

#REZ-2022-0007

BILL NO. Z-22-02-08

ZONING MAP ORDINANCE NO. Z-_____

**AN ORDINANCE amending the City of Fort Wayne
Zoning Map No. M-14 (Sec. 35 of Washington 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 1:

The North Twenty-five (25) feet of Lot Five (5) and the North ½ of the vacated alley, except
2 ½ feet for street and the South Fifteen (15) feet of Lot (6) except 2 ½ feet for street in John
H. Jacobs Third Addition, to the City of Fort Wayne, Allen County, Indiana.

EXCEPTING THEREFROM:

A part of Lots 5 and 6 in John H. Jacobs Third Addition to the City of Fort Wayne, Indiana,
the plat of which is recorded in Plat Book 4, page 47 in the Office of the Recorder of Allen
County, Indiana and being described as follows: Beginning at the Southeast corner of said
Lot 5, thence North 70 degrees 54 minutes 59 seconds West 7.50 feet along the southern line
of said Lot 5, thence North 19 degrees 05 minutes 01 second East 55.00 feet; thence South
70 degrees 54 minutes 59 seconds East 5.00 feet to the western boundary of US 27 (North
Clinton Street); thence South 19 degrees 05 minutes 01 second West 40.00 feet along the
boundary of said US 27, thence South 70 degrees 54 minutes 59 seconds East 2.50 feet along
said boundary to the eastern line of said Lot 5; thence South 19 degrees 05 minutes 01
second West 15.00 feet along said eastern line and along the boundary of said US 27 to the
point of beginning.

Parcel 2:

The South 1/2 of the vacated alley lying North of and adjacent to Lot 4 John H. Jacobs Third
Addition, to the City of Fort Wayne, Allen County, Indiana, except 2 ½ feet for street.

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Lot 5, thence North 70 degrees 54 minutes 59 seconds West 7.50 feet along the southern line
of said Lot 5, thence North 19 degrees 05 minutes 01 second East 55.00 feet; thence South
70 degrees 54 minutes 59 seconds East 5.00 feet to the western boundary of US 27 (North
Clinton Street); thence South 19 degrees 05 minutes 01 second West 40.00 feet along the

boundary of said US 27, thence South 70 degrees 54 minutes 59 seconds East 2.50 feet along said boundary to the eastern line of said Lot 5; thence South 19 degrees 05 minutes 01 second West 15.00 feet along said eastern line and along the boundary of said US 27 to the point of beginning

TOGETHER WITH:

Lots 7, 8 and 9 and the North 25 feet of Lot No. 6 in John H. Jacobs Third Addition to the City of Fort Wayne, Allen County, Indiana, as recorded in Plat Book 4, Page 47, in the office of the Recorder of Allen County, Indiana. Excepting therefrom said Lots that portion thereof appropriated for the widening of N. Clinton Street under Declaratory Resolution 677, and also excepting therefrom said Lot 9 that portion thereof appropriated for the State Street right-of-way under Declaratory Resolution 2016-39611.

and the symbols of the City of Fort Wayne Zoning Map No. M-14 (Sec. 35 of Washington 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

City of Fort Wayne Common Council

DIGEST SHEET

Department of Planning Services

Title of Ordinance: Zoning Map Amendment
Case Number: REZ-2022-0007
Bill Number: Z-22-02-08
Council District: 5 – Geoff Paddock

Introduction Date: February 8, 2022

Plan Commission
Public Hearing Date: February 14, 2022 (not heard by Council)

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

Synopsis of Ordinance: To rezone 0.56 acres from R1/Single Family Residential and C2/Limited Commercial to C3/General Commercial with a Written Commitment to restrict certain uses

Location: 2227 and 2239 North Clinton

Reason for Request: To bring an existing gas station and convenience store into compliance with the zoning ordinance, and to add one additional parcel for improved circulation and access.

Applicant: Lassus Brothers Oil, Inc.

Property Owner: Lassus Brothers Oil, Inc.

Related Petitions: none

Effect of Passage: Property will be rezoned to the C3/General Commercial zoning district, which will allow the existing use as a permitted use by right. A recorded Written Commitment on the property will restrict all C3 uses except those on site currently and those permitted in the C2/Limited Commercial district.

Effect of Non-Passage: The property will remain zoned for limited commercial uses. The gas station and convenience store may remain as a non-conforming use, but the owner may be limited on future maintenance, expansion, and financing resources because of the non-conforming status. The additional lot will remain zoned for residential uses.

**Department of Planning Services
Rezoning Petition Application**

Applicant
Applicant Lassus Bros. Oil, Inc.
Address 1800 Magnavox Way
City Fort Wayne State IN Zip 46804
Telephone (260)436-1415 E-mail samschenkel@lassus.com

Contact Person
Contact Person Sam Schenkel, Lassus Bros. Oil, Inc.
Address 1800 Maganvox Way
City Fort Wayne State IN Zip 46804
Telephone (260)436-1415 E-mail samschenkel@lassus.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 2239 N. Clinton St., Fort Wayne, IN 46805
Present Zoning C2 Proposed Zoning C3 Acreage to be rezoned 0.38
Proposed density 1 units per acre
Township name Wayne Township section # 30
Purpose of rezoning (attach additional page if necessary) To bring an existing
Lassus convenience store and gas station use into conformance with
the City of Fort Wayne Zoning Ordinance.
Sewer provider City Water provider City

Filing Requirements
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- ☐ 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.

Lassus Bros. Oil, Inc. by Sam Schenkel, Vice Pres.

(printed name of applicant)

(signature of applicant)

(date)

J&J Realty Co., LLP by Jon F. Lassus, Partner

(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	Receipt No.	Hearing Date	Petition No.
1-5-2022	139210	2-14-2022	REZ- 2022- 0007

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City Fort Wayne State IN Zip 46804
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(printed name of applicant) Sam Schenkel, VICE PRESIDENT 12/13/21
(signature of applicant) (date)
Robert C. Wiard
(printed name of property owner) Robert C. Wiard 12/14/21
(signature of property owner) (date)
Joy E. Wiard
(printed name of property owner) Joy E. Wiard 12-16-21
(signature of property owner) (date)
(printed name of property owner) (signature of property owner) (date)

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Rezoning Petition REZ-2022-0007 - 2239 North Clinton Street



1 inch = 150 feet

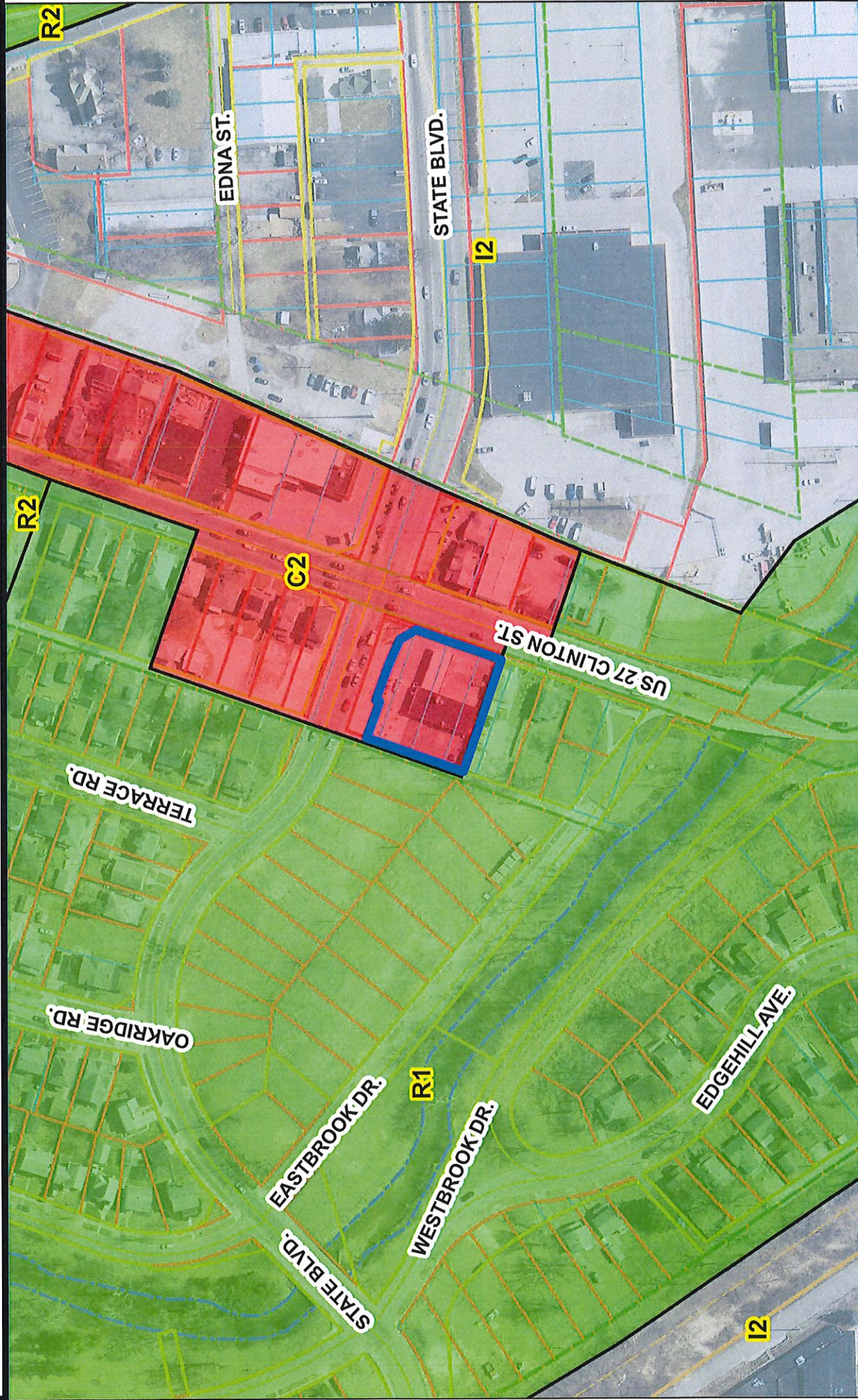


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 Photos and Contours: Spring 2009
 Date: 1/19/2022

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Rezoning Petition REZ-2022-0007 - 2239 North Clinton Street



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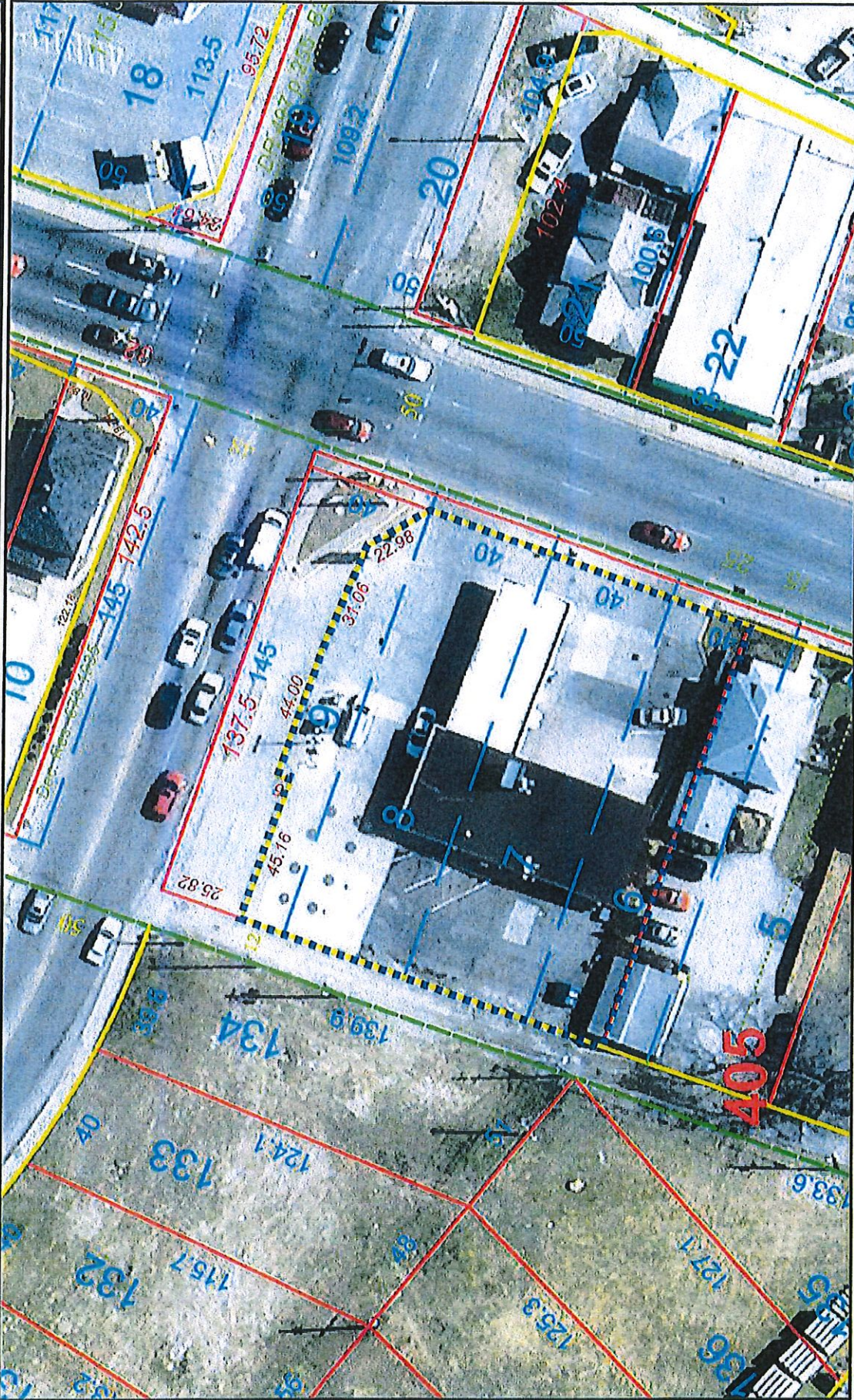
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Lassus Store 6

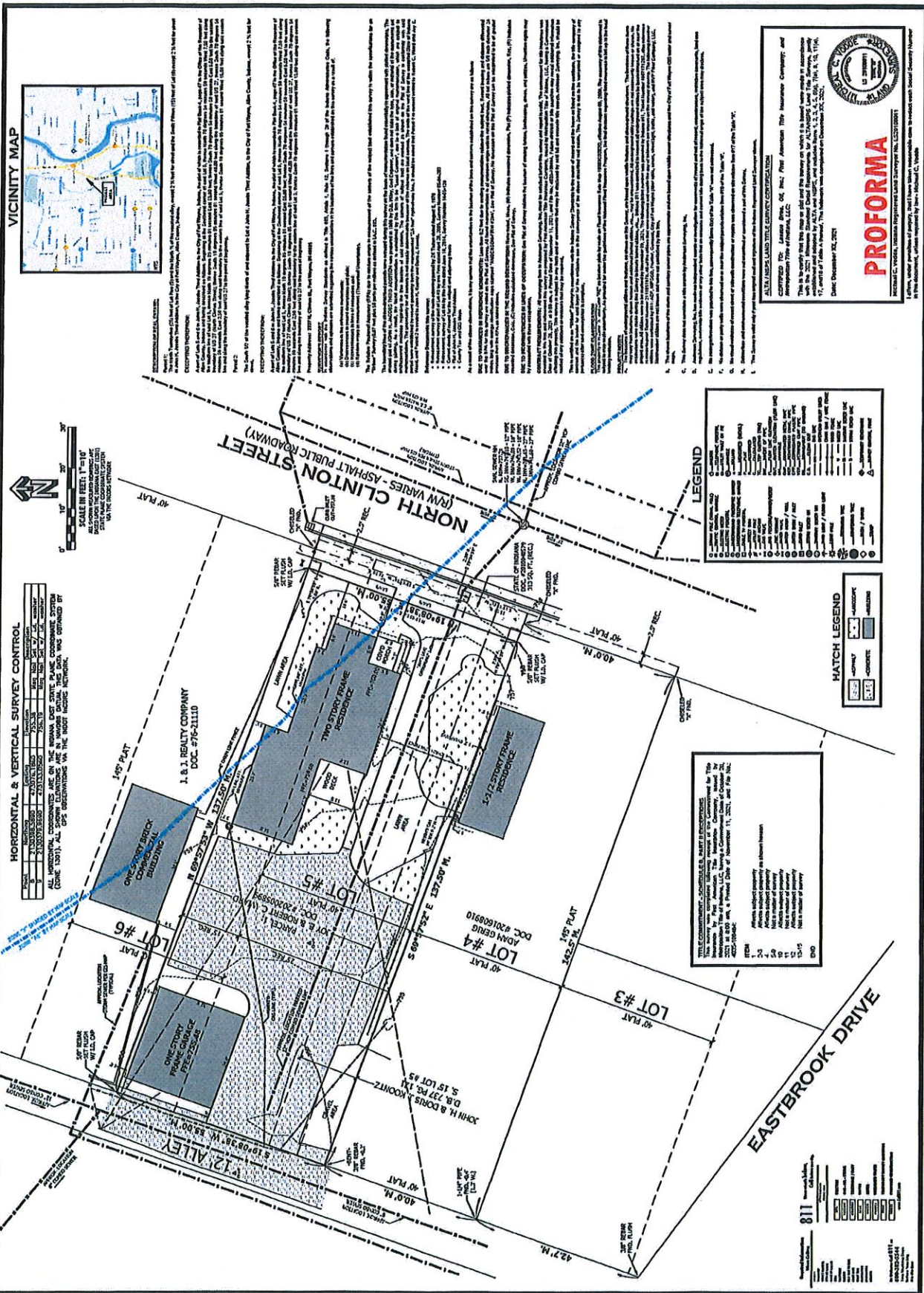


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North Arrow
Date: 5/8/2020 1" = 42'

SHEET 1 OF 1
ALTA



J&J / Lassus Parcel:

Lots 7, 8 and 9 and the North 25 feet of Lot No. 6 in John H. Jacobs Third Addition to the City of Fort Wayne, Allen County, Indiana, as recorded in Plat Book 4, Page 47, in the office of the Recorder of Allen County, Indiana. Excepting therefrom said Lots that portion thereof appropriated for the widening of N. Clinton Street under Declaratory Resolution 677, and also excepting therefrom said Lot 9 that portion thereof appropriated for the State Street right-of-way under Declaratory Resolution 2016-39611.

Property Address: 2239 N. Clinton St., Fort Wayne, IN 46805

PROFESSIONAL ENGINEERS & LAND SURVEYORS

Jerry K. Walker, P.E. & L.S.
Vice-President

This document is a record of a resurvey of land and real estate prepared in conformity with established rules of surveying and made in accordance with the records or plat on file in the Recorder's office of Madison County, State of Indiana. The land described exists in full dimensions as shown hereon in feet. It is free from encroachments by adjoining land owners unless specifically shown below. Corners were perpetuated as indicated.

The north 25 feet of lot #6, all of lots #7, #8 and #9 in John H. Jacob's Third Addition to the City of Fort Wayne, according to the Plat Record 4, page 47, is the office of the Recorder of said County, except that part thereat appropriated for the widening of Clinton Street under Declaratory Resolution 877.



Surveyed for: W. L. Smith - Richfield
Survey No. 70-145

Phones: 219.743-0003 or 219.422.5383

FACT SHEET

Case #	REZ-2022-0007	Bill #	Z-22-02-08	Project Start:	January 2022
APPLICANT:	Lassus Bros. Oil, Inc.				
REQUEST:	To rezone property from C2/Limited Commercial to C3/General Commercial to bring the existing gas station use in conformance with the Zoning Ordinance and to allow for future expansion.				
LOCATION:	The addresses of the subject properties are 2227 North Clinton Street and 2239 North Clinton Street (Section 35 of Washington Township).				
LAND AREA:	Approximately 0.6 acres				
PRESENT ZONING:	C2/Limited Commercial				
PROPOSED ZONING:	C3/General Commercial				
COUNCIL DISTRICT:	5- Geoff Paddock				
SPONSOR:	City of Fort Wayne Plan Commission				
ASSOCIATED PROJECT:	None				

February 14, 2022 Public Hearing

- No one spoke in opposition.
- Tom Freistroffer, Justin Shurley and Rachel Tobin-Smith were absent.

February 21, 2022 Business Meeting

Plan Commission Recommendation: DO PASS w/Written Commitment

A motion was made by Judi Wire and seconded by Tom Freistroffer to return the ordinance with a Do Pass recommendation with a written commitment to Common Council for their final decision.

5-0 MOTION PASSED

- Paul Sauerteig, Justin Shurley and Rachel Tobin-Smith were absent.

Fact Sheet Prepared by:
Michelle B. Wood, Senior Land Use Planner
March 8, 2022

PROJECT SUMMARY

SITE HISTORY:

- Two structures (a convenience store and a gas station canopy) were built around 1970.
- The site also consists of a foursquare home built around 1930.
- Until 2014, gas stations were permitted in the CM2 zoning district, which translates to today's C2/Limited Commercial zoning district.
- A zoning ordinance amendment limited gas stations to a special use in the C2/Limited Commercial zoning district. The amendment became effective on April 7, 2014.
- City Council proposed and approved a zoning ordinance amendment to remove gas stations as a special use in the C2 district, which became effective on April 22, 2019.

STAFF DISCUSSION:

The applicant, Lassos Bros. Oil, seeks to rezone their State and Clinton store and one additional parcel from C2/Limited Commercial and R1/Single-Family Residential to C3/Limited Commercial. Historically, the site was constructed with predominance of single-family homes in the 1910s to 1930s but have been replaced by new or converted commercial structures over time. Today, this stretch of North Clinton Street has a blend of commercial and residential structures. This specific gas station was developed in the early 1970's. Recently, the Pufferbelly Trail was installed two parcels south and can be accessed from a spur just south of the site. In addition, the City of Fort Wayne invested in the realignment of State Boulevard, which resulted in a large common area west of the site. The City of Fort Wayne beautified the site with trees and plantings, and placards note that the area can be used for water detention if needed. Of this month's petitions, this is the only site that contains more than one parcel. The applicant explained that this could be for future expansion relative to access. This can be confirmed by the applicant. No plans were provided to the Department of Planning Services, but expansions will be reviewed through a development plan or a site routing process in the future.

Given the freshness of the initiative to reduce the number of zoning districts where a gas station is permitted, staff would only recommend approval if a voluntary written commitment is submitted. Until the Zoning Ordinance Amendment in 2014, a gas station was a permitted use in the C2 zoning district.

Today, gas stations in the C2 district that existed prior to 2014 became nonconforming. The petitioner seeks the allowance of the existing gas station, and the ability to maintain, expand and improve as allowed for a permitted use. Along with the rezoning request, the petitioner has submitted a voluntary Written Commitment governing uses on the property. If approved, all but four C3 /General Commercial uses would be prohibited, as recommended by staff. Those new C3 uses proposed to be permitted are:

- (1) Automobile car wash
- (2) Gas station
- (3) Propane/bottled gas sales and service as an accessory to a gas station or convenience store
- (4) Truck fueling station

The Comprehensive Plan encourages development that will not adversely affect the current conditions of an area or the character of the current structures in the area. This proposal does not include any request to change or increase the intensity of the existing use. Staff is not opposed to bringing the existing use into compliance with the ordinance, with the written commitment. The applicant also reached out to neighborhood presidents, the District Councilman and Community Development staff before filing the petition. Staff has not received any written correspondence.

An additional benefit of rezoning to a C3 zoning district is that this zoning district has greater setbacks for development adjacent to residential zoning districts. For instance, the rear yard setback for a building adjacent to a residential district in a C3 district is 40', while the same setback in a C2 district is 25'. If a gas station

were to expand in the future, the applicant will either need to adhere to the larger setback or file a petition with either the Plan Commission or Board of Zoning Appeals.

PUBLIC HEARING SUMMARY:

Presenter: Sam Schenkel presented the proposal as outlined above. Mr. Schenkel stated that he contacted his district Councilman, staff members with Community Development, and presidents from area neighborhood associations.

Public Comments:

No one spoke in opposition.

Post-Hearing: The applicants met Plan Commission Staff and drafted a revised Written Commitment. A carwash and truck fueling station were removed from the permitted uses.

FORT WAYNE PLAN COMMISSION • FINDINGS OF FACT

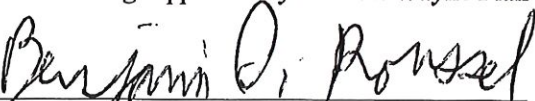
Rezoning Petition REZ-2022-0007

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LAND AREA:	Approximately 0.6 acres
PRESENT ZONING:	C2/Limited Commercial
PROPOSED ZONING:	C3/General Commercial

The Plan Commission recommends that Rezoning Petition REZ-2022-0007, with a Written Commitment, be returned to Council with a "Do Pass" recommendation after considering the following:

1. Approval of the rezoning request will be in substantial compliance with City of Fort Wayne Comprehensive Plan, and should not establish an undesirable precedent in the area. The site has accommodated a Lassus station for decades, and the surrounding conditions have changed to predominantly commercial and city-owned properties for floodplain management and traffic control. The purpose of the rezoning is to allow an existing use to comply with the zoning ordinance.
2. Approval of the request will not have an adverse impact on the current conditions in the area, or the character of current structures and uses in the area. The use on the property is existing and is not proposed to change. A proposed Written Commitment prohibiting all but existing C3 uses will protect surrounding property owners from new intensive or incompatible uses. Any planned expansion will consider C3 development standards and may mitigate traffic hazards.
3. Approval is consistent with the preservation of property values in the area. This proposal does not increase the intensity of the existing use, and allows for the property to be maintained, expanded and/or improved. Further investment when desired or necessary will fall within the constraints of the General Commercial (C3) zoning district.
4. Approval is consistent with responsible development and growth principles based on existing uses and infrastructure in the area.

These findings approved by the Fort Wayne Plan Commission on February 21, 2022.


Benjamin J. Roussel
Executive Director
Secretary to the Commission

**Department of Planning Services
Rezoning Petition Application**

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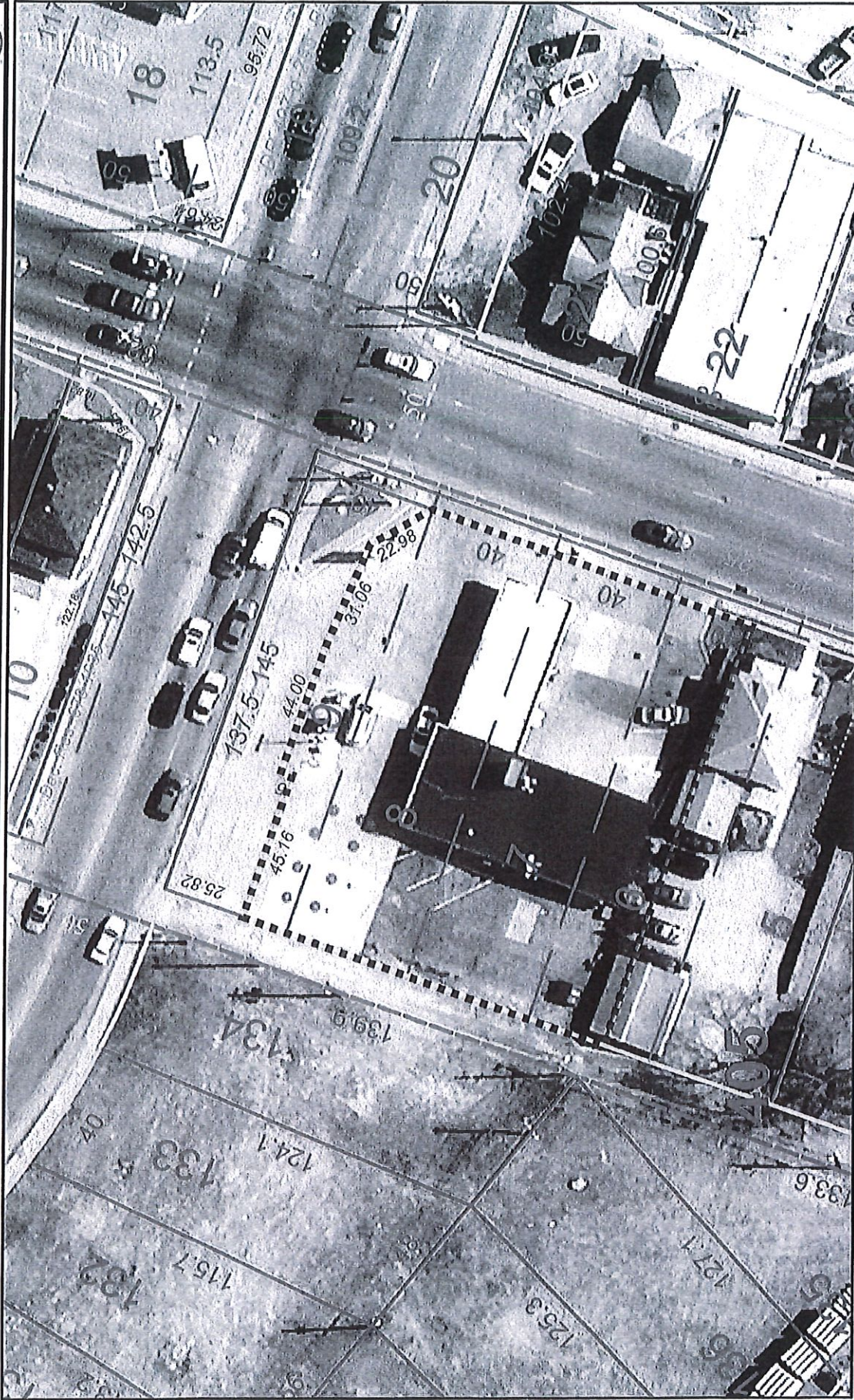
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(printed name of applicant) Sam Schenkel, VICE PRESIDENT 12/13/21
(signature of applicant) (date)
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Lassus Store 6



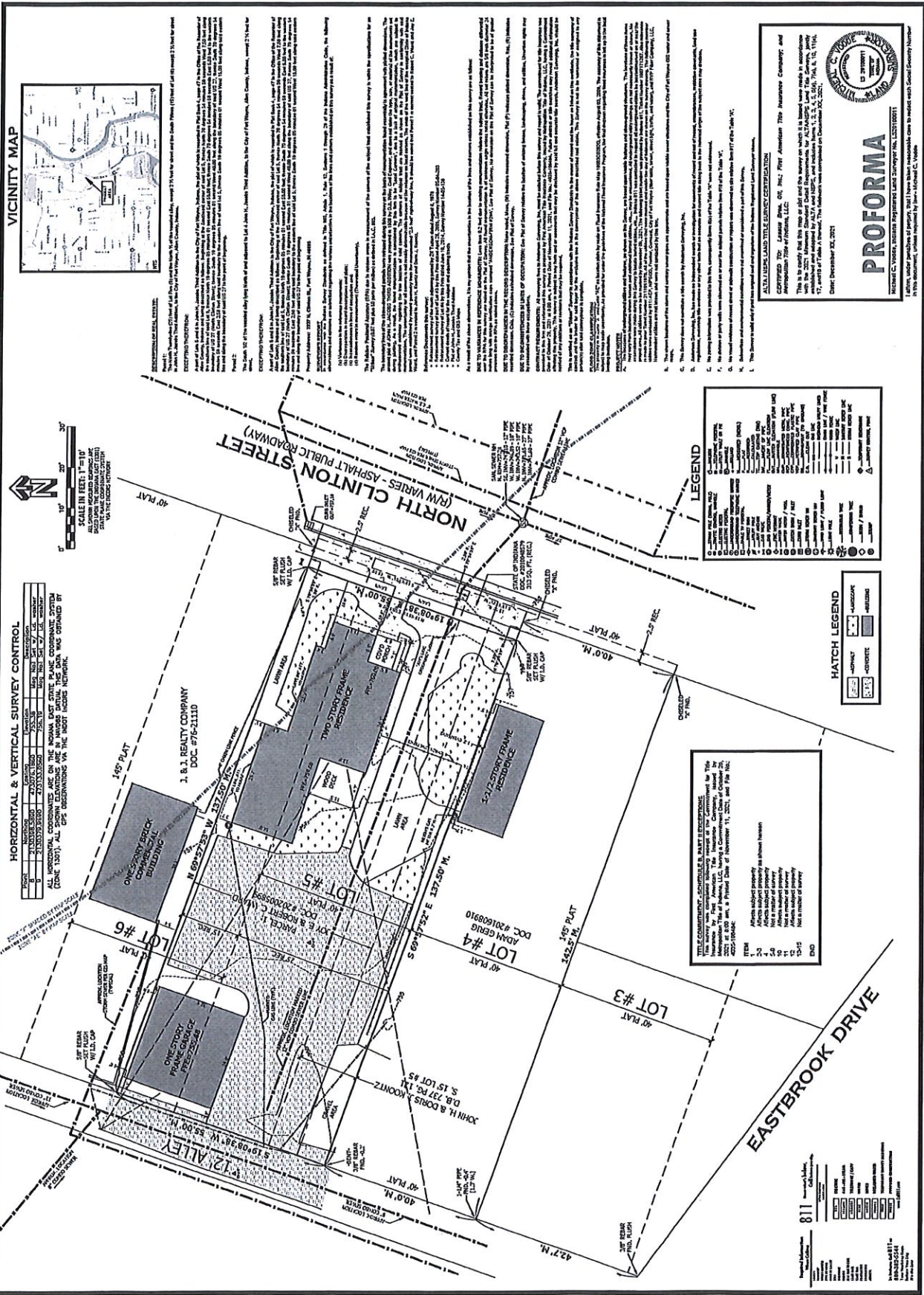
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Date: 5/8/2020 1" = 42'

ALTA



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Rezoning Petition REZ-2022-0007 - 2239 North Clinton Street



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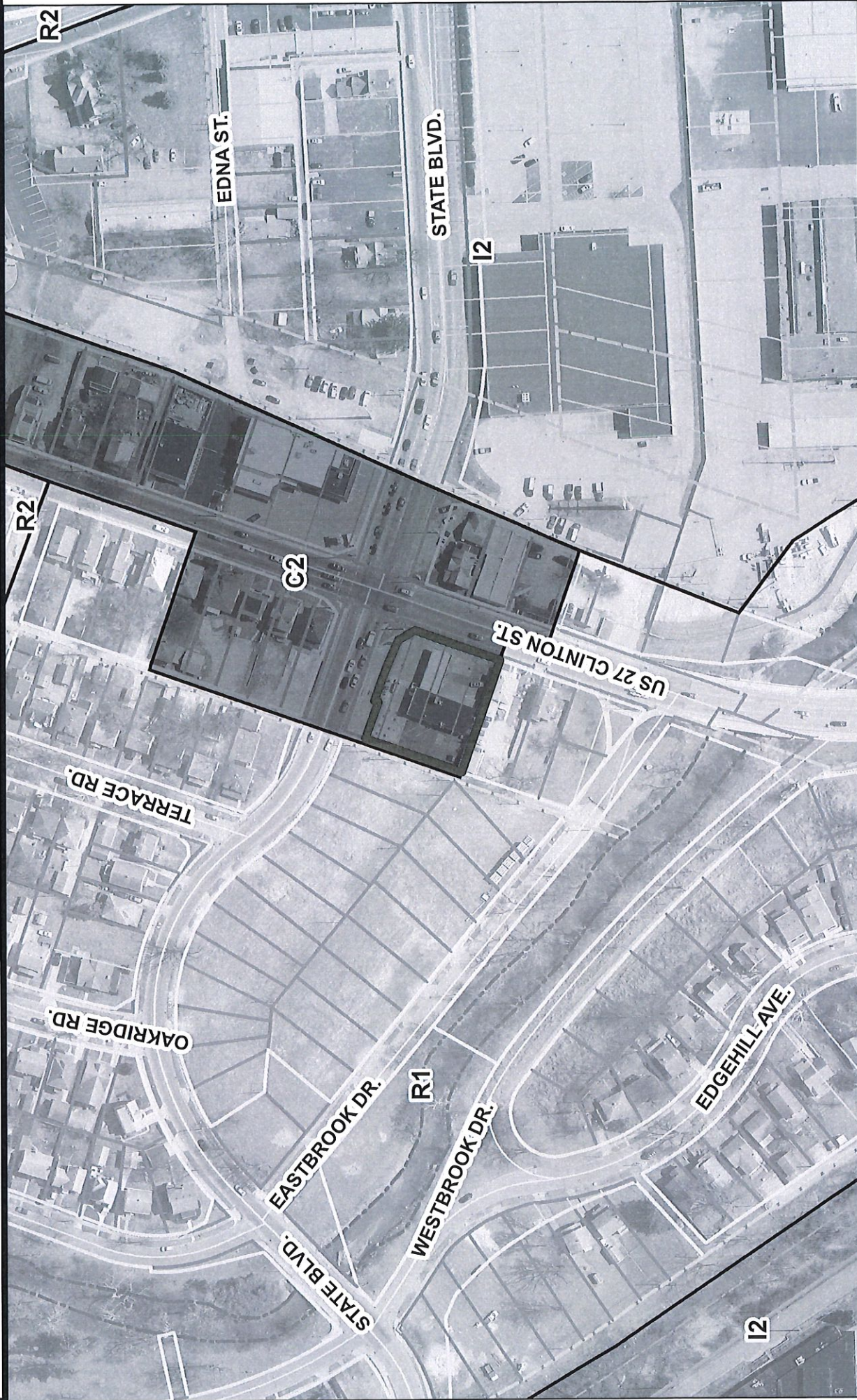


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WRITTEN COMMITMENT

This Written Commitment (this "Commitment") is made effective as of the 21st day of February, 2022, by the Fort Wayne Plan Commission ("Plan Commission").

RECITALS

A. By virtue of that certain Deed of Personal Representative dated **(date)** and recorded on **(date)** as Document Number **(document number)** 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. Lassus Bros Oil, LLC ("Company") filed an application under Case Number REZ-2022-0007 (the "Rezoning Application") to change the zoning map applicable to the Real Estate from the R1 and C2 Zoning Districts 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 Plan Commission is imposing this 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, the Plan Commission imposed a written commitment concerning the use and development of the Real Estate.

COMMITMENT

In consideration of the Approval, the Plan Commission imposed the following written commitments pursuant to I.C. §36-7-4-1015(a)(1):

1. **PERMITTED USES.** All uses in the C2/Professional Offices and Personal Services zoning district §157.217 of the Ordinance are permitted, as well as the following uses (which shall be permitted):

- a) Gas station;
- b) Propane/bottled gas sales and service as an accessory use to a gas station;

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. **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.

8. **STATUTORY AUTHORITY.** This Commitment is made pursuant to I.C. §36-7-4-1015(a)(2).

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.

[SIGNATURE PAGE FOLLOWS.]

City of Fort Wayne Plan Commission

By: _____
Benjamin J. Roussel, Secretary to the Plan Commission

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned Notary Public in and for said County and State, this _____ day of _____, 2022, personally appeared Benjamin J. Roussel, as Secretary to the Plan Commission, and acknowledged the execution of the foregoing Written Commitment on behalf of the Plan Commission.

WITNESS my hand and Notarial Seal.

My commission expires:
July 21, 2028

Amanda Woenker, Notary Public
Resident of Allen, County, Indiana

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. Nathan W. Schall

Exhibit "A"
Legal Description of the Real Estate

Parcel 1:

The North Twenty-five (25) feet of Lot Five (5) and the North ½ of the vacated alley, except 2 ½ feet for street and the South Fifteen (15) feet of Lot (6) except 2 ½ feet for street in John H. Jacobs Third Addition, to the City of Fort Wayne, Allen County, Indiana.

EXCEPTING THEREFROM:

A part of Lots 5 and 6 in John H. Jacobs Third Addition to the City of Fort Wayne, Indiana, the plat of which is recorded in Plat Book 4, page 47 in the Office of the Recorder of Allen County, Indiana and being described as follows: Beginning at the Southeast corner of said Lot 5, thence North 70 degrees 54 minutes 59 seconds West 7.50 feet along the southern line of said Lot 5, thence North 19 degrees 05 minutes 01 second East 55.00 feet; thence South 70 degrees 54 minutes 59 seconds East 5.00 feet to the western boundary of US 27 (North Clinton Street); thence South 19 degrees 05 minutes 01 second West 40.00 feet along the boundary of said US 27, thence South 70 degrees 54 minutes 59 seconds East 2.50 feet along said boundary to the eastern line of said Lot 5; thence South 19 degrees 05 minutes 01 second West 15.00 feet along said eastern line and along the boundary of said US 27 to the point of beginning.

Parcel 2:

The South 1/2 of the vacated alley lying North of and adjacent to Lot 4 John H. Jacobs Third Addition, to the City of Fort Wayne, Allen County, Indiana, except 2 ½ feet for street.

EXCEPTING THEREFROM:

A part of Lots 5 and 6 in John H. Jacobs Third Addition to the City of Fort Wayne, Indiana, the plat of which is recorded in Plat Book 4, page 47 in the Office of the Recorder of Allen County, Indiana and being described as follows: Beginning at the Southeast corner of said Lot 5, thence North 70 degrees 54 minutes 59 seconds West 7.50 feet along the southern line of said Lot 5, thence North 19 degrees 05 minutes 01 second East 55.00 feet; thence South 70 degrees 54 minutes 59 seconds East 5.00 feet to the western boundary of US 27 (North Clinton Street); thence South 19 degrees 05 minutes 01 second West 40.00 feet along the boundary of said US 27, thence South 70 degrees 54 minutes 59 seconds East 2.50 feet along said boundary to the eastern line of said Lot 5; thence South 19 degrees 05 minutes 01 second West 15.00 feet along said eastern line and along the boundary of said US 27 to the point of beginning

Parcel 3:

Lots 7, 8 and 9 and the North 25 feet of Lot No. 6 in John H. Jacobs Third Addition to the City of Fort Wayne, Allen County, Indiana, as recorded in Plat Book 4, Page 47, in the office of the Recorder of Allen County, Indiana. Excepting therefrom said Lots that portion thereof appropriated for the widening of N. Clinton Street under Declaratory Resolution 677, and also excepting therefrom said Lot 9 that portion thereof appropriated for the State Street right-of-way under Declaratory Resolution 2016-39611.