

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

March 21, 2011

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, March 21, 2011 at 7:00 p.m. The meeting was called to order by President John Gleissner, 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 – Present  
Mike Bellovich 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 – Present  
Gregg Hixenbaugh, Councilman At Large – Present  
John J. Roggeman, Councilman at Large – Absent  
A quorum was obtained.

Others present; Deborah S. Block, City Clerk; Mary Ellen Hazen Chief Deputy I, Linda Dotson, Chief Deputy II, Absent and Council Attorney Mike Trippel.

The minutes from the March 7, 2011 meeting were approved as received from the Clerk's Office.

Clerk Block read a letter from the Board of Zoning Appeals regarding recommendations from their March 8, 2011 meeting.

**APPEAL NO. 11-13**

An appeal submitted by Gates Automotive Group on Behalf of University Park Mall LLC requesting a Use Variance for 6501 Grape Road to permit three (3) separate off-site Used Car Sales as follows: ten (10) days in May, ten (10) days in June, and ten (10) days in August with temporary signage including banners and cold air balloons, and a mobile office facility for business transactions and securing of valuables. **NO RECOMMENDATION WAS MADE**

Clerk Block read a letter from the City Plan Commission regarding recommendations from their March 8, 2011 meeting.

**Petition No. 11-05**

A request submitted by the City of Mishawaka Redevelopment Commission to rezone 550-552 W. Sixth Street, 548 W. Sixth Street, 545 W. Sixth Street, and 422 South Wells Street to R-1 Single Family Residential District. **RECOMMENDED APPROVAL**

## **REPORT ON SPECAIL COMMITTEES**

Mr. Gleissner reported the Solid Waste Committee discussed looking into tipping fees and recycling fees as a possible source of revenue for the new Dispatch Center in 2014.

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

### **PROPOSED ORDINANCE NO. 2011-03**

#### **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-2, C-1, I-1 to R-1 Single Family Residential – Northeast corner of Wells and West 6<sup>th</sup> Streets – for 2 Single Family Habitat for Humanity Homes)  
Assigned to Land Use Planning Committee

Clerk Block read **RESOLUTION NO. R2011-02** opening it for public hearing.

### **RESOLUTION NO. 2011-02**

#### **A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, APPROVING A PETITION OF THE MISHAWAKA BOARD OF ZONING APPEALS FOR THE PROPERTY LOCATED AT: 6501 Grape Road, Mishawaka, Indiana**

(Use Variance to allow off-site car sales events – 6501 Grape Road –  
UP Mall Gates Automotive Group)

Clint Emberton, 714 Dice Court, South Bend, said he was the General Sales Manager for Gates Automotive Group requesting this Use Variance for the parking lot at the farthest north point of University Park Mall, do north of what is JC Penny at State Road 23 and Grape Road. He said they have sought and received permission from Simon Properties to use this parking lot subject to zoning approval for three dates. Mr. Emberton said a similar request was granted them for two dates in 2010 they realize they must satisfy five (5) specific findings of fact for this Variance request to be approved

- They would not be serving any food to the general public, trash receptacles’ would be provided every 50 feet and they would be emptied four (4) times daily, handicap accessible restrooms would be provided, and also hand washing stations. They would adhere to set backs provided by the universal code. A site plan has been provided, tents would be provided for shade, and vehicles would be moved at 6:00 a.m. on Sunday morning to and from the events so as to not disrupt traffic flow.
- After their 2010 event, according to the staff report prepared by the City of Mishawaka the findings were as followed “other then concerns from competing dealers no other problems or issues were found, specifically no traffic, public parking, or even nuisance issues were brought to the City’s attention.

- Gates notified everyone within a 300 foot radius of the property and with all due respect, no one showed up at the hearing subject to this event. There three safe entrances and exits to the property, and the area they would be in has grass and tree berms to protect from excess noise.
- The event brings in revenue far beyond the mall, along with the shopping there are restaurants and other local businesses that may benefit. He said the mall also receives revenue from Gates in the way of advertising and the use of their property.
- Many of these events have taken place all over Mishawaka on various vacant sites and they believe that the holding of sales events in these locations did nothing to decrease the value of these properties; on the contrary these events may have had a hand in convincing someone that these were great retail locations.

Mr. Emberton stated in 2010 over 30% of the sales they generated at their event were from outside the State of Indiana or from other counties, LaPorte, Berrien, Elkhart, and Cass just to name a few. He said out of 1,000 people that visited their event only 30% of them were sold, and they ask themselves what happen to the other 70%, perhaps they drove down the Grape Road Corridor and spent money at one of the many other proficient dealerships.

Mr. Emberton said Gates has complied in all areas that were required and requested and would in no way interfere with the Mishawaka 2000 Comprehensive Plan.

Mr. Banicki said the request was for 10 days and asked if that would that be from start to finish. Mr. Emberton said they would set up tents on Saturday, moving cars in at 6:00 a.m. on Sunday and be done be 10:00 a.m. as to not impede traffic, and the sale would be from Monday through Saturday and tear down would be on Sunday, the sale is actually on six (6) days.

Mr. Compton asked if this was the second or third year of the sale. Mr. Emberton stated it was their second year. Mr. Compton said he was assuming they have entered into a contract with the mall subject to the approval of this variance, correct. Mr. Emberton said that was correct. Mr. Compton asked if other dealers would be able to do the same. Mr. Emberton said he thought so, yes

Mr. Hixenbaugh said to follow up on Mr. Compton's question, the lease agreement that Gates has with the mall does not specifically bar other car dealers from entering into a similar agreement with the mall, was that correct. Mr. Emberton said that was correct.

Mr. Hixenbaugh said in the staff report and previous Resolution there was a specific mention made of inflatable balloons and he wanted to make the point that if this Resolution was passed this evening the inflatable balloons would not be a part of it. Mr. Emberton stated they had no objection to that.

Matt Hemcamp 14680 Carrigon Court, Granger said he was a dealer for Gates Chevy World and wanted to take a few minutes to rebuff the petition that was signed by some of the competitors. He said their fears were that last years show was a success and he feels that was good enough reason to do it again. Mr. Hemcamp stated the City of Mishawaka has a great reputation for being business friendly, every dealer has the same opportunity to have this type of sale and he would encourage them to do it, this sale is good for Mishawaka.

Mr. Gleissner asked how many non Gates employees or temporaries, such as drivers etc. Mr. Hemcamp said approximately 30 people paid hourly.

Steve Kemp, General Manager of the University Park Mall, 55608 English Point Court, Osceola, said he was in support of Gates Event held at the UP Mall. He said they put on a first class event and they are a first class mall who is trying grow their business and that too is what Gates was trying to do. Mr. Kemp said anything that brings customers to the mall is good for the mall and the city.

Mr. Kemp, asked if the mall has entered into an agreement with Gates. Mr. Kemp said yes a lease agreement. Mr. Compton said he did not want to sound like he would approve this year around but asked if the other car dealers had the ability to enter into the same lease agreement with the mall. Mr. Kemp said yes they would be happy to work with anyone in the city to put on a first class event. He said they would not engage in any type of event that would not represent the mall well.

Mr. Banicki these lease agreements could also apply it was not just limited to automotive. Mr. Kemp said that was correct. Mr. Deal asked if there was a down side to this event. Mr. Kemp stated no there were none.

## **OPPOSITION**

Don Reese 51371 Grand Oaks Court, Granger, Chief Operating Officer of Geerly Leap Automotive said he wanted to make sure that everyone understood the point; this was not about competition among car dealers it was about the use of property. He said Gurley Leap owns about 15 million dollars of automotive real estate in Mishawaka and pay in excess of 3 million dollars in real estate taxes related to that real estate. Mr. Reese said when they begin to degrade property outside of the use dealers have fought so hard to pay for and get zoned properly they can not even hang a balloon from an antenna of a car in their lot because of compliance with the City Ordinances. He said this variance would allow balloons, special signage, dinosaurs, and circus lights atmosphere that was created caused by one of these events. Mr. Reese said they were respectfully asking that this special use permit be rejected.

Mr. Reese said this sale was not just for a few days it is 30 days in total which is one calendar month of a year. He said anyone with permission of the mall would be able to come in and negotiate a contract as it relates to the use of this property from RV dealers, rental car, motor cycle dealers, independent non franchised businesses, this could set off a stack of request that could set off adverse consequences that could occur by continuing to allow this to go on.

Mr. Reese went on to say they are currently spending 750 thousand dollars of improvements to their Grape Road site and another one on Douglas Road and Gates has recently improved their property on McKinley Avenue upholding the physical and business appearance of the car dealers in Mishawaka. He said again this was not about competition but about use of property and living by the rules they have all agreed to as the properties zoned as car dealerships.

Mr. Compton asked if Gurley Leep has ever had off site sales, or entered into a contract with someone to hold those sales. Mr. Reese said they have but not where there has been a special use permit that been required to be granted in the City of Mishawaka.

Mrs. McClure asked why they were objecting this year and did not last year. Mr. Reese said they were unaware of the sale before hand last year. Mrs. McClure stated it was her feeling that this event would be increasing sales for Gurley Leeps at the same time since they have the option if they don't find a vehicle at the Gates Sale they could go right down the road to the Gurley Leep site, she said she fails to see the down side to this. He replied they had no evidence that is brings people in from the outside of the area, on the other hand they have contrary evidence called the Poke Registration Data and it showed that less then 10% of the sales in the area, all dealers, including Gates were from vehicles registered outside of the Mishawaka area. Mr. Reese went on to say it brings him back to the special use issue it allows Gates to market and advertise in a manner that Gurley Leep was not allowed to do on their own property, they are not allowed to float a balloon from a car antenna yet Gates would be allowed to have a 40 foot inflatable dinosaur so they can market and merchandise in a manner different then they can as an owner of a property.

Mr. Hixenbaugh said as he had stated earlier in the meeting and as the staff report reflects there would not be any inflatable balloons and the resolution if approved by the Council mirror that. Mr. Reese stated it is not limited just to the balloons there are temporary signs and yellow direction signs, none of those things are allowed by them to merchandise and market even a sales event because they own the property.

Mr. Hixenbaugh said given the fact that this was not the first year this event had taken place he asked if they had been able to identify for the Council any specific dimension in their property value that they have occurred. Mr. Reese stated nothing specific. Mr. Hixenbaugh asked how many off site functions Gurley Leep has participated in. Mr. Hixenbaugh stated it was in fact an off site auto auction although there was no variance requested. Mr. Reese replied that again that had nothing to do with them being able to utilize the property they have zoned for auto sales as a dealer was being degraded because now anyone can come in and put a contract together with the mall lower those standards.

Mr. Gleissner stated just for clarification the Gates Sale would be 18 days not 30 the extra days were for set up and movement of vehicles.

Michael Leep 50924 Ashford Lane Granger said he loves the Gates family Dan Gates was one of the finest men he knows. He said, briefly how this would affect Gurley Leep was mainly due to the sign ordinance stating no signs along the road way. He said in the past for these sales there would be 15 to 20 yellow signs saying sale, sale, sale, which Gurley Leep would not be allowed to do, because they abide by the sign ordinance, which puts them at a big disadvantage. He said if he was permitted to put all the advertising up that was permitted by these use variances at the same time they put theirs up then he would be all for it cause it would be good for everyone. Mr. Leep stated Gates had a used car lot on Grape Road at one time and only lasted one year they couldn't make it, on the other hand Gurley Leep Sales lot has been there paying taxes and because of the zoning they can not advertise like that. He said it was not the right thing to do to allowing this use variance.

Mr. Leep said there was a time when they had wonderful sale along with Gates Chevy, Meadows, Basney, all brought their cars to the mall sales and they all sold cars, after doing that for a few years the Mishawaka Council decided they did not want that to take place any longer so they changed it. He said so Gurley Leep stopped doing it they like to think of themselves of good corporate citizens. Mr. Leep said he was asking the Council to do the right thing and not approve this use variance.

Mr. Deal said he was a little confused because Mr. Reese said this was not about unfair competition this was about the degradation of property and everything that Mr. Leep just said was in regard to competition. Mr. Leep said he would be able to compete if he had the Gorillas and the signs at the same time the people with the use variance were aloud to have them and he would be glad to let this go, but it was about doing the right thing and the use variance was not the right thing that was why there were ordinances. He said once you open it up to this then you have to allow everyone to come in and do it and that was not fair to him who pays high taxes to be on Grape Road.

Mr. Compton said he understands Mr. Leep's position but was not sure he agreed with it, he feels the mall has can make a contract with whom they want and the Council has the option not to pass the use variance.

Mr. Banicki said he had a couple of question for Mr. Prince regarding the sale at Hickory Road and Elm Road was there a variance for that sale. Mr. Prince stated there was but he thought it may have been different because he believed the underlying zoning on that corner was automobile related commercial, the variance was related more to the developmental requirements then the use requirements. Mr. Banicki said Mr. Leep was very questionable about the sign ordinance, was there a mechanism in place where they could apply for special signs for a short period of time. Mr. Prince said they are so infrequently used he could not site them from memory, but there are provisions that allow for temporary signs for a very short time like 10 days for a one year period.

Mr. Hixenbaugh said he was concerned by the fact that outside the norm there was no recommendations by the Board of Zoning Appeals nor from the staff with regard to this matter, both of those entities he regards as advisory with regard to this process and if there was not the benefit of the advise then he begs to question as to what role they play in the process at any given time. He said this was a difficult decision for him because there were good people on both sides and all were solid businesses. Mr. Hixenbaugh said the precedent has already been set so to make a decision to the negative at this time would be counter intuitive if not raise some legal questions. He said it was up to the Council to try to apply the law and their duties in an even handed fashion without trying to manage the market as to who should have a preference over whom.

Mr. Hixenbaugh went on to say he concurs with Mr. Compton's statement that these should be weighed out on a case by case basis considering all the factors and it would allow the Council the make some control. He said he shares some of the concerns with the option, but would be voting in favor of this proposed ordinance.

Mr. Gleissner said he too agreed this was about competition and he agreed with his colleagues that they should not be in the business is supporting or denying business so he too would be supporting this proposed ordinance.

Question was called for at 8:01 p.m. on **RESOLUTION NO. 2011-02** with the vote being 8 to 0 in favor.

Clerk Block read **PROPOSED ORDINANCE NO. 2011-02** opening it for public hearing.

**PROPOSED ORDINANCE NO. 2011-02**

**AN ORDINANCE OF THE COMMON COUNCIL  
OF THE CITY OF MISHAWAKA, INDIANA ADDING AND AMENDING  
PARKING VIOLATION SECTIONS OF THE MUNICIPAL CODE OF THE  
CITY OF MISHAWAKA, INDIANA  
(Amend Fire Department Case Report Fee \$5.00)**

Mr. Emmons 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.

Jim Schuster, Chief of Fire Inspection Bureau said the raise in this fee was over looked at the first of the year and this proposed ordinance would bring them in line with what the Police Department charges for case reports.

Question was called for at 8:04 p.m. on **PROPOSED ORDINANCE NO. 2011-02** with the vote being 8 to 0 in favor thus it becomes **ORDINANCE NO. 5300**.

**PRIVILEGE OF THE FLOOR**

George Lane Division Street Mishawaka, said there was a lot of loud cars and motorcycles in his area and asked the police to be more vigilant and enforce the noise ordinance. He said he wanted to bring up the TIF money and the fact that it should be turned back over to the General Fund and not hold it in the TIF Fund.

James Elliott, President of Mishawaka Fire Fight Fighters Local 360 said they have filed a grievance against the City of Mishawaka for violating the recently negotiated Collective Bargaining Agreement, a copy of his statements are on file in the City Clerk's Office along with the minutes of this meeting.

1. Mr. Compton asked why they haven't seen movement in hiring the two new fire fighters. Mr. Elliot said he did not know the answer to that, they need to replace the two retirees from over a year ago and need to replace four. Mr. Compton said that goes to the question Mr. Emmons has had in the past as to why the city was not more prepared to bring people on.

Mr. Gleissner said he has always heard two in two out was that still a national standard. Mr. Elliott said yes, the fire fighters would not enter a building without having a vehicle there to meet the two in two out standard. Mr. Gleissner said what that means two men can go in and if they get in trouble there are two men that can go in after them. Mr. Elliott said that was correct. Mr. Gleissner said if there are only three men on the truck then no one can go in to fight the fire until another truck arrives for the two in and two out rule, which would result in a delay of fighting the fire. Mr. Elliott said that was correct. Mr. Elliott stated they have six men missing and need six additional men to staff this properly, but if they had the six men they were missing it would help tremendously.

Mr. Compton said if three men on a truck go to a scene of a sizeable fire and an ambulance could go along there would be the two men in two men out and that makes sense to him, but then he hears the

argument that someone may need an ambulance across town, and asked Mr. Elliott what in his opinion was the percentages of that happening. Mr. Elliott said 80% of their call volume was for the Ambulance (EMS) so they can not depend on an ambulance being there when that fire call comes in.

Mr. Gleissner asked if the EMS had proper gear in the ambulance to allow them to enter the fire. Mr. Elliott said yes they did have turnout gear in the ambulance to allow them to enter a burning building.

Mr. Deal asked what happened if the ambulance was on a fire call and was needed somewhere else on a medical call, would it be out of service for the medical call. Mr. Elliott said yes if it was at a fire it was out of service for any other call. He said their biggest concern was the ambulance would not be available when a fire call came in because it would already be out on a medical call somewhere else.

Mr. Hixenbaugh said it has been articulated by this Council not just this year but in prior years for them as a community to take a look at the hiring process particularly in public safety, from a Council standpoint they find the delay in filling vacancies in public safety to be unacceptable, that was clearly one issue that needs to be addressed. He said the other issue was the collective bargaining process because he was hard pressed to believe this issue could not have been addressed at the table or in some fashion been taken care of with out the need to file a grievance if the collective bargaining process was altered on some level.

Mr. Gleissner said it was mentioned in the South Bend Tribune regarding this grievance there a time when they to depend on mutual aid. He said he appreciates mutual aid it goes both ways, but he feels Mishawaka should be able to stand on their own two feet, they need the manpower, the equipment, and the training to fight fires and do EMS work without depending on volunteers and the time consuming travels from far away. Mr. Gleissner said, Mishawaka was big enough city it should stand on its own. Mr. Elliott said they feel they have the best trained highest quality fire fighters in the area and they want their fire fighters to be serving the Mishawaka citizens.

Mr. Emmons said it has taken a year to bring on two men to replace the two men that have retired and that was not acceptable, those two men have been budgeted for and they are needed, and he does not understand why it was taking so long. He said at present the city was down six and by the end of June 2011 four more people will have retired as of June 2011, there was supposed to be at 109 firefighters and presently there are only at 104. Mr. Emmons said he takes partial responsibility for not putting more pressure on the administration to staff these departments the way they are suppose to be staffed. He said there was a similar problem in the Police Department and we are lagging behind in protecting our citizens. Mr. Emmons said this was not a negotiation issue it was a moral issue to protect the citizens and the fire fighters.

There being no further business to come before the Council, President Gleissner adjourned the meeting at 8:31 p.m.

Deborah S. Block, \_\_\_\_\_ /s/  
Deborah S. Block, MMC  
City Clerk

John Gleissner \_\_\_\_\_ /s/  
John Gleissner  
Presiding Officer