

KANE COUNTY DEVELOPMENT DEPARTMENT
Subdivision and Zoning Division, Kane County Government Center
719 Batavia Avenue
Geneva, Illinois 60134
Office (630) 232-3492 Fax: (630) 232-3411

SPECIAL USE APPLICATION: _____ **Received Date:** (/ /)

To request a special use for a property, complete this application and submit it with all required attachments to the Subdivision and Zoning Division.

The information you provide must be complete and accurate. If you have a question please call the subdivision and zoning division, and we will be happy to help you.

1. Property Information:

Parcel Number(s): 05-25-178-006; 05-25-178-008.

Street Address: 9N533 Nesler Rd., Elgin, IL 60124.

2. Applicant Information:

Name: Burke Storage, Inc.

Address: c/o Patrick M. Griffin; Griffin | Williams LLP, 21 N. 4th St., Geneva, IL 60134.

Phone: Patrick M. Griffin: 630-524-2566.

Fax: Patrick M. Griffin: 630-262-0644.

Email: Patrick M. Griffin: pgriffin@gwillplaw.com

3. Owner of Record Information:

Name: Burke Storage, Inc., c/o James Burke.

Address: 9N533 Nesler Rd., Elgin, IL 60124.

Phone: James Burke: 847-638-6000.

Fax: n/a.

Email: James Burke: jim@burkeexcavating.com.

4. Zoning and Use Information:

2040 Plan Land Use Designation: Commerce / Employment.

Current Zoning: B3 District – Business.

Current Use: Burke Storage - indoor/outdoor storage facility; Burke Excavating – excavating contractor; Gopher Towing – towing service.

Proposed Zoning / Special Use: B3 District – Business, with a Special Use Permit to permit outdoor storage of vehicles and equipment.

Planned Improvements: In connection with the Special Use Permit, Applicant also proposes the following:

- a. Applicant will eliminate any encroachment of improvements onto adjacent property – specifically the encroachment of the driveway on the south edge of the Subject Property onto the adjoining land to the south.

No other new improvements or construction are presently planned.

Attachment Checklist

1. Plat of Survey prepared by an Illinois Registered Land Surveyor
2. Legal Description
3. Completed Land Use Opinion Application
4. EcoCAT / IDNR Closure Letter
5. Certification of Notice to Adjacent Property Owners / List of Adjacent Property Owners
6. Historical Aerial Photos: 1993 to 2018
7. Findings of Fact Sheet Worksheets for Zoning and Special Use
8. Griffin | Williams LLP Letter of Compliance and Protest
9. Digital Submission
10. Application Fee and Fine Payment

I (we) certify that this application and the documents submitted with it are true and correct to the best of my (our) knowledge and belief.

J. E. B. G. President
x _____
Applicant

8-31-18
Date

J. E. B. G. President
x _____
Owner of Record

8-31-18
Date

FINDINGS OF FACT SHEET – SPECIAL USE*

- The Kane County Zoning Board is required to make findings of fact when considering a rezoning (map amendment)
- You should “make your case” by explaining specifically how your proposed rezoning relates to each of the following factors.

Burke Storage, Inc.
Applicant

September 4, 2018
Date

* Applicant makes this application for special use under protest. Further, Applicant does not seek a rezoning (or map amendment), but rather seeks a “special use” within the existing B3 District. Under Illinois law, a special use is a type of property use that is expressly permitted within an existing zoning district as long as the special use meets certain conditions and criteria set forth in the zoning ordinance. *City of Chicago Heights v. Living Word Outreach Full Gospel Church and Ministries, Inc.*, 196 Ill.2d 1 (2001).

1. How does your proposed use relate to the existing uses of property within the general area of the property in question?

The proposed special use for outdoor storage seeks to utilize the Property “as-is,” consistent with the Property’s existing and historical uses for outdoor storage. The uses within the general area of the Property include the following:

North: Commonwealth Edison easement and railroad right-of-way.

East: F1 District parcel and residence owned by the applicant’s principle.

South: Homeowners Association open space and single family residential homes.

West: Vacant residential development land and multi-family and single family homes.

The outdoor storage uses predate the residential uses to the South and West.

2. What are the zoning classifications of properties in the general area of the property in question?

The properties immediately adjacent to the Property are zoned as follows:

North: B3

East: F1

South: Residential PUD (Elgin)

East: B1 and Residential PUD (Elgin)

3. How does the suitability of the property in question relate to the uses permitted under the existing zoning classification?

The Subject Property is ideally suited to the proposed use. The Property itself is hidden in an off-the-beaten-path location and the outdoor storage component of the Property is largely

shielded on the South and West by existing structures. As set forth in the Letter of Compliance and Protest, it is Applicant's position that the outdoor storage use is already a permitted use under the B3 District. However, to the extent it is permitted only as a special use, the property is uniquely suited for the intended use.

4. What is the trend of development, if any, in the general area of the property in question?

The most recent trend of development (10-15 years) in the area is residential PUD by way of annexations into the City of Elgin. The property immediately to the South was annexed into the City of Elgin as part of the Bowes Creek development. The property immediately to the West was annexed into the City of Elgin as part of the Stonebrook development. Both annexations post-date the Property's use for outdoor storage.

5. How does the projected use of the property, relate to the Kane County 2040 Land Use Plan?

The Property is identified in the 2040 Plan as Commerce/Employment. This category encompasses the former categories which included Crossroad Commercial, Office/Research and Industrial, Light Industrial and Warehousing. The current and intended use as an outdoor storage location is in keeping with the 2040 plans designation.

FINDINGS OF FACT SHEET – SPECIAL USE

- *The Kane County Zoning Board is required to make findings of fact when considering a special use.*
- *Special Uses shall be considered at a public hearing before the Zoning Board of Appeals. In its report of findings of facts, recommendations shall be made to the County Board following the public hearing. The Zoning Board **will not** recommend a special use **unless** the following items are addressed:*

Burke Storage, Inc.
Applicant

September 4, 2018
Date

6. Explain how the establishment, maintenance or operation of the special use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare.

Illinois law provides that the identification of a use as a “special use” within a zoning category constitutes a “local legislative determination that the use, as such, is neither inconsistent with the public’s health, safety, morals or general welfare, nor out of harmony with the town’s general zoning plan.” *City of Chicago Heights v. Living Word Outreach Full Gospel Church and Ministries, Inc.*, 196 Ill.2d 1 (2001).

The existing uses for outdoor storage pre-date the more recent adjacent uses for residential development and are neither detrimental nor dangerous to the public health, safety, morals, comfort or welfare.

7. Explain how the special use will not be injurious to the use, enjoyment and value of other property in the immediate vicinity.

As set forth above, the existing uses for outdoor storage pre-date the more recent adjacent uses for residential development. Moreover, the special use application will limit the outdoor storage use to the B3 parcel which is the subject of the application, and will therefore present a reduction in the intensity of use relative to the historical use at the Property and adjacent parcels.

8. Explain how the special use will not impede the normal, orderly development and improvement of the surrounding property.

The special use will not impede the normal, orderly development and improvement of the surrounding property because there is no intention to modify the site, and it in no way impacts traffic or other concerns in relation to the adjacent properties.

9. Will adequate utility, access roads, drainage and other necessary facilities be provided? Please explain:

Adequate utilities, access roads, drainage and other necessary facilities already exist at the Property and will not be modified, except to eliminate an encroachment on the property to the south.

10. Will adequate measures be provided for ingress and egress so designed to minimize the traffic and congestion? Please explain:

Adequate means of ingress and egress already exist and no changes are envisioned.

11. Will the special use conform to the regulations of the district in which it is located? Please explain:

To the extent the uses do not already conform to the B3 District (as maintained by the applicant), the proposed special use will ensure conformance with the provisions of the B3 District.

Griffin | Williams LLP

*Attorneys and
Counselors at Law*

MEMORANDUM

Patrick M. Griffin

TO: Mark VanKerkhoff
Kane County Development Dept.

FROM: Patrick M. Griffin

DATE: September 3, 2018

SUBJECT: Burke Storage, Inc. - Letter of Compliance and Protest
9N533 Nestler Rd., Elgin, IL
PINS: 05-25-178-006; 05-25-178-008

Direct: (630) 524-2566
pgriffin@gwillplaw.com

Mr. VanKerkhoff:

In connection with my client's special use application for the above-referenced Property, please allow this Memorandum to serve as our protest against the County's position that the existing uses at the Property do not already comply with the provisions of the County's B3 - Business zoning district.

Background

The applicant, Burke Storage, Inc., purchased the Property from Norwood Storage, Inc. on May 13, 1999. That transaction was memorialized in the deed recorded in the Office of the Kane County Recorder as Document No. 1999K051125. At the time of the transaction, and for many years prior, Norwood Storage utilized the Property (as well as adjacent property to the east) for, among other things, indoor and outdoor storage of vehicles. That historical usage is evidenced by the photographs attached hereto as Exhibit A which track the outdoor storage intermittently from March 1993 through March 2018.

On August 26, 2003, James and Nancy Burke acquired the adjacent F1 parcel to the east where they currently reside. As you are aware, the F1 parcel was the subject of a recent County enforcement action concerning, among other things, the ability to maintain outdoor storage of vehicles on the F1 parcel. After receiving notice from the County relative to the F1 parcel, and after consultation with my office, my client undertook to voluntarily comply with removal of the stored vehicles from the F1 parcel, and that matter has been satisfactorily resolved.

During the pendency of the F1 action, the County also initiated a similar enforcement action as to the B3 parcel – maintaining that the outdoor storage of vehicles is not an allowable use under the B3 zoning district absent a special use permit. Specifically, the County’s position is that such a special use is required under Section 25-10-4-2(O), which allows for a special use in the B3 district for “Yards and buildings for the storage of *equipment and materials* if not hazardous to life and neighboring property.” (emphasis added) Respectfully, and for the reasons set forth below, we believe the County’s position is not supported by a proper reading of the Zoning Ordinance. Rather, we believe that the existing (and longstanding) uses, which include outdoor storage of vehicles that are neither for sale nor for rent, are permitted uses in the B3 District, without the need for a special use permit.

The Kane County Zoning Ordinance

Article X (Section 25-10) of the Kane County Zoning Ordinance governs Business Districts. Set forth below are the relevant provisions of Section 25 as they relate to the outdoor storage of vehicles.

B1 District

Section 25-10-2-1(J) (Permitted Uses)

“Garage buildings for the repair, servicing, storage, sale or rental of new or used motor vehicles and vehicle parts, but not including ‘auto wrecking yards’ as herein defined, and not including open air lots for *parking or display for sale or rental of motor vehicles.*” (emphasis added)

Section 25-10-2-1(M) (Permitted Uses)

“*Motor vehicle parking lots* not including truck storage or truck terminals.” (emphasis added)

B3 District

Section 25-10-4-1(Permitted Uses)

“In the B3 district, the following uses are permitted, subject to the performance standards as set forth in Section 25-11-1-5 of this chapter.

Section 25-10-4-1(A) (Permitted Uses)

The uses permitted in the . . . B1 and B2 districts.

Section 25-10-4-2(I) (Special Uses in the B3 District)

“Open air lots for the *parking and display for sale or rental* of motor vehicles in self-propelling and self-operative condition and for *parking or display for sale* of trailer coaches.” (emphasis added)

Section 25-10-4-2(O) (Special Uses in the B3 District)

“Yards and buildings for the storage of *equipment and materials* if not hazardous to life and neighboring property.” (emphasis added)

These provisions appear to set forth a straightforward framework whereby the Ordinance differentiates between properties that are zoned for the storage of vehicles, generally, and those that are zoned for the parking and display of vehicles that are for sale or for rent.

For example, in the B1 District, Section 25-10-2-1(J) expressly *precludes* zoning for parking or displaying motor vehicles for sale or rent, while Section 25-10-2-1(M) expressly allows such zoning for vehicles, generally, except as it relates to “trucks and truck terminals” as defined in the Ordinance. Similarly, in the B3 District, Section 25-10-4-1(A) incorporates by reference the permissible outdoor storage of vehicles, generally, as allowed in the B1 District, but through Section 25-10-4-2(M) expressly requires a special use permit for vehicles when they are parked and displayed for sale or for rent. Notably, the existing outdoor storage usage at the Property is exclusively for storage purposes, and none of the vehicles are for sale or rent.

The applicant respectfully disagrees with the County’s position that the outdoor storage of vehicles is intended to be governed by the special use provisions set forth in Section 25-10-4-2(O) which does not address “vehicles” at all, but which instead is expressly addressed only to “equipment and materials.”

Application Under Protest

Notwithstanding the foregoing, my client has agreed to submit the special use application to which this letter is attached in order to amicably resolve these matters with the County and to obtain a special use permit which will allow the continued outdoor storage uses on the Property, consistent with the historical uses. In doing so, my client does not intend to waive – and instead expressly reserves – any rights it may have to maintain its outdoor storage uses without a special use permit. Such rights will only be waived as part of any approved special use permit.

We look forward to working with the County on this application.

October 22, 2018

Burke Storage, Inc.

Special Use in the B-3 Business District to allow for outdoor storage of vehicles and equipment

Special Information: In the early 1980's, a Special Use was granted on the western portion of the property for a grain storage business. Over the years, that business was replaced by a vehicle storage yard. The property does not have a Special Use for this particular business and is in violation. This vehicle storage business has generated complaints from neighboring property owners. The petitioners would like to continue this business and are requesting a Special Use to bring the business violation into conformance with the Zoning Ordinance.

Analysis: The Kane County 2040 Land Resource Management Plan designates this area as Commerce/Employment. This new combined category reflects the need for non-residential land uses to be centers for commerce and to generate local employment opportunities. The suitability of various uses within this category for specific locations depend on the trend and character of the adjacent land uses, availability of infrastructure and the economic development needs of the local community.

Staff recommended Findings of Fact:

1. The Special Use will bring the existing business use into conformance with the Zoning Ordinance.

Attachments: Location Map
 Township Map
 Petitioner's finding of fact sheet

LEGAL DESCRIPTION

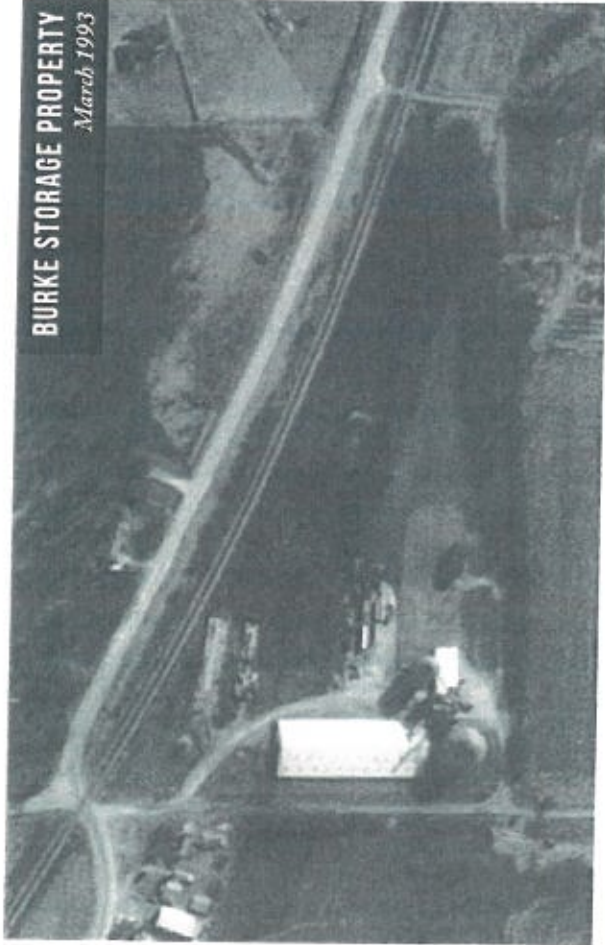
PARCEL ONE (05-25-178-006):

THAT PART OF THE EAST $\frac{1}{2}$ OF THE NORTHWEST $\frac{1}{4}$ OF SECTION 25, TOWNSHIP 41 NORTH, RANGE 7, EAST OF THE THIRD PRICIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF THE EAST $\frac{1}{2}$ OF SAID NORTHWEST $\frac{1}{4}$; THENCE NORTH 0 DEGREES, 39 MINUTES, 0 SECONDS EAST ALONG THE WEST LINE OF THE EAST HALF OF SAID NORTHWEST $\frac{1}{4}$, 501.80 FEET; FOR THE POINT OF BEGINNING, THENCE SOUTH 80 DEGREES, 55 MINUTES 0 SECONDS EAST, 209.39 FEET; THENCE NORTHWESTERLY ALONG A LINE FORMING AN ANGLE OF 162 DEGREES, 51 MINUTES, 18 SECONDS TO THE LEFT WITH THE PROLONGATION OF THE LAST DESCRIBED LINE OF 102.69 FEET; TO AN ANGLE POINT; THENCE NORTHWESTERLY ALONG A LINE FORMING AN ANGLE OF 20 DEGREES, 7 MINUTES, 10 SECONDS TO THE RIGHT WITH A PROLONGATION OF THE LAST DESCRIBED LINE 163.93 FEET TO A POINT OF THE WEST LINE OF SAID EAST $\frac{1}{2}$ OF THE NORTHWEST $\frac{1}{4}$ OF SECTION 25, WHICH IS 130.95 FEET NORTHWESTERLY OF THE POINT OF BEGINNING; THENCE SOUTH ALONG THE WEST LINE OF SAID EAST $\frac{1}{2}$ OF THE NORTHWEST $\frac{1}{4}$ OF SECTION 25, A DISTANCE OF 130.95 FEET TO THE POINT OF BEGINNING, IN THE TOWNSHIP OF PLATO, KANE COUNTY, ILLINOIS.

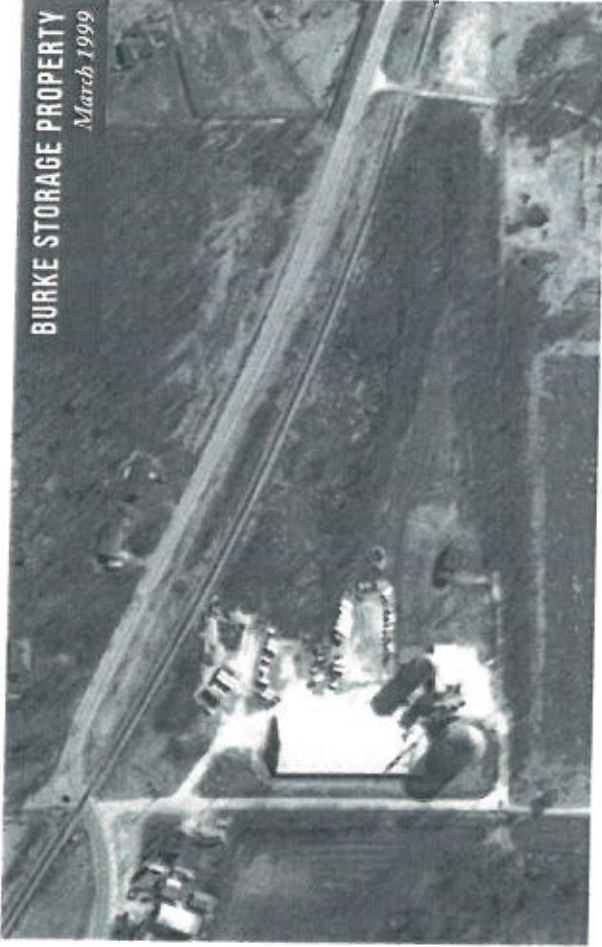
PARCEL TWO (05-25-178-008):

THAT PART OF THE EAST $\frac{1}{2}$ OF THE NORTHWEST $\frac{1}{4}$ OF SECTION 25, TOWNSHIP 41 NORTH, RANGE 7, EAST OF THE THIRD PRICIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF THE EAST $\frac{1}{2}$ OF THE NORTHWEST QUARTER OF SAID SECTION 25; THENCE NORTH 00 DEGREES, 39 MINUTES 00 SECONDS EAST ALONG THE WEST LINE OF THE EAST $\frac{1}{2}$ OF SAID NORTHWEST $\frac{1}{4}$ 501.80 FEET; THENCE SOUTH 80 DEGREES, 55 MINUTES, 0 SECONDS EAST 209.39 FEET; THENCE SOUTHEASTERLY ALONG A LINE FORMING AN ANGLE OF 17 DEGREES, 08 MINUTES, 42 SECONDS TO THE RIGHT WITH THE PROLONGATION OF THE LASTDESCRIBED LINE 130.67 FEET; THENCE SOUTH 09 DEGREES, 39 MINUTES, 00 SECONDS WEST ALONG A LINE PARALLEL WITH THE WEST LINE OF THE EAST $\frac{1}{2}$ OF SAID NORTHWEST $\frac{1}{4}$ 411.44 FEET TO THE SOUTH LINE OF SAID EAST HALF; THENCE WEST ALONG SAID SOUTH LINE 325.00 FEET TO THE POINT OF BEGINNING, IN THE TOWNSHIP OF PLATO, KANE COUNTY, ILLINOIS.

BURKE STORAGE PROPERTY
March 1993



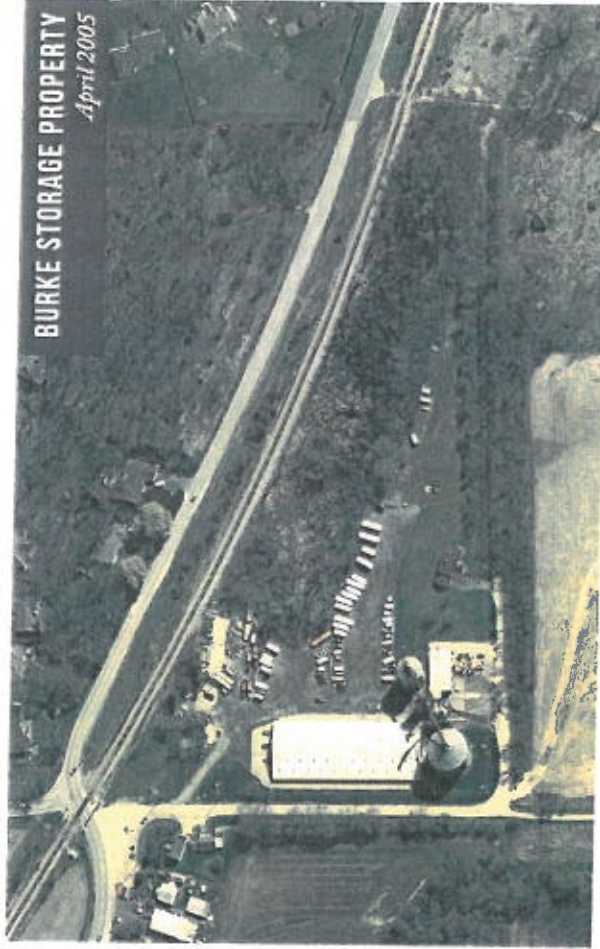
BURKE STORAGE PROPERTY
March 1999



BURKE STORAGE PROPERTY
March 2002



BURKE STORAGE PROPERTY
April 2005



APRIL 2005
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BURKE STORAGE PROPERTY

BURKE STORAGE PROPERTY
October 2007



BURKE STORAGE PROPERTY
October 2008



BURKE STORAGE PROPERTY
October 2009



BURKE STORAGE PROPERTY
June 2010



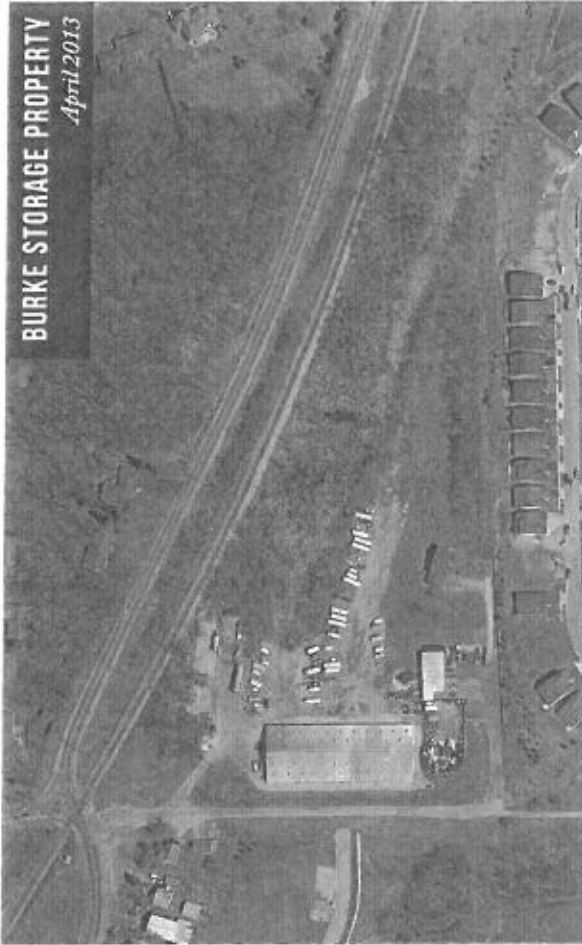
BURKE STORAGE PROPERTY

PHOTO COURTESY OF BURKE STORAGE

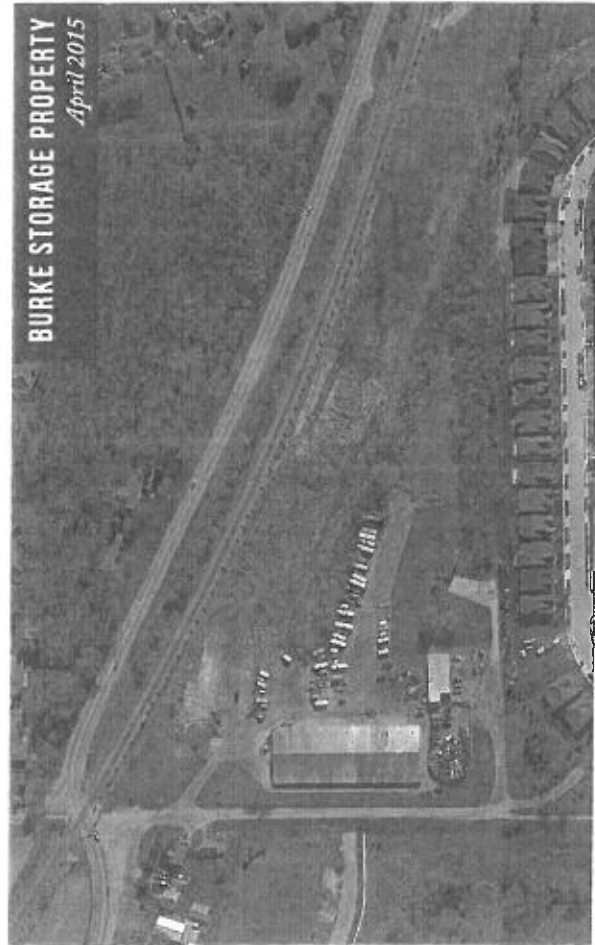
BURKE STORAGE PROPERTY
March 2012



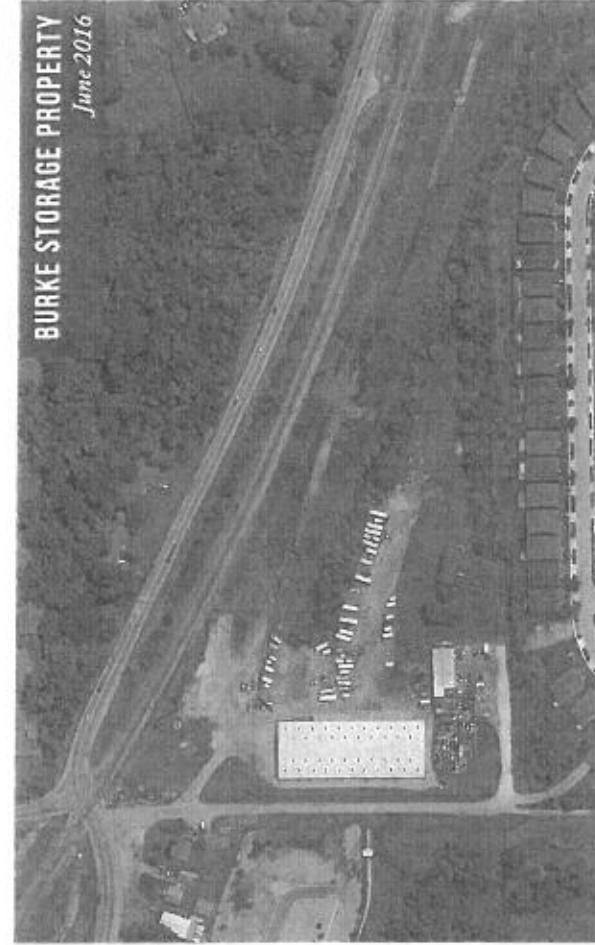
BURKE STORAGE PROPERTY
April 2013



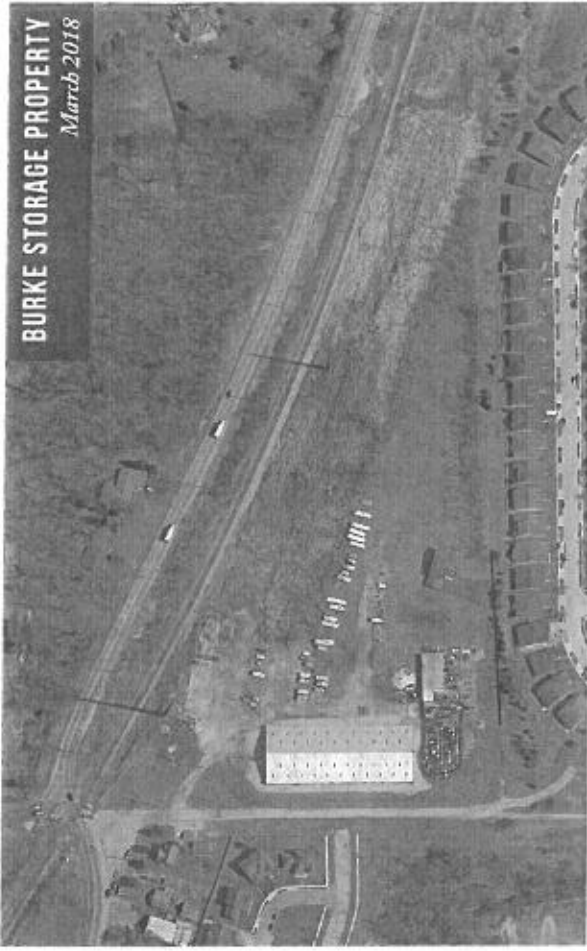
BURKE STORAGE PROPERTY
April 2015



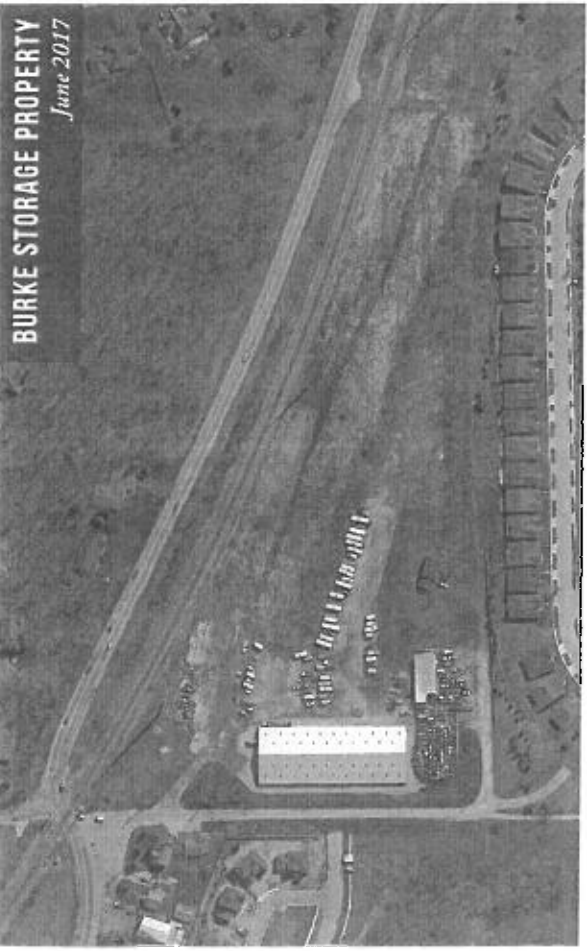
BURKE STORAGE PROPERTY
June 2016



BURKE STORAGE PROPERTY
March 2018



BURKE STORAGE PROPERTY
June 2017

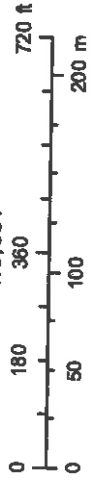


Map Title



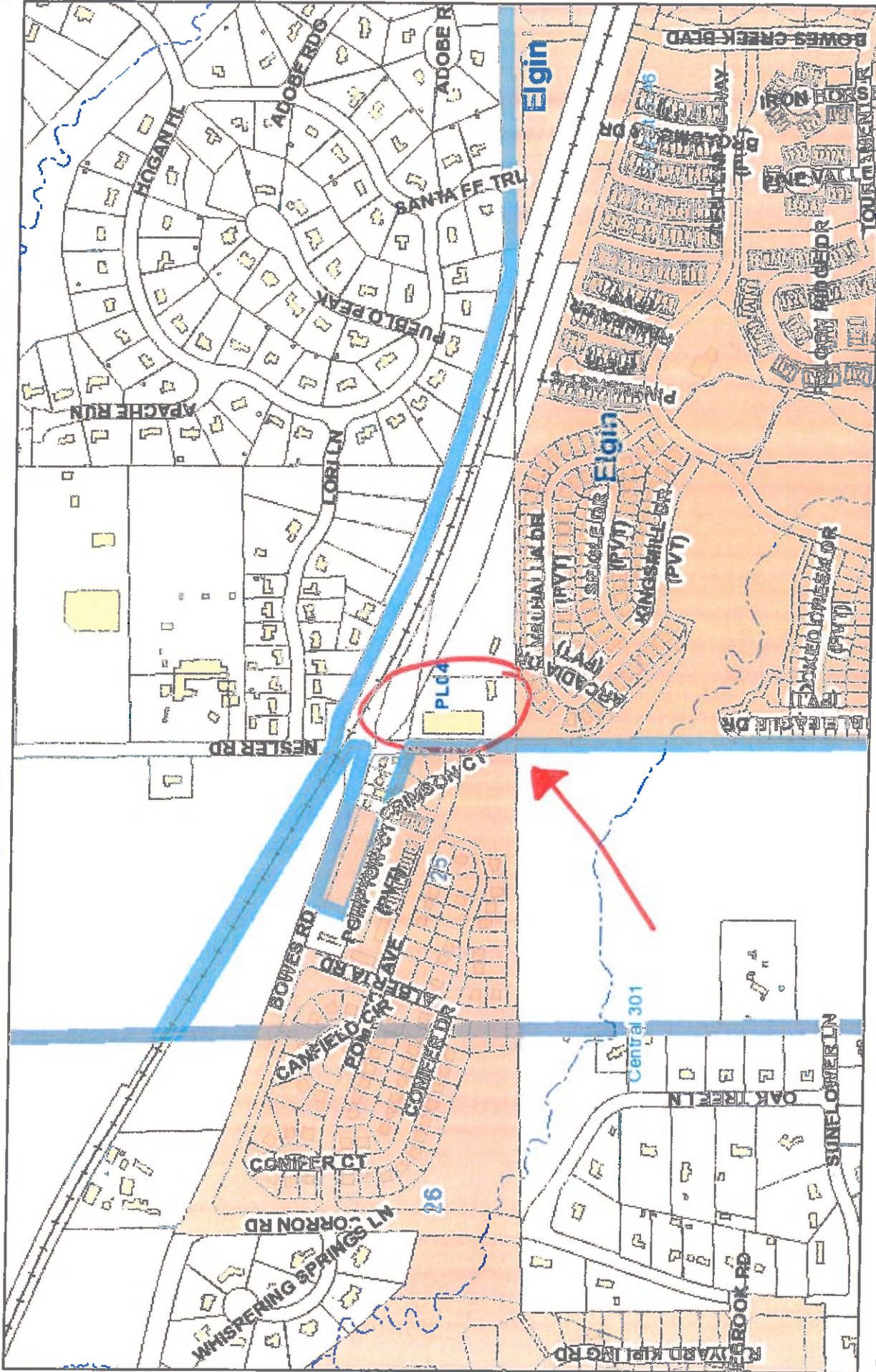
October 3, 2018

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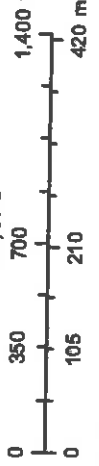
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Map Title



October 3, 2018

1:7,675



GIS-Technologies

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