AGENDA

Monday, March 20, 2017

The Beiger Bots Champion Display

6:00PM

Meetings of Standing Committees
Council Conference Room
6:45 P.M.

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL
COUNCIL CHAMBERS/CITY HALL
7:00 P.M.

1. **Call to Order**
2. **Pledge of Allegiance**
3. **Roll Call**
4. **Approval of the Minutes of the Previous Regular Meeting**

   March 6, 2017

5. **Petitions, Communications, Remonstrance and Memorials**

   A letter from the Board of Zoning Appeals regarding recommendations from their March 14, 2017 meeting.

6. **Report of Special Committee**
7. **Ordinances on First Reading**

   P.O. NO. 2017-12 Amending the Tattoo Ordinance

8. **Resolutions**

   R2017-05 Use Variance to allow a Restaurant with Drive-thru 308 W. Cleveland Rd (Proposed Biggby Coffee)

9. **Ordinances on Second Reading**

   P.O. NO. 2017-11 Transfer Funds LOIT Special Distribution Fund $7,500.00 (Assigned to Budget and Finance Committee)

10. **Privilege of the Floor – Non-Agenda Items**
11. **Unfinished Business**
12. **New Business**
13. **Adjournment**

At this time I know of no other business to come before the Council.
Deborah S. Block, IAMC, 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 Geoffrey Spiess, ADA Coordinator, at (574) 258-1615.

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

March 6, 2017

Be it remembered that the Common Council of the City of Mishawaka, Indiana met in the Council Chambers of the Mishawaka City Hall on Monday March 6, 2017, at 7:00 p.m. The meeting was called to order by President Ross Deal all were asked to stand for the Pledge of Allegiance. Clerk Block announced Mr. Mammolenti would be attending the meeting late.

Roll Call.

Present: Mrs. Voelker, Mr. Compton, Mr. Tanner, Mr. Mammolenti not present, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mr. Canarecci, Mr. Deal.

Others present; Mike Trippel Council Attorney, Chief Deputy Mary Ellen Hazen, Raven Boston, Deputy.

The minutes from the February 20, 2017 meeting were approved as received from the City Clerk's Office.

Clerk Block read the following Appeal to the Council, who referred it to the Board of Zoning Appeals, for their recommendation.

Appeal No. 2017-07	Use Variance to allow a Restaurant with Drive-Thru 308 W. Cleveland Rd (Proposed Biggby Coffee)

Clerk Block read the following ordinance that was given first reading, assigned to committee and set for public hearing at next meeting.

PROPOSED ORDINANCE NO. 2017-11

AN ORDINANCE DECLARING AN EMERGENCY AND TRANSFERRING AND REAPPROPRIATING FUNDS WITHIN THE BUDGET ADOPTED FOR THE CALENDAR YEAR ENDING DECEMBER 31, 2017
(Transfer Funds LOIT Special Distribution Fund $7,500)

Clerk Block read **RESOLUTION NO. 2017-04** by title.

RESOLUTION NO. 2017-04

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA WAIVING THE REQUIRED FILING DATE OF MAY 10, 2016, OR SUBSEQUENT APPLICABLE DATE PER I.C 6-1.1-12.1-5(B), AND ACCEPTANCE OF THE LATE FILING OF THE DEDUCTION APPLICATION FOR THE REAL ESTATE REHABILITATION LOCATED IN AN ECONOMIC REVITALIZATION AREA ESTABLISHED BY RESOLUTION NO. R2013-21 FOR BARAK RIVER ROCK, LLC LOCATED AT 116 &128 W. MISHAWAKA AVENUE, AND 117, 123, 129 & 135 W. GROVE STREET.

Ken Prince, City Planner spoke in favor of the resolution. He said it was a case that was procedural. Mr. Prince explained Barak River Rock, LLC completed the improvements that were identified on their tax abatement application. He said they filed the necessary form but they filed it in the previous year. Mr. Prince explained when the time came to analyze the records; the forms were not filed in the year it was supposed to be filed. He said this action would allow it to be corrected and allow the abatement to continue.

Scott Sivan Partner of Barak River Rock LLC said they filed in the previous year correctly. Mr. Sivan updated the Council on the project. He said the property was 90% leased and expected to be fully leased at the end of March. Mr. Sivan extended his appreciation for the tax abatement they received.

Mr. Compton was happy to hear the leasing rate was nearly full. He asked was the property commercial or residential. Mr. Sivan said the majority of the property was residential with 73 units. He explained the ground floor has some retail space that they were working on and talking to vendors and hoped to be open this summer.

Question was called for at 7:06 P.M. for **RESOLUTION NO. 2017-04** **Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 8). **Yes:** Mrs. Voelker, Mr. Compton, Mr. Tanner, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mr. Canarecci, Mr. Deal.

Clerk Block read the following ordinance by title and was opened for public hearing.

PROPOSED ORDINANCE NO. 2017-06

AN ORDINANCE DECLARING AN EMERGENCY AND DETERMINING THE EXPENDITURE OF ADDITIONAL FUNDS FOR THE YEAR ENDING DECEMBER31, 2017
(Additional Funds – LOIT Special Distribution $225,000)

Mr. Canarecci reported the Budget and Finance Committee recommended this proposed ordinance should be adopted and moved for acceptance of same upon a second by Mr. Banicki motion carried.

Rebecca Miller, City Controller explained the additional appropriation was for a purchase of a Street Sweeper out of the LOIT Special Distribution Fund. She said it was in the budget paperwork but did not get in to the official budget.

Question was called for at 7:08 P.M. for **PROPOSED ORDINANCE NO. 2017-06** **Vote: Motion carried by unanimous roll call vote (summary: Yes = 8). Yes: Mrs. Voelker, Mr. Compton, Mr. Tanner, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mr. Canarecci, Mr. Deal.** Thus it becomes, **ORDINANCE NO. 5563**

Clerk Block announced Mr. Mammolenti present at 7:09 P.M.

PROPOSED ORDINANCE NO. 2017-07

AN ORDINANCE AMENDING CHAPTER137, 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.

(City of Mishawaka & Habitat for Humanity Various Addresses Rezone C-1 to R-1)

Mrs. Voelker reported the Land Use Planning Committee recommended this proposed ordinance should be adopted and moved for acceptance of same upon a second by Mr. Banicki motion carried.

Ken Prince, City Planner said the process started a number of years ago, as they had tried to assemble properties that were formally zoned commercial to rezone to residential. He said the properties were located on the west side of Merrifield Avenue, on the north and south side of Third Street, and north side of Fourth Street. Mr. Prince explained there were 10 lots, and overtime they believed the properties would be resub divided into six or seven single family homes. He went on to say they deeded the portion of what use to be an old fence contractor building that was demolished to Habitat. Mr. Prince said Habitat required a deed to obtain the grant money that they needed for their proposal. He explained once they deeded Habitat the property and when they received a plot plan for review, they realized the zoning was not in place yet. Mr. Prince continued to say rather than doing one property at a time, they decided to request the change in zoning for all properties.

Question was called for at 7:12 P.M. for **PROPOSED ORDINANCE NO. 2017-07 Vote: Motion carried by unanimous roll call vote (summary: Yes = 9). Yes: Mrs. Voelker, Mr. Compton, Mr. Tanner, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mr. Canarecci, Mr. Deal.** Thus it becomes, **ORDINANCE NO. 5564**

PROPOSED ORDINANCE NO. 2017-08

AN ORDINANCE AMENDING CHAPTER137, 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 R-1 to C-1 for Assisted Living Facility 1128 W. Dragoon Trail and Logan Street)

Mrs. Voelker reported the Land Use Planning Committee recommended this proposed ordinance should be adopted and moved for acceptance of same upon a second by Mr. Banicki motion carried.

Courtney Figg, Attorney of Quarles and Brady LLP 135 Pennsylvania Street Indianapolis represented AHEPA Affordable Housing Management Company, Inc. She said they were proposing a 136 unit Assisted Living Facility that would consist of studio and one-bedroom units. Ms. Figg stated it would be an affordable Assisted Living Facility that would be financed through a 4% Tax Credit application submitted to the Indiana Housing Community Development Authority also coupled with Tax Exempt Bonds to finance the construction and development of the facility. She continued to say the facility would be affordable for those who were 60% or below the area need of income. Ms. Figg said the requirements were to be 62 years or older.

She went on to discuss the payments for the assisted living. Ms. Figg said they anticipated majority of the payment would be received from the Medicaid Waiver. She mentioned the developer had two facilities in the area that were independent senior living facilities, Penelope 60 located on in Mishawka and AHEPA 100 located in South Bend. Ms. Figg said the developer felt more assisted living communities were needed in the area, as people can no longer live independently.

Mr. Canarecci asked where the primary entrances would be located. Ms. Figg said there would be an entrance on Logan Street. She mentioned sharing an entrance with the Marion High School Athletic Facility. Ms. Figg said the City and the school were negotiating the specifics.

Mr. Mammolenti questioned the occupancy rates for the facilities in the area. Ms. Figg said both Penelope 60 and AHEPA 100 were fully occupied. She mentioned Penelope 60 had a waiting list of thirty-seven and AHEPA 100 currently had four.

Mr. Deal asked were they anticipating hiring contractors locally for this project. Todd Jenson represented AHEPA Management Company. He said they were leaning towards hiring a General Contractor out of Indianapolis called Shiel Sexton, which did hire local laborers and subs.

Mr. Mammolenti asked was their anticipation for the property to look the same as the others nearby. Mr. Jenson said the proposed property would be larger than the two nearby.

Mr. Emmons was curious why there were no two-bedroom units. Rick Banas from Gardant Management solutions said they have operated affordable assistant living communities since 2001. Mr. Banas went on to say they have found that two-bedroom apartments were not marketable. He explained the one -bedroom apartments were large enough to accommodate two individuals. Mr. Banas said most apartments were occupied with people who needed help with daily activities, so they tend not to be double occupied. He stated 4% of their apartments were double occupied.

Question was called for at 7:22 P.M. for **PROPOSED ORDINANCE NO. 2017-08** **Vote: Motion carried by unanimous roll call vote (summary: Yes = 9). Yes: Mrs. Voelker, Mr. Compton, Mr. Tanner, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mr. Canarecci, Mr. Deal.** Thus, it becomes **ORDINANCE NO. 5565**

PROPOSED ORDINANCE NO. 2017-09

AN ORDINANCE AMENDING CHAPTER137, 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 – NW corner Bremen Highway & US 20 Bypass)

Mr. Banicki reported the Land Use Planning Committee recommended this proposed ordinance should be adopted and moved for acceptance of same upon a second by Mr. Canarecci motion carried.

Bryan McMorrow represented Abonmarche Consultants Lincolnway East South Bend on behalf of KLT Properties. Mr. McMorrow said they were hoping to move forward toward realizing the full potential of the Gateway PUD. He went on to say their client would like to construct four hundred self-storage units that would primarily serve residents. Mr. McMorrow explained his client was prepared to make a $3M investment in this project. He said at the end they would expect the tax revenue to range between $70,000 thousand and $90,000 a year. He went on to state their favorable vote from the Plan Commission was due to his client putting under a contract of a piece of ground that would allow Meijer Drive to be extend from the traffic signal west into the project. Mr. McMorrow also mentioned INDOT also agreed to enter an agreement to abandon its rights for what they called Access Road Number 4. He explained it was a remaining vestige of the Route 20 Bypass. Mr. McMorrow said improvements showed it provided some frontage years ago. He expressed with those key facts, they petitioned to allow the PUD to be amended for an agreement to be entered by and between the petitioner, the City, and State to put in the steps to be taken and when the infrastructure improvement could occur. Mr. McMorrow stated it should unlock the potential of this side of the PUD. He said Access Road number 4 would be vacated by the state then dedicated to the city and then improved by the developer.

Mr. Deal asked was there a time table for the realignment of Meijer Drive. Mr. McMorrow answered they were not in full control of that. He explained this was the first step, the land is under contract and once they receive the favorable vote, they would move to close and work with the city to have the improvement made.

Mr. Deal said members of the Council met with some of the neighbors who had concerns on the traffic that would come through the access road. Mr. McMorrow said they understood the concerns. He went on to say they were fully prepared to move forward. He said with the support and with the Engineering Department, they believe together they could move forward quickly.

Richard Bishop 17413 Skyline Drive South Bend was the property owner of 3729 Bremen Highway. He spoke in support of the PUD. Mr. Bishop asked that the development of the road extension be developed quickly for the safety of the Elmwood Avenue residence.

Tim Myers, Doug Grawl, Dennis Pynfaust, Ben Dumonkus, Debbie Wiley, Jeff Zun, Linda and Frank Unruh, Jesse Davis, Brian Gordon, Dean Barnes, Eller, Dennis Piner, were residence of Elmwood Avenue, Bremen Highway, Stanley Street, 8th Street, Milburn Avenue, and Towel Avenue; they all expressed their concerns of the constructions of the extension of Meijer Drive and the 400 self-storage unit development. Their concerns consisted of the increase of traffic that would come down Elmwood Avenue, the loss in property values, possibility of increase in crime, the safety for the residence to enter or exit, the safety of the children that live in the area, and for the light to be constructed before the development opens. Some residence also expressed the short notice they received regarding the development. Some residence also asked for the proposal to be tabled until there was further information on when the traffic light would be constructed.

Mr. Banicki asked the following questions; did the property owner know there was commercial property out front, was the contract with the PUD land owners still in place, when the property was annexed commercial property, wouldn't the property values increase. Mr. Banicki stated this may help improve the PUD to move forward. He said the first step needed to be made and this seemed to be the step.

Mr. Canarecci asked Mr. Myers the following questions, the property immediately west of the state access road a part of the city and was it apart of the PUD, what development would be better suited for that property and did he think the self-storage development would make the area unattractive. Mr. Myers answered the property west of the access road was not a city property it was county and it was not a part of the PUD. He said he felt that a hotel or a business office would be better. Mr. Myers expressed he thought it would make the neighborhood less attractive.

Mrs. Unruh said she did want to look at 400 storage units. She called them junk. Mrs. Unruh also mentioned her difficulty trying to sell her property due to it being zoned commercial.

Mr. Banicki made the comment Mr. Veldman had many business in the area and has had done a great job running a good business. He asked Mrs. Unruh had she ever been to any of Mr. Veldmans properties. Mrs. Unruh answered no. Mr. Banicki said to call Mr. Veldmans properties junk was wrong.

Mr. Compton asked when was the PUD designed and when did the property become commercial. Mrs. Unruh said 2006. Mr. Compton clarified Mrs. Unruh started the PUD knowing her property would be zoned commercial and would have to sell commercial if Mrs. Unruh ever decided to sell in the future. Mrs. Unruh answered correct. Mr. Compton went on to say a piece of this was now starting to develop. He said eventually it would all develop. Mr. Compton believed what the city had in mind would improve the neighborhood property value. He said he did not agree with Mrs. Unruh that storage units would destroy their property value.

Mr. Mammolenti asked was Mrs. Unruh opposed to just the storage sheds or any commercial development and was most of the concern regarding increase of traffic. Mrs. Unruh replied it's the storage sheds.

Mr. Tanner asked for clarification that the point of the PUD was a mutual benefit for everyone. Mrs. Unruh said yes. Mr. Tanner went on to say that commercial investment in the area would benefit the proposition of more commercial in the area to be developed. He said the development must start with something.

Mr. Canarecci asked did Mr. Unruh have access to the State access road from her property. Mrs. Unruh said yes but her primary entrance was Bremen Highway.

Mr. Mammolenti asked Mr. Prince the time frame the traffic light would be put in. Mr. Prince said they did not have a time frame. He explained the development was a process; they did not want to spend any city funds until they know it has the potential to move forward. Mr. Prince continued to say what they had identified in the proposed conditions of approval, was that the self-lock storage developer would be doing the design development drawings that would identify right-of-way demand for the roadway realignment as well as the engineering cost. Mr. Prince said at that point they could then program the installation.

Mr. Mammolenti assumed this plan was the best options. He was curious were there any other design options. Mr. Prince said the current temporary access was not ideal. He continued to say the difference between this proposal than the previous two, was this time the developer had a plan and they agreed to bring money to the table. Mr. Prince explained acquiring the property for the acquisition of the right-of-way needed to extend Meijer Drive required real dollars to do. He said improving the INDOT access road which was a requirement from the city for fire protection required money to do. Mr. Prince explained after the developer had discussion with neighbors, they felt it would not be reasonable to do the road connections right away based on the property values. He said based on the information the developer gave, they felt this was the interim solution. Mr. Prince went on to say part of this was to be reasonable. He said everything may not be ideal but at the end the day their job was to make sure everyone understands the picture when it's fully developed and that it's working appropriately. Mr. Prince went on to say whether picture includes terminating Elmwood or not, it was up to the County to determine. He said the City prefers connections and having access. Mr. Prince also added another difference was the high-tension power lines that run on the property would also make it harder to develop compared to a typical area by the bypass.

Mrs. Voelker asked for any indication of when the light would be put in. Mr. Prince said they would prefer for the light to go in with the development, when Self Lock Storage opens the light would be in. He explained the dollar amount was still unknown and they could not make that commitment from the city. He said it was their goal to move the light forward.

Mr. Canarecci agreed with one of the residence that stated the best way to attract commercial development would be to improve the light. He asked was the developer going to buy the properties to create the right of way for the light. Mr. Prince said correct. Mr. Canarecci assumed the City was not spending any money to acquire the properties. Mr. Prince said the City was not buying the properties and the developer was not buying the properties unless the development was approved. He went on to say the developer had purchase agreement for it.

Mr. Canarecci asked if approved the developer would be under contract to purchase the properties, which would meant the city would have the opportunity to have diminished cost to put in the light and attract more commercial development. Mr. Prince answered correct.

Mr. Banicki stated they had to look at the overall plan. He said there were some commitments from the developers that gave the opportunity to get the intersection straight sooner than later. Mr. Banicki continued to say the sooner the intersection was fully functional the sooner the rest would develop like a rose. He stated he was prepared to move forward with the vote that evening.

Mr. Compton said it was always a challenge when the city bumps against county. He said his job was to represent the 5th district of Mishawaka and in their best interest. Mr. Compton went on to say if he could grow their tax base reasonably, that was in their best interest. He believed this proposal was reasonable. Mr. Compton said he had spoken too many residences. He said at the end, the overall plan was to make things right. Mr. Compton expressed he would vote in favor.

Mr. Tanner stated the biggest issue in the case was trust. He said they trust everyone was trying to do what was best in the community. Mr. Tanner stated he was empathic to everyone who had concerns. He said the city was not willing to dedicate the funds to make the light and the access road as it stands. Mr. Tanner continued to say they cannot move forward with the light or reasonable ambition of development until the intersection was aligned. He stated he was in favor to move forward with the development.

Question was called for at 9:06 P.M. for **PROPOSED ORDINANCE NO. 2017-09** **Vote: Motion carried by unanimous roll call vote (summary: Yes = 9). Yes: Mrs. Voelker, Mr. Compton, Mr. Tanner, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mr. Canarecci, Mr. Deal.** Thus it becomes **ORDINANCE NO. 5566**

PROPOSED ORDINANCE NO. 2017-10

AN ORDINANCE AMENDING CHAPTER137, OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA AS FROM TIME TO TIME AMENDED, COMMONLY KNOWN AS "THE ZONING ORDINANCE OF 1966" OF THE CITY OF MISHAWAKA, INDIANA.

(Rezone from C-1 to R-1 two new houses Habitat for Humanity Lots E. of 1612 LWE)

Mr. Tanner reported the Land Use Planning Committee recommended this proposed ordinance should be adopted and moved for acceptance of same upon a second by Mr. Banicki motion carried.

Bryan McMorrow represented Abonmarche Consultants Lincolnway East South Bend on behalf of Habitat for Humanity of Saint Joseph County. He said the properties to the north, south and west were currently zoned residential and the property to the east of Lincolnway was zoned commercial but there was an existing single-family residence. Mr. McMorrow said the petition was made to change the zoning from commercial to residential.

Questioned was called for at 9:09 P.M. for **PROPOSED ORDINANCE NO. 2017-10** **Vote: Motion carried by unanimous roll call vote (summary: Yes = 9). Yes: Mrs. Voelker, Mr. Compton, Mr. Tanner, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mr. Canarecci, Mr. Deal.** Thus it becomes **ORDINANCE NO. 5567**

Mr. Banicki requested for a five-minute recess at 9:11 P.M. The meeting reconvened at 9:16 P.M.

UNFINISHED BUSINESS

Mr. Deal announced there were two previous informational meetings regarding the following ordinances where there were opportunities for members of the public to speak. He limited public's remarks to 5 minutes each.

Clerk Block read **PROPOSED ORDINANCE 2017-04**

PROPOSED ORDINANCE NO. 2017-04

AN ORDINANCE AMENDING PART I, CHAPTER 62, OF

THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED
(Adopting Revised Rates and Charges for Wastewater)

Mr. Compton reported the Budget and Finance Committee recommended this proposed ordinance should be adopted and moved for acceptance of same upon a second by Mr. Banicki motion carried.

Jim Schrader General Manager of Mishawaka Utilities said there were wastewater treatment improvements that they would need to make over the next coming years. He explained the Milburn area needed to be finalized, the linden area also need to be improved to allow for some expansion of flow coming from the south side 12th Street area. Mr. Schrader mentioned other long term control projects that were based on the Federal Mandate and Consent Decree with Department of Justice. He said the projects had been identified as $13M projects and $30M in additional project to meet the long-term control plans. Mr. Schrader went on to say there had been a concerted effort since the 1990's to do their part for the team water act. He said through Karl Kopec and his personnel at the Wastewater Treatment Plant has done an excellent job to make those improvements. Mr. Schrader explained the Consent Decree requires further and they needed to discuss rates and charges that were necessary to put the rules in motion for the additional projects. He introduced John Julian to discuss the amounts for the financial needs for the projects.

John Julian, a partner of Umbaugh and Associates said they have had the privilege to work for the city as financial advisor for many years. He stated most recently they have been helping develop a financial plan, which resulted in their suggestions for adjustments for the rates and charges. Mr. Julian said in the past they looked at the utilities financial position and financial needs. He explained as the city has done a great job of maintaining the financial position of utilities as well as the general operation of the utilities, they were facing the magnitude of the capital improvements of the water and sewer utilities, and side improvements that total at approximately 100 million dollars. Mr. Julian said it would have an impact on their financial position. He continued to say a strategic plan was needed to address and to make sure the utilities stay in financial shape but do it in a way that was sensitive to the ultimate impact of the rate payers. Mr. Julian stated the ordinance would generate the revenues necessary to keep operating utility in a way that water is delivered in a safe reliable fashion and wastewater is collected and treated in the same way in accordance with all the environmental issues. He recommended the ways they believe would maintain the cities financial position. Mr. Julian explained a series of increases annually to the wastewater rates over the next five years and two adjustments to the water utilities rates that would be effective in 2018 and 2021. He said they realized the increases would be a great impact on the rate payers. Mr. Julian explained the plan stabilizes the impact with an initial $8 a month this year and the following year would be less than $7 a month. He said the increases would be substantial to the rate payers, they would at least have the comfort of knowing what was coming through the next several years and the city would also have the comfort of knowing that the utilities would continue to operate in a strong financial shape. Mr. Julian concluded this financial plan address everything that they know of in the 100 million-dollars in Capital improvements. He said this was a financial plan that Umbaugh recommended to the city to maintain the cities financial position and address the significant capital needs in a way that was easy for the rate payers to accommodate.

Mr. Emmons asked how many rate payers Mishawaka had. Mr. Julian said 15,000

Mr. Emmons questioned how much would be projected to be raised in the end of the first year with the $8-dollar increase and how much at the end of 5 years. Mr. Julian did not want to take the chance of guessing. He asked that he come back to the podium when he knew the exact dollars.

Mr. Canarecci asked how many 8 to 10 inch meters were in the city. Mr. Schrader said they primarily serve residential, which could have 1 inch type of service. He mentioned hotels and larger box stores could have 4 to 6-inch service. Mr. Schrader explained they did not make up the predominate portion of who they serve. He stated they have looked at the rates and evenly applied this impact of projects and capital improvements that was needed across the board so everyone felt the impact in base cost and flow charges.

Mr. Tanner asked for clarification that rates were not expected to go down after five years. Mr. Schrader answered correct. Mr. Tanner went on to say although most of the projects were expected to be completed within a 5 to 7-year period, they were taking out bonds over a 20 or more-year period to cover the cost. He said anticipation of inflation, construction cost, and future improvements to take place years down the line. Mr. Tanner assumed they could not anticipate that at 5 years or 10 years they would see rates decrease. Mr. Schrader answered no because they were taking on long-term debt with bonds that go out at a minimum of 15 to 20 years. He explained they would do that in conjunction with Umbaugh to get the interest rates and find the best market to market the bonds in. Mr. Schrader mentioned they have had great success in the past going about it in this way. He said times move forward, capital improvements may need to be made that would take the place of the one that was just completed 20 years from now. Mr. Schrader explained it was a cycle that they go through and rates did not decrease.

Mr. Julian came back to the podium to answer Mr. Emmons questioned from earlier. He said the two additional rate increases in 2018 and 2021 would generate 2.1 million dollars each. Mr. Julian explained the annual revenue was just under 8 million dollars currently and would be over 12 million dollars after the second increase for water. He said Wastewater currently generated 5.8 million and would increase to about 18 million dollars in that time frame.

Mr. Bellovich believed in the last 3 years, from the stand point of cost and staffing, Mr. Schrader has not added any additional staff and wage increase were no more than 1%. Mr. Schrader answered correct; the wage increase mirrored the city. He stated they have had to do some tightening of staffing in some areas and staffing in other groups was leveled at best.

Mr. Compton asked what the plan was for the water tank on the south side of Mishawaka. Mr. Schrader said the tank was a 3-million-gallon tank that was installed in 1929. He explained they did all they could to inspect it and they could not do a full level inspection of the tank itself due the tank pressurizing the south side of the city. Mr. Schrader said they anticipate in the next few years to address the backup of the tank to have a septic tank so that one could be out of service while the other maintains the pressure and supply.

Mr. Compton asked what could happen if the Southside tank was to fail. Mr. Schrader said if the tank was to become unusable they would have to use a boiler, which no one would want to do.

Mr. Compton said beside the mandates from the federal government, they also look at the long-term liability of their water system together. He mentioned they were looking at a new well field on the north side to handle the extend growth on the north side. Mr. Compton said they also had problems on a very old system on the south side that need to be maintained. Mr. Schrader said the Virgil plant on Virgil and Linden Avenue needed to be upgraded. He explained near the golf course where all the wells were, needed major refurbishing. Mr. Schrader also mentioned water mains throughout the city dated from the early 1900's. He said as they were still very functional, they need to be proactive and stay ahead of failures that could cause water supply issues.

Mr. Mammolenti asked regarding the long-term plan, was there a floor price so they did not have to go back to the rate payers. Mr. Julian explained within the financial plan there was more than capital improvements intended to be funded. He said several million dollars a year, which was a normal reinvestment that the utilities made would not take care of a project with a price tag of tens of millions of dollars. He said there was a significant amount of discussion about major infrastructure funding program that may be considered that could generate financing options that would reduce the cost by subsidized loans or grants. Mr. Julian explained there was so many moving pieces to say what the floor piece could be.

Mr. Schrader added a concerted effort to recognize the crumbling of the infrastructures in the United States, not just the roads and bridges. He continued to say water, wastewater, and a lot of electric grid have hit the media and hoped that it would continue hit hard so everyone would recognize there were problems. Mr. Schrader said the Federal Government does need to be one who steps in to assist in every way possible.

Mr. Mammolenti said his point was the proposed ordinance was a plan for 5 years but in 2 years or 3 years there will be some other improvements needed that were not included in this plan. He went on to say in case they did have to do another rate increase plan, they did not want to confuse the public. Mr. Mammolenti expressed his appreciation for including the proposed rate increase tonight and not to include any future rate increase plans in case of any changes. Mr. Schrader agreed with Mr. Mammolenti. He said in the future funding source may become available that were not known today. Mr. Schrader continued to say if anything the EPA may not grant them a change in their Long-term Control Plan but the may grant them more time. He explained more time could help them with the money need they may have in the future.

Mayor Wood spoke in favor of Proposed Ordinance 2017-04 and Proposed Ordinance 2017-05. He said it was not easy to speak in support to raise the rates for their citizens and themselves. Mayor Wood stated they were all rate payers. He said one of his great comforts that he has, was they provided their services at an extremely high level. Mayor Wood continued to say it could be no important to do so, then with a necessity of life, and that was with their water service. He mentioned hearing a major new story about a community not being able to provide safe drinking water until the year of 2019. Mayor Wood stated their citizen would never have to worry about that, they can wake up and count on their water being safe. He said as a former councilman it was not easy to vote on these things. Mayor Wood continued to say they were not elected to do the easy things; they were elected to do the responsible thing. He said he has heard the needs, they need a new water tank because it not be accessed due to the sedimentation. Mayor Wood explained if the water tank was to fail, a large portion of the city would be without water. He stated that was not an option. Mayor Wood said they needed a new well field because their well field was currently land locked. He explained they were unable to provide into the future in the Northern University Park Pressure District, which was the water that they needed online so they could shut down another one to rehabilitate it because it was many decades old. Mayor Wood mentioned the last water increase was in 2013 and in 2011 for Wastewater. He said because they take very seriously they did not want to over burden the citizens. Mayor Wood mentioned the many information meeting held to share with the citizens the needs that they have. He said when it comes to over burdening their citizens, and they see the necessity to pull the plug, they would do so and renegotiate and stand up for their rate payers. Mayor Wood continued to say the great work of their public employees since 1990; they have eliminated about 95% of their combined sewer overflow into the St. Joseph River at a steep cost of about $100M. He said they were 95% to their goal, the last 5% was $200M, which was a Federal Mandate and the city had no say in that. Mayor Wood said there were hopeful and optimistic that they could take a compelling case to the EPA this year and renegotiate that deal for the citizens so they could save them that burden. He stated it would be top priority this year and they were fully committed. Mayor Wood gave recognition to the dedicated workers who toke great passion to provide great service.

Alvin Smith 912 Homewood Avenue spoke in support of the proposed ordinance. He said there was no choice but to pass the ordinance. He stated the Council's job was to protect and provide safe water and sewage system.

Dean Barnes 2006 Milburn Boulevard was unable to attend the informational meetings. Mr. Barnes had the following questions: where along Milburn Boulevard were the sewer improvements needed, was it going to be new sewer installed or realigning, how long would the new sewer installments supposed to last, were there new EPA regulations. Mr. Emmons said it would be the side street off Milburn. Chris Jamrose, City Engineer said there were still a few interconnections with the combined system that they would have to separate them with storm and sanitary systems so that it was perfectly separated through. She also mentioned they had new laterals planned. Mrs. Jamrose continued to say every sewer main had been lined so they could have new laterals from the main to the houses with the new cleanouts. She added there would be new streets, curbs and sidewalks. Mrs. Jamrose said they would last 50 year and they would be stretched back from the beginning of Milburn. Mr. Schrader added each project has an impact of Long-term Control plan. He said they were fazed over a number of years through the Long-Term Control Plan as it was negotiated. Mr. Schrader stated some of the items would be done soon and some were scheduled out a few years. He explained it would be depended on their resources, monetarily and engineering wise. Mr. Emmons informed Mr. Barnes the 1st District monthly meeting would cover Milburn Boulevard. He said the next meeting City Engineer Chris Jamrose would be speaking about the upcoming projects for the Milburn Boulevard area on March 16th.

Jesse Davis 210 Towle Avenue mention South Bend $800M project Umbaugh proposed. He said project started at a couple million dollars, the problem was no made sure there was an ordinance in place stating there was no rain water from gutter drains going to commercial and residential properties. Mr. Davis was curious to know if Mishawaka had an Ordinance regarding rain water, how many studies had been done and how many times has it been negotiated, and when was the Consent Decree put in place. He also had concerns about the TIF dollars.

Mr. Tanner said the city was very proactive in ensuring separating the down spouts from the sewers. He explained the City of Mishawaka decided to use TIF Districts to partially fund projects, reduce the cost from the impacts to the rate payers, and to directly reduce the cost to the rate payers by using TIF funds to pay approximately $11 a month down on everyone utility rates.

Karl Kopec, Wastewater Manager said Mishawaka had been extremely proactive to reduce the combined sewer overflow. He continued to say there were some sewer separation projects that occurred before 1990. Mr. Kopec said the chose the year 1990 in their negotiations with EPA. He explained in 1990 they estimated on an annual bases Mishawaka roughly had 300 million gallons a year of combined sewer overflow to the river. Mr. Kopec said total sewer separation was not the answer that required a mixture of different control measures. He stated they estimated their annual CSO volume in a typical year, which was a year with average rain fall, was 4 million to 5 million gallons a year down from 350 million gallons. Mr. Kopec went on to say they had reduced their annual combined CSO volume by 95%. He said they started negotiating their consent decree with USEPA, the Department of Justice, and the Indiana Department of Environmental Management in November of 2004. Mr. Kopec stated they signed their Federal Consent Decree in May of 2014. He explained the reason it took so long, they decided from the very first meeting with the agency that they were not going to be bullied and they were going to do what was best for the rate payers of Mishawaka. Mr. Kopec continued to say they were going to put together a plan that they felt met the level of control required in the most cost effective way. He explained there were no engineering done on the deep tunnels, he said it was conceptual and based upon sewer models. Mr. Kopec said they were recessing an alternative to the deep tunnel. He mentioned they were going to do some preliminary engineering and if consented from the Engineers, the City, and Attorney, and if they could find an alternative that would achieve the same level of control but at a lesser cost, they would go back to the agency to negotiate a change in the decree and perhaps a change in the schedule. Mr. Kopec expressed their goal was to reduce the cost of the plan.

Phil Zuickl 2334 believed funds for Capital Improvement should be a separate line item on the bills.

Mrs. Voelker recalled Mr. Zuickl suggestion at the previous meetings. She said Mr. Schrader would look into it.

Mr. Tanner added the Council works as the physical body of the city and they did not have control of the day to day management of utilities. He said the oversight would be the Board of Public Works and Safety and the Department Managers within the public utility.

Mr. Compton said he understood that Mr. Zuickl was trying to make them accountable. He explained there was a cost to make them accountable, there was a cost to segment out. Mr. Compton expressed most of the citizen would not understand that and they would hear from the citizens that the utility bill was complicated. He appreciated Mr. Zuickl suggestion. He expressed as much as he would like to hold them accountable, he would not be in favor to make it complicated, especially adding a cost to the process when they were trying to pay for the infrastructure.

Tom Meyers 755 E. 18th Street believed cost saving should be put in place. He compared his cost with Elkhart.

Mr. Compton expressed he could not speak for Elkhart, he could only go by what was in front of him and that was to take care of water on the south side where Mr. Meyers lived. He said their biggest concern was maintaining the quality of water and sewage for every one of the city of Mishawaka. He explained no one likes it but it must be done.

Members of the Council thanked all the Department Heads and the Consultants of Umbaugh for all their hard work. They expressed they also did not like the rate increase but it was their responsibility to do the right thing.

Questioned was called for at 10:41P.M. for **PROPOSED ORDINANCE NO. 2017-04** **Vote: Motion carried by unanimous roll call vote (summary: Yes = 9). Yes: Mrs. Voelker, Mr. Compton, Mr. Tanner, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mr. Canarecci, Mr. Deal.** Thus it becomes **ORDINANCE NO. 5568**

PROPOSED ORDINANCE NO. 2017-05

AN ORDINANCE ADOPTING REVISED RATES AND CHARGES FOR WATER SERVICES FURNISHES BY THE CITY OF MISHAWAKA'S MUNICIPAL WASTER UTILITY
(Adopting Revised Rates and Charges for Water)

Mr. Bellovich reported the Budget and Finance Committee recommended this proposed ordinance should be adopted and moved for acceptance of same upon a second by Mr. Banicki motion carried.

The Proposed Ordinance was asked to be Amended. Clerk Block read the amendments as followed:

The amendment would add surcharge percentages shown on Exhibit B for Outside City users to the ordinance, it would not change the outcome of the numbers it would show the percentages. Clerk Block suggested amending the ordinance by deleting Exhibit B and replacing it with the new one the Council received.

Mr. Banicki moved to amend **PROPOSED ORDINANCE NO. 2017-05** with a second by Mr. Compton motion carried.

Jim Schrader, General Manager of Mishawaka Utilities stated the two ordinances were linked in the way both would be constructed from the stand point of timing. He said this was a $57M project to replace the water tank on Ireland Trail, some booster station repair, and Virgil Street Well Field rehab as well as the Well Field north on Juday Creek. Mr. Schrader mentioned the projects were also analyzed by Umbaugh. Mr. Schrader explained Umbaugh analyzed the projects to see what the best way was to approach increases that would make the projects doable over the next 5 years. He said the plan was to raise the water rates in the years of 2018 and 2021. Mr. Schrader explained they did so by leveling the effect of making the wastewater and water push the bill leveled through a 5-year period. He went on to say when water increases the wastewater increase would not be as high in the two given years. Mr. Schrader expressed the projects were needed.

John Julian a partner with Umbaugh and Associates said this ordinance reflects a recommendation that Umbaugh made to the city based upon their analyzes of the financial position of the water utility and its upcoming requirements. He said it was a 50 million dollar investment to allow the utility to maintain itself financially and fund the improvements. Mr. Julian explained it was structured in a way to consider the adjustments that would occur on the wastewater side with the intent to try to minimize some of the capital improvement plan to the utilities to the best extent possible to the rate payers.

Phil Zuickl 2334 Creek view Drive suggested amending the ordinance to put two line items of the utility bill. Mr. Zuickl asked why fire protection percentages were so high. Mr. Julian assisted Mr. Zuckl with the correct percentages.

Eric Holt a resident was curious how much a person pays per household. Mr. Compton explained the $8 a month increase was based on the certain amount of water usage. He said if people use more water they would pay more based off the 700 cubic feet of water usage.

Questioned was called for at 10:51 P.M. for **PROPOSED ORDINANCE NO 2017-05**
Vote: Motion carried by unanimous roll call vote (summary: Yes = 9). Yes: Mrs. Voelker, Mr. Compton, Mr. Tanner, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mr. Canarecci, Mr. Deal. Thus, it becomes **ORDINANCE NO. 5569AA**

NEW BUSINESS

Mayor Wood announced the State of the City would be on Monday, March 13th
At 7:00PM at Battell Center. The Mayor's Youth Council would be giving tours at 6:00PM.

Woody Emmons announced the 1st District Neighborhood Meeting would be March 16th at 7:00PM at St. Bavo's School. The speaker would be Chris Jamrose, City Engineer.

Ross Deal stated the Twin Branch Neighborhood Meeting would be at the Harrison Road Fire Station on March 15th at 7:00PM. The speaker would be Mayor Wood speaking on the State of the City.

Bryan Tanner stated there would not be an "Oaks" Neighborhood Meeting this month and encouraged residents to attend the State of the City at Battell Center on March 13th .

ADJOURNMENT 10:54 p.m.

Deborah S. Block /s/	Ross Deal s/
Deborah S. Block, IAMC, MMC, City Clerk	Ross Deal, President

City of Mishawaka

DAVID A. WOOD, MAYOR | **DEPARTMENT OF CITY PLANNING**

RECEIVED
DEBORAH S. BLOCK, MMC

MAR 15 2017

CITY CLERK
MISHAWAKA, IN

March 15, 2017

Honorable Members of the Common Council
City of Mishawaka, Indiana

RE: Board of Zoning Appeals Recommendation
March 14, 2017, Public Hearing

Honorable Members:

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

APPEAL #17-07 An appeal submitted by Mark Shea, Trustee of the John C. Shea Sr. Revocable Trust and Rosemary Shea, Trustee of the Rosemary Shea Revocable Trust requesting a Use Variance for **230 West Cleveland Road, Granger,** to permit a coffee shop with drive thru service on C-2 Shopping Center Commercial property.

The Board, with a vote of 4-0, recommended approval subject to the following conditions:

1. Submittal of an Administrative Site Plan showing drive-thru turning radius, revised parking layout, and connection to Grandview Planned Unit Development to the east.

Respectfully,

Kari Myers

Kari Myers, Administrative Planner
Secretary, Board of Zoning Appeals

cc: Mark Shea

STAFF REPORT

Location: 308 W Cleveland Road Date: March 14, 2017

Appeal: 17 07 Prepared By: CH

GENERAL INFORMATION

Applicant:	John C Shea Sr. Revocable Trust/Mark Shea
Status:	Property Owner/Agent
Request:	Use Variance to allow drive-thru restaurants in C-2
Zoning Classification:	C-2 Shopping Center Commercial
Lot Size:	3.67 acres
Applicable Regulations:	Section 137-326 C-2 Uses Section 137-42 (4) Board of Zoning Appeals

SPECIAL INFORMATION

Area Development Pattern:	North: Residential (St. Joseph County) South: S-1 Extensive Open Space and Public Use (cemetery) East: S-2 Planned Unit Development West: C-5 Neighborhood Commercial
Thoroughfare:	Cleveland Road
School District:	South Bend Community
Township:	Clay
Public Utilities:	Available and Existing
Comprehensive Plan:	General Commercial

ANALYSIS

The appellants are requesting a use variance for a drive-thru restaurant at 308 W Cleveland, the Centennial Place shopping center. The property is currently zoned C-2 Shopping Center Commercial, which does not allow the proposed drive-thru aspect of a restaurant.

The property is located on the north side of Cleveland Road. The drive-thru restaurant will be located on the east end of the larger building, between the two buildings. For a number of years, the drive-thru was utilized by a dry cleaner. The restaurant user is Biggby Coffee. Based on the Elkhart Biggby Coffee business, 70% of the daily customers use the drive-thru service, and 90% of which occurs before 10:00am. Directional signage will be placed between the edge of the parking lot and Cleveland Road and a menu board will be added at the end of the parking row closest to the building. The traffic flow will proceed north behind the building, make a U-turn, and come out south, using the existing curb cuts on Cleveland Road.

Some parking spaces are being removed, to allow stacking area for the drive-thru, and the turning radius, however, previously uncounted parking spaces along Cleveland and room for additional spaces behind the buildings meet the now increased parking calculation. Since the Grandview development abuts the eastern boundary, Staff recommends an access easement to connect the two developments. The property owner will be responsible for constructing drive, when the property to the east develops. An administrative site plan will be required to show the drive thru turning radius, revised parking layout, and connection to the Grandview PUD to the east.

All pertinent City Departments have reviewed this request and approved offering the following comments: The Engineering Department requires an exterior grease interceptor for all food service per Engineering standards.

RECOMMENDATION

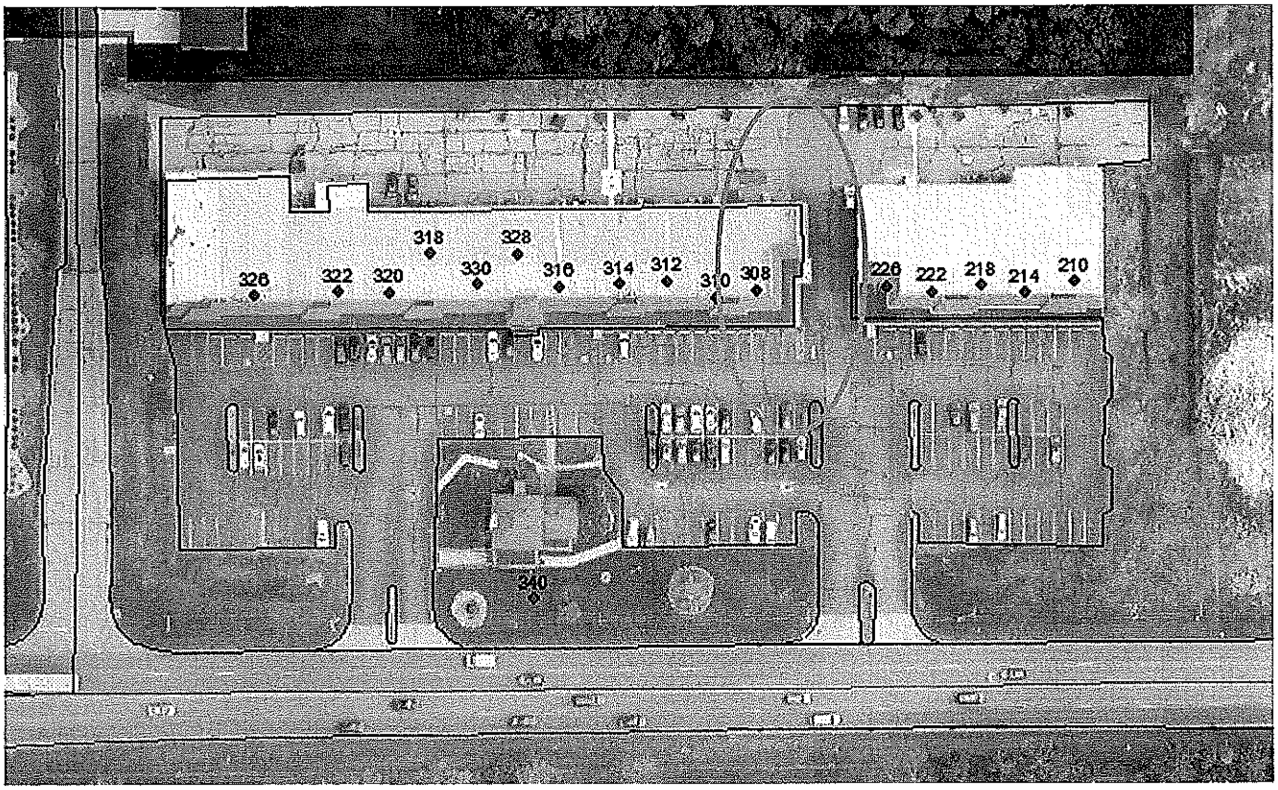
The Staff feels this is an appropriate use given the surrounding uses in the shopping center, therefore, the Staff recommends in favor of Appeal 17-07, a use variance for drive-thru restaurant at 308 W. Cleveland, subject to an administrative site plan showing drive thru turning radius, revised parking layout, and connection to the Grandview PUD to the east.

This recommendation is based on the following reasons:

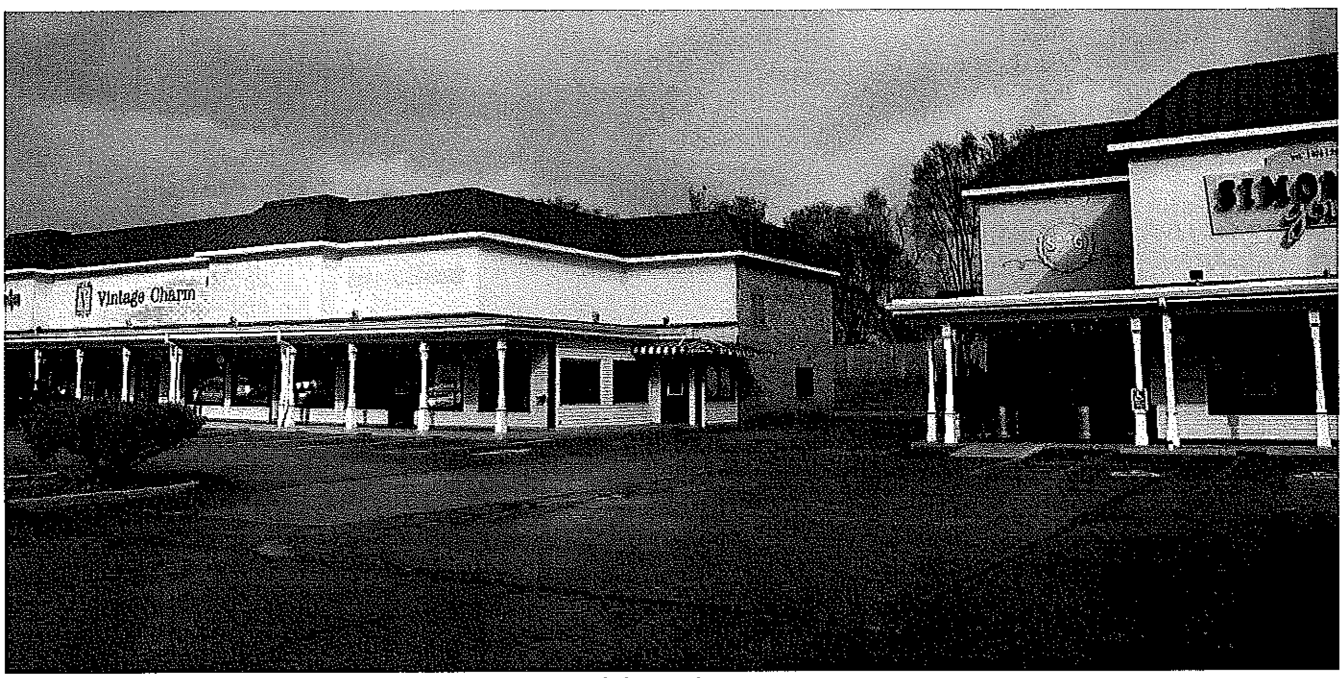
1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the proposed use will have little impact on the adjacent restaurant, retail and service uses that currently operate there. The proposed use is consistent with the existing shopping center.
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 heaviest use of the drive-thru is prior to most of the other tenants opening.
3. The need for a variance arises from the nature of the area, where property owners are very protective of the intensive zonings of their properties. A use variance would allow this tenant space to be used as a drive-thru restaurant, but maintain the shopping center zoning, protecting the other restaurant, retail and service businesses.
4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the current C-2 Shopping Center Commercial would not allow for the proposed drive-thru restaurant.
5. The approval will not interfere substantially with the Mishawaka 2000 Plan because the plan identifies the area as commercial. The approval is consistent with the goals and objectives of the Comprehensive Plan considering recent annexations not included on the Comprehensive Plan have extended that commercial area to the east.

ATTACHMENTS

AERIAL, PHOTOGRAPHS, PETITION, PRELIMINARY SITE PLAN & LOCATION MAP



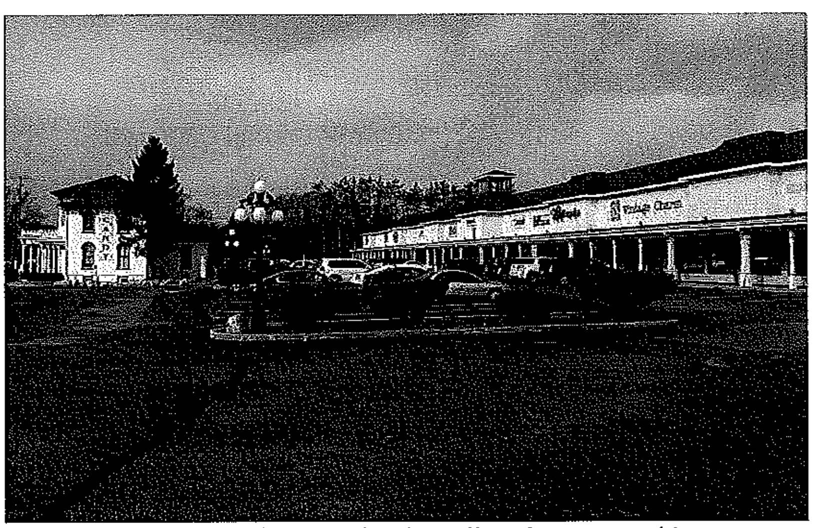
Aerial photography



Location of drive-thru restaurant

Close up of drive-thru window

Location of new menu board


Relocate landscape island to allow for car stacking

1st Reading 3-20-17
2nd Reading
Passed
Failed
Continued To

RECEIVED
DEBORAH S. BLOCK, MMC
MAR 15 2017
CITY CLERK
MISHAWAKA, IN

PROPOSED ORDINANCE NO. 2017- 12

ORDINANCE NO. __________

AN ORDINANCE AMENDING CHAPTER 18
OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA

WHEREAS, the Common Council for the City of Mishawaka in 1998 established policies and procedures for licensing and regulation of Tattoo establishments in the City of Mishawaka in Ordinance 4248; and

WHEREAS, it is appropriate at this time to amend certain sections of Ordinance 4248.

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

Section 1. The following sentences in Section 18-522 (e) are hereby deleted. The remaining portions of the sections will not be changed.

18-522 (e) (1): Has been convicted of a felony.

18-522 (e) (2): Has been known to be a drug user or alcohol abuser; or

Section 2. This Ordinance shall be in full force and effect from and after its passage by the Common Council, signature of the Mayor, attestation by the City Clerk and publication as required by law. Any payment made to an employee prior to the effective date of this ordinance that otherwise complies with its terms, is hereby ratified.

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

______ day of __________ 2017, at _________o' clock, P.M.

____
Presiding Officer, Ross Deal

ATTEST:

____
Deborah S. Block, City Clerk

PRESENTED by me to the Mayor this ____ day of _________, 2017, at _______ o'clock, __. .M.

____
Deborah S. Block, City Clerk

APPROVED by me this ____ day of _______, 2017, at ______ o'clock, __.M.

____
David A. Wood, Mayor

CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR **DEPARTMENT OF LAW**

March 15, 2017

Mishawaka Common Council
600 E. Third Street
Mishawaka, IN 46544

Re: Proposed Amendment of Tattoo Ordinance

Honorable Members of the Council:

Per your request, attached for your consideration is a Proposed Ordinance that would amend the current Ordinance governing licensing and regulation of Tattoo establishments in the City of Mishawaka. The previous ordinance was passed in 1998. The amendments are consistent with the discussions we have had on the topic.

Should you have any questions, please contact me.

Sincerely,

John J. Roggeman
City Attorney

Geoffrey D. Spiess
Corporation Counsel
600 East Third Street
Mishawaka, Indiana 46544
(574) 258-1702
fax: (574) 254-0197

John J. Roggeman
City Attorney
600 East Third Street
Mishawaka, Indiana 46544
(574) 258-1637
fax: (574) 254-0197

David V. Bent
Deputy City Attorney
320 West Fourth Street
Mishawaka, Indiana 46544
(574) 255-3680
fax: (574) 255-3969

Robert C. Beutter
Deputy City Attorney
4100 Edison Lakes Parkway
Mishawaka, Indiana 46545
(574) 243-4100
fax: (574) 232-9789

RECEIVED
DEBORAH S. BLOCK, MMC

MAR 15 2017

CITY CLERK
MISHAWAKA, IN

APPEAL #17-07

RESOLUTION NO. 2017- 05

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:

308 West Cleveland Road, Granger, 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 **308 West Cleveland Road, Granger, Indiana**, more particularly known and described as follows:

THAT PART OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 38 NORTH, RANGE 3 EAST, CLAY TOWNSHIP, CITY OF MISHAWAKA, ST. JOSEPH COUNTY, INDIANA BEING DESCRIBED AS: BEGINNING AT A POINT ON THE SOUTH LINE OF SAID SECTION AND THE CENTERLINE OF INDIANA HIGHWAY 23 (CLEVELAND ROAD) WHICH IS NORTH 90-00'-00" EAST, 656.26 FEET FROM THE SOUTH QUARTER POST OF SAID SECTION, SAID POINT ALSO ON THE CENTERLINE OF LEO STREET, THENCE NORTH 00-00'-46" WEST ALONG SAID CENTERLINE, 363.26 FEET TO THE SOUTH LINE OF THE RECORDED PLAT OF COUNTRY SIDE ESTATES SECTION 3; THENCE SOUTH 90-00'-00" EAST ALONG SAID SOUTH LINE, 667.79 FEET TO THE EAST LINE OF THE WEST HALF OF SAID SOUTHEAST QUARTER; THENCE SOUTH 00-00'-46" EAST ALONG SAID EAST LINE, 363.26 FEET TO THE SOUTH LINE OF SAID SECTION AND THE CENTERLINE OF INDIANA HIGHWAY 23 (CLEVELAND ROAD); THENCE NORTH 90-00'-00" WEST ALONG SAID SOUTH LINE AND CENTERLINE, 667.79 FEET TO THE POINT OF THE BEGINNING. SUBJECT TO ALL LEGAL HIGHWAYS OF RECORD.

The Use Variance, if approved, will permit a coffee shop with drive-thru service on C-2 Shopping Center Commercial zoned property subject to the following conditions of approval:

1. Submittal of an Administrative Site Plan showing drive-thru turning radius, revised parking layout, and connection to Grandview Planned Unit Development to the east.

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 the proposed use will have little impact on the adjacent restaurant, retail and service uses that currently operate there. The proposed use is consistent with the existing shopping center.

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 heaviest use of the drive-thru is prior to most of the other tenants opening.

3. The need for a variance arises from the nature of the area, where property owners are very protective of the intensive zonings of their properties. A use variance would allow this tenant space to be used as a drive-thru restaurant, but maintain the shopping center zoning, protecting the other restaurant, retail and service businesses.

4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the current C-2 Shopping Center Commercial would not allow for the proposed drive-thru restaurant.

5. The approval will not interfere substantially with the Mishawaka 2000 Plan because the plan identifies the area as commercial. The approval is consistent with the goals and objectives of the Comprehensive Plan considering recent annexations not included on the Comprehensive Plan have extended that commercial area to the east.

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_________________, 2017, at ______o'clock ____ .m.

____
Presiding Officer

ATTEST:

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

PRESENTED by me to the Mayor this ________day of ____________________2017, at ______ o'clock ___m.

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

APPROVED by me this _______ day of______________________, 2017, at ______o'clock _____.m.

____
David A. Wood, Mayor

RECEIVED
DEBORAH S. BLOCK, MMC
FEB 21 2017
CITY CLERK
MISHAWAKA, IN

RECEIVED
FEB 21 2017
BUILDING, PLANNING
COMMUNITY DEVELOPMENT

AP 17-07

DATE: February 17, 2017

TO: Board of Zoning Appeals
City of Mishawaka, Indiana

The undersigned appellant respectfully shows the Board:

1. Mark Shea, Trustee of the John C. Shea Sr. Revocable Trust and Rosemary Shea, Trustee of the Rosemary Shea Revocable Trust which own the following described real estate located within the City of Mishawaka, Clay Township, St. Joseph County, State of Indiana, to-wit:

   Legal Description:

   THAT PART OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 38 NORTH, RANGE 3 EAST, CLAY TOWNSHIP, CITY OF MISHAWAKA, ST. JOSEPH COUNTY, INDIANA BEING DESCRIBED AS: BEGINNING AT A POINT ON THE SOUTH LINE OF SAID SECTION AND THE CENTERLINE OF INDIANA HIGHWAY 23 (CLEVELAND ROAD) WHICH IS NORTH 90-00'000' EAST, 656.26 FEET FROM THE SOUTH QUARTER POST OF SAID SECTION, SAID POINT ALSO ON THE CENTERLINE OF LEO STREET, THENCE NORTH 00-00'-46" WEST ALONG SAID CENTERLINE, 363.26 FEET TO THE SOUTH LINE OF THE RECORDED PLAT OF COUNTRY SIDE ESTATES SECTION 3; THENCE SOUTH 90-00'-00" EAST ALONG SAID SOUTH LINE, 667.79 FEET TO THE EAST LINE OF THE WEST HALF OF SAID SOUTHEAST QUARTER; THENCE SOUTH 00-00'-46" EAST ALONG SAID EAST LINE, 363.26 FEET ; TO THE SOUTH LINE OF SAID SECTION AND THE CENTERLINE OF INDIANA HIGHWAY 23(CLEVELAND ROAD); THENCE NORTH 90-00'-00" WEST ALONG SAID SOUTH LINE AND CENTERLINE, 667.79 FEET TO THE POINT OF THE BEGINNING. SUBJECT ALL LEGAL HIGHWAYS OF RECORD.

   Common Address:

   Centennial Place
   230 W. Cleveland Road
   Granger, IN 46530

2. The above-described real estate presently has a zoning classification of Commercial C-2 Shopping Center District under the Zoning Ordinance of the City of Mishawaka.

3. Appellant presently occupies the above-described property in the following manner: As a shopping center.

4. Appellant desires to have a tenant open and operate a Biggby Coffee shop with drive-through service at 308 W. Cleveland Road, Granger IN 46530. This is an existing end-cap unit at Centennial Place where the previous retail tenant operated with drive-through service since 1994.

5. The Zoning Ordinance of the City of Mishawaka permits restaurants without drive-through service. Sec.137-326 (a) (46).

6. Strict adherence to the Ordinance requirements would create an undue hardship because the tenant, Biggby Coffee, expects to conduct 70% of its business with drive-through service to its customers. Emily and Ravneet Singh are residents of the local community who own the Biggby Coffee franchise. In December 2016 the Singhs entered into a long term lease with the Appellant and have invested significant funds to purchase equipment and franchise rights. Strict adherence to the Ordinance in this case would prevent the Singhs from successful operation of Biggby Coffee, resulting in failure to meet their financial and contractual obligations with Appellant and Biggby Coffee corporate. *See Affidavit of Emily and Ravneet Singh attached as Exhibit A.*

   Strict adherence to the Ordinance would also cause undue hardship to the Appellant if its new tenant is not permitted to operate with drive-through service. Centennial Place is the only business owned by the Appellant trusts and is operated by the family of its founder, John C. Shea Sr. It provides the financial support of Rosemary Shea, Mr. Shea's surviving spouse. The rental income from the Biggby Coffee lease is essential to the continued successful operation of Centennial Place, a member of the local business community for over 23 years. *See Affidavit of Mark Shea, Trustee; attached as Exhibit B.*

7. Answer the following necessary questions for a **USE VARIANCE**:

   (1) Approval will not be injurious to the public health, safety, morals or general welfare of the community. The safety and welfare of all visitors to Centennial Place is a primary concern for the Appellant. If approved, proper customer vehicle routing for the Biggby Coffee drive-through service will be ensured by improvements the Appellant will make to the existing drive-through and the common area parking lot, as well as by proper signage which will be installed by Biggby Coffee. Biggby Coffee will relocate an existing parking island to provide for improved vehicle line-up at the drive-through window. *See Centennial Place Site Plan, attached as Exhibit C and Google Earth aerial view attached as Exhibit D.*

   The drive-through line-up will accommodate five or six passenger vehicles for ordering and pick-up of coffee drinks. Existing dual driveways provide Centennial Place with superior ingress and egress on Cleveland Road and eastbound vehicles on Cleveland now have the benefit of a left-hand turn lane to enter (and leave) Centennial Place. After entering the driveway, Biggby customer vehicles will travel in the same direction and manner as those of the existing drive-through did for 23 years. Additional directional signage for Biggby customers will be installed inside the parking lot to increase the safety and welfare of all visitors to Centennial Place. *See Affidavits of Mark Shea, and Emily and Ravneet Singh, attached as Exhibits A and B attached.*

   Approval will enhance the general welfare of the community by providing a choice of coffee beverage service that is locally owned and operated while also creating jobs for twenty-five workers. In addition, the eleven locally owned and operated retail tenants at Centennial Place will benefit significantly from the new and additional visitors that

Biggby Coffee will attract to the complex. *See Affidavit of Emily and Ravneet Singh, Exhibit A.*

(2) The use and value of the area adjacent to the property included in the variance will not be affected in any adverse manner. The adjacent property to the east has commercial zoning and has proposed a shopping center similar to Centennial Place. There will be no change to the configuration of the buildings or property site of Centennial Place that will have any effect on the commercial property to the west across Leo St. Likewise, the proposed variance will have no effect on the residential property to the north. There is no roadway that connects Centennial Place to the residences to the north and the existing barriers as required by ordinance will not be disturbed.

(3) The need for the variance does not arise from some condition peculiar to the property. The existing drive-through was operated by a previous retail tenant since 1994.

(4) Strict application of the terms of this chapter constitutes an unnecessary hardship if applied to the property for which the variance is sought. The Shea family and Emily and Ravneet Singh would experience financial hardship as described in paragraph six above. In addition, the eleven local retail tenants of Centennial Place would be adversely affected and the community deprived of 25 jobs, if Biggby Coffee is not permitted to operate successfully in the complex. This combined hardship is unnecessary because the property for which Appellant seeks the variance has an existing drive-through that will be improved to eliminate all concerns for public safety and proper traffic flow.

(5) Approval will not interfere in any way with the Mishawaka 2000 Comprehensive Plan. On the contrary, approval would be consistent with the Plan's vision for the growth and vitality of the north Mishawaka trade center.

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

Signature of Property Owner/Title Holder

Rosemary Shea

Print Name Here

Rosemary Shea

Second Property Owner/Title Holder

Mark F Shea, Trustee

Print Name Here

Mark Shea

Notary:

Luis Miguel Roldan

LUIS MIGUEL ROLDAN
COMMISSION NUMBER FF 152426
EXPIRES Aug 19, 2018
BONDED THRU 1st FLORIDA NOTARY, LLC
Notary Public, State of Florida

CONTACT PERSON:
Name: Mark Shea
Address: 466 s Prospect Avenue
Day Phone Number: 630.258.3065
Fax Number:
Email:mshea24@comcast.net

AFFIDAVIT OF MARK F. SHEA

1. I, Mark F. Shea am a competent adult and make this Affidavit based on personal knowledge of the facts stated.

2. I reside in Elmhurst, DuPage County, Illinois.

3. I serve as Trustee of the John C. Shea Sr. Revocable Trust.

4. The John C. Shea Sr. Revocable Trust owns real estate located within the City of Mishawaka, Clay Township, St. Joseph County, Indiana; commonly known as Centennial Place, 230 W. Cleveland Road.

5. Centennial Place was founded By John C. Shea Sr. and has been operating as a shopping center since 1994.

6. Centennial Place is the only commercial real estate owned and operated by the Shea Trusts.

7. Since 2013 Centennial Place has been operated by the Shea family and provides the financial support of Rosemary Shea, Mr. Shea's surviving spouse.

8. In December, 2016 the Shea Trusts executed a long-term lease with Ravneet and Emily Singh for the premises in Centennial Place known as 308 W. Cleveland Road, to open and operate a Biggby Coffee franchise.

9. The rental income from the Biggby Coffee lease is essential to the continued successful operation of Centennial Place.

10. Since 1994, 308 W. Cleveland has been an "end-cap" unit operating as a retail business with drive-through service.

11. Ravneet and Emily Singh desire to provide drive-through service to customers of Biggby Coffee at Centennial Place.

12. The drive-through line-up for 308 W. Cleveland will accommodate five or six Biggby Coffee customer vehicles, depending on size and type.

13. It is intended that Biggby Coffee customers will follow the same route, in the same manner as the retail drive-through customers have done since 1994.

14. It is intended that an existing parking lot island will be relocated and directional signage installed to assist Biggby Coffee customers with the drive-through process.

15. Centennial Place currently provides proper customer parking as required by ordinance:

Required @ 5 per 1000 sq ft	157.5
Required @ 10 per 1000 sq ft	44
Total Required	**202**
Total Existing Spaces	**217**

16. Strict adherence to the Ordinance requirements of Sec. 137-326 (a) (46) would cause undue hardship to Rosemary Shea and the Shea family by preventing the successful operation of Centennial Place.

Date: February 17, 2017

I swear and affirm subject to penalties for perjury, that the above statements are true and correct.

Mark F Shea

Notary Seal

Mark F. Shea

AFFIDAVIT OF RAVNEET SINGH AND EMILY SINGH

1. We, Ravneet & Emily Singh, are competent adults and make this Affidavit based on personal knowledge of the facts stated.
2. We reside at 13859 Hearthside Drive, City of Granger,St. Joseph County, Indiana.
3. Since August 2012 We have owned and operated the Biggby Coffee franchise at 195 County Road 6E, Elkhart, IN.
4. In December 2016 we executed a ten-year Lease with the John C. Shea Sr. Revocable Trust and Rosemary Shea Revocable Trust for 2,020 square foot premises at 308 W. Cleveland Road, Mishawaka, Indiana to open and operate a second Biggby Coffee franchise at Centennial Place shopping center.
5. The Elkhart Biggby Coffee shop operates with drive-thru service, Monday through Friday 5 a.m. to 8 p.m. Saturday 6 am – 8pm and Sunday 7 a.m. to 8 p.m.
6. Approximately 70 % of the daily customers at the Elkhart Biggby Coffee shop are drive-thru service, 90 % of which occurs before 10:00 a.m.
7. I anticipate the Centennial Place Biggby Coffee shop to have customer numbers and patterns substantially similar to those of the Elkhart Biggby Coffee shop.
8. The plans for the drive-thru window at the Centennial Place Biggby Coffee include signage and parking lot markings to ensure traffic safety and proper vehicle traffic routing at Centennial Place.
9. Drive-thru service is essential for the successful operation of our Biggby Coffee shop at Centennial Place.
10. Strict adherence to the Ordinance Sec. 137-326 (a) (46) would cause undue hardship in that it would prevent us from the successful operation of our business and prevent us from meeting our financial and contractual obligations.
11. We anticipate employing 25 people at the Centennial Place location.

Date: February 22, 2017

We swear and affirm, subject to penalties for perjury, that the above statements are true and correct.

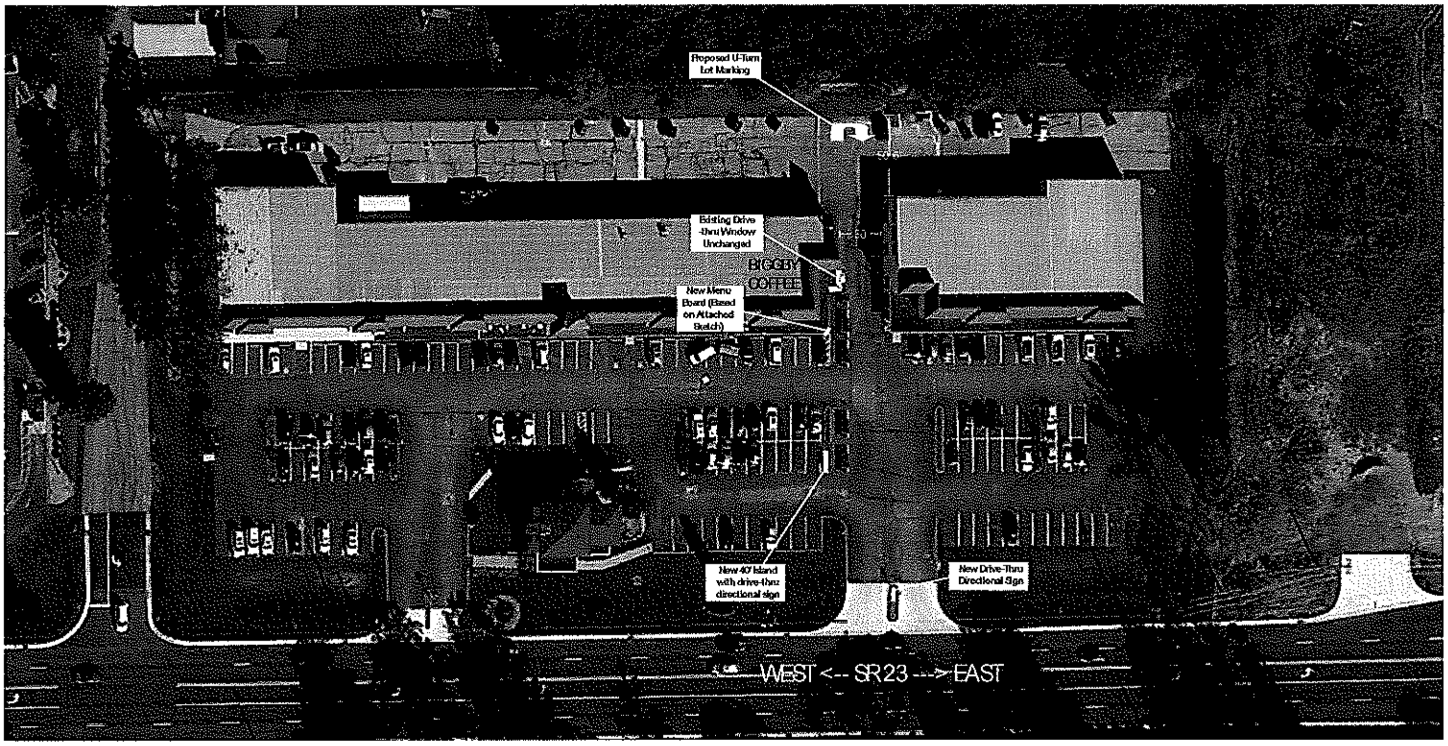
Emily Singh

02/18/2017

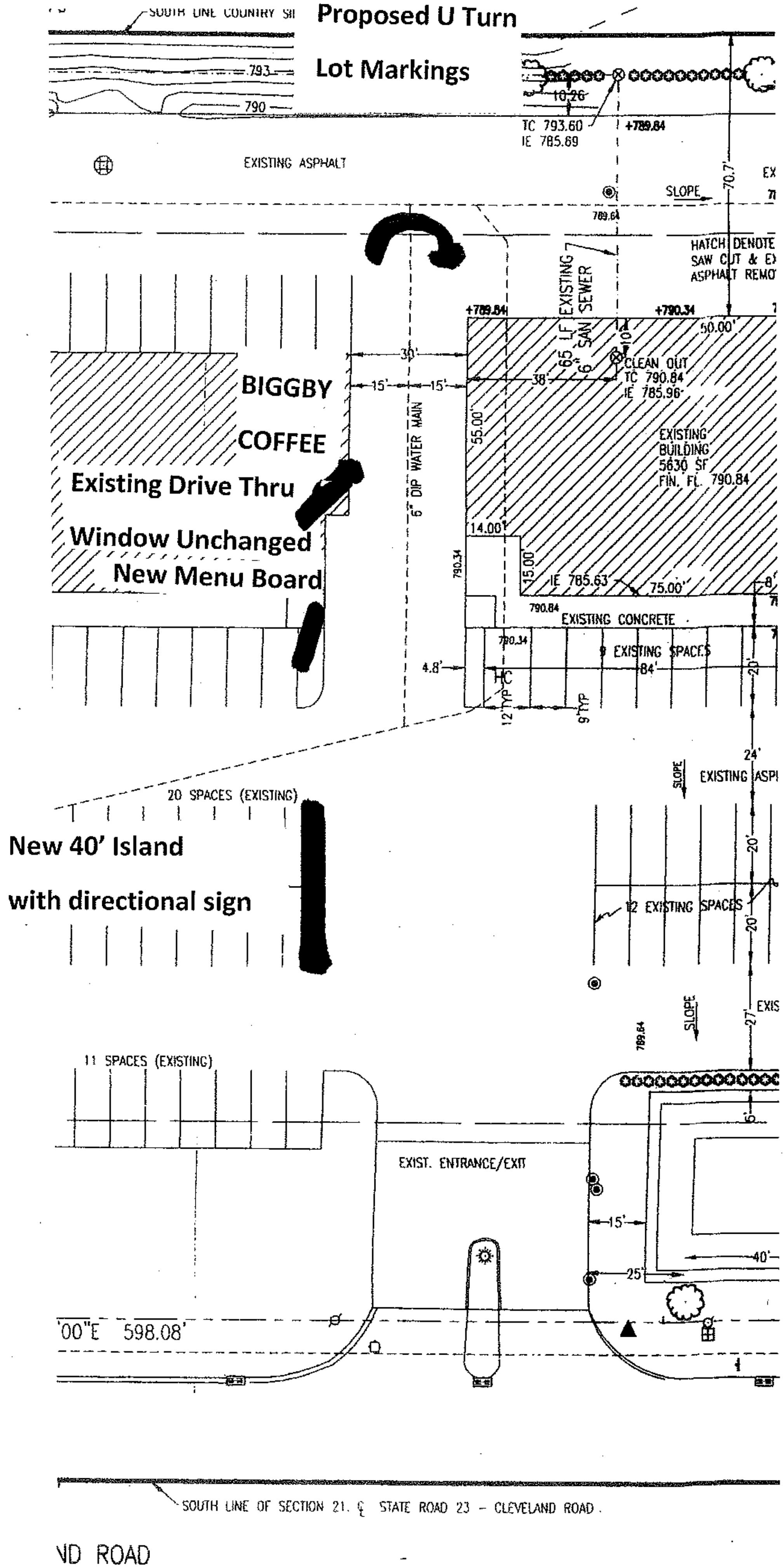
Ravneet Singh

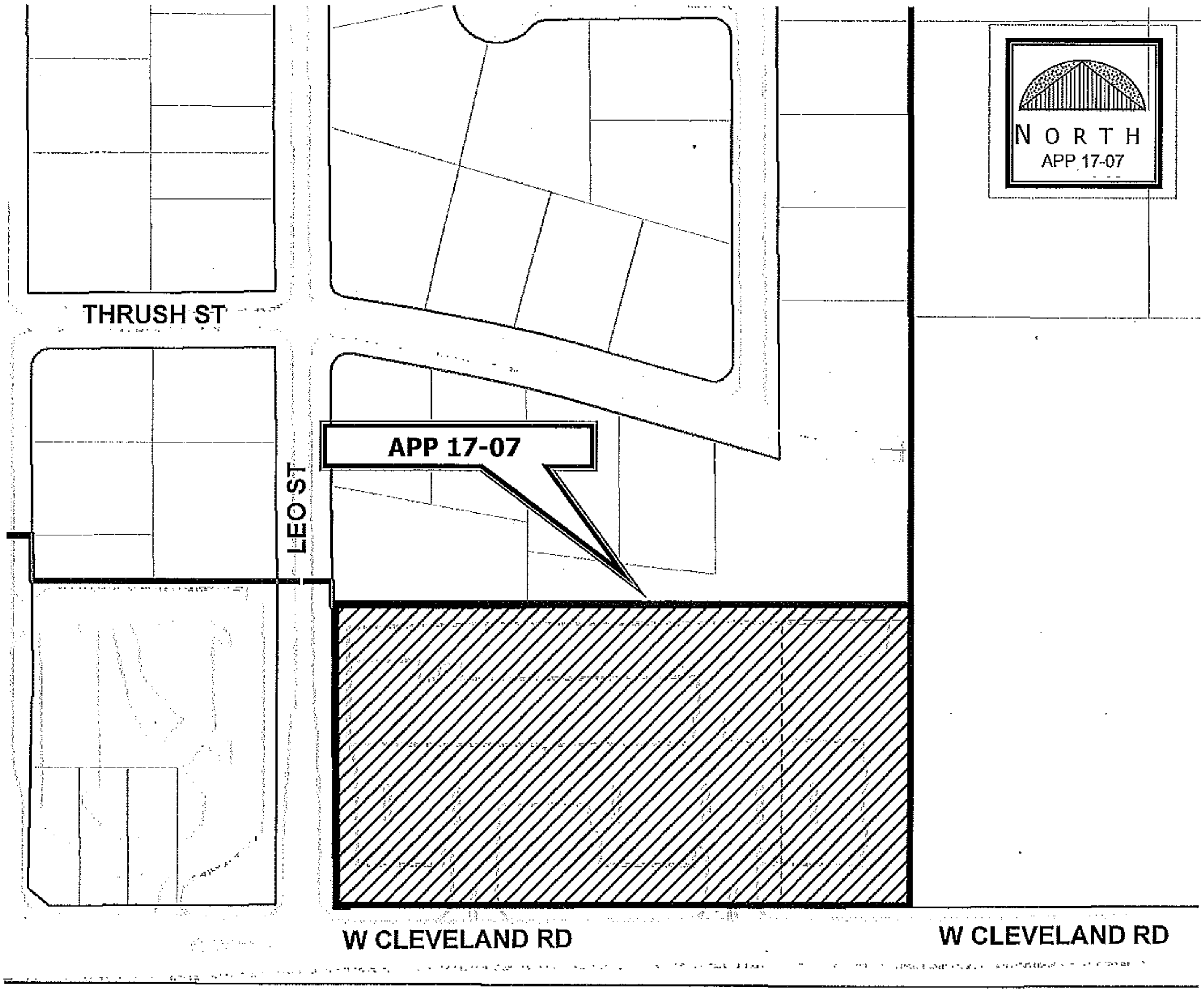
Mackenzie Loupee

MACKENZIE LOUPEE
Notary Public, State of Indiana
St. Joseph County
My Commission Expires
November 20, 2021



Proposed U-Turn Lot Marking
Existing Drive -thru Window Unchanged
BIGGBY COFFEE
New Menu Board (Based on Attached Sketch)
New 40' Island with drive-thru directional sign
New Drive-Thru Directional Sign
WEST <-- SR23 ---> EAST


Proposed U Turn
Lot Markings
SOUTH LINE COUNTRY SI
EXISTING ASPHALT
TC 793.60
IE 785.69
SLOPE
HATCH DENOTE SAW CUT & E ASPHALT REMO
65 LF EXISTING 6" SAN SEWER
CLEAN OUT TC 790.84 IE 785.96
BIGGBY
COFFEE
Existing Drive Thru
Window Unchanged
New Menu Board
6" DIP WATER MAIN
EXISTING BUILDING 5630 SF FIN. FL. 790.84
IE 785.63
EXISTING CONCRETE
9 EXISTING SPACES
20 SPACES (EXISTING)
New 40' Island
with directional sign
EXISTING ASPH
12 EXISTING SPACES
11 SPACES (EXISTING)
EXIST. ENTRANCE/EXIT
'00"E 598.08'
SOUTH LINE OF SECTION 21. ℄ STATE ROAD 23 – CLEVELAND ROAD
ND ROAD



Location Map

APPEAL 17-07

JOHN C. & ROSEMARY SHEA
308 W. CLEVELAND ROAD

CENTENNIAL PLACE
PROPOSED BIGGBY COFFEE

USE VARIANCE TO ALLOW A
RESTAURANT WITH DRIVE-THRU

RECEIVED
DEBORAH S. BLOCK, MMC

FEB 27 2017

CITY CLERK
MISHAWAKA, IN

1st Reading 3-6-17
2nd Reading
Passed
Failed
Continued To

PROPOSED ORDINANCE NO. 2017-11

ORDINANCE NO.__________

AN ORDINANCE DECLARING AN EMERGENCY AND TRANSFERRING AND REAPPROPRIATING FUNDS WITHIN THE BUDGET ADOPTED FOR THE CALENDAR YEAR ENDING DECEMBER 31, 2017

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

Section 1. An emergency exists which requires the transfer and reappropriation of funds within the Central Services Department in the General Fund budget adopted for the fiscal year ending December 31, 2017.

Section 2. There is hereby transferred and reappropriated the sum of $7,500.00 as follows:

LOIT Special Distribution Fund

From:	Capital Outlays		
	257-50-445-02	Highway Equipment	$7,500.00
		Total	$7,500.00
To:	Other Services and Charges		
	257-50-436-01	Repairs and Maintenance	$7,500.00
		Total	$7,500.00

Section 3. 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 __________________, 2017 at ________ o'clock, ____.M.

____
Presiding Officer

ATTEST:

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

PRESENTED BY ME to the Mayor this ______day of____________, 2017 at

________ o'clock, ____.M.

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

APPROVED BY ME this ______ day of, ____________, 2017 at ______ o'clock,

____.M.

____
David A. Wood, Mayor

CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF PARKS AND RECREATION
Phil Blasko, Park Superintendent

Date: February 24, 2017

To: Honorable Members of the Common Council

From: Phil Blasko

Re: Transfer

At this time, we find the need to request a transfer of $7,500 from LOIT Special Distribution, account number 257-50-445-02 to account number 257-50-436-01. This transfer is to cover an estimated bill of $5,000 for repairs to a 1-Ton Chassis Mini Dump.

From:	Capital Outlays		
	257-50-445-02	Highway Equipment	$7,500.00
		Total	$7,500.00
To:	Other Services and Charges		
	257-50-436-01	Repairs and Maintenance	$7,500.00
		Total	$7,500.00

Please contact me with any questions.

Sincerely,

Phil Blasko
Parks Superintendent

c: David A. Wood, Mayor

RECEIVED
DEBORAH S. BLOCK MMC
FEB 27 2017
CITY CLERK
MISHAWAKA, IN

Expense Budget Performance Report

Fiscal Year to Date 02/27/17

Include Rollup Account and Rollup to Account

Account	Account Description	Adopted Budget	Budget Amendments	Amended Budget	Current Month Transactions	YTD Encumbrances	YTD Transactions	Budget - YTD Transactions	% Used/ Rec'd	Prior Year Total
Fund	**257 - LOIT Special Distribution**									
Department	**50 - Non-Departmental**									
	EXPENSE									
431	**Consulting**									
431.06	Consulting	.00	.00	.00	.00	.00	9,583.22	(9,583.22)	+++	4,452.79
	431 - Consulting Totals	$0.00	$0.00	$0.00	$0.00	$0.00	$9,583.22	($9,583.22)	+++	$4,452.79
436	**Repairs and Maintenance**									
436.01	Repairs and Maintenance	.00	.00	.00	.00	5,288.00	.00	(5,288.00)	+++	.00
	436 - Repairs and Maintenance Totals	$0.00	$0.00	$0.00	$0.00	$5,288.00	$0.00	($5,288.00)	+++	$0.00
445	**Highway Equipment**									
445.02	Highway Equipment	140,000.00	.00	140,000.00	.00	.00	.00	140,000.00	0	.00
	445 - Highway Equipment Totals	$140,000.00	$0.00	$140,000.00	$0.00	$0.00	$0.00	$140,000.00	0%	$0.00
	EXPENSE TOTALS	$140,000.00	$0.00	$140,000.00	$0.00	$5,288.00	$9,583.22	$125,128.78	11%	$4,452.79
	Department **50 - Non-Departmental** Totals	($140,000.00)	$0.00	($140,000.00)	$0.00	($5,288.00)	($9,583.22)	($125,128.78)	11%	($4,452.79)
	Fund **257 - LOIT Special Distribution** Totals	$140,000.00	$0.00	$140,000.00	$0.00	$5,288.00	$9,583.22	$125,128.78		$4,452.79
	Grand Totals	$140,000.00	$0.00	$140,000.00	$0.00	$5,288.00	$9,583.22	$125,128.78		$4,452.79