

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

July 15, 2024

Be it remembered that the Common Council of the City of Mishawaka, Indiana met in the Council Chambers of the New Mishawaka City Hall and via telephone on Monday July 15, 2024, at 6:00PM. The meeting was called to order by Council President Gregg Hixenbaugh. All were asked to stand for the Pledge of Allegiance.

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

Clerk Block called the roll.

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

Also Present: Mike Trippel, Council Attorney

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

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

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

PROPOSED ORDINANCE NO. 2024-20

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

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

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

RESOLUTION R2024-14

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

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

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

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

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

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

RESOLUTION R2024-15

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA,
INDIANA, APPROVING A PETITION OF THE MISHAWAKA BOARD OF ZONING
APPEALS FOR THE PROPERTY LOCATED AT: 940 E 12th STREET MISHAWAKA,
INDIANA**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RESOLUTION R2024-16

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA APPROVING A PETITION OF THE MISHAWAKA BOARD OF ZONING APPEALS FOR THE PROPERTY LOCATED AT: 314 W CLEVELAND ROAD Use Variance for Fine Line Micro Tattooing Services - 314 W. Cleveland

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

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

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

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

PROPOSED ORDINANCE NO. 2024-10

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PROPOSED ORDINANCE NO. 2024-11

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

Amending the Municipal Code Park and Recreation - DORA

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

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

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

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

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

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

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

No: Mrs. Hazen. The proposed ordinance passed 8-1, thus it became **ORDINANCE NO. 5897.**

PROPOSED ORDINANCE NO. 2024-12

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

No: Mrs. Hazen. The proposed ordinance passed 8-1, thus it became **ORDINANCE NO. 5898.**

PROPOSED ORDINANCE 2024-19

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

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

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

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

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

Yes: Mrs. Hazen, Mrs. Voelker, Mr. Carroll, Mr. Banicki, Mr. Emmons, Ms. Hahn. Mr. Mammolenti, Mr. Violi, Mr. Hixenbaugh. The proposed ordinance passed 9-0, thus it became **ORDINANCE NO. 5898.**

UNFINISHED BUSINESS

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

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

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

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

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

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

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

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

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

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

NEW BUSINESS

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

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

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

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

ADJOURNMENT 8:14PM

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

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

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