

WHITLEY COUNTY ADVISORY PLAN COMMISSION

STAFF REPORT

21-W-SUBD-1 PRIMARY PLAT APPROVAL

Marquell-Devries Properties, LLC

Marquell Acres, approx. 10020 S. 800 East

JANUARY 20, 2021

AGENDA ITEM: 2

SUMMARY OF PROPOSAL

Pending Zoning:	RR, Rural Residential		<u>Code Minimum</u>	<u>Proposed Minimum</u>
Area of plat:	8.248 acres	Lot size:	15,000 sq. ft.	3.884± acres (lot 2)
Number of lots:	2 lots	Lot width:	100'	194'± (Lot 1)
Dedicated ROW:	0.251 acre	Lot frontage:	50'	50' (Lot 2)

The petitioner, owner of the subject property, is requesting a plat approval for Marquell Acres, a proposed two-lot subdivision located on the west side of 800 East, approximately 2/3 mile north of US 24 in Section 36 of Jefferson Township. The parent tract was previously platted in 2019 to create a one-lot plat known as Lance Acres, and additional acreage was approved to be added to that plat in late 2020. The petitioner proposes now to split the 8.248 acres into two lots. Being no available platting exemptions, this proposal will create a second and third platted lot from the 2018 parent parcel, which prompts the need for rezoning from the current AG district. That rezoning request is made in 21-W-REZ-1.

The proposed plat appears to comply with the development standards of the zoning code as shown in the above table.

Comment letters received (as of date of staff report)

Electric	X	Health	X	Cable TV	Parcel Cmte.	X
Gas	X	Co. Highway	X	Sanitary Sewer		
Telephone	X	SWCD	X	Water	NA	

A 45' wide right-of-way for the county road would be dedicated. Drainage and/or utility easements are not shown on the perimeter of the lots; being a multi-lot plat in a developed area, easements should be added. At the time of this writing, the comment letters received have stated that the proposed plat is generally adequate, with a few comments. The property is served with sanitary sewer.

The Parcel Committee noted some changes needed to meet recordation requirements. Frontier provided comment that they had a buried line along the north property line; this may be accommodated by the addition of a utility easement.

Separate restrictive covenants were not submitted at the time of this writing.

WAIVER REQUESTS

There are no waiver requests.

REVIEW CRITERIA

Subdivision primary plats are reviewed for compliance with the standards of Subdivision Control Ordinance and the Zoning Code. Staff finds that the proposed primary plat appears consistent with the standards, with the following condition(s):

1. The existing AG zoning must be amended to a district that permits Major Residential Subdivisions.
2. Add 10' drainage and utility easements to perimeters of lots. Additional width may be necessary where there are existing utilities.
3. The signature block needs to include a witness line to meet recording requirements. Names will need to be updated.
4. Secondary plat approval delegated to the Plan Commission Staff.

Date report completed: 1/13/21

PLAN COMMISSION RECORD OF ACTION

Motion:

By: _____

Second by: _____

Approve _____

Approve w/conditions _____

Deny _____

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

Primary Plat of:

MARQUELL ACRES

A subdivision of part of the Northeast Quarter of Section 36,
Township 30 North, Range 10 East, Whitley County, Indiana.

Owner:
Phillip A. Marquell
Marquell-Devries Properties, LLC
1425 Sycamore Hills Parkway
Fort Wayne, IN 46814

Surveyor - Planner:
Sauer Land Surveying, Inc.
14033 Illinois Road, Suite C
Fort Wayne, IN 46814
Tel: 260/469-3300

DEED OF DEDICATION

I the undersigned, Phillip A. Marquell, agent for Marquell-Devries Properties, LLC, owner of the real estate shown and described herein by virtue of a certain deed recorded as Document Number 2016030356 in the Office of the Recorder of Whitley County, Indiana, do hereby certify that I have laid off, platted and subdivided, and hereby lay off, plat and subdivide, said real estate in accordance with this plat.

The subdivision shall be known and designated as MARQUELL ACRES, a subdivision in Whitley County, Indiana. All rights-of-way of public roads and streets shown and not heretofore dedicated, are hereby dedicated to the public. Front yard building setback lines are hereby established as shown on this plat, between which lines and the property lines of the street, there shall be erected or maintained no building or structure, except in conformance with the requirements of the Whitley County Zoning Ordinance.

A perpetual easement is hereby granted to any private or public utility or municipal department, their successors and assigns, within the area shown on the plat and marked "Utility Easement" to install, lay, construct, renew, operate, maintain and remove conduits, cables, poles, pipes and wires, overhead or underground, with all necessary braces, guys, anchors and other equipment for the purpose of serving the subdivision or adjoining property with telecommunication, electric, gas, sewer, and water service as part of the respective utility system, and the right is hereby granted to enter upon the lots at all times for all of the purposes aforesaid.

The owners of land which as Regulated Drainage Easement right-of-way runs may use the land in any manner consistent with Indiana Code 36-9-27 and the proper operation of the drain. Permanent structures may not be placed on any right-of-way without the written consent of the Whitley County Drainage Board. Temporary structures may be placed upon or over the right-of-way without the written consent of the board, but shall be removed immediately by the owner when ordered so by the Board or by the County Surveyor. Crops grown on a right-of-way are at the risk of the owner, and, if necessary, in the reconstruction or maintenance of the drain, may be damaged without liability on the part of the Surveyor, the Board, or their representatives. Trees, shrubs, and woody vegetation may be removed by the surveyor, if necessary, to ensure the proper operation or maintenance of the drain.

Areas designated on the plat as "Drainage Easement" are hereby reserved to the County, or subsequent governmental authority, for the purpose of constructing, maintaining, operating, removing, and replacing stormwater drainage facilities, be it surface or subsurface, in accordance with plans and specifications approved by the Whitley County Engineer, or comparable agent of a subsequent governmental authority. No plantings, structures, fill, or other materials shall be placed in the Drainage Easements so as to impede the flow of storm water. Drainage Easements shall not be disturbed in a manner as to interfere with the flow of storm water and all grades shall be maintained as constructed. Responsibility for the maintenance of Drainage Easement stormwater facilities, including but not limited to periodic removal and disposal of accumulated particulate material and debris and mowing of common stormwater detention areas, shall remain with the owners of property within the plat, and such responsibility shall pass to any successive owner.

The removal of any obstructions located in any Utility Easement of Drainage Easement by an authorized person or persons performing maintenance or other work authorized herein shall in no way obligate the person in damages to restore the obstruction to its original form.

No owner of any Lot or any other parcel within this Plat shall at any time remonstrate against or attempt to cause cessation of any farming operation, whether now existing or existing in the near future which interferes with the residential use of the Lot of tract owned by the person or the tract owned by the person or persons remonstrating. Any person accepting title to a Lot or tract within this Plat, acknowledges that general agricultural areas exist adjacent to or near this Plat, and that activities on such agricultural areas may result in normal farm interference such as noise, odor, dust agricultural implement traffic, unusual hours, and other normal agricultural uses.

In addition to the Lots, Rights-of-way, Easements, and Building Lines dedicated on the face of this plat, the property is also subject to additional "Protective Covenants and Restrictions" recorded together with this plat.

The foregoing covenants, or restrictions, are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2044, at which time said covenants, or restrictions, shall be automatically renewed for successive periods of ten years unless amended through the Plan Commission. Invalidation of any one of the foregoing covenants, or restrictions, by judgement or court order shall in no way affect any of the other covenants or restrictions, which shall remain in full force and effect.

The right to enforce these provisions by injunction, together with the right to cause the removal, by due process of law, of any structure or part thereof erected, or maintained in violation hereof, is hereby dedicated to the public, and reserved to the owners of the lots in this subdivision and to their heirs and assigns.

Witness our hands and seals this _____ day of _____, 2021.

Phillip A. Marquell

State of Indiana)
County of Whitley)

Before me, the undersigned Notary Public in and for said County and State, personally appeared Phillip A. Marquell, and each separately and severally acknowledge the execution of the foregoing instrument as his or her voluntary act and deed, for the purposes therein expressed.

Witness my hand and Notarial seal this _____ day of _____, 2021.

My Commission Expires: _____

Notary Public

Resident of _____ County, _____

CERTIFICATE OF SURVEYOR

I, Joseph R. Herendeen, hereby certify that I am a Land Surveyor registered in compliance with the laws of the State of Indiana; that based on my knowledge, experience and belief this plat and accompanying legal description accurately depicts a subdivision of real estate described in Document Number 2016030356 in the Office of the Recorder of Whitley County, Indiana, all corners will be marked with 24-inch-long #5 rebar bearing plastic caps imprinted "SLSI Firm 0048"; and that there has been no change from the matters of survey revealed by the survey referenced hereon or any prior subdivision plats contained therein, on any lines that are common with this new subdivision.

I, Joseph R. Herendeen, 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.

Joseph R. Herendeen, Indiana Professional Surveyor Date: 12/18/2020



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 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.

(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 hereon 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 survey.
14. No statement made by any employee or agent of Sauer Land Surveying, Inc. is valid unless written herein.

APPROVALS

WHITLEY COUNTY PLAN COMMISSION
DATE: _____

DOUGLAS WRIGHT, PLAN COMMISSION PRESIDENT

JOHN JOHNSON, PLAN COMMISSION SECRETARY

BOARD OF COMMISSIONERS
DATE: _____

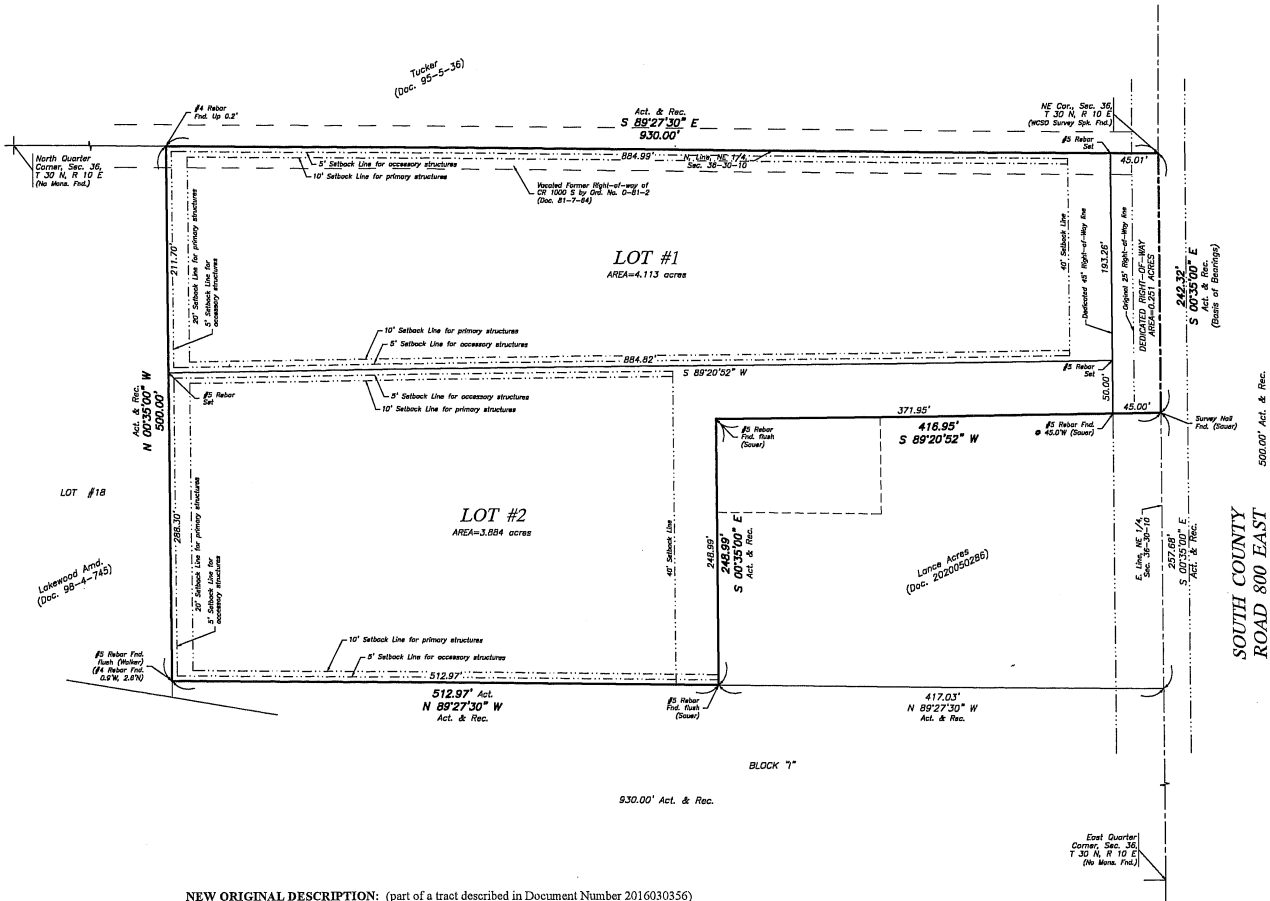
GEORGE SCHRUMPF

DON AMBER

THOMAS WESTERN

PLAN COMMISSION STAFF
DATE: _____

NATHAN BILGER, EXECUTIVE DIRECTOR



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

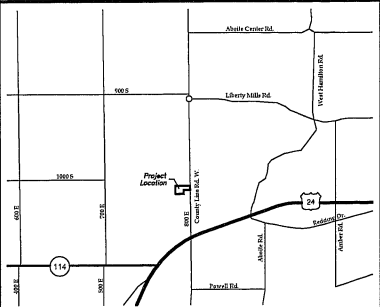
Part of the Northeast Quarter of Section 36, Township 30 North, Range 10 East, Whitley County, Indiana, being more particularly described as follows, to-wit:

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.

Last Deed of Record: Doc. 2016030356
Last Date of Fieldwork: September 15, 2020

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.

Location Map



Zone RR: Rural Residential

Setbacks:
Front: 40'
Side: 10' for primary structure, 5' for accessory structure
Rear: 20' for primary structure, 5' for accessory structure

PLAT LEGEND

— Plat Boundary Line
— Dedicated Road Right-of-Way Line
--- Building Set-back Line

AREAS:
Lots: 7.997 acres
Dedicated Right-of-Way: 0.251 acres
Total Plat: 8.248 acres



Ambuster, Thomas G Amended & Restated
Rev Trust & Ambuster, Pamela
L Amended & Restated Rev Trust

Orpheus, LLC

Moyle, N. Shepard
& Wendy Walker
Mulholland-

Orpheus,
LLC

Lutz, David L
& Irene J A

Lutz,
Andrew D

Little, Bryan G. & Brenda K.

Lentz, Jonathan R. &
Drusilla L.

Chillan, Cort &
Anderson, Kathleen M.

Pasalich, Frances M.

Orpheus, LLC

Tucker, William
A Jr & Cheryl S

Tucker,
Jeanne Y

Tucker, William
A Sr & Jeanne Y

Tucker,
William A Jr
& Cheryl Sue

Tucker, William
A Sr & Jeanne Y

Tindall, Drew & Marsha

Mills, Bradley M. &
Kimberly S.

Snyder, Matthew &
Staci

Sklenar, Frank
J & Margaret A

Evistan,
Thomas P
& Linda L

Dunfee, Kyle
N & Tonia M

Marquell-Devries
Properties LLC

Lance, Larry L &
Lance, Rebecca A

Mutton, Robert A. &
Linda A.

Buchholz, James P. &
Tina L.

S 800' E

Meyers, Brian E.

Meyers, Brian E.

Meyers, Brian E.

Northern Ind Pub
Service Co

Chopin Land
Associates Inc

Lakewood Homeowners
Association, Inc.

Fernandes,
Eustace
S & Anne

Dunfee, Kyle N &
Tonia M

Dunfee, Kyle
N & Tonia M

Lakewood Homeowners
Association, Inc.

Lennington,
Terrence
R & Susan

Lakewood
Homeowners
Association, Inc

LAKE WOOD DR.

Salk, Clifford
T Revocable
Trust Agreement

Witmer,
Mark E &
Michelle L

Hayes,
Jerome
B & Kelly

Etemadi,
Saeed S &
Annette D

Witmer, Neil
E & R Karin

Witmer, Neil
E & R Karin

Dymek, Robert J.

Keppel, C. Philip &
Nancy Sue

Keister, Michael E.
& Linda L.

Glaze, Scott
A & Melissa J

Rifkin, Richard
S & Chrisoula M

Miller, Wayne
S & Michele B

Mattax, Kimberly
Kay, Trustee of the
Trust, 10/31/02

Manitou Trail
Homeowners
Association Inc

MANITOU
TRAIL

Graves, Glenn
& Kimberly S

N