

ORDINANCE 2019-10

**AN ORDINANCE OF THE TOWN COUNCIL OF THE
TOWN OF WHITESTOWN, INDIANA,
VACATING PORTIONS OF EAST COUNTY ROAD 500 SOUTH**

WHEREAS, the Town Council ("Council") of the Town of Whitestown ("Town"), Indiana, has received a petition ("Petition"), pursuant to Ind. Code§ 36-7-3-12, requesting that the Town abandon and vacate portions of East County Road 500 South within the corporate limits of the Town from its intersection at Pen-y-Worth Road, eastward to the eastern property line of Boone County Parcel No. 020-00950-01 owned by Gene and Crystal Clark ("Vacation"); and

WHEREAS, Ind. Code§ 36-7-3-12(c) requires that the Town Council hold a hearing on the Petition; and

WHEREAS, the Petitioner has provided notice of the Petition and the time and place of the hearing pursuant to Ind. Code§ 36-7-3-12(c); and

WHEREAS, a copy of the Petition and corresponding descriptions and maps are attached hereto and incorporated herein as Exhibit 1; and

WHEREAS, the area requested to be vacated under the Petition includes:

a. "Area 1": a triangular parcel utilized as a vehicular connector for Pen-y-Worth Road and County Road 500 South, the legal description and depiction of which is attached as Exhibit A to the Petition;

b. "Area 2": from the western right-of-way line of Perry-Worth Road, that portion of East County Road 500 South, eastward, to the to the western property line of Boone County Parcel Number 020-00950-01 owned by Gene and Crystal Clark, the legal description of which is attached as Exhibit B to the Petition; and

c. "Area 3": from the western property line of Boone County Parcel Number 020-00950-01 owned by Gene and Crystal Clark, eastward approximately 374.82 feet to the western boundary of a proposed right of way for the southern extension of Anson Boulevard, the legal description and depiction of which is attached as Exhibit C to the Petition; and

WHEREAS, the Vacation is being requested in conjunction with a road relocation project that will be constructed by the Petitioner, that generally includes a new vehicular connection from the southernmost portion of Anson Boulevard to East County Road 500 South, and a new connector road from Perry-Worth road to the newly constructed southernmost portion of Anson Boulevard at its connection with East County Road 500 South ("New Road Improvements"); and

WHEREAS, the Petitioner has separately executed and delivered to the Town a Road Relocation Agreement whereby the Petitioner has contractually agreed to complete the New Road Improvements in a timely manner; and

WHEREAS, the Town Council convened a public hearing on the Petition and Vacation on March 13, 2019, where any person aggrieved by the proposed Vacation was pennitted to object.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Whitestown, Indiana, as follows:

1. The above recitals are incorporated herein by this reference as though fully set forth herein.
2. Having considered the Petition and all other evidence and testimony received at the public hearing, and subject to the terms in this Ordinance, the Town Council hereby makes the following affirmative findings with regard to the Petition:
 - a. The Vacation will not hinder the growth or orderly development of the Town or neighborhood in which the vacated area is located or to which it is contiguous;
 - b. The Vacation will not make access to the lands of any aggrieved person by means of public way difficult or inconvenient;
 - c. The Vacation will not hinder the public's access to a church, school, or other public building or place;
 - d. The Vacation will not hinder the use of a public way by the neighborhood in which it is located or to which it is contiguous; and
 - f. The Vacation is of public utility and benefit.
3. Pursuant to Ind. Code § 36-7-3-12, the Town Council, by Ordinance, hereby grants the Petition as follows: The Vacation of Area 1 and Area 2, described in Exhibit A and Exhibit B to the Petition, are effective immediately as set forth in subject to Section 4 of this Ordinance. The Vacation of Area 3, described in Exhibit C to the Petition, shall be and is subject to the condition that the Petitioner complete the New Road Improvements, in accordance with the Road Relocation Agreement and construction plans as may be approved by the Town. Accordingly, upon completion of the construction and dedication of the New Road Improvements, Petitioner shall file a Notice of Completion thereof with the Town, in a form reasonable acceptable to the Town. The Town's approval of such Notice of Completion shall be required in order to complete and effectuate the Vacation of Area 3. Upon the Town's approval of the Notice of Completion, the Petitioner shall dedicate the New road Improvements and related right of way to the Town, which shall also serve as evidence of the Vacation of Area 3.
4. This Ordinance shall take effect immediately upon its adoption; provided, however, that no Vacation shall be effective until (a) thirty (30) days from the date of adoption of the Ordinance if no appeal is filed pursuant to Ind. Code § 36-7-3-13 during said thirty (30) days ("Appeal"), or (b) upon final resolution of any timely Appeal.
5. The Clerk-Treasurer shall furnish a copy of this Ordinance to the County Recorder for recording and to the County Auditor.
6. The terms, paragraphs, sentences, words, and vacation area of this Ordinance are separable, and if a court of competent jurisdiction hereof declares any portion of this Ordinance or the vacation area unconstitutional, invalid, or unenforceable for any reason, such declarations shall not affect the remaining portions of the vacation area or this Ordinance.

Adopted by the Town Council of the Town of Whitestown, Indiana, on _____, 2019.

THE TOWN COUNCIL OF THE TOWN
OF WHITESTOWN, INDIANA

Clinton Bohm, President

Susan Austin, Vice-President

Eric Miller

ATTEST:

Kevin Russell

Matt Sumner, Clerk-Treasurer
Town of Whitestown, Indiana

Jeffrey Wishek

"Exhibit 1"

STATE OF INDIANA) BEFORE THE TOWN COUNCIL OF THE
)SS: TOWN OF WHITESTOWN
COUNTY OF BOONE)

IN THE MATTER OF A PETITION)
TO VACATE PORTIONS OF) PETITION NO. _____
EAST COUNTY ROAD 500 SOUTH)

**PETITION TO VACATE PORTIONS OF EAST COUNTY ROAD 500 SOUTH
WITHIN THE TOWN OF WHITESTOWN**

Come now the Petitioner, Whitestown 65 Commerce Park, L.L.C., and hereby petitions to vacate portions of East County Road 500 South, generally described as the public right-of-way between Perry-Worth Road, eastward, to the eastern property line of Boone County Parcel Number 020-00950-0 I owned by Gene and Crystal Clark. The specific portions of East County Road 500 South to be vacated (the "Vacation") are identified as follows:

1. Right-of-Way Area 1: a triangular parcel utilized as a vehicular connector for Perry-Worth Road and County Road 500 South. The legal description and depiction of Right-of-Way Area 1 is attached as Exhibit A.

2. Right-of-Way Area 2: from the western right-of-way line of Perry-Worth Road, that portion of East County Road 500 South, eastward, to the to the western property line of Boone County Parcel Number 020-00950-0 I owned by Gene and Crystal Clark. The legal description and depiction of Right-of-Way Area 2 is attached as Exhibit B.

3. Right-of-Way Area 3: from the western property line of Boone County Parcel Number 020-00950-01 owned by Gene and Crystal Clark, eastward approximately 374.82 feet to the western boundary of a proposed right of way for the southern extension of Anson Boulevard. The legal description and depiction of Right-of-Way Area 3 is attached as Exhibit C.

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In support thereof, Petitioner states as follows:

a. The Vacation is appropriate due to the fact that this portion of East County Road 500 South will be relocated and replaced with new rights-of-way which will be dedicated to the Town in part by the Petitioner.

b. The newly dedicated public rights-of-way will relocate and reconfigure the intersection of East County Road 500 South and Perry-Worth Road and provide a new vehicular connection from the southernmost portion of Anson Boulevard to East County Road 500 South.

c. The Vacation will not hinder the growth or orderly development of Whitestown or the adjoining properties; the Vacation will not make access to lands of the adjoining property owners difficult or inconvenient; the Vacation will not hinder the public's access to a church, school, or other public building or place; and the Vacation will not hinder the use of a public way by any neighborhood.

d. Pursuant to Indiana Code § 36-7-3-16, the Vacation will not deprive any public utility of the use of all or part of the public way being vacated, except Boone County Rural Electric Membership Cooperative, which has agreed to relinquish any and all of its rights with to those portions of the rights-of-way being vacated hereby.

e. The portions of the rights-of-way vacated hereby are entirely within the jurisdiction of the Town of Whitestown, as such rights-of-way fall within the municipal boundary of the Town.

f. The following property owners, in addition to Petitioner, own real property abutting and/or known interests within the rights-of-way included in the Vacation:

1. Town of Whitestown, Indiana
Whitestown Municipal Complex
6210 Veterans Drive
Whitestown, IN 46075

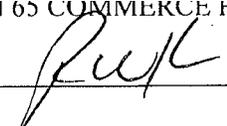
- ii. OF Realty, LLC
4850 W. 78th Street
Indianapolis, IN 46268
- 111. Gene and Crystal Clark
5045 E. County Road 500 South
Whitestown, IN 46075
- iv. Boone County Rural Electric Membership Cooperative
1207 Indianapolis Avenue
Lebanon, IN 46052

g. The Petitioner requests that the Whitestown Town Council abandon and vacate those portions of the right-of-way described and depicted in the attached Exhibit A, Exhibit B, and Exhibit C.

WHEREFORE, the Petitioner, respectfully requests that the Town Council of the Town of Whitestown, Indiana, pursuant to Indiana Code § 36-7-3-12, abandon and vacate that portion of East County Road 500 South described and depicted in Exhibit A, Exhibit B, and Exhibit C, and provide for all other proper relief in the premises.

I HEREBY CERTIFY UNDER THE PENALTIES FOR PERJURY THAT THE FOREGOING REPRESENTATIONS HEREIN ARE TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

WHITESTOWN 65 COMMERCE PARK, L.L.C.

By: _____ 

Printed: _____ Richard Horn _____

Its: --- P r e = s i = d = e n = t'-----

Date: __ 3 / - 19 _____

Address: c/o Strategic Capital Partners, LLC
8900 Keystone Crossing, Suite 100
Indianapolis, IN 46240

EXHIBIT A
Right of Way Area 1

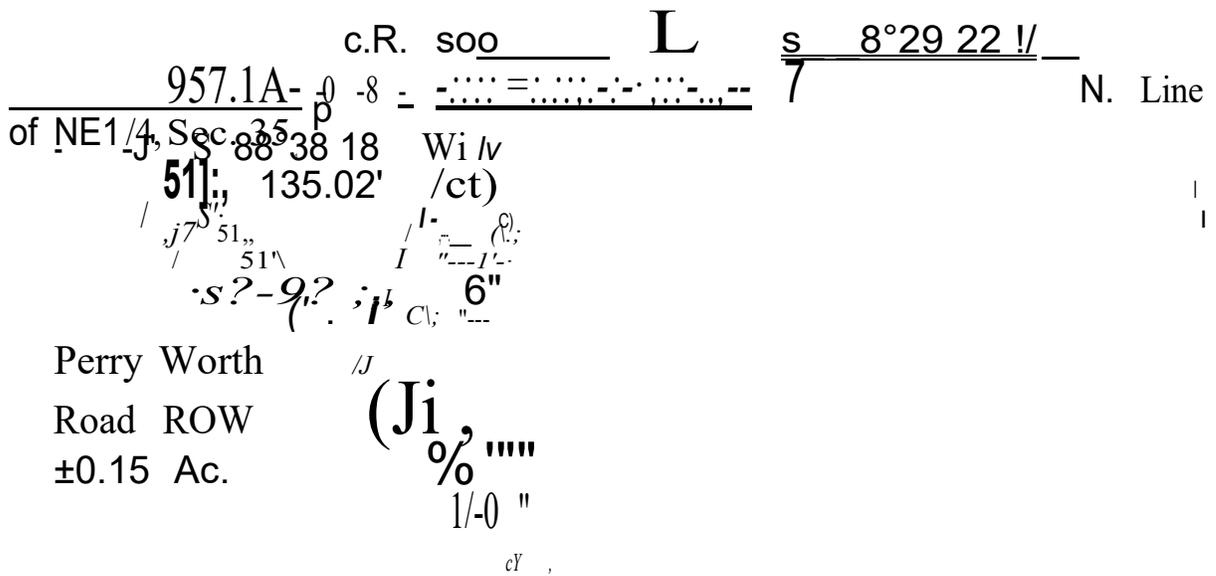
Land Description - Perry Worth Road Right-of-Way

A port of the Northeast Quarter of Section 35 in Township 18 North, Range 1 East, Boone County, Indiana, being described as follows:

Commencing at the Northeast corner of said Section 35; thence South 88 degrees 29 minutes 25 seconds West along the South line thereof a distance of 957.43 feet to the Northeasterly line of Perry Worth Road; thence South 43 degrees 54 minutes 42 seconds East along the Northeasterly line thereof a distance of 13.04 feet to the Point of Beginning; thence continuing along said Northeasterly line thereof South 43 degrees 54 minutes 42 seconds East a distance of 131.29 feet; thence North 24 degrees 11 minutes 18 seconds East a distance of 107.20 feet; thence South 88 degrees 38 minutes 18 seconds West a distance of 135.02 feet to the Point of Beginning, containing 0.15 acres, more or less.

S 43°54'42" E
13.04'

NE Corner
Sec.35 T18N-R1E



65 COMMERCE PARK PERRY WORTH RD. ROW	
SEA PROJECT NUMBER C18-4501	DATE: 11/30/18 DWN. BY: JMF
SHEET 1 OF 1	CHKD. BY: JMF SCALE: NONE

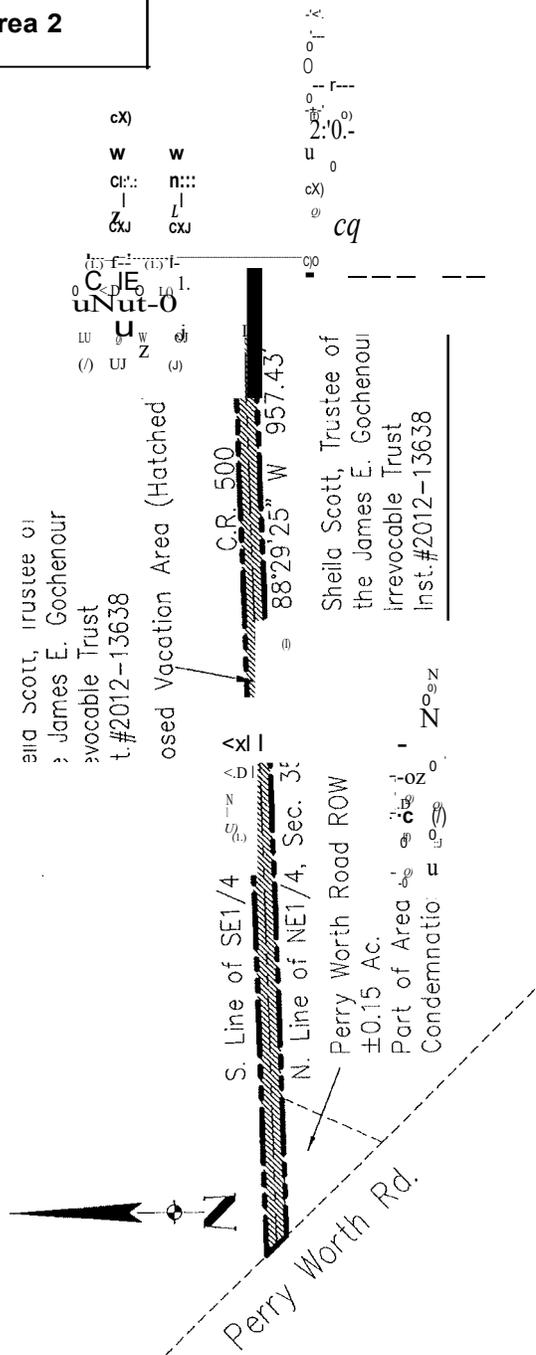
A.J.A Group,
Surv' ye>rs

c::::> sigr, L21yc::::>L1t
494 Gradle Drive Phone: 317.844.3333
Carmel, IN 46032 Fax: 317.844.3383
www.SEAGroupLLC.com

EXHIBIT B
Right of Way Area 2

Land Description - C.R. 500 ROW
Vocation

A port of the Southeast Quarter of Section 26 and the Northeast Quarter of Section 35, all in Township 18 North, Range 1 East, Boone County, Indiana, being a strip of Right-of-Way (unknown width), the approximate centerline being described as follows: Beginning at the Southeast Quarter of Section 26; thence South 88 degrees 29 minutes 25 seconds West along the South line thereof a distance of 957.43 feet to the northeasterly line of Perry Worth Road and the terminus.



65 COMMERCE PARK
CR500 ROW VACATION WEST TRACT

JECr NUMBER: _____ DATE: 2/26/19
 Lc:lye>ut **3**
 SHEET 1 OF _____
 CHKD BY: _____
 SCALE: **NON**

AJA Group,

S L I R v y r s

OWN.BY: **JMF c::::> sign**

494 Gradle Drive Phone: 317.844.3333
 Carmel, IN 46032 Fax: 317.844.3383
 www.SEAGroupLLC.com

