

#REZ-2022-0068

BILL NO. Z-23-01-01

ZONING MAP ORDINANCE NO. Z-_____

**AN ORDINANCE amending the City of Fort Wayne
Zoning Map No. N-19 (Sec. 24 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 98, 99, 100, 101 and 102 in Southview Addition to the City of Fort Wayne
according to the plat thereof recorded in Plat Record II, page 79 in the Office of the
Recorder of Allen County, Indiana.

AND ALSO:

Part of Lots Numbered 103, 104, 105, 106, and 107 in Southview Addition to the City of
Fort Wayne, Allen County, Indiana, as recorded in Book Number 11, page 79, in the Allen
County Recorder's Office, said property is more particularly described as follows:
Beginning at the intersection of the Northerly line of Paulding Road (70.03 feet wide) with
the Easterly line of Lafayette Street (35 feet wide); thence Northward along said Easterly
line of Lafayette Street 114.29 feet to a point in the Northwest corner of said Lot 103; thence
Eastward 195.45 feet along the Northerly line of said Lots 103, 104, 105, 106, and 107 to a
point in the Northeast corner of Lot 107; thence Southward along the East line of Lot 107
(said line also being the West line of Lot 108, Southview Addition) 115.68 feet to a point in
the North line of Paulding Road (said point being 40 feet North as measured at right angles
from the Southerly line of Section 24, Township 30 North, Range 12 East, Allen County,
Indiana); thence Westward along the Northerly line of Paulding Road 195.06 feet to the
point of beginning.

and the symbols of the City of Fort Wayne Zoning Map No. N-19 (Sec. 24 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

1 commitment is hereby approved and is hereby incorporated by reference.

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

5 _____
6 Council Member

7 APPROVED AS TO FORM AND LEGALITY:

8 _____
9 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-2022-0068
Bill Number: Z-23-01-01
Council District: 6-Sharon Tucker

Introduction Date: January 10, 2023

Plan Commission
Public Hearing Date: January 9, 2023 (not heard by Council)

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

Synopsis of Ordinance: To rezone approximately 1.05 acres from I1/Limited Industrial to C3/General Commercial with a Written Commitment.

Location: 411 East Paulding and 412 Southview Avenue

Reason for Request: To bring the existing convenience store and gas station into compliance with the zoning ordinance and allow for improvement or expansion.

Applicant: Solar Petroleum, LLC

Property Owner: Solar Petroleum, LLC

Related Petitions: none

Effect of Passage: Property will be rezoned to the C3/General Commercial zoning district, with a written commitment to restrict all C3 uses except those permitted in C2, and to allow for the existing gas station use.

Effect of Non-Passage: The property will remain zoned I1/Limited Industrial. A gas station is not a permitted use in I1, however, industrial uses are.

**Department of Planning Services
Rezoning Petition Application**

Applicant
Applicant Solar Petroleum, LLC
Address 624 McKinney Avenue
City Fort Wayne State IN Zip 46806
Telephone 337-532-0000 E-mail mo@pureccm.com

Contact Person
Contact Person Scott M. Federoff, Synder Morgan Federoff & Kuchmay LLP
Address 4211 Clubview Drive
City Fort Wayne State IN Zip 46804
Telephone 260-602-8000 E-mail smf@smfklaw.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 411 East Paulding Road and 412 Southview Avenue, Ft. Way
Present Zoning I1 Proposed Zoning C3 Acreage to be rezoned 1.047
Proposed density 1 units per acre
Township name Wayne Township section # 74
Purpose of rezoning (attach additional page if necessary) To bring an existing convenience store and gas station use and adjacent lot, which will be combined into for the renovation of the gas station and convenience store, into conformance with tr
Sewer provider City of Fort Wayne Water provider City of Fort 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.

<u>Solar Petroleum, LLC</u> (printed name of applicant)	<u>Mo Chah</u> (signature of applicant)	<u>11/15/2022</u> (date)
<u>Solar Petroleum, LLC</u> (printed name of property owner)	<u>Mo Chah</u> (signature of property owner)	<u>11/15/2022</u> (date)
<u>A & M Enterprise LLC</u> (printed name of property owner)	<u>Mo Chah</u> (signature of property owner)	<u>11/15/2022</u> (date)
<u></u> (printed name of property owner)	<u></u> (signature of property owner)	<u></u> (date)

Received <u>12/2/2022</u>	Receipt No. <u>142115</u>	Hearing Date <u>1/9/2023</u>	Petition No. <u>REZ-2022-0068</u>
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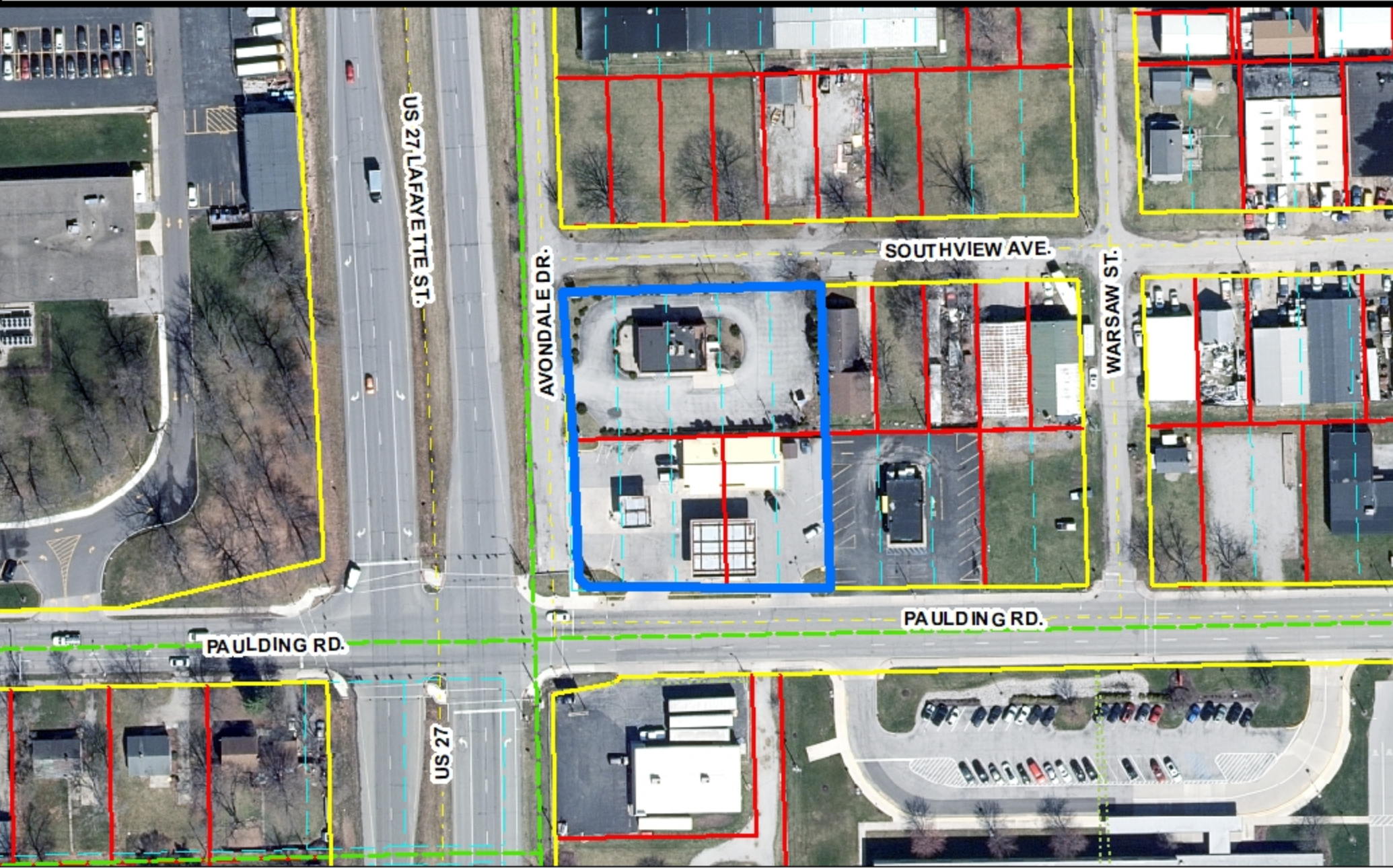
Legal Description of the Property to be Rezoned

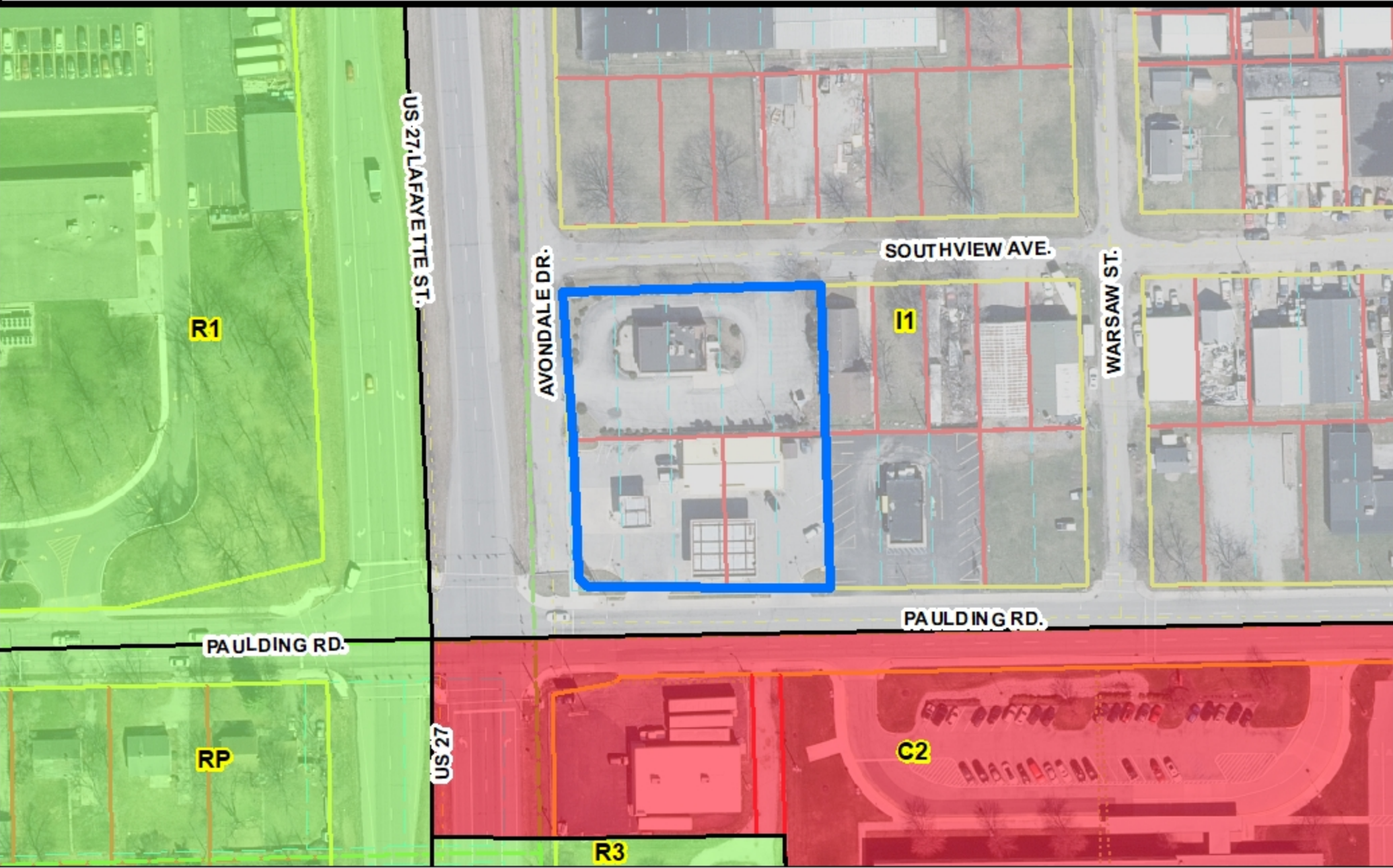
Lots Numbered 98, 99, 100, 101 and 102 in Southview Addition to the City of Fort Wayne according to the plat thereof recorded in Plat Record II, page 79 in the Office of the Recorder of Allen County, Indiana.

AND ALSO:

Part of Lots Numbered 103, 104, 105, 106, and 107 in Southview Addition to the City of Fort Wayne, Allen County, Indiana, as recorded in Book Number 11, page 79, in the Allen County Recorder's Office, said property is more particularly described as follows:

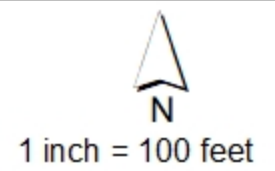
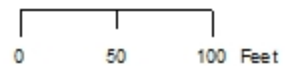
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Although strict accuracy standards have been employed in the compilation of this map, Allen County does not warrant or guarantee the accuracy of the information contained herein and disclaims any and all liability resulting from any error or omission 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: 12/21/2022





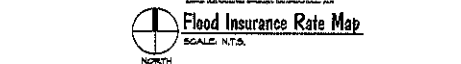
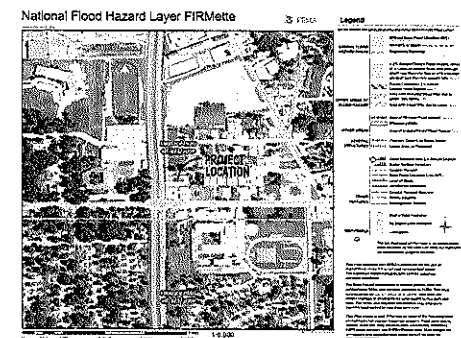
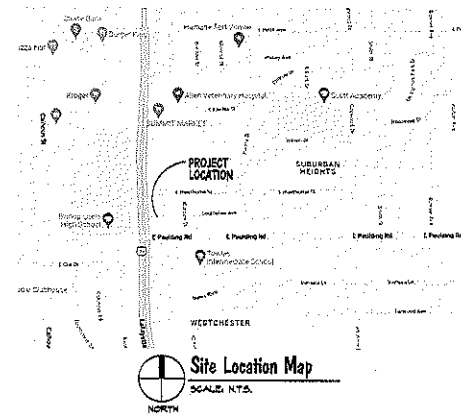
Boundary 'Retracement' Survey

SCALE: 1" = 40'



- Annotation Legend**
- P = PLATTED DIMENSION
 - D = DEED DIMENSION
 - A = MEASURED DIMENSION
 - S = RECORDED SURVEY DIMENSION
 - PR = PLAT RECORD
 - PG = PAGES NUMBER
 - CG = CONTROLLING CORNER
 - CH = CONTROLLING HIGHPOINT
 - HT = INDICATES HEIGHT OR DEPTH OF MONUMENT FOUND
 - PTM = PAST FIELD TIME FENCE
 - CL = CENTERLINE OF HIGHWAY
 - R/W = RIGHT OF WAY LINE
 - POS = POINT OF BEGINNING
 - APC = POINT OF COMMENCEMENT
 - SD = INDIANA STATE PLANE ZONE EAST COORDINATES FOR MONUMENT
 - CL = CH LINE

- Monument Legend**
- 1" = 3" BY 3" REBAR WITH 'FORESIGHT CONSULTING, LLC - BOUNDARY' IDENTIFICATION CAP SET.
 - 2" = 2" PIPE FOUND
 - 3" = 3" REBAR WITH 'HOPKIN & DAVIS' IDENTIFICATION CAP FOUND
 - 4" = 4" REBAR WITH A DIAMOND SHAPED TOP FOUND (ORIGINAL MONUMENT)
 - 5" = 5" REBAR FOUND
 - 6" = 6" REBAR WITH 'HOPKIN & DAVIS' IDENTIFICATION CAP FOUND
 - 7" = 7" REBAR WITH 'HOPKIN & DAVIS' IDENTIFICATION CAP FOUND
 - 8" = 8" REBAR WITH 'HOPKIN & DAVIS' IDENTIFICATION CAP FOUND
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Real Estate Description per Doc. No. 2021021342
 LOTS 98 THROUGH 101, 102 AND 103 IN SOUTHVIEW ADDITION TO THE CITY OF WEST CHESTER, INDIANA, AS SHOWN ON THE PLAT RECORDED IN PLAT RECORD 11, PAGE 14, IN THE OFFICE OF THE RECORDER OF ALLEN COUNTY, INDIANA.

Professional Surveyor's Certification
 THE UNDERSIGNED LAND SURVEYOR, REGISTERED UNDER THE LAWS OF THE STATE OF INDIANA, CERTIFIES THAT HE HAS MADE A RETRACTION SURVEY OF THE REAL ESTATE DEPICTED AND DESCRIBED THEREON. MEASUREMENTS WERE MADE AND MONUMENTS WERE REPERCUATED AND SHOWN IN CONFORMITY WITH THE RECORD THEREIN IN THE OFFICE OF THE RECORDER OF ALLEN COUNTY, INDIANA, NO VISIBLE DISCREPANCIES EXISTED EXCEPT AS NOTED. I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF THAT THIS PLAT REPRESENTS A SURVEY CONDUCTED UNDER MY DIRECT SUPERVISION IN ACCORDANCE WITH TITLE 36B, ARTICLE 1, RULE 12, SECTIONS 1 THROUGH 50 OF THE INDIANA ADMINISTRATIVE CODE.
 DECLARATION: CERTIFICATION IS MADE TO ORIGINAL PURCHASER OF THE SURVEY AND IS NOT TRANSFERABLE TO ADDITIONAL INTERESTS OR SUBSEQUENT OWNERS. THIS SURVEY IS VALID ONLY WITH THE SURVEYOR'S ORIGINAL OR ELECTRONIC SIGNATURE AND SEAL. FULL PAYMENT OF THE FEE, INVOICE, AND COMPLETE WITH ALL PAGES OF SURVEY.
 COMMISSION NUMBER: 22518
 CLIENT: SYDNEY MORGAN PERRYGO & KUGCHAT, LLP
 DATES OF FIELD WORK: NOVEMBER 17TH, 2022
 FIELD WORK COMPLETED: NOVEMBER 17TH, 2022
 IN WITNESS WHEREOF, I HERETOBY SET MY HAND AND SEAL THIS 20TH DAY OF NOVEMBER, 2022.
 I AFFIRM, UNDER THE PENALTIES FOR PERJURY, THAT I HAVE TAKEN REASONABLE CARE TO REPORT EACH SOCIAL SECURITY NUMBER IN THIS DOCUMENT, UNLESS REQUIRED BY LAW.

Foresight Consulting, LLC
 Professional Engineers & Surveyors
 1910 St. Joe Center Road, Suite 102
 Fort Wayne, IN 46806
 260-484-9900 phone
 260-484-9980 fax
 www.48486.com



Performed for:
 SYDNEY MORGAN PERRYGO & KUGCHAT, LLP
 1910 St. Joe Center Road, Suite 102
 Fort Wayne, IN 46806
 260-484-9900 phone
 260-484-9980 fax
 www.48486.com

BOUNDARY 'RETRACEMENT' SURVEY FOR:
Lots 98 Through 102 in South View Addition
 412 Southview Avenue, Fort Wayne, IN 46806

Drawing Revisions

Commission Number	22518
Date	November 28th, 2022
Title	
Sheet Number	S1.1
	SHEET 1 OF 2

WRITTEN COMMITMENT

This Written Commitment (this "Commitment") is made effective as of the ____ day of February, 2022, by Solar Petroleum, LLC, an Indiana limited liability company and A & M Enterprise LLC, an Indiana limited liability company (collectively, "Company").

RECITALS

A. By virtue of that certain Limited Warranty Deed dated December 17, 2021 and recorded on December 20, 2021 as Document Number 2021087568 in the Office of the Recorder of Allen County, Indiana, and that certain Corporate Warranty Deed dated March 26, 2021 and recorded on March 30, 2021 as Document Number 2021021342 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" (collectively, the "Real Estate").

B. Company filed an application under Case Number REZ-2022-____ (the "Rezoning Application") to change the zoning map applicable to the Real Estate from the I1 Zoning District 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 Fort Wayne Plan Commission (the "Plan Commission") may require an owner of real property to make a 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, 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) Automobile car wash;
- b) Gas station;
- c) Propane/bottled gas sales and service as an accessory use to a gas station or convenience store; and
- d) Truck fueling 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. **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. The 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.]

Solar Petroleum, LLC
an Indiana limited liability company

By: _____
Mohammad Abdelalghaffar, Member

“Company”

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned Notary Public in and for said County and State, this ____ day of February, 2022, personally appeared Mohammad Abdelalghaffar, as the Member of Solar Petroleum, LLC, an Indiana limited liability partnership, and acknowledged the execution of the foregoing Written Commitment on behalf of said company.

WITNESS my hand and Notarial Seal.

My commission expires:

_____, Notary Public

Resident of _____, County, Indiana

A & M Enterprise LLC
an Indiana limited liability company

By: _____
Mohammad Abdelalhaffar, Member

“Company”

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned Notary Public in and for said County and State, this ____ day of February, 2022, personally appeared Mohammad Abdelalhaffar, as the Member of A & M Enterprise LLC, an Indiana limited liability partnership, and acknowledged the execution of the foregoing Written Commitment on behalf of said company.

WITNESS my hand and Notarial Seal.

My commission expires:

_____, Notary Public

Resident of _____, County, Indiana

This instrument prepared by and after recording return to: Scott M. Federoff, SNYDER MORGAN FEDEROFF & KUCHMAY LLP, 4211 Clubview Drive, Fort Wayne, Indiana 46804.

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. Scott M. Federoff

Exhibit "A"
Legal Description of the Real Estate

Lots Numbered 98, 99, 100, 101 and 102 in Southview Addition to the City of Fort Wayne according to the plat thereof recorded in Plat Record II, page 79 in the Office of the Recorder of Allen County, Indiana.

AND ALSO:

Part of Lots Numbered 103, 104, 105, 106, and 107 in Southview Addition to the City of Fort Wayne, Allen County, Indiana, as recorded in Book Number 11, page 79, in the Allen County Recorder's Office, said property is more particularly described as follows:

Beginning at the intersection of the Northerly line of Paulding Road (70.03 feet wide) with the Easterly line of Lafayette Street (35 feet wide); thence Northward along said Easterly line of Lafayette Street 114.29 feet to a point in the Northwest corner of said Lot 103; thence Eastward 195.45 feet along the Northerly line of said Lots 103, 104, 105, 106, and 107 to a point in the Northeast corner of Lot 107; thence Southward along the East line of Lot 107 (said line also being the West line of Lot 108, Southview Addition) 115.68 feet to a point in the North line of Paulding Road (said point being 40 feet North as measured at right angles from the Southerly line of Section 24, Township 30 North, Range 12 East, Allen County, Indiana); thence Westward along the Northerly line of Paulding Road 195.06 feet to the point of beginning.