

City of Fort Wayne Common Council

DIGEST SHEET

Department of Planning Services

Title of Ordinance: Zoning Map Amendment
Case Number: REZ-2019-0080
Bill Number: Z-20-01-06
Council District: 6-Sharon Tucker

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

Synopsis of Ordinance: To rezone approximately 0.34 acres from C2/Limited Commercial to C3/General Commercial with a Written Commitment.

Location: 4224 South Anthony Boulevard

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

Applicant: Y and S Gas, Inc.

Property Owner: Y and S Gas, Inc.

Related Petitions: none

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-2019-0080

BILL NO. Z-20-01-06

ZONING MAP ORDINANCE NO. Z-_____

**AN ORDINANCE amending the City of Fort Wayne
Zoning Map No. O-11 (Sec. 13 of Wayne 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:

Lots numbered 133, 134, 135, and 136 in Elmwood Addition to the City of Fort
Wayne, as recorded in Plat Record 8, page 20, EXCEPT the East 25 feet
appropriated for the widening of Anthony Boulevard Improvement Resolution No.
38 and ALSO EXCEPT the South 5 feet of said Lot Number 136. ALSO EXCEPT
the following:

Part of Lot Number 136 in Elmwood Addition, an Addition to the City of Fort
Wayne, as Recorded in Plat Record 8, page 20, more particularly described as
follows:

Beginning at the Southeast corner of the aforesaid Lot as it now exists, also the point
of intersection of the North right-of-way line of McKinnie Avenue as it now exists
and the West right-of-way line of Anthony Boulevard as it now exists; thence West
on and along the North right-of-way line of McKinnie Avenue a distance of 12 feet;
thence Northeast to a point on the West right-of-way line of Anthony Boulevard,
said point being situated 12 feet North of the Southeast corner of the aforesaid Lot;
thence South on and along the West right-of-way line of Anthony Boulevard a
distance of 12 feet to the POINT OF BEGINNING, containing 72 square feet or
0.0002 acres, more or less.

and the symbols of the City of Fort Wayne Zoning Map No. O-11 (Sec. 13 of Wayne
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 Y and S Gas Inc

Address 4224 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 4224 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 4224 S Anthony Blvd., Fort Wayne, IN 46806

Present Zoning C2 Proposed Zoning C3 Acreage to be rezoned _____

Proposed density _____ units per acre

Township name WAYNE TOWNSHIP Township section # 074

Purpose of rezoning (attach additional page if necessary) We have been operating and managing a gas station and convenience located at 4224 S Anthony Blvd., Fort Wayne, IN for past several years. We need to bring the zoning into compliance per recent changes in the city of Fort Wayne zoning ordinance.

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)

09/11/2019

(date)

Saleh Salih

(printed name of property owner)

(signature of property owner)

09/11/2019

(date)

Rec #132756

Rec 12-2-19

REZ- 2019- 0080

WRITTEN COMMITMENT

This Written Commitment (this "Commitment") is made effective as of the 13th day of September 2019, by Y & S Gas Inc., an Indiana Corporation ("Company").

RECITALS

- A. By virtue of that certain Warranty Deed dated April 10th 2013 and recorded on April, 10th 2013 as Document Number 2013021676 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]

Y and S Gas Inc.,
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 Y and S Gas Inc., 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

Lots numbered 133, 134, 135, and 136 in Elmwood Addition to the City of Fort Wayne, as recorded in Plat record 8, page 20, Except the East 25 feet appropriated for the widening of Anthony Boulevard Improvement Resolution No. 38 and ALSO EXCEPT the South 5 feet of said Lot Number 136. ALSO EXCEPT the following:

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LIMITED WARRANTY DEED

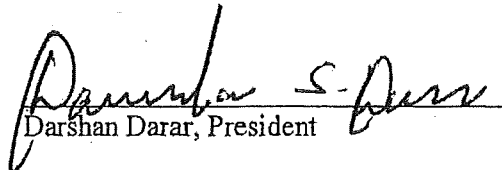
THIS INDENTURE WITNESSETH, that **Veer Inc.**, an Indiana corporation ("**Grantor**"), CONVEYS AND WARRANTS to **Y and S Gas Inc.**, an Indiana corporation ("**Grantee**"), for the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt of which is hereby acknowledged, the real estate in Allen County, in the State of Indiana legally described in Exhibit A attached hereto and incorporated herein by this reference (the "**Real Estate**").

The foregoing conveyance shall be subject to: (i) all real estate taxes and assessments due and payable after the date of Closing; (ii) all matters described in the pro forma owner's policy of title insurance for the Real Estate, issued by Lawyers Title Company, LLC as File No: 751302556; and (iii) together with all other covenants, restrictions, conditions and easements of record.

THE WARRANTIES OF GRANTOR HEREUNDER ARE LIMITED TO ITS ACTS AND DEEDS, AND THOSE CLAIMING BY, THROUGH OR UNDER GRANTOR, AND NOT OTHERWISE.

IN WITNESS WHEREOF, Grantor has caused this deed to be executed this 10th day of April, 2013.

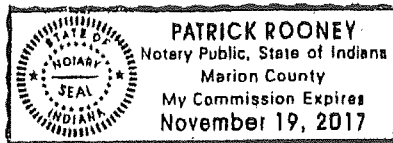
GRANTOR:
VEER INC.,
an Indiana corporation

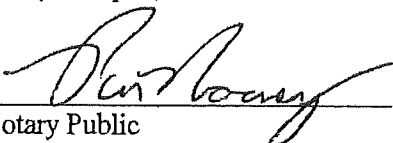

Darshan Darar, President

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for the State of Indiana, personally appeared **Darshan Darar**, who being first duly sworn by me upon his oath, acknowledged execution of the foregoing, stated that he is the President of **Veer Inc.**, an Indiana corporation, that he is duly authorized to execute the foregoing Limited Warranty Deed on its behalf, and who having been duly sworn stated that the representations therein are true.

WITNESS my hand and Notarial Seal this 10th day of April, 2013.





Notary Public

State Tax Parcel Numbers: 02-12-13-483-026.000-074 and 02-12-13-483-027.000-074.

Address of Transferred Property: 4224 S. Anthony Blvd., Fort Wayne, Indiana 46806.

Mail Tax Statements To:
Y and S Gas Inc.
c/o Yasir Salih
10717 Deep Creek Ct
Fort Wayne, IN 46804

THIS INSTRUMENT PREPARED BY:
Patrick M. Rooney
E. A. Harvey & Associates, P.C.
6910 North Shadeland Avenue, Suite 200
Indianapolis, Indiana 46220

I affirm under penalties for perjury that
I have taken reasonable care to redact
each social security number in this
document, unless required by law.
/s/ Patrick M. Rooney

Exhibit A

Legal Description of Real Estate

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ALTA/ACSM LAND TITLE SURVEY
BP GAS STATION
0.34± ACRES

Group
land surveyors
INCORPORATED
1000 N. 10TH AVE.
DENVER, CO 80202
(303) 733-1111

PROJECT LOCATION
4224 SOUTH ANTHONY BLVD.
FORT WAYNE, INDIANA

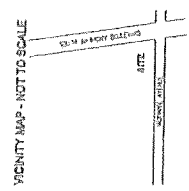
PROJECT LOCATED IN:
SECTION 12, TOWNSHIP 33 NORTH, RANGE 4 EAST
COUNTY OF ELKHART, INDIANA

ALTA/ACSM LAND TITLE SURVEY

PREPARED FOR:
National Oil & Gas, Inc.

DRAWING LEGEND

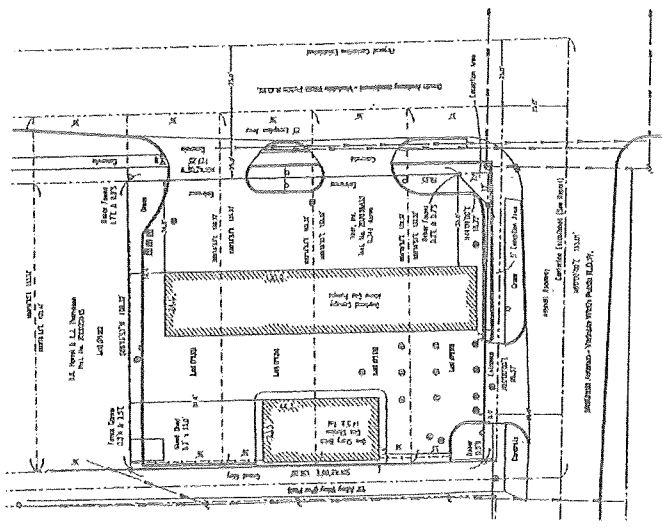
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REFERENCE #:

PROJECT NUMBER:

SHEET NUMBER:



SYMBOL LEGEND

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100	SECTION

NOTICE OF COMPLETION

THIS SURVEY WAS COMPLETED BY THE GROUP OF LAND SURVEYORS, INCORPORATED, A PROFESSIONAL CORPORATION, ON THE 15TH DAY OF MAY, 2006, AT FORT WAYNE, INDIANA. THE SURVEY WAS COMPLETED IN ACCORDANCE WITH THE INDIANA SURVEYING ACT, CHAPTER 36, ARTICLE 15, AND THE INDIANA PROFESSIONAL CORPORATION ACT, CHAPTER 36, ARTICLE 14. THE SURVEY WAS COMPLETED BY THE GROUP OF LAND SURVEYORS, INCORPORATED, A PROFESSIONAL CORPORATION, AND THE SURVEY WAS COMPLETED BY THE GROUP OF LAND SURVEYORS, INCORPORATED, A PROFESSIONAL CORPORATION.

GROUP OF LAND SURVEYORS, INCORPORATED

1000 N. 10TH AVE.

DENVER, CO 80202

(303) 733-1111

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GROUP OF LAND SURVEYORS, INCORPORATED

1000 N. 10TH AVE.

DENVER, CO 80202

(303) 733-1111

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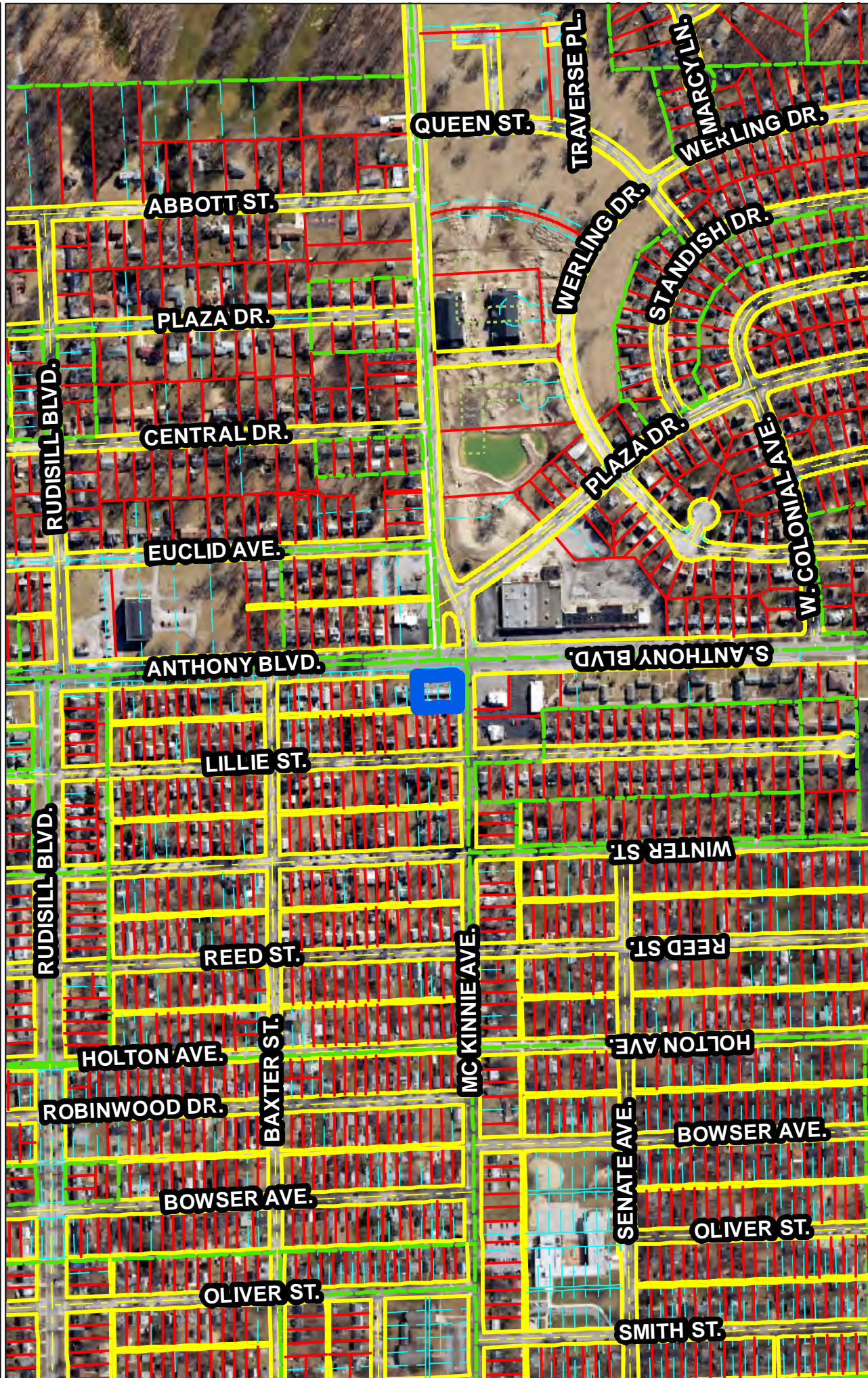
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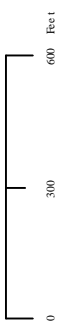


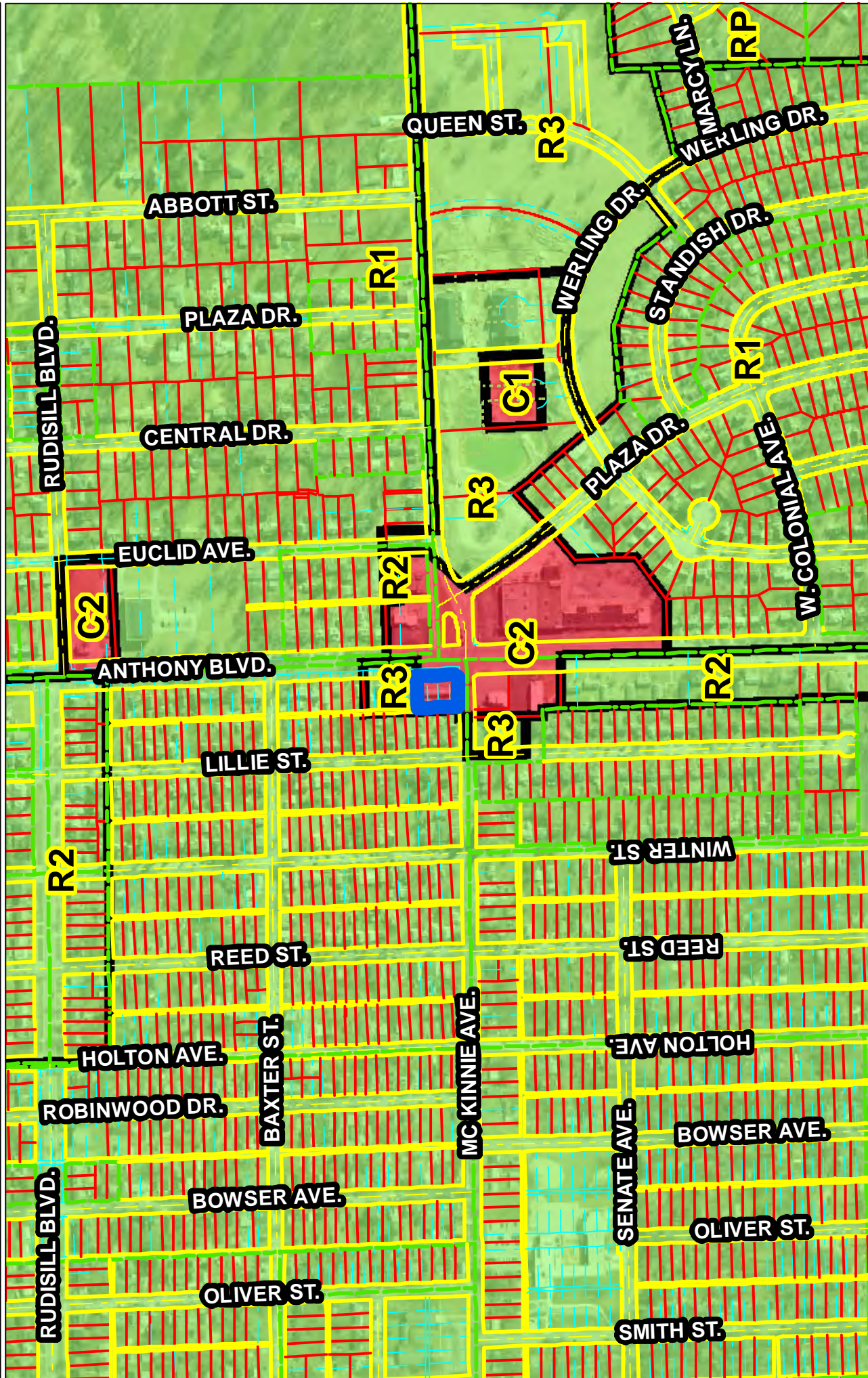
Although strict accuracy standards have been employed in the compilation of this map, Allen County does not warrant or guarantee the accuracy of the information contained herein and disclaims any and all liability resulting from any error or omission in this map.

© 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: 1/7/2020



1 inch = 438 feet





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1 inch = 438 feet

0 300 600 Feet