

#REZ 2024 0012

BILL NO. Z-24-03-17

ZONING MAP ORDINANCE NO. Z-_____

AN ORDINANCE amending the City of Fort Wayne
Zoning Map No. H-34 & I-34 (Sec. 21 of Washington Township)

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

SECTION 1. That the area described as follows is hereby designated a C3 (General
Commercial) District under the terms of Chapter 157 Title XV of the Code of the City of Fort
Wayne, Indiana:

LEGAL DESCRIPTION

The eastern 216.49 feet of the following:

Part of the Northeast Quarter and the Northwest Quarter of Section 21, Township 31 North,
Range 12 East, Allen County, Indiana, more particularly described as follows:

Beginning at the Northwest corner of the Northeast Quarter of said Section 21; thence North
90 degrees 00 minutes 00 seconds East (assumed bearing for the North line of said Northeast
Quarter and is the basis of bearings this description) along the North line of said Northeast
Quarter, being within the right of way of Washington Center Road, 391.90 feet to the
Northeast corner of a 68.66 acres parcel (John H. Dehner, Inc.), Deed Book 686, page 433-
34; thence South 00 degrees 21 minutes 17 seconds West along the East line of said Deed
Book 686, page 433-34, 271.80 feet to a point; thence South 90 degrees 00 minutes 00
seconds West 216.49 feet to a point; thence North 00 degrees 09 minutes 32 seconds East,
65.63 feet to a point; thence South 90 degrees 00 minutes 00 seconds West, 174.03 feet to a
point on the West line of said Northeast Quarter; thence South 00 degrees 02 minutes 04
seconds West along said West line, 383.86 feet to a point; thence North 88 degrees 35
minutes 45 seconds West, 290.94 feet to a point; thence North 00 degrees 08 minutes 27
seconds East, 582.45 feet to a point on the North line of the Northwest Quarter of said
Section 21; thence North 89 degrees 54 minutes 36 seconds East along said North line, being
within the right of way of Washington Center Road, 289.78 feet to the point of beginning,
said in previous deed to contain 6.086 acres of land, more or less.

and the symbols of the City of Fort Wayne Zoning Map No. H-34 & I-34 (Sec. 21 of
Washington Township), as established by Section 157.082 of Title XV of the Code of the
City of Fort Wayne, Indiana is hereby changed accordingly.

SECTION 2. If a written commitment is a condition of the Plan Commission's recommendation for the adoption of the rezoning, or if a written commitment is modified and approved by the Common Council as part of the zone map amendment, that written commitment is hereby approved and is hereby incorporated by reference.

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

Council Member

APPROVED AS TO FORM AND LEGALITY:

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-2024-0012
Bill Number: Z-24-03-17
Council District: 3 – Nathan Hartman

Introduction Date: March 26, 2024

Plan Commission
Public Hearing Date: April 8, 2024 (not heard by Council)

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

Synopsis of Ordinance: To rezone 1.37 acres from C2/Limited Commercial to C3/General Commercial

Location: 5725 Hatfield Road, east of its intersection with Washington Center Road (Section 21 of Washington Township)

Reason for Request: To permit a new gas station canopy

Applicant: Washington Center Plaza, LLC

Property Owner: Washington Center Plaza, LLC

Related Petitions: Primary Development Plan – 5725 Hatfield Road Gas Station Canopy

Effect of Passage: Property will be rezoned to the C3/General Commercial zoning district, which will allow for a new gas station canopy.

Effect of Non-Passage: The property will remain zoned C2/Limited Commercial, which does not permit a new gas station canopy. The site will continue with existing uses, and may be redeveloped with areas for moderate intensity business, community, office, personal service, and limited retail uses, along with certain residential facilities.

Department of Planning Services Rezoning Petition Application

Applicant

Applicant Washington Center Plaza LLC
Address 2990 Bristoe Ln
City Fort Wayne State IN Zip 46814
Telephone _____ E-mail _____

Property Ownership

Property Owner Washington Center Plaza LLC
Address 2990 Bristoe Ln
City Fort Wayne State IN Zip 46814
Telephone _____ E-mail _____

Contact Person

Contact Person Robert C. Kruger, Esq.
Address 200 E. Main Street, Suite 1000
City Fort Wayne State IN Zip 46802
Telephone 260-426-1300 E-mail rkruger@burtblee.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 5725 Hatfield Rd Township and Section WASH Sec 7
Present Zoning C2 Proposed Zoning C3 Acreage to be rezoned 1.37
Purpose of rezoning (attach additional page if necessary) _____
to accommodate construction of gas canopies to be used as part of a gas station/convenience store in existing retail building.
Sewer provider Fort Wayne Water provider Fort Wayne

Filing Checklist

Applications will not be accepted unless the following filing requirements are submitted with this application.

- ☐ Filing fee \$1000.00
- ☐ Surveys showing area to be rezoned
- ☐ Legal Description of parcel to be rezoned
- ☐ Rezoning Criteria (see attached checklist)

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 Fort Wayne and Allen County Plan Commissions 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

Washington Center Plaza LLC
(printed name of applicant)

By 
(signature of applicant)

04/03/2024
(date)

Washington Center Plaza LLC
(printed name of property owner)

By 
(signature of property owner)

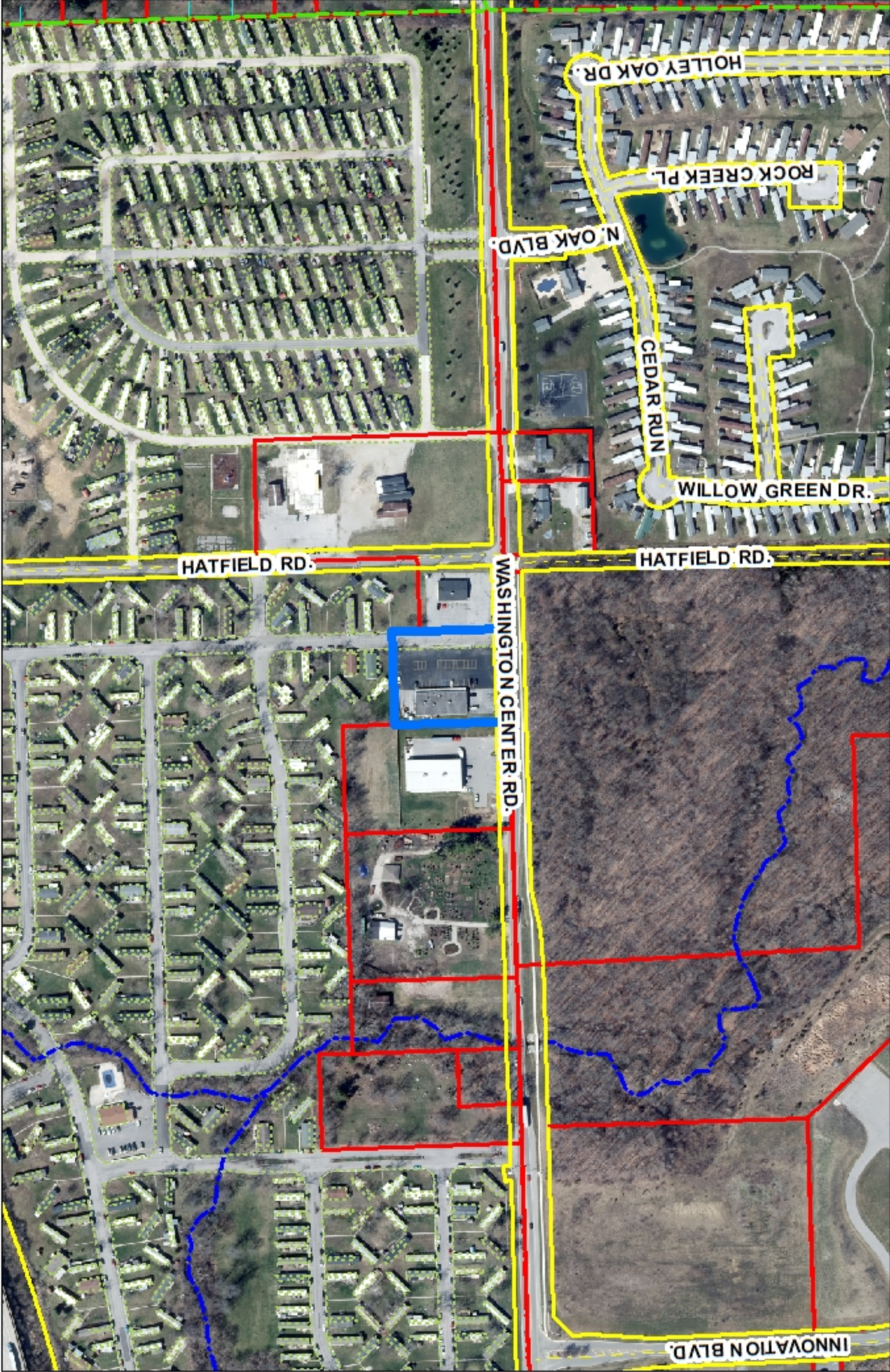
04/03/2024
(date)



Received	Receipt No.	Hearing Date	Petition No.
<u>3/5/24</u>	<u>144948</u>	<u>4/8/24</u>	<u>PEZ-2024-0012</u>

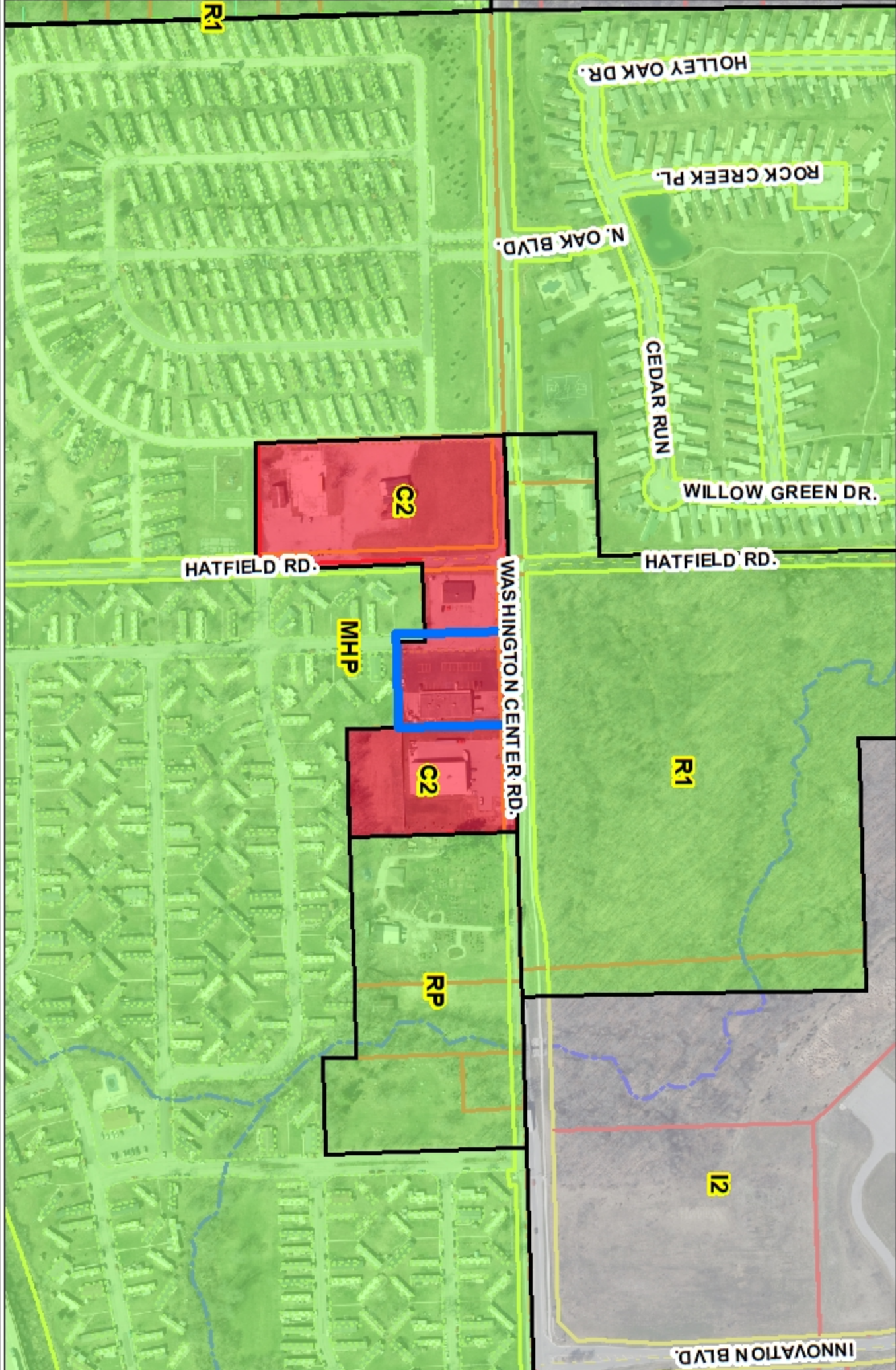
Department of Planning Services • 200 East Berry Suite 150 • Fort Wayne, Indiana • 46802
Phone (260) 449-7607 • Fax (260) 449-7682 • www.allencounty.us • www.cityoffortwayne.org





Although not a guarantee, we warrant that the information contained herein was obtained from reliable sources and that we have exercised reasonable care in the preparation of this map. We do not warrant the accuracy of the information contained herein and we do not assume any liability for any errors or omissions in this map. North American Datum 1983. State Plane Coordinate System, Indiana East. Drawn and Contoured: Spring 2019.

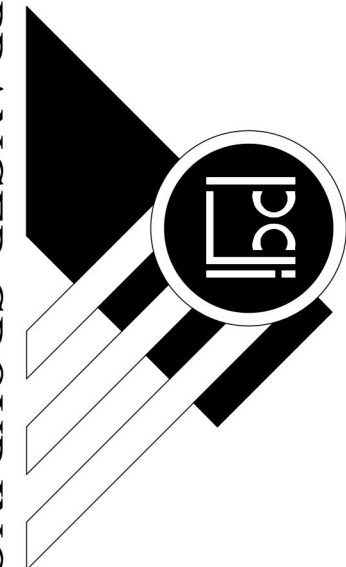




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North American Datum 1983
State Plane Coordinate System, Indian East
Zone 14N
Date: 3/15/2024

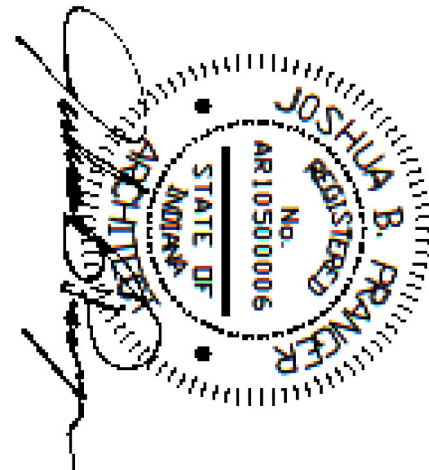




PRANGER GROUP INC.
ARCHITECTURE • ENGINEERING
343 ARBORN N. OFFICE RT. WAYNE, IN 46785
MAGNAN LINDA W. W/7 WANDERSON
PHONE 260.471.4901 FAX 260.484.6068

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CERTIFICATION:



5725 Hatfield Road
Fort Wayne, Indiana

Washington Center Plaza, LLC.

A Primary Development Plan For:

REVISION DATE BY

DATE PROJECT NO.
03-05-24 6485

SHEET TITLE

Primary Development Plan

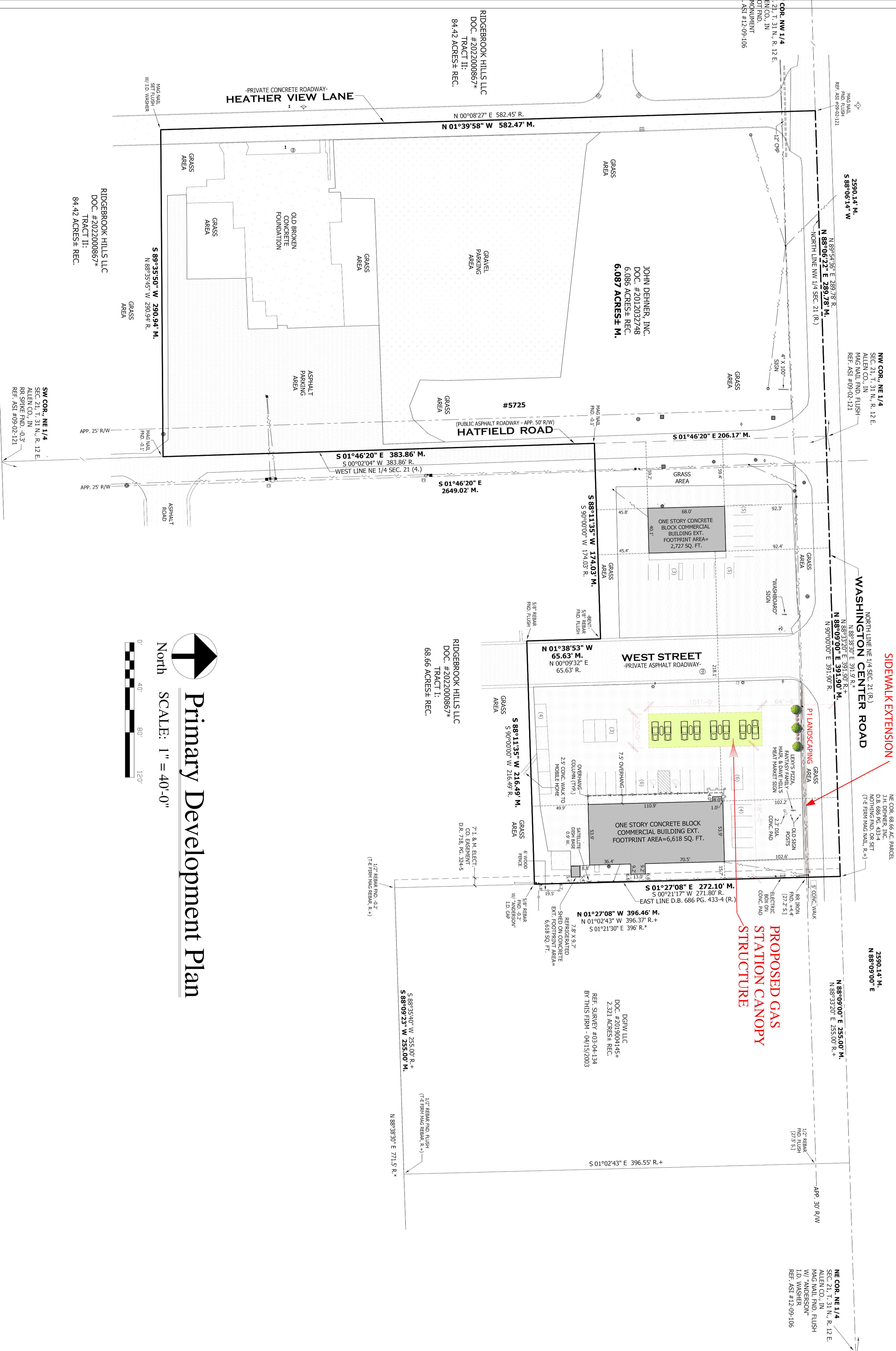
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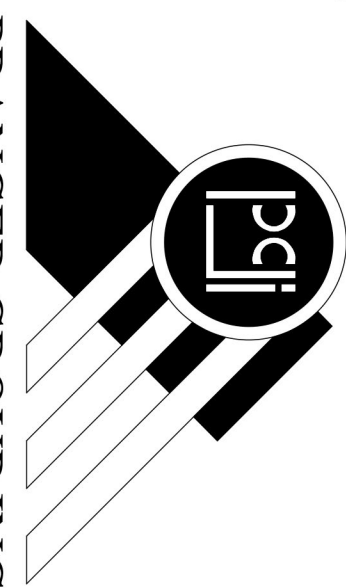
PDP-1



Primary Development Plan

North SCALE: 1" = 40'-0"

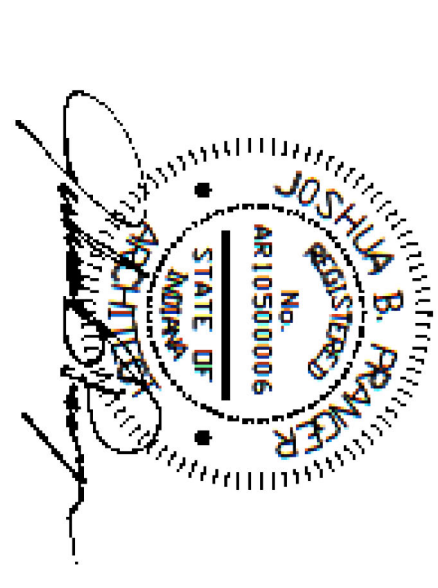




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CERTIFICATION:



A Primary Development Plan For:

Washington Center Plaza, LLC.

5725 Hatfield Road
Fort Wayne, Indiana

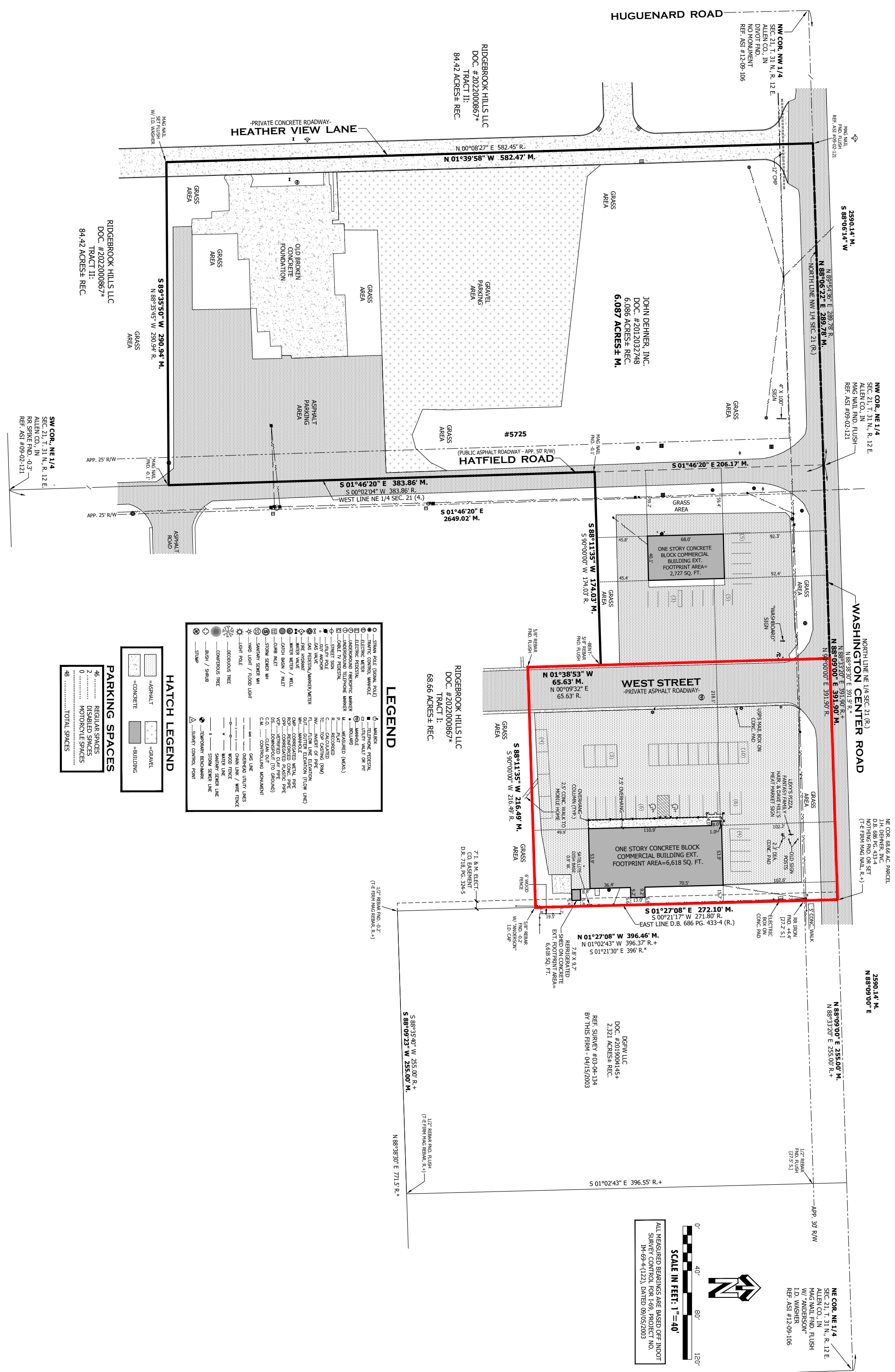
REVISION	DATE	BY

DATE	PROJECT NO.
03-05-24	6485

SHEET TITLE
Primary Development Plan

SHEET NO.

PDP-2



SCALE IN FEET: 1"=40

ALL MEASURED BEARINGS ARE BASED OFF INDOT
SURVEY CONTROL FOR I-69, PROJECT NO.
IM-69-4-(122), DATED 09/05/2003



WWW.ANDERSONSURVEYING.COM

DESCRIPTION OF REAL ESTATE:

Part of the Northeast Quarter and the Northwest Quarter of Section 21, Township 31 North, Range 12 East, Allen County, Indiana, more particularly described as follows:

Beginning at the Northwest corner of the Northeast Quarter of said Section 21; thence North 90 degrees 00 minutes 00 seconds East (assumed bearing for the North line of said Northeast Quarter and is the basis of bearings this description) along the North line of said Northeast Quarter, being within the right of way of Washington Center Road, 391.90 feet to the Northeast corner of a 68.66 acres parcel (John H. Dehner, Inc.), Deed Book 686, page 433-34; thence South 00 degrees 21 minutes 17 seconds West along the East line of said Deed Book 686, page 433-34, 271.80 feet to a point; thence South 90 degrees 00 minutes 00 seconds West 216.49 feet to a point; thence North 00 degrees 09 minutes 32 seconds East, 65.63 feet to a point; thence South 90 degrees 00 minutes 00 seconds West, 174.03 feet to a point on the West line of said Northeast Quarter; thence South 00 degrees 02 minutes 04 seconds West along said West line, 383.86 feet to a point; thence North 88 degrees 35 minutes 45 seconds West, 290.94 feet to a point; thence North 00 degrees 08 minutes 27 seconds East, 582.45 feet to a point on the North line of the Northwest Quarter of said Section 21; thence North 89 degrees 54 minutes 36 seconds East along said North line, being within the right of way of Washington Center Road, 289.78 feet to the point of beginning, said in previous deed to contain 6.086 acres of land, more or less.

Property Address: 5725 Hatfield Road, Fort Wayne, IN 46818

SURVEYOR'S REPORT

In accordance with the Indiana Survey Standards as defined in Title 865, Article 1, Rule 12, Sections 1 through 29 of the Indiana Administrative Code, the following observations and opinions are submitted regarding the various uncertainties in the locations of the lines and corners established on this survey as a result of:

- (a) Variances in the reference monuments:
- (b) Discrepancies in record descriptions and plats:
- (c) Inconsistencies in lines of occupation and:
- (d) Random errors in measurement (Theoretical Uncertainty).

The Relative Positional Accuracy (RPA) due to random errors in measurement of the corners of the subject tract established this survey is within the specifications for an **"Urban" Survey** (0.07 feet plus 50 parts per million) as defined in I.A.C. 865.

The purpose of this document was to perform a Retracement Survey of that real estate described in a Corporate Deed conveyed to John Dehner, Inc., recorded June 15, 2012, as Document #2012032748 in the Office of the Recorder of Allen County, Indiana. The boundary lines of the subject tract and other relevant lines were established as follows:

The Northwest, Southwest, and Southeast corners of the Northeast Quarter of Section were established by found monuments accepted in place as the best available evidence for the locations of said corners. No modern information for these corners was found in the records of the Allen County Surveyor's Office (ACSO). The monuments at the Northwest and Southwest corners were previously utilized by this firm in 2009 during the field work for the subject 6.086-acre parcel which was for a Description Plan only (see below discussion). These perpetuations were also utilized during a retracement survey of the south and west adjoining parcel by this Firm dated November 14, 2012, Survey Number 12-09-106.

The Northeast corner of the Northeast Quarter was reestablished in 2012 by the northerly extension of the monumented East line of said Quarter as defined by the East Quarter corner and by the called for and found INDOT monument at the intersection of said East line with the northerly right-of-way of I-69 with the easterly extension of the monumented North line of said Quarter as defined by the North Quarter corner and by the northeast corner of the cemetery parcel. The northeast corner of the cemetery parcel was established by extending the monumented east line northerly at record distance. No modern information for the location of the Northeast corner of Section 21 was found in the records of the ACSO. The old Section corner witnesses along the North line of Section 21 have all been lost or destroyed.

SURVEYOR'S REPORT CONTINUED ON PAGE 3 OF 3

Survey Number: 09-02-121

1324 Henry Avenue
Fort Wayne, Indiana 46808
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Phone: (260) 483-1724
Fax: (260) 482-6855

ANDERSON SURVEYING, INC.

1947 E. Schug Road
Columbia City, Indiana 46725

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Fax: (260) 482-6855
Toll Free: (888) 483-1724

SURVEYOR'S REPORT CONTINUED

The Northwest corner of the East Half of the Northwest Quarter of Section 21 was established by extending the monumented East line of Highview Park Addition northerly at the record distance of 2641.2 feet. The sum of the platted distances for this line is 2636 feet resulting in variance of up to 5.2 feet. This established location falls on the line from the monumented North Quarter corner and divot found near the Northwest corner of Section 21.

The northerly right-of-way of I-69 and the ramp to US 30 & 33 (N.W.C) were established by INDOT plan dimensions from called for and found INDOT monuments as shown (INDOT Control Points 683, 684, 685, 686, & 666). The found INDOT monuments conformed to plan dimension within the RPA for this survey. The INDOT bearing system was used as the basis of bearings this survey.

The boundary lines of the subject 6.086-acre parcel were established by record geometry and previous data of this Firm (2009 and 2012 surveys as discussed above). This description was created by this Firm on March 3, 2009, Survey No. 09-02-121, though a survey was not prepared per instruction of the client, John Dehner, Inc., as the parcel was not for a conveyance. The lines as established this survey conform to record geometry within 0.3 feet by field measurement as shown.

Reference Documents this survey:

- Prior survey and description plan by this Firm as discussed above
- Recorded plat of Highview Park Addition
- Previous surveys by this Firm within Highview Park Addition, Survey Numbers 99-06-205, 01-06-162, & 11-06-102
- INDOT plans for I-69 (Project No. 69-4(2), 1959 and Project No. IM-69-4-(122), 2003
- Current deeds of record for the subject and adjoining tracts
- ACSO Section corner information
- County Tax and GIS Maps

As a result of the above observations, it is my opinion that the uncertainties in the location of the lines and corners established on this survey are as follows:

DUE TO VARIANCES IN REFERENCE MONUMENTS: Up to 0.3 feet due to existing monumentation relative the subject tract. Record bearing and distance differential over the RPA for this survey are noted on the Plat of Survey. All found monumentation is of unknown origin unless noted otherwise. All set rebars are 5/8 inch diameter 24 inches long with orange identification caps stamped "ANDERSON-FIRM #29A". See Plat of Survey. No dimension on this Plat of Survey can be interpreted to be of greater precision than the RPA as stated above.

DUE TO DISCREPANCIES IN THE RECORD DESCRIPTION: None noted. Meas. (M) indicates measured dimension. Plat (P) indicates platted dimension. Rec. (R) indicates recorded dimension. Calc. (C) indicates calculated dimension. See Plat of Survey.

DUE TO INCONSISTENCIES IN LINES OF OCCUPATION: See the Plat of Survey relative to the location of existing utilities, private roadways, concrete walks, and gravel & asphalt parking areas. Also see the location of the wood fence and satellite dish along the north-south 271.80-foot course. Finally, see the location of the concrete walk utilized to access an adjoining mobile home along the east-west 216.49-foot course. Unwritten rights may be associated with these occupations.

CONTRACT REQUIREMENTS: All surveying fees to Anderson Surveying, Inc. must be satisfied before this survey and report are valid. The commitment for title insurance was provided to this firm and referenced in this survey as prepared by First American Title Insurance Company, issued by Metropolitan Title of Indiana, LLC, having a Commitment Date October 04, 2023, at 8:00 am, a Printed Date of October 16, 2023, and File No.: 4054-236694. Future abstract or title searches may reveal additional information affecting this property. This survey is subject to any facts and or easements that may be disclosed by said full and accurate title search. Anderson Surveying, Inc. should be notified of any additions or revisions that may be required.

This is certified as an **"Urban" Survey** in accordance with the Indiana Survey Standards to the owner of record and the buyer as listed on this certificate, the title company of contract and the lender for said buyer for the exclusive use in the conveyance of the above described real estate. This Survey is not to be warranted or assigned to any person(s) after said conveyance is complete.

FLOOD ZONE CLASSIFICATION

This property is in Zone "X" as location plots by scale on Flood Insurance Rate Map 18003C0170G, effective August 3, 2009. The accuracy of this statement is subject to map scale uncertainty. The exact location of any flood plain can only be ascertained with a topographic procedure, which is beyond the scope of this Survey. As provided for under the guidelines of the National Flood Insurance Program, the final decision regarding flood insurance is left up to the local lending institution.

Field Survey completed the 20th day of November, 2023

Certified this XXth day of November, 2023

Survey Number: 09-02-121

ANDERSON SURVEYING, INC.

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Toll Free: (888) 483-1724

5725 Hatfield Road – WASHINGTON CENTER PLAZA, LLC

Rezoning Criteria

1. Comprehensive Plan. This site is located in a Urban Infill Area. The gas canopies and allied gas station-use (using an existing building) will be an ideal use for nearby high-density residential and access to Washington Center Rd. The proposed development makes use of a highly underutilized parcel. The Generalized Future Land Use Map shows the site located in a Mixed Residential area. Supporting uses in a Mixed Residential area include neighborhood-oriented commercial uses. The convenience store portion of the use would likely be primarily utilized by the surrounding mobile home park residents.
2. Current Conditions and the Character of Current Structures and Uses in the Area. The location and use of an existing commercial building will be compatible with the surrounding high-density residential use in the surrounding mobile home parks. Also, there is existing access to Washington Center using internal roads currently serving the commercial site.
3. The Most Desirable Use for Which the Land in the District is Adapted. Because of the site's use of an existing retail commercial building as well as its access to Washington Center Rd., the site is ideal for the proposed use.
4. The Conservation of Property Values throughout the Jurisdiction. The gas station and convenience store will be an amenity to the surrounding neighborhoods. The convenience store will allow for easier access to some food staples as an alternative for taking high-traffic arterials to the Meijer on Lima Rd.
5. Responsible Development and Growth. The review of the development plan submitted contemporaneously with this rezoning request will insure careful design and development of the proposed uses requiring C3 zoning.

FACT SHEET

Case #REZ-2024-0012

Bill # Z-24-03-17

Project Start: March 2024

PROPOSAL:	Rezoning Petition REZ-2024-0012 – 5725 Hatfield Road Gas Station Canopy
APPLICANT:	Washington Center Plaza, LLC
REQUEST:	To rezone from C2/Limited Commercial to C3/General Commercial to permit a new gas station canopy
LOCATION:	5725 Hatfield Road, east of its intersection with Washington Center Road (Section 21 of Washington Township)
LAND AREA:	1.37 acres
PRESENT ZONING:	C2/Limited Commercial
PROPOSED ZONING:	C3/General Commercial
COUNCIL DISTRICT:	3 – Nathan Hartman
SPONSOR:	Fort Wayne Plan Commission

April 8, 2024 Public Hearing

- No one from the public spoke at the hearing.
- 6 letters of support and 36 petition signatures in support were submitted to the Plan Commission.
- Patrick Zaharako was absent.

April 15, 2024 Business Meeting

Plan Commission Recommendation: DO PASS, with a Written Commitment

A motion was made by Karen Richards and seconded by Rick Briley to return the ordinance with a Do Pass recommendation, with a Written Commitment, to Common Council for their final decision.

8-0 MOTION PASSED

- Amos Norman was absent.

Fact Sheet Prepared by:

Karen Couture, Associate Land Use Planner

April 17, 2024

PROJECT SUMMARY

The petitioner is requesting to rezone the parcel from C2/Limited Commercial to C3/General Commercial and to approve a primary development plan for a gas station canopy. The site is located 150 feet east of Hatfield Road. The adjacent properties consist of R1/Single Family Residential to the north, C2/Limited Commercial to the east and west, and MHP/Manufactured Home Park to the south. The site itself has a multitenant commercial structure on site that will be part of the gas station.

The submitted development plan shows the proposed gas station canopy structure replacing a portion of the parking lot. The rest of the site will remain as is with the addition of a sidewalk along West Washington Center Road and some proposed landscaping. The proposed gas station will be accessed off West Street which is a private roadway that also provides access to the mobile home park to the south.

COMPREHENSIVE PLAN REVIEW

Future Growth and Development Map, Goals, and Strategies

- The project site is located within the Urban Infill Area. Development in urban infill areas should be focused on vacant lots within neighborhoods and commercial or industrial areas already served by infrastructure.
- The following Goal would be applicable and supportive of this request:
LUD1 – Encourage compatible infill development and redevelopment in the Urban Infill and Priority Investment Areas

Overall Land Use Policies

- The following Land Use Policies would be applicable and supportive of this request:
LUD Policy 7 – Encourage compatible adaptive reuse of vacant, obsolete, or underutilized nonresidential buildings.

Generalized Future Land Use Map

- The project site is located within the Mixed Residential generalized land use category.
- Adjacent properties are categorized as Mixed Residential to the east, south and west. The property to the north is categorized as a Production Center.

Overall Land Use Related Action Steps

- **LUD Goal 1** Encourage compatible infill development and redevelopment in the Urban Infill and Priority Investment Areas.

Compatibility Matrix

- This proposed use is permitted in C3/General Commercial which is considered potentially compatible with mixed residential. Mitigation techniques such as enhanced landscaping and a Written Commitment to restrict other auto-oriented, or outdoor sales uses can be employed to increase compatibility.

Other Applicable Plans: none

PUBLIC HEARING SUMMARY:

Presenter: Rob Kruger, representing the developer, presented the request as outlined above.

Public Comments: None

6 letters of support

36 signatures in support

FORT WAYNE PLAN COMMISSION • FINDINGS OF FACT

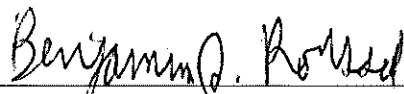
Rezoning Petition REZ-2024-0012 – 5725 Hatfield Road Gas Station Canopy

APPLICANT:	Washington Center Plaza, LLC
REQUEST:	To rezone property from C2/Limited Commercial to C3/General Commercial for gas pumps and canopy.
LOCATION:	3031 W Washington Center Road, 200 feet east of its intersection with Hatfield Road (Section 21 of Washington Township)
LAND AREA:	1.37 acres to be rezoned
PRESENT ZONING:	C2/Limited Commercial
PRESENT ZONING:	C3/General Commercial

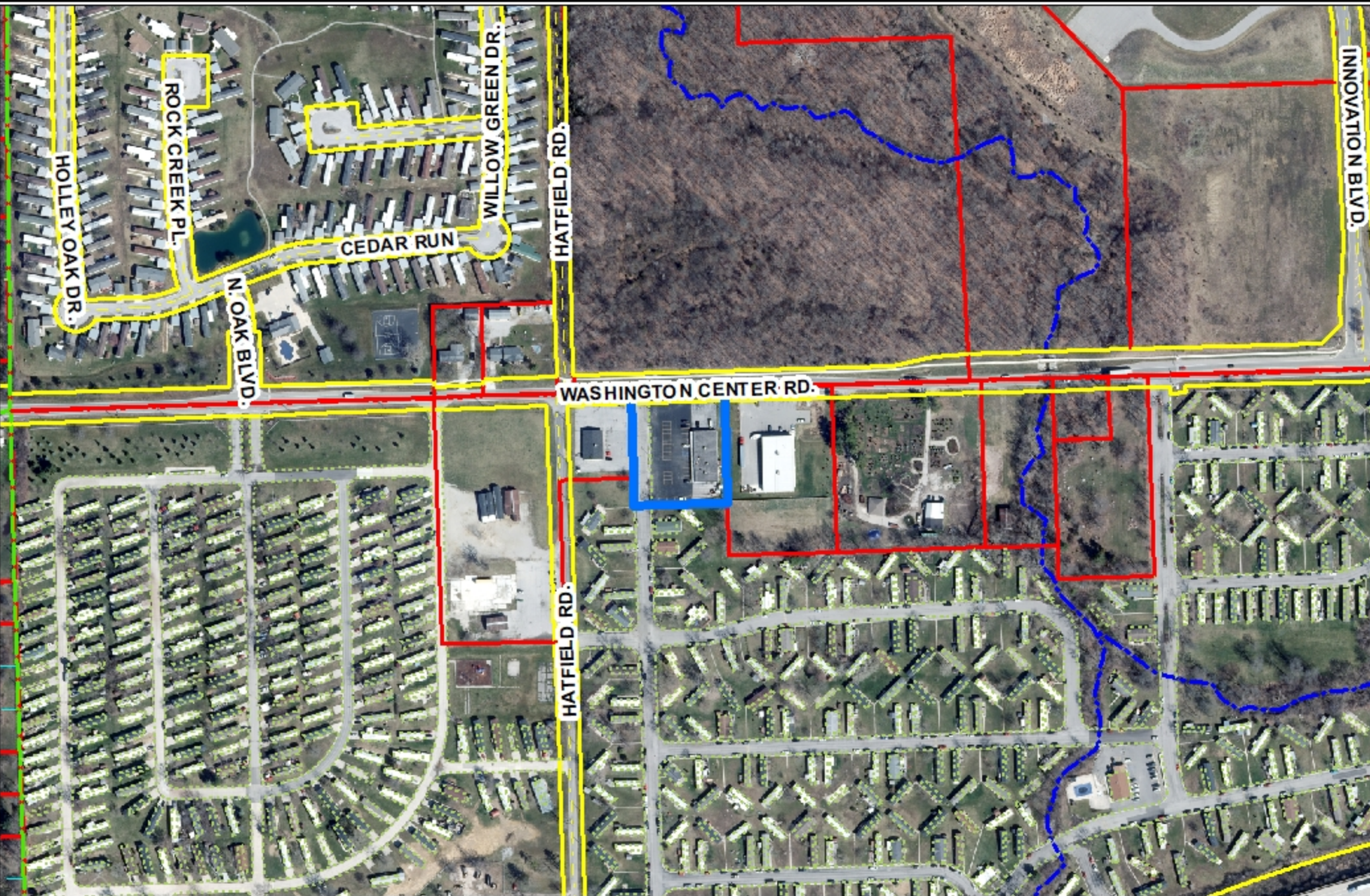
The Plan Commission recommends that Rezoning Petition REZ-2024-0012 be returned to Council, with a “Do Pass” recommendation with a written commitment after considering the following:

1. Approval of the rezoning request will be in substantial compliance with the City of Fort Wayne Comprehensive Plan, and should not establish an undesirable precedent in the area. The C3/General Commercial zoning will provide the opportunity to redevelop the site while providing additional commercial options along W Washington Center Road. The site is located within the urban infill area.
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 property is adjacent to other commercial zoning districts to the east and west. The existing building will be remodeled with modern architecture and receive significant investment.
3. Approval is consistent with the preservation of property values in the area. This proposal will allow reinvestment into the area and is adjacent to other commercial properties to the east and west. The proposal would construct a new gas station canopy in a portion of the property that is currently underutilized.
4. Approval is consistent with responsible development and growth principles based on existing uses and infrastructure in the area. Review by City engineering departments will ensure the required infrastructure is provided to the site. The rezoning is consistent with existing commercial zoning to the east and west.

These findings approved by the Fort Wayne Plan Commission on April 15, 2024.



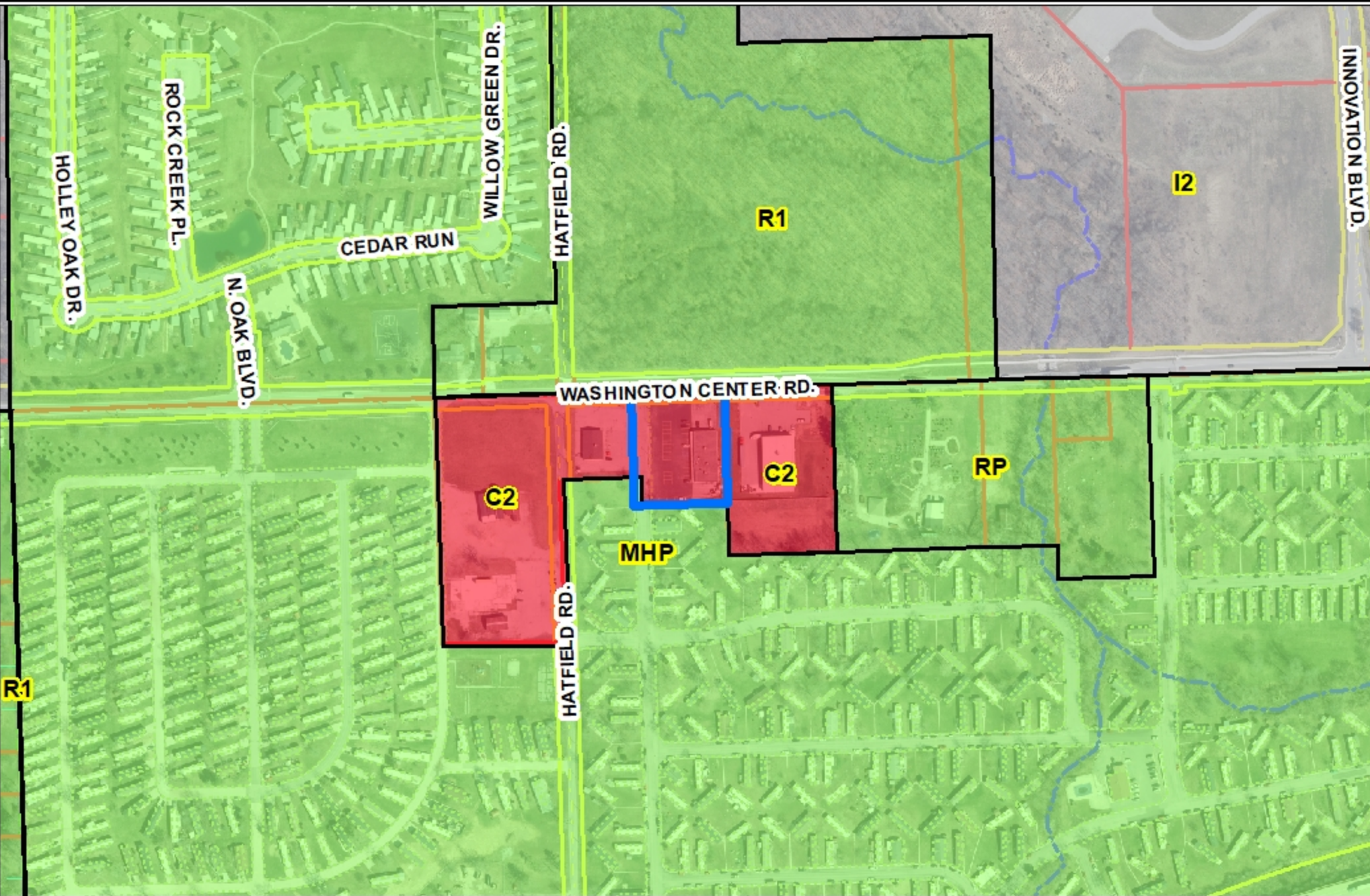
Benjamin J. Roussel
Executive Director
Secretary to the Commission

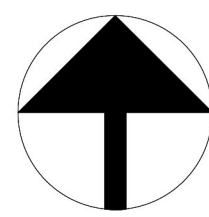
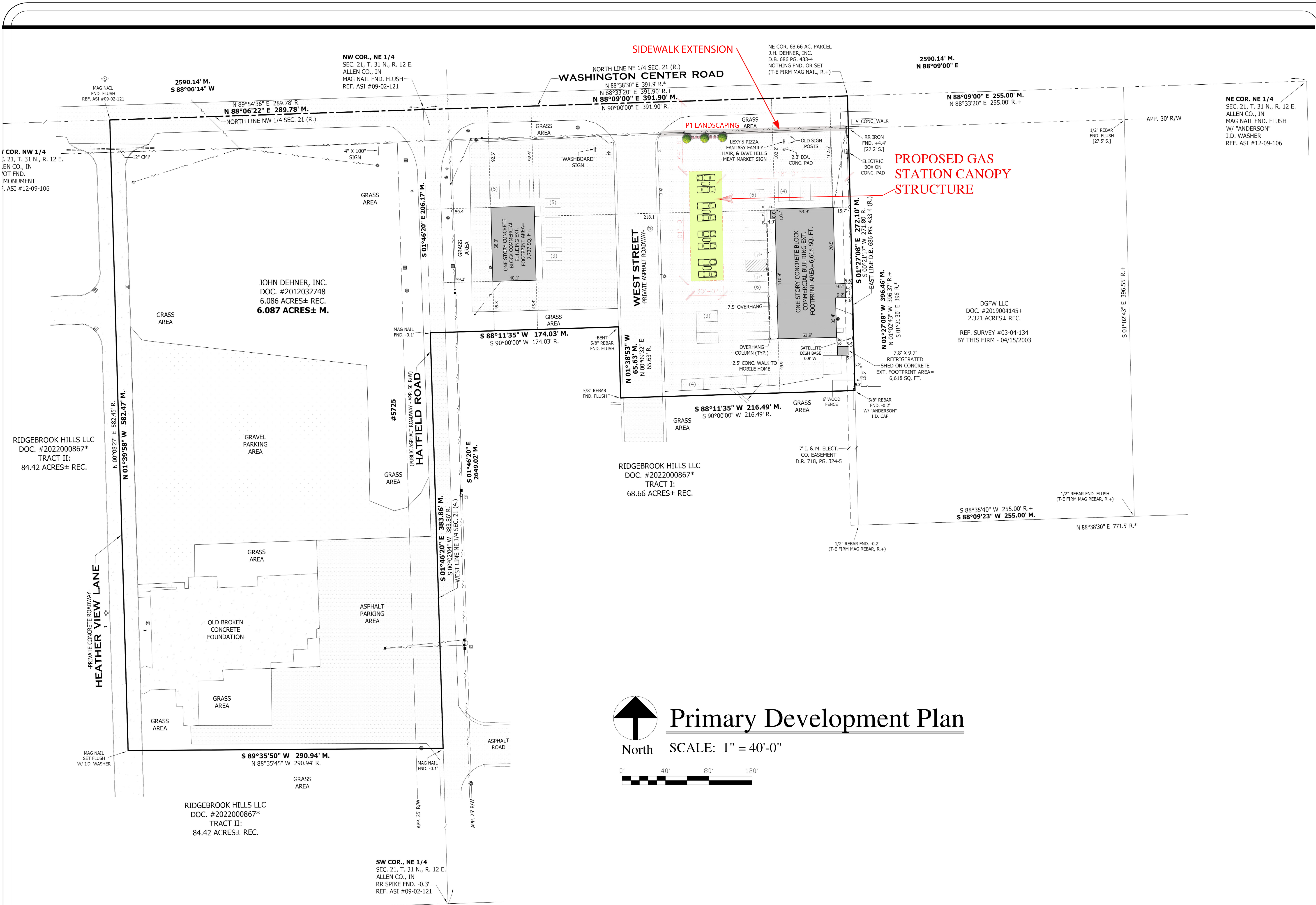


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 © 2004 Board of Commissioners of the County of Allen
 North American Datum 1983
 State Plane Coordinate System, Indiana East
 Photos and Contours: Spring 2009
 Date: 5/15/2024



1 inch = 300 feet





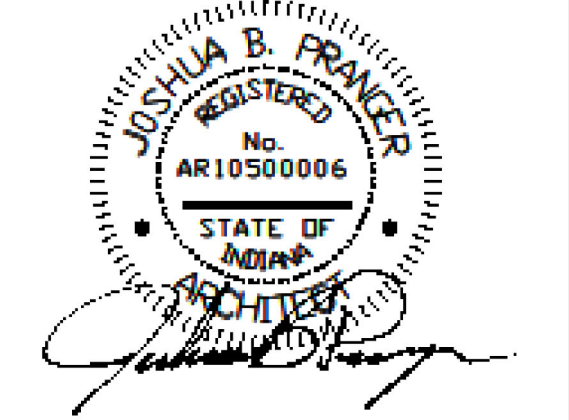
North SCALE: 1" = 40'-0"



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A Primary Development Plan For:

Washington Center Plaza, LLC.

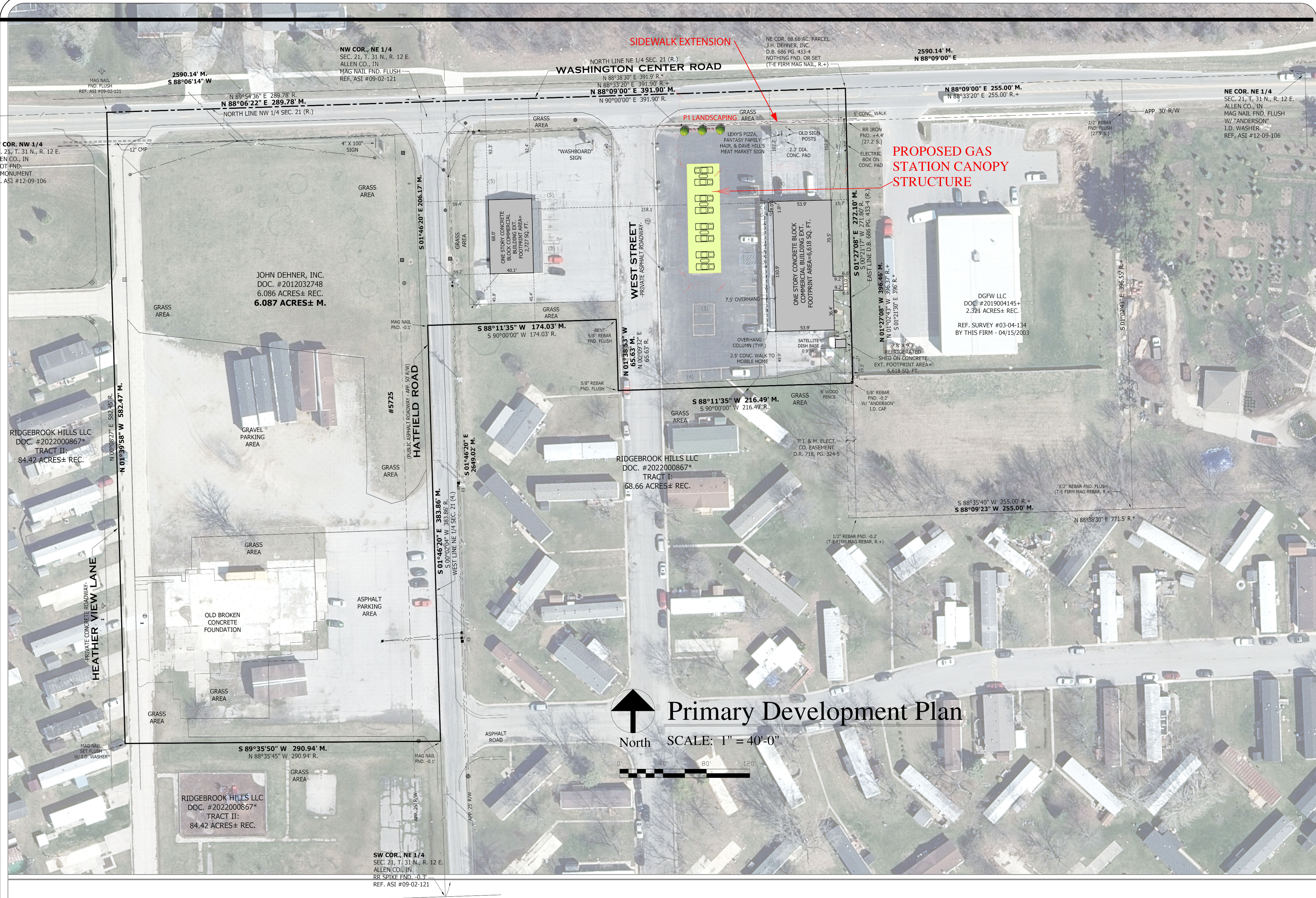
5725 Hatfield Road
Fort Wayne, Indiana

REVISION DATE BY

DATE 03-05-24 PROJECT NO. 6485

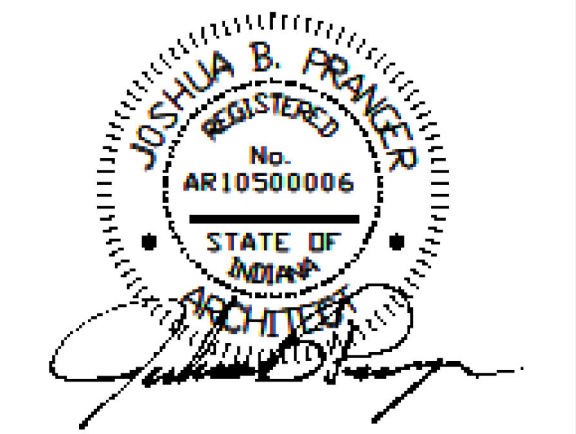
SHEET TITLE
Primary Development Plan

SHEET NO.
PDP-1



Each concept, idea, design, plan and detail as shown on this document is the sole property of Pranger Group Inc. and shall not be used for any purpose without the expressed written consent of Pranger Group Inc. The owner shall have the right to retain copies of this document for information and reference purposes as they pertain only to this project.

CERTIFICATION:



A Primary Development Plan For:

Washington Center Plaza, LLC.

5725 Hatfield Road
Fort Wayne, Indiana

REVISION DATE BY

DATE 03-05-24 PROJECT NO. 6485

SHEET TITLE
Primary Development Plan

SHEET NO.
PDP-2

WRITTEN COMMITMENT

THIS WRITTEN COMMITMENT (“Commitment”) is made this ____ day of April, 2024 by Washington Center Plaza, LLC, an Indiana limited liability company (the “Declarant”).

WITNESSETH:

WHEREAS, Declarant is the owner of approximately 1.37 acres of real estate located in Fort Wayne, Allen County, Indiana, the legal description of which is attached hereto as Exhibit “A” (the “Real Estate”); and

WHEREAS, Declarant submitted a rezoning petition with respect to the Real Estate to rezone the Real Estate from C2/Limited Commercial zoning district to a C3/General Commercial zoning district, bearing number REZ-2024-0012 and Primary Development Plan PDP 2024-0013 (collectively, the “Application”) which have been approved by the City of Fort Wayne Plan Commission (the “Plan Commission (the “Plan Commission”) and the Fort Wayne Common Council (“City Council”); and

WHEREAS, Declarant has offered this Commitment, voluntarily, pursuant to Indiana Code 36-7-4-1015, for the purpose of limiting certain uses for the Real Estate; and

WHEREAS, in conjunction with the Petition, the Plan Commission has accepted Declarant’s offer of this Commitment and its recordation with the Allen County, Indiana, Recorder’s Office upon approval of the Petition by the Plan Commission and City Council.

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 any portion of the Real Estate.

1. **Prohibited Uses.** **Except for the Permitted Uses specifically allowed in Paragraph 2 below, and** subject to the terms and conditions herein contained, the following uses shall be prohibited upon the Real Estate:

- 1) C3 Limited Commercial Specific Permitted Uses listed in Section 157.216 (B) of the Fort Wayne Zoning Ordinance
- 2) All C3 General Commercial Special Uses listed in Section 157.216 (C) of the Fort Wayne Zoning ordinance.

2. **Permitted Uses.** **The following uses shall be permitted on the Real Estate:**

- 1) Any use permitted in a C2/Limited Commercial zoning district; and

2) **The following specific uses permitted in a C3/General Commercial zoning district: **Automobile Car Wash, Gas Station, and Propane/Bottled gas sales as an accessory use to a gas station.****

3. Permits. No permits shall be issued under the zoning ordinance by the Zoning Administrator, or any successor agency having zoning jurisdiction over the Real Estate, 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.
4. Binding Effect, Modification, and Termination. This Commitment shall run with the Real Estate, and shall be binding upon the Declarant and each subsequent owner of the Real Estate and each other person acquiring an interest in the Real Estate, unless this Commitment is modified or terminated. The recitals are incorporated herein by reference and are expressly made a part of this Commitment. This Commitment may be modified or terminated only by a decision of the Plan Commission, following a public hearing held by the Plan Commission wherein notice has been given as provided by the Plan Commission's rules of procedure. The Plan Commission shall have the discretion whether to approve or deny any proposed modification or termination of this Commitment. This Commitment may only be modified or terminated by the Declarant or its successors proving to the Plan Commission that the proposed modification or termination is required because: (a) there is a substantial change in circumstances from the time of the original Commitment; (b) the proposed modification or termination is in substantial compliance with the Comprehensive Plan; (c) the proposed modification or termination is consistent with the Plan Commission's prior approval; and (d) the application of the terms of the original Commitment would cause an unnecessary hardship absent the modification or termination.
5. Recording. Declarant or Applicant shall, at Declarant's or Applicant's expense, record this Commitment with the Allen County Recorder and shall provide two copies of the recorded Commitment to the Zoning Administrator.
6. Enforcement. Any violation of this Commitment shall be deemed a violation of the zoning ordinance in effect 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 Plan Commission or any enforcement official designated in the zoning ordinance, or any successor agency having zoning jurisdiction over the Real Estate. Pursuant to I.C. §36-7-4-1015, the Plan Commission or any enforcement official designated in the zoning ordinance, shall be entitled to all legal and equitable remedies available, including specific performance and injunctive relief, for any violation of this Commitment. The enforcement rights of the Plan Commission or any enforcement official designated in the zoning ordinance are cumulative, not exclusive. This Commitment may be enforced by any successor commission or enforcement official having zoning jurisdiction over the Real Estate.

7. Authority to Sign. The person signing this Commitment in a representative capacity on behalf of Declarant warrants and represents that: (a) the person has the actual authority and power to so sign, and to bind the respective entity to the provisions of this Commitment; and (b) all corporate or other entity action necessary for the making of this Commitment has been duly taken.
8. Last Deeds of Record. The most recent deed of record for the Real Estate was recorded in the Office of the Recorder of Allen County, Indiana as Document Number 202400712.
9. 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.
10. Governing Law. This Commitment, including the restrictions and covenants hereunder, shall be governed by the laws of the State of Indiana.
11. Effective Date. The effective date (“Effective Date”) of this Commitment shall be the date of its recordation with the Office of the Recorder of Allen County, Indiana.

“DECLARANT”

WASHINGTON CENTER PLAZA, LLC

By: _____
Manveer Khatana, 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 April, 2024, personally appeared Manveer Khatana, Manager of Washington Center Plaza, LLC, and acknowledged the execution of the foregoing. In witness whereof, I have hereunto subscribed my name and affixed my official seal.

Notary Public

My Commission Expires: _____

My County of Residence: _____

THIS INSTRUMENT prepared by: Robert C. Kruger, Esq., BURT, BLEE, DIXON, SUTTON & BLOOM, LLP, 200 E. Main St., Ste. 1000, Fort Wayne, IN 46802; (260) 426-1300

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. Robert C. Kruger

Return to: _____

EXHIBIT "A"

LEGAL DESCRIPTION OF REAL ESTATE

The eastern 216.49 feet of the following:

Part of the Northeast Quarter and the Northwest Quarter of Section 21, Township 31 North, Range 12 East, Allen County, Indiana, more particularly described as follows:

Beginning at the Northwest corner of the Northeast Quarter of said Section 21; thence North 90 degrees 00 minutes 00 seconds East (assumed bearing for the North line of said Northeast Quarter and is the basis of bearings this description) along the North line of said Northeast Quarter, being within the right of way of Washington Center Road, 391.90 feet to the Northeast corner of a 68.66 acres parcel (John H. Dehner, Inc.), Deed Book 686, page 433-34; thence South 00 degrees 21 minutes 17 seconds West along the East line of said Deed Book 686, page 433-34, 271.80 feet to a point; thence South 90 degrees 00 minutes 00 seconds West 216.49 feet to a point; thence North 00 degrees 09 minutes 32 seconds East, 65.63 feet to a point; thence South 90 degrees 00 minutes 00 seconds West, 174.03 feet to a point on the West line of said Northeast Quarter; thence South 00 degrees 02 minutes 04 seconds West along said West line, 383.86 feet to a point; thence North 88 degrees 35 minutes 45 seconds West, 290.94 feet to a point; thence North 00 degrees 08 minutes 27 seconds East, 582.45 feet to a point on the North line of the Northwest Quarter of said Section 21; thence North 89 degrees 54 minutes 36 seconds East along said North line, being within the right of way of Washington Center Road, 289.78 feet to the point of beginning, said in previous deed to contain 6.086 acres of land, more or less.

Property Address: Part of 5725 Hatfield Road, Fort Wayne, IN 46818