

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

March 1, 2021

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, March 1, 2021 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 February 15, 2021 were approved as received from the Clerk's Office.

Clerk Block read the following petition by title.

PETITION #21-02 Penn PUD Amendment to allow an 8' High Anti-Climb Screening Fence to Surround the new Juday Creek Water Treatment Plant – Lot 2 of Juday Creek Business Park – Vacant Land

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

PROPOSED ORDINANCE NO. 2021-10

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-4 Automobile Oriented Commercial District to C-1 General Commercial District – 1333 Lincoln way East

Mr. Emmons reported the Committee of Land Use Planning recommended this proposed ordinance should be adopted. This was signed by the entire committee and upon a second by Mr. Banicki, the motion carried via voice vote with all members of the council present.

Mike Huber, Abonmarche Consultants, spoke in favor of **PROPOSED ORDINANCE NO. 2021-10**. Mr. Huber stated the owner acquired the parcel secondary to acquiring the parcel that would allow him to expand the site for the development project at 1335 Lincoln way East. He explained their goal was to combine the two parcels. Mr. Huber stated the proposed use would be for his client to build a laundromat and possibly have a small office component to it as well, in the 2,000 to 2,400 square foot building. Mr. Huber stated they would be preventing future gas station or auto uses on the property to keep it consistent with the other four corners with three of them being C-1 General Commercial as well. Mr. Huber stated they understood they would have

to have a buffer yard for the residents to use and they appreciated the council for their consideration.

Mr. Hixenbaugh asked although they were not at the site plan point in the process, if he had any information to share with the council on how the future development will be screened. Mr. Huber stated the bunker yard against the residential component would be to the west and they would be screening with fencing and trees for the buffer requirements in the ordinance. Mr. Huber stated they would be making sure it was nice landscapes and fence buffer to provide enough screening to the residential.

Question was called for at 7:09PM for **PROPOSED ORDINANCE NO. 2021-10**  **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 proposed ordinance passed, thus it became **ORDINANCE NO. 5738.**

PROPOSED ORDINANCE 2021-11

AN ORDINANCE ESTABLISHING THE MISHAWAKA REDEVELOPMENT AUTHORITY

Mr. Bellovich reported the Committee of Land Use Planning recommended this proposed ordinance should be adopted. This was signed by the entire committee and upon a second by Mr. Banicki, the motion carried via voice vote with all members of the council present.

Ken Prince, City Planner, spoke in favor of **PROPOSED ORDINANCE 2021-11**. Mr. Prince began stating he wanted to take a step back before proceeding with his presentation. Mr. Prince referred to Mayor Wood directing the staff to prepare a 3-tier approach to the recovery of COVID the previous summer. Mr. Prince stated the first step of the process was the immediate allocation of special funding they received from statements regarding funding programs such as real services, Mishawaka Food Pantry and Boys and Girls Club all to support their social safety net from the impacts of COVID. Mr. Prince stated the second tier was their small business loan program. Mr. Prince stated although they only had moderate success with this program, it was a \$10,000 loan that could be attained at 0 interest and no payments for 6 months to allow small businesses to have a way to stay in business. Mr. Prince stated they had funded 50 potential loans and of that 6 were ultimately approved and they believed that because of the grants that were afforded from the federal government and if you would get a grant rather than a loan, you would take the grant instead of the loan. Mr. Prince stated the third leg was identified as a potential bond issue for the stimulus. Mr. Prince stated they knew as a part of the recovery that construction trades would slow and businesses would be adversely impacted. Mr. Prince stated when you looked at the way local government could assist, providing construction jobs into the economy was one of those ways. Mr. Prince stated essentially at that point of time, they started developing the construction documents necessary and they had to prepare detailed plans and specifications. Mr. Prince stated they did not make up new project as part of the proposed stimulus and what they did do was they took projects already on the capital improvements plan and basically attempted to move those forward. Mr. Prince stated they met and after following

the direction of the Redevelopment Commission, they engaged legal counsel for assistance in the process. Since that time, they afforded multiple pieces of information to the council regarding the step by step process needed to undertake a \$45 million assistance bond. Mr. Prince stated they believed \$45 million was a good bite of the apple and it put a significant amount of work on the streets, but yet still reserved a bonding capacity within the tax income finance district when other projects came along. Mr. Prince stated he wanted to reiterate that Catherine Fanello was attending the meeting virtually and she would be presenting the specifics on the resolution. Mr. Prince stated the only thing the council would be acting on that evening was creating the Redevelopment Authority and not actually approving the bond issued that evening. Mr. Prince stated that would not occur until May 30th and they respectfully asked for their favorable consideration of the ordinance, because it would allow them to continue to move forward.

Catherine Fanello, 18441 Summer Wind Lane, spoke in favor of **PROPOSED ORDINANCE 2021-11**. Ms. Fanello stated the Redevelopment Authority is required to use as a financing mechanism for the projects being discussed. Mrs. Fanello stated the statute itself, all of the parameters for the Redevelopment Authority, and all of the components in the ordinance before the council were in strict conformance of the statute. Mrs. Fanello stated it provided the number of board members, who would appoint those board members, and exactly what the purpose of the Redevelopment Authority was. Mrs. Fanello stated this was simply to establish the authority, to provide them with the financing mechanism and there would be several improvements on the way as they got closer to the bond approvals. Ms. Fanello stated she would answer any questions they had.

Mr. Hixenbaugh stated he appreciated the work she and her firm had done on this and it was a creative way to fund the projects they were looking to fund and an exciting opportunity for them. Mr. Hixenbaugh referred to paragraph 2B and subparagraph 3 in the document Mrs. Fanello gave out, which talked about at the end of the lease, the leased asset would become the property of the Redevelopment Commission and asked if there would be a formal transfer of title back to the Redevelopment Commission at that time. Mrs. Fanello stated that was correct and the Redevelopment Commission could then transfer it back to the city. Mr. Hixenbaugh referred to paragraph C in that same section which talked about the maintenance and repair of the leased asset during the term of the bond and there was a reference to the relationship between the Redevelopment Authority, the Redevelopment Commission and the city. Mr. Hixenbaugh asked if title to the asset would be held initially by the Redevelopment Commission after the transfer took place from the Board of Public Works and then it would be held by the Redevelopment Authority during the pendency of the bonds and asked what would be the involvement of the city in making repairs to an asset it no longer had titles to. Mrs. Fanello stated the Commission could enter into an agency agreement to arrive a city to make the repairs, because it would be in lease and the Redevelopment Commission would lease the asset from the authority. Mrs. Fanello stated the city would want to make repairs to the road and it was simply a matter of affecting a paper transaction and where they would allow the Commission and City to enter into the agency agreement allowing the city to make improvements, as long as there was an understanding to continue to hold and increase the value of the asset to support the bond. Mr. Hixenbaugh asked if repairs were necessary during the pendency of the bond, would the funding source for the repairs be TIF funds or the general funds of the city of Mishawaka. Mrs. Fanello stated it could be funded from either dependent on the project. Mr. Hixenbaugh asked if there would be anything,

if he were so inclined, that would preclude the Mayor from appointing a member of the council to the RDA if that were his pleasure. Mrs. Fanello stated not that she was aware of. Mr. Hixenbaugh referred to the date Monday June 7, 2021 which would be the last day for 50 or more taxpayers to object to the execution of the lease or file an action to contest the validity of the lease. Mr. Hixenbaugh asked what the start date would be for the objection period. Mrs. Fanello stated it would be May 6th and 7th in the publish notice of an execution of lease. Mr. Hixenbaugh asked, with regard to an action to contest, would that be subject to the jurisdiction of court in St. Joseph County or more kin to an administrative proceeding before a body of state government. Mrs. Fanello stated it could be both and she was not aware of one that had ever been filed. Mr. Hixenbaugh asked, referring to Indiana Code 36-7-14.5, if this same type of funding mechanism would have been available for the funding of the purchase of the Liberty Mutual building if they had chosen that route as opposed to utility bonding. Mrs. Fanello stated she could not answer that without further information, but this would be available for public improvement projects that would be usually more high dollar and there were other ways to fund those projects as well. Mr. Hixenbaugh stated there was a reference in the ordinance to the potential of a special benefits tax and asked Mrs. Fanello to explain how that would work and what the likelihood was that a special benefit tax would come into the mix. Mrs. Fanello stated this would be covered by tax increment and in some projects, they were funded by tax increment and when that would be unavailable, a special benefits tax would be available and that was a different way of calling it a property tax under the code. Mr. Hixenbaugh stated he read the documents as making no reference to additional pledges of security on the part of the city, Redevelopment Commission, or any other Mishawaka entity to secure the bonds and asked if that were correct. Ms. Fanello stated it was correct and any type of security would not be in any document except for the documents approved by the council and that security right now was the tax increment. Mr. Hixenbaugh appreciated Ms. Fanello's patience and thanked her for the information.

Mayor Wood spoke in favor and encouraged the council's support of **PROPOSED ORDINANCE 2021-11**. Mayor Wood stated this was one of the formalities they needed to accomplish while working toward the ultimate goal of passing their bond. Mayor Wood stated they started and presented to the Mishawaka Redevelopment Commission and had a special meeting for the council to discuss what their goals and intent were. Mayor Wood stated as their City Planner communicated, they had come up with a plan and this was but one leg of the plan. Mayor Wood stated more specifically, they believed the time was right for a program such as this, because they were seeing a great opportunity to bid out projects. Mayor Wood stated they had bid out a couple recently where they had saved just in bids alone several hundred dollars on each project and that told them companies were hungry to get their work. Mayor Wood stated these were projects they were going to build anyway and they may not get to them paying cash until 6, 8, 10 years down the line and they would certainly build them cheaper now than years down the line. Mayor Wood stated they also wanted to take advantage of the favorable interest rates that they were going to be receiving in the current climate. Mayor Wood stated if they could get projects done now rather than pay more later, they thought that was a good sound plan financially. Mayor Wood stated he was a person who did not like debt but if there were ever a case to do it, this may be it. Mayor Wood stated they did know there were companies out there which translated to workers out there who were also citizens of Mishawaka looking for the work for their long-term liability. Mayor Wood encouraged the council to support this and stated once

again this was just one of the formalities and only pick 50 people to serve on their boards who only have the best interest in the city of Mishawaka at heart.

Mr. Hixenbaugh thanked Mayor Wood, Mr. Prince and everyone involved for the creativity they showed to bring the ordinance to the council.

Question was called for at 7:30PM for **PROPOSED ORDINANCE 2021-11**  **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 Proposed Ordinance passed thus it became **ORDINANCE NO. 5739**

PRIVILEGE OF THE FLOOR

Gina Pyrzewski, 519 W Edgar Ave, spoke before the council. Mrs. Pyrzewski began stating she moved from Michigan about 4 years ago and she was new to the area. Mrs. Pyrzewski wanted to know if there could be a council meeting with the health department to go over questions and concerns their constituents had for the Moderna and Pfizer bio-technology gene therapy shot being given out, because she stated that was not a vaccine. Mrs. Pyrzewski stated this was new technology along with an experiment and she thought there needed to be more questions answered by the health department. Mr. Hixenbaugh stated he would be happy to engage in that conversation and have that conversation with the Mayor as well. Mr. Hixenbaugh stated they certainly could not commit to the health department participating in any such meeting, although they were a very valuable partner in the community in the effort to address the pandemic. Mr. Hixenbaugh stated his one bit of additional hesitation was that in regard to vaccination, the vaccine was heavily regulated by the federal government and while there undoubtedly could be good information shared at the local level, there was a big piece of the puzzle that laid at the federal level as well as the state level. Mr. Hixenbaugh stated they would consider her request and consult with the Mayor along with the health department and any other relevant players to see if there was such an opportunity to put a meeting together. Mrs. Pyrzewski stated she had done a lot of research to what this was and if it was right for her. Mrs. Pyrzewski stated Moderna had never produced a successful mrna before and they had one they tried in 2017 that was scrapped, because it was killing animals. Mrs. Pyrzewski stated Moderna created the COVID bio technology gene therapy in 40 days and they could skip the main trials, because it was under the Emergency Use Authority Act. Mrs. Pyrzewski stated they did not know what the long-term effects were, how fragile the mrna was which was important because when mutated it could cause cancer along with neurological issues and you could not get that out of your system. Mrs. Pyrzewski stated it was not like a wild virus that was weakened or dead that your own immune system could get out and this was created to get into your immune system and she stated that was the difference. Mrs. Pyrzewski stated they needed to start having this dialogue and the concern was that there were tons of HR bills coming out of their federal government and other state governments about vaccines. Mrs. Pyrzewski stated there was a lot coming down and she did not believe they were being vigilant in using their critical thinking on what was going on. Mrs. Pyrzewski stated she believed because this was new and experimental, things had been rushed and were going too fast. Mrs. Pyrzewski began stating Washington D.C. passed a law and Mr. Hixenbaugh intervened stating when they would start to talk about other municipalities and the

laws they had enacted, that was outside of the scope of a local governmental entity in Mishawaka. Mrs. Pyrzewski stated she believed it was relevant and Mr. Hixenbaugh stated he appreciated her passion for the issue and suggested she submit documents she wanted to be reviewed to the Clerk's Office and it would be more valuable to them if she did that. Mr. Hixenbaugh stated if there would be follow up conversation, it would make more sense to him to defer on the information she was sharing until the proper time. Mrs. Pyrzewski stated this was relevant, because of what the federal government stated for all children where eleven year olds could make their own decisions and this was a city, so she believed other municipalities could do the same thing. Mr. Hixenbaugh stated he appreciated her concern, but there were various bodies of government the council did not have control over and ultimately, it was a voluntary vaccination system. Mr. Hixenbaugh stated he would speak on behalf of his colleagues by saying they would be happy to consider any information she had and they would take a look at working with other entities to put together information sharing for the community. Mr. Hixenbaugh asked for Mrs. Pyrzewski to wrap up at that time with any additional final points she wished to make and invited her to submit any more information to them that she would like them to consider. Mrs. Pyrzewski stated this was under the Emergency Act so it was not mandatory and they needed to be proactive and find out when it would be proactive. Mrs. Pyrzewski asked if they would legislate prophylactics or other alternatives other than a gene therapy that a lot are not going to take at this time. Mr. Hixenbaugh thanked her for her comments.

Mr. Hazen stated the Health Department was overseen by St. Joseph County and if she had not been to one of their council meetings, that could be helpful for her. Mr. Hazen stated he could meet with her after the meeting and give her names of individuals who could help her. Mr. Hazen stated like Mr. Hixenbaugh said, they would not vote on it but it was interesting and he could give her names of people she could call. Mrs. Pyrzewski stated this was a concern because it was getting passed in local cities and she stated the council had the power to do the same thing if they wanted. Mr. Hixenbaugh stated he might question that as a matter of law, but he could tell her they had not received any such proposal nor did he believe they would entertain it. Mr. Hixenbaugh stated Mr. Hazen's suggestion was a good one and there was, at the local level, an entire additional layer of government at the county level that directly oversaw the day-to-day work of the health department and they report to the County Council and the Board of Commissioners. Mr. Hixenbaugh concluded stating any written information she wanted to share with them, they would happy to consider and would be happy to put her in touch with any entities who might be able to chime in on the concerns she had.

UNFINISHED BUSINESS

PROPOSED ORDINANCE NO. 2021-02

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 Fuel Pumps & Convenience Store with parking reduction – 520 Bittersweet – SE. Corner of Bittersweet & Vistula

Mr. Mammolenti reported the Committee of Land Use Planning recommended this proposed ordinance should be adopted. This was signed by the entire committee and upon a second by Mr. Banicki, the motion carried via voice vote with all members of the council present.

George Lepeniotis, Kreig Devault LLP Suite 100, spoke on behalf one of the petitioners Dave & Sons Properties, LLC. Mr. Lepeniotis stated Dave & Sons was an owner and operator of various convenience stores and gas stations throughout the state of Indiana. Mr. Lepeniotis stated one of their markets was taking bankrupt and vacated family video stores and converting them to convenience stores and gas stations. Mr. Lepeniotis stated they had found large success in this and that the convenience stores were often located in high traffic commercial zones, much like the one at the corner of Bittersweet and Vistula. Mr. Lepeniotis stated the project had brought more concern than he had originally thought when he took on the assignment and thought it would be beneficial if the council had it in front of you, so they could see more about his client, but also more about the proposal for that particular station. Mr. Lepeniotis stated it was a vacant family video store and it was a PUD with an allowable zoning of C-2 commercial. Mr. Lepeniotis stated they were requesting a change to the amendment of the PUD to allow for fueling stations, that would be C-10. Mr. Lepeniotis stated the staff report was favorable in this and as a matter of fact, there was very few concerns on the staff comments and he believed one of the concerns was that a barrier be provided between the residential neighborhood to the east, which was the Reflections apartment complex. Mr. Lepeniotis stated on the back of the packet he provided, it showed that had been agreed to and it may have even been a little higher. Mr. Lepeniotis stated the station would be one of the highest investments and it was an interesting corner in the sense that there was a medical plaza to the north, a catholic school and church on the northwest corner and the Twin Branch residential neighborhood surrounding it, as well as the apartment complexes. Mr. Lepeniotis did not envision that this would be a destination gas station and it would truly be designed to serve the neighborhood and the needs of the residents in that neighborhood. Mr. Lepeniotis stated Mr. Pulsing was present on the phone as was Jeff Ballard from Danch, Harner and Associates. Mr. Lepeniotis stated this was not a new thing to them and under subsection C of his proposal, it stated this would be a nationally branded fueling station and his client was very adamant that his stations were very well lit and are nice places to be at. Mr. Lepeniotis stated he noted on page 3 of the proposal that this was not a 24-hour operation and his client would be willing to put that in writing and make that part of the PUD amendment. Mr. Lepeniotis stated Mr. Hazen and others with experience in that industry were present at the town hall meeting and a question arose regarding the fuel pumps and stated operators could keep an eye on their fueling pumps and there were alarming systems built in. Mr. Lepeniotis stated the fueling pumps would stay on and from what they understood, that was largely becoming universal. Mr. Lepeniotis stated it was almost an issue of safety and convenience, for instance his client's example was an employee shows up 30 minutes late and an individual accustomed to stopping at that gas station does so and the pumps were not working and this would alleviate some of this hassle. Mr. Lepeniotis stated he put down that the proposed hours would involve closing by midnight and he believed that would be every night with a flexible opening time. Mr. Lepeniotis stated the bigger concern was that it be open early enough to take advantage of the morning traffic and that was an important part of his client's business to serve those as they are getting up and going to work to get ready for their day. Mr. Lepeniotis stated they had a professionally engineer site plan considerate of the traffic flow and Danch, Harner spent a significant amount of time and expense on the site plan and looked at a truck flow pattern. Mr.

Lepeniotis stated during their town hall meeting, they spoke with the residents and their only concern really was the traffic. Mr. Lepeniotis stated they provided a truck movement study prepared by Danch, Harner that represented tire marks and where the trucks would be parked. Mr. Lepeniotis with the exception of one tree, there was no impact including what he considered a very hard left turn heading westbound either onto or off of Vistula. Mr. Lepeniotis stated the traffic flow showed there was ample room and some spaces where the flow was almost 40 to 50 feet wide for a truck to make it into and out of the site. Mr. Lepeniotis stated the site plan was created in response to concerns they heard at the town hall meeting. Mr. Lepeniotis stated they wanted to give the council assurance that they had looked at it scientifically. Mr. Lepeniotis stated Section D showed photographs of his client's most recent station that opened a month and a half ago in Brownsburg and it was one of the BP concepts with the store being well lit, well trafficked and well scoped for various code and safety provisions. Mr. Lepeniotis stated he wanted to note how focused the light was off of the canopy and that was important in an area in a residential neighborhood and they did not want light from the fueling station to flood a neighbor's yard. Mr. Lepeniotis stated also in Section E he gave the council an example of what the fuel tanks and systems would look like underground and just how many safety precautions were in there. Mr. Lepeniotis stated this was a double walled lined tank with part of it being fiberglass with an option for all of it to be fiberglass and it was controlled through a computer terminal in the station that would be constantly moderated locally and remotely. Mr. Lepeniotis stated there was no way nowadays there could be a fuel spill and not know about it. Mr. Lepeniotis stated his client was part of the town hall meeting and was very open to the community and made himself known. Mr. Lepeniotis stated they generally received a positive response other than the truck issue. Mr. Lepeniotis concluded stating he appreciated their time and their consideration and hoped they would vote for this change.

Mr. Banicki asked about lighting and stated he did not believe Mr. Lepeniotis when he stated the light would not reflect different ways. Mr. Lepeniotis stated there were no plans to put lights on the side of the establishment and there were only plans to put lights on the canopy pointing down. Mr. Banicki stated then that would be a security issue and at the drive entrances if they were to have cars coming and going at night, that could be an issue. Mr. Lepeniotis stated he did not think they needed lights at those entrances especially with light population being a big deal. Mr. Lepeniotis stated when they run into situations where commercial and residential sometimes coincide, light pollution is a big deal and his clients were cognizant of it and would do everything they could to limit that, including the fence and the fact that on this particular site there was only one house bordering it on the west. Mr. Banicki questioned the ingress and egress of the store in general, because onto Vistula if you had one car wanting to turn left and another wanting to turn right, there would not be enough room for three cars in the drive entrance, more or less a truck. Mr. Lepeniotis stated Jeff Ballard was on the phone and referred that question to him. Mr. Hixenbaugh stated they would defer until he was done answering questions first. Mr. Banicki asked about traffic not only on the site, but also on both Bittersweet and Vistula. Mr. Banicki stated when talking about this traffic, one of the attractions was the traffic flow and part of it was the amount of school buses from the high school and middle school just to the north causing backed up traffic at certain times of the day. Mr. Lepeniotis stated it used to be a video store and the council approved it. Mr. Lepeniotis stated he believed any use would increase the traffic and a gas station would not increase it that much more than the family video. Mr. Lepeniotis stated any commercial use would create traffic and believed the site did plan for that. Mr. Banicki stated so when cars would be leaving onto Bittersweet, there would be cars wanting

to turn left or south and with two lanes of traffic heading northbound, at times that could be an issue. Mr. Lepeniotis stated it absolutely could be and that was part of it but he believed the site had potential to handle the traffic it may generate. Mr. Lepeniotis stated he did not disagree with him and his experience on the fact that this wasn't the biggest gas station, but he did believe when looking at Danch, Harner's plan, it was a professional engineering project and not just something his client slapped onto a piece of paper. Mr. Lepeniotis stated his client hired a number of engineers to look at it and ensure it could happen and those engineers told him it could work. Mr. Banicki stated he thought they were just putting lipstick on this, make it look pretty and make it fit when in all reality if you had to buy that corner and tear down, would that site be big enough for a station in this day and age. Mr. Lepeniotis stated he asked that question and there are stations on less than 1 acre and this was about an acre. Mr. Banicki stated that was very tight and stated once you were to put the pumps in and by the time those are installed with parking, there was not enough room. Mr. Banicki stated there was not enough room on the west side for cars to pass if there were cars fueling up. Mr. Lepeniotis stated he appreciated Mr. Banicki's concern and stated he would defer the questions to Mr. Ballard, the engineer who could give him better answers.

Mr. Emmons stated when looking at the drawings, they had a horseshoe type of curve when you would exit onto Vistula. Mr. Emmons asked what that dimension was between the parking and the landscaping and what the distance was. Mr. Lepeniotis stated the scale of the drawing was one inch to twenty feet, so it was at least twenty feet and stated Jeff Ballard would be able to answer that. Mr. Emmons asked what the distance and spaced would be when you make the horseshoe curve and from the tire tracks to the tire tracks. Mr. Emmons stated the reason he was asking that was because from his experience in the transportation business for over 20 years, if you were to get a 60 to 65-foot tractor trailer, that would make it tough to make a turn like that. Mr. Lepeniotis stated Jeff Ballard would be able to tell him what kind of truck could fit and there were a couple of fuel deliveries his client utilized with specialty trucks for smaller sites. Mr. Lepeniotis stated his client did operate 50 sites in Indianapolis and Mr. Emmons then stated he was just asking from being in the trucking industry and making a turn like that would be almost impossible without jackknifing your trailer. Mr. Lepeniotis stated he believed the drawing and engineering showed it was possible and that they had to trust the numbers. Mr. Lepeniotis stated there was no question it was a tight turn, but asked if it was so tight that they needed to say no and scrap the project. Mr. Lepeniotis stated he believed the engineering studied showed them that it was no and that science showed it was not tight enough to operate. Mr. Lepeniotis also stated truck drivers were professionals and he lived in Chicago and he lived across from a truck stop and he had seen them do amazing things. Mr. Lepeniotis stated they would not have to do amazing, but was telling them he hoped that if the engineers said it could be done and the roads showed it could be done, that it would be. Mr. Lepeniotis stated there was currently a restaurant on site and a family video on site and they received deliveries which likely were large ones and would get out of there just fine. Mr. Lepeniotis stated that site was there, this was not a new development and they were very aware of its traffic pattern when the engineering was done. Mr. Emmons stated he would not dispute with him on that, but he doubted the Family Video had 60 foot trailers on the site. Mr. Lepeniotis stated he would agree with that. Mr. Emmons stated with it being a small area, they do have snow and when it starts to pile up that affect the turning radius of tractor trailers. Mr. Lepeniotis stated his client was cognizant of that and would admit that he would have to be more vigilant about making sure he moves the snow and takes it where it would need to go. Mr. Lepeniotis concluded stating his client was very aware of these concerns.

Mrs. DeMaged asked how many employees they anticipate being hired full time and part time. Mr. Lepeniotis stated he could not tell her that number yet, because the drawings had not been finished but he assumed that it would be dependent on the hour shift. Mr. Lepeniotis stated he could not give her an exact number and his client had not gotten to that point in the planning at that time. Mr. Hixenbaugh asked Mr. Lepeniotis to stay in range of the microphone to help those participating remotely to hear him.

Mr. Mammolenti thanked Mr. Lepeniotis for his time jumping onto the zoom call prior to the council meeting and asked if the canopy lights would remain on throughout the evening even when the convenience store is not open. Mr. Lepeniotis stated a few of them would remain on, but it would be lesser than the full amount of them. Mr. Lepeniotis stated there were regulations in that on how many are able to be left on and many will be turned off. Mr. Mammolenti revisited the truck traffic issue and he knew it could be done and he trusted the engineers, but the one thing he believed it may be missing was the human operator. Mr. Mammolenti stated he managed a fleet of trucks as well as semis. Mr. Mammolenti stated he reached out to convenience store owners, gas station owners, truck drivers, etc. and asked them to drive by the location. Mr. Mammolenti stated every single truck driver said it would be a tough one and he trusted that Mr. Ballard and his firm on design it looked as though this would work, but truck drivers were in high demand at that point. Mr. Mammolenti stated they had been passing the exams and put on the road, in some cases, with not many hours. Mr. Mammolenti stated his point was this did not take into account human air in his opinion and he thanked Mr. Lepeniotis for his time. Mr. Lepeniotis addressed Mr. Mammolenti's comments stating there were not only two options for this, being approve the gas station or shut it down and fence it up. Mr. Lepeniotis stated it was still zoned C-2 commercial and someone could still come in and put something in by writing without coming forward to the council and without doing everything his client had done. Mr. Lepeniotis stated there were many commercial businesses that got deliveries by their semi-trucks and he stated he respected what Mr. Mammolenti did and understood the site was not perfect, but it was built to handle C-2. Mr. Lepeniotis stated he did not think it was built just to handle a video store and he wanted to be cognizant of that, along with the fact that a gas station was not exactly a truck stop. Mr. Lepeniotis stated he did not think fuel came daily and they were talking about somewhat of a controllable situation. Mr. Lepeniotis stated his client had said he would request later hour deliveries of fuel and that would be always open to adjustment, but his client was adamant that if he requested a small truck, then it would show up and if it weren't to show up, he would switch vendors. Mr. Lepeniotis stated his client was adamant that he would be cognizant of the truck route and because it had been such an issue, he would be foolish not to be. Mr. Lepeniotis stated the council could trust in the fact that it would work. Mr. Mammolenti asked if his client owned or operated any convenience stores without gas station pumps. Mr. Lepeniotis stated he did not believe so and believed all fueling stations were also convenience stores. Mr. Mammolenti asked if this were to fail, would he go on with the convenience store only and scrap the fueling aspect. Mr. Lepeniotis stated he had not asked his client that but he did not believe so. Mr. Lepeniotis asked they do not hold him to that and that would need to be discussed.

Mr. Emmons asked where the proprietor lived. Mr. Lepeniotis stated he believed he lived in Indianapolis.

Jeff Ballard, Danch, Harner & Associates, spoke in favor of **PROPOSED ORDINANCE NO. 2021-02**. Mr. Ballard began giving information about the truck traffic. Mr. Ballard stated the truck they would run through there would be an average size tanker truck and not a box semi. Mr. Ballard stated they were designed to maneuver more than a normal semi-truck trailer setup. Mr. Ballard stated when they did the scenario, they brought the truck in coming north on Bittersweet coming into the entrance, heading north and then coming back around and lining up to the turn lane on Vistula. Mr. Ballard stated they checked Vistula to see if it was a truck route and did not see any signs that it was, but also if it were to allow trucks they could come in from the east and get through traffic to the site easier. Mr. Ballard stated that a tanker truck could come into the site easily, make the turns easily, and come back out onto Vistula easily. Mr. Ballard stated this would not be happening every day and it would not be happening during high traffic hours and it seemed to him the owner would arrange truck delivery and gas delivery at a time it made the most sense. Mr. Ballard stated he could only speak to the safety of a truck coming through the site and to the fact that it could be done easily with an average sized tanker truck. Mr. Ballard stated they had proven it and the proof was with the information in front of the council. Addressing the distance between the pumps and curb on Bittersweet, Mr. Ballard stated 24 feet was as wide as a residential road in Mishawaka and certainly there would be enough room for cars to park and pump gas. Mr. Ballard stated he had been a site designer for almost 30 years and saw no issues with circulation in this situation. Mr. Ballard stated drivers will make mistakes and truckers sometimes were pressured with tight schedules or are new or are veterans in the business and that was the way it works, but certainly was not a reason to stop a project. Mr. Ballard addressed the lighting stating they had not designed the lighting yet and could not speak on the canopy lighting, but they planned to design lighting that had shields so the lighting would not spread beyond the property line which was a requirement of the city. Mr. Ballard stated Ken Prince and his department had done a good job of holding them to the criteria of site design and knew exactly what had to be done. Mr. Ballard stated screening would be done as required and he was sure the owner would go above and beyond to do screening. Mr. Ballard concluded stating he would answer any questions the council had.

Mr. Banicki stated with the high school and middle school being just to the north of the intersection, there was a lot of bus traffic. Mr. Banicki asked if it concerned him that people might try to cut through and get in an accident in this area and stated they needed to do their due diligence so no one would get hurt whether it would be on the property or in the street. Mr. Ballard stated he could not answer to the traffic and stated there were several gas stations on Bittersweet and McKinley Highway that dealt with a lot more traffic than what they would coming off of Penn High School.

Mrs. Voelker asked if she understood Mr. Ballard correctly when he said the distance between the canopy and the curb on the west side towards Vistula was 24 feet. Mr. Ballard stated no, the distance between the pumps and the curb was 24 feet. Mr. Ballard stated he did not know for sure what the distance of the canopy was. Mrs. Voelker asked if what he was saying was there would be 24 feet for people to maneuver in when they would pull out of the site after fueling their vehicles. Mr. Ballard stated the space between the pumps and the curb was 24 feet and that was essentially two roadway widths of a standard residential road in Mishawaka. Mrs. Voelker asked if it was about the same on the east side between the pumps and the parking spaces up against the building. Mr. Ballard stated that was 36 feet and they had 24 foot width which was

the standard drive isle in Mishawaka plus 12 feet for the alignment of people up against the pumps. Mrs. Voelker stated one of her concerns with pulling in and fueling up would be individuals that may be pulling boats or trailers and asked if he felt, as an engineer, that there would be enough room for someone to maneuver a vehicle pulling a boat with it. Mr. Ballard stated absolutely there would be enough room.

Mr. Emmons asked Mr. Banicki how many times in tenure of owning a gas station he got a small delivery truck come onto his site to use the fuel pumps. Mr. Banicki it would always be a standard size truck and it was always the same size. Mr. Emmons asked if it was basically a 40 foot with a tractor on it, basically totaling 55 feet. Mr. Emmons stated they were definitely large. Mr. Emmons stated he could not see how a small truck would be able to deliver 2,000 to 4,000 gallons of regular, high octane, and diesel fuel without making multiple trips back and forth. Mr. Emmons stated it was not economically feasible.

Mrs. Voelker asked where the fuel truck would go to fill the tanks and would the fuel truck be blocking traffic during that time. Mr. Ballard stated the fuel system itself was not designed yet at that time and wherever the fueling pad was would be where the trucks would stop. Mrs. Voelker followed up asking where that would be and if it would be blocking traffic in and out of the site. Mr. Ballard stated he had not seen a fuel plan so he could not answer the question.

Mr. Compton asked Mr. Banicki if he ever attempted to order a smaller truck from his fuel service. Mr. Banicki stated when he would order gas, they would send out through a jobber whatever would carry the amount of fuel he needed. Mr. Compton stated so he would be able to order a smaller truck if he decided to do so. Mr. Banicki stated there were other fuel companies than the one he was with that their goal was to have stores close by so they could deliver gas to multiple stores, because they did not want to make quick trips back and forth. Mr. Banicki stated when they delivered him gas it would be between 8,000 and 9,000 gallons at a time, so the average truck would be carrying 16,000 and 18,000 gallons of gas. Mr. Compton asked if he could order a smaller truck if he so desired, but he never attempted to. Mr. Banicki stated if the jobber had them and he did not know if certain jobbers had those trucks.

Surinder Singh, 6755 Robin Hood Ct. Indianapolis, IN, spoke in favor of **PROPOSED ORDINANCE NO. 2021-02**. Mr. Singh stated he was the owner and wanted to address some of the topics spoken about. Mr. Singh stated the first thing he wanted to address was the issue with the trucking getting in and out. Mr. Singh stated there was currently a Little Caesar's right next to them and two times a week they received deliveries from a full semi-truck without any problems getting in and out. Mr. Singh stated they will probably be in the same situation with their business with getting fueled likely twice a week and with deliveries in the nighttime, because that was the time the drivers preferred. Mr. Singh stated they had some smaller sites where if they needed 4,000-gallon tank wagons, they could order one. Mr. Singh stated if they were to request a certain situation where they needed a certain type of fuel, that would be able to happen. Mr. Singh stated they currently had smaller sites than this where trucks are entering and departing easily. Mr. Singh stated with regard to lighting, the lighting at the entrances already currently there would not be changed and he did not believe it would bother the neighbors at that time, nor would it in the future. Mr. Singh stated if adjustments were needed for the canopy lights, they could change them to abide to city requirements without bothering the customers or

neighboring community. Mr. Singh stated he would let the neighbors and the city decide what kind of lighting they would want and he is fine with being that open throughout the project. Mr. Singh stated he was there to work with the city, work with the neighboring community, make friends and make good business. Mr. Singh stated they were still trying to get this going and change the zoning, so he did not have answers to questions such as how far the canopy will be from tanks, for example. Mr. Singh concluded stating he believed they could make the site work.

Mr. Mammolenti thanked Mr. Singh for his participation in the neighborhood watch meeting zoom. Mr. Mammolenti asked how long it would take to unload a full tanker of fuel once it was docked. Mr. Singh stated it would take 30 to 45 minutes. Mr. Mammolenti asked if he knew how long the Little Caesar's trucks were there each delivery. Mr. Singh stated he believed they were longer than the 30 to 45 minutes mentioned prior, because they had to park the truck and the driver would get out, take the delivery out and then put it back on the truck. Mr. Singh stated his drivers would be literally dumping the gas then leave, which would take much less time. Mr. Mammolenti asked if the estimation of 30 to 45 minutes to unload would apply to a full tanker or not. Mr. Singh stated that would be for a full tanker and it would carry from 8,000 to 9,000 gallons of gas and state requirements stated you could not have more than that.

Mr. Banicki asked what size tanks he proposed putting in. Mr. Singh stated he would put in a 10,000-gallon tank and 6,000 gallon small tanks and 6,000-gallon premium tanks. Mr. Banicki asked how many gallons of gas he proposed to pump every month. Mr. Singh stated somewhere around 270,000 to 290,000 gallons, because there were several fueling stations throughout the community and it also depended on the brand they receive. Mr. Banicki stated based on if they would do about 100,000 a month, that would be roughly 3 tankers a week at 8,000 gallons and if he went to 4,000 that be about 6, with 1 a day. Mr. Singh stated the drivers usually deliver the fuel at night so they can be in and out and if they needed to put out 4,000 gallon tanks, he did not believe his company would say no to him. Mr. Singh stated he did not see a problem with bigger tankers coming in, because it would be the exact same process Little Caesar's was using.

Mr. Hixenbaugh asked about the hours of operation for the convenience store and if his suggestion was that they would close by no later than midnight each evening. Mr. Singh stated that was correct. Mr. Hixenbaugh stated there was a reference to reopening prior to the morning rush and asked Mr. Singh to be a little bit more definitive in terms of time since the beginning of the morning rush hour was open to some interpretations. Mr. Singh stated they would around in the time frame of 4 or 4:30 in the morning and how he decided that time was they ran a report every day in the stores to see if the establishment did much business in the nighttime and come to found out they did not, so there was no point for them to be open. Mr. Singh stated they had seen in the 4:30AM to 5AM range was the timeframe when people begin to get out of the house to get ready for their job and stated 4:30AM was the time he was thinking to open the doors to the convenience store.

John Mosier, 15899 Cedar Ridge Ct. Granger, IN, spoke on of **PROPOSED ORDINANCE NO. 2021-02**. Mr. Mosier stated he was the Business Manager at Queen of Peace Church and School. Mr. Moiser stated after speaking with their pastor that day, they were indifferent and as one of the neighbors on the corner, they were not opposed to the gas station conversion and also not supportive. Mr. Moiser stated they were neutral and their one request was that folks would continue to remember that they were a school as well as a church, so if there were considerations

of business and products sold certain distances from the school to remember that they did have a school in that area.

Mr. Hixenbaugh asked when he talked about the concerns he had, if there were any more specific details Mr. Moiser could provide to the council about the concerns he had, particularly involving the school children who would be in close proximity to the convenience store at times.

Mr. Moiser stated he did not have concerns with the operation of the convenience school given where the school and church was. Mr. Moiser stated his only reason of raising that was if there were rules that certain things must be so far from a school, that those laws would be followed. Mr. Hixenbaugh stated he appreciated that clarification and if this request were approved, all arms of city government would make sure all of their local ordinances as well as all provisions of state law would be followed.

Debbie Fox, 5117 Breezewood Drive, was present on behalf of the neighbors in Twin Branch and River Pointe Estates and she brought their concerns forward. Mrs. Fox read some of their responses stating there were too many gas stations in one area and they had 8 gas stations in a mile radius. Mrs. Fox stated the location was too small for fuel trucks to get in and out and questioned how they would be able to travel down Vistula, because it would be tough to go down Cedar Road which was barely a two lane road and would have to leave out to Bittersweet by leaving out of two lanes of traffic as well. Mrs. Fox stated one of the neighbors was concerned about the waterways and ponds with a possible fuel spillage hurting the geese they had. Mrs. Fox stated a lot of the neighbors stated there were too many stations in the area and did not see how the tankers would get in and out. Mrs. Fox asked his son, who was a semi-truck driver, how someone would be able to maneuver out of there and he said it would be very tight. Mrs. Fox stated someone wanted to know why the City Council thought this would be a good idea and if they were looking at the big picture at all with the neighbors. Mrs. Fox stated they would love to see a restaurant or a doctor's office go into that spot. Mrs. Fox stated she called Penn High School to find out about buses and the buses pulled in there 3 times a day in the morning and 3 times at between 2 and 4 in the afternoon to drop off kids. Mrs. Fox stated kids hanging out around there could go into the convenience store, possibly spend their lunch money and not have lunch, miss their bus or just be out there when buses are present and that was a major concern to her. Mrs. Fox stated that would be a big safety issue and she was worried about the children. Mrs. Fox stated one neighbor stated they did not need more gas stations and they had enough around the neighborhood not directly in their neighborhood.

Mrs. Voelker asked if Mrs. Fox could tell her where the school bus pick up was in relation to this corner. Mrs. Fox stated they came in off of Bittersweet into the apartments where the trucks would come in, so it was the Reflections Apartments. Mrs. Fox stated they came in that way and one of the buses came in from Vistula and then would come out onto Bittersweet. Mrs. Voelker also asked if she had an idea on how many people participated in her survey. Mrs. Fox stated about 20 people chimed in on Facebook.

Mr. Hazen stated he asked Mrs. Fox to come by herself and he had about 25 to 30 people contact him with 3 emailing him and another 2 to 3 calls in opposing this ordinance. Mr. Hazen stated he asked Mrs. Fox to speak for all of the residents that evening.

Mr. Hixenbaugh asked her to go back to the point of her neighbors and her personal opinion, if not a gas station/convenience store what it was they would like to see on that corner. Mrs. Fox

stated a lot of the neighbors suggested a restaurant and some brought up a doctor's office and it would be a great location for a doctor's office. Mr. Hixenbaugh stated he appreciated the summary she gave of all of the opinions of the neighbors and asked if there was anyone who expressed support at all of the people she polled. Mrs. Fox stated no, not at all. Mr. Hixenbaugh clarified in regard to the individual questioning why the council thought this was a good idea that the council had not stated any opinion on the issue at all and they did not go out and recruit petitioners and developers to purpose development out of a particular site. Mr. Hixenbaugh stated they do not state an opinion until they take vote the evening of the public hearing and the council had no stated an opinion in favor or against the proposed ordinance at that time. Mr. Hixenbaugh stated it was not the first time they had heard that, but asked Mrs. Fox to clarify that for the neighbors. Mr. Hixenbaugh continued stating it was understandable why people expressed their opinion frequently with regard to re-zonings that they have too many gas stations, too many drive-thru restaurants, too many car washes, etc. and it made sense why people express that opinion on behalf of their neighborhood, but that was not a factor the law empowers them to look at right or wrong. Mr. Hixenbaugh stated they live in a free market economy and the market determines whether businesses will be successful rather than government dictating that they have a set number of gas stations. Mr. Hixenbaugh stated it was a little beyond their scope to be able to say that the perfect number of gas stations was 8 as opposed to 7 or 9 and it would be arbitrary. Mrs. Fox expressed concern with the owner stating they would open up at 4:30 in the morning and she did not believe it was fair to the neighbors to have that much light shining at that time. Mrs. Fox stated if they shut down their lights when closing at midnight and you were to stop and get gas, that would not be safe either. Mr. Hixenbaugh thanked Mrs. Fox for the representation of her neighborhood.

Mr. Compton thanked Mrs. Fox for attending the meeting and speaking for all of the neighbors. Mr. Compton asked if any other the neighbors mentioned 'what if the property were to sit empty for years on hand?' and also asked if they cared if there were no establishment in that spot rather than a running business. Mrs. Fox stated they the neighbors seemed to think there was something better that could go there. Mr. Compton stated he understood what she was saying and he looked at the corner and there was not a lot of single family homes nearby and some apartments. Mr. Compton stated this concern was that very attractive to certain businesses and he believed it was a pretty expensive corner to be on. Mr. Compton stated a business like what was being proposed or a fast food store, that needs traffic, was the exact reason why they wanted to be there. Mr. Compton said certain businesses want and need traffic. Mr. Compton stated they heard this regularly that there had to be another place but he believed what was being proposed was the best use for the property. Mrs. Fox stated she did not believe it was big enough for a gas station or a drive-thru restaurant. Mrs. Fox stated it could be more of a sit-down restaurant, a doctor's office or an insurance agent. Mr. Compton presented the question of would they want to use their dollars for the busy intersection and pay for the busy intersection they don't need. Mrs. Fox stated it was a busy intersection that did not need to get busier with trucks. Mr. Compton believed that would not change regardless and thanked Mrs. Fox.

Richard and Kara Mullens, 4015 Pleasant Point, spoke in opposition to of **PROPOSED ORDINANCE NO. 2021-02**. Mr. Mullens stated they did not have much of a say so if the fuel pumps would go in or not, but he hoped there was a clause in the contract in the city if it were to fail that they would be responsible for taking the tanks out and putting it back to where it was currently. Mr. Mullens believed a donut shop would be perfect there. Mrs. Mullens stated they

had seen all of the comments collected from neighbors and she understood they could not say they had too many gas stations, but on the corner of Bittersweet and McKinley there were 3 gas stations with 1 continually being shut down for lack of business. Mrs. Mullens stated with COVID going on in the last year, a lot of businesses had to go belly up in their neighborhood and for the remaining gas stations and convenience stores, she felt she needed to support them. Mrs. Mullens stated it was not that she was opposed to this being put in, but thought it was not the right time for a convenience store and gas station. Mrs. Mullens stated she had watched the Little Caesar's delivery truck come in off of Bittersweet at the Reflections entrance and they always unload on the side of the store not blocking any traffic and proceed right out the way they came in.

Mr. Hixenbaugh thanked them for their work done over many years with Mr. Mammolenti, Mr. Hazen and their predecessors in being the driving force behind the Twin Branch Neighborhood Watch. Mr. Mullens thanked Deb Fox for attending the meeting.

Mr. Mammolenti asked Mrs. Mullens if the Little Caesar's trucks were full semi-trucks. Mrs. Mullens stated there were not and they were box trucks that easily pull in and park on the side of the store. Mrs. Mullens also stated someone in the neighborhood asked where they will put the snow in the event of a snow storm and with the trucks trying to get in and out. Mr. Mammolenti asked if she took notice of how long the box trucks remained on site to unload. Mrs. Mullens stated she did not.

Mr. Banicki stated looking at the piece of property it was a tough piece of property for this business, because it was a little smaller than what a perfect newer gas station would be placed on. Mr. Banicki stated as far as lot size, that was up to the people there and they were trying to put 10 pounds of potatoes in a 5-pound bag and it would be tough. Mr. Banicki stated sometimes you had to trust your gut and use a little common sense and say for safety with the cars going in and out so close to the corner along with being close to the school, it just did not feel right. Mr. Banicki stated for that reason and the safety of traffic and possibly foot traffic in the future, he could not support the proposed ordinance that evening.

Mr. Hixenbaugh had a question for Mr. Prince. Mr. Hixenbaugh stated Mr. Banicki had just referenced the size of the parcel that was the subject of the proceeding and the staff report noted it was just under 1 acre at 0.95 acres. Mr. Hixenbaugh stated he was attempting to correlate that with other similar uses throughout the city and asked Mr. Prince, in his opinion, if there were other gas/convenience stores currently located on parcels roughly equivalent size of the parcel in question. Mr. Prince stated the 7-Eleven on the corner of Mishawaka Avenue and Main Street was a perfect example of a gas station where a tanker would come in and it was jammed right into the parking area they came in. Mr. Prince stated the Speedway was larger than the 7-Eleven but still was smaller than the parcel in question and the Citgo on Lincolnway between Twin Branch and Bittersweet was also a similar narrow site that had issues more severe than the parcel in question. Mr. Prince added the Family Video were looking at widening the pavement there and not using the existing pavement, which would give more room to allow the tankers to enter and exit. Mr. Hixenbaugh stated one of the other points made that evening was if the gas station/convenience store use was not approved, he believed it were accurate that there was any use that was approved in their C-2 shopping center uses that without further action of the council, would be eligible to be located at that site and asked if that was correct. Mr. Prince stated it was correct. Mr. Hixenbaugh stated after printing of a copy of the ordinance, it appeared

there were about 55 potential uses that were appropriate within the C-2 district and asked Mr. Prince if that was correct. Mr. Prince stated it may have been larger than that, but were broken down into different zoning ordinance pyramids and referred to other zoning districts as part of that. Mr. Prince added some were not eligible, because they had different parking requirements so a typical restaurant would have trouble going next to Little Caesar's, because the parking would be deficient for it. Mr. Prince stated another carry-out business could be able to use the site, for example, but he was not sure. Mr. Prince continued stating a corner like this with the high volume, as referenced by the council, people would look at the location and stores like a vape shop, a Low Bob's or a liquor store could go in and all had permitted uses without any approval from the council and it was a permitted use in the zoning district. Mr. Prince asked the council to keep that in mind relative to the permitted uses.

Mr. Hixenbaugh invited Mr. Lepeniotis to address the concerns expressed by Mrs. Fox. Mr. Lepeniotis thanked Mrs. Fox for attending the meeting and organizing the neighbor's comments. Mr. Lepeniotis stated his client was eager to have a business in the community. Mr. Lepeniotis stated his client had a vested interest in making this a nice station and making it an easy place that would be easy to get in and out. Mr. Lepeniotis stated his client had a commercial vested interest in not having a commercial tanker truck out in front of the store at 5 in the afternoon, 7 in the morning or even when the school buses show up. Mr. Lepeniotis stated his client had done nothing but what they had been asked of, invited members of the community up to speak, made their lines open at the end of the town hall meeting, and things of that nature. Mr. Lepeniotis stated he had not heard Mrs. Fox's concerns prior to the meeting, but did not think they were concerns that were an odor or other things that could be very preclusive to creating a bad environment. Mr. Lepeniotis stated he believed the corner was best suited for this and he believed his client had a vested interest in it. Mr. Lepeniotis stated he did not want to debate on the truck traffic and he knew the council knew more about that than he did, especially Mr. Emmons, but he did think it was possible. Mr. Lepeniotis stated with what they presented, he believed his guy would be a great addition to the community and he believed he would take all of the thoughts and concerns into account. Mr. Lepeniotis stated they did not want to start the relationship with the neighbors acrimoniously, because his client simply identified a piece of property he believed would make a good business. Mr. Lepeniotis stated he did not think he was asking for something extraordinary or something that would hurt the community. Mr. Lepeniotis concluded stating he appreciated everyone's comments and knew his client did as well.

Mrs. Voelker had a question for Mr. Prince and asked if in the future the business was no longer there, would the owner be responsible for removing the tanks. Mr. Prince stated the city was put in a position when acquiring historically old gas stations to clean up the property but in his tenure with the city, they never experienced that with a newer station. Mr. Prince stated that would be a better question for the operator, but he did not believe that burden would fall to the city. Mr. Lepeniotis answered Mrs. Voelker's question stating what's in the tanks was valuable so the fuel would always be removed from the site if the station ceased to exist and someone would come and pump the fuel out instantaneously. Mr. Lepeniotis stated modern tanks were designed to hold fuel a lot better than old tanks and also were monitored not only by the owner but the state of Indiana and are eyed routinely. Mr. Lepeniotis stated if the station were to close, it would be highly unlikely that a fuel spill would go unnoticed by the time a station closed. Mr. Lepeniotis stated if closed, the tanks in the ground would be largely innocuous and would have nothing in them, so there would be no reason to pull them out and the site could be operated on

with them still there. Mr. Lepeniotis stated the reason tanks were removed in the past was because they were leaky and had other issues with contamination on the site. Mr. Lepeniotis stated the tanks would be secured and would not be an obstacle.

Mr. Compton asked Mr. Lepeniotis if the tanks would be owned by Mr. Singh. Mr. Lepeniotis stated it may be a better question posed to him, but his understanding was the owner of the station owned the fueling system and paid for the system.

Mr. Compton stated he believed this was the best use for this property even though people in the proximity did not want to see another gas station in the neighborhood. Mr. Compton stated he believed there was a lot of businesses that could go into that spot that would be more objectionable to him. Mr. Compton stated he would support this and thought that the school and church across the street did not have a concern about what was on the corner and stated it made sense to put the gas station/convenience store there.

Mr. Hixenbaugh added that he also appreciated the passion and concerns voiced by neighbors in close proximity to any of the projects. Mr. Hixenbaugh stated on the other side, he was concerned about some of the potential downsides to the building not being used as proposed. Mr. Hixenbaugh stated the potential of it to sit vacant for a long period of time and the specter of some of the uses that could be enacted at the site without further action from the council being much worse with the location of schools in the area. Mr. Hixenbaugh stated he was torn on the merits of the proposal and one component of the community dialogue that bothered him was that there was some refrain that this was a done deal and the council would do what they wanted. Mr. Hixenbaugh stated that concept of it being a done deal was concerning to him, because he defied them to say this was a done deal given the conversations held during the public hearing that evening. Mr. Hixenbaugh stated he took some offense at it and hoped however this were to turn out, there was a thoughtful analysis on the part of the council who worry about what's best in the best interest of the community. Mr. Hixenbaugh stated they focused on that neighborhood and they were making a decision for the rest of the community and asked rhetorically how it was fair that there was a gas station on a much smaller parcel in his neighborhood, but suddenly it was a monumental problem in other neighborhoods. Mr. Hixenbaugh concluded stating he was torn by the equities and merits of this and he would take the proper time to process his decision.

Question was called for at 9:21PM for **PROPOSED ORDINANCE NO. 2021-02**  **Vote: Motion failed (summary: Yes = 3, No = 6, Abstain = 0). Yes: Mrs. DeMaegd, Mr. Compton, Mrs. Voelker. No: Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Emmons, Mr. Bellovich, Mr. Hixenbaugh.** The proposed ordinance failed 6 to 3.

ADJOURNMENT 9:22PM

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

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

