

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

August 07, 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, August 07, 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 (P), Mr. Banicki (P), Mr. Emmons (P), Mrs. DeMaegd (P), Mr. Compton (P), Mrs. Voelker (P), Mr. Hixenbaugh (P)
P: Present E: Electronically Participating A: Absent

Others Present: Clerk Block, Mike Trippel, Council Attorney.

Minutes for the Regular Meeting on July 17, 2023 were approved as received from the Clerk's Office.

Clerk Block read the following petitions to the council who referred them to the City Plan Commission for their recommendation.

Petition No. 2023-18	Right-of-Way Vacation of unimproved alley – North-South alley bound by W. Front Street, N. Spring Street, W. 1st Street, and N. Mill Street
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Petition No. 2023-19	PUD Amendment to allow Microblading in Unit 14 – 6910 N. Main Street
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Clerk Block opened the public hearing on Proposed Vacation 2023-02 required by State Statute on behalf of Todd Lang & Nathan Sherman, Gary & Linda King, and Rachelle Morris petition for vacation of the public right-of-way for the first east/west alley north of East Marion Street.

Gary King, 7230 East Marion Street, spoke in favor of **Proposed Vacation No. 2023-02**. Mr. King stated they were at the meeting about two to three weeks ago when the Plan Commission

approved their request to vacate the alley and just for general reference, the alley had not been used for anything. Mr. King respectfully requested that the vacation of the alley be approved. Todd Lang also spoke in favor of **Proposed Vacation No. 2023-02**. Mr. Lang stated they were there a couple of weeks ago and they felt this would be beneficial to them and beneficial to the city to not have to worry about that piece of property.

Public Hearing for Proposed Vacation closed at 7:08 p.m. and Mr. Hixenbaugh stated pursuant to state law later in that evening's proceedings, they would conduct second reading and public hearing of the ordinance dealing with the proposed vacation.

Clerk Block opened the public hearing on Proposed Vacation 2023-03 required by State Statute on behalf of the City of Mishawaka have filed a petition for vacation of the public right-of-way, part of Front Street (not improved as a street) between the east side of Church Street / Main Street.

Ken Prince, Director of Planning and Community Development, spoke in favor of **Proposed Vacation 2023-03**. Mr. Prince stated the area requested for vacation was the area in front of the former Police Station. Mr. Prince stated over the years, the area had been reconfigured several times, once by the state when they configured when the state highway went through, then when Main Street was connected to Church Street and Front Street was connected in residual pieces. Mr. Prince stated now the city had conveyed the property to Cressy and Everett Commercial. Mr. Prince stated there were several plats there and in the downtown where the city wanted to clean up loose ends. Mr. Prince continued to say this was one of the loose ends to clean up by vacating the right-of-way. Mr. Prince mentioned the city was retaining the right of access to the property, so that the property had access to the traffic signal. Mr. Prince continued to state the city would also retain easements for the sewer that traveled through the property. Mr. Prince stated in addition to platting the property, they would also have right-of-way dedicated for the existing riverwalk connection by the raceway. Mr. Prince stated this was all part of the purchase agreement that was executed when the property transferred. Mr. Prince reiterated the vacation was for cleanup up for the front portion of the property.

Public Hearing Closed at 7:11 p.m.

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

PROPOSED ORDINANCE NO. 2023-35

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, ESTABLISHING A DESIGNATED OUTDOOR REFRESHMENT AREA Establishing a Designated Outdoor Refreshment Area - DORA (Assigned to Public Health & Safety Committee)

Mr. Hixenbaugh stated for the record that given the significance of the matter, the public should anticipate that the Public Health & Safety Committee would be holding a special committee

meeting in the near future in order to receive presentation from the administration with regard to this proposed ordinance and also to provide the council with the opportunity to ask further questions. Mr. Hixenbaugh stated furthermore, in light of some preexisting travel plans on multiple plans of the council, the public should not anticipate that they would be voting on the matter on August 21st but rather it would be rescheduled for public hearing and final action at a later date in September.

PROPOSED ORDINANCE NO. 2023-36

AN ORDINANCE AMENDING CHAPTER 50, OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, COMMONLY KNOWN AS "PARKS AND RECREATION ORDINANCE" OF THE CITY OF MISHAWAKA, INDIANA.

Amending the Municipal Code Park and Recreation - DORA (Assigned to Public Health & Safety Committee)

Mr. Hixenbaugh stated again for the record that since this proposed ordinance operated in conjunction with the previously referred to ordinance, this would also be part of the work of the Public Health & Safety Committee, in terms of additional public hearings and the public should also anticipate that this would not be heard on August 21st but would be heard on the same evening that they heard the DORA ordinance.

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

RESOLUTION R2023-19

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF SOUTH BEND, INDIANA, THE CITY OF MISHAWAKA, INDIANA AND THE BOARD OF COMMISSIONERS OF ST. JOSEPH COUNTY, INDIANA, FOR THE MUTUAL INVESTIGATION OF OFFICER-INVOLVED SHOOTINGS IN ST. JOSEPH COUNTY

Interlocal Agreement between the City of South Bend and City of Mishawaka and Board of Commissioners for Mutual Investigation of Officer involved shooting in St. Joseph County

Ken Witkowski, Police Chief of the Mishawaka Police Department, spoke in favor of **RESOLUTION R2023-19**. Chief Witkowski stated this was a practice they had been doing since the homicide unit dispersed back two to three years ago so if they had an officer involved in a shooting or anything that resulted in death, they had the other agencies do the investigation. Chief Witkowski stated this outlined all of that and was what they had been doing before and this just finalized the practice of the past. Chief Witkowski stated, for example, say they had an officer-involved shooting, they would not investigate their own and they would bring in investigators from the county and South Bend to do the investigation. Chief Witkowski stated he would answer any further questions.

Mr. Hixenbaugh thanked Chief Witkowski for the information.

Question was called for at 7:15PM for **RESOLUTION R2023-19. Motion carried by unanimous roll call vote (summary: Yes = 9).**

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

RESOLUTION R2023-20

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, AUTHORIZING THE CITY OF MISHAWAKA REDEVELOPMENT COMMISSION TO PURCHASE PROPERTY IN ACCORDANCE WITH THE CITY OF MISHAWAKA MUNICIPAL CODE CHAPTER 2, ARTICLE 5, DIVISION 3, SEC. 2-492 & 493 Authorizing Property Disposal and Purchase Agreement – Temple Park

Ken Prince, Director of Planning and Community Development, spoke in favor of **RESOLUTION R2023-20**. Mr. Prince stated with the resolution they had before them, there was a picture on the last page he wanted displayed. Mr. Prince stated Temple Park was broken into three different parcels. Mr. Prince stated the blue area highlighted was one of the three parcels and going back 50+ years, the city had leased the property to the church and they had conducted park operations on it. Mr. Prince stated the blue area was the part they did not own, but the actual lease area was the middle parcel and the lease originally was not correct which was what they were trying to fix. Mr. Prince stated as part of their purchase of Temple Park, they were researching the issue and came to a verbal agreement with Twin City Baptist Church regarding how to proceed and even though Twin City did not have plans for expansion in that area, they did not want to make parking improvements with the understanding that they were going to be there for the life of the improvements. Mr. Prince stated essentially, they identified a desire to purchase the area outlined in blue and at that point, Twin City Baptist Church indicated that they did not have any immediate need for it, but they would like potential room for future expansion and at the same time the green area, the area purchased by Redevelopment, was demolished and dilapidated the home on the property so it was currently vacant and it was planned to be used for the first time homebuyer program at some point in time. Mr. Prince stated they requested that rather than to straight purchase the blue property that the church would acquire the green property and in addition to that, there was a jog in the property line that ran east and west which was denoted in red so they had to basically have someone go out and stake that property line so they could have a straight fence running east and west to make separation between the park and church property. Mr. Prince stated what they did was they had two appraisals done of the area in blue, deducted at the same square foot price the area in green and at that point in time, they were merely asking the Council's permission to sell the property outlined in red. Mr. Prince stated it had taken years to get to this point and the ultimate transfer of funds was about \$30,000 for the purchase of property. Mr. Prince stated it was more meaningful in terms of cleaning it up from a title standpoint for the perpetuity of the park than it was a significant financial commitment. Mr. Prince stated he would answer any questions.

Question was called for at 7:21PM for **RESOLUTION R2023-20**. Motion carried by unanimous roll call vote (summary: Yes = 9).

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

RESOLUTION R2023-21

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, ADDING PARCELS TO THE CITY'S PROPERTY ACQUISITION LIST ASSOCIATED WITH A PREVIOUSLY APPROVED COMMON COUNCIL RESOLUTION 2014-07 WHICH APPROVED AN ORDER OF THE CITY OF MISHAWAKA PLAN COMMISSION APPROVING A CERTAIN DECLARATORY RESOLUTION, AN AMENDMENT TO THE BOUNDARIES OF THE NORTHWEST AREA IMPROVEMENT PROJECT, CONSOLIDATION OF THE SOUTHSIDE ECONOMIC DEVELOPMENT AREA AND THE NORTHWEST IMPROVEMENT PROJECT INTO ONE CONSOLIDATED AREA IMPROVEMENT PROJECT, AND AN AMENDMENT TO THE ECONOMIC DEVELOPMENT PLAN FOR THE CONSOLIDATED AREA IMPROVEMENT PROJECT ADOPTED BY THE CITY OF MISHAWAKA REDEVELOPMENT COMMISSION
Adding Miscellaneous Property to the City's Acquisitions List

Ken Prince, Director of Planning and Community Development, spoke in favor of **RESOLUTION R2023-21**. Mr. Prince stated as part of any TIF District when looking to acquire property, you had an improvement plan where you had to identify the properties you were acquiring. Mr. Prince stated in 2014 when they did a wholesale amendment of the TIF District that included many road corridors and many redevelopment properties, they thought it would be more truthful to come to the council on an individual basis rather than to try to add hundreds of properties to the Acquisition List at that point in time with no discussion and did not want to hold up the process. Mr. Prince stated the property they were looking at was at 512 N Cedar Street on Cedar and the areas they were looking to add to the Acquisitions List included seven properties, with willing buyers and sellers that were all adjacent to the 512 N Cedar Street property. Mr. Prince stated made it known they did have an interest and mentioned that cleanup costs were contingent on having a plan for redevelopment and ultimately the acquisitions were aid their planning for redevelopment and they also had other cash and funding priorities for the city, so this was the push down the road so to speak. Mr. Prince stated ultimately, he would see cleanup on the properties being a year or two away, regardless if the acquisitions moved forward or not. Mr. Prince stated they needed a developer to come forward with a plan for the property they found appropriate and they found a little bit of interest in it, but again since they did not have the priority with their finances to move forward, they held off on any serious discussions until such a time where they had the funds available. Mr. Prince stated he was happy to answer any questions.

Mrs. Voelker asked about the two properties not included in this, the green house and the blue house that were adjacent to the building that had just gotten torn down on the corner of Cedar and Mishawaka Avenue and asked if those homes were targets for the redevelopment. Mr. Prince

stated they may consider them at some point but they were not identifying them as being included in the request of adding the properties to the acquisition list. Mr. Prince stated the corner property was challenging, because it was owned by Lamar for the billboard. Mr. Prince stated they would love to see the entire corner change and improve, but they were not ready to consider anything there. Mrs. Voelker asked if they were ready to consider the northwest corner of Mishawaka Avenue and Cedar and it seemed like a really challenging property to be utilized as residential currently and was undesirable. Mr. Prince did not specify whether it was in consideration. Mrs. Voelker asked if they were thinking next year was when they would begin the work. Mr. Prince stated that would be the soonest. Mr. Prince stated as the properties would be redeveloped, the remaining foundations that were in place were actually being removed as part of the development and that was really what had to happen. Mr. Prince stated you wanted to also make the properties clean and acceptable for the repurposing, in this case for residential use, and they could spend millions and millions to cleanup everything or strategically clean it up for a lower cost if they had a development plan associated with it.

Mr. Hixenbaugh stated going back to his discussion of eminent domain and the fact that the action being purposed that evening did not exercise the power of eminent domain that governmental entities had. Mr. Hixenbaugh thanked Mr. Prince for clearly identifying and labeling various parcels on the map and asked with regard to the parcels that were identified for acquisition that did not have signed purchase agreements in place, if it was a fair summary to say that they had committed to purchase them as they would become available and as the timing and finances allowed for, but no deal had been consummated at that point. Mr. Prince stated that was correct. Mr. Hixenbaugh asked if an owner of one of the parcels did not have a current purchase agreement in place and chose to sell it to someone, they would not be prohibited from doing so and the property would stay on the list regardless but they had the ability to sell and otherwise use the property as any of them would use if they owned it. Mr. Prince stated that was correct.

Question was called for at 7:32PM for **RESOLUTION R2023-21. Motion carried by unanimous roll call vote (summary: Yes = 9).**

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

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

PROPOSED ORDINANCE NO. 2023-25

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 S-1 Extensive Open Space to C-3 City Center Commercial – Northeast corner of Cedar & E. Third St.

(Petitioner requesting postponement)

Mr. Compton made a motion to honor the petitioner’s request. With a second from Mr. Banicki, a voice vote was held. The motion passed unanimously and **PROPOSED ORDINANCE NO.**

2023-25 was postponed for further action until August 21st as part of the regularly scheduled council meeting.

PROPOSED ORDINANCE NO. 2023-31

AN ORDINANCE TO ESTABLISH 1202 EAST MISHAWAKA AVENUE AS A LOCAL HISTORIC LANDMARK WITHIN THE CITY OF MISHAWAKA, INDIANA.

**Establishing 1202 E. Mishawaka Ave. a Historic Landmark
(Petitioner requesting postponement)**

Mrs. Voelker made a motion to honor the petitioner's request. With a second from Mr. Banicki, a voice vote was held. The motion passed unanimously and **PROPOSED ORDINANCE NO. 2023-31** was postponed for further action until August 21st as part of the regularly scheduled council meeting.

PROPOSED ORDINANCE NO. 2023-32

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 first East/West Alley N. of E. Marion St., starting at Christyann St. Then to the west 110' for the first North/south alley

Mr. Emmons reported the Committee of Land Use Planning recommended this proposed ordinance should be adopted. Upon a second by Mr. Banicki, the motion carried.

Mr. Hixenbaugh stated for the record, they would incorporate by reference the comments made by the two residents earlier in the public hearing held on the matter.

Question was called for at 7:37PM for **PROPOSED ORDINANCE NO. 2023-32. Motion carried by unanimous roll call vote (summary: Yes = 9).**

Yes: Mr. Hazen, Mr. Bellovich, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mrs. DeMaegd, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The proposed ordinance passed 9-0, thus it became **ORDINANCE NO. 5853.**

PROPOSED ORDINANCE NO. 2023-33

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 part of Front St. (Not improved) between the East Side of Church/Main St. connector and the St. Joseph River Raceway

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.

Ken Prince, Director of Planning and Community Development, spoke in favor of **PROPOSED ORDINANCE NO. 2023-33**. Mr. Prince asked that his previous comments be reflected in the public hearing.

Question was called for at 7:39PM for **PROPOSED ORDINANCE NO. 2023-33. Motion carried by unanimous roll call vote (summary: Yes = 9).**

Yes: Mr. Hazen, Mr. Bellovich, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mrs. DeMaegd, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The proposed ordinance passed 9-0, thus it became **ORDINANCE NO. 5854**.

PROPOSED ORDINANCE NO. 2023-34

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 General Commercial to C-6 Linear Office Commercial to permit a Residential Unit – 1644 Lincolnway East

Mr. Mammolenti reported the Committee of Land Use Planning recommended this proposed ordinance should be adopted. Upon a second by Mr. Banicki, the motion carried.

Cecilia Brown, 56827 Sundown Road South Bend, spoke in favor of **PROPOSED ORDINANCE NO. 2023-34**. Mrs. Brown stated she did not have much to add, as she was at the last meeting but she wanted to purchase it to transition it.

Mr. Compton stated as he understood it, she was looking to purchase the property and she was wanting to use it for commercial use and to also have an apartment in it and asked if that was correct. Mrs. Brown stated yes. Mr. Compton asked how big the apartment would be. Mrs. Brown stated it would be a single use, private unit for family of hers. Mrs. Brown stated it would be a one bedroom, one kitchen and living room single resident unit. Mr. Compton asked if there were off street parking there. Mrs. Brown stated there was not off street parking and it was on the lot, so there were 7 spots available for the business and there would be 2 spots transitioned for the resident and a guest.

Mrs. Voelker asked if she was moving her business from somewhere else or starting her business there. Mrs. Brown stated they split their time between Arizona and Indiana, so they felt it would be a good time to open a second location in Indiana. Mrs. Brown stated they would maintain their business in Arizona, but it was pretty self-sufficient as they had great staff there and this would be the second location. Mrs. Voelker asked what kind of services the business provided.

Mrs. Brown stated they offered body contouring, laser fat reduction, hair reduction, HydraFacial, Geneo, spray tan and just about anything they could think of but they were always changing their menu and adding new services. Mrs. Voelker asked if she was from Mishawaka. Mrs. Brown stated she was from South Bend. Mrs. Voelker welcomed her to Mishawaka and wished her luck in her business.

Question was called for at 7:44PM for **PROPOSED ORDINANCE NO. 2023-34. Motion carried by unanimous roll call vote (summary: Yes = 9).**

Yes: Mr. Hazen, Mr. Bellovich, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mrs. DeMaegd, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The proposed ordinance passed 9-0, thus it became **ORDINANCE NO. 5855.**

NEW BUSINESS

Mr. Emmons made a reminder that on August 17th, they would have the West End Neighborhood meeting at St. Bavo's with Senator Dave Niezgodski speaking about the new legislation passed at the state house, mainly some of the new laws that went into effect in July and some that would go into effect in October. Mr. Emmons stated he would also be there afterwards to answer any questions they may have. Mr. Emmons welcomed all to attend and refreshments would be served courtesy of West End Bakery.

ADJOURNMENT 7:46PM

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

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