

1 #REZ-2020-0004

2 BILL NO. Z-20-01-34

3  
4 ZONING MAP ORDINANCE NO. Z- 15-20

5 AN ORDINANCE amending the City of Fort Wayne  
6 Zoning Map No. K-62 (Sec. 32 of Perry 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 C1  
10 (Professional Office and Personal Services) District under the terms of Chapter 157 Title XV  
11 of the Code of the City of Fort Wayne, Indiana:

12 The East one-half of the Fractional Southwest one-quarter of Section 32, Township  
13 32 north, Range 12 East, Allen County, Indiana, more particularly described as  
14 follows:

15 Commencing at the Southeast corner of the Fractional Southwest one-quarter of  
16 Section 32, Township 32 North, Range 12 East, Allen County, Indiana; thence North  
17 1 degree 08 minutes 30 seconds West along the East line of the Fractional Southwest  
18 one-quarter of Section 32, Township 32 North, Range 12 East a distance of 205.0  
19 feet; thence South 89degrees 21 minutes 30 seconds West along the North line of  
20 Kehr's Addition a distance of 1312.1 feet actual (1314.0 recorded) to the East line of  
21 the former Toledo & Chicago Interurban Railway Company right-of-way line now  
22 owned by the State of Indiana; thence North 1 degree 07 minutes West along the said  
23 East right-of-way line a distance of 665.0 feet to the point of beginning; thence North  
24 88 degrees 59 minutes East a distance of 390.0 feet; thence North 1 degree 07  
25 minutes West a distance of 275.0 feet; thence South 88 degrees 59 minutes West a  
26 distance of 390.0 feet to the said East right-of-way line; thence South 1 degree 07  
27 minutes East a distance of 275.0 feet along the East line of the former Toledo &  
28 Chicago Interurban Railway Company right-of-way line to the point of beginning,  
29 containing 2.46 acres, more or less.

30 and the symbols of the City of Fort Wayne Zoning Map No. K-62 (Sec. 32 of Perry  
Township), as established by Section 157.082 of Title XV of the Code of the City of Fort  
Wayne, Indiana is hereby changed accordingly.

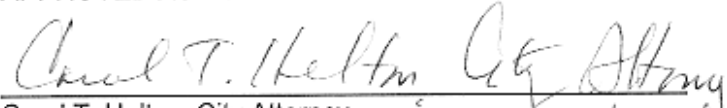
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SECTION 2. If a written commitment is a condition of the Plan Commission's recommendation for the adoption of the rezoning, or if a written commitment is modified and approved by the Common Council as part of the zone map amendment, that written commitment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

by 

**Department of Planning Services  
Rezoning Petition Application**

**Applicant**  
 Applicant Bussick Properties, LLC  
 Address 7207 Engle Road  
 City Fort Wayne State IN Zip 46804  
 Telephone (260) 436-2255 E-mail doc@bussickortho.com

**Contact Person**  
 Contact Person Tom Trent  
 Address 505 E. Washington Blvd.  
 City Fort Wayne State IN Zip 46802  
 Telephone (260) 422-9454 E-mail ttrent@rlwlawfirm.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 10630 Lima Road, Fort Wayne, IN 46818  
 Present Zoning AR Proposed Zoning C1 Acreage to be rezoned 2.46 acres  
 Proposed density One building for every 1.23 acres units per acre  
 Township name Perry Township Township section # 0032  
 Purpose of rezoning (attach additional page if necessary) The purpose of the rezoning is to enable Applicant to operate an orthodontia office and/or to provide for other medical office/professional office uses.  
 Sewer provider City of Fort Wayne Water provider City of Fort Wayne

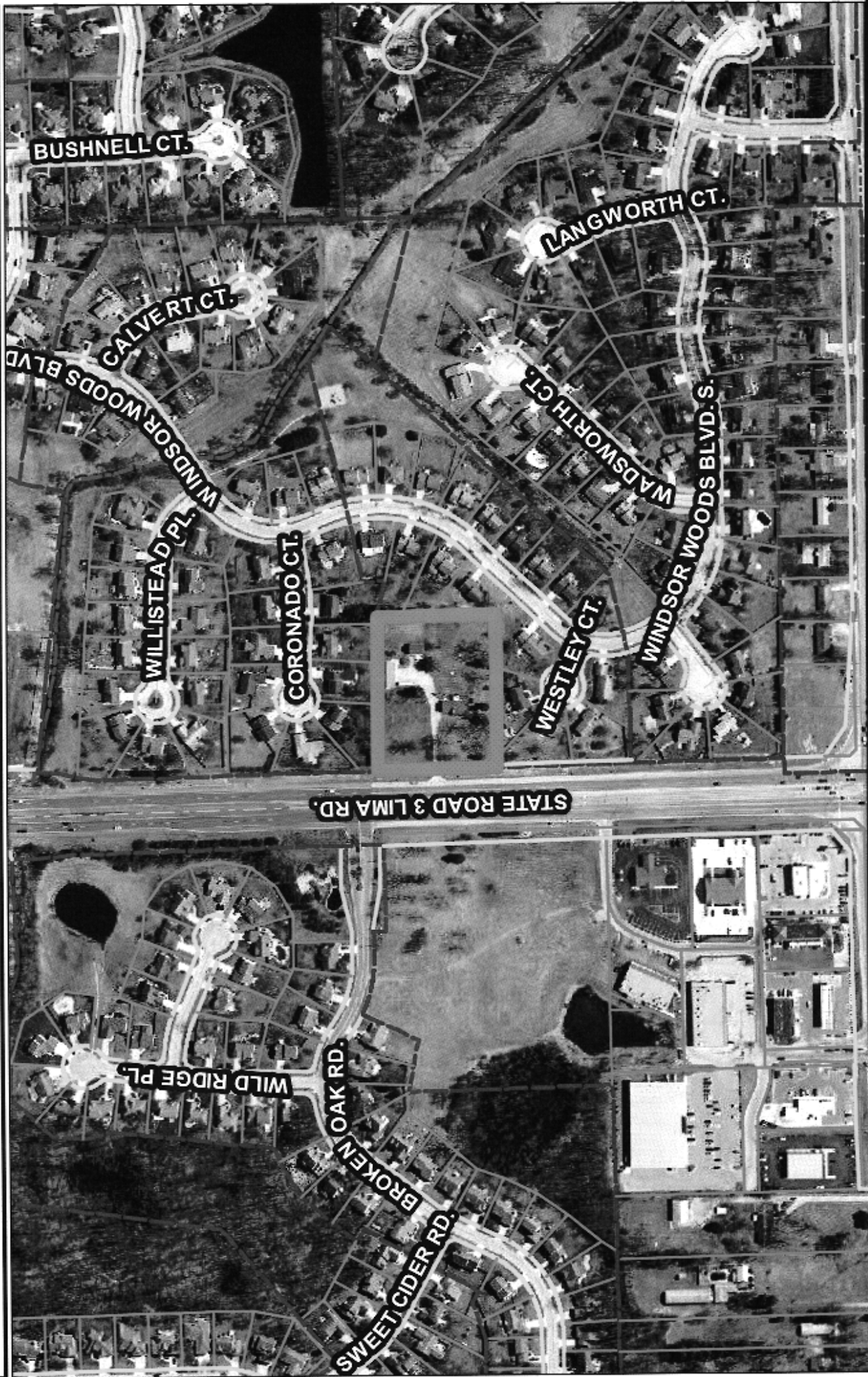
**Filing Requirements**  
*Applications will not be accepted unless the following filing requirements are submitted with this application. Please refer to checklist for applicable filing fees and plan/survey submittal requirements.*

- 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 \$30.00 per Indiana code.

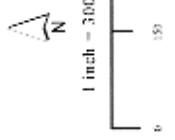
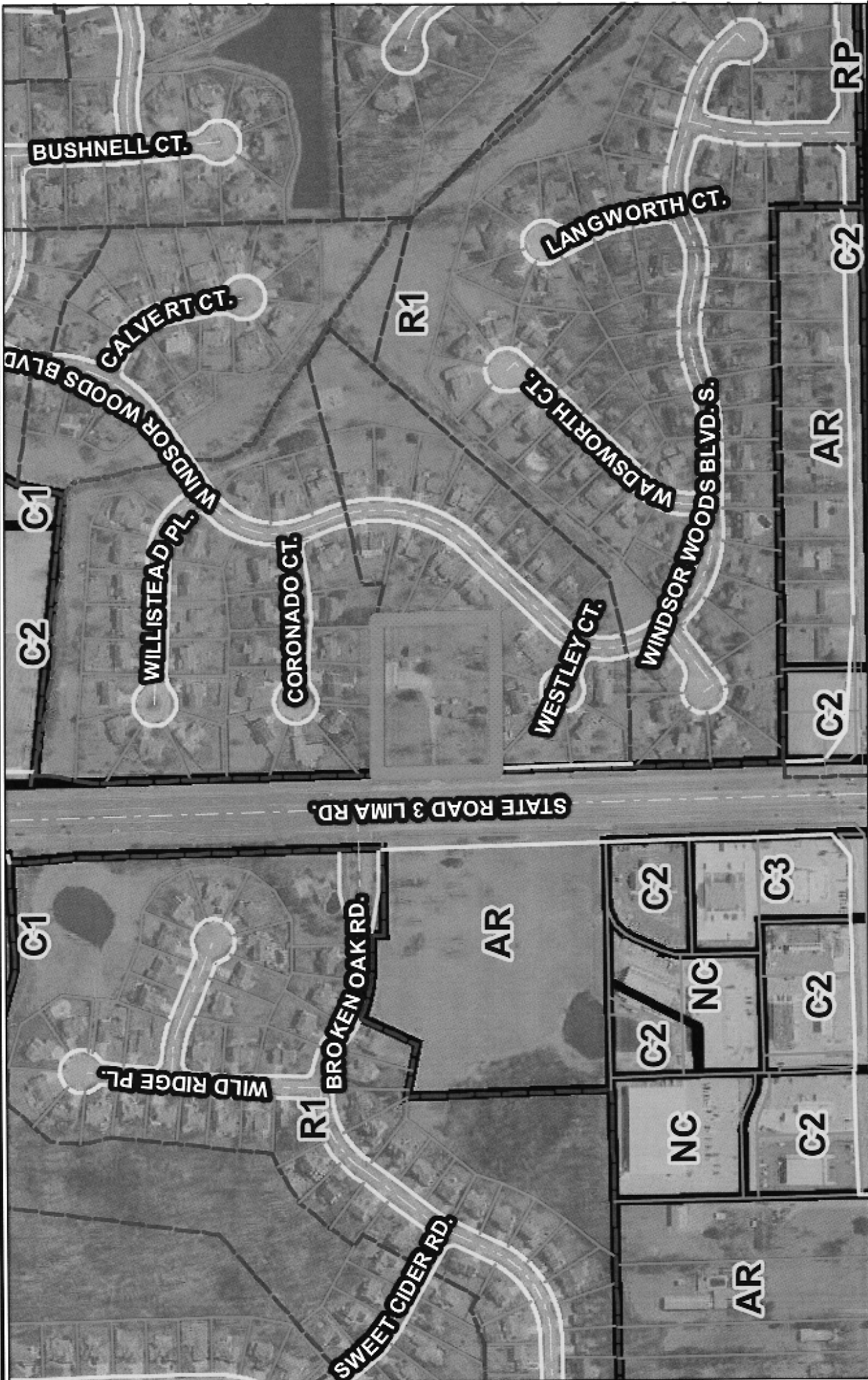
Bussick Properties, LLC [Signature] 1-7-20  
 (printed name of applicant) (signature of applicant) (date)  
Stephen E. Griffin [Signature] 1-6-20  
 (printed name of property owner) (signature of property owner) (date)  
 \_\_\_\_\_ (signature of property owner) \_\_\_\_\_ (date)  
 \_\_\_\_\_ (signature of property owner) \_\_\_\_\_ (date)

| Received | Receipt No. | Hearing Date | Petition No.  |
|----------|-------------|--------------|---------------|
| 1-7-2020 | 133062      | 2-10-2020    | RE2-2020-0004 |



Although street accuracy standards have been applied in the preparation 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 errors or omissions in this map.

©2020 Board of Commissioners of the County of Allen  
North American Map Co. 1985  
State Plane Coordinate System, Indiana East  
White and Gray Inc. Spring 2019  
Date: 1/22/2020



Although each accuracy standard's name  
 been employed in the completion of this map.  
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 North American Datum 1983  
 State Plane Coordinate System, Indiana East  
 Photos are Composite Spring 2019  
 Date: 1/22/2020



**CERTIFICATE OF SURVEY**

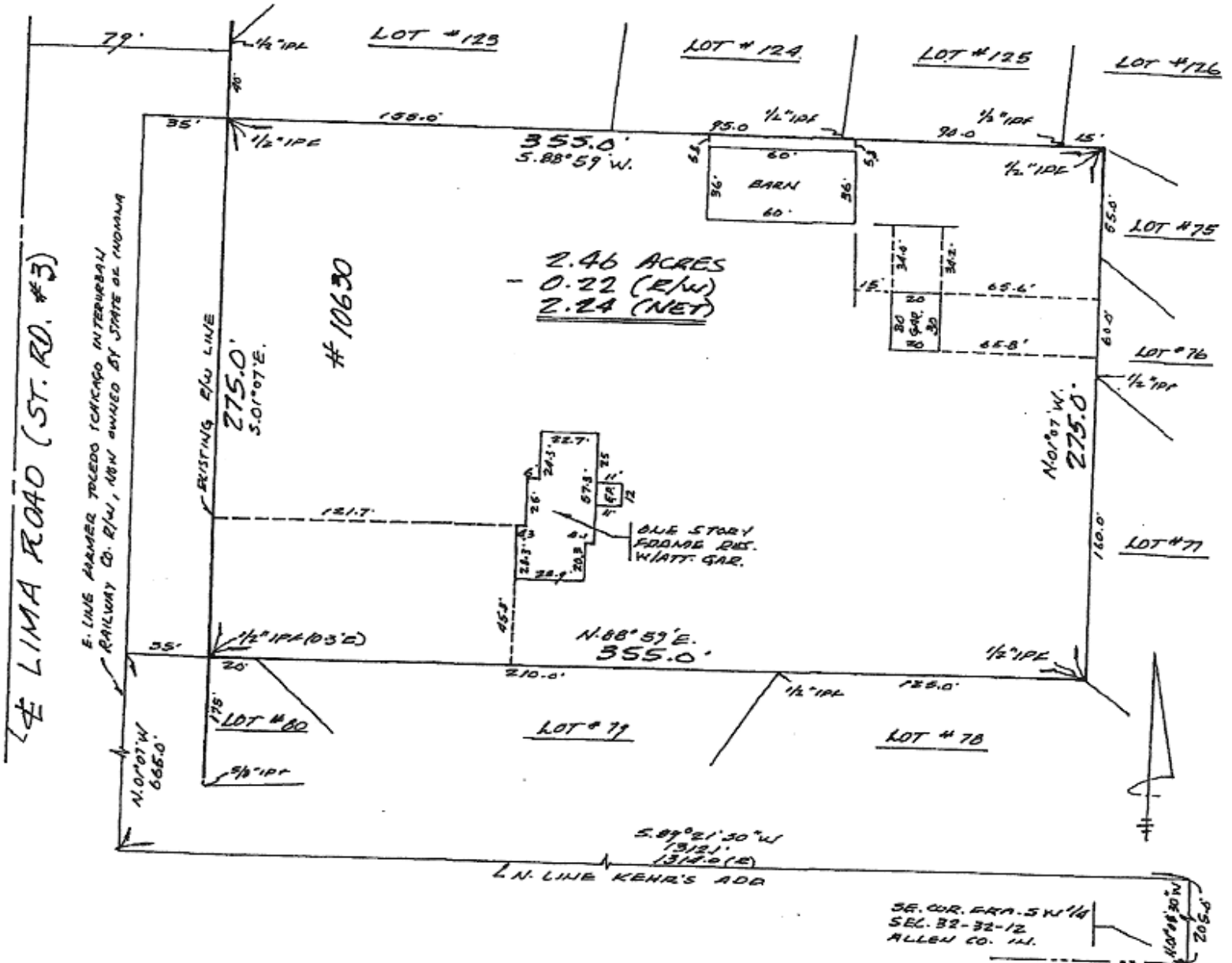
#200016417 Page 1

GREGORY L. ROBERTS PLS S0548 IN  
KENNETH W. HARRIS PLS 9500021 IN

DONOVAN ENGINEERING INC  
2020 INWOOD DRIVE  
EXECUTIVE PARK  
FORT WAYNE, INDIANA 46815

JOHN R. DONOVAN PE 9173 PLS 9921 IN  
FRANCIS X. MUELLER PLS S0193 IN

The undersigned has made a re-survey of the real estate located in ALLEN County, Indiana, as shown and described below. The description of the real estate is as follows:



Job No. SW 323212 Date: 7-7-99  
 Job for: ZIMMERMAN EST - MOSER  
 RECORDED  
 03/20/2000 13:24:20  
 RECORDER  
 PATRICIA J CRICK  
 ALLEN COUNTY, IN  
 Doc. No. 200016417  
 Receipt No. 7814

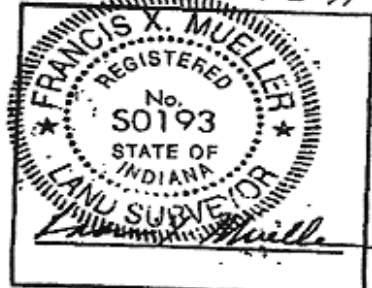
MISL 10.00  
 DCFD 3.00  
 Total 13.00

- LEGEND**
- IPF Iron Pin Found
  - PF Iron Pipe Found
  - IPS 5/8" re-bar set (with cap stamped #0027)
  - PK P.K. Nail
  - (M) Measured
  - (R) Recorded
  - (C) Calculated

All monuments are at grade except as noted.  
 All property line distances are recorded dimensions, except as noted.  
 Monuments found have no documented history, except as noted.

Scale: 1" = 60'

Date of field work: 7-6-99



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.

**CERTIFICATE OF SURVEY**

GREGORY L. ROBERTS PLS S0548 IN  
KENNETH W. HARRIS PLS 9500021 IN

DONOVAN ENGINEERING INC  
2020 INWOOD DRIVE  
EXECUTIVE PARK  
FORT WAYNE, INDIANA 46815

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Commencing at the Southeast corner of the Fractional Southwest One-Quarter of Section 32, Township 32 North, Range 12 East, Allen County, Indiana; thence North 1 degree 08 minutes 30 seconds West along the East line of the fractional Southwest One-Quarter of Section 32, Township 32 North, Range 12 East, a distance of 205.0 feet; thence South 89 degrees 21 minutes 30 seconds West along the North line Kehr's Addition a distance of 1312.1 feet actual (1314.0 feet recorded) to the East line of the former Toledo & Chicago Interurban Railway Company right of way line now owned by the State of Indiana; thence North 1 degree 07 minutes West along the said East right of way line a distance of 665.0 feet to the point of beginning; thence North 88 degrees 59 minutes East a distance of 390.0 feet, thence North 1 degree 07 minutes West a distance of 275.0 feet; thence South 88 degrees 59 minutes West a distance of 390.0 feet to the said East right of way line; thence South 1 degree 07 minutes East a distance of 275.0 feet along the East line of the former Toledo & Chicago Interurban Railway Company right of way line to the point of beginning, containing 2.46 acres more or less.

NOTE: According to the Flood Insurance Rate Map (FIRM) number 18003C0145 E, dated Feb. 16, 1995, the herein described real estate is located in Zone "X" and is not within the 100 year flood hazard area. The accuracy of this flood hazard statement is subject to map scale uncertainty.

Job No. 5W 323212 Date: 7-7-99  
Job for: RIMMERMAN WEST - MARSH

| LEGEND |   |
|--------|---|
| IPF    | Iron Pin Found                              |
| PF     | Iron Pipe Found                             |
| IPS    | 5/8" re-bar set<br>(with cap stamped #0027) |
| PK     | P.K. Nail                                   |
| (M)    | Measured                                    |
| (R)    | Recorded                                    |
| (C)    | Calculated                                  |

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All property line distances are recorded dimensions, except as noted.  
Monuments found have no documented history, except as noted.

Scale:

Date of field work: 7-6-99



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## FACT SHEET

Case #REZ-2020-0004      Bill # Z-20-01-34      Project Start: January 2020

|                      |   |
|----------------------|---|
| APPLICANT:           | Bussick Properties, LLC   |
| REQUEST:             | To rezone property from AR/Low Intensity Residential to C1/Professional Office and Personal Services for a two-building office development.   |
| LOCATION:            | The site is located on the east side of the 10600 block of State Road 3, south of Windsor Woods Section 3 and north and west of Windsor Woods Section 2. The address of the subject property is 10630 State Road 3 (Section 2 of Perry Township). |
| LAND AREA:           | Approximately 2.5 acres   |
| PRESENT ZONING:      | AR/Low Intensity Residential  |
| PROPOSED ZONING:     | C1/Professional Office and Personal Services  |
| COUNCIL DISTRICT:    | 3-Tom Didier  |
| ASSOCIATED PROJECTS: | Primary Development Plan, Bussick Orthodontics  |
| SPONSOR:             | City of Fort Wayne Plan Commission  |

### February 10, 2020 Public Hearing

- One resident spoke at the hearing in support.
- Three residents spoke with concerns or requests.
- Tom Freistroffer and Patrick Zaharako were absent.

### March 16, 2020 – Business Meeting

#### Plan Commission Recommendation: DO PASS

A motion was made by Patrick Zaharako and seconded by Justin Shurley to return the ordinance with a Do Pass recommendation to Common Council for their final decision.

#### 7-0 MOTION PASSED

- Tom Freistroffer and Ryan Neumeister were absent.

Fact Sheet Prepared by:  
Michelle B. Wood, Senior Land Use Planner  
May 21, 2020

Reviewed by:



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

## PROJECT SUMMARY

The site has historically been utilized as a single family home with accessory buildings. When annexed into the City of Fort Wayne, the zoning became AR/Low Intensity Residential. Past Board of Zoning Appeals petitions on the site include:

- Approval by the Allen County Board of Zoning Appeals for a special use for milk transport facility in 1984;
- Denial by the Fort Wayne Board of Zoning Appeals for a Use Variance for two dental offices in 2019.

The petitioner requests a rezoning from AR/Low Intensity Residential to C1/Professional Office and Personal Services for a new two-building office site. The proposed rezoning parcel is located on the east side of State Road 3 (Lima Road), approximately 1,000 feet north of the intersection of State Road 3 and West Dupont Road. The adjacent parcels surrounding the site to the north, south, east, and west are developed with subdivisions. This is a large metes and bounds parcel that has historically been used residentially, but there was an Allen County Plan Commission special use approval for a milk transport facility in 1984. In recent years, the Plan Commission has reviewed projects in proximity to the site, including the Meadows of Keefer Creek, a multiple family residential development zoned C1; a rezoning to C1 for a multi-tenant office building north of Meadows of Keefer Creek; and the Windsor Village development, with both C1 and C2 zoning. The signalized intersections along State Road 3 have developed with more intense commercial uses. Much like the State Road 14 corridor in southwest Fort Wayne, a number of non-platted parcels once suitable for single family residential along State Road 3 are being utilized for office or higher density residential uses.

Continued development including office and retail uses is occurring along the State Road 3 corridor between West Dupont Road and Carroll Road. Typically, these types of developments have occurred on large acreage metes and bounds properties that were once residential, but are no longer desirable for single family residential use with increased traffic along an arterial roadway. In this case, the developer is proposing that this property with direct vehicular access only to State Road 3, become C1.

As mentioned, the applicant applied for a Use Variance petition in 2019 for a similar use, which was denied by the Board of Zoning Appeals. A Use Variance has criteria for consideration that is different from a rezoning petition. The Use Variance application also did not have a primary development plan or a written commitment submitted with it, as this rezoning petition does.

With appropriate buffering, the proposal could offer services in close proximity to housing, with the addition of public pedestrian facilities that may eventually connect to the trail system. The proposal could be supported by the following goals and polices of the Comprehensive Plan:

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

**LU5.** Encourage sustainable growth and quality development, revitalization and redevelopment by increasing and enhancing connectivity;

**LU5.C** Encourage development proposals that provide neighborhood commercial, civic, institutional and other similar uses, designed to allow adequate access for pedestrians and bicycles, in close proximity to housing.

**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.

The applicant has provided a written commitment that addresses a number of use and site/building design items. The following five items are proposed in the document.

1. **Permitted Uses.** The following uses, both general and specific, shall be the only uses permitted on the Real Estate:

**a. General Permitted Use Categories:**

Instruction/Training/Education  
Professional Office/Business Service

Medical Facility or Office  
Personal Service

**b. Specific Permitted Uses:**

Accountant  
Appraiser  
Art Instruction  
Audiologist  
Clinic  
Counseling Service  
Diagnostic Center  
Doctor  
Finance Agency  
Foundation Office  
Insurance Agency  
Land Surveyor  
Ophthalmologist  
Optometrist  
Podiatrist  
Tax Consulting  
Travel Agency

Advertising  
Architect  
Attorney  
Chiropractor  
Consulting Service  
Dentist  
Dialysis Center  
Employment Agency  
Financial Planning Service  
Gymnastics Instruction  
Investment Service  
Legal Service  
Optician  
Physical Therapy Facility  
Realtor  
Title Company

2. **Orthodontia Office.** Notwithstanding the anything contained herein to the contrary, the operation of an Orthodontia Office shall be specifically permitted upon the Real Estate.

3. **Lighting.** All site and building lighting will use sharp cut-off type fixtures as defined by the Illuminating Engineers Society of North America (IESNA). Maximum pole light height will be 20-feet, including pole and base.

4. **Required Building Materials.** Except with respect to any existing improvement or structure set forth on Applicant's Primary Development Plan, materials selected for any building or addition located upon the Real Estate shall be durable and honestly expressed. The choice of material should be guided by functional and aesthetic concerns, free of gimmicks or faux finishes. A given material should read clearly and expressively and not try to mask its identity.

Building materials that will be encouraged for any new building or addition located upon the Real Estate shall include:

- Steel/aluminum curtain wall
- Concrete
- Precast concrete/finished concrete masonry units
- Stone
- Brick

- Glass, tinted and clear

Building materials that are inappropriate for any new building or addition located upon the Real Estate shall include:

- Exposed plywood or exposed wood
- Corrugated or pre-engineered metals
- Unfinished concrete masonry units
- Gypsum wall panels
- Plastics

5. **Hours of Operation.** Absent emergency circumstances, any Orthodontist, Doctor, Dentist or other provider of medical services, who operates a private practice upon the Real Estate, shall see his or her patients during the hours of 7:00 a.m. – 7:00 p.m., Monday – Friday, and 8:00 a.m. – 5:00 p.m., Saturday. To be found in violation of this covenant, any party seeking enforcement must demonstrate a pattern of non-compliance. Isolated incidents of non-compliance shall not be considered a violation of this Commitment.

The proposed site plan includes two new structures with a maximum gross floor area of 24,000 for all the buildings and 60 associated off-street parking spaces, which exceed the Ordinance minimum. Parking lies to the north and west of the two buildings. One access is proposed to State Road 3, allowing for right-in/right-out access. A detention basin is proposed at the southeast corner of the site. The site plan appears to meet all zoning requirements. The applicant intends to meet all landscaping standards of the Ordinance with the exception of the north property line. The plans show an alternate landscape plan that consists of staggered evergreen trees. The plans depict the alternate landscape plan being the request of the neighbors. No waiver of development plan standards has been requested.

**PUBLIC HEARING SUMMARY:**

Presenter: Tom Trent represented the applicant and presented the proposal as outlined above. Mr. Trent explained that the applicant is committed to a development that is complementary and compatible with the neighborhood. Dr. Bussick met with the neighborhood representatives and followed up on their concerns, including changes to the Written Commitment, and made changes to the plans (reducing size, reducing paved area, adding plant material). They engaged an appraiser to confirm that the office use will have a positive effect and remove the uncertainty of the underutilized parcel.

Public Comments:

Dave Falater, 10715 Windsor Woods Boulevard – Lives next door and downhill of the property and is in favor of the project.

Alex Daisey, 1616 Coronado Court – Would like an evergreen screen, concerned about drainage, how will the applicant be held accountable?

Dan Sarasein, 1318 Sycamore Drive – Concerned about traffic, drainage, too close to existing homes.

Pam Helfrich, 1635 Westley Court – Concerned about drainage and mowing.

Rebuttal:

They have engineering confirmation that the stormwater can be handled. Landscape and screening can be altered to meet the request of neighbor. Accountability – the Written Commitment is structured for enforcement.

## FORT WAYNE PLAN COMMISSION • FINDINGS OF FACT

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### Rezoning Petition REZ-2020-0004

APPLICANT: Bussick Properties, LLC  
REQUEST: To rezone property from AR/Low Intensity Residential to C1/Professional Office and Personal Services.  
LOCATION: The site is located on the east side of the 10600 block of State Road 3, south of Windsor Woods Section 3 and north and west of Windsor Woods Section 2. The address of the subject property is 10630 State Road 3 (Section 2 of Perry Township).  
LAND AREA: Approximately 2.5 acres  
PRESENT ZONING: AR/Low Intensity Residential  
PROPOSED ZONING: C1/Professional Office and Personal Services

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**The Plan Commission recommends that Rezoning Petition REZ-2020-0004, with a written commitment, be returned to Council with a “Do Pass” recommendation after considering the following:**

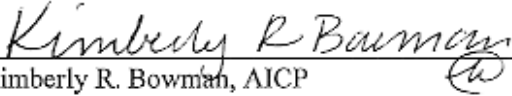
1. Approval of the rezoning request will be in substantial compliance with the City of Fort Wayne Comprehensive Plan, and should not establish an undesirable precedent in the area. The proposal meets the following goals of the Comprehensive Plan:
  - LU3. Use land resources efficiently by encouraging new development, revitalization and redevelopment in areas already served by infrastructure;
  - LU5. Encourage sustainable growth and quality development, revitalization and redevelopment by increasing and enhancing connectivity;
  - LU5.C Encourage development proposals that provide neighborhood commercial, civic, institutional and other similar uses, designed to allow adequate access for pedestrians and bicycles, in close proximity to housing.
  - 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.

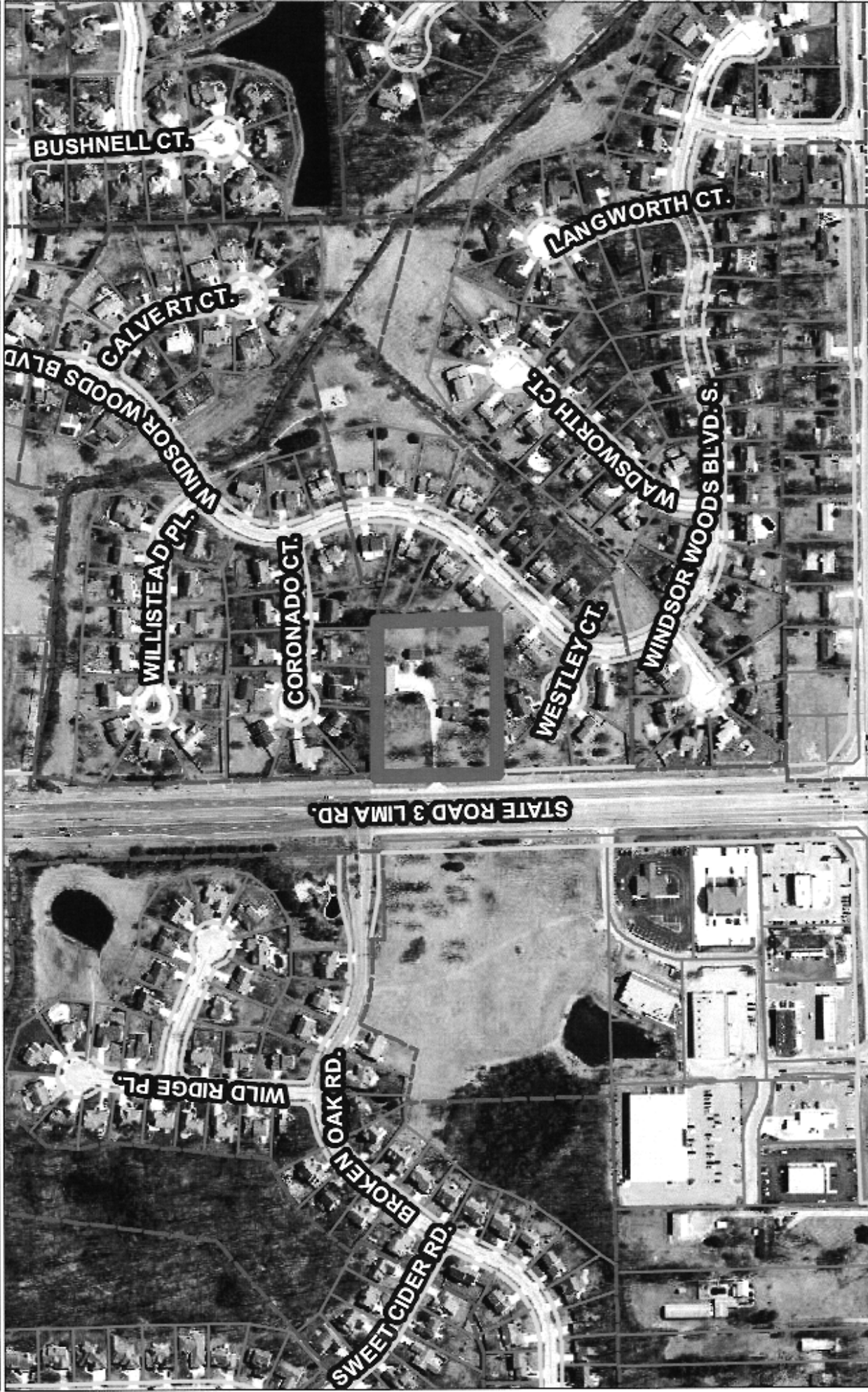
The site is near similar office development and the proposal will provide infill development using existing infrastructure.

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. An affidavit from an experienced appraisal professional was submitted by the applicant stating their opinion on the positive impact on property values in the area.

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 March 16, 2020.

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



All rights, including easements, have been reserved in the caption of this map. All other rights are reserved to the owner. The accuracy of the information is not guaranteed. The information is for informational purposes only and does not constitute an offer of insurance. © 2020 Busstick Ortho. All rights reserved. State of Ohio, Columbus, Ohio. Planning Department, 1500 North Avenue, Columbus, Ohio 43261. Planning Department, 1500 North Avenue, Columbus, Ohio 43261. Date: 1/22/2020



1 inch = 300 Feet

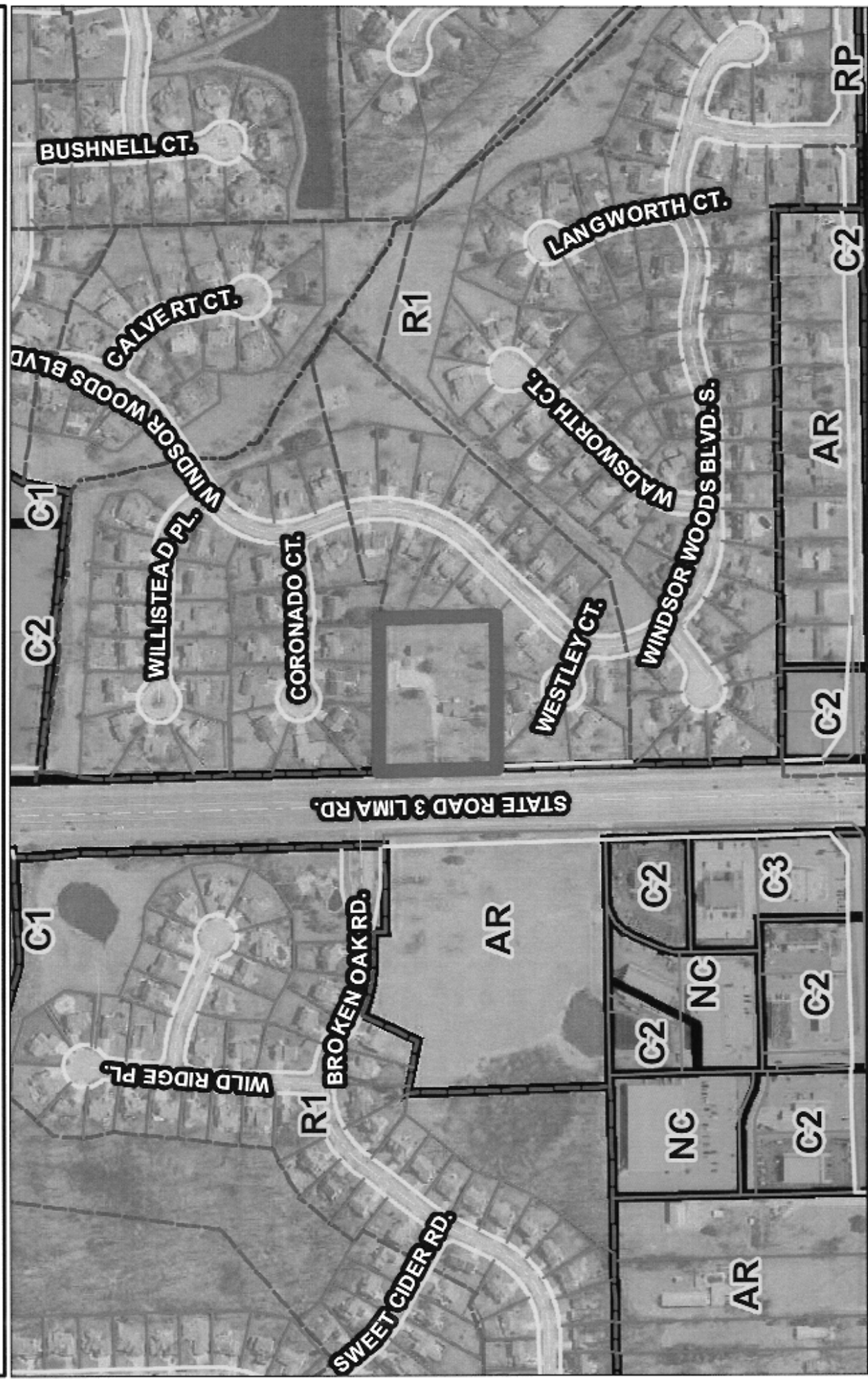


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feet



Although every reasonable effort has been made to ensure the accuracy of this map, the City of Lima does not warrant or guarantee the accuracy of the information contained herein and the City of Lima is not liable for any errors or omissions that may appear hereon.

City of Lima  
 100 North American Drive, 100  
 State Street, Lima, OH 43025  
 Phone: 419.223.3300  
 Fax: 419.223.3300



1 inch = 320 feet



0 100 200 Feet



**WRITTEN COMMITMENT**

**THIS WRITTEN COMMITMENT** (this “Commitment”) is made this \_\_\_ day of February/March, 2020, by **Stephen E. Griffen** (“Owner”) and **Bussick Properties, LLC**, an Indiana limited liability company (“Applicant”).

**WITNESSETH:**

**WHEREAS**, Owner is the owner of certain real estate located in Perry Township, Allen County, Indiana, the legal description of which is attached hereto as **Exhibit “A”**, more commonly referred to 10630 Lima Road, Fort Wayne, Indiana 46818 (the “Real Estate”); and

**WHEREAS**, Applicant filed a Primary Development Plan Application on January 7, 2020, which Primary Development Plan included a C1 Rezoning Petition Application numbered REZ-2020-0004 (the C1 Rezoning Petition Application numbered REZ-2020-0004, as part of the overall Primary Development Plan, is hereinafter referred to as the “Application”), which Application has been approved by the Fort Wayne Plan Commission (the “Plan Commission”) and the Fort Wayne Common Council (the “City Council”); and

**WHEREAS**, pursuant to the Application, the Real Estate has been rezoned “C1 Professional Office and Personal Services” pursuant to the Fort Wayne Zoning Ordinance effective as of April 22, 2019 (the “Ordinance”); and

**WHEREAS**, Owner and Applicant have submitted this Commitment, voluntarily, pursuant to the Ordinance and I.C. 36-7-4-1015 for the purpose of limiting certain off-site impacts and certain permitted uses arising from the development of the Real Estate; and

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

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

1. **Permitted Uses.** The following uses, both general and specific, shall be the only uses permitted on the Real Estate:

a. **General Permitted Use Categories:**

Instruction/Training/Education  
Professional Office/Business Service

Medical Facility or Office  
Personal Service

b. **Specific Permitted Uses:**

Accountant  
Appraiser  
Art Instruction  
Audiologist  
Clinic  
Counseling Service  
Diagnostic Center  
Doctor  
Finance Agency  
Foundation Office  
Insurance Agency  
Land Surveyor  
Ophthalmologist  
Optometrist  
Podiatrist  
Tax Consulting  
Travel Agency

Advertising  
Architect  
Attorney  
Chiropractor  
Consulting Service  
Dentist  
Dialysis Center  
Employment Agency  
Financial Planning Service  
Gymnastics Instruction  
Investment Service  
Legal Service  
Optician  
Physical Therapy Facility  
Realtor  
Title Company

2. **Orthodontia Office.** Notwithstanding the anything contained herein to the contrary, the operation of an Orthodontia Office shall be specifically permitted upon the Real Estate.

3. **Lighting.** All site and building lighting will use sharp cut-off type fixtures as defined by the Illuminating Engineers Society of North America (IESNA). Maximum pole light height will be 20-feet, including pole and base.

4. **Required Building Materials.** Except with respect to any existing improvement or structure set forth on Applicant's Primary Development Plan, materials selected for any building or addition located upon the Real Estate shall be durable and honestly expressed. The choice of material should be guided by functional and aesthetic concerns, free of gimmicks or faux finishes. A given material should read clearly and expressively and not try to mask its identity.

Building materials that will be encouraged for any new building or addition located upon the Real Estate shall include:

- Steel/aluminum curtain wall
- Concrete

- Precast concrete/finished concrete masonry units
- Stone
- Brick
- Glass, tinted and clear

Building materials that are inappropriate for any new building or addition located upon the Real Estate shall include:

- Exposed plywood or exposed wood
- Corrugated or pre-engineered metals
- Unfinished concrete masonry units
- Gypsum wall panels
- Plastics

5. **Hours of Operation.** Absent emergency circumstances, any Orthodontist, Doctor, Dentist or other provider of medical services, who operates a private practice upon the Real Estate, shall see his or her patients during the hours of 7:00 a.m. – 7:00 p.m., Monday – Friday, and 8:00 a.m. – 5:00 p.m., Saturday. To be found in violation of this covenant, any party seeking enforcement must demonstrate a pattern of non-compliance. Isolated incidents of non-compliance shall not be considered a violation of this Commitment.

6. **Successors and Assigns.** This Commitment and the restrictions and limitations set forth herein shall be binding upon Owner, and his successors and assigns, and shall also inure to the benefit of the Zoning Administrator of Allen County (the “Zoning Administrator”) and the Plan Commission, together with any successor agency having zoning jurisdiction over the Real Estate. This Commitment and the restrictions and limitations set forth herein shall run with the Real Estate, and any conveyance thereof, shall be binding upon Owner and his successors and assigns as owners of the Real Estate, unless modified or terminated pursuant to the provisions of Section 8 below.

7. **Enforcement.** Any violation of this Commitment shall be deemed a violation of the Ordinance. Pursuant to I.C. 36-7-4-1015, the Plan Commission, or any enforcement official designated by the Ordinance, shall be entitled to enforce this Commitment, at law or in equity, in the event of any breach of the obligations contained herein; provided, however, that nothing in this Commitment shall be construed as giving any person the right to compel the enforcement of this Commitment by the Plan Commission or any enforcement official designated by the Ordinance, or any successor agency having zoning jurisdiction over the Real Estate. The Plan Commission, or any enforcement official designated by the Ordinance, shall have the remedies provided for in the Ordinance, or the ordinance covering 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.

8. **Modification and Termination.** This Commitment may be amended or terminated only by a decision of the Plan Commission, following a public hearing held by the Plan Commission. Written notice of the public hearing for said amendment or termination shall be given by the Applicant and/or the then-owner of the Real Estate to the highest ranking officer of Windsor Woods Association, Inc. (the “Neighborhood Association”), with said notice being

based on the then available records of the Indiana Secretary of State and being mailed no later than the date application is made to the Plan Commission for said amendment or termination. This Commitment shall not be amended or terminated unless, after the public hearing, the Plan Commission makes the following determinations as part of its approval: (i) implementation of the amendment or termination will not be injurious to the public health, safety and general welfare of the owners of real property in the Neighborhood Association and (ii) the use and value of the real property adjacent to the Real Estate will not be affected in a substantially adverse manner by implementation of the amendment or termination.

9. **Remedies.** In addition to any remedies that may be available at law, temporary, preliminary and permanent injunctive relief may be granted to enforce any provision of this Commitment, without the necessity of proof of actual damage, in the event of an actual breach or violation, or threatened breach or violation, of any restriction or covenant under this Commitment. Such remedies shall be cumulative and nonexclusive, and shall be afforded to any owner of property in the Neighborhood Association, the Zoning Administrator of the City of Fort Wayne and the Plan Commission. As a condition precedent to the bringing of any lawsuit or initiating any action for temporary, preliminary and permanent injunctive relief as provided herein, the party desiring to bring said action shall first provide Owner, or the then existing owner(s) of the Real Estate, thirty (30) days prior written notice of the breach or violation, or threatened breach or violation, of the terms, restrictions or covenants of this Commitment.

10. **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.

11. **Authority to Sign.** Each person signing this Commitment in a representative capacity 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.

12. **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.

13. **Effective Date.** This Commitment shall be effective upon being duly recorded in the Office of the Recorder of Allen County, Indiana.

14. **Statutory Authority.** This Commitment is made by Owner and Applicant pursuant to I.C. 36-7-4-1015.

15. **Governing Law.** This Commitment, including the restrictions and covenants contained herein, shall be governed by the laws of the State of Indiana.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Owner hereby agrees to all of the restrictions and covenants of this Commitment as set forth above.

**OWNER:**

Date: \_\_\_\_\_

\_\_\_\_\_  
Stephen E. Griffen

STATE OF INDIANA     )  
                                  ) SS:  
COUNTY OF ALLEN     )

Before me, the undersigned, a Notary Public in and for said County and State, this \_\_\_\_\_ day of February/March, 2020, personally appeared Stephen E. Griffen, and acknowledged the execution of the foregoing Written Commitment.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

My Commission Expires:  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
A resident of \_\_\_\_\_ County

IN WITNESS WHEREOF, Applicant hereby agrees to all of the restrictions and covenants of this Commitment as set forth above.

**APPLICANT:**

**BUSSICK PROPERTIES, LLC**

Date: \_\_\_\_\_

\_\_\_\_\_  
Timothy J. Bussick, Member

STATE OF INDIANA     )  
                                  ) SS:  
COUNTY OF ALLEN     )

Before me, the undersigned, a Notary Public in and for said County and State, this \_\_\_\_\_ day of February/March, 2020, personally appeared Timothy J. Bussick, and acknowledged on behalf of Bussick Properties, LLC, as a Member thereof, the execution of the foregoing Written Commitment.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_, Notary Public  
A resident of \_\_\_\_\_ County

This instrument prepared by Thomas B. Trent, Attorney at Law

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. *Thomas B. Trent*

Return to:

RLW Box

## EXHIBIT A

The East one-half of the Fractional Southwest one-quarter of Section 32, Township 32 north, Range 12 East, Allen County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of the Fractional Southwest one-quarter of Section 32, Township 32 North, Range 12 East, Allen County, Indiana; thence North 1 degree 08 minutes 30 seconds West along the East line of the Fractional Southwest one-quarter of Section 32, Township 32 North, Range 12 East a distance of 205.0 feet; thence South 89degrees 21 minutes 30 seconds West along the North line of Kehr's Addition a distance of 1312.1 feet actual (1314.0 recorded) to the East line of the former Toledo & Chicago Interurban Railway Company right-of-way line now owned by the State of Indiana; thence North 1 degree 07 minutes West along the said East right-of-way line a distance of 665.0 feet to the point of beginning; thence North 88 degrees 59 minutes East a distance of 390.0 feet; thence North 1 degree 07 minutes West a distance of 275.0 feet; thence South 88 degrees 59 minutes West a distance of 390.0 feet to the said East right-of-way line; thence South 1 degree 07 minutes East a distance of 275.0 feet along the East line of the former Toledo & Chicago Interurban Railway Company right-of-way line to the point of beginning, containing 2.46 acres, more or less.

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-2020-0004  
Bill Number: Z-20-01-34  
Council District: 3-Tom Didier

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Introduction Date: January 28, 2020  
Plan Commission  
Public Hearing Date: February 10, 2020 (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 2.46 acres from AR/Low Intensity Residential to C1/Professional Office and Personal Services.

Location: 10630 Lima Road

Reason for Request: To allow redevelopment of the property with medical offices.

Applicant: Bussick Properties, LLC

Property Owner: Stephen Griffin

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Related Petitions: Primary Development Plan, PDP-2020-0001 (Bussick Orthodontics)

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Effect of Passage: Property will be rezoned to the C1/Professional Office and Personal Services which will allow the property to redevelop with medical office uses.

Effect of Non-Passage: The property will remain zoned AR/Low Intensity Residential and may be used for residential and some agricultural purposes.

**REPORT OF COMMITTEE ON REGULATIONS**

**May 26, 2020**

**Tom Freistroffer Chair**

**Glynn Hines Co-Chair**

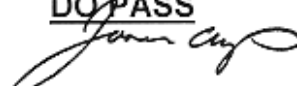
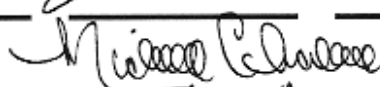
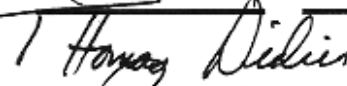

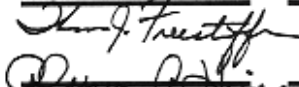

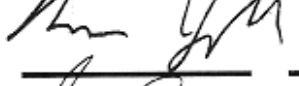
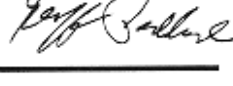

**All Council Members**

An Ordinance amending the City of Fort Wayne Zoning Map No. K-62 (Sec. 32 of Perry Township)

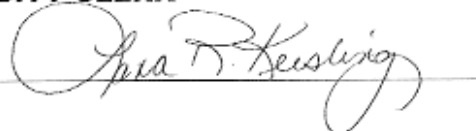
To rezone approximately 2.46 acres from AR/Low Intensity residential to 7C1/Professional Office and Personal Services

10630 Lima Road

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

| <u>COUNCIL MEMBER</u> | <u>DO PASS</u>  | <u>DO NOT PASS</u> | <u>ABSTAIN</u>  |
|-----------------------|---|--------------------|---|
| ARP                   |  |                    |   |
| CHAMBERS              |  |                    |   |
| DIDIER                |  |                    |   |
| ENSLEY                |  |                    |   |
| FREISTROFFER          |  |                    |   |
| HINES                 |  |                    |   |
| JEHL                  |  |                    |   |
| PADDOCK               |  |                    |  |
| TUCKER                |   |                    |   |

**LANA R. KEESLING  
CITY CLERK**



Public Hearing Date: 02/10/20

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

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

Read the third time in full and on motion by Councilperson 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"/> |
| CHAMBERS           | <input type="checkbox"/>            | <input checked="" 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 type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |
| JEHL               | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> |
| PADDOCK            | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |
| TUCKER             | <input type="checkbox"/>            | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

DATED: May 26, 2020

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

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

Zoning No. Z-20-01-34 on the 26th day of May, 2020

ATTEST:

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

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

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 27<sup>th</sup> day of May 2020, at the hour of 10:35AM o'clock E.S.T.

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

Approved and signed by me this 27<sup>TH</sup> day of MAY

2020, at the hour of 11:30 o'clock AM E.S.T.

FORT WAYNE, INDIANA  
**RECEIVED**  
 MAY 27 2020  
 LANA R. KEESLING  
 CITY CLERK

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