

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

July 25, 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, July 25, 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 July 5, 2022 were approved as received from the Clerk's Office.

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

PROPOSED ORDINANCE NO. 2022-14

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 I-1 Light Industrial to R-1 Single family Residential – 1816 W. Sixth St.

Mr. Hixenbaugh wanted the record to reflect that the committee report was received at the July 5th council meeting and reopened the public hearing on **PROPOSED ORDINANCE NO. 2022-14**.

Evan Forslund, 2526 Riviera Drive, spoke in favor of **PROPOSED ORDINANCE NO. 2022-14**. Mr. Forslund stated he did not have a whole lot to add that evening but he knew there was probably a few questions they had. Mr. Forslund stated they had talked about an agreement that he would be willing to sign and if they wanted to start with questions, he would be open to work

with any kind of items they talked about previously. Mr. Forslund stated he was just trying to make the process easy.

Mrs. Voelker stated she wanted to talk about a couple of things that concerned her if a family were going to move in there, as far as the setup went with the yard and whatnot. Mrs. Voelker stated if were her personally and she was to move her family in there, it would not be an inviting place for her particularly the backyard area. Mrs. Voelker asked if he had thought about what he would do with the backyard in order to make it more inviting. Mr. Forslund stated at that time there was a chain link fence there and he was going to make it a 6 foot privacy fence and then there was only a few feet between the property line of the industrial building and the house and then he was going to build the fence into his yard and then make a walkway of about five to six feet so that both property owners could go on both and maintain what they needed to maintain. Mr. Forslund stated then that would also stop people from walking in and out by putting output on both sides. Mrs. Voelker stated she knew there was a driveway and a pad where there used to be a garage and asked what he would do landscaping wise to make it look more residential as opposed to industrial and also making it look more palpable for someone purchasing the home. Mr. Forslund stated in his opinion, it already looked residential because it was a house and the backyard did have some concrete with maybe loose concrete that he would be tearing it so that there was an actual yard with grass. Mr. Forslund stated there was a pad on the back that seemed to be structurally okay as well, so he would leave that there if a future owner wanted to build a garage. Mrs. Voelker stated when you were to look along the driveway, there was basically no landscaping done and asked if he would put any additional landscaping in. Mr. Forslund stated he normally did things to make the property look nice, so he would put some mulch down but did not know if he would plant too many bushes and whatnot but if that was a determining factor he would be happy to.

Mr. Bellovich stated it looked like there was a concrete pad for the garage and asked if it was a single sized garage or double sized and also referred to possibly some asphalt being in the back and asked if that were true. Mr. Forslund stated he was not sure of the size of the pad and in turn did not know if it was a single or a double. Mr. Forslund stated there may be asphalt back there, but he could not remember. Mr. Forslund stated he had not started on a whole lot of landscaping with the house since its future was unknown at that point. Mr. Bellovich asked if it was rezoned differently that evening, if he would commit to tearing the concrete out or if he was going to leave it there if it was cracked and in pieces. Mr. Bellovich stated someone could build a garage on top of that. Mr. Forslund stated if it was loose or cracked, he could take it out no problem. Mr. Bellovich asked if he had the proper equipment. Mr. Forslund stated he did not, but he knew some guys that did have the equipment and could do it for him. Mr. Bellovich asked for clarification if he would commit to doing it. Mr. Forslund stated he would.

Mr. Mammolenti stated he knew they had asked if he would be willing to have a conversation with the business owner regarding a potential purchase and without getting into too much detail, asked if a conversation occurred between himself and the business owner. Mr. Forslund stated he never received a call back from the husband but he did talk to the wife shortly. Mr. Forslund

stated it seemed like they were pretty far apart and they were just wanting to purchase it at the value of the land and nothing else considered. Mr. Mammolenti asked if an offer had been made. Mr. Forslund stated he offered them a price.

Mr. Emmons stated when looking at the house and if you were look to the front of it and to the east and to the west, east was the industrial building and to the west there was the house and there was a small pathway between the business and the house that was maybe 18 inches. Mr. Forslund stated it was maybe 3 or 4 feet. Mr. Emmons stated he had been there a couple of times and asked what he planned to do for drainage. Mr. Forslund stated he did not believe there were gutters up there but he put gutters on every house he had so he would get an oversized one, he believed they would be the 6-inch ones and then there would be downspouts on the north and south side of the house where the water would go far away from both buildings. Mr. Emmons stated he knew it was his business to buy houses or buildings and fix them up to resell and asked if that was in fact his business. Mr. Forslund stated his main business was being a realtor and he invested in properties on the side. Mr. Forslund stated he had a few guys that worked for him full time and he had a handful of rental properties and did a handful of flips each year as well. Mr. Forslund stated it was something they had a good amount of experience in. Mr. Emmons asked when he owned a building, how long it took to flip and get it back on the market. Mr. Forslund stated it depended on how much work it needed with some taking a few weeks and some taking possibly a few months. Mr. Forslund stated this one would take maybe two months. Mr. Emmons stated he was asking because if you owned a building on the corner of Cedar and Mishawaka Avenue, they had been in disrepair for quite a while and he owned that building and he had not done anything to it. Mr. Forslund stated with that building, the first week the purchased it, he went to go start the utilities, pulled permits in the city, expressed interest in purchasing it and his plan for that was to keep it long term and use it for personal storage, but he signed a buy-and-sell contract with the city and he was going to sell it to them. Mr. Emmons asked when he purchased the building. Mr. Forslund stated he purchased it in February of 2022.

Mr. Hixenbaugh appreciated Mr. Forslund being there that evening and stated he wanted to try to recapitulate some of the discussions that had taken place that evening and at the last meeting as well. Mr. Hixenbaugh stated as he understood it, he would be willing to commit to the property to be used only for single family, owner occupied, or other non0rental use if the rezoning was approved and asked if that was correct. Mr. Forslund stated that was and he would sign something and then whoever purchased it, he would have them sign something that it had to be their primary. Mr. Hixenbaugh stated actually, it would be recorded and that would make it binding upon all subsequent landowners consistent with the state statute. Mr. Hixenbaugh asked if he would be willing to pay for the recording fee for the written commitment that would be drafted by their council attorney most likely. Mr. Forslund stated he would. Mr. Hixenbaugh asked if he would be willing to agree that if a subsequent owner did not abide by that commitment that the rezoning of the property would revert back to the industrial zoning that it was currently holding. Mr. Forslund stated he would. Mr. Hixenbaugh stated he heard him say to Mrs. Voelker and Mr. Bellovich that he would commit to the cleanup of the backyard in particular to the removal of the concrete and asked him how long it would take to remove the

concrete if the rezoning was approved. Mr. Forslund stated it would take a couple of weeks to remove. Mr. Hixenbaugh referred back to the conversation with him about the fencing and asked what he had in mind with regard to the fencing and to be as specific as he could. Mr. Forslund stated there would be a privacy fence around the backyard to where it would not block the neighbor's property. Mr. Hixenbaugh asked if he could be specific with regard to his commitment to the landscaping that he would do on this property if the rezoning was approved. Mr. Forslund stated he would remove all of the weeds and then would reseed where reseeding was needed where there was no grass and mulching around the garden beds if needed. Mr. Hixenbaugh asked for the record if he would be willing to sign a written document that reflected all of the commitments he was making that evening and pay the recording fees so that would be recorded and become part of the chain of title for the property. Mr. Forslund stated he would.

Mrs. Voelker stated she was looking at pictures of the building and it looked like there was a pretty mangy doghouse in the backyard and asked if he could get rid of that too. Mr. Forslund stated he could.

Jim Miller, 1824 W. 6th Street, spoke in opposition of **PROPOSED ORDINANCE NO. 2022-14**. Mr. Miller stated he knew Woody worked with Mr. Piper for many years to get that area cleaned up and it came a long way. Mr. Miller stated he appreciated that and he could sleep at night and there were not cars parked everywhere and it was not a big mess and that property itself was part of it. Mr. Miller stated it was really unusual and a serious issue with that purchase because that property had always been attached to that business forever. Mr. Miller stated they used it for rentals and they had people living in that home and that home should never have had anybody living in it. Mr. Miller stated it was bad and the fence had been installed on his property on one side. Mr. Miller stated the other issue was the drainage and he knew they mentioned that earlier and he would see a foot of water laying in the back coming off of the roof and there was a whole pipe that drained right into the backyard. Mr. Miller stated when it was part of that business, it was their business but with it potentially becoming residential it was another issue then at that point. Mr. Miller wanted it to be known the backyard did not look nice and you could see that from the pictures taken three days prior to the meeting that evening. Mr. Miller stated the only reason the weeds weren't overgrown into his property was because he had been spraying weed control along the edge and it just looked horrendous. Mr. Miller stated they had mowed the yard once all year, the weeds were for feet deep, there were animals living in the basement and that was what they were dealing with. Mr. Miller stated he did not know what the answer was other than it could not stay how it was and it was not keeping in the Mishawaka City Code. Mr. Miller stated it was frustrating sitting next door watching it all and that was the situation.

Mr. Hixenbaugh thanked Mr. Miller for the photos and stated his comments were helpful as well.

Mrs. Voelker stated she had agreed with his comments and she had personally seen the backyard and stated there was a lot left to be desired in the backyard to make it habitable and something that a family would actually want to live in. Mrs. Voelker asked if he was on the west side and had the privacy fence. Mr. Miller stated he was and he did have a privacy fence and he had it all

fixed except for that side because he could not reach it. Mrs. Voelker asked if he could not reach it due to the chain link fence. Mr. Miller stated that was why and it was on his property. Mrs. Voelker stated maybe he and Mr. Forslund could work that out whether it was attached to his fence, they took care of either side of it or another reason but they would have to work on that together and she understood the frustration of not being able to access that. Mrs. Voelker she was kind of interested on animals living in the basement because she was in the basement and did not see any animals down there and asked where they were going in and out at. Mr. Miller stated they were going in and out of the window in the back. Mr. Miller stated he had seen them go through there and the basement just had been sitting there in disrepair for a long time. Mrs. Voelker thanked him for coming and also taking the pictures and obviously with his property next door, he wanted what was next to him to be the best it could be.

Mr. Bellovich asked how long he had lived next to the property. Mr. Miller stated he had been in there for 4 years. Mr. Bellovich stated he did not go into the backyard but asked how the land sloped and if it sloped away from the house or if it ran toward the house. Mr. Miller stated it ran towards the house. Mr. Bellovich asked from his assessment, would there have to be landscaping that was going to have to slope the ground away from the house. Mr. Miller agreed with that.

Mr. Hixenbaugh thanked Mr. Miller for the information he had shared with the council and asked a couple of follow up questions. Mr. Hixenbaugh asked about the drainage issue he discussed with Mr. Bellovich and stated the concern that he expressed was that the water that drained off the roof of the industrial building next door left that pipe and flowed toward the house because of the land and asked if that was correct. Mr. Miller stated that was accurate and his question was how would a family be in there with the water. Mr. Hixenbaugh appreciated that clarification because when Mr. Forslund was speaking, it seemed there was a discussion of what he would do and that did not appear to address the concern he was expressing. Mr. Hixenbaugh stated when Mr. Forslund was speaking, he committed to a number of items including this being owner occupied as opposed to a rental property. Mr. Hixenbaugh stated as he referenced, sometimes there were problems with rentals and asked if that made him feel any different about it that he was making a commitment that would be owned and occupied by a family or an individual rather than being rented out. Mr. Miller stated part of the reason he was there was that he would hate to see the property have inside repairs and a full rent sign put in front because that was where it was going in his opinion. Mr. Miller stated prior to the purchase, the Pipers through the whole thing had somebody moving in exactly to do that. Mr. Miller stated if there were some things that could be resolved that way, he thought it would take a lot of work and money to do that. Mr. Hixenbaugh stated it sounded like subject to that work and that money that he would prefer it not be a rental property next door. Mr. Miller stated that was right and why he was speaking that evening.

Jason Van Desin, 1802 West 6th Street, spoke in opposition of **PROPOSED ORDINANCE NO. 2022-14**. Mr. Van Desin asked hypothetically if they had a family with two or three kids in that house and the business were to catch fire, the eaves were less than a foot to a foot and a half from his building and it was a bad situation in his opinion and he did not like it at all. Mr. Van Desin

stated he could get a lower-level family that moved in there and did something crazy he would lose his multi-million dollar business. Mr. Van Desin asked how they could have a building that was a residence that close to an industrial building and it was a very large concern of his. Mr. Van Desin stated he did not want to be responsible for someone dying and on top of that, the rain gutter in question was no longer active and they had moved it to the rear of the building. Mr. Van Desin stated they did a lot of work on that building and it was his life dream and he worked really hard to get where he was at. Mr. Van Desin stated if they needed to reroute the drain water off the roof, they would find a way and would not inconvenience the neighbors and they would like to purchase the property for reasonable value. Mr. Van Desin stated they would then remove the structure which in turn would make a great buffer between them and the neighbors.

Mr. Compton thanked him for coming down and appreciated what he had done with the building because it had been a problem prior to him owning it. Mr. Compton stated it sounded like to him that the house was originally part of that parcel so to speak and when he purchased the building, he obviously did not purchase the house along with it. Mr. Van Desin stated he had a signed agreement between himself and the seller for \$30,000 and she tore it up at the closing. Mr. Compton asked if the seller was the previous owner of the building. Mr. Van Desin stated it was Jennifer Piper. Mr. Compton stated he also heard, for one councilman, the preference would be he and Mr. Forslund come to an arrangement where he bought the property and the house was torn down and it was his then. Mr. Compton stated without that, then if they did not approve this, it would put Mr. Forslund in a pickle and he did not want to do that to him. Mr. Compton stated he would prefer them coming to an agreement that they rule on this and it be a single-family home and he would have the same concerns as Mr. Van Desin being that close to his business. Mr. Compton stated if there was a buyer, there was a family there he would not want to be responsible for that either. Mr. Compton stated with some more communication there may be able to be a deal made for the house and the property and asked what he thought. Mr. Van Desin stated he would pay him what he had in it and that was it and he was not going to line his pockets and this could have been done a long time ago and they would not have had to be there that evening. Mr. Van Desin asked if they had the circumstance with the single-family house, every time it changed hands who would police that. Mr. Compton stated that was part of the problem but that would be up to the city to manage that. Mr. Compton stated he would like to see them come together on a price whether it was exactly what he had in it or whatnot that would be between them two. Mr. Compton asked if he could put the other shoes on and he put his shoes on and they try to figure it out. Mr. Van Desin stated he bought an industrial property knowing it was one and Mr. Forslund bought an industrial property wanting to rezone it.

Mr. Mammolenti asked, without giving many details, he mentioned his price that he was willing to pay and asked if they were way off on numbers. Mr. Van Desin stated yes.

Mrs. Voelker asked when he was willing to buy the property the first time what he was going to pay for it. Mr. Van Desin stated \$30,000. Mrs. Voelker asked if that was their contract. Mr. Van Desin stated it was and he still had the contract.

Mr. Hixenbaugh thanked him for what he was doing there and he knew better than they did what the problem had been visited upon that neighborhood by that property. Mr. Van Desin stated he had been fighting for years to get rid of the Pipers incident. Mr. Hixenbaugh stated it was unfortunate the struggle he had with it but he did not think they could say too frequently how much on the behalf of the community that they appreciated the effort he made to turn it around and make it a positive influence on the neighborhood. Mr. Hixenbaugh stated no matter what happened with regard to the property, they did appreciate the work he had done to turn it around. Mr. Hixenbaugh thanked him for the clarification with regard to the drainage issue as well and appreciated him being proactive in taking that step.

Mr. Emmons stated he got a message from Roger Shields stating that Fire Marshal William Dempler had concerns and it state he thought he would be coming to the meeting that evening to discuss 1816 West 6th Street being rezoned to residential and he had reservations about it being rezoned as to what fire codes came into play. Mr. Emmons stated he said that the fire inspector got with Jason to talk about his concerns with rezoning and it sounded like he was against it and asked if he was reading that correctly. Mr. Van Desin stated he could not speak for him but it sounded as if that was correct. Mr. Emmons asked if he stated to him what his concerns were. Mr. Van Desin stated he was concerned about the closeness of the residence to his building. Mr. Emmons asked if he was going to put something in writing since he was not present that evening or if he knew anything about that. Mr. Van Desin stated he was supposed to meet with him Wednesday and assumed so but he did not want to speak for him.

Mrs. Voelker stated he said he would be willing to pay what Mr. Forslund had in the building. Mr. Van Desin stated he would and get him out of the situation he was in. Mrs. Voelker asked when they were going to talk about that. Mr. Van Desin stated he could anytime and his door was always open.

Mr. Bellovich asked if there was a potential issue and a liability that the city may be incurring here and stated they had held this in advance for a couple of weeks and recommended they maybe get guidance from their Fire Department and then they would be better prepared to move forward one way or the other next time they met. Mr. Hixenbaugh stated his recollection was that they still had some time under the law to postpone this and that the 90-day clock would not have to run with regard to the Plan Commission recommendation and asked Mr. Trippel if that was correct. Mr. Trippel stated they would have to take care of it at the next council meeting.

Mr. Compton added to what Mr. Bellovich suggested and stated him and Mr. Forslund work on an arrangement between the two of them and during the process as well, he wanted to wait and hear what the Fire Marshal had to say. Mr. Compton stated he would also life for him to try to work it out if it was possible, because that was the resolution he believed would be the best case scenario.

Mr. Hazen made a comment stating they gave them two weeks to work it out and they still did not do it and he felt like they were being used to negotiate a price. Mr. Hazen stated they should figure it out and move on.

Mrs. DeMaegd asked what year the house was built. Mr. Van Desin stated 1910. Mrs. DeMaegd asked what year his building was built, specifically the part that abutted the house next door. Mr. Van Desin stated that portion was built later on. Mrs. DeMaegd asked if they were both still standing. Mr. Van Desin stated yes.

Mr. Emmons stated he would also like to hear more from the Fire Marshal and what his concerns were as well. Mr. Emmons stated maybe they could postpone this for a week to their next meeting so both parties could get together and hammer this out face to face and see it come to a conclusion where it was best for both parties and for the neighborhood as well. Mr. Emmons made a motion that they postpone **PROPOSED ORDINANCE 2022-14** to the next meeting next Monday. There was a second to the motion.

Prior to the voting for the postponement, Mr. Hixenbaugh was interested in hearing from their staff with regard to the motion in terms of the Fire Marshal's role in this, how it typically played out in the staff report in front of them and if there was that type of concern, why they did not receive it other than second hand through the resident.

Derek Spier, City Planner, spoke before the council. Mr. Spier stated that was news to him as well but he was going to get up and speak on the 90-day delay. Mr. Spier stated it came to the council with an unfavorable recommendation from the Plan Commission and the vote wasn't until June 14th, so it came to them the next day on the 15th. Mr. Spier stated that evening marked day 40, so they had another 50 days forward and there were several other opportunities should the council decide to table it. Mr. Hixenbaugh if this type of matter was routed through the Fire Department and the Fire Marshals before the staff report. Mr. Spier stated it was. Mr. Hixenbaugh stated it sounded like it was an open question in his mind why in fact if there was a concern they were just hearing about it that evening. Mr. Spier stated that was correct.

Mr. Emmons asked for clarification if they did in fact have longer to table this proposed ordinance. Mr. Spier stated they had the consent and they were only on day 40 at that time. Mr. Emmons asked the council if one week was enough for both parties or if it should be postponed further. Mr. Hixenbaugh stated went back to what Mr. Hazen had said and in his opinion, the matter had lingered in front of them long enough and if they were not going to come to a deal within a week, there was not going to be a deal struck. Mr. Hixenbaugh suggested that anyone who wanted to talk price while they were in the room simultaneously, the best time to discuss it was immediately after the meeting to try to work it out. Mr. Hixenbaugh stated from his perspective, he was most compelled by the reference to the Fire Marshal concern and out of an abundance of caution, he wanted to hear about that otherwise he would not be in favor of the motion. Mr. Hixenbaugh stated there was the issue that why it is there was that type of concern and they were just now hearing about it as opposed to reading it in the staff reports they had for

many months. Mr. Hixenbaugh stated they had a systematic issue and a Public Health and Safety issue potentially, so he wanted to hear from the Fire Marshal directly and not hearsay. Mr. Hixenbaugh stated he was in favor postponing it one more time for one more week and if they did not have a council meeting the following Monday, he would not have been in favor of postponing. Mr. Hixenbaugh strongly encouraged them to work out a deal as soon as possible, but he was also sensitive to Mr. Hazen's other point that it was not their role to try to exercise leverage over people in these type of private disputes to try to have one person gain an advantage over another by using their process and he was becoming concerned that surreptitiously that was what was going on. Mr. Hixenbaugh stated if there was something to be worked out, it needed to be worked out and if it wasn't, they would have to make a decision based upon merits but two reasonable people, three reasonable people including the other involved ought to be able to sit down and be able to talk it through. Mr. Hixenbaugh stated if they could come to an agreement, great and if they could not, fantastic but this needed to be finalized in fairly short order in his mind. Mr. Hixenbaugh stated he was willing to support it but only for one more, one week delay subject to hearing some additional information from the Fire Marshal at their next council meeting. Mr. Emmons' motion had been made and seconded to postpone the public hearing on **PROPOSED ORDINANCE NO. 2022-14** until their next regularly scheduled council meeting on Monday, August 1st. The motion passed unanimously.

PRIVILEGE OF THE FLOOR

Christy Miller, 321 W 7th Street, spoke under Privilege of the Floor. Ms. Miller read off a prepared letter.

Ladies and Gentleman of the Mishawaka Common Council;

I've prepared my comments for you tonight, and I ask you to hear me out.

Mr. Hazen: During that council meeting on July 5, you specifically said "if you feel unsafe it's our responsibility and the chief's responsibility to make people feel safe," and that it didn't matter how you as council members felt. Well, Mr. Hazen, I'm here today to ask you to stand by what you said, because I don't feel safe. My family doesn't feel safe.

There was a little girl riding a bike on the sidewalk in front of the house where Rhema Harris was killed. That could have been my child. The shooter could have gotten the address wrong. It could have been my home. We were sitting at our kitchen table at the time Rhema was shot. It could have been us. Chief Witkowski told you at your last meeting there'd been about 219 reports of shots fire in the last year. The chief confirmed that number again last weekend during the District 1 meeting. And I'm aware that there's some hemming and hawing, those calls might actually have been shorts or car backfires or fireworks or whatever else. The final number of actual shots fired doesn't matter. It only takes on stray bullet and someone I love is dead or injured. I was at last week's District 1 meeting during which the Mayor gave his abbreviated State of the City. He seemed to

indicate that we have enough police, despite also having more calls for service and increasing population. In fact the Mayor repeatedly insisted that Mishawaka is safe, that crime is down, that in situations like the two homicides so far this year, there was never any risk or danger to the public. How was there no danger to anyone else? Because it wasn't an active shooter situation? How absurd is that statement? Perhaps when there's an accidental casualty because a targeted bullet misses it's intended target or because some criminal gets the address wrong, someone from the city can explain to that resident that it's ok because it was an isolated incident and they weren't the one targeted so there was no danger.

In mid-May the St. Joseph County Fugitive Task Force used a battering ram to go in after an assumed armed fugitive living next door to me. They had shields, rifles, some were in full SWAT gear. Some officers from MPD in SWAT gear had been to that dwelling the day before, too. I am absolutely thankful that the county officers were able to arrest the fugitive without too much trouble. But what if he had put up a fight? What if he'd been able to get his guns? That's my kitchen, my bathroom, my living room that's closest to what could have become a very dangerous situation. How could I feel safe through that??? The property is a problem. It's missing siding and downspouts, bricks are crumbling, there have been calls to the property for domestic violence since we bought our home nine years ago. But since the new owner took possession of it last summer, we just have fugitives and potential drug dealers six feet from our walls instead of young couples who were never taught how to walk away from an argument.

There are obvious homeless people and likely prostitutes in our alley and walking our street. There's properties on our block where cars will pull up, stay in idle, be there for a minute or two, and take off, and it happens repeatedly nearly daily. There's two abandoned properties on my block, just waiting for squatters.

I don't feel safe in my home, I don't feel safe walking my dog, I don't feel safe letting my teenager out in the yard alone, I don't feel safe in my home, my yard, or my neighborhood.

Almost a year ago, I stood before you, just like I am today, and expressed my frustration with entire city government for the increasing crime and disorder in the West End neighborhood. Following that particular meeting, there were more meetings, phone calls, officers of help, officers of assistance, and not only from some of you, but from the city administration, code enforcement, Mishawaka Police, county dispatch, and others. I truly appreciate those who have stepped in to help and to support our neighborhood and our goal to see Mishawaka be the best it can be for everyone. I was honestly optimistic that myself and my neighbors were heard, that those governing our city were listening and cared about this city and its residents.

We were told to start a neighborhood watch. So we did. We were told to work with MPD. So we do. We were told to work with code. Again, we do. I truly believe that we are doing

our part to the best of our ability to work with the city government as a whole to address what my family and I, along with others around us, see as increasing crime and disorder in our neighborhood. But in terms of what changes we've seen in our neighborhood, from what I see, not only has crime and disorder increased, it's becoming more violent, more dangerous, and far more frightening.

Mr. Hixenbaugh asked Ms. Miller to leave a copy with Clerk Block for the record.

Richard Freeman, President of the Mishawaka Fraternal Order of Police Lodge 91, spoke under Privilege of the Floor. Mr. Freeman read off a prepared speech to the council.

Good evening, Ladies and Gentlemen of the Council, Mr. Mayor, and Citizens of Mishawaka, both present and virtual. My name is Richard Freeman and I am the President of the Mishawaka Fraternal Order of Police Lodge 91. Before I begin, I just want to point out that I am here to make some points of clarification, and provide some context and data in rebuttal to some of the claims that Mayor Wood has made in his "Communicator", The South Bend Tribune, Our Fallen Officer's Memorial, the State of the City, and most recently at the West End Neighborhood watch meeting. For time's sake, I'm only going to touch on 2-3 items tonight. First being the topic of manpower

. • Mayor Wood has made several claims in the above listed platforms that we are "fully staffed."

• The Mayor also has stated many times that he would like to hire 3 additional police officers, and increase the shift strength from 10 to 11.

• The Mayor has also said on more than one occasion that this would be up to the FOP, but has most recently said "I could hire 50 officers today but that doesn't mean that they are going to be in your neighborhoods" and the proceeded to say that it was "because we have a collective bargaining agreement with the FOP." Implying that the FOP is somehow prohibiting this.

Mr. President, I am going to need your help in answering a few questions here to put things into perspective. I am not going to bait you or paint you into a corner. These are basically rhetorical questions that are common knowledge to the council but may not be known to the rest of the citizens.

Let me offer some points of clarification on this. The Mayor made mention of a State Statue that governed the TIF funds and stated that they cannot be used for hiring public safety or be used to give raises correct?

Mr. Hixenbaugh stated that was correct he would give him a little bit of latitude but it was not the norm that someone stepped up there and interrogated the council, so if he wanted to treat them as a series of rhetorical questions they would choose where they wanted to respond. Mr. Hixenbaugh stated he answered one, but he was drawing the line there.

Mr. President, Isn't there also an Indiana Statue that governs the negotiations between the City of Mishawaka and the FOP in the Collective Bargaining Agreement? YES

Mr. President is there not also a city ordinance that echoes the same? YES

Mr. Hixenbaugh wanted to clarify that they bargained collectively in Mishawaka by virtue of a local ordinance, 1666 that they were exempt from that meeting conferred statute by virtue of the local decision that was made to collectively bargain.

Mr. Freeman asked the remainder of the questions rhetorically.

Mr. President, to your knowledge has that process started yet? NO

Just to clarify for the citizens, there is Indiana Code, and City Ordinance, that outline the process of negotiations between the FOP and Members of the City Council, yet the Mayor continues to blame the FOP for something that hasn't even taken place yet.

Mr. President, if the negotiations had started, is manpower a topic in which the FOP has the authority to negotiate? NO

This is an Administrative function, correct? YES

Mr. President, you were there at our Fallen Officer's Memorial where Mayor Wood spoke. Did you hear him say that he has "never denied an administrative request."? Because I did, and so did everyone present, as well as on Facebook Live.

Mr. President, last week during the meeting you had also stated something similar to the effect of supporting law enforcement and that when the administration makes a request, the council has responded with unanimous support.

I do want to pause, and thank you for that. And let you know that your support is noticed and very much appreciated.

I was hired 17 years ago in 2005, and the Mishawaka Police Department's total number was 105. We are currently budgeted for 108.

In 2012? The department hired 3 officers on a COPS grant that was dedicated for School Resource Officers. Not on the road.

In those 17 years, I have seen this city expand beyond recognition from then to now. The Main St overpass was newly finished, and since then that corridor has exploded with growth. Tuscano Park, St Joseph Regional Medical Center, Main St Apartments, the

addition to the Mall, all the businesses along Main St., Beacon Parkway, even additions to the River Walk, Central Park, the Mill, the River Rock. The list goes on...

So... with the expansion of this city, coupled with manpower being an administrative function, and the Mayor along with the City Council supporting, and never denying any administrative requests, then a reasonable person would conclude that this administration has never asked for additional manpower. Because if manpower was asked for, then we would have it. But financially the City has concluded that it is cheaper to pay the overtime, than it is to hire additional officers.

However, all of you on the Council who DO negotiate with the FOP, are aware that we always ask for 2 things. One, we always have a surplus in the personnel line, because we are never "fully staffed" and have been working more, with less. We ask for that surplus to be added in the form of a raise, however, we are told it goes back into the general fund. Secondly, we always ask for more officers.

When Mayor Wood said "I could hire 50 officers today but that doesn't mean that they are going to be in your neighborhoods" and then proceeded to blame this on the FOP, he turned and ask "does anyone know why?" At which time Officer Faltynski said "because it cuts into vacation time."

I have a few issues with this.

1. I have nothing bad to say about Bruce Faltynski, he does an outstanding job, and in my opinion, he is extremely over worked. However, Bruce Faltynski has no authority to speak on behalf of the FOP. I am a little disappointed that the Mayor, and the entire command staff standing by, placed him in a position to feel obligated to answer this.

2. Although taken out of context, Faltynski is only partially correct. Since the birth of the Circuit Breaker, the raises we have received have been extremely small, with the exception of last year.

Mayor Wood is doing the same thing now with manpower proposals as he did then during these years of small wage increases. At THAT time Mayor Wood used his position to virtue signal his wishes by posting a 1% raise in the paper, prior to any negotiations ever starting. In lieu of raises, the FOP was able to negotiate provisions in which we could accumulate compensation in the form of TIME rather than money. This included the ability to break up solid weeks of vacations into individual days. Given the fact that we work a rotation, this made more sense to add a few days to our 3-day-off rotation rather than take a week of vacation that would encompass days that we already had off, depending on how the individual rotation fell.

The only part in this equation that the FOP has a hand in, is determining the Minimum Shift Strength. The reason for this is to protect members from being overworked, and allow for members to take time off in which they earned by working overtime.

Why would the FOP agree to mandate that more officers be obligated to work from an already depleted pool of available officers? This would contradict the benefits of the time off that were negotiated in lieu of money, and therefore wouldn't be much of a benefit if we couldn't use it.

And why would the FOP consider this when this has been a failure on the administration for the past 17 years to address?

Speaking of time off. Administrators like to take advantage of time off as well... Just the other week on July 9th, on Dayshift, we have 1 Captain, 2 Lieutenants, and 4 Sergeants assigned to the shift... All of which happened to be off, either they were already scheduled off, or they took time off that they had rightfully earned. This left the most senior Patrolman First Class in charge of the shift. However, no one working was aware of how our scheduling software works, and me being a former supervisor had to go through the overtime call-in process and ultimately order myself to work the Afternoon shift due to lack of manpower.

Regardless of semantics of manpower, and arguing over our true number of current officers, the real question is the definition of "Fully Staffed." What is fully staffed? Is that just meeting the number in which we are budgeted for, or is it the number of officers we should have in order to be able to perform our basic duties? Being that this issue has been neglected for nearly 2 decades, it should be re-evaluated at length. What is the result of not hiring more officers along the way as our city grew? How has that effected crime? The worst crime we can think of, generally speaking would be murder... I know that we don't like to work in hypotheticals so I'll point to actual occurrences. I mentioned the additions to the Mall, Tuscano Park, the River Walk and Central Park. Recently, within the last 2 years we have had homicides in Tuscano Park during a "mass shooting", 2 homicides in the same week at the Mall, and a homicide in Central Park.

This should speak volumes. Instead, Mayor Wood has mentioned in the "Communicator" that Mishawaka is a "gathering place", and that both the victims and the suspects in these instances were not from Mishawaka, implying as if they shouldn't count.

Fully Staffed should mean that we have enough officers to not only perform our basic duties, but allow us to be proactive. Mayor Wood continues to use this word out of context and described the recent call about the missing elderly woman, and said that we were proactive while using team work from multiple agencies, and had collaborated with a multitude of resources. While this was amazing to see, and all of the officers did a fantastic job, this is not being proactive, this is reacting to a call for service.

The Fire Department for example is also amazing, yet also reactive in nature. They don't drive around patrolling in order to preventing fires from taking place. I know nothing about the duties of a fire fighter, but it is interesting to note that as a reactive entity there

are more fire fighters than there are police, and the Mayor is asking for twice as many additional firefighters as he is police. Yet during a 2 hour neighborhood watch meeting, he talked for 1 hour and 45 min about police related issues.

Police however, SHOULD be proactive, and act on observed criminal behavior, and self-initiate calls. The most common application for this is by conducting traffic stops. While I agree that a quota for traffic stops would not be popular among officers or the citizens; the Mayor and the Chief both agreed that traffic stops are effective at reducing crime.

So much so, that Chief Witkowski mentioned a blitz coming up with State Police, and that last year we had approximately 20 officers from the State Police conducting traffic stops in Mishawaka. One stop alone according to Chief Witkowski yielded 100 lbs. of marijuana. One stop on a random night... Can you imagine what other crimes can be discovered or prevented?

So why not be more proactive?

One answer is manpower. With only 10 officers as a Minimum number, a call may have more than 1 officer dispatched for safety reasons. Other calls can take up the entire city worth of resources very quickly, such as the incident at Merrifield Pool, or any one of the recent homicides. That being said, if an officer makes a traffic stop it may involve having to go to the hospital to obtain evidence for a DUI, and then transporting out of the city to the jail. While this is happening, there are only 9 officers to cover the city. So, whether it is openly admitted or not, proactivity is frowned upon because it leaves the city under the minimum strength.

An example of this was on July 12th I received a subpoena and was requested for a pretrial on July 18th at 1100. I notified my supervisor, who then noted it on the schedule. On the day of the 18th, the shift was at minimum, and I was told to call the prosecutor to do a phone conference for the pretrial because it would take the shift under 10 while I was out of the city. So whether openly admitted or not, if I can't leave at the request of a court subpoena, does this give the impression that self-initiated traffic stops are encouraged that may also result in leaving the city?

Another contributing factor is a phenomenon not singular to Mishawaka, this has occurred everywhere and has been dubbed "the Ferguson Effect" by then St. Louis Police Chief Sam Dotson. The "Ferguson Effect" is due to the defunding movement based on a false narrative in the media that claims police across the country are excessively using deadly force on a daily basis, when the reality is that it may occur at a fraction of a fraction of a percentage. The "Ferguson Effect" has made officers non-proactive due to their lack of faith in administrative backing in the event that force may be required during a self-initiated stop. This has also caused a mass exodus in law enforcement, coupled with very

little interest from new prospects to become police officers. This has added to already existing problems with manpower.

Some of these issues are applicable here in Mishawaka. This roster was printed at the beginning of the year. There are 40 officers with 20 or more years on the department and that are eligible to retire. I say that because the Chief mentioned this being the primary reason for leaving the department, to retire here and then continue in other careers.

Of those 40 officers, approximately 20 of them are 52 years old and can retire and collect a pension. 12 of these officers have already left.

Only 7 applicants showed up to our last tryout, with the previous 2 having only 10.

This doesn't mean that all 7 applicants are qualified, or that they will pass through all the steps of the process, the academy, or their observation period with a Field Training Officer.

Although Mayor Wood has referred to Mishawaka as "a rose between two thorns," It doesn't help recruiting when the surrounding agencies make more on their pension base than Mishawaka, and have off duty use of their vehicles. In fact, in 2015, while Mishawaka has consistently fluctuated between 18th and 19th most populated city in the State, we have gone from 35th highest paid out of 120, to now 56th with more than 20 other agencies passing us in pay, including Walkerton and Warsaw.

Just like Mayor Wood has misplaced blame on the FOP for manpower, he has also inaccurately publicized that we have an Emergency Response Team, or ERT, or even sometimes referred to as a "Rapid Response team". I have had several conversations with Mayor Wood, both over the phone, as well as in person with members of the administration and have advised the Mayor that currently we have no existing language in our contract to govern the ERT. This however, is also not at the hand of the FOP. After the protests in 2020, the Mayor did in fact allocate funding to purchase equipment, uniforms, less than lethal weapons, as well as provided training for instructors to be certified on these weapon systems. The FOP, along with the proposed leadership of this ERT drafted language that was in compliance with the existing contract, as well as provided areas in which the use of the ERT could be expanded to be utilized for scene security, hospital watch, or other areas in which a rapid deployment of additional manpower may be required. This proposed Memorandum of Understanding was then presented and voted on by the Body of the Lodge, it passed in favor of the ERT, and was presented to the Administration in March and I have not heard anything since then. It should be noted that the ERT team has not conducted any training in over a year.

Lastly, the Mayor and the Chief both commented about the use of social media, namely Facebook. When going to the neighborhood watch meetings, and listening to the public's concerns, it is evident that in 2022 social media is where the information is gathered. To

belittle these groups for communicating this way, while not taking advantage of getting out in front of rapidly evolving events, I personally feel this only damages the cooperation and communication we have with the community, and contradicts the ideology behind community-policing in general.

There were several references that were made to social media posts that I have made on these very topics. I don't have a pulpit to speak from like Mayor Wood does. After 1 or 2 times of making statements that I knew were not to be completely accurate, I made several attempts to have meetings in order to correct some of these issues. After providing information to support the FOP's position, Mayor Wood continued to make statements that were inaccurate, and then proceeded to blame the FOP. In response I tried to address these issues on social media since the traditional methods had no results.

In closing I would like to reiterate that I am not here to complain. I am not here as a police officer. I am here because the Mayor has continuously made inaccurate statements about contractual issues publicly, and blamed the FOP for issues outside the scope of our purview. I am here because I have made numerous attempts to discuss these issues in the proper setting, with zero cooperation from my administration, and the Mayor. I am here as the President of the FOP to ultimately defend the FOP from these claims publicly.

There are several ADDITIONAL issues I would like to address, and if this is the preferred method of discussion, then so be it... I can be here, not next Monday but the following Monday.

OR we can set a date for contract and wage negotiations and discuss these remaining issues in the setting and the manner in which Statute and Ordinance outlines.

Keep in mind one thing that is clearly consistent in terms of the countrywide issue concerning manpower. As the Mayor compared the City to a "rose", I would compare the police to honey bees. A rose just like any other flower without bees will wither and die. You can say you want 50 bees, but when everyone else's garden looks better than yours, only 7 bees show up... You're going to have to invest in making your garden more attractive. Since it seems that both the Mayor, and the Administration are now on board with hiring more manpower after 2 decades, I look forward to future discussions.

Thank you for your time.

Mr. Hixenbaugh had some points of clarification he wanted to make. Mr. Hixenbaugh stated they had talked earlier about the fact that they bargained with both of their public service agencies and actually all of their employee groups based upon that local ordinance that he referenced again. Mr. Hixenbaugh stated what they bargained, however, was a function of state law and there was a separate state statute that empowered the council to establish compensation and that was the statutory term of art for public safety entities. Mr. Hixenbaugh stated when they talked about

manpower, ERT, when they talked about any number of other issues he referenced that was not subject to bargaining with the council. Mr. Hixenbaugh stated they dealt with compensatory issues only. Mr. Hixenbaugh stated those were issues that were bargaining and worked through between the administration and the FOP. Mr. Hixenbaugh stated he knew he knew that, but just for a point of clarification for anyone present or anyone watching, that was their role and in Indiana they had a bifurcated process where council established compensation and the administration worked through working conditions. Mr. Hixenbaugh stated he wanted to clarify that in case there was any misunderstanding out there on the part of anybody who hear their remarks. Mr. Hixenbaugh also asked if he did come back, if he could edit it and make it a little bit tighter the next time he came before them. Mr. Freeman stated he had been listening and been taking notes so there were several issues that hopefully they could discuss in the proper setting and would not have to waste anybody's time.

Mayor Wood spoke under Privilege of the Floor. Mayor Wood stated he certainly respected and appreciated Mr. Freeman his role as FOP President. Mayor Wood stated there were many misrepresentations with what you just heard but they did not feel it was the time nor place nor the venue to air those things out. Mayor Wood stated they were going into collective bargaining that year in which case, they would have discussions of these and many other issue and they would not bother you with the dirty laundry but would certainly keep them posted as to their progress on those types of things.

Rhea Quigg, 2512 River Avenue., spoke under Privilege of the Floor. Ms. Quigg was hoping they could help her with an issue happening back before 2014 where two fisherman were fishing with floodlights and a gentleman got too tired because he couldn't do anything about it and he rammed the boat and sunk it and all three had to go to the hospital and the guy who sunk the boat was the one who got arrested. She had spoken to many authorities across the state and she was tired of being frightened in the middle of the night with six floodlights coming 50 feet in and 50 feet up and it looked like a baseball or a football stadium and it made her scared. Ms. Quigg stated DNR told her that only DNR could do something and she asked for the council to make an ordinance for lights. Ms. Quigg stated the floodlights scared her to death and she had no clue what they were doing down there and she was up for two days from how angry she was. Ms. Quigg stated she lived alone and she did not like it and did not know what she could do, but something needed to be done. Ms. Quigg stated she knew there was not a lot they could do but she thought the council had light pollution for buildings and she had been there 44 years and she did not want lights nor did she ask for them. Ms. Quigg stated they had every right to fish but fish where there was no houses. Ms. Quigg stated she did not know what to ask the council, she did not even know where to go and she was sick of calling around. Mr. Hixenbaugh stated they may or may not have the answer, but he thought they could all appreciate her concern and they did not like to hear that she was being subjected to it either. Mr. Hixenbaugh suggested to her that before she left that evening, she talk to Mr. Hinkle their City Attorney and Lieutenant Reppert from the Police Department and he was also certainly happy to discuss after the meeting with their Council Attorney whether there was something they could do as a local entity to try to regulate it. Mr. Hixenbaugh stated his strong suspicion was that there was not given the

limitation of what they were subject to and DNR was a powerful entity. Mr. Hixenbaugh stated much of what they did with regard to construction along the river and things of that nature, they had to dance to their tune as well. Mr. Hixenbaugh stated if there was something they could do, they would certainly consider that and work with the administration to try to address it. Mr. Hixenbaugh stated he did not think they had a ready-made answer to lay out for her that evening, but he pledged to her that they would try to help her in any way they could. Mr. Hixenbaugh stated if she could speak with the gentlemen in the back of the room, they would follow up with their council attorney and he did not hold out great hope, but he had some hope that there may be something that comes out of the conversations or that discussion that would be a benefit but please continue to let them know and they would do what they could to help her. Ms. Quigg appreciated that and stated that the state attorney had the nerve to tell her to file a nuisance thing with an attorney which cost her along with a nuisance and then they had to come back because they were mad at her and they were going to do it more. Ms. Quigg thanked Mr. Hixenbaugh and the council for listening and appreciated their time.

Mr. Compton asked if the people were fishing from the bank even though he assumed they were on boats. Ms. Quigg stated they were fishing from the river and they would not be able to get the light back if they weren't in the river.

Mrs. Voelker asked if she could see who they were and if it was the same boat. Ms. Quigg she could not see but all she could say was these guys had been doing it since before 2014 and it did not happen all the time but it did happen sometime during the summer for the most part of the summer.

NEW BUSINESS

Mrs. DeMaegd stated there would be no West End Neighborhood Watch meeting in August, but they would be at the National Night Out Tuesday, August 2nd at Merrifield Park. Mrs. DeMaegd stated this year, the Mishawaka Police Department would be combining National Night Out with the annual Chill with a cop so it would be a great evening for the whole family with things getting started at 5PM until 8PM.

Mr. Mammolenti announced they would not have a 3rd District Twin Branch Neighborhood Watch meeting on their scheduled date of August 17th and they would have a small gathering at Twin Branch pavilion on August 12th and also would be participating in the National Night Out August 2nd.

Mr. Emmons stated the 1st District West End meeting would be on August 18th and Mayor Wood would be giving a tour of the new City Hall at 7PM. Mr. Emmons stated all were welcome and they would have donuts there as well.

ADJOURNMENT 8:28PM

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

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