

STATE OF INDIANA)
) SS: IN THE BROWN COUNTY CIRCUIT COURT
COUNTY OF BROWN) CAUSE NO: _____

SHERRIE MITCHELL and BEN MITCHELL,
 Petitioners

vs

BROWN COUNTY INDIANA BOARD
OF COMMISSIONERS
 Respondent.

VERIFIED PETITION FOR JUDICIAL REVIEW

Comes now Sherrie Mitchell and Ben Mitchell (collectively "Mitchell"), and submits their Verified Petition for Judicial Review of a legislative zoning decision of the Brown County, Indiana Board of Commissioners, and states:

1. The Brown County Board of Commissions on April 7, 2021 approved a request for rezoning of 3 acres of R-2 (residential 2) zoned property to FR (forest reserve) located at 7735 Gartner Drive, Morgantown, Indiana 46160 for industrial use.
2. Mitchell submit this Petition for Judicial Review under the 1600 series of Indiana Code 36-7-4.
3. Mitchell resides at 971 West Robertson Road, Morgantown, Indiana 46160.
4. Respondent is Brown County, Indiana Board of Commissioners, 201 Locust Lane, Nashville, Indiana 47448.
5. Petitioner to the Brown County Board of Commissioners requesting the rezoning approval is Christina Buccos ("Buccos"), 7705 Gartner Drive, Morgantown, Indiana 46160.

COUNT I – FAILURE TO PAY REASONABLE REGARD TO INDIANA
CODE 36-7-4-603

6. On April 7, 2021, the Brown County Board of Commissioners approved the

request for rezoning to allow general industrial use at 7736 Gartner Drive, Morgantown, Indiana 46160, Docket No. 21-RZ-02. The Brown County Area Plan Commission Staff Report for Christina Buccos is marked Exhibit A, attached.

7. The Brown County Commissioners approval of the rezoning allows or approves use of Buccos property for all uses authorized by the Brown County Zoning Ordinance in a Forest Reserve District, including industrial uses, slaughterhouse, junk yard, and petroleum tank farm. Buccos property is currently used for a logging yard operation associated with timbering, sorting of logs, and resale or other use of log/cut timber.

8. Mitchell is an aggrieved party to the Brown County Commissioners approval of the rezone to forest reserve (FR). Mitchell is the owner of property adjacent to the Buccos Property. The Mitchell property is located on West Robertson Road at the intersection with Gartner Lane. Mitchell's property is subject to industrial grade traffic and heavy equipment, and vehicles used to transport logs to and off the Buccos property.

9. Brown County Zoning Ordinance authorizes a special exception for general industrial use on property zoned FR.

10. Brown County Zoning Ordinance prohibits industrial uses inside of R2 districts. Rezoning a 3 acre tract inside of an exclusive R2 district constitutes "spot zoning" and is a subversion of the Brown County Zoning Ordinance.

11. Indiana Code 36-7-4-603 requires the legislative body, under the 600 series of this Chapter, to pay reasonable regard to (1) the comprehensive plan; (2) current conditions and the character of current structures and uses in each district; (3) the most

desirable use for which the land in each district is adapted; (4) the conservation of property values throughout the jurisdiction; and (5) responsible development and growth. Commissioners publicly denied having had a responsibility to perform these duties.

COUNT II – DECISION WAS ARBITRARY AND CAPRICIOUS

12. Indiana Code 36-7-4-1003 states “(a) Each decision of the legislative body under section 918.6 of this chapter is subject to judicial review in the same manner as that provided for the appeal of a final decision of the board of zoning appeals under section 1016(a) of this chapter.”

13. Comprehensive Plan for Brown County, Indiana states that the objective for residential uses is (7) to protect the integrity and stability of existing residential areas from encroachment by incompatible uses. Brown County Zoning Ordinance considers industrial uses in residential districts incompatible. Allowing industrial tractor-trailers on the Buccos property prevents Mitchells from enjoying their property due to noise, dust, vibration, and threat of risk to both property and person driving in unsafe conditions.

14. Comprehensive Plan for Brown County, Indiana states that the supporting policy for industrial uses (3) Rezoning of land for industrial uses should be discouraged in areas that are inappropriate.

15. Commissioners stated publicly that the Buccoses were “here first” to justify their support for approving the rezoning of the Buccos property.

16. The “rational basis” to support the decision of a board of commissioners must be based upon this criteria and have a real and substantial relationship to public health, safety, morals or general welfare of the community. *Field v. Area Plan Commission of Grant County*, 421 N.E.2d 1132.

17. The decision of the Board was arbitrary and capricious, lacking of support upon any rational basis, and was unreasonable.

COUNT III-DENIAL OF DUE PROCESS

18. Brown County Board of Commissioners voted to close the meeting and denied the Mitchells the opportunity to object to commissioners stated reasons for approval of the rezone request.

COUNT IV-PREJUDICE

19. Brown County Board of Commissioners made numerous comments about the longevity of the Buccoses. This is a prejudice vote against the Mitchells, who are 7 year residents of the county.

20. Granting the rezone request subverts the general purposes served by the zoning ordinance and materially and permanently injures the Mitchell property and other properties in the same district or in the vicinity of the Buccos property.

21. Approval of the rezone request for general industrial use on the Buccos property in the R2 district was illegal, arbitrary and capricious, and with prejudice.

22. The Brown County Board of Commissioners records pertaining to docket number 21-RZ-02 do not identify all persons who participated in the hearing on April 7, 2021. On information and belief, Mitchell states that persons appearing and participating in the hearing on April 7, 2021 were:

Christina Buccos

Sherrie Mitchell

Ben Mitchell

23. Mitchell requests that the Court on judicial review declare the decision of the

Board of Commissioners under docket number 21-RZ-02 to be illegal and void. Mitchell requests that the Court vacate the Brown County Board of Commissioners approval of the rezoning for industrial use on the Buccos property under docket number 21-RZ-02.

WHEREFORE, Mitchell requests the Court on judicial review to clear the decision of the Brown County Board of Commissions under docket number 21-RZ-02 to be illegal and void, and for all other proper relief.

Respectfully submitted,


Ben Mitchell


Sherrie Mitchell

I swear or affirm under the penalties of perjury that the forgoing representations are true.


Sherrie Mitchell


Ben Mitchell

**BROWN COUNTY AREA PLAN COMMISSION
STAFF REPORT FOR CHRISTINA BUCCOS**

Docket No.: 21-RZ-02

Hearing Date: March 24, 2021

Request: To rezone 3.006 acres from Secondary Residential (R2) to Forest Reserve (FR)

Petitioner: Christina Buccos

Owner: Christina Buccos

Location: 7735 Gartner Drive on the east side of the road in Jackson Township. The parcel is located approximately 1121 feet north of the West Robertson Road intersection.

Zoning and Current Use: The site is zoned Secondary Residential (R2) and has a large outbuilding on a wide gravel area.

General Findings:

1. The property consists of 3.006 acres and an outbuilding is the only structure.
2. The area is used currently, and has been used in the past, as a log yard meaning that it provides a staging area for log selection, transfer and/or eventual conversion to firewood.
3. Gartner deeds and land contracts go back to 1958.
4. A number of logging trucks and other equipment are kept at the site when not being used off-site to conduct normal logging operations.
5. The log yard is integral to the logging business that the Buccos-Gartner family owns and operates.
6. Under the Brown County Zoning Ordinance 1.2 Definitions:

logging operation - means the harvesting and/or removal of logs from a forest over a county highway, by a logging or trucking operator; (8/29/84)

general industrial use - means manufacturing, processing, extraction, heavy repairing, dismantling, storage, or disposal of equipment, raw materials, manufactured products or wastes, in which some operations, other than transportation, are performed in open areas;

7. The Brown County Ordinance provides that General Industrial use is allowed in Forest Reserve (FR) and Industrial (I) districts only with Special Exception approval from the Board of Zoning Appeals.
8. The petitioner has indicated that company trucks come and go two or three times a week with the trucks traveling after "rush hour" in the morning and at night.
9. The logging business currently has three employees, and these are family members.

*Exhibit
A.*

10. 2.1 Kinds of Districts: Establishment.6. Secondary Residence Districts (R2) are established to include areas that have been subject to urbanization on a scattered pattern, principally along County Highways.
11. The area surrounding the lot is rural in nature with a large private recreational lake, agricultural use and large forested tracts.
12. Gartner Drive is approximately one mile in length and provides access for only Gartner-Buccos owned properties.
13. A change to Forest Reserve (FR) zoning would authorize uses at the location including residential, agricultural, light Industrial, public use, and a variety of business uses with and without the necessity of a special exception. Most of these uses are also allowed in Secondary Residential (R2) with and without a special exception.
14. The Brown County Comprehensive Plan page 5, under Elements That Guide the Plan, provides that: "...the desire to preserve extends not only to natural features but also to ways of life. And: The Industrial Use section of the Comprehensive Plan states that types of use that are complimentary to and compatible with the physical, human and economic resources of Brown County should be identified and encouraged."
15. The Plan further provides: "The desire to discourage economic decline and foster economic development are two sides of the same coin, and both are important elements in guiding a comprehensive plan for Brown County. Of the two, the desire to discourage economic decline is the more important, for without it, there will be too few residents to preserve anything. In this regard, existing economic activities, such as farming, logging, arts and crafts of all sorts, tourist-oriented businesses, and businesses that supply the goods and services that make community life possible...should be protected, encouraged, and accommodated, as long as they remain compatible with the desire to preserve."
16. I.C. 36-7-4-603 describes the criteria to be used for review of zoning requests by the Plan Commission and the legislative body. Both shall pay reasonable regard to:
 - a. the comprehensive plan;
 - b. the current conditions and the character of current structures and uses in each district;
 - c. the most desirable use for which the land in each district is adapted;
 - d. the conservation of property values throughout the jurisdiction and
 - e. responsible development and growth.
17. Staff Recommendation: Because of the remote location with all adjoining property owned by the Buccos-Gartner family and the fact that the Forest Reserve use requested is nothing new to the area, Staff recommends rezoning the property.

Shady Oaks Logging

1. Limited space: On a job site, there isn't enough room to stockpile the logs. Bringing them to a log yard makes it easier to lay them out for the potential buyers to look at them. If they don't immediately go to a mill they can remain piled here until they can be sent off. Also, removing them from the job site makes it easier to get more done quicker, progress can continue without needing to wait for the backed up logs to be removed.

2. Weather: When bad weather is coming the logs can be removed from the job site so there is no damage from trucks trying to get in to pick them up. If they are stored in the log yard, its easy access to them, with no damage to the land owner property or the equipment. Progress can continue with logs being sold.

3. Shop: This log yard is where our shop is located. Our equipment comes home from job sites for maintenance and repairs.

4. Firewood: We bring in firewood logs that in turn are sold to a local company that processes them in to firewood for people in need. We stockpile the firewood logs through the summer because we have four households and the shop that burn wood through out the winter.

5. Income: Not only is this log yard part of our income and livelihood, it also helps to supply income for 3 local trucking companies that haul the logs in and out.

Hours of Operation: It just varies. During day time hours, there are times when there is nothing going on for months. Other times the loader and chainsaws can be running for several hours. The busiest time of year is late fall and early spring.

Our company has 2 employees

Thank you,



duke-energy.com
1.800.521.2232

Page 1 of 3

Service address

7535 GARNER DR N, MISC. BARN
MORGANTOWN IN 46160

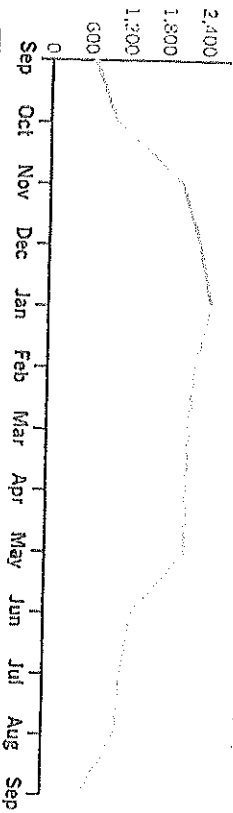
Bill date Sep 24, 2020

For service Aug 24 - Sep 23
30 days

Account number 1220-2865-02-8

Previous amount due \$162.69
Payment received Sep 18 -162.69
Current Electric Charges 87.31
Taxes 6.11
Total amount due Oct 16 \$93.42

Electric usage history
kWh 2019

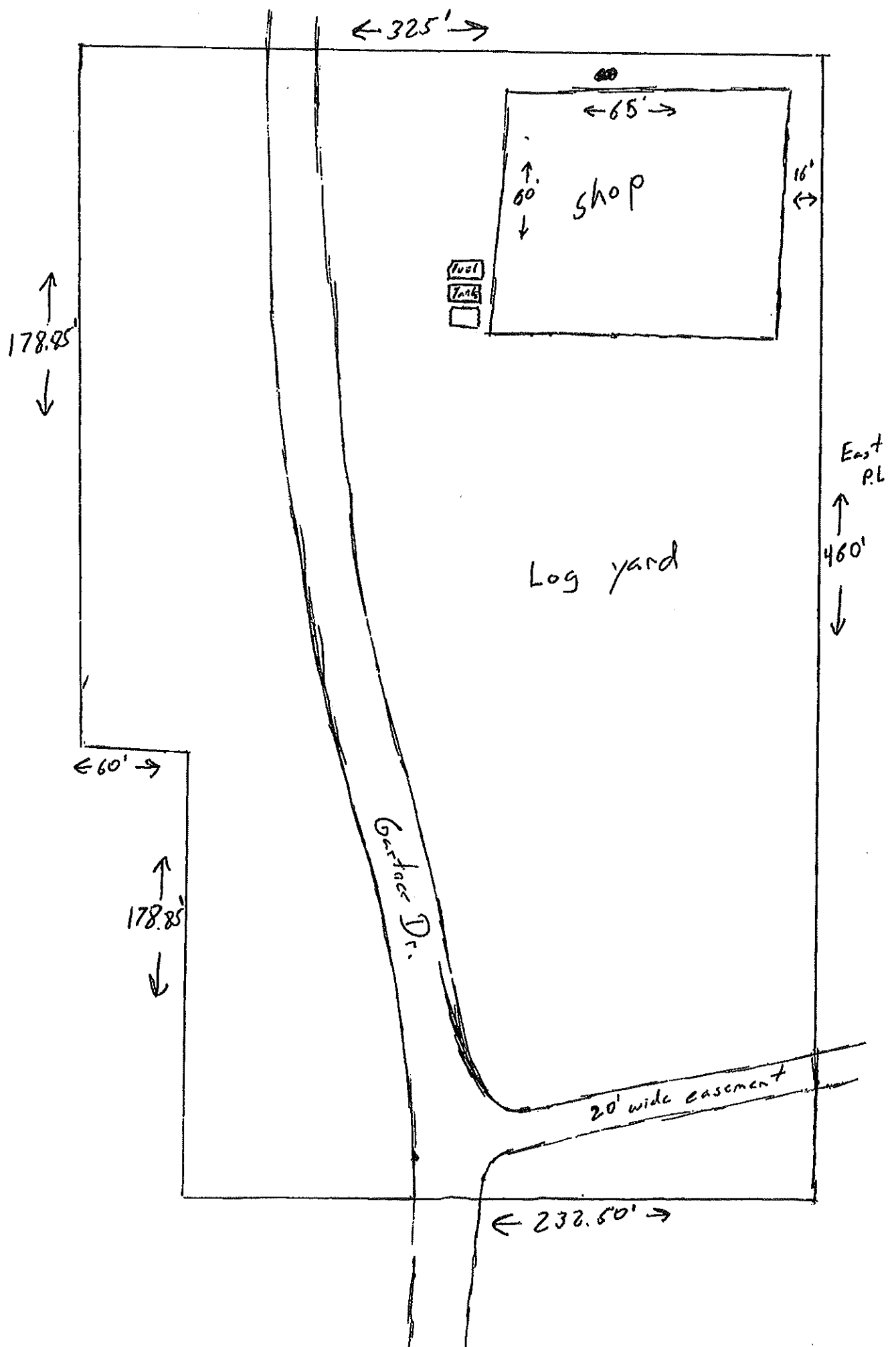


Current Month			
Electric (kWh)	Sep 2019	12-Month Usage	Avg Monthly Usage
	562	664	20.757
12-month usage based on most recent history			
			1.730

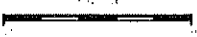
Thank you for your payment.
Your current rate is Commercial Service (CSNO).
For a complete listing of all Indiana rates and riders, visit duke-energy.com/rates

Standard billing and payment practices have resumed. Extended payment arrangements are available for customers who need more time to pay. Visit duke-energy.com/extension to set up a payment plan.

Mail your payment at least 7 days before the due date or pay instantly at duke-energy.com/billing. Late payments are subject to a 3% late charge.



Disclaimer: The purpose of this map is to show the general location of the property and not to provide any warranty concerning the accuracy or ownership of the property. The map is not intended to be used for any other purpose.



STATE OF INDIANA)
) SS:
COUNTY OF BROWN)

IN THE BROWN CIRCUIT COURT

CAUSE NO:

SHERRIE MITCHELL
Petitioner

vs.

BROWN COUNTY, INDIANA BOARD
OF COMMISSIONERS,
Respondent.

**NOTICE OF FILING VERIFIED PETITION
FOR JUDICIAL REVIEW**


Notice is hereby given that Petitioners, Sherrie Mitchell and Ben Mitchell, have filed a Verified Petition for Judicial Review ("Verified Petition") against Respondents, Brown County, Indiana Board of Commissioners. The Verified Petition seeks the review of the Board of Commissioners decision to approve a request for a rezoning under Docket Number 21-RZ-02 on April 7, 2021. The decision to approve the request was not in accordance with law, was defective. The decision to approve was based on recommendations to the Board by the Brown County Area Planning Commission.

Respectfully Submitted,


Sherrie Mitchell and Ben Mitchell

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Verified Petition was duly served on Christina Buccos by US Postal service, mail, on May 3, 2021.


Sherrie Mitchell and Ben Mitchell
971 W. Robertson Road
Morgantown, IN 46160

STATE OF INDIANA)
) SS: IN THE BROWN CIRCUIT COURT
COUNTY OF BROWN) CAUSE NO:

SHERRIE MITCHELL and BEN MITCHELL
Petitioners

vs.

BROWN COUNTY, INDIANA BOARD
OF COMMISSIONERS,
Respondent.

SUMMONS

STATE OF INDIANA TO DEFENDANT: Brown County, Indiana Board of Commissioners
c/o Jerry Pitman, President
201 Locust Lane, Second Floor
Nashville, IN 47448

You have been sued by the person named Plaintiff in the Court stated above.

The nature of the suit against you is stated in the Complaint, which is attached to this document. It also states the demand which the Plaintiff has made and wants from you.

You must answer the Complaint in writing, by you or your attorney, within twenty (20) days, commencing the day after you receive this summons, or judgment will be entered against you for what the Plaintiff has demanded. You have twenty-three (23) days to answer if this summons was received by mail. **Such answer must be made in court.**

The following manner of service of this Summons is hereby designated: hand delivery.

DATED: _____

Clerk, Brown Circuit Court

Petitioner: Sherrie Mitchell and Ben Mitchell
971 W. Robertson Road
Morgantown, IN 46160
(317) 459-4407

STATE OF INDIANA)
) SS: IN THE BROWN CIRCUIT COURT
COUNTY OF BROWN) CAUSE NO:

SHERRIE MITCHELL and BEN MITCHELL
Petitioner

vs.

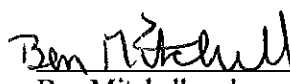

BROWN COUNTY, INDIANA BOARD
OF COMMISSIONERS,
Respondent.

CERTIFICATE OF ISSUANCE OF SUMMONS

Comes now Plaintiffs and hereby notifies the Court that on April 3, 2021 the
Summons and Complaint were hand delivered by Petitioner/Plaintiff for service upon the
following:

Brown County, Indiana Board of Commissioners
c/o Jerry Pitman, President
201 Locust Lane, Second Floor
Nashville, IN 47448

Respectfully submitted,

 
Ben Mitchell and
Sherrie Mitchell
971 W. Robertson Road
Morgantown, IN 46160
(317) 459-4407

The undersigned hereby certifies that a copy of the above and foregoing was duly served 3rd day of
April, 2021, via hand delivery, addressed to:

Jerry Pitman
Brown County Board of Commissioners
201 Locust Lane
Nashville, IN 47448

 
Ben Mitchell and Sherrie Mitchell

May 3, 2021

Brown County Board of Commissioners
Attn: Jerry Pitman
201 Locust Lane, 2nd floor
Nashville, IN 47448

RE: Sherrie Mitchell and Ben Mitchell, Petitioners
Verified Petition for Judicial Review
Cause No:

Dear Mr. Pitman:

The Brown County, Indiana Board of Commissioners is requested to transmit to the Brown County Circuit Court and to Petitioners, Cause Number _____, the original or a certified copy of the Board record for judicial review of the rezoning decision under Docket Number 21-RZ-02 consisting of:

1. Any Board documents expressing the decision of the Board;
2. Other documents identified by the Board as having been considered by the Board before its decision and used as a basis for its decision;
3. The petition or application submitted for the appeal of the administrative decision for docket number 21-RZ-02;
4. Staff Report and all other documents referred to in the Staff Report or provided to the Board with the Staff Report;
5. Minutes of the Board hearing on docket number 21-RZ-02;
6. Any other material made a part of the application for rezoning made available to or reviewed or considered by the Board of Commissioners prior to making its decision in docket number 21-RZ-02.

The Brown County Board of Commissioners are requested to provide the Record to the Court and to Petitioner on or before May 31, 2021.

Respectfully,


Sherrie Mitchell and Ben Mitchell