

City of Fort Wayne Common Council

DIGEST SHEET

Department of Planning Services

Title of Ordinance: Vacation of Platted Right-of-Way
Case Number: VROW-2019-0001
Bill Number: G-19-02-21
Council District: 4-Jason Arp

Introduction Date: February 26, 2019

Public Hearing Date: March 12, 2019 (to be held by Council)

Next Council Action: Ordinance will return to Council after approvals from reviewing agencies.

Synopsis of Ordinance: To vacate a portion of Land Drive and a portion of Sandhill Drive (aka Genth Road).

Location: All of Land Drive within Earth Industrial Park, Section II, and the western portion of Sandhill Drive, located north of Earth Industrial Park, Section II, and west of Mark Drive. Both rights-of-way are located south of Saybert, at 3511 Engle Road.

Reason for Request: The applicant plans to expand the Saybert facility south into Earth Industrial Park, Section II. The two rights-of way lie in this area.

Applicant: STN Realty, Indiana, LLC

Property Owner: STN Realty, Indiana, LLC

Related Petitions: none

Effect of Passage: Vacation of the rights-of-way will return the land to the adjacent property owner to the north and south (STN Realty) and allow for a 292,000 square foot expansion of a manufacturing facility. These are paper streets which remain undeveloped.

Effect of Non-Passage: The rights-of-way will remain under City jurisdiction. Expansion plans will have to be substantially altered to use the land within Earth Industrial Park, Section II.

VROW-2019-0001

BILL NO. G-19-02-21

GENERAL ORDINANCE NO. G-_____

**AN ORDINANCE amending the Thoroughfare
Plan of the City Comprehensive ("Master")
Plan by vacating public right-of-way.**

WHEREAS, a petition to vacate public right-of-way within the City of Fort Wayne, Indiana, (as more specifically described below) was duly filed with the City Clerk of the City of Fort Wayne, Indiana; and

WHEREAS, Common Council of the City of Fort Wayne, Indiana, duly held a public hearing and approved said petition, as provided in I.C. 36-7-3-12.

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

SECTION 1. That the petition filed herein to vacate a public right-of-way within the City of Fort Wayne, Indiana, more specifically described as follows, to-wit:

All of Land Drive within Earth Industrial Park, Section II, a plat recorded in Plat Book #37, Page 98, as document number 75-19673.

Together with:

All of Sandhill Drive located immediately north of Earth Industrial Park, Section II commencing at the western edge of Mark Drive and running westerly to the terminus of Sandhill Drive east of Ardmore Avenue.

and which vacating amends the Thoroughfare Plan of the City Comprehensive ("Master") Plan and is hereby approved in all respects.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage,
any and all necessary approval by the Mayor.

COUNCILMEMBER

APPROVED AS TO FORM AND LEGALITY:

Carol T. Helton, City Attorney

CITY OF FORT WAYNE

Vacation Petition

City Clerk / Suite 110 / Citizens Square Building / 200 East Berry Street / Fort Wayne IN 46802 / 260.427.1221

I/We do hereby petition to vacate the following:

_____ Easement X Public Right of Way (street or alley)

More particularly described as follows:

See attached.

(Please Attach a Legal Description of the property requested to be vacated, along with a survey or other acceptable drawing showing the property.)

DEED BOOK NUMBER: _____ **PAGE(S) NUMBER(S):** _____ (This information can be obtained from the Allen County Recorder's Office on the 2nd Floor, City-County Building, One Main Street, Fort Wayne, IN)

The reasons for the proposed vacation are as follows:

See attached.

(If additional space is needed please attach separate page.)

The applicant on an attached sheet must also provide the names and addresses of all adjacent property owner(s). The information on that sheet must be as follows:

Property owner(s) Name(s); Street Address; City; State; Zip Code; Phone Number with Area Code.

Applicant's name(s) if different from property owner(s):

Name: **See attached.**

Street Address: _____

City: _____ State: _____ Zip: _____ Phone: _____

FORT WAYNE, INDIANA

FILED

FEB 05 2019

LANA R. KEESLING
CITY CLERK

I/We, your petitioners, file this petition pursuant to the authority granted in Indiana Code, and provisions of local ordinance. I/We agree to abide by all provisions of the Fort Wayne Zoning Ordinance and/or Subdivision Control Ordinance, as well as all procedures and policies of the Fort Wayne City Plan Commission as those provisions, and policies relate to the handling and disposition of this petition. I/We also certify that this information is true and accurate to the best of my/our knowledge.

Stephen L Fink
Signature

Stephen L Fink
Printed Name

2/5/19
Date

888 S Harrison Suite 600
Address

Fort Wayne IN 46802
City/State/Zip

Signature

Printed Name

Date

Address

City/State/Zip

If additional space is needed for signatures please attach a separate page.

Agent's Name (Print Legibly): _____

Street Address: _____

City: _____ State: _____ Zip: _____ Phone: _____

NOTICE:

- Legal Description is to be the area to be vacated and must be complete and accurate. If necessary a licensed surveyor's legal description may be required.
- Applicant is hereby informed that in the case of a utility being located in a public way or easement, the applicant may be required to bear the cost of relocation, or of providing a replacement easement or easement's as needed.

For Office Use Only:

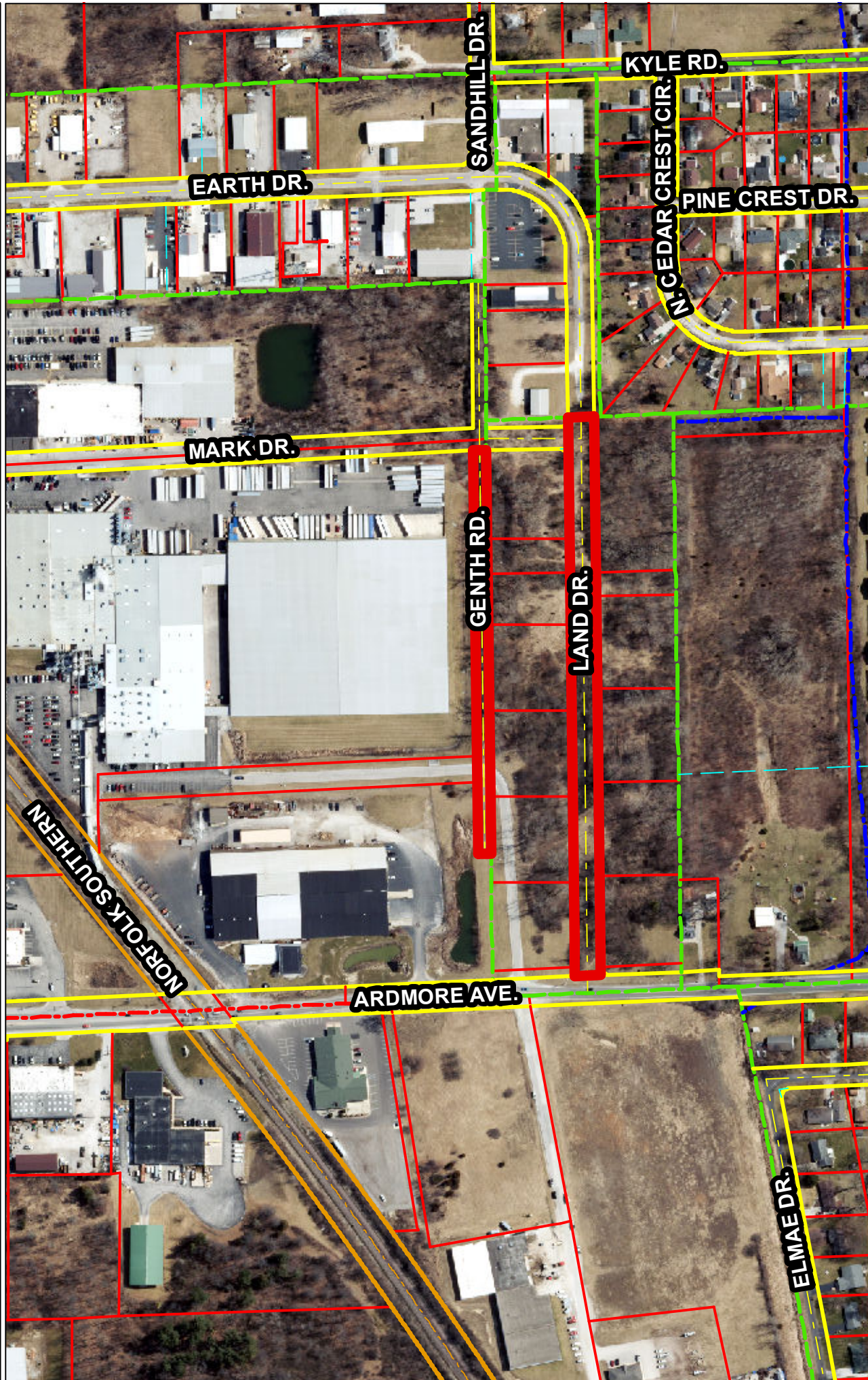
Receipt #: _____

Date Filed: 2/5/19

Map #: _____

Reference #: G-19-02-23

VROW-2019-0001



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: 2/15/2019



1 inch = 300 feet

0 150 300 Feet

ATTACHMENT TO VACATION PETITION SUBMITTED
BY STN REALTY INDIANA, LLC

Your petitioner, STN Realty, Indiana, LLC ("STN"), is located at 2288 Main St. Extension Sayreville, New Jersey 08872. The telephone number is (732) 721-5544. The contact person at STN is Lionel Pena (lpenna@sabert.com). STN seeks to vacate a platted but undeveloped right-of-way depicted as Land Drive within Earth Industrial Park, Section II, a plat recorded in Plat Book number 37, page 98, as document number 75-19673. A copy of the Plat which depicts Land Drive is attached hereto as Exhibit A. STN also petitions to vacate a platted but undeveloped right-of-way known as Sandhill Drive located immediately north of Earth Industrial Park, Section II and running parallel to the northern border of Earth Industrial Park, Section II in an east west direction starting at its intersection with Mark Drive and ending where the right-of-way terminates east of Ardmore Avenue. Sandhill Drive to the east was vacated pursuant to Dec. Res 1392-75.

The contact person with respect to this Vacation Petition is Stephen L. Fink, Esq., Barnes & Thornburg LLP located at 888 S. Harrison Street, Suite 600, Fort Wayne, Indiana 46802-2206; telephone number (260) 425-4664; facsimile (260) 424-8316; email - sfink@btlaw.com.

Sabert is a company affiliated with STN. Sabert operates the manufacturing facility located at 3511 Engel Rd., Fort Wayne, Indiana 46809 (the "Facility"). The Facility is immediately north of Sandhill Drive which is immediately north of the real estate platted as Earth Industrial Park, Section II. The purpose of the proposed vacations is to enable Sabert to expand the Facility by 292,000 square feet to the south. This expansion will enable Sabert to add additional machinery and employees, thereby enhancing Fort Wayne's tax base and providing additional jobs for its citizens.

Earth Industrial Park, Section II was platted in 1975. The plat contemplates 11 lots and a roadway known as "Land Drive." Notwithstanding the passage of nearly forty-five years, nothing

has been constructed on the real estate platted as Earth Industrial Park, and Land Drive has never been constructed. STN owns all of the real estate within Earth Industrial Park, Section II, subject to the easement of Land Drive. As stated above, Land Drive has never been improved or otherwise developed, notwithstanding the platting of Land Drive nearly 45 years ago. Similarly, none of the lots within Earth Industrial Park have ever been developed. It is STN's belief that there are no utilities or other infrastructure located within the Land Drive right-of-way.

STN owns all of the land abutting Land Drive, with the exception of Ardmore Avenue at the west end of Land Drive and undeveloped Earth Drive located at the east end of Land Drive.

In January, 2011, Todd Bauer submitted a Vacation Petition requesting the vacation of the entire plat of Earth Industrial Park, Section II. On January 26, 2011, notice was transmitted which states that the Vacation Petition is "to vacate the platted lots, easements, and rights-of-way in Earth Industrial Park, Section II" A hearing was held on February 14 after which the Plan Commission entered its Findings of Fact stating that the Plan Commission approves the vacation "for platted lots 11 through 21 and easements of Earth Industrial Park, Section II." The February 21, 2011 Findings of Fact includes "the proposed use for this property will utilize the entire property and the platted right-of-way, easements, and lot lines would prohibit the development." I.C. § 6-7-4-711(a) provides that the "Plan Commission has exclusive control over the vacation of plats or parts of plats." It is well settled that the recording of plat grants to the municipality an easement for the streets depicted in the plat. *Bass v. Salyer*, 923 N.E.2d 961, 966 (Ind. App. 2010). It seems clear that Land Drive has already been vacated. STN also believes it has the right to the vacation of Land Drive as the owner of all of the land within the Plat. STN is submitting this Petition out of an abundance of caution.

Conditions in the platted area have changed so as to defeat the original purpose of Land Drive and Sandhill Drive. The platted area contemplates eleven lots. STN and Sabert contemplate building across all of these lots with one structure instead of eleven separate structures. This is in the public's interest because the construction of the structure will significantly increase the tax base. Furthermore, the increase in employment is also in the public's interest. STN owns all of the land within Earth Industrial Park and to the north thereof, subject to the easements of Land Drive and Sandhill Drive, and STN is of the opinion that the value of its land will increase by the vacation of Land Drive and Sandhill Drive.