

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

September 6, 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 Tuesday, September 6, 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 (A), 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 August 15, 2022 were approved as received from the Clerk's Office.

Clerk Block read the following petitions by title.

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| Petition No. 2022-14 | Rezone from C-2 Shopping Center to S-1 Extensive Open Space to remain a natural open space due to floodplain – V/L south of 4601 Grape Rd. |
| Petition No. 2022-15 | Vacation of public right-of-way for 1 st alley between lots 44, 45, 46 and 47 – Battell's 2 nd Park Addition |
| Petition No. 2022-16 | PUD Amendment to allow second restaurant with drive-thru in proposed multi-tenant commercial building – south of 3615 Bremen Hwy. |
| Petition No. 2022-17 | Rezone from C-1 General Commercial to S-2 Planned Unit Development to allow Mixed-Use Commercial & Residential Development – NE. corner of N. Main St. & University Dr. |

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

PROPOSED ORDINANCE NO. 2022-27

**AN ORDINANCE APPROVING AN AGREEMENT BETWEEN THE CITY OF
MISHAWAKA SEWER DEPARTMENT AND THE TEAMSTERS LOCAL UNION
NUMBER 364 AMENDING THE COLLECTIVE BARGAINING AGREEMENT
EXPIRING ON THE 31ST DAY OF DECEMBER 2024**

**Amendment to Collective Bargaining Between the City and Local 364 Sewer Department –
Expiring 12-31-2024
(Assigned to Personnel Committee)**

PROPOSED ORDINANCE NO. 2022-28

**AN ORDINANCE APPROVING AN AMENDMENT TO COLLECTIVE BARGAINING
AGREEMENT BETWEEN THE CITY OF MISHAWAKA AND THE MISHAWAKA
FRATERNAL ORDER OF POLICE LODGE 91**

**Amendment to Collective Bargaining Between the city and Mishawaka Fraternal Order of
Police Lodge 91 – Expiring 12-31-2022
(Assigned to Personnel Committee)**

PROPOSED ORDINANCE NO. 2022-29

**AN ORDINANCE DECLARING AN EMERGENCY AND DETERMINING THE
EXPENDITURE OF ADDITIONAL FUNDS FOR THE YEAR ENDING DECEMBER 31,
2022**

**Additional Funds – ARP Coronavirus Local Fiscal Recovery Grant – Boys and Girls Club
(\$750,000.00) – Youth Service Bureau (\$375,000.00) – Troop Town (\$325,000) – Mishawaka
Building Trades (\$275,000.00) – M-P-H Public Library (\$50,000.00) – The Res (\$35,000.00)
– Total (\$1,810,000.00)**

(Assigned to Budget & Finance Committee)

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

RESOLUTION R2022-20

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA,
INDIANA, DECLARING CERTAIN AREAS WITHIN THE CITY OF MISHAWAKA,
INDIANA, COMMONLY KNOWN AS 2754 LINCOLNWAY EAST AND ADJACENT
PARCELS TO BE AN ECONOMIC REVITALIZATION AREA AND ECONOMIC
DEVELOPMENT TARGET AREA FOR PURPOSES OF A REAL PROPERTY TAX
ABATEMENT FOR BARACK GROUP LLC AND OR ITS SIGNS**

**Declaratory Resolution for Tax Abatement for proposed Steelhead Apartments Multi-
Family Residential Development – 2754 Lincolnway East & Adjacent Parcels**

Derek Spier, City Planner, spoke in favor of **RESOLUTION R2022-20**. Mr. Spier stated before the council was a declaratory resolution for a real property tax abatement and it was for the proposed redevelopment of the Mishawaka Inn into an apartment complex and also the construction of a second building to the north located to the northeast of the existing hotel building. Mr. Spier stated the proposed investment of \$1.5 to \$1.8 million was anticipated for the cost for the renovation of the existing building and an additional five to five and a half million dollars for the construction of the second building. Mr. Spier stated the first phase was anticipated for the first quarter of next year with the construction of the new building in the second quarter of 2024. Mr. Spier stated if the site was redeveloped as envisioned, the aged underutilized hotel that currently had a negative reputation would transform into a viable and highly visible apartment complex on Riverfront property. Mr. Spier stated due to the prior lack of investment in the property and underutilization of the existing hotel and the reduction of the property values that the site had experienced over the last five years, Planning staff recommended a real property abatement be submitted to assist in the redevelopment of the project. Mr. Spier stated the request was for 5 years. Mr. Spier stated normally when they did this, it usually started at 100% and then degraded at approximately 10 to 20% annually through the life of the abatement. Mr. Spier stated for this one, they were recommending a five-year abatement for 100% the first year, decreasing 5% annually for the life of the abatement and it was similar to what was approved for the River Rock Apartments on Mishawaka Avenue and then also for the Riverwalk Apartments that was planned but never started construction along Mishawaka Avenue to the east of Main Street. Mr. Spier stated this would be the first step if it were approved that evening and they would prepare a more detailed fiscal analysis to be considered with a confirmation resolution and the petitioner was also present that evening to speak more about the specifics on the projects if the council had any questions.

Mr. Hixenbaugh asked if he could touch on the project and how it aligned with previous projects and what certitude they had that they were going to know within a finite time period whether or not this was going to actually come to fruition. Mr. Spier stated for the last one they had conversed about was the Riverwalk project which never came to fruition and when they approved that, the council set it up for a five-year economic revitalization area, so that meant annually when they saw no movement on the project, they still had to come before the council to report that there was no movement on it. Mr. Spier stated for this one, they were only going to designate it as an economic revitalization area for a shorter period of three years so in the period, if they did not start construction on the first and second phase by the end of 2025, the actual designation for that area would expire. Mr. Spier stated it would be a tighter window to actually put some more fire under the developer to get them going in a shorter time frame. Mr. Hixenbaugh asked if he could talk a little bit about the way the process worked, in particular what the next stage of the process looked like if the council approved the resolution in front of them. Mr. Spier stated if approved that evening, they would prepare a more fiscal analysis showing what the abatement meant based on the proposed investment, so they would take a very high level look at what they thought the property values would increase to and then the additional property taxes that were abated over the five year window and also the property taxes that were actually generated by the additional investment. Mr. Spier stated that would be

included in the next phase and that would be provided for the confirmation resolution. Mr. Hixenbaugh asked for clarification if that evening was step one in the process but nothing was final and determined until the second vote and that stage in the process if they advanced to that. Mr. Spier stated that was correct.

Mr. Mammolenti asked Mr. Spier in terms of the tax percentages that he mentioned before the council, if that was on the suggestion of the developer or if it was something that they proposed. Mr. Spier stated that was something that the council had been favorable to in the past, so those were at the same level of incentive that was given to both the River Rock Apartments that had been developed and the other one that never came to fruition.

Mike Huber, Abonmarche Consultants, spoke in favor of **RESOLUTION R2022-20**. Mr. Huber stated he was there representing the Barak Group. Mr. Huber stated he thought Derek did a really nice job of summarizing the project and what they were trying to accomplish. Mr. Huber stated the property owner had closed on the property and he was investigating the costs, specifically costs in terms of structural analysis and what he could and could not do related to the mechanical equipment and all those kinds of things. Mr. Huber stated he had put in the investment and was ready to make the improvement to the building and he personally thought they were all excited about the possible change in the building there. Mr. Huber stated they laid out a fairly progressive timeline and he thought they had about 12 to 18 months to get the first building up, completed, open and operating before they turned around a couple months later and started in on the second building with a total of about 105 units. Mr. Huber stated he thought they were trying to find the right mix in the first set with somewhere between 48 and 60 units and what worked from a financial performance standpoint and allowed them to maximize the unit that they could get between the two buildings to get to that 100 and 110 unit level. Mr. Huber stated he was happy to answer any questions the council had.

Mr. Compton stated he knew they were only in the declaration stage but he could not help but look at the whole project and asked how many units he said it would be. Mr. Huber stated he thought there would be about 106 units and 206 units total for the project. Mr. Compton asked what the rents would be. Mr. Huber stated the rents would be market rate and it would depend on if the apartment was going to be a studio up to a one bedroom or two bedroom unit. Mr. Huber stated the second building would be almost exclusively all one and two bedrooms and they would not be putting studios there. Mr. Huber stated he anticipated rents were going to be in the \$900 to \$1200 range depending on what kind of unit it were to be, but they would be roughly around the rates currently in the market. Mr. Compton asked if these would be higher end units and asked for him to talk about the finished product. Mr. Huber stated it would middle tier to high middle upper and he knew they were calling it luxury. Mr. Huber stated it would definitely be an upgrade from what was there and it would be something that fit with the market at those rent rates. Mr. Compton asked if this project would be developed without a tax abatement. Mr. Huber stated he would defer to Mr. Davidson who was on the line to answer that or maybe John Piraccini, who was also present that evening. Mr. Compton rephrased the question and asked if they had to grant a tax abatement for an apartment project in Mishawka that provided no jobs

and added he understood they were cleaning up an old piece of the city they would like to see cleaned, but he asked to help himself, some of the other council members and others in the public understand why they should do that. Mr. Huber stated he thought he hit a nail on the head and if you looked at the level of work that had to be done in terms of renovating buildings, in particular this building, and then following that up with another \$4 million investment on the second building with the space they had there. Mr. Huber thought the abatement really helped them fill that gap to make the investment in that existing building worth it and the building had years and years of deferred maintenance and the work that was required to get the thing back up to standard that they would all be happy to have it operating at. Mr. Huber stated it was going to certainly help offset that.

Mr. Hixenbaugh referred to when Mr. Huber was discussing the analogy when talking about hotel rooms and asked if that was in fact just an analogy and if it would be a plan for this to be an apartment complex. Mr. Huber stated that was correct and they would all have kitchens and they were not going to be a hotel at that point. Mr. Hixenbaugh asked for the record if he could commit with the tight time frame Mr. Spier addressed earlier in the meeting and that it was doable and that it was what they potentially hoped was going to happen was this would come to pass during the three-year timeline. Mr. Huber stated he certainly thought it was doable and the heavy-duty investigation on what needed to be done and how that would get done by the contractor standpoint was currently taking place. Mr. Huber stated they based their timeline off of that and they closed the property.

John Piraccini, Caldwell Banker Commercial Office, spoke in favor of **RESOLUTION R2022-20**. Mr. Piraccini stated he had been the broker on both sides of the deal and probably helped Mr. Compton a little bit. Mr. Piraccini stated this had been on the market for 7 or 8 years and there just was not a lot of demand for it for the sites to tear down the building. Mr. Piraccini stated there were a lot of costs involved, it wasn't overly priced, and the landscaping accident among other issues had occurred over the years. Mr. Piraccini stated they were finally able to land Dunkin' Donuts who had actually turned it down before three times and Wendy's also turned it down, because they didn't want that side of the street but he thought it was a small blessing in the COVID era of drive-thrus starting to have their demand raised as a result and helping this property out. Mr. Piraccini stated Mr. Davidson had a lot of interest in it and had a lot of investment in the community and saw an opportunity to do something very nice along the river and help the area out. Mr. Piraccini stated it was kind of unique in the issues, the maintenance when you looked around Mishawaka where it sat and what they were trying to do over there on the east end. Mr. Piraccini stated they met the neighbors and had all kinds of meetings with Ken Prince and Derek as well since about March. Mr. Piraccini stated the developer wanted 100% for 10 years and that just was not in the cards and Derek let it be known that that couldn't happen. Mr. Piraccini stated he made it clear to Mr. Davidson that they have to stick to whatever the council said and he wanted that abatement, you had to stick to the plan and do something realistic. Mr. Piraccini stated he had a lot of money invested in it already as far as architects, engineering, etc. was concerned. Mr. Piraccini stated he had been through the whole thing and he just wanted to make it clear that it was a site that could use it and it was not a ton of money, but

it was enough to help. Mr. Piraccini stated the site as currently constructed had no landscaping, access had to be improved and there were things that needed to be fixed with the parking. Mr. Piraccini stated those were some of the issues outside of the building, among others. Mr. Piraccini stated it was going to be a nice project and that amount of money is not earth shattering but it would help and helped get the project going off the ground and make it work, because of the cost of construction.

Mr. Banicki asked if he could talk about who was going to come in and be the contractor and what kind of help they were going to get. Mr. Piraccini stated they had a general contractor and they had talked about the bidding process and making sure there was opportunities for local people to bid on it and he was not able to speak on the specifics at that time but they had discussed it.

Mr. Compton stated he voted In support of the tax abatement for The Mill project in Mishawaka but then corrected himself and stated it was actually the complex across the street on Mishawaka Avenue. Mr. Compton stated that was their first project downtown in the apartments and they wanted to make that successful and there was a little bit of an assistance in The Mill but it was not through a tax abatement. Mr. Compton stated at some point for him and one councilman was they have to stand on their own and should not be abated. Mr. Compton stated he did not think for him personally, a tax abatement should be for something that benefited the citizens and he saw some benefit there. Mr. Compton suspected this would pass that evening but he was not going to be able to support it. Mr. Compton stated he knew it was the first phase and that they would enter it if it passed and then they would enter into a much bigger discussion on what, how and when but he was not in support of it.

Mr. Hixenbaugh stated briefly that he appreciated the thoughtful comments as always from Mr. Compton and he certainly could understand where he came from. Mr. Hixenbaugh stated he was willing to cast a vote that night in order to allow the process to continue as he referenced and was also seldom inclined to vote in favor of those type of projects for tax abatement. Mr. Hixenbaugh stated with this area that had been so distressed for so long and with the development to be able to not just take care of that one property, but to have a positive impact in the surrounding properties again he was willing to cast a vote in favor that evening to have a chance to review the additional information and learn more about it. Mr. Hixenbaugh stated he would be voting in favor of it that evening.

Mr. Mammolenti also thanked Mr. Compton for his input and echoed some sentiments that Mr. Hixenbaugh mentioned and as they all had mentioned and heard that evening, this would be just the first process that allowed the city to move forward in the process. Mr. Mammolenti stated one thing he could ask some of the folks there was as the process played out, that they also be mindful that the market rate was set accordingly, as Mr. Huber mentioned and he was sure if the tax abatement did not go through, he was sure that the monthly rent may go up in order for him to get his return on investment. Mr. Mammolenti stated that was obviously not confirmed, but he

was just sharing his thoughts and with it being the first process and nothing set in stone, he would be voting in favor of it that evening.

Question was called at 7:26PM for **RESOLUTION R2022-20 Motion carried by unanimous roll call vote (summary: Yes = 8).**

Yes: Mrs. DeMaegd, Mr. Hazen, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mr. Hixenbaugh.

No: Mr. Compton. The resolution passed 7-1.

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

PROPOSED ORDINANCE NO. 2022-19

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

Rezone C-2 shopping center commercial to C-7 Auto Oriented Restaurant for speculative outlot – Lot 1 CAT Mishawaka, LLC. Minor Subdivision

Mr. Mammolenti reported the Committee of Land Use Planning recommended this proposed ordinance should be adopted. This was signed by the entire committee and upon a second by Mr. Banicki, the motion carried.

Mike Gilbert, representing the developer, spoke in favor of **PROPOSED ORDINANCE NO. 2022-19**. Mr. Gilbert stated their proposal was to create an acre outlot on surplus land that they had for a project that was currently under construction on a 3.38 acre site. Mr. Gilbert stated they were carving out one acre as an outlook and with an approval that evening, they would be ready to market the property to a next developer and they looked forward to bringing a new project to the city.

Question was called at 7:29PM for **PROPOSED ORDINANCE NO. 2022-19 Motion carried by unanimous roll call vote (summary: Yes = 8).**

Yes: Mrs. DeMaegd, Mr. Hazen, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mr. Hixenbaugh. The proposed ordinance passed 8-0, thus it became **ORDINANCE NO. 5796.**

PROPOSED ORDINANCE NO. 2022-20

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

Rezone from C-1 (Existing Insurance Office) to R-1 Single Family Residential (Conversion back to house) – 2212 LWE

Mr. Mammolenti reported the Committee of Land Use Planning recommended this proposed ordinance should be adopted. This was signed by the entire committee and upon a second by Mr. Banicki, the motion carried.

Chris Skadinski, 59308 Downey Avenue, spoke in favor of **PROPOSED ORDINANCE NO. 2022-20**. Mr. Skadinski stated they had operated the property for 20 plus years as an insurance office and they had subsequently moved the office to a building by a home and they had put the property up for sale. Mr. Skadinski stated it sold on the condition that that listed it as residential which seemed to be the best use for it and that was what they applied for at that point.

Mr. Compton stated it was good to see Mr. Skadinski and wished him good luck in his venture.

Question was called at 7:33PM for **PROPOSED ORDINANCE NO. 2022-20 Motion carried by unanimous roll call vote (summary: Yes = 8)**.

Yes: Mrs. DeMaegd, Mr. Hazen, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mr. Hixenbaugh. The proposed ordinance passed 8-0, thus it became **ORDINANCE NO. 5797**.

PROPOSED ORDINANCE NO. 2022-21

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 for an existing house – 805 S. Logan St.

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

Dawn Cripe, 11650 East 310 South LaGrange, Indiana, spoke in favor of **PROPOSED ORDINANCE NO. 2022-21**. Ms. Cripe stated they were asking for that home to be residential so her daughter could buy it.

Question was called at 7:36PM for **PROPOSED ORDINANCE NO. 2022-21 Motion carried by unanimous roll call vote (summary: Yes = 8)**.

Yes: Mrs. DeMaegd, Mr. Hazen, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mr. Hixenbaugh. The proposed ordinance passed 8-0, thus it became **ORDINANCE NO. 5798**.

PROPOSED ORDINANCE NO. 2022-22

AN ORDINANCE ANNEXING CONTIGUOUS TERRITORY IN THE CITY OF MISHAWAKA, INDIANA PROVIDING ZONING CLASSIFICATION THEREFORE Annexation and Rezone to S-2 PUD for commercial use – 14325 Cleveland Rd.

PUBLIC HEARING – NO VOTE

Greg Sharon, Dan Turner Associates, spoke in favor of **PROPOSED ORDINANCE NO. 2022-22**. Mr. Sharon stated he was there tonight representing various property owners of approximately 51 acres of land on the southwest corner of I-8090 Toll Road and Capital Avenue to annex and rezone of the property for a mixed use development which would include allowed uses under C-1, C-2, C-4, C-9, C-9 and C-10 commercial classification. Mr. Sharon stated currently, the planned development was a car dealership campus and this was the first phase of the process to annex into the city. Mr. Sharon stated this phase would occur in several phases and it could be 10 plus years before the whole property was developed. Mr. Sharon stated once the first site plan came through, the city would look at traffic patterns in the area.

Mr. Hixenbaugh stated there was a mention in the staff report about the anticipated proposed use to the filling station use that was identified and asked if he could talk a little bit about that in his response to the concerns that were expressed by the Planning staff. Mr. Sharon stated he believed their concern was mostly the environmental concern and so as they said during the Plan Commission meeting, he believed the staff's concern was the specific location of the filling station and so they would work with the staff to put that, if it ever came to be, to where was acceptable to the staff to meet those requirements. Mr. Hixenbaugh stated they were talking about an area that was in fairly close proximity to the Juday Creek Wellfield and when he talked about an automobile campus, he envisioned some mechanical work taking place there with oil and other fluids potentially being an issue. Mr. Hixenbaugh stated he knew that there were some capture mechanisms that those type of facilities have to put in place but beyond a potential filling station, Mr. Hixenbaugh asked if he could touch on that type of use as well. Mr. Sharon stated there were laws specifically that they would have to keep oil separated so that did not go into the sanitary sewer system and also infiltrated the groundwater. Mr. Sharon stated when you were dealing with any sort of oil or mechanical car stuff, those restrictions were very precise of what you had to do to maintain the environmental integrity and they would definitely comply with those requirements. Mr. Hixenbaugh asked for clarification if those type of activities would presently be envisioned to take place on the site. Mr. Sharon stated as far as he knew, that was correct and it was a big development.

Mr. Compton thanked Mr. Sharon and stated this looked interesting with the location and what he thought about was charging stations and being right there on the toll road, this could be an ideal spot for people traveling down the toll road who needed an extra boost. Mr. Compton asked if that was being discussed and if it was, would he address things such as traffic that would come with that. Mr. Sharon stated this project would be a several year process and he thought if five years down the road the electric vehicle market grew, then there could be a potential of the dealership bringing in more electric vehicles and a charging station as part of that. Mr. Sharon stated he could not say that for sure, but you never knew what the market might be at the time when it came.

Mr. Mammolenti stated he knew he mentioned this would be a long, several year project and asked with the first project being the auto campus and asked if he could confirm that. Mr. Sharon stated yes and right then the plan was for the whole development to be an auto campus and it may turn out the market doesn't allow that and so something else may come in under the uses

that were approved for the annexation and zoning. Mr. Mammolenti asked for those who were present or listening online, when referring to an auto campus if he meant what may include several dealerships or something different than that. Mr. Sharon stated there could be, although it was not definite, a Toyota, Subaru, Chrysler all on one campus on one several acre parcel of land.

Mr. Banicki asked on that side of Cleveland Road, the north side, were there any houses on that side at that time. Mr. Sharon stated he believed there was a residential property to the west of what was being annexed. Mr. Banicki asked if they had any conversations with that neighbor to discuss some of the issues that were going on. Mr. Sharon stated he had not had those conversations with them at that point, but they were happy to. Mr. Banicki thought with something of this magnitude, that would be something that needed to be focused on and it would have a big impact on them. Mr. Banicki asked how close Juday Creek would be to this campus. Mr. Sharon stated he did not have that information at that time. Mr. Banicki asked about the neighbors in the neighborhood there as far as if they would be hooked to city utilities or if they were on the wells and septic. Mr. Sharon stated from his understanding, the residents out there now were hooked up to water and some of the residents were present that evening so they could confirm it but he also believed that they were on septic and if there were any problems with sanitary backup for those residents, this development would not add to that, because it would be on the municipal sanitary sewer. Mr. Banicki asked if his proposal was on water and sewer, but theirs was not going to necessarily be hooked up automatically to water and sewers and if that was correct. Mr. Sharon stated it was not and he believed once utilities went out there, depending on where it came from that they would have opportunity to hook up to that if they would want to. Mr. Banicki asked if he knew what direction then the utilities would come from, if it would be along Capital Avenue or coming along the toll road and going to come up through that neighborhood. Mr. Sharon stated at that point, that was part of the process but when that first plan came in, the city would look at where the utilities were coming from.

Mr. Hixenbaugh stated to be candid, he was disappointed with what he understood to be his answer with respect to any type of meeting with the neighbors and the public. Mr. Hixenbaugh stated he expected that he and his firm, being as experienced as they were would have already taken that affirmative step. Mr. Hixenbaugh stated he did not know how others felt, but he knew he had been in front of the council enough to know that it historically had been the preference of the council whenever a significant development like this occurred, for those type of meetings to take place. Mr. Hixenbaugh stated no matter the outcome, there was value in the process and allowing people to have a say in what was going on next to them. Mr. Hixenbaugh stated that would be a significant factor with to how he felt about this project moving forward and if in fact there was not that type of opportunity to meet with the neighbors which would be an important point he wanted clarification on between that evening and the next time they would be asked to vote on it. Mr. Sharon stated they always had that opportunity to meet with the neighbors and after speaking with Mr. Banicki about it, he knew it was a concern and they needed to speak to the neighbors so that they could table it too. Mr. Hixenbaugh stated he did feel strongly about this and if he required some additional time to get it scheduled and have it take place that would be his preference before he came and asked them to cast a vote.

Ken Prince, Director of Planning Community Development for the city, spoke in favor of **PROPOSED ORDINANCE NO. 2022-22** and the project as a whole. Mr. Prince stated he wanted to add some clarity regarding the sewer and water issue. Mr. Prince stated currently, the Juday Creek subdivision was on septic and well systems and there was no intent to provide public sewer or water to that subdivision at that point in time. Mr. Prince stated there was a contamination issue associated with the county highway garage and it was located north of Cleveland. Mr. Prince stated his understanding was it was an issue and if they recalled when they discussed the well field, they very specifically looked at the aquifers involved and that was a separate issue and his understanding was the county provided some filtration systems to the homeowners that were significantly impacted by that salt but that was a separate issue. Mr. Prince stated any development would go on sewer and water and in fact, when looking at the conditions, not only did they recommend in those conditions prohibiting any type of fuel facility, they did not want those underground tanks as part of that which was why the convenience store, the filling station, they identified as a prohibited use. Mr. Prince stated also that the extension of sewer and water was one required for the project, whatever developed there, and it would be the developer's responsibility to provide those as a part of that. Mr. Prince stated his understanding from an engineering standpoint was the most practical way to extend the sewer and water was to take from Veterans Parkway that was built from Douglas Road, going north to serve their well field facility and extend it from that location and bring it to the north to Cleveland Road. Mr. Prince stated the most logical connection point was from the south, from Veterans Parkway and it would be the developer's obligation if they could not negotiate the extension of it then the property would not be developed under its proposed annexation request. Mr. Prince stated he was happy to answer any questions.

Anne Siatczynski, 53398 County Murray Drive, spoke in opposition to **PROPOSED ORDINANCE NO. 2022-22**. Mrs. Siatczynski stated they had problems with their wellfield for years because of that salt and they put in various things that were not supposed to be there that were still there. Mrs. Siatczynski stated the traffic was already bad because it was almost impossible to turn left out of the subdivision during certain hours of the day. Mrs. Siatczynski stated there were other places they could put this car dealership, like in the Movies 6 lot which had city water ready so if something did leak, it would not be ruining anybody's well and there was a huge parking lot there already. Mrs. Siatczynski stated there were a lot of local places like along Douglas or the Oral Charter Hospital site along with various other places on Douglas Road. Mrs. Siatczynski stated she moved to that area 32 years ago and part of the reason she moved there was the largely rural environment that would be wrecked if there was a car dealership there. Mrs. Siatczynski concluded stating she thought it would damage their property values.

Tim Buczynski, 14700 County Murray Drive, spoke in opposition to **PROPOSED ORDINANCE NO. 2022-22**. Mr. Buczynski stated he was a member of the HOA board and their board president had a prior commitment that evening and could not attend. Mr. Buczynski stated on August 16th, there was a story run by WSBT about the project and when the story ran, the HOA board started talking and nobody knew about this at the time. Mr. Buczynski stated he contacted two people that were interviewed for the story and asked them for details about if they received notification of the meeting and found out that they were given notice. Mr. Buczynski stated there were 16 homeowners or property owners listed on the document with 10 of them

having the same names as the sellers of the property on the north side of the street. Mr. Buczynski stated then there was a church and really only one unaffiliated homeowner not part of the project. Mr. Buczynski stated the only other people on the list were four homeowners in their neighborhood that evidently did receive notification, however none of the homeowners contacted the board. Mr. Buczynski referred to item one on the proposed ordinance which was existing conditions and it mentioned the heavily traveled Cleveland Road Corridor and at was the main road between people who worked or lived in St. Joe County and Elkhart County and vice versa so it was very traveled and you could not underestimate the amount of traffic they had there. Mr. Buczynski stated it also mentioned the church in that section along with several single-family houses but had no mention of Juday Creek Estates. Mr. Buczynski stated basically the four homeowners were notified but their Homeowners Association was not notified. Mr. Buczynski stated he knew per statute that they had to have property within 300 feet, so technically they could qualify, however being so close, you would've thought they had some type of notification. Mr. Buczynski stated if you walked directly across Cleveland Road from the project starting at the southwestern tip and you took steps across the land one step to the west, you would be standing in the county easement of their HOA that they took care of then you took a few steps and you were in the backyards of the properties. Mr. Buczynski stated also if you went over another property to the west of the four properties, it was right on the boulevard that led to the only entrance to the neighborhood. Mr. Buczynski stated they had 138 homes in their neighborhood and he felt it was only appropriate that they should be included in the notice and in the existing conditions paragraph and in future discussions related to the project. Mr. Buczynski stated homeowners and the board had many issues regarding traffic, especially making the current problem of getting in and out of their neighborhood more difficult. Mr. Buczynski stated there were other issues, however they had not had time to really discuss all of the issues and decide how to proceed. Mr. Buczynski stated they had not had an HOA meeting since August 16th since they found out about it and their next scheduled meeting was September 18th. Mr. Buczynski respectfully requested that the public hearing be continued at a later date and the vote on the 19th be pushed back or some combination there to give the homeowners and the HOA board some more time to evaluate the situation and meet with personnel so that they could have some input on the project especially since they did not know about the project until after the favorable recommendation by the City Planner due to the facts as stated above.

Mr. Hixenbaugh wanted to ask some questions to clarify what his request was. Mr. Hixenbaugh stated he heard him say that his Homeowner's Association wasn't meeting until September 18th and he heard earlier that it was his preference that the developer engage in a public neighborhood meeting that he and his members would be invited to. Mr. Buczynski stated yes. Mr. Hixenbaugh asked if they were able to schedule that and get the notice and have it occur prior to September 19th if he would postpone it or would that alleviate the need to postpone. Mr. Buczynski stated he thought they still needed to recommend the postponement because the board did not have a meeting until the 19th and could not talk about it until then. Mr. Buczynski stated there would not be enough time to get in touch with enough homeowners and see where they stood on the issue. Mr. Hixenbaugh stated he agreed and the HOA meeting was important to him, but he thought the nuts and bolts details of being able to schedule a meeting with as many people involved would make it difficult to kind of jam it in a two week timeframe.

Jenny Martin, 53044 County Kerry Drive, spoke in opposition to **PROPOSED ORDINANCE NO. 2022-22**. Mrs. Martin stated her property was the furthest east of the neighborhood, so it was the edge right off Cleveland and then the farm that bordered their backyard on the east side. Mrs. Martin stated they were directly across from the proposed land and they were against it. Mrs. Martin stated they moved out there 13 years ago from South Bend looking for a quiet place to raise their children and in the 13 years that they had been on the property, there had been two accidents through their yard and countless other rear endings that had not come through their property. Mrs. Martin stated the traffic was an issue and they were raising five children and being able to get out in a timely manner was crucial with the traffic having increased significantly. Mrs. Martin requested that it remain agricultural or residential.

Mr. Banicki asked when she purchased the property if Capital Avenue was already there. Mrs. Martin stated it was. Mr. Banicki stated when Capital Avenue was actually built, one of the biggest draws to it was all of the land along the sides of it and there were visions of big manufacturing there and all of these other things, but they really had not seen that come to fruition. Mr. Banicki stated at some point, this was somebody's property and of course they want to cash out for the best they could, that was the American dream. Mrs. Martin stated absolutely and the farmers were friends of theirs and they cared very much for them and their ability to sell their land and do what they needed to do with it, but she believed having it become a car lot would decrease property values. Mr. Banicki stated sometime car lots can be very nice when they were kept well and the curb appeal was good and it would be much better than some great big car factory, so there were pros and cons with it. Mr. Banicki stated they all wanted green space in their backyard and he used to live in the county and the city of Mishawaka also annexed his property years and years ago so he knew exactly what she was dealing with. Mr. Banicki stated as the city grew, it was going to keep sprawling out and at some point you could not stop progress. Mr. Banicki stated they try to be sympathetic and work with people to make it as easy as possible, but progress was progress. Mr. Banicki stated he appreciated her comments that evening.

Roger Lumm, 53028 St. Matthew Court, spoke in opposition to **PROPOSED ORDINANCE NO. 2022-22**. Mr. Lumm stated he was opposed to this based on traffic and a number of other questions that were proposed to Ken Prince. Mr. Lumm stated the problem a lot of them had was that the Juday Creek Business Park was jammed down their throats and to their knowledge there had been no contract signed for any other development other than the sports facility in that acreage. Mr. Lumm asked why the car lot could not go there and stated it was just sitting there. Mr. Lumm stated he's already proposed his questions to Ken Prince and would go from there.

Tressa Decker, 53095 Juday Creek Boulevard, spoke in opposition to **PROPOSED ORDINANCE NO. 2022-22**. Mrs. Decker stated she was also on the Homeowners Association and the environmental integrity of the area was important as well as making sure that was kept at the forefront, but the environmental integrity was already compromised because of the water issue they had that came from the county building on Cleveland. Mrs. Decker wanted to make sure that adding another complex would not compound the issues they were already dealing with as far as water quality and that was a real concern of theirs. Mrs. Decker stated traffic was also an issue and echoed the big concerns with that. Mrs. Decker stated she was pleased that their questions would be heard, but she wanted to go on record saying they were in opposition of the

annexation and development. Mr. Compton asked if they were looking at the housing development there, would the Homeowners Association be in support of that. Mr. Compton stated it would be adding 50, 60, 70 homes. Mrs. Decker stated they would be more in favor for that than something commercial, but there would be concerns about more people drawing from the aquifer and the corridor was not industrial or commercial at all. Mr. Compton asked if the biggest concern was traffic. Mrs. Decker stated it was one of the biggest concerns. Mr. Compton stated if that was the case, he was not sure anything could be developed there that really would be acceptable. Mrs. Decker stated with Cleveland Road as it was, she did not know how you could add more to it.

Penelope Culbertson, 53106 Juday Creek, spoke in opposition to **PROPOSED ORDINANCE NO. 2022-22**. Mrs. Culbertson stated she echoed what her neighbors had to say but she wanted to also point out the light pollution that would come from the car dealership, especially for the people that lived around the outside. Mrs. Culbertson stated they already had the traffic and the noise that was coming from the freeway and Cleveland, but to have the added light would be a big deal. Mrs. Culbertson asked for to council to keep that into consideration.

Mr. Sharon stated based on what he heard from the neighbors, he had spoken to the petitioner and he agreed that they could table and meet at the next association meeting to address some of their concerns. Mr. Hixenbaugh stated his preference would be for them to postpone it until a date was certain and he suggested their first meeting in October and asked if he believed that would be sufficient time. Mr. Sharon stated he believed so. Mr. Hixenbaugh then entertained a motion to postpone any further public hearing and vote on **PROPOSED ORDINANCE NO. 2022-22** until their regular scheduled council meeting of October 3rd, 2022. The motion was made by Mr. Compton and seconded by Mr. Mammolenti to postpone any further public hearing and the vote on **PROPOSED ORDINANCE NO. 2022-22** until their regular scheduled next council meeting on October 3rd, 2022.

Mr. Mammolenti requested to the Homeowners Association that they notify nearby residents of any dates or public meetings they may hold and also let the Clerk or Council President know so he or she could the council know as well, because he was sure several of them would like to attend.

Ken Prince stated he did not know where they would be on October 3rd if it would be in the current building or the new building so they should confirm the location so everyone knew in the audience. Mr. Hixenbaugh stated for those who were unaware, they were in the process of moving to a new City Hall so there was a chance they may be in another location in downtown Mishawaka when they came back on October 3rd. Mr. Hixenbaugh stated his sense was there would be public events and they would make it publicly known beforehand, but they would ask their partners to get the word out where they would be meeting on Monday October 3rd.

Clerk Block stated they should go ahead and like the City of Mishawaka Facebook page and they would get updates there as well.

A voice vote was held for the prior motion and the motion passed.

PROPOSED ORDINANCE NO. 2022-23

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

Rezone from C-1 to R-1 to rebuild single family residential house – 911 N. Main St.

Mr. Bellovich reported the Committee of Land Use Planning recommended this proposed ordinance should be adopted. This was signed by the entire committee and upon a second by Mr. Banicki, the motion carried.

Pierre Smith, 310 South Kentucky St. South Bend, Indiana, spoke in favor of **PROPOSED ORDINANCE NO. 2022-23**. Mr. Smith stated the property was actually his property and it was zoned commercial so they could not build a residential home. Mr. Smith stated they wanted to tear it down and rebuild a house.

Mr. Hixenbaugh stated he was pleased to make his acquaintance and for no other reason than that was the house his grandmother owned and he grew up there. Mr. Hixenbaugh appreciated what he was doing with the property and thanked him for making the investment and rebuilding. Mr. Hixenbaugh wished him well.

Question was called at 8:19PM for **PROPOSED ORDINANCE NO. 2022-23 Motion carried by unanimous roll call vote (summary: Yes = 8).**

Yes: Mrs. DeMaegd, Mr. Hazen, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mr. Hixenbaugh. The proposed ordinance passed 8-0, thus it became **ORDINANCE NO. 5799.**

PROPOSED ORDINANCE NO. 2022-24

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

Rezone from C-2 Center Commercial & C-7 Auto oriented restaurant to C-4 Auto Oriented Commercial for Drive N’ Shine Car Wash Facility – 3605 Bremen Highway

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

John Piraccini, 633 Windy Cove Court, spoke in favor of **PROPOSED ORDINANCE NO. 2022-23**. Mr. Piraccini stated this was a property that he owned with Dick LaFree and he had passed away recently, so it was in his estate. Mr. Piraccini stated they bought in back in 2006 and he wanted to give the council a little history. Mr. Piraccini stated this area had been a long, slow

development and back in the day, a developer bought a bunch of the land and made an agreement with the city to bring the water and sewer there because they could not get into the Meijer sewer line, since it was a private line. Mr. Piraccini stated the developer did not succeed so all of his investments became troubled where they had to assess each lot and at the time, their assessment was roughly \$65,000 to get sewer hooked up. Mr. Piraccini stated the city had made the commitment to Mayor Wood at the time to the south side being the entrance of the city. Mr. Piraccini stated they had finally gotten the big commitment there and it was taking a little while to get this developed but as they had seen, they went through a long process with Ken and Mayor Wood and worked with the city to get the Meijer Drive extended. Mr. Piraccini stated as they saw that evening on first reading, the next parcel was coming up and he did not have anything specific, but there may be a restaurant or two there. Mr. Piraccini stated they had this parcel on the market for a little bit and purchaser could not make it that evening, but they ultimately looked at their options and decided to build a car wash there. Mr. Piraccini stated he had a lot of investment in the city, paid his people well and believed it would be a great addition. Mr. Piraccini stated the property was rezoned commercial at that point and they were just trying to zone it for the car wash. Mr. Piraccini stated they had gotten a concern about the ditch but it had been addressed for years and it could not get moved or buried. Mr. Piraccini stated they had the easement reduced but the line was going to get moved and they had been working with the county on it. Mr. Piraccini stated he would answer any questions.

Steve Ruby, Abonmarche Consulting, stated he was working with developer. Mr. Ruby stated they were helping develop the Drive N' Shine sight facility and it was very challenging with the drainage easements and different things of that nature. Mr. Ruby stated they were helping smooth that process out and making sure everything came into compliance with the City of Mishawaka standards and regulations and making sure the facility was top-notch as all of the others were currently. Mr. Ruby stated they wanted to develop this in the most economic and beneficial way possible.

Question was called at 8:26PM for **PROPOSED ORDINANCE NO. 2022-24 Motion carried by unanimous roll call vote (summary: Yes = 8).**

Yes: Mrs. DeMaegd, Mr. Hazen, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mr. Hixenbaugh. The proposed ordinance passed 8-0, thus it became **ORDINANCE NO. 5800.**

PROPOSED ORDINANCE NO. 2022-25

AN ORDINANCE TO ESTABLISH THE CEDAR STREET MULTIPLE SITE DISTRICT WITHIN THE CITY OF MISHAWAKA, INDIANA.

Establishing the Cedar Street multiple site a Historic District

Mr. Bellovich reported the Committee of Land Use Planning recommended this proposed ordinance should be adopted. This was signed by the entire committee and upon a second by Mr. Banicki, the motion carried.

Christa Hill, Secretary for the Historic Preservation Commission and Associate Planner, spoke in favor of **PROPOSED ORDINANCE NO. 2022-25**. Mrs. Hill stated there were also multiple members of the Historic Preservation Commission present that evening and worked with each of the homeowners. Mrs. Hill stated the three houses within the district were 315 Cedar owned by Michael and Rosalie Portales and it was a contributing property, 321 Cedar owned by Sarah Joswick was an outstanding property and 403 Cedar owned by Susan Goodaire was recognized as notable in 1995 when the survey was done but was recently reviewed by the Indiana Landmark staff and was elevated to the status of outstanding. Mrs. Hill stated there were tiered guidelines with which the high the rating, the higher the standards and the two outstanding rated homes had more guidelines that restricted their changes. Mrs. Hill stated on October 2nd, 2022, the Historic Preservation Commission voted to recommend to approve Cedar Street as a multisite district. Mrs. Hill stated she would answer any questions.

Mr. Hixenbaugh thanked Mrs. Hill for the information and thanked her for in particular what she provided in terms of historical information as he found that as interesting as anything he had read in a while. Mrs. Hill stated they kind of paired up a commissioner with a homeowner so that they were able to get the necessary information from them. Mr. Hixenbaugh thanked her again.

Mike Portolese, 434 Calhoun, spoke in favor of **PROPOSED ORDINANCE NO. 2022-25**. Mr. Portolese stated he was very honored to have his childhood home considered for the historic district. Mr. Portolese stated his parents bought the house in 1964 and his mother still owned it and he was sure the former neighbors would be honored for this. Mr. Portolese wanted to thank them for their time and wanted to comment that they were very happy to be a part of the district.

Mary Watt, a member of the HPC committee, spoke in favor of **PROPOSED ORDINANCE NO. 2022-25**. Mrs. Watt stated she thought with the city's plans to improve the Cedar Street Bridge which was built in 1904 and helped to create this neighborhood and also the extension of the River walk, which was also in progress, would tie in so nicely with the other preservation efforts that were being taken place in the city. Mrs. Watt stated this would add a lot of ambiance to the neighborhood.

Lou Ann Welsh, member of the HPC committee, spoke in favor of **PROPOSED ORDINANCE NO. 2022-25**. Mrs. Welsh stated as these and other homes in Mishawaka near their century mark, it was very important to preserve the architecture and the outstanding craftsmanship of these older homes. Mrs. Welsh stated recognizing the homes as an historic district helped protect the integrity of their original features as well as encourage pride of the homeowners and encouraged them to take great pride and love their community even more.

Mr. Hixenbaugh added thanks to their colleague Kate Voelker, who was unable to be there that evening due to a scheduling conflict but Kate sat on the Historic Preservation Commission and was sure she played a vital role in this as well, so they appreciated her work along with all of the other members of the HPC in bringing it before the council.

Question was called at 8:33PM for **PROPOSED ORDINANCE NO. 2022-25 Motion carried by unanimous roll call vote (summary: Yes = 8)**.

Yes: Mrs. DeMaegd, Mr. Hazen, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mr. Hixenbaugh. The proposed ordinance passed 8-0, thus it became **ORDINANCE NO. 5801.**

PROPOSED ORDINANCE NO. 2022-26

**AN ORDINANCE AMENDING CHAPTER 10 OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, COMMONLY KNOWN AS THE AMUSEMENTS AND ENTERTAINMENTS ORDINANCE OF THE CITY OF MISHAWAKA, INDIANA.
Amusement and Entertainment Ordinance**

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

Chief Witkowski, Mishawaka Police Department, spoke in favor of **PROPOSED ORDINANCE NO. 2022-26**. Chief Witkowski stated this was something they started months ago and it pretty much stemmed from the Heavenly Goat incident up north a few years back. Chief Witkowski stated they as a police department thought they needed something to help them out in that area when parties were to pop up because they had nothing under books that would control it or address it, so that was their target to do. Chief Witkowski stated they did not create the wheel on this and the city attorney went to several different sites and investigated what other communities were doing to stop these type of incidents and come up with what they felt was a good solution. Chief Witkowski stated he had seen recent comments and push back on things that were listed in there and he wanted to stay up front and was more than willing to look at the concerns and work through those. Chief Witkowski sate he thought they had addressed most of them, but they may not have and there were things that were listed in there, one specifically he noticed when rereading it, was about going to your neighbors and trying to get permission before you had an event. Chief Witkowski stated that was meant to be for an outdoor event only and was not targeted for indoors. Chief Witkowski stated they currently did that for when people had block parties, they had them go to their neighbors and make sure it was okay and they were good with it as far as closing the street. Chief Witkowski stated there was no charge for the form and they would like to see it filled out but they could work with the clubs on especially annual events that they had for years and he would be more than glad to work with them on that. Chief Witkowski stated they were trying to be proactive not reactive to events such as Heavenly Goat, which ended up being a homicide and it was an awful situation with 70 to 80 shots fired and people with apartments across the street right there by Bar Louie were hit. Chief Witkowski stated they were lucky they did not have more damage than they did. Chief Witkowski stated he was there to work with anybody he could to make this work but they had to have something they could use to stop events such as these. Chief Witkowski stated just by smoking mirrors had been able to stop several events in the last couple years that came to their attention and there was one specific event he referred to that happened recently where people would rent venues out and not be honest about what they were planning to do there. Chief Witkowski stated they would then see it on Facebook and a lot of times they would be chasing the time clock and also one of their

clubs was proposed to be a birthday celebration but was advertised as something different and they were able to get it stopped. Chief Witkowski stated it was hard to find out two days before the event and trying to get it stopped, so they're supposed to have a permit in place and this would make it easier for himself and fire to just stop the events before they happened. Chief Witkowski believed they needed something through a city ordinance and things were happening all around the country and they would be foolish to think they would not happen in Mishawaka. Chief Witkowski stated they needed this to strengthen them so they could do a better job.

Mr. Hixenbaugh thanked Chief Witkowski for the work he and Pat Hinkle, the corporation counsel, had done to put this together and bring it to the council and also listening to some of the suggestions and the concerns the council had throughout this. Mr. Hixenbaugh stated it came through loud and clear that he believed this was something that would be a measure to enhance public safety in Mishawaka. Mr. Hixenbaugh stated as he referenced, the unfortunate tragic loss of life at Heavenly Goat, it was the inception for this version of the discussion. Mr. Hixenbaugh stated as they worked through the process, he started to think of this also in terms of events that don't result in that tragic outcome, but still pose a problem to public safety in Mishawaka, events where multiple squad cars had to be called off a beat where they were servicing other issues in the community and respond to a call. Mr. Hixenbaugh asked if he could touch on that and if he was wrong to think that the intent would also be to try to get those events that pose a risk short of resulting in a homicide. Chief Witkowski stated it was exactly that and that just totally took everyone they had working to go to such a magnitude event of that nature to police it, to call in overtime, that was tens of thousands of dollars. Chief Witkowski stated in the meantime, the city was stripped because they had so much going on in one particular area and they had to have something in place to address that proactively before it started, because once it went and if it went wrong they could not control it. Chief Witkowski stated he did not have the manpower to work it and it would be too late at that point after calling in overtime where it would be 30 to 40 minutes before someone could respond. Mr. Hixenbaugh stated his friend a colleague, Mr. Compton, had spoken in the last couple of days on several occasions about this and he made reference to tonight's proceeding being another step in the conversation and the process to try to arrive at an outcome that would address the concerns he expressed and balance the need of business owners and others. Mr. Hixenbaugh asked if he agreed with that and from his comments earlier, he took it as his willingness to listen to concerns that they received via email and other communications, but also it sounded like he was willing to work with them as well as the corporation counsel. Chief Witkowski stated they were not trying to take money out of anyone's pockets and they were not trying to rain on their parade and he knew of numerous events that had gone on for years without issues and they were not trying to stop any of that. Chief Witkowski stated it was the new things that they were looking at as they went through social media and saw questionable events. Mr. Hixenbaugh stated so he was not saying that it had to be exactly this ordinance as it was currently drafted, but he believed that they needed to do something in order to address the underlying concern. Chief Witkowski stated that was accurate and were willing to work with anyone. Chief Witkowski stated he understood there were smaller clubs that had been in business for years and they were just asking to fill out a form. Mr. Hixenbaugh appreciated his assistance that evening and again with the work he had done to get them to that point.

Janet Whitfield-Hyduck. 622 W 8th Street, spoke in favor of **PROPOSED ORDINANCE NO. 2022-06**. Mrs. Whitfield-Hyduck stated she was present that evening as a council member for the

DeAmicis Club and she stated to Chief Witkowski that they really valued their safety, public safety, being good neighbors in their community and overall, understanding the need for the ordinance. Mrs. Whitfield-Hyduck stated her and her colleagues would like to see was maybe meeting to discuss a few of the things they still had questions on regarding how it would affect the club. Mrs. Whitfield-Hyduck stated some of it may be semantics and easy things to fix but when looking at section 4c in the ordinance, they understood that funeral dinners, weddings and wedding receptions would be exempt from the 30 day notice. Mrs. Whitfield-Hyduck stated when looking at this she did not know if it was a comprehensive list or if there would be the ability to broaden it in scope. Mrs. Whitfield-Hyduck stated another question they thought of was throughout the year they had a small business in Michiana and hey hosted something in the upstairs hall, a vendors market so on any given day they may have 15 vendors and they may get 20 people there that Sunday or maybe they would get 60 and it was kind of hard to know. Mrs. Whitfield-Hyduck stated they wanted to know how it would impact those type of hall rentals when it was not the club sponsoring it and an outside vendor coming in, who were very wonderful to work with. Mrs. Whitfield-Hyduck stated those were some of the small things that they wanted to work through and maybe there could be opportunities to meet with the clubs together and have the opportunity to ease their concerns on how it impacted the club. Mrs. Whitfield-Hyduck stated they wanted public safety and wanted their patrons to be safe at the club and not have issues at their club either, even for rental, so she just wanted to share that so a conversation could take place.

Mayor Wood spoke in support of **PROPOSED ORDINANCE NO. 2022-26**. Mayor Wood stated this effort originated, as the Chief said, out of the Heavenly Goat situation that happened as well as some others that they had learned about over time, but by the good work of the Mishawaka Police Department working with some outside agencies the incidents were recognized and may have been lucky a couple of times and they may not be lucky all of the time. Mayor Wood stated they lived in a different world and they see deception out there when it came to renting out some of the places and they were looking to protect business owners and protect service clubs of which he was a member and a good customer of most of them in Mishawaka. Mayor Wood stated when Heavenly Goat happened and a couple of other issues happened, they decided to take a comprehensive look all around at what they could do differently, how they could respond better and one of the things that they promised was not only to look at operations within the police department but also at their ordinance structure. Mayor Wood stated they saw a glaring hole in their ordinance structure for something that gave them a tool that when it came to some of the big events that they may not know about, they would receive a notice so that they could be on alert for it. Mayor Wood stated they had also made changes at the police department and they now had a rapid response unit that they were training up and getting prepared with new equipment to respond. Mayor Wood stated they were always looking to be proactive and this was an effort to be proactive at the Mishawaka Police Department and their number one job was public safety and this was needed. Mayor Wood stated this was always meant to be a conversation starter and they were not there to dictate and they were not interested in this being bad for business but they had to know about some of these things and help and protect to the extent that they could. Mayor Wood stated they were not trying to police every single funeral dinner at the BK, for example, but they wanted to work with the BK and come up with something that protected them and also allowed them to provide public safety to the best extent they could. Mayor Wood stated they would love to have the conversation and make some tweaks

just to get this as right as they possibly could. Mayor Wood stated they thought there was a need for a tool of this nature and for the city of Mishawaka.

Pat Perri, representing the Diloreto Club at 914 Division Street, spoke in favor of **PROPOSED ORDINANCE NO. 2022-26**. Mr. Perri stated he understood why they had to do this and why this was being looked at and like Chief Witkowski said, it was a different era, but he had some bullet points he wanted to cover. Mr. Perri stated he did not understand the clarification for nonprofits and some of it needed to get cleaned up because it was not quite clear in the ordinance. Mr. Perri asked hypothetically how they could enforce an ordinance if the consequence for it was only if something bad happened at a party and if you had a permit, guns go off, people get killed and the police get called, the only consequence would be him getting fined a certain amount of money. Mr. Perri asked if it was really the intent to protect their businesses or to protect the image of the city. Mr. Perri stated Chief Witkowski presented an example that happened at his club and he believed the South Bend Police Department was alerted about a questionable event and he got word of it and shut it down. Mr. Perri stated they had an off duty Mishawaka police officer scheduled to secure the event and they had to provide security for an event that was planned and when the police department found the Facebook page, they thought it was a questionable organization or people and they would not allow that officer to secure the event, so he shut it down. Mr. Perri stated if the city did not want to enforce what they were trying to enforce and he had to go to Uncle Frank's security department, he did not see that the city was really concerned with his business. Mr. Perri stated those were some of the things that still needed to be talked about because he did not get the whole intent of the proposal and he did not know if they had the answers for those things yet, but he was happy to answer questions. Mr. Perri stated he did think it was a good thing, but he also thought it needed to be worked out where it was more proactive than reactive.

Mr. Hixenbaugh stated if he were to have his comments reduced to a list in a format where they could read them, he could leave them with Clerk Block and that would be something that could be shared with all of them and they could integrate it into the process. Mr. Hixenbaugh stated his questions were logical so he did not want to indicate otherwise, but he thought the process would be more beneficial for all of them and rather than trying to answer the concerns on the fly, what was suggested earlier in coming up with a different format where they could work through it in more of a measured fashion, they would be doing themselves a collective disservice if they tried to write it in real time that evening on the floor of the chambers. Mr. Hixenbaugh stated his personal opinion was that they would be better off trying to look at another process for him, the clubs, the for profit, the corporate citizens and give everyone the opportunity to be part of the process as long as everybody went into it with the anticipation that no one would get everything that they wanted, because when you brought so many people together and they try to come up with a piece of legislation by committee there would have to be compromises struck, not that they were struggling to find the perfect balance they were at. Mr. Hixenbaugh appreciated his concerns but that was his preference on how they moved forward. Mr. Perri stated there were a lot of businesses that should be represented that were not present. Mr. Hixenbaugh stated his friend and colleague, Mr. Compton went above and beyond what was expected by making phone calls out to the community and the problem whenever you tried to do that was there was not any readymade list of folks who would potentially be impacted by this that they could reach out to or get in touch with and have them be there. Mr. Hixenbaugh stated he would like to have as many

voices involved in this as possible and he appreciated Mike Compton's efforts in doing that, but they would have to rely on people like Mr. Perri and others to get in contact with those people and invite them to be part of the process. Mr. Perri reiterated that he was not against the process and he just did not fully understand the intent. Mr. Hixenbaugh stated he thought the intent was to enhance public safety and strike the balance between promoting public safety and this serving as an additional impediment to nonprofit or for profit good corporate citizens who were trying to do the things they wanted to do. Mr. Hixenbaugh stated if they were not there yet, they needed to work to get there and Mr. Hixenbaugh stated he always appreciated seeing Mr. Perri and thanked him for his opinions.

Kevin Warren, Attorney at Law with Sopko, Nussbaum, Inabnit and Kaczmarek, spoke before the council. Mr. Warren stated he was representing the Chicory Event Center and stated they recently had the opportunity to look at the ordinance and identified some concerns, but also stated he was glad that there would be collaboration throughout the process and recognized the concerns from both sides. Mr. Warren stated there was some obvious common ground that could be found in terms of putting an ordinance together that helped reflect safety concerns, but also not impacting the businesses too strongly. Mr. Warren stated there stated they were more than willing to do what was necessary to participate in the discussion and believed they could offer some valuable input.

Mr. Compton apologized publicly to the clubs that weren't included in the discussion. Mr. Compton stated he made a list in his head and did not think about it, so he wanted to address that. Mr. Compton stated they caught more this time and made some calls and they were represented at the meeting. Mr. Compton stated they as a council listened to Chief Witkowski, Mayor Wood and the legal staff and this was what they came up with and what he suggested going forward that they delay this that evening and continue the discussion. Mr. Compton stated but he thought that he would like to see Chief Witkowski and their city attorney hold a public meeting where they sat down, because they were the ones who crafted the ordinance for them and propose some ideas. Mr. Compton stated in this instance, the council were the middle people and he preferred to take himself out of the middle but be supportive of what was happening. Mr. Compton stated with that, maybe then they could draft something and he did have a concern when talking about what really started this whole thing off and asked himself if this was in place when it happened, would it be stopped and he did not know. Mr. Compton stated he did not know because that was a private business and they would not even know about the ordinance. Mr. Compton stated he was not sure if it would be completely resolved, so he thought those were questions that others may have had. Mr. Compton stated they certainly made the clubs in their community aware of a situation and he was going to guess if he were in the operation of the clubs and if there were issues, he would be a little more selective on who would rent from him, ask a few more questions and be more adamant about what was going on. Mr. Compton then made a motion to delay this at that point.

The motion was made and seconded to postpone the further public hearing and vote on **PROPOSED ORDINANCE NO. 2022-26** indefinitely. A voice vote was held and the motion passed to postpone it indefinitely, with the anticipation that the administration would work with the council to come up with a process to integrate the comments and concerns that were

previously made into the final product. Mr. Hixenbaugh thanked everyone that evening for their thoughts and comments and communicated with the council.

PRIVILEGE OF THE FLOOR

Bryan Tanner, 525 Calhoun Street, spoke on behalf of a new 501c3 nonprofit Inspire Mishawaka. Mr. Tanner stated it was an organization grown out of an initiative within the Mishawaka Business Association and something that had been in the works for years but really gained traction that past spring. Mr. Tanner stated he wanted to notify everyone of a public town hall style of session that would happen at the Mishawaka Penn-Harris library downtown branch on Thursday September 22nd from 5:30PM-7:30PM. Mr. Tanner stated they also produced a business inventory of what they considered their downtown district as it related to their Main Street's application with Indiana Office Community of Rural Affairs, roughly 135 businesses were invited and it was also open to the public. Mr. Tanner stated he wanted to make everyone aware of it at a public meeting such as the one being held that evening and appreciated the time to speak on behalf of the event. Mr. Tanner stated hopefully they were well attended, because they were looking to the feedback from the community and it gave them the access to funding and grants and resources they otherwise had not been qualified for in the city of Mishawaka.

UNFINISHED BUSINESS

RESOLUTION R2022-17

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA APPROVING A PETITION OF THE MISHAWAKA BOARD OF ZONING APPEALS FOR THE PROPERTY LOCATED AT: 1017 EAST JEFFERSON BOULEVARD, MISHAWAKA, INDIANA.

**Use Variance to allow Food Truck in the parking lot of Pilo's Body Shop – 1017 E.
Jefferson Blvd.**

Mr. Hixenbaugh stated the record would reflect that the petitioner requested postponement that evening. Mr. Compton stated he would honor Mr. Pilo's made a motion they postpone it to the next council meeting. Mr. Banicki seconded the motion and a voice vote held. The motion passed and **RESOLUTION R2022-17** was postponed to September 19th.

NEW BUSINESS

Mrs. DeMaegd announced the West End Neighborhood Watch Group would meet Tuesday September 13th at St. Bavo's School at 7PM and the group would be hosting Mayor Dave Wood, Police Chief Ken Witkowski and Director of Code Enforcement Joe Van Nevel for an open question and answer forum with issues dealing primarily with the West End. Mrs. DeMaegd stated all were welcome.

Mr. Mammolenti referred to a recent post by the Mishawaka FOP Lodge several hours ago and the post hit him with the post saying 15 officers that year alone left the department and they would all be missed greatly and he wanted to thank them all for tremendous service. Mr.

Mammolenti stated he wanted to give a shout out to one officer in particular that he had the opportunity and privilege to work with over the last 10 years pretty closely with his involvement in the Twin Branch Neighborhood Watch, Lieutenant Reppert had been a staple for that watch group along with Mr. and Mrs. Mullins. Mr. Mammolenti stated without those three, they would not be able to sustain the watch group, being one of the largest and strongest in the city. Mr. Mammolenti once again thanked all of the officers who had left them that year but in particular Lieutenant Reppert for all of his years of great help.

ADJOURNMENT 9:10PM

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

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