

# City of Fort Wayne Common Council

## DIGEST SHEET

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### Department of Planning Services

Title of Ordinance: Zoning Map Amendment  
Case Number: REZ-2019-0079  
Bill Number: Z-20-01-05  
Council District: 6-Sharon Tucker

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Introduction Date: January 14, 2020

Plan Commission  
Public Hearing Date: January 13, 2020 (not heard by Council)

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

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Synopsis of Ordinance: To rezone approximately 1.14 acres from C2/Limited Commercial to C3/General Commercial with a Written Commitment.

Location: 5407 South Anthony Boulevard

Reason for Request: To bring the existing uses of gas station and convenience store into compliance with the zoning ordinance.

Applicant: Two Brothers Gas and Convenience, LLC

Property Owner: Two Brothers Gas and Convenience, LLC

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Related Petitions: none

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Effect of Passage: Property will be rezoned to the C3/General Commercial district, with a Written Commitment which will only add the existing uses on the property to the options of permitted uses.

Effect of Non-Passage: The property will remain zoned C2/Limited Commercial. The existing gas station may remain, but future improvements and/or refinancing may be difficult without proper zoning.

#REZ-2019-0079

BILL NO. Z-20-01-05

**ZONING MAP ORDINANCE NO. Z-\_\_\_\_\_**

**AN ORDINANCE amending the City of Fort Wayne  
Zoning Map No. P-19 (Sec. 19 of Adams 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:

Land situated in the County of Allen, State of Indiana, is described as follows:

**PARCEL I:**

Beginning at the Northwest corner of Lot 1 of Meyer's Farm Lots, said point being  
on the east line of South Anthony Boulevard; thence North along said east line of  
South Anthony Boulevard to a point 32 feet North of the Northwest corner of Lot 1,  
Meyer's Farm Lots; thence easterly and parallel with the North line of Lot 1 of  
Meyer's Farm Lots 250 feet to a point; thence southwardly and parallel with the East  
line of South Anthony Boulevard and the West line of Lot 1 of Meyer's Farm Lots  
200 feet to a point on the South line of Lot 1 of Meyer's Farm Lots; thence  
westwardly along said South line 100 feet; thence northerly and parallel with the  
East line of South Anthony Boulevard and the West line of said Lot 1 of Meyer's  
Farm Lots 100 feet; thence westerly and parallel with the North line of said Lot 1,  
150 feet to the West line of Lot 1 of Meyer's Farm Lots and the East line of South  
Anthony Boulevard; thence North along the West line of said Lot 1 and the East line  
of South Anthony Boulevard 68 feet to the place of beginning, containing 0.803 acre.

**PARCEL II:**

The South 100 feet of the West 150 feet of Lot Number 1 in Meyer's Farm Lots, an  
addition to the City of Fort Wayne, according to the plat thereof, recorded in Plat  
Record 14, page 86, in the Office of the Recorder of Allen County, Indiana.

and the symbols of the City of Fort Wayne Zoning Map No. P-19 (Sec. 19 of Adams  
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.

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Council Member

APPROVED AS TO FORM AND LEGALITY:

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Carol T. Helton, City Attorney

**Department of Planning Services  
Rezoning Petition Application**

**Applicant**  
Applicant Two Brothers Gas and Convenience LLC  
Address 5405 S Anthony Blvd  
City Fort Wayne State IN Zip 46806  
Telephone 260 515 1210 E-mail salehsalih16@gmail.com

**Contact Person**  
Contact Person Saleh Salih  
Address 5405 S Anthony Blvd  
City Fort Wayne State IN Zip 46806  
Telephone 260 515 1210 E-mail salehsalih16@gmail.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 5405 S Anthony Blvd., Fort Wayne, IN 46806  
Present Zoning C2 Proposed Zoning C3 Acreage to be rezoned \_\_\_\_\_  
Proposed density \_\_\_\_\_ units per acre  
Township name Adams Township section # 70  
Purpose of rezoning (attach additional page if necessary) Recent change in the city of Fort Wayne zoning ordinance does not permit use of property for the current business in the existing C2 zoning. In order to bring this location into compliance with the zoning ordinance, we are requesting the rezoning to C3 zoning  
Sewer provider Republic Water provider City Utilities

**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.

Saleh Salih  
(printed name of applicant) (signature of applicant)

09/13/2019  
(date)

Saleh Salih  
(printed name of property owner) (signature of property owner)

09/13/2019  
(date)

Rec: 12-2-19 Rec # 132755

PEZ-2019-0079

## WRITTEN COMMITMENT

This Written Commitment (this "Commitment") is made effective as of the 13<sup>th</sup> day of September, 2019, by Two Brothers Gas & Convenience LLC, an Indiana Corporation ("Company").

## RECITALS

- A. By virtue of that certain Corporate Deed dated November 5<sup>th</sup> 2013 and recorded on November 5<sup>th</sup> 2013 as Document Number 2013063072 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 \_\_\_\_\_ (the "Rezoning Application") to change the zoning map applicable to the Real Estate from the C2 Zoning District to the C3 Zoning District.
- C. 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 as owner of the real property to make a written commitment concerning the use or development of the real property as part of rezoning application (the "Approval").
- D. 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. **PERMITTED/PROHIBITED USES.** All uses normally permitted in the C3/General Commercial zoning district under §157.216 of the Ordinance that are not permitted uses in the C2/Limited Commercial under §157.213 of the Ordinance (all of which shall remain permitted) shall be prohibited except for the following (which shall be permitted):

- a. Gas Station
- b. Propane/bottled gas sales and service as an accessory use to gas station convenience store.

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 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 exhaustive. 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 be 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)(1).
8. **PERMITS.** No permits shall be issued under the Ordinance by the Zoning Administrator until this Commitment is recorded with the Allen County Recorder. This Declarant shall deliver to the Zoning Administrator and the Plan Commission an executed and recorded copy of this Commitment.

9. **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.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGE FOLLOWS]

Two Brothers Gas & Convenience LLC,  
an Indiana Corporation

By:

*Saleh Salih*  
Saleh Salih, President "Company"

STATE OF INDIANA    )  
                                  ) SS:  
COUNTY OF ALLEN    )

Before me, the undersigned Notary Public in and for said County and State, this 27 day of November, 2019, personally appeared Saleh Salih, as President of Two Brothers Gas & Convenience LLC, an Indiana corporation, and acknowledged the execution of the foregoing Written Commitment on behalf of said company.

WITNESS my hand and Notarial Seal.

My Commission expires: July 2, 2020

*Amanda Marie Woenker*



AMANDA MARIE WOENKER, Notary Public  
Allen County, State of Indiana  
Commission Number 0636537  
My Commission Expires July 2, 2020



## **Exhibit A**

### **Legal Description of Real Estate**

Land situated in the County of Allen, State of Indiana, is described as follows:

#### **PARCEL I:**

Beginning at the northwest corner of Lot 1 of Meyer's Farm Lots, said point being on the east line of South Anthony Boulevard; thence North along said east line of South Anthony Boulevard to a point 32 feet north of the northwest corner of Lot 1, Meyer's Farm lots; thence easterly and parallel with the north line of lot 1 of Meyer's Farm Lots 250 feet to point; thence southwardly and parallel with the east line of South Anthony Boulevard and the west line of Lot 1 of Meyer's Farm lots 200 feet to a point on the south line of Lot 1 of Meyer's Farm lots; thence westwardly along said south line 100 feet; thence northerly and parallel with the east line of South Anthony Boulevard and the west line of said Lot 1 of Meyer's Farm Lots 100 feet; thence westerly and parallel with the north line of said Lot 1, 150 feet to the west line of Lot 1 of Meyer's Farm Lots and the east line of South Anthony Boulevard; thence north along the west line of said Lot 1 and the east line of South Anthony Boulevard 68 feet to the place of beginning, containing 0.803 acre.

#### **PARCEL II:**

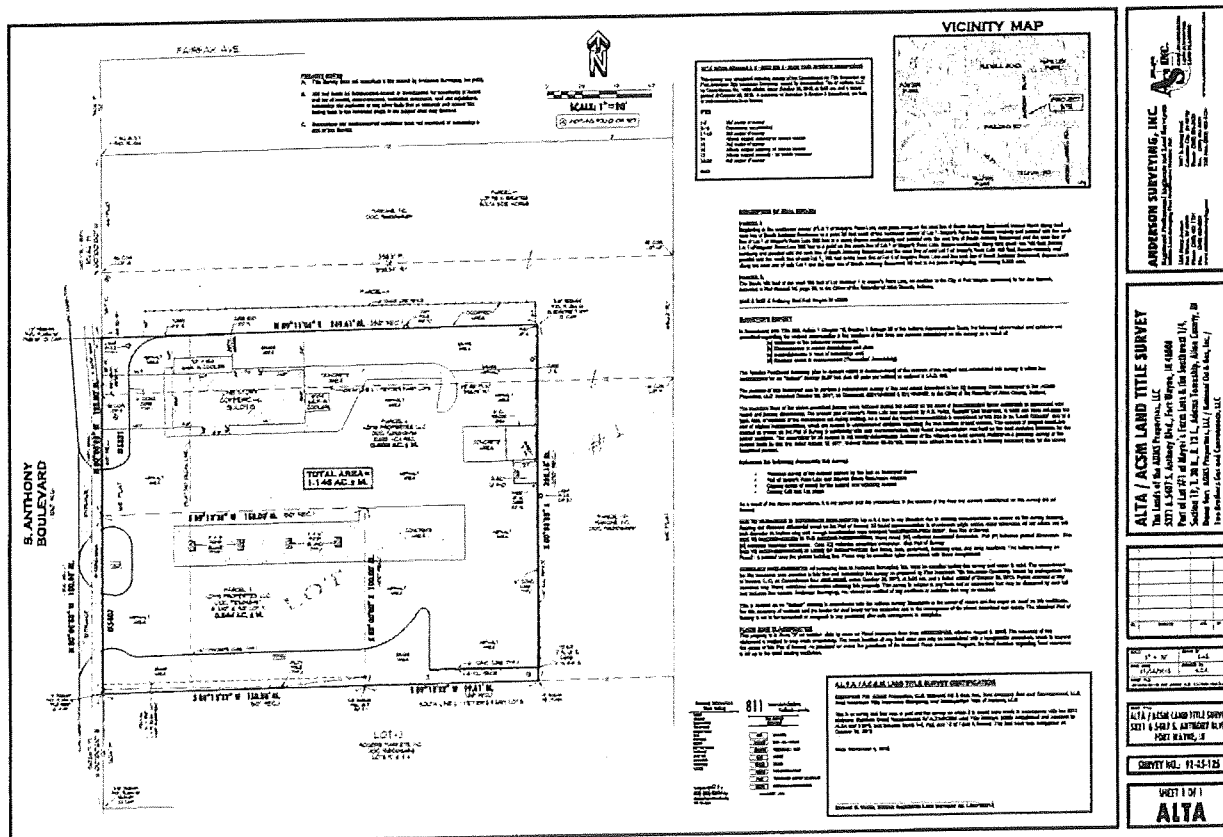
The South 100 feet of the west 150 feet of Lot Number 1 in Meyer's Farm Lots, an addition to the City of Fort Wayne, according to the plat thereof, recoded in Plat Record 14, page 86, in the office of the Recorder of Allen County, Indiana.

November 4, 2013 1:53 PM

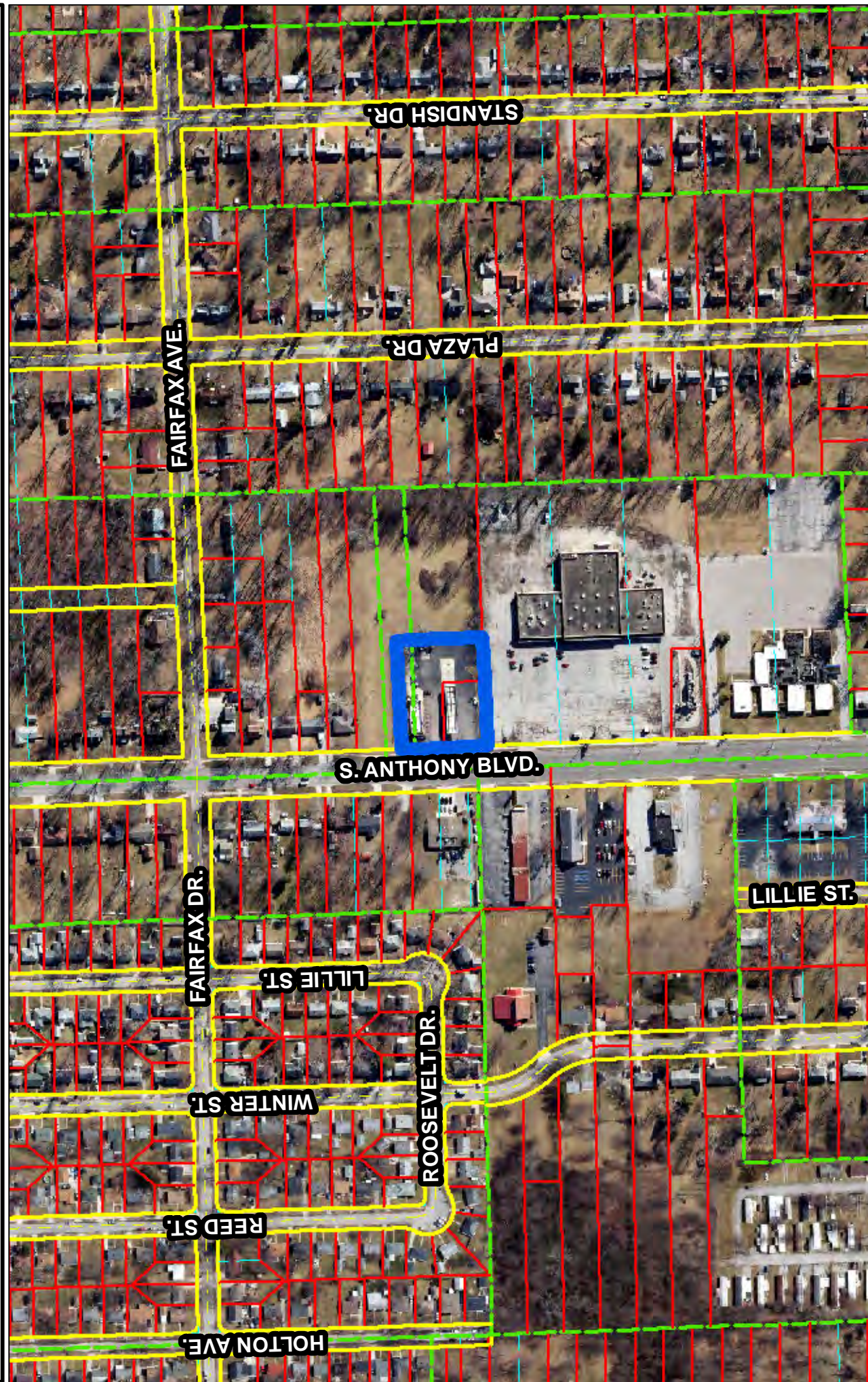
Attached is a pdf of the survey and my survey read.

PLEASE NOTE: Our North office address is:  
9604 Coldwater Road  
Suite 105  
Fort Wayne, IN 46825

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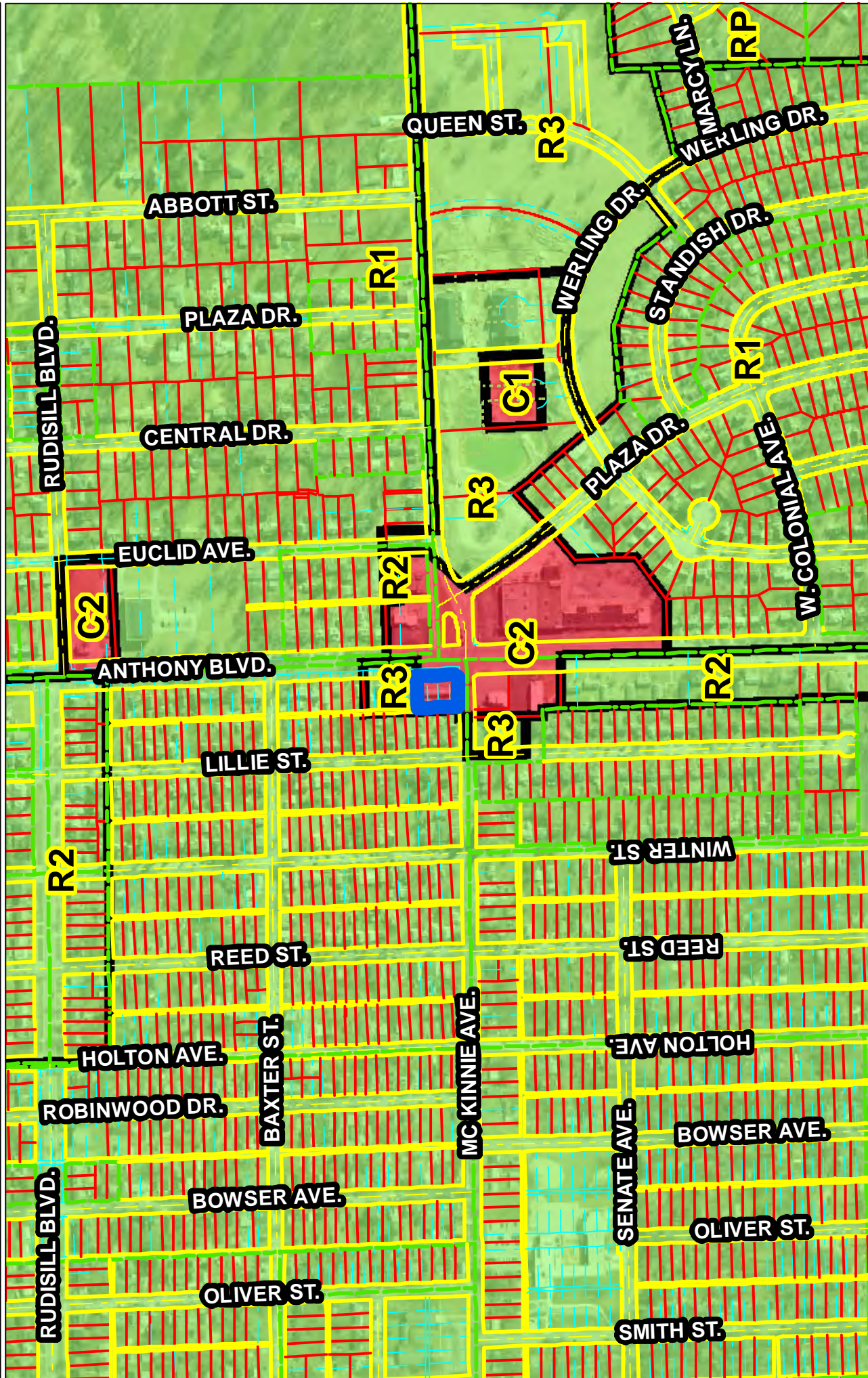
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North American Datum 1983  
State Plane Coordinate System, Indiana East  
Photos and Contours: Spring 2009  
Date: 12/27/2019



1 inch = 300 feet







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North American Datum 1983  
State Plane Coordinate System, Indiana East  
Photos and Contours: Spring 2009  
Date: 1/7/2020



1 inch = 438 feet

