

1 #REZ-2019-0008

2 BILL NO. Z-19-02-18

3
4 ZONING MAP ORDINANCE NO. Z-5-19

5 AN ORDINANCE amending the City of Fort Wayne
6 Zoning Map No. U-46 (Sec. 9 of St. Joseph 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 Southeast Quarter of Section 9, Township 31 North, Range 13 East, Allen
County, Indiana, more particularly described as follows:

14 COMMENCING at a P.K. nail found marking the Southeast corner of the Southeast Quarter
15 of Section 9, Township 31 North, Range 13 East, Allen County, Indiana; thence South 89
degrees 44 minutes 12 seconds West (deed bearing and the basis of the bearings in this
16 description) along the South line of the Southeast Quarter of Section 9, Township 31 North,
Range 13 East, a distance of 375.0 feet; thence North 00 degrees 15 minutes 48 seconds
17 West, a distance of 68.11 feet to a 5/8 inch iron pin set at the True Point of Beginning, said
point being located on the Northerly right-of-way line of Rothman Road as recorded in
18 Document Number 95-56785 in the Office of the Recorder of Allen County; thence
continuing North 00 degrees 15 minutes 48 seconds West, a distance of 255.12 feet to a 5/8
19 inch iron pin set; thence North 89 degrees 27 minutes 57 second East, a distance of 283.47
feet to a 5/8 inch iron pin set at a point on the West right-of-way line of Maplecrest Road as
20 recorded in said Document Number 95-56785; thence South 00 degrees 32 minutes 03
seconds East (South 03 degrees 26 minutes 33 seconds East, deed) along said right-of-way, a
21 distance of 225.0 feet to a 5/8 inch iron pin set; thence South 49 degrees 09 minutes 24
seconds West (South 46 degrees 14 minutes 40 seconds West, deed) along said right-of-way
22 line, a distance of 45.46 feet (45.52 feet, deed) to a 5/8 inch iron pin set at a point on the
Northerly right-of-way line of Rothman Road; thence South 89 degrees 44 minutes 12
23 seconds West (South 86 degrees 47 minutes 39 seconds West, deed) along said right-of-way
line, a distance of 225.0 feet to a 5/8 inch iron pin set; thence South 85 degrees 24 minutes
24 26 seconds West (South 82 degrees 30 minutes 18 seconds West, deed) along said right-of-
way line, a distance of 25.07 feet to the Point of Beginning, Containing 1.645 acres.

25
26 An easement for the purpose of ingress and egress and utilities for the benefit of Parcel I, as
created by Corporate Deed dated September 30, 1999 and recorded October 19, 1999 as
27 Document Number 990076539, over and across the following described real estate in Allen
County, Indiana:
28
29
30

1 A strip of land 50.0 feet in width, lying 25.0 feet on either side of the following described
2 centerline:


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12 the Office of the Recorder of Allen County; thence continuing North 00 degrees 15 minutes
13 48 seconds West, a distance of 281.88 feet; thence North 89 degrees 27 minutes 57 seconds
14 East, a distance of 308.35 feet to a point on the West right-of-way line of Maplecrest Road
15 as recorded in said Document Number 95-56785, and the point of termination; said easement
16 contains 0.677 acres.

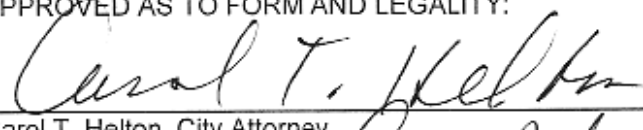
17 and the symbols of the City of Fort Wayne Zoning Map No. U-46 (Sec. 9 of St. Joseph
18 Township), as established by Section 157.082 of Title XV of the Code of the City of Fort
19 Wayne, Indiana is hereby changed accordingly.

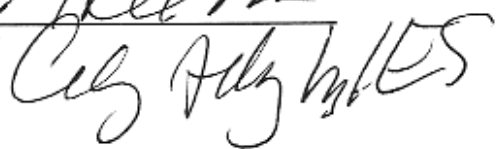
20 SECTION 2. If a written commitment is a condition of the Plan Commission's
21 recommendation for the adoption of the rezoning, or if a written commitment is modified and
22 approved by the Common Council as part of the zone map amendment, that written
23 commitment is hereby approved and is hereby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

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

26 
27 Council Member

28 APPROVED AS TO FORM AND LEGALITY:

29 
30 Carol T. Helton, City Attorney



**Department of Planning Services
Rezoning Petition Application**

Applicant
 Applicant 69 & Dupont, 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


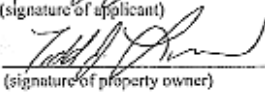
All staff correspondence will be sent only to the designated contact person.

Request
 Allen County Planning Jurisdiction City of Fort Wayne Planning Jurisdiction
 Address of the property 7405 Maplecrest Road, Ft. Wayne, IN 46835
 Present Zoning NC Proposed Zoning C3 Acreage to be rezoned 1.65
 Proposed density 1 units per acre
 Township name St. Joesph Township section # 9
 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

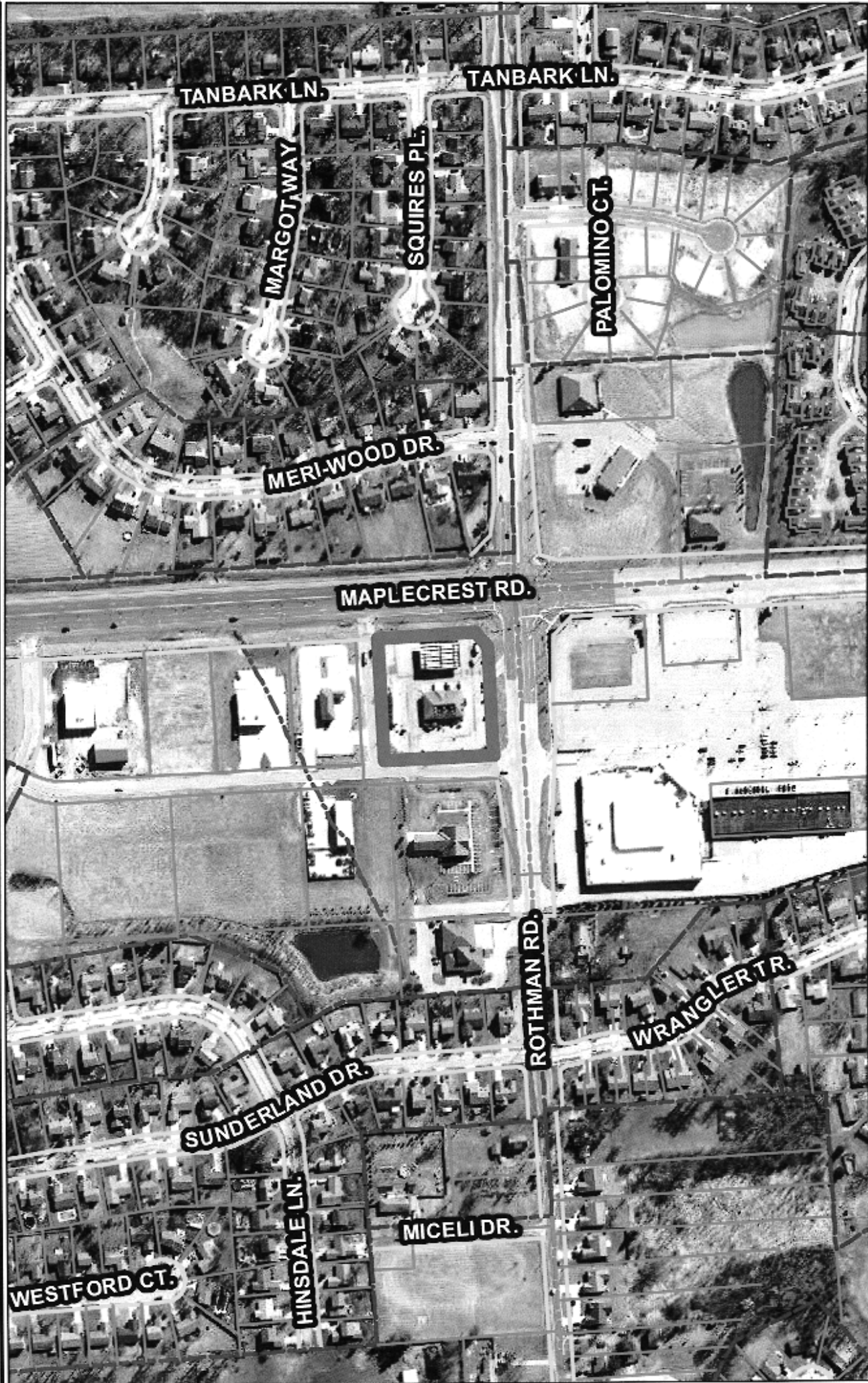
Filing Requirements
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- Applicable filing fee
- Applicable number of surveys showing area to be rezoned (plans must be folded)
- Legal Description of parcel to be rezoned
- Rezoning Questionnaire (original and 10 copies) County Rezoning Only

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.

69 & Dupont, LLC by Todd J. Lassus, Member (printed name of applicant)	 (signature of applicant)	<u>2/5/19</u> (date)
69 & Dupont, LLC by Todd J. Lassus, Member (printed name of property owner)	 (signature of property owner)	<u>2/5/19</u> (date)
_____ (printed name of property owner)	_____ (signature of property owner)	_____ (date)
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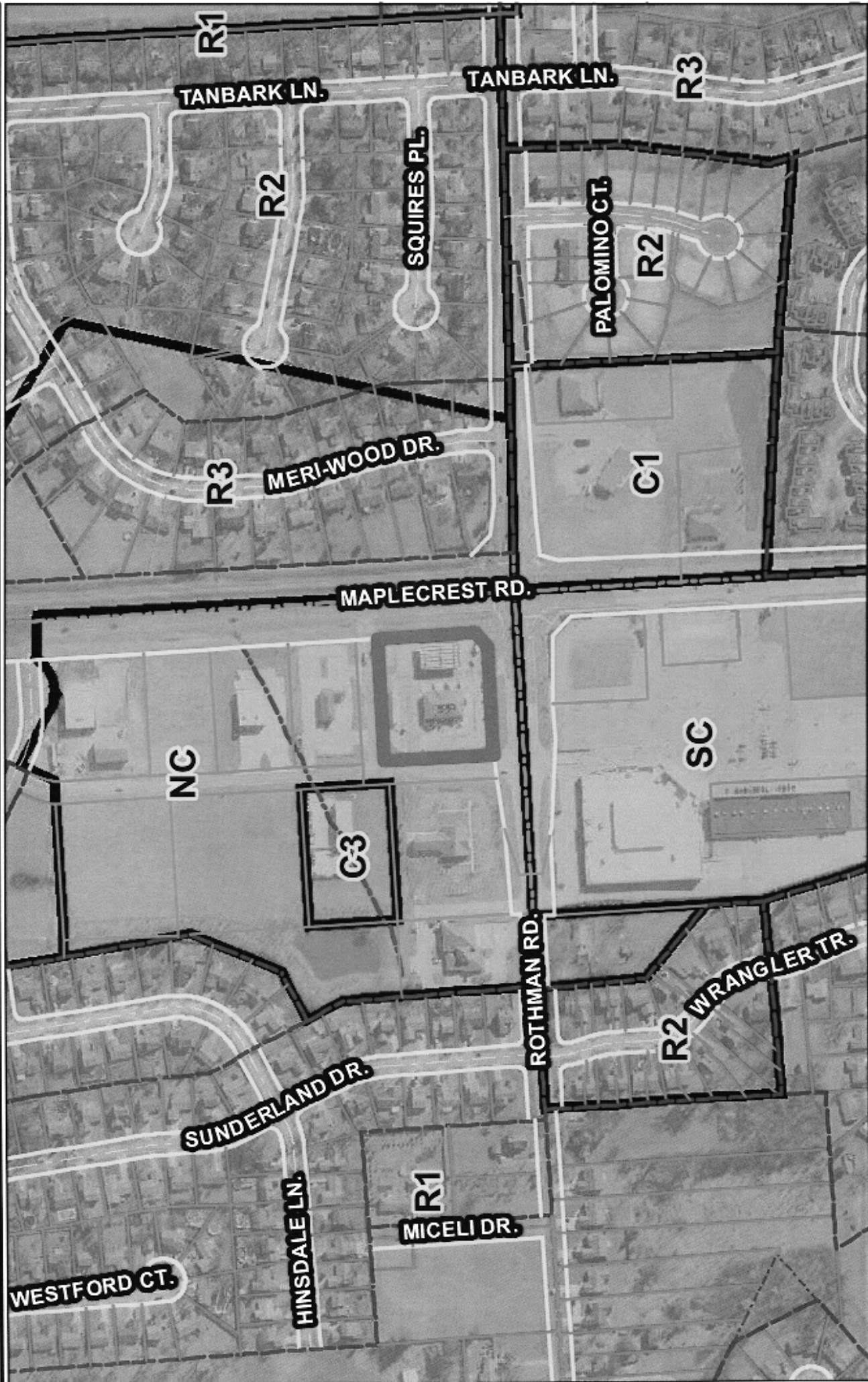
Received	Receipt No.	Hearing Date	Petition No.
2/5/19	129410	3/11/19	REZ-2019-0008



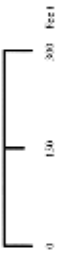
1 inch = 300 feet



Although these aerial photographs have been placed in the context of this map, Allen County does not warrant or guarantee the accuracy of the information contained herein and its liability is limited to the extent of any error or omission in this map.
North American Datum 1983
State Plane Coordinate System, Indiana East
Photo and Contour: Spring 2006
Date: 2-11-2013



1 inch = 300 feet



All right and/or easement studies have been employed in the preparation of this map. Allen County does not warrant or guarantee the accuracy of the information as shown herein and disclaims any and all liability resulting herefrom. This map is a reproduction of the map prepared by the Board of Commissioners of the County of Allen, North Carolina, in 1983. State Plane Coordinate System, 1983 datum East. Photocopyed from Spring 2009. Book 27352019

WRITTEN COMMITMENT

This Written Commitment (this "Commitment") is made effective as of the ___ day of _____, 2019, by 69 & Dupont, LLC, an Indiana limited liability company ("Company").

RECITALS

A. By virtue of that certain Special Warranty Deed dated December 20, 2012 and recorded on December 21, 2012 as Document Number 2012073008 and re-recorded on January 1, 2013 as Document Number 2013002448 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 NC 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.]

69 & Dupont, 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 69 & Dupont, 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 Southeast Quarter of Section 9, Township 31 North, Range 13 East, Allen County, Indiana, more particularly described as follows:

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FACT SHEET

Case #REZ-2019-0008	Bill # Z-19-02-18	Project Start: 5 February 2019
APPLICANT:	69 & Dupont, LLC	
REQUEST:	To rezone property from NC/Neighborhood Center to C3/General Commercial to bring the existing gas station use in conformance with the Zoning Ordinance.	
LOCATION:	The site is located at the northwest corner of Maplecrest Road and Rothman Road. The address of the subject property is 7405 Maplecrest Road (Section 9 of St. Joseph Township).	
LAND AREA:	Approximately 1.7 acres	
PRESENT ZONING:	NC/Neighborhood Center	
PROPOSED ZONING:	C3/General Commercial	
COUNCIL DISTRICT:	2-Russ Jehl	
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 Son Schmidt and seconded by Rachel Tobin-Smith to return the ordinance with a Do Pass recommendation, with a Written Commitment, to Common Council for their final decision.

6-0 MOTION PASSED

- Tom Freistroffer, Paul Sauersteig, 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 NC/Neighborhood Center 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 within Maplecrest Corners, which also includes a bank, a credit union, a fire station, an auto repair shop, and other retail outlets. Across Rothman Road, to the south, is the vacant Marsh grocery store, a gas station and various retail shops and services. The southeast corner is zoned C1/Professional Office and Personal Services and developed with offices. The northeast corner is residential. The original plan contemplated an Amoco station combined with a McDonald's. In 1999, the Lassus/Dairy Queen was approved, along with the addition of a carwash.

The area uses have changed slightly since the original primary plans were approved. In 2015, the Plan Commission approved plans for Travis Auto Center, and Council approved the rezoning of that outlot to C3/General Commercial, with a Written Commitment. The auto service center has been completed.

The SC2 zoning permitted the gas station use, and the use continued to comply with the ordinance until 2014, when a zoning ordinance amendment removed gas stations from the NC district. 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 Maplecrest Corners was proposed, the gas station use was included and reviewed and the Primary Development Plan was approved by the Fort Wayne Plan Commission.

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. Two of the corners at the intersection are developed with commercial uses, including the C3 uses for Travis Auto Center. There are some proposed uses, however, that could intensify the activity in the area, by allowing for more outdoor display and storage. Staff suggests looking more closely at prohibiting those types of uses.

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

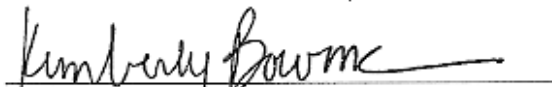
Rezoning Petition REZ-2019-0008

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LAND AREA: Approximately 1.7 acres
PRESENT ZONING: NC/Neighborhood Center
PROPOSED ZONING: C3/General Commercial
1

The Plan Commission recommends that Rezoning Petition REZ-2019-0008, 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 northwest and southwest corners of the Rothman Road and Maplecrest Road intersection have fully developed with commercial uses. The purpose of the rezoning is to allow an existing use to comply with the zoning ordinance. The Plan Commission determined that this is an appropriate use with the 1997 and 1999 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 resulted in a planned commercial development, with a variety of uses to serve the neighborhood. 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 69 & Dupont, 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

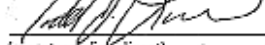
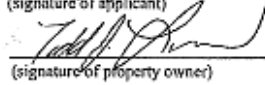
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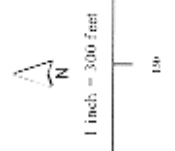
69 & Dupont, LLC by Todd J. Lassus, Member (printed name of applicant)	 (signature of applicant)	<u>2/5/19</u> (date)
69 & Dupont, LLC by Todd J. Lassus, Member (printed name of property owner)	 (signature of property owner)	<u>2/5/19</u> (date)
_____ (printed name of property owner)	_____ (signature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

Received	Receipt No.	Hearing Date	Petition No.
2/5/19	12940	3/11/19	REZ-2019-0008



Although our accuracy is not guaranteed, we warrant that the information is true to the best of our knowledge.

© 2004 Board of Geographical Names, City of Dallas
 State Park, U.S. National System, Indiana East
 Woodward Clarks Inc. Spring 2003
 Date: 2/13/2019



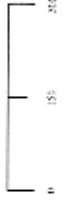


Although every attempt is made to ensure the accuracy of this map, the City of Indianapolis does not warrant or guarantee the accuracy of the information contained herein. The City of Indianapolis is not responsible for any errors or omissions in this map.

© 2019 Board of Commissioners of the City of Indianapolis
 City of Indianapolis, Indiana
 Planning and Development Services
 Date: 2/15/2019



1 inch = 300 feet



2019015241

RECORDED: 04/02/2019 02:36:03 PM

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

WRITTEN COMMITMENT

This Written Commitment (this "Commitment") is made effective as of the 1st day of April, 2019, by 69 & Dupont, LLC, an Indiana limited liability company ("Company").

RECITALS

A. By virtue of that certain Special Warranty Deed dated December 20, 2012 and recorded on December 21, 2012 as Document Number 2012073008 and re-recorded on January 1, 2013 as Document Number 2013002448 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-2019-0008 (the "Rezoning Application") to change the zoning map applicable to the Real Estate from the NC 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 NC/Neighborhood Center under §157.214 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.]

69 & Dupont, LLC,
an Indiana limited liability company

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

By: Todd J. Lassus, Member
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 1st 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 69 & Dupont, 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
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 Southeast Quarter of Section 9, Township 31 North, Range 13 East, Allen County, Indiana, more particularly described as follows:

COMMENCING at a P.K. nail found marking the Southeast corner of the Southeast Quarter of Section 9, Township 31 North, Range 13 East, Allen County, Indiana; thence South 89 degrees 44 minutes 12 seconds West (deed bearing and the basis of the bearings in this description) along the South line of the Southeast Quarter of Section 9, Township 31 North, Range 13 East, a distance of 375.0 feet; thence North 00 degrees 15 minutes 48 seconds West, a distance of 68.11 feet to a 5/8 inch iron pin set at the True Point of Beginning, said point being located on the Northerly right-of-way line of Rothman Road as recorded in Document Number 95-56785 in the Office of the Recorder of Allen County; thence continuing North 00 degrees 15 minutes 48 seconds West, a distance of 255.12 feet to a 5/8 inch iron pin set; thence North 89 degrees 27 minutes 57 second East, a distance of 283.47 feet to a 5/8 inch iron pin set at a point on the West right-of-way line of Maplecrest Road as recorded in said Document Number 95-56785; thence South 00 degrees 32 minutes 03 seconds East (South 03 degrees 26 minutes 33 seconds East, deed) along said right-of-way, a distance of 225.0 feet to a 5/8 inch iron pin set; thence South 49 degrees 09 minutes 24 seconds West (South 46 degrees 14 minutes 40 seconds West, deed) along said right-of-way line, a distance of 45.46 feet (45.52 feet, deed) to a 5/8 inch iron pin set at a point on the Northerly right-of-way line of Rothman Road; thence South 89 degrees 44 minutes 12 seconds West (South 86 degrees 47 minutes 39 seconds West, deed) along said right-of-way line, a distance of 225.0 feet to a 5/8 inch iron pin set; thence South 85 degrees 24 minutes 26 seconds West (South 82 degrees 30 minutes 18 seconds West, deed) along said right-of-way line, a distance of 25.07 feet to the Point of Beginning, Containing 1.645 acres.

An easement for the purpose of ingress and egress and utilities for the benefit of Parcel I, as created by Corporate Deed dated September 30, 1999 and recorded October 19, 1999 as Document Number 990076539, over and across the following described real estate in Allen County, Indiana:

A strip of land 50.0 feet in width, lying 25.0 feet on either side of the following described centerline:

Part of the Southeast Quarter of Section 9, Township 31 North, Range 13 East, Allen County, Indiana, more particularly described as follows:

COMMENCING at a P.K. nail found marking the Southeast corner of the Southeast Quarter of Section 9, Township 31 North, Range 13 East, Allen County, Indiana; thence South 89 degrees 44 minutes 12 seconds West (deed bearing and the basis of the bearing in this description) along the South line of the Southeast Quarter of Section 9, Township 31 North, Range 13 East, a distance of 400.0 feet; thence North 00 degrees 15 minutes 48 seconds West, a distance of 66.23 feet to the True Point of Beginning; said point being located on the Northerly right-of-way line of Rothman Road as recorded in Document Number 95-56785 in the Office of the Recorder of Allen County; thence continuing North 00 degrees 15 minutes 48 seconds West, a distance of 281.88 feet; thence North 89 degrees 27 minutes 57 seconds East, a distance of 308.35 feet to a point on the West right-of-way line of Maplecrest Road as recorded in said Document Number 95-56785, and the point of termination; said easement contains 0.677 acres.

City of Fort Wayne Common Council
DIGEST SHEET

Department of Planning Services

Title of Ordinance: Zoning Map Amendment
Case Number: REZ-2019-0008
Bill Number: Z-19-02-18
Council District: 2-Russ Jehl

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

Synopsis of Ordinance: To rezone approximately 1.65 acres of property from NC-Neighborhood Center to C3-General Commercial.

Location: 7405 Maplecrest 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: 69 & Dupont, LLC

Property Owner: 69 & Dupont, LLC

Related Petitions: none

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 NC-Neighborhood Center, 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.

BILL NO. Z-19-02-18

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. U-46 (Sec. 9 of St. Joseph Township)

To rezone approximately 1.65 acres of property from NC-Neighborhood Center to C3-General Commercial - 7405 Maplecrest Road

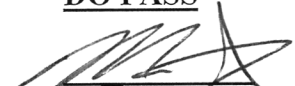

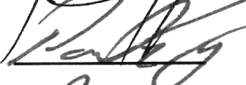
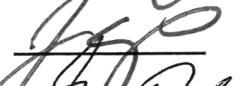
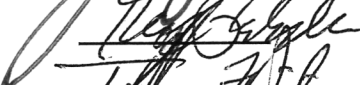
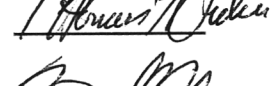
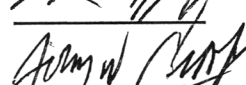
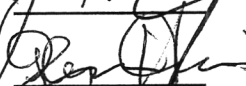

COMMITTEE ON REGULATIONS HAVE HAD SAID Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance

DO PASS

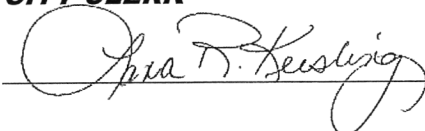
DO NOT PASS

ABSTAIN

NO REC

	_____	_____	_____
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**LANA R. KEESLING
CITY CLERK**



Public Hearing Date: March 11, 2019

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:

<u>TOTAL VOTES</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
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"/>

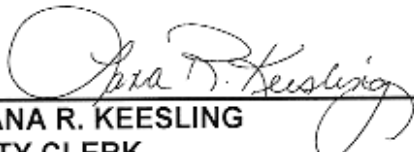
DATED: April 9, 2019



 LANA R. KEESLING, CITY CLERK

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

Zoning Ordinance No. Z-19-02-18 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 9TH day of APRIL

FOR THE CITY OF FORT WAYNE, INDIANA
RECEIVED

APR 10 2019

LANA R. KEESLING
CITY CLERK

at the hour of 10:30 o'clock AM E.S.T.



 THOMAS C. HENRY, MAYOR