

#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 I 07; 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

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:



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

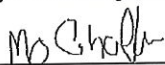
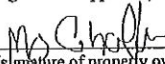
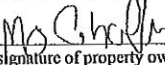
All staff correspondence will be sent only to the designated contact person.

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 th
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.

Solar Petroleum, LLC		11/15/2022
(printed name of applicant)	(signature of applicant)	(date)
Solar Petroleum, LLC		11/15/2022
(printed name of property owner)	(signature of property owner)	(date)
A & M Enterprise LLC		11/15/2022
(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.
12/2/2022	142145	1/9/2023	REZ-2022-0068

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:

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FACT SHEET

Case #	REZ-2022-0068	Bill #	Z-23-01-01	Project Start:	January 2023
PROPOSAL:	Rezoning Petition REZ-2022-0068 – 411 E Paulding Road				
APPLICANT:	Solar Petroleum, LLC				
REQUEST:	Rezone property from I1/Limited Industrial to C3/General Commercial to allow conforming status for an existing gas station/Convenience store and to rezone property to the north.				
LOCATION:	411 East Paulding Road, northwest corner of its intersection with Lafayette Street (Section 24 of Wayne Township)				
LAND AREA:	1.047 acres				
PRESENT ZONING:	I1/Limited Industrial				
PROPOSED ZONING:	C3/General Commercial with a Written Commitment				
COUNCIL DISTRICT:	6-Sharon Tucker				
SPONSOR:	City of Fort Wayne Plan Commission				

January 9, 2023 Public Hearing

- No one spoke in opposition.
- All Plan Commission members were present.

January 23, 2022 Business Meeting

Plan Commission Recommendation: DO PASS w/Written Commitment

A motion was made by Patrick Zaharako and seconded by Rachel Tobin-Smith to return the ordinance with a Do Pass recommendation with a Written Commitment to Common Council for their final decision.

8-0 MOTION PASSED

- Tom Freistroffer was absent.

Fact Sheet Prepared by:
Michelle B. Wood, Senior Land Use Planner
February 9, 2023

PROJECT SUMMARY

- The site is partially developed with gas pumps/canopy and convenience store. The northern portion of the site is a former Dairy Queen restaurant.
- It appears that the site has been used commercially since the 1970's.

The petitioner requests a rezoning from I1/Limited Industrial to C3/General Commercial with a written commitment to allow the existing use of the property to comply with the current zoning ordinance, and to allow for future improvements to the site. The existing Lassus Handy Dandy gas station and convenience store are located at 411 East Paulding Road, at the intersection of Paulding and US 27. The former Dairy Queen, located on the northern portion of the project site, is situated between the convenience store and the Southview Avenue and east of Avondale Drive. Access to Avondale Drive at Paulding has been closed by the City of Fort Wayne.

Until the Zoning Ordinance Amendment in 2014, a gas station was a permitted use in the I1/Limited Industrial zoning district. The petitioner seeks the allowance of the existing gas station, and the ability to maintain, expand and improve as allowed for a permitted use. The petition includes rezoning both the gas station and Dairy Queen property. 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 will be **prohibited**. 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 current 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. Records show that this area has been used commercially or industrially since the 1970's, and commercial, industrial and institutional uses are predominate east of US 27. Bishop Luers school is located west of US 27, as are residential neighborhoods. The northeast quadrant of the Paulding and US 27 intersection is subject of discussion in the Southeast Strategy Update, which calls for this general area to be considered for rezoning to districts that match the current uses, to help stabilize the area and to halt encroachment of intensive uses that may not be compatible with surrounding land uses. While this proposal does not include any request to change or increase the intensity of the existing use, the rezoning of the Dairy Queen property would permit future improvements and expansion of the convenience store onto that property. The Southeast plan calls for the Dairy Queen property to be rezoned to C2/Limited Commercial, as this district would match the most recent use. However, if use of a portion of this property will allow for the existing gas station to be improved to better serve the neighborhood and provide investment, then this rezoning proposal, with a written commitment, could be considered in compliance with the plan. The written commitment will prohibit other C3 uses, and encourage C2 uses. Land uses north of the project site are varied commercial and industrial. Staff is generally not opposed to bringing the existing use into compliance with the ordinance with the proposed written commitment. The restaurant property has been vacant since the closure of Avondale Drive, as access is now limited to Southview Avenue, or through the gas station site. Staff would be supportive of the overall request with the C3 use prohibitions. The written commitment will also require extra landscaping or screening when the north property redevelops, at the Plan Commission's request.

PUBLIC HEARING SUMMARY:

Presenter: Scott Federoff representing the property owner, presented the request as outlined above.

Public Comments:

None

FORT WAYNE PLAN COMMISSION • FINDINGS OF FACT

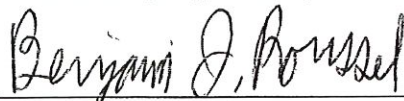
Rezoning Petition REZ-2022-0068

APPLICANT:	Solar Petroleum, LLC
REQUEST:	Rezone property from I1/Limited Industrial to C3/General Commercial to allow conforming status for an existing gas station/Convenience store and to rezone property to the north.
LOCATION:	411 East Paulding Road, northeast corner of its intersection with Lafayette Street (Section 24 of Wayne Township)
LAND AREA:	1.047 acres
PRESENT ZONING:	I1/Limited Industrial
PROPOSED ZONING:	C3/General Commercial

The Plan Commission recommends that Rezoning Petition REZ-2022-0068 be returned to Council, with a “Do Pass with a written commitment” 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 existing gas station and convenience store have served this neighborhood for decades. The area is heavily developed with commercial and industrial uses. The purpose of the rezoning is to allow an existing use to comply with the zoning ordinance and allow for improvements.
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.
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, allowing for investment when desired or necessary.
4. Approval is consistent with responsible development and growth principles based on existing uses and infrastructure in the area.
5. Plan Commission requests the following language to be added to the written commitment:
When the north parcel (412 Southview Avenue), is redeveloped or utilized in part for improvements to the gas station parcel (411 East Paulding), P-2 screening and buffering, or a solid board fence will be installed on the east property line, adjacent to the single family house at 420 Southview Avenue. If the property ceases to be used residentially, landscaping will be required per the zoning ordinance standards for the district.

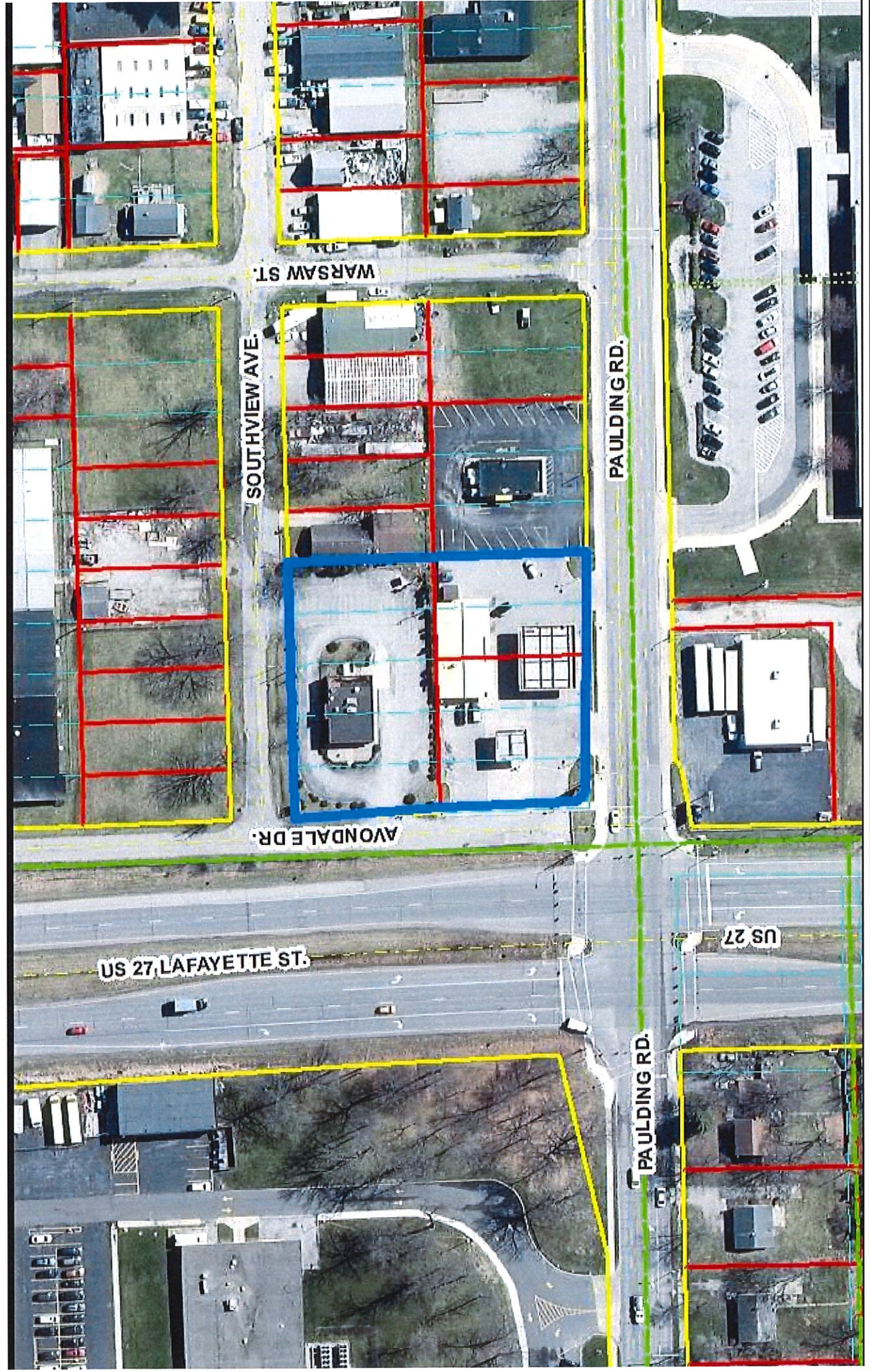
These findings approved by the Fort Wayne Plan Commission on January 23, 2023.



Benjamin J. Roussel
Executive Director
Secretary to the Commission

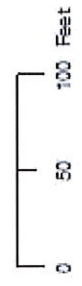


Rezoning Petition REZ-2022-0068

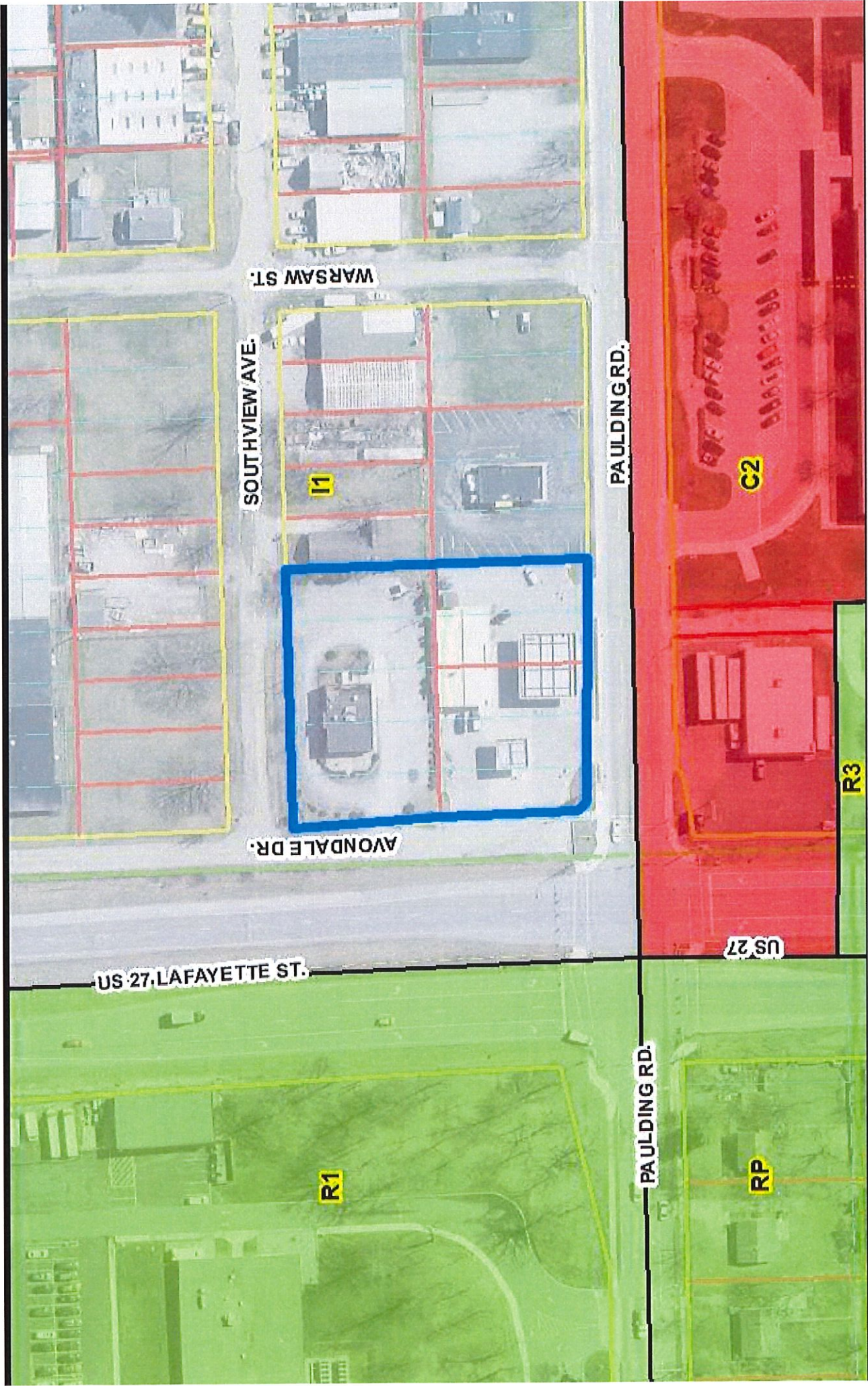


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© 2004 Board of Commissioners of the County of Allen
North American Datum 1983
State Plane Coordinate System, Indiana East
Photos and Coordinates: Spring 2009
Date: 12/21/2022



1 inch = 100 feet



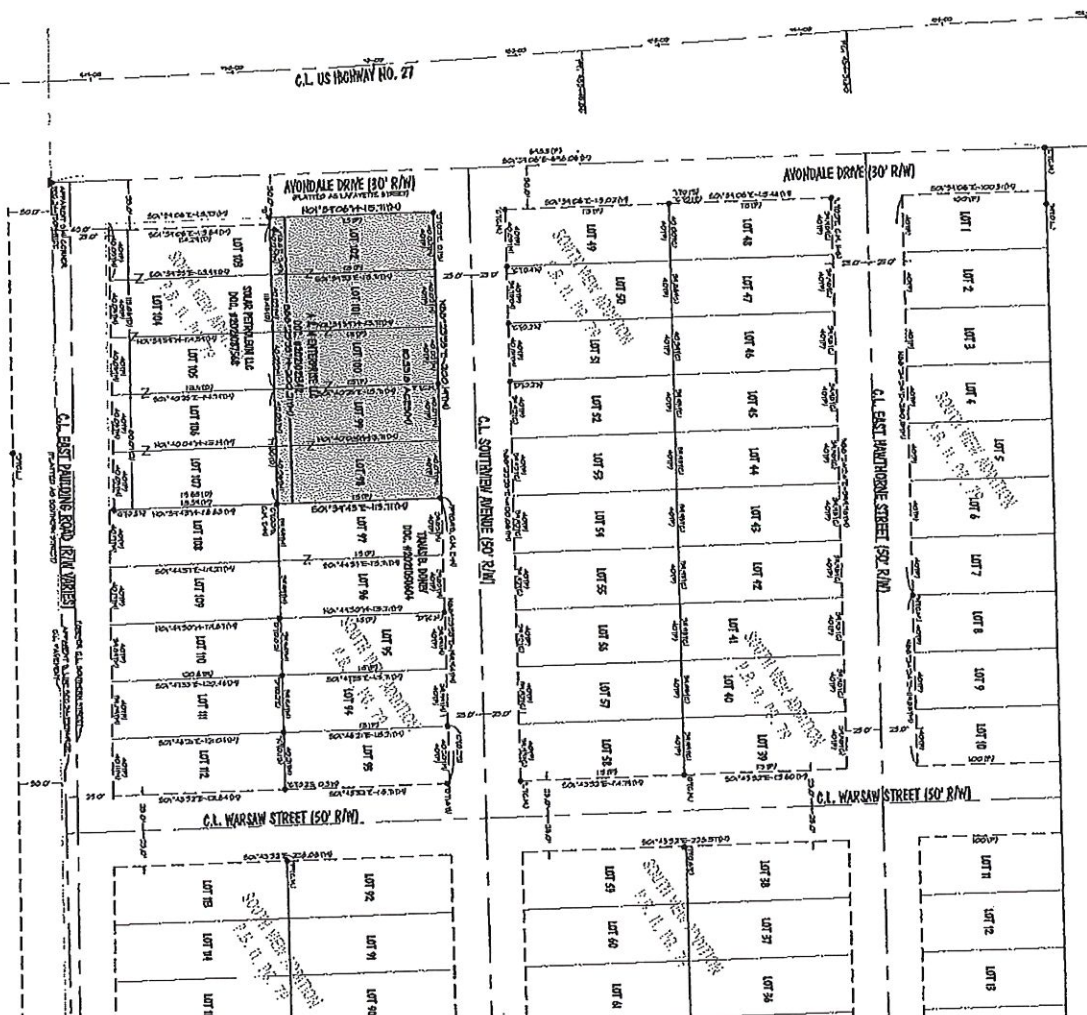
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North American Datum 1983
State Plane Coordinate System, Indiana East
Photos and Contours, Spring 2009
Date: 12/21/2022



0 50 100 Feet

1 inch = 100 feet



- Abbreviations Legend**
- 1" = 40'
 - 1" = 100'
 - 1" = 200'
 - 1" = 400'
 - 1" = 800'
 - 1" = 1600'
 - 1" = 3200'
 - 1" = 6400'
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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 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 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 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 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.