

**WHITLEY COUNTY ADVISORY PLAN COMMISSION  
STAFF REPORT**

**18-W-VAC-2      PLAT VACATION**  
Brent Emerick  
Vacation of part of Lot 10, Green Brier Addition

**OCTOBER 17, 2018  
AGENDA ITEM: 1**

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**SUMMARY OF PROPOSAL**

The petitioner is seeking to vacate the majority of Lot 10 from the plat of Green Brier Addition, located east of the intersection of CR 500 South and CR 500 East. Doing so would allow him to combine the resulting 8.9-acre parcel with the adjacent 36-acre parcel he already owns. As it is, platted and unplatted parcels cannot be combined.

Green Brier Addition was platted in February 1992. As platted, Lot 10 was to be accessed via a 50' wide "flagpole" access strip to 500 South. In May 1992, the east 25' of the access strip was sold together with Lot 8. Also in May 1992, Lot 10, minus the entire access strip, was sold together with the adjacent 36-acre parcel (which was the remainder of the parent tract after platting). At that point, Lot 10 as a platted parcel was landlocked. In May 1995, the west 25' of the access strip that was still in the original subdivider's name was also deeded to the owner of Lot 8.

It is uncertain as to why the property was even included in the plat, but since it was split, the subject property has been always conveyed together with the adjacent 36-acre tract. However, because the properties are unplatted and platted, they cannot be combined per tax parcel rules. Thus results this petition.

The petitioner has indicated that they have no intention to use the property in any different fashion than currently.

There are covenants recorded with the Green Brier subdivision. The vacation of a plat may include vacation of part of the covenants if done in accordance with IC §36-7-4-714. If the petitioner desires to do so, legal counsel may discuss the necessary determinations at the meeting.

**REVIEW CRITERIA**

Indiana Code §36-7-4-711, the Subdivision Control Ordinance, and the Zoning Code provide standards for plat vacations, including a requirement to make determinations regarding the criteria listed below. Staff's comments are under each criterion.

1. Conditions in the platted area have changed so as to defeat the original purpose of the plat;  
*The part of the platted area in question has in effect never been treated as part of the Green Brier plat. Because access to the public road has been removed, it cannot be used for residential uses as part of that subdivision as was the purpose of the plat. Therefore, the conditions of the area have changed so as to defeat the intended purpose of the plat.*
2. It is in the public interest to vacate all or part of the plat; and  
*Elimination of landlocked parcels is in the public interest. To the extent that such elimination necessitates a plat vacation, the vacation would also be in the public interest.*
3. The value of that part of the land in the plat not owned by the petitioner will not be diminished by the vacation.  
*The vacation does not change the permissibility of any uses under the zoning code, nor is any change of use proposed. Therefore the vacation is not expected to diminish the value of the remainder of the subdivision.*

**SUGGESTED CONDITIONS**

Staff finds that the proposed vacation and primary plat appear consistent with the standards, with the following condition(s):

1. The vacated part of Lot 10 shall be combined with adjacent parcel #92-10-03-000-401.000-006 after the required 30-day appeal period of the vacation.

Date report completed: 10/11/18

**PLAN COMMISSION ACTION**

Motion:

By:

Second by:

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