# AGENDA

# November 01, 2021

**Meetings of Standing Committees**
**Council Conference Room**
**6:45PM**

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

**WebEx Telephone Number:408-418-9388**
**Meeting Number (access code):** 2332 530 9767
**Meeting Password:** 5djQudEaf38

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

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

Dial: 23325309767@mishawaka.webex.com

1. Call to Order

2. Pledge of Allegiance

3. Roll Call

4. Approval of the Minutes of the Regular Meeting of October 25, 2021

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| Appeal No. 2021-40 | Use Variance to allow Indoor Gun Range as a part of a retail Firearm Sales Business – 6424 Grape Rd. |

5. Petitions, Communications, Remonstrance and Memorial

6. Report of Special Committee

7. Ordinances on First Reading

8. Resolutions

9. Ordinances on Second Reading

| | |
|---|---|
| P.O No. 2021-38 | Rezoning Future Outlot from C-2 Shopping Center to C-7 Automobile Oriented Restaurant Commercial- vacant land north of 210 W. McKinley Ave. (Assigned to Land Use Planning Committee) |
| P.O. No. 2021-39 | Annexation and Rezoning of 12452 &12434 Lincoln way East from I-1 to C-1 General Commercial and I-1 Light Industrial **Public Hearing- No Vote** |

10. Privilege of the Floor – Non-Agenda Items

11. Unfinished Business

12. New Business

13. Adjournment –

This meeting will be aired via live stream:

An archived version of the livestream video can be viewed on the city of Mishawaka's Facebook page, **https://www.facebook.com/cityofmishawaka/** and also on the Michiana Access TV Facebook page, **https://www.facebook.com/MichianaAccessTV**

At this time, I know of no other business to come before the Council.

Deborah S. Block, IAMC, MMC, City Clerk

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

**REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL**

**October 25, 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, October 25, 2021 at 7:00PM. The meeting was called to order by Council President Gregg Hixenbaugh. All were asked to stand for the Pledge of Allegiance.

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

Others Present: Clerk Block

**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 October 11, 2021 were approved as received from the Clerk's Office.

Clerk Block read the following letter from the City Plan Commission regarding their recommendations from their October 12, 2021 meeting.

**PETITION #21-16** A petition submitted by GLC-MAP McKinley Trust seeking to rezone vacant land north of 410 West McKinley Avenue from C-2 Shopping Center Commercial District to C-7 Automobile Oriented Restaurant Commercial District for a future outlot.

The Commission, with a vote of 7-0, recommended approval.

**PETITION #21-17** A petition submitted by Wennigsen LLC and Fox Fire Safety Inc. requesting to annex and zone 12452 and 12434 Lincolnway East to C-1 General Commercial District and I-1 Light Industrial District.

The Commission, with a vote of 7-0, recommended approval.

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

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

**<u>PROPOSED ORDINANCE NO. 2021-38</u>**

**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.**
**Rezoning Future Outlot from C-2 Shopping Center to C-7 Automobile Oriented Restaurant Commercial- vacant land north of 210 W. McKinley Ave.**
**(Assigned to Land Use Planning Committee)**

**<u>PROPOSED ORDINANCE NO. 2021-39</u>**

**AN ORDINANCE ANNEXING CONTIGUOUS TERRITORY TO THE CITY OF MISHAWAKA, INDIANA AND PROVIDING ZONING CLASSIFICATION THEREFORE**
**Annexation and Rezoning of 12452 &12434 Lincoln way East from I-1 to C-1 General Commercial and I-1 Light Industrial**
**(Assigned to Land Use Planning Committee)**

**<u>PROPOSED ORDINANCE NO. 2021-40</u>**

**AN ORDINANCE AMENDING ORDINANCE 57-12 FIXING THE SALARIES OF ALL EMPLOYEES OF THE CITY OF MISHAWAKA EXCEPT THE MISHAWAKA PARKS DEPARTMENT, ELECTED OFFICIALS AND MISHAWKA UTILITIES FOR THE CITY OF MISHAWAKA, INDIANA FOR THE YEAR BEGINNING JANUARY 1, 2022**
**Amending Salary Ordinance 5712 to Add position of Police Forensic Lab Technician/Property Room Specialist**
**(1st and 2nd Reading Requested)**

Consistent with the request of the petitioner, the chair entertained a motion to suspend the regular council rules and hold first and second reading that evening on **PROPOSED ORDINANCE NO. 2021-40**. A motion was made, seconded and the council voted unanimously to suspend council rules hold first and second reading. The council moved into second reading on **PROPOSED ORDINANCE NO. 2021-40**.

Mayor Wood spoke in favor of **PROPOSED ORDINANCE NO. 2021-40**. Mayor Wood began thanking the council for suspending their rules to allow for first and second reading on the proposed ordinance that evening. Mayor Wood stated the Police Forensic Lab Technician/Property Room Specialist was a position that needed filled immediately due to South Bend pulling out of the Metro Homicide cooperative between South Bend, St. Joseph County Police, the Prosecutor's Office and the City of Mishawaka. Mayor Wood stated they were taking no new cases as of October 15 and the group would be disbanded by the end of the year. Mayor Wood stated they were preparing to take on the responsibility and this was part of preparing for the duties. Mayor Wood stated they were able to hire an individual and he believed she started that day. Mayor Wood stated he would address any other highlights to the salary ordinance then or he could wait for later in the agenda. Mr. Hixenbaugh suggested they defer on the further comments, because they were amending the 2021 salary ordinance and the other issues would be involved with the 2022 salary ordinance.

Mayor Wood continued stating this was a position they needed and it was vital for Public Safety. Mayor Wood stated this was a great time to hire the position, because they were looking to start planning for a move from one police department building into a new one.

Mr. Banicki asked if the person would be a sworn officer or a civilian. Mayor Wood stated it would be a civilian employee.

Mr. Mammolenti thanked Mayor Wood for the description and asked if he could confirm that they used to send some of the stuff out off-site, specifically outside of the Metro Homicide. Mayor Wood stated that was correct, depending on the case. Mr. Mammolenti asked if they could be able to do it in house or if there would be things sent off. Mayor Wood stated he was sure that was situational and Chief Witkowski may be better prepared to answer that. Mayor Wood stated it was their intent to do as much of it in house as possible. Mayor Wood stated they felt they were in a good spot to do that and they thought with a department their size, they ought to have that discipline in house. Mayor stated this also could help with recruiting in the future. Mr. Mammolenti stated he believed it was a great addition to the department and he was excited for it.

Mr. Bellovich asked if the individual they were hiring had experience. Mayor Wood stated she had extensive experience in the area, specifically dealing with metro homicide units. Mayor Wood also stated she was a lateral transfer from another department.

Mr. Banicki asked what would happen to the heavier type of investigations with the stoppage of cases at the Metro Homicide. Mayor Wood stated it was in process of being figured out and thankfully, there were not a lot of cases unsolved in Mishawaka. Mayor Wood concluded stating any homicide that would pop up; they were in good position to investigate with their expertise on staff.

Mr. Hazen echoed what the Mayor had said and stated he thought this was all a blessing in disguise for Mishawaka. Mr. Hazen stated the new building would be equipped with what was needed and they had excellent officers through hires over the years. Mr. Hazen stated he thought it would help them recruit as well. Mayor Wood added that they might come before the council again as things may rise and they were looking to have their own Metro Homicide unit vehicle. Mayor Wood stated there could be equipment purchases needed as well.

Mrs. DeMaegd asked if the new Lab Tech would have staff of civilians or sworn officers. Mayor Wood stated they did not plan to have a staff and there already were evidence clerks and different positions at the police department who were civilian employees.

Mr. Emmons asked if there had been an appointed person from the police department to head up the homicide department in Mishawaka. Mayor Wood stated they had a couple of officers who were great in that expertise and they had an officer assigned to metro homicide, who would be very involved. Mayor Wood stated they were still working out the details, but it would be multiple officers involved.

Mr. Hixenbaugh thanked Mayor Wood for the information he shared and thanked him for the work his administration, Chief Witkowski and those who assisted in it did to ramp up for this responsibility. Mr. Hixenbaugh stated they would all agree that they were fortunate enough to have an abundance of talent in their sworn officers and civilian employees in the police department. Mr. Hixenbaugh stated it was pleasing to hear that they would be expanding the number of people they would bring on board. Mr. Hixenbaugh stated he would be open to the considerations of additional expenditures and other needs as those points became known. Mr. Hixenbaugh stated there was a desire on the part of the community to have them look to expand their Public Safety services and Mr. Hixenbaugh stated they were looking forward to seeing how the transition moved forward from that point.

Question was called for at 7:18PM for **PROPOSED ORDINANCE NO. 2021-40 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. 5760**

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

## PROPOSED ORDINANCE NO. 2021-34

### CIVIL CITY BUDGET AND TAX LEVY FOR 2022
### VOTE ONLY

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

Mr. Hixenbaugh reiterated the council's thanks to the Controller, Mayor Wood, all of the department heads and everyone involved in putting the budget together. Mr. Hixenbaugh stated they heard a very detailed summary from the Mayor in the last meeting as far as the high points and the changes in the budget. Mr. Hixenbaugh stated there was a great deal to be proud of in the budget. Mr. Hixenbaugh stated they needed to be open to continuing to beef up their Public Safety resources, human and otherwise, as they identified issues moving through the remainder of the year. Mr. Hixenbaugh stated it was a shared goal on the part of the council and the administration to always invest what was needed to be invested. Mr. Hixenbaugh concluded thanking everyone involved in the process, including the council members who participated in the committee meetings leading up to that evening.

Question was called for at 7:21PM for **PROPOSED ORDINANCE NO. 2021-34 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. 5761**

## PROPOSED ORDINANCE NO. 2021-35

### AN ORDINANCE AMENDING THE SALARIES OF CERTAIN ELECTED OFFICIALS OF THE CITY OF MISHAWAKA FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2022
### (Amendment Requested)

Consistent with a recommendation of the Controller, the chair entertained a motion to amend **PROPOSED ORDINANCE NO. 2021-35** in order to accurately reflect the certification language applicable to the City Clerk's Office. The motion was made by Mr. Banicki and seconded by Mrs. Voelker, thus the motion reached a voice vote and passed.

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

Mayor Wood spoke in favor of **PROPOSED ORDINANCE NO. 2021-35**. Mayor Wood stated the elected officials tended to follow suit with what the rest of the city did and they were requesting a 5% increase for the elected officials, because they typically were not treated any differently than the average city employee. Mayor Wood stated the amendment was to update the Certified Public Finance Administrator certification to align with the same certification that the Controller's budget had in it.

Question was called for at 7:26PM for **PROPOSED ORDINANCE NO. 2021-35 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. 5762**

## PROPOSED ORDINANCE NO. 2021-36

### AN ORDINANCE FIXING THE SALARIES OF ALL EMPLOYEES OF THE CITY OF MISHAWAKA EXCEPT SWORN PUBLIC SAFETY, MISHAWAKA PARKS DEPARTMENT, ELECTED OFFICIALS, AND THE MISHAWAKA UTILITIES FOR THE CITY OF MISHAWAKA, INDIANA FOR THE YEAR BEGINNING JANUARY 1, 2022

**City Employee Salary Ordinance for 2022**
**(Amendment Requested)**

Mr. Hixenbaugh stated the first amendment requested was the deletion of the term ‘fund’ and the addition of the term ‘finance’ in the Controller’s section of the ordinance dealing with the advanced certifications. Mr. Hixenbaugh stated the second item was to amend the proposed ordinance, so that the Clerk’s Office certifications that were referenced in conjunction with the elected officials ordinance, would be accurately reflected in the general civil city salary ordinance. Mr. Hixenbaugh stated the third amendment would be to add the Lab Technician/Property Room Specialist position to next year’s salary ordinance consistent with the action taken earlier to add that same position to the current year’s salary ordinance. The chair entertained a motion to make those revisions to the proposed ordinance as was just read. The motion was made by Mr. Banicki and seconded by Mr. Mammolenti to amend and revise the proposed ordinance, thus the motion reached a voice vote and passed.

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

Mayor Wood spoke in favor of **PROPOSED ORDINANCE NO. 2021-36**. Mayor Wood stated they were asking that the council consider 5% for the 2022 salary increases. Mayor Wood stated they were not what they originally considering, with the former being a 2% raise, but the council negotiated 5% for Public Safety and he felt strongly that the rest of the public servants should get 5% as well based on the great work they did serving the public day in and day out. Mayor Wood stated he could not be more proud of the public servants and was proud to work shoulder to shoulder with them. Mayor Wood stated he was a citizen first and he slept better at night knowing they had great people on duty all the time. Mayor Wood stated they were requesting the 5% to match what was given to Public Safety and there were a couple of notable exceptions to that. Mayor Wood stated they were requesting an approximate 12% raise for the Street Department Commissioner to align with the Park Department Superintendent. Mayor Wood stated he ran an operation that was substantial in terms of human resources, budget and complexity, so they were requesting a salary of $73,834 for him in recognition of the outstanding job he did and the complexity of the organization he managed. Mayor Wood stated on the IT side, they were requesting the promotion of the assistant specialist to assistant director with an additional $5,000 in salary. Mayor Wood stated it was a small, but mighty department and throughout COVID, they were able to answer the call to make sure the meetings were kept public and accessible to the public outside of the council chambers. Mayor Wood stated they were there 24/7 365 when needed to make sure all systems were go in the city. Mayor Wood stated in Planning, they were requesting a new executive director level position where the City Planner would move into it. Mayor Wood stated the City Planner position would then be open and they expected promotion from within the department to take place. Mayor Wood stated the Senior Planner Economic Development Specialist positon would revert to the Senior Planner. Mayor Wood stated the net change to the department would be essentially one new FTE. Mayor Wood stated they were also requesting stipends for the Board of Public Works and Safety, who took on duties outside of their normal department responsibilities and it would be $1,500 for the president and $1,000 for the members. Mayor Wood concluded stating those were all of the exceptions to the amendment.

Mr. Mammolenti stated he could not have said it better with his statements regarding the men and women of the city doing an outstanding job. Mr. Mammolenti stated he knew it was one of the largest raises he had seen since being on the council and he could not think of a better time to do it. Mr. Mammolenti appreciated the help and efforts from everyone involved.

Mr. Compton stated he and Mayor Wood discussed the budgets, raises, public safety and all of those areas and he understood his fiscal conservativeness in these areas while watching out for the budget. Mr. Compton also appreciated that now was the perfect time to show the city employees the appreciation of getting through what was an extremely challenging time. Mr. Compton wanted to thank Mayor Wood for coming to that conclusion and he knew Mayor Wood was a fair person and they liked to do these things. Mr. Compton stated it was also about watching their pocket book but he knew the citizens along with the police officers and fire appreciated all of this.

Mr. Banicki publicly thanked Mayor Wood and Mrs. Maguire for the hard work they had done through the trying times. Mr. Banicki stated employee retention was almost impossible those days and he thought anything they could do to try to retain an employee saved from turnover. Mr. Banicki stated they stood behind the decisions 100% and thanked Mayor Wood again.

Mr. Hixenbaugh appreciated the work that went into this and was also in support of what was in front of them that evening for the reasons that had been highlighted. Mr. Hixenbaugh stated Mr. Banicki made a great Point that not only was the investment in their employee groups good for the individuals but it was also a great investment for the entire community. Mr. Hixenbaugh stated for them to be able to deliver the services every ray they wanted to, they had to be able to recruit and retain the best and brightest talent out there. Mr. Hixenbaugh stated it was not just a gift to the employees and these were the people who worked hard each and every day on behalf of each and every citizen in Mishawaka. Mr. Hixenbaugh stated it was certainly worthy of support in his opinion. Mr. Hixenbaugh stated they also had been made aware of the fact that the city and the administration were actively involved in working with an outside consultant to comprehensively review the employee compensation related issues. Mr. Hixenbaugh hoped there could be good data that would come out of that process, so next year they would be able to identify perhaps an even broader vista of opportunities for them to better align the compensation for employees with not just market realities, but with the good work the employees did. Mr. Hixenbaugh stated he was excited to see the results of that and again showed appreciation for the work everyone had put into what was in front of them that evening.

Question was called for at 7:41PM for **PROPOSED ORDINANCE NO. 2021-36 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. 5763**

## PROPOSED ORDINANCE NO. 2021-37

**AN ORDINANCE FIXING THE SALARY OF ALL SWORN PUBLIC SAFETY EMPLOYEES OF THE CITY OF MISHAWAKA, INDIANA FOR THE YEAR BEGINNING JANUARY 1, 2022**
**Public Safety Salary Ordinance for 2022**

At the request of the administration and the fire chief, it was requested they amend **PROPOSED ORDINANCE NO. 2021-37** in order to add the position within the fire department of Diver Apprentice with a stipend compensatory amount of $500.

The chair entertained a motion to amend the proposed ordinance as requested by the administration. The motion was made by Mr. Banicki and seconded by Mr. Mammolenti and there was a voice vote. The motion was made by Mr. Banicki and seconded by Mrs. Voelker, thus the motion reached a voice vote and passed.

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

Mayor Wood spoke in favor of **PROPOSED ORDINANCE NO. 2021-37**. Mayor Wood stated this would fix the salary ordinance for public safety. Mayor Wood brought up an asterisk that more amendments may need to occur depending on the civil city and public safety side pending what happened with the collective bargaining process that had not been finalized yet. Mayor Wood referenced Mr. Compton's comment stating it was great to be in a position to be able to do this that year when it was most needed. Mayor Wood stated they had multiple collective bargaining units they negotiated with that year and on the nonpublic safety side, they were in a unique position where the labor group came in and asked for 3% and they had to reject that then came back with 5%. Mayor Wood stated it was very much appreciated by their labor groups and in the spirit of what they had gone through in the past year, it was well deserved and something they felt strongly about. Mayor Wood stated Public Safety was at the forefront of their public service number one. Mayor Wood stated they were the ones who were at risk each and every day so the citizens could value their property and way of life while they were out there defending it. Mayor Wood stated it was not getting any easier and times were challenging. Mayor Wood stated they were seeing this happen around the country with an increase of certain kinds of activity and Mishawaka was not immune. Mayor Wood stated he would not trade their problems for anyone else's because of the great work the Mishawaka Police Department and Mishawaka Fire Department did. Mayor Wood stated he was blessed to receive numerous compliments about the police department on a daily basis. Mayor Wood stated after seeing the kinds of decisions they had to make every day, they deserved everything they received. Mayor Wood stated they always were appreciative of their service and he was there to support them by not only giving them good wages, but also good benefits, support for their family, good equipment and good leadership. Mayor Wood stated when factoring all of those things in, he would put their departments up against anyone else's. Mayor Wood stated while they were seeing some challenge with what they had to deal with every day, they were seeing competition from other communities who were struggling much more than they were to hire and keep good police officers. Mayor Wood stated there were departments who were poaching out there and giving bonuses to lure sworn officers away for lateral transfers. Mayor Wood stated there were communities who were struggling to hire so much So that they were getting creative in how they went after police officers. Mayor Wood stated fortunately they were not losing police offers to other departments and in fact were gaining them from other departments, which told him they had good fundamentals in Mishawaka and continued to be a place where people wanted to work. Mayor Wood stated he believed the 5% raise was well deserved by their public safety personnel and he could not be more proud of them. Mayor Wood stated they would continue to have their support.

Mr. Compton agreed with Mayor Wood that public safety was extremely important to the city and public safety consumed about 70% of Mishawaka's budget. Mr. Compton stated it was important that they kept these individuals compensated to the degree that they could and the benefits with that as well. Mr. Compton thanked the negotiation committee, Mr., Hazen and Mr. Mammolenti, along with the rest of the council and Mr. Hixenbaugh who all had a comment or input that was helpful. Mr. Compton also thanked Mrs. Maguire and Mr. Hinkle who came to the meetings and helped with the numbers. Mr. Compton appreciated all of the efforts from everyone involved.

Mr. Mammolenti echoed Mr. Compton's comments and stated this was a team effort. Mr. Mammolenti took the time to thank his fellow wage committee members, Mr. Hazen and their chair Mr. Compton, for rolling up their sleeves and getting to work. Mr. Mammolenti stated as they mentioned before, this was certainly one of the most deserving times to get the employees what they needed and they were happy to do a little bit more than what they normally did.

Mr. Hixenbaugh thanked Mr. Compton for his leadership of the public health and safety committee and the work he, Mr. Hazen and Mr. Mammolenti did with the assistance of some of the council. Mr. Hixenbaugh stated one of the things he was most pleased with after rejoining the council in 2019 was the concerned effort they made in a team fashion to address compensation for public safety. Mr. Hixenbaugh stated he also wanted to acknowledge the unionized representatives of the fire department and FOP as he thought this was a very productive round of negotiations, not just because of the outcome, but also with regard to the information that was shared with them that helped them better understand the needs of each department and what they could do to be of assistance to them. Mr. Hixenbaugh concluded thanking them for their work along with everyone else involved in the process.

Question was called for at 7:53PM for **PROPOSED ORDINANCE NO. 2021-37 Vote: Motion carried by unanimous roll call vote (summary: Yes = 9).**
**Yes: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Emmons, Mr. Bellovich, Mr. Compton Mrs. Voelker, Mr. Hixenbaugh.** The proposed ordinance passed, thus it became **ORDINANCE NO. 5764**

**PRIVILEGE OF THE FLOOR**

Ricardo Lopez, 121 E 6th street, was present that evening to address the situation that came up to him that the new liberty mural building that would turn into the new city hall building got contracted to an out of town company, Midwest Glass. Mr. Lopez stated a lot of guys in his company and local construction workers read them the wrong way, because when guys got laid off, that was one less building they could go to. Mr. Lopez stated he did not know the business side and if it came down to a better bid, but he felt local works should never go to out of state construction contractors, which it did. Mr. Lopez wanted to see what could be done as a preventative, because there were many new jobs that were coming soon. Mr. Lopez was curious about what would happen to keep the jobs local in the future.

Mr. Compton thanked Mr. Lopez for stepping up and he was a member of the IBW. Mr. Compton stated he had asked them to come to the meeting to make their case to the rest of the council and he had been in his spot. Mr. Compton stated he was on the committee that interviewed general contractors and then talked about sub-contractors. Mr. Compton stated they made it very clear and the Mayor made it very clear that he wanted local contractors and local people. Mr. Compton stated that did not happen often with a Mayor saying that in a public setting, but he did. Mr. Compton stated they were dealing with taxpayer dollars and if a qualified bidder bid, and they were deemed them local, whether they were union or non-union, they had to go with them if they were qualified to do the job. Mr. Compton stated he looked back at some things and the glass packages were bid by multiple suitors and the actual bidders came down to three, Midwest, Precision and Werntz. Mr. Compton stated he looked Midwest up and they were in Stevensville Michigan, which was out of state, but also in Michiana in his opinion. Mr. Compton stated the bids were really close and he heard from Mr. Lopez's business manager about this. Mr. Compton stated the concern from the city was if they gave one contractor a second look, they had to give them all and they did not know where it would stop. Mr. Compton stated it was legitimate, on time, and they could do the work. Mr. Compton understood Mr. Lopez's concern and all he could do was give him information, because he had been in Mr. Lopez's shoes before. Mr. Compton stated in the future, as long as he was in the position and had some influence in Mishawaka, they would work with local contractors and contractors qualified to do the work. Mr. Compton stated he would be happy to talk with Mr. Lopez after the meeting and thanked him for coming.

**UNFINISHED BUSINESS**

**<u>RESOLUTION 2021-24</u>**

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA APPROVING THE INTER LOCAL AGREEMENT FOR THE OPERATION OF A CONSOLIDATED PUBLIC SAFETY ANSWERING POINT IN ST. JOSEPH COUNTY, INDIANA**

Mayor Wood gave a brief nod of support for the inter local and they had reviewed it and expressed thanks for allowing more time to get clear answers on it. Mayor Wood stated they were in support

Peter Agostino, 131 S Taylor St South Bend, IN, asked for support for the resolution that had been circulated. Mr. Agostino thought they did respond to the questions the Mayor and his staff had and he was glad to answer any questions the council had.

Mr. Hazen asked if they were the first council to pass it or if someone else already had. Mr. Agostino stated both South Bend and the county had approved it so they would be the last to do so.

Mr. Hixenbaugh thanked Mr. Agostino for his work on the project and he was one of the many involved, including representatives of the council and the other legislative bodies in St. Joseph County. Mr. Hixenbaugh summarized the major points reflected in the revised inter local agreement. Mr. Hixenbaugh stated the first change reflected built upon the recent change in the local income tax funding that had now been directed primarily toward funding the combined dispatch center. Mr. Hixenbaugh stated what had been done was to take what was referred to as the backup funding formula if the income tax revenues were not sufficient to fully fund the operation of the dispatch center and to allocate contributions on the part of St. Joseph county, the city of South Bend and the city of Mishawaka based on a funding formula that geared 25% toward net assessed value and 75% based on call volume. Mr. Hixenbaugh asked if he agreed that was one change in the resolution. Mr. Agostino agreed and stated it was a flip of the prior formula, which favored net assessed value. Mr. Agostino stated the new formula for the backup funding was a more accurate reflective of usage than the prior formula. Mr. Hixenbaugh stated the second change expanded the executive board that supervised the operation of the combined dispatch center, to now include representatives of the South Bend City Council, the St. Joseph County Council and the Mishawaka City Council. Mr. Hixenbaugh stated as he understood it, through separate action of the St. Joseph County Council, the number of representatives that each of the three legislative bodies would have on the executive board would be two council representatives per unit and asked if that was accurate. Mr. Agostino stated it was and that final action would take place at the November 9th meeting of the St. Joseph County Council.

Mr. Agostino thanked them for their kind words and acknowledged the great teamwork that played a great part in what Mishawaka was. Mr. Hixenbaugh made it a point to acknowledge the work Steve Dalton, the county's fiscal advisor, did as part of the process as well and asked Mr. Agostino to pass that appreciation along to him.

Mr. Hazen stated when Mr. Hixenbaugh met with the South Bend Council and the County Council, he represented Mishawaka very well and he had their interests at heart. Mr. Hazen wanted to make sure everyone knew that he did look out for Mishawaka. Mr. Hixenbaugh thanked Mr. Hazen for his kind words and his work on this issue as well.

Question was called for at 8:09PM for **RESOLUTION R2021-24 Vote: Motion carried by unanimous roll call vote (summary: Yes = 9).**
**Yes: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Emmons, Mr. Bellovich, Mr. Compton Mrs. Voelker, Mr. Hixenbaugh.** The resolution passed 9-0.

## PROPOSED ORDINANCE NO. 2021-31

**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 remove restrictions as a Senior Only Complex to become Market Rate Non-Age Restricted – Whispering Pines Apartments**

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.

Dennis Miller, representative of Miller Family Development Company, spoke in favor of **PROPOSED ORDINANCE NO. 2021-31**. Mr. Miller stated the company helped build and operate the Whispering Pines Apartments. Mr. Miller stated they started back in 1998 on this project and it was time for him to retire, so they put the property up for sale and they had a buyer. Mr. Miller stated the buyer's lender requested they remove the senior only restriction, given the present economic situations that they were seeing with inflation. Mr. Miller stated most of their tenants were on fixed incomes and he could see where the buyer would be apprehensive in the future should the inflation get to be enough where they start losing tenants. Mr. Miller stated initially, the property did not lease up fast at all mainly because seniors did not want to leave their homes and were slow movers, which he understood. Mr. Miller stated Mrs. Voelker mentioned not having a letter from the buyer and that there was a letter sent to Planning by mail and email that was supposed to be in the packet. Mr. Hixenbaugh stated the record would reflect that the letter was in fact in the packet and accessible to the council.

Mr. Compton asked Mr. Miller how long the apartments had operated this way. Mr. Miller stated they had set it up to be this way from inception and they purchased property, built the buildings. Mr. Miller stated they started building in 2002 and finished in 2015, taking them 13 years to build the 12 buildings.

Mrs. Voelker stated she appreciated the letter from the purchaser even though it was not super explanatory of what their plans were. Mrs. Voelker stated one of her thoughts about it was if she was a resident of Whispering Pines, she would be concerned with the building being purchased that the rent would change dramatically. Mrs. Voelker asked if he knew what the plans were on the part of the purchaser in terms of current residents. Mr. Miller stated unfortunately he did not and as far as changing dramatically, they were at market rents at that moment in time. Mr. Miller stated they had a number of folks that got subsidies from different agencies and those people would be the first to be affected. Mr. Miller stated they were planning their own rent increase that spring of the coming year and he did not physically operate it day-to-day but he had a manager who took care of all of that. Mrs. Voelker asked if he knew what percentage of people that currently resided in Whispering Pines would be in the subsidized category. Mr. Miller stated he believed it was around 20%.

Mr. Bellovich asked how many occupants were there currently. Mr. Miller stated 192 units were rented and he was not sure of the number of occupants, but he guessed about 250. Mr. Miller stated the units were mostly 1 and 2 bed units and did not see them as a good open market rent property, because they had a lot of physical improvements for the senior people.

Mrs. Demaegd stated the Fair Housing Act allowed for 20% of the residents to be over/under 55 and asked if he had that in Whispering Pines. Mr. Miller stated they did not. Mrs. Demaegd asked then so they had no one under the age of 55 living there. Mr. Miller stated it was possible, because he saw kids coming and going with their grandmothers and he did not know how many were living temporarily there, which he knew happened. Mr. Miller stated the tenant that signed the lease had to be 55. Mrs. Demaegd asked if they had a waiting list of tenants and how many were on that waiting list. Mr. Miller stated they did have a waiting list and he could only guess maybe three or four were on the waiting list. Mr. Miller stated a number of their tenants had been with them for quite a while and almost the whole time. Mrs. Demaegd stated a note stated he was unaware that this was a senior's only apartment building and asked how that could be. Mr. Miller stated that was not exactly right and that he was aware it was a senior complex, because that was what he wanted it to be but he did not know of the restrictions that it could only be that.

Mr. Banicki stated looking back at paperwork from May of 1998; it looked like every representation was in fact for a senior development, including statements from the property owners that sold him the property. Mr. Banicki stated everything said that in fact, it was very important to them that it be a senior facility. Mr. Banicki stated he understood things changed, but when you had a neighborhood and you had a facility next door with cooperative type housing and they had a nice senior housing next door that was beautiful, just to change it would be hard because of a petition that was put together with 105 signatures against it. Mr. Banicki stated that petition was put together in just the last week. Mr. Banicki stated there was fear that if the designations were taken off then they would try to change the entirety of the model that it was built on. Mr. Banicki stated the facility was beautiful and he knew people who lived there, so it was very hard to say taking off the designation would not change much. Mr. Banicki stated they did not know what would happen with different incomes of people. Mr. Banicki stated there was a lot of concern about changing the designation and the previous family that sold him the property was very adamant that they wanted senior housing. Mr. Banicki stated somebody would buy it the way it was with the waiting list along with the beautiful facility and he had to factor all of these things in when making a decision like this.

Mr. Hazen asked if he knew of the buyer trying other financial institutions or if he only went to one and how long it had been on the market. Mr. Miller stated it was not really on the market and it was more political in that they were talking about raising the rates for profits and it was kind of a tossup as to where it would stay or go.

Mr. Mammolenti stated Mr. Hazen brought up an interesting point that inspired a question of his. Mr. Mammolenti asked if the buyer knew that this was a 55 or up community. Mr. Miller stated he never really talked to the buyer and the broker had contacted him. Mr. Miller stated in this market he was getting 2-3 calls a month to buy the property and he entertained one company out of Indianapolis just to get an idea of where they were at dollar wise and the company came in with an offer considerably more than what the other company had estimated. Mr. Mammolenti felt that there was so much at risk in affecting the elderly population just by this one decision to lift this restriction when they had a potential buyer come to you when it was not even on the market. Mr. Mammolenti stated he believed it would be extremely marketable and a great value to purchase even with the 55 and older restriction still in place.

Peter Jankowski, 3327 Montmarte Circle West Bloomfield, Michigan, spoke in favor of **PROPOSED ORDINANCE NO. 2021-31**. Mr. Jankowski stated he was the broker representing the purchase of the property and wanted to weigh in and address some of the questions he listened to. Mr. Jankowski reiterated that the purchaser was based out of New York and they had at least four communities in the state of Indiana with about 30 others throughout the country. Mr. Jankowski stated they were a professional group that were paying a high price for the property and they would not be willing to sacrifice the integrity of the property and their investment by running it poorly or having undesirable people on the property to result in increased vacancy. Mr. Jankowski stated the property was already market rate and it was not more or less raising rights, economics or anything for the current tenants but providing the purchaser with the flexibility to dictate how they operated. Mr. Jankowski stated they could not kick any of the tenants out and once the property was purchased, they had to go through with whatever lease was in place and did not want to kick tenants out, because it would cost them money to go and improve units in any number of ways. Mr. Jankowski stated being able to keep the occupancy up lets the purchaser go and continue to maintain the property, do any improvements they had to do and gave them flexibility along with peace of mind for the lender. Mr. Jankowski stated as far as going to other banks and institutions, they were difficult as ever due to COVID in that climate. Mr. Jankowski stated once you get into a certain price range, you could not go to community banks and get favorable financing. Mr. Jankowski concluded stating these were going out to the larger markets.

Mr. Banicki thanked Mr. Jankowski and reference the people willing to come in and purchase the property, but only with the 55 and older taken off. Mr. Banicki brought up a hypothetical situation asking if they were to remove that restriction and next week the facility was sold to someone else, what would be the guarantee that it would be taken care of by someone else. Mr. Banicki asked who was to say that they could not just flip it themselves. Mr. Banicki stated the reality for him was it would be hard for him to even consider removing the restriction based on that information. Mr. Jankowski stated his client came in and made an offer so much higher that did entice Mr. Miller to sell, so with the price they were willing to pay and with taking in the account of taxes increasing after the purchase, there was no one that wanted to pay on a flip to go and buy the property when there would be so little property. Mr. Jankowski stated everything was purchased on cap rates and the cap rates would be so low that there was no flip. Mr. Jankowski stated the council could pass this and put in there that they had to continue to own, operate and manage the property for a reasonable period of time and that could be a good solution to give the council peace of mind. Mr. Banicki stated he just said that the other brokers Mr. Miller was talking to gave him different numbers when Mr. Miller just said he did not even put it on the market and someone came to him. Mr. Jankowski stated he just said a few minutes ago that there was a group out of Indianapolis who gave him a price range and his client came in and made an offer higher than that. Mr. Jankowski stated multiple brokers did evaluations for a property and he was sure Mr. Miller had more than one broker who put the assessment together and that was why he used it as a plural.

Mrs. Voelker had two questions for Mr. Jankowski. Mrs. Voelker asked if he recalled by any chance the name of the other Indiana properties that had been purchased and were owned by the Embassy group. Mr. Jankowski stated there were more in southern Indiana in the Evansville and Newburg area, but he did not know the name of them off the top of his head. Mrs. Voelker stated she was just curious about what the other properties were, what they looked and a little bit of information about them. Mrs. Voelker's other question was if the Embassy group was a subsidiary of an international real estate firm. Mr. Jankowski stated he did not know where their money came from and most groups were syndicators that had money they put together. Mr. Jankowski did not want to assume, but he guessed they might have had Israeli money behind them. Mrs. Voelker asked since it appeared the American company might be located in New York or possibly Ohio, who was managing the property, and if there was a plan to hire a local management firm or if there would be management on site. Mr. Jankowski stated he did not know who managed for them in certain markets. Mrs. Voelker spoke for herself stating one of the things that was important when talking about neighborhoods and people who lived in their community; they really liked to talk to a potential owner who could really answer questions for them. Mrs. Voelker stated it was not that he was not doing the best he could, but it made it a lot easier for them to make decisions when they could ask specific questions and have them answered. Mrs. Voelker stated it was just a note she wanted to throw out there, in terms of how she liked to get information prior to making a decision and thanked Mr. Jankowski.

Mrs. Demaegd asked what the estimated cost to remodel the units would be, given all of the amenities in the facility that catered to the elderly, specifically the bathroom hand rails for example in the units. Mrs. Demaegd stated if they were going to rent out to people who were of younger ages, they would have to go in and remodel all of the units, which would cost money and would have to recoup it somehow. Mrs. Demaegd asked once again how much the average cost would be to remodel the units. Mr. Jankowski stated he did not know if they planned to remodel them, but certain things would need to be done such as a carpet needing to be replaced or have hardwood floors installed, painting of the units or things of that nature. Mr. Jankowski stated if he threw a number out he would be totally guessing.

Cheryl Gerald, 818 Green Pine Court, stated she lived in the Whispering Pines complex and the other complex Mr. Miller had. Ms. Gerald spoke in opposition of the proposed ordinance. Ms. Gerald stated all she could tell the council was she lived in Mishawaka since she was 19 years old and she would do whatever she could to help out the city and volunteered many times for Mishawaka. Ms. Gerald stated she graduated from Bethel College with a bachelor in Human Services. Ms. Gerald stated she was a widow of a veteran and many of the individuals who lived in Whispering Pines were widows of veterans. Ms. Gerald stated it was not that they did not have an income, but they were the middle class seniors. Ms. Gerald stated she was still working and had many surgeries, but she was not ready for assisted living and was ready to keep going. Ms. Gerald stated the facility was a beautiful and peaceful place for them. Ms. Gerald stated they loved it there and would stay as long as they could. Ms. Gerald stated she did not see good things happening there if seniors were taken out of the equation. Ms. Gerald stated she hoped they could stay senior and thanked Mr. Miller for the nice place he gave them to live. Ms. Gerald concluded stating they did not want it to change.

Al Dover lived at Whispering Pines for over 14 years. Mr. Dover stated he moved there when he was 55, it was a very nice place to stay in and he did not understand why they wanted to get rid of senior living around the area. Mr. Dover stated there were people 55 and older who had the money to live somewhere and they wanted to spend the rest of their lives with other people around their age. Mr. Dover stated they were at full capacity, had a waiting list and asked rhetorically why it would be a problem to keep it a senior place. Mr. Dover stated it was a very secure place and you could not go anywhere else in the city of Mishawaka where you opened your door and you were to the outside. Mr. Dover stated in Whispering Pines, you had to have a key to get into your building and then a key to get into your apartment inside. Mr. Dover stated if there was problems, the cops came and people would not be able to get away if the place was blocked up. Mr. Dover thought it should stay at the 55 and older age restriction. Mr. Dover stated they had great apartments and he really did not think change was necessary. Mr. Dover again reiterated the fact that it was pleasant being surrounded by people in the same age group as him to be able to talk about things and have things in common with. Mr. Dover concluded stating it would be a mistake to change the restriction.

Linda, 801 Spruce Court, was a resident of Whispering Pines and spoke in opposition of the proposed ordinance. Linda stated she moved to this facility to have a safer place to live by herself after her husband, a veteran, passed away. Linda stated she loved Whispering Pines and her family was very happy with the security of it and it was very accommodating for people with problems moving. Linda stated it should stay the way it is, because she was not aware of any place quite like this facility even if she paid more money. Linda stated she was not ready for assisted living and Whispering Pines was the only place in the city for what they needed. Linda realized prices were going up and it would not change so she thought they probably would have to pay more money, but that had to be sorted out. Linda stated she would be willing to pay a little more on her rent if necessary.

Mrs. Voelker told her that she was happy to hear from people living in Whispering Pines, because the information they received via email that day was from people living outside of the facility. Mrs. Voelker thanked the people living in the community for attending the meeting that evening.

Patricia Gregg, 715 Spruce court, spoke in opposition to the proposed ordinance. Ms. Gregg stated they got together and decided that they would not allow their unit to be taken away from them. Ms. Gregg stated she was not ready to leave after living there for only 5 months and 3 years of waiting to get into the apartment. Ms. Gregg stated she had enjoyed every moment of her living there and her son and daughter did not need to worry about her since the facility was so secure. Ms. Gregg stated they wanted to stay 55 and older. Ms. Gregg stated she lived in South Bend, owned a home and after her husband passed away, she sold her house in order to downsize and choose to stay at Whispering Pines. Ms. Gregg concluded stating hopefully the council people would take this all into consideration.

Linda Turner, 801 Spruce Court Apartment J, spoke in opposition to the proposed ordinance. Ms. Turner stated she had been there three years, lost her husband and was a veteran. Ms. Turner stated Florida was where her husband passed away. Ms. Turner stated she left in 1970, joined the service and returned to Florida in 2000. Ms. Turner lost her husband and at that time and then left Florida to come back home to family in Indiana. Ms. Turner stated they did not want to move and wanted to keep Whispering Pines a senior community. Ms. Turner stated having her sister able to stay so close to her and get to the facility easily when she needed her was a huge factor. Ms. Turner stated if she went anywhere else she would be much further away, pay a lot more and some residents just could not afford that. Ms. Turner stated they could not ask for better treatment at Whispering Pines and some of the rumors about what was going to happen was very worrisome. Ms. Turner asked the council to not change how Whispering Pines was being run.

Cal, 715 Apartment C Whispering Pines, spoke in opposition to the proposed ordinance. Cal stated everyone said what he was going to say but he thought the council were truly concerned about the senior citizens. Cal thanked the council for hearing them.

Anthony Hack, 722 Green Pine Court Apartment K, spoke in opposition of the proposed ordinance. Mr. Hack stated he and his wife had been at Whispering Pines for seven and a half years. Mr. Hack stated they fell in love with Whispering Pines when they decided to move in and the people working there were very nice to them. Mr. Hack hoped they would not take senior age restriction out of it. Mr. Hack stated after herniated disks for him and an accident with his wife, they were scrapping the barrel to make ends meet and nobody told them if they were going to have to pay more or not. Mr. Hack stated he hoped the council realized that and took it into consideration that they were human beings.

Annie Young, 3005 Remington Court Apartment B, lived 5 minutes from Whispering Pines and stated she agreed with what everyone had said. Ms. Young stated she was a home caregiver professionally and worked in nursing homes and assisted living. Ms. Young stated Whispering Pines was the step before the nursing home and many people were not ready for that. Ms. Young stated Whispering Pines helped her sister out mightily and it was important how secure the facility was. Ms. Young stated there was no place else in Mishawaka like it. Ms. Young stated it would be a sad shame if they lost it and appreciated the fact that the council seemed to understand that. Ms. Young concluded stating the community needed to stay intact.

Mr. Banicki stated earlier that day, they received an email from some neighbors and read it in in opposition.

**I have attached a petition the members of Jamestown have put together for the voting on Whispering Pines restriction lift. They are concerned about what will happen if the restriction 55 and older is lifted. I hope this will be taken into consideration.**

**Thank You,**
**Jill Horvath Management**

**Jamestown Homes are writing to express our strong opposition to the rezoning of Whispering Pines Apartments. This will cause traffic and safety problems and noise. We would like the apartment to stay 55 and older. We are concerned about the apartment being resold and what the future outcome would be. We urge you to disapprove the proposed rezoning, Thank you for your continued service and support of our communities. (105 signatures attached).**

Mrs. Voelker stated she misunderstood at their last meeting and was under the impression that these were not market rate apartments and that the purchase of the apartments would move them into a market rate status. Mrs. Voelker appreciated that clarification that they were currently market rate apartments with 20% or so subsidized housing. Mrs. Voelker also thanked Mr. Jankowski for sending information in the WebEx chat about other Indiana complexes the Embassy group managed. Mrs. Voelker also appreciated the individuals from the community coming in to discuss their concerns with the council.

Mr. Mammolenti thanked Ms. Turner for her service to the country and some of the other folks who had spouses who did the same as well. Mr. Mammolenti applauded Mr. Miller for building such a superior product and it was extremely rare to hear so many residents speak so highly of the property, the amenities, the management and the property owners. Mr. Mammolenti stated the older he got, the more he valued safety and quality of life and at a younger age, he may have more options than some of the folks attending the meeting in terms of income. Mr. Mammolenti stated he believed they had fell in love with the property and were sold the idea of the product of safety and quality of life. Mr. Mammolenti stated he had put himself in their shoes and envisioned his mother speaking before the council and as a child; he would have the peace of mind if she were in a facility that was so secure that she could feel safe at night if she was safe. Mr. Mammolenti struggled with lifting the restriction and could not be in favor of the ordinance. Mr. Mammolenti stated with all of the great components of the facility; he did not think the property would have an issue selling and it was a great product. Mr. Mammolenti stated he would be in opposition to the ordinance.

Mr. Emmons stated with this proposed ordinance, it came up in the Plan Commission meeting and it was rejected 4 to 1. Mr. Emmons stated one of the main reasons was because Mr. Miller made his presentation, but they could never hear from the owners. Mr. Emmons stated he personally liked hearing from not only the past owner, but also the present owner and also the one purchasing the property to receive answers from them. Mr. Emmons stated you could not get all of the answers from the broker. Mr. Emmons stated he, along with Mr. Mammolenti, could not support the proposed ordinance and would be voting against it. Mr. Emmons appreciated all of the individuals who attended the council meeting and the ones who attended the Plan Commission meeting to voice their concerns. Mr. Emmons stated he listened and he was sure the rest of the council did the same.

Mr. Hixenbaugh stated for the record that, through the diligent research of the Clerk's Office, he was reminded of the fact that when the matter first came before the council in 1998, he was an attorney in private practice. Mr. Hixenbaugh stated although he did not have any current business relationship with Mr. Miller or anyone else affiliated with the property, it was his practice not to cast a vote as an elected official on a matter that he was involved in as a private attorney. Mr. Hixenbaugh stated he would abstain from the vote that evening. Mr. Hixenbaugh then thanked all of them for the presentations they made that evening. Mr. Hixenbaugh stated obviously it was an issue that spoke to their hearts, but everyone had been respectful and very appropriate in their comments and that included Mr. Miller as well throughout his comments as well as listening respectfully to what everyone had to say. Mr. Hixenbaugh stated no matter the outcome that evening, they were all to be congratulated for providing those present and those witnessing it with a bit of a civics listen with regard to how passionate issues should be handled on any level. Mr. Hixenbaugh stated they represented themselves and the community well and thanked them for that.

Question was called for at 9:10PM for **PROPOSED ORDINANCE NO. 2021-31 Vote: Motion failed by unanimous roll call vote with one abstain (summary: NO = 8, Abstain = 1).**

**Yes:**

**No: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Emmons, Mr. Bellovich, Mr. Compton Mrs. Voelker.**
**Abstain: Mr. Hixenbaugh.** The proposed ordinance failed 8-0, with one refusal.

**NEW BUSINESS**

Mr. Emmons thanked Mayor Wood for participating in his monthly meeting with his constituents. Mr. Emmons stated it was very gracious of him to recap incidents on the west end and he spent all of the time needed to share to the residents that things were being taken care of. Mr. Emmons stated he also gave a nice presentation of the State of the City and was very generous with his time. Mr. Emmons stated he knew his constituents were very appreciative of that and thanked Mayor Wood again.

Mr. Hixenbaugh announced that in order to facilitate the submission to the council of additional applications for the appointment to the School City of Mishawaka Board of School Trustees, they extended the deadline for interested members of the public and community to submit an application to them. Mr. Hixenbaugh stated the deadline would be Friday, October 29th at noon. Mr. Hixenbaugh stated they would continue to accept applications until that deadline and then move forward with interviews and selections of applicants for the position.

ADJOURNMENT 9:12PM

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

AP 21-40

RECEIVED
OCT 21 2021
COMMUNITY DEVELOPMENT

October 20, 2021

Board of Zoning Appeals
City of Mishawaka, IN

DEVELOPMENT
MANAGEMENT GROUP, LLC

Deborah S. Block, IAMC, MMC
OCT 27 2021
City Clerk
Mishawaka, IN

**RE: USE VARIANCE REQUEST**
**Proposed Shoot Point Blank Gun Range and Sales**
**6424 Grape Road – Tax ID #029-1002-010302**

The undersigned appellant respectfully shows the board:

1. We, **Cinemark USA, Inc**, are the owners of the following described real estate located within the City of Mishawaka, Clay Township, St. Joseph County, State of Indiana, to-wit:
   **Northeast corner of Section 28, Township 38 North, Range 3 East.**

2. The above-described real estate presently has a zoning classification of **'C2' Shopping Center / Commercial District** under the Zoning Ordinance of the City of Mishawaka.

3. Appellant presently occupies (or proposes to occupy) the above-described property in the following manner:
   **Cinemark USA originally developed the subject property for use as a movie theater which has since been demolished. Cinemark has entered an agreement with ComptonAddy to purchase the property for their development of a Shoot Point Blank which provides retail gun sales, indoor shooting ranges and instructional classrooms.**

4. Appellant desires to:
   **Obtain a Use Variance to allow Indoor Shooting Ranges at this location. The ranges are a critical part of the tenant's business which includes retail firearm sales and instructional classrooms, in addition to the indoor ranges.**

5. The Zoning Ordinance of the City of Mishawaka requires:
   **Per Section 137-326 (a) of the zoning ordinance, an indoor shooting ranges (Shooting Galleries) are not permitted by right within the 'C2' district.**

6. Explain why strict adherence to the ordinance requirements would create an unusual hardship:
   **The property itself doesn't impede the construction of the planned improvements as no developmental variances are being requested. This variance request solely regards the need to provide the indoor shooting range component which is an essential part of SPB's business at every location.**

7. Answer the following necessary questions as it regards the Use Variance request:

   (1) Will the approval be injurious to the public health, safety, morals or general welfare of the community?
   **No. The range areas are designed and constructed to meet or exceed all local, State and Federal safety standards required in the industry. While the main building is constructed of 100% masonry, the range areas also include additional reinforced concrete, AR 500 steel, bulletproof glass, self-healing ballistic rubber and bullet traps. Additional insulation and sound attenuation are also provided which greatly minimizes noises associated with shooting firearms. Additionally, the range areas are equipped with specially designed ventilation equipment designed to provide constant filtering and circulation of air inside the building. No activities from either the gun sales or the shooting range are conducted outdoors.**

**Lastly, the building is designed with a minimal number of accessible doors and windows which reduce the possibility of break-ins and theft of firearms, etc. Safety within their range areas, their customers and the surrounding community are a primary focus at every SPB location.**

(2) Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner?
**No. The subject property is in a heavily commercialized area along Grape Road and West University. The surrounding properties are currently developed with a mix of various retail and restaurant uses to the west, and hotels to the east. No residentially zoned properties are in the vicinity of this district. The activities associated with the indoor range use aside, the large majority of Shoot Point Blank's business comes from the sale of firearms, ammo and accessories. As a retailer the planned use is compatible with surrounding development and should be no detriment to the values or the use of the surrounding businesses.**

(3) Does the need for a variance arise from some condition peculiar to the property involved?
**No. The property itself doesn't impede the construction of the planned improvements as no developmental variances are being requested. This variance request solely regards the need to provide the indoor shooting range component which is an essential part of SPB's business at every location.**

(4) Does strict application of the terms of this chapter constitute an unnecessary hardship if applied to the property for which the variance is sought?
**Yes. As discussed above, the indoor range is an essential part of SPB's business along with the retail sales and instructional classrooms which are a part of the tenant's business model. Without the ability to include the range SPB will not move forward with the project.**

(5) Will approval interfere substantially with the Mishawaka 2000 Comprehensive plan?
**No. The comprehensive plan indicates General Commercial as the preferred/identified land use for this parcel.**

WHEREFORE, Appellant respectfully requests a hearing on this appeal and that after such hearing, the Board grant the requested variance. **The undersigned is a duly authorized agent of the property owner, Cinemark USA, Inc.**

Sincerely,

**DEVELOPMENT MANAGEMENT GROUP, LLC**

Ken Knuckles
Vice President
kknuckles@dmgnashville.com

cc: Doug Compton, ComptonAddy
Jon Zilch, ComptonAddy
Kevin Allee, Shoot Point Blank

# LEGAL DESCRIPTION FOR

**6424 GRAPE ROAD**
**MISHAWAKA, IN**
PARCEL ID #029-1002-010302

A TRACT OF LAND SITUATED IN THE NORTHEAST ¼ OF SECTION 28, TOWNSHIP 38 NORTH, RANGE 3 EAST, ST. JOSEPH COUNTY, INDIANA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT OF INTERSECT OF THE NORTH LINE OF INDIANA TOLL ROAD RIGHT OF WAY WITH THE EAST LINE OF GRAPE ROAD RIGHT OF WAY, SAID POINT BEING ON THE SOUTH LINE AND 110.00 FEET EAST OF THE WEST LINE OF THE NORTHEAST ¼ OF SECTION 28; THENCE N 89°30'42" E ALONG SAID NORTH RIGHT OF WAY LINE A DISTANCE OF 811.32 FEET TO A POINT; THENCE N 00°29'18" W A DISATNCE OF 435.65 FEET TO THE PRINCIPAL POINT AND THE PLACE OF BEGINNING OF THE FOLLOWING DESCRIPTION: CONTINUING N 00°29'18" W A DISTANCE OF 537.00 FEET TO A POINT; THENCE N 89°30'42" E A DISTANCE OF 355.00 FEET TO A POINT; THENCE S 00°29'18" E A DISTANCE OF 537.00 FEET TO A POINT; THENCE S 89°30'42" W A DISTANCE OF 355.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 4.38 ACRES OF LAND MORE OR LESS.

AP 21-40

CINEMARK®

CENTURY THEATRES. CinéArts. Tinseltown rave cinemas

October 20, 2021

AP 21-40

RECEIVED
OCT 21 2021
COMMUNITY DEVELOPMENT

Ken Prince
City of Mishawaka
600 East 3rd Street
Mishawaka, IN 46544
(574) 258-1625

**RE: Proposed Shoot Point Blank**
**6424 Grape Road**
**Parcel ID #029-1002-010302**

Dear Ken,

As the fee owner of the above referenced property, please let this letter serve as our authorization to allow ComptonAddy ("Purchaser") and Development Management Group ("Purchaser's Agent") to file all necessary applications relating to their planned development of the property for use as a retail gun sales store and indoor shooting range. This authorization includes submittals to the Board of Zoning Appeals, Planning Commission and Common Council as necessary to secure all necessary plan approvals from the City. Final approval (if given) should however, be contingent on Purchaser obtaining fee title to the property.

Please feel free to contact me to discuss any questions you may have or should you need additional information regarding this matter.

Sincerely,

Jay Jostrand
Executive Vice President-Real Estate and Construction

cc: Doug Compton, ComptonAddy
Ken Knuckles, DMG

October 18, 2021

SHOOT POINT BLANK™

RECEIVED
OCT 21 2021
COMMUNITY DEVELOPMENT

AP 21-40

Ken Prince
Planning Director
City of Mishawaka
600 East 3RD Street
Mishawaka, IN 46544
(574) 258-1625

**RE: PROPOSED SHOOT POINT BLANK**
**6424 Grape Road**
**Mishawaka, IN**

Dear Mr. Prince,

I wanted to take this opportunity to introduce myself and provide you with some information regarding Shoot Point Blank with the hope that by making the city more familiar with our company it will allow you to make a more informed decision regarding the approvals that we are seeking. My understanding is that the existing C-2 zoning will allow the sale of firearms, ammunition and accessories, our ability to include indoor shooting ranges (Shooting Gallery) will require us to obtain approval for a Use Variance thru the Board of Zoning Appeals and Common Council. While it is my intention to attend the required meetings, I wanted to provide you some general information below that you should find helpful.

Since opening our first store in 2012, SPB has developed nearly 30 new locations in 8 states. Every one of our locations is operated based on our corporate mission statement which is to "promote responsible firearm ownership and usage through an engaged, honest, and knowledgeable team effort." Our retail, range, and classroom areas are thoughtfully designed to serve our customers with a fun, educational, and memorable experience! Our stores provide a large retail area where we stock and sell over 500 firearms (handguns and long guns), all from trusted manufacturers such as Ruger, Glock, Sig Sauer, Smith & Wesson and many others. We also carry ammo, safes and other firearm accessories. Our retail area also includes a place where customers can sit and observe the activities inside our ranges. On average more than 80% of our revenue at each location is generated through our retail sales with the balance coming from our ranges and classroom instruction. Our range area at this location will include 20 state-of-the-art lanes that can be used for shooting all types of handguns and long guns. Our range areas are designed and constructed to meet or exceed all safety design standards required in the industry. They are well-lit, climate controlled, and are constructed from AR 500 steel, bulletproof glass and ballistic rubber.

Each of our stores include two classrooms which are used to help educate our customers on gun safety & use, and as part of qualifying our shooters who are pursuing concealed carry permits. It is our goal to make sure every SPB customer feels more confident about their firearm knowledge and handling when they leave our stores. All of our classes are taught by knowledgeable and experienced instructors who are NRA Certified.

Shoot Point Blank is not a "gun club" – there are no membership requirements as we are open to and serve the public. However, memberships are offered should our customers desire one. The hours of operation at a typical SPB store are 10:00 AM to 9:00 PM (Monday thru Friday), 8:00 AM to 9:00 PM on Saturdays, and 10:00 AM to 8:00 PM on Sundays. Our peak hours occur between 5:00 PM to 8:00 PM Monday – Friday, 11:00 AM to 5:00 PM on Saturdays, and 12:00 PM to 4:00 PM on Sundays.

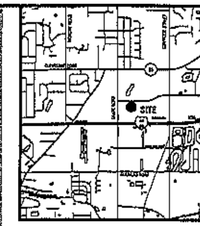
On average or stores employ 25-27 people and typically have 4-12 employees onsite at any time that are made up of sales staff, instructors and range safety officers. We hire individuals who are passionate and knowledgeable about firearms and firearm safety.

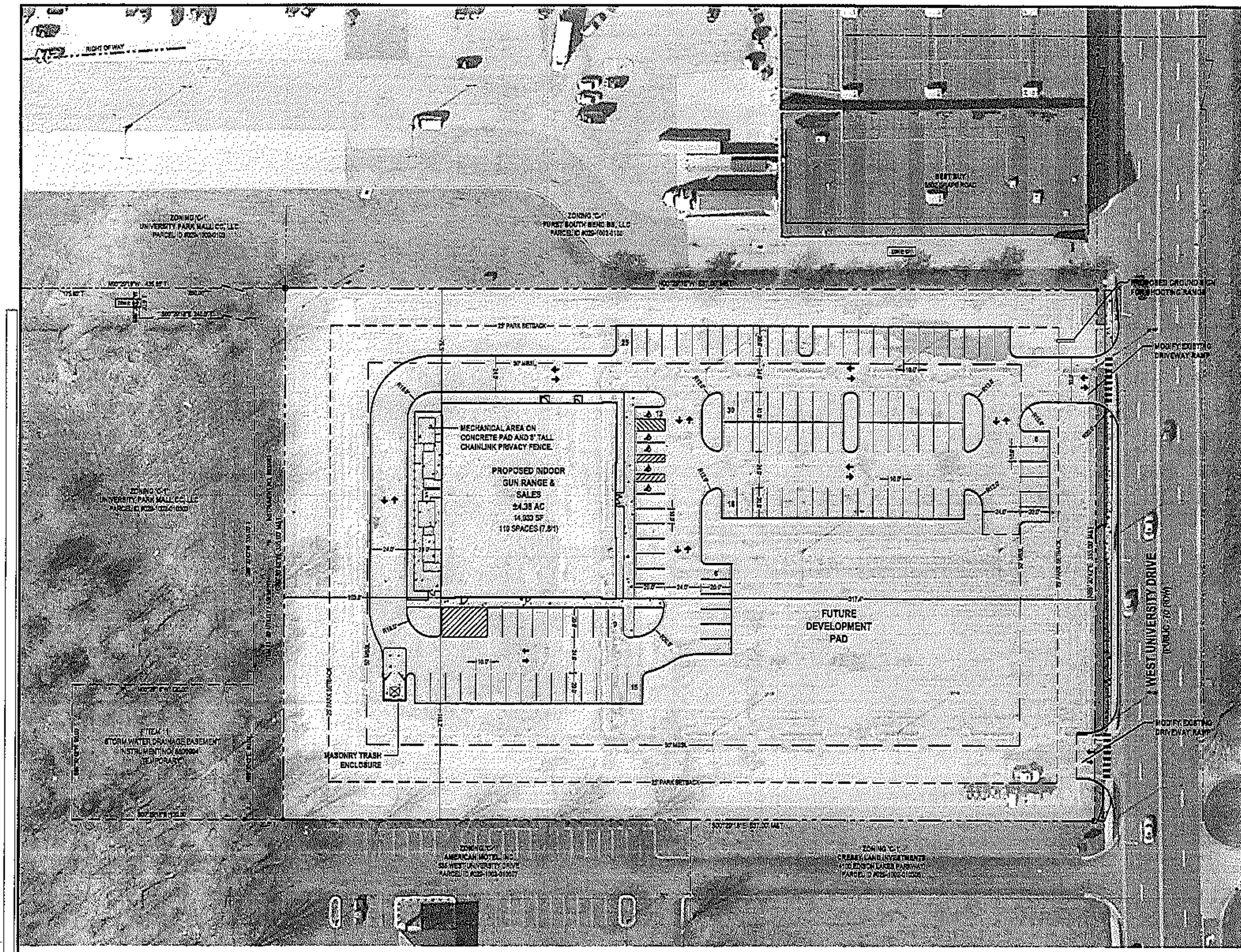
I sincerely hope that this letter provides you with some useful information about who SPB is as a company, what we do, and what's important to us regarding the operation of our stores, meeting the needs of our customers, and being good citizens in the communities we serve. I look forward to an opportunity to share more about our company with you, the BZA and Common Council. We are excited at the prospect of opening what will be our fifth location in Indiana with our other stores being in Indy North, Greenwood, Merrillville and Avon. If you have other questions or feel you need more information regarding SPB, please feel free to contact me!

**LIVE CONFIDENTLY!**

Kevin Alee

Kevin Alee
Vice President of Real Estate
Shoot Point Blank




AP 21-40

RECEIVED
OCT 21 2021
COMMUNITY DEVELOPMENT

PLANS PREPARED FOR:
COMPTONARDY
3865 EDWARDS ROAD
SUITE 300
CINCINNATI, OH 45209
(513) 757-1469

PLANS PREPARED BY:
DMG DEVELOPMENT MANAGEMENT GROUP, LLC
4209 GALLATIN PIKE
NASHVILLE, TN 37216
TELE:(615) 227-5863
www.dmgnashville.com

**PROPOSED INDOOR GUN RANGE & SALES**
6424 GRAPE ROAD
MISHAWAKA, IN

REVISIONS

| NO. | DATE | DESCRIPTION |
|---|---|---|
| 1 | 10/21/21 | BZA SUBMITTAL (USE VARIANCE) |

| | |
|---|---|
| DATE: | 10/04/21 |
| DMG Project No: | 21164 |

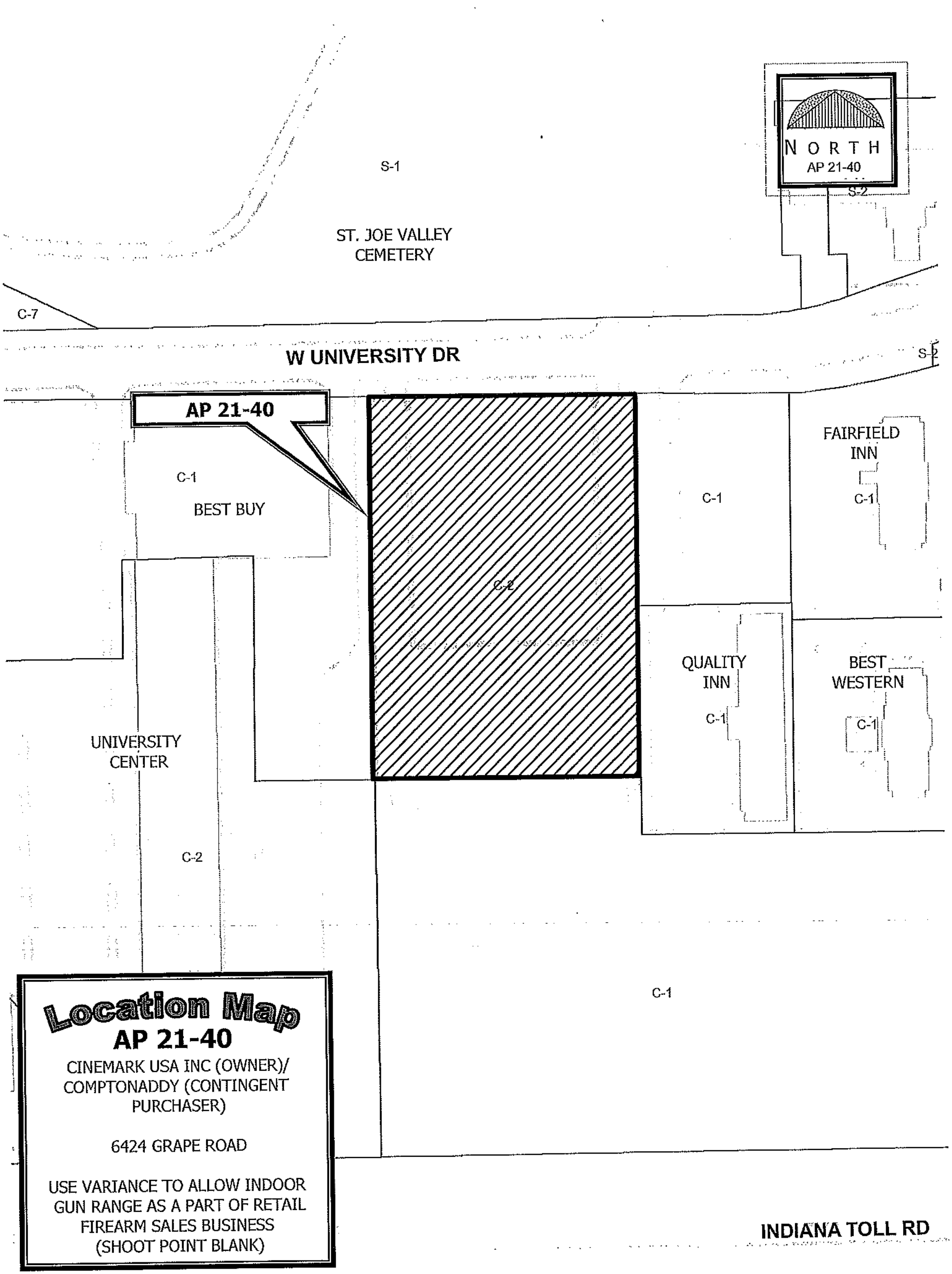
PRELIMINARY SITE PLAN

**SP1.0**

PARCEL ID: 029-1002-010302
ZONE: C-2
(SHOPPING CENTER / COMMERCIAL)

ISSUED FOR: ☐ CHECKSET ☐ AGENCY REVIEW ☐ BID PURPOSES ☐ CONSTRUCTION

SCALE: 1"=30'


NORTH
AP 21-40
S-1
S-2
ST. JOE VALLEY
CEMETERY
C-7
W UNIVERSITY DR
AP 21-40
C-1
BEST BUY
C-2
C-1
FAIRFIELD
INN
C-1
QUALITY
INN
C-1
BEST
WESTERN
C-1
UNIVERSITY
CENTER
C-2
C-1
INDIANA TOLL RD
Location Map
AP 21-40
CINEMARK USA INC (OWNER)/
COMPTONADDY (CONTINGENT
PURCHASER)
6424 GRAPE ROAD
USE VARIANCE TO ALLOW INDOOR
GUN RANGE AS A PART OF RETAIL
FIREARM SALES BUSINESS
(SHOOT POINT BLANK)

1st Reading
2nd Reading
Passed
Failed
Continued To

PETITION 21-16

CITY OF MISHAWAKA, INDIANA

PROPOSED ORDINANCE NO. 2021-38

ORDINANCE NO. ______

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

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

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

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

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

A PART OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 37 NORTH, RANGE 3 EAST, PENN TOWNSHIP, CITY OF MISHAWAKA, ST. JOSEPH COUNTY INDIANA AS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE EAST 231 FEET OF THE SOUTH 480 FEET (BY PARALLEL LINES) OF THE SOUTHEAST QUARTER OF SAID SOUTHWEST QUARTER, EXCEPTING THE SOUTH 290 FEET OF SAID SOUTHEAST QUARTER, AND CONTAINING 1.01 ACRES, MORE OR LESS.

COMMON ADDRESS: Vacant Land North of 410 West McKinley Avenue

which real estate is now classified as C-2 Shopping Center Commercial District shall hereafter be within and a part of that District known as C-7 Automobile Oriented Restaurant Commercial District designated in "The Zoning Ordinance of 1966" as amended.

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

1. Existing Conditions – The subject property consists excess parking at the intersection of a highly travelled corridor. Adjacent land uses include a car wash; proposed multi-tenant building including a drive-thru restaurant; retail and health club.

2. Character of Buildings – The character of the buildings in the area are predominantly single and multi-tenant commercial including retail, office, and restaurant.

3. The most desirable/highest and best use – Because of the property's location and the adjacent existing commercial zoning and development, the most desirable use of the property is commercial.

4. Conservation of property values – The proposed rezoning should not be injurious to property values in the surrounding area. The proposed restaurant with drive-thru and other C-7 Auto Oriented Restaurant Commercial uses are compatible with the adjacent existing uses.

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

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

PASSED by the Common Council of the City of Mishawaka, Indiana, this ________day of ____________________, 2021, at ________ o'clock ___.M.

____________________________
Presiding Officer

ATTEST:

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

PRESENTED by me to the Mayor this ________ day of __________________, 2021, at ________ o'clock ____.M.

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

APPROVED by me this __________ day of ________________, 2021, at ________o'clock ____.M.

____________________________
David A. Wood, Mayor

## STAFF REPORT

Location: Northwest corner of Grape and McKinley - North of 2315 Grape Road (John's Auto Spa)

Date: October 12, 2021

Petition: 21- 16

Prepared By: CH

## GENERAL INFORMATION

| | |
|---|---|
| Applicant: | GLC-MAP McKinley Trust / Abonmarche Consultants, Inc. |
| Status: | Property Owner / Surveyor & Site Design Consultant |
| Request: | To rezone from C-2 Shopping Center Commercial District to C-7 Auto Oriented Restaurant Commercial District to allow for the construction of a restaurant with drive-thru facilities |
| Zoning Classification: | C-2 Shopping Center Commercial District |
| Lot Size: | 0.64 acres |
| Applicable Regulations: | Section 137-455 thru 137-457 / C-7 Auto Oriented Restaurant Commercial District & Section 137-41 / Amendments to the Zoning Map |

## SPECIAL INFORMATION

| | | |
|---|---|---|
| Area Development Pattern: | North: | C-2 Shopping Center Commercial (multi-tenant building including Planet Fitness and Big Lots) |
| | South: | C-4 Automobile Oriented Commercial (John's Auto Spa/under construction) |
| | East: | S-2 Planned Unit Development (multi-tenant office building) |
| | West: | C-2 Shopping Center Commercial (parking lot for multi-tenant building including Planet Fitness and Big Lots ) |

| | |
|---|---|
| Thoroughfare: | Grape Road and McKinley Ave |
| School District: | School City of Mishawaka |
| Township: | Penn |
| Public Utilities: | All utilities are available and will be connected to the site at the expense of the developer. |
| Comprehensive Plan: | General Commercial (Retail Sales & Shopping Centers) |

## ANALYSIS

The Petitioner, GLC-MAP LLC, is requesting to rezone approximately 0.64 acres of property located at on Grape Road, north of John's Auto Spa at the northwest corner of Grape and McKinley, from C-2 Shopping Center Commercial to C-7 Auto Oriented Restaurant Commercial to allow for the construction of a restaurant with drive-thru facilities.

Per the preliminary site plan, the contingent developer is proposing to construct a one-story 1,250 square foot drive-thru restaurant, with 24 parking spaces, and stormwater collection system. Landscaping and screening shall comply with the commercial landscaping and C-7 Auto Oriented Restaurant Commercial District requirements.

The property to be rezoned is currently parking for the multi-tenant building including Planet Fitness and Big Lots. The overall parking lot includes approximately 550 spaces. The multi-tenant building would require 660 spaces at full capacity. This 0.64 acres would remove 90 spaces from the overall lot, leaving 460 parking spaces. A parking variance for the multi-tenant building will be required at the time a site plan is submitted for the drive-thru restaurant.

Access will be from the existing right-in/right-out on Grape Road due south of the site, the common drive north on Grape Road, or common drives from McKinley Ave.

With the exception of the above noted variances, the preliminary site plan shows the intent to comply with the required height, area, and developmental regulations for the C-7 Auto Oriented Restaurant Commercial District. If additional variances are required for landscaping or any other developmental regulations, the Board of Zoning Appeals shall be petitioned when the final site plan is submitted.

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

Since the property is currently zoned for commercial use and located along the highly travelled Grape Road and McKinley Avenue intersection, Planning Staff supports the request for rezoning. The proposed restaurant with drive-thru facilities is not out of character and will be compatible with the existing adjacent land uses. The property is located near other existing, or proposed drive-thru restaurants. The proposed use is also consistent with comprehensive plan.

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

The Engineering Department had no comments related to the rezoning petition but provided comments to be addressed with the final site plan, which have been forwarded to the owner's agent.

## RECOMMENDATION

Staff recommends in **favor** of rezoning Petition 21-16 to rezone approximately 0.64 acres of property located on Grape Road, north of John's Auto Spa at the northwest corner of Grape and McKinley, from C-2 Shopping Center Commercial to C-7 Auto Oriented Restaurant Commercial to allow for the construction of a restaurant with drive-thru facilities.
This recommendation is based on the following findings of fact:

1. Existing Conditions – The subject property consists excess parking at the intersection of a highly travelled corridor. Adjacent land uses include a car wash; proposed multi-tenant building including a drive-thru restaurant; retail and health club.

2. Character of Buildings – The character of the buildings in the area are predominantly single and multi-tenant commercial including retail, office, and restaurant.

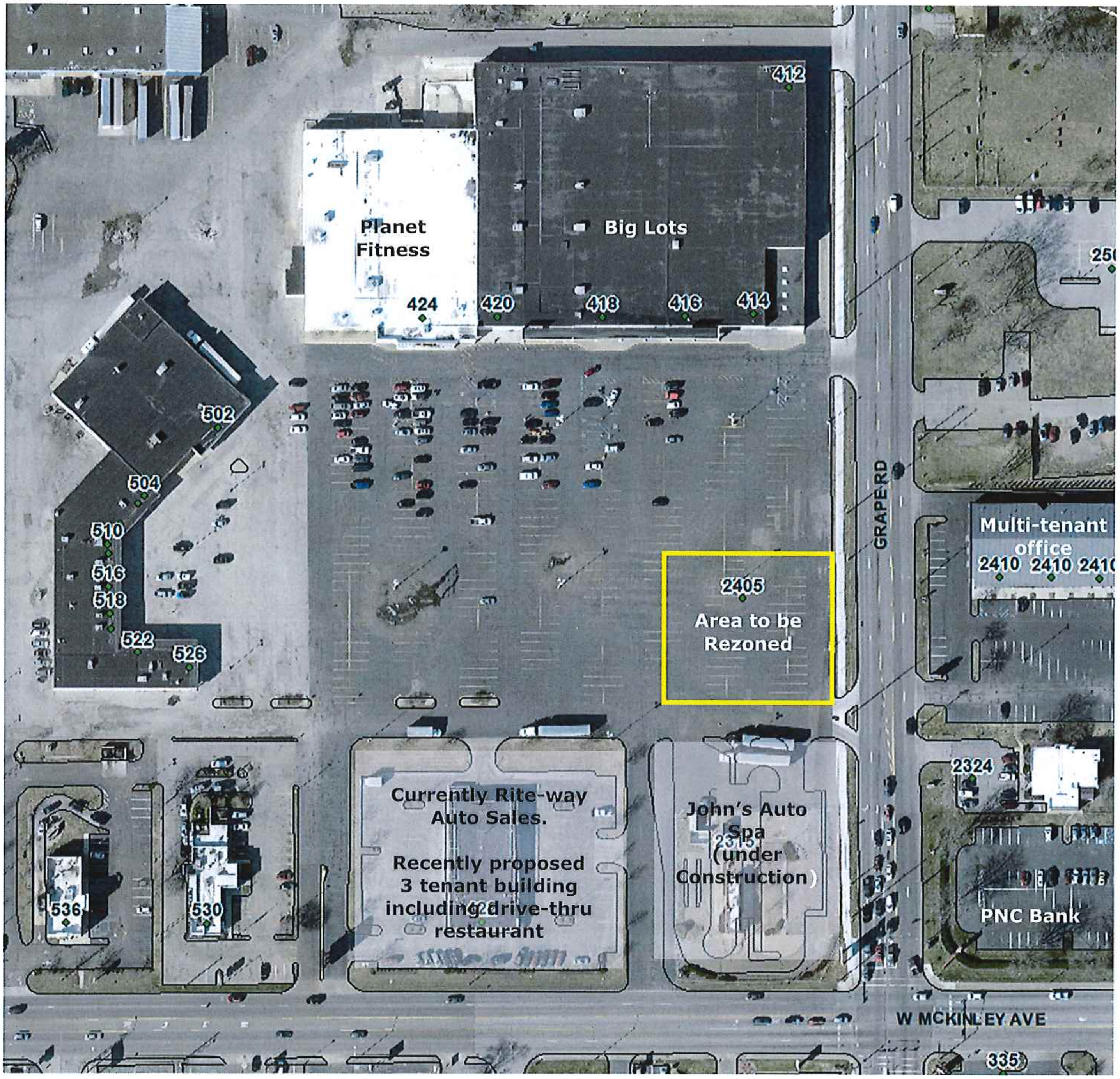
3. The most desirable/highest and best use – Because of the property's location and the adjacent existing commercial zoning and development, the most desirable use of the property is commercial.

4. Conservation of property values – The proposed rezoning should not be injurious to property values in the surrounding area. The proposed restaurant with drive-thru and other C-7 Auto Oriented Restaurant Commercial uses are compatible with the adjacent existing uses.

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

## ATTACHMENTS

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



A view of the site directly across Grape Road

A view of the site from the north along Grape Road

A view of the site from the northern part of the parking lot

A view of the site from the western parking lot

ABONMARCHE

Engineering • Architecture • Land Surveying

September 22, 2021

Deborah S. Block, IAMC, MMC
OCT 06 2021
City Clerk
Mishawaka, IN

RECEIVED
SEP 22 2021
ECONOMIC
COMMUNITY DEVELOPMENT
PLANNING

Pet 21-16

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

**RE: McKinley Commons Outlot Rezoning**

The undersigned, GLC-MAP McKinley Trust, respectfully show they are the owners of the following described real estate located in the City of Mishawaka, County of St. Joseph, State of Indiana, to-wit:

Please see attached legal description.

LOCATION DESCRIPTION: Proposed new outlot – McKinley Commons Shopping Plaza

Petitioner owns one-hundred percent (100%) of the above described parcel of land which carries a zoning classification of C-1 General Commercial District. The property to be rezoned is currently being used as parking lot to support the McKinley Commons Shopping Center.

Petitioner desires to rezone the above described property to C-7 Automobile-Oriented Restaurant Commercial District for the establishment of a new drive-through restaurant. We believe the use to be consistent with the auto-oriented form of the McKinley Road corridor and the outlot development occurring with the McKinley Commons Shopping Plaza. Within the McKinley Commons shopping plaza fronting on McKinley Avenue there are two (2) existing and one (1) proposed C-7 drive-through restaurants. Additionally, the new John's Auto Spa has been approved as a C-4 Auto-Oriented Commercial use. No negative impacts should arise from locating this new drive-thru restaurant use within this established commercial corridor.

WHEREFORE, the petitioner respectfully requests that the Common Council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate ordinance be enacted rezoning the above described parcel of land located in the City of Mishawaka

**Authorized Agent Name**
John Silverman
GLC-MAP McKinley Trust

**CONTACT PERSON**
Mike Huber
Abonmarche Consultants
315 W. Jefferson Blvd.
South Bend, IN 46601
(574) 347-4610
mhuber@abonmarche.com

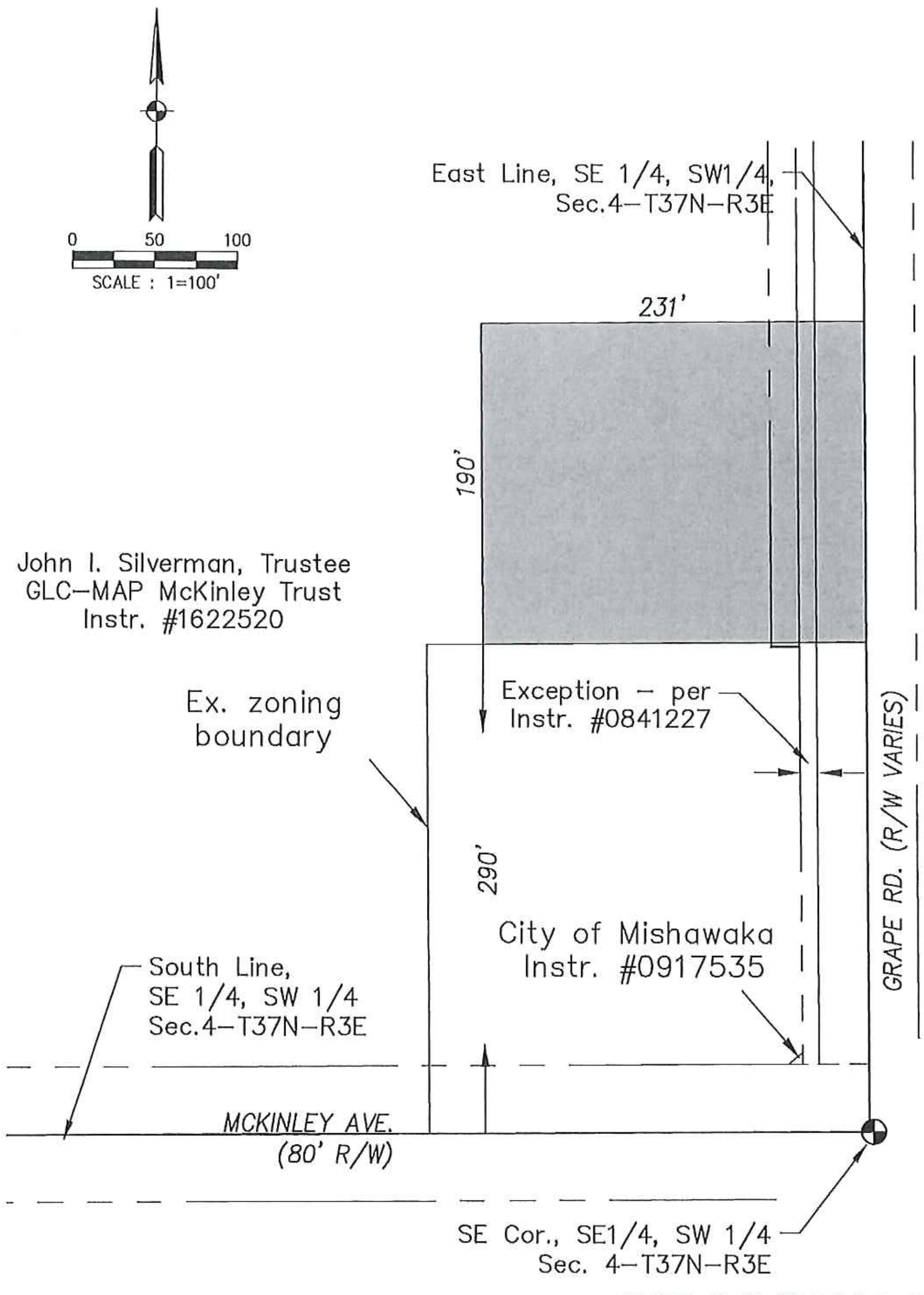
# EXHIBIT 'A'

A PART OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 37 NORTH, RANGE 3 EAST, PENN TOWNSHIP, CITY OF MISHAWAKA, ST. JOSEPH COUNTY INDIANA AS DEPICTED ON THE ATTACHED PARCEL PLAT MARKED **EXHIBIT 'B'**, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE EAST 231 FEET OF THE SOUTH 480 FEET (BY PARALLEL LINES) OF THE SOUTHEAST QUARTER OF SAID SOUTHWEST QUARTER, EXCEPTING THE SOUTH 290 FEET OF SAID SOUTHEAST QUARTER, AND CONTAINING 1.01 ACRES, MORE OR LESS.

# EXHIBIT B

**BEING A PART OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 37 NORTH, RANGE 3 EAST, PENN TOWNSHIP, CITY OF MISHAWAKA, ST. JOSEPH COUNTY, INDIANA**




**SKETCH FOR ZONING DESCRIPTION**

ABONMARCHE

351 West Jefferson Blvd
South Bend, IN. 46601
T 574.232.8700
F 574.251.4440
abonmarche.com

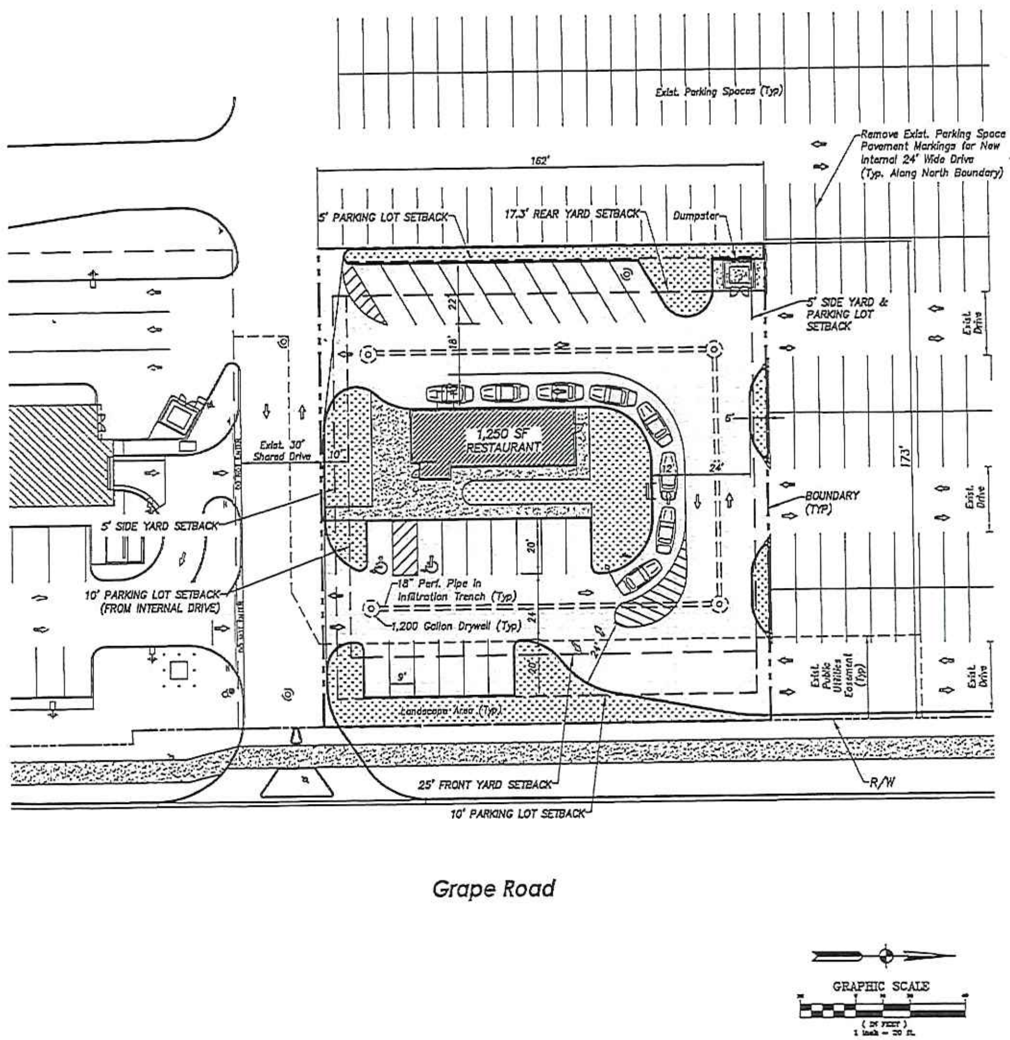
Battle Creek, Benton Harbor, Valparaiso, South Haven, Goshen, Hobart, Lafayette, South Bend



Engineering · Architecture · Land Surveying

DATE: **09/22/2021** ACI JOB #: **21-1493** SHT: **1** of **1**

O:\Projects\2021\21-1493 McKinley Commons Site Development\CAD_Survey\Drawings\21-1493 ZONING SKETCH.dwg, Layout1, 9/22/2021 11:13:28 AM, hmusser, 1:1




## PROPOSED COMMERCIAL C-7 DISTRICT PARKING SUMMARY

Parking Required: 15 Spaces/1,000 SF Gross Area
= (1,250 SF) x (15/1,000) = 19 Spaces

Parking Provided: 24 Spaces including 2 ADA Accessible

## TABULATED SITE DATA

| PROPOSED LAND USE | AREA (SFT) | |
|---|---|---|
| Building | 1,250 | 4.5% |
| Pavement & Walk | 19,933 | 71.1% |
| Open Space | 6,843 | 24.4% |
| TOTAL | 28,025 | 100.0% |

| NO. | REVISION DESCRIPTION | BY | DATE |
|---|---|---|---|

ABONMARCHE

Engineering · Architecture · Land Surveying

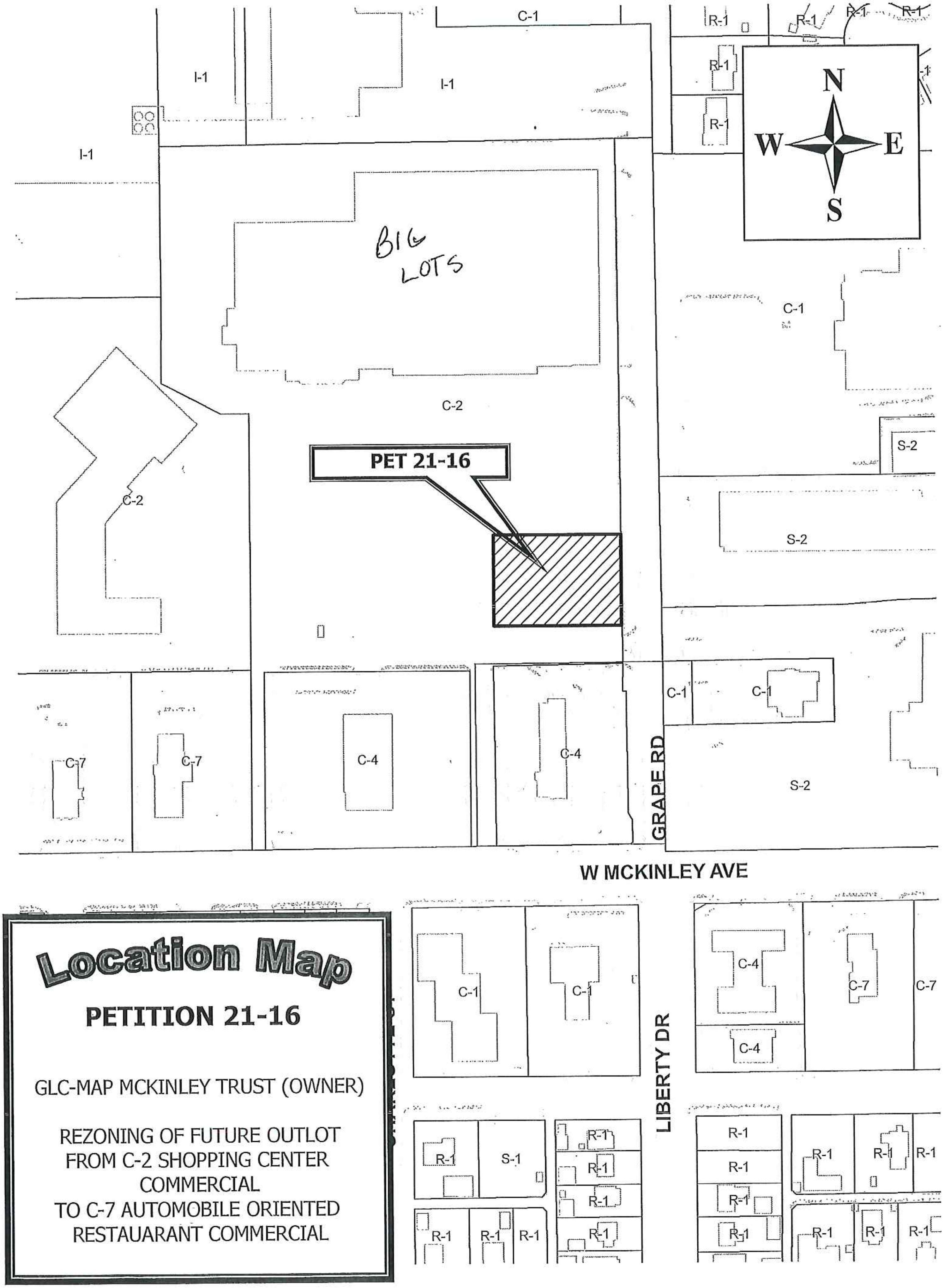
PROJECT: McKINLEY COMMONS
MISHAWAKA, IN

SHEET TITLE: SITE CONCEPT PLAN

DRAWN BY: NJ
DESIGNED BY:
PM REVIEW: MJH
QA/QC REVIEW:
DATE: 09/14/21
SEAL:

Preliminary
Not for
Construction

SIGNATURE:
DATE:
SCALE: HORZ: 1"=20'
VERT: NA
ACI JOB # 21-1493
SHEET NO. 1 of 1




# Location Map

## PETITION 21-16

GLC-MAP MCKINLEY TRUST (OWNER)

REZONING OF FUTURE OUTLOT FROM C-2 SHOPPING CENTER COMMERCIAL TO C-7 AUTOMOBILE ORIENTED RESTAUARANT COMMERCIAL

Deborah S. Block, IAMC, MMC

OCT 14 2021

City Clerk
Mishawaka, IN

1st Reading
2nd Reading
Passed
Failed
Continued To

PETITION #21-17

CITY OF MISHAWAKA, INDIANA

PROPOSED ORDINANCE NO. 2021-39

ORDINANCE NO. _________

AN ORDINANCE ANNEXING CONTIGUOUS TERRITORY TO THE CITY OF MISHAWAKA, INDIANA, AND PROVIDING ZONING CLASSIFICATION THEREFORE

WHEREAS, a Petition has been presented to the Common Council of the City of Mishawaka, Indiana, praying that certain territory lying contiguous to the corporate limits of the City of Mishawaka, Indiana, be annexed to and declared to be a part of the City of Mishawaka, and that it be provided with a Zoning Classification, and

WHEREAS, the Mishawaka City Plan Commission, to which Commission the petition was duly referred, has recommended the annexation and the zoning as hereinafter set forth, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning.

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

Section 1. The following described real estate be and the same is hereby annexed to and declared to be a part of the City of Mishawaka, Indiana:

Lots 12 and 13 as shown on the recorded plat of Oakland First Addition in Penn Township, as recorded in Plat Book 10, Pages 188-189 in the Office of the Recorder of St. Joseph County, Indiana, including adjacent Lincolnway East public right-of-way.

COMMON ADDRESSES: 12452 and 12434 Lincolnway East

The above described real estate shall hereafter be annexed into and within the City of Mishawaka, Indiana, and a part of that district designated in the Zoning Ordinance of the City of Mishawaka, Indiana, and shall carry a classification for zoning of C-1 General Commercial District and I-1 Light Industrial District.

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

1. Existing Conditions – The subject property is located along the heavily travelled Lincoln Way East corridor that serves as the one of the principal arterial roadways connecting Mishawaka and South Bend to downtown Elkhart. Traffic volumes in the immediate vicinity are anticipated to remain consistent. The property, which includes a carry-out/delivery restaurant and fire safety equipment sales and service business, is adjacent to a restaurant with drive-thru and pharmacy to the north, a two-tenant commercial building to the west, a railroad and agricultural land to the south, and a credit union to the east.

2. Character of Buildings in the Area – The character of buildings and land uses located along Lincoln Way East corridor vary greatly and include commercial, retail, restaurant, financial, and industrial land uses.

Proposed Ordinance No. ______________

Ordinance No. __________

3. The most desirable/highest and best use – Because of the property's location along a highly travelled mixed use corridor, the most desirable use for the property is commercial or light industrial use consistent with the current land use.

4. Conservation of property values – The proposed zoning will not be injurious to the property values in the surrounding area as no changes to the current uses are proposed. Additionally, other permitted uses within the C-1 General Commercial and I-1 Light Industrial Districts would be compatible with the existing adjacent and nearby land uses.

5. Comprehensive Plan – The Mishawaka 2000 Comprehensive Plan, created in 1990, guided commercial and industrial development along Lincoln Way East between Bittersweet Road and Cedar Road.

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

PASSED by the Common Council of the City of Mishawaka, Indiana, this _______ day of _________________, 2021, at ______ o'clock ___.M.

______________________________
Presiding Officer

ATTEST:

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

PRESENTED by me to the Mayor this _____ day of ________________, 2021, at o'clock _____.M.

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

APPROVED by me this _____ day of _______________, 2021, at _____ ______o'clock ______.M.

______________________________
David A. Wood, Mayor

## STAFF REPORT

Location: 12452 & 12434/4605 Lincoln Way East – South side of Lincoln Way East Approximately 160' East of Bittersweet Road

Date: October 12, 2021

Petition: 21- 17

Prepared By: DJS

## GENERAL INFORMATION

| | |
|---|---|
| Applicant: | Wenningsen LLC & Fox Fire Safety Inc. / City of Mishawaka |
| Status: | Property Owners / Representative |
| Request: | To annex and establish zoning to the C-1 General Commercial District and I-1 Light Industrial District for an existing carry-out/delivery pizza restaurant and fire safety equipment sales and service business |
| Existing Zoning: | Unincorporated St. Joseph County (I Industrial District) |
| Proposed Zoning: | C-1 General Commercial District for the northern 105' of Lot 12 of Oakland First Addition (12452 Lincoln Way East) and I-1 Light Industrial District for the remainder of said Lot 12 and Lot 13 of Oakland First Addition (12434 Lincoln Way East) |
| Lot Size: | 1.95 acres |
| Applicable Regulations: | Section 137-300 to 137-303 / C-1 General Commercial, Section 137-585 to 137-587 / I-1 Light Industrial, Section 137-41 / Amendments to Zoning Map & Indiana Code 36-4-3-2.1 and 36-4-3-3.1 |

## SPECIAL INFORMATION

| | | |
|---|---|---|
| Area Development Pattern: | North: | S-2 Planned Unit Development (Restaurant with Drive-Thru / Arby's & Pharmacy / Walgreen's) |
| | South: | Norfolk Southern Railroad & Unincorporated St. Joseph County (Agricultural) |
| | East: | C-1 General Commercial (Credit Union / Communitywide Federal) |
| | West: | C-7 Auto Oriented Restaurant Commercial (Two-Tenant Commercial Building – Restaurant with Drive Thru / Starbuck's & Retail / Verizon) |
| Thoroughfare: | Lincoln Way East | |
| School District: | Penn-Harris-Madison | |
| Township: | Penn | |
| Public Utilities: | All utilities are available and currently serve both parcels. | |
| Comprehensive Plan: | General Commercial | |

## Analysis

**Proposal:**
The applicants are proposing to annex and establish zoning for two parcels of property (Tax Parcels 014-1105-3710 & 014-1105-3711), more specifically being Lots 12 and 13 of Oakland First Addition, on the south side of Lincoln Way East approximately 160′ east of Bittersweet Road. The west parcel at 12452 Lincoln Way East is occupied by Bruno's, a carry-out/delivery pizza restaurant. The east parcel at 12434/4605 Lincoln Way East is occupied by Fox Fire Safety, a fire safety equipment and service business.

The purpose of the proposed annexation and requested zoning is to finalize a petition for annexation originally submitted to the City in 2000. When filed, the petition initially included only Lot 13 of Oakland First Addition (12434 Lincoln Way East). This lot had recently been developed in the County with an approximately 4,500 sq. ft. building for Fox Fire Safety. Several parcels to the west and east were then added to the petition as Planning Staff continued to discuss potential future development plans with the nearby property owners. The goal was fill in gaps between the unincorporated areas and those parcels already within the city limits. Staff continued to work on the annexation petition through 2001, but for unknown reasons, the request was never considered by the Plan Commission. Although the annexation was not finalized, the Fox Fire Safety property was issued a City address (4605 Lincoln Way). This address has been used by the business for over twenty years. Emergency responders may have difficulty in locating the property since it effectively has two addresses. For these reasons, Planning Staff initiated current annexation and zoning petition.

The proposed zoning for the northern 105′ of the Bruno's property (12452 Lincoln Way East/Lot 12 of Oakland First Addition) is C-1 General Commercial. Only part of the parcel is proposed for commercial zoning as the south part of the property is anticipated to the purchased by Fox Fire Safety for a future building expansion. A carry-out/delivery restaurant, as currently exists, is a permitted use in the C-1 District, but will be legal non-conforming after being annexed. This is due to the property not meeting the city's parking requirements of 10 spaces per 1,000 sq. ft. of floor area. The 1,019 sq. ft. building would require a total of 10 spaces while the site only appears to have 6 spaces. Also, the site may not adhere to other C-1 District development standards, such as parking setbacks, etc., and does not meet the city's landscaping requirements. Subdividing the property and selling the rear part to Fox Fire Safety may require future variances as the property changes use over time.

The proposed zoning for the remainder of said Lot 12 to the south and the adjacent Fox Fire property to the east (12434 & 4605 Lincoln Way East/Lot 13 of Oakland First Addition) is I-1 Light Industrial. The I-1 District permits the existing fire safety equipment sales and service business.

Normally when an annexation and zoning petition is filed, a preliminary site plan is required to conceptually show how the property will be developed. In this case, a preliminary site plan was not required since the property is currently developed with no immediate plans for additional development.

**Annexation:**
In 1998, the adjacent parcel to the east was annexed and zoned to the C-1 General Commercial District (Petition 98-43/Ord. 4317) for Communitywide Federal Credit Union. In 2003, the adjacent property to the west was annexed and zoned to the C-1 General Commercial District (Petition 03-24/Ord. 4763) for Applebee's restaurant. The restaurant has since been closed and the building remodeled for two-tenant occupancy. Currently, Starbuck's and Verizon occupy the building. In 1976, the adjacent property to the north was annexed and zoned S-2 Planned Unit Development (Petition 76-25/Ord. 2002) as a part of the original Bercado Farms PUD.

Per the State of Indiana's annexation laws, a parcel is required to share one-eighth, or 12.5%, of its boundary with the existing City boundary in order to be annexed. With the previous annexations outlined above, approximately 1,286.2 feet, or 89.6%, of the total 1435.2 feet of the perimeter of the property will be contiguous with the existing city limits. This exceeds the required 12.5% contiguity.

**Location/Context:**
The site is located south of Lincoln Way East approximately 160′ east of Bittersweet Road, and is bordered to the north by a restaurant with drive-thru facilities and pharmacy; to the west by a two-tenant

commercial building including a coffee shop with drive-thru facilities and mobile phone retailer; to the south by railroad tracks and agricultural land in unincorporated St. Joseph County; and to the east by a credit union. The Lincoln Way East corridor includes a variety of commercial, retail, restaurant, financial, and industrial land uses.

**Zoning Change:**
Staff believes the proposed zoning of the property to the C-1 General Commercial District and I-1 Light Industrial District is appropriate given the parcels are currently occupied by a carry-out/delivery restaurant and a fire safety equipment sales and service business. Other permitted uses within the C-1 and I-1 Districts are compatible with and conform to the existing and recommended land uses along the Lincoln Way East corridor.

**Transportation/Roads:**
According to the latest available traffic counts, there were 15,380 annual average daily trips (AADT) (October 2019) along Lincoln Way East immediately east of Bittersweet Road. The counts at this location have been relatively constant over the last 40 years fluctuating from a high of more than 17,400 AADT in 2004 to lows of just over 12,000 AADT in 1980 and 2013. With Lincoln Way East serving as the one of the principal arterial roadways connecting Mishawaka and South Bend to downtown Elkhart, it is anticipated that traffic volumes will continue to remain constant in future years.

The 2045 Transportation Plan, prepared by the Michiana Area Council of Governments with input from City staff, the County Engineering Department, and INDOT, does not include any added travel lane projects on Lincoln Way East or Bittersweet Road.

All pertinent City Departments have reviewed and approved the request for annexation and zoning.

The Engineering Department commented that a new address will be assigned for 12452 Lincoln Way East (Lot 12), and the existing 4605 Lincoln Way East address will remain for Lot 13.

## RECOMMENDATION

Staff recommends approval of Petition 21-17 to annex and establish zoning to the C-1 General Commercial District for the north 105' of Lot 12 of Oakland First Addition and I-1 Light Industrial District for the remainder of said Lot 12 and Lot 13 of Oakland First Addition. The parcels are currently occupied by Bruno's, a carry-out/delivery pizza restaurant, at 12452 Lincoln Way East, and Fox Fire Safety, a fire safety equipment sales and service business, at 12434 Lincoln Way East.

This recommendation is based on the following Findings of Fact:

1. Existing Conditions – The subject property is located along the heavily travelled Lincoln Way East corridor that serves as the one of the principal arterial roadways connecting Mishawaka and South Bend to downtown Elkhart. Traffic volumes in the immediate vicinity are anticipated to remain consistent. The property, which includes a carry-out/delivery restaurant and fire safety equipment sales and service business, is adjacent to a restaurant with drive-thru and pharmacy to the north, a two-tenant commercial building to the west, a railroad and agricultural land to the south, and a credit union to the east.
2. Character of Buildings in the Area – The character of buildings and land uses located along Lincoln Way East corridor vary greatly and include commercial, retail, restaurant, financial, and industrial land uses.
3. The most desirable/highest and best use – Because of the property's location along a highly travelled mixed use corridor, the most desirable use for the property is commercial or light industrial use consistent with the current land use.
4. Conservation of property values – The proposed zoning will not be injurious to the property values in the surrounding area as no changes to the current uses are proposed. Additionally, other permitted uses within the C-1 General Commercial and I-1 Light Industrial Districts would be compatible with the existing adjacent and nearby land uses.

5. Comprehensive Plan – The Mishawaka 2000 Comprehensive Plan, created in 1990, guided commercial and industrial development along Lincoln Way East between Bittersweet Road and Cedar Road.

## ATTACHMENTS

Aerial Map, Photographs, Rezoning & Annexation Petition including Existing Conditions Maps, Location Map


Aerial Photograph
Bruno's Pizza & Fox Fire Safety
12452 & 12434/4605 Lincoln Way East
Lots 12 & 13 of Oakland First Addition

P1. Looking southerly from Lincoln Way East toward Bruno's Pizza (12452 LWE).

P2. Looking southerly from Lincoln Way East toward Fox Fire Safety (12434/4605 LWE).

P2. Looking southerly from north of Lincoln Way East toward both parcels to be annexed.

PET 21-17

Deborah S. Block, IAMC, MMC

OCT 06 2021

City Clerk
Mishawaka, IN

RECEIVED
SEP 22 2021
ECONOMIC
COMMUNITY DEVELOPMENT
PLANNING

DATE: August 18, 2021

TO THE:

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

RE: Petition for Annexation and Zoning Classification

The undersigned Wennigsen LLC & Fox Fire Safety Inc. respectfully show they are the owners of the following described real estate located in the County of St. Joseph, State of Indiana, to-wit:

> Lots 12 and 13 as shown on the recorded plat of Oakland First Addition in Penn Township, as recorded in Plat Book 10, Pages 188-189 in the Office of Recorder of St. Joseph County, Indiana, including adjacent Lincoln Way East public right-of-way.
>
> Common Addresses: 12452 and 12434 Lincoln Way East, Osceola, IN 4656/4605 Lincoln Way East, Mishawaka, IN 46544

Petitioners own One Hundred (100%) percent of the above-described parcel of land which is located at 12452 and 12434/4605 Lincoln Way East, and that Petitioners desire the same to be annexed to the City of Mishawaka, Indiana, with a C-1 General Commercial District for the north 105' of said Lot 12 and an I-1 Light Industrial District for the remainder of said Lot 12 and all of said Lot 13. Petitioners further state they intend to utilize said land for continued use as a carry-out/deliver pizza restaurant at 12452 Lincoln Way East and a fire safety equipment sales and service business at 12434/4605 Lincoln Way East.

Accompanying this petition is a drawing showing the above-described parcel of real estate, showing the location of the existing building structure(s) and other improvements.

Petitioners further show this proposed annexation to be in the best interest of the City of Mishawaka, Indiana, and of the territory sought to be annexed which is urban in character and is an economic and social part of the City of Mishawaka.

Wherefore, Petitioners pray and respectfully request that the Common Council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate ordinance be enacted annexing the above described parcel of real estate to the City of Mishawaka with a C-1 General Commercial District and I-1 Light Industrial District as described above.

Property Owner Signature

Joseph S. Grabill
Wennigsen LLC
Lot 12 of Oakland First Addition

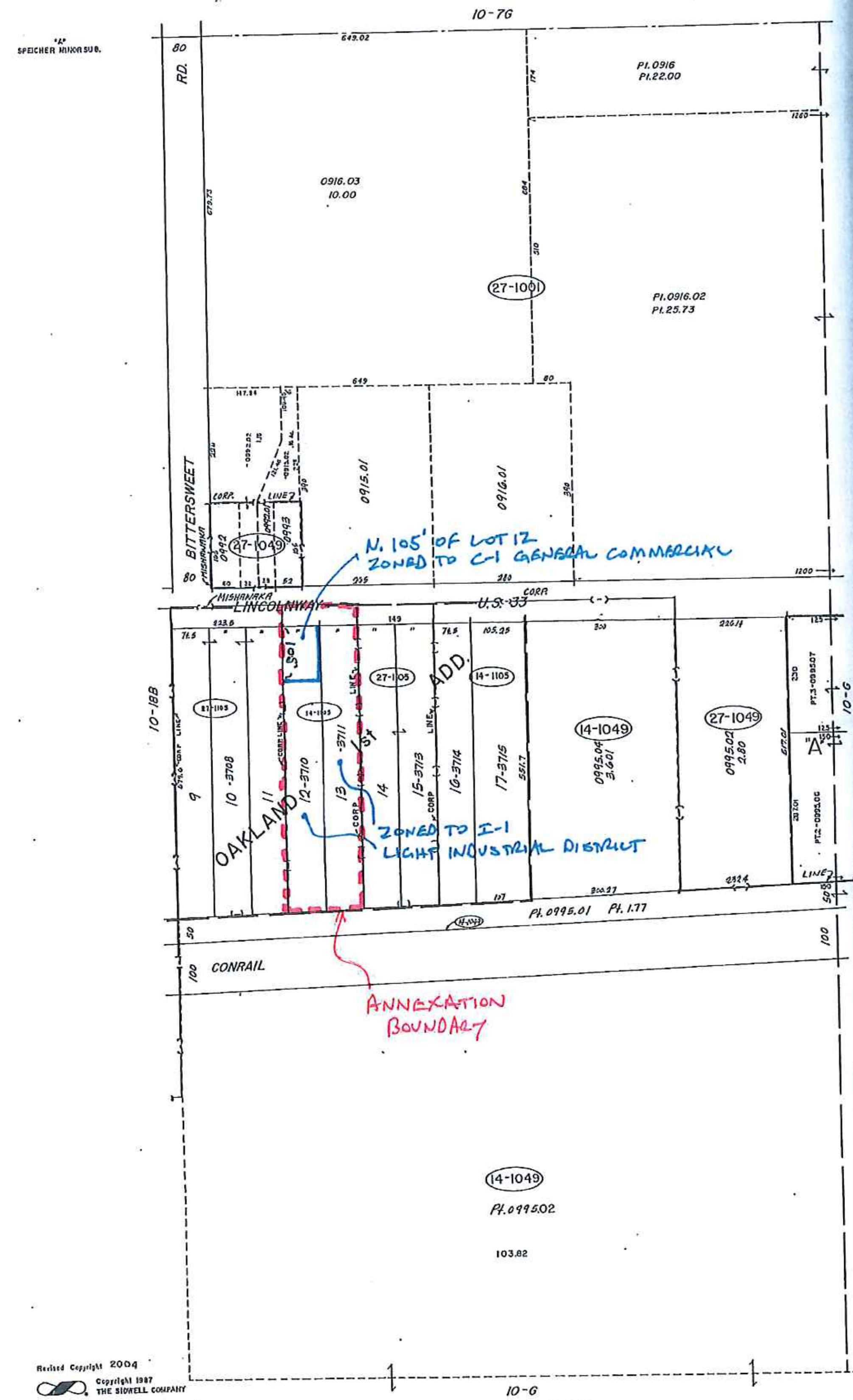
Robert E. Murray

Property Owner Signature

Robert E. Murray
Fox Fire Safety Inc.
Lot 13 of Oakland First Addition

Contact Person:
Derek J. Spier, AICP
600 E. Third Street
Mishawaka, IN 46545
574-258-1625
dspier@mishawaka.in.gov

Prepared by: Department of City Planning



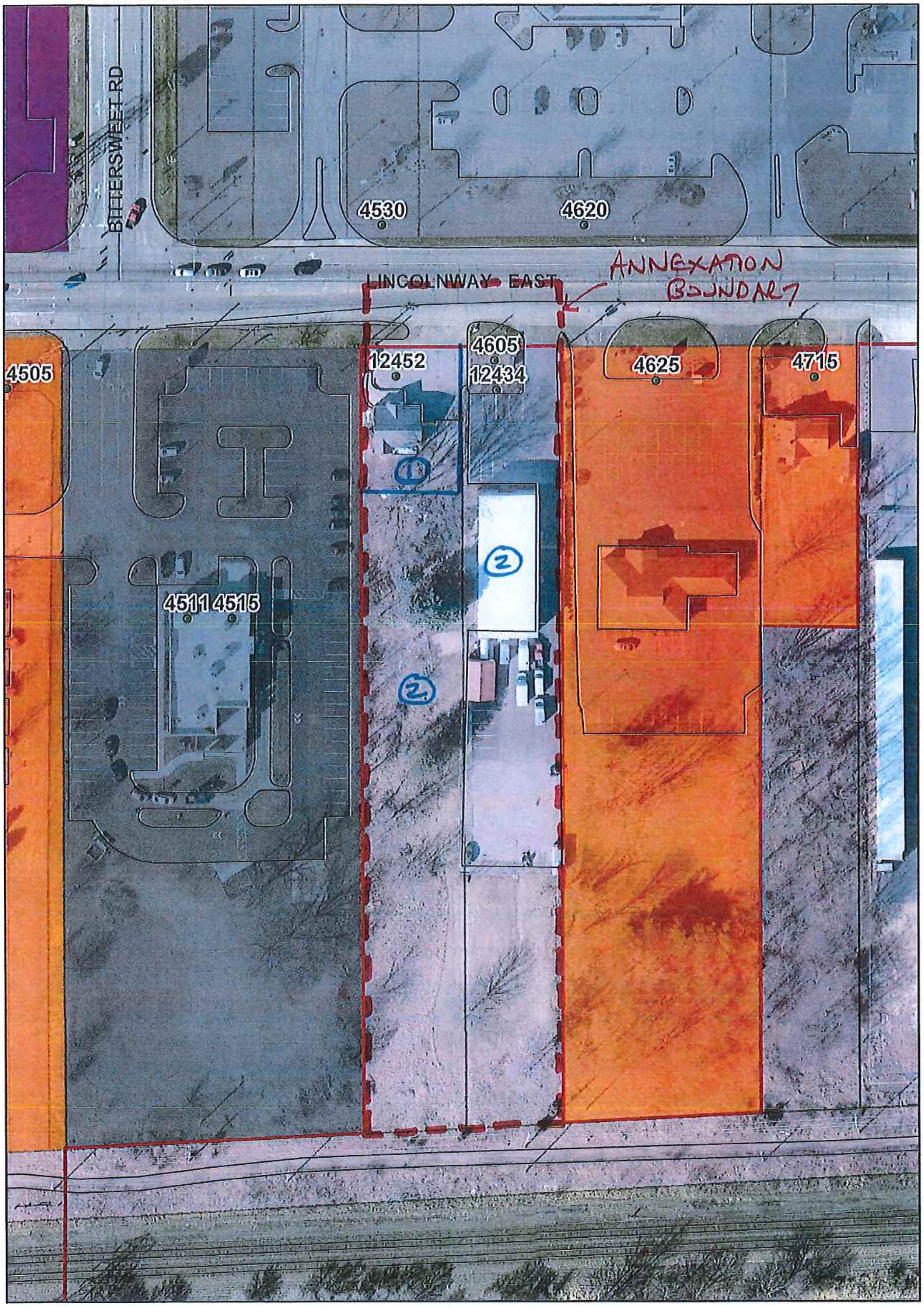

Revised Copyright 2004
Copyright 1987 THE SIDWELL COMPANY

SCALE: 1" = 100'

10-18C

PENN TWP.

W.1/2 N.E.1/4 SEC. 18 T.37N. R.4E.



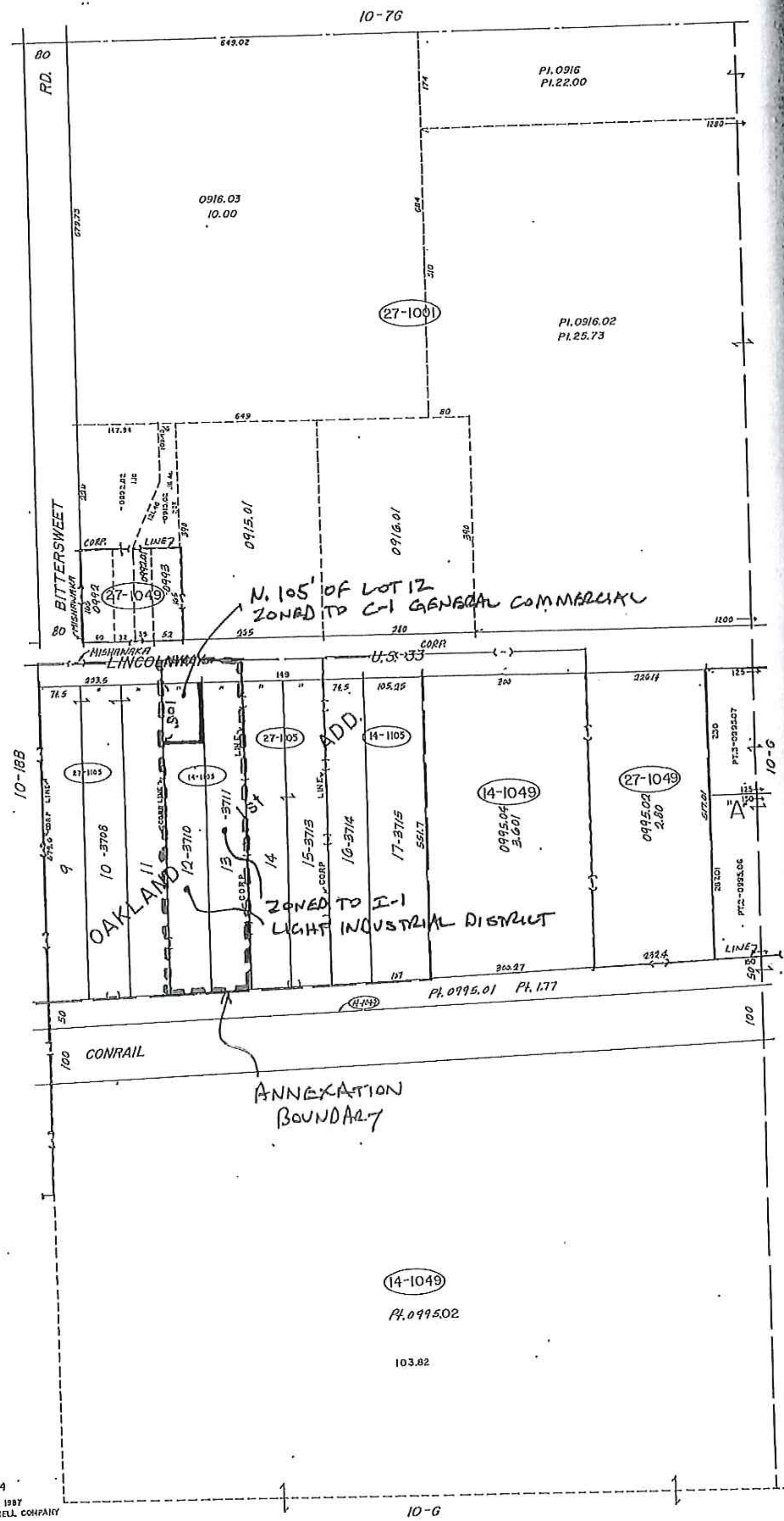

① ZONED C-1 GENERAL COMMERCIAL
② ZONED L-1 LIGHT INDUSTRIAL

↑ N

1" = 100' SCALE


LINCOLNWAY EAST
4605
12452
12434
3
3
1019
1st Floor
+/- 105'
C-1 GENERAL
COMMERCIAL
027-1105-3708
014-1105-3710
014-1105-3711
027-1105-3713
I-1
LIGHT
INDUSTRIAL
I-1
LIGHT
INDUSTRIAL

↑ N 1" = 30' SCALE



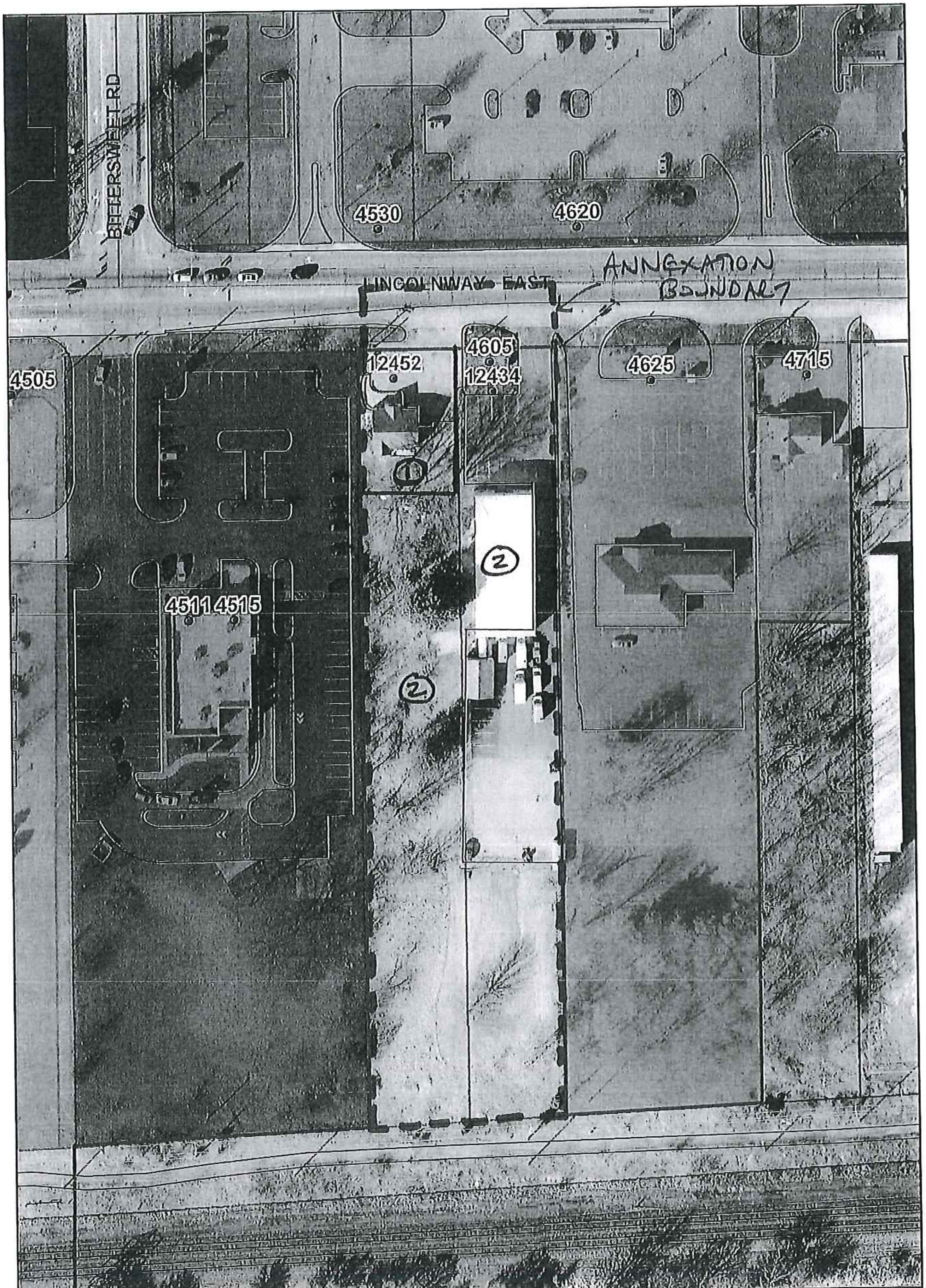

Revised Copyright 2004
Copyright 1987 THE SIDWELL COMPANY

SCALE: 1" = 100'

10-18C

PENN TWP.

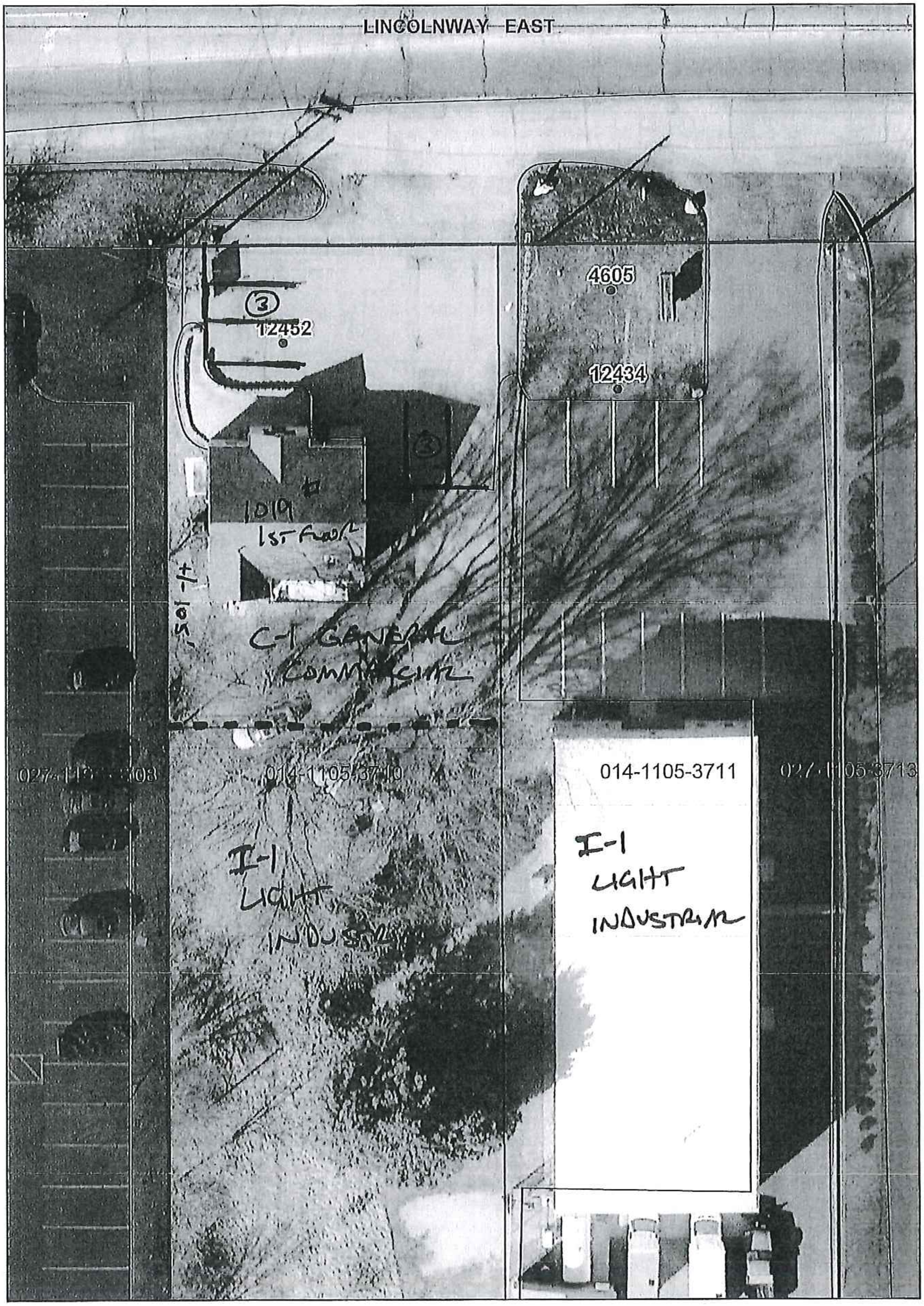
W. 1/2 N.E. 1/4 SEC. 18 T. 37N. R. 4E.



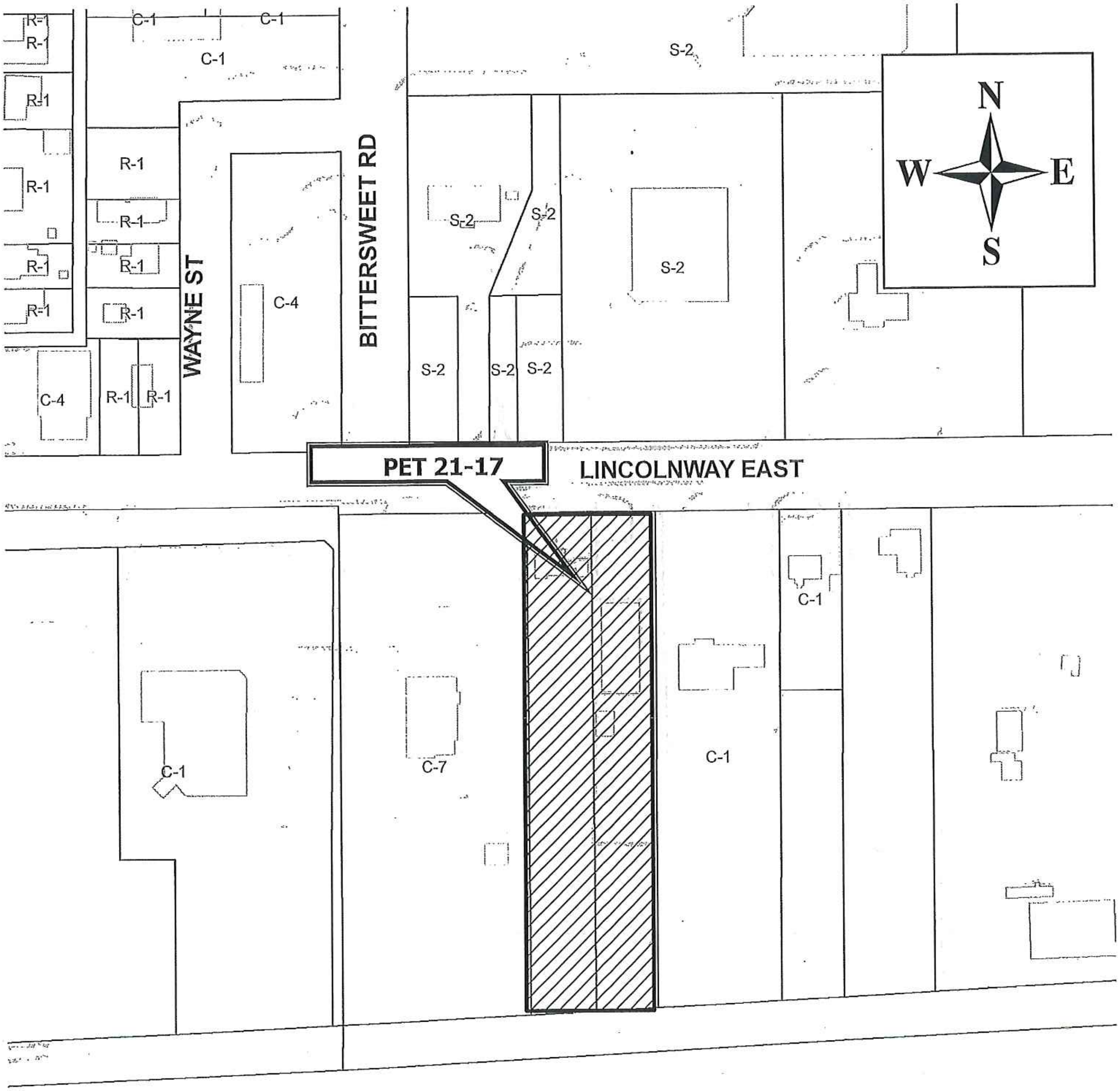

① ZONED C-1 GENERAL COMMERCIAL
② ZONED L-1 LIGHT INDUSTRIAL

↑ N

1" = 100' SCALE


LINCOLNWAY EAST
4605
12452
12434
1019
1st FLOOR
C-1 GENERAL COMMERCIAL
014-1105-3710
014-1105-3711
027-1105-3713
I-1 LIGHT INDUSTRIAL
I-1 LIGHT INDUSTRIAL

↑ 1" = 30'




# Location Map

## PETITION 21-17

WENNIGSEN LLC & FOX FIRE SAFETY INC
(OWNERS)

ANNEXATION AND REZONING OF
12452 & 12434 LINCOLNWAY EAST
FROM "I" INDUSTRIAL
(UNINCORPORATED ST. JOSEPH COUNTY)
TO C-1 GENERAL COMMERCIAL AND
I-1 LIGHT INDUSTRIAL