

#REZ-2019-0021

BILL NO. Z-19-04-17

ZONING MAP ORDINANCE NO. Z-_____

**AN ORDINANCE amending the City of Fort Wayne
Zoning Map No. R-02 (Sec. 8 of Adams Township)**

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE,
INDIANA:

SECTION 1. That the area described as follows is hereby designated an I3
(Intensive Industrial) District under the terms of Chapter 157 Title XV of the Code of the City
of Fort Wayne, Indiana:

Part of the Northwest Quarter of Section 8, Township 30 North, Range 13 East, Allen
County, Indiana, in particular described as follows, to-wit:

Commencing on the North line of the right-of-way of the Wabash Railroad at a point
situated 272.5 feet East of the West line of said quarter section; thence North and
parallel to said quarter section line, 514.5 feet to the centerline of Pennsylvania Street as
recorded in the plat of Harvester View Addition in Plat Book 10, page 29, in the Office
of the Recorder of said county; thence Southeasterly by a deflection right of 100 degrees
42 minutes, 229.0 feet; thence South and parallel to the West line of said quarter section,
471.8 feet to the North right-of-way line 225.0 feet to the Point of Beginning.

AND

Part of the Northwest Quarter of Section 8, Township 30 North, Range 13 East, Allen
County, Indiana, lying North of the Wabash Railroad and South of U.S. Highway No. 24
and 30, as presently established, in particular described as follows, to-wit:

Commencing at a point within said quarter section situated 272.5 feet East of the West
line of said quarter section and 514.5 feet North of the North right-of-way line of the
Wabash Railroad (now the Norfolk and Western Railway CO.); thence North parallel to
the West line of said quarter section a distance of 324 feet; thence Southeastwardly
making an interior angle of the tract herein being described of 78 degrees 52 minutes, a
distance of 229.3 feet to a point situated 497.5 feet East of the West line of said Quarter
section; thence South parallel to the West line of said quarter section a distance of 322.2
feet to a point set 471.8 feet North of the North right-of-way line of said Wabash
Railroad; thence Northwestwardly 229 feet to the Point of Beginning.

and the symbols of the City of Fort Wayne Zoning Map No. R-02 (Sec. 8 of Adams
Township), as established by Section 157.082 of Title XV of the Code of the City of Fort

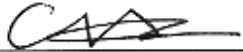
Wayne, Indiana is hereby changed accordingly.

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

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

Council Member

APPROVED AS TO FORM AND LEGALITY:



Carol T. Helton, City Attorney

**Department of Planning Services
Rezoning Petition Application**

Applicant
Applicant Copart of Connecticut, Inc., a Connecticut Corporation
Address 14185 Dallas Parkway
City Dallas State Texas Zip 75254
Telephone 972-391-5036 E-mail hilary.negron@copart.com

Contact Person
Contact Person Thomas M. Niezer
Address 215 East Berry Street
City Fort Wayne State IN Zip 46802
Telephone 260-423-8898 E-mail tmn@barrettllaw.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 3600 East Washington Boulevard
Present Zoning I-1; I-2 Proposed Zoning I-3 Acreage to be rezoned 4.22 acres
Proposed density N/A units per acre
Township name Adams Township Township section # 5
Purpose of rezoning (attach additional page if necessary) See Exhibit "A"

Sewer provider City of Fort Wayne Water provider City of Fort Wayne

Filing Requirements
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☒ 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

REZ-2019-0021

I/We understand and agree, upon execution and submission of this application, that I am/we are the owner(s) of more than 50 percent of the property described in this application; that I/we agree to abide by all provisions of the Allen County Zoning and Subdivision Control Ordinance as well as all procedures and policies of the Allen County Plan Commission as those provisions, procedures and policies related to the handling and disposition of this application; that the above information is true and accurate to the best of my/our knowledge; and that I/we agree to pay Allen County the cost of notifying the required interested persons at the rate of \$0.85 per notice and a public notice fee of \$50.00 per Indiana code.

Copart of Connecticut, Inc.

(printed name of applicant)


(signature of applicant)

April 2, 2019

(date)

Mason Laycock, Mng. of Property & Development

(printed name of property owner)

(signature of property owner)

(date)

Auction Real Estate, LLC

April 2, 2019

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Carl Miskotten, President

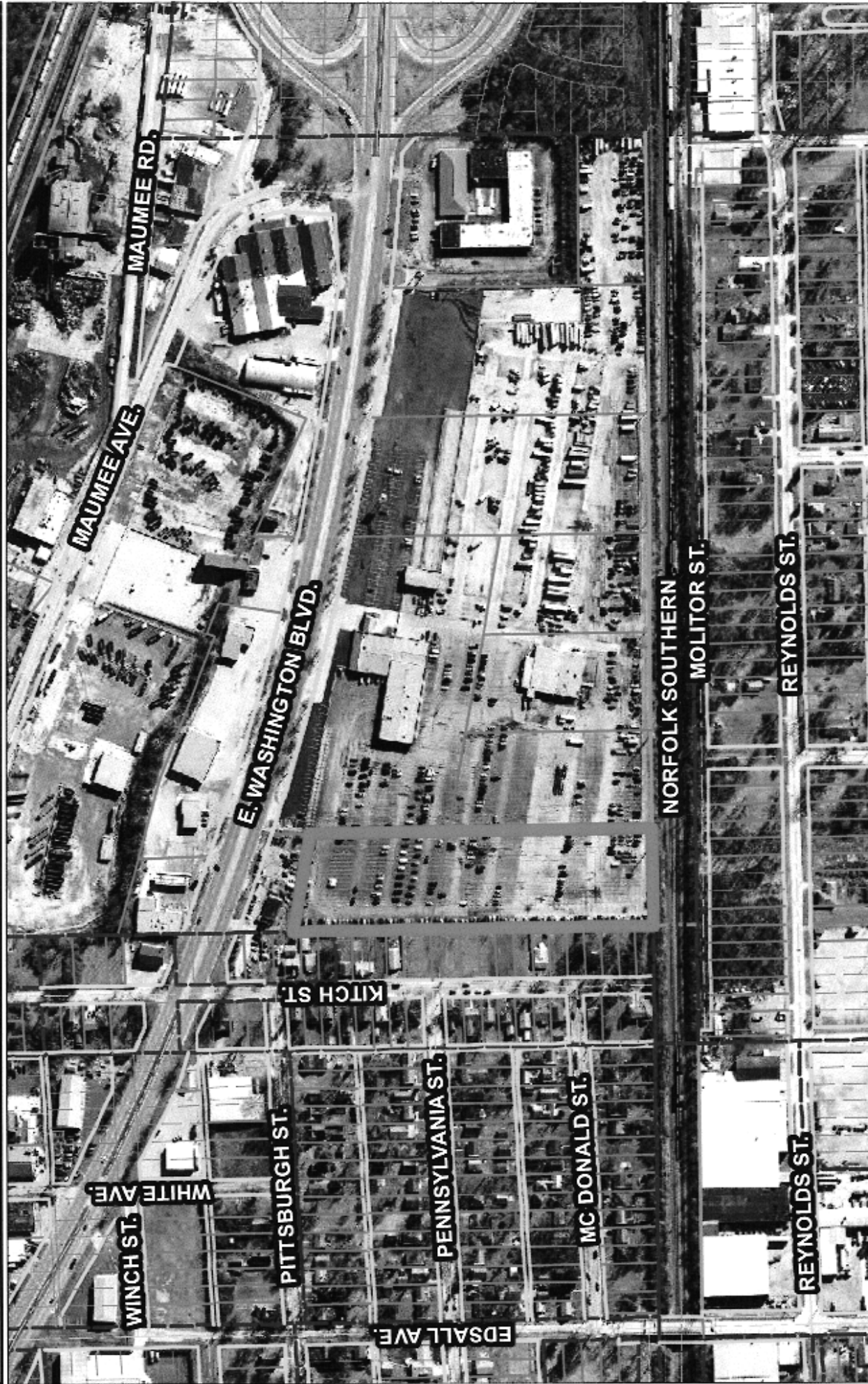
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4-1-19

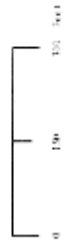
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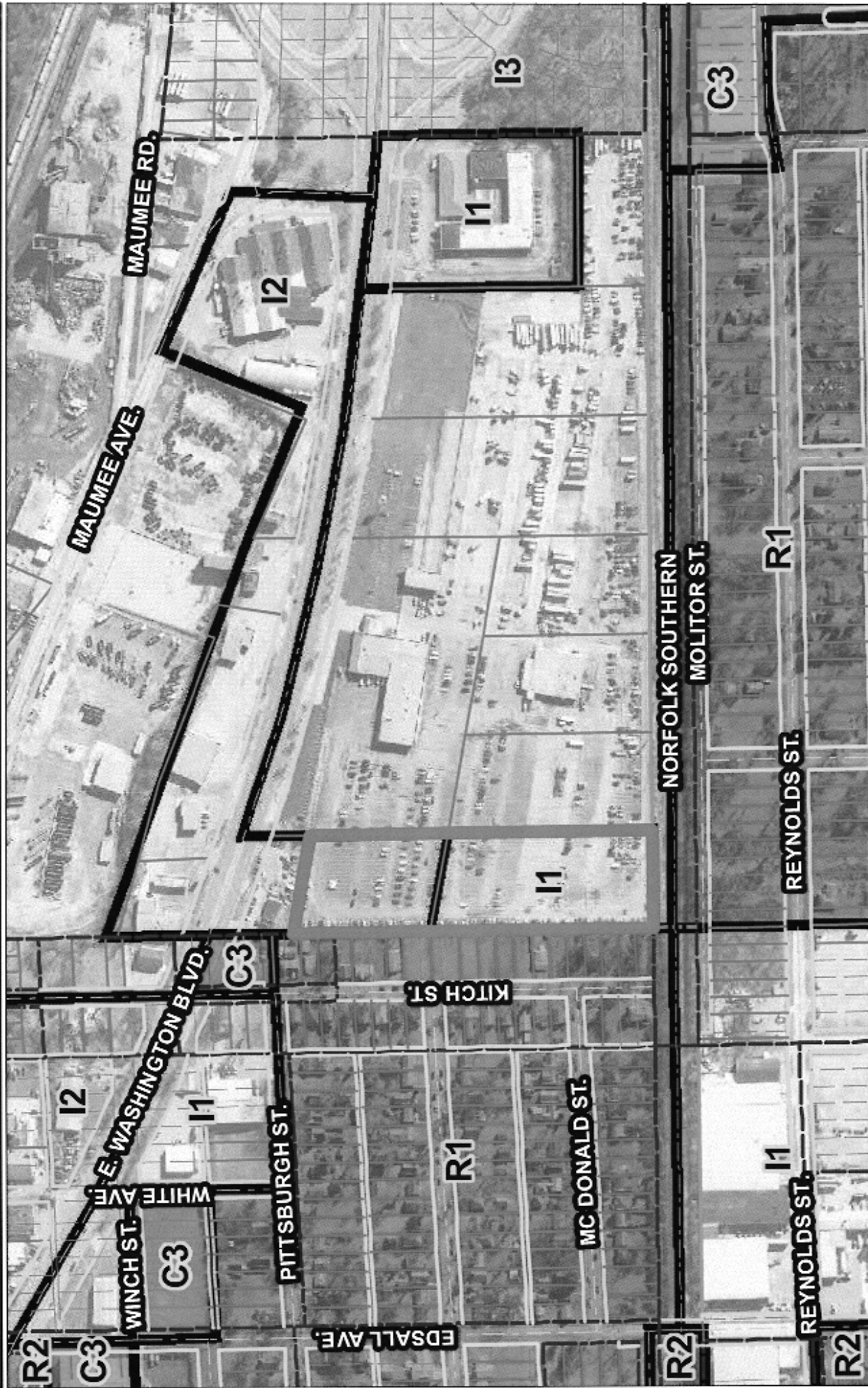
Received <u>4/2/19</u>	Receipt No. <u>129907</u>	Hearing Date <u>5/6/19</u>	Petition No. <u>REL-2019-0021</u>
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1 inch = 300 feet





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State Plane Coordinate System, Indiana East
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Date: 4/17/2015

City of Fort Wayne Common Council
DIGEST SHEET

Department of Planning Services

Title of Ordinance: Zoning Map Amendment
Case Number: REZ-2019-0021
Bill Number: Z-19-04-17
Council District: 6-Glynn Hines

Introduction Date: April 23, 2019

Plan Commission
Public Hearing Date: May 6, 2019 (not heard by Council)

Next Council Action: Ordinance will return to Council after recommendation by the Plan Commission

Synopsis of Ordinance: To rezone approximately 4.22 acres of property from I1-Limited Industrial and I2-General Industrial to I3-Intensive Industrial.

Location: 3600 East Washington Boulevard

Reason for Request: To permit auto auction services for vehicles that are primarily inoperable or wrecked.

Applicant: Copart of Connecticut, Inc.

Property Owner: Auction Real Estate, LLC

Related Petitions: Primary Development Plan, Copart

Effect of Passage: Property will be rezoned to the I3-Intensive Industrial which will allow the existing auto auction site to be used to the sale of inoperable and wrecked vehicles. The zoning ordinance defines this as a junkyard, which is an I3 use.

Effect of Non-Passage: The property will remain zoned I1-Limited Industrial, I2-General Industrial, and I3-Intensive Industrial. A junkyard is not permitted in I1 and I2.

FACT SHEET

Case #REZ-2019-0021

Bill # Z-19-04-17

Project Start: 23 April 2019

APPLICANT:	Copart of Connecticut, Inc.
REQUEST:	To rezone property from I1/Limited Industrial and I2/General Industrial to I3/Intensive Industrial to bring this real estate into the same zoning district as the remainder of the site.
LOCATION:	The site is generally located on the south side of East Washington Boulevard, to the east of Harvester View Addition and south of GND Auto Sales and Service. The real estate is part of the subject property located at 3600 East Washington Boulevard (Section 5 of Adams Township).
LAND AREA:	Approximately 4.2 acres
PRESENT ZONING:	I1/Limited Industrial and I2/General Industrial
PROPOSED ZONING:	I3/Intensive Industrial
COUNCIL DISTRICT:	6-Glynn Hines (immediately adjacent to 5-Geoff Paddock)
ASSOCIATED PROJECTS:	none
SPONSOR:	City of Fort Wayne Plan Commission

6 May 2019 Public Hearing

- One resident spoke at the hearing with a request.
- Don Schmidt, Tom Friestroffer and Billy Davenport were absent.

13 May 2019 – Business Meeting

Plan Commission Recommendation: DO PASS w/Written Commitment

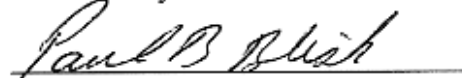
A motion was made by Don Schmidt and seconded by Tom Friestroffer to return the ordinance with a Do Pass recommendation to Common Council for their final decision.

8-0 MOTION PASSED

- Billy Davenport was absent.

Fact Sheet Prepared by:
Michelle B. Wood, Senior Land Use Planner
23 May 2019

Reviewed by:



Paul B. Blisk
Deputy Land Use Director

PROJECT SUMMARY

The petitioner, Copart of Connecticut, Inc. is purchasing the properties of the Indiana Auto Auction at 3600 East Washington Boulevard. The fleet auction use was established on this property in 1984. Most of the auto auction is zoned I3/Intensive Industrial, however two parcels along the western portion of the site are zoned I1/Limited Industrial and I2/General Industrial. While Copart is an automobile sales/auction service, its inventory includes wrecked and/or inoperable vehicles. This distinction causes the use to fall under the definition of a junkyard, which requires the I3/Intensive Industrial zoning. All assets are liquidated intact, meaning no dismantling, draining of fluids, crushing, or sale of parts occurs at a Copart facility. A typical Facility will consist of an office building, customer parking, a shipping and receiving area, and a short-term storage area. Inventory is never stacked, and will remain in short-term storage for an average of only 50 to 60 days. Vehicles are listed for sale through an online auction-style website by registered members. The buyer arranges for pickup and transportation of their assets from the facility.

Staff is not opposed to the zoning change as it will allow reinvestment into the property. Though the auto sales/auction use has been in place for nearly 35 years, the buffering along the west property line is lacking or non-existent, and the buffer width does not meet current zoning standards. The applicant has offered a Written Commitment to address the buffering along the west property line. Indiana Auto Auction owns seven of the vacant residential parcels, but ten parcels are privately owned and seven of those maintain residences. The applicant met with a representative of the neighborhood on April 26, 2019. A final draft of the Written Commitment and the proposed buffer details (fence, plant material, etc.) was provided at the business meeting.

The proposal can be supported by the following goals and policies of the Comprehensive Plan:

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

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

PUBLIC HEARING SUMMARY:

Presenter: Tom Niezer from Barrett McNagny represented the applicant and presented the proposal to the Plan Commission, as outlined above. The fence proposal is for an eight foot tall steel fence the entire western length of the property. This will replace the aging chain link fence and barbed wire. Evergreen and shade trees will be planted on the Copart-owned vacant lots on Kitch Street.

Public Comments:

Michelle Baker, Vice President of Memorial Park, 1521 Kitch Street – Requested that the fence be white or not dark in color, and be on the outside of the existing guardrail.

Rebuttal:

Mr. Niezer stated that the applicant will work with Ms. Baker on the fence color and placement.

FORT WAYNE PLAN COMMISSION • FINDINGS OF FACT

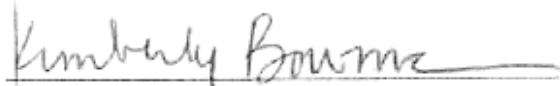
Rezoning Petition REZ-2019-0021

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LAND AREA: Approximately 4.2 acres
PRESENT ZONING: I1/Limited Industrial and I2/General Industrial
PROPOSED ZONING: I3/Intensive Industrial

The Plan Commission recommends that Rezoning Petition REZ-2019-0021, 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 site is currently used for auto auctions, which is similar to the proposed uses. This property and the surrounding area is heavily developed with industrial uses.
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. The proposed use will utilize existing infrastructure and paving and not add any intensity to the property. The new proposal will establish a landscape buffer between the vehicle storage and the residential properties to the west.
3. Approval is consistent with the preservation of property values in the area. This proposal will allow the existing use to continue and adjust to meet market demand, and new buffering will improve the view from the adjacent properties.
4. Approval is consistent with responsible development and growth principles based on existing uses and infrastructure in the area. No new infrastructure is needed for this proposal.

These findings approved by the Fort Wayne Plan Commission on May 13, 2019.



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

**Department of Planning Services
Rezoning Petition Application**

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Address 14185 Dallas Parkway
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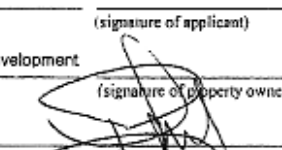
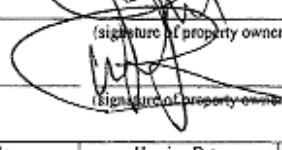
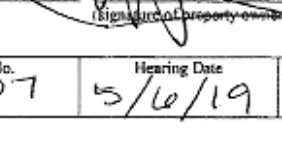
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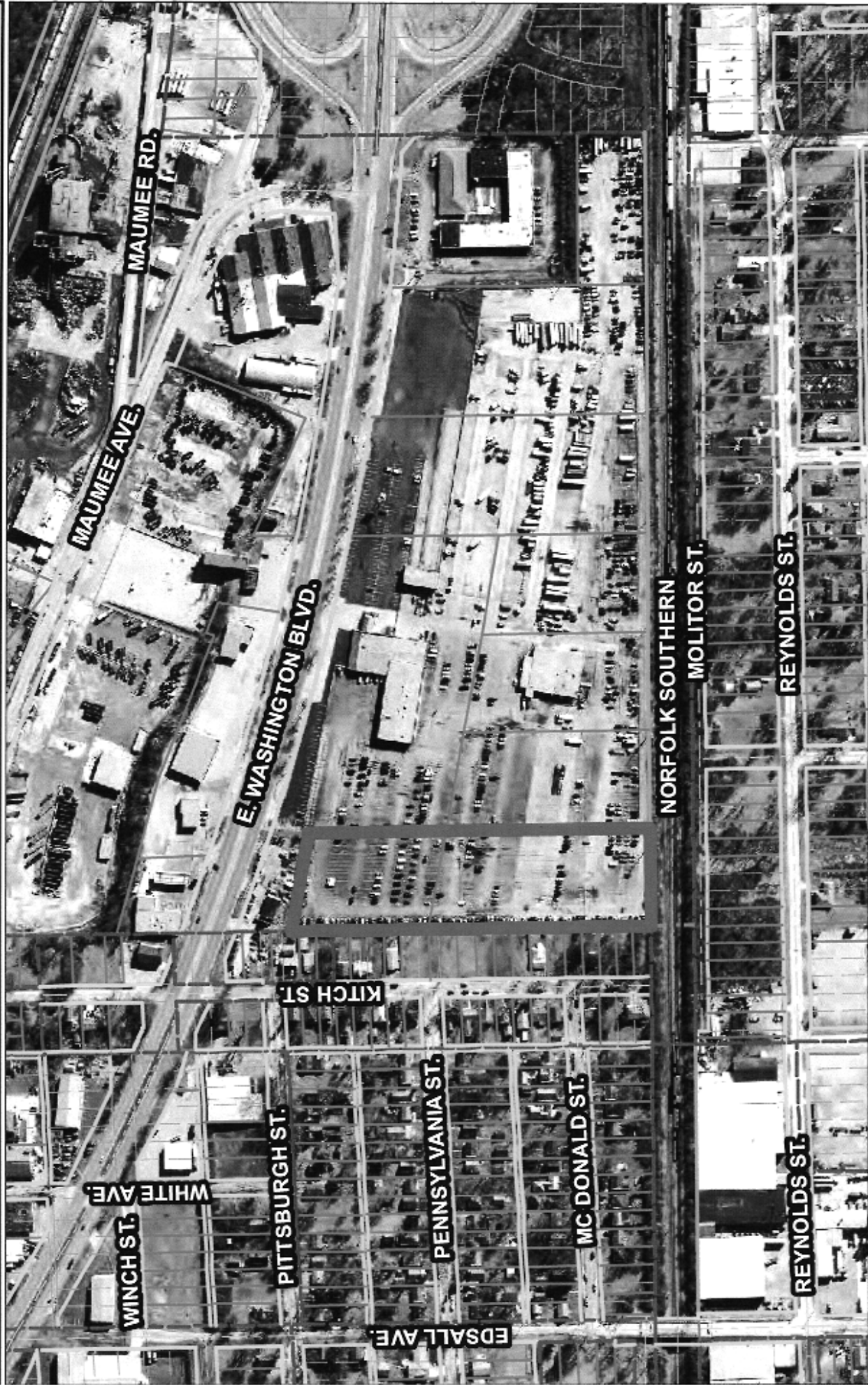
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<u>Mason Laycock, Mng. of Property & Development</u> (printed name of property owner)	 (signature of property owner)	<u>April 2, 2019</u> (date)
<u>Auction Real Estate, LLC</u> (printed name of property owner)	 (signature of property owner)	<u>4-1-19.</u> (date)
<u>Carl Miskotten, President</u> (printed name of property owner)	 (signature of property owner)	<u>4-1-19.</u> (date)

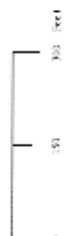
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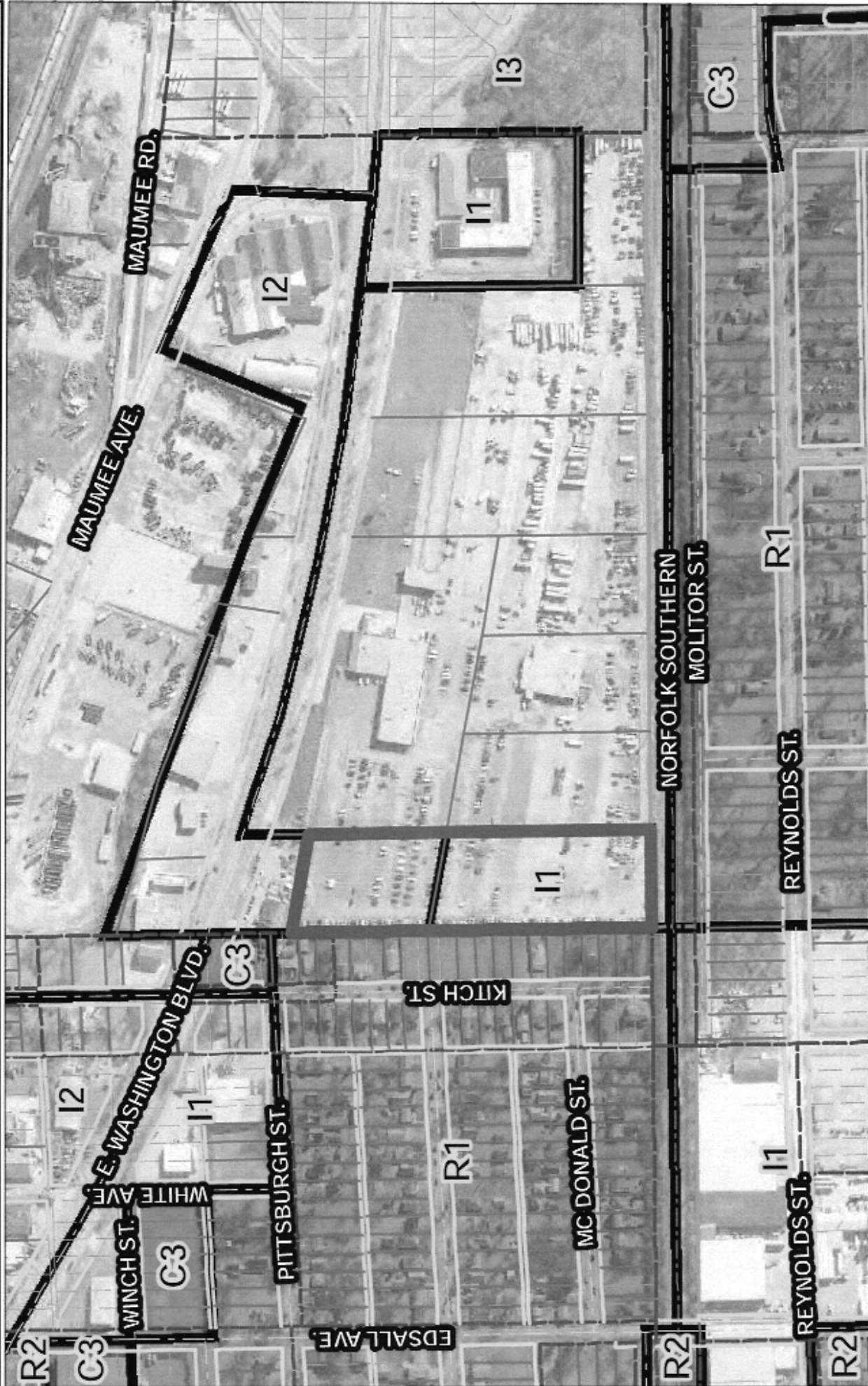


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 Data and Graphics, Spring 2019
 Date: 03/2019



1 inch = 100 feet





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WRITTEN COMMITMENT

THIS WRITTEN COMMITMENT ("Commitment") is made as of this 21st day of May, 2019, by **COPART OF CONNECTICUT, INC.** (herein the, "Declarant"), under the following circumstances:

WITNESSETH:

WHEREAS, Declarant is the fee simple owner of approximately 4.22 acres of real estate located in Fort Wayne, Allen County, Indiana, the legal description of which is attached hereto as Exhibit "A" (herein, the "Real Estate"); and

WHEREAS, Declarant has submitted a Zoning Map Amendment Application with the City of Fort Wayne Plan Commission ("Plan Commission"), bearing number REZ-2019-0021 (the "Zoning Application") with respect to a portion of the Real Estate; and

WHEREAS, pursuant to the Zoning Application, Declarant has requested a portion of the Real Estate be rezoned from I-1 and I-2 to I-3 pursuant to the City of Fort Wayne zoning ordinance (the "Ordinance") which permits development upon the Real Estate of certain industrial uses; and

WHEREAS, Declarant has proposed to establish a landscape area along a portion of the Real Estate previously zoned I-1 and I-2 to buffer the business operations of the Real Estate from existing residential zoned uses to the west of the Real Estate; and

WHEREAS, Declarant has voluntarily submitted this Commitment.

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

1. **Permitted Uses.** The Real Estate shall be used as a motor vehicle storage yard pursuant to the Ordinance together and in conjunction with the sales (including online sales) of motor vehicles being stored upon the Real Estate by Declarant and for no other purposes. Motor vehicles shall include an automobile, boat / watercraft, tractor, semi-trailer, construction and farm equipment vehicles or other vehicles similar to those listed therein, whether operable or inoperable, that are designed to be self-propelled or designed to be pulled, pushed or carried by another motor vehicle. No other uses shall be permitted upon the Real Estate which are otherwise permitted in an I-3 zoning district pursuant to the Ordinance, but nothing herein shall prohibit use of Tract I of the Real Estate for I-1 uses as permitted by the Ordinance or shall prohibit use of Tract II of the Real Estate for I-2

uses as permitted by the Ordinance, including special uses for each respective district as approved by the Fort Wayne Board of Zoning Appeals.

2. Fencing. Declarant shall replace the existing chain link fence with a new 8' steel panel fence along the entirety of the western boundary line of the Real Estate. Declarant shall maintain said fence in a commercially reasonable manner. The existing fence shall be removed and new fence constructed and installed no later than October 31, 2019.

3. Landscaping. Declarant owns certain residential lots immediately west of and adjacent to the Real Estate that are undeveloped ("Vacant Lots"). The Vacant Lots will be adjacent to the fence to be constructed and installed by Declarant pursuant to Section 2 above. Declarant shall enact the landscape plan, a copy of which is attached as Exhibit B, which will consist of a single row of tree plantings on the Vacant Lots and adjacent to the fence and that serve as a landscape buffer to said fence. Said tree plantings will be installed no later than October 31, 2019.

4. Successors and Assigns. This Commitment and the restrictions set forth above shall inure to the benefit of all persons who own property comprising the Real Estate, their successors and assigns, and shall also inure to the benefit of the Zoning Administrator of the City of Fort Wayne and the Plan Commission. This Commitment and the restrictions and limitations set forth herein shall run with the Real Estate, and any conveyance thereof, shall be binding upon Declarant and its successors and assigns as owners of the Real Estate.

5. Enforcement Rights. The City of Fort Wayne Zoning Administrator (the "Zoning Administrator") and the Plan Commission each shall have the option (but not the obligation) to enforce this Commitment, at law or in equity, in the event of a breach of an obligation in this Commitment; and in the event such an enforcement action is commenced, the Zoning Administrator or the Plan Commission (as applicable) shall have the remedies allowed by the Ordinance (or the ordinance governing 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. A violation of this Commitment shall be deemed a violation of the Ordinance, or the ordinance governing the Real Estate at the time of the violation; provided, however, that nothing in this Commitment shall be construed as giving any person the right to compel enforcement of it by the Zoning Administrator or the Plan Commission, or any successor agency having zoning jurisdiction over the Real Estate.

6. Amendment or Termination. This Commitment may be amended or terminated upon application by an owner of the Real Estate and only with the prior written consent of all owners of the Real Estate and the Plan Commission, following a public hearing to consider said amendment or termination.

7. 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 which comprises all or a portion of the Real Estate, the Zoning Administrator of the City of Fort Wayne and the Plan Commission.

8. No Permits Until Recording. No permits shall be issued under the Ordinance by the Zoning Administrator until this Commitment is recorded with the Allen County, Indiana Recorder and recorded and executed copy of the Commitment is delivered to the Zoning Administrator and the Plan Commission.

9. 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.

10. Governing Law. This Commitment, including the restrictions and covenants hereunder, shall be governed by the laws of the State of Indiana.

11. Effective Date. This Commitment shall be effective upon its recording in the Office of the Recorder of Allen County, Indiana.

12. Statutory Authority. This Commitment is made pursuant to I.C. §36-7-4 1015(a)(1).

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

"DECLARANT"

COPART OF CONNECTICUT, INC.

By: Randy A. Racine
Printed Name: Randy A. Racine
Title: Authorized Agent

STATE OF TEXAS)
) SS:
COUNTY OF DALLAS)

Before me, the undersigned, a Notary Public, in and for said County and State, this 21st day of May, 2019, personally appeared RANDY RACINE, the AUTHORIZED AGENT of Copart of Connecticut, Inc., and acknowledged the execution of the foregoing.

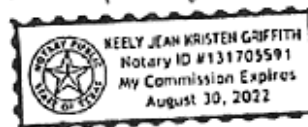
In witness whereof, I have hereunto subscribed my name and affixed my official seal.

KEELY JEAN KRISTEN GRIFFITH

Keely Jean Kristen Griffith, Notary Public

My Commission Expires: AUG 30, 2022

My County of Residence: DENTON



THIS INSTRUMENT prepared by Thomas M. Niezer, Esq., Attorney I.D. 11274-02, Barrett McNagny LLP, 215 East Berry Street, Fort Wayne, Indiana 46802.

I affirm, under the penalties of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Thomas M. Niezer

When recorded, return to: Thomas M. Niezer, Barrett McNagny LLP, 215 East Berry Street, Fort Wayne, Indiana 46802.

EXHIBIT A

Tract I

PART OF THE NORTHWEST QUARTER SECTION 8, TOWNSHIP 30 NORTH, RANGE 13 EAST, ALLEN COUNTY, INDIANA, IN PARTICULAR DESCRIBED AS FOLLOWS, TO-WIT:

COMMENCING ON THE NORTH LINE OF THE RIGHT OF WAY OF THE WABASH RAILROAD AT A POINT SITUATED 272.5 FEET EAST OF THE WEST LINE OF SAID QUARTER SECTION; THENCE NORTH AND PARALLEL TO SAID QUARTER SECTION LINE, 514.5 FEET TO THE CENTERLINE OF PENNSYLVANIA STREET AS RECORDED IN THE PLAT OF HARVESTER VIEW ADDITION IN PLAT BOOK 10, PAGE 29, IN THE OFFICE OF THE RECORDER OF SAID COUNTY; THENCE SOUTHEASTERLY BY A DEFLECTION RIGHT OF 100 DEGREES 42 MINUTES, 229.0 FEET; THENCE SOUTH AND PARALLEL TO THE WEST LINE OF SAID QUARTER SECTION, 471.8 FEET TO THE NORTH RIGHT OF WAY LINE OF SAID WABASH RAILROAD; THENCE WEST ON THE SAID RIGHT OF WAY LINE 225.0 FEET TO THE POINT OF BEGINNING.

AND

Tract II

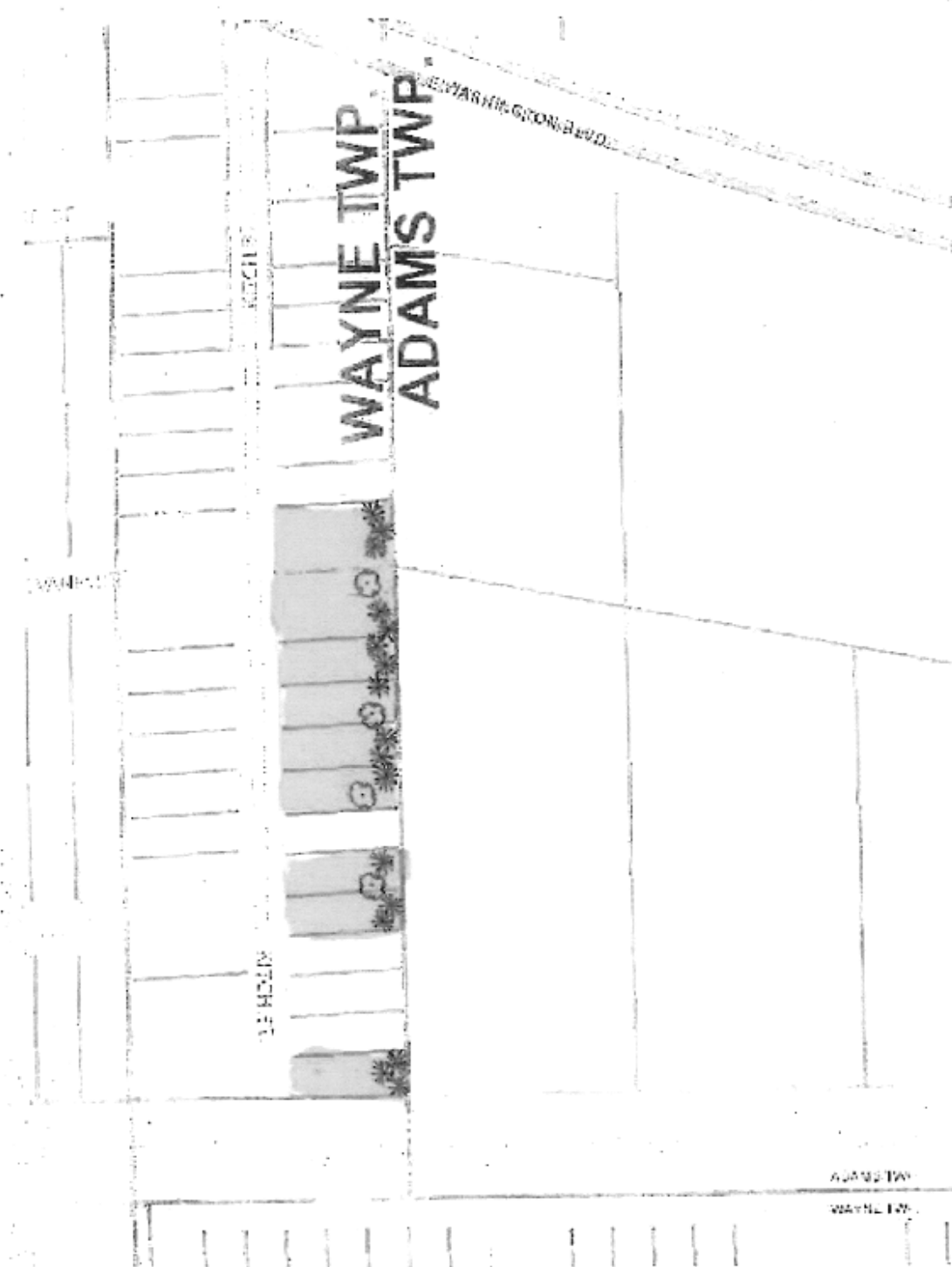
PART OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 30 NORTH, RANGE 13 EAST, ALLEN COUNTY, INDIANA, LYING NORTH OF THE WABASH RAILROAD AND SOUTH OF U.S. HIGHWAY NO. 24 AND 30, AS PRESENTLY ESTABLISHED, IN PARTICULAR DESCRIBED AS FOLLOWS, TO-WIT:

COMMENCING AT A POINT WITHIN SAID QUARTER SECTION SITUATED 272.5 FEET EAST OF THE WEST LINE OF SAID QUARTER SECTION AND 514.5 FEET NORTH OF THE NORTH RIGHT-OF-WAY LINE OF THE WABASH RAILROAD (NOW THE NORFOLK & WESTERN RAILWAY CO.); THENCE NORTH PARALLEL TO THE WEST LINE OF SAID QUARTER SECTION A DISTANCE OF 324 FEET; THENCE SOUTHEASTWARDLY MAKING AN INTERIOR ANGLE OF THE TRACT HEREIN BEING DESCRIBED OF 78 DEGREES 52 MINUTES, A DISTANCE OF 229.3 FEET TO A POINT SITUATED 497.5 FEET EAST OF THE WEST LINE OF SAID QUARTER SECTION; THENCE SOUTH PARALLEL TO THE WEST LINE OF SAID QUARTER SECTION A DISTANCE OF 322.2 FEET TO A POINT SET 471.8 FEET NORTH OF THE NORTH RIGHT-OF-WAY LINE OF SAID WABASH RAILROAD; THENCE NORTHWESTWARDLY 229 FEET TO THE POINT OF BEGINNING.

EXHIBIT B

Landscape Plan

Attached



Min. 17 Evergreen Trees — 6' B&B min. planted size
 15'-20' o.c.
 Min. 4 Shade Trees — 2-1/2" cal. min. planted size