



**METROPOLITAN DEVELOPMENT COMMISSION
HEARING EXAMINER**

January 23, 2025

Case Number: 2024-ZON-131
Property Address: 11700 and 11850 East 38th Street and 4002 North Carroll Road
Location: Warren Township, Council District #15
Petitioner: Laib & Russell Investment LLC, by David Gilman
Current Zoning: D-5 (FF)
Request: Rezoning of 46.77 acres from the D-5 (FF) district to the D-4 (FF) district to provide for a single-family detached residential development
Current Land Use: Undeveloped
Staff Recommendations: Approval, subject to the commitments noted below:
Staff Reviewer: Kathleen Blackham, Senior Planner

PETITION HISTORY

The Hearing Examiner continued this petition from the December 12, 2024 hearing, to the January 23, 2025 hearing, at staff's request, to provide time for the petitioner's representative to provide the required documents related to the request.

STAFF RECOMMENDATION

Approval, 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. A 45-foot half right-of-way shall be dedicated along the frontage of East 38th Street and a 53-foot half right-of-way along the frontage of North Carroll Road, as per the request of the Department of Public Works (DPW), Engineering Division. 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 DPW. The right-of-way shall be granted within 60 days of approval and prior to the issuance of an Improvement Location Permit (ILP).
2. The developer and /or property owner shall coordinate with the Department of Public Works to construct and install Infrastructure improvements identified in the April 2022 TIS.
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 46.77-acre site, zoned D-5 (FF), is comprised of three undeveloped parcels. It is surrounded by single-family dwellings, undeveloped land and a single-family dwelling to the north, zoned D-P, D-3 and D-A, respectively; undeveloped land and single-family dwellings to the south, across East 38th Street, zoned D-7 and D-4, respectively; single-family dwellings to the east, zoned D-A (Hancock County) across North Carroll Road; and single-family dwellings to the west, zoned D-P.

Petition 2022-ZON-030 rezoned this site to the D-5 district to provide for residential development. Petition 2024-DV3-023 requested a variance of development standards to provide for front loading garages comprising up to 65% of the front façade. This variance request was denied on October 15, 2024.

REZONING

The request would rezone the site to the D-4 (FF) district. “The D-4 district is intended for low or medium intensity single-family and two-family residential development. Land in this district needs good thoroughfare access, relatively flat topography, and nearby community and neighborhood services and facilities with pedestrian linkages. Provisions for recreational facilities serving the neighborhood within walking distance are vitally important. Trees fulfill an important cooling and drainage role for the individual lots in this district. The D-4 district has a typical density of 4.2 units per gross acre. This district fulfills the low-density residential classification of the Comprehensive General Land Use Plan. All public utilities and facilities must be present. Development plans, which may include the **use of clustering**, should incorporate and promote environmental and aesthetic considerations, working within the constraints and advantages presented by existing site conditions, including vegetation, topography, drainage and wildlife.”

The East 38th Street Corridor Plan recommends airport related mixed-use but does not provide details related to that land use designation and recommended land uses.

Floodway Fringe

This site has a secondary zoning classification of a Floodway Fringe (FF), which 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 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 (D-5 in this request) are permitted, subject to certain development standards of the Flood Control Secondary Zoning Districts Ordinance.

An area at the southwest corner of this site is located within the floodway fringe of O'Brien Ditch. Development in this area would be required to comply with any regulations related to the floodplain.



Department of Public Works

The Department of Public Works, Traffic Engineering Section, has requested the dedication and conveyance of a 45-foot half right-of-way along the frontage of East 38th Street and a 53-foot half right-of-way along the frontage of North Carroll Road. This dedication would also be consistent with the Marion County Thoroughfare Plan.

Traffic Impact Study (TIS) – April 2022

A TIS was previously conducted for the 2022 rezoning petition that requested residential development for 230 single-family dwellings, with two access drives. One access drive would connect to the stub street at the northwest corner of the site and the second access drive would occur along East 38th Street.

This request would provide for 145 lots, with an additional access drive along Carroll Road. Staff would recommend that a revised study be considered because it may result in a passing blister at one or both entrances along East 38th Street and Carroll Road, rather than construction of an exclusive eastbound left-turn lane along East 38th Street.

The parameter used to evaluate traffic operation conditions is referred to as the level-of-service (LOS). There are six LOS (A through F) categories, which relate to driving conditions from best to worst, respectively. LOS directly relates to driver discomfort, frustration, fuel consumption and lost travel time. Traffic operating conditions at intersections are considered to be acceptable if found to operate at LOS D or better.

Capacity analysis occurs for three different scenarios. Scenario 1: Existing Traffic Volumes based on existing peak hour traffic volumes. Scenario 2: Proposed Development Traffic Volumes based on the sum of existing traffic volumes and generated traffic volumes from the proposed development. Scenario 3: Background Traffic Volumes based on applying a growth rate factor of 1.09 to the existing traffic volumes and generated traffic volumes from the near-by warehousing development. Scenario 4: Total Development Traffic Volumes based on the sum of background traffic volumes and generated traffic volumes from the proposed development.

Conclusions and Recommendations

38th Street and Carroll Road

Capacity analyses have shown that this intersection operates and will continue to operate at acceptable levels of service during both AM and PM peak hours for all traffic scenarios.

Therefore, no improvements are recommended at this location.

38th Street and Proposed Access Drive

Capacity analyses have shown that all approaches to this intersection will operate at acceptable levels of service during the AM and PM peak hours with the following intersection conditions:

- Construction of the southbound access drive with at least one inbound lane and one outbound lane.
- This intersection should be stop controlled with the access drive stopping for 38th Street.
- Construction of an exclusive eastbound left-turn lane along 38th Street.

Tree Preservation / Heritage Tree Conservation

There are significant amounts of natural vegetation and trees centrally located on the site and at the northeast portion of the site. 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 Permit (ILP) issuance date. See Exhibit A, Table 744-503-3: Replacement Trees.



Planning Analysis

As proposed this request would be a cluster subdivision. “Cluster subdivisions are intended to allow greater flexibility in design and development of subdivisions, in order to produce innovative residential environments, provide for more efficient use of land, protect topographical features, and permit common area and open space.”

A cluster is “a form of development for single-family residential subdivisions that permits a reduction in the minimum lot: area, width, setback and open space requirements and to concentrate development in specific areas of the subdivision while the remaining land is reserved in perpetuity. Recreational purposes, common open space and preservation of environmentally sensitive features are examples of some purposes of the remaining land.

Subdivision cluster development requires two site plans, with a site plan that depicts the development of the site in full compliance with all use and development standards of the applicable underlying dwelling district and Chapter 741 Subdivision Regulations. This site plan is used to determine the maximum number of developable lots possible on the site and set the density of that development. The second site plan depicts the development of the site as a proposed cluster subdivision. The density of the overall cluster development shall be no greater than that permitted by the development of the site depicted in the first site plan.

This request would not be consistent with the Plan recommendation of airport related mixed-use. Staff, however, believes the proposed use would be compatible with and would not result in a negative impact on the surrounding residential land uses.

Staff would clarify that this request is limited to rezoning the site. Approval of the plat is not part of this request and would require the filing and approval of the subdivision plat by the Plat Committee, in accordance with the Subdivision Regulations.

Staff would note that the Mount Comfort Airport is in proximity of this site. Consequently, the developer / property owner should contact that entity to determine whether the proposed development would be impacted by noise and / or regulations related to the operation of that facility. See Exhibit B.

GENERAL INFORMATION

Existing Zoning	D-5 (FF)
Existing Land Use	Undeveloped land
Comprehensive Plan	Airport Related Mixed-Use

Surrounding Context	Zoning	Land Use
North:	D-P / D-3 / D-A	Single-family dwellings / undeveloped land / single-family dwelling
South:	D-7 / D-4	Undeveloped land / single-family dwellings
East:	D-A	Single-family dwellings (Hancock County)
West:	D-P	Single-family dwellings
Thoroughfare Plan		
East 38 th Street	Primary arterial	Existing 85-foot right-of-way and proposed 90-foot right-of-way.
North Carroll Road	Primary Collector	Existing 28-foot right-of-way and proposed 106-foot right-of-way.
Context Area	Metro	
Floodway / Floodway Fringe	Yes. This is located within the floodway fringe of O'Brien Ditch	
Overlay	No	
Wellfield Protection Area	No	
Site Plan	November 7, 2024	
Site Plan (Amended)	December 27, 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	N/A	

COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- Not applicable.

Pattern Book / Land Use Plan

The Comprehensive Plan consists of two components that include The Marion County Land Use Pattern Book (2019) and the land use map. The Pattern Book provides a land use classification system that guides the orderly development of the county and protects the character of neighborhoods while also being flexible and adaptable to allow neighborhoods to grow and change over time.

The Pattern Book serves as a policy guide as development occurs. Because of the surrounding residential land uses, staff believes it would be appropriate to reference the Pattern Book as it relates to the suburban neighborhood typology. Below are the relevant policies related to this typology:

Conditions for All Land Use Types (Suburban Neighborhood)

- All land use types except small-scale parks and community farms/gardens in this typology must have adequate municipal water and sanitary sewer.
- All development should include sidewalks along the street frontage.
- Hydrological patterns should be preserved wherever possible.
- Curvilinear streets should be used with discretion and should maintain the same general direction.
- In master-planned developments, block lengths of less than 500 feet, or pedestrian cut-throughs for longer blocks, are encouraged.

Conditions for All Housing

- A mix of housing types is encouraged.
- Developments of more than 30 housing units must have access to at least one arterial street of three or more continuous travel lanes between the intersections of two intersecting arterial streets
- Should be within a one-mile distance (using streets, sidewalks, and/or off-street paths) of a school, playground, library, public greenway, or similar publicly accessible recreational or cultural amenity that is available at no cost to the user.
- Should be oriented towards the street with a pedestrian connection from the front door(s) to the sidewalk. Driveways/parking areas do not qualify as a pedestrian connection.
- Developments with densities higher than five dwelling units per acre should have design character compatible with adjacent properties. Density intensification should be incremental with higher density housing types located closer to frequent transit lines, greenways or parks.

Detached Housing

- The house should extend beyond the front of the garage.
- Lots should be no more than 1.5 times the size (larger or smaller) of adjacent/surrounding lots, except in cases where lots abut existing residential lots of one acre or more in size. In those cases, lots should be no smaller than 10,000 square feet and no larger than 1.5 times the size of the abutting lot.

Red Line / Blue Line / Purple Line TOD Strategic Plan

- Not Applicable to the Site.

Neighborhood / Area Specific Plan

- East 38th Street Corridor Plan (2012)

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 describe 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

ZONING HISTORY

2024-DV3-023; 11700 and 11850 East 38th Street and 4002 North Carroll Road, requested a variance of Development Standards to provide for the construction of a single-family dwellings with front loaded garages comprising up to 65% of the front façade in a 138-lot subdivision, **denied**.

2022-ZON-030; 11700 and 11850 East 38th Street and 4002 North Carroll Road, requested rezoning of 46.2 acres from the D-A and D-3 (FF) Districts to the D-5 (FF) District, **approved**.

2008-ZON-049; 11850 East 38th Street, requested Rezoning of twenty acres, from the D-3 (FF) District to the D-P (FF) classification to provide for 222 multi-family dwelling units and approximately 16,000 square feet of commercial development with uses being those permitted within the C-3C classification, **denied**.

VICINITY

2006-APP-050; 11717 East 42nd Street (northwest of site), modification of site plan and development statement, related to 2004-ZON-070, to provide for elimination of eight alleys from the proposed development and eliminate language from development statement regarding alleys, reduced front setbacks and front porches, **approved**.

2005-APP-084; 4310 North Carroll Road and 11440 and 11717 East 42nd Street (north and northwest of site), modification of development statement, related to 2004-ZON-070, to reconfigure land to be dedicated to Department of Parks and Recreation, **approved**.

2004-ZON-070; 4310 North Carroll Road and 11440 and 11717 East 42nd Street (north and west of site), rezoning of 193 acres from D-A to D-P to provide for 600 single-family dwellings, **approved**.

2003-ZON-186; 11801 East 38th Street (south of site), rezoning of 36.17 acres from C-3 and D-6II to D-4, **approved**.

2003-ZON-036; 11801 East 38th Street (south of site), rezoning of 13.58 acres from C-3 and D-6II to D-6II, **denied**.

2003-ZON-036A; 11801 East 38th Street (south of site), rezoning of 22.59 acres from C-3 and D-6II to D-4, **denied**.

2002-ZON-094; 4002 North Carroll Road (north of site), rezoning of 40 acres from D-A to D-3, **approved**.

2000-ZON-126; 11618 East 38th Street (west of site), rezoning of 20 acres from D-A to D-P to provide for 80 single-family dwellings, **approved**.



**Department of Metropolitan Development
Division of Planning
Current Planning**

97-Z-64; 11350 East 38th Street (west of site), rezoning of 40.6 acres from D-A to D-5II, approved.

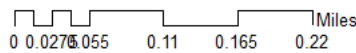
73-Z-110; 11901 East 38th Street (south of site), rezoning of 15.5 acres from A-2 to C-3, approved.

73-Z-109; 11755 East 38th Street (south of site), rezoning of 21 acres from A-2 to D-6II, approved.

EXHIBITS

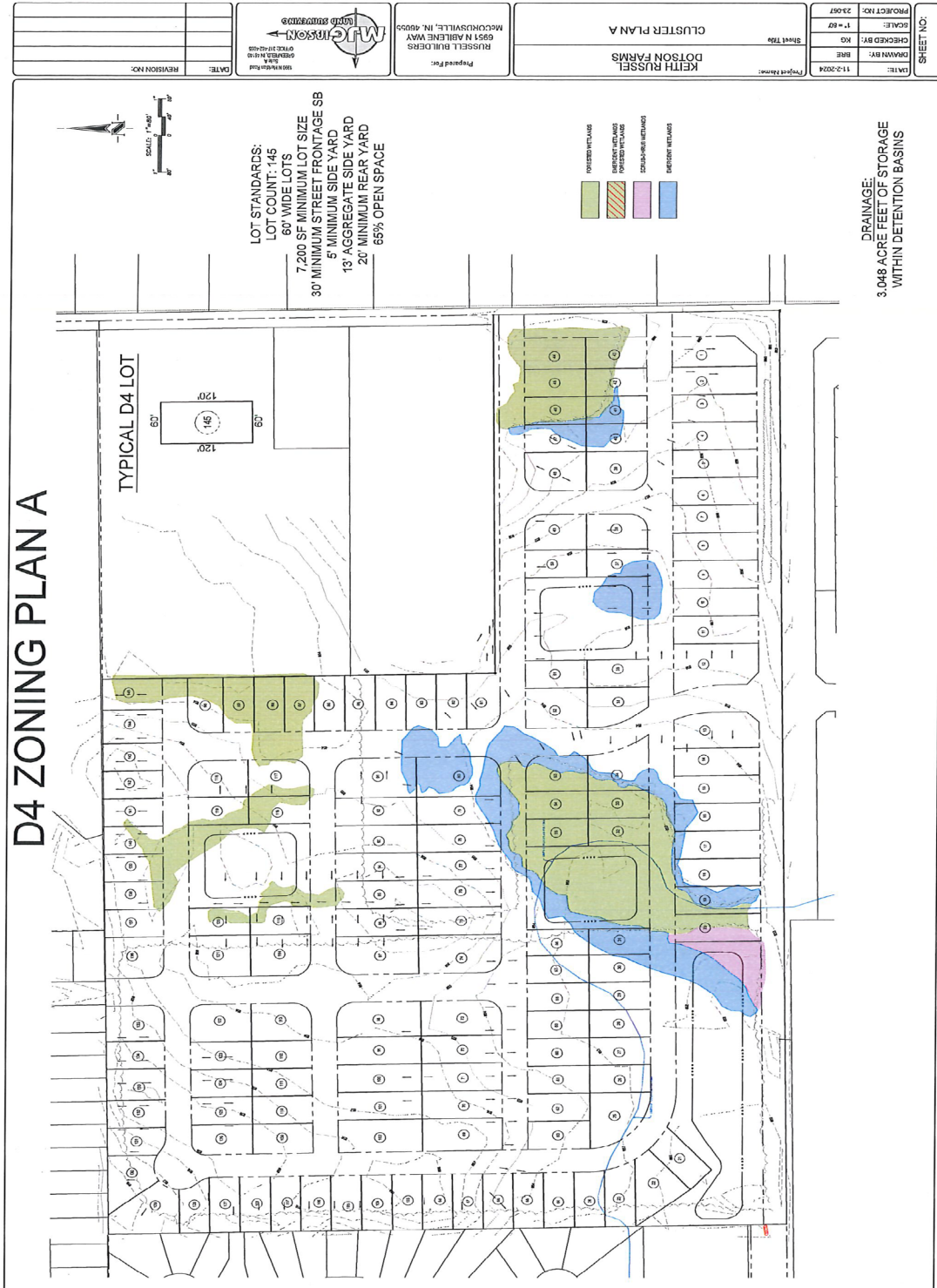


11700 and 11850 East 38th Street and 4002 North Carroll Road



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Site Plan – D-4 Standards



Cluster Plan



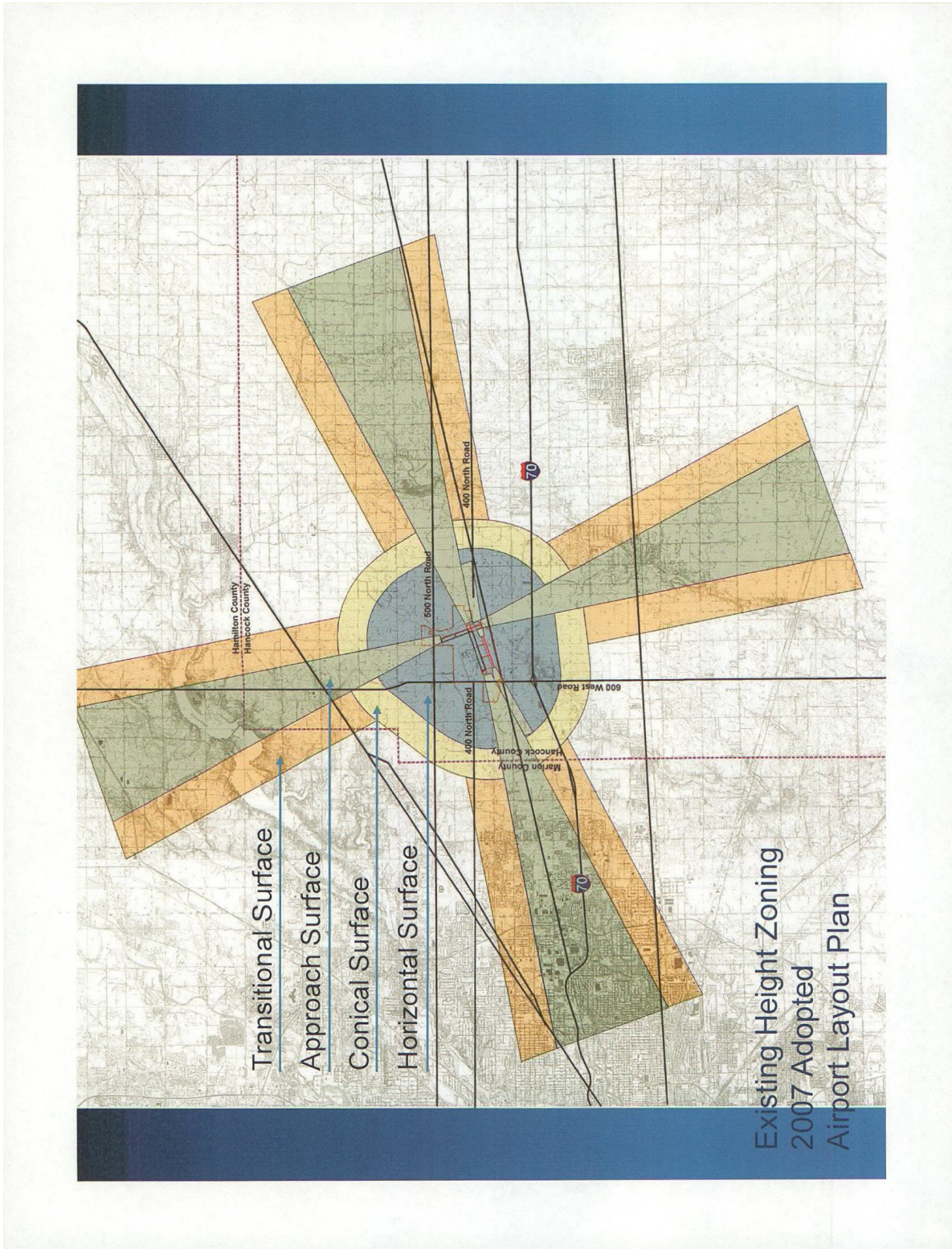
EXHIBIT A

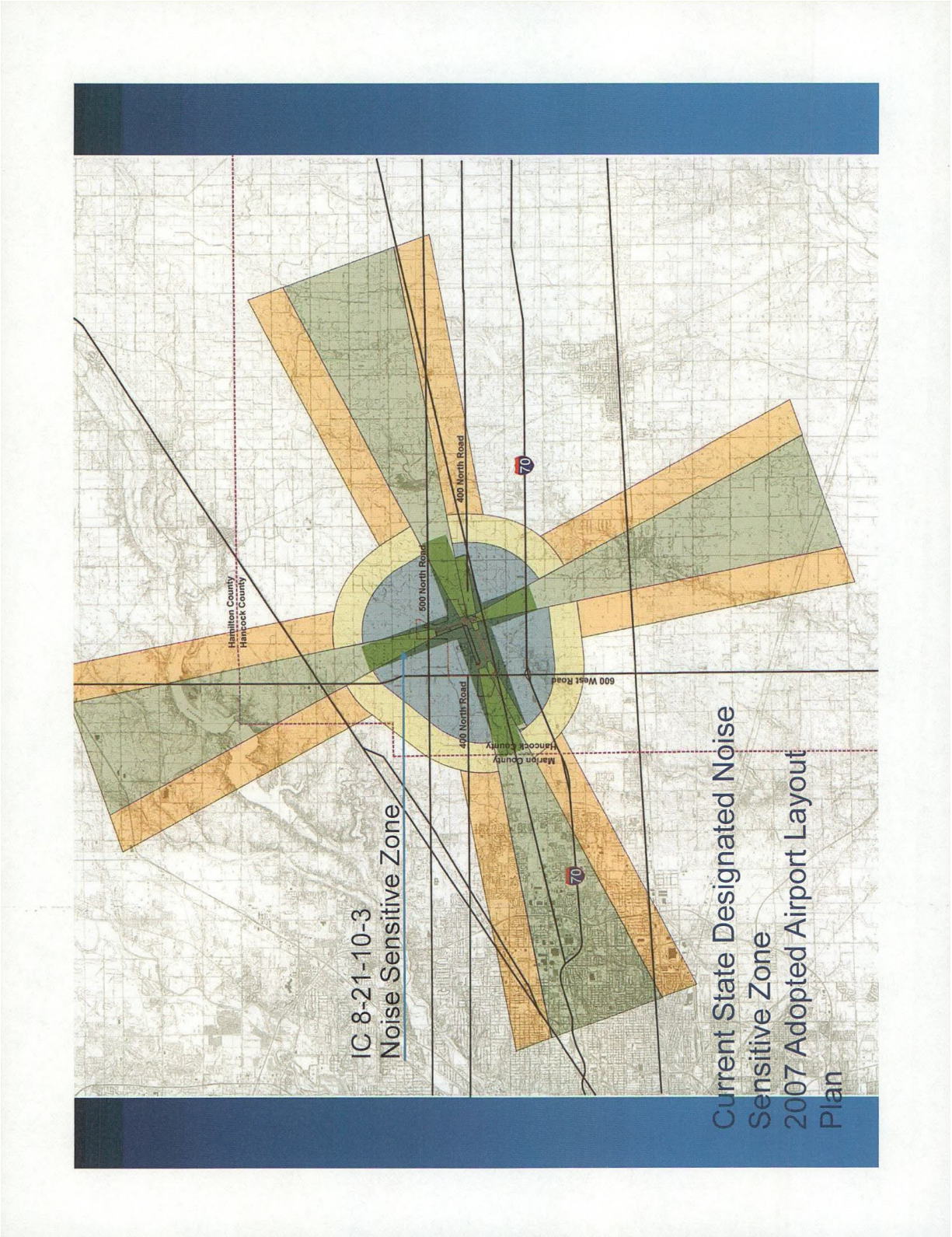
Heritage Tree Conservation

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.

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 38th Street



View looking east along East 38th Street



View of site looking north across East 38th Street



View of site looking north across East 38th Street



View of site looking north across East 38th Street



View of site looking north across East 38th Street



View of site looking northeast at intersection of East 38th Street and North Carroll Road



View of site looking west across North Carroll Road



View of site looking west across North Carroll Road



View of adjacent property to the north looking west across North Carroll Road