

#REZ-2022-0059

BILL NO. Z-22-11-18

ZONING MAP ORDINANCE NO. Z-_____

AN ORDINANCE amending the City of Fort Wayne
Zoning Map Nos. R-54 and Q-54 (Sec. 5 and 6 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 BTI
(Business, Technology, and Industrial Park) District under the terms of Chapter 157 Title XV
of the Code of the City of Fort Wayne, Indiana:

A PART OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 6 AND A PART OF
THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 5 IN TOWNSHIP 31 NORTH,
RANGE 13 EAST, ALLEN COUNTY, INDIANA BEING FURTHER A PORTION OF THAT
PROPERTY DESCRIBED IN DOCUMENT NUMBER 960005245 WITHIN THE OFFICE OF THE
RECORDER OF ALLEN COUNTY, INDIANA IN PARTICULAR DESCRIBED AS FOLLOWS:

TO ARRIVE AT THE POINT OF BEGINNING, COMMENCE AT AN I-BEAM POST AT THE
INTERSECTION OF THE NORTH LINE OF THE SOUTHWEST QUARTER OF SECTION 5 AND
THE WEST LINE OF THE BOURIES RESERVE; THENCE SOUTH 19 DEGREES 54 MINUTES 45
SECONDS EAST (BEARINGS BASED UPON INDIANA STATE PLANE COORDINATE, EAST
ZONE, GRID), A DISTANCE OF 1489.58 FEET TO THE POINT OF BEGINNING INITIALLY
REFERRED TO AS SITUATED ON THE SOUTH LINE OF AN 11.802 ACRE RIGHT OF WAY
PARCEL FOR INTERSTATE HIGHWAY NO. 469 BEING DESCRIBED IN DOCUMENT NUMBER
94-043253 WITHIN THE OFFICE OF THE RECORDER OF ALLEN COUNTY, INDIANA;
THENCE NORTH 80 DEGREES 23 MINUTES 59 SECONDS EAST ALONG THE SAID SOUTH
RIGHT OF WAY, A DISTANCE OF 46.19 FEET; THENCE SOUTH 88 DEGREES 18 MINUTES
03 SECONDS EAST AND CONTINUING ALONG SAID SOUTH RIGHT OF WAY, A DISTANCE
OF 1073.95 FEET TO THE NORTHWESTERLY RIGHT OF WAY OF NORTH CLINTON STREET
(LEO ROAD, STATE ROAD NO. 1); THENCE SOUTH 54 DEGREES 59 MINUTES 49 SECONDS
WEST ALONG SAID NORTHWESTERLY RIGHT OF WAY, A DISTANCE OF 931.23 FEET TO
THE SOUTHEASTERLY CORNER OF A 0.8609 ACRE PARCEL DESCRIBED IN DOCUMENT
NUMBER 87-035762 WITHIN THE OFFICE OF THE RECORDER OF ALLEN COUNTY,
INDIANA; THENCE NORTH 19 DEGREES 54 MINUTES 45 SECONDS WEST ALONG THE
EAST LINE OF SAID 0.8609 ACRES, A DISTANCE OF 224.10 FEET TO THE NORTHEAST
CORNER THEREOF; THENCE SOUTH 54 DEGREES 55 MINUTES 37 SECONDS WEST ALONG
THE NORTH LINE OF SAID 0.8609 ACRES, A DISTANCE OF 150.00 FEET TO THE
NORTHWEST CORNER THEREOF; THENCE NORTH 35 DEGREES 04 MINUTES 23 SECONDS
WEST, A DISTANCE OF 50.00 FEET; THENCE SOUTH 54 DEGREES 55 MINUTES 37
SECONDS WEST, A DISTANCE OF 30.00 FEET TO A POINT OF CURVE; THENCE
SOUTHWESTERLY ALONG A CIRCULAR CURVE TO THE RIGHT HAVING A RADIUS OF
1225.00 FEET, AN ARC DISTANCE OF 208.75 FEET, THE CHORD OF WHICH BEARS SOUTH
59 DEGREES 48 MINUTES 32 SECONDS WEST, 208.50 FEET TO A POINT OF REVERSE
CURVE; THENCE SOUTHWESTERLY ALONG A CIRCULAR CURVE TO THE LEFT HAVING A

RADIUS OF 775.00 FEET, AN ARC DISTANCE OF 131.14 FEET, THE CHORD OF WHICH BEARS SOUTH 59 DEGREES 50 MINUTES 35 SECONDS WEST, 130.99 FEET TO A POINT OF TANGENCY; THENCE SOUTH 54 DEGREES 59 MINUTES 43 SECONDS WEST, A DISTANCE OF 252.85 FEET; THENCE NORTH 35 DEGREES 00 MINUTES 17 SECONDS WEST, A DISTANCE OF 210.00 FEET; THENCE SOUTH 54 DEGREES 59 MINUTES 43 SECONDS WEST, A DISTANCE OF 442.55 FEET; THENCE SOUTH 0 DEGREES 00 MINUTES 00 SECONDS EAST, A DISTANCE OF 339.60 FEET TO THE NORTH LINE OF A 14.986 ACRE RIGHT OF WAY PARCEL DESCRIBED IN DOCUMENT NUMBER 93-048576;

THENCE ALONG THE BOUNDARY OF SAID 14.986 ACRES ALONG THE FOLLOWING TEN (10) COURSES, COMPRISING THE RIGHTS OF WAY OF NORTH CLINTON STREET (LEO ROAD/STATE ROAD NO. 1, AND INTERSTATE HIGHWAYS NOS 69 AND 469:

THENCE NORTH 86 DEGREES 55 MINUTES 52 SECONDS WEST, A DISTANCE OF 259.42 FEET; THENCE NORTH 89 DEGREES 08 MINUTES 37 SECONDS WEST, A DISTANCE OF 235.04 FEET; THENCE NORTH 21 DEGREES 27 MINUTES 19 SECONDS EAST, A DISTANCE OF 543.03 FEET; THENCE NORTH 20 DEGREES 18 MINUTES 07 SECONDS EAST, A DISTANCE OF 313.49 FEET; THENCE NORTH 37 DEGREES 46 MINUTES 11 SECONDS EAST, A DISTANCE OF 260.20 FEET; THENCE NORTH 59 DEGREES 36 MINUTES 31 SECONDS EAST, A DISTANCE OF 263.69 FEET; THENCE NORTH 83 DEGREES 51 MINUTES 21 SECONDS EAST, A DISTANCE OF 224.95 FEET; THENCE SOUTH 66 DEGREES 27 MINUTES 31 SECONDS EAST, A DISTANCE OF 107.70 FEET; THENCE NORTH 84 DEGREE3S 53 MINUTES 50 SECONDS EAST, A DISTANCE OF 251.79 FEET; THENCE NORTH 80 DEGREES 25 MINUTES 48 SECONDS EAST, A DISTANCE OF 107.84 FEET TO THE POINT OF BEGINNING AND CONTAINING 27.323 ACRES OF LAND, MORE OR LESS.

and the symbols of the City of Fort Wayne Zoning Map Nos. R-54 and Q-54 (Secs. 5 and 6 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.

1 SECTION 3. That this Ordinance shall be in full force and effect from and after its
2 passage and approval by the Mayor.

3 _____
4 Council Member

5 APPROVED AS TO FORM AND LEGALITY:

6 
7 _____
8 Malak Heiny, City Attorney

City of Fort Wayne Common Council
DIGEST SHEET

Department of Planning Services

Title of Ordinance: Zoning Map Amendment
Case Number: REZ-2022-0059
Bill Number: Z-22-11-18
Council District: 2 – Russ Jehl

Introduction Date: November 22, 2022

Plan Commission
Public Hearing Date: December 12, 2022 (not heard by Council)

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

Synopsis of Ordinance: To rezone approximately 27.32 acres from NC/Neighborhood Center, C1/Professional Offices and Personal Services, and RP/Planned Residential to BTI/Business, Technology, and Industrial Park to develop a new corporate campus and development parcels

Location: The west side of the 8900 block of North Clinton Street

Reason for Request: To accommodate the planned development of the Tippmann Group, which is planning to build their corporate campus on the site as well as develop the remainder of the site

Applicant: Tippmann Realty Partners, LLC

Property Owner: Banet-Roy Development

Related Petitions: Rezoning Petitions REZ-2022-0060 and REZ-2022-0061 and Primary Development Plan PDP-2022-0044 for the entire North Clinton Campus development

Effect of Passage: Property will be rezoned to the BTI/Business, Technology, and Industrial Park zoning district, which will enable the development of the new Tippmann campus.

Effect of Non-Passage: The property will remain zoned a patchwork of various residential and commercial zoning districts, all of which are developable but would not meet the needs for the desired investment.

Department of Planning Services
Rezoning Petition Application

Applicant
Applicant Tippmann Realty Partners, LLC
Address 9009 Coldwater Road
City Fort Wayne State IN Zip 46825
Telephone (260) 469-5446 E-mail jwharton@tippmannngroup.com

Contact Person
Contact Person Joe Wharton
Address 9009 Coldwater Road
City Fort Wayne State IN Zip 46825
Telephone (260) 469-5446 E-mail jwharton@tippmannngroup.com

All staff correspondence will be sent only to the designated contact person.

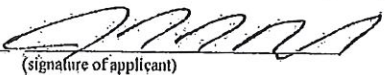
Request
☐ Allen County Planning Jurisdiction ☒ City of Fort Wayne Planning Jurisdiction
Address of the property 8923 North Clinton (Parcel I on the Survey Attached)
Present Zoning NO, C1, RP Proposed Zoning BTI Acreage to be rezoned 27.32
Proposed density See Survey and Development Plan units per acre
Township name St. Joseph Township section # _____
Purpose of rezoning (attach additional page if necessary) The rezoning is necessary to accommodate the planned development of the Tippmann Group which is planning to build their corporate campus on the site along with the development of the remaining site.
Sewer provider City of Ft. Wayne Water provider City of Ft. Wayne

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.

Tippmann Realty Partners, LLC
(printed name of applicant)


(signature of applicant)

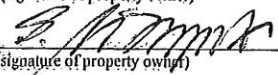
11/1/22
(date)

(printed name of property owner)

(signature of property owner)

(date)

Banet-Roy Development Company, LLC
(printed name of property owner)


(signature of property owner)

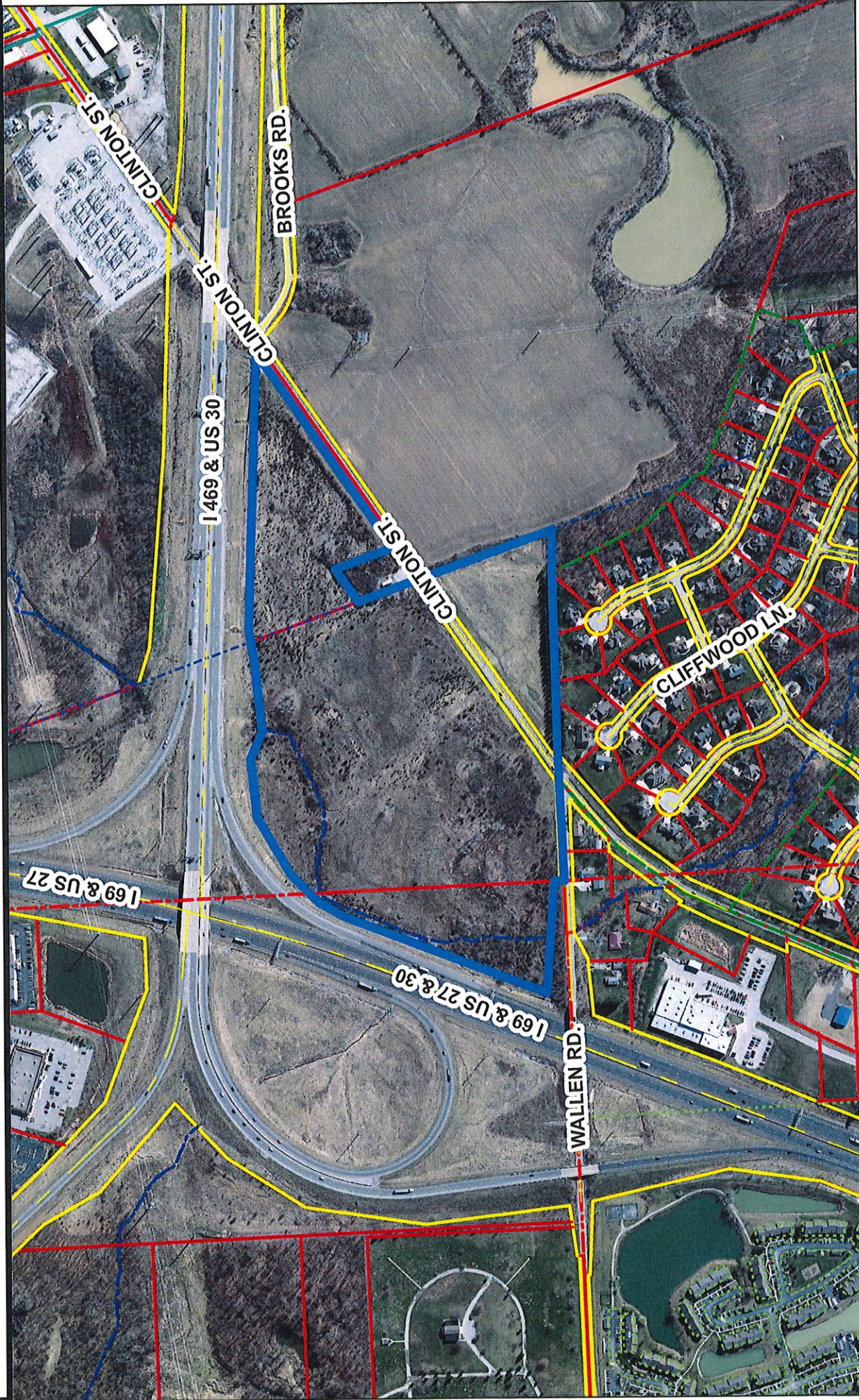
11/1/22
(date)

(printed name of property owner)

(signature of property owner)

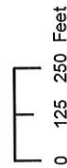
(date)

Received	Receipt No.	Hearing Date	Petition No.
<u>11/1/22</u>	<u>141911</u>	<u>12/12/22</u>	<u>REZ-2022-0059</u>

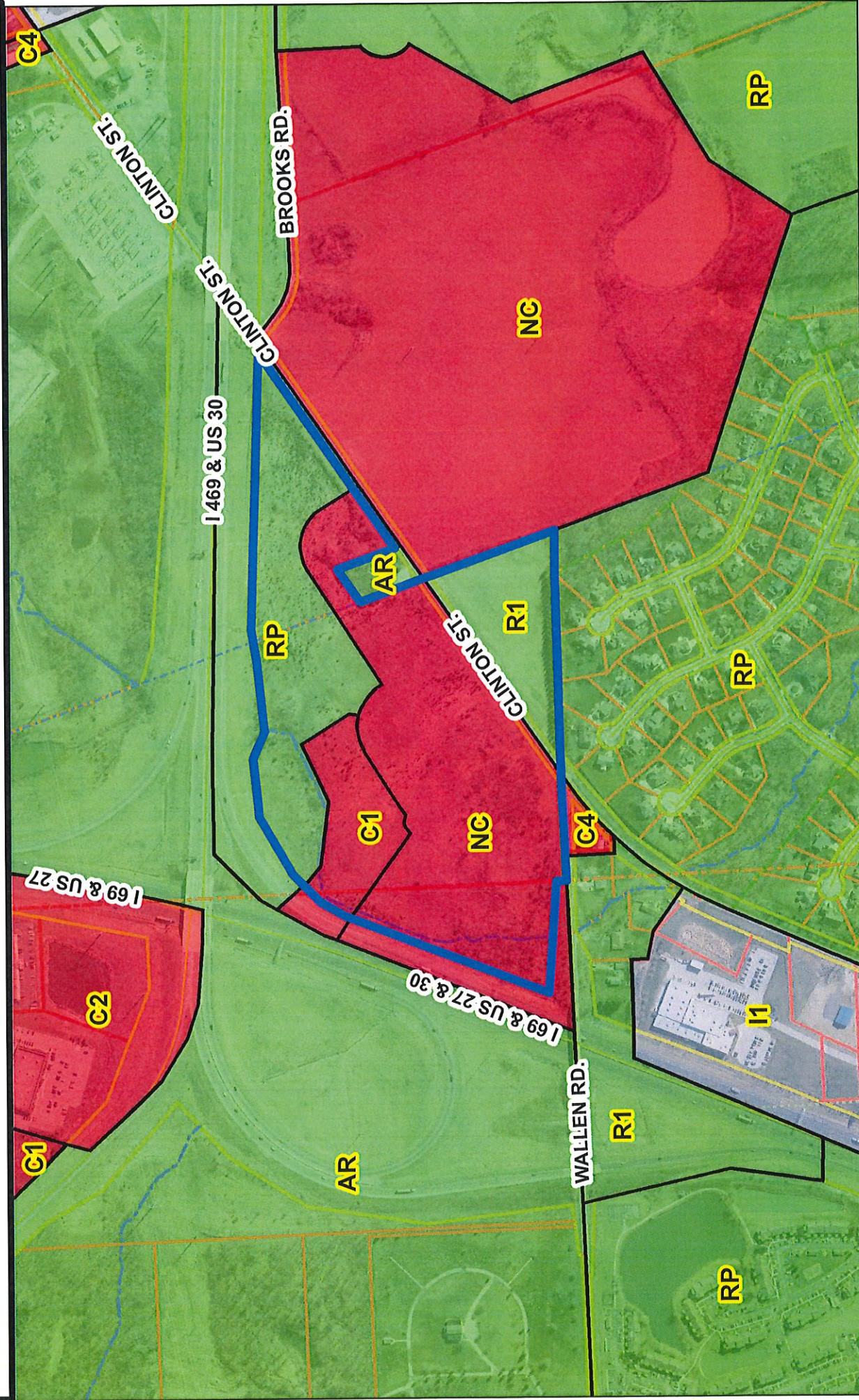


Although strict accuracy standards have been employed in the compilation of this map, Allen County does not warrant or guarantee the accuracy of the information contained herein and disclaims any and all liability resulting from any error or omission in this map.

© 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: 11/16/2022



1 inch = 500 feet



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North American Datum 1983
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1 inch = 500 feet



Certification:



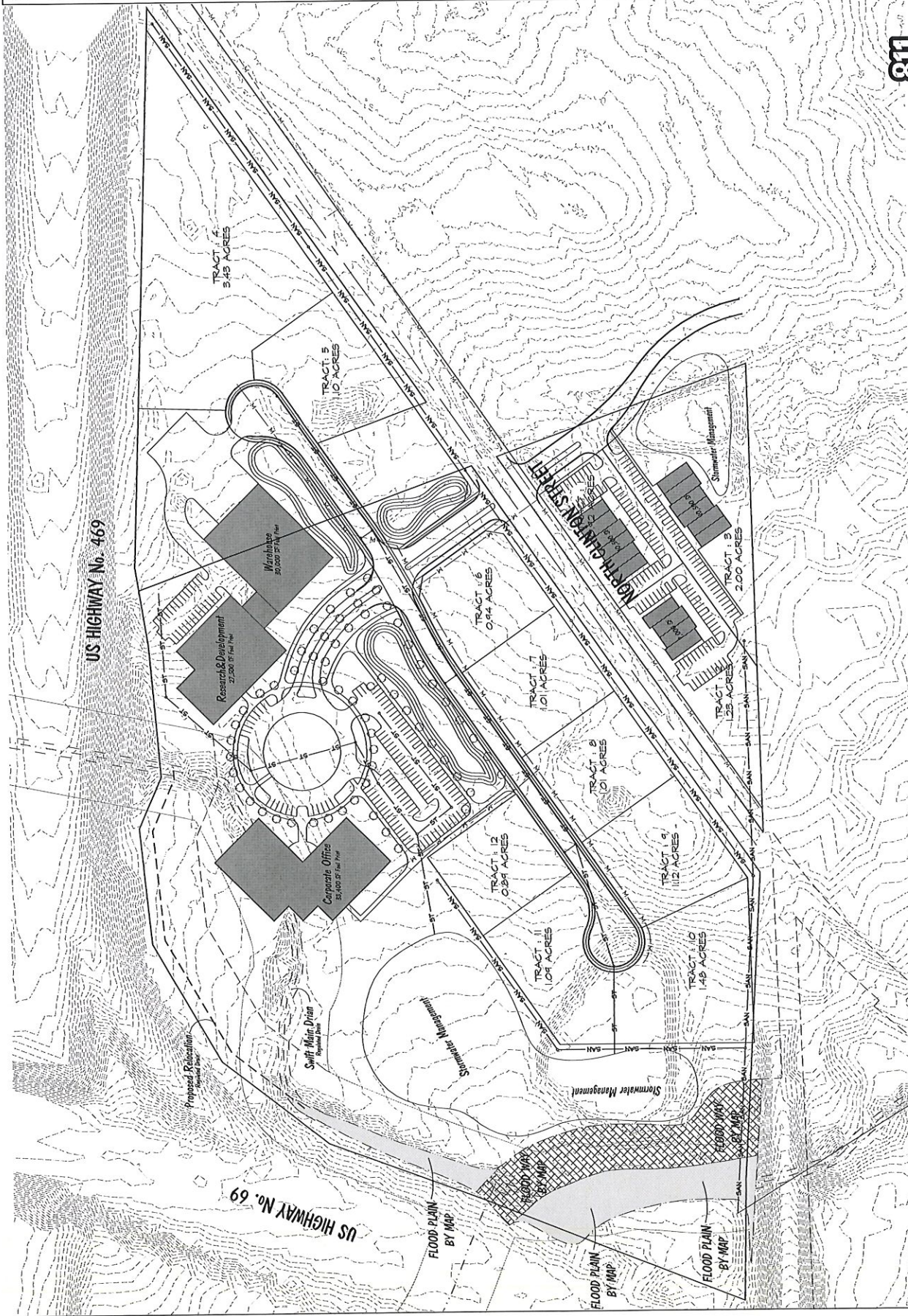
Performed for:

Drawing Revisions

Commission Number	223445
Date	October 31st, 2022
Title	

Sheet Number

PD2



PROJECT DEVELOPER:

Tippmann Group
9009 Colchester Road,
Fort Wayne, Indiana 46825
260.490.3000 phone
for www.4tills.biz

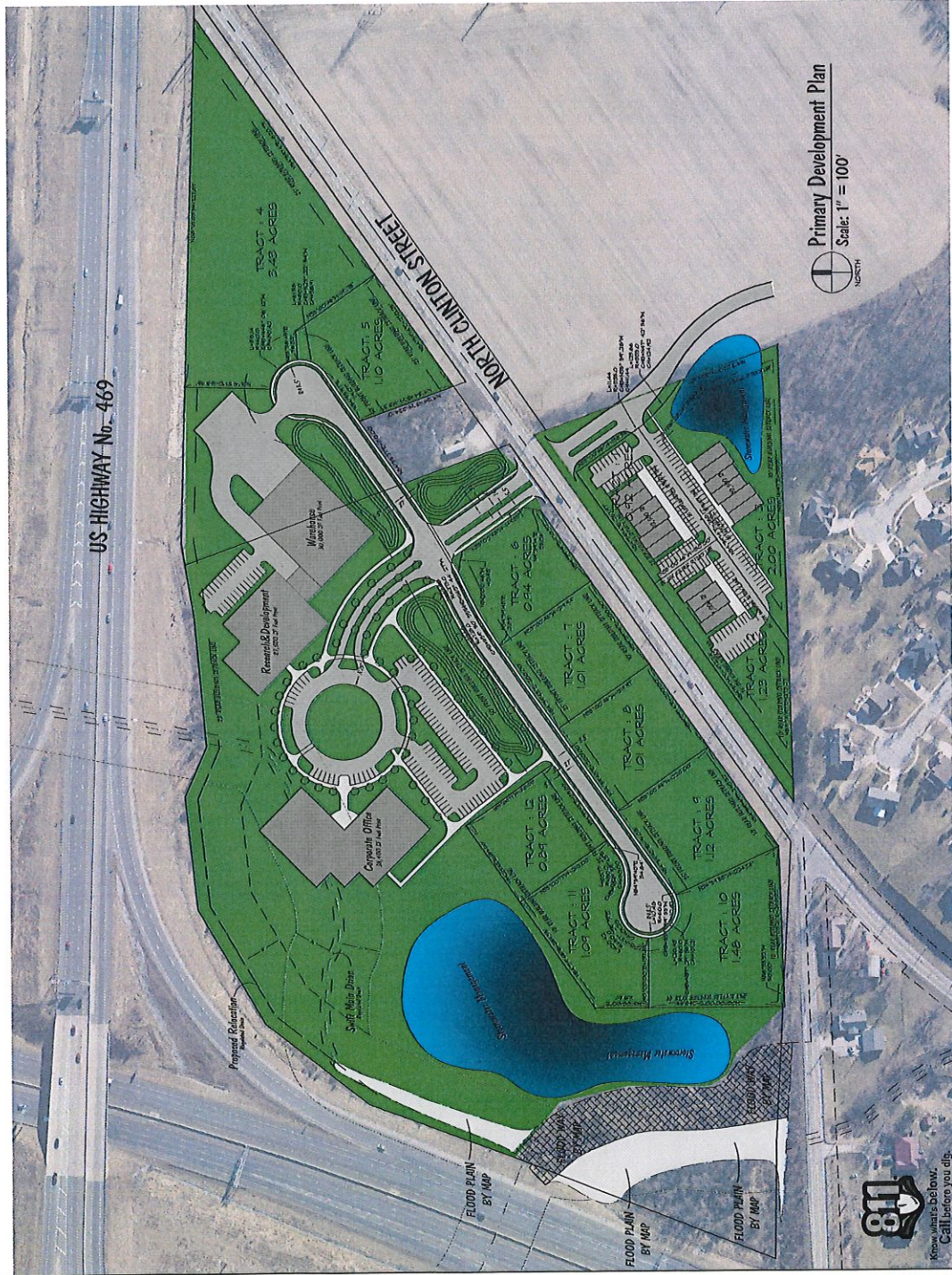
PROJECT CIVIL ENGINEER/SURVEYOR:

ForeSight Consulting, LLC
1910 Saint Joe Center Road, Suite 61
Fort Wayne, Indiana 46825
260.484.9900 phone
for www.4tills.biz

Primary Development Plan For:

North Clinton Campus

8923 North Clinton Street, Fort Wayne, Indiana 46825



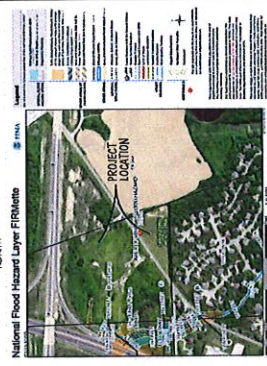
Primary Development Plan
Scale: 1" = 100'



Know what's below.
Call before you dig.



Site Location Map
NOT TO SCALE



Site Flood Rate Insurance Map
NOT TO SCALE



National Wetland Inventory Map
NOT TO SCALE

Existing Utility Provider Information	
Water Service	City of Fort Wayne
Sewer Service	City of Fort Wayne
Electric	American Electric Power
Gas	NPS200
Contact Information	
City of Fort Wayne Department of Land Use Management-Michael's Wood	260-427-1129
City of Fort Wayne Fire Department-Jerry Elser	260-427-1158
City of Fort Wayne New Water and Sewer Engineering-Carrie Shoben	260-427-1151
City of Fort Wayne Sewer Engineering Department-Lisa Rame	260-427-5064
City of Fort Wayne Stormwater Engineering Department-Patrick Joly	260-427-5064
City of Fort Wayne Water Engineering Department-Rick Sule	260-427-5064
City of Fort Wayne Traffic Engineering Department-Kyle Whiting	260-427-1172
American Electric Power-Karen Palmer	260-408-1863
Village of Fort Wayne	260-441-3325
NPS200 Mike Pruitt	260-439-1408
Concast-Paul Landolt	765-449-3811

ForeSight Consulting, LLC
Professional Engineers & Surveyors
1910 St. Joe Center Road, Suite #61
Fort Wayne, Indiana 46825
260.484.9900 phone
260.484.9980 fax
www.4tills.biz

EXPERIENCE. INNOVATION. RESULTS.

Certification:

Professional Engineer
State of Indiana
No. 1910 St. Joe Center Road, Suite #61
Fort Wayne, Indiana 46825
260.484.9900 phone
260.484.9980 fax
www.4tills.biz

Performed For:

8923 North Clinton Street, Fort Wayne, Indiana 46825

Primary Development Plan For:

North Clinton Campus

Drawing Revisions	
Commission Number	223445
Date	October 31st, 2022
Title	Primary Development Plan
Sheet Number	PDI

FACT SHEET

Cases #REZ-2022-0059, 0060 and 0061
Bills # Z-22-11-18, Z-22-11-19 and Z-22-11-20

APPLICANT:	Tippman Realty Partners, LLC
REQUEST:	To rezone various portions of the property to BTI/Business, Technology and Industrial, NC/Neighborhood Center, and C2/Limited Commercial for a new Tippmann corporate campus, commercial outlots and a mixed-use development.
LOCATION:	9000 block of North Clinton Street north and east of its intersection with East Wallen Road (Section 5 of Saint Joseph Township)
LAND AREA:	27.32 acres
PRESENT ZONING:	R1/Single Family Residential, RP/Planned Residential, C1/Professional Office and Personal Services, and NC/Neighborhood Center
PROPOSED ZONING:	BTI/Business, Technology, Industrial Park, NC/Neighborhood Center, and C2/Limited Commercial
COUNCIL DISTRICT:	6-Sharon Tucker
ASSOCIATED PROJECT:	Primary Development Plan, Tippmann North Clinton Campus
SPONSOR:	City of Fort Wayne Plan Commission

December 12, 2022 Public Hearing

- One property owner spoke at the public hearing in support.
- Ryan Neumeister was absent.

December 19, 2022 Business Meeting – REZ-2022-0059 (BTI Zoning)

- Plan Commission Recommendation: **DO PASS**
- A motion was made by Paul Sauerteig and seconded by Don Schmidt to return the ordinance with a Do Pass recommendation to Common Council for their final decision.
- **7-0 MOTION PASSED**
- Tom Freistroffer and Rachel Tobin Smith were absent.

December 19, 2022 Business Meeting – REZ-2022-0060 (C2 Zoning)

- Plan Commission Recommendation: **DO PASS**
- A motion was made by Patrick Zaharako and seconded by Ryan Neumeister to return the ordinance with a Do Pass recommendation to Common Council for their final decision.
- **7-0 MOTION PASSED**
- Tom Freistroffer and Rachel Tobin Smith were absent.

December 19, 2022 Business Meeting – REZ-2022-0061 (NC Zoning)

- Plan Commission Recommendation: **DO PASS w/Written Commitment**
- A motion was made by Ryan Neumeister and seconded by Patrick Zaharako to return the ordinance with a Do Pass recommendation to Common Council for their final decision.
- **7-0 MOTION PASSED**
- Tom Freistroffer and Rachel Tobin Smith were absent.

PROJECT SUMMARY

The petitioner, Tippmann Realty Partners, LLC is requesting three rezoning petitions as well as one primary development plan for a new corporate campus with development parcels planned along North Clinton Street. The applicant is requesting three separate zoning districts: BTI/Business, Technology, and Industrial Park for their corporate office, warehouse and their research & development buildings, C2/Limited Commercial for 8 development parcels on the north side of North Clinton Street, and finally NC/Neighborhood Center for 3 parcels on the south side of North Clinton Street for a mixed-use development.

The general area surrounding the proposed development consists of Interstate 69 and 469 to the north and west, North Pointe Woods Neighborhood Association to the south, and the Arneo development, which was recently rezoned to NC/Neighborhood Center and RP/Planned Residential. The site itself is located north of the East Wallen Road and North Clinton Street intersection and has the Swift Main Drain running through the west side of the parcel.

The applicant is proposing to rezone approximately 27.32 acres to BTI/Business, Technology, and Industrial Park, approximately 10.18 acres to C2/Limited Commercial, and approximately 5.03 acres to NC/Neighborhood Center. The existing zoning districts consists of NC/Neighborhood Center, C1/Professional Office and Personal Services, RP/Planned Residential and R1/Single Family Residential. The proposed rezones will be compatible with the various zoning districts found throughout the area. The applicant intentionally requested NC/Neighborhood Center on the south side of North Clinton Street to match that of the Arneo Development, rezoned earlier this year. The C2/Limited commercial districts are for outlots that the applicant intends to sell. BTI/Business Technology and Industrial Park is a zoning district that best matches the applicant's desire to relocate their corporate campus while also including buildings for research and development as well as warehousing. Industrial zoning is located on North Clinton Street further south of the site.

The zoning request to NC/Neighborhood Center and C2/Limited Commercial is intended to provide areas for the day-to-day shopping needs of the surrounding residential neighborhoods. Uses typically found within this zoning district include offices, personal services, limited retail, and certain residential facilities. The three proposed rezoning applications can be supported by the following goals and policies of the Plan:

LU3. Use land resources efficiently by encouraging new development, revitalization and redevelopment in areas already served by infrastructure;

LU6. Encourage carefully planned sustainable growth and coordinated development by encouraging mixed land uses.

LU6.C Encourage the conversion of vacant or underutilized properties into compatible mixed-use development areas.

LU6.D Support carefully planned, coordinated, compatible mixed-use development.

LU8. Use land resources efficiently by encouraging compact development alternatives in infill areas where utilities and other infrastructure currently exist.

The submitted development plan displays the proposed corporate campus for the applicant and development lots accessed on a proposed private drive. On the south side of North Clinton Street the applicant is showing a speculative mixed use development that will share a drive with the Arneo development which was approved earlier in 2022. The applicant has met with staff as well as the City of Fort Wayne Transportation Engineering staff to discuss future proposed plans to improve East Wallen Road which may impact the southwest side of the proposed development. While Wallen Road may be reconstructed, the development plan as proposed will have a minimal impact. The proposed lots may need to be reconfigured, reduced, or combined, but the labeled building of Corporate Office and the Research & Development are unlikely to be affected. The site also will have drainage challenges as there is floodplain on the property as well as the Swift Main Drain running along

the west side. The development plan has received primary approval from Stormwater Engineering as well as Floodplain. The Allen County Surveyor's office is still reviewing the plan.

The BTI zoned portion of the property provides the most detail. The plan shows a 38,400 square foot Corporate Office, a 27,500 square foot Research & Development building, and a 30,000 square foot Warehouse. Given the conceptual nature of the development plan (building and parking lots have not been identified for the outlots), specific landscape areas are not shown at this time. The applicant has not applied for any waivers.

PUBLIC HEARING SUMMARY:

Presenter: Randy Kammeyer, representing Tippmann Realty Partners, presented the request to Plan Commission as outlined above. Mr. Kammeyer stated that phase I of the development will be the office headquarters and research and development buildings. The retail area at the front of the property is conceptual, as they are working with the City on the possible realignment of Wallen Road. They are also coordinating with the developer of Arneo, on the south side of North Clinton, on aligning their entrances to have a signal. Design work for North Clinton improvements is commencing this year. Tippmann will work with James Khan on amending the existing Written Commitment to include the new NC/Neighborhood Center parcel.

Public Comments:

James Khan, developer of Arneo - Spoke in support of the proposal. Tippmann Realty reached out to him early in the process to coordinate traffic and access. James will wait to start his apartment development until the shared access on North Clinton is worked out.

WRITTEN COMMITMENT

THIS WRITTEN COMMITMENT ("Commitment") is made as of this ____ day of _____, 2022, by **B1 ENTERPRISES, LLC** (herein the, "Declarant"), under the following circumstances:

WITNESSETH:

WHEREAS, Declarant is the fee simple owner of approximately 64 acres of real estate located in Fort Wayne, Allen County, Indiana, the legal description of which is attached hereto as Exhibit "A" (herein, the "Real Estate"); and

WHEREAS, Declarant has submitted a Rezoning Petition Application with the City of Fort Wayne Plan Commission ("Plan Commission"), bearing number REZ-2021-0070 (the "Zoning Application") and has also submitted a Primary Development Plan Application with the Plan Commission bearing number PDP-2021-0051 (the "Development Plan Application"), both applications with respect to the Real Estate; and

WHEREAS, pursuant to the Zoning Application, Declarant has requested the Real Estate be rezoned to an NC (Neighborhood Center) zoning district pursuant to the City of Fort Wayne Zoning Ordinance (the "Ordinance") which permits development upon the Real Estate of certain business, community, office, personal service and limited retail uses, along with certain residential facilities; and

WHEREAS, Declarant, pursuant to Indiana Code 36-7-4-1015 (b)(6) has submitted this Commitment, voluntarily, which contains terms and conditions which are no less stringent for the Real Estate, its use and development, and has requested that this Commitment be considered as part of the Zoning Application.

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 a portion of the Real Estate.

1. Use Limitations. The following specific uses, which are otherwise allowed in the NC zoning district, shall be prohibited upon the Real Estate:

Air Conditioning Sales	Automobile rental (indoor)	Bingo establishment
Animal kennel	Automobile sales (indoor)	Bowling Alley
Automobile accessory	Bait sales	Campus Housing
store	Bankruptcy service	Catalog Showroom

Child Care Home (class I or II)	Fraternity House	Rental and/or Leasing Store
Cigarette/Tobacco/Cigar Store	Furrier	Residential Facility for Homeless Individuals
Collection Agency	Group Residential Facility (large)	Sign Sales Store
Consignment Shop	Group Residential Facility (small)	Skating Rink
Correctional Services Facility	Haunted House	Social Service Agency
Costume and Clothing Rental	Heating Sales	Sorority House
Credit service	Homeless/Emergency Shelter	Swimming Pool/Hot Tub Sales
Customer Service Facility	Laundromat	Taxi Service
Diagnostic Center	Library	Television Station
Diaper Service Facility	Parking Structure	Tire Sales
Dormitory	Planetarium	Treatment Center
Employment Agency	Public Transportation Facility	Variety Store
Fireworks Sales	Radio Station	Veterinary Clinic
Flea Market		Wind Energy Conversion System
		Window Sales
		Zoo

In addition to the above, and without expanding the uses permitted on the Real Estate, the following uses shall also be specifically prohibited: (A) the manufacture, storage or distribution of products which increase fire, explosion or radioactive hazards or cause a dangerous or hazardous condition; (B) any business or operation which creates a public or private nuisance by reason of noise, or excess emissions of odors, dust, fumes, smoke, liquid waste, glare, vibration or radiation; (C) adult book store, night club or discotheque, massage parlor, or any other establishment which provides live adult entertainment or which sells, rents or exhibits pornographic or obscene materials; (D) advertising sign or billboard; (E) manufactured home or mobile home; (F) gas station; (G) any medical or related professional use that provides abortion procedures or similar procedures; (H) a residential facility for the developmentally disabled or the mentally ill; (I) an indoor shooting range; (J) a retail plant nursery or greenhouse; (K) an automobile maintenance facility; and (L) any building, improvement or use which violates the applicable zoning ordinance or any other applicable law or regulation.

2. Landscaping, Buffering, and Site Development Features. Declarant shall improve the Real Estate with the landscape and buffering plan as depicted on the primary development plan approved by the Plan Commission, which improvements shall be no less than as described in this Commitment ("Landscape and Buffering Plan"). The Landscape and Buffering Plan shall be completed prior to the issuance of a certificate of compliance for the improvement(s) constructed on the Real Estate; provided, however, that the Plan Commission or its Department of Planning Services may grant an additional and commercially reasonable period of time to complete the Landscape and Buffering Plan due solely to weather related conditions of the Real Estate and upon Declarant furnishing a written commitment to complete said improvements within the agreed upon extended time frame. Conceptually, the Landscape and Buffering Plan shall be comprised of both an earthen berm and with trees of various species planted on the top

of said berm. Specifically, the Landscape and Buffering Plan shall be designed within the following parameters:

a. Declarant shall construct an earthen berm on the along the west property line of the Real Estate to provide buffering for the lots within North Pointe Woods. Such earthen berm shall be no less than six feet (6') above the finished grade level in closest proximity of the earthen berm. tapering to four feet (4') above the finished grade level for that portion of the earthen berm located between the western most pond depicted on the site plan and the boundary line of North Pointe Woods (the "Earthen Berm");

b. Declarant shall plant on the top of the Earthen Berm a mixture of evergreen trees, shade trees, and shrubs in order to screen or buffer adjacent properties from visual, lighting, and noise impacts from the proposed building improvements as well as or better than compliance with the standards set forth in Section 157.408 of the Ordinance. Declarant shall reasonably cooperate with the City of Fort Wayne – Allen County Department of Planning Services staff to determine the appropriate design, location and type of landscaping improvements.

c. All landscaping planted installed by Declarant upon the Real Estate shall be maintained, watered and fertilized by Declarant pursuant to a commercially reasonable standard for similar landscaping ~~and fencing~~ in Allen County, Indiana and shall be replaced within a commercially reasonable time in the event of decay, disease or death of said landscaping.

3. Lighting. All pole and parking lot lighting upon the Real Estate shall be restricted to a height of no greater than eighteen feet (18') from grade level; provided, however, that public street lighting shall be constructed in compliance with the standards and specifications of the applicable reviewing agency. All pole, parking lot, and building mounted lighting shall utilize sharp cut-off fixtures as defined by the Illuminating Engineers Society of North America and otherwise be of a type to minimize light pollution onto any adjacent residential property. No lighting poles, wall pack lighting or other light fixture shall be located between the top of any earthen berm constructed as part of the Landscape and Buffering Plan and the property line of the Real Estate

4. Signage.

a. No pole or pylon signage shall be permitted upon the Real Estate. Freestanding monument signage erected upon the Real Estate shall be no greater than fifteen feet (15') in height.

b. All building mounted signs must be mounted either flat on the surface of the walls or mounted on raceways which blend with the building exterior color and do not extend beyond six (6) feet from the building wall surface, and no signage is to project above the roof line. Individual, internally illuminated channel letters are encouraged. No hand-painted or flashing signs are permitted. No rooftop mounted signage is permitted.

- c. No banners, mobile or trailer signs, commercial flags, pennants, balloons, or temporary signs shall be permitted. This excludes temporary real estate signage for the purpose of marketing parcels or buildings as for sale or lease.

5. Outside Storage. Outside storage of trash, trash receptacles, and ground mounted HVAC units must be visually screened on three sides with a wood fence or masonry structure no less than eight (8) feet in height, with a gate enclosure on the fourth side. Except as otherwise provided herein, outside storage of any inventory or business related materials is prohibited.

6. Building Size Limitations. No individual building shall be constructed upon the Real Estate with a ground floor area in excess of Fifty Thousand (50,000) square feet.

7. Successors and Assigns. This Commitment and the restrictions set forth above shall inure to the benefit of all persons who own property comprising the Real Estate, their successors and assigns, and shall also inure to the benefit of the Zoning Administrator of the City of Fort Wayne and the Plan Commission. This Commitment and the restrictions and limitations set forth herein shall run with the Real Estate, and any conveyance thereof, shall be binding upon Declarant and its successors and assigns as owners of the Real Estate.

8. Enforcement Rights. The City of 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.

9. Amendment or Termination. Modification or amendment of this Commitment may only be made in accordance with I.C. § 36-7-4-1015, as such statute may be amended from time to time.

10. Remedies. In addition to any remedies that may be available at law, temporary, preliminary and permanent injunctive relief may be granted to enforce any provision of this Commitment, without the necessity of proof of actual damage, in the event of an actual breach or violation, or threatened breach or violation, of any restriction or covenant under this Commitment. Such remedies shall be cumulative and nonexclusive, and shall be afforded to any owner of property which comprises all or a portion of the Real Estate, the Zoning Administrator of the City of Fort Wayne and the Plan Commission.

11. ~~10.~~ Attorney Fees. In the event any action is brought to enforce the terms and conditions of this Commitment, the prevailing party shall be awarded its costs and reasonable attorney fees.

12. ~~11.~~ 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.

13. ~~12.~~ Governing Law. This Commitment, including the restrictions and covenants hereunder, shall be governed by the laws of the State of Indiana.

14. ~~13.~~ Effective Date. This Commitment shall be effective upon its recording in the Office of the Recorder of Allen County, Indiana.

15. ~~14.~~ Statutory Authority. This Commitment is made pursuant to I.C. §36-7-4-1015(a)(2).

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

“DECLARANT”

B1 ENTERPRISES, LLC

By: _____
James Khan, 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 _____, 2022, personally appeared James Khan, Manager of B1 Enterprises, LLC, and acknowledged the execution of the foregoing.

In witness whereof, I have hereunto subscribed my name and affixed my official seal.

Public

_____, Notary

My Commission Expires: _____
My County of Residence: _____
My Commission Number: _____

THIS INSTRUMENT prepared by Joshua C. Neal, Esq., Barrett McNagny LLP, 215 East Berry Street, Fort Wayne, Indiana 46802.

I affirm, under the penalties of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Joshua C. Neal

When recorded, return to: Joshua C. Neal, Barrett McNagny LLP, 215 East Berry Street, Fort Wayne, Indiana 46802.

EXHIBIT "A"

A PART OF THE WEST HALF OF BOURIE'S RESERVE IN TOWNSHIP 31 NORTH, RANGE 13 EAST, ALLEN COUNTY, INDIANA AND FURTHER BEING A PORTION OF THE LANDS OF ARNEO, INC. AS RECORDED IN DOCUMENTS 81-20527 AND 81-20528 WITHIN THE OFFICE OF THE RECORDER OF ALLEN COUNTY, INDIANA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE WESTERLY LINE OF SAID BOURIE'S RESERVE WITH THE CENTERLINE OF CLINTON STREET (FORMERLY FORT WAYNE AND LEO ROAD); THENCE NORTH 54 DEGREES 59 MINUTES 14 SECONDS EAST (INDIANA STATE PLANE GRID BEARING AND BASIS OF BEARINGS TO FOLLOW) ON AND ALONG SAID CLINTON STREET CENTERLINE, A DISTANCE OF 1056.76 FEET; THENCE SOUTH 35 DEGREES 00 MINUTES 46 SECONDS EAST A DISTANCE OF 25.00 FEET TO THE WESTERLY MOST CORNER OF THE LANDS OF THE STATE OF INDIANA AS RECORDED IN DOCUMENT NUMBER 93-37229 WITHIN THE OFFICE OF THE RECORDER OF ALLEN COUNTY, INDIANA, SAID CORNER BEING MARKED BY A HOFER AND DAVIS IDENTIFICATION CAP; THENCE SOUTH 73 DEGREES 46 MINUTES 54 SECONDS EAST ON AND ALONG THE SOUTHERLY LINE OF SAID LANDS OF INDIANA, A DISTANCE OF 121.31 FEET TO A POINT BEING MARKED BY A HOFER AND DAVIS IDENTIFICATION CAP; THENCE SOUTH 59 DEGREES 42 MINUTES 55 SECONDS EAST ON AND ALONG THE SOUTHERLY LINE OF SAID LANDS OF INDIANA, A DISTANCE OF 170.42 FEET TO A POINT BEING MARKED BY A HOFER AND DAVIS IDENTIFICATION CAP; THENCE NORTH 87 DEGREES 10 MINUTES 53 SECONDS EAST ON AND ALONG THE SOUTHERLY LINE OF SAID LANDS OF INDIANA, A DISTANCE OF 788.20 FEET TO THE NORTHERN CORNER OF A 137.78 ACRE TRACT OF LAND, SAID CORNER BEING MARKED BY A 5/8"x24" REBAR WITH "FORESIGHT - BOUNDARY" IDENTIFICATION CAP;

THE FOLLOWING 8 COURSES BEING ON AND ALONG THE NORTHWESTERLY LINE OF SAID 137.78 ACRE TRACT OF LAND WITH CORNERS BEING MARKED BY A 5/8"x24" REBAR WITH "FORESIGHT - BOUNDARY" IDENTIFICATION CAP.

THENCE SOUTH 02 DEGREES 49 MINUTES 07 SECONDS EAST, A DISTANCE OF 165.91 FEET TO THE POINT OF CURVATURE OF A 385.00 FOOT RADIUS CURVE TO THE LEFT; THENCE SOUTHERLY ALONG THE ARC OF SAID 385.00 FOOT RADIUS CURVE, A DISTANCE OF 103.81 FEET AND BEING SUBTENDED BY A CHORD BEARING SOUTH 10 DEGREES 32 MINUTES 35 SECONDS EAST AND CHORD LENGTH OF 103.49 FEET TO THE POINT OF A 100.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT; THENCE SOUTHERLY ALONG THE ARC OF SAID 100.00 FOOT RADIUS CURVE, A DISTANCE OF 205.08 FEET AND BEING SUBTENDED BY A CHORD BEARING SOUTH 14 DEGREES 39 MINUTES 36 SECONDS EAST AND A CHORD LENGTH OF 170.98 FEET TO THE POINT OF A 1470.00 FOOT NON-TANGENT CURVE TO THE LEFT; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID 1470.00 FOOT RADIUS CURVE, A DISTANCE OF 118.37 FEET AND BEING SUBTENDED BY A CHORD BEARING SOUTH 32 DEGREES 05 MINUTES 30 SECONDS WEST AND A CHORD LENGTH OF 118.33 FEET TO THE POINT OF TANGENCY; THENCE SOUTH 29 DEGREES 47 MINUTES 06 SECONDS WEST, A DISTANCE OF 340.68 FEET TO A POINT ON THE WEST LINE OF SAID

LANDS OF ARNEO, INC. (DOCUMENT NUMBER 81-20527); THENCE SOUTH 20 DEGREES 18 MINUTES 20 SECONDS EAST ON AND ALONG SAID WEST LINE A DISTANCE OF 550.73 FEET; THENCE SOUTH 58 DEGREES 51 MINUTES 25 SECONDS WEST A DISTANCE OF 493.50 FEET; THENCE SOUTH 33 DEGREES 32 MINUTES 39 SECONDS WEST, A DISTANCE OF 383.05 FEET TO THE WESTERLY CORNER OF SAID LANDS OF ARNEO, INC (DOCUMENT NUMBER 81-20528), SAID CORNER BEING MARKED BY A MAG NAIL SET IN A TREE ROOT; THENCE NORTH 70 DEGREES 47 MINUTES 44 SECONDS WEST ON AND ALONG THE WESTERN LINE OF SAID LANDS OF ARNEO, INC. AND THE EASTERLY LINE OF NORTH POINTE WOODS AS RECORDED IN PLAT CABINET "A" PAGE 112, WITHIN THE OFFICE OF THE RECORDER OF ALLEN COUNTY, INDIANA, A DISTANCE OF 999.90 FEET TO A CARVED STONE; THENCE NORTH 19 DEGREES 22 MINUTES 14 SECONDS WEST ON AND ALONG THE WESTERN LINE OF SAID LANDS OF ARNEO, INC., A DISTANCE OF 1151.26 FEET TO THE POINT OF BEGINNING.

CONTAINING 63.904 ACRES OF LAND MORE OR LESS AND BEING SUBJECT TO EASEMENTS AND RIGHTS OF WAY OF RECORD.

EXHIBIT "C"



ELEVATION

Document comparison by Workshare 10.0 on Monday, May 16, 2022 8:51:58 AM

Input:	
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Document 2 ID	C:\Users\jcn\AppData\Local\Temp\Workshare\tmp7988\Written Commitment - Arneo.docx
Description	C:\Users\jcn\AppData\Local\Temp\Workshare\tmp7988\Written Commitment - Arneo.docx
Rendering set	Standard

Legend:	
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Deletion	
Moved from	
<u>Moved to</u>	
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Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

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Total changes	24
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