

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL
July 06, 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 July 06, 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 - Present

Marsha McClure 4th District Councilman - Present

Michael Compton 5th District Councilman - Present

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, absent and Council Attorney Mike Trippel.

PETITIONS, COMMUNICATIONS, REMONSTRANCE AND MEMORIALS

Lieutenant Tim Williams, Mishawaka Police Department said he was honored to present the two students representing the City of Mishawaka in the DARE Essay City Championship for 2010, Hope Fowler; Hums School was 6th Place and Nina Hernandez, Emmons School 2nd Place.

President Emmons thanked both girls for their participation and Lt. Williams for his work, DARE is an excellent program.

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

PROPOSED ORDINANCE NO. 2010-22

**AN ORDINANCE OF THE CITY OF MISHAWAKA, INDIANA, AUTHORIZING THE
ISSUANCE AND SALE OF REVENUE BONDS OF THE CITY IN AN AGGREGATE
PRINCIPAL AMOUNT NOT TO EXCEED ONE MILLION THREE HUNDRED SIXTY-SIX
THOUSAND TWO HUNDRED FIFTY-TWO AND 00/100 DOLLARS (\$1,366,252,252.00) TO
PROCURE FUNDS TO BE APPLIED TO THE COSTS OF CERTAIN ENERGY
CONSERVATION IMPORVEMENTS IN THE CITY, TOGETHER WITH EXPENSES
INCIDENTAL THERETO**

(Authorizing Revenue Bonds for Energy Conservation Improvements)

Assigned to Budget and Finance Committee

Clerk Block read **PROPOSED ORDINANCE NO. 2010-20** opening it for public hearing.

PROPOSED ORDINANCE NO. 2010-20

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-1 Single Family to C-1 general Commercial 406 E. McKinley Ave.
(Children’s entertainment facility and retail use)

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

James A. Masters, Attorney at Law, 211 West Washington Street Suite 1800, South Bend, stated he was representing the property owner Dennis Pregel and the contingent purchaser of McKinley House of Bounce LLC. He said the petition is to rezone the property at 406 E. McKinley Avenue, Mishawaka from C-1, which currently only includes 60 feet immediately adjacent to McKinley Avenue, the balance of the property is zoned R-1, and the petitioner wants to rezone the entire property to the C-1 General Commercial Use. Mr. Masters stated there was an amendment to the petition, they were asking the Council to exclude from the rezoning petition the north 20 feet of the property to remain R-1 Residential to act as a buffer between the McKinley property and the residential property to the north, by recommendation of the Planning Department.

Mr. Masters said their plan was to develop this site for two commercial uses one was the McKinley House of Bounce for an entertainment facility for children and possibly other commercial uses aloud in a C-1 District, the west side of the lot would be reserved for future commercial development. He said a site plan would be submitted. Mr. Masters said they would be developing this piece of vacant ground that was currently being used as a dumping ground and allow it to become commercial property that would be productive for the City of Mishawaka. He said they invited to a meeting the people within the three hundred feet of the area affected by this rezoning to address their concerns, only 10 people showed up. He said there were three concerns that came out of that discussion, 1) They want there to be a natural barrier retained along the strip, which is a heavy wooded area along the north side of this lot adjacent behind the houses. Mr. Masters said they have agreed to maintain a natural barrier along there and they would write that into the site plan or a written commitment of such. 2) Another concern was what was going to be there, what the hours would be, how late at night they would be open. Mr. Masters said they have committed to agree that any commercial use that goes on this property the hours of operation would require closing by 9:00 p.m. on Sundays through Thursdays, and by 10:00 p.m. on Friday and Saturday night again they would make that as part of the site plan for any future owners as well 3) He said there were also questions regarding the traffic pattern for getting in and out of the property, which has already been addressed in the site plan, in that, going west on McKinley you would only be able to turn right (north) into the property and there would be no left turn onto McKinley from the exit of this property. He said on the Division Street side the ingress and egress was quite a distance from the intersection so there would not be a traffic bottle neck, again which was shown on the site plan

and requested by the Planning Department. Mr. Masters said hopefully all concerns have been addressed, and asked the Council for their favorable recommendation.

Dennis Pregal 5473 Redwood Road, Plymouth, Indiana said he was the property owner and his family has owned the property for 62 years and his parents maintained their home at the corner of McKinley and Division for over 50 years. He said originally the property consisted of 40 acres, with the front 110 feet being in the city, zoned C-1 and the remaining balance of the property was in the county until annexed into the city. Mr. Pregal stated it has always been their plan that the property would be developed residential on the northern 36 acres, which resulted in the establishment of Wild Flower Cove in 1999, and remainder of the property along McKinley Avenue would be developed C-1. He said over the last 11 years only a few interested parties have shown a desire to locate there and they were discouraged because of the rezoning, he now has a viable interested party that would provide a non-intrusive business that would have minimal impact to the residence to the north. Mr. Pregal asked the Council for their favorable vote.

Bill Callahan, 202 Lincolnway East said he was marketing this property for the highest and best use, driving up and down the McKinley corridor there was very few parcels that are not developed commercially. Mr. Callahan said over the number of years he has had this property listed there has been zero interest shown in residential development, most people steer away from the split zoning because they are fearful it would be too much of a headache. He said by just having this vacant parcel on McKinley it has become a convenient dumping ground and he showed pictures of the property in poor condition.

Mr. Callahan stated one thing he wanted to mention was the petitioner would like to request 10 days where he could exceed the hourly limit by one hour, so during the week-day where closing would be nine he could go to ten and during the week-end where he could go to eleven and it would only be for 10 days out of the year. He said he would like to add that Mr. Pregal has been a good neighbor and has always lent his property to city needs such as letting utility trucks park on his vacant land, was forgiving of truck tracks and everything left behind when the Habitat for Humanity built a house on the north corner of Division and McKinley, and in the fall when the sewer lines were put in they used his property as a centralized staging area, all of this makes his maintenance difficult. Mr. Callahan said they are not asking for a switch zoning or a change in zoning they are just looking for a unification of that zoning on the first one hundred feet. He asked the Council for their favorable vote.

Mr. Hixenbaugh said he appreciates all the efforts put into the effort to try and address the concerns that have been identified to this point. He said his concern was the proximity to the neighborhood and the elementary school. Mr. Hixenbaugh asked if children not accompanied by an adult would be allowed to enter the facility. Mr. Callahan said that was true. Mr. Hixenbaugh asked for definition of the 10 days a year extended hours, were they random days or were they in conjunction with holidays. Mr. Callahan said if someone wanted to have dad's 50th day party and they wanted to do it at the House of Bounce so the children would be entertained as well they would be allowed to extend the hours for that day. He said 10 days was a number they just threw out there.

Mr. Hixenbaugh asked if the House of Bounce LLC was the contingent purchaser for the entire parcel or just the parcel their facility would be on. Mr. Callahan said there was a one year window that they

could do that but to be frank a lot would be contingent on the ingress/egress if it does not come in off of McKinley then it may hinder everything.

Mr. Hixenbaugh said in regards to the other commercial uses that were being proposed, was there anything he could tell the Council with specificity about what they envision going into that portion of the property, because with the C-1 zoning there are 134 possible uses that could go into this site and not all of those uses would be appropriate in that neighborhood in proximity to the school. Mr. Callahan said that was a very valid point, he was approached at one point when the Loading Zone Liquor was displaced from their location on Jefferson. He said the price tag for that property would be pricey and therefore a lot of possibilities would be weeded out from that standpoint alone. Mr. Callahan said he envisioned a lending institute of some sort; again they would go back to the neighbors and ask if there would be an issue if there was an ATM at the back of the property. Mr. Hixenbaugh said he takes at face value that they are willing to work with the neighbors and certainly they have done so at this point and time but the pressures being what they are he was concerned with the 134 possible uses that simply working with neighborhood won't address the larger communal interest that are at stake with regard to certain of those uses, that personally was his problem, in a sense they would be buying a pig in a poke with regard to the other proposed facility. He said that was what he was struggling with, if they would be requesting a Use Variance then they would have more specificity and to a certain extent more control and more knowledge about what they would getting themselves into, but once the rezoning was done they would no longer be working with the Council as far as the uses were concerned.

Mr. Callahan asked what uses concerned Mr. Hixenbaugh. Mr. Hixenbaugh stated: candy stores, drug stores, animal hospitals/kennels, auto leasing, beverage stores, carryout restaurants, comprehensive car care centers, dairy stores, eating and drinking establishments, game arcade, pool hall or billiard hall, liquor stores, music stores, retail stores, tanning salons and tobacco stores again all legal, legitimate business, but in his mind not a good fit in close proximity to the houses and school where they sit. He said these are uses that all permitted under a C-1 zoning and if they do a wholesale rezoning here if someone steps up with a check book that was willing to write a check for one of these proposed uses he hesitates to think that they would be turned away. Mr. Callahan said they are not asking for a C-4 they are asking for the C-1 that is already there, he is not going to advocate or market to a billiard place, when there is a ½ million dollars staring you in the face if you were going to sell or waffle on being politically correct that would have already been done.

Mr. Masters asked why all of a sudden for this particular project do they want to change the zoning code, the 134 uses called out by Mr. Hixenbaugh are for everyone with C-1 zoning, those uses could go on the 100 feet that was adjacent to McKinley. Mr. Hixenbaugh said he agreed with that, first of all this is the only petition in front of him so this would be the only one that he would be considering, second of all the history of this Council going on the 12 years that he has been on have done a fair number of Use Variances in lieu of a rezoning for these very reasons so the Council can spell out specific uses and build in conditions allowed by state law that would allow the Council to assure themselves that it was an appropriate use for an appropriate setting. He said they have on multiple occasions worked with developers to address the concerns through the use of a Use Variance. Mr. Masters asked what he was proposing. Mr. Hixenbaugh said certainly was up to Mr. Masters whether or not he wanted to go forward he was only one vote out of nine and he has made it clear he is not going to support this given the uncertainty. He said he would be willing to make a motion to post-pone the public hearing on this

to allow everyone to try and fashion a petition that would address his concerns but still allow his client to be able to go forward with their ultimate goal which was to develop this.

Option

Pamela Regetie 430 Pregal Drive, said the gentleman handling all of this has bent over backwards to keep the neighbors informed, although they all feel the House of Bounce would not be a bad thing, but like Mr. Hixenbaugh their concern was the other piece of property and what would go on that parcel.

Mr. Gleissner said they do not just go out on a limb and hope that something nice would go in there, he agrees with Ms. Regetie he does not have a problem with the House of Bounce but he was not willing to commit himself with the location so close to residences and a school, he would consider that speculative so he wishes they would consider going with a Use Variance and he too would be in support of a postponement.

Mrs. McClure said as a councilperson she felt it was her responsibility to think about not just what was happening today but to think about tomorrow and years from now, she too would not be supporting this at this time.

Mr. Hixenbaugh said in order to provide an opportunity to work with the developer and arrive at an acceptable outcome he moved that the public hearing on **PROPOSED ORDINANCE NO. 2010-20** be postponed indefinitely to allow them to have further conversation with the developer, with a second by Mr. Compton with motion carried.

Clerk Block read **PROPOSED ORDINANCE NO. 2010-21**

PROPOSED ORDINANCE NO. 2010-21

**AN ORDINANCE AMENDING CHAPTER 58, OF THE MUNICIPAL
CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED,
COMMONLY KNOWN AS “TRAFFIC AND VEHICLES” OF
THE CITY OF MISHAWAKA INDIANA**

Amending “Traffic and Vehicles” Edgewater Drive one-way from Mishawaka Ave.
to John Street and adding an all-way stop

Ken Prince, City Planner said they have been working on this for over a year, spending time and multiple public meetings to address what they believe to be a sight distance problem based on the reconstruction of the Mishawaka Avenue Bridge. He said specifically what they are asking to be done was that Edgewater Drive between Mishawaka Avenue and John Street be limited to one way traffic south from Mishawaka Avenue and at the intersection of Edgewater and John Streets be an all way stop.

Mr. Prince said they would first be narrowing the street and increase the lawn on the river side, specifically it would be designed with 23 feet of pavement with an 8 foot parking lane next to the houses and a 15 foot travel lane and they would be adding street trees. He said one of the complaints they heard from neighborhood meetings was the speed that people travel. Mr. Prince said Edgewater

Drive was a cut through to get from here to there and one of the reasons that was possible was because of the very large radius at the intersection of Edgewater and Mishawaka Avenue, which didn't require people to hit their breaks to make the turn so they could hit Edgewater at full speed. He said they felt the three way stop sign at John Street helped people to stop and assess the intersection and make their turn onto John Street. Mr. Prince read a letter from Mr. & Mrs. Ruppe, 501 Edgewater Drive stating there support of these changes.

Mr. Deal asked if a concrete island and a no left turn sign had been considered and if so why wouldn't that work. Mr. Prince said they never work people will drive around them. Mr. Deal said there surely is a way to do it so that people can not drive around them he felt it should be much simpler and there be a less costly alternative and his first impression of this was that this project has been over engineered.

Mr. Prince stated he had DLZ look at numerous options including closing this off, which was not a possibility because of the right of way, they would have had to take a house in order to get a cul-de-sac of reasonable size in that location. He said regarding the overdesign part of that is inherent to the flaw of the excessive curve, in Mr. Deals scenario of the wedge the entire intersection would still need to be redone so over engineered is a relative term he said one of the things they look at was the ability to separate the sewer so this was another component just because it is convenient so yes it is an expensive project, but one that they feel is appropriate, meets the need, and has more fixes then just the site disposition. Mr. Prince said it adds value to the neighborhood.

Mr. Wood asked Mr. Prince what the feed back was from the neighbors during the neighborhood meetings. Mr. Prince said there was not a consensus but the broad range of the middle think this is the best solution to the problem. Mrs. McClure stated the administration has worked well with her neighborhood and she was please with decision, she has not had any negative calls. Mr. Wood said he lives next a couple of right turn only islands and he can testify to the fact that they do not work and people do go around them as Mr. Prince suggested.

Mr. Gleissner said he does have a friend who has been impacted by this decision and are against it but after talking with them he found out they had not gone to any of the meetings when looking at the maps they were more positive, some people are more uncomfortable with change at all rather then what change it is. He said a lot of it is a matter of habit and he feels they would get us to it as time goes on, once they saw the maps they are more in favor then they were.

Mrs. McClure agreed with Mr. Gleissner regarding that neighbor being more on board now that they understand it more clearly. She said again speed has always been a problem on Edgewater and this new design will help alleviate this. Mrs. McClure said she agreed with Mr. Gleissner that change was a big issue for a lot of the people.

Mr. Wood asked if coming off of the Mishawaka Avenue Bridge you can make a left hand turn onto Edgewater. Mr. Prince said yes and also a right hand turn from East Mishawaka Avenue onto Edgewater.

Wyatt Mick said he and his wife own the property at 507 Edgewater Drive, Mr. & Mrs. Ruppe own the property at 501 and his son owns the property at 515, they are the three residents that are most impacted by what was happening here and they are deeply indebted to Mr. Prince, Mr. West, the Project Engineer

and the Mayor for dealing with this matter since 2008. He said backing out of his drive way was very dangerous because of the speed of traffic coming onto Edgewater from Mishawaka Avenue. Mr. Mick said they feel in dealing with this situation in its entirety this was without question the best solution.

Question was called for at 8:31 p.m. on **PROPOSED ORDINANCE NUM 2010-21** with the vote being 9 to 0.

NEW BUSINESS

Mr. Gleissner congratulated Ross Signorino, Mishawaka Fire Fighter for being in the cook-off on the Regis and Kelly show.

Mr. Emmons reminded everyone of his neighborhood watch meeting on Thursday July 15, 2010 at St. Bavo.

There being no further business to come before the Council, President Emmons adjourned the meeting at 8:35 p.m.

Deborah S. Block /s/

Deborah S. Block, City Clerk

Dale "Woody" Emmons /s/

Dale "Woody" Emmons, President Presiding Officer