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#1303

BILL NO. Z-13-01-16

ZONING MAP ORDINANCE NO. Z- 5-13

AN ORDINANCE amending the City of Fort Wayne
Zoning Map No. L-26 (Sec. 26 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 CM3
(General Commercial) District under the terms of Chapter 157 Title XV of the Code of the
City of Fort Wayne, Indiana:

The North 119.5 feet of the West 291.06 feet of the Northwest Quarter of Section 26,
Township 31 North, Range 12 East, said by previous deeds to contain 0.41 acres,
more or less.

ALSO:

The South 149.6 feet of the North 269.1 feet of the West 291.6 feet of the Northwest
Quarter of Section 26, Township 31 North, Range 12 East, said by previous deeds to
contain 1.0 acre, more or less.

EXCEPT THE FOLLOWING:

A part of the Northwest Quarter of Section 26, Township 31 North, Range 12 East,
Allen County, Indiana, described as follows:

Commencing at the Northwest corner of said Quarter Section; thence North 88
degrees 44 minutes 26 seconds East 291.06 feet along the North line of said Quarter
Section to the Northeast corner of the Owner's land; thence South 1 degree 35
minutes 00 seconds East 52.36 feet along the East line of the Owner's land to the
Point of Beginning of this description, which point is on the South boundary of
U.S.R. 30 Bypass (California Road); thence South 1 degree 35 minutes 00 seconds
East 45.19 feet along said East line; thence South 88 degrees 53 minutes 00 seconds
West, 200.97 feet; thence South 88 degrees 53 minutes 18 seconds West 30.10 feet;
thence South 43 degrees 49 minutes 32 seconds West 49.12 feet to the East boundary
of Sherman Boulevard; thence North 1 degree 35 minutes 00 seconds West 55.00
feet along said East boundary to a Southeastern boundary of said Boulevard; thence
North 54 degrees 36 minutes 41 seconds East 44.36 feet along said Southeastern
boundary to the South boundary of U.S.R. 30 Bypass (California Road; thence along
said South boundary Easterly 75.01 feet along an arc to the left and having a radius
of 180984.04 feet and subtended by a long chord having a bearing of North 88
degrees 53 minutes 43 seconds East and a length of 75.01 feet; thence North 88

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1 degrees 53 minutes 00 seconds East 154.19 feet along said South boundary to the
2 Point of Beginning and containing 0.279 acres, more or less.

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4 and the symbols of the City of Fort Wayne Zoning Map No. L-26 (Sec. 26 of Washington
5 Township), as established by Section 157.082 of Title XV of the Code of the City of Fort
6 Wayne, Indiana is hereby changed accordingly.

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

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10 
Council Member

11 APPROVED AS TO FORM AND LEGALITY:

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14 Carol T. Helton, City Attorney
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City of Fort Wayne Common Council
DIGEST SHEET

Department of Planning Services

Title of Ordinance: Zoning Map Amendment
Case Number: 1303/13
Bill Number: Z-13-01-16
Council District: 3 – Tom Didier

Introduction Date: January 22, 2013

Plan Commission
Public Hearing Date: February 11, 2013

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

Synopsis of Ordinance: To rezone approximately 1.13 acres of property from CM2-Limited Retail and
Commercial to CM3-General Commercial with a Written Commitment

Location: 821 West Coliseum Boulevard.

Reason for Request: To expand retail services with certain CM3 uses in the existing retail center.

Applicant: Bill and Jerry, LLC

Property Owner: Bill and Jerry, LLC

Related Petitions: none

Effect of Passage: Property will be rezoned to CM3-General Commercial, which allows for retail
gun and ammunition sales. A voluntary Written Commitment will be
submitted to restrict other intensive uses within the CM3 zoning
classification.

Effect of Non-Passage: The property will remain zoned CM2-Limited Retail and Commercial and
will continue to allow the other existing retail tenants, however the gun shop
owner will need to find a different location.

**Department of Planning Services
Rezoning Petition Application**

Applicant
 Applicant BILL & JERRY, LLC.
 Address 821 W. COLISEUM BLVD.
 City FORT WAYNE State IN Zip 46808
 Telephone _____ Fax _____ E-mail _____

Property Ownership
 Property Owner BILL & JERRY, LLC.
 Address 821 W. COLISEUM BLVD, ST. 1
 City FORT WAYNE State IN Zip 46808
 Telephone (260) 417-2752 Fax _____ E-mail _____

Contact Person
 Contact Person BILL KESTERKE
 Address 821 W. COLISEUM BLVD.
 City FORT WAYNE State IN Zip 46808
 Telephone (260) 740-7331 Fax (260) 485-0439 E-mail billkesterkey@gmail.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 821 W. COLISEUM BLVD.
 Present Zoning CM2 Proposed Zoning CM3 Acreage to be rezoned 1.13
 Proposed density N/A units per acre
 Township name * WASHINGTON Township section # 26
 Purpose of rezoning (attach additional page if necessary) TO PERMIT URBAN CM3 USES.

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 contact staff 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 Rezonings 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>BILL KESTERKE</u> (printed name of applicant)	<u>Bill Kesterke</u> (signature of applicant)	<u>12/26/12</u> (date)
<u>BILL KESTERKE</u> (printed name of property owner)	<u>Bill Kesterke</u> (signature of property owner)	<u>12/26/12</u> (date)
<u>Jerry R Ely</u> (printed name of property owner)	<u>Jerry R Ely</u> (signature of property owner)	<u>12/27/12</u> (date)
_____ (printed name of property owner)	_____ (signature of property owner)	_____ (date)

Received	Receipt No	Hearing Date	Petition No
<u>12/13</u>	<u>110487</u>		<u>1303/13</u>
			<u>Re2-2013-0803</u>

* 2 0 0 9 0 6 7 1 6 7 2 *

2009067167

RECORDED ON
12/31/2009 06:11:12PM
JOHN MCGAULEY
ALLEN COUNTY RECORDER
FORT WAYNE, IN

REC FEE: 18.00
TRANS # 80757

QUITCLAIM DEED

Mail tax bills to:

*821 W Coliseum/ste 7
+ Wayne IN 46808*

Grantee mailing address:

Same

THIS INDENTURE WITNESSETH, that **BILL KESTERKE**, over the age of eighteen (18) years of Allen County in the State of Indiana ("Grantor"), **RELEASES AND QUITCLAIMS UNTO BILL & JERRY, LLC**, an Indiana limited liability company, of Allen County in the State of Indiana ("Grantee"), in consideration of Ten Dollars and No Cents (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, real estate located in Allen County, Indiana, more particularly described as follows, to-wit:

PARCEL 1

The North 119.5 feet of the West 291.06 feet of the Northwest Quarter of Section 26, Township 31 North, Range 12 East, said by previous deeds to contain .41 acres, more or less.

ALSO

The South 149.6 feet of the North 269.1 feet of the West 291.6 feet of the Northwest Quarter of Section 26, Township 31 North, Range 12 East, said by previous deeds to contain 1 acre, more or less.

Except the following:

A part of the Northwest Quarter of Section 26, Township 31 North, Range 12 East, Allen County, Indiana, described as follows:

Commencing at the Northwest corner of said Quarter Section; thence North 88 degrees 44 minutes 26 seconds East 291.06 feet along the North line of said Quarter Section to the Northeast corner of the owner's land; thence South 1 degree 35 minutes 00 seconds East 52.36 feet along the East line of the Owners' land to The Point of Beginning of this description, which point is on the South boundary of U.S.R. 30 Bypass (California Road); thence South 1 degree 35 minutes 00 seconds East 45.19 feet along said East line; thence South 88 degrees 53 minutes 00 seconds West, 200.97 feet; thence South 88 degrees 53 minutes 18 seconds West 30.10 feet; thence South 43 degrees 49 minutes 32 seconds West 49.12 feet to the East boundary of Sherman Boulevard; thence North 1 degree 35 minutes 00 seconds West 55.00 feet along said East boundary to a Southeastern Boundary of said Boulevard; thence North 54 degrees 36 minutes 41 seconds East 44.36 feet along said Southeastern boundary to the South boundary of U.S.R. 30 Bypass (California Road); thence along said South boundary Easterly 75.01 feet along an arc to the left and having a radius of 180984.04 feet and subtended by a long chord having a bearing of North 88 degrees 53 minutes 43 seconds East and a length of 75.01 feet; thence North 88 degrees 53 minutes 00 seconds East 154.19 feet along said South boundary to the Point of Beginning and containing 0.279 acres, more or less.

PARCEL 2

The North 119.5 feet of the West 291.06 feet of the Northwest Quarter of Section 26, Township 31 North, Range 12 East, said by previous deeds to contain .41 acres, more or less.

DEC 31 2009

Stacy O'Jat
STACY O'JAT
ALLEN COUNTY ASSESSOR

DEC 31 2009
78652

ALLEN COUNTY RECORDER

SUBJECT to all conditions, easements, restrictions, and limitations of record, as well as all applicable zoning ordinances.

DATED: 12/8/09.



(Signature)

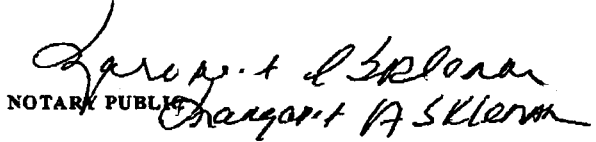
BILL KESTERKE

(Printed Name)

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, a Notary Public in and for said County and State, this 28 day of Dec 09, appeared **BILL KESTERKE**, over the age of eighteen (18) years, who acknowledged the execution of the above and foregoing Quitclaim Deed. I have, in witness thereof, subscribed my name and affixed my official seal.

My Commission Expires: 12/26/2016
Resident of: Whitley Co IN


NOTARY PUBLIC

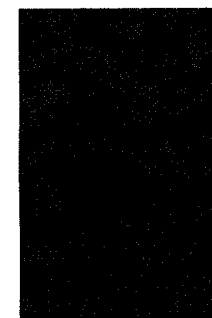
This instrument prepared by **VINCENT J. HEINY** (7638-02), Attorney at Law, Haller & Colvin, P.C., 444 East Main Street, Fort Wayne, Indiana 46802; telephone: (260) 426-0444; fax: (260) 422-0274. I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by Law. Vincent J. Heiny

PADEEDS\463809.wpd (12/28/09 10:12AM)





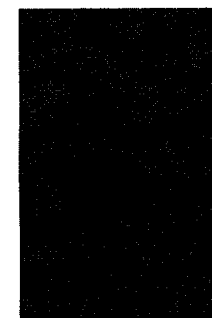
This map is for representational purposes only - Boundaries identified by bold colored lines represent the general location of the proposed project

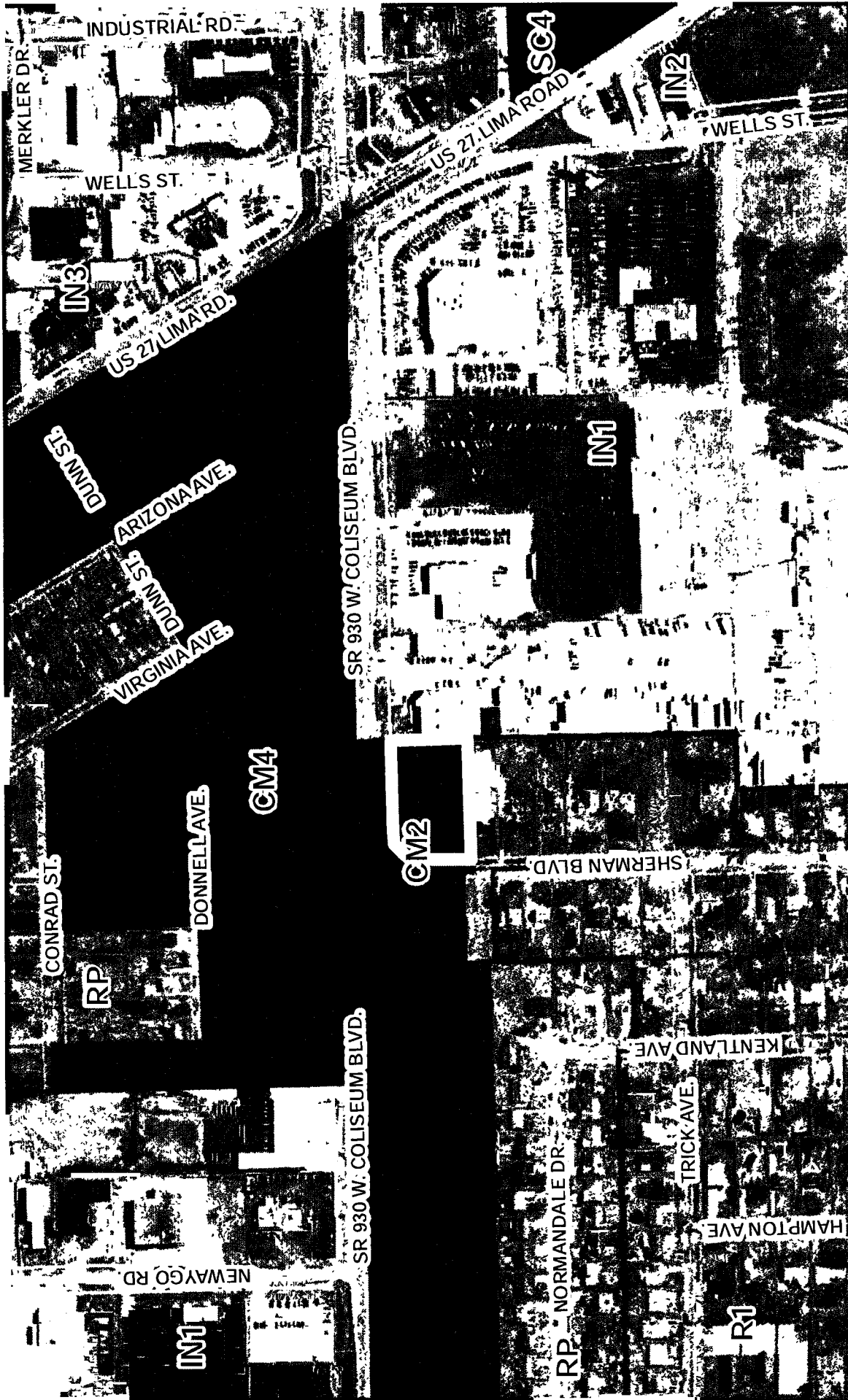


Rezoning Petition 1303/13

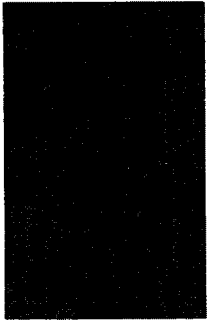
Printed: January 14, 2013
 © 2011 Board of Commissioners of the County of Allen
 North American Datum 1983
 State Plane Coordinate System Indiana 12 s

Although every attempt has 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 liabilities resulting from any error or omission in this map.



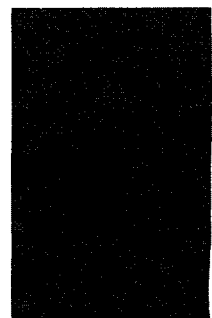


This map is for representational purposes only - Boundaries identified by bold colored lines represent the general location of the proposed project



Rezoning Petition 1303/13

Printed: January 14, 2013
 © 2004 Board of Commissioners of the County of Allen
 North American Datum 1983
 State Plane, NAD 83, Zone 14 East
 Photos: Spring 2006, 2008, 2009
 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.



BILL NO. Z-13-01-16

REGULATIONS COMMITTEE

MARCH 12, 2013

**GLYNN HINES – CHAIR
RUSSELL JEHL – CO-CHAIR
COUNCIL MEMBERS**

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS REFERRED **AN ORDINANCE AMENDING THE CITY OF FORT WAYNE ZONING MAP NO. L-26 (SEC. 26 OF WASHINGTON TOWNSHIP). THE PROPERTY LOCATION IS 821 WEST COLISEUM BOULEVARD. COMMITTEE OF FINANCE** HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE

DO PASS,

DO NOT PASS

ABSTAIN

NO REC

[Handwritten signatures under 'DO PASS']
Glynn Hines
Russell Jehl
Jeff Billard
Sylvia Campbell
Donna F. LeBlanc
Martin A. Bunker

[Handwritten signature under 'DO NOT PASS']
13-01-16

SANDRA E. KENNEDY
CITY CLERK

BILL NO. Z-13-01-16

REPORT OF COMMITTEE ON REGULATIONS

FEBRUARY 5, 2013

**GLYNN HINES – CHAIR
RUSSELL JEHL – CO-CHAIR
ALL COUNCIL MEMBERS**

WE, YOUR COMMITTEE ON REGULATIONS TO WHOM WAS REFERRED AN
ORDINANCE AMENDING THE CITY OF Fort Wayne Zoning Map No. L-26
(Sec. 26 of Washington Township). The property location is 821
West Coliseum Boulevard. HAVE HAD SAID ORDINANCE UNDER
CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL
THAT SAID ORDINANCE

DO PASS

DO NOT PASS

ABSTAIN

NO REC

SANDRA E. KENNEDY
CITY CLERK

Public Hearing Date, if applicable

Read the first time in full and on motion by Councilman *Glynn Hines*
Read the second time by title and referred to the *Regulation Committee*
Committee. Read the third time in full and on motion by Councilman
Hines, placed on passage by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	8	1		
BENDER	1			
CRAWFORD	1			
DIDIER	1			
HARPER	1			
HINES	1			
JEHL	1			
PADDOCK	1			
SHOAFF		1		
SMITH	1			

DATED: 3-12-13 *Sandra E. Kennedy*
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as
(ANNEXATION) (APPROPRIATION) (GENERAL) (SPECIAL) (ZONING) ORDINANCE
(RESOLUTION) NO. 7-5-13 on the 12th day of
March, 2013

ATTEST:
Sandra E. Kennedy
SANDRA E. KENNEDY,
CITY CLERK

Thomas F. Didier
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 13th day
of March, 2013, at the hour of 2:30 o'clock P.M. E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 14th day of MARCH
2013, at the hour of 9:00 o'clock A.M. E.S.T.

Thomas C. Henry
THOMAS C. HENRY, MAYOR

FACT SHEET

Case #1303

Bill # Z-13-01-16

Project Start: 22 January 2013

APPLICANT: Bill and Jerry, LLC
REQUEST: To rezone property from CM2-Limited Retail and Commercial to CM3-General Commercial
LOCATION: 821 West Coliseum Boulevard (Section 26 of Washington Township)
LAND AREA: Approximately 1.13 acres
PRESENT ZONING: CM2-Limited Retail and Commercial
PROPOSED ZONING: CM3-General Commercial
NEIGHBORHOOD ASSOCIATIONS: Northwest Area Partnership, North Franke Park Association, Neighborhood Advocate
COUNCIL DISTRICT: 3-Tom Didier
ASSOCIATED PROJECTS: none
SPONSOR: City of Fort Wayne Plan Commission

11 February 2013 Public Hearing

- No one spoke at the hearing in support.
- No one spoke at the hearing in opposition.
- All members were present.
- **Staff recommended Do Pass with a Written Commitment**

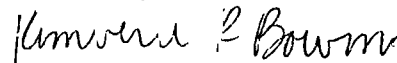
18 February 2013 – Business Meeting

Plan Commission Recommendation: DO PASS

- A motion was made by Don Schmidt and seconded by Barney Niezer to return the ordinance to Common Council for their final decision. **MOTION CARRIED 7-1**
- John Shoaff opposed.
- Judi Wire was absent.

Fact Sheet Prepared by:
Michelle Wood, Senior Land Use Planner
6 March 2013

Reviewed By:



Kimberly R. Bowman, Executive Director

PROJECT SUMMARY

The petitioner requests a rezoning from CM2-Limited Retail and Commercial to CM3-General Commercial for the existing multi-tenant retail center at 821 West Coliseum. There is no development plan associated with this request and the center is fully built.

The purpose of this request is to expand the commercial uses. The applicant has submitted a voluntary written commitment that outlines the proposed permitted uses on the site. Including all CM1 and CM2 uses, which are currently permitted, the applicant is seeking permission to also allow the following uses:

- automobile sales facility (excluding outdoor display)
- banquet/reception hall
- business or trade school
- check cashing establishment
- dance hall
- exterminating or pest control business
- furniture repair or refinishing shop
- glass cutting or glazing shop
- indoor simulated golf driving range
- gun shop or retail firearms dealer, as a primary or accessory use
- heating and air conditioning sales and service
- home improvement business
- indoor miniature golf course
- plumbing, retail sales and repair service
- retail feed store
- seasonal outdoor retail sales
- window and screen sales or repair shop

The existing zoning and land uses in the area are varied, but in general are commercial or industrial. This area has been intensively zoned since at least 1955. The residential neighborhood to south has remained and North Franke Park Neighborhood maintains an association. The first residential parcel south of this development is owned by the petitioner and has a Use Variance approval from the Board of Zoning Appeals for commercial storage. The access to the storage building is shared with the shopping center on Sherman Boulevard. The south line of the property is currently screened from the adjacent residential property. The area to the north is zoned CM4, the most intensive commercial district, and is predominately auto-oriented land use. While the property immediately to the east is retail and commercial, the zoning is industrial, which extends to Wells Street and to Lima Road. The land to the west is CM2 and the adjacent use is a gas station, with restaurants and other retail services on the south side of Coliseum. The north side of Coliseum to the west is populated with a variety of uses, such as restaurants, a gas station, a motel, and indoor shooting range and gun sales. The existing shopping center in this proposal currently includes a variety of commercial and retail uses, including a home improvement business office, a beauty supply store and a check cashing establishment. The applicant has chosen those CM3 uses that he feels are compatible with his current tenants and the type of commercial and retail services available along Coliseum and those that will not negatively impact the neighborhood to the south.

This request is very similar to the Canopy Corners rezoning on Getz Road in 2010. In addition to expanding the permitted uses in general, the shopping center has taken on a new tenant that specializes in retail gun and supplies sales. When it was realized that this is not a permitted use, the owner of the shopping center applied for the rezoning. The applicant has contacted the neighborhood president. Staff has not received any calls or letters regarding this proposal.

The 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. With the exception of seasonal outdoor retail sales,

all of the proposed uses would be housed completely indoors and would not change the character or conditions of the existing shopping center. The proposed uses are all permitted within the CM4 zoning district, which is adjacent to this property, and also in the IN1 district, which is adjacent to this property and the residential neighborhood.

PUBLIC HEARING DISCUSSION:

Bill Kesterke, owner of Key Exteriors and co-property owner of the shopping center presented the rezoning request to the Plan Commission. He explained the desire to expand the commercial uses available in the retail building. A Written Commitment was submitted that restrict some of the more intensive commercial uses in the CM3 district. He explained that the change would have no adverse affect on neighboring properties and there would be no physical changes to the site. Mr. Kesterke spoke with Mike Rueille, President of North Franke Park Association, and received no opposition.

No one spoke at the hearing in opposition or support.

FORT WAYNE PLAN COMMISSION • FINDINGS OF FACT

Rezoning Petition 1303/13 (REZ-2013-003)

APPLICANT: Bill & Jerry, LLC
REQUEST: To rezone property from CM2-Limited Retail and Commercial to CM3-General Commercial to expand retail sales
LOCATION: The site is located on the south side of the 800 block of West Coliseum Boulevard, and lies at the southeast corner of the intersection of Sherman Boulevard and West Coliseum Boulevard. The address of the subject property is 821 West Coliseum Boulevard (Section 26 of Washington Township).
LAND AREA: Approximately 1.13 acres
PRESENT ZONING: CM2-Limited Retail and Commercial
PROPOSED ZONING: CM3-General Commercial

The Plan Commission returns Rezoning Petition 1303/13 with an approved Written Commitment to Common Council, with a recommendation of “Do Pass” for the reasons stated below:

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 general area surrounding the site is a mixture of residential, retail, auto service and commercial uses. Adjacent properties allow equally or more intensive commercial uses. Approval of this request can offer a greater diversity of services while not changing the exterior look or layout of the shopping center.
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 Written Commitment prohibits those uses that would be out of character in a neighborhood shopping development. With the exception of seasonal outdoor sales, all of the uses would be housed indoors and would not require any site changes.
3. Approval is consistent with the preservation of property values in the area. This proposal is consistent with surrounding zoning classifications and the commercial character of the West Coliseum corridor.
4. Approval is consistent with responsible development and growth principles based on existing uses and infrastructure in the area. This proposal is to expand the permitted uses in an existing commercial development. There are no requests for additional infrastructure.

These findings approved by the Fort Wayne Plan Commission on February 18, 2013.



Michael Bultemeier
Secretary to the Commission

**Department of Planning Services
Rezoning Petition Application**

Applicant
 Applicant **BILL & JERRY, LLC.**
 Address **821 W. COLISEUM BLVD.**
 City **FORT WAYNE** State **IN** Zip **46808**
 Telephone _____ Fax _____ E-mail _____

Property Ownership
 Property Owner **BILL & JERRY, LLC.**
 Address **821 W. COLISEUM BLVD, ST. 1**
 City **FORT WAYNE** State **IN** Zip **46808**
 Telephone **(260) 417-2752** Fax _____ E-mail _____

Contact Person
 Contact Person **BILL KESTERKE**
 Address **821 W. COLISEUM BLVD.**
 City **FORT WAYNE** State **IN** Zip **46808**
 Telephone **(260) 740-7831** Fax **(260) 485-0434** E-mail **billkesterkey@gmail.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 **821 W. COLISEUM BLVD.**
 Present Zoning **CM2** Proposed Zoning **CM3** Acreage to be rezoned **1.13**
 Proposed density **N/A** units per acre
 Township name *** WASHINGTON** Township section # **26**
 Purpose of rezoning (attach additional page if necessary) **TO PERMIT CERTAIN CM3 USES.**

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 contact staff 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/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.

BILL KESTERKE (printed name of applicant)	<i>Bill Kesterke</i> (signature of applicant)	12/26/12 (date)
Bill KESTERKE (printed name of property owner)	<i>Bill Kesterke</i> (signature of property owner)	12/26/12 (date)
Terry R Ely (printed name of property owner)	<i>Terry R Ely</i> (signature of property owner)	12/27/12 (date)
_____ (printed name of property owner)	_____ (signature of property owner)	_____ (date)

Received 12/13	Receipt No. 110487	Hearing Date	Petition No. 1303/13
			12-2-2013-0003

(Handwritten mark)

* 2 0 0 9 0 6 7 1 6 7 2 *

2009067167

RECORDED ON
12/31/2009 06:11:12PM
JOHN MCGAULEY
ALLEN COUNTY RECORDER
FORT WAYNE, IN

REC FEE: 18.00
TRANS # 80757

QUITCLAIM DEED

Mail tax bills to:

*821 W Coliseum / Ste 1
Ft Wayne IN 46808*

Grantee mailing address:

Same

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ALSO

The South 149.6 feet of the North 269.1 feet of the West 291.6 feet of the Northwest Quarter of Section 26, Township 31 North, Range 12 East, said by previous deeds to contain 1 acre, more or less.

Except the following:

A part of the Northwest Quarter of Section 26, Township 31 North, Range 12 East, Allen County, Indiana, described as follows:

Commencing at the Northwest corner of said Quarter Section; thence North 88 degrees 44 minutes 26 seconds East 291.06 feet along the North line of said Quarter Section to the Northeast corner of the owner's land; thence South 1 degree 35 minutes 00 seconds East 52.36 feet along the East line of the Owners' land to The Point of Beginning of this description, which point is on the South boundary of U.S.R. 30 Bypass (California Road); thence South 1 degree 35 minutes 00 seconds East 45.19 feet along said East line; thence South 88 degrees 53 minutes 00 seconds West, 200.97 feet, thence South 88 degrees 53 minutes 18 seconds West 30.10 feet; thence South 43 degrees 49 minutes 32 seconds West 49.12 feet to the East boundary of Sherman Boulevard; thence North 1 degree 35 minutes 00 seconds West 55.00 feet along said East boundary to a Southeastern Boundary of said Boulevard; thence North 54 degrees 36 minutes 41 seconds East 44.36 feet along said Southeastern boundary to the South boundary of U.S.R. 30 Bypass (California Road), thence along said South boundary Easterly 75.01 feet along an arc to the left and having a radius of 180984.04 feet and subtended by a long chord having a bearing of North 88 degrees 53 minutes 43 seconds East and a length of 75.01 feet; thence North 88 degrees 53 minutes 00 seconds East 154.19 feet along said South boundary to the Point of Beginning and containing 0.279 acres, more or less.

PARCEL II

The North 119.5 feet of the West 291.06 feet of the Northwest Quarter of Section 26, Township 31 North, Range 12 East, said by previous deeds to contain .41 acres, more or less.

DEC 31 2009

Stacy O'Day
STACEY O'DAY
ALLEN COUNTY ASSESSOR

DEC 31 2009

78652

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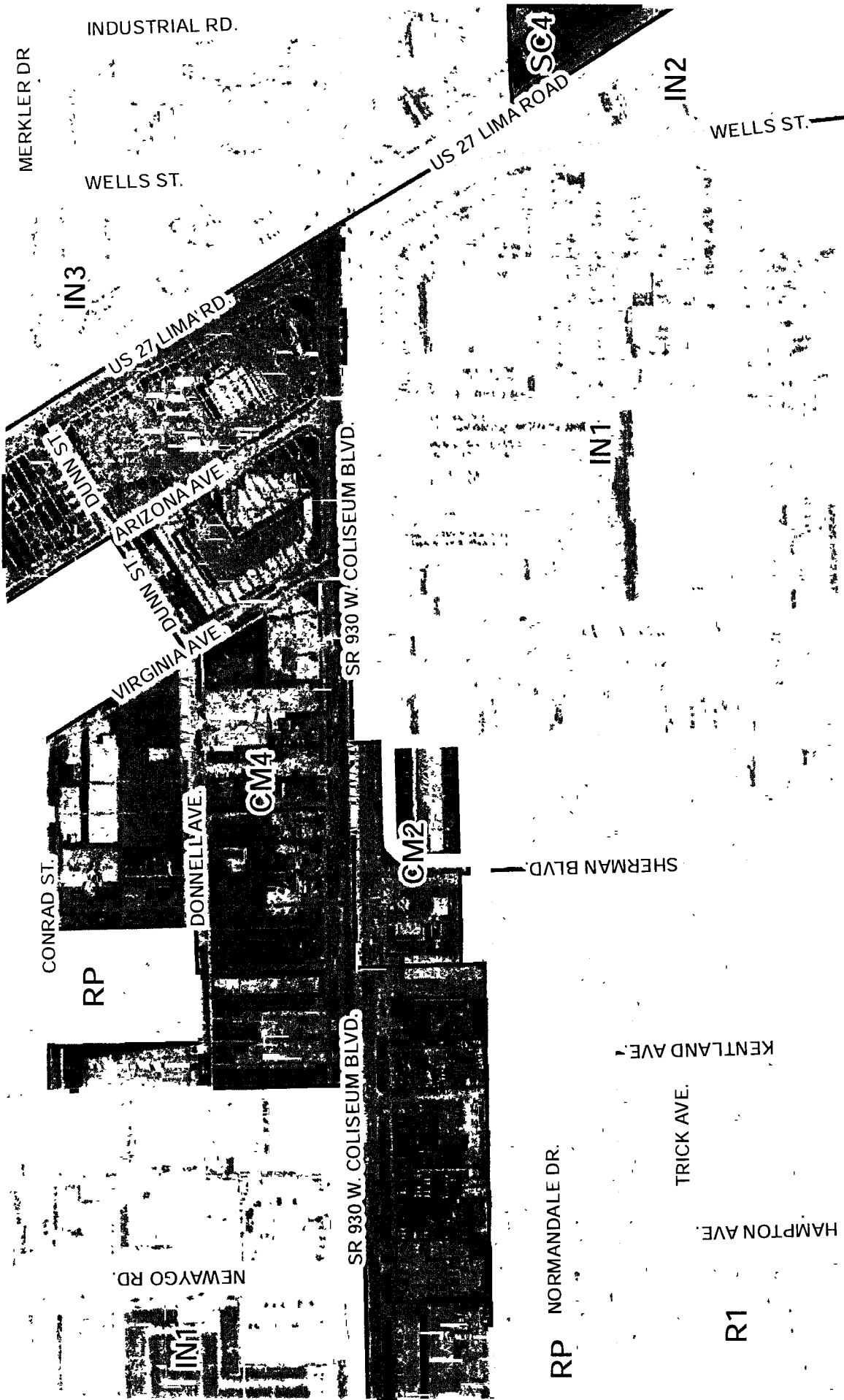
This map is for representational purposes only - Boundaries identified by bold colored lines represent the general location of the proposed project

300 Feet

Scale: 1" = 300'

Rezoning Petition 1303 13

City of Lancaster, Pa 2015
 Planning Department
 300 North 3rd Street, Lancaster, PA 17602
 Phone: 717-397-1000
 Fax: 717-397-1001
 Website: www.lancasterpa.gov



This map is for representational purposes only - Boundaries identified by bold colored lines represent the general location of the proposed project

Rezoning Petition 1303/13

Printed January 14, 2013
 Aerial Imagery / Cartography: © The County of Allen
 North American Datum 1983
 State Plane Coordinate System, Indiana 12
 Photo: Spring 2010, Courtesy: 2009

Although strict accuracy of vertices 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 on this map.



300 Feet
 Scale: 1" = 300'



WRITTEN COMMITMENT

This Written Commitment (hereinafter "Commitment") is made effective as of the 31st day of JANUARY, 2013 by Bill & Jerry, LLC, an Indiana limited liability company (hereinafter "Bill & Jerry").

RECITALS

A. Bill & Jerry is the owner of record in fee simple of certain real estate located in Allen County, Indiana, legally described in the addendum attached to this Commitment as Exhibit "A" (hereinafter "Real Estate").

B. Bill & Jerry have submitted to the Fort Wayne Planning Commission (hereinafter "Plan Commission") a petition to change the zone map of the real estate (hereinafter "Petition").

C. If granted, the Petition would change the zone map for the Real Estate from the CM2 zoning district to the CM3 zoning district, under the Fort Wayne/Allen County Zoning Ordinance (hereinafter "Ordinance").

D. Under IC 36-7-4-1015, the Plan Commission may permit or require the owner of real property to make a written commitment concerning the use or development of the real property.

E. Bill & Jerry intends to continue using the existing multi-tenant commercial building that is located on the Real Estate, but desires to accommodate the needs of prospective tenants by allowing certain additional uses permitted under the Ordinance in the CM3 zoning district.

F. To induce the Plan Commission and the Fort Wayne Common Council (hereinafter "Council") to approve the Petition, Bill & Jerry is willing to make certain written commitments concerning the use and development of the Real Estate.

COMMITMENT

In consideration of the Plan Commission's favorable recommendation for approval of the Petition, and Council's approval of the Petition, Bill & Jerry makes the following written commitments, pursuant to IC 36-7-4-1015:

1. **RESTRICTIONS.** All of uses that are permitted in a C-3 zoning district under §3-6-14 of the Ordinance (or such other similar zoning district classification as may subsequently be applicable as the result of amendment of the Ordinance), shall be prohibited on the Real Estate, except the following

uses, which are expressly permitted or such other corresponding use as it may be described in any subsequent amendment of the Ordinance):

- 1.1 All uses permitted in the C-1 and C-2 Districts;
- 1.2 Automobile sales facility (new or used)(indoor display of vehicles only);
- 1.3 Banquet/reception hall;
- 1.4 Business or trade school;
- 1.5 Check cashing establishment;
- 1.6 Dance hall;
- 1.7 Exterminating or pest control business;
- 1.8 Furniture repair or refinishing shop;
- 1.9 Glass cutting or glazing shop;
- 1.10 Golf driving range (indoor simulators only);
- 1.11 Gun shop or retail firearms dealer, as primary use or accessory use;
- 1.12 Heating and air conditioning sales and service;
- 1.13 Home improvement business;
- 1.14 Miniature golf course (indoor only);
- 1.15 Plumbing, retail sales and repair service;
- 1.16 Retail feed store;
- 1.17 Seasonal outdoor retail sales; and
- 1.18 Window and screen sales or repair shop

2. **BINDING EFFECT.** This Commitment shall run with the land, and shall be binding upon Bill & Jerry, and its respective successors in title and assigns.

3. **ENFORCEMENT RIGHTS.** The Zoning Enforcement Officer and/or the Plan Commission shall have the option (but not the obligation) to enforce this Commitment, at law or in equity, in the event of a breach herein, and, in the event an enforcement action is commenced, the zoning Enforcement Officer and/or the Plan Commission 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. 36-7-4-1016, 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 herein shall be construed as giving any person the right to compel enforcement of this Commitment by the Zoning Enforcement Officer of the Plan Commission, or any successor agency having zoning jurisdiction over the Real Estate.

4. **EFFECTIVE DATE.** This Commitment shall be effective upon the occurrence of all of the following described events:

4.1 This Commitment is approved by the Plan Commission or its designee.

4.2 Council approves the Petition.

4.3 This Commitment is recorded in the Office of the Recorder of Allen County, Indiana.

5. **STATUTORY AUTHORITY.** This Commitment is made pursuant to IC 36-7-4-1015.

6. **MODIFICATION AND TERMINATION.** Modification and termination of this Commitment may only be made in accordance with the Ordinance and the provisions of I.C. 36-7-4-1015 and I.C. 36-7-4-1016, as they are amended from time to time.

7. **AUTHORITY TO SIGN.** The person signing this Commitment in a representative capacity on behalf of Bill & Jerry warrants and represents that:

7.1 The person has the actual authority and power to so sign, and to bind Bill & Jerry to the provisions of this Commitment; and

7.2 All corporate or other entity action necessary for the making of this Commitment has been duly taken.

EXHIBIT A – LEGAL DESCRIPTION

PARCEL I

The North 119.5 feet of the West 291.06 feet of the Northwest quarter of Section 26, Township 31 North, Range 12 East, said by previous deeds to contain .41 acres, more or less.

ALSO

The South 149.6 feet of the North 269.1 feet of the West 291.6 feet of the Northwest Quarter of Section 26, Township 31 North, Range 12 East, said by previously deeds to contain 1 acre, more or less.

Except the following:

A part of the Northwest Quarter of Section 26, Township 31 North, Range 12 East, Allen County, Indiana, described as follows:

Commencing at the Northwest corner of said Quarter Section; thence North 88 degrees 44 minutes 26 seconds East 291.06 feet along the North line of said Quarter Section to the Northeast corner of the owner's land; thence South 1 degree 35 minutes 00 seconds East 52.36 feet along the East line of the Owner's land to The Point of Beginning of this description, which point is on the South boundary of U.S. R. 30 Bypass (California Road); thence South 1 degree 35 minutes 00 seconds East 45.19 feet along said East line; thence South 88 degrees 53 minutes 00 seconds West, 200.97 feet; thence South 88 degrees 53 minutes 18 seconds West 30.10 feet; thence South 43 degrees 49 minutes 32 seconds West 49.12 feet to the East boundary of Sherman Boulevard; thence North 1 degree 35 minutes 00 seconds West 55.00 feet along said East boundary to a Southeastern Boundary of said Boulevard; thence North 54 degrees 36 minutes 41 seconds East 44.36 feet along said Southeastern boundary to the South boundary of U.S.R. 30 Bypass (California Road); thence along said South boundary Easterly 75.01 feet along an arc to the left and having a radius of 180984.04 feet and subtended by a long chord having a bearing of North 88 degrees 53 minutes 43 seconds East and a length of 75.01 feet; thence North 88 degrees 53 minutes 00 seconds East 154.19 feet along said South boundary to the Point of Beginning, and containing 0.279 acres, more or less.

PARCEL II

The north 60 feet of the south 149.6 feet of the North 418.7 feet of the west 291.06 feet of the Northwest Quarter of Section 26, Township 31 North, Range 12 East.