

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

April 19, 2010

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 April 19, 2010 at 7:00 p.m. The meeting was called to order by President Emmons, and all were asked to stand for the Pledge of Allegiance.

Clerk Block's roll call showed the following;

Dale "Woody" Emmons 1st District Councilman – (President) Present

Dave Wood 2nd District Councilman – Present

Ross Deal 3rd District Councilman - Absent

Marsha McClure 4th District Councilman - Present

Michael Compton 5th District Councilman - Absent

Ronald Banicki 6th District Councilman – Present

John Gleissner, Councilman At Large – (Vice President) Present

Gregg Hixenbaugh, Councilman At Large – Present

John J. Roggeman, Councilman at Large – Present

A quorum was obtained.

Others present; Deborah S. Block, City Clerk; Mary Ellen Hazen Chief Deputy I and Linda Dotson, Chief Deputy II, and Council Attorney Mike Trippel.

Clerk Block read a letter from the Board of Zoning Appeals regarding recommendations from their April 13, 2010 meeting.

APPEAL NO. 2010-09 An appeal submitted by Jimi Enterprises/Jimi Partnership, requesting a Use Variance for 3820 Grape Road, to permit the use of two (2) temporary trailers for office use during construction of new Honda dealership building.
RECOMMENDED APPROVAL

APPEAL NO. 2010-10 An appeal submitted by JB Capital LLC requesting a Use Variance for property located in the 1000 Block of East Ireland Road to permit outside sales display/storage area.
RECOMMENDED APPROVAL/subject to the following conditions:

1. The three (3) display pads along Ireland Road shall be limited to single large items, such as tractors, trailers, and riding lawn mowers. No more than three (3) large items per pad shall be allowed. Multiple single type items such as bags of mulch, seed, etc. will not be allowed within these display pads. However, these multiple single type items may be allowed to be displayed within the sidewalk display area in front of the building and within the large display area adjacent and to the west of the building.

2. The display pads along Ireland Road shall maintain a setback of 20' from the Ireland Road right-of-way.
3. The 15,000 of display area adjacent and to the west of building shall be screened in the front portion facing Ireland Road with a 6 foot wood or vinyl opaque fence. Large shrubs, at a minimum of 6 feet in height at time of planting, creating an opaque screen, may be utilized in combination or in lieu of the opaque fencing.
4. The display areas in front of the building shall be clearly marked as to create a definite separation between the display area and the pedestrian walkway.

Clerk Block read a letter from the Plan Commission regarding recommendations from their April 13, 2010 meeting.

PETITION NO. 2010-04 A petition submitted by Garatoni Holdings, Limited Partnership V, requesting to rezone property north of 4343 Grape Road, from R-3 Multi-Family Residential District to C-1 General Commercial District. **RECOMMENDED APPROVAL**

PETITION NO. 2010-05 A petition submitted by Elmer E. and Linda L. Bailey requesting to rezone 4202 Lincolnway East, from C-1 General Commercial District. **RECOMMENDED APPROVAL**

Clerk Block read a letter from the Historic Preservation Commission regarding recommendations from their April 6, 2010 meeting.

HPC NO. 10-01 An application for nomination of a local landmark has been submitted by property owner Gregory A. Kuharic to establish 417 Edgewater Drive as a local Landmark.
RECOMMENDED APPROVAL

The following proposed ordinances were given first reading, assigned to committee, and set for public hearing at the next regular meeting.

PROPOSED ORDINANCE NO. 2010-11

**AN ORDINANCE TO ESTABLISH 417 EDGEWATER DRIVE AS
A LOCAL LANDMARK WITHIN THE CITY OF MISHAWAKA, INDIANA**
Establishing 417 Edgewater Drive as a Historic Landmark
(Assigned to Land Use Planning Committee)

PROPOSED ORDINANCE NO. 2012

**AN ORDINANCE DECLARING AN EMERGENCY AND
DETERMINING THE EXPENDITURE OF ADDITIONAL FUNDS FOR THE YEAR
ENDING DECEMBER 31, 2010**
Additional Funds Local Major Moves Fund \$725,000
(Assigned to Budget and Finance Committee)

PROPOSED ORDINANCE NO. 2013

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

Rezone from R-3 Multi-Family Residential to C-1 General Commercial North of 4343 Grape Road
(Assigned to Land Use Planning Committee)

PROPOSED ORDINANCE NO. 2014

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

Rezone from C-1 General Commercial to R-1 Single Family Residential – 4202 LWE
(Assigned to Land Use Planning Committee)

Clerk Block read Resolution No. R2010-08 opening it for public hearing.

RESOLUTION NO. 2010-08

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:

3820 Grape Road, Mishawaka, Indiana

(Use Variance to allow Temporary Sales Trailers – 3820 Grape Road (Basney Honda))

Brett Konarski, said he works for Wightman Petrie 412 S. Lafayette Blvd. South Bend, said they were representing Basney Honda who was requesting a Use Variance for temporary sales trailers, to be used by the sales staff during the renovation. He said Basney Honda was in the process of renovating their site at the corner of Grape and Edison Road, with the erection of a new building, adding more sales area, and expanding their maintenance and auto service area. Mr. Konarski went on to say Basney purchased land east of their property to expand their parking and auto storage.

Mr. Banicki said he has an issue with Basney Honda’s speaker system it affects his quality of life in his back yard, and wanted to know if they would continue using this system. Mr. Konarski said yes the speaker system would be in operation. Mr. Banicki asked why that was necessary now with all of the new technology, cell phones etc. he said sitting in his back yard he can hear them talking over the speaker system. Mr. Konarski said it was the easiest way to alert a customer on site when their car was ready after maintenance. Mr. Banicki said it sounded more like calls for sales people. Mr. Konarski said yes that was part of it when someone has a phone call they are paged on the speaker. Mr. Banicki stated he doesn’t know of any other car dealer in that area that uses the speaker system anymore, so he is not sure why it was a necessity for them to continue using them.

Mr. Roggeman stated that in the report that he has it says the project would be starting June 13th was that still the date. Mr. Konarski said yes it was. Mr. Roggeman said it also stated the job would take 32 weeks or until completion, which leaves it open ended. Mr. Konarski said they are hoping 32 weeks would be the maximum amount of time for this, it was estimated by the contractor for this phase of the contract and so far they are on schedule.

Mr. Gleissner asked if the land to the east was a new purchase and would it take the foot print of the old building. Mr. Konarski said it was newly acquired land and the new building would be quiet a bit larger, the southwest corner of the new building would go exactly where the existing building is and it would extend further east and further north.

Mr. Emmons asked Mr. Prince what would happen regarding the temporary sales trailers if the time frame went past the 32 weeks. Mr. Prince said he went with the general time frame of when they finished the plans that were submitted the trailers would be off the property which was the intent. He said if it goes past the 32 weeks it would be in climate weather so he sees the push to get it done but could stipulate one year. Mr. Emmons also asked about addressing the comment by Mr. Banicki regarding the noise from the speaker system. Mr. Prince said this was the first he had heard of the problem, he said he would meet with Mr. Konarski after the meeting and see if they could direct the speakers differently and possibly turning down the volume.

Mr. Hixenbaugh asked what the process was for following up and gauging whether or not there was compliance with our existing ordinances with regard to noise related issues. Mr. Prince said typically they go out and try and hear for themselves, when police go out on those calls they use their judgment as to whether or not it was disturbing the peace. He said some sounds are more disturbing than others, sometimes the base will vibrate windows, which will disturb the peace it would not be the sound in that case as much as turning down the bass. Mr. Hixenbaugh said he was willing to support Basney in their efforts to maintain a presence in Mishawaka, with that being said he would hope this could be addressed. He said the people living in Mr. Banicki's neighborhood about a commercial area; they have the same right as others to live in peace on their property, so if there was a way to address this without delaying this project he would be interested in having this resolved and have some feed back, if the Council was going to grant approval, he does not want this to slip through the crack.

Mr. Prince asked Mr. Banicki if he had brought this up to Code Enforcement or the Police, he said no he had not

Question was called for at 7:22 p.m. on **RESOLUTION NO. R2010-08** with the vote being 7 to 0 in favor.

Clerk Block read **RESOLUTION NO. 2010-09** opening it for public hearing.

RESOLUTION NO. 2010-09

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, APPROVING A PETITION OF MISHAWAKA BOARD OF ZONING APPEALS FOR THE PROPERTY LOCATED AT:

1000 Block of East Ireland Road, Mishawaka, Indiana

Jeff Ballard, Danch, Harner and Associates 1643 Commerce Drive South Bend said they were representing JB Capital LLC also known as Tractor Supply. He said the site plan shows a 97,000 square foot retail store planned for the site located near Ireland and Bremen Highway, which is currently part of the Bremen Highway Retail Center PUD that was originally designed for two retail tenants. Mr. Ballard said they were seeking approval for outdoor displays and storage, with regard to that there will be 20,360 square feet of outside sales and display area west of the building, which would include a fenced in concrete area. He went on to say they would be providing landscape plant materials along the Ireland Road frontage, which will buffer the parking area from the street, other display pads would be in front of the store and three display pads along Ireland Road. Mr. Ballard stated there would be entrances into the Walgreen site from the Tractor Supply one on the north and one on the south. He said they would be landscaping along side of the building for esthetics, as well as landscape buffer and fences would be constructed along the west side to buffer the neighbors to the west, with appropriate landscaping around the perimeter as well.

Mr. Emmons asked if the Walgreen parking lot would be a pass through to Tractor Supply's parking lot. Mr. Ballard said yes it is consistent; you could go to Walgreens or Tractor Supply. Mr. Emmons asked if there would be a back entrance. Mr. Ballard stated there would be an entrance on the north side of Walgreens to Tractor Supply or Subway.

Mr. Emmons asked about the storage area being 20,360 square feet when supposedly it was 15,000. Mr. Ballard said the 20,350 includes the 15,000 square feet, within the fenced in area directly to the west of the building. Mr. Emmons said the only places there would be storage would be in the fenced area and in the outside pads. Mr. Ballard said that was correct. Mr. Emmons asked about the fenced in storage in the back of the building there was a pretty good size asphalt area, and there would be no storage there correct. Mr. Ballard said the asphalt area would be for maneuvering of trucks that come in for delivery. Mr. Emmons said there would be a driveway from the west of the building where the buffer is located, was that correct. Mr. Ballard said there would be a 30 foot wide access easement that would actually connect to the next development at takes place there.

John Piraccini 633 Windy Cove, said he was one of the property owners of this property and he wanted the Council to know that he did talk with surrounding neighbors and show them the site plan, and most of them sent a letter of support. He said the property to the west of this site has been annexed and is a commercial piece of property. Mr. Piraccini said he was excited about Tractor Supply coming to Mishawaka they are a big generator of traffic.

Mr. Gleissner asked the type of people this store would cater to. Mr. Piraccini said they direct their business towards people who have five small farms and five acres of land, and draw people from 400 miles away.

Mr. Ballard stated that Tractor Supply absorbed and bought out Quality Farm and Fleet, they both became one and have 800 stores in 40 states and employ over 10,000 people, they will be employing 12 to 15 jobs at this location.

Question was called for at 7:32 p.m. on **RESOLUTION NO. R2010-09** with the vote being 7 to 0 in favor.

Clerk Block read **RESOLUTION NO. R20010-10** opening it for public hearing.

RESOLUTION NO. R2010-10

**RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF
MISHAWAKA, INDIANA, APPROVING A REPORT OF COMPLIANCE WITH
STATEMENT OF BENEFITS FOR CERTAIN PROPERTY OWNERS
(2009 Tax Abatement Compliance Reports with Statement of Benefits)**

Mr. Hixenbaugh said in order to afford the Council additional opportunity to review these statements of compliance reports and meet with several recipients' he would like to make a motion to postpone the public hearing on this resolution until the next scheduled Council meeting, with a second by Mr. Banicki the motion carried.

UNFINISHED BUSINESS

RESOLUTION NO. 2010-06

**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:
1110 South Ironwood Drive, Mishawaka, Indiana**

(Use Variance to allow the continued use of vehicle sales – 1110 S. Ironwood Drive)

Troy Parmelee, 32903 Nature View Drive, New Carlisle said he was requesting a continued Use Variance for this property. Mr. Banicki asked him if he realized it was just a three year extension, expiring in February, 2013, he said yes he did.

Mr. Hixenbaugh said he remembers when the initial approval of this property and it was the anticipation of the Council at that time they hoped it would be a one time approval, at least in his mind, he would like to understand why he needs the extension and what has happened to delay the ultimate plan for the property. Mr. Parmelee said ideally now would be to sell the place but the condition of the economy that was not an option, he said he finally has a tenant in there that seems to be doing well so he wanting to leave that until something else comes up. Mr. Hixenbaugh said then it is more the economical circumstances and the ordinary business cycle that has not allowed the property to move in a different direction at this time. Mr. Parmelee said yes and down the road he would like to sell.

Mr. Emmons stated he met with Mr. Parmelee regarding concerns that he had much like Mr. Hixenbaugh and Mr. Parmelee said he would keep up the landscaping, and building up, and the number of cars kept in an orderly fashion on the lot. He said he understands Mr. Parmelee's situation as an owner and a renter he was trying to keep the property up and also make his payments on the property. Mr. Emmons said after this lease expires it can not be a car lot any longer due to it being a residential area. Mr. Parmelee said he knows the building was old, and he understands the Council's position.

Question was called for at 7:40 p.m. on **RESOLUTION NO. R2010-06**, with the vote being 7 to 0 in favor.

Clerk Block read **RESOLUTION NO. R2010-07** opening it for public hearing.

RESOLUTION NO. 2010-07

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA,
INDIANA, APPROVIING A PETITION OF THE MISHAWAKA BOARD OF ZONING
APPEALS FOR THE PROPERY LOCATED AT:
715 East Mishawaka Avenue, Mishawaka, Indiana**

(Use Variance to allow a drive-thru window on a C-1 general commercial zoned property 715 E. Mishawaka Avenue)

Terry Lang, Lang Feeney and Associate, 715 South Michigan Street, South Bend said he was representing the petitioners in regards to the old Fashion Cleaners site on Mishawaka Avenue, requesting a drive-thru. He said they have been working with Engineering and Planning and would like to start construction of the drive-thru within ten days of the approval. Mr. Lang stated the owner would be taking care of the landscaping needs after the drive-thru was completed.

Mr. Banicki asked why they wanted to put in a drive-thru, his thought was to get the customer inside the store. Mr. Lange said they are a small bread, milk and pop store and for people wanting to stop on their way home a drive thru would make it more convenient. Mr. Banicki asked what the hours would be. Mr. Lang said 7:00 a.m. to 10:00 p.m. Mr. Banicki said his concern was kids hanging out late at night at the store and no alcohol would be sold. Mr. Lang said no they do not have a liquor license.

Mr. Gleissner said he was more familiar with the tobacco store on the corner of 8th and Main Street and was concerned if these may be the same owners. Mr. Lang said they are not the same owners and do not want to be confused with them because the operation they are running was completely a different operation. Mr. Gleissner said he did not want this store to turn into one like the one on 8th Street, you can not see in the windows they are covered with advertisement, it is a hangout for younger kids in the area and he does not want to encourage another type of that place anywhere else in the city. Mr. Lang said those were the same concerns the Planning Commission had and he has made the owners very much aware of situation on 8th Street and they agree they do not want that situation at their facility.

Mr. Hixenbaugh said for the record he appreciates the drive-thru it has saved him on several occasions, his question was did the applicant own any other properties in Mishawaka that they could use as a point of reference. Mr. Lang said this was the only property. Mr. Hixenbaugh said what causes him some concern was the location in proximity of Mishawaka High School and Battell Elementary School, with concerns of tobacco sales, what procedures, staff training and policy goes in to making sure there won't be those student oriented issues.

Mr. Lang said the owner Zackria Mohamed is one of the key employees there and was aware of what the age requirement was for purchasing tobacco, and they do not plan on selling alcohol, and it

would be his policy to make sure there was ID check. Mr. Hixenbaugh said they want to see a building that has set dormant for some time return to a viable use so he would be supporting this resolution but if it passes the Council vote he would encourage the relevant city departments, including the Police Department to keep a close eye on the building to make sure any problems would be nipped in the bud, and he appreciates Mr. Mohamed representations that he was going to do what he could to avoid that. He asked Mr. Mohamed to follow through with the commitments he has made to the Council regarding this.

Mrs. McClure felt the thing most important to her was that Mr. Mohamed would be the main employee. She said her concern was often part time help doesn't know the clientele, or the neighborhood.

Mr. Lang said one of the qualities that Mr. Mohamed has, was he would be there most of the time and would be able to monitor the clientele.

Mr. Gleissner asked Mrs. McClure if she had noticed any problems with youngsters up to this point. Mrs. McClure said no, she has not.

Mr. Emmons concurred with the comments made earlier regarding the problems of young people hanging out at the store on 8th and Main Streets, trash around the building, and poor up keep in general.. He asked Mr. Mohamed to monitor his store so this does not happen.

There being no further business to come before the Council, President Emmons adjourned the meeting at 7:54 p.m.

Deborah S. Block /s/

Deborah S. Block, City Clerk

Dale "Woody" Emmons /s/

Dale "Woody" Emmons, President Presiding Officer