

**WHITLEY COUNTY ADVISORY PLAN COMMISSION  
STAFF REPORT**

**21-W-REZ-2      ZONE MAP AMENDMENT**  
Daniel and Deborah Michel  
Various parcels in Washington Township

**JANUARY 20, 2021  
AGENDA ITEM: 3**

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**SUMMARY OF PROPOSAL**

Current zoning: AG, Agricultural  
Proposed zoning: AGP, Agricultural Production  
Property area: 767.46± acres

The petitioner, owner or agent of the subject property area, is requesting a zone map amendment for nine parcels located in Sections 19, 20, 27, 30, 32, 34, and 35 in Washington 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 some wooded areas, totaling about 17.5 acres. Floodplain encumbers about a third of one of the parcels. The petitioners' dwelling is located at 8980 S. 350 West.

As best as staff can find, the only structures located on the property are at the petitioners' farm at the 8980 S. 350 West site. That farm includes an existing Confined Feeding Operation (CFO), containing 4,420 grow-to-finish hogs (per IDEM approval dated 8/30/18). Under the current zoning code, the number of animal units would classify it as a Class 2 CFO, permissible by special exception under the existing AG and by-right under the proposed AGP zoning. No special exception filing was found for the most recent expansion in 2009; at the time, animal units were not calculated cumulatively. In 2018, the zoning code was amended to explicitly require cumulative calculation. Therefore, without a special exception, the existing CFO is legal nonconforming under the AG zoning.

Virtually all surrounding properties within a mile radius of the subject properties are zoned AG. One notable exception is the town of Tunker, located a half mile north of the subject property on 350 West.

***Proposed land use***

The petitioner is requesting the zoning amendment to "protect our farmland by zoning it all to AG production...By zoning our land AG production, we will ensure our families future in grain farming and animal production for future generations" (excerpted from the petitioner's submitted narrative). The petitioner has indicated to staff that they have no plans for new CFOs or other farm buildings, although an expansion of the current site might be considered in the future.

***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 40 acres, and most contiguous areas of the property exceed 80 acres.

The zoning code requires a minimum 20-acre parcel. Eight of the parcels included in the petition exceed 20 acres, with one being a sliver parcel that must be kept in common ownership with an adjacent parcel. So, none would be considered legal nonconforming as the code is currently applied. Other zoning standards also appear to be compliant.

### **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 properties appears to be well-within the “Agricultural” land classification, as is most of Washington Township and eastern Cleveland Township. The floodplain of the one parcel would be considered “Conservation & Open Space.”

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.

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 and Class 3 CFOs by special exception. Both the AG and AGP districts permit CFOs and general agriculture; the primary differences are the size of the CFO permissible and the scope of non-agricultural uses permissible within the district. The Commission should determine whether the subject property should be considered as “prime” agricultural land and conserved for productive agriculture in the future by way of the zoning map, or whether the property is better to continue as generally agricultural with allowances for other uses.

Regarding the Conservation and Open Space classification, in this case that appears to apply to the floodplain of one creek. The plan describes conserving these areas to “protect and enhance

environmental features.” Practically applying this recommendation to the subject property would mean restricting development in the floodplain area, which is already regulated by the floodplain section of the zoning code. So, the current and intended use of the subject property for agriculture would be in line with that Conservation classification.

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

This vicinity of Washington Township is generally comprised of farms, fields, and rural residences. The average area for the parcels within a mile of the subject properties is about 29.5 acres; about a third of them exceed 40 acres in size. Again, the town of Tunker is located roughly ½ mile from one parcel included in the subject property and includes small-lot historic residences, a church, and at least one business. No public sewer or water is available in this area.

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 highly 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 use of the subject property, and much of the surrounding area, is currently agricultural, so its current desirability for agricultural usage is likely established. The requested rezoning would maintain the agricultural usage, with some changes to permitted uses. The Commission should then consider whether it will be desirable to maintain the agricultural use in the future, and what effects, positive or negative, it may have on surrounding properties.

Agriculture production can be viewed as an ultimate end land use, rather than serving a placeholder for other types of development. If the Commission applies that concept here, the preservation of the large tracts of land proposed in the request may be desirable for continued long-term farming activities.

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

To the extent that the use of the subject property under the proposed AGP does not change from the current AG usage, there should be negligible effect on property values.

While the petitioner has indicated no intention to build a new 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 petitioners’ existing CFO were to be expanded beyond its existing Class 2 status, the Commission should remember that the Class 3 CFOs permissible in AGP still require BZA review for

compatibility and performance effects. However, while the review does attempt to mitigate incompatibilities, it is not completely discretionary.

AGP permits a smaller overall palette of uses than the existing AG district, so concerns about certain uses already permissible in AG (such as non-agricultural residences, kennels, auto repair shops, machine shops, hair salons, etc.) affecting surrounding land values could be lessened. AGP, by its minimal permitted uses, could serve as a check on non-agricultural residences.

**5. Responsible development and growth;**

The Commission must determine if the AGP district request is a desirable enhancement of or preservation of the existing agricultural uses, or whether it may irresponsibly stifle land uses that are already allowable under AG.

**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 should not be immediate change in effect on the public health, safety, and welfare.

The difference in size of permitted CFOs in AGP versus AG have been suggested by some recently to have a significant, perhaps toxic or lethal, impact on public health. Again, reasonable regard to health impacts must be paid by the Commission.

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>									

## Petitioner Statement

As a farming family, we would like to protect our farmland by zoning it all to AG production. In doing this, we will not only be providing food and maintaining air quality for our community, but we will also be providing future generations the tools and resources they will need to be successful farmers.

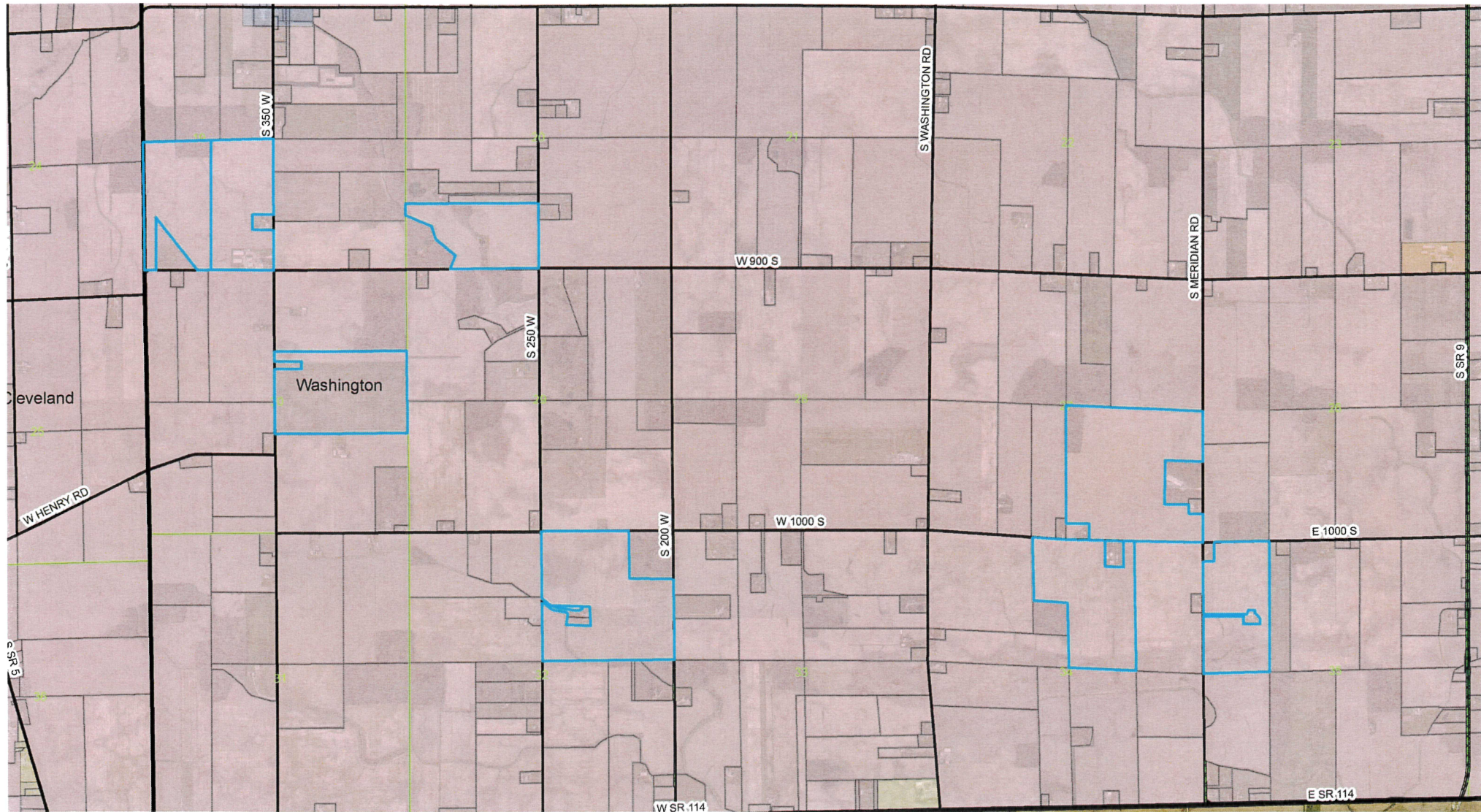
We are involved in both grain farming and animal production. Our current generation has grown our operation into a dynamic multifamily venture looking to grow in many ways. Our youngest generation has been actively involved in our day-to-day farm lives. From riding in the tractors during planting and harvest to working in the shop and to helping in the hog barn with the baby pigs. Those children have learned what it takes to have a good work ethic and to be successful by watching their parents and grandparents live and love what they do.

By zoning our land AG production, we will ensure our families future in grain farming and animal production for future generations.

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# 21-W-REZ-2 Surrounding Area Zoning Map



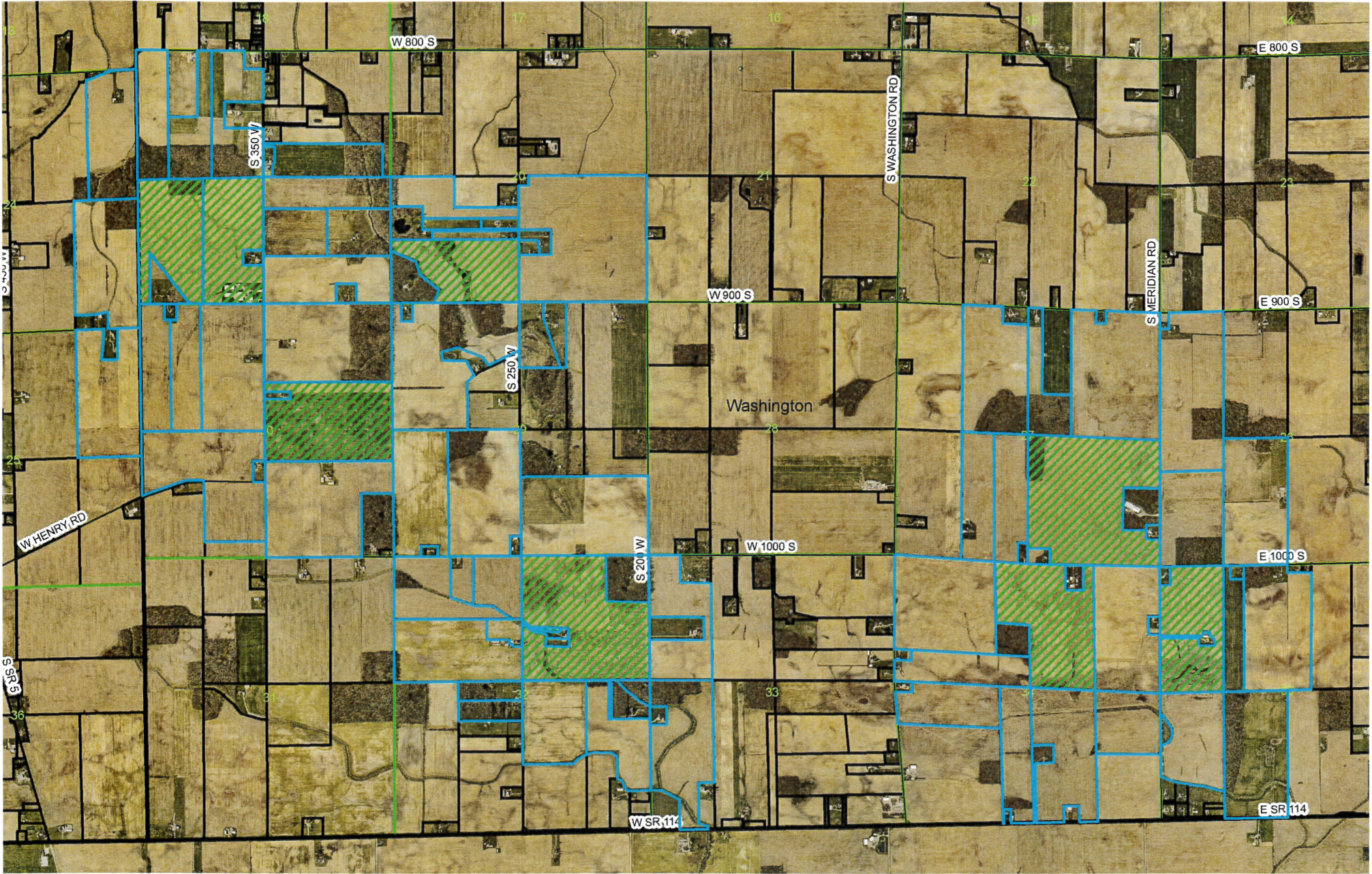
**21-W-REZ-2:** The subject properties, outlined in blue, are proposed to be rezoned from the AG (Agricultural district to the AGP (Agricultural Production) District.

## Zoning District

- |    |    |
|----|----|
| AG | RR |
| IN | GC |



## 21-W-REZ-2 Surrounding Property Owner Map



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

