AGENDA

November 16, 2020

CONSISTENT WITH TERMS OF GOVERNOR HOLCOMB'S EXECUTIVE ORDER 20-43 FACEMASK ARE REQUIRED!

Meetings of Standing Committees
Council Conference Room
6:45PM

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL
COUNCIL CHAMBERS/CITY HALL
7:00PM

WebEx Telephone Number: 1-408-418-9388
Meeting number (access code): 173 036 1320
Meeting password: USmtPrNQ867

Livestream #1: https://www.facebook.com/cityofmishawaka/
Livestream #2: @MichianaAccessTV on Facebook
Livestream #3: Michiana Access TV
(Comcast and AT&T U-Verse Channel 99)

To connect on-line join using Microsoft Lync or Microsoft Skype for Business

Dial: 1730361320.mishawaka@lync.webex.com

Members of the public will be asked to place their microphone on mute during the Meeting, with the exception of any public hearing. At the appropriate point in the public hearing, the Council President will invite the public to unmute their microphone for purposes of submitting such comments, one person at a time. All persons wishing to make public comments will be asked to first state their name and address for the record. After completing his/her public comments, members of the public will once again be asked to place their microphone on mute. Thank you for your cooperation.

1. Call to Order

2. Pledge of Allegiance

3. Roll Call

4. Approval of the Minutes of the Regular Meeting of November 04, 2020

5. Petitions, Communications, Remonstrance and Memorials

A letter from the Board of Zoning Appeals regarding their recommendations from their November 10, 2020 meeting.

A letter from the City Plan Commission regarding their recommendations from their November 10, 2020 meeting.

6. Report of Special Committee

7. Ordinances on First Reading

P.O. NO. 2020-43 Rezone from C-1 District to R-1 District for Residential Use – 2316 Lincoln Way West

P.O. NO. 2020-44 Rezone from C-7 & R-1 District to C-10 District to allow a Convenience Store with gas pumps

8. Resolutions

R2020-23 Use Variance to maintain a Duplex in R-1 Single Family Residential – 509 E. Lawrence

R2020-24 Conditional Use for Sand Mining – 1032 E. Twelfth St.

9. Ordinances on Second Reading

P.O. NO. 2020-39 Mishawaka Waterworks Bond Ordinance (Assigned to Budget and Finance Committee)

P.O. NO. 2020-40 Adopting Revised Rates and Charges for Water (Assigned to Budget and Finance Committee)

P.O. NO. 2020-41 Mishawaka Electric Bond Ordinance (Assigned to Budget and Finance Committee)

P.O. NO. 2020-42 Adopting Revised Rates and Charges for Electric (Assigned to Budget and Finance Committee)

10. Privilege of the Floor – Non-Agenda Items

11. Unfinished Business

12. New Business

13. Adjournment - This meeting will be aired Wednesday at 9:00AM on the Public Access Channel

At this time, I know of no other business to come before the Council.
Deborah S. Block, IAMC, MMC, City Clerk

The City of Mishawaka acknowledges its responsibility to comply with the Americans with Disabilities Act of 1990. In order to assist individuals with disabilities who require special services (i.e. sign interpretative services, alternative audio/visual devices, and amanuenses) for participation in or access to City sponsored public programs, services and/or meetings, the City requests that individuals make requests for these services forty-eight (48) hours ahead of the scheduled program, service and/or meeting. To make arrangements contact Susan Kile, ADA Coordinator, at (574) 258-1615.

Note: The Mishawaka Common Council has instituted changes in the way in which its meetings will be conducted during the current public health emergency. These changes are consistent with the terms of multiple Executive Orders issued by Governor Holcomb, as well as related legal guidance. It is anticipated that the Council's normal meeting procedures will be reinstituted at the conclusion of the public health emergency. In the meantime, physical attendance at Council meetings will continue to be restricted in accordance with relevant guidance related to limitations on public gatherings and social distancing. During the public health emergency, Council members, as well as members of the public and media, will continue to be afforded the opportunity to remotely access Council meetings. Recordings of Council meetings (if applicable) and the minutes of the meetings will also be made available to the public and the media as soon as is possible.

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

November 4, 2020

Be it remembered that the Common Council of the City of Mishawaka, Indiana met in the Council Chambers of the Mishawaka City Hall and via telephone on Wednesday, November 4, 2020 at 7:00PM. The meeting was called to order by President Gregg Hixenbaugh. All were asked to stand for the Pledge of Allegiance, followed by a moment of silence to remember the lives lost due to COVID-19.

Roll Call.
Present: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh.

Others Present: Mike Trippel, Council Attorney and Clerk Block

Minutes for the Regular meeting of October 19, 2020 were approved as received from the Clerk's Office.

Clerk Block read the following appeals and petitions to the council who referred them to the Board of Zoning Appeals and the City Plan Commission for their recommendations.

APPEAL NO. 2020-50	Use Variance to maintain a Duplex in R-1 Single Family Residential – 509 E. Lawrence
APPEAL NO. 2020-51	Conditional Use for Sand Mining – 1032 E. Twelfth St.
APPEAL NO. 2020-21	Rezone from C-1 District to C-10 District to allow Convenience Store with gas pumps – Part of 2754 Lincoln Way East – Existing Parking Area for Mishawaka INN
PETITION NO. 2020-22	Rezone from C-1 District to R-1 District for a Residential Use – 2316 Lincoln Way West
PETITION NO. 2020-23	Rezone from C-7 & R-1 District to C-10 District to allow a Convenience Store with gas pumps

Clerk Block read the following proposed ordinances by title and assigned committee.

PROPOSED ORDINANCE NO. 2020-39

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A PROPOSED ORDINANCE FROM THE CITY OF MISHAWAKA AUTHORIZING THE ISSUANCE OF WATERWORKS REVENUE BONDS FOR THE PURPOSE OF PROVIDING FUNDS TO PAY THE COST OF CERTAIN ADDITIONS, EXTENSIONS AND IMPROVEMENTS TO THE MUNICIPAL WATERWORKS OF SAID CITY,

PROVIDING FOR THE SAFEGUARDING OF THE INTERESTS OF THE OWNERS OF SAID BONDS, OTHER MATTERS CONNECTED THEREWITH, INCLUDING THE ISSUANCE OF NOTES IN ANTICIPATION OF BONDS, AND REPEALING ORDINANCES INCONSISTENT HEREWITH
Mishawaka Waterworks Bond Ordinance
(Assigned to Budget & Finance Committee)

PROPOSED ORDINANCE NO. 2020-40

AN ORDINANCE ADOPTING REVISED RATES AND CHARGES FOR WATER SERVICES FURNISHED BY THE CITY OF MISHAWAKA'S MUNICIPAL WATER UTILITY
Adopting Revised Rates and Charges for Water
(Assigned to Budget and Finance Committee)

PROPOSED ORDINANCE NO. 2020-41

AN ORDINANCE OF THE CITY OF MISHAWAKA AUTHORIZING THE ISSUANCE OF ELECTRIC UTILITY REVENUE BONDS FOR THE PURPOSE OF PROVIDING FUNDS TO APPLY ON THE COST OF THE CONSTRUCTION OF CERTAIN ADDITIONS, EXTENSIONS AND IMPROVEMENTS TO THE MUNICIPAL ELECTRIC UTILITY OF SAID CITY AND IMPROVEMENTS TO BUILDING SPACE FOR THE UTILITY PROVIDING FOR THE SAFEGUARDING OF THE INTEREST OF THE OWNERS OF SAID BONDS, OTHER MATTERS CONNECTED THEREWITH INCLUDING THE ISSUANCE OF NOTES AND ANTICIPATION OF BONDS AND REVEALING ORDINANCES INCONSISTENT HEREWITH
Mishawaka Electric Bond Ordinance
(Assigned to Budget and Finance Committee)

PROPOSED ORDINANCE NO. 2020-42

AN ORDINANCE ESTABLISHING A SCHEDULE OF RATES AND CHARGES FOR ELECTRIC ENERGY AND SERVICES RENDERED BY THE MISHAWAKA UTILITIES ELECTRIC DEPARTMENT
Adopting Revised Rates and Charges for Electric
(Assigned to Budget and Finance Committee)

Clerk Block read the following proposed ordinances and opened the public hearing.

PROPOSED ORDINANCE NO. 2020-37

AN ORDINANCE DECLARING AN EMERGENCY IN TRANSFERRING AND REAPPROPRIATING FUNDS WITHIN THE BUDGET ADOPTED FOR THE CALENDAR YEAR ENDING DECEMBER 31, 2020
Transfer Funds – Motor Vehicle Highway Fund - $10,000.00

Mrs. Voelker reported the Committee of Budget and Finance recommended this proposed ordinance should be adopted. This was signed by the majority of the committee upon a second by Mr. Banicki motion carried.

Tim Ryan, Director of Central Services, spoke in favor of **PROPOSED ORDINANCE NO. 2020-37**. Mr. Ryan asked for the council's favorable vote and stated this ordinance would bring their uniform rental lines back up to get them through the end of the year. Mr. Ryan concluded thanking the council for their considerations.

Question was called for at 7:09PM for **PROPOSED ORDINANCE NO. 2020-37** **Vote: Motion carried by unanimous roll call vote (summary: Yes = 9).**
Yes: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. Thus, it becomes **ORDINANCE NO. 5717.**

PROPOSED ORDINANCE NO. 2020-38

AN ORDINANCE AMENDING CHAPTER 137 OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, COMMONLY KNOWN AS "THE ZONING ORDINANCE OF 1966" OF THE CITY OF MISHAWAKA, INDIANA.
PUD Amendment to allow an Elevated Water Storage System Tank not to exceed 150' in height

Mr. Emmons reported the Committee of Land Use Planning recommended this proposed ordinance should be adopted. This was signed by the majority of the committee upon a second by Mr. Banicki motion carried.

Mr. Prince, City Planner, spoke in favor of **PROPOSED ORDINANCE NO. 2020-38** and presented as the President of the Mishawaka Utilities Board. Mr. Prince began stating they are requesting the city north well field plan unit development be amended to allow for the construction of an elevated water tank not to be exceed `50' in height. Mr. Prince introduced Dave Majewski, Manager of Mishawaka Utilities water division and Jaime Percheki, Design Engineer and Project Manager for DLZ and Andy Lembaris, Vice President of DLZ. Mr. Prince stated the Planning Commission considered the request on October 13th and there was no remonstrance at that public hearing. He continued to say the Plan Commission passed on a unanimous recommendation for the request. Mr. Prince stated the planning led to this request goes back to 2015 and at that time they made a decision to look for a replacement wellfield site to replace the current Gumwood Road wellfield. Mr. Prince stated the city since acquired property including the Juday Creek Golf Course where a new wellfield is planned and where they hope to start construction next year. Mr. Prince stated the Gumwood wellfield was proposed to be closed because of the small size of the property, the high manganese content in the water and the water production capacity did not meet the needs of the projected long term growth of the city. The wellfield itself was recently annexed in the city in 2015 and at the time contained 23.5 acres. Mr. Prince stated at the time of the annexation, the range of uses in addition to the wellfield use was proof for the wellfield site, including both residential and commercial uses. At the time, desire was expressed by the adjacent subdivision and county that no internal connection be made to the property and the wellfield was zoned as an extension of the Grandview planned unit development. As part of the planning associated with the creation of the new city wellfield, Mishawaka Utilities also looked at other system wide deficiencies. Mr. Prince stated the reason for the new tower is twofold. Mr. Prince stated as the city has grown there is a greater demand for water and the current tower is 1 million gallons with the proposed tower being 1.5 million gallons. Mr. Prince stated pressure is the second reason for a new tower and the elevation of the current tank is not tall enough to create as much pressure as needed for the city. Mr. Prince stated the new tower will raise the average pressure by approximately 15 PSI while also providing more storage and greater ability for fire protection. Mr. Prince stated the proposed tank is intended the replace the existing tank and as part of the design process, their consulting engineer reviewed the potential of keeping the existing tank and adding a new location. They also looked at varying options for new locations and because of the need to increase pressure; the existing tank did not work. Mr. Prince stated in regards to identifying a new tower site, they asked DLZ to look at multiple sites including the intersection of Capital and the Indiana Toll Road. Mr. Prince stated that location would not address the needs as far as pressure deficiencies and would also require a significant amount of new pipe infrastructure. Mr. Prince stated the location at Gumwood wellfield would address the pressure deficiencies but also added the benefit for minimizing installment of underground piping. They then looked specifically at the placement of the tower on the site. Mr. Prince stated there is no real traffic generated or developing concerns to be addressed and they do not feel the water tower is a negative impact on the landscape, but they do understand it changes the area in an appearance standpoint. As such, the proposed location is in the far southeast corner of the wellfield and would place the tower site 400 feet from the single family home properties in the area. Mr. Prince stated they felt this location was ideal and would allow for the new development to be constructed around the tower. Mr. Prince stated if approved, they would hope to begin construction in the spring of 2021 and would take two construction seasons to build the tank which would have it online by late 2022. Mr. Prince concluded stating answers to a couple of questions they had received. They were asked if the tower and proposed construction would have impact on the private wells located in the adjacent subdivision to the west. Mr. Prince stated it would not have any effect on the private wells and the wells on the site where the new tower will be constructed will be abandoned and sealed after the completion of their new wellfield. Mr. Prince stated the new wellfield is located over a mile away from the site. Mr. Prince stated they were also asked if the tower would affect property values. Mr. Prince stated the opinions on what impacts property values is subjective but they do not believe so. Mr. Prince stated they also had discussions with Great Lakes Capital and they have worked with them to make sure the proposed water tower site is not just utilitarian, but it can be an amenity. Mr. Prince stated they had not expressed any concerns and they feel the tower will fit in the landscape appropriately as a landmark.

Mr. Compton stated he was not opposed to the development of the water tower, but asked Mr. Prince if the location they are proposing is the best place to construct it and if it would be better to find another place which could be nice tax producing development. Mr. Prince stated any place they put the water tower is going to remove that tax and the infrastructure provides value to the city in terms of not building the additional piping. Mr. Prince stated that financial benefit outweighs looking at moving it to another property to where they may have to buy additional property along with counting on selling the current property. Mr. Prince stated they are only taking a small portion of land off the market, 1.5 acres, and they feel it is as good of a location as any. Mr. Compton stated he felt security around a water storage tank would be something they would be highly concerned about. Mr. Compton asked if that was part of the process now. Mr. Prince stated it is an issue and the tank on the south side off of Ireland Trail has razor coil around it, but they think there is benefit to having the development around the tower because it has eyes on it. Mr. Prince stated the security fencing is some of the best security fencing they can provide. Mr. Prince stated you also could not cut the fencing and feel it would be stronger from that perspective. Mr. Prince stated the water division installs video cameras on all of the locations as well.

Mrs. Voelker stated she thought they would receive a presentation from the engineer and wanted to ask them questions. Mr. Hixenbaugh thanked them for their cooperation as far as the capacity in the council chambers. Jaime Cocheki, DLZ Indiana 2211 E Jefferson Blvd, answered questions. Mrs. Cocheki stated the tank is a composite style tank and the design is meant to mimic the Blair Hills tower location on the south side of town. Mrs. Voelker stated she looked at the Bittersweet tower and it was not very appealing. Mrs. Voelker stated this new design is much better than the Bittersweet tower and she appreciated the picture they gave out.

Dave Majeski, Water Division Manager, spoke in favor of the ordinance. Mr. Majeski stated when the Gumwood tank was built there was only a car lot and the mall out in that area. Mr. Majeski stated now they have three hospitals, multiple residential cancer centers, etc. and that growth keeps expanding. Mr. Majeski stated this will not only help them out there, but they will be able to utilize the tower to be able to pressurize the future growth in that area. Mr. Majeski stated they appreciated the council's support.

Mr. Hixenbaugh appreciated the work everyone involved had done not just to address the needs of the city, but the wants and needs of the surrounding homeowners as well.

Question was called for at 7:26PM for PROPOSED ORDINANCE 2020-38 **Vote: Motion carried by unanimous roll call vote (summary: Yes = 9).**
Yes: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. Thus, it becomes **ORDINANCE NO. 5718.**

UNFINISHED BUSINESS

Clerk Block read the following proposed ordinance and opened the public hearing.

PROPOSED ORDINANCE NO. 2020-24

AN ORDINANCE AMENDING CHAPTER 137 OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, COMMONLY KNOWN AS "THE ZONING ORDINANCE OF 1966" OF THE CITY OF MISHAWAKA, INDIANA.
PUD Amendment to allow for mixed Use Development to allow Residential, Commercial, and Industrial Uses – Vacant land S. of Vistula Rd. & W. of Cedar Rd.

Mr. Banicki reported the Committee of Land Use Planning recommended this proposed ordinance should be presented to the council as a whole. This was signed by the entire committee upon a second by Mr. Mammolenti motion carried.

Mike Danch, Danch, Harner & Associates, spoke in favor of **PROPOSED ORDINANCE NO. 2020-24**. Mr. Danch stated there have been additional changes that he will go over with council on the site plan. Mr. Danch stated he sent a preliminary site plans to Clerk Block. Mr. Danch stated this was done back in the 1970s where there was an overall development plan approved by the Mishawaka City Council at that time. Mr. Danch stated over time there have been several parcels around that have been developed and per Mr. Prince, there was concern that it was decided that anything that happens in the PUD should come before the public hearing procedure to ask for an amendment. Mr. Danch stated the big portion of the project was the apartment complex. Mr. Danch stated when it was originally done, they had just submitted an amended PUD just for the complex and there had been a preliminary site plan for that apartment complex with issues such as whether they had met with the neighborhood and addressed concerns. Mr. Danch stated that did not happen and as of a result, the plan was pulled before it ever got to the council. Mr. Danch stated he and Jeff Johnson would then ask to take over the project and see if they could go ahead and proceed in getting it approved and up to date. Mr. Danch stated they met with Ken Prince and it was decided that it made more sense to bring in the rest of the property with about 56 acres of ground that had not been developed. Mr. Prince had suggested instead of getting the apartment complex approved to bring the whole thing in and that ended up amending the entire ordinance and nail down the uses. Mr. Danch stated that would give assurances to the residents in the area that are adjacent to the property, some consistency and some satisfaction in what could happen on the property. Mr. Danch stated the original PUD had a lot of uses to it such as multi-family and densities up to 15 units per acre that were fronting on Vistula Road which became an issue. Mr. Danch stated they worked with Mr. Prince and met with the residents on a couple of occasions to address their concerns and their issues on the standpoint of the apartment complex. Mr. Danch stated the second factor was how the rest of the property would be developed and whether those remaining parcels could also have some concerns for the single family development on the north side Vistula Road. Mr. Danch stated they tried to narrow down the particular uses that would be allowed on the rest of the property and submitted a plan with an apartment complex, but there were still major issues with residents. Mr. Danch stated several residents didn't want any apartment complex and would prefer the land to remain as is or only have single family development. Mr. Danch stated the planning staff was in favor of what they were proposing for this particular use and the residents believed the original 20 acres was extending too far to the east and too close to the existing single family homes on the north side of Vistula Road. Mr. Danch stated there was a concept given to them that would change to complex from a rectangular shape to more of an L shape and that particular plan is what he had given to the council. Mr. Danch stated they essentially had shifted everything over, increased the width of the property along the industrial common boundary and the driveway opening is closer to Bittersweet Road. Mr. Danch stated also the buildings were pushed farther back so they were not fronting on Vistula Road. Mr. Danch stated the closest building on this particular plan is over 670 feet from the closest single family property on Vistula Road. Mr. Danch stated they went through a public hearing with the Plan Commission and Chris Jamrose, City Engineer, was fine with the issues and the way they developed the site. Mr. Danch stated another issue that came up was the secondary access point and they provided that access point to the apartment complex. Mr. Danch stated the point goes into Parcel C, which would have commercial uses and industrial uses in it. Mr. Danch stated the issues with drainage will all be handled on site and there will be no water issues to adjacent properties. Mr. Danch stated there will also be additional landscaping along Vistula Road and along their eastern borders. Mr. Danch stated one of the last things that occurred in the past 48 hours was to take a look at Parcel B which contains 17.4 acres which is the main contention residents had. Mr. Danch stated the eastern portion of Parcel B, approximately 8-9 acres, would only have single family development and no other uses would be allowed. Mr. Danch stated the western portion of 17.44 acres against the parcel complex of Parcel B would strictly be for uses that are allowed under the R-1 category for the city of Mishawaka. Mr. Danch stated they would commit there would be no access between Parcel B, Parcel C, or Parcel A which means Parcel B would only have access to Vistula Road and there would not be a connection point between Parcel B and Parcel C. Mr. Danch hoped this would give assurance policies to the residents there that the 8 or 9 acres will only be used for single family development and if they would want to do something different they would have to come before the council to get approval.

Mr. Compton thanked Mr. Danch for his clear description. Mr. Compton asked about the ponds causing concerns and stated he did not like seeing the possibility of having them that close to the road. Mr. Compton asked for clarification on the ponds as far as a safety hazard. Mr. Danch stated usually the mounding would end up being either a 3 to 1 or 4 to 1 slope and will put landscaping trees on top of that along with shrubbery to stop a potential vehicle before reaching the retention area.

Mr. Mammolenti thanked Mr. Danch for the thorough explanation and brief history of the project. Mr. Mammolenti how deep the ponds will be. Mr. Danch stated it would be 4 to 5 feet deep and they also have to make a determination if that will be the full size, because for the capacity of drainage you will certainly want the pond to drain in the event of rain. Mr. Danch stated in this particular case they would have more of an issue trying to keep water in them because of the sand area. Mr. Mammolenti asked if the berms would be only along Vistula Road. Mr. Danch stated they could be on Vistula and also come along the eastern portion, because they may want some kind of separation between the higher density multi-families to the single family development. Mr. Danch stated they would rap the berming around the east portion of the site plan. Mr. Mammolenti asked if it would be very difficult, if not impossible, for a vehicle traveling east or west to get into the pond. Mr. Danch stated it would be.

Mrs. Voelker asked was it their intention to extend the sidewalk all along to Cedar Road. Mr. Danch stated it will not be all along Parcel B, because they are only purchasing Parcel A. Mr. Danch stated part of the approval of the amended PUD is they will be required to extend the sidewalk. Mrs. Voelker asked was the parcel being purchased currently is only Parcel A and also how they can guarantee what will happen with Parcel B and C. Mr. Danch stated that is what they make the amended PUD for and they are approving what is being required. Mr. Danch stated they are trying to give residents the policy and are creating a zoning to ensure all of the conditions. Mrs. Voelker stated she did not understand these conditions are being put on pieces of property that are not being purchased and she thought it would make it difficult to sell the other pieces of property, because the restrictions are so specific. Mrs. Voelker stated she was thinking about the connector road between Parcels B and C and that would put a lot of specific restrictions on the property and wondered if it would make it more difficult for the family to sell the rest of the property. Mr. Danch stated the owners understand and have asked them to make that part of the approval for the amended PUD. Mr. Danch also stated that road is not going to go in and they agreed to the restrictions and know that it is part of the process.

Mr. Bellovich thanked Mr. Danch for his explanation and asked will there only be restriction development to single family units along Vistula Road. Mr. Danch stated that was correct and on the eastern portion of the 17.44 acres in Parcel B can only be single family development. Mr. Danch also stated on the western portion, the remaining 8 acres, is only for uses allowed under R-1. Mr. Danch stated he is trying to address concerns of the residents who have single family homes and that they will also be looking at only single family homes.

Mr. Mammolenti asked why all of the Vistula frontage would not be single family. Mr. Danch stated it is a question that could be looked at and if they had that issue, they could certainly revise it.

Mr. Hazen stated he was under the impression after the last meeting they would go back to assess the secondary access point and make it possible for townhomes to the west and residential R-1 to the east. Mr. Danch stated they are doing more restrictions on the portion Mr. Hazen referred to, and instead of only doing R-1 in the east, they will only do single family development. Mr. Danch stated the eastern 8-9 acres was only for single family development to comply with the residents' request. Mr. Danch stated as far as the secondary access point, they are doing the emergency access but will let his colleague explain about it and how it will be made possible. Mr. Hazen stated there is some confusion with the neighbors as far as owner occupied villas and townhomes and then he received something late stating nursing homes and churches in the parcel. Mr. Danch stated he took that out of there so it is only on the eastern portion to give the residents that insurance policy to only see single family homes. Mr. Hazen stated a concern with Parcel B not solely being R-1. Mr. Danch stated if that were an issue they could readdress that at the rebuttal stage.

Mr. Hixenbaugh thanked Mr. Danch and Mr. Johnson for the work they put into the project to address concerns and make adjustments. Mr. Hixenbaugh stated he had concerns with Parcel B and if Mr. Hazen is confused then he is as well. Mr. Hixenbaugh stated they would defer on that issue to a certain extent until they hear from the neighbors. Mr. Hixenbaugh asked for a clarification on the 8-9 acres on the eastern portion and where that would approximate in that parcel. Mr. Danch stated the very eastern portion of the apartment complex would be the line of demarcation between the eastern portion of Parcel B and western portion of Parcel B. Mr. Hixenbaugh asked if tonight, the ordinance were approved, there would be only single family residential uses only and if there were a desire to amend it that would be a step a developer would take. Mr. Danch stated they would be willing to agree to that and they would come before the council once again to adjust Parcel B. Mr. Hixenbaugh stated he would like to hear for others and will have a question for their legal counsel regarding the restriction of only single family on the eastern portion and another use on the western portion and since it is not embedded on the ordinance, they would have to rely on the group of representation. Mr. Hixenbaugh stated they had run into projects in the past where representation had not been fulfilled by the user of the property and the last thing they would want to do is chase someone down and ask them to keep the commitments that were previously made. Mr. Danch stated Parcel B would simply be amended to single family only if necessary and the council would approve that amendment to the PUD request. Mr. Hixenbaugh thanked Mr. Danch for his patience.

Mike Stackage, owner of Reflection Apartments adjacent to site, spoke in favor of the ordinance. Mr. Stackage stated they were there to propose 188 apartment units in 24 buildings with the buildings being 7 or 8 units in size. Mr. Stackage the 7 unit building has a 3 car garage in the building and close to 1 for 1 garage ratio on the site. Mr. Stackage the unit mix would consist of 1, 2 and 3 bedroom units ranging from 800 to 1350 square feet. Rent would vary to $1100 to $2000 a month based on floor plan and timing. Mr. Stackage stated they propose a club house, pool, fitness center, and dog park. Mr. Stackage stated they currently have the sister property completed in Burns Harbor and purpose to do a little bit more luxurious version by adding brick to the front alleviations. Mr. Stackage stated this particular development is in a single family subdivision of which they are part of the Homeowners Association. Mr. Stackage stated they were asked to build this in the particular community to complement the single family. Mr. Stackage stated they believe this will be a couple year project by the time it is complete and with approval they would like to get started in the spring. Mr. Stackage concluded stating they presented to the council two and a half years ago with the exact same project, but with different site plans and worked with homeowners and the land owner along the way.

Mr. Banicki asked if the two are going to build the complex themselves or will they hie local workers and will they be compensated well with benefits. Mr. Stackage stated they have a builder and plan to go local. Mr. Stackage stated legally they won't be working for them, but he will be on site nearly every day and will have 100 percent control of management and construction. Mr. Banicki asked if they will be working for the contractor themselves. Mr. Stackage stated they will hire plumbers, concrete workers, excavators, etc. Mr. Stackage stated they have a specialized builder and he knows the industry.

Mr. Emmons asked how many bedrooms will be in the units. Mr. Stockage stated some units are 1 and 2 bedrooms and the other is 2 and 3 bedrooms. Mr. Emmons asked if the total units are 185 or 188, because they had it listed as both. Mr. Stockage stated most of their stuff is lower in density and reflections are 116 units, but they try to build under 200 units, because of the control and the easier it is to manage. Mr. Emmons asked will all units be rentals. Mr. Stockage stated that was correct.

Mrs. Voelker asked why they feel putting apartments in their community would be a good idea with there so many already present. Mr. Stockage stated his background was he was a cofounding broker in Chicago and parlayed that into Northern Indiana, so he created the database for apartment communities throughout Northern Indiana before he went private. Mr. Stockage stated his job was to know every asset and the owners. Mr. Stockage stated they know Northern Indiana probably better than anyone. Mr. Stockage stated they wanted to do this project, because they believe there are 188 families who want to live in this part of town compared to the mall. Mr. Stockage stated they own 116 units and added another property to complement Reflections at a higher level. Mrs. Voelker asked if they are now at market rate. Mr. Stockage stated it was government subsidized and they believed the location along with real estate was worthy to convert the development to conventional. Mrs. Voelker asked what the rents in the complex next door are. Mr. Stockage stated they are closing in on $1000. Mr. Stockage stated there are One hundred 2-bedrooms and Sixteen 3-bedrooms without any 1 bedrooms.

Mr. Mammolenti complemented Mr. Stockage on the upgrade and rehab of the property. Mr. Stockage stated it is because they are running it and they have not sell this place in recent years. Mr. Stockage stated they have only sold 2 properties and still own almost everything they have purchased and built.

Mr. Hixenbaugh asked what else he will do as an owner to try to ensure there would not be any spillage of a security related issue out into surrounding neighborhoods. Mr. Stockage stated they do not have a security officer at Reflections but they prefer to have at least one curtesy officer at every location at every demographic. Mr. Stockage stated that is a deterrent as well as they tend to handle anything that happens on the property. Mr. Stockage stated for Reflections they would do the same at the new property and currently they are adding companywide at every location, because they want to be ahead of the curve as far as high tech security cameras in the common areas. Mr. Stockage stated they are very serious about security. Mr. Hixenbaugh asked if he were a resident of the neighborhood and had gone through the meetings and heard the presentations, one of his concerns would be that he would not be present at the establishment and asked what type of outreach Mr. Stockage does with his current facilities to try to facilitate that communication. Mr. Stockage stated he handed out his business card to those who wanted his information with his cell phone number and personal address on it. Mr. Stockage stated on their website they have individuals email them directly also if there are any conflicts with a bad manager or a bad employ, for example. Mr. Hixenbaugh asked what their total investment would be. Mr. Stockage stated it would be $35 million dollars.

Mrs. DeMaegd asked if there will be a site manager present for the construction of the 188 units. Mr. Stockage stated they will have 5 employees who are full time plus a regional manager who will oversee Reflections. Mr. Stockage stated the two owners will be there at least once a week as well.

Jon Piraccini, 633 Windy Cove Ct., spoke in opposition of **PROPOSED ORDINANCE 2020-24**. Mr. Piraccini stated they have been dealing with them for 3 years and the reason why they have gotten to this point is because they have been forced to. Mr. Piraccini stated he did not know why it has taken 3 years to convince them to compromise. Mr. Piraccini stated he liked Mike Danch but he believed the PUD should be amended and be looked at. Mr. Piraccini's proposal stated he wanted owner occupied and not rentals which in their plan, it contains rentals. Mr. Piraccini stated he was disappointed in the owners and they were a friend of his and it was unbelievable to him. Mr. Piraccini stated he did not think this was going to fly until the last changes came right before the council meeting. Mr. Piraccini stated he did not think the city deserved that. Mr. Piraccini thought they were close and not far away from making the project work because it is a fair compromise. Mr. Piraccini stated the zoning on Vistula Road did not make any sense to him at least right now. Mr. Piraccini did not think it was a bad project and it could be a benefit if built right, but he is hoping they can take a long look at the proposals. Mr. Piraccini stated the land owners are not budging very much and are trying to work with the neighbors to get this done. Mr. Piraccini thought if they could get close with the plan, he will be alright with it.

Mr. Mammolenti asked what Mr. Piraccini meant by they are getting close and if he was referring to Parcel B being entire single family. Mr. Piraccini stated the 1-A in Parcel B is what he is concerned with. Mr. Piraccini stated since it is a PUD, if they do come up with a bite on a nursing home, then they could bring it to the council and take a lot at it once more. Mr. Piraccini stated he was confident it would work.

Mr. Compton stated what Mr. Piraccini is suggesting is to cut up the entrance piece a bit more and divide it up into 1-A and 1-B. Mr. Piraccini stated that was correct and to leave the apartments the way they are. Mr. Compton stated he was prepared to make an amendment for Parcel B to be all single family in the PUD and if something comes along, whatever that may be, they amend the PUD at that time with specific guidelines to control what goes in there. Mr. Compton further stated it would then be open to what R-1 is and they do not think the neighbors would like that. Mr. Compton stated he would support that and Mr. Piraccini would as well.

Michael Matski, 5305 Breezewood Dr., also spoke in opposition of **PROPOSED ORDINANCE 2020-24**. Mr. Matski stated fundamentally he is against apartments on Vistula. Mr. Matski stated he moved to the area about 4 and a half years ago with his family and found this nice community nestled against the agricultural land and thought it was a done deal. Mr. Matski stated this proposal is surprising to him and he was not disgusted with what he had heard. As written, Mr. Matski did not support the plan and he asked if the verbal concessions are binding with respect to eliminating the road from Parcel A to Parcel B and Parcel B to Parcel C access and looking to amend it to be all residential single family in Parcel B completely. Mr. Hixenbaugh stated what is in front of them was the land use issue and not the site plan to where the road will be. Mr. Hixenbaugh stated they were there to decide if the existing PUD should be amended so the use is enforceable. Mr. Hixenbaugh stated that was the question he was asking to Mr. Danch and they would all feel more comfortable if it were embedded in the ordinance that would be passed and have no hesitation in enforcing it.

Mr. Prince, City Planner, stated the difference with this petition is it is a plan unit development and plan unit developments are tied to a site plan. Regarding the road connections, Mr. Prince stated it should be identified in the conditions and if it is not graphically shown, it should be verbally shown.

Mr. Matski stated he liked the L shape on the plan submitted prior to the meeting and he assumed Parcel C would be anything up to light industrial uses, but he was not as concerned with that piece of the PUD. Mr. Matski stated this is a plan he could live with and did not think it would be a net positive for the community, but believed it would be very net neutral.

Mr. Emmons asked if Mr. Matski agreed with the plan Mr. Piraccini presented. Mr. Matski stated he agreed with the plan Mr. Danch presented with no connected road and single family in Parcel B. Mr. Matski stated he would also like to see sidewalk all the way along Parcel B, as it would be a huge plus for the community. Mr. Emmons stated he understood part 1-B, but stated Mr. Piraccini brought up Part 1-A being villas, townhomes, and owner occupied. Mr. Matski stated he thought that would be okay but the better plan would be that the entire Parcel B be changed to all single family.

James Bell, 645 Windy Cove Ct., spoke in opposition to **PROPOSED ORDINANCE 2020-24**. Mr. Bell asked the council to proceed with caution and the reason he says that is because the council had been deceived by the developer and seller along with the neighbors. Mr. Bell stated 2 and half years ago, they tried to bring the proposal to the council before talking to the neighbors and packed the Fire Station on 12th Street for a meeting. Mr. Bell stated they brought it back this summer and Mr. Emmons asked if they met with the neighbors in the community and the developer was not present at the meeting to address the neighbor's concerns. Mr. Bell stated they brought a petition to another set meeting with 75 signatures of individuals in the neighborhood opposing the plan. Mr. Bell stated they discussed this and at the meeting and stated there was no confusion, because they believed Parcel B would be made all single family. Mr. Bell asked the council once again to exercise extreme caution and mentioned they are concerned about the safety of their neighborhood. Mr. Bell stated he is still opposed, but they are making concessions and they dropped the plan at 4:30 last Friday and were told a meeting was set the day after the election. Mr. Bell stated they did not give them time to prepare and get together and had not seen the final plan prior to it coming before the council. Mr. Bell stated they have been deceived and so have the council for that matter.

Mr. Mammolenti asked Mr. Bell if Parcel B in its entirety were to be amended to single family if he would agree. Mr. Bell stated he would barely.

Mr. Emmons asked what all of his concerns are. Mr. Bell stated in today's market, he found it difficult that the whole acreage on Vistula couldn't find a buyer to develop into single family homes. Mr. Bell stated he would like all of Parcel B to be single family. Mr. Emmons stated his philosophy in Mishawaka is they are getting more and more rental apartments and you cannot build immunity when you have transit people. Mr. Emmons stated the more apartments you have, the more problems you inherit in his opinion. Mr. Bell stated he agreed with that completely.

Mrs. Voelker asked if the 75 people don't want any apartment frontage on Vistula and if the plan makes sense to him. Mr. Bell stated when you pull out of the subdivision you will see apartment complexes no matter what. Mrs. Voelker asked him if he understood the property was already zoned for apartments. Mr. Bell asked if they were able to develop the land without permission of the council, wouldn't they be doing it already? Mrs. Voelker stated if there was a buyer for it then they would be doing it. Mrs. Voelker stated the buyer wants some changes and it seems to her that there have been lots of concessions and changes from 2017 done for the neighbors. Mrs. Voelker stated they are in a situation where they have exercised control to what is going in and she believed people had worked so hard to meet the wants and needs of the community living across the street. Mrs. Voelker asked if it were single family homes in Parcel B, if he would be comfortable with it. Mr. Bell stated he would not favor it, but he would live with it. Mr. Bell stated they also had made concessions on their side as well and he had been in the room multiple times over the last couple of years. Mrs. Voelker stated there had been negotiation and a lot of work and because of the work they have done, the changes had been made in the negotiation process.

Patrick Kramer, 639 Windy Cove Ct., spoke in opposition **PROPOSED ORDINANCE 2020-24**. Mr. Kramer stated he was against the project from the beginning and appreciated all of the compromises. Mr. Kramer stated it would be inevitable that the apartment complex would go in and was very concerned about what the rest of the use is for the property. Mr. Kramer stated he would agree if the 17.44 acres were designated single family.

Debbie Fox, 5117 Breezewood Dr., spoke in opposition of **PROPOSED ORDINANCE 2020-24**. Mrs. Fox stated lots and lots of apartment complexes have vacancies in Mishawaka and she did not feel like they needed another apartment complex in the city. Mrs. Fox stated there is a demand for villas and condos, but they do not need more apartments.

Dominic Ball, 732 River Pointe Place, spoke in opposition of **PROPOSED ORDINANCE 2020-24**. Mr. Ball stated he is concerned with traffic and he comes out of River Pointe estates and it is getting harder to pull out of there. Mr. Ball stated with the 188 apartments, there could be an addition of around 400 cars in the area which is a considerable amount. Mr. Ball stated when they leave to turn left out of the complex; it would be more dangerous to exit. Mr. Ball stated he has a solution in which the apartments would be moved to Parcel C, that way they could exit on McKinley to go to South Bend or turn right on Bittersweet to head north. Mr. Ball stated he believed the residents would fully support that concept and there could be an exact onto Cedar Road as well.

Linda Clements, 629 Misty Harbor Ct., spoke in opposition of **PROPOSED ORDINANCE 2020-24**. Mrs. Clements stated she is concerned about the traffic and asked who owns Cedar Road and that the road is very narrow. Mrs. Clements also stated the traffic on Vistula has really picked up with all of the single family homes built in Osceola. Mrs. Clements stated she did not know what the occupancy rate of the Mill is and if it is booked, the apartments by the Toll Road if they are full, and she also asked if Reflections were 100 percent full. Mrs. Clements stated she did not know why there couldn't be single family residences. Mrs. Clements concluded stating she did not believe they needed more apartments.

Beth Barrett, 741 River Pointe Place, spoke in opposition of **PROPOSED ORDINANCE 2020-24**. Mrs. Barrett asked the council to keep in mind how lovely their neighborhood is and they would like to protect all of the investments in it. Mrs. Barrett stated they should have the road widened, Cedar Rd specifically, before all of the cars and bicycles and whatnot are in the neighborhood. Mrs. Barrett also stated they trust the council to protect their safety and asked for the Street Department look at this before the development starts.

The council took a recess at 9:25PM and reconvened at 9:42PM.

Mr. Hixenbaugh thanked everyone for their indulgence. Mr. Hixenbaugh stated there is an individual who tried to participate technologically and they are having the individual text the council to address their concern.

Mr. Mammolenti received a text message from a neighbor and read the following message.

Rachel Jun, River Pointe Estates, said the following. "I have been listening this whole time, I agree with my neighbor about the traffic concerns. Before any new development is considered in the structure such as Vistula and Cedar needs work. Cedar is dangerous as it is now. Unfortunately I am unable to voice my opposition remotely during the meeting, because I am caring for an infant at home."

Mrs. Voelker stated she spoke with Mr. Prince during the break and Cedar Road up near Vistula is not a Mishawaka road and is a county road. Mrs. Voelker asked about the connector road and if there was anything they could tell the council about the road. Mr. Danch stated the way they are showing the diagram, it has a preliminary layout and was an emergency access point. Mrs. Voelker stated if that could be used as a traffic point. Mr. Danch stated it is not an actual street; it is just for emergency access if the access point on Vistula Road would be blocked. Mrs. Voelker asked why they would be putting any roads in if there was nobody developing Parcel B and Parcel C. Mr. Danch stated it is a preliminary site plan, so they are showing the concept of how that development would occur. Mr. Danch stated it may not be in the exact spot or that the road will look exactly like that, because they would first work with the purchaser and developer for the final site plan approval.

Noah Davey, NAI Cressy, stated he realized this has not been an easy process for everyone involved and appreciated all the time the neighbors have put into this. Mr. Davey stated he worked on behalf of the Lung Family Trust for 4 years and the land has been available for $40,000 an acre with no single family interest. Mr. Davey stated they spoke with Ken Prince to upgrade the PUD set up in the 1970s. Mr. Davey stated there have been a lot of meetings and time sacrificed during the process and for the Lung family and Dorothy Lung, who is Davey's client, and through attorney Tom Walls, they are looking out for Dorothy to make sound decisions. Mr. Davey stated he called Tom Wells and it took multiple days to make any progress with the Lung Family with the new plan and that is why it did not come until Friday at 4:30. Mr. Davey stated they gave up 587 units and compromised even when the neighbors stated there was no compromise. Mr. Davey stated in the spirit of compromise, he received authority to agree to the plan that Mr. Piraccini proposed with 1-A and 1-B could be committed to the uses explained earlier. Mr. Davey stated he hoped on behalf of the neighbors and Lungs, they appreciate that the developer made multiple concessions and that they went through the public process to meet the neighbor's needs.

Mr. Hazen asked if they were referring to the 1-A west part of the parcel would include villas, townhomes, and single family to the west and 1-B would be solely single family. Mr. Hazen asked if they were talking about taking the 17 acres and dividing it right down the middle. Mr. Davey stated that was correct.

Mr. Hixenbaugh asked Mr. Trippel if he believed that the combination of the two constitutes enough of a record for them to be able to move forward with an approval if in fact there were a motion to amend the ordinance in front of them to reflect those comments or would they need to make a different type of record. Mr. Trippel stated if that is confirmed and if there were a written commitment it would work. Mr. Hixenbaugh clarified if there were a motion and a second approved by the council to amend the ordinance to reflect the compromise, that it could be approved that evening subject to the submission on the part of the petitioners of an appropriate written commitment. Mrs. Voelker stated she believed the connector road would be needed also in the ordinance if it were important. Mr. Danch stated they could make that part of the amendment with an access road that goes to Cedar Road and Lincoln way. Mrs. Voelker asked if there were no connection between Parcel B and Parcel C. Mr. Danch stated they would basically just need a written commitment one describing land use for Parcel B laid out with an exhibit and the second one would be no connection between Parcel B and Parcel C or Parcel A.

Mr. Hixenbaugh restated that subject to the subsequent submission of a written commitment reflect certain amendments to the preliminary PUD that **PROPOSED ORDINANCE NO. 2020-24** would be amended in two parts. The first would be to consider Parcel 1-A as being treated in two equivalent subsets; the western most to be limited to single family residences, townhomes and villas that would all be occupied and Parcel 1-B would be limited to single families only. Mr. Danch stated that would be corrected. Mr. Hixenbaugh continued stating the second subpart would be that there would not be any internal connection between Parcel C that connected directly to Vistula, but rather there would continue to be internal connections to Cedar Road and Lincoln way. Mr. Danch stated he would send that to Mr. Trippel as well to review.

Mr. Compton made a motion with a second from Mr. Banicki to amend **PROPOSED ORDINANCE NO. 2020-24** as stated by Mr. Danch and restated by Mr. Hixenbaugh.

Mr. Hazen thanked the neighbors for their involvement in the project.

Mr. Emmons stated he will go ahead and vote in favor of the ordinance even though he did not like the idea of apartments and believed they were flooding the area way too fast on apartments. Mr. Emmons stated they should focus on building homes and a stable community and not a transit community.

Mr. Compton thanked the residents for their efforts. Mr. Compton also stated he believed a diverse community is a better community and having people who live in an area that are not alike helps them all in the future and gives others a better understand of what they go through.

Mr. Compton concluded stating having a neighborhood of diverse people, incomes and housing is good for a community.

Mrs. Voelker thanked the neighbors and stated she knew they were concerned about their homes and quality of life and it showed in the devotion they have to the particular development. Mrs. Voelker also stated the properties on the website all look very nice, but she noticed In Good Company received the Indiana Apartment Association Management Company of the Year Award, top rated status in nearly every community and green certified new communities. Mrs. Voelker stated she believed they are making a solid investment in Mishawaka and she appreciates that.

Mr. Bellovich thanked the residents who attended the meeting voicing their concerns. Mr. Bellovich stated what they worked out is a win for the city of Mishawaka and he appreciated the fact they will be using local scaled labor for this project. Mr. Bellovich stated the apartments 670 feet from the nearest residence is a long way and will not impact property values. Mr. Bellovich concluded stating he believe this is a win for the city, residents and the local economy.

Clerk Block polled the council on the amendment (Parcel B only amendment 1-A; West part of parcel Villas, Townhomes, Single Family and 1-B Single Family; East Part of Parcel**)** **Vote: Motion carried by unanimous roll call vote (summary: Yes = 9).**
Yes: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The Amendment passes 9-0

Mr. Hixenbaugh read comments submitted on behalf of a resident of the neighborhood.

Mr. Hixenbaugh thanked the neighbors for their participation in the process and the developer and their various representatives for their willingness to listen to them and arrive to a compromise. Mr. Hixenbaugh stated it is important what is in the best interest of the neighborhood and the community as a whole. Mr. Hixenbaugh acknowledged the work Mr. Hazen did on the project and believed it was a better outcome for the time and effort everyone put into it. Mr. Hixenbaugh stated he would be voting in favor of the ordinance and amendment.

Mr. Mammolenti extended a sincere thanks to the developers and neighbors. Mr. Mammolenti stated this is what city government is about or should be about and they have a voice to speak their concerns with the council and it was greatly appreciated. Mr. Mammolenti also thanked Mr. Hazen and Mr. Hixenbaugh for their works and efforts and all of the others who attended meetings.

Mrs. DeMaged thanked the residents for making a little noise and believed it was healthy and thanked them for getting this done in a great way and hoped everyone was happy.

Question was called for at 10:19PM for **PROPOSED ORDINANCE NO. 2020-24** **Vote: Motion carried by unanimous roll call vote (summary: Yes = 9).**
Yes: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. Thus, it becomes **ORDINANCE NO. 5719.**

NEW BUSINESS

Mr. Compton thanked the council members that participated in the police contract negotiations, Mr. Hazen, Mr. Mammolenti, Mr. Hixenbaugh, Mr. Bellovich, and everyone involved. Mr. Compton also thanked Pat Hinkle, Corporation Counsel and Becky Miller, City Controller who were a big help in getting this done. Mr. Compton stated a week from Tuesday 11/10 they would be meeting with the Fire Department and it is an Executive Session to the council.

Mr. Mammolenti thanked all of the negotiating team for their outstanding job. Mr. Mammolenti also announced their last neighborhood watch meeting of 2020 for Twin Branch will be November 18th at 7PM via zoom. Mr. Hazen will remind the public at their next meeting and unveil the guest speaker.

ADJOURNMENT 10:23PM

Deborah S. Block /s/	Gregg A. Hixenbaugh /s/
Deborah S. Block, IAMC, MMC, City Clerk	Gregg A. Hixenbaugh, President

City of Mishawaka

DAVID A. WOOD, MAYOR **DEPARTMENT OF CITY PLANNING**

November 12, 2020

RECEIVED
DEBORAH S. BLOCK, MMC
NOV 12 2020
CITY CLERK
MISHAWAKA, IN

Honorable Members of the Common Council
City of Mishawaka, Indiana

RE: Board of Zoning Appeals Recommendation
November 10, 2020, Public Hearing

Honorable Members:

A regular meeting of the Mishawaka Board of Zoning Appeals was held on the above date at which time the following Use Variance and Conditional Use Permit were considered:

APPEAL #20-50 An appeal submitted by Darlene K. Ballard requesting a Use Variance for **509 East Lawrence Street** to allow a two-unit dwelling in R-1 Single Family Residential zoning to remain.

The Board, with a vote of 4-0, recommended approval.

APPEAL #20-51 An appeal submitted by John Cocquyt (owner) and Blueprint BCS, LLC (lessee) requesting a Conditional Use Permit for **1032 East Twelfth Street** to allow sand mining in I-2 Heavy Industrial zoning.

The Board, with a vote of 4-0, recommended approval subject to the following conditions:

1. Rule 5 Notice of Intent (NOI), a Stormwater Pollution Prevention Plan (SWPPP), and Erosion Control Bond Erosion Control;
2. Paved (may be asphalt) drive minimum 100';
3. An Administrative Site Plan shall be submitted for the property. The site plan shall be consistent with the preliminary site plan as submitted; and
4. The hours of operation will be limited to 7 a.m. to 8:00 p.m.

Respectfully,

Kari Myers

Kari Myers, Administrative Planner
Secretary, Board of Zoning Appeals

cc: Darlene Ballard
Matthew Cain

STAFF REPORT

Location: 509 East Lawrence Street

Date: Nov 10, 2020

Appeal: 20 50

Prepared By: KM

GENERAL INFORMATION

Applicant:	Darlene K. Ballard
Status:	Property Owner
Request:	Use Variance to allow a duplex in a R-1 Single Family Residential District to remain
Zoning Classification:	R-1 Single Family Residential
Lot Size:	66' X 132'
Applicable Regulations:	Section 137-42 / (5) Board of Zoning Appeals – Developmental Variance; Section 137-165 / R-1 District - Uses

SPECIAL INFORMATION

Area Development Pattern:	North:	R-1 Single Family Residential District
	South:	R-1 Single Family Residential District
	East:	R-1 Single Family Residential District
	West:	C-1 General Commercial District

Thoroughfare:	Lawrence Street east of Division
School District:	School City of Mishawaka
Township:	Penn
Public Utilities:	All utilities are available and existing to the site.
Comprehensive Plan:	Low Density Residential

ANALYSIS

The Appellant is requesting a Use Variance to allow a duplex in the R-1 Single Family Residential District to remain. The parcel is located within a residential neighborhood surrounded on the north, south, and east by R-1 zoned properties.

The Appellant is selling the property and while this information may have been enough for a legal non-conforming letter (grandfathered letter), that letter still contains the statement any nonconforming use can only be rebuilt if the damage is not more than 75% of fair market value. The Use Variance procedure will provide a permanent approval and help a buyer secure financing.

In 2006, the previous owner provided documentation indicating the property had been used as a duplex since at least 1966. A copy of the letter from the Planning Department is attached. Also attached is an affidavit from a neighbor stating the property had been used as a duplex since at least 1958 when she moved to the neighborhood.

There is a two-car garage with a paved apron parking to provide the required 1.5 parking spaces per unit.

All pertinent departments reviewed the request and had no comments.

RECOMMENDATION

The Planning Staff recommends approval of Appeal #20-50 to allow a Use Variance for a duplex in the R-1 Single Family Residential District. This recommendation is based upon the following findings of fact:

1. Approval will not be injurious to the public health, safety, morals and general welfare of the community because no physical changes are being made to the property;

2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the property has been used in this way for many years, without any problems that we know of;

3. The need for the variance arises from some condition peculiar to the property in that the property was built as a duplex, or was at least converted by 1966, but the zoning was never changed to match the use;

4. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought because the building has been used as a duplex since at least 1966; and

5. The recommendation is consistent with Comprehensive Plan which indicates low density residential uses for this area.

ATTACHMENTS

Photographs, Appeal, Site Plan, Aerial, Location Map

509 E. Lawrence Street

View of two-car garage

RECEIVED
OCT 21 2020
ECONOMIC
COMMUNITY DEVELOPMENT
PLANNING

AP 20-50

DATE: October 21, 2020

TO: Board of Zoning Appeals City of Mishawaka, Indiana

The undersigned appellant respectfully shows the Board:

1. I, Darlene K. Ballard, am the owner of the following described real estate located within the City of Mishawaka, Township, St. Joseph County, State of Indiana, towit:

   509 E Lawrence St, Mishawaka, IN 46545

   Lot 107 GWR Fowlers 1st

2. The above-described real estate presently has a zoning classification of R1 District under the Zoning Ordinance of the City of Mishawaka.

3. Appellant presently occupies (or proposes to occupy) the above-described property in the following manner: The property is, and has been for years, operated as a duplex.

4. Appellant states that it has been used as a duplex since at least 1966 and that use has been documented on the grandfathered list. In order for the buyer to secure financing, the use variance is required.

5. The Zoning Ordinance of the City of Mishawaka does not allow two family homes.

6. Explain why strict adherence to the Ordinance requirements would create an unusual hardship. I am trying to sell the property and the use variance is necessary in order for financing.

7. Answer the following necessary questions for a USE VARIANCE:

   (1) Will approval be injurious to the public health, safety, morals or general welfare of the community? No, the property has been used a duplex for many years.

   (2) Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner? No, the property has been used a duplex for many years.

   (3) Does the need for the variance arise from some condition peculiar to the property involved? The property is listed for sale as a duplex and the use variance is required for financing the sale.

   (4) Does strict application of the terms of this chapter constitute an unnecessary hardship if applied to the property for which the variance is sought? No, the property has been used a duplex for many years.

   (5) Will approval interfere substantially with the Mishawaka 2000 Comprehensive Plan? No, the property has been used a duplex for many years.

WHEREFORE, Appellant prays and respectfully requests a hearing on this appeal and that after such hearing, the Board grant the requested variance.

Darlene K. Ballard

Signature of Property Owner/Title Holder, Darlene K. Ballard

CONTACT PERSON:

Darlene K. Ballard

509 E. Lawrence St., Mishawaka, IN 46545

(574) 250-0330

Dballard574@gmail.com:

City of Mishawaka

JEFFREY L. REA, MAYOR

DEPARTMENT OF CITY PLANNING

October 2, 2006

Mr. Michael Dembinski
509 East Lawrence Street
Mishawaka, IN 46544

Re: Parcel No. - 16-2082-2752
509 & 509 ½ East Lawrence Street

Dear Mr. Dembinski:

Please let this letter serve as verification that the above referenced real estate is zone R-1 Single Family Residential District in the City of Mishawaka.

After reviewing the documents that you submitted, we concur that the aforementioned property has been consistently occupied and used as a duplex (two-family residential) prior to 1966 and is considered a legal non-conforming use (a grandfathered use) for the two unit building.

In the event that the lawful non-conforming structure is damaged or destroyed by fire, explosion, windstorm, or other similar active causes to an extent of more than 75% of its fair market value, the structure may not be reconstructed.

I am enclosing an aerial view of the property which shows the address and tax key number of the property. Please don't hesitate to contact our office if you have further questions.

Sincerely,

Kenneth B. Prince, ASLA, AICP
City Planner

Enc.

Cc- Gene Risnor, Cressy & Everett

City Hall, 600 East Third Street, Mishawaka, IN 46544-2241 (574) 258-1625 FAX (574) 968-6999
E-mail planning @ mishawakacity.com

October 2, 2006

Samuel & Ruth Shelby
516 E. Grove St. Mishawaka
Lived here since 1958
Long as we have lived here
509 & 509½ E. Lawrence has been
an apartment. Knew Betty since
we haved lived here. Always
been apartment since we have
lived here and alway has been
rented.

Ruth E. Shelby
phone 574-255-4026

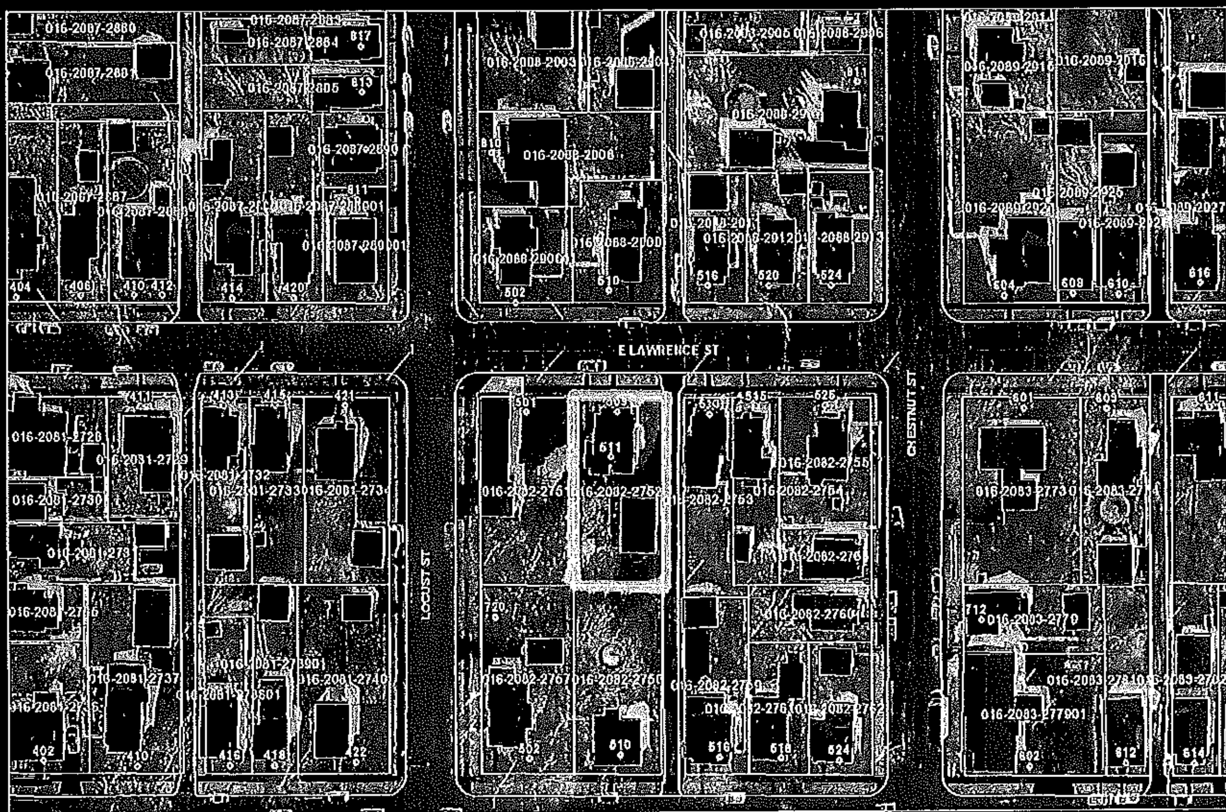
St. Joseph County
State of Indiana

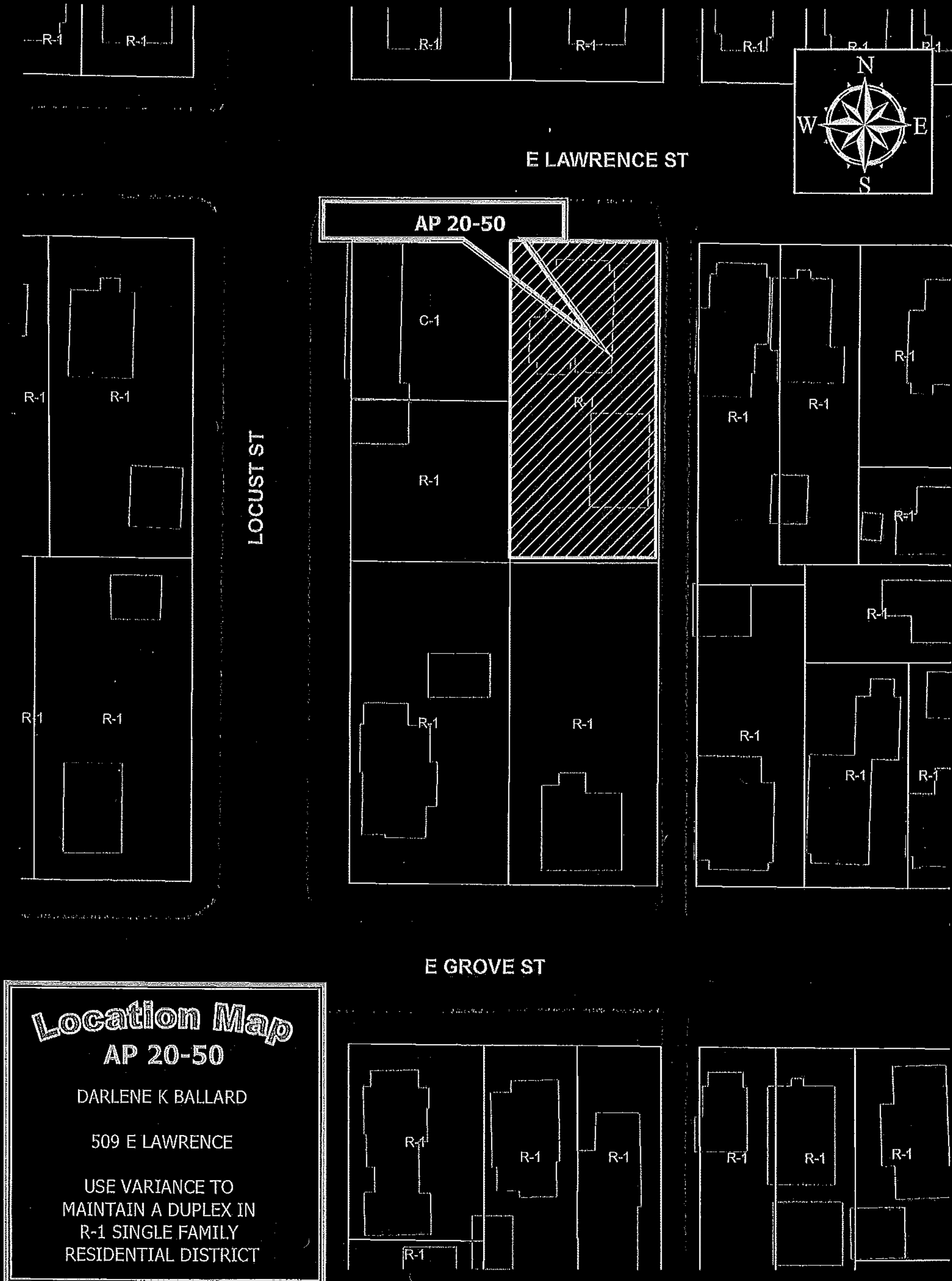
Ruth E Shelby appeared and
acknowledged before me a Notary
Public on October 2, 2006

[signature]

SEAL NOTARY PUBLIC
REGINA F. ESPOSITO
Notary Public, State of Indiana
County of St. Joseph
My Commission Expires Nov. 3, 2007

APPEAL #20-50
509 E. Lawrence Street




E LAWRENCE ST
N
W
E
S
AP 20-50
C-1
R-1
LOCUST ST
E GROVE ST
Location Map
AP 20-50
DARLENE K BALLARD
509 E LAWRENCE
USE VARIANCE TO
MAINTAIN A DUPLEX IN
R-1 SINGLE FAMILY
RESIDENTIAL DISTRICT

STAFF REPORT

Location: 1032 E Twelfth St.

Date: November 10, 2020

Appeal: 20-51

Prepared By: CH

GENERAL INFORMATION

Applicant:	Blueprint BCS, LLC/John Cocquyt
Status:	Lessee / Property Owner
Request:	Conditional Use Permit to allow a sand mining operation
Zoning Classification:	I-2 Heavy Industrial
Lot Size:	Approximate 6 acres in the north half of the 15.2 acre parcel
Applicable Regulations:	Section 137-43 / Conditional Use Permits & Section 137-608 thru 610 / Industrial I-2 District

SPECIAL INFORMATION

Area Development Pattern:	North:	I-2 Heavy Industrial (City recycling)
	South:	I-2 Heavy Industrial (Builders Iron Works) I-1 Light Industrial and Unincorporated St. Joseph County across Twelfth
	East:	S-1 Extensive Open Space (Ward Baker Park) and I-2 Heavy Industrial (storage)
	West:	R-3 Multi-Family Residential (Penelope 60 Apartments) and C-2 Shopping Center Commercial (Kroger)

Thoroughfare:	Twelfth Street
School District:	School City of Mishawaka
Public Utilities:	All utilities are available and/or will be extended to the site at the owner's expense
Comprehensive Plan:	Industrial (Manufacturing, Warehousing and Distribution)

ANALYSIS

The Applicant, Blueprint BCS, LLC, with authorization from John Cocquyt, is requesting a Conditional Use Permit to allow a sand mining operation to be located at 1032 E Twelfth Street. The facility will consist of just under 6 acres of the overall 15.2 acre parcel. No new buildings are proposed.

This site has a history of mining in the 1950's, but has been unoccupied in recent years.

The mining will maintain a 50' setback and existing tree buffer and fence will remain at the perimeter of the property. Access to the site will be provided from Twelfth Street to the south via a private drive. Engineering has requested the first 100' of this drive be paved with a tracking pad to prevent aggregate being tracked onto Twelfth Street.

Engineering also is requiring a Rule 5 Notice of Intent (NOI) be sent to IDEM, a Stormwater Pollution Prevention Plan (SWPPP) submitted to the City's MS4 Coordinator, and Erosion Control Bond for amount set forth in ordinance.

The Zoning Ordinance of the City of Mishawaka requires Mining and extraction operators shall be operated on a lot of no less than ten acres in area, provided that:

a. The operations and uses shall not be conducted within 50 feet of any property line unless a greater distance is specified by the board of zoning appeals, where such is deemed necessary for the protection of adjacent property. Beginning at the required setback, the banks of all excavation areas shall not be excavated to a slope greater than 45 degrees from the horizontal; however, when the adjacent property is being mined for sand or gravel, the setback requirements may be waived along any common property line. *These requirements are shown on the concept plan submitted with the application.*
b. A continuous fence, comprised of seven feet of woven wire fabric shall be erected and maintained along the property line around the entire site. In addition, an evergreen planting screen shall be required around the entire site within the required setback. Such screen planting shall be comprised of pine seedlings which are staggered six feet on center in two rows which are six feet apart; provided, however, when the adjacent property is used for mining and extraction operations, the fence and screen planting requirements may be waived along any common property line. *The existing fence is 6' with barbed wire and there is a dense row of existing trees.*
c. Prior to approval of the conditional use every applicant shall execute an acceptable indemnity agreement in favor of the city in a form approved by the board of zoning appeals, which indemnifying agreement shall be for the purpose of assuring the restoration, rehabilitation and reclamation of mined out areas within a reasonable time and to the satisfaction of the board of zoning appeals and to further assure that the following minimum requirements will be met: *Legal counsel will be asked for guidance preparing this document.*
d. A uniform rolling contour shall be established throughout all excavation areas.
e. The banks of all excavation areas shall be restored to a two-foot horizontal and one-foot vertical ratio and the slopes seeded, landscaped and maintained until a permanent type ground cover is established to prevent erosion.
f. Soil, suitable for growing vegetation, shall be replaced over the slopes of a uniform depth of not less than two inches.
g. If excavations are made to a water-producing depth, such depth shall not be less than six feet below the low water mark and the areas which are not permanently submerged shall be so graded as to eliminate the collection of stagnant water.
h. In addition to the foregoing, the board of zoning appeals may impose such other conditions, requirements or limitations concerning the nature, extent of the use and operation of such excavation operations as the board of zoning appeals may deem necessary for the protection of adjacent properties and the public interests.

The Staff feels that the proposed use of the site for mining operation is appropriate given the context and history of the site. Furthermore, existing screening/buffering is present between the residential and recreational uses nearby.

At the time of writing this Staff Report, the Planning Department received one phone call from an adjacent property owner questioning the noise level of the mining operation.

If the conditional use is approved, a detailed final site plan will be required for administrative review and approval prior to obtaining the necessary improvement location and building permits. The final site plan shall address all the applicable zoning (height, area, and development regulations), utility (storm water drainage, electric, gas, etc.), grading, erosion control, and any other required improvements.

Other pertinent City Department have reviewed and approved the conditional use request providing no comments.

Recommendation

The staff recommends in favor Appeal 20-51 to allow a sand mining operation in the northern 6 acres of 1032 E Twelfth St. subject to the following conditions:

1) Rule 5 Notice of Intent (NOI), a Stormwater Pollution Prevention Plan (SWPPP), and Erosion Control Bond Erosion Control;

2) Paved (may be asphalt) drive minimum 100'; and

3) An Administrative Site Plan shall be submitted for the property. The site plan shall be consistent with the preliminary site plan as submitted.

4) The hours of operation will be limited to 8am-8pm.

This recommendation is based upon the following findings of fact:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community. The property on which the tower is to be located is adjacent to industrial, commercial, and recreational uses, with residential uses. Screening/buffering is present between the residential area and the mining location. The site is currently fenced.

2. The use and value of the area adjacent to the property included in the conditional use permit will not be affected in a substantially adverse manner. The adjacent area consists primarily of industrial, office, and commercial development, with adequate screening/buffering between the proposed mining operation and the residential properties to the east.

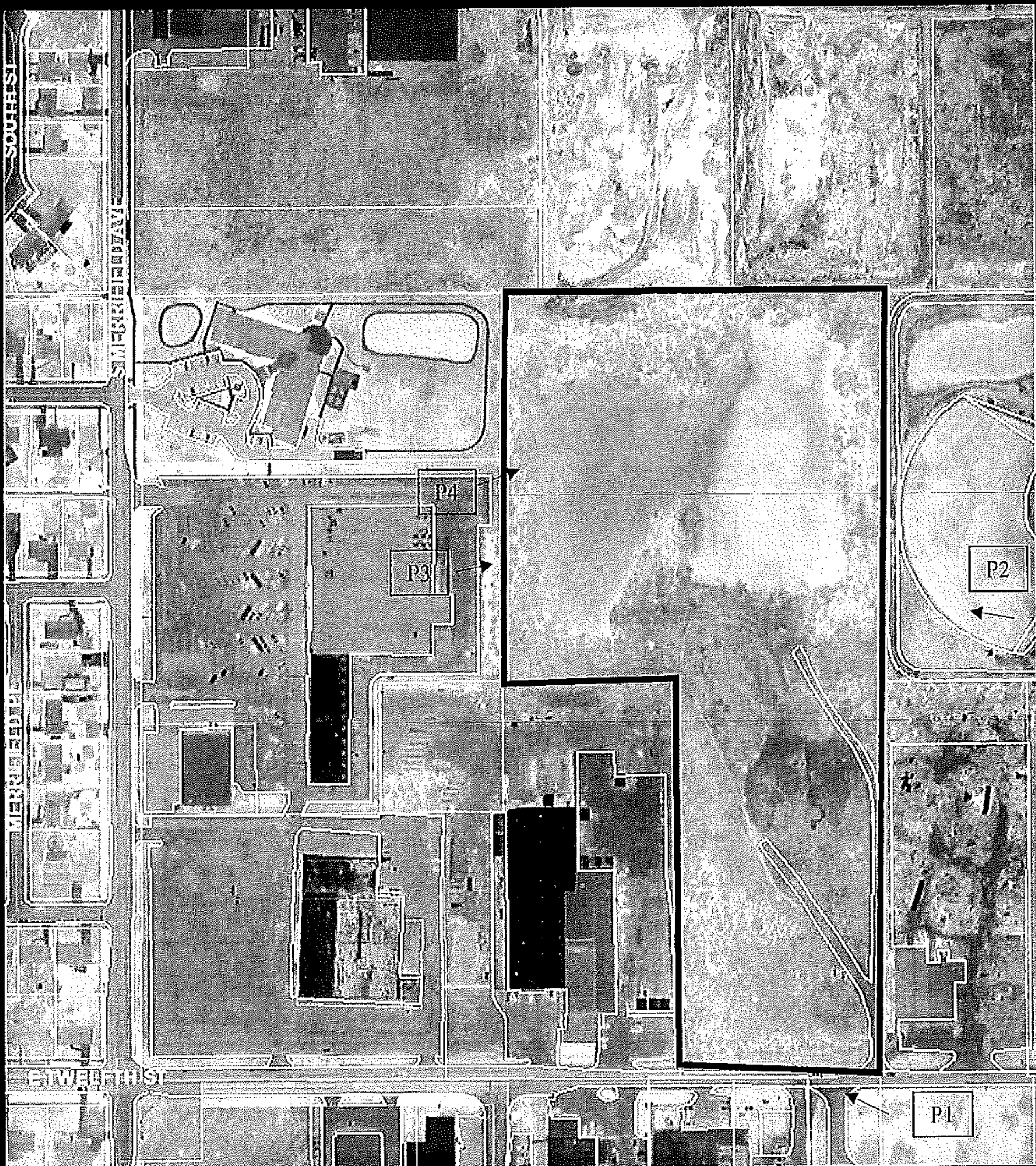
3. The conditions of approval shall mitigate any potentially adverse impact of the proposed use upon the adjacent properties. There is no dewatering, so a pump will not be constantly running.

4. Adequate measures will be taken to provide proper utilities, drainage, paved access roads, and fencing for safety precautions. Additional landscape buffering will not be required due existing vegetation providing adequate screening.

5. The granting of this conditional use is in the best interests of the community. This historic use of this site has been mining. The current condition of the site would not allow for redevelopment without major investment. The City will benefit by using the sand mined at this location in local projects.

Attachments

Aerial, Photograph(s), Appeal, Preliminary Site Plan, Location Map


SOUTH ST
S MERRIFIELD AVE
MERRIFIELD PL
E TWELFTH ST
P4
P3
P2
P1

P1. View from Twelfth St (south)

P2. View from Ward Baker Park (east)

P3. View from Kroger parking lot (west)

P4. The closest view of the pond (west)

Blueprint BCS, LLC

October 16, 2020

City of Mishawaka Board of Zoning Appeals
600 E. Third Street
Mishawaka, IN 46544

Re: **Application for a Conditional Use Permit**

The undersigned Appellant respectfully shows the Board:

1. Petitioner proposes to lease the following described real estate located in the City of Mishawaka, St. Joseph County, State off Indiana, to-wit:

   E 1/2 SW Se 20ac. 15-37-3e Ex Pts Sold (commonly known as 1032 East 12th Street, Mishawaka, IN). (SEE ATTACHED FOR FULL DESCRIPTION)

2. The above described real estate has a zoning classification of I-2 Heavy Industrial District under the Zoning Ordinance of the City of Mishawaka.

3. Petitioner presently occupies *(or proposes to occupy)* the above described property in the following manner:

   Blueprint BCS, LLC proposes to utilize the property as a general construction yard for storage of equipment, soils, sand, and aggregates such as gravel (all of which are permitted uses under Section 137-609.(a)(9); and to mine sand and gravel from the existing gravel (sand) pit (pond), which requires a Conditional Use Permit under Section 137-609.(b)(26).

4. Petitioner desires to:

   Blueprint BCS, LLC desires to obtain a conditional use permit in order to mine soil (sand) from the previously mined gravel (sand) pit (pond), generally on the northeast portion of the property, for use in local construction projects. The first project for which the sand will be used is the East Race Improvement, Phase I, project for the City of Mishawaka. It is noted that the site has previously been used for this purpose.

5. The Zoning Ordinance of the City of Mishawaka, in Section 137-609.(b)(26), states "Mining and extraction operations" may be conditionally approved by the Board of Zoning Appeals for property already zoned Industrial I-2 district.

6. Explain:

   1) *Will approval be injurious to the public health, safety, morals, or general welfare of the community?*

      No. The proposed use will not be injurious to the public health, safety, morals, or general welfare because the site is, and will remain, securely fenced and no dangerous materials will be used at the site. The use supports the health of the community by supporting growth and economic development through construction.

   2) *Will the use and value of the area adjacent to the property included in the conditional use permit be affected in a substantially adverse manner?*

      No. The use of the property will be consistent with its historical use, and similar to the use of several adjacent properties, most specifically to the north (City of Mishawaka Street Department environmental yard) and to the east (existing contractor yard). Additionally, Blueprint BCS, LLC has consulted with the Mishawaka City Planning and Economic Development Office and will continue to work with the Planner's Office to ensure that the site use and maintenance are carried out in an appropriate manner.

   3) *Will adequate conditions be stipulated to mitigate any potentially adverse impact of the conditional use permit upon adjacent property?*

      Yes. The site has previously been utilized for the proposed purposes, has in place a secure fence, and has in place a barrier of mature trees around the entire perimeter of the property. Blueprint BCS, LLC will continue to work with the Board of Zoning Appeals, Common Council, and Mishawaka City Planner's Office to operate, and to maintain and/or improve, the site for the proposed use.

   4) *Will adequate measures be taken to provide proper utilities, drainage, paved access roads, landscape buffering, fencing, leakproof dikes, safety precautions, and to minimize traffic congestion?*

      Yes. As stated, the site has in place a secure fence, and has in place a barrier of at least 50 feet of mature trees around the entire area to be mined for sand. The entire perimeter of the property also has a screen of mature trees and/or vegetation. The mining of sand will not take place within 50 feet of any property line. The site has in place, and which shall be maintained, a stone access road in excess of 100 feet long incorporating #2 crushed aggregates to serve as a tracking mat for truck traffic. No additional utilities will be necessary at this time. All work will be carried out in accordance with the safety regulations of IOSHA.

5) *Why is the granting of the conditional use permit in the best interest of the community?*

   The granting of the Conditional Use Permit is in the best interest of the community as the proposed use supports growth and economic development through construction, and because Blueprint BCS, LLC's occupancy and use of the site will improve the appearance and maintenance of the property through increased activity.

Wherefore, Petitioner prays and respectfully requests a hearing on this application and that after such hearing, the Board grant the requested Conditional Use Permit.

Blueprint BCS, LLC

By: ______________________
Matthew D. Cain, President

Mishawaka Board of Zoning Appeals
October 16, 2020

City of Mishawaka Board of Zoning Appeals
600 East Third Street
Mishawaka, IN 46544

RE: Application for a Conditional Use Permit for Mining Soil (Sand)

To the Honorable Board:

Please be advised that Matthew D. Cain, President of Blueprint BCS, LLC, has been directed to represent my interest at the public hearing of the Board of Zoning Appeals of Mishawaka, Indiana, at which this petition is to be considered.

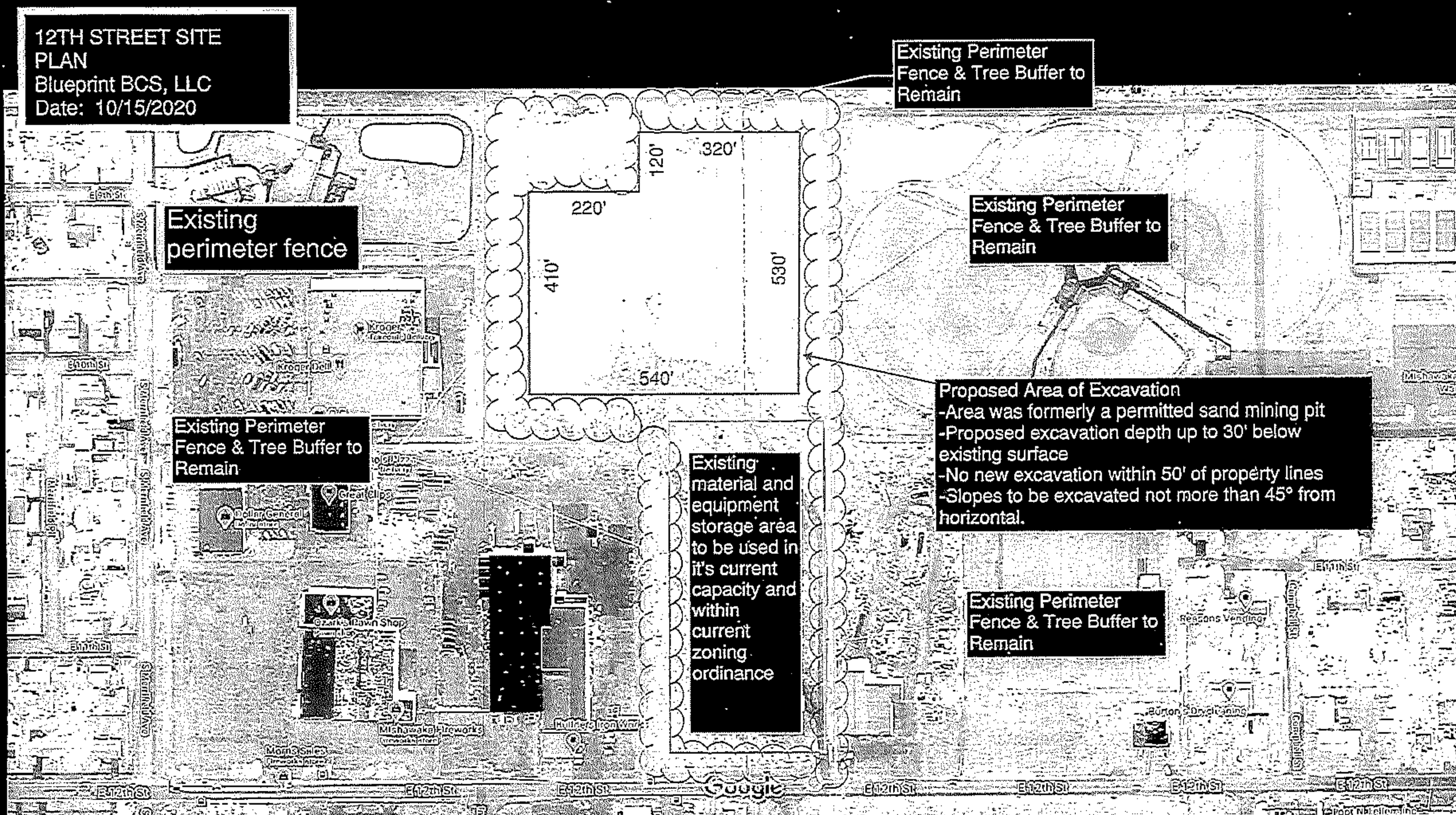
John C. Cocquyt

John Cocquyt

A lot or parcel of land in the Southwest quarter ($\frac{1}{4}$) of the Southeast quarter ($\frac{1}{4}$) of Section fifteen (15) Township thirty-seven (37) North, Range three (3) East, bounded by a line running as follows: Beginning on the South line of said Section 15, six hundred sixty-one and three hundred seventeen thousandths (661.317) feet East of the Southwest corner of the Southeast quarter ($\frac{1}{4}$) of said Section, Township and Range, thence running North parallel with the West line of said Southeast quarter ($\frac{1}{4}$) a distance of one thousand three hundred twenty-five and ninety-three hundredths (1325.93) feet to the North line of the Southwest quarter ($\frac{1}{4}$) of the Southeast quarter ($\frac{1}{4}$) of said Section; thence East along the North line of the Southwest quarter ($\frac{1}{4}$) of the Southeast quarter ($\frac{1}{4}$) of said Section a distance of six hundred sixty-one and three tenths (661.3) feet to the Northeast corner of the Southwest quarter ($\frac{1}{4}$) of the Southeast quarter ($\frac{1}{4}$) of said Section; thence South along the East line of the Southwest quarter ($\frac{1}{4}$) of the Southeast quarter ($\frac{1}{4}$) of said Section a distance of one thousand three hundred twenty-seven and eight tenths (1327.8) feet, more or less to the South line of said Section; thence West six hundred sixty-one and three tnehts (661.3) feet to the place of beginning, containing twenty (20) acres, more or less, and all now within and a part of the City of Mishawaka.

EXCLUDING PARTS SOLD.

Legal description for 1032 East 12th Street, Mishawaka, IN Subject property of Blueprint BCS, LLC Petition for Conditional Use.
October 21, 2020.



Imagery ©2020 IndianaMap Framework Data, Maxar Technologies, USDA Farm Service Agency, Map data ©2020 100 ft

Special Notes:

1. Existing tree line to be maintained for 30' minimum along site perimeter.
2. No dewatering will be used.
3. This site has been discussed with the local MS4 department and if approved for conditional use, a Rule 5 permit will be applied for and all applicable erosion control measures will be implemented.


AP 20-51
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W
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S MERRIFIELD AVE
E TWELFTH ST
INDUSTRIAL DR
R-1
R-3
C-2
C-7
C-1
I-2
I-1
S-1
Location Map
AP 20-51
OWNER: JOHN COCQUYT
LESSEE: BLUEPRINT BCS, LLC
LOCATION: 1032 E TWELFTH ST
CONDITIONAL USE FOR
SAND MINING

City of Mishawaka

DAVID A. WOOD, MAYOR **DEPARTMENT OF CITY PLANNING**

RECEIVED
DEBORAH S. BLOCK, MMC
NOV 12 2020
CITY CLERK
MISHAWAKA, IN

November 12, 2020

Honorable Members of the Common Council
City of Mishawaka, Indiana

RE: Plan Commission Recommendation
November 10, 2020, Public Hearing
Certification of Proposed Ordinances

Honorable Members:

A regular meeting of the Mishawaka Plan Commission was held on the above referenced date at which time the following proposed ordinances were considered:

PETITION #20-22 A petition submitted by John M. Palmer requesting to rezone **2316 Lincolnway West** from C-1 General Commercial District to R-1 Single Family Residential District.

The Commission, with a vote of 8-0, recommended approval.

PETITION #20-23 A petition submitted by Graber Group LP, Larry & Freda Scheibelhut, Dennis & Karen Culp, Mary Lou Seltzer, and Thomas Scheibelhut requesting to rezone **119 West McKinley Avenue, 2219 North Main Street, 2205 North Main Street, vacant land adjacent to and north of 2205 North Main Street, and 2201 North Main Street**, from C-7 Automobile Oriented Restaurant Commercial District and R-1 Single Family Residential District to C-10 Filling Station Commercial District.

The Commission, with a vote of 7-1, recommended approval.

Pursuant to I.C. 36-7-4-605 the Mishawaka Plan Commission hereby certifies to the Mishawaka Common Council the attached proposed ordinances regarding the above matters.

Respectfully,

Kari Myers

Kari Myers, Administrative Planner
Secretary, Mishawaka Plan Commission

cc: John Palmer
Peter Agostino

STAFF REPORT

Location: 2316 Lincolnway West

Date: Nov 10, 2020

Petition: 20 22

Prepared By: KM

GENERAL INFORMATION

Applicant:	John M. Palmer
Status:	Property Owner
Request:	Rezone from C-1 General Commercial District to R-1 Single Family Residential
Zoning Classification:	C-1 General Commercial District
Lot Size:	42' X 130.85'
Applicable Regulations:	Sec. 137-164 Residential R-1 District; Sec. 137-40 Plan Commission; & Sec. 137-41 Amendment to Zoning Ordinance and Zoning Map

SPECIAL INFORMATION

Area Development Pattern:	North:	R-1 Single Family Residential District
	South:	C-7 Automobile Oriented Restaurant Commercial District
	East:	R-2 Two-Family Residential District
	West:	C-1 General Commercial District
Thoroughfare:		Northeast corner of Lincolnway West and River Avenue
School District:		School City of Mishawaka
Public Utilities:		Available
Comprehensive Plan:		General Commercial

ANALYSIS

The Petitioner is requesting to rezone 2316 Lincolnway West from C-1 General Commercial District to R-1 Single Family Residential District. The property is located on the northeast corner of Lincolnway West and River Avenue. The neighborhood is a mix of residential and commercial uses along Lincolnway.

The Petitioner is selling the property and feels the market would be stronger selling as a single-family residence. He states it has been used as an office for a number of years, but is fully set up to be a single-family home and has a detached two-stall garage. It was built in 1922 as a single family residence.

Prior to the 1980's residential uses were permitted in commerical zoned districts. Around 1986 the Zoning Ordinance was amended to prohibit residential uses in certain districts.

Pertinent City Departments have reviewed and approved the request.

RECOMMENDATION

The Planning Department recommends **approval** of Petition #20-22 to rezone 2316 Lincolnway West from C-1 General Commercial District to R-1 Single Family Residential District. This recommendation is based upon the following findings of fact:

1. There are commercial uses south of the property, but the neighborhood surrounding the property, mainly to the north, is primarily residential in nature, and rezoning the property to R-1 would be compatible to the area;

2. Use and value of the area adjacent to the property included in the rezoning will not be affected in a substantially adverse manner because given the context of its location, its relationship to surrounding properties, and the potential of development as a commercial project, staff feels that the most desirable use for this property is a single-family use;

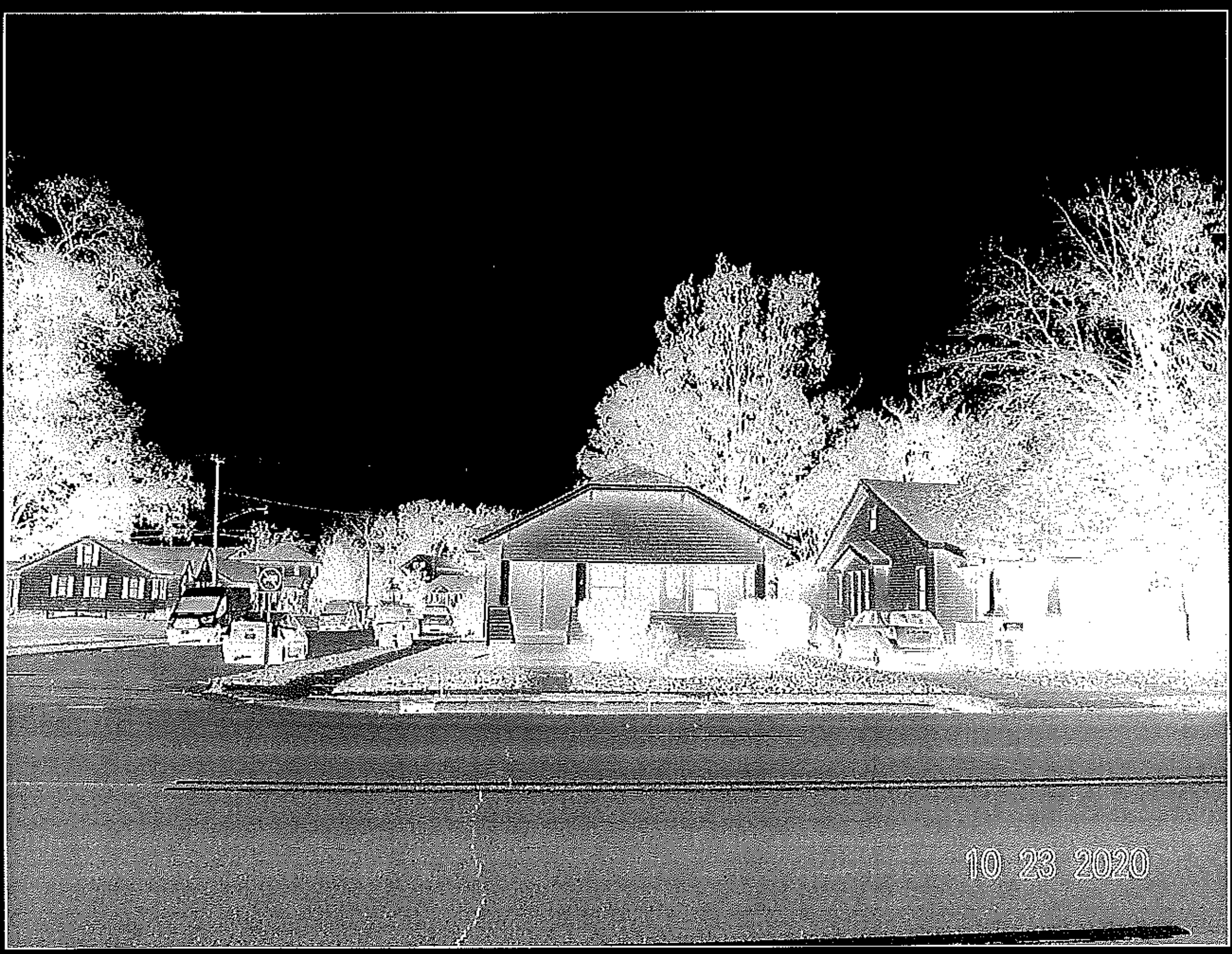
3. Because the parcel is located in an area of residential uses, the rezoning to R-1 Single-Family Residential is a desirable use for this property;

4. As opposed to the range of potential commercial development that could occur with its current zoning, rezoning this property to the R-1 Single-family Residential classification will have a favorable and stabilizing impact on the neighborhood, conserving property values in the immediate and surrounding residential neighborhood; and,

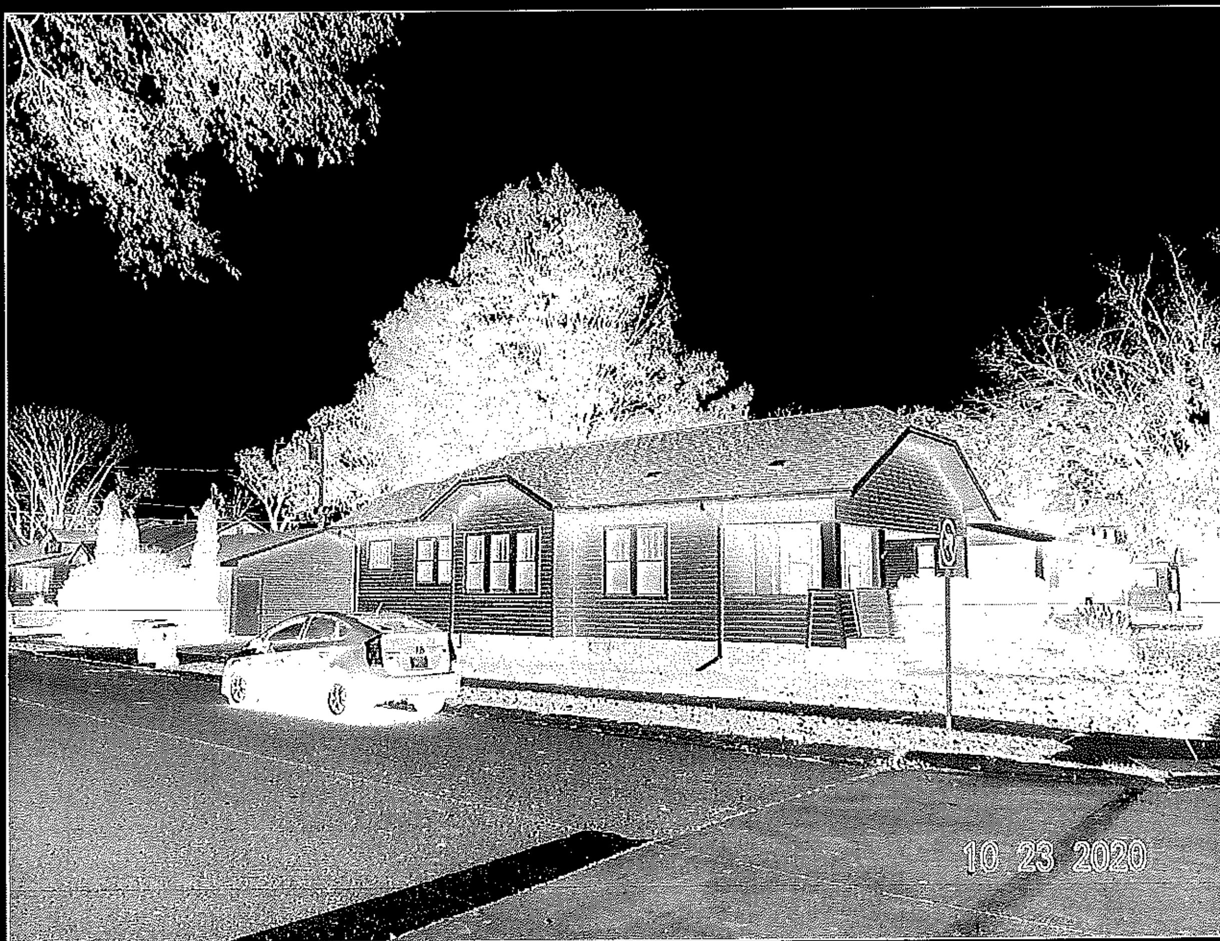
5. The City's Comprehensive Plan calls for general commercial, but its use as a single-family home would be compatible and consistent with the historic residential uses in the area.

ATTACHMENTS

PETITION, PHOTOGRAPHS, AERIAL, LOCATION MAP



2316 Lincolnway West



Looking to the site from the west

RECEIVED
OCT 2 1 2020
ECONOMIC
COMMUNITY DEVELOPMENT
PLANNING

Oct 20, 2020

Pet 20-22

Honorable Members of the
Common Council
City of Mishawaka, Indiana
and Mishawaka City Plan Commission
City of Mishawaka, Indiana

RE: PETITION TO REZONE

The undersigned John M Palmer respectfully show they are the owner of the following described real estate located in the City of Mishawaka, County of St. Joseph, State of Indiana, to wit:

2316 Lincolnway W. Mishawaka, In 46544, Legal Description: Lot 4 Bowmans 1st Add. Tax Key Number: 71-09-17-327-003.000-023.

Petitioner(s) own one hundred (100%) percent of the described parcel of land which carries a zoning classification of C-1 District. Said property is (was) being used as an office.

Petitioner(s) desire said real estate to be zoned to R-1 District. Petitioner(s) further state they intend to utilize said land for a residential use.

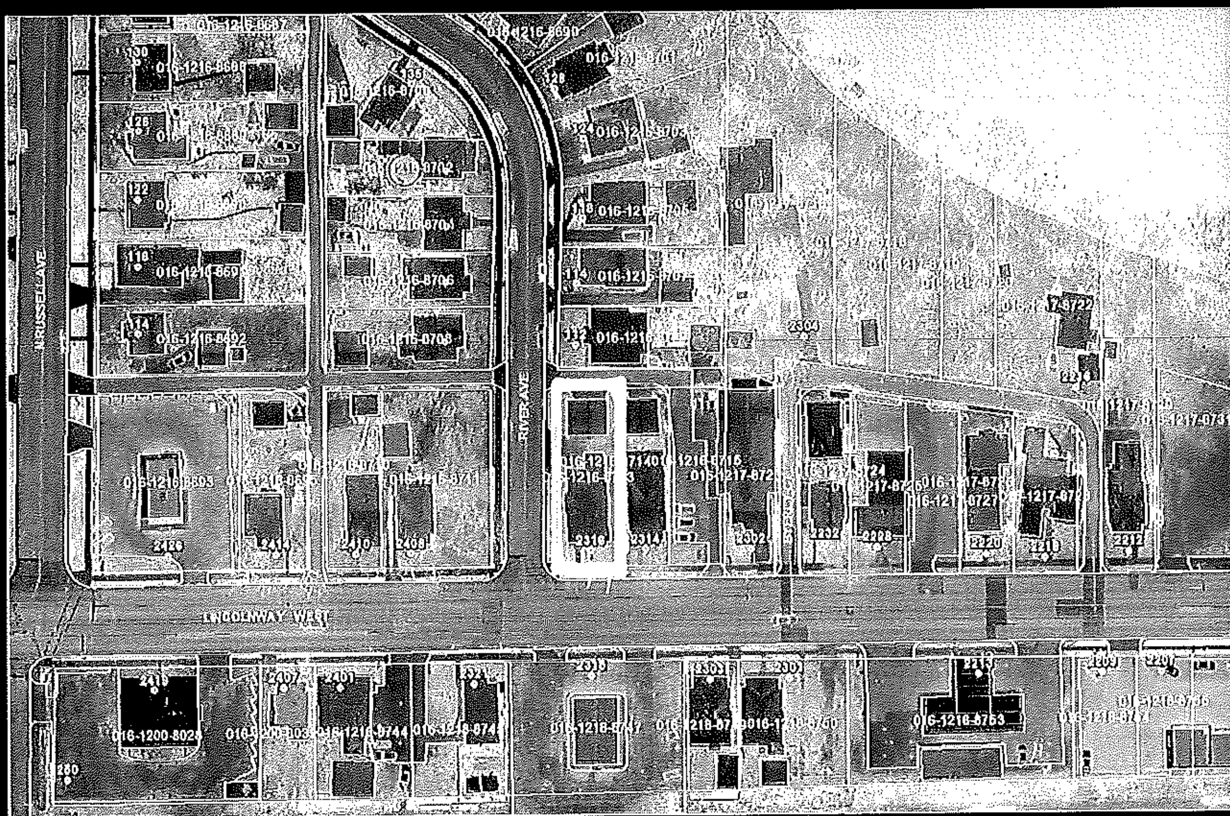
Wherefore, the petitioner(s) pray and respectfully request that the common council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate ordinance be enacted rezoning the above described parcel of land located in the City of Mishawaka.

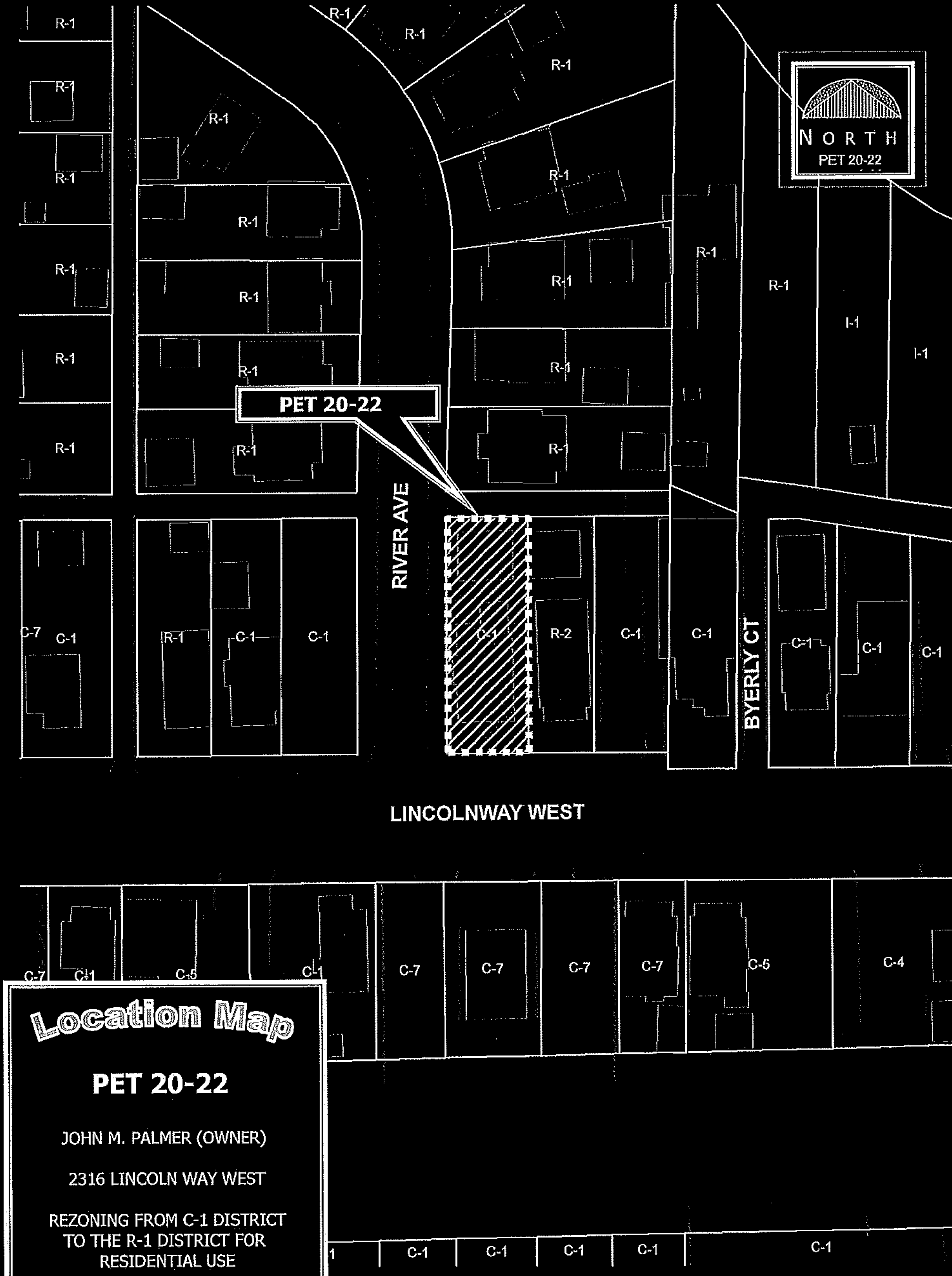
John M Palmer

John M. Palmer

CONTACT PERSON:
John M Palmer
3040 Springbrook Dr , South Bend, In
574-876-1234
john_p46614@yahoo.com

PETITION #20-22
2316 Lincolnway West




NORTH
PET 20-22
PET 20-22
RIVER AVE
BYERLY CT
LINCOLNWAY WEST
R-1
R-2
I-1
C-1
C-4
C-5
C-7
Location Map
PET 20-22
JOHN M. PALMER (OWNER)
2316 LINCOLN WAY WEST
REZONING FROM C-1 DISTRICT
TO THE R-1 DISTRICT FOR
RESIDENTIAL USE

STAFF REPORT

Location: Southwest Corner of W. McKinley Avenue & N. Main Street - 119 W. McKinley Avenue & Vacant Parcels to the East

Date: November 10, 2020

Petition: 20- 23

Prepared By: DJS

GENERAL INFORMATION

Applicant:	Graber Group LP, et. al represented by Peter J Agostino (AAK Law) / Danch, Harner & Associates, Inc.
Status:	Property Owner & Legal Representative / Site Design Consultant
Request:	To rezone from C-7 Auto Oriented Restaurant Commercial District and R-1 Single Family Residential District to C-10 Filling Station / Car Wash District to allow for the construction of a convenience store with gas pumps
Zoning Classification:	C-7 Auto Oriented Restaurant Commercial District and R-1 Single Family Residential District
Lot Size:	1.09 acres
Applicable Regulations:	Section 137-529 thru 137-530 / C-10 Filling Station – Car Wash District & Section 137-41 / Amendments to the Zoning Map

SPECIAL INFORMATION

Area Development Pattern:	North:	C-4 Auto Oriented Commercial (Automobile Sales & Service / Michiana Chrysler Dodge Jeep RAM Fiat) & C-1 General Commercial (Pharmacy / Walgreen's)
	South:	R-1 Single Family Residential (Residential)
	East:	C-7 Auto Oriented Restaurant Commercial (Restaurant with Drive-Thru / Dairy Queen)
	West:	C-1 General Commercial (Auto Parts Retailer / O'Reilly Auto Parts)
Thoroughfare:	W. McKinley Avenue & N. Main Street	
School District:	School City of Mishawaka	
Township:	Penn	
Public Utilities:	All utilities are available and/or will be extended/connected to the site at the expense of the developer.	
Comprehensive Plan:	General Commercial (Retail Sales & Shopping Centers)	

ANALYSIS

The Petitioners, Graber Group LP, Larry & Freda Scheibelhut, Dennis & Karen Culp, Mary Lou Seltzer and Thomas Scheibelhut, are requesting to rezone an approximate 1.09 acre area located at the southwest corner of W. McKinley Avenue and N. Main Street from C-7 Auto Oriented Restaurant Commercial and R-1

Single Family Residential to C-10 Filling Station / Car Wash to allow for the construction of a convenience store with gas pumps.

The site includes five separate parcels. The west parcel (Tax Parcel 016-2046-1551.08 / 119 W. McKinley Avenue) is occupied by Fiesta Tapatia, a dine-in restaurant formerly a Wendy's fast food restaurant. The vacant parcel at the far northeast corner (Tax Parcel 016-2117-3790) was previously developed with a commercial structure and occupied by Edward Jones Investments until the mid-2000s. The building was demolished as a part of the N. Main Street improvement project completed in the late 2000s. Until 2017, two single-family residential houses were located on the vacant parcels within the far southeast corner (Tax Parcels 016-2117-3787/3788). Both of the houses were relocated to accommodate future commercial development. According to Polk Directories from the mid-1990s, the other remaining vacant parcel (Tax Parcel 016-2117-3789) was occupied with a commercial structure until being razed in the mid-1990s. With the proposed redevelopment of the site, all existing improvements will be razed.

Per the preliminary site plan submitted with the rezoning petition, the contingent developer is proposing to construct a one-story 4,650 sq. ft. convenience store with gas pumps, a forty-four (44) space parking lot, and other required infrastructure (access drives, stormwater drainage system, landscaping, etc.).

Access to the site is currently proposed from both W. McKinley Avenue to the north and W. Russ Street to the south. The W. McKinley Avenue access will be right-in/right-out only in order to restrict left-hand turns into and from the property for west bound traffic. The W. Russ Street access will allow for unrestricted turning movements. Planning and Engineering Staff requested that an internal access drive be provided between the property and the adjacent auto parts store to the west. Establishing cross-access between the properties would be beneficial to both sites and allow for additional means of ingress-egress during periods of peak traffic.

Additional right-of-way will need to be dedicated via a plat along both W. McKinley Avenue and N. Main Street. The expanded right-of-way will be utilized for widening the right-turn lane along W. McKinley Avenue and new sidewalks along both W. McKinley Avenue and N. Main Street frontage.

The landscaping, conceptually shown, shall comply with the commercial landscaping requirements. In addition, Planning Staff requests that a multilayered landscaping screen consisting of both evergreens and deciduous plantings be provided along the entire south property line to screen the adjacent residential properties south of W. Russ Street. The types of plantings shall be varied to establish a permanent solid screen during all seasons. A 4' high ornamental fence shall also be incorporated into the landscape plantings and be provided along the entire south property line. *A written commitment from the Applicant is required for the landscaping and fencing, as outlined above, and shall be provided prior to consideration by the Common Council.* The landscaping plan shall be reviewed and approved as a part of the final site plan process.

The conceptual site plan shows that the site will comply with the required height, area and developmental regulations for the C-10 Filling Station / Car Wash District. If any variances from these regulations are required, the Board of Zoning Appeals shall be petitioned when the final site plan is submitted.

With this petition, the Applicant and contingent purchaser are only seeking to establish the proper zoning required for the proposed use. If approved, a detailed final site plan shall be submitted for Staff review and Plan Commission approval prior to construction. The final site plan shall address storm drainage, grading, utilities, landscaping, soil erosion control, and all other required improvements pertinent to the proposed development.

Since a majority of the property is currently zoned for commercial use and located along the McKinley Avenue commercial corridor, the Staff supports the request for rezoning. The proposed convenience store with gas pumps is not out of character, and with the required landscaping and screening, is compatible with the existing adjacent land uses. The proposed use is also consistent with the historical uses and recommended use per the comprehensive plan.

The Building, Fire, Electric, and Water Departments have reviewed and approved the rezoning request providing no additional comments.

The Engineering Department had no comments related to the rezoning petition but provided the following comments to be addressed with the final site plan:

1. Extend the throat of the access drive at the southeast corner and remove approximately 5-6 parking spaces to prevent blocking of entrance to incoming vehicles.
2. Ensure the 8' wide pathway (sidewalk) is an appropriate width all the way to the curb ramp. Curb ramp may need to be modified.
3. Ensure the pork chop island is mountable and make bigger to shrink pavement width.
4. Jog path on the west side of the drive approach to north so when extended west it does not affect the existing parking lot to the west.
5. Dedicate additional right-of-way along both W. McKinley Avenue and N. Main Street.

RECOMMENDATION

Staff recommends in **favor** of rezoning Petition 20-23 to rezone approximately 1.09 acres at the southwest corner of W. McKinley Avenue and N. Main Street (119 W. McKinley Avenue and the adjacent four parcels to the east) from C-7 Auto Oriented Restaurant Commercial and R-1 Single Family Residential to the C-10 Filling Station / Car Wash to allow for the construction of a convenience store with gas pumps. This recommendation is based on the following findings of fact:

1. Existing Conditions – The subject property consists of a restaurant and four vacant parcels at the southwest corner of W. McKinley Avenue and N. Main Street. These roads are highly travelled corridors providing major north-south and east-west access through the City of Mishawaka and South Bend. Adjacent land uses include an automobile sales and service business and pharmacy to the north, an auto parts retailer to the west, single-family residential houses to the south, and restaurant with drive-thru to the east.

2. Character of Buildings – The character of the buildings in the area are predominantly commercial and single-family residential.

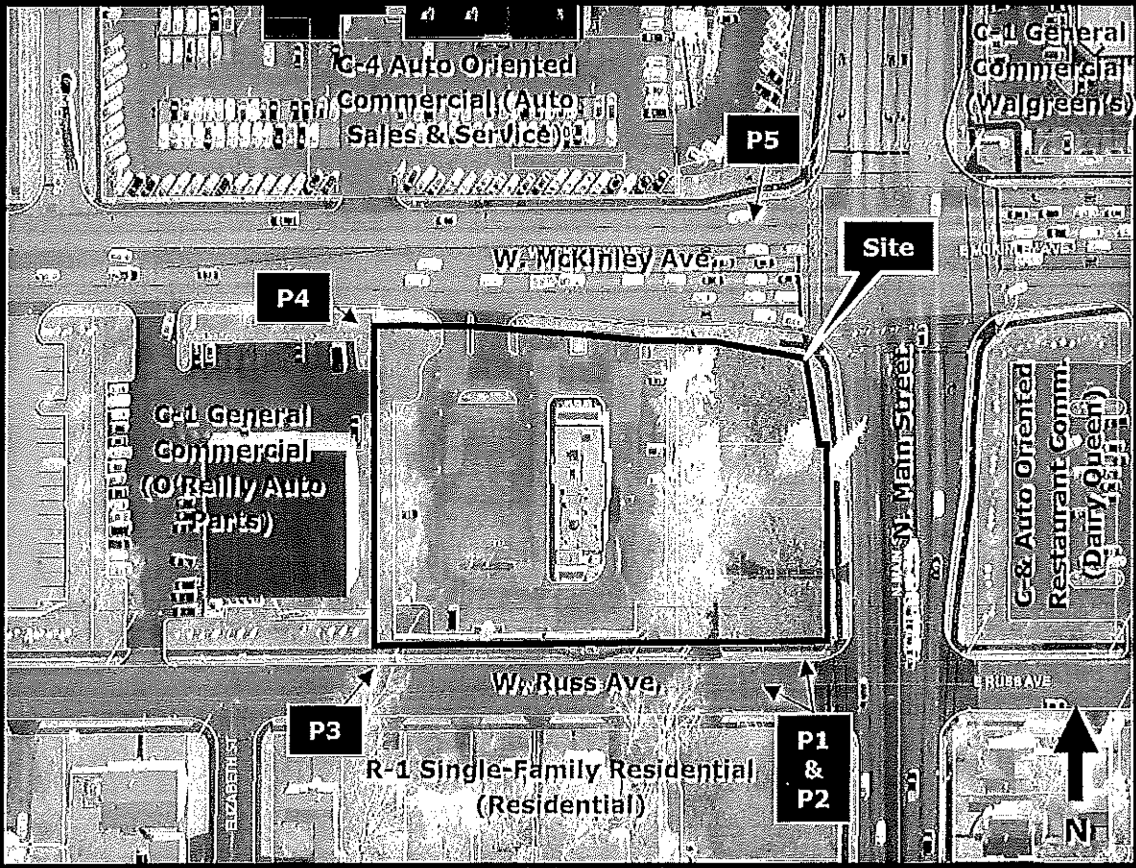
3. The most desirable/highest and best use – Because of the property's location and the prior and existing commercial uses, the most desirable use of the property is commercial. Although single-family residential properties are adjacent to the south across W. Russ Street, the high traffic volumes along W. McKinley Avenue and N. Main Street make long term use of the current residentially zoned properties undesirable for residential purposes. Furthermore, a large portion of the property is currently zoned for commercial use.

4. Conservation of property values – The proposed rezoning should not be injurious to property values in the surrounding area as the existing C-7 Auto Oriented Restaurant Commercial zoning classification permits commercial uses on a majority of the property. Landscaping and screening will be required per the C-10 Filling Station / Car Wash Commercial District to adequately buffer the proposed use from the adjacent residential properties.

5. Comprehensive Plan – The 2000 Mishawaka Comprehensive Plan, created in 1990, guided general commercial development within this property. The proposal is consistent with the Comprehensive Plan.

ATTACHMENTS

Aerial Photograph, Photographs, Petition, Location Map, Preliminary/Conceptual Site Plan



Aerial Photograph
Existing Restaurant (119 W. McKinley Ave.) and Four Adjacent Vacant Parcels
Southwest corner of W. McKinley Avenue & N. Main Street

P1. Looking northerly toward the four vacant parcels from the southeast corner of the site.

P2. Looking northwesterly toward the existing restaurant (screened by fence) from the southeast corner of the site.

P3. Looking northeasterly toward the existing restaurant (screened by fence) from the southwest corner of the site.

P4. Looking southeasterly toward the existing restaurant from the northwest corner of the site.

P5. Looking southerly toward the site from the northwest corner
of N. Main Street and W. McKinley Avenue.

PET 20-23

RECEIVED
OCT 21 2020
ECONOMIC
COMMUNITY DEVELOPMENT
PLANNING

Date: October 16, 2020

To The: Honorable Members of the
Common Council of the
City of Mishawaka, Indiana

RE: Graber Group LP, Larry & Freda Scheibelhut, Dennis & Karen Culp,
Mary Lou Seltzer and Thomas Scheibelhut,
Petition for Rezoning:

The undersigned, respectfully show that they are the owners of the following described real estate located in the City of Mishawaka, St. Joseph County, Indiana:

A PART OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 37 NORTH, RANGE 3 EAST, PENN TOWNSHIP, CITY OF MISHAWAKA, ST. JOSEPH COUNTY, INDIANA WHICH IS DESCRIBED AS: LOT # 4 OF THE PLAT OF "MAIN-MCKINLEY SUBDIVISION" AS RECORDED BY DOCUMENT NUMBER 1533244 IN THE RECORDS OF THE ST. JOSEPH COUNTY, INDIANA RECORDER'S OFFICE, LOTS # 10, 11 AND 12 OF THE PLAT OF "SHIVEY'S FIRST SUBDIVISION" AS RECORDED IN PLAT BOOK # 15 ON PAGE # 3 IN THE RECORDS OF SAID RECORDER'S OFFICE, EXCEPTING FROM SAID LOTS # 10, 11 AND 12, THAT PORTION OF SAID LOTS TAKEN FOR RIGHT-OF-WAY FOR MAIN STREET AND A PARCEL OF GROUND DESCRIBED AS: BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT # 10; THENCE NORTH 89°38'38" WEST ALONG THE NORTH RIGHT-OF-WAY LINE OF RUSS STREET FOR A DISTANCE OF 218.24 FEET MORE OR LESS; THENCE NORTH 00°07'31" EAST A DISTANCE OF 225.24 FEET MORE OR LESS TO THE SOUTH RIGHT-OF-WAY LINE OF MC KINLEY HIGHWAY; THENCE ALONG SAID SOUTH LINE FOR THE NEXT FOUR (4) COURSES, SOUTH 87°22'28" EAST, A DISTANCE OF 44.73 FEET MORE OR LESS AND NORTH 89°41'28" EAST, A DISTANCE OF 20.00 FEET MORE OR LESS AND SOUTH 85°28'21" EAST, A DISTANCE OF 130.47 FEET MORE OR LESS AND SOUTH 89°41'28" EAST, A DISTANCE OF 22.15 FEET MORE OR LESS TO THE NORTHWEST CORNER OF SAID LOT # 4.
CONTAINING 1.09 ACRES MORE OR LESS.
SUBJECT TO ALL LEGAL RIGHT-OF-WAYS, AND EASEMENTS, AND RESTRICTIONS OF RECORD.

Also, commonly known as 119 West Mc Kinley Highway, 2219 North Main Street, 2205 North Main Street, Vacant land adjacent to and North of 2205 North Main Street and 2201 North Main Street, Mishawaka, Indiana 46545.

The above described parcels of land are presently zoned "C-7" Commercial District and "R-1" Residential District.

The Petitioners desire said real estate, to be rezoned to the "C-10" Commercial District classification. The purpose for the rezoning is to allow for the real estate to be purchased by an interested party who desires to build a Convenience Store with Gas Pumps on the site.

Wherefore, the Petitioners pray and respectfully request that the Common Council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate ordinance be enacted rezoning the above described parcel of real estate located in the City of Mishawaka.

Attorney for the Petitioners:
Mr. Peter Agostino
131 South Taylor Street
South Bend, IN 46601
574-288-1510

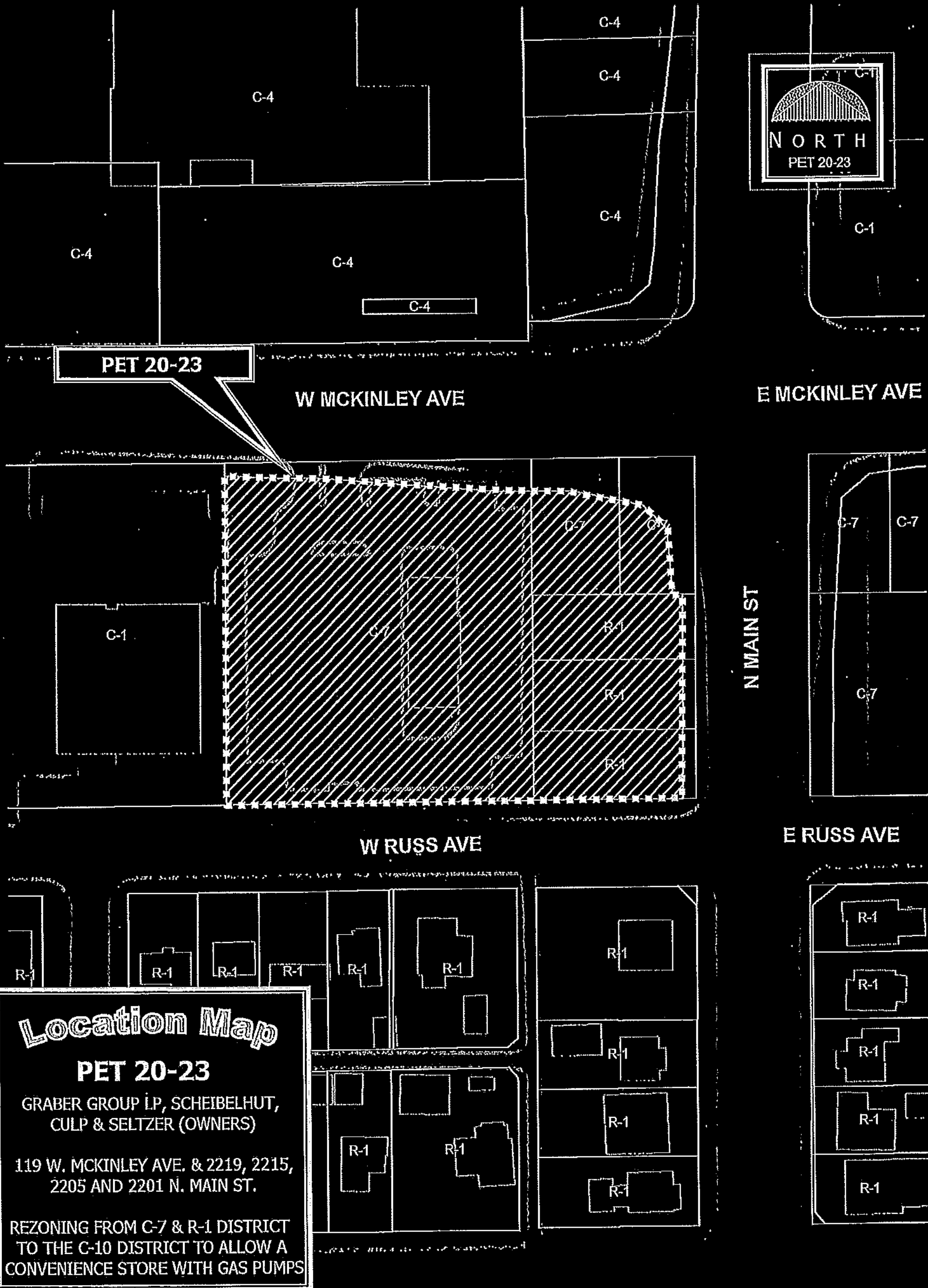
Contact person for site plan:
Danch, Harner & Associates, Inc.
1643 Commerce Drive
South Bend, Indiana 46628
574) 234-4003

LEGAL DESCRIPTION

A PART OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 37 NORTH, RANGE 3 EAST, PENN TOWNSHIP, CITY OF MISHAWAKA, ST. JOSEPH COUNTY, INDIANA WHICH IS DESCRIBED AS: LOT # 4 OF THE PLAT OF "MAIN-MCKINLEY SUBDIVISION" AS RECORDED BY DOCUMENT NUMBER 1533244 IN THE RECORDS OF THE ST. JOSEPH COUNTY, INDIANA RECORDER'S OFFICE, LOTS # 10, 11 AND 12 OF THE PLAT OF "SHIVEY'S FIRST SUBDIVISION" AS RECORDED IN PLAT BOOK # 15 ON PAGE # 3 IN THE RECORDS OF SAID RECORDER'S OFFICE, EXCEPTING FROM SAID LOTS #10, 11 AND 12, THAT PORTION OF SAID LOTS TAKEN FOR RIGHT-OF-WAY FOR MAIN STREET AND A PARCEL OF GROUND DESCRIBED AS: BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT # 10; THENCE NORTH 89°38'38" WEST ALONG THE NORTH RIGHT-OF-WAY LINE OF RUSS STREET FOR A DISTANCE OF 218.24 FEET MORE OR LESS; THENCE NORTH 00°07'31" EAST A DISTANCE OF 225.24 FEET MORE OR LESS TO THE SOUTH RIGHT-OF-WAY LINE OF MC KINLEY HIGHWAY; THENCE ALONG SAID SOUTH LINE FOR THE NEXT FOUR (4) COURSES, SOUTH 87°22'28" EAST, A DISTANCE OF 44.73 FEET MORE OR LESS AND NORTH 89°41'28" EAST, A DISTANCE OF 20.00 FEET MORE OR LESS AND SOUTH 85°28'21" EAST, A DISTANCE OF 130.47 FEET MORE OR LESS AND SOUTH 89°41'28" EAST, A DISTANCE OF 22.15 FEET MORE OR LESS TO THE NORTHWEST CORNER OF SAID LOT # 4.

CONTAINING 1.09 ACRES MORE OR LESS.

SUBJECT TO ALL LEGAL RIGHT-OF-WAYS, AND EASEMENTS, AND RESTRICTIONS OF RECORD.



NORTH
PET 20-23
PET 20-23
W MCKINLEY AVE
E MCKINLEY AVE
N MAIN ST
W RUSS AVE
E RUSS AVE
C-4
C-1
C-7
R-1
Location Map
PET 20-23
GRABER GROUP LP, SCHEIBELHUT, CULP & SELTZER (OWNERS)
119 W. MCKINLEY AVE. & 2219, 2215, 2205 AND 2201 N. MAIN ST.
REZONING FROM C-7 & R-1 DISTRICT TO THE C-10 DISTRICT TO ALLOW A CONVENIENCE STORE WITH GAS PUMPS

PRELIMINARY SITE PLAN

PART OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 37 NORTH, RANGE 3 EAST, PENN TOWNSHIP, CITY OF MISHAWAKA, ST. JOSEPH COUNTY, INDIANA

RECEIVED
OCT 21 2020
ECONOMIC
COMMUNITY DEVELOPMENT
PLANNING

Oct 2023

LEGAL DESCRIPTION:

A PART OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 37 NORTH, RANGE 3 EAST, PENN TOWNSHIP, CITY OF MISHAWAKA, ST. JOSEPH COUNTY, INDIANA WHICH IS DESCRIBED AS: LOT # 4 OF THE PLAT OF "MAIN-MCKINLEY SUBDIVISION" AS RECORDED BY DOCUMENT NUMBER 1553244 IN THE RECORDS OF THE ST. JOSEPH COUNTY, INDIANA RECORDER'S OFFICE. LOTS # 10, 11 AND 12 OF THE PLAT OF "SHIVEY'S FIRST SUBDIVISION" AS RECORDED IN PLAT BOOK # 15 ON PAGE # 3 IN THE RECORDS OF SAID RECORDER'S OFFICE. EXCEPTING FROM SAID LOTS # 10, 11 AND 12, THAT PORTION OF SAID LOTS TAKEN FOR RIGHT-OF-WAY FOR MAIN STREET AND A PARCEL OF GROUND DESCRIBED AS: BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT # 10; THENCE NORTH 89°38'38" WEST ALONG THE NORTH RIGHT-OF-WAY LINE OF RUSS STREET FOR A DISTANCE OF 218.24 FEET MORE OR LESS; THENCE NORTH 00°07'31" EAST A DISTANCE OF 225.24 FEET MORE OR LESS TO THE SOUTH RIGHT-OF-WAY LINE OF MC KINLEY HIGHWAY; THENCE ALONG SAID SOUTH LINE FOR THE NEXT FOUR (4) COURSES, SOUTH 87°22'28" EAST, A DISTANCE OF 44.73 FEET MORE OR LESS AND NORTH 89°41'28" EAST, A DISTANCE OF 20.00 FEET MORE OR LESS AND SOUTH 85°28'21" EAST, A DISTANCE OF 130.47 FEET MORE OR LESS AND SOUTH 89°41'28" EAST, A DISTANCE OF 22.15 FEET MORE OR LESS TO THE NORTHWEST CORNER OF SAID LOT # 4.
CONTAINING 1.08 ACRES MORE OR LESS.
SUBJECT TO ALL LEGAL RIGHT-OF-WAYS, AND EASEMENTS, AND RESTRICTIONS OF RECORD.

TABULATED DATA:

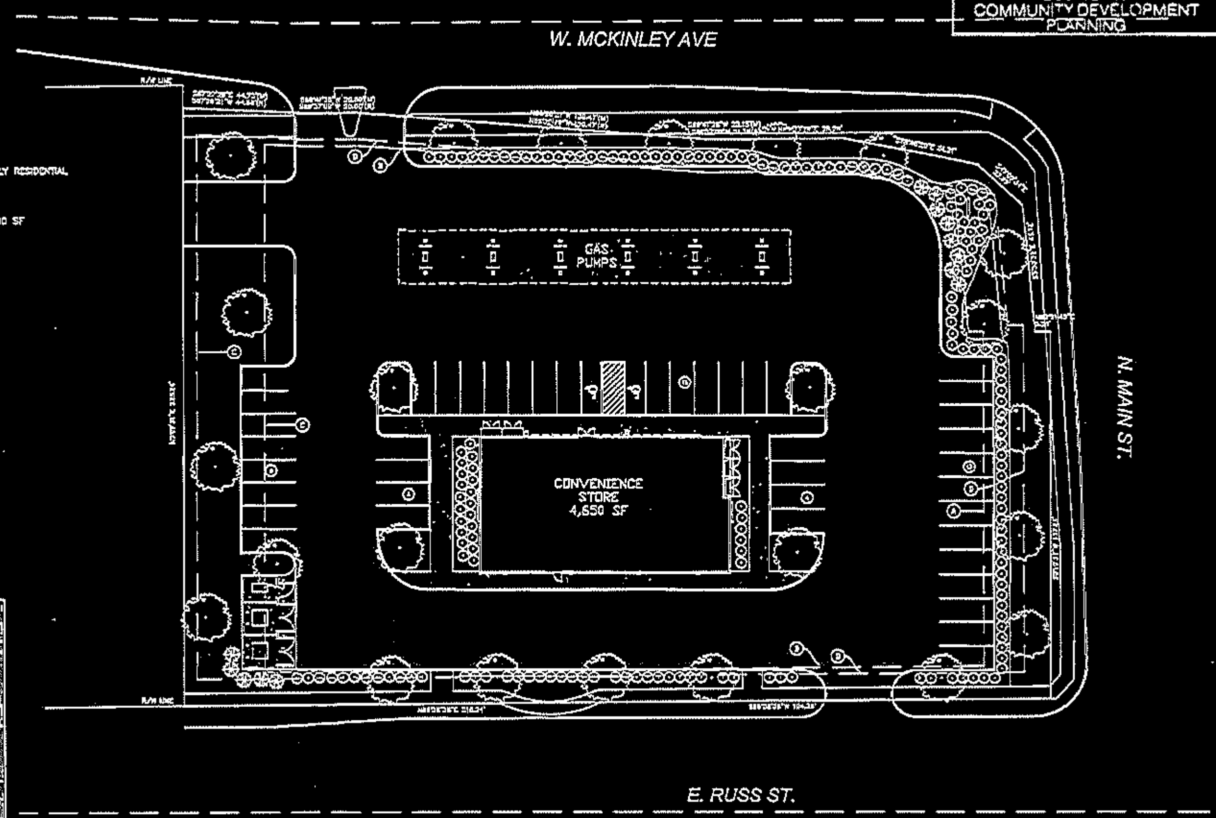
1) ACREAGE OF PARCEL .... 1.03 ± ACRES
   ZONING: EXISTING .... C-7 COMMERCIAL DISTRICT & R-1 SINGLE FAMILY RESIDENTIAL
   PROPOSED .... C-10 COMMERCIAL DISTRICT
2) PARKING RATIO REQUIRED BY ORDINANCE:
   A. C-4 COMMERCIAL DISTRICT .... (5.5) SPACE FOR 1,000 SF
   TOTAL NUMBER OF SPACES REQUIRED FOR (4,650 SF) .... 26 PARKING SPACES
   TOTAL NUMBER OF SPACES PROVIDED .... 44 PARKING SPACES
3) PROPOSED PARCEL TO BE SERVICED BY MUNICIPAL SEWER AND WATER.
4) DRAINAGE WILL MEET REQUIREMENTS OF CITY OF MISHAWAKA ENGINEERING.
5) CONTACT: DANCH, HARNER & ASSOCIATES, INC.
   1643 COMMERCE DRIVE
   SOUTH BEND, INDIANA 46628
   574-234-4003
6) DEVELOPMENT WILL MEET REQUIREMENTS OF CITY OF MISHAWAKA ZONING ORDINANCES.

REZONING REQUEST:

1) TO REZONE FROM C-7 COMMERCIAL DISTRICT AND R-1 SINGLE FAMILY RESIDENTIAL TO C-10 COMMERCIAL DISTRICT TO ALLOW FOR A CONVENIENCE STORE WITH GAS PUMPS.

SETBACKS:

(A) 25-FT FRONT-YARD SETBACK
(B) 12.5-FT EXTERIOR SIDE-YARD SETBACK
(C) 30-FT REAR-YARD SETBACK
(D) 10-FT PAVEMENT SETBACK
(E) 5-FT-PAVEMENT SETBACK



AERIAL PHOTOGRAPHY

SURVEYORS & ENGINEERS:
DANCH, HARNER & ASSOCIATES, INC.
1643 COMMERCE DRIVE
SOUTH BEND, IN. 46628
(574) 234-4003
ATTN: MICHAEL DANCH

DATE	DRAWN BY:	REVISIONS	
10-2020	CGS	DATE / BY	
SCALE	CHECKED BY:		
1"=20'	CGS		
FILE #	PROJ. MANGR:		
200211	MJD		

SHEET 1 OF 1

Danch, Harner & Associates, Inc.
Land Surveyors • Professional Engineers
Landscape Architects • Land Planners

DHA

RECEIVED
DEBORAH S. BLOCK, MMC

NOV 12 2020

CITY CLERK
MISHAWAKA, IN

PETITION 20-22

CITY OF MISHAWAKA, INDIANA

PROPOSED ORDINANCE NO. 2020-43

ORDINANCE NO. ______

AN ORDINANCE AMENDING CHAPTER 137, OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, COMMONLY KNOWN AS "THE ZONING ORDINANCE OF 1966" OF THE CITY OF MISHAWAKA, INDIANA.

WHEREAS, the Plan Commission of the City of Mishawaka, Indiana, has recommended the reclassification of the zoning as herein set forth of the real estate hereinafter described.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, that:

Section 1. Chapter 137, of the Municipal Code of the City of Mishawaka, commonly known as "The Zoning Ordinance of 1966", be, and the same is hereby amended as follows:

The following described real estate in the City of Mishawaka, Penn Township, St. Joseph County, State of Indiana, to-wit:

Lot 4, Bowmans 1st, City of Mishawaka, Penn Township, St. Joseph County, State of Indiana

COMMON ADDRESS: 2316 Lincolnway West

which real estate is now classified as C-1 General Commercial District shall hereafter be within and a part of that District known as R-1 Single Family Residential District designated in "The Zoning Ordinance of 1966" as amended.

Section 2. The Common Council of the City of Mishawaka, Indiana, hereby finds that:

1. There are commercial uses south of the property, but the neighborhood surrounding the property, mainly to the north, is primarily residential in nature, and rezoning the property to R-1 would be compatible to the area;

2. Use and value of the area adjacent to the property included in the rezoning will not be affected in a substantially adverse manner because given the context of its location, its relationship to surrounding properties, and the potential of development as a commercial project, staff feels that the most desirable use for this property is a single-family use;

3. Because the parcel is located in an area of residential uses, the rezoning to R-1 Single-Family Residential is a desirable use for this property;

Proposed Ordinance No: 2020-43

Ordinance No: ____________________________

4. As opposed to the range of potential commercial development that could occur with its current zoning, rezoning this property to the R-1 Single-family Residential classification will have a favorable and stabilizing impact on the neighborhood, conserving property values in the immediate and surrounding residential neighborhood; and,

5. The City's Comprehensive Plan calls for general commercial, but its use as a single-family home would be compatible and consistent with the historic residential uses in the area.

Section 3. This Ordinance shall be in full force and effect from and after its passage, due attestation and legal publication.

PASSED by the Common Council of the City of Mishawaka, Indiana, this __________day of ______________________, 2020, at _________ o'clock ___.M.

____

Presiding Officer

ATTEST:

____

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _________ day of ____________________, 2020, at __________ o'clock ____.M.

____

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _________ day of __________________, 2020, at _________o'clock ____.M.

____

David A. Wood, Mayor

STAFF REPORT

Location: 2316 Lincolnway West Date: Nov 10, 2020

Petition: 20 22 Prepared By: KM

GENERAL INFORMATION

Applicant:	John M. Palmer
Status:	Property Owner
Request:	Rezone from C-1 General Commercial District to R-1 Single Family Residential
Zoning Classification:	C-1 General Commercial District
Lot Size:	42' X 130.85'
Applicable Regulations:	Sec. 137-164 Residential R-1 District; Sec. 137-40 Plan Commission; & Sec. 137-41 Amendment to Zoning Ordinance and Zoning Map

SPECIAL INFORMATION

Area Development Pattern:	North:	R-1 Single Family Residential District
	South:	C-7 Automobile Oriented Restaurant Commercial District
	East:	R-2 Two-Family Residential District
	West:	C-1 General Commercial District
Thoroughfare:	Northeast corner of Lincolnway West and River Avenue	
School District:	School City of Mishawaka	
Public Utilities:	Available	
Comprehensive Plan:	General Commercial	

ANALYSIS

The Petitioner is requesting to rezone 2316 Lincolnway West from C-1 General Commercial District to R-1 Single Family Residential District. The property is located on the northeast corner of Lincolnway West and River Avenue. The neighborhood is a mix of residential and commercial uses along Lincolnway.

The Petitioner is selling the property and feels the market would be stronger selling as a single-family residence. He states it has been used as an office for a number of years, but is fully set up to be a single-family home and has a detached two-stall garage. It was built in 1922 as a single family residence.

Prior to the 1980's residential uses were permitted in commerical zoned districts. Around 1986 the Zoning Ordinance was amended to prohibit residential uses in certain districts.

Pertinent City Departments have reviewed and approved the request.

RECOMMENDATION

The Planning Department recommends **approval** of Petition #20-22 to rezone 2316 Lincolnway West from C-1 General Commercial District to R-1 Single Family Residential District. This recommendation is based upon the following findings of fact:

1. There are commercial uses south of the property, but the neighborhood surrounding the property, mainly to the north, is primarily residential in nature, and rezoning the property to R-1 would be compatible to the area;

2. Use and value of the area adjacent to the property included in the rezoning will not be affected in a substantially adverse manner because given the context of its location, its relationship to surrounding properties, and the potential of development as a commercial project, staff feels that the most desirable use for this property is a single-family use;

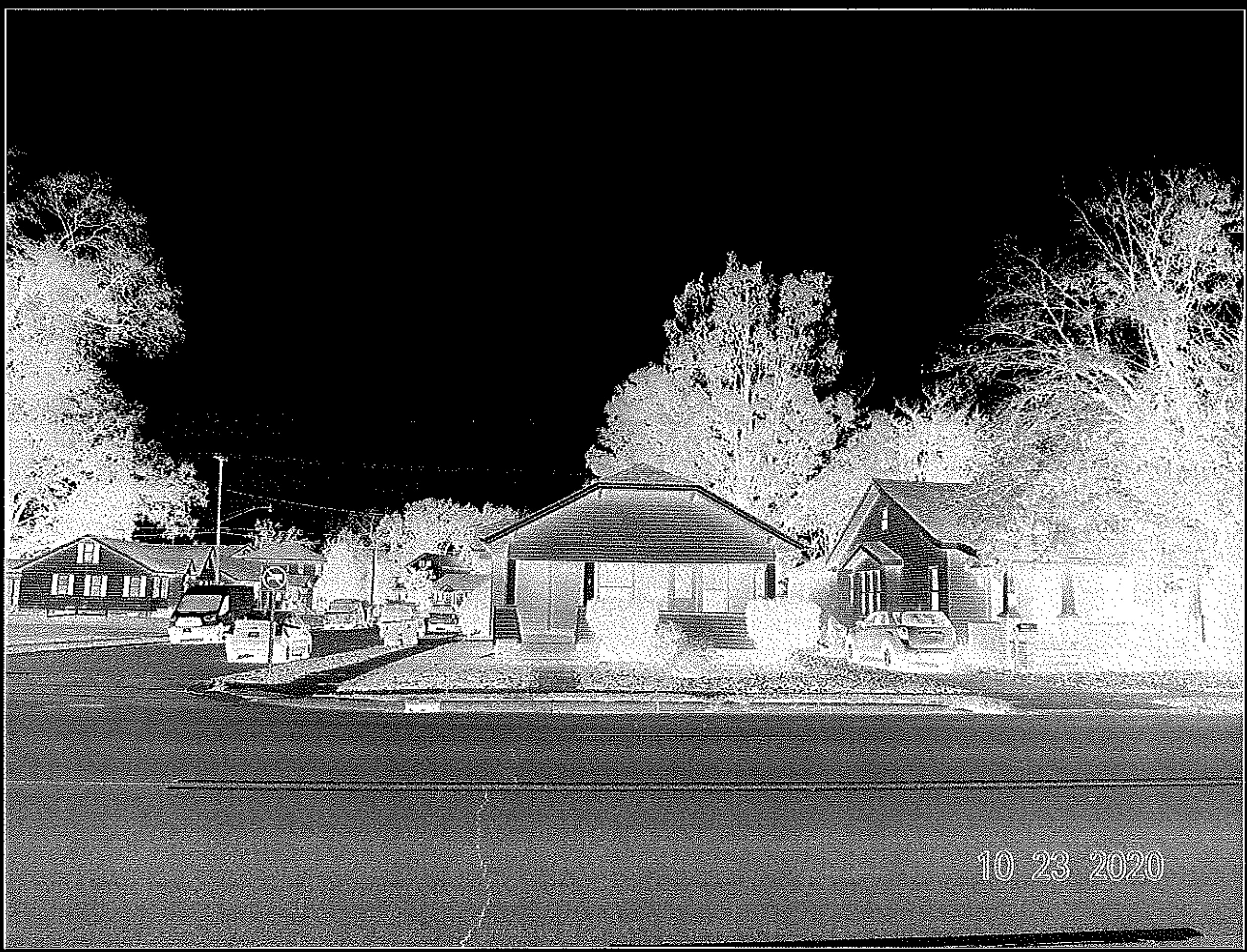
3. Because the parcel is located in an area of residential uses, the rezoning to R-1 Single-Family Residential is a desirable use for this property;

4. As opposed to the range of potential commercial development that could occur with its current zoning, rezoning this property to the R-1 Single-family Residential classification will have a favorable and stabilizing impact on the neighborhood, conserving property values in the immediate and surrounding residential neighborhood; and,

5. The City's Comprehensive Plan calls for general commercial, but its use as a single-family home would be compatible and consistent with the historic residential uses in the area.

ATTACHMENTS

PETITION, PHOTOGRAPHS, AERIAL, LOCATION MAP



2316 Lincolnway West

Looking to the site from the west

RECEIVED
DEBORAH S. BLOCK, MMC
OCT 29 2020
CITY CLERK
MISHAWAKA, IN

RECEIVED
OCT 21 2020
ECONOMIC
COMMUNITY DEVELOPMENT
PLANNING

Pet 20-22

Oct 20, 2020

Honorable Members of the
Common Council
City of Mishawaka, Indiana
and Mishawaka City Plan Commission
City of Mishawaka, Indiana

RE: PETITION TO REZONE

The undersigned John M Palmer respectfully show they are the owner of the following described real estate located in the City of Mishawaka, County of St. Joseph, State of Indiana, to wit:

2316 Lincolnway W. Mishawaka, In 46544, Legal Description: Lot 4 Bowmans 1st Add. Tax Key Number: 71-09-17-327-003.000-023.

Petitioner(s) own one hundred (100%) percent of the described parcel of land which carries a zoning classification of C-1 District. Said property is (was) being used as an office.

Petitioner(s) desire said real estate to be zoned to R-1 District. Petitioner(s) further state they intend to utilize said land for a residential use.

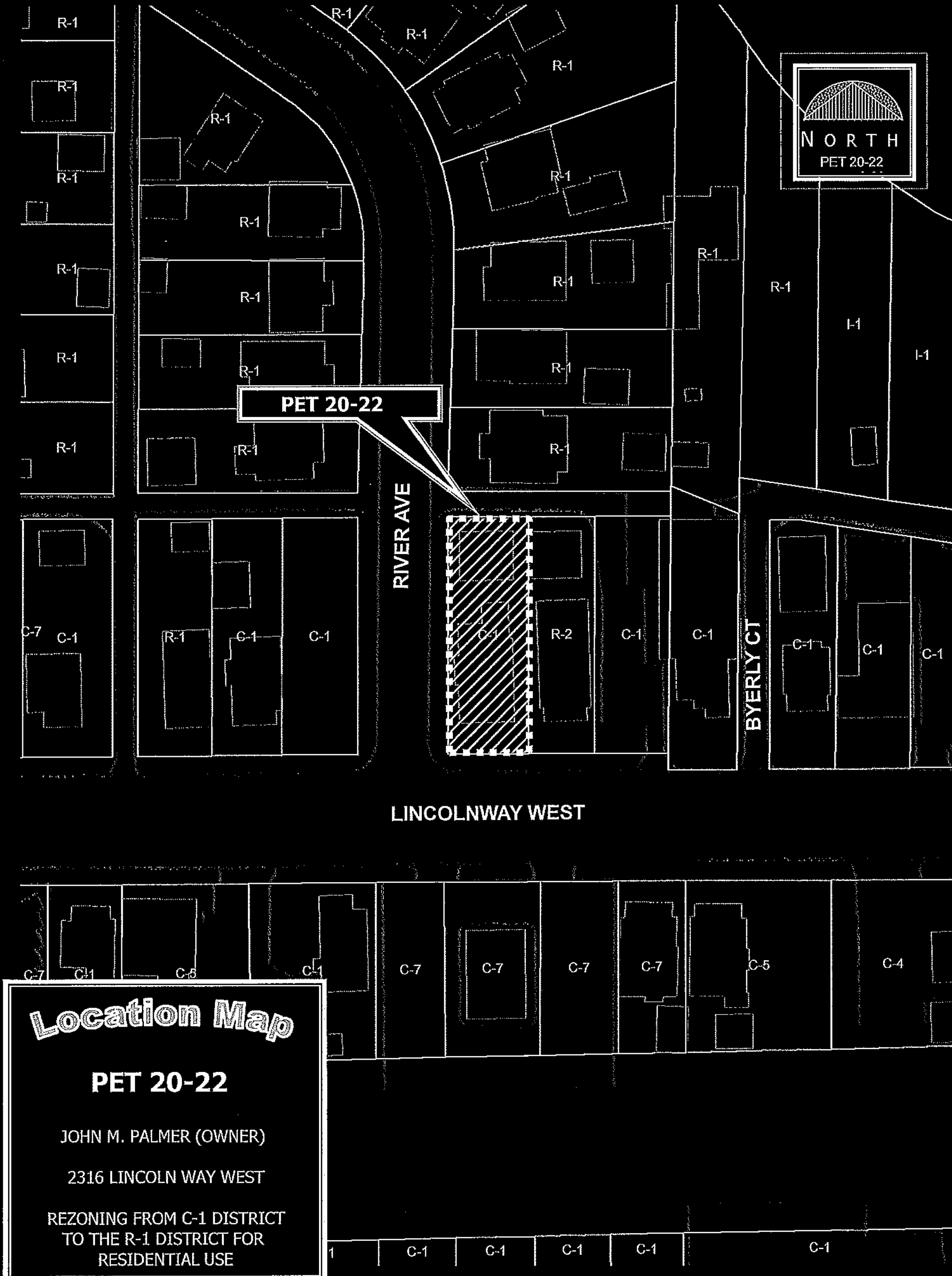
Wherefore, the petitioner(s) pray and respectfully request that the common council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate ordinance be enacted rezoning the above described parcel of land located in the City of Mishawaka.

John M Palmer

John M Palmer

CONTACT PERSON:
John M Palmer
3040 Springbrook Dr , South Bend, In
574-876-1234
john_p46614@yahoo.com

PETITION #20-22
2316 Lincolnway West



NORTH
PET 20-22
PET 20-22
RIVER AVE
BYERLY CT
LINCOLNWAY WEST
Location Map
PET 20-22
JOHN M. PALMER (OWNER)
2316 LINCOLN WAY WEST
REZONING FROM C-1 DISTRICT
TO THE R-1 DISTRICT FOR
RESIDENTIAL USE

RECEIVED
DEBORAH S. BLOCK, MMC

NOV 12 2020

CITY CLERK
MISHAWAKA, IN

PETITION 20-23

CITY OF MISHAWAKA, INDIANA

PROPOSED ORDINANCE NO. 2020-44

ORDINANCE NO. ______

AN ORDINANCE AMENDING CHAPTER 137, OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, COMMONLY KNOWN AS "THE ZONING ORDINANCE OF 1966" OF THE CITY OF MISHAWAKA, INDIANA.

WHEREAS, the Plan Commission of the City of Mishawaka, Indiana, has recommended the reclassification of the zoning as herein set forth of the real estate hereinafter described.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, that:

Section 1. Chapter 137, of the Municipal Code of the City of Mishawaka, commonly known as "The Zoning Ordinance of 1966", be, and the same is hereby amended as follows:

The following described real estate in the City of Mishawaka, Penn Township, St. Joseph County, State of Indiana, to-wit:

A PART OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 37 NORTH, RANGE 3 EAST, PENN TOWNSHIP, CITY OF MISHAWAKA, ST. JOSEPH COUNTY, INDIANA WHICH IS DESCRIBED AS: LOT # 4 OF THE PLAT OF "MAIN-MCKINLEY SUBDIVISION" AS RECORDED BY DOCUMENT NUMBER 1533244 IN THE RECORDS OF THE ST. JOSEPH COUNTY, INDIANA RECORDER'S OFFICE, LOTS # 10, 11 AND 12 OF THE PLAT OF "SHIVEY'S FIRST SUBDIVISION" AS RECORDED IN PLAT BOOK # 15 ON PAGE # 3 IN THE RECORDS OF SAID RECORDER'S OFFICE, EXCEPTING FROM SAID LOTS # 10, 11 AND 12, THAT PORTION OF SAID LOTS TAKEN FOR RIGHT-OF-WAY FOR MAIN STREET AND A PARCEL OF GROUND DESCRIBED AS: BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT # 10; THENCE NORTH 89°38'38" WEST ALONG THE NORTH RIGHT-OF-WAY LINE OF RUSS STREET FOR A DISTANCE OF 218.24 FEET MORE OR LESS; THENCE NORTH 00°07'31" EAST A DISTANCE OF 225.24 FEET MORE OR LESS TO THE SOUTH RIGHT-OF-WAY LINE OF MC KINLEY HIGHWAY; THENCE ALONG SAID SOUTH LINE FOR THE NEXT FOUR (4) COURSES, SOUTH 87°22'28" EAST, A DISTANCE OF 44.73 FEET MORE OR LESS AND NORTH 89°41'28" EAST, A DISTANCE OF 20.00 FEET MORE OR LESS AND SOUTH 85°28'21" EAST, A DISTANCE OF 130.47 FEET MORE OR LESS AND SOUTH 89°41'28" EAST, A DISTANCE OF 22.15 FEET MORE OR LESS TO THE NORTHWEST CORNER OF SAID LOT # 4. CONTAINING 1.09 ACRES MORE OR LESS. SUBJECT TO ALL LEGAL RIGHT-OF-WAYS, AND EASEMENTS, AND RESTRICTIONS OF RECORD.

COMMON ADDRESSES: 119 West McKinley Avenue, 2219 North Main Street, 2205 North Main Street, vacant land adjacent to and north of 2205 North Main Street, and 2201 North Main Street which real estate is now classified as C-7 Automobile Oriented Restaurant Commercial District and R-1 Single Family Residential District shall hereafter be within and a part of that District known as C-10 Filling Station Commercial District designated in "The Zoning Ordinance of 1966" as amended.

Section 2. The Common Council of the City of Mishawaka, Indiana, hereby finds that:

1. Existing Conditions – The subject property consists of a restaurant and four vacant parcels at the southwest corner of W. McKinley Avenue and N. Main Street. These roads are highly travelled corridors providing major north-south and east-west access through the City of Mishawaka and South Bend. Adjacent land uses include an automobile sales and service business and pharmacy to the north, an auto parts retailer to the west, single-family residential houses to the south, and restaurant with drive-thru to the east.

2. Character of Buildings – The character of the buildings in the area are predominantly commercial and single-family residential.

3. The most desirable/highest and best use – Because of the property's location and the prior and existing commercial uses, the most desirable use of the property is commercial. Although single-family residential properties are adjacent to the south across W. Russ Street, the high traffic volumes along W. McKinley Avenue and N. Main Street make long term use of the current residentially zoned properties undesirable for residential purposes. Furthermore, a large portion of the property is currently zoned for commercial use.

4. Conservation of property values – The proposed rezoning should not be injurious to property values in the surrounding area as the existing C-7 Auto Oriented Restaurant Commercial zoning classification permits commercial uses on a majority of the property. Landscaping and screening will be required per the C-10 Filling Station / Car Wash Commercial District to adequately buffer the proposed use from the adjacent residential properties.

5. Comprehensive Plan – The 2000 Mishawaka Comprehensive Plan, created in 1990, guided general commercial development within this property. The proposal is consistent with the Comprehensive Plan.

Section 3. This Ordinance shall be in full force and effect from and after its passage, due attestation and legal publication.

PASSED by the Common Council of the City of Mishawaka, Indiana, this __________day of ____________________, 2020, at ________ o'clock ___.M.

____

Presiding Officer

Proposed Ordinance No: 2020-44

Ordinance No: ______________________

ATTEST:

____

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this ________ day of ____________________, 2020, at _________ o'clock ____.M.

____

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this ________ day of __________________, 2020, at _________o'clock ____.M.

____

David A. Wood, Mayor

STAFF REPORT

Location:	Southwest Corner of W. McKinley Avenue & N. Main Street - 119 W. McKinley Avenue & Vacant Parcels to the East	Date:	November 10, 2020
Petition:	20- 23	Prepared By:	DJS

GENERAL INFORMATION

Applicant:	Graber Group LP, et. al represented by Peter J Agostino (AAK Law) / Danch, Harner & Associates, Inc.
Status:	Property Owner & Legal Representative / Site Design Consultant
Request:	To rezone from C-7 Auto Oriented Restaurant Commercial District and R-1 Single Family Residential District to C-10 Filling Station / Car Wash District to allow for the construction of a convenience store with gas pumps
Zoning Classification:	C-7 Auto Oriented Restaurant Commercial District and R-1 Single Family Residential District
Lot Size:	1.09 acres
Applicable Regulations:	Section 137-529 thru 137-530 / C-10 Filling Station – Car Wash District & Section 137-41 / Amendments to the Zoning Map

SPECIAL INFORMATION

Area Development Pattern:	North:	C-4 Auto Oriented Commercial (Automobile Sales & Service / Michiana Chrysler Dodge Jeep RAM Fiat) & C-1 General Commercial (Pharmacy / Walgreen's)
	South:	R-1 Single Family Residential (Residential)
	East:	C-7 Auto Oriented Restaurant Commercial (Restaurant with Drive-Thru / Dairy Queen)
	West:	C-1 General Commercial (Auto Parts Retailer / O'Reilly Auto Parts)
Thoroughfare:	W. McKinley Avenue & N. Main Street	
School District:	School City of Mishawaka	
Township:	Penn	
Public Utilities:	All utilities are available and/or will be extended/connected to the site at the expense of the developer.	
Comprehensive Plan:	General Commercial (Retail Sales & Shopping Centers)	

ANALYSIS

The Petitioners, Graber Group LP, Larry & Freda Scheibelhut, Dennis & Karen Culp, Mary Lou Seltzer and Thomas Scheibelhut, are requesting to rezone an approximate 1.09 acre area located at the southwest corner of W. McKinley Avenue and N. Main Street from C-7 Auto Oriented Restaurant Commercial and R-1

Single Family Residential to C-10 Filling Station / Car Wash to allow for the construction of a convenience store with gas pumps.

The site includes five separate parcels. The west parcel (Tax Parcel 016-2046-1551.08 / 119 W. McKinley Avenue) is occupied by Fiesta Tapatia, a dine-in restaurant formerly a Wendy's fast food restaurant. The vacant parcel at the far northeast corner (Tax Parcel 016-2117-3790) was previously developed with a commercial structure and occupied by Edward Jones Investments until the mid-2000s. The building was demolished as a part of the N. Main Street improvement project completed in the late 2000s. Until 2017, two single-family residential houses were located on the vacant parcels within the far southeast corner (Tax Parcels 016-2117-3787/3788). Both of the houses were relocated to accommodate future commercial development. According to Polk Directories from the mid-1990s, the other remaining vacant parcel (Tax Parcel 016-2117-3789) was occupied with a commercial structure until being razed in the mid-1990s. With the proposed redevelopment of the site, all existing improvements will be razed.

Per the preliminary site plan submitted with the rezoning petition, the contingent developer is proposing to construct a one-story 4,650 sq. ft. convenience store with gas pumps, a forty-four (44) space parking lot, and other required infrastructure (access drives, stormwater drainage system, landscaping, etc.).

Access to the site is currently proposed from both W. McKinley Avenue to the north and W. Russ Street to the south. The W. McKinley Avenue access will be right-in/right-out only in order to restrict left-hand turns into and from the property for west bound traffic. The W. Russ Street access will allow for unrestricted turning movements. Planning and Engineering Staff requested that an internal access drive be provided between the property and the adjacent auto parts store to the west. Establishing cross-access between the properties would be beneficial to both sites and allow for additional means of ingress-egress during periods of peak traffic.

Additional right-of-way will need to be dedicated via a plat along both W. McKinley Avenue and N. Main Street. The expanded right-of-way will be utilized for widening the right-turn lane along W. McKinley Avenue and new sidewalks along both W. McKinley Avenue and N. Main Street frontage.

The landscaping, conceptually shown, shall comply with the commercial landscaping requirements. In addition, Planning Staff requests that a multilayered landscaping screen consisting of both evergreens and deciduous plantings be provided along the entire south property line to screen the adjacent residential properties south of W. Russ Street. The types of plantings shall be varied to establish a permanent solid screen during all seasons. A 4' high ornamental fence shall also be incorporated into the landscape plantings and be provided along the entire south property line. *A written commitment from the Applicant is required for the landscaping and fencing, as outlined above, and shall be provided prior to consideration by the Common Council.* The landscaping plan shall be reviewed and approved as a part of the final site plan process.

The conceptual site plan shows that the site will comply with the required height, area and developmental regulations for the C-10 Filling Station / Car Wash District. If any variances from these regulations are required, the Board of Zoning Appeals shall be petitioned when the final site plan is submitted.

With this petition, the Applicant and contingent purchaser are only seeking to establish the proper zoning required for the proposed use. If approved, a detailed final site plan shall be submitted for Staff review and Plan Commission approval prior to construction. The final site plan shall address storm drainage, grading, utilities, landscaping, soil erosion control, and all other required improvements pertinent to the proposed development.

Since a majority of the property is currently zoned for commercial use and located along the McKinley Avenue commercial corridor, the Staff supports the request for rezoning. The proposed convenience store with gas pumps is not out of character, and with the required landscaping and screening, is compatible with the existing adjacent land uses. The proposed use is also consistent with the historical uses and recommended use per the comprehensive plan.

The Building, Fire, Electric, and Water Departments have reviewed and approved the rezoning request providing no additional comments.

The Engineering Department had no comments related to the rezoning petition but provided the following comments to be addressed with the final site plan:

1. Extend the throat of the access drive at the southeast corner and remove approximately 5-6 parking spaces to prevent blocking of entrance to incoming vehicles.
2. Ensure the 8' wide pathway (sidewalk) is an appropriate width all the way to the curb ramp. Curb ramp may need to be modified.
3. Ensure the pork chop island is mountable and make bigger to shrink pavement width.
4. Jog path on the west side of the drive approach to north so when extended west it does not affect the existing parking lot to the west.
5. Dedicate additional right-of-way along both W. McKinley Avenue and N. Main Street.

RECOMMENDATION

Staff recommends in **favor** of rezoning Petition 20-23 to rezone approximately 1.09 acres at the southwest corner of W. McKinley Avenue and N. Main Street (119 W. McKinley Avenue and the adjacent four parcels to the east) from C-7 Auto Oriented Restaurant Commercial and R-1 Single Family Residential to the C-10 Filling Station / Car Wash to allow for the construction of a convenience store with gas pumps. This recommendation is based on the following findings of fact:

1. Existing Conditions – The subject property consists of a restaurant and four vacant parcels at the southwest corner of W. McKinley Avenue and N. Main Street. These roads are highly travelled corridors providing major north-south and east-west access through the City of Mishawaka and South Bend. Adjacent land uses include an automobile sales and service business and pharmacy to the north, an auto parts retailer to the west, single-family residential houses to the south, and restaurant with drive-thru to the east.

2. Character of Buildings – The character of the buildings in the area are predominantly commercial and single-family residential.

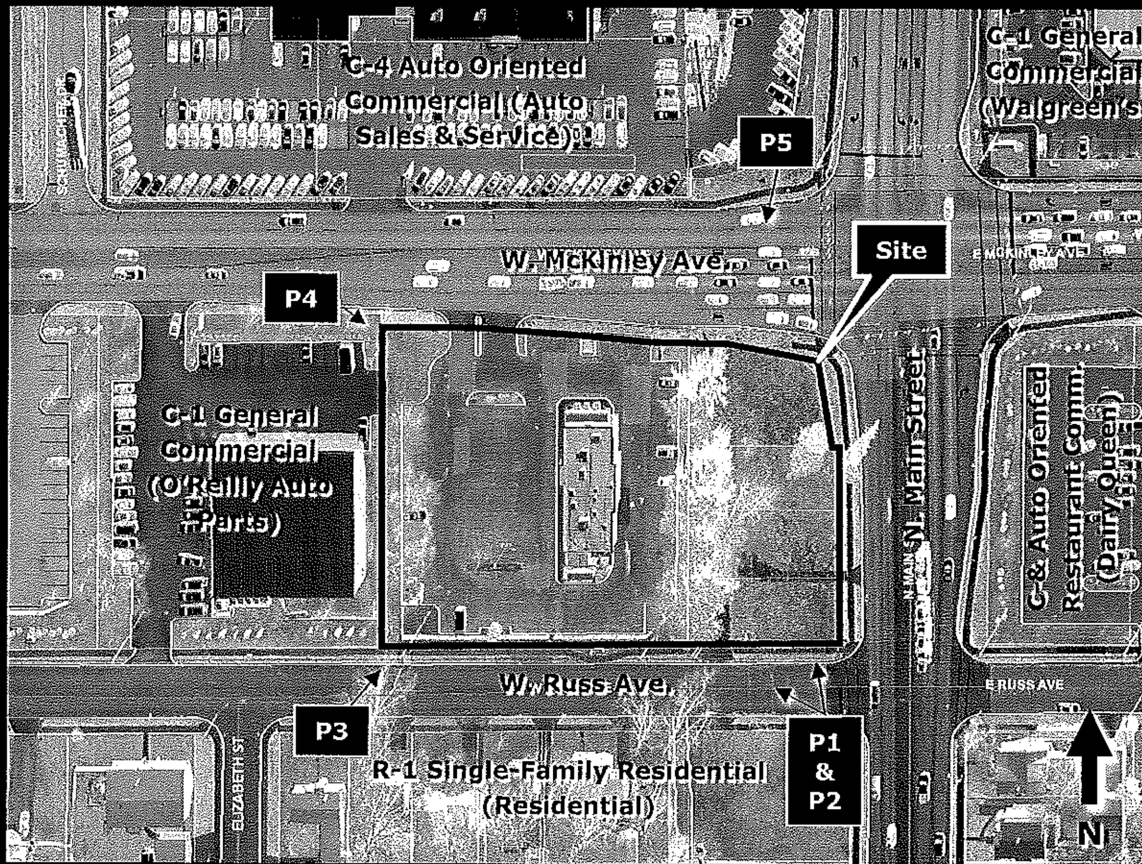
3. The most desirable/highest and best use – Because of the property's location and the prior and existing commercial uses, the most desirable use of the property is commercial. Although single-family residential properties are adjacent to the south across W. Russ Street, the high traffic volumes along W. McKinley Avenue and N. Main Street make long term use of the current residentially zoned properties undesirable for residential purposes. Furthermore, a large portion of the property is currently zoned for commercial use.

4. Conservation of property values – The proposed rezoning should not be injurious to property values in the surrounding area as the existing C-7 Auto Oriented Restaurant Commercial zoning classification permits commercial uses on a majority of the property. Landscaping and screening will be required per the C-10 Filling Station / Car Wash Commercial District to adequately buffer the proposed use from the adjacent residential properties.

5. Comprehensive Plan – The 2000 Mishawaka Comprehensive Plan, created in 1990, guided general commercial development within this property. The proposal is consistent with the Comprehensive Plan.

ATTACHMENTS

Aerial Photograph, Photographs, Petition, Location Map, Preliminary/Conceptual Site Plan



Aerial Photograph
Existing Restaurant (119 W. McKinley Ave.) and Four Adjacent Vacant Parcels
Southwest corner of W. McKinley Avenue & N. Main Street

P1. Looking northerly toward the four vacant parcels from the southeast corner of the site.

P2. Looking northwesterly toward the existing restaurant (screened by fence) from the southeast corner of the site.

P3. Looking northeasterly toward the existing restaurant (screened by fence) from the southwest corner of the site.

P4. Looking southeasterly toward the existing restaurant from the northwest corner of the site.

P5. Looking southerly toward the site from the northwest corner
of N. Main Street and W. McKinley Avenue.

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DEBORAH S. BLOCK, MMC

OCT 29 2020

CITY CLERK
MISHAWAKA, IN

PET 20-23

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PLANNING

Date: October 16, 2020

To The: Honorable Members of the
Common Council of the
City of Mishawaka, Indiana

RE: Graber Group LP, Larry & Freda Scheibelhut, Dennis & Karen Culp,
Mary Lou Seltzer and Thomas Scheibelhut,
Petition for Rezoning:

The undersigned, respectfully show that they are the owners of the following described real estate located in the City of Mishawaka, St. Joseph County, Indiana:

A PART OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 37 NORTH, RANGE 3 EAST, PENN TOWNSHIP, CITY OF MISHAWAKA, ST. JOSEPH COUNTY, INDIANA WHICH IS DESCRIBED AS: LOT # 4 OF THE PLAT OF "MAIN-MCKINLEY SUBDIVISION" AS RECORDED BY DOCUMENT NUMBER 1533244 IN THE RECORDS OF THE ST. JOSEPH COUNTY, INDIANA RECORDER'S OFFICE, LOTS # 10, 11 AND 12 OF THE PLAT OF "SHIVEY'S FIRST SUBDIVISION" AS RECORDED IN PLAT BOOK # 15 ON PAGE # 3 IN THE RECORDS OF SAID RECORDER'S OFFICE, EXCEPTING FROM SAID LOTS # 10, 11 AND 12, THAT PORTION OF SAID LOTS TAKEN FOR RIGHT-OF-WAY FOR MAIN STREET AND A PARCEL OF GROUND DESCRIBED AS: BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT # 10; THENCE NORTH 89°38'38" WEST ALONG THE NORTH RIGHT-OF-WAY LINE OF RUSS STREET FOR A DISTANCE OF 218.24 FEET MORE OR LESS; THENCE NORTH 00°07'31" EAST A DISTANCE OF 225.24 FEET MORE OR LESS TO THE SOUTH RIGHT-OF-WAY LINE OF MC KINLEY HIGHWAY; THENCE ALONG SAID SOUTH LINE FOR THE NEXT FOUR (4) COURSES, SOUTH 87°22'28" EAST, A DISTANCE OF 44.73 FEET MORE OR LESS AND NORTH 89°41'28" EAST, A DISTANCE OF 20.00 FEET MORE OR LESS AND SOUTH 85°28'21" EAST, A DISTANCE OF 130.47 FEET MORE OR LESS AND SOUTH 89°41'28" EAST, A DISTANCE OF 22.15 FEET MORE OR LESS TO THE NORTHWEST CORNER OF SAID LOT # 4.
CONTAINING 1.09 ACRES MORE OR LESS.
SUBJECT TO ALL LEGAL RIGHT-OF-WAYS, AND EASEMENTS, AND RESTRICTIONS OF RECORD.

Also, commonly known as 119 West Mc Kinley Highway, 2219 North Main Street, 2205 North Main Street, Vacant land adjacent to and North of 2205 North Main Street and 2201 North Main Street, Mishawaka, Indiana 46545.

The above described parcels of land are presently zoned "C-7" Commercial District and "R-1" Residential District.

The Petitioners desire said real estate, to be rezoned to the "C-10" Commercial District classification. The purpose for the rezoning is to allow for the real estate to be purchased by an interested party who desires to build a Convenience Store with Gas Pumps on the site.

Wherefore, the Petitioners pray and respectfully request that the Common Council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate ordinance be enacted rezoning the above described parcel of real estate located in the City of Mishawaka.

Attorney for the Petitioners:
Mr. Peter Agostino
131 South Taylor Street
South Bend, IN 46601
574-288-1510

Contact person for site plan:
Danch, Harner & Associates, Inc.
1643 Commerce Drive
South Bend, Indiana 46628
574) 234-4003

LEGAL DESCRIPTION

A PART OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 37 NORTH, RANGE 3 EAST, PENN TOWNSHIP, CITY OF MISHAWAKA, ST. JOSEPH COUNTY, INDIANA WHICH IS DESCRIBED AS: LOT # 4 OF THE PLAT OF "MAIN-MCKINLEY SUBDIVISION" AS RECORDED BY DOCUMENT NUMBER 1533244 IN THE RECORDS OF THE ST. JOSEPH COUNTY, INDIANA RECORDER'S OFFICE, LOTS # 10, 11 AND 12 OF THE PLAT OF "SHIVEY'S FIRST SUBDIVISION" AS RECORDED IN PLAT BOOK # 15 ON PAGE # 3 IN THE RECORDS OF SAID RECORDER'S OFFICE, EXCEPTING FROM SAID LOTS #10, 11 AND 12, THAT PORTION OF SAID LOTS TAKEN FOR RIGHT-OF-WAY FOR MAIN STREET AND A PARCEL OF GROUND DESCRIBED AS: BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT # 10; THENCE NORTH 89°38'38" WEST ALONG THE NORTH RIGHT-OF-WAY LINE OF RUSS STREET FOR A DISTANCE OF 218.24 FEET MORE OR LESS; THENCE NORTH 00°07'31" EAST A DISTANCE OF 225.24 FEET MORE OR LESS TO THE SOUTH RIGHT-OF-WAY LINE OF MC KINLEY HIGHWAY; THENCE ALONG SAID SOUTH LINE FOR THE NEXT FOUR (4) COURSES, SOUTH 87°22'28" EAST, A DISTANCE OF 44.73 FEET MORE OR LESS AND NORTH 89°41'28" EAST, A DISTANCE OF 20.00 FEET MORE OR LESS AND SOUTH 85°28'21" EAST, A DISTANCE OF 130.47 FEET MORE OR LESS AND SOUTH 89°41'28" EAST, A DISTANCE OF 22.15 FEET MORE OR LESS TO THE NORTHWEST CORNER OF SAID LOT # 4.

CONTAINING 1.09 ACRES MORE OR LESS.

SUBJECT TO ALL LEGAL RIGHT-OF-WAYS, AND EASEMENTS, AND RESTRICTIONS OF RECORD.

NORTH
PET 20-23
C-4
C-4
C-4
C-4
C-4
C-4
C-4
C-1
C-1
PET 20-23
W MCKINLEY AVE
E MCKINLEY AVE
C-7
C-7
C-7
C-7
C-7
C-7
C-1
R-1
R-1
R-1
N MAIN ST
W RUSS AVE
E RUSS AVE
R-1
Location Map
PET 20-23
GRABER GROUP LP, SCHEIBELHUT, CULP & SELTZER (OWNERS)
119 W. MCKINLEY AVE. & 2219, 2215, 2205 AND 2201 N. MAIN ST.
REZONING FROM C-7 & R-1 DISTRICT TO THE C-10 DISTRICT TO ALLOW A CONVENIENCE STORE WITH GAS PUMPS

PRELIMINARY SITE PLAN

PART OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 37 NORTH, RANGE 3 EAST, PENN TOWNSHIP, CITY OF MISHAWAKA, ST. JOSEPH COUNTY, INDIANA

Oct 2023

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PLANNING

LEGAL DESCRIPTION:

A PART OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 37 NORTH, RANGE 3 EAST, PENN TOWNSHIP, CITY OF MISHAWAKA, ST. JOSEPH COUNTY, INDIANA WHICH IS DESCRIBED AS: LOT # 4 OF THE PLAT OF "MAIN-MCKINLEY SUBDIVISION" AS RECORDED BY DOCUMENT NUMBER 1333244 IN THE RECORDS OF THE ST. JOSEPH COUNTY, INDIANA RECORDER'S OFFICE. LOTS # 10, 11 AND 12 OF THE PLAT OF "SHIVEY'S FIRST SUBDIVISION" AS RECORDED IN PLAT BOOK # 15 ON PAGE # 3 IN THE RECORDS OF SAID RECORDER'S OFFICE. EXCEPTING FROM SAID LOTS # 10, 11 AND 12, THAT PORTION OF SAID LOTS TAKEN FOR RIGHT-OF-WAY FOR MAIN STREET AND A PARCEL OF GROUND DESCRIBED AS: BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT # 10; THENCE NORTH 89°38'38" WEST ALONG THE NORTH RIGHT-OF-WAY LINE OF RUSS STREET FOR A DISTANCE OF 218.24 FEET MORE OR LESS; THENCE NORTH 00°07'31" EAST A DISTANCE OF 225.24 FEET MORE OR LESS TO THE SOUTH RIGHT-OF-WAY LINE OF MC KINLEY HIGHWAY; THENCE ALONG SAID SOUTH LINE FOR THE NEXT FOUR (4) COURSES, SOUTH 87°22'28" EAST, A DISTANCE OF 44.73 FEET MORE OR LESS AND NORTH 89°41'28" EAST, A DISTANCE OF 20.00 FEET MORE OR LESS AND SOUTH 85°28'21" EAST, A DISTANCE OF 130.47 FEET MORE OR LESS AND SOUTH 89°41'28" EAST, A DISTANCE OF 22.15 FEET MORE OR LESS TO THE NORTHWEST CORNER OF SAID LOT # 4.
CONTAINING 1.09 ACRES MORE OR LESS.
SUBJECT TO ALL LEGAL RIGHT-OF-WAYS, AND EASEMENTS, AND RESTRICTIONS OF RECORD.

TABULATED DATA:

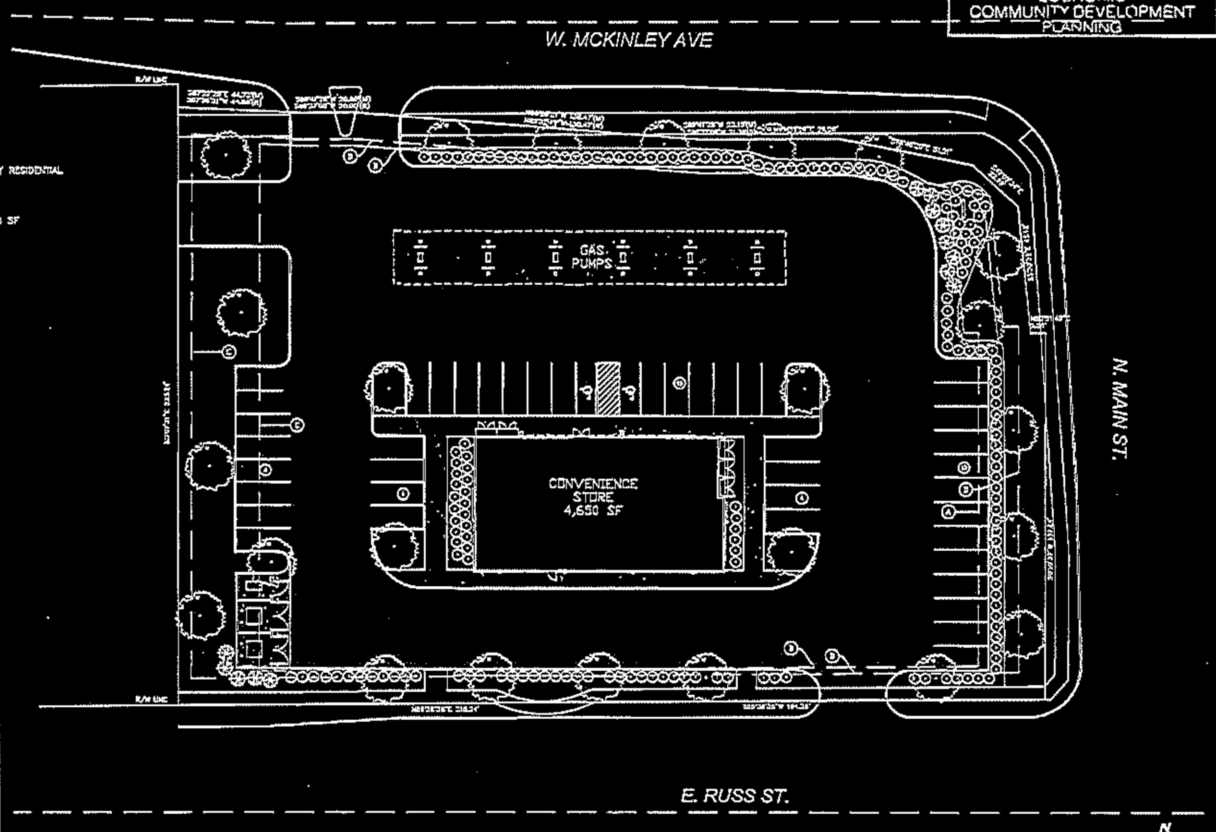
1) ACREAGE OF PARCEL ....1.09 ± ACRES
   ZONING: EXISTING........................C-7 COMMERCIAL DISTRICT & R-1 SINGLE FAMILY RESIDENTIAL
   PROPOSED........................C-10 COMMERCIAL DISTRICT
2) PARKING RATIO REQUIRED BY ORDINANCE:
   A. C-4 COMMERCIAL DISTRICT........................(5.5) SPACE FOR 1,000 SF
   TOTAL NUMBER OF SPACES REQUIRED FOR (4,650 SF)..............26 PARKING SPACES
   TOTAL NUMBER OF SPACES PROVIDED........................44 PARKING SPACES
3) PROPOSED PARCEL TO BE SERVICED BY MUNICIPAL SEWER AND WATER.
4) DRAINAGE WILL MEET REQUIREMENTS OF CITY OF MISHAWAKA ENGINEERING.
5) CONTACT: DANCH, HARNER & ASSOCIATES, INC.
   1643 COMMERCE DRIVE
   SOUTH BEND, INDIANA 46628
   574-234-4003
6) DEVELOPMENT WILL MEET REQUIREMENTS OF CITY OF MISHAWAKA ZONING ORDINANCES.

REZONING REQUEST

1) TO REZONE FROM C-7 COMMERCIAL DISTRICT AND R-1 SINGLE FAMILY RESIDENTIAL TO C-10 COMMERCIAL DISTRICT TO ALLOW FOR A CONVENIENCE STORE WITH GAS PUMPS.

SETBACKS:

- (A) 25-FT FRONT-YARD SETBACK
- (B) 12.5-FT EXTERIOR SIDE-YARD SETBACK
- (C) 30-FT REAR-YARD SETBACK
- (D) 10-FT PAVEMENT SETBACK
- (E) 5-FT-PAVEMENT SETBACK



AERIAL PHOTOGRAPHY

DATE 10-2020	DRAWN BY: CCS	REVISIONS
SCALE 1"=20'	CHECKED BY: CCS	
FILE # 200211	PROJ. MANGR: MJD	

Danch, Harner & Associates, Inc.

SHEET 1 of 1

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NOV 12 2020

CITY CLERK
MISHAWAKA, IN

APPEAL #20-50

RESOLUTION NO. 2020-23

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, APPROVING A PETITION OF THE MISHAWAKA BOARD OF ZONING APPEALS FOR THE PROPERTY LOCATED AT:

509 East Lawrence Street, Mishawaka, Indiana

WHEREAS, the Indiana Code requires the Common Council to give notice of its intention to consider Petitions from the Board of Zoning Appeals for approval or disapproval; and

WHEREAS, the Common Council must take action within sixty (60) days after the Board of Zoning Appeals makes its recommendation to the Council; and

WHEREAS, the Common Council is required to make a determination in writing on such requests; and

WHEREAS, the Mishawaka Board of Zoning Appeals has made a favorable recommendation, pursuant to applicable state law, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning.

NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, as follows:

Section I. The Common Council has provided notice of the hearing on the Petition from the Board of Zoning Appeals pursuant to Indiana Code requesting that a Use Variance for property located at **509 East Lawrence Street, Mishawaka, Indiana**, more particularly known and described as follows:

Lot 107, GWR Fowlers 1st, City of Mishawaka, Penn Township, St. Joseph County, State of Indiana

The Use Variance will allow the continuing use of a two-unit dwelling in R-1 Single Family Residential District.

Section II. Following a presentation by the Petitioner, and after proper public hearing, the Common Council hereby approves the Petition as recommended by the Mishawaka Board of Zoning Appeals, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning, a copy of which is on file in the Office of the City Clerk.

Section III. The Common Council of the City of Mishawaka, Indiana, hereby finds that:

1. Approval will not be injurious to the public health, safety, morals and general welfare of the community because no physical changes are being made to the property;

2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the property has been used in this way for many years, without any problems that we know of;

3. The need for the variance arises from some condition peculiar to the property in that the property was built as a duplex, or was at least converted by 1966, but the zoning was never changed to match the use;

4. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought because the building has been used as a duplex since at least 1966; and

5. The recommendation is consistent with Comprehensive Plan which indicates low density residential uses for this area.

Section IV. This Resolution shall be in full force and effect from and after its adoption by the Common Council and approval by the Mayor.

PASSED by the Common Council of the City of Mishawaka, Indiana, this ________ day of____________________, 2020, at ______o'clock _____.m.

____
Presiding Officer

ATTEST:

____
Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this ________day of ____________________2020, at _______ o'clock ____m.

____
Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _______ day of______________________, 2020, at _______o'clock ______.m.

____
David A. Wood, Mayor

STAFF REPORT

Location: 509 East Lawrence Street

Date: Nov 10, 2020

Appeal: 20 50

Prepared By: KM

GENERAL INFORMATION

Applicant:	Darlene K. Ballard
Status:	Property Owner
Request:	Use Variance to allow a duplex in a R-1 Single Family Residential District to remain
Zoning Classification:	R-1 Single Family Residential
Lot Size:	66' X 132'
Applicable Regulations:	Section 137-42 / (5) Board of Zoning Appeals – Developmental Variance; Section 137-165 / R-1 District - Uses

SPECIAL INFORMATION

Area Development Pattern:	North:	R-1 Single Family Residential District
	South:	R-1 Single Family Residential District
	East:	R-1 Single Family Residential District
	West:	C-1 General Commercial District
Thoroughfare:	Lawrence Street east of Division	
School District:	School City of Mishawaka	
Township:	Penn	
Public Utilities:	All utilities are available and existing to the site.	
Comprehensive Plan:	Low Density Residential	

ANALYSIS

The Appellant is requesting a Use Variance to allow a duplex in the R-1 Single Family Residential District to remain. The parcel is located within a residential neighborhood surrounded on the north, south, and east by R-1 zoned properties.

The Appellant is selling the property and while this information may have been enough for a legal non-conforming letter (grandfathered letter), that letter still contains the statement any nonconforming use can only be rebuilt if the damage is not more than 75% of fair market value. The Use Variance procedure will provide a permanent approval and help a buyer secure financing.

In 2006, the previous owner provided documentation indicating the property had been used as a duplex since at least 1966. A copy of the letter from the Planning Department is attached. Also attached is an affidavit from a neighbor stating the property had been used as a duplex since at least 1958 when she moved to the neighborhood.

There is a two-car garage with a paved apron parking to provide the required 1.5 parking spaces per unit.

All pertinent departments reviewed the request and had no comments.

Recommendation

The Planning Staff recommends approval of Appeal #20-50 to allow a Use Variance for a duplex in the R-1 Single Family Residential District. This recommendation is based upon the following findings of fact:

1. Approval will not be injurious to the public health, safety, morals and general welfare of the community because no physical changes are being made to the property;

2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the property has been used in this way for many years, without any problems that we know of;

3. The need for the variance arises from some condition peculiar to the property in that the property was built as a duplex, or was at least converted by 1966, but the zoning was never changed to match the use;

4. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought because the building has been used as a duplex since at least 1966; and

5. The recommendation is consistent with Comprehensive Plan which indicates low density residential uses for this area.

Attachments

Photographs, Appeal, Site Plan, Aerial, Location Map

509 E. Lawrence Street

View of two-car garage

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PLANNING

DATE: October 21, 2020

TO: Board of Zoning Appeals City of Mishawaka, Indiana

AP 20-50

The undersigned appellant respectfully shows the Board:

1. I, Darlene K. Ballard, am the owner of the following described real estate located within the City of Mishawaka, Township, St. Joseph County, State of Indiana, towit:

   509 E Lawrence St, Mishawaka, IN 46545

   Lot 107 GWR Fowlers 1st

2. The above-described real estate presently has a zoning classification of R1 District under the Zoning Ordinance of the City of Mishawaka.

3. Appellant presently occupies (or proposes to occupy) the above-described property in the following manner: The property is, and has been for years, operated as a duplex.

4. Appellant states that it has been used as a duplex since at least 1966 and that use has been documented on the grandfathered list. In order for the buyer to secure financing, the use variance is required.

5. The Zoning Ordinance of the City of Mishawaka does not allow two family homes.

6. Explain why strict adherence to the Ordinance requirements would create an unusual hardship. I am trying to sell the property and the use variance is necessary in order for financing.

7. Answer the following necessary questions for a USE VARIANCE:

   (1) Will approval be injurious to the public health, safety, morals or general welfare of the community? No, the property has been used a duplex for many years.

   (2) Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner? No, the property has been used a duplex for many years.

   (3) Does the need for the variance arise from some condition peculiar to the property involved? The property is listed for sale as a duplex and the use variance is required for financing the sale.

   (4) Does strict application of the terms of this chapter constitute an unnecessary hardship if applied to the property for which the variance is sought? No, the property has been used a duplex for many years.

   (5) Will approval interfere substantially with the Mishawaka 2000 Comprehensive Plan? No, the property has been used a duplex for many years.

WHEREFORE, Appellant prays and respectfully requests a hearing on this appeal and that after such hearing, the Board grant the requested variance.

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DEBORAH S. BLOCK, MMC
OCT 29 2020
CITY CLERK
MISHAWAKA, IN

Darlene K. Ballard

Signature of Property Owner/Title Holder, Darlene K. Ballard

CONTACT PERSON:

Darlene K. Ballard

509 E. Lawrence St., Mishawaka, IN 46545

(574) 250-0330

Dballard574@gmail.com:

City of Mishawaka

JEFFREY L. REA, MAYOR **DEPARTMENT OF CITY PLANNING**

October 2, 2006

Mr. Michael Dembinski
509 East Lawrence Street
Mishawaka, IN 46544

Re: Parcel No. – 16-2082-2752
509 & 509 ½ East Lawrence Street

Dear Mr. Dembinski:

Please let this letter serve as verification that the above referenced real estate is zone R-1 Single Family Residential District in the City of Mishawaka.

After reviewing the documents that you submitted, we concur that the aforementioned property has been consistently occupied and used as a duplex (two-family residential) prior to 1966 and is considered a legal non-conforming use (a grandfathered use) for the two unit building.

In the event that the lawful non-conforming structure is damaged or destroyed by fire, explosion, windstorm, or other similar active causes to an extent of more than 75% of its fair market value, the structure may not be reconstructed.

I am enclosing an aerial view of the property which shows the address and tax key number of the property. Please don't hesitate to contact our office if you have further questions.

Sincerely,

Kenneth B. Prince, ASLA, AICP
City Planner

Enc.

Cc- Gene Risnor, Cressy & Everett

October 2, 2006

Samuel & Ruth Shelby
516 E. Grove St. Mishawaka
Lived here since 1958
Long as we have lived here
509 & 509½ E. Lawrence has been
an apartment. Knew Betty since
we haved lived here. Always
been apartment since we have
lived here and alway has been
rented.

Ruth E. Shelby
phone 574-255-4026

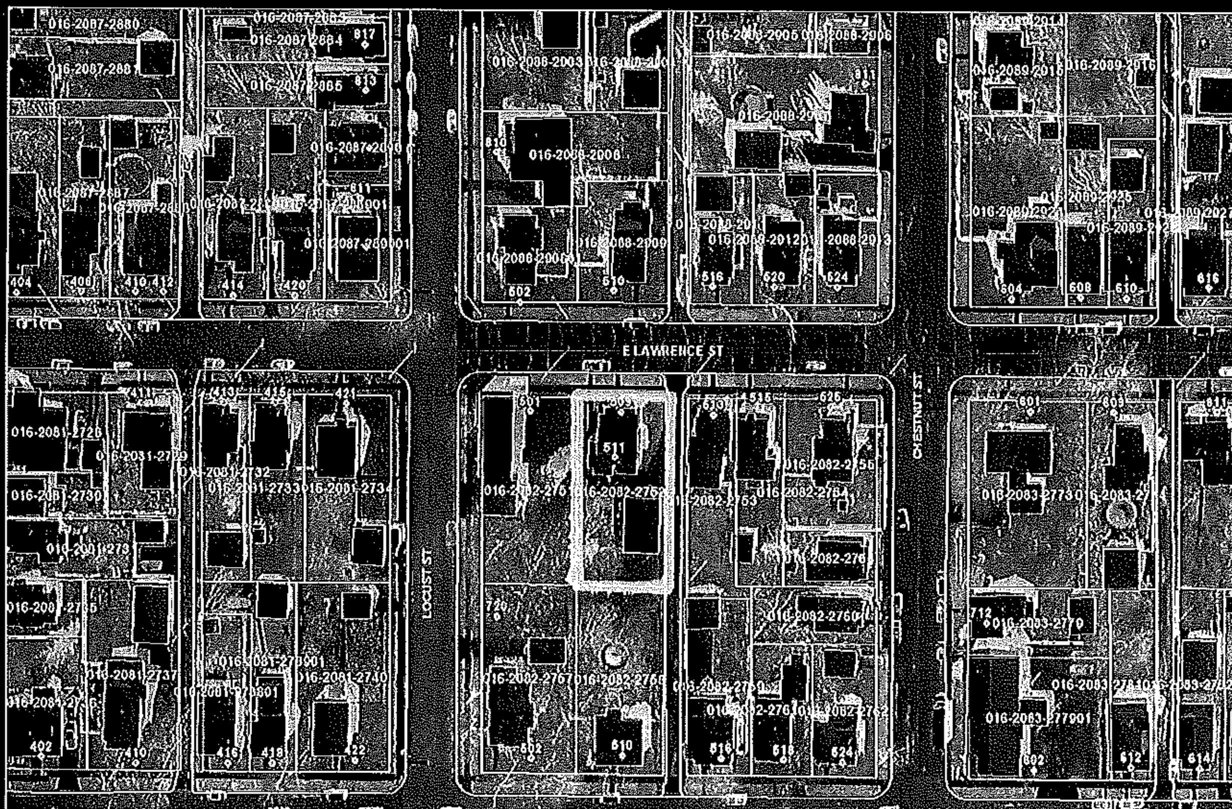
St. Joseph County
State of Indiana

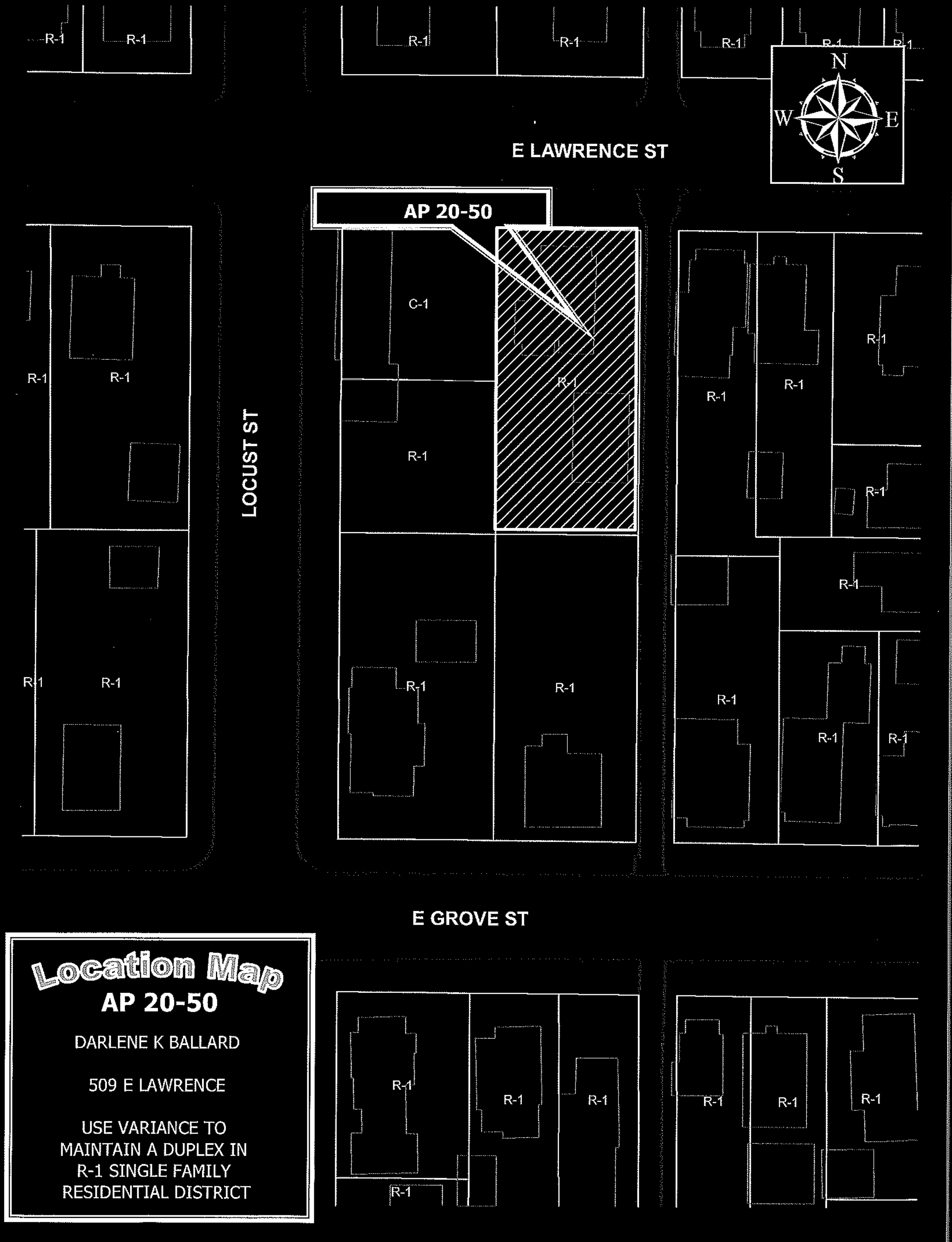
Ruth E Shelby appeared and
acknowledged before me a Notary
Public on October 2, 2006

[signature]

(SEAL) REGINA F. ESPOSITO
Notary Public, State of Indiana
County of St. Joseph
My Commission Expires Nov. 8, 2007

APPEAL #20-50
509 E. Lawrence Street





N
W
E
S
E LAWRENCE ST
AP 20-50
C-1
R-1
LOCUST ST
E GROVE ST
Location Map
AP 20-50
DARLENE K BALLARD
509 E LAWRENCE
USE VARIANCE TO
MAINTAIN A DUPLEX IN
R-1 SINGLE FAMILY
RESIDENTIAL DISTRICT

RECEIVED
DEBORAH S. BLOCK, MMC

NOV 12 2020

CITY CLERK
MISHAWAKA, IN

APPEAL #20-51

RESOLUTION NO. 2020- 24

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, APPROVING A PETITION OF THE MISHAWAKA BOARD OF ZONING APPEALS FOR THE PROPERTY LOCATED AT:

1032 East Twelfth Street, Mishawaka, Indiana

WHEREAS, the Indiana Code requires the Common Council to give notice of its intention to consider Petitions from the Board of Zoning Appeals for approval or disapproval; and

WHEREAS, the Common Council must take action within sixty (60) days after the Board of Zoning Appeals makes its recommendation to the Council; and

WHEREAS, the Common Council is required to make a determination in writing on such requests; and

WHEREAS, the Mishawaka Board of Zoning Appeals has made a favorable recommendation, pursuant to applicable state law, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning.

NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, as follows:

Section I. The Common Council has provided notice of the hearing on the Petition from the Board of Zoning Appeals pursuant to Indiana Code requesting that a Conditional Use Permit for property located at **1032 East Twelfth Street, Mishawaka, Indiana**, more particularly known and described as follows:

A lot or parcel of land in the Southwest quarter (1/4) of the Southeast quarter (1/4) of Section fifteen (15) Township thirty-seven (37) North, Range three (3) East, bounded by a line running as follows: Beginning on the South line of said Section 15, six hundred sixty-one and three hundred seventeen thousandths (661.317) feet East of the Southwest corner of the Southeast quarter (1/4) of said Section, Township and Range, thence running North parallel with the West line of said Southeast quarter (1/4) a distance of one thousand three hundred twenty-five and ninety-three hundredths (1325.93) feet to the North line of the Southwest quarter (1/4) of the Southeast quarter (1/4) of said Section; thence East along the North line of the Southwest quarter (1/4) of the Southeast quarter (1/4) of said Section a distance of six hundred sixty-one and three tenths (661.3) feet to the Northeast corner of the Southwest quarter (1/4) of the Southeast quarter (1/4) of said Section; thence South along the East line of the Southwest quarter (1/4) of the Southeast quarter (1/4) of said Section a distance of one thousand three hundred twenty-seven and eight tenths (1327.8) feet, more or less to the South line of said Section; thence West six hundred sixty-one and three tenths (661.3) feet to the place of beginning, containing twenty (20) acres, more or less, and all now within and a part of the City of Mishawaka, excluding parts sold.

The Conditional Use Permit will allow a sand mining operation in I-2 Heavy Industrial Zoning subject to the following conditions:

1. Rule 5 Notice of Intent (NOI), a Stormwater Pollution Prevention Plan (SWPPP), and Erosion Control Bond Erosion Control;

2. Paved (may be asphalt) drive minimum 100';

3. An Administrative Site Plan shall be submitted for the property. The site plan shall be consistent with the preliminary site plan as submitted.

4. The hours of operation will be limited to 7 a.m. to 8:00 p.m.

Section II. Following a presentation by the Petitioner, and after proper public hearing, the Common Council hereby approves the Petition as recommended by the Mishawaka Board of Zoning Appeals, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning, a copy of which is on file in the Office of the City Clerk.

Section III. The Common Council of the City of Mishawaka, Indiana, hereby finds that:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community. The property on which the tower is to be located is adjacent to industrial, commercial, and recreational uses, with residential uses. Screening/buffering is present between the residential area and the mining location. The site is currently fenced.

2. The use and value of the area adjacent to the property included in the conditional use permit will not be affected in a substantially adverse manner. The adjacent area consists primarily of industrial, office, and commercial development, with adequate screening/buffering between the proposed mining operation and the residential properties to the east.

3. The conditions of approval shall mitigate any potentially adverse impact of the proposed use upon the adjacent properties. There is no dewatering, so a pump will not be constantly running.

4. Adequate measures will be taken to provide proper utilities, drainage, paved access roads, and fencing for safety precautions. Additional landscape buffering will not be required due existing vegetation providing adequate screening.

5. The granting of this conditional use is in the best interests of the community. This historic use of this site has been mining. The current condition of the site would not allow for redevelopment without major investment. The City will benefit by using the sand mined at this location in local projects.

Section IV. This Resolution shall be in full force and effect from and after its adoption by the Common Council and approval by the Mayor.

PASSED by the Common Council of the City of Mishawaka, Indiana, this ________ day of____________________, 2020, at ______o'clock _____ .m.

____
Presiding Officer

ATTEST:

____
Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this ________day of ____________________2020, at _______ o'clock ___m.

____
Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _______ day of____________________, 2020, at _______o'clock ______.m.

____
David A. Wood, Mayor

Staff Report

Location: 1032 E Twelfth St. Date: November 10, 2020

Appeal: 20-51 Prepared By: CH

General Information

Applicant:	Blueprint BCS, LLC/John Cocquyt
Status:	Lessee / Property Owner
Request:	Conditional Use Permit to allow a sand mining operation
Zoning Classification:	I-2 Heavy Industrial
Lot Size:	Approximate 6 acres in the north half of the 15.2 acre parcel
Applicable Regulations:	Section 137-43 / Conditional Use Permits & Section 137-608 thru 610 / Industrial I-2 District

Special Information

Area Development Pattern:	North:	I-2 Heavy Industrial (City recycling)
	South:	I-2 Heavy Industrial (Builders Iron Works) I-1 Light Industrial and Unincorporated St. Joseph County across Twelfth
	East:	S-1 Extensive Open Space (Ward Baker Park) and I-2 Heavy Industrial (storage)
	West:	R-3 Multi-Family Residential (Penelope 60 Apartments) and C-2 Shopping Center Commercial (Kroger)
Thoroughfare:	Twelfth Street	
School District:	School City of Mishawaka	
Public Utilities:	All utilities are available and/or will be extended to the site at the owner's expense	
Comprehensive Plan:	Industrial (Manufacturing, Warehousing and Distribution)	

Analysis

The Applicant, Blueprint BCS, LLC, with authorization from John Cocquyt, is requesting a Conditional Use Permit to allow a sand mining operation to be located at 1032 E Twelfth Street. The facility will consist of just under 6 acres of the overall 15.2 acre parcel. No new buildings are proposed.

This site has a history of mining in the 1950's, but has been unoccupied in recent years.

The mining will maintain a 50' setback and existing tree buffer and fence will remain at the perimeter of the property. Access to the site will be provided from Twelfth Street to the south via a private drive. Engineering has requested the first 100' of this drive be paved with a tracking pad to prevent aggregate being tracked onto Twelfth Street.

Engineering also is requiring a Rule 5 Notice of Intent (NOI) be sent to IDEM, a Stormwater Pollution Prevention Plan (SWPPP) submitted to the City's MS4 Coordinator, and Erosion Control Bond for amount set forth in ordinance.

The Zoning Ordinance of the City of Mishawaka requires Mining and extraction operators shall be operated on a lot of no less than ten acres in area, provided that:

a. The operations and uses shall not be conducted within 50 feet of any property line unless a greater distance is specified by the board of zoning appeals, where such is deemed necessary for the protection of adjacent property. Beginning at the required setback, the banks of all excavation areas shall not be excavated to a slope greater than 45 degrees from the horizontal; however, when the adjacent property is being mined for sand or gravel, the setback requirements may be waived along any common property line. *These requirements are shown on the concept plan submitted with the application.*
b. A continuous fence, comprised of seven feet of woven wire fabric shall be erected and maintained along the property line around the entire site. In addition, an evergreen planting screen shall be required around the entire site within the required setback. Such screen planting shall be comprised of pine seedlings which are staggered six feet on center in two rows which are six feet apart; provided, however, when the adjacent property is used for mining and extraction operations, the fence and screen planting requirements may be waived along any common property line. *The existing fence is 6' with barbed wire and there is a dense row of existing trees.*
c. Prior to approval of the conditional use every applicant shall execute an acceptable indemnity agreement in favor of the city in a form approved by the board of zoning appeals, which indemnifying agreement shall be for the purpose of assuring the restoration, rehabilitation and reclamation of mined out areas within a reasonable time and to the satisfaction of the board of zoning appeals and to further assure that the following minimum requirements will be met: *Legal counsel will be asked for guidance preparing this document.*
d. A uniform rolling contour shall be established throughout all excavation areas.
e. The banks of all excavation areas shall be restored to a two-foot horizontal and one-foot vertical ratio and the slopes seeded, landscaped and maintained until a permanent type ground cover is established to prevent erosion.
f. Soil, suitable for growing vegetation, shall be replaced over the slopes of a uniform depth of not less than two inches.
g. If excavations are made to a water-producing depth, such depth shall not be less than six feet below the low water mark and the areas which are not permanently submerged shall be so graded as to eliminate the collection of stagnant water.
h. In addition to the foregoing, the board of zoning appeals may impose such other conditions, requirements or limitations concerning the nature, extent of the use and operation of such excavation operations as the board of zoning appeals may deem necessary for the protection of adjacent properties and the public interests.

The Staff feels that the proposed use of the site for mining operation is appropriate given the context and history of the site. Furthermore, existing screening/buffering is present between the residential and recreational uses nearby.

At the time of writing this Staff Report, the Planning Department received one phone call from an adjacent property owner questioning the noise level of the mining operation.

If the conditional use is approved, a detailed final site plan will be required for administrative review and approval prior to obtaining the necessary improvement location and building permits. The final site plan shall address all the applicable zoning (height, area, and development regulations), utility (storm water drainage, electric, gas, etc.), grading, erosion control, and any other required improvements.

Other pertinent City Department have reviewed and approved the conditional use request providing no comments.

Recommendation

The staff recommends in favor Appeal 20-51 to allow a sand mining operation in the northern 6 acres of 1032 E Twelfth St. subject to the following conditions:

1) Rule 5 Notice of Intent (NOI), a Stormwater Pollution Prevention Plan (SWPPP), and Erosion Control Bond Erosion Control;

2) Paved (may be asphalt) drive minimum 100'; and

3) An Administrative Site Plan shall be submitted for the property. The site plan shall be consistent with the preliminary site plan as submitted.

4) The hours of operation will be limited to 8am-8pm.

This recommendation is based upon the following findings of fact:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community. The property on which the tower is to be located is adjacent to industrial, commercial, and recreational uses, with residential uses. Screening/buffering is present between the residential area and the mining location. The site is currently fenced.

2. The use and value of the area adjacent to the property included in the conditional use permit will not be affected in a substantially adverse manner. The adjacent area consists primarily of industrial, office, and commercial development, with adequate screening/buffering between the proposed mining operation and the residential properties to the east.

3. The conditions of approval shall mitigate any potentially adverse impact of the proposed use upon the adjacent properties. There is no dewatering, so a pump will not be constantly running.

4. Adequate measures will be taken to provide proper utilities, drainage, paved access roads, and fencing for safety precautions. Additional landscape buffering will not be required due existing vegetation providing adequate screening.

5. The granting of this conditional use is in the best interests of the community. This historic use of this site has been mining. The current condition of the site would not allow for redevelopment without major investment. The City will benefit by using the sand mined at this location in local projects.

Attachments

Aerial, Photograph(s), Appeal, Preliminary Site Plan, Location Map


SOUTH ST
S MERRIFIELD AVE
MERRIFIELD PL
E TWELFTH ST
P1
P2
P3
P4

P1. View from Twelfth St (south)

P2. View from Ward Baker Park (east)

P3. View from Kroger parking lot (west)

P4. The closest view of the pond (west)

AP 20-51

Blueprint BCS, LLC

RECEIVED
DEBORAH S. BLOCK, MMC
OCT 29 2020
CITY CLERK
MISHAWAKA, IN

October 16, 2020

City of Mishawaka Board of Zoning Appeals
600 E. Third Street
Mishawaka, IN 46544

Re: **Application for a Conditional Use Permit**

The undersigned Appellant respectfully shows the Board:

1. Petitioner proposes to lease the following described real estate located in the City of Mishawaka, St. Joseph County, State off Indiana, to-wit:

   E 1/2 SW Se 20ac. 15-37-3e Ex Pts Sold (commonly known as 1032 East 12th Street, Mishawaka, IN). (SEE ATTACHED FOR FULL DESCRIPTION)

2. The above described real estate has a zoning classification of I-2 Heavy Industrial District under the Zoning Ordinance of the City of Mishawaka.

3. Petitioner presently occupies *(or proposes to occupy)* the above described property in the following manner:

   Blueprint BCS, LLC proposes to utilize the property as a general construction yard for storage of equipment, soils, sand, and aggregates such as gravel (all of which are permitted uses under Section 137-609.(a)(9); and to mine sand and gravel from the existing gravel (sand) pit (pond), which requires a Conditional Use Permit under Section 137-609.(b)(26).

4. Petitioner desires to:

   Blueprint BCS, LLC desires to obtain a conditional use permit in order to mine soil (sand) from the previously mined gravel (sand) pit (pond), generally on the northeast portion of the property, for use in local construction projects. The first project for which the sand will be used is the East Race Improvement, Phase I, project for the City of Mishawaka. It is noted that the site has previously been used for this purpose.

Shipping: 5777 Cleveland Road South Bend, IN 46628-9418 Phone 574-271-7800
Mailing: P.O. Box 266 South Bend, IN 46624-0266 FAX 574-271-0524

5. The Zoning Ordinance of the City of Mishawaka, in Section 137-609.(b)(26), states "Mining and extraction operations" may be conditionally approved by the Board of Zoning Appeals for property already zoned Industrial I-2 district.

6. Explain:

   1) *Will approval be injurious to the public health, safety, morals, or general welfare of the community?*

      No. The proposed use will not be injurious to the public health, safety, morals, or general welfare because the site is, and will remain, securely fenced and no dangerous materials will be used at the site. The use supports the health of the community by supporting growth and economic development through construction.

   2) *Will the use and value of the area adjacent to the property included in the conditional use permit be affected in a substantially adverse manner?*

      No. The use of the property will be consistent with its historical use, and similar to the use of several adjacent properties, most specifically to the north (City of Mishawaka Street Department environmental yard) and to the east (existing contractor yard). Additionally, Blueprint BCS, LLC has consulted with the Mishawaka City Planning and Economic Development Office and will continue to work with the Planner's Office to ensure that the site use and maintenance are carried out in an appropriate manner.

   3) *Will adequate conditions be stipulated to mitigate any potentially adverse impact of the conditional use permit upon adjacent property?*

      Yes. The site has previously been utilized for the proposed purposes, has in place a secure fence, and has in place a barrier of mature trees around the entire perimeter of the property. Blueprint BCS, LLC will continue to work with the Board of Zoning Appeals, Common Council, and Mishawaka City Planner's Office to operate, and to maintain and/or improve, the site for the proposed use.

   4) *Will adequate measures be taken to provide proper utilities, drainage, paved access roads, landscape buffering, fencing, leakproof dikes, safety precautions, and to minimize traffic congestion?*

      Yes. As stated, the site has in place a secure fence, and has in place a barrier of at least 50 feet of mature trees around the entire area to be mined for sand. The entire perimeter of the property also has a screen of mature trees and/or vegetation. The mining of sand will not take place within 50 feet of any property line. The site has in place, and which shall be maintained, a stone access road in excess of 100 feet long incorporating #2 crushed aggregates to serve as a tracking mat for truck traffic. No additional utilities will be necessary at this time. All work will be carried out in accordance with the safety regulations of IOSHA.

5) *Why is the granting of the conditional use permit in the best interest of the community?*

The granting of the Conditional Use Permit is in the best interest of the community as the proposed use supports growth and economic development through construction, and because Blueprint BCS, LLC's occupancy and use of the site will improve the appearance and maintenance of the property through increased activity.

Wherefore, Petitioner prays and respectfully requests a hearing on this application and that after such hearing, the Board grant the requested Conditional Use Permit.

Blueprint BCS, LLC

By: ______________________
Matthew D. Cain, President

Mishawaka Board of Zoning Appeals
October 16, 2020

City of Mishawaka Board of Zoning Appeals
600 East Third Street
Mishawaka, IN 46544

RE: Application for a Conditional Use Permit for Mining Soil (Sand)

To the Honorable Board:

Please be advised that Matthew D. Cain, President of Blueprint BCS, LLC, has been directed to represent my interest at the public hearing of the Board of Zoning Appeals of Mishawaka, Indiana, at which this petition is to be considered.

John C. Cocquyt

John Cocquyt

A lot or parcel of land in the Southwest quarter (¼) of the Southeast quarter (¼) of Section fifteen (15) Township thirty-seven (37) North, Range three (3) East, bounded by a line running as follows: Beginning on the South line of said Section 15, six hundred sixty-one and three hundred seventeen thousandths (661.317) feet East of the Southwest corner of the Southeast quarter (¼) of said Section, Township and Range, thence running North parallel with the West line of said Southeast quarter (¼) a distance of one thousand three hundred twenty-five and ninety-three hundredths, (1325.93) feet to the North line of the Southwest quarter (¼) of the Southeast quarter (¼) of said Section; thence East along the North line of the Southwest quarter (¼) of the Southeast quarter (¼) of said Section a distance of six hundred sixty-one and three tenths (661.3) feet to the Northeast corner of the Southwest quarter (¼) of the Southeast quarter (¼) of said Section; thence South along the East line of the Southwest quarter (¼) of the Southeast quarter (¼) of said Section a distance of one thousand three hundred twenty-seven and eight tenths (1327.8) feet, more or less to the South line of said Section; thence West six hundred sixty-one and three tnehts (661.3) feet to the place of beginning, containing twenty (20) acres, more or less, and all now within and a part of the City of Mishawaka.

EXCLUDING PARTS SOLD.

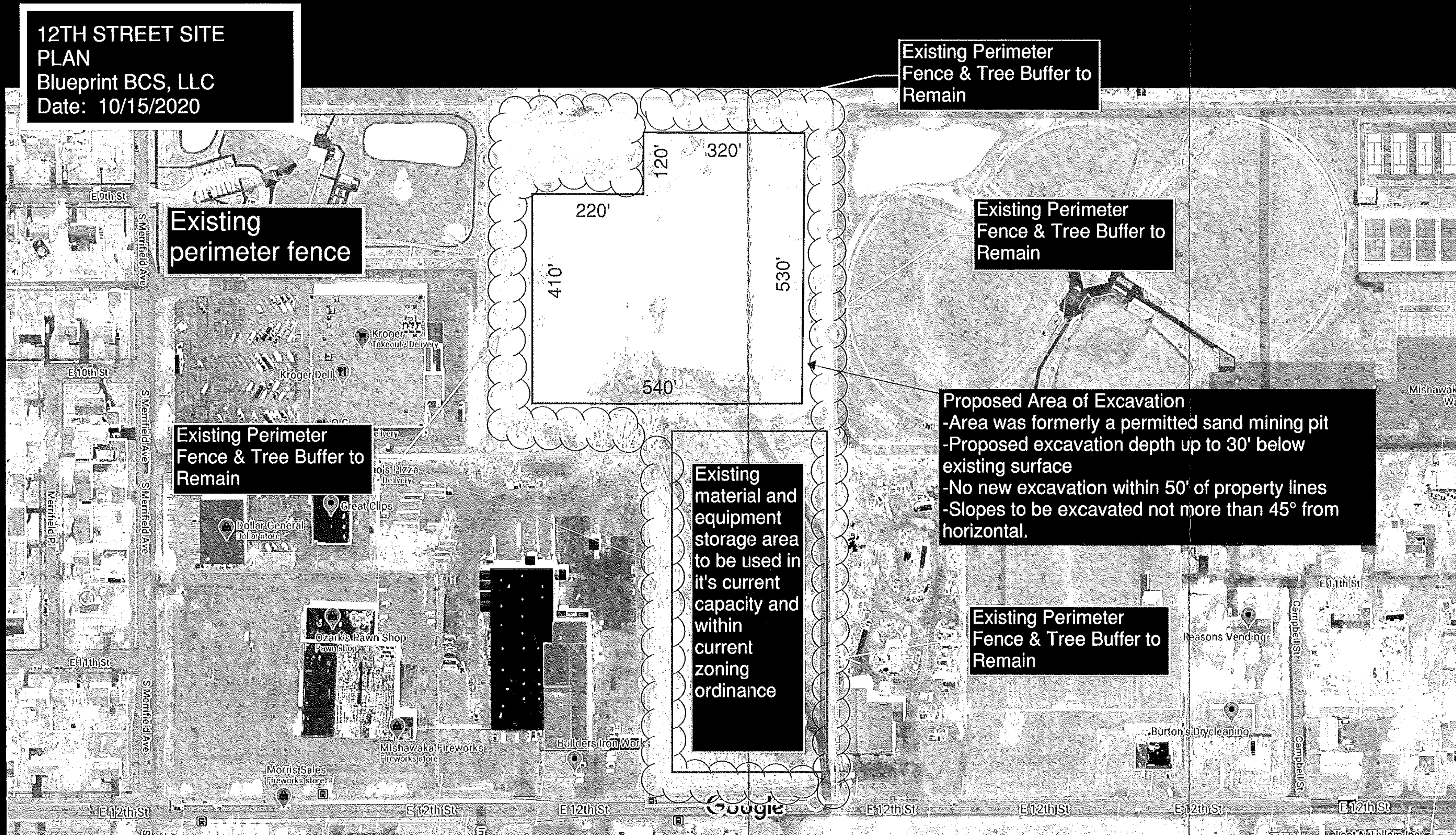
Legal description for 1032 East 12th Street, Mishawaka, IN
Subject property of Blueprint BCS, LLC Petition for Conditional Use.
October 21, 2020.

Location Map
AP 20-51

OWNER: JOHN COCQUYT
LESSEE: BLUEPRINT BCS, LLC

LOCATION: 1032 E TWELFTH ST

CONDITIONAL USE FOR
SAND MINING



Imagery ©2020 IndianaMap Framework Data, Maxar Technologies, USDA Farm Service Agency, Map data ©2020 100 ft

Special Notes:
1. Existing tree line to be maintained for 30' minimum along site perimeter.
2. No dewatering will be used.
3. This site has been discussed with the local MS4 department and if approved for conditional use, a Rule 5 permit will be applied for and all applicable erosion control measures will be implemented.

PROPOSED ORDINANCE NO. 2020-39
ORDINANCE NO. ________

An Ordinance of the City of Mishawaka authorizing the issuance of waterworks revenue bonds for the purpose of providing funds to pay the cost of certain additions, extensions and improvements to the municipal waterworks of said City, providing for the safeguarding of the interests of the owners of said bonds, other matters connected therewith, including the issuance of notes in anticipation of bonds, and repealing ordinances inconsistent herewith

WHEREAS, the Common Council ("Common Council") of the City of Mishawaka, Indiana ("City") has heretofore established, constructed and financed a municipal waterworks and now owns and operates the municipal waterworks in accordance with the provisions of Title 8, Article 1.5 of the Indiana Code, as in effect on the date of delivery of the bonds herein authorized ("Act"); and

WHEREAS, the Common Council finds that certain additions, improvements and extensions to said works are necessary; and that plans, specifications and estimates have been prepared and filed by the engineers employed by the City for the construction of said additions, improvements and extensions, as more fully described on Exhibit A attached hereto and made a part hereof ("Project"), which plans and specifications have been or will be approved by the Common Council and by all governmental authorities having jurisdiction, particularly the Indiana Department of Environmental Management ("Department"); and

WHEREAS, the City will advertise for and receive bids for the Project, which bids will be subject to the City's determination to construct the Project and subject to the City's obtaining funds to pay for the Project; that on the basis of said engineer's estimates and construction bids, the maximum cost of the Project, including incidental expenses, is in an amount not to exceed $51,600,000; and

WHEREAS, the City finds that there are no funds on hand available to apply to the costs of the Project and that the costs of the Project are hereby authorized to be financed by the issuance of waterworks revenue bonds, in one or more series, and, if necessary, bond anticipation notes ("BANs") in an aggregate principal amount not to exceed $51,600,000; and

WHEREAS, the Common Council finds that there are certain outstanding bonds of the waterworks designated "Waterworks Refunding Revenue Bonds of 2007," dated May 23, 2007 ("2007 Bonds"), originally issued in the amount of $4,475,000 and now outstanding in the amount of $220,000, and maturing semiannually over a period ending July 1, 2020, which 2007 Bonds constitute a first charge upon the Net Revenues (as hereinafter defined) of the waterworks; and

WHEREAS, the Common Council finds that there are certain outstanding bonds of the waterworks designated "Waterworks Refunding Revenue Bonds of 2013," dated August 20, 2013 ("2013 Bonds"), originally issued in the amount of $12,710,000 and now outstanding in the amount of $3,785,000, and maturing semiannually over a period ending July 1, 2022, which 2013 Bonds constitute a first charge upon the Net Revenues of the waterworks, on a parity with the 2007 Bonds; and

WHEREAS, the Common Council finds that there are certain outstanding bonds of the waterworks designated "Waterworks Revenue Bonds of 2018," dated October 29, 2018 ("2018 Bonds"), originally issued in the amount of $13,000,000 and now outstanding in the amount of $13,000,000, and maturing semiannually over a period ending July 1, 2039, which 2018 Bonds constitute a first charge upon the Net Revenues of the waterworks, on a parity with the 2007 Bonds and the 2013 Bonds; and

WHEREAS, the 2007 Bonds, the 2013 Bonds and the 2018 Bonds are hereinafter collectively referred to as the "Outstanding Bonds;" and

WHEREAS, the terms and conditions of the ordinances authorizing the Outstanding Bonds provides that additional revenue bonds may be issued on a parity with the Outstanding Bonds provided certain tests are met, and the City finds that the finances of said waterworks are such as will enable meeting the conditions for the issuance of additional parity bonds and that, accordingly, the additional revenue bonds to be issued hereunder shall rank on a parity with the Outstanding Bonds; and

WHEREAS, the bonds to be issued pursuant to this ordinance will constitute a first charge against the Net Revenues of the waterworks, on a parity with the Outstanding Bonds, and are to be issued subject to the provisions of the laws of the Act, and the terms and restrictions of this ordinance; and

WHEREAS, the City desires to authorize the issuance of bond anticipation notes ("BANs") hereunder, in one or more series, if necessary, payable from the proceeds of waterworks revenue bonds issued hereunder and to authorize the refunding of the BANs, if issued; and

WHEREAS, the City may enter into a Financial Assistance Agreement with the Indiana Finance Authority ("Authority") as part of its drinking water loan program ("DWSRF Program") established and existing pursuant to IC 5-1.2-1 through IC 5-1.2-4 and IC 5-1.2-10 ("Financial Assistance Agreement") if the bonds or BANs are sold to the Authority through its DWSRF Program; and

WHEREAS, the Common Council finds that the 2018 Bonds were sold to the Authority through its DWSRF Program and that a form of Financial Assistance Agreement was executed and delivered by the City for the 2018 Bonds; and

WHEREAS, the City may accept other forms of financial assistance, as and if available from the DWSRF Program; and

WHEREAS, the City reasonably expects to reimburse certain preliminary costs of the Project with proceeds of debt to be incurred by the City in an amount not to exceed $51,600,000; and

WHEREAS, the City's waterworks is not subject to the jurisdiction of the Indiana Utility Regulatory Commission; and

WHEREAS, the Common Council has been advised that it may be cost efficient to purchase municipal bond insurance and/or a debt service reserve surety for the bonds authorized herein; and

WHEREAS, the Common Council now finds that all conditions precedent to the adoption of an ordinance authorizing the issuance of revenue bonds and BANs have been complied with in accordance with the provisions of the Act;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, THAT:

Section 1. Authorization of Project; Reimbursement. The City shall proceed with the construction of the Project in accordance with the cost estimates and the plans and specifications heretofore prepared and filed by the consulting engineers employed by the City, which plans and specifications are hereby adopted and approved, and by reference made a part of this ordinance as fully as if the same were attached hereto and incorporated herein. Two copies of the plans and specifications and the cost estimates are on file in the office of the Clerk of the City and open for public inspection pursuant to IC 36-1-5-4. The estimated cost of construction of the Project will not exceed the sum of $51,600,000, plus investment earnings on the bond and BAN proceeds.

The terms "waterworks," "waterworks system," "works," "system," and other like terms where used in this ordinance shall be construed to mean and include the Drinking Water System, as defined in the Financial Assistance Agreement, and includes the existing waterworks system and all real estate and equipment used in connection therewith and appurtenances thereto, and all extensions, additions, and improvements thereto and replacements thereof now or at any time hereafter constructed or acquired as well as the drainage of storm and surface water to relieve the waterworks system of such water. The Project shall be constructed in accordance with the plans and specifications heretofore mentioned, which plans and specifications are hereby approved. The Project shall be constructed and the bonds herein authorized shall be issued pursuant to and in accordance with the Act.

The City hereby declares its official intent to complete the Project; to reimburse certain costs of completing the Project with proceeds of debt to be incurred by the City, and to issue debt not exceeding $51,600,000 in aggregate principal amount for purposes of paying and reimbursing costs of the Project.

Section 2. Issuance of BANs and Bonds. (a) The City shall issue, if necessary, its BANs for the purpose of procuring interim financing to apply to the cost of the Project. The City shall issue its BANs, in one or more series, in an amount not to exceed Fifty-one Million Six Hundred Thousand Dollars ($51,600,000) to be designated "Waterworks Bond Anticipation Notes of ___" (to be completed with the year in which issued and appropriate series designation, if any). The BANs shall be numbered consecutively from 1 upward, shall be sold at a price not less than 99.5% of their par value or at a price not less than 100% of their par value if sold to the Authority as part of the DWSRF Program, shall be in multiples of One Dollar ($1) if sold to the Authority as part of its DWSRF Program or in denominations of One Thousand Dollars ($1,000)

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or integral multiples thereof if sold to another purchaser, as set forth in the hereinafter defined Purchase Agreement for the BANs, shall be dated as of the date of delivery thereof, and shall bear interest at a rate not to exceed four percent (4%) per annum (the exact rate or rates to be determined through negotiation) payable either (i) at maturity or upon redemption, or (ii) semiannually on January 1 and July 1 in each year, beginning with the first January 1 or the first July 1 which is at least six full months following delivery of the BANs, and semiannually thereafter. Interest on the BANs is payable from (i) Net Revenues, subject to the prior payment of the Outstanding Bonds any bonds issued under this ordinance, or (ii) in the case of interest at maturity or upon prepayment, from proceeds of the bonds. The BANs will mature no later than five (5) years after their date of delivery. The BANs are subject to renewal or extension at an interest rate or rates not to exceed four percent (4%) per annum (the exact rate or rates to be negotiated). The term of the BANs and all renewal BANs may not exceed five years from the date of delivery of the initial BANs. The BANs shall be registered in the name of the purchasers thereof. Payment on the BANs may be made in the installments.

The BANs shall be issued pursuant to IC 5-1.5-8-6.1 if sold to the Indiana Bond Bank, pursuant to IC 5-1.2-1 through IC 5-1.2-4 and IC 5-1.2-10 if sold to the Authority, or pursuant to IC 5-1-14-5 if sold to a financial institution or any other purchaser. The principal of and interest on the BANs shall be payable from the issuance of revenue bonds pursuant to and in the manner prescribed by the Act. Interest on the BANs is also payable from Net Revenues, subject to the prior payment of the Outstanding Bonds any bonds issued under this ordinance, provided, however that if any interest to be paid from Net Revenues on the BANs is to occur on a date other than January 1 or July 1, by reason of maturity or redemption, such payment may only occur if all of the principal and interest on any bonds issued under this ordinance and all

Outstanding Bonds of the waterworks of the City due on the next succeeding principal and interest payment dates is fully accumulated in the Bond and Interest Account of the Waterworks Sinking Fund continued by this ordinance. The revenue bonds will be payable solely out of and constitute a first charge against the Net Revenues (herein defined as gross revenues, inclusive of System Development Charges (as hereinafter defined), after deduction only for the payment of the reasonable expenses of operation, repair and maintenance, excluding transfers for payment in lieu of property taxes ("PILOTs")) of the waterworks of the City, on a parity with the Outstanding Bonds. For purposes of this ordinance, "System Development Charges" shall mean the proceeds and balances from any non-recurring charges such as tap fees, subsequent connector fees, capacity or contribution fees, and other similar one-time charges that are available for deposit under this ordinance.

The City shall issue its waterworks revenue bonds, in one or more series, in an aggregate principal amount not to exceed $51,600,000 to be designated "Waterworks Revenue Bonds of _____" (to be completed with the year in which issued and series designation, if any) ("Bonds") for the purpose of procuring funds to be applied on the cost of the Project, the payment of costs of issuance, refunding the BANs, if issued, and all other costs related to the Project, including a premiums for municipal bond insurance and/or a debt service reserve surety. Each series of Bonds shall be sold at a price of not less than par value if sold to the Authority as part of its DWSRF Program, or not less than 99% of their par value if sold to any other purchaser, and shall be issued in the denomination of One Dollar ($1) or any multiple thereof if sold to the Authority through its DWSRF Program, or in denominations of Five Thousand Dollars ($5,000) each or integral multiples thereof if sold to any other purchaser, numbered consecutively from 1 upward, dated as of their date of delivery, and shall bear interest at a rate or rates not exceeding five percent (5%) per annum (the exact rate or rates to be determined by bidding or through negotiation), payable semiannually on January 1 and July 1 in each year, beginning on the first January 1 or the first July 1 following the date of delivery of the Bonds, as determined by the Controller with the advice of the City's financial advisor. Principal shall be payable in lawful money of the United States of America, at the principal office of the Paying Agent (as hereinafter defined) and the Bonds shall mature semiannually on January 1 and July 1 of each year, or shall be subject to mandatory sinking fund redemption if term bonds are issued, on January 1 and July 1 of each year over a period ending no later than July 1, 2046 and in such amounts that will either: (i) produce as level annual debt service as practicable taking into account the annual debt service on the Outstanding Bonds and all Bonds issued hereunder; or (ii) if the Bonds are sold to the Authority as part of its DWSRF Program, allow the City to meet the coverage and/or amortization requirements of the DWSRF Program. If the Bonds are sold to the Authority as part of its DWSRF Program, such debt service schedule shall be finalized and set forth in the Financial Assistance Agreement.

All or a portion of each series of the Bonds may be issued as one or more term bonds, upon election of the purchaser thereof. Such term bonds shall have a stated maturity or maturities consistent with the maturity schedule determined in accordance with the preceding paragraph, on the dates as determined by the purchaser thereof, but in no event later than the last serial maturity date of the Bonds as determined in the preceding paragraph. The term bonds shall be subject to mandatory sinking fund redemption and final payment(s) at maturity at 100% of the principal amount thereof, plus accrued interest to the redemption date, on principal payment dates which are hereinafter determined in accordance with the preceding paragraph.

Each series of Bonds issued hereunder shall rank on a parity for all purposes under this ordinance, including the pledge of Net Revenues.

Interest on the Bonds and BANs shall be calculated according to a 360-day calendar year containing twelve 30-day months.

Section 3. Registrar and Paying Agent; Book-entry Provisions. (a) The Controller is hereby authorized to contract with a qualified financial institution to serve as Registrar and Paying Agent for the Bonds ("Registrar" or "Paying Agent"). The Registrar is hereby charged with the responsibility of authenticating the Bonds. The Controller is hereby authorized to enter into such agreements or understandings with the Registrar as will enable the institution to perform the services required of a registrar and paying agent. The Controller is further authorized to pay such fees as the Registrar may charge for the services it provides as Registrar and Paying Agent and such fees may be paid from the Waterworks Sinking Fund established to pay the principal of and interest on the Bonds as fiscal agency charges.

As to the BANs and as to the Bonds, if the purchaser does not object to such designation, the Controller may serve as Registrar and Paying Agent and would be hereby charged with the performance of and all duties of and responsibilities of Registrar and Paying Agent.

(b) If the Bonds or BANs are sold to the Authority through its DWSRF Program, the principal of and interest thereon shall be paid by wire transfer to such financial institution if and as directed by the Authority on the due date of such payment or, if such due date is a day when financial institutions are not open for business, on the business day immediately after such due date. So long as the Authority, as part of its DWSRF Program, is the owner of the Bonds or BANs, such Bonds and BANs shall be presented for payment as directed by the Authority.

If such Bonds are not sold to the Authority as part of its DWSRF Program or if wire transfer payment is not required, the principal of the Bonds and the principal and interest on the BANs shall be payable at the principal corporate trust office of the Paying Agent. All payments of interest on the Bonds shall be paid by check mailed to the registered owners thereof, as of the fifteenth day of the month preceding each interest payment date ("Record Date"), at the addresses as they appear on the registration books kept by the Registrar or at such other address as is provided to the Paying Agent in writing by such registered owner on or before such Record Date. If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Paying Agent shall be instructed to wire transfer payments by 1:00 p.m. (New York City time) so such payments are received at the depository by 2:30 p.m. (New York City time).

All payments on the Bonds and BANs shall be made in any coin or currency of the United States of America, which on the date of such payment, shall be legal tender for the payment of public and private debts.

(c) Each Bond shall be transferable or exchangeable only upon the books of the City kept for that purpose at the principal corporate trust office of the Registrar by the registered owner in person, or by its attorney duly authorized in writing, upon surrender of such Bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the registered owner, or its attorney duly authorized in writing, and thereupon a new fully registered Bond or Bonds in an authorized aggregate principal amount and of the same maturity, shall be executed and delivered in the name of the transferee or transferees or the registered owner, as the case may be, in exchange therefor. The costs of such transfer or exchange shall be borne by the City except for any tax or governmental charge required to be paid with respect to the transfer or exchange, which taxes or governmental charges are payable by the person requesting such transfer or exchange. The City, Registrar and Paying Agent for the Bonds may treat and consider the person in whose name such Bonds are registered as the absolute owner thereof for all purposes including for the purpose of receiving payment of, or on account of, the principal thereof and interest due thereon.

(d) The Registrar and Paying Agent may at any time resign as Registrar and Paying Agent upon giving 30 days' notice in writing to the City and by first class mail to each registered owner of the Bonds then outstanding, and such resignation will take effect at the end of such 30 day period or upon the earlier appointment of a successor registrar and paying agent by the City. Any such notice to the City may be served personally or sent by registered mail. The Registrar and Paying Agent may be removed at any time as Registrar and Paying Agent by the City, in which event the City may appoint a successor registrar and paying agent. The City shall notify each registered owner of the Bonds then outstanding by first class mail of the removal of the Registrar and Paying Agent. Notices to the registered owners of the Bonds shall be deemed to be given when mailed by first class mail to the addresses of such registered owners as they appear on the registration books kept by the Registrar.

Upon the appointment of any successor registrar and paying agent by the City, the Controller is authorized and directed to enter into such agreements and understandings with such successor registrar and paying agent as will enable the institution to perform the services required of a registrar and paying agent for the Bonds. The Controller is further authorized to pay such fees as the successor registrar and paying agent may charge for the services it provides as registrar and paying agent and such fees may be paid from the Waterworks Sinking Fund continued in Section 15 hereof. Any predecessor registrar and paying agent shall deliver all of the Bonds and any cash or investments in its possession with respect thereto, together with the registration books, to the successor registrar and paying agent.

(e) Interest on the Bonds sold to the Authority as part of its DWSRF Program shall be payable from the date or dates of payment made by the Authority as part of its purchase of the Bonds pursuant to the Financial Assistance Agreement. Interest on all other Bonds shall be payable from the interest payment date to which interest has been paid next preceding the authentication date of the Bonds unless the Bonds are authenticated after the Record Date and on or before such interest payment date in which case they shall bear interest from such interest payment date, or unless the Bonds are authenticated on or before the Record Date preceding the first interest payment date, in which case they shall bear interest from the original date until the principal shall be fully paid. Notwithstanding anything to the contrary herein, the Bonds shall not be required to be presented or surrendered to receive payment in connection with any mandatory sinking fund redemption until the final maturity date of the Bonds or earlier payment in full of the Bonds.

(f) The City has determined that it may be beneficial to the City to have the Bonds held by a central depository system pursuant to an agreement between the City and The Depository Trust Company, New York, New York ("Depository Trust Company") and have transfers of the Bonds effected by book-entry on the books of the central depository system ("Book Entry System"). The Bonds may be initially issued in the form of a separate single authenticated fully registered Bond for the aggregate principal amount of each separate maturity of the Bonds. In such case, upon initial issuance, the ownership of such Bonds shall be registered in the register kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company.

With respect to the Bonds registered in the register kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company, the City and the Paying Agent shall have no responsibility or obligation to any other holders or owners (including any beneficial owner ("Beneficial Owner")) of the Bonds with respect to (i) the accuracy of the records of the Depository Trust Company, CEDE & CO., or any Beneficial Owner with respect to ownership questions, (ii) the delivery to any bondholder (including any Beneficial Owner) or any other person, other than the Depository Trust Company, of any notice with respect to the Bonds including any notice of redemption, or (iii) the payment to any bondholder (including any Beneficial Owner) or any other person, other than the Depository Trust Company, of any amount with respect to the principal of, or premium, if any, or interest on the Bonds except as otherwise provided herein.

No person other than the Depository Trust Company shall receive an authenticated Bond evidencing an obligation of the City to make payments of the principal of and premium, if any, and interest on the Bonds pursuant to this ordinance. The City and the Registrar and Paying Agent may treat as and deem the Depository Trust Company or CEDE & CO. to be the absolute bondholder of each of the Bonds for the purpose of (i) payment of the principal of and premium, if any, and interest on such Bonds; (ii) giving notices of redemption and other notices permitted to be given to bondholders with respect to such Bonds; (iii) registering transfers with respect to such Bonds; (iv) obtaining any consent or other action required or permitted to be taken of or by bondholders; (v) voting; and (vi) for all other purposes whatsoever. The Paying Agent shall pay all principal of and premium, if any, and interest on the Bonds only to or upon the order of the

Depository Trust Company, and all such payments shall be valid and effective fully to satisfy and discharge the City's and the Paying Agent's obligations with respect to principal of and premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. Upon delivery by the Depository Trust Company to the City of written notice to the effect that the Depository Trust Company has determined to substitute a new nominee in place of CEDE & CO., and subject to the provisions herein with respect to consents, the words "CEDE & CO." in this ordinance shall refer to such new nominee of the Depository Trust Company. Notwithstanding any other provision hereof to the contrary, so long as any Bond is registered in the name of CEDE & CO., as nominee of the Depository Trust Company, all payments with respect to the principal of and premium, if any, and interest on such Bonds and all notices with respect to such Bonds shall be made and given, respectively, to the Depository Trust Company as provided in a representation letter from the City to the Depository Trust Company.

Upon receipt by the City of written notice from the Depository Trust Company to the effect that the Depository Trust Company is unable or unwilling to discharge its responsibilities and no substitute depository willing to undertake the functions of the Depository Trust Company hereunder can be found which is willing and able to undertake such functions upon reasonable and customary terms, then the Bonds shall no longer be restricted to being registered in the register of the City kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company, but may be registered in whatever name or names the bondholders transferring or exchanging the Bonds shall designate, in accordance with the provisions of this ordinance.

If the City determines that it is in the best interest of the bondholders that they be able to obtain certificates for the fully registered Bonds, the City may notify the Depository Trust

Company and the Registrar, whereupon the Depository Trust Company will notify the Beneficial Owners of the availability through the Depository Trust Company of certificates for the Bonds. In such event, the Registrar shall prepare, authenticate, transfer and exchange certificates for the Bonds as requested by the Depository Trust Company and any Beneficial Owners in appropriate amounts, and whenever the Depository Trust Company requests the City and the Registrar to do so, the Registrar and the City will cooperate with the Depository Trust Company by taking appropriate action after reasonable notice (i) to make available one or more separate certificates evidencing the fully registered Bonds of any Beneficial Owner's Depository Trust Company account or (ii) to arrange for another securities depository to maintain custody of certificates for and evidencing the Bonds.

If the Bonds shall no longer be restricted to being registered in the name of the Depository Trust Company, the Registrar shall cause the Bonds to be printed in blank in such number as the Registrar shall determine to be necessary or customary; provided, however, that the Registrar shall not be required to have such Bonds printed until it shall have received from the City indemnification for all costs and expenses associated with such printing.

In connection with any notice or other communication to be provided to bondholders by the City or the Registrar with respect to any consent or other action to be taken by bondholders, the City or the Registrar, as the case may be, shall establish a record date for such consent or other action and give the Depository Trust Company notice of such record date not less than fifteen (15) calendar days in advance of such record date to the extent possible.

So long as the Bonds are registered in the name of the Depository Trust Company or CEDE & CO. or any substitute nominee, the City and the Registrar and Paying Agent shall be entitled to request and to rely upon a certificate or other written representation from the

Beneficial Owners of the Bonds or from the Depository Trust Company on behalf of such Beneficial Owners stating the amount of their respective beneficial ownership interests in the Bonds and setting forth the consent, advice, direction, demand or vote of the Beneficial Owners as of a record date selected by the Registrar and the Depository Trust Company, to the same extent as if such consent, advice, direction, demand or vote were made by the bondholders for purposes of this ordinance and the City and the Registrar and Paying Agent shall for such purposes treat the Beneficial Owners as the bondholders. Along with any such certificate or representation, the Registrar may request the Depository Trust Company to deliver, or cause to be delivered, to the Registrar a list of all Beneficial Owners of the Bonds, together with the dollar amount of each Beneficial Owner's interest in the Bonds and the current addresses of such Beneficial Owners.

The BANs may also be issued in book-entry form and in that case all of the provisions set forth in this Section 3 shall apply.

Section 4. Redemption of Bonds and BANs. (a) The BANs are prepayable by the City, in whole or in part, on any date after 180 days of issuance, upon 30 days' notice to the owner of the BANs, without premium.

(b) For any Bonds sold to the Authority as part of its DWSRF Program, such Bonds are redeemable at the option of the City, but no sooner than ten (10) years after their date of delivery, or any date thereafter, on sixty (60) days' notice, in whole or in part, in inverse order of maturity, and by lot within a maturity, at face value together with a premium no greater than 2%, plus accrued interest to the date fixed for redemption; provided, however, if the Bonds are sold to the DWSRF Program and registered in the name of the Authority, the Bonds shall not be redeemable at the option of the City unless and until consented to by the Authority. The exact redemption dates and premiums shall be established by the Controller, with the advice of the City's financial advisor, prior to the sale of the Bonds.

(c) For any Bonds not sold to the Authority as part of its DWSRF Program, such Bonds are redeemable at the option of the City, but no earlier than eight (8) years after their date of delivery and on any date thereafter, in whole or in part, in the order of maturity as determined by the City, and by lot within a maturity, on thirty (30) days' notice, at face value, with no premium, plus accrued interest to the date fixed for redemption. The exact redemption dates shall be established by the Controller, with the advice of the City's financial advisor, prior to the sale of the Bonds.

(d) If any Bond is issued as a term bond, the Paying Agent shall credit against the mandatory sinking fund requirement for the Bonds maturing as term bonds, and corresponding mandatory redemption obligation, in the order determined by the City, any Bonds maturing as term bonds which have previously been redeemed (otherwise than as a result of a previous mandatory redemption requirement) or delivered to the Registrar for cancellation or purchased for cancellation by the Paying Agent and not theretofore applied as a credit against any redemption obligation. Each Bond maturing as a term bond so delivered or cancelled shall be credited by the Paying Agent at 100% of the principal amount thereof against the mandatory sinking fund obligation on such mandatory sinking fund date, and any excess of such amount shall be credited on future redemption obligations, and the principal amount of the Bonds to be redeemed by operation of the mandatory sinking fund requirement shall be accordingly reduced; provided, however, the Paying Agent shall credit only such Bonds maturing as term bonds to the extent received on or before forty-five (45) days preceding the applicable mandatory redemption date.

Each authorized denomination shall be considered a separate bond for purposes of optional and mandatory redemption. If less than an entire maturity is called for redemption at one time, the Bonds to be redeemed shall be selected by lot within a maturity by the Registrar. If some Bonds are to be redeemed by optional redemption and mandatory sinking fund redemption on the same date, the Registrar shall select by lot the Bonds for optional redemption before selecting the Bonds by lot for the mandatory sinking fund redemption.

(e) Notice of redemption shall be given not less than sixty (60) days for Bonds sold to the Authority as part of its DWSRF Program and not less than thirty (30) days for Bonds sold to any other purchaser prior to the date fixed for redemption unless such redemption notice is waived by the owner of the Bond or Bonds redeemed. Such notice shall be mailed to the address of the registered owner as shown on the registration record of the City as of the date which is sixty-five (65) days for Bonds sold to the Authority as part of its DWSRF Program and forty-five (45) days for Bonds sold to any other purchaser prior to such redemption date. The notice shall specify the date and place of redemption and sufficient identification of the Bonds called for redemption. The place of redemption may be determined by the City. Interest on the Bonds so called for redemption shall cease on the redemption date fixed in such notice if sufficient funds are available at the place of redemption to pay the redemption price on the date so named.

Section 5. Execution and Negotiability. Each series of Bonds and BANs shall be executed in the name of the City by the manual or facsimile signature of the Mayor, countersigned by the manual or facsimile signature of the Controller, and attested by the manual or facsimile signature of its Clerk, and the seal of the City shall be affixed, imprinted or impressed to or on each of the Bonds and BANs manually, by facsimile or any other means; and these officials, by the execution of a Signature and No Litigation Certificate, shall adopt as and for their own proper signatures the facsimile signatures appearing on the Bonds or BANs. In case any officer whose signature or facsimile signature appears on the Bonds or BANs shall cease to be such officer before the delivery of the Bonds or BANs, the signature of such officer shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

The Bonds and BANs shall have all of the qualities and incidents of negotiable instruments under the laws of the State of Indiana, subject to the provisions for registration herein.

The Bonds shall also be authenticated by the manual signature of the Registrar, and no Bond shall be valid or become obligatory for any purpose until the certificate of authentication thereon has been so executed.

Section 6. Form of Bonds. The form and tenor of the Bonds shall be substantially as follows, all blanks to be filled in properly prior to delivery:

> [Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City of Mishawaka, Indiana, or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.]

NO. _____

UNITED STATES OF AMERICA

STATE OF INDIANA COUNTY OF ST. JOSEPH

CITY OF MISHAWAKA
WATERWORKS REVENUE BOND OF _____[, SERIES ___]

[INTEREST [MATURITY ORIGINAL AUTHENTICATION

RATE] DATE] DATE DATE [CUSIP]

REGISTERED OWNER:

PRINCIPAL SUM:

The City of Mishawaka, in St. Joseph County, State of Indiana ("City"), for value received, hereby promises to pay to the Registered Owner named above or registered assigns, solely out of the special revenue fund hereinafter referred to, the Principal Sum set forth above, [or so much thereof as may be advanced from time to time and be outstanding as evidenced by the records of the registered owner making payment for this bond, or its assigns,] on [the Maturity Date set forth above] **OR** [January 1 and July 1 on the dates and in the amounts as set forth on Exhibit A attached hereto] (unless this bond be subject to and be called for redemption prior to maturity as hereinafter provided), and to pay interest hereon until the Principal Sum shall be fully paid at the interest rate[s] per annum stated [above] **OR** [on Exhibit A attached hereto] from [the dates of payment made on this bond] **OR** [the interest payment date to which interest has been paid next preceding the Authentication Date of this bond unless this bond is authenticated after the fifteenth day of the month preceding an interest payment date and on or before such interest payment date in which case it shall bear interest from such interest payment date, or unless this bond is authenticated on or before __________ 15, 20__, which case it shall bear interest from the Original Date,] which interest is payable semiannually on January 1 and July 1 of each year, beginning on _________ 1, 20__. Interest shall be calculated according to a 360-day calendar year containing twelve 30-day months.

[The principal of this bond is payable at the [principal corporate trust] office of ________________________ ("Registrar") or "Paying Agent"), in the ______ of ________________, ____________]. All payments of [principal of and] interest on this bond shall be paid by [check mailed one business day prior to the interest payment date] **OR** [paid by wire transfer for deposit to a financial institution as directed by the Indiana Finance Authority ("Authority") on the due date or, if such due date is a day when financial institutions are not open for business, on the business day immediately after such due date] to the registered owner hereof as of the fifteenth day of the month preceding such interest payment date at the address as it appears on the registration books kept by [__________ ("Registrar" or "Paying Agent") in the _____ of ______________, Indiana] **OR** [the Registrar] or at such other address as is provided to the Paying Agent in writing by the registered owner. [Notwithstanding anything to the contrary herein, this bond shall not be required to be presented or surrendered to receive payment in connection with any mandatory sinking fund redemption until the final maturity date of this bond or earlier payment in full of this bond.] [If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Paying Agent shall wire transfer payments by 1:00 p.m. (New York City time) so such payments are received at the depository by 2:30 p.m. (New York City time).] All payments on the bond shall be made in any coin or currency of the United States of America, which on the dates of such payment, shall be legal tender for the payment of public and private debts.

THE CITY SHALL NOT BE OBLIGATED TO PAY THIS BOND OR THE INTEREST HEREON EXCEPT FROM THE HEREINAFTER DESCRIBED SPECIAL FUND, AND NEITHER THIS BOND NOR THE ISSUE OF WHICH IT IS A PART SHALL IN ANY RESPECT CONSTITUTE A CORPORATE INDEBTEDNESS OF THE CITY WITHIN THE PROVISIONS AND LIMITATIONS OF THE CONSTITUTION OF THE STATE OF INDIANA.

This bond is [the only] one of an authorized issue of bonds of the City [[to be] [issued in series][, of like date, tenor and effect, except as to numbering, interest rate[, series designation,] and date of maturity]; in the total amount of ______________________________ Dollars ($_____________); numbered consecutively from 1 up; issued for the purpose of providing funds to pay the cost of certain additions, extensions and improvements to the municipally owned waterworks system of the City[, to refund interim notes issued in anticipation of the bonds] and to pay issuance expenses[, including a premiums for municipal bond insurance and/or a debt service reserve surety]. This bond is issued pursuant to an ordinance adopted by the Common Council of the City on the ___ day of _________, 2020, entitled "An Ordinance of the City of Mishawaka authorizing the issuance of waterworks revenue bonds for the purpose of providing funds to pay the cost of certain additions, extensions and improvements to the municipal waterworks of said City, providing for the safeguarding of the interests of the owners of said bonds, other matters connected therewith, including the issuance of notes in anticipation of bonds, and repealing ordinances inconsistent herewith" ("Ordinance"), and in accordance with the provisions of Indiana law, including without limitation Indiana Code 8-1.5 as in effect on the date of delivery of the bonds of this issue ("Act").

[Reference is hereby made to the Financial Assistance Agreement ("Financial Assistance Agreement") between the City and the Authority concerning certain terms and covenants pertaining to the waterworks project and the purchase of this bond as part of the drinking water loan program established and existing pursuant to IC 5-1.2-1 through IC 5-1.2-4 and IC 5-1.2-10.]

Pursuant to the provisions of the Act and the Ordinance, the principal of and interest on this bond and all other bonds of said issue, [including the Waterworks Revenue Bonds of _______, Series ___ ("Series ____ Bonds")] and any bonds hereafter issued on a parity therewith are payable solely from the Waterworks Sinking Fund continued by the Ordinance ("Sinking Fund") to be provided from the Net Revenues (defined as the gross revenues, inclusive of System Development Charges (as defined in the Ordinance), after deduction only for the payment of the reasonable expenses of operation, repair and maintenance, excluding transfers for payment in lieu of property taxes) of the waterworks of the City. This bond and the issue of which it is a part ranks on a parity with the Outstanding Bonds (as defined in the Ordinance) [and the Series ____ Bonds], in accordance with the terms thereof.

The City irrevocably pledges the entire Net Revenues of the waterworks to the prompt payment of the principal of and interest on the bonds authorized by the Ordinance, of which this is one, and any bonds ranking on a parity therewith, including the Outstanding Bonds [and the Series ____ Bonds], to the extent necessary for that purpose, and covenants that it will cause to be fixed, maintained and collected such rates and charges for services rendered by the utility as are sufficient in each year for the payment of the proper and reasonable expenses of Operation and Maintenance (as defined in the Financial Assistance Agreement, as defined in the Ordinance) of the waterworks and, for the payment of the sums required to be paid into the Sinking Fund under the provisions of the Act and the Ordinance. If the City or the proper officers thereof shall fail or refuse to so fix, maintain and collect such rates or charges, or if there be a default in the payment of the interest on or principal of this bond, the owner of this bond shall have all of the rights and remedies provided for under Indiana law.

[The bonds shall be initially issued in a Book Entry System (as defined in the Ordinance). The provisions of this bond and of the Ordinance are subject in all respects to the provisions of the Letter of Representations between the City and DTC, or any substitute agreement, effecting such Book Entry System.]

The City further covenants that it will set aside and pay into its Sinking Fund monthly, as available, or more often if necessary, a sufficient amount of the Net Revenues of the works for payment of (a) the interest on all bonds which by their terms are payable from the revenues of the waterworks, as such interest shall fall due, (b) the necessary fiscal agency charges for paying bonds and interest, (c) the principal of all bonds which by their terms are payable from the revenues of the waterworks, as such principal shall fall due, and (d) an additional amount as a margin of safety to [create and] maintain the debt service reserve required by the Ordinance. Such required payments shall constitute a first charge against the Net Revenues of said works, on a parity with the Outstanding Bonds [and the Series ____ Bonds].

The bonds of this issue maturing on ___________ 1, 20__, and thereafter, are redeemable at the option of the City on __________ 1, 20__, or any date thereafter, on [sixty (60)] [thirty (30)] days' notice, in whole or in part, in [inverse] [the] order of maturity [as determined by the City] and by lot within a maturity, at face value together with the following premiums:

____% if redeemed on _______________, or thereafter
on or before __________;
____% if redeemed on _______________, or thereafter
on or before __________;
____% if redeemed on _______________, or thereafter
prior to maturity;

plus in each case accrued interest to the date fixed for redemption[; provided, however, if the Bonds are sold to the DWSRF Program and registered in the name of the Authority, the Bond shall not be redeemable at the option of the City unless and until consented to by the Authority].

[The bonds maturing on ______________ 1, 20_ are subject to mandatory sinking fund redemption prior to maturity, at a redemption price equal to the principal amount thereof plus accrued interest, on January 1 and July 1 on the dates and in the amounts set forth below:

Term Bond Date	Term Bond Amount	Term Bond Date	Term Bond Amount
*		*	

*Final Maturity]

Each [One Dollar ($1)] **OR** [Five Thousand Dollar ($5,000)] principal amount shall be considered a separate bond for purposes of optional [and mandatory] redemption. If less than an entire maturity is called for redemption, the bonds to be called shall be selected by lot by the Registrar. [If some bonds are to be redeemed by optional redemption and mandatory sinking fund redemption on the same date, the Registrar shall select by lot the bonds for optional redemption before selecting the bonds by lot for the mandatory sinking fund redemption.]

Notice of redemption shall be mailed to the address of the registered owner as shown on the registration record of the City, as of the date which is [sixty-five (65)] **OR** [forty-five (45)] days prior to such redemption date, not less than [sixty (60)] **OR** [thirty (30)] days prior to the date fixed for redemption. The notice shall specify the date and place of redemption and sufficient identification of the bonds called for redemption. The place of redemption may be determined by the City. Interest on the bonds so called for redemption shall cease on the redemption date fixed in such notice, if sufficient funds are available at the place of redemption to pay the redemption price on the date so named.

If this bond shall not be presented for payment or redemption on the date fixed therefor, the City may deposit in trust with its depository bank an amount sufficient to pay such bond or the redemption price, as the case may be, and thereafter the registered owner shall look only to the funds so deposited in trust with said bank for payment and the City shall have no further obligation or liability in respect thereto.

This bond is transferable or exchangeable only upon the books of the City kept for that purpose at the [principal corporate trust] office of the Registrar by the registered owner hereof in person, or by his attorney duly authorized in writing, upon surrender of this bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the registered owner, or his attorney duly authorized in writing, and thereupon a new fully registered bond or bonds in an authorized aggregate principal amount and of the same maturity, shall be executed and delivered in the name of the transferee or transferees or to the registered owner, as the case may be, in exchange therefor. This bond may be transferred without cost to the registered owner except for any tax or governmental charge required to be paid with respect to the transfer. The City, the Registrar, the Paying Agent and any other registrar or paying agent for this bond may treat and consider the person in whose name this bond is registered as the absolute owner hereof for all purposes including for the purpose of receiving payment of, or on account of, the principal hereof and interest due hereon.

This bond is subject to defeasance prior to redemption or payment as provided in the Ordinance referred to herein. THE OWNER OF THIS BOND, BY THE ACCEPTANCE HEREOF, HEREBY AGREES TO ALL THE TERMS AND PROVISIONS CONTAINED IN THE ORDINANCE. The Ordinance may be amended without the consent of the owners of the bonds as provided in the Ordinance.

The bonds maturing in any one year are issuable only in fully registered form in the denomination of [$5,000] **OR** [$1] or any integral multiple thereof.

It is hereby certified and recited that all acts, conditions and things required to be done precedent to and in the execution, issuance and delivery of this bond have been done and performed in regular and due form as provided by law.

This bond shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been executed by an authorized representative of the Registrar.

IN WITNESS WHEREOF, the City of Mishawaka, in St. Joseph County, Indiana, has caused this bond to be executed in its corporate name by the manual or facsimile signature of its Mayor, countersigned by the manual or facsimile signature of the Controller, its corporate seal to be hereunto affixed, imprinted or impressed by any means and attested manually or by facsimile by its Clerk.

CITY OF MISHAWAKA, INDIANA

By: ______________________
Mayor

COUNTERSIGNED:

By: ______________________
Controller

[SEAL]

Attest:

____
Clerk

REGISTRAR'S CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds described in the within-mentioned Ordinance.

______________________,
as Registrar

By: ______________________,
Authorized Representative

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto ______________________________ this bond and all rights thereunder, and hereby irrevocably constitutes and appoints ______________________________, attorney, to transfer the within bond in the books kept for the registration thereof with full power of substitution in the premises.

Dated: ____________________

____
NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution participating in a Securities Transfer Association recognized signature guarantee program.

____
NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within bond in every particular, without alteration or enlargement or any change whatsoever.

[EXHIBIT A]

(End of Bond Form)

Section 7. Authorization for Preparation and Sale of the Bonds and BANs; Official Statement; Continuing Disclosure; Insurance. (a) The Controller is hereby authorized and directed to have the Bonds and BANs prepared, and the Mayor, Controller and Clerk are hereby authorized and directed to execute and attest the Bonds and BANs in the form and manner provided herein.

(b) The Controller is hereby authorized and directed to deliver the Bonds and BANs to the respective purchasers thereof. At the time of delivery of the Bonds and BANs, the Controller shall collect the full amount which the respective purchasers have agreed to pay therefor, which amount shall not be less than the par value of the BANs if sold to the Authority as part of its DWSRF Program, not less than 99.5% of the par value of the BANs if sold to any other purchaser, not less than the par value of the Bonds if sold to the Authority as part of its DWSRF Program, and not less than 99% of the par value of the Bonds if sold to any other purchaser, as the case may be, plus accrued interest to the date of delivery, if any. The City may receive payment on the BANs and the Bonds in installments. The Bonds, as and to the extent paid for and delivered to the purchaser, shall be the binding special revenue obligations of the City payable out of the Net Revenues of the waterworks, on a parity with the Outstanding Bonds, to be set aside into the Sinking Fund as herein provided. The proceeds derived from the sale of the Bonds shall be and are hereby set aside for application on the cost of the Project hereinbefore referred to, the refunding of the BANs, if issued, and the expenses necessarily incurred in connection with the BANs and Bonds. The proper officers of the City are hereby directed to sell the Bonds, to draw all proper and necessary warrants, and to do whatever acts and things which may be necessary to carry out the provisions of this ordinance.

(c) Distribution of an Official Statement (preliminary and final) prepared by Baker Tilly Municipal Advisors, LLC on behalf of the City, is hereby authorized and approved and the Mayor or the Controller are authorized and directed to execute the Official Statement on behalf of the City in a form consistent with this ordinance. The Mayor or the Controller is authorized to designate the preliminary Official Statement as "nearly final" for purposes of Rule 15c2-12 as promulgated by the Securities and Exchange Commission ("Rule").

If an Official Statement is not required upon delivery of the Bonds, the City shall obtain an investment letter from the purchaser of the Bonds which satisfies federal and state securities laws applicable to the Bonds.

(d) If required under the Rule, the Mayor and Controller are hereby authorized and directed to complete, execute and attest a Continuing Disclosure Undertaking ("Disclosure Undertaking") for the Bonds on behalf of the City, in a form consistent with this ordinance. Notwithstanding any other provisions of this ordinance, failure of the City to comply with the Disclosure Undertaking shall not be considered an event of default under the Bonds or this ordinance.

(e) In the event the financial advisor to the City certifies to the City that it would be economically advantageous for the City to obtain a municipal bond insurance policy the City hereby authorizes the purchase of such an insurance policy. The acquisition of a municipal bond insurance policy is hereby deemed economically advantageous in the event the difference between the present value cost of (a) the total debt service on the Bonds if issued without municipal bond insurance and (b) the total debt service on the Bonds if issued with municipal bond insurance, is greater than the cost of the premium on the municipal bond insurance policy. If such an insurance policy is purchased, the Mayor and the Controller are hereby authorized to execute and deliver all agreements with the provider of the policy to the extent necessary to comply with the terms of such insurance policy and the commitment to issue such policy. Such agreement shall be deemed a part of this ordinance for all purposes and is hereby incorporated herein by reference.

Section 8. Sale of the Bonds; Award of Bonds. If the Bonds will be sold at a competitive sale, the Controller shall cause to be published either (i) a notice of such sale in the newspaper or newspapers which meet the requirements of IC 5-3-1, two times, at least one week apart, the first publication made at least fifteen (15) days before the date of the sale and the second publication being made at least three (3) days before the date of the sale, or (ii) a notice of intent to sell in the newspaper or newspapers which meet the requirements of IC 5-3-1 and the *Indianapolis Business Journal*, all in accordance with IC 5-1-11 and IC 5-3-1. A notice or summary notice of sale may also be published one time in the *Indianapolis Business Journal*, and a notice or summary notice may also be published in *The Bond Buyer* in New York, New York. The notice shall state the character and amount of the Bonds, the maximum rate of interest thereon, the terms and conditions upon which bids will be received and the sale made, and such other information as the Controller and the attorneys employed by the City shall deem advisable and any summary notice may contain any information deemed so advisable. The notice will also state that the winning bidder will agree to assist the City in establishing the issue price of the Bonds under Treas. Reg. Section 1.148-1(f) ("Issue Price Regulation"). The criteria for establishing the issue price under the Issue Price Regulation shall be set forth in the preliminary Official Statement and/or the bid form. The notice may provide, among other things, that electronic bidding will be permitted and that the winning bidder shall be required to submit a certified or cashier's check in an amount equal to 1% of the principal amount of the Bonds described in the notice within twenty-four hours of the sale and that in the event the successful bidder shall fail or refuse to accept delivery of the Bonds and pay for the same as soon as the Bonds are ready for delivery, or at the time fixed in the notice of sale, then said check and the proceeds thereof shall be the property of the City and shall be considered as its liquidated damages on account of such default; that bidders for the Bonds will be required to name the rate or rates of interest which the Bonds are to bear, not exceeding the maximum rate hereinbefore fixed, and that such interest rate or rates shall be in multiples of one-eighth (1/8), one-twentieth (1/20) or one-hundredth (1/100) of one percent (1%). The notice may state that the rate bid on a maturity shall be equal to or greater than the rate bid on the immediately preceding maturity. No conditional bid or bid for less than 99% of the face amount of the Bonds will be considered. The opinion of Ice Miller LLP, bond counsel of Indianapolis, Indiana, approving the legality of the Bonds, will be furnished to the purchaser at the expense of the City.

The Bonds shall be awarded by the Controller to the best bidder who has submitted his bid in accordance with the terms of this ordinance, IC 5-1-11 and the notice. The best bidder will be the one who offers the lowest net interest cost to the City, to be determined by computing the total interest on all of the Bonds to their maturities, adding thereto the discount bid, if any, and deducting the premium bid, if any. The right to reject any and all bids shall be reserved. If an acceptable bid is not received on the date of sale, the sale may be continued from day to day thereafter without further advertisement for a period of thirty (30) days, during which time no bid which provides a higher net interest cost to the City than the best bid received at the time of the advertised sale will be considered.

As an alternative to public sale, the Controller may negotiate the sale of the Bonds to the Authority as part of its DWSRF Program. The Mayor and the Controller are hereby authorized to: (i) submit an application to the Authority as part of its DWSRF Program; (ii) execute a Financial Assistance Agreement with the Authority with terms conforming to this ordinance; and (iii) sell such Bonds upon such terms as are acceptable to the Mayor and the Controller consistent with the terms of this ordinance. The substantially final form of Financial Assistance Agreement attached hereto and incorporated herein by reference as Exhibit B is hereby approved by the Common Council and the Mayor and Controller are hereby authorized to execute and deliver the same, and to approve any changes in form or substance to the Financial Assistance Agreement, which are consistent with the terms of this ordinance, such changes to be conclusively evidenced by its execution.

Notwithstanding anything contained herein, the City may accept any other forms of financial assistance, as and if available, from the DWSRF Program (including without limitation any forgivable loans, grants or other assistance whether available as an alternative to any Bond or BAN related provision otherwise provided for herein or as a supplement or addition thereto). If required by the DWSRF Program to be eligible for such financial assistance, one or more of the series of the Bonds issued hereunder may be issued on a basis such that the payment of the principal of or interest on (or both) of such series of Bonds is junior and subordinate to the payment of the principal of and interest on other series of Bonds issued hereunder (and/or any other revenue bonds secured by a pledge of Net Revenues, whether now outstanding or hereafter issued), all as provided by the terms of such series of Bonds as modified pursuant to this authorization. Such financial assistance, if any, shall be provided in the Financial Assistance Agreement and the Bonds of each series of Bonds issued hereunder (including any modification made pursuant to the authorization in this paragraph to the form of Bonds otherwise contained herein).

Section 9. Financial Records and Accounts. (a) The City shall keep proper records and books of account, separate from all of its other records and accounts, in which complete and correct entries shall be made showing all revenues received on account of the operation of the waterworks and all disbursements made therefrom and all transactions relating to the waterworks. Copies of all such statements and reports shall be kept on file in the office of the Clerk.

(b) If the Bonds or BANs are sold to the Authority as part of its DWSRF Program, the City shall establish and maintain the books and other financial records of the Project (including the establishment of a separate account or subaccount for the Project) and the waterworks in accordance with (i) generally accepted governmental accounting standards for utilities, on an accrual/cash basis, as promulgated by the Government Accounting Standards Board and (ii) the rules, regulations and guidance of the State Board of Accounts.

Section 10. Accrued Interest. The accrued interest received at the time of delivery of the Bonds, if any, and premium, if any, shall be deposited in the Waterworks Sinking Fund continued in Section 15.

Section 11. Use of Proceeds and Costs of Issuance. The proceeds from the sale of the Bonds, to the extent not used to refund BANs, and BAN proceeds shall be deposited in a bank or banks which are legally designated depositories for the funds of the City, in a special account or accounts to be designated as "City of Mishawaka, Waterworks Construction Account" ("Construction Account"). All funds deposited to the credit of the Waterworks Sinking Fund or the Construction Account shall be deposited, held, secured or invested in accordance with the laws of the State of Indiana relating to the depositing, holding, securing or investing of public funds, including particularly IC 5-13, as amended and supplemented, and as applicable, pursuant to IC 5-1.2-1 through IC 5-1.2-4-11 and IC 5-1.2-10. The funds in the Construction Account shall be expended only for the purpose of paying the cost of the cost of the Project, refunding the BANs, if issued, or as otherwise required by the Act or for the expenses of issuance of the Bonds and BANs. The cost of obtaining the services of Ice Miller LLP, the City Attorney and Baker Tilly Municipal Advisors, LLC shall be considered as a part of the cost of the Project on account of which the Bonds and BANs are issued.

Any balance or balances remaining unexpended in such special account or accounts after completion of the Project, which are not required to meet unpaid obligations incurred in connection with such Project, shall either (1) be paid into the Waterworks Sinking Fund and used solely for the purposes of the Waterworks Sinking Fund or (2) be used for the same purpose or type of project for which the Bonds were originally issued, all in accordance with IC 5-1-13, as amended and supplemented.

If the Bonds are sold to the Authority as part of its DWSRF Program, to the extent (a) that the total principal amount of the Bonds is not paid by the purchaser or drawn down by the City or (b) proceeds remain in the Construction Account and are not applied to the Project (or any modifications or additions thereto approved by the Department and the Authority), the City shall reduce the principal amount of the Bond maturities to effect such reduction in a manner that will still achieve the annual debt service as described in Section 2 subject to and upon the terms forth in the Financial Assistance Agreement.

Section 12. Pledge of Net Revenues. The interest on and the principal of the Bonds issued pursuant to the provisions of this ordinance, and any bonds hereafter issued on a parity therewith, shall constitute a first charge on all the Net Revenues and such Net Revenues are hereby irrevocably pledged to the payment of the interest on and principal of such Bonds, to the extent necessary for that purpose.

Section 13. Revenue Fund. There is hereby continued the Waterworks Revenue Fund ("Revenue Fund") into which shall be deposited all income and revenues derived from the operation of the waterworks and from the collection of water rates and charges (including any System Development Charges) of the waterworks. The Revenue Fund shall be maintained separate and apart from all other accounts of the City. Out of these revenues the proper and reasonable expenses of operation, repair and maintenance of the works shall be paid, the principal of and interest on all bonds and fiscal agency charges of registrars or paying agents shall be paid, the reserve shall be funded, and the costs of improvements, replacements, additions and extensions of the waterworks and shall be paid.

Section 14. Operation and Maintenance Fund. There is hereby continued a fund known as the Operation and Maintenance Fund ("O&M Fund"). On the last day of each calendar month, revenues of the waterworks shall be transferred from the Revenue Fund to the O&M Fund. The balance maintained in this Fund shall be sufficient to pay the expenses of operation, repair and maintenance of the waterworks for the then next succeeding two (2) calendar months.

The moneys credited to this Fund shall be used for the payment of the reasonable and proper operation, repair and maintenance expenses of the waterworks on a day-to-day basis, but none of the monies in the O&M Fund shall be used for PILOTs, depreciation, replacements, improvements, extensions or additions. Any monies in the O&M Fund may be transferred to the Waterworks Sinking Fund if necessary to prevent a default in the payment of principal of or interest on the outstanding bonds of the waterworks.

Section 15. Waterworks Sinking Fund. (a) There is hereby continued a special fund designated the "Waterworks Sinking Fund" ("Sinking Fund") for the payment of the principal of and interest on revenue bonds which by their terms are payable from the Net Revenues of the waterworks and the payment of any fiscal agency charges in connection with the payment of bonds and interest. There shall be set aside and deposited in the Sinking Fund, as available, and as provided below, a sufficient amount of the Net Revenues of the waterworks to meet the requirements of the Bond and Interest Account, the Reserve Account and the 2007 Reserve Account hereby continued in the Sinking Fund. Such payments shall continue until the balances in the Bond and Interest Account, the 2007 Reserve Account and the Reserve Account equal the amount needed to redeem all the then outstanding bonds of the waterworks.

(b) Bond and Interest Account. There is hereby continued, within the Sinking Fund, the Bond and Interest Account ("Bond and Interest Account"). There shall be credited on the last day of each month from the Revenue Fund to the Bond and Interest Account an amount of the Net Revenues equal to: (i) at least one-sixth (1/6) of the interest on all then outstanding bonds payable on the then next succeeding interest payment date; and (ii) at least one-sixth (1/6) of the principal payable on all then outstanding bonds payable on the then next succeeding principal payment date, until the amount of interest and principal payable on the then next succeeding interest and principal payment date shall have been so credited. There shall similarly be credited to the Account any amount necessary to pay the bank fiscal agency charges for paying principal and interest on outstanding bonds as the same become payable. The City shall, from the sums deposited in the Sinking Fund and credited to the Bond and Interest Account, remit promptly to the registered owner or to the bank fiscal agency sufficient moneys to pay the interest and principal on the due dates thereof together with the amount of bank fiscal agency charges.

(c) 2007 Reserve Account; Reserve Account. (i) There is hereby continued, within the Sinking Fund, the 2007 Reserve Account ("2007 Reserve Account"). The 2007 Reserve Account provides security for the 2007 Bonds and contains a debt service reserve surety ("2007 Surety") and cash in accordance with the requirements established by the ordinance authorizing the 2007 Bonds ("2007 Ordinance"). The City shall continue to maintain the 2007 Reserve Account in accordance with the 2007 Ordinance and the 2007 Surety. The 2007 Reserve Account does not secure and may not be used to pay the principal of or interest on the 2013 Bonds, the 2018 Bonds or the Bonds authorized herein.

(ii) The ordinance authorizing the 2013 Bonds, created an account designated "Reserve Account" as a reserve for the 2013 Bonds ("Reserve Account"). The Reserve Account was continued in the ordinance authorizing the 2018 Bonds and is hereby continued for the 2013 Bonds, the 2018 Bonds and shall also serve as the reserve to the Bonds authorized herein. On the date of delivery of the Bonds, funds on hand of the waterworks, Bond proceeds or any combination thereof may be deposited into the Reserve Account. The initial deposit or the balance maintained in the Reserve Account shall equal but not exceed the least of: (i) maximum annual debt service on the 2013 Bonds, the 2018 Bonds, the Bonds and any bonds issued in the future by the City which are payable from Net Revenues of the waterworks and which rank on a parity with the 2013 Bonds, 2018 Bonds and the Bonds ("Parity Bonds"); (ii) 125% of average annual debt service on the 2013 Bonds, 2018 Bonds, the Bonds and any Parity Bonds; or (iii) 10% of the stated principal amount or issue price, as applicable, of the 2013 Bonds, the 2018 Bonds, the Bonds and any Parity Bonds ("Reserve Requirement"); provided, however, that if any Bonds are sold to, or for so long as the 2018 Bonds are owned by, the Authority as part of its DWSRF Program, the Reserve Requirement shall equal the maximum annual debt service on the 2013 Bonds, the 2018 Bonds, the Bonds and any Parity Bonds. If the initial deposit into the Reserve Account does not equal the Reserve Requirement or if no deposit is made, an amount of Net Revenues shall be credited to the Reserve Account on the last day of each calendar month until the balance therein equals the Reserve Requirement. The monthly deposits shall be equal in amount and sufficient to accumulate the Reserve Requirement within five years of the date of delivery of the Bonds.

The Reserve Account shall constitute the margin for safety and protection against default in the payment of principal of and interest on the 2013 Bonds, the 2018 Bonds, the Bonds and any Parity Bonds, and the moneys in the Reserve Account shall be used to pay current principal and interest on the 2013 Bonds, the 2018 Bonds, the Bonds and any Parity Bonds to the extent that moneys in the Bond and Interest Account are insufficient for that purpose. Any deficiency in the balance maintained in the Reserve Account shall be made up from the next available Net Revenues remaining after credits into the Bond and Interest Account on a parity basis with any payments made to replenish the 2007 Reserve Account. If moneys in the Reserve Account are transferred to the Bond and Interest Account to pay principal and interest on any 2013 Bonds, the 2018 Bonds, the Bonds or Parity Bonds, then this depletion of the balance in the Reserve Account shall be made up from the next available Net Revenues after the credits into the Bond and Interest Account and on a parity basis with any payments made to replenish the 2007 Reserve Account. Any moneys in excess of the Reserve Requirement shall be transferred to the Waterworks Improvement Fund.

(iii) Alternatively, the City may purchase a debt service reserve surety bond ("Surety") and create a separate subaccount of the Reserve Account for securing the Bonds (hereafter referred to as the "Surety Reserve Account"). The Surety Reserve Account may be satisfied with cash, a Surety or a combination thereof; provided that if any Bonds are sold to, and for so long as any of the 2018 Bonds are owned by the Authority as part of its DWSRF Program, the City shall obtain the consent of the Authority. The initial balance or the balance to be accumulated in the Surety Reserve Account shall equal but not exceed the least of: (i) the maximum annual debt service on the Bonds and any Parity Bonds which by their terms may be secured by the Surety Reserve Account; (ii) 125% of average annual debt service on the Bonds and the Parity Bonds; or (iii) 10% of the stated principal amount or issue price, as applicable, of the Bonds and the Parity Bonds ("Surety Reserve Requirement"); provided, however, that if any Bonds are sold to the Authority as part of its DWSRF Program, the Surety Reserve Requirement shall equal the maximum annual debt service on the Bonds and any Parity Bonds. Such Surety Reserve Account shall be a separate account which secures only the Bonds (and any Parity Bonds which by their terms may be secured by the Surety Reserve Account) and, in that case, the Reserve Account shall not secure the Bonds. If created, the Surety Reserve Account shall not secure the 2007 Bonds, the 2013 Bonds or the 2018 Bonds. If such Surety is purchased, the Mayor and the Controller are hereby authorized to execute and deliver all agreements with the provider of the Surety to the extent necessary to comply with the terms of such Surety and the commitment to issue such Surety. Such agreement shall set out the terms for the Surety, including the operational provisions of replenishing the Surety, and shall be deemed a part of this ordinance for all purposes and is hereby incorporated herein by reference. If a Surety is not purchased for the Bonds, the Surety Reserve Account shall not be created as a subaccount of the Reserve Account; provided, however, the City reserves the right to purchase a Surety in the future for any Parity Bonds and the Bonds and in that case, the Surety Reserve Account shall be created and operational.

(d) If the Bonds are sold to the Authority as part of its DWSRF Program, the Sinking Fund, containing the Bond and Interest Account and the Reserve Account, and the Construction Account, may be held by a financial institution acceptable to the Authority as part of its DWSRF Program, pursuant to terms acceptable to the Authority. If the Sinking Fund and the accounts therein are held in trust, the City shall transfer the monthly required amounts of Net Revenues to the Bond and Interest Account and the Reserve Account in accordance with this Section 15, and the financial institution holding such funds in trust shall be instructed to pay the required payments in accordance with the payment schedules for the City's outstanding bonds. The financial institution selected to serve in this role may also serve as the Registrar and the Paying Agent for any series of the Bonds and for all or any of the Outstanding Bonds. If the Construction Account is so held in trust, the City shall deposit the proceeds of the Bonds therein until such proceeds are applied consistent with this ordinance and the Financial Assistance Agreement with respect to the Bonds. The Mayor and the Controller are hereby authorized to execute and deliver an agreement with a financial institution to reflect this trust arrangement for all or a part of the Sinking Fund and the Construction Account in the form of trust agreement as approved by the Mayor and the Controller, consistent with the terms and provisions of this ordinance.

Section 16. Waterworks Improvement Fund. The Waterworks Improvement Fund ("Improvement Fund") is hereby continued. After meeting the requirements of the O&M Fund and the Sinking Fund, any excess revenues shall be transferred or credited from the Revenue Fund to the Improvement Fund, and said Fund shall be used for improvements, replacements, additions or extensions to the waterworks, and to make payments representing PILOTs. The City reserves the right to transfer PILOTs from the Improvement Fund no more frequently than semiannually, in accordance with the Act, and only if all required transfers have been made to the Sinking Fund and the O&M Fund and the Accounts of the Sinking Fund contain the required balances as of the date the PILOTs are paid. The Improvement Fund may also be used to pay principal of and interest on the BANs. Moneys in the Improvement Fund shall be transferred to the Sinking Fund if necessary to prevent a default in the payment of principal of or interest on the then outstanding bonds or, if necessary, to eliminate any deficiencies in credits to or minimum balance in the 2007 Reserve Account and the Reserve Account of the Sinking Fund or may be transferred to the O&M Fund to meet unforeseen contingencies in the operation, repair and maintenance of the waterworks.

Section 17. Maintenance of Accounts; Investments. The Sinking Fund shall be deposited in and maintained as a separate banking account or accounts from all other accounts of the City. The O&M Fund and the Improvement Fund may be maintained in a single banking account, or accounts, but such account, or accounts, shall likewise be maintained separate and apart from all other banking accounts of the City and apart from the Sinking Fund account or accounts. All moneys deposited in the accounts shall be deposited, held and secured as public funds in accordance with the public depository laws of the State of Indiana; provided that moneys therein may be invested in obligations in accordance with the applicable laws, including particularly IC 5-13, as amended or supplemented and as applicable, pursuant to IC 5-1.2-1 through IC 5-1.2-4 and IC 5-1.2-10, and in the event of such investment the income therefrom shall become a part of the funds invested and shall be used only as provided in this ordinance. Nothing in this section or elsewhere in this ordinance shall be construed to require that separate bank accounts be established and maintained for the Funds and Accounts created by this ordinance except that (a) the Sinking Fund and the Construction Account shall be maintained as a separate bank account from the other Funds and Accounts of the waterworks, and (b) the other Funds and Accounts of the waterworks shall be maintained as a separate bank account from the other funds and accounts of the City.

Section 18. Defeasance of the Bonds. If, when the Bonds or a portion thereof shall have become due and payable in accordance with their terms or shall have been duly called for redemption or irrevocable instructions to call the Bonds or a portion thereof for redemption shall have been given, and the whole amount of the principal and the interest and the premium, if any, so due and payable upon all of the Bonds or a portion thereof then outstanding shall be paid; or (i) cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in (ii) below), or (ii) direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America, the principal of and the interest on which when due will provide sufficient moneys for such purpose, shall be held in trust for such purpose, and provision shall also be made for paying all fees and expenses for the redemption, then and in that case the Bonds or any designated portion thereof issued hereunder shall no longer be deemed outstanding or entitled to the pledge of the Net Revenues of the City's waterworks.

Section 19. Rate Covenant. The City shall establish, maintain and collect reasonable and just rates and charges for facilities and services afforded and rendered by said water utility, which shall to the extent permitted by law produce sufficient revenues at all times, provided that System Development Charges shall be excluded, to the extent permitted by law, when determining if such rates and charges are sufficient if any Bonds are sold to and for so long as the 2018 Bonds are outstanding and owned by the Authority as part of its DWSRF Program, to provide for the proper operation, repair and maintenance or Operation and Maintenance (as defined in the Financial Assistance Agreement) if the Bonds are sold to and for so long as the 2018 Bonds are outstanding and owned by the Authority through its DWSRF Program, to comply with and satisfy all covenants contained in this ordinance and the Financial Assistance Agreement, to pay all the legal and other necessary expense incident to the operation of such utility, to include maintenance costs, operating charges, upkeep, repairs, interest charges on bonds or other obligations, to provide a sinking fund and debt service reserve for the liquidation of bonds or other evidences of indebtedness, to provide adequate funds to be used as working capital, as well as funds for making extensions, additions, and replacements, and also, for the payment of any taxes that may be assessed against such utility, it being the intent and purpose hereof that such charges shall produce an income sufficient to maintain such utility property in a sound physical and financial condition to render adequate and efficient service. So long as any of the Bonds herein authorized are outstanding, none of the facilities or services afforded or rendered by said system shall be furnished without a reasonable and just charge being made therefor. The City shall pay like charges for any and all services rendered by said utility to the City, and all such payments shall be deemed to be revenues of the utility. Such rates or charges shall, if necessary, be changed and readjusted from time to time so that the revenues therefrom shall always be sufficient to meet the expenses of operation, repair and maintenance of the waterworks or Operation and Maintenance, as the case may be, and said requirements of the Sinking Fund.

Section 20. Additional Bond Provisions. The City reserves the right to authorize and issue additional BANs at any time ranking on a parity with the BANs. The City reserves the right to authorize and issue additional Parity Bonds payable out of the Net Revenues of its waterworks ranking on a parity with the Bonds for the purpose of financing the cost of future additions, extensions and improvements to its waterworks, or to refund obligations, subject to the following conditions:

(a) The interest on and principal of all bonds or other obligations payable from the Net Revenues of the waterworks shall have been paid to date in accordance with the terms thereof, and all credits required to be made into the Waterworks Sinking Fund and the accounts thereof shall have been made to date.

(b) The Reserve Requirement for the Outstanding Bonds, the Bonds and any outstanding Parity Bonds has been funded in accordance with this ordinance and the Reserve Requirement shall be increased proportionately for any additional Parity Bonds.

(c) The amount of Net Revenues of the waterworks in the fiscal year immediately preceding the issuance of any such Parity Bonds shall be not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of the then outstanding bonds and the additional Parity Bonds proposed to be issued; or, prior to the issuance of the Parity Bonds the water rates and charges shall be increased sufficiently so that said increased rates and charges applied to the previous fiscal year's operations would have produced Net Revenues for said year equal to not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of all bonds payable from the revenues of the waterworks, including the additional Parity Bonds proposed to be issued. For purposes of this subsection, the records of the waterworks shall be analyzed and all showings prepared by a certified public accountant employed by the City for that purpose. In addition, for purposes of this subsection, with respect to any Parity Bonds hereafter issued while the 2018 Bonds, or any Bonds sold to the Authority as part of its DWSRF Program, remain outstanding and owned by the Authority as part of its DWSRF Program, Net Revenues may not include any revenues from the System Development Charges unless the Authority provides its consent to include all or some portion of the System Development Charges as part of the Net Revenues or otherwise consents to the issuance of such Parity Bonds without satisfying this subsection (c).

(d) The principal, or mandatory sinking fund redemption dates, of the additional Parity Bonds shall be payable semiannually on January 1 and July 1 and the interest on said additional Parity Bonds shall be payable semiannually on January 1 and July 1 in the years in which such principal and interest are payable.

(e) If any Bonds are sold to and for so long as the 2018 Bonds are outstanding and owned by the Authority as part of its DWSRF Program, (i) the City obtains the consent of the Authority, (ii) the City has faithfully performed and is in compliance with each of its obligations, agreements and covenants contained in the Financial Assistance Agreement and this ordinance, and (iii) the City is in compliance with its waterworks permits, except for non-compliance for which purpose the Parity Bonds are issued, including refunding bonds issued prior to, but part of the overall plan to eliminate such non-compliance.

Section 21. Further Covenants of the City; Maintenance, Insurance, Pledge Not To Encumber, Subordinate Indebtedness, and Contract with Bondholders. For the purpose of further safeguarding the interests of the owners of the Bonds and BANs, it is hereby specifically provided as follows:

(a) All contracts let by the City in connection with the construction of the Project shall be let after due advertisement as required by the laws of the State of Indiana, and all contractors shall be required to furnish surety bonds in an amount equal to 100% of the amount of such contracts, to insure the completion of said contracts in accordance with their terms, and such contractors shall also be required to carry such employers' liability and public liability insurance as are required under the laws of the State of Indiana in the case of public contracts, and shall be governed in all respects by the laws of the State of Indiana relating to public contracts.

(b) The Project shall be constructed under plans and specifications approved by a competent engineer designated by the City. All estimates for work done or material furnished shall first be checked by the engineer and approved by the City.

(c) So long as any of the Bonds or BANs are outstanding, the City shall at all times maintain the waterworks system in good condition, and operate the same in an efficient manner and at a reasonable cost.

(d) So long as any of the Bonds or BANs are outstanding, the City shall maintain insurance coverage, including fidelity bonds, acceptable to the Authority if any Bonds or BANs are sold to and for so long as the 2018 Bonds are outstanding and owned by the Authority as part of its DWSRF Program, on the insurable parts of said works of a kind and in an amount such as would normally be carried by private companies engaged in a similar type of business. All insurance shall be placed with responsible insurance companies qualified to do business under the laws of the State of Indiana. Insurance proceeds collected shall be used in replacing or repairing the property destroyed or damaged; or if not used for that purpose shall be treated and applied as Net Revenues of the works; provided, if the Bonds or BANs are sold to and for so long as the 2018 Bonds are outstanding and owned by the Authority as part of its DWSRF Program, the Authority shall consent to any such treatment and application of such proceeds or awards as Net Revenues of the waterworks or any other different use of such proceeds or awards.

(e) So long as any of the Bonds are outstanding, the City shall not, either directly or indirectly, mortgage, pledge or otherwise encumber such works, or any part thereof, or any interest therein and it shall not sell, lease or otherwise dispose of any portion thereof except to replace equipment which may become worn out or obsolete; provided that the City shall obtain the prior written consent of the Authority if any Bonds or BANs are sold to and for so long as the 2018 Bonds are outstanding and owned by the Authority as part of its DWSRF Program.

(f) If any BANs or Bonds are sold to and for so long as the 2018 Bonds are outstanding and owned by the Authority as part of its DWSRF Program, the City shall not without the prior written consent of the Authority (i) enter into any lease, contract or agreement or incur any other liabilities in connection with the waterworks other than for normal operating expenditures, or (ii) borrow any money (including without limitation any loan from other utilities operated by the City) in connection with the waterworks.

(g) Except as hereinbefore provided in Section 20 of this ordinance, so long as any of the Bonds are outstanding, no additional bonds or other obligations pledging any portion of the revenues of said waterworks shall be authorized, executed or issued by the City, except such as shall be made junior and subordinate in all respects to the Bonds, unless all of the Bonds are redeemed, retired or defeased pursuant to Section 18 hereof coincidentally with the delivery of such additional bonds or other obligations.

(h) The provisions of this ordinance shall constitute a contract by and between the City and the owners of the Bonds and BANs herein authorized, and after the issuance of the Bonds or BANs, this ordinance shall not be repealed or amended in any respect which will materially and adversely affect the rights of the owners of the Bonds or BANs, nor shall the Common Council adopt any law, ordinance or resolution which in any way adversely affecting the rights of such owners so long as any of the Bonds, the BANs, or the interest thereon, remain unpaid. Except in the case of changes described in Section 22 (a)-(f), this ordinance may be amended, however, without the consent of the owners of the Bonds or BANs, if the Common Council determines, in its sole discretion, that such amendment would not adversely affect the owners of the Bonds or BANs; provided, however, that if any Bonds or BANs are sold to and for so long as the 2018 Bonds are outstanding and owned by the Authority as part of its DWSRF Program, the City shall obtain the prior written consent of the Authority.

(i) The provisions of this ordinance shall be construed to create a trust in the proceeds of the sale of the Bonds herein authorized for the uses and purposes herein set forth, and the owners of the Bonds shall retain a lien on such proceeds until the same are applied in accordance with the provisions of this ordinance and of the governing Act. The provisions of this ordinance shall also be construed to create a trust in the portion of the Net Revenues herein directed to be set apart and paid into the Sinking Fund for the uses and purposes of said fund as in this ordinance set forth. The owners of the Bonds shall have all of the rights, remedies and privileges set forth under Indiana law if there be a default in the payment of the principal of or interest on any of the Bonds herein authorized or in the event the City shall fail or refuse to fix and collect sufficient rates and charges for said purposes, or shall fail or refuse to operate and maintain said system and to apply properly the revenues derived from the operation thereof.

(j) For purpose this Section 21, the term "lease" shall include any lease, contract, or other instrument conferring a right upon the City to use property in exchange for a periodic payments made from the revenues of the waterworks, whether the City desires to cause such to be, or by its terms (or its intended effects) is to be, (i) payable as rent, (ii) booked as an expense or an expenditure, or (iii) classified for accounting or other purposes as a capital lease, financing lease, operating lease, non-appropriation leases, installment purchase agreement or lease, or otherwise (including any combination thereof).

Section 22. Amendments with Consent of Bondholders. Subject to the terms and provisions contained in this Section and Section 21(h), and not otherwise, the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the Bonds issued pursuant to this ordinance and then outstanding shall have the right from time to time, to consent to and approve the adoption by the Common Council of the City of such ordinance or ordinances supplemental hereto or amendatory hereof, as shall be deemed necessary or desirable by the City for the purpose of modifying, altering, amending, adding to or rescinding any of the terms or provisions contained in this ordinance, or in any supplemental ordinance; provided, however, that if the Bonds or BANs are sold to the Authority as part of its DWSRF Program, the City shall obtain the prior written consent of the Authority; and provided further, that nothing herein contained shall permit or be construed as permitting:

(a) An extension of the maturity, or mandatory sinking fund redemption date, of the principal of or interest on any Bond issued pursuant to this ordinance; or

(b) A reduction in the principal amount of any Bond or the redemption premium or the rate of interest thereon; or

(c) Except as otherwise noted in Section 2 with respect to the BANs, the creation of a lien upon or a pledge of the revenues or Net Revenues of the waterworks ranking prior to the pledge thereof created by this ordinance; or

(d) A preference or priority of any Bond or Bonds issued pursuant to this ordinance over any other Bond or Bonds issued pursuant to the provisions of this ordinance; or

(e) A reduction in the aggregate principal amount of the Bonds required for consent to such supplemental ordinance; or

(f) A reduction in the Reserve Requirement.

If the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the Bonds outstanding at the time of adoption of such supplemental ordinance shall have consented to and approved the adoption thereof by written instrument to be maintained on file in the office of the Clerk of the City, no owner of any Bond issued pursuant to this ordinance shall have any right to object to the adoption of such supplemental ordinance or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the Common Council of the City from adopting the same, or from taking any action pursuant to the provisions thereof. Upon the adoption of any supplemental ordinance pursuant to the provisions of this section, this ordinance shall be, and shall be deemed, modified and amended in accordance therewith, and the respective rights, duties and obligations under this ordinance of the City and all owners of Bonds then outstanding, shall thereafter be determined, exercised and enforced in accordance with this ordinance, subject in all respects to such modifications and amendments. Notwithstanding anything contained in the foregoing provisions of this ordinance, the rights and obligations of the City and of the owners of the Bonds authorized by this ordinance, and the terms and provisions of the Bonds and this ordinance, or any supplemental or amendatory ordinance, may be modified or altered in any respect with the consent of the City and the consent of the owners of all the Bonds then outstanding.

Section 23. Investment of Funds. (a) The Controller is hereby authorized to invest moneys pursuant to the provisions of this ordinance and IC 5-1-14-3 (subject to applicable requirements of federal law to insure such yield is then current market rate) to the extent necessary or advisable to preserve the exclusion from gross income of interest on the Bonds and BANs under federal law.

(b) The Controller shall keep full and accurate records of investment earnings and income from moneys held in the funds and accounts referenced herein. In order to comply with the provisions of the ordinance, the Controller is hereby authorized and directed to employ consultants or attorneys from time to time to advise the City as to requirements of federal law to preserve the tax exclusion. The Controller may pay any fees as operation expenses of the waterworks.

Section 24. Tax Covenants. In order to preserve the exclusion of interest on the Bonds and BANs from gross income for federal tax purposes under Section 103 of the Internal Revenue Code of 1986 as existing on the date of issuance of the Bonds or BANs, as the case may be ("Code"), and as an inducement to purchasers of the Bonds and BANs, the City represents, covenants and agrees that:

(a) The waterworks will be available for use by members of the general public. Use by a member of the general public means use by natural persons not engaged in a trade or business. No person or entity other than the City or another state or local governmental unit will use more than 10% of the proceeds of the Bonds or BANs or property financed by the Bond or

BAN proceeds other than as a member of the general public. No person or entity other than the City or another state or local governmental unit will own property financed by Bond or BAN proceeds or will have any actual or beneficial use of such property pursuant to a lease, a management or incentive payment contract, arrangements such as take-or-pay or output contracts or any other type of arrangement that conveys other special legal entitlements and differentiates that person's or entity's use of such property from use by the general public, unless such uses in the aggregate relate to no more than 10% of the proceeds of the BANs or the Bonds, as the case may be. If the City enters into a management contract for the waterworks, the terms of the contract will comply with IRS Revenue Procedure 2017-13, as it may be amended, supplemented or superseded for time to time, so that the contract will not give rise to private business use under the Code and the Regulations, unless such use in aggregate relates to no more than 10% of the proceeds of the Bonds or BANs, as the case may be.

(b) No more than 10% of the principal of or interest on the Bonds or BANs is (under the terms of the Bonds, BANs, this ordinance or any underlying arrangement), directly or indirectly, secured by an interest in property used or to be used for any private business use or payments in respect of any private business use or payments in respect of such property or to be derived from payments (whether or not to the City) in respect of such property or borrowed money used or to be used for a private business use.

(c) No more than 5% of the Bond or BAN proceeds will be loaned to any person or entity other than another state or local governmental unit. No more than 5% of the Bond or BAN proceeds will be transferred, directly or indirectly, or deemed transferred to a nongovernmental person in any manner that would in substance constitute a loan of the Bond or BAN proceeds.

(d) The City reasonably expects, as of the date hereof, that the Bonds and BANs will not meet either the private business use test described in paragraph (a) and (b) above or the private loan test described in paragraph (c) above during the entire term of the Bonds or BANs, as the case may be.

(e) No more than 5% of the proceeds of the Bonds or BANs will be attributable to private business use as described in (a) and private security or payments described in (b) attributable to unrelated or disproportionate private business use. For this purpose, the private business use test is applied by taking into account only use that is not related to any government use of proceeds of the issue (Unrelated Use) and use that is related but disproportionate to any governmental use of those proceeds (Disproportionate Use).

(f) The City will not take any action nor fail to take any action with respect to the Bonds or BANs that would result in the loss of the exclusion from gross income for federal tax purposes on the Bonds or BANs pursuant to Section 103 of the Code, nor will the City act in any other manner which would adversely affect such exclusion. The City covenants and agrees not to enter into any contracts or arrangements which would cause the Bonds or BANs to be treated as private activity bonds under Section 141 of the Code.

(g) It shall not be an event of default under this ordinance if the interest on any Bond or BAN is not excludable from gross income for federal tax purposes or otherwise pursuant to any provision of the Code which is not currently in effect and in existence on the date of issuance of the Bonds or BANs, as the case may be.

(h) The City represents that it will rebate any arbitrage profits to the United States in accordance with the Code.

(i) These covenants are based solely on current law in effect and in existence on the date of delivery of such Bonds or BANs, as the case may be.

Section 25. Issuance of BANs. (a) The City, having satisfied all the statutory requirements for the issuance of its Bonds, may elect to issue its BAN or BANs pursuant to a Bond Anticipation Note Purchase Agreement ("Purchase Agreement") to be entered into between the City and the purchaser of the BAN or BANs. If the BANs are sold to the Authority as part of its DWSRF Program, the Financial Assistance Agreement shall serve as the Purchase Agreement. The Common Council hereby authorizes the issuance and execution of the BAN or BANs in lieu of initially issuing the Bonds to provide interim financing for the Project until permanent financing becomes available. It shall not be necessary for the City to repeat the procedures for the issuance of its Bonds, as the procedures followed before the issuance of the BAN or BANs are for all purposes sufficient to authorize the issuance of the Bonds and the use of the proceeds to repay the BAN or BANs.

(a) The Mayor and the Controller are hereby authorized and directed to execute a Purchase Agreement or Financial Assistance Agreement (and any amendments made from time to time) in such form or substance as they shall approve acting upon the advice of counsel. The Mayor, the Clerk and the Controller may also take such other actions or deliver such other certificates as are necessary or desirable in connection with the issuance of the BANs or the Bonds and the other documents needed for the financing as they deem necessary or desirable in connection therewith.

Section 26. Noncompliance with Tax Covenants. Notwithstanding any other provisions of this ordinance, the covenants and authorizations contained in this ordinance ("Tax Sections") which are designed to preserve the exclusion of interest on the Bonds and BANs from gross income under federal law ("Tax Exemption") need not be complied with if the City receives an opinion of nationally recognized bond counsel that any Tax Section is unnecessary to preserve the Tax Exemption.

Section 27. Conflicting Ordinances. All ordinances and parts of ordinances in conflict herewith are hereby repealed; provided that the adoption of this ordinance shall not be construed as amending or repealing the ordinances authorizing the Outstanding Bonds or as adversely affecting the rights of the holders of the Outstanding Bonds.

Section 28. Headings. The headings or titles of the several sections shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this ordinance.

Section 29. Effective Date. This ordinance shall be in full force and effect from and after its passage and execution by the Mayor.

Passed and adopted by the Common Council of the City of Mishawaka, Indiana this ______ day of ________________, 2020.

COMMON COUNCIL OF THE CITY OF
MISHAWAKA, INDIANA

____
Presiding Officer

Attest:

____
Deborah S. Block, IAMC, MMC, City Clerk

Presented by me to the Mayor of the City of Mishawaka, Indiana on the ____ day of ____________, 2020, at the hour of ________ _.m.

____
Deborah S. Block, IAMC, MMC, City Clerk

This ordinance approved and signed by me, the Mayor of the City of Mishawaka, Indiana, on the ____ day of ______________, 2020, at the hour of________ ___.m.

____
David A. Wood Mayor

EXHIBIT A

Description of Project

EXHIBIT B

Form of Financial Assistance Agreement

EXHIBIT A

Description of Project

EXHIBIT B

Form of Financial Assistance Agreement

PROPOSED ORDINANCE NO. 2020- 40

ORDINANCE NO. ________

AN ORDINANCE ADOPTING REVISED RATES AND CHARGES FOR WATER SERVICES FURNISHED BY THE CITY OF MISHAWAKA'S MUNICIPAL WATER UTILITY

WHEREAS, the City of Mishawaka, Indiana, operates a municipal water utility through its agency Mishawaka Utilities (the "Utility") for the purpose of acquiring and distributing water to aid City and surrounding areas; and,

WHEREAS, the existing rates and charges for water services provided by the Utility were placed into effect following approval by the Common Council in Ordinance 5569 on March 6, 2017; and,

WHEREAS, the Utility engaged Baker Tilly Municipal Advisors, LLC to study the Utility's revenue requirements for water service under IC 8-1.5-3.8 and IC 8-1.5-2-28, and develop, in addition to other information, annual pro forma revenues and expenses for the period ending December 31, 2023; and,

WHEREAS, Baker Tilly Municipal Advisors, LLC has studied the Utility's annual revenue requirements and determined that the Utility's annual pro forma operating revenues from water service do not produce an adequate net operating income, and such revenues need to be increased to provide income for the revenue requirements set forth in IC 8-1.5-3-8 and IC 8-1.5-2-28; and,

WHEREAS, the Utility Board of the City of Mishawaka has recommended to the Common Council that it approve by Ordinance the revised rates and charges for water service developed by Baker Tilly Municipal Advisors, LLC, which rates and charges are set forth as part of Exhibits "A" and "B" attached hereto; and,

WHEREAS, the Common Council of the City of Mishawaka, Indiana now finds that (i) the Utility's annual revenues from rates and charges for water service should be increased with the Utility's annual revenues from water service increasing by $1,910,600 in Phase One and $1,939,200 in Phase Two; and (ii) the rates and charges for water service attached hereto as part of Exhibits "A" and "B" have been set to recover the necessary increases in the Utility's annual revenues from water service and so that they are non-discriminatory, "reasonable and just charges" for services within the meaning of IC 8-1.5-3-8;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, THAT:

Section 1. The rates and charges for water service attached hereto as part of Exhibits "A" and "B" are hereby adopted as and for the rates and charges to be utilized by the Utility when charging customers for water service, effective as set forth below.

Section 2. All Ordinances and parts of Ordinances in conflict herewith are hereby repealed; provided, however, that the existing rates and charges for water service shall remain in full force and effect until the rates and charges fixed by this Ordinance shall be approved by the Commission, and until such time as the Order of said Commission approving said new rates and charges shall direct.

Section 3. This Ordinance shall be in full force and effect from and after its passage. Phase One rates shall be effective on January 1, 2022 and phase two rates shall be effective on January 1, 2023.

APPENDIX A

EXHIBIT A

SCHEDULE OF RATES AND CHARGES

MISHAWAKA UTILITY - INSIDE CITY

MISHAWAKA (INDIANA) MUNICIPAL WATER UTILITY

SCHEDULE OF RATES AND CHARGES - INSIDE CITY

(Cont'd)

For the use of and the service rendered by the Water Utility of the City of Mishawaka, Indiana, the following rates and charges based upon the amount of water supplied by said Water Utility.

Residential and Multi-Unit:

(a) Metered rates - Phase One and Phase Two effective January 1, 2022 and January 1, 2023, respectively, in the amounts as follows:

Metered Rates per Month	Current (2021)	Phase One	Phase Two
Rate per 100 Cubic Feet	$2.52	$2.92	$3.33

(b) Customer base charge - Phase One and Phase Two effective January 1, 2022 and January 1, 2023, respectively, in the amounts as follows:

Size of Meter *	Current (2021)	Phase One	Phase Two
5/8" to 3/4"	$8.26	$9.58	$10.92
1"	8.26	9.58	10.92

*Meters over 1 inch are reclassified to commercial and industrial rates

(c) Fire Protection charge - Phase One and Phase Two effective January 1, 2022 and January 1, 2023, respectively, in the amounts as follows:

Customer Charge	Current (2021)	Phase One	Phase Two
Per month	$6.09	$7.06	$8.05

SCHEDULE OF RATES AND CHARGES - INSIDE CITY

(Cont'd)

Small Non-Residential

(a) **Metered Rates Per Month**

	Current (2021)	Phase One	Phase Two
All consumption per 100 cubic feet	$2.57	$2.98	$3.40

(b) **Customer Base Charge**

Each user shall pay a monthly base charge in accordance with the following applicable size meter installed:

Size of Meter	Current (2021)	Phase One	Phase Two
5/8" – 3/4"	$8.26	$9.58	$10.92
1"	16.67	19.34	22.05
1 1/2"	30.66	35.57	40.55
2"	47.41	55.00	62.70
3"	86.54	100.39	114.44

(c) **Fire Protection Charge**

Size of Meter	Current (2021)	Phase One	Phase Two
5/8" - 3/4"	$6.09	$7.06	$8.05
1"	15.22	17.66	20.13
1 1/2"	30.43	35.30	40.24
2"	48.70	56.49	64.40
3"	91.31	105.92	120.75

MISHAWAKA (INDIANA) MUNICIPAL WATER UTILITY

SCHEDULE OF RATES AND CHARGES - INSIDE CITY

(Cont'd)

Large Non-Residential

(a) **Metered Rates Per Month**

	Current (2021)	Phase One	Phase Two
First 7,750 cubic feet	$2.67	$3.10	$3.53
Over 7,750 cubic feet	1.69	1.96	2.23

(b) **Customer Base Charge**

Each user shall pay a monthly base charge in accordance with the following applicable size meter installed:

Size of Meter	Current (2021)	Phase One	Phase Two
4"	$142.43	$165.22	$188.35
6"	282.26	327.42	373.26
8"	449.99	521.99	595.07
10"	645.70	749.01	853.87

(c) **Fire Protection Charge**

Size of Meter	Current (2021)	Phase One	Phase Two
4"	$152.15	$176.49	$201.20
6"	304.36	353.06	402.49
8"	486.98	564.90	643.99
10"	700.02	812.02	925.70

Hydrant Rental

	Current (2021)	Phase One	Phase Two
Private hydrants - per annum	$784.21	$909.68	$1,037.04

Private Fire Protection Service

Sprinkler connection - per annum	Current (2021)	Phase One	Phase Two
1"	$21.79	$25.28	$28.82
1 1/2"	49.11	56.97	64.95
2"	87.16	101.11	115.27
3"	196.09	227.46	259.30
4"	348.63	404.41	461.03
6"	784.21	909.68	1,037.04
8"	1,394.13	1,617.19	1,843.60
10"	2,178.34	2,526.87	2,880.63
12"	3,136.86	3,638.76	4,148.19

MISHAWAKA (INDIANA) MUNICIPAL WATER UTILITY

SCHEDULE OF RATES AND CHARGES - INSIDE CITY

(Cont'd)

Non-Recurring Charges

Refer to Appendix "B".

Current rate effective March 5, 2013.

EXHIBIT B

SCHEDULE OF RATES AND CHARGES

MISHAWAKA UTILITY - OUTSIDE RATES

MISHAWAKA (INDIANA) MUNICIPAL WATER UTILITY

SCHEDULE OF RATES AND CHARGES - OUTSIDE CITY

(Cont'd)

For the use of and the service rendered by the Water Utility of the City of Mishawaka, Indiana, the following rates and charges based upon the amount of water supplied by said Water Utility.

Residential & Multi-Unit:

(a) Metered rates - Phase One and Phase Two effective January 1, 2022 and January 1, 2023, respectively, in the amounts as follows:

Metered Rates per Month	Current (2021)	Phase One	Phase Two	Surcharge Percentage
Rate per 100 Cubic Feet	$2.92	$3.39	$3.86	16%

(b) Customer base charge - Phase One and Phase Two effective January 1, 2022 and January 1, 2023, respectively, in the amounts as follows:

Size of Meter *	Current (2021)	Phase One	Phase Two	Surcharge Percentage
5/8" to 3/4"	$9.75	$11.31	$12.89	18%
1"	9.75	11.31	12.89	18%

*Meters over 1 inch are reclassified to commercial and industrial rates

(c) Fire Protection charge - Phase One and Phase Two effective January 1, 2022 and January 1, 2023, respectively, in the amounts as follows:

Customer Charge	Current (2021)	Phase One	Phase Two
Per month	$6.09	$7.06	$8.05

MISHAWAKA (INDIANA) MUNICIPAL WATER UTILITY

SCHEDULE OF RATES AND CHARGES - OUTSIDE CITY

(Cont'd)

Small Non-Residential

		Current (2021)	Phase One	Phase Two	Surcharge Percentage
(a)	Metered Rates Per Month				
	All Consumption	$2.93	$3.40	$3.88	14%

(b) Customer Base Charge

Each user shall pay a monthly base charge in accordance with the following applicable size meter installed:

Size of Meter	Current (2021)	Phase One	Phase Two	Surcharge Percentage
5/8" - 3/4"	$9.75	$11.31	$12.89	18%
1"	20.39	23.65	26.96	22%
1-1/2"	38.10	44.20	50.39	24%
2"	59.39	68.89	78.53	25%
3"	109.02	126.46	144.16	26%

(c) Fire Protection Charge

Size of Meter	Current (2021)	Phase One	Phase Two
5/8" - 3/4"	$6.09	$7.06	$8.05
1"	15.22	17.66	20.13
1 1/2"	30.43	35.30	40.24
2"	48.70	56.49	64.40
3"	91.31	105.92	120.75

MISHAWAKA (INDIANA) MUNICIPAL WATER UTILITY

SCHEDULE OF RATES AND CHARGES - OUTSIDE CITY

(Cont'd)

Large Non-Residential

(a) Metered Rates Per Month	Current (2021)	Phase One	Phase Two	Surcharge Percentage
First 7,750 cubic feet	$2.50	$2.90	$3.31	(6%)
Over 7,750 cubic feet	1.94	2.25	2.57	15%

(b) Customer Base Charge

Each user shall pay a monthly base charge in accordance with the following applicable size meter installed:

Size of Meter	Current (2021)	Phase One	Phase Two	Surcharge Percentage
4"	$179.94	$208.73	$237.95	26%
6"	357.19	414.34	472.35	27%
8"	569.87	661.05	753.60	27%
10"	818.04	948.93	1,081.78	27%

(c) Fire Protection Charge

Size of Meter	Current (2021)	Phase One	Phase Two
4"	$152.15	$176.49	$201.20
6"	304.36	353.06	402.49
8"	486.98	564.90	643.99
10"	700.02	812.02	925.70

Hydrant Rental	Current (2021)	Phase One	Phase Two
Private hydrants - per annum	$784.21	$909.68	$1,037.04

Private Fire Protection Service Sprinkler connection - per annum	Current (2021)	Phase One	Phase Two
1"	$21.79	$25.28	$28.82
1 1/2"	49.11	56.97	64.95
2"	87.16	101.11	115.27
3"	196.09	227.46	259.30
4"	348.63	404.41	461.03
6"	784.21	909.68	1,037.04
8"	1,394.13	1,617.19	1,843.60
10"	2,178.34	2,526.87	2,880.63
12"	3,136.86	3,638.76	4,148.19

MISHAWAKA (INDIANA) MUNICIPAL WATER UTILITY

SCHEDULE OF RATES AND CHARGES - OUTSIDE CITY

(Cont'd)

Non-Recurring Charges

Refer to Appendix "B".

Current rate effective March 5, 2013.

APPENDIX B

NON-RECURRING CHARGES

MISHAWAKA (INDIANA) MUNICIPAL WATER UTILITY

NON-RECURRING CHARGES

A. Water Account Service Charge - $20.00

B. Sprinkling Meters Turn-on Charge $20.00

C. Service Deposits- Service deposits are set by the Utility and can be up to one-sixth of normal annual bill per service location

D. Failure to Meet Appointment Scheduled Charge - $15.00

E. Dishonored Negotiable Instrument Charge - $20.00

F. Processing/Disconnect Charge

—Disconnect During Office Hours—$25.00

—Additional Reconnect charges after hours—$70.00

—Additional Reconnect charges on Sundays & Holidays— $90.00

G. After Hours Service Charge

After hours & Saturdays - $70.00 minimum 1st 2 hours
After 2 hours call out time an additional $35.00 per hour per man

Sundays and Holidays - $90.00 minimum 1st 2 hours
After 2 hours call out time an additional $45.00 per hour per man

H. Turn Water Services Off/On (For Repair or To Test Plumbing). No charge during office hours 8-5

For after hour charges, refer to item G

I. Late Penalty – 10% of the first $3.00 plus 3% of the balance

J. Meter Tampering Charge

First Offense – Actual cost of parts, labor, equipment and overhead plus cost of service estimated to have been used, based on prior history - $75.00 + damages and a police report filed with police.

Second Offense – Same as above, plus $250.00 + damages.

Subsequent Offenses – Same as second offense, plus disconnection of service

MISHAWAKA (INDIANA) MUNICIPAL WATER UTILITY

NON-RECURRING CHARGES

K. Violation of Fire Service Agreement – Illegal use of fire hydrant

First Offense - $500.00

Subsequent Offense - $1,000.00 and subject to criminal charges

L. Construction Permit Fees

150 day Residential – $65.00

240 day Commercial – $135.00 Per Building or $5.00 per unit (whichever is larger)

320 day Industrial – $600.00 Per Building

M. New Service Address Meter Charges –

Contact Water Department for current cost – 574-258-1652

Meter Size	Charge
5/8" — 3/4" (touch pad)	Actual Current Cost
1"	Actual Current Cost
1 1/2"	Actual Current Cost
2"	Actual Current Cost
3" & Larger	Actual Current Cost

Damage to Existing System Actual cost of repair

N. Meter Test at Customer Request

(No charge for first & second meter testing if second test has been requested after twelve months of the first testing)

Meter Size	Test Fee
5/8" — 1"	$25.00
1 1/2" - 2"	$48.00
3" & larger	Actual Cost

MISHAWAKA (INDIANA) MUNICIPAL WATER UTILITY

NON-RECURRING CHARGES

O. Hydrant Use Agreement

Hydrant Permit Charge – $35.00

Deposit $750.00
Damages to hydrant - repair cost to be deducted from deposit before refund, plus cost of water used, or per month (whichever is larger) $50.00 minimum.
Township Hydrant Use (Fire Department Use Only) $25.00 plus cost of water.

P. Tapping Permit

Existing taps never used and no fee paid at time of installation

Residential	
3/4"	$1,198.00
1"	$1,203.00
11/2"	$1,564.00
2"	$1,738.00
Commercial	
3/4"	Actual Current Cost
1"	Actual Current Cost
11/2"	Actual Current Cost
2"	Actual Current Cost
Commercial/Industrial	
4"	Actual Current Cost
6"	Actual Current Cost
8"	Actual Current Cost
10"	Actual Current Cost
12"	Actual Current Cost

All New Taps – Actual Current Cost

Contact Water Department for current pricing – 574-258-1652

MISHAWAKA (INDIANA) MUNICIPAL WATER UTILITY

NON-RECURRING CHARGES

Q. Lead Service Line Replacement Tap Costs

(Does Not Include Meter)

Size	Cost
5/8" — 3/4"	$1,198.00
1"	$1,203.00
1 1/2"	$1,564.00
2"	$1,738.00

R. Land Improvement Charges

Non-Residential	
Water Main	Charge / Linear Foot
6"	$12.00
8"	$16.00
10"	$20.00
12"	$24.00
14"	$28.00
16"	$32.00
20"	$40.00
24"	$48.00
Residential	
1/2 of the current cost of a 6" water main (100 feet maximum)	

Revised on 03/05/2012

PROPOSED ORDINANCE NO. 2020-41
ORDINANCE NO. _________

An Ordinance of the City of Mishawaka authorizing the issuance of electric utility revenue bonds for the purpose of providing funds to apply on the cost of the construction of certain additions, extensions and improvements to the municipal electric utility of said City and improvements to building space for the utility, providing for the safeguarding of the interests of the owners of said bonds, other matters connected therewith, including the issuance of notes in anticipation of bonds, and repealing ordinances inconsistent herewith

WHEREAS, the City of Mishawaka (the "City") now owns and operates a municipal electric utility in said City in accordance with the provisions of Title 8, Article 1.5 of the Indiana Code, as in effect on the date of delivery of the bonds herein authorized (the "Act"); and

WHEREAS, the Common Council of the City now finds that certain additions, extensions and improvements to the electric utility are necessary and that new building space for the City's municipal utilities will require improvements; and that plans and estimates will be prepared and filed by the engineers employed by the City for the construction of said additions, extensions and improvements, as more fully described on Exhibit A attached hereto (the "Project"), which plans and estimates will be approved by all governmental authorities having jurisdiction; and

WHEREAS, the City has obtained engineers' estimates of the costs for the construction of the Project and will advertise for and receive bids for the Project, which bids will be subject to the City's obtaining funds to pay for said Project; that on the basis of said estimates, the cost of the Project, including incidental expenses, is in an amount not to exceed $34,100,000; and

WHEREAS, the Common Council now finds that the City does not have sufficient funds on hand to apply on the costs of the Project and that it is necessary to finance the costs of the

Project by the issuance of electric utility revenue bonds and, if necessary, bond anticipation notes ("BANS"), in an aggregate principal amount not to exceed $34,100,000; and

WHEREAS, the bonds to be issued pursuant to this ordinance will constitute a first charge against the Net Revenues (as hereinafter defined) of the electric utility, and are to be issued subject to the provisions of the laws of the State of Indiana, including, without limitation, the Act, and the terms and restrictions of this ordinance; and

WHEREAS, the Common Council has been advised the City's municipal sewage works and waterworks will also utilize the new building space being financed under this ordinance and the sewage works and waterworks will each contribute to the payment of the bonds issued hereunder with payments to the City's electric utility ("Sewage Works and Waterworks Payments"); and

WHEREAS, the Common Council has been advised that the Sewage Works and Waterworks Payments should be used to pay the principal of and interest on the bonds issued hereunder and shall be deemed as Net Revenues of the City's electric utility; and

WHEREAS, the City desires to authorize the issuance of BANs hereunder, if necessary, to provide interim financing for the Project and to authorize the refunding of the BANs, if issued; and

WHEREAS, the Common Council has been advised that it may be cost efficient to purchase municipal bond insurance and/or a debt service reserve surety for the bonds authorized herein; and

WHEREAS, the City's municipal electric utility is not subject to the jurisdiction of the Indiana Utility Regulatory Commission; and

WHEREAS, the Common Council now finds that all conditions precedent to the adoption of an ordinance authorizing the issuance of said bonds and BANs have been complied with in accordance with the provisions of the Act; now, therefore,

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA:

Section 1. Issuance of Bonds and BANs. (a) The City, being the owner of and engaged in operating a municipal electric utility furnishing the City, its inhabitants and the residents adjacent thereto, with electric current for public, domestic and industrial uses, now proceed with the Project, the cost of which shall not exceed $34,100,000, plus investment earnings on the BAN and bond proceeds, without further authorization from the Common Council, and the financing thereof by the issuance of revenue bonds pursuant to and in the manner prescribed by the Act, which revenue bonds shall be payable solely out of the Net Revenues (herein defined as gross revenues after deduction only for the reasonable expenses of operation, repair and maintenance, excluding transfers for payment in lieu of property taxes ("PILOTs")) of said electric utility, including all additions and improvements thereto and replacements thereof subsequently constructed or acquired of said electric utility. So long as the bonds issued under this ordinance are outstanding, the Net Revenues shall include the Sewage Works and Waterworks Payments. The terms "municipal electric utility," "electric utility," "utility," "electric utility system," "system," and words of like import where used in this ordinance shall be construed to mean and include the existing electric utility and all real estate and equipment used in connection therewith and appurtenances thereto, and all extensions, additions and improvements thereto and replacements thereof now or at any time hereafter constructed or acquired.

(b) That said Project shall be constructed and installed in accordance with the plans and estimates to be prepared by the engineers employed for the Project.

(c) The City shall issue, if necessary, its BANs for the purpose of procuring interim financing to apply on the costs of said Project. The City shall issue its BANs in an amount not to exceed Thirty-four Million One Hundred Thousand Dollars ($34,100,000) to be designated "Electric Utility Bond Anticipation Notes." The BANs shall be sold at not less than 99% of their par value, shall be numbered consecutively from 1 upward, shall be in multiples of $1 as designated in the purchase agreement for the BANs, shall be dated as of the date of delivery thereof, and shall bear interest at a rate not to exceed 4% per annum (the exact rate or rates to be determined through bidding or negotiation) payable either (i) at maturity or upon redemption, or (ii) semiannually on January 1 and July 1 in each year, beginning with the first January 1 or the first July 1 which is at least six full months following delivery of the BANs, and semiannually thereafter. Principal on the BANs will be payable no later than five (5) years from their date of delivery. The BANs are subject to renewal or extension at an interest rate or rates not to exceed 4% per annum (the exact rate or rates to be determined through bidding or negotiation). The term of the BANs and all renewal BANs may not exceed five years from the date of delivery of the initial BANs. The BANs shall be registered in the name of the purchasers thereof. The BANs may be paid for in installments.

The BANs shall be issued pursuant to IC 5-1.5-8-6.1 if sold to the Indiana Bond Bank or pursuant to IC 5-1-14-5 if sold to a financial institution or any other purchaser. The principal of and interest on the BANs shall be payable from the issuance of revenue bonds pursuant to and in the manner prescribed by the Act. Interest on the BANs is also payable from Net Revenues, subject to the prior payment of any bonds issued under this ordinance. The City may use any legally available revenues to pay the principal of and interest on the BANs. The revenue bonds will be payable solely out of and constitute a first charge against the Net Revenues of the electric utility of the City, including all additions and improvements thereto and replacements thereof subsequently constructed or acquired.

(d) The City shall issue its revenue bonds designated "Electric Utility Revenue Bonds of 20__" (to be completed with the year of issuance), in an aggregate principal amount not to exceed Thirty-four Million One Hundred Thousand Dollars ($34,100,000) for the purpose of procuring funds to apply on the funding of the costs of said Project, refunding the BANs, if issued, and the payment of costs of issuance, including premiums for municipal bond insurance and/or a debt service reserve surety.

(e) The bonds shall be issued in the denomination of Five Thousand Dollars ($5,000) each or integral multiples thereof, numbered consecutively from 1 upward, dated as of the date of delivery thereof, and shall bear interest at a rate or rates not exceeding 5% per annum (the exact rate or rates to be determined by bidding), payable semiannually on January 1 and July 1, beginning on the first January 1 or the first July 1 after delivery of the bonds as determined by the Controller, with the advice of the City's municipal advisor. The bonds shall be sold at a price not less than 99% of the par value thereof, and shall mature semiannually or be subject to mandatory sinking fund redemption on January 1 and July 1, over a period ending not later than

January 1, 2044 and in such principal amounts as will match the economic lives of the portions of the Project being financed under this ordinance.

Interest on the bonds shall be calculated according to a 360-day calendar year containing twelve 30-day months. Interest on the BANs may be calculated according to a 360-day calendar year containing twelve 30-day months or an actual 365-day calendar year.

All or a portion of the bonds may be issued as one or more term bonds, upon election of the successful bidder. Such term bonds shall have a stated maturity or maturities on January 1 or July 1 in the years as determined by the successful bidder, but in no event later than the final serial maturity of the bonds as established in accordance with the above paragraph. The term bonds shall be subject to mandatory sinking fund redemption and final payment(s) at maturity at 100% of the principal amount thereof, plus accrued interest to the redemption date, on principal payment dates which are hereinafter determined in accordance with the above paragraph.

Section 2. Registrar and Paying Agent; Book Entry Provisions. The Controller is hereby authorized to contract with a qualified institution to serve as Registrar and Paying Agent for the bonds ("Registrar" or "Paying Agent"). The Registrar is hereby charged with the responsibility of authenticating the bonds. The Controller is hereby authorized to enter into such agreements or understandings with the Registrar on the date of issuance of the bonds, or at any later date until all the bonds mature or are redeemed, as will enable the institution to perform the services required of registrar and paying agent for the bonds as set forth herein. The Controller is further authorized to pay such fees as the Registrar may charge for the services it provides as Registrar and Paying Agent and such fees may be paid from the Electric Utility Sinking Fund created in Section 13 hereof to pay the principal of and interest on the bonds and fiscal agency charges.

As to the BANs and as to the bonds, if sold to a purchaser that does not object to such designation, the Controller may be designated the Registrar and Paying Agent and, in that case, will be charged with the performance of all of the duties and responsibilities of Registrar and Paying Agent.

The principal of the bonds shall be payable at the principal office of the Paying Agent. All payments of interest on the bonds and all payments of interest and principal on the BANs shall be paid by check mailed one business day prior to the payment date to the registered owners thereof as of the fifteenth day of the month immediately preceding such interest payment date ("Record Date"), at the addresses as they appear on the registration books kept by the Registrar or at such other address as is provided to the Paying Agent in writing by such registered owner. Notwithstanding anything to the contrary herein, the bonds shall not be required to be presented or surrendered to receive payment in connection with any mandatory sinking fund redemption until the final maturity date of the bonds or earlier payment in full of the bonds. If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Paying Agent shall be instructed to wire transfer payments by 1:00 p.m. (New York City time) so such payments are received at the depository by 2:30 p.m. (New York City time). Payments on the BANs may also be made by wire transfer. All payments on the bonds and BANs shall be made in any lawful money of the United States of

America, which on the date of such payment, shall be legal tender for the payment of public and private debts.

Each bond shall be transferable or exchangeable only upon the books of the City kept for that purpose at the principal office of the Registrar by the registered owner thereof in person, or by its attorney duly authorized in writing, upon surrender of such bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the registered owner, or its attorney duly authorized in writing, and thereupon a new fully registered bond or bonds in an authorized aggregate principal amount and of the same maturity, shall be executed and delivered in the name of the transferee or transferees or the registered owner, as the case may be, in exchange therefor. The costs of such transfer or exchange shall be borne by the City except for any tax or governmental charge required to be paid with respect to the transfer or exchange, which taxes or governmental charges are payable by the person requesting such transfer or exchange. The City, Registrar and Paying Agent for the bonds may treat and consider the person in whose name such bonds are registered as the absolute owner thereof for all purposes including for the purpose of receiving payment of, or on account of, the principal thereof and interest due thereon.

Interest on such bonds shall be payable from the interest payment date to which interest has been paid next preceding the authentication date of the bonds unless the bonds are authenticated after the Record Date and on or before such interest payment date in which case they shall bear interest from such interest payment date, or unless the bonds are authenticated on or before the Record Date preceding the first interest payment date in which case they shall bear interest from the original date of the bonds until the principal shall be fully paid.

The City has determined that it may be beneficial to the City to have the bonds held by a central depository system pursuant to an agreement between the City and The Depository Trust Company, New York, New York ("Depository Trust Company") and have transfers of the bonds effected by book-entry on the books of the central depository system ("Book Entry System"). The bonds may be initially issued in the form of a separate single authenticated fully registered bond for the aggregate principal amount of each separate maturity of the bonds. In such case, upon initial issuance, the ownership of such bonds shall be registered in the register kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company.

With respect to the bonds registered in the register kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company, the City and the Paying Agent shall have no responsibility or obligation to any other holders or owners (including any beneficial owner ("Beneficial Owner")) of the bonds with respect to (i) the accuracy of the records of the Depository Trust Company, CEDE & CO., or any Beneficial Owner with respect to ownership questions, (ii) the delivery to any bondholder (including any Beneficial Owner) or any other person, other than the Depository Trust Company, of any notice with respect to the bonds including any notice of redemption, or (iii) the payment to any bondholder (including any Beneficial Owner) or any other person, other than the Depository Trust Company, of any amount with respect to the principal of, or premium, if any, or interest on the bonds except as otherwise provided herein.

No person other than the Depository Trust Company shall receive an authenticated bond evidencing an obligation of the City to make payments of the principal of and premium, if any, and interest on the bonds pursuant to this ordinance. The City and the Registrar and Paying

Agent may treat as and deem the Depository Trust Company or CEDE & CO. to be the absolute bondholder of each of the bonds for the purpose of (i) payment of the principal of and premium, if any, and interest on such bonds; (ii) giving notices of redemption and other notices permitted to be given to bondholders with respect to such bonds; (iii) registering transfers with respect to such bonds; (iv) obtaining any consent or other action required or permitted to be taken of or by bondholders; (v) voting; and (vi) for all other purposes whatsoever. The Paying Agent shall pay all principal of and premium, if any, and interest on the bonds only to or upon the order of the Depository Trust Company, and all such payments shall be valid and effective fully to satisfy and discharge the City's and the Paying Agent's obligations with respect to principal of and premium, if any, and interest on the bonds to the extent of the sum or sums so paid. Upon delivery by the Depository Trust Company to the City of written notice to the effect that the Depository Trust Company has determined to substitute a new nominee in place of CEDE & CO., and subject to the provisions herein with respect to consents, the words "CEDE & CO." in this ordinance shall refer to such new nominee of the Depository Trust Company. Notwithstanding any other provision hereof to the contrary, so long as any bond is registered in the name of CEDE & CO., as nominee of the Depository Trust Company, all payments with respect to the principal of and premium, if any, and interest on such bonds and all notices with respect to such bonds shall be made and given, respectively, to the Depository Trust Company as provided in a representation letter from the City to the Depository Trust Company.

Upon receipt by the City of written notice from the Depository Trust Company to the effect that the Depository Trust Company is unable or unwilling to discharge its responsibilities and no substitute depository willing to undertake the functions of the Depository Trust Company hereunder can be found which is willing and able to undertake such functions upon reasonable and customary terms, then the bonds shall no longer be restricted to being registered in the register of the City kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company, but may be registered in whatever name or names the bondholders transferring or exchanging the bonds shall designate, in accordance with the provisions of this ordinance.

If the City determines that it is in the best interest of the bondholders that they be able to obtain certificates for the fully registered bonds, the City may notify the Depository Trust Company and the Registrar, whereupon the Depository Trust Company will notify the Beneficial Owners of the availability through the Depository Trust Company of certificates for the bonds. In such event, the Registrar shall prepare, authenticate, transfer and exchange certificates for the bonds as requested by the Depository Trust Company and any Beneficial Owners in appropriate amounts, and whenever the Depository Trust Company requests the City and the Registrar to do so, the Registrar and the City will cooperate with the Depository Trust Company by taking appropriate action after reasonable notice (i) to make available one or more separate certificates evidencing the fully registered bonds of any Beneficial Owner's Depository Trust Company account or (ii) to arrange for another securities depository to maintain custody of certificates for and evidencing the bonds.

If the bonds shall no longer be restricted to being registered in the name of a Depository Trust Company, the Registrar shall cause said bonds to be printed in blank in such number as the Registrar shall determine to be necessary or customary; provided, however, that the Registrar shall not be required to have such bonds printed until it shall have received from the City indemnification for all costs and expenses associated with such printing.

In connection with any notice or other communication to be provided to bondholders by the City or the Registrar with respect to any consent or other action to be taken by bondholders, the City or the Registrar, as the case may be, shall establish a record date for such consent or other action and give the Depository Trust Company notice of such record date not less than fifteen (15) calendar days in advance of such record date to the extent possible.

So long as said bonds are registered in the name of the Depository Trust Company or CEDE & CO. or any substitute nominee, the City and the Registrar and Paying Agent shall be entitled to request and to rely upon a certificate or other written representation from the Beneficial Owners of the bonds or from the Depository Trust Company on behalf of such Beneficial Owners stating the amount of their respective beneficial ownership interests in the bonds and setting forth the consent, advice, direction, demand or vote of the Beneficial Owners as of a record date selected by the Registrar and the Depository Trust Company, to the same extent as if such consent, advice, direction, demand or vote were made by the bondholders for purposes of this ordinance and the City and the Registrar and Paying Agent shall for such purposes treat the Beneficial Owners as the bondholders. Along with any such certificate or representation, the Registrar may request the Depository Trust Company to deliver, or cause to be delivered, to the Registrar a list of all Beneficial Owners of the bonds, together with the dollar amount of each Beneficial Owner's interest in the bonds and the current addresses of such Beneficial Owners.

The BANs may also be issued in book-entry form and in that case all of the provisions set forth in this Section 2 shall apply.

Section 3. Redemption of BANs and Bonds. (a) The BANs are prepayable by the City, in whole or in part, upon thirty days' notice to the owner of the BANs at any time after the BANs have been outstanding for 180 days without any premium.

(b) The bonds are redeemable at the option of the City, but no earlier than eight (8) years after their date of delivery and on any date thereafter, in whole or in part, in the order of maturity as determined by the City, and by lot within a maturity, on thirty (30) days' notice, at face value, with a premium not to exceed 1%, plus accrued interest to the date fixed for redemption. The exact redemption features shall be established by the Controller, with the advice of the City's municipal advisor, prior to the sale of the bonds.

If any bond is issued as a term bond, the Paying Agent shall credit against the mandatory sinking fund requirement for the bonds maturing as term bonds, and corresponding mandatory redemption obligation, in the order determined by the City, any bonds maturing as term bonds which have previously been redeemed (otherwise than as a result of a previous mandatory redemption requirement) or delivered to the Registrar for cancellation or purchased for cancellation by the Paying Agent and not theretofore applied as a credit against any redemption obligation. Each bond maturing as a term bond so delivered or canceled shall be credited by the Paying Agent at 100% of the principal amount thereof against the mandatory sinking fund obligation on such mandatory sinking fund date, and any excess of such amount shall be credited on future redemption obligations, and the principal amount of the bonds to be redeemed by operation of the mandatory sinking fund requirement shall be accordingly reduced; provided, however, the Paying Agent shall credit only such bonds maturing as term bonds to the extent received on or before forty-five (45) days preceding the applicable mandatory redemption date.

If less than an entire maturity is called for redemption at one time, the bonds to be redeemed shall be selected by lot within a maturity by the Registrar. Each Five Thousand Dollars ($5,000) principal amount shall be considered a separate bond for purposes of optional and mandatory redemption. If some bonds are to be redeemed by optional and mandatory sinking fund redemption on the same date, the Registrar shall select by lot the bonds for optional redemption before selecting the bonds by lot for the mandatory sinking fund redemption.

In either case, notice of such redemption shall be mailed to the registered owner not less than thirty (30) days prior to the date fixed for redemption at the address of the registered owner as shown on the registration record of the City as of the date which is forty-five (45) days prior to said redemption date, unless such redemption notice is waived by the owner of the bond or bonds redeemed. The notice shall specify the date and place of redemption and sufficient identification of the bonds called for redemption. The place of redemption may be determined by the City. Interest on the bonds so called for redemption shall cease on the redemption date fixed in such notice if sufficient funds are available at the place of redemption to pay the redemption price on the date so named.

Section 4. Execution. Each of said bonds and BANs shall be executed in the name of the City by the manual or facsimile signature of the Mayor, countersigned by the Controller, attested by the manual or facsimile signature of its Clerk and the seal of the City shall be affixed, imprinted or impressed to or on each of said bonds and BANs manually, by facsimile or any other means; and said officials, by the execution of a Signature and No Litigation Certificate, shall adopt as and for their own proper signatures the facsimile signatures appearing on said bonds and BANs. In case any officer whose signature or facsimile signature appears on the bonds or BANs shall cease to be such officer before the delivery of the bonds or BANs, the signature of such officer shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery. The bonds shall also be authenticated by the manual signature of an authorized representative of the Registrar and no bond shall be valid or become obligatory for any purpose until the certificate of authentication thereon has been so executed.

Said bonds and BANs shall have all of the qualities and incidents of negotiable instruments under the laws of the State of Indiana, subject to the provisions for registration herein.

Section 5. Form of Bonds. The form and tenor of said bonds shall be substantially as follows, with such changes as are necessary, all blanks to be filled in properly prior to delivery thereof:

[Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City of Mishawaka, Indiana, or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.]

UNITED STATES OF AMERICA

STATE OF INDIANA COUNTY OF ST. JOSEPH

CITY OF MISHAWAKA
ELECTRIC UTILITY REVENUE BOND OF 20__

Interest Rate	Maturity Date	Original Date	Authentication Date	CUSIP

REGISTERED OWNER:

PRINCIPAL SUM:

The City of Mishawaka ("City"), in St. Joseph County, State of Indiana, for value received, hereby promises to pay to the Registered Owner named above ("Registered Owner") or registered assigns, solely out of the special revenue fund hereinafter referred to, the Principal Sum set forth above ("Principal Sum") [on the Maturity Date set forth above] OR [on the dates and in the amounts as shown on Exhibit A attached hereto] (unless this bond is subject to and shall have been duly called for redemption and payment as provided for herein), and to pay interest hereon until the Principal Sum is paid at the [Interest Rate per annum specified above] OR interest rates per annum as set for on Exhibit A attached hereto], from the interest payment date to which interest has been paid next preceding the Authentication Date of this bond unless this bond is authenticated after the fifteenth day of the month preceding an interest payment date and on or before such interest payment date in which case it shall bear interest from such interest payment date, or unless this bond is authenticated on or before ________________, in which case it shall bear interest from the Original Date, which interest is payable semiannually on **January 1 and July 1** beginning ______________, 20__. Interest shall be calculated according to a 360-day calendar year containing twelve 30-day months.

The principal of this bond is payable at the principal office of ______________________________ ("Registrar" or "Paying Agent"), in the City of ________________________, ______. All payments of interest on this bond shall be paid by check mailed one business day prior to the interest payment date to the Registered Owner hereof, as of the fifteenth day of the month immediately preceding such interest payment date, at the address as it appears on the registration books kept by the Registrar or at such other address as is provided to the Paying Agent in writing by the registered owner. [Notwithstanding anything to the contrary herein, this bond shall not be required to be presented or surrendered to receive payment in connection with any mandatory sinking fund redemption until the final maturity date of this bond or earlier payment in full of this bond.] If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Paying Agent shall be instructed to wire transfer payments by 1:00 p.m. (New York City time) so such payments are received at the depository by 2:30 p.m. (New York City time). All payments on the bond shall be made in any lawful money of the United States of America, which on the dates of such payment, shall be legal tender for the payment of public and private debts.

THE CITY SHALL NOT BE OBLIGATED TO PAY THIS BOND OR THE INTEREST HEREON EXCEPT FROM THE HEREINAFTER DESCRIBED SPECIAL REVENUE FUND, AND NEITHER THIS BOND NOR THE ISSUE OF WHICH IT IS A PART SHALL IN ANY

RESPECT CONSTITUTE A CORPORATE INDEBTEDNESS OF THE CITY WITHIN THE PROVISIONS AND LIMITATIONS OF THE CONSTITUTION OF THE STATE OF INDIANA.

This bond is one of an authorized issue of bonds of the City, of like date, tenor and effect, except as to numbering, interest rates and dates of maturity in the total amount of $______________; numbered consecutively from 1 up; issued for the purpose of providing funds to pay the costs of certain additions, extensions and improvements to the municipally owned electric utility system of the City, [refunding notes issued in anticipation of bonds] and to pay issuance expenses [, including premiums for municipal bond insurance and/or a debt service reserve surety]. This bond is issued pursuant to an Ordinance adopted by the Common Council of the City on the __ day of ________________, 20__, entitled "An Ordinance of the City of Mishawaka authorizing the issuance of electric utility revenue bonds for the purpose of providing funds to apply on the cost of the construction of certain additions, extensions and improvements to the municipal electric utility of said City and improvements to building space for the utility, providing for the safeguarding of the interests of the owners of said bonds, other matters connected therewith, including the issuance of notes in anticipation of bonds, and repealing ordinances inconsistent herewith" ("Ordinance"), and in accordance with the provisions of Indiana law, including without limitation Indiana Code 8-1.5 as in effect on the date of delivery of the bonds of this issue ("Act"), the proceeds of which are to be applied solely to the construction of said additions, extensions and improvements, [refunding said interim notes issued in anticipation of bonds,] and the incidental expenses incurred in connection therewith.

Pursuant to the provisions of the Act and the Ordinance, the principal of and interest on this bond and all other bonds of said issue and any bonds hereafter issued on a parity herewith, are payable solely from the Electric Utility Sinking Fund created by the Ordinance ("Sinking Fund") to be provided from the Net Revenues (defined as the gross revenues after deduction only for the reasonable expenses of operation, repair and maintenance, excluding transfers for payment in lieu of property taxes) of the electric utility, including the works authorized by the Ordinance to be acquired and constructed and all additions and improvements thereto and replacements thereof subsequently constructed or acquired. So long as the bonds issued under the Ordinance are outstanding, the Net Revenues shall include the Sewage Works and Waterworks Payments (as defined in the Ordinance). This bond and the issue of which it is a part constitute a first charge upon the Net Revenues.

The City irrevocably pledges the entire Net Revenues of said electric utility to the prompt payment of the principal and interest on this bond, and any bonds ranking on a parity therewith, to the extent necessary for that purpose, and covenants that it will cause to be fixed, maintained and collected such rates and charges for service rendered by said utility as are sufficient in each year for the payment of the proper and reasonable expenses of operation, repair and maintenance of said utility, and for the payment of the sums required to be paid into its Sinking Fund under the provisions of the Ordinance and the Act. In the event the City or the proper officers thereof shall fail or refuse to so fix, maintain and collect such rates or charges, or if there be a default in the payment of the interest on or principal of this bond, the owner of this bond shall have all of the rights and remedies provided for under Indiana law.

The City further covenants that it will set aside and pay into its Sinking Fund monthly, as available, or more often if necessary, a sufficient amount of the Net Revenues of said works for payment of (a) the interest on all bonds which by their terms are payable from the revenues of said electric utility, as such interest shall fall due, (b) the necessary fiscal agency charges for paying bonds and interest, (c) the principal of all bonds which by their terms are payable from the revenues of said electric utility, as such principal shall fall due, and (d) an additional amount as a margin of safety to [create and] maintain the reserve required by the Ordinance. Such required payments shall constitute a first charge upon all the Net Revenues of said electric utility.

The bonds of this issue maturing on or after ___________1, 20__, are redeemable at the option of the City on _______ 1, 20__, or any date thereafter, on thirty (30) days' notice, in whole or in part, in the order of maturity determined by the City and by lot within a maturity, at face value together with the following premiums:

___% if redeemed on _______ 1, 20__,
or thereafter on or before ___________, 20__;
___% if redeemed on ________ 1, 20__,
or thereafter on or before ___________, 20__;
0% if redeemed on ________ 1, 20__,
or thereafter prior to maturity;

plus, in each case accrued interest to the date fixed for redemption.

[The bonds maturing on _______ 1, ____________ are subject to mandatory sinking fund redemption prior to maturity, at a redemption price equal to the principal amount thereof plus accrued interest, on the dates and in the amounts set forth below:

_________ Term Bond

Date	Amount
*	

*Final Maturity]

If less than an entire maturity is called for redemption at one time, the bonds to be redeemed shall be selected by lot within a maturity by the Registrar. Each Five Thousand Dollars ($5,000) principal amount shall be considered a separate bond for purposes of optional [and mandatory] redemption. [If some bonds are to be redeemed by optional and mandatory sinking fund redemption on the same date, the Registrar shall select by lot the bonds for optional redemption before selecting the bonds by lot for the mandatory sinking fund redemption.]

In either case, notice of such redemption shall be mailed to the address of the registered owner as shown on the registration records of the City, as of the date which is forty-five (45) days prior to such redemption date, not less than thirty (30) days prior to the date fixed for redemption. The notice shall specify the date and place of redemption and sufficient identification of the bonds called for redemption. The place of redemption may be determined by the City. Interest on the bonds so called for redemption shall cease on the redemption date fixed in such notice if sufficient funds are available at the place of redemption to pay the redemption price on the date so named.

If this bond shall not be presented for payment or redemption on the date fixed therefor, the City may deposit in trust with its depository bank, an amount sufficient to pay such bond or the redemption price, as the case may be, and thereafter the registered owner shall look only to the funds so deposited in trust with said bank for payment and the City shall have no further obligation or liability in respect thereto.

This bond is transferable or exchangeable only upon the books of the City kept for that purpose at the office of the Registrar, by the Registered Owner hereof in person, or by its attorney duly authorized in writing, upon surrender of this bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the Registered Owner, or its attorney duly authorized in writing, and thereupon a new fully registered bond or bonds in an authorized aggregate principal amount and of the same maturity, shall be executed and delivered in the name of the transferee or transferees or to the Registered Owner, as the case may be, in exchange therefor. This bond may be transferred or exchanged without cost to the Registered Owner except for any tax or governmental charges required with respect to the transfer. The City, the Registrar and any paying agent for this bond may treat and consider the person in whose name this bond is registered as the absolute owner hereof for all purposes including for the purpose of receiving payment of, or on account of, the principal hereof and interest due hereon.

[The bonds shall be initially issued in a Book Entry System (as defined in the Ordinance). The provisions of this bond and of the Ordinance are subject in all respects to the provisions of the Letter of Representations between the City and The Depository Trust Company, or any substitute agreement, effecting such Book Entry System.]

THE OWNER OF THIS BOND, BY THE ACCEPTANCE HEREOF, HEREBY AGREES TO ALL THE TERMS AND PROVISIONS CONTAINED IN THE ORDINANCE. This bond is subject to defeasance prior to payment or redemption as provided in the Ordinance. The Ordinance may be amended without the consent of the owners of the bonds as provided in the Ordinance if the Common Council determines, in its sole discretion, that the amendment shall not adversely affect the rights of any of the owners of the bonds.

The bonds maturing in any one year are issuable only in fully registered form in the denomination of $5,000 or any integral multiple thereof not exceeding the aggregate principal amount of the bonds maturing in such year.

It is hereby certified and recited that all acts, conditions and things required to be done precedent to and in the execution, issuance and delivery of this bond have been done and performed in regular and due form as provided by law.

This bond shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been executed by an authorized representative of the Registrar.

IN WITNESS WHEREOF, the City of Mishawaka, in St. Joseph County, Indiana, has caused this bond to be executed in its corporate name by the manual or facsimile signature of its Mayor, countersigned by the manual or facsimile signature of the Controller, its corporate seal to be hereunto affixed, imprinted or impressed by any means and attested manually or by facsimile by its Clerk.

CITY OF MISHAWAKA, INDIANA

(SEAL)

By ______________________
Mayor

COUNTERSIGNED:

By: ______________________
Controller

Attest:

____
Clerk

REGISTRAR'S CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds described in the within-mentioned Ordinance.

______________________,
as Registrar

By ______________________________
Authorized Representative

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto ______________________________ the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints ____________________, attorney, to transfer the within bond in the books kept for the registration thereof with full power of substitution in the premises.

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution participating in a Securities Transfer Association recognized signature guarantee program.

NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within bond in every particular, without alteration or enlargement or any change whatsoever.

Section 6. Authorization for Preparation and Sale of the BANs and the Bonds; Official Statement; Bond Insurance. The Controller is hereby authorized and directed to have said bonds and BANs prepared, and the Mayor, Controller and Clerk are hereby authorized and directed to execute and attest said bonds and BANs in the form and manner herein provided. The Controller is hereby authorized and directed to deliver said bonds and BANs to the purchasers thereof after sale made in accordance with the provisions of this ordinance, provided that at the time of said delivery the Controller shall collect the full amount which the purchaser has agreed to pay therefor, which amount shall not be less than 99% of the par value of the BANs or not less than 99% of the par value of said bonds, as the case may be, plus accrued interest to the date of delivery. The City may receive payment on the BANs in installments. The bonds herein authorized, when fully paid for and delivered to the purchaser, shall be the binding special revenue obligations of the City, payable out of the Net Revenues of the electric utility to be set aside into the Electric Utility Sinking Fund, as herein provided. The proceeds derived from the sale of said bonds shall be and are hereby set aside for payment of the costs of the Project, the refunding of the BANs, if issued, and the expenses necessarily incurred in connection with the bonds and BANs. The proper officers of the City are hereby directed to draw all proper and necessary warrants, and to do whatever acts and things which may be necessary to carry out the provisions of this ordinance.

Distribution of an Official Statement (preliminary and final) prepared by Baker Tilly Municipal Advisors, LLC on behalf of the City, is hereby authorized and approved and the Mayor or the Controller are authorized and directed to execute the Official Statement on behalf of the City in a form consistent with this ordinance. The Mayor or the Controller is authorized to designate the preliminary Official Statement as "nearly final" for purposes of Rule 15c2-12 as promulgated by the Securities and Exchange Commission ("Rule").

If an Official Statement is not required upon delivery of the bonds, the City shall obtain an investment letter from the purchaser of the bonds which satisfies federal and state securities laws applicable to the bonds.

In the event the financial advisor to the City certifies to the City that it would be economically advantageous for the City to obtain a municipal bond insurance policy the City hereby authorizes the purchase of such an insurance policy. The acquisition of a municipal bond insurance policy is hereby deemed economically advantageous in the event the difference between the present value cost of (a) the total debt service on the bonds if issued without municipal bond insurance and (b) the total debt service on the bonds if issued with municipal bond insurance, is greater than the cost of the premium on the municipal bond insurance policy. If such an insurance policy is purchased, the Mayor and the Controller are hereby authorized to execute and deliver all agreements with the provider of the policy to the extent necessary to comply with the terms of such insurance policy and the commitment to issue such policy. Such agreement shall be deemed a part of this ordinance for all purposes and is hereby incorporated herein by reference.

Section 7. Sale of Bonds; Award of Bonds. Prior to the sale of said bonds, the Controller shall cause to be published either (i) a notice of such sale in the newspaper or newspapers which meet the requirements of IC 5-3-1, two times, at least one week apart, the first publication made at least fifteen (15) days before the date of the sale and the second publication being made at least three (3) days before the date of the sale, or (ii) a notice of intent to sell in the newspaper or newspapers which meet the requirements of IC 5-3-1 and the *Indianapolis Business Journal*, all in accordance with IC 5-1-11 and IC 5-3-1. A notice or summary notice of sale may also be published in the *Court & Commercial Record* or in *The Bond Buyer* in New York, New York. The notice shall state the character and amount of the bonds, the maximum rates of interest thereon, the terms and conditions upon which bids will be received and the sale made, and such other information as the Controller and the attorneys employed by the City shall deem advisable, and any summary notice may contain any information deemed so advisable. Said notice shall provide, among other things, that bidders for said bonds will be required to name the rate or rates of interest which the bonds are to bear, not exceeding the maximum rate hereinbefore fixed, and that such interest rate or rates shall be in multiples of one-eighth (1/8) or one-hundredth (1/100) of one percent (1%). The notice may provide that the rate bid on a maturity shall be equal to or greater than the rate bid on the immediately preceding maturity. The notice will also state that the winning bidder will agree to assist the City in establishing the issue price of the bonds under Treas. Reg. Section 1.148-1(f) ("Issue Price Regulation"). The criteria for establishing the issue price under the Issue Price Regulation shall be set forth in the preliminary Official Statement and/or the bid form. The notice may provide, among other things, that electronic bidding will be permitted and that the winning bidder shall be required to submit a certified or cashier's check or wire transfer in an amount equal to 1% of the principal amount of the bonds described in the notice within twenty-four hours of the sale and that in the event the successful bidder shall fail or refuse to accept delivery of the bonds and pay for the same as soon as the bonds are ready for delivery, or at the time fixed in the notice of sale, then said deposit and the proceeds thereof shall be the property of the City and shall be considered as its liquidated damages on account of such default. No conditional bids or bids for less than 99% of the par value of the bonds will be considered. The opinion of Ice Miller LLP, bond counsel of Indianapolis, Indiana, approving the legality of said bonds will be furnished to the purchaser at the expense of the City.

The bonds shall be awarded by the Controller to the best bidder who has submitted its bid in accordance with the terms of this ordinance and the notice. The best bidder will be the one who offers the lowest net interest cost to the City to be determined by computing the total interest on all of the bonds to their maturities, adding thereto the discount bid, if any, and deducting therefrom the premium bid, if any. The right to reject any and all bids is hereby reserved. If an acceptable bid is not received on the date of sale, the sale may be continued from day to day thereafter without further advertisement for a period of thirty (30) days, during which time no bid which provides a higher net interest cost to the City than the best bid received at the time of the advertised sale will be considered.

Section 8. Financial Records and Accounts; Continuing Disclosure. The City shall keep proper records and books of account, separate from all of its other records and accounts, in which complete and correct entries shall be made showing all revenues received on account of the operation of said electric utility and all disbursements made therefrom and all transactions relating to said electric utility. Copies of all such statements and reports shall be kept on file in the office of the Clerk. If the bonds or BANs are subject to Rule 15c2-12 of the Securities and Exchange Commission ("Rule"), the Mayor and the Controller are authorized to execute and deliver a continuing disclosure undertaking agreement in satisfaction of the Rule. Notwithstanding any other provisions of this ordinance, failure of the City to comply with the continuing disclosure undertaking shall not be considered an event of default under the bonds or this ordinance.

Section 9. Pledge of Net Revenues. (a) The BANs, if issued, shall be payable from the proceeds of the bonds, and interest on the BANs shall also be payable from Net Revenues, subject to the prior payment of any bonds issued under this ordinance.

(b) The interest on and principal of the bonds issued pursuant to the provisions of this ordinance, and any bonds hereinafter issued on a parity therewith, shall constitute a first charge on all the Net Revenues, and such Net Revenues are hereby irrevocably pledged to the payment of the interest on and principal of such bonds, to the extent necessary for that purpose.

Section 10. Construction Account. Any accrued interest and any premium received at the time of delivery of the bonds shall be deposited in the Electric Utility Sinking Fund and credited to the Bond and Interest Account thereof. The remaining proceeds from the sale of said bonds, to the extent not used to refund BANs, and BAN proceeds shall upon receipt be deposited in a bank or banks which are legally designated and qualified depositories of the City, in a special account or accounts to be designated as "City of Mishawaka, Electric Utility Construction Account." The funds in each of such special accounts shall be deposited, held, secured or invested in accordance with the laws of the State of Indiana relating to the depositing, holding, securing or investing of public funds. The funds in such special account or accounts and any income derived from the investment hereof shall be expended only for the purpose of paying the cost of the Project, refunding the BANs, if issued, and the incidental expenses incurred in connection therewith and with the issuance of the bonds and BANs. Any balance or balances remaining unexpended in such special account or accounts after the completion of the Project, which are not required to meet unpaid obligations incurred in connection with the construction of the Project, shall either (i) be deposited in the Electric Utility Sinking Fund and used solely for the purposes of said Fund, or (ii) be used for the same purpose or type of project for which the bonds were issued, all in accordance with IC 5-1-13, as amended.

Section 11. Use of Revenues. All revenues derived from the operation of the electric utility and from the collection of electric rates and charges shall be segregated and kept separate and apart from all other funds and accounts of the City. Said revenues shall be deposited into the Operation and Maintenance Fund, the Electric Utility Sinking Fund and the Improvement Fund of the utility in accordance with this ordinance.

Section 12. Operation and Maintenance Fund. The Operation and Maintenance Fund ("O&M Fund"), is hereby created and there shall be credited to the O&M Fund as of the last day of each calendar month a sufficient amount of the revenues of the electric utility so that the balance in the O&M Fund shall be sufficient to pay the reasonable expenses of operation, repair and maintenance for the next succeeding calendar month. The moneys credited to this O&M Fund shall be used for the payment of the reasonable operation, repair and maintenance expenses of the electric utility on a day-to-day basis, but none of the moneys in such O&M Fund shall be used for PILOTs, depreciation, replacements, improvements, extensions or additions. Any balance in the O&M Fund in excess of the expected expenses of operation, repair and maintenance for the next succeeding month may be transferred to the Electric Utility Sinking Fund if necessary to prevent a default in the payment of principal or interest on the then outstanding bonds.

Section 13. Electric Utility Sinking Fund. (a) The Electric Utility Sinking Fund ("Sinking Fund") is hereby created and constitutes the sinking fund for the payment of the principal of and interest on the bonds. There shall be set aside and deposited in the Sinking Fund, as available, and as hereinafter provided a sufficient amount of the Net Revenues of said electric utility to meet the requirements of the Bond and Interest Account and of the Debt Service Reserve Account hereby created in the Sinking Fund. Such payments shall continue until the balance in the Bond and Interest Account, plus the balance in the Debt Service Reserve Account, equals the principal of and interest on all of the then outstanding bonds to the final maturity thereof.

(b) Bond and Interest Account. So long as the bonds are outstanding, the City shall deposit all Sewage Works and Waterworks Payments, upon receipt, into the Bond and Interest Account and treat such payments as Net Revenues. There shall be credited on the last day of each calendar month to the Bond and Interest Account an amount equal to the sum of at least one-sixth (1/6) of the interest on and at least one-sixth (1/6) of the principal of such outstanding bonds which will be payable on the then next succeeding interest and principal payment date, until the amount of interest and principal payable on the then next succeeding principal and interest payment dates shall have been so credited. There shall similarly be credited to the account any amounts necessary to pay the bank fiscal agency charges for paying principal and interest on said bonds as the same become payable. The City shall, from the sums deposited in the Sinking Fund and credited to the Bond and Interest Account, remit promptly to the bank fiscal agency sufficient moneys to pay the principal and interest on the due dates thereof together with the amount of bank fiscal agency charges.

(c) Debt Service Reserve Account. The Debt Service Reserve Account ("Reserve Account") is hereby created. On the date of delivery of the bonds, bond proceeds, funds on hand of the electric utility or a combination thereof may be deposited into the Reserve Account. The initial deposit or the balance accumulated in the Reserve Account shall equal but not exceed the least of (i) the maximum annual debt service on the bonds, (ii) 125% of the average annual debt service on the bonds or (iii) 10% of the of the stated principal amount or issue price, as applicable, of the bonds ("Reserve Requirement"). If the initial deposit into the Reserve Account does not cause the balance therein to equal the Reserve Requirement or if no deposit is made, the City shall deposit a sum of Net Revenues into the Reserve Account on the last day of each calendar month until the balance therein equals the Reserve Requirement. The monthly deposits shall be equal in amount and sufficient to accumulate the Reserve Requirement within five years of the date of delivery of the bonds.

The Reserve Account may be satisfied with cash, a debt service reserve surety bond or a combination thereof. If such surety bond is purchased, the Mayor and the Controller are hereby authorized to execute and deliver all agreements with the provider of the surety bond to the extent necessary to comply with the terms of such surety bond and the commitment to issue such surety. Such agreement shall be deemed a part of this ordinance for all purposes and is hereby incorporated herein by reference.

The Reserve Account shall constitute the margin for safety and as protection against default in the payment of principal of and interest on the bonds and any parity bonds, and moneys in the Reserve Account shall be used to pay current principal and interest on the bonds and any parity bonds to the extent that moneys in the Bond and Interest Account are insufficient for that purpose. Any deficiency in the balance maintained in the Reserve Account shall be made up from the next available Net Revenues remaining after credits into the Bond and Interest Account. In the event moneys in the Reserve Account are transferred to the Bond and Interest Account to pay interest and principal on the bonds, then such depletion of the balance in the Reserve Account shall be made up from the next available Net Revenues after the credits into the Bond and Interest Account hereinbefore provided for. Any moneys in the Reserve Account in excess of the Reserve Requirement shall be transferred to the Improvement Fund.

Section 14. Improvement Fund. There is hereby created a special fund designated the Improvement Fund ("Improvement Fund"). There shall be deposited into the Improvement Fund on or before the last day of each calendar month any excess revenues remaining after making the required deposits into the O&M Fund and the Sinking Fund. The Improvement Fund shall be expended in making good depreciation in the property of said electric utility, or applied on the cost of the improvements herein referred to or future replacements, extensions, additions and improvements to such property, and to make payments representing PILOTs. The City reserves the right to transfer PILOTs from the Improvement Fund no more frequently than semiannually, in accordance with the Act, and only if all required transfers have been made to the Sinking Fund and the O&M Fund and the Accounts of the Sinking Fund contain the required balances as of the date the PILOTs are paid. The Improvement Fund may also be used to pay principal of and interest on the BANs. Funds may also be transferred to the Bond and Interest Account to prevent a default on all outstanding bonds, or, if necessary, to eliminate any deficiencies in credits to or minimum balance in the Reserve Account of the Sinking Fund or may be transferred to the O&M Fund to meet unforeseen contingencies in the operation, repair and maintenance of the electric utility.

Section 15. Maintenance of Accounts. The Sinking Fund shall be deposited in and maintained as a separate account or accounts from all other accounts of the City. The O&M Fund and the Improvement Fund may be maintained in a single account or accounts but such account or accounts shall likewise be maintained separate and apart from all other accounts of the City and apart from the Sinking Fund account or accounts. This section shall not be construed as requiring the City to maintain separate bank accounts. All moneys deposited in said accounts shall be deposited, held and secured as public funds in accordance with the public depository laws of the State of Indiana, provided that moneys therein may be invested in accordance with the applicable laws, including particularly Indiana Code, Title 5, Article 13, as amended or supplemented, and in the event of such investment the income therefrom shall become a part of the funds invested and shall be used only as provided in this ordinance.

Section 16. Defeasance of the Bonds. If, when the bonds issued hereunder or any portion thereof shall have become due and payable in accordance with their terms or shall have been duly called for redemption or irrevocable instructions to call the bonds or any portion thereof for redemption shall have been given, and the whole amount of the principal and the interest and the premium, if any, so due and payable upon all of the bonds or any portion thereof then outstanding shall be paid; or (i) sufficient moneys, or (ii) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, the principal of and the interest on which when due will provide sufficient moneys for such purpose, shall be held in trust for such purpose, and provision shall also be made for paying all fees and expenses for the redemption, then and in that case the bonds issued hereunder or any designated portion thereof shall no longer be deemed outstanding or entitled to the pledge of the Net Revenues of the City's electric utility.

Section 17. Rate Covenant. The City shall by ordinance establish, maintain and collect reasonable and just rates and charges for facilities and services afforded and rendered by said electric utility, which shall to the extent permitted by law produce sufficient revenues at all times to pay all the legal and other necessary expense incident to the operation of such electric utility, to include maintenance costs, operating charges, upkeep, repairs, interest charges on bonds or other obligations, to provide the sinking fund and reserve account as herein required for the liquidation of bonds or other evidences of indebtedness, to provide adequate funds to be used as working capital, as well as funds for making extensions, additions, improvements and replacements, and also, for the payment of any taxes that may be assessed against such electric utility, it being the intent and purpose hereof that such charges shall produce an income sufficient to maintain such electric utility property in a sound physical and financial condition to render adequate and efficient service. So long as any of the bonds herein authorized are outstanding, none of the facilities or services afforded or rendered by said system shall be furnished without a reasonable and just charge being made therefor. The City shall pay like charges for any and all services rendered by said electric utility to the City, and all such payments shall be deemed to be revenues of the electric utility. Such rates or charges shall, if necessary, be changed and readjusted from time to time so that the revenues therefrom shall always be sufficient to meet the expenses of operation and maintenance, and the requirements of the Sinking Fund.

Section 18. Additional Bond Provisions. (a) The City reserves the right to authorize and issue additional BANs at any time ranking on a parity with the BANs. The City also reserves the right to authorize and issue additional bonds payable out of the revenues of its electric utility ranking on a parity with the bonds authorized by this ordinance for the purpose of financing the cost of future additions, extensions, and improvements to the electric utility, or to refund obligations, subject to the following conditions:

(b) The interest on and principal of all bonds or other obligations payable from the revenues of the electric utility shall have been paid to date in accordance with the terms thereof and all credits required to be made to the Sinking Fund and the accounts thereof shall have been made to date.

(c) The Net Revenues of the electric utility in the fiscal year immediately preceding the issuance of any such bonds ranking on a parity with the bonds authorized by this ordinance shall not be less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of the then outstanding bonds payable from Net Revenues and the additional parity bonds proposed to be issued; or, prior to the issuance of said parity bonds, the electric rates and charges shall be increased sufficiently so that said increased rates and charges applied to the previous fiscal year's operations would have produced Net Revenues for said year equal to not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of the then outstanding bonds and the additional parity bonds proposed to be issued. For the purposes of this subsection, the records of the electric utility shall be analyzed and all showings shall be prepared by a certified public accountant retained by the City for that purpose. The term "Net Revenues" as used in this subsection shall be construed to mean the revenues remaining after the reasonable expenses of operation, repair and maintenance, including any payments required under any power sales or supply agreement or agreements, has been paid or provided for, excluding depreciation expense and interest costs on bonds.

(d) The interest on the additional parity bonds shall be payable semiannually on January 1 and July 1, and the principal shall be payable semiannually on January 1 and July 1.

Section 19. Further Covenants of the City; Maintenance, Insurance, Pledge Not To Encumber, Subordinate Indebtedness, and Contract with Bondholders. For the purpose of further safeguarding the interests of the owners of the BANs and the bonds, it is hereby specifically provided as follows:

(a) All contracts let by the City in connection with the construction of the Project shall be let after due advertisement as required by the laws of the State of Indiana, and all contractors shall be required to furnish surety bonds in an amount equal to one hundred percent (100%) of the amount of such contracts, to insure the completion of said contracts, in accordance with their terms, and such contractors shall also be required to carry such employers' liability and public liability insurance as are required under the laws of the State of Indiana in the case of public contracts, and shall be governed in all respects by the laws of the State of Indiana relating to public contracts.

(b) The Project shall be constructed under the supervision and subject to the approval of such competent engineer as shall be designated by the City. All estimates for work done or material furnished shall be examined by the engineer and approved by the City prior to payment therefor.

(c) The City shall at all times maintain its electric utility in good condition and operate the same in an efficient manner and at a reasonable cost.

(d) So long as the BANs and the bonds herein authorized are outstanding, the City shall maintain insurance on the insurable parts of said electric utility of a kind and in an amount such as would normally be carried by private companies engaged in a similar type of business. All insurance shall be placed with responsible insurance companies qualified to do business under the laws of the State of Indiana. Insurance proceeds shall be used in replacing the property destroyed or damaged; or if not used for that purpose shall be deposited in the Sinking Fund. As an alternative to maintaining such insurance, the City may maintain a self-insurance program with catastrophic or similar coverage so long as such program meets the requirements of any applicable laws or regulations and is maintained in a manner consistent with programs maintained by similarly situated municipalities.

(e) So long as the BANs and the bonds herein authorized are outstanding, the City shall not mortgage, pledge or otherwise encumber such utility or any part thereof, nor shall it sell, lease or otherwise dispose of any portion thereof except equipment or property which may become worn out, obsolete or no longer suitable for use in the electric utility.

(f) Except as hereinbefore provided in Section 18, so long as the bonds herein authorized are outstanding, no additional bonds or other obligations pledging any portion of the revenues of said electric utility shall be authorized, executed or issued by the City except such as shall be made subordinate and junior in all respects to the bonds herein authorized, unless the bonds herein authorized have been defeased and sufficient funds to effect the retirement have been deposited in accordance with the terms and conditions of said bonds and Section 16 of this ordinance.

(g) The provisions of this ordinance shall constitute a contract by and between the City and the owners of the BANs and the bonds herein authorized, and after the issuance of said BANs or bonds, this ordinance shall not be repealed or amended in any respect which will adversely affect the rights of the owners of said bonds or BANs, nor shall the Common Council adopt any law, ordinance or resolution which in any way adversely affects the rights of such owners so long as said BANs or bonds, or the interest thereon, remain unpaid. Excluding the changes set forth in Section 22(a)-(f), the ordinance may be amended, however, without the consent of bond or BAN owners, if the Common Council determines, in its sole discretion, that such amendment would not adversely affect the owners of the BANs or bonds.

(h) The provisions of this ordinance shall be construed to create a trust in the proceeds of the sale of the BANs and bonds herein authorized for the uses and purposes herein set forth, and the owners of the BANs and bonds shall retain a lien on such proceeds until the same are applied in accordance with the provisions of this ordinance and of said governing Act.

The provisions of this ordinance shall also be construed to create a trust in the portion of Net Revenues herein directed to be set apart and paid into the Sinking Fund for the uses and purposes of said Fund as in this ordinance set forth. The owners of said BANs and bonds shall have all the rights, remedies and privileges set forth under Indiana law in the event the City shall default in the payment of the interest on or principal of the BANs or bonds, or fail or refuse to fix and collect sufficient rates and charges for said purposes, or shall fail or refuse to operate and maintain said system and to apply properly the revenues derived from the operation thereof.

Section 20. Investment of Moneys. (a) The Controller is hereby authorized to invest moneys pursuant to IC 5-1-14-3 and the provisions of this ordinance (subject to applicable requirements of federal law to insure such yield is the then current market rate) to the extent necessary or advisable to preserve the exclusion from gross income of interest on the BANs and bonds under federal law.

(b) The Controller shall keep full and accurate records of investment earnings and income from moneys held in the funds and accounts referenced herein. In order to comply with the provisions of the ordinance, the Controller is hereby authorized and directed to employ consultants or attorneys from time to time to advise the City as to requirements of federal law to preserve the tax exclusion. The Controller may pay any fees as operation expenses of the electric utility.

Section 21. Tax Covenants. In order to preserve the exclusion of interest on the bonds and BANs from gross income for federal tax purposes under Section 103 of the Internal Revenue Code of 1986 as existing on the date of issuance of the bonds or BANs, as the case may be

("Code"), and as an inducement to purchasers of the bonds and BANs, the City represents, covenants and agrees that:

(a) The Project and the electric utility will be available for use by members of the general public. Use by a member of the general public means use by natural persons not engaged in a trade or business. No person or entity other than the City or another state or local governmental unit will use more than 10% of the proceeds of the bonds or BANs or property financed by the bond or BAN proceeds other than as a member of the general public. No person or entity other than the City or another state or local governmental unit will own property financed by bond or BAN proceeds or will have any actual or beneficial use of such property pursuant to a lease, management, service or incentive payment contract, an arrangement including take-or-pay or other type of output contracts or any other type of arrangement that conveys other special legal entitlements and differentiates that person's or entity's use of such property from use by the general public, unless such uses in the aggregate relate to no more than 10% of the proceeds of the bonds or BANs, as the case may be. If the City enters into a management contract for all or a portion of the electric utility or the Project, the terms of the contract will comply with the Regulations and IRS Revenue Procedure 2017-13, as amended, supplemented or superseded from time to time, so that the contract will not give rise to private business use under the Code and the Regulations unless such use in the aggregate will not relate to more than 10% of the proceeds of the BANs or bonds, as the case may be.

(b) No more than 10% of the principal of or interest on the bonds or BANs is (under the terms of the bonds, BANs, this ordinance or any underlying arrangement), directly or indirectly, secured by an interest in property used or to be used for private business use or payments in respect of such property, or to be derived from payments (whether or not to the City) in respect of such property or borrowed money used or to be used for a private business use.

(c) No more than 5% of the bond or BAN proceeds will be loaned to any person or entity other than another state or local governmental unit. No more than 5% of the bond or BAN proceeds will be transferred, directly or indirectly, or deemed transferred to a nongovernmental person in any manner that would in substance constitute a loan of the bond or BAN proceeds.

(d) The City reasonably expects, as of the date hereof, that the bonds and BANs will not meet either the private business use test described in paragraph (a) and (b) above or the private loan test described in paragraph (c) above during the entire term of the bonds or BANs, as the case may be.

(e) No more than 5% of the proceeds of the bonds or BANs will be attributable to private business use as described in (a) and private security or payments described in (b) attributable to unrelated or disproportionate private business use. For this purpose, the private business use test is applied by taking into account only use that is not related to any government use of proceeds of the issue (Unrelated Use) and use that is related but disproportionate to any governmental use of those proceeds (Disproportionate Use).

(f) The City will not take any action nor fail to take any action with respect to the bonds or BANs that would result in the loss of the exclusion from gross income for federal tax purposes of interest on the bonds or BANs pursuant to Section 103 of the Code, nor will the City act in any other manner which would adversely affect such exclusion, and it will not make any investment or do any other act or thing during the period that the bonds or BANs are outstanding which would cause the bonds or BANs to be private activity bonds under the meaning of Section 141 of the Code.

(g) It shall be not an event of default under this ordinance if the interest on any bonds or BANs is not excludable from gross income for federal tax purposes or otherwise pursuant to any provision of the Code which is not currently in effect and in existence on the date of issuance of the bonds or BANs, as the case may be.

(h) The City represents that it will rebate any arbitrage profits to the United States in accordance with the Code.

(i) These covenants are based solely on current law in effect and in existence on the date of delivery of the bonds or BANS, as the case may be.

Section 22. Amendments with Consent of Bondholders. Subject to the terms and provisions contained in this section, and not otherwise, the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the bonds issued pursuant to this ordinance and then outstanding shall have the right from time to time, anything contained in this ordinance to the contrary notwithstanding, to consent to and approve the adoption by the Common Council of the City of such ordinance or ordinances supplemental hereto or amendatory hereof, as shall be deemed necessary or desirable by the City for the purpose of modifying, altering, amending, adding to or rescinding in any particular any of the terms or provisions contained in this ordinance, or in any supplemental ordinance; provided, however, that nothing herein contained shall permit or be construed as permitting:

(a) An extension of the maturity of the principal of, mandatory sinking fund redemption dates, if any, or interest on any bond issued pursuant to this ordinance; or

(b) A reduction in the principal amount of any bond or the redemption premium or the rate of interest thereon; or

(c) Except as otherwise noted in Section 1 with respect to the BANs, the creation of a lien upon or a pledge of the Net Revenues of the electric utility to the bonds ranking prior to the pledge thereof created by this ordinance; or

(d) A preference or priority of any bond or bonds issued pursuant to this ordinance over any other bond or bonds issued pursuant to the provisions of this ordinance;

(e) A reduction in the Reserve Requirement; or

(f) A reduction in the aggregate principal amount of the bonds required for consent to such supplemental ordinance.

In the event that the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the bonds outstanding at the time of adoption of such supplemental ordinance shall have consented to and approved the adoption thereof by written instrument to be maintained on file in the office of the Clerk of the City, no owner of any bond issued pursuant to this ordinance shall have any right to object to the adoption of such supplemental ordinance or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the Common Council of the City from adopting the same, or from taking any action pursuant to the provisions thereof. Upon the adoption of any supplemental ordinance pursuant to the provisions of this section, this ordinance shall be, and shall be deemed, modified and amended in accordance therewith, and the respective rights, duties and obligations under this ordinance of the City and all owners of bonds then outstanding, shall thereafter be determined, exercised and enforced in accordance with this ordinance, subject in all respects to such modifications and amendments. Notwithstanding anything contained in the foregoing provisions of this ordinance, the rights and obligations of the City and of the owners of the bonds authorized by this ordinance, and the terms and provisions of the bonds and this ordinance, or any supplemental or amendatory ordinance, may be modified or altered in any respect with the consent of the City and the consent of the owners of all the bonds then outstanding.

Section 23. Issuance of BANs. (a) The City, having satisfied all the statutory requirements for the issuance of its bonds, may elect to issue its BAN or BANs to a financial institution, the Indiana Bond Bank, or any other purchaser, pursuant to a Bond Anticipation Note Purchase Agreement ("BAN Purchase Agreement") to be entered into between the City and the purchaser of the BAN or BANs. The Common Council hereby authorizes the issuance and execution of the BAN or BANs in lieu of initially issuing bonds to provide interim financing for the Project until permanent financing becomes available. It shall not be necessary for the City to repeat the procedures for the issuance of its bonds, as the procedures followed before the issuance of the BAN or BANs are for all purposes sufficient to authorize the issuance of the bonds and the use of the proceeds to repay the BAN or BANs.

(b) The Mayor and the Controller are hereby authorized to execute a BAN Purchase Agreement in such form or substance as they shall approve acting upon the advice of counsel. The Mayor, the Controller and the Clerk may also take such other actions or deliver such other certificates as are necessary or desirable in connection with the issuance of the BANs or the bonds and the other documents needed for the financing as they deem necessary or desirable in connection therewith.

Section 24. Permitted Non-Compliance with Tax Covenants. Notwithstanding any other provisions of this ordinance, the covenants and authorizations contained in this ordinance ("Tax Sections") which are designed to preserve the exclusion of interest on the BANs and bonds from gross income under federal law ("Tax Exemption") need not be complied with if the City receives an opinion of bond counsel that compliance with any Tax Section is unnecessary to preserve the Tax Exemption.

Section 25. Conflicting Ordinances. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 26. Headings. The headings or titles of the several sections shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this ordinance.

Section 27. Effective Date. This ordinance shall be in full force and effect from and after its passage by the Common Council and execution by the Mayor.

Passed and adopted by the Common Council by the Common Council of the City of Mishawaka, Indiana, this ___ day of ___________, 2020.

COMMON COUNCIL
CITY OF MISHAWAKA, INDIANA

____
Presiding Officer

ATTEST:

____
Deborah S. Block, IAMC, MMC, City Clerk

Presented by me to the Mayor of the City of Mishawaka, Indiana, on the _____ day of _____________, 2020.

____
Deborah S. Block, IAMC, MMC, CityClerk

This ordinance approved and signed by me, the Mayor of the City of Mishawaka, Indiana, on the _____ day of ____________, 2020.

____
David A. Wood, Mayor

Exhibit A

Description of Project

PROPOSED ORDINANCE NO. 2020-42

ORDINANCE NO. ______

AN ORDINANCE ESTABLISHING A SCHEDULE OF RATES AND CHARGES FOR ELECTRIC ENERGY AND SERVICES RENDERED BY THE MISHAWAKA UTILITIES ELECTRIC DEPARTMENT.

WHEREAS, the City of Mishawaka, Indiana, owns and operates the Mishawaka Utilities Electric Department for the purpose of distributing electric energy in said City and surrounding areas; and

WHEREAS, the existing rates and charges for services provided by the Mishawaka Utilities Electric Department were placed into effect following the Common Council's approval of Ordinance No. 5426; and

WHEREAS, the Common Council of the City of Mishawaka has found that (i) the existing electric rates and charges of the Mishawaka Utilities Electric Department produce an income in abundance of what is sufficient to maintain the Utility property in a sound physical and financial condition to render adequate and efficient service, (ii) Mishawaka Utilities Electric Department's existing rates and charges produce revenues in abundance of what is sufficient to provide for all the legal and other necessary expenses incident to operation of the Utility (including, but not limited to, operation and maintenance costs, upkeep, repairs, depreciation and taxes), to provide adequate money for working capital, to provide funds for making extensions and replacements, to provide funds for payments to the City in lieu of taxes and to provide a reasonable return upon the City's investment in plant and, therefore, such current rates and charges are not "reasonable and just charges" within the meaning of IC 8-1.5-3-8 and need to be adjusted, (iii) the proposed rates and charges attached hereto as Exhibit "A" are designed so as to be nondiscriminatory, "reasonable and just charges" for services within the meaning of IC 8-1.5-3-8, and (iv) the proposed rates and charges attached reflect therein the election of the Common Council to include in such rates and charges each of the elements of "reasonable and just charges" under IC-8-1.5-3-8, and

NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, THAT:

Section 1. The rates and charges for the Mishawaka Utilities Electric Department are those set forth in Exhibit "A" attached hereto, made a part hereof and incorporated herein by reference.

Section 2. From time to time the cost of purchased power will be adjusted by Indiana Michigan Power in accordance with the rules and regulations promulgated by the Federal Energy Regulatory Commission. The Mishawaka Electric Utility's rates may be adjusted solely by the change in the cost of purchased power (the "I&M Adjustment Factor"). The I&M Adjustment Factor will be calculated in a manner reflected or closely reflected in Appendix A and, unless otherwise directed by the Common Council, shall be effective upon presentation to the Common Council for its review.

Section 3. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 4. This Ordinance shall be in full force and effect from and after its passage. Phase One rates shall be effective no sooner than January 1, 2021 and phase two rates shall be effective on January 1, 2022.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, ON THIS ______DAY OF __________________, 2020.

Common Council
City of Mishawaka, Indiana

____
Gregg Hixenbaugh, President

ATTEST:

____
Deborah S. Block, IAMC, MMC,
City Clerk

Presented by me, the undersigned City Clerk of the City of Mishawaka, Indiana, to the Mayor of the City of Mishawaka, Indiana, for approval on the _______ day of ________________, 2020 at _______ o'clock ____.m.

____
Deborah S. Block, IAMC, MMC,
City Clerk

Having examined the foregoing Ordinance, I do as the Mayor of the City of Mishawaka, Indiana, approve said Ordinance and return the same to the City Clerk of the City of Mishawaka, Indiana, this ____ day of ____________________, 2020.

____
Dave Wood, Mayor
City of Mishawaka, Indiana

ATTEST:

____
Deborah S. Block, IAMC, MMC,
City Clerk

EXHIBIT "A"

CONTENTS

RATE "R"

MISHAWAKA (INDIANA) ELECTRIC UTILITY

RESIDENTIAL SERVICE

To Whom Available

Available for residential service through one meter to individual residential customers including rural residential customers.

Character of Service

Alternating current, sixty-cycle, single-phase, at a standard voltage.

Rates

	Phase One	Phase Two
Customer Charge:		
Per month for each dwelling unit	$5.91	$5.50
Energy Charge:		
For the first 500 KWH used per month	0.1009	0.0938
Energy over 500 KWH used per month	0.0917	0.0853

Minimum Payment

The customer's minimum monthly payment under this rate shall be the Customer Charge plus the Energy Charge for the month.

Rate Adjustment

See Appendix A.

Non-Recurring Charges

See Appendix B.

Terms

Contracts under this rate shall be made for no less than one year and shall be self-renewing for successive periods of one year each until either party shall give at least 48 hours' notice to the other of their intention to discontinue service at the end of any earlier period. The Utility reserves the right to require contracts for periods in excess of one year.

Special Terms and Conditions

This rate is available for single-phase service only. Where three-phase service is required and/or where motors or heating equipment are used for commercial or industrial purposes, the applicable power rate will apply to such service.

RATE "C"

MISHAWAKA (INDIANA) ELECTRIC UTILITY

COMMERCIAL SERVICE

To Whom Available

Available to non-residential and commercial customers.

Character of Service

Alternating current, sixty-cycle, single-phase service supplied through a single set of service wires on a single meter location at a standard service voltage.

Rates

Customer Charge:	Phase One	Phase Two
Per month for each service location	$5.91	$5.50
Energy Charge (per KwH):	0.1234	0.1148

Minimum Payment

The minimum monthly payment for service shall be the Customer Charge plus the Energy Charge, if applicable.

Rate Adjustment

See Appendix A.

Non-Recurring Charges

See Appendix B.

Terms

Contracts under this rate shall be made for no less than one year and shall be self-renewing for successive periods of one year each until either party shall give at least 48 hours' notice to the other of their intention to discontinue service at the end of any earlier period. The Utility reserves the right to require contracts for periods in excess of one year.

Special Terms and Conditions

This rate is available for single-phase service only. Where three-phase service is required and/or where motors or heating equipment are used for commercial or industrial purposes, the applicable power rate will apply to such service.

Unmetered Usage

For customers whose service cannot reasonably be metered, the Utility shall estimate the average monthly KwHs usage and the bill shall be based on estimated average KwHs usage price at the current rates for Commercial Service, including Rate Adjustment.

RATE "P"

MISHAWAKA (INDIANA) ELECTRIC UTILITY

COMMERCIAL POWER SERVICE

To Whom Available

Available for all commercial and industrial customers taking service through one three-phase meter with a monthly billing demand less than 150 KW.

Character of Service

Alternative current, sixty-cycle, three-phase service supplied through a single set of service wires to a single meter location. The service voltage shall be standard secondary voltage as the Utility may, at its option, make available.

Any applicant requiring service differing from that to be supplied as herein provided shall provide proper converting, transforming, regulating, or other equipment upon his own premises at his own expense.

Rates

The rate for electrical energy supplied hereunder shall be as follows:

Customer Charge:	**Phase One**	**Phase Two**
Per month for each service location	$20.75	$19.30
Demand Charge:		
Per KW of billing demand for month	7.83	7.28
Energy Charge (per KwH):	0.0702	0.0653

Rate Adjustment

See Appendix A.

Non-Recurring Charges

See Appendix B.

Terms

Contracts under this rate shall be made for no less than one year and shall be self-renewing for successive periods of one year each until either party shall give at least 48 hours' notice to the other of their intention to discontinue service at the end of any earlier period. The Utility reserves the right to require contracts for periods in excess of one year.

Monthly Minimum Payment

The monthly minimum charge shall be the Customer Charge plus Demand Charge plus the Energy Charge for the month.

Measurement of Maximum Demand

Maximum demand shall be measured by suitable recording instruments provided by the Utility and in any month the maximum demand expressed in kilowatts shall be the highest registration of a 15 minute integrating demand meter or the highest registration of a thermal type demand meter.

RATE "P" (Continued)

Billing Demand

The billing demand for any month shall be the greater of (i) 5 KW or (ii) the maximum demand for the month.

Delivery Voltage

Where the Utility elects to meter the customer's service at the Utility's primary voltage, the measured maximum demand and energy will be multiplied by 0.98.

Primary Voltage Service

Where customer furnished and maintains all transformers and/or other apparatus necessary for the customer to take its entire service at the primary voltage of the Utility distribution system, a credit of $0.44 per KW of monthly billing maximum load will be applied to each month's net bill.

RATE "I"

MISHAWAKA (INDIANA) ELECTRIC UTILITY

INDUSTRIAL POWER SERVICE

To Whom Available

Available for all industrial customers taking service through one three-phase meter with a monthly billing demand greater than 149 KW.

Character of Service

Alternative current, sixty-cycle, three-phase service supplied through a single set of service wires to a single meter location. The service voltage shall be standard secondary voltage as the Utility may, at its option, make available.

Any applicant requiring service differing from that to be supplied as herein provided shall provide proper converting, transforming, regulating, or other equipment upon his own premises at his own expense.

Rates

The rate for electrical energy supplied hereunder shall be as follows:

Customer Charge:	Phase One	Phase Two
Per month for each service location	$18.27	$16.99
Demand Charge:		
Per KW of billing demand for month	6.90	6.42
Per KW of billing demand for month*	6.21	5.78
Energy Charge (per KwH):	0.0627	0.0583

*At the Utility's option if it is determined by metering that the customer's monthly power factor is less than 85% leading or lagging.

Rate Adjustment

See Appendix A.

Non-Recurring Charges

See Appendix B.

Terms

Contracts under this rate shall be made for no less than one year and shall be self-renewing for successive periods of one year each until either party shall give at least 48 hours' notice to the other of their intention to discontinue service at the end of any earlier period. The Utility reserves the right to require contracts for periods in excess of one year.

Monthly Minimum Payment

The monthly minimum charge shall be the Customer Charge plus Demand Charge plus the Energy Charge for the month.

RATE "I" (Continued)

Measurement of Maximum Demand

Maximum demand shall be measured by suitable recording instruments provided by the Utility and in any month the maximum demand expressed in kilowatts shall be the highest registration of a 15 minute integrating demand meter or the highest registration of a thermal type demand meter.

Billing Demand

The billing demand for any month shall be the greater of (i) 5 KW or (ii) the maximum demand for the month.

Delivery Voltage

Where the Utility elects to meter the customer's service at the Utility's primary voltage, the measured maximum demand and energy will be multiplied by 0.98.

Primary Voltage Service

Where customer furnished and maintains all transformers and/or other apparatus necessary for the customer to take its entire service at the primary voltage of the Utility distribution system, a credit of $0.39 per KW of monthly billing maximum load will be applied to each month's net bill.

RATE "MS"

MISHAWAKA (INDIANA) ELECTRIC UTILITY

MUNICIPAL SERVICE

To Whom Available

Available to the City of Mishawaka for the supply of electrical energy to public buildings or locations which are supported by public tax levies or municipally-owned Utility rates.

Character of Service

Electric energy supplied hereunder shall be alternating current, sixty-cycle, at standard single -phase or poly-phase voltage.

Rates

Customer Charge:	Phase One	Phase Two
Per month for each service location	$20.75	$19.30
Energy Charge (per KwH):	0.1202	0.1118

Rate Adjustment

See Appendix A.

Non-Recurring Charges

See Appendix B.

RATE "EH"

MISHAWAKA (INDIANA) ELECTRIC UTILITY

ELECTRIC HEATING SERVICE

To Whom Available

This tariff is available to existing customers only who were taking service under tariff EHND prior to December 12, 1984.

Character of Service

Alternating current, sixty-cycle, supplied through a single set of service wires to a single meter location at a standard service voltage.

Rates

Customer Charge:	**Phase One**	**Phase Two**
Per month for each service location	$20.75	$19.30
Energy Charge (per KwH):	0.2202	0.2048

Rate Adjustment

See Appendix A.

Non-Recurring Charges

See Appendix B.

RATE "S"

MISHAWAKA (INDIANA) ELECTRIC UTILITY

SCHOOL SERVICE

To Whom Available

Available to public and private not-for-profit entities providing educational instruction serving students pre-kindergarten through twelfth grade for facilities that house classrooms.

Character of Service

Electric energy supplied shall be alternating currents sixty-cycle and a single-phase or polyphase voltage.

Rates

The rate for electrical energy supplied hereunder shall be as follows:

	Phase One	Phase Two
Customer Charge:		
Per month for each service location	$5.91	$5.50
Energy Charge (per KwH):	0.1099	0.1022

Rate Adjustment

See Appendix A.

Non-Recurring Charges

See Appendix B.

Terms

Contracts under this rate shall be made for no less than one year and shall be self-renewing for successive periods of one year each until either party shall give at least 48 hours' notice to the other of their intention to discontinue service at the end of any earlier period. The Utility reserves the right to require contracts for periods in excess of one year.

Minimum Payment

The minimum payment for service shall be the Customer Charge plus the Energy Charge.

RATE "OL"

MISHAWAKA (INDIANA) ELECTRIC UTILITY

RATE FOR OUTDOOR PROTECTION LIGHTING

To Whom Available

Available for outdoor lighting customers within the service area of the Utility. The utility has begun the process of converting the HPS bulbs to light emitting diode (LED) fixtures. The utility will continue this process replacing the HPS bulbs to make all lighting in the city LED. All existing 100, 250 and 400 watt high pressure sodium and 175 watt mercury lighting will be replaced at the end of life or at the request of the customer at no additional charge.

Rates Per Month

(a) Where the lighting fixture can be installed on an existing distribution-type wood pole or other supporting device and served from existing secondary facilities, with no more than one span of secondary, the rate shall be:

Customer Charge:	Phase One	Phase Two
Single 48 watt LED lamp	$6.80	$6.32
Single 110 watt LED lamp	9.21	8.56

(b) Where additional poles and spans of overhead secondary are required to provide outdoor lighting service, the following additional charges shall apply:

Customer Charge:	Phase One	Phase Two
Each additional pole	$0.78	$0.73
Each additional span of secondary	0.52	0.48

(c) Where a customer requests outdoor lighting service requiring special poles or fixtures, or the use of an underground distribution system instead of an overhead distribution system, the customer's rates will be increased according to the Company's cost to install, operate, and maintain such special facilities, or the customer may be required to make a payment to cover the investment made as a result of these special installations.

Customer Charge:	Phase One	Phase Two
Single 80 watt LED decorative light	$9.21	$8.56
Single D4A LED decorative retrofit	9.21	8.56

Terms

Contracts under this tariff will be for not less than one year for residential customers and three years for commercial or industrial customers.

Hours of Lighting

All rates assume that lamps will burn approximately 4,000 hours per year.

RATE "SL"

MISHAWAKA (INDIANA) ELECTRIC UTILITY

MUNICIPAL STREET LIGHTING SERVICE

To Whom Available

Available to the City of Mishawaka and other governmental agencies for street lighting service.

The utility has begun the process of converting the HPS bulbs to light emitting diode (LED) fixtures. The utility will continue this process replacing the HPS bulbs to make all lighting in the city LED. All existing 100, 250, and 400 watt high pressure sodium and 175 watt mercury lighting will be replaced at the end of life or at the request of the customer at no additional charge.

Character of Service

The Utility shall install, operate, and maintain, at its expense, all street lighting equipment and appurtenances.

Rates

The rates for street lighting per lamp per month shall be as follows:

Lamp Size	Lamp Type	Phase One	Phase Two
D4A	LED Retro	$9.21	$8.56
73 watt	LED	6.98	6.49
80 watt	LED	9.21	8.56
110 watt	LED	9.21	8.56
150 watt	Sodium	6.98	6.49
175 watt	Mercury Vapor	6.98	6.49
250 watt	Sodium	9.21	8.56

Hours of Lighting

All rates assume that lamps will burn approximately 4,000 hours per year.

APPENDIX A

RATE ADJUSTMENT

The Rate Adjustment shall be on the basis of an I&M Adjustment Factor, occasioned solely by changes in the cost of purchased power applicable to Rates R, C, P. I, MS, EH, and S.

Rate Adjustment applicable to the above-listed Rate Schedules:

$0.000000 per KWH used per month as computed following the method, or a method closely approximating the method, illustrated below.

Annual Cost of Purchased Power at the new wholesale rates and charges	$0	
Annual Cost of Purchased Power priced at rates and charges effective ________	0	
Annual Change in Purchased Power Cost	0	
Annual KWH Sales	0	KWH
	0	
	0.93	
	$0.000000	/KWH

Annual Increase per KWH Sold

Adjusted for Utility Receipts Tax

I&M Adjustment Factor

APPENDIX B

NON-RECURRING CHARGES

A. **Electric Account Service Charge:** $20.00 one-time charge (not refundable)

B. **New Account OPL Service Charge:** $10.00 one-time charge (not refundable)

C. **Service Deposit:** Service deposits are set by the Utility and can be up to One-sixth (1/6) of normal annual bills per service location

D. **Failure to Meet Appointment Scheduled Charge:** $15.00

E. **Dishonored Negotiable Instrument Charge**: $20.00

F. **Processing/Disconnect Charge:**
Single Phase
—Disconnect During Office Hours—$25.00
—Additional Reconnect charges after hours—$70.00
—Additional Reconnect charges on Sundays & Holidays— $90.00
Three-Phase
— Disconnect During Office Hours—$ 100.00
— Additional Reconnect after hours—$ 225.00
— Additional Reconnect on Sundays & Holidays—$ 275.00

G. **Processing/Disconnect Charge, when Disconnect is required at pole, in vault, manhole or service box:**
— Disconnect During Office Hours—$ 100.00
— Additional Reconnect after hours—$ 225.00
— Additional Reconnect on Sundays & Holidays—$ 275.00

H. **Meter Test Charge:** Free every two years if required
1. Single Phase—$ 20.00* if more frequent than every 2 years
2. Three-Phase—$ 40.00* if more frequent than every 2 years
*Fee is refunded if meter is off more than two percent (2%)

I. **Service Call ("no power" call when the Customer is at fault):** Same as Processing/Disconnect Charge (F, above)

J. **Late Payment Penalty:** 10% on the first $3.00; 3% on the balance for Electric & OPL

APPENDIX B

NON-RECURRING CHARGES

K. **Meter Tampering Charge:**
1. First Offense—Actual cost of parts, labor, equipment and overhead plus cost of service estimated to have been used, based on prior history $75.00 + damage and a police report should be filed with the police.
2. Second Offense—Same as above, plus 100.00 + damage
3. Subsequent Offenses— Same as above, plus disconnection

L. **Credit Agreement Fee:** 10% of arrears amount or $10, whichever is greater (added to payment agreement)

M. **Temporary Service Charge**:
- Residential Service (if meter immediately adjacent to Delivery Point): $ 50.00

  In Addition:
- single span up to 125 feet $100.00
- each additional Span up to 125 feet $150.00
- Commercial Service: $100.00

  In Addition:
- Cost of labor for hookup and removal
- Cost of vehicles for hookup and removal
- Cost of engineering (two hour minimum)
- Cost of additional transformers (per 30 days, or any part thereof) $10.00 each

N. **Energy Recording Device:** $20.00 installation charge (not refundable) at customers request. No charge if found to be utility problem.