

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL
December 5, 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 December 5, 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 – Absent

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 absent.

The minutes from the November 21, 2011 meeting Clerk's Office will be approved at the December 19, 2011 meeting.

Clerk Block read the following appeals and referred them to the Board of Zoning Appeals for their recommendation

APPEAL NO. 2011-47 Use Variance to allow an outdoor dog daycare and boarding facility 2406 Schumacher Drive.

APPEAL NO 2011-48 Use Variance to allow Lawnmower Sales on an I-1 Light Industrial zoned property 3935 Glaser Court.

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

PROPOSED ORDINANCE NO. 2011-38

AAN ORDINANCE AMENDING SECTION 30.30 OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, COMMONLY KNOWN AD "THE COUNCILMANIC DISTRICT ORDINANCE", AND HEREBY REDEFINING THE BOUNDARIES OF THE COUNCILMANIC DISTRICTS OF THE CITY OF MISHAWAKA, INDIANA

Assigned to Land Use Plan Committee

Clerk Block read **RESOLUTION NO. R2011-17** opening it for public hearing

RESOLUTION NO. R2011-17

HONORING PENN HIGH SCHOOL VOLLEYBALL CHAMPIONS 2011

President Gleissner asked Head Coach Sarah Hendricks if she would like to speak Ms. Hendricks stated she had a great group of girls, they worked very hard and she was very proud of them.

Question was called for at 7:07 p.m. on **RESOLUTION NO. 2011-17.**

Vote: Motion carried by unanimous roll call vote (summary: Yes = 8).

Yes: Gregg Hixenbaugh At Large, John Gleissner At Large President, Marsha McClure 4th District, Mike Bellovich 2nd District, Mike Compton 5th District Vice President, Ron Banicki 6th District, Ross Deal 3rd District, Woody Emmons 1st District.

Absent: John Roggeman At Large.

Clerk Block read **RESOLUTION NO. R2011-18** opening it for public hearing

RESOLUTION NO. R2011-18

HONORING THE MISHAWAKA HIGH SCHOOL BOYS CROSS COUNTRY TEAM

President Gleissner asked Head Coach Chris Kowalewski if would like to speak. Mr. Klowalewski said he was extremely honored and appreciated the team being invited to the Council Meeting.

Question was called for at 7:14 p.m. on **RESOLUTION NO. 2011-18**

Vote: Motion carried by unanimous roll call vote (summary: Yes = 8).

Yes: Gregg Hixenbaugh At Large, John Gleissner At Large President, Marsha McClure 4th District, Mike Bellovich 2nd District, Mike Compton 5th District Vice President, Ron Banicki 6th District, Ross Deal 3rd District, Woody Emmons 1st District.

Absent: John Roggeman At Large.

Clerk Block read **PROPOSED ORDINANCE NO. 2011-32** opening it for public hearing.

PROPOSED ORDINANCE NO. 2011-32

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

(Vacation of Public Right of Way portion of Fulmer Road East of Bremen Highway)

Mr. Emmons reported the Land Use Planning Committee recommended this proposed ordinance should be adopted and moved for acceptance of same, upon a second by Mr. Banicki, the motion carried.

Ken Prince, City Planned said as he mentioned at the last meeting this vacation was a result of the realignment of the intersection at Bremen Highway and Ireland Road, it was a section of the old Fulmer Road, there was no utilities involved.

Question was called for at 7:20 p.m. on **PROPOSED ORDINANCE NO. 2011-32**

Vote: Motion carried by unanimous roll call vote (summary: Yes = 8).

Yes: Gegg Hixenbaugh At Large, John Gleissner At Large President, Marsha McClure 4th District, Mike Bellovich 2nd District, Mike Compton 5th District Vice President, Ron Banicki 6th District, Ross Deal 3rd District, Woody Emmons 1st District.

Absent: John Roggeman At Large.

Thus it becomes **ORDINANCE NO. 5328**

Clerk Block read **PROPOSED ORDINANCE NO 2011-33** opening it for public hearing.

PROPOSED ORDINANCE NO. 2011-33

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 C-1 Commercial to C-3 City Center 201-203 East Mishawaka Avenue)

Ms McClure reported the Land Use Planning Committee recommended this proposed ordinance should be adopted and moved for acceptance of same, upon a second by Mr. Hixenbaugh the motion carried.

Brian Linson 203 East Mishawaka Avenue said he believed with the downstairs being commercial and the upstairs residential he felt like it was a good fit.

Question was called for at 7:23 p.m. on **PROPOSED ORDINANCE NO. 2011-33**

Vote: Motion carried by unanimous roll call vote (summary: Yes = 8).

Yes: Gegg Hixenbaugh At Large, John Gleissner At Large President, Marsha McClure 4th District, Mike Bellovich 2nd District, Mike Compton 5th District Vice President, Ron Banicki 6th District, Ross Deal 3rd District, Woody Emmons 1st District.

Absent: John Roggeman At Large

Thus it becomes **ORDINANCE NO. 5329**

Clerk Block read **PROPOSED ORDINANCE NO 2011-34** opening it for public hearing.

PROPOSED ORDINANCE NO. 2011-34

AN ORDINANCE ANNEXING CONTIGUOUS TERRITORY TO THE CITY OF MISHAWAKA, INDIANA, AND PROVIDING ZONING CLASSIFICATION THEREFORE

(Annex and Zone to I-1 Light Industrial & C-4 Auto Oriented – North of 914 & 916 East McKinley)

NO VOTE

Bill Pemberton 1333 Patriot Court said, he and his partner purchased this property and requesting a rezoning due to the fact that part of the property was in the county and part of it was in the city. He said they were cleaning up the property and at the same time wanted to clean up the zoning. Mr. Pemberton since they are protected by Mishawaka Police and Fire Departments he felt it was the right thing to do to have it annexed and pay their proper share of taxes for the services provided them.

Clerk Block read **PROPOSED ORDINANCE NO 2011-35** opening it for public hearing.

PROPOSED ORDINANCE NO. 2011-35

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-

(Amend the PUD for 6.197 acres, more or less – southwest corner of East 12th Street and Capital Avenue)

Ms McClure reported the Land Use Planning Committee recommended this proposed ordinance should be adopted and moved for acceptance of same, upon a second by Mr. Compton the motion carried.

Pat Brown of SiteScapes Incorporated 1003 Lincolnway West said he was representing the property owners of the 12th Street PUD, Purlight LLC; 1st Source Bank and Diversified Real Estate in their request to relocate two established businesses that was on Capital Avenue. He said the convenience store gas station was on the north east corner since the mid 80’s and 1st Source Bank was on the north west corner for almost 30 years with their ATM machine and branch office and because of the Capital Avenue construction and realignment both businesses were forced to relocate. Mr. Brown said these two businesses are well established in that area they would like to stay in that area and they were able to acquire this land on the south side of 12th Street, just west of Capital Avenue and their request was for approval to Amend the PUD to allow for the Convenience Store, Gas Station, Car Wash, to be reconstructed in that area putting them back on the tax rolls with 15 to 20 employees and 1st Source Bank would also be able to bring back their ATM.

Mike Dobson, Diversified Real Estate 514 Dixeway North, South Bend said as Mr. Brown stated it was opportunity for them to get back into the neighborhood and the only reason for their delay was because the improvements being made on Capital Avenue and 12th Street. He said they were hoping to be back in business two years ago. He asked for the Council’s support.

Question was called for at 7:30 p.m. on **PROPOSED ORDINANCE NO. 2011-35**

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 8).

Yes: Gegg Hixenbaugh At Large, John Gleissner At Large President, Marsha McClure 4th District, Mike Bellovich 2nd District, Mike Compton 5th District Vice President, Ron Banicki 6th District, Ross Deal 3rd District, Woody Emmons 1st District.

Absent: John Roggeman At Large.

Thus it becomes **ORDINANCE NO. 5330**

Clerk Block read **PROPOSED ORDINANCE NO 2011-36** opening it for public hearing.

PROPOSED ORDINANCE NO. 2011-36

**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**

(Amend the S-2 PUD for Multi-Family, Single Family and General Commercial
Toscana Park 52598 Gumwood Drive)

Mr. Deal reported the Land Use Planning Committee recommended this proposed ordinance should be adopted and moved for acceptance of same, upon a second by Mr. Banicki the motion carried.

Daryl Knip Abonmarche Consultants, Inc. 750 Lincolnway East, South Bend said he was representing the property owner and the applicant Mr. Ryan Rans of Toscana Reality. He said Toscana Park Plan Unit Development was initially approved in 2006 and amended a few years later and allows primarily for commercial uses along with some office space to the north and 22 villa lots on the east end. Mr. Knip said unfortunately the commercial retail market is not currently as strong as it was when this plan was first approved and therefore much of this site sits vacant. Mr. Knip said they were requesting the approval for a PUD amendment that would allow for multi-family use on the north 12 acres of Toscana Park and the remainder of the development would maintain the existing approved uses. He said this redevelopment project includes constructing 104 new high end single family attached residences in 11 buildings at the north end of Mishawaka. He said Mr. Rans would speak about the specifics.

Ryan Rans of Great Lakes Capital Development 54401 26th Street South Bend, Indiana said this was an over all 36 acre project as called today Toscana Park. He displayed a slide showing quite a bit of heavy commercial just to the south and extending into Toscana Park what they were looking to do was help buffer the northern most point of Mishawaka from the single family residential. Mr. Rans stated they were looking to down zone the northern 1/3 piece of this property to multi-family from retail/commercial. He went on to explain the benefits as he sees it are many fold, one it softens the use in the intersection of the commercial retail and the single family residential. Mr. Rans said to contrast that with asphalt you would be seeing a reduction in density overall. He said in twelve and a half acres he could put in more units but goal here was to go with lack of density and instead do something that was more in keeping with the residential this abuts.

Mr. Rans said he has met with the proximate neighbors a few times and on three occasions he has met with either the homeowner's association board or the home owners association of Brenden Hills to get their feed back. He said in those meetings he modified some of the site plan the recreation area for the apartments was moved more internally, instead of being an amenity for the entire community as he originally planned the villa owners preferred to have these three remain as individual lots. Mr. Rans said the change that impacted the site plan the most was extending and adding to the tree line that practically exists now along with the fence line increasing it to the east to the logical boundary of the property, with a 50 foot set back and adding a tree line with a fence line

and along the most northern point adding a privacy fence addressing the concerns of the neighbors most proximate to this.

Mr. Rans said it was his plan to extend the Italian theme from Toscana Park as well as making it the mass scale height of the residential homes in that area. He explained that it would be two story homes with individual garages; the market he was trying to achieve was individual homeowners that were otherwise displaced. Mr. Rans said to address a couple of other concerns that have been brought up was traffic so they did a study using the Institute of Transportation Engineer's numbers under the currently approved site plan as it currently exists, they would be looking in the range of 1390 trips per day. He said by taking this 12 ½ acres and modifying it to this use they would be looking to have about 699 trips per day which would be reducing the traffic impact not add to it from what was currently approved.

Mr. Rans went on to say this would be in the Penn-Harrison-Madison School District improving the school enrollment which was down this year 8.8% below what they expected two years ago and this was a concern throughout the school system. He said even with open enrollment, which this would be, they were 4.2% below projections made just two years so they are looking at something that if anything would help feed a concern the board has in the school system.

Mr. Rans said he was not a resident of Mishawaka, he was a resident of Granger but he does business in the City of Mishawaka and owns quite a few buildings in the city, he was not looking for any tax abatement he was looking to extend the tax base. He said the multi-family development itself would add over \$100,000.00 a year in real-estate taxes the city is not currently seeing. He said he to date has paid over a million dollars in taxes, he was committed to Mishawaka and he feels thinks this was a great project.

Mr. Banicki said he wants to take out the obvious and say this would not be section 8 housing. Mr. Rans said it would not it would market rate to above market rate housing, which would range around \$1,100.00 to \$1,600.00 a month range. Mr. Banicki asked if he would be trying to appeal to Notre Dame students. Mr. Rans said he does not see Notre Dame students as a natural fit although he could not prevent it, however, the development would consist of 50% two bedroom, 36 to 38% one bedroom, and 12% or so 3 bedroom, the reason for that was they were looking for individuals, individual families, executive type housing not something that would appeal to 5 or 6 students trying to get together and live in one place. He went on to see it could probably be done but there is that price range closer to Notre Dame then this and would think closer to ND would be better for them then not.

Mr. Banicki asked if they have given consideration to a stop light at the main entrance of the main plaza to help traffic flow not only down Main Street but also in and out of the new plaza. Mr. Rans said yes, currently he has engaged Abonmarche to work with the City Engineer and he has offered at this cost to put in a light.

Mr. Banicki asked Mr. Rans if he had been involved in a big plaza or apartments like this before. Mr. Rans said he just recently turned University Commons into a Medical Plaza and has done several other office projects similar to that of that kind of magnitude. Mr. Banicki asked if he had decided on a construction company yet. Mr. Rans stated he has not, frankly he has his own

construction company and right now the question was would he be doing it and general contracting it or would he be construction managing it and looking for a general contractor, all of that was still up in the air. He said presently he was looking to finish plans and if the Council were to look favorably on this until next early summer go to bid. Mr. Rans said the focus would be local from the perspective of construction and how that works out exactly was yet to be defined.

Mr. Gleissner asked for a time line. Mr. Rans said there were 11 buildings in total his intention was Phase I to build two buildings which could be three stories on the Northern end and reason for this was it envelops the restaurant and the community and then as the construction takes place behind this it would block the view of that construction as well as the activities that take place in the retail and commercial court from dumpsters to lighting. He said his goal was to have a buffer between the retail and commercial and the single family residential.

Mr. Banicki thanked Mr. Rans and Mr. Knip for keeping him updated throughout this project and they had great communications with the neighbors, he feels it was a very good plan and the plan was not speculative it is shovel ready and could be started as soon as spring, with that being said he would be supporting his proposal.

Mr. Gleissner said there have been times where there was opposition during the Plan Commission and the Council had to insist they meet, so he appreciated Mr. Rans and Mr. Knip getting all of this worked out prior to the Council meeting.

Question was called for at 7:51 p.m. on **PROPOSED ORDINANCE NO. 2011-36**

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 8).

Yes: Gregg Hixenbaugh At Large, John Gleissner At Large President, Marsha McClure 4th District, Mike Bellovich 2nd District, Mike Compton 5th District Vice President, Ron Banicki 6th District, Ross Deal 3rd District, Woody Emmons 1st District.

Absent: John Roggeman At Large.

Thus it becomes **ORDINANCE NO. 5331**

Clerk Block read **PROPOSED ORDINANCE NO 2011-37** opening it for public hearing.

PROPOSED ORDINANCE NO. 2011-37

AN ORDINANCE AMENDING AND CORRECTING ORDINANCE NO. 5283, PASSED AND APPROVED BY THE COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, ON THE 3RD DAY OF NOVEMBER, 2010, AND APPROVED BY THE MAYOR, ON THE 4TH DAY OF NOVEMBER, 2010, WHICH CONTAINED A SCRIVERNR'S ERROR; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCE IN CONFLICT HEREWITH
(Scrivener's error for Floodplain Ordinance No. 5283)

Mr. Hixenbaugh reported the Public Health and Safety Committee recommended this proposed ordinance should be adopted and moved for acceptance of same, upon a second by Mr. Compton the motion carried.

Ken Prince City Planner said he was responsible for the typo and was here to correct it. He said these are ordinances that were cookie cutter and then modified, they get the language from the DNR and they cut and paste and that was when the error was made. Mr. Prince said there were no changes to the regulations as proposed this was merely correcting those typos.

Question was called for at 7:55 p.m. on **PROPOSED ORDINANCE NO. 2011-37**

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 8).

Yes: Gregg Hixenbaugh At Large, John Gleissner At Large President, Marsha McClure 4th District, Mike Bellovich 2nd District, Mike Compton 5th District Vice President, Ron Banicki 6th District, Ross Deal 3rd District, Woody Emmons 1st District.

Absent: John Roggeman At Large.

Thus it become **ORDINANCE NO. 5332**

PRIVILEGE OF THE FLOOR

Jim Cierzniak 1518 Pine Top Trace read letter to the Council that he wrote concerning to encourage the city not to allow the squatters group to camp out in Beutter. This letter is on file in the City Clerk's Office.

Phil. Zwickl 2334 Creekview Drive expressed his concerns about the South Bend Post Office closing, which would result in the mail going to Fort Wayne and there would be a 2 day delivery date instead of next day delivery. He said with the Mishawaka Post Office being in a rented building he suggested they move to the South Bend Building along with the surrounding small town post offices and the Mishawaka Post office could become a village system. Mr. Zwickl said he was asking the Council to Senators and Congressmen about keeping South Bend open.

UNFINISHED BUSINESS

Clerk Block read **PROPOSED ORDINANCE NO. 2011-17** opening it for public hearing.

PROPOSED ORDINANCE NO. 2011-17

AN ORDINANCE APPROVING THE CITY OF MISHAWAKA, INDIANA COUNTY ECONOMIC DEVELOPMENT INCOME TAX CAPITAL IMPROVEMENT PLAN (Amending the CEDIT)

Mr. Emmons reported the Budget and Finance Committee recommended this proposed ordinance should be continued to the December 19, 2011 meeting and asked for acceptance of same, upon a second by Mr. Banicki n the motion carried.

Mr. Hixenbaugh said in consistent with the committee report that was just read he would like to make a motion the to continue the public hearing on **PROPOSED ORDINANCE NO. 2011-17** to the December 19, 2011 regularly scheduled Council Meeting, with a second by Mr. Banicki the motion carried.

Clerk Block read **PROPOSED ORDINANCE NO 2011-27** opening it for public hearing.

PROPOSED ORDINANCE NO. 2011-27

AN ORDINANCE AMENDING ORDINANCE NO. 1666 BEING AN ORDINANCE ESTABLISHING POLICIES AND PROCEDURES FOR THE ADMINISTRATION OF EMPLOYER-EMPLOYEE RELATIONS IN CITY GOVERNMENT, THE FORMAL RECOGNITION OF EMPLOYEE ORGANIZATIONS AND THE RESOLUTION OF DISPUTES REGARDING WAGES, HOURS AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT AS AMENDED.

(Amending Ordinance 1666 collective bargaining agreement)

Mr. Compton the Personnel Committee recommended this proposed ordinance should be adopted and moved for acceptance of same, upon a second by Mr. Hixenbaugh the motion carried, with Mr. Bellovich voting no.

James Elliott, President of Mishawaka Fire Fighters Local 360 said he supports this proposed ordinance, hoping that it would never be necessary to use this because he is confident that the administration would be bargaining in good faith. He said this ordinance does provide a little protection for the bargaining units. Mr. Elliott said he feels this proposed ordinance could be a benefit to both sides, sometimes when they are at an in pass a third party could be helpful for everyone so he asks for the Council's support.

Pasquale Rulli Jr, President of Mishawaka Fraternal Order of Police Local 360 said he agreed with Mr. Elliot that he too hopes this proposed ordinance never had to be used but it was nice to know they had the buffer.

Question was called for at 8:13 p.m. on **PROPOSED ORDINANCE NO. 2011-27**

Vote: Motion passed (summary: Yes = 6, No = 2, Abstain = 0).

Yes: Gregg Hixenbaugh At Large, John Gleissner At Large President, Marsha McClure 4th District, Ron Banicki 6th District, Ross Deal 3rd District, Woody Emmons 1st District. Mike Compton 2nd dist No: Mike Bellovich 2nd District, Mike Compton 5th District Vice President.

Absent: John Roggeman At Large.

Thus it becomes Ordinance No. 5333.

There being no further business to come before the Council, President Gleissner adjourned the meeting at 7:20 p.m.

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

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