

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

December 7, 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, December 7, 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 16, 2020 were approved as received from the Clerk's Office.

Clerk Block read the following appeal to the council who referred it to the Board of Zoning Appeals for their recommendation.

APPEAL NO. 2020-52

Use Variance to maintain 3 units in R-1 Single Family Residential District – 823 E Third Street

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

PROPOSED ORDINANCE NO. 2020-45

AN ORDINANCE DECLARING AN EMERGENCY IN TRANSFERRING AND REAPPROPRIATING FUNDS WITHIN THE BUDGET ADOPTED FOR THE CALENDAR YEAR ENDING DECEMBER 31, 2020

**Transfer Funds – General Fund - \$50,000
(Assigned to Budget and Finance Committee)**

PROPOSED ORDINANCE NO. 2020-46

AN ORDINANCE AMENDING ORDINANCE 5712 FIXING THE SALARIES OF ALL EMPLOYEES OF THE CITY OF MISHAWAKA EXCEPT MISHAWAKA PARKS DEPARTMENT, ELECTED OFFICIALS, AND THE MISHAWAKA UTILITIES FOR THE CITY OF MISHAWAKA, INDIANA FOR THE YEAR BEGINNING JANUARY 1, 2021

Amending the 2021 Civil City Salary Ordinance

(Assigned to Budget and Finance Committee)

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

RESOLUTION R2020-25

A RESOLUTION PROVING RENEWAL OF A WASTE REMOVAL CONTRACT

Mr. Mammolenti made a motion to postpone **RESOLUTION R2020-25** to the next regular meeting of the Mishawaka common council on December 21, 2020. With a second from Mr. Banicki, the motion passed.

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

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

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

John Palmer, 2316 Lincoln Way West, spoke in favor of **PROPOSED ORDINANCE NO. 2020-43**. Mr. Palmer stated he felt the property would be better suited back to its original zoning and the layout lends itself to that action.

Question was called for at 7:08PM for **PROPOSED ORDINANCE NO. 2020-43**  **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 become **ORDINANCE NO. 5720.**

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.

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

Peter J. Agostino, Attorney at Law, spoke in favor of **PROPOSED ORDINANCE NO. 2020-44**. Mr. Agostino stated this ordinance involves a planned 7-11 store at the southwest corner of McKinley and Main and it will be a corporate owned operation. Mr. Agostino also stated they believed they did good work with the Plan Commission and met all criteria.

Mr. Emmons asked if he had a meeting with the neighbors in the area. Mr. Agostino stated he had not but he had talked with council people and people in the area, but they did not hold a neighborhood meeting. Mr. Emmons stated he heard some of the neighbors were against the petition and the council always made it a priority to reach out to them. Mr. Emmons stated he cannot back the petition until they have a meeting with them, hear their concerns, and address them to the best of their ability. Mr. Agostino stated given the clients he is representing, he felt they had a pretty good feel where things stood on the petition. Mr. Emmons disagreed.

Mr. Banicki asked if they were purposing a car wash along with the 7-11 store. Mr. Agostino stated the developer could address that. Mr. Banicki also asked how they plan to stage the car washes when business is busy when there is a convenience store with pumps in the way. Mr. Agostino stated his experience was this is not a car wash destination place and it is not a standalone car wash. Mr. Banicki stated this could be a huge safety hazard if there are traffic backups. Mr. Agostino stated he believed this would be a matter of convenience and there would not be a backup. Mr. Banicki stated he would need to see the layout and he didn't believe there could be a large amount of cars occupying the lot, along with the pumps out front and other different aspects. Mr. Banicki stated the car wash was a problem for him. Mr. Banicki asked about access points and if there was one in the back of the property, which will be something new for the neighbors. Mr. Agostino stated

Mr. Compton stated he grew up in this neighborhood and he did not hear from any of the neighbors in the area. Mr. Compton stated he did not have issues with this petition and was not discounting what Mr. Emmons said. Mr. Compton continued stating he did not realize there was a car wash component either and believed it was concerning.

Mrs. Voelker stated this is in her district and did not hear from any neighbors. Mrs. Voelker asked Mr. Prince if anyone within 300 feet received a letter. Mr. Hixenbaugh suggested the council direct questions to Mr. Agostino and then allow Mr. Prince to approach the podium.

Mr. Compton asked if the people Mr. Agostino represented would be willing to move forward without a car wash. Mr. Agostino stated they would, but it is not their preference.

Ken Prince, City Planner, stated he wanted to provide information. Mr. Prince stated the reason the car wash is brought up is to identify from the staff report as the zoning permitted there. Mr. Prince stated they have not seen a plan with the car wash on the property, nor did he think they were proposing a car wash on the property. Mr. Prince again stated it is merely the zoning to permit a car wash. Mr. Prince stated that would propose different logistical issues for the site

plan, but to his knowledge they were not proposing a car wash on the property. Mr. Prince stated over 40 notices were sent out to adjacent property owners and received one letter of remonstrance that was read in the record for the Plan Commission. Mr. Prince stated they direct petitioners to have neighborhood meetings and in this case they did not feel that was warranted, given the limited amount of remonstrance occurred.

Mrs. Voelker asked what the address of the letter was. Mr. Prince stated it was 2116 North Main Street.

Mr. Hazen asked if the council passed this proposed ordinance, does it mean the Planning Department could approve a car wash. Mr. Prince stated once the zoning is established, they could place a car wash there but they would have to meet the criteria. Mr. Prince stated there is a certain amount of parking spaces required and believed they would not be able to make it fit on the property. Mr. Hazen asked if the Planning Department would take the staging area into consideration. Mr. Prince stated they would have to make it work.

Mr. Mammolenti asked if there was no space for a car wash. Mr. Prince stated the concept plan did not show a car wash either attached or separate. Mr. Prince stated there is no place to drive into to this building. Mr. Mammolenti asked when it was drawn up and submitted, would they be able to decide tomorrow to put in a car wash. Mr. Prince stated they could, but they would have to make it zoned correctly and significantly alter plans to make it work.

Mr. Banicki asked if it would be unprecedented for the council to put a stipulation in to prohibit a car wash on the property. Mr. Prince stated they could ask the petitioner as part of the written commitments to prohibit a car wash, but he would not recommend that. Mr. Prince stated the corner would also be appropriate for a car wash as a permitted use on the property and the issue is how you would get it to fit with the parking and transportation pattern. Mr. Prince believed the use was consistent with the location of the property, but it would not fit given the size of the property.

Mr. Agostino stated Mr. Banicki threw him off with the car wash question, because they did not have a plan for a car wash. Mr. Agostino echoed the size of the lot is very tight and they would have to sacrifice the store or pump locations to install a car wash. Mr. Agostino once again stated it was not part of the plans.

Mr. Mammolenti asked if Mr. Agostino had heard mention of a car wash in conversation with the developer. Mr. Agostino stated he had not and it was news to him given the size of the site.

Question was called for at 7:26PM for **PROPOSED ORDINANCE NO. 2020-44**  **Vote: Motion passed (summary: Yes = 7, No = 2, Abstain = 0).**

Yes: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. No: Mr. Emmons, Mr. Bellovich. Thus, it becomes ORDINANCE NO. 5721.

UNFINISHED BUSINESS

PROPOSED ORDINANCE NO. 2020-39

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)

Mr. Mammolenti made a motion to postpone **PROPOSED ORDINANCE NO. 2020-39** to their next scheduled council meeting on December 21, 2020. With a second from Mr. Banicki, the Motion passed.

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)

Mr. Mammolenti made a motion to postpone **PROPOSED ORDINANCE NO. 2020-40** to their next scheduled council meeting on December 21, 2020. With a second from Mr. Banicki, the motion passed.

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)**

Mr. Compton made a motion to postpone **PROPOSED ORDINANCE NO. 2020-41** to their next scheduled council meeting on December 21, 2020. With a second from Mr. Banicki, the motion passed.

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)**

Mr. Emmons made a motion to postpone **PROPOSED ORDINANCE NO. 2020-42** to their next scheduled council meeting on December 21, 2020. With a second from Mr. Banicki, the motion passed.

NEW BUSINESS

Mr. Hixenbaugh announced today was Councilman Hazen's birthday.

ADJOURNMENT 7:32PM

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

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