

**REGULAR MEETING OF THE COMMON COUNCIL OF THE CITY OF GOSHEN,
TO BE HELD NOVEMBER 1, 2016 AT 7:00 P.M. AT THE COUNCIL CHAMBERS
111 EAST JEFFERSON STREET, GOSHEN, INDIANA**

.....
**OUT OF RESPECT TO OTHERS IN THIS MEETING, PLEASE TURN CELL PHONES,
BEEPERS AND PAGERS OFF OR TO SILENT MODE. IF A PHONE CONVERSATION IS
NECESSARY, PLEASE STEP OUTSIDE OF THE MEETING ROOM. THANK YOU.**

Call to Order by Mayor Jeremy Stutsman

Pledge of Allegiance

Roll Call of Council: Mr. Ahlersmeyer_____ Ms. Gautsche_____ Ms. King_____
Mr. McKee_____ Mr. Orgill_____ Mr. Scharf_____
Mr. Weddell_____

Approval of Agenda and Changes to Agenda

Agenda Items:

1. ORDINANCE 4888

**(FIRST READING)
(SECOND READING)**

**AN ORDINANCE TO AMEND ORDINANCE NO 3011 KNOWN AS THE ZONING AND USE
REGULATIONS ORDINANCE FOR THE CITY OF GOSHEN, INDIANA, BY REZONING
THE AREA OF REAL ESTATE HEREINAFTER DESCRIBED FROM COMMERCIAL B-3
DISTRICT AND COMMERCIAL B-1 DISTRICT TO RESIDENTIAL R-3 DISTRICT**

2. RESOLUTION 2016-40

TRANSFER OF CIGARETTE TAXES FROM CAPITAL IMPROVEMENT FUND

PRIVILEGE OF FLOOR

Next Council Meeting: November 15, 2016 (Regular Council Meeting)



Rhonda L. Yoder, AICP
PLANNING & ZONING DEPARTMENT, CITY OF GOSHEN
204 East Jefferson Street, Suite 4 • Goshen, IN 46528-3405

Phone (574) 537-3815 • Fax (574) 533-8626 • TDD (574) 534-3185
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MEMORANDUM

TO: Goshen Common Council
FROM: Rhonda L. Yoder, City Planner
DATE: November 1, 2016
RE: Ordinance 4888

The Goshen Plan Commission met on October 18, 2016, in regular session and considered a request for the rezoning of three parcels of land from Commercial B-3 District (two parcels) and Commercial B-1 District (one parcel) to Residential R-3 District, for the development of approximately 194 apartments, for subject property generally located at 1375 Lincolnway East, two parcels containing \pm 8.937 acres and zoned Commercial B-3 District, and one parcel adjacent to the south, containing \pm 6.402 acres and zoned Commercial B-1 District, with the following outcome:

Sent to the City Council with a favorable recommendation by a vote of 5-0.

Approval is based upon the following:

1. The rezoning is consistent with the existing zoning and land use in the area.
2. The R-3 developmental requirements will be met, including lot area, density, setbacks and on-site parking.

Ordinance 4888

An Ordinance to Amend Ordinance No. 3011, Known as the Zoning and Use Regulations Ordinance for the City of Goshen, Indiana, by Rezoning the Area of Real Estate Hereinafter Described from Commercial B-3 District and Commercial B-1 District to Residential R-3 District

WHEREAS City of Goshen Department of Redevelopment, MA Investments, and Brad Emmert, submitted an application on the 28th day of September 2016 to rezone the real estate hereinafter described from Commercial B-3 District and Commercial B-1 District to Residential R-3 District, and the Goshen City Plan Commission did after proper legal notice conduct a hearing on said Petition as provided by the Law on the 18th day of October 2016, and recommended the adoption of this Ordinance by a vote of 5-0:

NOW, THEREFORE be it ordained by the Common Council of the City of Goshen, Indiana, that:

Properties generally located at 1375 Lincolnway East, Tract 1 being two parcels containing \pm 8.937 acres and zoned Commercial B-3 District, and Tract 2 being one parcel adjacent to the south containing \pm 6.402 acres and zoned Commercial B-1 District, and more particularly described as follows:

Tract I:

A PART OF THE SOUTHEAST QUARTER OF SECTION 15, TOWNSHIP 36 NORTH, RANGE 6 EAST, ELKHART TOWNSHIP, ELKHART COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A STONE MARKING THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 15; THENCE ON AN ASSUMED BEARING OF NORTH 89 DEGREES 51 MINUTES 47 SECONDS WEST ALONG THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 15, A DISTANCE OF 804.50 FEET TO THE INTERSECTION OF THE CENTERLINE OF U.S. HIGHWAY NO. 33 (LINCOLNWAY EAST) AND THE CENTERLINE OF FAIRFIELD AVENUE, A FIFTY (50) FOOT WIDE RIGHT OF WAY, THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE SOUTH 44 DEGREES 24 MINUTES 45 SECONDS EAST ALONG THE CENTERLINE OF SAID U.S. HIGHWAY NO. 33, A DISTANCE OF 600.00 FEET TO THE NORTHEAST CORNER OF THE PLAT OF STARBEST SUBDIVISION, SAID PLAT BEING RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN PLAT BOOK 32, PAGE 53; THENCE NORTH 89 DEGREES 53 MINUTES 08 SECONDS WEST ALONG THE NORTH LINE OF SAID STARBEST SUBDIVISION AND ALONG THE NORTH LINE OF A PARCEL OF LAND CONVEYED TO MA INVESTMENTS AS DESCRIBED AND RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN INSTR. #2000-19271, A DISTANCE OF 685.31 FEET TO THE NORTHWEST CORNER OF SAID MA INVESTMENTS PARCEL, ALSO BEING THE NORTHEAST CORNER OF LOT I AS SAID LOT IS KNOWN AND DESIGNATED ON THE PLAT OF THE COMMONS AT COLLEGE GREEN, SAID PLAT BEING RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN PLAT BOOK 17, PAGE 90; THENCE NORTH 89 DEGREES 54 MINUTES 18 SECONDS WEST ALONG THE NORTH LINE OF SAID LOT I AND THE NORTH LINE OF LOT H AS SAID LOT IS KNOWN AND DESIGNATED ON THE PLAT OF SAID THE COMMONS AT COLLEGE GREEN, A DISTANCE OF 434.74 FEET TO THE NORTHWEST CORNER OF SAID LOT H AND THE SOUTHEAST CORNER OF A PARCEL OF LAND CONVEYED TO GOSHEN FITNESS & RACQUET, LLC AS DESCRIBED AND RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN INSTR. #2003-40443; THENCE NORTH 00 DEGREES 05 MINUTES 42 SECONDS EAST ALONG THE EAST LINE OF SAID GOSHEN FITNESS & RACQUET, LLC PARCEL, A DISTANCE OF 428.17 FEET TO THE NORTHEAST CORNER OF SAID GOSHEN FITNESS & RACQUET, LLC PARCEL, ALSO BEING ON THE NORTH LINE OF THE SOUTHEAST QUARTER OF AFORESAID SECTION 15, AND THE CENTERLINE OF AFORESAID FAIRFIELD AVENUE; THENCE SOUTH 89 DEGREES 51 MINUTES 47

SECONDS EAST ALONG SAID NORTH LINE AND SAID CENTERLINE, A DISTANCE OF 699.45 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION CONTAINING 8.937 ACRES, MORE OR LESS, BEING SUBJECT TO ALL EASEMENTS, RESTRICTIONS AND PUBLIC RIGHTS OF WAY OF RECORD.

and

Tract II:

A PART OF THE SOUTHEAST QUARTER OF SECTION 15, TOWNSHIP 36 NORTH, RANGE 6 EAST, ELKHART TOWNSHIP, CITY OF GOSHEN, ELK HART COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A STONE MARKING THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 15; THENCE SOUTH 89 DEGREES 54 MINUTES 18 SECONDS WEST ALONG THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 15, A DISTANCE OF 804.50 FEET TO THE CENTERLINE OF U.S. HIGHWAY NUMBER 33; THENCE SOUTH 44 DEGREES 38 MINUTES 40 SECONDS EAST ALONG THE EAST LINE OF A PARCEL OF LAND CONVEYED TO INNKEEPERS OF GOSHEN, INC. AS DESCRIBED AND RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN DEED RECORD VOLUME 292, PAGE 190 AND ALONG SAID U.S. HIGHWAY NUMBER 33, A DISTANCE OF 600.00 FEET TO THE SOUTHEAST CORNER OF SAID INNKEEPERS OF GOSHEN, INC. PARCEL AND THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING SOUTH 44 DEGREES 38 MINUTES 40 SECONDS EAST ALONG SAID U.S. HIGHWAY NUMBER 33, A DISTANCE OF 307.24 FEET TO THE MOST NORTHERLY CORNER OF A PARCEL OF LAND CONVEYED TO THE COMMODORE CORPORATION AS DESCRIBED AND RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN INSTRUMENT NUMBER 88 001729; THENCE SOUTH 45 DEGREES 22 MINUTES 05 SECONDS WEST ALONG THE NORTHWESTERLY LINE OF SAID THE COMMODORE CORPORATION PARCEL, A DISTANCE OF 251.95 FEET AN IRON PIPE; THENCE SOUTH 89 DEGREES 47 MINUTES 49 SECONDS WEST ALONG THE NORTH LINE OF SAID THE COMMODORE CORPORATION PARCEL AND A PARCEL OF LAND CONVEYED TO DONALD R. AND ELIZABETH STAUFFER AS DESCRIBED AND RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN INSTRUMENT NUMBER 93 026478, A DISTANCE OF 365.09 FEET TO A REBAR MARKING THE NORTHWEST CORNER OF SAID STAUFFER PARCEL; THENCE SOUTH 00 DEGREES 42 MINUTES 10 SECONDS EAST ALONG THE WEST LINE OF SAID STAUFFER PARCEL, A DISTANCE OF 354.75 FEET TO A REBAR MARKING THE SOUTHWEST CORNER OF SAID STAUFFER PARCEL; THENCE NORTH 89 DEGREES 47 MINUTES 49 SECONDS EAST ALONG THE SOUTH LINE OF SAID STAUFFER PARCEL, A DISTANCE OF 122.79 FEET TO A REBAR; THENCE NORTH 89 DEGREES 56 MINUTES 00 SECONDS EAST ALONG THE SOUTH LINE OF SAID STAUFFER, A DISTANCE OF 230.00 FEET TO AN IRON PIPE MARKING THE SOUTHEAST CORNER OF SAID STAUFFER PARCEL; THENCE SOUTH 00 DEGREES 42 MINUTES 10 SECONDS EAST ALONG THE WEST LINE OF AFORESAID THE COMMODORE CORPORATION PARCEL, A DISTANCE OF 10.00 FEET TO A REBAR MARKING THE SOUTHWEST CORNER OF SAID THE COMMODORE CORPORATION PARCEL, ALSO BEING THE NORTHEAST CORNER OF LOT NUMBER 13 AS THE SAID LOT IS KNOWN AND DESIGNATED ON THE PLAT OF THE VILLAS AT COLLEGE GREEN, SAID PLAT BEING RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN PLAT BOOK 17, PAGE 91; THENCE SOUTH 89 DEGREES 56 MINUTES 55 SECONDS WEST ALONG THE NORTH LINE OF LOT NUMBER 13, LOT NUMBER 14, AND LOT NUMBER 16 AS THE SAID LOTS ARE KNOWN AND DESIGNATED ON THE PLAT OF SAID THE VILLAS AT COLLEGE GREEN, A DISTANCE OF 510.37 FEET TO A REBAR MARKING THE NORTHWEST CORNER OF SAID LOT NUMBER 16; THENCE NORTH 45 DEGREES 24 MINUTES 30 SECONDS WEST ALONG THE NORTHEASTERLY RIGHT-OF-WAY LINE OF WINSTED DRIVE A RIGHT-OF-WAY DEDICATED ON THE PLAT OF SAID THE VILLAS AT COLLEGE GREEN, A DISTANCE OF 202.54 FEET TO A REBAR; THENCE NORTHWESTERLY ALONG THE

NORTHEASTERLY RIGHT-A-WAY LINE OF WINSTED DRIVE, RIGHT-A-WAY DEDICATED ON THE PLAT OF THE COMMONS AT COLLEGE GREEN, SAID PLAT BEING RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN PLAT BOOK 17, PAGE 90, BEING ON THE ARC OF A 385.00 FOOT RADIUS CURVE TO THE LEFT, CONCAVE TO THE SOUTHWEST, A DISTANCE OF 59.77 FEET (CHORD BEARING NORTH 51 DEGREES 12 MINUTES 36 SECONDS WEST, CHORD DISTANCE 59.71 FEET) TO THE SOUTHEAST CORNER OF LOT LETTER K, AS SAID LOT IS KNOWN AND DESIGNATED ON THE PLAT OF SAID THE COMMONS AT COLLEGE GREEN; THENCE NORTH 01 DEGREE 17 MINUTES 00 SECONDS WEST ALONG THE EAST LINE OF LOT LETTER K, LOT LETTER J AND LOT LETTER I, AS THE SAID LOTS ARE KNOWN AND DESIGNATED ON THE PLAT OF SAID THE COMMONS AT COLLEGE GREEN, A DISTANCE OF 580.51 FEET TO REBAR MARKING THE NORTHEAST CORNER OF SAID LOT LETTER I; THENCE NORTH 89 DEGREES 52 MINUTES 57 SECONDS EAST ALONG THE SOUTH LINE OF THE AFORESAID INNKEEPERS OF GOSHEN, INC. PARCEL, A DISTANCE OF 685.36 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION CONTAINING 9.82 ACRES, MORE OR LESS.

LESS AND EXCEPTING FROM SUCH 9.82 ACRES, MORE OR LESS, THE FOLLOWING DESCRIBED 3.418 ACRES:

A PART OF THE SOUTHEAST QUARTER OF SECTION 15, TOWNSHIP 36 NORTH, RANGE 6 EAST, ELKHART TOWNSHIP, CITY OF GOSHEN, ELKHART COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A STONE MARKING THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 15; THENCE SOUTH 89 DEGREES 54 MINUTES 18 SECONDS WEST ALONG THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 15, A DISTANCE OF 804.50 FEET TO THE CENTERLINE OF U.S. HIGHWAY NUMBER 33; THENCE SOUTH 44 DEGREES 38 MINUTES 40 SECONDS EAST ALONG THE EAST LINE OF A PARCEL OF LAND CONVEYED TO RAGHE, LLC AS DESCRIBED AND RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN INSTRUMENT NUMBER 2006 33216 AND ALONG SAID U.S. HIGHWAY NUMBER 33, A DISTANCE OF 600.00 FEET TO THE SOUTHEAST CORNER OF SAID RAGHE, LLC PARCEL AND THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING SOUTH 44 DEGREES 38 MINUTES 40 SECONDS EAST ALONG SAID U.S. HIGHWAY NUMBER 33, A DISTANCE OF 307.24 FEET TO THE MOST NORTHERLY CORNER OF A PARCEL OF LAND CONVEYED TO THE COMMODORE CORPORATION AS DESCRIBED AND RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN INSTRUMENT NUMBER 88 001729; THENCE SOUTH 45 DEGREES 22 MINUTES 05 SECONDS WEST ALONG THE NORTHWESTERLY LINE OF SAID THE COMMODORE CORPORATION PARCEL, A DISTANCE OF 251.95 FEET TO AN IRON PIPE; THENCE SOUTH 89 DEGREES 47 MINUTES 49 SECONDS WEST ALONG THE NORTH LINE OF SAID THE COMMODORE CORPORATION PARCEL AND A PARCEL OF LAND CONVEYED TO DONALD R. AND ELIZABETH STAUFFER AS DESCRIBED AND RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN INSTRUMENT NUMBER 93 026478, A DISTANCE OF 295.89 FEET; THENCE NORTH 00 DEGREES 12 MINUTES 11 SECONDS WEST, A DISTANCE OF 396.12 FEET TO A POINT ON THE SOUTH LINE OF AFORESAID RAGHE, LLC PARCEL; THENCE NORTH 89 DEGREES 52 MINUTES 57 SECONDS EAST ALONG THE SOUTH LINE OF SAID RAGHE, LLC PARCEL, A DISTANCE OF 260.69 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION CONTAINING 3.418 ACRES, MORE OR LESS.

All of the above shall be rezoned from Commercial B-3 District and Commercial B-1 District to Residential R-3 District and the zone maps designated and referred to in Ordinance No. 3011 shall hereby be amended and ordered amended to reflect such classification and rezoning of said real estate.

PASSED by the Common Council of the City of Goshen on _____, 2016.

Presiding Officer

Attest:

Tina M. Bontrager, Clerk-Treasurer

PRESENTED to the Mayor of the City of Goshen on _____, 2016 at _____ a.m./p.m.

Tina M. Bontrager, Clerk-Treasurer

APPROVED AND ADOPTED by the Mayor of the City of Goshen on _____, 2016.

Jeremy P. Stutsman, Mayor

To: Goshen City Plan Commission/Goshen Common Council
From: Rhonda L. Yoder, Planning & Zoning Administrator
Subject: 16-05R, 1375 Lincolnway East & Adjacent Parcel to the South
Rezoning - Commercial B-3 & Commercial B-1 to Residential R-3
Date: October 18, 2016

ANALYSIS

The City of Goshen Department of Redevelopment, MA Investments, and Brad Emmert request the rezoning of three parcels of land from Commercial B-3 District (two parcels) and Commercial B-1 District (one parcel) to Residential R-3 District, for the development of approximately 194 apartments. The subject properties are generally located at 1375 Lincolnway East, two parcels containing \pm 8.937 acres and zoned Commercial B-3 District, and one parcel adjacent to the south, containing \pm 6.402 acres and zoned Commercial B-1 District.

The rezoning request is being made as part of a proposed apartment complex development. Residential multi-family dwelling units are a permitted use in the Residential R-3 District.

The subject property is three tax parcels, two of which are zoned Commercial B-3, with frontage along Lincolnway East and Fairfield Avenue, and one of which is zoned Commercial B-1, with no frontage along a public street. If the project proceeds, the three parcels would be under one ownership and would be considered one zoning lot, developed as one overall site.

Uses along Lincolnway East are primarily commercial, with a mix of residential. The existing zoning to the west and southwest of the subject property is Residential R-3 and Residential R-3PUD, with a mix of single-family attached dwelling units and multi-family dwelling units.

The site plan submitted for the rezoning demonstrates that the R-3 developmental requirements will be met, including lot area, density, setbacks and on-site parking. The site plan is preliminary and does not include all of the detailed requirements, such as landscaping, as the final detailed plans will be submitted and reviewed if the rezoning is approved.

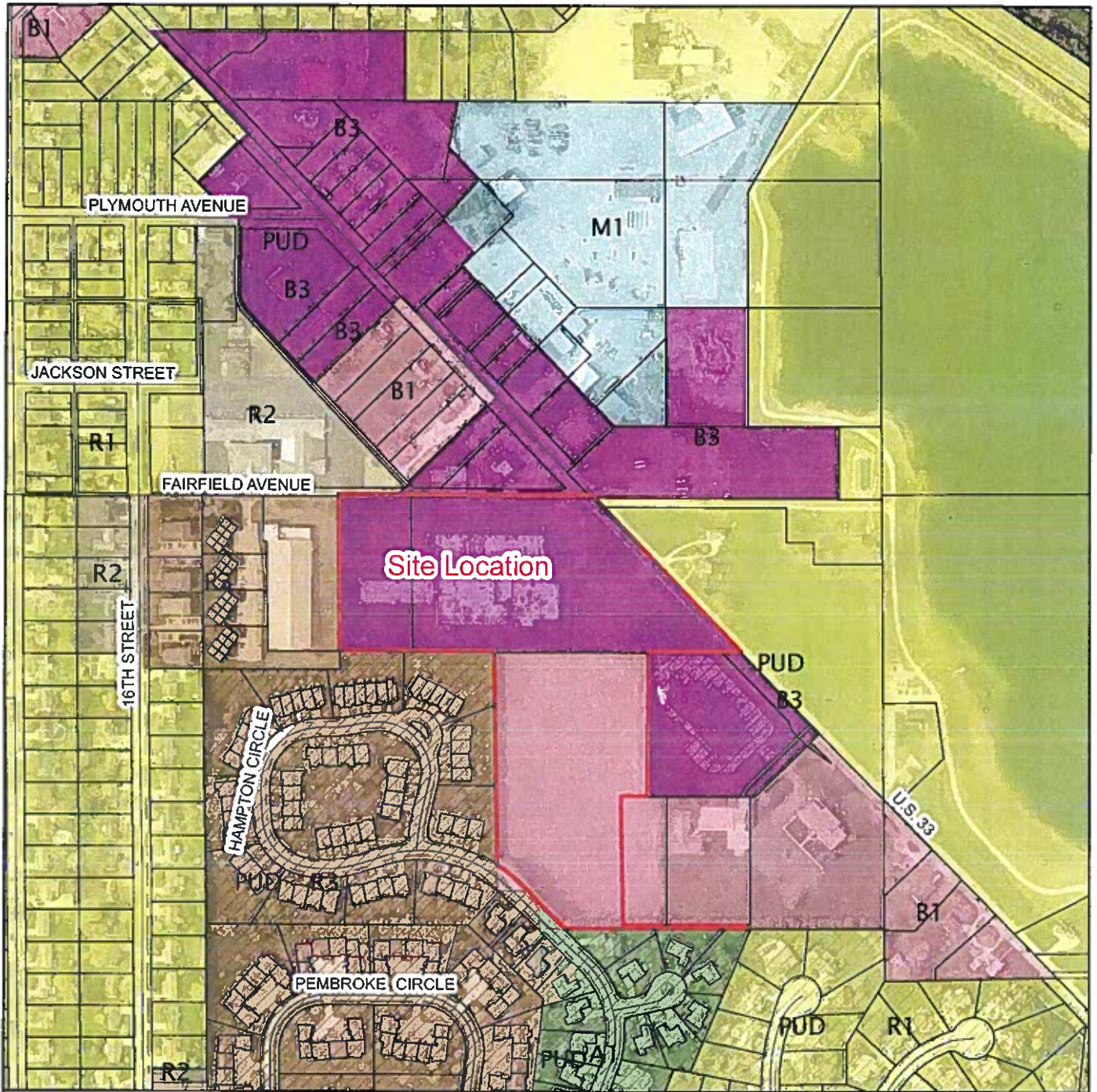
Access for the apartment complex is proposed to Fairfield Avenue only. A meeting has been held with INDOT regarding the proposed apartment and hotel developments (recently approved rezoning for hotel on the east side of Lincolnway East), and a traffic study will be conducted to determine what improvements may be required related to the proposed developments.

The proposed rezoning is consistent with the existing zoning and land use in the area, and the R-3 developmental requirements will be met, including lot area, density, setbacks and on-site parking.

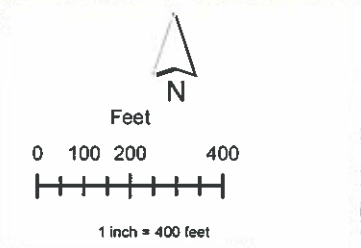
RECOMMENDATIONS

Staff recommends the Plan Commission forward a favorable recommendation to the Goshen Common Council, and the Goshen Common Council approve, the request to rezone three parcels of land from Commercial B-3 District (two parcels) and Commercial B-1 District (one parcel) to Residential R-3 District, based upon the following:

1. The rezoning is consistent with the existing zoning and land use in the area.
2. The R-3 developmental requirements will be met, including lot area, density, setbacks and on-site parking.



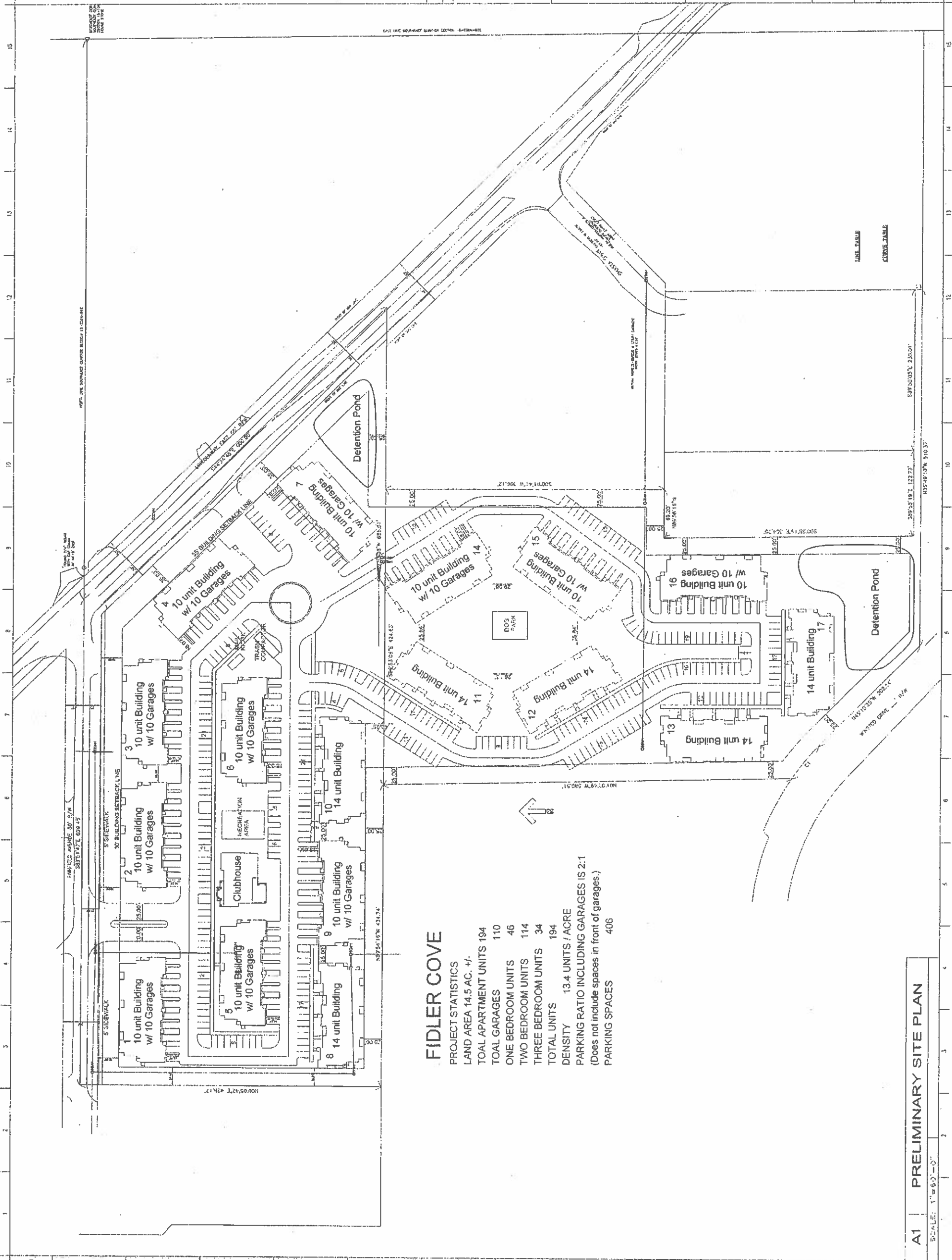
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1375 Lincolnway East

2015 Aerial
Printed October 3, 2016

The City of Goshen
Department of
Planning & Zoning
204 East Jefferson Street, Goshen, Indiana 46520
Phone: 574-534-3600 Fax: 574-533-8626



FIDLER COVE

PROJECT STATISTICS
 LAND AREA 14.5 AC. +/-
 TOTAL APARTMENT UNITS 194
 TOTAL GARAGES 110
 ONE BEDROOM UNITS 46
 TWO BEDROOM UNITS 114
 THREE BEDROOM UNITS 34
 TOTAL UNITS 194
 DENSITY 13.4 UNITS / ACRE
 PARKING RATIO INCLUDING GARAGES IS 2:1
 (Does not include spaces in front of garages.)
 PARKING SPACES 406

REVISIONS

NO.	DATE	REVISIONS



Mark A. Smith
 NOT FOR LEND - ALL RIGHTS RESERVED
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MAS ASSOCIATES, L.L.C.

Architects and Planners

5200 East 64th Street, Suite A
 Indianapolis, Indiana 46220
 masfirmth@comcast.net
 Phone 317 725 1060 Fax 317 725 1061

ROAD ENGINEER
FIDLER COVE
 Gosport, Indiana

PRELIMINARY SITE PLAN FOR RECORDING ONLY

DATE	PROJECT NO.	DATE	PROJECT
09/23/2015	21017.001	MAS	MAS

AS101

A1 PRELIMINARY SITE PLAN

SCALE: 1"=60'-0"

FIDLER COVE Apartments



RESOLUTION 2016-40

Transfer of Cigarette Taxes from Capital Improvement Fund

WHEREAS pursuant to Indiana Code § 6-7-1-30.1, the City of Goshen receives semiannual distributions on or before June 1 and December 1 of each year from the State of Indiana's cigarette tax fund.

WHEREAS three-fourteenths (3/14) of the total amount of the cigarette tax allocated to the City must be deposited in the General Fund and the remaining eleven-fourteenths (11/14) must be deposited in the Cumulative Capital Improvement Fund.

WHEREAS pursuant to Indiana Code § 6-7-1-31.1, the money in the Cumulative Capital Improvement Fund at the end of a fiscal year does not revert to the General Fund, however, the City may transfer by resolution the cigarette tax that has been deposited in the Cumulative Capital Improvement Fund to the General Fund.

NOW THEREFORE, BE IT RESOLVED by the Goshen Common Council that, pursuant to Indiana Code § 6-7-1-31.1(c), the Clerk-Treasurer is authorized to transfer the 2016 semiannual distributions of cigarette taxes deposited or to be deposited in the Cumulative Capital Improvement Fund to the General Fund.

PASSED by the Goshen Common Council on November ____, 2016.

Jeremy P. Stutsman, Presiding Officer

Attest:

Tina M. Bontrager, Clerk-Treasurer

PRESENTED to the Mayor of the City of Goshen on November ____, 2016 at ____ a.m./p.m.

Tina M. Bontrager, Clerk-Treasurer

APPROVED and ADOPTED on November ____, 2016.

Jeremy P. Stutsman, Mayor