

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

November 3, 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 November 3, 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, Absent and Council Attorney Mike Trippel.

The minutes from the October 18, & October 27, 2010 meetings were approved as received from the Clerk's Office.

Clerk Block presented the following Appeal to the Council, who referred them to the Plan Commission for their recommendation.

APPEAL NO. 10-37

Variance to allow a fence with a zero ft exterior side setback and a Use Variance to allow C-5 use within a R-1 district at 701 West Fourth Street.

Mr. Gleissner stated at the last Council meeting he made a request for someone to get back with the Council and let them know what Project Future feels they provide the City of Mishawaka for the tax dollars they receive from them. He said he would like for the Mayor to know, he would like to offer to meet with the administration along with another Council member to discuss what the administration feels the benefits of Project Future are for the City.

President Emmons said he would make contact with the Mayor or whom ever his designee would be to get the information Mr. Gleissner was requesting and get back with him as soon as possible. Mr. Gleissner said they only have until the end of December to make this decision.

Clerk Block reported there were no Ordinances on first reading and no Resolutions at this time.

Clerk Block read **PROPOSED ORDINANCE NO. 2010-40** opening it for public hearing.

PROPOSED ORDINANCE NO. 2010-40

**AN ORDINANCE DECLARING AN EMERGENCY AND TRANSFERRING
AND REAPPROPRIATING FUNDS WITHIN THE BUDGET ADOPTED FOR THE
CALENDAR YEAR ENDING DECEMBER 31, 2010**

(Transferring Funds – Police Dept. \$65,000.00)

Mr. Compton reported the Budget and Finance Committee recommended this proposed ordinance should be adopted and moved for acceptance of same upon a second by Mr. Banicki the motion carried.

Ken Witkowski, Police Chief said due to a large amount of unexpected repairs and needed supplies it would be necessary to transfer and re-appropriate funds within the Police Department Budget to complete the year. He said they would be transferring \$65,000 from the regular salary line, there was extra money in that line item due to officer vacancies. He said he would be putting \$60,000 into the Building Repair Maintenance Line and the \$5,000 into their operation supply line.

Mr. Deal asked how many openings there were in the Police Department at present. Chief Witkowski said they were funded for 103 and they have two openings. Mr. Deal asked how long those positions have been vacant. Chief Witkowski said the first of this year for one of them and another about half way through the year, so they have been in the process of testing since April and hope to fill those positions by the end of 2010.

Mr. Gleissner asked if it takes such a long time why aren't they taking a look at the next batch of recruits to make sure there are some in back up. Chief Witkowski said they have tried that, they have 90 candidates and have tried to move it along as fast as they can it takes approximately 6 months to go through the process. He said they have checked with other departments to see if there was a better process of doing it but so far they have not found any quicker way. Chief Witkowski stated they were looking to get started for next year because there would be three openings in the department so they would begin that process would be starting the second week of January.

Question was called for at 7:10 p.m. on **PROPOSED ORDINANCE NO. 2010-40**, with the vote being 9 to 0, thus it becomes **ORDINANCE NO. 5281**.

Clerk Block read **PROPOSED ORDINANCE NO. 2010-41** opening it for public hearing.

PROPOSED ORDINANCE NO. 2010-41

**AN ORDINANCE DECLARING AN EMERGENCY AND
DETERMINING THE EXPENDITURE OF THE ADDITIONAL
FUNDS FOR THE YEAR ENDING DECEMBER 31, 2010**

(Additional Funds – Controller - \$900,000.00)

Mr. Bellovich reported the Budget and Finance Committee recommended this proposed ordinance should be adopted and moved for acceptance of same upon a second by Mr. Deal the motion carried.

Yvonne Milligan, City Controller said this was a large additional, as far as the PERF and the 77 Pension, what she was trying to accomplish was to pay the fourth quarter in the fourth quarter and having a January to December pension distribution from now on. She said as far as the employee insurance they now have to pay the total attachment rather than the claims and prescriptions and not knowing this last year when the budget was put together, this would be the additional funds they would need to get them through the end of the year.

Question was called for at 7:15 p.m. on **PROPOSED ORDINANCE NO. 2010-41** with the vote being 9 to 0, thus it becomes **ORDINANCE NO. 5282**.

Clerk Block read **PROPOSED ORDINANCE NO. 2010-45** opening it for public hearing.

PROPOSED ORDINANCE NO. 2010-45

AN ORDINANCE ANNEXING CONTIGUOUS TERRITORY TO THE CITY OF MISHAWAKA, INDIANA, AND PROVIDING ZONING CLASSIFICATION THEREFORE
(Annex and Zone to C-10 Convenience Store – Filling Station with Car Wash and ATM Services – NW Corner of Douglas and Fir Road)
Petitioner Requesting Postponement until 12-6-10

Mr. Compton as per the petitioner's request he would make a motion to continue this proposed ordinance until December 6, 2010, with a second by Mr. Banicki the motion carried.

Clerk Block read **PROPOSED ORDINANCE NO. 2010-46** opening it for public hearing.

PROPOSED ORDINANCE NO. 2010-46

AN ORDINANCE REPLACING CHAPTER 121, OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, COMMONLY KNOWN AS "THE FLOOD CONTROL ORDINANCE" OF THE CITY OF MISHAWAKA, INDIANA
(Updated Flood Control Ordinance)

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. Gleissner the motion carried.

Ken Prince, City Planner said he wanted to present the replacement of the Flood Control Ordinance. He said the city participates in the Flood Insurance Rate Map, which is a national flood insurance program, run through FEMA and each city must adopt a legally enforceable ordinance for that. He said there is a template provided through out the country with an allowance of moderate modifications. Mr. Prince said flood plains are amended and they are kept on record so when the flood maps are updated it was then corrected on the next map issuance. Mr. Prince said the last flood map issuance was in the early 1980s so this new map would be good for another 20 to 30

years. He said he included a copy of the flood plain map with the ordinance, even though there are areas that have potential for flooding in the city the only two areas that are part of the National Flood Insurance Program are Judi Creek and the St. Joseph River, everything else falls outside of that jurisdiction.

Question was called for at 7:15 p.m. on **PROPOSED ORDINANCE NO. 2010-46** with the vote being 9 to 0 thus it becomes **ORDINANCE NO. 5283**.

PRIVILEGE OF THE FLOOR

Johnathan Smith, 209 North Cedar Street said he would like for the Council to write a law stating the city would not be able to block a citizen from electronic communication, no matter how controversial a citizen may be, their taxes are paying for these services and they should be able to use them freely. He said even if a law was not written he can exercise his First Amendment right.

NEW BUSINESS

Clerk Block stated she was in receipt of a Conflict of Interest form from Councilman Mike Belovich. President Emmons asked for a motion regarding this form. Mr. Hixenbaugh made the motion to accept this form with a second by Mr. Banicki the motion carried.

Clerk Block stated this form would be forwarded to the State Board of Accounts and to the Circuit Court of Saint Joseph County.

Clerk Block said there are two appointments for the Mishawaka School Board for 2011 to 2014. Mr. Hixenbaugh said he would like the record to reflect he is not bound to do so by Indiana Law, but it has been his past practice, he would not be voting on either of the two school board appointments which are before the Council this evening due to his employment with School City of Mishawaka.

President Woody Emmons said he would open the floor for nominations.

Ron Banicki nominated Marci Sears, and Jenny McNeal for appointment to the Mishawaka School Board, with a second by Mr. Compton the motion carried.

President Emmons asked if there were any other nominations, hearing none, he asked for the nominations to be closed. Mr. Gleissner made the motion to close nominations with a second by Mr. Compton the motion carried.

Question was called for at 7:28 on Marci Sears and Jenny McNeil for School Board Appointees, with vote being 8 to 0, in favor, with Mr. Hixenbaugh recusing.

Mr. Deal reminded everyone of his neighborhood watch meeting at Twin Branch School on November 17, 2010 at 7:p.m. with Mayor Wood as his guest speaker.

Mr. Emmons reminded everyone of his neighborhood watch meeting at St. Bavo School on November 18, at 7:00 p.m. having Fire Prevention Chief Jim Schuster as his guest speaker regarding a safe holiday season.

There being no further business to come before the Council, President Emmons adjourned the meeting at 7:30 p.m.

Deborah S. Block /s/

Deborah S. Block, City Clerk

Dale "Woody" Emmons /s/

Dale "Woody" Emmons, President Presiding Officer