

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

May 2, 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, May 2, 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 led by the Local Boy Scouts. Following the Pledge of Allegiance, the Boy Scouts introduced themselves along with the school they attended.

Clerk Block called the roll.

Roll Call.

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

P: Present E: Electronically Participating A: Absent

Others Present: Clerk Block, 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 April 19, 2022 were approved as received from the Clerk's Office.

Clerk Block read the following appeals and petition by title.

Appeal No. 2022-10	Use Variance to allow Self storage in C-1 General Commercial-1010 S. Merrifield
Appeal No. 2022-13	Use Variance to allow Micro blading Services within a Multi-tenant Commercial Strip Center (C-1 District) – 4125 Grape Rd.
Petition No. 2022-03	Rezone from I-1 Light Industrial to R-1 Single family Residential 1816 W. Sixth St.

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

RESOLUTION R2022-10

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA AMENDING RESOLUTION R2021-30, AS AMENDED WHICH ADOPTED A PLAN FOR DISTRIBUTION OF PROCEEDS OF THE CITY OF MISHAWAKA'S GRANT FROM THE AMERICAN RESCUE PLAN ACT OF 2021
Amending R2021-30AA the American Rescue Plan**

Mr. Hixenbaugh stated for the record that in a relevant part, the amendment to their ARPA plan which was reflected in the resolution, referenced a fairly limited technical matter. Mr. Hixenbaugh stated in January of 2022, the federal government and the guidelines that came out from the US Treasury Department provided local communities, such as themselves, with enhanced flexibility to treat up to \$10 million as lost revenue. Mr. Hixenbaugh stated this simplified and streamlined the reporting process and also allowed them to spend funds on any governmental purpose. Mr. Hixenbaugh stated that was the limited revision to their ARPA plan that was in front of them that evening and continued to open the public hearing.

Mr. Hixenbaugh thanked Mrs. Maguire for being very patient with him that week and helped him work through some conversations. Mr. Hixenbaugh stated as always, she was very helpful and they had a very collaborative process in place there. Mr. Hixenbaugh stated they appreciated the administration's willingness to work with them and they had a very productive meeting led by Mr. Mammolenti and the special committee. Mr. Hixenbaugh stated they were moving forward with this and the approval of the resolution was simply another step in the process.

Question was called for at 7:08PM for **RESOLUTION R2022-10** **Vote: Motion carried by unanimous roll call vote (summary: Yes = 8).**

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

UNFINISHED BUSINESS

RESOLUTION R2022-07

RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, APPROVING A REPORT OF COMPLIANCE WITH STATEMENT OF BENEFITS FOR CERTAIN PROPERTY OWNERS

Derek Spier, City Planner, spoke in favor of **RESOLUTION R2022-07**. Mr. Spier stated property owners that have applied for either a real or personal property tax abatement must file a report with the council and in turn, file with the auditor no later than May 15th. Mr. Spier stated in the report, reports the extent of which they are in compliance with the goals set forth at the time when the payment was granted. Mr. Spier stated currently, they had 6 abatements in the city and all 6 required reporting for the year. Mr. Spier stated all property owners had responded to their request to complete the statement of benefits from and in summary, all 6 of the active abatements which required reporting were in compliance. Mr. Spier stated they had exceeded and nearly met or were working toward expectations. Mr. Spier stated construction for one of the active abatements, which was the Riverwalk Project, had not yet begun. Mr. Spier stated because of that, a new abatement must be submitted and reported for the existing abatement, because it would expire in May of that year. Mr. Spier stated since the prior reporting period, they had two abatements that dropped off of the active list and no longer required reporting. Mr. Spier stated the first one was for a real property abatement for a medical office building which was attached to the Saint Joseph county hospital and that was a 10-year abatement that recently expired. Mr. Spier stated the other one was for an assisted living facility for Bell Tower along Fir Road and that one just had expired as well. Mr. Spier began giving a summary of all 6 of the abatements

going from the earliest that was approved to the most recent. Mr. Spier started with Barack River Rock who received an abatement back in 2013 for the first phase of a mixed-use apartment building and first floor retail space which was along Mishawaka Avenue. Mr. Spier stated although it was approved in 2013, construction did not begin until 2015 and was finished in 2016 and the required reporting would be required through 2022. Mr. Spier stated they said they had indicated that they had 5 to 8 jobs, so their reporting for the year had five jobs. Mr. Spier stated although not reported on the CF one, they also said they had a few additional jobs in some retail space that was actually along Mishawaka Avenue. Mr. Spier stated there was a spa there and then there was also another business called Bar Method that was now vacant and they said that they were going to anticipate on leasing that space, so there could be an additional three people in that space. Mr. Spier stated total payroll was listed at \$230,000 which was higher than the \$200,000 on the SB1 and they stated that they had actually invested \$14 and a half million on that project which was an exceedance of the \$14 to \$17 million. Mr. Spier stated the project would be considered in compliance since they had been in exceedance of both their employee goals and their total investment. Mr. Spier stated the next one was WellPet. Mr. Spier stated this was for an abatement approved in 2015 for equipment for a high-speed packaging line. Mr. Spier stated installation began in 2016 for this equipment and it was currently in operation. Mr. Spier stated an annual report would be required through 2023 and the net values upon completion of the project were estimated at \$17.3 million dollars in the SB one. Mr. Spier stated actual net values of the completed project was almost \$26 million, so it nearly exceeded the values by nearly \$8 million. Mr. Spier stated the total employment at the facility increased beyond what was originally projected and when the abatement was filed, they had 115 employees. Mr. Spier stated with an additional four jobs to be added, the total employment was reported at 120 employees. Mr. Spier stated since both the employment and payroll were higher and the investment was higher, they should be considered in substantial compliance at that time. Mr. Spier stated the Riverwalk Development Group received an abatement for a proposed project on city-owned property by the Riverwalk. Mr. Spier stated when originally submitted, it was supposed to be a \$12.5 to a \$13.5 million project and was to include 63 rental units. Mr. Spier stated they were reevaluating the project due to changes in the market downtown with some of the new apartments being built. Mr. Spier stated original intent was to start construction during the second quarter of 2020. Mr. Spier stated they had amended in the development agreement between the city and the developer, which extended the occupancy date until March of last year, but then COVID further delayed that even longer. Mr. Spier stated the development agreement would once again have to be amended and a new property tax submitted and approved, because the current abatement expired actually in May of 2022. Mr. Spier stated at that time, it should be considered in compliance to just because it was still ongoing and they needed a new abatement should they start the project. Mr. Spier stated Lippert Components was the next one and they received real and personal property abatement in 2017 for renovation of a building on Byrkit Avenue. Mr. Spier stated the proposed real estate improvements included in the statement were originally estimated at \$7.4 million and they had been completed. Mr. Spier stated actual real estate improvements today were nearly twice that at \$13 million. Mr. Spier stated the personal property improvements included in the abatement were estimated at just around \$1.5 million and all of the investments had been purchased and installed and they had spent nearly \$10 million on the SB one in personal property equipment. Mr. Spier stated since this abatement was required for 10 years, they were going to have to add due reporting for it through 2028 and when they filed, they had existing employment at 247 with an additional 200 jobs to be added. Mr. Spier

stated at present, there were 392 jobs, which was a substantial increase from the 21 jobs originally filed but it's similar to the 395 employees reported the year before. Mr. Spier stated they did think they were going to get additional employment growth and indicated in their SB one that they acquired Furian LLC, a distributor of appliances and electronics. Mr. Spier stated with that, they anticipated additional employee growth throughout the year. Mr. Spier stated they had their payroll listed at just over \$20 million, which was more than twice that listed on the SB one when they originally filed their abatement. Mr. Spier stated given that total investment and payroll exceeding the projected amounts along with their employment levels increasing, they should be considered in substantial compliance. Mr. Spier stated the next one was Jamil Packaging Corporation. Mr. Spier stated they received an abatement in 2019 for a new folder and gluer for the property on Industrial Drive. Mr. Spier stated originally the said it was \$1.5 million and the equipment was already installed and was installed in July 2019. Mr. Spier stated annual reporting as required through 2022 and when they filed, they said they had 139 employees with 12 positions to be added. Mr. Spier stated they did a total employee report and said they had only 112, which was a decrease of 27 positions and 39 less than what was projected. Mr. Spier stated employment did increase from the past year and with the COVID pandemic and disruption in business operations, they continued throughout the year. Mr. Spier stated they recovered initially from the slowdown a little bit, but they still struggled to find people to fill some of their vacant positions. Mr. Spier stated wages for employees though had been increased to retain talent and starting pay for the new employees had been increase. Mr. Spier stated even with the drop in employment over the last two years, total payroll was listed at over \$6.2 million, which was 28% higher than the \$4.8 million listed on the original SB one. Mr. Spier stated given payroll was higher than the projected amounts and the employee levels while decreasing over the last two years due to COVID, but leveling off with an increase in just four positions over the last year, this abatement was in substantial compliance. Mr. Spier stated the last one was WellPet. Mr. Spier stated this was for a building expansion and new equipment that was approved last year. Mr. Spier stated there was information in the packet which provided an update on the project with also both the real and personal property abatement. Mr. Spier stated construction on the real estate improvements included in the abatement was estimated at \$14.7 million and it began last September, but after they did some engineering and design work, the decision was made to put it on hold. Mr. Spier stated they had spent just over \$70,000 as they listed on their CF one and a majority of the personal property improvements included in the abatement listed at around \$28 million, which was also on hold at that current time. Mr. Spier stated with the purchase and installation of the odor control equipment, the actual personal property investment today was \$410,000 for the odor control equipment. Mr. Spier stated the equipment was supposed to be scheduled for the summer and installed by the first quarter of next year and the abatement approved the economic revitalization for a three-year period. Mr. Spier stated should the project start up again, anything the invested over the next three years in the property would have the benefit of the abatement. Mr. Spier stated when they filed, they had a decrease in some employment from when they filed last year with a listing of 120 positions, which was a decrease and loss of five position, but they did have an open workforce event and hiring event a couple of weeks back. Mr. Spier stated they stated they had hire 11 jobs because of these events, so their employment made an increase. Mr. Spier stated since they were currently actively working on the project, this one should also be considered in compliance at that time. Mr. Spier stated he would answer any questions.

Mr. Bellovich stated on Jamil, their jobs reduced but there was not any relocation of the positions out of Mishawaka and asked if that was correct. Mr. Spier stated that was correct and it was just a workforce issue.

Mr. Hixenbaugh thanked Mr. Spier for not only his thorough summary that evening but for the information that was provided in writing and that it was very helpful. Mr. Hixenbaugh had a couple of questions in regard to River walk Development. Mr. Hixenbaugh asked Mr. Spier as he made reference to the potential for them to reinitiate an abatement request on that property with a different business model or plan in mind, if he had in mind when the council should anticipate that coming before them or if that remained to be seen. Mr. Spier stated he thought it remained to be seen. Mr. Hixenbaugh also made a comment stating the pandemic and other unanticipated circumstances already were going to be in the backdrop with regard to these type of abatement requests, but his hope was with regard to this particular developer given the history there and with regard to the particular parcel that when they would decide to come before the council that it was with as much certitude as they possibly could have and would actually break ground and follow through on it. Mr. Hixenbaugh stated it seemed counterintuitive to have abatements hanging out there without any tangible signs of action and asked Mr. Spier to pass that along to them as one councilperson's request. Mr. Hixenbaugh appreciated Mr. Spier's summary for Wellness Pet and he wanted to restate what the takeaway was to make sure he was accurately receding the information. Mr. Hixenbaugh started with the real estate component and the construction of the building itself was on hold as they understood it based upon some decisions made on the corporate level with regard to not moving forward at that time with that portion of the abatement. Mr. Spier stated that was correct. Mr. Hixenbaugh stated as referenced in his written material and comments tonight, the odor remediation equipment had been purchased and it was their understand that that was in the process of being installed with a target date of the first quarter of 2023. Mr. Spier stated that was correct. Mr. Hixenbaugh stated so right now, the only taxes that were being abated were the taxes that were associated with the equipment, the personal property taxes for that purchased equipment, but there were no taxes that were being abated for the construction that had not yet begun. Mr. Spier stated that was correct. Mr. Hixenbaugh thanked Mr. Spier again for the information.

Ken Prince, Executive Director of Planning, spoke in favor of **RESOLUTION R2022-07**. Mr. Prince stated he thought it was important to note with Wellness Pet that they understood the frustration regarding not fully doing what they said they were going to do, with that being a real issue for him and his department as well. Mr. Prince stated his understanding was they hadn't received the equipment as of yet. Mr. Prince stated they wanted them to go full speed ahead on the equipment and if they could imagine, that had been a process and it started with no remediation and then it started with different equipment being installed and that equipment wasn't then effective. Mr. Prince stated they heard when they presented the proposal for this equipment, exactly how scientifically how it would reduce the odor and they could discuss the percentages all they wanted, but the reality was that the equipment as they understood it should make a significant difference. Mr. Prince stated they just wanted to stress that giving them no reason not to follow through as they had identified was very important and they hoped that they would follow through and do it. Mr. Prince stated the other thing he would say just on a level of his understanding of the tax abatement was he was not sure how much the assessed valuation of the odor control equipment and how much benefit they were going to get from the installation of

the equipment. Mr. Prince stated with the building addition, they saw a very clear increase and assess valuation based on the increased production. Mr. Prince stated obviously there was a community benefit and a potential help with their litigation ongoing, but he was not sure how much of a financial incentive they were talking about from a city perspective that they were providing. Mr. Prince stated with factors considered, they wanted to council to consider it in compliance, reevaluate it as time moved on and give them every reason to install it as identified in the committee meeting.

Mr. Hazen asked if they had any clue from when they first purchased the building and the business to what they had cleaned up as far as percentage wise, did they. Mr. Prince stated it was indicated earlier at the committee meeting that the previous system that was installed at the best of intentions was an encapsulation system. Mr. Prince stated the idea was to encapsulate and then distribute it over a larger area where it had a distant and different diffusing impact where it would not impact so many people and what they heard that evening was they anticipated that affected basically 15% of the smell. Mr. Prince stated the other thing was he equated those percentages to noise. Mr. Prince stated so you would likely still smell the odor in some capacity, but it would have been reduced and tolerable in this case. Mr. Prince stated there was going to be a processing odor that came from it and the question was, was it tolerable or not tolerable. Mr. Prince stated and clearly, based on the discussion they had at nauseam, was that this was a much higher tech equipment than was installed last time and it had the best ability, in their mind, to take care of the issue which was the upmost importance from a community livability standpoint.

Mr. Compton asked if what common practice is for a company that they gave a tax abatement to come back to the city and talk to them and say where they were at or if it just kind of happened. Mr. Compton stated he knew he got in them and asked them if they notified the city even if there was no responsibility to do that because he thought that made sense to him. Mr. Prince answered Mr. Compton's question stating they concurred and typically they tried not to bother the businesses they had out there and would like to think they would notify them, but he also know from a corporate standpoint that the Jamil Packaging's of the world, who they had a personal relationship with locally, in this case those representing aren't the ones making the decision. Mr. Prince stated in terms of how it was presented, he thought it really relied on the process to bring out the answers to the questions that at a local company level, they would be freer and he did not think there was anything wrong with that particularly with large corporations. Mr. Prince stated at the same time though, there was accountability. Mr. Prince stated he wanted to mention one thing regarding the River walk one that was expiring which was from the administration side, they thought the moving forward on the projects had been an issue with their past development agreements and they were now drafting language that gave them a little extra time in terms of their execution or the development agreement would expire automatically. Mr. Prince stated they understood that COVID was an exception and they were hoping that did not go forward but at the same time, they were taking on the other side of that to try to move things forward or at a minimum be able to move forward on the property with somebody else.

Mr. Hixenbaugh thanked Mr. Spier and the staff for the information they provided and the information Mr. Prince and Mr. Spier shared that evening. Mr. Hixenbaugh stated one of the things that jumped out at him was as conversations took place throughout the city with regard to tax abatement, it was powerful information they had in the council packet which was also

available to the public, but he suspected most people would not be able to identify how many abatements were done in the history of Mishawaka going way back when and if they spreadsheet they had was accurate, they were at just over 60 of them. Mr. Hixenbaugh stated they always say they were judicious with tax abatements and it was important to the administration and the council that they were careful with how they made the investments in their corporate partners and he believed they had been judicious over the course of time. Mr. Hixenbaugh stated as was referenced earlier prior to that evening's meeting, they engaged in a meeting of their Budget and Finance Committee to take a look at the most recent Wellness Pet tax abatement that had the odor control component explicitly embedded within it and the Wellness Pet continued to be, in his opinion, a good corporate citizen of Mishawaka. Mr. Hixenbaugh stated their local representatives who had appeared in front of them, both that evening and in the past in his experience, had always been forthright with them and shared information and he appreciated what they heard from everyone. Mr. Hixenbaugh stated since their colleague Mr. Emmons was not present that evening, he felt duty to somewhat speak on his behalf. Mr. Hixenbaugh stated it continued to be a monumental issue for the people who lived in close proximity to Wellness Pet. Mr. Hixenbaugh stated the odor had not been remediated and he thought it was fair to look at it not only in the context of the most recent abatement, but going back to a series of abatements where odor control equipment had once before at least been approved by the council. Mr. Hixenbaugh stated what they had been led to believe was when they approved the last one that they were going to be as high as the ninetieth percentile. Mr. Hixenbaugh stated things had happened, unintended consequences had arisen and some decisions had been made at the corporate level that he did not think were in keeping with their expectations as a community with regard to how the project would play out. Mr. Hixenbaugh stated as he said in the committee meeting, if this was the initial vote on the Wellness Pet tax abatement, although Mr. Prince made valuable points and although they wanted to continue to partner with Wellness Pet, he would have voted against it if this was the presentation that evening. Mr. Hixenbaugh stated he had given serious consideration on voting against the compliance report as being in substantial compliance, but on balance he was willing to give it one last opportunity to work. Mr. Hixenbaugh stated he appreciated the leap of faith Wellness Pet had made to continue to put the odor remediation equipment in place even though the construction of the building itself that it was attached to had not occurred and that was an act of good faith in his mind. Mr. Hixenbaugh stated he really had not thought about that until Mr. Prince brought it up, so Wellness Pet was to be congratulated for that. Mr. Hixenbaugh stated construction schedules, supply chain problems and cost of labor aside, if next year when the report was in front of them, from his opinion, if they were no further down the line to the odor having been significantly remediated, he would never vote in favor of compliance for this tax abatement again. Mr. Hixenbaugh stated he would not think it would be fair to the people who lived in that neighborhood to do so. Mr. Hixenbaugh stated whatever could be done that was humanly possible to bring it much more compliance needed to get done and there had to be a heck of a lot more compliance than 15% and he would not vote in favor of a 15% solution ever again. Mr. Hixenbaugh stated they would continue to work with Wellness Pet and value them as a corporate citizen and appreciated the fact that those jobs were in Mishawaka and had been kept in the community for low many years, but it had to get done. Mr. Hixenbaugh stated sooner or later, the benefit of the bargain that they thought they were obtaining when they approved the tax abatement goes away when there was not a noticeable improvement in the odor control. Mr. Hixenbaugh stated so if Wellness Pet could stay in touch with them and the more they knew about this, the better they would feel and the more

that they could communicate with their constituents who were really on their backs about this and the better it would be for everybody including Wellness Pet. Mr. Hixenbaugh once again thanked the local representatives for being there, but he wanted the record to reflect that he would never vote in favor of anything having to do with the Wellness Pet tax abatement unless there was significant progress and improvement in the odor remediation between that point and next year.

Mr. Bellovich stated he knew over the last couple of years because of COVID, they had not had the companies represented at council meetings physically, but he hoped they would begin to attend the meetings as they moved forward in the future. Mr. Bellovich stated even though all of the companies may be in compliance, he thought it was a good idea that if they had questions, they would be there and they would have an opportunity to ask those questions. Mr. Prince stated they kind of cut that out of their normal operating procedure but he would not that they only ever had them come in when there had been questions. Mr. Prince stated they had at any point in time and even during COVID they would have the ability to do it through Zoom and be able to ask them to participate and receive questions. Mr. Prince stated to Mr. Bellovich that anytime he had a question even outside of the process, they had the ability to call them and ask those questions. Mr. Prince stated as a matter of ordinary operating procedure though, they did not feel the need if the abatement was in compliance because like everybody they had too much on their plate already. Mr. Prince stated they only wanted to call them in if they did in fact have questions and could resolve it. Mr. Hixenbaugh agreed with Mr. Prince in the fact that the administration had been very helpful in facilitating the meetings when they requested specific tax abatement recipients to come in and he could not recall a recipient who had not availed themselves of the opportunity to come in and speak to them. Mr. Hixenbaugh stated they certainly still could review the process going forward and tailor it as meets the needs of the council.

Mr. Hazen posed a question to either Mr. Hixenbaugh or their Council Attorney, Mike Trippel, and asked if he voted this as a whole report yes that evening, if that would bind him to a yes vote on one that would expire in a month. Mr. Trippel stated it would.

Question was called for at 7:39PM for **RESOLUTION R2022-07 Vote: Motion carried by unanimous roll call vote (summary: Yes = 8).**

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

NEW BUSINESS

Mrs. DeMaegd announced the West End Neighborhood Watch Meeting would be Tuesday May 10th at 7PM and would be held in the activity room at St. Bavos School. Mrs. DeMaegd the guest would Mishawaka Police Department's Sergeant Bartlett from the Street Crimes Unit along with his partner, K9 Officer Bailey. Mrs. DeMaegd stated due to the sensitivity of issues discussed, there would be no live stream available for the meeting and she also wanted to advise parents that some of the material discussed may not be suitable for young children. Mrs. DeMaegd stated parking would be in the fenced area located in the lot south of the church at Eighth and West and all were welcome and encouraged to attend.

Mr. Mammolenti announced the Twin Branch Neighborhood Watch Meeting would be pushed back from May 18th to June 15th, due to Mayor Dave Wood having another engagement to attend which was the Mishawaka Police Memorial Service on May 18th. Mr. Mammolenti stated the now June 15th meeting would be at 7PM at Fire Station Number Four and as of that time the guest speaker remained to be Mayor Dave Wood.

Mr. Hixenbaugh made a couple of brief reminders and started with announcing Election Day being the next day, Tuesday May 3rd and stated no matter the political affiliation of the council, they were all in favor of a maximum number of people exercising their franchise and going out to vote. Mr. Hixenbaugh stated what better way is to participate in a democracy is in the vote and asked those to please consider voting tomorrow. Mr. Hixenbaugh asked one of the Boy Scout members who arrived to the council meeting after the introduction of the other Boy Scouts to introduce himself and tell the council what school he attended. Mr. Hixenbaugh thanked the Boy Scouts for being there that evening and asked the council to stick around afterwards to answer any questions they had.

ADJOURNMENT 7:43PM

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

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