

**WHITLEY COUNTY ADVISORY PLAN COMMISSION  
STAFF REPORT**

**21-W-REZ-1      ZONE MAP AMENDMENT**

Marquell-Devries Properties, LLC

8.2± acres, west side of 800 East, approx. 10020 S. 800 East

**JANUARY 20, 2021**

**AGENDA ITEM: 1**

**SUMMARY OF PROPOSAL**

Current zoning: AG, Agricultural

Proposed zoning: RR, Rural Residential

Property area: 8.248± acres

The petitioner, owner of the subject property area, is requesting a zone map amendment for 8.248± acres located in Jefferson Township on the west side of 800 East, approximately 800' north of Lakewood Drive. The property is addressed 10020 South 800 East, but the house and outbuildings were recently demolished. The requested zoning for the subject property is RR, Rural Residential.

The petitioner is requesting the zoning amendment to permit the subdivision of the property into two platted lots for residential use. This triggers the need for rezoning out of AG, as explained in more detail below.

Note that a portion of the current parcel is being transferred to an adjacent property owner, making the area requested to be rezoned and subsequently platted approximately 8.248 acres instead of the current 8.56± acres.

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

Currently, the subject area is zoned AG, Agricultural, and was used for a residence and pasture. The house and outbuildings were demolished in the past year.

The following table lists current surrounding zoning classifications and land uses:

	<i>Current zoning</i>	<i>Current land use</i>
<i>North</i>	AG	Residences, woods
<i>East</i>	A1 (Allen Co.)	[800 East], residences (large lot subdivisions)
<i>South</i>	AG	Residences (Lance Acres, Lakewood subdivisions), common area
<i>West</i>	AG	Residences (Lakewood Amended subdivision)

***Proposed land use***

The petitioner has indicated that the property would be sold for residential uses. The property has access to sanitary sewer, but not a public water supply.

***Zoning code criteria***

The parent parcel of 10± acres was split in 2019 to create a one-lot plat (Lance Acres), with an exempt remainder of 8.5± acres. That remainder was exempt due to its dwelling predating 1979; the demolition of the house makes the entire parcel subject to platting. Thus, the proposed two parcels require a two-lot subdivision (proposed in 21-W-SUBD-1). Being as the total platted lots would total three or more since September of 2018, the plat is considered a Major Residential Subdivision. Since Major Residential Subdivisions are not permitted in AG, the petitioner seeks this rezoning.

## **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 most recently adopted Comprehensive Plan is the 2011 Plan. Remember that there is a pending update to this Plan, which may or may not result in changes to the following recommendations. This review criterion specifically references the most recently adopted Plan, not a pending one, so the Commission has grounds to base decisions upon this Plan. However, the Commission may, in its reasonable regard, opt to consider the current Plan obsolete given the pending update, in which case the Commission should generate specific bases for such a decision.

The Land Classification Map of the 2011 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 the classification areas is conceptual and open for interpretation, particularly around the fringes, the location of the subject property appears to be well-within the "Rural Residential" land classification.

In its text, the Comprehensive Plan describes the purpose of the Rural Residential classification as "to allow residential development in rural areas with large lots and large front yard setbacks." The recommended location of the classification is described in part as:

- Rural areas not suitable for productive agriculture
- Areas where there is demand for new dwelling sites and low cost to provide basic services
- Clustered near other residential uses
- Outside of predominantly agricultural or prime agricultural areas

Some of the recommended development features of the classification include:

- Discourage strip development along County roads
- Lots two to ten acres in size
- Nearly all of the acreage is used for non-agricultural uses

Based on these criteria, it appears that the proposed rezoning and proposed use would align with the Plan's recommendations. The RR zoning does permit some agricultural uses, but after the proposed development, the majority of the property area would be considered residential. The property also has access only upon the County road, which is discouraged, but the 8-acre size of the property generally precludes a feasible alternative. Minimization of driveway cuts may be a point of discussion during the subdivision plat review.

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

The property is located among residences and residential subdivisions of varying sizes. Rezoning this property to RR would reflect the proposed residential use and would be compatible with the surrounding area's existing uses.

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

The subject property has long-been used for residential, so the desirability of such a use at this location is well-established. The proposed property split would be somewhat an intensification of the residential use. Generally, given the location within a residential area and the minimal available access from 800 East, residential or other low-intensity uses would likely be the most desirable here.

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

The only effective change proposed here is the addition of one residential lot of about 4 acres in size. This lot would be similar in size to those in the surrounding areas, and it is likely that the new residences would be similar to those in the area as well.

The reduction in permissible land uses of the proposed RR from that permitted in AG may also conserve property values by precluding some uses that could be less compatible with residences in tighter-developed areas.

5. **Responsible development and growth;**

The rezoning would permit additional residential building sites over what is currently in place. The proposed plat would add one additional site, with access to sanitary sewer. This moderate increase in land use intensity on this property has likely negligible effect on the development and growth of the broader area.

Note that "spot zoning" may be a term that is discussed in this case since the RR district would be a literal spot on the zone map. On this property, it may be that rezoning to RR would be responsible development and growth since the zoning district would more closely reflect the current and proposed actual use of the land. The existing AG zoning in the immediately surrounding area may be misleading given the prevalence of solely residential developments.

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

It seems unlikely that the public health, safety, and welfare would be affected by this proposal since the use is not proposed to change from the existing, beyond adding one residence. Any effect of development on the safety of the county road is expected to be reviewed as part of the subdivision plat.

Date report completed: 1/13/21

**PLAN COMMISSION RECORD OF ACTION**

Motion:

By:

Second by:

Favorable recommendation \_\_\_\_\_

Unfavorable recommendation \_\_\_\_\_

No recommendation \_\_\_\_\_

Conditions/Commitments? \_\_\_\_\_

<b>Vote:</b>	<b>Bemis</b>	<b>Emerick</b>	<b>Drew</b>	<b>Green</b>	<b>Hodges</b>	<b>Kurtz-Seslar</b>	<b>J. Wolf</b>	<b>B. Wolfe</b>	<b>Wright</b>
<i>Yes</i>									
<i>No</i>									
<i>Abstain</i>									

# Sauer Land Surveying, Inc.

Joseph R. Herendeen, PS, Co-Principal Indiana Firm Number 048  
Wade N. Hacker, Co-Principal  
Brian W. Jacquay, PS  
John C. Sauer, PS - retired

14033 Illinois Road, Suite C  
Fort Wayne, IN 46814  
TEL 260/469-3300 FAX 260/469-3301  
Toll Free: 877-625-1037  
www.sauersurveying.com

## **CERTIFICATE OF SURVEY**

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This document is a record retracement survey of real estate prepared under IAC 865 Rule 12 in conformity with established practices of surveying and made in accordance with the records on file in the Office of the Recorder of Whitley County, Indiana. The land described exists in full dimensions as shown hereon in feet. It is free from visible encroachments either way across boundary lines unless specifically stated below. Corners were perpetuated as indicated.

### **NEW ORIGINAL REMAINDER DESCRIPTION: (part of a tract described in Document Number 2016030356)**

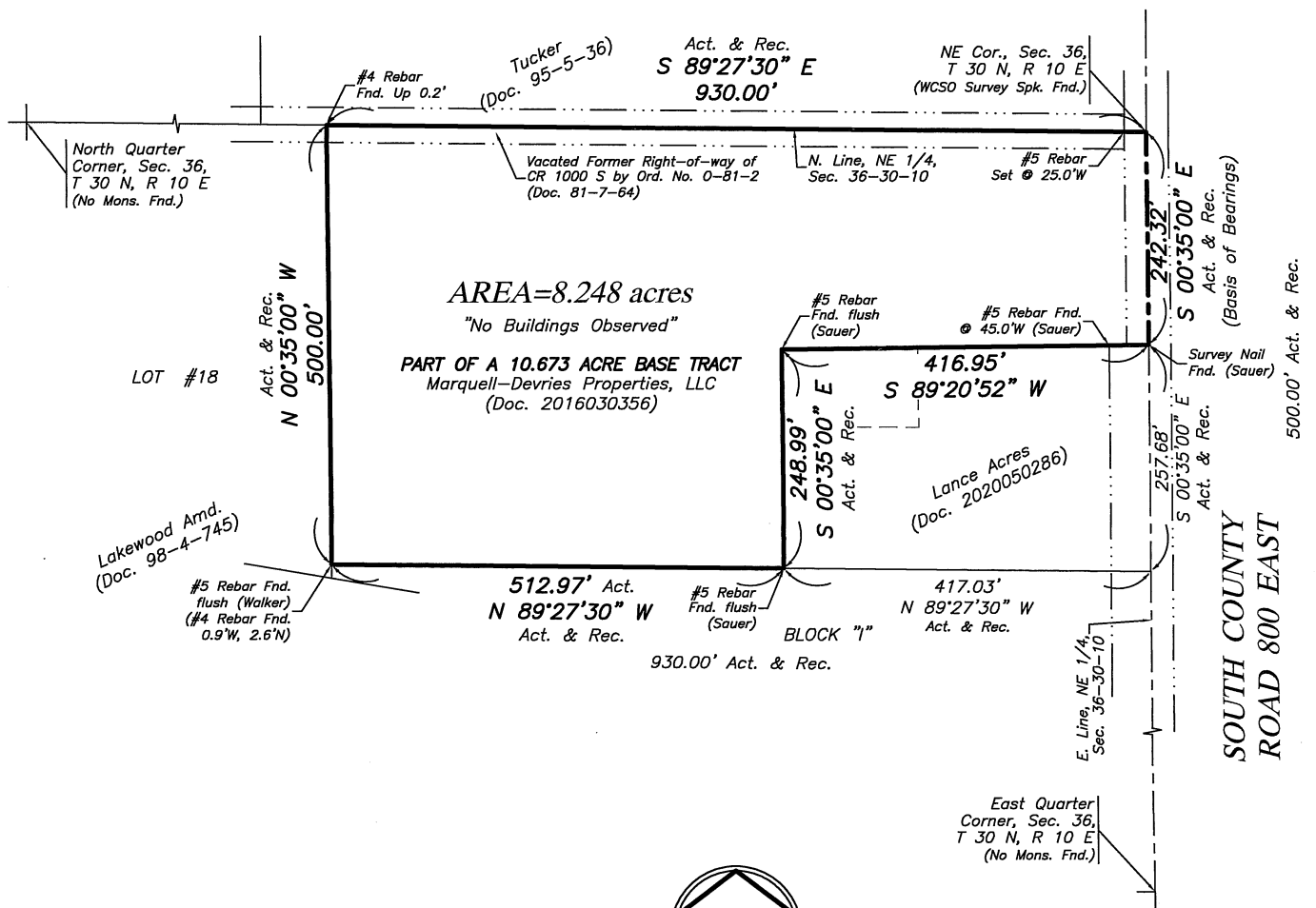
Part of the Northeast Quarter of Section 36, Township 30 North, Range 10 East, Whitley County, Indiana, based on an original survey by Joseph R. Herendeen, Indiana Professional Surveyor Number 20900190 of Sauer Land Surveying, Inc., Survey No. 131-140, dated December 18, 2020, and being more particularly described as follows, to-wit:

Beginning at the Northeast corner of said Section 36, being marked by a Whitley County survey spike; thence South 00 degrees 35 minutes 00 seconds East (deed bearing and basis for all bearings in this description), on and along the East line of said Northeast Quarter, being within the right-of-way of South County Road 800 East, a distance of 242.32 feet to a survey nail at the Northeast corner of Lance Acres, as described in Document Number 2020050286 in the Office of the Recorder of Whitley County, Indiana; thence South 89 degrees 20 minutes 52 seconds West, on and along the North line of said Lance Acres and its Westerly projection, a distance of 416.95 feet to a #5 rebar; thence South 00 degrees 35 minutes 00 seconds East, on and along a line partially defined as the West line of said Lance Acres, being parallel with the East line of said Northeast Quarter, a distance of 248.99 feet to a #5 rebar at the Southwest corner thereof, being a point on the South line of a 10.673 acre base tract of real estate described in a deed to Marquell-Devries Properties, LLC, in Document Number 2016030356 in the Office of said Recorder; thence North 89 degrees 27 minutes 30 seconds West, on and along the South line of said 10.673 acre base tract, a distance of 512.97 feet to a #5 rebar at the Southwest corner thereof; thence North 00 degrees 35 minutes 00 seconds West, on and along the West line of said 10.673 acre base tract, a distance of 500.00 feet to a #4 rebar at the Northwest corner thereof, being a point on the North line of said Northeast Quarter; thence South 89 degrees 27 minutes 30 seconds East, on and along said North line, a distance of 930.00 feet to the point of beginning, containing 8.248 acres of land, subject to legal right-of-way for South County Road 800 East, and subject to all easements of record.

This property appears to lie within Zone X as the description plots by scale on Flood Insurance Rate Map Numbered 18183C 0290C, effective May 4, 2015.

# PLAT OF ORIGINAL SURVEY

1" = 200'



SCALE IN FEET:  
 0 100 200

**SURVEYOR'S REPORT**

Prepared as a part of the foregoing survey.

Address: South County Road 800 East, Roanoke, IN 46783

This survey is intended to retrace the remainder of the record boundaries of a tract of real estate described in a Warranty Deed from Laura L. Laux to Marquell-Devries Properties, LLC, dated March 22, 2016, and recorded in Document Number 2016030356 in the Office of the Recorder of Allen County, Indiana.

In Accordance with Title 865, Article 1.1, Chapter 12, Sec. 1 et. seq. of the Indiana Administrative Code, the following observations and opinions are submitted regarding various uncertainties in (a) reference monuments, (b) lines of occupation, (c) record descriptions, and (d) those uncertainties due to random errors in measurement (“relative positional accuracy”). There may be unwritten rights associated with these uncertainties.

REFERENCES: A copy of the following documents were reviewed in completion of this survey:

- The deeds of the subject tract and the adjoining tracts, as shown on the plat of survey.
- Whitley County Surveyor's Section Corner Records.
- The plat of Lakewood Amended Addition, Document Number 98-4-745
- The plat of Lance Acres, Document Number 2020050286.

(A) AVAILABILITY OF REFERENCE MONUMENTS:

The existing monuments of the Public Land Survey corners were held as controlling corners and were used as the basis for this survey. The found monuments are considered by the undersigned surveyor to be “local corners” which are subject to undiscovered evidence regarding the true location of said corners. The corners of subject tract are marked as shown on the survey certificate in conformity with said survey monuments. Uncertainties based on existing monuments are not readily determinable due to the use of said local corners. The following monument was accepted as the location of the Public Land Survey corners:

- The Northeast corner of Section 36.....Whitley County survey spike found.
- The East Quarter corner of Section 36.....No monument evidence found.
- The North Quarter corner of Section 36.....No monument evidence found.

Due to a lack of found section corners, the North and East lines of the Northeast Quarter of Section 36 were established by using record geometry and found monuments at the West corners of the base tract. Uncertainties due to variances between all found monuments and record distances were determined to be 2.6 feet in any direction.

(B) OCCUPATION AND/OR POSSESSION LINES:

Occupation and/or possession lines near the perimeter of subject tract are shown on the plat of survey with the variances from the boundary lines as established in this survey. Encroachments and/or discrepancies may be buried or otherwise obscured by natural or man-made obstructions. There are no observable uncertainties in occupation and/or possession lines.

(C) AMBIGUITY OF RECORD DESCRIPTIONS:

Upon review of the most current deeds of record, the base tract description does not contain any ambiguity with any of the adjoining's descriptions. Therefore, there are no uncertainties based upon record descriptions.

(D) RELATIVE POSITIONAL ACCURACY:

The relative positional accuracy representing the uncertainty due to random errors in measurements of the corners established in this survey is less than or equal to the specifications for a Suburban Survey (0.13 feet plus 100 ppm) as defined by IAC 865.

(E) ESTABLISHMENT OF LINES AND CORNERS:

1. The East line of subject tract was established on and along the East line of the Northeast Quarter of Section 36.
2. The North line of subject tract was established on and along the North line of the Northeast Quarter of Section 36.
3. The lines of the Lance Acres tracts were all established using record geometry and found original monuments.
4. The South and West lines of subject tract were all established using found original monuments.

(Continued on Page 4)

## **SURVEYOR'S REPORT**

(Continued from Page 3)

### (F) NOTES:

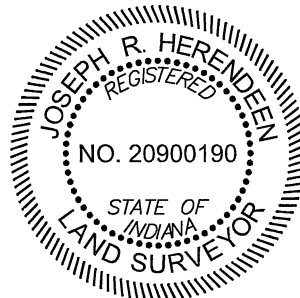
1. This survey is an opinion of a licensed land surveyor of the State of Indiana as to the actual location of the lines and corners outlined in the deed description. This opinion is based on logic, relevant field and research evidence, and established surveying principles. However, this opinion is subject to the interpretation of its deed description, and the boundaries of adjacent tracts may not be consistent with the boundaries of the subject tract. As a consequence, another surveyor may arrive at a different conclusion and different location of the boundaries.
2. A survey cannot resolve uncertainties in the position of the original boundaries that exist. Only courts may establish property lines. The boundaries were established from the most current recorded descriptions. An abstract or title search may reveal the existence of matters of ownership and rights of others not otherwise apparent. As of this date, no title commitment has been provided for review.
3. The flood statement on Page 1 is for informational purposes only. Accurate determination of the flood hazard status of the property can only be made by an elevation study which is beyond the scope of this survey.
4. No attempt has been made to review or come to an opinion on the title or marketability of the title. Any appearance of an opinion on the title is unintentional.
5. Unplatted easements, setback lines, restrictive covenants, or land use regulations affecting the subject tract are shown only when documentation of such matters has been furnished by the client.
6. All documents of record and information from other public sources referred to in this survey are hereby incorporated as part of this survey as if fully set out.
7. No attempt has been made to determine the zoning status of the property. It is the responsibility of the parties involved in the real estate transaction to determine compliance with zoning regulations.
8. Any fence or other evidence of possession which varies from the written title lines may constitute adverse possession or prescriptive rights.
9. Subsurface and environmental conditions were not examined or considered as a part of this survey.
10. Any acreage shown is based on the boundaries established from the deed description and no certification is made that the land area shown on the survey is the exact acreage owned by the client.
11. Expression of distances to hundredths of a foot and angles to seconds of arc is solely to minimize errors introduced by rounding. Neither distances nor angles can be measured to the degree of precision implied by the stated units. No dimension on the survey can be interpreted to be of greater precision than the relative positional accuracy stated in Part (D) of the Surveyor's Report.
12. Since the last date of fieldwork of this survey, conditions beyond the knowledge or control of Sauer Land Surveying, Inc. may have altered the validity and circumstances of matters shown or noted hereon.
13. Declaration is made to original purchaser of the survey and is not transferable to additional institutions or subsequent owners. This survey is valid only with the surveyor's original or electronic signature and seal, full payment of invoice, and complete with all pages of the survey.
14. No statement made by any employee or agent of Sauer Land Surveying, Inc. is valid unless written herein.

I, Joseph R. Herendeen, hereby certify the above statements to be correct to the best of my information, knowledge, and belief. I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

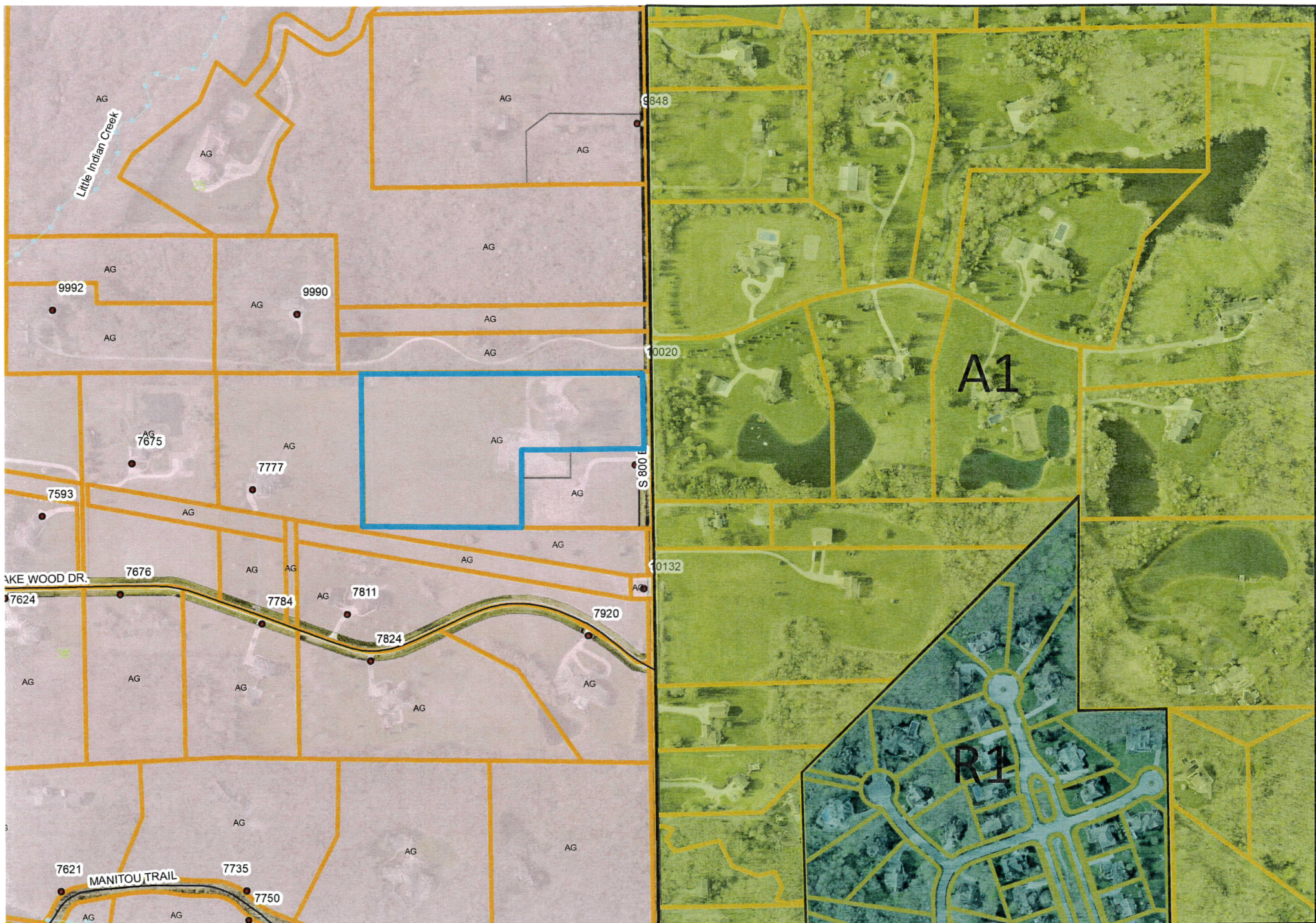
  
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Indiana Professional Land Surveyor

Date: 12/18/2020

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December 18, 2020  
Survey No. 131-140  
Marquell-Devries Properties, LLC







**21-W-REZ-1:** The subject property (10020 W. 800 East-92, Roanoke, IN 46783), outlined in blue, is proposed to be rezoned from the AG (Agricultural) District to the RR (Rural Residential) District.





