

City of Fort Wayne Common Council

DIGEST SHEET

Department of Planning Services

Title of Ordinance: Zoning Map Amendment
Case Number: REZ-2019-0005
Bill Number: Z-19-02-15
Council District: 3-Tom Didier

Introduction Date: February 26, 2018

Plan Commission
Public Hearing Date: March 11, 2019 (not heard by Council)

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

Synopsis of Ordinance: To rezone approximately 1.83 acres of property from C2-Limited Commercial to C3-General Commercial.

Location: 8830 Coldwater Road

Reason for Request: To rezone the property of an existing Lassus gas station and convenience store to bring the gas station use into compliance with the current zoning ordinance.

Applicant: Coldwater and Wallen, LLC

Property Owner: Coldwater and Wallen, LLC

Related Petitions: none

Effect of Passage: Property will be rezoned to the C3-General Commercial zoning district, along with a Written Commitment to prohibit other C3 uses. The rezoning will allow the existing use to conform to the ordinance.

Effect of Non-Passage: The property will remain zoned C2-Limited Commercial, which does not permit new gas stations. The existing investment is non-conforming, which affects how the property can be developed or expanded in the future.

#REZ-2019-0005

BILL NO. Z-19-02-15

ZONING MAP ORDINANCE NO. Z-_____

**AN ORDINANCE amending the City of Fort Wayne
Zoning Map No. N-50 (Sec. 12 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 C3 (General
Commercial) District under the terms of Chapter 157 Title XV of the Code of the City of Fort
Wayne, Indiana:

PARCEL I:

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

COMMENCING AT A P.K. NAIL AT THE NORTHEAST CORNER OF SAID
NORTHWEST QUARTER; THENCE SOUTH 87 DEGREES 55 MINUTES 55 SECONDS
WEST (INDOT HIGHWAY PLANS PROJECT #STP-F-184(001) BEARING AND BASIS
OF BEARINGS TO FOLLOW) A DISTANCE OF 1296.00 FEET (PLAT) ALONG THE
NORTH LINE OF SAID NORTHWEST QUARTER TO THE NORTHWEST CORNER
OF NEWBERRY, SECTION 1, SUBDIVISION, AS RECORDED IN DOCUMENT
NUMBER 7834991 IN THE OFFICE OF THE RECORDER OF ALLEN COUNTY,
INDIANA; THENCE SOUTH 02 DEGREES 48 MINUTES 17 SECONDS EAST A
DISTANCE OF 49.11 FEET ALONG SAID WEST LINE TO THE SOUTH RIGHT-OF-
WAY LINE OF WALLEN ROAD; THENCE SOUTH 87 DEGREES 57 MINUTES 36
SECONDS WEST A DISTANCE OF 99.29 FEET ALONG SAID RIGHT-OF-WAY LINE
TO A 5/8 INCH STEEL REBAR SET AT THE POINT OF BEGINNING OF THE
HEREIN DESCRIBED TRACT, SAID POINT ALSO BEING ON A NON-TANGENT
CURVE, CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 35.00 FEET;
THENCE SOUTHEASTERLY ALONG SAID CURVE, A DISTANCE OF 38.68 FEET,
HAVING A CENTRAL ANGLE OF 63 DEGREES 18 MINUTES 46 SECONDS AND A
CHORD OF 36.74 FEET BEARING SOUTH 34 DEGREES 27 MINUTES 40 SECONDS
EAST TO A 5/8 INCH STEEL REBAR SET AT THE POINT OF TANGENCY; THENCE
SOUTH 02 DEGREES 48 MINUTES 17 SECONDS EAST A DISTANCE OF 129.42
FEET TO A 5/8 INCH STEEL REBAR SET ON A TANGENT CURVE, CONCAVE TO
THE NORTHWEST, HAVING A RADIUS OF 40.00 FEET; THENCE
SOUTHWESTERLY ALONG SAID CURVE A DISTANCE OF 63.35 FEET, HAVING A
CENTRAL ANGLE OF 90 DEGREES 44 MINUTES 12 SECONDS, AND A CHORD OF
56.93 FEET BEARING SOUTH 42 DEGREES 33 MINUTES 49 SECONDS WEST TO A

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PARCEL II:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS TO AND FROM COLDWATER ROAD AND WALLEN ROAD AS PROVIDED IN ARTICLE IV OF THE DECLARATION OF DEVELOPMENT STANDARDS, COVENANTS AND PROTECTIVE RESTRICTIONS FOR COLDWATER CENTRE RECORDED DECEMBER 16, 2004 AS DOCUMENT NUMBER 204089757; FIRST AMENDMENT TO DECLARATION OF DEVELOPMENT STANDARDS, COVENANTS AND PROTECTIVE RESTRICTIONS FOR COLDWATER CENTRE DATED DECEMBER 21, 2004, RECORDED DECEMBER 27, 2004 AS DOCUMENT NUMBER 204091700; SECOND AMENDMENT TO DECLARATION OF DEVELOPMENT STANDARDS, COVENANTS AND PROTECTIVE RESTRICTIONS FOR COLDWATER CENTRE RECORDED APRIL 5, 2005 AS DOCUMENT NUMBER 205020476.

and the symbols of the City of Fort Wayne Zoning Map No. N-50 (Sec. 12 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.

SECTION 2. If a written commitment is a condition of the Plan Commission's recommendation for the adoption of the rezoning, or if a written commitment is modified and approved by the Common Council as part of the zone map amendment, that written commitment is hereby approved and is hereby incorporated by reference.

SECTION 3. That this Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

Council Member

APPROVED AS TO FORM AND LEGALITY:

Carol T. Helton, City Attorney

Department of Planning Services
Rezoning Petition Application

Applicant

Applicant Coldwater & Wallen, LLC
Address 1800 Magnavox Way
City Fort Wayne State IN Zip 46804
Telephone 260-436-1415 E-mail lassust@lassus.com

Contact Person

Contact Person Scott M. Federoff, Synder Morgan Federoff & Kuchmay LLP
Address 4211 Clubview Drive
City Fort Wayne State IN Zip 46804
Telephone 260-602-8000 E-mail smf@smfklaw.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 8830 Coldwater Road, Ft. Wayne, IN 46825
Present Zoning C2 Proposed Zoning C3 Acreage to be rezoned 1.83
Proposed density 1 units per acre
Township name Washington Township section # 12
Purpose of rezoning (attach additional page if necessary) To bring an existing convenience store and gas station use into conformance with the City of Fort Wayne Zoning Ordinance.
Sewer provider City of Fort Wayne Water provider City of Fort Wayne

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 Rezonings 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.

Coldwater & Wallen, LLC by Todd J. Lassus, Member
(printed name of applicant) (signature of applicant) 2/5/19 (date)

Coldwater & Wallen, LLC by Todd J. Lassus, Member
(printed name of property owner) (signature of property owner) 2/5/19 (date)

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

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

Received	Receipt No.	Hearing Date	Petition No.
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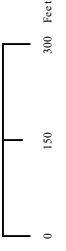


Although strict accuracy standards have been employed in the compilation of this map, Allen County does not warrant or guarantee the accuracy of the information contained herein and disclaims any and all liability resulting from any error or omission in this map.

© 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

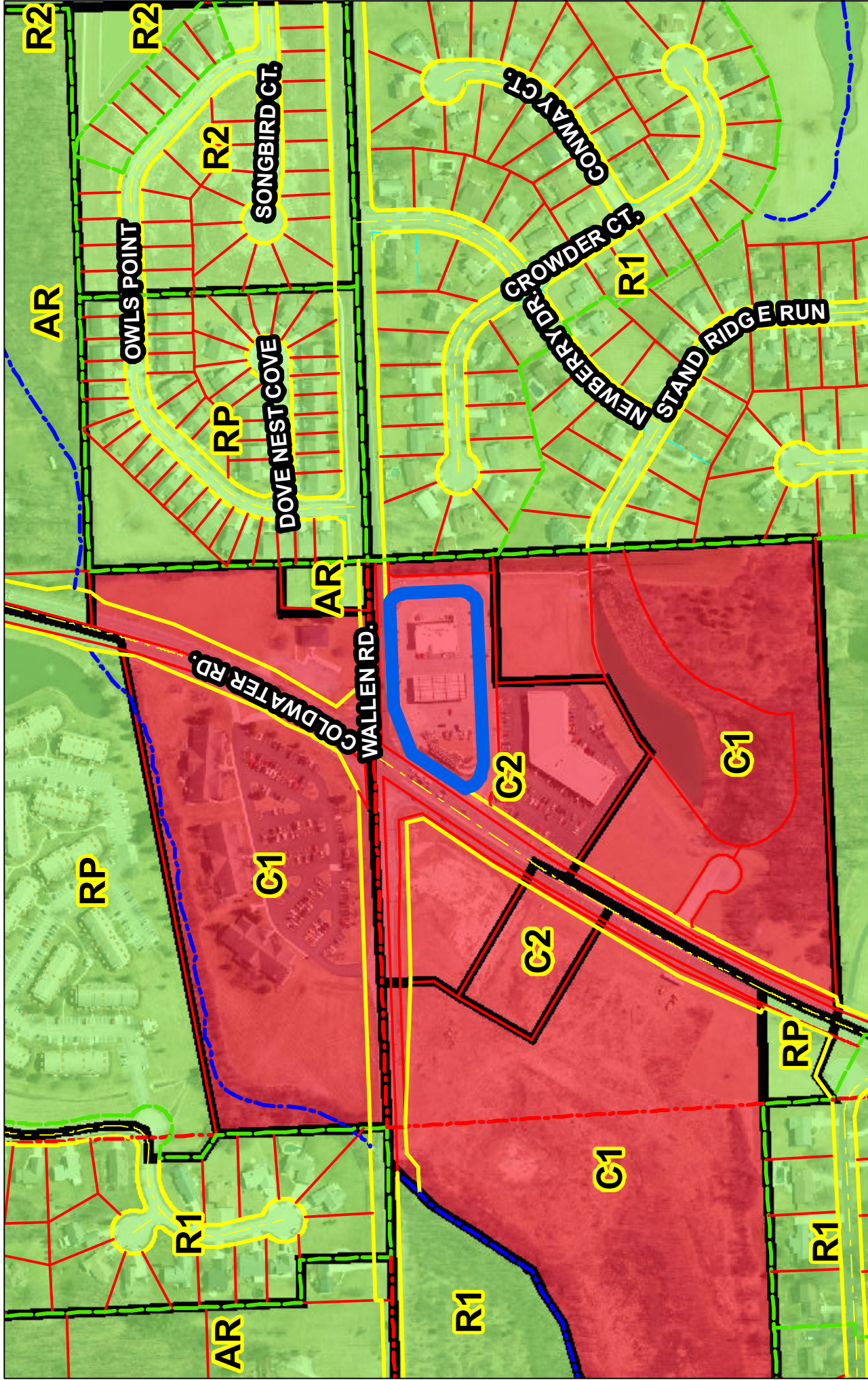


1 inch = 300 feet





Rezoning Petition REZ-2019-0005 - Lassus Coldwater and Wallen



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North American Datum 1983
State Plane Coordinate System, Indiana East
Photos and Contours: Spring 2009
Date: 2/15/2019



1 inch = 300 feet



WRITTEN COMMITMENT

This Written Commitment (this “Commitment”) is made effective as of the __ day of _____, 2019, by Coldwater & Wallen, LLC, an Indiana limited liability company (“Company”).

RECITALS

A. By virtue of that certain Warranty Deed dated June 21, 2006 and recorded on October 26, 2006 as Document Number 206065704 in the Office of the Recorder of Allen County, Indiana, Company is the owner of record in fee simple of certain real estate located in Allen County, Indiana, which is legally described in the addendum attached to this Commitment as Exhibit “A” (the “Real Estate”).

B. Company filed an application under Case Number REZ-2019-00____ (the “Rezoning Application”) to change the zoning map applicable to the Real Estate from the C2 Zoning District to the C3 Zoning District.

D. Pursuant to Ind. Code § 36-7-4-1015(a)(1) and the City of Fort Wayne Zoning Ordinance (the “Ordinance”), the Fort Wayne Plan Commission (the “Plan Commission”) may require an owner of real property to make a written commitment concerning the use or development of the real property as part of rezoning application (the “Approval”).

E. In connection with the Rezoning Application, Company offered to make, and the Plan Commission required Company to make, a written commitment concerning the use and development of the Real Estate.

COMMITMENT

In consideration of the Approval, Company makes the following written commitments pursuant to I.C. §36-7-4-1015(a)(2):

1. ***PROHIBITED USES.*** The following uses shall be prohibited as a primary use upon the Real Estate as permitted in the C3/General Commercial zoning district under §157.217 and §157.218 of the Ordinance:

- a) Agricultural equipment sales;
- b) Agricultural equipment service;
- c) Agricultural supply sales;
- d) Amusement park;
- e) Animal grooming with outdoor runs;
- f) Animal Kennel or Obedience School with outdoor runs;
- g) Automobile Detailing and Trim Shop;
- h) Arcade;
- i) Arena;
- j) Auction hall;
- k) Auction service;
- l) Automobile auction
- m) Automobile body shop;
- n) Automobile repair;
- o) Automobile Sales Facility (new or used);
- p) Bar or Tavern;
- q) Batting cages;
- r) Betting or other gambling facility;
- s) Billiard or pool hall;
- t) Bingo establishment;
- u) Blood bank;
- v) Blood or plasma donor facility;
- w) Boarding/lodging house;
- x) Boat/watercraft sales;
- y) Bowling alley;
- z) Campus housing;
- aa) Clinic;
- bb) Club, private;
- cc) Coin shop;
- dd) Collection agency;
- ee) Correctional services facility;
- ff) Dating service;
- gg) Dormitory;
- hh) Entertainment facility;
- ii) Equipment service;
- jj) Exhibit hall;
- kk) Exterminator;
- ll) Feed store;
- mm) Flea market;
- nn) Fraternity house;
- oo) Garage sales;
- pp) Go-kart facility;
- qq) Golf course, miniature;

- rr) Golf driving range;
- ss) Group residential facility (large);
- tt) Group residential facility (small);
- uu) Gun sales;
- vv) Haunted house;
- ww) Homeless/emergency shelter ;
- xx) Hotel;
- yy) Landscape contracting service;
- zz) Laundromat/coin operated laundry;
- aaa) Manufactured home sales;
- bbb) Motel;
- ccc) Motor vehicle sales;
- ddd) Parking area (off-site);
- eee) Parking structure;
- fff) Pawn shop;
- ggg) Public transportation or similar public facility;
- hhh) Reception/banquet hall;
- iii) Rehabilitation facility;
- jjj) Residential facility for homeless individuals;
- kkk) Riding stable;
- lll) Shooting range (indoor);
- mmm) Stadium/racetrack;
- nnn) Treatment center;
- ooo) Truck stop;
- ppp) Warehouse/storage facility;
- qqq) Wholesale facility;
- rrr) Zipline;
- sss) Zoo.

2. ***ENFORCEMENT RIGHTS.*** The Fort Wayne Zoning Administrator (the “Zoning Administrator”) and the Plan Commission each shall have the option (but not the obligation) to enforce this Commitment, at law or in equity, in the event of a breach of an obligation in this Commitment; and in the event such an enforcement action is commenced, the Zoning Administrator or the Plan Commission (as applicable) shall have the remedies allowed by the Ordinance (or the ordinance governing the Real Estate at the time of the enforcement action) and I.C. §36-7-4-1015, which remedies shall be cumulative and not exclusive. A violation of this Commitment shall be deemed a violation of the Ordinance, or the ordinance governing the Real Estate at the time of the violation; provided, however, that nothing in this Commitment shall be construed as giving any person the right to compel enforcement of it by the Zoning Administrator or the Plan Commission, or any successor agency having zoning jurisdiction over the Real Estate.

3. ***EFFECTIVE DATE.*** This Commitment shall be effective upon its recording in the Office of the Recorder of Allen County, Indiana.

4. ***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 and the Plan Commission, together with any successor agency having zoning jurisdiction over the Real Estate.

5. ***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.

6. ***GOVERNING LAW.*** This Commitment, including the restrictions and covenants hereunder, shall be governed by the laws of the State of Indiana.

7. ***STATUTORY AUTHORITY.*** This Commitment is made pursuant to I.C. §36-7-4-1015(a)(2).

8. ***MODIFICATION AND TERMINATION.*** Modification and termination of this Commitment may only be made in accordance I.C. §36-7-4-1015, as such statute may be amended from time-to-time.

[SIGNATURE PAGE FOLLOWS.]

Coldwater & Wallen, LLC,
an Indiana limited liability company

By: _____
Todd J. Lassus, Member

“Company”

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned Notary Public in and for said County and State, this ____ day of _____, 2019, personally appeared Todd J. Lassus, as a Member of Coldwater & Wallen, LLC, an Indiana limited liability company, and acknowledged the execution of the foregoing Written Commitment on behalf of said company.

WITNESS my hand and Notarial Seal.

My commission expires:
June 28, 2028

Scott M. Federoff, Notary Public
Resident of Allen, County, Indiana

This instrument prepared by: Scott M. Federoff, SNYDER MORGAN FEDEROFF & KUCHMAY LLP, 4211 Clubview Drive, Fort Wayne, Indiana 46804.

After recording, return to: _____.

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. Scott M. Federoff

Exhibit "A"
Legal Description of the Real Estate

PARCEL I:

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

COMMENCING AT A P.K. NAIL AT THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER; THENCE SOUTH 87 DEGREES 55 MINUTES 55 SECONDS WEST (INDOT HIGHWAY PLANS PROJECT #STP-F-184(001) BEARING AND BASIS OF BEARINGS TO FOLLOW) A DISTANCE OF 1296.00 FEET (PLAT) ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER TO THE NORTHWEST CORNER OF NEWBERRY, SECTION 1, SUBDIVISION, AS RECORDED IN DOCUMENT NUMBER 7834991 IN THE OFFICE OF THE RECORDER OF ALLEN COUNTY, INDIANA; THENCE SOUTH 02 DEGREES 48 MINUTES 17 SECONDS EAST A DISTANCE OF 49.11 FEET ALONG SAID WEST LINE TO THE SOUTH RIGHT-OF-WAY LINE OF WALLEN ROAD; THENCE SOUTH 87 DEGREES 57 MINUTES 36 SECONDS WEST A DISTANCE OF 99.29 FEET ALONG SAID RIGHT-OF-WAY LINE TO A 5/8 INCH STEEL REBAR SET AT THE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT, SAID POINT ALSO BEING ON A NON-TANGENT CURVE, CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 35.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE, A DISTANCE OF 38.68 FEET, HAVING A CENTRAL ANGLE OF 63 DEGREES 18 MINUTES 46 SECONDS AND A CHORD OF 36.74 FEET BEARING SOUTH 34 DEGREES 27 MINUTES 40 SECONDS EAST TO A 5/8 INCH STEEL REBAR SET AT THE POINT OF TANGENCY; THENCE SOUTH 02 DEGREES 48 MINUTES 17 SECONDS EAST A DISTANCE OF 129.42 FEET TO A 5/8 INCH STEEL REBAR SET ON A TANGENT CURVE, CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 40.00 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE A DISTANCE OF 63.35 FEET, HAVING A CENTRAL ANGLE OF 90 DEGREES 44 MINUTES 12 SECONDS, AND A CHORD OF 56.93 FEET BEARING SOUTH 42 DEGREES 33 MINUTES 49 SECONDS WEST TO A 5/8 INCH STEEL REBAR SET AT THE POINT OF TANGENCY; THENCE SOUTH 87 DEGREES 55 MINUTES 55 SECONDS WEST A DISTANCE OF 346.31 FEET TO A 5/8 INCH STEEL REBAR SET ON A TANGENT CURVE, CONCAVE TO THE NORTH, HAVING A RADIUS OF 130.00 FEET; THENCE WESTERLY ALONG SAID CURVE A DISTANCE OF 36.05 FEET, HAVING A CENTRAL ANGLE OF 15 DEGREES 53 MINUTES 22 SECONDS, AND A CHORD OF 35.94 FEET BEARING NORTH 84 DEGREES 07 MINUTES 24 SECONDS WEST TO A 5/8 INCH STEEL REBAR SET AT THE POINT OF TANGENCY, ALSO BEING THE POINT

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