



AGENDA

May 20, 2024

Meetings of Standing Committees
Council Conference Room
5:45PM

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL
COUNCIL CHAMBERS/CITY HALL
6:00PM

WebEx Telephone Number:1-408-418-9388
Meeting Number (access code): 2333 031 4281
Meeting password: 4NCy72Emjbm

Livestream #1:
<https://mishawaka.in.gov/government/elected-appointed-officials/common-council/>

Livestream #2
<https://www.facebook.com/cityofmishawaka/>

Livestream #3:
www.youtube.com/@cityofmishawaka635

Livestream #4:
@MichianaAccessTV on Facebook

To connect on-line join using Microsoft Lync or Microsoft Skype for Business

Dial:[23330314281@mishawaka.webex.com](https://mishawaka.webex.com/join/23330314281)

1. Call to Order

2. Pledge of Allegiance

3. Roll Call

4. Approval of the Minutes of the Regular Meeting of May 06, 2024

5. Petitions, Communications, Remonstrance and Memorial

6. Report of Special Committee

7. Ordinances on First Reading

8. Resolutions

9. Ordinances on Second Reading

P.O. No. 2024-08 Rezone from C-1 General Commercial to C-10
Filling Station Commercial for proposed
Casey's Convenience Store & Gas Station - SE
corner of Douglas & Fir Rd.
**(Petitioner requesting postponement to June
17th)**

10. Privilege of the Floor - Non-Agenda Items

11. Unfinished Business

12. New Business

Change of Meeting dates for the month of October

13. Adjournment -

This meeting will be aired via live stream:

An archived version of the livestream video can be viewed on the
city of Mishawaka's Facebook and YouTube pages,
<https://www.facebook.com/cityofmishawaka/> and
www.youtube.com/@cityofmishawaka635 and on the Michiana Access TV
Facebook page, <https://www.facebook.com/MichianaAccessTV>

If technology is needed to present, please advise the Clerk's Office by 4:00pm the Friday before the meeting by
emailing: dblock@mishawaka.in.gov or calling 574-258-1616.

Download Council Packet Link:

[https://mishawaka.in.gov/government/elected-appointed-
./officials/common-council/council-agendas-minutes/](https://mishawaka.in.gov/government/elected-appointed-./officials/common-council/council-agendas-minutes/)

At this time, I know of no other business to come before the Council.

Deborah S. Block, IAMCA, CMO, MMC, City Clerk

The City of Mishawaka acknowledges its responsibility to comply with the Americans with Disabilities Act of 1990. In order to assist individuals with disabilities who require special services (i.e. sign interpretative services, alternative audio/visual devices, and amanuenses) for participation in or access to City sponsored public programs, services and/or meetings, the City requests that individuals make requests for these services forty-eight (48) hours ahead of the scheduled program, service and/or meeting. To make arrangements contact Susan Kile, ADA Coordinator, at (574) 258-1615.

Scan the QR Code to access all Common Council Meeting Agenda's, Packets, and Meeting Minutes.



REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

May 6, 2024

Be it remembered that the Common Council of the City of Mishawaka, Indiana met in the Council Chambers of the New Mishawaka City Hall and via telephone on Monday, May 6, 2024, at 6:00PM. The meeting was called to order by Council President Gregg Hixenbaugh. All were asked to stand for the Pledge of Allegiance.

Members attending virtually do so by WebEx. Public that attends can participate by WebEx or observe meetings by YouTube or Facebook live. The Council meetings are also streamed live on Michiana Access on Comcast/AT&T U-verse Channel 99.

Clerk Block called the roll.

Present: Mrs. Hazen (P), Mrs. Voelker (P), Mr. Carroll (P), Mr. Banicki (P), Mr. Emmons (P), Ms. Hahn (P), Mr. Mammolenti (E), Mr. Violi (P), Mr. Hixenbaugh (P)
P: Present E: Electronically Participating A: Absent

Also Present: Mike Trippel, Council Attorney

Minutes for the Regular Meeting on April 22, 2024, were approved as received from the Clerk's Office.

PROPOSED ORDINANCE NO. 2024-11

AN ORDINANCE AMENDING CHAPTER 50 OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA AS FROM TIME TO TIME AMENDED, COMMONLY KNOWN AS "THE PARK AND RECREATION ORDINANCE" OF THE CITY OF MISHAWAKA, INDIANA

**Amending the Municipal Code Park and Recreation – DORA
(Assigned to Public Health & Safety Committee)**

PROPOSED ORDINANCE NO. 2024-12

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, ESTABLISHING A DESIGNATED OUTDOOR REFRESHMENT AREA

(Assigned to Public Health & Safety Committee)

Mr. Hixenbaugh noted for the record that the Council coordinated their calendars with the Administration, and they would be holding a public informational meeting on DORA in June and asked Clerk Block what the exact date and time was for that meeting. Clerk Block stated it would be June 12th at 6PM in the Council Chambers. Mr. Hixenbaugh stated until such time as they could conduct that informational meeting, they would not see DORA advance to second reading

on their agenda, but that decision would be made after they have conducted the informational session on June 12th.

PROPOSED ORDINANCE NO. 2024-13

**AN ORDINANCE ESTABLISHING A SCHEDULE OF RATE AND CHARGES FOR
ELECTRIC AND SERVICES RENDERED BY THE MISHAWAKA UTILITIES
ELECTRIC DEPARTMENT
(Assigned to Budget & Finance Committee)**

Mr. Hixenbaugh stated in light of the specific proposal that was pending before the Council, they would be scheduling a public informational meeting on that matter as well and asked Clerk Block when this meeting would be held and at what time. Clerk Block stated the informational meeting would be May 23rd at 6PM with a special council meeting following on May 30th at 6PM. Mr. Hixenbaugh stated they would be conducting an informational meeting to share additional information with regard to the proposed electric utility rate increases.

RESOLUTION R2024-09

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA,
INDIANA, APPROVING A PETITION OF THE MISHAWAKA BOARD OF ZONING
APPEALS AT THE PROPERTY LOCATED AT: 415 BITTERSWEET ROAD
Use Variance to allow for a Restaurant with Drive-Thru (Jimmy Johns) in C-1 General
Commercial District – 415 Bittersweet Rd.**

George Lepeniotis, Partner at Kreig Devault, spoke in favor of **RESOLUTION R2024-09**. Mr. Lepeniotis stated he was representing the petitioner, the local Jimmy Johns franchisee, and was presenting on behalf of his client for the next two agenda items with both the resolution and proposed ordinance that would follow. Mr. Lepeniotis stated before them, they had the opportunity to allow Jimmy Johns to come into a parcel out on Bittersweet and it was just north of the Everwise Credit Union cattycorner to Martins PUD. Mr. Lepeniotis stated both parts of the petition for the special use and rezone had favorable recommendations from the respective committees and the BZA. Mr. Lepeniotis stated they had spent some time with the Twin Branch Neighborhood Association and Councilmember Mammolenti was kind enough to invite them to his monthly meeting with the Twin Branch folks, with Councilman Hazen and Councilman Hixenbaugh in attendance along with other staff as well. Mr. Lepeniotis stated as they saw in the packet before them, the property located at 415 Bittersweet Road was largely overgrown, it was currently zoned R-1 residential, and it suffered from a couple of unique attributes. Mr. Lepeniotis stated first and foremost, there were high tension power lines that ran through the center of the property and as they could tell, it was very overgrown, and it currently had a rather dilapidated manufactured home on it. Mr. Lepeniotis stated the power lines reduced the buildable footprint and its attractiveness as a future R-1 residential site and no one would want to build their house underneath the power lines on a very small acre that was actually available. Mr. Lepeniotis stated

the size of the lot was what gave staff concern and led to the unique application process. Mr. Lepeniotis stated their indication was to go for a C-7 designation which was the categorized and defined drive-thru designation, but staff had concerns in the future that if a new operator were to take over it, the city would be limited in its control over it, especially when it came to what was called a HighQ operator and the Q line for a Starbucks was much more invasive than a Q line for Jimmy Johns. Mr. Lepeniotis that had to do with the speed in which they could prepare food and get people in and out that made staff comfortable giving them a favorable recommendation and allowing for the site to be utilized in this manner when it was slightly undersized for something like a large-scale McDonalds or a Chic Fil A or something that would create a significantly higher volume of traffic. Mr. Lepeniotis stated doing it this way with the stipulations they agreed to during BZA and the Planning Commission, the use in the future would be limited to just a sandwich shop which allowed it to stay in character what it remained at that time. Mr. Lepeniotis stated the owners, Nick and Zach, were two brothers who were young guys, and they were very excited as they were already part of this community, so he believed it would be Jimmy Johns for the foreseeable future. Mr. Lepeniotis stated he highlighted the site in his presentation to show where the proposed location exactly was and they worked with staff to make sure that the driveway did not come out in a manner that was completely intrusive to the high density residential across the way, the apartment complex, and also they were looking to negotiate an easement with the Everwise Credit Union to the south so that some traffic, when it was appropriate, could stay out of Bittersweet and transition between businesses on an interior corridor. Mr. Lepeniotis stated they would make the easement available as part of their stipulated conditions and obviously, Everwise was not applying for anything so they had to do that, but they were hopeful that the discussions would go well and they had preliminary discussions and there was some interest, but in an institution at large, it was sometimes hard to get to decision makers, but they were working on it. Mr. Lepeniotis displayed a site plan in his presentation and stated it was a preliminary site plan, but it was their most updated site plan and it showed all of the conditions that were part of the conditional approval before it could come before the Council. Mr. Lepeniotis stated it showed mature trees and it showed that we had a bailout line for the drive-thru so that if you got into the drive-thru line and decided you did not want to order, you had a way out so you would not be jamming up the works. Mr. Lepeniotis stated when looking at the easement to the south, it would really go to nowhere but again, they hoped Everwise would be cooperative. Mr. Lepeniotis stated as an accommodation to everyone's work and effort, his client had agreed to actually run sidewalks all the way to the corner of Vistula and that included in front of the residential parcel that was just north of the property in question. Mr. Lepeniotis stated he believed that would complete the sidewalk loop or at least get it closer to being complete so that Bittersweet would have a better walking rating, especially for some of the students and other people who might be using that neighborhood. Mr. Lepeniotis stated they also would notice that their setbacks were somewhat unique, as they were a little broader on the back and a little bit different on the one side, because of the residential nature of it and there was a fence requirement, and the fence would match what was there purposefully as that was requested at the Twin Branch neighborhood meeting that the fences did not clash with each other. Mr. Lepeniotis stated he believed it would be a six-foot wood fence with some mature trees on the residential borders to the north and to the west. Mr. Lepeniotis noted that the owner of the

residential parcel was at the Twin Branch neighborhood meeting, and he could represent, and staff could verify that he was in favor of the project. Mr. Lepeniotis stated he did not start there, but he thought with the screening and some talks about his potential property value in the future, he came around nicely. Mr. Lepeniotis showed displays of several other existing Jimmy Johns sites in the Mishawaka, South Bend and Benton Harbor areas. Mr. Lepeniotis stated his client was the area Jimmy Johns franchisee as he mentioned and he believed they had up to 19 locations throughout north central Indiana and up to Michigan, including all of the ones there locally. Mr. Lepeniotis stated they were two young brothers who lived in the area and also participated in the community on a regular basis by providing both cash and food as they did for Habitat for Humanity, Logan Center, Memorial Hospital and others. Mr. Lepeniotis stated part of their growing in the community was making sure they did that in communities such as Mishawaka and he was told they would be feeding the firefighters if the Chief allowed it. Mr. Lepeniotis stated all efforts were taken to make sure that the meeting with the Twin Branch Neighborhood Watch that the meeting was going to be advertised that this would be the purpose and they had no one who showed any real concern with the project. Mr. Lepeniotis stated they had a favorable recommendation from the BZA and the Plan Commission and with that, he was happy to answer any questions.

Mr. Carroll stated he knew that the power company was acquiring a parcel two or three to the west and he assumed that they had no interest in anything else near his property and asked if that was correct. Mr. Lepeniotis stated they had not heard anything from them, and they had no notice of additional easements or eminent domain proceedings or anything like that. Mr. Lepeniotis stated the property was subject to an easement by the power company for the high tensile lines that made it really a sliver where you could build.

Ms. Hahn stated she saw that they had the location on McKinley and then the one on Portage and asked if most of their restaurants accommodated drive-thru or if this was a newer concept because it seemed like most of the ones she was thinking of were kind of in a shopping complex and did not have a drive-thru. Mr. Lepeniotis stated stand alone was Jimmy Johns' new push and he thought they were coming up with some new menu items as well to rebrand a bit and build on their success. Mr. Lepeniotis stated Jimmy Johns corporate dictated what the franchisees could do and they had to approve the site and they actually had a selection of a couple of sites out in that neighborhood and felt this one would be the most appropriate. Ms. Hahn asked if his client had any experience with the drive-thru restaurant. Mr. Lepeniotis stated they did, and they owned a number of restaurants that included the drive-thru.

Mr. Violi asked if there were any drive-thru Jimmy John's in their area. Mr. Lepeniotis stated the Portage site had one and he thought the Mishawaka site on McKinley had one. Mr. Violi stated the Mishawaka site did not as he had been there before. Mr. Lepeniotis stated it must have been because of the nature of that site where it bumped right up on the back of the site.

Mr. Mammolenti thanked Mr. Lepeniotis for his detailed presentation that evening and also at the Twin Branch Neighborhood Watch meeting. Mr. Mammolenti stated he thought he did an

excellent job presenting and answering all of the questions of the residents and he concurred with his statement that he felt everyone felt comfortable moving forward. Mr. Mammolenti thanked him and his clients. Mr. Lepeniotis thanked Mr. Mammolenti for hosting them and he really appreciated it.

Mr. Hixenbaugh added his thanks to staff for their creative solution for this project and it was very well done.

Question was called for at 6:19PM for **RESOLUTION R2024-06 Motion passed by unanimous roll call vote (summary: Yes = 9).**

Yes: Mrs. Hazen, Mrs. Voelker, Mr. Carroll, Mr. Banicki, Mr. Emmons, Ms. Hahn, Mr. Mammolenti, Mr. Violi, Mr. Hixenbaugh. The resolution passed 9-0.

Clerk Block read the following proposed ordinance by title and opened the public hearing.

PROPOSED ORDINANCE NO. 2024-09

AN ORDINANCE AMENDING CHAPTER 137 OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, COMMONLY KNOWN AS “THE ZONING ORDINANCE” OF THE CITY OF MISHAWAKA, INDIANA

Rezone from R-1 Single Family Residential to C-1 General Commercial for a Restaurant with Drive-Thru (Jimmy Johns) – 415 Bittersweet Rd.

Mr. Carroll reported the Committee of Land Use Planning recommended this proposed ordinance should be adopted. Upon a second by Mr. Banicki, the motion carried. Clerk Block polled the Council on the Committee Report.

Motion passed by unanimous roll call vote (summary: Yes = 9).

Yes: Mrs. Hazen, Mrs. Voelker, Mr. Carroll, Mr. Banicki, Mr. Emmons, Ms. Hahn, Mr. Mammolenti, Mr. Violi, Mr. Hixenbaugh. The committee report passed 9-0.

Mr. Hixenbaugh stated if Mr. Lepeniotis would like his earlier comments to be incorporated into the record on this matter by reference, he was able to do so. Mr. Lepeniotis asked the Council to incorporate his previous comments on the resolution that was just passed into this as it was essentially the second part of the resolution and he appreciated that. Mr. Lepeniotis thanked the Council, Clerk Block and staff for doing the hearings this way. Mr. Lepeniotis stated originally, they were going to have the resolution at the last meeting, and they accommodated them by doing it all in one night as opposed to his client having to pay attorneys to be present for two nights and appreciated them doing that.

Question was called for at 6:22PM for **PROPOSED ORDINANCE NO. 2024-09 Motion passed by unanimous roll call vote (summary: Yes = 9).**

Yes: Mrs. Hazen, Mrs. Voelker, Mr. Carroll, Mr. Banicki, Mr. Emmons, Ms. Hahn, Mr. Mammolenti, Mr. Violi, Mr. Hixenbaugh. The proposed ordinance passed 9-0, thus it became **ORDINANCE NO. 5887.**

NEW BUSINESS

Mr. Emmons announced the West End Neighborhood meeting would be held Thursday May 16th at St. Bamos at 7PM with their guest speaker being Lou Ann Hazen, who was the Director of the Mishawaka Food Pantry explaining what the Food Pantry did for the citizens of Mishawaka. Mr. Emmons stated he looked forward to seeing everybody there and as usual, West End Bakery goods would be served.

ADJOURNMENT 6:24PM

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

Gregg A. Hixenbaugh /s/
Gregg A. Hixenbaugh, President

These minutes are a summary of actions taken at the Mishawaka Common Council meeting. The full video archive of the meeting is available for viewing at www.youtube.com/@cityofmishawaka635 for as long as this media is supported.

1st Reading 4-22-24

2nd Reading

Passed

Failed

Continued To

PETITION 24-05

CITY OF MISHAWAKA, INDIANA

PROPOSED ORDINANCE NO. 2024-08

ORDINANCE NO. _____

Deborah S. Block, IAC, MMC

APR 15 2024

City Clerk
Mishawaka, IN

AN ORDINANCE AMENDING CHAPTER 137, OF THE MUNICIPAL
CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME
AMENDED, COMMONLY KNOWN AS "THE ZONING ORDINANCE OF 1966" OF
THE CITY OF MISHAWAKA, INDIANA.

WHEREAS, the Plan Commission of the City of Mishawaka, Indiana, has recommended the reclassification of the zoning as herein set forth of the real estate hereinafter described.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, that:

Section 1. Chapter 137, of the Municipal Code of the City of Mishawaka, commonly known as "The Zoning Ordinance of 1966", be, and the same is hereby amended as follows:

The following described real estate in the City of Mishawaka, Penn Township, St. Joseph County, State of Indiana, to-wit:

PARCEL 1:

PART OF LOT NUMBERED EIGHT (8) AS SHOWN ON THE RECORDED PLAT OF HOGUE'S FARM SUBDIVISION, RECORDED IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA, IN PLAT BOOK 12, PAGE 16, AND FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 40 FEET WEST AND 35 FEET SOUTH OF THE NORTHEAST CORNER OF SAID SECTION 4 (SAID NORTHEAST CORNER IS LOCATED 660 FEET WEST OF THE EAST LINE OF LOT NUMBERED 8 IN SAID ADDITION), THENCE SOUTH 125 FEET; THENCE WEST 220 FEET; THENCE NORTH 125 FEET; THENCE EAST 220 FEET TO THE PLACE OF BEGINNING, IN ST. JOSEPH COUNTY, INDIANA.

LESS AND EXCEPTING THEREFROM THE FOLLOWING:

A PARCEL OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 34, TOWNSHIP 38 NORTH, RANGE 3 EAST OF THE SECOND PRINCIPAL MERIDIAN IN PENN TOWNSHIP, ST. JOSEPH COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SECTION 34; THENCE NORTH 89 DEGREES 57 MINUTES 53 SECONDS WEST (BASIS OF BEARINGS) ON THE NORTH LINE OF THE NORTHEAST QUARTER, A DISTANCE OF 40.00 FEET; THENCE SOUTH 00 DEGREES 09 MINUTES 43 SECONDS EAST, A DISTANCE OF 33.0 FEET TO THE SOUTH EXISTING RIGHT OF WAY OF DOUGLAS ROAD AND BEING THE POINT OF BEGINNING; THENCE NORTH 89 DEGREES 57 MINUTES 53 SECONDS WEST PARALLEL WITH THE NORTH LINE OF THE NORTHEAST QUARTER ON THE SOUTH EXISTING RIGHT OF WAY OF DOUGLAS ROAD, A DISTANCE OF 220.00 FEET; THENCE SOUTH 00 DEGREES 09 MINUTES 43 SECONDS EAST, A DISTANCE OF 12.00 FEET TO THE SOUTH PROPOSED RIGHT OF WAY OF DOUGLAS ROAD; THENCE SOUTH 89 DEGREES 57 MINUTES 53 SECONDS EAST ON SAID SOUTH PROPOSED RIGHT OF WAY, A DISTANCE OF 220.00 FEET, THENCE NORTH 00 DEGREES 09 MINUTES 43 SECONDS WEST, A DISTANCE OF 12.00 FEET TO THE POINT OF BEGINNING, CONTAINING 0.06 ACRES MORE OR LESS.

Proposed Ordinance No: 2024-08

Ordinance No: _____

PARCEL 2:

PART OF THE NORTHEAST QUARTER OF SECTION 34, TOWNSHIP 38 NORTH, RANGE 3 EAST, DESCRIBED AS FOLLOWS:

BEGINNING ON THE NORTH LINE OF SAID SECTION 34, 260 FEET WEST OF THE NORTHEAST CORNER OF SAID SECTION 34; THENCE SOUTH, PARALLEL WITH THE EAST LINE OF SAID SECTION 34, 160 FEET; THENCE WEST, PARALLEL WITH THE NORTH LINE OF SAID SECTION 34, 233.17 FEET TO THE CENTER LINE OF FIR ROAD; THENCE NORTHWESTERLY, ON THE CENTER LINE OF FIR ROAD, 56.27 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE RIGHT; THENCE CONTINUING ON SAID CENTER LINE OF FIR ROAD AND ON SAID CURVE, HAVING A RADIUS OF 4326.33 FEET, 137.93 FEET TO THE NORTH LINE OF SAID SECTION 34; THENCE EAST, ON THE NORTH LINE OF SAID SECTION 34, 43.33 FEET TO THE POINT OF BEGINNING, IN ST. JOSEPH COUNTY, INDIANA.

EXCEPTING, A PARCEL OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 34, TOWNSHIP 38 NORTH, RANGE 3 EAST, OF THE SECOND PRINCIPAL MERIDIAN, PENN TOWNSHIP, ST. JOSEPH COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SECTION 34; THENCE NORTH 89 DEGREES 57 MINUTES 53 SECONDS WEST (BASIS OF BEARINGS), ON THE NORTH LINE OF THE NORTHEAST QUARTER OF SECTION 34, A DISTANCE OF 260.00 FEET; THENCE SOUTH 00 DEGREES 09 MINUTES 43 SECONDS EAST, A DISTANCE OF 33.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 00 DEGREES 09 MINUTES 43 SECONDS EAST, A DISTANCE OF 11.95 FEET; THENCE NORTH 89 DEGREES 57 MINUTES 53 SECONDS WEST, A DISTANCE OF 131.04 FEET; THENCE SOUTH 72 DEGREES 33 MINUTES 03 SECONDS WEST, A DISTANCE OF 68.80 FEET; THENCE SOUTH 02 DEGREES 55 MINUTES 30 SECONDS EAST, A DISTANCE OF 66.44 FEET; THENCE SOUTH 27 DEGREES 23 MINUTES 21 SECONDS EAST, A DISTANCE OF 31.58 FEET; THENCE NORTH 89 DEGREES 57 DEGREES 53 SECONDS WEST, A DISTANCE OF 14.52 FEET; THENCE NORTH 35 DEGREES 21 MINUTES 31 SECONDS WEST, A DISTANCE OF 155.79 FEET; THENCE SOUTH 89 DEGREES 57 MINUTES 53 SECONDS EAST, A DISTANCE OF 283.39 FEET TO THE POINT OF BEGINNING.

PARCEL 3:

PART OF THE NORTHEAST QUARTER OF SECTION 34, TOWNSHIP 38 NORTH, RANGE 3 EAST, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 160 FEET SOUTH AND 40 FEET WEST OF THE NORTHEAST CORNER OF SECTION 34, TOWNSHIP 38 NORTH, RANGE 3 EAST; THENCE WEST, PARALLEL WITH THE SOUTH LINE OF LOT SEVEN (7), IN THE RECORDED PLAT OF HOGUE MINUTES S FARM SUBDIVISION, A DISTANCE OF 413.7 FEET, MORE OR LESS, TO THE EASTERLY LINE OF FIR ROAD; THENCE SOUTHEASTERLY ALONG THE EASTERLY LINE OF FIR ROAD, 191.09 FEET, MORE OR LESS, TO THE SOUTHWESTERLY CORNER OF SAID LOT 7; THENCE EAST, ALONG THE SOUTH LINE OF SAID LOT 7, A DISTANCE OF 303.5 FEET, MORE OR LESS, TO A POINT 40 FEET WEST OF THE EAST LINE OF SAID SECTION 34; THENCE NORTH 157 FEET TO THE PLACE OF BEGINNING, AND BEING A PART OF LOT SEVEN (7) IN THE RECORDED PLAT OF HOGUE MINUTES S FARM SUBDIVISION, RECORDED AUGUST 10, 1935. IN PLAT BOOK 12, PAGES 16-17.

LESS AND EXCEPTING THEREFROM THE FOLLOWING:

A PARCEL OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 34, TOWNSHIP 38 NORTH, RANGE 3 EAST OF THE SECOND PRINCIPAL MERIDIAN, PENN TOWNSHIP, ST. JOSEPH COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SECTION 34; THENCE NORTH 89 DEGREES 57 MINUTES 53 SECONDS WEST (BASIS OF BEARINGS), ON THE NORTH LINE OF THE NORTHEAST QUARTER OF SECTION 34, A DISTANCE OF 607.20 FEET; THENCE SOUTH 35 DEGREES 21 MINUTES 31 SECONDS EAST ON THE CENTERLINE OF FIR ROAD, A DISTANCE OF 196.27 FEET; THENCE SOUTH 89 DEGREES 57 MINUTES 53 SECONDS EAST, A DISTANCE OF 40.48 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89 DEGREES 57 MINUTES 53 SECONDS EAST, A DISTANCE OF 14.52 FEET; THENCE SOUTH 27 DEGREES 23 MINUTES 21 SECONDS EAST, A DISTANCE 34.67 FEET; THENCE SOUTH 35 DEGREES 21 MINUTES 31 SECONDS EAST, A DISTANCE OF 160.76 FEET; THENCE SOUTH 54 DEGREES 38 MINUTES 29 SECONDS WEST, A DISTANCE OF 7.03 FEET; THENCE NORTH 35 DEGREES 21 MINUTES 31 SECONDS WEST, A DISTANCE OF 203.51 FEET TO THE POINT OF BEGINNING.

which real estate is now classified as C-1 General Commercial District shall hereafter be within and a part of that District known as C-10 Filling Station Commercial designated in "The Zoning Ordinance of 1966" as amended.

Section 2. The Common Council of the City of Mishawaka, Indiana, hereby finds that: UNFAVORABLE

1. The applicable Comprehensive Plan is from the Capital Avenue Land Use Plan that was done jointly with St. Joseph County- the site was identified as existing residential because of the homes that existed on the properties at the time and the site was not guided for future development. The home(s) previously located on the property were subsequently demolished or will be demolished as part of the proposed change in use. The undeveloped area south and east of the site behind the existing residential was guided for office park and medium density residential uses. As such, if it were not for the extenuating factors associated with the City wellfield the higher intensity commercial use of a convenience store/filling station is reasonably consistent with the comprehensive plan.
2. Current conditions and the character of current structures and uses in each district – The current conditions warrant the existing commercial zoning that exists for the property being located at the hard corner of two heavily travelled roadways. The proposed change to allow for a filling station is not appropriate given that the site is located within the 1-year time of travel for the recently completed Juday Creek Municipal Wellfield. Underground storage tanks holding large volumes of petroleum products, despite the increases made in the technology still poses a potential risk to the Juday Creek Wellfield.
3. The most desirable use for which the land in each district is adopted – The most desirable use for the property is commercial given that it is located at the hard corner of two heavily travelled roadways. The proposed change to filling station commercial is not desirable given that the site is located within the 1-year time of travel for the recently completed Juday Creek Municipal Wellfield. Underground storage tanks holding large volumes of petroleum products, despite the increases made in the technology still poses a potential risk to the Juday Creek Wellfield.
4. The conservation of property values throughout the jurisdiction – The most impacted properties from the proposed change are the existing single family homes in close proximity to the site. The proposed change is consistent with the continued change to commercial rather than residential uses in the area. Provided the proposed development includes landscaping and buffering consistent with the City's development standards while still allowing for access easements connecting to adjacent properties, the existing residential value should be reasonably conserved while still potentially allowing for the future conversion/higher value of commercial development in the future.

Ordinance No: _____

5. Responsible development and growth - The proposed change to filling station commercial is not desirable given that the site is located within the 1-year time of travel for the recently completed Juday Creek Municipal Wellfield. Underground storage tanks holding large volumes of petroleum products, despite the increases made in the technology still poses a potential risk to the Juday Creek Wellfield.

FAVORABLE

1. The applicable Comprehensive Plan is from the Capital Avenue Land Use Plan that was done jointly with St. Joseph County- the site was identified as existing residential and not guided for future development. The home(s) previously located on the property were subsequently demolished or will be demolished as part of the proposed change in use. The undeveloped area south and east of the site behind the existing residential was guided for office park and medium density residential uses. As such, the higher intensity commercial use of a convenience store/filling station is reasonably consistent with the comprehensive plan.
2. Current conditions and the character of current structures and uses in each district - The current conditions warrant the existing commercial zoning that exists for the property being located at the hard corner of two heavily travelled roadways. The proposed change to allow for a filling station is appropriate despite that the site is located within the 1-year time of travel for the recently completed Juday Creek Municipal Wellfield. We believe that the underground storage tanks holding large volumes of petroleum products does not pose a substantial risk to the Juday Creek Wellfield because of the increases in technology of petroleum storage tanks that have been made safer over time.
3. The most desirable use for which the land in each district is adopted - The most desirable use for the property is commercial given that it is located at the hard corner of two heavily travelled roadways. The proposed change to filling station commercial is desirable given that there is already a fueling station convenience store located at the northwest corner of the intersection.
4. The conservation of property values throughout the jurisdiction - The most impacted properties from the proposed change are the existing single family homes in close proximity to the site. The proposed change is consistent with the continued change to commercial rather than residential uses in the area. Provided the proposed development includes landscaping and buffering consistent with the City's development standards while still allowing for access easements connecting to adjacent properties, the existing residential value should be reasonably conserved while still potentially allowing for the future conversion/higher value of commercial development in the future.
5. Responsible development and growth - The proposed change to filling station commercial is responsible development and growth because there is an existing fueling station on the northwest corner of the intersection. The proposed change to allow for a filling station is appropriate despite that the site is located within the 1-year time of travel for the recently completed Juday Creek Municipal Wellfield. We believe that the underground storage tanks holding large volumes of petroleum products does not pose a substantial risk to the Juday Creek Wellfield because of the increases in technology of petroleum storage tanks that have been made safer over time.

Proposed Ordinance No: 2024-08

Ordinance No: _____

Section 3. This Ordinance shall be in full force and effect from and after its passage, due attestation and legal publication.

PASSED by the Common Council of the City of Mishawaka, Indiana, this _____ day of _____, 2024, at _____ o'clock _____.M.

Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____, 2024, at _____ o'clock _____.M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _____, 2024, at _____ o'clock _____.M.

David A. Wood, Mayor



WWW.KRIEGDEVAULT.COM

May 14, 2024

Stephen A. Studer
Direct Dial: (574) 277-1207
E-mail: sstuder@kdlegal.com

SENT BY EMAIL

rboston@mishawaka.in.gov

Attn: Members of Council
City of Mishawaka
Planning Department 100
Lincolnway West
Mishawaka, IN 46544
Phone: 574-258-1625

Deborah S. Block, WMC, MMC

MAY 14 2024

City Clerk
Mishawaka, IN

Re: Mishawaka Plan Commission Recommendation
Petition #24-05 – To rezone from C-1 General Commercial to C-10 Filling
Station Commercial to allow for the construction of a Casey's General Store – a
convenience store and gas station business

Dear Members of the Common Council:

We are contacting you to formally request a postponement of the meeting for consideration of request scheduled for **Monday, May 20, 2024 at 6:00pm**. We ask that the meeting be moved to **Monday, June 17, 2024 at 6:00pm**.

Should you have any questions or concerns regarding this matter, please contact me or my assistant, Mary Brown (574-277-1200).

Thank you for your assistance.

Very truly yours,

Stephen A. Studer

SAS/mkb
Enclosure

STAFF REPORT

Location: Southeast corner of E Douglas Rd and Fir Rd

Date: April 9, 2024

Petition: 24- 05

Prepared By: SA/KP

GENERAL INFORMATION

Applicant: SEC Investments LLC / Kimley-Horn & Associates, Inc.

Status: Property Owner / Civil Engineering Consultant

Request: To rezone from C-1 General Commercial to C-10 Filling Station Commercial to allow for the construction of a Casey's General Store- a convenience store and gas station business.

Zoning Classification: C-1 General Commercial District

Lot Size: 2.3 acres

Applicable Regulations: Section 137-529 to 137-530 C-10 Filling Station Commercial / Amendments to the Zoning Map, Indiana Code 36-7-4-603

SPECIAL INFORMATION

Area Development Pattern: North: S-2 Planned Unit Development (Vacant Land)
South: Unincorporated Saint Joseph County (Vacant)
East: Unincorporated Saint Joseph County (Residential)
West: Unincorporated Saint Joseph County (Residential) & C-8 High Density Suburban Commercial

Thoroughfare: E. Douglas Rd. & Fir Rd.

Council District: 5

School District: Penn-Harris-Madison

Township: Penn

Public Utilities: All utilities are available and will be connected to/throughout the site at the expense of the developer

Comprehensive Plan: On the Capital Avenue Land Use Plan from 2003 the site was identified as existing residential and not guided for future development. The home(s) previously located on the property were subsequently demolished or will be demolished as part of the proposed change in use. The undeveloped area south and east of the site behind the existing residential was guided for office park and medium density residential uses.

ANALYSIS

The Petitioner, SEC Investments LLC, is requesting to rezone from C-1 General Commercial to C-10 Filling Station Commercial (3) three parcels containing approximately 2.3 acres of land. Located on the

southeast corner of the intersection of Douglas and Fir Roads. The (3) three parcels consists of 15022 Douglas Road (027-1078-204901) vacant house, 5328 North Fir Road (027-1078-2050) vacant land, and (027-1078-204905) a vacant lot. Surrounded by S-2 Planned Unit Development to the north, C-8 High Density Suburban Commercial to the west, and unincorporated parts of Saint Joseph County to the south, east, and west.

Over the past year, staff has communicated with the applicant's consultants multiple times and indicated that staff would be recommending denial of the proposed request. The request is very similar in scope to the Family Express located at the northwest corner of the same intersection that was annexed and zoned for a fueling station in 2015. The sole reason for the recommended denial is the presence of the City's recently completed Juday Creek Wellfield and the need to protect the public water supply long-term. The concept of placing the wellfield on the Juday Creek Golf Course was approved by the Council and Redevelopment Commission in 2016 following the approval of the Family Express. For the last 8 years the City has been working on the design and construction of not only the wellfield and filtration plant, but the many construction projects required to implement this massive piece of public infrastructure that we envision will serve the City for the next 100 years.

Staff is recommending denial of the proposed change in zoning because the site is located within the 1-year time of travel of the wellfield. We could recommend restrictions outside of the 1-year time of travel as well, and the proposed location within the 1-year time of travel represents the seriousness of the risk to the wellfield.

For general reference- time of travel means the time required for groundwater to move through the water bearing zone from a specific point to a well. In layman terms, the 1-year time of travel is the area in which it would take a molecule of water/liquid contaminants 1 year or less to reach the well. The City continues to work to make sure the entire area around the wellfield area is managed to protect our drinking water supply from viral, microbial, and direct chemical contamination.

As identified previously, when the wellfield property was purchased, the Family Express located at the northwest corner of the intersection of Fir Road and Douglas Road, which is currently located within the 1-year time of travel, had already been approved. In investigating potential locations for the wellfield, the City took into consideration all the known risks associated with placing the wellfield. Attached to this staff report is a map that identifies the one year time of travel and the various known risk factors that surround the wellfield. One of the reasons of the location chosen was that by placing the wells in the golf course, it naturally provides an area of control and protection around the wells. Just because there are existing risk factors, does not mean that more risk factors should be added, even if the additional risk is relatively small.

The total area of the one year time of travel is about 450 acres. This is a relatively large area for a City to place with no potential risks. That being said, each new development that has been proposed and approved in or adjacent to the 1-year time of travel since the approval of the wellfield in 2016 has had restrictions placed on the approval that reflect the location of the wellfield.

When the City purchased the Juday Creek Golf course, and then leased the property back to the previous owner for their continued use and operation, the following provisions were placed that restricted the use of chemicals and fertilizers on the golf course:

As part of the on-going ordinary maintenance, the Seller/Lessee shall adhere to all of the City's existing requirements and future requirements by state and federal agencies solely for the operation of the City's proposed municipal wellfield. As to Seller/Lessee's ongoing ordinary maintenance, Seller/Lessee would, pursuant to City instructions, use only those chemicals and fertilizers approved by the City. Seller/Lessee would not install any new wells for irrigation purposes, unless approved and consented to by the City. Any restriction of existing storm water areas of any storm or any storm water retention areas later created on the leased parcel by Seller/Lessee would be reviewed and be subject to the prior approval of the Buyer/Lessor. It is understood that the operation of the City's proposed municipal wellfield may, from time to time, change based upon then state and federal regulations which the parties acknowledge may be more restrictive over time. If the restrictions, federal or state, substantially restrict with Seller/Lessee's usual and normal operations of its golf

course, Seller/Lessee may, at its option, terminate this lease and any prepaid rental payments shall be refunded by the City to the Seller/Lessee.

When a portion the Penn Farm property was purchased for potential wellfield use, the following restrictions were placed over the entire Penn Farm as part of the buy-sell agreement with the City. Underground tanks are specifically prohibited as part of the restrictive covenants of the business park.

The Seller agrees to prepare and record covenants and restrictions over the Sellers property to create an association or other entity to provide for the perpetual maintenance of public improvements, as well as, create limitations on the use of the property that are consistent with the Buyer's desire to create a municipal wellfield adjacent to the site. Specifically, the Seller shall prohibit the use of underground fuel storage tanks, restrict the type of fertilizers and chemicals that can be stored or used on the property, prohibit the construction of new wells on the property, limit the means and methods of storm water retention, and otherwise identify that the all applicable requirements of the City, State, and Federal governments relating to well head protection, as may be modified over time, shall be complied with in full.

Also, as part of the proposed Auto Mall property located north of Cleveland Road, West of Capital, located outside the 1-year time of travel, a condition was placed that specifically prohibits Filling stations from being constructed on the property. This property is outside of the 1-year time of travel, but still in reasonably close proximity to the wellfield.

All of these development sites are also restricted on how stormwater is retained. No new drywells or underground percolation system is permitted to be used within these developments in close proximity to the wellfield.

Staff also acknowledges that vast improvements have been made to fuel underground storage containment systems over time and the current known risks are relatively low. Double wall tanks with an internal sensor are now an industry standard. That being said, environmental standards used for drinking water are getting more and more restrictive over time. There is also no accounting for human error or accidents that have the potential to occur over time that should be considered when considering this rezoning request.

To this end, the City already has experienced the impact of faulty storage tanks can have on a City Municipal Wellfield. There used to be municipal wells at Ward Baker Park which had to be closed as a result of leaking fuel tanks at the intersection of 12th and Byrkit. In 2008, the City received 8.15 million dollars from a class action settlement concerning the use of Methyl tert-butyl ether (MTBE) which is a flammable liquid that had been used as an additive for unleaded gasoline since the 1980s. MTBE increases octane and oxygen levels in gasoline and reduces pollution emissions. MTBE spread more easily underground than other gasoline components due to its higher solubility in water. Legislation passed in 2005 then prompted gasoline refiners to replace MTBE with ethanol. Staff brought this history up not because of a specific chemical, but as an indication of how circumstances and standards change over time. When the tanks were originally installed at the Fir/Byrkit fueling stations we are reasonably confident that the tanks met an industry standard at the time. Our understanding is that chemicals and additives also continue to evolve over time, but again, when MTBE was introduced, it was done so with the best of intentions. What is the next chemical, hazard, industry standard that is going to change that might have a causal relationship to our ability to provide clean and safe drinking water?

Staff also has a concern regarding precedent should this request ultimately be approved. If the Penn family was approached to allow a convenience store/fueling station at the intersection of Veteran's Parkway and Douglas Road, should the City allow the change in their covenants and zoning to allow it, given that is approximately the same distance from the wells as the proposed Casey's General store? This intersection will likely be a prime potential location for this type of use because this intersection will likely be signaled. With the Mishawaka Fieldhouse regional recreation facility going in, there will be a steady stream of potential customers that will be using Veteran's Parkway.

Note, the burden is on the applicant relative to this request. There is no inherent right to place a fueling station on this site. The site is currently zoned C-1 Commercial which permits a wide range of commercial uses by right including a drug store, restaurant, banks, medical clinic, hotels and many more. A convenience store could also be constructed by right on the property without fueling. Staff would also potentially support a rezoning request for drive-thru uses for this prime corner location. In short, the

reasonable use of the property is not being denied or hindered. Our singular focus is to insure the long term operation of the wellfield which has taken close to 8 years to plan and develop at a total cost of over 40 million dollars.

Although staff is recommending denial solely on the basis of the wellfield, there are also other site plan and logistical factors that will need to be worked out should the proposed change in zoning be approved.

The site is located on a hard corner in a location that was formerly residential. It is important that the adjacent properties to the east and south are both properly screened while also still allowing for the future redevelopment of those properties for commercial purposes over time. Cross access easements will need to be provided to both the east and south. If and when those properties are developed as commercial, they would then have the ability to remove screening and buffering and connect to the existing access points proposed at Casey's. We feel that this would also be beneficial for Casey's. Knowing that the traffic on both Douglas Road and Fir Road will increase over time, the stacking at the intersection and the proximity of the proposed drives to the intersection could make certain turning movements more difficult during peak traffic times. Having cross access where turning movements can potential be made further from the intersection could aid in safely moving traffic.

The concept site plan, although acceptable for rezoning purposes, does not identify important elements such as the minimum commercial landscaping required in conjunction with the development of the property. Landscaping and using full cut off fixtures for site lighting, exterior building lighting, and under canopy lighting will be important given the adjacent residential uses.

Juday Creek is located adjacent to the site and the drainage structure conveying it actually goes southwest through the middle of the intersection of Douglas and Fir. The Casey's site is currently located in area identified as flood fringe and as such the finished floor of the building and fueling locations will need to be raised to two feet above the hundred year flood elevation. Casey's consultants have this information and we believe the site can be raised without issue.

The Engineering Department has also recommended denial of the request. They commented that the applicant neglected to state how they plan to merge well head protection requirements as previously discussed on multiple occasions. They also identified that a traffic impact study has not been presented, although it would be more appropriate to follow with such a study following the rezoning of the property if it is approved. Engineering also indicated that the developer will need to identify what improvements are necessary to retain current levels of service for both Fir and Douglas Roads. Engineering identified that a minimum dedicated right turn lane and left turn lane for Fir Road will be required. A sidewalk/pathway will need to be constructed on both Fir Road and Douglas Road frontage. Left turn lane on Fir Road will need to be modified as it appears the thru lane is pushed to this proposed movement.

The Electric Department commented that they will need to discuss electric service needs with the contractor prior to construction. One of the parcels 15022 Douglas Road (027-1078-204901) is currently serviced by AEP.

RECOMMENDATION

We have been asked by the Council on known contested requests to prepare findings both for and against the petition. As such, the staff recommendation for denial is listed first. Findings for approval, which is not recommended is listed second.

Staff recommends against Petition 24-05 to rezone 2.3 acres of property located at the southeast corner of Douglas and Fir Roads from C-1 General Commercial to C-10 Filling Station Commercial for a proposed Casey's convenience store and gas station business and that it be forwarded to the Common Council with a **unfavorable** recommendation. This recommendation is based on the following findings of fact per Indiana Code Section 36-7-4-603 which requires both the Planning Commission and Common Council as the Legislative Body of the City pay reasonable regard to the following:

1. The applicable Comprehensive Plan is from the Capital Avenue Land Use Plan that was done jointly with St. Joseph County- the site was identified as existing residential because of the homes that

existed on the properties at the time and the site was not guided for future development. The home(s) previously located on the property were subsequently demolished or will be demolished as part of the proposed change in use. The undeveloped area south and east of the site behind the existing residential was guided for office park and medium density residential uses. As such, if it were not for the extenuating factors associated with the City wellfield the higher intensity commercial use of a convenience store/filling station is reasonably consistent with the comprehensive plan.

2. Current conditions and the character of current structures and uses in each district – The current conditions warrant the existing commercial zoning that exists for the property being located at the hard corner of two heavily travelled roadways. The proposed change to allow for a filling station is not appropriate given that the site is located within the 1-year time of travel for the recently completed Juday Creek Municipal Wellfield. Underground storage tanks holding large volumes of petroleum products, despite the increases made in the technology still poses a potential risk to the Juday Creek Wellfield.
 3. The most desirable use for which the land in each district is adopted – The most desirable use for the property is commercial given that it is located at the hard corner of two heavily travelled roadways. The proposed change to filling station commercial is not desirable given that the site is located within the 1-year time of travel for the recently completed Juday Creek Municipal Wellfield. Underground storage tanks holding large volumes of petroleum products, despite the increases made in the technology still poses a potential risk to the Juday Creek Wellfield.
 4. The conservation of property values throughout the jurisdiction – The most impacted properties from the proposed change are the existing single family homes in close proximity to the site. The proposed change is consistent with the continued change to commercial rather than residential uses in the area. Provided the proposed development includes landscaping and buffering consistent with the City's development standards while still allowing for access easements connecting to adjacent properties, the existing residential value should be reasonably conserved while still potentially allowing for the future conversion/higher value of commercial development in the future.
 5. Responsible development and growth – The proposed change to filling station commercial is not desirable given that the site is located within the 1-year time of travel for the recently completed Juday Creek Municipal Wellfield. Underground storage tanks holding large volumes of petroleum products, despite the increases made in the technology still poses a potential risk to the Juday Creek Wellfield.
-

The following are findings for approval of Petition 24-05 to rezone 2.3 acres of property located at the southeast corner of Douglas and Fir Roads from C-1 General Commercial to C-10 Filling Station Commercial for a proposed Casey's convenience store and gas station business and it will be forwarded to the Common Council with a **favorable** recommendation. This recommendation is based on the following findings of fact per Indiana Code Section 36-7-4-603 which requires both the Planning Commission and Common Council as the Legislative Body of the City pay reasonable regard to the following:

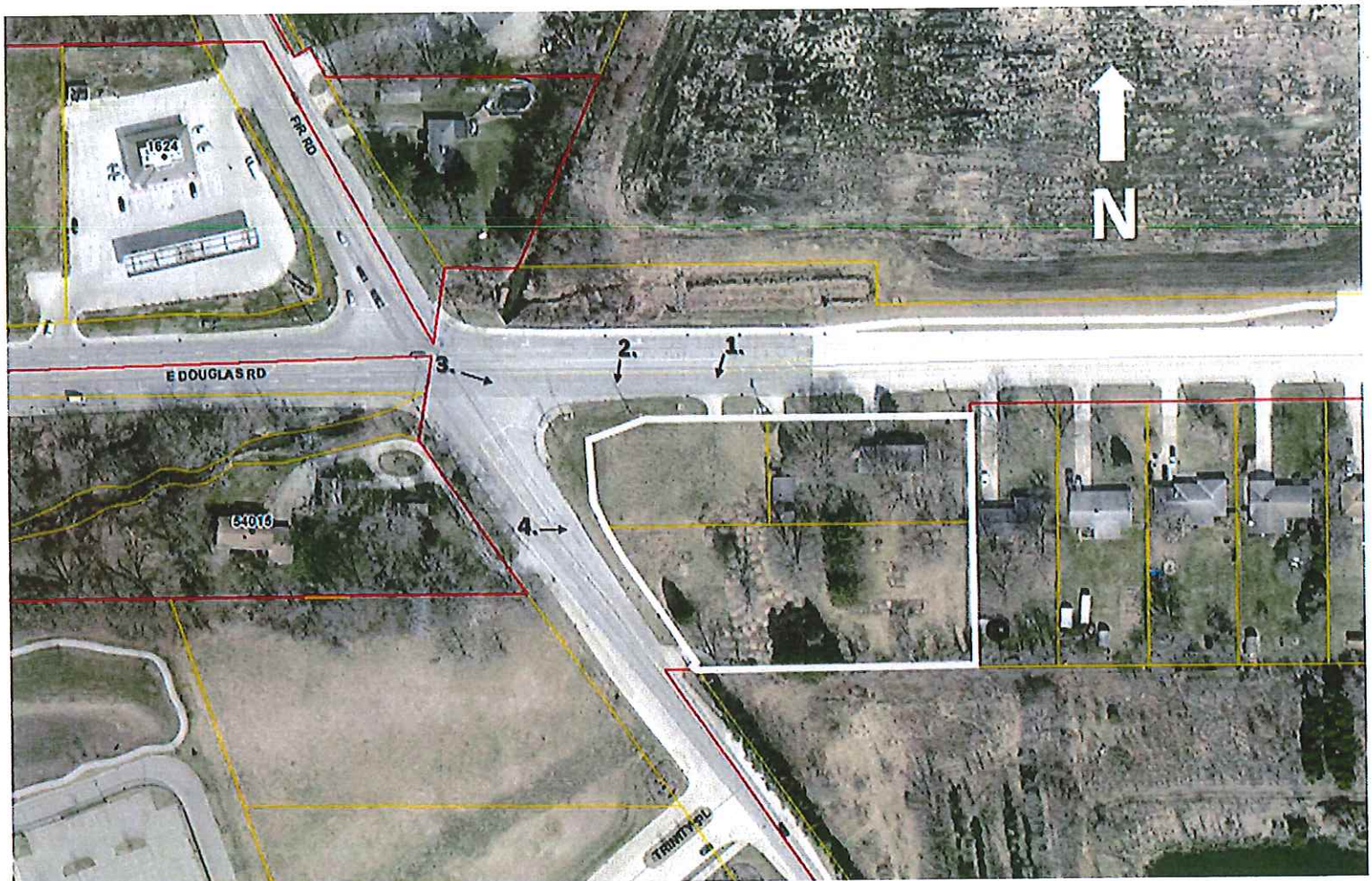
1. The applicable Comprehensive Plan is from the Capital Avenue Land Use Plan that was done jointly with St. Joseph County- the site was identified as existing residential and not guided for future development. The home(s) previously located on the property were subsequently demolished or will be demolished as part of the proposed change in use. The undeveloped area south and east of the site behind the existing residential was guided for office park and medium density residential uses. As such, the higher intensity commercial use of a convenience store/filling station is reasonably consistent with the comprehensive plan.
2. Current conditions and the character of current structures and uses in each district – The current conditions warrant the existing commercial zoning that exists for the property being located at the hard corner of two heavily travelled roadways. The proposed change to allow for a filling station is appropriate despite that the site is located within the 1-year time of travel for the recently completed Juday Creek Municipal Wellfield. We believe that the underground storage tanks holding large volumes of petroleum products does not pose a substantial risk to the Juday Creek Wellfield because of the increases in technology of petroleum storage tanks that have been made safer over time.
3. The most desirable use for which the land in each district is adopted – The most desirable use for the property is commercial given that it is located at the hard corner of two heavily travelled

roadways. The proposed change to filling station commercial is desirable given that there is already a fueling station convenience store located at the northwest corner of the intersection.

4. The conservation of property values throughout the jurisdiction – The most impacted properties from the proposed change are the existing single family homes in close proximity to the site. The proposed change is consistent with the continued change to commercial rather than residential uses in the area. Provided the proposed development includes landscaping and buffering consistent with the City's development standards while still allowing for access easements connecting to adjacent properties, the existing residential value should be reasonably conserved while still potentially allowing for the future conversion/higher value of commercial development in the future.
5. Responsible development and growth - The proposed change to filling station commercial is responsible development and growth because there is an existing fueling station on the northwest corner of the intersection. The proposed change to allow for a filling station is appropriate despite that the site is located within the 1-year time of travel for the recently completed Juday Creek Municipal Wellfield. We believe that the underground storage tanks holding large volumes of petroleum products does not pose a substantial risk to the Juday Creek Wellfield because of the increases in technology of petroleum storage tanks that have been made safer over time.

ATTACHMENTS

Aerial Photograph, Site Photographs, Wellfield Map, Petition, Site Plan, Location Map



Aerial Photograph



1. South facing from Douglas Rd



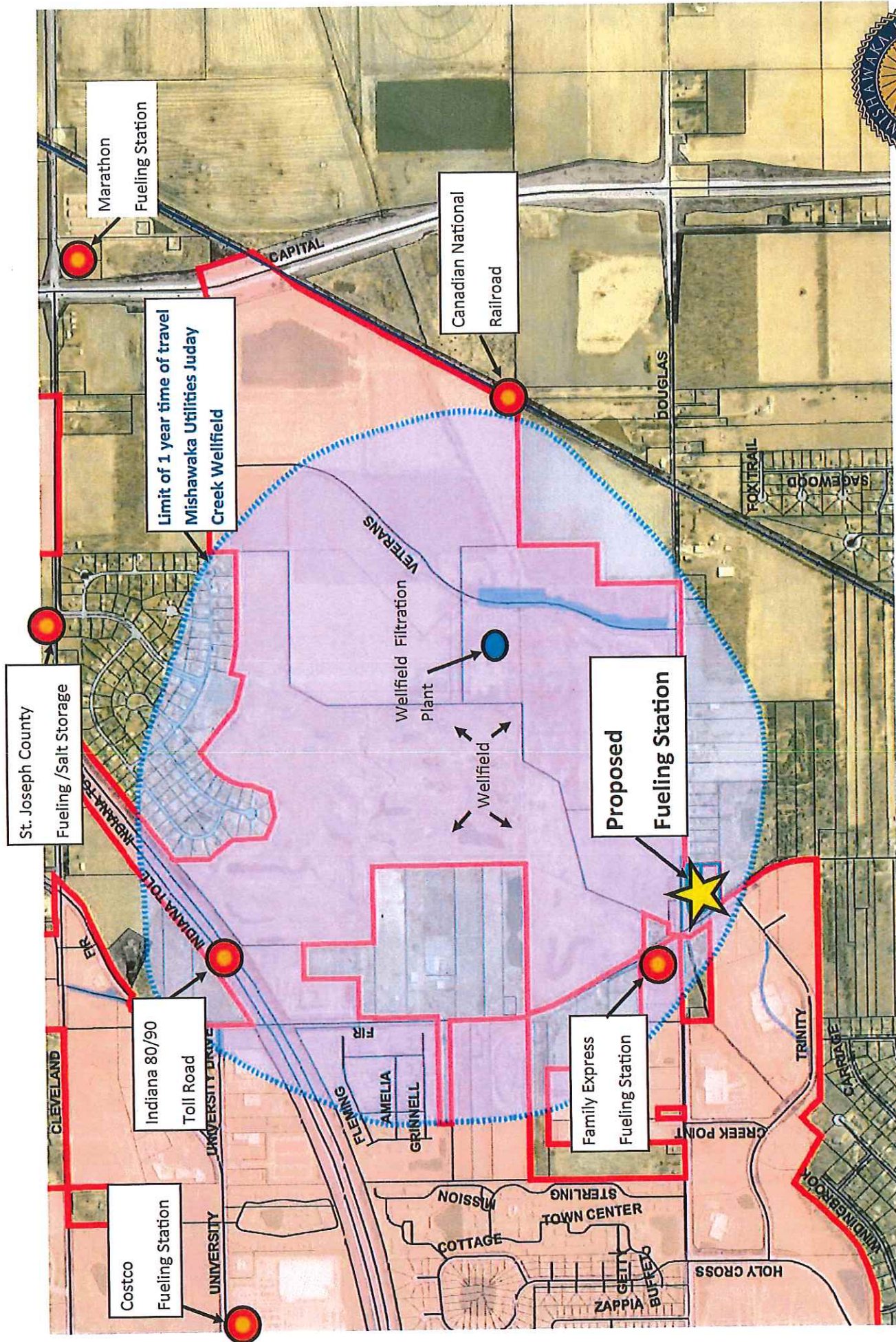
2. Southwest facing from Douglas Rd



3. Southeast facing from Fir Rd



4. East facing from Fir Rd



Mishawaka Utilities Water Division Juday Creek Wellfield 1 year time of travel

Known existing risk factor
Juday Creek wellfield



Honorable Members of the
Common Council
City of Mishawaka, Indiana
And
Mishawaka City Plan Commission
City of Mishawaka, Indiana



RE: Petition to Rezone 3 Total Parcels (15022 Douglas Road, 5328 N Fir Road, and vacant)

The undersigned, SEC Investments LLC, ("Petitioner") is the owner of three (3) parcels of land containing approximately 2.3 acres located on the southeast corner of the intersection of Douglas and Fir Roads, Mishawaka, St. Joseph County, Indiana and further described by the legal description attached hereto as EXHIBIT "A".

The Petitioner owns one hundred (100%) percent of the above described 3 parcels of land which are currently zoned C-1 General Commercial District in the city of Mishawaka. Said real estate is improved with a vacant single family dwelling unit in addition to a detached garage and shed.

The Petitioner desires said real estate to be rezoned to C-10 Filling Station District in the city of Mishawaka. The Petitioner further states that it intends to utilize said land for the development of a proposed convenience store and gas station.

Wherefore, the Petitioner respectfully requests that the Common Council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate ordinance be enacted rezoning the above described parcels of land in the City of Mishawaka.

PETITIONER: SEC INVESTMENTS, LLC

By: _____

Stephen R. Murphy

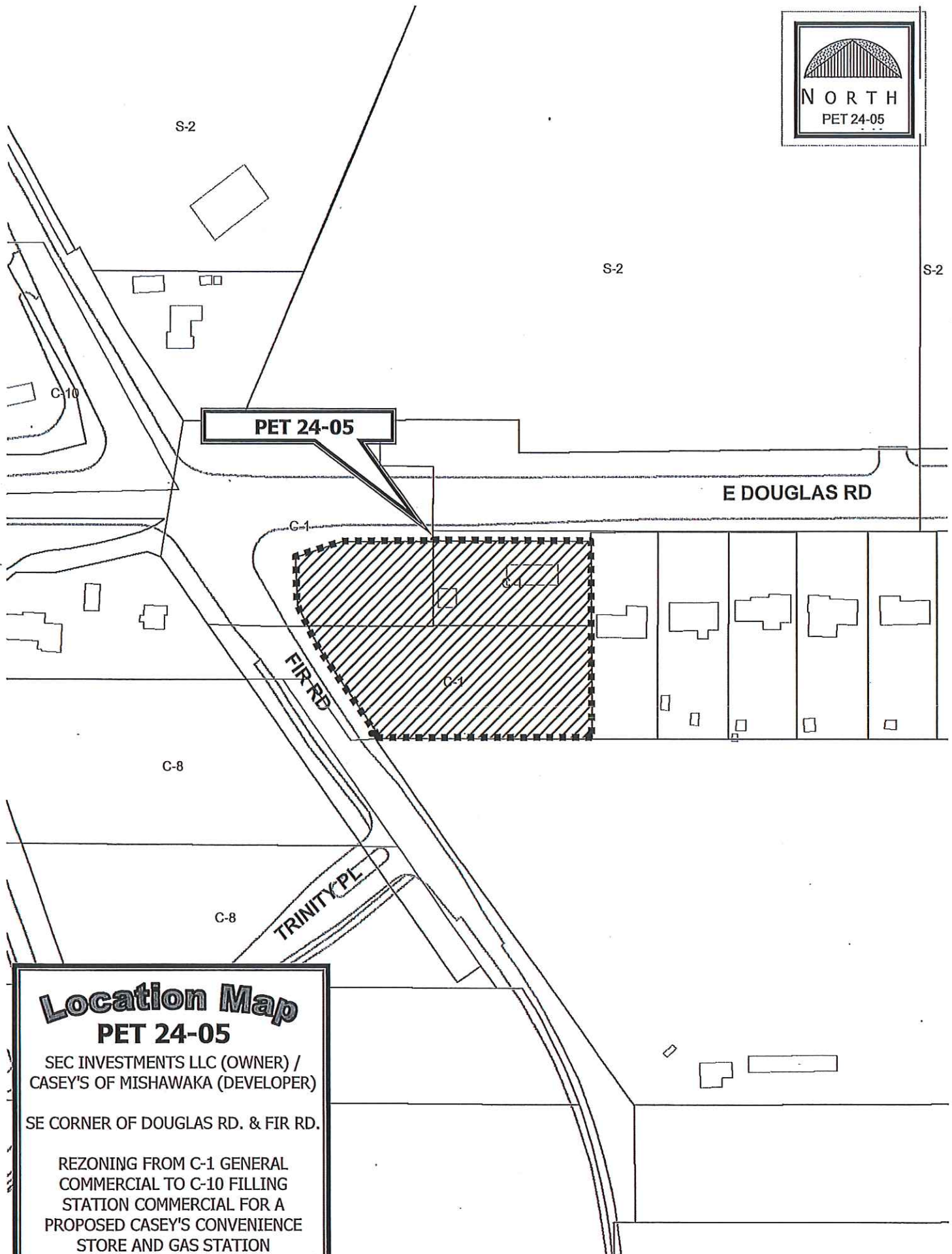
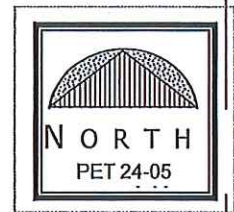
Stephen R. Murphy
Member

3/19/24

Date

Contact Person:

Name: Connor Strege, PE – Kimley-Horn & Associates, Inc.
Address: 500 East 96th Street, Suite 300, Indianapolis, IN 46240
Phone Number: (317) 218-9465
Email: connor.strege@kimley-horn.com



Location Map PET 24-05

SEC INVESTMENTS LLC (OWNER) /
CASEY'S OF MISHAWAKA (DEVELOPER)

SE CORNER OF DOUGLAS RD. & FIR RD.

REZONING FROM C-1 GENERAL
COMMERCIAL TO C-10 FILLING
STATION COMMERCIAL FOR A
PROPOSED CASEY'S CONVENIENCE
STORE AND GAS STATION