

**WHITLEY COUNTY ADVISORY PLAN COMMISSION  
STAFF REPORT**

**20-W-REZ-4      ZONE MAP AMENDMENT**  
Brian Emerick  
Various parcels in Jefferson Township

**JUNE 17, 2020  
AGENDA ITEM:    3**

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**SUMMARY OF PROPOSAL**

Current zoning:    AG, Agricultural  
Proposed zoning:   AGP, Agricultural Production  
Property area:      799± acres

The petitioner, owner or agent of the subject property area, is requesting a zone map amendment for four parcels located Sections 10, 15, and 22 in Jefferson Township, as shown on the attached map. The requested zoning for the subject property is AGP, Agricultural Production.

***Existing zoning classifications and land uses***

Currently, the subject property is zoned AG, Agricultural, and is primarily used for crop cultivation. There are a few stands of trees, totaling about 42 acres. Dwellings are located on the properties at 5355 E. 700S and 5352 E. 700S; these appear to be rentals. Farm buildings are also located on the properties, but no confined feeding operations (CFOs) are currently located on any of these properties, nor is staff aware of any other livestock raising on the properties.

Nearly all surrounding properties within a mile radius of the subject properties are zoned AG. There is one area of IPM, Industrial Park/Manufacturing and GC, General Commercial nearby to the north side of SR 14.

***Proposed land use***

The petitioner is requesting the zoning amendment to make use of the AGP district for agricultural operations; the petitioner has indicated that there would be no foreseeable change in the current land use of crop production.

As stated to staff, the petitioner intends to change the zoning classification in order to reflect the desirability of this land and vicinity for solely agricultural uses, as opposed to the existing AG district that allows for agriculture and a variety of other uses.

***Zoning code criteria***

For reference, AGP permits a far smaller list of uses than AG; however, it does allow for both Class 1 and Class 2 CFOs without need for a Special Exception approval. A Class 3 CFO would be permissible with a Special Exception.

With the code changes adopted in 2018, the minimum contiguous area for rezoning to AGP is 40 acres. An area of at least 80 acres would be required to be zoned AGP if a Special Exception were sought for a Class 3 CFO. The minimum contiguous area for these parcels exceeds 80 acres.

The zoning code requires a minimum 20-acre parcel. Since all of the parcels included in the petition exceed 20 acres, none would be considered legal nonconforming. Other standards also appear to be compliant.

***Previous petition***

In 2019-W-REZ-2, the subject properties were included in a larger rezoning request. That request was similarly for AG to AGP, but included several other parcels located east of CR 600 East to the county line. The Commission, by a vote of 5-4, forwarded an unfavorable recommendation to the County

Commissioners. After some discussion, that petition was withdrawn by the petitioner without official action by the Commissioners.

### **REVIEW CRITERIA**

Indiana Code §36-7-4-603 and Section 12.2(F) of the zoning ordinance state the criteria listed below to which the Commission must pay “reasonable regard” when considering amendments to the zoning ordinance. Staff’s comments are under each criterion.

#### **1. The most recently adopted Comprehensive Plan;**

The Land Classification Map of the 2011 Comprehensive Plan “depicts the County’s land use and development form goals (land classification) in a conceptual manner. It should not be construed representing precise location of land classifications, but used as a foundation for support and influence with land use and development form decisions and zoning map changes.”

So, while the precise location of these classification areas is conceptual and open for interpretation, particularly around the fringes, the size of the areas involved seem to be large enough to make at least some determination that the subject properties lie within or near areas classified as “Agricultural,” “Transitional Agricultural,” and “Conservation and Open Space.” This table shows the apparent classification of the subject parcels based on the map.

<i>Parcel #</i>	<i>Agricultural</i>	<i>Transitional Agriculture</i>	<i>Conservation &amp; Open Space</i>
92-10-10-000-102.000-006	X		
92-10-10-000-301.000-006	X		
92-10-15-000-101.901-006	X		X
92-10-22-000-201.900-006	X	X	X

In its text, the Comprehensive Plan describes the purpose of the Agricultural classification as “to maintain large, undeveloped areas for productive agricultural uses and intense agricultural-related uses.” The location of this classification is described as “generally away from municipalities and residential development...where there are less than fifteen (15) dwelling units per square mile, low demand for new dwelling sites, and high cost to provide basic services.” Generally 90% of the acreage per square mile is used for agricultural production. Recommended land uses include large farms, CFOs, farmsteads, and other uses.

The Plan describes the purpose of Transitional Agriculture classification as “to allow farmland and residential uses to coincide in appropriate rural areas.” The classification may apply to “areas where a portion of the agricultural land has been divided into tracts that are forty (40) acres or less...where there are more than fifteen (15) dwelling units per square mile, some demand for new dwelling sites, and low cost to provide basic services.” Uses would include small farms, farmsteads, single-family residences, and other uses. New residential lots would be 2-10 acres in area, while up to 50% of the acreage per square mile would *not* be used for agricultural production.

Since the Land Classification Map’s intent can be to show the development *goals* for an area, the current conditions of the mapped classifications in the vicinity of the subject properties do not necessarily align with the textual descriptions. In this case, Sections 10, 15, and 22, in which the subject properties are located, contain 25, 16, and 16 dwellings, respectively, and inclusive of the petitioner’s own two dwellings. By Staff’s calculation, just under 1,700 acres of the 1,948 acres in

these three sections are apparently used for agriculture, roughly 87%. As discussed in more detail below, these properties are likely unfeasible to be developed using public utilities due to issues with distance and potential capacity.

Based on new address assignment records, no new dwellings sites have been established in the three sections containing the subject properties since 2008. Even when including the surrounding adjacent sections, there have been a total of 10 or 11 new home sites established since 2008 within those 15 square miles. For reference, in the years 2004-08, there were approximately 17 new sites established in the same 15 sections. From this data, it appears that in the past twelve years, the favorability of this area for new dwelling sites has fallen. The Plan Commission can reflect on the causes and implications of this shift in demand. Based on these factors, the properties currently seem to align with the Plan's "Agricultural" purpose; even the part shown as "Transitional Agriculture" on the map may be more similar to the "Agricultural" classification.

A point for the Commission's examination may be a general comparison of the uses, purposes, and descriptions of the Plan's classifications with the current zoning districts. Such a comparison seems to indicate that the "Agricultural" classification could include both the AGP and AG zoning districts, while the "Transitional Agriculture" classification seems to be more similar to the AG zoning. Since the subject properties are primarily in the "Agricultural" classification, they may be appropriately zoned as AGP, although the existing AG zoning can also be appropriate in meeting the Plan's recommendations. The small part of "Transitional Agriculture" classification in the subject properties may need to be reexamined given that the actual property usage is more in line with the definition of "Agricultural."

Additionally, the Plan's text recommends to "support well-managed and properly located industrialized farms." At a zoning level, "well-managed" may not be possible for the Commission to consider. However, the Commission should pay reasonable regard to whether this property is "properly located" for the AGP zoning since it would permit Class 2 CFOs by-right. Both the AG and AGP districts permit CFOs and general agriculture; the primary differences are the size of the CFO permitted by-right and the scope of non-agricultural uses permissible within the district. Given the relatively low demand of dwellings in the vicinity of the subject property, permitting Class 2 CFOs by-right may be acceptable. In any case, the Commission should determine whether the subject property should be considered as "prime" agricultural land and conserved for productive agriculture, or whether the property is better to continue as generally agricultural with allowances for other uses.

Returning to the Conservation and Open Space classification, in this case that appears to be the floodplains of two creeks. The plan describes conserving these areas to "protect and enhance environmental features." Practically applying this recommendation to these properties would mean restricting development in the floodplain area, which is already regulated by the floodplain section of the zoning code. So the intended use of the subject property for agriculture would be in line with the Plan.

Finally, there is an upcoming Comprehensive Plan update due to be completed in early 2021. The expectation is that the definitions and maps for the land use recommendations may change, but of course any possible changes are tentative and still months away.

**2. The current conditions and the character of current structures and uses in each district;**

Over the past 50 years, Jefferson Township has been subject to land splits, subdivisions, and large-

lot residential development. Most of these splits have occurred to the east of CR 600 East, but in the immediate vicinity of the subject parcels, there are still 4-5 minor subdivisions. The most recent of which, Arrowhead Subdivision Section 2, was recorded earlier in 2020. Within 500 feet of these properties lie 30 residential addresses; within ¼ mile, there are 74 addresses. Nearly all are located along road frontages. As mentioned above, the majority of these residences are more than 12 years old. That said, nearly 90% of area of the three sections in which the subject properties are located is used agriculturally, and 20% of the parcels exceed 40 acres in area, while 37% are larger than 10 acres.

The intent of the AGP zoning district is to “provide a land use category for intensive agricultural uses and to recognize certain needs of the agricultural community.” Further, the Plan Commission “should strive to protect this district from conflicting land uses...and any use that may inflict significant environmental impacts or be injurious to neighbors.” The intent further states that the district is to protect an AGP-zoned property from development that may object to or conflict with agricultural operations. When considering the current conditions and character of current uses in the area, it seems that placement of AGP should be in areas that are not already at least moderately-fractionalized with smaller residential tracts. Otherwise, the district may actually be creating the conflict that the district is intended to avoid. So the Commission should examine the subject properties as to whether AGP zoning regulations would complement the existing area or if they would be an insertion into an area of incongruous uses.

**3. The most desirable use for which the land in each district is adapted;**

The northern parcel in the request lies in proximity to existing sanitary sewer infrastructure and is located on a major roadway (SR 14). However, due to the topography, size, and shape of the parcel, and the uncertain available capacity in that sewer, the extension of sewer to the bulk of that parcel is likely unfeasible without significant expense or more widespread development. The other parcels in the request are a half-mile to a mile away from known sanitary sewer infrastructure, making the parcels unsuited for major development in the foreseeable future. Further, the lack of public water utility in the area also impedes any but low-density development. As mentioned above, while there have been small splits and minor platting in the area of the subject parcels, the majority of the area has been and is used for agriculture. These factors seem to suggest that agriculture is a desirable use here.

Agriculture production can be viewed as an ultimate land use in itself, rather than serving a placeholder for other types of development. If the Commission considers this applicable here, the preservation of the large tracts of land proposed in the request may be most desirable to preserve them for long-term farming activities.

**4. The conservation of property values throughout the jurisdiction;**

While the petitioner has indicated no intention to build a CFO of any size in the foreseeable future, the change of zoning to AGP would permit, by-right, larger CFOs than those permitted under the current AG zoning. Such uses may have negative effects on property values in throughout the jurisdiction if a CFO is poorly located, not well-managed, and if any adverse performance effects are not mitigated. If the Commission finds that the location is well-suited for AGP, the management and mitigation of any effects would likely be secondary and so would also have minimal effects on property values.

Further, since AGP permits a smaller overall palette of uses than the existing AG district, concerns about certain uses already permissible in AG (such as kennels, auto repair shops, machine shops, hair salons, etc.) affecting surrounding land values could be lessened. AGP, by its minimal permitted uses, serves as a check on residential development, which some property owners may find more injurious to adjacent property values than the perpetuation of agricultural uses.

Because property values are somewhat subjective according to market trends, the effects of a single rezoning request are usually somewhat indeterminate. In this case, since the rezoning is being sought to maintain existing land uses rather than allow a new set of uses, it seems likely that rezoning to AGP would have minimal impact on property values throughout the jurisdiction.

**5. Responsible development and growth;**

The Commission must determine if the AGP district request is an enhancement to or preservation of the existing agricultural uses in line with the recommendations of the Comprehensive Plan or whether it may stifle desirable land uses that are allowable under AG. Given the location, surrounding uses, and minimal availability of public utilities, the subject properties seem to be unlikely to be suitable for non-agricultural development in the near future.

As has been previously discussed by the Commission, the AGP district may also be a method to preserve large tracts of property for more intense development in the future, beyond the planning horizon of the current Comprehensive Plan (roughly 20-plus years). In the future, such conserved parcels may be developed more intensely/densely than what is currently recommended by the Plan, which can be smarter growth than to permit low-density, long-lasting residential developments of 2- to 10-acre parcels. Further, while the areas to the east of 600 East may be seen as suited for non-agricultural development in the near future, the subject properties are at and beyond the fringe of what is likely to be developed within the planning horizon. So applying these concepts to this rezoning request, the subject parcels could be an example of defining a “line in the sand” or a “growth boundary” especially since they are already designated for continuation of agricultural operations by the Comprehensive Plan.

**6. The public health, safety and welfare.**

Being that the uses permitted in the requested AGP zoning are already mostly permitted in the existing AG district, there would not be much change in effect on the public health, safety, and welfare. The difference in size of permitted CFOs in AGP versus AG could be argued by some to have a different impact on public health, although regulations and permitting requirements are in place through IDEM that could be expected to mitigate health impacts. Again, the petitioner has not indicated that any CFO would be constructed, but would use the AGP district to designate the property as well-suited for agricultural uses.

Date report completed: 6/11/20

**PLAN COMMISSION ACTION**

Motion By:

Second By:

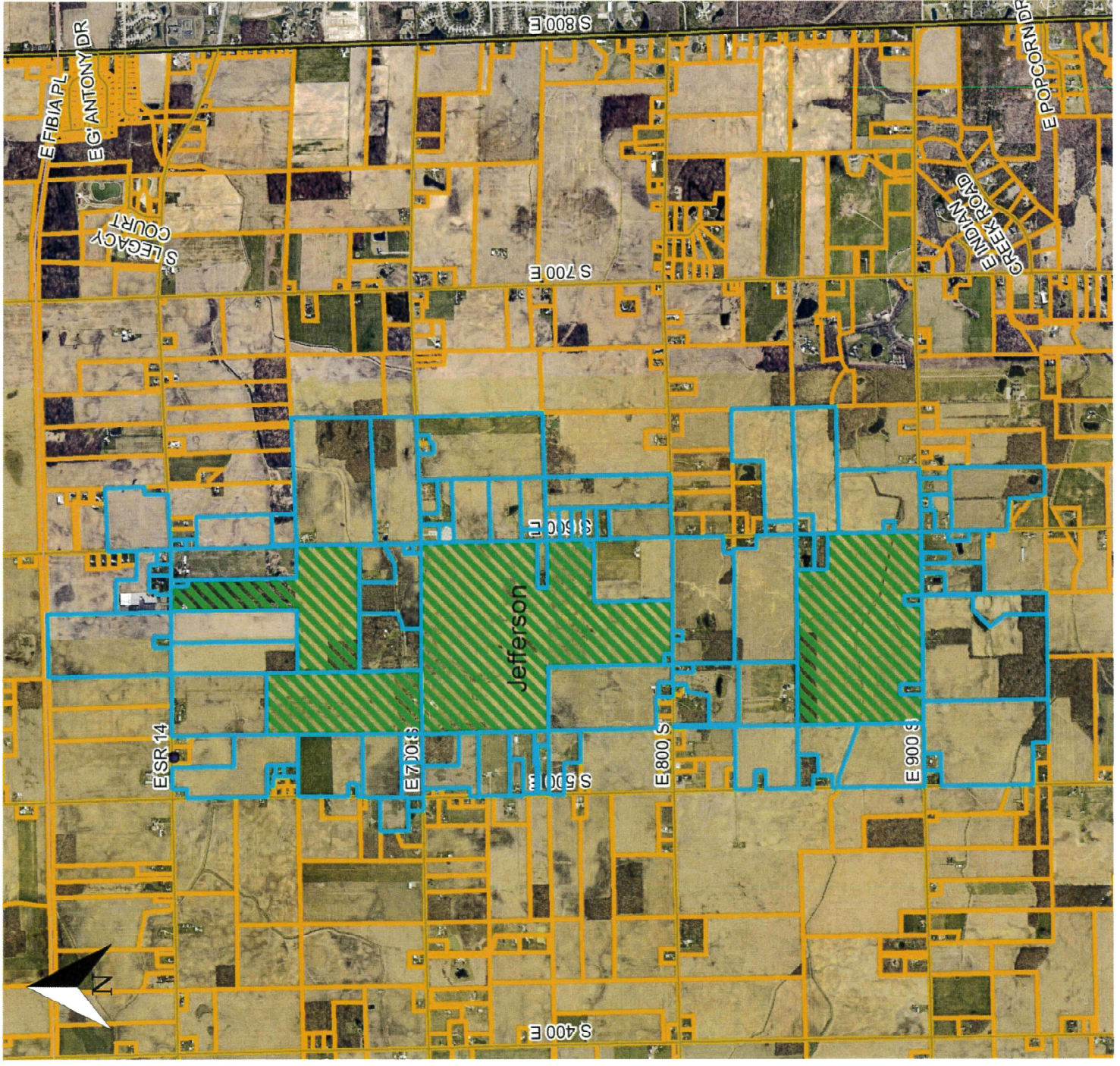
<b>Vote:</b>	<b>Hodges</b>	<b>Johnson</b>	<b>Mynhier</b>	<b>Western</b>	<b>Wolf</b>	<b>Wolfe</b>	<b>Woodmansee</b>	<b>Wright</b>	<b>Vacant</b>
<i>Yes</i>									
<i>No</i>									
<i>Abstain</i>									

## 20-W-REZ-4

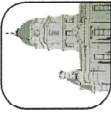
### Surrounding Property

#### Owner Map

- Properties identified with green lines are properties proposed to be rezoned from AG to AGP.
- Properties identified with a blue outline are adjacent property owners.



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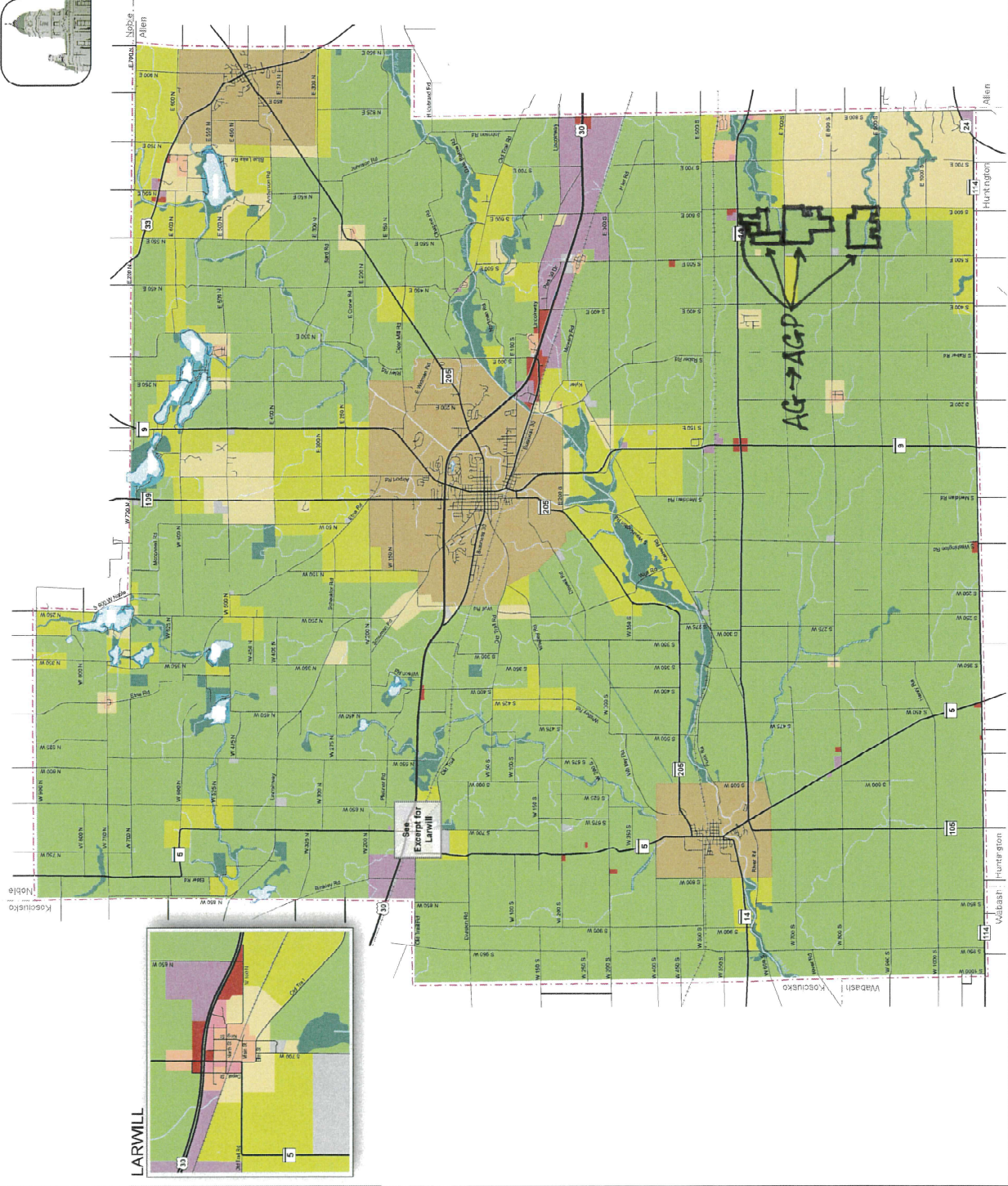
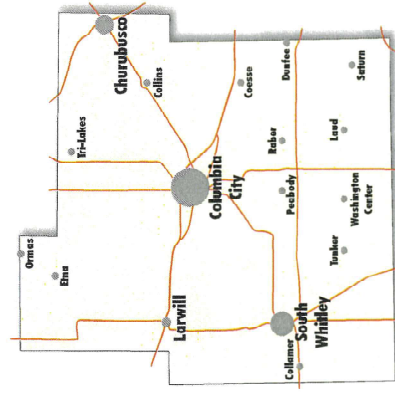


# Land Classification Map Whitley County, Indiana

## MAP LEGEND

- Conservation and Open Space
- Agricultural
- Transitional Agriculture
- Rural Residential
- Residential
- Lake Residential
- Government and Institutional
- Village Commercial
- General Commercial
- Industrial
- Extra-Territorial Jurisdiction
- County Boundary

## COMMUNITY IDENTIFICATION



## Statement from petitioner

June 1, 2020

To our Jefferson Township Neighbors:

We are seeking the re-zoning of 4 parcels of land including about 800 acres from the current AG zoning to AGP zoning. These properties are all within the 2009 Comprehensive Plan area designated to be for Agricultural use and are between State Road 14, 900 South, 500 East and 600 East. Of the 1920 total acres in the 3 square mile area, our properties represent 42% of the total acreage. Our family's desire is to protect and preserve large tracts of land for agricultural use and to enhance the recognition that these properties are solely for agricultural use for generations to come. While we are not trying to dictate what others can do on their land, personally, we are not interested in splitting up or developing these parcels of land into small hobby farms, housing additions or other non-agricultural uses. AGP zoning is the only zoning district in Whitley County that preserves and protects large tracts of farmland for agricultural uses. We believe the AGP zoning is a tool to mitigate future conflicts between the pressures of residential development and agriculture. We plan to continue farming this land as we have in the past and to continue improving the soil health, drainage and overall condition of our properties. For those who value the rural setting and privacy, AGP zoning will ensure that our property stays as it is, farmland. AGP zoning does much more to preserve the rural agricultural characteristics of the neighborhood than AG. While many special exception uses outside agriculture are allowed in AG zoning, very few uses outside agriculture are allowed within the AGP zoning. AGP zoning is also good for those interested in conservation, preservation of wetlands, wildlife refuges and hunting lands.

Sincerely,

A handwritten signature in black ink that reads "Brian Emerick". The signature is written in a cursive, slightly slanted style.

Brian Emerick

RECEIVED

JUN 10 2020

6/9/2020

## Joint Planning & Building Department

On the night of this meeting I am out of town. So I want to state my opinion

I see no reason for Brian Emrich to change the zoning. If he wants it to stay agricultural then all he has to do keep it that way he owns it.

We have seen him try to do this before so he can build some giant hog or cattle building. It was turned down before and I think it should be turned down again.

He has no right to change every thing to suit is greedy attitude.

He never does anything unless its going to benefit him.

He ~~took~~<sup>owns</sup> 1000 of acres and he took 35 acres away from a small farmer. He only think of him self.

Thank You

Nelson Byrd