

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

November 15, 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, November 15, 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 November 3, 2010 meeting were approved as received from the Clerk's Office.

Clerk Block read a letter from the City Plan Commission regarding recommendations from their November 9, 2010 meeting.

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. (Yakety Yak Café), to allow a C-5 Neighborhood Commercial use within an R-1 Single Family Residential District.

RECOMMENDED APPROVAL with the following conditions:

1. Outdoor activities on the lot be limited only to those dates that are approved by the Mishawaka Board of Public Works and Safety;
2. The dumpster be removed from the public right of way (street and sidewalk) and to surrounded by an enclosure;
3. At the time any construction is proposed, a site plan and landscape plan shall be submitted to comply with Section 137-35 Final Site Plan Approval, Section 137-815 Landscaping and Screening Regulations, and the C-1 General Commercial District Developmental Regulations; and
4. The ground area between the fence and the sidewalk shall be landscaped.

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

PROPOSED ORDINANCE NO. 2010-47

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

(Additional Funds – Controller - \$120,000.00)

Assigned to Budget and Finance Committee

PROPOSED ORDINANCE NO. 2010-48

AN ORDINANCE AMENDING ORDINANCE 5232 WHICH WAS PASSED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA ON OCTOBER 19, 2010 FIXING THE SALARIES OF ALL EMPLOYEES OF THE CITY OF MISHAWAKA EXCEPT THE MISHAWAKA PARK DEPARTMENT ELECTED OFFICIALS AND THE MISHAWAKA UTILITIES FOR THE CITY OF MISHAWAKA INDIANA FOR THE YEAR BEGINNING JANUARY 1, 2011

(Amending the Salary Ordinance for 2011 Police and Fire and add cell phone allowance)

Assigned to Budget and Finance Committee

PROPOSED ORDINANCE NO. 2010-49

AN ORDINANCE APPROVING AN AGREEMENT BETWEEN THE CITY OF MISHAWAKA FOR AND ON BEHALF OF THE SEWER DEPARTMENT – REPRESENTED BY THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 364

(CBA between the City and Sewer Dept. 1-1-2011 through 12-31-2012)

Assigned to Personnel Committee

PROPOSED ORDINANCE NO. 2010-50

AN ORDINANCE APPROVING AN AGREEMENT BETWEEN THE CITY OF MISHAWAKA FOR AND ON BEHALF OF THE SEWER DEPARTMENT – REPRESENTED BY THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL, 364

(CBA between the City and Sewer Dept. 1-1-2011 through 12-31-0910)

Assigned to Personnel Committee

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

RESOLUTION NO. 2010-23

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA,
INDIANA, AUTHORIZING THE PARTICIPATION OF SAID CIT IN THE MOTOR
FUEL HEDGE PROGRAM OF THE INDIANA BOND BANK FOR THE 2011 BUDGET
YEAR, THE EXECUTION OF THE QUALIFIED ENTITY REIMBURSEMENT
AGREEMENT IN CONNECTION THEREWITH AND OTHER RELATED MATTERS
(Motor Fuel Hedging Program of the Indiana Bond Bank for 2011)**

Yvonne Milligan, City Controller said this resolution was a request for Council approval on the Motor Fuel Hedging Program for 2011. She said she feels it was a good program; in 2010 there were only three months the city had to pay more than the administrative fee, which came to about \$1,100. plus fees. Ms. Milligan said the reason for that was because there was a range of prices in the Hedge of a \$2.00 minimum to a \$2.40 maximum considering this floor and cap it was good that it did not cost the city more than it did. She said there was a difference in the diesel price of a penny. Ms. Milligan stated in January of 2009 regular fuel was \$1.99 and diesel was \$2.07 per gallon, this past November fuel was \$2.48 and diesel was \$2.42 so prices are inching up according to Maverick Energy the floor may be \$2.10 and cap may be \$2.60 next year so if they hedged 50% they would stay way under the budget. She said the purpose of the Fuel Hedging was to allow the city to stay within their budget.

Mr. Banicki asked what the fees were. Ms. Milligan answered four cents for every gallon which results in the city paying between two and five hundred dollars a month in administration fees. Mr. Banicki stated he thought that was somewhat high. Ms. Milligan said there was a lot of work involved. She said they know going into it that it would cost about that per gallon so if they hedge 50% of 270,000 gallons divided by 2 times the 4% that would be what the city would be paying next year.

Mr. Hixenbaugh thanked Ms. Milligan for the work that has gone into this on her part. He said he does have some concerns with the process, time line and the blanks in the agreement with the regards to pricing. He feels that the expected range is probably fairly accurate but not having solid figures when being asked to approve the agreement, the Council was not being asked to just authorize the administration to enter into negotiations it specifically says that they have reviewed the agreement, and had a chance to consult with legal council with regard to questions and they have had a chance to confer with the Bond Bank for explanations and having just received this information on Friday before the Monday night meeting does not allow the Council enough time for all of that to happen and it does cause him some concern. Mr. Hixenbaugh said the Hedge Fund was supposed to be more or less a break even proposition for the city correct. Ms. Milligan stated that was correct. He said the anticipated approval of this proposal would allow them to guard against those increases in fuel costs so that in 2011 it may have a bigger net benefit for the city than was seen in 2010 correct. Ms. Milligan said that was correct. He asked Ms. Milligan if she would pass along to the powers that be that are otherwise involved in this to help the Council have more certainty with regards to the numbers that are at issue and also more time to review and have a chance to ask questions ahead of time.

Ms. Milligan said she would be sure to contact Maverick Energy and have them add the Council to their e-mail address list so the Council would receive the information the same time she did. Mr. Hixenbaugh said he appreciated that and asked if when the numbers on this agreement became solid numbers they would be passed on to the City Clerk's Office so they could be provided to the Council. Ms. Milligan said absolutely.

Ms. Milligan said she would like to say they have been pricing fuel with other companies, in the past the city has purchased from Nelson Fuel and got better pricing from RKA Petroleum this time so that was where the fuel has been purchased from recently.

Question was called for at 7:16 p.m. on **RESOLUTION NO. 2010-23** with the vote being 9 to 0 in favor.

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

RESOLUTION NO. 2010-24

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, APPROVING A PEITITON OF THE MISHAWAKA BOARD OF ZONING APPEALS FOR THE PROPERTY LOCATED AT: 701 West Fourth Street, Mishawaka, Indiana

(Variance to allow a fence with a zero foot exterior side setback and
a use variance to allow C-5 use within a R-1 District)

Paul Gurson, President of Gurson Enterprises Inc. owner of 701 West Fourth Street said, he was asking for the space where the fence is located now, without the 8.6 foot set back. He said these lots are very narrow and he needs the room for outdoor seating and some entertainment to increase business. Mr. Gurson said he wants the rezoning so he can use this part of the property along with his business and he would enclose the dumpster. He hopes to improve his business and hire more people.

Mr. Hixenbaugh expressed some concern regarding the entertainment and how it would impact the neighbors asking Mr. Gurson to keep them in mind.

Mr. Emmons said these outdoor activities have to be approved by the Board of Public Works and Safety and asked if Mr. Gurson if he has requested any dates as of this time. Mr. Gurson said he would like to do outdoor entertainment two or three times a week, he would put the bandstand on the alley side with the music facing the building. Mr. Prince said he would have to follow the noise ordinance with 10:00 p.m. as the shut down time. Mr. Emmons also expressed his concern about the neighbors. Mr. Prince said it would have to go to Board of Public Works and Safety and it would be at their discretion. Clerk Block reminded him that if the Police receive calls they would come out and ask the noise to be turned down, or shut it down.

Question was called for at 7:29 p.m. on **RESOLUTION NO. 2010-24** with the vote being 9 to 0 in favor.

Clerk Block read **PROPOSED ORDINANCE NO. 2010-42** opening it for public hearing, stating there would be no vote at this meeting..

PROPOSED ORDINANCE NO. 2010-42

AN ORDINANCE ANNEXING CONTIGUOUS TERRITORY TO THE CITY OF MISHAWAKA, INDIANA, AND PROVIDING ZONING CLASSIFICATION THEREFORE
(Annex and Zone to S-2 PUD and Mixed Land Use Development 43.36 acres NE corner of Fir Road and Cleveland Rd.)

Mike Danch, Danch Harner & Associates, Inc. 1643 Commerce Drive, South Bend, said he was representing the petitioners Mary Spillane and Mary & APOS, LLC. He said what they were asking for was an annexation and rezoning for property located on the Northeast corner of Fir and Cleveland Road, which was the Bobbick site. Mr. Danch said they want to bring that parcel into the City of Mishawaka under the S-2 PUD Ordinance by doing that it put a lot of restrictions on the uses. He passed out a preliminary site plan that depicts the size of the property and the types of roads that would connect to Capital Avenue and Fir Road with lighted intersections. Mr. Danch stated that Mr. Prince asked them before drafting a final site plan for them to work with the adjacent property owners and come up with a plan that would be consistent where everyone agrees on how the interior road structure would be laid out between the properties. He said this entire area is approximately 200 acres and would probably be developed by some commercial uses. Mr. Danch said they do not have anyone in particular in mind for this because it was such a large development they like to come in ahead of time to get the zoning in place and have it annexed and give the Council a list of potential uses that would go onto the property. He said they would then come back with the final site plan, including infrastructure, and improvements and with the guide lines that Mr. Prince laid out it pretty much sets the standards for landscaping, parking areas, building heights, and lighting standards. He said they would work with the city on all the drain standards so any development that happens within this would have to meet those particular standards.

Mr. Gleissner said since he has been on the Council they use to never approve something before knowing what was going on that site. He asked if that was why a PUD was developed to give the Council a leg to stand on. Mr. Prince said it goes beyond the Planned Unit Development, what the owners of these properties are looking for is the ability to market it and the reality is unless the property is zoned commercial, they would immediately cross the site off the list because it is not zoned and it would be another three hurdles they would have to jump through. He said as the legislative body whether it is through the regular zoning board ordinance or through a Planned Unit Development they would be establishing the setting the prime verse for which this property would develop. Mr. Prince said he prefers the PUD more because they can do it place specifically.

Mr. Gleissner said there have been instances where the Council passed a rezoning and people would end up putting something undesirable on the property and the Council would get blamed for it. Mr. Prince said what the Council is approving is the developmental standard of the property by adopting the zoning so if they can not live with the developmental regulations then the zoning ordinance needs to be changed as opposed to changing the site plan.

President Emmons closed the hearing on **PROPOSED ORDINANCE NO. 2010-42**.

Clerk Block read **PROPOSED ORDINANCE NO. 2010-43** opening it for public hearing stating there would be no vote at this meeting..

PROPOSED ORDINANCE NO. 2010-43

AN ORDINANCE ANNEXING CONTIGUOUS TERRITORY TO THE CITY OF MISHAWAKA, INDIANA, AND PROVIDING ZONING CLASSIFICATION THEREFORE
(Annex and Zone to C-1 for Future Retail Uses – 54050 Fir Road)

Mike Danch, Danch Harner & Associates, Inc. 1643 Commerce Drive, South Bend said he was representing the petitioners of the Olen Bixler Estate, Evelyn and Gina Bixler. He said this property is not right on the corner of Douglas Road and Fir Road but the next piece to the south of that, they are asking to annex this into the City of Mishawaka under the C-1 Commercial guide lines. Mr. Danch said they were looking at service type businesses since the property is so close to the hospital, and also pharmacy type business but at this time there was no particular us and they prefer right now to be able to annex and look at those limited uses.

Mr. Hixenbaugh said if he understood he and Mr. Prince’s earlier comments there was some chance that if this property was annexed and rezoned a convenience store that was found inappropriate by the county could be located on this property was that correct. Mr. Danch said no they do not feel this parcel is big enough for a convenience store. Mr. Hixenbaugh asked what they could give to the Council that would assure them this would not happen. Mr. Prince said the county only petitioned for one of these two annexation which was the corner so it would be half the size as it was being proposed in the county that would be in the city, even with the two parcels he feels it would be too small for a convenience store and would be a C-10 classification and they were asking for a C-1.

Mr. Gleissner asked about the property line crossing the road. Mr. Danch stated under state law guidelines it must be 12.5% contiguous with the municipal boundary that you are asking to go into. He said the new guidelines now are to take in the entire road so one municipality would be responsible for that roadway.

Mr. Roggeman asked about the home just east of this site. Mr. Danch said they have had conversations with that resident and if things go perfectly he would be back with that annexation also. Mr. Roggeman asked if there were more residential parcels there. Mr. Danch said yes down a little farther.

Mr. Gleissner asked by the next meeting if they could report how this would affect Police, Fire and Street Departments. Mr. Prince said while plowing the department that was out there at the time whether it be county or city would go ahead and plow but if there was work to be done on the road such as a pot hole or something the city would be responsible for that. Mr. Gleissner said more then the plowing he was concerned about how far it stretches Police and Fire. Mr. Prince said it was well within the service district both are set up for calls, it was well within the fiscal plan and both departments responded they could handle all services within the city budget.

President Emmons closed the hearing on **PROPOSED ORDINANCE NO. 2010-43** stating there would be no vote at this meeting.

Clerk Block read **PROPOSED ORDINANCE NO. 2010-44** opening it for public hearing stating there would be no vote at this meeting.

PROPOSED ORDINANCE NO. 2010-44

AN ORDINANCE ANNEXING CONTIGUOUS TERRITORY TO THE CITY OF MISHAWAKA, INDIANA, AND PROVIDING ZONING CLASSIFICATION THEREFORE
(Annex and Zone to C-1 for future retail uses – North of 54050 Fir Road)

Mike Danch, Danch Harner & Associates, Inc. 1643 Commerce Drive, South Bend said he was representing the petitioners SEC Investments LLC this property is contiguous to property in **PROPOSED ORDINANCE NO. 2010-44**. He said they would like for this property to be annexed in as a C-1 for a neighborhood type of operation.

Mr. Gleissner asked Mr. Danch when talking to the upcoming developers to please let them know that they would be having a Granger address but in fact would be in the City of Mishawaka and would need to advertise in that manner. He said it would be Mishawaka Police and Fire that would be coming to their aid. Mr. Danch said he would do that.

President Emmons closed the hearing on **PROPOSED ORDINANCE NO. 2010-44** stating there would be no vote at this meeting.

NEW BUSINESS

Mr. Gleissner said that Mishawaka lost a icon the past week-end Mr. David Robertson a Social Teacher at Mishawaka High School he was a great teacher, friend and guide to a lot of people he will be greatly missed.

Mr. Deal said his monthly neighborhood meeting in the Third District would be Wednesday 11-17-10 at 7:00 p.m. Mayor Wood would be the guest speaker.

Mr. Emmons said his monthly neighborhood meeting in the Second District would Thursday 11-18-10 at 7:00 p.m. at St. Bavo Community Building.

Mr. Hixenbaugh asked for volunteer coaches to help with basketball for elementary school children, if anyone would be interested please call the Park Department.

Mr. Emmons said he wanted to congratulate the Penn High School Volleyball team on their winning the Volleyball Championship in Muncie, Indiana.

Mr. Compton congratulated the Mishawaka High School Football team on a very successful football year.

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