

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

July 18, 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 July 18, 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 1st District Councilman – 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 – 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, Linda Dotson, Chief Deputy II, and Council Attorney Mike Trippel.

The minutes from the July 5, 2011 meeting were approved as received from the Clerk's Office.

Clerk Block read a letter from the Plan Commission regarding recommendations from their June 12 2011 meeting.

Clerk Block read a letter from the Zoning Appeals Board regarding recommendations from their June 12 2011 meeting.

APPEAL NO. 11-27

An appeal submitted by City Group, L.L.C., requesting a Use Variance for 1753 East Twelfth Street to allow more than two (2) tenants on C-1 General Commercial and C-4 Automobile Oriented Commercial District. **RECOMMENDED APPROVAL** subject to the following conditions:

1. A final site plan shall be filed prior to new occupancy and site deficiencies for the property shall be brought up to meet current City ordinances and engineering standards as determined by the applicable departments as part of the site plan review.
2. Residential uses shall be prohibited.

APPEAL NO. 11-29

An appeal submitted by Foundation for the Center for Hospice & Palliative Care, Inc. on behalf of property owner Barbara Matheson requesting a Use Variance for 301 North Cedar Street to allow a residence for visiting

families, doctors, and guests of the Center for Hospice Care on R-1 Single-Family Residential property.

RECOMMENDED APPROVAL

PETITION NO. 11-13

A request submitted by Billie Moore, Rose Ferrara, Joseph Varga, Dan Estes, William Squibb, Robert Woodward, Loyal Order Moose 1262, South Bend Real Estate LLC, and the City of Mishawaka requesting to rezone property from R-1 Single Family Residential, R-3 Multi-Family Residential and C-1 General Commercial to, to C-3 City Center Commercial.

RECOMMENDED APPROVAL

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

PROPOSED ORDINANCE NO. 2011-12

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-1, C-1, & R-3 City Center Commercial for a Hospice Facility West. of Cedar Street North of St. Joseph River)
(Assigned to Land Use Planning Committee)

Clerk Block read **RESOLUTION NO. R2011-10** opening it for public hearing.

RESOLUTION NO. 2011-10

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:

1753 East Twelfth Street, Mishawaka, Indiana
(Use Variance to allow more than 2 tenants – 1753 East 12th Street)

Charlene Rowe, representing City Group, 512 West Cleveland Road, Granger said they want to clean and fix up the property getting it up to code so they can rent out the spaces for tenants bringing more business into the area. She said they would also be working on the curbing around the parking lot so it wouldn't flood anymore.

Mr. Gleissner said there are some drainage problems there and City Group would be looking into that situation. Ms. Rowe said yes they would. Mr. Gleissner asked if they had any tenants in mind. Ms. Rowe stated there was a person wanting to put a tobacco mart in there but waiting on the approval before submitting their plan. She said they would also like to locate their City Group office there, and

hopefully a discount store, maybe a second hand store, more retail and offices upstairs. Mr. Gleissner said there was a restaurant and bar located at the site now, other than that the building has been abandoned. Ms. Rowe said that was correct, the roof was falling in on the upper level in one section because of lack of upkeep.

Mr. Emmons said he wanted to speak to the petitioner and asked Ms. Rowe if he could come to the next Council meeting. Ms. Rowe stated he did not speak good English. Mr. Emmons said it was customary for the Council to ask the petitioner what their intentions were and would like to postpone this hearing until they could speak to him. He said there have been problems in the past where intentions were not clearly stated and promises made and it was his feeling those should come from the petitioner themselves.

Mr. Banicki asked if they planned on putting any apartments in this building. Ms. Rowe stated no living quarters were planned just retail and office space. She said she had just graduated from Brown Mackey College and this was her externship.

Mr. Emmons asked if there was a reason why the proprietor that wants to buy this property was not there to answer questions. Ms. Rowe said the gentleman was Japanese and did not speak English well. Mr. Emmons stated that he had several questions to ask the proprietor. He said he would make a motion to continue this until someone was here to answer questions. Mr. Emmons stated that he appreciated Ms. Rowe being there but she could not answer the questions that he has regarding this property. Ms. Rowe stated the owner wants only to fix up the buildings so they can be rented to tenants. Mr. Emmons said that he would not vote on this matter unless the owners were present.

Mr. Compton said he agreed with Mr. Emmons in regards to having the petitioner present. He said in the past promises have been made and not kept and he would like to see more than two tenants in this strip mall.

Mr. Compton asked Council Attorney Trippel to clarify exactly what the Council would be approving in regards to having two tenants. Mr. Trippel said they have multiple zonings on this site it was kind of a hodgepodge development when it was originally built and has been added onto several times. He said it has had multiple owners and several foreclosures. Mr. Hixenbaugh said the essence of the issue was while the C-1 General Commercial zoning would be more in keeping with a shopping center use which would then open the door for additional tenants there is not sufficient square footage on the property to meet the other developmental elements of it so the Use Variance was a creative solution to allow this to go forward and for multiple tenants to come in without putting the petitioner in a box with regards to not being able to meet developmental requirements of additional C zonings. Mr. Trippel said the Variance was kind of an end run around the ordinance, allowing the tenant to do this without redoing the entire tract.

Mr. Emmons made a motion this resolution be tabled until the August 1, 2011 meeting until the owner, of City Properties or who ever was seeking this variance could be in attendance to answer questions from the Council and Mr. Banicki seconded the motion..

President Gleissner called for a voice vote to continue **RESOLUTION NO. 2011-10**, to the August 1, 2011 Council meeting, the motion carried.

Clerk Block read **RESOLUTION NO. 2011-11** opening it for public hearing

RESOLUTION NO. 2011-11

**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:**

301 North Cedar Street, Mishawaka, Indiana

(Use Variance to allow residence for visiting families, doctors, and guests of the Center for Hospice
Care 301 N. Cedar Street)

(Petitioner requested the resolution be postponed until August 1, 2011 meeting)

Clerk Block stated the Petitioner was requesting that this Resolution be postponed to the August 1st meeting to co-inside with Proposed Ordinance No. 2011-12 that was read earlier in the evening under First Readings.

Mr. Gleissner stated this would group these under one nights meeting.

Mr. Deal moved to postpone Resolution No. R2011-11 until the August 1st meeting. Upon a second by Mr. Compton the motion carried by a voice vote.

NEW BUSINESS

Under New Business Mr. Gleissner stated that he had been approached by several fishermen regarding the Parking Lot at Castle Manor. He said Construction Vehicles belonging to a private company working on a private sea wall across the river were parking there causing problems. He said fishermen wishing to launch their boats had to park far away from the launch site. Mayor Wood said he would look into this and get back with Mr. Gleissner.

Mr. Emmons announced his 1st District Meeting would be held on July 28th at St. Bavo's at 7:00 pm. He said the Mishawaka Police Department SWAT Team would be there to demonstrate.. Mr. Emmons said refreshments would be provided.

Mr. Deal said his monthly 3rd District Meeting would be held on August 2nd at 5:00 pm in conjunction with "National Night Out" at the Twin Branch Pavilion. He stated that food and entertainment would be provided and everyone was welcome to attend.

Mr. Banicki reminded everyone that Kamm Island Fest would be held on Wednesday, July 20th.

There being no further business to come before the Council, President Gleissner adjourned the meeting at 7:21 p.m.

Deborah S. Block, _____/s/
Deborah S. Block, MMC
City Clerk

John P. Gleissner _____/s/
John P. Gleissner
Presiding Officer