

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

August 2, 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 August 2, 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 1<sup>st</sup> District Councilman – (President) Present

Dave Wood 2<sup>nd</sup> District Councilman – Present

Ross Deal 3<sup>rd</sup> District Councilman - Present

Marsha McClure 4<sup>th</sup> District Councilman - Present

Michael Compton 5<sup>th</sup> District Councilman - Present

Ronald Banicki 6<sup>th</sup> 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, Absent and Linda Dotson, Chief Deputy II, and Council Attorney Mike Trippel.

Clerk Block presented the following appeals and petitions to the Council, who referred them to the Plan Commission for their recommendation

**PETITION NO. 10-13**      Rezone from C-1 General Commercial to R-1 Single Family Residential District 501 West 6<sup>th</sup> Street.

**PETITION NO. 10-14**      Amend the PUD – Deer Run PUD for the Preserve II-Multi Family Apartment Buildings

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

**PROPOSED ORDINANCE NO. 2010-26**

**AN ORDINANCE OF THE CITY OF MISHAWAKA, INDIANA APPROPRIATING THE PROCEEDS (TOGETHER WITH INVESTEMENT EARNINGS THEREON) DERIVED FROM THE SALE OF REVENUE BONDS OF THE CITY HERETOFORE AUTHORIZED TO BE ISSUED FOR THE PURPOSE OF FINANCING THE COSTS OF CERTAIN ENERGY SAVINGS IMPROVEMENTS, TOGETHER WITH EXPENSES INCIDENTAL THERETO**

**(Appropriating Proceeds from Revenue bonds – energy savings improvements)**

**Assigned to Budget and Finance Committee**

**PROPOSED ORDINANCE NO. 2010-27**

**AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA,  
AMENDING THE MUNICIPAL CODE BY  
ESTABLISHING A UNIFORM SCHEDULE OF FEES  
(Amend Municipal Code – Uniform Schedule of Fees)  
Assigned to Budget and Finance Committee**

Clerk Block read **RESOLUTION NO. R2010-17** opening it for public hearing.

**RESOLUTION NO. R2010-17**

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA,  
INDIANA APPROVING ENTRY INTO A CONSENT DECREE AMONG THE CITY OF  
MISHAWAKA, THE STATE OF INDIANA, AND THE UNITED STATES, GOVERNING  
THE IMPLEMENTATION OF COMBINED SEWER OVERFLOW CONTROLS  
(Combined Sewer Overflow Controls)**

Mayor Rea stated they have been in negotiations for quiet some time with the EPA over this Consent Decree. He said the issue of combined sewer overflow is one that hundreds of communities are dealing with all over the north east including Indiana as to what the long term solutions would be. Mayor Rea said they have been negotiating an agreement that would be in the best interest of Mishawaka and are in the process of the final stages of that. He said this resolution would guide their activities for the next 20 plus years as they work to address the river water quality.

Karl Kopec Manager of Wastewater Treatment Plant said, as the Mayor stated they have been negotiating with IDEM, EPA, and the Department of Justice since November 2004 and was happy to say they are nearing the completion of their negotiations. He said their acceptance of the plan has been approved and they are now tweaking some of the Consent Decree language, the Long Term Control Plan would then be attached to the Consent Decree.

Mr. Kopec said this Resolution recognizes first of all the pro-active approach that Mishawaka has taken toward the Combine Sewer Overflow (CSO) control and that was something to be proud of. He said since 1990 through 2010 they have reduced annual CSO volume in Mishawaka by over 86% and have done it cost effectively. Mr. Kopec said that has been done by sewer separation projects, two upgrades of the Wastewater Treatment Plant, and improvements to the Sanitary Sewer System.

Mr. Kopec stated the Resolution also makes clear that the remaining CSOs are violations of the Federal Clean Water Act and therefore, the City of Mishawaka was required by law to address them, so even though a major portion of it was done the remaining still has to be addressed. He said the Resolutions states the city, state, and federal government prefer to enter into a Consent Decree to avoid litigation in federal court.

Mr. Kopec said the resolution along with the companion resolution that was adopted by the Utility Board last week gives the Mayor authority to sign the Consent Decree when all parties are ready for the

finalization of the Decree and the Long Term Physical Plan and therefore, he respectfully asked for the Council's support in adopting this resolution.

Mr. Roggeman said in the Resolution the City of Mishawaka would be agreeing to pay a slight fine, and he realizes it could have been a lot worse but none the less it is still \$14,000 to the State of Indiana and \$14,000 to the Federal Government would that be the extent of what we are exposed, could there be penalties or fines in the future. Mr. Kopec said a component of the Consent Decree states penalties for non-compliance of not reporting in a regular manor, if there is scheduled project and the city does not meet the funding to do the project or meet the schedule, the city could then be subject to fines, so it would take in the next 20 years some very careful and thoughtful management of the program. He said the initial fine of \$28,000 was for past violations for past overflows and he has not seen a Consent Decree that has not had that penalty component.

Mr. Deal asked they were able to negotiate language into the Consent Decree that would allow the city to renegotiate in the event of an economic downturn. Mr. Kopec said yes they are calling it an offering that if the economic conditions don't improve, and project costs escalate beyond what they are estimating them to be they could go back and open the negotiations, that does not necessarily mean they would say we could do less but could say they would give us more time to get it done. Mr. Ross asked if that could be done unilaterally. Mr. Kopec said it can not be done unilaterally, EPA would have to agree and even a judge may have to agree to the reopening. He said there also is a reopener if the city does not receive a use-attainability analysis which essentially gives the city a legal end point that recognizes no matter what, there could be a rain event that would overwhelm what has been constructed and would have an overflow and could never get it to absolute zero.

Mr. Gleissner said he has served on several committees involving the St. Joseph River and CSOs and he knows it has been a big burden and wanted Mr. Kopec and his people to know he appreciates all the diligent work they have done on this. He asked where Mr. Kopec would rank Mishawaka in the progress they have made, compared to other cities in the state. Mr. Kopec said for cities our size and larger we are definitely near the lead of the pack but every city is different and every sewer system has its own unique characteristics, there is definitely no one size fits all, in terms if actual reduction to this point there are few communities that have done as much as Mishawaka has done and he thinks the agency has recognized Mishawaka's efforts and that has helped throughout the negotiation process.

Mr. Hixenbaugh said neither the approval of this resolution nor the Consent Decree, even though they anticipate some future rate increases, would circumvent the normal rate approval process that is in place for Council action and dialogue with the administration, was that correct. Mr. Kopec said that was correct. He said normally he would be very reluctant to approve a resolution like this where the Consent Decree was attached and made available to them, but Mr. Kopec, Mayor Rea and other department heads have done a fantastic job, in his opinion, of keeping the Council in the loop with regards to developments and going above and beyond explaining the process and the specifics and he wanted them to know he appreciates the effort everyone has put into this and he was comfortable approving it. Mr. Kopec thanked Mr. Hixenbaugh and stated he too appreciated the partnership and communication he has had with everyone and it was not a political issue it was something that was good of the community. Mr. Hixenbaugh said he would ask when the final version of the Consent Decree was prepared it be made available to the City Clerk so the Council would have access to it.

Mrs. McClure was called away from the meeting for a family emergency at 7:25 p.m.

Mr. Wood asked if the Consent Decree tied the city into a very specific plan or would there be flexibility in that plan over the course of time to take advantage of efficiencies and new technology. Mr. Kopec said, they tried to make it as general as it could be in terms of project description and also their schedule where the projects would fall in the 20 year implementation period, there is some latitude if new technology comes along, but they are consider significant variances from what was originally proposed you have to go back to the bargaining table to negotiate that change. Mr. Wood said he too wanted compliment him and his staff on this plan and doing the best they could for the citizens of Mishawaka and while no one likes these unfunded mandates to come down he does feel confident in the plan.

Jim Schrader, Mishawaka Utilities General Manager, said he too wanted to express his support for this resolution; he has been involved in these negotiations since has been here in 2005 and have had much discussion with many other utilities throughout the state during this process. He said he has the ut-most confidence in his staff at the Waste Water Treatment operation and feel they have done their best for the citizens of Mishawaka, and the environment.

Question was called for at 7:25 p.m. on **RESOLUTION NO. R2010-17** with vote being 8 to 0 in favor.

Clerk Block read **RESOLUTION NO. R2010-18** opening it for public hearing.

### **RESOLUTION NO. R2010-18**

#### **A RESOLUTION APPROVING APPOINTMENTS TO THE HISTORIC PRESERVATION COMMISSION OF THE CITY OF MISHAWAKA, INDIANA**

(Historic Preservation Commission Appointment-Cliff Zenor)

Jeff Rea, Mayor said the Historic Preservation Ordinance requires mayoral appointments to be brought before the City Council for approval. He said Cliff Zenor would be replacing Cynthia Harington who recently resigned from the commission and was a very valuable member contributing many good things. Mr. Zenor has served on the advisory board to the commission and would be a good fit having contributed many good things to the commission in an advisory position.

Mr. Gleissner stated as Chairman of the Historic Preservation Commission he has worked with Mr. Zenor who is a professional photographer, he was always at the meetings and a very active member and very dedicated to preservation and it would be a pleasure to sit with him.

Question was called for at 7.28 p.m. on **RESOLUTION NO. R2010-18** with the vote being 8 to 0 in favor.

Clerk Block read **PROPOSED ORDINANCE NO. 2010-23** opening it for public hearing.

## **PROPOSED ORDINANCE NO. 2010-23**

### **AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, AMENDING THE MUNICIPAL CODE BY UPDATING SEWER SERVICES TO COMPLY WITH EPA REGULATIONS (Sewer Uses Ordinance Revisions – EPA Regulations)**

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

Karl Kopec, Manager of Waste Water said he was speaking in favor of updating the Sewer Use Ordinance, the proposed changes fall in the three areas

- One pertains to the city's industrial pretreatment program where they are required to monitor certain industries in town to make sure they are complying with any discharge limitations that they have on their discharges to the sewer. He said the changes to the Pretreatment part of the ordinance are EPA mandates they wanted to clear up some mandates and make it more consistent and also streamline the permit process. These changes are fairly insignificant in the ordinance some of them are a few words changed in a sentence. The changes in the proposed ordinance have been reviewed by the EPA and they meet their requirements.
- The second change is also required by outside agencies and they are designed to control the discharge of fats, oils, and grease into the sewer system, the term they use is FOG. He said the food establishments are the biggest producers of FOG discharges to the sewer system, the result of discharging FOG is that you can get sewer blockages and backups as well as sanitary sewer overflows which are prohibited by the clean water act. The reason this falls under Waste Water Management's responsibility is they are required to properly operate and maintain their systems and the definition of treatment works includes the sewer system, so that was why these changes are being made to the Sewer Use Ordinance.
- Lastly was a surcharge for Phosphorus, which is a nutrient which causing the big dead zones in the Gulf of Mexico and are also impacting the Great Lakes, and EPA is taking a close look at discharging of Phosphorus and he anticipates in the next NPDES Permit they would see more stringent Phosphorus limits then the ones implemented right now. This proposed ordinance would decrease the threshold of Phosphorus that an industry could discharge before they have to pay a surcharge on the discharge and the decrease would be from the level of 10 milligrams or parts per million discharge down to 5, and the amount of surcharge for discharges in excess of that would be increased from \$2.231 per pound of Phosphorus to \$8.924 per pound. This is not a prohibition on industries that discharge Phosphorus they are free to discharge above the surcharge levels but it does force them to make an economic decision as to whether it would be cheaper for them to treat the Phosphorus in their own plants before they discharge or just discharge it and pay the surcharge. It does help the city to recover the cost they incur from removing the Phosphorus. The chemical the city uses in treating the Phosphorus has quadrupled in price and the old surcharge levels and concentration thresholds just did not make sense anymore.

Mr. Kopec said these were the three areas that are changed in what they are proposing and he would respectfully ask for the Council's support in amending the Sewer Use Ordinance.

Mr. Wood asked how many businesses that discharge Phosphorus would be affected by this. Mr. Kopec said one or two. Mr. Wood asked if those two businesses resulted in a large amount of Phosphorus discharge. Mr. Kopec said under the old threshold of 10 parts per million before they begin paying. He said the old surcharge per pound was \$36.86 and when you compare that to the chemical cost to remove the Phosphorus at the treatment plant it was laughable, it was no where near the cost of the treatment. Mr. Kopec said under the new rate and surcharge level it be \$226.67 and if you discharge above that surcharge limit there is no fine or violation it would be just a business decision to let the city treat it rather they treat it at their own facility. Mr. Wood asked if he felt in anyway it would be a negative impact on local businesses, Mr. Kopec said he does not.

Mr. Compton asked what Phosphorus was used for. Mr. Kopec said it was used for a lot of metal finishing applications pre-cleaning, was probably one of the biggest uses and they are developing alternates that are either no Phosphorus or low Phosphorus. Mr. Compton asked when they speak of so many parts per million how often is that monitored. Mr. Kopec said a significant industrial user was required to monitor a representative sample four times a month and they report those results to the Sewer Plant and he monitors the industries twice a year.

Mr. Hixenbaugh said in regards to the FOG portion of this ordinance have they been in contact with restaurants that would be impacted by this. Mr. Kopec said they began the process in January when these businesses came to City Hall to renew their restaurant licenses; they were given an informational brochure telling them what the plans were about implementing the FOG section in the Sewer Use Ordinance and what the expectations were. He said there would be an education process where they would meet with restaurants; this was a work in progress. Mr. Hixenbaugh asked who would be responsible for the enforcement and inspection components of this as well as the other proposed changes in this proposed ordinance. Mr. Kopec they would be trying to share the inspection aspect of it, with Waste Water Treatment Plant personnel, one of the first line of defense would be the Sewer Maintenance Department they would be the ones to know where the FOG build ups are causing problems, so it would be a combined effort. Mr. Hixenbaugh asked if any of the changes being proposed necessitate that increase the staff in order to cover these responsibilities. Mr. Kopec said he does not foresee an increase in staff; he was sure through education the problem would make itself less severe.

Question was called for at 7:45 p.m. on **PROPOSED ORDINANCE NO. 2010-23** with the vote being 8 to 0, thus it becomes **ORDINANCE NO. 5265**.

Clerk Block read **PROPOSED ORDINANCE NO. 2010-24** opening it for public hearing.

### **PROPOSED ORDINANCE NO. 2010-24**

**AN ORDINANCE AMENDING CHAPTER 137, OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, COMMONLY KNOWN AS "THE ZONING ORDINANCE OF 1966" OF THE CITY OF MISHAWAKA, INDIANA  
(Rezone from I-1 to R-1 Single Family 905 East Mishawaka Avenue)**

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

Mr. Gleissner said there was a long tradition that if the petitioner was not present to speak on their behalf of the proposed ordinance it would be continued to the next meeting so he made a motion to continue this proposed ordinance to the 17<sup>th</sup> meeting, with a second by Mr. Deal the motion carried.

Clerk Block read **PROPOSED ORDINANCE NO. 2010-25** opening it for public hearing.

**PROPOSED ORDINANCE NO. 2010-25**

**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 I-1 to C-1 General Commercial Restaurant and Take-Out BBQ 1017 E. Jefferson)**

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

Max Helman 17299 Penn Cross Road Granger said he was the owner of this property and was asking for a rezoning to allow a Commercial Restaurant. He said they have several variances and different businesses at this site and would like now to have it permanently changed so Mr. Weber can move his successful business to this location.

Question was called for at 7:51 p.m. on **PROPOSED ORDINANCE NO. 2010-25** with the vote being 8 to 0 in favor, thus it becomes **ORDINANCE 5266**.

**PRIVILEGE OF THE FLOOR**

Chris Frasier 122 Monmoor Avenue said she wanted to thank the Mishawaka Police Department for their cleaning up problems on her street.

Jeff Rea Mayor said August 3, 2010 was National Night Out at 5:30 locations were available in the City Clerk’s Office.

**UNFINISHED BUSINESS**

Mr. Emmons asked Mr. West if Milburn Boulevard would be open by the time school started. Mr. West stated they were right on schedule and it would be open in time for school to start, sidewalks, curbs, and sod all in.

There being no further business to come before the Council, President Emmons adjourned the meeting at 8:05 p.m.

Deborah S. Block \_\_\_\_\_/s/

Dale “Woody” Emmons \_\_\_\_\_/s/

Deborah S. Block, City Clerk

Dale “Woody” Emmons, President Presiding Officer