

SPECIAL ORDINANCE NO. 45, 2011.

APPLICATION FOR REZONING PETITION CITY OF TERRE HAUTE

Common Address of lots to be rezoned:

417 Greenwood Street, Terre Haute, IN 47802

Rezone From: R-1 Single Family Residence District

Rezone To: C-2 Community Commerce District

Proposed Use: Commercial Development

Name of Owner: Burger Caldwell Real Estate, LLC

Address of Owner: 2600 S. Third Street
Terre Haute, IN 47802

Phone Number of Owner: (812) 232-1331

Attorney Representing Owner: Richard J. Shagley II

Address of Attorney: Wright, Shagley & Lowery, P.C.
PO Box 9849, Terre Haute, IN 47808

For Information Contact: Owner Attorney

Council Sponsor: Richard F. Dunkin

COPY OF A SITE-PLAN MUST ACCOMPANY THIS APPLICATION

OCT 27 2011

SPECIAL ORDINANCE NO. 45, 2011

CITY CLERK

An Ordinance Amending Chapter 10, of the Terre Haute City Code, Zoning and Subdivision Regulations, as adopted by General Ordinance No. 10, 1999, as Amended, entitled "An Ordinance Adopting And Enacting A Code Of Ordinances For The City Of Terre Haute, Indiana; Establishing The Same; Providing For The Repeal Of Certain Ordinances Not Included Therein, Except As Herein Provided; Providing For The Manner Of Amending Such Code Of Ordinances; Providing A Penalty For Violations Thereof; Providing When This Ordinance Shall Become Effective And Officially Adopting The Terre Haute City Code, And Passing Ordinances Addressing Fees, Fines And Regulations".

BE IT ORDAINED by the Common Council of the City of Terre Haute, Indiana, as follows:

SECTION I. That Chapter 10, of the Terre Haute City Code, known and referred to as "The Comprehensive Zoning Ordinance for Terre Haute" of General Ordinance No. 10, 1999, effective, December 10, 1999, Section 10-121, thereof, District Maps, is hereby amended to read as follows:

Lot Numbered One Hundred Twenty-One (121) in George R. Prestons Subdivision of Lots 1 & 2 & 7-16 inclusive and 19-20 & 25 and part of Lots 17-18-21-22 & 24 and part of Block A of Krumbhaars Subdivision, as shown on the recorded plat thereof recorded April 27, 1888, in Plat Record 4, Page 54, records of the Recorder's Office of Vigo County, Indiana.


Lot 122 in George R. Prestons Subdivision in the City of Terre Haute, Vigo County, Indiana, of a part of Krumbhaars Subdivision of the Northwest Quarter of the Southeast quarter of Section 33, Township 12 North, Range 9 West, as per Plat Record 4, page 54 in the Recorder's Office of Vigo County, Indiana.

Commonly known as 417 Greenwood Street, Terre Haute, IN 47802.

be and the same is, hereby established as a C-2 Community Commerce District, together with all rights and privileges that may inure to said real estate and the owners thereof by virtue of the law in such cases provided, subject to all limitations and restrictions imposed thereon by deed or otherwise.

SECTION II. WHEREAS, an emergency exists for the immediate taking effect of this Ordinance, the same shall be in full force and effect from and after its passage by the Common Council of the City of Terre Haute, and its approval by the Mayor and publication as by law provided.

Presented by Council Member,



Richard F. Dunkin, Councilperson


Passed in open Council this 8th day of Dec, 2011.


John Mullican, President


ATTEST:


Charles P. Hanley, City Clerk


Presented by me, to the Mayor of the City of Terre Haute, this 9th day of Dec, 2011.


Charles P. Hanley, City Clerk


Approved by me, the Mayor of the City of Terre Haute, this 9th day of DECEMBER, 2011.


Duke A. Bennett, Mayor

ATTEST:


Charles P. Hanley, City Clerk

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.


Richard J. Shagley II

This instrument prepared by Richard J. Shagley II, Attorney-at-Law, WRIGHT, SHAGLEY & LOWERY, P.C., 500 Ohio Street, Terre Haute, Indiana 47807.

PETITION TO REZONE REAL PROPERTY

TO: THE PRESIDENT AND MEMBERS OF THE COMMON COUNCIL OF THE CITY OF TERRE HAUTE, INDIANA;

and THE PRESIDENT AND MEMBERS OF THE AREA PLANNING COMMISSION OF VIGO COUNTY, INDIANA.

LADIES and GENTLEMEN:

The undersigned, Burger Caldwell Real Estate, LLC, respectfully submits this Petition to Rezone the following described real estate in the City of Terre Haute, Vigo County, State of Indiana, to-wit:

Lot Numbered One Hundred Twenty-One (121) in George R. Prestons Subdivision of Lots 1 & 2 & 7-16 inclusive and 19-20 & 25 and part of Lots 17-18-21-22 & 24 and part of Block A of Krumbhaars Subdivision, as shown on the recorded plat thereof recorded April 27, 1888, in Plat Record 4, Page 54, records of the Recorder's Office of Vigo County, Indiana

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Commonly known as 417 Greenwood Street, Terre Haute, IN 47802.

Your Petitioner is informed and believes that in accordance with Chapter 10, known and referred to as "The Comprehensive Zoning Ordinance for Terre Haute", as amended, the above described real estate is now zoned as R-1 Single Family Residence District.

Your Petitioner would respectfully state that the real estate is now vacant and that Petitioner intends to develop the real estate for commercial use.

Your Petitioner would request that the real estate described herein shall be zoned as a C-2 Community Commerce District to allow for the use as proposed by the Petitioner. Your Petitioner would allege that the C-2 Community Commerce District would not alter the general characteristics of this neighborhood, since the real estate is located adjacent the commercial property owned by Petitioner.

Your Petitioner would respectfully show the proposed change would not be detrimental to the public welfare or injurious to the property or improvements in the area.

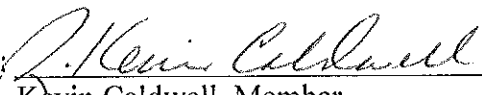
WHEREFORE, your Petitioner respectfully requests that the Area Planning Commission and the Common Council of the City of Terre Haute, Indiana, favorably consider the passage of a Special Ordinance amending the District Maps of Chapter 10, of the Terre Haute City Code entitled The Comprehensive Zoning Ordinance for Terre Haute, Section 10-121 District Maps and declaring the above-described real estate to be part of the C-2

Community Commerce District of the City of Terre Haute, Indiana, and is entitled to the rights and benefits that may accrue to the real estate and the owners thereof by virtue of the new designation subject to all limitations imposed by deed or otherwise.

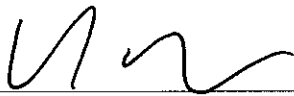
IN WITNESS WHEREOF, the undersigned Petitioner has executed this Petition to Rezone Real Property, this 25th day of October, 2011.

PETITIONER:

BURGER CALDWELL REAL ESTATE, LLC

By: 
Kevin Caldwell, Member

WRIGHT, SHAGLEY & LOWERY, P.C.
500 Ohio Street
PO Box 9849
Terre Haute, IN 47808
Phone: (812) 232-3388

BY: 
Richard J. Shagley II, #23135-84
Attorneys for Petitioner

The owner and mailing address: Kevin Caldwell, 2600 S. 3rd Street, Terre Haute, IN 47802.

This instrument prepared by Richard J. Shagley, Attorney-at-Law, WRIGHT, SHAGLEY & LOWERY, P.C., 500 Ohio Street, P.O. Box 9849, Terre Haute, Indiana 47807.

STATE OF INDIANA)
) SS:
COUNTY OF VIGO)

AFFIDAVIT

Comes now, Kevin Caldwell, being duly sworn upon his oath, deposes and says:

1. That the Burger Caldwell Real Estate, LLC, is the fee simple owner of record of the following described real estate located in the City of Terre Haute, County of Vigo, State of Indiana, to-wit:

Lot Numbered One Hundred Twenty-One (121) in George R. Prestons Subdivision of Lots 1 & 2 & 7-16 inclusive and 19-20 & 25 and part of Lots 17-18-21-22 & 24 and part of Block A of Krumbhaars Subdivision, as shown on the recorded plat thereof recorded April 27, 1888, in Plat Record 4, Page 54, records of the Recorder's Office of Vigo County, Indiana

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Commonly known as 417 Greenwood Street, Terre Haute, IN 47802.

2. That copies of the Deeds, recorded in the records of the Recorder's Office of Vigo County, Indiana, transferring fee simple title to Burger Caldwell Real Estate, LLC, are attached hereto and made a part hereof and marked as Exhibits A and B.

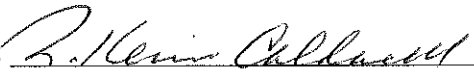
3. That Affiant makes this Affidavit for the sole purpose of affirming that Burger Caldwell Real Estate, LLC, is the owner of record of the above-described real estate for which a proposed change to the zoning map of the City of Terre Haute, Indiana, has been filed and to induce the Common Council of the City of Terre Haute, Indiana, to accept the Petition to Rezone Real Property as filed by Burger Caldwell Real Estate, LLC.

4. Further, Affiant saith not.

Dated at Terre Haute, Indiana this 25 day of October, 2011.


PETITIONER:

BURGER CALDWELL REAL ESTATE, LLC

By: 
Kevin Caldwell, Member

STATE OF INDIANA)
) SS:
COUNTY OF VIGO)

SUBSCRIBED AND SWORN TO before me, a Notary Public in and for said County and State, this 25 day of October, 2011.



Jimi J. Brown, Notary Public

My Commission expires:

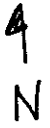
1.20.2018

My County of Residence:

Clay

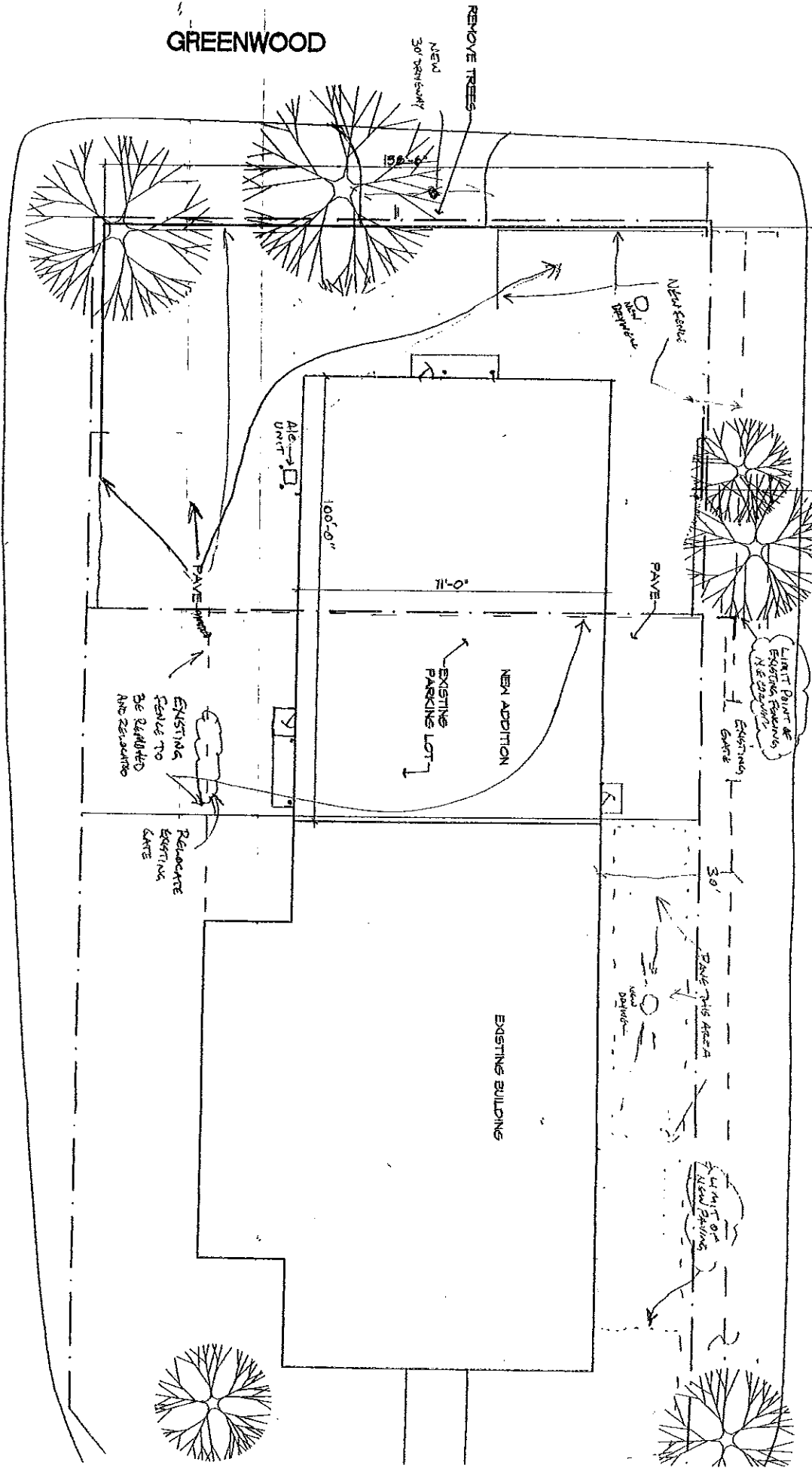
This instrument prepared by Richard J. Shagley II, Attorney At Law, WRIGHT, SHAGLEY & LOWERY, P.C., 500 Ohio Street, P.O. Box 9849, Terre Haute, IN 47807.

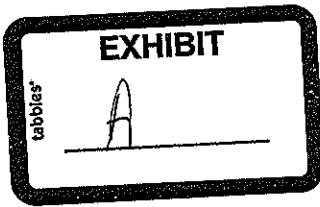
GREENWOOD



SITE PLAN
417 Greenwood ST
Terre Haute IN 47802

4TH STREET





TRUSTEE'S D E E D

THIS INDENTURE WITNESSETH that John R. Crapo, IV, as the Trustee of the John R. Crapo IV Revocable Trust u/a/d August 1, 2000, ("Grantor") of the State of Indiana, CONVEYS, GRANTS AND WARRANTS to Burger Caldwell Real Estate, LLC, ("Grantee") of the State of Indiana, for and in consideration of One Dollar (\$1.00) and other valuable consideration, the receipt whereof is hereby acknowledged, the following described real estate in Vigo County in the State of Indiana, to-wit:

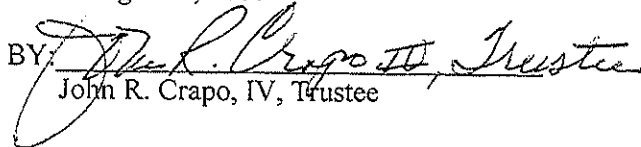
Lot 122 in George R. Preston's Subdivision in the City of Terre Haute, Vigo County, Indiana, of a part of Krumbhaar's Subdivision of the Northwest Quarter of the Southeast quarter of Section 33, Township 12 North, Range 9 West, as per Plat Record 4, page 54 in the Recorder's Office of Vigo County, Indiana.

Subject to any other easements, covenants, restrictions, leases and other matters of record affecting title to the subject real estate, as well as rights of way for drainage tiles, ditches, feeders and laterals, if any.

The undersigned person executing this Trustee's Deed represent s and certifies that s/he has good right and lawful authority as the Trustee under the John R. Crapo IV Revocable Trust u/a/d August 1, 2000, to sell, grant and convey said real estate in accordance with the terms of the aforementioned Trust.

DATED this _____ day of _____, 2011.

John R. Crapo IV Revocable Trust
u/a/d August 1, 2000

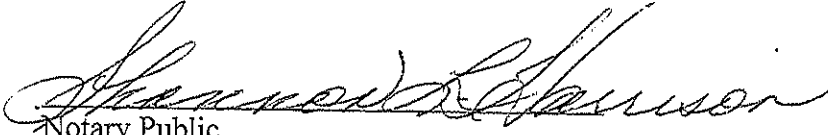
BY: 
John R. Crapo, IV, Trustee

STATE OF INDIANA)
) SS:
COUNTY OF VIGO)

Before me, the undersigned, a Notary Public in and for said County and State, this _____ day of _____, 2011, personally appeared John R. Crapo, IV, as the Trustee under the before-mentioned Trust, and acknowledged the execution of the foregoing deed

In witness whereof, I have hereunto subscribed my name and affixed my official seal.

My Commission Expires:


Notary Public
Printed: _____
Residing in _____ County

Mail Tax Statements to Grantee at:

Mail Deed To: Integrity Title Services, 1721 Wabash Ave., Terre Haute, IN 47807

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.

John A. Gurchiek, Esq.

This instrument was prepared by: GURCHIEK LAW, INC., P.O. Box 6327, Fishers, IN 46038, at the specific request of the parties of their authorized representatives based solely on information supplied by one or more of the parties to this conveyance. The drafter assumes no liability for any errors, inaccuracy, or omissions in this instrument resulting from the information provided and makes no representation regarding the status or quality of the title hereby conveyed by Grantor's execution and Grantee's acceptance of this instrument.

CMT: 11 0897

DULY ENTERED FOR TAXATION
Subject to final acceptance for transfer

2009016767 WD \$18.00
12/02/2009 11:56:34A 2 PGS
NANCY S. ALLSUP
VIGO County Recorder IN
Recorded as Presented

DEC 02 2009

Timothy M. Spivey
VIGO COUNTY AUDITOR

Parcel No.: 84-06-33-409-002.000-002

WARRANTY DEED

The Grantor, WENDELL L. KIRKMAN II and WENDELL KIRKMAN, SR., OF VIGO COUNTY, INDIANA, for the sum of One Dollar (\$1.00) and other valuable consideration the receipt of which is hereby acknowledged, conveys and warrants to Grantee, BURGER CALDWELL REAL ESTATE LLC, OF VIGO COUNTY, INDIANA, the following described real estate situated in Vigo County, Indiana, in fee simple absolute:

Lot Numbered One Hundred Twenty-one (121) in George R. Prestons Subdivision of Lots 1 & 2 & 7-16 inclusive and 19-20 & 25 and part of Lots 17-18-21-22 & 24 and part of Block A of Krumbhaars Subdivision, as shown on the recorded plat thereof recorded April 27, 1888, in Plat Record 4, Page 54, records of the Recorder's Office of Vigo County, Indiana.

Except Forty-five (45) feet off the West end thereof.

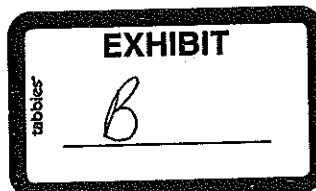
More commonly known as 417 Greenwood Street, Terre Haute, Indiana 47802.

SUBJECT TO ANY AND ALL CONDITIONS, RESTRICTIONS, COVENANTS OR EASEMENTS OF RECORD.

Dated: 12-1-09

Wendell L. Kirkman II
Wendell L. Kirkman, II, Grantor

Wendell L. Kirkman, Sr.
Wendell Kirkman, Sr., Grantor



2

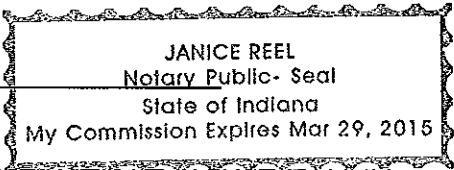
STATE OF INDIANA)
 : SS
COUNTY OF VIGO)

On this 1st day of December, 2009, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Wendell L. Kirkman, II and Wendell Kirkman, Sr., and acknowledged the execution of the foregoing instrument.

WITNESS my hand and official seal.

Notary Public Janice Reel

My commission expires: _____
Resident of Vigo County, Indiana



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. Attorney Todd A. Berry, #24797-84

Send Tax Statements to Grantee at Grantee's address.

2600 S 3rd St
T.H IN 47802

Return Deed to HONEY CREEK TITLE SERVICES, INC.

This instrument was prepared by Attorney Todd A. Berry, #24797-84, P.O. Box 10548, Terre Haute, Indiana, 47801-0548; (812) 299-9028.



TERRE HAUTE

Area Planning Department For Vigo County

159 Oak Street, Terre Haute, Indiana 47807

Telephone: (812) 462-3354

Fax: (812) 234-3248

Terre Haute • West Terre Haute • Riley • Seelyville

DATE: December 8, 2011

REPORT TO THE CITY COUNCIL ON ZONING MAP AMENDMENT

THE VIGO COUNTY AREA PLAN COMMISSION HEREBY GIVES CERTIFICATION TO
SPECIAL ORDINANCE NUMBER #45-11

CERTIFICATION DATE: December 7, 2011

TO: The Honorable Common Council of the City of Terre Haute

Dear Members,

The Vigo County Area Plan Commission offers you the following report and certification on Special Ordinance No. 43-11. This Ordinance is a rezoning of the property located at 417 Greenwood Street. The Petitioner, Burger Caldwell Real Estate, LLC, Petitions the Plan Commission to rezone said real estate from zoning classification R-1 to C-2, Community Commerce District, for a commercial development. The Ordinance was published in the Tribune-Star Newspaper in accordance with IC 5-3-1 and Division XIII of the Comprehensive Zoning Ordinance. Further, this ordinance was posted by the City Building Inspection Department in accordance with IC 36-7-4-604(c).

The Area Plan Commission considered Special Ordinance No. 45-11 at a public meeting and hearing held Wednesday, December 7, 2011. Remonstrators were not present. At this meeting, a quorum was present throughout the meeting pursuant to IC 36-7-4-301, and the Area Plan Commission took official action on Special Ordinance No. 45-11 as required by IC 36-7-4-302. The Area Plan Commission of Vigo County now hereby attaches certification to Special Ordinance No. 45-11 as required by IC 36-7-4-401(a)(7) and IC 36-7-4-605(c).

Therefore, Area Plan Commission's certified recommendation on Special Ordinance No. 45-11, was Favorable.

Fred L. Wilson, President

Jeremy Weir, Executive Director

Received this 8th day of December, 2011

APPLICATION INFORMATION

Petitioner: Burger Caldwell Real Estate, LLC.

Property Owner: Burger Caldwell Real Estate, LLC.

Representative: Richard J. Shagley II

Proposed Use: Commercial Development

Proposed Zoning: C-2, Limited Community Commerce District

Current Zoning: R-1, Single Family Residence District

Location: The property is located on the northwest corner of south 5th Street and Greenwood Street.

Common Address: 417 Greenwood Street, Terre Haute, IN 47802

COMPREHENSIVE PLAN GUIDANCE

Service Area: The City of Terre Haute

Guiding Policies: Regional Commercial

- Spatial containment of commercial activities to existing commercially zoned sites; maintain and reinforce the drawing power of major retail centers including anchor department and discount stores.
- Reduce future traffic congestion and more closely tie existing retail centers with transit operations; expand the opportunities for pedestrian linkage between and among major existing activity centers.
- Increase the Identity of the district as a whole, with improved coordination in urban design elements including directional signage, common landscape elements such as lighting or street furniture; develop a common approach to business signage.
- Encourage reinvestment in and continual upgrading of existing retail space; encourage the intensification of activities for retail comparative shopping purposes. Ancillary activities such as fast-food restaurants or quick stop establishments do not add to the regional character of activity centers. Emphasis should increasingly be upon multiple-trip purpose activities with regional significance.
- Ensure that future retail commercial development in the area does not detract from the viability of residential Neighborhoods in the vicinity.

STAFF REVIEW – CITY OF TERRE HAUTE ZONE CHANGE

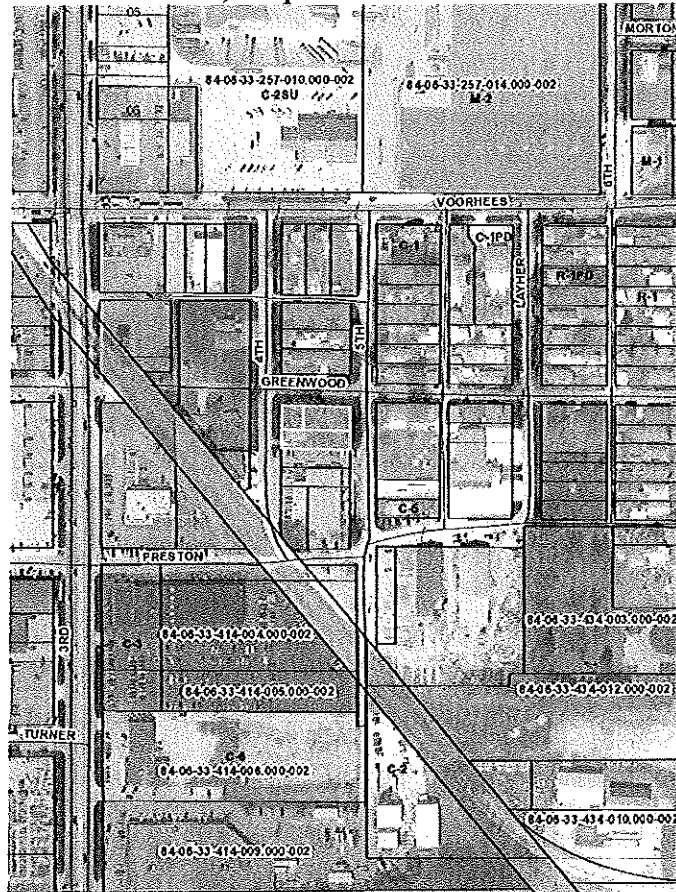
Number: SO #45-11
Date: December 2011

Doc: # 79
Page 2 of 3

- Available Services: Area is well served by utilities.
- Soil Limitations: Not studied.
- Street Access: South Greenwood Street is a local level roadway
- Dev. Priority: Capital investment is a high priority
-

ZONING COMPATIBILITY

- Sur. Zones and Uses: **North** – R-1, Single-family Residence District
East – R-1, Single-family Residence District, and
C-5, General Central Business District
South – C-2, Community Commerce District
West – C-2, Community Commerce District, and
C-6, Strip Business District



STAFF REVIEW – CITY OF TERRE HAUTE ZONE CHANGE

Number: SO #45-11
Date: December 2011

Doc: # 79
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Character of Area: This area has a mix of Commercial, Industrial, and Residential uses, which are located along a railroad spur, U.S. Highway 41/3rd Street, and Voorhees Avenue. The area is within the U.S. Highway 41, and I-70 Regional Commercial Corridor.

Contig. Uses & Zones: Auto-repairs business is located on the south side of the property, and the use is a permitted in a C-2, Community Commerce District.

ZONING REGULATIONS

C-2 Purpose: The Community Commerce Zone is designed for the residents of the nearby community consisting of more than one (1) of the neighborhoods in that section of the city, so as to permit a wider variety of both business uses and services. It is designed not for an abutting neighborhood, but for a relatively larger consumer population for both daily and occasional shopping. The development is characterized by a lack of “comparison shopping” and is limited to providing only one (1) store for each type of business.

C-2 Uses: Barber/Beauty Shops, Branch banks, Business and Professional office. Establishments are restricted to a (gross) floor area of ten thousand (10,000) square feet.

C-2 Standards: Floor Area Ratio of 0.5; street setback of 55 feet from centerline; rear setback 11’ from the rear property line; Interior 5’ from the interior lot line, and Meet the minimum parking requirement per table 4. Any area contingent or abutting a Residential District shall be buffered by an open space of off-street parking area with a minimum fifty foot (50’) width measured at right angles to the residential property line.

FINDINGS and RECOMMENDATION

Staff Findings: The proposed use is in harmony with the Thrive 2025 Comprehensive Plan, as the plan has identified this area as a Regional Commercial District. Regional commercial areas are major retail centers providing the widest variety of goods and services to a market area larger than the community, with no single type of retail activity dominating the district. The vitality of the areas is based upon the diversity of retail activities being located in a relatively concentrated area.

Recommendation: Staff offers a Favorable Recommendation:

Receipt

The following was paid to the City of Terre Haute, Controller's Office.

Date: Oct 27, 2011

Name: Wright, Shagrey & Sawyer

Reason: Binger Caldwell Real Estate - Rezoning \$4500

Cash: _____

Check: \$4500 CK# 59424

Credit: _____

Total: \$4500

TERRE HAUTE, IN
PAID

OCT 27 2011

CONTROLLER

Received By: M. Bowe/BE