

**JANUARY 10, 2017**

**PLAN COMMISSION  
CITY OF MISHAWAKA, INDIANA**

The regular meeting of the Mishawaka Plan Commission was held Tuesday, January 10, 2017, at 7:00 p.m. in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Commission members attending: Chris Jamrose, Dale "Woody" Emmons, Ross Portolese, Murray Winn, Don McCampbell, Nick Troiola, Dale Freeman, and Kathleen White-Gadacz. Absent: Matt Lentsch. In addition to members of the public, the following were in attendance: Mayor Dave Wood, David Bent, Ken Prince, Derek Spier, Christa Hill, and Kari Myers.

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Murray Winn turned the meeting over to Ken Prince, City Planner, for the election of officers.

**ELECTION OF OFFICERS:**

**MOTION:** Nick Troiola moved to nominate Murray Winn as President. Ross Portolese seconded; motion carried with a vote of 7-0.

**MOTION:** Don McCampbell moved to nominate Dale "Woody" Emmons as Vice-President. Nick Troiola seconded; motion carried with a vote of 7-0.

**MOTION:** Nick Troiola moved to reappoint the Planning Staff for 2017. Don McCampbell seconded; motion carried with a vote of 8-0.

**MOTION:** Dale Freeman moved to reappoint Kari Myers as Commission Secretary. Don McCampbell seconded; motion carried with a vote of 8-0.

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Mr. Winn explained the Rules of Procedure.

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The Minutes of the December 13, 2016, meeting, were approved as distributed.

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Conflict of Interest was not declared.

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**PUBLIC HEARING:**

**PETITION #17-01** A petition submitted by Derec and Jenifer Eggleston requesting to rezone **403 West Fourth Street** from I-1 Light Industrial District to R-1 Single Family Residential District.

Derec and Jenifer Eggleston, 403 W. Fourth Street, said they are asking to rezone the property from I-1 to R-1.

Mr. Emmons asked why they needed to rezone. Mr. Eggleston said they are remodeling back into a single family home and half of the financing is being held up due to the zoning. They will live there.

Mr. Winn closed the Public Hearing on Petition #17-01.

**Staff Recommendation**

*The Planning Department recommends **approval** of Petition #17-01 to rezone 403 W. Fourth Street from I-1 Light Industrial District to R-1 Single Family Residential District. This recommendation is based upon the following findings of fact:*

1. *There are multiple zonings in the immediate vicinity and many of the structures are residential in use. The conversion from office to a single family dwelling would be compatible to the area;*
2. *Use and value of the area adjacent to the property included in the rezoning will not be affected in a substantially adverse manner because given the context of its location, its relationship to surrounding properties, and the potential of development as an industrial project, staff feels that the most desirable use for this property is single-family use;*
3. *Because the parcel is located in an area of residential properties, the rezoning to R-1 Single-Family Residential is a desirable use for this property;*
4. *As opposed to the range of potential industrial development that could occur with its current zoning, rezoning this property to the R-1 Single Family Residential classification will have a favorable and stabilizing impact on the neighborhood, conserving property values in the immediate and surrounding residential neighborhood; and will allow the property owner to refinance the home; and,*
5. *The City's Comprehensive Plan calls for general commercial which is consistent with the downtown vicinity.*

**MOTION:** Ross Portolese moved to forward Petition #17-01 to the Common Council with a favorable recommendation. Don McCampbell seconded; motion carried with a vote of 8-0.

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**PETITION #17-02** A petition submitted by Mishawaka LLC requesting to rezone **1702 and 1720 Union Street** from R-1 Single Family Residential, C-1 General Commercial, and I-1 Light Industrial, to C-10 Filling Station Commercial.

Todd Etzler, General Counsel, Family Express Corporation, 213 S. State Road 49, Valparaiso, IN, presented the Petition. He said this is a situation where "what is old is new again." The property is 1.5 acres at Union and Dragoon. It's also across the street from the intersection of King's Court. At one time, there was a 7up bottling plant at the location.

Mr. Etzler said Family Express appeared before this Commission a year ago seeking approval of two locations in town and they are now up and running and going well. He said he hoped you were pleased with the development.

Mr. Etzler presented a rendering of the building prototype. He said they have changed the brick color to be lighter. He also showed photos of the two new locations in Mishawaka, day and night. Mr. Etzler said they would be continuing with the colonial architecture at this location. He also said the building size will be increased as they are adding food service such as pizza and needs more space.

Mr. Etzler said the parcels are a mish-mash of zoning and they are seeking C-10. The zoning is exactly what has been looked at in the Comprehensive Plan and there was previously a convenience store with gas and Family Express will do the same thing. He said the Plan calls for commercial development along the corridor and the surrounding houses on Union Street are zoned commercial and you could expect that over the next few decades, there would be change in those houses to commercial. Mr. Etzler also said the neighborhood was developed expecting fuel at this corner.

Mr. Etzler said looking at the site plan, they will have the same building and canopy and have access points at three locations, although Engineering hasn't done a detailed review, but they have preliminary comments. He said at the beginning, they moved access from across from King's Court and access onto Dragoon is as far east of the intersection as possible. Mr. Etzler said the City has plans for large intersection improvements and he assumes new lighting will be included.

Mr. Etzler said they have worked on access points and coordinated the building location based on what those intersection improvements will do to the site. They will have plentiful landscaping as at the

other two locations. He said adding landscaping to the convenience store makes people feel comfortable coming to their location.

Mr. Etzler said they have talked to Engineering about drainage and they are confident they can work out stormwater retention. He said there is a corner parcel that is not part of the project and they are working with the owner and hope to come to an agreement on the acquisition. Mr. Etzler said they will not be building on that parcel, but will remove the building to provide better visibility and more parking.

Mr. Etzler said this is a site that has traditionally provided fuel to the city and neighborhood and they are used to having a convenience store for necessities. He said it's at the intersection of two major thoroughfares and will be able to pull directly into the site from Dragoon and will work well for citizens and visitors. Mr. Etzler said it's consistent with the Comprehensive Plan and justifies being rezoned to C-10.

Mr. Emmons asked Mr. Etzler to explain the pet wash facility. Mr. Etzler said the location at Hickory and Edison has one. He said it's about the size of a mobile food truck and you can bring your pets inside to wash them. There's a table that moves up and down and works similar to a self-wash car wash. Mr. Etzler said you put money in the machine and also has a hair dryer. He said they aren't sure if they'll put one at this location.

Mr. Emmons asked if it was in the car wash. Mr. Etzler said no, it's a self-enclosed facility.

Mr. Emmons commended Mr. Etzler on their facilities and went to Valparaiso to look at your operation. He said he's a proponent of no outside storage and is glad the other facilities are willing to work with that. Mr. Emmons said it's a distraction to have salt, wood sitting out. Mr. Etzler said he agrees it looks bad at the front of the lot. He said they are happy to do whatever everyone else is required to do. He also said he's hesitant to agree to such if someone can go in across the street and do it.

Mr. Emmons said it was a stipulation when he talked to the president as it's a distraction from the attractiveness of the store. Mr. Etzler said he would rather not agree to that stipulation.

Mr. Emmons said it's a sticking point to the Council. Mr. Etzler said it's generally permitted in C-1. Mr. Emmons said there are a few where it isn't allowed. Mr. Etzler said he would agree not to have it in front, but maybe next to the door and building as they cannot store the items inside. Mr. Emmons said what he saw was sitting out front at their Hickory location.

### **Opposition**

Angela Magrames, 16025 Chandler Blvd., Mishawaka, said she had a few questions and concerns about the proposed location. She said she's a former teacher in Penn district and school buses are a concern in this area with the traffic. Mrs. Magrames said she sees where traffic merges into one lane and coming downhill on a slippery day is dangerous with a bus. She also said that semi's are now allowed on Bremen Highway. How is everyone going to stop in time to come onto Union Street?

Mrs. Magrames said she has lived in her house for 36 years. She said about 4:30 traffic starts heading out. How are folks at the gas station going to turn back onto Union to go south? She said there have been accidents every day since the snow fell.

Mrs. Magrames said the entrances will be plowed in. Who will keep the entrances clear? She asked the Commission to consider where the curb cuts will be allowed; 18<sup>th</sup> Street is all residential.

Mrs. Magrames said she didn't know too much about the business, so she stopped in to the location on Hickory Road and that store is open 24/7. She said lights are on all night at the pumps and in the building. Mrs. Magrames said an employee told her it looks like a flyer saucer has landed. She asked the Commission to remember there is residential on two sides of the property. She would probably be able to see the site in the winter.

Mrs. Magrames also said she had concerns about the noise. She said some of her trees have been cut down because of utility lines and now has less of a buffer and in the summertime there will be noise.

She asked if the City really wanted this in a residential area. Mrs. Magrames said these are things she wants you to consider.

Mrs. Magrames said the speed limit coming down from Bremen Highway is 45 mph and there are times when she can't turn out onto Bremen Highway because of the traffic. She asked the Commission to think of the times this building would be open; think of the noise and the light affecting people; think of the school buses. What will happen if there's a gas station there?

Mrs. Magrames thanked the Commission for their time and reminded them there are convenience stores with gas at Meijer and BP at Bremen and Ireland Road.

Richard Allen, 16168 Chandler Blvd., Mishawaka, suggested the Commission proceed with caution. He said he's lived on Chandler for 20 years and can testify that coming downhill from Meijer he's been rear-ended twice; most recently when he tried to turn onto Chandler. Mr. Allen said people come down that hill fast; it's part of nature.

Mr. Allen said his main concern was the pollution. He said before you make any decision he asks that the Commission take a drive past the location at Hickory and Edison and ask yourself would you like to live across from this?

Mr. Allen said the building would depress the value of homeowners on 18<sup>th</sup> Street, Union Street, and King's Court. Would you also want that much light across the street from you?

Mr. Allen said there are three gas stations in downtown Mishawaka and another at Meijer and also BP. He said within a 1.5 mile radius there are 6 gas stations. He also has a broader concern about dark buildings. He feels the Walgreens will sit empty for a long time. He wonders if the area we're looking at in Mishawaka, if another one goes in, does one go dark? It would be a tax loss to the City.

### **Rebuttal**

Mr. Etzler thanked Mrs. Magrames for her comments. He said Family Express started with this colonial building style many years ago, about 15. He said when they look to locate a store like this, they don't just look at traffic, but also at rooftops. He said their first colonial was in Valpo. Mr. Etzler said a large PUD subdivision with high end homes, 3000 sqft homes, sought them out and asked them to locate a store near them. They came up with the colonial style and it's good for their brand. He also said they have been located in some very nice neighborhoods. He said he expects there will be apartments to the east and other residences may be gone in the future.

Mr. Etzler said they are a neighborhood friend and they depend on the residents to buy their goods; that's their main business.

Mr. Etzler said light pollution is also a concern of theirs. He said several years ago they retrofitted all 68 stores with LED lights at a time when most gas stations still had bulb lighting (he showed a photo of a site in the evening). In the evening they have LED lights in front of the store and light bleed is eliminated as it's focused right where you need it.

Mr. Etzler said regarding traffic and they have no control over the improvement of the intersection at this location. He said the reason the City is looking for the improvements are due to the issues raised tonight. The store is there for convenience purposes. Mr. Etzler said the business isn't like a lumber yard. He said FE customers already drive there; they don't make traffic, they serve traffic that is existing and that's why they seek easy access. He said it's important to get people in and out; to be convenient and friendly.

Mr. Etzler said as for snow removal, they have contractors and store associates have authority to call for snow removal; they'll get it cleared out. He said they want to get people in and out.

Mr. Etzler said as for hours of operation, they serve the people around them. They don't come in saying they are going to be a 24 hour store. He said they open and then see what the community needs. Mr. Etzler said if they reduce the hours, they get complaints from the folks who want coffee and donuts early. He suspects they'll target this store to be open from 5:00 a.m. to 11:00 p.m. Mr.

Etzler said probably 5 stores are 24 hour stores and don't seek to open 24 hour stores. He said when the store is closed all lights are off, including the sign.

Mr. Winn closed the Public Hearing on Petition #17-02.

Ms. White-Gadacz said the reality of the situation is that at some point in the future, the site will be a convenient store/gas station. She said she's only heard good things about Family Express and if one were to go there, she would want to shop there.

Ms. Jamrose said the site currently has industrial zoning and worse could go there.

### **Staff Recommendation**

*Staff recommends in **favor** of rezoning Petition 17-02 to rezone approximately 1.51 acres located at 1702 & 1720 Union Street from I-1 Light Industrial, C-1 General Commercial, and R-1 Single-Family Residential to C-10 Filling Station/Carwash Commercial to allow for the construction of a convenience store with fuel pumps, carwash, and pet wash facility. This recommendation is based on the following findings of fact:*

- 1. Existing Conditions – The subject property consists of two vacant parcels located near the intersection of Union Street and Dragoon Trail. These arterial roads are highly travelled corridors providing major north-south and east-west access through the City. A majority of the adjacent properties along this portion of Union Street are single-family residential with a vacant convenience store/gas station located to the south. Although currently undeveloped, the property was previously occupied with various industrial and commercial uses prior to 2005.*
- 2. Character of Buildings – The character of the buildings in the area are predominantly single-family residential with a vacant convenience store/gas station located to the south at the northeast corner of Union Street and Dragoon Trail.*
- 3. The most desirable/highest and best use – Because of the properties location and the prior industrial and commercial uses, the most desirable use for the property is commercial. Although single-family residential properties are adjacent to the west and north, the high traffic volumes along Union Street and Dragoon Trail make long term use of the properties undesirable for residential purposes. Furthermore, portions of the property fronting Union Street are currently zoned for both commercial and industrial use.*
- 4. Conservation of property values – The proposed rezoning should not be injurious to property values in the surrounding neighborhood as the existing I-1 Light Industrial and C-1 General Commercial zoning classifications permit industrial and commercial uses on a majority of the property. Landscaping and screening will be required per the C-10 Filling Station/Carwash Commercial district to adequately buffer the proposed use from the adjacent residential properties.*
- 5. Comprehensive Plan – The 2000 Mishawaka Comprehensive Plan, created in 1990, guided general commercial development within this property. The proposal is consistent with the Comprehensive Plan.*

**MOTION:** Kathleen White-Gadacz moved to forward Petition #17-02 to the Common Council with a favorable recommendation. Nick Troiola seconded; motion carried with a vote of 8-0.

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**PETITION #17-03** A petition submitted by Rans Realty LLC requesting a rezoning of **3634 and 3708 Hickory Road** from C-1 General Commercial District and C-6 Linear Office Commercial District to R-3 Multi-Family District.

Ari Parritz, Vermillion Development, 401 N. Franklin Street, Chicago, appeared on behalf of Rans Real Estate. He said they have been in business since the mid-2000's and they opened their first facility in

Peoria last year and four others are under construction in Indiana and they are excited about this parcel.

Mr. Parritz said this property is just under 4.5 acres with great access to retail and is nestled in an aesthetically pleasing area. They'll orient the building entrance and parking off Hickory providing privacy to the residents to the east.

Mr. Parritz said the building will have 119 apartment-style units. Each resident will have their own apartment and access to amenities like dining and such. Mr. Parritz said many residents no longer drive and moving into a facility allows them to be independent with care. He said there will be a full service kitchen, lounge, medical suite, and about 35 people will be employed, but not all at one time. Probably about 25 people at peak employment.

Mr. Winn closed the Public Hearing on Petition #17-03.

### **Staff Recommendation**

Staff recommends in **favor** of Petition 17-03 to rezone approximately 4.56 acres located at 3708 and 3634 Hickory Road from C-1 General Commercial and C-6 Linear Office Commercial to R-3 Multiple Family Residential to allow for the construction of a 119 unit senior assisted living community. This recommendation is based on the following findings of fact:

1. *Existing Conditions – The subject property consists of a vacant parcel of land located near the intersection of Hickory Road and Edison Road. These arterials roads are highly travelled corridors providing major north-south and east-west access through both the City of Mishawaka and South Bend. Adjacent land uses include commercial/retail to the north, commercial and single family residential to the west in the City of South Bend, a credit union to the south, and vacant land zoned for commercial use to the east. Although currently undeveloped, the property was previously occupied with several single family residences until the 1990s and has remained vacant since being rezoned for commercial use in 2001.*
2. *Character of Buildings – The character of the buildings in the area vary greatly from single-use commercial buildings to the north, a multi-tenant strip commercial building and single-family residential to the west, and a single-use commercial building with drive-thru to the south. The proposed assisted living facility will be consistent with the character of both the adjacent commercial and residential buildings.*
3. *The most desirable/highest and best use – Due to the property's location on Hickory Road, a highly travelled arterial roadway, and the adjacent commercial/retail uses, the most desirable use for the property is commercial or multi-family residential.*
4. *Conservation of property values – The rezoning should not be injurious to property values in the area. The rezoning is essentially a down zoning as the proposed assisted living facility is less intensive than many of the permitted uses allowed within the C-1 General Commercial district.*
5. *Comprehensive Plan – The 2000 Mishawaka Comprehensive Plan, created in 1990, guided general commercial development within this property. Although more residential in nature, the proposed use for an assisted living facility is consistent with the Comprehensive Plan.*

**MOTION:** Ross Portolese moved to forward Petition #17-03 to the Common Council with a favorable recommendation. Don McCampbell seconded; motion carried with a vote of 8-0.

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**PLAT #17-04** A request submitted by Terry L. Seggerman seeking approval of the one (1) lot "The Reserve at Watermark" subdivision.

Mr. Winn read a letter from the Petitioner requesting the item be continued to February 14, 2017, meeting.

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**DESIGN REVIEW:  
DR #17-01**

A request submitted by Richard B. Nicholas, **225 North Main Street** requesting a waiver from the Mishawaka City Design Review Ordinance Section 105-170 Exterior Signage Colors, 105-174 Signage Size Limitations, and Section 105-176 Signage Clutter to allow an oversized wall mural for White House Cleaning & Restoration advertisement.

Rene' Micola appeared and represented White House Cleaning & Restoration. He said they want to put their sign up again as they have in the past. He said the design is a bit different, but the same message.

Mr. Emmons asked if the sign would be the same size that's already there. Mr. Micola said yes, it should be. He said they would cover over what's there and put their sign up.

Mr. Emmons asked if it would overlap the "Eagle" sign. Mr. Micola said no.

Mr. Emmons said he has had concerns about downtown. He said there are guidelines and regulations for store owners to have certain size advertising and now we allow certain buildings to plaster advertising for others on their building. He said it is not appropriate and it is not right.

Mr. Winn closed the Public Hearing on Design Review #17-01.

Mr. Troiola asked Mr. Emmons if he was opposed to the American flag. Mr. Emmons said no, it's not an advertisement for another business. He said if Buzz wants to put up a sign for his business that meets code, then he has no problem with it.

Ms. White-Gadacz asked if it was allowed and they just wanted to change it. Mr. Prince said the 1999 Master Plan for downtown was approved with special regulations. He said at the time, they put extra emphasis on signs and there are aesthetic ways to put up banners and off-premise signs. Mr. Prince said they didn't want a billboard like on top of the old Tivoli. He said Doc Pierce's wall mural adds a certain vitality and the waiver process allows us to review; especially for this site.

Mr. Prince said what is being requested is a modification of a sign that was approved earlier and there's kind of a history of how this has evolved. He said we can look at removing that provision, but there are few buildings that have the ability to have the advertising on the wall.

**Staff Recommendation**

*The Plan Staff recommends Approval of Design Review Waiver 17-01, as presented, for the north wall of 225 North Main Street to allow White House Cleaning and Restoration.*

**MOTION:** Kathleen White-Gadacz moved to approve Design Review #17-01. Chris Jamrose seconded; motion *fails* with a vote of 4-4, due to the lack of majority vote.

Mr. Troiola asked if they could retract the vote and discuss. David Bent said yes.

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**SITE PLAN:  
SP #17-A**

A request submitted by Waterman Residential seeking approval of the "Reserve at Watermark" multi-family apartment complex located at 53555 Fir Road.

Mr. Winn read a letter from the Petitioner requesting the item be continued to February 14, 2017, meeting.

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**NEW BUSINESS**

Mayor Dave Wood said it was a privilege to honor friend and mentor Ross Portolese, as tonight is Ross's last meeting.

Mayor Wood said when he thinks of public service in Mishawaka, he sets a high standard. He said he learned City government from Ross while serving on the Plan Commission and he helped him through the first years and taught him most of the good stuff he knows.

Mayor Wood said when he thinks of the City, it's people like Ross whose service that made it what it is today. He's been involved in decisions like University Park Mall and all the changes made on his watch and having input and impact on the City. Mayor Wood told Ross the City is better because of his service.

Mayor Wood said his service doesn't start or end with the Plan Commission. He said he's served the State on Excise Board, served our country, and got to experience an Honor Flight to Washington DC. Mayor Wood said Ross has served for mostly no reward other than wanting to make the City a better place.

Mayor Wood said on behalf of the citizens of the City of Mishawaka, staff, and all the others who serve at the City, you are the example; you have led the way and set the bar high. He said he couldn't be more proud to call you his friend. Thank you for your service.

Ross Portolese said he'll be 93 in a few weeks and mother nature will sure slow you down. He said with a heavy heart he'll be leaving Mishawaka and moving to St. Paul's retirement community. He said Mishawaka has been good to him and his family.

Mr. Portolese said he has seen planners on this board and somehow would get neighbors all riled up; Ken controls the people and gives us a good meeting. He said Ken is also good to the people of Mishawaka and thanked the Mayor for his kind words.

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**ADJOURNMENT:** 8:07 p.m.

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Kenneth B. Prince, City Planner

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Kari Myers, Administrative Planner