

## **REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL**

**November 16, 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 Monday, November 16, 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 November 4, 2020 were approved as received from the Clerk's Office.

Clerk Block read letters from the Board of Zoning Appeals and the City Plan Commission regarding their recommendations from their November 10, 2020 meetings.

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

### **PROPOSED ORDINANCE NO. 2020-43**

**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.**

**Rezone from C-1 District to R-1 District for Residential Use – 2316 Lincoln Way West  
(Assigned to Land Use Planning Committee)**

### **PROPOSED ORDINANCE NO. 2020-44**

**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.**

**Rezone from C-7 & R-1 District to C-10 District to allow a Convenience Store with gas pumps - 119 W. McKinley Ave & 2219, 2215, 2205 & 2201 N. Main St.  
(Assigned to Land Use Planning Committee)**

Clerk Block read the following resolutions by title and opened the public hearing.

**RESOLUTION R2020-23**

**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 E LAWRENCE STREET  
MISHAWAKA, INDIANA**

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

Darlene Ballard, 509 E. Lawrence Street, was present via WebEx.

Jaime Bradshaw, Darlene Ballard's sister and business manager, spoke in favor of **RESOLUTION NO. 2020-23**. Mrs. Bradshaw stated they were requesting the variance, because the property sold is contingent on the variance going through with the new property owner inquiring about it and the variance is needed for sale.

Mr. Compton asked if the residence had been operating as a duplex currently. Mrs. Bradshaw stated it is and has been operating as a duplex going back to 1966.

Mrs. Voelker asked if there was any way they could go back into the information the city has to start rezoning these things properly. Mr. Hixenbaugh stated that would be a good question for Mr. Prince. Ken Prince, City Planner, stated the issue they have was Mishawaka had been founded on a lot of industry and blue collar housing developed at the time. Mr. Prince stated in this case, they recommended a use variance because it would be a hardship to go back and modify the property that had been in use as a duplex for over 50 years back to a single family residence. Mr. Prince stated they would like more of these dwellings converted back to single family than not and he believed he premise of what they were doing was that they did not want to go and create conforming situations where they think there is a chance that they could be converted over time. Mr. Prince concluded stating the action was merely doing the minimal amount necessary to allow the transaction to move forward. Mrs. Voelker thanked Mr. Prince and stated ideally in the neighborhood, they do want them to go back to single family homes and if they are zoned as R-2 the likelihood of that happening is less. Mrs. Voelker also stated they are leaving money on the table, because they aren't being taxed. Mr. Prince stated they should be taxed on the underlying use regardless and not taxed on the zoning. Mr. Prince stated the taxing question would be a question for the assessor and Mr. Prince stated he would speak with the assessor and find that out.

Mr. Emmons asked if Mr. Prince knew if the petitioner will live in the units or rent them out. Mr. Prince stated they had not had any discussion with the buyer, but only the applicant. Mr. Prince stated he did not know if the petitioner would live there. Mr. Emmons asked if they should put a time limit on this use variance. Mr. Prince stated he believed if they put a time limit on it, it would have to exceed the lending limit on the property. Mr. Prince stated he did not recommend putting a time limit on a use variance with a lending limit such as this.

Mrs. DeMaged stated after looking at the listing of the property, it shows the property as a duplex and it is being sold as a duplex.

Mr. Hixenbaugh stated he thought the individualized analysis of these types of requests and control of ability to build conditions into these uses is on balance in their best interest and agreed with all of Mr. Prince's points.

Mr. Emmons asked the petitioner if in the sale of this unit, if the person buying it will live in the units or to rent out the units. Mrs. Bradshaw stated they did not know the answer to that. Mr. Emmons stated he is concerned with what the unit will be used for.

Mr. Mammolenti asked if they know if the buyer is local to Mishawaka. Mrs. Bradshaw stated she believed the buyer is a local of Mishawaka, but Mrs. Ballard stated she was not sure of that. Mrs. Bradshaw stated they will check with the realtor to be sure.

Mr. Compton stated he understood the thought of Mr. Emmons and he thought in the perfect world he would agree with him, but this is a duplex that had been operating for 50 years. Mr. Compton stated he did not think it was fair to the current owner who bought it and now can't sell it if they don't prove the zoning without making the financial investment into converting it back. Mr. Compton stated he did not believe in these neighborhoods with these types of homes that would be realistic. Mr. Compton stated he would like to see more single family homes and under certain situations they should deny rezoning, especially if someone wanted to convert an existing property. Mr. Compton stated with something that has been there for 50 years, he did not see how the council could deny the request.

Mr. Emmons stated his concern was that people buy these, continue to live out of town, just rent them for the money and do not maintain them which would cause problems for the council. Mr. Emmons stated if it were an individual buying it and living in half of it and renting out the other half of it, he would have no issue. Mr. Emmons stated they are running into this exact problem in Mishawaka with other buildings, especially in his district, of people buying homes, turning them into rentals and not maintaining them. Mr. Emmons stated he thought the petitioner should know the answer of who is buying the duplex and all of their information. Mr. Emmons stated he is not in favor of this use variance.

Mr. Hixenbaugh stated he appreciated having heard that discussion and also congratulated Mrs. DeMaged for doing her research of the tax records. Mr. Hixenbaugh stated he will be voting in favor, because if in fact they are presented with evidence of the property having problems that is a relevant factor with regard to the decision, but this evening they had heard of no types of issues. Mr. Hixenbaugh concluded stating until and unless they are presented with that evidence, he will assume it will be a net positive for the neighborhood and he was confident with the Planning Department and Code Enforcement Department will keep a close watch on this property along with all the others posing an issue in the neighborhood. Mr. Hixenbaugh concluded stating he would be voting in favor of the use variance.

Question was called for at 7:23PM for **RESOLUTION R2020-23**  **Vote: Motion passed (summary: Yes = 7, No = 2, Abstain = 0).**

**Yes: Mrs. DeMaegd, Mr. Banicki, Mr. Mammolenti, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh.**

**No: Mr. Hazen, Mr. Emmons.**

## **RESOLUTION R2020-24**

### **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 E TWELFTH STREET Conditional Use for Sand Mining – 1032 E Twelfth St.**

Matthew Cane, 5777 Cleveland Road, represented Blue Print which was the company wishing to lease the property in question from John Cocquyt and he is speaking on behalf of Mr. Cocquyt. Mr. Cane stated the property is a parcel that is zoned I-2 heavy industrial and Mr. Cocquyt had owned it for approximately 20 years. Mr. Cane stated it has not been used much but he would store sand, gravel, and occasionally heavy equipment. Mr. Cane stated historically, he believed going back prior to 1966 when the zoning law came about, it had been used for mining sand. Mr. Cane stated this is not mining on a grand scale where there is processing equipment, but it is a back hoe digging sand out of a hole and putting it into a truck. Mr. Cane stated a manmade pond exists on the property and they wish to obtain additional sand from the site for primarily local construction projects and the sand would be sold to HRP Construction. Mr. Cane stated the use of the site falls under I-2 Industrial with the exception of removing the sand and they wish to dig initial sand out of the wet pit and also would like for HRP Construction to be able to use the site as a construction yard. Mr. Cane stated they would store equipment and perhaps piles of aggregates and he believed those fell under the current I-2 zoning. Mr. Cane stated they had submitted their request to the city and Engineering along with Planning came back with some reasonable requests and they are prepared to honor those requests.

Mr. Bellovich asked if the pond will be fenced or barricaded off. Mr. Cane stated the property already has a six foot chain linked fence with barbed wire around most of it with a gap in the fence where it adjoins City of Mishawaka Organic Resources. Mr. Cane stated the mining of sand would have to be 50 feet back from the property line and there are mature trees around the site along with the fencing.

Mr. Emmons asked with the digging of the sand, if they are coming out towards the road. Mr. Cane stated he did not have a map but he believed the pond now is 600 feet away from Twelfth Street so they would not be coming close to the street. Mr. Cane stated the pond would be going deeper and a bit to the south and more to the west. Mr. Emmons asked how long they will continue to harvest sand. Mr. Cane stated they have asked to lease the property for a year and ideally they would like to harvest the sand before spring and have it in place. Mr. Emmons asked after harvesting the sand, what their next idea will be with it. Mr. Cane stated the water is only 3 or 4 feet below the surrounding area, making it a shallow water table. Mr. Cane stated it will be a larger pond when they are done and HRP has cleaned up the area. Mr. Cane stated the property will be in better shape than it was before when they are finished.

Mr. Compton asked if there would be any additional buildings built out there. Mr. Cane stated there will not be. Mr. Compton also asked if this would be just HRP using the sand in the Race Way project. Mr. Cane stated that is correct. Mr. Compton asked how much sand they think they

will take out of there. Mr. Cane stated that site will call for an order of 25,000 cubic yards plus or minus 20 percent.

Mrs. Voelker stated Kroger is to the West of the site and the Assisted Living building and then to the south would be the Organic Resource facility. Mr. Cane stated that was all correct. Mrs. Voelker asked if there was a baseball diamond on one side. Mr. Cane stated it is and that was city property, more specifically Baker Park. Mrs. Voelker asked if there is solid fence between Baker Park and their site. Mr. Cane stated there was fencing.

Mr. Hixenbaugh asked with regard to Kroger, what type of noise they would expect to experience while the mining is in operation. Mr. Cane stated the City Facility is in the area and they use dump trucks and a front end loader. Mr. Cane stated the noise of this site would be very similar to that, because this will operate as a construction yard. Mr. Cane there would be conventional construction equipment such as an excavator, a bulldozer and other sorts of things. Mr. Cane stated it would not be unusually loud and the equipment would only be operating during business hours from 7AM to 8PM. Mr. Cane stated they usually would run from the start of 4:30 to 6. Mr. Cane stated he did not think it would offer as a sound nuisance. Mr. Hixenbaugh asked if there should be any worry from a parent watching their child at Baker Park and if they should worry about dust clouds wafting over the fence from the mining operation and interfering with the athletic events. Mr. Cane stated one of the benefits of the site comes from below the water table and do not create dust. Mr. Cane stated the majority of the work would be before spring occurs and the parks would not be in use. Mr. Cane stated it would not generate a lot of dust. Mr. Hixenbaugh asked if there are concerns, who should they address those concerns with. Mr. Cane stated they would address those concerns with him.

Question was called for at 7:41PM for **RESOLUTION R2020-24**  **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.**

Mr. Mammolenti made a motion that the council postpones the public hearing on proposed ordinances number 2020-39, 2020-40, 2020-41 and 2020-42 until their December 7<sup>th</sup> meeting, with a second from Mr. Compton.  **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.**

## **NEW BUSINESS**

Mr. Mammolenti announced the last neighborhood watch meeting of 2020 will be held on November 18<sup>th</sup> at 7PM via zoom and stated he would circulate the link to the meeting as soon as he received it. Mr. Mammolenti stated they would have Mayor Wood as a guest speaker to provide updates and Lieutenant Reppert will also be speaking.

Mr. Compton stated they had a meeting with the Fire Department last week with their negotiating committee and they would honor the agreement with no additional changes at this

time. Mr. Compton explained on the WebEx app how to completely mute the microphone for future reference.

Mr. Hixenbaugh announced the council will hold a public meeting on the four ordinances on Monday, November 30<sup>th</sup> at 6PM in the Council Chambers and will make remote participation available. Mr. Hixenbaugh stated the ordinances in question deal with proposed rate hikes with regard to their Water utility and Electric utility and will have relevance with regard to the plans for the new City Hall building.

Mrs. DeMaged asked the council if there is any way they would get an audit by the city referring to how many properties that are multi-family and are zoned in R-1. Mr. Hixenbaugh suggested they have that discussion with Mr. Prince at the conclusion of the meeting to see if that can be integrated into their normal process.

ADJOURNMENT 7:49PM

Deborah S. Block /s/  
Deborah S. Block, IAMC, MMC, City Clerk

Gregg A. Hixenbaugh /s/  
Gregg A. Hixenbaugh, President