

#REZ-2015-0059

BILL NO. Z-15-11-22

ZONING MAP ORDINANCE NO. Z-_____

**AN ORDINANCE amending the City of Fort Wayne
Zoning Map No. N-26 (Sec. 25 of Washington Township)**

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE,
INDIANA:

SECTION 1. That the area described as follows is hereby designated a C2 (Limited
Commercial) District under the terms of Chapter 157 Title XV of the Code of the City of Fort
Wayne, Indiana:

Part of the Northwest Quarter of Section 25, Township 31 North, Range 12 East, In Allen County,
Indiana, more particularly described as follows:

Commencing at a point on the center line of Parnell Avenue, said point being 21.15 feet north and 9
feet west of the center of Section 25, Township 31 North, Range 12 East, Allen County, Indiana;
thence North, 1,022.40 feet along the centerline of Parnell Avenue; thence North 86 degrees 20
minutes 40 seconds West (North 86 degrees 32 minutes West, Deed) a distance of 748.10 feet to the
point of beginning; thence continuing North 86 degrees 20 minutes 40 seconds West, 550.40 feet;
thence North 00 degrees 17 minutes 00 seconds East, 180.00 feet; thence South 89 degrees 59
minutes 30 seconds East, 420.50 feet; thence South 32 degrees 31 minutes 15 seconds East, 49.60
feet; thence South 11 degrees 41 minutes 38 seconds East, 94.40 feet; thence South 45 degrees 27
minutes 59 seconds East, 115.16 feet to the point of beginning. Containing 2.11 acres more or less.

TOGETHER WITH:

Part of the Northwest Quarter of Section 25, Township 31 North, Range 12 East, in Allen County,
Indiana, more particularly described as follows:

Commencing at a point on the centerline of Parnell Avenue, said point being 21.15 north and 9 feet
west of the center of Section 25, Township 31 North, Range 12 East, Allen County, Indiana; thence
North 1,022.40 feet along the centerline of Parnell Avenue; thence North 86 degrees 20 minutes 40
seconds West (North 86 degrees 32 minutes West, deed) a distance of 496.50 feet to the point of
beginning; thence North 02 degrees 28 minutes 45 seconds East, 196.15 feet to the point of curvature
of a non-tangent curve to the left; thence Northwesterly, Northerly, and Northeasterly, along said curve
having a radius of 50.00 feet, an arc length of 125.66 feet and subtended by a chord bearing North 14
degrees 35 minutes 55 seconds West, a chord length of 95.41 feet; thence North 64 degrees 29
minutes 16 seconds West 303.68 feet; thence South 25 degrees 25 minutes 00 seconds West, 208.71
feet; thence South 32 degrees 31 minutes 15 seconds East, 49.60 feet; thence South 11 degrees 41
minutes 38 seconds East, 94.40 feet; thence South 45 degrees 27 minutes 59 seconds East, 115.16
feet; thence South 86 degrees 20 minutes 40 seconds East, 251.60 feet to the point of beginning.
Containing 2.61 acres, more or less. Subject to easements, rights-of-way, covenants and restrictions
of record.

and the symbols of the City of Fort Wayne Zoning Map No. N-26 (Sec. 25 of Washington
Township), as established by Section 157.082 of Title XV of the Code of the City of Fort
Wayne, Indiana is hereby changed accordingly.

City of Fort Wayne Common Council

DIGEST SHEET

Department of Planning Services

Title of Ordinance: Zoning Map Amendment
Case Number: REZ-2015-0059
Bill Number: Z-15-11-22
Council District: 3-Tom Didier

Introduction Date: November 24, 2015

Plan Commission
Public Hearing Date: December 7, 2015

Next Council Action: Ordinance will return to Council after recommendation by the Plan Commission

Synopsis of Ordinance: To rezone approximately 4.73 acres of property from SC-Shopping Center and RP-Planned Residential to C2-Limited Commercial

Location: 1007 Memorial Way

Reason for Request: To bring the zoning of the property into a single district that is compatible with surrounding zoning and uses.

Applicant: Shook, Mahoney-Shook, Glaser and Rusher

Property Owner: Shook, Mahoney-Shook, Glaser and Rusher

Related Petitions: none

Effect of Passage: Property will be rezoned to the C2-Limited Commercial zoning district which will permit a variety of commercial and retail uses.

Effect of Non-Passage: The property will remain zoned for residential and commercial uses under the multiple family and shopping center designations.

**Department of Planning Services
Rezoning Petition Application**

Applicant Shook Michael Andrew & Mahoney-Shook Kelli J UND 65% INT & Glaser Robyn K UND 25% INT & Rusher Christeen UND 10% INT
 Address 6211 Highgate Place
 City Fort Wayne State IN Zip 46815
 Telephone 260-415-3690 E-mail kjmahoney17@comcast.net

Contact Person
 Contact Person Brandon Downey
 Address PO Box 8169
 City Fort Wayne State IN Zip 46898
 Telephone 260-410-0575 E-mail brandon.downey@svn.com

All staff correspondence will be sent only to the designated contact person.

Request
☐ Allen County Planning Jurisdiction ☒ City of Fort Wayne Planning Jurisdiction
 Address of the property 1007 Memorial Way
 Present Zoning RP/SC Proposed Zoning C2 Acreage to be rezoned 4.73
 Proposed density _____ units per acre
 Township name Washington Township section # 25
 Purpose of rezoning (attach additional page if necessary) _____
 To bring all 4.73 acres to a more suitable zoning classification for future development other than current RP and SC
 Sewer provider City Water provider City

Filing Requirements
*Applications will not be accepted unless the following filing requirements are submitted with this application.
 Please refer to checklist for applicable filing fees and plan/survey submittal requirements.*

- ☒ Applicable filing fee
- ☐ Applicable number of surveys showing area to be rezoned (plans must be folded)
- ☒ Legal Description of parcel to be rezoned
- ☐ Rezoning Questionnaire (original and 10 copies) County Rezoning Only

I/We understand and agree, upon execution and submission of this application, that I am/we are the owner(s) of more than 50 percent of the property described in this application; that I/we agree to abide by all provisions of the Allen County Zoning and Subdivision Control Ordinance as well as all procedures and policies of the Allen County Plan Commission as those provisions, procedures and policies related to the handling and disposition of this application; that the above information is true and accurate to the best of my/our knowledge; and that I/we agree to pay Allen County the cost of notifying the required interested persons at the rate of \$0.85 per notice and a public notice fee of \$50.00 per Indiana code.

See Exhibit A

_____ (printed name of applicant)	_____ (signature of applicant)	_____ (date)
_____ (printed name of property owner)	_____ (signature of property owner)	_____ (date)
_____ (printed name of property owner)	_____ (signature of property owner)	_____ (date)
_____ (printed name of property owner)	_____ (signature of property owner)	_____ (date)

Received <u>11-3-15</u>	Receipt No. <u>119477</u>	Hearing Date <u>12/7/15</u>	Petition No. <u>REZ-2015-0059</u>
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Exhibit A

Printed name of property owner: **Shook Michael Andrew & Mahoney-Shook Kelli J UND 65%
int & Glaser Robyn K UND 25% int & Rusher Christeen UND 10% int**

Signature of applicant: Michael Andrew Shook

 11-2-15

Signature of applicant: Kelli J Shook-Mahoney

 11-2-15

Signature of applicant: Robyn Glaser

 11-2-15

Signature of applicant: Christeen Rusher

 11-2-15

Printed name of property owner: Michael Andrew Shook

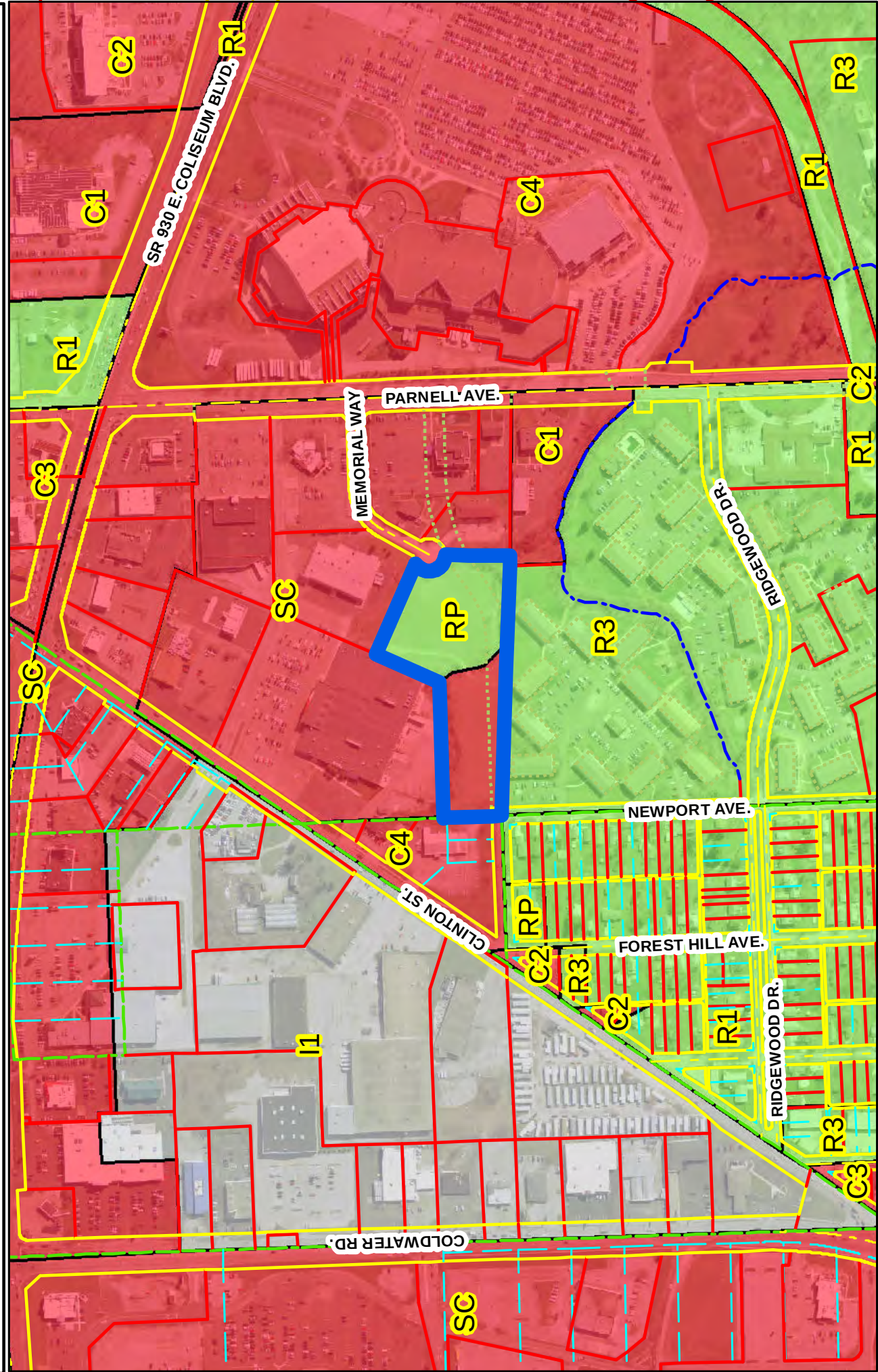
Printed name of property owner: Kelli J Shook-Mahoney

Printed name of property owner: Robyn Glaser

Printed name of property owner: Christeen Rusher



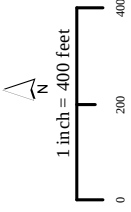
Rezoning Petition REZ-2015-0059



Project boundaries represented by bold colored lines are for representational purposes only.

Although strict accuracy standards have been employed in the compilation of this map, Allen County does not warrant or guarantee the accuracy of the information contained herein and disclaims any and all liability resulting from any error or omission in this map.

© 2004 Board of Commissioners of the County of Allen
North American Datum 1983
State Plane Coordinate System, Indiana East
Photos and Contours: Spring 2009



Date: 11/17/2015



Rezoning Petition REZ-2015-0059



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Photos and Contours: Spring 2009

Date: 11/17/2015

1 inch = 400 feet

0 200 400 Feet

WRITTEN COMMITMENT

THIS WRITTEN COMMITMENT ("Commitment") is made by **Shook Michael Andrew & Mahoney-Shook Kelli J UND 65% int & Glaser Robyn K UND 25% int & Rusher Christeen UND 10% int** (the "Declarant"), and is made effective as of the date of the approval of the Rezoning Petition.

WITNESSETH:

WHEREAS, Declarant is the owner of approximately 4.73 acres of real estate located in Fort Wayne, Allen County, Indiana, the legal description of which is attached hereto as Exhibit "A" (the "Real Estate"); and

WHEREAS, Declarant has applied for rezoning approval with the Plan Commission, on the Real Estate, which Petition has been approved by the Plan Commission and City Council; and

WHEREAS, Declarant has offered this Commitment, voluntarily, pursuant to Indiana Code 36-7-4-1015, for the purpose of limiting certain uses for the Real Estate; and

WHEREAS, in conjunction with the Petition, the Plan Commission has accepted Declarant's offer of this Commitment and its recordation with the Allen County, Indiana, Recorder's Office upon Plan Commission's and City Council approval of the Petition.

NOW, THEREFORE, in consideration of the above and foregoing recitals, Declarant hereby impresses upon the Real Estate certain restrictions and covenants which shall run with the Real Estate and be binding upon Declarant and all future owners of the Real Estate, and all lessees of all or any portion of the Real Estate.

1. Prohibited Uses. The following uses shall be prohibited upon the Real Estate as permitted in the C4/Intensive Commercial zoning district §157.213: TO BE DETERMINED
2. Maintenance. The Real Estate, and any parking lot or landscaping located thereon, shall be maintained in good order and repair so as to cause the least possible amount of interference, inconvenience or annoyance to any adjacent owner of residential property.
3. Outside Storage. Outside storage of trash and trash receptacles must be visually screened on three sides with a wood or vinyl fence or masonry structure, with a gate enclosure on the fourth side, or located within a larger fenced area, so long as the fence is a minimum of six (6) feet in height and solid board construction.
4. Landscaping and Buffering. A buffer area will be maintained along the boundaries of the Real Estate and will include: Based on recommendations by Landscape professionals at the time of development All landscaping planted and fencing installed by Declarant and/or Applicant upon the Real Estate shall be maintained, watered and fertilized by Declarant and/or Applicant pursuant to a commercially reasonable standard for similar landscaping and fencing in Allen County, Indiana and shall be replaced within a commercially reasonable time in the event of decay, disease or death of said landscaping or vandalism, casualty or other non-repairable condition to said fencing.

6. Signage. There may be located upon the Real Estate (a) one (1) ground mounted sign not to exceed eight (8) feet in height and eighty (80) square feet in area, which sign shall be located along the Memorial Way access drive at the entrance to the Real Estate. No temporary signs (including but not limited to banners, mobile or trailer signs, commercial flags, pennants, or balloons) shall be permitted.
7. Lighting. Site lighting shall be of a type to minimize light pollution onto any adjacent property by utilizing only full "cut-off" style wall pack lighting fixtures. Maximum pole height, including fixture and base shall not exceed 25 feet.
9. Successors and Assigns. This Commitment and the restrictions set forth above shall inure to the benefit of: (a) all persons who own property comprising the Real Estate, and their successors and assigns; and (b) the Zoning Administrator of City of Fort Wayne ("Zoning Administrator") and the Plan Commission, together with any successor agency having zoning jurisdiction over the Real Estate.
10. Enforcement. Any violation of this Commitment shall be deemed a violation of the Zoning Ordinance; provided, however, that nothing in this Commitment shall be construed as giving any person the right to compel enforcement of it by the Plan Commission or any enforcement official designated in the Zoning Ordinance, or any successor agency having zoning jurisdiction over the Real Estate. Pursuant to I.C. 36-7-4-1015, the Plan Commission, or any enforcement official designated in the Zoning Ordinance, shall be entitled to all legal and equitable remedies available, including specific performance and injunctive relief, for any violation of this Commitment. The Plan Commission enforcement rights are cumulative, not exclusive.
11. Amendment or Termination. This Commitment may be modified or terminated in accordance with the Zoning Ordinance and I.C. 36-7-4-1015, as they may be amended from time-to-time.
12. Effective Date. This Commitment shall be deemed effective upon the Commitment being duly recorded in the Office of the Recorder of Allen County, Indiana.
13. Statutory Authority. This Commitment is pursuant to I.C. 36-7-4-1015.
14. Severability. Each covenant or restriction contained in any paragraph of this Commitment shall be severable and separate, and if any court shall rule that any particular restriction or covenant is unenforceable, such ruling shall not affect the enforceability of any other restriction or covenant under this Commitment, and such other restriction or covenant shall be enforced.
15. Governing Law. This Commitment, including the restrictions and covenants hereunder, shall be governed by the laws of the State of Indiana.

"DECLARANT"

**Shook Michael Andrew & Mahoney-Shook Kelli J UND 65%
int & Glaser Robyn K UND 25% int & Rusher Christeen UND 10% int**

[Signature]
OWNER
[Signature]
OWNER
[Signature]
OWNER
[Signature]
OWNER

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public, in and for said County and State, this 2 day of NOV 2015, personally appeared **Shook Michael Andrew & Mahoney-Shook Kelli J UND 65% int & Glaser Robyn K UND 25% int & Rusher Christeen UND 10% int** and acknowledged the execution of the foregoing.

In witness whereof, I have hereunto subscribed my name and affixed my official seal.

LYNDA S. WYNN
Notary Public # 594733
Allen County, Indiana
My Commission Expires September 28, 2016

[Signature]
Notary Public

My Commission Expires: 9/28/16

My County of Residence: Allen

Pursuant to IC 36-2-11-15(d): I affirm, under the penalties of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

Prepared by: XXXXXXXX
When recorded, return to: Department of Planning Services

EXHIBIT "A"
LEGAL DESCRIPTION

SOUTHWEST PORTION OF 4.73 MEMORIAL WAY LAND

PART OF THE NORTHWEST QUARTER OF SECTION 25, TOWNSHIP 31 NORTH, RANGE 12 EAST, IN ALLEN COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE CENTER LINE OF PARNELL AVENUE, SAID POINT BEING 21.15 FEET NORTH AND 9 FEET WEST OF THE CENTER OF SECTION 25, TOWNSHIP 31 NORTH, RANGE 12 EAST, ALLEN COUNTY, INDIANA; THENCE NORTH, 1022.4 FEET ALONG THE CENTERLINE OF PARNELL AVENUE; THENCE NORTH 86 DEGREES 20 MINUTES 40 SECONDS WEST (NORTH 86 DEGREES 32 MINUTES WEST, DEED) A DISTANCE OF 748.10 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 86 DEGREES 20 MINUTES 40 SECONDS WEST, 550.40 FEET; THENCE NORTH 00 DEGREES 17 MINUTES 00 SECONDS EAST, 180.00 FEET; THENCE SOUTH 89 DEGREES 59 MINUTES 30 SECONDS EAST, 420.50 FEET; THENCE SOUTH 32 DEGREES 31 MINUTES 15 SECONDS EAST, 49.60 FEET; THENCE SOUTH 11 DEGREES 41 MINUTES 38 SECONDS EAST, 94.40 FEET; THENCE SOUTH 45 DEGREES 27 MINUTES 59 SECONDS EAST, 115.16 FEET TO THE POINT OF BEGINNING.

CONTAINING 2.11 ACRES, MORE OR LESS.

SUBJECT TO EASEMENTS, RIGHTS OF WAY, COVENANTS AND RESTRICTIONS OF RECORD.

NORTHEAST PORTION OF 4.73 MEMORIAL WAY LAND

PART OF THE NORTHWEST QUARTER OF SECTION 25, TOWNSHIP 31 NORTH, RANGE 12 EAST, IN ALLEN COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE CENTER LINE OF PARNELL AVENUE, SAID POINT BEING 21.15 FEET NORTH AND 9 FEET WEST OF THE CENTER OF SECTION 25, TOWNSHIP 31 NORTH, RANGE 12 EAST, ALLEN COUNTY, INDIANA; THENCE NORTH, 1022.4 FEET ALONG THE CENTERLINE OF PARNELL AVENUE; THENCE NORTH 86 DEGREES 20 MINUTES 40 SECONDS WEST (NORTH 86 DEGREES 32 MINUTES WEST, DEED) A DISTANCE OF 496.5 FEET TO THE POINT OF BEGINNING; THENCE NORTH 02 DEGREES 28 MINUTES 45 SECONDS EAST, 196.15 FEET TO THE POINT OF CURVATURE OF A NON-TANGENT CURVE TO THE LEFT; THENCE NORTHWESTERLY, NORTHERLY AND NORTHEASTERLY, ALONG SAID CURVE HAVING A RADIUS OF 50.00 FEET, AN ARC LENGTH OF 125.66 FEET AND SUBTENDED BY A CHORD BEARING NORTH 14 DEGREES 35 MINUTES 55 SECONDS WEST, A CHORD LENGTH OF 95.41 FEET; THENCE NORTH 64 DEGREES 29 MINUTES 16 SECONDS WEST, 303.68 FEET; THENCE SOUTH 25 DEGREES 25 MINUTES 00 SECONDS WEST, 208.71 FEET; THENCE SOUTH 32 DEGREES 31 MINUTES 15 SECONDS EAST, 49.60 FEET; THENCE SOUTH 11 DEGREES 41 MINUTES 38 SECONDS EAST, 94.40 FEET; THENCE SOUTH 45 DEGREES 27 MINUTES 59 SECONDS EAST, 115.16 FEET; THENCE SOUTH 86 DEGREES 20 MINUTES 40 SECONDS EAST, 251.60 FEET TO THE POINT OF BEGINNING.

CONTAINING 2.61 ACRES, MORE OR LESS.

SUBJECT TO EASEMENTS, RIGHTS OF WAY, COVENANTS AND RESTRICTIONS OF RECORD.