

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

July 1, 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 1, 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 June 17, 2024, were approved as received from the Clerk's Office.

Clerk Block read the following appeals by title.

Appeal No. 2024-25 Use Variance to allow for Two Permanent Storage Containers for Fireworks – 940 E. 12th St.

Appeal No. 2024-27 Use Variance for Fine Line Micro Tattooing Services – 314 W. Cleveland Rd.

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

PROPOSED ORDINANCE NO. 2024-08

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

Rezone from C-1 General Commercial to C-10 Filling Station Commercial for proposed Casey's Convenience Store & Gas Station – SE corner of Douglas & Fir Rd.

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.

The chair entertained a motion to amend **PROPOSED ORDINANCE NO. 2024-08** consistent with a hard copy of the proposed amendments that had been distributed to the council. Mrs. Voelker moved the motion, Mr. Violi seconded the motion, and a voice vote was held. The motion was passed unanimously, and the ordinance was amended. Mr. Hixenbaugh stated for the record that the reason for the amendment was to provide an ordinance that was in appropriate fashion for them to have an up or a down vote on the matter that evening.

Stephen Studer, attorney with Krieg DeVault LLP, spoke in favor of **PROPOSED ORDINANCE NO. 2024-08AA**. Mr. Studer stated they were asking the council that evening to rezone Mr. Murphy's property from C-1 to C-10, which would be consistent with the exact zoning that Family Express had cattycorner to this property. Mr. Studer stated he provided them each with a copy of a booklet and page one contained a number of key facts. Mr. Studer stated at page two was some information about Casey's and he believed the Council had questions about the actual Casey's that would be coming onto this property, and they had representatives from Casey's present that evening, but even the city acknowledged that Casey's was a first-rate operation. Mr. Studer stated this was a company that was American owned, they were not a franchise, and they were company-owned stores. Mr. Studer stated there were over 2,600 stores all in the Midwest and there were over 40,000 employees. Mr. Studer stated this would be over a \$6 million investment by Casey's in the City of Mishawaka. Mr. Studer stated he had received inquiries from other vendors asking if those were to be approved, if they could contact Casey's to provide additional services. Mr. Studer stated there would be 18 to 22 employees at this location with 40% of which being full-time. Mr. Studer stated the starting rate for individuals with no prior experience would be \$13 an hour, which was well above the \$7.25 minimum wage provided by the state. Mr. Studer stated from there, the rate would continue to go up to the point where you would have full-time employees who would receive full benefits. Mr. Studer stated this was a company with over 40,000 employees, it was a well-run company, and it was considered by many to be the gold standard of these stores. Mr. Studer this property was in the vicinity of an intersection that had between 14,000 and 20,000 vehicles a day and this was precisely the type of operation that should be permitted here not only because of the fast-growing Douglas Road corridor but with the Mishawaka Athletic Facility and others, people need gasoline and stores and other things. Mr. Studer stated as they may or may not know Casey's was the fifth largest purveyor of pizza in the country. Mr. Studer stated on page 8 of what he provided the council, there was a staff report from 2015 and this report dealt not with Casey's but with Family Express. Mr. Studer stated in 2015, the staff fully supported the location and the approval of the rezone of the property where Family Express was located. Mr. Studer stated all the reasons for approval that were set forth on the second page are the exact same reasons why Casey's should be approved. Mr. Studer stated the existing conditions, the character of buildings, the most desirable and highest and best use of the property, conservation, property values, and the comprehensive plan. Mr. Studer stated nothing had changed with respect to that recommendation and in fact, the staff report provided a pro and a con recommendation and in respect to the pro and favor of zoning this, many of these mirrored Casey's as they did for Family Express. Mr. Studer stated in page 3, there was an ordinance passed by this Council some 20 years ago and this ordinance did three specific things with the first it did was delegating the authority of the City of Mishawaka for all wellhead protection issues to the St. Joe County

Health Department. Mr. Studer stated 20 years ago, this body decided that it was up to the County Health Department to administer all wellhead protection issues. Mr. Studer stated the second thing it did was it required the city to designate to the County Health Department a wellhead protection area. Mr. Studer stated the third thing it said was that if in fact the city did designate a wellhead protection area and a proposed property was located in that wellhead protection area, they needed to file a permit with the County Health Department, and this was precisely what Casey's did. Mr. Studer stated Casey's met with the County Health Department after being told that this property was in a wellhead protection area and city staff advised them of that. Mr. Studer stated they went to the County Health Department advised them that it was not in a wellhead protection area and they did not know that it was at that current time but nevertheless, they took the extra step of applying for a permit for the wellhead protection. Mr. Studer stated that permit was in the handout he provided to the council in full and it was an eight or nine page application, so despite the fact that the County Health Department told them that they were not in a wellhead protection area, they took the extra step and Casey's took the extra step in applying as if it were in a wellhead protection area, because they fully believed at some point, the city would comply with section two of the ordinance and apply for wellhead protection area, so they wanted to be ahead of the curve. Mr. Studer stated in doing so, they advised city staff that they were moving forward as they believed it was not in a wellhead protection area, but it was in a one-year time of travel which they had no way of knowing that until they met with the city staff. Mr. Studer stated after they submitted the application to the County Health Department, they advised the city staff that the application was complete and accurate. Mr. Studer stated the County Health Department told them that if they were within 200 feet of a city well, they would not approve the application. Mr. Studer stated they were 1,737 feet from the well. Mr. Studer stated the council approved the purchase of the wellfield only four months after approving Family Express. Mr. Studer stated when the council approved it in December of 2015, four months after they actually approved the purchase of the wellfield site they knew full well that Family Express was going to build there. Mr. Studer stated from their position and argument, they accepted that risk then or did not think it was a risk. Mr. Studer stated either way, Family Express was built. Mr. Studer stated on page five, there was an exhibit from the U.S. Environmental Protection Agency on their official website regarding release detection tanks. Mr. Studer stated on the third page of that, you would see after 2016, they had to install secondary containment with an interest to show monitoring and they provided an exhibit of what that looked like with the double wall tanks and there was material between that detected any leaks from the outside or inside. Mr. Studer stated of the 19,000 tanks installed by this vendor, not one had failed. Mr. Studer stated one question that was raised during the informational session was what type of inspections Casey's would perform at the site. Mr. Studer stated every day, the systems were tested so if there was any anomaly, they would be put back into headquarters and that was level one. Mr. Studer stated level two was that every month, a technician from Casey's came and inspected all of the equipment and level three was that every year, an independent third-party vendor came to inspect all of the equipment, all of the tanks, and they even included a simulated leak in the tanks to see if those leaks would be picked up by the equipment. Mr. Studer stated if it did not, the station would shut down. Mr. Studer stated these inspections occurred daily by the main office and the actual location. Mr. Studer stated page six included a quick

reference guide that was only one page long, that was posted at every store and every employee saw this. Mr. Studer stated behind that was the operating manual that every employee also had to see and take training in. Mr. Studer stated despite their position, there was no real-world risk to the city well-field. Mr. Studer stated Casey's had also offered to pay and make a commitment to install two monetary valves between the well-field and Casey's and Family Express almost as an early warning system. Mr. Studer stated there was going to be the Mishawaka Athletic Facility which, as he understood, was not going to be on concrete and it was going to be on paved asphalt with thousands of cars out there every year. Mr. Studer stated they also posed a risk, so what they were providing for the city was an early warning system that Casey's would pay for. Mr. Studer stated in conclusion, there was no identifiable additional risk for Casey's over Family Express and the city had accepted whatever minute risk there may be for Family Express, and they thought the same was true for Casey's and they had followed the Mishawaka wellhead protection ordinance. Mr. Studer stated it had also complied with the County Health Department regulations and for that reason, they requested approval of the application that evening.

Mr. Violi asked if he could explain the wells that they wanted to install and how they exactly looked. Mr. Studer stated from his prior experience, he would tell him that when you had a major wellfield, you had a zone of influence, and it drew from different areas, and it may even work against the water in this area and groundwater would roll and go to the river. Mr. Studer stated it was drawn in that direction, but wells could be very powerful, and they could draw the water from all directions. Mr. Studer stated they were not addressing any issues that might come off of the toll road or Cleveland Avenue or anywhere else, but what they were doing was addressing the particular concern that these two gas stations presented some type of risk to the wellfield and so they could put those wells wherever the city wanted them and they would pay for them as well as the installation of them and they would make a written commitment to do that so there could be an additional layer of security. Mr. Studer stated the two above ground storage tanks that were on the other side closer to the golf course could leak at any time or a truck could hit them, or a car could hit them or there could be a spill over there. Mr. Studer stated they were offering the city the opportunity to say they were going to put in some additional monitoring wells that would catch that. Mr. Violi asked if they went through that and if they felt that three would be better, would Casey's be willing to pay for a third one. Mr. Studer stated yes, they would commit to a third monitoring well if the city desired that.

Mrs. Voelker asked if it would be the city's responsibility to test the wells and not Casey's responsibility and if she was correct. Mr. Studer stated that was correct and they would want the city to have the independent authority to verify the wells. Mr. Studer stated it was up to the city to decide when and how often to test them and they would install those at their expense then turn the keys over to the city for that purpose. Mrs. Voelker asked what if Casey's decided this location was not for them anymore and decided to sell the property and it became a McDonald's, would Casey's remove the tanks. Mr. Studer stated Casey's was a growing business and he thought it was because they were considered such a fine operation in the Midwest, but they would have to remove the tanks themselves. Mr. Studer stated any gas station that closed down now had to remove all of the tanks.

Mr. Banicki stated while he was concerned about the drinking water, he was also concerned about Juday Creek and on section 8 page 3, there was a blue section and asked what that lineage was. Mr. Studer stated that part of the floodway for Juday Creek was not Juday Creek per se and it went underground there. Mr. Studer stated it was part of the floodway and this was the first part of the process as they still had to meet with the Juday Creek Task Force. Mr. Studer stated they already had some preliminary discussions with the County Surveyor. Mr. Studer stated Juday Creek from them was on the other side of Douglas Road a four-lane highway but that was part of the original floodway that was designed by the Court of Engineers. Mr. Studer stated their tanks were away from that and their detention areas away from that but they would work with the Juday Creek Task Force as well as the County Surveyor to make sure that issue was addressed and if they did not get rezoning, it did not make sense to have that so that had a couple of steps to go but in their preliminary discussions with the County Surveyor, they did not have a problem because they were on the opposite side of Douglas Road. Mr. Banicki stated it just looked like it ran under the middle of the road actually so they were comparable. Mr. Studer stated Juday Creek actually went under Culvert under that intersection and it did not rise above ground, so you could not see Juday Creek from that corner anymore. Mr. Banicki stated you could see it a little bit towards the golf course. Mr. Banicki stated common sense told him that they were taking a little bit of a risk with one and asked if they kept putting on more and more and more if that would increase the chances that one or more may contribute to contaminating either the wellfield and or Juday Creek. Mr. Studer stated his answer to that was no and if they were dealing with gas stations of 15 to 20 years ago, that new could present a risk and in his career, he cleaned up a lot of tanks and gas stations that were enclosed, sold, or whatever and these new tanks did not leak and it was almost impossible for them to leak. Mr. Studer stated if they did leak, not only would the system automatically shut it down but the way that the system was designed, if the monitors went off and said there was a leak, it actually pulled in and shut all of the systems down, so it did not let things go out. Mr. Studer stated even in a worst-case scenario, the concern would be somebody spilling something as they were filling up their gas can for their mower. Mr. Studer stated as they knew, gasoline was a highly volatile chemical in that it dissipated almost immediately and this was all on concrete, so it was impervious to leaks and anything that did leak, not only did it have to be reported to the Indiana State Department of Environment Management and to Casey's but everything would go to an oil water separator and all that was captured. Mr. Studer stated these systems were overbuilt and it was a good thing that they were overbuilt. Mr. Studer stated his grandfather had a gas station back in the 20s and they would actually take the gasoline and spread it along and would burn fires to it, but they did not do that anymore and they had overbuilt the systems to be as safe as possible. Mr. Studer stated he thought there was more of a risk coming from either the parking lot at the athletic facility with thousands of cars that could have oil leaks or gas leaks. Mr. Studer stated they could not get to the point where there would be zero risk for every eventuality that they made up, but they could say that the EPA felt these were no longer risk and were asking that all new stations installed these type of tanks and truthfully, he had to bend to what the EPA had done and there were lots of studies on this and this was what they wanted to see and were installing in accordance with that. Mr. Studer stated they had to or they would be violating federal law, so they were doing everything they could to mitigate any real-world risk. Mr. Studer stated he could not say with 100% certainty there would never be problems, but he could not say that about anything and all they could do was minimize it. Mr. Studer stated when the city bought the wellfield, Family Express was there and they knew it was going to be there and accepted a risk where they

recognized it was not a risk and he thought there was no reason to shut down Family Express, because they did not pose that risk. Mr. Studer stated if the risk was almost zero there, twice zero was still zero and he was not worried about the risk from the gasoline here or from the tank, or the pipes or anything else. Mr. Studer stated he was not worried about anything that was going to go north. Mr. Studer stated the groundwater on their side of the creek generally went south to the river, so there were competing forces and they were doing everything reasonably possible and beyond to make this a safe project. Mr. Studer stated he did not think they needed the monitoring walls truthfully, but Casey's said if it gave the Council more comfort to do it. Mr. Studer stated let's give the city something in return that they can say, we had the ability to monitor that.

Mr. Carroll asked if when he found it was not in the wellfield but still submitted the application if that was reviewed by the Health Department at all or if they just gave him certification that he did submit it. Mr. Studer stated they actually met with the County Health Department and included their counsel, the head of the County Health Department and also their Senior Director of Environmental Affairs, so they went through the whole process and where they were and they said at the time, it was not in a designated wellhead protection area. Mr. Studer stated there was nothing more to be done with the application and they did not even need to fill out the application in the first place, but they fully expected the city at some point to designate it as a wellhead protection area and followed the procedure anyway. Mr. Studer stated they went back and forth with a national engineering firm, Kimberly Horn and met with them and filled out the eight-page application. Mr. Studer stated they completed that and sent back an email saying the application was complete and accurate and told them that if they built the gas station in conjunction with the application, they would give them the permit even though they did not actually present the permit until the business was getting ready to open, but they said if they did not build it in accordance with the application, they were not going to give them a permit. Mr. Studer stated there was a lot of economic incentive for Casey's to complete the station in accordance with this. Mr. Studer stated this would not be a truck stop, it would be a family store where they sold gasoline, pizza, and other items of that nature. Mr. Studer stated the County was very comfortable with this and they told them that there were a number of gas stations in the county in wellhead protection areas who had never filed a permit but they did not want to go that route. Mr. Studer stated they wanted to be ahead of the curve. Mr. Carroll asked who at the County had eyes on the application and took a look at it. Mr. Studer stated Mark Espich, the Senior Environmental Director for the County Health Department and Marcel Levin, the Attorney for the County Health Department and they all met in a meeting with them and he did not know if the President of the County Health Board, John Linn, was there or not but he knew he communicated with these people and they met in March. Mr. Studer stated they wanted to follow the procedure and they did and the application was approved as complete and accurate. Mr. Carroll asked if the council were to approve this that evening, if there would be any further action that he would have to take with the County or if he felt like he had done his due diligence as far as that was concerned. Mr. Studer stated they were done with the County until they actually completed construction and they would come out and give them the application and see that they complied with everything they said in the application and give them the permit. Mr. Studer stated if they did not build it in accordance with the application then they would not grant them a permit but if they built it in accordance with the application, they would be granted the permit. Mr. Carroll asked if there would be further scrutiny that the County would need to do and certain eyes on it as far as that went and if there was a board that had to look at it to give them

the final approval for the permit. Mr. Studer stated he understood it as there was none but for instance, they asked them where the utilities came from and they were getting Mishawaka Utilities for sewing water, so those were things they looked at and they did not want to see septic tanks and if they had an ongoing septic tank, they would may want to come out and inspect it to make sure the septic tank was not leaking. Mr. Studer stated they were the second largest County for septic tanks in the state and septic tanks leaked probably more than any tank they had in their homes anymore, but they did not have that and they would have city utilities. Mr. Studer stated in fact, he received an inquiry from a high-tech vendor saying they would like to bring additional utilities to this location and they said that they would just see and go through the process first. Mr. Studer stated he did not think the County would have any more input on that because what they were going to build would be in accordance with their standards and the application and it was a standardized wellhead protection permit application and it took them seven weeks to get all of the information that was requested. Mr. Carroll thanked Mr. Studer.

Mr. Mammolenti stated as he understood with how he answered Mr. Carroll's question, the County, after the building was completed, would come to inspect and they had the finally say whether he got the permit or not. Mr. Studer stated that was correct and if they did not have the permit, they could not open.

Ms. Hahn stated he mentioned several times that this was a \$6 million investment and asked if they were to break ground, what the timeframe on the construction from start to finish would be. Mr. Studer stated within 6 months. Ms. Hahn asked if he planned on using local labor as far as the construction jobs were concerned. Mr. Studer stated the jobs would go up for bid.

Mr. Hixenbaugh stated he talked about the conditions with regard to the test wells and his ability to be able to commit on behalf of his client to written conditions that reflected the test wells. Mr. Hixenbaugh stated he knew in the staff report that there were additional rezoning related issues that were addressed on page 4 of the staff report with the first issue being cross access easements to allow for movement between this site and surrounding properties to the east and the south. Mr. Hixenbaugh stated the second was a reference to landscaping and using full cut-off fixtures for site lighting, exterior building lighting, and under canopy lighting given the adjacent residential uses. Mr. Hixenbaugh stated the third made note of the fact that this site was located in an area that was identified as flood fringe and as such, the finished floor of the building and fueling locations would need to be raised to two feet above the hundred year flood elevation. Mr. Hixenbaugh stated he believed that those were the three additional conditions over and above the test wells that he mentioned and asked if he had authorization on behalf of his client to include those in any written commitments. Mr. Studer stated yes and they always expected that they would have to meet those developmental requirements, so they would commit to those as well. Mr. Hixenbaugh stated their past practice had been when there as that type of written commitment, it would be drafted in conjunction with the Council Attorney so he could review it on their behalf and then they would ask the developer to pay for the cost of recording those so that they ran with the land in their record and asked if he was willing to commit to that as well. Mr. Studer stated they would agree to that as well. Mr. Hixenbaugh stated he wanted to go back to a bit of a discussion they had with regard to test wells at the informational meeting and stated with regard to the test wells and asked whether there would be two or three, if he recalled the exchange that they had at the time of the informational if it was not the case that the test wells

would not only have relevance to Casey's and its ongoing operation if approved but also would provide additional layer of protection to Family Express and their current operation. Mr. Studer stated absolutely and not only Family Express and Casey's but there was a maintenance barn for the golf course that had above ground storage tanks with both diesel and gasoline in them and it would also provide protection there as well. Mr. Studer stated with the golf course, after it was purchased by the city, there were a lot of agreements entered into about what types of chemicals and things could be used on a golf course. Mr. Studer stated they could check for anything they wanted that would impact the city wells and there was a whole litany of things under the Safe Drinking Water Act, including a two-page report on the city website about all three of the wellfields meeting requirements and they just wanted to make sure they continued to have clean water for the City of Mishawaka and so they were offering to do that and give the city one more tool they could check whenever they wanted for whatever purpose they wanted and to Mr. Violi's request that they would agree to do three. Mr. Hixenbaugh asked with regard to the test wells when they detected an issue, how did that help them to protect the integrity of the wellfield and the suitability of the water. Mr. Hixenbaugh stated he got that it picked up signs of trouble but asked what did that allow them to do that they would not be able to do without the test wells. Mr. Studer stated it was an early warning system, so you had a one-year time of travel and these, let's just say, were eight months before any water could get to the wells, for instance they were set inside the perimeter and inside the maintenance barn and if there was ever a leak, their system shut down and the state would come in. Mr. Studer stated hypothetically, if there was a tanker crash at Fir Road and Douglas and that went into the creek and also into the groundwater and it started heading towards the well, it gave the city enough time to address that issue and there were all kinds of ways to deal with groundwater contamination that they did not have years ago. Mr. Studer stated this would give the city an opportunity to see where the issues were coming from and why they were seeing this. Mr. Studer stated they just had this issue with the County on behalf of a client where they were seeing high levels of chloride in the individual drinking water and what they thought happened was the person's home water softener failed but it was caught in a way to where they could see there were high levels of chloride and where it occurred. Mr. Studer stated this gave the city and its utilities the opportunity to go back and check whatever chemical it may be. Mr. Studer stated in the old 12th Street wellfield case where they had problems was an issue, because Mishawaka was one of 146 public entities that sued the manufacturer of MTPE, which was a chemical compound put in to increase the octane level of gasoline but they found out it was not necessary so Mishawaka joined with numerous other municipalities and it was settled for \$425 million nationwide and Mishawaka received \$8 million of that. Mr. Studer stated those wellfields were still safe and they were still using those wellfields as far as he knew and the wellfields were still pumping out good water. Mr. Studer stated that was a settlement based on the fact that whoever with MTPE never should have been in the water and the EPA allowed it at the time and never should have been allowed in the gasoline as an additive. Mr. Studer stated it was an anomaly, people paid for it, and it had been cleaned up and it had not been used in decades now. Mr. Studer stated you never knew what the next chemical was going to come from and they wanted to make sure they were giving the city another tool to check that. Mr. Hixenbaugh stated on a related topic, one of the other phrases that he had mentioned in his presentation at the information meeting was that Indiana was a polluter pays state and asked if that was correct. Mr. Studer stated that was correct. Mr. Hixenbaugh asked if he could explain that concept a little more and his understanding was that whomever was identified as the source of the pollution or contamination, they were financially responsible so it

was not a municipality that had the sole responsibility to foot the bill and it was whoever was the identified source of the contamination and asked if that were correct. Mr. Studer stated yes and when the water facility over at the wellfield received chemicals and there was a tanker leak, the tanker was responsible to clean that, not the city and Indiana had adopted something called the polluter pays rule, which stated it was the polluter who paid the bill and whoever was responsible for causing that pollution was directly responsible for cleaning it up. Mr. Studer stated Indiana was the only state out of the forty nine others that had insurance coverage for these types of issues and they dealt with this all the time. Mr. Studer stated Honeywell in the City of South Bend had to pay for an old landfill over at LaSalle Park, because they were the ones who, as far as the EPA was concerned, had caused the contamination. Mr. Hixenbaugh stated and of course, Casey's was a fairly large corporation and had been successful, but it sounded like that financial obligation on the part of Casey's would not be funded solely on their corporate profits but they did in fact have insurance coverage that would pay if there was this type of issue and asked if that was correct. Mr. Studer yes and to his point, when they did a lot of tank cleanup problems and they had a lot of pollution from old gas stations, their biggest problems were the mom and pop stores as they did not have the financial wherewithal to pay for pollution or tank cleanups and they would file bankruptcy and they would have to sell assets to clean it up so they always looked wherever they could to find a corporate client that would clean it up, because they generally had more money than an individual had. Mr. Studer stated Casey's would have the ability to clean up any spill if it did come from them and there were lots of ways to do that. Mr. Studer stated he had cases where you could fingerprint gasoline from a particular station and see where it came from and what it did. Mr. Studer stated a lot of things had changed in the 50 years the EPA had been around about how they dealt with pollution, how they dealt with particularly petroleum but the serious cases now were chemical cases and non-gasoline pollution.

Mayor Dave Wood spoke in opposition to **PROPOSED ORDINANCE NO. 2024-08**. Mayor Wood stated this had absolutely nothing to do with Casey's or Family Express or any other individual operation and this was a land use issue. Mayor Wood stated they would welcome Casey's almost anywhere else in the City of Mishawaka with whatever development they wanted to bring and they understood they were a reputable company but the issue here was, as had happened after Family Express came in, the city purchased property and they could not purchase property without permission and going through government process and coming before the Council and that all happened after Family Express went in and that was when they started their significant investment and studies into putting in a wellfield to service Mishawaka's future. Mayor Wood stated since Family Express went in, they did purchase property and they put in a very significant and generational investment, \$40 million into a new wellfield to service Mishawaka's growth and to also help them with their pressure on the far north side and give them what he called water security for essentially their lifetimes. Mayor Wood stated this was a lifetime investment and this would far outlive all of them and land use was a lifetime decision and it would likely outlive all of them. Mayor Wood stated while they loved Casey's and wished them well, they could sell next year, in 2 years, 10 years, 20 years, 50 years from that time and then who would take their place. Mayor Wood asked rhetorically would the next user of the site have the same level of commitment to protecting the site that Casey's did and started that was what they did not know and again, it was a lifetime decision on land use most of the time until somebody came back to request a rezoning. Mayor Wood stated when he thought about his job, his job was to fundamentally protect health and safety and they made a lifetime investment in

safe and clean water and that was what he was there to speak for and protect that evening and they had had a wellfield that had been contaminated with MTBE and while that facility was not operational anymore, the old Baker Park, they had to abandon the wellfield because of that contamination. Mayor Wood stated the city did join in on a lawsuit and were awarded roughly \$8 million on that but that wellfield was abandoned and they had been there before with gas stations contaminating wellfields in close proximity and the other thing that was changing all the time was federal regulation. Mayor Wood stated they saw it as a moving target and that target was always getting stricter. Mayor Wood stated 50 years from now, who knew what the federal regulations would be and he promised they would not be looser and if they continued to exponentially put risk on their perimeter, he was not comfortable with that. Mayor Wood stated he was not there to speak against Casey's, nor was he there to speak against development but he was there to make sure their lifetime investment in their wellfield was protected. Mayor Wood stated not only was that wellfield designed to serve today, it was designed to serve tomorrow and they may need to expand that wellfield very soon, so they would have more wellheads out there in the near future and a bigger plant if some of the news they had seen came to fruition. Mayor Wood stated these were lifetime decisions and that was what they needed to feel comfortable with that they were making the right decisions for their citizens for a lifetime. Mayor Wood thanked the Council.

Ken Prince, Director of Planning and Community Development, spoke in opposition to **PROPOSED ORDINANCE NO. 2024-08**. Mr. Prince stated he wanted to identify that this was about minimizing risk and there were risks everywhere, they talked about this at the information session and one thing he wanted to say that Mr. Studer referenced was that there were risks potentially from the parking lot and leaking and the asphalt, in his tenure he had demolished many parking lots and there had not been one issue of contamination associated with the parking lots and in terms of the gas stations, he wanted to note that Swifty Gas on McKinley east of the railroad tracks was not owned by the city but their planned expansion of McKinley was impacted by the contamination taking place there. Mr. Prince stated Marathon at the southeast corner of Liberty and McKinley had to buy a home and tear it down and there were two vacant lots immediately south of that because of the contamination that was in the ground, the Sunoco that they bought at the southeast corner of 12th and Union had contamination in the ground that prevented the development of residential on that property. Mr. Prince stated Family Express that they partnered with to get rid of the old Blair Hills Mini Mart, when they built that they had to remediate the ground as part of that agreement because of the leaking tanks at the facility. Mr. Prince stated the gas station at the southeast corner of Main and 4th Street had groundwater contamination that impacted their ability to do excavation for their long-term control improvements that were ongoing and also it was what stopped the library from acquiring property because of what they perceived as an environmental liability on adjacent property. Mr. Prince stated with the Rebel gas station right across from City Hall, Murphy Rice had to put a vapor barrier down because of the gas station leaks and contaminants found and those were all of the examples off of the top of his head of gas stations having issues in the city that had directly impacted them. Mr. Prince stated the other thing he wanted to identify was that Mr. Studer was a very good attorney and he had no questions regarding that and he brought up and concentrated on wellhead protection because he wanted to keep the discussion away from the fact that it was a land use issue. Mr. Prince stated on a land use issue, it was very black and white that this was not a good proposal. Mr. Prince stated in terms of the wellhead, all the County was doing was

following their prescribed ordinance regarding if they met their minimum requirements, they would issue a permit and what they did not see that evening was any evidence regarding them recommending in favor of putting a gas station there and there was no professional expert that came forward and stated that they should move forward with this and heard no testimony regarding that either from the County, the State, or the federal government regarding how close these things should be constructed next to a municipal wellfield. Mr. Prince stated the other thing the city had a history of was directing uses to other sites and for example, with John's Auto Spa, they brought a proposal to the Council regarding a perfectly good proposal but it was adjacent to Juday Creek and the senior living facility that was behind it and the Council astutely recommended that it was a great project but it should find another location and this matter that evening was very similar in that regard. Mr. Prince stated lastly, regarding the findings he thought they were black and white. Mr. Prince stated when Family Express came in, they were aware of the potential that a wellfield could be located on the property, but it was strictly a potential and asked rhetorically if they could imagine him coming before the Council at that time saying they had an idea to potentially put a wellfield there with no standing in terms of an agreement, had no ownership of property and how did they astutely represent that and they did not even know at that point the Council would approve it, but yet he should somehow have standing. Mr. Prince stated this was a black and white difference between now and when Family Express was approved, because of the purchase, the standing, the investment, and the ongoing actions that they had taken as a city to protect that wellfield. Mr. Prince stated they placed restrictions that protected the city's wellfield and with this property, to him it was black and white. Mr. Prince stated the two findings he wanted to concentrate on were the current conditions and character of the current structures and uses in each district, very specifically the proposed change to allow a filling station was not appropriate given that the site was located within the one-year time of travel recently completed by the Juday Creek wellfield. Mr. Prince continued stating underground storage tanks holding large volumes of petroleum products, despite increases made in technology, still posed a potential risk to the Juday Creek wellfield. Mr. Prince stated as he said at the information session, they did not yield monitoring wells when a McDonald's went in and they did not need operating manuals that relied on potential human error regarding a Jimmy John's that would go in that location. Mr. Prince stated there were many uses that could go into that corner that did not have that inherent risk despite the best efforts of the applicant. Mr. Prince stated the finding regarding responsible development and growth he thought was also applicable and specifically that the proposed change to the filling station commercial was not desirable given the site was located within that one-year time of travel for the Juday Creek municipal wellfield. Mr. Prince stated underground storage tanks holding large volumes of petroleum, again despite the increases made in technology still posed a risk to the Juday Creek wellfield and again, they were talking about levels of risk and the risk may not be that great regarding a complete shutdown, but there was still ongoing risk. Mr. Prince asked rhetorically how many 50 year old gas stations they saw in the city and the wellfield would be there for 100 years and they knew from the improvements that Mr. Majewski managed existed for 100 years before it was recently renovated and expanded. Mr. Prince stated the tank at the golf course, an 100 year investment, was just another example of how long they expected the infrastructure to last and he could not tell them a gas station that was currently operating that was over 50 years, but they also knew the fact of how they changed over time and the problems they had to deal with with the abandoned gas stations. Mr. Prince stated he was happy to answer any questions.

Mr. Banicki stated looking at the one-year time of travel, it looked like it went almost to the railroad tracks to the east and asked in his opinion, how far from where this was did they think Casey's would have to move in order to be safe. Mr. Prince stated safe was a relative term, but when you got to the intersection of Douglas and Capital, that was beyond that area and to him that was beyond that perimeter and also logical for a c-store. Mr. Banicki stated that the intersection would have as many or more cars there than what this current proposed intersection would be. Mr. Prince stated that was correct and currently there was no infrastructure at that location, so they knew they had some large proposals that were pending that would potentially bring services to that area but that was a real impediment for any development happening at that corner until those services would be provided but it was on the horizon.

Mr. Mammolenti asked if he agreed or disagreed that the three detection wells would be a benefit to providing additional protection from other elements. Mr. Prince stated part of it was they did not want the additional burden of having the monitoring wells there and it was additional work for the city but Mr. Majewski would have to answer that question even though he knew there was work he had to do regardless of that but ultimately other certain uses did not require monitoring wells and the question would be best for Mr. Majewski.

Dave Majewski, Mishawaka Utilities Water Manager, spoke in opposition to **PROPOSED ORDINANCE NO. 2024-08**. Mr. Majewski stated after years of planning, land acquisition and three years of construction, they had a wellfield and apparatus to run the wellfield here at Juday Creek, with their support. Mr. Majewski stated federal regulations only got tighter for them with the lead and copper rule they could have unfunded mandates there and PFAs was going to be a huge one. Mr. Majewski stated the EPA was also looking at lowering the arsenic level from ten parts per billion down to five parts per billion. Mr. Majewski stated he was a first hand witness when they lost Ward Baker Park and they tested the test wells there and found a leak and that wellfield had to be abandoned, so adding a gas station in a one-year time of travel was not a chance he thought they should take with the significant investment and that was why he was respectfully speaking against this. Mr. Majewski stated Casey's was a great gas station and they had great pizza, but he just thought a better use would be more suited for that area and he would hate to see the same thing that happened to Ward Baker happen there. Mr. Majewski stated he knew the wellhead was a big topic and the preliminary delineation happened in 2016 and the final delineation happened within the year of the wellfield going online and the wellfield had been online for two and a half months. Mr. Majewski stated they data they were collecting now calibrated the model, which they would submit for the wellhead protection area and then the wellhead protection plan would come off of that and that would happen over the next year, so there was never an official plan and pretty much it would roughly come out to what they thought it was. Mr. Majewski stated he would answer any questions.

Mrs. Voelker asked about expansion of the wellfield and if that happened, if he had a vision of what that would look like and if that would increase the one-year time of travel area. Mr. Majewski stated as far as the plans, they were still in the works with that development but with adding more wells, the wellfield currently was capable of producing 8.4 million gallons a day and adding a couple of more wells would help the wellfield produce up to 12.4 million gallons a day. Mr. Majewski stated adding that pull to the aquifer, cone of depression so to speak, could

increase the time of travel and if they added new wells, they would have to do another delineation to see what would happen. Mr. Majewski stated generally speaking, the one-year time of travel probably would not change and basically they were one-year, five-year, or ten-year. Mrs. Voelker asked if they were to put more wells in, would those wells be in the same area that the current wells were in. Mr. Majewski stated generally speaking, yes on the Juday Creek Golf Course those would be added there and they had already looked at spots on the golf course. Mrs. Voelker stated given what Mr. Studer said, there were many ways that contamination could be cleaned up and they referred to the well contaminated in Baker Park and asked why they did not just clean it up if it was a good well. Mr. Majewski stated at that time, they were rehabilitating the Virgil wellfield and the cost to do that could not guarantee a total cleanup.

Mr. Violi asked if they were to develop future wells, it was not necessarily that they would get closer to the Douglas and Fir intersection and they could be built further away and asked if that was an option. Mr. Majewski stated they would not be too far from the wellfield, but they would be generally near that area. Mr. Violi stated in theory, they could be a little further northeast and they would not necessarily be closer and it depended obviously but it was not necessarily going to be closer to the intersection. Mr. Majewski stated the hydrogeology, that was a big part of it and seeing how the aquifer performed in different spots and they did test wells to see where the best spot would be.

Mrs. Hazen asked if he or anybody had any idea of the year time of travel from Mabels to the Family Express on Dragoon. Mr. Majewski stated with their delineation since they were not pumping water out of Mabels, generally it was not in consideration and generally wealth had delineation at their Virgil plant, their Gumwood plant, Juday Creek and Division, the wellhead started there where they were pumping the water and that was where it started. Mr. Majewski stated really for Mabels, if there was a wellfield to go up in the south end of town, then that delineation would take place and Mabels could fall in that time of travel. Mrs. Hazen asked about the Meijer and BP on Bremen Highway by the water tower in Blair Hills. Mr. Majewski stated if they were to put up wells there, they would look into that area but since there were no wells they did not look there. Mrs. Hazen asked for clarification just because there was a tower that did not mean there were wells. Mr. Majewski stated that was correct and above ground storage and in ground storage was a little different.

Mr. Carroll asked if he was aware how many gas stations right now had been allowed to be built with one-year time of travel, he was pretty sure there were two in his neighborhood and asked if there were more than that. Mr. Majewski stated he was not aware of any more than those two but it went back to chance that now if somebody were to do that, he would be before them again saying it would not be a good idea.

Mr. Hixenbaugh appreciated that he and Mr. Prince both worked to provide them with additional information in response to questions and he apologized that the turnaround time was so short and so close in proximity to that evening but sometimes questions arose when they did. Mr. Hixenbaugh appreciated his effort along with Mr. Prince to provide the supplemental information. Mr. Majewski stated it was his pleasure.

Mr. Banicki stated looking at the proposal, he thought that Casey's was a great company, they did well and ran a great operation and he had full respect for Mr. Studer and all the work that had been done there but some days you had to look at things and say it made sense or did not make sense and go with your gut. Mr. Banicki stated to him to risk having the wellfield they had and the development they hoped to have, he could not support the proposal that evening and he hoped everyone understood and hopefully, Casey's would build somewhere in the area at some point.

Mr. Hixenbaugh thanked everyone who made a presentation and because of the nature of this issue, he called Mr. Studer back to the podium to see if there were any additional points he would like to address.

Mr. Studer stated there were a lot of comments made and he had a great deal of respect for Mayor Wood, Mr. Prince, and Mr. Majewski but he had some comments, particularly comments in response to their statements. Mr. Studer stated he was a little surprised that the offer of putting century wells in to protect the city's wellfield at a \$40 million investment was considered additional work and an additional expense of the city, even though they admitted that because of the century type wells at Baker, that was how they discovered the pollution. Mr. Studer stated it was an offer made by Casey's to provide to city with additional protection and if they did not want the wells, they did not need the wells. Mr. Studer stated to his knowledge, every gas station that Mr. Prince mentioned was decades old and he did not mention one station that was built in the last eight to ten years, because they could always find old gas stations and Mr. Prince mentioned, for instance at Dragoon there was no gas station there that was contaminated and as a condition to put Family Express there, they had to clean up the contamination so it was clear contamination could be addressed and cleaned up. Mr. Studer stated a question was raised regarding what would happen if Casey's decided to sell and if that was the case for whatever reason, you still had the new USTs approved by the EPA as well as the century well and nothing would change besides the ownership. Mr. Studer stated it was kind of hard to prove a negative, so they were not going to get the County Health Department to come there and say they thought it was a great project, because that was not their role and their role was to say if it was a designated wellhead protection area, they would look at it and they would determine if it was one and publish that, just like South Bend did. Mr. Studer stated the County Health Department told them that they did not even think it needed a permit because it was not in a wellhead protection area. Mr. Studer stated Mr. Prince quoted from the staff report and the staff report had a pro and a con recommendation and on page five of the staff report, they talked specifically about the fact that when in favor of this project that it did not pose a substantial risk to the Juday Creek wellfield, because of the increases in technology, the petroleum storage tanks had been made safer over time. Mr. Studer stated it was the most desirable use, because of this was the hard corner of two heavily traveled roadways. Mr. Studer stated the proposed change, the fueling station commercial, was desirable given there was already a fueling station convenience store located at the northwest corner of the intersection, Family Express. Mr. Studer stated when he looked at the recommendations he made for Family Express and looked at these recommendations he made in the favorable recommendation staff report, they lined up directly. Mr. Studer stated they understood there was a \$40 million investment and he wanted their water protected too and he thought it was very important. Mr. Studer stated this was what he did for a living and he would never bring a project to the City of Mishawaka that he thought would

present any type of reasonable harm to the city, its citizens, or its water supply. Mr. Studer stated with 12th Street, Mr. Prince mentioned they permitted Family Express before purchasing the wellfield and that was true, but three years prior they knew they were looking at a wellfield in the area and when Family Express came, for three years the city had been looking for somewhere to put a wellfield. Mr. Studer stated when Family Express came, it would have been the simplest thing to say they were not in favor of it because they were proposing, negotiating and thinking about putting a wellfield in and one-year time of travel. Mr. Studer stated one-year time of travel was amorphous and Mr. Violi's questions were well taken as depending on where they would put the wells, it could change the one-year time of travel and it could move it north several hundred feet but they did not know yet. Mr. Studer stated for them to deal with an amorphous line that may or may not move or had moved and by the way, it was not delineated and not something that had been submitted that had been submitted to any state agency or county agency yet and their best guess was to where they thought the one-year time of travel was. Mr. Studer stated they believed that was a contrary factor and water went south to the river, particularly on that side of Juday Creek and Douglas Road. Mr. Studer stated there were a lot of comments made and he would be happy to answer any more questions but they believed in protecting the wellfield too and they did not think anything they were proposing that evening put any risk on the wellfield.

Mr. Hixenbaugh appreciated the presentations and the information on both sides and for him, it was understandable that the initial reflex was to always err on the side of protecting their water supply and the wellfield, particularly because of the good work the administration had done in conjunction with the Council to invest in that area and pave the way for future development in Mishawaka and a great deal of that credit went to Mayor Wood, Mr. Prince, and Mr. Majewski. Mr. Hixenbaugh stated that was an understandable initial reaction but there were certain elements of what had been presented to them that he continued to struggle with. Mr. Hixenbaugh stated the first was the discussion of risk, which was very well taken. Mr. Hixenbaugh stated that was in his mind, a critical concept in this instance and it was alluded to earlier that risk was really not an absolute and there were degrees of risk and there were degrees of risk we all assumed every day, so it was fair to bring up that risk in his opinion but what he struggled with was not being able to quantify it. Mr. Hixenbaugh stated it seemed as though that there was an analysis of the risk that was posed by Family Express when they built the wellfield and he had no doubt the city did its due diligence and looked at that in the proper context, but that appeared to be a risk that was deemed as being allowable and acceptable based upon the fact that they went forward and developed the wellfield. Mr. Hixenbaugh stated they struggled with not having a solid and more quantifiable level of risk to hang his hat on there and on the flip side, he did think that Casey's had met its burden of showing that within the bounds of modern technology and beyond that they had planned and would continue to plan around the risk and they met the burden of responsible development. Mr. Hixenbaugh stated the other thing that he struggled with was the pure geography of what they were talking about there and he struggled with the fact that they had another gas station that was directly catty corner from the parcel they were talking about there. Mr. Hixenbaugh stated what worried him was that as well taken as some of the arguments were, and he believed everyone had made arguments in good faith and appreciated that on behalf of all involved, but it was a fact nevertheless that they had a gas station on one corner and now they were being asked to turn down a gas station on another corner and to him that felt arbitrary and it opened the door to potential litigation. Mr. Hixenbaugh stated whether or not there would be litigation, it was incumbent upon the Council to try to be fair and not make

arbitrary decisions and while he could understand the argument on the other side, he was fixated on the fact that there was the other gas station in close proximity. Mr. Hixenbaugh stated to him, it felt as though it would be arbitrary to draw the line at one and only one gas station in that vicinity, particularly because he thought that an unintended consequence was with the development of the Fieldhouse and the other development that they anticipated would take place there, an unanticipated consequence there would be Family Express got a significant advantage with regard to servicing those vehicles coming to the Fieldhouse, that they hoped, if it would be successful. Mr. Hixenbaugh stated it did not feel fair and that was not anyone's intent, but that was just an unintended consequence of what would result if they would turn this down. Mr. Hixenbaugh stated he probably could work through those two concerns and reconcile himself in voting against it, but as the wellhead protection ordinance was raised at the informational meeting, he had to go back and refresh his memory with regard to the wellhead protection ordinance and when it was mentioned that it was passed in 2004, there were three of them still sitting on the Council involved in passing that and he only knew that because he went back and checked the minutes to refresh his memory. Mr. Hixenbaugh stated Mr. Emmons, Mr. Banicki and himself were on the Council and Mayor Wood sat there as well and the minutes refreshed his memory that the action that was taken to create their wellhead protection ordinance came to them as the result of a recommendation from their Mishawaka Utilities, Phil Miller who was the General Manager of the Mishawaka Utilities at the time, presented the ordinance to them and recommended they approve it and in relevant part the minutes said, Mr. Miller said that the County already enforced South Bend, Walkerton, etc. and it would be in everyone's advantage and put everyone on the same level playing field. Mr. Hixenbaugh stated there was a recommendation from the administration to adopt the wellhead protection ordinance as it read that day. Mr. Hixenbaugh stated when he looked more closely at the ordinance, not only did they approve a relationship with St. Joseph County government but the ordinance they passed literally said that they adopted the St. Joe County wellhead protection ordinance, so everything that was in their ordinance by virtue of what they did in 2004, they incorporated that by reference and he did not recall looking at the time but when he looked at the St. Joe County ordinance, it was fairly elaborate. Mr. Hixenbaugh stated it went beyond some of the points that were made and there was an advisory committee that was comprised of geologists and other folks of the scientific background and there was appointment by governmental entities, including the City of Mishawaka which had an appointment. Mr. Hixenbaugh stated he did not have any first hand knowledge of it but it had a certain structure to it that appeared to make sense in 2004 and still was incorporated in their own ordinance. Mr. Hixenbaugh addressed Mr. Prince's point because it was well taken and he could understand his argument that it was a separate issue from the land use matter in front of them and where he saw it come together was in that fifth condition that was in the statute with respect to determining the proposal, if it was approved, constituted development and growth and to him, that concept was so broad and all encompassing that that sucked into that analysis the wellhead protection ordinance and there may be a good argument to be made with regard to whether or not the relationship with the County was in Mishawaka's best interest but it was the rule at that time and until and unless they would change that rule, he felt compelled to pay some attention to it. Mr. Hixenbaugh stated he struggled with that element of it and if what they did in terms of the land use issue, disposed of the wellhead protection component before it ever got to the County to be dealt with and analyzed in terms of wellhead protection, then to him they were writing out of existence the wellhead protection ordinance before it ever had the chance to be implemented, so he struggled with that. Mr. Hixenbaugh

stated so again, while he thought that there were really good arguments on both side of the equation there on balance balance as he worked through it, he was going to support the proposal based upon the proposals that had been made with regard to honoring the commitments that were made, but regardless of what the outcome was there that evening, his hope would be they could engage in a conversation, the Administration and the Council, with regard to that current wellhead protection ordinance and as they were working through the comprehensive plan process and working through their zoning ordinances and maybe even before, take a look at whether there was some enhanced protection for all of their wellhead areas that they needed to consider. Mr. Hixenbaugh asked rhetorically if they would have a better outcome if they could articulate within their zoning ordinance and enhance protection for those wellfields so that before someone had to engage in this process, they could provide some notice and have an opportunity for that to be known. Mr. Hixenbaugh stated he would like to see them engage in that conversation to see if it made sense and revisit their relationship with St. Joseph County government as well but subject to that taking place in the future, he would be supporting the proposed ordinance that evening.

Question was called for at 7:32PM for **PROPOSED ORDINANCE NO. 2024-08 Motion passed by unanimous roll call vote (summary: Yes = 6, No = 3).**

Yes: Mrs. Hazen, Mrs. Voelker, Mr. Carroll, Mr. Mammolenti, Mr. Violi, Mr. Hixenbaugh.

No: Mr. Banicki, Mr. Emmons, and Ms. Hahn. The proposed ordinance passed 6-3, thus it became **ORDINANCE NO. 5893.**

PROPOSED ORDINANCE NO. 2024-17

AN ORDINANCE DECLARING AN EMERGENCY AND DETERMINING THE EXPENDITURE OF ADDITIONAL FUNDS FOR THE YEAR ENDING DECEMBER 31, 2024

Additional Appropriation: CEDIT – Repairs and Maintenance 2209-50-436-02: City Maintenance, City Hall elevators - \$ 250,000.00 Battell Park Band Shell - \$500,000.00, \$750,0000

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

Ken Prince, Director of Planning and Community Development, spoke in favor of **PROPOSED ORDINANCE NO. 2024-17**. Mr. Prince stated the two additional appropriations, one being for \$250,000 for city hall elevators. Mr. Prince stated as they identified in the description that was forwarded to the Council, when they purchased the building they had an elevator inspection. Mr. Prince stated the inspection revealed they were reconstructed in 2008 and they were expecting 20 years out of the elevators and did not get them and the reconstruction was only the mechanical equipment, so you would notice no difference on the exterior or the inside of the cab as part of the reconstruction. Mr. Prince stated the mechanical, as they had been told by their maintenance vendor had to be reconstructed at that time, so they were hopeful to get 20 years out of them but the reason they did not rebuild them at the time City Hall was done was because they were hoping for additional time because of that cycle and did not want to incur the additional cost. Mr.

Prince stated also, they knew that that reconstruction was independent of the remodel, so it was not dependent on something happening inside of the building for it to occur. Mr. Prince stated the second additional appropriation was for the Battell Park Band Shell. Mr. Prince stated a number of years ago, they encountered leaking and had cracked limestone in the facility and had it inspected and it was not deemed dangerous to the public. Mr. Prince stated they then had trouble finding masonry work and ended up working with Weigand based on their relationship with other projects and they did an inspection including drone footage of the issue and they were hoping they could merely contract with them to complete the work, but they identified the work was more detailed and internal and not a quick fix, so they needed to hire an architect to put together a scope to bid. Mr. Prince stated they then contacted DLZ who prepared specifications and took the project out to bid, they received bids for the project with the bids being identified as roughly in the \$420,000 range. Mr. Prince stated they had asked for \$500,000 specifically because they knew with the historic building and with the water damage, it would be routine to keep at least 10% additional because of additional work that you may encounter when you opened it up and also for additional funds to provide for the construction oversight. Mr. Prince stated he would answer any questions.

Mrs. Voelker asked with the City Hall elevators, he said there was an inspection done at the time of the remodeling of City Hall and if the report told them if they had another eight years. Mr. Prince stated no and he believed the report said that the condition was marginal and it was not identified in great condition either as it had been reconstructed in 2008 and their understanding was that the lifespan was roughly 20 years. Mrs. Voelker asked regarding the bandshell, who did the work on the bandshell 25 years ago. Mr. Prince stated he believed Ziolkowski did the construction if he remembered correctly and DLZ did prepare the plans for the reconstruction at that time. Mrs. Voelker asked why it happened. Mr. Prince stated it was not clear if there were some of the seals leaking between the copper or not or if it was only the internal drainage structure where it connected to the building, but in any event it all had to be pulled out in order to be replaced. Mrs. Voelker asked if it had nothing to do with any kind of construction flaw or a repair flaw that occurred with the structure. Mr. Prince stated not that he identified but they did identify different alternate roofs that go on the structure and they decided not to even pursue them because of the historic nature of the structure and they wanted to replicate it in kind because again, if another alternative was going to be better they wanted to consider it, but because of the historic significance of the structure they did not pursue it.

Mr. Hixenbaugh appreciated the work that went into this and both were important projects that definitely were worthy of maintenance and being saved. Mr. Hixenbaugh asked with regard to the funding source, the Controller mentioned in her cover letter that the funding source was a supplemental distribution of funds received in May, some option income tax money and he recalled this was referenced in the financial update that they received from Baker Tilly recently but off the top of his head, did he know how much in total they received as part of that supplemental distribution. Mr. Prince apologized to Mr. Hixenbaugh and stated he did not know. Mr. Hixenbaugh stated it was no problem and he would follow up with Madame Controller. Mr. Hixenbaugh asked with regard to the bandshell then, if this expenditure would address not only the problem that was front and center but would it also address other issues that would help them preserve the longevity and historical integrity of the bandshell or should they anticipate that there were always going to be unforeseen issues with the bandshell and they may well receive a

request to fund other projects in the future. Mr. Prince stated in the short term, in the next five years, he would not expect an additional appropriation for the bandshell unless something happened that they were currently not expecting.

Question was called for at 7:40PM for **PROPOSED ORDINANCE NO. 2024-17 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. 5894.**

PROPOSED ORDINANCE NO. 2024-18

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

PUD Amendment to allow a Third Drive-Thru Restaurant and reduction of Parking space – Vacant Lot S, of 3625 Bremen Hwy

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.

Robin Urpso, Watermark Engineering 2631 Gingerwood Parkway Aurora, Illinois 6052, spoke in favor of **PROPOSED ORDINANCE NO. 2024-18.** Mrs. Urpso stated they were the civil engineers for the Starbucks project and they were present to request an amendment to the PUD to allow for a drive-thru for the Starbucks building as well as a reduction in the required parking spaces from 34 to 24 as currently shown on the latest site plan submitted. Mrs. Urpso stated she was there as well as a representative from Starbucks if there were any questions,

Mr. Hixenbaugh stated the staff report indicated that their Engineering Department became aware that the retention basin that was on site to handle the runoff from both Wendy’s and the site in general was not functioning as was intended and initially, there was some consideration of tabling this that matter was resolved, but the Administration decided to recommend they move forward with the amendment and then ask to have that addressed and he could appreciate their willingness to work with them on that, but he wanted to hear from her directly on the fact that if she agreed the retention basin was not working as designed and intended. Mrs. Urpso stated they agreed it was not functioning as intended and they had obtained some additional geotechnical reports as well as they just recently obtained as built topography of the basin from the general contractor, so they were looking at all of those things at that point in coming up with a proposal prior to the construction of the Starbucks and they had been working directly with the Engineering Department on those proposals. Mr. Hixenbaugh asked if she could be more specific in regard to when that issue would be resolved or if it was too soon to tell based upon all of the engineering that needed to take place. Mrs. Urpso stated she would imagine they would have a proposed planned to the city engineers sometime next week and they were looking to resolve this as soon as possible and they would go ahead and get their feedback and then it was their understanding that the city wanted them to address this from a construction standpoint as quickly

as possible prior to getting the approval of the engineering of the Starbucks and that was their intention. Mr. Hixenbaugh stated he appreciated that and he appreciated the due diligence of the city staff to raise this issue but he asked her if she was privy to the information that would help him understand how it took this request and the intervention of the city staff for them to address this before she and the underlying land owner addressed it themselves. Mrs. Urpso stated it was a matter of they were working with the city staff and they were informed that they were not allowed to outlet the basin due to the storm surge with them on Bremen Highway and therefore, it was designed with no outlet and it was designed for the criteria in the ordinance and the issue was the overflow path for it. Mrs. Urpso stated the pond was overflowing more frequently than anyone suspected because it was thought there would be some sort of seepage through their soil and there was no seepage through the soil whatsoever so the pond was functioning as designed, but it was overflowing more frequently because they were not getting any sort of infiltration through the existing soil in that area. Mrs. Urpso stated what they were proposing now was providing infiltration for the basin along with an emergency overflow outlet to Bremen Highway as allowed by the city engineers and approved by the city engineers. Mr. Hixenbaugh appreciated the information and her willingness and the point of her client's willingness to work with the Administration but at the risk of stating the obvious, he thought that they all would hope that she would continue to work with them and that if this was approved, that the expansion of the use on the site would not result in further drainage problems and issues with the retention basin but it sounded like they were moving forward with identifying a remedy and he appreciated that.

Question was called for at 7:44PM for **PROPOSED ORDINANCE NO. 2024-18 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. 5895.**

PROPOSED ORDINANCE NO. 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 Road across
from Preserve Apartments, extending to Clover Road**

PUBLIC HEARING – NO VOTE

They were proposing a residential development on this 19.45-acre site and this would be consistent with the surrounding developments there and he would answer any questions.

Mark Weaver, representing the developer, spoke in favor of **PROPOSED ORDINANCE NO. 2024-19.** Mr. Weaver stated they were proposing a residential development on this 19.45-acre site and this would be consistent with the surrounding developments there and he would answer any questions.

Mrs. Voelker asked about the plan that was provided and if he could tell them if they were standalone homes or duplexes. Mr. Weaver stated there were standalone homes, specifically residential villas, over 2,000 square feet each. Mrs. Voelker stated they looked tightly packed and asked what would happen on the interior square of land. Mr. Weaver stated that it would be developed for stormwater drainage and it would be some sort of green area. Mrs. Voelker asked in terms of stormwater as the developer developed the property, you would be able to determine if there were areas you needed to put retention ponds or things like that and that would happen over time and asked if that was correct. Mr. Weaver stated that was correct and believed remotely that Matt Birch from Birch Frank and Associates was with them also and he may be the one to address that better than him. Mrs. Voelker asked if he had any idea what a price would be for the villas. Mr. Weaver stated the range was going to be between \$450,000 and \$600,000. Mrs. Voelker asked how many units there would be. He stated 54 units.

Matt Birch, Birch Frank and Associates 811 Lawrence Drive Fort Wayne, Indiana, spoke in favor of **PROPOSED ORDINANCE NO. 2024-19**. Mr. Birch stated based on staff review, they were recommending approval of this annexation and rezoning. Mr. Birch stated it was consistent with adjacent land and in their opinion, it was the highest and best use of the property and it was also consistent with the comprehensive plan that Mishawaka put together in 2000 that recommended the use of this property to be low density residential. Mr. Birch stated what they had before them that evening was a plan that was just a concept before the project actually came to fruition and a lot more design engineering would need to occur. Mr. Birch stated they had already received a few preliminary comments from the Planning staff that they needed to address, but what they were seeing on paper was how it might look and they received some feedback from the neighboring properties to the east and they likely needed to consider a traffic study to see if the county road known as Clover Road could even handle a second entrance. Mr. Birch stated those were things that they had to address and planned to address through the development process and that evening was just about rezoning the property and annexing the property into the city. Mr. Birch stated he would be happy to answer any questions.

Mr. Mammolenti asked if he could confirm that his client would pay for and conduct a traffic study. Mr. Birch stated they had the ability to do it in-house and that would be part of the development.

The public hearing was closed on **PROPOSED ORDINANCE NO. 2024-18** and consistent with the requirements of Indiana law they would not be taking a vote that evening, but rather the matter would be acted upon at their next regularly scheduled council meeting.

NEW BUSINESS

Mrs. Hazen invited everyone to the Food Pantry Garden to harvest some lettuce and other good greens that were ready to be harvested.

ADJOURNMENT 7:55PM

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.