

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

October 6, 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 Wednesday October 6, 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

Mike Bellovich 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, and Council Attorney Mike Trippel.

The minutes from the September 20, 2010 meeting were approved as received from the Clerk's Office.

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

APPEAL NO. 10-34 Use Variance on I-1 Light Industrial zoned Property 1802 W. 6th Street auto body repair And maintenance shop.

APPEAL NO. 10-36 Conditional Use Permit – 917 W. McKinley to Allow for a tattoo and body piercing studio.

Clerk Block read a letter from the petitioner requesting to withdrawal this Appeal.

PETITION NO. 10-18 Annex and Zone to S-2 PUD and Mixed Land Use Development 43.36 acres corner of Fir Road and Cleveland Road.

PETITION NO. 10-20 Annex and Zone to C-1 for Future Retail Uses – 54050 Fir Road

PETITION NO. 10-21 Annex and Zone to C-1 for future retail uses – North of 54050 Fir Road

PETITION NO. 10-22 Annex and Zone to C-10 Convenience Store – Filling Station with Car Wash and ATM Services – NW corner of Douglas and Fir.

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

PROPOSED ORDINANCE NO. 2010-39

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

(Amending the Deer Run PUD to correct errors)

Requesting Second Reading

John Roggeman made a motion to waive Council Rules and hear **PROPOSED ORDINANCE NO. 2010-39** under New Business, with a second by Mr. Hixenbaugh the motion carried.

Clerk Block read **PROPOSED ORDINANCE NO. 2010-37** opening it for public hearing.

PROPOSED ORDINANCE NO. 2010-37

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 Light Industrial to R-1 Single Family – 1304 N. Willow Street)

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

Cindy Rice 1304 Willow Street said this was her home and she needed to rezone in order to refinance the property.

Question was called for at 7:09 p.m. on **PROPOSED ORDINANCE NO. 2010-37** with the vote being 9 to 0 in favor, thus it becomes **ORDINANCE NO. 5277**.

Clerk Block read **PROPOSED ORDINANCE NO. 2010-38** opening it for public hearing.

PROPOSED ORDINANCE NO. 2010-38

**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 R-3 Multi-Family – 900 Block of S. Merrifield)

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

Mike Danch, Danch Harner and Associates 1643 Commerce Drive, South Bend said he was representing the petitioners, who are the contingent purchasers HEPA DOP 60 in their request to rezone this property. He said owners of this property were the Fraternal Order of Eagles Aeries 2083. Mr. Danch said this property contains four acres of ground just north of the Kroger Store is zoned C-1 Commercial and they wanted to take it to residential zoning to allow for the construction of a senior citizen apartment complex. He said he presented the Council with a site plan showing a two phase project, the first phase would be on the western end, closest to Merrifield, and that would be a three story building containing approximately 50 apartments, the second phase may be happening at a later date on the east end of the property which would also be a three story building, with 40 apartments. Mr. Danch said this would be independent living for seniors funded by HUD, age restricted from 62 and older, as well as income restricted, with a sliding rent schedule. He said there would be one access off of Merrifield, and they have a variance from the Board of Zoning to reduce the parking spaces to 38 since the study showed only 25% of the residents drive cars. Mr. Danch said if this project was approved they would be under construction this spring.

Mrs. McClure asked how much would HUD be involved in this project. Mr. Danch said his understanding was they would do the financing and set the restrictions on how the units are rented out.

Mr. Compton said HUD projects, he believed would have Davis Bacon requirements which would set a wage rate to be paid to the construction workers on this project since it was federally funded and asked Mr. Danch if that was the case. Mr. Danch said if that was a requirement it would be.

Mr. Gleissner asked the developers if the Council could have the site plan sooner, they would like to have it in their Council Packets the Friday before the meeting the following week, the deadline for that would be Thursday in the Clerk’s Office. He said it would give them the week-end to look it over instead of five minutes at the Council Meeting. Mr. Danch said could do that.

Mr. Deal said this would be independent living. Mr. Danch said the first building would be, the second building may have some assisted living. Mr. Deal asked if they had a time frame for the second building. Mr. Danch said not at this time, it has not been funded yet. Mr. Deal said since this would be independent living would there be people on staff or on the premises to check on the residents. Mr. Danch said they have a 9 to 5 staff everyday to help with the residents and they have a management company out of Indianapolis that would be doing the overall management for the

facility and they do have maintenance there. Mr. Deal said the group that was developing this was a not for profit organization correct. Mr. Danch said that was correct.

Mrs. McClure asked how they would make sure that when a person moved into the apartment they don't have the grandchildren living with them or staying for long periods of time. Mr. Danch said they would have rules and regulations; although at times the situation may require a caregiver to stay over.

Mr. Bellovich asked who would be responsible for the maintenance and where does the funding come from. Mr. Danch said the management takes care of that and the rent from the residence takes care of the cost.

Mr. Hixenbaugh to follow up on Mrs. McClure's question, there was presently a similar problem in the same neighborhood where family or friends were visiting or staying in the apartments and the parking has overflowed into the neighborhood streets, making it inconvenient for homeowners and others to be able to park in front of their homes. He said with this project being so close in proximity he would like to hear from the client that they would exercise all the authority that was available to them under the law to make sure there would not be a visitor or resident parking that spills over into these neighborhoods, particularly because BZA has approved of the reduction in the parking area. Mr. Danch said he feels they can make that commitment between the HEPA and the Management Company that would be taking care of this that there would not be that type of problem. Mr. Hixenbaugh said he believes those kind of commitments to be binding upon developers and land owners to the extent that if those commitments are not kept that it would provide sufficient grounds for the Council and the City to look at the revocation, so he appreciates that commitment that was very definitive without any wiggle room and he would hear it in that context.

Mr. Emmons asked if there was a neighborhood meeting to discuss this. Mr. Danch said no, he did not he did not have one but Angela did meet with some residence when they went through the notification process both for the rezoning and the Board of Zoning Appeals and had a question and answer period. Mr. Emmons asked about a sidewalk. Mr. Danch said they would be putting a sidewalk along Merrifield Street and making a crosswalk that would be compatible with 9th and 10th Streets. Mr. Emmons suggested running a sidewalk along side the Kroger parking lot going east and west to make it safer. Mr. Danch said that was exactly what they have done on the Engineering plan; they would even be taking one of Kroger's parking spaces out as an entry way to Krogers from the side walk.

Mr. Emmons said this would be a large unit with 90 apartments in total would there be someone keeping the outside area clean. Mr. Danch said there would be an enclosed dumpster area, and again the management company would be in charge of that. Mr. Emmons asked if the retention pond would be fenced in. Mr. Danch said it would be open with grassy area and stone.

Angela Magrames 16025 Chandler Boulevard said she represents HEPA Daughters Of Penelope 60 who would be taking over this project. She said her chapter has been in the South Bend area since 1937 and have been fund raising since then, they now have decided to contribute back to the community so they applied for the HUD Grant 202 and found out in July of this year they had been

granted 5.8 million dollars from the Federal Government. Ms. Magrames said she met with the HUD officials in Indianapolis last Wednesday; she also met with the construction analyst, who assured her he would be here every two weeks overseeing the construction of the building. She said they have very strict codes and would not sign off on this until it is up to code. Ms. Magrames said there would be hall monitors that make sure everyone was ok and they would have wireless systems in the apartments that would show at the front desk if there should be a problem in their rooms. She said there would be a full time maintenance man on site taking care of the outside of the building as well as inside fixing all problems within one day.

Ms. Magrames said they are aiming for a closing date of April 1, 2011, and they would also be seeking tax credits, they would be applying for a 500 thousand dollar grant through First Source Bank and they have someone who was willing to donate the landscaping.

Mr. Roggeman asked if they were not granted the tax credits would the project go forward anyway. Ms. Magrames said yes, it would determine whether or not it would be a 560 square foot area or 620 square foot area.

Mrs. McClure asked Ms. Magrames what HEPA stood for. Ms. Magrames said American Hellenic Educational Progressive Association founded in 1922 in Atlanta, Georgia.

Mr. Emmons said that neighborhood is all single story buildings, would this building look like a hotel. Ms. Magrames said she does not think so; Krogers is only one story but a very tall building.

Mr. Gleissner asked Mr. Watson if the Merrifield parking was going to remain no parking. Mr. Watson said yes it would.

Mr. Roggeman said Mr. Prince talked about this project being a deviation from the 2000 plan and asked him what his thoughts were on it. Mr. Prince said the 2000 Plan was prepared in the early to mid 1990's and it was reflective of certain areas of the city with this area being established as commercial property with the east side of Merrifield Street being mostly commercial. He said the demand for commercial in that area has been pretty much non-existent and he feels this would be a good transitional use from commercial and industrial to single family residential that exists across the street. Mr. Prince said if this project does go through it would be a priority from the administrations standpoint to look at providing the sidewalk connection all the way from 12th Street going into the city, so they would have to buy additional right of way so it would be a large project.

Question was called for at 7:43 p.m. on **PROPOSED ORDINANCE NO. 2010-38** with the vote being 9 to 0 in favor thus it becomes **ORDINANCE NO. 5278**.

PRIVILEGE OF THE FLOOR

Susan Mahoney 1920 Charles Street South Bend, said she was speaking as a Board Member of Public Access TV Michiana along with Peter Helen and they recently sent a letter to the Council for funds to start Public Access TV in the Michiana area. She said a South Bend Council member stated he would not vote for them to give money unless Mishawaka came on board to chip in some money. Ms. Mahoney said their request was for \$20,000 from Mishawaka's Franchise Fees from Comcast and

AT&T to be appropriated to their project for the next fiscal year. She said a portion of that money would go towards capital equipment, cameras and TV Station equipment and the following years the amount would be reduced to just operating expenses. Ms. Mahoney stated they would also be approaching Elkhart because the entire area would be benefiting from having citizen media to share their knowledge, experience and opinions with their community. She said to protect Mishawaka's interest they have employed a Mishawaka Resident and the other protection would be they would entertain an agreement between the city of Mishawaka and, South Bend as to how this would play out.

Mr. Compton said if Mishawaka would commit \$20,000 would South Bend still come on board with a large amount. Ms. Mahoney stated yes, they had originally requested \$118,000 from them and they may commit \$60,000. Mr. Compton asked if they would be coming back yearly for money. Ms. Mahoney stated yes they would. Mr. Compton asked if she had any idea what they would be asking for. Ms. Mahoney said it would probably less then the \$20,000 unless they go to a broader schedule where they would need more producers. She said for the first couple of years it would be just doing well to be on the air and having a modest schedule just to get started and get them known. Ms. Mahoney said they are thinking it would be a good resource for non-profits who may be able to use this for supplementing their educational purposes, no advertising is aloud though. Mr. Compton said Ms. Mahoney stated they would eventually work towards streaming this over the internet and asked if they have considered starting there and seeing what kind of support she would get from that. He said his thought was that could be done with a digital camera with not a lot of costs and people could see the product. Ms. Mahoney said they did consider that and it could be an option. She said they were hoping to get to a level where there was professionalism about it with a schedule for viewing; they really don't want it to be like a U-Tube situation.

Mr. Gleissner said he had watched the broadcasting previously and enjoyed some of the segments but then there were the ones that had dirty talk and characters that looked like they were smoking pot, how would Ms. Mahoney restrict that in lue of free speech. Ms. Mahoney said they have talked with Fort Wayne and Kalamazoo regarding their public access and she also tunes in to public access when ever she travels. She said most towns has the producer sign an agreement that they would take liability for what ever was said and done so these shows can be suspended if it is violation of obscenity laws etc. Ms. Mahoney stated what might be obscene to one may not be obscene to another but if they see after the first airing if was for adults only they would move them to the evening hours. Mr. Gleissner said he finds it very interesting and likes to view it when ever he ever goes out of town to see what is happening and how they conducted their business in other towns. He said what happened was a bunch of kids got a video camera and what they did was not well done and was not funny. Ms. Mahoney said they want a professional staff there that would keep an eye on that, it is not that they could say no but they can make sure they don't take up central viewing time.

Mr. Gleissner asked Ms. Mahoney if she was going to use this to show people how to change democracy. She said no, it was to show people what was going on, like at a Council Meeting to let people know how decisions are made. Ms. Mahoney said coming to Council Meetings has shown her how much work goes into running a city and she feels other people should be made aware or has the chance to see that also, because they don't come out to go to these meetings.

Mr. Hixenbaugh thanked Ms. Mahoney for the information and he respects her passion on the subject, his concern was that she was directing this presentation to the Council and he would hate for her to

leave under the mistaken assumption that it was in their power simply to pass an ordinance to appropriate money in the fashion she was requesting. He said he was fairly sure that consistent with the law and their past practice that an appropriation of this amount would need to be recommended to them by the Mayor and the administration before the Council could act upon it. Mr. Hixenbaugh said they can take away from the budget but not add to it so his suggestion was to continue to work with the administration to have them specify an appropriation they believe appropriate and that the city could afford with regard to this type of endeavor. Ms. Mahoney stated that would be her next step.

George Lane 2305 Division, Citizens for Accountability said he put in a Point of View regarding violence. He said he wants the people to have a voice in public access and would take the new Mayor to task over it like he did the former Mayor. Mr. Lane said the people have to have the opportunity to speak

UNFINISHED BUSINESS

Clerk Block said when the Council called for a special meeting of October 27, 2010 they asked that the meeting be held for the Budget and because it would be a special meeting that would be the only topic that could be addressed and the Council would like to add the CEDIT Ordinance to that at this time.

Mr. Hixenbaugh made a motion to amend the Notice of the Special Meeting of October 27, 2010 to include a reference to the fact that they would also be voting that evening on the Proposed CEDIT Ordinance, with a second by Mr. Banicki the motion carried.

NEW BUSINESS

Clerk Block read **PROPOSED ORDINANCE NO. 2010-39** opening it for public hearing. She said this is amending a prior ordinance passed by the Council; **ORDINANCE NO. 5271**, to correct errors.

PROPOSED ORDINANCE NO. 2010-39

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

(Amending the Deer Run PUD to correct errors)

Ken Prince said very simply they made errors in putting together **ORDINANCE NO. 5271** and **PROPOSED ORDINANCE NO. 2010-39** corrects those errors. He said the content the Council reviewed originally has not changed it is merely correcting an error that was done through his department.

Question was called for at 8:12 p.m. on **PROPOSED ORDINANCE NO.2010-39** with the vote being 9 to 0 in favor, thus it becomes **ORDINANCE NO. 5279**.

Mr. Deal announced his neighborhood watch meeting in the 3rd District would be on Wednesday October 20, 2010 at Twin Branch School at 7:00 p.m. He said his guest speaker would be Mr. Gleissner who would be speaking about Historic Preservation.

Mr. Emmons stated his neighborhood watch meeting would be on Thursday October 21, 2010 at 7:00 p.m. at St. Bavo’s School and the speaker would be Mr. Towner the interim Superintendent of School City of Mishawaka.

Mr. Gleissner asked Mr. Prince about box trucks with political advertisements on the sides parked in people’s driveways of their establishments, 1) is it in violation 2) do we need to up date the rules because people have found a new way to liter the city with political signs. Mr. Prince said he first wanted to explain how they regulate commercial businesses; if the advertisement was on the truck and the truck was running it is perfectly legal to park it there as long as the business owner wanted it there. He said if they park it and leave it, they consider it a sign, that they have parked a mobile sign there. Mr. Prince said regarding the political sign nature, he would have to touch base with the Council if there

was a freedom of speech issue and would it be regulated in the same manner. He went on to say they have exempted temporary signs for political purposes to go out before elections; they recently politely informed some that this action was questionable.

Mr. Gleissner said some of these are in the access way, his question was do we need to update our rules, and address whether these vehicles are blocking vision or access to the drive way, because some are being literally parked in the entrance way. Mr. Price said if Mr. Gleissner would tell him the locations of these businesses he would look into it.

There being no further business to come before the Council, President Emmons adjourned the meeting at 8:17 p.m.

Deborah S. Block /s/

Deborah S. Block, City Clerk

Dale "Woody" Emmons /s/

Dale "Woody" Emmons, President Presiding Officer