

Agenda Item #2

Case Number	BZNA-0084-2019	Acreage	8.00 acres
Address	16336 Cherry Tree Road	Zoning	R-1 (Low Density Single Family Residential)
Owner	Beaver Materials	Reviewer	David Hirschle
Applicant	Church, Church, Hittle & Antrim	BZA Meeting	August 5, 2019

Requested Action:

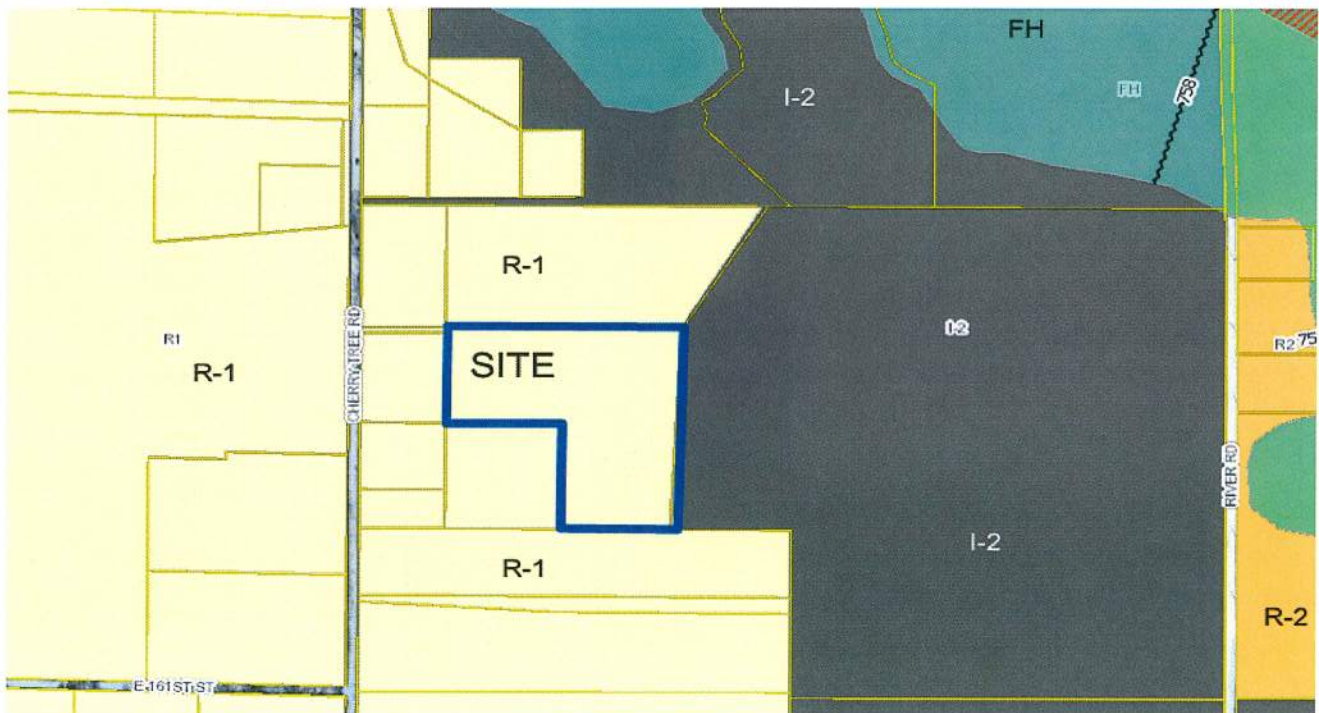
UDO § 8.B.2.B and Appendix C -- Variance of Use application to permit Mineral/Sand/Gravel extraction on an urban property in an R-1 (Low-Density Single-Family Residential) zoning district.

Recommendation:

Continuance. See Findings of Fact on page 2 and Recommendation on page 3.

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1. Staff Report
2. Aerial Map
3. Application
4. Site Photographs



ANALYSIS

The subject site is located north and east of the intersection of Cherry Tree Road and 161st Street. The site exhibits a single residential structure and a large accessory structure. The petitioner has entered into a purchase agreement for the property. The petitioner requests approval of a land use variance to allow the expansion of their existing gravel operation onto the southeastern 1/3 of this property. The existing residential structures on the property will remain. The topography of the property falls off to the east, over a distance of 65 feet, from 785 feet at the residence to 770 feet at the lower area of the property. The petitioner has not provided any information about the means of extraction on this property or any operational details. Neither has there been provided any detail about proposed mounding or landscaping east of the existing residence.

The property is located within a five-year time-of-travel zone under the provisions of the Wellhead Protection District. This means that there are specific regulations to be followed relating to excavation techniques because such activity could directly affect the drinking water supply. The petitioner will be required to use wet excavation techniques and the excavation can only be filled with clean fill. The petitioner has not disclosed specifics about the techniques that they plan to use on site, but they are required by ordinance to adhere to the techniques described above.

VARIANCE OF USE FINDINGS

AGENDA ITEM #2:

The Noblesville Board of Zoning Appeals is authorized to approve or deny variances of use from the terms of the zoning ordinance. **The BZA may impose reasonable conditions as part of its approval. A variance of development standards may be approved only upon a determination in writing that the following three (3) conditions are met (see Indiana Code § 36-7-4-918.5):**

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community:

It is unclear whether or not the proposed variance will be injurious to public health, safety, and general welfare of the community. The proposed operation could have significant impact on the local drinking water supply based upon its location within a five-year time-of-travel in the wellhead protection zone. The petitioner is required to follow the regulations in the wellhead protection ordinance regarding excavation techniques, and it would be prudent to require submission of the details of the operation. None have been supplied as yet.

2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:

It is likely that the use and value of real estate adjacent to the subject site will NOT be affected in a substantially adverse manner by allowing the requested variance. Nearby property owners may remonstrate against this petition if they believe this request will have significant adverse effects on adjacent properties. Should nothing contrary be brought to light by adjacent owners at the public hearing, it is presumed that the approval of this variance request will not have a substantially adverse effect on the use and value of adjacent properties.

3. The need for the proposed variance arises from some condition peculiar to the property involved:

The need for the variance does arise from a condition peculiar to the property involved. The geological characteristics of the subject site are comparable to the conditions of the property to the east from which aggregate is currently being extracted.

4. The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought:

The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought. The complete prohibition of mineral/gravel/sand extraction on the property means that the resources on this property may not be depleted without grant of a variance. There are numerous other extraction sites located within very close proximity to the subject site.

5. The approval of this variance does not interfere substantially with the provisions of the Comprehensive Master Plan for the City of Noblesville, Indiana:

The approval does interfere substantially with the Comprehensive Plan. The property is shown on the Comprehensive Plan as a residential area. While the petitioner's proposed use would be a relatively short term use, leaving the site open to development following the completion of the excavation, no details have been submitted regarding reclamation of the site after excavation. It is anticipated that the owner's future use of the site would be for residential purposes, but this is not known at present, and there have been no details provided as to how the site would be readied for and made safe for residential use or development.

RECOMMENDATION

AGENDA ITEM #2:

CONTINUE the requested Variance of Use based upon failure to meet Findings of Fact #1 and #5, below:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
3. The need for the proposed variance arises from some condition peculiar to the property involved;
4. The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought;
5. The approval of this variance does not interfere substantially with the provisions of the Comprehensive Master Plan for the City of Noblesville, Indiana.

IF the Board decides to grant approval of the application, it is requested that the following conditions be attached:

1. Blasting or explosives shall not be used on the subject property.

Exhibit 1

2. Mounding shall be established along the entire angled western excavation line and shall be at least six (6) feet in height higher than the elevation at which the residence sits. Mounds will be seeded with grass or similar form of landscaping and be planted with 2 staggered rows of evergreen trees, each row planted 15 feet on center, with a height of 5 feet at time of planting.
3. Stockpiles within 500 feet of any residence shall not exceed 50 feet in height.
4. Hours of operation shall be limited to two shifts.
5. All excavation at or below the elevation of the water table shall use wet excavation techniques. De-watering shall not occur on the subject property.
6. A metes and bounds description of the proposed excavation area shall be provided to establish a limiting line of excavation advancement.
7. Excavation shall not take place within one hundred (100) feet of the northern property line.
8. No form of solid waste (as defined at 329 IAC 10-2-174) or any other form of waste material of any kind, including but not limited to construction/demolition debris, shall be used on the site. Clean natural earth fill materials may be used.
9. Only portable lighting will be used, which will not exceed six (6) feet in height.
10. Trucks shall not exit the property onto Cherry Tree Road. The Applicant shall find an alternate exit from the site.
11. The Petitioner shall submit a reclamation plan for approval prior to undertaking on site any activity proposed with this application. The plan shall indicate the following:
 - 11a. Reuse of the affected lands, after cessation of all mining operations, which is compatible with the Comprehensive Plan.
 - 11b. Methods of anticipated topsoil removal, storage, re-application, stabilization and conservation that will be used during reclamation.
 - 11c. Topographic contours of the site prior to excavation, expected after completion of excavation, and expected after completion of reclamation, in 2 foot intervals, and any water impoundments or artificial lakes planned to support the anticipated future use of the site.
 - 11d. Reclamation, in accordance with the approved Reclamation Plan, shall begin within 6 months of the completion of all mining on this property and shall be completed within 2 years after cessation of the mining operation on this property.
 - 11e. A safety ledge shall be required around the perimeter of all water bodies. Safety ledge width shall be a minimum of 10 feet; and the maximum depth shall be 25 inches to 30 inches below the normal pool water level. Maximum ground slope above the safety ledge for a distance of 10 feet shall be six to one (6:1) horizontal to vertical incline.
 - 11f. Final reclaimed slopes shall not be steeper than a three to one (3:1) horizontal to vertical incline. The top of slope shall be no closer than 125 feet from adjacent lot lines.
 - 11g. A minimum of 4 inches of clean topsoil shall be re-applied, and vegetative groundcover established, on all affected land during reclamation activity. Vegetative groundcover used in reclamation shall consist of native grasses or native wildflowers.
12. A minimum separation of 200 feet shall be maintained between any excavation and any drinking water supply that is a point-driven or dug well and that was in existence prior to the excavation.
13. A minimum separation of 100 feet shall be maintained between any excavation and any drinking water supply that is drilled into saturated bedrock and that was in existence prior to the excavation.

Exhibit 1

14. A minimum separation of 1,000 feet shall be maintained between any excavation and a public drinking water source.
15. All petroleum products or highly flammable or explosive liquids, solids, or gasses to be stored on-site shall be located in bulk, above-ground, anchored tanks or containers having a roofed, secondary containment system adequate to contain 110% of the full contents of the container, and shall be located at least 75 feet from any lot line or right-of-way. The use of underground tanks shall be strictly prohibited.
16. A copy of the excavation plan required to be approved by the State Department of Natural Resources shall be provided to Staff after said approval.
17. The Petitioner shall sign the Acknowledgement of Variance document prepared by the Planning and Development Department Staff within 60 days of this approval. Staff will then record this document against the property and a file stamped copy of such recorded document shall be available in the Department of Planning and Development.
18. Any alterations to the approved land use or site plan, other than those required by the Board of Zoning Appeals (BZA), shall be submitted to the Planning and Development Department prior to the alterations being made, and if necessary, a BZA hearing shall be held to review such changes.

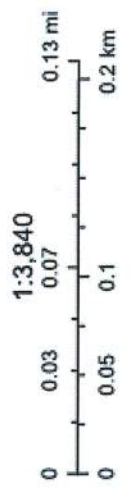


Exhibit 2

BZNA-0084-2019
16336 Cherry Tree Road



CITY OF NOBLESVILLE
BOARD OF ZONING APPEALS
VARIANCE OF USE APPLICATION

Application Number: BZVA-0084-2019

The undersigned requests a Variance of Use as specified below. Should this variance request be approved, such approval shall only authorize the particular use described in this application and as further limited by reasonable conditions imposed upon such approval by the Board of Zoning Appeals.

Project Name or Occupant Name: Beaver Gravel Corporation

✓ Common Address 16336 Cherry Tree Road, Noblesville

Applicant Name: Church, Church, Hittle + Antrim by Andrew Wert for Beaver Gravel Corp.

Applicant Address: 2 North 9th Street

Applicant City/State/Zip: Noblesville, IN 46060 E-mail: awert@cchalaw.com

Applicant Phone #1: 317.776.5262 Phone #2: 317.773.2190 Fax: 317.773.5320

Owner Name: Carlene P Mallamo

Owner Address: 16336 Cherry Tree Road

Owner City/State/Zip: Noblesville, IN 46062 E-mail: _____

Owner Phone #1: _____ Phone #2: _____ Fax: _____

Property Location: Not located in a recorded subdivision, see legal description attached.

Subdivision Name: _____

Subdivision Section: _____ Lot Number: _____ Last Deed of Record Number 2012078022

Existing Land Use: Residential

Common Description of Request: Mineral/Sand/Gravel Extraction

Zoning District of Property: R1 Code Section(s) Appealed: UDO § Appendix C

Date: 7/1/2019 Applicant's Signature: Andrew Wert

The Noblesville Board of Zoning Appeals (BZA) is authorized to approve or deny Variances of Use from the terms of the Unified Development Ordinance. The BZA may impose reasonable conditions as part of its approval. A Variance of Use may be approved only upon a determination in writing that the following five (5) statements are true (see Indiana Code § 36-7-4-918.4):

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community. Explain why this statement is true in this case:

The health, safety, morals and welfare of the community will be served by this request
because it is an incremental expansion of an existing gravel pit and will have no new entry/exit
points onto a public road.

2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner by the approval of this variance request. Explain why this statement is true in this case:

Adjacent property will not be affected adversely in that there is already an ongoing
extraction operation next to it.

3. The need for the proposed variance arises from some condition peculiar to the property involved. Explain why this statement is true in this case:

The peculiar condition in this case is the geography of the area proposed for extraction.

The existing pit is zoned I-2 and also falls under the "non-urban" statutory definition
exempting it from the local zoning ordinance. While the subject area shares remote characteristics
of the existing pit, it is zoned residential and does not fall under the "non-urban" definition.

4. The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which this variance is sought. Explain why this statement is true in this case:

The unnecessary hardship is that given the demand for aggregate material in
Hamilton County, strict application of the zoning ordinance would require another
gravel pit to be opened, possibly involving new entry/exit points onto public roads.

5. The approval of this variance does not interfere substantially with the provisions of the Comprehensive Master Plan for the City of Noblesville, Indiana. Explain why this statement is true in this case:

The Future Land Use Map in PLANoblesville shows the subject area as
being on the edge of the Industrial classification. The limited, incremental
expansion of the existing gravel pit is consistent with an Industrial use.

BEAVER GRAVEL VARIANCE OF USE – NARRATIVE STATEMENT

Beaver Gravel Corporation is entering into a purchase agreement for property located at 16336 Cherry Tree Road. The property is composed of one parcel with a residence. The proposal is to expand the existing extraction operation to the east into the southeastern portion of the subject property. In that the zoning of this property is R-1, a Variance of Use is being sought. The intent is for the existing residence to remain.

The property to the east is zoned I-2. This is the existing gravel pit owned by the petitioner. North and west are residential uses zoned R-1. To the south is a residence and property which was granted, in February of 2019, a Variance of Use for mineral extraction.

16336 Cherry Tree Rd

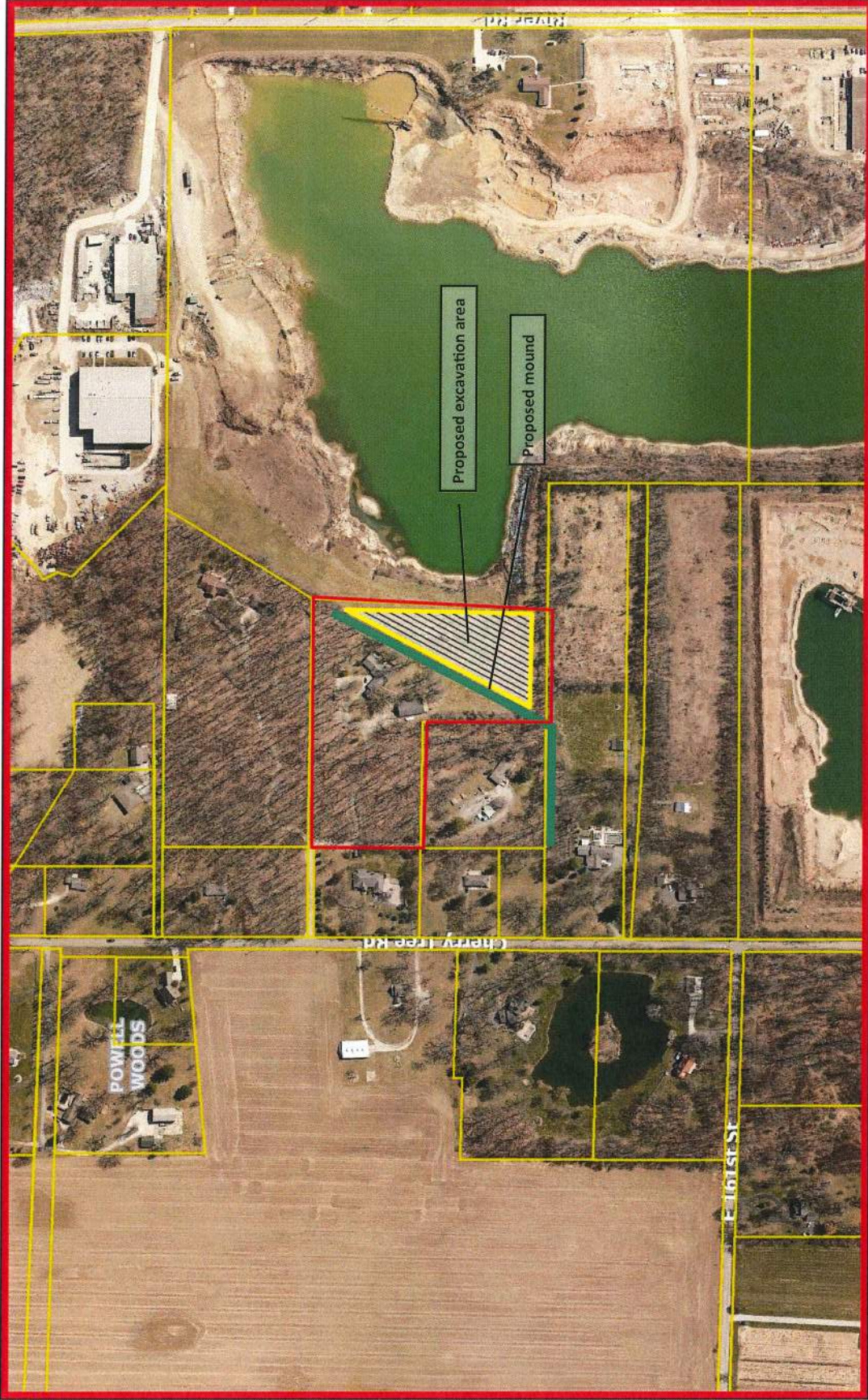


EXHIBIT A

Part of the Northeast Quarter of Section 11, Township 18 North, Range 4 East located in Noblesville Township, Hamilton County, Indiana, being more specifically described as follows: Commencing at the Southwest corner of the Northeast Quarter of Section 11, Township 18 North, Range 4 East, thence North 00 degrees 19 minutes 44 seconds West (assumed bearing) 1250.37 feet on and along the West line of said Northeast Quarter to the center line of a Right-of-way for ingress and egress for use by public utilities (Deed Record 243, page 265); thence South 89 degrees 16 minutes 59 seconds East 272.50 feet parallel with the South line of a tract of ground described in Miscellaneous Record 62, page 489 and on and along the center line of said Right-of-way for ingress and egress for use by public utilities to the point of beginning of this description; thence South 89 degrees 16 minutes 59 seconds East 711.10 feet; thence South 02 degrees 43 minutes 16 seconds West 686.24 feet to a point on the line described in the 4th course of land described in Miscellaneous Record 62, page 489; thence North 89 degrees 16 minutes 59 seconds West 319.15 feet to a point on the East line of land described in Deed Record 243, page 265; thence North 00 degrees 19 minutes 44 seconds East 356.14 feet on and along the East line of said land to its Northeast corner; thence North 89 degrees 16 minutes 59 seconds West 363.30 feet on and along the North line of said land to its Northwest corner, thence North 00 degrees 19 minutes 44 seconds East 329.70 feet to the point of beginning, containing 8.00 acres, more or less.

Together with an undivided one-half interest in the following real estate: Eighteen feet by parallel lines off the North side of real estate described in that certain Quitclaim Deed dated September 9, 1989 and recorded October 13, 1989 as Instrument No. 8923132 in the Office of the Recorder of Hamilton County, Indiana, as follows:

A part of the Northeast Quarter of Section 11, Township 18 North, Range 4 East described as follows: Begin at a point 920.67 feet North of the Southwest Corner of the North East Quarter of Section 11, Township 18 North, Range 4 East, run thence East 272.5 feet to an iron pin; thence North parallel to the West line of said North East Quarter 319.7 feet to an iron pin; thence West 272.5 feet to the intersection with the West line of said North East Quarter; thence South along this West line 319.7 feet to the place of beginning, containing 2.0 acres; more or less.

For information purposes only:

Common Address:	16336 Cherry Tree Road, Noblesville, IN 46062
TSLLC File #:	13323
Tax Parcel #:	10-10-11-00-00-009.001

10/13/89

IN WITNESS WHEREOF, Grantor has executed this Warranty Deed this 10 day of December, 2012.

Brian S. Campbell
Brian S. Campbell

Melinda J. Campbell
Melinda J. Campbell

STATE OF INDIANA)
COUNTY OF Hamilton) SS:

Before me, a Notary Public in and for said County and State, personally appeared **Brian S. Campbell and Melinda J. Campbell, husband and wife**, who acknowledged the execution of the foregoing Warranty Deed, and who, being duly sworn, stated that any representations therein contained are true. Witness my hand and Notarial Seal this 10 day of Dec, 2012.

My Commission Expires:

County of Residence: _____

Signature Deborah K. Bates
Printed _____

Notary Public



Parcel No.: **10-10-11-00-00-009.001 (State # 29-10-11-000-009.001-012)**

- Send tax statements to Grantee's address (Common Address of Property): **16396 Cherry Tree Road, Noblesville, IN 46062**
- Send tax statements to Grantee's Address: _____

This instrument was prepared by: David A. Schmitz, Attorney at Law
9201 N. Meridian Street, Suite 100, Indianapolis, IN 46260 (317) 571-6969

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 Deborah K. Bates

Exhibit 4



Due east of existing residence, looking south



Due east of existing residence, at base of slope, looking south-southwest



In middle of proposed excavation area, at 770 elevation, looking north-northeast



At base of slope (770 elevation), looking north-northeast, with existing residence at left



Near base of slope, looking west to existing residence



At base of slope, looking southeast