



AGENDA

August 18, 2025

Meetings of Standing Committees
Council Conference Room
5:45PM

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

WebEx Telephone Number:1-408-418-9388
Meeting Number (access code): 2332 439 5683
Meeting password: Q3NpegcUx39

Dial: 23324395683@mishawaka.webex.com

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

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

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

1. Call to Order

2. Pledge of Allegiance

3. Roll Call

4. Approval of the Minutes of the Regular Meeting of August 04, 2025

5. Petitions, Communications, Remonstrance, and Memorial

A letter from the Board of Zoning Appeals regarding their recommendation from their August 12, 2025, meeting.

A letter from the City Plan Commission regarding their recommendation from the August 12, 2025, meeting.

6. Report of Special Committee

7. Ordinances on First Reading

P.O. No. 2025-19 Vacation of Right-of-Way due to
Realignment- Ballard St. south of Vistula
Rd.

P.O. No. 2025-20 Prohibiting Public Records Request for
Commercial Purposes

8. Resolutions

R2025-20 Use Variance to allow Outside Storage and
Developmental Variance for Rear Yard
Setback, Paving, Fencing and Landscaping-
811 & 815 E. McKinley

R2025-21 Adding Property to the City Acquisition
List

9. Ordinances on Second Reading

10. Privilege of the Floor - Non-Agenda Items

11. Unfinished Business

12. New Business

13. Adjournment

This meeting will be aired via live stream:

An archived version of the livestream video can be viewed on the city of Mishawaka's Facebook and YouTube pages.

<https://www.facebook.com/cityofmishawaka/> and www.youtube.com/@cityofmishawaka635 and on the Michiana Access TV Facebook page, <https://www.facebook.com/MichianaAccessTV>

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

Download Packet Link:

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

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

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

Scan the QR Code to access all Common Council Meeting Agenda's, Packets, and Meeting Minutes.



REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

August 4, 2025

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 28, 2025, 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.

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

P: Present E: Electronically Participating A: Absent

Minutes for the Regular Meeting on July 28, 2025, were approved as received from the Clerk's Office.

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

PROPOSED ORDINANCE NO. 2025-16

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 C-1 General Commercial to R-1 Single Family Residential – 303 W. 6th St.

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

Terry Lang, Wightman Office at 1402 Mishawaka Avenue in South Bend, spoke in favor of **PROPOSED ORDINANCE NO. 2025-16**. Mr. Lang stated he was representing the petitioner and wanted to give background on the rezoning. Mr. Lang stated he thought everyone knew where Sunny's Korean Restaurant was and they had two parking lots, one across the street and one immediately south. Mr. Lang stated the petition before them that evening addressed the parcel across the street to the west. Mr. Lang stated Mr. Green owned the house to the north and he had purchased the property from the owners of the former Sunny's Korean Restaurant. Mr. Lang stated he was looking to be able to have a real yard of any size as well as potential to put up a garage to store his vehicles in. Mr. Lang stated the purpose of the petition was to make the parcel residential so that it could be merged through the platting process through the Plan Commission. Mr. Lang stated he was happy to answer any questions.

Ms. Hahn asked, since it used to be a parking lot, if Mr. Green was going to be required to or if he had already done any environmental testing on it. Mr. Lang stated he did not know if he had or not and could not answer that.

Question was called for at 6:04PM for **PROPOSED ORDINANCE NO. 2025-16** Motion passed by unanimous roll call vote (summary: Yes = 7).

Yes: Mrs. Hazen, Mrs. Voelker, Mr. Banicki, Ms. Hahn, Mr. Mammolenti, Mr. Violi, Mr. Hixenbaugh. The proposed ordinance passed 7-0, thus it became **ORDINANCE NO. 5939.**

PROPOSED ORDINANCE NO. 2025-17

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 I-1 Light Industrial to R-1 Single Family Residential – 3418 York St.

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

Angela Richardson, Owner of 3418 York Street, spoke in favor of **PROPOSED ORDINANCE NO. 2025-17.** Mrs. Richardson stated she was wanting to get the zoning moved over to strictly residential.

Question was called for at 6:06PM for **PROPOSED ORDINANCE NO. 2025-17** Motion passed by unanimous roll call vote (summary: Yes = 7).

Yes: Mrs. Hazen, Mrs. Voelker, Mr. Banicki, Ms. Hahn, Mr. Mammolenti, Mr. Violi, Mr. Hixenbaugh. The proposed ordinance passed 7-0, thus it became **ORDINANCE NO. 5940.**

PROPOSED ORDINANCE NO. 2025-18

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 for reduction in landscaping, Building and Pavement Setbacks, and Planting Area Widths – NW corner of Cleveland & Capital

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

Mike Danch, President at Danch Harner & Associates, Inc. 1643 Commerce Drive South Bend, IN, spoke in favor of **PROPOSED ORDINANCE NO. 2025-18.** Mr. Danch stated he was representing the petitioners, who were Mish RE, LLC. Mr. Danch stated this was the annexation and rezoning they did for the auto mall up at the northwest corner of Capital Avenue and

Cleveland Road, if this looked familiar to the site plan that he provided to the Council. Mr. Danch stated when they did all of that, they did the preliminary site plan, which they typically got to see when they started through the front-end process of the rezoning, and this was now the final part. Mr. Danch stated the portion they were seeing that evening would be pretty close to where they were at the final site plan stage, so the auto mall would have the eight dealerships, and this was showing everything on the north side of Cleveland Road. Mr. Danch stated the main access point into the property was going to end up being a signalized intersection and there would be one other driveway on the very west side of the site. Mr. Danch stated the owners and the consultants had been working with the staff with the eight dealerships and this would only be one large lot that would be owned by the developer for all of the eight dealerships, so they would basically build eight different dealerships, and the interior road system would all be private. Mr. Danch stated as far as the signalized intersection was concerned, they would be working with the City of Mishawaka on a developmental agreement for all of the improvements that had to be made and getting water and sewer to the site would also be done through a developmental agreement with the city. Mr. Danch stated the staff took a look at everything happening within the site itself and they came up with four amendments to the original PUD, so what they were seeing was the final layout and he would be going over the four amendments that the layout had. Mr. Danch stated the first one was a reduction in the setback for the buildings within the interior of the site. Mr. Danch stated under the PUD ordinance that they had, they had a 75-foot building setback and all that was going to happen was that that would go down to a minimum of sixty-five feet. Mr. Danch stated to keep in mind that all of the interior roads were private roads, so those were not public dedicated right-of-ways. Mr. Danch stated with the way that it worked out with the layout of the buildings, the staff was okay with that particular amendment to the building setback. Mr. Danch stated there was also going to be an informational kiosk when you came into the site off of Cleveland Road that would actually be set within that private driveway where they had a large landscape area. Mr. Danch stated the second reduction was for the pavement setback. Mr. Danch stated under the original PUD, there was a 25-foot setback from the roads for any kind of pavement and that it was going to go down to a minimum of eighteen feet. Mr. Danch stated when you were looking at the interior road system, you would still see all of the green space that was there and the staff just wanted to make sure that there would still be enough green space where the trees were going to be located and where there would also be some interior sidewalks there through the auto mall development. Mr. Danch stated all the way along Cleveland Road there would still be a large grass strip between where they would see any of the parking spaces and Cleveland Road itself, so that was about seventy feet wide. Mr. Danch stated typically in the City of Mishawaka, you were allowed to go down to ten feet so they would still be maintaining that seventy feet all the way along the whole front portion that they saw there. Mr. Danch stated the third reduction they were talking about was in the City of Mishawaka when they were usually doing development, you always had the area on the public right-of-way where they ran the utilities and then you had the tree parking area there. Mr. Danch stated the staff wanted them to make sure that they maintained at least a minimum of eight foot so that there was enough room where you saw all of the trees on that interior portion had enough room to grow, so they would be maintaining the eight-foot space as requested. Mr. Danch stated the last one that they were doing was an overall adjustment because in this case, you had a 72-acre site and the staff took a look at it from the PUD standards they had and under the C-1 category, you would have had to put trees every 25 foot on center which was typical for C-1 commercial. Mr. Danch stated along the perimeter boundary of any lot you would have in a development, the trees would

be sixty foot on center and then there were usually landscape islands that would be put on the interior and that was based on the number of parking spaces that you would have for a typical parking layout for a retail type of situation. Mr. Danch stated when you had auto malls, most of those parking spaces that were seen there were for display purposes and not for where visitors came in in a retail space. Mr. Danch stated the owners worked with staff to come up with a reduction on that and the entire site would still have to maintain 270 trees that were seen throughout the whole development. Mr. Danch stated the staff thought that would be a good compromise and it would still provide the streetscape. Mr. Danch stated they would still have to put trees there every seventy-five feet along Cleveland Road and also along the entire interior. Mr. Danch stated one of the other things the staff also asked to be put in place was that to the west of the auto mall development, there was an existing church there on that property and they were out in the county, so what the staff asked them to do was to increase the buffer zone over there with evergreen trees at a six-foot height minimum. Mr. Danch stated that would put a heavier buffer between them and where the church property was. Mr. Danch stated there would still be the road and the landscape areas there, but that would be maintained with it. Mr. Danch stated if the Council approved this that evening, it would become the ordinance for the PUD. Mr. Danch stated when they came through and did their final site plans for each of the dealerships, then they would have to abide by the guidelines for the amendments and what they were doing with the interior as far as water, sewer, and drainage were concerned, they would have to do all of that. Mr. Danch stated they were also trying to work with the City of Mishawaka on a request by the Water Department to bring a water line underneath the toll road through the development and tie it to the existing water lines. Mr. Danch stated they would also be providing them with the easement and the space and the route to be able to do that and keep the water pressure up on that side of the city for any kind of development that was going to go on. Mr. Danch stated if the Council had any questions for him, he would be happy to answer them.

Mr. Banicki stated when he looked at this, it used to be all corn fields and now all he saw was concrete and asphalt. Mr. Banicki asked how he kept all of the rainwater, snow, and things like that from getting on other people's property and causing flooding issues for other people. Mr. Danch stated he dealt with that daily and what they were doing in this particular case just for the size of the development there were a couple of good things that went with it. Mr. Danch stated the soils out there were sandy soils and they had a good infiltration rate, which really helped them out. Mr. Danch stated they still had to develop to the City of Mishawaka standards though and in this particular case for the 72 acres for the development, they were setting aside over \$5 million to do the underground drainage system that was going to be required, so if they were to take a look at the plan there were some little blue areas and that would not be the final system. Mr. Danch stated what that did was pull the water off of some of the surface areas. Mr. Danch stated that all had to be treated through what they called storm interceptors which had a baffle system, so if you had any kind of petroleum byproduct or anything like that, that got taken care of in the baffle system. Mr. Danch stated for the size under a large portion of the parking areas that they saw, there would be a chamber system that they used that basically would be like a Quonset hut for that and allowed the water to set there and then slowly drain away into the sandy soils. Mr. Danch stated usually what you ended up doing was a calculation for the rain and in this particular case with Mishawaka, it was like a 5.4-inch rainfall in a 24-hour period of time and that allowed 100% water to get into the drainage systems and then slowly release into the soils. Mr. Danch stated it worked really well, but it was very expensive to do and when you did the

calculation on it, it was about \$10 per cubic foot for storage capacity, so that was why it would be over \$5 million to do the system. Mr. Danch stated that would be how they handled it so that they did not have any water going off site because in this case, they did not have what they would call a positive outflow, meaning there would not be a ditch or somewhere else for the water to go to. Mr. Danch stated the way Mishawaka's drainage requirement went was that you had to hold everything on site for that particular rainfall event. Mr. Banicki stated he thought just to the west of that, the county used to have a highway garage and there was some contamination there caused by salt and it affected some of the neighbors to the south. Mr. Banicki asked how they knew that some contamination from this would not get into the ground water and affect the wells. Mr. Danch stated that happened because the system they used with the baffle and the storm interceptors and that would be looked at to make sure everything was up to par and met all of the requirements for the standards. Mr. Danch stated what the county did not do when they had all of their salts and everything was that they allowed those to go on the ground and the problem was because of the sandy soils, they did not have any barrier between the bottom of the salt piles that they had, and it went directly into the soils. Mr. Danch stated the difficulty was that Juday Creek Estates was directly across the street from where those people were but because the county garage had been in effect for thirty to forty years, which had given that enough time to slowly leak the salts into that aquifer layer. Mr. Danch stated there were two different aquifer layers in St. Joe County and there was about a sixty-foot clay barrier between the upper aquifer layer and the lower aquifer layer. Mr. Danch stated the one that Mishawaka drew their water out of was the lower layer, so you tried to make sure that anything that went into those sandy soils were still treated and that was the whole point when they met with Chris Jamrose, the Director of the Engineering Department, so that any drainage system that was used on the site had to be pre-treated so that any of that water that went in was not going to be a problem. Mr. Banicki stated he knew Engineering was not a perfect science and it was as good as it could be but it just seemed like they were getting more extreme weather, so whether it was the heavier rains or whatever the case may be, he did not want to see somebody that had been in the neighborhood for many years all of the sudden have their basements flooding or their backyards or whatever. Mr. Danch stated that was why the good thing about this particular area in question was that they had the sandy soils and when he did the Microsoft data center, the real issue on some of the soils was that people were growing corn out there and they should be able to continue doing that but the issue with sandy soils and corn was that a lot of the nutrients went through and you had to continually pump fertilizers onto that, which caused more of a problem with nitrates going into the wellfields. Mr. Danch stated that was the tradeoff between those types of soils and what you ended up with there.

Mr. Mammolenti thanked Mr. Danch for his presentation that evening and stated it seemed like many years ago they were approving this, and he recalled a pretty involved discussion with the Juday Creek Estates and their HOA that meeting. Mr. Mammolenti asked if he and the petitioners had been in contact with their HOA throughout the process and if there were any concerns. Mr. Danch stated they had been in contact with them and there had not been any concerns at that point. Mr. Danch stated they were doing everything they had originally said they would and when they had gone through the process, they actually came through the Council on two different occasions in 2022 and 2024, because of the state law on how he had to annex and bring property into the city, he had to meet certain guidelines and restrictions but they were not changing anything really from what they had after meeting with the HOA. Mr. Danch stated he

was also doing a subdivision and hopefully, they would be able to get Veterans Parkway up to Cleveland Road to provide another tie there and also bring water and sewer up to that particular location as well.

Mrs. Voelker asked what the time of travel would be for the Juday Creek wellfield. Mr. Danch stated with this site in relation to the wellfield, there was a five-year time of travel and a ten-year time of travel, and it almost bisected this particular site. Mr. Danch stated the five-year time of travel was on the western portion of the site, so any kind of development that happened within that location had to meet certain restrictions. Mr. Danch stated for any kind of particulars or anything like that, the eastern portion of the site fell in the ten-year time of travel and had less restrictions. Mr. Danch stated in the five-year time of travel, there were certain restrictions that he believed the Council had with certain uses permitted in that specific time of travel and they had to come back before the Council and make a special exception. Mrs. Voelker stated she remembered when they did the wellfield time of travel ordinance and car wash was not permitted in the five-year time of travel. Mr. Danch stated if they took a look at the site, they put the car wash facility way over by Capital Avenue. Mrs. Voelker asked if this site was closer to the ten-year time of travel or in the ten-year time of travel. Mr. Danch stated it was in the ten-year time of travel and was outside of where they would be required to make a special exception. Mr. Danch stated one of the other things that was still in the ordinance that did not change was that you were not allowed in this particular development to do a typical gas station as that was prohibited and had not changed on anything that they were doing. Mrs. Voelker asked if they would have gas tanks, in this case. Mr. Danch stated they would a type of fueling center for cars and it was not a five-year time of travel area though; it would be a ten-year time of travel. Mr. Danch stated that was something that was looked at by the Engineering Department and made sure absolutely everything was done correctly and met all of the standards so that they did not have any issues where there might be leakage or something like that. Mr. Danch stated there were containment things that they did and that would have to be approved.

Mr. Violi asked if the future car would be on the west side. Mr. Danch stated it would be on the very east side over by Capital Avenue. Mr. Violi stated it said on the site plan there was recon and future car wash, and it was on the east side on the handout and asked for clarification. Mr. Danch stated if they did that particular one, it would be inside of the building and anything that happened there would go into the sanitary sewer, so there was nothing that went outside of that or went into soils or anything like that.

Mr. Hixenbaugh thanked Mr. Danch for the information he provided and, as always, he provided accurate information and noted for the record that the staff report indicated that the Water Department commented that a part of the property was within the Juday Creek five-year time of travel and it would have protection areas. Mr. Hixenbaugh stated that implied to him that as he previously stated, some part of it was and some part of it was not. Mr. Hixenbaugh stated his follow-up question was admittedly not germane to the PUD amendments in front of them but coincidentally just recently, he had a couple of people ask him questions with regard to the timing of the project and when they were planning to move forward. Mr. Hixenbaugh asked if there was anything he was at liberty to share with the Council on the timing element. Mr. Danch stated he could tell them a couple of things and that was why he mentioned the subdivision he was doing in the county currently to bring Veterans Parkway up to that particular site. Mr. Danch

stated there was a family who lived across the street on the south side and hopefully on that coming Thursday, they would have the subdivision approved which would give them a piece of property that the city basically needed to get Veterans Parkway from where it ended down by the recreation up to Cleveland Road. Mr. Danch stated that there would also be a corridor for the water and sewer, which was particularly important because the whole development depended on getting that water and sewer to the site. Mr. Danch stated his understanding from all of the conversations he had was that the first dealership wanted to be in and open in 2027, so that was why everything was critical that they were getting it done and they were trying to get the corridor to get the water and sewer up potentially so Mishawaka could also get Veterans Parkway, get the signal in, and do the things that needed to be done.

Question was called for at 6:29PM for **PROPOSED ORDINANCE NO. 2025-18 Motion passed by unanimous roll call vote (summary: Yes = 7).**

Yes: Mrs. Hazen, Mrs. Voelker, Mr. Banicki, Ms. Hahn, Mr. Mammolenti, Mr. Violi, Mr. Hixenbaugh. The proposed ordinance passed 7-0, thus it became **ORDINANCE NO. 5941.**

NEW BUSINESS

Mr. Mammolenti made a reminder that Tuesday August 5th was the National Night Out and the Twin Branch Neighborhood Watch would be hosting their own in the Twin Branch Pavillion at Twin Branch Park and it would start at 6PM. Mr. Mammolenti stated there would be a lot of food, games, prizes, etc. for the young ones. Mr. Mammolenti stated all were welcome.

Ms. Hahn stated there would also be a National Night Out at Merrifield Park also at 6PM with similar food, games, and prizes available.

ADJOURNMENT 6:31PM

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.



CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

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

Deborah S. Block, IAC, MMC

August 13, 2025

AUG 13 2025

City Clerk
Mishawaka, IN

Honorable Members of the Common Council
City of Mishawaka, Indiana

RE: Board of Zoning Appeals Recommendation
August 12, 2025, Public Hearing

Honorable Members:

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

APPEAL #25-25 An appeal submitted by Heartwood Holdings LLC requesting a Use Variance for outside storage.

The Board, with a vote of 4-0, provided a favorable recommendation.

Respectfully,

Donna M Whitt

Donna M Whitt, Administrative Planner
Secretary, Board of Zoning Appeals



CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

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

Deborah S. Block, IAMC, MMC

August 13, 2025

AUG 13 2025

Honorable Members of the Common Council
City of Mishawaka, Indiana

City Clerk
Mishawaka, IN

RE: Plan Commission Recommendation
August 12, 2025, Public Hearing

Honorable Members:

A regular meeting of the Mishawaka Plan Commission meeting was held on the above date at which time the following petitions were considered:

PET #25-10

A request submitted by City of Mishawaka & School City of Mishawaka requesting a vacation of Right-Of-Way for Ballard Street south of Vistula Road due to realignment.

The Commission, with a vote of 7-0, recommended approval.

Respectfully,

Donna M Whitt

Donna M Whitt, Administrative Planner
Secretary, Plan Commission

AUG 13 2025

City Clerk
Mishawaka, IN

PETITION #25-10

CITY OF MISHAWAKA, INDIANA

PROPOSED ORDINANCE NO. 2025-19

ORDINANCE NO. _____

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

WHEREAS, City of Mishawaka & School City of Mishawaka have filed a petition for vacation of the public right-of-way described in Section 1 below;

WHEREAS, the Petitioner owns part of land that abuts the public right-of-way sought to be vacated;

WHEREAS, notice of the filing and petition and date of hearing on said petition has been given as required by law;

WHEREAS, the vacation will not hinder the growth or orderly development of the neighborhood;

WHEREAS, the public right-of-way sought to be vacated will not prevent access to any abutting lands by means of a public way;

WHEREAS, the vacation of the public right-of-way sought to be vacated will not hinder the public's access to a church, school, or other public building or place;

WHEREAS, the vacation of the public right-of-way sought to be vacated will not hinder the use of any public way, utility or place;

WHEREAS, the vacation of the public right-of-way does not conflict with the goals, objectives and policies of the Mishawaka Comprehensive Plan; and

WHEREAS, the Plan Commission of the City of Mishawaka, Indiana, has recommended the vacation of the public right-of-way including the imposition of reasonable conditions, to-wit, the recommendation of the department of City Planning, as hereinafter described.

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

Section 1. Chapter 137 of the Municipal Code of the City of Mishawaka, commonly known as "The Zoning Ordinance of 1966", be, and the same is hereby amended as follows:

A part of Ballard's Addition, recorded in Plat Book 12, Pages 32-33 in the Office of the Recorder, St. Joseph County, Indiana; more particularly described as follows:

ORDINANCE NO. __

Beginning at the northwest corner of Lot 17 of said Ballard's Addition; thence South 00 degrees 10 minutes 27 seconds East along the east line of Ballard's Street a distance of 163.85 feet; thence South 36 degrees 26 minutes 40 seconds West a distance of 31.21 feet to a point of curvature of curve to the left having a radius of 235.00 feet; thence southwesterly and southerly along said curve an arc distance of 101.63 feet to the west line of Ballard Street, said curve having a chord bearing South 24 degrees 03 minutes 19 seconds West and chord distance of 100.84 feet; thence North 00 degrees 10 minutes 27 seconds West along said west line a distance of 258.77 feet to the south line of Vistula Road; thence North 69 degrees 37 minutes 17 seconds East along said south line a distance of 63.93 feet to the Point of Beginning, containing 0.275 acres, more or less.

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

- 1. The vacation will not hinder the growth or orderly development of the neighborhood. A subdivision dedicating new right of way will continue the connection to Ballard Street north of Vistula Road.*
- 2. The vacation of the established right-of-way will not make access to any adjacent property difficult or inconvenient. A subdivision dedicating new right of way will continue the connection to Ballard Street north of Vistula Road.*
- 3. While the street does abut a school and a park, the new dedicated road will not hinder the public's access to any of the aforementioned destination;*
- 4. The proposed vacation will not hinder the use of any public way, utility or place.*

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

PASSED by the Common Council of the City of Mishawaka, Indiana, this ____ day of _____, 2025, at ____ o'clock ____ .M.

Presiding Officer

ATTEST:

Deborah S. Block, IAMCA, MMC, City Clerk

PRESENTED by me to the Mayor this ____ day of _____, 2025, at ____ o'clock ____ .M.

PROPOSED ORDINANCE NO. 2025-19

ORDINANCE NO. __

Deborah S. Block, IAMCA, MMC, City Clerk

APPROVED by me this ____ day of _____, 2025, at ____ o'clock
____.M.

David A. Wood, Mayor

STAFF REPORT

Location: Ballard Street, south of Vistula Road

Date: August 12, 2025

Petition: 25-10

Prepared By: CH

GENERAL INFORMATION

Applicant: City of Mishawaka & School City of Mishawaka/Lawson Fisher Associates P.C.
Status: Owner/Surveyor & Engineer
Request: Vacate Public Right-of-Way
Zoning Classification: Right-of-Way
Applicable Regulations: IC 36-7-3-12 and 13

SPECIAL INFORMATION

Area Development Pattern: North: R-1 Single Family Residential (single family homes)
South: S-1 Extensive Open Space (Twin Branch Park)
East: S-1 Extensive Open Space (Twin Branch Park)
West: R-1 Single Family Residential (Twin Branch School)

Thoroughfare: Vistula Road

Council District: 3

School District: School City of Mishawaka

Township: Penn

Public Utilities: Public Right-of-Way

Comprehensive Plan: Low Density Residential and Open Space

ANALYSIS

The Petitioner is requesting the vacation of public right of way. This is a section of Ballard Street, south of Vistula Road between Twin Branch School and Twin Branch Park. Ballard Street is being rerouted to match the recently raised intersection at Vistula.

The property to the west is owned by School City of Mishawaka, and the property to the east is owned by the City of Mishawaka. A replat has been submitted concurrently which will dedicate the new road and redistribute the remaining property between the two owners.

A 35' storm sewer easement will remain in the vacated Ballard Street.

All City departments have reviewed the proposed right-of-way vacation and recommend approval.

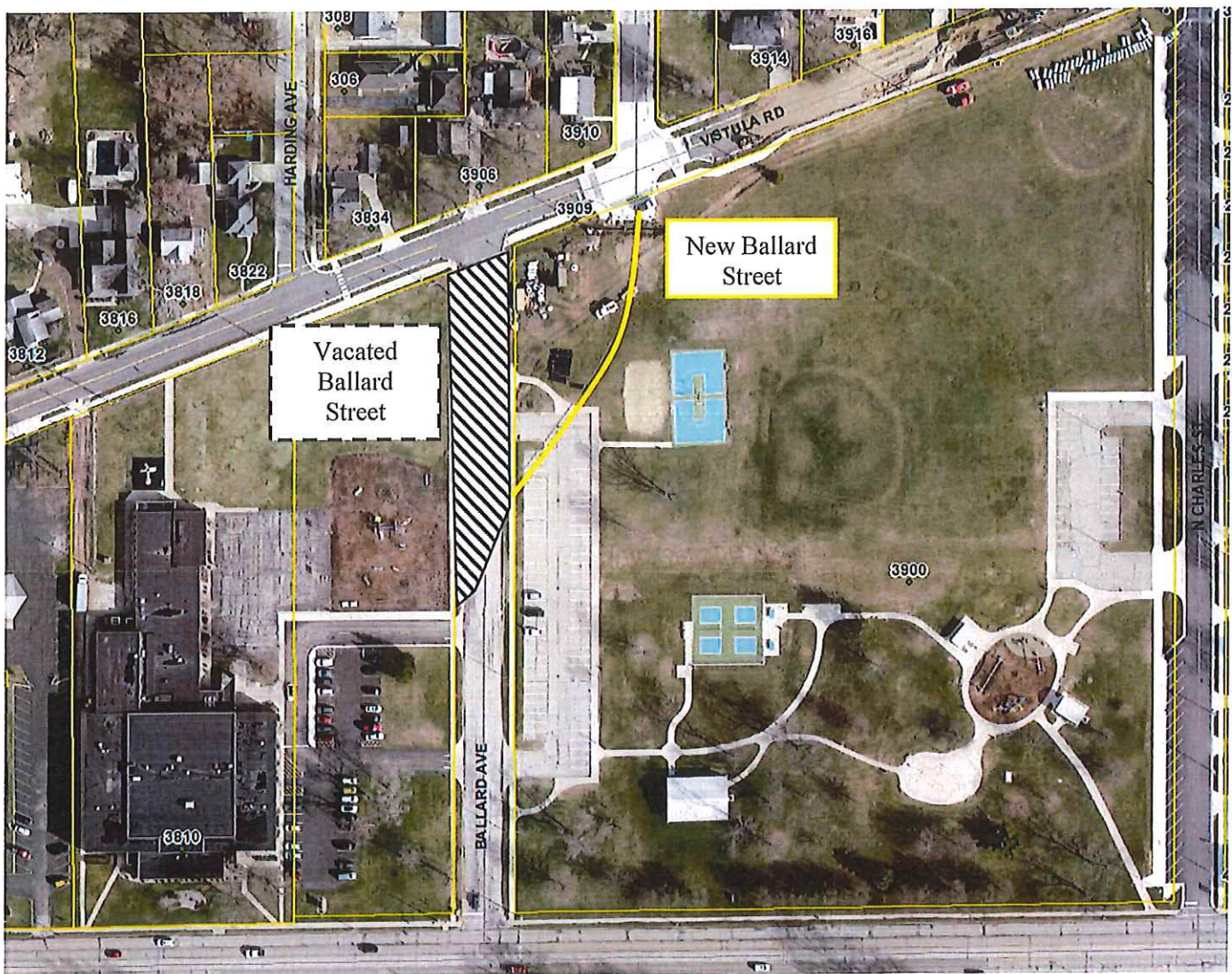
RECOMMENDATION

Staff recommends in favor of Petition 25-10 to vacate a portion of Ballard Street, south of Vistula Road. This recommendation is based on the following findings of fact:

- 1) The vacation will not hinder the growth or orderly development of the neighborhood. A subdivision dedicating new right of way will continue the connection to Ballard Street north of Vistula Road.
- 2) The vacation of the established right-of-way will not make access to any adjacent property difficult or inconvenient. A subdivision dedicating new right of way will continue the connection to Ballard Street north of Vistula Road.
- 3) While the street does abut a school and a park, the new dedicated road will not hinder the public's access to any of the aforementioned destination;
- 4) The proposed vacation will not hinder the use of any public way, utility or place.

ATTACHMENTS

Aerial, Photos, Petition, Location Map



Aerial



Ballard Street at its intersection with LWE



Twin Branch Park parking lot from Lincolnway East, just east of Ballard Street



Ballard Street entrance for Twin Branch School



Ballard Street Road Construction



New Ballard Street from Twin Branch School entrance



New Ballard Street from Twin Branch Park side

Received

JUL 16 2025

Planning and
Community Development

PET 25-10

July 1, 2024

PAUL A. HUMMEL, PE
PIPER C. TITTLE, PE
MICHAEL J. GUZIK, PE
AARON W. BLANK, PS, PE

202340.40

CHRISTOPHER J. JETER, PE
DAN G. DELGADO, PE
JARED M. HUSS, PE
KEVIN J. SIEDLECKI, PE
CHRISTOPHER M. VANHULLE, PE
DMITRI G. ADAMS, PE
AMANDA R. BUDREAU, PE
JOSEPH D. DUNBAR, PE
MARK H. FOSTER, PE
REBECCA L. DUNBAR, PS, EI
DAVID J. TEGGELAAR, PE
MICHAEL A. WILLIAMS, PE
TREVOR M. CREAGER, PE
ADAM J. BEERY, PS, EI
CHARLES P. DEWES, PE

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

Re: Petition for Vacation of Public Right of Way

The undersigned Civil City of Mishawaka and School City of Mishawaka respectfully request the Mishawaka Common Council and Mishawaka City Plan Commission vacate the following described public right of way located in the City of Mishawaka, St. Joseph County, Indiana:

That part of Ballard Street between the south right-of-way of Vistula Road and the relocated north right-of-way of Ballard Street, as depicted on the attached Exhibit 'A'.

Adjoining property is owned by the City of Mishawaka or School City of Mishawaka.

Petitioners further state they are the owners of the property immediately adjacent to the above-described right of way. Wherefore, the Petitioner(s) pray and respectfully request that the Common Council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate ordinance be enacted vacating the above described right of way located in the City of Mishawaka.



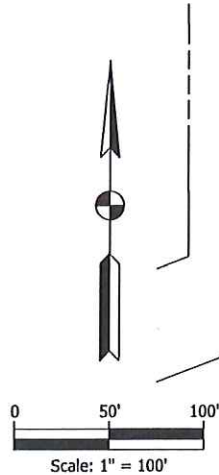
Kenneth B. Prince
Civil City of Mishawaka
Executive Director of Planning
and Community Development



Kenneth Kahlenbeck
Director of Operations
School City of Mishawaka

Contact Person:
Adam J. Beery, PS
Lawson-Fisher Associates P.C.
abeery@lawson-fisher.com

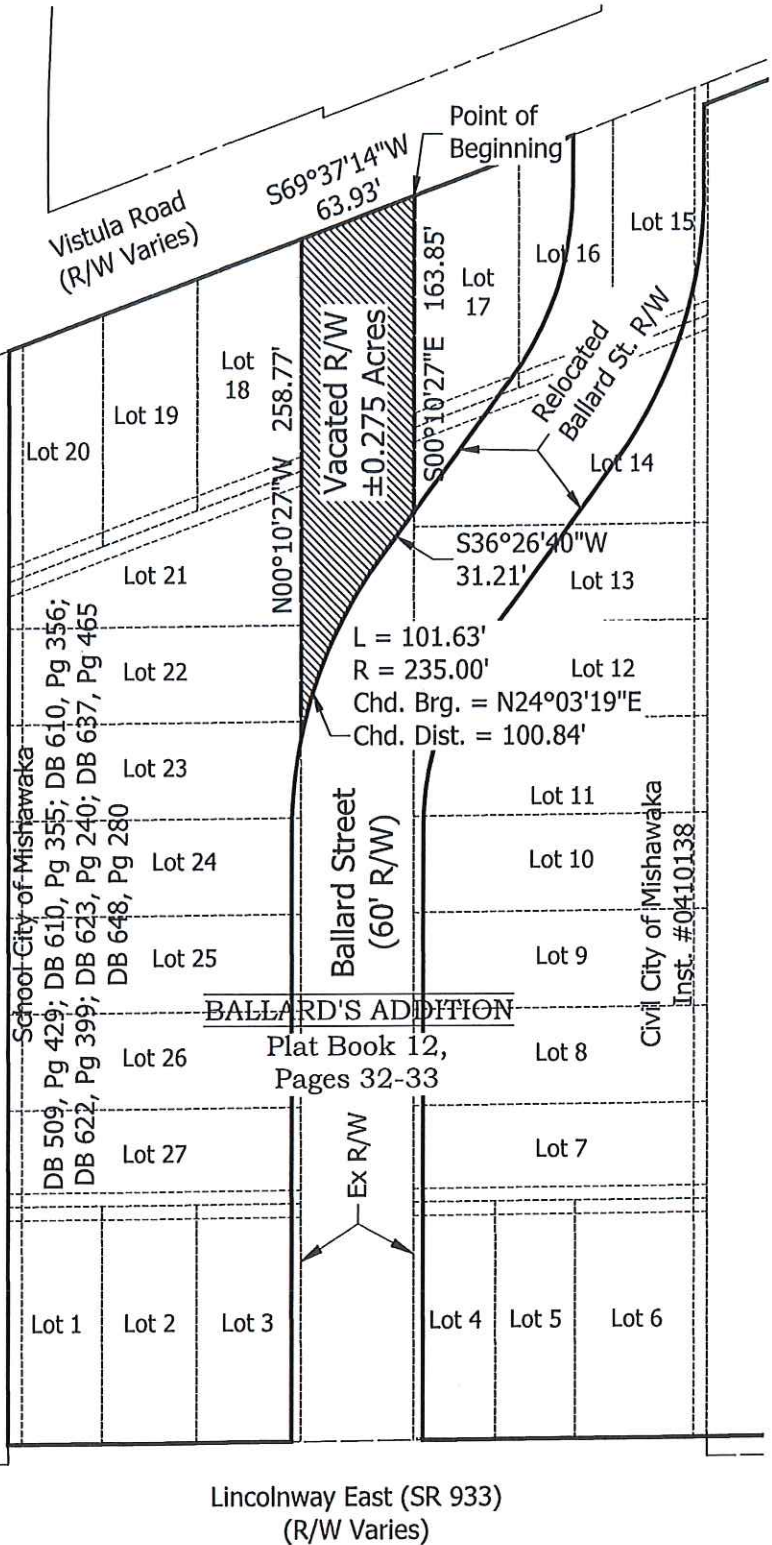
EXHIBIT 'A' **RIGHT-OF-WAY VACATION** Prepared for the City of Mishawaka By Lawson-Fisher Associates P.C. 202340



Vacation Description

A part of Ballard's Addition, recorded in Plat Book 12, Pages 32-33 in the Office of the Recorder, St. Joseph County, Indiana; more particularly described as follows:

Beginning at the northwest corner of Lot 17 of said Ballard's Addition; thence South 00 degrees 10 minutes 27 seconds East along the east line of Ballard's Street a distance of 163.85 feet; thence South 36 degrees 26 minutes 40 seconds West a distance of 31.21 feet to a point of curvature of curve to the left having a radius of 235.00 feet; thence southwesterly and southerly along said curve an arc distance of 101.63 feet to the west line of Ballard Street, said curve having a chord bearing South 24 degrees 03 minutes 19 seconds West and chord distance of 100.84 feet; thence North 00 degrees 10 minutes 27 seconds West along said west line a distance of 258.77 feet to the south line of Vistula Road; thence North 69 degrees 37 minutes 17 seconds East along said south line a distance of 63.93 feet to the Point of Beginning, containing 0.275 acres, more or less.



LJA - 6/30/2025 9:21 AM - U:\2023\202340 Mish CSO 020\Code\Plan Set\Survey\2340 Ballard Vacation.dwg (11)

PROJECT NO.: CSO 020
 CODE: XXX
 PARCEL:
 ROAD:
 COUNTY: XXX
 SECTION:
 TOWNSHIP:
 RANGE:

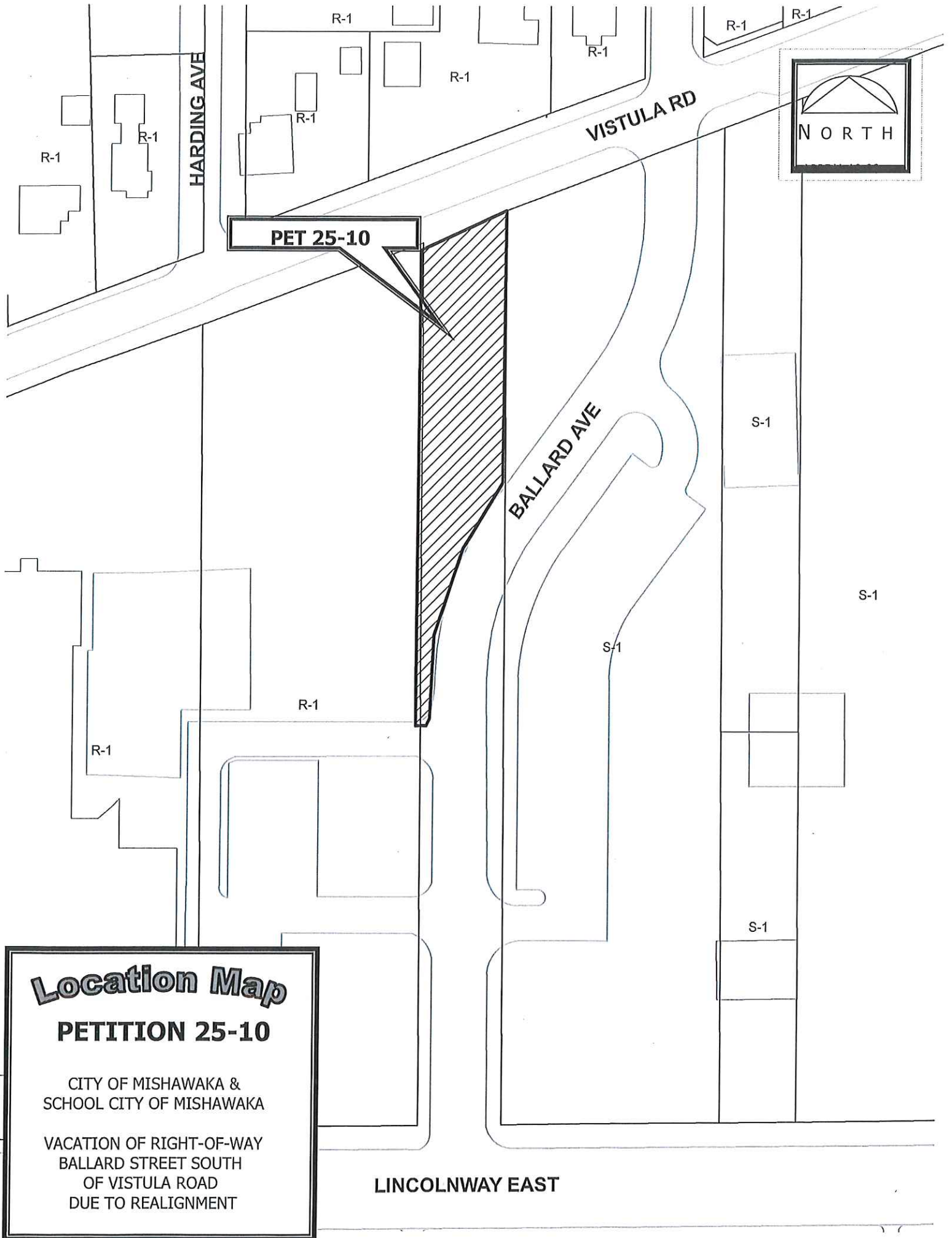
OWNER/RECORD REFERENCE
 City of Mishawaka
 School City of Mishawaka

TAX KEY #

 Hatched area is the Vacation Area

LFA
 LAWSON-FISHER ASSOCIATES P.C.
 525 W. WASHINGTON AVENUE
 SOUTH BEND, INDIANA 46601
 PH. (574) 234-3167

DRAWN: AJB	CHK: AWB
DATE: JULY 2025	SHEET: 1 OF 1



Location Map

PETITION 25-10

CITY OF MISHAWAKA &
SCHOOL CITY OF MISHAWAKA

VACATION OF RIGHT-OF-WAY
BALLARD STREET SOUTH
OF VISTULA ROAD
DUE TO REALIGNMENT

LINCOLNWAY EAST

AUG 14 2025

City Clerk
Mishawaka, IN

PROPOSED ORDINANCE NO. 2025-20

ORDINANCE NO. _____

**AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF
MISHAWAKA TO PROHIBIT THE USE OF PUBLIC RECORDS FOR
COMMERCIAL PURPOSES**

WHEREAS, Ind. Code § 5-14-3, the Access to Public Records Act provides that a person has the right to access information regarding the government and the official acts of public officials and employees, and that government officials have a responsibility to provide that information;

WHEREAS, the City of Mishawaka (“the City”) makes every effort to comply with the Indiana Access to Public Records Act;

WHEREAS, the City receives requests for public records from individuals and entities that use or intend to use public records from the City’s electronic data storage systems for commercial purposes;

WHEREAS, in order to respond to a request for public records, contained in the City’s electronic data storage systems, to be used for commercial purposes, the City commits considerable, time, resources, and taxpayer money;

WHEREAS, Ind. Code § 5-14-3-3(e) specifically permits the City to prohibit the use of public records requested under Ind. Code § 5-14-3 for commercial purposes;

WHEREAS, pursuant to Ind. Code § 5-14-3-3 “commercial purpose” includes: “to sell, advertise, or solicit the purchase of merchandise, goods, or services, or sell, loan, give away, or otherwise deliver the information obtained by the request to any person for these purposes;” and

WHEREAS, the provision of public records for commercial purposes is not an essential function of a representative government, and such provision unnecessarily exhausts public resources for the benefit of for-profit businesses.

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

Section 1. Any individual or entity receiving public records or information, pursuant to a request made under Ind. Code § 5-14-3-3(d), shall not use the records or information for commercial purposes. This prohibition does not apply to the use of such records in connection with the preparation or publication of news, for nonprofit activities, or for academic research.

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

PASSED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana, on
this _____ day of _____ 2025, at _____ o'clock, ____ m.

Gregg Hixenbaugh, Presiding Officer

ATTEST:

Deborah S. Block, IAMCA, MMC, City Clerk

PRESENTED BY ME, to the Mayor on this _____ day of _____ 2025, at _____
o'clock, ____ m.

Deborah S. Block, IAMCA, MMC, City Clerk

APPROVED BY ME this _____ day of _____ 2025, at _____ o'clock,
_____ m.

David A. Wood, Mayor



CITY OF MISHAWAKA

Deborah S. Block, AMC, MMC

AUG 14 2025

City Clerk
Mishawaka, IN

DAVID A. WOOD, MAYOR

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

Date: August 14, 2025

To: Honorable Members of the Common Council

From: Rebecca Maguire – Controller

Re: Ordinance prohibiting the use of Public Records for commercial purposes

I am requesting first reading for an ordinance that prohibits the use of public records for commercial use.

Typically, I see requests for current, open purchase orders or older, uncashed checks for over \$1,000. While these requests are not particularly cumbersome, recent requests have asked for all purchase orders over the past five years. Since these files are large and do not email well, further time-consuming steps must be taken.

As the ordinance states, providing information for commercial purposes is not an essential function of government. The City will continue to provide public information requests following ARPA policy. This ordinance reflects the language used by the cities of Noblesville and Greenwood.

Thank you for your consideration. Please contact me with any questions.

c: David A. Wood – Mayor
John Roggeman – Corporation Counsel

AUG 13 2025

City Clerk
Mishawaka, IN

APPEAL #25-25

RESOLUTION NO. 2025-20

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:

811 & 815 E McKinley Avenue, Mishawaka, Indiana

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

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

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

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

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

Section I. The Common Council has provided notice of the hearing on the Petition from the Board of Zoning Appeals pursuant to Indiana Code requesting that a Use Variance for property located at **811 & 815 E McKinley Avenue, Mishawaka, Indiana**, more particularly known and described as follows:

PARCEL I: (Parcel No. 016-2093-305202)

A lot or parcel of land in the East Half of the Northwest Quarter of Section 10, Township 37 North, Range 3 East, bounded by a line running as follows: Beginning on the North line of said Section 10, at a point 256 feet East of the Northwest corner of the East Half of the North Quarter of said Section; thence running East along the North line of said Section, a distance of 100 feet; thence South 602 feet; thence West on a line parallel with the North line of said Section 100 feet; thence North 602 feet to the place of beginning, now within and a part of the City of Mishawaka, in St. Joseph County, Indiana. (815 E. McKinley, Mishawaka, IN 46545)

PARCEL II: (Parcel No. 016-2093-3052)

A parcel of land in the East Half of the Northwest Quarter of Section 10, Township 37 North, Range 3 East lying Northwest of the Grand Trunk Western Railway Company's right of way, described as follows: Beginning on the North line of said Section 10 at a point 120 feet East of the Northwest corner of the East Half of the Northwest Quarter of said Section; running thence East on the North line of said Section, a distance of 136 feet; thence South 602 feet; thence West on a line parallel with the North line of said Section, a distance of 136 feet; thence North 602 feet to the place of beginning, now within and a part of the City of Mishawaka, in St. Joseph County, Indiana. (811 E. McKinley, Mishawaka, IN 46545)

The Use Variance will allow outside storage on the property located at 811 & 815 E McKinley Ave, subject to the following conditions:

1. An administrative site plan shall be submitted;
2. Outside storage shall be limited to the area identified on approved site plan;
3. The area of outside storage shall be screened with a 6' fence with privacy slats on the north side from a point 12.5' from the property line on Went Ave, continuing west to the property line;
4. Commercial front yard landscaping is required along McKinley Ave and Went Ave, concurrent with phased development;
5. No vehicles shall be parked/stored on an unpaved surface; and
6. No known hazardous materials shall be stored on site.

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

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

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because, with the location being behind the front of the building and with proposed screening fence, the view is minimized from the road.
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the area set aside for the outside storage is small, covering less than 17% of the lot.
3. The need for the variance arises from the need for outside storage of loose material that would not typically be kept indoors. The buildings are less than 9,000 square feet.
4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because although the use is allowed in the I-2 Heavy Industrial District, rezoning the property would not be the highest and best use by allowing the more intense uses of that district.
5. The recommendation is consistent, and or, not in conflict with the Mishawaka 2000 Plan because the plan identifies this thoroughfare as General Commercial, however, surrounding uses are industrial in nature.

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

PASSED by the Common Council of the City of Mishawaka, Indiana, this _____ day of _____, 2025, at _____ o'clock ____ .m.

Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____, 2025,
at _____ o'clock ____m.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _____, 2025, at
_____ o'clock ____m.

David A. Wood, Mayor

STAFF REPORT

Location: 811 & 815 E McKinley

Date: August 12, 2025

Appeal: 25-25

Prepared By: CH

GENERAL INFORMATION

Applicants: Heartwood Holdings LLC

Status: Property Owner

Request: Use Variance for outside storage of materials
Developmental Variances for setbacks, paving and screening

Zoning Classification: I-1 Light Industrial

Lot Size: 3.03 Acres

Applicable Regulations: Section 137-586 I-1 Light Industrial Uses
Section 137-42 (4) Board of Zoning Appeals Use Variance
Indiana Code 36-7-4-918.4
Section 137-587 I-1 District Height, area, and developmental regulations
Section 137-42 (5) Developmental Variance
Indiana Code 36-7-4-918.5(a.)

SPECIAL INFORMATION

Area Development North: C-4 Automobile Oriented Commercial (access drive to storage units) & I-1 Light Industrial (Direct Line Communication)

Pattern: South: R-3 Multi-Family (Colfax Townhomes)
East: C-4 Automobile Oriented Commercial (Auto One) & I-1 Light Industrial (Big C Lumber)
West: I-1 Light Industrial (office & storage units)

Thoroughfare: East McKinley Avenue and Went Aveune

Council District: 5

School District: School City of Mishawaka

Township: Penn

Public Utilities: All public utilities are available and existing.

Comprehensive Plan: The Mishawaka 2000 Comprehensive Plan identifies the area as General Commercial.

ANALYSIS

Heartwood Holdings LLC d/b/a Heartwood Tree Care LLC is looking to locate on this site and make improvements to operate their business. The site currently contains a 3,800 sf building. In order to use it for their tree business, they would like to add a 5,000sf building addition, an area of outside storage on gravel, and future expansion north along McKinley.

The first Developmental Variance is for the rear yard setback. The rear yard setback on the south is required to be 30' due to the depth of the lot. The existing building has a 2.3' rear yard setback. The building addition will maintain a 10' setback.

The second Developmental Variance is for fencing screening. Since the property to the south is zoned R-3 Multi-Family Residential (Colfax Townhomes), a 7' privacy fence is required along the south property line. The townhomes already have a 6' privacy fence, so the appellants are hoping to use that instead of putting up another fence back to back.

The third Developmental Variance is for landscaping screening. Abutting residential property also requires a 10' wide area along the property line to be landscaped with at least seven-foot high shrubs or trees to form a permanent, opaque landscape screen. Planning Staff would still want to see this landscaping between any new improvements (building and paving), with the only exception being the existing building, as it is too close to the property line.

The Use Variance being requested is for an outside storage area and a fourth Developmental Variance that the outside storage area be gravel instead of hard surface. The I-1 District Business related activities specifically states: *Outside storage of raw materials, finished products, or other incidental materials are prohibited.* Outside storage is only permitted as a conditional use in I-2 Heavy Industrial. The proposal is to have an outside storage area, approximately 24,000sf, located behind the front line of the existing building.

In the past, we've approved outside storage with gravel for contractors like Milestone Fence on Home Street and Direct Line Communications across the street on McKinley.

The north half of the property is a future phase of development.

Engineering states that gravel areas are not allowed for vehicular traffic.

Permits are required from the Planning and Building Departments.

Other pertinent City departments have reviewed and approved the request.

RECOMMENDATION

The Staff recommends **approval** of Appeal 25-25, a Use Variance to allow outside storage on the property located at 811 & 815 E McKinley Ave, subject to the following conditions:

1. An administrative site plan shall be submitted;
2. Outside storage shall be limited to the area identified on approved site plan;
3. The area of outside storage shall be screened with a 6' solid fence on the north side from a point 12.5' from the property line on Went Ave, continuing west to the property line;
4. Commercial front yard landscaping is required along McKinley Ave and Went Ave, concurrent with phased development;
5. No vehicles shall be parked/stored on an unpaved surface; and
6. No known hazardous materials shall be stored on site.

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

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because, with the location being behind the front of the building and with proposed screening fence, the view is minimized from the road.
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the area set aside for the outside storage is small, covering less than 17% of the lot.

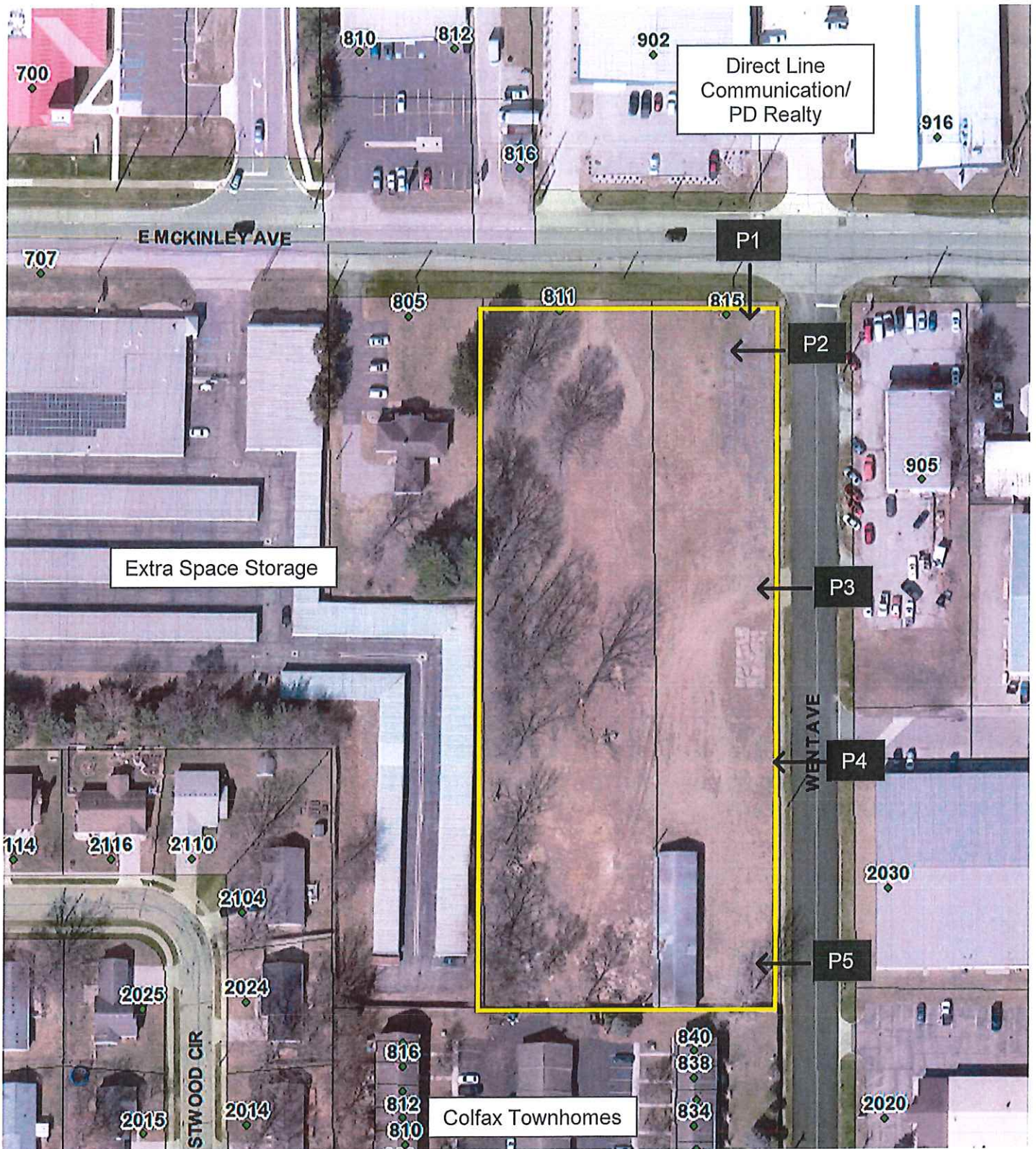
3. The need for the variance arises from the need for outside storage of loose material that would not typically be kept indoors. The buildings are less than 9,000 square feet.
4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because although the use is allowed in the I-2 Heavy Industrial District, rezoning the property would not be the highest and best use by allowing the more intense uses of that district.
5. The recommendation is consistent, and or, not in conflict with the Mishawaka 2000 Plan because the plan identifies this thoroughfare as General Commercial, however, surrounding uses are industrial in nature.

The Staff recommends **approval** of Appeal #25-25 to allow for a 10' rear yard setback, no screening fence, and no landscaping between the existing building and the south property line, and gravel/unpaved storage area for property located at 811 & 815 E. McKinley. This recommendation is based upon the following findings of fact per Indiana Code 36-7-4-918.5 (a.):

1. *The approval will not be injurious to the public health, safety, morals and general welfare of the community.* Due to the existing layout of the building on the property, providing a reduced setback allows the existing building to still be utilized. Additionally, existing fence together new trees on the residential property to the south should provide adequate screening for the expanded use of the property.
2. *The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.* The property is currently zoned for and partially occupied with and industrial use. With the expansion, adequate screening between the property and the adjacent residential property shall be provided.
3. *The strict application of the terms of this chapter will result in practical difficulties in the use of the property.* Adhering to the rear setback would restrict how the property can be developed for the proposed use. Using the existing fence in addition on the adjacent property in addition to new landscaping should adequately buffer the adjacent residential property.

ATTACHMENTS

Aerial Photograph, Photographs of Site, Petition, Location Map





Looking south along Went from McKinley



Looking West along McKinley from Went



Existing curb cut off Went



Area of outside storage



Existing Building on Went

AP 25-25
Received

JUL 16 2025

Planning and
Community Development

DATE:

TO: Board of Zoning Appeals
City of Mishawaka, Indiana

The undersigned appellant respectfully shows the Board:

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

PARCEL I: (Parcel No. 016-2093-305202)

A lot or parcel of land in the East Half of the Northwest Quarter of Section 10, Township 37 North, Range 3 East, bounded by a line running as follows: Beginning on the North line of said Section 10, at a point 256 feet East of the Northwest corner of the East Half of the North Quarter of said Section; thence running East along the North line of said Section, a distance of 100 feet; thence South 602 feet; thence West on a line parallel with the North line of said Section 100 feet; thence North 602 feet to the place of beginning, now within and a part of the City of Mishawaka, in St. Joseph County, Indiana. (815 E. McKinley, Mishawaka, IN 46545)

PARCEL II: (Parcel No. 016-2093-3052)

A parcel of land in the East Half of the Northwest Quarter of Section 10, Township 37 North, Range 3 East lying Northwest of the Grand Trunk Western Railway Company's right of way, described as follows: Beginning on the North line of said Section 10 at a point 120 feet East of the Northwest corner of the East Half of the Northwest Quarter of said Section; running thence East on the North line of said Section, a distance of 136 feet; thence South 602 feet; thence West on a line parallel with the North line of said Section, a distance of 136 feet; thence North 602 feet to the place of beginning, now within and a part of the City of Mishawaka, in St. Joseph County, Indiana. (81 1 E. McKinley, Mishawaka, IN 46545)

2. The above-described real estate presently has a zoning classification of I-1 Light Industrial District under the Zoning Ordinance of the City of Mishawaka.
3. Appellant presently occupies the above-described property in the following manner: The Appellant recently purchased this parcel with an empty building and large vacant lot.
4. Appellant desires to occupy the current building for his tree service business, provide a parking lot and service drive to the existing building and provide outdoor storage. They would also like to construct a future building and parking lot. This site shall meet the requirements for site drainage.
5. The Zoning Ordinance of the City of Mishawaka requires

Section 137-587(4) Rear Yard Setback: There shall be a rear building setback of not less than ten percent of the depth of the lot for a one-story building, rear yard not to exceed 30'. We request a rear yard setback of 2.3' for the existing building and 10' for the proposed building.

Section 137-587(6)b.3 All parking lots shall be surfaced with an all-weather paving material capable of carrying a wheel load of 4,000 pounds without damaging the pavement. The lot shall be properly maintained at all times. We request our material storage be a gravel surface instead of the require asphalt.

Section 137-587(9)(a) A seven-foot-high opaque fence shall be mandatory along any developed industrial property line that is contiguous to any residentially zoned property. We request no new fencing along the rear property line and utilize the existing 7' fencing on the property line as screening with a zero setback.

Section 137-587(9)(b) 10' wide area along the property line shall be sodded, planted, and landscaped with at least seven-foot high shrubs or trees in order to form a permanent, opaque, landscaped screen along a property line which is contiguous to any residentially zoned property.

Section 137-587(16) Outside storage of raw materials, finished products, or other incidental materials are prohibited. We request to be allowed outside storage of material on site and utilizing chain link fencing for the area.

Section 137-85(1)(h) All ornamental or decorative fencing, earthen berms, plant material screens, shrubs, trees, structures or other objects shall permit completely unobstructed visibility within the vision clearance area. We request the placement of front yard fence at 3' to allow for the placement of required trees and retention basin in the front yard.

6. Explain why strict adherence to the Ordinance requirements would create an unusual hardship. The most cost effective development is by utilizing the existing features and structures on site. Due to adjacent properties and existing features on site, strict adherence to the ordinance makes development of this parcel difficult.

7. Answer the following necessary questions for a developmental variance:

DEVELOPMENTAL VARIANCE

(1) Will approval be injurious to the public health, safety, morals or general welfare of the community? The proposed business is allowed within this I-1 Industrial zoned property. Proposed activity shall meet guidelines for the business. Approval will not be injurious to the public health, safety, morals or general welfare of the community

(2) Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner? This development follows the continuity of the surrounding area and should not affect the use or value of adjacent properties.

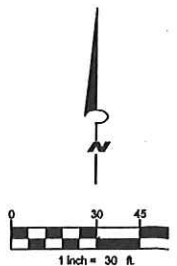
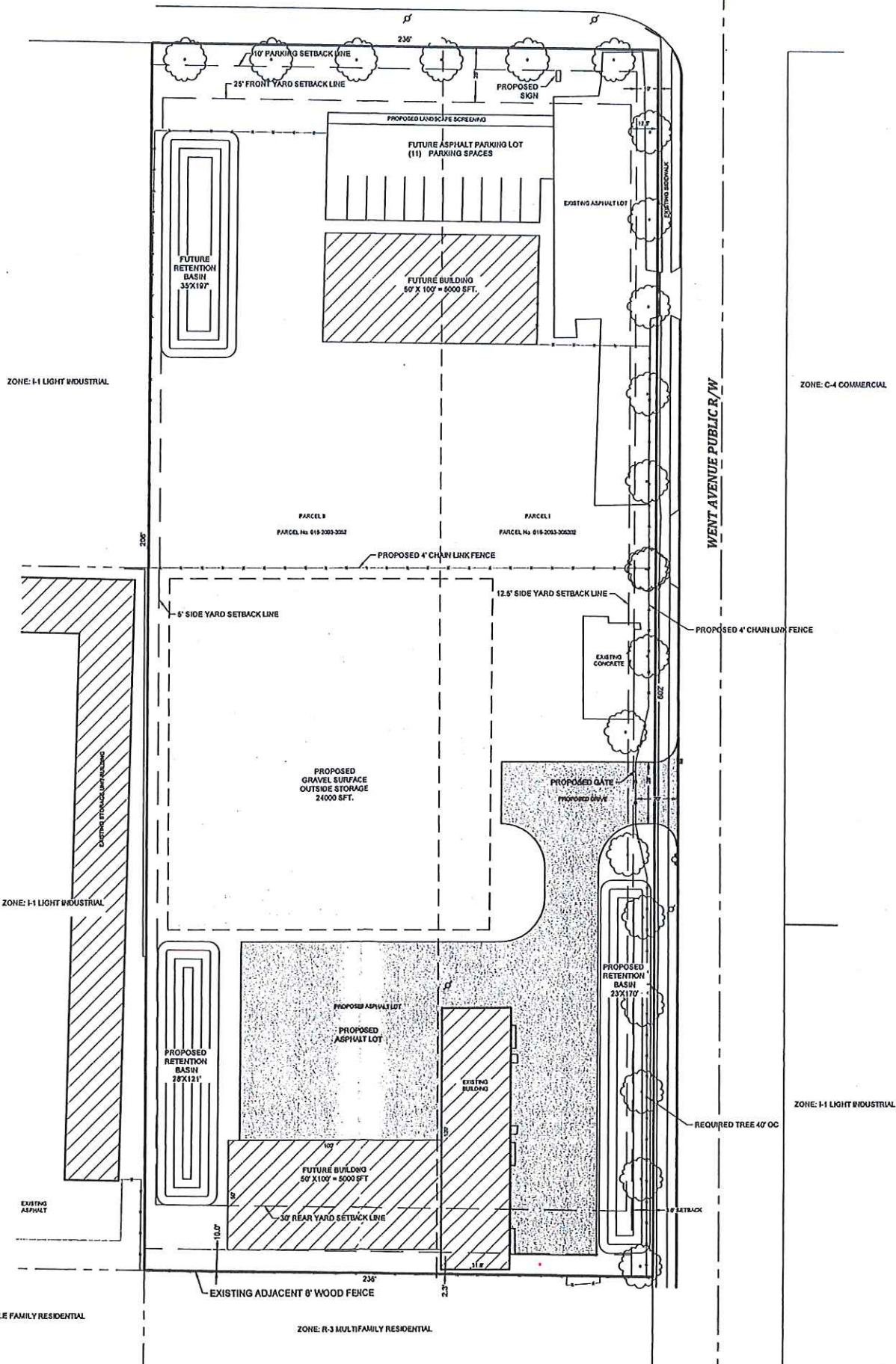
(3) Will strict application of the terms of this chapter result in practical difficulties in the use of the property? The strict application of the terms of the Ordinance does not allow the Owner the most applicable use of their property and existing features.

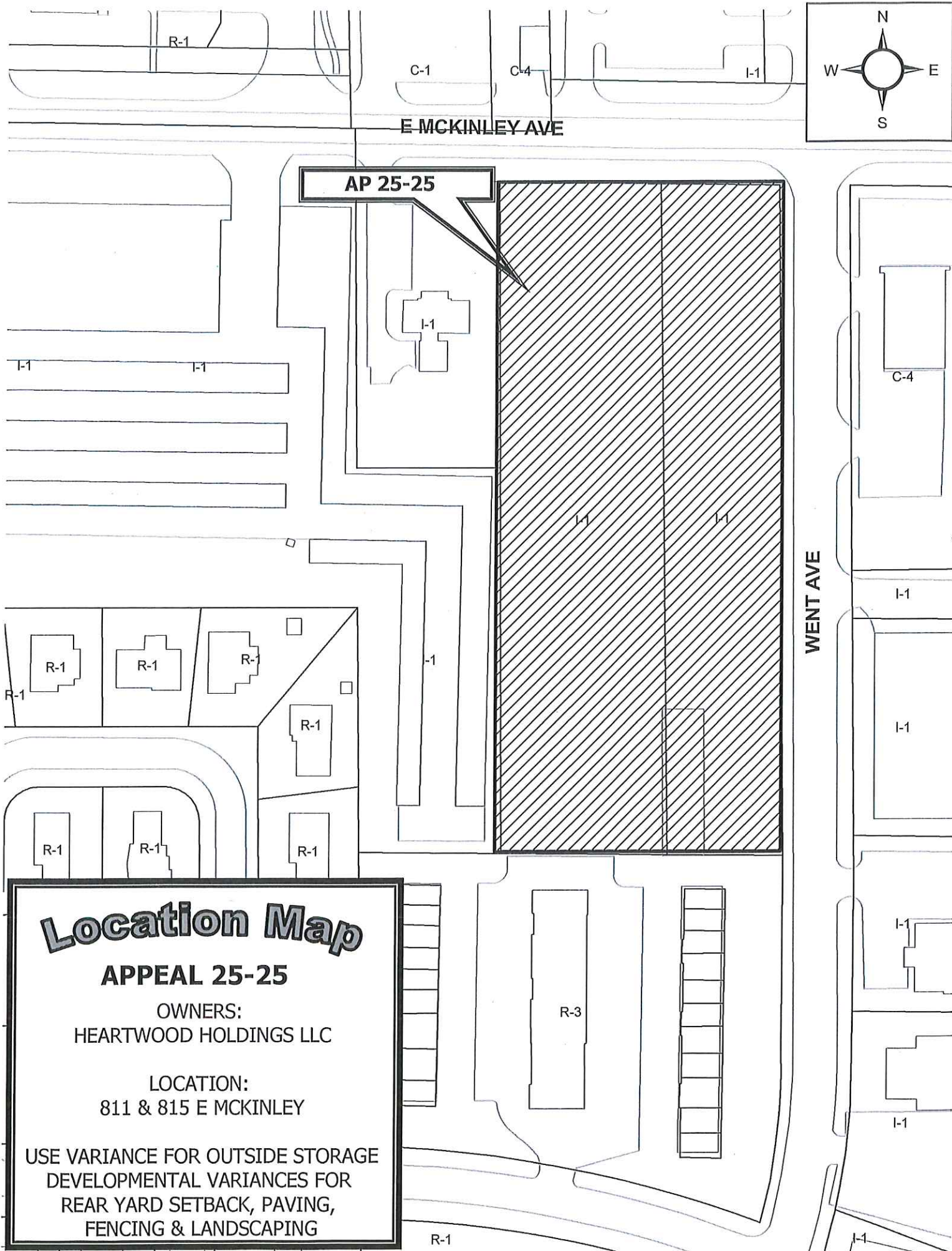
WHEREFORE, Appellant prays and respectfully requests a hearing on this appeal and that after such hearing, the Board grant the requested variance.



Heartwood Holdings, LLC
Clint Williams
50782 Patridge Woods Drive
Granger, Indiana 46530
574-485-8575
clint@heartwood-trees.com

CONTACT PERSON:
Wightman c/o Terry Lang
1402 Mishawaka Avenue
South Bend, Indiana 46615
574-233-1841
tlang@gowightman.com





Location Map

APPEAL 25-25

OWNERS:
HEARTWOOD HOLDINGS LLC

LOCATION:
811 & 815 E MCKINLEY

USE VARIANCE FOR OUTSIDE STORAGE
DEVELOPMENTAL VARIANCES FOR
REAR YARD SETBACK, PAVING,
FENCING & LANDSCAPING

RESOLUTION NO. 2025-21
Miscellaneous Property Acquisitions
1107 South Union Street

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF
MISHAWAKA, INDIANA, ADDING PARCELS TO THE CITY'S
PROPERTY ACQUISITION LIST ASSOCIATED WITH A PREVIOUSLY
APPROVED COMMON COUNCIL RESOLUTION 2014-07 WHICH
APPROVED AN ORDER OF THE CITY OF MISHAWAKA PLAN
COMMISSION APPROVING A CERTAIN DECLARATORY
RESOLUTION, AN AMENDMENT TO THE BOUNDARIES OF THE
NORTHWEST AREA IMPROVEMENT PROJECT, CONSOLIDATION
OF THE SOUTHSIDE ECONOMIC DEVELOPMENT AREA AND THE
NORTHWEST IMPROVEMENT PROJECT INTO ONE
CONSOLIDATED AREA IMPROVEMENT PROJECT, AND AN
AMENDMENT TO THE ECONOMIC DEVELOPMENT PLAN FOR THE
CONSOLIDATED AREA IMPROVEMENT PROJECT ADOPTED BY
THE CITY OF MISHAWAKA REDEVELOPMENT COMMISSION**

WHEREAS, on February 24, 2014, the City of Mishawaka Redevelopment Commission (the "Commission") approved and adopted its Resolution No. 2014-03 entitled "Resolution of the City of Mishawaka Redevelopment Commission Designating and Declaring Certain Areas as Economic Development Areas, Amending the Boundaries of the Northwest Area Improvement Project, Consolidating the Southside Economic Development Area and the Northwest Area Improvement Project Into One Area, And Amending the Economic Development Plan for the Consolidated Area Improvement Project" (the "Declaratory Resolution"); and

WHEREAS, the Declaratory Resolution (i) designated and declared certain areas within the City of Mishawaka, Indiana (the "City") to be economic development areas (the "Expansion Areas") for purposes of tax increment financing pursuant to Section 39 of Indiana Code 36-7-14 (the "Act") to expand the existing Northwest Area Improvement Project (the "Northwest Area"); (ii) removed certain parcels from the Northwest Area; (iii) consolidated the Southside Economic Development Area (the "Southside Area") and the Northwest Area into one area (to be known as the Consolidated Area Improvement Project) (the "Consolidated Area"); and (iv) approved an amendment (the "Plan Amendment") to the Economic Development Plan for the Northwest Area (the "Economic Development Plan") to provide for such Economic Development as amended to serve as the economic development plan for the Consolidated Area Improvement Project (as amended by the Plan Amendment shall hereinafter be referred to as the "Economic Development Plan"); and

WHEREAS, on March 11, 2014, the City of Mishawaka Plan Commission (the "Plan Commission") adopted and approved its resolution 2014-01, determining that the Declaratory Resolution and the Economic Development Plan, as amended by the Plan

Amendment, conform to the plan of development for the City and approving, ratifying and confirming the Declaratory Resolution and the Economic Development Plan, as amended by the Plan Amendment, and designated such resolution as the written order of the Plan Commission approving the Declaratory Resolution and the Economic Development Plan, as amended by the Plan Amendment, as required by Section 16 of the Act (the “Plan Commission Order”); and

WHEREAS, Section 16 of the Act prohibits the Commission from proceeding until the Plan Commission Order is approved by the legislative body of the City; and

WHEREAS, the Common Council of the City (the “Common Council”) previously approved the Plan Commission Order by Common Council Resolution 2014-07; and

WHEREAS, as part of the previous approval various public improvement projects were listed as part of the Economic Development Plan; and

WHEREAS, a number of those projects including the acquisition of properties necessary for the future widening Union Street in the area improvement project were included in the economic development plan; and

WHEREAS, the Administration is asking the legislative body for its review and approval of adding certain properties to the City’s acquisition list to implement a portion of these projects; and

WHEREAS, the description of the property that is proposed to be added is as follows:

- ***Lots Numbered Two Hundred Thirty-five (235) and Two Hundred Thirty-six (236) as shown on the recorded Plat of Gaylord’s Third Plat, an Addition to the City of Mishawaka. In St. Joseph County, Indiana***
- ***Parcel Number: 71-09-16-490-010.000-023***

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

1. The referenced parcels are hereby added to the City’s acquisition list as part of the consolidated area improvement projects
2. This Resolution shall be in full force and effect from and after its passage by the Common Council.

Passed and adopted at a meeting of the Common Council of the City of Mishawaka, Indiana, held on August 18, 2025.

COMMON COUNCIL OF THE
CITY OF MISHAWAKA, INDIANA

Gregg Hixenbaugh, President

ATTEST:

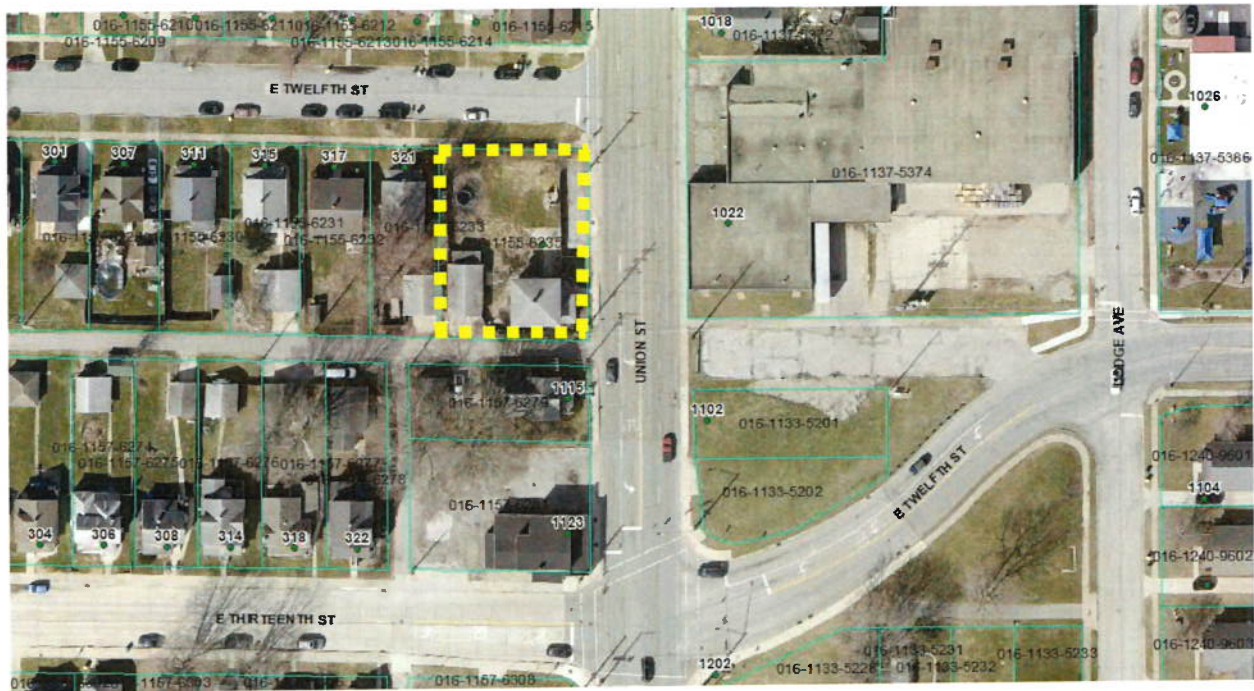
Deborah S. Block
Clerk of the City of Mishawaka, Indiana

Presented by me to the Mayor of the City of Mishawaka, Indiana, on the _____
day of August _____, 2025, at the hour of _____ .m.

Deborah S. Block
Clerk of the City of Mishawaka, Indiana

This Resolution approved and signed by me on the ____ day of August, 2025, at
the hour of _____ .m.

David A. Wood
Mayor of the City of Mishawaka, Indiana



Location Map- 1107 South Union Street

RE: Proposed Council Resolution 2025-20- Adding 1107 South Union Street to acquisition list

From Ken Prince <kprince@mishawaka.in.gov>

Date Mon 8/4/2025 10:22 AM

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

Cc DL-Council <DL-Council@mishawaka.in.gov>; David A. Wood <dwood@mishawaka.in.gov>; Roger Shields <rshields@mishawaka.in.gov>; Derek Spier <dspier@mishawaka.in.gov>

 2 attachments (2 MB)

1107 Union Street Buy Sell 7-14-2025 revised 7-17-2025.pdf; Resolution 2025-20 Common Council Acquisition List 1107 South Union Street.doc;

Good morning,

Attached is proposed Council Resolution 2025-20 concerning adding 1107 block of south Union Street to the City's property acquisition list.

On behalf of the Administration, we are respectfully requesting that this item be placed on the **August 18th** Council Agenda.

Identical to 1216 South Union that was placed on the acquisition list in April, and the vacant lots that are located in the 900 block of south Union that were acquired in July, in order for the City to acquire property using TIF funds, per the Indiana Code, it must first be placed on an acquisition list that is approved by the City Council. In 2014 when the consolidated TIF underwent major modifications to include many of the main transportation routes in the City, the City made the decision to evaluate acquisitions as they are needed, rather than blindly add what would have amounted to hundreds of properties to a generic acquisition list along corridors that were anticipated to be widened or improved over time. Union Street is one of those corridors.

1107 South Union included in the resolution is a single family home on a double lot located at the southwest corner of South Union Street and 12th Street. Although this section of Union Street will likely not be needed for widening in the next 5 years, the administration is pursuing acquisition at this time because the property was recently purchased by the current owner from a Sheriff sale. We reached out to the new owner to see if there was an interest in selling to the City before the property was remodeled for rental. The new owner was interested. Attached is the buy-sell agreement for the property that has been signed by the owner.

The proposed purchase price is \$174,000. This offering price matches the current assessed value of the property. The City has also had the property appraised by two independent licensed appraisers who have confirmed the value of the property at \$175,000.

As we move forward, as other properties come for sale, we would like to acquire them before someone else purchases them and makes further investment. This is in an area where we know Union Street will be widened over time. 1107 is problematic for the future widening not only because of the location of the

backing up into Union street with little visibility or room between the parking area and the adjacent sidewalk and street. Removing this parking area will provide immediate benefit regardless of the timing of the future roadway widening. If this property is approved by the Council and acquired, this would leave only one home left to acquire on the west side of Union between the 12th Street and 13th Street. As an update, the 331 Inn is under contract for demolition, but we are not able to start until NIPSCO can confirm the gas line has been shut off. Depending on the timing of the gas shut off, we are hopeful demolition will be completed in the coming months.

Our consolidated TIF is the source of funds that would be used if the purchase is ultimately approved. Please let me know if you have any questions regarding the potential acquisition. We appreciate your consideration.

Ken

Kenneth B. Prince, FASLA
Executive Director

City of Mishawaka
Planning and Community Development
100 Lincolnway West
Mishawaka, IN 46544
Phone- (574) 258-1625
Email- kprince@mishawaka.in.gov
Website- www.mishawaka.in.gov



BUY AND SELL AGREEMENT

THIS AGREEMENT made and entered into as of the 14th day of July, 2025 by and between **1107 South Union Street Land Trust**, hereinafter referred to as “Seller”, and **CITY OF MISHAWAKA**, acting by and through its Redevelopment Commission, hereinafter referred to as “Buyer”, All of St. Joseph County, State of Indiana,

WITNESSETH THAT:

The Seller promises and agrees to sell and convey to the Buyer, and the Buyer promises and agrees to purchase of and from the Seller, for the sum of **One Hundred and Seventy Four Thousand Dollars (\$174,000)**, the property's located at **1107 South Union Street.** City of Mishawaka, 46544 St. Joseph County, Indiana, more particularly described as follows:

1107 Union Street Land Trust

Lots Numbered Two Hundred Thirty-five (235) and Two Hundred Thirty-six (236) as shown on the recorded Plat of Gaylord's Third Plat, an Addition to the City of Mishawaka. In St. Joseph County, Indiana

Parcel Number: 71-09-16-490-010.000-023

This purchase is contingent on the following:

1. Upon the Seller's approval of his agreement, the Buyer will order two appraisals of the properties. If the average of the two property appraisals is equal to or greater than \$174,000, the purchase price shall be \$174,000. If the average of the two appraisals is below \$174,000, the purchase price may be the average of the two property appraisals if approved by the Seller, or other price as negotiated and agreed to by both the Buyer and Seller.
2. As a public entity, the Buyer is subject to specific purchasing laws identified by the Indiana Code. This includes adding this property to an official acquisition list that requires the approval of the Common Council of the City of Mishawaka.
3. Unless mutually agreed to prior to closing, Seller shall remove any items, material, or debris stored within the building and properly dispose of any chemicals or materials in accordance with applicable laws and restrictions.

Subject to and upon the terms and conditions hereinafter set forth:

1. Buyer shall obtain, at Buyer's expense, a commitment for the purchase price Owner's Policy of Title Insurance in which the title insurance company shall agree to insure merchantable title in the name of the Buyer after delivery of a Deed to Buyer from Seller. Any defects in title which tend to render the same un-merchantable shall be submitted by the Buyer to the Seller in writing and the Seller shall be given reasonable time to correct the same. If the Seller shall fail or refuse to cause such defects to be corrected, Buyer shall have the option of accepting title subject to defects, or of terminating this Agreement.
2. After the title to the described real estate has been approved by the Buyer, and upon payment of the balance of the purchase price by the Buyer to the Seller, the Seller shall execute and deliver a Warranty Deed conveying the real estate above described to the Buyer, free and clear of all liens and encumbrances, except as provided herein, and subject to all covenants, restrictions, easements, and zoning ordinances of record.
3. It is understood and agreed by the parties hereto that Buyer is purchasing the real estate and personal property covered by this agreement in an "as is" condition and that Seller has made no guarantees or warranties, expressed or implied, concerning said personal property, real estate, or any improvements thereon.
4. Pending the timely delivery of the aforementioned appraisals, this Transaction shall be closed as soon as possible following the execution of the agreement, but no later than the 29th day of August 2025. This time may be moved up or back by mutual agreement of both the Buyer and the Seller.

5. Seller shall deliver possession of the real estate above described to the Buyer at the time of closing. The Seller has identified that no tenants are currently residing on the property. Furthermore, the Seller agrees to deliver possession to the buyer with no tenants occupying the premises nor with any tenants holding any lease hold interest in the property. The Buyer shall be permitted to inspect the premises on the day of closing to insure the building is not occupied.
6. Seller, at his option, shall have the right to limited salvage rights in the real estate. All such salvage rights are to be approved by the Buyer prior to Seller exercising his salvage rights. Salvage shall specifically not include anything that would structurally modify or impact the structure. As part of any salvage, the Seller shall be responsible for maintaining a secure structure not creating any openings that would freely allow birds, animals, or people to enter the building. The Seller shall have the time up to the closing of the transaction to complete any salvage work.
7. Risk of loss or damage to any improvements located upon the real estate above described shall remain with the Seller until the time of delivery of the Warranty Deed conveying title from Seller to Buyer and possession of the premises by Buyer.
8. Seller acknowledges that because Federal Funds may be used by the Buyer in the purchase of the subject property that the sale on behalf of the Seller is voluntary. Seller further acknowledges that the Buyer will not use the power of eminent domain to acquire the property. Seller acknowledges that the estimate of the fair market value of the property is \$174,000. Seller further acknowledges that since the purchase is a voluntary, arm's length transaction, Seller would not be eligible for relocation payments or other relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), or any other law or regulation.
9. Seller shall pay any unpaid taxes and assessments for prior years. Taxes for the year 2025, payable in 2026, shall be prorated to the date of closing based upon the last official tax rate.

10. The covenants, agreements, and conditions herein contained shall be binding upon the parties hereto and shall also extend to and be binding upon their respective heirs, legal representatives, and assigns.
11. The seller shall assist with and provide any documentation relative to known environmental conditions on the property including but not limited to underground tanks and other existing conditions on the property of an environmental nature. This shall include providing the buyer with any existing environmental reports such as a Phase 1 or Phase 2 environmental studies, if they exist.
12. Vendor's Affidavit. Seller shall provide Buyer with an executed Vendor's Affidavit at the Closing in form acceptable to the Title Company.
13. In addition to any other obligations assumed by Seller hereunder, Seller shall pay, for deed preparation, and one-half (1/2) of Metropolitan Title Company closing fees. Buyer shall pay the other one-half (1/2) of closing fees, plus the costs associated with recording the deed.
14. Seller shall be responsible for maintaining the property until Closing and for paying for all necessary maintenance and repairs. Seller shall also maintain a proper insurance on the property until Closing, fully insuring it against loss.
15. In the event that the Seller or Buyer breaches any of the terms of this Agreement and the party not in default employs attorneys to protect or to enforce its rights hereunder and prevails, then the party in default agrees to pay all reasonable costs, attorney fees, and expenses incurred by the party not in default in enforcing the covenants and agreements contained herein.
16. No modification to this Agreement shall be valid unless in writing and signed by all parties.

17. If any provision of this Agreement is deemed void or unenforceable, the same shall in no way impair the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect.

18. It is expressly agreed and understood that this Agreement contains all of the agreements of the parties and that no verbal agreements of any kind shall be binding upon the parties.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

BUYER

SELLER

CITY OF MISHAWAKA, acting by and
Through its Redevelopment Commission
By:

1107 South Union Street Land Trust
2043 South Bend Ave 195
South Bend, IN 46637

Janet Whitfield-Hyduk, President

Austin Cabello

Austin Cabello - Agent

Kris Ermeti, Secretary



Location Map:
1107 Union Street