

**JULY 12, 2011**

**PLAN COMMISSION  
CITY OF MISHAWAKA, INDIANA**

A regular meeting of the Mishawaka Plan Commission was held Tuesday, July 12, 2011, at 7:00 p.m. in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Commission members attending: Gary West, Matt Lentsch, Ross Deal, Ross Portolese, Murray Winn, Don McCampbell, Carol Sergeant, Edward Salyer, and Rosemary Klaer. In addition to members of the public, the following were also in attendance: David Bent, Ken Prince, Greg Shearon, Peg Strantz, and Kari Myers.

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Murray Winn explained the Rules of Procedure.

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The Minutes of the June 14, 2011, meeting, were approved as distributed.

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Conflict of Interest was not declared.

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**PUBLIC HEARING:**

**PLAT #11-12**

A request submitted by Cressy Land Investments, LLC, seeking approval of the one (1) lot Cheddar's Main Street Minor Subdivision.

Jeff Ballard, Danch, Harner & Associates, 1643 Commerce Dr., South Bend, appeared on behalf of the petitioner. He said this is a one lot subdivision to facilitate Cheddar's restaurant at the corner of Edison Lakes Parkway and Main Street. Mr. Ballard said the restaurant will be approximately 8,000 sqft. He said both Planning and Engineering have reviewed the Plat and Engineering indicated an access easement needs to be shown. Mr. Ballard said a revised Plat has been submitted for review.

Mr. Winn closed the Public Hearing on Plat #11-12.

**Staff Recommendation:**

*Provided a revised plat is submitted addressing the outstanding items, the Planning Department recommends approval of the Preliminary Plat and Final Plat of the Cheddar's Main Street Minor Subdivision (Plat #11-12) because it meets the requirements identified within the City of Mishawaka Zoning Subdivision Control Ordinances.*

**MOTION:** Ross Deal moved to approve Plat #11-12. Gary West seconded; motion carried with a vote of 9-0.

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**PETITION #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 C-3 City Center Commercial.

Mike Wargo, Chief Operating Officer, Center for Hospice and Palliative Care, appeared to present the request. He said that over the past 2 years they have been looking at sites in

Mishawaka to operate a Hospice site. They currently have locations in Roseland and Elkhart and they also lease space in Mishawaka and Plymouth.

Mr. Wargo said Phase I of the plan will be to relocate the operations that are currently housed in the Quality Dining building in Edison Lakes and consolidate in a centralized campus along the St. Joseph river. Phase I is the Life Transition Center and administrative offices. He said they decided to go with two buildings for a more residential feel with a connecting feature. Mr. Wargo said the buildings will be designed by Helman Sechrist Architecture who specializes in lakefront homes and they anticipate starting construction in Spring 2012 with occupancy in 2013. Phase II would be in the 2014-2016 timeframe depending on funding of the facilities.

Mr. Wargo said the building to the right of Hospice House (as shown on the overhead), Edgewater Floral, would be converted into a Palliative Care Center in early 2013. It is currently located in Edison Lakes and the long term plan is to move more operations from north of South Bend into the new facilities

Mr. Deal asked if they anticipate creating new jobs. Mr. Wargo said it will initially be a relocation of jobs, but they are continuing to grow as they have in the past few years. He said there may be as many as 100 employees at the campus and have built parking into the long term plan.

Mr. Deal asked how many building would be used 24 hours per day. Mr. Wargo said Hospice House which will be a 10-12 bed unit only would operate on that schedule. He said the after-hours staff is typically 3-4 people and sometimes doctors come in during the night.

Mr. Deal asked if hours would be 9-5, five days per week for the most part. Mr. Wargo said yes, but staff may be coming in during the night to pick up supplies.

Mr. Deal said his concern was that it's a residential area and he wants to make sure that the interest of the nearby residents is taken into consideration. Mr. Wargo said that was one of the things that attracted them to this area is the residential feel; it isn't a medical setting. He said they have tried to design buildings that feel very home-like. He said the buildings in the campus would have a more residential style than commercial.

Mr. Deal said that given the size of this project and if they proceed with it they be cognizant of exterior lighting that could be a detriment to the neighborhood.

Mr. Lentsch spoke to the mission of Hospice and why the residential location is important. He said the mission is to improve the quality of living. They endeavor to take care of patients and families in a manner that is dignified to them and respects their cultural values and spiritual beliefs. Mr. Lentsch said they take a holistic view of care; team care of patients and they collaborate on how best to care for a particular patient and family that dignifies a family during a difficult time.

Mr. West asked if Hospice was a "for-profit" organization. Mr. Wargo said they were not for profit.

### **In Favor**

Johnathan Smith, 209 N. Cedar, said his home is directly south of Edgewater Floral and right next to the bridge. He said he felt Hospice would be a good neighbor, much better than the Moose who he said has been a problem in the neighborhood.

Mr. Smith said his selfish concern was that he has a back yard and has egress rights with Edgewater Floral and wants to make sure he can keep his driveway.

## **Opposition**

Jacquelynn Defauw, 315 Edgewater Drive, said she was also speaking on behalf of some of her neighbors. She said she is concerned about the maintenance building that is currently Edgewater Florist. She asked if that was also going to be the Palliative Care Center. She said she's worried there won't be enough spaces for trucks or equipment and can be seen from the street. Do they have plans to fence it in? Ms. Defauw said if that isn't going to be used as a maintenance building, then where would it be.

Ms. Defauw said she and her neighbors were also concerned about first time home buyers going in where the industrial buildings were torn down. She asked what the required income bracket would be; will they be welfare recipients; would they be built in an architectural style that would complement the neighborhood; would they have 2 or 3 bedrooms with garages with an alley access.

Mr. Prince said the Center for Hospice has purchase agreements for some homes on Pine Street and the City doesn't anticipate buying more houses.

Mr. Deal said he appreciates Ms. Defauw's comments and has some of the same concerns about the maintenance garage.

Mr. Deal also said with regard to first time home buyers; you will see a great example of a first time homebuyer program house that is located right across the street from City Hall. Ms. Defauw said she's concerned the homes would lower their home values.

Mr. Deal said this isn't the forum to discuss the required income bracket, but the Redevelopment Department could provide that information to her.

## **Rebuttal**

Mr. Wargo said one of the proposed uses for the Edgewater Floral building is a maintenance building to store paint and building maintenance supplies. He said Hospice doesn't own any vehicles so there wouldn't be any maintenance vehicles to be stored there and they would probably contract out snow removal, lawn maintenance, and general maintenance.

Mr. Winn closed the Public Hearing on Petition #11-13.

Mr. Lentsch said he wanted to welcome Hospice and they have a tremendous design and the City of Mishawaka is fortunate to have been able to attract them and they have his support.

## **Staff Recommendation:**

*The Planning Department recommends approval of Petition 11-13 to rezone multiple parcels from R-1 Single Family Residential, R-3 Multiple Family Residential, and C-1 General Commercial, to C-3 City Center Commercial. This recommendation is based on the following findings of fact:*

- 1. Existing Conditions- The properties proposed to be rezoned are located in an area of historically mixed uses. The proposed use, as a Center for Hospice campus, is low intensity that provides a nice transition between the adjacent single family homes and Central Park. The existing C-3, City Center, zoning district is located directly across the river to the south. Public infrastructure and connections to the downtown exist through the Mishawaka Riverwalk system and the proximity of the project to the Cedar Street bridge.*

2. *Character of Buildings – The existing building located on the properties include a combination of one and two story commercial and residential structures. At least one of the existing structures located on the properties is substandard and is under an order through City Code enforcement to repair or demolish. The proposed development includes a combination of one and two story commercial campus like buildings that will compliment surrounding uses and structures. The proposed C-3 City Center Zoning District has the most stringent qualitative development requirements of any City zoning district.*
3. *The most desirable/highest and best use - Because of the low intensity nature of the combined office and residential care facility, the proposed use compliments the surrounding residential and park uses. The development of the property is also limited based on the City's control of a portion of the property intended for development. City control insures that regardless of the underlying zoning, the site will be constructed for the intended use and is not speculative.*
4. *Conservation of property values- The use and value of the area adjacent to the property included in the rezoning will not be affected in a substantially adverse manner because the property will be developed with a low intensity combined office and residential care facility. The site previously contained non-single family residential uses, including the Fraternal Order of Moose, which holds events that include the consumption of Alcohol. The rezoning would allow for the redevelopment of the larger neighborhood that includes public infrastructure projects. The quality and investment in new construction will help insure that the adjacent property values are retained and possibly increased.*
5. *Comprehensive Plan – The properties were designated by the Mishawaka 2000 Comprehensive Plan as Low Density Residential and Open Space. The proposed rezoning is consistent with the 2000 Mishawaka Comprehensive Plan, created in 1990, because the property will be developed with a low intensity combined office and residential care facility, that will compliment the surrounding park and single family residential uses.*

**MOTION:** Matt Lentsch moved to forward Petition #11-13 to the Common Council with a favorable recommendation. Don McCampbell seconded; motion carried with a vote of 9-0.

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**DESIGN REVIEW:**

**DR #11-04**

A request submitted by Richard B. Nicholas, 225 North Main Street, Mishawaka, Indiana, 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.

Richard Johnson, Art Works Sign Company, 55581 Current Road, Mishawaka, appeared on behalf of the applicant, White House Cleaning, as well as the building owner.

Mr. Johnson said White House Cleaning and Restoration has been doing a lot of advertising in print and want to get optimum value from advertising on Mr. Nicholas' wall. Mr. Johnson said he has been working with Planning staff on the design of the ad. He did say the original design submittal was a bit cluttered and the requested revisions are better. The rotunda in the design is part of their logo and this advertisement would be consistent with their advertising identity.

Mr. Deal asked Mr. Johnson if they were willing to accept the Planning staff recommendations or did they want to seek approval of the original design. Mr. Johnson said he is ok with staff recommendations.

### **In Favor**

Kirk Gabrielson, 13431 Chippewa Blvd, South Bend, said they used the Capital building instead of the White House due to the prospect of being sued for the use. He said they are ok with the design and it would please him greatly if the Commission would approve this request.

Mr. Winn closed the Public Hearing on Design Review #11-04.

Mr. Lentsch asked if the revisions met the Design Review Ordinance. Mr. Prince said the sign still requires a waiver, but staff has worked with the sign company on the design revisions.

Ms. Klaer asked how long will it be on the wall. Mr. Prince said as long as White House has rented the space. Mr. Gabrielson said they are starting with 12 month lease and they have been told by the sign company that the material can stay on the wall for up to 3 years.

Ms. Klaer said she isn't comfortable with the request as the City is putting quite a bit of money into Main Street upgrades and doesn't feel it is appropriate in what the City is trying to accomplish in welcoming people to historical part of the city.

Carol Sergeant said she agreed with Ms. Klaer.

Mr. Deal asked Mr. Prince if this were a billboard, which essentially it is, what would be the City's position. Mr. Prince said what they look at, and part of the Design Review provision is to encourage creative use of design and an example of that is Doc Pierce's wall sign; it adds interest to the area. He said the signage on the wall has changed over time and each time it has changed it brought in new design.

Mr. Prince also said in a business area you expect to see signs and he asked to keep this sign in perspective with other signs in town and the City is trying to draw people downtown.

### **Staff Recommendation:**

*The Plan Staff recommends Denial of Design Review Waiver 11-4, as presented, for the north wall of 225 North Main Street to allow White House Cleaning and Restoration, but can recommend approval with the following revisions:*

- 1. Shrink the phone number on the bottom line.*
- 2. Eliminate the third line, the eight Readers' Choice Awards; thereby removing 128 characters.*
- 3. Enlarge the very top Reader's Choice Award and include the years they received the award in that medallion, such as 2003 - 2010.*
- 4. Move up the bottom two lines to make them more visible.*

**MOTION:** Matt Lentsch moved to approve Design Review #11-04 as amended. Gary West seconded; motion carried with a vote of 7-2 (*Sergeant, Klaer*).

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### **DR #11-05**

A request submitted by Richard B. Nicholas, 225 North Main Street, Mishawaka, Indiana, requesting a waiver from the Mishawaka City Design Review Ordinance Section 105-174 Signage Size Limitations for a new façade sign.

Richard Johnson, Art Works Sign Company, 55581 Current Road, Mishawaka, appeared on behalf of Mr. Nicholas. Mr. Johnson said Buzz's Used Furniture wants to revise their storefront signage. He said there is currently a mosaic tile in place and it is in need of repair; it's losing tile and is a maintenance issue. He said the sign violates the Design Review Requirements due to the sign being 22.5' in length, vs. 20', which would leave the storefront looking unfinished. They feel this is a good solution.

Mr. Winn closed the Public Hearing on Design Review #11-05.

**Staff Recommendation:**

*The Plan Staff recommends approval of Design Review Waiver 11-5 for the east wall sign at 225 North Main Street to allow a wall sign with a width of 22.5 feet.*

**MOTION:** Carol Sergeant moved to approve Design Review #11-05. Don McCampbell seconded; motion carried with a vote of 9-0.

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**SITE PLAN:**

**SP #11-B**

A request submitted by Cheddar's Restaurant for final site plan approval for a 8,000 sqft restaurant located at the **northeast corner of Main Street and Edison Lakes Parkway.**

Jeff Ballard, Danch, Harner & Associates, 1643 Commerce Dr., South Bend, appeared on behalf of the petitioner. Mr. Ballard said they are requesting approval of the site plan for the new 8,000 sqft Cheddar's Restaurant. He said they will be providing 169 parking spaces, 80 are required, and that is keeping with Cheddar's policy.

Mr. Ballard said there would be two access points to the site; one from Main Street and one from Edison Lakes Parkway. He also said Cheddar's would like to move the Main Street entrance farther north to align with the Meijer entrance across the street and they have been working with Engineering to solve some problems. Mr. Ballard said if they have the standard deceleration lane, they would have to move the existing vault and that could be upward of \$90,000.00 to do so. The proposed deceleration lane is shorter and Engineering has approved it. He also said Cheddar's is worried about customers having to do a U-turn from Main Street to enter the property.

Gary West asked why the customers couldn't just enter from Edison Lakes Parkway. Mr. Ballard said that is an outstanding issue and would be taken care of. He said that is the only issue on the site and has resubmitted plans with all changes except the entrance. Mr. Ballard said the Fire Department asked for an additional hydrant, and they have provided that. He said they are also working with Planning to beef up landscaping at the site.

Mr. Deal asked where the power supply vault shown on the site plan. It is shown just north of the existing proposed entrance on Main. Mr. West said there are other issues with this and that is part of their concerns. If they do the entrance in a substandard way and there are accidents, people will want to know who approved it.

Mr. Ballard said the entrance would be similar to what is existing by Gordon's and Culvers. Mr. West said this entrance would be off-site and ingress-egress easements would be required and they are working through that.

Mr. Deal asked Mr. Ballard to tell them a bit about Cheddar's Restaurant. Mr. Ballard said they are similar to Houlihan's in quality.

Mr. Deal asked if they would have a liquor license. Mr. Ballard said yes. They have two restaurants in Indiana and are based in Texas.

Mr. Lentsch asked if the Commission could approve the site plan if there were still outstanding issues. Mr. Prince said yes, the real issue is an engineering standard and that up to Mr. West to work through with the applicant.

Mr. West said in all fairness to Mr. Ballard, the entrance issue was a late event that didn't come up until last week.

Mr. Deal said assuming the Commission approves the site plan, what is the time line. Mr. Ballard said they hope to start construction before fall.

**Staff Recommendation:**

*Provided a revised site plan is submitted addressing the outstanding items, the Planning Department recommends approval of Site Plan 11-B for a Cheddar's Restaurant because it meets the requirements of Sec. 137-35 Final Site Plan Approval.*

**MOTION:** Don McCampbell moved to approve Site Plan #11-B. Ross Deal seconded; motion carried with a vote of 9-0.

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**PUBLIC COMMENT:**

Johnathan Smith, 209 S. Cedar Street, said that for nearly three years the City has threatened to take his property by eminent domain. He said he made the City a very fair offer for his home and if the City doesn't agree on the value of his property, then let him have his day in court. Mr. Smith said the Constitution of the United States said they must pay full and just compensation, not fair market value. He said he told the City the price is \$350,000.00 and he's not budging from that amount. A while back he gave Ken Prince five days to make him an offer. Three years ago Mr. Smith thought he could get \$205,000.00 and this could have been settled years ago for much less. Mr. Smith said he wants his day in court or he wants the sidewalk moved that is coming to his back yard.

Mr. West said he didn't think this discussion was germane and this was not the forum. Mr. Smith said he just wants his day in court, to be left alone.

Mr. West said this is a legal situation and this is not the body to do it. Mr. Smith said he has been told he can't sue the City to buy his house.

Mr. Portolese said the Planning Commission has nothing to do with this issue.

Mr. Smith said they had no idea how many times he's been approached about his home and how this will change his socioeconomic status. He said the City can't steal his and his wife's home.

Mr. West moved to adjourn. Mr. Lentsch seconded.

**ADJOURNMENT:** 8:08 p.m.

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Kenneth B. Prince, City Planner

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Kari Myers, Administrative Planner