

## **AGENDA**

**Monday, August 21, 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**

August 07, 2017

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

A letter from the Board of Zoning Appeals regarding recommendations from their August 8, 2017 meeting.

A letter from the City Plan Commission regarding recommendations from their August 8, 2017 meeting.

A Public Hearing on Vacation 2017-02 as required by State Statute on behalf of City of Mishawaka, commonly known as a portion of Borley Avenue South of Donaldson St.

### **6. Report of Special Committee**

### **7. Ordinances on First Reading**

P.O. NO. 2917-30 Vacation of Public Right of Way - A Portion of Borley Avenue South of Donaldson St.

P.O. NO. 2017-31 Economic Development Revenue Bonds for Hellenic Senior Living of Mishawaka \$19,000,000.00 1128 W. Dragoon Trail

### **8. Resolutions**

R2017-21 Use Variance Temporary Non-Hazardous Storage & Processing & Related Ancillary Uses 514 E. Marion St.

### **9. Ordinances on Second Reading**

P.O. NO. 2017-29 Annex and Zone - 914 & 916 E. McKinley Ave. to I-1 Light Industrial VOTE ONLY (Petitioner Requesting Postponement)

### **10. Privilege of the Floor - Non-Agenda Items**

### **11. Unfinished Business**

### **12. New Business**

### **13. Adjournment**

At this time I know of no other business to come before the Council.  
Deborah S. Block, IAMC, MMC, City Clerk

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

## REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

August 7, 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 August 7, 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 passing of Kate Voelkers Mother-in-law.



### **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 July 17, 2017 and July 24, 2017 meeting were approved as received from the City Clerk's Office.

Clerk Block read the following Appeal and Petition to the Council, who referred them to the City Board of Zoning Appeals and Plan Commission, for their recommendation.

**APPEAL NO. 2017-30** Use Variance Temporary Non-Hazardous Storage & Processing & related Ancillary Uses 514 E. Marion Street.

**PETITION NO. 2017-21** Vacation of Public Right of way – A Portion of Borley Avenue and south of Donaldson Street.

Clerk Block read the following Resolution by title and opened it for public hearing.

### **RESOLUTION NO. 2017-20**

#### **ACQUISITION OF RIVERWALK AND VARIOUS REDEVELOPMENT PROPERTIES**

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, ADDING PARCELS TO THE CITY'S PROPERTY ACQUISITION LIST ASSOCIATED WITH A PREVIOUSLY APPROVED COMMON COUNCIL RESOLUTION NO. 2014-07 WHICH APPROVED AN ORDER OF THE CITY OF MISHAWAKA PLAN COMMISSION APPROVING A CERTAIN DECLARATORY RESOLUTION, AN AMENDMENT TO THE BOUNDARIES OF THE NORTHWEST AREA IMPROVEMENT PROJECT, CONSOLIDATION OF THE SOUTHSIDE ECONOMIC DEVELOPMENT AREA AND THE NORTHWEST IMPROVEMENT PROJECT INTO ONE CONSOLIDATED AREA IMPROVEMENT PROJECT, AND AN AMENDMENT TO THE ECONOMIC DEVELOPMENT PLAN FOR THE CONSOLIDATED AREA IMPROVEMENT PROJECT ADOPTED BY THE CITY OF MISHAWKA REDEVELOPMENT COMMISSION**

(Addition of Property Parcels to the city Acquisition List)

Ken Prince, City Planner explained the resolution was a follow up from the previous approved resolution that occurred in 2014. He said at that time a series of projects were listed within the amendment of the TIF District as part of the Economic Development Plan. Mr. Prince continued to say there were hundreds of projects listed into the plan, some would be funded and some the city could not afford in the life of the plan. Mr. Prince stated by law they were required to have the council adopt properties as a part of an acquisition list. He said at the time they made a conscious choice not to present thousands of parcels to the council for consideration individually but to try to consolidate them and present all at once. Mr. Prince mentioned they had a number of projects with signed purchase agreements and some they would like to move forward and urge property owners for acquisition. He asked the council for approval of adding certain properties to the City's acquisition list to implement a portion of projects.

Question was called for at 7:07 P.M. for **RESOLUTION NO. 2017-20**  **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 proposed ordinances by title and were opened for public hearing.

**PROPOSES ORDINANCE NO. 2017-28**

**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**

(Vacate north/south alley adjacent to 131 E. Seventh St.)  
(Assigned to Land Use Planning Committee)

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.

Olivia Gonzales 131 E. 7<sup>th</sup> Street explained she would like to vacate the north/south alley adjacent to her home which was once a part of her property years ago. She said with the high volume of cut through traffic it placed safety concerns for her children. Mrs. Gonzales also mentioned there had been issues of people walking close to her home after dark. She said they would like to get the alley vacated and fenced for the safety for her home and family.

Mr. Banicki asked how long Mrs. Gonzales lived in her home and if she interacted with her neighbors. Mrs. Gonzales replied 6 months and as far as getting to know her neighbors they greet each other.

Mr. Compton said they received a number of notes from neighbors wanting the alley to remain open. He asked did Mrs. Gonzales have any discussion with any neighbors about why they wanted the alley to remain open and who used the alley. Mrs. Gonzales said she spoke with the Ms. Scarberry, she did not see many neighbors use the alley, mostly people cutting through

trying to avoid traffic. She explained drivers were using the right of way alley a couple homes down from the right of her property, then exiting at the alley near her home.

Members of the council stated they went to observe the alley. They realized most residence were not up to code to have garages and some appeared they were not being used. Members of the council believed the alley served no purpose and should go back to its original owner.

Mr. Canarecci asked did Mrs. Gonzales price fencing for her home and would she be concerned of any animosity from neighbors if the alley was vacated. He also asked if Mrs. Gonzales owned her home. Mrs. Gonzales replied yes to owning her home and pricing fencing. She said most of the residences on 7th street were renters, she believed they should not care if the alley was closed.

Mr. Mammolenti asked did Mrs. Gonzales ever see the neighbors adjacent or behind her property use the alley to access their garage. She replied no.

Lin Scarberry, 55503 Cedar Lane Mishawaka, owner of property at 127 E. 7th Street, the adjacent property to the proposed alley spoke in opposition to the vacation. She said she currently had renters in the property but hoped to move into the property when she retired. Ms. Scarberry stated the alley in question was her only access to her garage. She presented more letters from residence in opposition and argued many residences used the alley for parking and walking. Ms. Scarberry complimented Mrs. Gonzales home, she said Mrs. Gonzales home was beautiful and she also had the largest yard in the neighborhood. She suggested picket fencing for her home to allow the alley to remain open.

Mr. Banicki said looking at the picture the rollup door did not seem to be original, he asked was the door added and were the doors along the east/west alley functional. He also questioned how many apartments were in the home. Ms. Scarberry said the previous homeowner added the door, assuming it was for convenience with the straight shot from the north/south alley. She explained her property was a duplex apartment; there were tenants on the top and bottom. Ms. Scarberry said her tenants did not drive but she did go into the garage occasionally for her belongings. She went on to say the doors along the east/west alley were heavy wooden doors, they were difficult to open and it was also difficult to drive her car in from the east/west alley.

Mr. Emmons asked how long Ms. Scarberry lived on Cedar Lane and when she planned to move to the property on 7<sup>th</sup> Street. He stated he did not believe Ms. Scarberry would be affected by closing the alley; the east/west was wide enough she could turn into her garage. Mr. Emmons also mentioned her garage was not up to code, she needed a cement pad to use the north/south garage door. He believed the alley was blight and a fence would enhance the neighborhood. Ms. Scarberry said she lived on Cedar Lane for 15 years, she was hoping by the time she was ready to retire her tenants would voluntarily move at the end of their lease.

Mr. Canarecci asked did Ms. Scarberry receive a quote for a new garage door and cement pad. Ms. Scarberry said she received a quote for door but not for the pad. She continued to say she had a four stall garage; it would cost her over \$6,000 for new doors.

Mr. Tanner asked the purpose for getting letters from residents a block or more away from the proposed address. He also asked was Ms. Scarberry offended by the change suggestions for her

property. Ms. Scarberry said 7<sup>th</sup> street was a long block; residence on 7<sup>th</sup> street used the alley as a turnaround point. She went on to say the suggestion did not bother her, she knew changes and updates were needed when she bought the property.

Mr. Mammolenti asked if the main garage door was perfectly usable would Ms. Scarberry have issue giving up the right of way. Ms. Scarberry explained it would be difficult to maneuver into her garage from the east/west alley.

Mr. Mammolenti asked Ken Prince, City Planner how many north/south right of way alleys exist in Mishawaka. Mr. Prince said quit a few, typically alleys went one-way but longer alleys had breaks in between. Mr. Mammolenti also made the comment regarding the concerns of the lack of privacy and the safety of the children. He said having strangers walking close to her home would place concerns. He also mentioned if this alley were to close there was another alley a few doors down to exit.

Mr. Compton asked how long she owned her property and had it always been duplex. He also stated that the alley was not meant for cut through traffic which was concerning. Ms. Scarberry said she owned the property for 26 years and it was always a duplex. She said there were people that walked the alley and there were also people who used the alley to get to the east/west alley to park their cars.

Mr. Banicki asked was Mrs. Gonzales proposing for her entrance into her garage be off the east/west alley. Mrs. Gonzales said yes, she would enter her garage off the east /west alley like everyone else.

Mr. Canarecci stated his neighborhood was very similar to 7<sup>th</sup> Street but their alley did not have north/south alleys, the residence in his neighborhood get into their garage fine. He expressed his support.

Mr. Compton asked City Planner Mr. Prince what was typical in this type of situation, when the alley is vacated was the property split. Mr. Prince explained on a platted subdivision by state law the alley would be split between two property owners. He said a typical exception would be when a plat stops at the alley state law stated it would go to the subdivision it came from. Mr. Prince went on to say because this alley was a part of Mrs. Gonzales lot years ago, state law says the vacated alley had to go back to its original lot, it could not be split.

Question was called for at 7:46 P.M. for **PROPOSED ORDINANCE NO. 2017-28**  **Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 9). **Yes:** Mrs. Voelker, Mr. Compton, Mr. Tanner, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mr. Canarecci, Mr. Deal. Thus, it becomes **ORDINANCE NO. 5586**

### **PROPOSES ORDINANCE NO. 2017-29**

**AN ORDINANCE ANNEXING CONTIGUOUS TERRITORY OF THE CITY OF  
MISHAWAKA, INDIANA, AND PROVIDING ZONING CLARIFICATION  
(Annex and zone 914 & 926 E. McKinley Ave. to I-L Light Industrial)**

(Assigned to Land Use Planning Committee)

**NO VOTE**

Bill Pemberton Managing Partner of Pemberton Davidson Electric at 1333 Patriot Court Mishawaka said they wished to be annexed and zoned into the city. Mr. Pemberton gave some history about the business. He said their business was located in Granger, Indiana until they made the decision to move to Mishawaka, their office was located at 917 Union Street. Mr. Pemberton went on to say they rented space at the Dodge facility for four years; they then found the property located on McKinley Avenue in 2011. He said the property at 916 E. McKinley Avenue was distressed and prior to acquiring the property half of the building was in the county and a third was in the city. Mr. Pemberton continued to say when they acquired the property they tried to clean the lines to be annexed into the city and then to rezone to be under one zoning, so they could expand their business. He said it would be easier to work with the city for utilities and etc. Mr. Pemberton went on to say Pemberton Davidson Electric was growing significantly; they were in a position where they needed to expand their facilities.

Mr. Deal asked would they be moving their office on Union Street. Mr. Pemberton replied his personal office on Union Street would remain.

Mr. Mammolenti and Mr. Emmons commented on their business, they said their property on Union Street was always well maintained. Mr. Pemberton said although he was out of the rental property business, he felt it was important to do the best he could in the neighborhood to have the best house on the block. He continued to say he wanted to do the same as a commercial business owner, they wanted to be a good neighbor, and it was an investment for them and the city. Mr. Pemberton said they wanted to do the best they could for the city and look good, being in the city was a benefit.

Mr. Compton thanked Mr. Pemberton for what they do for Mishawaka. He said Pemberton Davidson Electric provided good jobs with a good pay for residents to make a living.

Public hearing was closed at 7:54 P.M.

**PRIVILEGE OF THE FLOOR**

Michael Clayton, Local President for 911 Dispatch Center Local 164 and Dana Hamilton, Vice President spoke in regards to 10,000 missed 911 calls and addressed the Council for support in hiring 14 employees for the 911 Dispatch Center. They expressed concerns over the need for more employees and the unsafe working conditions, employees were quitting due to the work overload. Mr. Clayton said they lost 164 years of experience and with the loss of employees, they were being mandated to work longer hours. He explained dispatchers were being taking away from their duties to help answer calls. Mrs. Hamilton expressed that she had been a dispatcher for 15 years and this was her passion, she was also on the union board and ACS which was supervisor for the Dispatch Center. She said working many hours of overtime was taking a toll on her. Mrs. Hamilton urged for the support and to get the word out, it was unfair for the citizen in need of help.

Mr. Compton expressed they needed to see the safety of their citizens, they wanted the missed calls issue to be resolved but the council was not a part of negotiations. He questioned who sat at

the table during the 911 dispatch contract negotiation meeting and who represented management. Mr. Clayton said the Center manager and County Attorney along with management representation, 911 Director, Operation Manager, and the Administrative Secretary. He explained they did negotiate for 15 operators on the floor, however in order to get the approval to get the 14 operators it would go through the 911 Executive Board which consisted of the Mishawaka and South Bend Mayors, Andrew Kostielney, County Commissioner and the representative to the board. Mr. Clayton went on to say the three-member panel had to approve then it would come before Mishawaka, South Bend, and County councils for approval.

Mr. Deal said the hope of the implementation of new technology would create efficiencies to lighten the load and make the current staffing levels in lined with what was needed; he asked was that being experienced. Mr. Clayton replied no, so far there were efficiencies as a county fire dispatcher, he could answer calls for South Bend, Mishawaka, and County Police, however he was being taken away from his duties as a radio operator. He continued to say when all the 911 lines light up everyone were trying to grab a call no matter what their duties were.

Mr. Bellovich asked how many dispatchers did they currently have and prior to the consolidation. Mr. Clayton said 63 now and prior to consolidation they had 80. He explained they were seeking 78.

Mrs. Voelker asked for the current average overtime. Mr. Clayton gave an estimate of 250 hours of overtime currently year to date. He explained the problem was instead of six call takers they had two.

Mr. Mammolenti complimented the new Call Center. He said walking through the facility the overheard incoming calls and commended them on their jobs. Mr. Mammolenti asked since the launch of the new facility and new technology how many employees were left. Mr. Clayton said 31 members left which equaled 164 years of experience. He went on to say the work load of the mandated overtime was too much.

Mr. Canarecci questioned based pay for dispatcher and how much did the county pay in overtime last year. Mr. Clayton said trainees starting pay was \$32, 0000 after training pay was raised to \$38,000. He went on to say County paid \$560,000 in overtime last year and on track of \$740,000 this year.

Mr. Tanner said he recently visited the new facility and the conversation they had was regarding the 14 position. He asked did the operations board approve the 14 position. He also questioned shifts the employees work. Mr. Clayton replied yes, now they were waiting for the executive board to act. He said they had been waiting over a year. Mr. Clayton explained they worked a typical 8-hour shift with 6 days on and 3 days off but they were now being frequently mandated to work over.

Mr. Compton thanked Mr. Clayton and Mrs. Hamilton for the job they do and speaking before them. He said calls going unanswered was not only unfair but it was unacceptable. Mr. Compton gave his commitment to do what he could.

**ADJOURNMENT 8:21 P.M.**

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

Ross Deal\_\_\_\_\_/s/  
Ross Deal, President



# City of Mishawaka

DAVID A. WOOD, MAYOR

DEPARTMENT OF CITY PLANNING

August 9, 2017

RECEIVED  
DEBORAH S. BLOCK, MMC

AUG 10 2017

Honorable Members of the Common Council  
City of Mishawaka, Indiana

CITY CLERK  
MISHAWAKA, IN

RE: Board of Zoning Appeals Recommendation  
August 8, 2017, Public Hearing

Honorable Members:

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

**APPEAL #17-30**

A appeal submitted by S E R Real Estate LLC requesting a Use Variance for **514 East Marion Street** to permit temporary non-hazardous storage and processing and related uses (office, shop/maintenance facility, interior and exterior tank storage) in I-1 Light Industrial zoning.

The Board, with a vote of 5-0, forwarded a favorable recommendation subject to the following conditions:

1. The Use Variance shall be limited to the temporary storage and testing of non-hazardous materials, and shall be limited to indoors. No outside storage or testing of materials shall be permitted;
2. No known hazardous materials shall be stored on site; and
3. Provide paved access drive to site.

Respectfully,

Kari Myers, Administrative Planner  
Secretary, Board of Zoning Appeals

cc: Dennis Murphy

**STAFF REPORT**

Location: 514 E Marion Street

Date: August 8, 2017

Appeal: 17 30

Prepared By: CH

**GENERAL INFORMATION**

Applicant: SER Real Estate LLC/INSERT/ Dan Wilson  
Status: Property Owners  
Request: Use Variance to allow the temporary storage and testing of non-hazardous materials.  
Zoning Classification: I-1 Light Industrial District  
Lot Size: 4.18 acres  
Applicable Regulations: Section 137-586 I-1 Uses  
Section 137-42 (4) Board of Zoning Appeals

**SPECIAL INFORMATION**

Area Development Pattern: North: I-1 Light Industrial, I-2 Heavy Industrial and C-4 Automobile Oriented Commercial  
South: R-1 Single Family Residential and I-1 Light Industrial  
East: R-1 Single Family Residential and C-4 Automobile Oriented Commercial  
West: I-1 Light Industrial  
Thoroughfare: Marion and Division Streets  
School District: Mishawaka School City  
Township: Penn  
Public Utilities: Available and Existing  
Comprehensive Plan: Industrial

**ANALYSIS**

The appellants are requesting a use variance to allow the temporary storage and testing of non-hazardous materials on the property located at 514 E Marion Street. The property is currently zoned I-1 Light Industrial. The use is so specific that it cannot be categorized in an existing zoning use.

The property address is 514 E Marion, however, the site extends north to the railroad tracks and west to Division Street. The site contains an office, maintenance/storage building, interior tank storage and exterior tank storage. According to the petitioner, all truck traffic uses Division Street.

INSERTV Inc. offers a hydro excavation service that utilizes water and vacuum to remove soil in areas where underground utilities may be present. The resulting spoils cannot be left at the customer location due to the presence of free liquids. This byproduct is returned to the facility at 514 E Marion St., where the soils are dewatered, and then tested to determine where it can be reused or disposed. No hazardous soils will be accepted by INSERTV.

IDEM classifies this process as a "transfer facility", and is requiring INSERV to apply for a solid waste processing permit. One of the steps to getting this permit is zoning approval from the local municipality, hence the request for use variance. The Staff feels the term "transfer facility" is more intense than the activities taking place on site, therefore the use variance is written in a way to limit the use only to the temporary storage and testing of non-hazardous materials.

All pertinent City Departments have reviewed this request and approved it subject to the following comments:

Engineering: Please provide a paved access drive to site.

### **RECOMMENDATION**

The Staff recommends in favor of Appeal 17-30, a use variance to allow the temporary storage and testing of non-hazardous materials on the property located at 514 E Marion Street, subject to the following conditions:

1. Use variance shall be limited to the temporary storage and testing of non-hazardous materials, and shall be limited to indoors. No outside storage or testing of materials will be permitted;
2. No known hazardous materials shall be stored on site;
3. Provide paved access drive to site.

This recommendation is based on the following reasons:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the proposed use will have no additional impact on the adjacent industrial uses that currently operate there. The proposed use is consistent with the existing industrial properties within the area.
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the operation has been at that site for approximately two years.
3. The need for a variance arises from the uniqueness of the use proposed. Since temporary storage of non-hazardous materials is not listed as a use in any zoning district, a use variance can better represent the exact activities happening on this site.
4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the use being requested is not specifically referenced in the zoning ordinance. The closest being medical and nuclear waste disposal or landfill, all conditional uses in I-2 Heavy Industrial. This being a temporary stop but not the final resting place of the materials did not quite fit into these categories.
5. The approval will not interfere substantially with the Mishawaka 2000 Plan because the plan identifies this pocket as industrial. The approval is consistent with the goals and objectives of the Comprehensive Plan.

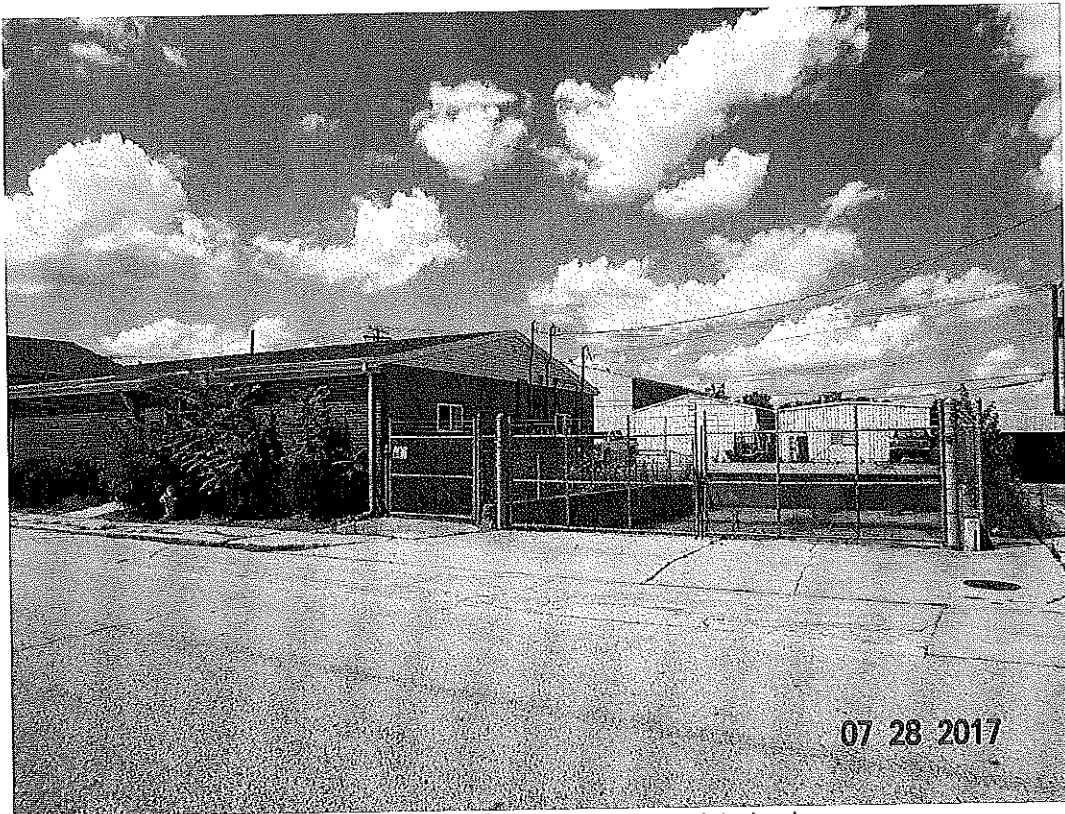
### **ATTACHMENTS**

AERIAL, PHOTOGRAPHS, VARIANCE REQUEST & LOCATION MAP





P1: Storage building (gray) and office (brick) on Marion Street



P2: Inside storage buildings (beige) in back



P3: Access to Division Street



# City of Mishawaka

DAVID A. WOOD, MAYOR

DEPARTMENT OF CITY PLANNING

August 9, 2017

RECEIVED  
DEBORAH S. BLOCK, MMC

AUG 10 2017

CITY CLERK  
MISHAWAKA, IN

Honorable Members of the Common Council  
City of Mishawaka, Indiana

RE: Plan Commission Recommendation  
August 8, 2017, Public Hearing  
Certification of Proposed Ordinance

Honorable Members:

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

**PETITION #17-21** A petition submitted by the City of Mishawaka requesting to vacate a portion of Borley Avenue south of Donaldson Street.

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 Ordinance regarding the above matter.

Respectfully,

Kari Myers, Administrative Planner  
Secretary, Mishawaka Plan Commission

**STAFF REPORT**

Location: Portion of Borley Avenue South of Donaldson Avenue

Date: August 8, 2017

Petition: 17-21

Prepared By: DJS

**GENERAL INFORMATION**

Applicant: City of Mishawaka, Department of Planning &amp; Development

Status: Adjacent Property Owner

Request: Vacate Public Right-of-Way

Zoning Classification: Right-of-Way

Applicable Regulations: IC 36-7-3-12 and 13

**SPECIAL INFORMATION**

Area Development Pattern: North: C-6 Linear Office Commercial (Office/Trevino Insurance) & R-1 Single Family Residential (Residential)  
South: R-1 Single Family Residential (Vacant & Residential)  
East: Remnant 14' Alley (Public Right-of-Way) & R-1 Single Family Residential (Vacant/City-Owned Lot)  
West: C-6 Linear Office Commercial (Vacant/City-Owned Lot)

Thoroughfare: Borley Avenue

School District: School City of Mishawaka

Public Utilities: Public Right-of-Way

Comprehensive Plan: The Mishawaka 2000 Comprehensive Plan identifies a preferred or planned use for the adjacent property as General Commercial (Downtown Retail Sales & Shopping Centers). However, the existing zoning of the adjacent parcels permit single-family residential use which is compatible and consistent with existing adjacent uses and uses along the N. Main Street corridor.

**ANALYSIS**

The Petitioner, the City of Mishawaka, is requesting to vacate a portion of right-of-way recently dedicated for the planned Borley Avenue extension south of Donaldson Avenue. The part to be vacated is currently unimproved, and if vacated, will result in a remaining 14' wide right-of-way. The remnant right-of-way will include an existing north-south alley.

When the Main Street underpass and realignment was completed in 2010, Borley Avenue became a dead end street. Additional right-of-way was platted in 2014 with the intention of constructing a new street to connect the western terminus of Borley Avenue to Donaldson Avenue. The City is modifying these plans and no longer intends to make the connection. The north-south alley will remain in place as it exists today.

The benefit to the neighborhood is that the current traffic patterns will be maintained while not promoting additional traffic which could occur if the original planned improvements were constructed. The benefit to the City is a reduction in the construction costs as the new plan will only require a small section of new curb at the western terminus of Borley Avenue and additional signage.

The vacated right-of-way will be replatted with the adjacent lot to the west establishing a lot large enough for a new single-family home. Logan Center plans to construct a new home on the lot similar to the house they built at the southeast corner of N. Main Street and E. Edgar Avenue north of Trevino Insurance.

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

The Engineering Department requested that the south 50' of the right-of-way to be vacated remain as a utility easement due to the presence of sanitary sewer. A utility easement between the western terminus of the Borley Street right-of-way and Main Street right-of-way will be dedicated with a subsequent replat.

The Electric Department requested that the existing utility poles along the east side of the alley be located within an easement. A 5' utility easement will be dedicated along the east property line of the new lot.

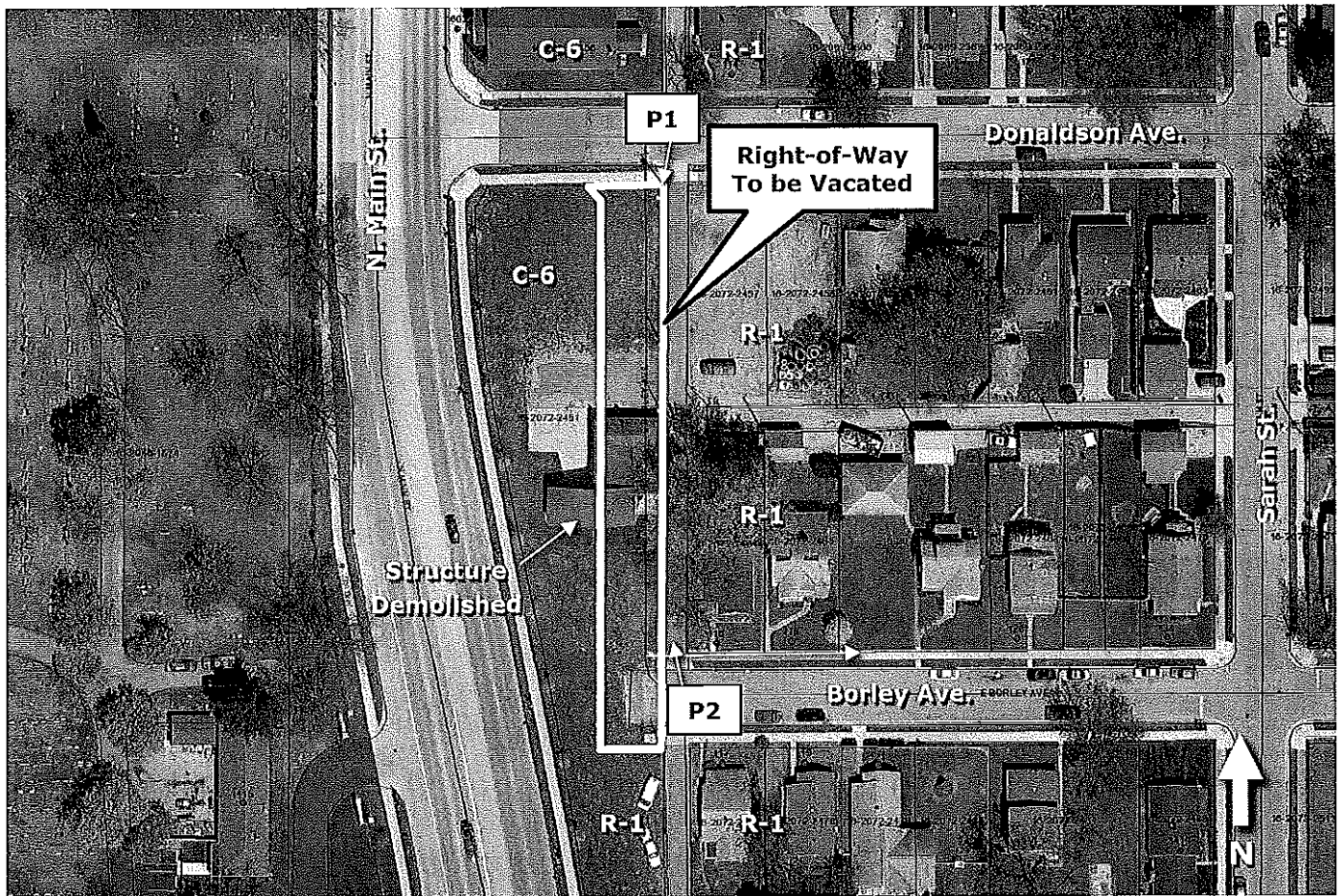
### **RECOMMENDATION**

Staff recommends in favor of Petition 17-21 to vacate a portion of the Borley Avenue right-of-way south of Donaldson Avenue and north of the western terminus of Borley Avenue east of N. Main Street. 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 the existing north-south alley east of right-of-way to be vacated to remain as is while establishing an adjacent lot large enough for a new single-family home.
- 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**

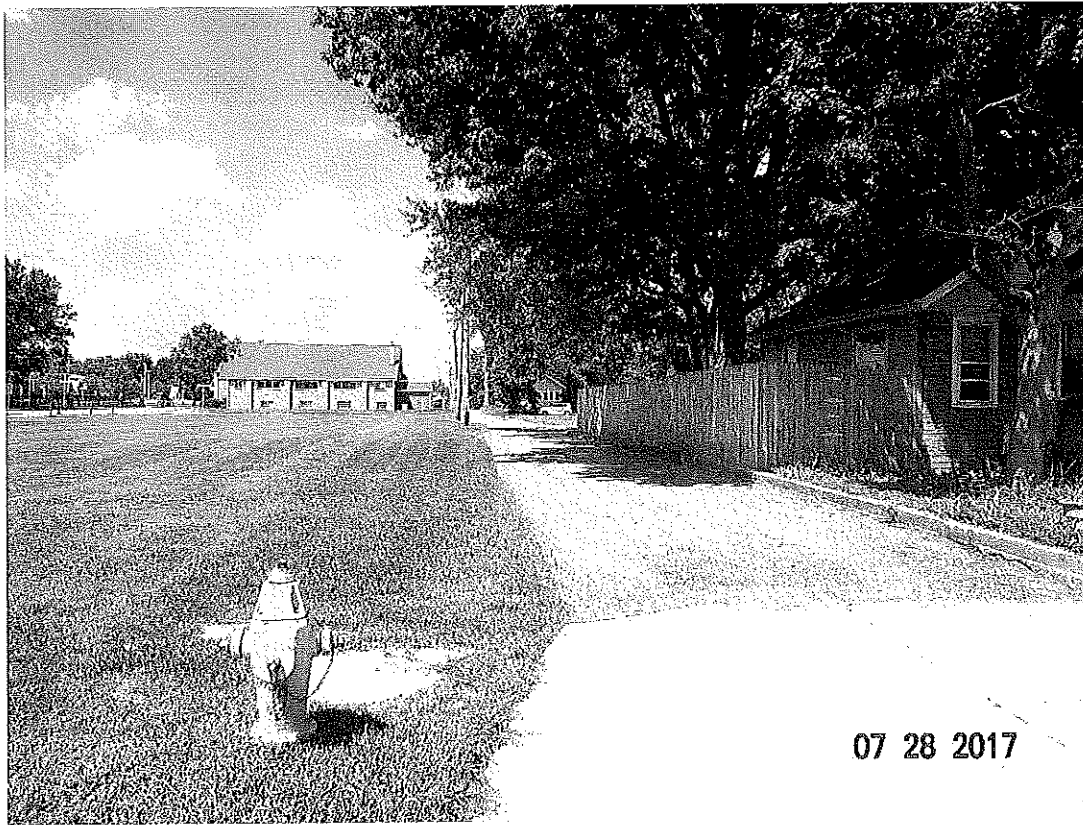
Aerial Photograph of Area to be Vacated, Photos, Petition, Location Map



Aerial Photograph  
Part of the Borley Avenue Right-of-Way to be vacated



P1. A view looking south along the existing alley and adjacent right-of-way to the east to be vacated.



07 28 2017

P2. A view looking north along the existing alley and adjacent right-of-way to the east to be vacated.



# City of Mishawaka

OFFICE OF THE CITY CLERK

Deborah S. Block, IAMC, MMC, City Clerk

## NOTICE OF HEARING

|                 |                   |
|-----------------|-------------------|
| VACATION NO.    | <u>2017-02</u>    |
| PETITION NO.    | <u>2017-21</u>    |
| DATE of HEARING | <u>08-21-2017</u> |
| TIME of HEARING | <u>7:00PM</u>     |

**A petition has been filed by City of Mishawaka, Ken Prince City Planner**

THE WEST 36 FEET OF THE BORLEY AVENUE FROM THE SOUTH RIGHT-OF-WAY LINE OF DONALDSON AVENUE EXTENDED TO THE SOUTH RIGHT-OF-WAY LINE BORLEY AVENUE ALSO BEING THE NORTH LINE OF LOT 7 OF MAIN STREET CORRIDOR FIRST SUBDIVISION AS RECORDED UNDER INSTRUMENT NUMBER 1405633 IN THE OFFICE OF RECORDER OF ST. JOSEPH COUNTY, INDIANA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 6 IN SAID MAIN STREET CORRIDOR FIRST SUBDIVISION; THENCE NORTH 00 DEGREES 14 MINUTES 00 SECONDS WEST ALONG THE EAST LINE OF SAID LOT 6, A DISTANCE OF 289.63'; THENCE NORTH 45 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 8.90 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF DONALDSON AVENUE; THENCE NORTH 89 DEGREES 14 MINUTES 12 SECONDS EAST ALONG SAID SOUTH RIGHT-OF-WAY LINE EXTENDED, A DISTANCE OF 42.27 FEET; THENCE SOUTH 00 DEGREES 14 MINUTES 00 SECONDS EAST, A DISTANCE OF 296.01 FEET TO SAID NORTH LINE OF LOT 7 OF MAIN STREET CORRIDOR FIRST SUBDIVISION; THENCE SOUTH 89 DEGREES 14 MINUTES 12 SECONDS WEST ALONG SAID NORTH LINE, A DISTANCE OF 36.00 FEET TO THE POINT OF BEGINNING.

Said right-of-way to be vacated is adjacent to Lot 6 of Main Street Corridor 1<sup>st</sup> Subdivision.

COMMONLY KNOWN AS: A portion of Borley Avenue south of Donaldson 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 August 21, 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.

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 August 7, 2017, at 7:00 pm in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Public hearing will be conducted on the 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.

Respectfully,

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.

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

1st Reading 8-21-17  
2nd Reading  
Passed  
Failed  
Continued

PETITION #17-21

CITY OF MISHAWAKA, INDIANA

PROPOSED ORDINANCE NO. 2017-30e

ORDINANCE NO. \_\_\_\_\_

RECEIVED  
DEBORAH S. BLOCK, MMC

AUG 10 2017

CITY CLERK  
MISHAWAKA, IN

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

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

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

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

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

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

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

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

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

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

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

THE WEST 36 FEET OF THE BORLEY AVENUE FROM THE SOUTH RIGHT-OF-WAY LINE OF DONALDSON AVENUE EXTENDED TO THE SOUTH RIGHT-OF-WAY LINE BORLEY AVENUE ALSO BEING THE NORTH LINE OF LOT 7 OF MAIN STREET CORRIDOR FIRST SUBDIVISION AS RECORDED UNDER INSTRUMENT NUMBER 1405633 IN THE OFFICE OF RECORDER OF ST. JOSEPH COUNTY, INDIANA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PROPOSED ORDINANCE NO. 2017-30

ORDINANCE NO.           

BEGINNING AT THE SOUTHEAST CORNER OF LOT 6 IN SAID MAIN STREET CORRIDOR FIRST SUBDIVISION; THENCE NORTH 00 DEGREES 14 MINUTES 00 SECONDS WEST ALONG THE EAST LINE OF SAID LOT 6, A DISTANCE OF 289.63'; THENCE NORTH 45 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 8.90 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF DONALDSON AVENUE; THENCE NORTH 89 DEGREES 14 MINUTES 12 SECONDS EAST ALONG SAID SOUTH RIGHT-OF-WAY LINE EXTENDED, A DISTANCE OF 42.27 FEET; THENCE SOUTH 00 DEGREES 14 MINUTES 00 SECONDS EAST, A DISTANCE OF 296.01 FEET TO SAID NORTH LINE OF LOT 7 OF MAIN STREET CORRIDOR FIRST SUBDIVISION; THENCE SOUTH 89 DEGREES 14 MINUTES 12 SECONDS WEST ALONG SAID NORTH LINE, A DISTANCE OF 36.00 FEET TO THE POINT OF BEGINNING.

COMMONLY KNOWN AS: A Portion of Borley Avenue South of Donaldson Avenue

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

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.

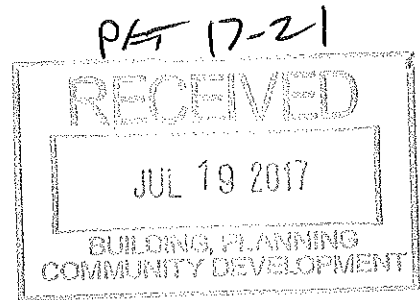
\_\_\_\_\_  
Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this \_\_\_\_\_ day of \_\_\_\_\_, 2017, at \_\_\_\_\_ o'clock \_\_\_\_\_M.

\_\_\_\_\_  
David A. Wood, Mayor

RECEIVED  
DEBORAH S. BLOCK, MMC

AUG 03 2017



Date: July 19, 2017

CITY CLERK  
MISHAWAKA, IN  
To The Honorable Members of the  
Common Council  
City of Mishawaka, Indiana  
And  
Mishawaka City Plan Commission  
City of Mishawaka, Indiana

**Re: Petition for Vacation of Public Right of Way**

The undersigned City of Mishawaka, through its Department of Planning and Development, respectfully requests the Mishawaka Common Council and the Mishawaka City Plan Commission vacate the following described public right of way located in the City of Mishawaka, St. Joseph County, Indiana:

THE WEST 36 FEET OF THE BORLEY AVENUE FROM THE SOUTH RIGHT-OF-WAY LINE OF DONALDSON AVENUE EXTENDED TO THE SOUTH RIGHT-OF-WAY LINE BORLEY AVENUE ALSO BEING THE NORTH LINE OF LOT 7 OF MAIN STREET CORRIDOR FIRST SUBDIVISION AS RECORDED UNDER INSTRUMENT NUMBER 1405633 IN THE OFFICE OF RECORDER OF ST. JOSEPH COUNTY, INDIANA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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Said right-of-way to be vacated is adjacent to Lot 6 of Main Street Corridor 1<sup>st</sup> Subdivision.

Petitioner further states they are the owner of the property immediately adjacent to the above-described right of way.

Wherefore, the Petitioner prays and respectfully requests 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 vacated the above described right of way located in the City of Mishawaka.

*Kenneth B. Prince, AICP, ASLA*  
City Planner  
ADJACENT PROPERTY OWNER  
Lot 6 of Main Street Corridor First Sub.

CONTACT PERSON:  
*Kenneth B. Prince, AICP, ASLA*  
City Planner  
600 E. Third Street  
Mishawaka, IN 46544  
574-258-1625



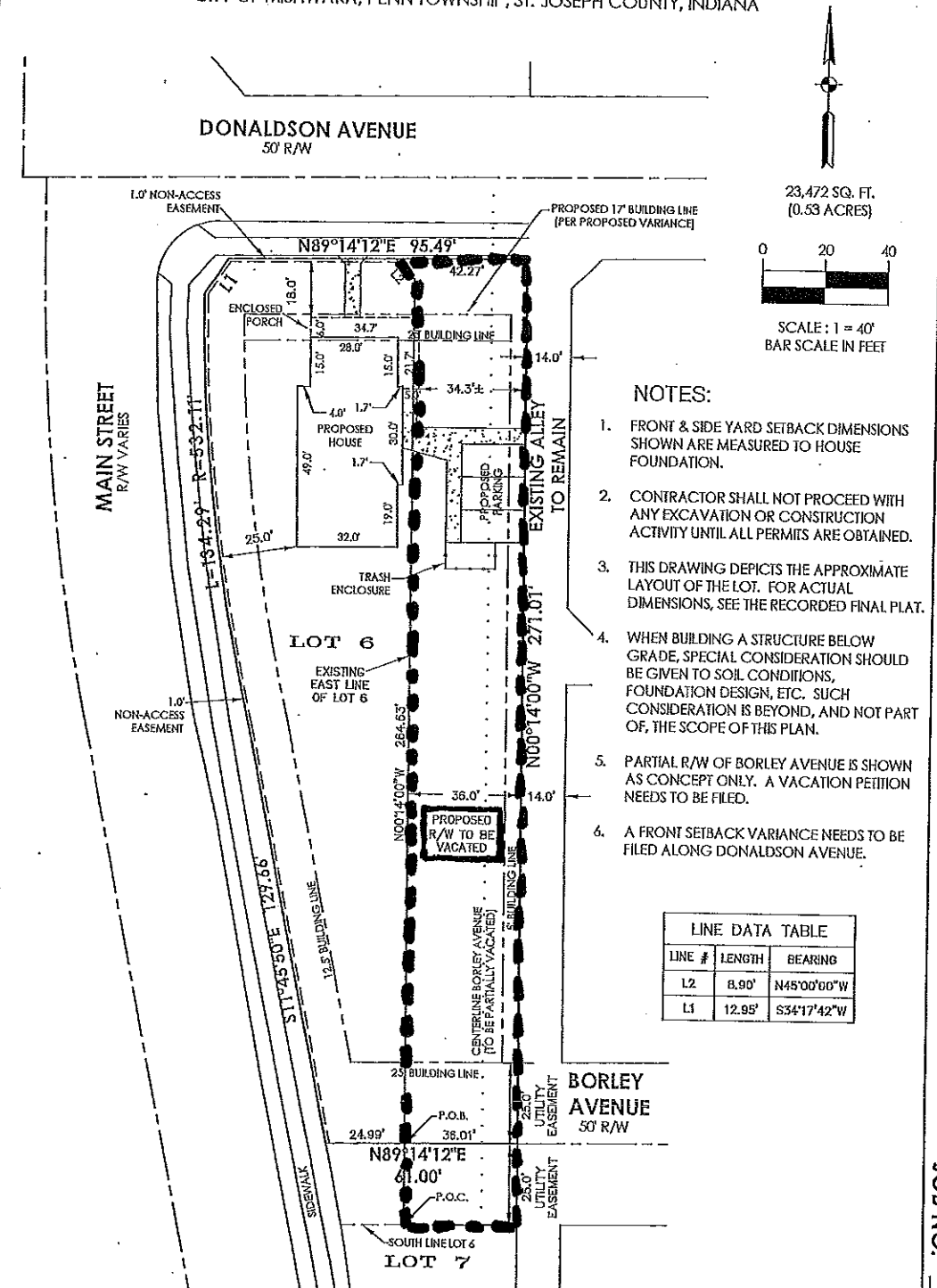
# ABONMARCHE

750 Lincoln Way East  
South Bend, IN. 46601  
T 574.232.8700  
F 574.251.4440  
abonmarche.com

INSET/DETAIL MAP

Battle Creek  
Benton Harbor  
Marquette  
South Haven  
Goshen  
Hobart  
Lafayette  
South Bend  
Valparaiso  
Engineering • Architecture • Land Surveying

A PART OF LOT 6 MAIN STREET CORRIDOR FIRST SUBDIVISION,  
EXCEPT THE SOUTH 25 FEET  
PART OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 37 NORTH, RANGE 3 EAST,  
CITY OF MISHWAKA, PENN TOWNSHIP, ST. JOSEPH COUNTY, INDIANA



DRAWING FOR: BUILDING PERMITS ONLY  
PREPARED FOR: PLACE BUILDERS  
THE STRUCTURE IS APPROX. 18' FROM THE R/W

DATE OF FIELDWORK:

DATE: 06/02/17

FIELDBOOK:

ZONING: RESIDENTIAL

REVIEWED BY:

DRAWN BY: DRS/JLM

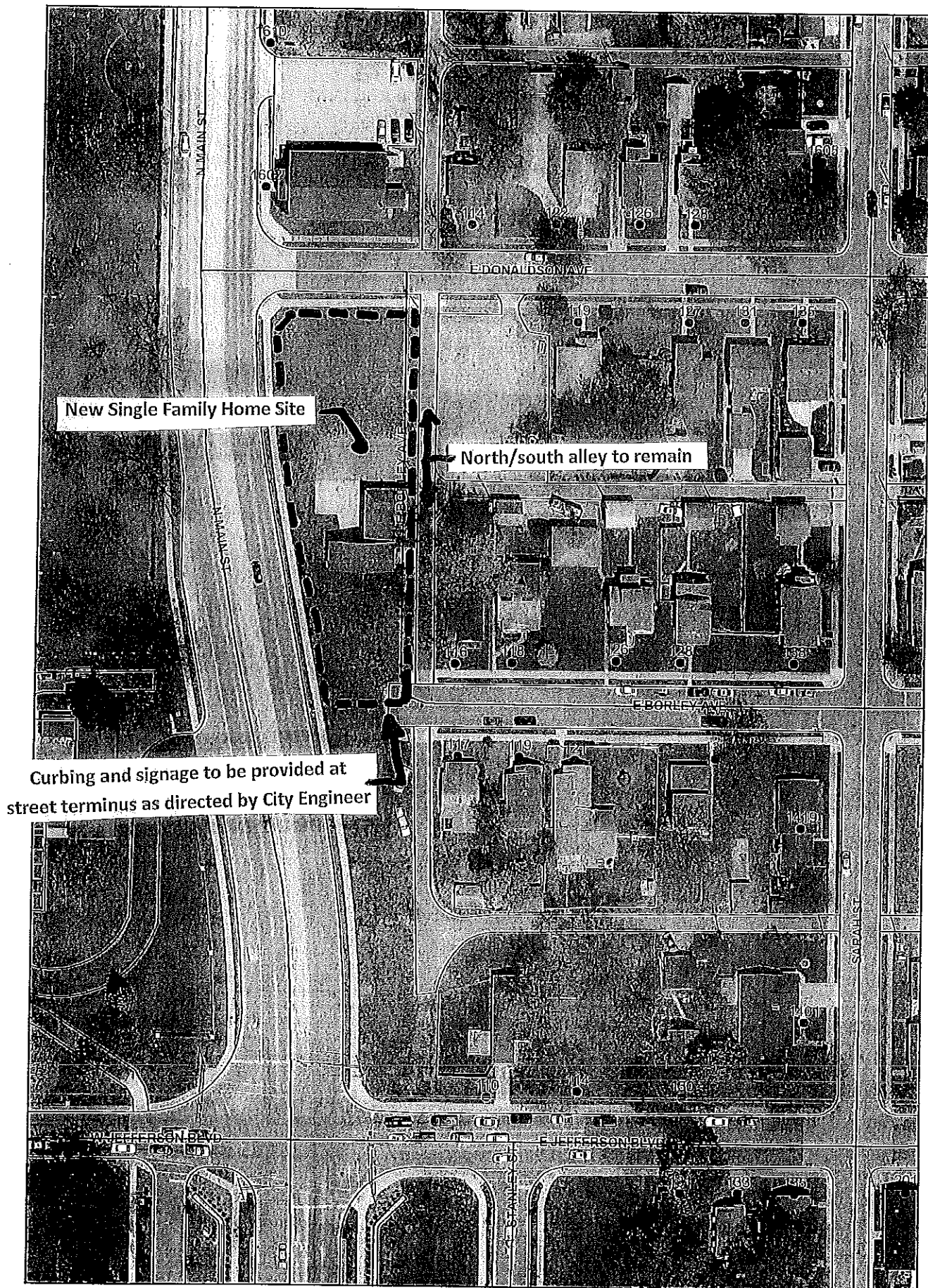
SCALE: 1"=40'

SHEET 1 OF 1

COPYRIGHT 2017 - ABONMARCHE CONSULTANTS, INC.

JOB NO. 17-0035-10

C:\Projects\2017\17-0035-10\17-0035-10 LOT 6 MAIN STREET CORRIDOR.dwg, SITE, 02/20/17 4:56:41 PM, Legal, 1:1



Borley Avenue Permanent Street Closure Concept Plan



E DONALDSON AVE

PET 17-21

LOT 6 OF MAIN  
STREET CORRIDOR  
FIRST SUB

N MAIN ST

E BORLEY AVE

E BORLEY AVE

## Location Map

**PET 17-21**

CITY OF MISHAWAKA  
VACATE A PORTION OF  
BORLEY AVENUE SOUTH OF  
DONALSON STREET

E. OF LOT 6 OF MAIN STREET  
CORRIDOR 1ST MINOR SUB

1st Reading 8-21-17  
2nd Reading  
Passed  
Failed  
Continued To

RECEIVED  
DEBORAH S. BLOCK, MMC

AUG 16 2017

CITY CLERK  
MISHAWAKA, IN

**PROPOSED ORDINANCE NO. 2017-31**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE  
COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA,  
AUTHORIZING THE ISSUANCE OF ECONOMIC DEVELOPMENT  
REVENUE BONDS IN ONE (1) OR MORE SERIES IN THE AGGREGATE  
PRINCIPAL AMOUNT NOT TO EXCEED NINETEEN MILLION AND 00/100  
DOLLARS (\$19,000,000.00) AND APPROVING AND AUTHORIZING OTHER  
ACTIONS IN RESPECT THERETO**

WHEREAS, the Common Council of the City of Mishawaka, Indiana (the "Common Council"), has previously adopted a resolution on June 5, 2017 (the "Inducement Resolution"), finding that the proposed economic development facilities project to be owned and operated by Hellenic Senior Living of Mishawaka, LLC (the "Borrower"), consisting of the acquisition, design, construction and equipping of a 136-unit affordable assisted living multifamily housing facility, together with functionally related and subordinate facilities for low and moderate income seniors (the "Project") to be located at 1128 West Dragoon Trail, Mishawaka, Indiana, will not have a material adverse competitive impact on other facilities of the same or similar kind already constructed or operating in the City of Mishawaka, Indiana (the "City"); and

WHEREAS, Indiana Code 36-7-11.9 and 12 (collectively, the "Act") declares that the financing of economic development facilities constitutes a public purpose; and

WHEREAS, pursuant to the Act, the City is authorized to issue revenue bonds and lend the proceeds thereof to a developer for the purpose of financing, reimbursing or refinancing the costs of acquisition, design, construction and equipping of economic development facilities in order to foster diversification of economic development and creation or retention of opportunities for gainful employment in or near the City; and

WHEREAS, the Act provides that such bonds may be secured by a trust indenture between an issuer of such bonds and a corporate trustee; and

WHEREAS, the Borrower has advised the City of Mishawaka, Indiana, Economic Development Commission (the "Commission") and the City concerning the Project, and requested that the City issue one or more series of its taxable or tax-exempt Multifamily Housing Revenue Bonds (Hellenic Senior Living of Mishawaka Project), Series 2017 (with such further series or other designation as determined to be necessary, appropriate or desirable), in an aggregate principal amount not to exceed Nineteen Million Dollars (\$19,000,000) (the "Bonds"), under the Act and lend all or a portion of the proceeds of such Bonds to the Borrower for the purpose of paying all or a portion of the costs of the Project, funding a debt service reserve fund and/or other permissible reserves, if necessary, paying capitalized interest, if necessary and paying all or a portion of the incidental expenses incurred on account of the issuance of the Bonds; and

WHEREAS, the Commission has rendered a report concerning the proposed financing of economic development facilities for the Borrower and has been given the opportunity to comment thereon; and

WHEREAS, the Commission has considered whether the Project will have an adverse competitive effect or impact on any similar facility or facilities of the same kind already constructed or operating in the same market area or in or about the City; and

WHEREAS, pursuant to Section 24 of the Act and certain provisions of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, (the "Code"), the Commission held a public hearing on August 28, 2017, following publication of notice duly given (the "Public Hearing") for the purpose of receiving evidence and testimony on the Project and matters related to the proposed financing thereof and heard all persons interested in the proceedings and considered written remonstrances and objections, if any; and

WHEREAS, following the Public Hearing, the Commission found that the financing of the Project complies with the purposes and provisions of the Act, that such financing will be of benefit to the health and welfare of the City and its citizens through the requirements that the Project serve persons and families of low and moderate income, that the amount of tax credits to be allocated to the Project under Section 42 of the Code does not exceed the amount necessary for the financial feasibility of the project and its viability as a qualified housing project throughout the credit period for the Project, and that the Project satisfied the requirements for the allocation of a housing credit dollar amount under the Indiana Housing and Community Development Authority's qualified allocation plan; and

WHEREAS, pursuant to and in accordance with the Act, the City desires to provide funds necessary to finance all or a portion of the Project by issuing the Bonds; and

WHEREAS, the City intends to issue the Bonds consistent with the terms of this Ordinance and pursuant to a Trust Indenture, to be dated the first day of the month in which the Bonds are sold or delivered (or such other date as the officers of the City may hereafter approve) (the "Indenture"), by and between the City and a corporate trustee to be selected by the Borrower (the "Trustee"), in order to obtain funds to lend to the Borrower for the purpose of financing all or a portion of the Project, funding a debt service reserve fund and/or other permissible reserves, if necessary, paying capitalized interest, if necessary and paying all or a portion of the incidental expenses incurred on account of the issuance of the Bonds in accordance with the terms of a Loan Agreement, to be dated the first day of the month in which the Bonds are sold or delivered (or such other date as the officers of the City may hereafter approve) (the "Loan Agreement"), by and between the City and the Borrower with respect to Bonds and the Project, provided, however, that the aggregate principal amount of the Bonds shall not exceed \$19,000,000; and

WHEREAS, pursuant to the Loan Agreement, the Borrower will make certain representations, warranties and commitments with respect to the Project and will agree to make payments sufficient to pay all principal of, premiums, if any, and interest on the Bonds as the same becomes due and payable, and to pay administrative expenses in connection with the Bonds; and

WHEREAS, no member of the Common Council has any pecuniary interest in any employment, financing agreement or other contract made under the provisions of the Act and related to the Bonds authorized herein, which pecuniary interest has not been fully disclosed to the Common Council and no such member has voted on any such matter, all in accordance with the provisions of Indiana Code 36-7-12-16; and

WHEREAS, the Commission approved the terms of the following documents in substantially final form: the Indenture (including a form of the Bonds), the Loan Agreement, the Official Statement providing for the marketing of the Bonds (the "Official Statement"), the Bond Purchase Agreement among the City, the Borrower and Piper Jaffray & Co. (the "Underwriter") for sale of the Bonds (the "Purchase Agreement"), and the Land Use Restriction Agreement among the City, the Borrower and the Trustee (the "Land Use Restriction Agreement" and collectively with the Indenture, the Loan Agreement, the Official Statement and the Purchase Agreement, the "Financing Documents"), and this proposed form of ordinance, each of which were incorporated by reference in the Commission's Resolution adopted on August 28, 2017, which Resolution has been transmitted hereto; and

WHEREAS, based upon the resolution adopted by the Commission pertaining to the Project, the Common Council hereby finds and determines that the funding approved by the Commission for all or a portion of the Project will be of benefit to the health and general welfare of the citizens of the City, complies with the provisions of the Act and the amount necessary to finance all or a portion of the costs of the Project will require the issuance, sale and delivery of one or more series of the Bonds in an aggregate principal amount not to exceed Nineteen Million Dollars (\$19,000,000);

**NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, AS FOLLOWS:**

SECTION 1. It is hereby found, determined, ratified and confirmed that the financing of the economic development facilities referred to in the Financing Documents consisting of the Project, the issuance and sale of the Bonds, and the loan of the proceeds thereof to the Borrower for the purpose of financing all or a portion of the Project (i) will result in the diversification of industry, the creation or retention of business opportunities and the creation or retention of opportunities for gainful employment within the jurisdiction of the City, (ii) will serve a public purpose, and will be of benefit to the health and general welfare of the City, (iii) complies with the purposes and provisions of the Act and it is in the public interest that the City take such lawful action as determined to be necessary or desirable to encourage the diversification of industry, the creation or retention of business opportunities, and the creation or retention of opportunities for gainful employment and providing quality affordable multifamily housing within the jurisdiction of the City, and (iv) will not have a material adverse competitive effect on any similar facilities already constructed or operating in or near the City.

SECTION 2. The forms of the Financing Documents presented herewith are hereby approved and all such documents shall be kept on file by the Clerk of the Common Council or City Controller. In compliance with Indiana Code 36-1-5-4, two (2) copies of the Financing Documents are on file in the office of the Clerk of the Common Council for public inspection.

SECTION 3. The City shall issue its Bonds in one or more series, as described above, in the maximum aggregate principal amount not to exceed Nineteen Million Dollars (\$19,000,000), with a maximum term not to exceed forty (40) years and with a maximum interest rate not to exceed six and one-half percent (6.50%) per annum, for the purpose of procuring funds to loan to the Borrower in order to finance all or a portion of the Project, fund a debt service reserve fund and/or other permissible reserves, if necessary, pay capitalized interest, if necessary, and pay all or a portion of the incidental expenses incurred on account of the issuance of the Bonds. The Bonds will

be payable as to principal and interest solely from payments made by the Borrower pursuant to the Financing Documents, and upon such terms and conditions as otherwise provided in the Financing Documents and this Ordinance. The Bonds shall never constitute a general obligation of, an indebtedness of, or charge against the general credit of the City.

SECTION 4. The Mayor and Controller of the City are authorized and directed to sell such Bonds to the purchaser or purchasers thereof at a price not less than 98% of the aggregate principal amount thereof plus accrued interest, if any, at a rate of interest not to exceed six and one-half percent (6.50%) per annum, and with a final maturity no later than forty (40) years from the date of the issuance of any series of Bonds. The Purchase Agreement in form and substance acceptable to the Mayor and the Controller, may be, and hereby is, approved, and the Mayor and the Controller are hereby authorized and directed to execute and deliver the Purchase Agreement in form and substance acceptable to them and consistent with the terms and conditions set forth in this Ordinance. If necessary or desirable in connection with the sale of the Bonds, each of the Mayor, the Controller and any other officer of the City is authorized to enter into a continuing disclosure undertaking agreement, in compliance with Rule 15c2-12 of the Securities and Exchange Commission (the "SEC Rule"), which will be in such a form as may be deemed necessary, appropriate or desirable by each of the Mayor, the Controller and any other officer of the City, with such to be conclusively evidenced by execution thereof by any such officer. The Mayor, the Controller, or any other officer of the City familiar with the matters with respect to the City set forth in the Official Statement is hereby authorized to certify to the underwriter of the Bonds that the information in the Official Statement with respect to the City is deemed to be final within the meaning of the SEC Rule. The Underwriter is hereby authorized to distribute the Official Statement to potential investors in the Bonds.

SECTION 5. The Mayor and the Clerk are authorized and directed to execute the Financing Documents, and the Mayor, the Controller and the Clerk and any officer of the City are authorized and directed to execute such other documents approved or authorized herein and any other document which may be necessary, appropriate or desirable to consummate the transaction contemplated by the Financing Documents and this Ordinance, and their execution is hereby confirmed on behalf of the City. The signatures of the Mayor and the Clerk on the Bonds which may be necessary or desirable to consummate the transaction and their execution are hereby confirmed on behalf of the City. The signatures of the Mayor and the Clerk on the Bonds may be facsimile signatures. The Mayor, the Controller, the Clerk and any other officer of the City are authorized to arrange for the delivery of such Bonds to the purchaser, payment for which will be made in the manner set forth in the Financing Documents. The Mayor, the Clerk and any other officer of the City may, by their execution of the Financing Documents requiring their signatures and imprinting of their facsimile signatures thereon, approve any and all such changes therein and also in those Financing Documents which do not require the signature of the Mayor, the Clerk or any other officer of the City without further approval of this Common Council or the Commission if such changes do not affect terms set forth in Sections 27(a)(1) through and including (a)(10) of the Act.

SECTION 6. The provisions of this Ordinance and the Financing Documents shall constitute a contract binding between the City and the holder or holders of the Bonds and after the issuance of said Bonds, this Ordinance shall not be repealed or amended in any respect which would

adversely affect the right of such holder or holders so long as said Bonds or the interest thereon remains unpaid.

SECTION 7. It is hereby determined that the amount of the tax credits to be allocated to the Project under Section 42 of the Code does not exceed the amount necessary for the financial feasibility of the Project and its viability as a qualified housing project throughout the credit period for the Project. In making the foregoing determination, the Common Council has relied upon the representations of the Borrower. The foregoing determinations shall not be construed to be a representation or warranty by the City as to the feasibility or viability of the Project. The Common Council hereby authorizes and directs the Mayor of the City to review and make the foregoing determination again for and on behalf of the City at the request of the Borrower, following receipt of supporting materials submitted by the Borrower to the Indiana Housing and Community Development Authority ("IHCD") and either written representations of the Borrower or of IHCD to the effect that (i) the amount of tax credits to be allocated to the Project under Section 42 of the Code does not exceed the amount necessary for the financial feasibility of the Project and its viability as a qualified housing project throughout the credit period for the Project and (ii) the Project satisfied the requirements for the allocation of a housing credit dollar amount under IHCD's qualified allocation plan. Such determinations shall occur on or about the date of the sale of the Bonds to the purchasers thereof and on or about the date that each building of the Project is placed in service. In reliance solely upon the representations of the Borrower, it is hereby found and determined that the Project satisfies the requirements for the allocation of a housing credit dollar amount under IHCD's qualified allocation plan.

SECTION 8. Subject to the obligations of the Borrower set forth in the Loan Agreement, the Land Use Restriction Agreement and/or the certificates or other agreements of the Borrower to be executed upon the issuance of the Bonds, the City will use its best efforts to restrict the use of the proceeds of the Bonds in such a manner and to expectations at the time the Bonds are delivered to the purchasers thereof, so that they will not constitute "arbitrage bonds" under Section 148 of the Code and the regulations promulgated thereunder, or to preserve any other desired tax status of any series of Bonds under the Code, if necessary. The Mayor, the Controller and the Clerk, or any other officer having responsibility with respect to the issuance of the Bonds, are authorized and directed, alone or in conjunction with any of the foregoing, or with any other officer, employee, consultant or agent of the City, to deliver a certificate for inclusion in the transcript of proceedings for the Bonds, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to said Section 148 of the Code and the regulations thereunder.

SECTION 9. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this ordinance, the Financing Documents or under any judgment obtained against the City, including without limitation its Commission, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, under or independent of the Loan Agreement, shall be had against any member, director, or officer or attorney, as such, past, present, or future, of the City, including without limitation its Commission, either directly or through the City, or otherwise, for the payment for or to the City or any receiver thereof or for or to any holder of the Bonds secured thereby, or otherwise, of any sum that may remain due and unpaid by the City upon any of such Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such member, director, or officer or attorney, as such,

to respond by reason of any act or omission on his or her part or otherwise for, directly or indirectly, the payment for or to the City or any receiver thereof, or for or to any owner or holder of the Bonds, or otherwise, of any sum that may remain due and unpaid upon the Bonds hereby secured or any at them, shall be expressly waived and released as a condition of and consideration for the execution and delivery of the Loan Agreement and the issuance, sale and delivery of the Bonds.

SECTION 10. The Borrower will indemnify and hold the City, including its officials, attorneys, employees and agents, free and harmless from any loss, claim, damage, tax, penalty, liability, disbursement, litigation expenses, attorneys' fees and expenses and other court costs arising out of, or in any way relating to, the execution or performance of the Financing Documents or other documents in connection therewith or any other cause whatsoever pertaining to the Project or the Bonds, including the issuance and sale of the Bonds or failure to issue or sell the Bonds or other actions taken under the Financing Documents or other documents in connection therewith or any other cause whatsoever pertaining to the Project or the Bonds arising out of a failure or breach of performance by the Borrower, all as further described in the Loan Agreement, except in any case as a result of the intentional misrepresentation or willful misconduct of the City or its agents.

SECTION 11. The Mayor, the Controller, the Clerk and any other officer of the City are each hereby authorized and directed to execute, attest and deliver such further instruments and documents and to take such further actions, in the name and on behalf of the City, as in their judgment shall be necessary, desirable or appropriate in order to fully consummate the transaction and to effect the purposes of this Ordinance, and any such instruments or documents heretofore executed and delivered and any such actions heretofore taken, be, and hereby are, ratified and approved. The Mayor or his designee is hereby authorized to enter into one or more project agreements with the Borrower, on terms and conditions acceptable to the Mayor, together with any all changes as may be necessary, desirable or appropriate, which shall be evidenced by his execution thereof.

SECTION 12. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 13. All ordinances, resolutions and orders or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

SECTION 14. It is hereby determined that all formal actions of the Common Council relating to the adoption of this Ordinance were taken in one or more open meetings of the Council, that all deliberations of the Common Council and of its committees, if any, which resulted in formal action, were in meetings open to the public, and that all such meetings were convened, held and conducted in compliance with applicable legal requirements, including Indiana Code 5-14-1.5, as amended.

SECTION 15. This Ordinance shall be in full force and effect upon adoption and compliance with Indiana Code 36-4-6.

\* \* \* \* \*

PASSED AND ADOPTED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana, on this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Presiding Officer

ATTEST:

\_\_\_\_\_  
Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED to the Mayor of the City of Mishawaka, Indiana, this \_\_\_\_\_ day of \_\_\_\_\_, 2017, at \_\_\_\_\_ o'clock, \_\_\_\_\_.M.

\_\_\_\_\_  
Deborah S. Block, IAMC, MMC, City Clerk

APPROVED, this \_\_\_\_\_ day of \_\_\_\_\_, 2017, \_\_\_\_\_, o'clock, \_\_\_\_\_.M.

\_\_\_\_\_  
David S. Wood, Mayor

AUG 10 2017

CITY CLERK  
MISHAWAKA, IN

APPEAL #17-30

RESOLUTION NO. 2017-21

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:

**514 East Marion Street, Mishawaka, Indiana**

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

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

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

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

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

Section I. The Common Council has provided notice of the hearing on the Petition from the Board of Zoning Appeals pursuant to Indiana Code requesting that a Use Variance for property located at **514 East Marion Street, Mishawaka, Indiana**, more particularly known and described as follows:

A PARCEL LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 37 NORTH, RANGE 3 EAST, CITY OF MISHAWAKA, PENN TOWNSHIP, ST. JOSEPH COUNTY INDIANA, A PORTION OF SAID PARCEL BEING PART OF LOTS 19-22, 33-36 AND ALL OF LOTS 23-32 OF THE RECORDED PLAT OF HUDSON'S ADDITION AS RECORDED IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA, AND ALSO A PORTION OF A VACATED ALLEY LYING BETWEEN LOTS 34 AND 35 OF SAID PLAT, AND ALSO THE VACATED ALLEY LYING BETWEEN LOTS 24, 25, AND LOTS 30 AND 31; SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS COMMENCING AT THE INTERSECTION OF THE SOUTH LINE OF THE GRAND TRUNK WESTERN RAILROAD, AND THE EAST RIGHT-OF-WAY LINE OF DIVISION STREET; THENCE SOUTH 00°25'35" EAST, 110.07 FEET (REC. SOUTH 00°06'43" EAST, 109.08 FEET) TO THE POINT OF BEGINNING; THENCE SOUTH 89°55'39" EAST, 285.74 FEET (REC. SOUTH 89°14'25" EAST, 285.74 FEET); THENCE NORTH 00°34'27" WEST, 106.49 FEET (REC. NORTH 00°06'47" EAST, 106.49 FEET); THENCE NORTH 89°41'02" EAST, 220.50 FEET (REC. SOUTH 89°37'51" WEST, 220.94 FEET); THENCE NORTH 00°27'46" WEST, 238.53 FEET (N 00°13'28" E, 238.77 FEET) TO THE SOUTH LINE OF SAID GRAND TRUNK WESTERN RAILROAD; THENCE WITH A CURVE TURNING TO THE LEFT WITH AN ARC LENGTH OF 224.19

FEET, WITH A RADIUS OF 2903.66 FEET, WITH A CHORD BEARING OF NORTH 57°13'09" EAST, WITH A CHORD LENGTH OF 224.14 FEET; THENCE SOUTH 00°17'18" EAST, 648.58 FEET TO THE NORTH RIGHT-OF-WAY LINE OF MARION STREET; THENCE SOUTH 89°54'37" WEST ALONG SAID NORTH RIGHT-OF-WAY LINE, 346.57 FEET (REC. NORTH 90°00'00" WEST 346.43 FEET) TO THE SOUTHWEST CORNER OF SAID LOT 23; THENCE NORTH 00°30'10" WEST ALONG THE WEST LINE OF SAID LOT 23, 126.47 FEET; THENCE NORTH 89°55'40" WEST, 346.86 FEET TO THE EAST RIGHT-OF-WAY LINE OF DIVISION STREET; THENCE NORTH 00°25'35" WEST, 55.00 FEET (REC. NORTH 00°06'43" WEST, 55.00 FEET) TO THE POINT OF BEGINNING. CONTAINING 4.18 ACRES MORE OR LESS. SUBJECT TO ALL LEGAL RIGHT-OF-WAYS, EASEMENTS, AND RESTRICTIONS OF RECORD.

The Use Variance, if approved, will allow temporary storage and testing of non-hazardous materials on I-1 Light Industrial zoned property subject to the following conditions of approval:

1. The Use Variance shall be limited to the temporary storage and testing of non-hazardous materials, and shall be limited to indoors. No outside storage or testing of materials shall be permitted;
2. No known hazardous materials shall be stored on site; and
3. Provide paved access drive to site.

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

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

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the proposed use will have no additional impact on the adjacent industrial uses that currently operate there. The proposed use is consistent with the existing industrial properties within the area.
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the operation has been at that site for approximately two years.
3. The need for a variance arises from the uniqueness of the use proposed. Since temporary storage of non-hazardous materials is not listed as a use in any zoning district, a use variance can better represent the exact activities happening on this site.

4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the use being requested is not specifically referenced in the zoning ordinance. The closest being medical and nuclear waste disposal or landfill, all conditional uses in I-2 Heavy Industrial. This being a temporary stop but not the final resting place of the materials did not quite fit into these categories.
5. The approval will not interfere substantially with the Mishawaka 2000 Plan because the plan identifies this pocket as industrial. The approval is consistent with the goals and objectives of the Comprehensive Plan.

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

PASSED by the Common Council of the City of Mishawaka, Indiana, this \_\_\_\_\_ day of \_\_\_\_\_, 2017, at \_\_\_\_\_ o'clock \_\_\_\_\_ .m.

\_\_\_\_\_  
Presiding Officer

ATTEST:

\_\_\_\_\_  
Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this \_\_\_\_\_ day of \_\_\_\_\_ 2017,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ m.

\_\_\_\_\_  
Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this \_\_\_\_\_ day of \_\_\_\_\_, 2017, at  
\_\_\_\_\_ o'clock \_\_\_\_\_ .m.

\_\_\_\_\_  
David A. Wood, Mayor

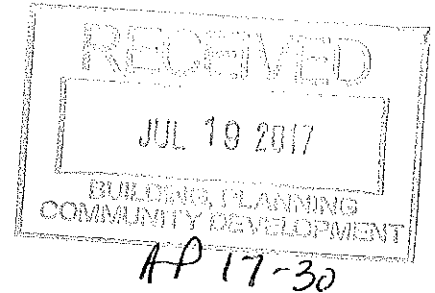
RECEIVED  
DEBORAH S. BLOCK, MMC

AUG 03 2017

CITY CLERK  
MISHAWAKA, IN

July 19, 2017

Board of Zoning Appeals  
City of Mishawaka, IN



I, S E R Real Estate LLC / INSERVE / Dan Wilson, am the owner of the following described real estate located within the City of Mishawaka, Penn Township, St. Joseph County, State of Indiana, to wit:

514 E Marion Street, Mishawaka, IN 46545

A PARCEL LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 37 NORTH, RANGE 3 EAST, CITY OF MISHAWAKA, PENN TOWNSHIP, ST. JOSEPH COUNTY INDIANA, A PORTION OF SAID PARCEL BEING PART OF LOTS 19-22, 33-36 AND ALL OF LOTS 23-32 OF THE RECORDED PLAT OF HUDSON'S ADDITION AS RECORDED IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA, AND ALSO A PORTION OF A VACATED ALLEY LYING BETWEEN LOTS 34 AND 35 OF SAID PLAT, AND ALSO THE VACATED ALLEY LYING BETWEEN LOTS 24, 25, AND LOTS 30 AND 31; SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS COMMENCING AT THE INTERSECTION OF THE SOUTH LINE OF THE GRAND TRUNK WESTERN RAILROAD, AND THE EAST RIGHT-OF-WAY LINE OF DIVISION STREET; THENCE SOUTH 00°25'35" EAST, 110.07 FEET (REC. SOUTH 00°06'43" EAST, 109.08 FEET) TO THE POINT OF BEGINNING; THENCE SOUTH 89°55'39" EAST, 285.74 FEET (REC. SOUTH 89°14'25" EAST, 285.74 FEET); THENCE NORTH 00°34'27" WEST, 106.49 FEET (REC. NORTH 00°06'47" EAST, 106.49 FEET); THENCE NORTH 89°41'02" EAST, 220.50 FEET (REC. SOUTH 89°37'51" WEST, 220.94 FEET); THENCE NORTH 00°27'46" WEST, 238.53 FEET (N 00°13'28" E, 238.77 FEET) TO THE SOUTH LINE OF SAID GRAND TRUNK WESTERN RAILROAD; THENCE WITH A CURVE TURNING TO THE LEFT WITH AN ARC LENGTH OF 224.19 FEET, WITH A RADIUS OF 2903.66 FEET, WITH A CHORD BEARING OF NORTH 57°13'09" EAST, WITH A CHORD LENGTH OF 224.14 FEET; THENCE SOUTH 00°17'18" EAST, 648.58 FEET TO THE NORTH RIGHT-OF-WAY LINE OF MARION STREET; THENCE SOUTH 89°54'37" WEST ALONG SAID NORTH RIGHT-OF-WAY LINE, 346.57 FEET (REC. NORTH 90°00'00" WEST 346.43 FEET) TO THE SOUTHWEST CORNER OF SAID LOT 23; THENCE NORTH 00°30'10" WEST ALONG THE WEST LINE OF SAID LOT 23, 126.47 FEET; THENCE NORTH 89°55'40" WEST, 346.86 FEET TO THE EAST RIGHT-OF-WAY LINE OF DIVISION STREET; THENCE NORTH 00°25'35" WEST, 55.00 FEET (REC. NORTH 00°06'43" WEST, 55.00 FEET) TO THE POINT OF BEGINNING.

CONTAINING 4.18 ACRES MORE OR LESS.

SUBJECT TO ALL LEGAL RIGHT-OF-WAYS, EASEMENTS, AND RESTRICTIONS OF RECORD.

The above-described real estate presently has a zoning classification of I-1 – Light Industrial District under the Zoning Ordinance of the City of Mishawaka.

Appellant presently occupies the above-described property in the following manner:

INSERVE, the company occupying the site has been conducting business on this site for the past 2 years and is an ever-growing business. They occupy all of the existing buildings, one as corporate office, second as shop/maintenance for equipment and equipment storage, another is interior tank storage and they also have exterior tank storage.

Appellant desires to continue to occupy the site. Due to uniqueness of the operations, an actual classification of zoning land use is not available. They have some similar operations of a Transfer Facility and of a Processing Facility but do not actual conduct that exact type of business. The type of business they conduct is a temporary place for non-hazardous materials to be held while prepared for reuse in other industries such as reclaimed water, reclaimed oils, and materials to be utilized in Alternate Solid Fuel Programs. Materials are brought back from the various clients and are placed temporarily in existing holding tanks/facilities waiting for further dispersal to the reuse-recycle market place to eliminate unnecessary materials to a landfill.

The Zoning Ordinance of Mishawaka does not currently outline the specific type of work conducted on the property. INSERVE offers a unique service to the community by collecting non-hazardous unwanted materials from various industries, temporarily place it into existing holding tanks and facilities on the premises, then relocate the collected materials into the various market places where it can be utilized

within other industries. INSERVE is a site/facility that conducts the beginning process of materials to be reused in other market industries while eliminating unnecessary re-usable materials into landfills.

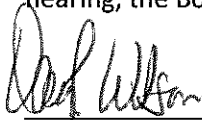
The unusual type of business conducted at the INSERVE Facility, since they do not process materials, transfer refuse materials, or discharge materials, a new definition is needed to assist in describing the work conducted. They are a temporary site for unwanted reusable non-hazardous materials that are waiting for relocation to known established reuse facilities. Please see diagrams provided by INSERVE.

The use and value of the adjacent area to the property included in the variance will not be affected in any adverse manner due to the site has had the exterior above ground tanks since 1947, the above ground tanks enclosed within buildings were established in 1989. The type of business conducted on the site has only improved the quality of the property where as it does not discharge any materials, everything is hauled to other re-usable facilities. All truck traffic enters/exits onto Division Street near the railroad crossing and does not enter the residential neighborhood.

The use variance is needed due to the type of business conducted does not fall under any current defined category of the zoning ordinance. INSERVE would like to continue to grow in the Mishawaka community, the employ approximately 75 people at this site and have considerable room to grow.

The approval of the use, a temporary facility site of non-hazardous materials waiting for process to reuse in the market place, does not interfere with the Mishawaka 2000 Comprehensive Plan, this site which is located along the existing railroad tracks is serving at its best use providing a buffer to the existing residential neighbors.

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



---

Dan Wilson  
S E R Real Estate, LLC  
INSERVE

Contact Person:  
Concept Creations Development, Inc.  
Dennis Murphy  
510 W. Jefferson Boulevard  
Mishawaka, IN 46545  
Phone: 574.257.4766  
Fax: 574.257.0708  
Email: dlm@primedc.com

## Example of Current Waste Management Practices

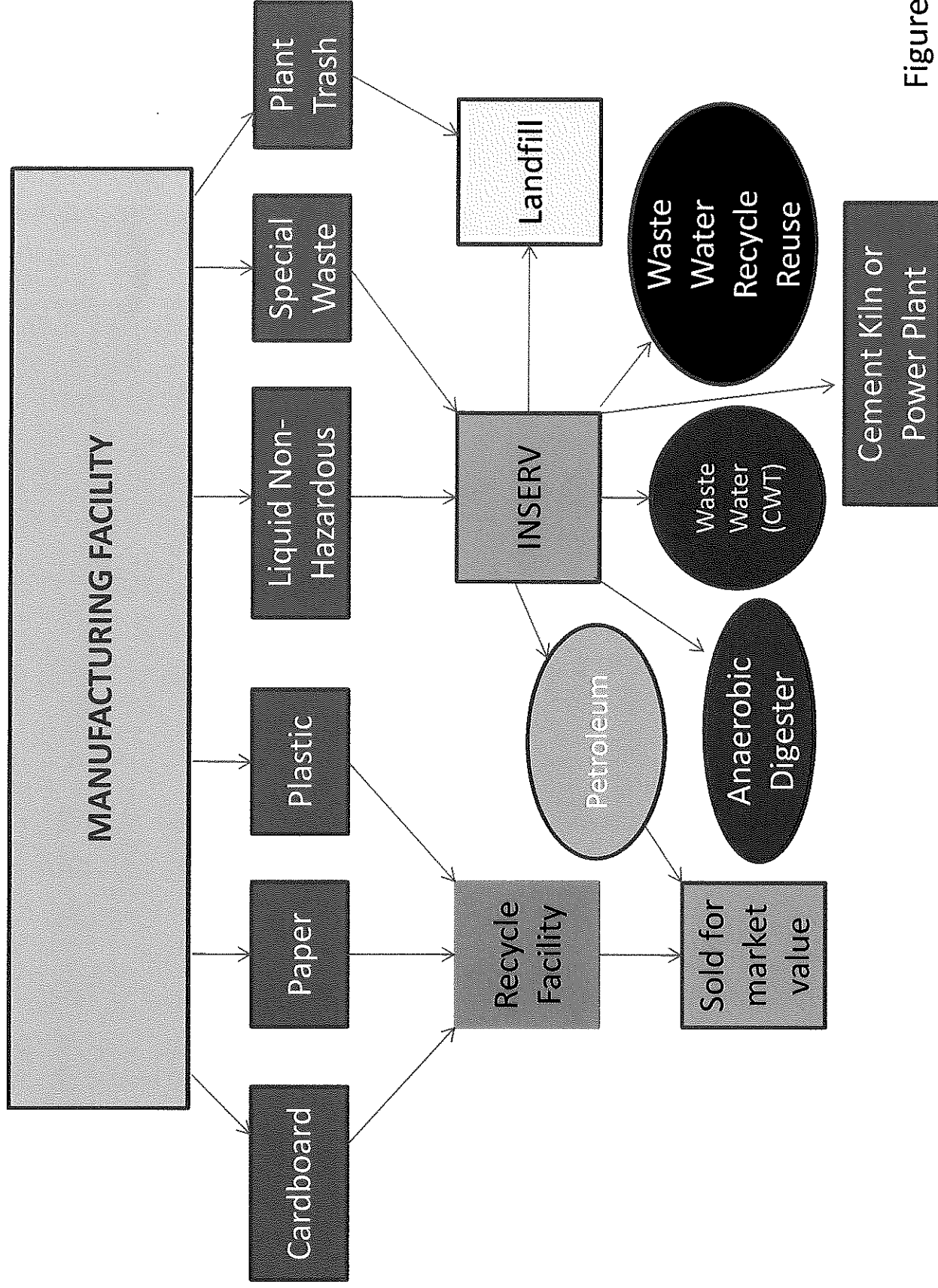


Figure 1

**INSERTV INC.**  
**1122 Division St.**  
**Mishawaka, IN 46545**  
**HYDRO-EXCAVATING**  
**SPOILS MANAGEMENT PLAN**

This document describes the procedures utilized by INSERTV Inc. to manage and dispose/recycle spoils (soils and liquids) resulting from hydro-excavating projects.

**Hydro-excavators:**

INSERTV Inc. offers hydro excavation services that utilizes water and vacuum to remove soil for the installation of utility poles, or other excavations where underground utilities may be present. The resulting spoils contain a mixture of water and soil which contains free liquids. INSERTV will deliver the resulting spoils to the 514 E. Marion St. facility for dewatering and reuse. Many times the spoils cannot be left at the customer location due to the presence of free liquids. Prior to scheduling the job, the site will be inspected and tested to determine whether the soils/water has been impacted by any chemical contamination. An INSERTV Profile Sheet (Profile) is filled out and signed by the generator of the spoils prior to any shipment. Analysis is provided by the generator to assist in characterizing the waste as non-hazardous/impacted. Once the spoils have been approved by INSERTV for acceptance to their facility, an approval will be issued for the spoils. In some cases, a sample will be requested to determine potential recycle value, potential odor issues, or to verify the spoils/waste stream matches the description on the Profile.

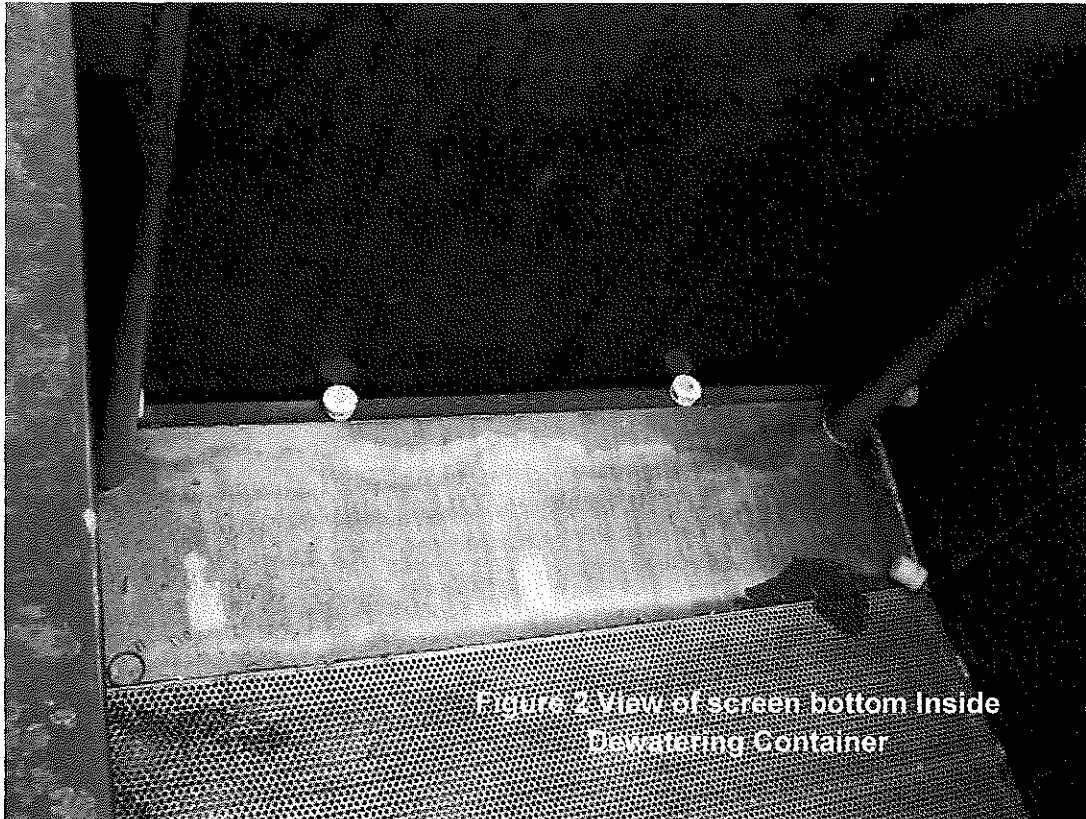
***Approval Process:***

1. INSERTV completes initial site assessment;
2. Generator Completes Waste Characterization Profile and submits to INSERTV (with a representative sample of material as required);
3. Analytical Provided by Generator in combination with Generator Knowledge of the Process is reviewed by INSERTV Inc. approvals coordinator;
4. **No RCRA hazardous or PCB containing soils will be accepted by INSERTV;**
5. INSERTV issues approval letter (good for one year);
6. Annually generating process is reviewed if no change INSERTV issues recertification letter;
7. If analytical on file is greater than 3 years old, new analysis will be required prior to recertification.

***Training:***

The operator will be trained in observing the spoils generated from the hydro excavation operation for evidence of staining, sheen in the water, or other physical/visual signs of potential contamination even though the site has been previously characterized.

Figure 2 shows the inside construction of a dewatering container. The bottom of the dewatering container is a false bottom of screen mesh to allow the free liquids to drain to a valve to allow the removal from the container. Additionally, a geotextile liner will be used with the dewatering container to assist in the exclusion of solids in the liquid removed from the container.



Water removed from the dewatering container is pumped to a storage tank located at 1122 Division St. A sample of the water will be tested for each tank to determine that there are no chemicals present that would require additional treatment for reuse. Water verified as "clean" will be reused in the hydro-excavators. Water requiring additional treatment will be sent to an INSERV approved Centralized Waste Treatment (CWT) facility for treatment and discharge.

INSERV will utilize the INSERV Inc. Commodity and By-Product Management Plan to determine sampling criteria, collection and analysis.

Although the dewatering containers have gaskets on the rear doors, INSERV will store them on a concrete surface to contain any potential spills. Additionally, INSERV will perform a daily inspection of any containers that are stored on-site to insure that no liquids are allowed to be released from the dewatering container.

## **Approved Spoils Locations**

### **Prairie View Landfill~Waste Profile Number 609816IN**

15505 Shively Road  
Bremen, Indiana  
574/546-4475

### **Advanced Waste**

5625 Old Porter Road~Waste Profile Number 41462652  
Portage, Indiana 46368  
219/763-7600 or 219/252-2362 Jaymes Barrera

### **Superior Construction Co., Inc.**

1101 Lake St  
Lake Station, IN  
Jon A. Shaner, (219) 787-0850, jshaner@sccinc.com

### **GNG Gravel**

2064 N. 150 West  
Warsaw, Indiana (219) 269-9300

### **Elkhart Gravel**

19242 US 6 East  
New Paris, Indiana (574) 831-2815

### **Irving Sand and Gravel Company, Inc.**

1129 CR 64,  
Garrett, Indiana (888) 637-4518

### **Larry Mergy**

120 Thomas Road  
Fort Wayne, Indiana (260) 483-4729

### **Earth Movers~Waste Profile Number 60920IN**

26488 Co Rd 26,  
Elkhart, IN 46517

### **Liberty Landfill~Waste Profile Number 60920IN**

8635 E State Road 16,  
Monticello, IN 47960

### **Emergency Response and Contingency Plan:**

Because INSERTV Inc. is an oil/water recycling facility, the site is required to have in place a Spill Prevention Control and Countermeasure Plan (SPCC) in accordance with 40 CFR 112.3 (d).

The SPCC plan outlines the following Emergency Response requirements:

- Emergency Notification/Phone List
- Emergency Response Equipment
- Training for Emergency Response
- Facility Response Personnel
- Facility Evacuation Plan Factors (includes evacuation plan)
- Emergency Coordinator Responsibilities

Additionally, the SPCC plan outlines hazard identification, vulnerability analysis, discharge scenarios, potential equipment failure, discharge protection system, spill countermeasures, security, inspections, and response training.

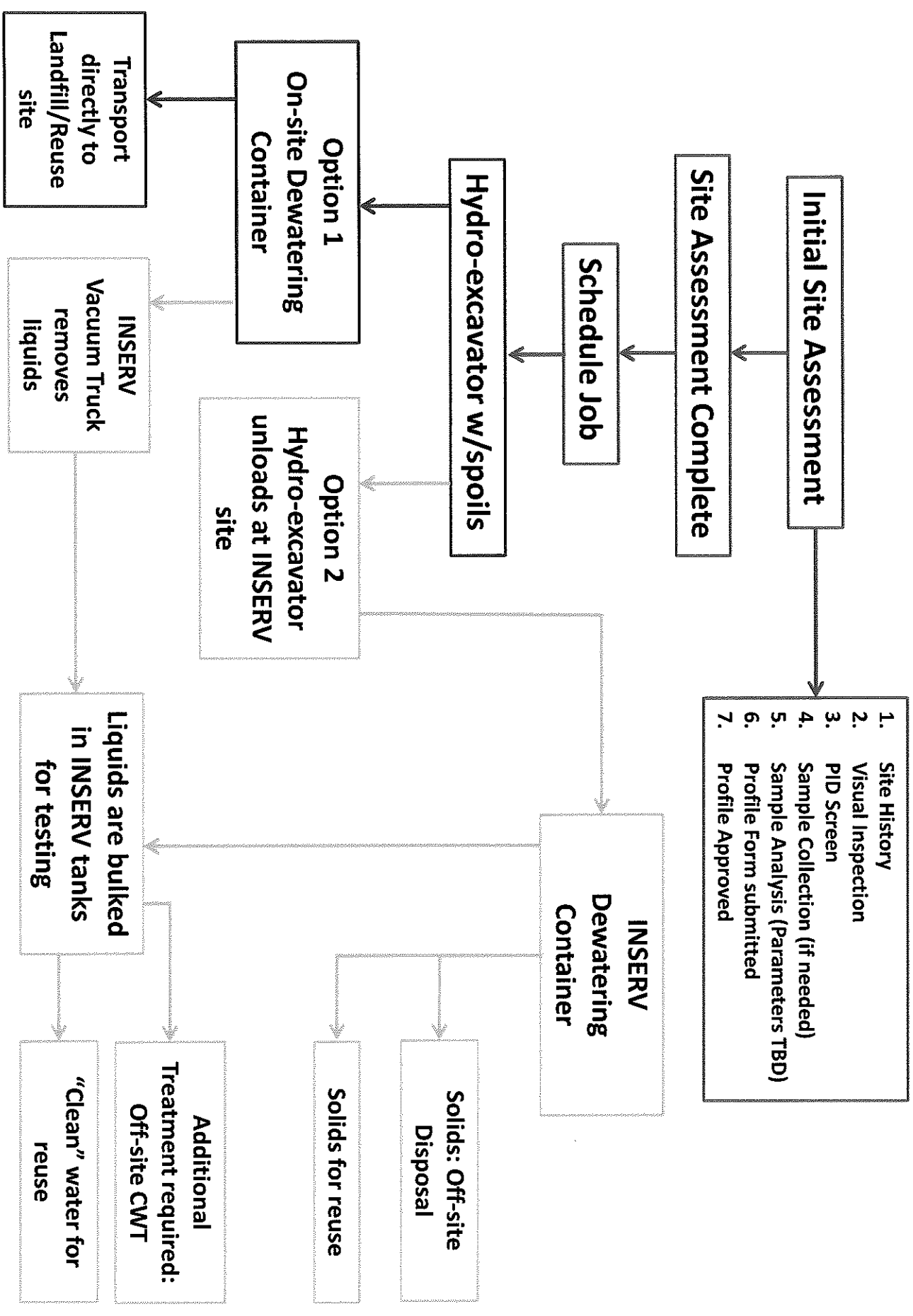
In the event of a release from one of the dewatering containers, INSERTV personnel will implement the Emergency Response as outlined in the SPCC plan. In the event of a spill/release, INSERTV personnel and equipment will respond to the release. Response time will be minimal, since the labor and equipment are located on the same site to respond to the spill. Additionally, INSERTV personnel are trained in emergency response, and all necessary equipment and supplies are located within 5 minutes of the dewatering container storage area.

A spill response kit will be located in the immediate vicinity of the dewatering containers for small spills, or possible leaks from truck engines or hydraulic lines.

Additionally, INSERTV has multiple vacuum trucks available at all times to respond to a potential spill or release from the dewatering containers. Equipment and personnel are available on a 24/7 basis as INSERTV is an emergency response contractor for many local businesses.

A copy of the SPCC plan is located at various locations throughout the site and copies are kept by key response personnel.

# INSERV Inc. Hydro-excavation Spoils Flow Chart



**INSERV, Inc.  
1122 Division St.  
Mishawaka, IN 46545**

**Commodity and By-Product Management Plan**

Section 1.1 describes the chemical and physical analysis as well as the characteristics of the streams accepted, segregated, and stored at INSERV, Inc. Section 1.2 presents the Laboratory Documentation for sampling, testing and evaluating materials received and processed at the facility. The Laboratory Documentation is designed to gather sufficient information about the material to assure safe handling and processing of the incoming material streams.

**1.1 Chemical and Physical Properties**

**General Description of Materials**

INSERV manages and reclaims materials and commodities including, petroleum Contaminated Waters (PCW), dark & off-spec contaminated fuels, cross-contaminated fuels, ethanol bearing fuels, tank decanting residuals, tank clean residuals, line clean-out, pigging, maintenance and testing, dewatering and Emergency Response residues in its storage, decanting and reclamation facility. Materials are delivered to the facility in bulk tanker trucks, vacuum trucks or van trailers for storage, segregating and shipment off-site to approved facilities.

All of the materials managed, stored and reclaimed at the INSERV facility are designated as non-hazardous, non-RCRA material streams as defined by the U.S. EPA and the State of Indiana as used oil, petroleum hydrocarbons, off-specification fuels, petroleum contact water (PCW), and other non-hazardous, non-RCRA materials.

**Stream Designation**

**Trans-Mix and Feed Stock**

**Re-refining**

Petroleum streams that are either off specification, discarded, or for whatever reason are no longer considered to have retail commercial value may be blended into a feed stock or transmix stream for re-refining at an approved refining/recycling facility.

## **1.2 Laboratory Documentation**

New streams undergo pre-qualification review. Analytical data may be provided by the supplier or by INSERV. Other laboratories may also be used as necessary.

Samples delivered to the facility are analyzed and shipping papers are reviewed before acceptance. Any problems with identification and composition are resolved with the generator or the stream is not accepted. Analysis of samples from incoming shipments are approved on-site. Other laboratories are contracted as necessary.

### **Material Analysis Plan**

The material analysis plan sets out the criteria, rationale and procedures that will be followed at the facility for the sampling, analysis and evaluation of materials for acceptance at the facility. It outlines the procedures and analytical methods used to obtain the chemical and physical data on the materials in order to evaluate them for safe storage and handling by the facility.

### **Material Qualification Protocol**

It is the facility's policy not to accept any materials until the analytical results are obtained and any discrepancies are resolved.

### **Pre-qualification Procedure and Analysis**

The facility requires a written Material Profile Sheet of the material from the generator prior to the material being shipped to the facility. An example of a Material Profile Sheet, shown in 1-1, is reviewed annually or whenever the material stream changes. The generator may use a version of their own Material Profile Sheet, if all pertinent information is included on the form. The pre-qualification procedure is designed to assure that a comprehensive chemical profile is provided for each material including: volatiles, semi-volatiles, metals, PCBs, herbicides and pesticides, and poly-aromatic hydrocarbons. The information can be based on generator knowledge, generator certification or testing. Based on the information contained on the Material Profile Sheet, the facility will determine whether the material can be managed on site. Note, non-substantive changes to these

- pH\*\*
- Moisture Content\*\*\*
- Specific Gravity\*\*\*
- Compatability\*
- GC Scan\*
- PCBs\*

*\*This analysis will be performed only on materials to be blended into fuel for reuse,*

*\*\*This analysis will be performed on oily materials or water insoluble solid matrix materials,*

*\*\*\*This analysis will be performed only on liquid materials.*

If discrepancies are noted the facility will contact the generator within 24 hours and describe the discrepancy. The generator is allowed 24 hours to: 1) revise the profile, 2) correct the manifest, or 3) make arrangements to remove the material. If revisions are necessary, the generator may fax the corrected document(s).

Materials bulked, blended or processed for shipment off-site may receive additional analysis in accordance with requirements of the receiving facility.

### **In-Coming Bulk Shipment Procedures and Analysis**

In addition to the pre-qualification procedures, representative samples from the material shipment are analyzed upon arrival at the facility and the results are compared to the Material Profile.

The following fingerprint analysis will be performed on incoming shipments prior to acceptance:

- BTU Value\*
- Ash Content\*
- Chlorides\*
- pH\*\*
- Moisture Content\*\*\*
- Specific Gravity\*\*\*
- Compatability\*
- GC Scan\*
- PCBs\*

*\*This analysis will be performed only on materials to be blended into fuel for reuse,*

*\*\*This analysis will be performed on oily materials or water insoluble solid matrix materials,*

*\*\*\*This analysis will be performed only on liquid materials.*

remove the material. If revisions are necessary, the generator may fax the corrected document(s).

### **Parameters to be Analyzed**

A general discussion of the parameters to be analyzed follows:

During the initial material pre-qualification procedure described previously, a fingerprint test is performed for each material.

The fingerprint test is to: a) check that the arriving shipment corresponds to its description in the Material Profile Sheet; b) check those constituents which may create worker safety or compliance problems; and c) check those containers that have significant influence on the heat value of the material or the difficulty or cost of processing.

It is essential that the fingerprint test be both brief and reliable. The fingerprint test must be brief in order to prevent the formation of queues of vehicles awaiting acceptance, and sufficiently reliable to prevent the inadvertent acceptance of materials not conforming to the manifest or contractual description. Thus, the least number of parameters, which can be analyzed quickly and which together will confirm the identity of the received material shipment have been chosen for analysis.

A list of key parameters from which the fingerprint parameters may be chosen are discussed below:

#### **pH**

pH is a very important indicator since unwanted reactions may occur when materials of widely different pH are mixed. The facility does not accept corrosive material for processing or fuel blending, nor does the facility accept reactive material for any purpose.

#### **Specific Gravity**

Specific gravity is a basic indicator of material characteristics and, as such, is used to ensure that a material shipment matches the Material Profile.

#### **Flash Point**

different tank or matrix that will not result in a reaction that will interfere with reclamation, or 3) ship off-site to another facility that could handle this material.

## Test Methods

Table 1-1 lists the test methods utilized to measure each parameter at the facility laboratory. Because of the varied nature of the liquid material, it may be desirable or necessary to modify or adapt the standard methods or the sample preparation used prior to analysis, or to use entirely alternative methods. Such modifications are permissible under this plan, provided that the modified or alternative achieve accurate and reliable results. However, test methods normally conform to SW-846 methods or other acceptable methods.

Initial testing for qualifying a new material stream is generally performed by the facility. Alternate laboratories may also be used. Analysis of samples collected from incoming trucks for acceptance at the facility are generally performed in laboratories at the facility. If the facility is unable to analyze a sample in a timely manner, an alternate laboratory will be utilized.

**Table 1-1**  
**Test Methods for Analysis\***

| Parameters         | Test Methods             | Reference                 |
|--------------------|--------------------------|---------------------------|
| Specific Gravity   | Standard Hydrometer      |                           |
| Flash Point        | Closed Cup Method        | SW-846 Method 1010        |
| pH                 | pH meter or litmus paper | SW-846 Method             |
| 9040,9041,9045     |                          |                           |
| Heat of combustion | Bomb Calorimeter         | ASTM D-240                |
| Ash Residue        | Bomb Calorimeter         | ASTM D-240                |
| Moisture Content   | Karl Fisher              | ASTM D-2361, D-805, E-203 |
| Halogen/Chloride   | Silver Nitrate           | ASTM D-808 and 512B       |
| PCBs               | Gas Chromatography       | SW-846 8082               |
| Volatiles          | Gas Chromatography       | SW-846 8010, 8015, 8020   |

## Sampling Methods

### Bulk Shipments

are pre-qualified. material streams in current use are reviewed annually, at which time suppliers are required to provide re-certification of their Material Profile.

Each incoming shipment of bulk material is sampled to verify the identity of the material. Containers are sampled according to EPA Test Methods in lots of ten or less with the representative samples from each container being composite into one sample. Composite samples will be taken only from containers containing material from the same material stream of the same generator.

## **2.0 INSERV VIRGIN PETROLEUM RECLAMATION PROGRAM**

COMMODITY HIERARCHY-all petroleum products (crude unrefined and refined fuels) recycled commodities (Jet A, kerosene, gasoline, diesel, heating).

**99% clear fuels** with no ethanol-Gladieux Trading and Marketing, 4133 New Haven Avenue, Fort Wayne, IN 46803.

**90% dark contaminated fuels** with <10% B, S &W, crude oil with <10% B, S &W-Continental Refining Company, 300 refinery Road, Somerset, KY 42501.

**90% fuels, dark, contaminated, high B, S &W (30%), ethanol bearing, crude bearing as "fuel-to-fuel exempt"**-Buzzi Unicem 3301 South CR 150 West, P.O.Box 486, Greencastle, IN 46135

**PCW after virgin fuels removed, with flash above 100F and no BOD's (ethanol, glycols or unknown chemicals)** classified as non-hazardous oily waters from petroleum fuels and used oils to the following Centralized Wastewater Treatment (CWT) facilities:

Liquid Industrial Waste Services, 11325 East Lakewood Blvd, Holland, MI 49424

Beaver Oil Company, 6037 Lenzi Avenue, Hodgkins, IL 60525.

Eagle Processing/GroAmerica, 2275 Burlingame Avenue, Suite B, Wyoming, MI 49509

514 E Marion Street  
Mishawaka, Indiana 46545

Office Phone: 574-968-0372  
Toll Free: 1-877-917-3239  
24/7 Emergency: 574-968-0372  
Fax: 574-968-0373  
Website: [inserv24-7.com](http://inserv24-7.com)



## **INSERV VIRGIN PETROLEUM RECLAMATION PROGRAM**

### **MATERIAL PROFILING**

All petroleum Contaminated Waters (PCW), dark & off-spec contaminated fuels, cross-contaminated fuels, ethanol bearing fuels, tank decanting residuals, tank clean residuals, line clean-out, pigging, maintenance and testing, dewatering and Emergency Response events will all require and undergo initial site profiling, profiling on loaded truck/tanker/trailer, profiling at receiving tank farm prior loading into tank farm and after loading into tank farm storage tank. Bottoms, Solids & Water (B,S &W), fuel type content (%), material handling procedures, material placement into fuels hierarchy and value will be assessed by Facility Manager. Customer information and invoicing criteria will be forwarded to AR and Office Manager.

**COMMODITY HIERARCHY**-all petroleum products (crude unrefined and refined fuels) recycled commodities (Jet A, kerosene, gasoline, diesel, heating).

**99% clear fuels** with no ethanol-Gladieux Trading and Marketing, 4133 New Haven Avenue, Fort Wayne, IN 46803.

**90% dark contaminated fuels** with <10% B, S &W, crude oil with <10% B, S &W-Continental Refining Company, 300 refinery Road, Somerset, KY 42501.

**90% fuels, dark, contaminated, high B, S &W (30%), ethanol bearing, crude bearing as "fuel-to-fuel exempt"**-Buzzi Unicem 3301 South CR 150 West, P.O.Box 486, Greencastle, IN 46135

**PCW after virgin fuels removed, with flash above 100F and no BOD's (ethanol, glycols or unknown chemicals)** classified as non-hazardous oily waters from petroleum fuels and used oils to the following Centralized Wastewater Treatment (CWT) facilities:

Liquid Industrial Waste Services, 11325 East Lakewood Blvd, Holland, MI 49424

Beaver Oil Company, 6037 Lenzi Avenue, Hodgkins, IL 60525.

Eagle Processing/GroAmerica, 2275 Burlingame Avenue, Suite B, Wyoming, MI 49509

Valicor Environmental Services, Inc., 11807 Reading Road, Cincinnati, OH 45241



**Virgin Petroleum contaminated Solids after bulk liquids removed-Solidification:** soils, absorbents, sludge, filters, debris-PrairieView Landfill (Waste Management), 0000 Hively Road, Wyatt, IN 46545

Southeast Berrien County Landfill, 3200 Chamberlain Road, Buchanan, MI 49107

Liquid Industrial Waste Services, 11325 East Lockwood Blvd., Holland, MI 49424

Eagle Processing/GroAmerica, 2275 Burlingame Avenue, Suite B, Wyoming, MI 49509

**Virgin Petroleum contaminated Solids after bulk liquids removed-Thermal Destruction:** Buzzi-Unicem, Greencastle, IN/Cape Girardeau, MO

E BORLEY AVE

E BORLEY AVE

CHESTNUT ST

NORTH  
AP 17-30

E JEFFERSON BLVD

AP 17-30

STANLEY ST

E MARION ST

## Location Map

**AP 17-30**

514 E. MARION ST.

S E R REAL ESTATE LLC

USE VARIANCE - TEMPORARY  
NON-HAZARDOUS STORAGE  
& PROCESSING AND RELATED  
ANCILLARY USES (OFFICE, SHOP/  
MAINTENANCE FAC., EQUIPMENT  
STORAGE, AND INTERIOR &  
EXTERIOR TANK STORAGE)

LOCUST ST

E BROADWAY

LOCUST ST

PETITION #17-17

JUL 13 2017

1st Reading 7-17-17

CITY OF MISHAWAKA, INDIANA

2nd Reading

PROPOSED ORDINANCE NO. 2017-29

Passed

Failed

Continued To

CITY CLERK  
MISHAWAKA, IN

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

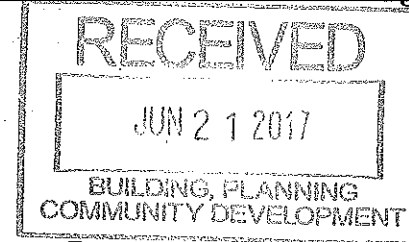
JUN 29 2017

CITY CLERK  
MISHAWAKA, IN

**Petition for Annexation and Zoning**

June 21, 2017

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.

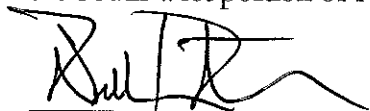
*It comes down to people and their experiences | Together, We Will*

550 Union St. | Mishawaka, IN 46544 | p 574.259.9976 | [www.troyergroup.com](http://www.troyergroup.com)

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.



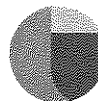
Property Owner Signature

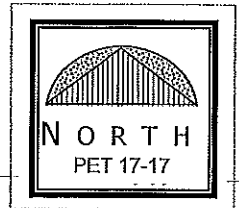


Print Property Owner Name

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**

PARCEL 1  
ANNEX &  
REZONE

PARCEL 2  
REZONE

PREGEL DR

E MCKINLEY 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