

City of Fort Wayne Common Council

DIGEST SHEET

Department of Planning Services

Title of Ordinance: Zoning Map Amendment
Case Number: REZ-2019-0008
Bill Number: Z-19-02-18
Council District: 2-Russ Jehl

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

Location: 7405 Maplecrest 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: 69 & Dupont, LLC

Property Owner: 69 & Dupont, 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.

1 **#REZ-2019-0008**

2 **BILL NO. Z-19-02-18**

3
4 **ZONING MAP ORDINANCE NO. Z-_____**

5 **AN ORDINANCE amending the City of Fort Wayne**
6 **Zoning Map No. U-46 (Sec. 9 of St. Joseph Township)**

7
8 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE,
INDIANA:

9 SECTION 1. That the area described as follows is hereby designated a C3 (General
10 Commercial) District under the terms of Chapter 157 Title XV of the Code of the City of Fort
11 Wayne, Indiana:

12 **PARCEL I:**

13 Part of the Southeast Quarter of Section 9, Township 31 North, Range 13 East, Allen
County, Indiana, more particularly described as follows:

14 COMMENCING at a P.K. nail found marking the Southeast corner of the Southeast Quarter
15 of Section 9, Township 31 North, Range 13 East, Allen County, Indiana; thence South 89
16 degrees 44 minutes 12 seconds West (deed bearing and the basis of the bearings in this
17 description) along the South line of the Southeast Quarter of Section 9, Township 31 North,
18 Range 13 East, a distance of 375.0 feet; thence North 00 degrees 15 minutes 48 seconds
19 West, a distance of 68.11 feet to a 5/8 inch iron pin set at the True Point of Beginning, said
20 point being located on the Northerly right-of-way line of Rothman Road as recorded in
21 Document Number 95-56785 in the Office of the Recorder of Allen County; thence
22 continuing North 00 degrees 15 minutes 48 seconds West, a distance of 255.12 feet to a 5/8
23 inch iron pin set; thence North 89 degrees 27 minutes 57 second East, a distance of 283.47
24 feet to a 5/8 inch iron pin set at a point on the West right-of-way line of Maplecrest Road as
25 recorded in said Document Number 95-56785; thence South 00 degrees 32 minutes 03
seconds East (South 03 degrees 26 minutes 33 seconds East, deed) along said right-of-way, a
26 distance of 225.0 feet to a 5/8 inch iron pin set; thence South 49 degrees 09 minutes 24
27 seconds West (South 46 degrees 14 minutes 40 seconds West, deed) along said right-of-way
28 line, a distance of 45.46 feet (45.52 feet, deed) to a 5/8 inch iron pin set at a point on the
29 Northerly right-of-way line of Rothman Road; thence South 89 degrees 44 minutes 12
30 seconds West (South 86 degrees 47 minutes 39 seconds West, deed) along said right-of-way
line, a distance of 225.0 feet to a 5/8 inch iron pin set; thence South 85 degrees 24 minutes
26 seconds West (South 82 degrees 30 minutes 18 seconds West, deed) along said right-of-
way line, a distance of 25.07 feet to the Point of Beginning, Containing 1.645 acres.

 An easement for the purpose of ingress and egress and utilities for the benefit of Parcel I, as
created by Corporate Deed dated September 30, 1999 and recorded October 19, 1999 as
Document Number 990076539, over and across the following described real estate in Allen
County, Indiana:

1 A strip of land 50.0 feet in width, lying 25.0 feet on either side of the following described
2 centerline:

3 Part of the Southeast Quarter of Section 9, Township 31 North, Range 13 East, Allen
4 County, Indiana, more particularly described as follows:

5 COMMENCING at a P.K. nail found marking the Southeast corner of the Southeast Quarter
6 of Section 9, Township 31 North, Range 13 East, Allen County, Indiana; thence South 89
7 degrees 44 minutes 12 seconds West (deed bearing and the basis of the bearing in this
8 description) along the South line of the Southeast Quarter of Section 9, Township 31 North,
9 Range 13 East, a distance of 400.0 feet; thence North 00 degrees 15 minutes 48 seconds
10 West, a distance of 66.23 feet to the True Point of Beginning; said point being located on the
11 Northerly right-of-way line of Rothman Road as recorded in Document Number 95-56785 in
12 the Office of the Recorder of Allen County; thence continuing North 00 degrees 15 minutes
13 48 seconds West, a distance of 281.88 feet; thence North 89 degrees 27 minutes 57 seconds
14 East, a distance of 308.35 feet to a point on the West right-of-way line of Maplecrest Road
15 as recorded in said Document Number 95-56785, and the point of termination; said easement
16 contains 0.677 acres.

17 and the symbols of the City of Fort Wayne Zoning Map No. U-46 (Sec. 9 of St. Joseph
18 Township), as established by Section 157.082 of Title XV of the Code of the City of Fort
19 Wayne, Indiana is hereby changed accordingly.

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

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

26 _____
27 Council Member

28 APPROVED AS TO FORM AND LEGALITY:

29 _____
30 Carol T. Helton, City Attorney

**Department of Planning Services
Rezoning Petition Application**

Applicant
Applicant 69 & Dupont, LLC
Address 1800 Magnavox Way
City Fort Wayne State IN Zip 46804
Telephone 260-436-1415 E-mail lassust@lassus.com

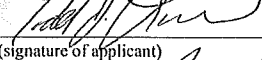
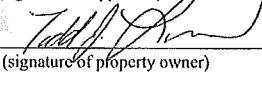
Contact Person
Contact Person Scott M. Federoff, Synder Morgan Federoff & Kuchmay LLP
Address 4211 Clubview Drive
City Fort Wayne State IN Zip 46804
Telephone 260-602-8000 E-mail smf@smfklaw.com

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

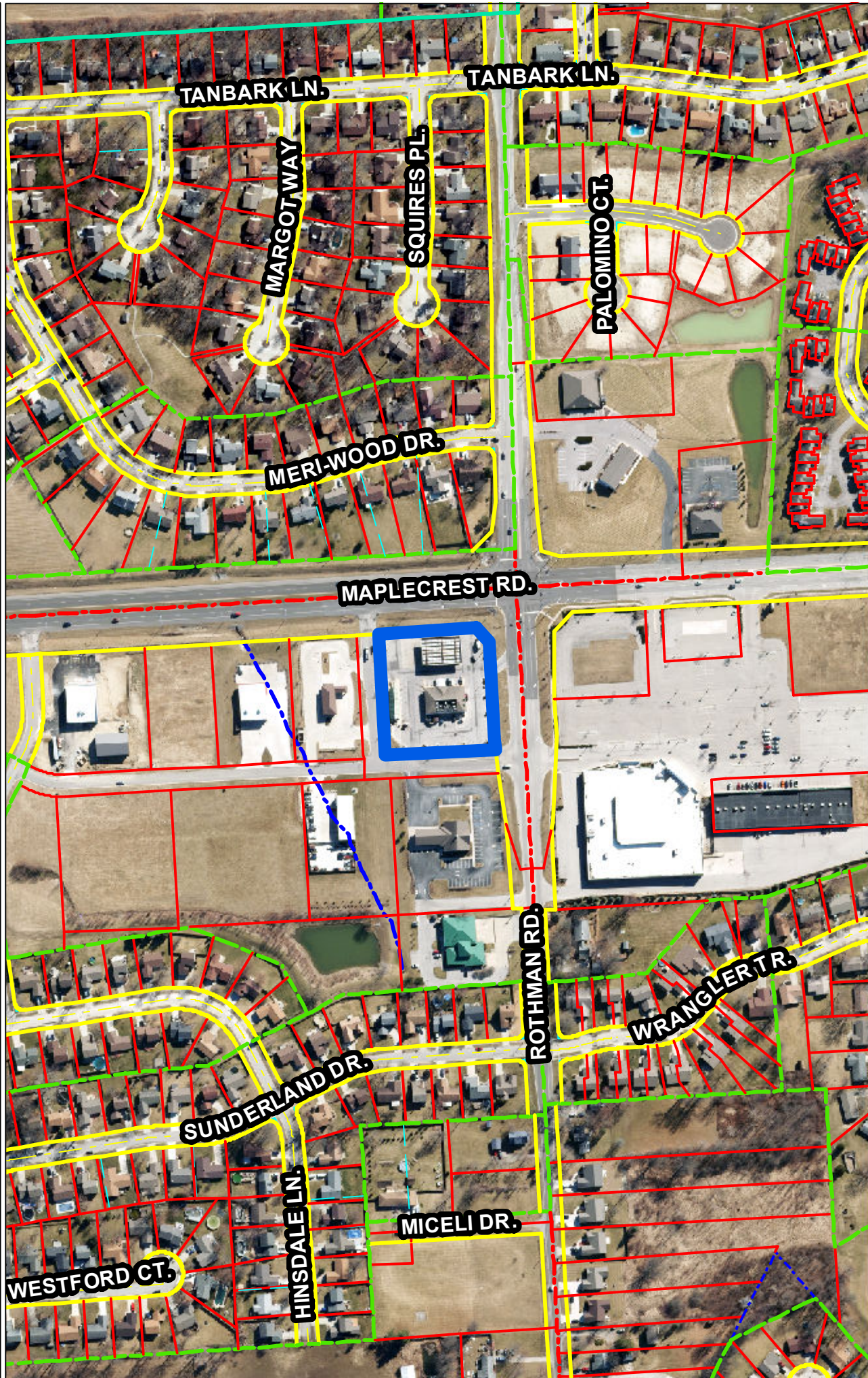
Request
☐ Allen County Planning Jurisdiction ☒ City of Fort Wayne Planning Jurisdiction
Address of the property 7405 Maplecrest Road, Ft. Wayne, IN 46835
Present Zoning NC Proposed Zoning C3 Acreage to be rezoned 1.65
Proposed density 1 units per acre
Township name St. Joesph Township section # 9
Purpose 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 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.

69 & Dupont, LLC by Todd J. Lassus, Member		2/5/19
(printed name of applicant)	(signature of applicant)	(date)
69 & Dupont, LLC by Todd J. Lassus, Member		2/5/19
(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>2/5/19</u>	Receipt No. <u>129410</u>	Hearing Date <u>3/11/19</u>	Petition No. <u>REZ-2019-0008</u>
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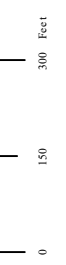


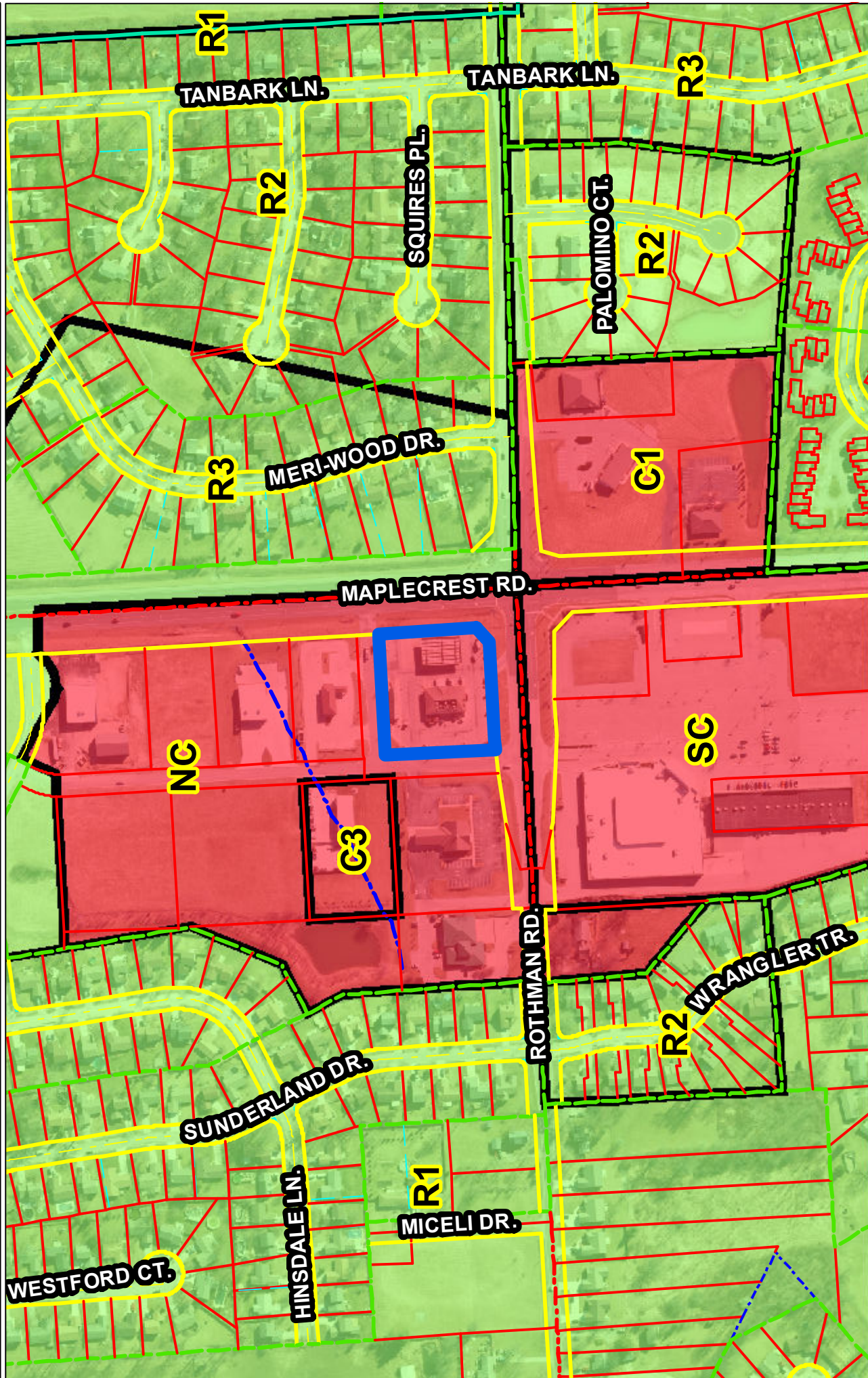
Although strict accuracy standards have been employed in the compilation of this map, Allen County does not warrant or guarantee the accuracy of the information contained herein and disclaims any and all liability resulting from any error or omission in this map.

© 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



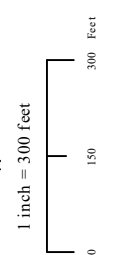
1 inch = 300 feet





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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 69 & Dupont, LLC, an Indiana limited liability company (“Company”).

RECITALS

A. By virtue of that certain Special Warranty Deed dated December 20, 2012 and recorded on December 21, 2012 as Document Number 2012073008 and re-recorded on January 1, 2013 as Document Number 2013002448 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)(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.]

69 & Dupont, 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 69 & Dupont, 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 Southeast Quarter of Section 9, Township 31 North, Range 13 East, Allen County, Indiana, more particularly described as follows:

COMMENCING at a P.K. nail found marking the Southeast corner of the Southeast Quarter of Section 9, Township 31 North, Range 13 East, Allen County, Indiana; thence South 89 degrees 44 minutes 12 seconds West (deed bearing and the basis of the bearings in this description) along the South line of the Southeast Quarter of Section 9, Township 31 North, Range 13 East, a distance of 375.0 feet; thence North 00 degrees 15 minutes 48 seconds West, a distance of 68.11 feet to a 5/8 inch iron pin set at the True Point of Beginning, said point being located on the Northerly right-of-way line of Rothman Road as recorded in Document Number 95-56785 in the Office of the Recorder of Allen County; thence continuing North 00 degrees 15 minutes 48 seconds West, a distance of 255.12 feet to a 5/8 inch iron pin set; thence North 89 degrees 27 minutes 57 second East, a distance of 283.47 feet to a 5/8 inch iron pin set at a point on the West right-of-way line of Maplecrest Road as recorded in said Document Number 95-56785; thence South 00 degrees 32 minutes 03 seconds East (South 03 degrees 26 minutes 33 seconds East, deed) along said right-of-way, a distance of 225.0 feet to a 5/8 inch iron pin set; thence South 49 degrees 09 minutes 24 seconds West (South 46 degrees 14 minutes 40 seconds West, deed) along said right-of-way line, a distance of 45.46 feet (45.52 feet, deed) to a 5/8 inch iron pin set at a point on the Northerly right-of-way line of Rothman Road; thence South 89 degrees 44 minutes 12 seconds West (South 86 degrees 47 minutes 39 seconds West, deed) along said right-of-way line, a distance of 225.0 feet to a 5/8 inch iron pin set; thence South 85 degrees 24 minutes 26 seconds West (South 82 degrees 30 minutes 18 seconds West, deed) along said right-of-way line, a distance of 25.07 feet to the Point of Beginning, Containing 1.645 acres.

An easement for the purpose of ingress and egress and utilities for the benefit of Parcel I, as created by Corporate Deed dated September 30, 1999 and recorded October 19, 1999 as Document Number 990076539, over and across the following described real estate in Allen County, Indiana:

A strip of land 50.0 feet in width, lying 25.0 feet on either side of the following described centerline:

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