

1 #REZ-2019-0040

2 BILL NO. Z-19-06-17

3
4 ZONING MAP ORDINANCE NO. Z- 26-19

5 AN ORDINANCE amending the City of Fort Wayne
6 Zoning Map No. AA-02 (Sec. 11 of Aboite 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 C2 (Limited
10 Commercial) District under the terms of Chapter 157 Title XV of the Code of the City of Fort
11 Wayne, Indiana:

12
13 Part of the Northwest Quarter of Section 11, Township 30 North, Range 11 East,
14 Allen County, Indiana, more particularly described as follows:

15 Commencing at the Northwest corner of the Northwest Quarter of Section 11,
16 Township 30 North, Range 11 East, Allen County, Indiana; thence South 89 degrees
17 10 minutes 28 seconds East (based on INDOT plan bearings for State Road No.14
18 project) along the North line of the Northwest Quarter of Section 11 a distance of
19 1217.8 feet; thence South 00 degrees 47 minutes 35 seconds west a distance of 59.63
20 feet to a point on the South right of way line of State Road No.14 (Illinois Road),
21 said point being the POINT OF BEGINNING; thence South 89 degrees 13 minutes
22 27 seconds East along said right of way line a distance of 111.43 feet; thence South
23 89 degrees 53 minutes 34 seconds East along said right of way line a distance of
24 242.2 feet; thence South 87 degrees 21 minutes 35 seconds East along said right of
25 way line a distance of 406.67 feet to a point on the East line of a tract of land
26 conveyed to BHI Retirement Communities, Inc. as recorded in Document
27 2017010332 in the Office of the Recorder of Allen County, Indiana; thence South 00
28 degrees 51 minutes 59 seconds West along said BHI Retirement Communities, Inc.
29 tract a distance of 289.52 feet; thence North 89 degrees 15 minutes 28 seconds West
30 a distance of 509.7 feet; thence north 00 degrees 47 minutes 35 seconds East a
distance of 60.0 feet; thence North 89 degrees 15 minutes 28 seconds West a
distance of 250.0 feet; thence North 00 degrees 47 minutes 35 seconds East a
distance of 240.37 feet to the Point of Beginning, containing 4.864 acres.

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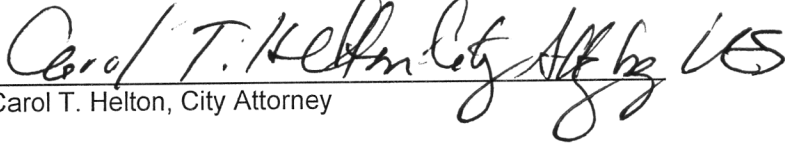
and the symbols of the City of Fort Wayne Zoning Map No. AA-02 (Sec. 11 of Aboite Township), as established by Section 157.082 of Title XV of the Code of the City of Fort Wayne, Indiana is hereby changed accordingly.

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

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


Council Member

APPROVED AS TO FORM AND LEGALITY:


Carol T. Helton, City Attorney

City of Fort Wayne Common Council
DIGEST SHEET

Department of Planning Services

Title of Ordinance: Zoning Map Amendment
Case Number: REZ-2019-0040
Bill Number: Z-19-06-17
Council District: 4-Jason Arp

Introduction Date: June 25, 2019

Plan Commission
Public Hearing Date: July 8, 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 4.864 acres from R1/Single Family Residential
and RP/Multiple Family Residential to C2/Limited Commercial.

Location: 9019 and 9100 Illinois Road

Reason for Request: To redevelop the property with commercial uses to serve a proposed
residential development.

Applicant: BHI Senior Living, Inc. dba The Town House

Property Owner: BHI Senior Living, Inc. dba The Town House

Related Petitions: Primary Development Plan, Prairie Landing

Effect of Passage: Property will be rezoned to the C2/Limited Commercial zoning district,
which will allow a variety of retail and office uses.

Effect of Non-Passage: The property will remain zoned residentially which will not allow
commercial uses.

**Department of Planning Services
Rezoning Petition Application**

Applicant
 Applicant BHI Senior Living, Inc. d/b/a The Towne House
 Address 2209 St. Joe Center Road
 City Fort Wayne State IN Zip 46825
 Telephone 260-969-8000 E-mail dcarr@bhiseniorliving.org

Contact Person
 Contact Person Thomas M. Niezer, Esq.
 Address 215 East Berry Street
 City Fort Wayne State IN Zip 46802
 Telephone (260) 423-8898 E-mail tmn@barrettlaw.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 9019 & 9100 Illinois Road
 Present Zoning RP/R1 Proposed Zoning C2 Acreage to be rezoned 4.864
 Proposed density n/a units per acre
 Township name Aboite Township section # 11
 Purpose of rezoning (attach additional page if necessary) _____
Rezoning of Illinois Road frontage portion of property from RP and R1 to C2 to be developed with businesses serving residential development to be constructed on southern RP portion of property.
 Sewer provider Aqua 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 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.

See attached Exhibit A _____ (date) _____
 (printed name of applicant) (signature of applicant)
 See attached Exhibit A _____ (date) _____
 (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)

| | | | |
|-----------------------------|------------------------------|----------------------------------|--------------------------------------|
| Received <u>6-4-2019</u> | Receipt No. <u>130696</u> | Hearing Date <u>7-11-2014</u> | Petition No. <u>REZ-2019-0040</u> |
|-----------------------------|------------------------------|----------------------------------|--------------------------------------|

EXHIBIT A
Signature Page

OWNER & APPLICANT:

BHI SENIOR LIVING, INC.,
an Indiana nonprofit corporation

By: _____

Name: _____

Its: _____

BDaniel Carv
BDaniel Carv
Vice President Operations

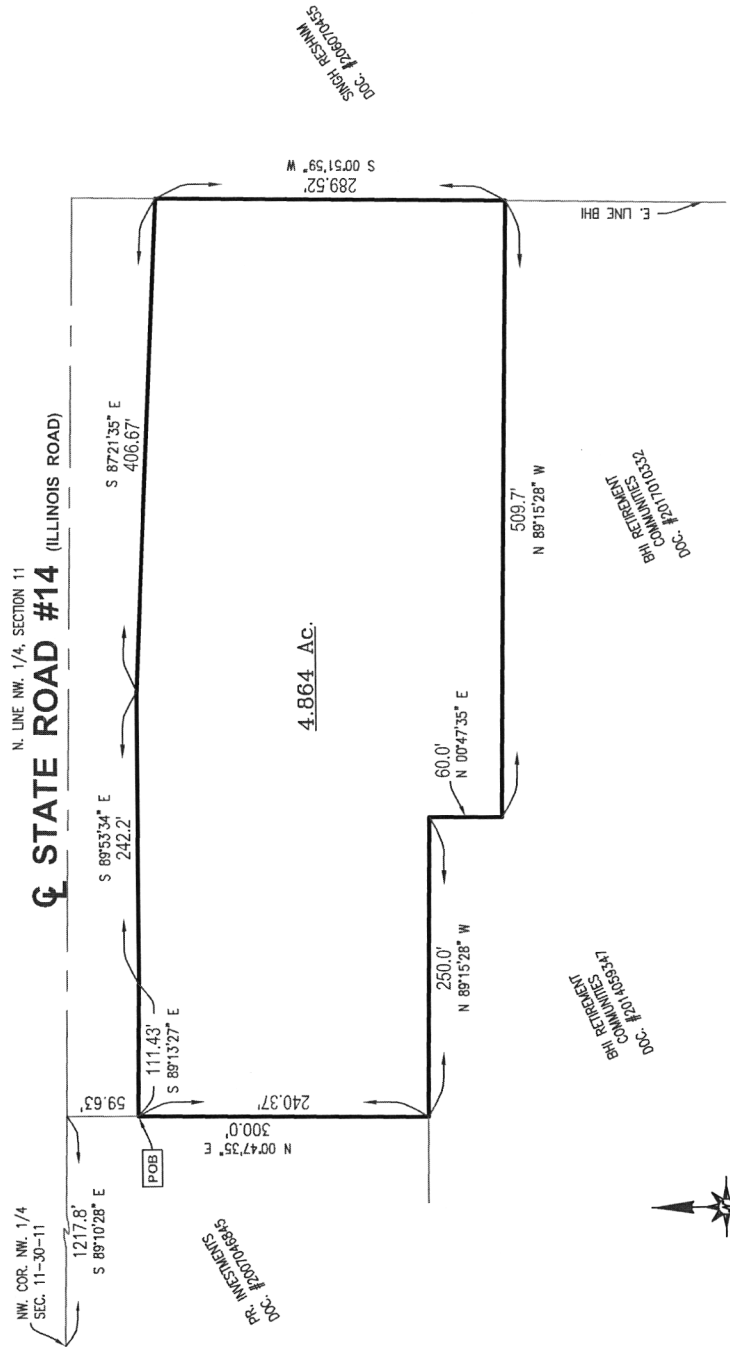
Date: _____

5/31/19

LEGAL DESCRIPTION:

Part of the Northwest Quarter of Section 11, Township 30 North, Range 11 East, Allen County, Indiana, more particularly described as follows:

Commencing at the Northwest corner of the Northwest Quarter of Section 11, Township 30 North, Range 11 East, Allen County, Indiana; thence South 89 degrees 10 minutes 28 seconds East (based on INDOT plan bearings for State Road No. 14, project) along the North line of the Northwest Quarter of Section 11 a distance of 1217.8 feet; thence South 00 degrees 47 minutes 35 seconds west a distance of 59.63 feet to a point on the South right of way line of State Road No. 14 (Illinois Road), said point being the POINT OF BEGINNING; thence South 89 degrees 13 minutes 27 seconds East along said right of way line a distance of 111.43 feet; thence South 89 degrees 53 minutes 34 seconds East along said right of way line a distance of 242.2 feet; thence South 87 degrees 21 minutes 35 seconds East along said right of way line a distance of 406.67 feet to the Point of Beginning line of a tract of land conveyed to BHI Retirement Communities, Inc. as recorded in Document 2017010332 in the Office of the Recorder of Allen County, Indiana; thence South 00 degrees 51 minutes 59 seconds West along said BHI Retirement Communities, Inc. tract a distance of 289.52 feet; thence North 89 degrees 15 minutes 28 seconds West a distance of 509.7 feet; thence North 00 degrees 47 minutes 35 seconds East a distance of 60.0 feet; thence North 89 degrees 15 minutes 28 seconds West a distance of 250.0 feet; thence North 00 degrees 47 minutes 35 seconds East a distance of 240.37 feet to the Point of Beginning, containing 4.864 acres.



1967 **DONOVAN** 2019
ENGINEERING, INC.
 3521 Lake Avenue, Suite 2
 Fort Wayne, Indiana 46805
 Office: 260.424.1918
 Fax: 260.424.1918
 www.donovan-eng.com

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 REVISIONS
 NO. DATE DESCRIPTION BY

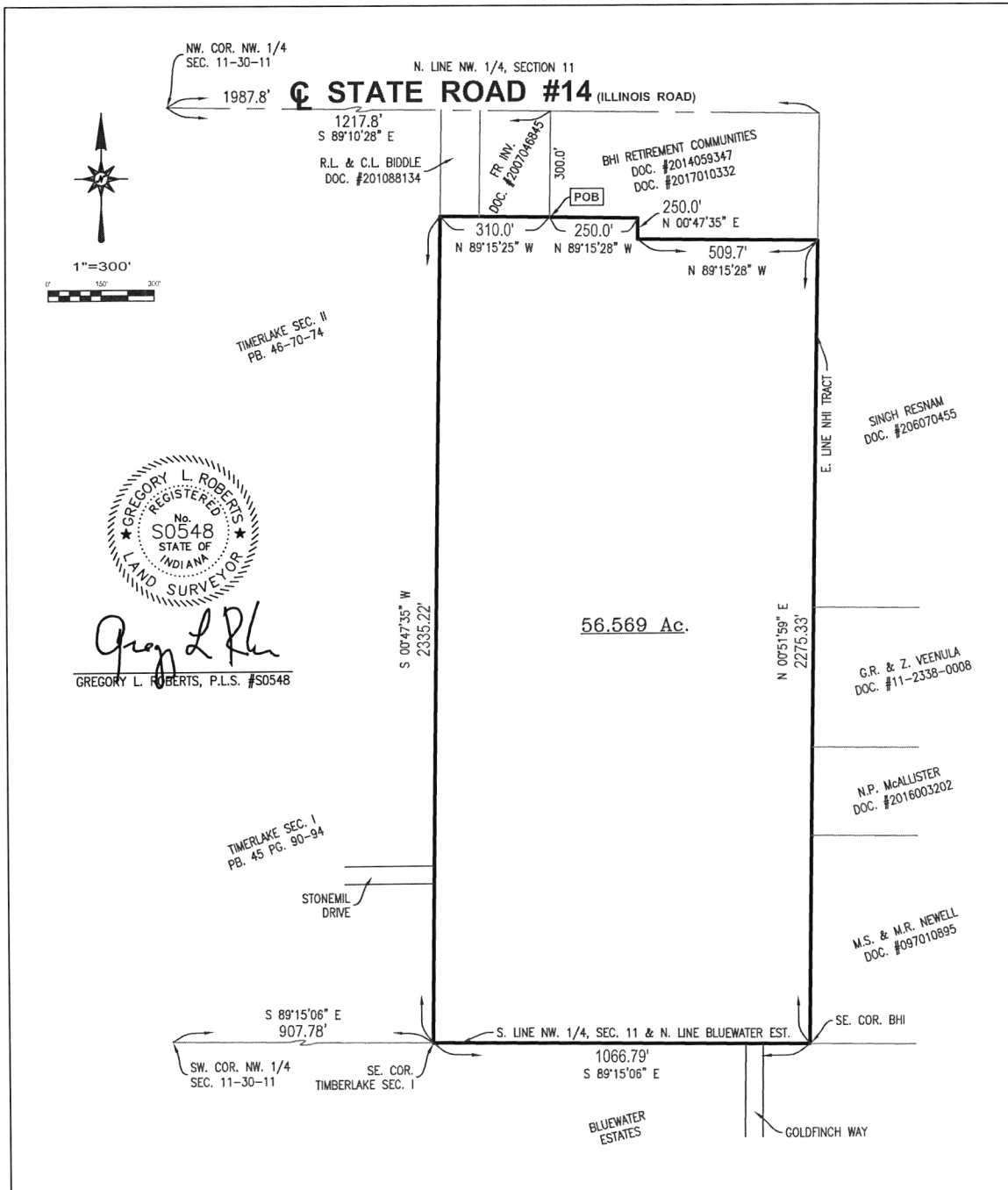
1"=100'
 0' 50' 100'



Gregory L. Roberts
 GREGORY L. ROBERTS, P.L.S. #50548

ZONING SKETCH
 SCALE: 1"=100'
 STATE ROAD #14
 FORT WAYNE, INDIANA
BHI

SHEET 1 OF 1
 DATE 6-4-19



LEGAL DESCRIPTION:

Part of the Northwest Quarter of Section 11, Township 30 North, Range 11 East, Allen County, Indiana, more particularly described as follows:

Commencing at the Northwest corner of the Northwest Quarter of Section 11, Township 30 North, Range 11 East, Allen County, Indiana; thence South 89 degrees 10 minutes 28 seconds East (based on INDOT plan bearing for State Road No 14 project) along the North line of the Northwest Quarter of Section 11 a distance of 1217.8 feet; thence South 00 degrees 47 minutes 35 seconds West a distance of 300.0 feet to the POINT OF BEGINNING; thence North 89 degrees 15 minutes 25 seconds West a distance of 310.0 feet to a point on the East line of the Plat of Timberlake, Section "II" as recorded in Plat Record 46, pages 70-74 in the Office of the Recorder of Allen County, Indiana; thence South 00 degrees 47 minutes 35 seconds West along the East line of Plat of Timberlake, Section "I" and Section "II" a distance of 2335.22 feet to the Southeast corner of the Plat of Timberlake Section "I" as recorded in Plat Record 45, pages 90-94, said point being 907.78 feet East of the Southwest corner of the Northwest Quarter of Section 11; thence South 89 degrees 15 minutes 06 seconds East along the South line of the Northwest Quarter of Section 11 a distance of 1066.79 feet to the Southeast corner of a tract of land conveyed to BHI Retirement Communities, Inc. as recorded in Document 2017010332 in the Office of the Recorder of Allen County, Indiana; thence North 00 degrees 51 minutes 59 seconds East along said BHI Retirement Communities, Inc. tract a distance of 2275.33 feet; thence North 89 degrees 15 minutes 28 seconds West a distance of 509.7 feet; thence North 00 degrees 47 minutes 35 seconds East a distance of 60.0 feet; thence North 89 degrees 15 minutes 28 seconds West a distance of 250.0 feet to the point of beginning, containing 56.569 acres.

1987 2019

DONOVAN ENGINEERING, INC

3521 Lake Avenue, Suite 2
Fort Wayne, Indiana 46805
Office 260.424.7418
Fax 260.424.1918
www.donovan-eng.com

I hereby certify that this survey was completed under my direct supervision and to the best of my knowledge and belief, was executed according to the survey requirements set forth in 865 IAC 1-12.

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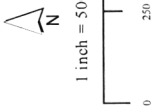
| REVISIONS | | | | ZONING SKETCH - RP | | |
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| NO. | DATE | DESCRIPTION | BY | STATE | SCALE | SHEET |
| | | | | INDIANA | 1"=300' | 1 OF 1 |
| | | | | STATE ROAD #14 FORT WAYNE, INDIANA | | DATE: 6-4-19 |
| | | | | BHI | | |

Rezoning Petitions REZ-2019-0040 and REZ-2019-0041 and Primary Development Plan - PDP-2019-0033 - Prairie Landing



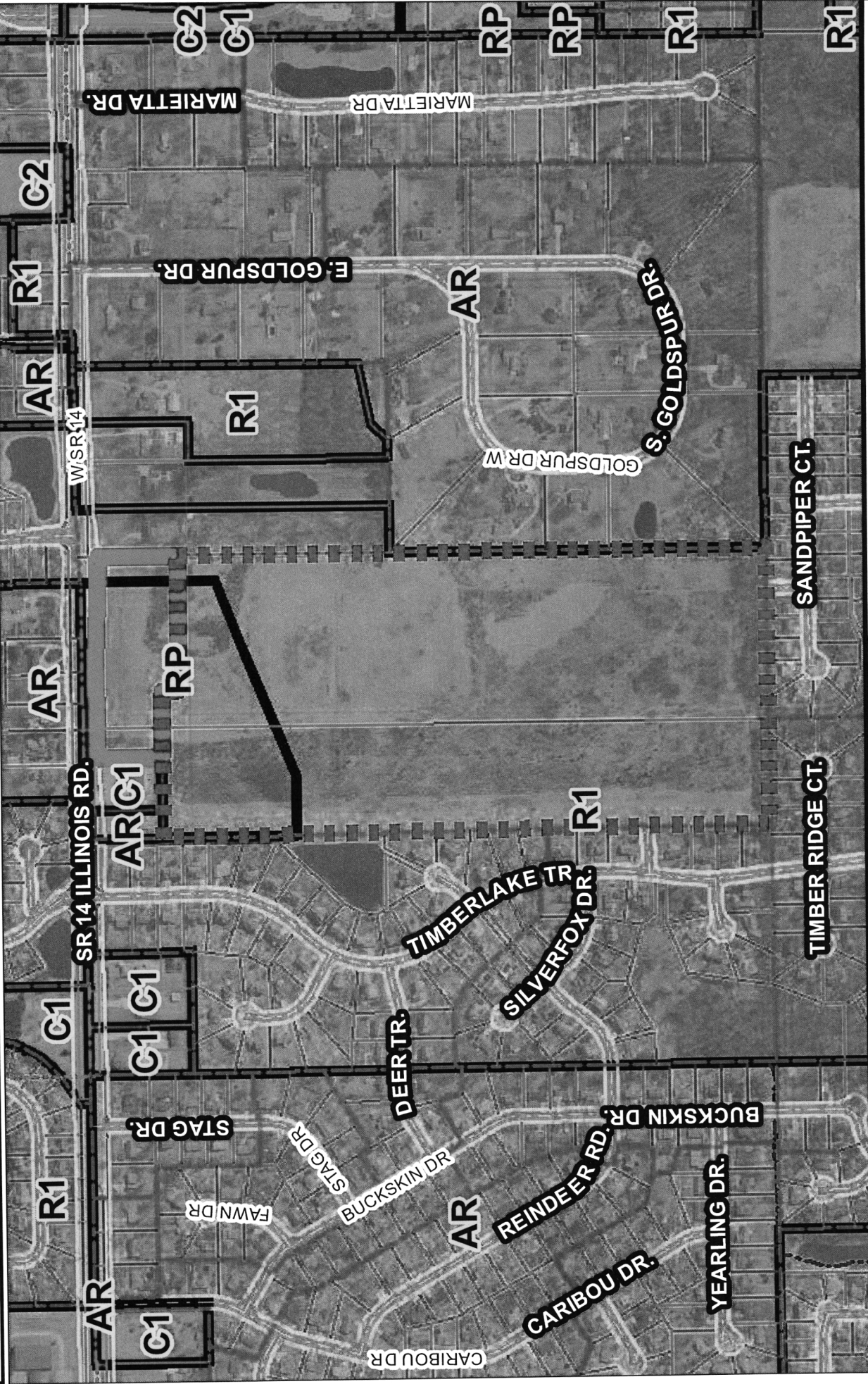
Although strict accuracy standards have been employed in the compilation of this map, Allen County does not warrant the accuracy, completeness, or timeliness of the information contained herein and disclaims any and all liability resulting from any error or omission in this map.

© 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: 6/17/2019

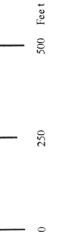




Rezoning Petitions REZ-2019-0040 and REZ-2019-0041 and Primary Development Plan - PDP-2019-0033 - Prairie Landing



1 inch = 500 feet



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North American Datum 1983
State Plane Coordinate System, Indiana East
Photos and Contours: Spring 2009
Date: 6/17/2019

FACT SHEET

Case #REZ-2019-0040 Bill # Z-19-06-17 Project Start: 25 June 2019

| | |
|----------------------|--|
| APPLICANT: | BHI Senior Living, Inc. – The Towne House |
| REQUEST: | To approve a primary development plan for a multiple family residential complex with commercial outlots along Illinois Road. |
| LOCATION: | The site is on the south side of the 8900 to 9100 blocks of Illinois Road/State Road 14, east of Timberlake subdivision, west of Centaur Acres subdivision, and north of a portion of Covington Woods and Bluewater Estates (Section 11 of Aboite Township). |
| LAND AREA: | Approximately 61.4 acres for total site Approximately 4.9 acres for C2 zoning Approximately 56.6 acres for RP zoning |
| PRESENT ZONING: | R1/Single Family Residential and RP/Planned Residential |
| PROPOSED ZONING: | C2/Limited Commercial (REZ-2019-0040) |
| COUNCIL DISTRICT: | 4-Jason Arp |
| ASSOCIATED PROJECTS: | Primary Development Plan, Prairie Landing |
| SPONSOR: | City of Fort Wayne Plan Commission |

8 July 2019 Public Hearing

- Five residents were supportive but shared concerns at the hearing.
- All members were present.

15 July 2019 – Business Meeting

Plan Commission Recommendation: DO PASS w/Written Commitment

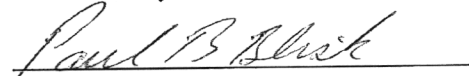
A motion was made by Paul Sauerteig and seconded by Billy Davenport to return the ordinance with a Do Pass recommendation to Common Council for their final decision.

7-0 MOTION PASSED

- Connie Haas Zuber and Patrick Zaharako were absent.

Fact Sheet Prepared by:
Michelle B. Wood, Senior Land Use Planner
July 17, 2019

Reviewed by:


Paul B. Blisk
Deputy Land Use Director

PROJECT SUMMARY

The petitioner, BHI Senior Living, Inc. d/b/a The Towne House is requesting two rezoning petitions and a primary development plan for a mixed-use development. The Towne House is a nonprofit continuing care retirement community that has a campus on St. Joe Center Road in the northeast portion of the City. Due to growth in southwest Fort Wayne, The Towne House is proposing a community to provide a variety of housing densities and options, on-site health care, and also the potential for commercially associated outlots. Approximately five acres of real estate is proposed to be rezoned to C2 for outlots along the Illinois Road/State Road 14 frontage, and the remainder of the property is proposed to be rezoned to RP/Planned Residential. Today, the zoning is comprised of both RP/Planned Residential, primarily along Illinois Road and the northern portion of the site and R1/Single Family Residential. The Illinois Road corridor has seen a large amount of growth in recent years on metes and bounds parcels outside of platted subdivisions. North of the property across Illinois Road are metes and bounds residential properties zoned AR/Low Intensity Residential. East of the site are large-lot residential uses, both metes and bounds and platted within Centaur Acres. Just to the east along Illinois Road are two commercial rezonings for Quail Commons Office and Shigs and Pit/IPT that the Plan Commission heard this year. South of the site are Bluewater Estates and Covington Woods subdivisions. Along the western property line is Timberlake subdivision. There are two metes and bounds properties along Illinois Road that are also adjacent to the site to the northwest; including 9121 Illinois Road, which was rezoned to C1 for an office building.

As mentioned, the Illinois Road corridor is developing with a variety of uses. Residential subdivisions have developed in Aboite Township over the years on the larger metes and bounds properties. Recently, the Plan Commission has reviewed a number of smaller metes and bounds properties with frontage on Illinois Road between Scott Road and Hadley Road for both C1 and C2 zoning. Typically, the rezoning requests include written commitments. This property is a unique case along this portion of Illinois Road that a large amount of acreage is available for a mixed-use development.

The applicant has submitted a written commitment for both of the rezoning petitions. The C2 zoning along Illinois Road does not include any specific users at this time, but the goal of the commercial zoning is to provide business establishments geared toward serving the residents of Prairie Landing. The list of prohibited uses is included within the written commitment which is attached to the staff report. At this point, 97 uses that are permitted within the C2 zoning district as proposed to be prohibited. The spectrum of senior/independent living and assisted living is permitted in the RP/Planned Residential zoning, which is proposed for the remainder of the site. As mentioned, a portion of the real estate is already RP, so this will allow for a variety of residential densities throughout the site. The written commitment associated with the RP rezoning proposes to prohibit fraternity house, sorority house, and off-site campus housing.

The development plan consists of both commercial outlots and the residential community and associated facilities. The primary development plan does not show any specific users or buildings for the proposed commercial property, just outlots as typically shown on primary development plans for shopping centers or office developments. The design of each outlot would be under the review of the Zoning Ordinance's standards. No waiver of any development standard has been requested. Access would be internal and no new access points are proposed to Illinois Road, besides the single access point that serves Prairie Landing. The internal drives throughout the development are proposed to be private. The commercial outlots would also have access to the trail which sits on the south side of Illinois Road.

The residential portion of Prairie Landing does have more specific plans. The proposal includes up to 73 single family and duplex units, as well as multiple family buildings and community facilities; all situated on a proposed water feature. All the residential units are proposed on a single parcel. Building heights will fall at or below 40 feet in height, which is the maximum height in the RP district. The primary development plan does not encompass all of the real estate proposed to be rezoned to RP. There is additional real estate owned by BHI Senior Living to the south of the development plan boundaries that will be future development. A

private stub street is proposed to the additional development, as well as two public stub streets from adjacent residential subdivisions. Future development will likely require a primary development plan or plat to be reviewed by the Plan Commission. No other vacant parcels are present that would require private stub streets.

The applicant is proposing an alternate landscape plan. Due to the classification of this residential development as a multiple family complex, the Zoning Ordinance requires landscape code B-3 adjacent to residential districts. Code B-3 includes a solid board fence and shade/ornamental tree plantings. The development is primarily single family and two family residential, and similar building height as adjacent development, so the applicant would like to use a mixture of shade, evergreen, and ornamental trees and large shrubs around the exterior of the site. The applicant is proposing a well landscaped neighborhood, and is requesting the development not be "fenced-in." Specific plant varieties and locations can be reviewed by the Plan Commission with the secondary development plans.

The rezoning proposals can be supportive by the following goals and policies of the Comprehensive Plan:

LU3. Use land resources efficiently by encouraging new development, revitalization and redevelopment in areas already served by infrastructure;

LU5.D Encourage development proposals that provide housing, designed to allow adequate pedestrian and bicycle access, in close proximity to existing neighborhood commercial, civic, institutional and other similar uses.

LU6. Encourage carefully planned sustainable growth and coordinated development by encouraging mixed land uses.

LU6.C Encourage the conversion of vacant or underutilized properties into compatible mixed-use development areas.

LU6.D Support carefully planned, coordinated, compatible mixed-use development.

LU8. Use land resources efficiently by encouraging compact development alternatives in infill areas where utilities and other infrastructure currently exist.

PUBLIC HEARING SUMMARY:

Presenter: Tom Niezer, representing the applicant, presented the proposal to the Plan Commission, as outlined above.

Public Comments:

- Richard DeWitt – Feels positive about the development. Concerns about stormwater and buffering.
- Andrew Easton – He is okay with the development. Concerns about additional traffic, safety for bike trail users, property values, additional strip center-type development.
- Austin McCracken – Would like more buffering for headlights near the parking lots.
- Patty Murzyn – She is okay with the development.
- Trisha Thomas – She is okay with development. Concerns about stormwater, traffic and bike trail.

Rebuttal:

The traffic should be less than a single family development because traffic patterns for 55+ communities are very different: fewer trips and at off-peak times. The development will have a positive effect on property values because of the investment and amenities. Internal sidewalks will be provided, and they welcome neighborhood connectivity.

FORT WAYNE PLAN COMMISSION • FINDINGS OF FACT

Rezoning Petition REZ-2019-0040

APPLICANT: BHI Senior Living, Inc. – The Towne House
REQUEST: To rezone property from R1/Single Family Residential and RP/Planned Residential to C2/Limited Commercial; and approve a primary development plan for a multiple family residential complex with commercial outlots along Illinois Road.

LOCATION: The site is on the south side of the 8900 to 9100 blocks of Illinois Road/State Road 14, east of Timberlake subdivision, west of Centaur Acres subdivision, and north of a portion of Covington Woods and Bluewater Estates (Section 11 of Aboite Township).

LAND AREA: Approximately 61.4 acres for total site
Approximately 4.9 acres for C2 zoning

PRESENT ZONING: R1/Single Family Residential and RP/Planned Residential
PROPOSED ZONING: C2/Limited Commercial

The Plan Commission recommends that Rezoning Petition REZ-2019-0040 with an approved 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 the City of Fort Wayne Comprehensive Plan, and should not establish an undesirable precedent in the area. The site is near similar commercial development and the proposal will provide an opportunity for neighborhood services for the surrounding subdivisions and developments. The Illinois Road corridor has developed with
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. Site plan and architectural review from the Plan Commission and staff will ensure a compatible development that complements the neighborhood.
3. Approval is consistent with the preservation of property values in the area. This proposal will provide redevelopment in the neighborhood with a market to serve the area residents, and provide a substantial investment into the community. The commercial zoning will allow for services for the residents of Prairie Landing
4. Approval is consistent with responsible development and growth principles based on existing uses and infrastructure in the area. Review by City engineering departments indicates that the site can be developed for the proposed uses and adequate infrastructure is available to service the site.

These findings approved by the Fort Wayne Plan Commission on July 15, 2019.


Paul B. Blisk, AICP
Deputy Land Use Director

**Department of Planning Services
Rezoning Petition Application**

Applicant
 Applicant BHI Senior Living, Inc. d/b/a The Towne House
 Address 2209 St. Joe Center Road
 City Fort Wayne State IN Zip 46825
 Telephone 260-969-8000 E-mail dcarr@bhiseniorliving.org

Contact Person
 Contact Person Thomas M. Niezer, Esq.
 Address 215 East Berry Street
 City Fort Wayne State IN Zip 46802
 Telephone (260) 423-8898 E-mail tmn@barrettlaw.com

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

Request
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 Township name Aboite Township section # 11
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Rezoning of Illinois Road frontage portion of property from RP and R1 to C2 to be developed with businesses serving residential development to be constructed on southern RP portion of property.
 Sewer provider Aqua Water provider City of Fort Wayne

Filing Requirements
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- Rezoning Questionnaire (original and 10 copies) County Rezonings Only

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See attached Exhibit A
 (printed name of applicant) _____ (signature of applicant) _____ (date) _____

See attached Exhibit A
 (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. |
|----------|-------------|--------------|---------------|
| 6-4-2019 | 130696 | 7-11-2014 | REZ-2019-0040 |

EXHIBIT A
Signature Page

OWNER & APPLICANT:

BHI SENIOR LIVING, INC.,
an Indiana nonprofit corporation

By: 

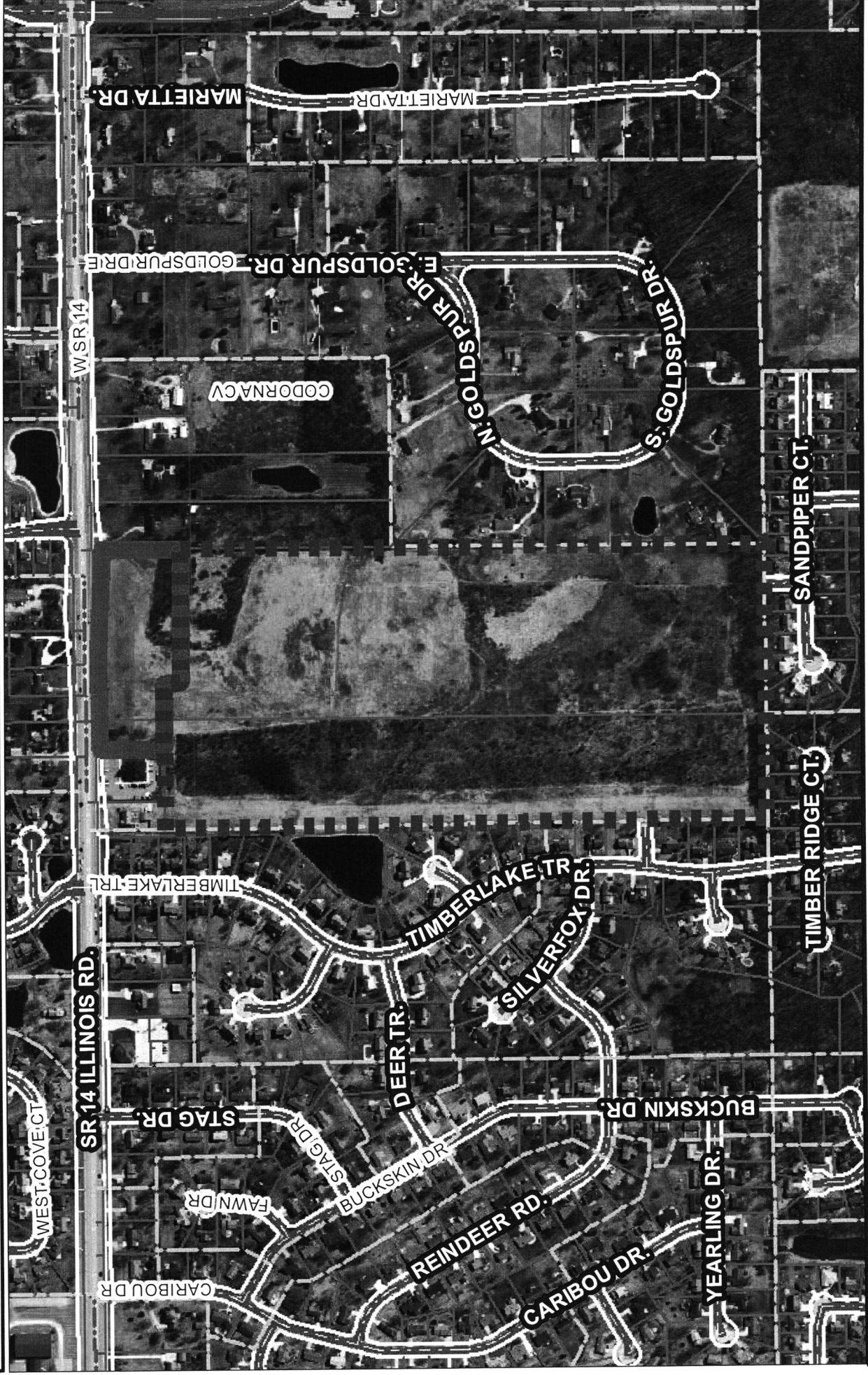
Name: B. Daniel Caru

Its: Vice President Operations

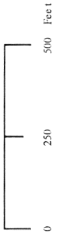
Date: 5/31/19



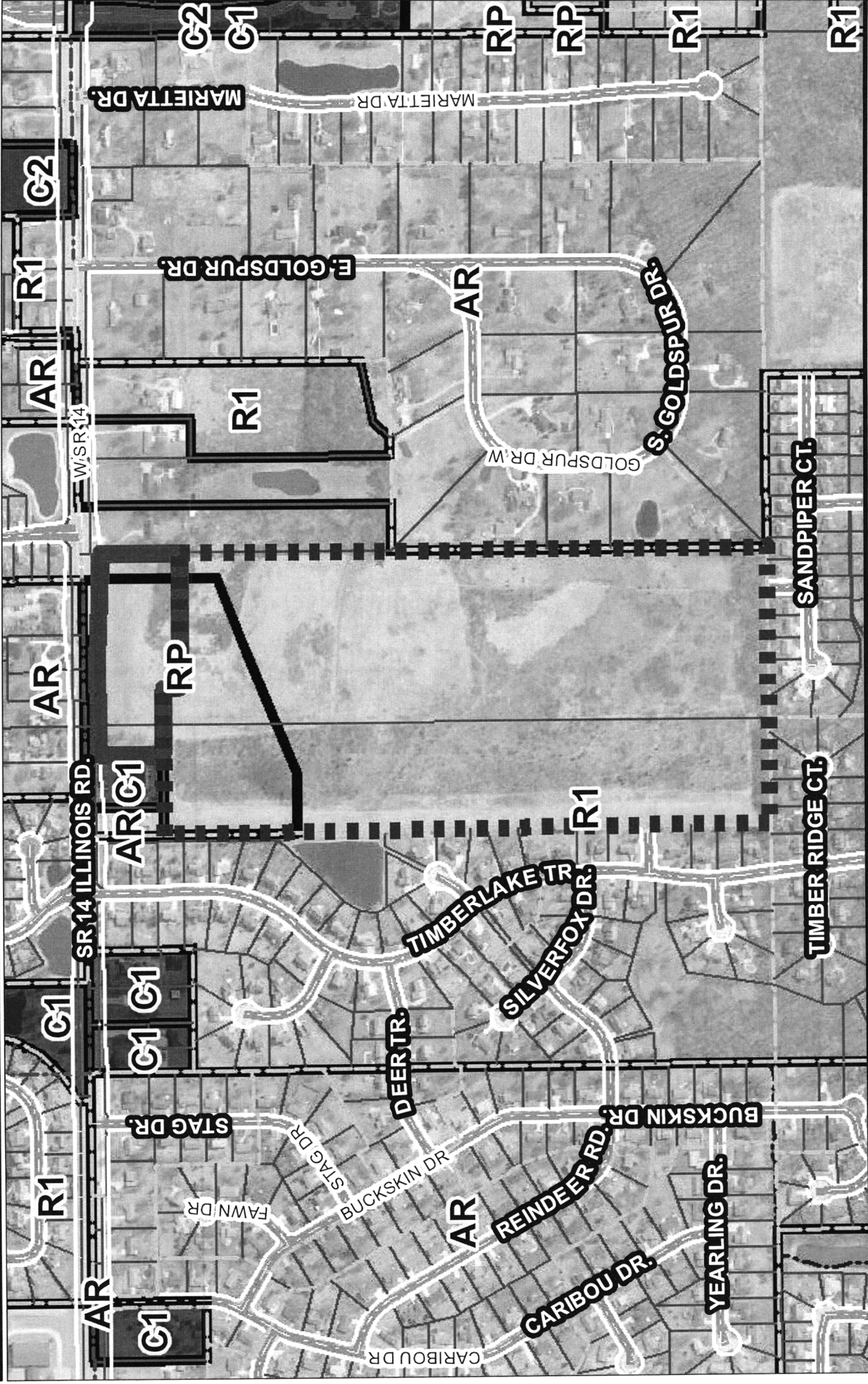
Rezoning Petitions REZ-2019-0040 and REZ-2019-0041 and Primary Development Plan - PDP-2019-0033 - Prairie Landing

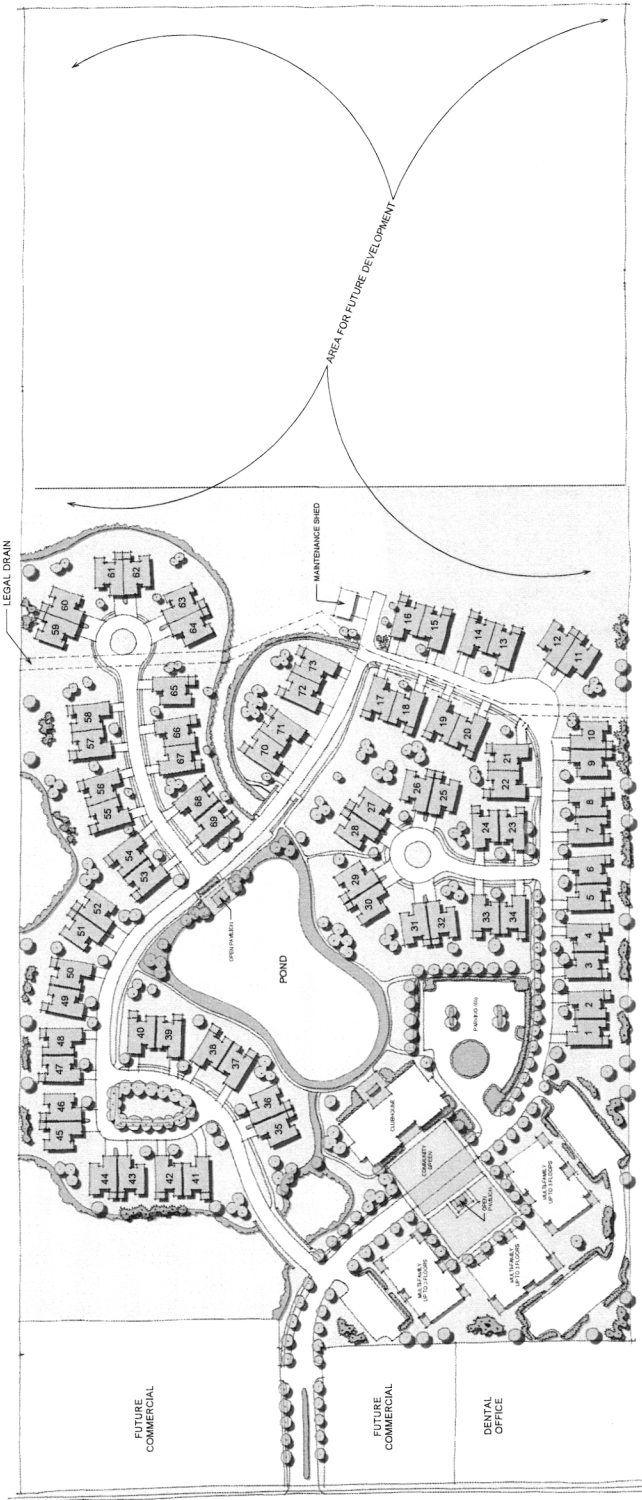


1 inch = 500 feet



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State Plane Coordinate System - Kansas East
Photos: GeoEye, Inc. / GeoEye, Inc. / GeoEye, Inc.
Date: 6/17/2019





HWY 14

PROPOSED SITE PLAN
1" = 100'-0"



WRITTEN COMMITMENT

THIS WRITTEN COMMITMENT (“Commitment”) is made this ___ day of July, 2019 by BHI Senior Living, Inc., an Indiana nonprofit corporation (the “Declarant”).

WITNESSETH:

WHEREAS, Declarant is the owner of approximately 61.433 acres of real estate located on Illinois Road in Fort Wayne, Allen County, Indiana, the legal description of which is attached hereto as Exhibit “A” (the “Real Estate”); and

WHEREAS, Declarant submitted rezoning petitions with respect to the Real Estate to rezone the area located along the frontage of Illinois Road from RP and R1 to C2 (the “C2 Parcel”), bearing number REZ-2019-0040 and to rezone the remaining area of the Real Estate that was previously zoned R1 to RP (the “RP Parcel”), bearing number REZ-2019-0041 (collectively, the “Petitions”), which Petitions have been approved by the Allen County, Indiana Plan Commission (the “Plan Commission”) and City Council; and

WHEREAS, Declarant also filed a development plan application (the “Development Plan Application”) with the Plan Commission, bearing number PDP-2019-0022, seeking approval of a residential development on the portion of the Real Estate comprising the RP Parcel, which Development Plan Application has been approved by the Plan Commission

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

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

NOW, THEREFORE, in consideration of the above and foregoing recitals, Declarant hereby impresses upon the Real Estate certain restrictions and covenants which shall run with the Real Estate and be binding upon Declarant and all future owners of the Real Estate, and all lessees of all or any portion of the Real Estate.

1. Prohibited Uses on C2 Parcel. Subject to the terms and conditions herein contained, the following uses shall be prohibited upon the C2 Parcel:

- 1) Adult care center
- 2) Adult care home
- 3) Advertising
- 4) Air conditioning sales
- 5) Animal hospital
- 6) Animal kennel
- 7) Animal obedience school
- 8) Answering service
- 9) Antique shop
- 10) Appraiser
- 11) Arcade
- 12) Assisted living facility
- 13) Auction service
- 14) Audio-visual studio
- 15) Automobile accessory store
- 16) Bait sales
- 17) Bankruptcy service
- 18) Bed and breakfast
- 19) Billiard or pool hall
- 20) Bingo establishment
- 21) Blood bank
- 22) Blood or plasma donor facility
- 23) Boarding/lodging house
- 24) Bowling alley
- 25) Broker
- 26) Business training
- 27) Campus housing
- 28) Catalog showroom
- 29) Child care home (class I or II)
- 30) Cigarette/tobacco/cigar store
- 31) Club, private
- 32) Coin shop

- 33) Collection agency
- 34) Community garden
- 35) Correctional services facility
- 36) Credit service
- 37) Customer service facility
- 38) Data processing facility
- 39) Data storage facility
- 40) Dating service
- 41) Day care
- 42) Department store
- 43) Diaper service facility
- 44) Dormitory/campus housing
- 45) Driving instruction
- 46) Educational institution
- 47) Employment agency
- 48) Entertainment facility
- 49) Finance agency
- 50) Fireworks sales
- 51) Flea market
- 52) Floor covering store
- 53) Fraternity house
- 54) Funeral home
- 55) Group residential facility (large)
- 56) Group residential facility (small)
- 57) Gymnastics instruction
- 58) Haunted house
- 59) Heating sales
- 60) Homeless/emergency shelter
- 61) Hospital
- 62) Hotel
- 63) Model unit
- 64) Motel
- 65) Movie and game sales and rental
- 66) Multiple family complex
- 67) Multiple family dwelling

- 68) Nursing home
- 69) Package liquor store
- 70) Paint store
- 71) Park or recreation area
- 72) Parking structure
- 73) Radio station
- 74) Reception/banquet hall
- 75) Religious institution/school field
- 76) Rental and/or leasing store
- 77) Rescue mission
- 78) Residential dwelling unit
- 79) Residential facility for homeless individuals
- 80) Retirement facility
- 81) School
- 82) Security service
- 83) Sign sales store
- 84) Skating rink
- 85) Social service agency
- 86) Sorority house
- 87) Sporting goods sales and rentals
- 88) Tanning salon
- 89) Tattoo establishment
- 90) Taxi service
- 91) Telephone sales and service
- 92) Television station
- 93) Theater
- 94) Tire sales
- 95) Townhouse complex
- 96) Variety store
- 97) Wind energy conversion system (micro)

2. Prohibited Uses on RP Parcel. Subject to the terms and conditions herein contained, the following uses shall be prohibited upon the RP Parcel:

- 1) Fraternity or sorority house
- 2) Off-site campus housing

3. Permitted Uses. Any use otherwise permitted in a C2 zoning district pursuant to the Ordinance which is not expressly prohibited pursuant to Section 1 above shall be a permitted use upon the C2 Parcel. Any use otherwise permitted in a RP zoning district pursuant to the Ordinance which is not expressly prohibited pursuant to Section 2 above shall be a permitted use upon the RP Parcel.
4. Landscaping and Buffering. The screening and buffering landscaping upon the Real Estate shall be constructed and installed as depicted in the Drawing attached hereto as Exhibit “B”, which shall be completed within the same calendar year as the issuance of the certificate of occupancy for the first residential unit upon the Real Estate, provided, however, that to the extent said certificate of occupancy is issued on or after October 1st of any calendar year, the screening and buffering landscaping will be installed and completed no later than June 15th of the following calendar year.
5. Permits. Declarant shall comply all other permitting, drainage, and other requirements with respect to Declarant’s use and development of the Real Estate. No permits shall be issued under the Ordinance by the Zoning Administrator of City of Fort Wayne (“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.
6. Binding Effect, Modification, and Termination. This Commitment shall run with the Real Estate, and shall be binding upon the Declarant and each subsequent owner of the Real Estate and each other person acquiring an interest in the Real Estate, unless this Commitment is modified or terminated. The recitals are incorporated herein by reference and are expressly made a part of this Commitment. This Commitment may be modified or terminated only by a decision of the Plan Commission or the Board of Zoning Appeals (the “BZA”), as applicable, following a public hearing held by the Plan Commission or BZA wherein notice has been given as provided by the Plan Commission's and BZA’s rules of procedure.
7. Recording. Declarant or Applicant shall, at Declarant’s or Applicant’s expense, record this Commitment with the Allen County Recorder and shall provide two copies of the recorded Commitment to the Allen County Zoning Administrator.
8. Enforcement. Any violation of this Commitment shall be deemed a violation of the zoning ordinance in effect at the time of the violation; provided, however, that nothing in this Commitment shall be construed as giving any person the right to compel enforcement of it by the Plan Commission, the BZA, or any enforcement official designated in the zoning ordinance, or any successor agency having zoning jurisdiction over the Real Estate. Pursuant to I.C. §36-7-4-1015, the Plan Commission, the BZA, or any enforcement official designated in the zoning ordinance, shall be entitled to all legal and equitable remedies available, including specific performance and injunctive relief, for any violation of this Commitment. The enforcement rights of the Plan Commission, the BZA, or any enforcement official designated in the zoning ordinance are cumulative, not exclusive.

9. Authority to Sign. The person signing this Commitment in a representative capacity on behalf of Declarant warrants and represents that: (a) the person has the actual authority and power to so sign, and to bind the respective entity to the provisions of this Commitment; and (b) all corporate or other entity action necessary for the making of this Commitment has been duly taken.
10. Last Deeds of Record. The most recent deed of record for the Real Estate was recorded in the Office of the Recorder of Allen County, Indiana as Document Number 2017010331 and Document Number 2017010332.
11. 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.
12. Governing Law. This Commitment, including the restrictions and covenants hereunder, shall be governed by the laws of the State of Indiana.
13. Effective Date. The effective date (“Effective Date”) of this Commitment shall be the date of its recordation with the Office of the Recorder of Allen County, Indiana.

[Signature page follows.]

“DECLARANT”

BHI SENIOR LIVING, INC.,
an Indiana nonprofit corporation

By: _____
Printed Name: B. Daniel Carr
Title: Vice President of Operations

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public, in and for said County and State, this ___ day of July, 2019, personally appeared B. Daniel Carr, the Vice President of Operations of BHI Senior Living, Inc. and acknowledged the execution of the foregoing. In witness whereof, I have hereunto subscribed my name and affixed my official seal.

Notary Public

My Commission Expires: _____

My County of Residence: _____

THIS INSTRUMENT prepared by Alison V. Podlaski, Attorney No. 35337-02, Barrett McNagny, 215 East Berry Street, P.O. Box 2263, Fort Wayne, Indiana 46801-2263.

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. Alison V. Podlaski.

When Recorded, mail to: Alison V. Podlaski, Barrett McNagny LLP, 215 East Berry Street, P.O. Box 2263, Fort Wayne, Indiana 46801-2263.

EXHIBIT "A"

LEGAL DESCRIPTION OF REAL ESTATE

C2 Parcel:

Part of the Northwest Quarter of Section 11, Township 30 North, Range 11 East, Allen County, Indiana, more particularly described as follows:

Commencing at the Northwest corner of the Northwest Quarter of Section 11, Township 30 North, Range 11 East, Allen County, Indiana; thence South 89 degrees 10 minutes 28 seconds East (based on INDOT plan bearings for State Road No.14 project) along the North line of the Northwest Quarter of Section 11 a distance of 1217.8 feet; thence South 00 degrees 47 minutes 35 seconds west a distance of 59.63 feet to a point on the South right of way line of State Road No.14 (Illinois Road), said point being the POINT OF BEGINNING; thence South 89 degrees 13 minutes 27 seconds East along said right of way line a distance of 111.43 feet; thence South 89 degrees 53 minutes 34 seconds East along said right of way line a distance of 242.2 feet; thence South 87 degrees 21 minutes 35 seconds East along said right of way line a distance of 406.67 feet to a point on the East line of a tract of land conveyed to BHI Retirement Communities, Inc. as recorded in Document 2017010332 in the Office of the Recorder of Allen County, Indiana; thence South 00 degrees 51 minutes 59 seconds West along said BHI Retirement Communities, Inc. tract a distance of 289.52 feet; thence North 89 degrees 15 minutes 28 seconds West a distance of 509.7 feet; thence north 00 degrees 47 minutes 35 seconds East a distance of 60.0 feet; thence North 89 degrees 15 minutes 28 seconds West a distance of 250.0 feet; thence North 00 degrees 47 minutes 35 seconds East a distance of 240.37 feet to the Point of Beginning, containing 4.864 acres.

RP Parcel:

Part of the Northwest Quarter of Section 11, Township 30 North, Range 11 East, Allen County, Indiana, more particularly described as follows:

Commencing at the Northwest corner of the Northwest Quarter of Section 11, Township 30 North, Range 11 East, Allen County, Indiana; thence South 89 degrees 10 minutes 28 seconds East (based on INDOT plan bearing for State Road No 14 project) along the North line of the Northwest Quarter of Section 11 a distance of 1217.8 feet; thence South 00 degrees 47 minutes 35 seconds West a distance of 300.0 feet to the POINT OF BEGINNING; thence North 89 degrees 15 minutes 28 seconds West a distance of 310.0 feet to a point on the East line of the Plat of Timberlake, Section "II" as recorded in Plat Record 46, pages 70-74 in the Office of the Recorder of Allen County, Indiana; thence South 00 degrees 47 minutes 35 seconds West along the East line of Plat of Timberlake, Section "I" and Section "II" a distance of 2335.22 feet to the Southeast corner of the Plat of Timberlake Section "I" as recorded in Plat Record 45, pages 90-94, said point being 907.78 feet East of the Southwest corner of the Northwest Quarter of Section 11; thence South 89 degrees 15 minutes 06 seconds East along the South line of the Northwest Quarter of Section 11 a distance of 1066.79 feet to the Southeast corner of a tract of land conveyed to BHI Retirement Communities, Inc. as recorded in Document 2017010332 in the

Office of the Recorder of Allen County, Indiana; thence North 00 degrees 51 minutes 59 seconds East along said BHI Retirement Communities, Inc. tract a distance of 2275.33 feet; thence North 89 degrees 15 minutes 28 seconds West a distance of 509.65 feet; thence North 00 degrees 47 minutes 35 seconds East a distance of 60.0 feet; thence North 89 degrees 15 minutes 28 seconds West a distance of 250.0 feet to the point of beginning, containing 56.569 acres.

EXHIBIT "B"
DRAWING OF LANDSCAPING

BILL NO. Z-19-06-17

REPORT OF COMMITTEE ON REGULATIONS

July 23, 2019

Tom Freistroffer Chair

Michael Barranda Co-Chair

All Council Members

An Ordinance amending the City of Fort Wayne Zoning Map No. AA-02 (Sec. 11 of Aboite Township)

To rezone approximately 4.864 acres from R1/Single Family Residential and RP/Multiple Family Residential to C2/Limited Commercial at 9019 and 9100 Illinois Road




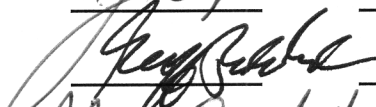
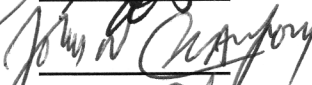
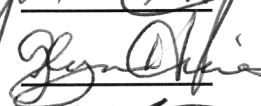

COMMITTEE ON REGULATIONS HAVE HAD SAID Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance

DO PASS

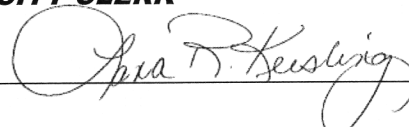
DO NOT PASS

ABSTAIN

NO REC

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**LANA R. KEESLING
CITY CLERK**



Public Hearing Date: N/A

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

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

Read the third time in full and on motion by Councilman Freistroffer, 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 type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| ENSLEY | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" 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 type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| PADDOCK | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

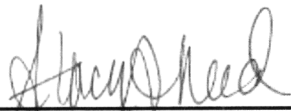
DATED: July 23, 2019



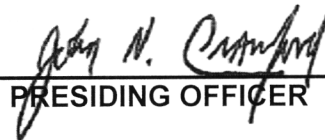
STACY A. REED, DEPUTY CITY CLERK

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

Zoning Ordinance No. Z-19-06-17 on the 23rd day of July, 2019



STACY A. REED
DEPUTY CITY CLERK



PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 24th of July 2019, at the hour of 10:00 o'clock A.M. E.S.T.



STACY A. REED, DEPUTY CITY CLERK

Approved and signed by me this 24TH day of JULY

2019, at the hour of 2:00 o'clock PM E.S.T.

FORT WAYNE, INDIANA
RECEIVED

JUL 25 2019

LANA R. KEESLING
CITY CLERK


THOMAS C. HENRY, MAYOR