

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

June 7, 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, June 7, 2021 at 7:00PM. The meeting was called to order by President Gregg Hixenbaugh. All were asked to stand for the Pledge of Allegiance.

Roll Call.

Present: Mrs. DeMaegd (P), Mr. Banicki (P), Mr. Hazen (E), Mr. Mammolenti (P), Mr. Emmons (A), Mr. Bellovich (P), Mr. Compton (P), Mrs. Voelker (P), Mr. Hixenbaugh (P)
P: Present E: Electronically Participating A: Absent

Others Present: Clerk Block and Mike Trippel, Council Attorney.

Members attending virtually do so by WebEx. Public that attend can participate by WebEx or observe meetings by YouTube or Facebook live. The Council meetings are also streamed live on Michiana Access on Comcast/AT&T U-verse Channel 99.

Minutes for the Regular Meeting of May 17, 2021 were approved as received from the Clerk's Office.

Clerk Block read the following petitions by title.

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| Petition No. 2021-07 | University Marketplace PUD Amendment to allow an Automobile Dealership and Service Center – 7207 Grape Road (former Jcpenny Home Store) |
| Petition No. 2021-08 | Rezone from C-1 District to C-7 District to allow Restaurant with Drive-Thru – Part of 2754 Lincoln Way East – existing parking area for Mishawaka Inn |
| Petition No. 2021-09 | Annexation & Zoning of 19.02 Acres to R-1 for a proposed Single Family Residential Subdivision – Autumn Ridge Phase 4 |
| Petition No. 2021-10 | Annexation & Zoning of 5.24 Acres to I-1 for a proposed Self Storage Facility – 16996 S.R. 23 |

A public hearing was held on **Proposed Vacation 2021-01** required by State Statute on behalf of Hack Properties LLC, Right of Way alley vacation 16' wide alley N. of Brown, S. of Catalpa, between Forest and Boston Ave. for length of 215 feet.

Terry Lang, Lang, Feeney & Associates Inc., spoke in favor of **Proposed Vacation 2021-01** and represented the petitioner, Hack Properties. Mr. Lang stated Hack Properties bought 5 lots along Brown Street and were proposing to develop new home sites there. Mr. Lang stated in working

with the Engineering and Planning offices, it was suggested that they petition to vacate an alley that had not been used in 75 years when it was originally platted. Mr. Lang stated they were following through with the recommendation from the Planning Commission and the Engineering Department, requesting there be a vacation and divvy it up between the property owners.

Mr. Hixenbaugh asked what type of outreach there had been to the neighboring property owners to gauge any concerns they had. Mr. Lang stated at the hearing, the adjacent property owner immediately to the west showed up in support of the petition and they had everyone notified of what was transpiring.

The public hearing for **Proposed Vacation 2021-01** was closed at 7:07PM, subject to further action later that evening.

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

RESOLUTION R2021-12

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA ADOPTING A WRITTEN POLICY ESTABLISHING THE PROCEDURES FOR ELECTRONIC PARTICIPATION AT MEETINGS

Mr. Hixenbaugh asked if Mr. Trippel could provide a brief overview of the resolution. Mr. Trippel stated this would allow the council to continue to allow remote participation by both the public and the council even after the executive order was lifted. Mr. Trippel stated as of July 1, Governor Holcomb had given the indication that he would not extend the order beyond that date and the state legislature set forward procedures in their most recent session by which various public bodies could have remote sessions. Mr. Hixenbaugh thanked Mr. Trippel for putting the resolution together.

Mr. Hixenbaugh stated one of the positives that came out of the pandemic was their ability to be able to do further outreach to the community through remote means to be able to allow that many more people to view the council meetings, either in real time or after the fact. Mr. Hixenbaugh stated they all had experienced positive comments from the community and this would allow them to continue to provide that public service, not only then but in the future when they move to the new City Hall building and have a greater ability to allow the public to participate in meetings. Mr. Hixenbaugh concluded thanking everyone involved, including the IT staff, who allowed that to happen.

Question was called for at 7:10PM for **RESOLUTION R2021-12. Vote: Motion carried by unanimous roll call vote (summary: Yes = 8).**

Yes: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The resolution passed 8-0.

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

PROPOSED ORDINANCE NO. 2021-17

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.

**Right of Way alley vacation of 16’ wide alley N. of Brown, S. of Catalpa, between Forest and Benton Ave. for length of 215 feet
(Planning Department requested an amendment)**

Mr. Hixenbaugh stated at the request of the Planning Department and in order to address a clerical error with regard to a reference to the petitioner in the original ordinance, the chair entertained a motion to delete the original ordinance **PROPOSED ORDINANCE NO. 2021-17** in its entirety and replace it with the revised ordinance listing the correct petitioner as distributed to them by the City Clerk’s Office. A motion was made by Mr. Banicki and seconded by Mr. Mammolenti, thus question was called for and the council was polled on the amendment to the proposed ordinance.

Question was called for at 7:12PM for **PROPOSED ORDINANCE NO. 2021-17AA** **Vote: Motion carried by unanimous roll call vote (summary: Yes = 8).**
Yes: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The amendment passed 8-0.

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. Clerk Block polled the council on the committee report.

Motion carried by unanimous roll call vote (summary: Yes = 8).
Yes: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The committee report passed 8-0.

Terry Lang, Lang Feeney & Associates, spoke in favor of **PROPOSED ORDINANCE NO. 2021-17AA**. Mr. Lang stated he had nothing to additional comments.

Mrs. Voelker stated she had looked at the pictures provided and it appeared some of the properties had structures in the alley, such as a pool and a shed or garage. Mr. Lang stated there was a garage there that would be taken down. Mrs. Voelker stated it looked like the house at the corner of Benton and Brown had a fence and used proportionally more of the alley than they would own. Mr. Lang stated he had not done a survey on the piece, but when he was at the meeting he indicated his fence was into the alley area and spoke in favor of the petition. Mrs. Voelker stated just by appearance, it appeared he had extended more than halfway across the alley. Mrs. Voelker asked if that were the case, if he would have to take his fence down. Mr. Lang stated he potentially would have to and it would be up to him and the resident to work out the necessary details. Mr. Lang stated it could happen, it’s happened in the past.

Mr. Banicki asked if they would build 4 or 5 homes. Mr. Lang stated they would build 5 and that would begin now that they had the petition before the council for the alley vacation. He said they also needed to work on tearing down the garage.

Question was called for at 7:17PM for **PROPOSED ORDINANCE NO. 2021-17AA** **Vote:**

Motion carried by unanimous roll call vote (summary: Yes = 8).

Yes: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The proposed ordinance passed 8-0, thus became **ORDINANCE NO. 5745**

PROPOSED ORDINANCE NO. 2021-18

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 Auto Oriented Restaurant to C-4 Automobile Oriented Commercial – 5603 Grape Road

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. Mammolenti, the motion carried. Clerk Block polled the council on the committee report.

Motion carried by unanimous roll call vote (summary: Yes = 8).

Yes: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The committee report passed 8-0.

Mike Huber, Abonmarche Consultants, spoke in favor of **PROPOSED ORDINANCE NO. 2021-18**. Mr. Huber stated the property had been there once before when they rezoned from C-1 to C-7. Mr. Huber stated since that time they created 2 out lots. He the intent was both out lots would be used and created for proposed drive-thru restaurant uses. Mr. Huber stated since that time, one of the tenants became no longer interested in the property, so the property on the north was in consideration with an instant oil lube project. He said they were there to ask change from C-7 to C-4. Mr. Huber stated this would be better for the two uses, given they had a tire and auto place just adjacent to the north of the lot. Mr. Huber stated in the original rezoning, they had conversations with the apartment complex to the northwest of the property and agreed they would stay in communication with them as they developed the final site plan for the project. Mr. Huber stated with the project and the C-7 use to the south, they worked with the Engineering and the Planning Department to create a new entrance into the shopping center and to discontinue the existing access and would be shifting it to the north more directly in the center of the shopping plaza. Mr. Huber stated it met the safety goals of city engineering, enhanced the plaza and they believed the two out lot uses would inject life into the shopping center along the Grape Road corridors.

Mr. Banicki stated it would have been nice to see the proposed entrance, but they obviously could not at that time. Mr. Banicki asked if they would close the entrance right next to the

restaurant to move it. Mr. Huber stated that was correct and the existing entrance brought up concerns with how it would function and/or not function. He said they worked with the Engineering Department to identify a location centered in front of the ABC Warehouse. Mr. Banicki asked if the entrance would be similar to the one almost straight across the street that was right in and right out only. Mr. Huber stated there would be full access there with right in, right out, left in and left out. Mr. Huber stated along with the city, they felt it would function a lot more efficiently and effectively. Mr. Banicki asked if there would be a type of access road right out front. Mr. Huber stated there would be a deceleration lane and an acceleration lane, along with an additional right of way dedicated from the property to get the traffic out.

Mrs. Voelker asked if there would be similar landscaping around the restaurant, Steak N Shake, to make it a little bit more appealing. Mr. Huber stated they would be in full compliance at the final site plan level with the city zoning ordinance, meeting all of the required landscaping, parking/paving setbacks and the building setbacks required with the development. Mr. Huber stated they were currently trying to get the zoning secured and then they would be working collectively between the two sites and the entrance to get the final site plan submitted and present that unified site plan for all of the developments. Mrs. Voelker asked if the entrance off of Douglas will function as an internal roadway. Mr. Huber stated it would.

Mr. Banicki had some concerns about traffic flow and stated moving forward with the petitioners, they were proposing moving driveways and things like that and the council would not see any of that if they weren't present at the council meetings. Mr. Banicki stated it was their right to participate remotely, but it was also the council's right to continue these types of things until they were given that information. Mr. Banicki stated he did not know if they should have continued that evening, but moving forward the council needed more information or they would continue. Mr. Banicki stated they should certainly have that information but they did not. Mr. Banicki stated he would be voting in favor of the proposed ordinance that evening, but without the necessary information in the future he would have to move forward.

Mr. Hixenbaugh echoed Mr. Banicki's comments and stated he believed it was helpful and appropriate for their process to be followed and for them to have the best information when making action. Mr. Hixenbaugh stated they were all adjusting to the remote world, including those who present to the council, but he certainly would be in favor of a motion to postpone at any point in time that a council member did not feel like they did not have the information they needed to make a solid decision. Mr. Hixenbaugh appreciated Mr. Banicki's comments.

Question was called for at 7:27PM for **PROPOSED ORDINANCE NO. 2021-18** **Vote: Motion carried by unanimous roll call vote (summary: Yes = 8).**

Yes: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The proposed ordinance passed 8-0, thus became **ORDINANCE NO. 5746**

PROPOSED ORDINANCE NO. 2021-19

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 General Commercial to C-7 Automobile Oriented Restaurant – 2777 Lincoln Way East

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. Clerk Block polled the council on the committee report.

Motion carried by unanimous roll call vote (summary: Yes = 8).

Yes: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The committee report passed 8-0.

Mike Huber, Abonmarche Consultants, spoke in favor of **PROPOSED ORDINANCE NO. 2021-19**. Mr. Huber apologized as he was under the impression the council had the site plans provided to the Plan Commission in their staff reports and also apologized for not being present physically that evening. Mr. Huber stated he did not mean to put them at a disadvantage during the presentations and he would do his best to answer questions related to the ordinances.

Mrs. Voelker asked if there was a center left turn lane on Lincoln Way in the location. Mr. Huber stated currently there was not a formal center left turn lane at that location. Mrs. Voelker stated she asked that, because there was an ordinance on first reading they would be talking about at the next council meeting for another drive thru restaurant in the Mishawaka Inn parking lot. Mrs. Voelker stated she knew that was not his request, but they were talking about adding two restaurants with requiring right and left turns, so they were adding the potential of 30% more traffic turning in and out of those restaurants. Mr. Huber stated for this project, they were proposing to the council that they would be accessing their site off of Mary Ellen Avenue. Mr. Huber stated as far as the future project Mrs. Voelker referenced, that was a project they were working with that developer on. Mr. Huber stated she was correct and part of that project, they were negotiating to create a left turn lane accessing the property to the north, which would offset and eliminate the conflict points. Mr. Huber stated between the two projects, they would be working collectively to make sure that would function as a safer and more managed area with a lot of the safety concerns mitigated.

Clerk Block mentioned the project was a petition and was not first reading at that time, so it would be discussed in two council meetings.

Question was called for at 7:37PM for **PROPOSED ORDINANCE NO. 2021-19** **Vote: Motion carried by unanimous roll call vote (summary: Yes = 8).**

Yes: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The proposed ordinance passed 8-0, thus became **ORDINANCE NO. 5747**

PRIVILEGE OF THE FLOOR

Dale Nelson, 601 North Byrkit Avenue Mishawaka, IN, stated he wanted to present to the council that evening a petition to have a three way stop or all stop at the intersection of 600 North Byrkit Avenue and 1300 East Mishawaka Avenue in Mishawaka. Mr. Nelson passed out copies of the petition to the council. Mr. Nelson again stated they respectfully request that the intersection located in Lincoln Gardens at the intersection of 600 block of North Byrkit Avenue and the 1300 block of East Mishawaka Avenue be changed from a one way stop on the southbound North Byrkit Avenue to a three way stop at the eastbound Mishawaka Avenue and northbound Byrkit Avenue. Mr. Nelson stated in the past 5 to 10 years, the neighborhood had added younger families and as a result, they had more children and adults using the crosswalk at the intersection on their way to Merrifield Park to use their amenities, such as the Merrifield pool, the splash pad, and the skating rink. Mr. Nelson stated they had seen an increase in families using the crosswalk and a lot of other people young and elderly riding their bicycles, walking their dogs, jogging and simply walking with their families. Mr. Nelson stated when using the crosswalk, it had become difficult to get across the street as the traffic coming North on Byrkit Avenue and West on Mishawaka Avenue did not in many cases use their turn signals to indicate which way they were going. Mr. Nelson stated they fear someone would be struck by a vehicle and receive serious injury when trying to cross. Mr. Nelson stated they felt that if the intersection were a three way stop, the danger of someone being hit by a vehicle and receiving serious injury would be greatly reduced. Mr. Nelson stated in the process of doing this, he had also found out that if you went northbound on North Byrkit to the third or fourth house down, in the trees on a telephone poll said it was a bike route. Mr. Nelson stated if you came west on Prospect on the corner just prior to turning onto Byrkit Avenue, there was also a bike route sign there as well. Mr. Nelson stated he had a meeting with the City Engineer on the first of the month and they said they would have to run all of the different checks. Mr. Nelson stated one of the things they mentioned was that they would take the accident report and he asked Chris Jamrose about unreported traffic accidents as well. He stated he was told they would not count and he found that interesting. Mr. Nelson stated there had been two separate instances when a jeep hit the curb and the person fell out of it and rolled up on his side yard and the second instance was an individual on a motorcycle bumped the curb and rolled up onto his side yard as well. Mr. Nelson stated there had been people who bumped into the guard rail as well, among other accidents that had gone unreported. Mr. Nelson stated with this being a bicycle route, a lot of times the bicyclists had to take a chance to cross the street. Mr. Nelson stated there were numbers of people who cut all the way inside and people consistently bump up over the curb going down Byrkit Avenue off of Mishawaka. Mr. Nelson stated he would stop in the middle of the intersection so they could not do that and there had been 171 individuals who signed the petition. Mr. Nelson stated he had tried to get this done 9 to 10 years ago and he presented the problems not to the council, but to the Engineering Department. Mr. Nelson stated they said to him they would have a meeting and when him and his wife were celebrating their 50th anniversary in Hawaii, he got a call from the Engineering Department and they stated they would have the meeting the following week. Mr. Nelson stated ultimately, they decided they would put a

guardrail on the corner to the alley. Mr. Nelson stated he told them that was not very smart and got permission to plant flowers and bushes around the section. Mr. Nelson stated at that time, they presented this to the city and when they returned from vacation, the Chief of Police said in the meeting 'Mr. Nelson would watch how many people run the stop sign, call the police department and say they were not doing their job.' Mr. Nelson stated he was irritated with that comment and he had been festering with it for a while. Mr. Nelson stated on the west side of Mishawaka Avenue, there was a sidewalk that went all the way down to Prospect and the only crossing goes across by the guardrail across Byrkit. Mr. Nelson stated there used to be a crosswalk from his corner over to the other corner across Mishawaka Avenue, but that had been changed around and it was not there anymore. Mr. Nelson stated there was a lot of folks who said they would ride their bicycles on the inside of the guardrail and they were worried about their kids hitting it, because there was not a lot of room in there. Mr. Nelson stated mentioned again that the Engineering Department told him they had to do a lot of reports and that was fine with him, but he asked the council to take into consideration the bicycles, the people walking the streets and the elderly individuals walking in that area. Mr. Nelson stated someday somebody was going to get hit there and get seriously injured and he hoped it wasn't anyone's kids or grandkids. Mr. Nelson stated that was why he was presenting the petition.

Mr. Mammolenti applauded Mr. Nelson for his passion and efforts in trying to get this taken care of. Mr. Mammolenti stated he took that intersection twice a day to and from dropping his kids off at school and for the last 5 to 6 months, he had been working with a resident who resided off of Mishawaka Avenue. Mr. Mammolenti stated her concern was exactly what he mentioned and there was a really long stretch where people could gain speed on the Avenue, especially with the schools and students exiting off of Mishawaka. Mr. Mammolenti stated he concurred with him on the fact that it was a dangerous and confusing intersection and applauded Mr. Nelson's efforts once again. Mr. Mammolenti concluded wishing Mr. Nelson the best of luck. Mr. Nelson followed up stating people dropped their kids off at the high school on either State Street from Lincoln Way or they went to Studebaker and took Studebaker down to Mishawaka Avenue. Mr. Nelson stated he was not stupid and knew people would pull up there and do a California stop. Mr. Nelson stated he was not going to call up the police every time he saw that, because that was not his job. Mr. Nelson stated the stop sign would slow them down and give the pedestrians much more of a chance.

Mr. Compton thanked Mr. Nelson for bringing this to the council and he took it to the right place. Mr. Compton agreed with him and after being in the community for a long time, that was an intersection that was certainly interesting to say the least. Mr. Compton stated the Engineering Department was a great place to start with and the council relied on their diligent work as far as studying the situation the best they can. Mr. Compton asked Mr. Nelson to keep Mr. Bellovich informed so he can keep the council informed, because he believed this was indeed important and would be glad to help in any way he could. Mr. Nelson appreciated Mr. Compton's comments and stated he had two attorneys who signed the petition and one of the school board members signed the petition as well.

Mr. Bellovich asked walking across the Avenue going from the north side to the south side, how long ago it was that they took out the curb that made it solid. Mr. Nelson stated it was about 2 to 3 years ago when that was changed. Mr. Bellovich stated if someone was walking south on

Byrkit, what they would have to do was cross from the west side of Byrkit to the east side and then continue to go south if they were headed towards Lincoln Way and asked if that was correct. Mr. Nelson stated that was correct and it was quite interesting. Mr. Bellovich appreciated him attending the meeting that evening and Mr. Nelson thanked the council for letting him say his piece.

Mrs. Voelker stated he met Mr. Nelson and his wife one day when they were meeting people as they were walking by and she had used that route when riding her bike and it was dangerous. Mrs. Voelker stated she had fallen there trying to get across the street and behind the guardrail it was not safe. Mrs. Voelker agreed with him that there had to be adjustments made. Mr. Nelson stated in the fall, it got filled up with leaves and he did not know who was responsible for fixing that. Mr. Nelson stated the end of the guardrail to where you would turn off to come across, was not that large, especially for bicyclists, and there were a lot of things needed to be done to the intersection besides the stop signs. Mr. Nelson stated there was a family who stopped by recently who signed the petition that told him they were worried about their children getting hit. Mr. Nelson stated it was a concern and was thankful no one had got hurt.

Mr. Mammolenti added an idea for Mr. Nelson to mention when he next met with the Engineering Department. Mr. Mammolenti stated perhaps instead of looking at the accidents reported at that intersection, maybe go 100 to 200 yards from the west side of Mishawaka Avenue, the resident that contacted him a few times stated parked cars had been hit as well due to high speeds. Mr. Nelson stated there was an accident a week prior to that evening two blocks down when someone ran a stop sign and three cars were involved on Byrkit and there were unfortunately injuries involved. Mr. Nelson stated he hope when the investigation was done, that they took pedestrians, bicyclists and everyone else into consideration because it was not just about accidents.

Mr. Hixenbaugh thanked Mr. Nelson and suggested that in addition to working with Mr. Bellovich, the Engineering Department and the admiration, he would ask Mr. Banicki, the council representative to the Traffic Commission, to also take a look at the issue and integrate that into the work of the Traffic Commission. Mr. Hixenbaugh stated as Mr. Compton said, it was really helpful to them as a legislative body when they had the experts working in City Hall taking a look at the issues and the uniform traffic control manual was a wonderful tool. Mr. Hixenbaugh stated though, there were also times when the best interest of the community and the will of the community needed to supersede the cold hard letter of the document. Mr. Hixenbaugh stated his experience was that the process worked very well and there were a lot of people who would have liked a lot of stop signs throughout the community and he believed Mr. Nelson would agree with him that they could not have a stop sign everywhere, but that did not mean that location was not a good one to provide enhancement in that way. Mr. Hixenbaugh thanked Mr. Nelson again for bringing it to their attention and between the councilmen involved and the rest of the individuals who continued to work with them, they looked forward to a continued conversation with him and his neighbors about the issue. Mr. Nelson stated he was surprised how many people had signed the petition and it was just people walking by his home. Mr. Hixenbaugh stated it said a lot, but he was sure he'd agree with him that they also had to balance the best interest of the entire community and as wonderful of a job as he had done gathering signatures, it was less than a percent of the total residents of Mishawaka. Mr. Hixenbaugh stated

they had to look at it from a total communal standpoint, but what he had done was very helpful and educational for them. Mr. Hixenbaugh concluded thanking Mr. Nelson for his work.

NEW BUSINESS

Mr. Banicki asked Mr. Hinkle if he had an update for the council on the Piper's situation. Mr. Hinkle stated there was nothing really new to report and they were working there every day. Mr. Hinkle stated the police and Code Enforcement stated there was no activity there. Mr. Banicki stated he had talked to a lot of different vendors whether it was body or auto parts and everyone was still delivering there every day and they were not delivering to an empty building. Mr. Banicki stated he did not know how they could prove that and he understood that was the hard part, but they were still going hot and heavy. Mr. Banicki stated there was also a car lot on Lincoln Way that Mr. Piper owned as well that had cars in disrepair, missing back tailgates and he did not think that was not the meaning of a car lot. Mr. Banicki stated he did not know if he was using that for storage or if he was working inside of that building. Mr. Hinkle stated he would talk to Code Enforcement about that.

Mr. Banicki also brought up that an individual reached out to him and was very unhappy with the Liberty Street crossing and said he had complained numerous times about it and no one did anything about it. Mr. Banicki stated he realized it did not have to do with them and it had to do with railroad. Mr. Banicki stated he knew the Mayor had responded to him as well and he wanted to make sure that was made public. Mr. Banicki stated he would go around that crossing, because he was afraid his car would fall apart.

Mr. Hixenbaugh stated he added the concerns of Mrs. Lynn Hixenbaugh to the Liberty Crossing and he had told her it was not a City Council issue, but anything that could be done by city departments to address that would make things easier.

Mrs. Voelker stated she had contacted Engineering about that and she had the phone number for Canadian Railroad and the railroad who was the company to do it did a good job with Logan a couple of years ago. Mrs. Voelker stated she knew Liberty was being monitored and imagined the pandemic had something to do with the delay, because she had thought it was going to be done by that point. Mrs. Voelker stated she would find that phone number and would pass it on to the council and encouraged them to call the railroad company.

Mr. Hixenbaugh stated with regard to the first issue Mr. Banicki made, he asked Mr. Hinkle to refresh his memory on if the litigation was still pending with Piper's or not. Mr. Hinkle stated it was still pending and the next step in the process was for Ken Prince to do an inspection of the interior of the building and he would talk to Ken Prince about what the process was with respect to that. Mr. Hinkle stated they had meetings with the neighborhood enforcement team and the police and Code Enforcement told them they go by that building on a regular basis and there was nothing going on. Mr. Hinkle stated they had to have been doing their work pretty stealth fully whatever they were doing.

Mr. Banicki asked if they had withdrawn their ability to work out of that establishment. Mr. Hinkle stated they had and nothing should be going on there. Mr. Hinkle stated cars could be

stored in there, but he could not and should not be working on cars and if Mr. Banicki's statement about parts being dropped off there was true then something was up. Mr. Hinkle stated at the last neighborhood enforcement meeting, they talked about it and Joe Van Nevel stated he went by there on a regular basis and John Roggeman drove by there as well and said nothing appeared to be going on. Mr. Hinkle stated they were acutely aware of it, because Mr. Emmons had concerns about it and they were not ignoring it. Mr. Hinkle stated the police said if they did not catch someone going in and out of there, there was not a lot they could do. Mr. Hixenbaugh stated he appreciated Mr. Hinkle mentioning Mr. Emmons and stated he was confident if Mr. Emmons was present that evening, he would have been able to contend and echo the comments that there was still activity going on there. Mr. Hixenbaugh stated somewhere there was disconnect between the perception of the neighborhood along with the information Mr. Banicki shared and what various agencies are able to discern. Mr. Hixenbaugh stated anything that could be done to try to get to the bottom of it and if they were going to take action as a legislative body to either grant a variance or revoke it, they would all agree that the actions should be observed by the individuals subject to the actions. Mr. Hinkle stated he drove by there himself and did not see things going on. Mr. Hinkle stated he had seen Mr. Piper's car parked there and he could still be in there. Mr. Hinkle stated Mr. Piper took a lot of the cars in the lot and put them inside, but he was not defending him. Mr. Hinkle stated it was hard to catch him. Mr. Banicki stated they needed to do an inspection. Mr. Hixenbaugh thanked Mr. Hinkle for his help on the issue.

Mrs. Voelker had a follow up on the Liberty Drive railroad crossing and according to Canadian National, Liberty Drive was scheduled for repair in 2022. Mrs. Voelker also stated they did temporary repair work at the crossing a couple of years ago and stated if there was more temporary repair work needed to be done, she would pass on the phone number to the council and suggested they put some pressure on Canadian National to get the work done. Mrs. Voelker stated they had a live person answering their customer service calls and there was also an email she would send to Clerk Block.

Mr. Mammolenti gave a special thanks to a couple of his colleagues who attended the new ribbon cutting for what was formally known as Hums Park and now appropriately named Heroes Park. Mr. Mammolenti thanked Mayor Wood, his youth council, Jamie Wood, Lou Ann Hazen, Central Services, Mr. Blasko and all of the countless others who had a hand in the project. Mr. Mammolenti stated he was super excited about it and it was an amazing park with a lot of people dedicated in the ceremony. Mr. Mammolenti tipped his hat to all involved.

Mr. Compton revisited something the council started talked about in their pre-meeting. Mr. Compton stated he did some legwork and there was a carnival at the mall the weekend of the shooting and wanted to know how it was determined when the Board of Public Works approves and an event there and when the council approves an event there and who determines that. Mr. Compton stated he did not know who to ask about it and wanted to bring the issue to the council to get help. Mr. Hixenbaugh suggested he inquire with Mr. Hinkle and/or Mr. Spier who was present on behalf of the Planning Department or leave that as a rhetorical question and ask the gentlemen to get back to the council with an answer to that question as they contemplated other meetings that they had to try to learn more about the state of public safety in Mishawaka. Mr. Compton asked Mr. Hinkle if he could help them with the issue and he wanted to know who and how it was determined.

Mr. Hinkle stated it went to the Board of Public Works and then they had the Police Department review it and Chief Witkowski would give the okay on it. Mr. Hinkle stated if he did not see a problem with it, then it would be allowed and the petitioners came before the Board of Public Works and they explained what they would do, where they would have the carnival and when they would have it. Mr. Hinkle stated they testified to the Board of Public Works and the board approved the petition to have a carnival. Mr. Compton asked when Gates came to the council to sell cars in that spot, why they came to them and not the Board of Public Works. Mr. Hinkle stated he recalled they did come before the Board of Public Works and he did not know why they came before the council. Mr. Compton stated they used to approve it yearly and then they approved a three-year period. Mr. Compton stated he strongly felt that something like a carnival at the mall should come before the council. Mr. Compton stated if that was an ordinance they needed to work on to make sure those kinds of things happened in the future, they could do that. Mr. Compton stated in his opinion, that was not a decision the Board of Public Works should be involved in and the police should be solely responsible for that. Mr. Hinkle stated he would bring that up at the Board of Public Works meeting and staff meeting the following day. Mr. Compton stated he appreciated that and would appreciate their input and much like the Planning Commission, their approval as it came to the council.

Mr. Hixenbaugh followed up suggesting that they ask Mr. Trippel, their attorney, to also consult with Mr. Hinkle, the Planning Department, the Board of Public Works and give the council an overview of the legality of the two approval processes, one going to the council and one going to the Board of Public Works. Mr. Hixenbaugh also stated to chime in with regard to what options they had by ordinance or otherwise to look at that process and review a possible change.

Mrs. Voelker made a follow-up stating she read the Board of Public Works often and there were a lot of things getting approved there that did not come to the council and she was not suggesting that they needed to approve a street closing for a block party, for example. Mrs. Voelker asked rhetorically if something like an event at the mall came to the council, where the line would stop between what stayed at the Board of Public Works and what the magnitude would have to be in order to come to the council. Mr. Hixenbaugh stated those points were well taken.

Mr. Hixenbaugh made a general statement saying many, not all, of the actions taken by the Board of Public Works were driven by the fact that a series of city councils over a series of years had delegated certain legislative authority to the Board of Public Works, because of efficiency and the fact that they met on a weekly basis, the legislative work of the city would bog down if they were to approve every last thing. Mr. Hixenbaugh stated where this type of issue lied, if in fact it was within their jurisdiction to take action on it, was a good discussion to have. Mr. Hixenbaugh stated that was why he believed it would be beneficial for all of them if Mr. Trippel chimed in on it to provide the council with the background they needed to have an ongoing dialogue of where they wanted to go from there to make changes. Mr. Hixenbaugh thanked Mrs. Voelker for her comments.

Clerk Block made a comment stating a lot of it was set up by state statute and it depended on whether they were a town, a city of the third class or a city of the second class and everything went by if a town council would have the authority over everything in the city, since they may

not have a Board of Public Works. Clerk Block concluded stating it was a balance of powers, in a sense. Mr. Hixenbaugh agreed stating that was part of the analysis, but he thought that the legislative body had empowered the Board of Public Works to take certain steps and he was not indicating that that was a bad thing. Mr. Hixenbaugh stated the conversations they were having that evening should cause them to take a look at certain issues and revisit whether they thought the current structure was the proper way. Clerk Block stated she would pull the last ordinance for Gates Automotive. Mr. Hixenbaugh stated he agreed with Mr. Compton that it began they would provide annual approval and then would give a longer approval at one point in time. Mr. Hixenbaugh stated these were good conversations to have and appreciated everyone for bringing their answers up.

Mr. Hixenbaugh made a final comment staying regular attendees to the council meetings and those who had become regular viewers during the pandemic may have noticed that for the first time in well over a year, they were all on the dais together. Mr. Hixenbaugh stated consistent with the CDC guidelines, people by choice may wear a mask but were no longer enforcing a face mask mandate as part of their meetings, which was a positive sign and yet another indicator that they all were moving back toward a state of normalcy in the city of Mishawaka. Mr. Hixenbaugh stated he did think it was important for them to remember, however that pursuant to Governor Holcomb's executive order which was referenced by Mr. Trippel earlier, emergency conditions continued to exist relating to the pandemic throughout the state of Indiana including Mishawaka. Mr. Hixenbaugh stated he also did not call for a moment of silence that evening as they had done throughout the pandemic and consistent not only with the Governor's executive order, but the state of facts in the United States, as of that day there were more than 597,000 COVID related deaths they had experienced as a nation. Mr. Hixenbaugh stated while they had all the positives and vaccination continued through the community and while they reverted to their normal business practices, he believed it was incumbent on all of them and everyone residing in Mishawaka to continue to follow the guidance and continue to act prudently to help ensure that they came through as well as they could on the other side. Mr. Hixenbaugh stated they were so close and all of them would agree they would hate to see any backsliding occur as they were near the finish line. Mr. Hixenbaugh thanked everyone for their efforts to try to get to that point and for their ongoing efforts as well.

ADJOURNMENT 8:17PM

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

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

