



AGENDA

November 13, 2023

**Meetings of Standing Committees
Council Conference Room
6:45PM**

**REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL
COUNCIL CHAMBERS/CITY HALL
7:00PM**

**WebEx Telephone Number:1-408-418-9388
Meeting Number (access code): 2341 304 4361
Meeting password:ZdfbMyBP764**

**Livestream #1: <https://www.facebook.com/cityofmishawaka/>
Livestream #2: @MichianaAccessTV on Facebook
Livestream #3: Michiana Access TV
(Comcast and AT&T U-Verse Channel 99)**

To connect on-line join using Microsoft Lync or Microsoft Skype for Business

Dial: 23413044361@mishawaka.webex.com

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Approval of the Minutes of the Regular Meeting of October 16, 2023
5. Petitions, Communications, Remonstrance and Memorial

Petition No. 2023-22 Rezone from I-2 Heavy Industrial to C-4
Automobile Oriented Commercial - 1213 E.
Jefferson Blvd.

Petition No. 2023-24 Rezon from C-1 to C-9 Auto & Vehicle Sales
for the expansion of Gage Auto - 3813
Lincolnway East

6. Report of Special Committee

7. Ordinances on First Reading

P.O. No. 2023-51 Amending the Municipal Code for Barber and
Beauty Shops to add definitions for
Microblading and Permanent Makeup

P.O. NO. 2023-52 Transferring and Reappropriating Funds
Public Safety LIT Fund
From: Capital Outlays
2240-50-445-09 \$130,000.00
To: Debt Services
2240-50-438-01 \$124,000.00
2240-50-438-02 \$ 6,000.00

P.O. No. 2023-53 Amending Ordinance No. 5641 The Deferred
Compensation Matching Plan, Adoption
Agreement & Amendment 1

8. Resolutions

R2023-22 Use Variance to allow Adult Daycare in I-2
Heavy Industrial District - 550 Union St.

R2023-25 Amending R2023-12 American Rescue Plan Act
(ARP)

9. Ordinances on Second Reading

P.O. No. 2023-49 Transfer and Reappropriating Funds

General Fund
From: Central Services \$20,000.00
1101-22-422-02
To: Central Service
1101-22-436-01 \$20,000.00
(Assigned to Budget & Finance Committee)

P.O. No. 2023-50 Annexing Northern 13.55 Acres and Establish
PUD & Amend PUD for Southern 6.88 Acres -
Northwest corner of Fir Road and Beacon
Parkway **Public Hearing - No Vote**

10. Privilege of the Floor - Non-Agenda Items

11. Unfinished Business

Reconsideration of Resolution No. 2023-24 for Amendment a Use
Variance to allow Mini Storage and Developmental Variances for
Setback, Fencing, and Parking - NE Corner of E. McKinley and
Maplehurst.

12. New Business

13. Adjournment -

This meeting will be aired via live stream:

An archived version of the livestream video can be viewed on the
city of Mishawaka's Facebook page,
<https://www.facebook.com/cityofmishawaka/> and on the Michiana Access
TV Facebook page, <https://www.facebook.com/MichianaAccessTV>

If technology is needed to present, please advise the Clerk's Office by 4:00pm the Friday before the meeting by
emailing: dblock@mishawaka.in.gov or calling 574-258-1616.

Download Council Packet Link:

[https://mishawaka.in.gov/government/elected-appointed-
officials/common-council/council-agendas-minutes/](https://mishawaka.in.gov/government/elected-appointed-officials/common-council/council-agendas-minutes/)

At this time, I know of no other business to come before the
Council.

Deborah S. Block, IAMC, CMO, MMC, City Clerk

The City of Mishawaka acknowledges its responsibility to comply with the Americans
with Disabilities Act of 1990. In order to assist individuals
with disabilities who require special services (i.e. sign interpretative services,
alternative audio/visual devices, and amanuenses) for participation in or access
to City sponsored public programs, services and/or meetings, the City requests
that individuals make requests for these services forty-eight (48) hours ahead of
the scheduled program, service and/or meeting. To make arrangements contact Susan
Kile, ADA Coordinator, at (574) 258-1615.

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

October 16, 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, October 16, 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

Minutes for the Regular Meeting on October 2, 2023 were approved as received from the Clerk's Office.

Clerk Block read two letters from the Board of Zoning Appeals and the City Plan Commission regarding their recommendations from their October 10, 2023 meetings.

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

PROPOSED ORDINANCE NO. 2023-49

AN ORDINANCE DECLARING AN EMERGENCY AND TRANSFERRING AND REAPPROPRIATING FUNDS WITHIN THE BUDGET ADOPTED FOR THE CALENDAR YEAR ENDING DECEMBER 31, 2023

Transfer and Reappropriating Funds General Fund – From: Central Services (1101-22-422-02) - \$20,000.00 To: Central Services (1101-22-436-01) - \$20,000
(Assigned to Budget & Finance Committee)

PROPOSED ORDINANCE NO. 2023-50

AN ORDINANCE ANNEXING CONTIGUOUS TERRITORY TO THE CITY OF MISHAWAKA, INDIANA AND PROVIDING ZONING CLASSIFICATION THEREFORE

**Annexing Northern 13.55 Acres and Establish PUD & Amend PUD for Southern 6.88 Acres – Northwest corner of Fir Road and Beacon Parkway
(Assigned to Land Use Planning Committee)**

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

RESOLUTION R2023-22

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: 550 UNION STREET MISHAWAKA, INDIANA

**Use Variance to allow Adult Daycare in I-2 Heavy Industrial District – 550 Union St.
(Petitioner requesting postponement)**

Mr. Hazen made a motion to postpone **RESOLUTION R2023-22** until their next regularly scheduled council meeting on November 13th. With a second from Mr. Banicki, a voice vote was held and the motion passed. Mr. Hixenbaugh added for the record that the reasoning for the postponement was to allow for the scheduling of a meeting that would afford an opportunity for the proponent of the proposal to not only provide some additional information to the Council, but to the public as well and that would take place on Monday, October 30th at 6PM on site at 550 Union Street. Mr. Hixenbaugh invited those who had questions or was interested in that matter to attend the meeting.

RESOLUTION R2023-23

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: 206 W EIGHTH STREET, MISHAWAKA, INDIANA

Use Variance to allow Daycare Center in R-1 Single Family District – 206 W. Eighth St.

Catherine Baker, 51315 Stony Brook Drive, spoke in favor of **RESOLUTION R2023-22**. Mrs. Baker stated they desired to open a daycare and believed it would be good for the area. Mrs. Baker stated they currently had a location in Elkhart, which had outgrown their needs and they found a school that would give them much more room to be able to help. Mrs. Baker stated they really focused on lower income families and wanted to help them to be able to have professional childcare with trained people to be able to take care of their children.

Mr. Emmons asked if she purchased the facility. Mrs. Baker stated yes, they were. Mr. Emmons asked if she was the sole owner. Mrs. Baker stated her and her husband would be the owners. Mr. Emmons stated there was some work that needed to be done on the outside of the facility to make it safe for kids walking to and from or getting dropped off, because of the metal shedding

on the roof on the soffit and asked if that was going to be taken care of. Mrs. Baker stated yes, they were told about it and were waiting to get everything done legally with the meetings to make sure that they would be able to be in the building and then they would work out who was going to fix the roof but it definitely had to be fixed in order to get passed by the state for them to even open. Mr. Emmons asked if there would be no children there until it was fixed. Mrs. Baker stated that was correct, there would be no children. Mr. Emmons asked what their age group would be for the daycare center. Mrs. Baker stated it would be from 6 weeks to 13 years old. Mr. Emmons stated he assumed all of her instructors or caregivers licensed and asked if that was correct. Mrs. Baker stated yes and everybody that did childcare had to pass a federal background check to be able to work for the facility. Mr. Emmons asked if that was in the works currently. Mrs. Baker stated they already had 6 people that were cleared from their other facility that they would start with but everybody who came on new had to be fingerprinted by the state. Mr. Emmons asked if she would transport people from the Elkhart facility to this one or would it just be for basically the Mishawaka area. Mrs. Baker stated they had, right now, 150 and out of that they asked who would want to go and they had 10 people, so she did not think their Elkhart people would want to come but the rest would remain. Mr. Emmons stated with the playground, he knew it needed quite a bit of work out there and asked if it was in her plan to correct the situations in the playground. Mrs. Baker stated they just put a new playground out there. Mr. Emmons stated he knew that but he was talking about the fencing area over there and referenced fencing problems that had been ongoing for several days. Mrs. Baker stated everything had to come up to code for them to even open it by the state, so if the fencing or anything had an issue they could not even do anything until the state approved of it and they would not approve anything until it was all fixed up and running and up to code standards. Mr. Emmons stated he was glad to hear that and welcomed her to the neighborhood.

Mrs. Voelker thanked Mrs. Baker for her interest in Mishawaka and asked a couple of questions. Mrs. Voelker stated she knew there were different accreditation levels and asked if she could tell her what level her daycare was at currently. Mrs. Baker stated the one they were at currently was Glory Bound Daycare Ministry and it started at a Level 1 and the one they were going to open was Glory Bound Learning Center, so the one they were opening they hoped they could go through with it because you could open them on a 2 with more than the 5 years of experience that they had. Mrs. Baker stated they hoped they would be able to open it on a 2 and work their way up to a 4. Mrs. Voelker asked what kind of funding they would have and if they would be participating in any state funding for kids or if it would be private pay or a mixture of the two. Mrs. Baker stated they did both at that point in time and when she said they focused on lower income families, she said that because sometimes childcare was very expensive. Mrs. Baker stated for a newborn it was \$465 and if a young lady came to her who really wanted to work and better herself and she could only afford to pay \$275, for example, she was not going to turn her away and she was going to take the money, give her child a safe licensed facility and help her get to where she was trying to get to so she could be better in the future. Mrs. Voelker stated it sounded like she would have a sliding scale of sorts for people that were unable to afford it and asked if she would be accepting any state funding. Mrs. Baker stated yes and they would accept the state vouchers that they offered to the young women. Mrs. Voelker asked about the scale and

stated, for clarification, that Mrs. Baker had 6 people working for her right now that had passed the federal background check, but she had 150 kids and asked if their ratio was one caregiver for 25 children. Mrs. Baker stated no and she had 6 that they were going to bring with them to start up the new daycare and the rest of them would remain at the daycare they currently had open in Elkhart and they had 150 kids but you may have 75 kids at the most in one day even though they had 150 total kids enrolled. Mrs. Baker stated they all did not come at the same time, because they opened at 3:30AM and closed at 6PM. Mrs. Voelker asked if she was planning at opening at 3:30AM in Mishawaka as well. Mrs. Baker stated they planned on opening at 5AM in Mishawaka. Mrs. Voelker stated one of the things she also saw was that in the requirements, you they had to have off-street loading and unloading and she knew that was a concern that one of the neighbors discussed with her, mentioning that there were traffic backups on 8th Street when it was operating as a school with drop off. Mrs. Voelker asked how she would be handling drop off and pick up. Mrs. Baker stated they would be doing drop off and pick up in the front of the building and daycares were definitely different from school. Mrs. Baker stated you may get three of four parents at a time, but it would not be like how a school operated because you would not get 20 parents at one time whereas with a school, there would be a line of cars and it was never like that in their case. Mrs. Voelker stated she was fairly certain she read from the City Engineer that they needed to have off-street drop off. Mrs. Baker stated for a daycare, they had not been told any different that they could not have the front part of the building for pick up and drop off and the Fire Marshal was there that day and the state and the Fire Marshal worked closely together. Mrs. Voelker stated she would read through the report and come back to her and thanked Mrs. Baker.

Mr. Mammolenti thanked Mrs. Baker for coming that evening and asked if she said that already purchased the property. Mrs. Baker stated no and that they were going to purchase it after making sure it met all of the codes. Mr. Mammolenti asked if it was their plan to keep the Elkhart facility in operation as well as they operated the one in Mishawaka. Mrs. Baker stated yes. Mr. Mammolenti stated at their board meeting, she mentioned that it held up to 250 students and asked if it was her plan to get to 250. Mrs. Baker stated she wanted to help as many people as possible and this was a new area for them, so if it were at all possible they would take whatever amount of people came in need. Mrs. Baker stated they were there to offer that. Mr. Mammolenti asked who set that 250 amount. Mrs. Baker stated in the school, they had way more than that but that was about what she wanted to start with, no more than 200 children. Mr. Mammolenti asked based on the state required ratio, how many caregivers would she need. Mrs. Baker stated it went according to children and if they had babies, newborns or any child from 12 months or under, it was 1 person to 4 babies which meant for every 4 babies, you had to have 1 adult and as they got older, you could have 1 adult to 7 children. Mrs. Baker stated then with the after-school kids, if they were in kindergarten or older, you could have 1 adult to 15 children. Mr. Mammolenti asked if they were going to be providing lunch or an option for lunch. Mrs. Baker stated yes, they provided lunch. Mr. Mammolenti asked if that would be prepared onsite. Mrs. Baker stated yes. Mr. Mammolenti stated he assumed the kitchen would be inspected by typical health codes. Mrs. Baker stated yes.

Mr. Hixenbaugh followed up on some of the points his colleagues raised, but first thanked her for her commitment to helping their community and the community as a whole and he loved the idea that this school was going to be reused for this type of purpose. Mr. Hixenbaugh stated going back to the question about the drop off and pick up, Mrs. Voelker was correct and in the staff report that they received and he presumed she received a copy of the report that their staff did prior to the Board of Zoning Appeals meeting and then prior to the meeting that evening and it did indicate that the Engineering Department had commented that she must accommodate off-street drop off and the reason for that was even going back to the days when this was an elementary school and when the Hebrew Day School was there, it became a problem when parents would park on the south side of 8th Street and then walk their children across the street in the middle of the street without using either corner. Mr. Hixenbaugh stated granted, it was a little bit different when you were talking about preschoolers but that was still of concern to himself and his colleagues if there was not going to be an adequate provision made so that even if it was just a handful of parents dropping off at any point in time beginning at 5 or 5:30, that they did not have people crossing in the middle of the street, particularly those early morning hours when sometimes it was dark and it could be a problem for all of them. Mr. Hixenbaugh asked if she had any plans to try to accommodate that off-street parking so that rather if you met by the front of the building on 8th Street, he sensed that would be a problem for himself and others and it was inconsistent with what the Engineering Department had recommended. Mr. Hixenbaugh stated he would grant her that that was more of a site plan issue and was not about the use per se but in order for him and others to be able to vote in favor of this and say that this would be supportive of the public health and safety of the community, he thought it was relevant to talk about the traffic issues. Mr. Hixenbaugh asked if she could talk about that plan for drop off and pick up, whether it was at the beginning of the day, end of the day or during the day and how she thought she could work to avoid having parents park on that street and walk their kids across in the middle of the street. Mrs. Baker stated they could also have drop off in the back of the building as well so if it would be an issue, they would just move their drop off from the front because they always planned on them pulling right up in front of the building to do drop offs but if it was going to be an issue, they could also do drop off and pick up in the back. Mr. Hixenbaugh asked if she provided their parents, when they enrolled their child or children in the program, with some guidelines as to what she expected out of them or how the day operated so that they knew what they were supposed to do on a daily basis. Mrs. Baker stated yes, she did. Mr. Hixenbaugh asked if it would be a problem for her to work in a statement that parents needed to drop off on the same side of the street as the school so they did not have people walking across the street or drop off in the back of the building so that they did not have the same type of issues and if she could commit to doing that. Mrs. Baker stated she could commit to doing that. Mr. Hixenbaugh stated another thing that was a strength and perhaps a challenge with regard to the building was that it was embedded right in the middle of that neighborhood, which he thought would make for a very pleasant environment for what it was that she planned to use it for but it also could become a problem if whomever occupied the building did not really live by the motto of being a good neighbor and took care of snow removal and take care of garbage, for example. Mr. Hixenbaugh stated to the extent that there would be anything outside that would blow on people's yard, to the extent that they needed to have the sidewalks shoveled so that people could

walk back and forth in front of their building and asked if she had adequate staff in place and resources to be able to take care of those building maintenance issues on a daily basis so that this would not become an issues for the neighbors. Mrs. Baker stated yes, they did. Mr. Hixenbaugh asked if she had on-site custodial and maintenance staff who worked in the building or how they would take care of those issues particularly when they were going to have 250 kids in a school building. Mr. Hixenbaugh stated there was a lot of upkeep, as she knew and a lot of day-to-day cleaning. Mr. Hixenbaugh asked how she was going to accommodate that and handle that if this took off and went to the level she wanted it to. Mrs. Baker stated they had an outside company that did their snow currently and an outside person that cleaned their buildings now. Mr. Hixenbaugh asked if they did that during the course of the day or if they did that before or after the program operation hours. Mrs. Baker stated after hours and the snow guy came at about 3AM and then they cleaned the building at night time. Mr. Hixenbaugh stated they talked about when she was planning on opening up around 5AM and asked what the concluding time for her program would be there on site. Mrs. Baker stated 6PM. Mr. Hixenbaugh stated as Mr. Emmons alluded to, it was a beautiful building and he loved it and it had been here since time immemorial almost in Mishawaka but those type of buildings required a lot of upkeep. Mr. Hixenbaugh asked if she felt like she had the adequate resources to be able to reinvest in the physical plant of the building so that those fence issues, the roofing issues, things like that were going to be able to be taken care of in an appropriate way. Mrs. Baker stated she did. Mr. Hixenbaugh thanked her and appreciated her patience with him.

Mr. Compton thanked Mrs. Baker for coming into Mishawaka and into a neighborhood that could use the resource that she was trying to provide, answering all of the questions from the Council which was concerning for the neighborhood just to cross their T's and dot their I's but this was sorely needed in Mishawaka and he thanked her again for coming here and making a run at it and trying to do a good thing for their city and the people who lived in it.

Question was called for at 7:25PM for **RESOLUTION R2023-23. Motion passed 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 R2023-24

**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: NORTHEAST CORNER OF E
MCKINLEY AND MAPLEHURST, MISHAWAKA, INDIANA
Use Variance to allow Mini Storage and Developmental Variances for Setback, Fencing,
and Parking – NE Corner of E. McKinley and Maplehurst**

Bernie Feeney, Registered Land Surveyor with Wightman and Associates in Plymouth, Indiana, spoke in favor of **RESOLUTION R2023-24**. Mr. Feeney stated he was present that evening to

represent the petitioner and 1500 McKinley LLC. Mr. Feeney stated this set of variances that they were looking at that evening were variances that accompanied the site plan that they had already taken a look at and that the Plan Commission had taken a look at and was in the process of approving. Mr. Feeney stated the plot had been approved that set this piece of property up in the fashion that had been recommended by both the Plan Commission and the Engineering Department and dedicated additional right-of-way for the future improvement of McKinley. Mr. Feeney stated in addition, they had secured the approval of the Engineering Department on the erosion control plan for this particular piece of the property and this would be the final piece of the puzzle that would allow the buildings to be built on this property in the fashion they had shown them and represented them far to the Council, the Plan Commission and the Board of Zoning Appeals. Mr. Feeney stated he would be happy to answer any questions.

Mrs. Voelker asked about the 5 feet versus 15 feet between the building and the fence and the setback change. Mrs. Voelker stated it was on the east side by building #1. Mr. Feeney stated that building #1 was on the far west side and building #6 was on the far east side. Mrs. Voelker stated the 5 foot variance he was asking for was going to be right next to Maplehurst and asked if that was correct. Mr. Feeney stated that was correct and the reason for those items and issues had been because there were prior security issues on the property. Mr. Feeney stated some of the cars for Cars2You had been showcased on the property and the owner had experienced theft of catalytic convertors almost on a wholesale basis out there. Mr. Feeney stated the buildings and the development of the property would provide more security for the autos being stored at Cars2You. Mr. Feeney stated most of the trespassing had occurred from Maplehurst into the property under cover of the woods and subsequent to the approval of the erosion control plan, the woods were now gone. Mr. Feeney stated there was much less hiding space out there and the building along with the fence were efforts on the part of the developer to provide a more secure environment for the cars he hoped to sell as well as the storage buildings he would be operating. Mrs. Voelker asked if they had cars to the east and storage to the west. Mr. Feeney stated that was correct. Mrs. Voelker then asked if the fence would go around both sets of property or just around the storage. Mr. Feeney stated the fence would go around the storage and make that a secure facility. Mr. Feeney stated the owner was taking this measure to prevent anything from happening.

Question was called for at 7:31PM for **RESOLUTION R2023-24. Motion passed 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. 2023-40

CIVIL CITY BUDGET AND TAX LEVY FOR 2024

Mr. Banicki reported the Committee of Budget and Finance recommended this proposed ordinance should be adopted. Upon a second by Mr. Mammolenti, the motion carried.

Mr. Hixenbaugh noted for the record that they had a very well done PowerPoint presentation at the last council meeting from Rebecca Maguire, City Controller that was very helpful to him and others. Mr. Hixenbaugh thanked Mrs. Maguire. Mr. Hixenbaugh thanked Mayor Wood and his staff as well as Mrs. Maguire and her staff for their work in putting the budget together. Mr. Hixenbaugh stated he believed they said virtually every year he served on the council that budgets were about their priorities as a community and overwhelmingly so, they invested in public safety in Mishawaka which was job number one of local government and where they put their dollars to protect every one of their residents, businesses and visitors. Mr. Hixenbaugh stated he appreciated the work that had gone into it as well as the priorities that were established in the budget and he looked forward to seeing the work they did in approving it that evening come to fruition as they moved into the next year and it would have a tangible impact on the quality of life in Mishawaka.

Question was called for at 7:34PM for **PROPOSED ORDINANCE NO. 2023-40. Motion passed 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. 5861.**

PROPOSED ORDINANCE NO. 2023-41

AN ORDINANCE OF THE COMMON COUNCIL OF MISHAWAKA AUTHORIZING ADVANCE PAYMENTS ON CONTRACTS FOR PUBLIC WORKS PROJECTS AND GOODS AND SERVICES

Mr. Banicki reported the Committee of Budget and Finance recommended this proposed ordinance should be adopted. Upon a second by Mr. Mammolenti, the motion carried.

Rebecca Maguire, City Controller, spoke in favor of **PROPOSED ORDINANCE NO. 2023-41.** Mrs. Maguire stated this would allow the city to make advance payments and due to the change in Public Law 181, this ordinance would allow them to do that. Mrs. Maguire stated as vendors, more often than not currently, they were requesting upfront payments because either they did not have the cash or other customers had placed orders and had backed out so they were not willing to extend credit.

Mrs. Voelker stated her only concern with this was prepaying for someone to purchase something for a job and they disappear. Mrs. Voelker asked how they would control or track the prepayments and make sure that they would not lose money on it. Ken Prince, Director of Community Development and Planning, answered Mrs. Voelker's question. Mr. Prince stated the real issue was that there were certain vendors they dealt with where it was standard business practice for them to get 50% down and the reality was when they looked at the way the contracts were worded, if they wanted a specific heating system or furniture for example, they had to follow the vendor's guideline and that was how it worked. Mr. Prince stated they did not make adjustments for cities and were very happy to tell them to take their business elsewhere if they did not go down that route. Mr. Prince stated Mrs. Maguire was keeping them in line with what state law required by bringing this before the Council, because they had already done this practice in the past in order to obtain that. Mrs. Voelker stated she was a little bit confused and asked for clarification if they were asking to do this now but they already had been doing it. Mr. Prince stated that was correct and Mrs. Maguire was trying to keep them out of trouble, so to speak.

Mr. Bellovich asked what percentage of their vendors she thought would be falling into this category. Mrs. Maguire stated it should be a small percentage and would be on anything that needed to be manufactured and they had seen it in playground equipment for example. Mr. Bellovich asked if this was more for specialized type of things. Mrs. Maguire stated that was correct and the reason they had it in the past was they had the previous City Attorney give them his opinion that since they were purchasing the materials upfront, they owned those materials and they never had an audit comment in the past on that and with new state legislation, they wanted to make sure they were following the guidelines in putting it in ordinance form.

Mr. Compton stated that made sense in business practices that people wanted something down to get started. Mr. Compton asked if there was ever a case where there was 100% payment prior to services rendered. Mrs. Maguire stated she could not think of anything off of the top of her head. Mr. Compton asked if this was more about down payment, deposits and things of that nature to make them comply with new state guidelines. Mrs. Maguire stated yes and the ordinance only allowed 50% as well.

Mr. Mammolenti asked if there were any cases where any of the services they had prepaid for had not been rendered. Mrs. Maguire stated not that she could recall.

Mr. Hixenbaugh thanked Mrs. Maguire and Mr. Hinkle for their work on this. Mr. Hixenbaugh stated to follow up on some of the points made by his colleagues that the ordinance as he read it also built in some safeguards to be protective of the city and there was some process language with regard to tracking repayments through a purchase order and creating a prepayment invoice but what spoke to it the most in his opinion was that it indicated that when the prepayment was in an amount more than \$150,000 then there was a surety bond that had to be posted by the entity that received the prepayment and asked if that was correct. Mrs. Maguire stated that was correct. Mr. Hixenbaugh stated then so if in fact there would be that situation where someone did not

provide them with the materials they prepaid for, they had that legal recourse available to them under the law and could pursue a claim against that surety bond and asked if that was correct. Mrs. Maguire stated that was correct. Mr. Hixenbaugh stated as she indicated, this was not freestanding approval with regard to any amount of prepayment but consistent with the statutory language, it was the lesser of 50% of the entire cost of the contract or \$2 million, so even in the multimillion dollar relationships from time to time she was involved in, they were still going to operate within those guardrails and parameters and asked if that was correct. Mrs. Maguire stated that was correct. Mr. Hixenbaugh stated he had the pleasure of recently sitting in on the exit conference with the auditors in the State Board of Accounts process and the record would reflect that they had very glowing comments about Mrs. Maguire and her staff as they typically did. Mr. Hixenbaugh congratulated Mrs. Maguire for once again surviving the audit process and coming through with flying colors on behalf of the city.

Question was called for at 7:43PM for **PROPOSED ORDINANCE NO. 2023-41. Motion passed 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. 5862.**

PROPOSED ORDINANCE NO. 2023-42

AN ORDINANCE DECLARING AN EMERGENCY AND TRANSFERRING AND REAPPROPRIATING FUNDS WITHIN THE BUDGET ADOPTED FOR THE CALENDAR YEAR ENDING DECEMBER 31, 2023

Transfer and Re-appropriate Funds Park & Recreation Non-Reverting Fund - \$25,000.00

Mr. Banicki reported the Committee of Budget and Finance recommended this proposed ordinance should be adopted. Upon a second by Mrs. Voelker, the motion carried.

Rebecca Maguire, City Controller, spoke in favor of **PROPOSED ORDINANCE NO. 2023-42.** Mrs. Maguire stated this transfer was to help fund the repair of the red bridge at Shiojiri Garden. Mrs. Maguire stated they had funding in Consulting that they were transferring to Park Development and they also had received a gift from the Community Foundation that would give them the total amount of the repair which was close to \$65,000. Mrs. Maguire stated they received a letter from the Park Superintendent describing the repair and they also had Jacob Crawford present to answer any questions about the repair or the bridge itself.

Mrs. Voelker stated she met with Jacob Crawford in the prior week about a few things and took a look at the bridge and it was in disrepair in an area that was unsafe. Mrs. Voelker stated if someone were to fall against the railings, they could give through. Mrs. Voelker stated Mr. Crawford also mentioned that the bridge had been there for over 30 years and Phil Blasko, Park Superintendent, also said in the letter that they would be making changes that would minimize the water that hit the bridge and also there would be cement footings instead of the wood going

directly into the ground that would minimize problems with the rot that were apparent. Mrs. Voelker stated it was a beautiful, iconic bridge and it was used very often for senior pictures, weddings and so many other things and she was happy that they were taking care of it.

Mr. Hixenbaugh thanked the Crawford Family and the Nancy and Donald Crawford Fund that was held with the Community Foundation for their matching grant that allowed them to make these needed repairs.

Question was called for at 7:47PM for **PROPOSED ORDINANCE NO. 2023-42. Motion passed 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. 5863.**

PROPOSED ORDINANCE NO. 2023-43

AN ORDINANCE DECLARING AN EMERGENCY AND DETERMINING THE EXPENDITURE OF ADDITIONAL FUNDS FOR THE YEAR ENDING DECEMBER 31, 2023

Additional Appropriation: General Fund – Human Resources (\$20,000.00) Park Fund – Insurance Claim (\$50,000) Public Safety Local Income Tax Taser – Police (\$450,000.00) Fire Truck (\$750,000.00) Total – (\$1,220,000.00)

Mrs. Voelker reported the Committee of Budget and Finance recommended this proposed ordinance should be adopted. Upon a second by Mr. Banicki, the motion carried.

Rebecca Maguire, City Controller, spoke in favor of **PROPOSED ORDINANCE NO. 2023-43.** Mrs. Maguire stated they had four items that she was requesting approval for additional appropriations. Mrs. Maguire stated the first one was out of the Human Resources budget and General Fund. Mrs. Maguire stated they currently had a Safety Director position in Utility Department and they were moving the scope of the Safety Director and it had now changed and evolved so that person would be paid out of the city budget and the General Fund. Mrs. Maguire stated they were currently taking applications and \$20,000 would more than cover if they hired someone that day for the rest of the year and that was what that was for. Mrs. Maguire stated with the Park Fund, their line was for property insurance and liability insurance and they saw an increase in their bill and the Park Fund did not have a line where they could transfer from, so they were doing an additional appropriate for this item. Mrs. Maguire stated in the Public Safety Local Income Tax Fund, they had two items that were purchases that they did not want to pass up and they were able to provide tasers for the entire Police Department, new technology and they would receive a discount by paying in full upon receipt and then a stock firetruck was coming off the line and that was for their reserve.

Mr. Mammolenti asked Chief Witkowski if he could shed any light on the new technology previously addressed by Mrs. Maguire. Chief Witkowski stated it was a brand new technology and starting in 2023, they had two five-year contracts with Taser on initial X26 that they carried currently and one of them expired in June and the other would expire in another year and a half so they came out with new technology and a new weapon that could shoot 10 darts compared just the two that they carried and the range was different with the ones they carried now they had to be within 21 feet and the new ones had a range up to 40 feet. Chief Witkowski stated the nice thing about the new technology was that sometimes depending on the weather, specifically the winter with thicker coats, one dart may penetrate and the other may get caught on clothing or not penetrate at all because of distance or other circumstances and with the newer ones, if that one dart would miss you would have 8 other shots you could take if the second one missed. Chief Witkowski stated you did not have to worry about the separation now when shooting it because with the new ones and the laser it had, you just could aim and shoot quickly and it was safer for the suspect actually. Mr. Mammolenti asked if you aimed and shot per dart. Chief Witkowski stated yes, they were single darts and the officers went through extensive training on this, specifically a 12-hour training for the new tool. Mr. Mammolenti asked about the batteries and if they were rechargeable. Chief Witkowski stated yes.

Question was called for at 7:55PM for **PROPOSED ORDINANCE NO. 2023-43. Motion passed 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. 5864.**

PROPOSED ORDINANCE NO. 2023-44

AN ORDINANCE AMENDING ORDINANCE NO. 5829 FIXING THE SALARIES OF ALL SWORN PUBLIC SAFETY FOR THE CITY OF MISHAWAKA, INDIANA FOR THE YEAR BEGINNING SEPTEMBER 20, 2023

Amending Ordinance No. 5829 Fixing Salaries All Sworn Public Safety

Mr. Emmons reported the Committee of Budget and Finance recommended this proposed ordinance should be adopted. Upon a second by Mr. Banicki, the motion carried.

Ken Witkowski, Police Chief of the Mishawaka Police Department, spoke in favor of **PROPOSED ORDINANCE NO. 2023-44.** Chief Witkowski stated he was there to speak specifically on the removal of the signing bonuses for the Police Department that were put in last year as a recruitment tool, with the changes of the 12-hour shifts and increased pay he thought it was no longer needed to attract people to come to the Mishawaka Police Department.

Mr. Hixenbaugh thanked Chief Witkowski for his work on this and on the move to 12-hour shifts and as a follow up to that, perhaps at the next council meeting, it may be beneficial to the Council if he could provide them with an update as to where they were at in staffing and if there

had been an influx of applicants to fill our vacancies since it had become public knowledge that they were moving to the different staffing model and different compensation structures. Mr. Hixenbaugh stated if he could consult with their recruiter and provide them with details and facts that would be great. Chief Witkowski stated he could answer a little bit of that and he believed that they were still at 96 currently and as they had been seeing, they did have several laterals in the process currently and last he heard the number was 36 non-laterals or people that needed to go through the academy to send. Chief Witkowski stated he believed that it was working and he actually interviewed two laterals that day. Mr. Hixenbaugh stated that was fantastic and if memory served, as supposed to the budgeted strength for that year, next year they would go to 99 officers and if that was correct. Chief Witkowski stated it was correct. Mr. Hixenbaugh stated the 12-hour shift model was predicated to operate at peak efficiency with 80 officers assigned to the uniform division, so as that application process played out and as he was able to finalize his staffing for 2024, if he could keep them updated as to where they were at with regard to assigning the 80 officers to the uniform divisions so that they could see the benefits as soon as possible of the move to the 12-hour shift model, he thought that would be beneficial to all. Chief Witkowski stated he would do that.

Question was called for at 7:59PM for **PROPOSED ORDINANCE NO. 2023-44. Motion passed 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. 5865.**

PROPOSED ORDINANCE NO. 2023-45

AN ORDINANCE AMENDING ORDINANCE NO. 5811 FIXING THE SALARIES OF ALL EMPLOYEES OF THE CITY OF MISHAWAKA EXCEPT MISHAWAKA PARK DEPARTMENT, ELECTED OFFICIALS AND THE MISHAWAKA UTILITIES FOR THE CITY OF MISHAWAKA, INDIANA FOR THE YEAR BEGINNING SEPTEMBER 20, 2023

**Amending Ordinance No. 5811 Fixing Salaries All City Employees – Human Resources
Safety Director**

Mr. Emmons reported the Committee of Budget and Finance recommended this proposed ordinance should be adopted. Upon a second by Mr. Banicki, the motion carried.

Rebecca Maguire, City Controller, spoke in favor of **PROPOSED ORDINANCE NO. 2023-45.** Mrs. Maguire stated piggybacking with the increase in the budget for the Safety Director, they had also added it to the Salary Ordinance for Civil City where on an annual basis in the new revised position, the Safety Director would make approximately \$65,500 and in comparison in the position with less requirements and responsibilities under the Electric Division, it was \$57,900.

Question was called for at 8:02PM for **PROPOSED ORDINANCE NO. 2023-45. Motion passed 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. 5866.**

PROPOSED ORDINANCE NO. 2023-46

AN ORDINANCE AMENDING ORDINANCE NO. 5820 FIXING THE SALARIES OF ALL SWORN POLICE OFFICERS FOR THE CITY OF MISHAWAKA, INDIANA FOR THE YEAR BEGINNING JANUARY 1, 2024

Amending Ordinance No. 5820 Fixing Salaries of all Sworn Police Officers

Mr. Banicki reported the Committee of Budget and Finance recommended this proposed ordinance should be adopted. Upon a second by Mrs. Voelker, the motion carried.

Mayor Dave Wood spoke in favor of **PROPOSED ORDINANCE NO. 2023-46.** Mayor Wood stated they had heard a lot about the shift over to 12 hours in their Police Department and they already had taken substantial action to make that a reality as had the FOP. Mayor Wood stated really, the last bit that required their attention was to change the Salary Ordinance which was based on the collective bargaining agreement done in 2022, which committed the city to 2023 and 2024 needed to be amended to account for the new 12-hour schedule rates and that was what this ordinance would do.

Question was called for at 8:05PM for **PROPOSED ORDINANCE NO. 2023-46. Motion passed 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. 5867.**

PROPOSED ORDINANCE NO. 2023-47

AN ORDINANCE FIXING THE SALARIES OF ALL EMPLOYEES OF THE CITY OF MISHAWAKA EXCEPT SWORN PUBLIC SAFETY, MISHAWAKA PARK DEPARTMENT, ELECTED OFFICIALS AND MISHAWAKA UTILITIES FOR THE CITY OF MISHAWAKA, INDIANA FOR THE YEAR BEGINNING JANUARY 1, 2024

Civil City Employee Salary Ordinance for 2024

Mr. Hixenbaugh reported the Committee of Budget and Finance recommended this proposed ordinance should be adopted. Upon a second by Mr. Banicki, the motion carried.

Mayor Dave Wood spoke in favor of **PROPOSED ORDINANCE NO. 2023-47.** Mayor Wood stated this was the Salary Ordinance for 2024. Mayor Wood stated this, as they knew, had

already been looked at through the Civil City budget and what they were seeking that year was an increase of 3% for their staff. Mayor Wood stated that of course was non-collective bargaining staff members, but they did have some outliers that exceeded that 3%. Mayor Wood stated first of all, they did a salary study back in 2022 and they looked at all of their staff and there were a few outliers so they came up with a plan to bring those outliers up to get them in line with what their salary ordinance suggested. Mayor Wood stated the second part of those increases would hit the Salary Ordinance for 2024 and also in it, they were seeking the return of the Human Resources Department Office Assistant which would be a tremendous help in that office and they did an exceptional job but they sure could use the help. Mayor Wood stated they were also looking to reconfigure the IT Department with some increases again and this was something that they studied and this was a department that got hit with market conditions more than most. Mayor Wood stated these were highly skilled, specialized people that did these jobs and in fact over the last year, they lost their Director and their Assistant Director to higher paying jobs in other communities and so they wanted to make the salaries within that department such that they were able to hire, which they struggled to do. Mayor Wood stated they were at full staff minus one currently and they just had a staff member start that day and they were now just one help desk position away from being fully staffed. Mayor Wood stated with department heads, they paid them what they could and most of those people went elsewhere and made more money just based on their skills and their leadership ability and they thankfully had not had a lot of turnover with department heads and they were passionate about what they did but there were a few that felt what he thought was below the wage they deserved so he would like to create a minimum salary for department heads. Mayor Wood stated he would like to set that at \$70,000 and they had three positions within their department managers that fell below that being Code Enforcement, the Building Department and Human Resources. Mayor Wood stated this would bring them up to that \$70,000 mark. Mayor Wood stated and then, of course the Park Department salaries got approved by the Park Board and so they were seeking some additional duties and increases there as well that were within the outliers. Mayor Wood stated another part of this was that every few years, there was a deferred comp increase and in fact, they started initially what never had been done before which was a match and that was a match for deferred comp. Mayor Wood stated they started it at 1% and that was if any employee citywide wanted to put 1% of their income towards deferred comp, they would match that at 1% and it had been a while but he would like to take that up to 2%. Mayor Wood stated then that of course meant the city would match the 2%. Mayor Wood stated this also correlated a little bit with PERF, which the city would contribute 3%, so if an employee took full advantage, they would see about 5% of their income matched by the city and he thought that was pretty customary out in the marketplace and something that when they were talking about salaries and benefits for employees, they tried to make sure that they were covering their staff with fair compensation, good benefits and in this case benefits typically you would not find anywhere else out in the marketplace. Mayor Wood stated not only for them but for their families and then they also wanted to make sure that their retirement was good too after a full career of serving their citizens as public servants. Mayor Wood stated you did not enter into this profession to get rich but he believed they did owe them the benefits after they had worked there in retirement as a thank you for a job well done. Mayor Wood stated the last part of what the Salary Ordinance for 2024

proposed included was longevity for non-union, non-utility salary personnel. Mayor Wood stated these were the folks who had been there in many cases for decades providing exceptional services to their citizens. Mayor Wood stated their higher standards and level of service happened because they had people that were passionate about what they did and dedicated. Mayor Wood stated most other collective bargaining units had longevity pay and most other ones collectively bargained and got maybe some kind of stipend or some kind of specialty pays or things of that nature. Mayor Wood stated the folks there at City Hall were always on the outside looking in but yet they would not be a successful city without their leadership and their commitment to their services and he thought it would send a strong message that they valued their service, valued their leadership and their experience was acknowledged but also rewarded. Mayor Wood asked that the Council send a strong message to the people in the city that they did an exceptional job over a long period of time and they wanted to reward that.

Mr. Hazen asked where the \$70,000 put them on the page study that they did and if it was in line or if they were still below. Mayor Wood stated they were not any of the outliers to begin with, so it would not have been low in the marketplace per se but as far as around here, they were the low salaries in Code for instance and it had been one of the lower paid department managers over the course of the last year and they really stepped it up as far as pursuing different options within Code. Mayor Wood stated the work they were doing required a whole different kind of leadership level as well as advising staff and more staff within the department. Mayor Wood stated they had a Building Department in a growing city and any of those folks could go to any other community and make a lot more money and so these were folks with a lot of experience who were very marketable elsewhere and could leave them and go make money somewhere else and they just wanted to make sure they felt valued in Mishawaka.

Mr. Hixenbaugh thanked Mayor Wood for the work he, the Controller and the department heads did on this and he certainly supported it and he liked the fact that they did the salary study in the previous year as they talked about at that time but also that it was not just gathering dust on the shelf and they were making use of it and using it to help guide their decisions. Mr. Hixenbaugh stated hopefully, the city would continue to do that moving forward and as they discussed in their budget meetings, as the time was right that they updated that study so it would be an evolving document that they could continue to make use of and he echoed his comments with regard to the quality of work their employees did across the board. Mr. Hixenbaugh stated they were in a people intensive business and the services that they needed to deliver to folks would be impossible without having highly trained, well-qualified, dedicated employees and what was in front of them that evening allowed them to further recognize all of those attributes on behalf of their employees. Mr. Hixenbaugh asked Mayor Wood to please express their appreciation to them for the work they did on a daily basis for the community. Mayor Wood thanked Mr. Hixenbaugh.

Andrew Graber, Business Manager of IBEW 1392, spoke in opposition to **PROPOSED ORDINANCE NO. 2023-47**. Mr. Graber stated the ordinance talked about the non-unionized employees and the union was currently in the process of negotiating with the Utility Department

for setting the wages. Mr. Graber stated he came to speak not in opposition of the content of the bill but more in just opposition of cementing an increase for non-union employees when there was an active negotiation for the unionized group which could be an influence for not wanting differences between union and non-union usually between the employer and the unions. Mr. Graber stated he was making a request to table this until the union negotiations had completed.

Mr. Hixenbaugh deferred to their Legal Counsel and to the Corporation Council, but his recollection was that they were statutorily obligated to pass this type of ordinance by November 1st and then, subject to further negotiations as had happened in the past, they could amend the ordinance not to reduce the number but supplement it based upon the outcome of the collective bargaining process but he deferred to Legal Counsel about that. Mr. Graber stated if that were the case, the union found that sufficient. Mr. Hixenbaugh stated it was good conversation and a point well taken and the Council, along with the Administration, respected the bargaining process and they wanted that process to play out but they had that artificial deadline state law put in place so he wished them well as he returned to the table on behalf of the members that he represented and they looked forward to hearing what the outcomes were but nothing that they did that evening would prevent him from bargaining in good faith and representing his members.

Question was called for at 8:21PM for **PROPOSED ORDINANCE NO. 2023-47. Motion passed 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. 5868.**

PROPOSED ORDINANCE NO. 2024-48

AN ORDINANCE FIXING THE SALARIES OF CERTAIN ELECTED OFFICIALS OF THE CITY OF MISHAWAKA FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2024

Elected Officials Salary Ordinance for 2024

Mrs. Voelker reported the Committee of Budget and Finance recommended this proposed ordinance should be adopted. Upon a second by Mr. Banicki, the motion carried.

Mayor Dave Wood spoke in favor of **PROPOSED ORDINANCE NO. 2023-48.** Mayor Wood stated this ordinance would set the elected officials salary in 2024 at an increase, the standard increase of 3%. Mayor Wood stated while they talked in the previous ordinance about longevity pay, elected officials would not participate in the longevity pay program but elected officials would be eligible for deferred comp if they were to make the contribution of 1% or 2% into their deferred comp.

Mr. Compton thanked Mayor Wood for this and he would certainly approve this but as he would be leaving the group, he asked that he and future councilmembers to consider their Mayor's salary and he knew that put him in a bit of a tough spot but it needed to be increased significantly, in his opinion. Mr. Compton asked that he work towards that in the future and it needed to be done, possibly with next year being a time to address it. Mr. Compton stated with that, the Clerk's position should be addressed as well as he saw certain certifications there and they should be compensated for those things as well. Mayor Wood thanked Mr. Compton very much and as he mentioned before, they entered into the profession not to get rich and it was a public service position and his salary, which was all he got, was right there in the paper for everyone to read and they did keep an eye on it just to make sure that they were not falling behind other communities around the state. Mayor Wood felt like they should not be in the top 10 or the bottom 10 but they should be somewhere in the middle and they were, but they would keep an eye on it and he appreciated the sentiment and thanked him for that. Mr. Compton stated his position was a CEO of a pretty good sized corporation there and that was what he did and they both knew that and it should be compensated reasonably and accordingly. Mr. Compton stated he understood the things he was saying but he continued to attract good talent and good people interested and that was something he thought that needed to be done.

Mr. Hazen seconded Mr. Compton's comments and he thought they should take a look at those salaries and they had department heads making more than the Mayor and probably 50% of their Police and Fire were as well and he agreed wholeheartedly with Mr. Compton. Mayor Wood thanked Mr. Hazen. Mayor Wood thought in a couple of years all of their police would be making more than him and he thought that was appropriate for those who jumped between harm's way and he had no problem with that. Mayor Wood stated again, these were people with very specialized skills and in many cases, required degrees and for his job you had to be 18 and live in the city for a year and that was it, so he did not have to bring a special skill to the job. Mayor Wood stated it was a passion of his and he loved it but he was a public servant and he did not expect to get rich and thanked them again.

Question was called for at 8:28PM for **PROPOSED ORDINANCE NO. 2023-48. Motion passed 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. 5869.**

PRIVILEGE OF THE FLOOR

Alicia Vandygriff, 840 South Sheridan Street, spoke under **PRIVILEGE OF THE FLOOR.** Mrs. Vandygriff stated on October 5, 2023 she went to the Marvin Gardens Marv Wood ribbon cutting ceremony and the ceremony was held on her 40th birthday. Mrs. Vandygriff stated as an underdog in life and one of two underdogs in her family, the ceremony was supposed to bring joy, which it did to a certain extent. Mrs. Vandygriff stated she was glad that she was persistent and still attended and stood in the rain just like everyone else and a very nice woman offered her

an umbrella and a man next to her gave them his larger umbrellas to share so they were not in the rain. Mrs. Vandygriff stated that simple act of kindness was greatly appreciated and the world could use more people like this, especially in the Princess City. Mrs. Vandygriff stated during the ceremony, an ambulance and fire trucks went by and they made their stop at the Vannoni Assisted Living Center and her father was not at the Marvin Gardens ceremony as previously planned. Mrs. Vandygriff stated she had to leave to make sure her dad was okay and it was not her father going in the ambulance and she thanked God and prayed for that nice woman earlier referenced and everyone in the facility. Mrs. Vandygriff stated on October 13th, she was trespassed from the property after male medical staff member screamed in her face during her father's chest pains bout and a nurse was scared to wake her father up and she had to do a sternum rub on her father. Mrs. Vandygriff stated she had the resume was much decorated in medicine and she was actively pursuing her nursing degree and saved countless lives and would do it all over again. Mrs. Vandygriff continued to express her frustration with the Mishawaka Housing Authority and the Vannoni Assisted Living Facility where her father resided. Ms. Vandygriff requested help and direction on how to go about the grievance she filed against the Mishawaka Housing Authority and Vannoni Assisted Living Facility. Mrs. Vandygriff hoped something positive could come from her situation and she provided the Clerk's Office with a copy of her statement.

Mr. Hixenbaugh appreciated her concern and they were sorry for what she experienced and he wished there was an ability on behalf of the Council to provide her with some of the closure she was seeking and even though the name was Mishawaka Housing Authority, it really was more of a federal governmental program than it was anything that they as a municipality had control over. Mr. Hixenbaugh stated he thought their main involvement was that the Mayor had the ability to appoint commissioners who sat on their board but they did not answer to the Council or report to them. Mr. Hixenbaugh wished there was something more they could do tangibly and talk to her that evening about how they could help but if she left that information with Clerk Block along with her contact information, if they could come up with anything they could do try to be of assistance they would be happy to do so. Mrs. Vandygriff thanked the Council very much.

NEW BUSINESS

Mr. Mammolenti announced the next Twin Branch Neighborhood Watch meeting would be Wednesday October 18th at 7PM and would be held at Fire Station Number 4. Mr. Mammolenti stated their guest speaker would be State Representative Maureen Bauer and all residents of Mishawaka were welcome.

Mr. Emmons announced the West End meeting would be held Thursday October 19th at 7PM at St. Bamos and their guest speaker would be Mr. Brian Tanner to talk about the Third Thursday event in Mishawaka and other new events coming into the city. Mr. Emmons stated it should be very informative and he looked forward to seeing everyone. Mr. Emmons stated refreshments would be served from West End Bakery.

Mr. Hixenbaugh made a reminder that because of Election Day, they had rescheduled their next regularly scheduled council meeting to Monday, November 13th at 7PM and they looked forward to seeing everyone there at that time.

ADJOURNMENT 8:41PM

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

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

23-22

OCT 27 2023

DATE:

City Clerk
Mishawaka, IN

Honorable Members of the
Common Council
City of Mishawaka, Indiana
and
Mishawaka City Plan Commission
City of Mishawaka, Indiana

Received

OCT 23 2023

Planning and
Community Development

RE: PETITION TO REZONE

The undersigned Petkov & Sons LLC respectfully show they are the owners of the following described real estate located in the City of Mishawaka, County of St. Joseph, State of Indiana, to-wit:

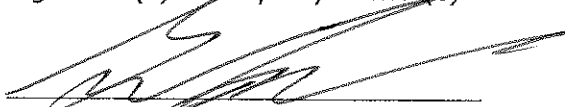
Lots 8-11 except north 5' of each lot for Jefferson Avenue in Milliken's
Proposed Commonly known as 1213 E Jefferson Blvd

Petitioner(s) own one hundred (100%) percent of the above described parcel of land which carries a zoning classification of I-2 Heavy Industrial District. Said property is *vacant restaurant and overflow parking (former Reggio's)*.

Petitioner(s) desire said real estate to be rezoned to C-4 Automobile Oriented Commercial.

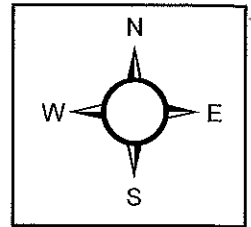
Wherefore, the petitioner(s) pray and respectfully request that the Common Council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate ordinance be enacted rezoning the above described parcel of land located in the City of Mishawaka.

Signature(s) of Property Owner(s)


Grigor Petkov, Petkov and Sons LLC

CONTACT PERSON:

NAME: GRIGOR PETKOV
ADDRESS: 1102 E JEFFERSON
PHONE NUMBER: 574-323-7279
EMAIL: GRIGORMPETKOV@YAHOO.COM

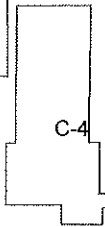


N MERRIFIELD AVE

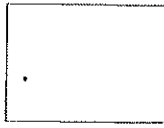


C-4

Greg's Automotive



C-4



C-4

PET 23-22

E JEFFERSON BLVD

Recent Expansion of Greg's Automotive

C-4

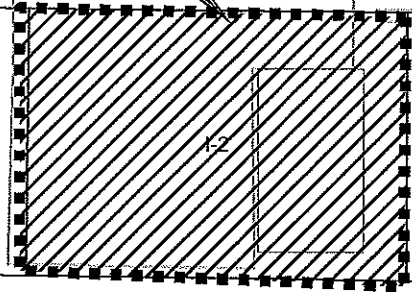
C-4

C-4

C-4

C-4

C-4



I-2

R-3

R-3

I-2

I-2

I-2

R-1

R-1

I-2

I-2

I-2

I-2

STANLEY ST

I-2

I-2

S-2

Location Map

PET 23-22

PETKOV & SONS LLC (OWNER)

1213 E. JEFFERSON BLVD.
(FORMER REGGIO'S)

REZONING FROM I-2 HEAVY INDUSTRIAL
TO C-4 AUTOMOBILE ORIENTED COMMERCIAL

I-2

S-2

GLENEAGLE DR

I-2

PET 23-24

Received

OCT 25 2023

Planning and
Community Development

Date: August 14, 2023

To the: Honorable Members of the Common Council,
City of Mishawaka, Indiana:

RE: Gage Stewart Petition for Rezoning:

The undersigned, Gage Stewart, respectfully shows that he is the owner of the following described real estate located in the City of Mishawaka, St. Joseph County, Indiana:

That part of the Northeast Quarter of Section 13, Township 37 North, Range 3 East, Penn Township, City of Mishawaka, St. Joseph County, Indiana which is described as: Part of Lot # 4 of the "Geyers Acreage" Unrecorded Plat and being more particularly described as: Beginning at the Northwest corner of said Lot # 4 thence N. 90°00'00" E. (all bearings assumed), along the South right-of-way line of Linconlway East, a distance of 61.50 feet more or less to the Northeast corner of said Lot; thence S. 00°00'00" E. along the East line of said Lot, a distance of 120.00 feet more or less; thence S. 90°00'00" W., a distance of 61.50 feet more or less to the West line of said Lot; thence N. 90°00'00" W. along the West line of said Lot, a distance of 120.00 more or less to the point of beginning.

Containing 0.17 acres more or less.

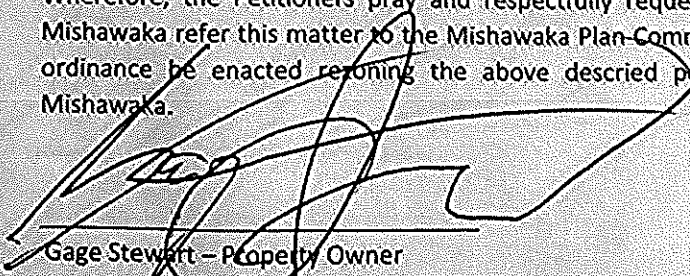
Subject to all legal highways, Easements and restrictions of record.

Also, commonly known as 3813 Lincolnway East, Mishawaka, Indiana 46544.

The above-described parcel is presently zoned: C-1 Commercial District.

Petitioners desire said real estate to be rezoned to C-9 Commercial District. The purpose for the rezoning is to allow for the expansion of an existing automotive sales lot located at 3805 Linconlway East which is West of and adjacent to the Petition property.

Wherefore, the Petitioners pray and respectfully request that the Common Council of the City of Mishawaka refer this matter to the Mishawaka Plan Commission and that after hearing, an appropriate ordinance be enacted rezoning the above described parcel of real estate located in the City of Mishawaka.



Gage Stewart – Property Owner
3813 Lincolnway East
Mishawaka, Indiana 46544
574-334-6309

Contact person:

Michael Danch

Danch, Harner & Associates, Inc.

1643 Commerce Drive

South Bend, Indiana 46628

Pes 23-24

Received

OCT 25 2023

Planning and
Community Development



Danch, Harner & Associates, Inc.

Michael J. Danch, L.A., ASLA
Ron Harner, P.S.

Land Surveyors • Professional Engineers
Landscape Architects • Land Planners

Honorable Members of the Common Council,
City of Mishawaka, Indiana
600 East 3rd Street
Mishawaka, Indiana 46544

August 14, 2023

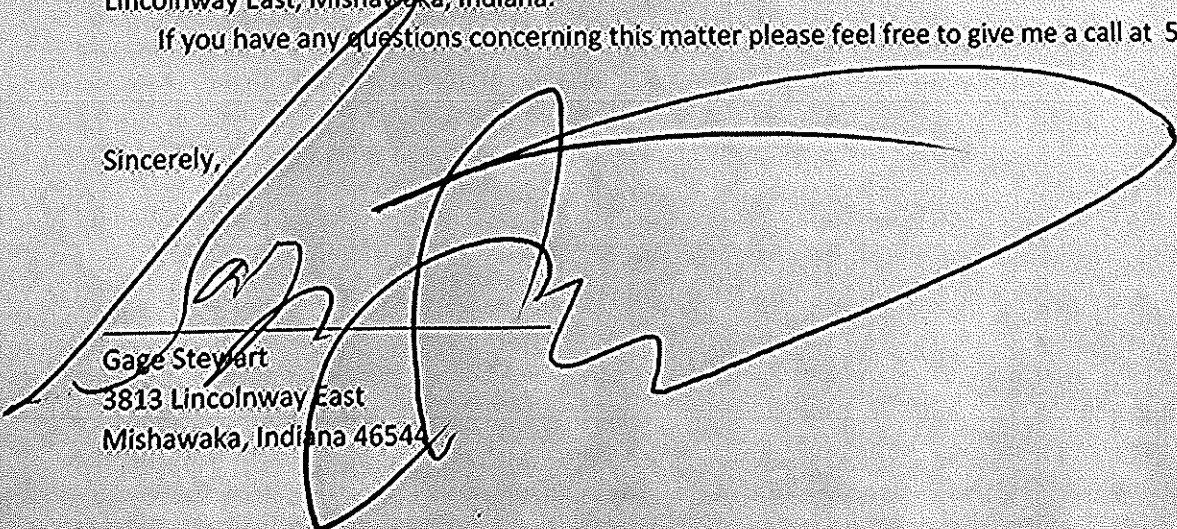
RE: Gage Stewart Petition for Rezoning:

Dear Council Members and Plan Commission Members;

Please accept this letter as written confirmation that we have granted Danch, Harner & Associates, Inc. to represent us at all required Council meetings for our rezoning request for property at 3813 Lincolnway East, Mishawaka, Indiana.

If you have any questions concerning this matter please feel free to give me a call at 574-334-6309.

Sincerely,



Gage Stewart
3813 Lincolnway East
Mishawaka, Indiana 46544

mdanch@danchharner.com

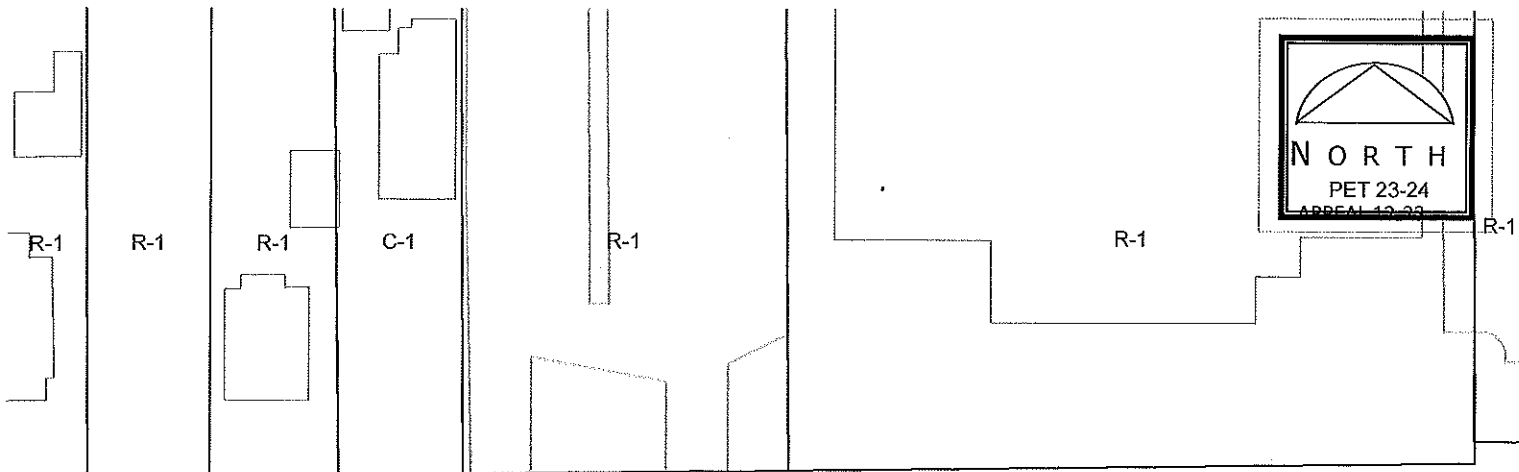
Legal Description:

That part of the Northeast Quarter of Section 13, Township 37 North, Range 3 East, Penn Township, City of Mishawaka, St. Joseph County, Indiana which is described as: Part of Lot # 4 of the "Geyers Acreage" Unrecorded Plat and being more particularly described as: Beginning at the Northwest corner of said Lot # 4 thence N. 90°00'00" E. (all bearings assumed), along the South right-of-way line of Lincolnway East, a distance of 61.50 feet more or less to the Northeast corner of said Lot; thence S. 00°00'00" E. along the East line of said Lot, a distance of 120.00 feet more or less; thence S. 90°00'00" W., a distance of 61.50 feet more or less to the West line of said Lot; thence N. 90°00'00" W. along the West line of said Lot, a distance of 120.00 more or less to the point of beginning.

Containing 0.17 acres more or less.

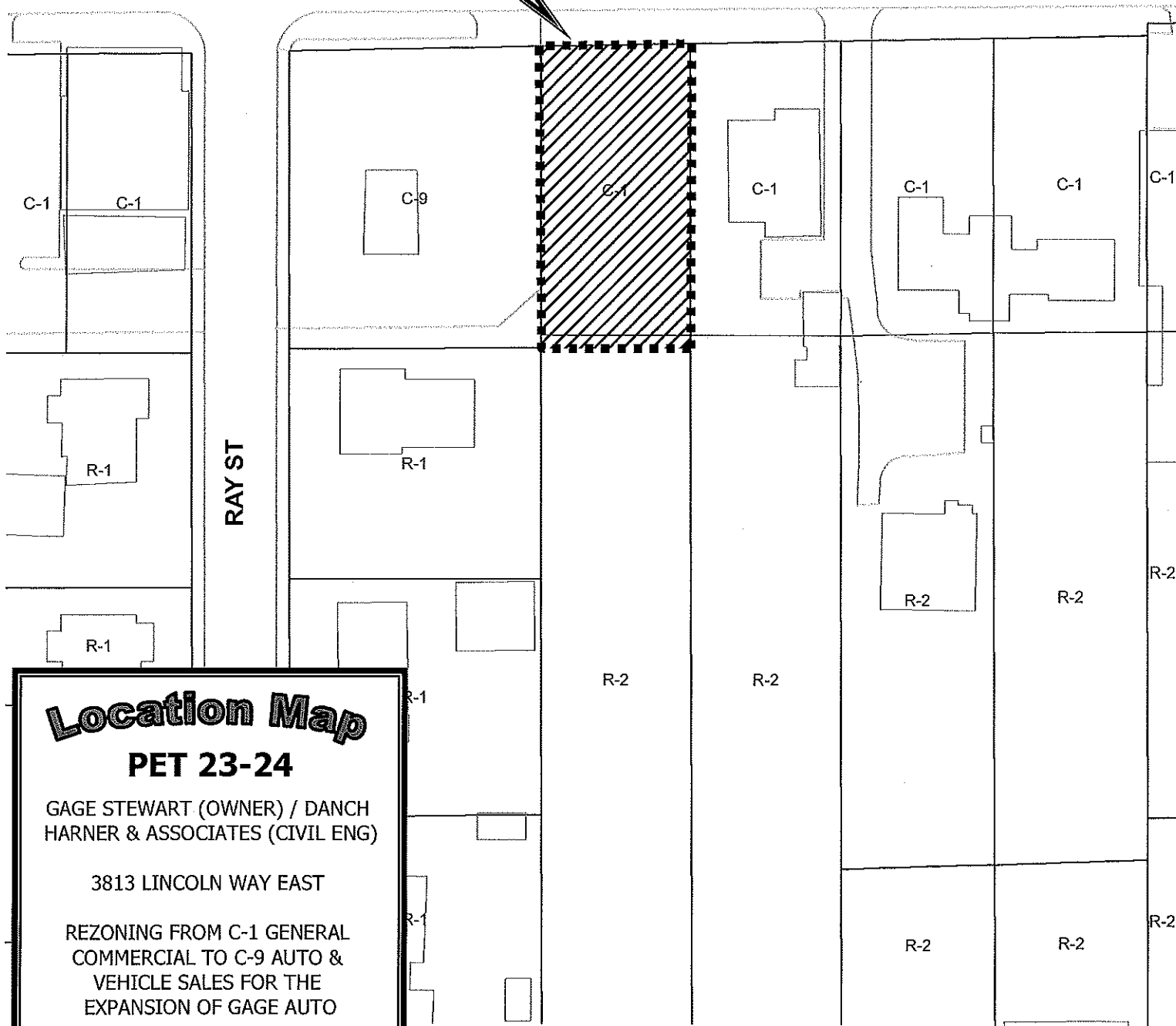
Subject to all legal highways, Easements and restrictions of record.

Also, commonly known as 3813 Lincolnway East, Mishawaka, Indiana 46544.



PET 23-24

LINCOLNWAY EAST



1st Reading
2nd Reading
Passed
Failed
Continued To

Deborah S. Block, WMC, MMC

OCT 27 2023

CITY OF MISHAWAKA, INDIANA

City Clerk
Mishawaka, IN

PROPOSED ORDINANCE NO. 2023-51

ORDINANCE NO. _____

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 THE CITY OF MISHAWAKA, INDIANA.

WHEREAS, in 1966 the City of Mishawaka adopted the Zoning Ordinance to regulate uses and development within the City, and

WHEREAS, uses regulated by this ordinance includes barber shops, beauty shops, and scarifying establishments including tattooing, and

WHEREAS, when the Zoning Ordinance was adopted there was no distinction between the application of permanent make-up such as microblading and scarifying establishments that include tattooing, and

WHEREAS, over the past decade as the technology and practices of applying permanent makeup have become more and more prevalent, the City has received multiple use variance requests to allow microblading and permanent makeup either by itself or as part of a beauty shop/salon, and

WHEREAS, over that period of time, no request for microblading or permanent make up has been considered controversial. In addition, each request has been recommended for approval by the Board of Zoning Appeals and were subsequently approved by the Mishawaka Common Council, and

WHEREAS, the City now has a desire to distinguish permanent make-up and microblading from scarifying and tattooing establishments, and

WHEREAS, the City has a desire to regulate microblading and permanent makeup in an identical fashion to barber and beauty shops, which are identified as a permitted use without further separation provisions in multiple commercial zoning districts, and

WHEREAS, the term Barber and Beauty Shop had not been previously defined by the Zoning Ordinance, and

WHEREAS, the terms Scarifying Establishment, Scarifying, Tattoo Establishment, and Tattooing have all been defined in the Zoning Ordinance as follows: *Scarifying establishment* means any room or space where scarifying is performed for compensation. Scarifying means a placement in, upon or under the skin of any indelible design, letter, scroll, figure, symbol or other mark placed with the aid of a surgical scalpel or other instruments. *Tattoo establishment* means any room or space where tattooing is performed for compensation. *Tattooing* means a placement in human tissue of any indelible design, letter, scroll, figure, symbol or other mark placed with the aid of needles or other instrument; or any design, letter, scroll, figure or symbol done by scarring upon or under the skin; and

WHEREAS, microblading is a semi permanent technique for enhancing the appearance of the eyebrows, in which pigment is scratched into the skin in fine, short strokes resembling hair, using a hand tool with a blade formed of tiny needles; and

WHEREAS, Permanent makeup, also known as permanent cosmetics, derma-pigmentation, micro-pigmentation, and cosmetic tattooing, is a cosmetic technique which employs tattoos as a means of producing designs that resemble makeup, such as eye-lining and other permanent enhancing colors to the skin of the face, lips, and eyelids; and

WHEREAS the distinguishing factor between scarifying/tattooing and microblading/permanent makeup is the cosmetic nature of the procedures that are designed to resemble makeup and is limited to the skin of the face, lips, and eyelids; and

WHEREAS, the City desires to regulate microblading and permanent makeup identically to Barber and Beauty Shop uses within the zoning ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, that:

Section 1. Chapter 137, of the Municipal Code of the City of Mishawaka, commonly known as the "Zoning Ordinance", be, and the same is hereby amended as follows:

Add the following:

Sec. 137-4. - Definitions

Add the following:

Barbershops and beauty shops means any use regulated by the State of Indiana Board of Cosmetology and Barber Examiners as may be amended including Barbers, Beauty Culture Instructors, Cosmetologists, Electrologists, Estheticians, Manicurists, Beauty Culture Salons, Beauty Culture Schools, and Tanning Facilities. For the purposes of this ordinance, Barbershops and beauty shop uses shall also include microblading and permanent makeup, but shall exclude scarifying, tattoos and tattooing as defined herein.

Microblading is a semi permanent technique for enhancing the appearance of the eyebrows, in which pigment is scratched into the skin in fine, short strokes resembling hair, using a hand tool with a blade formed of tiny needles.

Permanent makeup, also known as permanent cosmetics, derma-pigmentation, micro-pigmentation, and cosmetic tattooing, is a cosmetic technique which employs tattoos as a means of producing designs that resemble makeup, such as eye-lining and other permanent enhancing colors to the skin of the face, lips, and eyelids.

Section 2. This Ordinance shall be in full force and effect from and after its passage, due attestation and legal publication.

PASSED by the Common Council of the City of Mishawaka, Indiana, this _____ day of _____, 2023, at _____ o'clock _____.M.

Gregg Hixenbaugh - President

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____, 2023, at _____ o'clock _____.M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _____, 2023, at _____ o'clock _____.M.

David A. Wood, Mayor

STAFF REPORT

Location: Zoning Ordinance Amendment to Section 137-4 Definitions

Date: November 14,
2023

Petition: 23 23

Prepared By: CH

GENERAL INFORMATION

Applicant: City of Mishawaka Planning Commission

Request: The City is seeking to amend the Definitions for *Barbershops and beauty shops*, and add definitions for *Microblading* and *Permanent makeup*.

Applicable Regulations: Sec. 137-41 (b) (2) - Amendment of this chapter and the zoning map.

ANALYSIS

Staff has attached a proposed ordinance amendment to make changes to Section 137-4. -Definitions of the Zoning Ordinance to allow microblading and permanent make up in any zoning district that allows barbershops and beauty shops.

Starting in 2018, the Planning Department was made aware of a process known as microblading, a form of semi-permanent makeup specific to eyebrows.

When we learned the St. Joseph County Health Department was requiring providers to apply for a tattoo license, the City Planning Department treated this process the same as we would a tattoo. Tattoos are a Conditional Use in the C-1 District with separation restrictions. The more filings we heard, 15 in total, the more we understood the process was becoming more common and usually takes place within an existing salon where other services like hair, nails, massage, etc. were offered. The Common Council has approved all the requests, 5 PUD Amendments and 10 Use Variances, to allow microblading without controversy.

Barbershops and beauty shops are a use allowed in C-1, C-2, C-3, C-4, C-5, C-7, C-8, C-9 and C-10 but are not defined within the Ordinance. Microblading and permanent makeup currently do not appear anywhere in the Ordinance.

Therefore, we proposed the following changes to Section 137-4. -Definitions

Add the following:

Barbershops and beauty shops means any use regulated by the State of Indiana Board of Cosmetology and Barber Examiners as may be amended including Barbers, Beauty Culture Instructors, Cosmetologists, Electrologists, Estheticians, Manicurists, Beauty Culture Salons, Beauty Culture Schools, and Tanning Facilities. For the purposes of this ordinance, Barbershops and beauty shop uses shall also include microblading and permanent makeup, but shall exclude scarifying, tattoos and tattooing as defined herein.

Microblading is a semi permanent technique for enhancing the appearance of the eyebrows, in which pigment is scratched into the skin in fine, short strokes resembling hair, using a hand tool with a blade formed of tiny needles.

Permanent makeup, also known as permanent cosmetics, derma-pigmentation, micro-pigmentation, and cosmetic tattooing, is a cosmetic technique which employs tattoos as a means of producing designs that resemble makeup, such as eye-lining and other permanent enhancing colors to the skin of the face, lips, and eyelids.

RECOMMENDATION

The Planning Department recommends **approval** of Petition 23-23 to modify *Section 137-4. Definitions* to add definitions for **Barbershops and beauty shops, microblading, and permanent makeup**. This recommendation is based upon the following findings of fact:

- (1) the proposed change in code relative to allowing microblading by right within any district that currently allows barbershops and beauty shops does not contradict, change, or alter the City of Mishawaka 2000 Comprehensive plan;
- (2) The proposed changes consider the recent advancements in beauty procedures and aims to reduce the number of PUD amendments and Use Variances brought before the Common Council;
- (3) The proposed change does not alter or prohibit the most desirable use for which the land in each district is adapted;
- (4) By allowing microblading by right within any district that currently allows barbershops and beauty shops, it allows those businesses to evolve to changing trends, which will ultimately help with the conservation of property values throughout the City; and
- (5) the proposed change will not hinder responsible development and growth of the City, and will aid in the City's desire to encourage additional investment.

ATTACHMENTS

Proposed Ordinance Revision, Table of Previously Approved Use Variances/PUD Amendments for Microblading

Microblading

Case #	Address	Owner/Salon	Date of Resolution/Ordinance	
PET 18-05	6910 N Main Unit 21 & 22	Jennifer Gerber	1/23/18	5612
PET 19-03	6910 N Main Unit 13 D	Danielle Rzepka	4/2/19	5652
PET 19-07	6910 N Main Unit 25 & 26	Jack Schoenthaler	8/6/19	5662
AP 19-23	6501 Grape Rd Suite 1205	Sola Salon	6/18/19	R2019-17
AP 19-38	605 W Edison Unit L	LaSheen Taylor Xclusive Beauty 'n BROWS	8/19/19	R2019-23B
AP 19-28	228 W Edison Suite 600	Lindsay Bowerman	9/3/19	R2019-21
PET 19-10	239 W University Dr	Blown Away	10/8/19 -	5664
AP 20-43	3602 Grape Rd Suite 11	Rootz Salon	10/5/20	R2020-20
AP 21-24	218 W Cleveland	Salon Sixteen	8/17/21	R2021-20
AP 21-41	420 W Cleveland Rd	Tribe Salon	12/21/21	R2021-31
AP 22-02	3931 LWE	That Hair Place	3/20/22	R2022-05
AP 22-04	1238 E University	Sola Salon	3/20/22	R2022-06
AP 22-13	4125 Grape	Salon Studio Suites Kelly Reynolds	7/5/23	R2022-13
AP 23-06	3607 Grape	Blush Studio Salon	3/20/23	R2023-05
PET 23-19	6910 N Main Unit 14	Nicole Walasinski	9/11/23	5858

1st Reading
2nd Reading
Passed
Failed
Continued To

Deborah S. Block, AMC, MMC

NOV 09 2023

City Clerk
Mishawaka, IN

PROPOSED ORDINANCE NO. 2023-52

ORDINANCE NO. _____

AN ORDINANCE DECLARING AN EMERGENCY AND
TRANSFERRING AND REAPPROPRIATING FUNDS
WITHIN THE BUDGET ADOPTED FOR THE
CALENDAR YEAR ENDING DECEMBER 31, 2023

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA,
INDIANA, THAT:

Section 1. An emergency exists which requires the transfer and reappropriation of funds within the Public Safety LIT for the budget adopted for the fiscal year ending December 31, 2023.

Section 2. There is hereby transferred and reappropriated the sum of \$130,000.00 as follows:

Public Safety LIT Fund

From: <u>Capital Outlays</u>		
2240-50-445-09	Vehicles	\$130,000.00
To: <u>Debt Service</u>		
2240-50-438-01	Principal	\$124,000.00
2240-50-438-02	Interest	<u>\$ 6,000.00</u>
		\$130,000.00

Section 3. This ordinance shall be in full force and effect from and after its passage, signing and attestation.

PASSED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana, on this

_____ day of _____, 2023 at _____ o'clock, _____. M.

Gregg Hixenbaugh, Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED BY ME to the Mayor this _____ day of _____, 2023 at
_____ o'clock, _____. M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED BY ME this _____ day of, _____, 2023 at _____ o'clock,
_____. M.

David A. Wood, Mayor



CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF FINANCE
Rebecca S. Maguire, Controller
Kayla Yoder, Deputy Controller

Deborah S. Block, WMC, MMC

NOV 09 2023

City Clerk
Mishawaka, IN

Date: November 9, 2023
To: Honorable Members of the Common Council
From: Rebecca Maguire
Re: Public Safety LIT transfer

Requesting your approval for first reading is a transfer of public safety LIT funds.

In 2021 we ordered two fire trucks that were approved to be paid for by the Mishawaka Local Bond Bank. When preparation for the 2023 budget occurred, the trucks had still not arrived, and their bond bank payments were missed during budget prep.

This transfer moves unused funds from the police car line to the debt service lines to make these payments to the bond bank.

Please let me know if you have any further questions.

c: David A. Wood

1st Reading
2nd Reading
Passed
Failed
Continued To

Deborah S. Block, IAMC, MMC

NOV 09 2023

City Clerk
Mishawaka, IN

PROPOSED ORDINANCE NO. 2023-53

ORDINANCE NO. _____

**AN ORDINANCE AMENDING ORDINANCE 5641 OF THE
COMMON COUNCIL OF THE CITY OF MISHAWAKA,
INDIANA, APPROVING THE PARTICIPATION IN THE
STATE OF INDIANA DEFERRED COMP MATCHING
PLAN, ADOPTION AGREEMENT, AND AMENDMENT 1**

WHEREAS, the City of Mishawaka, Indiana, (hereinafter referred to as the "Participating Employer") has determined that in the interest of attracting and retaining qualified employees, it wishes to offer a defined contribution plan, funded by employer contributions;

WHEREAS, the Participating Employer has reviewed the State of Indiana Deferred Compensation Matching Plan ("Plan");

WHEREAS, the Participating Employer wishes to participate in the Plan to provide certain benefits to its employees, reduce overall administrative costs, and afford attractive investment opportunities;

WHEREAS, the Participating Employer is an Employer as defined in the Plan;

WHEREAS, the Mishawaka Common Council ("Governing Body") is authorized by law, IC 5-10-1.1-7.3, to adopt this ordinance approving the Adoption Agreement on behalf of the Participating Employer;

Therefore, the Governing Body of the Participating Employer hereby resolves:

Section 1. The Participating Employer adopts the Plan and the Trust Agreement ("Trust") for the Plan for its Employees.

Section 2. The Participating Employer acknowledges that the Deferred Compensation Committee ("Trustees") are only responsible for the Plan and have no responsibility for other employee benefit plans maintained by the Participating Employer.

Section 3. The Participating Employer hereby adopts the terms of the Adoption Agreement, which is attached hereto and made a part of this ordinance. The Adoption Agreement sets forth the Employees to be covered by the Plan, the benefits to be provided by the Participating Employer under the Plan, and any conditions imposed by the Participating Employer with respect to, but not inconsistent with, the Plan. The Participating Employer reserves the right to amend its elections under the Adoption Agreement, so long as the amendment is not inconsistent with the Plan or the Internal Revenue Code or other applicable law and is approved by the Trustees of the Plan.

Section 4. The Participating Employer hereby authorizes the Auditor of the State of Indiana ("Administrator"), in conjunction with the Deferred Compensation Committee ("Trustees"), to amend the Plan on its behalf as provided under Section 18.01 of the Plan.

The Trustees and the Administrator will maintain or have maintained on their behalf a record of the Participating Employers, and the Trustees and the Administrator will make reasonable and diligent efforts to ensure that Participating Employers have actually received and are aware of all Plan amendments.

Section 5.

(a) The Participating Employer shall abide by the terms of the Plan and the Trust, including amendments to the Plan and the Trust made by the Trustees of the Plan, all investment, administrative, and other service agreements of the Plan and the Trust, and all applicable provisions of the Internal Revenue Code and other applicable law.

(b) The Participating Employer accepts the administrative services to be provided by the Administrator of the Plan and any services provided by a Service Manager (as defined in the Plan) as delegated by the Administrator or Trustees. The Participating Employer acknowledges that fees will be imposed with respect to the services provided and that such fees will be charged to the Participants' Accounts, and not to the Participating Employer.

Section 6.

(a) The Participating Employer may terminate its participation in the Plan, including but not limited to, its contribution requirements, if it takes the following actions:

- (i) A ordinance must be adopted terminating its participation in the Plan.
- (ii) The ordinance must specify when the participation will end.

The Trustees shall determine whether the ordinance complies with the Plan, and all applicable federal and state laws, shall determine an appropriate effective date, and shall provide appropriate forms to terminate ongoing participation. However, distributions under the Plan of existing accounts to Participants will be made in accordance with the Plan.

(b) The Participating Employer acknowledges that the Plan contains provisions for involuntary Plan termination.

Section 7. The Participating Employer acknowledges that all assets held in connection with the Plan, including all contributions to the Plan, all property and rights acquired or purchased with such amounts and all income attributable to such amounts, property or rights shall be held in trust for the exclusive benefit of Participants and their Beneficiaries under the Plan. No part of the assets and income of the Plan shall be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries and for defraying reasonable expenses of the Plan. All amounts of compensation deferred pursuant to the Plan, all property and rights acquired or purchased with such amounts and all income attributable to such amounts, property or rights held as part of the Plan, shall be transferred to the Trustees to be held, managed, invested and distributed

as part of the Trust Fund in accordance with the provisions of the Plan. All contributions to the Plan must be transferred by the Participating Employer to the Trust Fund. All benefits under the Plan shall be distributed solely from the Trust Fund pursuant to the Plan. Only the assets attributable to a particular Participating Employer and its Employees are available to pay benefits to those Employees and their Beneficiaries.

Section 8. This ordinance and the Adoption Agreement shall be submitted to the Trustees for their approval. The Trustees shall determine whether the ordinance complies with the Plan, and, if it does, shall provide appropriate forms to the Participating Employer to implement participation in the Plan. The Trustees may refuse to approve an Adoption Agreement by an Employer that does not have state statutory authority to participate in the Plan. The Trustees may also refuse to approve an Adoption Agreement that is ambiguous or that does not comply with the requirements of the Plan. The Governing Body hereby acknowledges that it is responsible to assure that this ordinance and the Adoption Agreement are adopted and executed in accordance with the requirements of applicable law.

Section 9. This Adoption Agreement may be used only in conjunction with the Plan. Failure to properly complete this Adoption Agreement may result in the failure of the Plan to qualify.

Section 10. This ordinance shall be in full force and effect from and after its passage, signing, attestation and legal publication.

PASSED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana, on this

_____ day of _____, 2023 at _____ o'clock, ____ .M.

Gregg Hixenbaugh, Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED BY ME to the Mayor this _____ day of _____, 2023 at
_____ o'clock, ____ .M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED BY ME this _____ day of, _____, 2023 at _____ o'clock,
_____.M.

David A. Wood, Mayor



CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF FINANCE
Rebecca S. Maguire, Controller
Kayla Yoder, Deputy Controller

Deborah S. Block, AMC, MMC

NOV 09 2023

City Clerk
Mishawaka, IN

Date: November 9, 2023
To: Honorable Members of the Common Council
From: Rebecca Maguire
Re: Amending Ordinance 5641 Deferred Comp Matching Plan

Requesting your approval for first reading is an amendment to the Deferred Compensation Matching Plan – Adoption Agreement to be effective the first payroll of 2024.

In 2018, a 401(a) plan was adopted where the City matched up to 1% of an employee's base pay if the employee contributed the same.

The 2024 salary ordinances were approved with a 2% City match. This amendment updates Section III, part A, subsection 2 to this 2%.

Please let me know if you have any questions.

c: David A. Wood

**THE STATE OF INDIANA DEFERRED
COMPENSATION MATCHING PLAN
ADOPTION AGREEMENT**

ADMINISTRATOR

Auditor of the State of Indiana
200 West Washington Street
State House Suite 240
Indianapolis, Indiana 46204
Telephone: (317) 233-3300
Facsimile: (317) 233-2794

PARTICIPATING EMPLOYER

Name: City of Mishawaka

GOVERNING BODY

Name: City of Mishawaka Common Council
Address: 100 Lincolnway West, Mishawaka, IN 46544
Phone: 574-258-1616
Facsimile: 574-258-1628
E-mail: dblock@mishawaka.in.gov

Person Authorized to receive Official Notices from
the Plan or Administrator and to access account and
Plan information: Rebecca S. Maguire

DISCLOSURE OF OTHER 401(a) PLAN(S)

This Participating Employer ☐ does or ☒ does not have an existing defined contribution plan(s). If the Participating Employer does have one or more defined contribution plans, the Governing Body must provide the plan name and name of the provider and such other information requested by the Administrator.

Section I. Types of Employer Contributions Under the Plan. The Participating Employer shall provide the following types of contributions to Eligible Employees under this Plan (check all that apply):

- ☒ Matching Contributions.
- ☐ Non-Matching Contributions.

Section II. Eligibility Requirements. Only Employees as defined in the Plan may be covered by the Adoption Agreement. Independent contractors may not participate in the Plan. Subject to other conditions in the Plan and this Adoption Agreement, the Participating Employer may designate which categories of employees are eligible to participate in the Plan. The Employer shall provide the Trustees with the name, address, Social Security Number, and date of birth for each Eligible Employee, as defined by the Adoption Agreement. A Participating Employer may also establish a waiting period before an Eligible Employee may become a Participant in the Plan. For purposes of determining a period of service, any period of time during which an individual is considered employed by the Participating Employer (including sick leave, personal leave, vacation leave, and paid time off) shall be included in the period of service calculation).

A. Eligibility For Matching Contributions

1. Eligible Classes of Employees (check one)

- ☐ All Employees.
- ☒ All Employees with the following exclusions (select all that apply):
 - ☐ Elected or appointed officials
 - ☒ Employees who are not covered by the Participating Employer's defined benefit retirement plan(s)
 - ☐ Other (must specify): _____

If "Other" is selected, the exclusion must be described in a manner that is definitely determinable and that does not allow for Participating Employer discretion.

2. Waiting Period - The Employer hereby elects the following (elect "no waiting period" or one of the waiting period options below):

- ☒ **No waiting period.** An Eligible Employee may become a Participant for matching contributions immediately upon meeting the eligibility conditions of the Plan.
- ☐ Matching contributions will be made only after satisfying a waiting period described under one of the following options (check one):
 - ☐ **Minimum Period of Service (if checked, please complete all items below):**

The waiting period for participation in the Plan shall be _____ (not to exceed 12 months) of service, calculated from the commencement of the Eligible Employee's employment with the Employer.

Eligible Employees who are employed on the date the plan is adopted ☐ will be ☐ will not be given credit for prior service as an Employee for purposes of satisfying the waiting period.

Separate periods of service ☐ will be ☐ will not be added together to determine whether the waiting period has been satisfied.

☐ **Minimum Period of Contributions to the Deferred Compensation Plan (if checked, please complete all items below):**

The waiting period for participation in the Plan shall be _____ (not to exceed 12 months) from the date the Eligible Employee first makes contributions to the Deferred Compensation Plan. An eligible employee ☐ will ☐ will not be required to continuously make contributions throughout the waiting period in order to be eligible for matching contributions.

Eligible Employees who are employed on the date the plan is adopted ☐ will be ☐ will not be given credit for prior periods of time they were making contributions to a 457(b) Plan for purposes of satisfying the waiting period.

After initially meeting the waiting period, any interruption of employee contributions to the Deferred Compensation Plan ☐ will ☐ will not require the employee to meet another waiting period to qualify for matching contributions.

Separate periods of service in which deferrals are made as an Eligible Employee ☐ will ☐ will not be added together to determine if the waiting period has been satisfied.

B. Eligibility For Non-Matching Contributions

1. Eligible Classes of Employees (check one)

☐ All Employees.

☐ All Employees with the following exclusions (select all that apply):

☐ Elected or appointed officials

- ☐ Employees who are not covered by the Participating Employer's defined benefit retirement plan(s)
- ☐ Other (must specify): _____

If "Other" is selected, the exclusion must be described in a manner that is definitely determinable and that does not allow for Participating Employer discretion.

2. **Waiting Period** - The Employer hereby elects the following (elect "no waiting period" or one of the waiting period options below):

- ☐ **No waiting period.** An Eligible Employee may become a Participant for non-matching contributions immediately upon meeting the eligibility conditions of the Plan.
- ☐ Non-matching contributions will be made only after satisfying a waiting period described under one of the following options (check one):

- ☐ **Minimum Period of Service (if checked, please complete all items below):**

The waiting period for participation in the Plan shall be _____ (not to exceed 12 months) of service, calculated from the commencement of the Eligible Employee's employment with the Employer.

Eligible Employees who are employed on the date the plan is adopted ☐ will be ☐ will not be given credit for prior service as an Employee for purposes of satisfying the waiting period.

Separate periods of service ☐ will be ☐ will not be added together to determine whether the waiting period has been satisfied.

- ☐ **Minimum Period of Contributions to the Deferred Compensation Plan (if checked, please all complete items below)**

The waiting period for participation in the Plan shall be _____ (not to exceed 12 months) from the date the Eligible Employee first makes contributions to the Deferred Compensation Plan.

Eligible Employees who are employed on the date the plan is adopted ☐ will be ☐ will not be given credit for prior contributions made to a prior 457(b) Plan for purposes of satisfying the waiting period.

After initially meeting the waiting period, any interruption of

employee contributions to the Deferred Compensation Plan ☐ will ☐ will not require the employee to meet another waiting period to qualify for matching contributions.

Separate periods of service in which deferrals are made as an Eligible Employee ☐ will ☐ will not be added together to determine if the waiting period has been satisfied.

Section III. Amount of Employer Contributions. A Participating Employer may make Matching Contributions and/or Non-Matching Contributions, pursuant to a definite, pre-determined formula, as specified below. Matching Contributions and Non-Matching Contributions that are tied to Payroll Periods (as defined in this Adoption Agreement) must be remitted to the Administrator no later than 15 business days after the Payroll Period. Annual Contributions must be remitted to the Administrator no later than 15 days after the end of the Plan Year.

A Participating Employer may impose conditions on the receipt of Matching and Non-Matching Contributions – such as the requirement to be employed as of a particular date, the requirement to have made employee contributions for a specified period of time or any other objectively determinable requirement.

For purposes of computing matching or non-matching contributions, “Compensation” is subject to the limits imposed by Internal Revenue Code 401(a)(17).

The Participating Employer hereby elects to make contributions as follows:

A. Matching Contributions.

1. Matching Contribution Amount (check one)

- ☐ **Flat Dollar Match:** For each Payroll Period in which the Participant contributed at least \$_____ (\$15 to \$25) to the Deferred Compensation Plan, the Participating Employer will contribute a flat dollar amount as shown below (complete as applicable; amount may not result in a zero flat dollar match):

\$_____ per weekly Payroll Period
\$_____ per bi-weekly Payroll Period
\$_____ per semi-monthly Payroll Period
\$_____ per monthly Payroll Period

The amount of the matching contribution ☐ is ☐ is not subject to a maximum cap as elected in Item 2 below.

- X** **Percentage Match:** For each Payroll Period in which the Participant contributed to the Deferred Compensation Plan, the Employer will contribute 100 % (insert percentage; may not be zero) of the dollar amount contributed to the Deferred Compensation Plan. **(For example, if an**

Employer elects a 50% match, then for every \$10 the Participant contributes to the Deferred Compensation Plan, the Employer will contribute \$5 to this Plan).

The amount of the matching contribution X is ☐ is not subject to a maximum cap as elected in Item 2 below.

2. **Maximum Matching Contribution (if a matching contribution cap is elected in item 1 above, check one of the following):**

- ☐ **Flat Dollar Cap** - In no event will Matching Contributions made on behalf of a Participant exceed a flat dollar amount equal to (may not result in zero dollar amount):

\$_____ per weekly Payroll Period
\$_____ per bi-weekly Payroll Period
\$_____ per semi-monthly Payroll Period
\$_____ per monthly Payroll Period
\$_____ per Plan Year

- X **Cap Equal to Percentage of Total Compensation:** In no event will Matching Contributions made on behalf of a Participant exceed 2 % (may not be zero) of the Participant's Compensation X per Payroll Period ☐ per Plan Year.

3. **Additional Allocation Conditions.** In order to receive a matching contribution, each Eligible Employee must satisfy the following additional conditions (conditions must be objectively determinable):

_____.

B. **Non-Matching Contributions.**

1. **Non-Matching Contribution Amount** (check one):

- ☐ **Annual Contributions:** An annual contribution each Plan Year of \$_____ or _____% of Compensation per Eligible Employee Participant (may not result in total contribution of zero).
- ☐ **Special One-Time Contribution:** A one-time contribution of \$_____ or _____% of Compensation per Eligible Employee (may not result in total contribution of zero) to be made as of the following date: _____.
- ☐ **Per Payroll Period Contribution:** _____% (may not be zero) of Compensation per Payroll Period or a flat dollar amount per Payroll Period as shown below (complete as applicable; amount may not result in a zero flat dollar amount):

\$ _____ per weekly Payroll Period
\$ _____ per bi-weekly Payroll Period
\$ _____ per semi-monthly Payroll Period
\$ _____ per monthly Payroll Period

2. **Additional Allocation Conditions.** In order to receive a non-matching contribution, each Eligible Employee must satisfy the following additional conditions (conditions must be objectively determinable): _____

Conditions for Annual Contribution: _____

Conditions for Special One-Time Contribution: _____

Conditions for Per Payroll Period Contribution: _____

Section IV. Payroll Period. The payroll period of the Participating Employer is:

- ☐ Weekly
☒ Bi-Weekly
☐ Semi-Monthly
☐ Monthly

Section V. Modification and Termination of the Adoption Agreement. If a Participating Employer desires to amend any of its elections contained in this Adoption Agreement, the Governing Body by official action must adopt an amendment of the Adoption Agreement or a new Adoption Agreement must be adopted and forwarded to the Trustees for approval. The amendment of the new Adoption Agreement is not effective until approved by the Trustees and other procedures required by the Plan have been implemented. The Administrator shall inform the Participating Employer of any amendments made to the Plan.

Adoption Agreement may be terminated only in accordance with the Plan. The Administrator shall inform the Participating Employer of the discontinuance or abandonment of the Plan.

Effective Date. This Plan will be effective for this Employer as of the later of (1) the first day of the Plan Year (January 1) in which this Adoption Agreement is executed by the Employer; or (2) January 1, 2024.

EXECUTION BY EMPLOYER

The foregoing Adoption Agreement is hereby adopted and approved on the ____ day of _____, 2023.

Signed:_____

Printed Name:_____

Title:_____

Date of Signature:_____

NOTICE TO EMPLOYER

This Adoption Agreement may only be used in conjunction with The State of Indiana Deferred Compensation Matching Plan.

The failure to properly complete this Adoption Agreement or to, operate and maintain the Plan and Trust in accordance with the terms of the completed Adoption Agreement, Master Plan Document, and Trust may result in disqualification of the Plan under the Code. Inquiries regarding the adoption of the Plan, the meaning of Plan provisions, or the effect of the IRS advisory letter should be directed to the Administrator. The Administrator is the Auditor of the State of Indiana, with its primary business offices located at: 200 West Washington Street, State House Suite 240, Indianapolis, Indiana 46204. The business telephone number is: (317) 233-3300. The primary person to contact is: _____.

TRUSTEES APPROVAL

The Adoption Agreement is approved by the Board of Trustees of the State of Indiana Deferred Compensation Matching Plan. Contributions shall first be remitted as follows:

- ☐ within 15 business days after the Payroll Period ending _____, 20____.
- ☐ other (must specify): _____.

Dated: _____

By: _____

Title: _____
on behalf of the Board of Trustees

**State of Indiana Deferred Compensation Matching Plan Amendment
City of Mishawaka**

Amendment 1

Pursuant to Section III.A.2 of the State of Indiana Deferred Compensation Matching Plan Adoption Agreement, for purposes of calculating the cap on an employer contribution, only the participant's "base salary" will be considered.

EXECUTION BY EMPLOYER

The foregoing Adoption Agreement is hereby adopted and approved on the ____ day of _____, 20__.

Signed:_____

Printed Name:_____

Title:_____

Date of Signature:_____

TRUSTEES APPROVAL

The Adoption Agreement is approved by the Board of Trustees of the State of Indiana Deferred Compensation Matching Plan. Contributions shall first be remitted as follows:

- ☐ within 15 business days after the Payroll Period ending _____, 20__.
- ☐ other (must specify): _____.

Dated: _____

By: _____

Title: _____
on behalf of the Board of Trustees

OCT 12 2023

City Clerk
Mishawaka, IN

APPEAL #23-27

RESOLUTION NO. 2023-22

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:

550 Union, Mishawaka, Indiana

WHEREAS, the Indiana Code requires the Common Council to give notice of its intention to consider Petitions from the Board of Zoning Appeals for approval or disapproval; and

WHEREAS, the Common Council must take action within sixty (60) days after the Board of Zoning Appeals makes its recommendation to the Council; and

WHEREAS, the Common Council is required to make a determination in writing on such requests; and

WHEREAS, the Mishawaka Board of Zoning Appeals has made a favorable recommendation, pursuant to applicable state law, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning.

NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, as follows:

Section I. The Common Council has provided notice of the hearing on the Petition from the Board of Zoning Appeals pursuant to Indiana Code requesting that a Use Variance for property located **550 Union, Mishawaka, Indiana**, more particularly known and described as follows:

PARCEL I:

Part of the Southeast Quarter of Section 16 and part of the Southwest Quarter of Section 15, Township 37 North, Range 3 East, City of Mishawaka, Indiana, described as follows: Commencing at the point of intersection of the East line of Union Street with the North line of Ward & Laing's Addition; thence North 00°00'00" East on the East line of Union Street, a distance of 649.465 feet to the point of intersection with the Easterly line of the Church-Union Underpass; thence on a curve to the left having a radius of 1477.39 feet and on the Easterly line of the Church-Union Underpass an arc distance of 450.92 feet, to the POINT OF BEGINNING; thence North 90°00'00" East, a distance of 119.27 feet; thence North 00°09'30" West, a distance of 370.995 feet to the Southerly right of way line of the Penn Central Railroad; thence South 84 degrees 00'30" West and on said right of way line, a distance of 86.115 feet to a point of curvature; thence continuing on said right of way line and on a curve to the right having a radius of 8557.96 feet, a chord distance of 159.32 feet bearing South 83°28'30" West; thence continuing on said right of way line South 83°18'0" West, a distance of 33.00 feet to a point of curvature; thence continuing on said right of way line, on a curve to the left having a radius of 611.40 feet, an arc distance of 49.22 feet to a point of the Easterly line of the Church-Union Underpass; thence South 34°30'00" East on the Easterly line of the Church-Union Underpass, a distance of 164.09 feet, to a point of curvature; thence continuing on the Easterly line of the Church-Union Underpass on a curve

to the right having a radius of 1477.39 feet, an arc distance of 227.96 feet, to the point of beginning.

PARCEL II:

Part of the Southeast Quarter of Section 16, and a part of the Southwest Quarter of Section 15, Township 37 North, Range 3 East, City of Mishawaka, Indiana, described as follows: Commencing at the point of intersection of the East line of Union Street with the North line of Ward & Laing's Addition; thence North 00°00'00" East on the East line of Union Street, a distance of 649.465 feet to the point of intersection with the Easterly line of the Church-Union Underpass; thence on a curve to the left having a radius of 1477.39 feet and on the Easterly line of the Church-Union Underpass, an arc distance of 450.92 feet, to the POINT OF BEGINNING; thence North 90°00'00" East, a distance of 192.085 feet; thence South 45°21'58" East, a distance of 54.71 feet; thence North 89°53'58" East, a distance of 55.02 feet; thence

South 00°06'02" East, a distance of 34.695 feet; thence North 89°52'51" East, a distance of 39.265 feet; thence South 00°02'15" East, parallel with and 5.00 feet East of the East line of Building 65, a distance of 167.49 feet; thence South 89°50'53" West, a distance of 112.11 feet; thence South 00°12'22" West, a distance of 96.53 feet; thence North 84°50'57" West, a distance of 100.89 feet to a point on the Easterly line of the Church-Union Underpass; thence on a curve to the left having a radius of 1477.39 feet, and on the Easterly line of the Church-Union Underpass, an arc distance of 347.66 feet, to the point of beginning, EXCEPTING THEREFROM all that portion of the above described real estate lying West of the centerline of Union Street as located prior to the creation of the Church-Union Underpass.

PARCEL III:

Rights and benefits of an Easement for Ingress & Egress granted in a Corporate Quit Claim Deeds dated November 20, 1985 and recorded November 22, 1985 as Document Number 8526186 and 8526187, and affecting the following described real estate: Commencing at the point of intersection of the East line of Union Street with the North line of Ward & Laing's Addition; thence North 00°00'00" East, on the East line of Union Street and said line extended North, a distance of 649.465 feet to the point of intersection with the Easterly line of the Church-Union Underpass; thence Northerly on a curve to the left having a radius of 1477.39 feet and on the Easterly line of Church-Union Underpass, an arc distance of 103.26 feet, to the POINT OF BEGINNING; thence South 84°50'57" East, a distance of 147.425 feet; thence South 00°12'26" East a distance of 25.11 feet; thence North 84°50'57" West, a distance of 142.12 feet to the Easterly line of the Church-Union Underpass; thence Northerly on the Easterly line of the Church-Union Underpass, an arc distance of 26.12 feet, to the point of beginning.

PARCEL IV:

Rights and benefits of an Easement for Ingress & Egress granted in Corporate Quit Claim Deeds dated November 20, 1985 and recorded November 22, 1985 as Document Number 8526186 and 8526187, and affecting the following described real estate: Commencing at the point of intersection of the East line of Union Street with the North line of Ward & Laing's Addition; thence North 00°00'00" East, on the East line of Union Street and said line extended North, a distance of 749.44 feet; thence South 84°50'57" East, a distance of 109.035 feet, to the POINT OF BEGINNING; thence North 00°12'22" West, a distance of 98.975 feet; thence North 89°50'53" East, a distance of 20.00 feet; thence South 00°12'22" East, a distance of 100.825 feet; thence North 84°50'57" West, a distance of 20.08 feet, to the point of beginning.

The Use Variance will to allow Adult Day Care center in the I-2 Heavy Industrial District.

Section II. Following a presentation by the Petitioner, and after proper public hearing, the Common Council hereby approves the Petition as recommended by the Mishawaka Board of Zoning Appeals, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning, a copy of which is on file in the Office of the City Clerk.

Section III. The Common Council of the City of Mishawaka, Indiana, hereby finds that:

1. Approval will not be injurious to the public health, safety, morals and general welfare of the community because minimal external improvements will be made to the site, and will provide services on a pre-arranged schedule.;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the majority of neighboring properties are owned and utilized by the City. Traffic will use a signalized intersection at Seventh and Union.;
3. The need for the variance arises from some condition peculiar to the property in that this use, a social service, is not specifically listed in the ordinance. Rezoning this property to a commercial district which allows adult day care, also allows uses that may not be compatible with adjacent properties.;
4. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought because the zoning does not allow for the Appellant to expand their services which are already established nearby.
5. The recommendation is consistent, and/or, not in conflict with Comprehensive Plan which indicates Industrial. Office buildings are a permitted use in industrial districts. The adult day care will be a supplemental use.

Section IV. This Resolution shall be in full force and effect from and after its adoption by the Common Council and approval by the Mayor.

PASSED by the Common Council of the City of Mishawaka, Indiana, this _____ day of _____, 2023, at _____ o'clock _____.m.

Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____, 2023, at _____ o'clock _____.m.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _____, 2023, at _____ o'clock _____.m.

David A. Wood, Mayor

STAFF REPORT

Location: 550 Union St

Date: September 12, 2023
Moved to: Oct. 10, 2023

Appeal: 23 27

Prepared By: CH

GENERAL INFORMATION

Applicant: Comfy Homes, LLC

Status: Property Owner

Request: Use Variance to allow adult day care in the I-2 Heavy Industrial District

Zoning Classification: I-2 Heavy Industrial

Lot Size: 1.35 acres

Applicable Regulations: Section 137-42 Board of Zoning Appeals Use Variance
Section 137-609 I-2 Heavy Industrial Uses

SPECIAL INFORMATION

Area Development Pattern: North: I-2 Heavy Industrial (former Dodge buildings)
South: I-2 Heavy Industrial (Fire Station #1 and Central Services)
East: I-2 Heavy Industrial (former RMG buildings)
West: R-1 Single Family Residential (across Union St.)

Thoroughfare: Union Street

School District: School City of Mishawaka

Township: Penn

Public Utilities: All utilities are available to, and currently serve the site

Comprehensive Plan: Industrial (Manufacturing, Warehousing and Distribution)

ANALYSIS

The Appellants are requesting a Use Variance to provide adult day care in the I-2 Heavy Industrial District. The building was built in 1965 and was most recently the home of the Troyer Group since 1997.

The new owner will be using the building as the office for Comfy Homes, LLC, but would like to make the most of the space by also operating an adult day care out of the building. Office buildings is a permitted use in I-2 Heavy Industrial. Daily activities/services will be provided. The building has been for sale since summer of 2019.

Engineering commented the sanitary sewer currently goes north under the railroad and is in poor condition. Coordinate rerouting south to Seventh Street with the Engineering Department. The Appellant has reached out to Engineering regarding the timing of this conversion.

Fire commented this is a change in use and all life safety will need to be added and inspected. This does not affect the Use Variance, but the occupancy of the building.

All other pertinent City departments have reviewed this petition and recommended approval.

RECOMMENDATION

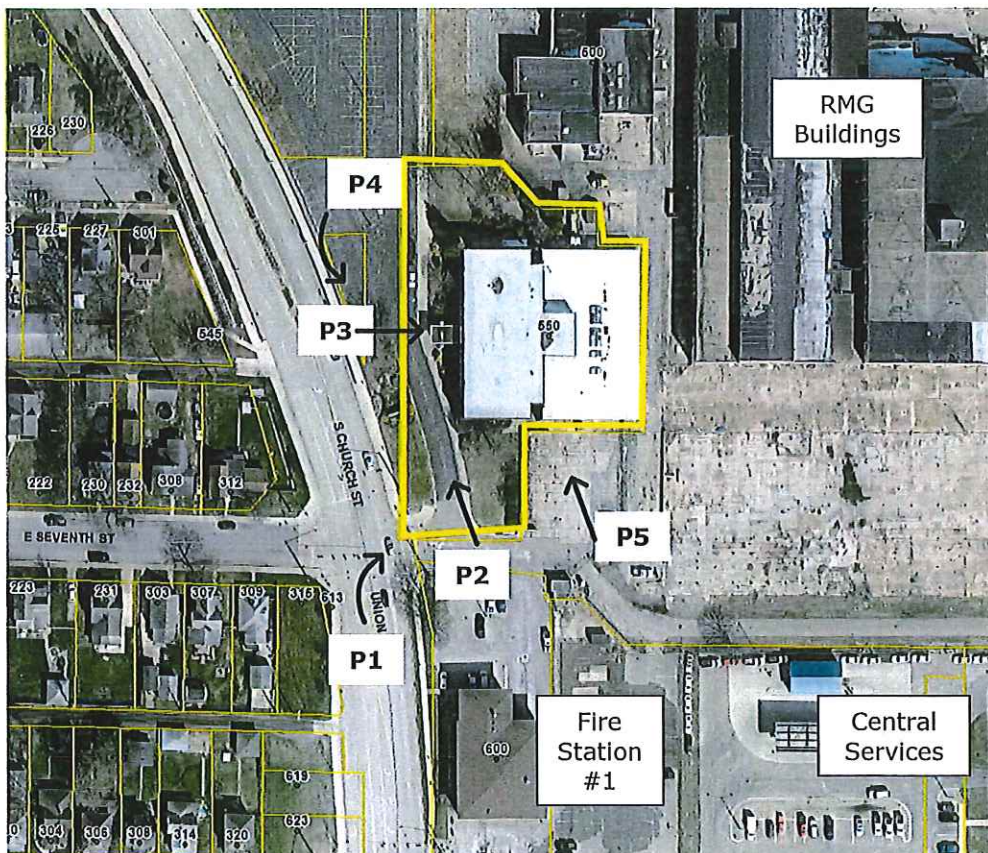
The Planning Staff recommends approval of Appeal #23-27 to provide adult day care services in the I-2 Heavy Industrial District at 550 Union Street.

This recommendation is based upon the following findings of fact:

1. Approval will not be injurious to the public health, safety, morals and general welfare of the community because minimal external improvements will be made to the site, and will provide services on a pre-arranged schedule.;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the majority of neighboring properties are owned and utilized by the City. Traffic will use a signalized intersection at Seventh and Union.;
3. The need for the variance arises from some condition peculiar to the property in that this use, a social service, is not specifically listed in the ordinance. Rezoning this property to a commercial district which allows adult day care, also allows uses that may not be compatible with adjacent properties.;
4. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought because the zoning does not allow for the Appellant to expand their services which are already established nearby.
5. The recommendation is consistent, and/or, not in conflict with Comprehensive Plan which indicates Industrial. Office buildings are a permitted use in industrial districts. The adult day care will be a supplemental use.

ATTACHMENTS

Aerial, Photographs, Appeal, Location Map





P1. From intersection of Seventh St and Union St.



P2. Entrance to parking lot from signalized intersection



P3. Front entrance facing Union Street



P4. Looking south from parking lot.



P5. Loading dock area on south side

5. Will approval interfere substantially with the Mishawaka 2000 Comprehensive Plan?
Explain your reason why. **No**

SIGN VARIANCE

1. Will approval be injurious to the public health, safety, morals or general welfare of the community? *Explain your reason why*
2. Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner? *Explain your reason why*
3. Will strict application of the terms of the On-Premise Sign Standards Ordinance result in practical difficulties in the use of the property? *Explain your reason why*

THIS IS NOT A FILL-IN FORM, BUT A SAMPLE APPEAL TO BE USED AS A GUIDE WHEN PREPARING YOUR APPEAL

DATE: 08/14/2023

TO: Board of Zoning Appeals
City of Mishawaka, Indiana

The undersigned appellant respectfully shows the Board:

1. **Comfy Homes LLC**, I am the owner of the following described real estate 550 South Union Street located within the City of Mishawaka, ____ Township, St. Joseph County, State of Indiana, to-wit:
550 S Union
(PROVIDE ACCURATE LEGAL DESCRIPTION AND ALSO THE COMMON ADDRESS—A TAX KEY NUMBER IS NOT A LEGAL DESCRIPTION) see attached
2. The above-described real estate presently has a zoning classification of Industrial District under the Zoning Ordinance of the City of Mishawaka.
3. Appellant presently occupies (or proposes to occupy) the above-described property in the following manner: Adult Day Service and Office Use.
4. Appellant desires to (Explain what is proposed that violates the Ordinance.)
The current classification as industrial zoning is outdated. The buildings around us are owned by the City of Mishawaka and none of those buildings are currently used for industrial purposes. The neighboring buildings have no active industrial usage.
5. The Zoning Ordinance of the City of Mishawaka requires (Explain ordinance requirements and note Section Number of the Ordinance.)
6. Explain why strict adherence to the Ordinance requirements would create an unusual hardship.
Without the granting of the variance, the building will remain vacant or underutilized. The building was acquired in good faith that the zoning variance will be granted. The granting of the variance will contribute to community development, and jobs. Many adults will benefit by having a place they look forward to going to every morning and returning home with a fulfilled sense of purpose and accomplishment for a day well spent.

7. Answer the following necessary questions for a **USE VARIANCE**:

- (1) Will approval be injurious to the public health, safety, morals or general welfare of the community? *YES OR NO and explain your reason why.*
- (2) Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner? *YES OR NO and explain your reason why.*
- (3) Does the need for the variance arise from some condition peculiar to the property involved? *YES OR NO and explain your reason why.*
- (4) Does strict application of the terms of this chapter constitute an unnecessary hardship if applied to the property for which the variance is sought? *YES OR NO and explain your reason why.*
- (5) Will approval interfere substantially with the Mishawaka 2000 Comprehensive Plan? *YES OR NO and explain your reason why.*

WHEREFORE, Appellant prays and respectfully requests a hearing on this appeal and that after such hearing, the Board grant the requested variance.

Signature of Property Owner/Title Holder

Print Name Here

Reuben Kangethe

Second Property Owner/Title Holder

Print Name Here

CONTACT PERSON:

Name: Reuben Kangethe/ Comfy Homes LLC
Address: 550 South Union Street, Mishawaka, 46544
Day Phone Number: 574 3002990
Fax Number: 5743450575
Email: rkangethe@residentialoption.com



Please understand that you or your representative **MUST** be present at the public hearing. In the case of a USE VARIANCE, two (2) public hearings will be conducted— one hearing with the Board of Zoning Appeals and one hearing with the City Council, normally the following week after the Board hearing. It is the responsibility of the Appellant to establish the date and time of the public hearing with the Common Council. **PERSONAL NOTIFICATION IS NOT GIVEN FOR THE COMMON COUNCIL PUBLIC HEARING.** The staff for the Board does send notification for the Board of Zoning Appeals meeting, along with a staff report to the Appellant. You are welcome to call the Department of City Planning if you have any questions. Secretary to the Board is:

Donna Burkart

(574) 258-1625 Fax (574) 968-6999

The following are the questions that **MUST** be addressed and discussed within the body of your appeal.

DEVELOPMENTAL VARIANCE

1. Will approval be injurious to the public health, safety, morals or general welfare of the community? *Explain your reason why.*
2. Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner? *Explain your reason why.*
3. Will strict application of the terms of this chapter result in practical difficulties in the use of the property? *Explain your reason why.*

USE VARIANCE

1. Will the approval be injurious to the public health, safety, morals or general welfare of the community? *Explain your reason why.*

NO the approval will not be injurious to the public health, safety, morals, or general welfare of the Community. We will use the building as an adult day service, where the attendees will learn skills that can help them with their activity of daily living. This is a great way to use the building. We will also use it as our offices.

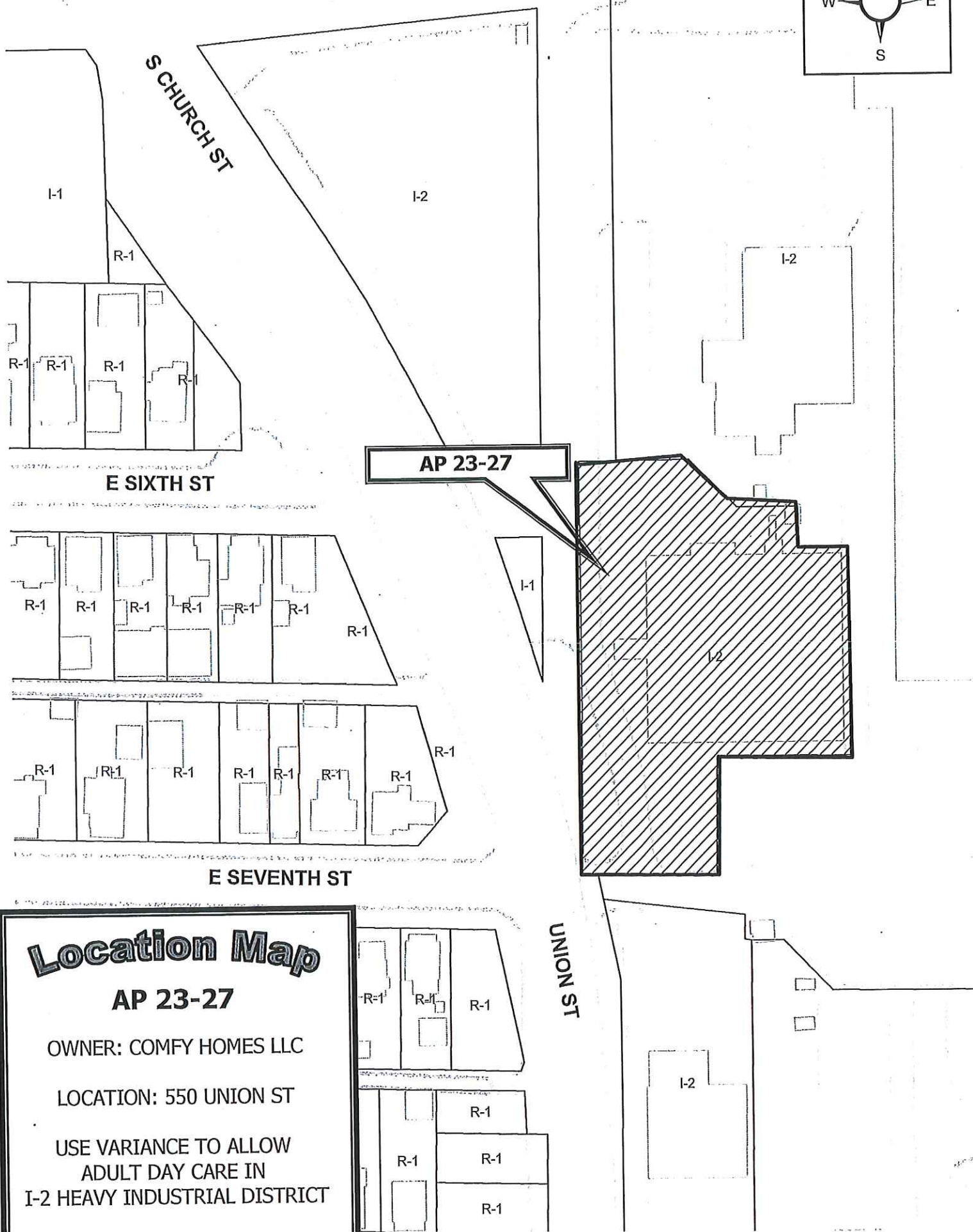
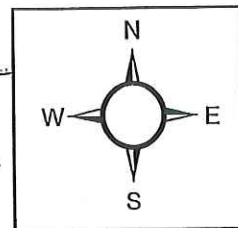
2. Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner? *Explain your reason why.*

No, the value of the property adjacent will lower due to granting if this variance. The building has been vacant for some years and the landscaping environment appears to be deteriorating due to lack of care. Our use of the building will enhance the landscaping appearance of the area, as we start using and taking care of the building, through regular maintenance. The building next door is owned by the city, and it is not in a usable condition.

3. Does the need for the variance arise from some condition peculiar to the property involved? *Explain your reason why.*
No, the building is designed with large open spaces that are very appropriate for effective and efficient use for adult day service.

4. Does strict application of the terms of this chapter constitute an unnecessary hardship if applied to the property for which the variance is sought? *Explain your reason why.*

Yes, we will have a huge building that cannot be used economically for office use only. We need the variance to be granted for use to use this building economically. This is a large building and day service program requires huge space for people with various needs to have their needs met without overcrowding.



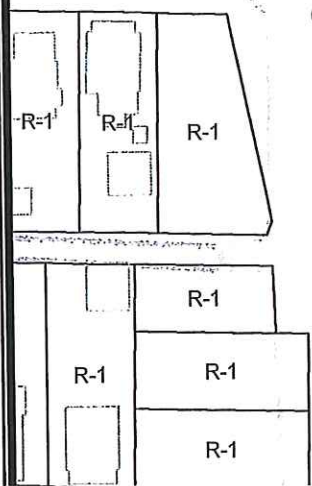
Location Map

AP 23-27

OWNER: COMFY HOMES LLC

LOCATION: 550 UNION ST

USE VARIANCE TO ALLOW
ADULT DAY CARE IN
I-2 HEAVY INDUSTRIAL DISTRICT



Please understand that you or your representative **MUST** be present at the public hearing. In the case of a USE VARIANCE, two (2) public hearings will be conducted— one hearing with the Board of Zoning Appeals and one hearing with the City Council, normally the following week after the Board hearing. It is the responsibility of the Appellant to establish the date and time of the public hearing with the Common Council. **PERSONAL NOTIFICATION IS NOT GIVEN FOR THE COMMON COUNCIL PUBLIC HEARING.** The staff for the Board does send notification for the Board of Zoning Appeals meeting, along with a staff report to the Appellant. You are welcome to call the Department of City Planning if you have any questions. Secretary to the Board is:

Donna Burkart

(574) 258-1625 Fax (574) 968-6999

The following are the questions that **MUST** be addressed and discussed within the body of your appeal.

DEVELOPMENTAL VARIANCE

1. Will approval be injurious to the public health, safety, morals or general welfare of the community? *Explain your reason why.*
2. Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner? *Explain your reason why.*
3. Will strict application of the terms of this chapter result in practical difficulties in the use of the property? *Explain your reason why.*

USE VARIANCE

1. Will the approval be injurious to the public health, safety, morals or general welfare of the community? *Explain your reason why.*

NO the approval will not be injurious to the public health, safety, morals, or general welfare of the Community. We will use the building as an adult day service, where the attendees will learn skills that can help them with their activity of daily living. This is a great way to use the building. We will also use it as our offices.

2. Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner? *Explain your reason why.*

No, the value of the property adjacent will lower due to granting if this variance. The building has been vacant for some years and the landscaping environment appears to be deteriorating due to lack of care. Our use of the building will enhance the landscaping appearance of the area, as we start using and taking care of the building, through regular maintenance. The building next door is owned by the city, and it is not in a usable condition.

3. Does the need for the variance arise from some condition peculiar to the property involved? *Explain your reason why.*

No, the building is designed with large open spaces that are very appropriate for effective and efficient use for adult day service.

4. Does strict application of the terms of this chapter constitute an unnecessary hardship if applied to the property for which the variance is sought? *Explain your reason why.*

Yes, we will have a huge building that cannot be used economically for office use only. We need the variance to be granted for use to use this building economically. This is a large building and day service program requires huge space for people with various needs to have their needs met without overcrowding.

5. Will approval interfere substantially with the Mishawaka 2000 Comprehensive Plan?
Explain your reason why. **No**

SIGN VARIANCE

1. Will approval be injurious to the public health, safety, morals or general welfare of the community? *Explain your reason why*
2. Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner? *Explain your reason why*
3. Will strict application of the terms of the On-Premise Sign Standards Ordinance result in practical difficulties in the use of the property? *Explain your reason why*

THIS IS NOT A FILL-IN FORM, BUT A SAMPLE APPEAL TO BE USED AS A GUIDE WHEN PREPARING YOUR APPEAL

DATE: 08/14/2023

TO: Board of Zoning Appeals
City of Mishawaka, Indiana

The undersigned appellant respectfully shows the Board:

1. **Comfy Homes LLC**, I am the owner of the following described real estate 550 South Union Street located within the City of Mishawaka, ____ Township, St. Joseph County, State of Indiana, to-wit: 550 S Union
(PROVIDE ACCURATE LEGAL DESCRIPTION AND ALSO THE COMMON ADDRESS—A TAX KEY NUMBER IS NOT A LEGAL DESCRIPTION) see attached
2. The above-described real estate presently has a zoning classification of Industrial District under the Zoning Ordinance of the City of Mishawaka.
3. Appellant presently occupies (*or proposes to occupy*) the above-described property in the following manner: Adult Day Service and Office Use.
4. Appellant desires to (*Explain what is proposed that violates the Ordinance.*)
The current classification as industrial zoning is outdated. The buildings around us are owned by the City of Mishawaka and none of those buildings are currently used for industrial purposes. The neighboring buildings have no active industrial usage.
5. The Zoning Ordinance of the City of Mishawaka requires (*Explain ordinance requirements and note Section Number of the Ordinance.*)
6. Explain why strict adherence to the Ordinance requirements would create an unusual hardship.
Without the granting of the variance, the building will remain vacant or underutilized. The building was acquired in good faith that the zoning variance will be granted. The granting of the variance will contribute to community development, and jobs. Many adults will benefit by having a place they look forward to going to every morning and returning home with a fulfilled sense of purpose and accomplishment for a day well spent.

7. Answer the following necessary questions for a **USE VARIANCE**:

- (1) Will approval be injurious to the public health, safety, morals or general welfare of the community? *YES OR NO and explain your reason why.*
- (2) Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner? *YES OR NO and explain your reason why.*
- (3) Does the need for the variance arise from some condition peculiar to the property involved? *YES OR NO and explain your reason why.*
- (4) Does strict application of the terms of this chapter constitute an unnecessary hardship if applied to the property for which the variance is sought? *YES OR NO and explain your reason why.*
- (5) Will approval interfere substantially with the Mishawaka 2000 Comprehensive Plan? *YES OR NO and explain your reason why.*

WHEREFORE, Appellant prays and respectfully requests a hearing on this appeal and that after such hearing, the Board grant the requested variance.

Signature of Property Owner/Title Holder

Print Name Here

Reuben Kangethe

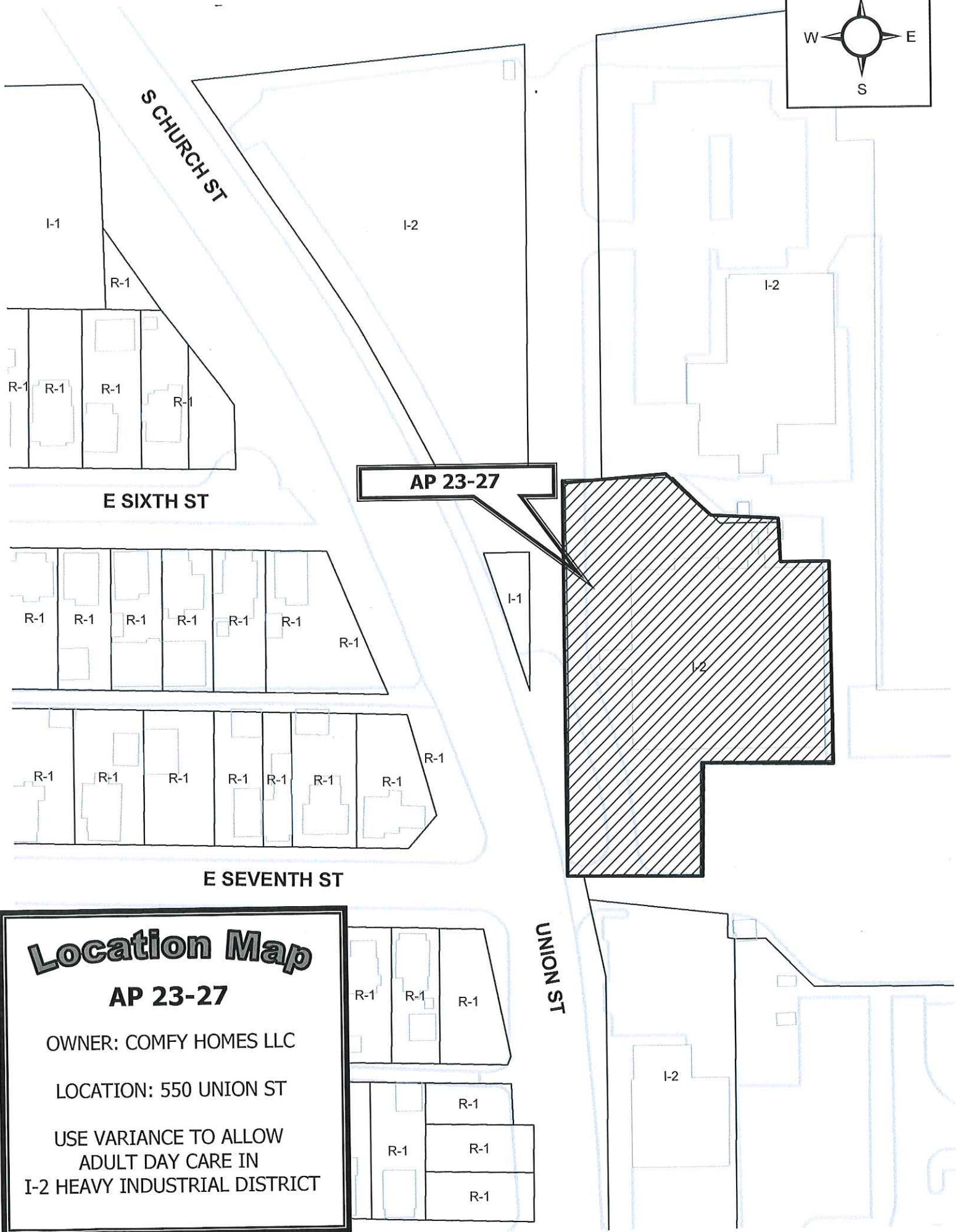
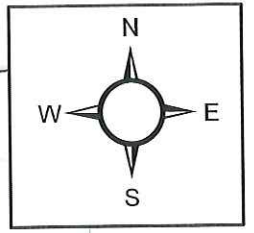
Second Property Owner/Title Holder

Print Name Here

CONTACT PERSON:

Name: Reuben Kangethe/ Comfy Homes LLC
Address: 550 South Union Street, Mishawaka, 46544
Day Phone Number: 574 3002990
Fax Number: 5743450575
Email: rkangethe@residentialoption.com





Location Map

AP 23-27

OWNER: COMFY HOMES LLC

LOCATION: 550 UNION ST

USE VARIANCE TO ALLOW
ADULT DAY CARE IN
I-2 HEAVY INDUSTRIAL DISTRICT

NOV 09 2023

City Clerk
Mishawaka, IN

RESOLUTION NO. 2023 – 25

A Resolution of the Common Council of the City of Mishawaka amending Resolutions R2022-10, R2022-22, R2023-03, and R2023-12 which Adopted a Plan for Distribution of the Proceeds of the City of Mishawaka's Grant from the American Rescue Plan Act of 2021

WHEREAS, the federal government enacted the American Rescue Plan Act of 2021 (ARPA) on or about March 11, 2021; and

WHEREAS, on or about May 17, 2021, the Common Council of the City of Mishawaka adopted Ordinance 5744, thereby establishing the ARPA Coronavirus Local Fiscal Grant Fund #180 in order to hold and receive ARPA monies allocated to the City in 2021 and 2022; and

WHEREAS, the terms of Ordinance 2021-16 and the relevant requirements of the ARPA require the Common Council to adopt a plan that details the use of ARPA funds.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Mishawaka as follows:

Section I – General Terms

- A. The City's distribution of the ARPA funds detailed in this Plan and any future amendments to this Plan shall be limited to the following uses of the funds authorized by the ARPA statute:
 1. To respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;
 2. To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of the City that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;
 3. For the provision of government services to the extent of the reduction in revenue of the City due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year of the City prior to the emergency, that being 2019; or
 4. To make necessary investments in water, sewer, or broadband infrastructure.
- B. The Common Council may amend this Plan to comply with ARPA, any subsequent amendments to ARPA, and the rules adopted by the United States Treasury Department to implement ARPA, including the Interim Final Rule (31 CFR Part 35).

- C. Prior to the disbursement of any ARPA funds, the Common Council, as the fiscal body, must appropriate said funds for a use that is consistent with the statutory purposes set out above.
- D. The Plan's procedures and designated uses for distribution of ARPA funds are stated in the following sections below, as from time to time may be amended.

Section II – Premium Pay to Eligible Employees

- A. The Common Council finds that all employees of the City of Mishawaka, including employees of the Mishawaka Municipal Utilities, who worked for the City of Mishawaka from the start of the COVID-19 public health emergency through November 30, 2021, performed duties that were critical to protecting the health and wellbeing of the community. These City employees put their physical wellbeing at risk to meet the daily needs of the community and to provide care for others. To the extent necessary under the terms of Section 603(g)(2) of the ARPA, the Mayor of Mishawaka has also deemed each employee described above to have performed essential work critical to protect the health and well-being of residents. Therefore, all of the above-described employees who are employed by the City as of November 30, 2021, are hereby designated as "eligible employees" pursuant to Section 603(g)(2) of the ARPA and so shall be eligible to receive premium pay pursuant to the ARPA.
- B. The City will issue "premium pay" to all "eligible employees", including department heads, for all hours worked during the relevant time period that constituted "essential work", which is defined by the Interim Final Rule as "work involving regular in-person interactions or regular physical handling of items that were also handled by others." An employee will be deemed to not have engaged in essential work, and accordingly may not receive premium pay, for telework performed from a residence. The term "hours worked", as used in this subsection, does not include vacation time, sick time, COVID-19 time, holiday time, or any other non-worked time. The hours and time records of each "eligible employee" have been reviewed and determined to accurately demonstrate the number of "hours worked" at "essential work" performed by each "eligible employee". All such reviews and any "premium pay" payments to "eligible employees" will be subject to the Internal Controls policy previously adopted by the City of Mishawaka in Ordinance No. 5532, amended by Ordinance No. 5639.
- C. The Common Council finds that the "premium pay" that is established in this Plan responds to the "essential work" performed by "eligible employees" by addressing the heightened risk to essential workers who were required, and continue to be required, to be physically present at their assigned work location during the COVID-19 public health emergency.
- D. Eligible employees shall receive premium pay calculated at an hourly rate not to exceed Thirteen and 00/100 Dollars (\$13.00) per hour and further capped at the gross amounts set out below:

1. Lead Medic	\$3,000.00
2. Sworn Fire and Police	\$2,500.00
3. Non-Lead Medic and Advanced EMT	\$1,000.00
4. Teamsters and Certain IT Employees	\$2,000.00
5. Civil City Full Time Employees	\$1,570.00
(Includes Park, Redevelopment and Utility employees)	

- E. To the extent that the “premium pay” established by this Plan increases total compensation for certain employees during the relevant time period above One Hundred Fifty Percent (150%) of Indiana’s average annual wage for all occupations, as defined by the Bureau of Labor Statistic’s Occupational Employment and Wage Statistics, or the employee’s residing county’s average annual wage, as defined by the Bureau of Labor Statistics’ Occupational Employment and Wage Statistics, whichever is higher, on an annual basis, the Common Council finds that the employee’s receipt of “premium pay” is justified and responsive to the needs of employees performing essential work during the public health emergency as required by the Interim Final Rule. Specifically, the Common Council has determined that the “premium pay” calculation set forth above is appropriate given the known and potential risks that all eligible employees faced while performing essential work on behalf of the citizens of Mishawaka, given that City services have continued without interruption during the public health emergency. Furthermore, the Common Council has determined that the receipt of “premium pay” by all “eligible employees” serves the best interests of the community by promoting the retention of the highly qualified essential employees that Mishawaka is dependent upon to continue to provide essential services as the public health emergency remains ongoing. Finally, the Common Council finds the receipt of premium pay by all eligible workers serves the best interests of the community by facilitating the maintenance of employee morale and equity between various employee work groups. The Common Council also finds that the varying levels of maximum “premium pay” set forth in Section II.D. are justified and have been set in light of unique risks and duties the applicable employees faced and carried out during the public health emergency.
- F. The “premium pay” established by this Plan and received by “eligible employees” shall be reduced by appropriate deductions for any applicable federal, state, or local taxes. Furthermore, the City will use ARPA funds in order to satisfy related social security, Medicare, and mandatory retirement plan contributions that are attributable to “premium pay”, as required by Indiana law.
- G. Additional premium pay will be awarded to eligible full-time employees employed on March 1, 2023 at the amount of \$1,000 each. The payment of this additional premium pay is subject to approval by the Common Council and Mayor of the corresponding salary amendment ordinance and appropriation ordinance (Proposed Ordinances No. 2023 – 03, 04, and 05)

Section III – Reduction in Revenue Due to the COVID-19 Public Health Emergency

- A. On January 6, 2022, the U.S. Department of the Treasury adopted a Final Rule implementing the Coronavirus State and Local Fiscal Recovery Funds (SLFRF). By agreement with the Mayor and the Administration, the Common Council elects to use the “Standard Allowance” as indicated in the Final Rule, up to the grant amount, but not to exceed the sum of Ten Million and 00/100 Dollars (\$10,000,000.00).
- B. Consistent with the terms of the Final Rule and any future guidance issued by the U.S. Department of the Treasury, all sums expended for the replacement of lost revenue via the Standard Allowance must be used to fund allowable “government services.”
- C. The expenditure of these funds shall remain subject to further amendment of this Resolution and Plan, as well as the approval of an additional appropriation.
- D. As part of the replacement of lost revenue referenced above, the following grants and subsidies are approved, subject to the separate approval of a corresponding appropriations ordinance (Proposed Ordinance No. 2022-29):
- | | |
|------------------------------|--------------|
| 1. Boys and Girls Club | \$750,000.00 |
| 2. Youth Services Bureau | \$375,000.00 |
| 3. Troop Town | \$325,000.00 |
| 4. Mishawaka Building Trades | \$275,000.00 |
| 5. M-P-H Public Library | \$50,000.00 |
| 6. The Res | \$35,000.00 |
- E. The receipt of the grants and subsidies set out above shall be subject to the individual recipient’s execution of and compliance with the required Mishawaka Coronavirus Relief Grant Program Sub-Recipient Agreement, a true and accurate copy of which is attached hereto and incorporated by reference as is fully set out herein as Exhibit “A.”
- F. As part of the replacement of lost revenue referenced above, six firefighters and six police officers are approved for the 2023 fiscal year City budget from ARPA funds. This total budgeted amount is \$800,000.00.
- G. As part of the replacement of lost revenue referenced above, the following infrastructure project is approved, subject to the separate approval by the Common Council and Mayor of a corresponding appropriations ordinance (Proposed Ordinance No. 2023 – 05). A total of \$5.5 million was approved and the project breakdown is amended with the addition of CSO 23A Project. **Replacement Revenue is amended here to move the CSO 23A project to Section IV under investments in water and sewer infrastructure.**
1. West Street Phase IIIB - \$4.6 million – this project includes water main upsizing throughout project limits, new trunk storm sewer, reconstructed sanitary and water laterals, new concrete curb, ADA sidewalk and crossings, street trees, and full depth asphalt pavement.

Section IV – To make necessary investments in water, sewer, or broadband infrastructure

- A. To assist in meeting the critical need for investments and improvements to existing infrastructure in water, sewer, and broadband, the Fiscal Recovery Funds provide funds to State, local, and Tribal governments to make necessary investments in these sectors.
- B. By permitting funds to be used for water and sewer infrastructure needs, Congress recognized the critical role that clean drinking water and services for the collection and treatment of wastewater and stormwater play in protecting public health.
 - 1. CSO 23A (LTCP) – \$900,000 – full length of Manor Drive and Manchester Drive, north of Lincolnway East. This project includes extensive water main replacement with upsizing water main diameter and looping for fire capacity, lead service replacement, new storm sewer including sewer separation with reconfiguration of CSO23A, sanitary lateral replacement, new concrete curb and gutter, new ADA ramps and sidewalk, and full depth pavement replacement.

Section V – Conclusion

- A. This Plan is subject to amendments as more permitted uses are determined by the ARPA, U.S. Treasury Department guidance, and as priorities for the City develop.
- B. This Resolution and the Plan contained shall be in full force and effect upon passage by the Common Council and approval by the Mayor.

PASSED by the Common Council of the City of Mishawaka, Indiana, this _____ day of _____ 2023, at _____ o'clock _____. m.

Gregg A Hixenbaugh, Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____ 2023,
at _____ o'clock _____. m.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _____ 2023, at _____

o'clock _____. m.

David A. Wood, Mayor



CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF FINANCE
Rebecca S. Maguire, Controller
Kayla Yoder, Deputy Controller

Deborah S. Block, IAC, MMC

NOV 09 2023

City Clerk
Mishawaka, IN

Date: November 9, 2023
To: Honorable Members of the Common Council
From: (Rebecca Maguire
Re: **Resolution to amend the ARPA Plan to update an approved project use**

Earlier this year funding was approved for West Street Phase IIIB for \$5,500,000. The plan was then amended to split the \$5.5 million to \$4.6 million for the West Street project and \$900,000 for CSO 23A.

ARPA rules state that any funds received over \$10 million must go towards specific dedicated uses. From the City's \$11.88 million, \$1.61 million was spent on premium pay. This leaves approximately \$270,000 that must go towards an ARPA specific use.

This amendment moves the \$900,000 CSO 023A project from Revenue Replacement to "make investments in water, sewer, or broadband infrastructure" and I am requesting your approval.

I've included a red highlighted copy to see the changes more easily.

I included President Hixenbaugh in the review of the plan amendment.

c: David A. Wood – Mayor
Chris Jamrose – City Engineer/Director

RESOLUTION NO. 2023-12

A Resolution of the Common Council of the City of Mishawaka amending Resolutions R2023-03 which Adopted a Plan for Distribution of the Proceeds of the City of Mishawaka's Grant from the American Rescue Plan Act of 2021

WHEREAS, the federal government enacted the American Rescue Plan Act of 2021 (ARPA) on or about March 11, 2021; and

WHEREAS, on or about May 17, 2021, the Common Council of the City of Mishawaka adopted Ordinance 5744, thereby establishing the ARPA Coronavirus Local Fiscal Grant Fund #180 in order to hold and receive ARPA monies allocated to the City in 2021 and 2022; and

WHEREAS, the terms of Ordinance 2021-16 and the relevant requirements of the ARPA require the Common Council to adopt a plan that details the use of ARPA funds.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Mishawaka as follows:

Section I – General Terms

- A. The City's distribution of the ARPA funds detailed in this Plan and any future amendments to this Plan shall be limited to the following uses of the funds authorized by the ARPA statute:
 - 1. To respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;
 - 2. To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of the City that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;
 - 3. For the provision of government services to the extent of the reduction in revenue of the City due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year of the City prior to the emergency, that being 2019; or
 - 4. To make necessary investments in water, sewer, or broadband infrastructure.
- B. The Common Council may amend this Plan to comply with ARPA, any subsequent amendments to ARPA, and the rules adopted by the United States Treasury Department to implement ARPA, including the Interim Final Rule (31 CFR Part 35).

- C. Prior to the disbursement of any ARPA funds, the Common Council, as the fiscal body, must appropriate said funds for a use that is consistent with the statutory purposes set out above.
- D. The Plan's procedures and designated uses for distribution of ARPA funds are stated in the following sections below, as from time to time may be amended.

Section II – Premium Pay to Eligible Employees

- A. The Common Council finds that all employees of the City of Mishawaka, including employees of the Mishawaka Municipal Utilities, who worked for the City of Mishawaka from the start of the COVID-19 public health emergency through November 30, 2021, performed duties that were critical to protecting the health and wellbeing of the community. These City employees put their physical wellbeing at risk to meet the daily needs of the community and to provide care for others. To the extent necessary under the terms of Section 603(g)(2) of the ARPA, the Mayor of Mishawaka has also deemed each employee described above to have performed essential work critical to protect the health and well-being of residents. Therefore, all of the above-described employees who are employed by the City as of November 30, 2021, are hereby designated as "eligible employees" pursuant to Section 603(g)(2) of the ARPA and so shall be eligible to receive premium pay pursuant to the ARPA.
- B. The City will issue "premium pay" to all "eligible employees", including department heads, for all hours worked during the relevant time period that constituted "essential work", which is defined by the Interim Final Rule as "work involving regular in-person interactions or regular physical handling of items that were also handled by others." An employee will be deemed to not have engaged in essential work, and accordingly may not receive premium pay, for telework performed from a residence. The term "hours worked", as used in this subsection, does not include vacation time, sick time, COVID-19 time, holiday time, or any other non-worked time. The hours and time records of each "eligible employee" have been reviewed and determined to accurately demonstrate the number of "hours worked" at "essential work" performed by each "eligible employee". All such reviews and any "premium pay" payments to "eligible employees" will be subject to the Internal Controls policy previously adopted by the City of Mishawaka in Ordinance No. 5532, amended by Ordinance No. 5639.
- C. The Common Council finds that the "premium pay" that is established in this Plan responds to the "essential work" performed by "eligible employees" by addressing the heightened risk to essential workers who were required, and continue to be required, to be physically present at their assigned work location during the COVID-19 public health emergency.
- D. Eligible employees shall receive premium pay calculated at an hourly rate not to exceed Thirteen and 00/100 Dollars (\$13.00) per hour and further capped at the gross amounts set out below:

1. Lead Medic	\$3,000.00
2. Sworn Fire and Police	\$2,500.00
3. Non-Lead Medic and Advanced EMT	\$1,000.00
4. Teamsters and Certain IT Employees	\$2,000.00
5. Civil City Full Time Employees	\$1,570.00
(Includes Park, Redevelopment and Utility employees)	

- E. To the extent that the “premium pay” established by this Plan increases total compensation for certain employees during the relevant time period above One Hundred Fifty Percent (150%) of Indiana’s average annual wage for all occupations, as defined by the Bureau of Labor Statistic’s Occupational Employment and Wage Statistics, or the employee’s residing county’s average annual wage, as defined by the Bureau of Labor Statistics’ Occupational Employment and Wage Statistics, whichever is higher, on an annual basis, the Common Council finds that the employee’s receipt of “premium pay” is justified and responsive to the needs of employees performing essential work during the public health emergency as required by the Interim Final Rule. Specifically, the Common Council has determined that the “premium pay” calculation set forth above is appropriate given the known and potential risks that all eligible employees faced while performing essential work on behalf of the citizens of Mishawaka, given that City services have continued without interruption during the public health emergency. Furthermore, the Common Council has determined that the receipt of “premium pay” by all “eligible employees” serves the best interests of the community by promoting the retention of the highly qualified essential employees that Mishawaka is dependent upon to continue to provide essential services as the public health emergency remains ongoing. Finally, the Common Council finds the receipt of premium pay by all eligible workers serves the best interests of the community by facilitating the maintenance of employee morale and equity between various employee work groups. The Common Council also finds that the varying levels of maximum “premium pay” set forth in Section II.D. are justified and have been set in light of unique risks and duties the applicable employees faced and carried out during the public health emergency.
- F. The “premium pay” established by this Plan and received by “eligible employees” shall be reduced by appropriate deductions for any applicable federal, state, or local taxes. Furthermore, the City will use ARPA funds in order to satisfy related social security, Medicare, and mandatory retirement plan contributions that are attributable to “premium pay”, as required by Indiana law.
- G. Additional premium pay will be awarded to eligible full-time employees employed on March 1, 2023 at the amount of \$1,000 each. The payment of this additional premium pay is subject to approval by the Common Council and Mayor of the corresponding salary amendment ordinance and appropriation ordinance (Proposed Ordinances No. 2023 – 03, 04, and 05)

Section III – Reduction in Revenue Due to the COVID-19 Public Health Emergency

- A. On January 6, 2022, the U.S. Department of the Treasury adopted a Final Rule implementing the Coronavirus State and Local Fiscal Recovery Funds (SLFRF). By agreement with the Mayor and the Administration, the Common Council elects to use the “Standard Allowance” as indicated in the Final Rule, up to the grant amount, but not to exceed the sum of Ten Million and 00/100 Dollars (\$10,000,000.00).
- B. Consistent with the terms of the Final Rule and any future guidance issued by the U.S. Department of the Treasury, all sums expended for the replacement of lost revenue via the Standard Allowance must be used to fund allowable “government services.”
- C. The expenditure of these funds shall remain subject to further amendment of this Resolution and Plan, as well as the approval of an additional appropriation.
- D. As part of the replacement of lost revenue referenced above, the following grants and subsidies are approved, subject to the separate approval of a corresponding appropriations ordinance (Proposed Ordinance No. 2022-29):
- | | |
|------------------------------|--------------|
| 1. Boys and Girls Club | \$750,000.00 |
| 2. Youth Services Bureau | \$375,000.00 |
| 3. Troop Town | \$325,000.00 |
| 4. Mishawaka Building Trades | \$275,000.00 |
| 5. M-P-H Public Library | \$50,000.00 |
| 6. The Res | \$35,000.00 |
- E. The receipt of the grants and subsidies set out above shall be subject to the individual recipient’s execution of and compliance with the required Mishawaka Coronavirus Relief Grant Program Sub-Recipient Agreement, a true and accurate copy of which is attached hereto and incorporated by reference as is fully set out herein as Exhibit “A.”
- F. As part of the replacement of lost revenue referenced above, six firefighters and six police officers are approved for the 2023 fiscal year City budget from ARPA funds. This total budgeted amount is \$800,000.00.
- G. As part of the replacement of lost revenue referenced above, the following infrastructure project is approved, subject to the separate approval by the Common Council and Mayor of a corresponding appropriations ordinance (Proposed Ordinance No. 2023 – 05). **A total of \$5.5 million was approved and the project breakdown is amended with the addition of CSO 23A Project:**
1. West Street Phase IIIB - **\$4.6 million** – this project includes water main upsizing throughout project limits, new trunk storm sewer, reconstructed sanitary and water laterals, new concrete curb, ADA sidewalk and crossings, street trees, and full depth asphalt pavement.
 2. **CSO 23A (LTCP) – \$900,000 – full length of Manor Drive and Manchester Drive, north of Lincolnway East. This project includes extensive water main replacement with upsizing water main diameter and looping for fire capacity, lead service replacement, new storm sewer including sewer separation with reconfiguration**

of CSO23A, sanitary lateral replacement, new concrete curb and gutter, new ADA ramps and sidewalk, and full depth pavement replacement.

Section IV – Conclusion

- A. This Plan is subject to amendments as more permitted uses are determined by the ARPA, U.S. Treasury Department guidance, and as priorities for the City develop.
- B. This Resolution and the Plan contained shall be in full force and effect upon passage by the Common Council and approval by the Mayor.

PASSED by the Common Council of the City of Mishawaka, Indiana, this 15 day of May, 2023, at 7:15 o'clock p. m.

Gregg A. Hixenbaugh /s/
Gregg A Hixenbaugh
Presiding Officer

ATTEST:

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

PRESENTED by me to the Mayor this 16 day of May, 2023,
at 8:31 o'clock a. m.

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

APPROVED by me this 16 day of May, 2023, at 9:55
o'clock a. m.

David A. Wood /s/
David A. Wood
Mayor

OCT 12 2023

City Clerk
Mishawaka, IN

PROPOSED ORDINANCE NO. 2023-49

ORDINANCE NO. _____

AN ORDINANCE DECLARING AN EMERGENCY AND
TRANSFERRING AND REAPPROPRIATING FUNDS
WITHIN THE BUDGET ADOPTED FOR THE
CALENDAR YEAR ENDING DECEMBER 31, 2023

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA,
INDIANA, THAT:

Section 1. An emergency exists which requires the transfer and reappropriation of funds within the Central Services Department in the General Fund budget adopted for the fiscal year ending December 31, 2023.

Section 2. There is hereby transferred and reappropriated the sum of \$20,000.00 as follows:

General Fund

From: Central Services Department

Supplies

1101-22-422-02 Gas, Oil, etc. \$20,000.00

Total \$20,000.00

To: Central Services Department

Other Services and Charges

1101-22-436-01 Repairs and Maintenance \$20,000.00

Total \$20,000.00

Section 3. This ordinance shall be in full force and effect from and after its passage, signing and attestation.

PASSED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana, on this

_____ day of _____, 2023 at _____ o'clock, _____. m.

Gregg Hixenbaugh, Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED BY ME to the Mayor this _____ day of _____, 2023 at
_____ o'clock, _____. m.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED BY ME this _____ day of _____, 2023 at _____ o'clock,
_____. m.

David A. Wood, Mayor



CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

CENTRAL SERVICES DEPARTMENT
Tim Ryan, Street Commissioner

October 4, 2023

Mishawaka Common Council
City Hall
100 Lincolnway West
Mishawaka, IN 46544

Deborah S. Block, AMC, MMC

OCT 03 2023

City Clerk
Mishawaka, IN

RE: Proposed Ordinance 2023-

Honorable Council Members:

At this time, we find the need to request a transfer of Central Services funds as follows:

FROM: Central Services Department

Operating Supplies

1101-22-422-02 Gas, Oil, Etc.

\$20,000

Total: \$20,000

TO: Central Services Department

Repairs and Maintenance

1101-22-436-01 Building Repair/Equipment/Maint.

\$20,000

Total: \$20,000

If you have any questions concerning this transfer, please call or visit my office.

Sincerely,

Tim Ryan
Street Commissioner

OCT 12 2023

City Clerk
Mishawaka, IN

PETITION 23-21

CITY OF MISHAWAKA, INDIANA

PROPOSED ORDINANCE NO. 2023-50

ORDINANCE NO. _____

AN ORDINANCE ANNEXING CONTIGUOUS TERRITORY TO THE CITY OF
MISHAWAKA, INDIANA, AND PROVIDING ZONING CLASSIFICATION
THEREFORE

WHEREAS, a Petition has been presented to the Common Council of the City of Mishawaka, Indiana, praying that certain territory lying contiguous to the corporate limits of the City of Mishawaka, Indiana, be annexed to and declared to be a part of the City of Mishawaka, and that it be provided with a Zoning Classification, and

WHEREAS, the Mishawaka City Plan Commission, to which Commission the petition was duly referred, has recommended the annexation and a PUD Amendment as hereinafter set forth, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, that:

Section 1. The following described real estate be and the same is hereby annexed to and declared to be a part of the City of Mishawaka, Indiana:

OUTLOT "A" AS SHOWN ON THE RECORDED PLAT OF SEGGERMAN FIR ROAD MINOR SUBDIVISION RECORDED SEPTEMBER 16, 1998 AS DOCUMENT NO. [9848691](#) IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA.

EXCEPTING THEREFROM THAT PART DEEDED TO CITY OF MISHAWAKA, INDIANA BY DEED RECORDED APRIL 16, 2013 AS DOCUMENT NO. [1311274](#), DESCRIBED AS FOLLOWS:

A PART OF OUTLOT "A" IN SEGGERMAN FIR ROAD MINOR SUBDIVISION, A SUBDIVISION IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 38 NORTH, RANGE 3 EAST, THE PLAT OF WHICH SUBDIVISION IS RECORDED AS INSTRUMENT # [9848691](#), IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA, AND BEING THAT PART OF THE GRANTOR'S LAND LYING WITHIN THE RIGHT-OF-WAY LINES DEPICTED ON THE ATTACHED RIGHT-OF-WAY PARCEL PLAT MARKED AS EXHIBIT "B" DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID OUTLOT; THENCE NORTH 89 DEGREES 55 MINUTES 08 SECONDS EAST 35.00 FEET ALONG THE NORTH LINE OF SAID OUTLOT TO POINT "697" DESIGNATED ON SAID PARCEL PLAT; THENCE SOUTH 0 DEGREES 23 MINUTES 38 SECONDS EAST 469.01 FEET TO THE SOUTH LINE OF SAID OUTLOT; THENCE SOUTH 89 DEGREES 55 MINUTES 08 SECONDS WEST 35.00 FEET ALONG SAID SOUTH LINE TO THE SOUTHWEST CORNER OF SAID OUTLOT; THENCE NORTH 0 DEGREES 23 MINUTES 38 SECONDS WEST 469.01 FEET ALONG THE WEST LINE OF SAID OUTLOT TO THE POINT OF BEGINNING AND

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CONTAINING 0.377 ACRES, MORE OR LESS; including all of the adjacent Fir Road right-of-way.

The above described real estate shall hereafter be annexed into and within the City of Mishawaka, Indiana, and a part of that district designated in the Zoning Ordinance of the City of Mishawaka, Indiana, and shall carry a classification for zoning of S-2 Planned Unit Development District.

Furthermore, Chapter 137, of the Municipal Code of the City of Mishawaka, commonly known as "The Zoning Ordinance of 1966", be, and the same is hereby amended as follows:

LOT NUMBERED ONE (1) AS SHOWN ON THE RECORDED PLAT OF SEGGERMAN FIR ROAD MINOR SUBDIVISION RECORDED SEPTEMBER 16, 1998 AS DOCUMENT NO. [9848691](#) IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA, TOGETHER WITH THE VACATED PORTION OF EVERGREEN ROAD.

EXCEPTING THEREFROM THE FOLLOWING TRACTS:

TRACT 1: PART OF LOT NUMBERED ONE (1), SEGGERMAN FIR ROAD MINOR SUBDIVISION IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 38 NORTH, RANGE 3 EAST, HARRIS TOWNSHIP, ST. JOSEPH COUNTY, INDIANA, DESCRIBED AS FOLLOWS:
COMMENCING AT A POINT ON THE EAST RIGHT OF WAY LINE OF FIR ROAD WHICH IS BOTH THE SOUTHWEST CORNER OF LOT 1. SEGGERMAN FIR ROAD MINOR SUBDIVISION, RECORDED IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA AS DOCUMENT NUMBER [9848691](#) AND THE NORTHWEST CORNER OF LOT 1, PETERSON-SEGGERMAN MINOR SUBDIVISION, RECORDED IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA IN PLAT [BOOK 31, PAGE P](#); THENCE NORTH 89°42'02" EAST ON THE COMMON LINE BETWEEN LOT 1, SEGGERMAN FIR ROAD MINOR SUBDIVISION AND LOT 1, PETERSON- SEGGERMAN MINOR SUBDIVISION, A DISTANCE OF 216.59 FEET; THENCE NORTH 00°17'58" WEST, A DISTANCE OF 52.59 FEET; THENCE NORTH 33°34'53" EAST, A DISTANCE OF 4.75 FEET; THENCE NORTH 56°25'07" EAST, A DISTANCE OF 125.00 FEET; THENCE NORTH 33°34'53" EAST, A DISTANCE OF 186.50 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 33°34'53" EAST, A DISTANCE OF 83.01 FEET; THENCE NORTH 89°42'30" EAST, A DISTANCE OF 48.96 FEET; THENCE SOUTH 54°36'36" EAST, A DISTANCE OF 152.10 FEET; THENCE SOUTH 33°34'53" WEST, A DISTANCE OF 105.50 FEET; THENCE NORTH 56°25'07" WEST, A DISTANCE OF 192.67 FEET TO THE POINT OF BEGINNING.

TRACT 2: PART OF LOT NUMBERED ONE (1), SEGGERMAN FIR ROAD MINOR SUBDIVISION IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 38 NORTH, RANGE 3 EAST, HARRIS TOWNSHIP, ST. JOSEPH COUNTY, INDIANA,

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Ordinance No: _____

DESCRIBED AS FOLLOWS: COMMENCING AT A POINT ON THE EAST RIGHT OF WAY LINE OF FIR ROAD WHICH IS BOTH THE SOUTHWEST CORNER OF LOT 1, SEGGERMAN FIR ROAD MINOR SUBDIVISION, RECORDED IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA AS DOCUMENT NUMBER [9848691](#) AND THE NORTHWEST CORNER OF LOT 1, PETERSON-SEGGERMAN MINOR SUBDIVISION, RECORDED IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA IN PLAT [BOOK 31, PAGE P](#); THENCE NORTH 89°42'02" EAST ON THE COMMON LINE BETWEEN LOT 1, SEGGERMAN FIR ROAD MINOR SUBDIVISION AND LOT 1, PETERSON- SEGGERMAN MINOR SUBDIVISION, A DISTANCE OF 216.59 FEET; THENCE NORTH 00°17'58" WEST, A DISTANCE OF 52.59 FEET; THENCE NORTH 33°34'53" EAST, A DISTANCE OF 4.75 FEET TO THE POINT OF BEGINNING; THENCE NORTH 56°25'07" WEST, A DISTANCE OF 125.00 FEET; THENCE NORTH 33°34'53" EAST, A DISTANCE OF 92.00 FEET; THENCE SOUTH 56°25'07" EAST, A DISTANCE OF 125.00 FEET; THENCE SOUTH 33°34'53" WEST, A DISTANCE OF 92.00 FEET TO THE POINT OF BEGINNING.

TRACT 3: PART OF LOT NUMBERED ONE (1), SEGGERMAN FIR ROAD MINOR SUBDIVISION IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 38 NORTH, RANGE 3 EAST, HARRIS TOWNSHIP, ST. JOSEPH COUNTY, INDIANA, DESCRIBED AS FOLLOWS COMMENCING AT A POINT ON THE EAST RIGHT OF WAY LINE OF FIR ROAD WHICH IS BOTH THE SOUTHWEST CORNER OF LOT 1, SEGGERMAN FIR ROAD MINOR SUBDIVISION, RECORDED IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA AS DOCUMENT NUMBER [9848691](#) AND THE NORTHWEST CORNER OF LOT 1, PETERSON-SEGGERMAN MINOR SUBDIVISION, RECORDED IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA IN PLAT [BOOK 31, PAGE P](#); THENCE NORTH 89°42'02" EAST ON THE COMMON LINE BETWEEN LOT 1, SEGGERMAN FIR ROAD MINOR SUBDIVISION AND LOT 1, PETERSON- SEGGERMAN MINOR SUBDIVISION, A DISTANCE OF 216.59 FEET; THENCE NORTH 00°17'58" WEST, A DISTANCE OF 52.59 FEET; THENCE NORTH 33°34'53" EAST, A DISTANCE OF 4.75 FEET; THENCE NORTH 56°25'07" EAST, A DISTANCE OF 125.00 FEET; THENCE NORTH 33°34'53" EAST, A DISTANCE OF 92.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 33°34'53" EAST, A DISTANCE OF 94.50 FEET; THENCE SOUTH 56°25'07" EAST, A DISTANCE OF 125.00 FEET; THENCE SOUTH 33°34'53" WEST, A DISTANCE OF 94.50 FEET; THENCE NORTH 56°25'07" WEST, A DISTANCE OF 125.00 FEET TO THE POINT OF BEGINNING.

TRACT 4: THAT PART DEEDED TO BOARD OF COMMISSIONERS OF THE COUNTY OF ST. JOSEPH, INDIANA BY WARRANTY DEED RECORDED NOVEMBER 1, 2010 AS INSTRUMENT NO. [1030439](#), DESCRIBED AS FOLLOWS: A PART OF LOT 1 IN SEGGERMAN FIR ROAD MINOR SUBDIVISION, A SUBDIVISION IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 38 NORTH, RANGE 3 EAST, THE PLAT OF WHICH SUBDIVISION IS RECORDED AS INSTRUMENT

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#9848691, IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT ON THE NORTH BOUNDARY OF CLEVELAND ROAD; THENCE NORTH 00 DEGREES 23 MINUTES 38 SECONDS WEST 10.00 FEET ALONG A WEST LINE OF SAID LOT; THENCE NORTH 89 DEGREES 38 MINUTES 24 SECONDS-EAST 204.91 FEET TO THE SOUTHEASTERN LINE OF SAID LOT; THENCE ALONG SAID SOUTHEASTERN LINE SOUTHWESTERLY 24.84 FEET ALONG AN ARC TO THE RIGHT HAVING A RADIUS OF 29.00 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 65 DEGREES 06 MINUTES 23 SECONDS WEST AND A LENGTH OF 24.08 FEET TO THE SOUTH LINE OF SAID LOT; THENCE SOUTH 89 DEGREES 38 MINUTES 24 SECONDS WEST 182.99 FEET (183.03 FEET BY THE PLAT OF SAID SUBDIVISION) ALONG SAID SOUTH LINE TO THE POINT OF BEGINNING AND CONTAINING 0.045 ACRES, MORE OR LESS, INCLUSIVE OF THE PRESENTLY EXISTING RIGHT-OF-WAY WHICH CONTAINS 0.025 ACRES, MORE OR LESS.

TRACT 5: THAT PART DEEDED TO THE CITY OF MISHAWAKA, INDIANA BY QUIT-CLAIM DEED RECORDED AUGUST 9, 2013 AS INSTRUMENT NO. 1324532 DESCRIBED AS FOLLOWS:

A PART OF LOT 1 IN SEGGERMAN FIR ROAD MINOR SUBDIVISION, A SUBDIVISION IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 38 NORTH, RANGE 3 EAST, THE PLAT OF WHICH SUBDIVISION IS RECORDED AS INSTRUMENT # 9848691, IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT; THENCE NORTH 89 DEGREES 55 MINUTES 08 SECONDS EAST 35.00 FEET ALONG THE NORTH LINE OF SAID LOT; THENCE SOUTH 0 DEGREES 23 MINUTES 38 SECONDS EAST 89.74 FEET; THENCE SOUTH 44 DEGREES 36 MINUTES 09 SECONDS EAST 57.84 FEET; THENCE SOUTH 88 DEGREES 04 MINUTES 52 SECONDS EAST 185.66 FEET; THENCE SOUTHEASTERLY 441.55 FEET ALONG AN ARC TO THE RIGHT HAVING A RADIUS OF 1,060.00 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 76 DEGREES 08 MINUTES 52 SECONDS EAST AND A LENGTH OF 438.36 FEET; THENCE SOUTH 64 DEGREES 12 MINUTES 52 SECONDS EAST 95.10 FEET; THENCE SOUTHEASTERLY 523.41 FEET ALONG AN ARC TO THE LEFT HAVING A RADIUS OF 740.00 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 84 DEGREES 28 MINUTES 39 SECONDS EAST AND A LENGTH OF 512.57 FEET TO THE EAST LINE OF SAID LOT; THENCE ALONG SAID EAST LINE SOUTH 0 DEGREES 27 MINUTES 02 SECONDS EAST 123.28 FEET; THENCE NORTHWESTERLY 577.85 FEET ALONG AN ARC TO THE RIGHT HAVING A RADIUS OF 860.00 FEET AND SUBTENDED BY A LONG

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CHORD HAVING A BEARING OF NORTH 83 DEGREES 27 MINUTES 49 SECONDS WEST AND A LENGTH OF 567.04 FEET; THENCE NORTH 64 DEGREES 12 MINUTES 52 SECONDS WEST 95.10 FEET; THENCE NORTHWESTERLY 391.56 FEET ALONG AN ARC TO THE LEFT HAVING A RADIUS OF 940.00 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF NORTH 76 DEGREES 08 MINUTES 52 SECONDS WEST AND A LENGTH OF 388.73 FEET; THENCE NORTH 88 DEGREES 04 MINUTES 52 SECONDS WEST 181.66 FEET; THENCE SOUTH 45 DEGREES 20 MINUTES 44 SECONDS WEST 55.13 FEET; THENCE SOUTH 0 DEGREES 23 MINUTES 38 SECONDS EAST 713.55 FEET; THENCE SOUTHWESTERLY 218.52 FEET ALONG AN ARC TO THE RIGHT HAVING A RADIUS OF 889.64 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 6 DEGREES 38 MINUTES 34 SECONDS WEST AND A LENGTH OF 217.97 FEET TO A SOUTH LINE OF SAID LOT; THENCE ALONG SAID SOUTH LINE SOUTH 89 DEGREES 38 MINUTES 24 SECONDS WEST 8.30 FEET TO A SOUTHWEST CORNER OF SAID LOT; THENCE ALONG THE WEST LINE OF SAID LOT NORTH 0 DEGREES 23 MINUTES 38 SECONDS WEST 1,219.80 FEET TO THE POINT OF BEGINNING; **excluding all property south of the Beacon Parkway Right-of-way.**

General Location: NEC of Fir Road and Beacon Parkway

which real estate is now classified as S-2 Planned Unit Development District.

All the above real estate shall hereafter be amended to allow for a 280 to 320 unit gated multi-family residential apartment complex subject to the following conditions:

Uses:

1. Permitted uses shall be limited to a 320 unit maximum multi-family residential apartment complex and other accessory uses including but not limited to a club house, maintenance garage, and community pool.
2. Off-premise signs/billboards shall be prohibited.

Parking Spaces, Building & Parking/Pavement Setbacks:

1. A minimum of 1.5 parking spaces shall be provided per residential dwelling unit.
2. The building setback shall be a minimum of 25' from the right-of-way and external property lines.
3. The parking/pavement setback shall be 15' from the right-of-way and all external property lines.

Landscaping & Fencing:

1. A 15' wide landscape buffer shall be provided along the perimeter of the property.
2. Landscaping within the buffer shall be provided as required per the C-1 General Commercial District. No additional landscaping shall be required

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where the existing mature vegetation is preserved if compliant with the minimum spacing requirements.

3. A 5' high metal picket (semi-opaque) decorative fence shall be permitted within the building setback along Fir Road and Beacon Parkway. If provided, Planning Staff shall review and approve the fence as a part of the planned unit development plan process.

Signage:

1. A total of two (2) freestanding monument signs shall be permitted. These signs shall be limited to 8' in height and contain a display area of no more than 60 square feet. Each sign shall have a masonry base no less than 3' in height. No more than 1/3 of the display area for each sign may be utilized as an electronic reader board.

Right-of-way & Sidewalks:

1. Additional right-of-way and easements may be required and shall be determined by review of the City Director of Engineering as a part of the planned unit development plan and subdivision plat.
2. The developer shall construct an 8' wide sidewalk within the public right-of-way along Fir Road from Beacon Parkway to the north property line and along Beacon Parkway from Fir Road to the entrance/access drive. Connections from the site to the sidewalk shall be provided along Fir Road and Beacon Parkway. The sidewalk shall be reviewed and approved by the City Director of Engineering as a part of the planned unit development plan.

Lighting:

1. All site lighting shall be limited to 30 feet in height. 90-degree cut-off fixtures shall be required for both pole and wall mounted fixtures.
2. A lighting plan shall be submitted with each subsequent planned unit development plan submission.
3. Ornamental fixtures matching the current City standard may be utilized in addition or instead of the lighting noted above.

Building Limitations & Architecture:

1. The maximum building height shall be 48'.
2. Commercial grade high-quality vinyl lap siding and concrete panels (fiber cement board) shall be permitted building materials for all buildings, including the multi-family residential buildings, clubhouse, and any accessory buildings. For the building façades facing Beacon Parkway and Fir Road, masonry (brick veneer or stone) accents shall be utilized. All building materials shall be a mix of the above referenced materials and are subject to review and approval by the City Planner as a part of the planned unit development plan.

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3. The architecture shall include garages and private entrances as conceptually identified.

Stormwater Management Infrastructure & Utilities:

1. The existing detention pond within the southeast corner of the property shall be expanded to provide for stormwater storage and located within an easement on the subdivision plat. A stormwater drainage plan shall be reviewed and approved by the City Director of Engineering as a part of the planned unit development plan.
2. All costs associated with the extension of utilities shall be the responsibility of the developer. Extension of utilities shall occur in a location and size as directed by the City Director of Engineering.

Other:

1. If the development should not proceed within two (2) years following approval of the annexation/zoning and Planned Unit Development amendment, the prior development regulations (Ord. 5284) shall remain and be applicable to the subject parcels.

Section 2. The Common Council of the City of Mishawaka, Indiana, hereby finds that:

1. Existing Conditions - The subject parcel is located at the northeast corner of Fir Road and Beacon Parkway. Fir Road is currently a moderately travelled corridor on which traffic volumes are expected to increase due to the significant commercial and residential growth that has occurred in the northeast part of the City and St. Joseph County. Beacon Parkway is currently a lower travelled corridor. The property is located immediately adjacent to vacant unincorporated land to the north zoned for residential development, vacant land within the city limits to the east and south zoned for commercial development, and unincorporated land to the west occupied by single-family residential houses.
2. Character of Buildings in Area - The character of buildings and land uses located along the Fir Road corridor from State Road 23 to the north to south of the Indiana Toll Road vary greatly and include a convenience store/gas station, an automatic car wash facility, a church and parochial school, medical offices, a credit union, single family residential home, and a multi-family residential apartment complex. Several Beacon Medical Group buildings, including an acute care hospital, an ambulatory surgery center, a health and fitness center, and corporate offices, are located to the northeast along Beacon Parkway.
3. The most desirable/highest and best use - With the property's location along the increasingly commercial and residential developed Fir Road corridor combined with the adjacent properties being zoned for commercial use, the most desirable use for the property is either commercial or high-density residential.
4. Conservation of property values - The proposed zoning should not be injurious to property values in the surrounding area. The proposed multi-

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family residential use is compatible with the adjacent vacant property and single-family residential uses.

5. Comprehensive Plan - Although this property was identified with a preferred use as commercial in the Capital Avenue Land Use Plan (2003), the proposed multi-family residential use is reasonably consistent with adjacent and changing land uses along the Fir Road corridor.

Section 3. This Ordinance shall be in full force and effect from and after its passage, due attestation and legal publication.

PASSED by the Common Council of the City of Mishawaka, Indiana, this _____ day of _____, 2023, at _____ o'clock _____.M.

Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____, 2023, at _____ o'clock _____.M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _____, 2023, at _____ o'clock _____.M.

David A. Wood, Mayor

STAFF REPORT

Location: Northeast Corner of Fir Road & Beacon Parkway

Date: October 10, 2023

Petition: 23-21 Annexation & Northeast Fir and Cleveland Road
 Planned Unit Development Amendment - Establish
 Zoning, and Approve a Preliminary Planned Unit
 Development Site Plan for the proposed Springs at
 Mishawaka apartment complex

Prepared By: DJS

GENERAL INFORMATION

Applicants: Helen M. Seggerman Estate & 1st Source Bank / Continental Properties, Inc.

Status: Property Owners / Contingent Developer

Request: To annex and establish zoning, amend an existing PUD, and approve a preliminary planned unit development site plan for the Springs at Mishawaka – a 280 to 320 unit gated multi-family residential apartment complex.

Existing Zoning: Unincorporated St. Joseph County & S-2 Planned Unit Development (Permitted Uses on the portion of the Northeast Fir and Cleveland Road PUD to be amended include C-1 General Commercial and C-2 Shopping Center Commercial / Ord. 5284)

Proposed Zoning: S-2 Planned Unit Development (Multi-Family Residential)

Lot Size: 20.43 acres (13.55 acre annexation parcel & 6.88 acre part of a parcel within an existing PUD)

Applicable Regulations: Section 137-671 thru 137-679 / S-2 Planned Unit Development District, Section 137-41 / Amendments to the Zoning Map & Indiana Code 36-4-3-2.1 and 36-4-3-3.1

SPECIAL INFORMATION

Area Development Pattern:

North:	Unincorporated St. Joseph County / R Single Family Residential (Vacant)
South:	S-2 Planned Unit Development (Northeast Fir and Cleveland PUD/ Vacant Land approved for C-1 & C-2 commercial uses)
East:	S-2 Planned Unit Development (Northwest Capital and Toll Road PUD/ Vacant Land approved for C-1 & C-2 commercial uses)
West:	Unincorporated St. Joseph County / R Single Family Residential (Single-Family Residential)

Thoroughfare: Fir Road & Beacon Parkway

School District: Penn-Harris-Madison

Public Utilities: All public utilities are available and/or will be extended to/throughout the site at the owner's/developer's expense.

Comprehensive Plan:

The Capital Avenue Land Use Plan (2003) prepared jointly by St. Joseph County and the City of Mishawaka identifies a recommended land use as commercial.

ANALYSIS

Proposal:

The applicants, Helen M. Seggerman Estate (owner), 1st Source Bank (owner), and Continental Properties Inc. (contingent developer) are proposing to annex and establish zoning, amend a portion of the existing Northeast Fir and Cleveland Planned Unit Development, and approve a preliminary planned unit development site plan for the Springs at Mishawaka – a 280 to 320 unit gated multi-family residential apartment complex.

A pre-application meeting, which was attended by the contingent developer and various City Staff, was held in late August. The development entitlement process was reviewed, including but not limited to, the annexation and PUD amendment petitions, final site plan requirements, and subdivision process. A preliminary site plan, generally matching what was filed with the petitions, was presented at this meeting. After review, Planning Staff recommended that several development regulations and conditions similar to those approved for other multi-family residential apartment complexes be placed on the property. A draft of the regulations and conditions was prepared by the contingent developer and included with the petitions. A majority of the proposed regulations, as requested, are included in the staff recommendation with modifications, deletions, and additions as deemed appropriate. These regulations and conditions are only applicable to this specific development proposal and will supersede those currently applicable to the south part of the site (Lot B). If the development should not proceed following approval of the annexation, the prior development regulations (Ord. 5284) shall remain and be applicable to the subject parcels.

The 20.43 acre site, which consists of a 13.55 acre parcel in unincorporated St. Joseph County (Lot A) and a 6.88 acre part of a larger parcel in the City of Mishawaka (Lot B), is located at the northeast corner of Fir Road and Beacon Parkway. Two separate petitions were filed with the annexation and zoning classification petition covering the north parcel (Lot A) and the Planned Unit Development amendment petition covering the part of the south parcel north of Beacon Parkway (Lot B).

The current PUD regulations and conditions for Lot B, which were approved in 2010 (Petition 10-18/Ord. 5284), limited permitted uses to C-1 General Commercial and C-2 Shopping Center Commercial uses. When the property was annexed, only the permitted uses and basic development regulations/conditions were outlined as there was no specific development proposal.

Per the preliminary site plan, the project is proposed to include 280 apartment units within 14 separate buildings, a club house with a fitness center, a community pool, a car care center, two pet parks, an outdoor grilling area, and a maintenance garage. The apartments will consist of 28 studio, 112 one-bedroom, 112 two-bedroom, and 28 three-bedroom units. The overall density will be 13.7 units per acre. A total of 542 parking spaces will be provided consisting of 112 spaces within the attached garages, 30 spaces within the detached garages, 1 space within the grounds maintenance building, and 399 surface spaces. Parking spaces will be provided at a ratio of 1.94 spaces per unit.

Access will be provided from Beacon Parkway utilizing the existing curb cut in the middle of the property. The entry drive will be gated north of the public parking area adjacent to the clubhouse. The access will allow unrestricted turning movements to and from the property. An emergency-only access will be provided along Fir Road in the northwest corner of the property. This access will be gated and utilized only by fire/emergency vehicles.

Per the preliminary site plan, a 25' building setback and 15' landscape and parking setback will be provided along the entire perimeter of the property. Landscaping shall meet the C-1 General Commercial landscaping and screening requirements. A detailed landscaping plan shall be submitted with the final planned unit development site plan, and is subject to review and approval by the Planning Staff.

The scale and density of the proposed development is similar to other multi-family residential developments in the northern part of the City of Mishawaka, such as the Villas on Fir on Fir Road south of the Indiana Toll Road, Gumwood Apartments to the northwest of Gumwood and Cleveland Roads, Summer Place Apartments along E. University Drive, and the Main Street Village apartments along Douglas Road.

At this time, the applicants are only proposing to establish and amend the permitted uses and basic development requirements of the planned unit development. If approved, a detailed final planned unit development site plan must be submitted to address all the applicable zoning (height, area, and development regulations), utility (sanitary sewer, water, storm drainage, electric, gas, etc.), grading, landscaping, erosion control, and other required improvements.

Annexation:

As previously mentioned, the annexation and zoning petition only includes the northern parcel (Lot A) since the south parcel north of Beacon Parkway (Lot B) is already within the City limits.

In 2008 and 2011, the adjacent properties to the east and south were respectively annexed into the City for commercial use (C-1 and C2 permitted uses). There are no specific development proposals for these vacant adjacent properties. The property to the north is also vacant but is unincorporated land zoned for residential use. The property to the west across Fir Road is unincorporated land consisting of several single-family residential homes.

Per the State of Indiana's annexation laws, a parcel is required to share one-eighth, or 12.5%, of its boundary with the existing boundary in order to be annexed. With the two previous annexations as outlined above, approximately 1,816 feet, or 50%, of the total 3,630 feet of the perimeter of the property will be contiguous with the existing city limits. This exceeds the required 12.5% contiguity.

Location/Context:

The site is located at the northeast corner of Fir Road and Beacon Parkway, and is bound to the north by vacant property zoned for single-family residential use in unincorporated St. Joseph County, to the west by single-family residential houses in unincorporated St. Joseph County, to the south by vacant property zoned for commercial uses, and to the east by vacant property zoned for commercial uses.

Zoning Change:

Staff believes that the proposed annexing and zoning of the northern parcel to the S-2 Planned Unit Development District and amending the existing Planned Unit Development for the southern parcel for a multi-family residential apartment complex is appropriate. Although the Capital Avenue Land Use Plan recommends commercial land use for the subject property, a multi-family residential use would not be out of character with the existing or other permitted commercial land uses within the area. Significant commercial and multi-family residential growth has occurred along both the Fir Road and University Drive corridors to the south and Beacon Parkway to the east.

Transportation/Roads:

According to the latest available traffic counts, there were 9,273 annual average daily trips (AADT) (March 2022) along Fir Road south of Beacon Parkway. The counts at this location have more than doubled over the last 17 years. Between 2006 and 2010, counts ranged from just over 4,200 AADT to 6,300 AADT. There were 2,983 annual average daily trips (AADT) (March 2021) along Beacon Parkway southwest of Capital Avenue. Historical counts at this location are not available since Beacon Parkway was constructed less than 10 years ago. With the existing and anticipated increase in commercial and residential development in the northern Mishawaka and Granger areas, it is anticipated that traffic volumes will remain relatively consistent and/or increase in future years.

The 2050 Transportation Plan (Draft), prepared by the Michiana Area Council of Governments with input from City staff and the County Engineering Department, does not show any planned added travel lanes along the Fir Road corridor. An auxiliary line (center turn lane) along Fir Road to the south between McKinley Avenue and the Indiana Toll Road is proposed for construction in 2035. A small road west of the Indiana Toll Road connecting Beacon Parkway to Cleveland Road is proposed for construction in 2040. This connector may relieve future traffic congestion along Fir Road adjacent to the site and north of

Cleveland Road. The plan and anticipated completion dates for any transportation improvements may be amended in future years dependent on projected travel demand.

All pertinent City Departments have reviewed and approved the request for annexation and zoning (Lot A), and to amend the existing Planned Unit Development.

The Electric Department commented that the city can only currently serve Lot B of the proposed project as Lot A is currently not within the city's service territory.

RECOMMENDATION

Staff recommends **approval** of Petition 23-21 to annex and establish zoning (Lot A), and to amend the Northeast Fir and Cleveland Planned Unit Development (Lot B) for the Springs at Mishawaka – a 280 to 320 unit multi-family residential apartment complex subject to the following development regulations/conditions:

Uses:

1. Permitted uses shall be limited to a 320 unit maximum multi-family residential apartment complex and other accessory uses including but not limited to a club house, maintenance garage, and community pool.
2. Off-premise signs/billboards shall be prohibited.

Parking Spaces, Building & Parking/Pavement Setbacks:

1. A minimum of 1.5 parking spaces shall be provided per residential dwelling unit.
2. The building setback shall be a minimum of 25' from the right-of-way and external property lines.
3. The parking/pavement setback shall be 15' from the right-of-way and all external property lines.

Landscaping & Fencing:

1. A 15' wide landscape buffer shall be provided along the perimeter of the property.
2. Landscaping within the buffer shall be provided as required per the C-1 General Commercial District. No additional landscaping shall be required where the existing mature vegetation is preserved if compliant with the minimum spacing requirements.
3. A 5' high metal picket (semi-opaque) decorative fence shall be permitted within the building setback along Fir Road and Beacon Parkway. If provided, Planning Staff shall review and approve the fence as a part of the planned unit development plan process.

Signage:

1. A total of two (2) freestanding monument signs shall be permitted. These signs shall be limited to 8' in height and contain a display area of no more than 60 square feet. Each sign shall have a masonry base no less than 3' in height. No more than 1/3 of the display area for each sign may be utilized as an electronic reader board.

Right-of-way & Sidewalks:

1. Additional right-of-way and easements may be required and shall be determined by review of the City Director of Engineering as a part of the planned unit development plan and subdivision plat.
2. The developer shall construct an 8' wide sidewalk within the public right-of-way along Fir Road from Beacon Parkway to the north property line and along Beacon Parkway from Fir Road to the entrance/access drive. Connections from the site to the sidewalk shall be provided along Fir Road and Beacon Parkway. The sidewalk shall be reviewed and approved by the City Director of Engineering as a part of the planned unit development plan.

Lighting:

1. All site lighting shall be limited to 30 feet in height. 90-degree cut-off fixtures shall be required for both pole and wall mounted fixtures.
2. A lighting plan shall be submitted with each subsequent planned unit development plan submission.
3. Ornamental fixtures matching the current City standard may be utilized in addition or instead of the lighting noted above.

Building Limitations & Architecture:

1. The maximum building height shall be 48'.
2. Commercial grade high-quality vinyl lap siding and concrete panels (fiber cement board) shall be permitted building materials for all buildings, including the multi-family residential buildings, clubhouse, and any accessory buildings. For the building façades facing Beacon Parkway and Fir Road, masonry (brick veneer or stone) accents shall be utilized. All building materials shall be a mix of the above referenced materials and are subject to review and approval by the City Planner as a part of the planned unit development plan.
3. The architecture shall include garages and private entrances as conceptually identified.

Stormwater Management Infrastructure & Utilities:

1. The existing detention pond within the southeast corner of the property shall be expanded to provide for stormwater storage and located within an easement on the subdivision plat. A stormwater drainage plan shall be reviewed and approved by the City Director of Engineering as a part of the planned unit development plan.
2. All costs associated with the extension of utilities shall be the responsibility of the developer. Extension of utilities shall occur in a location and size as directed by the City Director of Engineering.

Other:

1. If the development should not proceed within two (2) years following approval of the annexation/zoning and Planned Unit Development amendment, the prior development regulations (Ord. 5284) shall remain and be applicable to the subject parcels.

This recommendation is based on the following findings of fact:

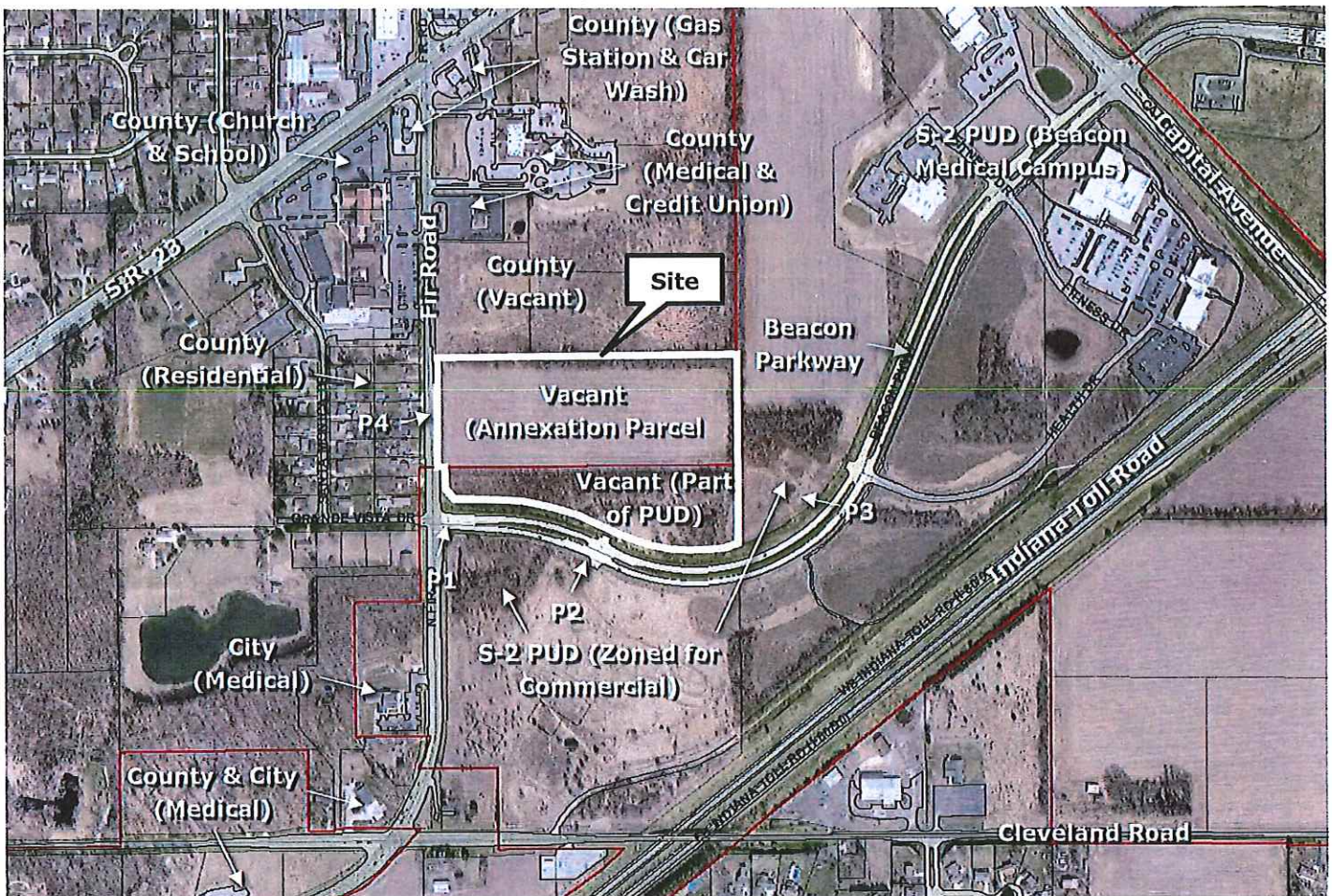
1. Existing Conditions - The subject parcel is located at the northeast corner of Fir Road and Beacon Parkway. Fir Road is currently a moderately travelled corridor on which traffic volumes are expected to increase due to the significant commercial and residential growth that has occurred in the northeast part of the City and St. Joseph County. Beacon Parkway is currently a lower travelled corridor. The property is located immediately adjacent to vacant unincorporated land to the north zoned for residential development, vacant land within the city limits to the east and south zoned for commercial development, and unincorporated land to the west occupied by single-family residential houses.
2. Character of Buildings in Area - The character of buildings and land uses located along the Fir Road corridor from State Road 23 to the north to south of the Indiana Toll Road vary greatly and include a convenience store/gas station, an automatic car wash facility, a church and parochial school, medical offices, a credit union, single family residential home, and a multi-family residential apartment complex. Several Beacon Medical Group buildings, including an acute care hospital, an

ambulatory surgery center, a health and fitness center, and corporate offices, are located to the northeast along Beacon Parkway.

3. The most desirable/highest and best use – With the property's location along the increasingly commercial and residential developed Fir Road corridor combined with the adjacent properties being zoned for commercial use, the most desirable use for the property is either commercial or high-density residential.
4. Conservation of property values - The proposed zoning should not be injurious to property values in the surrounding area. The proposed multi-family residential use is compatible with the adjacent vacant property and single-family residential uses.
5. Comprehensive Plan - Although this property was identified with a preferred use as commercial in the Capital Avenue Land Use Plan (2003), the proposed multi-family residential use is reasonably consistent with adjacent and changing land uses along the Fir Road corridor.

ATTACHMENTS

Aerial Photograph, Photographs of Site Area, Cover Letter from Developer, Petition for Annexation and Zoning Classification (Petition 1 of 2), Petition for PUD Amendment (2 of 2), Preliminary Planned Unit Development Site Plan, Conceptual Building Elevations, Location Map



Aerial Photograph – Northeast Corner of Fir Road and Beacon Parkway
Proposed Springs at Mishawaka – a 280 to 320 unit multi-family residential apartment complex



P1. Looking north from the right-turn lane on Fir Road and south of Beacon Parkway.
Property is the patch of trees on the upper right.



P2. Looking northerly from Beacon Pkwy toward the existing curb cut proposed to access the property.



P3. Looking westerly from Beacon Parkway toward the southeast corner of the property.



P4. Looking easterly from Fir Road toward the annexation parcel (Lot A).

P25 23-21

Received

SEP 20 2023

Planning and
Community Development

September 20, 2023

Mr. Kenneth B Prince, ASLA, AICP,
Executive Director
Department of Planning and Community Development
100 Lincolnway West
Mishawaka, IN 46544

RE: Multi-Parcel Joint Annexation/Zoning Petition & PUD Amendment Petition – NEC of Fir Rd. & Beacon Pkwy.

Dear Mr. Prince,

On behalf of the Property Owners SEGGERMAN HELEN M ESTATE (the "Seggerman Parcel"; PIN 71-04-23-300-003.000-011) and 1ST SOURCE BANK (the "1st Source Parcel"; a portion of PIN 71-04-27-200-044.000-036), Continental Properties 764 Fund LLC (the "Petitioner", an affiliate entity of Continental Properties Company, Inc.) submits for your review and consideration a joint petition for Annexation and Zoning for the Seggerman Parcel and a PUD Amendment for the 1st Source Parcel.

This two-property assemblage totals approximately 20.43 acres and is located at the northeast corner of the intersection of Fir Rd. and Beacon Pkwy. The Applicant, Continental Properties Company, Inc. is pursuing a market-rate multifamily residential community at this location.

Included in this enclosure are the following documents:

1. 3 original copies of Annexation & Zoning Petition for the Seggerman Parcel, each with wet signature (**separate wet signature pages previously delivered to Derek Spier, City Planner on 9/13/2023**)
2. 3 original copies of PUD Amendment Petition for 1st Source Parcel, each with wet signature (**separate wet signature pages previously delivered to Derek Spier, City Planner on 9/13/2023**)
3. Six (6) 24"x36" copies of the conceptual site plan
4. A \$500 check payable to the "City of Mishawaka"
5. **One set** (per Derek Spier's instruction) of business-size stamped envelopes addressed to all property owners within 300 feet of the subject property boundary lines, provided by Staff
6. One copy of the above-referenced list of Property Owners within 300 feet of the subject property boundary lines, provided by Staff

As part of this joint petition, the Petitioner requests the following amendments be included in the Proposed PUD classification for this two-property assemblage:

1. **Uses.** Permitted uses shall be limited to an up to 320-unit multi-family residential apartment complex and other accessory uses including but not limited to a club house, maintenance garage, and community pool.
2. **Setbacks.** There shall be a minimum building setback of 25' from the parcel boundaries.
3. **Building Height.** The maximum building height for the site shall be 48'.
4. **Landscaping.** No landscaping shall be required where existing mature vegetation is preserved, provided the areas is a minimum of 25' in width. The site shall comply with the C-1 Commercial landscaping requirements.
5. **Parking.** Total number of parking spaces required shall be a minimum of 1.5 spaces per unit.
6. **Signage.** Two monument signs, not exceeding 8' in height and 60 square feet in area (and including an electronic reader board) shall be permitted for the site.

Continental Properties Company, Inc.

Continental Properties Company, Inc. · W134 N8675 Executive Parkway, Menomonee Falls, WI 53051

7. **Right-of-Way.** A roughly 38.5' x 458.1' (roughly .38 acres) portion of the Seggerman Parcel along Fir Road shall be dedicated to the City of Mishawaka as part of the final site plan approval and shall be determined by review of the City Director of Engineering and City Planner based on proposed construction.
8. **Lighting.** All site lighting shall be limited to 30 feet in height.
9. **Building Materials & Colors.** High-quality vinyl lap siding shall be a permitted and primary building material for all buildings on the property, including the multifamily residential buildings, the clubhouse, and any accessory buildings. For building facades which front Beacon Pkwy. and Fir Rd., Petitioner shall employ masonry (brick, brick veneer, or stone) accents; please refer to the enclosed elevations for a representative sample of these Fir- and Beacon-fronting building facades.
10. **Architecture.** The architecture shall include garages and private entrances as conceptually identified.
11. **Detention.** City shall permit the applicant to expand the existing detention pond on the southeast corner of the site as designed and approved as part of the final construction drawings.
12. **Traffic.** A Traffic Impact Study shall not be required given that the applicant is only requesting emergency access only along Fir Road.
13. **Off-Site Improvements.** Road improvements along Fir Road shall be limited to a 8' wide sidewalk located within the right-of-way. Under no circumstances shall any off-site improvements or special assessments come due as part of Continental's proposed development and subsequent construction activities.

Signed:

CONTINENTAL PROPERTIES 764 Fund LLC



By: Ben Walker
Its: Acquisitions Associate
Continental Properties Inc.
bwalker@cproperties.com
414.305.8865

Pkt 23-21

Received

SEP 20 2023

Planning and
Community Development

DATE: September 20, 2023

TO THE:

Honorable Members of the Common Council
City of Mishawaka, Indiana
and
Mishawaka City Plan Commission
City of Mishawaka, Indiana

RE: Petition for Annexation and Zoning Classification

The undersigned The heirs or devisees of Helen M. Seggerman, deceased, respectfully show they are the owners of the following described real estate located in the County of St. Joseph, State of Indiana, to-wit:

OUTLOT "A" AS SHOWN ON THE RECORDED PLAT OF SEGGERMAN FIR ROAD MINOR SUBDIVISION RECORDED SEPTEMBER 16, 1998 AS DOCUMENT NO. [9848691](#) IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA.

EXCEPTING THEREFROM THAT PART DEEDED TO CITY OF MISHAWAKA, INDIANA BY DEED RECORDED APRIL 16, 2013 AS DOCUMENT NO. [1311274](#), DESCRIBED AS FOLLOWS:

A PART OF OUTLOT "A" IN SEGGERMAN FIR ROAD MINOR SUBDIVISION, A SUBDIVISION IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 38 NORTH, RANGE 3 EAST, THE PLAT OF WHICH SUBDIVISION IS RECORDED AS INSTRUMENT # [9848691](#), IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA, AND BEING THAT PART OF THE GRANTOR'S LAND LYING WITHIN THE RIGHT-OF-WAY LINES DEPICTED ON THE ATTACHED RIGHT-OF-WAY PARCEL PLAT MARKED AS EXHIBIT "B" DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID OUTLOT; THENCE NORTH 89 DEGREES 55 MINUTES 08 SECONDS EAST 35.00 FEET ALONG THE NORTH LINE OF SAID OUTLOT TO POINT "697" DESIGNATED ON SAID PARCEL PLAT; THENCE SOUTH 0 DEGREES 23 MINUTES 38 SECONDS EAST 469.01 FEET TO THE SOUTH LINE OF SAID OUTLOT; THENCE SOUTH 89 DEGREES 55 MINUTES 08 SECONDS WEST 35.00 FEET ALONG SAID SOUTH LINE TO THE SOUTHWEST CORNER OF SAID OUTLOT; THENCE NORTH 0 DEGREES 23 MINUTES 38 SECONDS WEST 469.01 FEET ALONG THE WEST LINE OF SAID OUTLOT TO THE POINT OF BEGINNING AND CONTAINING 0.377 ACRES, MORE OR LESS; **including all of the adjacent Fir Road right-of-way.**

General Location: Northeast Corner of Fir Road and Beacon Parkway.

Petitioners own One Hundred (100%) percent of the above-described parcel of land which is located northwest corner of N. Fir Road and Beacon Parkway and that Petitioners desire the same to be annexed to the City of Mishawaka, Indiana, with a S-2 Planned Unit Development District. Petitioners further state they intend to utilize said land for a multi-family development.

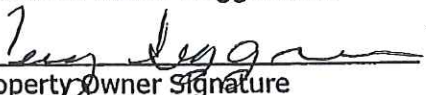
Accompanying this petition is a drawing, to scale, showing the above-described parcel of real estate, showing the size of the proposed building and also the location of the proposed building structure(s).

Petitioners further show this proposed annexation to be in the best interest of the City of Mishawaka, Indiana, and of the territory sought to be annexed which is urban in character and is an economic and social part of the City of Mishawaka.

Wherefore, Petitioners pray and respectfully request that the Common Council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate ordinance be enacted annexing the above described parcel of real estate to the City of Mishawaka with a S-2 Planned Unit Development District.

Estate of Helen Seggerman

By:


Property Owner Signature

Terry L. Seggerman, Personal Representative

Print Property Owner Name

Contact Person:

NAME
ADDRESS
TELEPHONE NUMBER
EMAIL

Malcolm J. Tuesley or April L. Troyer
THK Law, LLP
(574) 232-3538
mtuesley@thklaw.com and atroyer@thklaw.com

DATE: 09/20/2023

Honorable Members of the
Common Council
City of Mishawaka, Indiana
and
Mishawaka City Plan Commission
City of Mishawaka, Indiana

PET 23-21

2 of 2

Received

SEP 20 2023

Planning and
Community Development

RE: PETITION FOR PUD AMENDMENT

The undersigned 1st Source Bank respectfully show they are the owners of the following described real estate located in the City of Mishawaka, County of St. Joseph, State of Indiana, to-wit:

LOT NUMBERED ONE (1) AS SHOWN ON THE RECORDED PLAT OF SEGGERMAN FIR ROAD MINOR SUBDIVISION RECORDED SEPTEMBER 16, 1998 AS DOCUMENT NO. [9848691](#) IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA, TOGETHER WITH THE VACATED PORTION OF EVERGREEN ROAD.

EXCEPTING THEREFROM THE FOLLOWING TRACTS:

TRACT 1: PART OF LOT NUMBERED ONE (1), SEGGERMAN FIR ROAD MINOR SUBDIVISION IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 38 NORTH, RANGE 3 EAST, HARRIS TOWNSHIP, ST. JOSEPH COUNTY, INDIANA, DESCRIBED AS FOLLOWS: COMMENCING AT A POINT ON THE EAST RIGHT OF WAY LINE OF FIR ROAD WHICH IS BOTH THE SOUTHWEST CORNER OF LOT 1. SEGGERMAN FIR ROAD MINOR SUBDIVISION, RECORDED IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA AS DOCUMENT NUMBER [9848691](#) AND THE NORTHWEST CORNER OF LOT 1, PETERSON-SEGGERMAN MINOR SUBDIVISION, RECORDED IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA IN PLAT [BOOK 31, PAGE P](#); THENCE NORTH 89°42'02" EAST ON THE COMMON LINE BETWEEN LOT 1, SEGGERMAN FIR ROAD MINOR SUBDIVISION AND LOT 1, PETERSON-SEGGERMAN MINOR SUBDIVISION, A DISTANCE OF 216.59 FEET; THENCE NORTH 00°17'58" WEST, A DISTANCE OF 52.59 FEET; THENCE NORTH 33°34'53" EAST, A DISTANCE OF 4.75 FEET; THENCE NORTH 56°25'07" EAST, A DISTANCE OF 125.00 FEET; THENCE NORTH 33°34'53" EAST, A DISTANCE OF 186.50 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 33°34'53" EAST, A DISTANCE OF 83.01 FEET; THENCE NORTH 89°42'30" EAST, A DISTANCE OF 48.96 FEET; THENCE SOUTH 54°36'36" EAST, A DISTANCE OF 152.10 FEET; THENCE SOUTH 33°34'53" WEST, A DISTANCE OF 105.50 FEET; THENCE NORTH 56°25'07" WEST, A DISTANCE OF 192.67 FEET TO THE POINT OF BEGINNING.

TRACT 2: PART OF LOT NUMBERED ONE (1), SEGGERMAN FIR ROAD MINOR SUBDIVISION IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 38 NORTH, RANGE 3 EAST, HARRIS TOWNSHIP, ST. JOSEPH COUNTY, INDIANA, DESCRIBED AS FOLLOWS: COMMENCING AT A POINT ON THE EAST RIGHT OF WAY LINE OF FIR ROAD WHICH IS BOTH THE SOUTHWEST CORNER OF LOT 1, SEGGERMAN FIR ROAD MINOR SUBDIVISION. RECORDED IN THE OFFICE OF THE

RECORDER OF ST. JOSEPH COUNTY, INDIANA AS DOCUMENT NUMBER 9848691 AND THE NORTHWEST CORNER OF LOT 1, PETERSON-SEGGERMAN MINOR SUBDIVISION, RECORDED IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA IN PLAT BOOK 31, PAGE P; THENCE NORTH 89°42'02" EAST ON THE COMMON LINE BETWEEN LOT 1, SEGGERMAN FIR ROAD MINOR SUBDIVISION AND LOT 1, PETERSON- SEGGERMAN MINOR SUBDIVISION, A DISTANCE OF 216.59 FEET; THENCE NORTH 00°17'58" WEST, A DISTANCE OF 52.59 FEET; THENCE NORTH 33°34'53" EAST, A DISTANCE OF 4.75 FEET TO THE POINT OF BEGINNING; THENCE NORTH 56°25'07" WEST, A DISTANCE OF 125.00 FEET; THENCE NORTH 33°34'53" EAST, A DISTANCE OF 92.00 FEET; THENCE SOUTH 56°25'07" EAST, A DISTANCE OF 125.00 FEET; THENCE SOUTH 33°34'53" WEST, A DISTANCE OF 92.00 FEET TO THE POINT OF BEGINNING.

TRACT 3: PART OF LOT NUMBERED ONE (1), SEGGERMAN FIR ROAD MINOR SUBDIVISION IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 38 NORTH, RANGE 3 EAST, HARRIS TOWNSHIP, ST. JOSEPH COUNTY, INDIANA, DESCRIBED AS FOLLOWS COMMENCING AT A POINT ON THE EAST RIGHT OF WAY LINE OF FIR ROAD WHICH IS BOTH THE SOUTHWEST CORNER OF LOT 1, SEGGERMAN FIR ROAD MINOR SUBDIVISION, RECORDED IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA AS DOCUMENT NUMBER 9848691 AND THE NORTHWEST CORNER OF LOT 1, PETERSON-SEGGERMAN MINOR SUBDIVISION, RECORDED IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA IN PLAT BOOK 31, PAGE P; THENCE NORTH 89°42'02" EAST ON THE COMMON LINE BETWEEN LOT 1, SEGGERMAN FIR ROAD MINOR SUBDIVISION AND LOT 1, PETERSON-SEGGERMAN MINOR SUBDIVISION, A DISTANCE OF 216.59 FEET; THENCE NORTH 00°17'58" WEST, A DISTANCE OF 52.59 FEET; THENCE NORTH 33°34'53" EAST, A DISTANCE OF 4.75 FEET; THENCE NORTH 56°25'07" EAST, A DISTANCE OF 125.00 FEET; THENCE NORTH 33°34'53" EAST, A DISTANCE OF 92.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 33°34'53" EAST, A DISTANCE OF 94.50 FEET; THENCE SOUTH 56°25'07" EAST, A DISTANCE OF 125.00 FEET; THENCE SOUTH 33°34'53" WEST, A DISTANCE OF 94.50 FEET; THENCE NORTH 56°25'07" WEST, A DISTANCE OF 125.00 FEET TO THE POINT OF BEGINNING.

TRACT 4: THAT PART DEEDED TO BOARD OF COMMISSIONERS OF THE COUNTY OF ST. JOSEPH, INDIANA BY WARRANTY DEED RECORDED NOVEMBER 1, 2010 AS INSTRUMENT NO. 1030439, DESCRIBED AS FOLLOWS: A PART OF LOT 1 IN SEGGERMAN FIR ROAD MINOR SUBDIVISION, A SUBDIVISION IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 38 NORTH, RANGE 3 EAST, THE PLAT OF WHICH SUBDIVISION IS RECORDED AS INSTRUMENT #9848691, IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT ON THE NORTH BOUNDARY OF CLEVELAND ROAD; THENCE NORTH 00 DEGREES 23 MINUTES 38 SECONDS WEST 10.00 FEET ALONG A WEST LINE OF SAID LOT; THENCE NORTH 89 DEGREES 38 MINUTES 24 SECONDS-EAST 204.91 FEET TO THE SOUTHEASTERN LINE OF SAID LOT; THENCE ALONG SAID SOUTHEASTERN LINE SOUTHWESTERLY 24.84 FEET ALONG AN ARC TO THE RIGHT HAVING A RADIUS OF 29.00 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 65 DEGREES 06 MINUTES 23 SECONDS WEST AND A LENGTH OF 24.08 FEET TO THE SOUTH LINE OF SAID LOT; THENCE

(183.03 FEET BY THE PLAT OF SAID SUBDIVISION) ALONG SAID SOUTH LINE TO THE POINT OF BEGINNING AND CONTAINING 0.045 ACRES, MORE OR LESS, INCLUSIVE OF THE PRESENTLY EXISTING RIGHT-OF-WAY WHICH CONTAINS 0.025 ACRES, MORE OR LESS.

TRACT 5: THAT PART DEEDED TO THE CITY OF MISHAWAKA, INDIANA BY QUIT-CLAIM DEED RECORDED AUGUST 9, 2013 AS INSTRUMENT NO. [1324532](#) DESCRIBED AS FOLLOWS:

A PART OF LOT 1 IN SEGGERMAN FIR ROAD MINOR SUBDIVISION, A SUBDIVISION IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 38 NORTH, RANGE 3 EAST, THE PLAT OF WHICH SUBDIVISION IS RECORDED AS INSTRUMENT # [9848691](#), IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT; THENCE NORTH 89 DEGREES 55 MINUTES 08 SECONDS EAST 35.00 FEET ALONG THE NORTH LINE OF SAID LOT; THENCE SOUTH 0 DEGREES 23 MINUTES 38 SECONDS EAST 89.74 FEET; THENCE SOUTH 44 DEGREES 36 MINUTES 09 SECONDS EAST 57.84 FEET; THENCE SOUTH 88 DEGREES 04 MINUTES 52 SECONDS EAST 185.66 FEET; THENCE SOUTHEASTERLY 441.55 FEET ALONG AN ARC TO THE RIGHT HAVING A RADIUS OF 1,060.00 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 76 DEGREES 08 MINUTES 52 SECONDS EAST AND A LENGTH OF 438.36 FEET; THENCE SOUTH 64 DEGREES 12 MINUTES 52 SECONDS EAST 95.10 FEET; THENCE SOUTHEASTERLY 523.41 FEET ALONG AN ARC TO THE LEFT HAVING A RADIUS OF 740.00 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 84 DEGREES 28 MINUTES 39 SECONDS EAST AND A LENGTH OF 512.57 FEET TO THE EAST LINE OF SAID LOT; THENCE ALONG SAID EAST LINE SOUTH 0 DEGREES 27 MINUTES 02 SECONDS EAST 123.28 FEET; THENCE NORTHWESTERLY 577.85 FEET ALONG AN ARC TO THE RIGHT HAVING A RADIUS OF 860.00 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF NORTH 83 DEGREES 27 MINUTES 49 SECONDS WEST AND A LENGTH OF 567.04 FEET; THENCE NORTH 64 DEGREES 12 MINUTES 52 SECONDS WEST 95.10 FEET; THENCE NORTHWESTERLY 391.56 FEET ALONG AN ARC TO THE LEFT HAVING A RADIUS OF 940.00 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF NORTH 76 DEGREES 08 MINUTES 52 SECONDS WEST AND A LENGTH OF 388.73 FEET; THENCE NORTH 88 DEGREES 04 MINUTES 52 SECONDS WEST 181.66 FEET; THENCE SOUTH 45 DEGREES 20 MINUTES 44 SECONDS WEST 55.13 FEET; THENCE SOUTH 0 DEGREES 23 MINUTES 38 SECONDS EAST 713.55 FEET; THENCE SOUTHWESTERLY 218.52 FEET ALONG AN ARC TO THE RIGHT HAVING A RADIUS OF 889.64 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 6 DEGREES 38 MINUTES 34 SECONDS WEST AND A LENGTH OF 217.97 FEET TO A SOUTH LINE OF SAID LOT; THENCE ALONG SAID SOUTH LINE SOUTH 89 DEGREES 38 MINUTES 24 SECONDS WEST 8.30 FEET TO A SOUTHWEST CORNER OF SAID LOT; THENCE ALONG THE WEST LINE OF SAID LOT NORTH 0 DEGREES 23 MINUTES 38 SECONDS WEST 1,219.80 FEET TO THE POINT OF BEGINNING; **excluding all property south of the Beacon Parkway Right-of-way.**

Petitioner(s) own one hundred (100%) percent of the above described parcel of land which carries a zoning classification of S-2 Planned Unit Development specifically for planned low density residential.

Petitioner(s) desire said real estate to be amended to allow for a high density multi family development.

Wherefore, the petitioner(s) pray and respectfully request that the Common Council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate ordinance be enacted amending the PUD of the above described parcel of land located in the City of Mishawaka.

Signature(s) of Property Owner(s)



Signature(s) of Property Owner(s)

CONTACT PERSON:

Name GREG STROUPE

Address 100 N. MICHIGAN ST., SOUTH BEND, IN 46601

Phone Number/ Fax 574 235-2828

Email stroupe@1stsource.com

[illegible]

Received
SEP 20 2023
Planning and
Community Development

A scale bar and a north arrow. The scale bar is marked with 0, 75, 150, and 300. The north arrow points towards the top right of the map.

CHIEF INFORMATION OFFICER SITE PLAN

SPRINGS AT MISHAWAKA
N. FIR RD & BEACON PKWY - NEC | MISHAWAKA, MI
CONTINENTAL 764 ELUND LLC

CONTINENTAL
PROPERTIES

VICINITY MAP
SCALE: NTS

CONTINENTAL 764 FUND L...

DRAWN DATE: 08/28/2022
DRAWN BY: BMW

IP-1.0

ASPHALT SHINGLES



TM-SH-1



CBP-B-1

LAP PANEL



CBP-B-2

FLAT PANEL



CBP-F-3

STONE VENEER



MSE-S-3

TRIM



CBP-T-1

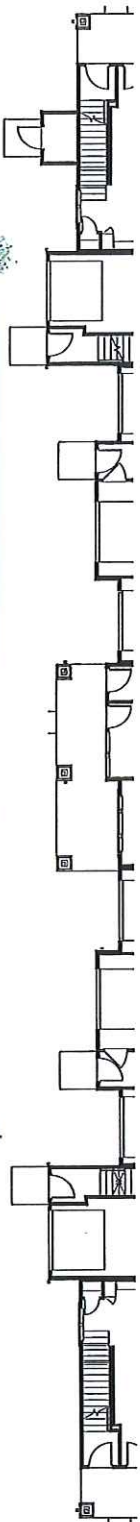
DOOR COLOR



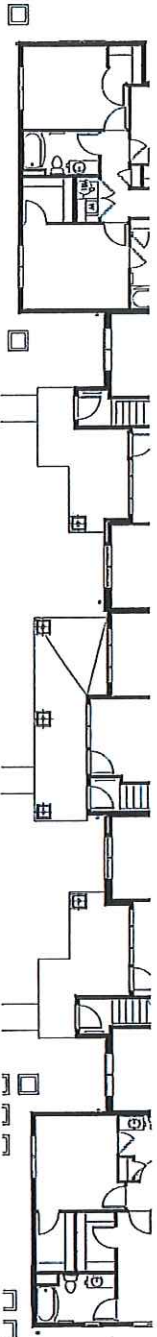
PT-A-1



F
Front Elevation
Scale: 1/8" = 1'-0"



R
Rear Elevation
Scale: 1/8" = 1'-0"



CONTINENTAL
PROPERTIES

20 UNIT BUILDING
YOU ARE HERE

ASPHALT SHINGLES



TM-SH-1

BOARD & BATTEN



OB-BM

LAP PANEL



CBP-B-2

FLAT PANEL



CBP-B-3

STONE VENEER



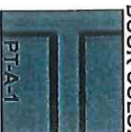
MS-B-3

TRIM



CBP-T-1

DOOR COLOR

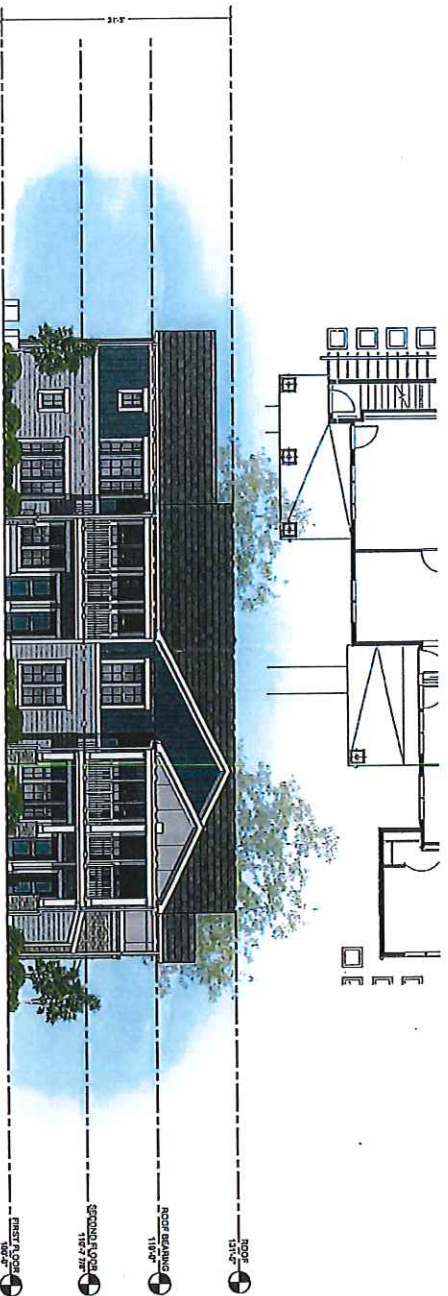


PT-A-1



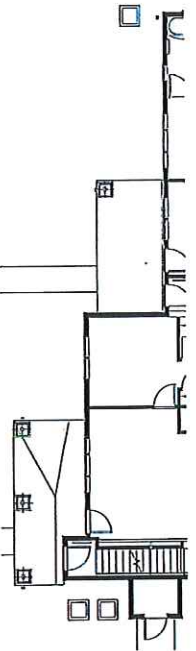
Right Elevation

SCALE: 1/8"=1'-0"



Left Elevation

SCALE: 1/8"=1'-0"



CONTINENTAL
PROPERTIES

20 UNIT BUILDING

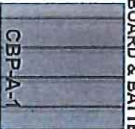
YOU ARE HERE

ASPHALT SHINGLES



TM-SH-1

BOARD & BATTEN



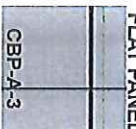
GBP-A-1

LAP PANEL



GBP-A-2

FLAT PANEL



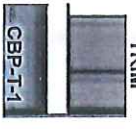
GBP-A-3

STONE VENEER



MS-B-3

TRIM



GBP-T-1

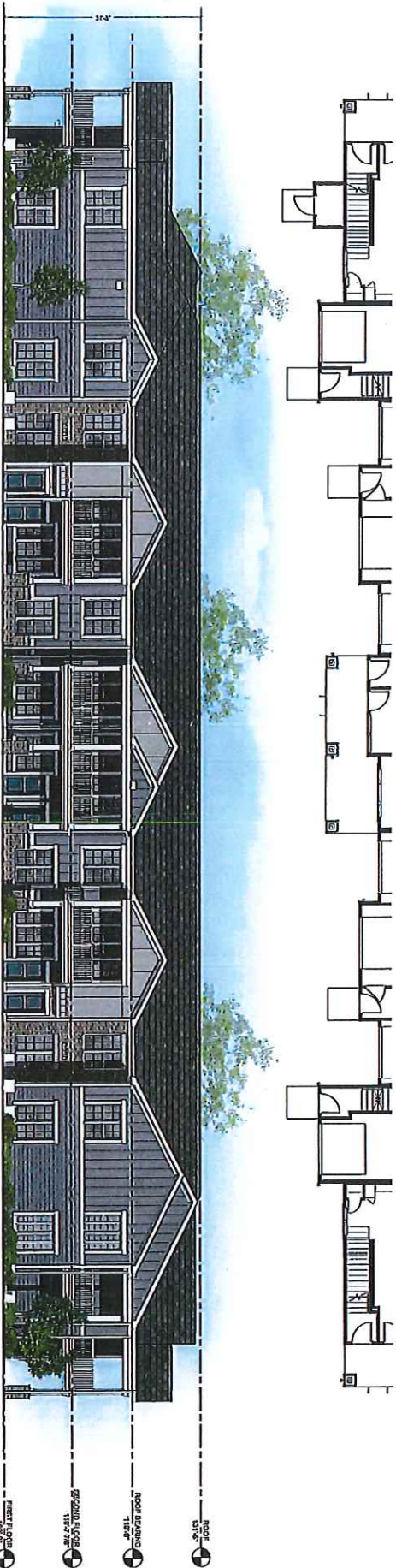
DOOR COLOR



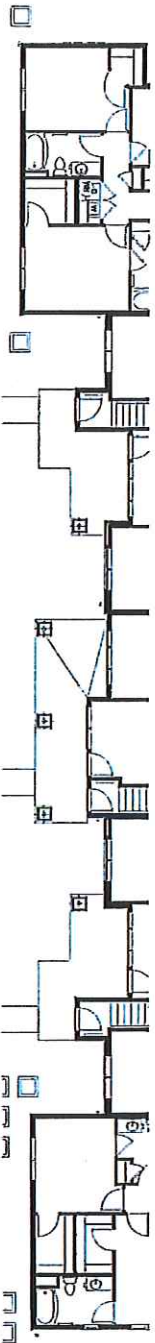
PI-A-1



F
Front Elevation
SCALE: 1/8"=1'-0"



R
Rear Elevation
SCALE: 1/8"=1'-0"



CONTINENTAL
PROPERTIES

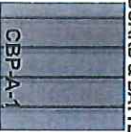
20 UNIT BUILDING
YOU ARE HERE

ASPHALT SHINGLES



TM-SH-1

BOARD & BATTEN



CBP-A-1

LAP PANEL



CBP-A-2

FLAT PANEL



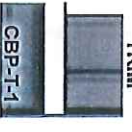
CBP-A-3

STONE VENEER



MSB-B-3

TRIM



CBP-T-1

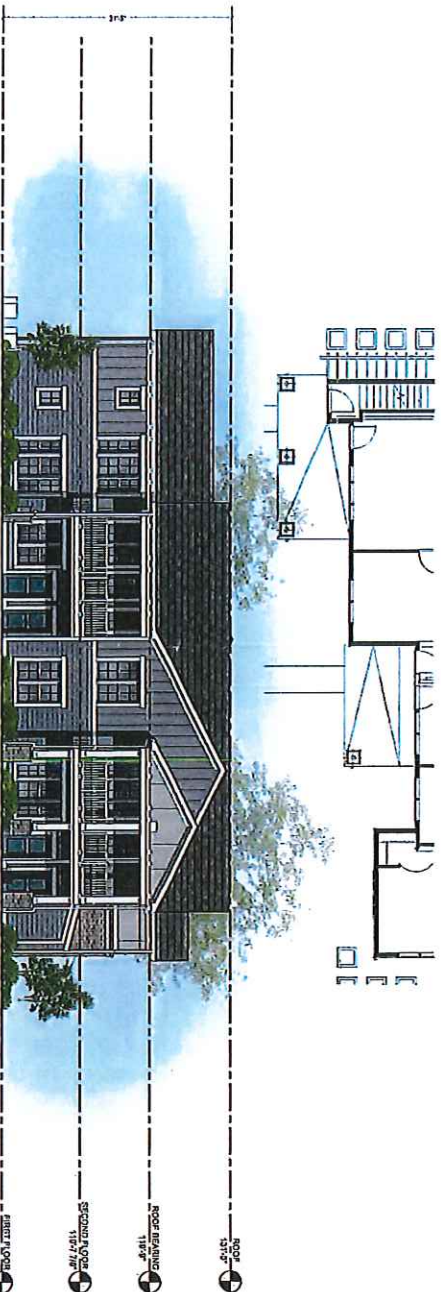
DOOR COLOR



PT-A-1



Right Elevation



Left Elevation

CONTINENTAL
PROPERTIES

20 UNIT BUILDING
YOU ARE HERE

ANNEX & ESTABLISH PUD

PUD AMENDMENT

GRANDE VISTA DR

N FIR RD

C-1

C-1

C-1

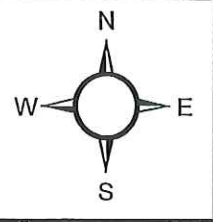
S-2

S-2

BEACON PKWY

CLEVELAND RD

WB INDIANA TOLE RD (I-80/90)



Location Map

PET 23-21

HELEN M SEGGERMAN ESTATE AND
1ST SOURCE BANK (OWNERS)

NORTHWEST CORNER OF FIR ROAD
AND BEACON PARKWAY

ANNEX NORTHERN 13.55 ACRES
AND ESTABLISH PUD

AMEND PUD FOR SOUTHERN 6.88 ACRES

SEP 25 2023

City Clerk
Mishawaka, IN

PA-23-21
Received

SEP 20 2023

Planning and
Community Development

DATE: September 20, 2023

TO THE:

Honorable Members of the Common Council
City of Mishawaka, Indiana
and
Mishawaka City Plan Commission
City of Mishawaka, Indiana

RE: Petition for Annexation and Zoning Classification

The undersigned The heirs or devisees of Helen M. Seggerman, deceased, respectfully show they are the owners of the following described real estate located in the County of St. Joseph, State of Indiana, to-wit:

OUTLOT "A" AS SHOWN ON THE RECORDED PLAT OF SEGGERMAN FIR ROAD MINOR SUBDIVISION RECORDED SEPTEMBER 16, 1998 AS DOCUMENT NO. [9848691](#) IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA.

EXCEPTING THEREFROM THAT PART DEEDED TO CITY OF MISHAWAKA, INDIANA BY DEED RECORDED APRIL 16, 2013 AS DOCUMENT NO. [1311274](#), DESCRIBED AS FOLLOWS:

A PART OF OUTLOT "A" IN SEGGERMAN FIR ROAD MINOR SUBDIVISION, A SUBDIVISION IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 38 NORTH, RANGE 3 EAST, THE PLAT OF WHICH SUBDIVISION IS RECORDED AS INSTRUMENT # [9848691](#), IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA, AND BEING THAT PART OF THE GRANTOR'S LAND LYING WITHIN THE RIGHT-OF-WAY LINES DEPICTED ON THE ATTACHED RIGHT-OF-WAY PARCEL PLAT MARKED AS EXHIBIT "B" DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID OUTLOT; THENCE NORTH 89 DEGREES 55 MINUTES 08 SECONDS EAST 35.00 FEET ALONG THE NORTH LINE OF SAID OUTLOT TO POINT "697" DESIGNATED ON SAID PARCEL PLAT; THENCE SOUTH 0 DEGREES 23 MINUTES 38 SECONDS EAST 469.01 FEET TO THE SOUTH LINE OF SAID OUTLOT; THENCE SOUTH 89 DEGREES 55 MINUTES 08 SECONDS WEST 35.00 FEET ALONG SAID SOUTH LINE TO THE SOUTHWEST CORNER OF SAID OUTLOT; THENCE NORTH 0 DEGREES 23 MINUTES 38 SECONDS WEST 469.01 FEET ALONG THE WEST LINE OF SAID OUTLOT TO THE POINT OF BEGINNING AND CONTAINING 0.377 ACRES, MORE OR LESS; **including all of the adjacent Fir Road right-of-way.**

General Location: Northeast Corner of Fir Road and Beacon Parkway.

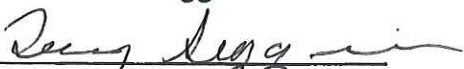
Petitioners own One Hundred (100%) percent of the above-described parcel of land which is located northwest corner of N. Fir Road and Beacon Parkway and that Petitioners desire the same to be annexed to the City of Mishawaka, Indiana, with a S-2 Planned Unit Development District. Petitioners further state they intend to utilize said land for a multi-family development.

Accompanying this petition is a drawing, to scale, showing the above-described parcel of real estate, showing the size of the proposed building and also the location of the proposed building structure(s).

Petitioners further show this proposed annexation to be in the best interest of the City of Mishawaka, Indiana, and of the territory sought to be annexed which is urban in character and is an economic and social part of the City of Mishawaka.

Wherefore, Petitioners pray and respectfully request that the Common Council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate ordinance be enacted annexing the above described parcel of real estate to the City of Mishawaka with a S-2 Planned Unit Development District.

Estate of Helen Seggerman

By: 
Property Owner Signature

Terry L. Seggerman, Personal Representative

Print Property Owner Name

Contact Person:

NAME

ADDRESS

TELEPHONE NUMBER

EMAIL

Malcolm J. Tuesley or April L. Troyer

THK Law, LLP

(574) 232-3538

mtuesley@thklaw.com and atroyer@thklaw.com

DATE: 09/20/2023

Deborah S. Block, AMC, MMC

2 of 2

Honorable Members of the
Common Council
City of Mishawaka, Indiana
and
Mishawaka City Plan Commission
City of Mishawaka, Indiana

SEP 25 2023

City Clerk
Mishawaka, IN

PE 23-21
Received

SEP 20 2023

Planning and
Community Development

RE: PETITION FOR PUD AMENDMENT

The undersigned 1st Source Bank respectfully show they are the owners of the following described real estate located in the City of Mishawaka, County of St. Joseph, State of Indiana, to-wit:

LOT NUMBERED ONE (1) AS SHOWN ON THE RECORDED PLAT OF SEGGERMAN FIR ROAD MINOR SUBDIVISION RECORDED SEPTEMBER 16, 1998 AS DOCUMENT NO. [9848691](#) IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA, TOGETHER WITH THE VACATED PORTION OF EVERGREEN ROAD.

EXCEPTING THEREFROM THE FOLLOWING TRACTS:

TRACT 1: PART OF LOT NUMBERED ONE (1), SEGGERMAN FIR ROAD MINOR SUBDIVISION IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 38 NORTH, RANGE 3 EAST, HARRIS TOWNSHIP, ST. JOSEPH COUNTY, INDIANA, DESCRIBED AS FOLLOWS: COMMENCING AT A POINT ON THE EAST RIGHT OF WAY LINE OF FIR ROAD WHICH IS BOTH THE SOUTHWEST CORNER OF LOT 1. SEGGERMAN FIR ROAD MINOR SUBDIVISION, RECORDED IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA AS DOCUMENT NUMBER [9848691](#) AND THE NORTHWEST CORNER OF LOT 1, PETERSON-SEGGERMAN MINOR SUBDIVISION, RECORDED IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA IN PLAT [BOOK 31, PAGE P](#); THENCE NORTH 89°42'02" EAST ON THE COMMON LINE BETWEEN LOT 1, SEGGERMAN FIR ROAD MINOR SUBDIVISION AND LOT 1, PETERSON-SEGGERMAN MINOR SUBDIVISION, A DISTANCE OF 216.59 FEET; THENCE NORTH 00°17'58" WEST, A DISTANCE OF 52.59 FEET; THENCE NORTH 33°34'53" EAST, A DISTANCE OF 4.75 FEET; THENCE NORTH 56°25'07" EAST, A DISTANCE OF 125.00 FEET; THENCE NORTH 33°34'53" EAST, A DISTANCE OF 186.50 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 33°34'53" EAST, A DISTANCE OF 83.01 FEET; THENCE NORTH 89°42'30" EAST, A DISTANCE OF 48.96 FEET; THENCE SOUTH 54°36'36" EAST, A DISTANCE OF 152.10 FEET; THENCE SOUTH 33°34'53" WEST, A DISTANCE OF 105.50 FEET; THENCE NORTH 56°25'07" WEST, A DISTANCE OF 192.67 FEET TO THE POINT OF BEGINNING.

TRACT 2: PART OF LOT NUMBERED ONE (1), SEGGERMAN FIR ROAD MINOR SUBDIVISION IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 38 NORTH, RANGE 3 EAST, HARRIS TOWNSHIP, ST. JOSEPH COUNTY, INDIANA, DESCRIBED AS FOLLOWS: COMMENCING AT A POINT ON THE EAST RIGHT OF WAY LINE OF FIR ROAD WHICH IS BOTH THE SOUTHWEST CORNER OF LOT 1, SEGGERMAN FIR ROAD MINOR SUBDIVISION, RECORDED IN THE OFFICE OF THE

RECORDER OF ST. JOSEPH COUNTY, INDIANA AS DOCUMENT NUMBER 9848691 AND THE NORTHWEST CORNER OF LOT 1, PETERSON-SEGGERMAN MINOR SUBDIVISION, RECORDED IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA IN PLAT BOOK 31, PAGE P; THENCE NORTH 89°42'02" EAST ON THE COMMON LINE BETWEEN LOT 1, SEGGERMAN FIR ROAD MINOR SUBDIVISION AND LOT 1, PETERSON- SEGGERMAN MINOR SUBDIVISION, A DISTANCE OF 216.59 FEET; THENCE NORTH 00°17'58" WEST, A DISTANCE OF 52.59 FEET; THENCE NORTH 33°34'53" EAST, A DISTANCE OF 4.75 FEET TO THE POINT OF BEGINNING; THENCE NORTH 56°25'07" WEST, A DISTANCE OF 125.00 FEET; THENCE NORTH 33°34'53" EAST, A DISTANCE OF 92.00 FEET; THENCE SOUTH 56°25'07" EAST, A DISTANCE OF 125.00 FEET; THENCE SOUTH 33°34'53" WEST, A DISTANCE OF 92.00 FEET TO THE POINT OF BEGINNING.

TRACT 3: PART OF LOT NUMBERED ONE (1), SEGGERMAN FIR ROAD MINOR SUBDIVISION IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 38 NORTH, RANGE 3 EAST, HARRIS TOWNSHIP, ST. JOSEPH COUNTY, INDIANA, DESCRIBED AS FOLLOWS COMMENCING AT A POINT ON THE EAST RIGHT OF WAY LINE OF FIR ROAD WHICH IS BOTH THE SOUTHWEST CORNER OF LOT 1, SEGGERMAN FIR ROAD MINOR SUBDIVISION, RECORDED IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA AS DOCUMENT NUMBER 9848691 AND THE NORTHWEST CORNER OF LOT 1, PETERSON-SEGGERMAN MINOR SUBDIVISION, RECORDED IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA IN PLAT BOOK 31, PAGE P; THENCE NORTH 89°42'02" EAST ON THE COMMON LINE BETWEEN LOT 1, SEGGERMAN FIR ROAD MINOR SUBDIVISION AND LOT 1, PETERSON-SEGGERMAN MINOR SUBDIVISION, A DISTANCE OF 216.59 FEET; THENCE NORTH 00°17'58" WEST, A DISTANCE OF 52.59 FEET; THENCE NORTH 33°34'53" EAST, A DISTANCE OF 4.75 FEET; THENCE NORTH 56°25'07" EAST, A DISTANCE OF 125.00 FEET; THENCE NORTH 33°34'53" EAST, A DISTANCE OF 92.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 33°34'53" EAST, A DISTANCE OF 94.50 FEET; THENCE SOUTH 56°25'07" EAST, A DISTANCE OF 125.00 FEET; THENCE SOUTH 33°34'53" WEST, A DISTANCE OF 94.50 FEET; THENCE NORTH 56°25'07" WEST, A DISTANCE OF 125.00 FEET TO THE POINT OF BEGINNING.

TRACT 4: THAT PART DEEDED TO BOARD OF COMMISSIONERS OF THE COUNTY OF ST. JOSEPH, INDIANA BY WARRANTY DEED RECORDED NOVEMBER 1, 2010 AS INSTRUMENT NO. 1030439, DESCRIBED AS FOLLOWS: A PART OF LOT 1 IN SEGGERMAN FIR ROAD MINOR SUBDIVISION, A SUBDIVISION IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 38 NORTH, RANGE 3 EAST, THE PLAT OF WHICH SUBDIVISION IS RECORDED AS INSTRUMENT #9848691, IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT ON THE NORTH BOUNDARY OF CLEVELAND ROAD; THENCE NORTH 00 DEGREES 23 MINUTES 38 SECONDS WEST 10.00 FEET ALONG A WEST LINE OF SAID LOT; THENCE NORTH 89 DEGREES 38 MINUTES 24 SECONDS-EAST 204.91 FEET TO THE SOUTHEASTERN LINE OF SAID LOT; THENCE ALONG SAID SOUTHEASTERN LINE SOUTHWESTERLY 24.84 FEET ALONG AN ARC TO THE RIGHT HAVING A RADIUS OF 29.00 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 65 DEGREES 06 MINUTES 23 SECONDS WEST AND A LENGTH OF 24.08 FEET TO THE SOUTH LINE OF SAID LOT; THENCE SOUTH 89 DEGREES 38 MINUTES 24 SECONDS WEST 182.99 FEET

(183.03 FEET BY THE PLAT OF SAID SUBDIVISION) ALONG SAID SOUTH LINE TO THE POINT OF BEGINNING AND CONTAINING 0.045 ACRES, MORE OR LESS, INCLUSIVE OF THE PRESENTLY EXISTING RIGHT-OF-WAY WHICH CONTAINS 0.025 ACRES, MORE OR LESS.

TRACT 5: THAT PART DEEDED TO THE CITY OF MISHAWAKA, INDIANA BY QUIT-CLAIM DEED RECORDED AUGUST 9, 2013 AS INSTRUMENT NO. [1324532](#) DESCRIBED AS FOLLOWS:

A PART OF LOT 1 IN SEGGERMAN FIR ROAD MINOR SUBDIVISION, A SUBDIVISION IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 38 NORTH, RANGE 3 EAST, THE PLAT OF WHICH SUBDIVISION IS RECORDED AS INSTRUMENT # [9848691](#), IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT; THENCE NORTH 89 DEGREES 55 MINUTES 08 SECONDS EAST 35.00 FEET ALONG THE NORTH LINE OF SAID LOT; THENCE SOUTH 0 DEGREES 23 MINUTES 38 SECONDS EAST 89.74 FEET; THENCE SOUTH 44 DEGREES 36 MINUTES 09 SECONDS EAST 57.84 FEET; THENCE SOUTH 88 DEGREES 04 MINUTES 52 SECONDS EAST 185.66 FEET; THENCE SOUTHEASTERLY 441.55 FEET ALONG AN ARC TO THE RIGHT HAVING A RADIUS OF 1,060.00 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 76 DEGREES 08 MINUTES 52 SECONDS EAST AND A LENGTH OF 438.36 FEET; THENCE SOUTH 64 DEGREES 12 MINUTES 52 SECONDS EAST 95.10 FEET; THENCE SOUTHEASTERLY 523.41 FEET ALONG AN ARC TO THE LEFT HAVING A RADIUS OF 740.00 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 84 DEGREES 28 MINUTES 39 SECONDS EAST AND A LENGTH OF 512.57 FEET TO THE EAST LINE OF SAID LOT; THENCE ALONG SAID EAST LINE SOUTH 0 DEGREES 27 MINUTES 02 SECONDS EAST 123.28 FEET; THENCE NORTHWESTERLY 577.85 FEET ALONG AN ARC TO THE RIGHT HAVING A RADIUS OF 860.00 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF NORTH 83 DEGREES 27 MINUTES 49 SECONDS WEST AND A LENGTH OF 567.04 FEET; THENCE NORTH 64 DEGREES 12 MINUTES 52 SECONDS WEST 95.10 FEET; THENCE NORTHWESTERLY 391.56 FEET ALONG AN ARC TO THE LEFT HAVING A RADIUS OF 940.00 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF NORTH 76 DEGREES 08 MINUTES 52 SECONDS WEST AND A LENGTH OF 388.73 FEET; THENCE NORTH 88 DEGREES 04 MINUTES 52 SECONDS WEST 181.66 FEET; THENCE SOUTH 45 DEGREES 20 MINUTES 44 SECONDS WEST 55.13 FEET; THENCE SOUTH 0 DEGREES 23 MINUTES 38 SECONDS EAST 713.55 FEET; THENCE SOUTHWESTERLY 218.52 FEET ALONG AN ARC TO THE RIGHT HAVING A RADIUS OF 889.64 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 6 DEGREES 38 MINUTES 34 SECONDS WEST AND A LENGTH OF 217.97 FEET TO A SOUTH LINE OF SAID LOT; THENCE ALONG SAID SOUTH LINE SOUTH 89 DEGREES 38 MINUTES 24 SECONDS WEST 8.30 FEET TO A SOUTHWEST CORNER OF SAID LOT; THENCE ALONG THE WEST LINE OF SAID LOT NORTH 0 DEGREES 23 MINUTES 38 SECONDS WEST 1,219.80 FEET TO THE POINT OF BEGINNING; **excluding all property south of the Beacon Parkway Right-of-way.**

General Location: NEC of Fir Road and Beacon Parkway

Petitioner(s) own one hundred (100%) percent of the above described parcel of land which carries a zoning classification of S-2 Planned Unit Development specifically for planned low density residential.

Petitioner(s) desire said real estate to be amended to allow for a high density multi family development.

Wherefore, the petitioner(s) pray and respectfully request that the Common Council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate ordinance be enacted amending the PUD of the above described parcel of land located in the City of Mishawaka.

Signature(s) of Property Owner(s)

Signature(s) of Property Owner(s)

CONTACT PERSON:

Name

Address

Phone Number/ Fax

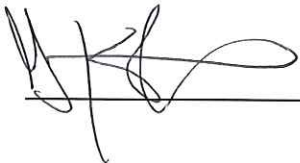
Email

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Signature(s) of Property Owner(s)



Signature(s) of Property Owner(s)

CONTACT PERSON:

Name GREG STROUPE

Address 100 N. MICHIGAN ST., SOUTH BEND, IN 46601

Phone Number/ Fax 574-235-2828

Email

stroupe.g@1stsource.com

SEP 20 2023

Planning and
Community Development

September 20, 2023

Mr. Kenneth B Prince, ASLA, AICP,
Executive Director
Department of Planning and Community Development
100 Lincolnway West
Mishawaka, IN 46544

RE: Multi-Parcel Joint Annexation/Zoning Petition & PUD Amendment Petition – NEC of Fir Rd. & Beacon Pkwy.

Dear Mr. Prince,

On behalf of the Property Owners SEGGERMAN HELEN M ESTATE (the "Seggerman Parcel"; PIN 71-04-23-300-003.000-011) and 1ST SOURCE BANK (the "1st Source Parcel"; a portion of PIN 71-04-27-200-044.000-036), Continental Properties 764 Fund LLC (the "Petitioner", an affiliate entity of Continental Properties Company, Inc.) submits for your review and consideration a joint petition for Annexation and Zoning for the Seggerman Parcel and a PUD Amendment for the 1st Source Parcel.

This two-property assemblage totals approximately 20.43 acres and is located at the northeast corner of the intersection of Fir Rd. and Beacon Pkwy. The Applicant, Continental Properties Company, Inc. is pursuing a market-rate multifamily residential community at this location.

Included in this enclosure are the following documents:

1. 3 original copies of Annexation & Zoning Petition for the Seggerman Parcel, each with wet signature **(separate wet signature pages previously delivered to Derek Spier, City Planner on 9/13/2023)**
2. 3 original copies of PUD Amendment Petition for 1st Source Parcel, each with wet signature **(separate wet signature pages previously delivered to Derek Spier, City Planner on 9/13/2023)**
3. Six (6) 24"x36" copies of the conceptual site plan
4. A \$500 check payable to the "City of Mishawaka"
5. **One set** (per Derek Spier's instruction) of business-size stamped envelopes addressed to all property owners within 300 feet of the subject property boundary lines, provided by Staff
6. One copy of the above-referenced list of Property Owners within 300 feet of the subject property boundary lines, provided by Staff

As part of this joint petition, the Petitioner requests the following amendments be included in the Proposed PUD classification for this two-property assemblage:

1. **Uses.** Permitted uses shall be limited to an up to 320-unit multi-family residential apartment complex and other accessory uses including but not limited to a club house, maintenance garage, and community pool.
2. **Setbacks.** There shall be a minimum building setback of 25' from the parcel boundaries.
3. **Building Height.** The maximum building height for the site shall be 48'.
4. **Landscaping.** No landscaping shall be required where existing mature vegetation is preserved, provided the areas is a minimum of 25' in width. The site shall comply with the C-1 Commercial landscaping requirements.
5. **Parking.** Total number of parking spaces required shall be a minimum of 1.5 spaces per unit.
6. **Signage.** Two monument signs, not exceeding 8' in height and 60 square feet in area (and including an electronic reader board) shall be permitted for the site.

Continental Properties Company, Inc.

Continental Properties Company, Inc. · W134 N8675 Executive Parkway, Menomonee Falls, WI 53051

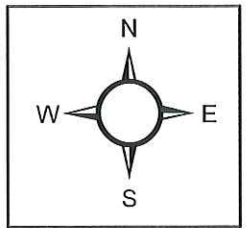
7. **Right-of-Way.** A roughly 38.5' x 458.1' (roughly .38 acres) portion of the Seggerman Parcel along Fir Road shall be dedicated to the City of Mishawaka as part of the final site plan approval and shall be determined by review of the City Director of Engineering and City Planner based on proposed construction.
8. **Lighting.** All site lighting shall be limited to 30 feet in height.
9. **Building Materials & Colors.** High-quality vinyl lap siding shall be a permitted and primary building material for all buildings on the property, including the multifamily residential buildings, the clubhouse, and any accessory buildings. For building facades which front Beacon Pkwy. and Fir Rd., Petitioner shall employ masonry (brick, brick veneer, or stone) accents; please refer to the enclosed elevations for a representative sample of these Fir- and Beacon-fronting building facades.
10. **Architecture.** The architecture shall include garages and private entrances as conceptually identified.
11. **Detention.** City shall permit the applicant to expand the existing detention pond on the southeast corner of the site as designed and approved as part of the final construction drawings.
12. **Traffic.** A Traffic Impact Study shall not be required given that the applicant is only requesting emergency access only along Fir Road.
13. **Off-Site Improvements.** Road improvements along Fir Road shall be limited to a 8' wide sidewalk located within the right-of-way. Under no circumstances shall any off-site improvements or special assessments come due as part of Continental's proposed development and subsequent construction activities.

Signed:

CONTINENTAL PROPERTIES 764 Fund LLC



By: Ben Walker
Its: Acquisitions Associate
Continental Properties Inc.
bwalker@cproperties.com
414.305.8865



ANNEX & ESTABLISH PUD

PUD AMENDMENT

GRANDE VISTA DR

N FIR RD

C-1

C-1

C-1

S-2

S-2

BEACON PKWY

Location Map

PET 23-21

HELEN M SEGGERMAN ESTATE AND
1ST SOURCE BANK (OWNERS)

NORTHWEST CORNER OF FIR ROAD
AND BEACON PARKWAY

ANNEX NORTHERN 13.55 ACRES
AND ESTABLISH PUD

AMEND PUD FOR SOUTHERN 6.88 ACRES

CLEVELAND RD

WB INDIANA TOLL RD (I-80/90)

RESOLUTION NO. 2023-24
AS Amended

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:

Northeast Corner of E McKinley and Maplehurst, Mishawaka, Indiana

WHEREAS, the Indiana Code requires the Common Council to give notice of its intention to consider Petitions from the Board of Zoning Appeals for approval or disapproval; and

WHEREAS, the Common Council must take action within sixty (60) days after the Board of Zoning Appeals makes its recommendation to the Council; and

WHEREAS, the Common Council is required to make a determination in writing on such requests; and

WHEREAS, the Mishawaka Board of Zoning Appeals has made a favorable recommendation, pursuant to applicable state law, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning.

NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, as follows:

Section I. The Common Council has provided notice of the hearing on the Petition from the Board of Zoning Appeals pursuant to Indiana Code requesting that a Use Variance for property located at the **northeast corner of E McKinley and Maplehurst, Mishawaka, Indiana**, more particularly known and described as follows:

PART OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 3, TOWNSHIP 37 NORTH, RANGE 3 EAST, IN ST JOSEPH COUNTY, INDIANA, DESCRIBED AS BEGINNING AT THE SOUTHEAST CORNER OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 3, RUNNING THENCE NORTH ALONG THE EAST LINE OF SAID WEST HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 3, 395.98 FEET; THENCE WEST 310.93 FEET TO A POINT WHICH IS 396 FEET NORTH OF THE SOUTH LINE OF SAID SECTION 3 (SAID POINT ALSO BEING ON THE EAST LINE OF MAPLEHURST STREET); THENCE SOUTH ALONG THE EAST LINE OF SAID MAPLEHURST STREET 396 FEET TO THE SOUTH LINE; THENCE EAST ALONG THE SOUTH LINE OF SAID SECTION, 311.14 FEET TO THE PLACE OF BEGINNING,.

The Use Variance will to allow a self storage facility in the C-4 Automobile Oriented Commercial District.

Section II. Following a presentation by the Petitioner, and after proper public hearing, the Common Council hereby approves the Petition as recommended by the Mishawaka Board of Zoning Appeals, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning, a copy of which is on file in the Office of the City Clerk.

1. No outside storage shall be permitted.
2. Freestanding off-premises signs (i.e. billboards) shall be prohibited.
3. Architectural building materials and colors per Section 137-380 (15) Design Review / Development Plan Restrictions shall only apply to the southern building façades facing E. McKinley Avenue. Fiber cement board shall be considered an appropriate material.
4. The minimum commercial landscaping and screening regulations per Section 137-815 shall be applicable.
5. Electrified fencing, barbed wire and razor wire are prohibited.
6. Any fencing along the E. McKinley Avenue frontage and within 15' of the additional right-of-way to be dedicated shall be decorative and is subject to review and approval by the Planning Department.
7. All access drives shall be hard surfaced (concrete or asphalt).
8. A Site Plan shall be submitted for review and approval by the Planning Department and Plan Commission. Additional review, including but not limited to, landscaping, drainage, access, and building materials will occur with the site plan review.

Section III. The Common Council of the City of Mishawaka, Indiana, hereby finds that:

1. Approval will not be injurious to the public health, safety, morals and general welfare of the community. The proposed self-storage facility will be compatible with several businesses in the area and will not affect the adjacent commercial uses. The requested developmental variances will also not be injurious to the public or adjacent uses, and are being requested to provide additional security for the property and allow for the maximum development potential while not requiring unneeded parking.
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner. Compatible commercial uses are currently adjacent to and in close proximity to the site. The requested developmental variances will also not affect the use or value of the adjacent properties. The investment in the property will likely have a positive impact on surrounding properties.
3. The need for the use variance arises from some condition peculiar to the property in that the proposed C-4 Automobile Oriented Commercial zoning does not allow the proposed self-storage facility. Planning Staff instructed the appellant to request the commercial zoning for the property since an industrial zoning, which would permit the self-storage facility by right, would also permit other higher intensity non-compatible uses.
4. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought and result in practical difficulties in the use of the property. The commercial zoning of the property will not allow the development of the proposed use. Self-storage facilities are only permitted within the industrial zoning districts. The developmental variances will allow for greater security and maximize the development potential of the property.

5. The approval will not substantially interfere with the Mishawaka 2000 Comprehensive Plan. The Mishawaka 2000 Comprehensive Plan, created in 1990, identified a preferred land use of the subject property as open space. The plan does not reflect subsequent changes in the adjacent land use patterns from the mid-1990s to the early 2010s which permitted commercial uses to the west, north, and east. The proposed use is reasonably consistent with the goals and objectives of the plan and existing adjacent land uses.

Section IV. This Resolution shall be in full force and effect from and after its adoption by the Common Council and approval by the Mayor.

PASSED by the Common Council of the City of Mishawaka, Indiana, this _____ day of _____, 2023, at _____ o'clock ____ .m.

Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____, 2023, at _____ o'clock ____m.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _____, 2023, at _____ o'clock ____m.

David A. Wood, Mayor

RE: Use Variance - NE Corner of Maplehurst & E. McKinley (Resolution 23-18)

Derek Spier <dspier@mishawaka.in.gov>

Tue 10/24/2023 3:04 PM

To: Raven S. Boston <rboston@mishawaka.in.gov>; Deb Block <dblock@mishawaka.in.gov>; Michael Hixenbaugh <mhixenbaugh@mishawaka.in.gov>

Cc: Donna Burkart <donna.burkart@mishawaka.in.gov>; Ken Prince <kprince@mishawaka.in.gov>; Christa Hill <chill2@mishawaka.in.gov>

📎 2 attachments (4 MB)

R2023-24 UV Mini storage NE corner McKinley.pdf; June 13, 2023 BZA - RES - 23-18.doc;

Deb/Raven-

I just dropped off an amended Resolution 2023-24, which was approved by the Council on October 16th, to correct a scrivener's error in Section II.

The attached updated resolution correctly references the conditions of approval which were included in the Planning Staff report for the Use Variance, but were not updated in the resolution.

Please put this on the November 13th Council meeting so that the error can be corrected.

Let us know if you have any questions.

Best,

Derek

From: Derek Spier

Sent: Tuesday, October 24, 2023 12:07 PM

To: Donna Burkart <donna.burkart@mishawaka.in.gov>; Ken Prince <kprince@mishawaka.in.gov>; Christa Hill <chill2@mishawaka.in.gov>

Subject: Use Variance - NE Corner of Maplehurst & E. McKinley (Resolution 23-24)

All-

Resolution 23-24 which was just approved by the Council on Oct. 16th as an error in Section II which are the conditions of approval.

The resolution was copied from an older one and this section was not updated. The conditions that need to be included are in the recommendation of the Staff Report for AP 23-18.

Please revise so we can get this back to the Council for approval.

Thanks, and let me know if you have any questions.



Derek Spier, AICP | City Planner

City of Mishawaka | Department of Planning & Community Development

City Hall, 100 Lincolnway West, Mishawaka, IN 46544

Phone: (574) 258-1625 | Fax: (574) 968-6999

Email: dspier@mishawaka.in.gov

Website: www.mishawaka.in.gov

"
*Working together to build the "Best Hometown in America", by delivering exceptional services,
promoting safe and clean neighborhoods, elevating the quality of life, and inspiring pride in our community*

APPEAL #23-18

RESOLUTION NO. 2023-24

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:

Northeast Corner of E McKinley and Maplehurst, Mishawaka, Indiana

WHEREAS, the Indiana Code requires the Common Council to give notice of its intention to consider Petitions from the Board of Zoning Appeals for approval or disapproval; and

WHEREAS, the Common Council must take action within sixty (60) days after the Board of Zoning Appeals makes its recommendation to the Council; and

WHEREAS, the Common Council is required to make a determination in writing on such requests; and

WHEREAS, the Mishawaka Board of Zoning Appeals has made a favorable recommendation, pursuant to applicable state law, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning.

NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, as follows:

Section I. The Common Council has provided notice of the hearing on the Petition from the Board of Zoning Appeals pursuant to Indiana Code requesting that a Use Variance for property located at the **northeast corner of E McKinley and Maplehurst, Mishawaka, Indiana**, more particularly known and described as follows:

PART OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 3, TOWNSHIP 37 NORTH, RANGE 3 EAST, IN ST JOSEPH COUNTY, INDIANA, DESCRIBED AS BEGINNING AT THE SOUTHEAST CORNER OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 3, RUNNING THENCE NORTH ALONG THE EAST LINE OF SAID WEST HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 3, 395.98 FEET; THENCE WEST 310.93 FEET TO A POINT WHICH IS 396 FEET NORTH OF THE SOUTH LINE OF SAID SECTION 3 (SAID POINT ALSO BEING ON THE EAST LINE OF MAPLEHURST STREET); THENCE SOUTH ALONG THE EAST LINE OF SAID MAPLEHURST STREET 396 FEET TO THE SOUTH LINE; THENCE EAST ALONG THE SOUTH LINE OF SAID SECTION, 311.14 FEET TO THE PLACE OF BEGINNING.

The Use Variance will to allow a self storage facility in the C-4 Automobile Oriented Commercial Dsitric.

Section II. Following a presentation by the Petitioner, and after proper public hearing, the Common Council hereby approves the Petition as recommended by the Mishawaka Board of Zoning Appeals, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning, a copy of which is on file in the Office of the City Clerk.

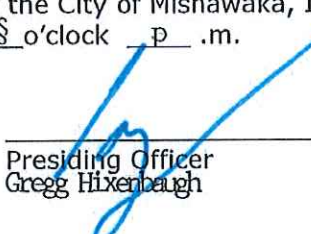
1. The use of the temporary asphalt and gravel parking areas for semi-trucks and trailers shall be limited to not more than 5 years.
2. Other than parking of semi-trucks and trailers, no other outside storage, including but not limited to automobile parts or vehicles in various states of disrepair, or storage containers, shall be permitted on the property.
3. If a building is not constructed within a 5 year period, the gravel parking areas shall be reverted back to green space.
4. An Administrative Site Plan shall be submitted for review and approval consistent with the preliminary site plan.

Section III. The Common Council of the City of Mishawaka, Indiana, hereby finds that:

1. Approval will not be injurious to the public health, safety, morals and general welfare of the community. The proposed self-storage facility will be compatible with several businesses in the area and will not affect the adjacent commercial uses. The requested developmental variances will also not be injurious to the public or adjacent uses, and are being requested to provide additional security for the property and allow for the maximum development potential while not requiring unneeded parking.
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner. Compatible commercial uses are currently adjacent to and in close proximity to the site. The requested developmental variances will also not affect the use or value of the adjacent properties. The investment in the property will likely have a positive impact on surrounding properties.
3. The need for the use variance arises from some condition peculiar to the property in that the proposed C-4 Automobile Oriented Commercial zoning does not allow the proposed self-storage facility. Planning Staff instructed the appellant to request the commercial zoning for the property since an industrial zoning, which would permit the self-storage facility by right, would also permit other higher intensity non-compatible uses.
4. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought and result in practical difficulties in the use of the property. The commercial zoning of the property will not allow the development of the proposed use. Self-storage facilities are only permitted within the industrial zoning districts. The developmental variances will allow for greater security and maximize the development potential of the property.
5. The approval will not substantially interfere with the Mishawaka 2000 Comprehensive Plan. The Mishawaka 2000 Comprehensive Plan, created in 1990, identified a preferred land use of the subject property as open space. The plan does not reflect subsequent changes in the adjacent land use patterns from the mid-1990s to the early 2010s which permitted commercial uses to the west, north, and east. The proposed use is reasonably consistent with the goals and objectives of the plan and existing adjacent land uses.

Section IV. This Resolution shall be in full force and effect from and after its adoption by the Common Council and approval by the Mayor.

PASSED by the Common Council of the City of Mishawaka, Indiana, this 16 day of October, 2023, at 7:32 o'clock p.m.



Presiding Officer
Gregg Hixenbaugh

ATTEST:



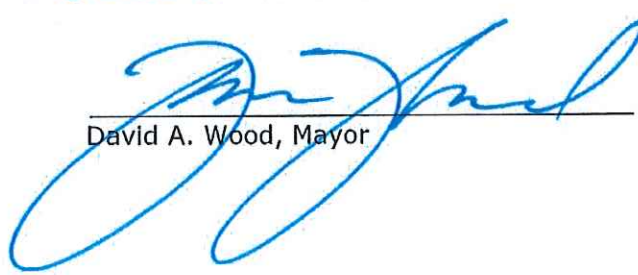
Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this 17 day of October, 2023, at 8:48 o'clock a.m.



Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this 17 day of October, 2023, at 9:46 o'clock A.m.



David A. Wood, Mayor

STAFF REPORT

Location: West of 1500 E. McKinley Avenue - Northeast corner of E.
McKinley Avenue & Maplehurst Avenue

Date: June 13, 2023

Appeal: 23 -18

Prepared By: DJS

GENERAL INFORMATION

Applicant: 1500 McKinley LLC (d/b/a Cars2You on adjacent property to the east) /
Wightman

Status: Property Owner / Surveyor & Site Design Consultant

Request: Use variance to allow a self-storage facility; and developmental variances to
allow a reduced rear yard building setback, increased fence height in the
front yard setback, and a reduction in the required number of parking spaces
to zero.

Zoning Classification: C-4 Automobile Oriented Commercial District (Pending Petition 23-14)

Lot Size: 2.87 acres excluding the current E. McKinley Avenue right-of-way (additional
right-of-way is required)

Applicable Regulations: Section 137-42 / (4) Board of Zoning Appeals – Use Variance; Section 137-
42 / (5) Board of Zoning Appeals – Developmental Variance; Section 137-
379 to 137-380 / C-4 Automobile Oriented Commercial District

SPECIAL INFORMATION

Area Development Pattern: North: Unincorporated St. Joseph County – C Commercial District
(Dealer-Only Automobile Auction / Greater Mishawaka Auto
Auction)

South: C-4 Automobile Oriented Commercial (Used Automobile Sales /
Cars2You and Rite Way Auto, Vacant, and Automobile Repair /
Town & Country Tire and Auto)

East: C-4 Automobile Oriented Commercial (Used Automobile Sales /
Cars2You owned by the Applicant)

West: C-1 General Commercial (Commercial Building)

Thoroughfare: E. McKinley Avenue & Maplehurst Avenue

School District: Penn-Harris-Madison

Township: Penn

Public Utilities: All utilities are available and/or will be extended to/throughout the site at
the owner's expense

Comprehensive Plan: Open Space

ANALYSIS

The appellant, 1500 McKinley LLC, is requesting a use variance to allow a self-storage facility; and developmental variances to allow a reduced rear yard building setback, increased fence height in the front yard setback, and a reduction in the required number of parking spaces to zero.

The 2.87 acre site, which includes two separate parcels (tax parcels 014-1019-0272.09 and 016-2093-3039.01), is located at the northeast corner of E. McKinley Avenue and Maplehurst Avenue. A majority of the site is a vacant wooded area with a small paved lot in the south part of the property previously serving the prior Swifty's gas station. The adjacent property to the east is also owned by the appellant and occupied by the Cars2You used automobile sales business (1500 E. McKinley Avenue).

An annexation and zoning petition (PET 23-14) was filed concurrent with the variance appeal and will zone the northern parcel to the C-4 Automobile Oriented Commercial District. The southern parcel, which is currently zoned C-4 Automobile Oriented Commercial, serves as an overflow vehicular display area for the appellant. A mini-storage facility, which is an I-1 Light Industrial use, is not a permitted use in the C-4 Auto Oriented Commercial District. Rezoning to the I-1 District zoning classification is not desired as it would allow for several permitted uses that would not be appropriate for the property. As a result, Planning Staff instructed that the C-4 Auto Oriented Commercial zoning be sought for the northern parcel and use variance be requested for both parcels. The commercial zoning also requires landscaping and design regulations on the type of architectural materials that can be used on the buildings which are not required for Industrial zoned property. Staff believes that due to the location along a highly travelled commercial corridor, commercial landscaping and design regulations were appropriate for the property.

As indicated on the preliminary site plan, the development is proposed to include 5 storage unit buildings, an entrance drive from E. McKinley Avenue, and the associated access drives. The storage unit buildings will be located on both the annexation parcel and the applicant-owned property to the south zoned C-4 Auto Oriented Commercial and currently used for display of vehicles. Although not shown on the plan, an off-site storm water retention basin will be provided within the applicant-owned property to the east. The existing retention basin serving the adjacent property is proposed to be expanded to provide additional storm water storage for the proposed storage unit property. This basin shall be shown and dedicated as a drainage easement on the future required subdivision plat. No phasing is shown on the site plan so it is anticipated that it will be developed in one phase. An office building/space is also not shown within the property. No parking spaces will be required if there are no on-site employees.

The Developmental Variances are to allow a reduced rear yard building setback, increased fence height in the front yard setback, and a reduction in the required number of parking spaces to zero. Since the appeal was filed, the preliminary site plan was revised which modify several of the developmental variances as requested. A reduction in the required 30' rear building setback to a 5' rear setback for the westernmost building and 30' for all other buildings is proposed. The 5' rear setback for the building immediately east of Maplehurst Avenue is to provide more security for the property. The 30' rear setback for the other buildings is the minimum allowance for the required 5' pavement setback/landscape area and 25' drive aisle. The increased fence height in the front yard setback is to allow a 7' high solid fence along the west property line (Maplehurst Avenue) to be located 15' north of the future E. McKinley right-of-way. This fence will also allow for greater security for the property while maintaining proper sight distances at the E. McKinley Avenue and Maplehurst Avenue intersection. The appellant also requested the same variance along the east property, but is not applicable since an east-west drive aisle connection is required south of the storage unit buildings between the subject property and the appellant-owned property to the east. The final variance is to allow a reduction in the required number of parking spaces to zero (0) spaces. Per the C-4 District regulations, parking spaces shall be provided at a ratio of 5.5 spaces per 1,000 sf of gross floor area. The proposed self-storage facility will not have any office space or on-site employees requiring parking spaces.

Additional conditions of approval and development regulations are included in the Staff recommendation.

If approved, a detailed final site plan must be submitted to address all the applicable zoning (height, area, and development regulations), utility (sanitary sewer, water, storm water drainage, electric, gas, etc.), landscaping/screening, grading, erosion control, and any other required improvements.

The Engineering Department had the following comments which shall be addressed with the final site plan and subdivision plat:

1. Remove the two existing drives at the corner of E. McKinley Avenue and Maplehurst Avenue. Throat shall be extended so vehicles don't back up on E. McKinley Ave. or come off of Maplehurst Ave.
2. The existing private lift station and force main shall be properly abandoned.
3. The site has restrictive covenants due to contaminated soils/groundwater from leaking underground storage tanks from previous owners. Confirm with the Indiana Department of Environmental Management that the proposed use is allowed.
4. A subdivision plat is required along with dedicating additional public right-of-way. A 60' half right-of-way shall be dedicated on the north side of E. McKinley Avenue.
5. A cross-access (Ingress-egress) easement shall be provided to allow access to and from the adjacent property to the east.

All other pertinent City departments have reviewed and approved the use and developmental variance requests.

RECOMMENDATION

The Planning Staff recommends approval of Appeal 23-18 for a Use Variance to allow a self-storage facility subject to the following conditions:

1. No outside storage shall be permitted.
2. Freestanding off-premises signs (i.e. billboards) shall be prohibited.
3. Architectural building materials and colors per Section 137-380 (15) Design Review / Development Plan Restrictions shall only apply to the southern building façades facing E. McKinley Avenue. Fiber cement board shall be considered an appropriate material.
4. The minimum commercial landscaping and screening regulations per Section 137-815 shall be applicable.
5. Electrified fencing, barbed wire and razor wire are prohibited.
6. Any fencing along the E. McKinley Avenue frontage and within 15' of the additional right-of-way to be dedicated shall be decorative and is subject to review and approval by the Planning Department.
7. All access drives shall be hard surfaced (concrete or asphalt).
8. A Site Plan shall be submitted for review and approval by the Planning Department and Plan Commission. Additional review, including but not limited to, landscaping, drainage, access, and building materials will occur with the site plan review.

The Planning Staff recommends approval of Appeal 23-118 for Developmental Variances a reduced rear yard building setback, increased fence height in the front yard setback, and a reduction in the required number of parking spaces to zero (0).

These recommendations are based upon the following findings of fact:

1. Approval will not be injurious to the public health, safety, morals and general welfare of the community. The proposed self-storage facility will be compatible with several businesses in the area and will not affect the adjacent commercial uses. The requested developmental variances will also not be injurious to the public or adjacent uses, and are being requested to provide additional security for the property and allow for the maximum development potential while not requiring unneeded parking.
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner. Compatible commercial uses are currently adjacent to and in close proximity to the site. The requested developmental variances will also not affect the use or value of the adjacent properties. The investment in the property will likely have a positive impact on surrounding properties.

3. The need for the use variance arises from some condition peculiar to the property in that the proposed C-4 Automobile Oriented Commercial zoning does not allow the proposed self-storage facility. Planning Staff instructed the appellant to request the commercial zoning for the property since an Industrial zoning, which would permit the self-storage facility by right, would also permit other higher intensity non-compatible uses.
4. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought and result in practical difficulties in the use of the property. The commercial zoning of the property will not allow the development of the proposed use. Self-storage facilities are only permitted within the Industrial zoning districts. The developmental variances will allow for greater security and maximize the development potential of the property.
5. The approval will not substantially interfere with the Mishawaka 2000 Comprehensive Plan. The Mishawaka 2000 Comprehensive Plan, created in 1990, identified a preferred land use of the subject property as open space. The plan does not reflect subsequent changes in the adjacent land use patterns from the mid-1990s to the early 2010s which permitted commercial uses to the west, north, and east. The proposed use is reasonably consistent with the goals and objectives of the plan and existing adjacent land uses.

ATTACHMENTS

Aerial Map, Photographs, Appeal, Preliminary Site Plan, and Location Map



Aerial Photograph
Vacant Land - N. of E. McKinley Avenue & E. of Maplehurst Avenue
Proposed Self-Storage Facility



P1. Looking easterly from Maplehurst Avenue toward the applicant-owned property south of the annexation parcel.



P1. Looking easterly from Maplehurst Avenue toward the wooded area on the annexation parcel.



P3. Looking northerly from south of E. McKinley Avenue toward the property.

DATE: May 23, 2023

TO: Board of Zoning Appeals
City of Mishawaka, Indiana

AP 23-18
Received

MAY 24 2023

The undersigned appellant respectfully shows the Board:

Planning and
Community Development
located within
wit:

1. I, **1500 McKinley LLC**, am the owner of the following described real estate located within the City of Mishawaka, Penn Township, St. Joseph County, State of Indiana, to-wit:

PART OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 3, TOWNSHIP 37 NORTH, RANGE 3 EAST, IN ST. JOSEPH COUNTY, INDIANA, DESCRIBED AS BEGINNING AT THE SOUTHEAST CORNER OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 3, RUNNING THENCE NORTH ALONG THE EAST LINE OF SAID WEST HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 3, 395.98 FEET; THENCE WEST 310.93 FEET TO A POINT WHICH IS 396 FEET NORTH OF THE SOUTH LINE OF SAID SECTION 3 (SAID POINT ALSO BEING ON THE EAST LINE OF MAPLEHURST STREET); THENCE SOUTH ALONG THE EAST LINE OF SAID MAPLEHURST STREET 396 FEET TO THE SOUTH LINE; THENCE EAST ALONG THE SOUTH LINE OF SAID SECTION, 311.14 FEET TO THE PLACE OF BEGINNING, ~~EXCEPTING THE SOUTH 110'-~~

2. The above-described real estate presently has a zoning classification of C-4 District under the Zoning Ordinance of the City of Mishawaka.
3. Appellant presently occupies (or proposes to occupy) the above-described property in the following manner: Storage buildings.
4. Appellant desires to (Explain what is proposed that violates the Ordinance.) Construct secure storage units on property formerly occupied by the Swifty Gas Station.
5. The Zoning Ordinance of the City of Mishawaka requires (Explain ordinance requirements and note Section Number of the Ordinance.)

137-380 (3)b - from the required 12.5' side set back to a 5' side setback along Maplehurst.

137-380 (4) - from the required 32.6' rear set back to 25' rear setback for buildings 2,3,4 & 5 and a 5' rear setback for building 1.

137-380(8)b - to allow 7' high fence along Maplehurst to 15' North of McKinley and to allow 7' high fence along interior lot line to 15' North of McKinley.

137-380 (9)a - From the required parking to zero parking required.

6. Explain why strict adherence to the Ordinance requirements would create an unusual hardship. - I would not be able to build the storage units the size and location I want them without getting approval.
7. Answer the following necessary questions for a **USE VARIANCE**:

- (1) Will approval be injurious to the public health, safety, morals, or general welfare of the community? YES OR NO and explain your reason why.

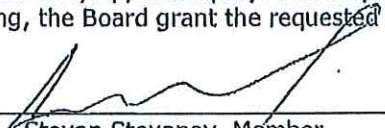
No, the site has been cleaned of contamination. The site can now be improved.

- (2) Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner? YES OR NO and explain your reason why.
No - similar use to surrounding.

- (3) Does the need for the variance arise from some condition peculiar to the property involved? *YES OR NO and explain your reason why.*
Yes, with adjacent zoning, these variances will accommodate the intended use of the property. Also, IDEM restrictive covenants on this site make traditional commercial development economically impractical.
- (4) Does strict application of the terms of this chapter constitute an unnecessary hardship if applied to the property for which the variance is sought? *YES OR NO and explain your reason why.*
Yes, staff has recommended a C-4 zoning for this property to remain consistent.
- (5) Will approval interfere substantially with the Mishawaka 2000 Comprehensive Plan? *YES OR NO and explain your reason why.*

No.

WHEREFORE, Appellant prays and respectfully requests a hearing on this appeal and that after such hearing, the Board grant the requested variance.



Stoyan Stoyanov, Member

N/A

Print Name Here

CONTACT PERSON:

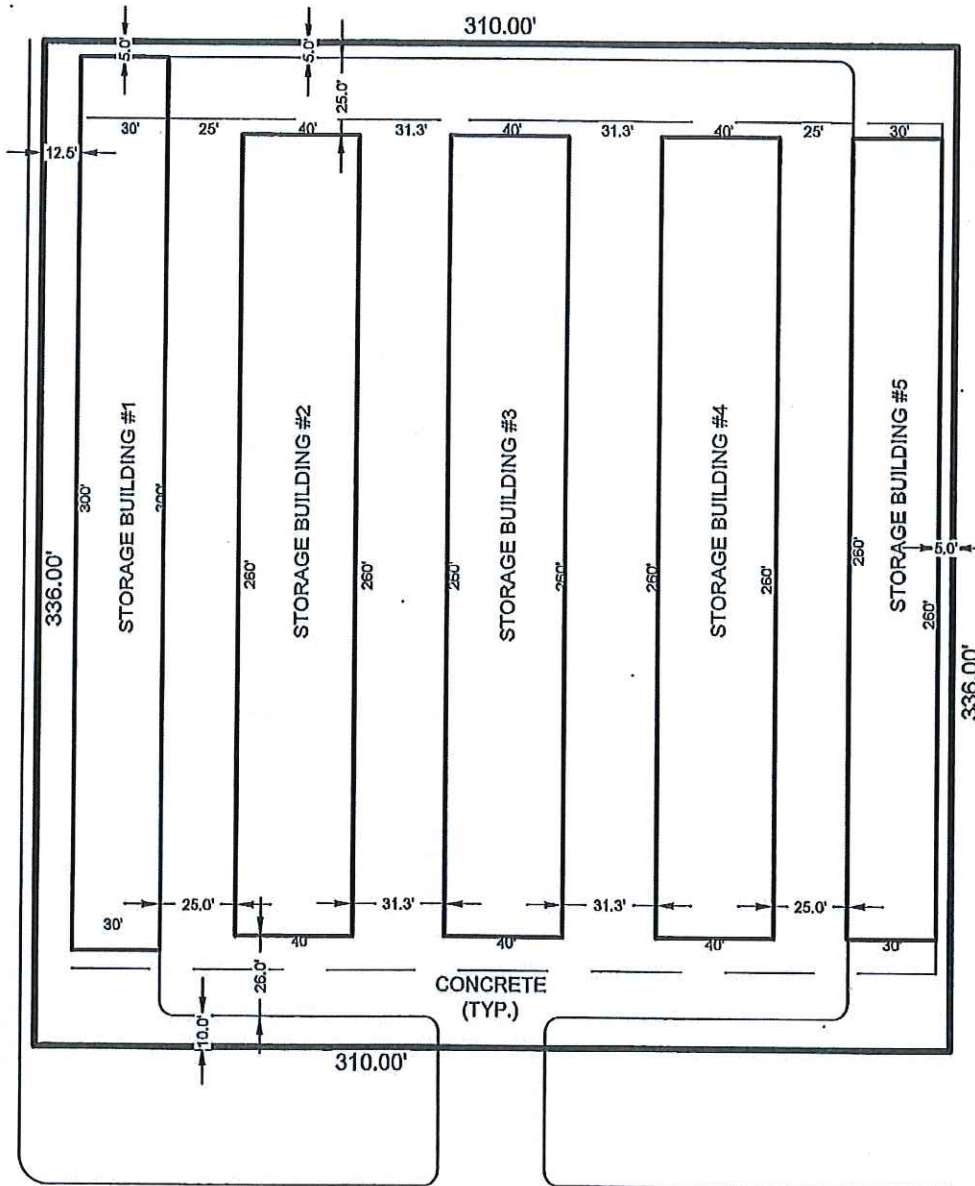
Stoyan Stoyanov
1500 E. McKinley Avenue
Mishawaka, IN 46545
574-329-8909
sales@cars2you.com

J. Bernard Feeney
1405 N. Michigan Street
Plymouth, IN 46563
574-936-3469
bfeeney@gowightman.com

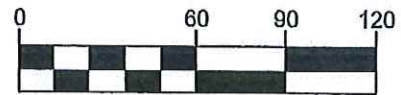
PRELIMINARY SITE PLAN

Pes 23-14 &
AP 23-18

MAPLEHURST AVE.



MCKINLEY HWY.



1 inch = 60 ft.



W+ WIGHTMAN

1405 N. MICHIGAN ST. PLYMOUTH, IN. 46563
574.936.3469
www.gowightman.com

CLIENT: STOYAN
PROJECT:
JOB No:
DATE: 05/01/2023
SCALE: 1"=60'

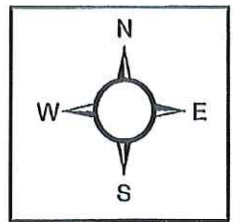
Received

JUN 05 2023

Planning and
Community Development

10F1

REVISAO #1



AP 23-18

EXISTING CITY LIMITS

E MCKINLEY AVE

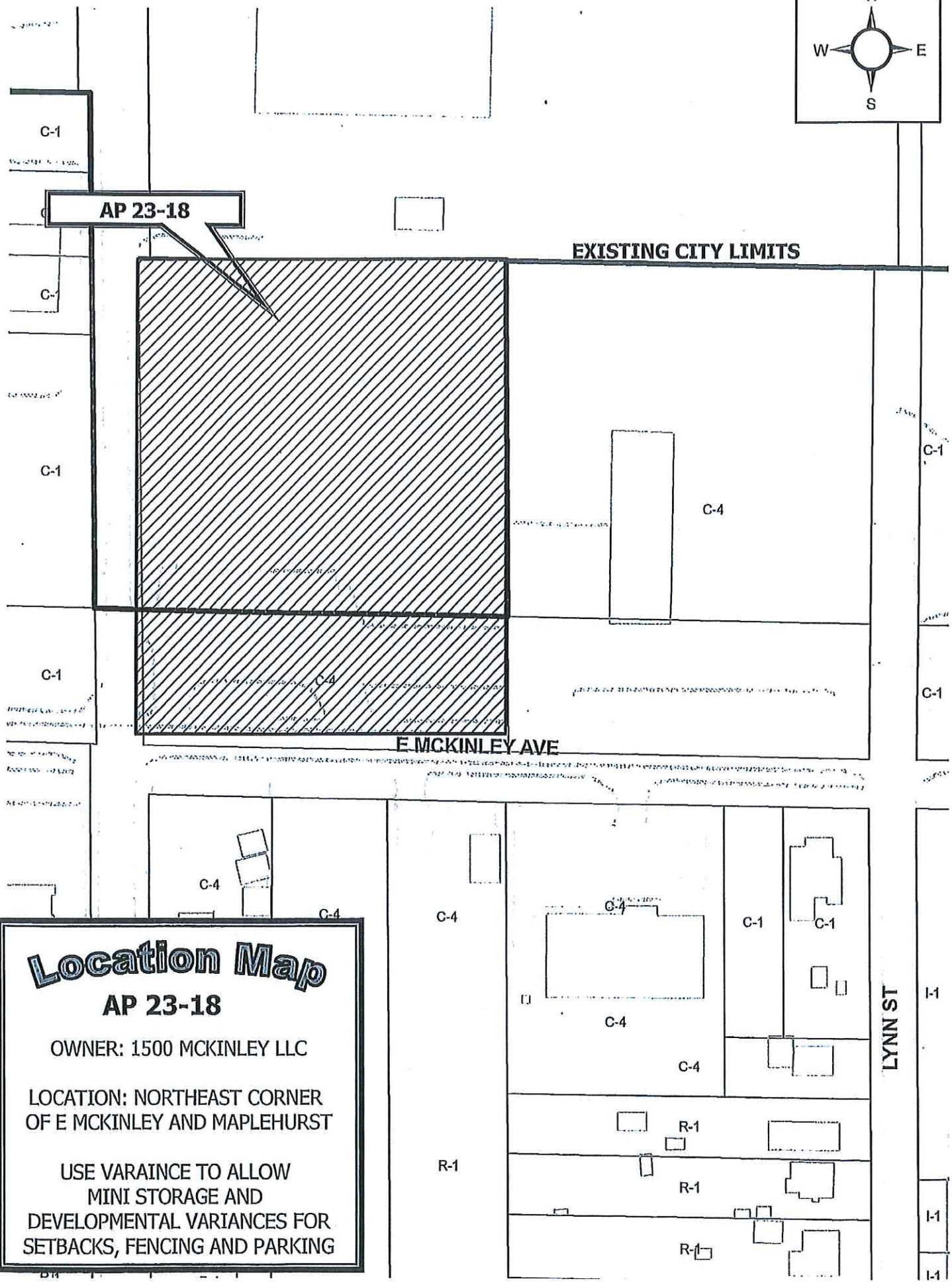
LYNN ST

Location Map AP 23-18

OWNER: 1500 MCKINLEY LLC

LOCATION: NORTHEAST CORNER
OF E MCKINLEY AND MAPLEHURST

USE VARAINCE TO ALLOW
MINI STORAGE AND
DEVELOPMENTAL VARIANCES FOR
SETBACKS, FENCING AND PARKING





CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT
Kenneth B. Prince, ASLA, AICP, Executive Director

June 14, 2023

Honorable Members of the Common Council
City of Mishawaka, Indiana

RE: Board of Zoning Appeals Recommendation
June 13, 2023, Public Hearing

Honorable Members:

A regular meeting of the Mishawaka Board of Zoning Appeals was held on the above date at which time the following Use Variance was considered:

APPEAL #23-18 An appeal submitted by 1500 McKinley LLC requesting a Use Variance for self storage in C-4 Automobile Oriented District and a Developmental Variance to allow for a reduced front, side and rear setback and reduced parking for property located at the **NE Corner of E McKinley and Maplehurst, Mishawaka, Indiana.**

The Board, with a vote of 4-0, recommended approval.

Respectfully,

Donna M Burkart

Donna Burkart, Administrative Planner
Secretary, Board of Zoning Appeals