

#REZ-2021-0015

BILL NO. Z-21-05-08

ZONING MAP ORDINANCE NO. Z-_____

**AN ORDINANCE amending the City of Fort Wayne
Zoning Map No. R-14 (Sec. 32 of Saint Joseph 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:

Lot Numbered 21 of Delta Heights as recorded in Plat Book 11B, Page 84, in the Office of
the Recorder of Allen County, Indiana.

and the symbols of the City of Fort Wayne Zoning Map No. R-14 (Sec. 32 of Saint Joseph
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.

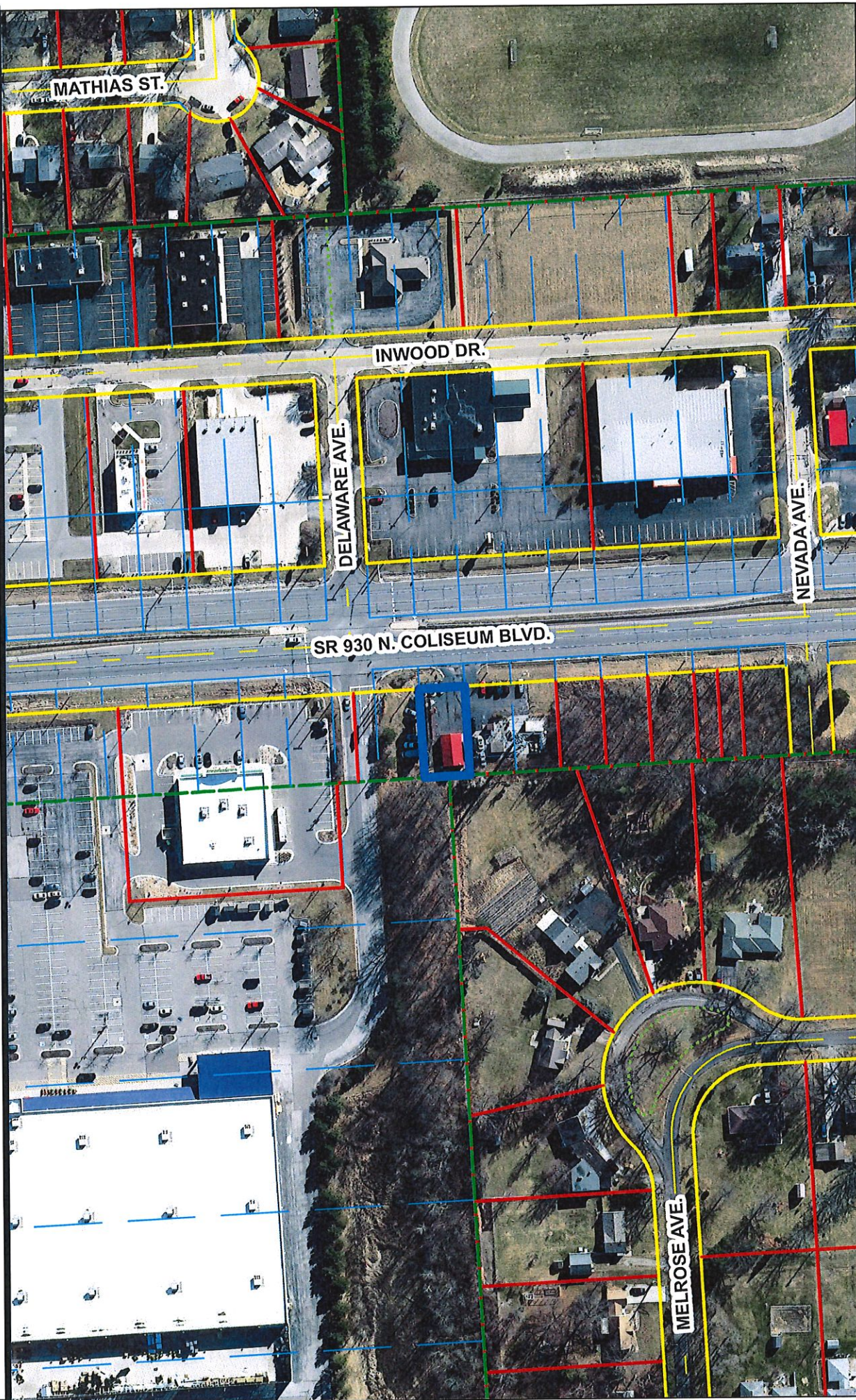
Council Member

APPROVED AS TO FORM AND LEGALITY:

Carol T. Helton, City Attorney



REZ-2021-0015 1841 North Coliseum Boulevard

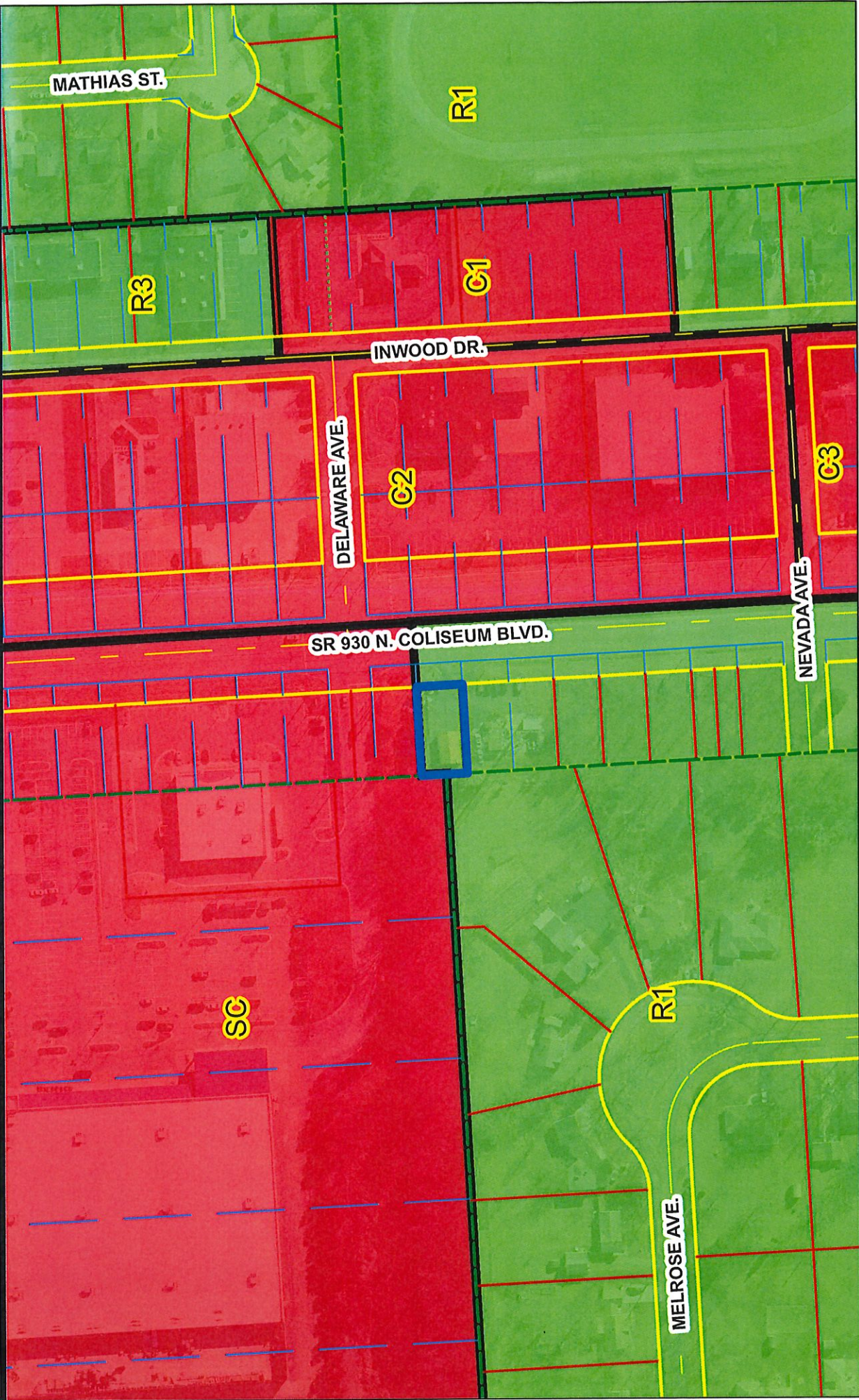


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North American Datum 1983
State Plane Coordinate System, Indiana East
Photos and Contours: Spring 2009
Date: 5/14/2021



1 inch = 150 feet



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Department of Planning Services
Rezoning Petition Application

Applicant

Applicant Pony Express Investments LLC

Address PO Box 8169

City Fort Wayne State Indiana Zip 46898-8169

Telephone 2604102974 E-mail houndbj@aol.com

Contact Person

Contact Person Kelli A Kline

Address 15918 Cascade Bluff Court

City Fort Wayne State IN Zip 46845

Telephone 2604102974 E-mail kelliprtygrl@gmail

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 1841 North Coliseum Blvd

Present Zoning R-1 Proposed Zoning C-2 Acreage to be rezoned .2

Proposed density _____ units per acre

Township name _____ Township section # _____

Purpose of rezoning (attach additional page if necessary) _____

the property and building has been used as a used car lot and auto repair service for 40 years and the new owners wish to have a permanent classification.

Sewer provider city Water provider well

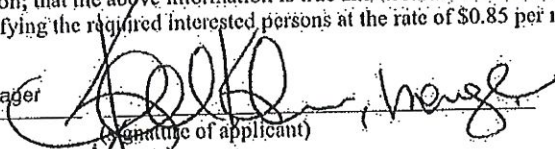
Filing Requirements

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

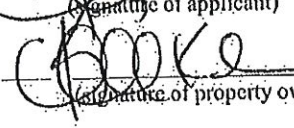
I/We understand and agree, upon execution and submission of this application, that I am/we are the owner(s) of more than 50 percent of the property described in this application; that I/we agree to abide by all provisions of the Allen County Zoning and Subdivision Control Ordinance as well as all procedures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

Pony Express Investments LLC, Kelli Kline manager
(printed name of applicant)


(signature of applicant)

9-8-2020
(date)

(printed name of property owner)


(signature of property owner)

(date)

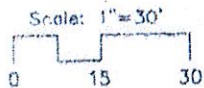
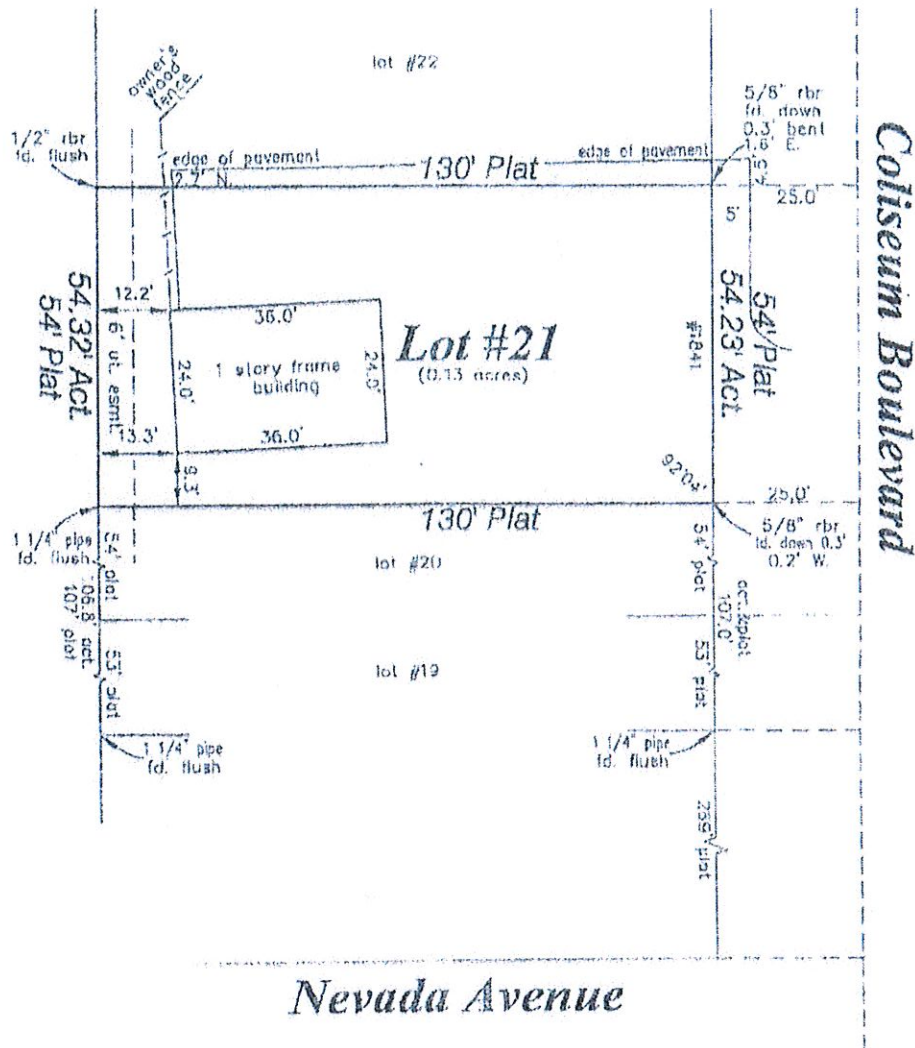
Pony Express Investments LLC, Kelli Kline manager

9-8-2020

Rec 3-3-2021

PR 4-15-2021

RE2-2021-0015



Fieldwork completed on May 10, 2005.

This property is in Zone X as the description plots by scale on Flood Insurance Rate Map No. 18003C0150 F, effective November 5, 2003.

SURVEY NO. M5-0029-046

SURVEYED FOR: Pakizehjam, Fakrolzamon

DATE: May 24, 2005

Sam L Faust

SAM L. FAUST
REGISTERED LAND SURVEYOR NO. S0540



ENGINEERS

/ LAND SURVEYORS

/ CONSTRUCTION MANAGEMENT

DELTA HEIGHTS LOT 21

LEGAL DESCRIPTION

DELTA HEIGHTS LOT 21

City of Fort Wayne Common Council
DIGEST SHEET

Department of Planning Services

Title of Ordinance: Zoning Map Amendment
Case Number: REZ-2021-0015
Bill Number: Z-21-05-08
Council District: 1 – Paul Ensley

Introduction Date: May 25, 2021

Plan Commission
Public Hearing Date: June 7, 2021 (not heard by Council)

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

Synopsis of Ordinance: To rezone 0.16 acres from R1/Single Family Residential to C2/Limited Commercial

Location: 1841 N. Coliseum Boulevard

Reason for Request: To bring an existing commercial building into compliance with the zoning ordinance.

Applicant: Pony Express Investments, LLC

Property Owner: Pony Express Investments, LLC

Related Petitions: none

Effect of Passage: Property will be rezoned to the C2/Limited Commercial zoning district, which will allow the restoration of the existing commercial building and allow for commercial uses on the site.

Effect of Non-Passage: The property will remain zoned for single family residential uses and may redevelop as such, or a Board of Zoning Appeals approval would be needed for a commercial use. The site has been used commercially for over 35 years.

FACT SHEET

Case #REZ-2021-0015		Bill # Z-21-05-08	Project Start: May 2021
APPLICANT:	Pony Express Investments LLC		
REQUEST:	To rezone property from R1/Single Family Residential to C2/Limited Commercial		
LOCATION:	The address of the subject property is 1841 North Coliseum Blvd. (Section 32 of St. Joseph Township).		
LAND AREA:	Approximately 0.2 acre		
PRESENT ZONING:	R1/Single Family Residential		
PROPOSED ZONING:	C2/Limited Commercial w/Written Commitment		
COUNCIL DISTRICT:	1-Paul Ensley		
ASSOCIATED PROJECT:	none		
SPONSOR:	City of Fort Wayne Plan Commission		

June 14, 2021 Public Hearing

- One property owner spoke at the hearing with concerns.
- Ryan Neumeister and Justin Shurley were absent.

June 21, 2021 Business Meeting

Plan Commission Recommendation: DO PASS w/Written Commitment

A motion was made by Paul Sauerteig and seconded by Don Schmidt to return the ordinance with a Do Pass recommendation with a Written Commitment to Common Council for their final decision.

7-0 MOTION PASSED

- Ryan Neumeister and Justin Shurley were absent.

Fact Sheet Prepared by:
Michelle B. Wood, Senior Land Use Planner
July 2, 2021

PROJECT SUMMARY

SITE HISTORY:

- The commercial structure was built on the site in 1957 according to the property record card.

STAFF DISCUSSION:

The petitioner requests to rezone from R1/Single Family Residential to C2/Limited Commercial to allow the existing commercial structure to be utilized as such. The most recent use of the property was car sales, and it appears that commercial uses have been occurring since at the least the 1980's. The car sales have been abandoned, the site purchased by the current applicant, and remodeling has been taking place. Besides it's relatively small size, one constraint of this parcel has been the lack of public sewer. The applicant now has a contract with the City of Fort Wayne to install sewer. The intent is to lease the newly renovated building for an office or light commercial business. The site currently appears able to accommodate about 8 to 10 parking spaces. The proposed zoning would no longer allow for outdoor car sales, but would allow the flexibility to use the site for more size appropriate commercial uses. The site is no longer conducive to residential use, considering the size and location on Coliseum Boulevard. The property immediately north is owned by Lowes and contains a billboard. The property immediately south is owned by Pinnacle Towers and contains communication utilities.

The applicant has signed a voluntary Written Commitment to restrict more intensive and/or auto related uses from the C2/Limited Commercial district, while still allowing for flexibility to lease the space.

PUBLIC HEARING SUMMARY:

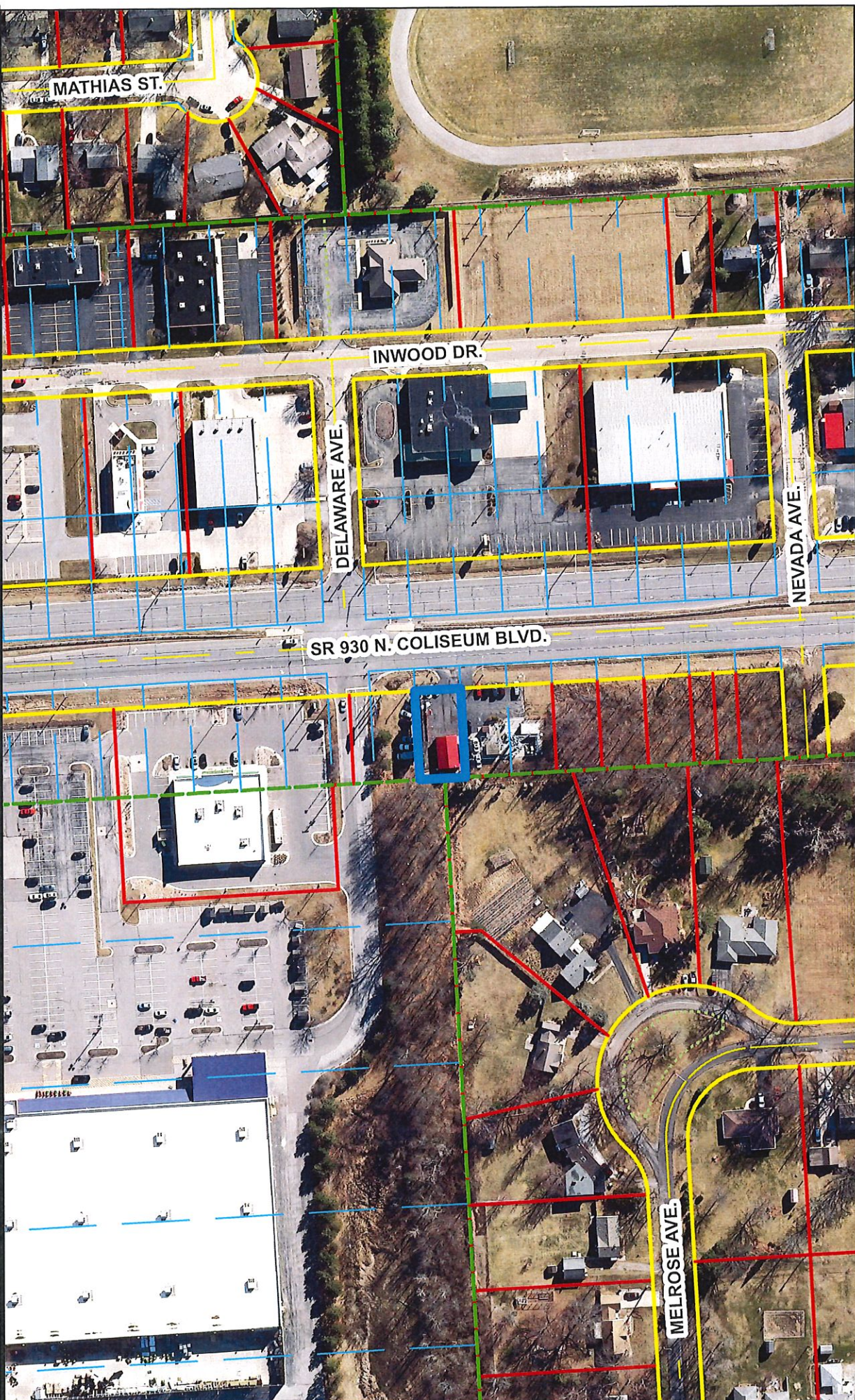
Presenter: Chuck Downey, property owner, presented the proposal as outlined above.

Public Comments:

none

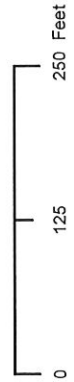


REZ-2021-0015 1841 North Coliseum Boulevard

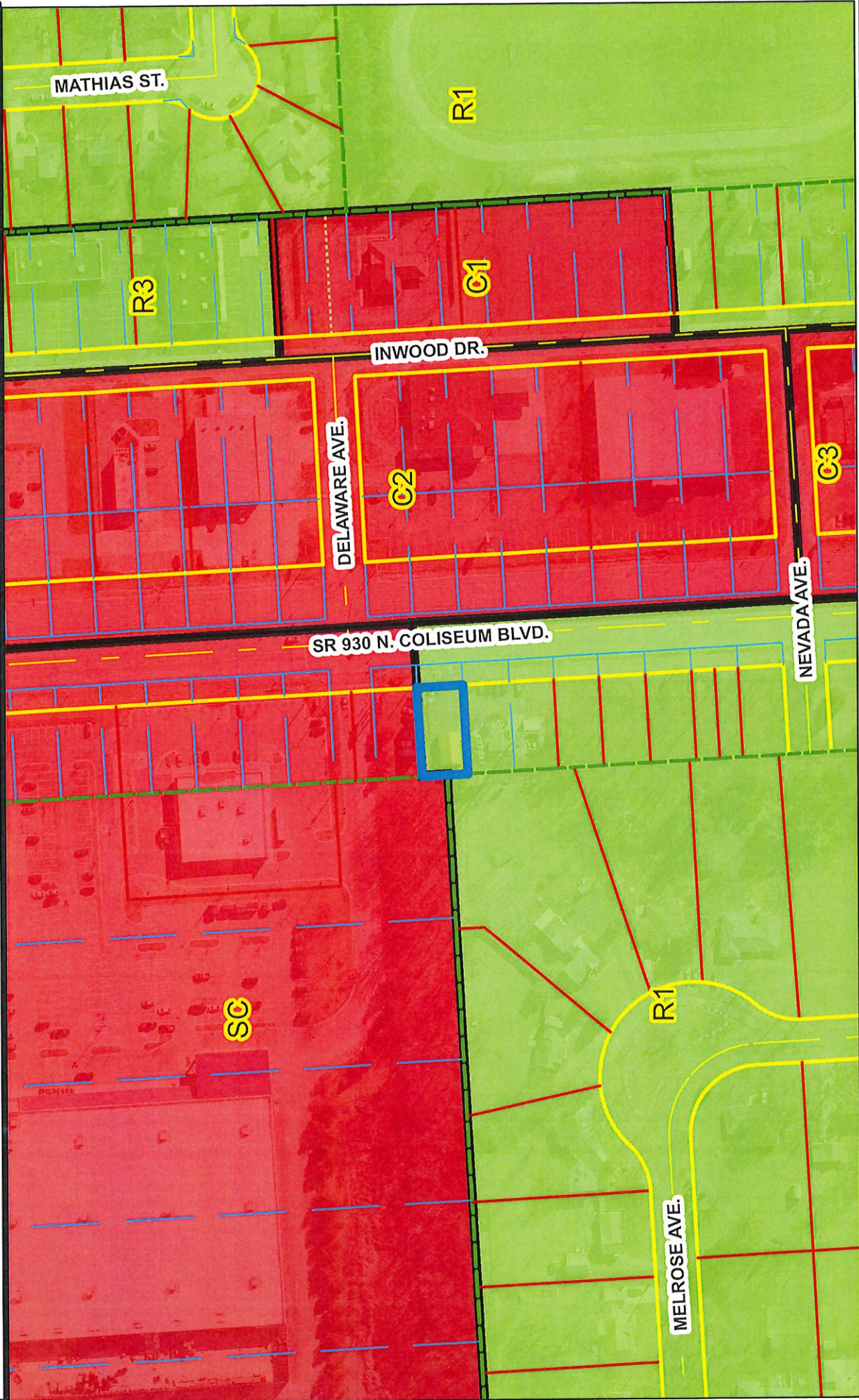


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WRITTEN COMMITMENT

THIS WRITTEN COMMITMENT ("Commitment") is made this ____ day of _____, 2021 by Pony Express Investments, LLC, an Indiana domestic limited liability company (the "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of approximately 0.2 acres of real estate located at 1841 North Coliseum Boulevard in Fort Wayne, Allen County, Indiana, the legal description of which is attached hereto as Exhibit "A" (the "Real Estate"); and

WHEREAS, Declarant submitted a rezoning petition with respect to the Real Estate to rezone the Real Estate from R1/Single Family Residential to a C2/Limited Commercial zoning district, bearing number REZ-2021-0015 (the "Petition"), which Petition has been approved by the City of Fort Wayne Plan Commission (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 approval of the Petition by the Plan Commission and City Council.

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. Subject to the terms and conditions herein contained, the following uses shall be prohibited upon the Real Estate:

- 1) Assisted living facility
- 2) Banquet hall
- 3) Bar
- 4) Bed and breakfast
- 5) Billiard or pool hall
- 6) Bingo establishment
- 7) Blood bank
- 8) Blood or plasma donor facility
- 9) Boarding house
- 10) Bowling alley
- 11) Brewery
- 12) Campus housing
- 13) Department store

- 14) Dinner theater
- 15) Dormitory
- 16) Entertainment facility
- 17) Fraternity house
- 18) Funeral home
- 19) Supermarket
- 20) Group residential facility (large)
- 21) Group residential facility (small)
- 22) Homeless shelter ⁽¹⁾
- 23) Hospice care center
- 24) Hospital
- 25) Hot tub sales
- 26) Hotel
- 27) Live-work unit
- 28) Motel
- 29) Multiple family complex
- 30) Multiple family dwelling
- 31) Nursing home
- 32) Parking area
- 33) Parking area (off-site)
- 34) Parking structure
- 35) Public transportation facility
- 36) Reception hall
- 37) Rescue mission
- 38) Residential facility for homeless individuals (up to 8)
- 39) Restaurant, including drive-through
- 40) Retirement facility
- 41) Skating rink
- 42) Sorority house
- 43) Swim club
- 44) Tavern
- 45) Taxi service
- 46) Tennis club
- 47) Theater
- 48) Tire sales
- 49) Townhouse complex
- 50) Zoo

2. Permitted Uses. Any use otherwise permitted in a C2 zoning district pursuant to the Ordinance which is not expressly prohibited pursuant to Section 1 above shall be a permitted use upon the Real Estate.
3. Permits. No permits shall be issued under the Ordinance by the Zoning Administrator until this Commitment is recorded with the Allen County Recorder. The Declarant shall deliver to the Zoning Administrator and the Plan Commission an executed and recorded copy of this Commitment.

4. Binding Effect, Modification, and Termination. This Commitment shall run with the Real Estate, and shall be binding upon the Declarant and each subsequent owner of the Real Estate and each other person acquiring an interest in the Real Estate, unless this Commitment is modified or terminated. The recitals are incorporated herein by reference and are expressly made a part of this Commitment. This Commitment may be modified or terminated only by a decision of the Plan Commission following a public hearing held by the Plan Commission wherein notice has been given as provided by the Plan Commission's rules of procedure.
5. Recording. Declarant or Applicant shall, at Declarant's or Applicant's expense, record this Commitment with the Allen County Recorder and shall provide two copies of the recorded Commitment to the Zoning Administrator.
6. Enforcement. Any violation of this Commitment shall be deemed a violation of the zoning ordinance in effect 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 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 enforcement rights of the Plan Commission, or any enforcement official designated in the zoning ordinance are cumulative, not exclusive.
7. Authority to Sign. The person signing this Commitment in a representative capacity on behalf of Declarant warrants and represents that: (a) the person has the actual authority and power to so sign, and to bind the respective entity to the provisions of this Commitment; and (b) all corporate or other entity action necessary for the making of this Commitment has been duly taken.
8. Last Deeds of Record. The most recent deed of record for the Real Estate was recorded in the Office of the Recorder of Allen County, Indiana as Document Number 2017041729.
9. 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.
10. Governing Law. This Commitment, including the restrictions and covenants hereunder, shall be governed by the laws of the State of Indiana.
11. Effective Date. The effective date ("Effective Date") of this Commitment shall be the date of its recordation with the Office of the Recorder of Allen County, Indiana.

[Signature page follows.]

“DECLARANT”

PONY EXPRESS INVESTMENTS, LLC,
an Indiana domestic limited liability company

By: _____
Printed Name: Kelli Kline
Title: Manager

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public, in and for said County and State, this ____ day of _____, 2021 personally appeared _____, manager of Pony Express Investments, LLC and acknowledged the execution of the foregoing. In witness whereof, I have hereunto subscribed my name and affixed my official seal.

Notary Public

My Commission Expires: _____

My County of Residence: _____

THIS INSTRUMENT prepared by Michelle Wood, Department of Planning Services, 200 East Berry Street, Suite 150, Fort Wayne, Indiana 46801.

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. Michelle B. Wood.

When Recorded, mail to: Pony Express Investments, P.O. Box 8169, Fort Wayne, Indiana 46898-8169.

EXHIBIT "A"

LEGAL DESCRIPTION OF REAL ESTATE

Lot Numbered 21 of Delta Heights as recorded in Plat Book 11B, Page 84, in the Office of the Recorder of Allen County, Indiana.

Department of Planning Services
Rezoning Petition Application

Applicant

Applicant Pony Express Investments LLC

Address PO Box 8169

City Fort Wayne State Indiana Zip 46898-8169

Telephone 2604102974 E-mail houndbj@aol.com

Contact Person

Contact Person Kelli A Kline

Address 15918 Cascade Bluff Court

City Fort Wayne State IN Zip 46845

Telephone 2604102974 E-mail kelliptygrl@gmail

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 1841 North Coliseum Blvd

Present Zoning R1 Proposed Zoning C-2 Acreage to be rezoned 2

Proposed density _____ units per acre

Township name _____ Township section # _____

Purpose of rezoning (attach additional page if necessary) _____

the property and building has been used as a used car lot and auto repair service for 40 years and the new owners wish to have a permanent classification.

Sewer provider city Water provider well

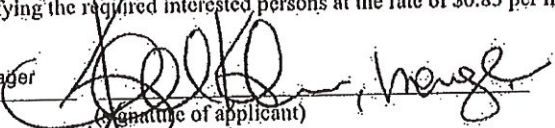
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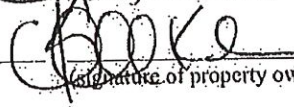
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(printed name of applicant)


(signature of applicant)

9-8-2020
(date)

(printed name of property owner)


(signature of property owner)

(date)

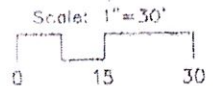
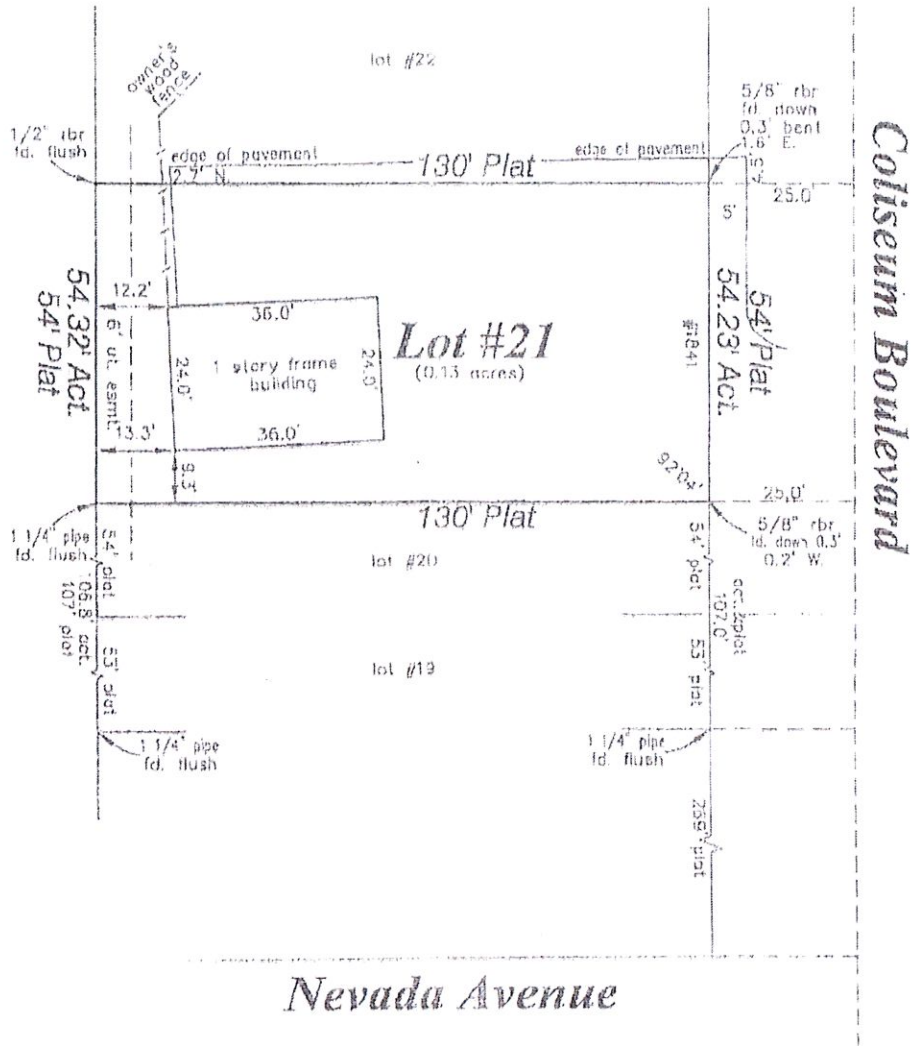
Pony Express Investments LLC, Kelli Kline manager

9-8-2020

Rec 3-3-2021

PK 4-15-2021

RE2-2021-0015



Fieldwork completed on May 10, 2005.

This property is in Zone X as the description plots by scale on Flood Insurance Rate Map No. 18003C0150 F, effective November 5, 2003.

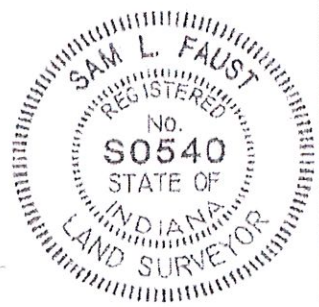
SURVEY NO. MS-0029-046

SURVEYED FOR: Pakizeh Jam, Fakrolzamon

DATE: May 24, 2005

Sam L Faust

SAM L. FAUST
REGISTERED LAND SURVEYOR NO. S0540



ENGINEERS / LAND SURVEYORS / CONSTRUCTION MANAGEMENT

DELTA HEIGHTS LOT 21

LEGAL DESCRIPTION

DELTA HEIGHTS LOT 21