

A RESOLUTION approving a Waiver of Noncompliance for a Late-Filed Application for the Economic Revitalization Area Deduction on Real Property Improvements (Form 322/RE) for Allied Building Company, LLC/NeuroSpine/Pain Surgery Center, LLC

WHEREAS, the Allen County Council designated and declared by Confirmatory Resolution and a Statement of Benefits Approval Resolution property at 7950 West Jefferson Boulevard for Allied Building Company, LLC/NeuroSpine/Pain Surgery Center, LLC (Resolution Number 05-07-21-1) pursuant to Allen County Council Resolution Number 2004-12-16-03 and I.C. 6-1.1-12.1; and

WHEREAS, the property designated an economic revitalization area in 2005 for Allied Building Company, LLC/NeuroSpine/Pain Surgery Center, LLC by Allen County Council was located in unincorporated Allen County; and

WHEREAS, the property is now located in the City of Fort Wayne as a result of the Southwest Extended annexation effective January 1, 2006; and

WHEREAS, Common Council with the support of Allen County Council will process Allied Building Company, LLC/NeuroSpine/Pain Surgery Center, LLC's request for a waiver of non compliance; and

WHEREAS, the original Statement of Benefits and economic revitalization area designation application submitted by Allied Building Company, LLC/NeuroSpine/Pain Surgery Center, LLC and approved under Resolution Number 05-07-21-1 was for \$9,600,000 in real property improvements and \$1,500,000 in personal property improvements; and

WHEREAS, construction of a 56,000 square foot medical office building for NeuroSpine/Pain Surgery Center, LLC was completed in August 2006; and

WHEREAS, Allied Building Company, LLC/NeuroSpine/Pain Surgery Center, LLC received a partial assessment on their real property improvements for 2006 payable 2007; and

WHEREAS, Allied Building Company, LLC/NeuroSpine/Pain Surgery Center, LLC filed FORM 322/RE with the Allen County Auditor's Office to receive their real property tax abatement for 2006 payable 2007 tax year; and

WHEREAS, representatives of Allied Building Company, LLC/NeuroSpine/Pain Surgery Center, LLC have informed the City of Fort Wayne that their application for

deduction from assessed valuation of structures in economic revitalization areas (322 /RE) for the remainder of their building for 2007 payable 2008 tax year was not filed in a timely manner; and

WHEREAS, this oversight was an unusual occurrence for Allied Building Company, LLC/NeuroSpine/Pain Surgery Center, LLC which has made diligent efforts in good faith to make all required Indiana tax abatement filings on a timely basis on other economic revitalization area designation paperwork; and

WHEREAS, the Common Council finds that Allied Building Company, LLC/NeuroSpine/Pain Surgery Center, LLC has fulfilled its pledge to build the facility; and

WHEREAS, NeuroSpine/Pain Surgery Center, LLC has retained its workforce and created new jobs as reported on the approved statement of benefits forms; and

WHEREAS, the Common Council acknowledges that Allied Building Company, LLC/NeuroSpine/Pain Surgery Center, LLC has requested a waiver of non compliance which the Common Council has the power and authority to approve, under I.C. 6-1.1-12.1-9.5 and I.C. 6-1.1-12.1-11.3; and

WHEREAS, the Common Council intends that Allied Building Company, LLC/NeuroSpine/Pain Surgery Center, LLC receive the tax abatement benefits to which they would have been entitled had no non compliance event occurred, so long as the waiver of non compliance and the granting of those benefits does not prejudice the City of Fort Wayne; and

WHEREAS, the Common Council has concluded that granting of the ERA deduction for 2007 payable 2008 tax year and paying Allied Building Company, LLC/NeuroSpine/Pain Surgery Center, LLC an immediate refund of the excess taxes paid in those years would not be fiscally responsible under the circumstances, but granting relief by permitting Allied Building Company, LLC/NeuroSpine/Pain Surgery Center, LLC to receive the lost ERA deductions over one year would be an appropriate way for the Common Council to grant Allied Building Company, LLC/NeuroSpine/Pain Surgery Center, LLC the benefit of its tax abatement without creating a strain on the City of Fort Wayne's fiscal budget; and

WHEREAS, I.C. 6-1.1-12.1-9.5 and I.C. 6-1.1-12.1-11.3 permit tax abatement non compliance events such as the untimely filing of deduction application paperwork to be waived; and

WHEREAS, the noncompliance event has been corrected and a public hearing of the Common Council has been held on the waiver.

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

SECTION 1. That, Common Council hereby waives all clerical and technical errors and nonconformities that are waivable under State and local law, including without limitation those errors and nonconformities described in I.C. 6-1.1-12.1-9.5 and I.C. 6-1.1-12.1-11.3.

SECTION 2. As authorized by I.C. 6-1.1-12.1-9.5(d), the Common Council will permit Allied Building Company, LLC/NeuroSpine/Pain Surgery Center, LLC to recover the lost ERA deduction amounts in subsequent tax years, in accordance with the following schedule:

Tax Year	Real Property Deduction Amount
2009 pay 2010	\$45,605.18
TOTAL	\$45,605.18

The foregoing numbers represent deductions from assessed valuation of real property, not credits against tax liability. The total deduction amounts set forth in the preceding table represent deductions Allied Building Company, LLC/NeuroSpine/Pain Surgery Center, LLC lost in 2007 payable 2008 that will be applied to Allied Building Company, LLC/NeuroSpine/Pain Surgery Center, LLC 2009 payable 2010 real property taxes. These amounts shall be in addition to the real property tax abatement deduction amounts to which Allied Building Company, LLC/NeuroSpine/Pain Surgery Center, LLC would have been or will be entitled in the one-year period over which the lost 2007 payable 2008 deduction amount is recouped. The Allen County Auditor shall be supplied with a copy of this Resolution, upon passage, and instructed to apply the additional deduction amounts in accordance with this schedule. Any credit given to Allied Building Company, LLC/NeuroSpine/Pain Surgery Center, LLC for the 2007 payable 2008 deduction amount shall forego interest normally due. This resolution shall have no effect on the assessed value, tax abatement deductions, or taxes payable with respect to Allied Building Company, LLC/NeuroSpine/Pain Surgery Center, LLC personal property.

SECTION 3. That, this Resolution shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Elizabeth M. Brown
Council Member

Read the third time in full and on motion by Brown. and duly adopted, placed on its passage. PASSED by the following vote:

AYES: Nine
Bender, Brown, Didier, Goldner,
Harper, Hines, Pape, Shoaff, Smith
NAYS: None
ABSTAINED: None
ABSENT: None

DATED: 10-27-09

Sandra E. Kennedy
City Clerk

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as Resolution No. R-58-09 on the 27th day of October, 2009

ATTEST:

SEAL

Sandra E. Kennedy
City Clerk

Thomas E. Smith
Presiding Officer

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 28th day of October, 2009, at the hour of 4:00 o'clock P.M. E.S.T.

Sandra E. Kennedy
City Clerk

Approved and signed by me this 29th day of October, 2009, at the hour of 2:00 o'clock P..M, E.S.T.

Thomas C. Henry
Mayor