

**WHITLEY COUNTY BOARD OF ZONING APPEALS
STAFF REPORT**

21-W-VAR-13 DEVELOPMENT STANDARDS VARIANCE
Ag Plus, Inc.
5501 South SR 9

**JULY 27, 2021
AGENDA ITEM: 2**

SUMMARY OF PROPOSAL

Current zoning: IN, Intensive Use

Property area: 11.88± acres (parent tract), 4.33 acres (proposed tract)

The petitioner, a company related to the property owner, is requesting a development standards variance to permit the splitting of the property without the required road frontage. The property is located at 5501 South State Road 9, at the southeast corner of SR 9 and the Norfolk Southern Railroad crossing in Washington Township.

The parent tract has been used for a grain elevator and other agri-business purposes since the 1950s. Recently the petitioner constructed a dry fertilizer building on the eastern half of the property. While the ground is owned by Briggs Crop Nutrients, the new facility is owned by the petitioner. In order to satisfy financial and business requirements, the petitioner intends to acquire the 4.33-acre property upon which this facility is located.

The petitioner is requesting a variance of the required 100' of public road frontage due to constraints in configuring the new parcel. In lieu of parcel frontage, a 50' access easement would be provided across the parent tract to SR 9. Additionally, an indeterminate right of access over current or future gravel drive areas on the parent is to be provided.

REVIEW CRITERIA

Indiana Code §36-7-4-918.5 and Section 10.10 of the Zoning Code state the criteria listed below upon which the Board must base its review. Staff's comments/proposed findings of fact under each criterion.

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

The proposed frontage variance will not likely be injurious to the public health, safety, morals, or general welfare as the proposed parcel is in a long-established agri-business area that is already developed with structures, driveways, railroad spur, etc. Such improvements preclude the feasibility of extending the proposed parcel to the public road to meet the required frontage. The provision of a 50' access easement would provide the essential access for the parcel, while the supplemental right-of-access easement over the existing gravel drives would further ensure accessibility.

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; and

It is not expected that the variance will adversely affect the use and value of the area adjacent to the property as there would be no change in the appearance or use of the property, the petitioner's related company owns the surrounding property, and the parcel will be served by an access easement.

3. The strict application of the terms of the Ordinance will result in practical difficulties in the use of the property. This situation shall not be self-imposed, nor be based on a perceived reduction or restriction of economic gain.

The strict application of the Ordinance terms regarding the frontage would likely result in practical difficulties. The extension of the proposed parcel to SR 9 would split the parent parcel into

noncontiguous pieces or would be located primarily along a railroad spur. Alternatively, the parcel could be configured to parallel the south property line, which would split existing buildings and storage tanks, creating problems for ownership as well as noncompliant setbacks. The provision of an access easement as an alternative to the strict application of the code seems to be the minimum necessary to meet the objective of the development standard while avoiding these practical difficulties.

Further, the petitioner had originally intended not to split the parcel and to lease the property area, which would not require a variance request. It is the petitioner's financial institution that is requiring the property split.

Date report prepared: 7/21/21

BOARD OF ZONING APPEALS ACTION

Findings of Fact Criteria

	Vote: Denihan		Lopez		Wilkinson		Wolf		Wright	
	<i>Yes</i>	<i>No</i>	<i>Yes</i>	<i>No</i>	<i>Yes</i>	<i>No</i>	<i>Yes</i>	<i>No</i>	<i>Yes</i>	<i>No</i>
<i>Criterion 1</i>										
<i>Criterion 2</i>										
<i>Criterion 3</i>										

Motion:

By:

Second by:

Vote:	Denihan	Lopez	Wilkinson	Wolf	Wright
<i>Yes</i>					
<i>No</i>					
<i>Abstain</i>					

Whitley County Board of Zoning Appeals

VARIANCE PETITION

Date Filed: 07/02/2021

Hearing Date: 07/27/2021

Name of Applicant: Ag Plus, Inc.

Address of Applicant: 401 North Main St., South Whitley, IN 46787

Name of Current Deeded Owner: Briggs Crop Nutrient, LLC

Address of Owner: 401 North Main St., P.O. Box 306, South Whitley, IN 46787

Property Located at 5501 S. State Road 9, Columbia City, IN Southeast of the Chicago and St. Louis Railroad

SUMMARY OF PROPOSAL AND PETITION FOR VARIANCE:

Current Zoning: IN District- Industrial Intensive Use

Property Area: 12.92 Acres (Total), 4.33 Acres (proposed)

The Petitioner, Ag Plus, Inc. ("Ag Plus") is requesting a development standards variance related to a fertilizer storage facility currently located on 4.331 acres on the Southeast corner of a 12.92 Acre Parcel. Petitioner is requesting a variance to create a 4.331 acres parcel that does not have the required minimum 100' road frontage.

The Petitioner, Ag Plus, Inc., is an Indiana Agricultural Cooperative located in South Whitley, Indiana. The owner of the 12.92 acre parcel is Briggs Crop Nutrients, LLC ("Briggs") is, which is an Indiana Limited Liability Company jointly owned by Ag Plus, Inc. (50% membership interest) and CHS, Inc. (50% membership interest).

Briggs currently operates a crop nutrient handling and storage facility on the West portion of the subject property. Ag Plus, Inc., as one of the owners of Briggs maintains a mutually beneficial business relationship with Briggs Crop Nutrients, LLC and provides product and support services for the Briggs operation.

In or around August of 2020, Ag Plus and Briggs entered into a lease arrangement so that Ag Plus could construct a dry fertilizer storage facility on a 4.331 Acre portion ("Ag Plus Parcel") located within the 12.92 Acres parcel owned by Briggs. Ag Plus' 30,000 Sq. Ft. dry fertilizer storage facility was completed at the end of 2020.

Ag Plus provided all of the finances to construct the storage facility on the Ag Plus Parcel and is exclusively responsible for operating it. In early 2021, Ag Plus began the process of refinancing its debt with Co-Bank. At that time, Co-Bank advised Ag Plus that in order to complete the refinancing, it would be necessary to purchase the 4.331 acre dry fertilizer parcel from Briggs. Because of the cooperative relationship between Ag Plus and Briggs, Briggs agreed, and the parties entered into and executed all of the necessary documents to complete the transfer. Because the Ag Plus Parcel is not located on State Road 9, Briggs granted a permanent 50' access easement over its property for the benefit of the Ag Plus Parcel

A variance of the development standards requiring 100 feet of road frontage is necessary in order to consummate the transfer of the 4.331 acre parcel to Ag Plus, Inc. The transfer of the property is necessary for Ag Plus to obtain refinancing critical to its business operations. The proposed frontage variance will not likely be injurious to the public health, safety, morals, or general welfare as the proposed parcel is in an industrial area that is already developed with sizeable buildings and fertilizer storage and handling facilities, driveways, railroad, and railroad spur, etc. These improvements preclude the feasibility of extending the proposed parcel to the public road to meet the required frontage. Specifically, a railroad spur to the North and other buildings and propane tanks to the South makes extending the Ag Plus Parcel


unworkable. There is currently a permanent 50' access easement that provides the necessary access from State Road 9 to the Ag Plus Parcel.

In addition, the use and/or value of the area adjacent to the property as the facility is already being used as a dry fertilizer storage and handling facility. If this variance is granted, the use of the property would be identical to its current use.

Finally, the strict application of the Ordinance terms regarding the frontage would result in practical difficulties. Extending the proposed 4.331 acre parcel to State Road 9 would result in potentially two (2) additional non-contiguous parcels or would be located along a railroad track or rail spur. Along with splitting the property into non-contiguous parcels, the configuration of other buildings on the property would also likely require a circuitous path from the Ag Plus parcel to State Road 9. Allowing the current 50' access easement, which provides access to the Ag Plus Parcel, to serve as an alternative to the strict application of the code would avoid these complications and is the most practical solution to meet the objectives of the development standards.

It is for the above enumerated reasons that Ag Plus, Inc. is requesting that the Whitley County Board of Zoning Appeals grant its request for a variance of the development standards requiring 100' of public road frontage.

Respectfully Submitted,


Michael E Boring, Atty No. 24097-73
Attorney for Ag Plus, Inc.

ORIGINAL DESCRIPTION

Part of the lands conveyed to Briggs Crop Nutrients, LLC as recorded in Document #2014070375, being part of the West Half of the Southwest Quarter of and part of the West Half of the Northwest Quarter lying South of the Chicago and St. Louis Railroad in Section 1, Township 30 North, Range 9 East, Second Principal Meridian, Whitley County, Indiana, this new description having been prepared by Michael C. Vodge, Indiana Professional Surveyor #20100011, as part of Anderson Surveying, Inc. Survey #20-E-08, dated July 16, 2021, more particularly described as follows:

Beginning at a rail post monumenting the Southeast Corner of lands described in Document #2014070375, said post being located 2333.70 feet North 00 degrees 15 minutes 28 seconds West (all bearings in this description are based on VGS-84 longitude and Latitude by GPS observation) of the Southeast Corner of said West Half, thence North 89 degrees 45 minutes 50 seconds West, on the South line of said Document #2014070375, a distance of 505.54 feet, thence North 00 degrees 07 minutes 09 seconds West, a distance of 371.95 feet, thence North 89 degrees 52 minutes 54 seconds East, a distance of 504.62 feet, to a point on the East line of said Document #2014070375, thence South 00 degrees 15 minutes 28 seconds East, on said East line, a distance of 375.11 feet, to the point of beginning. Containing 4.331 acres, more or less, subject to all easements, restrictions and covenants of record.

TOGETHER WITH

A 50' Access easement over part of the lands conveyed to Briggs Crop Nutrients, LLC as recorded in Document #2014070375, being part of the West Half of the Southwest Quarter of and part of the West Half of the Northwest Quarter lying South of the Chicago and St. Louis Railroad in Section 1, Township 30 North, Range 9 East, Second Principal Meridian, Whitley County, Indiana, more particularly described as follows:

Commencing at a rail post monumenting the Southeast Corner of lands described in Document #2014070375, said post being located 2333.70 feet North 00 degrees 15 minutes 28 seconds West (all bearings in this description are based on VGS-84 longitude and Latitude by GPS observation) of the Southeast Corner of said West Half, thence North 89 degrees 45 minutes 50 seconds West, on the South line of said Document #2014070375, a distance of 505.54 feet, thence North 00 degrees 07 minutes 09 seconds West, on the West line of a lease parcel, a distance of 231.3 feet, to the TRUE POINT OF BEGINNING for the easement herein described, thence South 89 degrees 52 minutes 54 seconds West, a distance of 788.01 feet, to a point on the centerline of State Road #9; thence North 00 degrees 40 minutes 34 seconds East, on said centerline, a distance of 50.00 feet, thence North 89 degrees 52 minutes 54 seconds East, a distance of 767.52 feet, to a point on the West line of the above described lease parcel, thence South 00 degrees 07 minutes 09 seconds East, on said West line, a distance of 50.00 feet, to the point of beginning. Containing 0.881 acres, more or less.

TOGETHER WITH

A right of Access over the current or future gravel drive areas on the the remaining parent parcel:

NOTE: these descriptions were based on a previous survey of the parent tract by Anderson Surveying, Inc. (survey #96-10-208, dated 11-1996)

SURVEYOR'S REPORT

In Accordance with Title 885, Article 1 Chapter 12, Section 1 through 29 of the Indiana Administrative Code, the following observation 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 plat
- (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 "Rural" Survey (0.26 feet plus 200 parts per million) as defined in I.A.C. 885.

The purpose of this document was to perform an Original Survey of a portion of the real estate conveyed to Briggs Crop Nutrients, LLC as recorded in Document #2014070375 in the Office of the Recorder of Allen County, Indiana. The boundary lines of the parent tract, the new parcel, and other relevant lines were established as follows:

The parent tract was surveyed by Anderson Surveying, Inc. (survey #96-10-208, dated 11-1996). All monuments that were accepted during the survey of the parent tract were recovered in good condition and accepted during the survey of the new parcel. The orientation of the new parcel was determined by instruction of the owner. This parcel was created for mortgage purposes only and is not intended to be used for any conveyance. The new parcel has access to State Road by a 50-foot wide Ingress and Egress Easement as described in deed for the parent tract (Document #600335552).

CERTIFICATION

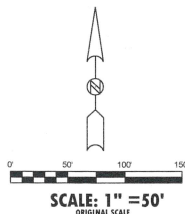
I hereby certify that this Plat of Survey was prepared under my direct supervision and that to the best of my knowledge and belief was executed in accordance with the requirements of the Indiana Survey Standards as defined in Title 885, Article 1, Rule 12 of the Indiana Administrative Code.

Field Survey completed the 10th day of September, 2020
Certified this 16th day of July, 2021
Prepared exclusively for: Briggs Crop Nutrients, LLC / Ag Plus
Survey Number: 20-E-08

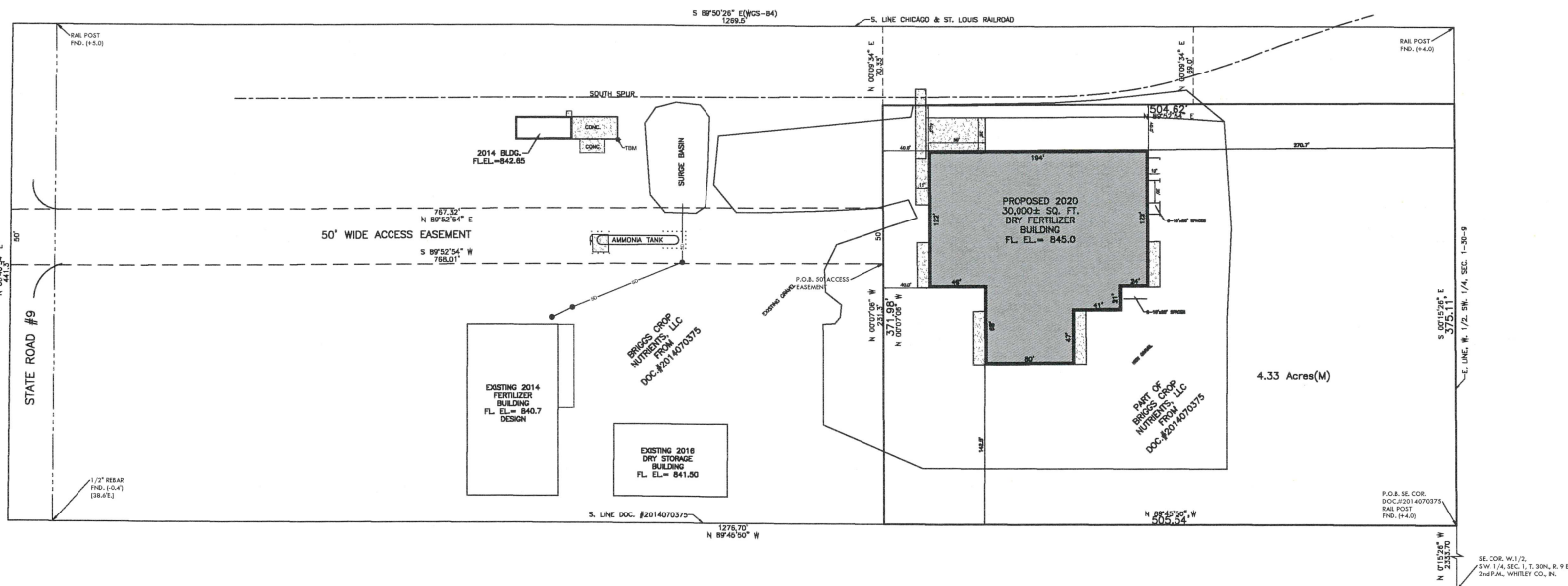
PRO FORMA

Michael C. Vodge, L.S.# 20100011

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



CHICAGO AND ST. LOUIS RAILROAD



ANDERSON SURVEYING, INC.
Registered Professional Engineer and Land Surveyor
1329 Henry Avenue
Columbia City, IN 46725
For Work: 317-4698
For Home: 317-4698
Fax: (317) 462-8852
www.andersonsurveying.com

SITE IMPROVEMENTS
BRIGGS CROP NUTRIENTS, LLC
5501 S. STATE ROAD #9
COLUMBIA CITY, INDIANA
46725

SHEET TITLE:

**2021 NEW
PARCEL EXHIBIT**

SCALE: 1"=50'

DATE: 07/15/21

DRAWN BY: MCV

CHECKED BY: LJS/DMW

DATE: 07/15/21

DATE: 07/15/21

DATE: 07/15/21

DATE: 07/15/21

DATE: 07/15/21

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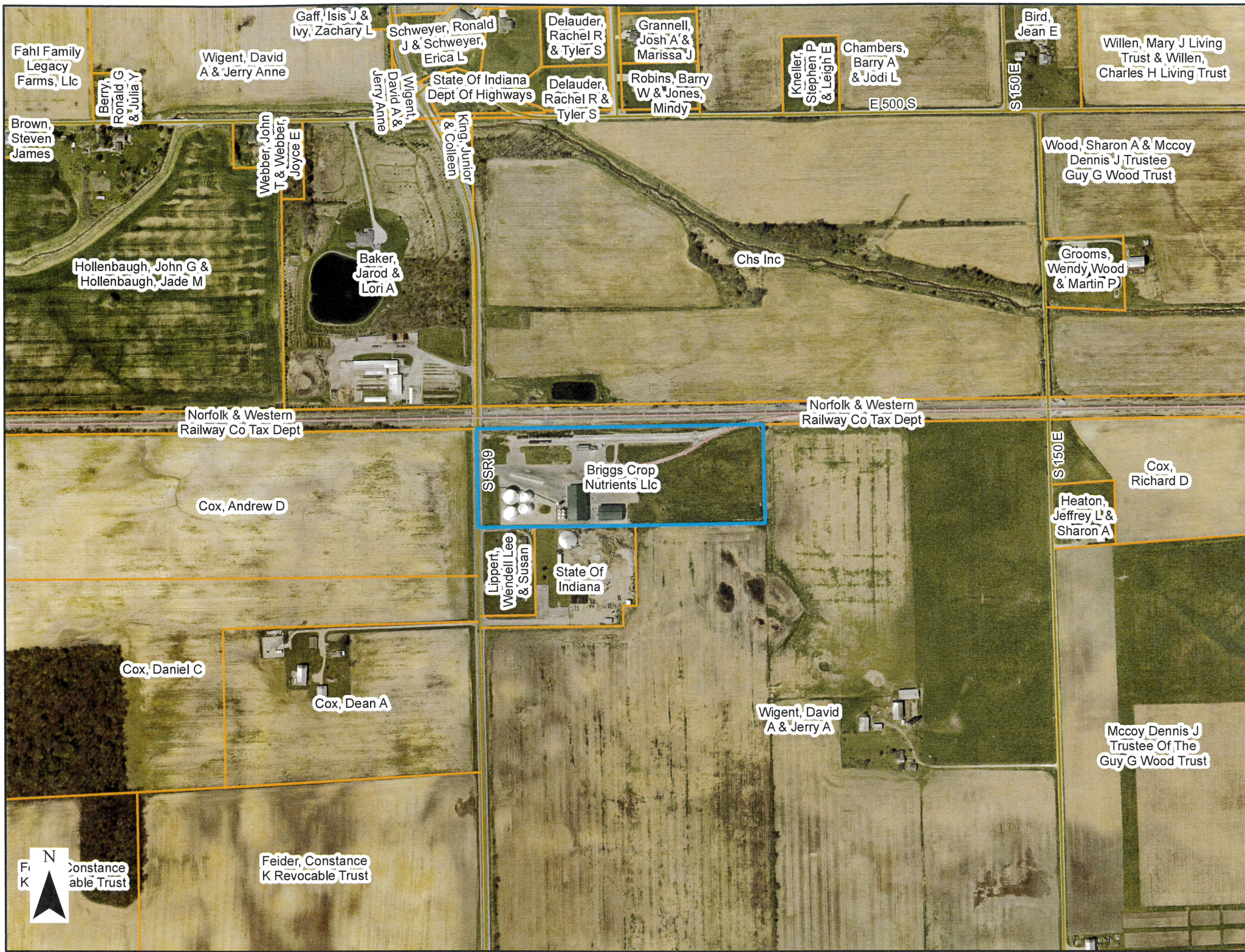
DATE: 07/15/21

DATE: 07/15/21

DATE: 07/15/21

DATE: 07/15/21

DATE: 07/15/21



Fahl Family
Legacy
Farms, Llc

Brown,
Steven
James

Hollenbaugh, John G &
Hollenbaugh, Jade M

Wigent, David
A & Jerry Anne

Webber, John
T & Webber,
Joyce E

Baker,
Jarod &
Lori A

Norfolk & Western
Railway Co Tax Dept

Cox, Andrew D

Cox, Daniel C

Cox, Dean A

Feider, Constance
K Revocable Trust

Gaff, Isis J &
Ivy, Zachary L

Schweyer, Ronald
J & Schweyer,
Erica L

Wigent, David A &
Jerry Anne

King, Junior
& Colleen

State Of Indiana
Dept Of Highways

DeLauder,
Rachel R
& Tyler S

DeLauder,
Rachel R &
Tyler S

Grannell,
Josh A &
Marissa J

Robins, Barry
W & Jones,
Mindy

Chambers,
Barry A
& Jodi L

E 500 S

Norfolk & Western
Railway Co Tax Dept

Briggs Crop
Nutrients Llc

Lippert,
Wendell Lee
& Susan

State Of
Indiana

Wigent, David
A & Jerry A

Bird,
Jean E

Willen, Mary J Living
Trust & Willen,
Charles H Living Trust

Wood, Sharon A & Mccoy
Dennis J Trustee
Guy G Wood Trust

Grooms,
Wendy Wood
& Martin P

Cox,
Richard D

Heaton,
Jeffrey L &
Sharon A

Mccoy Dennis J
Trustee Of The
Guy G Wood Trust

