



AGENDA

August 05, 2024

Meetings of Standing Committees
Council Conference Room
5:45PM

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL
COUNCIL CHAMBERS/CITY HALL
6:00PM

WebEx Telephone Number: 1-408-418-9388
Meeting Number (access code): 2337 489 6370
Meeting password: UTip2xteu79

Livestream #1:
<https://mishawaka.in.gov/government/elected-appointed-officials/common-council/>

Livestream #2
<https://www.facebook.com/cityofmishawaka/>

Livestream #3:
www.youtube.com/@cityofmishawaka635

Livestream #4:
@MichianaAccessTV on Facebook

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

Dial: 23374896370@mishawaka.webex.com

1. Call to Order

2. Pledge of Allegiance

3. Roll Call

4. Approval of the Minutes of the Regular Meeting of July 15, 2024

5. Petitions, Communications, Remonstrance and Memorial

Appeal No. 2024-30 Use Variance to allow a Temporary Sales Trailer -
NE corner of Fir Road and Beacon Parkway

6. Report of Special Committee

7. Ordinances on First Reading

P.O. No. 2024-21 Sewer Use Ordinance Revisions - EPA Regulations

P.O. No. 2024-22 Post-Construction Amendments to Erosion Control

8. Resolutions

9. Ordinances on Second Reading

P.O. No. 2024-20 Amending Salary Ordinance No. 5868 -
Police Department

10. Privilege of the Floor - Non-Agenda Items

11. Unfinished Business

R2024-15 Use Variance to allow for two permanent storage
containers - 940 E. 12th St.

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An archived version of the livestream video can be viewed on the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 and YouTube pages,

<https://www.facebook.com/cityofmishawaka/> and www.youtube.com/@cityofmishawaka635 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://mishawakain.portal.civicclerk.com/event/946/files/agenda/3199>

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

Deborah S. Block, IAMCA, 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.

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REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

July 15, 2024

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 July 15, 2024, at 6:00PM. 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 attends 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.

Present: Mrs. Hazen (P), Mrs. Voelker (P), Mr. Carroll (P), Mr. Banicki (P), Mr. Emmons (P), Ms. Hahn (P), Mr. Mammolenti (P), Mr. Violi (P), Mr. Hixenbaugh (P)
P: Present E: Electronically Participating A: Absent

Also Present: Mike Trippel, Council Attorney

Minutes for the Regular Meeting on July 1, 2024, were approved as received from the Clerk's Office.

Clerk Block read a letter from the Board of Zoning appeals regarding their recommendations from their July 9, 2024 meeting.

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

PROPOSED ORDINANCE NO. 2024-20

AN ORDINANCE AMENDING ORDINANCE NO. 5868 FIXING THE SALARIES OF ALL EMPLOYEES OF THE CITY OF MISHAWAKA EXCEPT FOR MISHAWAKA PARK DEPARTMENT, ELECTED OFFICIALS, AND MISHAWAKA UTILITIES FOR THE CITY OF MISHAWAKA, INDIANA FOR THE YEAR BEGINNING: JANUARY 1, 2024

**Amending Salary Ordinance No. 5868 – Police Department
(Assigned to Budget & Finance Committee)**

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

RESOLUTION R2024-14

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, INTRODUCING AN ORDINANCE FOR ANNEXATION, ADOPTING A WRITTEN FISCAL PLAN, AND A DEFINITE POLICY FOR ANNEXATION FOR THE

**PROPERTY LOCATED AT: 55770 FIR ROAD & 55721 CLOVER ROAD IN
MISHAWAKA, IN 46545 - EAST SIDE OF FIR ROAD APPROXIMATELY 1,200'
NORTH OF E. MCKINLEY AVENUE**

**Fiscal Plan for the Annexation of the East side of Fir Rd. across from Preserve
Apartments, extending to Clover Rd.**

Ken Prince, Director of Planning and Community Development for the City of Mishawaka, spoke in favor of **RESOLUTION R2024-14**. Mr. Prince stated as they knew, with every annexation, the city was required to prepare a fiscal plan identifying the potential cost of services and capital expenditures that would be undertaken by the city as part of providing service to the area being annexed. Mr. Prince stated with every annexation they came in; they distributed the request to all applicable departments. Mr. Prince stated in this case that it was common that the expenses of the additional property could be managed within the existing budgets and there was no capital expenditure required of the city as a result of the annexation. Mr. Prince stated all the costs to provide utilities and services would be borne by the developer. Mr. Prince stated the area in question was twenty acres and it was on the east side of Fir Road across from the Preserve Apartments. Mr. Prince stated the area was a quarter of a mile north of McKinley and the most expensive challenge for the developer was to serve it with sewer services because the Preserve was actually fed from the west and not fed from Fir Road, so this would likely require construction of a lift station and extension of sewer, which they were aware of as part of providing services to the request. Mr. Prince stated that per state law, every annexation had to be at least 12.5% contiguous to the city and this property was 20.4% contiguous. Mr. Prince stated a concern that was brought up at the public hearing was access to Clover Road, which included a section of property that extended toward Clover Road. Mr. Prince stated what they had identified was that because Clover Road was such a substandard county road, they felt there would be benefits to providing access at least for emergency services personnel and they wanted to work with the developer to provide a crash gate essentially at that location, so normally traffic would not follow in and out of Clover Road but that was yet to be determined and the first step in the process was the annexation. Mr. Prince stated he was happy to answer any questions.

Question was called for at 6:06PM for **RESOLUTION R2024-14 Motion passed by unanimous roll call vote (summary: Yes = 9).**

Yes: Mrs. Hazen, Mrs. Voelker, Mr. Carroll, Mr. Banicki, Mr. Emmons, Ms. Hahn. Mr. Mammolenti, Mr. Violi, Mr. Hixenbaugh. The resolution passed 9-0.

RESOLUTION R2024-15

**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: 314 W CLEVELAND ROAD
MISHAWAKA, INDIANA**

Use Variance to allow for two permanent storage containers – 940 E. 12th St.

Joshua Visser, Lawyer with Sopko, Nussbaum, Inabnit, and Kaczmarek, spoke in favor of **RESOLUTION R2024-15**. Mr. Visser stated he was there tonight, because one of their clients was Morris Sales Inc. and they owned the property at 940 E. 12th Street. Mr. Visser stated at that location, there was a fireworks store that had been in operation, and it was currently zoned C-1, which did not permit accessory buildings or outside storage containers. Mr. Visser stated they proposed a use variance that would place two storage containers outside of the store, specifically two steel storage shipping containers about 40 feet by 80 feet by 10 feet. Mr. Visser stated the building at 940 E 12th Street was about 1,500 square feet and it was 36 feet by 46 feet, and it was a fireworks store that had a fireworks permit from the Indiana Department of Homeland Security, the division of Fire and Building Safety. Mr. Visser stated some permits that were issued by the state had limits on the amount of fireworks that could be there and had pound restrictions. Mr. Visser stated they had an unlimited license at that location, because of the fire suppression system in the building and that they had gone forward with the State Fire Marshal and the local fire department. Mr. Visser stated the building was subject to inspections by both the state and city fire. Mr. Visser stated the Fire Marshal in the City of Mishawaka brought it to their attention and recommended that it would be safer if they had storage containers outside of the building to store inventory and currently all the inventory was inside of the small building. Mr. Visser stated they then took steps to seek that use variance and on July 9th, the Department of City Planning issued a staff report and recommended in favor of the use variance and noted five conditions they would like to see happen when recommending it. Mr. Visser stated one was installing slats in the existing fence that would be between the storage containers and the road on East 12th Street. Mr. Visser stated the second condition was that they did not want to see the steel storage containers stacked on top of each other and there would be a limit of 10 feet for one storage container. Mr. Visser stated third, they asked that the containers be labeled with a sign that said explosives. Mr. Visser stated fourth, they wanted to make sure there was a permit from the state and this would only occur if it was approved by the Department of Homeland Security and there was a fireworks permit for this location and fifth, they wanted to make sure the location of the storage containers would allow the fire department to have access to the area if they ever needed to be there. Mr. Visser stated in particular, the staff had checked with the Mishawaka Fire Marshal, and he was in favor of the variance request and the fire department set forth three different recommendations for locations of the storage containers and they preferred the first option, which would have the storage containers piggybacked right behind one another. Mr. Visser stated this matter went before the Board of Zoning Appeals and there was a 2 to 1 vote in favor of the use variance and a recommendation to this Council. Mr. Visser stated after that meeting, he contacted the Fire Marshal to confirm his understanding of several reasons why he would recommend that there be storage containers there rather storing all of the inventory in the store and he confirmed that was accurate and received an email from him confirming it was accurate and provided the email to the City Clerk and he had copies if the Council needed any. Mr. Visser stated the Fire Marshal was in favor of the use variance, because he believed moving the inventory out of the store would be much safer for emergency responders, it would limit how many fireworks would be in the building, it would make the building safer along with neighboring buildings, it would be safer for anybody who may be in the building and the steel storage containers would do a better job of containing whatever would happen if there were to be

an accident. Mr. Visser stated the building did have a fire suppression system, which was wonderful and helpful in the case of an accident. Mr. Visser stated the proposed location provided space between the building and the containers, so there was space there if it got too hot and to not have the containers right outside of the building. Mr. Visser stated the Fire Marshal's recommendations were even more stringent than the recommendations set forth by the Indiana Department of Homeland Security, but he made certain recommendations that were included in the staff report. Mr. Visser stated at the meeting of the Board of Zoning Appeals, there was some concern by a neighbor whether or not this would attract criminal activity as far as theft was concerned and first of all, he would like to know if there was evidence of thieves trying to get into a fireworks store and here, they had not had a problem in the store and there was no evidence that storage containers would somehow increase any risk there. Mr. Visser stated more importantly, the storage containers would be locked and behind a 6-to-8-foot fence between the storage containers and East 12th Street and there would be slats in that chain link fence to reduce visibility from the road. Mr. Visser stated in addition, the fence would have a gate where the fire department would have access and the gate was locked and the storage containers themselves would be locked, as previously mentioned. Mr. Visser stated his client would also put two cameras on the storage containers and have access to those via cellphone so he could monitor that activity. Mr. Visser stated in addition, there was a utility pole near the position of the proposed storage containers and there were lights off the utility pole to keep the unit lit and on the other side on the building, there was also a light that would shine light out. Mr. Visser stated also, at the neighboring building at 1010 South Merrifield there was also a security camera on that building that would shine on the lot where the storage containers would be. Mr. Visser stated at the meeting last week, there was a letter of remonstrance that was sent in regarding the neighbor at Builders Iron Works Inc. and he believed the Council all had a copy of that too. Mr. Visser stated the letter talked a lot about whether or not fireworks had been lit in the past in this area and he said fireworks had been lit on occasion from the premises right next to the fireworks store for demonstration purposes and he was also told that after the meeting last week, fireworks were lit off by Builder Iron Works next door the day after they had the meeting, so they would be hearing from both ways that fireworks were being lit off. Mr. Visser stated what he would like to say about that was the use variance they were requesting was for storage containers and there were other rules and guidelines in the ordinances possibly that the city had that governed whether the fireworks could be lit and the limitations on that. Mr. Visser stated what they were there for tonight was the use variance request for the storage containers so regardless of how that would be determined, it did not affect whether or not people were lighting off fireworks and pointing the finger at one another and they would like to work with each other and be good neighbors and not cause unnecessary disturbances, but that issue alone was not what they had before the Council that evening. Mr. Visser stated in conclusion, fire safety was the one common thing anyone he talked to had mentioned and everyone wanted safety to be looked out for. Mr. Visser stated that was his client's concern and after speaking with the Fire Marshal, that was why they petitioned for the request and there were also some unrelated YouTube videos and power tool demonstrations shown by the neighbors during the meeting and if they used any of those methods or means that evening, he wanted to point back to the safety issue and he reached out to the Fire Marshal and did what he could to do what the Fire Marshal wanted and he tried to give

the Council a detailed list of reasons for some of his thinking. Mr. Visser stated they were trying to do the safe thing and trying to comply with the Fire Marshal's recommendations and that was why he was there that evening. Mr. Visser thanked the Council.

Mr. Carroll asked if there was going to be full inventory in the containers all year long or this would be just for overflow inventory leading up to the holidays. Mr. Visser stated he believed with the push with inventory, there would be less inventory there year-round because this was extremely seasonal but the level of fireworks in there would fluctuate and be lower in the down season, but they were requesting year-round with the storage containers. Mr. Carroll stated they were just trying to get a mental picture here if this was going to be full floor to the ceiling with explosives all year round or if there were just going to be a few boxes there in random months that there weren't holidays. Mr. Carroll stated that was the kind of thing they needed to know. Mr. Visser stated right, and his understanding was not that it was not going to be chock-full, and they would not want to carry that inventory after the busy time of the year anyway, but they would not have all their inventory so there would be less there.

Mr. Emmons asked for clarification if they planned on piggy backing the storage containers. Mr. Visser stated that was correct. Mr. Emmons asked when piggy backing them, if they would be stacked with the front facing 12th Street. Mr. Visser stated his understanding was if they were piggy backed, their backs would be together with one door facing 12th Street and the door of the other container would be facing the opposite way.

Mrs. Voelker stated she was reading the remonstrance letter and in it, it said that this business was only open part of the year and asked if that was the case. Mr. Visser stated his understanding was that it was still open but was not open for the same number of hours as in June or July. Mr. Visser stated it would still be open but not as often. Mrs. Voelker stated she was curious about heat because it seemed like a steel storage container would get hot in the summer and asked what heat could do when you had a huge 40-foot storage unit filled with fireworks. Mr. Visser stated that was a very reasonable question and he was not an expert, but that issue was actually raised at the Board of Zoning Appeals meeting and he did ask the Fire Marshal about that and to his knowledge, he was not concerned with any type of spontaneous combustion at a certain temperature. Mrs. Visser stated although, the Fire Marshal also said he was not a pyrotechnic expert and someone specialized in that may be better to answer the question, but his understanding was even the transient fireworks stores, the ones with a tent in a parking lot, this year they were permitted to have a storage container and that was how it was used and some of those containers were in large retail stores. Mr. Visser stated when he asked the Fire Marshal that he had not indicated any concerns about that and there were fireworks in containers around the city this past year with no issues. Mrs. Voelker stated she heard him say that they would be screening the containers or fencing them and asked if the fencing would be locked. Mr. Visser stated yes, the 6-to-8-foot chain link fence would have screens put in along with a gate for the fire department to access and it had a lock on it. Mrs. Voelker thanked Mr. Visser.

Mr. Violi asked if his client be willing to put in a 24-hour surveillance camera system where somebody could monitor it to help alleviate some of the concerns from his neighbors. Mr. Visser stated he would have to go back and ask him but the only thing that could be an issue would be the cost even though he was not sure of how that all broke down, but he could not think of any reason to be against the idea itself. Mrs. Violi asked if they stored the inventory in the back of the store and if bingo supplies and gaming supplies were sold in there as well as the rest of the inventory. Mr. Visser stated they had previously sold bingo supplies but the last time he was there, it was all fireworks. Mr. Visser stated there was a spot where fire suppression system and such was in a small room, but almost the rest of the entire store was open for the retail purpose and there was no backroom or spot for inventory, so all of the inventory would be on the shelves and that was what arose the Fire Marshal. Mr. Violi asked if they would still have inventory in the store. Mr. Visser stated it would be reduced and they would have more than one box of inventory on the shelf, but this would alleviate it. Mr. Violi asked why they would then need the storage containers during the off season if they were not looking to increase their inventory and sales. Mr. Visser stated they may not and going forward they would have to build up that inventory, otherwise they could just keep putting the inventory back in store, but they were told by the Fire Marshal it would be safer to operate with the storage containers. Mr. Violi asked if they were looking to build up the inventory and keep it there for when June and July came, like he said, and then that was why they would sit there all winter or was there not going to be a big influx of inventory until busy season, like Mr. Carroll was asking. Mr. Visser stated his understanding was they would not stock up on the inventory until busy season and then depending on how long it took to get there, then they would fill it but their goal was not to have maximum inventory there year-round and they have not operated that way in the past and the storage containers would not change that.

Mr. Emmons asked if there would be any labeling on the fireworks in the containers as to what temperature they could not exceed because those containers could double in temperature with them being metal, acting as an incubator when the sun hit them. Mr. Emmons asked how they were going to check the temperatures with the containers. Mr. Visser stated he was not sure whether they had that on there or not, but the Fire Marshal recommended the storage container as a better option than storing them all in the store. Mr. Emmons stated he understood that, but what he was asking was if there was any kind of labelling saying they could not exceed a certain number of degrees. Mr. Visser stated he was sorry, and he did not know. Mr. Emmons stated that was something that ought to be known. Mr. Visser stated he understood and would be happy to follow up on that, but he did not know as he stood there that evening. Mr. Emmons thanked Mr. Visser.

Mr. Mammolenti asked for clarification if they were not going to ramp up the inventory and the reason for the storage units was to reduce the inventory that was in the current brick and mortar store and asked if he heard that correctly. Mr. Visser stated yes, they did not have to operate that way and this year they were able to have one storage container there, so the two would change that but otherwise, the storage containers would be to alleviate what fireworks could be stored in the store and to put them out in the containers.

Mr. Hixenbaugh acknowledged for the record that they received the email that he referenced earlier and he knew speaking only for himself, it was received late in the day and even though Clerk Block was kind enough to print out a hard copy of it and he appreciated his summary of the same, he did not feel like he really had a chance to be able to fully vet through it, so he wanted to acknowledge that from the get-go. Mr. Hixenbaugh stated they got it, but he suspected other councilmembers were like him and did not have a chance to review it in any detail because of the time of receipt. Mr. Hixenbaugh went back to comments made regarding the letter of remonstrance and the concern expressed by the neighbor regarding his client and fireworks being demonstrated on the property. Mr. Hixenbaugh stated he wanted to make sure he understood him correctly, because it sounded to him like he was acknowledging for the record that his client did have a regular practice of shooting off the fireworks on their property, but as he understood it, the argument was to ignore that because the people next door was doing the same thing. Mr. Visser stated it was his understanding that his client had set off fireworks in this location, but he would not say regularly, and he thought that whether fireworks were set off, those were addressed by other regulations other than the use variance regarding the storage of them. Mr. Visser stated it was his understanding that in the last week, the neighbor had also set off fireworks and he did not think pointing fingers or stain on that issue would be helpful before the Council and he thought that was something the neighbors needed to talk about and work through, but he did not think that affected whether or not there would be a use variance for the storage of the containers. Mr. Visser stated it seemed like that issue remained either way, unfortunately, and they needed to work through that issue. Mr. Hixenbaugh stated he was going to respectfully disagree with him for a couple of reasons. Mr. Hixenbaugh stated first of all, it was not the neighbor standing in front of them that evening asking for an approval of the use variance, it was his client so what may or may not be happening next door, he would suggest would be relevant to his client's request for the Council to approve their request. Mr. Hixenbaugh stated the other thing that he would say was that two of the statutory findings that they had to make regarding approving any use variance he thought were germane to the issue. Mr. Hixenbaugh stated the first was that the approval would not be injurious to the public health, safety, morals, and welfare of the community and second was that the use of value of the area adjacent to the property included in the variance would not be affected in a substantially adverse manner, so respectfully he would suggest to him that while he may prefer to have this dealt with as a separate matter of enforcing their fireworks ordinance, he was going to disagree with him and say it was 100% appropriate for them to consider this very much in keeping with the precedent that they had for many years of asking those who came before them for an approval to be good corporate citizens and to do the right things while they were asking the Council to help them. Mr. Hixenbaugh stated he found that argument to be puzzling. Mr. Hixenbaugh stated he wanted to make sure he understood the chain of events correctly and as he understood it, his client's request was initiated as a result of a conversation with the Fire Marshal and asked if that was accurate. Mr. Visser stated yes. Mr. Hixenbaugh asked if the Fire Marshal indicated to his client to the best of his knowledge that his client was required to ask for this use variance or rather was it a recommendation. Mr. Visser stated his understanding was that it was not a requirement and it was a recommendation, because the area was inspected periodically by the state and the local and so during that with the Mishawaka Fire Marshal, he mentioned this and with regard to the

neighbors and the lighting off of the fireworks, he agreed that his client needed to abide by any ordinance that was in play or anything that was determined by the Council and if they did deem that a concern, certainly adding that as one of the prerequisites in the use variance would be no problem. Mr. Hixenbaugh stated he appreciated that and told him from his perspective, he suspected that it would be difficult for him to vote in favor of this unless he heard from his client directly and not his legal counsel, as much as he respected attorneys, he wanted to hear from his client that they were continuing to follow their ordinances with regard to fireworks and that, there was not going to be a situation where there would be debris and detritus from the fireworks that would be going onto the neighboring property and he thought it was within everybody's understanding that that was something they would all object to if they owned property next door to where that was happening. Mr. Hixenbaugh stated he was going to need to hear from his client in some fashion that they would be committed to that. Mr. Hixenbaugh stated he wanted to jump back to his last question about the chain of events. Mr. Hixenbaugh stated the request was not generated by any independent business necessity on the part of his client but rather it was his client's good faith attempt to respond to the recommendation from the Fire Marshal and asked if that was correct. Mr. Visser stated yes, and it was not as though his client had one conversation with the Fire Marshal every year they were inspected, and it arose out of one of the conversations had in the prior year regarding storage containers with transient vendors. Mr. Hixenbaugh appreciated that and thanked Mr. Visser for his patience with him.

Rudy Vegh, owner of Ozarks Pawn Shop located in the same development of the fireworks store, spoke in opposition to **RESOLUTION R2024-15**. Mr. Vegh stated there used to be an old Kroger building and Revco and he was in the Revco portion of it. Mr. Vegh stated it affected him because the containers were known for blowing up. Mr. Vegh stated there were videos all over and he was the one who had the videos at the prior meeting, and he had a video of one occurrence of shipping containers loaded with fireworks igniting and causing a fire in South Carolina. Mr. Vegh stated one thing about gunpowder, gunpowder would blow no matter what, so if it were underwater and you ignited it, it would blow, and fire departments could not put out gunpowder and it would have to extinguish itself after blowing. Mr. Vegh stated the fire department and the fire extinguisher system built into that unit could only put out the aftermath of the fireworks exploded, and they could put out the remnants in the aftermath of the explosion. Mr. Vegh stated that was why he was strictly against this. Mr. Vegh stated when you took metal and gunpowder and put it together, you created a bomb. Mr. Vegh stated no disrespect to the Fire Marshal or the Fire Chiefs, but this happened in a bunch of different states and these storage containers would blow. Mr. Vegh stated the City Councils, Fire Chiefs, and Fire Marshals absolutely wished they could have gone back and said no to this, but they did not have the opportunity to do so, because they already had blown. Mr. Vegh stated he was before them to prevent this from happening in their community. Mr. Vegh brought a grinder with him and showed it to the Council and stated the grinder was every thief's right-hand man to get into anything and it could cut through the fence they were wanting to put slats in. Mr. Vegh stated the grinder would make sparks when attacking the metal and that would then mix with the gunpowder and could cause combustion. Mr. Vegh stated Mishawaka did have a problem with people trying to break into things and the fireworks store in question here actually had their front

door ripped open once for someone to get in to get fireworks and it was reported and there was record of it at the Mishawaka Police Department. Mr. Vegh stated his pawn shop had three instances that year where someone tried to break into it as they had firearms in there and firearm dealers unfortunately tried to get in there, but he had a very sophisticated security system so nobody could get in. Mr. Vegh stated the thing about the firework place was that most of them were standalone and they typically were not in a building with other tenants around them but somehow, they merged with the bingo supplies into fireworks and unfortunately, he was paying much attention to it back then or else he would have come forward and expressed concern with it. Mr. Vegh stated he would have asked for a surety bond if he knew this was going to happen. Mr. Vegh stated the insurance company with the fireworks store would only take care of an issue in his store and if they were the ones to cause an injury, but the same insurance company did not cover the storage unit or his pawn shop. Mr. Vegh stated a surety bond would cover all the neighbors. Mr. Vegh stated they all watched fireworks and when they came back down to Earth, you had smoldering pieces of cardboard that could burn. Mr. Vegh stated he had a rubber roof and the storage unit joined with that also had a rubber roof and their neighbors had a rubber roof. Mr. Vegh stated they did not want fireworks blowing up there if possible. Mr. Vegh stated that all he could ask of them was to watch the videos and this was not for their community and for the Council to let this occur in a different community. Mr. Vegh thanked the Council.

Mr. Mammolenti stated based on the question he asked Mr. Visser, his response was that they would not have any additional fireworks and it was only going to move inventory from the store to the storage containers. Mr. Vegh stated if the Council were going to give them permission to do it, he would ask them two things. Mr. Vegh stated first that it be seasonal, like Memorial Day to Labor Day and just in the period of when they would need it. Mr. Vegh stated they were going to need it when the influx of fireworks came in and pre-ordered it and he understood they would need a storage place prior to the 4th of July. Mr. Vegh stated he was a businessman himself and it was not that he did not want him to make any money, every business should be able to be out there to make money, but his big thing was the safety aspect of it, and he did not want a bomb in the backyard of his business. Mr. Mammolenti asked if he would feel more comfortable with the same amount of inventory inside. Mr. Vegh stated he would if it all was inside of the building with the fire suppression system in there and the container outside did not have a fire system in it, and it was just a metal container. Mr. Vegh stated humans made errors and it was the errors that were going to cause a catastrophe with this and it was nothing that the firework place was doing with it, but it could be an employee or it could be a thief and they just did not know what would cause it to blow but there were obviously problems with them.

Elvis Balentine, President and Owner of Builders Iron Works and the Real Estate along with his two sons to the east of the property being discussed, spoke in opposition to **RESOLUTION R2024-15**. Mr. Balentine stated if this were allowed, it would only be the beginning of something that would continue to grow, and it would not be good. Mr. Balentine stated the counsel alluded to the fact that some of their employees set off fireworks and he had no knowledge of that or his son's knowledge, but he assured them if it did happen, it would never happen again. Mr. Balentine stated the counsel sounded like he had quite a few things he was not

sure about and asked if some of them did not see it to raise their hands. Mr. Balentine stated he started Builders Iron Works in 1968 and he felt that they were an exceptionally good tenant for Mishawaka and what they did was a wonderful thing for Mishawaka. Mr. Balentine stated he graduated from Mishawaka High School in 1956 and he worked hard, and his sons would continue to work extremely hard to be good for the City of Mishawaka. Mr. Balentine stated that Rudy had laid out everything he thought about this as plainly as he could, but he also said that he had always been aware that to make a bomb, you put gunpowder and metal together and these containers were huge. Mr. Balentine asked rhetorically why they would need so many fireworks and if they were going to be the distributor. Mr. Balentine stated he was afraid that this could grow to be something much worse than what they were alluding to now. Mr. Balentine asked the Council to not approve this and thanked them for their time.

Tony Balentine, Vice President of Builders Iron Works, spoke in opposition to **RESOLUTION R2024-15**. Mr. Balentine stated they were obviously opposed to this use variance and felt it was going to be a public safety issue primarily with their employees, their building, and contents they had. Mr. Balentine stated they had worked hard to get to where they were at in their business and to have the two storage containers that were basically going to be powder kegs waiting to happen. Mr. Balentine stated along with Rudy having break-ins, they had several break-ins with their cutting through the fence as Rudy demonstrated with the grinder and he felt it was just a matter of time before one of the criminals cut through there and the sparks of that blew the things up. Mr. Balentine stated they had concerns as well about the heat, as Mr. Emmons spoke to. Mr. Balentine stated no disrespect to the fire department or Fire Marshal, but he did not know that they were pyrotechnic experts, and he did not pretend to know anything about it himself, but that was a genuine concern. Mr. Balentine stated he had seen many of the videos and doing a little research, he had seen a lot of explosions and they had happened from these containers. Mr. Balentine stated it just did not make sense to them and he understood Morris was in business to make money with this, but if the use variance was just supplemental, he did not understand if they were not going to increase their inventory how it would be a good idea to have the containers in lieu of a fire being enclosed in their facility with the fire suppression system. Mr. Balentine stated as a concerned citizen, he respectfully asked the Council to not give the variance them and he appreciated the opportunity to speak that evening. Mr. Hixenbaugh wanted to ask about the letter of remonstrance he submitted, for the record, on July 1st, 2024 and stated it indicated that the owners of the property next door had let off large fireworks and large boom makers from time to time up to the present including the week of June 17th, 2024 and asked if that was correct. Mr. Balentine stated that was correct. Mr. Hixenbaugh asked if he could provide the Council with a little bit more detail regarding the frequency and what impact that had on his business operations. Mr. Balentine stated his office was right adjacent to where this was going on, as they were just to the west of them, and he was in the very west corner office. Mr. Balentine stated when the fireworks went off, he would go over and see what was going on as they would be going off in the Builders Iron Works parking lot and they had guys in their shop in the middle of fabrication and doing welding, cutting, and some of the big bombs would go off and sound like dynamite and the individuals had been startled and they were actually worried about that for their safety as well. Mr. Balentine stated this happened pretty much every day

during the fireworks season and he could attest that none of their employees had been lighting off any fireworks and if they did, they would have to come back after hours because their office staff was there longer than the employees were and that had not been an issue whatsoever. Mr. Hixenbaugh asked if he had any sense of when the fireworks were let off next door whether they were customers lighting off fireworks they just purchased or if it was the retailer themselves that were demonstrating their fireworks or if it was a combination of all the above. Mr. Balentine stated he could not attest to that. Mr. Hixenbaugh stated he also referred in the letter to at least one incident when there had been some debris that had found its way over to their property and to quote Mr. Balentine, related to their fireworks had landed on their property causing a grass fire one time. Mr. Hixenbaugh asked if he could tell the Council a little bit more about that as well. Mr. Balentine stated he believed his brother was going to speak on that behalf. Mr. Hixenbaugh stated he could defer until that then. Mr. Hixenbaugh thanked him.

Brian Balentine, Builders Iron Works, spoke in opposition to **RESOLUTION R2024-15**. Mr. Balentine stated over the years, 10 to 12 times, their fence had been cut, typically for catalytic converters and they had lost 3 to 4 catalytic converters over the years, and it was always through the cutoff grinder. Mr. Balentine stated the property was about 6 acres and the building was 50,000 to 55,000 square feet so you could imagine how large that was so it was easy for someone to get access behind their property and usually they would break into their property sometimes to get to the pawn shop. Mr. Balentine stated they were worried about what somebody found out about the fireworks and what could happen. Mr. Balentine stated there had been police reports about all the fence cuts and you could see where they had been cut as they were just mended and not replaced. Mr. Balentine stated near this area, there was a camper, four boats, and a couple of cars typically stored right back to this area, and he was not sure if something did happen that their stuff would be protected with insurance. Mr. Balentine stated their employees used this area for breaks and their fence was 20 feet from where the storage unit would be located and some of their employees parked there and there could be overflow parking. Mr. Balentine stated within the last couple of years, their yard was caught on fire, and he was the one who put it out. Mr. Balentine stated after he put it out, their employee was the one who was shooting off the fireworks and he went over and let them know that he could see the smoke that he had to put out, as it was four or five areas he had to stamp out with his foot towards the end of the day and he was working late. Mr. Balentine stated he mentioned to them that they did not appreciate the fireworks being shot off at all hours and he recommended if they were going to shoot them off to shoot them off after office hours, but he also mentioned that was kind of scary if they would be shooting off fireworks and they were not there to protect their property. Mr. Balentine stated this was something that scared them a little bit with the fact that they were now going to have all those fireworks in the containers.

Mrs. Voelker wanted to clarify that they did have a fireworks ordinance in their city and didn't the fireworks ordinance say that no fireworks should be set off except for on the Fourth of July and in the evening New Year's Day and there were other certain times, but their fireworks ordinance did not allow fireworks to be set off 365 days a year and all hours of the day and she actually lived pretty close to the shop and she heard those fireworks and did not make the

connection to that happening. Mrs. Voelker stated they should call the police if the fireworks were being set off as it was illegal and that was what she wanted to say.

Mr. Carroll stated this location was in his district and he went down to take a look at it and normally when they considered these container issues, it was more from a cosmetic perspective and he took a look at that area and it looked ideal for something like this where it would be screened and all of that, so the issue really came down to what was in the containers and the concerns that were had. Mr. Carroll stated he would like to know more about specifically the Fire Marshal's thoughts and why he thought it was safer to not have it with the suppression system and what he felt his comfort was in assessing the risk of the fireworks and like Councilman Emmons said, the temperatures and all of that involved. Mr. Carroll stated he did not think he personally had time to consider this, and he guessed that was the view of some of the Council as well. Mr. Carroll stated with that in mind, he moved they postponed the vote on this until the next scheduled council meeting to give it full consideration and those stakeholders involved to get the same information they needed to make this decision. Mr. Banicki seconded the motion, and a voice vote was held. As a result, **RESOLUTION R2024-15** was postponed until their first regularly scheduled meeting in August of 2024.

RESOLUTION R2024-16

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: 314 W CLEVELAND ROAD Use Variance for Fine Line Micro Tattooing Services - 314 W. Cleveland

Danielle Zebka, owner of Ink and Stone at 314 W. Cleveland Road, spoke in favor of **RESOLUTION R2024-16**. Mrs. Zebka stated she was currently moving into the space at 314 West Cleveland, and she was going to be a tenant and she did permanent makeup tattooing as well as ear piercing and other beauty services and she was looking to add micro tattooing onto her service list. Mrs. Zebka stated it was a little bit different as it took a little bit of a spin on your traditional tattoo and piercing partners, which was why they were looking for the use variance.

Question was called for at 7:05PM for **RESOLUTION R2024-16 Motion passed by unanimous roll call vote (summary: Yes = 9).**

Yes: Mrs. Hazen, Mrs. Voelker, Mr. Carroll, Mr. Banicki, Mr. Emmons, Ms. Hahn. Mr. Mammolenti, Mr. Violi, Mr. Hixenbaugh. The resolution passed 9-0.

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

PROPOSED ORDINANCE NO. 2024-10

**AN ORDINANCE AMENDING CHAPTER 58 OF THE MUNICIPAL CODE OF THE
CITY OF MISHAWAKA, INDIANA COMMONLY REFERRED TO AS: THE TRAFFIC
CODE**

Amending the Traffic Code to add All-Way Stop at Various Intersections

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

Mr. Hixenbaugh stated at that time, it was his understanding that there was a desire to amend the proposed ordinance and the chair entertained a motion to amend the proposed ordinance by striking the reference to Prospect Drive and North Mason Street and also striking the reference to Third Street and South Victoria Street which would retain Cleveland and Sixth and Carter Court and East Edgar Avenue.

Mr. Carroll stated after talking with Chris Jamrose and Engineering, it looked like they had a solution to Victoria Street that would possibly be better than a stop sign and then on Prospect Drive, possibly some larger plans in the works to fix that so he was comfortable removing those at this time and moved that they be removed. Mr. Banicki seconded the motion, and a voice vote was held. The motion passed unanimously, and the public hearing was opened.

Ambrea Pruitt, 1535 Troyer Trail, spoke in favor of **PROPOSED ORDINANCE NO. 2024-10**. Mrs. Pruitt stated they wanted a stop sign at Edgar and Carter Court and that is why she was present that evening. Mrs. Pruitt stated when she moved in the neighborhood five years ago, they had about 45 children at that time, and they had grown since then to somewhere between 60 to 75 children now in the neighborhood and the cars went by on Edgar with no stop sign and they sped by. Mrs. Pruitt stated they did a survey, but it was a cold, rainy day in October and no children were outside playing and no cars were coming by, and the consensus was to put a crosswalk in that they now had but she still did not think that was enough. Mrs. Pruitt stated they had children ranging from high school down to preschoolers moving in and they went to the park and they told them as parents to look both ways before crossing the street but at the end of the day, they were children and there were recently 35 mile per hour speed limit signs put up in their neighborhood, so in people's minds if it was 35 they could do 40 and if they were doing 40, they may as well do 45 and were speeding down there with the children running back and forth and it just was not safe for their little neighborhood. Mrs. Pruitt on their streets, when they have cars parked on each side, the children would already have to be somewhat in the street to look both ways and if a car was zooming by, that could be an accident waiting to happen and she did not think it was safe for their children in their neighborhood without a four-way stop.

Ric Oswald, Director of Advocacy for Habitat for Humanity of St. Joseph County, spoke in favor of **PROPOSED ORDINANCE NO. 2024-10**. Mr. Oswald stated they certainly supported Ambrea and the homeowner's request for a four-way stop at the intersection of Edgar Avenue and Carter Court. Mr. Oswald stated as she so eloquently stated, as you went down Edgar, it was a through street and traffic traveled at high rates of speed from time to time. Mr. Oswald stated the Fields at Highland was a 75-lot subdivision and they had about 13 to 14 remaining lots and they had 56 homes in there right now and they would be closing on another 6 homes in the remainder of 2024. Mr. Oswald stated as Ambrea said, they had somewhere around 65 children who were at the age of 16 and under and a handful of others over 18 years old. Mr. Oswald

stated in October of 2024, they completed the construction of Darnell Park located between Edgar Avenue and Yearwood Lane which was a park of about $\frac{3}{4}$ of an acre, ADA accessible and used on daily basis by their families. Mr. Oswald stated traffic flowed very quickly through the subdivision from time to time and they had a lot of young children who were crossing the street and unfortunately sometimes the kids did not look both ways when crossing. Mr. Oswald stated safety was a key issue and the speed of the vehicles going down Edgar Avenue was another issue. Mr. Oswald stated they respectfully requested they favorably moved forward with the request for a four-way stop.

Michael Compton, 1530 South Lake George Drive, spoke in favor of **PROPOSED ORDINANCE NO. 2024-10**. Mr. Compton stated he was present to speak on the stop sign at Edgar and Carter. Mr. Compton stated this was an issue that came up when he was still sitting on the Council with some of the members there currently and it had been ongoing for quite a while. Mr. Compton stated it was brought to his attention by a young lady who lived in Highland and asked that they consider it. Mr. Compton stated he knew there were some studies done and maybe the data did not support it, but in his mind, this was more about people and not necessarily data. Mr. Compton stated this was the newest neighborhood in Mishawaka and it was thriving with children, more so than any other neighborhood they had. Mr. Compton stated he could not think of another neighborhood that had more children per capita than this one. Mr. Compton stated this was not a public park and he believed it was a neighborhood park they put together but still there were a lot of kids walking around and walking through there. Mr. Compton asked the Council to consider this in a four-way stop at that street in that corner as it was something requested by the neighbors, and he asked that they honor their request.

Raven Boston, 1721 Carter Court, spoke in favor of **PROPOSED ORDINANCE NO. 2024-10**. Mrs. Boston stated she understood it was not warranted and the numbers were not there, but it only took one car to speed and one kid to be coming around the car and not be seen. Mrs. Boston stated she had had an incident while this process was going on with her oldest son as he was chased by a dog and she was here at City Hall for a meeting while he was outside playing with his friends, and he could have been hit by a car. Mrs. Boston stated she felt that if there was a stop sign there, it could have been prevented and she wanted to be proactive and prevent accidents from happening.

Mr. Violi stated he had the honor of succeeding Mr. Compton in the 5th District and about a couple months after he was elected, Raven reached out and asked if he could sit in on a neighborhood watch meeting and he said of course he would love to do that, so he sat in on their meeting about a month ago and had no idea this was an issue and Raven was so generous the next day in apologizing for him getting blindsided by a question he knew nothing about, but immediately he could tell by the group in the meeting that they felt strongly about this, they were passionate about it and they really wanted this to go through and Raven said at the time that they were just going to get a crosswalk for the time being and bring it up at another time. Mr. Violi stated he did a little drive through the neighborhood and to him, it looked like they forgot to put a stop sign when they built the subdivision and it belonged there. Mr. Violi stated it was a long road and anyone to go 35 to 45 MPH he thought could be a catastrophic issue. Mr. Violi stated like Mr. Compton said, it was a private park but it was right there with no stop sign and although he respected their Engineering Department and would always be willing to listen to their

analytics, like Mr. Compton said, this was a people thing and a gut thing that they needed a stop sign there and he did not see the harm in having one there. Mr. Violi stated this to him was a no-brainer and he hoped all the Council would support it.

Mr. Emmons stated with this ordinance, he had put in two stop signs on Cleveland and Seventh and Cleveland and Sixth and he was withdrawing the one on Seventh Street after talking with Engineering. Mr. Emmons stated the neighbors and the Engineering Department agreed though that there should be a stop sign at Cleveland and Sixth Street. Mr. Emmons stated once again that he wanted to withdraw the stop sign on Cleveland and Seventh but wanted to promote the stop sign on Cleveland and Sixth.

Question was called for at 7:05PM for **PROPOSED ORDINANCE NO. 2024-10 Motion passed by unanimous roll call vote (summary: Yes = 9).**

Yes: Mrs. Hazen, Mrs. Voelker, Mr. Carroll, Mr. Banicki, Mr. Emmons, Ms. Hahn. Mr. Mammolenti, Mr. Violi, Mr. Hixenbaugh. The proposed ordinance passed 9-0, thus it became **ORDINANCE NO. 5893.**

PROPOSED ORDINANCE NO. 2024-11

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

Amending the Municipal Code Park and Recreation - DORA

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

Matt Lentsch, Executive Director of Development and Governmental Affairs for the City of Mishawaka, spoke in favor of **PROPOSED ORDINANCE NO. 2024-11**. Mr. Lentsch stated for the DORA ordinance, there were two parts to it with this first part pertaining to amending the park ordinance to allow alcohol under the DORA ordinance. Mr. Lentsch stated this had to happen for the DORA to take place within Beutter Park and the other parks in the riverfront area where this would be located. Mr. Lentsch stated he was very enthusiastic about the implementation of the DORA and this initiative would represent a significant step forward in their ongoing efforts to enhance the vibrancy and appeal of their riverfront area. Mr. Lentsch stated they would get into more of the nuts and bolts and positives and negatives of a DORA, but he asked for their approval of this part that would impact the DORA being allowed in a park.

Mrs. Voelker asked for clarification on this ordinance and if it said they could have alcohol in any park. Mr. Lentsch stated no. Mrs. Voelker stated she was reading the ordinance and was trying to figure that out. Mr. Lentsch stated on the second page in section 2 at the end of section 50 it said prohibited acts except bringing controlled substances defined by the laws, state, drug bureau, etc. except unwritten permission from the Board of Parks and Recreation or duly authorized agents unless the park was in a designated outdoor refreshment area, or a DORA. Mr. Lentsch stated it would only mean that they would be allowing this to happen within the DORA.

Mrs. Voelker stated just to follow up on that and clarify, if the second ordinance was passed and the second ordinance was modified and included another park, they did not have to change this ordinance and asked if that was correct. Mr. Lentsch stated for the DORA as they were recommending with the footprint, it would not need to be amended.

Mr. Mammolenti stated right now, you could rent a pavilion within the city limits at a park, apply for a permit, and be allowed to consume alcohol and asked if that was correct. Mr. Lentsch stated as he understood it, that was the way it went. Mr. Mammolenti asked so what they were approving with this ordinance was that with a park within the established DORA, the city or whoever would not have to apply for a permit every single day. Mr. Lentsch stated that was correct and last year, he went before the Park Board and talked to them specifically about this ordinance and there was broad support across the Park Board for this. Mr. Mammolenti asked just for confirmation that any park outside of the designated DORA area would still not be allowed to have alcohol unless a permit had been given. Mr. Lentsch stated that was correct. Mrs. Hazen stated she was confused, so it only listed the Public House and Social Cantina but then it said any additional licensed premises and asked if that covered all the others that were listed in the next one. Mr. Hixenbaugh asked Mr. Trippel to chime in with regard to the various legal questions posed by his colleagues with respect to the effect of the passage of this ordinance and how it impacted their parks. Mr. Trippel stated it would only impact the downtown zone that had been identified as presented to them that evening and it would just be the downtown region. Mr. Hixenbaugh asked, to button this up, that this was not a freestanding approval that was being requested to allow the general rules with regard to the consumption of alcohol to take place in any area in any park other than an area of a park that was within the map of a DORA area. Mr. Trippel stated that was correct, yes.

Question was called for at 7:28PM for **PROPOSED ORDINANCE NO. 2024-11 Motion passed by unanimous roll call vote (summary: Yes = 8, No = 1).**

Yes: Mrs. Voelker, Mr. Carroll, Mr. Banicki, Mr. Emmons, Ms. Hahn. Mr. Mammolenti, Mr. Violi, Mr. Hixenbaugh.

No: Mrs. Hazen. The proposed ordinance passed 8-1, thus it became **ORDINANCE NO. 5894.**

PROPOSED ORDINANCE NO. 2024-12

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, ESTABLISHING A DESIGNATED OUTDOOR REFRESHMENT AREA

Ms. Hahn reported the Committee of Public Health and Safety recommended this proposed ordinance should be adopted. Upon a second by Mr. Banicki, the motion carried.

Mr. Hixenbaugh stated the record would reflect the Council had in front of them a proposed amendment to this ordinance that in relevant parts made some grammatical and formatting changes in multiple sections, assigned the day-to-day administration of the DORA area, if it was approved, to the Board of Public Works and Safety as opposed to the Council. Mr. Hixenbaugh stated the amendment touched on an enhanced role the Council would play in reviewing the continued operation of the DORA through the use of their Public Health and Safety Committee as was outlined in section 7 of the ordinance and then the proposed amendment would also

include an enhanced list of expectations for the operation of the DORA in section 7 of the ordinance and in particular, some new provisions with regard to the use of approved cups and logos as well as an expectation on the part of the Council that the operation of DORA would not become a burden upon their public safety services. At that time, the chair entertained a motion to amend **PROPOSED ORDINANCE NO. 2024-12** as reflected in the hard copy of the amendment that had been distributed to the Council. Mr. Banicki moved the motion and Mrs. Voelker seconded the motion. A voice vote was held, and the motion passed. The Council commenced with the second reading and public hearing on **PROPOSED ORDINANCE NO. 2024-12AA**.

Matt Lentsch, Director of Utilities and Community Affairs for Mishawaka, spoke in favor of **PROPOSED ORDINANCE NO. 2024-12**. Mr. Lentsch stated he wanted to again express his enthusiastic support for a designated outdoor refreshment area in Mishawaka. Mr. Lentsch stated this initiative represented a significant step forward in their ongoing efforts to enhance the vibrancy and appeal of their riverfront area. Mr. Lentsch stated their riverfront area had long been a jewel in Mishawaka's crown offering scenic beauty, recreational opportunities, and a sense of community. Mr. Lentsch stated the introduction of a DORA would further elevate the area and transform it into a premier destination for residents and visitors alike. Mr. Lentsch stated first, economic growth was a reason. Mr. Lentsch stated a DORA would attract more foot traffic to their riverfront, benefiting local businesses, restaurants, and so on. Mr. Lentsch stated increased visitation needed more revenue for their local economy, fostering a thriving business environment. Mr. Lentsch stated community engagement was another reason DORA would be beneficial. Mr. Lentsch stated the DORA would provide a unique space for social gatherings, events, and festivals and it would encourage residents to spend more time outdoors with a beverage, enjoying amenities and the ambiance of their beautiful riverfront. Mr. Lentsch stated third, tourism appeal. Mr. Lentsch stated by offering a distinctive and enjoyable experience, DORA would draw tourists from neighboring areas and beyond and the influx of visitors would put Mishawaka on the map even more so than it already was and this would be another added element. Mr. Lentsch stated it would put Mishawaka on the map as a multi-visit destination which would enhance their city's reputation and visibility. Mr. Lentsch stated there would also be an enhanced quality of life and the DORA aligned with their vision of creating a vibrant, inclusive, and dynamic community and it would offer a safe and welcoming environment for people to relax, socialize, have a beverage, and enjoy Mishawaka's unique charm. Mr. Lentsch stated with the innovation progress, adopting a DORA demonstrated Mishawaka's commitment to innovation progress and it showed they were a forward-thinking city that valued creativity and was willing to embrace new ideas to enhance the quality of life for their residents. Mr. Lentsch stated in conclusion, establishing a DORA from his perspective in Mishawaka was a very strategic move that would bring numerous benefits to their community and it would make the riverfront a lively, attractive, and economically vibrant destination that would enrich the lives of those who lived, worked, and visited there. Mr. Lentsch therefore urged the Council to support this and help them to create a riverfront area in a DORA they all could be proud of. Mr. Lentsch stated he was not going to go through all the nuts and bolts, but just to say that as of July 1st of 2023, the general assembly made possible a DORA to happen. Mr. Lentsch stated this became an option and they came before the Council and, the DORA allowed adults 21 and over to purchase an alcoholic beverage from participating vendors and walk within that designated area with their beverage of choice and a cup that would have a designated sticker on it. Mr. Lentsch stated they

believed this would give more freedom and a safe environment to their patrons and event visitors and a potential increase in business for their outstanding vendors. Mr. Lentsch stated they had shown time and time again through festivals and all kinds of activities that the riverfront, Ironworks, Beutter Park, and the Biergarten were places that people came to but what happened now was a person could not go to Social Cantina and have to finish a drink before walking to a different location. Mr. Lentsch stated they had looked at 36 different DORAs across Ohio, Michigan, and Indiana and as they had looked at this, none of them had significant issues and as he had talked to folks around those states, Shelbyville for example had adopted DORA essentially for the entire existence of their downtown and they called it 'doraing', a verb, where they could go out with their friends and family and have a couple of beverages and walk around the downtown and visit while going into shops and other establishments as well. Mr. Lentsch stated they thought it provided a really excellent opportunity for people to come and gather and just relax and have a good time and they thought this DORA and the map that he would have handed out would be the original map and he wanted to make sure they were talking about the same map. Mr. Lentsch stated the map went in front of the riverfront and went to The Mill and to The Mill Part 2 and ended at Front Street at the front of The Mill Part 1 and went to the edge of Front Street around to Church Street. Mr. Lentsch stated the boundary had really been tightened up and they thought it represented a great place to start, as they needed to walk before, they ran. Mr. Lentsch stated he believed the map would allow them to have an effective space that was very confined for them to have a DORA. Mr. Lentsch stated he was happy to answer questions.

Mr. Hixenbaugh thanked Mr. Lentsch for his work on it before fielding any questions, as he knew Mr. Lentsch put a lot of time and work into it. Mr. Lentsch stated it was his pleasure and he thanked the Council for their collaboration, and they had listened and adapted, and they thought what they had before the Council was a very conservative ordinance and the most conservative DORA of any of the 36 he had seen.

Mr. Carroll wanted to state for the record that it looked like this could include some residences and he wanted to make sure this would not adversely affect people having their own private alcohol in their own residence or building. Mr. Lentsch stated it would not. Mr. Carroll stated thank you.

Mr. Emmons thanked Mr. Lentsch for his presentation and stated they had numerous conversations about DORA and the layout, and he knew it changed a number of times, but he always had a concern about how it was going to be policed. Mr. Emmons stated right now, the establishments themselves sold alcoholic beverages and they were not policed in the sense of staying within the boundary of their own establishment. Mr. Emmons asked how they were going to police the area of DORA when they could not do it within the three businesses that were there now. Mr. Lentsch stated that was a good question and that their vendors as well as their Parks Department were doing their very best to make sure it was policed and he had been down there on numerous occasions and to what he had seen, he believed all of their vendors did an incredible job making sure that they were not over serving and people were staying within the Biergarten or in the restaurants. Mr. Lentsch stated Mr. Blasko had extra fencing in the case of a festival or concert in which people could walk within but he thought their folks were doing the very best job they could in terms of their bartenders and the management of all three vendors to make sure that folks abided by the liquor laws and as far as he knew, they had not had one

situation where the police had been called to deal with folks who had been drunk and disorderly or otherwise. Mr. Lentsch stated he would say to Mr. Emmons that the predominant of amount time people were following the rules even though there was a case where people were leaving the Biergarten and subsequent to that, he talked with Mr. Blasko as well as some of the Council and more signs were put up in the area with more education. Mr. Lentsch stated he thought part of it was education to their patrons as well as their vendors with signage but he was confident in this and they did not have one issue as far as he knew related to drunk and disorderly down there. Mr. Lentsch stated he thought their vendors did a great job and the regular patrols that their police currently did would be sufficient and within the confined map and boundary, he thought there would be great success and he thought people would predominantly follow the rules and some may have to be reminded, but for the most part he thought that they would have great success. Mr. Emmons stated he appreciated that and he hoped it worked, but his concern was regarding the parks and especially down there at their riverfront where they would have DORA and it was a family oriented park, not an adult park, especially on Sundays he did not feel alcohol should be served down there between 11 and 4 on Sundays and it should be a day free of alcohol except for it being sold in establishments and they stayed in establishments because he had taken pictures of people right now not abiding by the guidelines and here now they were going to promote more. Mr. Lentsch stated again, they had not one call to the police department about drunk and disorderly people but they had people come out of the Biergarten and they addressed that with the police department with signage and more education and he thought between what Alex Arndt would present in terms of regular shift strength and in terms of education they did with their patrons and vendors, he thought they could make sure people continued to follow the rules. Mr. Lentsch stated he thought people may try to go down there with a Yeti cup and have their own refreshment, but within a DORA you could only have a DORA cup within a specific time, so he thought they could do the education and provide the appropriate enforcement necessary, but no more than they did now. Mr. Emmons asked if people were violating the guidelines of DORA and if they had drinks with them, what would the consequences be. Mr. Lentsch stated they would remind folks of the rules when they saw it and if they were repeat offenders, they would then notify law enforcement and ask them to deal with it. Mr. Lentsch stated they could expect that to happen from time to time and there would have to be continued education and if folks continued to not abide by the rules, then they would have to take the privileges away. Mr. Lentsch stated they would do that in tandem with the police department. Mr. Emmons wished Mr. Lentsch good luck.

Mr. Hixenbaugh stated as he read the ordinance, the DORA would only be in operation on Wednesdays, Thursdays, and Fridays from 4PM to 10PM with last call at 9:30PM, Saturdays from 12PM to 10PM with last call at 9:30PM, and then 11AM to 4PM on Sundays with last call at 3:30PM and asked if that was correct. Mr. Lentsch stated yes. Mr. Hixenbaugh stated at the time of the informational meeting held recently, Ms. Hahn in particular was a vocal advocate in taking a look at an enhanced map that would incorporate some of their smaller businesses and that was not in front of them, but asked Mr. Lentsch if he would agree with him that this ordinance indicated that by no later than October 31st, the Common Council's Public Health and Safety Committee would be reviewing the operation of DORA totally but then paying particular attention to the consideration of further expansion into the remainder of the Central Business District in conjunction with the opinion of the police department. Mr. Lentsch stated yes, absolutely he thought that was warranted and he and Ms. Hahn talked about this specific thing,

and it went back to they wanted to walk before running and wanted to make sure this was successful within the defined boundary before expanding. Mr. Lentsch stated they got the police department's recommendations and they had investigated this, but upon review if they wanted to expand it, it would be the Council's decision to do so. Mr. Hixenbaugh asked if it was the case that the Council also retained the authority to revoke the DORA designation if in fact there tended to be a significant number of people who did not follow the rules, and this was a problem for the community. Mr. Lentsch stated that was true and, in the ordinance, they were giving the Chief of Police and the Mayor the opportunity to suspend it until the Council then acted on it. Mr. Hixenbaugh stated one of the concerns expressed was the ability to allow temporary vendors to come in in conjunction with events or festivals made sense, but to allow somebody who did not have a brick and mortar site within the DORA map to set up a truck on a repetitive basis would be problematic and his reading of this ordinance was that while the temporary permittees could operate within the area in conjunction with the festival, the ordinance obligated the Board of Public Works not to allow a permanent presence on the part of those temporary permittees separate from participation in those events or festivals. Mr. Lentsch stated that was right and he concurred and thought they needed to give vendors the best opportunity to serve the clientele that would take advantage of the DORA.

Mr. Violi asked for a timeline after if this would pass, if granted approval and where it would go from here. Mr. Lentsch stated if the Council would be so inclined to pass the ordinance, they would need to take it and get approval from the state. Mr. Lentsch stated it could take up to 90 days for state approval, however they had adopted an ordinance similar to the ones they had given approval to and he talked with Alex, a very astute young lady with Councilman Hixenbaugh and she believed that they could have it done within 30 days potentially. Mr. Lentsch stated it would be a constructive rough estimate to say they could be operational in 60 days.

Alex Arndt, Assistant Chief of Police of Mishawaka Police Department, spoke in favor of **PROPOSED ORDINANCE NO. 2024-12**. Chief Arndt stated he knew that a letter was distributed to the Council for review prior to the meeting and he wanted to hit on the highlights of it. Chief Arndt stated the police department did maintain support of the DORA but they would advocate for the smaller, more concise footprint of the map that was handed out that evening and they wanted to assure them that the current staffing structure would be able to address any issues without a burden to the public safety. Chief Arndt stated they would continue to patrol, and it would be business as usual. Chief Arndt stated their new staffing model with the 12-hour shifts with additional officers on the street allowed them some resources to respond to any potentially larger crowds or any issues that would develop down there that they thought attention was needed for on a daily or weekly basis. Chief Arndt stated the smaller footprint would allow for the police department to evaluate their effectiveness of the operation related to safety and to address any unforeseen challenges or issues. Chief Arndt stated one of the other issues since the second area that was proposed would be the pedestrian traffic in a busier area with busier streets like Lincolnway or Main Street or First Street if people were traversing back and forth. Chief Arndt stated the ease of pedestrian movement if they went with the map in front of them would help with some of those issues while allowing for the DORA to successfully operate. Chief Arndt stated he would answer any questions.

Mr. Hixenbaugh appreciated the work they were able to do as a Council in conjunction with the Administration and the command staff at the police department to implement that investment in public safety and the 12-hour staffing model. Mr. Hixenbaugh stated he was concerned that there was the potential for this to work in contravention of that, but he respected his opinion and the opinion of the other chiefs, so that meant a lot to him but his hope would be to continue to keep a close eye on this and if they did identify issues that they would react promptly to address those issues before it worked at counter purposes to the historic investment they made in police services in Mishawaka. Mr. Hixenbaugh stated this ordinance also reflected some discretion on the part of the police department and the Chief to be able to ask those businesses within the DORA to participate in securing private security if a need was identified and his hope would be that the police department would also look at this through that lens so that if that issue became one that did pose a drag in their staffing resources, that one way to address it would be to ask those business owners who chose to participate in the DORA to help partner with them on obtaining that security. Mr. Hixenbaugh appreciated the work that went into the letter he sent them and his participation in the process.

Tim Ryan, Director of Central Services for the City of Mishawaka, spoke in favor of **PROPOSED ORDINANCE NO. 2024-12**. Mr. Ryan stated currently, the area mapped out in front of them was included in their daily and evening sanitation and weekend sanitation and the only issue would be getting that coverage on the weekends as they lost their seasonals. Mr. Ryan stated looking at the expanded map, it would be a little more challenging because now you were getting a larger area and their main focus right now when they had afternoon and evening and weekend was mainly the riverwalk and the parks along the riverwalk to keep those clean, so this footprint would fall right into what they were doing.

Craig Fry, 1115 Waterfield Court, spoke in opposition to **PROPOSED ORDINANCE NO. 2024-12**. Mr. Fry stated he did not consume alcohol and he believed Mishawaka had done an unbelievably good job with their city parks and to contaminate it with people who overindulged in alcohol was a mistake in his mind. Mr. Fry stated he walked in Heroes Park every day and so his point was that Mishawaka was proud of its parks and adding alcohol and the problems with it would not be a good thing overall. Mr. Fry stated as a citizen, he did not agree with the position.

Mr. Emmons asked Mr. Lentsch about the outline of the DORA and if it would go over to Main Street, as he thought the first map brought it back a little further to the west. Mr. Lentsch stated that compared to what they proposed last year, they actually tightened it up and moved it back from the riverwalk, but it did not go over to Church or Main and it ended at Front. Mr. Lentsch stated this was the more confined and restricted smaller footprint.

Mr. Carroll stated it occurred to him that there may be some activities that went on, like the ice skating rink, where they may not want people consuming alcohol during that activity and asked if this did not block the Parks Department from setting those restrictions within the DORA for certain activities. Mr. Lentsch stated not at all.

Ms. Hahn thanked the Street Department and the Police Department for their work on this and she thought the right thing to do was to start with the smaller footprint so everybody was more comfortable, and the public could see that hopefully it would be a successful thing for

Mishawaka. Ms. Hahn stated they talked about attracting people, the growth of the city and doing really great things for the City of Mishawaka and she wanted to always make sure they were included their local businesses and all of the great things they had done, will do and were going to do so she thought starting smaller was the right thing to do. Ms. Hahn stated she would be personally contacting Mr. Lentsch at the end of October making sure that they were safely and efficiently including their small businesses.

Mr. Carroll thanked the Administration for answering all the questions folks had.

Mr. Emmons stated he had reservations about the DORA and whether it would be attracting the wrong clientele to the riverwalk and the DORA area and he had concerns about alcohol being served on Sundays down there, but he was going to say yes to this but with reservations and he hoped it did not attract the wrong clientele down there. Mr. Emmons hoped that their police department could police the area and provide a safe area down there. Mr. Emmons hopefully if there were issues, they could bring it back before the Council and correct the situation.

Mr. Hixenbaugh thanked everyone for their work on this, the Administration and his colleagues who had spent a considerable amount of time on this issue. Mr. Hixenbaugh stated he agreed with Mr. Emmons that the concerns made by residents and citizens in the past certainly warranted some consideration but on balance, he was willing to err on the side of affording the residents of their community the opportunity to take in these types of districts, just the same as folks who resided in other communities across the state. Mr. Hixenbaugh stated he was willing to bet that the citizens of Mishawaka and the community would be able to appropriately operate within a DORA environment and he thought there was a track record of other communities that were much smaller with fewer resources being able to manage it effectively. Mr. Hixenbaugh stated what gave him the peace of mind to be able to take a little bit of a leap of faith and vote in favor of this was the fact that he believed this Council and Administration were committed to paying very close attention to this situation and he believed that the police department leadership would as well. Mr. Hixenbaugh stated at the first sign of significant trouble, he believed it was encompassed on all of them to act promptly and revisit the issue because Mr. Fry was right in saying they had made historic investments in their downtown area and parks and the last thing they wanted to do was denigrate that investment. Mr. Hixenbaugh stated that while he had those concerns, on balance he was going to err on the side of supporting the ordinance that evening and he looked forward to updates from the Administration even before October regarding how it operated if it passed.

Question was called for at 8:04PM for **PROPOSED ORDINANCE NO. 2024-12 Motion passed by unanimous roll call vote (summary: Yes = 8, No = 1).**

Yes: Mrs. Voelker, Mr. Carroll, Mr. Banicki, Mr. Emmons, Ms. Hahn. Mr. Mammolenti, Mr. Violi, Mr. Hixenbaugh.

No: Mrs. Hazen. The proposed ordinance passed 8-1, thus it became **ORDINANCE NO. 5895.**

PROPOSED ORDINANCE 2024-19

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

**Annexing and Establishing zoning as R-1 Single Family - East Side of Fir Rd across from
Preserve Apartments, extending to Clover Rd,
VOTE ONLY**

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

Mr. Hixenbaugh stated as accurately noted by Clerk Block, the Council conducted a public hearing on this proposed ordinance at their last council meeting, so in conjunction with state law at that point in time opened the floor to questions and comments from the Council.

Question was called for at 8:06PM for **PROPOSED ORDINANCE NO. 2024-19 Motion passed by unanimous roll call vote (summary: Yes = 9).**

Yes: Mrs. Hazen, Mrs. Voelker, Mr. Carroll, Mr. Banicki, Mr. Emmons, Ms. Hahn. Mr. Mammolenti, Mr. Violi, Mr. Hixenbaugh. The proposed ordinance passed 9-0, thus it became **ORDINANCE NO. 5896.**

UNFINISHED BUSINESS

Matter of the Mayor's veto of Ordinance No. 5893

Mr. Hixenbaugh stated given that there had been various legal issues raised regarding this matter, he called on Council Attorney Mr. Trippel to state his legal opinion as it had been presented to the Council in writing.

Mr. Trippel reiterated his legal opinion had not changed and stated he circulated a legal memorandum to the Council on July 3rd, outlining what he believed was the Mayor's lack of ability to veto zoning matters in the city and he did receive his veto in detail and reviewed it and with the legal analysis he did, he had not changed his mind. Mr. Trippel stated section 2103 of the Mishawaka City Code did back in 1981 authorize the Mayor to veto ordinances or resolutions of the Council upon passage by the Council, however in 1985, the Indiana Code under section 364614 specifically amended the general powers of the Mayor and specifically stated the section did not apply to a zoning ordinance or an amendment to a zoning ordinance or resolution approving the comprehensive plan. Mr. Trippel stated therefore, since 1981 was the passage of the Mishawaka ordinance and 1985 was the passage of the state law that amended that, they had a bit of an issue. Mr. Trippel stated the Mayor also mentioned there was case law on point and he reached out to Aim because they said they had City Attorney John Roggeman reach out to them as well and Mr. Trippel spoke with General Counsel there Becca who advised that they provided resources to the city among them as he had surmised was the case of Wilson vs. Brown, which was an Indiana Court of Appeals case passed in 1984. Mr. Trippel stated that case had been abrogated by statute because it interpreted different statutes that had since been amended like the Indiana Zoning Code that stated that a legislative body must have passed an ordinance specifically giving the executive the power to veto zoning and going back to the 1985

amendments of the mayoral veto authorization, saying that this section did not apply to the zoning ordinance. Mr. Trippel stated with all that being said, in light of the Mayor's veto, if it was the pleasure of the Council to approve the development of the Casey's, which they did at the last meeting, it was his recommendation that they vote to override the veto since they had a bit of a legal dispute and that would be the cleanest way if it was the Council's opinion to move forward with the approval of the zoning ordinance which they approved at the last meeting.

Mr. Hixenbaugh stated he agreed with that opinion and asked by virtue of the Council if it was their pleasure to do so in taking a vote, it was not conceding any argument to the contrary of the opinion that he had just stated and asked if that was correct. Mr. Trippel stated absolutely not.

Mr. Mammolenti asked what would occur if if there was still a dispute between both legal entities and the veto did not happen. Mr. Trippel stated if they did not override the veto, he suspected that the petitioner, Casey's, could seek a legal remedy. Mr. Mammolenti asked who would determine which attorney was correct. Mr. Trippel stated a judge in a court of competent jurisdiction would file a suiting. Mr. Mammolenti asked in which the City of Mishawaka would pay for and asked if that was correct. Mr. Trippel stated he presumed the city would defend their position.

Mr. Hixenbaugh entertained a motion to override the mayoral veto of Ordinance No. 5893. Mrs. Hazen made the motion and Mr. Mammolenti seconded the motion.

Mr. Emmons stated although he had not changed his position on the previous votes of the reasoning of the parcel regarding the ordinance, he did agree with their Council Attorney, Mr. Trippel's opinion that Mayor Wood's veto was not allowed under Indiana statue, therefore he would be supporting his colleagues position in voting in favor of the override of Mayor Wood's veto.

Question was called for at 8:12PM for **The Override of the Mayor's veto of Ordinance No. 5893. Motion passed by unanimous roll call vote (summary: Yes = 9).**

Yes: Mrs. Hazen, Mrs. Voelker, Mr. Carroll, Mr. Banicki, Mr. Emmons, Ms. Hahn. Mr. Mammolenti, Mr. Violi, Mr. Hixenbaugh. The override passed 9-0.

NEW BUSINESS

Mr. Emmons made a reminder that the July meeting of the West End Neighborhood would be cancelled, and they would start again on August 16th at St. Bavos Church.

Mrs. Voelker thanked Greg Spiers for writing the article on the Mishawaka Historic Commission as they built plaques for people that owned homes and properties in Mishawaka that were older than 70 years and the Historic Commission had developed a program where the property owner could apply to purchase a metal plaque that listed the date that the structure was built and it had historic Mishawaka and it was an acknowledgment of the history of their city and the beautiful residential properties that met that criteria. Mrs. Voelker stated if anyone were interested in that, they could contact the Historic Preservation Commission or the Planning Department in the City

of Mishawaka. Mr. Hixenbaugh thanked Mrs. Voelker and the other members of the Historic Preservation Commission for a job well done.

Ms. Hahn stated the Mishawaka Business Association would be having workshops every Wednesday morning at 9AM at the Penn-Harris Mishawaka Library that would focus on entrepreneurs, business owners, and startups where they could connect with other resources and mentors in the area to help them get started on their business journey. Ms. Hahn stated that was every Wednesday at 9AM.

ADJOURNMENT 8:14PM

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

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

These minutes are a summary of actions taken at the Mishawaka Common Council meeting. The full video archive of the meeting is available for viewing at www.youtube.com/@cityofmishawaka635 for as long as this media is supported.

DATE: July 22, 2024
TO: Board of Zoning Appeals
City of Mishawaka, Indiana

JUL 23 2024
Planning and
Community Development

The undersigned appellant, Continental Fund 764 LLC ("Continental"), respectfully shows the Board they are the owners of the following described real estate located within the City of Mishawaka, County of St. Joseph, State of Indiana, to-wit:

PART OF THE SOUTHWEST 1/4 OF SECTION 23, TOWN 38 NORTH, RANGE 3 EAST, HARRIS TOWNSHIP, ST. JOSEPH COUNTY, INDIANA, BEING PART OF OUTLOT "A" AND LOT ONE OF SEGGERMAN FIR ROAD MINOR SUBDIVISION, RECORDED AS DOC # 9848691, ST. JOSEPH COUNTY RECORDS, DESCRIBED AS: BEGINNING AT A FOUND 5/8" IRON (NO CAP) AT THE NORTHEAST CORNER OF OUTLOT "A" OF SAID PLAT; THENCE SOUTH 00°27'11" EAST ALONG THE EAST LINE OF SAID PLAT A DISTANCE OF 802.22 FEET TO A FOUND 5/8" IRON (NO CAP) AT THE NORTHERLY RIGHT OF WAY OF BEACON PARKWAY (120' WIDE/PUBLIC); THENCE NORTHWESTERLY ALONG SAID RIGHT OF WAY A DISTANCE OF 523.42 FEET ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 740.00 FEET, A CENTRAL ANGLE OF 40°31'36", AND CHORD BEARING NORTH 84°28'46" WEST 512.58 FEET TO A FOUND 5/8" IRON WITH CAP '0050 ABONMARCHIE'; THENCE NORTH 64°12'58" WEST ALONG SAID RIGHT OF WAY A DISTANCE OF 95.10 FEET TO A FOUND 5/8" IRON WITH CAP '0050-ABONMARCHIE'; THENCE NORTHWESTERLY ALONG SAID RIGHT OF WAY A DISTANCE OF 441.55 FEET, ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 1060.00 FEET, A CENTRAL ANGLE OF 23°52'00", AND CHORD BEARING NORTH 76°08'58" WEST 438.36 FEET TO A FOUND 5/8" IRON WITH CAP '0050-ABONMARCHIE'; THENCE NORTH 88°04'58" WEST ALONG SAID RIGHT OF WAY A DISTANCE OF 185.66 FEET A FOUND 5/8" IRON (NO CAP); THENCE NORTH 44°36'15" WEST ALONG SAID RIGHT OF WAY A DISTANCE OF 57.85 FEET TO A SET 5/8" REBAR WITH CAP # 'LS20100015' AT THE EASTERLY RIGHT OF WAY OF NORTH FIR ROAD (105' WIDE/PUBLIC); THENCE NORTH 00°23'41" WEST ALONG SAID RIGHT OF WAY A DISTANCE OF 558.74 FEET TO A FOUND 5/8" IRON (NO CAP) AT THE NORTH LINE OF SAID PLAT; THENCE NORTH 89°58'46" EAST ALONG SAID LINE A DISTANCE OF 1245.13 FEET TO THE POINT OF BEGINNING. CONTAINING 882,721 SQUARE FEET OR 20.264 ACRES.

The real estate described above is currently zoned as S-2 Planned Unit Development District under the Zoning Ordinance of the City of Mishawaka. Continental fully occupies this property and owns 100% of it.

Continental seeks to place two temporary buildings on-site for construction and leasing purposes. However, the City of Mishawaka Zoning Ordinance Sec. 137-216.10 permits only one temporary building for the construction industry. Applying this ordinance imposes unnecessary hardships on the property, as strict adherence would hinder smooth operations during the construction timeline.

Deborah S. Block, IAMC, MMC

JUL 25 2024

City Clerk
Mishawaka, IN



A construction trailer will be erected on-site to serve as the contractor's office for the duration of construction. A leasing trailer (approximately 12' x 48') will be erected approximately three months before the leasing office within the Springs at Mishawaka clubhouse is completed. The leasing trailer will be removed upon the clubhouse's completion.

Approving this variance will not harm public health, safety, morals, or the general welfare of the community, as the proposed leasing trailer will remain on-site, and will serve future residents wishing to sign a lease at Springs at Mishawaka prior to construction completion. It will not be unsightly or adversely affect adjacent areas. The variance is not due to any peculiar property condition and will not interfere with the Mishawaka Comprehensive Plan. As mentioned previously, the trailer is temporary and will be removed once the leasing office in the Springs at Mishawaka clubhouse is completed.

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



Property Owner/Title Owner Signature

Jordan Teichen, Development Director (on behalf of Continental 764 Fund LLC)

Print Property Owner Name

Contact Person:

Jordan Teichen
W134N8675 Executive Pkwy
Menomonee Falls, WI 53051
(414) 534-4323
jteichen@cproperties.com

CONTINENTAL PROPERTIES COMPANY, INC.
CONTRACT EXHIBITS

EXHIBIT X – Leasing Trailer Guidelines

To the

Agreement between Continental 764 Fund LLC and Rohde Construction Company, Inc

Dated 7/10/2024 for the Springs at Mishawaka

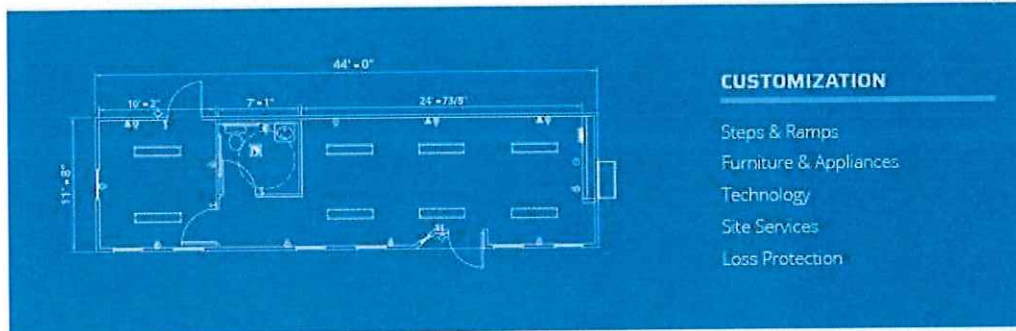
Mishawaka, IN



48' x 12' SALES OFFICE



In addition to your office solution, we can provide additional products and services that complete your space- creating a more productive, comfortable, and safe work environment.



CUSTOMIZATION

- Steps & Ramps
- Furniture & Appliances
- Technology
- Site Services
- Loss Protection

Dimensions

48' Long (including hitch)
44' Box size
12' Wide
8' Ceiling height

Exterior Finish

Aluminum or wood siding
I-Beam Frame
Standard drip rail gutters

Interior Finish

Vinyl covered gypsum walls
Commercial carpeting throughout
Gypsum or T-grid suspended ceiling

Electric

Fluorescent ceiling lights
Single phase electric and breaker panel

Heating/Cooling

Central HVAC and duct heating

Windows/Doors

Large glass windows
French door

Other

Large display/reception area
Private office(s)
Handicapped accessible restroom
Coffee bar

* Photos are representational; actual products vary.
Additional floor plans and specifications may vary from those shown and are subject to in-stock availability

800.782.1500 | WILLSCOT.COM

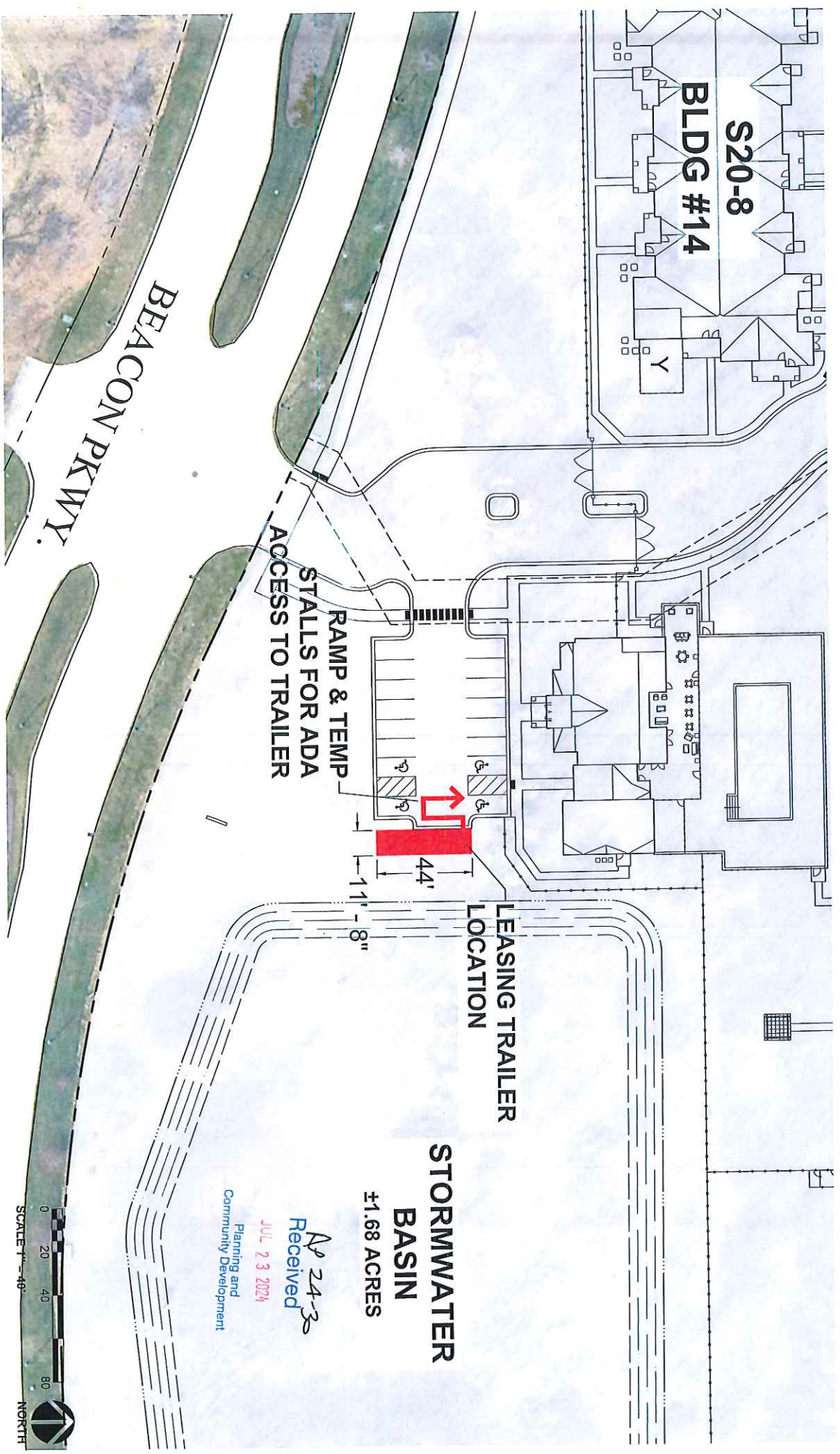
GC INITIAL _____

OWNER INITIAL _____

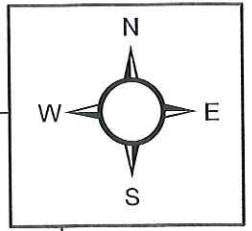
LEASING TRAILER LOCATION EXHIBIT

MISHAWAKA - INDIANA

7/16/2024



AP 24-3
Received
JUL 23 2024
Planning and
Community Development



FIR RD

AP 24-30

N FIR RD

VERBANA LN

NEWBERRY LN

HAZELWOOD LN

LIATRIS LN

GALLERIA DR

PENSTEMON PL

ARONIA RD

BEACON PKWY

Location Map

APPEAL 24-30

CONTINENTAL PROPERTIES
SPRINGS AT MISHAWAKA

NE CORNER OF N FIR ROAD
AND BEACON PARKWAY

USE VARIANCE TO ALLOW
A TEMPORARY SALES TRAILER

AUG 02 2024

City Clerk
Mishawaka, IN

PROPOSED ORDINANCE NO. 2024-21

ORDINANCE NO. _____

**AN ORDINANCE AMENDING TITLE 15, CHAPTER 162, OF THE MUNICIPAL CODE OF THE CITY OF
MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, HENCEFORTH KNOWN AS
"EROSION CONTROL AND POST-CONSTRUCTION STORMWATER POLLUTION PREVENTION
ORDINANCE" OF THE CITY OF MISHAWAKA, INDIANA**

WHEREAS, safeguarding public health, safety, the environment, and the general welfare of our citizens by controlling the introduction of pollutants into the MS4 to the maximum extent practicable, as mandated by federal law.

WHEREAS, the Common Council believes it is in the best interests of the City to align our city's practices which amends Section 62-351 which establishes robust methods for managing pollutants and ensuring compliance with the National Pollutant Discharge Elimination System (NPDES) and the Indiana Department of Environmental Management (IDEM) MS4 General Permit (MS4GP) processes.

NOW, THEREFORE, BE IT ORDAINED, by the Common Council of the City of Mishawaka, Indiana, as follows: The adoption of Section 62-351 is a significant step towards enhancing our city's environmental stewardship and ensuring the sustainable development of Mishawaka. By implementing these regulations and necessary revisions, we can better protect our natural resources, maintain a clean and safe environment, and improve the quality of life for our residents.

Section 1. , We commit to safeguarding our environment and enhancing the quality of life for our citizens. It is therefore necessary to Amend and Approval of Chapter Chapter 62 - UTILITIES ARTICLE II. - SEWER SERVICE DIVISION 11. ILLICIT DISCHARGES thus demonstrating our dedication to responsible environmental stewardship and community welfare by our focus in the following:

1. **Regulating Pollutant Contribution:** This section aims to control the contribution of pollutants to the municipal separate storm sewer system by any individual or entity, ensuring that our stormwater remains as clean as possible.
2. **Prohibiting Illicit Discharges and Illegal Connections:** By prohibiting illicit discharges and illegal connections to the MS4, we can prevent harmful substances from entering our stormwater system and protect our water quality.
3. **Preventing Non-Stormwater Discharges:** This provision seeks to prevent non-stormwater discharges, which are often the result of spills, inappropriate dumping, or

disposal, from entering the MS4, thereby reducing pollution and protecting our environment.

4. **Establishing Legal Authority:** The division provides the necessary legal framework for conducting inspections, monitoring, and enforcement procedures to ensure compliance with these regulations, promoting accountability and adherence.
5. **Ensuring Proper BMP Installation and Maintenance:** The division also focuses on the proper installation, operation, and maintenance of construction site best management practices (BMPs) for controlling silt, water quantity, and water quality. This is essential for preventing erosion and managing stormwater runoff effectively.

DIVISION 11. ILLICIT DISCHARGES

Sec. 62-351. Purpose and intent.

The purpose of this division is to protect the public health, safety, environment and general welfare of the citizens of the City through the regulation of non-stormwater discharges to the City's separate storm sewer system to the maximum extent practicable as required by federal law. This division establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) and the Indiana Department of Environmental Management (IDEM) MS4 General Permit (MS4GP) processes. The objectives of this division are to:

- (1) Regulate the contribution of pollutants to the municipal separate storm sewer system by any person;
- (2) Prohibit illicit discharges and illegal connections to the municipal separate storm sewer system;
- (3) Prevent non-stormwater discharges, generated as a result of spills, inappropriate dumping or disposal, to the municipal separate storm sewer system;
- (4) To establish legal authority to carry out all inspection, monitoring and enforcement procedures necessary to ensure compliance with this division; and
- (5) To ensure the proper installation, operation, and maintenance of construction site best management practices (BMPs) for silt, water quantity, and water quality control.

(Ord. No. 5265, § 2, 8-2-2010)

Sec. 62-352. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accidental discharge means a discharge prohibited by this division which occurs by chance and without planning or thought prior to occurrence.

Best management practices (BMPs) means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants, directly or indirectly, to stormwater, receiving waters, or stormwater conveyance systems. Best management practices also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal or drainage from raw materials storage.

City planner means the City planner or their designated representative.

Clean Water Act means the Federal Water Pollution Control Act (33 USC 1251 et seq.), and any subsequent amendments thereto.

Construction activity means land disturbing activities subject to the City's construction site erosion control ordinance or NPDES general construction permits. Such activities include, but are not limited to, clearing and grubbing, grading, excavating, and demolition.

Department of Engineering means the City department responsible for implementing the provisions of this division.

Hazardous materials means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illegal connection means either of the following:

- (1) Any pipe, open channel, drain or conveyance, manmade or natural whether on the surface or subsurface, which allows an illicit discharge to enter the storm drain system including, but not limited to, any conveyances which allow any nonstormwater discharge including sewage, process wastewater, and wash water to enter the storm drain system, regardless of whether such pipe, open channel, drain or conveyance has been previously allowed, permitted, or approved by an authorized enforcement agency; or
- (2) Any pipe, open channel, drain or conveyance connected to the municipal separate storm sewer system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

Illicit discharge means any direct or indirect non-stormwater discharge to the municipal separate storm sewer system, except as exempted in section 62-356.

Industrial activity means activities subject to NPDES industrial permits as defined in 40 CFR 122.26(b)(14).

MS4 coordinator means the MS4 coordinator or their designated representative.

Municipal separate storm sewer system (MS4) means any facility designed or used for collecting and/or conveying stormwater; including, but not limited to, any roads with drainage systems, highways, municipal streets, curbs, gutters, inlets, catch basins, piped storm drains, pumping facilities, structural stormwater controls, ditches, swales, natural and manmade or altered drainage channels, reservoirs, and other drainage structures, and which is:

- (1) Owned or maintained by the City;
- (2) Not a combined sewer;
- (3) Not part of a publicly owned treatment works; and
- (4) Located in an easement on any recorded subdivision/development plat.

National Pollutant Discharge Elimination System (NPDES) stormwater discharge permit means a permit issued by the state department of environmental management (IDEM) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Nonstormwater discharge means any discharge to the storm drain system that is not composed entirely of stormwater.

Person means, except to the extent exempted from this division, any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, City, county or other political subdivision of the state, any interstate body or any other legal entity.

Pollutant means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: Paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents (biodegradable or otherwise); degreasers; cleaning chemicals; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatable; pesticides, herbicides, and fertilizers; liquid and solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; concrete and cement; and noxious or offensive matter of any kind that may cause or contribute to pollution.

Pollution means the contamination or other alteration of any water's physical, chemical or biological properties by the addition of any constituent and includes, but is not limited to, a change in temperature, taste, color, turbidity, or odor of such waters, or the discharge of any liquid, gaseous, solid, radioactive, or other substance into any such waters as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety, welfare, or environment, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

Premises means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Storm drainage system means publicly-owned facilities or those facilities shown as stormwater drainage easements on plats for subdivisions or developments by which stormwater is collected and/or conveyed; including, but not limited to, any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human made or altered drainage channels, reservoirs, and other drainage structures.

Stormwater pollution prevention plan (SWPPP) means a document which describes the best management practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable.

Stormwater runoff or *stormwater* means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Structural stormwater control means a structural stormwater management facility or device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

Wastewater means any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

Waters of the state means any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface and subsurface water, natural or artificial, lying within or forming a part of the boundaries of the State of Indiana which are not entirely confined and retained completely upon the property of a single person.

(Ord. No. 5265, § 2, 8-2-2010)

Sec. 62-353. Applicability.

The provisions of this division shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by the Department of Engineering or the NPDES permitting authority.

(Ord. No. 5265, § 2, 8-2-2010)

Sec. 62-354. Compatibility with other regulations.

This division is not intended to modify or repeal any other division, rule, regulation, other provision of law. The requirements of this division are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this division imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

(Ord. No. 5265, § 2, 8-2-2010)

Sec. 62-355. Responsibility for administration.

The City's Department of Engineering, the department of City planning and MS4 coordinator shall administer, implement, and enforce the provisions of this division.

(Ord. No. 5265, § 2, 8-2-2010)

Sec. 62-356. Prohibitions.

(a) *Illicit discharges.*

- (1) No person shall throw, drain, drip, leak, or otherwise discharge, cause, or allow others under their control to throw, drain, drip, leak, or otherwise discharge onto surfaces that will allow them to be conveyed into the municipal separate storm sewer system, watercourse, or waterbody any pollutants or waters containing any pollutants, other than stormwater.
- (2) The commencement, conduct or continuance of any illegal discharges of the following, but not limited to, into the storm drain system or local waterbody is prohibited:
 - a. Automobile maintenance and operation sources such as untreated commercial car wash wastewaters, untreated radiator flushing wastewaters, untreated engine degreasing wastes, improper oil, gasoline, transmission fluid, and other automotive fluids disposal, leaking underground storage tanks, and untreated leaking of oils, gasoline and other automotive fluids.
 - b. Landscape irrigation sources such as direct spraying of fertilizers, pesticides or herbicides onto impervious surfaces and the over-spraying of fertilizers, pesticides or herbicides onto landscaping.
 - c. Concrete washout material must be properly contained within an appropriate practice and any waste material properly disposed of.
- (3) The following discharges are exempt from the prohibition provisions of subsections (a)(1) and (2) of this section:
 - a. Water line flushing performed by a government agency, discharge from other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising groundwater, uncontaminated groundwater infiltration to storm drains, uncontaminated pumped groundwater, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, noncommercial washing of vehicles, natural riparian habitat or wetland flows, swimming pools (only if dechlorinated, typically less than one part per million chlorine), firefighting activities, and any other water source not containing pollutants;
 - b. Discharges or flows specified in writing by the state department of environmental management (IDEM) or the United States Environmental Protection Agency (EPA) as being necessary to protect public health and safety;

- c. Dye-testing is an allowable discharge, but requires a notification to the Department of Engineering prior to the event, except as administered by the City utilities sewer maintenance department;
 - d. The prohibition provisions in subsection (a) of this section shall not apply to any nonstormwater discharge permitted under an NPDES permit or order issued to the discharger and administered under the authority of the state and the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.
 - e. Stormwater runoff from agricultural, timber harvesting, and mining activities, unless determined to contain pollutants not associated with such activities or in excess of standard practices. Farm residences are *not* included in this exemption.
- (b) *Illegal connections.* The construction, connection, use, maintenance or continued existence of any illegal connection to the storm drain system is prohibited.
- (1) This prohibition expressly includes, without limitation, illegal connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
 - (2) A person violates this division if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.
 - (3) Improper connections in violation of this division must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the Department of Engineering.
 - (4) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the Department of Engineering requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be completed, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the Department of Engineering.
- (c) *Storage of hazardous or toxic materials.* Storage or stockpiling of hazardous or toxic material within any watercourse, or in its associated floodway or floodplain, is strictly prohibited. Storage or stockpiling of hazardous or toxic material, including sewage treatment plant stockpiles, on active construction sites must include adequate protection and/or containment so as to prevent any such materials from entering any temporary or permanent stormwater conveyance or watercourse.

(Ord. No. 5265, § 2, 8-2-2010)

Sec. 62-357. Industrial or construction or land disturbing activity discharges.

- (a) Any person subject to an industrial or construction activity NPDES (or state) stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit shall be required in a form acceptable to the Department of Engineering prior to allowing discharges to the MS4.
- (b) Projects subject to a City building permit, including single-family residential building permits, must develop and adhere to a sediment and erosion control plan. Submittal to and approval of this plan by the City's department of planning is required prior to obtaining a building permit. Failure to properly implement the approved plan constitutes a violation of this division.

- (c) As a minimum, the City will require best management practice (BMP) implementation for any land disturbing activity, including land or individual lot clearing, grubbing, landscaping, etc., that may cause or contribute to pollution or contamination of stormwater, the MS4, or waters of the United States.

(Ord. No. 5265, § 2, 8-2-2010)

Sec. 62-358. Access and inspection/monitoring of properties and facilities.

The Department of Engineering and/or the MS4 coordinator shall be permitted to enter and inspect properties and facilities at reasonable times as often as may be necessary to determine compliance with this division.

- (1) City personnel shall be permitted to enter and inspect properties and facilities subject to regulation under this division as often as may be necessary to determine compliance with this division. If a property or facility has security measures in force which require proper identification and clearance before entry into its premises, the owner or operator shall make the necessary arrangements to allow access to representatives of the City.
- (2) The owner or operator shall allow the City personnel ready access to all parts of the premises for the purposes of inspection, sampling, photography, videotaping, examination and copying of any records that are required under the conditions of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.
- (3) City personnel shall have the right to set up on any property or facility such devices as are necessary in the opinion of the City personnel to conduct monitoring and/or sampling of the facility's stormwater discharges.
- (4) City personnel may require the owner or operator to install monitoring equipment and perform monitoring as necessary and make the monitoring data available to City personnel. This sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the owner or operator at his own expense. All devices used to measure flow and quality shall be calibrated to ensure their accuracy.
- (5) Any temporary or permanent obstruction to the property or facility to be inspected and/or sampled shall be allowed by the owner or operator at the written or oral request of City personnel. Failure to provide safe and easy access to the property or facility to be inspected and/or sampled is a violation of this division.
- (6) Unreasonable delays in allowing City personnel access to a facility is a violation of this division.
- (7) If City personnel have been refused access to any part of the premises from which stormwater is discharged, and are able to demonstrate probable cause to believe that there may be a violation of this division, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this division or any order issued hereunder, or to protect the overall public health, safety, environment and welfare of the community, then the City personnel may seek issuance of a search warrant from any court of competent jurisdiction or refer the case to the NPDES permitting authority.
- (8) Following the final completion of construction, the City has the authority to inspect new development and re-development sites to verify that all on-site stormwater conveyances and connections to the storm drainage system are in compliance with this section.

(Ord. No. 5265, § 2, 8-2-2010)

Sec. 62-359. Requirement to prevent, control, and reduce stormwater pollutants.

- (a) The board of public works of the City has adopted construction standards identifying best management practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the storm drain system, or waters of the United States. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and nonstructural BMPs. Further, any person responsible for a property or premises, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and nonstructural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.
- (b) Every property owner through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that could pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

(Ord. No. 5265, § 2, 8-2-2010)

Sec. 62-360. Notification of accidental discharges and spills.

- (a) Notwithstanding other requirements of law, as soon as any person responsible for a facility, activity or operation, or responsible for emergency response for a facility, activity or operation has information of any known or suspected release of pollutants or nonstormwater discharges from that facility or operation which are resulting or may result in illicit discharges or pollutants discharging into stormwater, the MS4, waters of the state, or waters of the United States, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release so as to minimize the effects of the discharge. In the event of such release, and in addition to other notification requirements, the facility shall notify the Department of Engineering in person, by phone, facsimile or by e-mail no later than the day following such discharge. Notification in person or by phone shall be confirmed by written notice addressed and mailed to the Department of Engineering within three business days of the notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained and made available for inspection for at least three years.
- (b) In the event of such a release of hazardous materials, emergency response agencies and/or other appropriate local and state agencies shall be immediately notified.
- (c) For facilities that operate under existing NPDES permits for stormwater discharge, spill reporting shall be made to the permitting authority in accordance with the permit. The Department of Engineering shall be provided with copies of any written notification required by the NPDES permit.
- (d) Failure to provide notification of a release as provided above is a violation of this division.

(Ord. No. 5265, § 2, 8-2-2010)

Sec. 62-361. Violations, enforcement and penalties.

- (a) *Violations.* It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this division. Any person who has violated or continues to violate the provisions of this division, may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law.
- (b) *Enforcement.*
 - (1) In the event the violation constitutes an immediate danger to public health or public safety, City personnel or their agents are authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The City shall be entitled to compensation for any expenses involved in abating the violation and/or restoring the property. The City shall have the option of performing the work and placing a lien on the property for recovery of such documented expenses.
 - (2) Whenever City personnel finds that a person has violated a prohibition or failed to meet a requirement of this division, Department of Engineering may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:
 - a. The performance of monitoring, analyses, and reporting;
 - b. The elimination of illicit discharges and illegal connections;
 - c. That violating discharges, practices, or operations shall cease and desist;
 - d. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
 - e. Payment of costs to cover administrative and abatement costs, attorney's fees, court costs, and other expenses associated with enforcement of this division, including sampling and monitoring expenses;
 - f. Payment of penalty determined in subsection (c) of this section; and
 - g. The implementation of pollution prevention practices (i.e., source control or treatment BMPs).
- (c) *Penalties.* Any person found to be in violation of this division that fails to comply with a compliance directive issued by the City and referenced in section 62-331 shall be punishable as provided in section 1-7.
- (d) *Remedies not exclusive.* The remedies listed in this division are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

(Ord. No. 5265, § 2, 8-2-2010)

Secs. 62-362—62-380. Reserved.

This Ordinance shall be in full force and effect upon its passage, approval, and publication pursuant to Indiana law.

Passed by the Common Council of the City of Mishawaka, Indiana, on this _____ day of _____, 2024.

Gregg Hixenbaugh, President

ATTEST:

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

Presented to the Mayor this _____ day of _____, 2024.

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

Approved this _____ day of _____, 2024.

David A. Wood
Mayor

AUG 02 2024

City Clerk
Mishawaka, IN

Dear Honorable Members of the Mishawaka Common Council,

I am writing to present to you for your consideration an important addition to the Mishawaka City Ordinances: Section 62-351, which outlines the purpose and intent of regulating non-stormwater discharges to the City's separate storm sewer system (MS4). This section is crucial for safeguarding public health, safety, the environment, and the general welfare of our citizens by controlling the introduction of pollutants into the MS4 to the maximum extent practicable, as mandated by federal law.

Section 62-351 establishes robust methods for managing pollutants and ensuring compliance with the National Pollutant Discharge Elimination System (NPDES) and the Indiana Department of Environmental Management (IDEM) MS4 General Permit (MS4GP) processes. The specific objectives of this division are as follows:

1. **Regulating Pollutant Contribution:** This section aims to control the contribution of pollutants to the municipal separate storm sewer system by any individual or entity, ensuring that our stormwater remains as clean as possible.
2. **Prohibiting Illicit Discharges and Illegal Connections:** By prohibiting illicit discharges and illegal connections to the MS4, we can prevent harmful substances from entering our stormwater system and protect our water quality.
3. **Preventing Non-Stormwater Discharges:** This provision seeks to prevent non-stormwater discharges, which are often the result of spills, inappropriate dumping, or disposal, from entering the MS4, thereby reducing pollution and protecting our environment.
4. **Establishing Legal Authority:** The division provides the necessary legal framework for conducting inspections, monitoring, and enforcement procedures to ensure compliance with these regulations, promoting accountability and adherence.
5. **Ensuring Proper BMP Installation and Maintenance:** The division also focuses on the proper installation, operation, and maintenance of construction site best management practices (BMPs) for controlling silt, water quantity, and water quality. This is essential for preventing erosion and managing stormwater runoff effectively.

The adoption of Section 62-351 is a significant step towards enhancing our city's environmental stewardship and ensuring the sustainable development of Mishawaka. By implementing these regulations, we can better protect our natural resources, maintain a clean and safe environment, and improve the quality of life for our residents.

I urge the Common Council to review and approve Section 62-351, demonstrating our collective commitment to responsible environmental management and compliance with federal and state regulations. Your support is crucial for the successful implementation of these important standards.

Thank you for your attention to this matter. I look forward to working with you to ensure the effective management of our stormwater system and the protection of our community's health and welfare.

Sincerely,

Chris Jamrose, City of Mishawaka

AUG 02 2024

City Clerk
Mishawaka, IN

PROPOSED ORDINANCE NO. 2024-22

ORDINANCE NO. _____

**AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA,
AMENDING THE MUNICIPAL CODE
BY UPDATING SEWER SERVICES TO COMPLY WITH EPA REGULATIONS**

WHEREAS, ensuring the health, safety, and welfare of our community is paramount and it is therefore necessary to set stringent standards for managing erosion, controlling stormwater pollution post-construction.

WHEREAS the Common Council believes it is in the best interests of the City to align our city's practices with the National Pollutant Discharge Elimination System (NPDES) permit process and Indiana Department of Environmental Management's (IDEM) Construction Stormwater General Permit (CSGP).

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

Section 1. , We commit to safeguarding our environment and enhancing the quality of life for our citizens. It is therefore necessary to Amend and Approval of Chapter 117 EROSION CONTROL thus demonstrating our dedication to responsible environmental stewardship and community welfare by our focus in the following:

Pollutant Regulation: We aim to regulate pollutants entering our drainage systems, ponds, lakes, and other stormwater receivers, ensuring a cleaner environment.

Storm Sewer System Protection: Control stormwater discharges into the MS4 by any user, minimizing pollution at its source.

Impact Mitigation: Address and reduce the negative impacts of land disturbing activities on nearby properties and the public.

Enforcement and Compliance: Establish legal authority for inspection, surveillance, and monitoring to ensure adherence to the ordinance.

Flood and Erosion Prevention: Minimize flooding, siltation, stream temperature increases, and stream bank erosion, maintaining stream channel integrity and enforcing no net increase in stormwater runoff from new developments.

Nonpoint Source Pollution Reduction: Reduce nonpoint source pollution from stormwater runoff due to development, protecting local water quality.

Erosion and Pollution Control: Implement and maintain stormwater management controls to reduce soil erosion and nonpoint source pollution effectively.

Chapter 117 EROSION CONTROL¹

ARTICLE I. IN GENERAL

Sec. 117-1. Purpose.

To provide for the health, safety, and general welfare of the public, the City finds it necessary to adopt standards concerning erosion control, post-construction stormwater pollution prevention, and other provisions related to the regulation of earthmoving, excavation, and stormwater discharge. This chapter provides methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with the requirements of the National Pollutant Discharge Elimination System (NPDES) permit process and the Indiana Department of Environmental Management's (IDEM) Construction Stormwater General Permit (CSGP). Specifically, the City has found that soil erosion resulting from nonagricultural land disturbing activities may cause a significant amount of sediment and other pollutants to be transported off-site to locations including adjacent properties, public streets, storm sewer structures, ditches, streams, wetlands, lakes and rivers. Furthermore, the proper installation and operation of stormwater management measures is necessary to ensure that soil erosion and stormwater quality issues do not arise after the completion of a land disturbing activity. The regulation of land disturbing activities will minimize the amount of sediment and other pollutants, resulting from soil erosion due to land disturbing activities, from being transported off site to adjacent public or private lands. It will also minimize erosion and stormwater quality issues that arise due to the long-term operation of the site after construction. This chapter applies to nonagricultural land disturbing activities, including industrial, commercial, institutional, residential, utility, and roadway development. The objectives of this chapter are:

- (1) To regulate the contribution of pollutants to the municipal drainageways, ponds, lakes, and other stormwater receivers.
- (2) To regulate the contribution of pollutants to municipal separate storm sewer system (MS4) by stormwater discharges by any user.
- (3) To reduce the potential negative impact of land disturbing activities on adjacent properties and the public at large.
- (4) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this chapter.
- (5) To minimize or reduce flooding, siltation, increases in stream temperature, and stream bank erosion and maintain the integrity of stream channels and to continue to enforce no net increase of stormwater runoff from newly developed sites.

¹State law reference(s)—Legislative policy concerning soil and water conservation, IC 14-32-1-1 et seq.; ability to adopt, codify and enforce ordinances, IC 36-1-4-11.

- (6) To minimize increases in nonpoint source pollution caused by stormwater runoff from development, which could otherwise degrade local water quality.
- (7) To reduce soil erosion, and nonpoint source pollution, wherever possible, through stormwater management controls and to ensure that these management controls are properly maintained.

(Ord. No. 5085, § 1(162.01), 12-4-2006)

Sec. 117-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Administering authority means the department of City planning, as it relates to the issuance of improvement location permits. The department of City planning, the Department of Engineering, or any duly authorized representative of the City utilities, as it relates to identifying violations and placing stop work orders.

Agricultural land use means use of land for the production of animal or plant life, including forestry, pasturing or yarding livestock, and planting, growing, cultivating, and harvesting crops for human or livestock consumption for profit. The term "agricultural land" further clarified as uses that require specific verifiable tax filings relative to the agricultural nature of the operation.

Best management practices (BMPs) means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants, directly or indirectly, into stormwaters, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials.

City planner means the City planner or their designated representative.

Construction Stormwater Pollution Prevention Plan (SWPPP) means a plan developed to minimize the impact of stormwater pollutants resulting from construction activities.

Department of Engineering means the City Department of Engineering as the designated unit of government given the authority to review the performance specifications of this chapter.

Director of engineering means the director of engineering or their designated representative.

Erosion means the detachment and movement of soil, sediment, or rock fragments by any means including water, wind, ice, or gravity.

Erosion control measure means a practice or a combination of practices to control erosion and resulting sedimentation.

Erosion control plan means a written and/or graphic description of pertinent information concerning erosion control measures designed to meet the requirements of this chapter as submitted by the applicant for review and approval by the department of City planning.

Exposed land uses means those activities that result in continuous or habitual nonagricultural disturbance of land not associated with construction. Exposed land uses shall include, but shall not be limited to, nonsurfaced public or private race tracks and recreational yards, driveways and parking areas, mining and extraction sites, manufacturing storage yards, site clearing and tree harvesting, and other manmade activities that cause land to be subject to erosion due to the lack of pavement, vegetative cover, or other stable surfacing. For the purposes of this chapter, gravel shall not be considered a stable surface when used for vehicular traffic and parking.

Land disturbing activity means any manmade change of the land surface, including removing vegetative cover, excavating, filling, transporting, and grading. In the context of this chapter, it includes only nonagricultural land disturbing activities.

Land users means those entities, individually and collectively who are performing land disturbing activities or have caused these activities to occur. These include but are not limited to owners, lot operators, builders, contract agents, lessees, renters, and occupiers. For enforcement purposes, the owner is the entity continually responsible for meeting the performance requirements of this chapter.

Long-term operation and maintenance agreement means a written description of the pertinent information concerning the long-term maintenance schedule and expectations to ensure that stormwater management BMPs are kept functional. The maintenance agreement will specify minimum operation and maintenance requirements and intervals to be performed by the property owner.

Lot Operator means a builder, contractor or subcontractor working on an individual lot.

Lot Owner means a person who has a financial interest in the construction activities for an individual lot.

Nonagricultural land use means use of land for industrial, commercial, manufacturing, wholesale or retail sale of goods or services, residential, institutional, and recreational uses of land. These uses shall also include utility and public works projects including lanes, sewers, conduits, alleys, and streets, and other land uses not included under agricultural land use.

Post-construction stormwater pollution prevention plan means a written and/or graphic description of pertinent information concerning permanent stormwater pollution prevention measures designed to meet the requirements of this chapter and submitted for review prior to the issuance of an improvement location permit and approved by the Department of Engineering.

Runoff means the portion of precipitation from such sources as rainfall, snowmelt, or irrigation water that flows over the ground surface.

Site means the entire area included in the legal description of the land on which land disturbing activity has been proposed in the permit application or is currently occurring.

Stormwater management system means the structural or nonstructural practices that are designed and constructed to reduce stormwater runoff pollutant loads, discharge volumes, and/or establish storage rates on-site.

Trained Individual means an individual who is trained and experienced in the principles of stormwater management, including erosion and sediment control as is demonstrated by completion of coursework, state registration, professional certification, or annual training that enable the individual to make judgments regarding stormwater management, treatment, and monitoring.

(Ord. No. 5085, § 1(162.09), 12-4-2006)

Sec. 117-3. Authority.

This chapter is adopted under the authority granted by IC 36-1-4-11. This authority provides for the administration, enforcement, and amendment of this chapter for controlling soil erosion and other provisions related to the regulation of stormwater in the City. No statement contained herein shall be construed to interfere or conflict with any additional ordinance, code, or law of the City. In addition, no statement contained herein shall be construed to interfere, conflict, or be deemed to fulfill the requirements of any other applicable authority or agency.

(Ord. No. 5085, § 1(162.02), 12-4-2006)

Sec. 117-4. Applicability of chapter provisions.

This chapter applies to all nonagricultural land disturbing activities within the incorporated boundaries of the City. Projects approved by the City board of public works and safety funded in part by City tax dollars where

performance and maintenance bonds are required are exempt from the permit and bonding requirements of this chapter, but shall be required to comply with all performance requirements of section 117-10.

Additionally, new retail gasoline outlets and new MS4-owned fueling areas or those that replace their existing tank systems, regardless of size are required to install appropriate measures to reduce lead, copper, zinc, and polyaromatic hydrocarbons in stormwater run-off.

(Ord. No. 5085, § 1(162.03), 12-4-2006)

Sec. 117-5. Calculation of areas and volumes.

Due to the quantitative nature of calculating areas and volumes, fractional numbers may arise. For the purposes of this chapter, areas shall be calculated to the nearest square foot. Volumes shall be calculated to the nearest cubic yard.

(Ord. No. 5085, § 1(162.04), 12-4-2006)

Sec. 117-6. Classification of land disturbing activities.

This chapter recognizes that different types of construction and the relative size of land disturbing activities inherently have differing degrees of potential impact relative to erosion and sediment runoff. As such, separate classifications have been established to vary the regulation of land disturbing activities proportionally to the potential impact of the activity. Any individual land disturbing less than the thresholds described must still adhere to the requirements of this section if it is part of a larger development falling within the thresholds described below.

(Ord. No. 5085, § 1(162.05), 12-4-2006)

Sec. 117-7. Light land disturbing activities.

Nonagricultural land disturbing activities including residential, industrial, commercial, institutional, utility, and highway construction falling within the following parameters:

- (1) Activities involving the excavation, filling, or combination thereof of no more than 40 cubic yards of soil, sand, gravel, stone, or similar material.
- (2) Activities which disturb no more than 2,000 square feet of land.
- (3) Emergency repair or replacement of existing utility lines located within easements or rights-of-way as required to restore interrupted service or imminent hazards.
- (4) Public utility improvements or other public projects that require a performance bond to the City relative to the satisfactory completion of land disturbing activities.

(Ord. No. 5085, § 1(162.06), 12-4-2006)

Sec. 117-8. Moderate land disturbing activities.

Nonagricultural land disturbing activities including residential, industrial, commercial, institutional, utility, and highway construction falling within the following parameters:

- (1) Activities involving the excavation, filling, or combination thereof of more than 40 cubic yards but less than or equal to 2,000 cubic yards of soil, sand, gravel, stone, or similar material.
- (2) Activities which disturb more than 2,000 square feet of land but less than one acre of land.

(Ord. No. 5085, § 1(162.07), 12-4-2006)

Sec. 117-9. Significant land disturbing activities.

Nonagricultural land disturbing activities including residential, industrial, commercial, institutional, utility, and highway construction falling within the following parameters:

- (1) Activities involving the excavation, filling, or combination thereof of more than 2,000 cubic yards of soil, sand, gravel, stone, or similar material.
- (2) Activities that disturb one acre of land or more.

(Ord. No. 5085, § 1(162.08), 12-4-2006)

Sec. 117-10. Nonagricultural land disturbing activity performance requirements.

Unless otherwise specified herein, the following requirements apply to all nonagricultural land disturbing activities, including the light, moderate, and significant levels as identified herein, within the incorporated boundaries of the City. Each item listed below may not be applicable to all land disturbing activities. As such, performance requirements may vary based on the specific land disturbing activities and soil characteristics. Best management practices shall be utilized to address the prevention, control, and reduction of stormwater pollutants on a site-specific basis.

- (1) *Site dewatering/discharge.* Sediment-laden water flowing from the site shall be detained to allow sediment to settle and accumulate prior to discharge. Water shall not be discharged in a manner that causes erosion, including the scouring of a receiving channel. Discharge into the existing storm sewer shall not be performed unless previously approved by the City Department of Engineering, or applicable jurisdictional agency.
- (2) *Waste and material disposal.* Wastes or unused building materials, including, but not limited to, garbage, debris, cleaning wastes, wastewater, toxic materials, and hazardous substances shall not be carried by runoff from a site. Proper disposal of all wastes and unused building materials, in line with the nature of the waste or material is required.
- (3) *Roadway protection.* Public or private roadways shall be kept cleared of accumulated sediment. If appreciable sedimentation occurs after a storm event, the sediment will be removed and deposited on the parcels of land from where it likely originated. Sediment being tracked from a site onto public or private roadways shall be minimized.
- (4) *Property protection.* Adjacent properties shall be kept cleared of accumulated sediment. If appreciable sedimentation occurs after a storm event, the sediment shall be removed and deposited on the parcels of land from where it likely originated, where legally permitted. Permission, means, and methods of clean up shall be secured from impacted property owners prior to removal.
- (5) *Drain inlet protection.* All storm drain inlets within land disturbing activity areas shall be protected against sedimentation with barriers meeting accepted design criteria, standards, and specifications. In addition, storm drain inlets located outside of land disturbing activity areas, which accept stormwater runoff from a land disturbing activity area, shall also be protected in an identical manner.
- (6) *Exposed land uses.* Exposed land uses shall be prohibited, except where specifically identified as a permitted or conditional use within chapter 137, zoning. Any exposed land use, either permitted by right or conditional, shall require prior site plan approval pursuant to the requirements identified within section 137-35.
- (7) *On-site erosion control.* The following items apply to significant land disturbing activities and shall be required throughout the period of the time when land disturbing activities are taking place:

- a. Stormwater runoff passing through a site from adjacent areas shall be controlled by diverting it around disturbed areas whenever possible. Alternatively, the existing channel may be improved to prevent erosion or sedimentation from occurring.
- b. Barring unforeseeable weather conditions, all disturbed ground left inactive for seven or more days shall be stabilized, by seeding, sodding, mulching, covering, sediment fences, or with other barriers meeting accepted design criteria, standards, and specifications.
- c. With disturbed areas of more than ten acres, where drainage is in the same direction or where runoff will result in loss of soil, an abatement or recovery program is required. When the disturbed area is stabilized, the sediment basin can be removed. If erosion is likely to continue, the sediment basin shall be maintained by the existing or subsequent landowners. The discharge rate from a sediment basin shall not cause scouring in the receiving channel.
- d. With disturbed areas of less than or equal to ten acres, filter fences, straw bales, or equivalent erosion control measures, placed along all side-slope and down-slope sides of the site, shall be required. Also, if concentrated runoff passes through the site, filter fences shall be placed along the edges of the concentrated flow area to reduce the amount of sediment removed from the site. If these measures are not sufficient to control off-site sedimentation, a sediment basin may still be required to manage severe slopes.
- e. Erosion from all soil storage piles containing more than ten cubic yards of material shall be controlled by placing straw bales, filter fence, or other best management practices. Moreover, any soil storage pile containing more than ten cubic yards of materials shall be located at least 25 feet upslope from a roadway, drainage channel, or adjacent property. Furthermore, if remaining in existence for more than seven days, the storage pile shall be stabilized by mulching, vegetative cover, tarps, or other approved best management practice.

(Ord. No. 5085, § 1(162.10), 12-4-2006)

Sec. 117-11. Significant land disturbing activity post-construction performance requirements.

Unless otherwise specified herein, the following requirements apply to all nonagricultural land disturbing activities classified as significant as identified herein, within the incorporated boundaries of the City. Performance requirements may vary based on the specific land disturbing activities and soil characteristics. Best management practices shall be utilized to address the prevention, control, and reduction of stormwater pollutants on a site-specific basis. Project completion and release of the performance bond shall not exempt the site owner from the performance activities listed below. The maintenance and inspection measures contained in this section are permanent measures that apply throughout the life of the site.

- (1) Install and maintain each post construction stormwater management system approved as part of the post-construction stormwater pollution prevention plan. Each measure shall be installed in accordance with the approved plan. As-builts of applicable stormwater management systems will be required and may be field verified prior to the release of the performance bond.
- (2) Maintain all drainage systems and stormwater management facilities in good working order.
- (3) Maintain natural drainage for any portion of the real estate not served by a constructed drainage system.
- (4) Maintain all erosion sediment control systems installed on the real estate or identified as part of the construction plan unless such systems were temporary measures only intended to be in place during construction.
- (5) Maintain all drainage channels, swales and basins installed or identified as part of the construction plan so that they do not cause erosion in the receiving channel, the outlet, or basin side-slope reducing the

performance of the system. Keep all natural features such as wetlands and bodies of water protected from stormwater run-off pollutants.

- (6) Inspect all stormwater management facilities on a schedule sufficient to ensure compliance with this chapter. These inspections shall occur on at least an annual basis.
- (7) Provide for the removal of silt, litter, grass cuttings, vegetation and other debris from all catchbasins, inlets and stormwater retention/detention areas.
- (8) Maintain records of all maintenance and inspection activities related to the stormwater management measures. Records shall be retained for at least three years and must be made available to City personnel upon request.

(Ord. No. 5085, § 1(162.11), 12-4-2006)

Sec. 117-12. Design criteria, standards, and specifications for erosion control measures and post construction stormwater measures.

All erosion control and post-construction stormwater management measures including, but not limited to, those required to comply with this chapter shall meet the design criteria, standards, and specifications for erosion control and stormwater management measures similar to or the same as those outlined in the Indiana Department of Environmental Management's Indiana Stormwater Quality Manual, or engineering standards as adopted by the City board of public works and safety, as may be amended.

(Ord. No. 5085, § 1(162.12), 12-4-2006)

Sec. 117-13. Permit requirements.

Where required, no land user shall begin a land disturbing activity subject to this chapter without receiving prior approval of an improvement location permit. Improvement location permits shall be issued in accordance with the requirements of chapter 137, zoning. Permits may be issued specifically for land disturbing activities or in conjunction with planned improvements that require land disturbing activity. An improvement location permit shall be required as follows:

- (1) Light land disturbing activity: No permit required.
- (2) Moderate land disturbing activity: Permit required.
- (3) Significant land disturbing activity: Permit required.

Any land disturbing activity greater than or equal to 1 acre must submit a Notice of Intent (NOI) to obtain permit coverage from IDEM and meet all applicable requirements of IDEM's CSGP.

(Ord. No. 5085, § 1(162.15), 12-4-2006)

Sec. 117-14. As-built requirements.

- (a) Prior to final release of the bond provided for in section 117-47, the as-built condition of critical stormwater management features must be identified and approved.
- (b) The volume, slopes, configuration, condition and topographic information of all detention, retention and water quality practices shall be certified by a professional engineer licensed in the state. This information shall be provided to the City in the form of a scaled as-built drawing or other electronic form accepted by the City. The as-built certification shall indicate if final conditions are consistent with, or exceed, the provisions of the post-construction stormwater pollution prevention plan (SWPPP).

- (c) If it is determined that information provided in the as-built drawing, certification, inspection or survey of the site does not meet or exceed the post-construction SWPPP provisions, the City reserves the right to withhold the final bond until such time as site conditions meet or exceed the plan provisions. Furthermore, other enforcement mechanisms may be applied to the permittee or persons making certifying statements.

(Ord. No. 5085, § 1(162.31), 12-4-2006)

Secs. 117-15—117-31. Reserved.

ARTICLE II. ADMINISTRATION AND ENFORCEMENT

Sec. 117-32. Responsibility.

Control of erosion and sediment relative to land disturbing activities shall be the responsibility of the land users.

(Ord. No. 5085, § 1(162.13), 12-4-2006)

Sec. 117-33. Penalty for proceeding without permit.

No land user shall begin a land disturbing activity subject to the provisions of this chapter without receiving prior approval of an improvement location permit where required. The fee for improvement location permits issued following proceeding land disturbing activity shall increase by a factor of ten (ten times the normal associated fee). Land users notified of a lack of permit shall have three business days from the date of notification to obtain a permit. Failure to obtain a permit following notification shall be subject to penalty provisions identified by chapter 137, zoning.

(Ord. No. 5085, § 1(162.16), 12-4-2006)

Sec. 117-34. Bonding requirements.

No land user shall begin a land disturbing activity subject to this chapter without receiving prior submission of a surety bond where required. Administration of surety bonds shall rest with the Department of Engineering. The amount of the surety shall be as identified by this chapter and shall be submitted prior to or concurrently with an improvement location permit to the Department of Engineering. Surety shall remain in full force and effect during and after land disturbing activities until Notice of Termination (NOT) requirements have been met, City has inspected and accepted project site for compliance, and NOT has been submitted to IDEM. Surety bonds shall be required as follows:

- (1) Light land disturbing activity: No surety required.
- (2) Moderate land disturbing activity: No surety required.
- (3) Significant land disturbing activity: Surety required.

(Ord. No. 5085, § 1(162.17), 12-4-2006)

Sec. 117-35. Determination of required surety.

The required dollar amount of the surety bond where required shall be determined as identified below. The largest dollar amount shall apply:

- (1) *Area calculation.*

- a. Up to five acres of disturbed land area: \$5,000.00 per acre.
- b. For each additional acre of disturbed land area: \$2,500.00 per acre.

(2) *Volume calculation.* 1 dollar per cubic yard of disturbed material including both cut and fill.

(Ord. No. 5085, § 1(162.18), 12-4-2006)

Sec. 117-36. Erosion control plan or construction stormwater pollution prevention plan (SWPPP) required.

An erosion control plan as identified herein shall be required for all moderate land disturbing activities. A Construction SWPPP as identified herein shall be required for all significant land disturbing activities. No land user shall begin a moderate or significant land disturbing activity without submitting and obtaining approval for an erosion control plan or Construction SWPPP, respectively. Two copies of the erosion control plan or Construction SWPPP shall be submitted prior to or concurrently with the improvement location permit. Erosion control plans submitted and approved as part of the review of final development plans need not be resubmitted and can merely be referenced on the improvement location permit application. Although subject to the performance requirements of section 117-10, projects approved by the City under the IDEM CSGP prior to the establishment of this chapter shall not be required to submit an erosion control plan as required herein.

(Ord. No. 5085, § 1(162.19), 12-4-2006)

Sec. 117-37. Content of erosion control plan—Moderate land disturbing activity.

All applications for an improvement location permit for moderate land disturbing activity shall include the following information:

- (1) Site boundaries and adjacent lands which accurately identify the site location;
- (2) Site construction/grading plan. Erosion control plans submitted concurrently with final site plans need not duplicate information except as necessary for plan clarity. Site construction/grading plans shall include at a minimum:
 - a. Locations and approximate dimensions of all proposed land disturbing activities;
 - b. Locations and approximate dimensions of all temporary soil stockpiles;
 - c. Locations and approximate dimensions of all erosion control measures necessary to meet the performance requirements of this chapter;
 - d. Schedule of the anticipated starting and completion dates of each land disturbing activity, including the installation of erosion control measures needed to meet the requirements of this chapter; and
- (3) Any additional information deemed necessary by the Department of Engineering where specific or unique site conditions warrant clarification identifying that the performance requirements of section 117-10, pertaining to nonagricultural land disturbing activity performance requirements, are met.

(Ord. No. 5085, § 1(162.20), 12-4-2006)

Sec. 117-38. Content of construction stormwater pollution prevention plan (SWPPP)—Significant land disturbing activity.

All applications for an improvement location permit for significant land disturbing activity shall include, but not be limited to, the following content and Construction SWPPP in accordance with IDEM's CSGP:

- (1) An index indicating the location, in the construction plan, of all information required by this Section.
- (2) A vicinity map depicting the project site location in relationship to recognizable local landmarks, towns, and major roads.
- (3) A project narrative and supporting plan documents (documentation may be included on the plan sheets or in a separate document), which must include:
 - a. A description of the nature and purpose of the project.
 - b. A legal description of the project site. The description must include the legal section(s), or alternative land division(s), township and range.
 - c. The latitude and longitude in decimal representation at:
 - i. The approximate entrance to the project site that is obtaining permit coverage if the project is not linear.
 - ii. The beginning of the project site for linear projects.
 - d. The size of the project area expressed in acres.
 - e. The total expected land disturbance expressed in acres.
 - f. Construction support activities that are expected to be part of the project.
 - g. The soil properties, characteristics, limitations, and hazards associated with the project site and the measures that will be integrated into the project to overcome or minimize adverse soil conditions.
 - h. The general construction sequence related to phasing of the project.
 - i. A reduced plat or project site map that is submitted on a sheet or sheets no larger than eleven (11) inches by seventeen (17) inches for all phases or sections of the project site (multiple sheets may be submitted to meet this requirement) and includes:
 - i. The boundaries of the project site as represented in the full construction plans and for which the notice of intent (NOI) will be submitted.
 - ii. The boundaries of each phase, section, or other divisions of the project site associated with the construction activity.
 - iii. When applicable, the lot numbers, lot boundaries, road layout, and road names.
 - iv. A legend.
 - j. The identification and location of all wetlands, lakes and water courses on or adjacent to the project site.
 - k. The location of any in-stream activities that are planned for the project including, but not limited to stream crossings and pump arounds.
 - l. The identification and status of any other state or federal water quality permits or authorizations that are required for construction activities associated with the project site. If the permit or authorization has not been obtained, provide the expected timeline for obtaining the permit or authorization.
 - m. The Identification of a U.S. EPA approved or established TMDL, including the name of the TMDL and the pollutant(s) for which there is a TMDL.
 - n. The Identification of discharges to a water on the current 303(d) list of impaired waters and the pollutant(s) for which it is impaired.
- (4) An existing project site layout which must include:

- a. The identification of all wetlands, lakes, and water courses on, or adjacent to, the project site.
 - b. The location of all existing structures on the project site.
 - c. The boundaries of the one hundred (100) year flood plains, floodway fringes, and floodways.
 - d. A soil map of the predominant soil types, as determined by the United States Department of Agriculture, Natural Resources Conservation Service (USDA, NRCS) Soil Survey, an equivalent publication, or as determined by a soil scientist. A soil legend must be included with the soil map.
 - e. The identification and delineation of natural buffers and existing vegetative cover, such as crop or crop residue, grass, weeds, brush, and trees.
 - f. The land use of all adjacent properties.
 - g. The existing topography at a contour interval appropriate to indicate drainage patterns.
 - h. The location(s) of where run-off enters the project site.
 - i. The location(s) of where run-off discharges from the project site.
- (5) The final project site layout which must include:
- a. The location of all proposed site improvements, including roads, utilities, lot delineation and identification, proposed structures, and common areas.
 - b. The boundaries of one hundred (100) year floodplains, floodway fringes, and floodways.
 - c. The proposed final topography at a contour interval appropriate to indicate drainage patterns.
 - d. The boundaries of natural features or unique resource areas that will be left undisturbed or preserved including, but not limited to, wetlands, steep slopes, riparian corridors, and natural buffers
- (6) A grading plan which must include:
- a. A delineation of all proposed land-disturbing activities, including known off-site activities that will provide services to the project site.
 - b. The location of all on-site soil stockpiles and borrow areas and, when known at the time of submittal, the location of all off-site borrow, soil stockpiles, and disposal areas.
 - c. The existing and proposed topography.
- (7) A drainage plan which must include:
- a. The location, size, and dimensions of all stormwater drainage systems, such as culverts, storm sewers, and conveyance channels.
 - b. The locations of specific points where concentrated stormwater and non-stormwater discharges will leave the project site.
 - c. The locations where stormwater may be directly discharged into ground water, such as abandoned wells, sinkholes, or karst features.
 - d. The name(s) of the receiving water(s) and, when the discharge is to a system (storm sewer, stormwater management measure, etc.) owned/or operated by a municipality, city, town, or county, the name of the system operator and the ultimate receiving water.
 - e. The location, size, and dimensions of features, such as existing permanent retention or detention facilities, including manmade wetlands, designed for the purpose of stormwater management.
- (8) A SWPPP associated with construction activities. The plan must be designed and implemented to achieve the minimum performance requirements of Section 3.0 of the IDEM CSGP and must include:

- a. A description of the potential pollutant generating sources and pollutants, including all potential non-stormwater discharges that are associated with the construction activities, which may reasonably be expected to contribute pollutants to stormwater discharges.
 - b. The location, dimensions, detailed specifications, and construction details of all temporary and permanent stormwater quality measures , Including , but not limited to:
 - i. Erosion control measures;
 - ii. Sediment control measures;
 - iii. Perimeter control measures;
 - iv. Run-off control measures;
 - v. Dewatering applications and management methods;
 - vi. Measures utilized to cross water resources for the accessibility needed to perform construction;
 - vii. Measures utilized to isolate or separate construction activities from work within waterbodies; and
 - viii. Concrete and cementitious washout areas and management measures.
 - c. Temporary stabilization and permanent stabilization plans, including the sequence of implementation planned to minimize the footprint of disturbed, unstable soil and the following information:
 - i. Specifications and application rates for soil amendments and seed mixtures.
 - ii. The type and application rate for anchored mulch, erosion control blanket, and other appropriate stabilization options.
 - d. For each temporary stormwater measure, a maintenance standard, including a threshold of when each requires corrective action and/or replacement with alternative measures.
 - e. The planned construction sequence describing the relationship between implementation of stormwater quality measures, including temporary and permanent stabilization and stages of construction activities. The sequence must include the measures that will be implemented prior to land disturbance in a specific drainage area and those that will be implemented as construction progresses throughout the life of the project.
 - f. The provisions for erosion and sediment control on individual building lots regulated under the permit.
 - g. A material handling and spill prevention and spill response plan meeting the requirements in 327 IAC 2-6. 1, including contact information for local emergency personnel and the IDEM Emergency Spill Line (888)233-7745 or (317)233-7745
 - h. The material handling and storage procedures associated with construction activity describing the management and disposal of construction products and waste.
- (9) *Additional information as deemed necessary.* Any additional information deemed necessary by the Department of Engineering where specific or unique site conditions warrant clarification identifying that the performance requirements of section 117-10, pertaining to nonagricultural land disturbing activity performance requirements, are met.
- (10) *Signature of a "trained individual".* The Construction SWPPP must be signed by a trained individual as defined in Sec. 117-2.

Sec. 117-39. Post-construction stormwater pollution prevention plan required.

A post-construction stormwater pollution prevention plan (SWPPP) as identified herein shall be required for all significant land disturbing activities. No land user shall begin a significant land disturbing activity without submitting and obtaining approval for a post-construction SWPPP. Two copies of the post-construction SWPPP shall be submitted prior to or concurrently with the improvement location permit application and erosion control plan. Post-construction SWPPPs submitted and approved as part of the review of final development plans need not be resubmitted and can merely be referenced on the improvement location permit application. Although subject to the performance requirements of section 117-10, projects approved by the City IDEM's CSGP prior to the establishment of this chapter shall not be required to submit a post-construction SWPPP as required herein.

(Ord. No. 5085, § 1(162.22), 12-4-2006)

Sec. 117-40. Content of post-construction stormwater pollution prevention plan.

The post-construction stormwater pollution prevention plan (SWPPP) must include, but not be limited to the following information, in accordance with IDEM's CSGP :

- (1) A description of potential pollutant generating sources and a list of pollutants from the proposed land use that may reasonably be expected to contribute pollutants to stormwater discharges.
- (2) A description of stormwater quality and stormwater management measures that will be installed to address post-construction sources that are expected to generate pollutants in stormwater discharges after construction activities have been completed. The measures selected should achieve, at a minimum, the following objectives:
 - a. Stormwater quality measures that target pollutants of concern and are designed to remove or minimize pollutants from stormwater run-off that is associated with the final land use.
 - b. Stormwater quality measures that will be implemented to prevent or minimize adverse impacts to aquatic resources including, but not limited to, wetlands, streams, karst features, and riparian habitats.
 - c. Stormwater management measures that will address the potential impacts of increased run-off from the project. Measures must be designed and approved according to the CSGP and this ordinance. A trained individual must approve that the design meets the applicable requirement(s).
 - d. Measures, including structural and those based on low impact development principles, selected to address the pollutant(s) of concern, reduction of peak flows, and ability to infiltrate.
 - e. Protective measures that will be implemented during active construction when the type of post-construction measure(s) planned are susceptible to pollutants, specifically sediment that may be generated during land-disturbing activities.
- (3) The location, dimensions, detailed specifications, and construction details of all post-construction stormwater quality and stormwater management measures.
- (4) A sequence describing when each post-construction stormwater measure will be installed in relation to project construction.
- (5) An operation and maintenance manual that includes a description of the maintenance guidelines for all post-construction stormwater measures to facilitate their proper long-term function. This operation and maintenance manual must be provided to City and any additional future parties who will assume responsibility for the operation and long-term maintenance of the post-construction stormwater measures.

- (6) When known at the time of plan submittal, the entity that will be responsible for operation and maintenance of the post-construction system.

Additionally, the post construction stormwater pollution prevention plan must also include a long-term operation and maintenance agreement containing maintenance guidelines for all post-construction stormwater quality measures to facilitate their proper long-term function.

(Ord. No. 5085, § 1(162.23), 12-4-2006)

Sec. 117-41. Long-term operation and maintenance agreement.

- (a) Long-term operation and maintenance agreements shall include a maintenance plan for all stormwater quality best management practices (BMPs) for all projects covered under this chapter that require more than general maintenance (e.g., periodic mowing). The long-term operation and maintenance agreements shall be recorded.
- (b) The plan will be developed to ensure that the stormwater management BMPs are kept functional. The maintenance agreement will specify minimum operation and maintenance requirements and intervals to be performed by the property owner. The operation and maintenance requirements shall be in accordance with the operation and maintenance procedures and schedules listed in the state stormwater quality manual.
- (c) The plan shall address schedules for inspections and techniques for operation and maintenance including vegetation clearing or mowing and removing accumulated trash, debris, sediment pollutants and other forms of pollution.
- (d) It is the obligation of the project owners and their successors in interest to provide this agreement to future parties, including property owners, who will assume responsibility for the operation and maintenance of the post-construction stormwater quality measures.
- (e) When a stormwater quality BMP serves more than one parcel, an owners' association or binding contract for the purpose of operation and maintenance is required. The owners association shall be responsible for operation and maintenance as directed by this article.
- (f) Where stormwater detention and/or retention systems are used, care must be taken to ensure that the systems do not become nuisances or health hazards. Detention and retention facilities should be designed to require minimal maintenance, and maintenance expectations must be clearly stated in the long-term operation and maintenance agreement.

(Ord. No. 5085, § 1(162.24), 12-4-2006)

Sec. 117-42. Easement requirements.

All permanent stormwater management systems identified in the post-construction stormwater pollution prevention plan (SWPPP), including detention or retention basins, filter strips, infiltration systems, conveyance systems, and structures located outside of the right-of-way shall be designated as common areas or incorporated into permanent easements if the permanent systems serve the City, County Drainage Board Regulated Drains, or other lot owners (i.e. subdivisions). For the purposes of access, monitoring, inspection, and general maintenance activities, an adequate easement width beyond the actual footprint of the stormwater quality management facility as well as a 20-foot-wide access easement from a public right-of-way to each BMP shall be provided. If the permanent stormwater management systems are required solely for the benefit of the individual lot owner, then a permanent easement will not be required. The easement requirements noted may be changed by the City as deemed necessary for specific cases.

(Ord. No. 5085, § 1(162.25), 12-4-2006)

Sec. 117-43. Review of erosion control plan, construction stormwater pollution prevention plan (SWPPP), post-construction stormwater pollution prevention plan (SWPPP), and long-term operation and maintenance agreement.

- (a) Upon submission, the City planner shall review the submission requirements of the erosion control plan, construction stormwater pollution prevention plan (SWPPP), post-construction stormwater pollution prevention plan (SWPPP), and long-term operation and maintenance agreement. These documents shall not be evaluated by the City planner in regards to the performance requirements of this chapter. The City planner shall promptly forward complete submissions to the Department of Engineering for review of the performance requirements of this chapter.
- (b) For moderate land disturbing activities, the City planner may issue an improvement location permit prior to the review of the Department of Engineering. For significant land disturbing activities, the City planner may not issue an improvement location permit prior to the review of the Department of Engineering. When questions arise or specific unique site circumstances dictate it, the City planner may also withhold the issuance of any improvement location permit pending the review of the Department of Engineering.
- (c) The Department of Engineering shall promptly review erosion control plans, construction- and post-construction SWPPPs, and long-term operation and maintenance agreements. If the submission is deficient or held for the review of the Department of Engineering, the City planner shall inform the applicant in writing and require additional information where applicable. When additional information is submitted, the City planner shall again determine whether the plan meets the submission requirements of this chapter. If the plan is disapproved or requires modification based on the review of the Department of Engineering, the City planner shall inform the applicant in writing giving reasons for disapproval or the need for modifications.
- (d) In the case where the City planner has issued an improvement location permit prior to the review of the Department of Engineering, comments of the Department of Engineering received following the issuance of an improvement location permit shall be forwarded in writing to the land user. If the plan is disapproved or requires modification based on the review of the Department of Engineering, the City planner shall inform the applicant in writing giving reasons for disapproval or the need for modifications. The review and approval of an erosion control plan by the City planner and/or the Department of Engineering shall not be construed as more than meeting the submission requirements of this chapter. The review and approval of an erosion control plan by the City planner and/or the Department of Engineering shall not exempt, remove, or otherwise modify the obligations of the land user relative to the performance requirements of this chapter. Thus, if the proposed erosion control measures are approved but yet fail to meet the performance requirements identified in section 117-10, the land user shall be responsible for installing additional measures, performing maintenance, and taking any measure necessary to ensure compliance with performance requirements on a continual basis.
- (e) Approval of the provisions of the erosion control plan and post-construction stormwater pollution prevention plan as allowed by this chapter shall not be construed as compliance with any other applicable state, federal, or local ordinances.

(Ord. No. 5085, § 1(162.26), 12-4-2006)

Sec. 117-44. Inspection.

- (a) To ensure compliance with the erosion control plan, the City shall inspect sites having ongoing land disturbing activities as deemed appropriate. Inspections may be undertaken by the department of planning, the Department of Engineering, or any other representative employed by or contracted with the City for said purpose.
 - (1) Inspection programs may be established on any reasonable basis, including, but not limited to:

- a. Routine inspections;
 - b. Random inspections;
 - c. Inspections based upon complaints or other notice of possible violations;
 - d. Inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants;
 - e. Inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the NPDES stormwater permit; and
 - f. Joint inspections with other departments or agencies inspecting under environmental or safety laws.
- (2) Inspections may include, but are not limited to:
- a. Reviewing maintenance and repair records;
 - b. Sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and
 - c. Evaluating the condition of drainage control facilities and other stormwater treatment practices.
- (b) When any new drainage or erosion control facility is installed on private property, or when any new connection is made between private property and a public storm sewer system, the property owner shall grant to the City the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection. This includes the right to enter a property when it has a reasonable basis to believe that a violation of this chapter has occurred.
- (c) The site owner is responsible for implementing a self-monitoring program, as required by CSGP Section 3.6. The self-monitoring program shall include the following:
- (1) A trained individual shall perform a written evaluation of the project site:
- a. Twenty-four (24) hours prior to a qualifying precipitation event or by the end of the next business day following each measurable storm event; which is defined as a precipitation accumulation equal to, or greater than, one-half (0.50) inch of rainfall within a 24-hour period; and
 - b. If no rain event occurs within the work week a minimum of one inspection must occur per week.
 - c. In the event of multiple qualifying events during the work week, no more than three (3) inspections would be required to meet the self-monitoring commitment.
- (2) The evaluation must:
- a. Address the maintenance of existing stormwater quality measures to ensure they are functioning properly; and
 - b. Identify additional measures necessary to remain in compliance with all applicable statutes and rules.
- (3) Written evaluation reports must include:
- a. The name of the individual performing the evaluation;
 - b. The date of the evaluation;
 - c. Problems identified at the project site; and
 - d. Details of corrective actions recommended and completed.
- (d) All evaluation reports for the project site must be made available to the City within 48 hours of a request.

(Ord. No. 5085, § 1(162.27), 12-4-2006)

Sec. 117-45. Responsibility of the Department of Engineering.

The administration of this chapter, as identified, is the responsibility of the City planner. However, based on the technical requirements of this chapter, the Department of Engineering shall be responsible for the review and evaluation of all land disturbing activities compliance with the performance requirements of this chapter. The City planner may only pursue the administration of this chapter relative to performance requirements when the lack of compliance has been documented in writing by the Department of Engineering.

(Ord. No. 5085, § 1(162.28), 12-4-2006)

Sec. 117-46. Enforcement.

The following practices shall be utilized regarding the enforcement of this chapter:

- (1) Land users shall be notified in writing of noncompliance following the inspection and verification of the department of planning and/or Department of Engineering.
- (2) If, within five days after notification, a permit holder does not correct said noncompliance, the City planner may pursue issuing a stop work order in accordance with the requirements identified herein.
- (3) The City planner may also immediately post a stop-work order if:
 - a. Any land disturbing activity requiring an improvement location permit and/or bond under this chapter is being undertaken without a permit and/or bond;
 - b. If the approved erosion control plan has not been implemented in good faith concurrent with construction; or
 - c. The land disturbing activity does not comply with the performance requirements of this chapter and poses an imminent negative impact to the public health, safety, and welfare as determined by the Department of Engineering following an on-site inspection.
- (4) Upon correction of the violation, land users may appeal to the City to retract a stop-work order.
- (5) Ten days after posting a stop-work order, the City may issue a notice of intent to the violator stating the intent of the City to use or draw upon the surety bond, where required, to perform work necessary to provide compliance with this chapter. All expenses for work, administration, and legal fees associated with providing compliance with this chapter which exceeds the amount of the surety bond may be billed to the land user. For all other land disturbing activities where surety was not required, the City may perform the work necessary to provide compliance with this chapter. All expenses for work, administration, and legal fees associated with providing compliance with this chapter may be billed to the land user.

(Ord. No. 5085, § 1(162.29), 12-4-2006)

Sec. 117-47. Project completion.

- (a) Land users shall complete land disturbing activities in a timely and orderly manner. Land disturbing activities shall be considered complete when the disturbed area has been stabilized with improvements, vegetative cover, or other Department of Engineering approved means and when discharges of stormwater associated with construction activity have ceased. When a project has been completed for a significant land disturbing activity, the person holding the permit shall petition, in writing, indicating project completion and submittal of Notice of Termination for approval by the City and filed with IDEM.

- (b) For significant land disturbing activities, as-builts of permanent stormwater management systems must be submitted prior to or concurrently with the project completion notice and request for bond release. The City shall have 28 calendar days to perform an inspection and respond to the request for release. City
- (c) Upon inspection and verification of satisfactory land disturbing completion, any surety bonds shall be released by the Department of Engineering forthrightly. Maintenance responsibilities of completed land disturbing activities shall remain with the person owning the land.
- (d) If the stormwater management systems on site are deemed to be insufficient, not appropriate and/or inconsistent with the post-construction stormwater pollution prevention plan (SWPPP) or objectives stated in this chapter, then approval will not be granted.

(Ord. No. 5085, § 1(162.30), 12-4-2006)

Sec. 117-48. Appeals.

Any order, requirement, decision, or determination made by an administrative official or staff member may be appealed in the same manner that any provision of chapter 137, zoning. This process is identified in chapter 137.

(Ord. No. 5085, § 1(162.37), 12-4-2006)

Secs. 117-49—117-69. Reserved.

ARTICLE III. NONCONFORMING USES

Sec. 117-70. Correction of nonconforming situations—General compliance standard.

Land users who are currently in violation or are out of compliance with the performance standards identified within section 117-10 pertaining to nonagricultural land disturbing activity performance requirements shall have 30 calendar days from the receipt of notice of violation identified under section 117-46, enforcement, to apply for the applicable permits or bring the property into compliance with this chapter.

(Ord. No. 5085, § 1(162.32), 12-4-2006)

Sec. 117-71. Same—Compliance standard for existing gravel drive, parking area or alley.

Land users who are currently in violation or are out of compliance with the performance standards identified within section 117-10 pertaining to nonagricultural land disturbing activity performance requirements due to an existing gravel drive, parking area, or alley may add gravel as a surfacing material to meet the performance requirements of this chapter provided the area of the existing gravel surface is not expanded. Land users shall have 30 calendar days from the receipt of notice of violation identified under section 117-46, enforcement, to apply for the applicable permits or bring the property into compliance with this chapter.

(Ord. No. 5085, § 1(162.33), 12-4-2006)

Sec. 117-72. New or expanded gravel drives, parking areas, and alleys prohibited.

New or expanded permanent non-construction-related drives, parking areas, alleys shall be hard-surfaced. Gravel or stone surfaces shall not be considered an acceptable stable surface when used for vehicular traffic and parking.

(Ord. No. 5085, § 1(162.34), 12-4-2006)

Secs. 117-73—117-102. Reserved.

ARTICLE IV. MAINTENANCE MEASURES

Sec. 117-103. Maintenance of erosion control measures.

During the period of land disturbance at a site, all sediment basins and other erosion control measures necessary to meet the performance requirements of this chapter shall be applied by the land user. If sedimentation is likely to be a problem after land disturbing activities have ceased, some or all of the sediment basins, as well as other erosion control measures shall be maintained by the land user or subsequent landowner for as long as the problem exists.

(Ord. No. 5085, § 1(162.14), 12-4-2006)

Sec. 117-104. Maintenance of permanent measures.

All stormwater/erosion control management facilities must be maintained by the property owner to ensure compliance with the requirements of this chapter and accomplishment of its purposes. Maintenance needs may include the removal of silt, litter and other debris from all catch basins, inlets and drainage pipes, grass cutting and vegetation removal, and necessary replacement of landscape vegetation. Any maintenance needs found must be addressed in a timely manner, as determined by the City.

(Ord. No. 5085, § 1(162.35), 12-4-2006)

Sec. 117-105. Failure to maintain permanent measures.

The responsible party must ensure that all permanent stormwater management measures are maintained so that they operate according to the approved design. If a responsible party fails or refuses to perform the required maintenance, the City, after reasonable notice, may correct a violation of the design standards or maintenance needs by performing all necessary work to place the facility in proper working condition. If the erosion control/stormwater management facility becomes a danger to public safety or public health, the City shall notify the party responsible for maintenance of the facility, in writing. Upon receipt of that notice, the responsible person shall immediately effect maintenance and repair of the facility in an approved manner. After proper notice, the City may assess the owner of the facility for the cost of repair work and any penalties.

(Ord. No. 5085, § 1(162.36), 12-4-2006)

This Ordinance shall be in full force and effect upon its passage, approval, and publication pursuant to Indiana law.

Passed by the Common Council of the City of Mishawaka, Indiana, on this _____ day of _____, 2024.

Gregg Hixenbaugh, President

ATTEST:

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

Presented to the Mayor this _____ day of _____, 2024.

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

Approved this _____ day of _____, 2024.

David A. Wood
Mayor

AUG 02 2024

City Clerk
Mishawaka, IN

Honorable Council Members,

I present to you Chapter 117 of the Mishawaka City Ordinances, specifically addressing Erosion Control. This chapter is vital for ensuring the health, safety, and welfare of our community by setting stringent standards for managing erosion, controlling stormwater pollution post-construction, and regulating activities related to earthmoving, excavation, and stormwater discharge.

Purpose and Scope:

- **Compliance and Regulation:** The primary purpose is to align our city's practices with the National Pollutant Discharge Elimination System (NPDES) permit process and Indiana Department of Environmental Management's (IDEM) Construction Stormwater General Permit (CSGP). This will help us manage and control pollutants entering our municipal separate storm sewer system (MS4).
- **Soil Erosion Management:** We recognize the significant impact of soil erosion from nonagricultural activities. Unchecked erosion transports pollutants to adjacent properties, public streets, and natural water bodies, necessitating a comprehensive approach to erosion control and stormwater management.

Objectives:

1. **Pollutant Regulation:** We aim to regulate pollutants entering our drainage systems, ponds, lakes, and other stormwater receivers, ensuring a cleaner environment.
2. **Storm Sewer System Protection:** Control stormwater discharges into the MS4 by any user, minimizing pollution at its source.
3. **Impact Mitigation:** Address and reduce the negative impacts of land disturbing activities on nearby properties and the public.
4. **Enforcement and Compliance:** Establish legal authority for inspection, surveillance, and monitoring to ensure adherence to the ordinance.
5. **Flood and Erosion Prevention:** Minimize flooding, siltation, stream temperature increases, and stream bank erosion, maintaining stream channel integrity and enforcing no net increase in stormwater runoff from new developments.
6. **Nonpoint Source Pollution Reduction:** Reduce nonpoint source pollution from stormwater runoff due to development, protecting local water quality.
7. **Erosion and Pollution Control:** Implement and maintain stormwater management controls to reduce soil erosion and nonpoint source pollution effectively.

Application:

This chapter covers nonagricultural land disturbing activities, encompassing industrial, commercial, institutional, residential, utility, and roadway developments.

By adopting this chapter, we commit to safeguarding our environment and enhancing the quality of life for our citizens. I urge the Council to approve Chapter 117, demonstrating our dedication to responsible environmental stewardship and community welfare.

Thank you for your attention and consideration.

Respectfully,

JUL 10 2024

City Clerk
Mishawaka, IN

APPEAL #24-25

RESOLUTION NO. 2024-15

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:

940 E 12th Street

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 **940 E 12th Street, Mishawaka, Indiana**, more particularly known and described as follows:

Lot 2 as shown on the plat of MCC Self Storage Minor Subdivision recorded on March 20, 2023, in the office of the Recorder of St. Joseph County, Indiana as instrument number 2023-05675

The Use Variance will allow outside storage in two containers behind 1010 S. Merrifield, for the business located at 940 E Twelfth St., subject to the following conditions:

- 1) Installing slats in the existing fence facing south, between the building and the east property line;
- 2) The storage containers shall not be stacked. There shall be a 10' maximum height.;
- 3) The containers shall be labeled as "explosives";
- 4) All State and local permits are received;
- 5) The location of the containers shall insure required fire access; and shall be moved at any time at the direction of the Fire Marshall.

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. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because, with the location being behind the building in the service area, the proposed use will have little to no additional impact on the adjacent commercial uses.
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 fence is being modified to help screen the view of the containers.
3. The need for a variance arises from the small size of the location, and the lack of storage space indoors.
4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because although the use is allowed in the I-2 Heavy Industrial District, rezoning the property would not be the highest and best use for the shopping center by allowing the more intense uses of that district.
5. The approval will not interfere substantially with the Mishawaka 2000 Plan because the plan identifies this intersection as General Commercial. The approval is consistent with the goals and objectives of the Comprehensive Plan.

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 _____, 2024, at _____ o'clock ____ .m.

Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

RESOLUTION #2023-11
206 W Eighth St
Page 3 of 3

PRESENTED by me to the Mayor this _____ day of _____ 2024,
at _____ o'clock ____m.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _____, 2024, at
_____ o'clock ____m.

David A. Wood, Mayor

STAFF REPORT

Location: 940 E Twelfth Street (Morris Sales, Inc)/1010 S Merrifield (MCC Self Storage)

Date: July 9, 2024

Appeal: 24-25

Prepared By: CH

GENERAL INFORMATION

Applicants: MCC Self Storage LLC & Morris Sales, Inc./Joshua A Visser, Soppo, Nussbaum, Inabnit & Kaczmarek

Status: Property Owners/Legal Counsel

Request: Use Variance for up to two outside storage containers for fireworks

Zoning Classification: C-1 General Commercial

Lot Size: 7.95 Acres

Applicable Regulations: Section 137-301 C-1 Uses
Section 137-42 (4) Board of Zoning Appeals Use Variance, Indiana Code 36-7-4-918.4

SPECIAL INFORMATION

Area Development Pattern: North: C-1 General Commercial (Ozark Pawn Shop)
South: I-1 Light Industrial (LKQ Refinish Mishawaka & Jackel, Inc)
East: I-2 Heavy Industrial (Builders Iron Works)
West: C-7 Automobile Oriented Restaurant Commercial (vacant)

Thoroughfare: E Twelfth Street and S Merrifield Avenue

Council District: 2

School District: School City of Mishawaka

Public Utilities: All public utilities are available and existing.

Comprehensive Plan: The Mishawaka 2000 Comprehensive Plan identifies the area at the corner of S Merrifield Ave. and E Twelfth St. as General Commercial.

ANALYSIS

Morris Sales, Inc., a fireworks retailer, is located in the southeast corner of the building at the corner of S Merrifield Ave. and E Twelfth St. Each owner owns their building, and has split ownership of the parking lot/common areas. The address of 940 E Twelfth Street was reactivated in 2018. Last year, the owner reached out to the Planning Department about the use of storage containers for additional storage, particularly around the 4th of July holiday. There are other retailers, who receive transient merchant licenses to operate in parking lots, who are allowed to keep their fireworks supply in storage containers. However, we have not permitted this as a permanent solution in commercial areas.

Storage in accessory buildings is not allowed in commercial districts per Section 137-302 (5) c. Outside storage is only permitted as a conditional use in I-2 Heavy Industrial. Previously, storage containers have

been approved at Big Lots and Dunham's in the Town & Country shopping center, and Dick's Sporting Goods in Princess City Plaza, and Hobby Lobby in Wilshire Plaza.

The Appellant is requesting to have a maximum of two 8' wide x 40' long x 9.5' tall storage containers on the east side of the main building at 1010 S. Merrifield, which is on property owned by the neighbor MCC Self Storage LLC, who also signed the application. The storage containers would be used for additional fireworks inventory.

In an attempt to screen the site from the traveling public along Twelfth Street, the Appellant has agreed to install slats in the existing chain link fence facing south.

The initial proposed location of the storage containers was shown to block Fire Department access. The Fire Marshall states the storage containers must be 10' from the building and allow 15' of pavement for fire truck access. There were three configurations provided by Fire of appropriate locations. 1) Front to back against the truck dock retaining wall; 2) side by side in the truck dock ramp; or 3) side by side against the property line, behind the building. Planning staff prefers location #3. If the variance is approved, an Improvement Location Permit will need to be issued to identify the placement of the containers.

The storage containers shall not be stacked. There shall be a 10' maximum height. The Fire Department requires the containers be labeled as "explosives".

The Building Department is requesting State Fire Marshall approval, state permit, and local permit.

Other pertinent City departments have reviewed and approved the request. We did receive a letter of remonstrance from the neighbor to the east, Builders Iron Works, Inc.

RECOMMENDATION

The Staff recommends in favor of Appeal 24-25, a Use Variance to allow outside storage in two containers behind 1010 S. Merrifield, for the business located at 940 E Twelfth St., subject to:

- 1) Installing slats in the existing fence facing south, between the building and the east property line;
- 2) The storage containers shall not be stacked. There shall be a 10' maximum height.;
- 3) The containers shall be labeled as "explosives";
- 4) All State and local permits are received;
- 5) The location of the containers shall insure required fire access; and shall be moved at anytime at the direction of the Fire Marshall.

This recommendation is based on the following reasons per Indiana Code 36-7-4-918.4:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because, with the location being behind the building in the service area, the proposed use will have little to no additional impact on the adjacent commercial uses.
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 fence is being modified to help screen the view of the containers.
3. The need for a variance arises from the small size of the location, and the lack of storage space indoors.
4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because although the use is allowed in the I-2 Heavy Industrial District, rezoning the property would not be the highest and best use for the shopping center by allowing the more intense uses of that district.
5. The approval will not interfere substantially with the Mishawaka 2000 Plan because the plan identifies this intersection as General Commercial. The approval is consistent with the goals and objectives of the Comprehensive Plan.

ATTACHMENTS

Aerial Photograph, Photographs of Site, Petition, Site Plan, Fire Department Locations, Letter of Remonstrance, Location Map



Yellow outline = location of business
Blue oval = location of storage containers



P1. Front of 1010 S. Merrifield, operating as MCC Self Storage (facing west)



P2. Side of 1010 S. Merrifield, and front of 940 E. Twelfth (facing south)



P3. Front of 940 E Twelfth St., operating as Morris Sales (south facing)



P4. Current location of one storage container (south facing)

JUN 20 2024

City Clerk
Mishawaka, IN

NP 24-25

Received

JUN 18 2024

Planning and
Community Development

DATE: June 17, 2024

TO: Board of Zoning Appeals, City of Mishawaka, Indiana

The undersigned appellant respectfully shows the Board:

1. MCC Self Storage LLC has an undivided 79% ownership interest, and Morris Sales, Inc. has an undivided 21% ownership interest, in the following described real estate (the "Real Estate") located within the City of Mishawaka, Penn Township, St. Joseph County, State of Indiana, to-wit:

Lot 2 as shown on the plat of MCC Self Storage Minor Subdivision recorded on March 20, 2023, in the office of the Recorder of St. Joseph County, Indiana as instrument number 2023-05675.

Parcel Number 71-09-15-451-014.000-023

This Real Estate is outlined in red on the attached plat of the MCC Self Storage Minor Subdivision (the "Plat"), but the Real Estate excludes the building on the Plat which is depicted with hatching. The Plat is attached as Exhibit 1. An enlarged image of the portion of the Plat at issue is attached as Exhibit 2. The Real Estate does not have a common address, but it is just northeast of the intersection of Merrifield Ave. and 12th Street.

Mishawaka Fireworks, LLC ("Appellant") operates a fireworks store (the "Store") which is highlighted in blue on the Plat. The Store is on a separate neighboring parcel, and the Store occupies 100% of the area of the separate neighboring parcel. Morris Sales, Inc. owns the parcel on which the Store is located. The Store's address is 940 E. 12th Street.

2. The Real Estate has a zoning classification of Commercial C-1 District under the Zoning Ordinance of the City of Mishawaka.
3. Appellant proposes to place two storage containers, which are forty (40) feet long, eight feet wide, and nine and one-half feet tall, on the Real Estate as depicted by the orange rectangles on the Plat. Appellant seeks to stock fireworks inventory in the storage containers.
4. Appellant requests a use variance in order to place the storage containers on the front half yard area of the Real Estate and use the storage containers for retail storage purposes.

5. The Zoning Ordinance of the City of Mishawaka, specifically Sec. 137-302(5), requires the following in a Commercial C-1 District:

(5) *Accessory buildings.*

- a. Accessory buildings not over 15 feet high **may be located in the rear half yard area**, provided the accessory buildings come not nearer than 30 inches to any rear lot line or side lot line. Additionally, accessory buildings shall not be greater than 720 square feet in floor area.
- b. No accessory building shall be used in whole or part for living or residential purposes.
- c. **No accessory building or accessory building area shall be used for commercial storage purposes.**

(Code 1985, § 159.067; Ord. No. 2930, 9-2-1986; Ord. No. 3263, 4-17-1989; Ord. No. 3297, 8-7-1989; Ord. No. 3363, 3-19-1990; Ord. No. 3466, 3-4-1991; Ord. No. 3698, 6-21-1993; Ord. No. 3703, 6-21-1993; Ord. No. 4020, 2-20-1996; Ord. No. 4565, 2-12-2001; Ord. No. 4576, 4-2-2001; Ord. No. 4584, 5-7-2001)(Emphasis added).

Sec. 106-116 of the Zoning Ordinance of the City of Mishawaka includes the following miscellaneous requirement:

Dumpster and **utility service areas** (including transformers, truck docks, and loading areas) **shall be located where they are not visible from the public right-of-way** and/or the St. Joseph River. Equipment/dumpsters on the ground shall be screened or housed in a structure that is in harmony with the surroundings. The use of screening that utilizes appropriate architectural materials shall be encouraged.

(Code 1985, § 161.58; Ord. No. 4469, 12-20-1999) (Emphasis added).

6. Strict adherence to the Ordinance requirements creates an unusual hardship for Appellant's operation of a retail store because it prohibits Appellant from stocking inventory for its Store.

7. Questions about the requested use variance.

- a. Will approval be injurious to the public health, safety, morals or general welfare of the community?

No. Allowing Appellant to stock inventory in two storage containers will alleviate the need for Appellant to keep all of its merchandise in the Store, and will encourage Appellant to have fewer fireworks in the Store.

Appellant has met the requirements of Indiana Homeland Security and obtained a Fireworks Retail Sales Permit #FR29277C (the "Permit"). The Store was renovated including installation of fire barriers and a revised fire suppression system in order to obtain the Permit.

The Appellant will continue to be subject to inspections of the State Fire Marshall and the Mishawaka Fire Marshall.

The Real Estate already has a six-foot-high chain link fence between proposed location for the storage containers and 12th Street. The fence is depicted as a green line on the Plat. Appellant would be willing to have slats installed in the fence to reduce visibility between the storage containers and 12th Street.

- b. Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner?

No. The use of the area adjacent to the Real Estate will not be affected by the variance in an adverse manner. The parcel directly north of the proposed location of the storage containers is zoned I-2. The parcel directly east of the proposed location of the storage containers is zoned I-2. The parcel directly south of the proposed location of the storage containers, which is across 12th Street, is zoned I-1. The parcel directly west of the proposed location of the storage containers is the Store, which is zoned C-1. There is no accessory building restriction on the neighboring industrial properties. The pertinent portion of the zoning map is attached as Exhibit 3. The proposed location of the storage containers is marked with a black star. As such, storage containers are already permitted in the community. Moreover, the nearest residential property to the proposed location for the storage containers is over 550 feet away. Further, the value of the area adjacent to the Real Estate will not be affected by the variance in a substantially

adverse manner.

- c. Does the need for the variance arise from some condition peculiar to the property involved?

Yes. The Store covers 100% of the parcel on which it operates and there is no room for Appellant to stock inventory in the Store.

Further, the parcels adjacent to the Real Estate have industrial zoning classifications, and accessory buildings are not prohibited in the industrial classifications.

- d. 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. The prohibition against commercial storage in an accessory building and the prohibition against accessory buildings in the front half yard area preclude Appellant from stocking merchandise for its Store.

- e. Will approval interfere substantially with the Mishawaka 2000 Comprehensive Plan?

No, the approval of this use variance will not substantially, if in fact at all, interfere with the Mishawaka 2000 Comprehensive Plan.

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

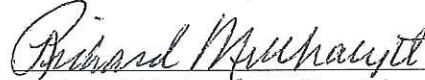
Appellant

MISHAWAKA FIREWORKS, LLC


Charles Long, Member

Co-Owner

MORRIS SALES, INC.

 6/18/24
Richard Mulhaupt, President

Co-Owner

MCC SELF STORAGE LLC

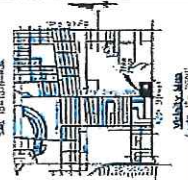
  06/18/24

Brad Beer, Member

CONTACT PERSON:

Joshua A. Visser
SOPKO, NUSSBAUM, INABNIT & KACZMAREK
5th Floor - Plaza Building
210 S. Michigan Street
South Bend, Indiana 46601
Telephone: (574) 234-3000
Email: joshv@sni-law.com

Notarized 12/1/21
Notary Public
Notary Seal



NOTARIZATION STATEMENT
I, the undersigned, Notary Public for the State of Indiana, do hereby certify that the foregoing is a true and correct copy of the original as shown to me by the person presenting it for recording.

OWNER'S CERTIFICATE
We, the undersigned, do hereby certify that the foregoing is a true and correct copy of the original as shown to me by the person presenting it for recording.

NOTARIZATION STATEMENT
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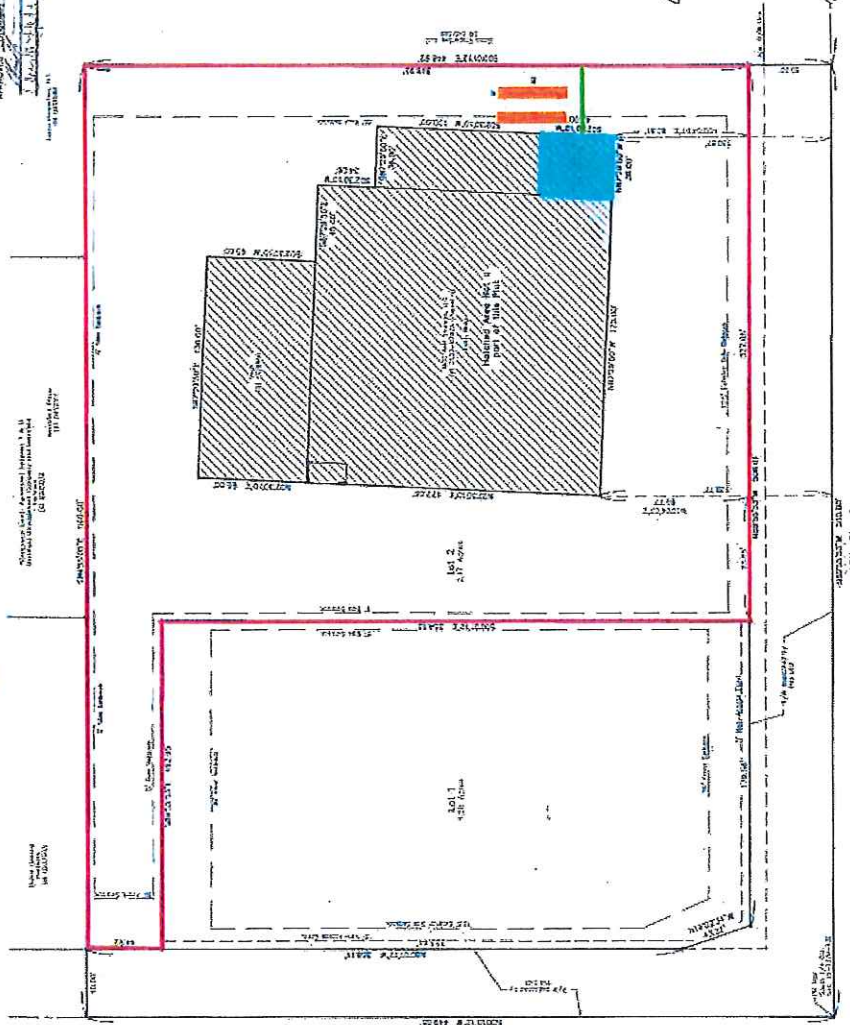
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MCC SELF STORAGE MINOR SUBDIVISION
A Part of the Southeast Quarter of Section 15 Township 37 North,
Range 3 East, Merriam Township, St. Joseph County, Indiana



KEY

- Boundary Line
- Storage Containers
- Fence

Legend

- Surveyed Boundary
- As Shown
- As Shown
- As Shown
- As Shown

2021-08-07
MCC Self Storage, LLC
2008-A Peninsula Road
Bloomington, IN 47307

SUBDIVISION LEGAL DESCRIPTION
That part of the Southeast Quarter of Section 15 Township 37 North, Range 3 East, Merriam Township, St. Joseph County, Indiana, containing 8.44 Acres, more or less, as shown on the plat of the MCC Self Storage Minor Subdivision, recorded in the Public Records of St. Joseph County, Indiana, at Page 111 of Book 111.

FLOOD CERTIFICATION
The undersigned, Notary Public for the State of Indiana, do hereby certify that the foregoing is a true and correct copy of the original as shown to me by the person presenting it for recording.

EASEMENTS
The undersigned, Notary Public for the State of Indiana, do hereby certify that the foregoing is a true and correct copy of the original as shown to me by the person presenting it for recording.

WATER AND SEWER NOTE
The undersigned, Notary Public for the State of Indiana, do hereby certify that the foregoing is a true and correct copy of the original as shown to me by the person presenting it for recording.

BUILDING SETBACK NOTE
The undersigned, Notary Public for the State of Indiana, do hereby certify that the foregoing is a true and correct copy of the original as shown to me by the person presenting it for recording.

ENCROACHMENT
The undersigned, Notary Public for the State of Indiana, do hereby certify that the foregoing is a true and correct copy of the original as shown to me by the person presenting it for recording.

STREET CLASSIFICATION
The undersigned, Notary Public for the State of Indiana, do hereby certify that the foregoing is a true and correct copy of the original as shown to me by the person presenting it for recording.

EXHIBIT 1

Balco
D

S00'01

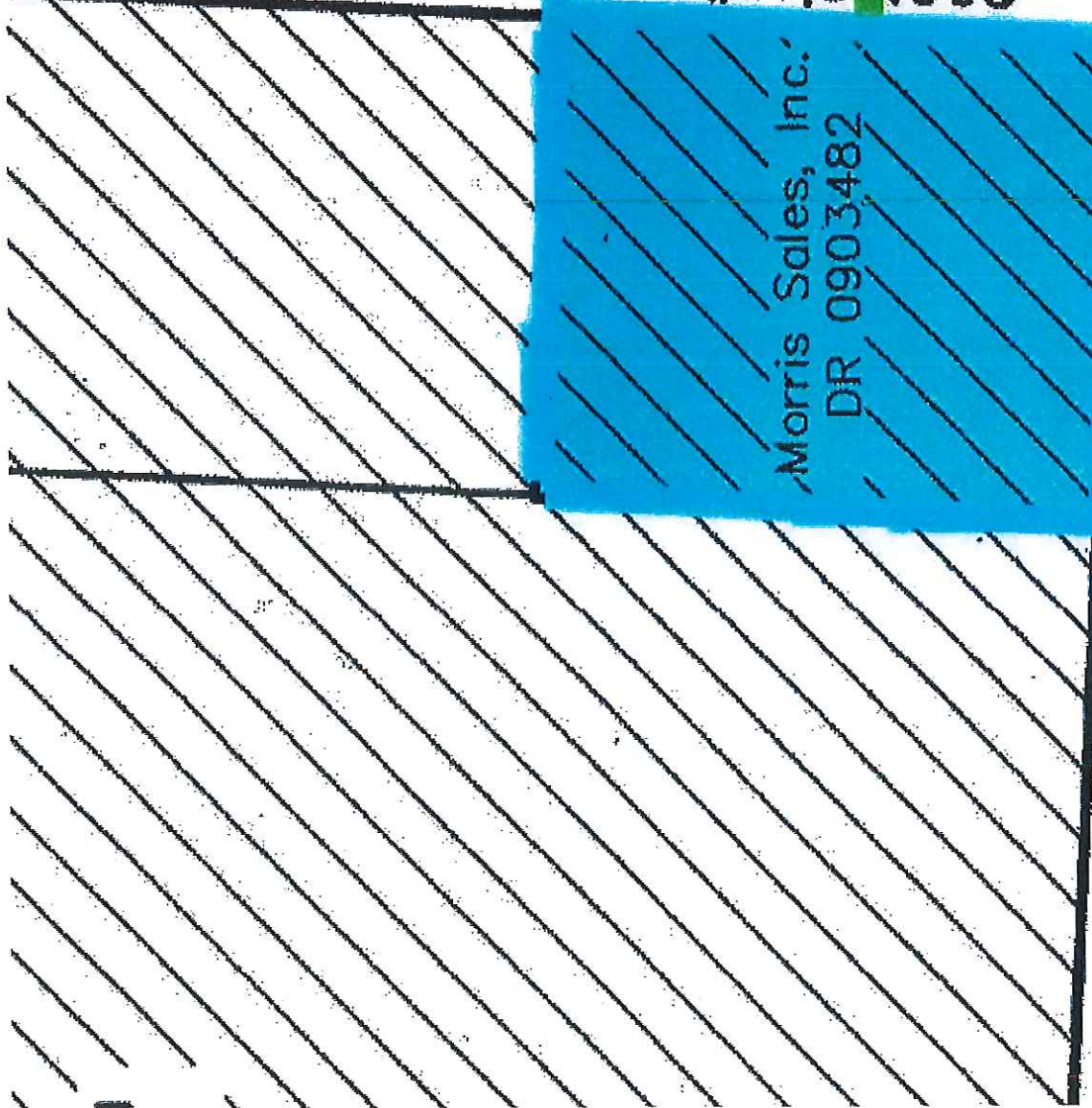
40'

8

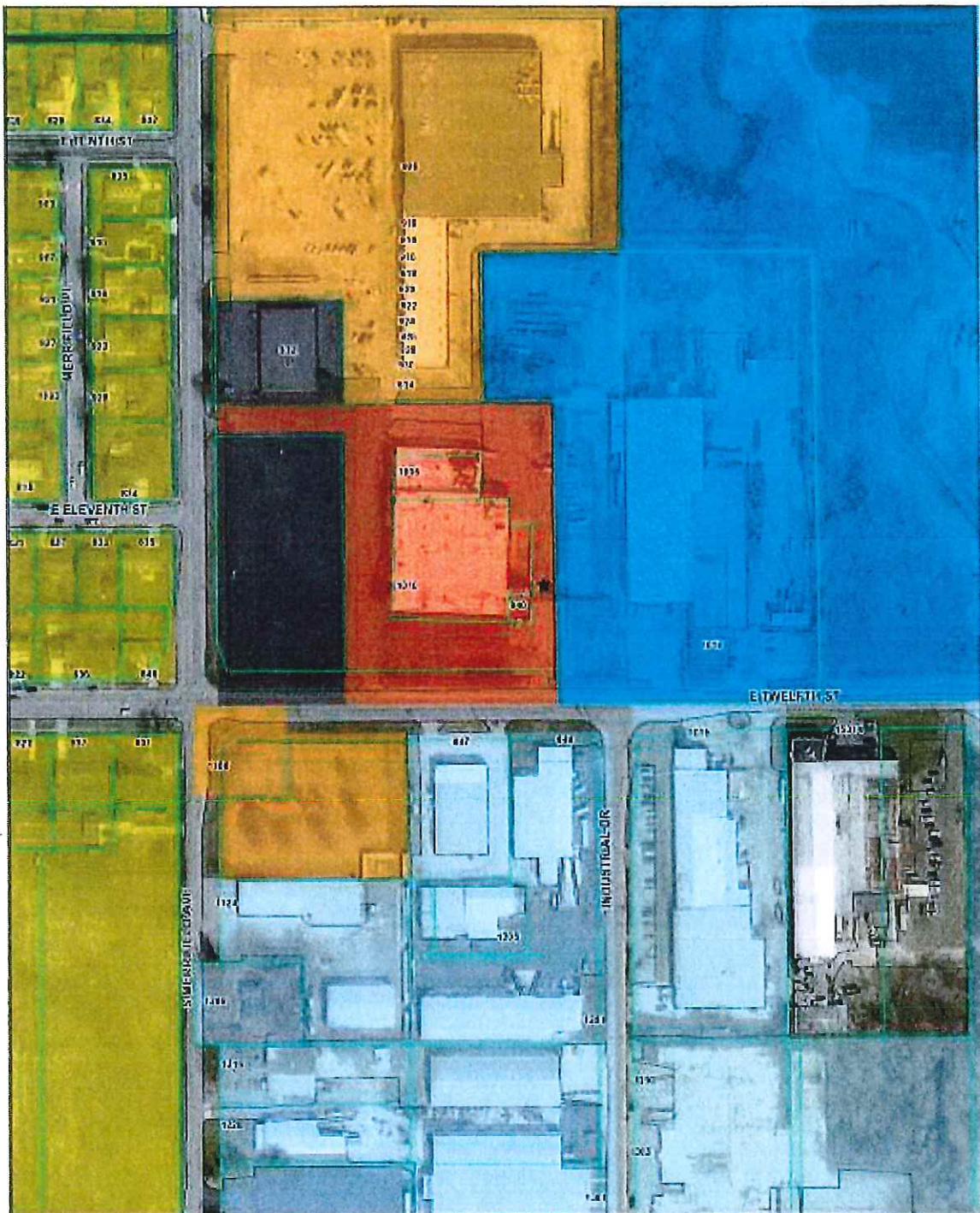
S02'30' 4'00' S02'0'10"W

Morris Sales, Inc.
DR 0903482

N87°29'50"W
36.00'

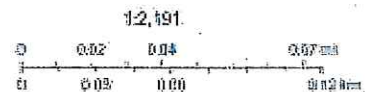


City of Mishawaka Zoning



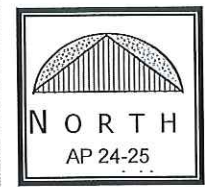
© 2024, 8:57:18 AM

- | | | |
|---|--|--|
| <ul style="list-style-type: none"> Property Line Street City Block Water Edge Building Proposed Survey Adjacent Property City-Designated Public Right-of-Way | <ul style="list-style-type: none"> R-1 Single-Family Residential R-2 Medium-Density Residential R-3 Medium-Density Residential C-1 General Commercial C-2 Shopping Center Commercial C-3 City Center Commercial C-4 Office Commercial C-5 Professional/Community C-6 Light Industrial C-7 Heavy Industrial C-8 Community Open Space C-9 Public Use (Park/Recreation) | <ul style="list-style-type: none"> I-1 Light Industrial I-2 Heavy Industrial I-3 Heavy Industrial I-4 Heavy Industrial I-5 Heavy Industrial I-6 Heavy Industrial I-7 Heavy Industrial I-8 Heavy Industrial I-9 Heavy Industrial I-10 Heavy Industrial I-11 Heavy Industrial I-12 Heavy Industrial I-13 Heavy Industrial I-14 Heavy Industrial I-15 Heavy Industrial I-16 Heavy Industrial I-17 Heavy Industrial I-18 Heavy Industrial I-19 Heavy Industrial I-20 Heavy Industrial I-21 Heavy Industrial I-22 Heavy Industrial I-23 Heavy Industrial I-24 Heavy Industrial I-25 Heavy Industrial I-26 Heavy Industrial I-27 Heavy Industrial I-28 Heavy Industrial I-29 Heavy Industrial I-30 Heavy Industrial I-31 Heavy Industrial I-32 Heavy Industrial I-33 Heavy Industrial I-34 Heavy Industrial I-35 Heavy Industrial I-36 Heavy Industrial I-37 Heavy Industrial I-38 Heavy Industrial I-39 Heavy Industrial I-40 Heavy Industrial I-41 Heavy Industrial I-42 Heavy Industrial I-43 Heavy Industrial I-44 Heavy Industrial I-45 Heavy Industrial I-46 Heavy Industrial I-47 Heavy Industrial I-48 Heavy Industrial I-49 Heavy Industrial I-50 Heavy Industrial I-51 Heavy Industrial I-52 Heavy Industrial I-53 Heavy Industrial I-54 Heavy Industrial I-55 Heavy Industrial I-56 Heavy Industrial I-57 Heavy Industrial I-58 Heavy Industrial I-59 Heavy Industrial I-60 Heavy Industrial I-61 Heavy Industrial I-62 Heavy Industrial I-63 Heavy Industrial I-64 Heavy Industrial I-65 Heavy Industrial I-66 Heavy Industrial I-67 Heavy Industrial I-68 Heavy Industrial I-69 Heavy Industrial I-70 Heavy Industrial I-71 Heavy Industrial I-72 Heavy Industrial I-73 Heavy Industrial I-74 Heavy Industrial I-75 Heavy Industrial I-76 Heavy Industrial I-77 Heavy Industrial I-78 Heavy Industrial I-79 Heavy Industrial I-80 Heavy Industrial I-81 Heavy Industrial I-82 Heavy Industrial I-83 Heavy Industrial I-84 Heavy Industrial I-85 Heavy Industrial I-86 Heavy Industrial I-87 Heavy Industrial I-88 Heavy Industrial I-89 Heavy Industrial I-90 Heavy Industrial I-91 Heavy Industrial I-92 Heavy Industrial I-93 Heavy Industrial I-94 Heavy Industrial I-95 Heavy Industrial I-96 Heavy Industrial I-97 Heavy Industrial I-98 Heavy Industrial I-99 Heavy Industrial I-100 Heavy Industrial |
|---|--|--|



R-1 R-1

E TENTH ST



S MERRIFIELD AVE

AP 24-25

I-2

I-2

C-7

C-2

R-1

R-1

R-1

R-1

R-1

R-1

R-1

R-1

R-1

R-1

R-1

C-7

C-1

C-1

C-1

PROPOSED²
STORAGE CONTAINER
LOCATION

I-2

E TWELFTH ST

C-2

R-1

R-1

I-1

I-1

I-1

I-1

I-1

I-1

I-1

INDUSTRIAL DR

Location Map

AP 24-25

MCC SELF STORAGE LLC & MORRIS
SALES, INC (OWNERS) / JOSHUA
VISSER (LEGAL COUNSEL)

940 E. 12TH STREET

USE VARIANCE TO ALLOW FOR
TWO PERMANENT STORAGE
CONTAINERS FOR FIREWORKS



BUILDERS IRON WORKS, INC.

1016 E 12TH STREET, MISHAWAKA, IN 46544

PHONE: 574-254-1553, FAX 574-254-1598

July 1, 2024

Planning & Community Development
100 Lincolnway West
Mishawaka, Indiana 46544
donna.burkart@mishawaka.in.gov

**RE: Appeal No. #24-25, MCC Self Storage LLC & Morris Sales, Inc.
940 E. Twelfth St., Mishawaka, Indiana
Use Variance**

Dear Board of Zoning Appeals, City of Mishawaka:

I write on behalf of Builders Iron Works, Inc., located at 1016 E. 12th St., Mishawaka, Indiana 46544. The property which is the subject of this appeal, 940 E. 12th St. (the "Subject Property"), is our neighbor to the west.

The Subject Property has applied for a use variance for two permanent storage containers for fireworks. Builders Iron Works, Inc. strongly opposes this use variance.

Throughout the years, the occupant of the Subject Property has let off large fireworks/large boom-makers from time to time, up to the present. The most recent incident was the week of June 17, 2024. In the past, debris and detritus from the Subject Property related to their fireworks have landed on our property, possibly causing a grass fire at one time. This has occurred even with the Mishawaka Fireworks business operating only part of the year. We are concerned about the potential for even worse problems if the owners of the Subject Property are allowed to store fireworks on the property for the entire year.

The grant of the use variance to allow permanent fireworks storage will be injurious to the public health, safety, morals, and general welfare of the community by making it more likely that an explosive event will occur at any point throughout the year, and the possibility of causing fires that spread to multiple properties in the area. The existence of a part-of-the-year fireworks business already negatively affects our property values negatively; if fireworks are allowed to be stored all-year-round, the negative effect will be even worse. There is nothing specific to the Subject Property which makes the use variance requested necessary or appropriate; it is just like any other business property location in the area. Mishawaka Fireworks has had a successful business for years utilizing the building only part of the year, meaning that the application of the zoning ordinance as written regarding permanent storage of fireworks does not cause them unnecessary hardship. There is simply no reason to grant the Subject Property owners the use variance they are requesting, and every reason not to.

Thank you,
Tony Balentine, V.P.
Builders Iron Works, Inc.

CC: Mishawaka Common Council

1st Reading
2nd Reading
Passed
Failed
Continued To

Deborah S. Block, IAMC, MMC

JUL 10 2024

City Clerk
Mishawaka, IN

PROPOSED ORDINANCE NO. 2024 -20

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE 5868 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 JANUARY 1, 2024.

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

Section 1. Ordinance number 5868 passed by the Common Council of the City of Mishawaka, Indiana, on the 16th of October 2023 is hereby amended as follows:

POLICE DEPARTMENT:

BIWEEKLY

SERVICES DIVISION DIRECTOR

\$2,692.31

Section 2. This ordinance shall be in full force and effect from and after its signing and attestation.

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

this _____ day of August 2024 at _____ o'clock, __. m.

Gregg A. Hixenbaugh, Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED BY ME, to the Mayor on this _____ day of August 2024, at _____ o'clock,
_____ m.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED BY ME this _____ day of August 2024, at _____ o'clock, _____ m.

David A. Wood, Mayor



CITY OF MISHAWAKA



Police Department
100 Lincolnway West
Mishawaka, IN 46544

David A. Wood, Mayor
Kenneth L. Witkowski, Chief

July 15, 2024

Mishawaka Common Council
Mayor Dave Wood

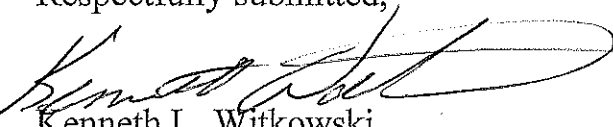
Re: Service Division Director

Mr. President and Honorable Council Members:

The Mishawaka Police Department would like to present to the Council for approval a request to convert the Division Chief of Services position to civilian status and change the title to Services Division Director.

The salary will be \$70,000 which is a reduction from the current pay of \$96,500. An additional benefit is to allow the MPD to utilize sworn personnel more efficiently to serve the public.

Respectfully submitted,


Kenneth L. Witkowski
Chief of Police