

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

March 6, 2023

Be it remembered that the Common Council of the City of Mishawaka, Indiana met in the Council Chambers of the New Mishawaka City Hall and via telephone on Monday, March 6, 2023 at 7:00PM. The meeting was called to order by Council President Gregg Hixenbaugh. All were asked to stand for the Pledge of Allegiance.

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.

Clerk Block called the roll.

Roll Call.

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

Others Present: Clerk Block, Mike Trippel, Council Attorney

Minutes for the Regular Meetings of February 20, 2023 were approved as received from the Clerk's Office.

Clerk Block read the following appeals and petition by title.

Appeal No. 2023-04 Use Variance to allow Educational, Social & Faith Support Services in R-2 Residential Zoned Property – 702 E. 12th Street

Appeal No. 2023-06 Use Variance to allow Microblading inside existing salon – 3607 Grape Road

Petition No. 2023-04 PUD Amendment to allow Drive-Thru Restaurant (Scooter's Coffee) – NW corner of 12th Street/Harrison Road & Capital Avenue

Clerk Block also opened the public hearing on **VACATION V2023-01**. Pursuant to Indiana law, they moved into the public hearing on the proposed vacation.

Terry Lang, Wightman Office, spoke in favor of **VACATION V2023-01** and was representing the petitioner. Mr. Lang stated the petition before them was for a small section, triangle shaped part of Taylor Street that was never constructed. Mr. Lang stated a year ago, they had a petition

for annexation for a property located on both sides of Arthur Street and this was at the corner of Arthur and Grape Road. Mr. Lang stated that piece was what they were petitioning to vacate and it would help incorporate the area residential lots on the north side of Arthur Street and that was the reason for the petition.

The public hearing was closed on the proposed right-of-way vacation, subject to further consideration under ordinances on second reading.

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

PROPOSED ORDINANCE NO. 2023-10

**AN ORDINANCE OF THE COMMON COUNCIL OF THE
CITY OF MISHAWAKA, INDIANA AMENDING
TITLE III, CHAPTER 34 OF THE
MISHAWAKA MUNICIPAL CODE
Amending the Municipal Code Personnel Policies – Call to Active Military Duty
(Assigned to Personnel Committee)**

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

PROPOSED ORDINANCE NO. 2023-06

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

**Rezoning from I-2 Heavy Industrial & R-1 Single Family Residential to C-4 Automobile
Oriented Commercial for Auto Sale & Associated Vehicle Prep – Vacant Land SE corner
of N. Merrifield Ave. & Jefferson Blvd.**

Mr. Bellovich reported the Committee of Land Use Planning recommended this proposed ordinance should be adopted. Upon a second by Mr. Banicki, the motion carried. Clerk Block polled the council on the committee report.

The vote took place at 7:06PM. **Motion carried by unanimous roll call vote (summary: Yes = 6).**

Yes: Mr. Hazen, Mr. Bellovich, Mr. Banicki, Mrs. DeMaegd, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The committee report passed 7-0.

Terry Lang, Wightman Office, spoke in favor of **PROPOSED ORDINANCE NO. 2023-06** and represented the petitioner. Mr. Lang stated years ago, there was a building on the property that sold miscellaneous items there and stored them there years ago that was torn down and had been vacant for quite some time. Mr. Lang stated the petition before them was to rezone all of it to an

automobile business and associated type of uses that went along with it. Mr. Lang stated the owner of the property had the property located immediately to the north of it at the northeast corner and looked to get additional display area for vehicles and put up a future new building on the site also. Mr. Lang stated it was an expansion of an existing business in that area and it all was automobile associated along that stretch from Cedar at Jordan to this operation. Mr. Lang stated they were asking for nothing more than what was already in the neighborhood there.

Mr. Compton asked the auto shop and sales to the north owned the property as well and wanted to expand their business across the street. Mr. Lang stated that was correct.

Mrs. Voelker asked if there would be anything beyond auto sales going on there. Mr. Lang stated the use of the property would be for basically detailing vehicles they had on site and then putting them for sale which was exactly what they were doing on the property to the north. Mr. Lang stated they had expanded as much as they could and when this property became available, it was a perfect fit to stay right in the area and continue their operation there. Mrs. Voelker asked if they were talking strictly auto sales and not a body shop or repair shop. Mr. Lang stated it was going to be minor type of repair things and when they took vehicles in and detail them, minor repairs were made when necessary but they were not talking complete body repairs. Mr. Lang stated it would be minor items that would be necessary for detailing the vehicles to make them for sale.

Mr. Banicki stated to the north, they did complete auto repair for the general public pushing that type of work all over television and social media. Mr. Banicki stated if they would be doing the same type of work on the south side as they did on the north side, then they would in fact be doing complete auto repair. Mr. Lang stated they did tune ups, auto things in the light that would be necessary. Mr. Lang stated they bought and sold vehicles all of the time and when he was visiting with them, he saw vehicles coming in, getting detailed and put up for display. Mr. Lang stated it was a combination of all of the items and that was why they were asking for the auto associated uses. Mr. Banicki stated most car lots, when they bought a car that had dings and dents and things like that, they were in fact doing body type of repairs and so that could actually happen on that property as well. Mr. Lang stated as minor details, yes. Mr. Banicki stated it was not detailing. Mr. Lang stated he looked at it as detailing but he did not what it was called and was not in the auto business, but he got dings on his car before and took his other car down to the body shop and minor detailing is what he called it. Mr. Banicki stated detailing would be cleaning carpets, windows, and freshening up the inside, but when you had to grind on paint and stuff like that, that would be a little more in depth than just detailing. Mr. Lang stated he considered that detailing and would be no different than the operation at the Jordan lot where he bought his vehicle and they also brought vehicles in, traded them, detailed them, fixed dings and dents if there were any and put them up for sale. Mr. Banicki stated he believed Jordan had their own body shop on site. Mr. Lang stated they had another one for the new car stuff to the north but they also had their stuff that they did in the body building there in the southeast corner. Mr. Banicki asked if they would have oil separators and things like that. Mr. Lang stated they would be required for that and that was mandatory from the city engineering offices. Mr. Banicki stated just to the south of that were some of the nicer homes that they had been building up and that

was why they cleaned that corner to freshen it up and make it look nice. Mr. Lang stated he was preaching to the choir because that was one of the projects he did about 20 years ago so he was very familiar with it. Mr. Banicki asked if any of the close proximity neighbors had been warned that this was a possibility of coming. Mr. Lang stated this was the first hearing right here for the rezoning portion. Mr. Banicki how big the lot they were proposing was. Mr. Lang stated the property was 150 foot deep and 600 some feet long and it was the north half of the lot and it went from Merrifield down to the Reggio parking lot.

Mr. Hazen asked if the parking lot was considered industrial he believed he put in there especially with the building. Mr. Lang stated the building that was there was zoned industrial and one of the lots at the far east end of this petition was zoned residential and there must have been a home there, but he did not remember homes being between that plotted building and Reggio's but there must have been one in that lot in the past. Mr. Hazen stated the east boundary was described as I-2 heavy industrial, former Reggio's restaurant. Mr. Lang stated there was a parking lot on the west side of Reggio's and the west line of the parking lot was their east line for the project.

Mr. Hixenbaugh stated he was inclined to support this and thought it was great that business was booming, he wanted to expand and make use of that corner but he worried a little bit about the owner, particularly with the four way stop there, and his personnel encouraging people to not cross at the corner but cross at the middle of Jefferson and he envisioned some problems coming of that, but that would not be a council issue that would be a Police Department issue and other departments of the city's issue. Mr. Lang stated he would inform him that he should stress to his employees and potential clients to cross at the corner. Mr. Hixenbaugh stated he knew for sure people did not necessarily cross at the corner because he had been one of those people to not cross at the corner in the past, but it was just different with the proximity there.

Mr. Hazen asked a question to Mr. Prince directly that if he remembered from the past correctly that there was a large sewer line under the concrete on this property and there was concern about some development over that line and asked if that still existed or got taken out. Ken Prince, Director of Planning and Community Development, stated he was not aware of the sewer issue but he could look quickly look at the engineering comments if there was. Mr. Prince stated it would be unusual that a sewer would be traversing a property that small and if it did it would probably go north south and then parking could go over that easement and it would just be restricting of not putting a building over it.

Question was called for at 7:19PM for **PROPOSED ORDINANCE NO. 2023-06 Motion carried by unanimous roll call vote (summary: Yes = 8).**

Yes: Mr. Hazen, Mr. Bellovich, Mr. Banicki, Mrs. DeMaegd, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The proposed ordinance passed 7-0, thus it became **ORDINANCE NO. 5831.**

PROPOSED ORDINANCE NO. 2023-07

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

Right-of-Way Vacation for unimproved Taylor St. at NW corner of Arthur & Grape Rd. – E. of 410 Arthur St.

Mr. Bellovich reported the Committee of Land Use Planning recommended this proposed ordinance should be adopted. Upon a second by Mr. Banicki, the motion carried. Clerk Block polled the council on the committee report.

The vote took place at 7:20PM. **Motion carried by unanimous roll call vote (summary: Yes = 6).**

Yes: Mr. Hazen, Mr. Bellovich, Mr. Banicki, Mrs. DeMaegd, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The committee report passed 7-0.

Terry Lang, Wightman Office, spoke in favor of PROPOSED ORDINANCE NO. 2023-07. Mr. Lang stated he had nothing additional to add, with regard to what was said on the matter near the beginning of the meeting but he did remember when Mr. Hazen was asking about the storm sewer that that was located on Merrifield Avenue father to the south of Stanley Street.

Question was called for at 7:22PM for **PROPOSED ORDINANCE NO. 2023-06 Motion carried by unanimous roll call vote (summary: Yes = 8).**

Yes: Mr. Hazen, Mr. Bellovich, Mr. Banicki, Mrs. DeMaegd, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The proposed ordinance passed 7-0, thus it became **ORDINANCE NO. 5832.**

PROPOSED ORDINANCE NO. 2023-08

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

PUD Amendment to expand area of previously approved permitted use for a Regional Recreational Facility – Part of Lots 2 & 4 of Juday Creek Business Park Sub

Mr. Bellovich reported the Committee of Land Use Planning recommended this proposed ordinance should be adopted. Upon a second by Mr. Banicki, the motion carried. Clerk Block polled the council on the committee report.

The vote took place at 7:23PM. **Motion carried by unanimous roll call vote (summary: Yes = 6).**

Yes: Mr. Hazen, Mr. Bellovich, Mr. Banicki, Mrs. DeMaegd, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The committee report passed 7-0.

Ken Prince, Director of Planning and Community Development, spoke in favor of **PROPOSED ORDINANCE NO. 2023-08**. Mr. Prince stated this was for the Mishawaka Fieldhouse project and the project was getting ready to have their final site plan approved and there were a number of incidental changes that needed to be amended to have that clean transition from what was envisioned. Mr. Prince stated he said that because when they originally acquired the project, there were three holes they were looking to reconfigure at the Juday Creek Golf Course and they added property to that so where they originally changed the zoning, the property back toward the golf course all fell under that regional recreation facility so the front portion adjacent to Veterans Parkway was needed to be added into that overall parcel. Mr. Prince stated the parcel he was talking about was now a little over 49 acres for the property and he went over the amendments that were being requested. Mr. Prince stated the first was regarding the use and they wanted to limit the use of the property only to the regional recreation facility. Mr. Prince stated the property in the front would have allowed multiple uses to occur on it and they essentially did not want the developer, without permission, to be able to divide the property and do out lots in front of it. Mr. Prince stated this was strictly meant for the development of the regional recreation facility and that was one of the protections they had as part of the development agreement and one of the commitments they made to the previous landowner that they would restrict them because they were looking for those spinoff uses to occur on the adjacent property and not on the property it was intended for, being the regional recreation facility. Mr. Prince stated the regional recreation was planned to be expanded in phases. Mr. Prince stated another amendment was the signage and they did not have the scale right for the banners so they would add banners that were permitted and in terms of the architecture, they added insulated metal panels and on a building this size, this was just an oversight on the original PUD and there was no way to build a building of this size without using a significant amount of insulated metal panels, at least not in a cost effective manner. Mr. Prince stated regarding the landscaping, one of the concerns they were hearing from the neighbors on multiple occasions was the potential impact of visibility and they thought it would make sense to have 20 foot of the required landscape buffer to provide a natural buffer between the golf course and then ultimately the views of the neighborhood subdivision by providing that no mow area. Mr. Prince stated this also, in his opinion, helped protect the drainage areas that were immediately adjacent to property providing more of a filter area for any drainage going through there. Mr. Prince noted that there may be an additional amendment that would be coming at a later date even though it was not before them that evening and they asked specifically for the developer, Card Associates Architecture, to review anything that needed to be cleared up as part of this and two of the elements that were missing with one being the building height with the limitation being 60 feet and they thought they would be at 65 feet for the overall height and they would probably ask for 70 feet in case there was an incidental change. Mr. Prince stated the other amendment would be parking and so they were proposing 720 spaces and based on the square footage on the size of the building, they would need well over 800 parking spaces to meet the ordinance requirement and they did not want them to build more parking that wasn't necessary to serve the facility so that may also come before the council. Mr. Prince was happy to answer any questions.

Mr. Hixenbaugh asked Mr. Prince if there were any other updates that he could share with them regarding the construction timeline and where they currently were with that. Mr. Prince stated they would be breaking ground in the next few months, barring the weather and they were looking to be operating between the summer and fall of 2024. Mr. Prince stated the building was huge and would go up relatively quickly.

Question was called for at 7:30PM for **PROPOSED ORDINANCE NO. 2023-08** Motion carried by unanimous roll call vote (summary: Yes = 8).

Yes: Mr. Hazen, Mr. Bellovich, Mr. Banicki, Mrs. DeMaegd, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The proposed ordinance passed 7-0, thus it became **ORDINANCE NO. 5833.**

PROPOSED ORDINANCE NO. 2023-09

AN ORDINANCE AMENDING CHAPTER 34 OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, COMMONLY KNOWN AS “THE FIRE PREVENTION AND PROTECTION ORDINANCE” OF THE CITY OF MISHAWAKA, INDIANA.

Amending Fire Prevention & Protection Ordinance

Mr. Compton reported the Committee of Public Health & Safety recommended this proposed ordinance should be adopted. This was signed by the entire committee and upon a second by Mr. Banicki, the motion carried. Clerk Block polled the council on the committee report.

The vote took place at 7:31PM. **Motion carried by unanimous roll call vote (summary: Yes = 6).**

Yes: Mr. Hazen, Mr. Bellovich, Mr. Banicki, Mrs. DeMaegd, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The committee report passed 7-0.

Chief Bryon Woodward, Fire Chief Mishawaka Fire Department, spoke in favor of **PROPOSED ORDINANCE NO. 2023-09**. Chief Woodward stated they were certainly in favor of this ordinance and changing the Municipal Code and adding a third party service would allow them to better help their businesses, stay protected and help them to inspect the businesses. Chief Woodward stated they understood that with their further discussions previously, there soon could be some potential downstream costs that would be passed on local vendors and business owners. Chief Woodward stated one thing they discussed about, with there being some accountability to it, was that there would be audits done every year with whatever company they decided to go with and they wanted to be transparent about everything they did. Chief Woodward stated that way they would have the ability to hold whatever company they chose accountable and if they felt they were going the wrong way, they would not have to keep them along. Chief Woodward stated with the amount of businesses they had, the amount of systems they had and the lack of reporting they received, it made the job difficult and this would a lot of staff without adding any personnel. Chief Woodward thanked the council.

Mr. Hazen asked that in 6 months to a year he come back before the council and give them an update for this.

Mr. Hixenbaugh thanked Chief Woodward on the work he had done on this as well as Chief Dempler and Corporation Counsel Pat Hinkle and this was a really long and involved process and he knew he had been working on it for a long time, so they appreciated that. Mr. Hixenbaugh thanked him for that commitment to continue to look at it and have dialogue with the council as well. Mr. Hixenbaugh asked Chief Woodward to expand a little bit more on how this was not just good for businesses but really helped the efficiency for fire marshals and Chief Dempler and his group to really get their arms better around this responsibility that they had. Chief Woodward stated one thing they talked about was that businesses were supposed to supply them with their reports after they went through their inspections, which did not happen very often so at least now they would have them when they would have to have them when they walked in the door and a majority of the time that would not get produced right away. Chief Woodward stated using the UP Mall for example, there were many shops there and when you went in there an inspection would normally take 20 to 30 minutes, then you would wait an extra 45 minutes to an hour for a 17, 18, 19 year old employee trying to find a manager, having them then contacting corporate offices to have it fax or emailed down and if that were to happen at every shop there, that would take far too long. Chief Woodward stated they did what they could to now to make them mobile with their tablets to do all of the reporting and deals and now they were privy to the information before going into the store and now the inspections would be quicker. Chief Woodward stated this gave them the ability to get through the mall in a day or two days as opposed to weeks. Chief Woodward stated the other part, as Mr. Banicki said, was that it would also be better for the business owner because it took the responsibility off of them. Chief Woodward stated they had to have that inspection by the third party ever year anyway and once the third party uploaded it to the service they chose, they had access to it, the business owner no longer had to worry about it and they would not have to freak people out when going in and asking for it. Chief Woodward stated in general, this would bring a better product for everybody.

Mrs. DeMaegd stated she looked forward to seeing Chief Woodward back in the future to tell them what a great thing this was. Chief Woodward stated it would take them a couple years to get where they needed to be but he imagined in 6 months they would start to see some improvement even though it would be a slow process. Chief Woodward stated they were not planning on going anywhere any time soon, so they had time and they would make it work.

Mrs. Voelker thanked Chief Woodward for embracing technology and looking for a way to make the work of the police department more efficient and better for the community and she looked forward to seeing the results and believed that it would be great. Chief Woodward thanked Mrs. Voelker and stated this had been a lot of work, 2 years in the making, and it had been done by himself as well as Captain Dempler and Mr. Hinkle and they put in all the time and effort into it and he just said yes and never no to a good idea. Chief Woodward stated all the credit had to go to them and they were putting all of the effort and work in.

Question was called for at 7:38PM for **PROPOSED ORDINANCE NO. 2023-09** Motion carried by unanimous roll call vote (summary: Yes = 8).

Yes: Mr. Hazen, Mr. Bellovich, Mr. Banicki, Mrs. DeMaegd, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The proposed ordinance passed 7-0, thus it became **ORDINANCE NO. 5834.**

ADJOURNMENT 7:39PM

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

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