AGENDA

Monday, July 17, 2017

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**

   July 5, 2017

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

   A letter from the City Plan Commission regarding recommendations from their July 11, 2017 meeting.

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

   P.O. NO. 2017-28 Vacate North/South Alley Adjacent to 131 E. Seventh St.

   P.O. NO. 2017-29 Annex and Zone -914 & 916 E. McKinley Ave to I-1 Light Imdustrial

8. **Resolutions**
9. **Ordinances on Second Reading**

   P.O. NO. 2017-27 Sewage Works Revenue Bond (Assigned to Budget and Finance Committee)

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

    Call for Special Meeting July 24, 2017 - 6:00PM Regarding Resolution R2017-19 JAMIL Packaging Corporation Confirming Resolution

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

July 05, 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 July 05, 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 with a moment of silence for the Bellovich family for the loss of their daughter Rachael Bellovich.

Roll Call.
Present: Mrs. Voelker, Mr. Compton, Mr. Tanner, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mr. Canarecci, Mr. Deal.

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

The minutes from the June 19, 2017 meeting were approved as received from the City Clerk's Office.

True -Up update presented by Jim Schrader, Utilities General Manager and Partner of Umbaugh & Associates John Julian. Mr. Schrader said every year they did True-Up with I&M for power supply to Mishawaka Utilities. He went on to say this year after analyzing the components that made up True-Up, they found there was no need to change electric rates this year. Mr. Schrader said Mr. Julian would explain what the components comprised of. Mr. Julian said every year I&M went through a process of readjusting rates and analyzing previous years' rates. He continued to say for the past years it amounted to some increases and in some cases substantial increases. Mr. Julian added in previous years they had to amend what is called I&M pass through to accommodate. He said the current analysis showed the estimated increase in purchased power cost from the last bases rate adjustment in 2013 was 4.8 million dollars. Mr. Julian stated the current rates and charges including I&M Pass through would account for 4.3 million dollars, leaving a 500-thousand-dollar short fall. He believed it was prudent and appropriate for the increase in cost to be absorbed by the electric utilities operating balances, so it would not be necessary to pass the increases along. Mr. Julian said this was the report made and recommended to utilities.

PETITION NO. 2017-27 Annex and Zone - 914 & 916 E. McKinley Ave.
to I-1 Light Industrial.

Clerk Block read the following proposed ordinance by title and was assigned to a committee and set for second reading at the next meeting.

<u>PROPOSES ORDINANCE NO. 2017-27</u>

AN ORDINANCE OF THE CITY OF MISHAWAKA AUTHORIZING THE ADVANCE REFUNDING BY THE CITY OF ITS SEWAGE WORKS REVENUE BONDS OF 2010, SERIES B; AUTHORIZING THE ISSUANCE OF SEWAGE WORKS REVENUE

BONDS FOR THE PURPOSE OF PROVIDING FUNDS TO PAY THE COST OF CERTAIN ADDITIONS, EXTENSIONS AND IMPROVEMENTS TO THE MUNICIPAL SEWAGE WORKS OF THE CITY AND PROVIDE FOR THE REFUNDING; PROVIDING FOR THE SAFEGUARDING OF THE INTEREST OF THE OWNERS OF SAID BONDS, OTHER MATTERS CONNECTED THEREWITH, INCLUDING THE ISSUANCE OF NOTES IN ANTICIPATION OF BONDS, AND REPEALING ORDINANCES INCONSISTENT HEREWITH
(Sewage Works Revenue Bond)
(Assigned to Budget and Finance Committee)

Clerk Block read the following Resolutions by title and were opened for public hearing.

RESOLUTION NO. 2017-16

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, MAKING A FINAL DETERMINATION AND CONFIRMING THE DESIGNATION OF AREAS WITHIN THE CITY OF MISHAWAKA, INDIAN KNOWN AS 420 SOUTH BYRKIT AVENUE, WITH OTHER ADDRESS INCLUDING 408, 418, 424 AND 440 SOUTH BYRKIT AVENUE AND 401 SOUTH BEIGER STREET AS AN ECONOMIC REVITALIZATION AREA FOR THE PURPOSE OF PERSONAL PROPERTY TAX ABATEMENT
(Lippert Components Manufacturing Inc.)

Todd Blyly, Lippert's Financial Controller expressed the company was happy to transfer and gain new employees in Mishawaka. He remembered Mr. Tanner questioned how many of transferred employees were residence of Mishawaka, he said 43. Mr. Blyly explained they would invest $9 million in renovation of the former AM General warehouse and would add 80,000 square feet to the Byrkit site. He said they were transferring 270 employees from the Elkhart and South Bend locations and planned to add 200 more jobs within the next two years.

Mr. Tanner stated although this abatement includes a lot of jobs and seemed like a win for the city, he expressed he was voting against the abatement. He explained Lippert Components was a 1.7-billion-dollar revenue company with a net income of 129.7 million dollars as of 2016. Mr. Tanner said Lippert received over 36 million dollars of free cash after debt. He went on to say although the city appreciates Lippert wanting to invest millions of dollars in Mishawaka; he did not think they needed the help from the tax payers of Mishawaka to do it. Mr. Tanner said he did not see where Lippert Components needed the financial investment.

Questioned was called for at 7:11 P.M. for **RESOLUTION NO. 2017-16 Vote: Motion passed (summary: Yes = 8, No = 1, Abstain = 0). Yes: Mrs. Voelker, Mr. Compton, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mr. Canarecci, Mr. Deal.**
No: Mr. Tanner.

RESOLUTION NO. 2017-17

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, MAKING A FINAL DETERMINATION AND CONFIRMING THE DESIGNATION OF AREAS WITHIN THE CITY OF MISHAWAKA, INDIAN KNOWN AS 420 SOUTH BYRKIT AVENUE, WITH OTHER ADDRESS INCLUDING 408, 418, 424 AND 440 SOUTH BYRKIT AVENUE AND 401 SOUTH BEIGER STREET AS AN ECONOMIC REVITALIZATION AREA FOR THE PURPOSE OF PERSONAL PROPERTY TAX ABATEMENT
(Lippert Components Manufacturing Inc.)

Todd Blyly, Financial Controller with Lippert Components identified his previous remarks from the additional abatement.

Ken Prince, City Planner addressed the need issue for the abatement. Mr. Prince expressed in his many years of working with abatements he would hate to see immediate need be the determining factor regarding tax abatements. He continued to say if you had a successful company wanting to grow in Mishawaka that had the ability to do business elsewhere, and in Lippert's case anywhere in the world, he believed it was responsible for the city to remain competitive. Mr. Prince expressed he understood Mr. Tanners concerns.

Mr. Compton stated he was going to support the abatement but Mr. Tanner also made a good point. He continued to say he did not like being in competition with other communities for jobs. Mr. Compton said they come to Mishawaka because it was a great place. He expressed he did not like corporate competition between communities and tax payers; it was not good for the community as a whole.

Mr. Tanner said he understood the need and benefit to the city by inducing additional jobs. He went on to say the 1.5 million dollars Lippert Components would save over the next 10 years did not per sway him on why Lippert choose the site. Mr. Tanner said it obviously had a financial benefit for the company at large to consolidate two other facilities into this one. He went on to say giving the space and availability of the AM General plant to expand for more employees, which he hoped to see it happen but he believed it could happen without this particular abatement.

Mr. Mammolenti agreed with both Mr. Tanner and Mr. Compton, tax abatement were difficult. He expressed he also agreed with Mr. Prince, it was a reality that cities were competing for tax dollars. Mr. Mammolenti said they were trying to attract world known names to the community which would bring new talent, new residence to Mishawaka and provide high quality paying jobs. He expressed his support.

Mr. Banicki thanked Lippert for wanting to come to Mishawaka. He said they were offering the kind of jobs the city was looking for. Mr. Banicki went on to say people would have good paying jobs and be able to purchase homes and spend money in the community. He said Elkhart was so saturated with RV industries, it had to go somewhere and he'd rather have them come to Mishawaka. Mr. Banicki went on to say this was what they were looking for on Capital Avenue, hopefully they could expand there. He expressed his support.

Mr. Emmons expressed he supported abatements that provided long lasting and good paying jobs. He expressed his support.

Mr. Canarecci said this was a new sector that would service Mishawaka throughout economic cycles. He expressed his support.

Question was called for at 7:20 P.M. for **RESOLUTION NO. 2017-17 Vote: Motion passed (summary: Yes = 8, No = 1, Abstain = 0). Yes: Mrs. Voelker, Mr. Compton, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mr. Canarecci, Mr. Deal. No: Mr. Tanner.**

RESOLUTION NO. 2017-18

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, DECLARING CERTAIN AREAS WITHIN THE CITY OF MISHAWKA, INDIANA, KNOWN AS 1420 INDUSTRIAL DRIVE MISHAWKA, IN 46544 TO BE AN ECONOMIC REVITALIZATION AREA AND ECONOMIC DEVELOPMENT TARGET AREA FOR PURPOSES OF PERSONAL PROPERTY TAX ABATEMENT
(Jamil Packaging Corporation)

Dave Diroll, owner and operator of Jamil Packaging said he was hoping to receive the abatement because in his industry the technology was moving forward. He explained there were machines being created that could digitally print boxes and other products. Mr. Diroll said the technology had been around for a while but there were no machines for the corrugated industry. He felt they need the machinery to be on the cutting edge.

Mr. Mammolenti asked did he purchase a corrugate. Mr. Diroll said he partnered with an operation in Bristol Indiana that made their corrugate. He explained it took a lot of square feet to make the corrugate profitable. Mr. Diroll added they began looking in Mishawaka first but at the time there was not a space large enough. He said in order to be successful they had to have a real site to bring in big rolls of paper. Mr. Diroll said their track led them to Bristol because they had a real site.

Mr. Bellovich asked how long they operated in Mishawaka and how many employees did they currently have. Mr. Diroll replied since 2002 with 125 employees. He added in the past the council granted them a tax abatement, in their case it was very successful and it created new higher paying jobs. Mr. Diroll said the abatement really helped privately owned companies.

Mr. Canarecci asked would the new technology eliminate or create new jobs. Mr. Diroll said it would create new jobs, and if their successful he hoped to spin off another business in

Mishawaka. He mentioned the machine would also allow them to print things other than corrugated, such as foam and plastics for signs and advertising.

Mr. Emmons asked how many jobs were anticipated to be created with the new technology. Mr. Diroll said he was unsure but the at least 10, in the past he gave a small amount as they were very conservative and they nearly tripled in size.

Mr. Compton asked could the equipment be purchased without the abatement. Mr. Diroll replied no, it was very expensive equipment. He said he recently purchase a million-dollar machine without the abatement. Mr. Diroll explained the machine needed for the abatement was a demo. He said was told he would get a great price for it.

Mr. Mammolenti thanked Jamil packaging for investing in Mishawaka, he said he looked forward to hear the annual report for tax abatements from Mr. Prince; Jamil Packaging always received a good report.

Questioned was called for at 7:28 P.m. for **RESOLUTION NO. 2017-18** **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.**

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

PROPOSES ORDINANCE NO. 2017-24

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 Commercial TO R-1 Two Family Residential 2030 N. Merrifield Ave.)

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.

Cyndi Carper owner of property at 2030 N. Merrifield Avenue said 2 years ago she came before the council to request zoning for the second-floor apartments. She explained she previously ran a restaurant and bar but she sold her three-way license to Ruth Chris Steakhouse in 2007. Mrs. Carper said she would like to make the first floor a 3-bedroom apartment for her parents when they came to town twice a year. She stated the second floor had always been an apartment since she purchased the building but it became difficult for her step father to take the stairs. Mrs. Carper went on to say when she received her spring bill she realized she was still being billed as a commercial lot. She said rezoning to residential would be less expensive. Ms. Carper mentioned they would tear the asphalt to plant grass to have a yard like atmosphere.

Question was called for at 7:32 P.M. for **PROPOSED ORDINANCE NO. 2017-24** **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 **ORINANCE NO. 5582**

<u>PROPOSED ORDINANCE NO. 2017-25</u>

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 Commercial to C-7 Auto Oriented Restaurant Vacant land North of 4914 N. Main St.)

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. Tanner motion carried.

Mike Danch, Danch, Harner & Associates, Inc represented the petitioner and introduced Peggy Harp from Portillos Restaurant. Mr. Danch went on to describe the site to be 3.3 acres of ground that laid North of Cheddars Restaurant. He said Portillos would like to build a restaurant with drive-thru. Mr. Danch explained the building would be 9000 square foot building with access off of Main Street and also off of Edison Lakes Parkway shared with Cheddars Restaurant. He said Mishawaka would also like for the petitioners to add interior access driveways between Cheddars and for any future development that would happen to the north and east. Mr. Danch stated utilities would be connected to Mishawaka city water and sewer and drainage would be handled per the engineering requirements. He said there would be landscaping along both Main Street and throughout the site itself.

Mrs. Voelker thanked them for their interest in Mishawaka; she said she'd been to a Portillos location in Chicago. Mrs. Voelker questioned the two lane drive-thru. Mr. Danch explained there would be serval staff members taking customers orders for the drive-thru and there would also be other staff going to the cars placing orders. He said the approximate waiting time would be five minutes. Mr. Danch stated they did not typically see this style drive-thru in this area, but they were experts at it. He explained at the end of the drive thru were right and left turns, the right turn lead to open field that would later become future development. Mr. Danch said they were just approved for the Qdoba Restaurant, which would leave room for two more commercial developments. He continued to say as a part of the development for commercial Mishawaka asked to add a connected drive to avoid having more than one driveway going out to Main Street. Mr. Danch explained through the subdivision process of ingress and egress easements, it would allow the individual property owners to drive across each other's property.

Mr. Canerecci asked was there a median on Main Street in front of the proposed parking lot. Mr. Danch explained the median was a little further to the south.

Mr. Banicki thanked the petitioner for their interest in Mishawaka.

Mr. Tanner expressed Portillo's was a great restaurant. He said he was glad there would be a two-lane drive-thru. Mr. Tanner continued to say if it's as popular as the locations in Chicago; they were going to need it to get cars through and out.

Question was called for at 7:40 P.M. for **PROPOSED ORDINANCE NO. 2017-25** **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 **ORINANCE NO. 5583**

PROPOSED ORDINANCE NO. 2017-26

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
(Amend PUD Ridgemont Crossings E. Dragoon Trail and Fir Rd. 73 Residential lots)

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.

Daryl Knip, Abonmarche Consultants represented property owners and developers. Mr. Knip explained there were three items to note that were different from the previous approved PUD. He said the previous site plan had several private cul-de-sacs; this layout would eliminate the cul-de-sacs which would create the typical single family residential lot. Mr. Knip went on to say the lots were slightly larger than the existing lots, proposed to be 75 feet wide. He said the market would be the same or slightly higher than the existing homes. Mr. Knip went on to note the second item, the entrance on Dragoon Trail was initially near Fir Road and they were proposing to move it east to line up with Clover Road. Mr. Knip concluded the third item was being proposed to be a light industrial use which would match the park to the east.

Mrs. Voelker asked would there be a fence in between the industrial park and the new properties. Mr. Knip said currently there were high tension lines cutting off the southeast corner of the property, which made a natural split. He stated as a part of the recommendations they agreed to have a 35-foot green area with a 4-foot mound and evergreen trees along the top mound to create a buffer between the residential homes and the light industrial. Mr. Knip said all the homes adjacent to the light industrial would be new homes. He also explained there would be a shared entrance, which would line up with Clover Road on Dragoon Trail. Mr. Knip said the use of light industrial was unknown at the moment; they've had discussion that it could be used for expansion for businesses to the east that may need more room.

Mr. Mammolenti recalled the Ridgemont Crossings neighborhood to having a vocal homeowner's association; he asked did they meet with the neighbors. Mr. Knip replied yes, they attended a neighborhood meeting. He also mentioned at the Plan Commission meeting the president of the homeowner's association spoke in favor for the project.

Question was called for at 7:46 P.M. for **PROPOSED ORDNANCE NO. 2017-26** **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 **ORINANCE NO. 5584**

PRIVILEGE OF THE FLOOR

Jim Holtz, John Kostry, Jeanette and Jim Shown residents of Miami Club Drive expressed concerns over the removal of trees due to the Storm/Sewer Separation Project without prior notification. They felt the City should help or replace the trees as they have done in other areas.

UNFINISHED BUSINESS

RECONSIDERATION OF;

RESOLUTION NO. 2017-15

A RESOLUTION OF THE
COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA,
APPROVING A PETITION OF THE MISHAWAKA BOARD OF ZONING APPEALS
FOR THE PROPERTY LOCATED AT:
1927 North Cedar Street, MISHAWAKA, INDIANA
(Use Variance for auto body shop)

Mr. Compton made a motion to reconsider **RESOLUTION NO. 2017-15** with second by Mr. Canarecci motion carried.

Mr. Compton thanked Mr. Lopez for meeting with the neighbors opposed to the auto body shop. He said the neighbors contacted the council to express their approval under certain conditions. Mr. Compton explained if Mr. Lopez accepted to follow the conditions, the council would pass the resolution.

Mr. Compton asked Clerk Block to read the additional conditions as followed;

7. Automotive work hours are limited to 8:00am-5:00pm, Monday through Friday; and
8. All Tenant changes require an additional Use Variance.

Mr. Compton made a motion to amend **RESOLUTION MO. 2017-15** with a second by Mr. Tanner motion carried.

Murray Winn 1913 Margarete Avenue said he wanted to make sure of conditions. He expressed he hoped Mr. Lopez would be successful. Mr. Winn appreciated Mr. Lopez reaching out to the neighbors.

Mr. Banicki expressed he still had reservation. He believed the business hours for Mr. Lopez auto body shop were not reasonable. Mr. Banicki continued to say as an auto shop owner himself; he did what he had to do to pay the bills at the end of the day, which included working late. He expressed he was not in support.

Mr. Mammolenti thanked Mr. Lopez and the neighbors for coming together. He asked did Mr. Lopez accept the conditions and were they realistic. Mr. Lopez replied yes. He said maybe he found a different way of running his business as he tried for a year and a half successfully. Mr. Lopez stated the only thing holding him back was time and a shop. He said he did not have a problem paying his lease before when it was more expensive. Mr. Lopez felt it would not be any different other than paying less at his new location.

Mrs. Voelker questioned the type of cars Mr. Lopez worked on. Mr. Lopez said he worked on classic cars that people drove on special occasions. He continued to say they did work every day vehicles as filler if they had nothing to work on or were waiting on parts. Mr. Lopez said he tried not to take on anything he could not handle; he only scheduled two cars per day.

Mr. Tanner recalled one of the neighbors asking if there was somewhere else an auto body shop could go. He said he spoke with people in the commercial real estate business to see if there were other options. Mr. Tanner continued to say there was nothing reasonable or fit for Mr. Lopez shop. He stated he wanted to support Mr. Lopez at the last meeting but he was hindered by the comments of the neighbors and the available real estate for this type of business. Mr. Tanner said the concerns seemed to be resolved with the neighbors. He thanked Mr. Lopez for his effort. Mr. Tanner expressed his support.

Question was called for at 8:22 P.M. for **RESOLUTION NO. 2017-15 Vote: Motion passed (summary: Yes = 8, No = 1, Abstain = 0).Yes: Mrs. Voelker, Mr. Compton, Mr. Tanner, Mr. Mammolenti, Mr. Emmons, Mr. Bellovich, Mr. Canarecci, Mr. Deal. No: Mr. Banicki.**

NEW BUSINESS

Mr. Emmons announced the First District Neighborhood Meetings would resume in September.

ADJOURNMENT 8:24 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
JUL 13 2017
CITY CLERK
MISHAWAKA, IN

July 13, 2017

Honorable Members of the Common Council
City of Mishawaka, Indiana

RE: Plan Commission Recommendation
July 11, 2017, Public Hearing
Certification of Proposed Ordinances

Honorable Members:

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

PETITION #17-11 A petition submitted by Olivia Gonzales and Agustin Armenta requesting to vacate the north/south alley adjacent to **131 East Seventh Street**.

The Commission, with a vote of 8-1, recommended approval.

PETITION #17-17 A request submitted by PD Realty, LLC requesting to annex and zone **914 East McKinley Avenue and 916 East McKinley Avenue** from C-4 Automobile Oriented Commercial District and I-1 Light Industrial District to I-1 Light Industrial District (both Parcel 1 and Parcel 2).

The Commission, with a vote of 9-0, recommended approval.

Pursuant to I.C. 36-7-4-605, the Mishawaka Plan Commission hereby certifies to the Mishawaka Common Council the attached proposed Ordinances regarding the above matters.

Respectfully,

Kari Myers

Kari Myers, Administrative Planner
Secretary, Mishawaka Plan Commission

cc: Olivia Gonzales
Steven Ruby

STAFF REPORT

Location: 16' alley West of 131 E Seventh

Date: June 13, 2017

Prepared By: CH

Petition: 17-11

GENERAL INFORMATION

Applicant:	Olivia Gonzales and Agustin Armenta
Status:	Adjacent Property Owners to the East
Request:	Vacate Public Right of Way
Zoning Classification:	R-1 Single Family Residential (on both sides)
Applicable Regulations:	IC 36-7-3-12 and 13

SPECIAL INFORMATION

Area Development Pattern:	North:	R-1 Single Family Residential
	South:	R-1 Single Family Residential
	East:	R-1 Single Family Residential
	West:	R-1 Single Family Residential
Thoroughfare:	Seventh Street	
School District:	School City of Mishawaka	
Public Utilities:	Public Right-of-Way	
Comprehensive Plan:	General Commercial	

ANALYSIS

The Petitioners are requesting to vacate a 16' alley east of their house at 131 E Seventh. The plat of E.J. Perkins Addition, recorded in 1897, does not include an alley. In fact, the legal description specifically excepts a 16' parcel. Staff was unable to find when the alley was created; however, three similar alleys along this street were vacated in 1970 and 1971. Since the alley was originally part of Lot R, the petitioner will received the entire vacated alley.

There are no improvements on the site, however, there is a utility easement, which will remain. It will be the responsibility of the Petitioner to install a sign, fence, etc to indicate the alley is now private property.

The proposed vacation request has been routed to the appropriate City departments who approve of the request without further comment.

Recommendation

Staff recommends in favor of Petition 17-11 to vacate 16' alley west of 131 E Seventh Street, subject to a utility easement. This recommendation is based on the following findings of fact:

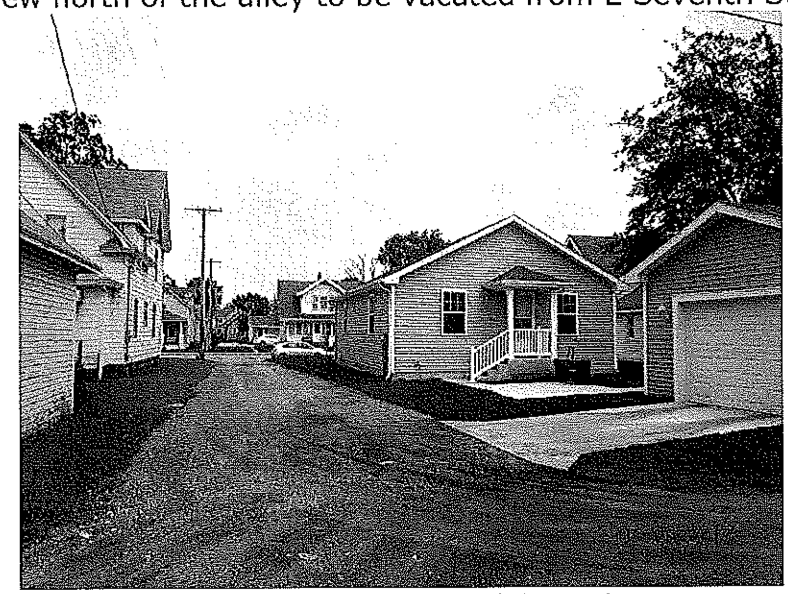
1) The vacation will not hinder the growth or orderly development of the neighborhood. The vacation will allow for improved growth and orderly development of the neighborhood.
2) The vacation of the established right-of-way will not make access to any adjacent property difficult or inconvenient.
3) The street does not provide access to any church, school, public building or place and thus 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.
5) This petition is not in specific conflict with the goals, objectives, and policies of the Comprehensive Plan.

Attachments

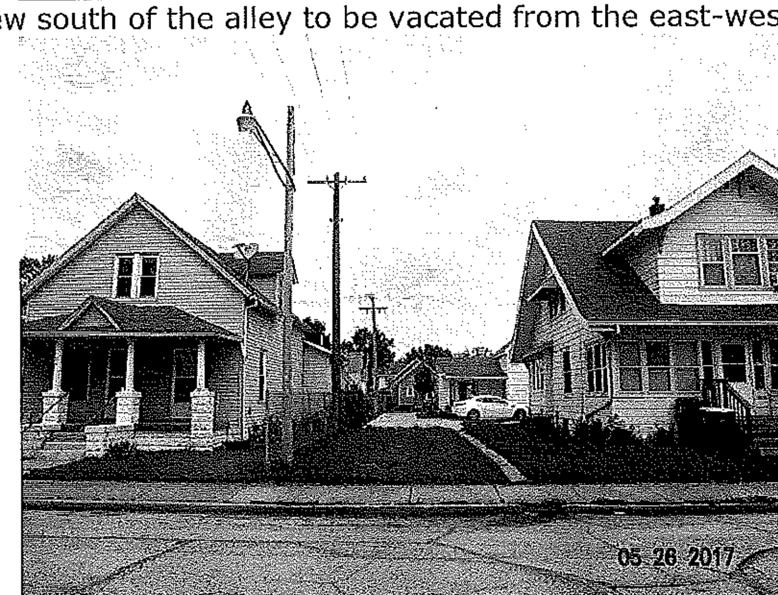
Aerial, Photo, Petition, Vacation Diagram

White outline is alley to be vacated. Solid Red boxes indicate previously vacated alleys.

A view north of the alley to be vacated from E Seventh Street



A view south of the alley to be vacated from the east-west alley



A view of the previously vacated alley on the north side of E Seventh Street

STAFF REPORT

General Location: 914 & 916 E McKinley

Date: July 11, 2017

Petition: 17-17 Annexation and Establish Zoning for 5.53 acres, Rezone additional 6.99 acres

Prepared By: CH

GENERAL INFORMATION

Applicants:	PD Realty, LLC
Status:	Property Owner
Request:	To annex and establish zoning of I-1 Light Industrial for 5.53 acres (Parcel 1) and rezone an additional 6.99 acres (Parcel 2) from C-4 Automobile Oriented Commercial to I-1 Light Industrial.
Existing Zoning:	R Single-Family Residential and C Commercial (Unincorporated St. Joseph County); C-4 Automobile Oriented Commercial and I-1 Light Industrial (City of Mishawaka)
Proposed Zoning:	I-1 Light Industrial
Lot Size:	12.52 Acres
Applicable Regulations:	Section 137-585 thru 137-587 / I-1 Light Industrial Section 137-41 / Amendments to the Zoning Map & Indiana Code 36-4-3-2.1 and 36-4-3-3.1

SPECIAL INFORMATION

Area Development Pattern:	North:	R Residential (Unincorporated St. Joseph County)
	South:	C-4 Automobile Oriented Commercial and I-1 Light Industrial
	East:	I-1 Light Industrial
	West:	C-1 General Commercial, C-4 Automobile Oriented Commercial and I-1 Light Industrial

Thoroughfare:	McKinley Avenue
School District:	School City of Mishawaka (Southernmost 100 feet) and Penn-Harris-Madison School Corporation
Public Utilities:	All public utilities are either available or will be extended to/throughout the site at the owner's/developer's expense.
Comprehensive Plan:	The Mishawaka 2000 Comprehensive Plan identifies the northern side of McKinley as Industrial.

Analysis

Proposal:
The applicant is proposing to annex and establish zoning of I-1 Light Industrial for 5.53 acres (Parcel 1) and rezone an additional 6.99 acres (Parcel 2) from C-4 Automobile Oriented Commercial to I-1 Light Industrial.

The owners have expansion plans, which include a new building for Direct Line Communications, LLC and an addition to Pemberton Davis Electric, Inc. and an outside storage area. Separate filings will need to be submitted for the new building, building addition and use variance.

History:
In 2011, 6 acres north of 916 E McKinley was annexed into Mishawaka. The property at 916 E McKinley established zoning at I-1 Light Industrial to match what was already in the City, but the property at 914 E McKinley was rezoned C-4 Automobile Oriented Commercial to match the parcel's previous use as a car dealership.

Annexation:
Per Indiana State annexation laws, a parcel is required to share one-eighth, or 12.5%, of its boundary with the existing City boundary in order to be annexed. Based on the survey provided, 2,275.5 feet, or 90%, of the total 2,511 feet of the perimeter of the property will be contiguous with the existing city limits. This exceeds the required 12.5% contiguity.

Location/Context:
The site is located on the north side of McKinley Avenue, starting 300' from the centerline, between Division Street and Filbert Road. The property is bordered to the north by the heavily wooded rear of a single-family residential property within unincorporated St. Joseph County; to the west by Ace Maytag Home Appliance Center and mini storage zoned C-1 General Commercial and I-1 Light Industrial respectively; to the south by an automobile repair business zoned C-4 Automobile Oriented Commercial; and to the east by the Habitat for Humanity construction headquarters zoned I-1 Light Industrial.

Zoning Change:
Staff feels that the proposed zoning of this property for industrial purposes is <u>appropriate</u> given the adjacent industrial uses along McKinley Avenue and the comprehensive plan identifying this area of McKinley as industrial.

Transportation/Roads:
According to the latest available traffic counts, there were 16,681 annual average daily trips (2015) along McKinley Avenue between Division and Chestnut. The counts at this location have been relatively constant over the last ten years. McKinley is a major east-west thoroughfare into the city.

The 2040 Transportation Plan, prepared by the Michiana Area Council of Government with input from City staff, recommends improving McKinley through Mishawaka to Elkhart. The proposed project list includes added travel lanes between Division and Byrkit Street/Fir Road to be completed by 2025.

Department Comments:
All pertinent City Departments have reviewed and approved the proposed annexation, rezoning and preliminary site plan with the Engineering and Water Departments providing the following comments:

<u>Engineering Department:</u>

1. Please be mindful of historically high groundwater and need to extend own utilities to both lots.
2. Lot 2 will need to establish ingress/egress easement for proposed Lot 1.

These comments shall be addressed with the Final Site Plan.

<u>Water Department:</u>

1. The project is located within 1-year well head protection area.

RECOMMENDATION

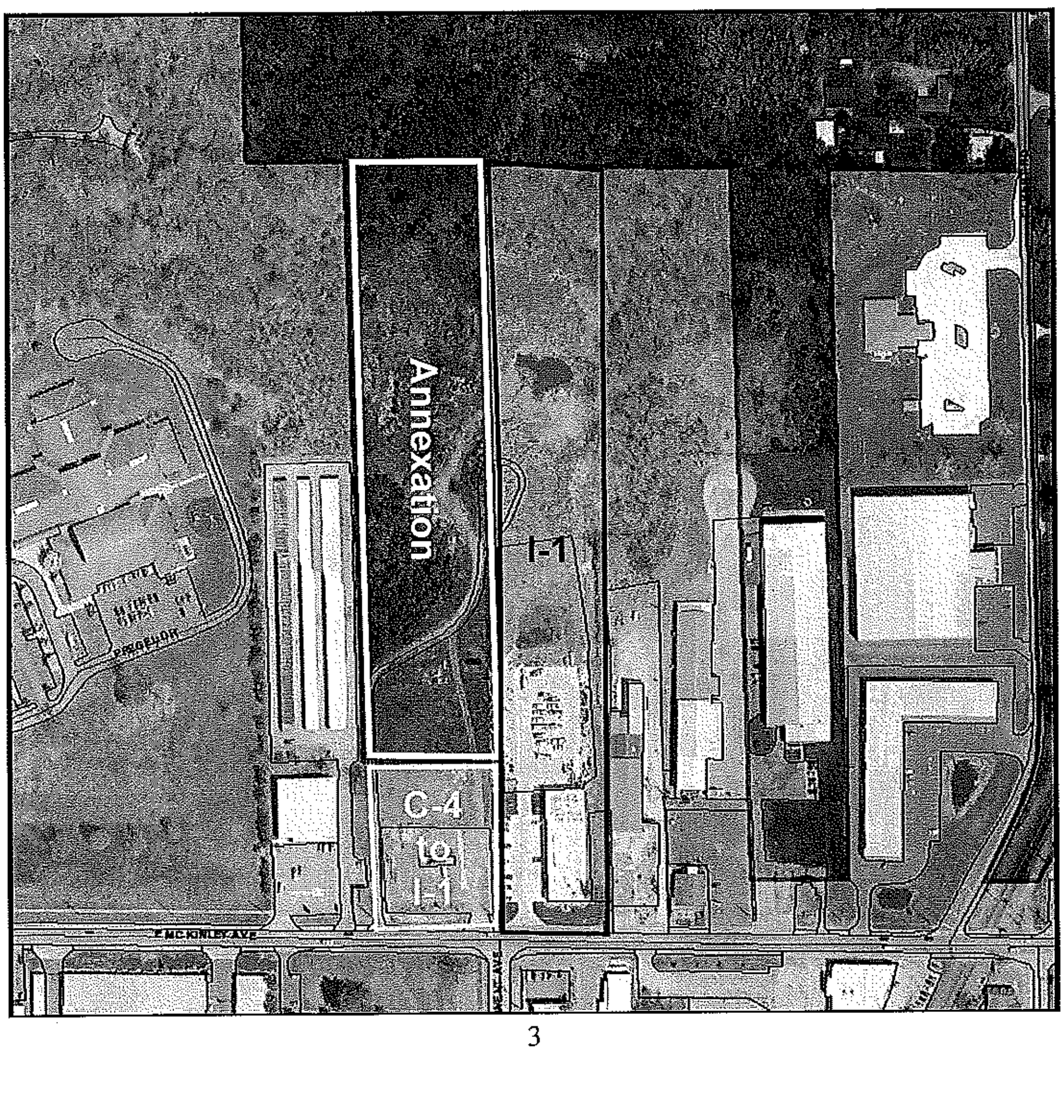
Staff recommends in favor of rezoning Petition 17-17 to annex and establish I-1 Light Industrial zoning for property located at 914 and 916 E McKinley Avenue and property north of 914 E McKinley Avenue.

This recommendation is based upon the following Findings of Fact:

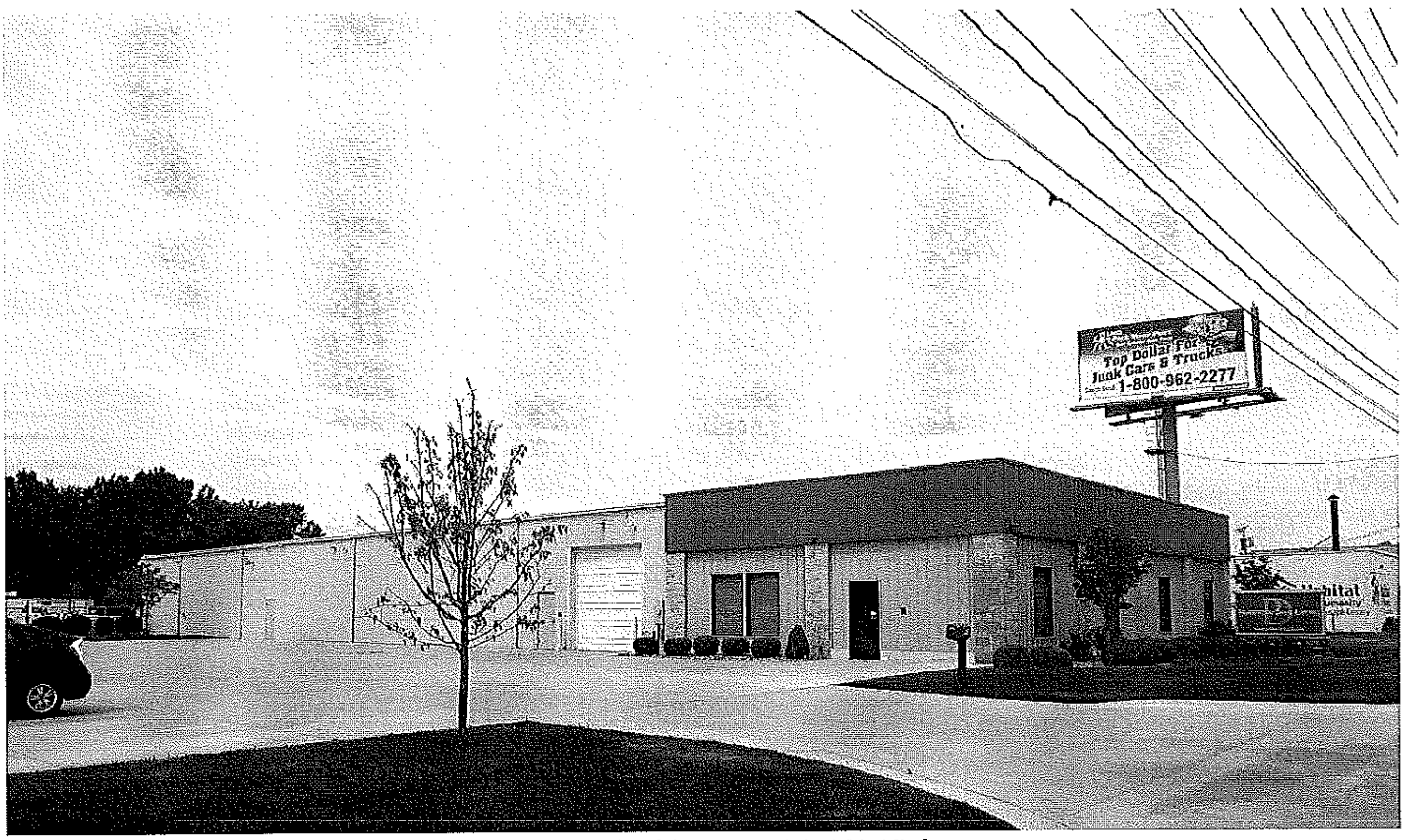
1. Existing Conditions – A majority of the property owned by the petitioner is within the City limits and would be easier to use/enforce if all the property was in one jurisdiction..
2. Character of Buildings in Area - Adjacent land uses include are a mix of industrial and commercial, along one of the City's major east-west corridors.
3. The most desirable/highest and best use – Because of the parcel's location along the corridor and the property's historical use, the most desirable use for the property is to continue and expand the industrial use.
4. Conservation of property values - The proposed zoning will not be injurious to property values in the surrounding area because the proposed use is compatible with the adjacent commercial and industrial uses.
5. Comprehensive Plan – The Mishawaka 2000 Comprehensive Plan identified this pocket of the McKinley corridor as industrial. The petition to annex and zone the entire property to I-1 Light Industrial is consistent with the Comprehensive Plan.

ATTACHMENTS

Aerial Photograph, Photographs of Site Area, Rezoning & Annexation Petition, Location Map



A view north of 914 E McKinley



The existing building at 916 E McKinley

RECEIVED
DEBORAH S. BLOCK MMC
JUL 13 2017
CITY CLERK
MISHAWAKA, IN

1st Reading 7-17-17
2nd Reading
Passed
Failed
Continued To

PETITION #17-11

CITY OF MISHAWAKA, INDIANA

PROPOSED ORDINANCE NO. ~~2017-28~~

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, Olivia Gonzales and Agustin Armenta have filed a petition for vacation of the public right-of-way described in Section 1 below;

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:

THE 16' WIDE NORTH-SOUTH ALLEY FROM THE SOUTH RIGHT-OF-WAY LINE OF E. 7TH STREET TO THE NORTH RIGHT-OF-WAY LINE OF THE 16' WIDE EAST-WEST ALLEY TO THE SOUTH HAVING ORIGINALLY BEEN TAKEN OFF OF THE WEST SIDE OF LOT "R" OF E.J. PERKINS ADDITION AS RECORDED DECEMBER 23, 1897 IN PLAT BOOK 7, PAGE 17 IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY. SUBJECT TO A UTILITY EASEMENT BEING MAINTAINED BY THE CITY OF MISHAWAKA.

COMMONLY KNOWN AS: The north/south alley west of 131 East Seventh Street.

PROPOSED ORDINANCE NO. 17-28

ORDINANCE NO._

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. The vacation will allow for improved growth and orderly development of the neighborhood.

2) The vacation of the established right-of-way will not make access to any adjacent property difficult or inconvenient.

3) The street does not provide access to any church, school, public building or place and thus 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.

5) This petition is not in specific conflict with the goals, objectives, and policies of the Comprehensive Plan.

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 __________________, 2017.

____
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

MAY 31 2017

CITY CLERK
MISHAWAKA, IN

Date: May 22nd, 2017

To The Honorable Members of the Common Council city of Mishawaka, Indiana
And
Mishawaka City Plan Commission
City of Mishawaka, Indiana

Petition for Vacation of Public Right of way

Olivia Gonzales and Agustin Armenta request the Mishawaka Common Council and the Mishawaka City Plan Commission to please vacate the public right of way located in the City of Mishawaka, St. Joseph County, Indiana:

THE 16' WIDE NORTH-SOUTH ALLEY FROM THE SOUTH RIGHT-OF-WAY LINE OF E. 7TH STREET TO THE NORTH RIGHT-OF-WAY LINE OF THE 16' WIDE EAST-WEST ALLEY TO THE SOUTH HAVING ORIGINALLY BEEN TAKEN OFF OF THE WEST SIDE OF LOT "R" OF E. J. PERKINS ADDITION AS RECORDED DECEMBER 23, 1897 IN PLAT BOOK 7, PAGE 17 IN THE OFFICE OF RECORDER OF ST. JOSEPH COUNTY.

SUBJECT TO A UTILITY EASEMENT BEING MAINTAINED BY THE CITY OF MISHWAKA.

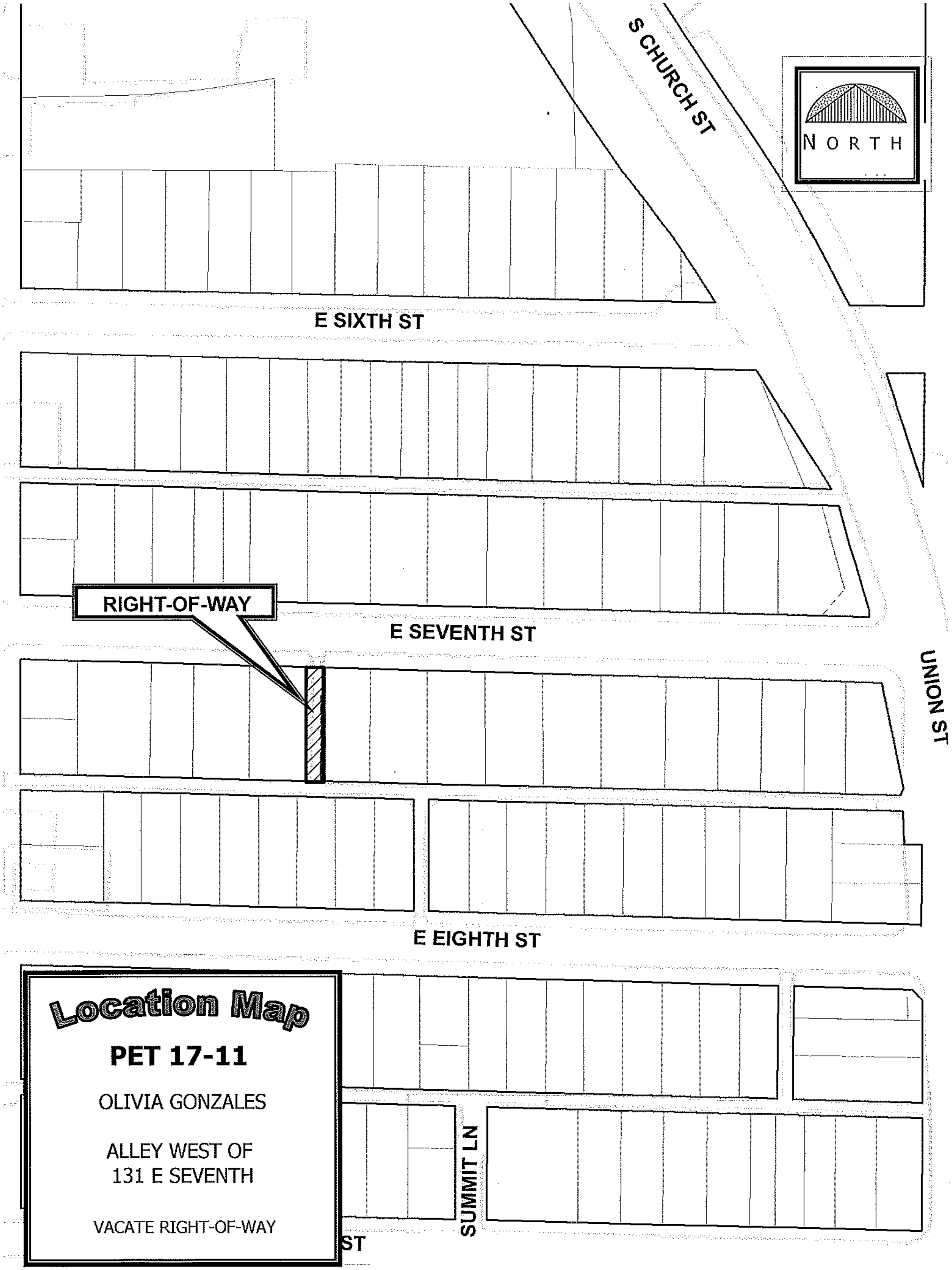
Olivia Gonzales and Agustin Armenta are the homeowners of the property located immediately adjacent to the above right of way located in the City of Mishawka. We (Olivia Gonzales, Agustin Armenta) purchased the home in December of 2016 and were unaware (due to snow) of how close the right of way was to our home and now fear for our children's safety as well as our homes safety and security. We respectfully request that the Common Council of the City of Mishawaka refer this request to the Mishawaka City Plan Commission in hope that our request is granted and the right of way listed above can appropriately be vacated.

Olivia Gonzales
Olivia Gonzales
Agustin Armenta
Agustin Armenta

PET 17-11

RECEIVED
MAY 22 2017
BUILDING, PLANNING
COMMUNITY DEVELOPMENT

Contact Information:
Olivia Gonzales, 131 E. 7TH ST., MISHAWAKA, IN 46544
574-315-7660



S CHURCH ST
NORTH
E SIXTH ST
RIGHT-OF-WAY
E SEVENTH ST
UNION ST
E EIGHTH ST
SUMMIT LN
ST
Location Map
PET 17-11
OLIVIA GONZALES
ALLEY WEST OF
131 E SEVENTH
VACATE RIGHT-OF-WAY

NOTICE OF HEARING
VACATION NO 2017-1
PETITION NO. 2017-11
DATE of HEARING 06-19-2017
TIME of HEARING 7:00PM

A petition has been filed by Olivia Gonzales and Austin Armenta

The 16ft wide North-South alley from the south right of way line of E. 7th St to the North right of way line of the 16ft wide East-West alley to the south having originally been taken off of the west side of lot "R" of E.J. Perkins addition as recorded December 23, 1897 in plat Book 7, page 17 in the Office of Recorder of St. Joseph County

Subject to a Utility Easement, being maintained by the City of Mishawaka

COMMONLY KNOWN AS: Alley West of 131 E. Seventh St.

Subject to all legal highways, easements and restrictions of record.

NOTICE IS HEREBY GIVEN that a regular meeting of the Mishawaka Common Council will be held on June 19, 2017 at 7:00 pm in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. A Public hearing will be conducted on a proposed ordinance at which time any interested person may appear, be represented by agent or present in writing any reasons they may have for the granting or denying of a proposed ordinance. You are requested to prepare your case, in detail, and present all evidence relating to this proposed ordinance at the time of scheduled hearing.

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 interpretive 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.

Respectfully, Deborah S. Block,
IAMC, MMC, City Clerk
51—

State of Indiana St. Joseph County

Personally Appeared Before Me The Undersigned:

Nancy Nich

Legal Clerk of the **MISHAWAKA ENTERPRISE**, a public newspaper of general circulation, published in the city of Mishawaka in the County aforesaid, who being duly sworn, upon her oath saith, that the notice of which she attached is the true copy, was duly published in the **Mishawaka Enterprise** for:

_XX_ One __ TWO __ THREE

times successively to-wit:

On the ___8th___ day of ___June___, 2017, and

On the ________ day of __________, 2017, and

On the ________ day of __________, 2017

Subscribed & Sworn To Before Me
This ___8th___ day of ___June___, 2017

William L. Nich, Notary Public
Residing in Elkhart County
My Commission Expires 5/30/2019

CHARGES: $ 26.82

Prescribed by State Board of Accounts

General Form No. 99P (Rev. 2009A)

Governmental Unit

To .... Dr.

IDEM

....County, Indiana

South Bend Tribune
225 West Colfax Ave
South Bend, Indiana 46628
Tax ID# 35-13-1571

PUBLISHER'S CLAIM

Ad #: 273272

LINE COUNT

Display Master (Must not exceed two actual lines, neither of which shall total more than four solid lines of type in which the body of the advertisement is set) -- number of equivalent ....

Head -- Number of lines ....

Body -- Number of lines ....

Body -- Number of lines ....

Total number of lines in notice 71

COMPUTATION OF CHARGES

71 lines, 1 columns wide equals 71 equivalent lines at 0.3751 cents per line

Additional charges for notices containing rule or tabular work
(50 per cent of above amount) ....

Charge for extra proofs of publication
($1.00 for each proof in excess of two) $0.00

TOTAL AMOUNT OF CLAIM $27.01

DATA FOR COMPUTING COST

Width of single column in picas 9.4ems — Size of 8 point

Number of Insertions 1

Pursuant to the provisions and penalties of IC 5-11-10-1, I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.

I also certify that the printed matter attached hereto is a true copy, of the same column width and type size, which was duly published in said paper 1 time(s). The dates of publication being as follows: South Bend Tribune: 06/07/17.

Sally J. Brown
Publisher

Cheryl June Morey
Cheryl June Morey, Notary Public
Resident of St. Joseph County
My Commission expires December 21, 2024

South Bend Tribune

225 W. Colfax Ave. South Bend, IN 46628
ON ACCT OF APPROPRIATION FOR
$27.01
Appropriation No. Tax ID# 35-138-1571

ALLOWED _____._____
IN THE SUM OF $27.01

Attest

That it is duly authenticated as required by law.
That it is based upon statutory authority.

That it is apparently correct / incorrect

I certify that the within claim is true and correct; that the services there in itemized and for which charge is made were ordered by me and were necessary to the public business

_______________________ , ____________

Ad #: 273272

NOTICE OF HEARING
VACATION NO. 2017-1
PETITION NO. 2017-11
DATE of HEARING 06-19-2017
TIME of HEARING 7:00PM

A petition has been filed by Olivia Gonzales and Austin Armenta The 16ft wide North-South alley from the south right of way line of E. 7th St to the North right of way line of the 16ft wide East-West alley to the south having originally been taken off of the west side of lot "R" of E.J. Perkins addition as recorded December 23, 1897 in plat Book 7, page 17 in the Office of Recorder of St. Joseph County

Subject to a Utility Easement, being maintained by the City of Mishawaka

COMMONLY KNOWN AS: Alley West of 131 E. Seventh St.

Subject to all legal highways, easements and restrictions of record. NOTICE IS HEREBY GIVEN that a regular meeting of the Mishawaka Common Council will be held on June 19, 2017 at 7:00 pm in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. A Public hearing will be conducted on a proposed ordinance at which time any interested person may appear, be represented by agent or present in writing any reasons they may have for the granting or denying of a proposed ordinance. You are requested to prepare your case, in detail, and present all evidence relating to this proposed ordinance at the time of scheduled hearing.

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

Hspaxlp 1t 6:7

City of Mishawaka

OFFICE OF THE CITY CLERK **Deborah S. Block, IAMC, MMC, City Clerk**

NOTICE OF HEARING

VACATION NO.	**2017-1**
PETITION NO.	**2017-11**
DATE of HEARING	**06-19-2017**
TIME of HEARING	**7:00PM**

A petition has been filed by Olivia Gonzales and Austin Armenta

The 16ft wide North-South alley from the south right of way line of E. 7th St to the North right of way line of the 16ft wide East-West alley to the south having originally been taken off of the west side of lot "R" of E.J. Perkins addition as recorded December 23, 1897 in plat Book 7, page 17 in the Office of Recorder of St. Joseph County

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

Mary Ellen Hazen, Chief Deputy Raven Boston, Deputy
City Hall, 600 East Third Street Mishawaka, IN 46544-2241 (574) 258-1616 FAX (574) 258-1728
E-mail: dblock@Mishawaka.in.gov Website: Mishawaka.in.gov

RECEIVED
DEBORAH S. BLOCK, MMC

JUL 13 2017

CITY CLERK
MISHAWAKA, IN

1st Reading 7-17-17
2nd Reading
Passed
Failed
Continued To

PETITION #17-17

CITY OF MISHAWAKA, INDIANA

PROPOSED ORDINANCE NO. 2017-29

ORDINANCE NO. ________

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

WHEREAS, a Petition has been presented to the Common Council of the City of Mishawaka, Indiana, praying that certain territory lying contiguous to the corporate limits of the City of Mishawaka, Indiana, be annexed to and declared to be a part of the City of Mishawaka, and that it be provided with a Zoning Classification, and

WHEREAS, the Mishawaka City Plan Commission, to which Commission the petition was duly referred, has recommended the annexation and the zoning as hereinafter set forth, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning.

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

Section 1. The following described real estate be and the same is hereby annexed to and declared to be a part of the City of Mishawaka, Indiana:

Parcel 1: Acreage 5.53 +/-

A parcel of land located in the Southeast Quarter of the Southwest Quarter of Section Three (3), Township Thirty-seven (37) North, Range Three (3) East, described as beginning at the Southeast corner of the parcel of land containing 7 ½ acres taken off the entire length of the East side of 17 ½ acres off the West side of said Southwest Quarter; thence North 1320 feet to the North line of said Quarter Quarter Section; thence West along said North line 177 feet to the true point of beginning; thence South 1020 feet; thence West 235.5 feet; thence North 1020 feet to the North line of said Quarter Quarter Section; thence East along said North line 235.5 feet to the point of beginning.

COMMON ADDRESSES: 914 East McKinley Avenue

Parcel 2: Acreage 6.99 +/-

A parcel of land located in the Southeast Quarter of the Southwest Quarter of Section Three (3), Township Thirty-seven (37) North, Range Three (3) East described as beginning at the Southeast corner of a parcel of land containing 7 ½ acres taken off the entire length of the East side of 17 ½ acres off the West side of said Southeast Quarter of the Southwest Quarter; thence North 1320 feet to the North line of said Quarter Quarter Section; thence West 177 feet; thence South 1020 feet; thence West 235.5 feet; thence South 300 feet to the South line of Section 3; thence East along said South line 412.5 feet to the point of beginning.

Proposed Ordinance No. 17-29

Ordinance No. ___________
COMMON ADDRESSES: 916 East McKinley Avenue

The above described real estate shall hereafter be annexed into and within the City of Mishawaka, Indiana, and a part of that district designated in the Zoning Ordinance of the City of Mishawaka, Indiana, and shall carry a classification for zoning of I-1 Light Industrial District.

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

1. Existing Conditions – A majority of the property owned by the petitioner is within the City limits and would be easier to use/enforce if all the property was in one jurisdiction.

2. Character of Buildings in Area - Adjacent land uses include are a mix of industrial and commercial, along one of the City's major east-west corridors.

3. The most desirable/highest and best use – Because of the parcel's location along the corridor and the property's historical use, the most desirable use for the property is to continue and expand the industrial use.

4. Conservation of property values - The proposed zoning will not be injurious to property values in the surrounding area because the proposed use is compatible with the adjacent commercial and industrial uses.

5. Comprehensive Plan – The Mishawaka 2000 Comprehensive Plan identified this pocket of the McKinley corridor as industrial. The petition to annex and zone the entire property to I-1 Light Industrial is consistent with the Comprehensive Plan.

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 __________________, 2017, at _______ o'clock ____.M.

____
Presiding Officer

ATTEST:

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

Proposed Ordinance No. 17-29

Ordinance No. ___________

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

troyer group

Together, We Will

Petition for Annexation and Zoning

June 21, 2017

PET 17-17

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

RE: Petition for Annexation and Zoning Classification

The undersigned *PD Realty, LLC* respectfully show they are the owners of the following described real estate located in the County of St. Joseph, State of Indiana, to-wit:

Parcel 1: Acreage 5.53 +/-
A parcel of land located in the Southeast Quarter of the Southwest Quarter of Section Three (3), Township Thirty-seven (37) North, Range Three (3) East, described as beginning at the Southeast corner of the parcel of land containing 7 ½ acres taken off the entire length of the East side of 17 ½ acres off the West side of said Southwest Quarter; thence North 1320 feet to the North line of said Quarter Quarter Section; thence West along said North line 177 feet to the true point of beginning; thence South 1020 feet; thence West 235.5 feet; thence North 1020 feet to the North line of said Quarter Quarter Section; thence East along said North line 235.5 feet to the point of beginning.

COMMON ADDRESSES: 914 East McKinley Avenue

Parcel 2: Acreage 6.99 +/-
A parcel of land located in the Southeast Quarter of the Southwest Quarter of Section Three (3), Township Thirty-seven (37) North, Range Three (3) East described as beginning at the Southeast corner of a parcel of land containing 7 ½ acres taken off the entire length of the East side of 17 ½ acres off the West side of said Southeast Quarter of the Southwest Quarter; thence North 1320 feet to the North line of said Quarter Quarter Section; thence West 177 feet; thence South 1020 feet; thence West 235.5 feet; thence South 300 feet to the South line of Section 3; thence East along said South line 412.5 feet to the point of beginning.

COMMON ADDRESSES: 916 East McKinley Avenue

Petitioners own One Hundred (100%) percent of the above-described parcel of land which is located at 914 and 916 East McKinley Avenue, Mishawaka, IN and that Petitioners desires to have **Parcel I** be annexed to the City of Mishawaka, Indiana, with a I-1 Light Industrial Zoning classification. It is also the desire of the Petitioners to rezone the South West portion of **Parcel II** (Described as the SW 235.5' by 300'section of Parcel II) from a C-4 Automobile Oriented Commercial Zoning to the I-1 Light Industrial Zoning Classification in its entirety. The petitioner further state they intend to utilize said land for business operations related to the Direct Line Communications, LLC (New Building) and Pemberton Davis Electric, Inc. (Future Addition) Operations.

Accompanying this petition is a drawing, to scale, showing the above-described parcels of real estate.

Petitioners further show this proposed annexation to be in the best interest of the City of Mishawaka, Indiana, and of the territory sought to be annexed. The New Building and addition to the site will restore its contribution, economically, to the City of Mishawaka, and ensure that protection for the adjacent well field is established.

Wherefore, Petitioners 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 annexing parcel 1 to the City of Mishawaka with a zoning classification of I-1 Light Industrial and the rezoning of the South west portion of Parcel 2 to a I-1 Light Industrial Classification.

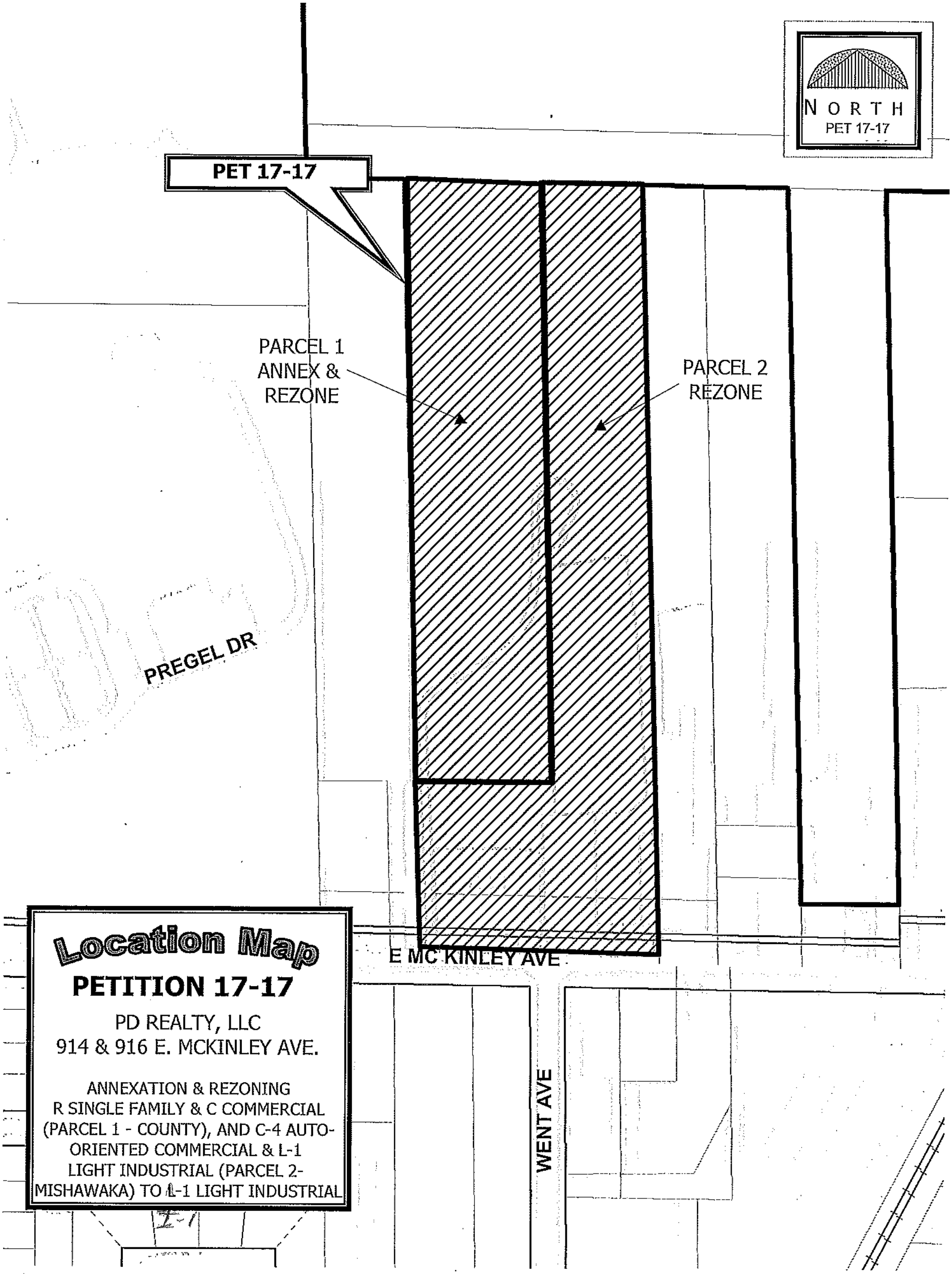
Property Owner Signature

WILLIAM D. PEMBERTON

Print Property Owner Name

Contact Person:

Steven Ruby, PLA
550 Union Street
Mishawaka, IN 46544
Ph:(574) 259-9976
Fax:(574)254-4048
sdr@troyergroup.com


PET 17-17
NORTH
PET 17-17
PARCEL 1
ANNEX &
REZONE
PARCEL 2
REZONE
PREGEL DR
E MC KINLEY AVE
WENT AVE
Location Map
PETITION 17-17
PD REALTY, LLC
914 & 916 E. MCKINLEY AVE.
ANNEXATION & REZONING
R SINGLE FAMILY & C COMMERCIAL
(PARCEL 1 - COUNTY), AND C-4 AUTO-
ORIENTED COMMERCIAL & L-1
LIGHT INDUSTRIAL (PARCEL 2-
MISHAWAKA) TO L-1 LIGHT INDUSTRIAL

1st Reading 7-5-17
2nd Reading
Passed
Failed
Continued To

RECEIVED
DEBORAH S. BLOCK, MMC
JUN 28 2017
CITY CLERK
MISHAWAKA, IN

PROPOSED ORDINANCE NO. 2017-27

ORDINANCE NO. ____________

An Ordinance of the City of Mishawaka authorizing the advance refunding by the City of its Sewage Works Revenue Bonds of 2010, Series B; authorizing the issuance of sewage works revenue bonds for the purpose of providing funds to pay the cost of certain additions, extensions and improvements to the municipal sewage works of the City and provide for the refunding; providing for the safeguarding of the interests of the owners of said bonds, other matters connected therewith, including the issuance of notes in anticipation of bonds, and repealing ordinances inconsistent herewith

WHEREAS, the City of Mishawaka, Indiana ("City") has heretofore established, constructed and financed a municipal sewage works and now owns and operates the sewage works pursuant to IC 36-9-23, and other applicable laws; and

WHEREAS, the Common Council finds that certain hereinafter described outstanding bonds of the sewage works should be advance refunded to obtain a reduction in interest payments and effect a savings to the City by providing for the payment of such outstanding bonds; that the refunding of said outstanding bonds, together with accrued interest thereon and including all costs related to the refunding cannot be provided for out of funds of the sewage works now on hand and the refunding should be accomplished by the issuance of revenue bonds of the sewage works; and

WHEREAS, the Common Council finds that there are now outstanding bonds originally issued to finance the construction of additions and improvements to the sewage works and payable out of the revenues therefrom designated "Sewage Works Revenue Bonds of 2010, Series A," dated January 28, 2010 ("2010A Bonds"), originally issued in the amount of $2,398,000, now outstanding in the amount of $1,721,000, and maturing semiannually over a period ending March 1, 2030, which 2010A Bonds constitute a first charge upon the Net Revenues (as hereinafter defined) of the sewage works; and

WHEREAS, the Common Council finds that there are now outstanding bonds originally issued to finance the construction of additions and improvements to the sewage works and payable out of the revenues therefrom designated "Sewage Works Revenue Bonds of 2010, Series B," dated December 21, 2010 ("2010B Bonds"), originally issued in the amount of $37,225,000, now outstanding in the amount of $28,310,000, and maturing semiannually over a period ending September 1, 2030, which 2010B Bonds constitute a first charge upon the Net Revenues of the sewage works, on a parity with the 2010A Bonds; and

WHEREAS, the Common Council finds that there are now outstanding bonds originally issued to finance the refunding of certain outstanding sewage works bonds designated "Sewage Works Refunding Revenue Bonds of 2015," dated August 20, 2015 ("2015 Bonds"), originally issued in the amount of $34,755,000, now outstanding in the amount of $31,145,000, and maturing semiannually over a period ending March 1, 2027, which 2015 Bonds constitute a first charge upon the Net Revenues of the sewage works, on a parity with the 2010A Bonds and the 2010B Bonds; and

WHEREAS, the Common Council finds that the 2010B Bonds (hereinafter, "Refunded Bonds") may be refunded pursuant to the provisions of IC 5-1-5 to enable the City to obtain a reduction in interest payments and effect a savings to the City; and

WHEREAS, the Common Council finds that certain improvements and extensions to said works are necessary; that plans, specifications and estimates have been or will be prepared and filed by the engineers employed by the City for the construction of the improvements and extensions (as more fully set forth in Exhibit A hereto and made a part hereof) ("Project"), which plans and specifications have been or will be submitted to all governmental authorities having jurisdiction, particularly the Indiana Department of Environmental Management, and have been or will be approved by the aforesaid governmental authorities and are incorporated herein by reference and open for inspection at the office of the Clerk as required by law; and

WHEREAS, the City has obtained engineers' estimates of the costs for the construction of the Project and will advertise for and receive bids for the construction of the Project, which bids will be subject to the City's determination to construct the Project and subject to the City obtaining funds to pay for the Project; that on the basis of said estimates, the maximum estimated cost of the Project, as defined in IC 36-9-1-8, including incidental expenses, is in an amount not to exceed $13,060,000; and

WHEREAS, the City finds that it has no funds on hand available to apply on the costs of the Project, and the entire balance of the cost of the Project and the cost of the refunding, after applying funds on hand allocable to the refunding, is to be financed by the issuance, in one or more series, of sewage works revenue bonds, in an aggregate principal amount not to exceed $43,060,000 and, if necessary, bond anticipation notes ("BANs"); and

WHEREAS, the ordinances authorizing the issuance of the 2010A Bonds and the 2015 Bonds (hereinafter, collectively, "Outstanding Bonds") permit the issuance of additional bonds ranking on a parity with the Outstanding Bonds provided certain conditions can be met, and the City finds that the finances of the sewage works will enable the City to meet the conditions for the issuance of additional parity bonds and that, accordingly, the revenue bonds authorized herein shall rank on a parity with the Outstanding Bonds; and

WHEREAS, the Mishawaka Redevelopment Commission ("Redevelopment Commission") has previously adopted a Declaratory Resolution designating and declaring an area known as the Northwest Area Improvement Project ("Area") as an economic development area and an allocation area within the meaning of IC 36-7-14, and the Declaratory Resolution was ratified and confirmed by the Redevelopment Commission; and

WHEREAS, in connection with the issuance of the 2010A Bonds, the Redevelopment Commission adopted a resolution ("2010 Resolution") which pledges an increased annual amount of all real and personal property tax proceeds in the Area allocated and deposited in the Allocation Fund created pursuant to IC 36-7-14 ("Tax Increment"), bringing the total annual amount of Tax Increment to $3,360,000 and the pledge of Tax Increment was expanded to include the payment of the 2010A Bonds and the funding of any reserves for such 2010A Bonds; all of such actions regarding the Tax Increment was done with the consent of the Indiana Finance Authority ("Authority"), the owner of the 2010A Bonds through the hereafter defined SRF Program; and

WHEREAS, in connection with the issuance of bonds under this ordinance, the Redevelopment Commission has adopted or will adopt a resolution ("2017 Resolution") to allow the pledge of Tax Increment as described in the ordinances authorizing the Outstanding Bonds and in the 2010 Resolution, to also apply to the payment of all bonds issued under this ordinance, and the funding of any reserves for all bonds issued under this ordinance; and

WHEREAS, the Common Council has been advised that Tax Increment has been pledged to the payment of the City of Mishawaka, Indiana, Redevelopment District Tax Increment Revenue Bonds, Series 2015 ("2015 Tax Increment Bonds") and will be pledged to the City of Mishawaka, Indiana, Redevelopment District Tax Increment Revenue Bonds, Series 2017 ("2017 Tax Increment Bonds"); the resolutions authorizing such 2015 Tax Increment Bonds and 2017 Tax Increment Bonds (collectively, "Tax Increment Bonds") pledge Tax Increment to the Tax

Increment Bonds, but such pledges do not include the Pledged Tax Increment (as hereinafter defined), which Pledged Tax Increment is junior and subordinate to the payment of the Tax Increment Bonds; and

WHEREAS, the Redevelopment Commission's 2010 Resolution and 2017 Resolution direct that the Pledged Tax Increment shall be used as Net Revenues of the sewage works; and

WHEREAS, the bonds to be issued pursuant to this ordinance will constitute a first charge against the Net Revenues of the sewage works, on a parity with the Outstanding Bonds, and are to be issued subject to the provisions of the laws of the State of Indiana, including, without limitation, IC 5-1-5, IC 5-1-14 and IC 36-9-23, each as in effect on the issue date of the bonds (collectively, "Act"), and the terms and restrictions of this ordinance; and

WHEREAS, the City desires to authorize the issuance of BANs hereunder, in one or more series, if necessary, payable solely from the proceeds of the sewage works revenue bonds issued to finance the aforementioned costs of the Project and to authorize the refunding of the BANs, if issued; and

WHEREAS, the City reasonably expects to reimburse certain preliminary costs of the Project with proceeds of debt to be incurred by the City in an amount not to exceed $13,060,000; and

WHEREAS, the Common Council now finds that all conditions precedent to the adoption of an ordinance authorizing the issuance of revenue bonds and BANs have been complied with in accordance with the provisions of the Act;

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

Section 1. Project and Refunding Authorization; Reimbursement. (a) The City may proceed with the construction of the Project in accordance with the cost estimates, plans and specifications heretofore prepared and filed or to be filed by the consulting engineers employed by the City, which cost estimates, plans and specifications are now on file or shall subsequently be placed on file in the office of the Clerk of the City, and have been or will be adopted and approved, and by reference made a part of this ordinance as fully as if the same were attached hereto and incorporated herein. Two copies of any additional final plans and specifications and the cost estimates shall be open for public inspection pursuant to IC 36-1-5-4. The estimated cost of the construction of the Project shall not exceed the sum of $13,060,000, plus investment earnings on the bond and BAN proceeds, without further authorization from this Common Council. The City shall also provide funds for refunding the Refunded Bonds in an amount not to exceed $30,000,000, thereby reducing its interest payments and effecting a savings, as reported by the City's financial advisor, H.J. Umbaugh & Associates, Certified Public Accountants, LLP. The terms "sewage works," "works" and words of like import where used in this ordinance shall be construed to mean the Treatment Works, as defined in the Financial Assistance Agreement, dated January 28, 2010 ("Financial Assistance Agreement") between the City and the Authority as part of its wastewater loan program established and existing pursuant to IC 4-4-11 and IC 13-18-13 ("SRF Program"), and includes the existing structures and property of the sewage works and all enlargements, extensions, additions and improvements thereto and replacements thereof now or at any time hereafter constructed or acquired. The Project shall be constructed in accordance with the plans and specifications heretofore mentioned. The Project shall be constructed, the refunding accomplished and the BANs and bonds herein authorized shall be issued pursuant to and in accordance with the Act.

(b) The City hereby declares its official intent to complete the Project, to reimburse certain costs of completing the Project with proceeds of debt to be incurred by the City, and to issue debt not exceeding $13,060,000 in aggregate principal amount for purposes of paying and reimbursing costs of the Project.

Section 2. Issuance of Bonds and BANs (a) The City shall issue, if necessary, one or more series of BANs for the purpose of procuring interim financing to apply to the cost of the Project. The City shall issue its BANs, in an aggregate principal amount not to exceed Thirteen Million Sixty Thousand Dollars ($13,060,000) to be designated "Sewage Works Bond Anticipation Notes of _____," to be completed with the year in which issued and series designation, if any. The BANs shall be sold at a price not less than 99% of their par value, shall be numbered consecutively from 1 upward, shall be in multiples of $1,000, as designated in the hereinafter defined Purchase Agreement, shall be dated as of the date of delivery thereof, and shall bear interest at a rate not to exceed 5% per annum (the exact rate or rates to be negotiated) payable upon maturity and upon redemption. The BANs will mature no later than five years after their date of delivery. The BANs are subject to renewal or extension at an interest rate or rates not to exceed 5% per annum (the exact rate or rates to be negotiated with the purchaser of the BANs). The term of the BANs and all renewal BANs may not exceed five (5) years from the date of delivery of the initial BANs. The BANs shall be registered in the name of the purchasers thereof.

(b) The BANs shall be issued pursuant to IC 5-1.5-8-6.1 if sold to the Indiana Bond Bank or pursuant to IC 5-1-14-5 if sold to a financial institution or any other purchaser. The principal of and interest on the BANs shall be payable solely from the issuance of revenue bonds pursuant to and in the manner prescribed by the Act. The Bonds (as defined below) will be payable solely out of and constitute a first charge against the Net Revenues (herein defined as the gross revenues after deduction only for the payment of the reasonable expenses of operation, repair and maintenance, excluding transfers for payment in lieu of property taxes ("PILOTs")), of the sewage works of the City, on a parity with the Outstanding Bonds. The Net Revenues of the sewage works shall include the Pledged Tax Increment. For purposes of this ordinance, the "Pledged Tax Increment" shall mean an annual amount not to exceed $3,360,000 of Tax Increment remaining after payment of the Tax Increment Bonds available for deposit under this ordinance. The Pledged Tax Increment is pledged to pay, on a parity basis, the debt service on and fund reserves for the 2010A Bonds and the Bonds issued under this ordinance. The Pledged Tax Increment shall remain in force for so long as the Bonds authorized under this ordinance are outstanding, provided, however, that (i) the Pledged Tax Increment may be reduced or shall be increased (but not in excess of $3,360,000 annually) so that Net Revenues of the sewage works (including Pledged Tax Increment) in the fiscal year are not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of all bonds payable from the Net Revenues of the sewage works; or (ii) Pledged Tax Increment shall no longer be pledged or treated as Net Revenues of the sewage works upon the one time showing that prior to the City's determination to release the Pledged Tax Increment from the payment of the bonds, the sewage rates and charges are increased sufficiently so that the increased rates and charges applied to the previous fiscal year's operations would have produced Net Revenues (not including Pledged Tax Increment) for said year equal to not less than one hundred twenty-five (125%) of the maximum annual interest and principal requirements of all bonds payable from the Net Revenues of the sewage works. For purposes of this subsection, the records of the sewage works shall be analyzed and all showings prepared annually by a certified public accountant employed by the City for that purpose within 120 days of the close of each fiscal year.

(c) The City shall issue its bonds to be designated "Sewage Works Revenue and Refunding Revenue Bonds of ____," to be completed with the year in which issued and series designation, if any. If the City, with the advice of its financial advisor, determines that it is necessary to issue its bonds in more than one series, the Bonds shall be designated "Sewage Works [Refunding] Revenue Bonds of ____," to be completed within the year in which issued and series designation, if any (hereafter referred to collectively as the "Bonds"). The Bonds shall be issued in an aggregate principal amount not to exceed Forty-three Million Sixty Thousand Dollars ($43,060,000), for the purpose of procuring funds to be applied on the cost of the Project, the refunding of the BANs, if issued, the refunding of the Refunded Bonds and the payment of costs of issuance and all other costs related to the refunding and the Project. The City shall apply moneys currently held for the payment of debt service on the Refunded Bonds to the refunding as provided in Section 8.

The Bonds shall be issued in the denomination of Five Thousand Dollars ($5,000) each or integral multiples thereof. The Bonds shall be numbered consecutively from 1 upward, dated as of the first day of the month in which they are sold or issued, or as of the date of delivery of the Bonds, as determined by the Controller with the advice of the City's financial advisor. Interest on the Bonds shall be payable semiannually on March 1 and September 1 in each year, beginning on the first March 1 or the first September 1 following delivery of the Bonds as designated by the Controller, with the advice of the City's financial advisor. The Bonds shall be sold at a price of not less than 99.5% of the par value thereof. The Bonds shall be payable in lawful money of the United States of America, at the principal office of the Paying Agent (as hereinafter defined). The Bonds shall bear interest at a rate or rates not exceeding 5% per annum (the exact rate or rates to be determined by bidding or negotiation for any refunding series). The Bonds shall mature semiannually, or shall be subject to mandatory sinking fund redemption if term bonds are issued, on March 1 and September 1 of each year, ending no later than March 1, 2038 and in amounts which will either: (i) produce as level debt service as practicable with $5,000 denominations and taking into account the annual debt service on all series of Bonds issued under this ordinance and the Outstanding Bonds, or (ii) maximize the savings on the refunding.

All or a portion of the Bonds may be issued as one or more term bonds, upon election of the purchaser. Such term bonds shall have a stated maturity or maturities on March 1 or September 1 on the dates as determined by the purchaser, but in no event later than the final serial maturity date of the Bonds as hereafter determined in accordance with the above paragraph. The term bonds shall be subject to mandatory sinking fund redemption and final payment(s) at maturity at 100% of the principal amount thereof, plus accrued interest to the redemption date, on principal payment dates which are hereinafter determined in accordance with the above paragraph.

Interest on the Bonds and BANs shall be calculated according to a 360-day calendar year containing twelve 30-day months.

Each series of Bonds shall rank on a parity with the other for all purposes, including the pledge of Net Revenues under this ordinance.

Section 3. Registrar and Paying Agent; Book-Entry Provisions. The Controller is hereby authorized to contract with a qualified financial institution to serve as Registrar and Paying Agent for the Bonds ("Registrar" or "Paying Agent"). The Registrar is hereby charged with the responsibility of authenticating the Bonds. The Controller is hereby authorized to enter into such agreements or understandings with the Registrar as will enable the institution to perform the services required of a registrar and paying agent. The Controller is further authorized to pay such fees as the Registrar may charge for the services it provides as Registrar and Paying Agent and such fees may be paid from the Sewage Works Sinking Fund established to pay the principal of and interest on the Bonds as fiscal agency charges. As to the BANs and as to the Bonds, if the purchaser does not object to such designation, the Controller may serve as Registrar and Paying Agent and in that case, is hereby charged with the duties of a Registrar and Paying Agent.

The principal of the Bonds shall be payable at the principal corporate trust office of the Paying Agent. All payments of interest on the Bonds shall be paid by check, mailed one business day prior to the interest payment date to the registered owners thereof as the names appear as of the fifteenth day of the month preceding the interest payment date ("Record Date") and at the addresses as they appear on the registration books kept by the Registrar or at such other address as is provided to the Paying Agent in writing by such registered owner. If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Paying Agent shall be instructed to wire transfer payments by 1:00 p.m. (New York City time) so such payments are received at the depository by 2:30 p.m. (New York City time). All payments on the Bonds and BANs shall be made in any coin or currency of the United States of America, which on the date of such payment, shall be legal tender for the payment of public and private debts.

Each Bond shall be transferable or exchangeable only upon the books of the City kept for that purpose at the principal corporate trust office of the Registrar by the registered owner in person, or by its attorney duly authorized in writing, upon surrender of such Bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the registered owner, or its attorney duly authorized in writing, and thereupon a new fully registered Bond or Bonds in an authorized aggregate principal amount and of the same maturity, shall be executed and delivered in the name of the transferee or transferees or the registered owner, as the case may be, in exchange therefor. The costs of such transfer or exchange shall be borne by the City except for any tax or governmental charge required to be paid with respect to the transfer or exchange, which taxes or governmental charges are payable by the person requesting such transfer or exchange. The City and the Registrar and Paying Agent for the Bonds may treat and consider the person in whose name such Bonds are registered as the absolute owner thereof for all purposes including for the purpose of receiving payment of, or on account of, the principal thereof and interest due thereon.

The Registrar and Paying Agent may at any time resign as Registrar and Paying Agent upon giving 30 days' notice in writing to the City and by first class mail to each registered owner of the Bonds then outstanding, and such resignation will take effect at the end of such 30 day period or upon the earlier appointment of a successor registrar and paying agent by the City. Any such notice to the City may be served personally or sent by registered mail. The Registrar and Paying Agent may be removed at any time as Registrar and Paying Agent by the City, in which event the City may appoint a successor registrar and paying agent. The City shall notify each registered owner of the Bonds then outstanding by first class mail of the removal of the Registrar and Paying Agent. Notices to the registered owners of the Bonds shall be deemed to be given when mailed by first class mail to the addresses of such registered owners as they appear on the registration books kept by the Registrar.

Upon the appointment of any successor registrar and paying agent by the City, the Controller is authorized and directed to enter into such agreements and understandings with such successor registrar and paying agent as will enable the institution to perform the services required of a registrar and paying agent for the Bonds. The Controller is further authorized to pay such fees as the successor registrar and paying agent may charge for the services it provides as registrar and paying agent and such fees may be paid from the Sewage Works Sinking Fund continued in Section 16 hereof. Any predecessor registrar and paying agent shall deliver all of the Bonds and any cash or investments in its possession with respect thereto, together with the registration books, to the successor registrar and paying agent.

Interest on the Bonds shall be payable from the interest payment date to which interest has been paid next preceding the authentication date of the Bonds unless the Bonds are authenticated after the Record Date and on or before such interest payment date in which case they shall bear interest from such interest payment date, or unless the Bonds are authenticated on or before the Record Date preceding the first interest payment date, in which case they shall bear interest from the original date until the principal shall be fully paid.

The City has determined that it may be beneficial to the City to have the Bonds held by a central depository system pursuant to an agreement between the City and The Depository Trust Company, New York, New York ("Depository Trust Company") and have transfers of the Bonds effected by book-entry on the books of the central depository system ("Book Entry System"). The Bonds may be initially issued in the form of a separate single authenticated fully registered Bond for the aggregate principal amount of each separate maturity of the Bonds. In such case, upon initial issuance, the ownership of such Bonds shall be registered in the register kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company.

With respect to the Bonds registered in the register kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company, the City and the Paying Agent shall have no responsibility or obligation to any other holders or owners (including any beneficial owner ("Beneficial Owner")) of the Bonds with respect to (i) the accuracy of the records of the Depository Trust Company, CEDE & CO., or any Beneficial Owner with respect to ownership questions, (ii) the delivery to any bondholder (including any Beneficial Owner) or any other person, other than the Depository Trust Company, of any notice with respect to the Bonds including any notice of redemption, or (iii) the payment to any bondholder (including any Beneficial Owner) or any other person, other than the Depository Trust Company, of any amount with respect to the principal of, or premium, if any, or interest on the Bonds except as otherwise provided herein.

No person other than the Depository Trust Company shall receive an authenticated Bond evidencing an obligation of the City to make payments of the principal of and premium, if any, and interest on the Bonds pursuant to this ordinance. The City and the Registrar and Paying Agent may treat as and deem the Depository Trust Company or CEDE & CO. to be the absolute bondholder of each of the Bonds for the purpose of (i) payment of the principal of and premium, if any, and interest on such Bonds; (ii) giving notices of redemption and other notices permitted to be given to bondholders with respect to such Bonds; (iii) registering transfers with respect to such Bonds; (iv) obtaining any consent or other action required or permitted to be taken of or by bondholders; (v) voting; and (vi) for all other purposes whatsoever. The Paying Agent shall pay all principal of and premium, if any, and interest on the Bonds only to or upon the order of the

Depository Trust Company, and all such payments shall be valid and effective fully to satisfy and discharge the City's and the Paying Agent's obligations with respect to principal of and premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. Upon delivery by the Depository Trust Company to the City of written notice to the effect that the Depository Trust Company has determined to substitute a new nominee in place of CEDE & CO., and subject to the provisions herein with respect to consents, the words "CEDE & CO." in this ordinance shall refer to such new nominee of the Depository Trust Company. Notwithstanding any other provision hereof to the contrary, so long as any Bond is registered in the name of CEDE & CO., as nominee of the Depository Trust Company, all payments with respect to the principal of and premium, if any, and interest on such Bonds and all notices with respect to such Bonds shall be made and given, respectively, to the Depository Trust Company as provided in a representation letter from the City to the Depository Trust Company.

Upon receipt by the City of written notice from the Depository Trust Company to the effect that the Depository Trust Company is unable or unwilling to discharge its responsibilities and no substitute depository willing to undertake the functions of the Depository Trust Company hereunder can be found which is willing and able to undertake such functions upon reasonable and customary terms, then the Bonds shall no longer be restricted to being registered in the register of the City kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company, but may be registered in whatever name or names the bondholders transferring or exchanging the Bonds shall designate, in accordance with the provisions of this ordinance.

If the City determines that it is in the best interest of the bondholders that they be able to obtain certificates for the fully registered Bonds, the City may notify the Depository Trust

Company and the Registrar, whereupon the Depository Trust Company will notify the Beneficial Owners of the availability through the Depository Trust Company of certificates for the Bonds. In such event, the Registrar shall prepare, authenticate, transfer and exchange certificates for the Bonds as requested by the Depository Trust Company and any Beneficial Owners in appropriate amounts, and whenever the Depository Trust Company requests the City and the Registrar to do so, the Registrar and the City will cooperate with the Depository Trust Company by taking appropriate action after reasonable notice (i) to make available one or more separate certificates evidencing the fully registered Bonds of any Beneficial Owner's Depository Trust Company account or (ii) to arrange for another securities depository to maintain custody of certificates for and evidencing the Bonds.

If the Bonds shall no longer be restricted to being registered in the name of a Depository Trust Company, the Registrar shall cause the Bonds to be printed in blank in such number as the Registrar shall determine to be necessary or customary; provided, however, that the Registrar shall not be required to have such Bonds printed until it shall have received from the City indemnification for all costs and expenses associated with such printing.

In connection with any notice or other communication to be provided to bondholders by the City or the Registrar with respect to any consent or other action to be taken by bondholders, the City or the Registrar, as the case may be, shall establish a record date for such consent or other action and give the Depository Trust Company notice of such record date not less than fifteen (15) calendar days in advance of such record date to the extent possible.

So long as the Bonds are registered in the name of the Depository Trust Company or CEDE & CO. or any substitute nominee, the City and the Registrar and Paying Agent shall be entitled to request and to rely upon a certificate or other written representation from the

Beneficial Owners of the Bonds or from the Depository Trust Company on behalf of such Beneficial Owners stating the amount of their respective beneficial ownership interests in the Bonds and setting forth the consent, advice, direction, demand or vote of the Beneficial Owners as of a record date selected by the Registrar and the Depository Trust Company, to the same extent as if such consent, advice, direction, demand or vote were made by the bondholders for purposes of this ordinance and the City and the Registrar and Paying Agent shall for such purposes treat the Beneficial Owners as the bondholders. Along with any such certificate or representation, the Registrar may request the Depository Trust Company to deliver, or cause to be delivered, to the Registrar a list of all Beneficial Owners of the Bonds, together with the dollar amount of each Beneficial Owner's interest in the Bonds and the current addresses of such Beneficial Owners.

Section 4. Redemption of BANs and Bonds. (a) The BANs are prepayable by the City, in whole or in part, at any time upon 20 days' notice to the owner of the BANs with no premium.

(b) The Bonds of this issue are redeemable at the option of the City no sooner than September 1, 2027, and thereafter on any date, on thirty (30) days' notice, in whole or in part, in the order of maturity as determined by the City and by lot within a maturity, at face value, together with no premium, plus in each case accrued interest to the date fixed for redemption. The exact redemption features shall be established by the Controller, with the advice of the City's financial advisor, prior to the sale of the Bonds.

If any Bond is issued as a term bond, the Paying Agent shall credit against the mandatory sinking fund requirement for the Bonds maturing as term bonds, and corresponding mandatory redemption obligation, in the order determined by the City, any Bonds maturing as term bonds which have previously been redeemed (otherwise than as a result of a previous mandatory redemption requirement) or delivered to the Registrar for cancellation or purchased for cancellation by the Paying Agent and not theretofore applied as a credit against any redemption obligation. Each Bond maturing as a term bond so delivered or canceled shall be credited by the Paying Agent at 100% of the principal amount thereof against the mandatory sinking fund obligation on such mandatory sinking fund date, and any excess of such amount shall be credited on future redemption obligations, and the principal amount of the Bonds to be redeemed by operation of the mandatory sinking fund requirement shall be accordingly reduced; provided, however, the Paying Agent shall credit only such Bonds maturing as term bonds to the extent received on or before forty-five (45) days preceding the applicable mandatory redemption date as stated above.

Each Five Thousand Dollars ($5,000) principal amount shall be considered a separate bond for purposes of optional mandatory redemption. If less than an entire maturity is called for redemption, the Bonds to be called shall be selected by lot by the Registrar. If some Bonds are to be redeemed by optional redemption and mandatory sinking fund redemption on the same date, the Registrar shall select by lot the Bonds for optional redemption before selecting the Bonds by lot for the mandatory sinking fund redemption.

(c) In either case, notice of such redemption shall be given at least thirty (30) days prior to the date fixed for redemption by mail unless the notice is waived by the registered owner of a Bond. Such notice shall be mailed to the address of the registered owners as shown on the registration records of the City as of the date which is forty-five (45) days prior to such redemption date. The notice shall specify the date and place of redemption and sufficient identification of the Bonds called for redemption. The place of redemption shall be determined by the City. Interest on the Bonds so called for redemption shall cease on the redemption date fixed in such notice if sufficient funds are available at the principal office of the Paying Agent to pay the redemption price on the date so named. Coincidentally with the payment of the redemption price, the Bonds so called for redemption shall be surrendered for cancellation.

Section 5. Execution and Negotiability. Each of the BANs and Bonds shall be executed in the name of the City by the manual or facsimile signature of the Mayor, countersigned by the manual or facsimile signature of its Controller and attested by the manual or facsimile signature of its Clerk, and the seal of the City shall be affixed, imprinted or impressed to or on each of the BANs and Bonds manually, by facsimile or any other means; and these officials, by the execution of a Signature and No Litigation Certificate, shall adopt as and for their own proper signatures the facsimile signatures appearing on the Bonds or BANs. In case any officer whose signature or facsimile signature appears on the Bonds or BANs shall cease to be such officer before the delivery of the Bonds or BANs, the signature of such officer shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

The BANs and Bonds shall have all of the qualities and incidents of negotiable instruments under the laws of the State of Indiana, subject to the provisions for registration herein.

The Bonds shall also be authenticated by the manual signature of the Registrar, and no Bond shall be valid or become obligatory for any purpose until the certificate of authentication thereon has been so executed.

Section 6. Form of Bonds. The form and tenor of the Bonds shall be substantially as follows, all blanks to be filled in properly prior to delivery:

[Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City of Mishawaka, Indiana, or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.]

NO. _____

UNITED STATES OF AMERICA

STATE OF INDIANA COUNTY OF ST. JOSEPH

CITY OF MISHAWAKA
SEWAGE WORKS [REFUNDING] REVENUE
[AND REFUNDING REVENUE] BOND OF ________[, SERIES ___]

[Interest Rate]	[Maturity Date]	Original Date	Authentication Date	[CUSIP]

REGISTERED OWNER:

PRINCIPAL SUM:

The City of Mishawaka ("City"), in St. Joseph County, State of Indiana, for value received, hereby promises to pay to the Registered Owner named above or registered assigns, solely out of the special revenue fund hereinafter referred to, the Principal Sum set forth above on [the Maturity Date set forth above] **OR** [March 1 and September 1 on the dates and in the amounts as set forth on Exhibit A attached hereto] (unless this bond be subject to and be called for redemption prior to maturity as hereinafter provided), and to pay interest hereon at the [Interest Rate per annum specified above] **OR** [interest rate[s] per annum as set forth on Exhibit A attached hereto] from the interest payment date to which interest has been paid next preceding the Authentication Date of this bond unless this bond is authenticated after the fifteenth day of the month preceding an interest payment date and on or before such interest payment date in which case it shall bear interest from such interest payment date or unless this bond is authenticated on or before __________, 15, 20___ in which case it shall bear interest from the Original Date, until the principal is paid, which interest is payable semiannually on the first days of March and September of each year, beginning on __________, 20___. Interest shall be calculated according to a 360-day calendar year containing twelve 30-day months.

The principal of this bond is payable at the principal office of ______________________ ("Registrar" or "Paying Agent"), in the _____ of

______________________, Indiana. All payments of interest on this bond shall be paid by check, mailed one business day prior to the interest payment date to the registered owner hereof as of the fifteenth day of the month preceding such interest payment date at the address as it appears on the registration books kept by the Registrar or at such other address as is provided to the Paying Agent in writing by the registered owner. If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Paying Agent shall wire transfer payments by 1:00 p.m. (New York City time) so such payments are received at the depository by 2:30 p.m. (New York City time). All payments on the bond shall be made in any coin or currency of the United States of America, which on the dates of such payment, shall be legal tender for the payment of public and private debts.

THE CITY SHALL NOT BE OBLIGATED TO PAY THIS BOND OR THE INTEREST HEREON EXCEPT FROM THE HEREINAFTER DESCRIBED SPECIAL FUND, AND NEITHER THIS BOND NOR THE ISSUE OF WHICH IT IS A PART SHALL IN ANY RESPECT CONSTITUTE A CORPORATE INDEBTEDNESS OF THE CITY WITHIN THE PROVISIONS AND LIMITATIONS OF THE CONSTITUTION OF THE STATE OF INDIANA.

This bond is [the only] one of an authorized issue of bonds of the City [to be] [issued in series][, of like date, tenor and effect, except as to numbering, rates of interest, series designation, and dates of maturity]; aggregating ________________________ Dollars ($________________) [for this series]; numbered consecutively from 1 up; issued for the purpose of [refunding certain Refunded Bonds (as defined in the hereinafter defined Ordinance),] [providing funds to be applied on the cost of additions, extensions and improvements to the City's sewage works ("Project")] [, refunding interim notes issued in anticipation of the bonds] and to pay issuance expenses. This bond is issued pursuant to an Ordinance adopted by the Common Council of the City on the _________ day of _____________, 2017, entitled "An Ordinance of the City of Mishawaka authorizing the advance refunding by the City of its Sewage Works Revenue Bonds of 2010, Series B; authorizing the issuance of sewage works revenue bonds for the purpose of providing funds to pay the cost of certain additions, extensions and improvements to the municipal sewage works of the City and provide for the refunding; providing for the safeguarding of the interests of the owners of said bonds, other matters connected therewith, including the issuance of notes in anticipation of bonds, and repealing ordinances inconsistent herewith" ("Ordinance"), and in accordance with the provisions of Indiana law, including without limitation [Indiana Code 5-1-5,] Indiana Code 5-1-14 and Indiana Code 36-9-23, each as in effect on the date of delivery of the bonds of this issue (collectively, "Act"), the proceeds of which bonds are to be applied to the costs of [the refunding and legal defeasance of the Refunded Bonds] [and the] [Project][, the payment of notes issued in anticipation of the bonds,] and expenses incurred in connection therewith.

Pursuant to the provisions of the Act and the Ordinance, the principal of and interest on this bond and all other bonds of said issue[, including the Sewage Works [Refunding] Revenue Bonds of _____, Series ___ ("Series ___ Bonds")] and any bonds hereafter issued on a parity therewith are payable solely from the Sewage Works Sinking Fund continued by the Ordinance ("Sinking Fund") to be provided from the Net Revenues (defined as the gross revenues after deduction only for the payment of the reasonable expenses for operation, repair and maintenance, excluding transfers for payment in lieu of property taxes) of the sewage works of the City. The bonds rank on a parity with the Outstanding Bonds (as defined in the Ordinance) [and the Series ___ Bonds]. Under the Ordinance, Net Revenues include the Pledged Tax Increment (as defined in the Ordinance) subject to Section 2(b) of the Ordinance.

[Pursuant to the Ordinance and the Escrow Agreement defined therein, the City has set aside securities (purchased from proceeds of the bonds of this issue and funds on hand of the City) and certain cash in a Trust Account to provide payment of principal of and interest on the Refunded Bonds by the purchase of obligations of the United States of America.]

The City irrevocably pledges the entire Net Revenues of the sewage works to the prompt payment of the principal of and interest on the bonds authorized by the Ordinance, of which this is one, and any bonds ranking on a parity therewith, including [the Series ___ Bonds and] the Outstanding Bonds, to the extent necessary for that purpose, and covenants that it will cause to be fixed, maintained and collected such rates and charges for services rendered by the utility as are sufficient in each year for the payment of the proper and reasonable expenses of Operation and Maintenance (as defined in the Financial Assistance Agreement (as defined in the Ordinance)), of the sewage works and for the payment of the sums required to be paid into the Sinking Fund under the provisions of the Act and the Ordinance. If the City or the proper officers thereof shall fail or refuse to so fix, maintain and collect such rates or charges, or if there be a default in the payment of the interest on or principal of this bond, the owner of this bond shall have all of the rights and remedies provided for in the Act, including the right to have a receiver appointed to administer the works and to charge and collect rates sufficient to provide for the payment of this bond and the interest hereon.

The City further covenants that it will set aside and pay into its Sinking Fund a sufficient amount of the Net Revenues of the works for payment of (a) the interest on all bonds which by their terms are payable from the revenues of the sewage works, as such interest shall fall due, (b) the necessary fiscal agency charges for paying bonds and interest, (c) the principal of all bonds which by their terms are payable from the revenues of the sewage works, as such principal shall fall due, and (d) an additional amount as a margin of safety to [create and] maintain the debt service reserve required by the Ordinance. Such required payments shall constitute a first charge upon all the Net Revenues of the sewage works, on a parity with the Outstanding Bonds [and the Series ___ Bonds].

The bonds of this issue maturing on and after __________ 1, 20___, are redeemable at the option of the City on __________ 1, 20___, or any date thereafter, on thirty (30) days' notice, in whole or in part, in the order of maturity as determined by the City and by lot within a maturity, at face value, with no premium, plus accrued interest to the date fixed for redemption.

[The bonds maturing on __________ 1, ____ are subject to mandatory sinking fund redemption prior to maturity, at a redemption price equal to the principal amount thereof plus accrued interest on the dates and in the amounts set forth below:

Date	Amount

*

* Final Maturity]

Each Five Thousand Dollars ($5,000) principal amount shall be considered a separate bond for purposes of optional [and mandatory] redemption. If less than an entire maturity is called for redemption, the bonds to be redeemed shall be selected by lot by the Registrar. [If some bonds are to be redeemed by optional redemption and mandatory sinking fund redemption on the same date, the Registrar shall select by lot the bonds for optional redemption before selecting the bonds by lot for the mandatory sinking fund redemption.]

Notice of such redemption shall be mailed to the address of the registered owner as shown on the registration records of the City, as of the date which is forty-five (45) days prior to such redemption date, not less than thirty (30) days prior to the date fixed for redemption unless the notice is waived by the registered owner of this bond. The notice shall specify the date and place of redemption and sufficient identification of the bonds called for redemption. The place of redemption may be determined by the City. Interest on the bonds so called for redemption shall cease on the redemption date fixed in such notice if sufficient funds are available at the place of redemption to pay the redemption price on the date so named.

If this bond shall not be presented for payment or redemption on the date fixed therefor, the City may deposit in trust with its depository bank an amount sufficient to pay such bond or the redemption price, as the case may be, and thereafter the registered owner shall look only to the funds so deposited in trust with said bank for payment and the City shall have no further obligation or liability in respect thereto.

This bond is transferable or exchangeable only upon the books of the City kept for that purpose at a principal corporate trust office of the Registrar by the registered owner hereof in person, or by his attorney duly authorized in writing, upon surrender of this bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the registered owner, or his attorney duly authorized in writing, and thereupon a new fully registered bond or bonds in an authorized aggregate principal amount and of the same maturity, shall be executed and delivered in the name of the transferee or transferees or to the registered owner, as the case may be, in exchange therefor. This bond may be transferred without cost to the registered owner except for any tax or governmental charge required to be paid with respect to the transfer. The City, the Registrar, the Paying Agent and any other registrar or paying agent for this bond may treat and consider the person in whose name this bond is registered as the absolute owner hereof for all purposes including for the purpose of receiving payment of, or on account of, the principal hereof and interest due hereon.

[The bonds shall be initially issued in a Book Entry System (as defined in the Ordinance). The provisions of this bond and of the Ordinance are subject in all respects to the provisions of the Letter of Representations between the City and The Depository Trust Company, or any substitute agreement, effecting such Book Entry System.]

This bond is subject to defeasance prior to redemption or payment as provided in the Ordinance referred to herein. THE OWNER OF THIS BOND, BY THE ACCEPTANCE

HEREOF, HEREBY AGREES TO ALL THE TERMS AND PROVISIONS CONTAINED IN THE ORDINANCE. The Ordinance may be amended without the consent of the owners of the bonds as provided in the Ordinance if the Common Council determines, in its sole discretion, that the amendment shall not adversely affect the rights of any of the owners of the bonds.

The bonds maturing in any one year are issuable only in fully registered form in the denomination of $5,000 or any integral multiple thereof.

It is hereby certified and recited that all acts, conditions and things required to be done precedent to and in the execution, issuance and delivery of this bond have been done and performed in regular and due form as provided by law.

This bond shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been executed by an authorized representative of the Registrar.

IN WITNESS WHEREOF, the City of Mishawaka, in St. Joseph County, Indiana, has caused this bond to be executed in its corporate name by the manual or facsimile signature of its Mayor, countersigned with the manual or facsimile signature of the Controller, its corporate seal to be hereunto affixed, imprinted or impressed by any means and attested manually or by facsimile by its Clerk.

CITY OF MISHAWAKA, INDIANA

By ______________________________
Mayor

COUNTERSIGNED

By ______________________________
Controller

[SEAL]

Attest:

____
Clerk

REGISTRAR'S CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds described in the within-mentioned Ordinance.

______________________________, as Registrar

By: ______________________________
Authorized Representative

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto ________________________________ this bond and all rights thereunder, and hereby irrevocably constitutes and appoints ________________________________, attorney, to transfer the within bond in the books kept for the registration thereof with full power of substitution in the premises.

Dated: ____________________

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution participating in a Securities Transfer Association recognized signature guarantee program.	NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within bond in every particular, without alteration or enlargement or any change whatsoever.

[EXHIBIT A]

[end of bond form]

Section 7. Authorization for Preparation and Sale of the BANs and the Bonds; Official Statement; Continuing Disclosure. (a) The Controller is hereby authorized and directed to have the BANs and the Bonds prepared, and the Mayor, Controller and Clerk are hereby authorized and directed to execute and attest the BANs and the Bonds in the form and manner provided herein.

(b) The Controller is hereby authorized and directed to deliver the BANs and the Bonds to the respective purchasers thereof. At the time of delivery of the BANs and the Bonds, the Controller shall collect the full amount which the respective purchasers have agreed to pay therefor, which amount shall not be less than 99% of the face value of the BANs and not less than 99.5% of the face value of the Bonds, as the case may be. Each series of Bonds herein authorized, when fully paid for and delivered to the purchaser, shall be the binding special revenue obligations of the City payable out of the Net Revenues of the sewage works. The proceeds derived from the sale of the Bonds shall be and are hereby set aside for application on the refunding of the Refunded Bonds and on the cost of the Project, to the refunding of the BANs if issued, and the expenses necessarily incurred in connection with the BANs and the Bonds. The proper officers of the City are hereby directed to sell the Bonds, to draw all proper and necessary warrants, and to do whatever acts and things which may be necessary to carry out the provisions of this ordinance. Payment for the BANs may be made in installments.

(c) The Controller is hereby authorized to appoint a financial institution to serve as escrow trustee ("Escrow Trustee") in accordance with the terms of the Escrow Agreement between the City and the Escrow Trustee ("Escrow Agreement"). The Mayor and the Controller are hereby authorized and directed to complete, execute and attest an Escrow Agreement on behalf of the City so long as its provisions are consistent with this ordinance.

(d) The execution, by either the Mayor, the Controller, the City's financial advisor, or the purchaser of the Bonds, of a subscription for United States Treasury Obligations – State and Local Government Series for investments of proceeds of the Bonds to be held under the Escrow Agreement in a manner consistent with this ordinance is hereby approved.

(e) Distribution of an Official Statement (preliminary and final) for the Bonds, prepared by H.J. Umbaugh & Associates, Certified Public Accountants, LLP, on behalf of the City, is hereby authorized and approved and the Mayor and Controller are authorized and directed to execute the Official Statement on behalf of the City in a form consistent with the ordinance. The Mayor or Controller is hereby authorized to designate the preliminary Official

Statement as "nearly final" for purposes of Rule 15c2-12 as promulgated by the Securities and Exchange Commission ("Rule").

(f) If the Bonds are subject to the Rule, a continuing disclosure undertaking ("Undertaking") for the Bonds is hereby authorized and approved by the Common Council, and the Mayor and Controller are hereby authorized and directed to complete, execute and attest the same of behalf of the City. Notwithstanding any other provisions of this ordinance, failure of the City to comply with the Undertaking shall not be considered an event of default under the Bonds or this ordinance.

Section 8. Refunding of the Refunded Bonds. The Controller shall, with the assistance of the City's financial advisor and legal counsel, determine the date the Refunded Bonds will be paid, which date will be as soon as legally possible after delivery of the Bonds. The City shall use Bond proceeds and funds on hand allocable to the Refunded Bonds to pay the principal of and interest and redemption premium, if any, on the Refunded Bonds due on the date on which the Refunded Bonds may be called for redemption. Concurrently with the delivery of the Bonds, the Controller may acquire, with a portion of the proceeds of the Bonds and cash on hand, direct obligations of or obligations the principal and interest on which are unconditionally guaranteed by, the United States of America ("Government Obligations") to be used, together with certain cash from the proceeds of the Bonds and cash on hand as set forth in the Escrow Agreement, to refund and legally defease the Refunded Bonds all as set forth in the Escrow Agreement. In order to refund the Refunded Bonds, the Controller shall deposit Government Obligations and certain cash with the Escrow Trustee under the Escrow Agreement in an amount sufficient to provide money for payment of the principal of and interest and redemption premium, if any, on the Refunded Bonds until the earliest date upon which the Refunded Bonds may be called for redemption.

The City shall obtain a verification of an accountant as to the sufficiency of the funds deposited and used to accomplish said refunding and legal defeasance of the Refunded Bonds.

Section 9. Sale of Bonds; Award of Bonds. Prior to the sale of the Bonds, the Controller shall cause to be published either (i) a notice of bond sale in one or more newspapers published in St. Joseph County with general circulation in the City, two times, at least one week apart, the first publication made at least fifteen (15) days before the date of the sale and the second publication being made at least three (3) days before the date of the sale, or (ii) a notice of intent to sell in one or more newspapers published in St. Joseph County with general circulation in the City and the *Court & Commercial Record* all in accordance with IC 5-1-11 and IC 5-3-1. A notice of sale may also be published one time in the *Court & Commercial Record*, and a summary notice may also be published in *The Bond Buyer* in New York, New York. The notice shall state the character and amount of the Bonds, the maximum rate of interest thereon, the terms and conditions upon which bids will be received and the sale made, and such other information as the Controller and the attorneys employed by the City shall deem advisable and any summary notice may contain any information deemed so advisable. The notice will also state that the winning bidder will agree to assist the City in establishing the issue price of the Bonds under Treas. Reg. Section 1.148-1(f) ("Issue Price Regulation"). The criteria for establishing the issue price under the Issue Price Regulation shall be set forth in the preliminary Official Statement and/or the bid form. The notice may provide, among other things, that electronic bidding will be permitted and that the successful bidder shall be required to submit a certified or cashier's check or a wire transfer of funds in an amount equal to 1% of the principal amount of the Bonds described in the notice to guarantee performance on the part of the bidder. In the event the successful bidder shall fail or refuse to accept delivery of the Bonds and pay for the same as soon as the Bonds are ready for delivery, or at the time fixed in the notice of sale, then said check and the proceeds thereof shall be the property of the City and shall be considered as its liquidated damages on account of such default. Bidders for the Bonds will be required to name the rate or rates of interest which the Bonds are to bear, not exceeding the maximum rate hereinbefore fixed, and such interest rate or rates shall be in multiples of one-eighth (1/8) or one-hundredth (1/100) of one percent (1%). The notice may provide that the rate bid on a maturity shall be equal to or greater than the rate bid on the immediately preceding maturity. No conditional bid or bid for less than 99.5% of the par value of the Bonds will be considered. The opinion of Ice Miller LLP, bond counsel of Indianapolis, Indiana, approving the legality of the Bonds, will be furnished to the purchaser at the expense of the City.

The Bonds shall be awarded by the Controller to the best bidder who has submitted his bid in accordance with the terms of this ordinance, IC 5-1-11 and the notice of sale. The best bidder will be the one who offers the lowest net interest cost to the City, to be determined by computing the total interest on all of the Bonds to their maturities and adding thereto the discount bid, if any, and deducting the premium bid, if any. The right to reject any and all bids shall be reserved. If an acceptable bid is not received on the date of sale, the sale may be continued from day to day thereafter without further advertisement for a period of thirty (30) days, during which time no bid which provides a higher net interest cost to the City than the best bid received at the time of the advertised sale will be considered.

If a series of Bonds is sold solely to refund the Refunded Bonds, the Mayor and the Controller are hereby authorized to negotiate the sale of the Bonds in accordance with a Purchase

Contract ("Purchase Contract") between the City and the purchaser of the series of Bonds being issued to refund the Refunded Bonds. The Mayor and the Controller are authorized to execute the Purchase Contract and deliver the Bonds to the purchaser of the Bonds so long as their terms are consistent with this ordinance. Such Purchase Contract shall establish a final principal amount, interest rates, maturity schedule, optional redemption provisions and term bonds mandatory redemptions, if any.

Section 10. Use of Proceeds for Project and Costs of Issuance. Any accrued interest and any premium received at the time of the delivery of the Bonds shall be deposited in the Sewage Works Sinking Fund hereinafter defined. The remaining proceeds from the sale of the Bonds, after allocating the amount needed to accomplish the refunding of the Refunded Bonds in accordance with Section 8 and to the extent not used to refund BANs, and BAN proceeds shall be deposited in a bank or banks which are legally designated depositories for the funds of the City, in a special account or accounts to be designated as "City of Mishawaka, Sewage Works Construction Account" ("Construction Account"). All funds deposited to the credit of the Sewage Works Sinking Fund or the Construction Account shall be deposited, held, secured or invested in accordance with the laws of the State of Indiana relating to the depositing, holding, securing or investing of public funds, including particularly IC 5-13, as amended and supplemented. The funds in the Construction Account shall be expended only for the purpose of paying the cost of the Project, refunding the BANs, if issued, or as otherwise required by the Act and for the expenses of issuance of the Bonds. The cost of obtaining the services of Ice Miller LLP, H.J. Umbaugh & Associates, Certified Public Accountants, LLP and the City Attorney shall be considered as a part of the cost of the Project on account of which the BANs and Bonds are issued. Any balance or balances remaining unexpended in such special account or accounts after completion of the Project, which are not required to meet unpaid obligations incurred in connection with such Project, shall either (1) be paid into the Sinking Fund and used solely for the purposes of the Sinking Fund or (2) be used for the same purpose or type of project for which the Bonds were originally issued, all in accordance with IC 5-1-13, as amended and supplemented.

Section 11. Financial Records and Accounts. The City shall keep proper records and books of account, separate from all of its other records and accounts, in which complete and correct entries shall be made showing all revenues received on account of the operation of the sewage works, all disbursements made therefrom and all transactions relating to the utility. Copies of all such statements and reports shall be kept on file in the office of the Clerk. The City shall maintain on file the audited financial statements of said works prepared by the State Board of Accounts.

Section 12. Pledged Tax Increment. The Net Revenues of the sewage works shall continue to include the Pledged Tax Increment. The Pledged Tax Increment is pledged to the payment of the Bonds, on a parity with the 2010A Bonds, subject to Section 2(b) of this ordinance.

Section 13. Pledge of Net Revenues. The interest on and the principal of the Bonds issued pursuant to the provisions of this ordinance, and any bonds hereafter issued on a parity therewith, shall constitute a first charge on all the Net Revenues, on a parity with the Outstanding Bonds, and such Net Revenues are hereby irrevocably pledged to the payment of the interest on and principal of such Refunding Bonds, to the extent necessary for that purpose.

Section 14. Revenue Fund. The City shall segregate, deposit and keep in a special fund, separate and apart from all other funds of the City, all gross revenues received on account of the sewage works, which special fund was established and designated as the "City of Mishawaka, Indiana, Sewage Works Revenue Fund" ("Revenue Fund") and is continued hereby. Out of said revenues the proper and reasonable expenses of operation, repair and maintenance of the sewage works shall be paid, the principal and interest of all bonds and fiscal agency charges of bank paying agents shall be paid, reserves shall be funded, and the costs of replacements, extensions, additions and improvements shall be paid as hereinafter provided. No moneys derived from the revenues of the sewage works shall be transferred to the general fund of the City or be used for any purpose not connected with the sewage works so long as any bonds payable from the revenues of the sewage works are outstanding.

Section 15. Operation and Maintenance Fund. The Operation and Maintenance Fund ("O&M Fund") is hereby continued. On the last day of each calendar month, a sufficient amount of revenues of the sewage works shall be transferred from the Revenue Fund to the O&M Fund. The balance maintained in this Fund shall be sufficient to pay the expenses of operation, repair and maintenance of the works for the then next succeeding two (2) calendar months. The moneys credited to this Fund shall be used for the payment of the reasonable and proper operation, repair and maintenance expenses of the sewage works on a day-to-day basis, but none of the moneys in the O&M Fund shall be used for PILOTs, depreciation, replacements, improvements, extensions or additions. Any monies in said Fund may be transferred to the Sewage Works Sinking Fund if necessary to prevent a default in the payment of principal of or interest on the outstanding bonds of the sewage works, or if necessary to eliminate any deficiencies in credits to or minimum balance in the Reserve Accounts described below.

Section 16. Sewage Works Sinking Fund (a) The Sewage Works Sinking Fund ("Sinking Fund") is hereby continued for the payment of the principal of and interest on revenue bonds which by their terms are payable from the Net Revenues of the sewage works and the payment of any fiscal agency charges in connection with the payment of bonds. The Sinking Fund shall consist of a Debt Service Account, and two Reserve Accounts hereby continued. The Sinking Fund shall be continued until all of the bonds payable from the Net Revenues of the sewage works have been paid.

(b) Debt Service Account. Any moneys heretofore accumulated to pay principal of and interest on the Refunded Bonds shall be credited to and become a part of the Trust Account under the Escrow Agreement and shall be applied on the first payments made from the Trust Account. All Pledged Tax Increment shall be deposited into the Sinking Fund and shall be deemed as Net Revenues of the sewage works. Upon receipt by the City, the Pledged Tax Increment shall be credited to the Debt Service Account. Any Pledged Tax Increment received by the City in excess of the requirements of the Debt Service Account shall be used to satisfy the requirements of the 1994 Reserve Account and the 1999 Reserve Account (each as hereinafter defined) on a parity basis. After making the required monthly payments into the O&M Fund, Net Revenues shall be deposited into the Debt Service Account monthly, as available, in an amount sufficient for the payment of: (a) the amount required for the interest on the all Outstanding Bonds, the Bonds and any bonds hereafter issued and payable by their terms from the Net Revenues of the sewage works; (b) the principal of all Outstanding Bonds, the Bonds and any bonds hereinafter issued and payable by their terms from the Net Revenues of the sewage works; and (c) the necessary fiscal agency charges for paying the principal of and interest on all Outstanding Bonds, the Bonds and any bonds hereafter issued and payable by their terms from the Net Revenues of the sewage works. After accounting for the amount of Pledged Tax Increment on deposit in the Debt Service Account, the monthly payments into the Debt Service

Account shall be in an amount equal to at least one-sixth (1/6) of the amount required during the next succeeding six (6) calendar months for the payment of interest on and principal of the Outstanding Bonds, the Bonds, and all bonds hereafter issued payable by their terms from the Net Revenues of the sewage works, and an amount necessary to pay the bank fiscal agency charges as the same become payable. The City shall, from the sums deposited in the Sinking Fund and credited to the Debt Service Account, remit promptly to the registered owner or to the bank fiscal agency sufficient moneys to pay the interest and principal on the due dates thereof together with the amount of bank fiscal agency charges.

(c) Reserve Accounts. (i) The 2015 Bonds are secured by the 1994 Reserve Account described below. The 2010A Bonds purchased by the Authority as part of its SRF Program are secured by the 1999 Reserve Account described below. The 1999 Reserve Account will serve as the reserve for the Bonds issued hereunder.

(ii) 1994 Reserve Account. The reserve account continued for the 2015 Bonds ("1994 Reserve Account") is hereby continued. The 1994 Reserve Account serves as the reserve for the 2015 Bonds and it may also serve as the reserve for any series of future bonds not purchased by the Authority as part of its SRF Program. The 1994 Reserve Account contains a surety which funds, in part, the required balance for the 1994 Reserve Account with the remaining balance being funded with cash. Any moneys accumulated as a reserve for the Refunded Bonds may be credited to and made a part of the Trust Account under the Escrow Agreement and used for the refunding of the Refunded Bonds, may be retained in the 1994 Reserve Account or may be used for deposit into the 1999 Reserve Account. After the refunding of the Refunded Bonds, the balance to be maintained in the 1994 Reserve Account, taking into account the surety held therein and the cash, shall equal the maximum annual debt service on the 2015 Bonds ("Reserve Requirement").

The 1994 Reserve Account shall constitute the margin for safety and protection against default in the payment of principal of and interest on the 2015 Bonds and any future bonds not purchased by the Authority as part of its SRF Program but secured by the 1994 Reserve Account, and the moneys in the 1994 Reserve Account shall be used to pay current principal and interest on the 2015 Bonds to the extent that moneys in the Debt Service Account are insufficient for that purpose. No moneys in the 1994 Reserve Account shall secure or be used to pay the principal of or interest on the 2010A Bonds or the Bonds issued under this ordinance. Any moneys in the 1994 Reserve Account in excess of the Reserve Requirement shall be transferred to the Sewage Works Improvement Fund.

(iii) 1999 Reserve Account. The 1999 Reserve Account ("1999 Reserve Account") is hereby continued. The 1999 Reserve Account shall continue to serve as the reserve for the 2010A Bonds and shall also serve as the reserve for any future bonds purchased by the Authority as part of its SRF Program. The 1999 Reserve Account shall also serve as the reserve for the Bonds issued under this ordinance. The balance therein shall equal but not exceed the maximum annual debt service on the 2010A Bonds, any parity bonds issued in the future by the City which are payable from the Net Revenues of the sewage works and secured by the 1999 Reserve Account, and the Bonds ("1999 Reserve Requirement"). If the initial deposit into the 1999 Reserve Account does not equal the 1999 Reserve Requirement or if no deposit is made, an amount of Net Revenues shall be deposited to the 1999 Reserve Account on the last day of each calendar month until the balance therein equals the 1999 Reserve Requirement. The monthly deposits shall be equal in amount and sufficient to accumulate the 1999 Reserve Requirement within five years of the date of delivery of the Bonds. The 1999 Reserve Account shall constitute the margin for safety and protection against default in the payment of principal of and interest on the 2010A Bonds and the Bonds, and the moneys therein shall be used to pay current principal and interest on the 2010A Bonds and the Bonds to the extent that moneys in the Debt Service Account are insufficient for that purpose. No moneys in the 1999 Reserve Account shall secure or be used to pay the principal of or interest on the 2015 Bonds. Any moneys in the 1999 Reserve Account in excess of the 1999 Reserve Requirement shall be transferred to the Sewage Works Improvement Fund.

(iv) Deficiency Restoration. Any deficiency in the balance maintained in the 1994 Reserve Account and the 1999 Reserve Account shall be made up on a parity (pro rata) basis, from the next available Net Revenues remaining after credits into the Debt Service Account.

Section 17. Sewage Works Improvement Fund. The Sewage Works Improvement Fund ("Improvement Fund") is hereby continued. Any excess revenues over and above the requirements of the O&M Fund and Sinking Fund may be transferred or credited from the Revenue Fund to the Improvement Fund, and said Fund shall be used for improvements, replacements, additions and extensions of the sewage works and to make payments representing PILOTs. The City reserves the right to transfer PILOTs from the Improvement Fund no more frequently than semiannually in accordance with the Act, and only if all required transfers have been made to the Sinking Fund and the accounts of the Sinking Fund contain the required balances as of the date the PILOTs are paid. In no event shall any PILOTs be treated as an expense of operation and maintenance, nor in any case shall it be payable from the O&M Fund or the Sinking Fund. Moneys in the Improvement Fund shall be transferred to the Sinking Fund if necessary to prevent a default in the payment of principal and interest on the then outstanding bonds or, if necessary, to eliminate any deficiencies in credits to or minimum balance in any of the Reserve Accounts of the Sinking Fund or may be transferred to the O&M Fund to meet unforeseen contingencies in the operation, repair and maintenance of the sewage works.

Section 18. Maintenance of Funds; Investments. The Sinking Fund shall be deposited in and maintained as a separate account or accounts from all other accounts of the City. The O&M Fund and the Improvement Fund may be maintained in a single account, or accounts, but such account, or accounts, shall likewise be maintained separate and apart from all other accounts of the City and apart from the Sinking Fund account or accounts. All moneys deposited in the accounts shall be deposited, held and secured as public funds in accordance with the public depository laws of the State of Indiana; provided that moneys therein may be invested in obligations in accordance with the applicable laws, including particularly Indiana Code, Title 5, Article 13, as amended or supplemented, and in the event of such investment the income therefrom shall become a part of the funds invested and shall be used only as provided in this ordinance.

Section 19. Defeasance of the Bonds. If, when the Bonds or a portion thereof shall have become due and payable in accordance with their terms or shall have been duly called for redemption or irrevocable instructions to call the Bonds or a portion thereof for redemption shall have been given, and the whole amount of the principal and the interest and the premium, if any, so due and payable upon all of the Bonds or a portion thereof then outstanding shall be paid; or (i) cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in (ii) below), or (ii) direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America, the principal of and the interest on which when due will provide sufficient moneys for such purpose, shall be held in trust for such purpose, and provision shall also be made for paying all fees and expenses for the redemption, then and in that case the Bonds or any designated portion thereof issued hereunder shall no longer be deemed outstanding or entitled to the pledge of the Net Revenues of the City's sewage works.

Section 20. Rate Covenant. The City covenants and agrees that it will establish and maintain just and equitable rates or charges for the use of and the service rendered by the works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses said sewage works by or through any part of the sewage system of the City, or that in any way uses or is served by such works, at a level adequate to produce and maintain sufficient revenue (including user and other charges, fees, income or revenues available to the City), together with the Pledged Tax Increment reasonably expected to be collected and available to provide for the timely payment of debt service on the Outstanding Bonds, to provide for the proper Operation and Maintenance (as defined in the Financial Assistance Agreement) of the sewage works, to comply with and satisfy all covenants contained in this ordinance and the Financial Assistance Agreement and to pay all obligations of the sewage works and of the City with respect to the sewage works. Such rates and charges shall, if necessary, be changed and readjusted from time to time so that the revenues therefrom shall always be sufficient, together with the Pledged Tax Increment reasonably expected to be collected and available to provide for the timely payment of debt service on the Bonds and the 2010A Bonds, to meet the expenses of Operation and Maintenance of the sewage works and the requirements of the Sinking Fund. The rates or charges so established shall apply to any and all use of such works by and service rendered to the City and all departments thereof, and shall be paid by the City or the various departments thereof as the charges accrue.

For purposes of determining whether the Pledged Tax Increment will be considered to be reasonably expected to be collected and available to provide for the timely payment of debt service, the following shall control:

(a) the estimated Pledged Tax Increment to be collected shall be based on the existing assessed valuation (unless such valuation has been challenged by the owner of the property, in which case the prior assessed value shall be used) and the then current tax rate;

(b) any delinquent payments of property taxes constituting Pledged Tax Increment shall not be considered available; and

(c) if there is any pending challenge against the establishment or propriety of the Pledged Tax Increment, or its proposed use under this ordinance, such challenged portion of the Pledged Tax Increment shall not be considered available.

If in any year while the 2010A Bonds are outstanding, the Net Revenues of the sewage works and the Pledged Tax Increment received from (a) the June settlement is less than the next September 1 payment on all outstanding bonds or (b) the June settlement (after payment of such September 1 payment), together with the December settlement, is less than the next March 1 payment on all outstanding bonds, then the City shall take all steps required to immediately increase sewage works rates and charges to the level required to provide for the timely payment of debt service on all outstanding bonds. Any such increase shall be enacted to be effective within 45 days after the receipt of the June or December settlement, as the case may be.

Section 21. Additional Bond Provisions. The City reserves the right to authorize and issue additional BANs at any time ranking on a parity with the BANs. The City shall not issue any additional obligations payable from or secured by the Pledged Tax Increment without the prior written consent of the Authority. The City reserves the right to authorize and issue additional bonds or other obligations payable out of the Net Revenues of its sewage works ranking on a parity with the Bonds for the purpose of financing the cost of future additions, extensions and improvements to its sewage works, or to refund obligations, subject to the following conditions:

(a) All required payments into the Sinking Fund shall have been made in accordance with the provisions of this ordinance, and the interest on and principal of all bonds payable from the Net Revenues of the sewage works shall have been paid to date in accordance with their terms.

(b) The Net Revenues of the sewage works, including the Pledged Tax Increment, in the fiscal year immediately preceding the issuance of any such parity bonds shall be not less than one hundred twenty five percent (125%) of the maximum annual interest and principal requirements of the then outstanding bonds and the additional parity bonds proposed to be issued; or, prior to the issuance of the parity bonds, the sewage rates and charges shall be increased sufficiently so that the increased rates and charges, if realized and when applied to the previous fiscal year's operations would have produced Net Revenues for said year, including the Pledged Tax Increment, equal to not less than one hundred twenty five percent (125%) of the maximum annual interest and principal requirements of all bonds payable from the revenues of the sewage works, including additional parity bonds proposed to be issued. For purposes of this subsection, the records of the sewage works shall be analyzed and all showings shall be prepared by an independent certified public accountant employed by the City for that purpose who shall certify the satisfaction of the foregoing conditions for the issuance of parity bonds.

(c) The interest on the additional parity bonds shall be payable semiannually on the first days of March and September and the principal of, or mandatory sinking fund redemption dates for, the additional parity bonds shall be payable semiannually on March 1 and September 1.

(d) The reserve shall be satisfied for the additional parity bonds either as of the date of delivery of said additional parity bonds or through equal monthly deposits of Net Revenues sufficient to accumulate the reserve in a manner commensurate with and proportional to the provisions established by Section 16 of this ordinance.

(e) So long as any 2010A Bonds are outstanding and owned by the Authority as part of the SRF Program, (i) the City obtains the consent of the Authority, (ii) the City has faithfully performed and is in compliance with each of its obligations, agreements and covenants contained in the Financial Assistance Agreement and the ordinance authorizing the Outstanding Bonds, and (iii) the City is in compliance with its National Pollutant Discharge Elimination System permits, except for non-compliance for which purpose the parity bonds are issued, including refunding bonds issued prior to, but part of the overall plan to eliminate such non-compliance.

Section 22. Further Covenants of the City; Maintenance, Insurance, Pledge Not To Encumber, Subordinate Indebtedness, and Contract with Bondholders. For the purpose of further safeguarding the interests of the owners of the BANS and the Bonds, it is hereby specifically provided as follows:

(a) All contracts let by the City in connection with the construction of the Project shall be let after due advertisement as required by the laws of the State of Indiana, and all contractors shall be required to furnish surety bonds in an amount equal to 100% of the amount of such contracts, to insure the completion of said contracts in accordance with their terms, and such contractors shall also be required to carry such employers' liability and public liability insurance as are required under the laws of the State of Indiana in the case of public contracts, and shall be governed in all respects by the laws of the State of Indiana relating to public contracts.

(b) The Project shall be constructed under plans and specifications approved by a competent engineer designated by the City. All estimates for work done or material furnished shall first be checked by the engineer and approved by the City.

(c) So long as any of the Bonds or BANs are outstanding, the City shall at all times maintain the sewage works system in good condition and operate the same in an efficient manner and at a reasonable cost.

(d) So long as any of the Bonds or BANs are outstanding, the City shall maintain insurance on the insurable parts of said works, of a kind and in an amount, including fidelity bonds, such as would normally be carried by private corporations engaged in a similar type of business and, so long as any 2010A Bonds are owned by the Authority as part of its SRF Program, acceptable to the Authority. All insurance shall be placed with responsible insurance companies qualified to do business under the laws of the State of Indiana. All insurance proceeds shall be used in replacing or repairing the property destroyed or damaged, unless, so long as the 2010A Bonds are owned by the Authority as part of its SRF Program, the Authority consents to a different use.

(e) So long as any of the Bonds or BANs are outstanding, the City shall not mortgage, pledge or otherwise encumber the property and plant of its sewage works system, or any part thereof, nor shall it sell, lease or otherwise dispose of any part of the same, excepting only such machinery, equipment or other property as may be replaced, or shall no longer be necessary for use in connection with said utility; provided, however, the City shall obtain the prior written consent of the Authority so long as any 2010A Bonds are owned by the Authority as part of its SRF Program.

(f) For so long as any 2010A Bonds are outstanding and owned by the Authority as part of the SRF Program, the City shall not borrow any money, enter into any contract or agreement or incur any other liabilities in connection with the sewage works, other than for normal operating expenditures, without the prior written consent of the Authority if such undertaking would involve, commit or use the revenues of the sewage works.

(g) Except as otherwise specifically provided in Section 21 of this ordinance, so long as any of the Bonds are outstanding, no additional bonds or other obligations pledging any portion of the revenues of said sewage works shall be authorized, issued or executed by the City except such as shall be made junior and subordinate in all respects to the Bonds, unless all of the Bonds are redeemed or defeased coincidentally with the delivery of such additional bonds or other obligations.

(h) The City shall take all action or proceedings necessary and proper, to the extent permitted by law, to require connection of all property where liquid and solid waste, sewage, night soil or industrial waste is produced with available sanitary sewers. The City shall, insofar as possible, and to the extent permitted by law, cause all such sanitary sewers to be connected with said sewage works.

(i) The provisions of this ordinance shall constitute a contract by and between the City and the owners of the Bonds and BANs herein authorized, and after the issuance of the Bonds or BANs, this ordinance shall not be repealed or amended in any respect which will adversely affect the rights or interests of the owners of the Bonds or BANs, nor shall the Common Council adopt any law, ordinance or resolution which in any way adversely affects the rights of the bondholders so long as any of the Bonds or BANs, or the interest thereon, remain unpaid. Except in the case of changes described in Section 23(a)-(f), this ordinance may be amended, however, without the consent of the owners of the Bonds or BANs, if the Common Council determines, in its sole discretion, that such amendment would not adversely affect the owners of the Bonds or BANs.

(j) The provisions of this ordinance shall be construed to create a trust in the proceeds of the sale of the Bonds and BANs herein authorized for the uses and purposes herein set forth, and the owners of the Bonds and BANs shall retain a lien on such proceeds until the same are applied in accordance with the provisions of this ordinance and of the governing Act. The provisions of this ordinance shall also be construed to create a trust in the Net Revenues herein directed to be set apart and paid into the Sinking Fund for the uses and purposes of that Fund as in this ordinance set forth. The owners of the Bonds shall have all the rights, remedies and privileges set forth in the provisions of the governing Act hereinbefore referred to, including the right to have a receiver appointed to administer said sewage works, in the event the City shall fail or refuse to fix and collect sufficient rates and charges for those purposes, or shall fail or refuse to operate and maintain said system and to apply the revenues derived from the operation thereof, or if there be a default in the payment of the principal of or interest on any of the Bonds or in the event of default in respect to any of the provisions of this ordinance or the governing Act.

Section 23. Amendments with Consent of Bondholders. Subject to the terms and provisions contained in this section, and not otherwise, the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the Bonds issued pursuant to this ordinance and then outstanding shall have the right from time to time, to consent to and approve the adoption by the Common Council of the City of such ordinance or ordinances supplemental hereto or amendatory hereof, as shall be deemed necessary or desirable by the City for the purpose of modifying, altering, amending, adding to or rescinding in any particular any of the terms or provisions contained in this ordinance, or in any supplemental ordinance; provided, however, that nothing herein contained shall permit or be construed as permitting:

(a) An extension of the maturity of the principal of or interest on, or any mandatory sinking fund redemption date for, any Bond issued pursuant to this ordinance; or

(b) A reduction in the principal amount of any Bond or the redemption premium or the rate of interest thereon; or

(c) The creation of a lien upon or a pledge of the revenues or Net Revenues of the sewage works ranking prior to the pledge thereof created by this ordinance; or

(d) A preference or priority of any Bond or Bonds issued pursuant to this ordinance over any other Bond or Bonds issued pursuant to the provisions of this ordinance; or

(e) A reduction in the aggregate principal amount of the Bonds required for consent to such supplemental ordinance; or

(f) A reduction in the Reserve Requirement or the 1999 Reserve Requirement.

If the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the Bonds outstanding at the time of adoption of such supplemental ordinance shall have consented to and approved the adoption thereof by written instrument to be maintained on file in the office of the Clerk of the City, no owner of any Bond issued pursuant to this ordinance shall have any right to object to the adoption of such supplemental ordinance or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the Common

Council of the City from adopting the same, or from taking any action pursuant to the provisions thereof. Upon the adoption of any supplemental ordinance pursuant to the provisions of this section, this ordinance shall be, and shall be deemed, modified and amended in accordance therewith, and the respective rights, duties and obligations under this ordinance of the City and all owners of Bonds then outstanding, shall thereafter be determined, exercised and enforced in accordance with this ordinance, subject in all respects to such modifications and amendments. Notwithstanding anything contained in the foregoing provisions of this ordinance, the rights and obligations of the City and of the owners of the Bonds authorized by this ordinance, and the terms and provisions of the Bonds and this ordinance, or any supplemental or amendatory ordinance, may be modified or altered in any respect with the consent of the City and the consent of the owners of all the Bonds then outstanding.

Section 24. Investment of Funds. (a) The Controller is hereby authorized to invest moneys pursuant to the provisions of this ordinance and IC 5-1-14-3 (subject to applicable requirements of federal law to insure such yield is then current market rate) to the extent necessary or advisable to preserve the exclusion from gross income of interest on the Bonds and BANs under federal law.

(b) The Controller shall keep full and accurate records of investment earnings and income from moneys held in the funds and accounts referenced herein. In order to comply with the provisions of the ordinance, the Controller is hereby authorized and directed to employ consultants or attorneys from time to time to advise the City as to requirements of federal law to preserve the tax exclusion. The Controller may pay any fees as operation expenses of the sewage works.

Section 25. Tax Covenants. In order to preserve the exclusion of interest on the Bonds and BANs from gross income for federal tax purposes under Section 103 of the Internal Revenue Code of 1986 as existing on the date of issuance of the Bonds or BANs, as the case may be ("Code"), and as an inducement to purchasers of the Bonds and BANs, the City represents, covenants and agrees that:

(a) Since the date of issuance of the Refunded Bonds and until the earlier of the last date of the reasonably expected economic life of the projects constructed with funds from the Refunded Bonds or the latest maturity date of the Bonds ("Combined Measurement Period"), the sewage works will be available for use by members of the general public. Use by a member of the general public means use by natural persons not engaged in a trade or business. During the Combined Measurement Period, no person or entity other than the City or another state or local governmental unit will use more than 10% of the proceeds of the Bonds or BANs or property financed by the Refunded Bond, Bond or BAN proceeds other than as a member of the general public. During the Combined Measurement Period, no person or entity other than the City or another state or local governmental unit will own property financed by Refunded Bond, Bond or BAN proceeds or will have any actual or beneficial use of such property pursuant to a lease, a management or incentive payment contract, arrangements such as take-or-pay or output contracts or any other type of arrangement that conveys other special legal entitlements and differentiates that person's or entity's use of such property from use by the general public, unless such uses in the aggregate relate to no more than 10% of the proceeds of the Bonds or BANs, as the case may be. If the City enters into a management contract for the sewage works, the terms of the contract will comply with IRS Revenue Procedure 2017-33, as it may be amended, supplemented or superseded for time to time, so that the contract will not give rise to private business use under the Code and the Regulations, unless such use in aggregate relates to no more than 10% of the proceeds of the Bonds or BANs, as the case may be.

(b) No more than 10% of the principal of or interest on the Bonds or BANs over the Combined Measurement Period will (under the terms of the Bonds or BANs, this ordinance or any underlying arrangement), directly or indirectly, secured by an interest in property used or to be used for any private business use or payments in respect of any private business use or payments in respect of such property or to be derived from payments (whether or not to the City) in respect of such property or borrowed money used or to be used for a private business use.

(c) No more than 5% of the Bond or BAN proceeds will be loaned to any person or entity other than another state or local governmental unit. No more than 5% of the Bond or BAN proceeds will be transferred, directly or indirectly, or deemed transferred to a nongovernmental person in any manner that would in substance constitute a loan of the Bond or BAN proceeds.

(d) The City reasonably expects, as of the date hereof, that the Bonds and BANs will not meet either the private business use test described in paragraph (a) and (b) above or the private loan test described in paragraph (c) above for the Combined Measurement Period.

(e) During the Combined Measurement Period, no more than 5% of the proceeds of the Bonds or BANs will be attributable to private business use as described in (a) and private security or payments described in (b) attributable to unrelated or disproportionate private business use. For this purpose, the private business use test is applied by taking into account only use that is not related to any government use of proceeds of the issue (Unrelated Use) and use that is related but disproportionate to any governmental use of those proceeds (Disproportionate Use).

(f) The City will not take any action nor fail to take any action with respect to the Bonds or BANs that would result in the loss of the exclusion from gross income for federal tax purposes on the Bonds or BANs pursuant to Section 103 of the Code, nor will the City act in any other manner which would adversely affect such exclusion. The City covenants and agrees not to enter into any contracts or arrangements which would cause the Bonds or BANs to be treated as private activity bonds under Section 141 of the Code.

(g) It shall be not an event of default under this ordinance if the interest on any Bond or BAN is not excludable from gross income for federal tax purposes or otherwise pursuant to any provision of the Code which is not currently in effect and in existence on the date of issuance of the Bonds or BANs, as the case may be.

(h) The City covenants that it will rebate any arbitrage profits to the United States to the extent required by the Code and the regulations promulgated thereunder.

(i) These covenants are based solely on current law in effect and in existence on the date of delivery of such Bonds or BANs, as the case may be.

Section 26. Issuance of BANs. (a) The City, having satisfied all the statutory requirements for the issuance of its Bonds, may elect to issue its BAN or BANs to a financial institution, the Indiana Bond Bank or any other purchaser pursuant to a Bond Anticipation Note Purchase Agreement ("Purchase Agreement") to be entered into between the City and the purchaser of the BAN or BANs. The Common Council hereby authorizes the issuance and execution of the BAN or BANs in lieu of initially issuing the Bonds to provide interim financing for the Project until permanent financing becomes available. It shall not be necessary for the City to repeat the procedures for the issuance of its Bonds, as the procedures followed before the issuance of the BAN or BANs are for all purposes sufficient to authorize the issuance of the Bonds and the use of the proceeds to repay the BAN or BANs.

(b) The Mayor and the Controller are hereby authorized and directed to execute a Purchase Agreement in such form or substance as they shall approve acting upon the advice of counsel. The Mayor and the Controller may also take such other actions or deliver such other certificates as are necessary or desirable in connection with the issuance of the BANs or the Bonds and the other documents needed for the financing as they deem necessary or desirable in connection therewith.

Section 27. Non-Compliance with Tax Covenants. Notwithstanding any other provisions of this ordinance, the covenants and authorizations contained in this ordinance ("Tax Sections") which are designed to preserve the exclusion of interest on the Bonds and BANs from gross income under federal law ("Tax Exemption") need not be complied with if the City receives an opinion of nationally recognized bond counsel that any Tax Sections are unnecessary to preserve the Tax Exemption.

Section 28. Rates and Charges. The present rates and charges of the sewage works are set forth in Ordinance No. 5568 adopted on March 6, 2017, which ordinance is incorporated herein by reference.

Section 29. Conflicting Ordinances. (a) All ordinances and parts of ordinances in conflict herewith are hereby repealed; provided that the adoption of this ordinance shall not be construed as: (i) except as described in (b) below, amending or repealing the ordinances authorizing the Outstanding Bonds; or (ii) adversely affecting the rights of the holders of the Refunded Bonds or the Outstanding Bonds.

(b) In the ordinances authorizing the Outstanding Bonds, the 1999 Reserve Account was to secure bonds payable from the Net Revenues of the sewage works which are sold to the Authority as part of the SRF Program. Pursuant to Section 16 of this ordinance, the 1999 Reserve Account is now permitted to secure bonds not sold to the Authority as part of the SRF Program, including the Bonds. In connection with the delivery of the Bonds, the City will obtain the consent of the SRF Program to permit the 1999 Reserve Account to secure the Bonds. The provisions of Section 16(c)(iii) of this ordinance shall govern the 1999 Reserve Account and shall amend and restate Section 12(b)(iii) of the ordinance authorizing the 2010A Bonds and Section 14(c)(iii) of the ordinance authorizing the 2015 Bonds. The Common Council hereby finds that such amendment does not adversely affect the owners of the 2015 Bonds as the 1999 Reserve Account does not secure and may not be used to pay the 2015 Bonds and the 1999 Reserve Account has not created any preference in funding to impair the pledge to the owners of the 2015 Bonds. The Common Council also finds that the amendment created in this subsection does not adversely affect the owner of the 2010A Bonds and that under the provisions applicable to such 2010A Bonds, the City will obtain the consent of the SRF Program as required under the ordinance authorizing the 2010A Bonds.

Section 30. Headings. The headings or titles of the several sections shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this ordinance.

Section 31. Effective Date. This ordinance shall be in full force and effect from and after its passage and execution by the Mayor.

Passed and adopted by the Common Council of the City of Mishawaka, Indiana, this ____day of ________________, 2017.

COMMON COUNCIL OF THE CITY OF MISHAWAKA

____
Presiding Officer

ATTEST:

____
Clerk

Presented by me to the Mayor of the City of Mishawaka, Indiana, on the _____ day of ______________, 2017, at ___:___ __.m.

____
Clerk

Presented to and approved by me, the Mayor of the City of Mishawaka, Indiana, and signed this _______ day of _________________, 2017, at ___:___ __.m.

____
Mayor

EXHIBIT A

Description of Project

Treatment plant projects, including the following:

1. New influent screen
2. Final clarifier trough
3. Hypo improvements
4. Air monitoring panel
5. CSO 009 improvements
6. All engineering, supervision and design for the projects
7. All engineering, supervision and design for future planned projects

Long-Term Control Plan – Collection system, including the following:

1. Milburn Divisions K & M
2. Linden Divisions A, B & C
3. All engineering, supervision and design for the projects
4. All engineering, supervision and design for future planned projects

The Project will include the components list above together with all related improvements, additions, equipment and appurtenances.