



**METROPOLITAN DEVELOPMENT COMMISSION
HEARING EXAMINER**

May 15, 2024

Case Number: 2024-ZON-025
Property Address: 7500 East 30th Street
Location: Warren Township, Council District #9
Petitioner: Calumet Civil Contractors, Inc., by John Cross
Current Zoning: C-S (FF)(FW)
Request: Rezoning of 68.45 acres from the C-S (FF)(FW) district to the C-S (FF)(FW) district to provide for uses permitted under 2006-ZON-110, in addition to commercial and buildings contractors and outdoor storage and operations.
Current Land Use: Undeveloped
Staff Recommendations: Denial
Staff Reviewer: Kathleen Blackham, Senior Planner

PETITION HISTORY

The Hearing Examiner acknowledged the automatic continuance filed by a registered neighborhood organization that continued this petition from the March 28, 2024 hearing, to the April 25, 2024, hearing.

This petition was heard by the Hearing Examiner on April 25, 2024. After a full hearing, the Hearing Examiner recommended denial of the rezoning. Subsequently, the petitioner's representative filed an appeal of the Hearing Examiner's decision. A memorandum of her recommendation is attached.

The petitioner's representative submitted an amended site plan file-dated May 1, 2024, that decreased the storage area from approximately 28 acres to 19 acres and maintained the 200-foot buffer.

Staff believes that reclaiming / recycling of concrete, which would occur on this site, would be considered a waste or recycling transfer facility, which is defined as "a site or facility where solid waste is unloaded from collection vehicles and transferred onto transport vehicles, either immediately or following a temporary storage period, aggregation, composting, or sorting. The facility may feature sorting, **use of a crushing apparatus, and the storage of the material until it is transported.** The definition includes solid waste and recyclables that are transferred from a vehicle or container to another vehicle or container for transportation purposes. This definition does not include motorized vehicles or vehicle parts, which is instead included in a Wrecking or Salvage Facility."

The Ordinance permits this use in the I-3 and I-4 districts and requires a Special Exception in the I-2. When this site was zoned to the C-S district, I-2 uses were permitted but does not permit I-2 uses by special exception. Consequently, staff believes the use would not be permitted under the current C-S district and is further evidence that the request is wholly inappropriate and would have a major negative impact the abutting neighborhood to the north and west.

Staff continues to strongly recommend denial of this request.

STAFF RECOMMENDATION

Denial. If approved, staff would request approval be subject to the following commitments being reduced to writing on the Commission's Exhibit "B" forms at least three days prior to the MDC hearing:

1. Final site plan and elevations of any future structures shall be submitted for Administrator Approval prior to the issuance of an Improvement Location Permit (ILP).
2. The site and improved areas within the site shall be maintained in a reasonably neat and orderly manner during and after development of the site with appropriate areas and containers / receptacles provided for the proper disposal of trash and other waste.
3. A tree inventory, tree assessment and preservation plan prepared by a certified arborist shall be submitted for Administrator Approval prior to preliminary plat approval and prior to any site preparation activity or disturbance of the site. This plan shall, at a minimum: a) indicate proposed development; b) delineate the location of the existing trees, c) characterize the size and species of such trees, d) indicate the wooded areas to be saved by shading or some other means of indicating tree areas to be preserved and e) identify the method of preservation (e.g. provision of snow fencing or staked straw bales at the individual tree's dripline during construction activity). All trees proposed for removal shall be indicated as such.

PETITION OVERVIEW

This 68.45 acre-acre site, zoned C-S (FF)(FW) is undeveloped, except for three off-premises signs (billboards) oriented to Interstate 465. It is surrounded by single-family dwellings to the north, zoned D-5; industrial uses to the south, across East 30th Street, zoned I-3; Interstate I-465 right-of-way to the east, zoned C-S (FF); and single-family dwellings uses to the west, zoned D-3.

Beginning in 1991 this site has been the subject of several petitions, including rezonings and variances. The rezonings requested industrial uses and the variances allowed for off-premises signs (billboards).

Rezoning

The request would rezone both parcels to the C-S (Commercial Special) District. The purpose of the C-S District is to:

1. Encourage:
 - a. A more creative approach in land planning.
 - b. Superior site and structural design and development.
 - c. An efficient and desirable use of open space.
2. Provide for a use of land with high functional value.
3. Assure compatibility of land uses, both within the C-S District and with adjacent areas.
4. Permit special consideration of property with outstanding feature, including, but not limited to, historical, architectural or social significance, unusual topography, landscape amenities, and other special land characteristics.
5. Provide maximum adaptability and flexibility in zoning and development controls to meet the changing and diverse needs of the metropolitan area.

The amended C-S Statement, dated March 19, 2024, states that commercial / building contractors and outdoor storage / operations would be additional permitted uses.

The Comprehensive Plan recommends light industrial typology for the site that would be contemplated to be consistent with the I-1 and I-2 districts.

The C-S Statement describes typical materials of crushed concrete, clean dirt and other similar materials used by civil contractors that would be stored on site. Staff asked whether the concrete would be processed on site, but no information has been provided. If this operation would occur on this site, the result would be noise and dust that would negatively impact the air quality and quality of life for the surrounding residential land uses.

Staff also asked how the stored materials would be contained to avoid encroachment into the floodplain areas. No response has been provided.

It is, however, clear that the commitments from the 2006 rezoning would be eliminated and all protections for the neighborhood removed. See Exhibit A.

Staff would note that no commitments have been submitted by the petitioner's representative.

As proposed, this request would not be consistent with the Comprehensive Plan recommendation and the Pattern Book removes this use as a recommended land use when adjacent to living typologies, which in this situation abuts the entire western and eastern boundaries. Staff would note that operations in light industrial typologies would be enclosed. Because approximately half of the site would provide for outdoor storage as a primary use, the use would be consistent with the heavy industrial typology.

In staff's opinion, the commitments associated with the 2006 rezoning provided the appropriate buffer from the residential neighborhood that required a 200-foot "non-disturbance area" along the northern boundary and a 200-foot "non-disturbance area" along the western boundary to the southern terminus of the storage area and a 100-foot area from this southern terminus of the storage area to 30th Street. However, this request would eliminate that buffer and replace it with a 50-foot buffer. Staff believes this reduction is wholly inappropriate and unacceptable. Approximately 34 residences would be negatively impacted by the proposed use of the site.

This request would substantially increase the intensity of the use of the site and eliminate the buffer area protecting the residential uses abutting this site.

Overlays

This site is also located within an overlay, specifically the Environmentally Sensitive Areas (ES) Overlay. "Overlays are used in places where the land uses that are allowed in a typology need to be adjusted. They may be needed because an area is environmentally sensitive, near an airport, or because a certain type of development should be promoted. Overlays can add uses, remove uses, or modify the conditions that are applied to uses in a typology."

The Environmentally Sensitive Areas (ES) Overlay is intended for areas containing high quality woodlands, wetlands, or other natural resources that should be protected. The purpose of this overlay is to prevent or mitigate potential damage to these resources caused by development. This overlay is also appropriate for areas that present an opportunity to create a new environmental asset. This overlay is not intended for the preservation of open space.

Much of this site is covered by high quality woodlands (specifically identified as Forest Alliance Woodlands), 100-year floodplain and a large wetland. Based on the amended site plan, the northern portion (approximately 28 acres) of the site (Forest Alliance Woodlands) would be clear cut to provide for outdoor storage of materials along with an additional four acres at the southeast corner of the site. In other words, almost half of the site would be used for outdoor storage.

Tree Preservation / Heritage Tree Conservation

There are significant amounts of natural vegetation and trees located on the northern half of the site and the southeast corner. Due to their inherent ecological, aesthetic, and buffering qualities, the maximum number of these existing trees should be preserved on the site.

All development shall be in a manner that causes the least amount of disruption to the trees.

A tree inventory, tree assessment and preservation plan prepared by a certified arborist shall be submitted for Administrator Approval prior to preliminary plat approval and prior to any site preparation activity or disturbance of the site. This plan shall, at a minimum: a) indicate proposed development, b) delineate the location of the existing trees, c) characterize the size and species of such trees, d) indicate the wooded areas to be saved by shading or some other means of indicating tree areas to be preserved and e) identify the method of preservation (e.g. provision of snow fencing or staked straw bales at the individual tree's dripline during construction activity). All trees proposed for removal shall be indicated as such.

If any of the trees are heritage trees that would be impacted, then the Ordinance requires that the Administrator, Urban Forester, or Director of Public Works determine whether the tree(s) would be preserved or removed and replaced.

The Ordinance defines "heritage tree" as a tree over 18 inches Diameter at Breast Height (DBH) and one of the Heritage tree species. Heritage tree species include: Sugar Maple (*Acer saccharum*), Shagbark Hickory (*Carya ovata*), Hackberry (*Celtis occidentalis*), Yellowwood (*Cladrastus kentukea*), American Beech (*Fagus grandifolia*), Kentucky Coffeetree (*Gymnocladus dioica*), Walnut or Butternut (*Juglans*), Tulip Poplar (*Liriodendron tulipifera*), Sweet Gum (*Liquidambar styraciflua*), Black Gum (*Nyssa sylvatica*), American Sycamore (*Platanus occidentalis*), Eastern Cottonwood (*Populus deltoides*), American Elm (*Ulmus americana*), Red Elm (*Ulmus rubra*) and any oak species (*Quercus*, all spp.)

The Ordinance also provides for replacement of heritage trees if a heritage tree is removed or dies within three years of the Improvement Location issuance date. See Exhibit B, Table 744-503-3: Replacement Trees.

Floodway / Floodway Fringe

This site has a secondary zoning classification of a Floodway (FW) and Floodway Fringe (FF). The Floodway (FW) is the channel of a river or stream and those portions of the floodplains adjoin the channels which are reasonably required to efficiently carry and discharge the peak flood flow of the base flood of any river or stream. The Floodway Fringe (FF) is the portion of the regulatory floodplain that is not required to convey the 100-year frequency flood peak discharge and lies outside of the floodway.

The purpose of the floodway district is to guide development in areas identified as a floodway. The Indiana Department of Natural Resources (IDNR) exercises primary jurisdiction in the floodway district under the authority of IC 14-28-1.

The designation of the FF District is to guide development in areas subject to potential flood damage, but outside the Floodway (FW) District. Unless otherwise prohibited, all uses permitted in the primary zoning district (C-S in this request) are permitted, subject to certain development standards of the Flood Control Secondary Zoning Districts Ordinance.



Environmental Public Nuisances

The purpose of the Revised Code of the Consolidated City and County, Sec.575 (Environmental Public Nuisances) is to protect public safety, health and welfare and enhance the environment for the people of the city by making it unlawful for property owners and occupants to allow an environmental public nuisance to exist.

All owners, occupants, or other persons in control of any private property within the city shall be required to keep the private property free from environmental nuisances.

Environmental public nuisance means:

1. Vegetation on private or governmental property that is abandoned, neglected, disregarded or not cut, mown, or otherwise removed and that has attained a height of twelve (12) inches or more;
2. Vegetation, trees or woody growth on private property that, due to its proximity to any governmental property, right-of-way or easement, interferes with the public safety or lawful use of the governmental property, right-of-way or easement or that has been allowed to become a health or safety hazard;
3. A drainage or stormwater management facility as defined in Chapter 561 of this Code on private or governmental property, which facility has not been maintained as required by that chapter; or
4. Property that has accumulated litter or waste products, unless specifically authorized under existing laws and regulations, or that has otherwise been allowed to become a health or safety hazard.

Staff would request a commitment that emphasizes the importance of maintaining the site in a neat and orderly manner at all times and provide containers and receptacles for proper disposal of trash and other waste.

GENERAL INFORMATION

Existing Zoning	C-S (FF)(FW)	
Existing Land Use	Undeveloped / off premises signs (billboards)	
Comprehensive Plan	Light Industrial	
Surrounding Context	Zoning	Land Use
North:	D-5	Single-family dwellings
South:	I-3	Industrial uses
East:	C-S (FF)(FW)	Interstate 465 right-of-way
West:	C-S (FF)(FW)	Single-family dwellings

Thoroughfare Plan		
East 30th Street	Primary Collector	Existing 90-foot right-of-way and proposed 56-foot right-of-way.
Context Area	Metro	
Floodway / Floodway Fringe	Yes	
Overlay	Environmental Sensitive Areas (ES)	
Wellfield Protection Area	No	
Site Plan	March 1, 2024	
Site Plan (Amended)	March 25, 2024 and May 1, 2024	
Elevations	N/A	
Elevations (Amended)	N/A	
Landscape Plan	N/A	
Findings of Fact	N/A	
Findings of Fact (Amended)	N/A	
C-S/D-P Statement	March 19, 2024 (Updated)	

COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- The Comprehensive Plan recommends Light Industrial typology. “The Light Industrial typology provides for industrial production, distribution, and repair uses conducted within enclosed structures and unlikely to create emissions of light, odor, noise, or vibrations. This typology is characterized by freestanding buildings or groups of buildings, often within industrial parks. Typical uses include warehousing, self-storage, assembly of parts, laboratories, wholesaling, and printing. Industrial or truck traffic should be separated from local/residential traffic”.

Pattern Book / Land Use Plan

- *Light Industrial Uses*
 - Industrial truck traffic should not utilize local, residential streets.
 - Streets internal to industrial development must feed onto an arterial street.
 - Removed as a recommended land use where they would be adjacent to a living or mixed-use typology.

Red Line / Blue Line / Purple Line TOD Strategic Plan

- Not Applicable to the Site.

Neighborhood / Area Specific Plan

- Not Applicable to the Site.

Infill Housing Guidelines

- Not Applicable to the Site.

Indy Moves

(Thoroughfare Plan, Pedestrian Plan, Bicycle Master Plan, Greenways Master Plan)

- The Marion County Thoroughfare Plan (2019) “is a long-range plan that identifies the locations classifications and different infrastructure elements of roadways within a defined area.”
- The following listed items describes the purpose, policies and tools:
 - Classify roadways based on their location, purpose in the overall network and what land use they serve.
 - Provide design guidelines for accommodating all modes (automobile, transit, pedestrians, bicycles) within the roadway.
 - Set requirements for preserving the right-of-way (ROW)
 - Identify roadways for planned expansions or new terrain roadways
 - Coordinate modal plans into a single linear network through its GIS database

MEMORANDUM OF EXAMINER'S DECISION

2024-ZON-025

7500 East 30th Street

The petition requests the rezoning of 68.45 acres from the C-S (FF)(FW) district to the C-S (FF)(FW) district to provide for commercial and buildings contractors and outdoor storage and operations, in addition to uses permitted under 2006-ZON-110.

Your Hearing Examiner visited the undeveloped site prior to the hearing and noted the single family residences north and west of it. Interstate I-465 abuts the site on the east, and industrial uses are south of 30th Street.

The petitioner's representative explained the proposal to use the site for a civil contractor, with uses to include the storage of asphalt, clean dirt, and concrete, commercial vehicle storage, and use of a portable concrete crusher. Access would be limited to 30th Street, the storage of materials would be away from the Flood Fringe and controlled by silt fences, and Heritage Tree regulations would be followed. The representative opined that the decibel level of the concrete crusher would be minimal due to its distance from the residences.

Letters of opposition were received from the State Senator, the City-County Councilor, Warren Township Development Association (WTDA), and Indiana Forest Alliance (IFA), and a petition was signed by about 30 residents. A representative of IFA appeared and expressed concern with clear cutting, loss of wetlands, impact on quality of life, and the development of an environmentally sensitive area. A representative of WTDA expressed similar concerns, along with the impact on residents that abut the site on the north and west.

Staff stated that the proposal did not conform with the Comp Plan recommendation of light industrial development, and highlighted the Pattern Book recommendation to not have industrial development adjacent to residential areas. Staff also expressed concern with lack of details about the use of the concrete crusher.

In your Hearing Examiner's opinion, the request is too intense for this site and would have a grossly negative impact on the residents in the area and on this environmentally sensitive area. Denial of this petition was recommended.

For Metropolitan Development Commission Hearing on May 15, 2024

ZONING HISTORY

2006-ZON-110; 7500-7534 East 30th Street, requested rezoning of 69.174 acres, being in the I-2-S (FF)(FW) District, to the C-S (FF)(FW) classification to provide for all I-2 uses and the sale, rental, service, and repair of heavy construction equipment, **approved**.

2000-ZON-122; 7522, 7530, and 7534 East 30th Street, rezoning of 0.35 acre from D-4 to I-2-S to provide for light industrial uses, **approved**.

97-AP-32; 7702 East 30th Street, termination of commitments related to petition 91-Z-137, to delete erroneously recorded commitments, **approved**.

93-V3-54; 7702 East 30th Street, variance of development standards to provide for the erection of a 50-foot tall off-premises advertising sign, within 250 feet of a Protected District, and within one-mile of another off-premises advertising sign, **granted**.

93-V3-53; 7702 East 30th Street, variance of development standards to provide for the erection of an off-premises advertising sign, within 250 feet of a Protected District, and within one-mile of another off-premises advertising sign, **granted**.

93-V3-52; 7702 East 30th Street, variance of development standards to provide for the erection of an off-premises advertising sign, within 250 feet of a Protected District, and within one-mile of another off-premises advertising sign, **granted**.

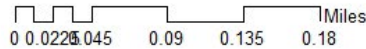
92-Z-50; 7522, 7530, and 7534 East 30th Street, rezoning of 1.1 acres from D-4 to I-2-S to provide for light industrial uses, **approved**.

91-Z-137; 7702 East 30th Street, rezoning of 68 acres from D-4 and D-A to I-2-S to provide for light industrial uses, **approved**.

EXHIBITS

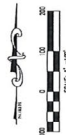


7500 East 30th Street



Amended Site Plan – May 1, 2024

**REZONE SITE PLAN
 STOCKPILE AREA WITH TREE REMOVAL
 7500 E 30th STREET, INDIANAPOLIS**



EXISTING LEGEND

	UTILITY LINE
	EASEMENT
	RIGHT-OF-WAY
	PROPERTY LINE
	100' BUFFER
	200' BUFFER
	500' BUFFER
	1000' BUFFER
	1500' BUFFER
	2000' BUFFER
	2500' BUFFER
	3000' BUFFER
	3500' BUFFER
	4000' BUFFER
	4500' BUFFER
	5000' BUFFER
	5500' BUFFER
	6000' BUFFER
	6500' BUFFER
	7000' BUFFER
	7500' BUFFER
	8000' BUFFER
	8500' BUFFER
	9000' BUFFER
	9500' BUFFER
	10000' BUFFER



PREPARED BY:

 CROSSROADS
 ENGINEERS, APC
 1110 W. 10th Street, Suite 200, Indianapolis, IN 46202
 MAY 1, 2024

C-S DEVELOPMENT STATEMENT

Introduction: The Petitioner, Calumet Civil Contractors, Inc., is under contract to purchase the subject property. The property was rezoned to CS in 2007 under Case No. 2006-ZON-110 to provide for all I-2 uses and the sale, rental, service, and repair of heavy construction equipment. The then-owner also agreed to certain commitments recorded on January 31, 2007 as Instrument No. 2007-0019683. Petitioner seeks to rezone to C-S to permit all current uses as well as (1) Commercial and Building Contractors and (2) Outdoor Storage and Operations as primary uses.

Petitioner intends to use the property to store materials prior to use at jobs or sale to clients. Petitioner anticipates using 40 acres of the property as temporary storage. Staging areas would be used for storage locations. No permanent construction is currently anticipated. The entire perimeter is fenced. Business operations would be from 8-4 and sales are business-to-business. Typical materials stored would be crushed concrete, clean dirt, and other similar materials used for the civil contractor business.

Zoning: The property is currently zoned C-S.

Permitted Uses: Proposed Permitted Primary Uses of the Subject Property are all current permitted uses under Case No. 2006-ZON-110 as well as (1) Commercial and Building Contractors and (2) Outdoor Storage and Operations as primary uses.

Permitted Accessory Uses of the Subject Property shall include all accessory uses permitted in the I-2 zoning district, for Commercial and Building Contractors and Outdoor Storage.

Developmental Standards: Petitioner hereby incorporates the Lot and Building Dimensions for properties in the C-S zoning district set forth in Chapter 744, Art. II, Section 01.C, Table 744-201-3 of the Zoning Ordinance.

Landscaping plans are not yet fully developed as the site has not been fully engineered or site planned; however, the landscaping plans for each building, if any erected, shall be consistent with the Concept Plan tendered for Administrative Approval prior to obtaining an Improvement Location Permit. The property is already adequately screened for outdoor storage uses.

Signs: The following sign types shall be permitted on the Subject Property:

1. Three billboards along 465 shown on the site plan.

All signs shall meet the requirements for signs otherwise located in an Industrial zoning district.

Phasing of Development: The Subject Property may be used as generally shown on the site plan submitted with the C-S rezoning petition and this C-S Development Statement. Prior to applying for an Improvement Location Permit required in conjunction with any new development or redevelopment of the Subject Property, a final site and development plan, consistent with the standards contains in this C-S Statement, shall be tendered for Administrator's Approval.



STATEMENT OF INTENT

7500 E. 30TH ST., INDIANAPOLIS, IN 46226

The Petitioner, Calumet Civil Contractors, Inc., is under contract to purchase the subject property. The property was rezoned to CS in 2007 under Case No. 2006-ZON-110 to provide for all I-2 uses and the sale, rental, service, and repair of heavy construction equipment. The then- owner also agreed to certain commitments recorded on January 31, 2007 as Instrument No. 2007- 0019683. Petitioner seeks to rezone to C-S to permit all current uses as well as (1) Commercial and Building Contractors and (2) Outdoor Storage and Operations as primary uses.

Petitioner further seeks to terminate the commitments for the purpose or reevaluating any needed commitments with planning staff.

Request:

Petitioner, Calumet Civil Contractors, Inc., has existed for over 40 years. Petitioner is involved in all phases of site development and road construction including Asphalt Paving, Earthwork, Sewer and Underground Utility Installation, and Concrete Construction. Petitioner intends to use the property to store materials prior to use at jobs or sale to clients. Petitioner anticipates using 40 acres of the property as temporary storage. Staging areas would be used for storage locations. No permanent construction is currently anticipated. The entire perimeter is fenced. Business operations would be from 8-4 and sales are business-to-business. Typical materials stored would be crushed concrete, clean dirt, and other similar materials used for the civil contractor business.

The property is currently unimproved. The property and area will benefit if the property can be utilized. The comprehensive land plan recommends the property be light industrial. Commercial and Building Contractors use is permitted in all Industrial zoning districts. Outdoor Storage and Operations is listed as an accessory use in all Industrial zoning districts. The property is already adequately screened for outdoor storage uses. The outdoor storage use would be a primary use of the property.

EXHIBIT A

2006-20N-110
7500 E. 30th St. JAN 17 2007



STATEMENT OF COMMITMENTS

COMMITMENTS CONCERNING THE USE OR DEVELOPMENT OF REAL ESTATE
MADE IN CONNECTION WITH A REZONING OF PROPERTY OR PLAN APPROVAL

In accordance with I.C. 36-7-4-613 or I.C. 36-7-4-614, the owner of the real estate located in Marion County, Indiana, which is described below, makes the following COMMITMENTS concerning the use and development of that parcel of real estate:

Legal Description: See Attachment "B"

Statement of COMMITMENTS:

1. The owner agrees to abide by the Open Occupancy and Equal Employment Opportunity Commitments required by Metropolitan Development Commission Resolution No. 85-R-69, 1985, which commitments are attached hereto and incorporated herein by reference as Attachment "A".
2. Access to the Real Estate shall be limited to 30th Street, including all construction traffic and all utilities except (i) drainage using Pleasant Run North Branch, (ii) the existing 10 inch VCP sanitary sewer which exits the Real Estate in the right-of-way of the Renfrew Drive sub street, (iii) telephone, electric, water and gas which may need to enter the Real Estate at the northwest corner of the site from the sub street located between 33rd and 34th streets, and (v) one additional point of perpendicular access for electric along the west property line.
3. A natural buffer area, to be designated as a Non-Disturbance Area, shall be maintained to a minimum depth of (i) Two Hundred (200) feet along the north perimeter property line and (ii) Two Hundred (200) feet along the west perimeter line to the southern terminus of the storage area and (iii) One Hundred (100) feet from the southern terminus of the storage area to 30th Street. This natural buffer area shall be preserved in its natural state but shall be maintained in an attractive and professional manner including supplemental plantings to provide effective screening and cutting of invasive, undesirable or low quality shrubs, woods or trees. No improvements (other than a fence) shall be erected or maintained within or upon such Non-Disturbance Area and no trees, bushes, shrubbery or other vegetation shall be removed from the Non-Disturbance Area except those which are minimally required by the public utility companies, governmental agencies, developer or the Department of Public Works of the City of Indianapolis in connection with such entity's use of Utility Easements and/or Drainage Easements or for erection of a fence. In addition, a minimum six (6) foot tall fence shall be installed prior to occupancy of a building constructed on the Real Estate along a line at or within approximately 12 feet from (unless otherwise requested by the adjacent neighbors), the north and west perimeter property lines, except along the west property line where the fence may turn east and run toward the building at such location as Developer desires. Said fence shall be maintained in good repair at all times. Maintenance, attention or removal of vegetation (primarily for dead, dying or diseased vegetation) within the natural buffer area shall be the obligation of Owner and any removal of vegetation shall only be as the result of a request approved by the Administrator, except where such removal is required to assure the health and safety of the general public.
4. Any building constructed on the Real Estate and any equipment storage area established on the Real Estate shall be a minimum of Two Hundred (200) feet from the west and north property lines.

MDC's Exhibit B -- page 1 of 4

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Invt # 2007-0019683

5. No accessory lighting provided on the Real Estate shall cause illumination at or beyond the west and north perimeter property lines in excess of 0.1 foot-candles of light. All lights mounted on poles shall be limited to a pole height of thirty (30) feet and the fixtures shall be a "shoe box" type fixture.
6. Loading doors shall not be permitted along the south (front) or west facades of the building.
7. The east perimeter of any equipment storage area established on the Real Estate shall be buffered by a staggered double row of conifer trees, each row being planted twenty feet (20') on center. The species of the conifers shall be from the City's approved landscape list. The conifers shall be 5 to 6 feet in height at the time of planting. The buffer shall be located in a twenty-five foot (25') area located immediately west of a vertical plane created by the west edge of the existing three advertising signs located on the Real Estate. The buffer may include existing hard-wood deciduous trees that may exist in this buffer area. All healthy hardwood trees in this buffer area, such as oak, maple and ash, which are greater than 2.5 inches in diameter, will be preserved and included in the buffer landscaping. The landscape plan and hard-wood preservation plan for this buffer area shall be subject to the review and approval of the Administrator.
8. Within Sixty days (60) after approval of the rezoning, Petitioner shall dedicate a sixty foot (60') half right-of-way along 30th Street. Additional easements shall not be granted to third parties within the area to be dedicated as public right-of-way prior to the acceptance of all grants of right-of-way by the Department of Public Works.
9. Commitments with the Department of Public works related to general infrastructure, storm water management, and sanitary sewer and wastewater management as set forth in Attachment "C".

These COMMITMENTS shall be binding on the owner, subsequent owners of the real estate and other persons acquiring an interest therein; provided that Commitment #1 (Open Occupancy and Equal Opportunity Commitments) shall not be binding on an owner, subsequent owners or other person acquiring an interest therein if such persons are exempt persons or are engaged in an exempt activity as defined on Attachment "A" which is attached hereto and incorporated herein by reference. These COMMITMENTS may be modified or terminated by a decision of the Metropolitan Development Commission made at a public hearing after proper notice has been given.

COMMITMENTS contained in this instrument shall be effective upon:

- (a) the adoption of rezoning petition # 2006-ZON-110 by the City-County Council changing the zoning classification of the real estate from a L-2-S zoning classification to a CS zoning classification; or
- (b) the adoption of approval petition # _____ by the Metropolitan Development Commission;

and shall continue in effect for as long as the above-described parcel of real estate remains zoned to the CS zoning classification or until such other time as may be specified herein.

These COMMITMENTS may be enforced jointly or severally by:

1. The Metropolitan Development Commission;
2. Owners of all parcels of ground adjoining the real estate to a depth of two (2) ownerships, but not exceeding six-hundred-sixty (660) feet from the perimeter of the real estate, and all owners of real estate within the area included in the petition who were not petitioners for the rezoning or approval.

Owners of real estate entirely located outside Marion County are not included, however. The identity of owners shall be determined from the records in the offices of the various Township Assessors of Marion County which list the current owners of record. (This paragraph defines the category of persons entitled to receive personal notice of the rezoning or approval under the rules in force at the time the commitment was made);

3. Any person who is aggrieved by a violation of either of the Commitments contained in Commitment #1 (Open Occupancy and Equal Employment Opportunity Commitments); and
4. Warren Township Development Association
5. Thirty-Eighth & Community Improvement Association

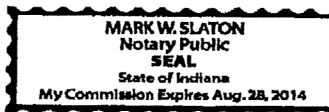
The undersigned hereby authorizes the Division of Planning of the Department of Metropolitan Development to record this Commitment in the office of the Recorder of Marion County, Indiana, upon final approval of petition #2006-ZON-110.

IN WITNESS WHEREOF, owner has executed this instrument this 2nd day of JANUARY, 2007.

SMC PNEUMATICS, INC.

Signature: _____
 Printed: Yoshiaki TAKADA _____
 STATE OF INDIANA)
) SS:
 COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared YOSHIKI TAKADA, owner(s) of the real estate who acknowledged the execution of the foregoing instrument and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 2nd day of January, 2007

Mark W. Slaton
 Notary Public
 MARK W. SLATON
 Printed Name of Notary Public
 My Commission expires: AUG 28, 2014
 My County of residence: JOHNSON

This Instrument prepared by Philip A. Nicely, Attorney at Law, Bose McKinney & Evans LLP, 301 Pennsylvania Parkway, Suite 300, Indianapolis, Indiana 46280.

EXHIBIT B

Heritage Tree Conservation

Removal of any Heritage Tree is prohibited unless any of the following determinations are made before removal:

1. The Administrator or the city’s Urban Forester determines that the tree is dead, significantly and terminally diseased, a threat to public health or safety, or is of an undesirable or nuisance species.
2. The Director of the Department of Public Works determines that the tree interferes with the provision of public services or is a hazard to traffic.
3. The Administrator determines that the location of the tree is preventing development or redevelopment that cannot be physically designed to protect the tree.
4. The site from which the tree is removed is zoned D-A and the tree is harvested as timber or similar forestry product.

Table 744-503-3: Replacement Trees

Size of tree removed or dead (inches)	Number of Trees to be planted to replace a Heritage Tree	Number of Trees to be planted to replace an existing tree
Over 36 DBH	15	10
25.5 to 36 DBH	11	8
13 to 25 DBH	8	6
10.5 to 12.5 DBH	6	4
8.5 to 10 DBH	5	4
6.5 to 8	3	2
4 to 6	2	2
2.5 to 3.5	1	1



View looking west along East 30th Street



View looking east along East 30th Street



View looking south along Richardt Avenue



View looking east from intersection of Richardt Avenue and East 30th Street



View of site looking northwest across East 30th Street



View of site looking northwest across East 30th Street



View of site looking northeast across East 30th Street



View of site looking east across Richardt Avenue from the neighborhood



View of site looking east across Richardt Avenue from the neighborhood



View of site looking east across Richardt Avenue from the neighborhood



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