

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL
September 6, 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 September 6, 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 August 15, 2011 meeting were approved as received from the Clerk's Office.

Clerk Block read the following appeal and referred it to the Board of Zoning Appeals for their recommendation.

APPEAL NO. 2011-35 Use Variance to allow an office and apartment
Of R-2 zoned property & 2' x 4' sign 819 LWW

Clerk Block read the following petitions and referred them to the Plan Commission for their recommendations.

PETITION NO. 2011-14 Vance Public Alley – Alley West of 402 LWW

PETITION NO. 2011-18 Annex and Zone R-1 Single Family – located within the
northwest corner of Harrison Road and Bennington Drive
for a new municipal fire station.

PETITION NO. 2011-19 Rezone from I-1 Light Industrial to R-1 single family
residential – 421 & 413 N Cedar Street (SW Alice St. & N
Cedar St)

PETITION NO. 2011-20 Vacation of Public Right of Way-North/South alley between N.
Hill St., N. Spring St., West Front St. & W First St.

PETITION NO. 2011-21 Rezone from C-1 General Commercial to C-3 City Center Commercial East of Main St., N of the St. Joseph River.

PETITION NO. 2011-22 Rezone from I-1 Light Industrial & I-2 Heavy Industrial To C-3 City Center Commercial – Various Properties between N., Mill St., N., West St., & W., Front St., W., First St.

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

PROPOSED ORDINANCE NO. 2011-15
AN ORDINANCE DECLARING AN EMERGENCY AND
TRANSFERRING AND REAPPROPRIATING FUNDS
WITHIN THE BUDGET ADOPTED FOR THE
CALENDAR YEAR ENDING DECEMBER 31, 2011
(Transfer Funds – Park and Recreation - \$45,000.00)
Assigned to Budget and Finance Committee

PROPOSED ORDINANCE NO. 2011-16
AN ORDINANCE DECLARING AN EMERGENCY AND
TRANSFERRING AND REAPPROPRIATING FUNDS
WITHIN THE BUDGET ADOPTED FOR THE
CALENDAR YEAR ENDING DECEMBER 31, 2011
(Transfer Funds – Fire Department \$80,000.00)
Assigned to Budget and Finance Committee

PROPOSED ORDINANCE NO. 2011-17
AN ORDINANCE APPROVING THE CITY OF MISHAWAKA, INDIANA
COUNTY ECONOMIC DEVELOPMENT INCOME TAX
CAPITAL IMPROVEMENT PLAN
(CEDIT Capital Improvement Fund)
Assigned to Budget and Finance Committee

PROPOSED ORDINANCE NO. 2011-18
ORDINANCE FOR APPROPRIATIONS AND TAX RATES
(Civil City Budget and Tax Levy for 2012)

Clerk Block read **RESOLUTION NO. R2011-12** opening it for public hearing

RESOLUTION NO. 2011-12
HONORING LINA MARCHI,
5th GRADER FROM TWIN BRANCH SCHOOL
FOR WINNING THE INDIANA STATE CHAMPION
D.A.R.E. ESSAY CONTEST

Mr. Gleissner stated in the past these awards have been presented before the Council voted and he would like to reverse that and vote on this Resolution before it was awarded. He asked if there was anyone wishing to speak in favor of **RESOLUTION NO. 2011-12** with no response he asked if there was anyone who wished to speak in opposition, also asking for Council comments, there being none he asked the Clerk to take the vote, which passed 9 to 0 in favor

Mr. Gleissner asked Lt. Williams to come forward and introduce Lina Marchi.

Lt. Williams expressed his appreciation to the Council for having him and for him to be able to represent the Police Department and the D.A.R.E. Program. He also thanked the Council for allowing the students to read their essays in front of them during their end of the year contest. Lt. Williams said he brings with pride and great pleasure the State Champion for the Indiana D.A.R.E. Officers Association Essay Contest Lina Marchi from Twin Branch School.

Mr. Gleissner said the Council wanted to present her with the Proclamation marking her great accomplishment.

Mr. Gleissner asked how many Students competed in the State Level Contest. Lt. Williams said 75. Lt. Williams said he wanted to recognize the very first essay state champion from the same family 7 years ago, Antonio Marchi, Lina's brother.

Clerk Block read **PROPOSED ORDINANCE NO. 2011-13** opening it for public hearing.

PROPOSED ORDINANCE NO. 2011-13
AN ORDINANCE FIXING THE SALARIES OF
CERTAIN ELECTED OFFICIALS OF THE CITY OF MISHAWAKA
FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2012
(Elected Officials Salary Ordinance 2012)

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

Mr. Compton said he would like to make a motion to continue this proposed ordinance until the budget was passed; this was a recommendation by the committee, with a second by Mr. Banicki the motion carried.

Clerk Block asked if they were asking for this Proposed Ordinance to be held until the October 17, 2011 meeting when they have final adoption of the budget. Mr. Compton said that was correct. Mr. Gleissner called for another voice vote regarding the October 17, 2011 date, which passed in favor.

Clerk Block read **PROPOSED ORDINANCE NO. 2011-14** opening it for public hearing.

PROPOSED ORDINANCE NO. 2011-14

AN ORDINANCE 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, 2012
(City Employees Salary Ordinance 2012)
Assigned to Budget and Finance Committee

UNFINISHED BUSINESS

Clerk Block read **RESOLUTION NO. 2011-10** opening it for public hearing.

RESOLUTION NO. R2011-10

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)

Russell Sandford, Attorney at Law, 328 South Eddy Street South Bend said he was speaking on behalf of The City Group LLC and the operating manager Mr. Zheng. He said City Group LLC purchased the property in April of 2011 as a result of a foreclosure sale which started in 2007. Mr. Sandford said for at least 4 years this property has been neglected, since his client has acquired the property he has secured leases with two of the tenants who have been there for sometime, paying rent to no one. He said Mr. Zheng has secured a prospect to rent unit one, which was the unit nearest to 12th Street, to a tobacco shop, which would be his 3rd tenant.

Mr. Sandford stated the problem they have was there are seven rental units on the ground floor and at this point only two of those are rented to make the property viable, in order for them to set up a program to repair the property, and improve it they need to have more tenants at that location. He said having full occupancy or moving forward and maintaining the property go hand and hand. Mr. Sandford said the problem they have presently was the zoning only allows 2 tenants, it was crucial for this property to get the Variance granted so they can rent out the property. He said his client has expressed an interest in putting his City Group Office on the second floor of this building and that would then give them four of the seven spaces rented, with the corner property remaining as a storage unit leaving six possible rental spaces. Mr. Sandford went on to say that was why they were asking for a Variance from C-1 to Multiple use.

Mr. Deal said there is probably no one more excited about the prospect of this development being dressed up and rented out then he was because it was in his district. He went on to say having said that the last time Mr. Sandford's Client was before the Council they had questions for him regarding how much he was willing to invest in the property. He said they did not get any answers to those questions.

Mr. Deal said the importunate for those questions was that many times people come before the Council and ask for zonings etc and the Council in turn grants those requests and they do not see those promises come to fruition.

Mr. Deal stated he was in favor of what Mr. Zheng was trying to do but he thinks before that can happen at least on his part, the Council needs more answers. Mr. Sandford said Mr. Zheng has other property in the area for many years and it has been well maintained. He said the property before the Council as it sits now was in difficulty and Mr. Zheng purchased it that way and has submitted plans to do painting, work on the interior, exterior, fix the roof, and work on the parking area as well as landscaping. Mr. Sandford said the only way to make this place viable was to allow him to get tenants in there. He said Mr. Zheng would clean and prepare each unit, make sure the roof is sound as he tries to ready each unit for rent, he has to do this in order to rent so he will.

Mr. Deal said he understands that but his question was what kind of investment was Mr. Zheng looking at making in improving this property, and the reason he was asking that question was important to him was because when that question was asked previously Mr. Zheng a figure of 25 thousand dollars was thrown out which included fixing the parking lot and that was ludicrous. Mr. Deal explained he wanted to make sure this would be done the right way and benefit the area around it; he was in favor of this and just wants to make sure it was done properly.

Mr. Sandford stated his client does not have 300,000 dollars to invest in this property right now if that was what they were asking. Mr. Deal said that was not what he was asking he wants to know what Mr. Zheng envisions it is going to take to bring this property back. Mr. Sandford said he thinks his client would spend the money that was necessary to satisfy the Council if they give him the opportunity.

Mr. Emmons said he was appalled that he and his client were present at this meeting when they at the last Council Meeting asked to meet with Mr. Sandford and his client to discuss this situation and Mr. Sandford then canceled that meeting. He said now they come to this meeting and ask the Council to pass this Variance. Mr. Emmons said until that canceled meeting was held he would be voting against this Variance. He said there is still no roof on that building and with the amount of rain fall in the past several months and no roof and he would then come back to the Council and Council to ask for a Variance.

Mr. Sandford said in reference to that meeting it was at a time when he was to be in New England and his understanding was simply that meeting was to be rescheduled. Mr. Emmons stated it was Mr. Sandford's responsibility to reschedule that meeting since he was the one who could not make it. Mr. Sandford said then he misunderstood he had no intention to evade a meeting. He said they do not want to lose the potential client, in that rental space the just fine. Mr. Emmons said he was talking about the entire facility; Code Enforcement and Building Department both have questions they need to have answered and that was what that meeting was for, and until that happens, he was only one of nine, but he would not be supporting this Variance until that meeting was held and they get answers.

Charlene Rowe 412 North Grove, Argos said she received an e-mail from Peggy in Planning stating the meeting was to be on site and in speaking to Mr. Zheng he stated his lawyer was out of town and she then called and tried to reschedule. She said then in talking to the City Clerk's Office she was told the meeting was to be in room 205 in City Hall so there was a conflict of place and time.

Mr. Roggeman said in light of the conversation that has been had he would like to make a motion to continue this hearing indefinitely until the meeting can be held and hopefully get everything ironed out, with a second by Mr. Compton the motion carried.

Mr. Hixenbaugh said from his standpoint in addition to the meeting taking place, in order to be comfortable, and making the findings proposed in this resolution that approval of this would not be injurious to the public health and safety in Mishawaka he would need to know more personally about the time table, when and how would the roof be fixed. He asked Mr. Sandford what confidence he could give that this building would be in compliance with the City Ordinances. Mr. Hixenbaugh said after this meeting takes place he needs for Mr. Sandford to come back to the Council at the time of the public hearing with a follow up to Mr. Deal's questions, that was what he was looking for in order for him to be comfortable .

Mr. Gleissner stated he too understood there was to be a meeting before coming back to the Council for approval, and he feels it should be verbally stated at this time whether the meeting should be here in City Hall or at the site. He knows that the Building Department and Code Enforcement both had questions regarding the problems at this site.

Mr. Gleissner called for the vote on the motion to continue **RESOLUTION R11-10** indefinitely that passed with a unanimously favorable vote.

Mr. Gleissner asked Mr. Sandford to get with Mr. Deal who was the Chairman of the Land Use Planning Committee to set up this meeting.

New Business

Mr. Deal announced his Neighborhood Meeting for the 3rd District at Twin Branch School on September 21, 2011, Wednesday at 7:00 p.m. with the Swat Team as his guest.

Mr. Emmons said he would be out of town and there would be no meeting this month.

Mr. Gleissner asked Mr. Wood about the drinking fountains at Beutter and Battle Park. Mr. Prince said the parts for the fountains at Beutter Park are no longer made so they are trying to order them from a different company. He said they are trying to find a vandal resistant system because every time they fix them they get vandalized.

Mayor Wood said he was working with the Police Department concerning the vandalism in the parks.

There being no further business to come before the Council, President Gleissner adjourned the meeting at 7:40 p.m.

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

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