

**WHITLEY COUNTY ADVISORY PLAN COMMISSION
STAFF REPORT**

21-W-SUBD-11 PRIMARY REPLAT APPROVAL

Travis & Amanda Himes

Replat of 17A and 18A...Magic Hills Estates, 1162/1166 E. Kennys Ct.

JUNE 16, 2021

AGENDA ITEM: 3

SUMMARY OF PROPOSAL

Zoning:	AG, Agricultural		<u>Code Minimum</u>	<u>Proposed Minimum</u>
Area of plat:	4.314 acres	Lot size:	20,000 sq. ft.	1.839± acres (lot 18B)
Number of lots:	2 lots	Lot width:	100'	135'± (Lot 18B)
Dedicated ROW:	NA	Lot frontage:	50'	127.73' (Lot 17B)

The petitioner, owner of the subject property, is requesting a plat approval for a replat. The property consists of Lots 17A and 18A of the Partial Replat of Magic Hills Estates (recorded in 2017) in Section 10 of Thorncreek Township. The lots were part of a larger replat of the original Magic Hills Estates subdivision that occurred when the golf course closed. At the time, the existing pond was divided among Lots 17A, 18A, 19A, and 30.

To provide for the maintenance of the pond, the lot owners, including the petitioner, are establishing a maintenance agreement. The petitioner is seeking to revise the lot line between 17A and 18A to balance the usable pond frontage on each lot. Under current rules, this could be achieved without the need for a plat approval, but a replat has the benefit of resetting the legal descriptions.

No rezoning is required as this is a replat only and creates no new lots. 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		Health	X	Cable TV		Parcel Cmte.	X
Gas	X	Co. Highway	X	Sanitary Sewer	X		
Telephone		SWCD	X	Water	NA		

No additional right-of-way would be dedicated, as the existing right-of-way for Kenny's Court is adequate. Drainage and/or utility easements are not shown on the perimeter of the lots, this is consistent with the original plat. At the time of this writing, the comment letters received have stated that the proposed replat is generally adequate. The property is served with sanitary sewer.

The Parcel Committee discussed the naming convention of the plat, and the Recorder will need to approve the final plat name prior to recordation.

Separate restrictive covenants were not submitted at the time of this writing; the underlying Magic Hills covenants still apply.

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 subdivision name will need to be reviewed prior to recordation.
2. Secondary plat approval delegated to the Plan Commission Staff.

Date report completed: 6/7/21

PLAN COMMISSION RECORD OF ACTION

Motion:

By:

Second by:

Approve

Approve w/conditions

Deny

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

1324 Henry Avenue
Fort Wayne, IN 46808
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REPLAT OF LOTS 17A AND 18A IN THE PARTIAL REPLAT OF MAGIC HILLS ESTATES

AS LOCATED IN THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 32 NORTH,
RANGE 9 EAST, THORNCREEK CIVIL TOWNSHIP, WHITLEY COUNTY, INDIANA

DEED OF DEDICATION

We the undersigned, Travis J. Himes and Amanda M. Himes, owners of the real estate shown and described herein by virtue of a certain deed recorded as Document #2017040238, do hereby certify that we have laid off, platted and subdivided, and hereby lay off, plat and subdivide, said real estate in accordance with this plat.

This subdivision shall be known and designated as The Replat of Lots 17A and 18A in the Partial Replat of Magic Hills Estates, a subdivision in Whitley County, Indiana. All rights-of-way of public roads, streets, and alleys 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 as 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, pipes, poles and wires, overhead and 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 a part of the respective utility systems, and the right is hereby granted to enter upon the lots at all times for all of the purposes aforesaid.

The owners of land over which a Regulated Drain 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 so ordered 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 not be planted in the right-of-way without the written consent of the Board, and trees and shrubs 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 owner or 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 or Drainage Easement by an authorized person or persons performing maintenance or other work authorized herein shall in no way obligate the person in damages or 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 the cessation of any farming operation, whether now existing or existing in the near future which interferes with the residential use of the Lot or 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, 2046, 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 judgment 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 _____, 20____.

Travis J. Himes Amanda M. Himes Witness

State of Indiana)
County of Whitley)

Before me, the undersigned Notary Public in and for said County and State, personally appeared Travis J. Himes, Amanda M. Himes, and _____, Witness, 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 _____, 20____.

Notary Public My Commission Expires

PLAN COMMISSION CERTIFICATION OF APPROVAL

Primary approval granted on this ____ day of _____, 20____ by the Whitley County Advisory Plan Commission.

Thor Hodges, President

Troy Joe Wolf, Secretary

COUNTY COMMISSIONERS CERTIFICATION OF APPROVAL AND ACCEPTANCE

Approved and accepted this ____ day of _____, 20____ by the Board of Commissioners of the County of Whitley, State of Indiana.

George Schrumpp

Theresa Green

Chad Banks

PLAN COMMISSION STAFF CERTIFICATION OF APPROVAL

Secondary approval granted this ____ day of _____, 20____ by the Staff of the Whitley County Advisory Plan Commission.

Nathan Bilger, Executive Director

SURVEYOR'S CERTIFICATION

I, the undersigned Registered Land Surveyor licensed in compliance with the laws of the state of Indiana, hereby certify the hereon Plat to correctly represent a Survey of the real estate described above as made under my direction, that all the monuments shown thereon actually exist, that lots and streets shown in the Plat have been established in accordance with true and established boundaries of said Survey, and that this Survey and accompanying report has been completed in accordance with Title 865-IAC 1-12 and all other amendments thereto.

I hereby certify that to the best of my knowledge the above Plat and Survey are correct.

Micheal C. Vodge, Professional Surveyor

I affirm, under penalties of perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law - Micheal C. Vodge

SURVEYOR'S REPORT

In accordance with the Indiana Survey Standards as defined in Title 865, Article 1, Rule 12, Sections 1 through 29 of the Indiana Administrative Code, the following observations and opinions are submitted regarding the various uncertainties in the locations of the lines and corners established on this survey as a result of:

- (a) Variances in the reference monuments;
- (b) Discrepancies in record descriptions and plats;
- (c) Inconsistencies in lines of occupation and;
- (d) Random errors in measurement (Theoretical Uncertainty).

The Relative Positional Accuracy (RPA) due to random errors in measurement of the corners of the subject tract established this survey is within the specifications for a "Suburban" Survey (0.13 feet plus 100 parts per million) as defined in I.A.C. 865.

The purpose of this document was to perform two (2) original surveys (replat) of Lots #17A and 18A in the Partial Replat of Magic Hills Estates. The Partial Replat of Magic Hills Estates was prepared by this Firm on January 17, 2017, and all of the monuments that were set or found were recovered this date in good condition and conformed to record geometry by field measurement within the RPA for this survey. The plat of Magic Hills Estates was prepared by ZK Tazian Associates in 1988 and does not indicate the type, size, or material of the monuments set during platting. The boundary lines of these Lots were retraced during this survey on the basis of monumentation found essentially in agreement with platted geometry by field measurement as shown on the Plat of Survey. As a result, the found monumentation is considered by this firm to be "Local Corners", due to a lack of original monumentation, which are subject to undiscovered evidence regarding the true location of said corners. The uncertainty for all corners is not readily determinable because of the reliance on local corners. The orientation of the replatted Lots was determined by instruction of the owner.

As a result of the above observations, it is my opinion that the uncertainties in the location of the lines and corners established on this Plat of Survey are as follows:

DUE TO VARIANCES IN REFERENCE MONUMENTS: As shown on the Plat of Survey. All found monumentation is of unknown origin unless noted otherwise. Bearing and distance differential over the RPA for this survey are noted on the Plat of Survey. All set rebars are 5/8 inch diameter 24 inches long with orange identification caps stamped "ANDERSON-FIRM #29A". No dimension on this Plat of Survey can be interpreted to be of greater precision than the RPA as stated above. See Plat of Survey.

DUE TO DISCREPANCIES IN THE RECORD DESCRIPTION: None noted. Meas. (M) indicates measured dimension. Plat (P) indicates platted dimension. Rec. (R) indicates recorded dimension. Calc. (C) indicates calculated dimension. See Plat of Survey.

DUE TO INCONSISTENCIES IN LINES OF OCCUPATION: See the location of the existing pond as shown on the Plat of Survey. Unwritten rights may be associated with this occupation.

CONTRACT REQUIREMENTS: All surveying fees to Anderson Surveying, Inc. must be satisfied before this survey and report is valid. The commitment for title insurance was not provided at the time of this report. An abstract or title search may reveal additional information affecting this property. This survey is subject to any facts and or easements that may be disclosed by said full and accurate title search. Anderson Surveying, Inc. should be notified of any additions or revisions that may be required.



ANDERSON SURVEYING, INC.

Registered Professional Engineers and Land Surveyors
Indiana Land Surveying Firm Identification Number: 29A

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Fort Wayne, IN 46808
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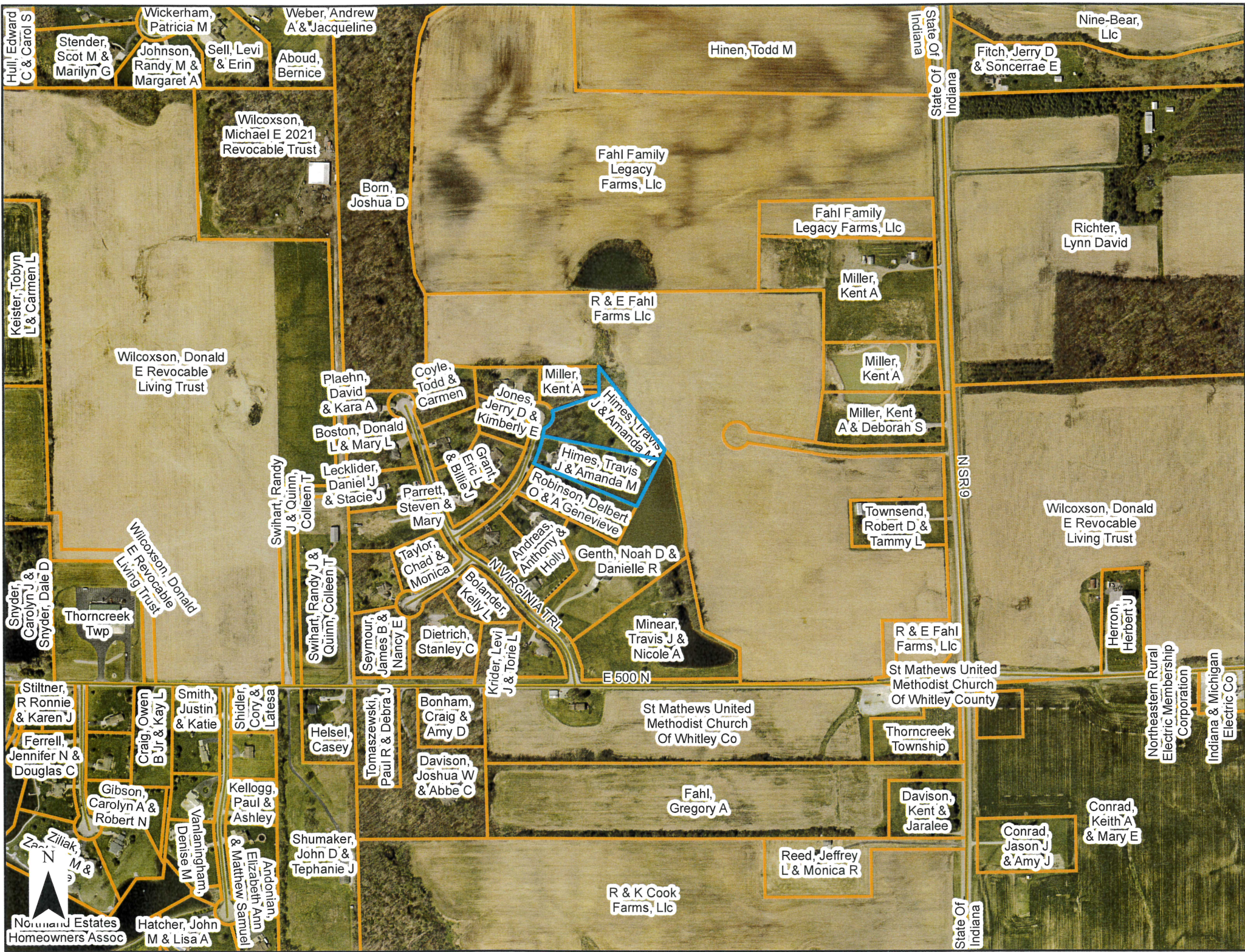
WWW.ANDERSONSURVEYING.COM

DEVELOPER

Travis J. & Amanda M. Himes
1162 E Kennys CT N
Columbia City, IN 46725

MAY 12, 2021

PAGE 2 OF 2 SURVEY NUMBER: 16-11-115-17A



Hull, Edward C & Carol S
Stender, Scot M & Marilyn G
Wickerham, Patricia M
Johnson, Randy M & Margaret A
Sell, Levi & Erin
Weber, Andrew A & Jacqueline
Aboud, Bernice

Keister, Tobyn L & Carmen L

Snyder, Carolyn J & Snyder, Dale D

Stilltner, R Ronnie & Karen J
Ferrell, Jennifer N & Douglas C

Ziliak, M & S
Norman Estates Homeowners Assoc

Wilcoxson, Michael E 2021 Revocable Trust

Wilcoxson, Donald E Revocable Living Trust

Wilcoxson, Donald E Revocable Living Trust

Gibson, Carolyn A & Robert N

Hatcher, John M & Lisa A

Born, Joshua D

Plaehn, David & Kara A

Boston, Donald L & Mary L

Lecklider, Daniel J & Stacie J

Swihart, Randy J & Quinn, Colleen T

Swihart, Randy J & Quinn, Colleen T

Helsel, Casey

Tomaszewski, Paul R & Debra J

Shumaker, John D & Tephane J

Coyle, Todd & Carmen

Jones, Jerry D & Kimberly E

Parrett, Steven & Mary

Taylor, Chad & Monica

Seymour, James B & Nancy E

Bonham, Craig & Amy D

Davison, Joshua W & Abbe C

Miller, Kent A

Grant, Eric J & Billie J

Robinson, Delbert O & A Genevieve

Andreas, Anthony & Holly

Krider, Levi J & Torie L

Himes, Travis J & Amanda M

Himes, Travis J & Amanda M

Genth, Noah D & Danielle R

Miner, Travis J & Nicole A

Fahl, Gregory A

Reed, Jeffrey L & Monica R

R & K Cook Farms, LLC

Miller, Kent A

Miller, Kent A & Deborah S

Townsend, Robert D & Tammy L

R & E Fahl Farms, LLC

St Mathews United Methodist Church Of Whitley Co

Thorncreek Township

Davison, Kent & Jaralee

Conrad, Jason J & Amy J

Conrad, Keith A & Mary E

Herron, Herbert J

Wilcoxson, Donald E Revocable Living Trust

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