BILL NO. R-20-09-31

RESOLUTION NO. ___________

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA, REGARDING THE APPROVAL OF THE APPROPRIATION OF AVAILABLE LOCAL INCOME TAX REVENUES TO PAY FOR THE ACQUISITION BY THE FORT WAYNE REDEVELOPMENT COMMISSION OF LAND AND IMPROVEMENTS DEEMED NECESSARY FOR FURTHER EXPANSION OF THE RIVERFRONT DEVELOPMENT PLANS OF THE CITY OF FORT WAYNE (Norfolk Southern Railway Corridor)

WHEREAS, the Fort Wayne Redevelopment Commission (the "Commission"), governing body of the City of Fort Wayne, Indiana, Department of Redevelopment (the "Department") and the Redevelopment District of the City of Fort Wayne, Indiana, exists and operates under the provisions of the Redevelopment of Cities and Towns Act of 1953, which has been codified in Indiana Code 36-7-14 et seq., as amended from time to time (the "Act"); and

WHEREAS, the Commission has previously designated and declared in accordance with the Act an area in the City of Fort Wayne, Indiana (the "City"), known as the Riverfront 1 / Columbia Street Economic Development Area, to be a redevelopment area and an allocation area (the "Area"), adopted a Redevelopment Plan, and established an allocation fund for said Area; and

WHEREAS, on April 2, 2019, Norfolk Southern Railway co. ("NS") and Headwaters Junction, Inc. ("HWJ") entered into a Contract of Purchase and Sale whereby HWJ would acquire from NS 7.59 acres of real estate in Fort Wayne, consisting of the former railroad right-of-way depicted on the exhibit to the attached Exhibit A (the "Real Estate"), which Contract was amended on August 2 and November 1, 2019 (collectively the "Purchase Agreement); and

WHEREAS, pursuant to the terms of the Purchase Agreement, HWJ paid NS $52,00 as earnest money, and HWJ has incurred expenses in the amount of $75,000 in the performance of due diligence activities in pursuit of the Purchase Agreement; and

WHEREAS, the Commission desires to acquire the Real Estate and has compensated HWJ for the expenses incurred in pursuit of acquiring the Real Estate; and

WHEREAS, the Commission has approved the acceptance of an Assignment and Assumption of Contract of Purchase and Sale, as attached to this Resolution as Exhibit A, to memorialize the agreement between NS, HWJ and the Commission regarding Commission's assumption of HWJ's rights and responsibilities with regard to the Purchase Agreement. The Commission now desires to exercise the Option to purchase the Real Estate and requires the appropriation of local income tax revenues to fund the purchase price (less earnest money) of Four Hundred Sixty-Eight Thousand and No/100 Dollars ($468,000) pursuant to the terms and conditions of the Option; and,

WHEREAS, the Commission has determined that the completion of the Project is in the best interests of the citizens and taxpayers of the City and has complied with the provisions of the Act applicable to the purchase of the Real Estate; and

WHEREAS, the Commission has requested the appropriation of riverfront local income tax revenues in an amount not to exceed Four Hundred Sixty-Eight Thousand and No/100 Dollars ($468,000) to the payment of the purchase price pursuant to the Option ("LIT Appropriation"); and

WHEREAS, the Common Council has determined that the completion of the acquisition of the Real Estate is in the best interests of the citizens and taxpayers of the City and desires to provide for the expansion of the City's riverfront development efforts and approve and appropriate the LIT Appropriation as provided in this Resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA, AS FOLLOWS:

The Common Council finds, determines, ratifies and confirms that the Acquisition of the Real Estate is in the best interests of the citizens and taxpayers of the City of Fort Wayne, will support the redevelopment goals and objectives of the City of Fort Wayne previously approved and authorized for the Area and will support the ongoing riverfront development goals previously approved and authorized for the Area.

The Common Council hereby finds and determines that the LIT Appropriation in an amount not to exceed Four Hundred Sixty-Eight Thousand and No/100 Dollars ($468,000) is in the best interests of the citizens and taxpayers of the City of Fort Wayne.

The Common Council does hereby appropriate to the payment of the purchase price for the Real Estate pursuant to the Option the LIT Appropriation not to exceed Four Hundred Sixty-Eight Thousand and No/100 Dollars ($468,000).

This Resolution shall be in full force and effect from and after the time it has been adopted by Common Council, approved by the Mayor and otherwise executed and delivered in accordance with any and all laws appertaining thereto.

____

Council Member

APPROVED AS TO FORM AND LEGALITY:

____

Carol Helton, City Attorne

EXHIBIT A

ASSIGNMENT AND ASSUMPTION OF CONTRACT OF PURCHASE AND SALE

(See attached)

EXHIBIT "A"
TO RESOLUTION

ASSIGNMENT AND ASSUMPTION
OF CONTRACT OF PURCHASE AND SALE

THIS ASSIGNMENT AND ASSUMPTION OF CONTRACT OF PURCHASE AND SALE (the "Assignment") is made and entered into effective as of the 13 day of July, 2020 (the "Effective Date"), by and between Norfolk Southern Railway Company, a Virginia corporation ("Owner"), Headwaters Junction, Inc., an Indiana nonprofit corporation ("Assignor"), and The City of Fort Wayne, Department of Redevelopment, acting by and through its Redevelopment Commission ("Assignee").

Recitals

WHEREAS, Owner and Assignor entered into a Contract of Purchase and Sale, dated April 2, 2019; a First Amendment to Contract of Purchase and Sale dated August 2, 2019; and, a Second Amendment to Contract of Purchase and Sale dated November 1, 2019 (collectively, the "Purchase Agreement"), for the purchase of certain real estate and improvements in Fort Wayne, Allen County, Indiana, consisting of 7.50 acres, more or less, being located substantially as shown as Exhibit A, which is hereinafter referred to as the "Real Estate"; and,

WHEREAS, Assignor desires to assign all of its rights, title, benefits and interest in, to and under the Purchase Agreement to Assignee, and Assignee desires to accept such assignment and assume Assignor's rights, title, benefits, interest, duties, obligations and liabilities under the Purchase Agreement upon and subject to the terms of this Assignment.

NOW, THEREFORE, in consideration of Seventy-Five Thousand and 00/100 Dollars ($75,000.00) for Assignor's time and incurred due diligence expenses in furtherance of the Purchase Agreement, plus an additional Fifty-Two Thousand and 00/100 Dollars ($52,000.00) for Assignor's earnest money paid under the Purchase Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, Owner, Assignor and Assignee agrees as follows:

1. **Assignment and Assumption**. As of the Effective Date, Assignor hereby assigns to Assignee all of Assignor's rights, title, benefits and interest in, to and under the Purchase Agreement. Assignee hereby accepts such assignment including all of Assignor's rights, title, benefits and interest in, to and under the Purchase Agreement and agrees to assume all of Assignor's duties, obligations and liabilities under the Purchase Agreement arising and occurring from and after the Effective Date.

2. **Assignor Work Product**. Assignor agrees to provide Assignee and its representatives a complete copy of all its due diligence related to this transaction for the Real Estate. Those documents will include title work completed by Titan Title Services, LLC; a copy of the title opinion letter drafted by Assignor's counsel; and, survey. Assignor and its representatives agree to communicate with and provide information to Assignee and its representatives relative to its due diligence as of the Effective Date. Assignor also agrees to facilitate the certification of title work and survey for the Real Estate to Assignee.

3. **Representations.** Owner and Assignor represent and warrant to Assignee that: (i) the Purchase Agreement is in full force and effect and has not been amended or modified in any way; (ii) neither Owner nor Assignor is in default under the Purchase Agreement; (iii) all of the terms, covenants and conditions to be performed by Assignor under the Purchase Agreement, as of the Effective Date of this Assignment, have been duly performed and observed; (iv) Assignor has received no written notice from Owner of any claim (actual or threatened) or default by Assignor under the terms of the Purchase Agreement; (v) subject to Owner's prior approval, Assignor has the full right and authority to assign its interest in the Purchase Agreement; and, (vi) Assignor has not previously assigned, hypothecated, or pledged any of Assignor's rights, title, or interest in the Purchase Agreement. The representations and warranties contained in this Paragraph 3 shall be true as of the date of Assignor's execution of this Assignment and as of the Effective Date. The representations and warranties contained in this Paragraph 3 shall survive the Effective Date.

4. **Assignor Indemnification.** Assignor agrees to defend (by legal counsel reasonably acceptable to Assignee), indemnify and hold harmless Assignee from and against any and all claims, actions, damages, liabilities, losses, costs, expenses and judgments, including, without limitation, reasonable attorney's fees, accruing and arising under the Purchase Agreement prior to the Effective Date and for any breach of Assignor's representations and warranties contained in this Assignment.

5. **Assignee Indemnification.** Assignee shall and does hereby agree to defend (by legal counsel reasonably acceptable to Assignor), indemnify and hold harmless Assignor from and against any and all claims, actions, damages, liabilities, losses, costs, expenses and judgments, including, without limitation, reasonable attorneys' fees, accruing and arising under the Contract of Purchase and Sale after the Effective Date.

6. **Miscellaneous.** Facsimile or emailed signatures appearing hereon shall be deemed an original and this Assignment may be executed simultaneously in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The parties to this Assignment have no intention to create any third-party beneficiaries to this Assignment.

7. **Consent of Owner.** Owner executes this Assignment to memorialize Owner's notice of the assignment of the Contract for Sale and Purchase by Assignor to Assignee, and to consent to the same.

[Remainder intentionally blank. Signature pages follow.]

IN WITNESS WHEREOF, Owner has caused its duly authorized representatives to execute this Assignment and Assumption of Contract of Purchase and Sale as of the Effective Date.

OWNER:

NORFOLK SOUTHERN RAILWAY COMPANY
a Virginia corporation

By: Solomon Jackson

Printed: Solomon Jackson

Its: Real Estate Manager

[Owner's Signature Page to
Assignment and Assumption of Contract of Purchase and Sale]

IN WITNESS WHEREOF, Assignor has caused its duly authorized representative to execute this Assignment and Assumption of Contract of Purchase and Sale as of the Effective Date.

ASSIGNOR:

HEADWATERS JUNCTION, INC.
an Indiana nonprofit corporation

By: D B Steininger
Printed: DONALD B. STEININGER
Its: CHAIRMAN

[*Assignor's Signature Page to*
Assignment and Assumption of Contract of Purchase and Sale]

IN WITNESS WHEREOF, Assignee has caused its duly authorized representative to execute this Assignment and Assumption of Contract of Purchase and Sale as of the Effective Date.

ASSIGNEE:

THE CITY OF FORT WAYNE, INDIANA, DEPARTMENT OF REDEVELOPMENT

By: ______________________

Printed: NANCY TOWNSEND

Its: EXECUTIVE DIRECTOR

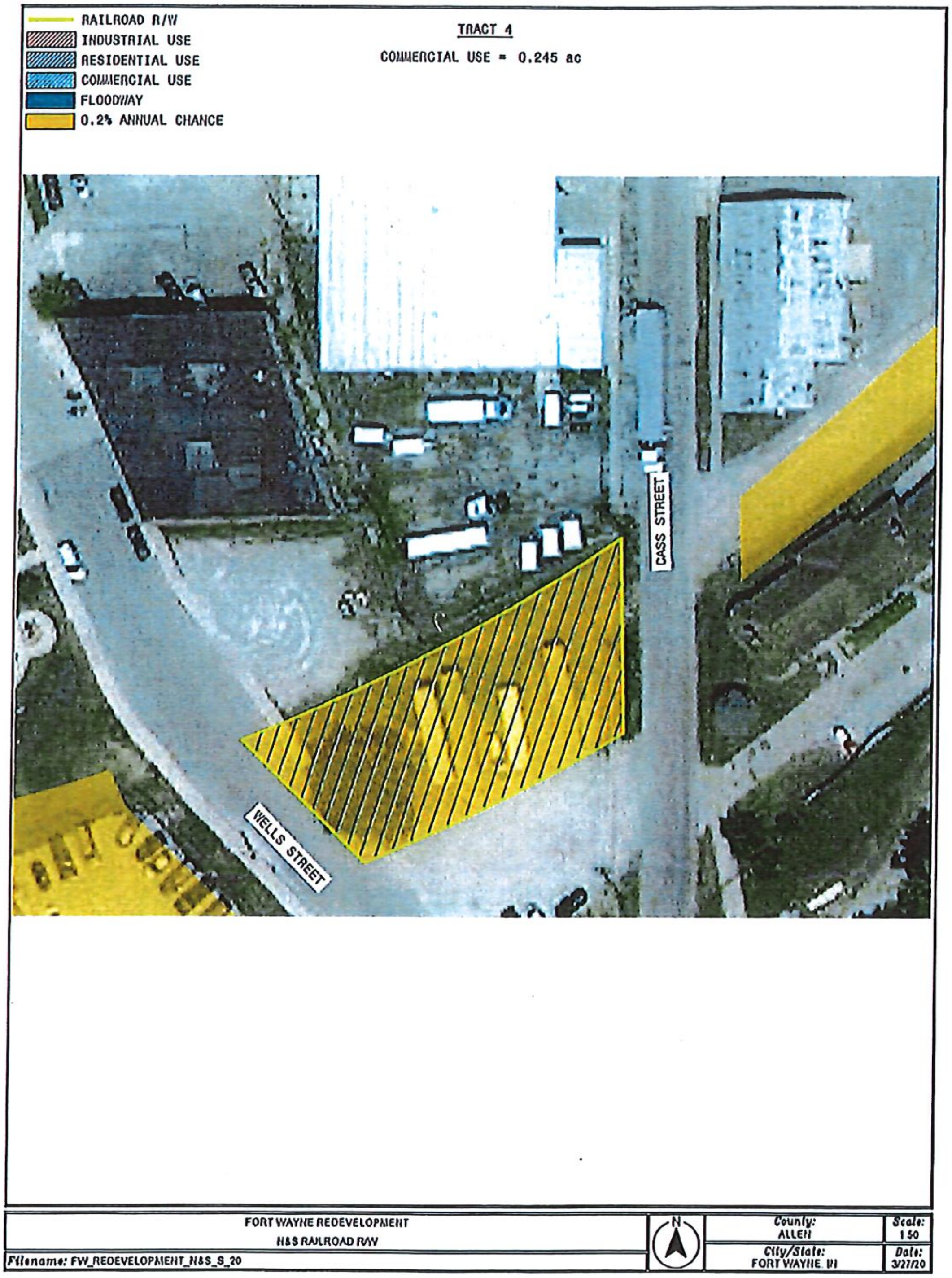
[*Assignee's Signature Page to*
Assignment and Assumption of Contract of Purchase and Sale]

AERIAL OF TRACT 1:

AERIAL OF TRACT 2:

AERIAL OF TRACT 3:

AERIAL OF TRACT 4:



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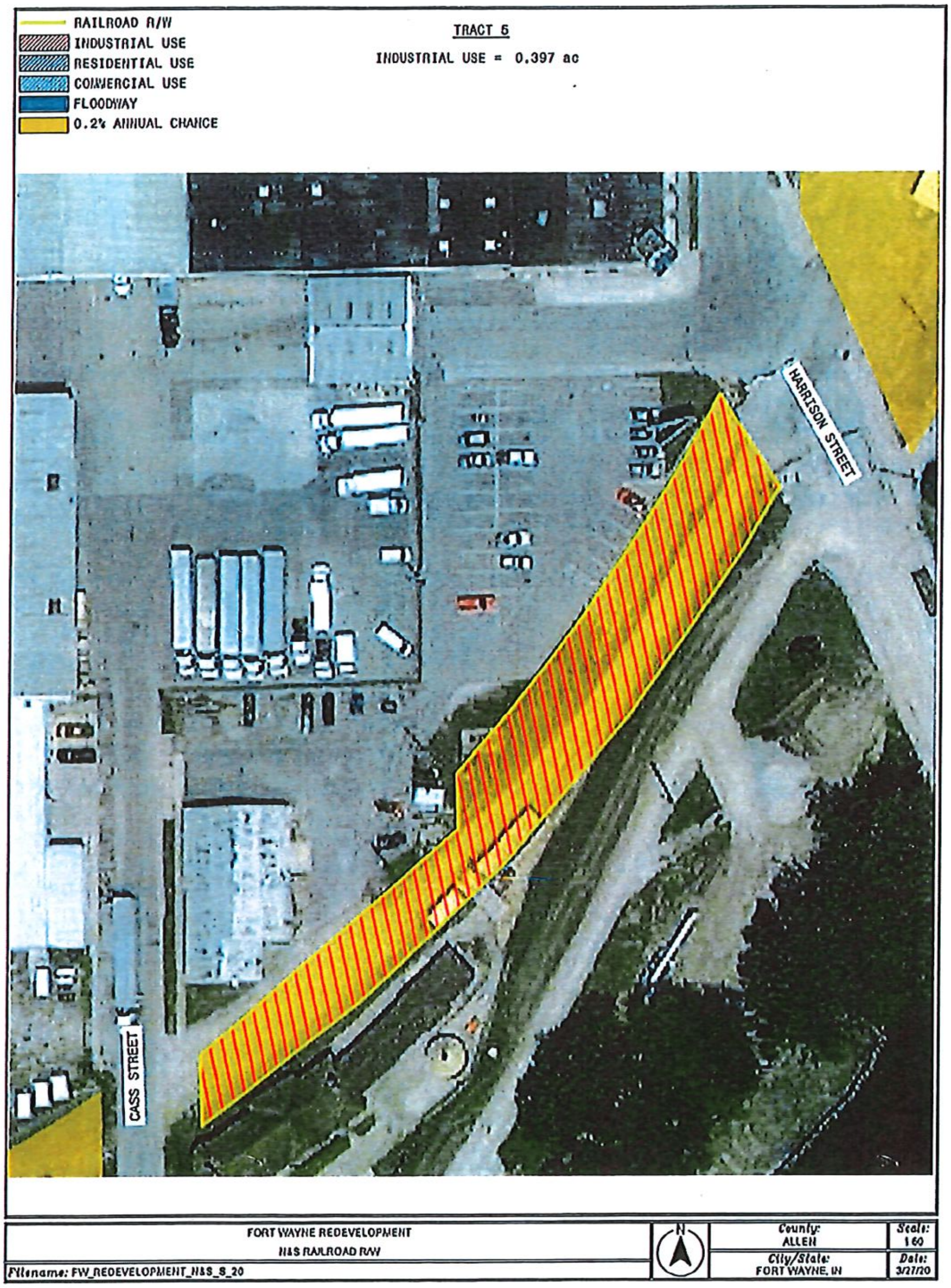
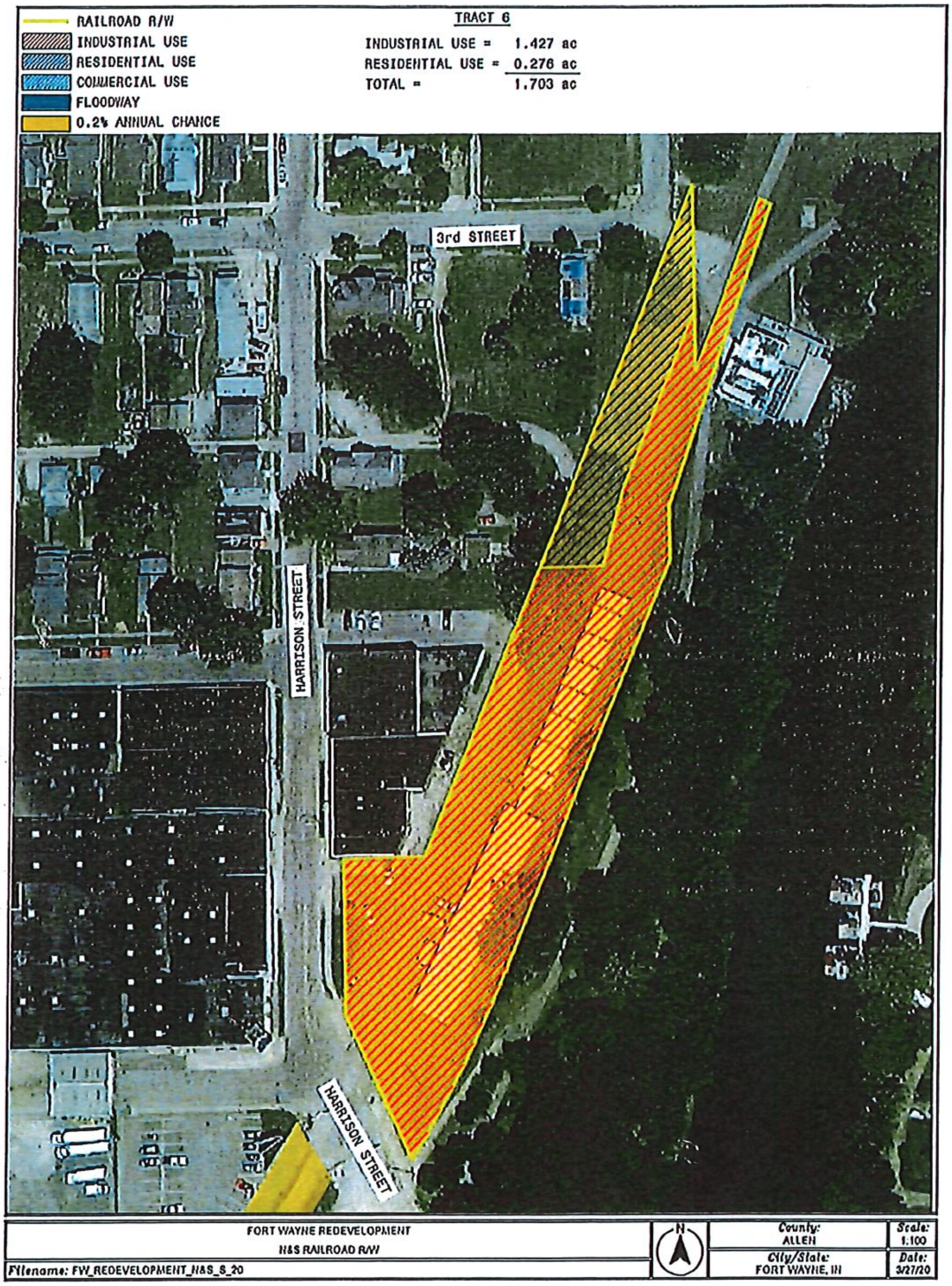


AERIAL OF TRACT 6:



DIGEST SHEET

TITLE OF RESOLUTION. A Resolution of the Common Council of the City of Fort Wayne, Indiana, regarding the approval of the appropriation of available local income tax revenues to pay for the acquisition by the Fort Wayne Redevelopment Commission of land and improvements deemed necessary for further expansion of the Riverfront Development plans of the City of Fort Wayne (Norfolk Southern Railway Corridor)

DEPARTMENT REQUESTING RESOLUTION. Redevelopment Commission.

SYNOPSIS OF RESOLUTION. Fort Wayne Redevelopment Commission is asking for approval of the expenditure of $468,000 of LIT Riverfront funds to acquire 7.59 acres of abandoned railway corridor owned by Norfolk Southern Railway Co. The property is located along the north side of the Saint Marys River between Sherman Blvd. and 3rd Street and is comprised of six different parcels.

Norfolk Southern Railway Co. and Headwaters Junction, Inc. entered into a purchase agreement on April 2, 2019 (amended on August 2 and November 1, 2019), whereby Headwaters Junction would acquire this property from Norfolk Southern. The terms of the purchase agreement set the purchase price at $520,000 (earnest money of $52,000), conveyance of the property by quitclaim deed, and stipulates that the closing must occur on or before November 1, 2020. Headwaters Junction has paid $52,000 in earnest money and $75,000 for due diligence activities (title and survey work). Two appraisals were obtained at $505,000 and $520,000.

On July 13, 2020, the Fort Wayne Redevelopment Commission approved an assignment of the purchase agreement between Norfolk Southern, Headwaters Junction and the Commission, assigning the Headwaters Junction's rights and responsibilities of the purchase agreement to the Commission. The assignment states that Redevelopment Commission will abide by the terms of the existing purchase agreement and will reimburse Headwaters Junction $127,000 for their due diligence expenses and earnest money. The assignment has been approved by all parties.

EFFECT OF PASSAGE. Passage of the resolution will give the Department of Redevelopment the ability to acquire a key piece of real estate located in the Riverfront district. With this acquisition, the City of Fort Wayne will be able to begin implementation of various components of the Riverfront Fort Wayne Phases II and III plan. One of the most immediate uses of the property includes constructing a restroom facility to support the playground at Promenade Park. Future uses will include development of additional public space and private development.

EFFECT OF NON-PASSAGE. Without this key piece of real estate, many of the components of the Riverfront Fort Wayne Phases II and III schematic plan cannot be realized. This property is located on the dry side of the levee making private development much easier to accomplish rather than closer to the river within the floodplain.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS). $468,000 (purchase price less earnest money) of LIT Riverfront funds – property acquisition budget line

ASSIGNED TO COMMITTEE (PRESIDENT). ______________________________

COMMUNITY DEVELOPMENT
REDEVELOPMENT

Thomas C. Henry, Mayor

City of Fort Wayne
Community Development
200 East Berry Street, Suite 320
Fort Wayne, IN 46802
260-427-2150 fwcommunitydevelopment.org

September 17, 2020

MEMO

To: City of Fort Wayne Common Council

Copy: City of Fort Wayne Redevelopment Commission

From: Nancy Townsend, Executive Director, 427-2323

Re: **Resolution approving property acquisition - Riverfront**

This memo requests Common Council approval of a resolution approving of the expenditure of $468,000 of LIT Riverfront funds – Property Acquisition budget line to acquire 7.59 acres of abandoned railway corridor owned by Norfolk Southern Railway Co. The property is located along the north side of the Saint Marys River between Sherman Blvd. and 3rd Street and is comprised of six different parcels.

Enclosed herewith, please find a digest sheet and a resolution approving a property acquisition.

This property will be used in support of the plans for Riverfront Fort Wayne Phases II and III. This land is important for the development of additional public space and private development in this area. One of the most immediate uses of the property includes constructing a restroom facility to support the playground at Promenade Park.

As additional background, Norfolk Southern Railway Co. and Headwaters Junction, Inc. entered into a purchase agreement on April 2, 2019 (amended on August 2 and November 1, 2019), whereby Headwaters Junction would acquire this property from Norfolk Southern. The terms of the purchase agreement set the purchase price at $520,000 (earnest money of $52,000), conveyance of the property by quitclaim deed, and stipulates that the closing must occur on or before November 1, 2020. Headwaters Junction paid $52,000 in earnest money and $75,000 for due diligence activities (title and survey work). Two appraisals were obtained at $505,000 and $520,000.

On July 13, 2020, the Fort Wayne Redevelopment Commission approved an assignment of the purchase agreement between Norfolk Southern, Headwaters Junction and the Commission, assigning the Headwaters Junction's rights and responsibilities of the purchase agreement to the Commission. The assignment states that the Redevelopment Commission will abide by the terms of the existing purchase agreement and will reimburse Headwaters Junction $127,000 for their due diligence expenses and earnest money. The assignment has been approved by all parties. Redevelopment Commission is not seeking reimbursement for the due diligence and earnest money costs.