

VROW-2022-0007

BILL NO. G-22-05-21

GENERAL ORDINANCE NO. G-_____

**AN ORDINANCE amending the Thoroughfare
Plan of the City Comprehensive ("Master")
Plan by vacating public right-of-way.**

WHEREAS, a petition to vacate public right-of-way within the City of Fort Wayne, Indiana, (as more specifically described below) was duly filed with the City Clerk of the City of Fort Wayne, Indiana; and

WHEREAS, Common Council of the City of Fort Wayne, Indiana, duly held a public hearing and approved said petition, as provided in I.C. 36-7-3-12.

NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the petition filed herein to vacate a public right-of-way within the City of Fort Wayne, Indiana, more specifically described as follows, to-wit:

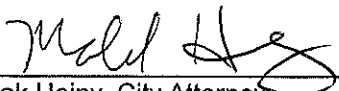
The entirety of Scotswolde Drive, located between Lots 6 through 8 and Lots 9 through 11 of Woodlawn Park Addition, as recorded in Plat Book 28A, page 33, in the Office of the Recorder of Allen County, Indiana.

and which vacating amends the Thoroughfare Plan of the City Comprehensive ("Master") Plan and is hereby approved in all respects.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage, any and all necessary approval by the Mayor.

COUNCILMEMBER

APPROVED AS TO FORM AND LEGALITY:



Malak Heiny, City Attorney

City of Fort Wayne Common Council
DIGEST SHEET

Department of Planning Services

Title of Ordinance: Right of Way Vacation
Case Number: VROW-2022-0007
Bill Number: G-22-05-21
Council District: 3 – Tom Didier

Introduction Date: May 24, 2022

Public Hearing Date: June 14, 2022 to be heard by Council

Next Council Action: Ordinance will return to Council after recommendation by reviewing agencies.

Synopsis of Ordinance: To vacate the remaining right-of-way of Scotswolde Drive.

Location: West of Goshen Road, to the western terminus of Scotswolde Drive.

Reason for Request: To allow for combination of properties and future development.

Applicant: Dave Baldwin

Property Owners: Dave Baldwin

Related Petitions: none

Effect of Passage: The vacation of the right-of-way will allow for existing parcels to be combined and aid in redevelopment of the property.

Effect of Non-Passage: The right of way will remain as platted. The applicant owns the property on both sides of the right-of-way and the road is no longer used by the public. Maintaining the right-of-way may hinder future development of the property.

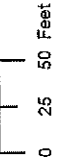


Vacation of Right of Way VROW-2022-0007 Scotswolde Drive



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: 5/13/2022



1 inch = 100 feet

CITY OF FORT WAYNE

Vacation Petition

City Clerk / Suite 110 / Citizens Square Building / 200 East Berry Street / Fort Wayne IN 46802 / 260.427.1221

I/We do hereby petition to vacate the following:

_____ Easement ☒ Public Right of Way (street or alley)

More particularly described as follows:

SCOTSWOLDE DRIVE (PICTURE ATTACHED)

(Please Attach a Legal Description of the property requested to be vacated, along with a survey or other acceptable drawing showing the property.)

DEED BOOK NUMBER: _____ PAGE(S) NUMBER(S): _____ (This information can be obtained from the Allen County Recorder's Office on the 2nd Floor, City-County Building, One Main Street, Fort Wayne, IN)

The reasons for the proposed vacation are as follows:

1. SCOTSWOLDE DRIVE IS RARELY TRAVELED EXCEPT FOR THE USE OF OUR BUSINESS, BEST DEAL AUTO SALES & OUR CUSTOMERS.
2. WE OWN 8 OF 8 LOTS ON SCOTSWOLDE DRIVE.
3. WE HAVE MAINTAINED SCOTSWOLDE DRIVE AND THE R-O-W SINCE 2004.
4. WE WOULD LIKE TO MAKE IMPROVEMENTS & MAINTAIN USE OF THE R-O-W NECESSARY FOR CURRENT AND FUTURE IMPROVMENTS.
5. WE OWN ROUGHLY 364' OF THE 464' OF ROAD FRONTAGE ON SCOTSWOLDE DRIVE.

(If additional space is needed please attach separate page.)

The applicant on an attached sheet must also provide the names and addresses of all adjacent property owner(s). The information on that sheet must be as follows:

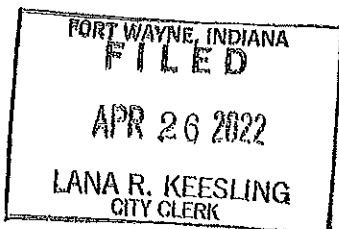
Property owner(s) Name(s); Street Address; City; State; Zip Code; Phone Number with Area Code.

Applicant's name(s) if different from property owner(s):

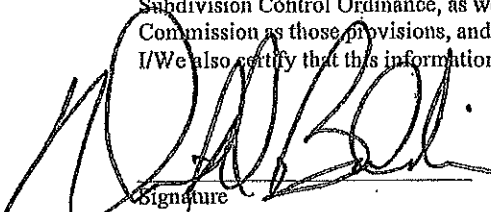
Name: _____

Street Address: _____

City: _____ State: _____ Zip: _____ Phone: _____



I/We, your petitioners, file this petition pursuant to the authority granted in Indiana Code, and provisions of local ordinance. I/We agree to abide by all provisions of the Fort Wayne Zoning Ordinance and/or Subdivision Control Ordinance, as well as all procedures and policies of the Fort Wayne City Plan Commission as those provisions, and policies relate to the handling and disposition of this petition. I/We also certify that this information is true and accurate to the best of my/our knowledge.


Signature

DAVID D. BALDWIN

Printed Name

04/25/2022

Date

13442 TONKEL ROAD

Address

FORT WAYNE, IN 46808

City/State/Zip

Signature

Printed Name

Date

Address

City/State/Zip

If additional space is needed for signatures please attach a separate page.

Agent's Name (Print Legibly):

Street Address:

City:

State:

Zip:

Phone:

NOTICE:

- Legal Description is to be the area to be vacated and must be complete and accurate. If necessary a licensed surveyor's legal description may be required.
- Applicant is hereby informed that in the case of a utility being located in a public way or easement, the applicant may be required to bear the cost of relocation, or of providing a replacement easement or easement's as needed.

For Office Use Only:

Receipt #:

Date Filed:

Map #:

Reference #:

**NOTICE OF PUBLIC HEARING
FORT WAYNE COMMON COUNCIL**

ORDINANCE NO. G-22-05-21

NOTICE IS HEREBY GIVEN THAT THE FORT WAYNE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA, WILL CONDUCT A PUBLIC HEARING ON JUNE 14, 2022 AT 5:30 P.M., IN ROOM 035 – COUNCIL CHAMBERS COURTROOM – GARDEN LEVEL CITIZENS SQUARE, 200 E. BERRY, FORT WAYNE, INDIANA 46802; A REQUEST TO VACATE AN AREA KNOWN AS:

LOCATION: The remaining right-of-way of Scotswolde Drive West of Goshen Road, to the western terminus of Scotswolde Drive to allow for combination of properties and future development

COMMON COUNCIL WILL CONDUCT A PUBLIC HEARING ON WHETHER THE ABOVE DESCRIBED RESOLUTION SHOULD BE CONFIRMED, MODIFIED AND CONFIRMED, OR RESCINDED ON TUESDAY, JUNE 14, 2022.

ADDITIONAL INFORMATION CAN BE VIEWED AT THE DEPARTMENT OF PLANNING SERVICES OFFICE IN CITIZEN'S SQUARE: 200 E. BERRY ST, SUITE 150.

ALL INTERESTED PERSONS ARE INVITED TO ATTEND AND BE HEARD AT THE PUBLIC HEARING.

REASONABLE ACCOMMODATIONS FOR PERSONS WITH A KNOWN DISABLING CONDITION WILL BE CONSIDERED IN ACCORDANCE WITH STATE AND FEDERAL LAW. ANY PERSON NEEDING A REASONABLE ACCOMMODATION SHOULD NOTIFY PUBLIC INFORMATION OFFICE (260) 427-1120, TTY (260) 427-1200, AT LEAST SEVENTY-TWO HOURS PRIOR TO THE MEETING.

*LANA R. KEESLING
CITY CLERK*

NOTICE OF PUBLIC HEARING
FORT WAYNE COMMON COUNCIL
ORDINANCE NO. G-22-05-21

NOTICE IS HEREBY GIVEN THAT THE FORT WAYNE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA, WILL HOLD A PUBLIC HEARING ON JUNE 14, 2022 AT 5:30 P.M. IN ROOM 035 - COUNCIL CHAMBERS COURTHOUSE, 600 E. BERRY, FORT WAYNE, INDIANA 46802, A REQUEST TO VACATE AN AREA KNOWN AS:

Location: The remaining right-of-way of Scotswoide Drive West of Gosh, Indiana, westward from the intersection of Scotswoide Drive to allow for completion of properties and future development.

COMMON COUNCIL WILL CONDUCT A PUBLIC HEARING ON WHETHER THE ABOVE DESCRIBED AREA SHOULD BE REZONED, RECLASSIFIED, MODIFIED AND CONFIRMED OR RESOUND ON TUESDAY, JUNE 14, 2022.

ADDITIONAL INFORMATION CAN BE VIEWED AT THE DEPARTMENT OF PLANNING AND DEVELOPMENT, 600 E. BERRY ST. SUITE 150.

ALL INTERESTED PERSONS ARE INVITED TO ATTEND AND BE HEARD AT THE PUBLIC HEARING.

REASONABLE ACCOMMODATIONS FOR PERSONS WITH A KNOWN DISABILITY CONDITION WILL BE CONSIDERED IN ACCORDANCE WITH THE AMERICAN DISABILITY ACT. PERSONS NEEDING A REASONABLE ACCOMMODATION SHOULD NOTIFY 408-1111 IN ADVANCE OF THE MEETING. SEVEN-TWO HOURS PRIOR TO THE MEETING.

LANA R. NEESLING
CITY CLERK
5-27 hspaxlp

The Journal Gazette

Allen County, Indiana Account Name
Gov: Fort Wayne City Clerk's Office
Notice ID: 0VTavpqlzsLStm3tS8Ap

PUBLISHER'S CLAIM

ATTACH COPY OF ADVERTISEMENT

LINE COUNT
Display Master (Must not exceed two actual lines, neither of which shall
total more than four solid lines of the type in which the body of the
advertisement is set) - number of equivalent lines _____
Head - number of lines _____
Body - number of lines _____
Tail - number of lines _____
Total number of lines in notice 58

COMPUTATION OF CHARGES
58 lines, 1 column(s) wide equal: \$28.94
58 equivalent lines at \$0.4990 cents per line
Additional charges for notices containing rule or tabular work
(50 percent of above amount) \$
Electronic processing fee \$0.00
TOTAL AMOUNT OF CLAIM \$28.94

DATA FOR COMPUTING COST
Width of single column in picas 9.8 Size of type 7point.
Number of Insertions 1

Pursuant to the provisions and penalties of IC 5-1-10-1, I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.

I also certify that the printed matter attached hereto is a true copy, of the same column width and type size, which was duly published in said paper.

The dates of publication being as follows:

5/27/22 _____

Additionally, Newspaper has a Web site and this public notice was posted on the same day as it was published in The Journal Gazette.

Date: 5/27/2022
Blair McQuinn
Legal Clerk

ALLEY VACATION – DISCUSSION

Department of Planning Services

VROW 2022 0007	Bill #G-22-05-21	Project Start: June 2022
APPLICANT:	Dave Baldwin	
REQUEST:	To vacate the remaining right-of-way of Scotswolde Drive.	
LOCATION:	West of Goshen Road, to the western terminus of Scotswolde Drive.	
COUNCIL DISTRICT:	3-Tom Didier	
PUBLIC HEARING DATE:	June 14, 2022	

PROJECT SUMMARY

The petitioner owns property on either side of Scotswolde Drive, just west of Goshen Road. Best Deal Auto Sales, the applicant's company occupies the properties on both side of the drive. The applicant would like to vacate the right-of-way to combine parcels and have more land for development. A public hearing was held on June 14, 2022, with the two immediate neighbors (or their representatives) speaking in opposition to the request. Nermin Besirovic owns properties at 2612 Scotswolde Drive and 2615 Congressional Parkway which also receive access from the west end of Scotswolde. Bud 3 Properties/Johnstone Supply owns properties at 2530 Independence Drive, and also uses Scotswolde for access. Additionally, a letter from Bud 3 Properties' attorney was submitted to staff and Council requesting denial of the vacation based on Indiana Code 36-7-3-13(a)(2), as a properly aggrieved person who may object to a vacation (letter attached). Request for comment was submitted to the appropriate utility and government review agencies. All agencies have either approved or provided no comment, except for City Utilities and City Traffic Engineering. City Utilities would need an easement for existing facilities. City Traffic does not approve the vacation request, based on opposition from the neighboring property owners who currently use Scotswolde for access to their businesses.

City Plan:	Indiana Code (36-7-3-16 (b)) states that any public utility occupying a public way or easement shall not be deprived of the use of the public way for the location and operation of existing facilities. The petitioner shall provide all necessary easements (as approved) at the time the vacation petition is recorded.
Traffic/Transportation Engineering:	Approved as long as Bud 3 Properties, LLC and Nermin Besirovic do not oppose the vacation.
Stormwater Engineering:	Approved with easement
Water Engineering:	Approved with easement
WPC Engineering – Sanitary:	Approved with easement
City Parks Department:	Approved
Fire Department:	No comment
Land Acquisition Agent:	No Comment
Frontier:	Approved
Comcast Cable:	Approved
AEP:	Approved
NIPSCO:	Approved with easement

Grounds for Remonstrance for Vacation Requests (I.C. 36-7-3-13):

- (1) The vacation would hinder the growth or orderly development of the unit or neighborhood in which it is located or to which it is contiguous.
- (2) The vacation would make access to the lands of the aggrieved person by means of public way difficult or inconvenient.
- (3) The vacation would hinder the public's access to a church, school, or other public building or place.
- (4) The vacation would hinder the use of a public way by the neighborhood in which it is located or to which it is contiguous.

VROW-2022-0007

Bill No. G-22-05-21

Right-of-Way Vacation – Notifications

**The Clerk's Office placed legal notification in the Fort Wayne Newspapers.
DPS Staff notified the following by Certified Mail or Hand Delivery:**

PIN/Property Address:

Property Owner of Record:

020728278002000073

Bud 3 Properties, LLC
2530 Independence Drive
Fort Wayne, IN 46808

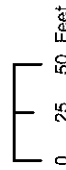
020728277002000073

Nermin Besirovic
2612 Scotswolde Drive
Fort Wayne, IN 46808



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.

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North American Datum 1983
State Plane Coordinate System, Indiana East
Photos and Contours: Spring 2009
Date: 5/13/2022



1 inch = 100 feet



CarsonLLP.com The Harrison
260 423-9411 301 W. Jefferson Boulevard, Suite 200
Fort Wayne, IN 46802

Andrew D. Boxberger
aboxberger@carsonllp.com

June 10, 2022

Department of Planning Services
Attn: Michelle Wood
200 East Berry Street, Ste. 150
Fort Wayne, IN 46802

Via email to: michellewood@allencounty.us

RE: Bud 3 Properties, LLC - Johnstone Supply / Vacation Case No.: VROW-22-0007

Dear Michelle:

Please be advised that our firm represents the interests of Bud 3 Properties, LLC as well as its affiliated entity Johnstone Supply (who operates out of the subject property) (collectively "Bud 3"). I am in receipt of the Department of Planning Services' notice of hearing related to a vacation of Scotswolde Drive. Bud 3 is the owner of Parcel No. 02-07-28-278-002.000-073 which abuts Scotswolde Drive (the "Property"). The notice indicates that a petition to vacate the remaining right-of-way of Scotswolde Drive has been filed by Dave Baldwin and a public hearing will be held on June 14, 2022 in front of the City of Fort Wayne Common Council ("Council").

Please consider this letter Bud 3's formal objection to the vacation petition. Bud 3 owns the property at the west end of Scotswolde Drive, and Scotswolde Drive is the exclusive and only public road access to the Property.

It is evident that Bud 3 satisfies the standard for objection to a vacation petition in accordance with Indiana Code § 36-7-3-13(a)(2) as a properly aggrieved person who may object to a vacation, more specifically, "The vacation would make access to the lands of the aggrieved person by means of public way difficult or inconvenient." Due to the fact that Bud 3 satisfies the aggrieved person standard, we are of the opinion that Indiana Code § 36-7-3-13(b)(1) and (2) requires that that Council deny the petition as a matter of law. The foregoing code section specifically states that if the lands of the aggrieved person do not touch any other public way other than the public way to which the vacation petition applies, it shall be denied. It is clear that the Property touches no other public way and therefore the standard requires that this petition be denied. In the alternative, being that Bud 3 does own the adjacent parcel, which is not a part of the standard, the law further requires that if the vacation of the public way would cause the lands of the aggrieved person to become landlocked with no other convenient or reasonable means of ingress or egress via public way, it shall be denied. While we believe the first standard is clearly

satisfied requiring denial, this second standard is also satisfied in that even if it was determined that the Property had alternative access, said access would be extremely inconvenient and unreasonable having to travel a protracted route through an abutting parcel to gain access which is extremely difficult. Not to mention, the vacation would eliminate Bud 3's ability to sell the Property as it would be landlocked with no access to a public way resulting in an extreme diminishment in value.

My client appreciates the opportunity to provide this information; I will be at the hearing speaking on its behalf sharing this information directly with counsel. However, I wanted to make this information available as I understand that this may not have been known to the planning staff or Council prior to the hearing and I'm hoping that this material is helpful in resolving this matter appropriately. If there are any questions, please do not hesitate to contact me.

Respectfully yours,

CARSON LLP

A handwritten signature in black ink, appearing to read "Andy Box", with a long horizontal line extending to the right.

Andrew D. Boxberger

ADB/mc

cc: Joe Bonahoom at joeb@b-blegal.com

Megan Flohr at megan.flohr@cityoffortwayne.org