

1 #REZ-2019-0005

2 BILL NO. Z-19-02-15

3  
4 ZONING MAP ORDINANCE NO. Z-9-19

5 AN ORDINANCE amending the City of Fort Wayne  
6 Zoning Map No. N-50 (Sec. 12 of Washington Township)

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

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

12 **PARCEL I:**

13 PART OF THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 31 NORTH,  
14 RANGE 12 EAST OF THE SECOND PRINCIPAL MERIDIAN, WASHINGTON  
15 TOWNSHIP IN ALLEN COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED  
AS FOLLOWS:

16 COMMENCING AT A P.K. NAIL AT THE NORTHEAST CORNER OF SAID  
17 NORTHWEST QUARTER; THENCE SOUTH 87 DEGREES 55 MINUTES 55 SECONDS  
18 WEST (INDOT HIGHWAY PLANS PROJECT #STP-F-184(001) BEARING AND BASIS  
19 OF BEARINGS TO FOLLOW) A DISTANCE OF 1296.00 FEET (PLAT) ALONG THE  
20 NORTH LINE OF SAID NORTHWEST QUARTER TO THE NORTHWEST CORNER  
21 OF NEWBERRY, SECTION 1, SUBDIVISION, AS RECORDED IN DOCUMENT  
22 NUMBER 7834991 IN THE OFFICE OF THE RECORDER OF ALLEN COUNTY,  
23 INDIANA; THENCE SOUTH 02 DEGREES 48 MINUTES 17 SECONDS EAST A  
24 DISTANCE OF 49.11 FEET ALONG SAID WEST LINE TO THE SOUTH RIGHT-OF-  
25 WAY LINE OF WALLEN ROAD; THENCE SOUTH 87 DEGREES 57 MINUTES 36  
26 SECONDS WEST A DISTANCE OF 99.29 FEET ALONG SAID RIGHT-OF-WAY LINE  
27 TO A 5/8 INCH STEEL REBAR SET AT THE POINT OF BEGINNING OF THE  
28 HEREIN DESCRIBED TRACT, SAID POINT ALSO BEING ON A NON-TANGENT  
29 CURVE, CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 35.00 FEET;  
30 THENCE SOUTHEASTERLY ALONG SAID CURVE, A DISTANCE OF 38.68 FEET,  
HAVING A CENTRAL ANGLE OF 63 DEGREES 18 MINUTES 46 SECONDS AND A  
CHORD OF 36.74 FEET BEARING SOUTH 34 DEGREES 27 MINUTES 40 SECONDS  
EAST TO A 5/8 INCH STEEL REBAR SET AT THE POINT OF TANGENCY; THENCE  
SOUTH 02 DEGREES 48 MINUTES 17 SECONDS EAST A DISTANCE OF 129.42  
FEET TO A 5/8 INCH STEEL REBAR SET ON A TANGENT CURVE, CONCAVE TO  
THE NORTHWEST, HAVING A RADIUS OF 40.00 FEET; THENCE  
SOUTHWESTERLY ALONG SAID CURVE A DISTANCE OF 63.35 FEET, HAVING A  
CENTRAL ANGLE OF 90 DEGREES 44 MINUTES 12 SECONDS, AND A CHORD OF  
56.93 FEET BEARING SOUTH 42 DEGREES 33 MINUTES 49 SECONDS WEST TO A

1 5/8 INCH STEEL REBAR SET AT THE POINT OF TANGENCY; THENCE SOUTH 87  
2 DEGREES 55 MINUTES 55 SECONDS WEST A DISTANCE OF 346.31 FEET TO A 5/8  
3 INCH STEEL REBAR SET ON A TANGENT CURVE, CONCAVE TO THE NORTH,  
4 HAVING A RADIUS OF 130.00 FEET; THENCE WESTERLY ALONG SAID CURVE A  
5 DISTANCE OF 36.05 FEET, HAVING A CENTRAL ANGLE OF 15 DEGREES 53  
6 MINUTES 22 SECONDS, AND A CHORD OF 35.94 FEET BEARING NORTH 84  
7 DEGREES 07 MINUTES 24 SECONDS WEST TO A 5/8 INCH STEEL REBAR SET AT  
8 THE POINT OF TANGENCY, ALSO BEING THE POINT ON A TANGENT CURVE,  
9 CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 45.00 FEET; THENCE  
10 NORTHWESTERLY ALONG SAID CURVE A DISTANCE OF 54.22 FEET, HAVING A  
11 CENTRAL ANGLE OF 69 DEGREES 02 MINUTES 16 SECONDS AND A CHORD OF  
12 51.00 FEET BEARING NORTH 41 DEGREES 39 MINUTES 34 SECONDS WEST TO A  
13 5/8 INCH STEEL REBAR SET AT THE POINT OF TANGENCY, ALSO BEING ON  
14 THE EAST RIGHT-OF-WAY LINE OF COLDWATER ROAD AS DESCRIBED IN  
DOCUMENT NUMBER 201008280 IN THE OFFICE OF THE RECORDER OF ALLEN  
COUNTY, INDIANA, SAID RIGHT-OF-WAY LINE ESTABLISHED FROM LINE "A"  
AS DEPICTED ON THE INDOT HIGHWAY PLANS PROJECT #STP-F-184(001);  
THENCE NORTH 33 DEGREES 21 MINUTES 25 SECONDS EAST, A DISTANCE OF  
145.56 FEET ALONG SAID RIGHT-OF-WAY LINE TO A 5/8 INCH STEEL REBAR  
SET; THENCE NORTH 68 DEGREES 37 MINUTES 45 SECONDS EAST A DISTANCE  
OF 115.51 FEET ALONG SAID RIGHT-OF-WAY LINE TO A 5/8 INCH STEEL REBAR  
SET ON THE SOUTH RIGHT-OF-WAY LINE OF WALLEN ROAD; THENCE NORTH  
87 DEGREES 56 MINUTES 36 SECONDS EAST A DISTANCE OF 239.66 FEET  
ALONG SAID RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING,  
CONTAINING 1.832 ACRES, MORE OR LESS.

15 PARCEL II:

16 A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS TO AND FROM  
17 COLDWATER ROAD AND WALLEN ROAD AS PROVIDED IN ARTICLE IV OF THE  
18 DECLARATION OF DEVELOPMENT STANDARDS, COVENANTS AND  
19 PROTECTIVE RESTRICTIONS FOR COLDWATER CENTRE RECORDED  
20 DECEMBER 16, 2004 AS DOCUMENT NUMBER 204089757; FIRST AMENDMENT  
21 TO DECLARATION OF DEVELOPMENT STANDARDS, COVENANTS AND  
22 PROTECTIVE RESTRICTIONS FOR COLDWATER CENTRE DATED DECEMBER 21,  
23 2004, RECORDED DECEMBER 27, 2004 AS DOCUMENT NUMBER 204091700;  
24 SECOND AMENDMENT TO DECLARATION OF DEVELOPMENT STANDARDS,  
25 COVENANTS AND PROTECTIVE RESTRICTIONS FOR COLDWATER CENTRE  
26 RECORDED APRIL 5, 2005 AS DOCUMENT NUMBER 205020476.

27 and the symbols of the City of Fort Wayne Zoning Map No. N-50 (Sec. 12 Washington  
28 Township), as established by Section 157.082 of Title XV of the Code of the City of Fort  
29 Wayne, Indiana is hereby changed accordingly.  
30

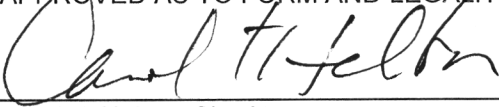

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SECTION 2. If a written commitment is a condition of the Plan Commission's recommendation for the adoption of the rezoning, or if a written commitment is modified and approved by the Common Council as part of the zone map amendment, that written commitment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

  
\_\_\_\_\_  
Carol T. Helton, City Attorney  


City of Fort Wayne Common Council  
**DIGEST SHEET**

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**Department of Planning Services**

Title of Ordinance: Zoning Map Amendment  
Case Number: REZ-2019-0005  
Bill Number: Z-19-02-15  
Council District: 3-Tom Didier

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Introduction Date: February 26, 2018  
Plan Commission  
Public Hearing Date: March 11, 2019 (not heard by Council)  
Next Council Action: Ordinance will return to Council after recommendation by the Plan Commission

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Synopsis of Ordinance: To rezone approximately 1.83 acres of property from C2-Limited Commercial to C3-General Commercial.  
Location: 8830 Coldwater Road  
Reason for Request: To rezone the property of an existing Lassus gas station and convenience store to bring the gas station use into compliance with the current zoning ordinance.  
Applicant: Coldwater and Wallen, LLC  
Property Owner: Coldwater and Wallen, LLC

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Related Petitions: none

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Effect of Passage: Property will be rezoned to the C3-General Commercial zoning district, along with a Written Commitment to prohibit other C3 uses. The rezoning will allow the existing use to conform to the ordinance.  
Effect of Non-Passage: The property will remain zoned C2-Limited Commercial, which does not permit new gas stations. The existing investment is non-conforming, which affects how the property can be developed or expanded in the future.

**Department of Planning Services  
Rezoning Petition Application**

**Applicant**  
 Applicant Coldwater & Wallen, LLC  
 Address 1800 Magnavox Way  
 City Fort Wayne State IN Zip 46804  
 Telephone 260-436-1415 E-mail lassust@lassus.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 8830 Coldwater Road, Ft. Wayne, IN 46825  
 Present Zoning C2 Proposed Zoning C3 Acreage to be rezoned 1.83  
 Proposed density 1 units per acre  
 Township name Washington Township section # 12  
 Purpose of rezoning (attach additional page if necessary) To bring an existing convenience store and gas station use into conformance with the City of Fort Wayne Zoning Ordinance.  
 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.*

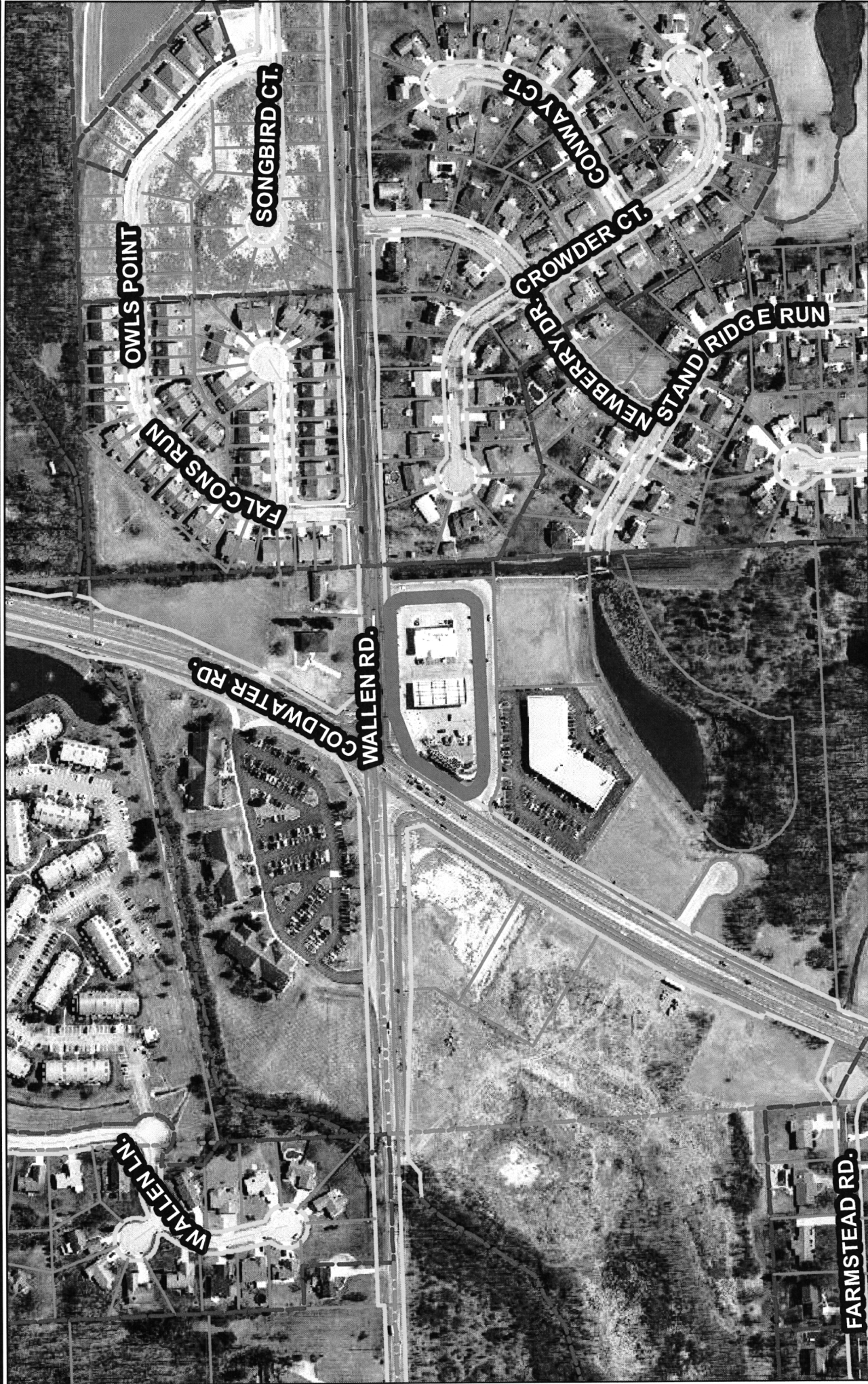
- Applicable filing fee
- Applicable number of surveys showing area to be rezoned (plans **must be folded**)
- Legal Description of parcel to be rezoned
- Rezoning Questionnaire (original and 10 copies) County Rezoning Only

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.

Coldwater & Wallen, LLC by Todd J. Lassus, Member		<u>2/5/19</u>
(printed name of applicant)	(signature of applicant)	(date)
Coldwater & Wallen, LLC by Todd J. Lassus, Member		<u>2/5/19</u>
(printed name of property owner)	(signature of property owner)	(date)
_____	_____	_____
(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.
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Rezoning Petition REZ-2019-0005 - Lassus Coldwater and Wallen

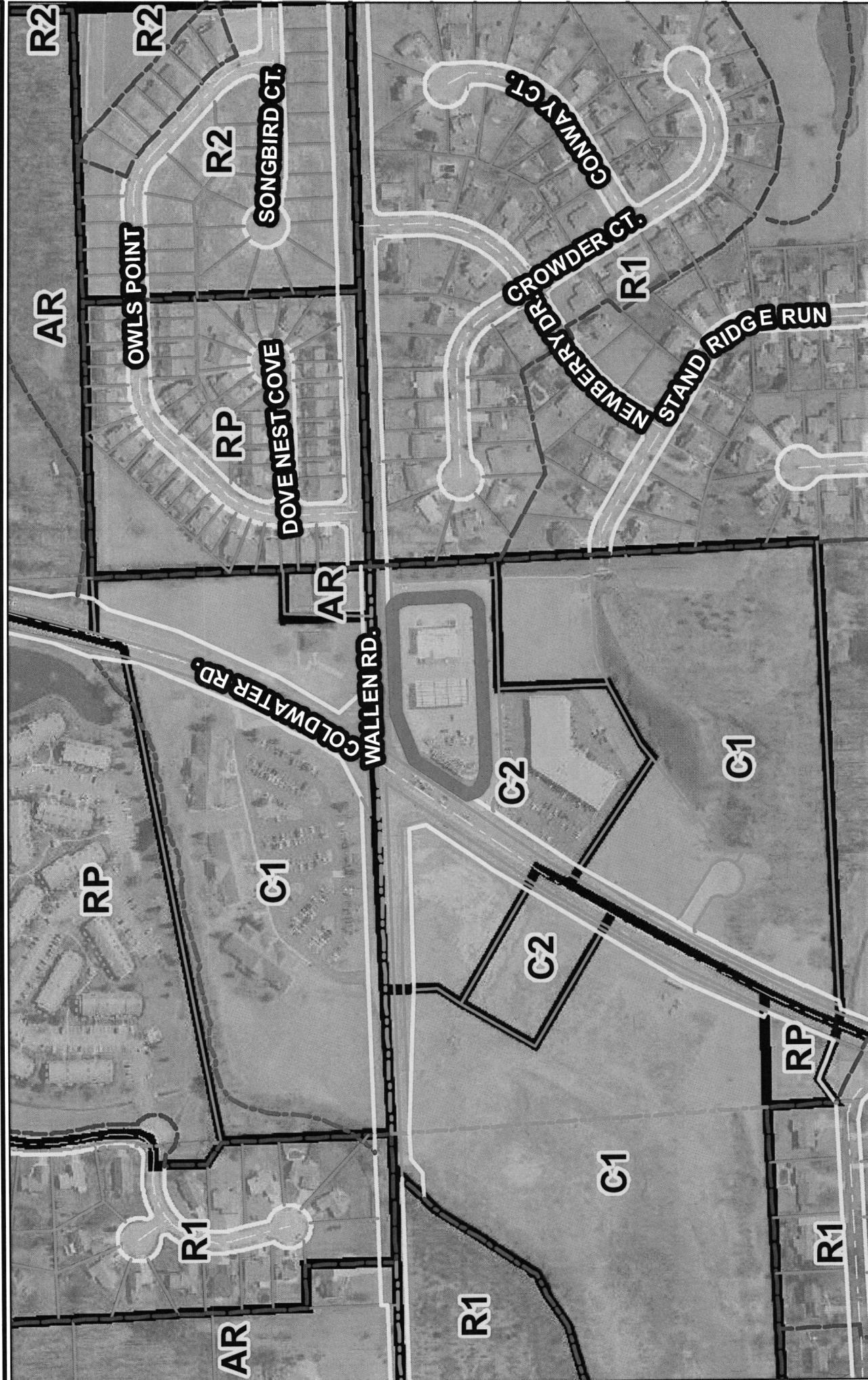


1 inch = 300 feet

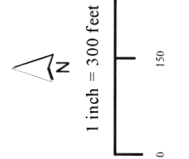


Although strict accuracy standards have been employed in the compilation of this map, Allen County does not warrant or guarantee the accuracy of the information contained herein and disclaims any and all liability resulting from any error or omission in this map.  
© 2004 Board of Commissioners of the County of Allen  
North American Datum 1983  
State Plane Coordinate System, Indiana East  
Photos and Contours: Spring 2009  
Date: 2/15/2019

Rezoning Petition REZ-2019-0005 - Lassus Coldwater and Wallen



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Contact Person

Contact Person Scott M. Federoff, Synder Morgan Federoff & Kuchmay LLP  
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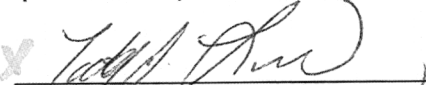
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Sewer provider City of Fort Wayne Water provider City of Fort Wayne

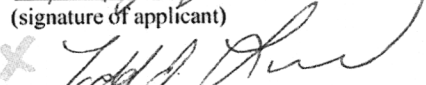
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Coldwater & Wallen, LLC by Todd J. Lassus, Member  2/5/19  
(printed name of property owner) (signature of property owner) (date)

\_\_\_\_\_  
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\_\_\_\_\_  
(printed name of property owner) (signature of property owner) (date)

Received	Receipt No.	Hearing Date	Petition No.
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## WRITTEN COMMITMENT

This Written Commitment (this “Commitment”) is made effective as of the \_\_\_ day of \_\_\_\_\_, 2019, by Coldwater & Wallen, LLC, an Indiana limited liability company (“Company”).

### RECITALS

A. By virtue of that certain Warranty Deed dated June 21, 2006 and recorded on October 26, 2006 as Document Number 206065704 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” (the “Real Estate”).

B. Company filed an application under Case Number REZ-2019-00\_\_\_ (the “Rezoning Application”) to change the zoning map applicable to the Real Estate from the C2 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)(2):

1. **PROHIBITED USES.** The following uses shall be prohibited as a primary use upon the Real Estate as permitted in the C3/General Commercial zoning district under §157.217 and §157.218 of the Ordinance:

- a) Agricultural equipment sales;
- b) Agricultural equipment service;
- c) Agricultural supply sales;
- d) Amusement park;
- e) Animal grooming with outdoor runs;
- f) Animal Kennel or Obedience School with outdoor runs;
- g) Automobile Detailing and Trim Shop;
- h) Arcade;
- i) Arena;
- j) Auction hall;
- k) Auction service;
- l) Automobile auction
- m) Automobile body shop;
- n) Automobile repair;
- o) Automobile Sales Facility (new or used);
- p) Bar or Tavern;
- q) Batting cages;
- r) Betting or other gambling facility;
- s) Billiard or pool hall;
- t) Bingo establishment;
- u) Blood bank;
- v) Blood or plasma donor facility;
- w) Boarding/lodging house;
- x) Boat/watercraft sales;
- y) Bowling alley;
- z) Campus housing;
- aa) Clinic;
- bb) Club, private;
- cc) Coin shop;
- dd) Collection agency;
- ee) Correctional services facility;
- ff) Dating service;
- gg) Dormitory;
- hh) Entertainment facility;
- ii) Equipment service;
- jj) Exhibit hall;
- kk) Exterminator;
- ll) Feed store;
- mm) Flea market;
- nn) Fraternity house;
- oo) Garage sales;
- pp) Go-kart facility;
- qq) Golf course, miniature;

- rr) Golf driving range;
- ss) Group residential facility (large);
- tt) Group residential facility (small);
- uu) Gun sales;
- vv) Haunted house;
- ww) Homeless/emergency shelter ;
- xx) Hotel;
- yy) Landscape contracting service;
- zz) Laundromat/coin operated laundry;
- aaa) Manufactured home sales;
- bbb) Motel;
- ccc) Motor vehicle sales;
- ddd) Parking area (off-site);
- eee) Parking structure;
- fff) Pawn shop;
- ggg) Public transportation or similar public facility;
- hhh) Reception/banquet hall;
- iii) Rehabilitation facility;
- jjj) Residential facility for homeless individuals;
- kkk) Riding stable;
- lll) Shooting range (indoor);
- mmm) Stadium/racetrack;
- nnn) Treatment center;
- ooo) Truck stop;
- ppp) Warehouse/storage facility;
- qqq) Wholesale facility;
- rrr) Zipline;
- sss) Zoo.

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)(2).

8. ***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.

**[SIGNATURE PAGE FOLLOWS.]**

Coldwater & Wallen, LLC,  
an Indiana limited liability company

By: \_\_\_\_\_  
Todd J. Lassus, 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 \_\_\_\_\_, 2019, personally appeared Todd J. Lassus, as a Member of Coldwater & Wallen, LLC, an Indiana limited liability company, and acknowledged the execution of the foregoing Written Commitment on behalf of said company.

WITNESS my hand and Notarial Seal.

My commission expires:  
June 28, 2028

\_\_\_\_\_  
Scott M. Federoff, Notary Public  
Resident of Allen, County, Indiana

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

After recording, return to: \_\_\_\_\_.

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**

**PARCEL I:**

PART OF THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 31 NORTH, RANGE 12 EAST OF THE SECOND PRINCIPAL MERIDIAN, WASHINGTON TOWNSHIP IN ALLEN COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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ON A TANGENT CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 45.00 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE A DISTANCE OF 54.22 FEET, HAVING A CENTRAL ANGLE OF 69 DEGREES 02 MINUTES 16 SECONDS AND A CHORD OF 51.00 FEET BEARING NORTH 41 DEGREES 39 MINUTES 34 SECONDS WEST TO A 5/8 INCH STEEL REBAR SET AT THE POINT OF TANGENCY, ALSO BEING ON THE EAST RIGHT-OF-WAY LINE OF COLDWATER ROAD AS DESCRIBED IN DOCUMENT NUMBER 201008280 IN THE OFFICE OF THE RECORDER OF ALLEN COUNTY, INDIANA, SAID RIGHT-OF-WAY LINE ESTABLISHED FROM LINE "A" AS DEPICTED ON THE INDOT HIGHWAY PLANS PROJECT #STP-F-184(001); THENCE NORTH 33 DEGREES 21 MINUTES 25 SECONDS EAST, A DISTANCE OF 145.56 FEET ALONG SAID RIGHT-OF-WAY LINE TO A 5/8 INCH STEEL REBAR SET; THENCE NORTH 68 DEGREES 37 MINUTES 45 SECONDS EAST A DISTANCE OF 115.51 FEET ALONG SAID RIGHT-OF-WAY LINE TO A 5/8 INCH STEEL REBAR SET ON THE SOUTH RIGHT-OF-WAY LINE OF WALLEN ROAD; THENCE NORTH 87 DEGREES 56 MINUTES 36 SECONDS EAST A DISTANCE OF 239.66 FEET ALONG SAID RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING, CONTAINING 1.832 ACRES, MORE OR LESS.

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A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS TO AND FROM COLDWATER ROAD AND WALLEN ROAD AS PROVIDED IN ARTICLE IV OF THE DECLARATION OF DEVELOPMENT STANDARDS, COVENANTS AND PROTECTIVE RESTRICTIONS FOR COLDWATER CENTRE RECORDED DECEMBER 16, 2004 AS DOCUMENT NUMBER 204089757; FIRST AMENDMENT TO DECLARATION OF DEVELOPMENT STANDARDS, COVENANTS AND PROTECTIVE RESTRICTIONS FOR COLDWATER CENTRE DATED DECEMBER 21, 2004, RECORDED DECEMBER 27, 2004 AS DOCUMENT NUMBER 204091700; SECOND AMENDMENT TO DECLARATION OF DEVELOPMENT STANDARDS, COVENANTS AND PROTECTIVE RESTRICTIONS FOR COLDWATER CENTRE RECORDED APRIL 5, 2005 AS DOCUMENT NUMBER 205020476.

## FACT SHEET

Case #REZ-2019-0005

Bill # Z-19-02-15

Project Start: 5 February 2019

APPLICANT:	Coldwater & Wallen, LLC
REQUEST:	To rezone property from C2/Limited Commercial to C3/General Commercial to bring the existing gas station use in conformance with the Zoning Ordinance.
LOCATION:	The site is located at the southeast corner of Coldwater Road and East Wallen Road. The address of the subject property is 8830 Coldwater Road (Section 12 of Washington Township).
LAND AREA:	Approximately 1.4 acres
PRESENT ZONING:	C2/Limited Commercial
PROPOSED ZONING:	C3/General Commercial
COUNCIL DISTRICT:	3-Tom Didier
ASSOCIATED PROJECTS:	none
SPONSOR:	City of Fort Wayne Plan Commission

### 11 March 2019 Public Hearing

- No one spoke at the hearing in support or opposition.
- Rachel Tobin-Smith was absent.

### 18 March 2019 – Business Meeting

#### Plan Commission Recommendation: DO PASS w/Written Commitment

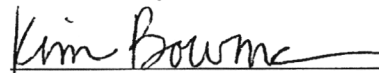
A motion was made by Patrick Zaharako and seconded by Don Schmidt to return the ordinance with a Do Pass recommendation, with a Written Commitment, to Common Council for their final decision.

#### 6-0 MOTION PASSED

- Tom Freistroffer, Paul Sauerteig, and Judi Wire were absent.

Fact Sheet Prepared by:  
Michelle B. Wood, Senior Land Use Planner  
2 April 2019

Reviewed by:



Kimberly R. Bowman, AICP  
Executive Director  
Secretary to the Commission

## PROJECT SUMMARY

The petitioner requests a rezoning from C2/Limited Commercial to C3/General Commercial to allow the existing use of the property to comply with the current zoning ordinance. The existing gas station, convenience store, and carwash are located at the southeast corner of the Coldwater Road and Wallen Road intersection, in a mixed-use commercial development called Coldwater Centre. In 2004, when the site was rezoned, the zoning ordinance permitted the gas station use in the Limited Commercial district (then called CM2, equivalent to C2 today). The 2014 zoning ordinance amendment removed gas stations from the C2 district, although a Special Use could allow a gas station, after approval from the Board of Zoning Appeals. A current bill is under consideration by Common Council that would remove the ability to seek a Special Use for a gas station in C2, among other districts. Plan Commission has forwarded a Do Pass recommendation on this ordinance amendment, but as of this printing, Council has not taken final action on the bill. If the bill is approved as proposed, the only option to bring existing gas station use into full compliance with the ordinance is legislatively, as a rezoning to C3/General Commercial, as proposed, or to C4/Intensive Commercial, or I3/Intensive Industrial.

The petitioner seeks the allowance of the existing gas station, and the ability to maintain, expand and improve as allowed for a permitted use. When Coldwater Centre was proposed, the corner gas station use was reviewed, the Primary Development Plan was approved, and the rezoning request received a Do Pass recommendation from staff and Plan Commission. Council approved the rezoning in 2004, and the Secondary Development Plan was approved in 2005. A 40-foot wide buffer area was installed along the east property line, as required in the recorded Declaration of Development Standards, Covenant and Protective Restrictions for Coldwater Centre (#204089757).

Along with the rezoning request, the petitioner has submitted a voluntary Written Commitment governing uses on the property. All C3/General Commercial uses, except those already present on the site, will be prohibited.

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. Staff is not opposed to bringing the existing use into compliance with the ordinance, with a Written Commitment.

The comprehensive plan supports this development through the following objectives:

- LU1.** Encourage carefully planned growth by utilizing the conceptual development map as part of the community's land use decision-making process;
- LU3.** Use land resources efficiently by encouraging new development, revitalization and redevelopment in areas already served by infrastructure;
- LU8.** Use land resources efficiently by encouraging compact development alternatives in infill areas where utilities and other infrastructure currently exist.

### **PUBLIC HEARING SUMMARY:**

Presenter: Scott Federoff, representing Lassus, presented the proposal to the Plan Commission, as outlined above.

No Public Comments

## FORT WAYNE PLAN COMMISSION • FINDINGS OF FACT

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### Rezoning Petition REZ-2019-0005

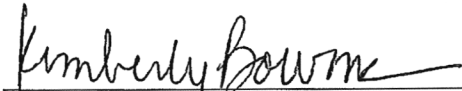
APPLICANT: Coldwater & Wallen, LLC  
REQUEST: To rezone property from C2/Limited Commercial to C3/General Commercial to bring the existing gas station use in conformance with the Zoning Ordinance.  
LOCATION: The site is located at the southeast corner of Coldwater Road and East Wallen Road. The address of the subject property is 8830 Coldwater Road (Section 12 of Washington Township).  
LAND AREA: Approximately 1.4 acres  
PRESENT ZONING: C2/Limited Commercial  
PROPOSED ZONING: C3/General Commercial

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**The Plan Commission recommends that Rezoning Petition REZ-2019-0005, with a Written Commitment, be returned to Council with a “Do Pass” 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 general area is a mixture of residential, office and commercial services. The purpose of the rezoning is to allow an existing use to comply with the zoning ordinance. The Plan Commission and Council determined that this is an appropriate use with the 2004 approvals.
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. Earlier review of a development plan, and recorded covenants have resulted in a planned, quality-built neighborhood center. A proposed Written Commitment prohibiting certain 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.

These findings approved by the Fort Wayne Plan Commission on March 18, 2019.



---

Kimberly R. Bowman, AICP  
Executive Director  
Secretary to the Commission

**Department of Planning Services  
Rezoning Petition Application**

**Applicant**  
 Applicant Coldwater & Wallen, LLC  
 Address 1800 Magnavox Way  
 City Fort Wayne State IN Zip 46804  
 Telephone 260-436-1415 E-mail lassust@lassus.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

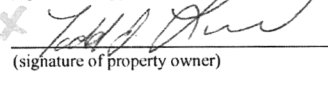
*All staff correspondence will be sent only to the designated contact person.*

**Request**  
 Allen County Planning Jurisdiction  City of Fort Wayne Planning Jurisdiction  
 Address of the property 8830 Coldwater Road, Ft. Wayne, IN 46825  
 Present Zoning C2 Proposed Zoning C3 Acreage to be rezoned 1.83  
 Proposed density 1 units per acre  
 Township name Washington Township section # 12  
 Purpose of rezoning (attach additional page if necessary) To bring an existing convenience store and gas station use into conformance with the City of Fort Wayne Zoning Ordinance.  
 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

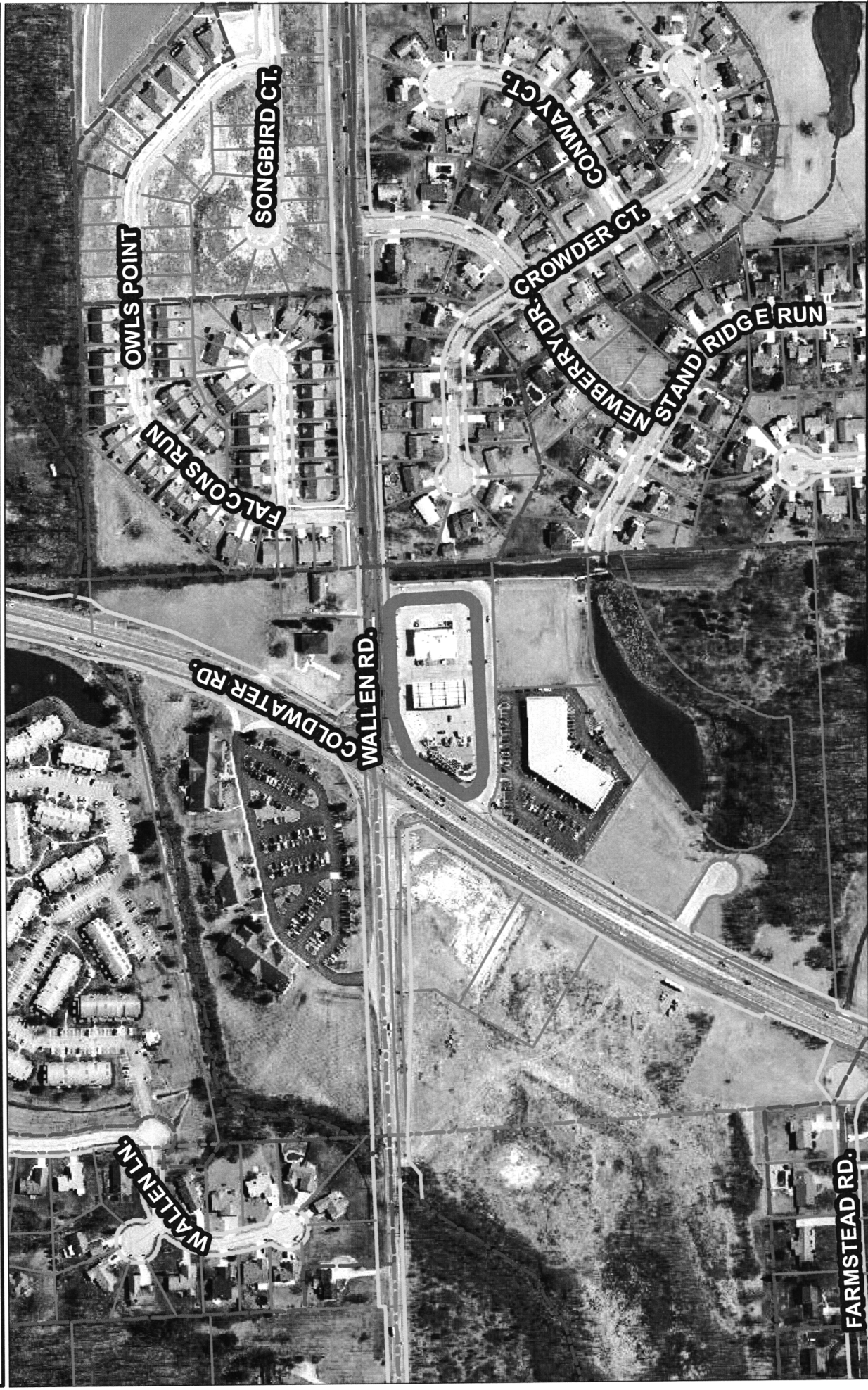
I/We understand and agree, upon execution and submission of this application, that I am/we are the owner(s) of more than 50 percent of the property described in this application; that I/we agree to abide by all provisions of the Allen County Zoning and Subdivision Control Ordinance as well as all procedures 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.

Coldwater & Wallen, LLC by Todd J. Lassus, Member		<u>2/5/19</u>
(printed name of applicant)	(signature of applicant)	(date)
Coldwater & Wallen, LLC by Todd J. Lassus, Member		<u>2/5/19</u>
(printed name of property owner)	(signature of property owner)	(date)
_____	_____	_____
(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.
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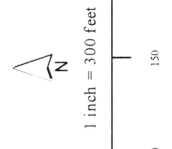


Rezoning Petition REZ-2019-0005 - Lassus Coldwater and Wallen



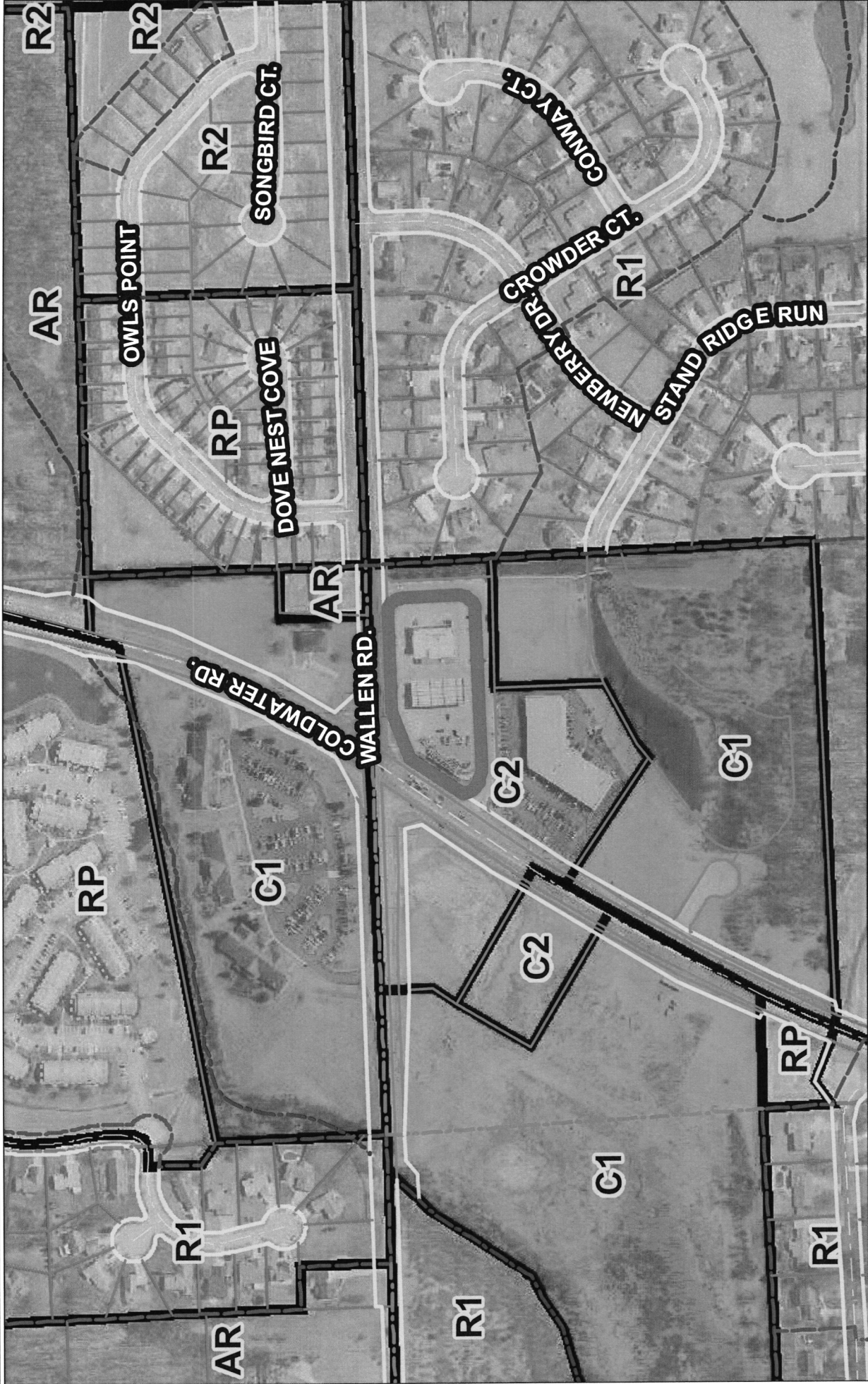
Although strict accuracy standards have been employed in the compilation of this map, the user assumes all responsibility for the accuracy of the information contained herein and disclaims any and all liability resulting from any error or omission in this map.

© 2004 Board of Commissioners of the County of Allen  
 North American Datum 1983  
 State Plane Coordinate System, Indiana East  
 Photos and Contours: Spring 2009  
 Date: 2/15/2019



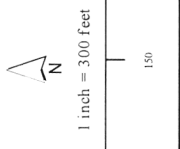


Rezoning Petition REZ-2019-0005 - Lassus Coldwater and Wallen



Although error 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.

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 State Plane Coordinate System, Indiana East  
 Photos and Contour: Spring 2009  
 Date: 2/15/2019



**2019015248**

**RECORDED: 04/02/2019 02:38:31 PM**

**ANITA MATHER  
ALLEN COUNTY RECORDER  
FORT WAYNE, IN**

## **WRITTEN COMMITMENT**

This Written Commitment (this "Commitment") is made effective as of the 1<sup>st</sup> day of April, 2019, by Coldwater & Wallen, LLC, an Indiana limited liability company ("Company").

### **RECITALS**

A. By virtue of that certain Warranty Deed dated June 21, 2006 and recorded on October 26, 2006 as Document Number 206065704 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" (the "Real Estate").

B. Company filed an application under Case Number REZ-2019-0005 (the "Rezoning Application") to change the zoning map applicable to the Real Estate from the C2 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.

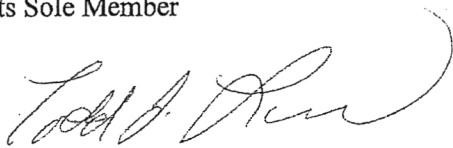
9. **MODIFICATION AND TERMINATION.** Modification and termination of this Commitment may only be made in accordance I.C. §36-7-4-1015, as such statute may be amended from time-to-time.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]**

**[SIGNATURE PAGE FOLLOWS.]**

Coldwater & Wallen, LLC,  
an Indiana limited liability company

By: LB Master Holdings, LLC,  
an Indiana limited liability company,  
its Sole Member

By:   
Todd J. Lassus, Member

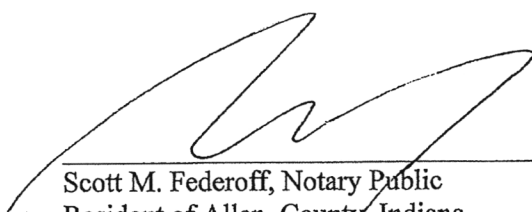
“Company”

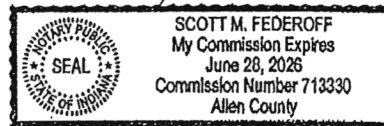
STATE OF INDIANA            )  
  ) SS:  
COUNTY OF ALLEN         )

Before me, the undersigned Notary Public in and for said County and State, this 1<sup>st</sup> day of April, 2019, personally appeared Todd J. Lassus, as a Member of LB Master Holdings, LLC, an Indiana limited liability company, as the Sole Member of Coldwater & Wallen, LLC, an Indiana limited liability company, and acknowledged the execution of the foregoing Written Commitment on behalf of said company.

WITNESS my hand and Notarial Seal.

My commission expires:  
June 28, 2026

  
Scott M. Federoff, Notary Public  
Resident of Allen, 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**

**PARCEL I:**

PART OF THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 31 NORTH, RANGE 12 EAST OF THE SECOND PRINCIPAL MERIDIAN, WASHINGTON TOWNSHIP IN ALLEN COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A P.K. NAIL AT THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER; THENCE SOUTH 87 DEGREES 55 MINUTES 55 SECONDS WEST (INDOT HIGHWAY PLANS PROJECT #STP-F-184(001) BEARING AND BASIS OF BEARINGS TO FOLLOW) A DISTANCE OF 1296.00 FEET (PLAT) ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER TO THE NORTHWEST CORNER OF NEWBERRY, SECTION 1, SUBDIVISION, AS RECORDED IN DOCUMENT NUMBER 7834991 IN THE OFFICE OF THE RECORDER OF ALLEN COUNTY, INDIANA; THENCE SOUTH 02 DEGREES 48 MINUTES 17 SECONDS EAST A DISTANCE OF 49.11 FEET ALONG SAID WEST LINE TO THE SOUTH RIGHT-OF-WAY LINE OF WALLEN ROAD; THENCE SOUTH 87 DEGREES 57 MINUTES 36 SECONDS WEST A DISTANCE OF 99.29 FEET ALONG SAID RIGHT-OF-WAY LINE TO A 5/8 INCH STEEL REBAR SET AT THE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT, SAID POINT ALSO BEING ON A NON-TANGENT CURVE, CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 35.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE, A DISTANCE OF 38.68 FEET, HAVING A CENTRAL ANGLE OF 63 DEGREES 18 MINUTES 46 SECONDS AND A CHORD OF 36.74 FEET BEARING SOUTH 34 DEGREES 27 MINUTES 40 SECONDS EAST TO A 5/8 INCH STEEL REBAR SET AT THE POINT OF TANGENCY; THENCE SOUTH 02 DEGREES 48 MINUTES 17 SECONDS EAST A DISTANCE OF 129.42 FEET TO A 5/8 INCH STEEL REBAR SET ON A TANGENT CURVE, CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 40.00 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE A DISTANCE OF 63.35 FEET, HAVING A CENTRAL ANGLE OF 90 DEGREES 44 MINUTES 12 SECONDS, AND A CHORD OF 56.93 FEET BEARING SOUTH 42 DEGREES 33 MINUTES 49 SECONDS WEST TO A 5/8 INCH STEEL REBAR SET AT THE POINT OF TANGENCY; THENCE SOUTH 87 DEGREES 55 MINUTES 55 SECONDS WEST A DISTANCE OF 346.31 FEET TO A 5/8 INCH STEEL REBAR SET ON A TANGENT CURVE, CONCAVE TO THE NORTH, HAVING A RADIUS OF 130.00 FEET; THENCE WESTERLY ALONG SAID CURVE A DISTANCE OF 36.05 FEET, HAVING A CENTRAL ANGLE OF 15 DEGREES 53 MINUTES 22 SECONDS, AND A CHORD OF 35.94 FEET BEARING NORTH 84 DEGREES 07 MINUTES 24 SECONDS WEST TO A 5/8 INCH STEEL REBAR SET AT THE POINT OF TANGENCY, ALSO BEING THE POINT

ON A TANGENT CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 45.00 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE A DISTANCE OF 54.22 FEET, HAVING A CENTRAL ANGLE OF 69 DEGREES 02 MINUTES 16 SECONDS AND A CHORD OF 51.00 FEET BEARING NORTH 41 DEGREES 39 MINUTES 34 SECONDS WEST TO A 5/8 INCH STEEL REBAR SET AT THE POINT OF TANGENCY, ALSO BEING ON THE EAST RIGHT-OF-WAY LINE OF COLDWATER ROAD AS DESCRIBED IN DOCUMENT NUMBER 201008280 IN THE OFFICE OF THE RECORDER OF ALLEN COUNTY, INDIANA, SAID RIGHT-OF-WAY LINE ESTABLISHED FROM LINE "A" AS DEPICTED ON THE INDOT HIGHWAY PLANS PROJECT #STP-F-184(001); THENCE NORTH 33 DEGREES 21 MINUTES 25 SECONDS EAST, A DISTANCE OF 145.56 FEET ALONG SAID RIGHT-OF-WAY LINE TO A 5/8 INCH STEEL REBAR SET; THENCE NORTH 68 DEGREES 37 MINUTES 45 SECONDS EAST A DISTANCE OF 115.51 FEET ALONG SAID RIGHT-OF-WAY LINE TO A 5/8 INCH STEEL REBAR SET ON THE SOUTH RIGHT-OF-WAY LINE OF WALLEN ROAD; THENCE NORTH 87 DEGREES 56 MINUTES 36 SECONDS EAST A DISTANCE OF 239.66 FEET ALONG SAID RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING, CONTAINING 1.832 ACRES, MORE OR LESS.

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A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS TO AND FROM COLDWATER ROAD AND WALLEN ROAD AS PROVIDED IN ARTICLE IV OF THE DECLARATION OF DEVELOPMENT STANDARDS, COVENANTS AND PROTECTIVE RESTRICTIONS FOR COLDWATER CENTRE RECORDED DECEMBER 16, 2004 AS DOCUMENT NUMBER 204089757; FIRST AMENDMENT TO DECLARATION OF DEVELOPMENT STANDARDS, COVENANTS AND PROTECTIVE RESTRICTIONS FOR COLDWATER CENTRE DATED DECEMBER 21, 2004, RECORDED DECEMBER 27, 2004 AS DOCUMENT NUMBER 204091700; SECOND AMENDMENT TO DECLARATION OF DEVELOPMENT STANDARDS, COVENANTS AND PROTECTIVE RESTRICTIONS FOR COLDWATER CENTRE RECORDED APRIL 5, 2005 AS DOCUMENT NUMBER 205020476.

**BILL NO. Z-19-02-15**

**REPORT OF COMMITTEE ON REGULATIONS**

**April 9, 2019**

**Michael Barranda Chair**

**Tom Freistroffer Co-Chair**

**All Council Members**

An Ordinance amending the City of Fort Wayne Zoning Map No. N-50 (Sec. 12 of Washington Township)

To rezone approximately 1.83 acres of property from C2-Limited Commercial to C3-General Commercial - 8830 Coldwater Road



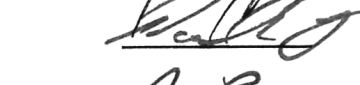

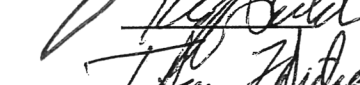
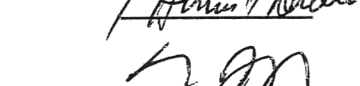
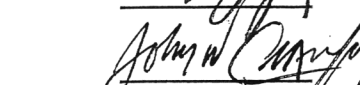

**COMMITTEE ON REGULATIONS HAVE HAD SAID Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance**

DO PASS

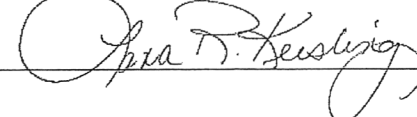
DO NOT PASS

ABSTAIN

NO REC

	_____	_____	_____
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	_____	_____	_____

**LANA R. KEESLING  
CITY CLERK**



Public Hearing Date: 03/11/19

Read the first time in full and on motion by Councilman Barranda.

Read the second time by title and referred to the Regulations Committee.

Read the third time in full and on motion by Councilman Barranda, placed on passage by the following vote:

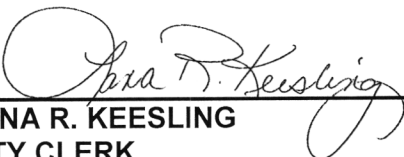
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ARP	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
BARRANDA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CRAWFORD	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DIDIER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ENSLEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FREISTROFFER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HINES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JEHL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PADDOCK	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DATED: April 9, 2019

  
 \_\_\_\_\_  
 LANA R. KEESLING, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as

Zoning Ordinance No. Z-19-02-15 on the 9th day of April, 2019

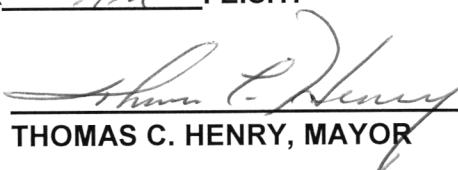
  
 \_\_\_\_\_  
 LANA R. KEESLING  
 CITY CLERK

  
 \_\_\_\_\_  
 PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 10th of April 2019, at the hour of 9:35 o'clock A.M. E.S.T.

  
 \_\_\_\_\_  
 LANA R. KEESLING, CITY CLERK

Approved and signed by me this 9<sup>TH</sup> day of APRIL 2019, at the hour of 10:30 o'clock AM E.S.T.

  
 \_\_\_\_\_  
 THOMAS C. HENRY, MAYOR

FORT WAYNE, INDIANA  
**RECEIVED**  
 APR 10 2019  
 LANA R. KEESLING  
 CITY CLERK