

## **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 12<sup>th</sup> 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 12<sup>th</sup>.

**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 23<sup>rd</sup> at 6PM with a special council meeting following on May 30<sup>th</sup> 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. 5888.**

## **NEW BUSINESS**

Mr. Emmons announced the West End Neighborhood meeting would be held Thursday May 16<sup>th</sup> at St. Bavos 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](http://www.youtube.com/@cityofmishawaka635) for as long as this media is supported.