

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

January 8, 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, January 8, 2024 at 7:00PM. The meeting was called to order by City Clerk Debbie Ladyga-Block. All were asked to stand for the Pledge of Allegiance.

Members attending virtually do so by WebEx. Public that attend can participate by WebEx or observe meetings by YouTube or Facebook live. The Council meetings are also streamed live on Michiana Access on Comcast/AT&T U-verse Channel 99.

Dale “Woody” Emmons 1st District
Matt Carroll 2nd District
Anthony “Tony” Hazen 3rd District
Kate Voelker 4th District
Anthony “Tony” Violi 5th District
Ron Banicki 6th District
Gregg A. Hixenbaugh At-Large
Matt Mammolenti At -Large
Lacy Hahn At-Large

Chief Deputy Clerk Boston called the roll.

Roll Call.

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

Clerk Block opened the floor for nominations for the position of President of the Council for 2024. Mr. Emmons stated it was his honor and privilege to nominate Honorable Mr. Gregg Hixenbaugh for President of the Council for 2024 and Mr. Banicki seconded the motion. Clerk Block entertained a motion to close nominations, as there were no more nominations made. The motion was moved by Mr. Banicki and seconded by Mr. Mammolenti and a voice vote was held on the motion. Clerk Boston polled the Council on the nomination of Mr. Hixenbaugh for the position of Council President.

Motion passed by unanimous roll call vote (summary: Yes = 9).

Yes: Mr. Hazen, Mrs. Voelker, Mr. Carroll, Mr. Banicki, Mr. Emmons, Mrs. Hahn, Mr. Mammolenti, Mr. Violi, Mr. Hixenbaugh. The motion passed 9-0 and Mr. Hixenbaugh became Council President.

Mr. Hixenbaugh opened the floor for nominations for the position of Vice President of the Council. Mr. Mammolenti nominated Mr. Ron Banicki for Vice President of the Council and Mr. Violi seconded the motion. Mr. Hixenbaugh entertained a motion to close nominations, as there were no more nominations made. The motion was moved by Mr. Violi and seconded by Mr. Mammolenti and a voice vote was held on the motion. Clerk Block polled the Council on the nomination of Mr. Banicki for the position of Vice President.

Motion passed by unanimous roll call vote (summary: Yes = 9).

Yes: Mr. Hazen, Mrs. Voelker, Mr. Carroll, Mr. Banicki, Mr. Emmons, Mrs. Hahn, Mr. Mammolenti, Mr. Violi, Mr. Hixenbaugh. The motion passed 9-0 and Mr. Banicki became Vice President of the Council.

Minutes for the Regular Meeting on December 18, 2023 were approved as received from the Clerk's Office.

Clerk Block read the following petitions by title.

Petition No. 2023-27 PUD Amendment to allow a Convenience Store with Gas Station & C-1 Parking Standards – Lot 2 of Capital & 12th PUD Minor Subdivision

Petition No. 2023-28 PUD Amendment for increased Building Height (69', Reduced Parking Setback (6') and Pavement Drive Aisle Setback (0'), and Outdoor/Open Space for Various Uses – Lot 1 & Lot 2 of the Enclave at Grandview Manor Subdivision

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

PROPOSED ORDINANCE NO. 2024-01

**AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA
AMENDING CHAPTER 2 ARTICLE 2 OF THE MUNICIPAL CODE OF THE CITY OF
MISHAWAKA, INDIANA
An Ordinance Amending Council Procedural Rules
(Assigned to Personnel Committee)**

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

PROPOSED ORDINANCE NO. 2023-57

**AN ORDINANCE AMENDING CHAPTER 137 OF THE MUNICIPAL CODE OF THE
CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED,**

**COMMONLY KNOWN AS “THE ZONING ORDINANCE” OF THE CITY OF
MISHAWAKA, INDIANA**

Rezone from C-1 General Commercial to C-4 Automobile Oriented – 411 W. McKinley

Mr. Hixenbaugh stated the record would reflect that since they had not as of yet appointed their committees, the matter would be presented to the Council as a whole and with that, they moved into the second reading and public hearing on **PROPOSED ORDINANCE NO. 2023-57**.

Andy Morrison. 4351 Chase Circle Zionsville, Indiana, spoke in favor of **PROPOSED ORDINANCE NO. 2023-57**. Mr. Morrison stated he was the petitioner and he owned Take 5 Oil Change in Indiana, and they had a proposed project at 411 West McKinley Avenue. Mr. Morrison stated it was currently zoned C-1 and they were proposing a rezone to C-4 to allow for a drive-thru oil change use. Mr. Morrison stated Take 5 Oil Change was a ten-minute drive-thru oil change concept and they did not do many ancillary products and services and really focused on just the oil changes. Mr. Morrison stated they would do wiper blades, air filters, cabin air filters and an occasional coolant exchange but that was it and the guests remained in their vehicle for the duration of the service with bay times being about 9 minutes. Mr. Morrison stated Take 5 was a national brand and his cousin and himself were partners and they had 23 of these businesses operating in Indiana and the brand recently opened their one thousandth location nationwide. Mr. Morrison stated the site was currently a vacant bank site and they wanted to rezone it from C-1 to C-4.

Mr. Banicki asked if this would be a pit style unit where you basically drove over to whoever was servicing the car. Mr. Morrison stated that was correct and they were about thirty-inch-deep pits and no basement. Mr. Banicki asked if the current entrances, one on the front and one on the backside of the property, would stay the same. Mr. Morrison stated the proposed site plan called for removing access from McKinley, so that curb cut would not be there. Mr. Morrison stated they worked with staff at length and decided that the best path forward was to remove access off of McKinley from a safety perspective. Mr. Banicki stated at some point they were going to have to widen that intersection and asked if there was going to be room for them to kind of infringe upon his property a little bit without affecting the business. Mr. Morrison stated there would be room and their building was about 1750 square feet and they fit on a third of an acre to a half of an acre and this site was almost a full acre, so they had plenty of room on the site and that should not be an issue. Mr. Banicki wished Mr. Morrison good luck.

Mr. Mammolenti asked for confirmation if he had no plans for a car wash at that location, even though some of his national brands did have that. Mr. Morrison stated they did not have plans for that, and the car wash was all corporate owned and this site would be a co-development, and this would be just them in the oil change business.

Mr. Emmons asked when he proposed to demolish the former bank building on the site. Mr. Morrison stated immediately after if this was successful and approved. Mr. Morrison stated they

would have to go through the building permit process, but demolition would probably begin in the late spring-early summer timeframe.

Mr. Hixenbaugh thanked Mr. Morrison for the information and welcomed him to the community and stated he was inclined to support this, but one thing he was inclined to ask was that even though it had been used as a bank for a lot of years, it was in close proximity to some residences and he did not want it to upset the neighbors, even though it did not seem like it would be a noxious use. Mr. Hixenbaugh stated his hope would be that he and those who would work for him would keep that in mind and that they would continue to be good neighbors to the folks who lived directly south and adjacent to the property. Mr. Hixenbaugh stated even though he may have operated from elsewhere, if he could do everything he could as a responsible business owner to keep an eye on those types of issues, he was sure they would appreciate that. Mr. Morrison said yes sir. Mr. Hixenbaugh thanked Mr. Morrison.

Martin Ufkin, 2113 Liberty Drive, spoke in opposition of **PROPOSED ORDINANCE NO. 2023-57**. Mr. Ufkin stated he had lived at 2113 Liberty Drive for the past ten years with his wife and now eight-month-old daughter. Mr. Ufkin stated his home would be directly south of the proposed Russ Avenue entrance for Take 5 Oil Change. Mr. Ufkin stated he spoke previously to the Planning Commission when the zoning was originally presented by the petitioner, Mr. Morrison. Mr. Ufkin stated he felt that his concerns for the safety of the residents and drivers of the area were not adequately considered. Mr. Ufkin stated over the past ten years, he had witnessed how the intersection of Russ and Liberty attracted many accidents. Mr. Ufkin stated when Grape crossed McKinley and became Liberty, it abruptly went from a two-lane street to a one-lane street and oftentimes, distracted drivers unfamiliar with the abrupt merging of the lanes were forced to attempt to outrun another car when their own lane suddenly disappeared. Mr. Ufkin stated this put any car slowing down to turn west onto Russ Avenue, including future Take Five customers, in danger. Mr. Ufkin stated he had seen it happen many times and twice they had ended up with car parts in their front lawn and once even a whole car. Mr. Ufkin stated his primary concern with the proposal was the plan to remove the McKinley entrance as this would only increase traffic turning west onto Russ Avenue. Mr. Ufkin stated at the Planning Commission meeting, Mr. Morrison argued that they consulted traffic studies and claimed that the studies said their business would have less traffic than other businesses, such as fast-food restaurants or a bank, with this site previously being a bank before Mr. Morrison became the owner. Mr. Ufkin stated the bank had the McKinley entrance open when it was in business, which lessened the traffic onto Russ. Mr. Ufkin stated furthermore, such traffic studies would not look at the traffic flow for this specific intersection. Mr. Ufkin stated often drivers heading east down McKinley did not want to have to stop at McKinley stoplights and instead they would decide to take Russ Avenue, usually turning off of Benton Street or Forest Avenue, raced down Russ at high speeds in order to skip the McKinley lights. Mr. Ufkin stated the situation was already a hazard to the residents off of Russ Avenue and the increased traffic necessary to access Take 5 could exasperate the problem if the McKinley entrance was closed. Mr. Ufkin stated limiting access to Take 5 via Russ Avenue was his main concern, but not his only one. Mr. Ufkin stated he had never seen an oil change business that was not an eyesore and he questioned how

adding this business would affect his property value. Mr. Ufkin stated the previous bank at least had nice landscaping and shrubbery that created a nice partition between business and residence. Mr. Ufkin stated Take 5 also briefly addressed the concerns about added noise and pollution and perhaps Take 5 could contain some of the environmental hazards, but they would not have control obviously over the noise and pollution of the customer cars running while waiting in line. Mr. Ufkin thanked the Council for listening to his concerns and for their future actions to address the safety of Mishawaka.

Mrs. Voelker stated he addressed her concern about his home and the proximity of the business and increased traffic on Russ and Liberty and she drove down Liberty frequently and even though she had lived in Mishawaka for thirty years, she had actually gotten caught occasionally with the lanes merging at that particular intersection, so she could see how that happened so frequently. Mrs. Voelker stated she echoed his concern about the traffic and thanked him for speaking.

Mrs. Voelker asked Ken Prince if the neighbors were notified of this. Mr. Prince stated standard notification was used. Mrs. Voelker if Mr. Prince could address the questions about the merging of traffic, closure of the McKinley entrance and also landscaping to protect neighbors from the business of the oil change shop. Mr. Prince began with the closing of the entrance off of McKinley and stated they had extensive discussions with the applicant regarding how access and how the circulation worked going into the facility and one of the noted by Engineering was the left turn movement from McKinley on the westbound traffic being able to turn into the site which was why they were requesting why that access be closed. Mr. Prince stated what happened was there was no turn lane, and it was a stacking lane for when you were left bound, eastbound on McKinley turning left on Grape which was the higher volume, and you would be essentially stopping traffic in McKinley by stopping to make the turn into the oil change facility. Mr. Prince stated they also requested that the applicant talk to the next-door neighbor to the west regarding possibly using their access drive as a shared drive, but the next-door neighbor had no interest in that. Mr. Prince stated at that point in time, they told the applicant that their only viable access was going to be off Russ and at that point, they had to really debate whether it was worth pursuing the site or not pursuing the site. Mr. Prince stated if another bank were to go into the site, that access would be grandfathered in but because of the change in use, they required the property be brought up to code which was why they were requesting that access be closed concurrently with the change in use of the property. Mrs. Voelker asked if he at all thought about a right-in, right-out only at that access point so you could only turn right off of McKinley into the oil change facility and only right turning out. Mr. Prince stated they did, and he thought it was an expense issue. Mr. Prince stated when you put one of those angled pieces of concrete down, they never worked, and they did it in multiple locations before and they were just not feasible. Mr. Prince stated the only way to really restrict the turning movement was to widen McKinley and put an unmountable median in, which they did not have the right of way for and would be an extreme expense for what they were looking to do. Mr. Prince stated it would be their option to look into that and they could potentially do that but with the amount of volume of traffic, their understanding from the applicant was they did about 50 to 60 oil changes a day and

they could confirm that if you multiplied that by the number of hours, that traffic was significantly less than what the bank was at peak times and that was why, in part, they did not have the same concern about the access to Russ because of that limited amount of traffic based on the number of oil changes they did. Mrs. Voelker asked Mr. Prince if he could address the landscaping. Mr. Prince stated they would be required to meet their current landscaping for the C-4 district and he had not analyzed the existing landscaping at the bank site to see if that complied and that they could reuse it. Mr. Prince stated they had identified on the site plan that he believed was distributed to everybody that they had planned to retain that area on the south side of the property, so they may have already met the landscaping requirements needed. Mrs. Voelker stated they did not have a site plan in the packet. Mr. Hixenbaugh echoed Mrs. Voelker's statement and stated he saw an aerial but not a site plan. Mr. Morrison provided a copy of the site plan to project at the meeting. Mr. Prince stated on the aerial, you could see the dual curve cuts in the existing landscaping remaining and you could see in the area of existing paving that they would essentially be retained and then the area to the north of it, you could see the area where they would be looking to expand and build upon. Mr. Prince stated theoretically, they would be able to retain the asphalt paving, landscaping on that south side of the property. Mrs. Voelker asked if there really was not any protective landscaping between residential on Russ and the proposed business. Mr. Prince stated they would be required to plant trees as part of the site plan and again, he had not done an analysis of what existed on the property and what did not, and he was only reacting to what was indicated by the remonstrator that said the landscaping looked good on the bank. Mr. Prince stated there was a landscape bed and if you looked at the parking lot between the sidewalk and where the parking was, there was a landscape bed in there, but he was not sure if it had shrubbery in it or not. Mr. Prince stated you would see a tree in the shadows, and you could see on the adjacent property, there was a tree on the property to the east.

Mr. Mammolenti asked, based on the comment that he had made, any other project that went into this property other than a bank, if the McKinley entrance would be eliminated. Mr. Prince stated he used the bank as an example but no, if it was equal or less intense than a bank, they could go in there and not make any improvements, with an office for example. Mr. Prince stated it could become a doctor's office or an urgent care and no improvements would be required. Mr. Prince stated if it became a restaurant, that would be a change of use that would warrant any upgrade with a different parking requirement among other things. Mr. Mammolenti asked if it would be up to the petitioner to pay for those improvements if those were suggested and if they wanted to have an entrance on McKinley or elsewhere. Mr. Prince stated that was correct.

Mr. Hixenbaugh asked with respect to the C-1 use, if the bank sold this to an individual who planned to make use of it in conjunction with their C-1 zoning, there would not be any rezoning that would be necessary as well as no action for the Council to take. Mr. Prince stated that was correct. Mr. Hixenbaugh stated it appeared to him that there were about 134 commercial uses within a C-1 district that would presumptively be possible on the site. Mr. Prince stated that was correct. Mr. Hixenbaugh pointed out a few things such as tobacco stores, which he assumed would be much more problematic for the neighborhood potentially and his point was that without any action on the part of any governmental entity in Mishawaka, if in fact the property to

somebody who was going to use it in conjunction with that C-1 commercial use, they would have no control over that unless they otherwise violated a separate provision of the municipal code and asked if that were correct. Mr. Prince stated that was correct. Mr. Hixenbaugh stated when it came to the neighbor's concern with regard to that buffering and natural sound barriers that could help make certain uses more consistent with the neighborhoods, if as part of the site plan process any of that would be addressed and if the petitioner would be working with staff and the Plan Commission to address that separate and distinct from whether the use was allowable. Mr. Prince stated they would definitely be required to review the landscaping plan and that included the planting along the edge. Mr. Prince stated that unlike a typical commercial property, it butted immediately adjacent to a residential property and there would be no evergreen or fencing requirement because of the clear visionary required to see to get in and put of the business and the fence would essentially block your ability to see. Mr. Hixenbaugh stated with regard to the problem with McKinley, they had all seen people do that and asked if there had been any discussion of a fix for that particular predicament and the problems on McKinley that he addressed earlier in his comments. Mr. Prince stated they had no current capital improvement project planned for the proposed area and they did have other areas where they had multiple lanes being reduced and had the same problem and it was not unique to the location in question. Mr. Prince referenced the drawing and stated you could see the point of constriction where it angled back into one lane and there was talk of potentially removing that restriction to have a designated right turn lane onto Russ to help that free flow to stop that conflict and he was not sure if that made it better or worse but it was a better question for the City Engineer as it was an engineering decision.

Mr. Banicki stated if he was not mistaken, the building on the northeast corner used to be an oil change facility. Mr. Prince stated that was correct. Mr. Banicki stated while the proposal had a much bigger footprint, he did not think it would be that much different for the neighborhood. Mr. Prince stated part of their decision in recommending approval was the existing auto-related uses near this property. Mr. Prince stated there was a gas station immediately to the north as well as the car wash across the street, so that was part of their basis of their decision. Mr. Banicki stated so really north of Russ had always been a commercial area with automotive uses. Mr. Prince stated as he knew, going down McKinley it changed as you went but the automobile uses were definitely prevalent. Mr. Banicki stated he could attest that when you were heading west on McKinley and tried to turn left into the bank entrance, there is a great chance you could get hit and his son unfortunately did, so crossing traffic there was just brutal. Mr. Banicki stated closing that entrance was probably a positive thing, even though it would move some traffic to the back of Russ, but it would eliminate some major accidents. Mr. Prince stated he would pass that on to Chris Jamrose. Mr. Banicki thanked Mr. Prince.

Mr. Hixenbaugh asked Mr. Morrison to come back to the podium and stated hopefully he heard not only from the neighbor but from the questions of the Council, the concerns that they had and having heard that as he conceived of the site plan that he and his organization put together, asked him if he could take a look at anything that their staff would work with him to suggest that would help further serve as a buffer between his operation and the neighborhood, if it was possible

given the layout of the site. Mr. Morrison said yes. Mr. Hixenbaugh asked if he ever had the chance to talk to the gentleman that spoke before the Council that evening, his soon-to-be neighbor, if this went through. Mr. Morrison stated he attended the Planning Commission meeting virtually and was able to respond to some of his comments, but they had not spoken in person. Mr. Hixenbaugh asked if he had the time if he could commit to meeting the gentleman that evening to try to further understand what his concerns were and see if there was anything he or his organization could do to try to address them. Mr. Morrison stated he would. Mr. Hixenbaugh asked for clarification what the hours of operation would be. Mr. Morrison stated standard hours were 7AM to 7PM, Monday through Saturday and 10AM to 5PM on Sundays. Mr. Hixenbaugh asked what about vehicular traffic service vehicles, because obviously the oil had to be delivered from some place and if he lived next door, what would he need to expect to be the noise and the frequency that he was going to see tankers in his neighborhood. Mr. Morrison stated typically, oil was delivered once a week at midday and then used oil would be picked up either weekly or bi-weekly depending on the volume of the store. Mr. Morrison added that they had 23 of these stores operating and their average oil changes per day at that time fluctuated between 32 and 33 so they were open for twelve hours a day essentially for 6 days a week and then 7 hours on Sundays, so they had numerous traffic trip generation reports and studies done on ingress and egress and basically everyone said the max amount of vehicles entering and exiting in peak hours were anything from roughly six to eight, which was much less intense than fast food or bank or anything else like that. Mr. Hixenbaugh thanked Mr. Morrison.

Mrs. Voelker asked how many bays they would have. Mr. Morrison stated 3. Mrs. Voelker thanked Mr. Morrison.

Question was called for at 7:34PM for **PROPOSED ORDINANCE NO. 2023-57. Motion passed by unanimous roll call vote (summary: Yes = 9).**

Yes: Mr. Hazen, Mrs. Voelker, Mr. Carroll, Mr. Banicki, Mr. Emmons, Mrs. Hahn, Mr. Mammolenti, Mr. Violi, Mr. Hixenbaugh. The proposed ordinance passed 9-0, thus it became **ORDINANCE NO. 5878.**

PROPOSED ORDINANCE NO. 2023-58

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

Rezone from C-1 General Commercial to R-1 Single Family Residential – 617 E. Grove Street

Mr. Hixenbaugh stated the record would reflect that since they had not as of yet appointed their committees, the matter would be presented to the Council as a whole and with that, they moved into the second reading and public hearing on **PROPOSED ORDINANCE NO. 2023-58.**

Mrs. Voelker made a motion that they postpone **PROPOSED ORDINANCE NO. 2023-58** until their next regularly scheduled council meeting to give the property owner the opportunity to come before the Council and speak. Mr. Mammolenti seconded the motion and a voice vote was held. The motion was passed, and the matter was postponed until their next regularly scheduled council meeting.

NEW BUSINESS

The chair entertained a motion to approve the list of Council Committees and Appointments with the appointment of Mr. Trippel as Council Attorney and the appointments of various boards and commissions with the specifics being reflected as were set out in a sheet that was distributed to them by the Clerk's Office. Mrs. Voelker made the motion and Mr. Mammolenti seconded the motion; thus, a voice vote was held, and the matter carried. Mr. Hixenbaugh congratulated all on their appointments.

Mr. Hixenbaugh stated they also had the acceptance of the annual Conflict of Interest forms for councilmembers and Clerk Block read the names of the individuals that had submitted the form.

Dale "Woody" Emmons, Matt Carroll, Anthony "Tony" Hazen, Anthony "Tony" Violi, Gregg Hixenbaugh, Matt Mammolenti.

The chair entertained a motion to accept the Conflict of Interest forms for the individuals whose names were read by Clerk Block. Mr. Banicki made the motion and Mr. Mammolenti seconded the motion; thus, a voice vote was held, and the matter carried.

Mr. Emmons announced the first West End neighborhood meeting of the year would be on January 18th and the speaker would be Ken Cotter, St. Joseph County Prosecutor. Mr. Emmons stated it was a follow-up of other meetings they had in the past talking about the Police Department and related topics. Mr. Emmons stated the meeting would start at 7PM at St. Bavos and West End Bakery donuts would be served. Mr. Emmons looked forward to seeing everyone there.

Mr. Mammolenti made brief reminder that the Twin Branch Neighborhood Watch would be meeting January 17th at 5:30PM and they would be meeting at the Mishawaka Historical Museum for a brief tour to take a look around and have an opportunity to ask any questions. Mr. Mammolenti hoped to see everyone there and all were welcome.

ADJOURNMENT 7:40PM

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

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