

AGENDA

Monday, November 20, 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**

November 06, 2017

5. Petitions, Communications, Remonstrance and Memorials

A letter from the City Plan Commission regarding recommendations from their November 14, 2017 meeting.

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

A Public Hearing on Vacation 2017-03 as required by State Statute on behalf of Larry J. Penn, ET AL. & City of Mishawaka to vacate Veterans Parkway & release of easements - 2320 Douglas Rd.

6. Report of Special Committee

7. Ordinances on First Reading

P.O. NO. 2017-41 Rezone from I-2 Heavy Industrial to R-1 Single Family - 926 S. Byrkit Ave.

P.O. NO. 2017-42 Vacate Public Right of Way Veterans Parkway & Release of Easements - 2320 Douglas Rd

8. Resolutions

R2017-27 Use Variance for Outdoor Storage - 2320 Miracle Lane - Big Lots

9. Ordinances on Second Reading

P.O. NO. 2017-39 Transfer Funds - MVH Dept. \$44,000.00 (Assigned to Budget and Finance Committee)

P.O. NO. 2017-40 Transfer Funds - Central Services Dept. - \$43,000.00 (Assigned to Budget and Finance Committee)

10. Privilege of the Floor - Non-Agenda Items

11. Unfinished Business

12. New Business

13. Adjournment

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

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

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

November 6, 2017

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

Roll Call.

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

Absent: Mr. Emmons.

The minutes from the October 02, 2017 meeting was approved as received from the City Clerk's Office.

Clerk Block read a letter from the Board of Zoning Appeals and the City Plan Commission regarding recommendations from their October 10, 2017 meeting.

PETITION 2017-26 Rezone from 1-2 Heavy Industrial to R-1 Single Family – 926 S. Byrkit

PETITION 2017-28 Vacate Veterans Parkway & Release of Easements 2320 Douglas Road.

Chief Deputy Clerk Hazen read the following Proposed Ordinances by title and were assigned to committee and set for public hearing at next meeting.

PROPOSED ORDINANCE NO. 2017-39

AN ORDINANCE DECLARING AN EMERGENCY AND TRANSFERRING AND REAPPROPRIATING FUNDS WITHIN THE BUDGET ADOPTED FOR THE CALENDAR YEAR ENDING DECEMBER21, 2017

(MVH Dept. \$44,000)

(Assigned to the Budget and Finance Committee)

PROPOSED ORDINANCE NO. 2017-40

AN ORDINANCE DECLARING AN EMERGENCY AND TRANSFERRING AND REAPPROPRIATING FUNDS WITHIN THE BUDGET ADOPTED FOR THE CALENDAR YEAR ENDING DECEMBER21, 2017

(Central Service Dept. \$43,000)

(Assigned to the Budget and Finance Committee)

PRIVILEGE OF THE FLOOR

Tony Trinca, Bill Sykes, David Morgan, all spoke on the seriousness of puppy mills in St. Joseph County. They asked the council to make an ordinance banning the sale of dogs, cats and rabbits in pet stores. They said pet store buy their animals from puppy mills. They explained animals from puppy mills are abused and not properly taken care of, the mills were all about making a profit. They said best way to cut the market from puppy mills was to ban the sale of animals in pet stores. Mr. Trinca mentioned there were 249 retail pet sales bans enacted in North America including the unincorporated areas of St. Joseph County.

Mr. Mammolenti questioned how many pet stores in St. Joseph County. Mr. Trinca replied one, Pats Pets at University Park mall.

Mr. Compton expressed he supported the idea of no puppy mills. He asked did Mr. Trinca know for sure the pet store in Mishawaka gets their animals from puppy mills. Mr. Trinca replied no. Bill Sykes added he recently went to Pats Pet store and acted as an interested buyer. He said went he asked for the pets background of vaccinations and breeder, the breeder was known to be a large breeder and ran a puppy mill.

Mr. Tanner also expressed his support. He asked did all breeders have to be American Kennel Club registered breeders and if the one location were too close, how would it impact the broader scheme of the other puppy mills nearby. Mr. Trinca said he was not sure about the registration. He went on to say they would have to shut down one store at a time. Mr. Trinca said if the demand seizes then the puppy mills seizes.

Mr. Canarecci said this could seriously impact the other person's right to do business. He agreed no one should sale abused animals. He asked based on Mr. Trinca's knowledge did other places enact similar ideas to find new avenues to create revenues such a partnering with local rescues. Mr. Trinca said California recently passed law stating pet stores must sell animals from shelters and rescue centers only.

Mr. Compton asked if a pet was purchased at a store would the pet be considered a rescue. Mr. Morgan said a family purchasing a pet from a store was considered to be rescued but it did not rescue the mother dog that was contained in a crate 24/7. He went on to say he was a rescue pet owner, his dog was from a puppy mill in Missouri, she was bred every breeding cycle for 3 ½ years in a crate. He continued to say they cannot prevent puppy mills but they can stop the cycle of selling and replacing animals by preventing stores from buying animals from puppy mills. Mr. Morgan mentioned there were many rescue associations including the humane society in the United States that would work with pet stores and set up programs to sell rescue dogs. He stated there were 3 million dogs euthanized every year in the United States due to puppy mills. Mr. Morgan was hoping Mishawaka would make a law the same as the county to help support and stop the cycle.

Mr. Mammolenti asked the definition of a puppy mill. Mr. Morgan explained a puppy mill was a multiple breeding facility where profit is given priority over the well-being of the animals.

Brent Williams, Chris Robbins, Jerry Goeller from the Borley Avenue neighborhood expressed their concerns and frustrations on the Drug Problems and Nuisance Houses in Mishawaka. Mr.

Williams said the drug houses in their neighborhood have been ongoing and the city has been doing a good job trying to help. He suggested two proposals to help the city and the Police Department stream line their efforts to solve this very difficult problem. Mr. Williams felt the Mishawaka Ordinance for a Public Nuisance House was complicated and needed revising, he suggested the council and the Law Department to look into South Bends Public Nuisance Ordinance. He said the neighbors believed the city was subsidizing drug use, if someone overdoses; the city revives the person with a drug called Narcan. Mr. Williams went on to discuss the second proposal the neighborhood believed would end drug houses in the City of Mishawaka, they asked the city tally the total cost of all First Responders treating drug overdoses and to bill the homeowners. He explained if the bill was not paid, the city should place a lean on the homes. Mr. Robins wanted to know what it cost for the Narcan drug and the cost for First Responders going to the homes repeatedly. He expressed they were losing property value with the drug house in the neighborhood. Mr. Robins believed the offenders were not being held responsible for their actions and tax payers were being paying the offenders bill. He said the offenders were not billed for the Narcan drug or the for the first responders bill.

Mr. Tanner said they had intriguing ideas but there were laws that had to be followed. He continued to say the council and the city was very aware of the problem. Mr. Tanner said the city may be able to take action on one of the proposals Mr. Williams presented but it was a process. He thanked the neighbors for being very patient; he also informed the city was doing everything they could do within the framework and laws.

Mr. Compton expressed this was a problem that was extremely challenging. He said he has spoken with his fellow council members and to the city administration; they were working on making changes to the nuisance house ordinance. Mr. Compton expressed this was not being ignored and he told his constituents to continue calling the police.

Mr. Canarecci said this was a problem that also bothered the council as it did the residence. He hoped for everyone sake this problem will get resolved.

Mr. Mammolenti said when he was first sworn-in he received a call regarding a drug house in a neighborhood. He continued to say he made a promise he would help fix the problem and it took a very long time. Mr. Mammolenti insured the neighbors that Mr. Compton has brought this issue to their attention many times and the administration was working on solving the problem.

Mr. Tanner referred to Mr. Robbins comments; he said there is no price on a life, even when you question how much someone values their own life going through this cyclical process. Mr. Tanner went on to say it gets challenging when talking numbers and lives.

NEW BUSINESS

Appointment to School Board

Mrs. Voelker made a motion to nominate Amanda Roberts to the Mishawaka School Board with a seconded by Mr. Tanner the motion carried.



Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 8).
Yes: Mrs. Voelker, Mr. Compton, Mr. Tanner, Mr. Mammolenti, Mr. Banicki, Mr. Bellovich, Mr. Canarecci, Mr. Deal.

Members of the Council thanked Denny Wood for his years of service on the School Board. They also thanked the other applicants and asked that they continue to invest in Mishawaka and the Mishawaka schools.

Mr. Deal thanked Mike Trippel for saving the Christopher Columbus Statue after it was vandalized.

Mr. Deal and Mr. Mammolenti announced The Twin Branch Neighborhood Meeting would be November 15th at 7:00PM at Twin Branch School. The speaker would be announced at a later date.

ADJOURNMENT 8:14 P.M.

Mary Ellen Hazen /s/
Chief Deputy Clerk

Ross Deal /s/
Ross Deal, President



City of Mishawaka

DAVID A. WOOD, MAYOR

DEPARTMENT OF CITY PLANNING

November 15, 2017

Honorable Members of the Common Council
City of Mishawaka, Indiana

RE: Plan Commission Recommendation
November 14, 2017, Public Hearing
Certification of Proposed Ordinances

Honorable Members:

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

PETITION #17-27 A petition submitted by Michael R. and Kathrine Nisley requesting to rezone **926 South Byrkit Avenue** from I-2 Heavy Industrial District to R-1 Single Family Residential.

The Commission, with a vote of 8-0, recommended approval.

PETITION #17-28 A petition submitted by Larry J. Penn of the Larry J. Penn Revocable Living Trust, Becky L. Penn of the Becky L. Penn Revocable Living Trust, and Paul D. Penn of the Paul D. Penn Revocable Living Trust and the City of Mishawaka Board of Public Works and Safety requesting to vacate Veterans Parkway and release of easements.

The Commission, with a vote of 8-0, recommended approval.

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

Respectfully,

Kari Myers, Administrative Planner
Secretary, Mishawaka Plan Commission

cc: Kathrine Nisely

RECEIVED
DEBORAH S. BLOCK, MMC

NOV 15 2017

CITY CLERK
MISHAWAKA, IN

STAFF REPORT

Location: 926 S. Byrkit Avenue

Date: Nov. 14, 2017

Petition: 17 27

Prepared By: KM

GENERAL INFORMATION

Applicant: Michael R. and Kathrine Nisley

Status: Property Owners

Request: Rezone from I-2 Heavy Industrial District to R-1 Single Family Residential District

Zoning Classification: I-2 Heavy Industrial District

Lot Size: 140.65 X 309.71

Applicable Regulations: Sec. 137-164 Residential R-1 District; Sec. 137-40 Plan Commission; & Sec. 137-41 Amendment to Zoning Ordinance and Zoning Map

SPECIAL INFORMATION

Area Development Pattern: North: I-2 Heavy Industrial District (vacant land)
South: C-4 Automobile Oriented Commercial (gas station/convenience store)
East: I-2 Heavy Industrial District
West: R-1 Single Family Residential District

Thoroughfare: Byrkit Avenue north of Twelfth Street

School District: School City of Mishawaka

Public Utilities: Available

Comprehensive Plan: Industrial

ANALYSIS

The Petitioners are requesting to rezone 926 South Byrkit Avenue from I-2 Heavy Industrial District to R-1 Single Family Residential District. The property is located on Byrkit Avenue north of Twelfth Street and is surrounded on the north and east by I-2 zonings, C-4 to the south and R-1 to the west with single family uses.

The property has been in the Petitioner's family since 1947 and they have lived in the home since 1986. The Petitioners state they are refinancing the home and were denied due to the industrial zoning.

Prior to the 1980's residential uses were permitted in the I-2 Heavy Industrial District. Around 1986 the Zoning Ordinance was amended to prohibit residential uses. Originally constructed as a private residence in 1920, the home historically has remained residential in its use.

Pertinent City Departments reviewed and approved the request.

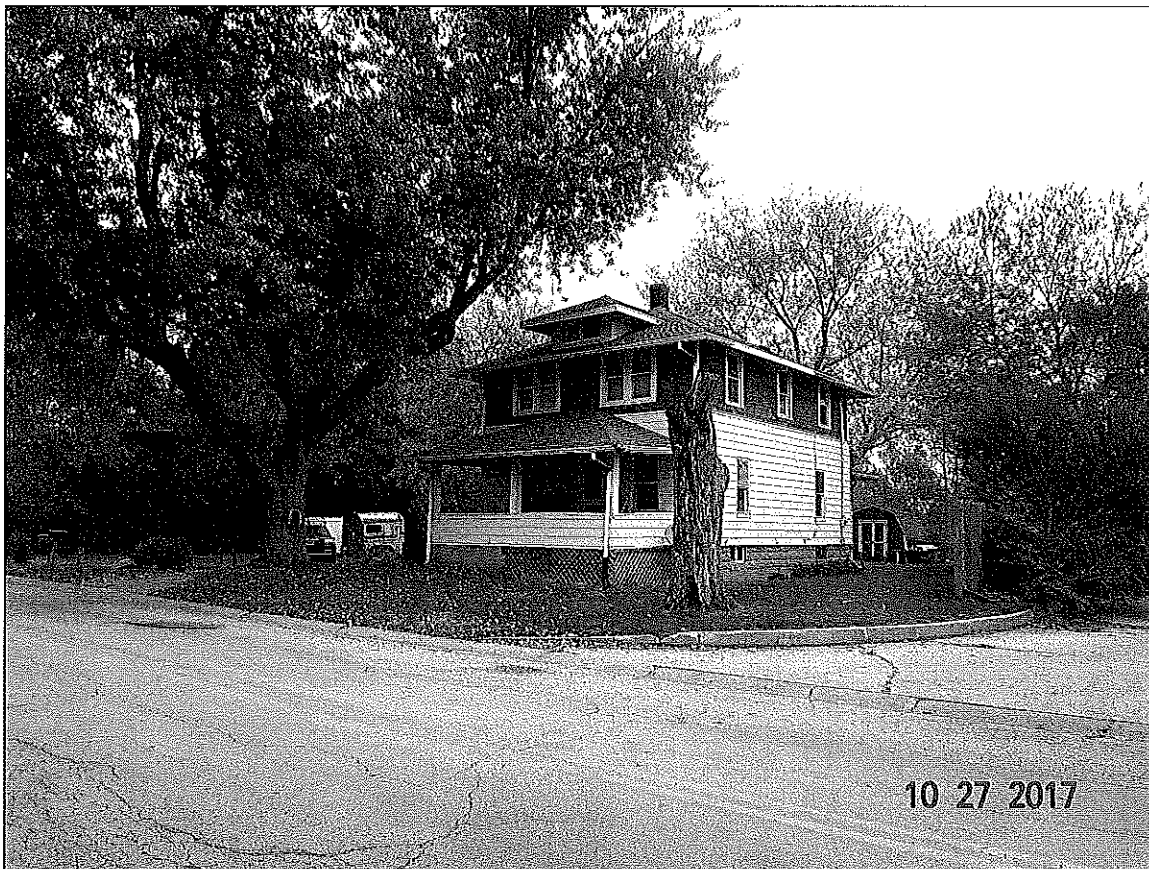
RECOMMENDATION

The Planning Department recommends **approval** of Petition #17-27 to rezone 926 South Byrkit Avenue from I-2 Heavy Industrial District to R-1 Single Family Residential District. This recommendation is based upon the following findings of fact:

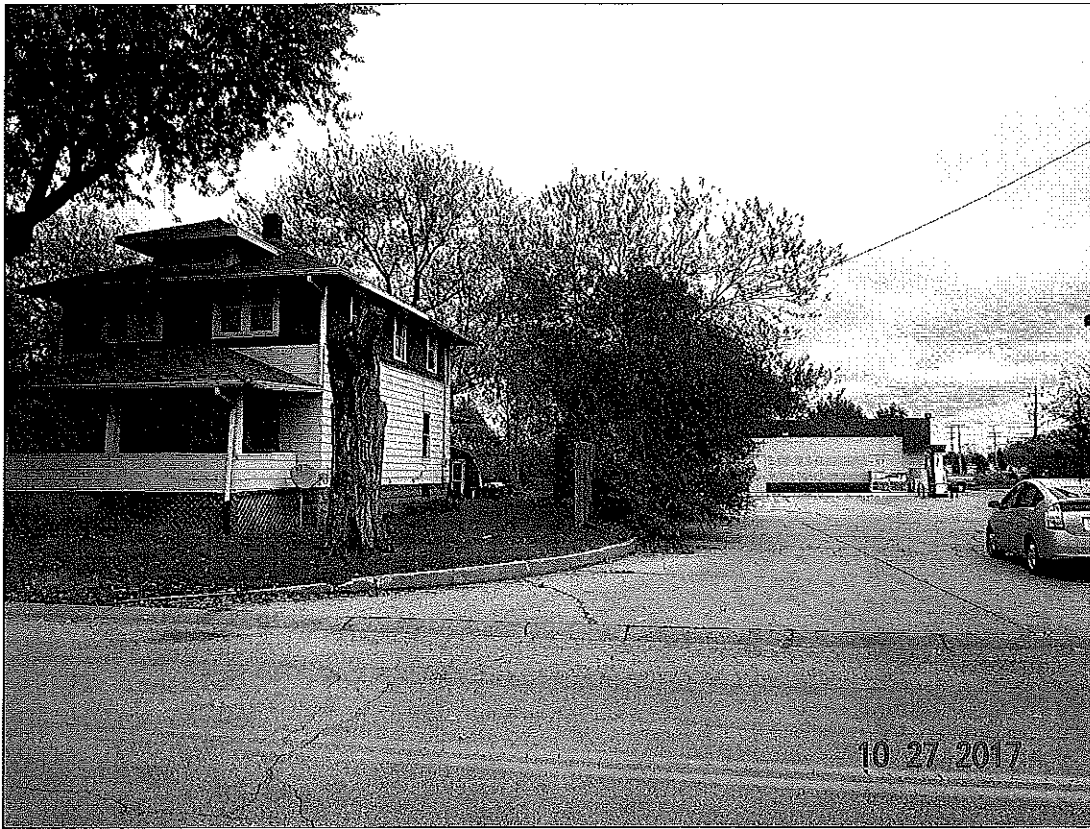
1. There are multiple zonings in the immediate vicinity and many of the structures are residential in use. This property's historic use as a single family dwelling would be compatible to the area;
2. Use and value of the area adjacent to the property included in the rezoning will not be affected in a substantially adverse manner because given the context of its location, its relationship to surrounding properties, and the potential of development as an industrial project, staff feels that the most desirable use for this property is its historical single-family use;
3. Because the parcel is located in an area of residential properties, the rezoning to R-1 Single-Family Residential is a desirable use for this property;
4. As opposed to the range of potential industrial development that could occur with its current zoning, rezoning this property to the R-1 Single Family Residential classification will have a favorable and stabilizing impact on the neighborhood, conserving property values in the immediate and surrounding residential neighborhood; and will allow the property owner to sell the home; and,
5. The City's Comprehensive Plan identifies the area as Industrial, but its historical use as a single family home is not inconsistent with the Plan.

ATTACHMENTS

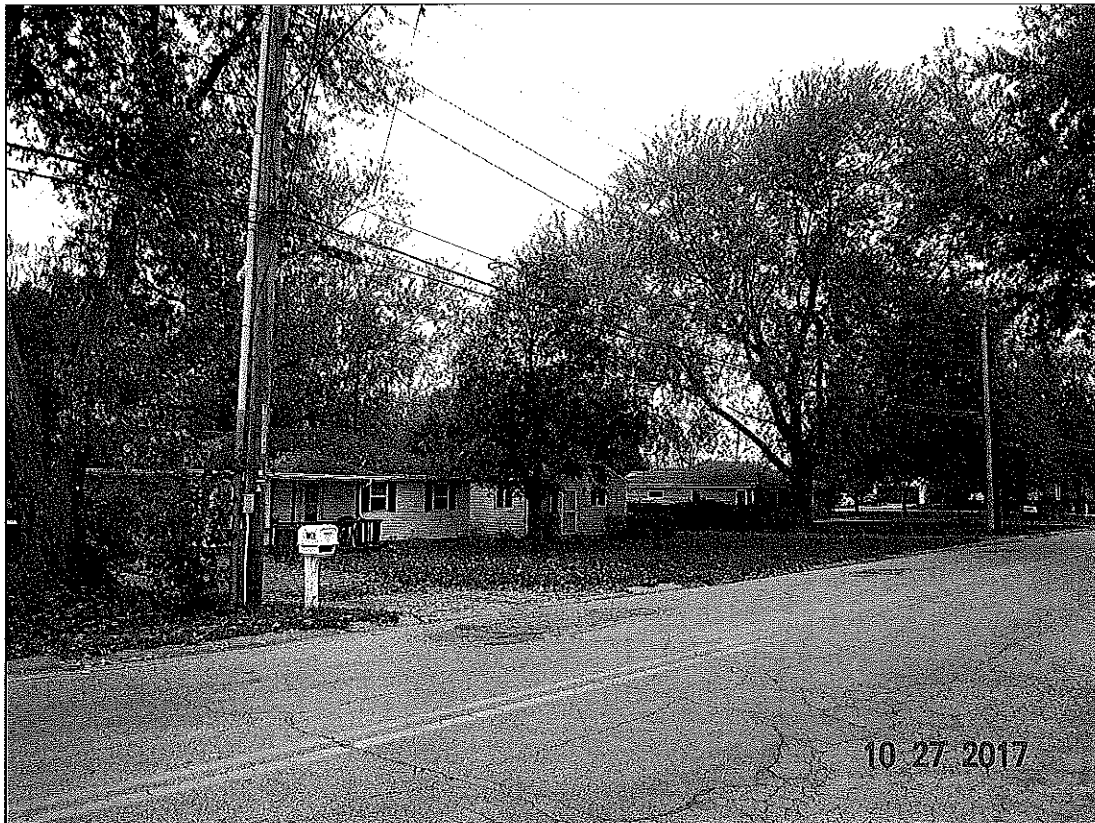
PHOTOGRAPHS, PETITION, AERIAL, LOCATION MAP



926 South Byrkit Avenue



View of gas station/convenience store to the south of home



View of homes to the west across Byrkit

STAFF REPORT

Location: Veteran's Parkway – North of Douglas Road &
Approximately 2,600 East of Fir Road

Date: Nov. 14, 2017

Petition: 17-28

Prepared By: DJS

GENERAL INFORMATION

Applicant: Larry J. Penn of the Larry J. Penn Revocable Living Trust
Becky L. Penn of the Becky L. Penn Revocable Living Trust
Paul D. Penn of the Paul D. Penn Revocable Living Trust
City of Mishawaka, Board of Public Works

Status: Adjacent Property Owners (Penn) & Grantee of the adjacent Non-Access and Utility & Landscape Easements (City of Mishawaka)

Request: Vacate Public Right-of-Way & Release of the adjacent Non-Access and Utility & Landscaping Easements

Zoning Classification: Right-of-Way

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

SPECIAL INFORMATION

Area Development Pattern: North: S-2 Planned Unit Development (Vacant/Agricultural)
South: R Residential/Unincorporated St. Joseph County
(Vacant/Agricultural & Low Density Single Family Residential)
East: S-2 Planned Unit Development (Vacant/Agricultural)
West: S-2 Planned Unit Development (Vacant/Agricultural Land & Warehousing/Storage Buildings)

Thoroughfare: Veteran's Parkway

School District: Penn-Harris-Madison School District

Public Utilities: Public Right-of-Way

Comprehensive Plan: The adjacent property, which was annexed in 2012, is outside the boundaries of the Mishawaka 2000 Comprehensive Plan. Therefore, a preferred or planned use is not identified for the property.

ANALYSIS

The Petitioners, Larry J. Penn, Becky L. Penn, Paul D. Penn, and the City of Mishawaka through its Board of Public Works, are requesting to vacate the entire Veteran's Parkway right-of-way located north of Douglas Road approximately 2,600 feet east of Fir Road. The right-of-way was dedicated to the City of Mishawaka via a Deed of Dedication recorded in the St. Joseph County Recorder's office (Instrument #1714652).

In addition to the vacation, the Petitioners are also requesting to release the non-access and landscape & utility easements. These easements, which are adjacent to the right-of-way to be vacated, were granted to the City via a Deed of Dedication of Non-Access Easement and Landscape & Utility Easement (Instrument #1714657). The drawing attached to the vacation petition shows the location of these easements.

The purpose of the proposed vacation and release of easements is to allow for shifting the future roadway 30' to the west. This will create a greater separation between it and a residential driveway on the south side of Douglas Road (14620 Douglas Road). An updated configuration of Veteran's Parkway and the associated easements will be rededicated through the subdivision platting process. No improvements are located within the existing right-of-way or the adjacent easements as they were both dedicated in June 2017.

Veteran's Parkway will provide access to a new water treatment plant planned for construction in 2020.

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

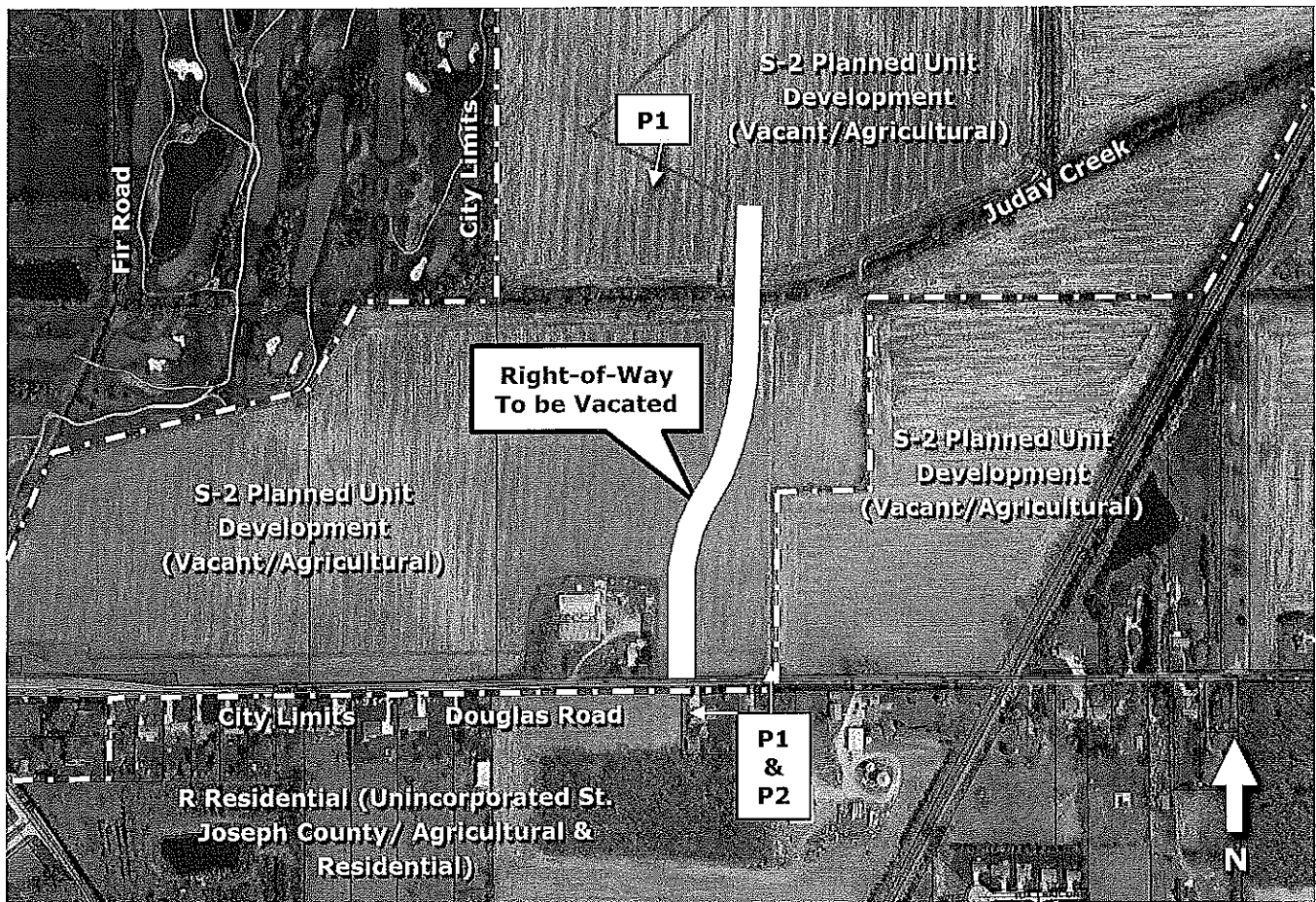
RECOMMENDATION

Staff recommends in favor of Petition 17-28 to vacate the entire Veteran's Parkway right-of-way and release the adjacent easements north of Douglas Road approximately 2,600 feet east of Fir Road. This recommendation is based on the following findings of fact:

- 1) The vacation and release easements will not hinder the growth or orderly development of the neighborhood. The future roadway will be shifted to the west to provide a greater separation between it and an adjacent residential driveway south of Douglas Road.
- 2) The vacation of the established unimproved right-of-way will not make access to any adjacent property difficult or inconvenient. The right-of-way and easements will be rededicated through the subdivision platting process providing future access to the adjacent property.
- 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. The existing right-of-way is currently unimproved.
- 5) This petition is not in specific conflict with the goals, objectives, and policies of the Comprehensive Plan. The adjacent property, which was annexed in 2012, is outside the boundaries of the Mishawaka 2000 Comprehensive Plan.

ATTACHMENTS

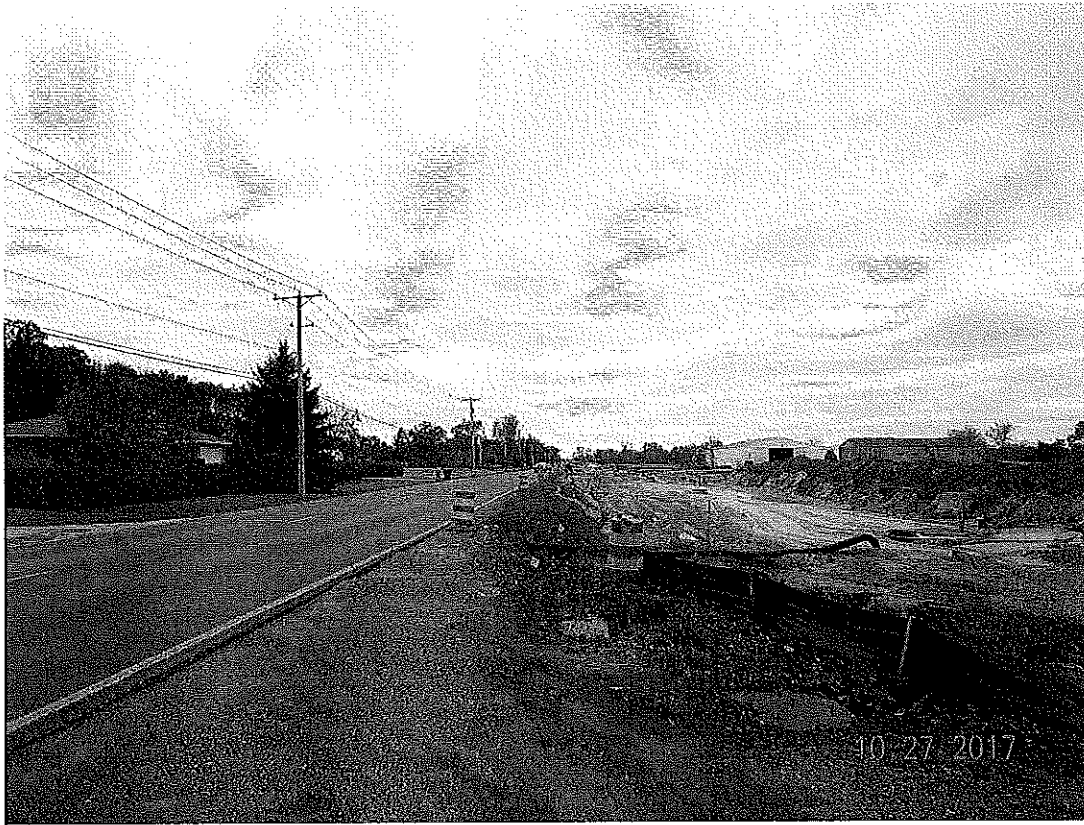
Aerial Photograph of Area to be Vacated, Photos, Petition, Location Map



Aerial Photograph
 Veteran's Parkway Right-of-Way to be vacated



P1. A view looking north from Douglas Road along an existing agricultural access drive east of the right-of-way to be vacated.



P2. A view looking west along Douglas Road toward the right-of-way to be vacated.



City of Mishawaka

DAVID A. WOOD, MAYOR

DEPARTMENT OF CITY PLANNING

November 15, 2017

Honorable Members of the Common Council
City of Mishawaka, Indiana

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

Honorable Members:

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

APPEAL #17-46 An appeal submitted by McKinley Town and Country, LP, on behalf of Big Lots Stores, Inc., requesting a Use Variance for **2320 Miracle Lane** to permit outside storage containers.

The Board, with a vote of 5-0, recommended approval, subject to installing a 6' vinyl fence in Almond on the north, east, and west sides of the containers.

Respectfully,

Kari Myers, Administrative Planner
Secretary, Board of Zoning Appeals

cc: Christine Peak

RECEIVED
DEBORAH S. BLOCK, MMC

NOV 15 2017

CITY CLERK
MISHAWAKA, IN

STAFF REPORT

General Location: 2320 Miracle Lane

Date: October 10, 2017

Appeal: 17-46

Prepared By: CH

GENERAL INFORMATION

Applicants: McKinley Town and Country, LP/Big Lots
Status: Property Owner/Tenant
Request: Use Variance for outside storage
Zoning Classification: C-2 Shopping Center Commercial
Lot Size: 37.44 Acres
Applicable Regulations: Section 137-326 C-2 Uses
Section 137-42 (4) Board of Zoning Appeals

SPECIAL INFORMATION

Area Development Pattern: North: R-3 Multi-Family Residential (Pin Oak Apartments)
South: C-4 Automobile Oriented Commercial and C-7 Automobile Oriented Restaurant Commercial
East: I-1 Light Industrial and C-4 Automobile Oriented Commercial
West: PUD Planned Unit Development (City of South Bend)

Thoroughfare: McKinley Avenue and Hickory Road

School District: School City of Mishawaka

Public Utilities: All public utilities are available and existing.

Comprehensive Plan: The Mishawaka 2000 Comprehensive Plan identifies the north east corner of this intersection as General Commercial.

ANALYSIS

Town and Country Shopping Center occupies the northeast corner of McKinley Avenue and Hickory Road. Big Lots Store 386 is located at the western end near Hickory Road.

Storage in accessory buildings is not allowed in commercial districts per Section 137-302 (5) c. Outside storage is only permitted as a conditional use in I-2 Heavy Industrial.

Last year, the Planning Department noticed an increase in the number of businesses using temporary storage containers on a more permanent basis. Those businesses were contacted and asked to remove the storage containers by June of 2017. Big Lots was one of the businesses that asked for a solution where they could keep the existing three storage containers. Aerial photography indicates storage containers have been located at this site since 2011.

The Appellant is requesting to keep the storage containers in order to provide immediate pick up for their furniture sales. In an attempt to lessen the impact on neighboring properties, especially the residential to the north, the Appellant has agreed to install a 6' Almond vinyl fence (PVC Galveston by Bufftech) on the north, east and west sides of the containers. The fence would not be placed between the building and the containers so they could be easily accessible from the store.

If the variance is approved, an Improvement Location Permit will need to be issued before the installation of the fence.

All pertinent City departments have reviewed and approved the request.

RECOMMENDATION

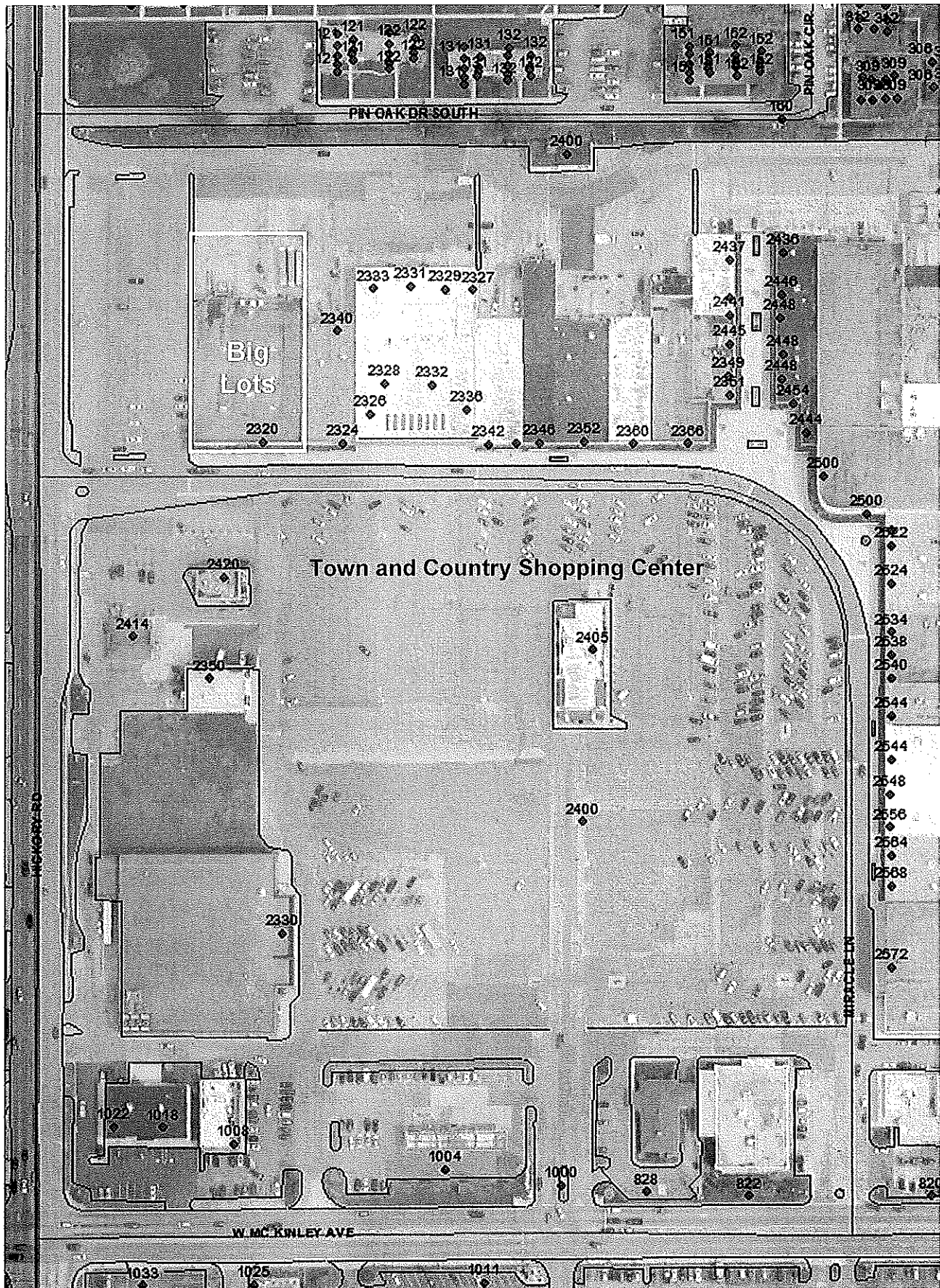
The Staff recommends in favor of Appeal 17-46, a Use Variance to allow outside storage in three existing containers for property located at 2320 Miracle Ln, subject to installing a 6' vinyl fence in Almond on the north, east and west sides of the containers.

This recommendation is based on the following reasons:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the proposed use will have little to no additional impact on the adjacent commercial or residential uses.
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 a fence is being added to help screen the view of the containers. The closest residential structure is over 200' from the storage containers.
3. The need for a variance arises from the large scale size of the merchandise sold at this location, specifically furniture, and the lack of storage space indoors.
4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because although the use is allowed in the I-2 Heavy Industrial District, rezoning the property would not be the highest and best use for the shopping center by allowing the more intense uses of that district.
5. The approval will not interfere substantially with the Mishawaka 2000 Plan because the plan identifies this intersection as General Commercial. The approval is consistent with the goals and objectives of the Comprehensive Plan.

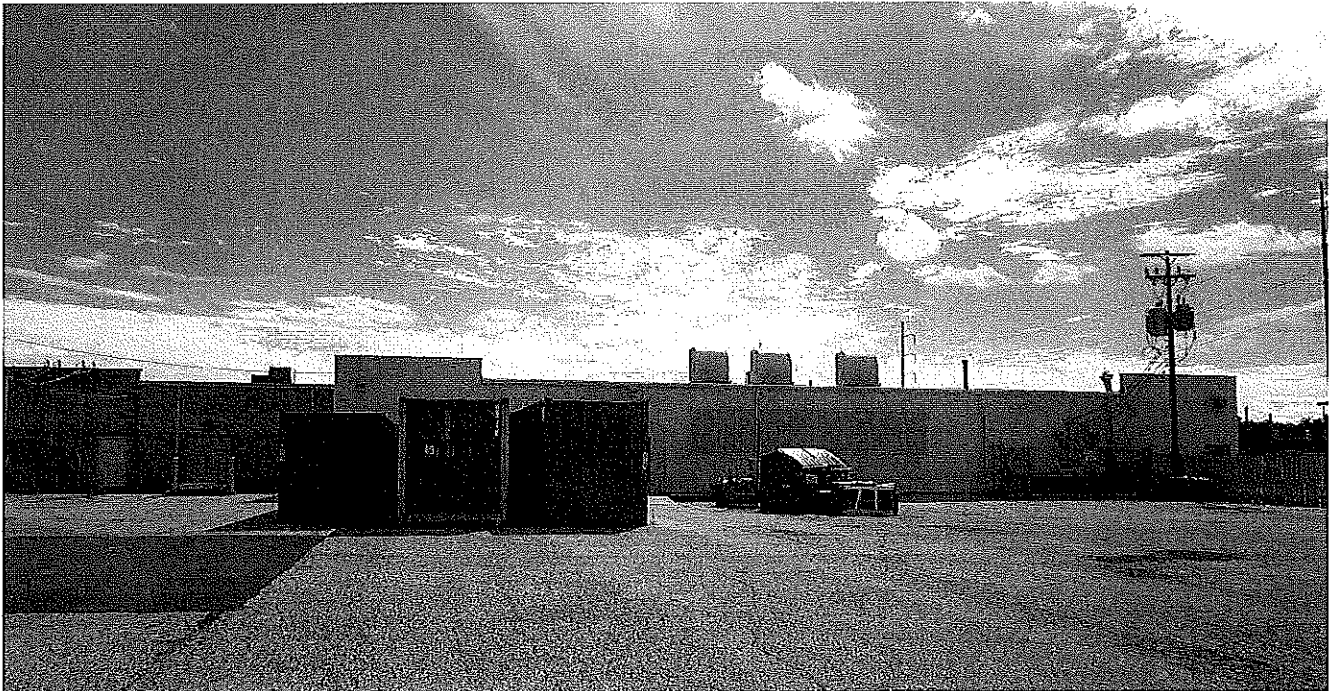
ATTACHMENTS

Aerial Photograph, Photographs of Site, Petition, Location Map





A view looking east from Hickory Road.



A view looking south from rear access drive.



City of Mishawaka

OFFICE OF THE CITY CLERK

Deborah S. Block, IAMC, MMC, City Clerk

NOTICE OF HEARING

VACATION NO.	<u>2017-03</u>
PETITION NO.	<u>2017-28</u>
DATE of HEARING	<u>11-20-2017</u>
TIME of HEARING	<u>7:00PM</u>

A petition has been filed by Larry J. Penn, Becky L. Penn, Paul D. Penn and the City of Mishawaka to Vacate Veterans Parkway & Release of Easements.

Containing 4.181 acres, more or less, 2320 Douglas Rd formerly 14669 Douglas Rd prior to annexation.

NOTICE IS HEREBY GIVEN that a regular meeting of the Mishawaka Common Council will be held on November 20, 2017 at 7:00 pm in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. A Public hearing will be conducted on a proposed ordinance at which time any interested person may appear, be represented by agent or present in writing any reasons they may have for the granting or denying of a proposed ordinance. You are requested to prepare your case, in detail, and present all evidence relating to this proposed ordinance at the time of scheduled hearing.

The City of Mishawaka acknowledges its responsibility to comply with the Americans with Disabilities Act of 1990. In order to assist individuals with disabilities who require special services (i.e. sign 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.

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

1st Reading 11-20-17
2nd Reading
Passed
Failed
Continued To

PETITION 17-27
CITY OF MISHAWAKA, INDIANA
PROPOSED ORDINANCE NO. 2017-41
ORDINANCE NO. _____

RECEIVED
DEBORAH S. BLOCK, MMC
NOV 15 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 Plan Commission of the City of Mishawaka, Indiana, has recommended the reclassification of the zoning as herein set forth of the real estate 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 following described real estate in the City of Mishawaka, Penn Township, St. Joseph County, State of Indiana, to-wit:

The parcel is legally described as: A part of the West One Half (1/2) of the South West Quarter (1/4) of Section Numbered Fourteen (14), Township Numbered Thirty-seven (37) North, Range Numbered Three (3) East which part is bounded by a line running as follows, viz: Beginning on the West line of said Section at a point One Hundred Ninety-three (193) feet North of the South West corner of said Section; thence running East parallel with the south line of said Section Three Hundred Nine and Seventy-one hundredths (309.71) feet; thence North parallel with the West line of said Section, One Hundred Forty and Sixty-five hundredths (140.65) feet; thence West parallel with the South line of said Section Three Hundred Nine and Seventy-one hundredths (309.71) feet; thence South along the West line of said Section One Hundred forty and Sixty-five hundredths (140.65) feet to the place of beginning, containing One (1) acre.

COMMON ADDRESS: 926 South Byrkit Avenue

which real estate is now classified as I-2 Heavy Industrial District shall hereafter be within and a part of that District known as R-1 Single Family Residential District designated in "The Zoning Ordinance of 1966" as amended.

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

1. There are multiple zonings in the immediate vicinity and many of the structures are residential in use. This property's historic use as a single family dwelling would be compatible to the area;
2. Use and value of the area adjacent to the property included in the rezoning will not be affected in a substantially adverse manner because given the context of its location, its relationship to surrounding properties, and the potential of development as an industrial

Proposed Ordinance No: 17-41

Ordinance No: _____

project, staff feels that the most desirable use for this property is its historical single-family use;

3. Because the parcel is located in an area of residential properties, the rezoning to R-1 Single-Family Residential is a desirable use for this property;
4. As opposed to the range of potential industrial development that could occur with its current zoning, rezoning this property to the R-1 Single Family Residential classification will have a favorable and stabilizing impact on the neighborhood, conserving property values in the immediate and surrounding residential neighborhood; and will allow the property owner to sell the home; and,
5. The City's Comprehensive Plan identifies the area as Industrial, but its historical use as a single family home is not inconsistent with the 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

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

October 23, 2017

OCT 26 2017

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

CITY CLERK
MISHAWAKA, IN

RE; PETITION TO REZONE

We, the undersigned, Michael R. and Kathrine Nisley, respectfully show that we are the owners of the following described real estate located in the City of Mishawaka, County of St. Joseph, State of Indiana., to-wit:

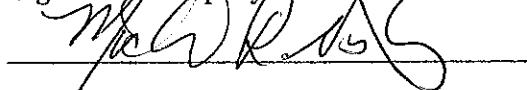
(Property address: 926 S. Byrkit Ave., Mishawaka, Indiana, 46544...
Legal Description: 309.71 x 140.65 FT SW COR 1 AC S 1/2 14 37 3E &
N 1/2 14 37 3E
Identification number: 71-09-14-351-008.000-023 / 0116-1117-4646)

We own one hundred (100%) percent of the above described parcel of land which now carries a zoning classification of **I-2 Heavy Industrial**, even though said property continues to be used as a single family dwelling.

Our desire of the said real estate is to be rezoned to **R-1 Single Family Residential**. This property has been in my husband's family for decades. In July of 1947, Michael's uncle, Augustine DeLaruelle and wife Helen, purchased this property. In September of 1950, it was sold to Michael's parents, Maurice E. and Martha L. Nisley. This is the home that his mother and father raised their 6 children. About 7 years after the death of his father in 1986, we purchased the said property from his mother and have continued to use it as a single family dwelling, where we raised our 5 children. But, due to some unfortunate circumstances, including one of our children's battle with Ewings Sarcoma (she was dx at age 16, which thankfully she has survived now for over 14 yrs, so we were thankful to do it), we had no choice but to refinance our home a couple of times. Now, we are both on Social Security with a large housepayment largely due to a high interest rate. In the process of trying to refinance with a smaller interest rate, as well as trying to reduce the number of years, we were denied because our property is zoned industrial and they will only refinance for residential. In fact, fairly recently we learned that in the event of a fire or other natural disaster, we would not even be able to rebuild.

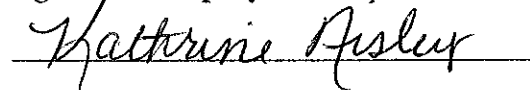
Therefore, we, Michael and Kathrine Nisley, the petitioners pray and respectfully request that the Common Council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate ordinance be enacted rezoning the above described parcel of land located in the City of Mishawaka.

Signature of Property Owner



Michael R. Nisley

Signature of Property Owner



Kathrine Nisley

CONTACT PERSON:

Kathrine Nisley
926 S. Byrkit Ave. Mishawaka, Indiana 46544
Home phone: 574-256-0720; Cell phone: 574-514-8311
Email: Katharn070@aol.com

PET 17-26

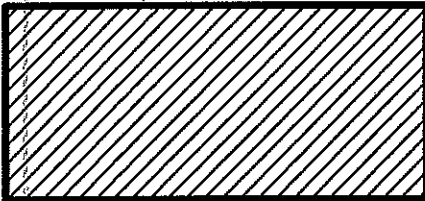
OCT 25 2017



S BYRKIT AVE

PET 17-27

E ELEVENTH ST



E TWELFTH ST

Location Map

PET 17-27

MICHAEL R. SR. &
KATHRINE NISLEY

926 S. BYRKIT AVENUE

REZONING FROM I-2 HEAVY
INDUSTRIAL TO R-1 SINGLE FAMILY
RESIDENTIAL FOR AN EXISTING HOUSE

1st Reading
2nd Reading
Passed
Failed
Continued To

PETITION #17-28

CITY OF MISHAWAKA, INDIANA

PROPOSED ORDINANCE NO. 2017-42

ORDINANCE NO. _____

RECEIVED
DEBORAH S. BLOOM, MMC

NOV 15 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, Larry J. Penn of the Larry J. Penn Revocable Living Trust, Becky L. Penn of the Becky L. Penn Revocable Living Trust, Paul D. Penn of the Paul D. Penn Revocable Living Trust, and the City of Mishawaka Board of Public Works and Safety has filed a petition for vacation of the public right-of-way described in Section 1 below;

WHEREAS, the Petitioners own 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:

A part of the Southwest Quarter of Section 26, Township 38 North, Range 3 East, City of Mishawaka, Harris Township, St. Joseph County Indiana, and being that part of the grantor's land described in Instrument Numbers 0644091 and 0647623, as recorded in the Office of the Recorder of St. Joseph County, Indiana, more particularly described as follows:

Commencing at a Harrison Monument found at the southeast corner of said quarter section, thence South 89 degrees 35 minutes 21 seconds West 330.00 feet along the south line of said quarter section to a prolonged east line of the grantor's land; thence North 00 degrees 15 minutes 10 seconds West 80.00 feet along said prolonged line and the east line of the grantor's land; thence South 89 degrees 35 minutes 21 seconds West 265.22 feet to the Point of Beginning of this description; thence South 89 degrees 35 minutes 21 seconds West 125.00 feet; thence North 45 degrees 25 minutes 10 seconds East 24.40 feet; thence North 00 degrees 24 minutes 39 seconds

ORDINANCE NO.

West 265.00 feet; thence Northeasterly 121.32 feet along an arc to the right and having a radius of 863.51 feet and subtended by a long chord having a bearing of North 03 degrees 36 minutes 52 seconds East and a length of 121.23 feet; thence North 44 degrees 35 minutes 13 seconds West 12.61 feet; thence North 00 degrees 24 minutes 39 seconds West 60.00 feet; thence North 89 degrees 35 minutes 21 seconds East 11.18 feet; thence North 54 degrees 15 minutes 50 seconds East 15.02 feet; thence Northeasterly 131.12 feet along an arc to the right and having a radius of 863.51 feet and subtended by a long chord having a bearing of North 17 degrees 14 minutes 22 seconds East and a length of 130.99 feet; thence North 21 degrees 35 minutes 21 seconds East 188.99 feet; thence Northeasterly 110.31 feet along an arc to the left and having a radius of 773.51 feet and subtended by a long curve having a bearing of North 17 degrees 30 minutes 14 seconds East and a length of 110.21 feet; thence North 46 degrees 04 minutes 47 seconds West 11.63 feet; thence North 00 degrees 24 minutes 39 seconds West 60.00 feet; thence North 89 degrees 35 minutes 21 seconds East 16.82 feet; thence North 44 degrees 09 minutes 42 seconds East 8.49 feet; thence Northeasterly 111.10 feet along an arc to the left and having a radius of 773.51 feet and subtended by a long chord having a bearing of North 03 degrees 42 minutes 14 seconds East and a length of 111.00 feet; thence North 00 degrees 24 minutes 39 seconds West 328.02 feet; thence Northeasterly 220.35 feet along an arc to the right and having a radius of 863.51 feet and subtended by a long chord having a bearing of North 06 degrees 53 minutes 59 seconds East and a length of 219.76 feet; thence North 89 degrees 35 minutes 21 seconds East 142.04 feet; thence South 00 degrees 24 minutes 39 seconds East 215.74 feet; thence South 08 degrees 46 minutes 12 seconds West 94.01 feet; thence South 00 degrees 24 minutes 39 seconds East 256.69 feet; thence North 89 degrees 31 minutes 53 seconds West 70.20 feet; thence Southwesterly 93.87 feet along an arc to the right and having a radius of 858.51 feet and subtended by a long chord having a bearing of South 03 degrees 56 minutes 05 seconds West and a length of 93.82 feet; thence South 41 degrees 21 minutes 39 seconds East 6.67 feet; thence North 89 degrees 35 minutes 21 seconds East 10.09 feet; thence South 00 degrees 24 minutes 39 seconds East 60.00 feet; thence South 89 degrees 35 minutes 21 seconds West 20.45 feet; thence South 58 degrees 56 minutes 52 seconds West 13.62 feet; thence Southwesterly 142.57 feet along an arc to the right and having a radius of 853.51 feet and subtended by a long chord having a bearing of South 16 degrees 48 minutes 14 seconds West and a length of 142.40 feet; thence South 21 degrees 35 minutes 21 seconds West 188.99 feet; thence Southwesterly 99.82 feet along an arc to the left and having a radius of 783.51 feet and subtended by a long chord having a bearing of South 17 degrees 56 minutes 22 seconds West and a length of 99.76 feet; thence South 42 degrees 39 minutes 34 seconds East 11.96 feet; thence North 89 degrees 35 minutes 21 seconds East 10.32 feet; thence South 00 degrees 24 minutes 39 seconds East 60.00 feet; thence South 89 degrees 35 minutes 21 seconds West 23.01 feet; thence South 47 degrees 22 minutes 26 seconds West 16.04 feet; thence Southwesterly 119.66 feet along an arc to the left and having a radius of 783.51 feet and subtended by a long chord having a bearing of South 03 degrees 57 minutes 52 seconds West and a length of 119.54 feet; thence South 00 degrees 24 minutes 39 seconds East 265.00 feet; thence South 58 degrees 41 minutes 14 seconds East 32.33 feet to the Point of Beginning and containing 4.181 acres, more or less.

COMMONLY KNOWN AS: Proposed Veteran's Parkway

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

- 1) The vacation and release easements will not hinder the growth or orderly development of the neighborhood. The future roadway will be shifted to the west to provide a greater separation between it and an adjacent residential driveway south of Douglas Road.
- 2) The vacation of the established unimproved right-of-way will not make access to any adjacent property difficult or inconvenient. The right-of-way and easements will be rededicated through the subdivision platting process providing future access to the adjacent property.

PROPOSED ORDINANCE NO. 2017-42

ORDINANCE NO. __

- 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. The existing right-of-way is currently unimproved.
- 5) This petition is not in specific conflict with the goals, objectives, and policies of the Comprehensive Plan. The adjacent property, which was annexed in 2012, is outside the boundaries of the Mishawaka 2000 Comprehensive Plan.

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

PASSED by the Common Council of the City of Mishawaka, Indiana, this _____ day of _____, 2017.

Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____, 2017, at _____ o'clock _____ .M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _____, 2017, at _____ o'clock ____ .M.

David A. Wood, Mayor

OCT 26 2017

CITY CLERK
MISHAWAKA, IN

PAUL A. HUMMEL, P.E.
PIPER C. TITTLE, P.E.
MICHAEL J. GUZIK, P.E.



201610.40

PS 17-28

OCT 23 2017

October 23, 2017

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-Veterans Parkway
-and-
Release of Easements

GREGORY L. HOLDEN, P.E.
JON E. RIEMKE, P.E.
JEFFREY L. MCKEAN, P.E.
RANDOLPH J. LINDLEY, P.E.
CHRISTOPHER J. JETER, P.E.
DENNIS A. ZEBELL, P.E.
BENJAMIN P. HOLDEN, P.E.
DAN G. DELGADO, P.E.
MICHAEL F. JOHNSTON, P.E.
JEFFREY M. BYRD, P.E.
JARED M. HUSS, P.E.
SKY K. MEDORS, P.E.
AARON W. BLANK, P.L.S., P.E.
BREAGAN P. EICHER, P.E.
RICHARD A. CHAPMAN, II, P.E.
THOMAS J. McNICHOLAS, P.E.
KEVIN J. SIEDLECKI, P.E.
CHRISTOPHER M. VANHULLE, P.E.
MICHELLE M.G. SLACK, P.L.S.
MAX WATKINS, P.E., S.E.

The undersigned **Larry J. Penn of the Larry J. Penn Revocable Living Trust, Becky L. Penn of the Becky L. Penn Revocable Living Trust, and Paul D. Penn of the Paul D. Penn Revocable Living Trust and City of Mishawaka, Board of Public Works** respectfully request the Mishawaka Common Council and the Mishawaka City Plan Commission to:

Vacate the following described public right of way located in the City of Mishawaka, St. Joseph County, Indiana:

(A part of the Southwest Quarter of Section 26, Township 38 North, Range 3 East, City of Mishawaka, Harris Township, St. Joseph County Indiana, and being that part of the grantor's land described in Instrument Numbers 0644091 and 0647623, as recorded in the Office of the Recorder of St. Joseph County, Indiana,) more particularly described as follows:

Commencing at a Harrison Monument found at the southeast corner of said quarter section, thence South 89 degrees 35 minutes 21 seconds West 330.00 feet along the south line of said quarter section to a prolonged east line of the grantor's land; thence North 00 degrees 15 minutes 10 seconds West 80.00 feet along said prolonged line and the east line of the grantor's land; thence South 89 degrees 35 minutes 21 seconds West 265.22 feet to the **Point of Beginning** of this description; thence South 89 degrees 35 minutes 21 seconds West 125.00 feet; thence North 45 degrees 25 minutes 10 seconds East 24.40 feet; thence North 00 degrees 24 minutes 39 seconds West 265.00 feet; thence Northeasterly 121.32 feet along an arc to the right and having a radius of 863.51 feet and subtended by a long chord having a bearing of North 03 degrees 36 minutes 52 seconds East and a length of 121.23 feet; thence North 44 degrees 35 minutes 13 seconds West 12.61 feet; thence North 00 degrees 24 minutes 39 seconds West 60.00 feet; thence North 89 degrees 35 minutes 21 seconds East 11.18 feet;



Petition for Vacation and Release

October 23, 2017

Page 2

thence North 54 degrees 15 minutes 50 seconds East 15.02 feet; thence Northeasterly 131.12 feet along an arc to the right and having a radius of 863.51 feet and subtended by a long chord having a bearing of North 17 degrees 14 minutes 22 seconds East and a length of 130.99 feet;

thence North 21 degrees 35 minutes 21 seconds East 188.99 feet;

thence Northeasterly 110.31 feet along an arc to the left and having a radius of 773.51 feet and subtended by a long curve having a bearing of North 17 degrees 30 minutes 14 seconds East and a length of 110.21 feet;

thence North 46 degrees 04 minutes 47 seconds West 11.63 feet;

thence North 00 degrees 24 minutes 39 seconds West 60.00 feet;

thence North 89 degrees 35 minutes 21 seconds East 16.82 feet;

thence North 44 degrees 09 minutes 42 seconds East 8.49 feet;

thence Northeasterly 111.10 feet along an arc to the left and having a radius of 773.51 feet and subtended by a long chord having a bearing of North 03 degrees 42 minutes 14 seconds East and a length of 111.00 feet;

thence North 00 degrees 24 minutes 39 seconds West 328.02 feet;

thence Northeasterly 220.35 feet along an arc to the right and having a radius of 863.51 feet and subtended by a long chord having a bearing of North 06 degrees 53 minutes 59 seconds East and a length of 219.76 feet;

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thence South 08 degrees 46 minutes 12 seconds West 94.01 feet;

thence South 00 degrees 24 minutes 39 seconds East 256.69 feet;

thence North 89 degrees 31 minutes 53 seconds West 70.20 feet;

thence Southwesterly 93.87 feet along an arc to the right and having a radius of 858.51 feet and subtended by a long chord having a bearing of South 03 degrees 56 minutes 05 seconds West and a length of 93.82 feet;

thence South 41 degrees 21 minutes 39 seconds East 6.67 feet;

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thence Southwesterly 142.57 feet along an arc to the right and having a radius of 853.51 feet and subtended by a long chord having a bearing of South 16 degrees 48 minutes 14 seconds West and a length of 142.40 feet;

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Petition for Vacation and Release
October 23, 2017
Page 3

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thence South 47 degrees 22 minutes 26 seconds West 16.04 feet;
thence Southwesterly 119.66 feet along an arc to the left and having a radius of 783.51 feet and subtended by a long chord having a bearing of South 03 degrees 57 minutes 52 seconds West and a length of 119.54 feet;
thence South 00 degrees 24 minutes 39 seconds East 265.00 feet;
thence South 58 degrees 41 minutes 14 seconds East 32.33 feet to the **Point of Beginning** and containing 4.181 acres, more or less.

The intent of this vacation description is to rescind the dedication of Veterans Parkway description, verbatim, as recorded in Instrument #1714652, on June 12, 2017.

AND;

Release the dedicated Non-Access and Landscape & Utility Easements, as recorded in Instrument #1714657, on June 12, 2017.

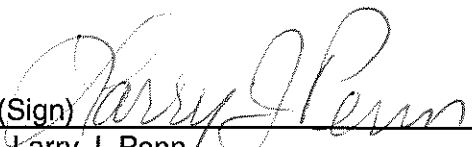
An updated configuration of Veterans Parkway and associated easements is to be dedicated through the platting process.

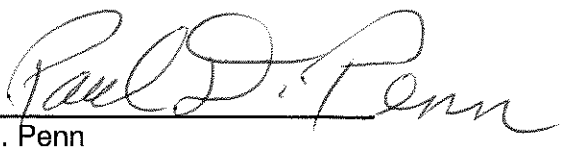
Petitioners further state they are the owners of the subject property and property immediately adjacent to the above-described right of way and easements.

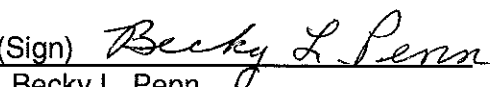
Wherefore, the Petitioner(s) pray and respectfully request that the Common Council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate ordinance be enacted vacating the above described right of way and releasing the referenced easements located in the City of Mishawaka.

Adjacent Property Owners

Larry J. Penn, Becky L. Penn, and Paul D. Penn

(Sign) 
Larry J. Penn

(Sign) 
Paul D. Penn

(Sign) 
Becky L. Penn



Petition for Vacation and Release
October 23, 2017
Page 4

**City of Mishawaka
Board of Public Works**

(Sign) 
Kenneth B. Prince, President

(Sign) 
Ronald E. Watson, Member

(Sign) _____
Rebecca S. Miller, Vice-President

(Sign) 
Kari Myers, Clerk

CONTACT PERSON:

Aaron W. Blank, P.L.S., P.E.
Lawson-Fisher Associates P.C.
525 West Washington Avenue
South Bend, IN 46601
574-234-3167 (phone)
574-236-1330 (fax)

AWB/kcb

INDIANA TOLL RD



PET 17-28

Fir Rd

Douglas Rd

Location Map PET 17-28

LARRY J. PENN, ET. AL. & CITY
OF MISHAWAKA
VACATE VETERANS PARKWAY &
RELEASE OF EASEMENTS

2320 DOUGLAS ROAD (FORMERLY
14669 DOUGLAS ROAD PRIOR
TO ANNEXATION)

LARK CT

SAGEWOOD DR

Mystique Dr

DEER CT

* * * Communication Result Report (Nov. 8. 2017 4:09PM) * * *

1) MISH Clerks Office
2)

Date/Time: Nov. 8. 2017 4:07PM

File No. Mode	Destination	Pg(s)	Result	Page Not Sent
0925 Memory TX	92361330	P. 2	OK	

Reason for error

mm. 1) Hang up or line fail
 . 3) No answer
 . 5) Exceeded max. E-mail size

E. 2) Busy
 E. 4) No facsimile connection
 E. 6) Destination does not support IP-Fax



CITY OF MISHAWAKA

Deborah S. Block, IAMC, MMC City Clerk

FACSIMILE COVER LETTER

TO: Arson Blank From: Mary Ellen HagerAttn: Jacques Fisher Fax: 574-258-1728Fax: 574-236-1330 Date: 11-8-17Re: Notice of Hearing Pages: including cover 2

Mary Ellen Hager, Chief Deputy Linda Dotson, Deputy

City Hall 600 East Third Street, Mishawaka, IN 46544 (574) 238-1616 (574) 238-1728



CITY OF MISHAWAKA

Deborah S. Block, IAMC, MMC City Clerk

FACSIMILE COVER LETTER

TO: Aaron Blank From: Mary Ellen Hazen

Attn: Lawson & Fisher Fax: 574-258-1728

Fax: 574-236-1330 Date: 11-8-17

Re: Notice of Hearing Pages: including cover 2

Mary Ellen Hazen, Chief Deputy Linda Dotson Deputy

City Hall 600 East Third Street, Mishawaka, IN 46544 (574) 258-1616 (574) 258-1728



City of Mishawaka

OFFICE OF THE CITY CLERK

Deborah S. Block, IAMC, MMC, City Clerk

NOTICE OF HEARING

VACATION NO.	<u>2017-03</u>
PETITION NO.	<u>2017-28</u>
DATE of HEARING	<u>11-20-2017</u>
TIME of HEARING	<u>7:00PM</u>

A petition has been filed by Larry J. Penn, Becky L. Penn, Paul D. Penn and the City of Mishawaka to Vacate Veterans Parkway & Release of Easements.

Containing 4.181 acres, more or less, 2320 Douglas Rd formerly 14669 Douglas Rd prior to annexation.

NOTICE IS HEREBY GIVEN that a regular meeting of the Mishawaka Common Council will be held on November 20, 2017 at 7:00 pm in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. A Public hearing will be conducted on a proposed ordinance at which time any interested person may appear, be represented by agent or present in writing any reasons they may have for the granting or denying of a proposed ordinance. You are requested to prepare your case, in detail, and present all evidence relating to this proposed ordinance at the time of scheduled hearing.

The City of Mishawaka acknowledges its responsibility to comply with the Americans with Disabilities Act of 1990. In order to assist individuals with disabilities who require special services (i.e. sign 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.

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

NOTICE OF HEARING

VACATION NO. 2017-03

PETITION NO. 2017-28

DATE of HEARING 11-20-2017

TIME of HEARING 7:00PM

A petition has been filed by Larry J. Penn, Becky L. Penn, Paul D. Penn and the City of Mishawaka to Vacate Veterans Parkway & Release of Easements.

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

21

State of Indiana St. Joseph County

Personally Appeared Before Me The Undersigned:

Nancy Nich

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

XX One TWO THREE

times successively to-wit:

On the 9th day of November, 2017, and

On the day of , 2017, and

On the day of , 2017

William L. Nich

Subscribed & Sworn To Before Me

This 9th day of November, 2017

William L. Nich

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

CHARGES: \$ 23.48

NOV 15 2017

APPEAL #17-46

RESOLUTION NO. 2017- 27

CITY CLERK
MISHAWAKA, IN

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:

2320 Miracle Lane, 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 **2320 Miracle Lane, Mishawaka, Indiana**, more particularly known and described as follows:

Part of the West Half of the Southwest Quarter of Section 4, Township 37 North, Range 3 East, Mishawaka, Indiana, described as follows:

Commencing at the Southwest corner of Section 4; thence North on the West line of Section 4, a distance of 210.00 feet; thence right (Easterly) 89°28'21", parallel with the South line of Section 4, a distance of 40.00 feet to the East line of Hickory Road and the point of beginning; thence left (Northerly) 89°28'21", parallel with the West line of Section 4 and on the East line of Hickory Road, a distance of 1110.87 feet; thence right (Easterly) 89°28'36", a distance of 1279.31 feet to the Southwest corner of Imus Addition in Penn Township, St. Joseph County, Indiana; thence right (Southerly) 90°11'20" on the East line of the West Half of the Southwest Quarter of Section 4, a distance of 1280.76 feet to the North line of McKinley Avenue; thence right (Westerly) 89°48'25" on the North line of McKinley Avenue, a distance of 526.50 feet; thence right (Northerly) 90°11'35", parallel with the East line of the West Half of the Southwest Quarter of Section 4, a distance of 170.00 feet; thence left (Westerly) 90°11'35", parallel with the North line of McKinley Avenue, a distance of 129.60 feet; thence left (Southerly) 89°12'29", a distance of 170.02 feet to the North line of McKinley Avenue; thence right (Westerly) 89°12'29" on the North line

of McKinley Avenue, being 40.00 feet North of and parallel with the South line of Section 4, a distance of 402.84 feet; thence right (Northerly) 90°31'39", parallel with the West line of Section 4, a distance of 170.00 feet; thence left (Westerly) 90°31'39", parallel with the South line of Section 4, a distance of 225.70 feet to the point of beginning.

COMMON ADDRESS: 2320 Miracle Lane

The Use Variance, if approved, will allow outside storage in three existing containers subject to installing a 6' vinyl fence in Almond on the north, east, and west sides of the containers.

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

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

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the proposed use will have little to no additional impact on the adjacent commercial or residential uses.
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 a fence is being added to help screen the view of the containers. The closest residential structure is over 200' from the storage containers.
3. The need for a variance arises from the large scale size of the merchandise sold at this location, specifically furniture, and the lack of storage space indoors.
4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because although the use is allowed in the I-2 Heavy Industrial District, rezoning the property would not be the highest and best use for the shopping center by allowing the more intense uses of that district.
5. The approval will not interfere substantially with the Mishawaka 2000 Plan because the plan identifies this intersection as General Commercial. 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.

RESOLUTION #2017-27
2320 Miracle Lane
Page 3 of 3

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

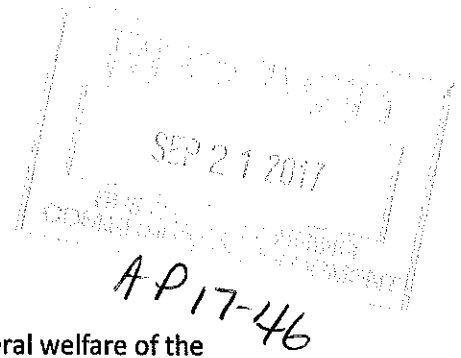
Use Variance For:

Big Lots 386
2320 Miracle Lane
McKinley Town & country Shopping Center
Mishawaka, IN 46545

RECEIVED
DEBORAH S. BLOCK MMC

SEP 28 2017

CITY CLERK
MISHAWAKA, IN



1. Will the approval be injurious to the public health, safety, morals or general welfare of the community? *Explain your reason why.*

The enclosure that Big Lots is looking to install will be a permanent enclosure constructed professionally by a general contractor.

2. Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner? *Explain your reason why.*

The intention of the storage container enclosure is to screen off the area to the residential community to the north of the Big Lots lot.

3. Does the need for the variance arise from some condition peculiar to the property involved? *Explain your reason why.*

Big Lots has expanded to furniture sales and allows its customers to purchase and receive their product the same day instead of having to wait like other furniture stores. The storage trailers are needed to store the pieces of furniture as they are too big to store in the stockroom.

4. Does strict application of the terms of this chapter constitute an unnecessary hardship if applied to the property for which the variance is sought? *Explain your reason why.*

To not be able to store the pieces of furniture would limit the stores ability to keep stock and affect sales which would also create a hardship for this Big Lots location.

5. Will approval interfere substantially with the Mishawaka 2000 Comprehensive Plan? *Explain your reason why.*

The shopping center is intended for commercial use and would not interfere with the intended use of the shopping center. The storage container enclosure would secure the storage containers and block them from view from the surrounding residential community.

A handwritten signature in black ink that reads "Christine Peak". The signature is written in a cursive, flowing style.

Christine Peak
Facility Administration Specialist
Big Lots Stores, Inc.
300 Phillipi Road
Columbus, Oh 43228-5311
Direct: 614-278-7801
cpeak@biglots.com

AP 17-46

MCKINLEY TOWN & COUNTRY LP
2400 MIRACLE LANE
MISHAWAKA, IN 46545
TELEPHONE * 574-259-2580
FAX * 574-255-8021

September 19, 2017

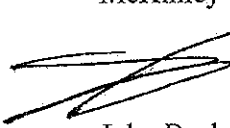
Board of Zoning Appeals
City of Mishawaka, Indiana

To Whom It May Concern:

I, John Becker give Big Lots authorization to apply for a use variance to construct an enclosure for outdoor storage containers.

If you have any questions, please feel free to give me a call at 574-850-1565.

Sincerely,
McKinley Town & Country LP



John Becker

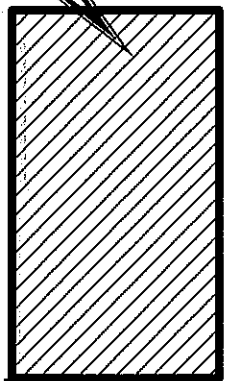
JB/dg



AP 17-46

PIN OAK SOUTH

HICKORY RD



MIRACLE LN

W MC KINLEY AVE

Location Map

AP 17-46

**USE VARIANCE
OUTDOOR STORAGE**

**2320 MIRACLE LANE
BIG LOTS
TOWN AND COUNTRY**

OCT 13 2017

CITY CLERK
MISHAWAKA, IN

1st Reading 11-6-17
2nd Reading
Passed
Failed
Continued To

PROPOSED ORDINANCE NO. 2017-39

ORDINANCE NO. _____

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

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

Section 1. An emergency exists which requires the transfer and reappropriation of funds within the Motor Vehicle Highway Fund budget adopted for the fiscal year ending December 31, 2017.

Section 2. There is hereby transferred and reappropriated the sum of \$44,000.00 as follows:

Motor Vehicle Highway Fund

From: Street Department

Other Services and Charges

201-50-436-01	Building/Equipment Repair	<u>\$44,000.00</u>
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Total	<u>\$44,000.00</u>
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To: Street Department

Supplies

201-50-423-03	Equip, Parts, Supplies	\$20,000.00
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201-50-429-08	Uniform Supplies	4,000.00
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Other Services and Charges

201-50-435-01	MU Charges	<u>\$20,000.00</u>
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Total	<u>\$44,000.00</u>
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Section 3. This ordinance shall be in full force and effect from and after its passage, signing and attestation.

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

_____ day of _____, 2017 at _____ o'clock, ____ M.

Ross Deal, Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED BY ME to the Mayor this _____ day of _____, 2017 at
_____ o'clock, _____.M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED BY ME this _____ day of _____, 2017 at _____ o'clock,
_____.M.

David A. Wood, Mayor



CITY OF MISHAWAKA

STREET DEPARTMENT
Tim Ryan
Street Commissioner

DAVID A. WOOD, MAYOR

October 11, 2017

Mishawaka Common Council
City Hall
600 East Third Street
Mishawaka, IN 46544

RE: Proposed Ordinance 2017- 39

Honorable Council Members:

At this time, we find the need to request a transfer of \$44,000 from our *Other Services/Building/Equipment Repair* line #201-50-436-01 to be distributed as follows:

FROM:	<u>MVH Street Department</u>		
	<u>Other Service and Charges</u>		
	201-50-436-01	Repairs & Maintenance	<u>\$44,000</u>
TO:	<u>MVH Street Department</u>		
	<u>Supplies</u>		
	201-50-423-03	Equip. Parts/Supplies	\$20,000
	<u>Other Supplies</u>		
	201-50-429-08	Uniform Supplies	\$ 4,000
	<u>Other Service and Charges</u>		
	201-50-435-01	MU Charges	<u>\$20,000</u>
		TOTAL -	\$44,000

If you have any questions concerning this transfer, please call or visit my office.

Sincerely,

Tim Ryan
Street Commissioner

OCT 13 2017

1st Reading 11-6-17
2nd Reading
Passed
Failed
Continued To

PROPOSED ORDINANCE NO. 2017-40

CITY CLERK
MISHAWAKA, IN

ORDINANCE NO. _____

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

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

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

Section 2. There is hereby transferred and reappropriated the sum of \$43,000.00 as follows:

General Fund

From: Central Services Department

Supplies

101-22-422-02	Gas, Oil, etc.	\$43,000.00
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Total	\$43,000.00
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To: Central Services Department

Supplies

101-22-422-05	Equipment/Vehicle Supplies	\$30,000.00
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101-22-429-08	Uniform/Supplies	\$ 3,000.00
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Other Services and Charges

101-22-436-01	Repairs and Maintenance	\$10,000.00
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Total	\$43,000.00
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Section 3. This ordinance shall be in full force and effect from and after its passage, signing and attestation.

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

_____ day of _____, 2017 at _____ o'clock, _____.M.

Ross Deal, Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED BY ME to the Mayor this _____ day of _____, 2017 at
_____ o'clock, _____.M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED BY ME this _____ day of, _____, 2017 at _____ o'clock,
_____.M.

David A. Wood, Mayor



CITY OF MISHAWAKA

Tim Ryan
Street Commissioner

DAVID A. WOOD, MAYOR

October 11, 2017

Mishawaka Common Council
City Hall
600 East Third Street
Mishawaka, IN 46544

RE: Proposed Ordinance 2017-

Honorable Council Members:

At this time, I am requesting the following transfers within the Central Motor Pool budget:

FROM:	Central Services Department		
	101-22-422-02	Gas, Oil, Etc.	\$43,000
TO:	Central Services Department		
	101-22-429-08	Uniforms/Supplies	\$ 3,000
	101-22-422-05	Equipment/Vehicle Supplies	\$30,000
	101-22-436-01	Equipment Maintenance	<u>\$10,000</u>
			\$43,000

If you have any questions concerning this transfer, please call or visit my office.

Sincerely,

Tim Ryan
Street Commissioner