

ORDINANCE NO.: #24-2020

**AN ORDINANCE OF THE COMMON COUNCIL OF THE
CITY OF VALPARAISO, PORTER COUNTY, INDIANA,
ANNEXING CERTAIN REAL ESTATE TO THE CITY OF
VALPARAISO, INDIANA**

WHEREAS, on June 8, 2020, in accordance with Indiana Code §36-4-3-5.1, Bharat K Pithadia and Kanak B. Pithadia filed a Petition for Annexation, to annex an area consisting of approximately 14.34 acres located outside of but contiguous to the City, more particularly described on Exhibit A attached hereto and incorporated herein ("Annexed Territory"). Such petition is incorporated by reference into this Ordinance; and

WHEREAS, the City of Valparaiso, Porter County, Indiana ("City"), wishes to annex the Annexed Territory; and

WHEREAS, in accordance with Indiana Code §36-4-3-5.1(e), on or about December 14th, 2020, the Common Council held a duly noticed public hearing regarding the Annexed Territory; and

WHEREAS, the Common Council has determined, in accordance with Indiana Code §36-4-3-5.1, the petition requesting a super voluntary annexation is signed by 100% of the owners of land within the Annexed Territory; and

WHEREAS, in accordance with Indiana Code §36-4-3-1.5, the Common Council has determined that the Annexed Territory is contiguous as at least one-eighth (1/8) of the aggregate external boundaries of the Annexed Territory coincides with the existing boundaries of the City; and

WHEREAS, on or about December 14th, 2020, and prior to holding the above-referenced public hearing, in accordance with Indiana Code §36-4-3-3.1 and §36-4-3-12, the Common Council adopted by resolution a written fiscal plan for the Annexed Territory; and

WHEREAS, on or about September 8, 2020, the City's Plan Commission held a duly noticed public hearing regarding the initial zoning of the Annexed Territory; and

WHEREAS, on or about October 13, 2020, the City's Plan Commission voted by a vote of 7-0 to favorably recommend initially zoning the Annexed Territory as Suburban Residential (SR) District; and

WHEREAS, the Common Council finds that the annexation and initial zoning of the Annexed Territory pursuant to the terms and conditions of this Ordinance is in the best interest of all owners of land in the Annexed Territory, is fair and equitable, and should be accomplished; and

WHEREAS, the Common Council now desires to annex the Annexed Territory.

NOW, THEREFORE BE IT ORDAINED by the Common Council of the City of Valparaiso, Porter County, Indiana, as follows:

Section 1. Incorporation of Recitals. The foregoing recitals are findings of fact by the Common Council and are incorporated into this Ordinance by reference.

Section 2. Contiguity. The petition requesting super voluntary annexation for the Annexed Territory is signed by 100% of the owners of land within the Annexed Territory and is contiguous to the City boundaries as at least one-eighth (1/8) of the aggregate external boundaries of the Annexed Territory coincides with the existing boundaries of the City.

Section 3. Annexed Territory. The real estate containing approximately 14.34 acres more or less more particularly described in Exhibit A attached hereto and incorporated herein, is hereby annexed to and declared part of the City of Valparaiso, Porter County, Indiana.

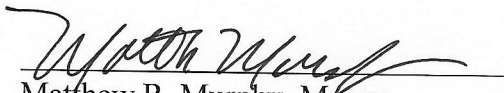
Section 4. Councilmatic District. The Annexed Territory is hereby assigned City Council District No. 1 and shall become a part thereof immediately upon the effective date of this Ordinance.

Section 5. Zoning. Upon the effective date of this Ordinance, the Annexed Territory shall be classified for zoning purposes as Suburban Residential (SR) District, subject to the terms of the Annexation Agreement effective simultaneously with this Ordinance, and attached hereto as Exhibit B.

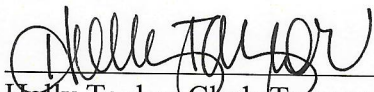
Section 6. Effective Date. Consistent with Indiana Code §36-4-3-5.1(j), this Ordinance shall be in full force and effect thirty (30) days after its passage by the Common Council and as provided by Indiana law.

Section 7. Severability. The sections, subsections, paragraphs, sentences, clauses, and phrases of this ordinance are severable, and if any section, subsection, paragraph, sentence, clause or phrase of this Ordinance shall be declared unconstitutional, invalid or unenforceable by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality, invalidity, or unenforceability shall not affect any of the remaining sections, subsections, paragraphs, sentences, clauses, and phrases of this Ordinance.

DULY PASSED AND ADOPTED this 11th day of January, 2021, by the Common Council of the City of Valparaiso, Porter County, Indiana, having been passed by a vote of 1 in favor and 0 opposed.


Matthew R. Murphy, Mayor

ATTEST:


Holly Taylor, Clerk-Treasurer

Presented by me to the Mayor of the City of Valparaiso, Indiana, this 11th day of January, 2021 at the hour of 6:00 o'clock p.m.



Holly Taylor, Clerk-Treasurer

EXHIBIT A
LEGAL DESCRIPTION

A parcel of land in the Southeast $\frac{1}{4}$ of Section 31, Township 35 North, Range 5 West of the Second Principal Meridian, in Center Township, Porter County, Indiana described as follows: Beginning at the Southwest corner of said Southeast $\frac{1}{4}$; thence North 00 degrees 06 minutes 45 seconds West along the West line of said Southeast $\frac{1}{4}$, 578.78 feet to a point that is 2073.00 feet South of the Northwest corner of said Southeast $\frac{1}{4}$; thence South 89 degrees 48 minutes 17 seconds East, parallel to the North line of said Southeast $\frac{1}{4}$ 1079.72 feet; thence South 00 degrees 06 minutes 45 seconds East parallel to said West line, 578.72 feet to the South line of said Southeast $\frac{1}{4}$; thence North 89 degrees 48 minutes 29 seconds West along said South line, 1079.72 feet of the Point of Beginning.

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT ("Agreement") is made by and between Bharat K. Pithadia and Kanak B. Pithadia ("Petitioner"), and the City of Valparaiso, Indiana, a municipality created and existing pursuant to the laws of the State of Indiana ("City"), and jointly referred to herein as "Parties."

WITNESSETH:

WHEREAS, Petitioners are the fee simple owners of the following described real estate located in Porter County, Indiana (the "Property"):

A parcel of land in the Southeast $\frac{1}{4}$ of Section 31, Township 35 North, Range 5 West of the Second Principal Meridian, in Center Township, Porter County, Indiana described as follows: Beginning at the Southwest corner of said Southeast $\frac{1}{4}$; thence North 00 degrees 06 minutes 45 seconds West along the West line of said Southeast $\frac{1}{4}$, 578.78 feet to a point that is 2073.00 feet South of the Northwest corner of said Southeast $\frac{1}{4}$; thence South 89 degrees 48 minutes 17 seconds East, parallel to the North line of said Southeast $\frac{1}{4}$ 1079.72 feet; thence South 00 degrees 06 minutes 45 seconds East parallel to said West line, 578.72 feet to the South line of said Southeast $\frac{1}{4}$; thence North 89 degrees 48 minutes 29 seconds West along said South line, 1079.72 feet of the Point of Beginning; and

WHEREAS, the Property is approximately 14.34 acres located on the north side of Division Road in unincorporated Porter County but contiguous to the corporate boundaries of the City of Valparaiso located within unincorporated Porter County, Indiana. The Property is identified as Parcel # 64-10-31-454-016.000-003; and

WHEREAS, on or about June 8, 2020, Petitioner filed Petition No. A20-001 and RZ20-001 (the "Petition") with the City seeking to have the Property annexed into the City and zoned as Light Industrial (INL) District pursuant to the City's Unified Development Ordinance, and the Petition is hereby incorporated by reference into this Agreement as if fully set forth herein;

WHEREAS, on September 8, 2020, the City Plan Commission conducted a legally advertised public hearing on the Petition; and

WHEREAS, on October 13, 2020, the City Plan Commission made a favorable recommendation to have the Property annexed into the City and zoned as the Suburban Residential (SR) District to the Common Council of the City by a vote of seven to zero; and

WHEREAS, the Plan Commission's favorable recommendation included the relaxation of certain development standards relating to accessory structures on the Property in the future; and

WHEREAS, on December 14, 2020, the Common Council of the City adopted Resolution No. 10-2020, and in doing so approved the Fiscal Plan for the Property. Resolution No. 10-2020 is hereby incorporated by reference into this Agreement as if fully set forth herein; and

WHEREAS, also on December 14, 2020, the Common Council of the City convened a public hearing on the Petition; and

WHEREAS, on January 11th, 2021, the Common Council of the City adopted Ordinance No. 24, 2020 by a vote of 7 to 0 contingent upon the City and Petitioner executing an Annexation Agreement relaxing certain requirements on the development of accessory structures on the Property. This Agreement shall be incorporated and attached to Ordinance No. 24, 2020; and

WHEREAS, the Parties wish to enter into this Agreement to memorialize and ratify the terms and conditions placed upon the Property as part of its annexation into the corporate limits of the City.

NOW, THEREFORE, in consideration of being permitted to be annexed into the City based upon the terms and conditions set forth herein, the Parties agree as follows:

1. Incorporation of Recitals. The above and foregoing recitals are true and correct and are hereby incorporated by reference and made a part of this Agreement.

2. Conditions Related to Subdivision for Residential Purposes. The Parties hereby acknowledge and agree that the current zoning of the Property is General Agriculture (A1) in unincorporated Porter County, Indiana pursuant to the Official Zone Map. The Parties further acknowledge and agree that the City's Unified Development Ordinance permits a residential subdivision to be developed on the Property under the Suburban Residential (SR) District. In the event that Petitioner, or its successors and assigns, seek to erect an accessory structure on the Property or any lot or zoning parcel on the Property, the following standards shall exclusively apply to such accessory structure or structures on each lot:

(a) Maximum Number of Accessory Structures.

1. On a lot between 12,000 square feet and two (2) acres, no more than two (2) accessory structures shall be permitted.
2. On lots greater than two (2) acres, up to three (3) accessory structures shall be permitted.

(b) Maximum Floor Area of Accessory Structures. The cumulative square footage of all accessory structures shall not exceed One Thousand Three Hundred (1,300) square feet; or two percent (2%) of the square footage of the lot; whichever is greater. However, the accessory structure's square footage shall not exceed the square footage of the primary structure.

- (c) Height of Accessory Structures. Accessory structures may have a maximum height of Twenty (20) feet. However, the height shall not exceed the height of the primary structure.

The annexation of the Property is conditioned upon the approval of these commitments.

3. Compliance with City Standards. Until such time as the Property is sold or otherwise transferred to a third party, Petitioner shall at all times be responsible for maintaining the Property in compliance with all applicable sections of the City's Code of Ordinances, Unified Development Ordinance and all other ordinances, rules or regulations. All future development, construction or alternation of the Property shall be done in full conformance with all requirements of the City. Existing structures shall be non-conforming structures under the Unified Development Ordinance.

4. Further Assurances. Promptly upon request from time to time of any party, the other party(ies) shall execute, acknowledge and deliver, or cause to be done, executed, acknowledged or deliver, to or at the direction of such party, all further acts, powers and other documents and instruments as may be so requested to give effect to the terms and conditions of this Agreement.

5. Deferred Annexation - Effective Date. This Agreement and the effective date of the annexation shall be as provided in Section 6 of Ordinance #24, 2020. Petitioner reserves the right and opportunity to withdraw the Petition prior to the adoption of Ordinance # 24, 2020. No lots may be conveyed by prior to the effective date, however, Petitioner may take deposits or enter into construction or purchase agreements prior to the effective date.

6. Merger. This Agreement constitutes the entire agreement of the Parties, and all promises, undertakings, representations, agreements and understandings, and arrangements with reference to representations are herein merged.

7. Construction. This Agreement is entered into in the State of Indiana and shall be construed in accordance with the laws thereof. In the event of a conflict or ambiguity within this Agreement, the more restrictive provision shall be deemed to prevail. The headings appearing as titles for each of the provisions of this Agreement are included for purposes of convenience only and shall not be considered in the construction of any of the substantive provisions herein.

8. Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under the present or future laws effective during the term of this Agreement, such provision will be fully severable, and this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never been a part of this Agreement; and the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as part of this Agreement a provision as similar in terms and intent to such illegal, invalid or unenforceable provision as may be possible.

9. Amendments. All amendments to this Agreement shall be in writing and approved and signed by all the parties, and no such amendment shall be effective unless and until so made.

10. Attorney's Fees. If any party to this Agreement seeks to enforce its terms or provisions by way of litigation or other methods of dispute resolution, the prevailing party shall be entitled to recover its reasonable attorney's fees, costs and other expenses from the non-prevailing party.

11. Authority. Each party hereto represents and warrants to the other that it is duly authorized by proper resolution or other such valid appointment to execute this Agreement.

12. Recordation. The Parties hereby acknowledge and agree that this Agreement will be recorded with the Office of the Recorder of Porter County, Indiana. The requirements of this Agreement shall run with the land and shall be binding upon and enforceable against Petitioners and their successors and assigns.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates and year set forth below.

PETITIONER:


Bharat K. Pithadia

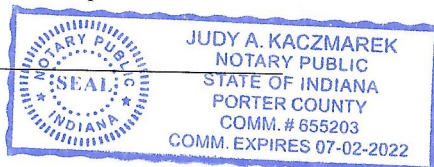
Kanak B. Pithadia

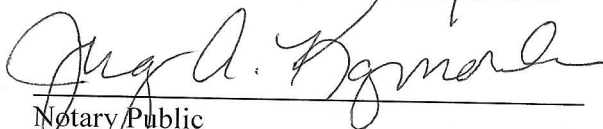
STATE OF INDIANA)
) SS:
COUNTY OF PORTER)

Before me, a Notary Public in and for said county and state, do hereby certify that Bharat K. Pithadia and Kanak B. Pithadia and personally known to me to be the person whose name is subscribed in the foregoing instrument, this day in person and acknowledged that he executed the foregoing instrument of his free and voluntary act.

Given under my hand and notarial seal this 11th day of January,
~~2020~~ 2021. 

My Commission Expires:




Notary Public

Printed: _____

The foregoing instrument was EXECUTED AND DELIVERED in my presence:

Corina Gaffney
Signature

Witnesses Printed Name:

Corina Gaffney

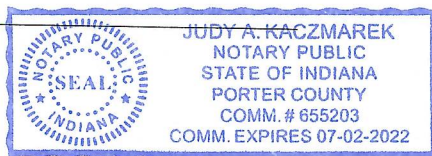
STATE OF INDIANA)
) SS:
COUNTY OF PORTER)

Before me, a Notary Public in and for said County and State, personally appeared Corina Gaffney, (WITNESSES NAME) being known to me to be the person whose name is subscribed as a witness to the foregoing instrument, who, being duly sworn by me, deposes and says that the foregoing instrument was executed and delivered by Bharat K. Pithadia and Kanak B. Pithadia in the above-named subscribing witness' presence, and that the above-named subscribing witness is not a party to the transaction described in the foregoing instrument and will not receive any interest in or proceeds from the property that is the subject of the transaction.

Witness my hand and Notarial Seal this 11th day of January, ~~2020~~ 2021. 40

My Commission Expires:

Judy A. Kaczmarek
Notary Public
Printed: _____



CITY:

CITY OF VALPARAISO, INDIANA

By: Matthew R. Murphy
Matthew R. Murphy
Mayor

Attest:

Holly Taylor
Holly Taylor, Clerk-Treasurer

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. *Todd A. Leeth*

This Instrument Prepared By:

Todd A. Leeth
Hoeppner Wagner & Evans LLP
103 E. Lincolnway
Valparaiso, Indiana 46383

**HOEPPNER
WAGNER &
EVANS LLP**
ATTORNEYS AT LAW

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