

NOVEMBER 15, 2011
PLAN COMMISSION
CITY OF MISHAWAKA, INDIANA

A regular meeting of the Mishawaka Plan Commission was held Tuesday, November 15, 2011, at 7:00 p.m. in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Commission members attending: Matt Lentsch, Ross Deal, Ross Portolese, Murray Winn, Carol Sergeant, Edward Salyer, and Rosemary Klaer. Absent: Gary West and Don McCampbell. In addition to members of the public, the following were also in attendance: David Bent, Ken Prince, Greg Shearon, Peg Strantz, and Kari Myers

Murray Winn explained the Rules of Procedure.

The Minutes of the October 11, 2011, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

PLAT #11-16

A request submitted by the City of Mishawaka seeking approval of the four-lot Main-McKinley Subdivision. *Continued from the October 11, 2011 hearing.*

Mr. Winn said he received notice from Gary West that he was withdrawing this item and it will be re-submitted at a later date.

PETITION #11-28

A petition submitted by Larry J. and Becky L. Penn requesting to annex and zone property on the north side of Douglas Road, east of Fir Road to S-2 Planned Unit Development to allow for commercial and residential uses. *Staff requests continuance to December 13, 2011 meeting.*

Mr. Winn said the Planning staff has requested this item be continued to next month's meeting. Carol Sergeant moved to continue, Rosemary Klaer seconded; unanimously approved.

PETITION #11-29

A petition submitted by Larry J. and Becky L. Penn requesting to annex and zone property on the north side of Douglas Road, east of Fir Road to S-2 Planned Unit Development to allow for commercial and residential uses. *Staff requests continuance to December 13, 2011 meeting.*

Mr. Winn said the Planning staff has requested this item be continued to next month's meeting. Edward Salyer moved to continue, Carol Sergeant seconded; unanimously approved.

PETITION #11-30

A petition submitted by Larry J. and Becky L. Penn requesting to annex and zone property on the north side of Douglas Road, east of Fir Road to S-2 Planned Unit Development to allow for commercial and residential uses. *Staff requests continuance to December 13, 2011 meeting.*

Mr. Winn said the Planning staff has requested this item be continued to next month's meeting. Matt Lentsch moved to continue, Ross Deal seconded; unanimously approved.

PETITION #11-24 A petition submitted by the City of Mishawaka to vacate a portion of Old Fulmer Road.

Ken Prince, City Planner, presented the Petition. He said this request is the former location of Fulmer Road near Meijer (aerial view shown). He said the City had been working with Meijer, who acquired the property, and they donated some property to allow for the realignment of the traffic light on Ireland Road. Mr. Prince said the City was remiss in not filing it before now. He said there is no pavement or underground utility and is a developable lot.

Mr. Winn closed the Public Hearing.

Staff Recommendation

The Staff recommends in favor of Petition 11-24 allowing for the vacation of a portion of Fulmer Road. This recommendation is based upon the following findings of fact:

- 1. The vacation will not hinder the growth or orderly development of the neighborhood. The vacation will allow for improved growth and orderly development of the neighborhood.*
- 2. The vacation of the established right-of-way will not make access to any adjacent property difficult or inconvenient.*
- 3. The public right-of-way does not provide access to any church, school, public building or place and thus will not hinder the public's access to any of the aforementioned destination;*
- 4. The proposed vacation will not hinder the use of any public way, utility or place.*
- 5. This petition is not in specific conflict with the goals, objectives, and policies of the Comprehensive Plan.*

MOTION: Ross Deal moved to forward Petition #11-24 to the Common Council with a favorable recommendation. Rosemary Klaer seconded; motion carried with a vote of 7-0.

PETITION #11-25 A petition submitted by Merna M. Holloway and Brian T. Linson requesting to rezone **201-203 East Mishawaka Avenue** from C-1 General Commercial District to C-3 City Center Commercial District.

Brian Linson, 201-203 Mishawaka Avenue, presented the Petition. He said they are requesting to rezone their property to C-3 because they feel it better reflects the actual use of the property which is a combination of residential and commercial.

Mr. Lentsch asked what the building is being used for and what changes are planned. Mr. Linson for the last 25 years there has been a storefront on the lower level and four one-bedroom units on the second floor. He said they also like the idea of a commercial and residential classification rather than just the commercial.

Mr. Lentsch asked if it will change the use of the building. Mr. Linson said not at all. The zoning will be consistent with the property to the south that the City recently rezoned to C-3.

Mr. Winn closed the Public Hearing.

Staff Recommendation

The Staff recommends in favor of Petition 11-25 rezoning three parcels known as 201/203 East Mishawaka Avenue, from C-1 General Commercial District to C-3 City Center Commercial District. The recommendation is based upon the following findings of fact:

- 1. The property's proximity to the Riverwalk and adjacent C-3 property make it compatible to the area by providing a desired mixed-use urban development.*
- 2. The proposed C-3 zoning, with the associated design review restrictions inherent to that district, will compliment and support the variety of uses in the existing City Center.*
- 3. C-3 City Center Commercial is the most desirable zoning for the parcels because it is the only zoning classification that will allow for a combination of residential, commercial and institutional uses.*
- 4. As opposed to the range of potential commercial development that could occur with the current C-1 zoning, rezoning these parcels to the C-3 City Center classification will have a favorable and stabilizing impact on the neighborhood, by conserving property values in the immediate and surrounding neighborhood.*
- 6. The recommendation is consistent with the goals and objectives of the Mishawaka Comprehensive Plan which denotes General Commercial.*

MOTION: Ross Deal moved to forward Petition #11-25 to the Common Council with a favorable recommendation. Matt Lentsch seconded; motion carried with a vote of 8-0.

PETITION #11-26 A petition submitted by PD Realty LLC requesting to annex and zone **914 and 916 East McKinley Avenue** to C-4 Automobile Oriented Commercial District and I-1 Light Industrial District.

Bill Pemberton, 1333 Patriot Ct., Mishawaka, said he was representing the partnership that purchased the property. He said they were in the process of cleaning up the property and rehabbing the building.

Mr. Pemberton said the southern 100' of the property is currently in the City and the north portion is county. They want to bring all into the City and zone appropriately for its use.

Mr. Pemberton said there is currently a used car lot at 914 E. McKinley and the existing modular office will be removed by the end of November and they will continue to clean up that section of the property.

Mr. Lentsch asked what their plans were for the property. Mr. Pemberton said they will move their office that are now on Union Street into the building as well as inventory that is located at Dodge. An electrical group will also be located in the building as well.

Mr. Winn closed the Public Hearing.

Staff Recommendation

Staff recommends approval of Petition #11-26 to annex approximately 6 acres located north of 914 & 916 E. McKinley Avenue into the City of Mishawaka and zone to C-4 Automobile Oriented Commercial and I-1 Light Industrial. This recommendation is based upon the following findings of fact:

- 1. Existing Conditions- The subject parcel is currently developed and has previously been utilized for commercial, light industrial and automotive commercial uses.*

2. *Character of Buildings – The character of the buildings located adjacent to and in the surrounding area are commercial, light industrial, and automotive commercial.*
3. *The most desirable/highest and best use – Because of the existing I-1 Light Industrial zoning on that portion of the property located within the City and the property's historical use of a car dealership, the most desirable uses for the property is an automotive oriented commercial zoning and light industrial.*
4. *Conservation of property values- The proposed zoning will not be injurious to property values in the surrounding area, because the automobile oriented commercial use and light industrial use is consistent with those located within the surrounding area.*
5. *Comprehensive Plan- The Comprehensive Plan, created in 1990, guided general commercial and industrial development within this area. The petition to annex and zone to C-4 Automobile Oriented Commercial and I-1 Light Industrial is consistent with the Comprehensive Plan.*

Furthermore, Staff recommends approval of Petition #11-26 to rezone that portion of property zoned I-1 Light Industrial located at 914 E. McKinley to C-4 Automobile Oriented Commercial. This recommendation is based upon the following findings of fact:

1. *There are C-4 Automobile Oriented Commercial zonings to the west and adjacent and to the southeast of property.*
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 existing automobile commercial uses in the area, staff feels that the most desirable use for this property is its historical automobile oriented commercial use;*
3. *Because the parcel is located in an area of commercial, industrial, and automobile commercial properties, the rezoning to C-4 Automobile Oriented Commercial is a desirable use for this property;*
4. *Rezoning this property to the C-4 zoning classification will have a favorable and stabilizing impact on the neighborhood, conserving property values in the immediate and surrounding neighborhood; and,*
5. *The proposed rezoning to C-4 Automobile Oriented Commercial is consistent with City's Comprehensive Plan which indicates general commercial uses for this portion of property.*

MOTION: Matt Lentsch moved to forward Petition #11-26 to the Common Council with a favorable recommendation. Rosemary Klaer seconded; motion carried with a vote of 7-0.

PETITION #11-27 A petition submitted by Purlight, LLC, 1st Source Bank, and Diversified Real Estate, LLC, requesting approval to amend the Twelfth Street Planned Unit Development to permit an automated teller machine on Lot 1, Filling station/convenience store and car wash on Lot 2, and general commercial uses on Lot 3.

Pat Brown, SiteScapes at 1003 LWW, Mishawaka, appeared on behalf of the Petitioners. He said this is an amendment to a previous Planned Unit Development that was tabled in 2007 due to the impending construction on Capital Avenue.

Mr. Brown said this is a three-lot PUD and the first lot, on the east, has been sold. This will be for the relocation of the original First Source ATM and will also hold a convenience store/gas station/car wash. He said it's the same tenants, they are just relocating.

Mr. Brown said the third lot is for future development and limited to C-1 uses.

Opposition

Don Kiiskila, 1540 Southwood Dr., Mishawaka, said he had no objections to the convenience store, but the groundwater is 4 ½' in that area. He said there are test wells at 12th and Byrkit and the aquifer runs toward Eller Ditch. He asked how they were going to put an 8' tank into a 4 ½' groundwater table. He said he worked for 50 years in that business and he made fiberglass tanks and you have to think of the future. Bendix Park Lake is within a couple hundred yards of that site. What happens if there is a gasoline leak and he asked the Commission to please think about the future.

Rebuttal

Pat Brown said the high groundwater issue is no different than the gas station across the street. He said they are looking at raising the building 2 ½' due to the higher elevation of Capital.

Mr. Brown said as far as the fuel tanks were concerned, with today's technology, they are double-walled with lots of monitors and it's almost impossible to spill a drop of fuel. The tanks will be the safest thing on the site.

Mike Dobson, Diversified Properties, 514 Dixie Way North, said they will have to de-water the site, pour concrete, let cure, set the tanks, and they won't be going anywhere. He said the weight of the product will keep the tanks firm in position. He said when the previous tanks were removed they had been there 25 years and had not spilled.

Mr. Winn closed the Public Hearing.

Staff Recommendation

Staff is recommending that the following conditions be included in the ordinance as part of this PUD amendment. These conditions shall replace those conditions established within the original PUD:

- *Lot 1 shall be limited to one freestanding automated teller machine and those uses identified by the C-1 General Commercial District.*
- *Lot 2 shall be limited to one filling station/convenience store, car wash and those uses identified by C-1 General Commercial District.*
- *Lot 3 shall be limited to those uses identified by the C-1 General Commercial District.*
- *The freestanding automated teller machine may be installed in a prefabricated metal structure in the form of the number (1) in lieu of not placing a freestanding main identification sign on the parcel.*
- *All site lighting shall be limited to 25 feet in height. 90-degree full cut-off fixtures shall be required for both pole and wall mounted fixtures. Full cut-off fixtures shall be provided for all under canopy lighting.*
- *Required front-yards, rear-yards, side-yards shall be provided consistent with the C-1 General Commercial zoning district.*
- *Landscaping on Lot 1 and Lot 2 may be in accordance with the Landscape Plan submitted with the Final PUD Site Plan. Lot 3 landscaping and screening shall be consistent with the General Commercial Landscape Ordinance.*
- *All Parcels shall maintain a 25-foot front building setback and a 10-foot pavement setback from all road right-of-way.*
- *Outside sale display for loose items shall only be permitted on Lot #2 and shall be identified on any final planned unit development site plan, and shall exclude areas north of the pump islands. Outside display for loose items shall be prohibited within*

- designated parking areas, drive/travel lanes, and within 50' of the road right-of-way.*
- *Free-standing signage shall be limited as follows- Lot #1- no sign if developed as intended for an ATM in the shape of a number one. If Lot #1 is developed for general commercial uses, the sign shall be limited to a monument sign no greater than 8' in height and 60 square feet in display area. Lot #2- shall be limited to no greater than 30-ft in height and a maximum of 180 square feet in display area. Lot #3 is developed for general commercial uses, the sign shall be limited to a monument sign no greater than 8' in height and 60 square feet in display area.*
 - *General façade and directional signage standards shall be submitted concurrently with the final planned unit development plan submission, including a sign package. Limits on the height of letters/signage for façade signs shall be reviewed, evaluated, and approved by the Planning Commission at that time.*
 - *The car wash shall utilize architectural materials deemed appropriate by the Design Review Ordinance, consisting primarily of architectural block, brick, and/or EIFS. The car wash shall not contain any flashing or moving exterior lighting.*
 - *All loading docks, dumpsters, and mechanical equipment shall be screened from view. Dumpsters shall be screened by a wall matching the building materials of the principle building. Dumpster locations shall be located away from any roads behind principle buildings and located away from internal collector drives.*
 - *Drive locations and sanitary sewer connection and extension locations shall be further reviewed and evaluated as part of any final planned unit development submission. The number of curb cuts and any required improvements relative to interior drives, turn lanes, median extensions, sanitary sewer extensions/platting shall be as determined by the City of Mishawaka Director of Engineering.*

The Planning Staff recommends approval of Petition 11-27 to amend the 12th Street PUD to allow for one filling station with accessory car wash, a freestanding automated teller machine, and uses limited to those identified by the C-1 General Commercial zoning district. Approval is subject to the conditions approval identified by staff in the analysis. This recommendation is based on the following findings of fact:

1. *Existing Conditions- The subject parcel is located at the corner of Capital Avenue and 12th Street, both heavily traveled arterial roadways.*
2. *Character of Buildings – The character of many buildings located along 12th Street is commercial.*
3. *The most desirable/highest and best use – The dramatic commercial growth in the area in recent years has altered the highest and best use of the property from residential to mixed commercial uses. The future expansion and rerouting of Capital Avenue will continue to make the area a desirable place to locate intensive commercial uses.*
4. *Conservation of property values- The proposed PUD amendment will not be injurious to property values in the surrounding area, because commercial development already exists within the surrounding area.*
5. *Comprehensive Plan- The Comprehensive Plan, created in 1990, guided residential development within this area. Recently development patterns within the area, along with the expansion of Capital Avenue and the impact that project will have on traffic and development along the corridor, has alter developmental patterns from what once was a desirable location for residential development to more intensive commercial growth. Residential development is no longer desirable within this area and comprehensive plans must be reevaluated as development trends change over the years.*

MOTION: Ross Portolese moved to forward Petition #11-27 to the Common Council with a favorable recommendation. Carol Sergeant seconded; motion carried with a vote of 7-0.

PETITION #11-31 A petition submitted by Toscana Realty, LLC, requesting to amend the Toscana Park Planned Unit Development to permit single and multiple family residential and general commercial.

Daryl Knip, Abonmarche Consultants, 750 Lincolnway East, South Bend, appeared on behalf of the Petitioner. He said the Toscana Park PUD was originally approved to allow primarily commercial uses on the 33 acre site along with 22 single family lots on the east end, but unfortunately the commercial real estate market is not as it was when approved and much of the site sits vacant. He said they are requesting to amend the PUD to allow 104 multi-family attached high end residences in 11 buildings on the north end of the site. Mr. Knip said the buildings would be 2-story and a few 3-story. All residences would have at least one garage.

Mr. Knip said that all previously approved buffers will be maintained or enhanced. The commercial building will be remodeled to be used as a clubhouse, offices, and C-1 uses. He said the developer will work with the Engineering Department to finish improvements and widen Gumwood Road.

Ryan Rans, Toscana Real Estate, 54401 26th Street, South Bend, said he was before this Board in the past in connection with University Commons Medical Plaza. This asset was different as it was not working as retail and he saw it as an adaptive use. In this case, he wants to modify to high-end multi family residential. He said originally, retail extended to the northern boundary and asked how do you reduce the density and create a blend from residential and villa community.

Mr. Rans said they will be extremely high-end attached multi-family buildings and he sees this as a way to stabilize the commercial and retail that will remain.

Mr. Rans said in the past few weeks he has met with several neighbors in Brendon Hills and what is being shown is slightly different than what was originally submitted. He said they originally planned to add an amenity on the east end of the site and the villa residents want to keep those as single family and they will be built as villas instead and the recreation area has been moved further south. They will also be adding a tree line and fencing to keep the 50' buffer between the 2 neighborhoods.

Mr. Rans said he isn't looking for any tax abatements and he is looking to start construction in the spring and it will be an \$8 million dollar project.

Mr. Portolese asked if they will be rental or owner occupied. Mr. Rans said they have been designed as condos, but will be rented as apartments and are looking at full occupancy. He said they will be a step above Main Street Villages.

Mr. Rans said they want to discourage students from renting and a price point in self selection will drive the market. He said most apartments will only have 2 bedrooms and some will have 3 bedrooms. He said they were designed as flats to attract a mature population. He said this will add something to the market that is currently underserved.

In Support

Tom Eslinger, 7514 Toscana Ct., said he met with Mr. Rans last week and he's one of the three homeowners most affected by this plan. He said as long as Mr. Rans is willing to go along with

his plans and keep lots 1-3 as single family, he has no objection and looks forward to positive happening.

Opposition

Tom Holobyn, 52530 Glenmore Ct., Granger, said this is the third time he has been here. He said his connects with this property and was not part of a neighborhood meeting and is probably closest to the project. He said he is concerned about a 3-story complex. Where would it be? Mr. Rans said the 3-story buildings would be located on the interior drive and the 2-story buildings would be closer to the residential neighborhoods to the north. Mr. Rans said the 3-story building would block sight and sound from the commercial portion of the complex. The 2-story buildings will be similar in height and mass to the residential homes to the north. He said they wanted to keep the scale and proportion similar to the homes in the area and they have purposely kept the rooflines low.

Mr. Holobyn asked how long the apartments would stay high end. Is there something that guarantees that 5 years down the road it's still high end?

Mr. Portolese said they would have to take Mr. Rans word for it. Mr. Rans said due to the lack of density, cost of materials, and size of units it will be difficult to least at a lower rate to make them work. He said they are looking at marketing at \$1,100 - \$1,600 per month.

Mr. Prince said that the Council can adopt conditions as part of any approval and staff has recommended a number of conditions. If any part of the plan is changed, then they would have to come back for another approval. Any changes to this plan would require approval. He said the maximum building height in the R-1 zoning district, 35 feet, has been adopted as a condition for the 2-story buildings and 45 feet for the 3-story buildings. The maximum height for the C-1 zoning district is 48 feet and these buildings would provide a transition.

Mr. Holobyn asked if they would be keeping the tree line. Mr. Rans said yes and they will be enhancing it; they would add where none is presently. Mr. Holobyn asked if that tree line was in the wording. Mr. Rans said yes.

Mr. Holobyn asked if the traffic coming through the apartments would be 5-lane. Mr. Rans said there will be a 5th lane added on Gumwood from the northern entrance up to the northern boundary of the city.

Mr. Prince said there will be a transition of 5 lanes to 3 lanes over time. Currently, the county section is 3 lanes and there are 5 lanes in the city near commercial. He said that transition will be up to the City and county engineers.

Stephen Miller, 15837 N. Lakeshore, Granger, said southbound on Gumwood Road is awful and if another southbound lane isn't added, this whole thing won't work. Traffic backs up all the way to Brendon Hills several times during the day.

Mr. Miller also wanted to know what opportunity will there be for apartment residents to have group parties behind their apartments. Will there be green space? Mr. Rans said the apartments have a small patio and they will be located underneath the balcony and that will keep noise, light, and people more inward to the complex, and most of the common areas will be located in the middle of the complex.

Rhonda Polite, 52459 Glenmore Court, Granger, asked about the continuing quality of the development. She said they have Mr. Rans word, but she doesn't know him but has heard of his reputation. She said at a previous meeting they had the word of Mr. Macri that everything along Gumwood Road would remain and changes will now take place. Ms. Polite asked what will prevent him from selling the property. The local residents have gone through a lot over the years; they have given up property for the widening of the roads and now they'll have apartments up to their back yards. Ms. Polite said they want to see what kind of buffer there will be on the northern most portion of the site. Mr. Rans said landscaping will be added to the tree line buffer at the northern most portion of the site. The two houses on Gumwood will be removed.

Ms. Polite said they were told the buildings along Gumwood would only be 1-store. Mr. Rans said the building height will not exceed 35' and it will be much softer than a hardscape commercial building.

Ms. Polite said at what point do you say no to encroaching commercial/multi use development and look at the homeowners who have lived in established neighborhoods and who want to continue living there. She wants to keep the integrity of the area. She said at what point do you say no to changes that impact homeowners who are taxpayers also. Ms. Polite said she looks at it as a no-win situation with the traffic and noise and she said couldn't imagine 104 apartments feeding on to Gumwood. She said people cut through their property to get through to Toscana and she's concerned about crime and her property values and asked the Commission to please think of the individual home owners.

Robert Stahelin, 52479 Glenmore Court, Granger, said he is impressed with the plan, but asked if the exit at the northwest absolutely necessary. He said the previous developer agreed to a privacy fence. Mr. Rans said the fence will continue. He also said at the urging of the Fire Department that exit is necessary to thee would be no dead end, but this exit is narrower than the exit farther south. That entrance will not be advertised with a large monument sign.

Mr. Stahelin asked if any trees would be removed. Mr. Rans said maybe the removal of some scrub trees, but no removal of actual trees.

Patrick Polite, 52459 Glenmore Court, Granger, asked if they will continue to respect the 50' buffer zone on the northern boundary. Mr. Rans said there would be 15' of landscaping and 24' of buffer. There may be a few spaces with less than 50'.

Mr. Polite asked if he would stand by his word and keep the buffer at 50'. Mr. Rans said he would be happy to look at additional screening and privacy fence in the areas with less than 50 feet.

Jacqueline Badics, 15880 S. Lake Shore Drive, Granger, said she has appeared before this Commission in the past. She said she's on the Gumwood Road Committee and they still have not seen the widening of Gumwood Road. Ms. Badics said her argument is they are putting the horse before the cart and developing without putting in the infrastructure first. She said it often takes 5-10 minutes to get out of her subdivision onto Gumwood.

Ms. Badics said she doesn't have a problem with residential as a buffer zone, but has a big problem with it being apartments. She said there was lots of controversy previously and they worked with the residents and now she feels as if she's being undermined. Ms. Badics said she's not opposed to development, in fact she likes having the Martin's on the corner. She only wants Mr. Rans to listen to the residents and sit down and talk about what can be done to benefit the tax payers. Ms. Badics said she has seen kids partying in \$500,000 apartments at Notre Dame and what does he think is going to stop them from coming here.

Ms. Badics also asked how they know what high end is. Is it because they have a garage? She said she had noise problems and traffic is a nightmare. Why would you want to build and wait for traffic accidents to happen? She isn't in opposition to him developing the property, but wants to see more communication. The original deal was offices along the north property line and that's what was agreed to. She said Mr. Macri was good about meeting with residents and she has not met personally with Mr. Rans. Ms. Badics said these people are going to have the same problem with people cutting through to get to Brick Road and now you are going to create a nightmare.

Susan Stephens, 52525 Woodington Court, Granger, said she lives on the other side of the development and her property backs up to the villas. She asked if the fence will be continued where there are gaps. Mr. Rans said the gap will be filled and it will be continuous all the way and the landscaping will match what is there.

Ms. Stephens said lots 4-5 were zoned single family and asked the Commission give consideration to keep lots 4-5 as single family. She said she doesn't understand why the apartments have to encroach on these lots. Mr. Rans said the extra space was needed to reduce the density and provide a buffer between the apartments and the homes. He said that's the best use and you will see a benefit.

Ms. Stephens said she is requesting those lots remain as single family. Mr. Rans said he met with the villa owners and discussed their concerns. He said the villas are more proximate than she is and he has addressed their concerns. He also said he is adding fence and trees along the north line to screen noise and light even further.

Rebuttal

Mr. Rans said he did his best to meet with as many residents as possible as well as meeting with the Homeowners Association (HOA) of Brendon Hills. He said everything you see has been provided to the HOA so it could be circulated among the residents. Mr. Rans said he is committed to doing what he has proposed. He said he has overdone the information so there aren't broad strokes and wants to be held accountable to the detail and what he has committed to.

Mr. Rans said he can deal with the Gumwood Road width in the county, but can widen in the city limits and has committed to do so. He said he would like to meet with the City in the future about a traffic light at Toscana to help with traffic and he is still willing to meet with any concerned homeowner.

Mr. Portolese asked Mr. Rans if he would own the apartments. Mr. Rans said yes.

Mr. Winn closed the Public Hearing.

Mr. Prince read a letter of support from Dale Devon.

Mr. Prince read a letter of remonstrance from Joleen Holobyn.

Mr. Lentsch asked Mr. Prince if he knew what the plans were for the widening of Gumwood Road. Mr. Prince said the property on the west side of Gumwood Road is in unincorporated St. Joseph County and once the city is able to obtain that property, the road will be improved. The City has had interest in that property for 3 years.

Staff Recommendation

Staff recommends in favor of rezoning Petition # 11-31, Toscana Park, to amend a preliminary planned unit development for a change permitted uses to include multiple family residential rental uses on approximately 12.7 acres subject to the previously adopted conditions which shall be supplemented as follows:

- 1. Uses shall be expanded to allow 12.7 acres of the previously approved and partially developed 33 acre PUD to allow for the construction of new multiple family residential buildings, not to exceed 104 units. Units shall be high quality with individual garages, consistent with submitted concept plans.*
- 2. All units shall be limited to two-stories and a maximum height of 35 feet, except for buildings immediately adjacent to the Villa Macri Restaurant. These internal buildings may be three stories with a maximum height of 45 feet.*
- 3. If the 5 single family villa lots are included and not removed from the request, and an alternative buffer/plan is not approved by the existing Villa owners, a buffer including fencing similar in scope to the buffer provided to Brendan Hills shall be developed between the uses, including mounding, fencing, landscaping, and substantially more new plantings to compensate for the lack of existing vegetation that currently exists between these areas. A detailed plan of this buffer shall be submitted subject to staff review and approval. If the 5 single family lots are removed from the petition by the developer, a 6' wood privacy fence, in addition to the buffer planting as originally required shall be provided.*
- 4. Where necessary, the developer shall install additional landscaping around the perimeter of the amended PUD to comply with the original approvals. Internal landscaping around and between buildings and parking areas shall be provided. Landscape buffering shall also be provided along Gumwood Road, subject to staff review and approval.*
- 5. Prior to occupancy, improvements to Gumwood Road and the common storm water retention basin shall be completed consistent within past approvals as may be directed by the City of Mishawaka Department of Engineering.*

This recommendation is based on the following findings of fact:

- 1. Existing Conditions- The subject parcel is located on Gumwood Road, a heavily traveled arterial roadway. The site has in excess of 1000 lineal feet of frontage on Gumwood Road. The site is located immediately across the street from existing businesses and the City Well field. A significant retail shopping area in excess of 30 acres has been developed immediately south of and adjacent to the PUD. The proposed change in use is a good adaptive reuse of undeveloped and underdeveloped previously approved commercial property. With the ability to place conditions requiring landscaping and buffering, a plan is in place to mitigate potential impacts to the existing single family villa sites*
- 2. Character of Buildings in Area- The character of many of the buildings located along Main Street and Gumwood Road are commercial from the north property line of the proposed site to the south. The buildings north and east of the proposed site are predominantly residential; making the proposed multi-family residential uses on the north side of this property an appropriate transition.*
- 3. The most desirable/highest and best use- Because of the parcels' location and the significant commercial development along the Main Street Gumwood Road corridor, combined with the surrounding single family residential subdivisions, makes the most desirable use for the property as high quality multiple family housing. Although there are adjacent single family residential properties to the north and east, the lack of any direct internal road connection and the existing commercial uses warrants a higher more intense use than single family residential.*

4. *Conservation of property values- The proposed zoning will not be injurious to property values in the surrounding area, because the proposed/required blend of uses transitions the proposed uses from higher to lower intensities where the development is adjacent to existing neighborhoods. Furthermore, if approved, the adjacent residential parcels would be protected by the series of conditions placed on the planned unit development. These conditions include among other significant restrictions as requiring substantial screening and landscape "green" buffer yards between uses.*
5. *Comprehensive Plan- Although this specific property was not guided in the Mishawaka 2000 plan, the petition is reasonably consistent with the goals, objectives and policies of the Comprehensive Plan. The Plan, created in 1990, guided general commercial uses along the Main Street (Gumwood Road extended) Corridor. The continued change and expansion of the commercial areas of the City are proportionate to the substantial residential growth that occurred in an almost uncontrolled manner in the unincorporated County from the time of adoption of the Mishawaka 2000 Comprehensive Plan in the early 1990's.*

MOTION: Ross Portolese moved to forward Petition #11-31 to the Common Council with a favorable recommendation. Matt Lentsch seconded; motion carried with a vote of 7-0.

PLAT #11-32 A petition submitted by Purlight, LLC, 1st Source Bank, and Diversified Real Estate, LLC, requesting approval of the three (3) lot plat.

Ed Fisher, Fisher Land Surveying Services, 303 E. Third Street, Mishawaka, represented the Petitioners. He said this plat goes along with the PUD Amendment heard earlier in this meeting.

Mr. Fisher said the plat was originally tabled due to the Capital and 12th Street expansion and they have had to wait until now to plat the property.

Mr. Winn closed the Public Hearing.

Staff Recommendation

Planning Department recommends that the Petitioner's request for preliminary and final PUD plat approval of Plat 11-32, 12th Street PUD, be approved. This recommendation is based on the fact that the Plat meets all the requirements of Section 133-73 (Preliminary Plat) & Section 133-76 (Final Plat).

MOTION: Matt Lentsch moved to approve Plat #11-32. Edward Salyer seconded; motion carried with a vote of 7-0.

PETITION #11-33 Amendment to the Floodplain Ordinance to correct a scrivener's error.

Ken Prince, City Planner, said there was some nomenclature omitted from the original Ordinance and this amendment will add back in.

Mr. Winn closed the Public Hearing.

MOTION: Ross Deal moved to forward Petition #11-33 to the Common Council with a favorable recommendation. Carol Sergeant seconded; motion carried with a vote of 7-0.

DESIGN REVIEW:

DR #11-09

A request submitted by Donald and Leslie Kelly requesting a waiver from the Mishawaka City Design Review Ordinance Sections 105-173 Projecting Signage Clearance, 105-174 Signage Size Limitations, and 105-178 Signage Style Considerations for **101 Lincolnway West (Phoenix Bar & Grill)** to allow a marquee-style sign suspended over the sidewalk and employing use of an electronic message center.

Scott Franko, US Signcrafters, 216 Lincolnway West, Osceola, presented the request. He said the owners of Phoenix Bar & Grill contacted him to come up with a concept similar to the Nappanee Theater for their building. Mr. Franko said the structure they are proposing will be done in a similar fashion. He said the structure will function as a sign and as an ornamental feature of the building taking into consideration the engineering of the building.

Mr. Franko said the owners are considering two concepts; a structure over the entry of the venue or one shifted toward the corner of the building. The concepts are similar, but the positions are different.

Mr. Lentsch asked Mr. Franko if he had read the staff report and did he agree with the conditions outlined by staff. Mr. Franko said yes, and the content would be controlled and how the message would be changed.

Mr. Winn closed the Public Hearing.

Staff Recommendation

The Staff considers the digital display is appropriate provided:

1. *the sign shall not flash,*
2. *there shall be at the least an eight (8) second time interval between each successive display frame,*
3. *the sign shall not have animated movement,*
4. *the sign shall have dimming capacity, transitioning from daytime to nighttime.*

The Plan Staff recommends approval of Design Review Waiver 11-09 to permit a digital/automatic changing display that would be installed on the corner of The Phoenix Bar & Grill, 101 Lincolnway West.

MOTION: Carol Sergeant moved to approve Design Review #11-09. Edward Salyer seconded; motion carried with a vote of 7-0.

DR #11-10

A request submitted by CCG Properties, LLC, requesting a waiver from the Mishawaka City Design Review Ordinance Section 105-109 Vending Machines to permit an outdoor vending machine at **101 East McKinley Avenue (Walgreens)**.

Anthony Hubble, Manager, Walgreens, said he is requesting a waiver for a Red Box kiosk to be placed at the exterior of the building. He said it would be along the south wall of the building, approximately 30' from the entrance and centered under an awning. This location will also allow wheelchair access.

Ms. Klaer asked why it was necessary to have the machines outside of the building when beverages are sold inside. Mr. Hubble said this machine rents DVD's and is accessible to the

consumer 24 hours per day. He said sometimes kiosks are located inside locations open 24 hours.

Mr. Winn closed the Public Hearing.

Staff Recommendation

The staff would be in favor of a waiver at this Walgreens location on the condition that the machine be located under a building canopy or under the window awnings, similar to the RedBox that is located at the Walgreens store at the intersection of Edison Road and Ironwood Drive in South Bend (as seen in photos below). The location of the station shall not block the walkway adjacent to the building and/or restrict handicap access to and from the entrance.

MOTION: Matt Lentsch moved to approve Design Review #11-10. Edward Salyer seconded; motion carried with a vote of 5-2 (*Portolese, Klaer*).

DR #11-11

A request submitted by Ireland Green, LLC, requesting a waiver from the Mishawaka City Design Review Ordinance Section 105-109 Vending Machines to permit an outdoor vending machine at **3425 Bremen Highway (Walgreens)**.

Mike Barna, Manager, Walgreens, said his request is the same as the one previous and these kiosks would be located approximately 32' from the entrance and would still allow 4' of clearance on the sidewalk. It would also be located under a canopy as recommended by staff.

Mr. Winn asked it if would face Bremen Highway. Mr. Barna said yes.

Mrs. Sergeant said she knows that Meijer across the street has a Red Box inside of their store and asked if this was necessary. Mr. Barna said that Red Box was ok with both locations and consumers would have easy access to either location.

Ms. Klaer asked who is responsible for keeping the area around the kiosks clean. Mr. Barna said the store staff is responsible. He said it is his task to walk around the store each evening to make sure the property stays clean.

Mr. Winn closed the Public Hearing.

Staff Recommendation

The staff would be in favor of a waiver at this Walgreens location on the condition that the machine be located under a building canopy or under the window awnings, similar to the RedBox that is located at the Walgreens store at the intersection of Edison Road and Ironwood Drive in South Bend (as seen in photos below). The location of the station shall not block the walkway adjacent to the building and/or restrict handicap access to and from the entrance.

MOTION: Edward Salyer moved to approve Design Review #11-11. Ross Deal seconded; motion carried with a vote of 5-2 (*Portolese, Klaer*).

DR #11-12

A request submitted by Walgreen Co., requesting a waiver from the Mishawaka City Design Review Ordinance Section 105-109 Vending Machines to permit an outdoor vending Machine at **4620 Lincolnway East (Walgreens)**.

Brian Hall, Manager, Walgreens, said his request is the same as the two previous ones. This kiosk would be oriented toward Lincolnway and be ADA compliant.

Mr. Winn closed the Public Hearing.

Staff Recommendation

The staff would be in favor of a waiver at this Walgreens location on the condition that the machine be located under a building canopy or under the window awnings, similar to the Red Box that is located at the Walgreens store at the intersection of Edison Road and Ironwood Drive in South Bend (as seen in photos below). The location of the station shall not block the walkway adjacent to the building and/or restrict handicap access to and from the entrance.

MOTION: Ross Deal moved to approve Design Review #11-12. Edward Salyer seconded; motion carried with a vote of 5-2 (*Portolese, Klaer*).

ADJOURNMENT: 8:35 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner