

## **REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL**

**April 22, 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, April 22, 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 (P), 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 8, 2024, were approved as received from the Clerk's Office.

Clerk Block read letters from the Board of Zoning Appeals and the City Plan Commission regarding their recommendations from their April 9, 2024, meetings.

Clerk Block read the following proposed ordinances by title and assigned committee.

### **PROPOSED ORDINANCE NO. 2024-08**

**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 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 second reading to be held on May 20<sup>th</sup>)  
(Assigned to Land Use Planning Committee)**

### **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.  
(Assigned to Land Use Planning Committee)**

**PROPOSED ORDINANCE NO. 2024-10**

**AN ORDINANCE AMENDING TITLE 8, CHAPTER 58 OF THE MUNICIPAL CODE  
OF THE CITY OF MISHAWAKA, INDIANA, COMMONLY REFERRED TO AS THE  
TRAFFIC CODE**

**Amending the Traffic Code to add All-Way Stop at Various Intersections  
(Assigned to Land Use Planning Committee and also the Mishawaka Traffic Commission  
for their review)**

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

**RESOLUTION R2024-04**

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA,  
INDIANA, INTRODUCING AN ORDINANCE FOR ANNEXATION, ADOPTING A  
WRITTEN FISCAL PLAN, AND A DEFINITE POLICY FOR ANNEXATION FOR THE  
PROPERTY LOCATED AT: 58650 BREMEN HIGHWAY, 15900 & 15901 PRINCESS  
DRIVE, AND 15676 DRAGOON TRAIL MISHAWAKA, IN 46544 – EAST SIDE OF  
BREMAN HIGHWAY APPROXIMATELY 480’ SOUTH OF DRAGOON TRAIL  
Fiscal Plan for the annexation of Bremen Hwy & Dragoon Trail**

Derek Spier, City Planner, spoke in favor of **RESOLUTION R2024-04**. Mr. Spier stated this was a fiscal plan for a proposed annexation of over 18 acres for residential development located at the southeast corner of Bremen Highway and Dragoon Trail. Mr. Spier stated prior to preparing the plans, they forwarded them to all of the city departments that would provide services to them, and they were asked if there were any expenditures or cost, what would be required to service the area and if the funds were already currently approved within the city budget. Mr. Spier stated in this case, the property was in a pocket of unincorporated area immediately adjacent to the existing city limits. Mr. Spier stated the developer was responsible for extending all utilities to the property and also constructing any of the required improvements in the public right-of-way for the proposed development. Mr. Spier stated no additional expenditure was anticipated at that time. Mr. Spier stated the proposal was 50 to 75 residential units and the value of each of the units was approximately \$500,000. Mr. Spier stated currently on the property, there were two single family homes and those would be incorporated in the overall design of the property and with the proposed development to include up to 75 residential units over the next several years, it was anticipated that the assessed valuations would significantly increase and as a result, the amount of taxes that each unit would give would increase. Mr. Spier stated he was happy to answer any questions.

Mr. Carroll stated they were holding meetings and answering questions and concerns of folks in the immediate area within the district and to his knowledge, all of the questions and concerns they had were answered to their satisfaction.

Question was called for at 6:09PM for **RESOLUTION R2024-04 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.

### **RESOLUTION R2024-05**

#### **A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, INTRODUCING AN ORDINANCE FOR ANNEXATION, ADOPTING A WRITTEN FISCAL PLAN, AND A DEFINITE POLICY FOR ANNEXATION FOR THE PROPERTY LOCATED AT: THE NORTHWEST CORNER OF CLEVELAND ROAD AND CAPITAL AVENUE, INCLUDING THE ADJACENT CLEVELAND ROAD AND CAPITAL AVENUE PUBLIC RIGHT-OF-WAY**

#### **Fiscal Plan for the annexation of NW corner of Cleveland Road and Capital Avenue**

Derek Spier, City Planner, spoke in favor of **RESOLUTION R2024-05**. Mr. Spier stated this included over 30 acres and of those 30 acres, 19 of them were within the public right-of-way. Mr. Spier stated this was planned to be a phased auto mall commercial development and it was immediately adjacent to the property that was annexed two years ago that was brought into the city over 60 acres to the north and to the west and it was owned by the same applicant. Mr. Spier stated similar to the last fiscal plan, all of the city departments had indicated that they could service this with no additional expenditures and it was already within the budget that they could service it and also like the last one, the developer was required to extend any utilities to the property and do any improvements within the public right-of-way, so there were no additional expenditures that were anticipated to the public. Mr. Spier stated this was a multi-phase project and it was estimated to be a \$50 million development. Mr. Spier stated on the piece to be annexed, there was currently a single-family house there along with a lot of farmed land and with the commercial development being at \$50 million that was anticipated to be constructed, it was also anticipated to significantly increase tax revenue for all of the taxing districts. Mr. Spier stated he was happy to answer any questions.

Question was called for at 6:12PM for **RESOLUTION R2024-05 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.

## **RESOLUTION NO. 2024-06**

### **A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, INTRODUCING AN ORDINANCE FOR ANNEXATION, ADOPTING A WRITTEN FISCAL PLAN, AND A DEFINITE POLICY FOR ANNEXATION FOR THE PROPERTY LOCATED AT: 16963 W. DOUGLAS ROAD, CONSISTING OF ONE TAX PARCEL AND THE ADJACENT DOUGLAS ROAD PUBLIC RIGHT-OF-WAY Fiscal Plan for the annexation of 16963 W. Douglas Road**

Derek Spier, City Planner, spoke in favor of **RESOLUTION R2024-06**. Mr. Spier stated this was a 1.4-acre property that included a single-family residential house. Mr. Spier stated this was truly a pocket in that all of the property to the north, west and east was currently within city limits. Mr. Spier stated the property was proposed to be combined with the adjacent property to the north and west and developed for a proposed U-Haul development. Mr. Spier stated similar to the last two, the developer was responsible for connecting all city utilities to the property, so there was no additional anticipated cost in public expenditures required for the property. Mr. Spier stated also with this property, with the vacant land being to the north and west and this just being a single-family residential home, in the future it was anticipated to bring increased revenue based on the increase in the assessed valuation for the project. Mr. Spier stated he was happy to answer any questions.

Question was called for at 6:15PM 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.

## **RESOLUTION R2024-07**

### **A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, APPROVING A PETITION OF THE MISHAWAKA BOARD OF ZONING APPEALS FOR THE PROPERTY LOCATED AT: 1017 E JEFFERSON BOULEVARD Use Variance to allow a Food Truck in the Parking Lot of Pilo's Body Shop – 1017 E. Jefferson Blvd.**

Pablo Bueno Jr., also known as Pilo, the owner of Pilo Body Shop and Auto Sales LLC at 1017 E. Jefferson Boulevard, spoke in favor of **RESOLUTION R2024-07**. Mr. Bueno stated he was originally granted a permit back in 2022 but they did not end up doing anything that year, because he got sick with COVID three different times, and it set him back quite a bit. Mr. Bueno stated he was present that evening to once again renew the permit and to continue to move forward with their plan of a food truck at Pilo's Body Shop.

Mr. Mammolenti thanked Mr. Bueno for coming that evening and he was glad everything went well last year health-wise. Mr. Mammolenti asked if there was any different than when he came before the Council the last time in 2022. Mr. Bueno stated nothing had changed and all was the

same. Mr. Mammolenti asked, just to be clear, if he ever operated the food truck. Mr. Bueno stated he did not.

Ms. Hahn asked if the food truck would be stationary or if it would be going off of the property. Mr. Bueno stated it would be on the property and it would be there three days a week, Thursday, Friday and Saturday, from 2PM to 8PM on Thursday and Friday and 4 to 6 hours on Saturday. Ms. Hahn asked where he anticipated most of his business coming from. Mr. Bueno stated just the general public.

Mr. Banicki stated he looked forward to stopping by and trying his food. Mr. Bueno stated he would appreciate that.

Mrs. Voelker asked if the truck was fully equipped and ready to go or if he was still working on it. Mr. Bueno stated at the time he was sick, it set him back, but they were very close to finishing it up and they were hoping to be ready by Cinco de Mayo, which was why he was there that evening but that did not matter at that point. Mr. Bueno stated he just wanted to be able to put his business out there at one point or another. Mrs. Voelker asked if he would be doing the cooking or if his son would be cooking. Mr. Bueno stated it would be done by family members and he would be hiring a professional chef as well to help cook. Mrs. Voelker asked him to tell her about the steps in the process and where they were at that point and asked if the truck was painted. Mr. Bueno stated it was painted and it would be wrapped that weekend. Mrs. Voelker asked if going to the health department was the next step. Mr. Bueno stated that was correct and he had already been in contact with them, but they were waiting for certain things for him to continue forward. Mr. Bueno stated it was an established food truck and had been a food truck prior to him purchasing it and it was already made, already had a kitchen and everything was all ready on that front.

Mr. Hixenbaugh stated it was good to see him again. Mr. Hixenbaugh stated he assumed Mr. Bueno had seen the staff report and in there, there were two conditions that were proposed for any approval of his request with the first being that the truck would be located a minimum of ten feet from the north property line and asked if that would be a problem. Mr. Bueno stated it would not be a problem at all. Mr. Hixenbaugh stated and then the second condition was that the hours of operation would be limited to six hours per day and three days a week. Mr. Bueno stated that was correct. Mr. Hixenbaugh asked if he had an idea specifically on which three days and which six hours per day he intended to operate. Mr. Bueno stated Thursday and Friday for a fact and he had asked for Sunday, but he was back and forth with Saturday or Sunday being the third day of operation. Mr. Bueno stated it would probably be Sunday. Mr. Hixenbaugh asked so basically the weekend, starting on Thursday, was what he had in mind. Mr. Bueno said yes. Mr. Hixenbaugh stated he felt the same way about this as he did in 2022 and he liked the story, he liked the fact that he wanted to bring his son into the business and allow him to participate as well, so he felt good about that but what he did not feel as good about was the fact that, right or wrong, the Council put a year limitation on the original use variance so they could gauge how this would work in the neighborhood and the community since it was a little bit of an unusual

request that did not come to them frequently and now, through no fault of his own, the year had come and gone but he had not operated to the point where they could gauge what, if any, issues there would be. Mr. Hixenbaugh stated he did not anticipate any issues, but there was a reason why they put the year limitation on the original use variance, so that was what he was struggling with a little bit and asked if Mr. Bueno could help him work through that technicality, because he felt like they almost ought to start the clock ticking on the year again since he really did not have a chance to operate during that first year. Mr. Bueno stated he believed he expressed all of that back in 2022 but if he would like, he'd be more than glad to break it down again. Mr. Hixenbaugh thanked Mr. Bueno.

Mr. Mammolenti asked Mr. Hixenbaugh to clarify that as they approved it in 2022 which was for a year as stated before, but this time if approved, it would be in perpetuity and if that was correct. Mr. Hixenbaugh stated that was his reading of the resolution in front of them and asked Mr. Trippel if he agreed. Mr. Trippel said yes. Mr. Mammolenti continued on stating he shared some of the concerns that Mr. Hixenbaugh mentioned that they had granted the use variance for a year just to get a trial and see how it would work within neighborhood, residents and with the traffic impact and to his point, it was no fault of Mr. Bueno's due to an unexpected illness but he did feel a little bit cautious voting in favor of it in perpetuity. Mr. Mammolenti asked if there was any way they could make an amendment for another year. Mr. Hixenbaugh asked Mr. Trippel if he saw any problem with the entertaining motion to again impose a year condition in the resolution. Mr. Trippel stated that would be acceptable. Mr. Mammolenti asked for Mr. Bueno to come back up to the podium and then asked him if he would be willing to do the same thing for the following year, do a year and then come back for the approval. Mr. Bueno stated the problem was that it would be the second time he would have to pay the fee and to have to come a third time, that did not seem fair to him at all, but if that was what the Council was asking then he was willing to do that. Mr. Mammolenti asked if he was willing to do it but would prefer not to. Mr. Bueno stated he was willing to do it because nothing had changed and everything that he had came and told them last year was the complete truth that he would run the business to the best of his ability and use integrity, dignity and respect in the process. Mr. Bueno stated just to point out, Pilo's Body Shop was just recognized by the Better Business Bureau as a five-star body shop and he did not see why he did could not carry that integrity and dignity that got him to that point to his business of the tacos, which was going to be much easier to run than a body shop, but if it was one year they were asking for, then let's do it. Mr. Mammolenti thanked Mr. Bueno.

Mrs. Voelker asked what the fee was that he mentioned for this process. Mr. Bueno stated it was \$400. Mrs. Voelker asked if he paid \$400 two years ago and \$400 again. Mr. Bueno stated that was correct. Mrs. Voelker stated the first time though, it was not their fault that it did not happen. Mr. Bueno stated it was nobody's fault, but he just wished the Council would take that into consideration and it was hard times right now. Mrs. Voelker thanked him and stated she just wanted to clarify that.

Mr. Hixenbaugh stated he could certainly understand having the hesitation to pay the fee again and again and that made perfect sense, but his concern, perhaps it was a lawyer's concern and he

was overthinking it, was that he did not feel strongly about the year condition back in 2022 when they approved this, however once the Council took that step and to the extent that they were going to do this in the future, if the passage of time allowed someone to wait them out and not follow through with that trial period, then it really rendered that nullity and they should never do it again. Mr. Hixenbaugh stated he was not casting any dispersions on Mr. Bueno, and he took at face value his explanation, but he was fearful that it would establish a precedent where whomever did not like the conditions would be able to run out the clock. Mr. Hixenbaugh stated from his standpoint, because of that overall procedural concern, he was unwilling to vote in favor of this, as much as he continued to like the story and if they were going to establish those conditions, they ought to have some meaning so absent of another year-long trial period, he would be voting no on the resolution that evening.

Mr. Carroll asked if there was a happy medium where it could be part of the same variance, so the fee did not have to be paid but still have a year time limit. Mr. Hixenbaugh asked for Mr. Trippel's opinion on this, but he was unaware of any ability for them to waive the standard fee for this specific individual and make an exception for him and him alone. Mr. Trippel stated he was unaware of it ever being done and did not know how it would be done and enforced. Mr. Hixenbaugh stated again that he would like to see this done, but the year-long trial period that they did not have a chance to be able to monitor in the past continued to make sense to him.

Mr. Banicki stated he would like to make a motion that they amend the resolution to include another one-year probationary type of period and then reevaluate it in a year. Mr. Banicki stated they would basically just be starting the clock over and that way they could better tell if it was going to work for him and work for the Council. Mr. Banicki stated if it worked really well for Mr. Bueno, which he hoped it would, then he would be more than happy to pay that fee and make sure it worked. Mr. Banicki stated if not, then he just would not come back, and it would fall by the wayside, and they would be done. Mr. Banicki made the motion to start over the one-year probationary period. Mr. Mammolenti seconded the motion. Prior to the vote, Mr. Emmons asked when the period would start. Mr. Hixenbaugh stated it was his suspicion that the clock would start to tick as of that evening, but he deferred to Mr. Trippel. Mr. Trippel stated that was correct. A voice vote was held on Mr. Banicki's motion, and it passed unanimously. Mr. Hixenbaugh then called for the question on **RESOLUTION R2024-07 AS AMENDED**.

Question was called for at 6:31PM for **RESOLUTION R2024-07AA 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 as amended passed 9-0.

## **RESOLUTION R2024-08**

### **A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, APPROVING A PETITION OF THE MISHAWAKA BOARD OF ZONING APPEALS FOR THE PROPERTY LOCATED AT: 311 TAYLOR STREET Use Variance to allow Duplex in R-1 Single Family Residential – 311 Taylor St.**

Michelle Bordeaux, 10189 Shadow Wood Drive Granger, IN, spoke in favor of **RESOLUTION R2024-08**. Mrs. Bordeaux stated the property at 311 Taylor was currently operating and had been operating as a duplex for numerous years and she was in the process of trying to purchase the property and it was causing her some problems with the mortgage lender, because was in an R-1 Single Family Residential, so it was showing as illegal and non-conforming. Mrs. Bordeaux stated that they were asking to continue to use it as a duplex as it had been running for multiple years to be able to get the sell underway.

Mrs. Voelker asked Mrs. Bordeaux if she was attempting to purchase it or if she was the current owner. Mrs. Bordeaux stated she was attempting to purchase it and she worked with the owner who was trying to sell it as well.

Ms. Hahn asked Mrs. Bordeaux if she would be managing the property locally and if she was in St. Joe County. Mrs. Bordeaux stated she was in St. Joe County and lived in Granger, so she would personally be managing the property. Ms. Hahn asked Mrs. Bordeaux if she would continue to use it as a duplex. Mrs. Bordeaux said yes. Ms. Hahn stated she saw there were some code violations on the property and asked if she had any plans as to how she would intend to provide better upkeep while still using it as an apartment. Mrs. Bordeaux stated the current sellers had eliminated the one violation where there was parking in the street or parking in the yard as there had now been big boulders put there, so there was no way to park in the grass and you would have to park in the parking where it was allotted in the street. Mrs. Bordeaux stated as far as the trash was concerned, they drove by the properties she owned in Mishawaka quite frequently to help prevent any of these issues moving forward, so she hoped to do the same thing with this property as well. Ms. Hahn asked about parking and if in the lease there would be wording as to how many vehicles per apartment were allowed. Mrs. Bordeaux stated that there was wording in the lease that stated there was only enough parking for the people that were on the lease, with one individual living upstairs and two individuals living downstairs. Ms. Hahn thanked Mrs. Bordeaux.

Mr. Hixenbaugh asked Ken Prince if he could approach the podium and talk through a couple of points with him and thanked him for doing so. Mr. Hixenbaugh stated as part of an add-on to the staff report, the Council received some communication from their Code Enforcement department that touched on the issues Ms. Hahn referenced earlier and his reading of this was that, beginning in January of 2021 and continuing through October of 2023, there were a series of six nuisance cases opened by Code Enforcement with regard to this property and asked Mr. Prince if that was his understanding as well. Mr. Prince stated that was correct. Mr. Hixenbaugh stated that built upon a history of some substandard Code Enforcement cases that were opened, albeit prior to the

current owners taking possession of property in 2021 and asked if that was correct. Mr. Prince stated that was correct. Mr. Hixenbaugh stated there was also in the petition that was filed related to the resolution and in the staff report, some discussion of the nonconforming status on the property. Mr. Hixenbaugh asked Mr. Prince if he could touch on that and in particular, touch on what it meant when a property was described as a nonconforming property. Mr. Prince stated when you had a property such as this that was currently being used as a duplex, the zoning itself did not permit a duplex but in their research, they could not find any evidence that it was ever constructed as a single-family home, and it was probably constructed as a duplex when it started. Mr. Prince stated as the Council knew, the zoning ordinance adopted was adopted in 1966, so there were many properties that were created prior to that adoption and in this case, they had no issues with the applicant or the request but their issue was the lack of parking and if the Council allowed the R-2 zoning to continue, there was room for parking in this to perpetuate the R-2 use in the future. Mr. Prince stated for example, the reason the mortgage company typically wanted the zoning to match it was because if the property burned, they would be allowed to construct the R-2 family home back on the property and that was exactly why they were against the change of zoning, because if it burned to the ground, they had a nonconforming situation. Mr. Prince stated they already had parking issues in the area, and this would perpetuate that, and their preference would be that this property be converted to a single-family residence and particularly if it were to burn, they would want it reconstructed as a single-family to minimize the nonconformity and not perpetuate the nonconformity. Mr. Hixenbaugh asked with regard to that nonconforming status, based upon the recommendation of staff as well as the BZA, if in fact the Council chose not to approve the resolution, what would happen with the ongoing use of the property as a duplex. Mr. Prince stated it would not be impacted and essentially, it was nonconforming so there was no order from the city to vacate or stop that use and it could continue, albeit the applicant in this case was looking to purchase it would be unable to purchase the mortgage so if it were to remain for sale, likely someone else not needing a mortgage would end up buying it and not the current applicant. Mr. Hixenbaugh stated based upon the presentation that was made by the applicant that evening and the information provided, was there any change in the staff recommendation for denial that he would like to share with them or did he stand by the recommended denial of the proposal. Mr. Prince stated no and they felt for the applicant and appreciated that they were local and wanted to manage the property and wished more properties were done that way, but in this case just because of the nonconformity unless more parking could be provided for the property, their recommendation would be the same and they stood by their recommendation.

Mr. Carroll asked if there was any remediation that could be done to the property that would change his opinion possibly and it seemed like, if the purchaser had some kind of guarantee that parking was going to be remedied that could change things. Mr. Prince stated right now, the property was on a postage stamp and there was no room for parking and fundamentally, that was what the issue was. Mr. Prince stated barring working with a neighbor to try to figure out how to provide by buying property and adding it to the property, that would be the only way to conceivably address it. Mr. Carroll thanked Mr. Prince.

Question was called for at 6:41PM for **RESOLUTION R2024-08 Motion failed by unanimous roll call vote (summary: No = 9).**

**No: Mrs. Hazen, Mrs. Voelker, Mr. Carroll, Mr. Banicki, Mr. Emmons, Ms. Hahn, Mr. Mammolenti, Mr. Violi, Mr. Hixenbaugh.** The resolution failed 9-0.

### **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 FOR 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.**

**(Petitioner requesting postponement to May 6<sup>th</sup> regularly scheduled council meeting)**

Based on the request of the petitioner, the chair entertained a motion to postpone public hearing on PROPOSED RESOLUTION R2024-09 until their regularly scheduled meeting of May 6, 2024. Mr. Banicki moved the motion and Mr. Mammolenti seconded the motion, thus a voice vote was held. The motion passed unanimously, and the matter was moved to May 6, 2024.

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

### **PROPOSED ORDINANCE NO. 2024-05**

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

**Annex 1.5 Acres (crosshatch) & Establish Zoning as S-2 PUD & Amend existing Douglas Common PUD to allow for storage units – 1693 Douglas Rd & Adjacent property  
Vote Only**

Mr. Mammolenti reported the Committee of Land Use Planning recommended this proposed ordinance should be adopted. Upon a second by Mr. Banicki, the motion carried.

Mr. Hixenbaugh stated the record would reflect that in compliance with Indiana law, the public hearing on the matter was held at their last council meeting, so the floor was opened up to questions and comments from the Council.

Mr. Hixenbaugh stated to Mr. Trippel both at the public hearing and then in various forms of communication the Council received, questions had been raised with regard to the legality of the approval of this proposed ordinance and asked him to address that for the Council. Mr. Trippel referred to two points in the ordinance that both referenced uses and developmental standards of industrial districts, which were not germane to this argument because this was a PUD request and an amendment and the third point he referred to spoke about restrictions on residential developments and PUDs and again, that may have been a legal arguments but not in this

instance, because the existing PUD had already been using non-residential uses, so his opinion was that they failed and the staff report was quite good in summarizing the issues and that this was already determined to be a commercial corridor and there were non-residential uses on the PUD already. Mr. Hixenbaugh stated so in other words, if it was the pleasure of the Council to approve the proposed ordinance, there would be sufficient evidence that was adduced at the time of the hearing and based upon the staff report, that would support that action under Indiana law. Mr. Trippel stated he agreed.

Question was called for at 6:45PM for **PROPOSED ORDINANCE NO. 2024-05 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. 5885.**

#### **PROPOSED ORDINANCE NO. 2024-06**

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

**Annex 30.64 Acres & Establish Zoning as S-2 PUD – NW corner of Capital Ave. &  
Cleveland Rd.**

**Vote Only**

Mr. Mammolenti reported the Committee of Land Use Planning recommended this proposed ordinance should be adopted. Upon a second by Mr. Banicki, the motion carried.

Mr. Hixenbaugh stated the record would reflect that in compliance with Indiana law, the public hearing on the matter was held at their last council meeting, so the floor was opened up to questions and comments from the Council.

Question was called for at 6:47PM for **PROPOSED ORDINANCE NO. 2024-06 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 proposed ordinance passed 9-0, thus it became **ORDINANCE NO. 5886.**

#### **PROPOSED ORDINANCE NO. 2024-07**

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

**Annex & Zone to S-2 PUD for Residential Subdivision – SE Corner of Bremen Hwy &  
Dragoon Tr.**

### **Vote Only**

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.

Mr. Hixenbaugh stated the record would reflect that in compliance with Indiana law, the public hearing on the matter was held at their last council meeting, so the floor was opened up to questions and comments from the Council.

Question was called for at 6:49PM for **PROPOSED ORDINANCE NO. 2024-07 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.**

### **UNFINISHED BUSINESS**

#### **RESOLUTION R2024-03**

#### **A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, APPROVING A REPORT OF COMPLIANCE WITH STATEMENT OF BENEFITS FOR CERTAIN PROPERTY OWNERS**

#### **Tax Abatement Compliance Report 2024**

#### **Reconsideration for Amendment**

The chair entertained a motion to reconsider **RESOLUTION R2024-03 AS AMENDED.** Mr. Banicki moved the motion and with a second from Mr. Mammolenti, a voice vote was held. The motion passed unanimously, and the Council moved into the reconsideration of the proposed resolution with questions or comments from the Council.

Question was called for at 6:51PM for **RESOLUTION R2024-03AA 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 as amended passed 9-0.

Mr. Hixenbaugh thanked Mr. Spier for his work on that.

### **NEW BUSINESS**

Mr. Mammolenti publicly thanked Tim Ryan for accepting his calls during the workday, post-workday and on the weekends regarding issues Republic was having as far as picking up residents' trash and recycling. Mr. Mammolenti stated Mr. Ryan had been very on top of it and communicating with them trying to figure out what issues they were having and his

understanding was that there were truck and staffing issues and they were working their way through it. Mr. Mammolenti stated he had never had an issue on his street, but he had heard more and more complaints regarding Republic, and he just asked the citizens of Mishawaka experiencing these problems be patient with them over the next few weeks and hopefully they resolved some of their truck and staffing issues going forward. Mr. Mammolenti thanked Tim Ryan and all of those involved. Mr. Hixenbaugh thanked Mr. Mammolenti for his follow-up on that issue.

ADJOURNMENT 6:53PM

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](http://www.youtube.com/@cityofmishawaka635) for as long as this media is supported.