

SPECIAL ORDINANCE NO. 18, 2016

APPLICATION FOR REZONING PETITION CITY OF TERRE HAUTE

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Common Address of lots to be rezoned:

Agricultural vacant land on E. Margaret Drive  
(North of E. Margaret Drive, Terre Haute, Indiana 47802)

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Rezone From: O-1 Agricultural

Rezone To: C-3 Regional Commerce District

Proposed Use: Heavy Farm Machinery Dealership

Name of Owner: Richard L. Wheatfill II and Mary Jane Wheatfill  
Address of Owner: 4801 E. Margaret Drive  
Terre Haute, IN 47802

Phone Number of Owner -

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: Amy Auler

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COPY OF A SITE-PLAN MUST ACCOMPANY THIS APPLICATION

FILED

JUN 24 2016

CITY CLERK

SPECIAL ORDINANCE NO. 18, 2016

An Ordinance Amending Chapter 10, Article 2 of the Municipal Code designated as "Comprehensive Zoning Ordinance for Terre Haute Indiana."

SECTION 1. BE IT ORDIANED BY THE COMMON COUNCIL of the City of Terre Haute, Vigo County, State of Indiana, that Chapter 10, Article 2 of the City Code of Terre Haute, designated as the "Comprehensive Zoning Ordinance for Terre Haute" and Division 4, Section 10.121 thereof, District Maps, be, and the same is hereby amended to include as follows:

Lots One (1), Two (2) and Three (3) in the Subdivision made in the partition of the West Half (1/2) of the North East Quarter (1/4) of Section One (1), Township Eleven (11) North, Range Nine (9) West, in Vigo County, Indiana, Except the following described tract to-wit:

Commencing 393.2 feet East of the North West corner of the Northeast Quarter of Section I, Township II North, Range 9 West, and extending thence South Two Hundred Ninety (290) feet, thence East Three Hundred (300) feet, thence North Two Hundred ninety (290) feet, thence West Three Hundred (300) feet to the place of beginning.

Also Except that part thereof conveyed to Everett W. Wright and Josephine Wright by instrument dated January 8, 1949 and recorded in Deed Record 254, Page 590.

Also Except that part thereof conveyed to Estel Clouse and Miriam Clouse, by instrument dated May 10, 1948 and recorded in Deed Record 341, Page 203.

Also Except that part thereof as platted into L. Dever One Lot Subdivision as shown by instrument dated August 13, 1991 and recorded October 9, 1991, in Plat Record 26, Page 49.

Subject to an instrument dated June 18, 1963 granting an easement to Public Service Company of Indiana, Inc., as shown in Deed Record 335, Page 776.

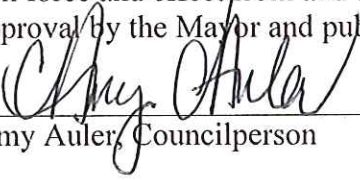
Subject to grant of permanent and temporary easement granted to the City of Terre Haute, Indiana for the use and benefit of the Sanitary District of the City of Terre Haute, Indiana dated August 28, 2001 and recorded September 18, 2001, in Instrument Number 200119289.

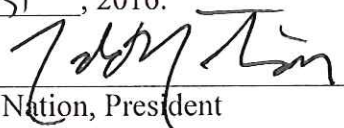
All records of the Vigo County Recorder's Office.


(Commonly known as agricultural vacant land on E. Margaret Drive (North of 3300 S. Fruitridge Avenue, Terre Haute, Indiana 47802), Parcel ID: 84-09-01-201-008.000-005)

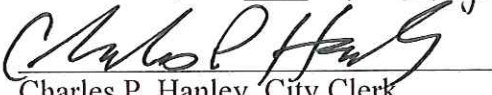
be the same is hereby established as a C-3 Regional Commerce District, together with all rights and privileges that may inure to said real estate and the owners thereof by virtue of the law in such cases provided, subject to all limitations and restrictions imposed thereon by deed or otherwise.”

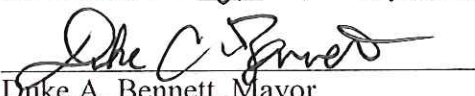
SECTION II, WHEREAS, an emergency exists for the immediate taking effect of this Ordinance, the same shall be in full force and effect from and after its passage by the Common Council of Terre Haute, and its approval by the Mayor and publication as required by law.


Presented by Council Member,   
Amy Auler, Councilperson


Passed in open Council this 11<sup>th</sup> day of August, 2016.  
  
Todd Nation, President

ATTEST:  
  
Charles P. Hanley, City Clerk

Presented by me, to the Mayor of the City of Terre Haute, this 12<sup>th</sup> day of August, 2016.  
  
Charles P. Hanley, City Clerk

Approved by me, the Mayor of the City of Terre Haute, this 12<sup>th</sup> day of August, 2016.  
  
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, Richard L. Wheatfill II and Mary Jane Wheatfill, respectfully submit this Petition to Rezone the following described real estate in the City of Terre Haute, Vigo County, State of Indiana, to-wit:

Lots One (1), Two (2) and Three (3) in the Subdivision made in the partiton of the West Half (1/2) of the North East Quarter (1/4) of Section One (1), Township Eleven (11) North, Range Nine (9) West, in Vigo County, Indiana, Except the following described tract to-wit:

Commencing 393.2 feet East of the North West corner of the Northeast Quarter of Section I, Township II North, Range 9 West, and extending thence South Two Hundred Ninety (290) feet, thence East Three Hundred (300) feet, thence North Two Hundred ninety (290) feet, thence West Three Hundred (300) feet to the place of beginning.

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Subject to grant of permanent and temporary easement granted to the City of Terre Haute, Indiana for the use and benefit of the Sanitary District of the City of Terre Haute, Indiana dated August 28, 2001 and recorded September 18, 2001, in Instrument Number 200119289.

All records of the Vigo County Recorder's Office.

(Commonly known as agricultural vacant land on E. Margaret Drive (North of 3300 S. Fruitridge Avenue, Terre Haute, Indiana 47802), Parcel ID: 84-09-01-201-008.000-005)

The Petitioners are 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 O-1 Agricultural.

Your Petitioners would respectfully state that the real estate is now a vacant lot. The Petitioners intend to sell the real estate for the use of heavy farm machinery dealership.


Your Petitioners would request that the real estate described herein shall be zoned as a C-3 Regional Commercial District to allow for the use as proposed by Petitioners. Your Petitioners would allege that the C-3 Regional Commercial District would not alter the general characteristics of this neighborhood.

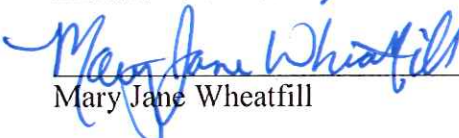
Your Petitioners would respectfully show the proposed change would not be detrimental to the public welfare or injurious to the property or improvements in the neighborhood.

WHEREFORE, your Petitioners respectfully request 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-3 Regional 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 owner thereof by virtue of the new designation subject to all limitations imposed by deed or otherwise.


IN WITNESS WHEREOF, the undersigned Petitioners have caused this Petition to Rezone Real Property to be executed, this 10<sup>th</sup> day of June, 2016.

**PETITIONERS:**

  
Richard L. Wheatfill II

  
Mary Jane Wheatfill

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

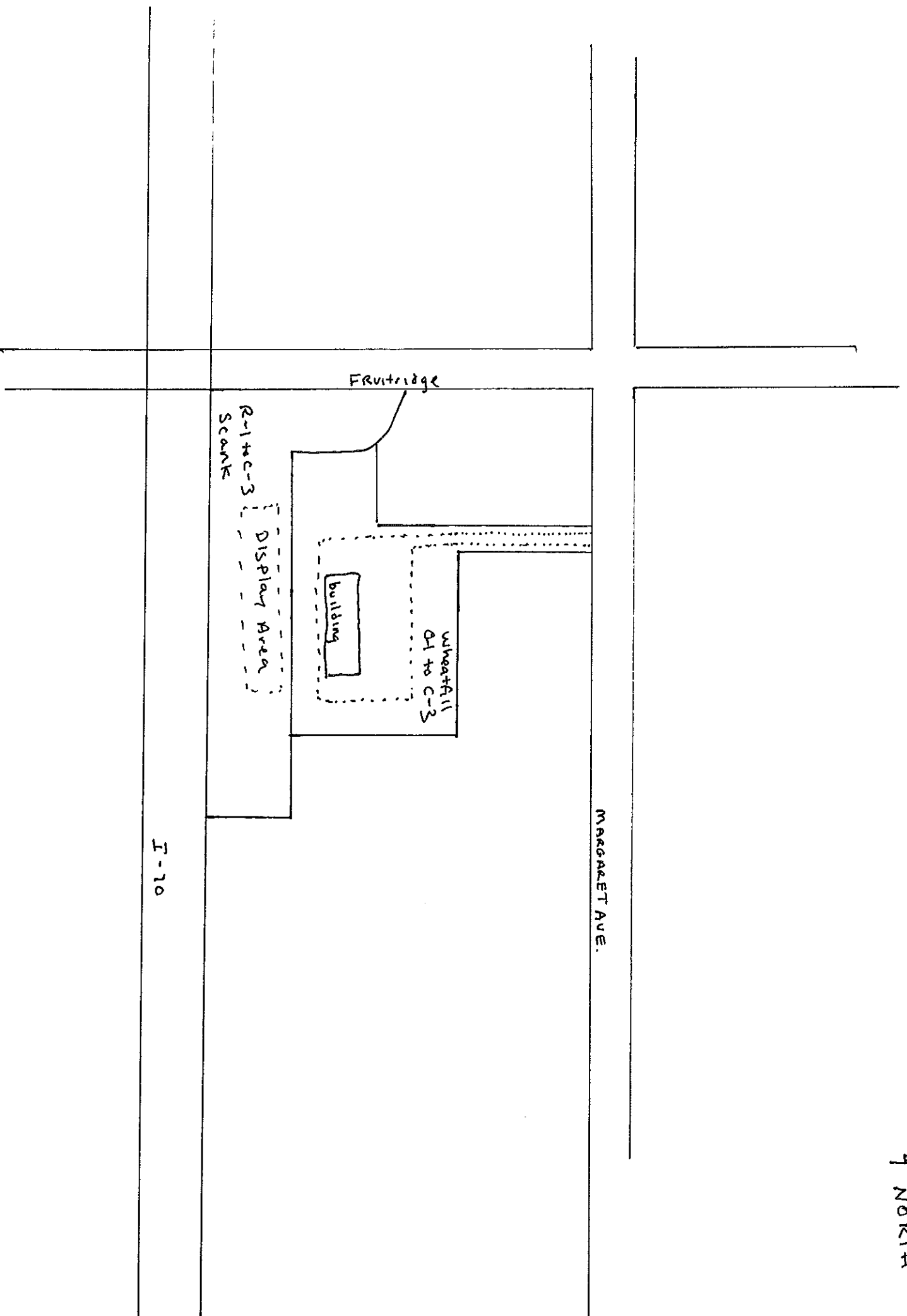
BY:   
Richard J. Shagley, II #23135-84  
Attorneys for Petitioners

The owner and mailing address: 4801 E. Margaret Drive, Terre Haute, Indiana 47802.

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, Indiana 47807.

Site Plan

9 NORTH



**DULY ENTERED FOR TAXATION**  
Subject to final acceptance for transfer

2013014391 TT \$20.00  
11/04/2013 01:26:59P 3 PGS  
NANCY S. ALLSUP  
VIGO County Recorder IN  
Recorded as Presented

NOV 04 2013

*Jessie M. Spade*  
VIGO COUNTY AUDITOR

## TRUSTEE'S DEED

This deed made this 1<sup>ST</sup> day of November, 2013, by Jay T. Shaw as Trustee, and the successor trustees, of the Jay T. Shaw Revocable Trust u/a/d June 23, 1997;

### WITNESSETH:

WHEREAS, by deed recorded on December 23, 1997, at Deed Record 442, page 4757, in the office of the Recorder of Vigo County, Jay T. Shaw as Trustee, and the successor trustees, of the Jay T. Shaw Revocable Trust u/a/d June 23, 1997 acquired the hereinafter described land.

NOW, THEREFORE, Jay T. Shaw as Trustee, and the successor trustees, of the Jay T. Shaw Revocable Trust u/a/d June 23, 1997, pursuant to authority granted to him under the above-referred to Trust Instrument, CONVEYS AND GRANTS to Richard L. Wheatfill, II and Mary Jane Wheatfill, Husband and Wife, for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the following described real estate located in the County of Vigo, State of Indiana, to-wit:

Lots One (1), Two (2) and Three (3) in the Subdivision made in the partition of the West Half (1/2) of the North East Quarter (1/4) of Section One (1), Township Eleven (11) North, Range Nine (9) West, in Vigo County, Indiana, Except the following described tract to-wit:

Commencing 393.2 feet East of the North West corner of the Northeast Quarter of Section 1, Township 11 North, Range 9 West, and extending thence South Two Hundred Ninety (290) feet, thence East Three Hundred (300) feet, thence North Two Hundred ninety (290) feet, thence West Three Hundred (300) feet to the place of beginning.

Also Except that part thereof conveyed to Everett W. Wright and Josephine Wright by instrument dated January 8, 1949 and recorded in Deed Record 254, Page 590.

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All records of the Vigo County Recorder's Office.



Subject to easements, covenants, restrictions, leases and other matters of record affecting title to the subject real estate.

Subject to Indiana real property taxes prorated to date hereof.

Grantor-Trustee represents under oath that he is the current duly appointed Trustee of said Trust and that said Trust authorizes the Trustee to hold and convey real estate and this deed is executed pursuant to and in the exercise of the power and authority granted to the Trustee under said Trust Agreement and that the powers referred to in said instrument have never been altered or modified so as to prohibit this conveyance and said Trust is still in existence.

IN WITNESS WHEREOF, Jay T. Shaw as Trustee, and the successor trustees, of the Jay T. Shaw Revocable Trust u/a/d June 23, 1997, has hereunto set his hand and seal this 1<sup>ST</sup> day of November, 2013.

Jay T. Shaw (SEAL)  
Jay T. Shaw as Trustee, and the successor trustees, of the Jay T. Shaw Revocable Trust u/a/d June 23, 1997

STATE OF INDIANA )  
 ) SS:  
COUNTY OF VIGO )

Before me, a Notary Public in and for said county and state, this 1<sup>ST</sup> day of November, 2013, personally appeared Jay T. Shaw as Trustee, and the successor trustees, of the Jay T. Shaw Revocable Trust u/a/d June 23, 1997, and acknowledged the execution of this conveyance to be his voluntary act and deed and, being duly sworn, acknowledged the truth of the representations contained therein.

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

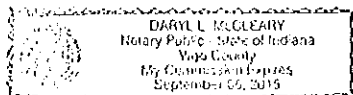
Daryl L. McCleary  
Notary Public  
Daryl L. McCleary  
Printed Name of Notary

My Commission Expires:

07-06-2015

My County of Residence:

VIGO



I affirm, under the penalties for perjury, that I have taken reasonable care to reflect each Social Security number in this document, unless required by law.

*[Handwritten Signature]*  
Donald J. Bonomo

This instrument prepared by Donald J. Bonomo, Attorney at Law, COX, ZWERNER, GAMBILL & SULLIVAN, LLP, 511 Wabash Avenue, Terre Haute, IN 47807. The deed was prepared at the specific request of the parties or their authorized representatives based solely on information supplied by one or more of the parties to this conveyance concerning the property to be conveyed and without examination of title or abstract. 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 the instrument.

GRANTEE'S ADDRESS: 8597 E. Woodsmall Drive Terre Haute, IN 47802

MAIL TAX STATEMENTS TO: 4801 E. Margaret Drive Terre Haute, IN 47802

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF VIGO         )

**AFFIDAVIT**

Come now, Richard L. Wheatfill II and Mary Jane Wheatfill, being duly sworn upon their oaths, depose and say:

1. That Richard L. Wheatfill II and Mary Jane Wheatfill are the fee simple owners of record of the following described real estate located in the City of Terre Haute, County of Vigo, State of Indiana, to-wit:

Lots One (1), Two (2) and Three (3) in the Subdivision made in the partition of the West Half (1/2) of the North East Quarter (1/4) of Section One (1), Township Eleven (11) North, Range Nine (9) West, in Vigo County, Indiana, Except the following described tract to-wit:

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(Commonly known as agricultural vacant land on E. Margaret Drive (North of 3300 S. Fruitridge Avenue, Terre Haute, Indiana 47802), Parcel ID: 84-09-01-201-008.000-005)

2. That copies of the Deed, recorded in the records of the Recorder's Office of Vigo



**TERRE HAUTE**  
A LEVEL ABOVE

**Receipt**

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

Date: 6/24/14

Name: Wright, Shagley & Rowery, PC

Reason: Re Zoning  
B3 Pentons, LLC

Cash: \_\_\_\_\_  
Check: \$90.00 (<sup>\$45.00</sup> #66096 & <sup>\$45.00</sup> #66094)

Credit: \_\_\_\_\_

Total: \$90.00

TERRE HAUTE, IN  
PAID

JUN 24 2014

CONTROLLER

Received By: Belis/K



# 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: August 4, 2016

## REPORT TO THE CITY COUNCIL ON ZONING MAP AMENDMENT

THE VIGO COUNTY AREA PLAN COMMISSION HEREBY GIVES CERTIFICATION TO  
SPECIAL ORDINANCE NUMBER #18-16

CERTIFICATION DATE: August 3, 2016

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. 18-16. This Ordinance is a rezoning of the property located on E. Margaret Dr. The Petitioner, Richard and Mary Jane Wheatfill, petitions the Plan Commission to rezone said real estate from zoning classification 0-1 to C-3, Regional Commerce District, for commercial retail to allow the development of a heavy farm machinery dealership. 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. 18-16 at a public meeting and hearing held Wednesday, August 3, 2016. Remonstrators WERE 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. 18-16 as required by IC 36-7-4-302. The Area Plan Commission of Vigo County now hereby attaches certification to Special Ordinance No.18-16 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.18-16 was FAVORABLE WITH THE FOLLOWING CONDITIONS: 1) Landscape Plan be submitted and approved by the City; 2) A complete detailed Site Plan be submitted and approved; 3) A drive cut capable of handling commercial traffic be built to the standards as outlined by City Engineering; 4) A major subdivision be submitted and approved.

Handwritten signature of Fred L. Wilson.

Fred L. Wilson, President

Handwritten signature of Jared Bayler.

Jared Bayler, Interim Director

Received this 4th day of August, 2016



## APPLICATION INFORMATION

Petitioner: Richard & Mary Jane Wheatfill

Property Owner: Same as Above

Representative: Richard J. Shagley II

Proposed Use: Commercial Retail to allow the development of Heavy Farm Machinery Dealership

Proposed Zoning: C-3, Regional Commerce District

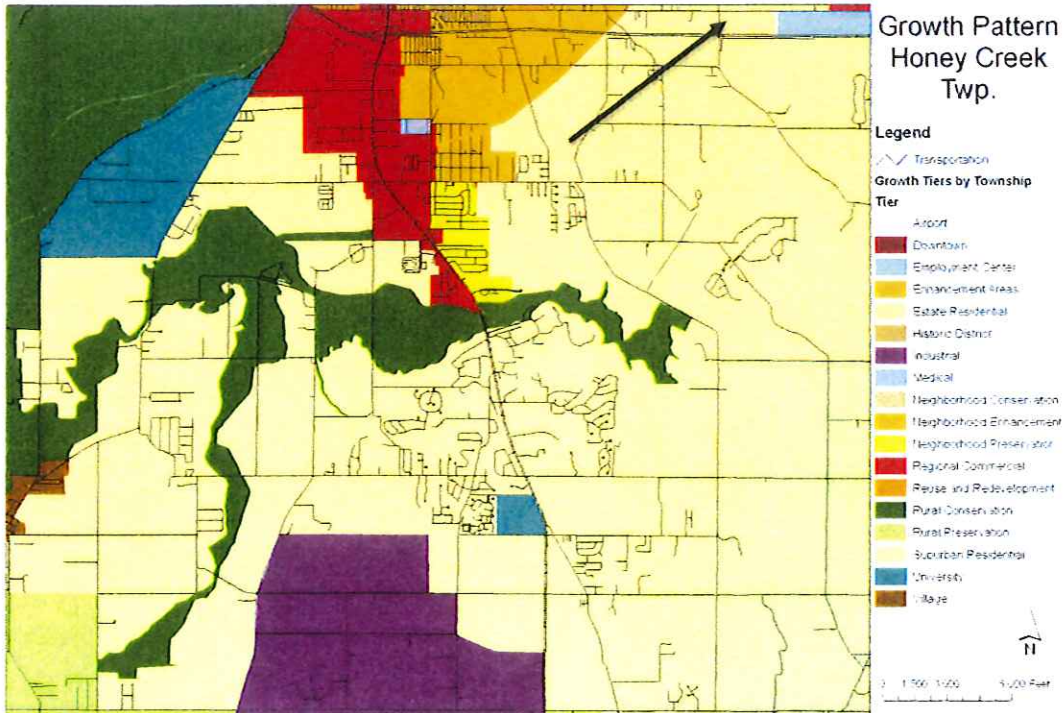
Current Zoning: O-1, Agricultural District

Location: The property is located East of the corner of the intersection of Fruitridge and E. Margaret Dr. It is located behind homes addressed 3801, 3815 and 3901 E. Margaret Dr.

Common Address: No common address has been assigned at this time. Parcel # 84-09-01-201-008.000-005

## COMPREHENSIVE PLAN GUIDANCE

Service Area: The City of Terre Haute



**Recommended Use: Suburban Residential**

These are largely undeveloped areas lying within the boundaries of existing and planned urban services. Current residential densities range from building on lots of ½ acre to 2 acres in size, this should be used as a minimum density. Over time, densities should be encouraged to increase moderately to allow average densities of three to three and one-half (3 to 3.5) households per acre. In the case of all residential densities, densities are stated as an average for the entire area in a given land use categories.

Promotion of monotonous suburban tract housing is not the intent of this growth pattern, although this may be an undesirable consequence. To avoid this outcome, careful consideration of alternative site development schemes should be undertaken by planning, engineering, development and real estate professionals for each new residential tract.

Increasing residential densities within this growth pattern offers four distinct advantages over typical low-density development.

- Optimization of the relationship between public infrastructure capacity and average development densities.
- Reduction in the need for infrastructure extensions and expansions, thereby saving public capital cost.
- Provides pedestrian scale residential neighborhoods, which will blend with existing Terre Haute neighborhoods that were developed at five to seven (5 to 7) units per acre and at the same time provide enhanced opportunities for non-motorized travel.
- Minimize land consumption and limits land disturbance.

Not every new subdivision will provide developed densities approaching four (4) units per acre, yet, as cluster housing, patio homes, variations of zero-lot line housing and integrated neighborhoods of town houses, garden apartment, and single family dwelling units become more common and more fashionable, average densities will increase. Traditionally, allowable densities controlled mix and pattern of suburban residential development. Density, per se, is increasingly viewed by development professionals as only one of many variables that must be considered in making site development decisions. The infrastructure capacity relative to undeveloped areas and special environmental conditions of a specific development site, as well as, the site plan itself and its impact on surrounding property should primarily control the developed density. This should especially be the case as development moves beyond minimum residential densities. In all cases, density and the arrangement of uses on a developed site should be sensitive to surrounding development patterns, making land use transitions within the new development and utilizing natural features as transitions or buffers.

Policies for Suburban Residential areas should include:

- Houses on lots ranging from one-half to two acres depending on wastewater treatment needs.



STAFF REVIEW – CITY OF TERRE HAUTE ZONE CHANGE

Number: SO #18-16

Doc: #56

Date: August, 2016

Page 3 of 4

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- The extent of non-residential uses should be limited to parks, churches, and schools.
- Residential subdivision lots should not have frontage on county roads, rather they should be required to build local level public streets to provide access from the county road to the lots.
- Medium range plans for expanding needed infrastructure should be developed, considering projected demand and funding.

**Available Services:** Area is well served by utilities and urban services.

**Street Access:** According to the Site Plan ingress/egress is to be from Margaret Ave.

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## ZONING COMPATIBILITY

Sur. Zones and Uses:

**North** – R-1, Single Family Residential, C-2, Community Commerce Zone,

**East** – O-1, Agricultural District

**South** – R-1, Single Family Residential

**West** – O-1, Agricultural District C-2, Community Commerce

Contig. Uses & Zones:

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- To the northwest is a national exterminator chain. All other surrounding uses are either residential or agricultural.
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## ZONING REGULATIONS

**C-3 Purpose:** The Regional Commerce Zone is designated for all residents in the region of Terre Haute, Indiana, and is not a limited community commerce area (or shopping center); consequently, it shall permit a wide variety of business, commerce, and services with some degree of limited warehousing for those establishments allowed in area. It shall be a major shopping center, definitely limited specific locations and characterized by

large establishments generating large volumes of vehicular traffic. The development is characterized by its provision of some degree of comparison-shopping and a complete lack of any attempt to draw pedestrian traffic.

C-3 Uses: Any use permitted in C-1, and C-2, Pet shops, Live professional entertainment and dancing, Schools, Auction rooms, Recreation establishments, Automobile sales and service (minor and major repairs) Farm equipment sales and service.

C-3 Standards: Street setback of 50 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.

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## FINDINGS and RECOMMENDATION

The property is located near two busy thoroughfares and has easy visibility from I-70. If the business is to locate here special attention needs be paid to visual screening against residential uses. Illumination of an off-street parking area shall be arranged so as not to reflect direct rays of light into adjacent residential districts and streets. Farm equipment sales and service is a permitted use by right in a C-3 District.

Questions arise as to the selection of this location. One would think that property closer to Hwy 46 would better suit the needs of the developer. It is anticipated that over time industrial and commercial uses along E. Margaret Drive will infill to the west. As they do so the increase in traffic will continue. E. Margaret is being constructed and expanded with that traffic flow in mind. Also, as development continues westward encounters with residential uses will become more common. It is possible to integrate the two uses as long as proper buffer and visual screening is applied. The buffer for a C-3 against single family residence is 450 ft.

Recommendation: Favorable Recommendation on the request to rezone the property to C-3, Regional Commercial with the following conditions.

1. Landscape plan be submitted and approved by the city.
2. A complete detailed site plan be submitted and approved.
3. A drive cut capable of handling commercial traffic be built to the standards as outlined by city engineering.
4. A major subdivision be submitted and approved.