

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

February 21, 2022

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, February 21, 2022 at 7:00PM. The meeting was called to order by Council President Gregg Hixenbaugh. All were asked to stand for the Pledge of Allegiance.

Clerk Block called the roll.

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, Mike Trippel

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 February 7, 2022 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 February 08, 2022 meeting.

Honorable Members:

A regular meeting of the Mishawaka Plan Commission was held on the above referenced date at which time the following proposed Resolution and Ordinances were considered:

RESOLUTION #22-01 A resolution amending the City Municipal Riverfront District.

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

PETITION #22-01 A petition submitted by Rebecca Parker as Trustee for Rose Glen & Mavis H., Raymond Jeziorski, and Matthew Bender requesting to rezone 107 Wayne Street, 119 Wayne Street, and 123 Wayne Street from R-1 Single Family Residential District to C-4 Automobile Oriented Commercial District.

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

PETITION #22-02

A petition submitted by DEV 4506 Lincolnway East, LLC, Rebecca Parker as Trustee for Rose Glen R. and Mavis H., Raymond Jeziorski, Matthew Bender, Tiffany J. Gilbert, and Rousseve Properties, LLC, seeking vacation of Wayne Street and unimproved Pennsylvania Avenue right-of-way for planned adjacent car wash development (Drive N' Shine).

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 Resolution and ordinances regarding the above matters.

Respectfully,

Kari Myers, Administrative Planner

Secretary, Mishawaka Plan Commission

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

PROPOSED ORDINANCE NO. 2022-06

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

Rezone from R-1 & C-4 to C-4 Auto Oriented Commercial for proposed Car Wash Drive N' Shine – NW corner of Lincoln Way & Bittersweet Rd.

(Assigned to Land Use Planning Committee)

PROPOSED ORDINANCE NO. 2022-07

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

Right of Way Vacation for Planned Adjacent Car Wash Development Drive N' Shine – Wayne & Pennsylvania Ave.

(Assigned to Land Use Planning Committee)

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

RESOLUTION R2022-01

A RESOLUTION OF THE CITY OF MISHAWAKA COMMON COUNCIL APPROVING THE DESIGNATION OF CERTAIN AREAS AS REDEVELOPMENT PROJECT AREAS FOR THE ESTABLISHMENT AS A MUNICIPAL RIVERFRONT DEVELOPMENT PROJECT

Ken Prince, Director of Planning Community Development Department, spoke in favor of and presented **RESOLUTION R2022-01**. Mr. Prince summarized the resolution by stating in 2004 was when the city originally adopted a municipal riverfront district with purposes of reduced liquor license as afforded by state law. Mr. Prince stated in 2018, they amended it drastically and what they did at that point in time was they said they did not want to be the arbitrator of the special districts established by the state and wanted to maximize the area involved. Mr. Prince stated since then, they had obtained that. Mr. Prince stated they took the floodplain that was identified on the fema flood maps for both the St. Joseph River and Juday Creek and extended it the maximum 1500 feet on both sides of the bank, so that created it as the area of the district in the city. MR. Prince stated they literally made every property eligible for a river walk license that would be zoned appropriate. Mr. Prince stated what they found out, which was brought to their attention by Mr. Hazen, was that there were areas of the river outside of the FEMA identified floodplain. Mr. Prince stated there were areas of open water that were not regulated as floodplain that was still part of the water body that would make other areas eligible for a Riverwalk license. Mr. Prince stated these were all located on the east side of the Twin Branch Dam. Mr. Prince stated they had amended the district and that was what the proposal was before them that evening to add the areas that had open water, which extended the Riverwalk district up along Lincoln Way. Mr. Prince stated the other area that was included was the area of Bittersweet Cove that extended parallel to Bittersweet and they had a channel that was open water creating a larger area for Riverwalk license eligibility. Mr. Prince stated that was the only purpose of the resolution before the council that evening and he would take questions.

Mr. Hixenbaugh thanked Mr. Hazen for his diligence in bringing the issue to light.

Question was called for at 7:09PM for **RESOLUTION R2022-01** **Vote: Motion carried by unanimous roll call vote (summary: Yes = 9).**

Yes: Mrs. DeMaegd, Mr. Hazen, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mr. Compton Mrs. Voelker, Mr. Hixenbaugh. The resolution passed 9-0.

RESOLUTION R2022-02

A RESOLUTION OPPOSING LEGISLATION REGARDING THE BUSINESS PROPERTY TAX OF THE CITY OF MISHAWAKA KNOWN AS REPLACE DON'T ERASE PERSONAL PROPERTY TAX

Mayor Wood spoke in favor of **RESOLUTION R2022-02**. Mayor Wood stated typically, he did not like resolutions like this with it being non-binding, but in this case and only in this case, where it was of immediate and significant consequence to the city of Mishawaka, would he think of supporting something like this. Mayor Wood stated this was the General Assembly's somewhat annual attempt recently to cut the business personal property tax and Indiana was in a favorable tax climate being better than most, if not all, states in many categories. Mayor Wood stated most of them did not mind being in that position because of the economic development activity that could happen with the impact on their businesses and such. Mayor Wood asked rhetorically 'why would we be opposed to this?' and went on stating the state was looking to cut part of it and it impacted local governments the most. Mayor Wood stated the proceeds from the business personal property tax did not go straight to the state, but they were a property tax that came to local communities. Mayor Wood stated for example, they had Baker Tilly look at what impact this would have if it were cut fully and that would be to the tune of about three million dollars. Mayor Wood stated the house bill being considered down state did not attempt to cut the entire amount, but these tax dollars were important because they went straight to their general fund. Mayor Wood stated that was the fund that supported police, fire and almost all of their payroll in the city of Mishawaka. Mayor Wood stated a cut of any kind to that without replacement would put them in a more precarious spot with their budget. Mayor Wood reminded them that they were spending out of deficit that year because of the property tax caps that were instituted and their preparation for that. Mayor Wood stated they also had not seen the assessed evaluation of their property really kick in. Mayor Wood stated they knew real estate was white hot but that would not impact them for some time to come, if it did impact them. Mayor Wood stated they had just recently caught up to 2008 levels just a couple of years ago, so they were in a position where they were giving their employees more and more raises and they believed it was justified because they deserved it. Mayor Wood stated they were in a position where they still had to buy firetrucks, they had thirty police cars with about eighteen on back order and twelve that were getting ready to be ordered, they had to equip their staff and provide training and finally the departments needed more people. Mayor Wood stated when you are faced with cuts and spending on a deficit such as this, it became more difficult. Mayor Wood asked rhetorically 'what would their options be?' and stated it would not be out of their general fund, which is what supported public safety with about half of their budget and most of the budget going to payroll. Mayor Wood stated if the council wanted more police and fire there was an option with it being the local option income tax for public safety. Mayor Wood stated the county was at 1.75 with the capacity being 2.5. Mayor Wood stated if the council decided to raise that tax, it would be about a 54 million dollar take for the county, assuming South Bend or Saint Joe County would go along with it and that would be roughly 9 million for the city of Mishawaka for public safety. Mayor Wood stated that was an option the council had in front of them, but they were there to talk about the business personal property tax and it was another attack into their local budget. Mayor Wood stated it was alive downstate and could pass in some form that year, so they wanted to send a good strong message, as had other towns and cities across the state of Indiana. Mayor Wood stated the message would be that it impacted them at the local level and if they attempted to make any cut of business personal property tax, they wanted to see a direct replacement decided on as part of that effort. Mayor Wood stated that was the emphasis of the resolution and

it was a very important signal they could send downstate to their legislators, who often wanted to cut but did not realize the impact of those cuts on their local community. Mayor Wood stated it also impacted their residents, because for the homeowners not up to the property tax caps, it acted as a shift to homeowners. Mayor Wood stated homeowner's taxes will go up to the tax caps to compensate for the business personal property tax cuts that would impact businesses in a positive way. Mayor Wood encouraged the council to support this and it was a vote of conscience and a vote that was non-binding in anyway other than them wanting to send a message downstate.

Bryon Woodward, Mishawaka Fire Chief, spoke in favor of **RESOLUTION R2022-02**. Chief Woodward stated everyone in the Mayor's administration had been great to them over his ten years of Fire Chief over the last five years. Chief Woodward stated they felt it was important to come show their support back to the city and a tax cut like this would adversely affect the plans they had trying to move forward. Chief Woodward stated as they continued to work with the administration, should they talk about things such as adding people. Chief Woodward stated this would not only significantly impact them, but also every employee working for the city. Chief Woodward stated they understood the amount of money they used out of the city budget, they did not want it to be more of an impact on the other city employees, and they tried to be very cognizant when they did that stuff. Chief Woodward stated they were present as a show of support for the city. Chief Woodward stated they had been very good to them and they felt it was important for them to be there to show that support back to them.

Frank Zappia, President of Mishawaka Professional Firefighters Local 360, spoke in favor of **RESOLUTION R2022-02**. Mr. Zappia stated he was in Indianapolis for a legislative conference for the state firefighters and he got to talk with some of their state leaders about the topic. Mr. Zappia stated they had worked directly with the replaced Stony Race and anything that was going to hurt the financial impact of the city for public safety is something they could not be for. Mr. Zappia stated Mayor Wood brought up increasing the county's public safety local option income tax and he knew increasing taxes was not something people wanted to hear about, but sometimes it was necessary and it was an option to look into. Mr. Zappia stated he was appreciative of the fact that the city was looking to go against what the state had proposed.

Rich Freeman, President of the Mishawaka Police Fraternal Order of Police Lodge 91, spoke in favor of **RESOLUTION R2022-02**. Mr. Freeman stated in attending some of the meetings and listening to the public, he seconded Chief Woodward and Mr. Zappia's stances as far as manpower and increasing police on the streets. Mr. Freeman stated he would say that not only was this a financial burden within the city on the general fund but in order to remain competitive in a field where they were finite with the interest in law enforcement in general, and even a smaller amount of people who were qualified, any type of hindering to the fund would hinder the process altogether. Mr. Freeman stated he was in favor of the resolution and would answer any questions.

Mr. Hixenbaugh thanked everyone who spoke that evening, including Mayor Wood for the work that went into drafting the resolution. Mr. Hixenbaugh stated as they touched on a number of times, he thought they were all in favor of looking to fully fund their public safety agencies including increasing manpower in both the police and fire department as they were able to do so. Mr. Hixenbaugh stated anything standing in the way of them doing the job to support public safety that they need to was something he was not in favor of. Mr. Hixenbaugh appreciated the work that went into this and the comments made that evening.

Question was called for at 7:23PM for **RESOLUTION R2022-02** **Vote: Motion carried by unanimous roll call vote (summary: Yes = 9).**

Yes: Mrs. DeMaegd, Mr. Hazen, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mr. Compton Mrs. Voelker, Mr. Hixenbaugh. The resolution passed 9-0.

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

PROPOSED ORDINANCE NO. 2022-05

AN ORDINANCE AMENDING ORDINANCE 5769 AN AGREEMENT BETWEEN THE CITY OF MISHAWAKA AND THE EMPLOYEES OF THE MISHAWAKA UTILITIES REPRESENTED BY THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL NUMBER 1392

Amendment to Ordinance No. 5769 a Collective Bargaining Between the City and Local 1392 IBEW.1-1-2022 thru 12-31-2024

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 respectfully requested that they approve **PROPOSED ORDINANCE NO. 2022-05**. Mayor Wood stated it had already been approved through the collective bargaining agreement between the city of Mishawaka, Mishawaka Utilities and the International Brotherhood of Electrical Workers Local Number 1392. Mayor Wood stated essentially what this did was strike a sentence from one section and recreate the sentence in another section that was more appropriate for the sentence to be. Mayor Wood stated it referred to emergency callout language and it was something he would almost call a scrivener's error. Mayor Wood stated when they first realized they needed to do this, they were advised they could do it by memo, which they usually liked to be transparent and go through the council on these things. Mayor Wood stated they were then advised, has been tradition even since when he was on the City Council, to request first and second reading for this. Mayor Wood stated they did that in part because it was a minor thing and would never attempt to request first and second reading if it were a fiscal matter or something of consequence to the city, unless it were an emergency. Mayor Wood stated they came in part to not clog up their agenda and get it over with; being that it was a minor scrivener's error. Mayor Wood stated the rules had evidently changed and they recognized that and they would not be bringing them to the council unless they requested first

and second reading. Mayor Wood stated there was no attempt to not be transparent in this nor were they trying to slide something through and were not trying to be shift in any way. Mayor Wood stated they knew the lay of the land so they would adhere to that and they could count on that from his administration. Mayor Wood requested they approve the proposed ordinance that evening.

Mr. Banicki thanked the Mayor for bringing this to the council and in the 18 years he had been on the council, they had done a lot of first and second reading and there was nothing that had been underhanded. Mr. Banicki stated if it was ever questionable, they had always done the right thing and done first and second reading separately. Mr. Banicki stated he appreciated the Mayor's efforts and by no means did he see that as being other than wanting to get it over with and move on.

Question was called for at 7:28PM for **PROPOSED ORDINANCE NO. 2022-05 Vote: Motion carried by unanimous roll call vote (summary: Yes = 9).**

Yes: Mrs. DeMaegd, Mr. Hazen, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mr. Compton Mrs. Voelker, Mr. Hixenbaugh. Thus, it becomes **Ordinance No. 5782.**

PRIVILEGE OF THE FLOOR

Mayor Wood wanted to address another issue that was brought up at the last council meeting and that had to do with snowplowing. Mayor Wood stated he would tell them that there was no one more proud of the efforts of the Mishawaka Street Department, Central Services Department, Sewer Department and others in snowplowing than he was. Mayor Wood stated he was their biggest supporter but he also expected more out of them than anyone else. Mayor Wood stated that was only because he knew that they were up to any challenge or any goal that they threw out there. Mayor Wood stated their challenges were bigger because of what was going on around the country with the times. Mayor Wood stated they had salt that they had ordered by contract and they would get regular shipments of it. Mayor Wood stated they had product and a supplier but there were no trucks to get it there and it was starting to show up slowly. Mayor Wood stated they actually had to pay trucks to go pick up that product and had to pay for that even though it was a part of a contract to be delivered to them. Mayor Wood stated they were doing that to make sure they did not run out of salt and they would not run out of salt. Mayor Wood stated they would seek restitution as they could and they had a significant fleet of trucks. Mayor Wood stated not all of which liked snow and especially not like the snow and cold mix and so when a truck broke down, they had a good fleet but they still broke down. Mayor Wood stated when they did break down, they could not get the parts like they used to and they would sit in a shop for a significant period of time. Mayor Wood stated the goals were still the same and they would not change. Mayor Wood stated the public should not expect less of them and they would not deliver less. Mayor Wood stated they would see now as a result of some of the issues they were having that pickup trucks plowed nine or ten formations on their five, six seven, eight, nine lane roads and they would never have seen that in the past. Mayor Wood stated that was because the

goal had not changed and they would put everything in their power out and run around the clock with it, with the first significant snow always being a tester for them. Mayor Wood stated that one came and it was rain right before the snow so they couldn't pre-treat and pre-treatment was good for them because it prevented snow from packing. Mayor Wood stated in this case, they could not pre-treat so the snow packed and when it packed, it was almost like they had to continuously plow because as it loosened and melted up it would still be there on the street. Mayor Wood stated they appreciated the patience of their citizens but oftentimes, they plowed snow into their driveways and he knew it was frustrating. Mayor Wood stated he knew this from personal experience and having to clear the snow out of his driveway multiple times after the plow truck came through. Mayor Wood stated though he did not shovel the snow back into the street, because he knew it would just come right back into his driveway. Mayor Wood stated they had danced that dance with the public many times and they also tried to plow their streets multiple times. Mayor Wood stated one of the main reasons they plowed their streets was so that if there were an emergency, public safety personnel and equipment could get to that doorstep no matter what and that was their goal. Mayor Wood stated the complaints last week ranged from the plows did not come through to they came through too much and the beauty of their equipment was that it had GPS. Mayor Wood stated that helped them be able to tell the time, date and how fast the truck came to their neighborhoods and he knew that they came through their neighborhoods and could pull the data to further demonstrate that. Mayor Wood stated they knew there was frustration that came with snowplowing on all of their citizens. Mayor Wood stated they got a lot of compliments about their first effort of the year and then again last week from the public. Mayor Wood invited those who had frustrations to give them a call and not sit with pent up feelings until the next council meeting. Mayor Wood stated they were there to work with them and all of their department managers were available to them not just during the day but 24/7 because they were that dedicated to their job. Mayor Wood stated if they did have an issue to please feel free to give them a call and if they didn't get anywhere with them, to call him personally and they would make sure to give them the response the citizens deserved. Mayor Wood stated that held true or other things as well no matter what the issue. Mayor Wood stated they also heard some complaints about sidewalks and they lived in a city where they had no school buses, so kids often had to walk to their schools. Mayor Wood stated that meant they had to do a better job than most communities to make sure there was at least one shovel swipe through the neighborhoods, especially closer to schools, so kids could walk on the sidewalks without having to walk on the streets. Mayor Wood stated their Code Enforcement department really made a big effort of clearing at least one path and they would work with citizens no matter what the issue was and if there were citizens who had no way to get their shovel, they would work to try to find somebody to help with the shoveling. Mayor Wood stated at the end of the day they had to put out those expectations, because people had a reasonable expectation to have their kids walk to school safely. Mayor Wood stated they wanted to assist with that to the extent they could and it was one of those things that when they did that, a lot of people complain but it was their job to make sure that they were as open as they possibly could be and that started with them. Mayor stated they tried to put a good example out there and with that, he would take any questions on the snow removal effort.

Mrs. Voelker stated she didn't have a question but did have a comment and stated she lived on Lincolnway where kids walked to school every day and it was very, very important that those sidewalks be clear. Mrs. Voelker stated she appreciated the efforts and she personally appreciated it, because she walked a lot on those sidewalks herself.

NEW BUSINESS

Mr. Hixenbaugh announced there was a discussion of changing the council meetings in April from April 4th to April 11th and April 18th to April 19th. The chair entertained a motion to change their two meetings in April with the first meeting in April now taking place on Monday April 11th and the second meeting in April would take place on Tuesday April 19th. The motion was made and seconded to change the meeting dates for the council in the month of April. The motion passed and Mr. Hixenbaugh stated he would notify all of the interested parties of those date changes.

Mr. Emmons made a reminder that there would be no regular meeting in the 1st District in March. Mr. Emmons stated they would start again in April on the third Thursday in April.

ADJOURNMENT 7:38PM

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

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