

City of Fort Wayne Common Council

DIGEST SHEET

Department of Planning Services

Title of Ordinance: Zoning Map Amendment
Case Number: REZ-2019-0007
Bill Number: Z-19-02-17
Council District: 4-Jason Arp

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 1.38 acres of property from NC-Neighborhood Center to C3-General Commercial.

Location: 10225 Illinois 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: JTG Realty, LLC

Property Owner: JTG Realty, 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 NC-Neighborhood Center, 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-2019-0007

BILL NO. Z-19-02-17

ZONING MAP ORDINANCE NO. Z-_____

**AN ORDINANCE amending the City of Fort Wayne
Zoning Map No. CC-02 (Sec. 10 of Aboite 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 10, Township 30 North, Range 11 East, Allen
County, Indiana, more particularly described as follows:

Commencing at a 5/8-inch iron pin found marking the Northeast corner of the Northwest
Quarter of Section 10, Township 30 North, Range 11 East, Allen County, Indiana; thence
Westerly along the North line of the NW 1/4 of said Section 10, a distance of 760.0 feet;
thence Southerly with a deflection angle to the left of 90 degrees 00 minutes a distance of
55.0 feet to a 5/8-inch iron pin set at the true point of beginning, said point being on the
proposed Southerly right of way line of State Road #14; thence Easterly with deflection
angle to the left of 90 degrees 00 minutes along said proposed right of way line, a distance of
290.0 feet to a 5/8-inch iron pin set; thence Southerly with a deflection angle to the right of
90 degrees 00 minutes, a distance of 190.0 feet to a 5/8-inch iron pin set; thence Westerly
with a deflection angle to the right of 90 degrees 00 minutes, a distance of 290.0 feet to a
5/8-inch iron pin set; thence Northerly with a deflection angle to the right of 90 degrees 00
minutes, a distance of 190.0 feet to the point of beginning, containing 1.265 acres (55,100
square feet).

PARCEL II:

Part of the Northwest Quarter of Section 10, Township 30 North, Range 11 East, Allen
County, Indiana, and more particularly described as follows:

Commencing at a 5/8-inch iron pin found marking the Northeast corner of the Northwest
Quarter of Section 10, Township 30 North, Range 11 East, Allen County, Indiana; thence
Westerly along the North line of the NW 1/4 of Sec. 10, a distance of 760.1 feet; thence
Southerly with a deflection angle to the left of 90 degrees 06 minutes 31 seconds, a distance
of 55.0 feet to a point on the Southerly right of way line of State Road #14 and the true point
of beginning; thence Westerly with a deflection angle to the right of 90 degrees 06 minutes
31 seconds along the South right of way line of State Road #14, a distance of 28.01 feet;
thence South with a deflection angle to the left of 90 degrees 06 minutes 31 seconds a

distance of 170.0 feet; thence Southeasterly with a deflection angle to the left of 48 degrees 55 minutes 45 seconds a distance of 30.51 feet; thence East with a deflection angle to the left of 40 degrees 57 minutes 44 seconds a distance of 5.01 feet; thence North with a deflection angle to the left of 90 degrees 06 minutes 31 seconds a distance of 190.0 feet to the point of beginning, containing 0.117 acres.

The above described real estate is the same as the following described:

A parcel of land located in the Northwest Quarter of Section 10, Township 30 North, Range 11 East, Allen County, Indiana, and more particularly described as follows:

Commencing at the North Quarter corner of Section 10, Township 30 North, Range 11 East, as marked by a P.K. Nail; thence North 89 degrees 56 minutes 09 seconds West (bearing based on adjacent plat of Westchester Glens) along the North line of the NW 1/4 of Sec. 10-30-11, a distance of 760.00 feet; thence South 00 degrees 03 minutes 09 seconds West, a distance of 55.00 feet to the true point of beginning, said point being the Northwest corner of the real estate conveyed to Lassus Bros. Oil. Co. in the deed recorded in Document #970058991 in the Office of the Recorder of Allen County, Indiana; thence North 89 degrees 56 minutes 09 seconds west along the South right of way line of State Road #14, a distance of 28.00 feet; thence South 00 degrees 03 minutes 51 seconds West, a distance of 170.00 feet; thence South 48 degrees 55 minutes 36 seconds East, a distance of 30.48 feet; thence South 89 degrees 56 minutes 09 seconds East, a distance of 5.00 feet to the Southwest corner of said Lassus Bros. tract; thence South 89 degrees 56 minutes 09 seconds East along the South line of said Lassus Bros. tract, a distance of 290.00 feet to the Southeast corner thereof; thence North 00 degrees 03 minutes 51 seconds East along the East line of said Lassus Bros. tract, a distance of 190.00 feet to the Northwest corner thereof; thence North 89 degrees 56 minutes 09 seconds West along the North line of said Lassus Bros. tract, a distance of 290.00 feet to the point of beginning, containing 1.382 acres.

and the symbols of the City of Fort Wayne Zoning Map No. CC-02 (Sec. 10 Aboite 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.

**Department of Planning Services
Rezoning Petition Application**

Applicant
Applicant JTG Realty, 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

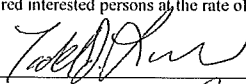
All staff correspondence will be sent only to the designated contact person.

Request
☐ Allen County Planning Jurisdiction ☒ City of Fort Wayne Planning Jurisdiction
Address of the property 10225 Illinois Road, Ft. Wayne, IN 46814
Present Zoning NC Proposed Zoning C3 Acreage to be rezoned 1.38
Proposed density 1 units per acre
Township name Aboite Township section # 10
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 Aqua Indiana 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 Rezoning Only

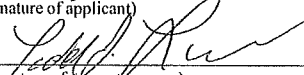
I/We understand and agree, upon execution and submission of this application, that I am/we are the owner(s) of more than 50 percent of the property described in this application; that I/we agree to abide by all provisions of the Allen County Zoning and Subdivision Control Ordinance as well as all procedures 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.

JTG Realty, by Todd J. Lassus, Member
(printed name of applicant)


(signature of applicant)

2/5/19
(date)

JTG Realty, 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)

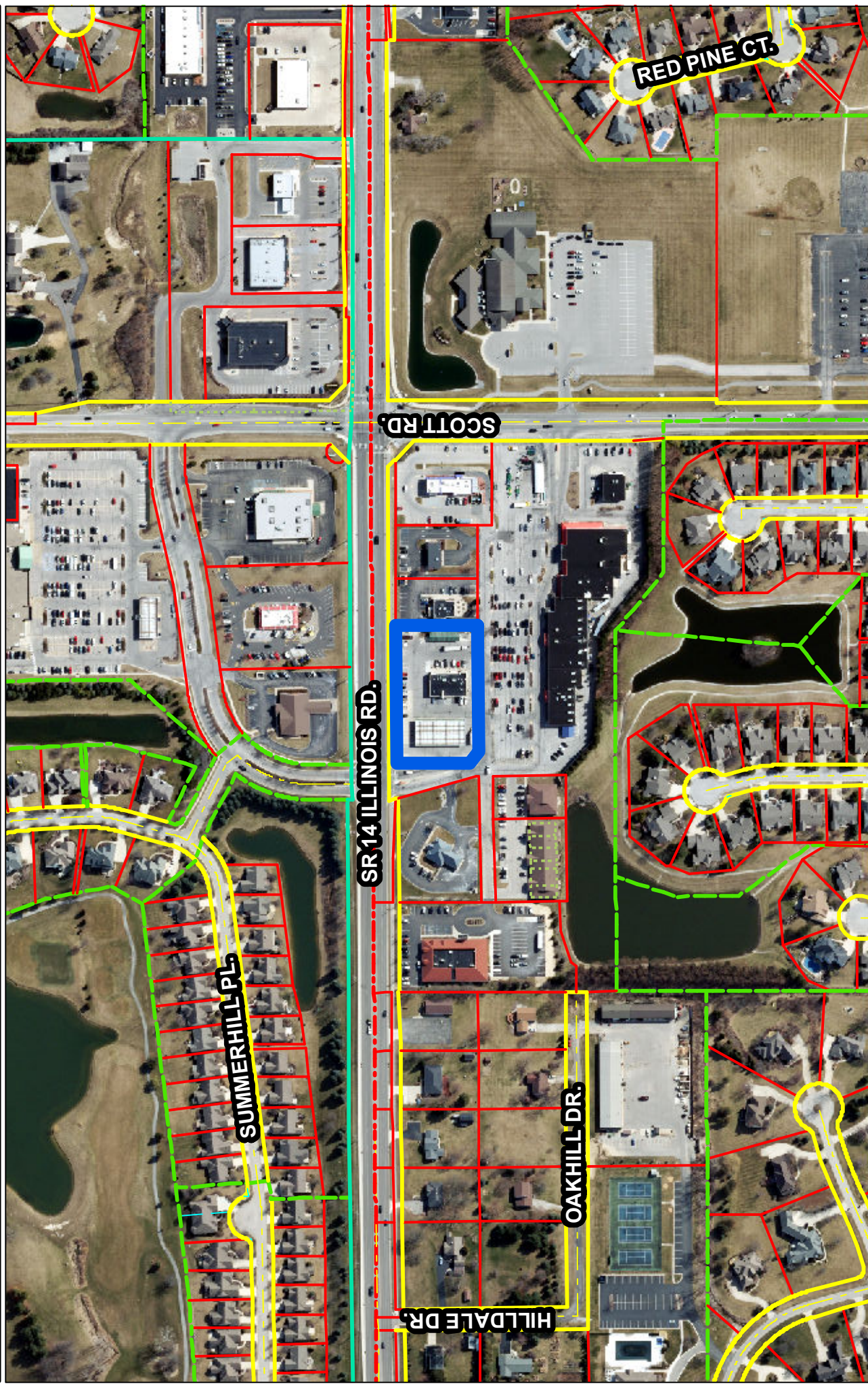
(signature of property owner)

(date)

Received	Receipt No.	Hearing Date	Petition No.
<u>2/5/19</u>	<u>129409</u>	<u>3/11/19</u>	<u>REZ-2019-0007</u>

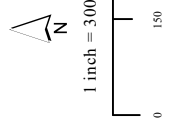


Rezoning Petition REZ-2019-0008 - Lassus Maplecrest



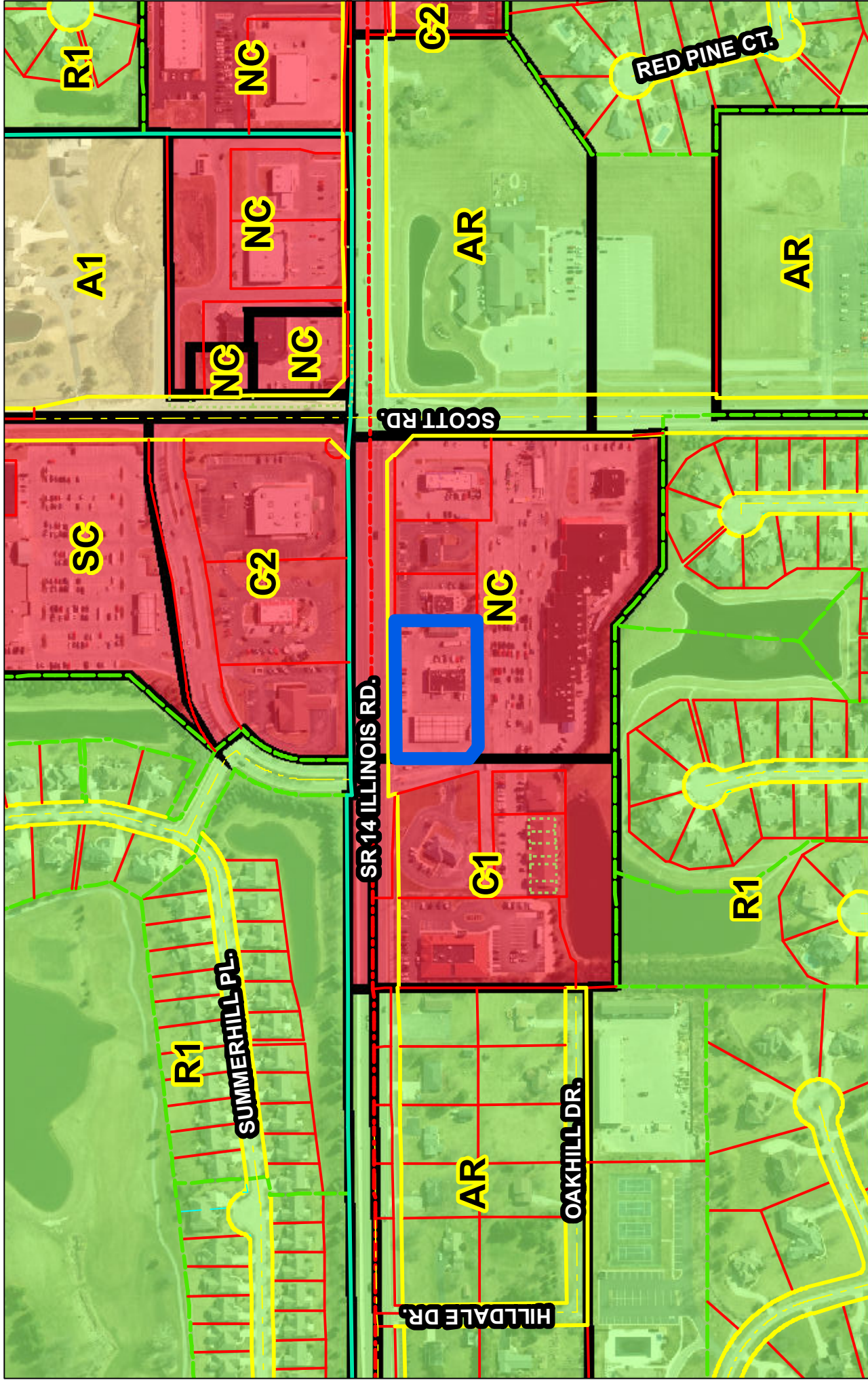
Although strict accuracy standards have been employed in the compilation of this map, Allen County does not warrant or guarantee the accuracy of the information contained herein and disclaims any and all liability resulting from any error or omission in this map.

© 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



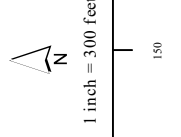


Rezoning Petition REZ-2019-0008 - Lassus Maplecrest



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



WRITTEN COMMITMENT

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

RECITALS

A. By virtue of that certain Corporate Deed dated March 26, 2003 and recorded on April 15, 2003 as Document Number 203038105 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 NC 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)(1):

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.]

JTG Realty, 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 JTG Realty, 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 10, Township 30 North, Range 11 East, Allen County, Indiana, more particularly described as follows:

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PARCEL II:

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Commencing at the North Quarter corner of Section 10, Township 30 North, Range 11 East, as marked by a P.K. Nail; thence North 89 degrees 56 minutes 09 seconds West (bearing based on adjacent plat of Westchester Glens) along the North line of the NW 1/4 of Sec. 10-30-11, a distance of 760.00 feet; thence South 00 degrees 03 minutes 09 seconds West, a distance of 55.00 feet to the true point of beginning, said point being the Northwest corner of the real estate conveyed to Lassus Bros. Oil. Co. in the deed recorded in Document #970058991 in the Office of the Recorder of Allen County, Indiana; thence North 89 degrees 56 minutes 09 seconds west along the South right of way line of State Road #14, a distance of 28.00 feet; thence South 00 degrees 03 minutes 51 seconds West, a distance of 170.00 feet; thence South 48 degrees 55 minutes 36 seconds East, a distance of 30.48 feet; thence South 89 degrees 56 minutes 09 seconds East, a distance of 5.00 feet to the Southwest corner of said Lassus Bros. tract; thence South 89 degrees 56 minutes 09 seconds East along the South line of said Lassus Bros. tract, a distance of 290.00 feet to the Southeast corner thereof; thence North 00 degrees 03 minutes 51 seconds East along the East line of said Lassus Bros. tract, a distance of 190.00 feet to the Northwest corner thereof; thence North 89 degrees 56 minutes 09 seconds West along the North line of said Lassus Bros. tract, a distance of 290.00 feet to the point of beginning, containing 1.382 acres.