

CASE NO. 024-V-21

*PRELIMINARY MEMORANDUM
OCTOBER 19, 2021*

Petitioner: John Ehler

Request: Authorize a variance for an 9.1-acre lot in lieu of the maximum allowed 3 acres in area for a lot with soils that are best prime farmland in the AG-1 Agriculture Zoning District, per Section 5.3 of the Champaign County Zoning Ordinance.

Subject Property: Part of a 77.9-acre tract and approximately the west 15 feet of the adjacent 74.5-acre tract in the West Half of the Northwest Quarter of Section 10, Township 19 North, Range 10 East of the Third Principal Meridian in St. Joseph Township, commonly known as the farm ground at the southeast corner of the intersection of CR 2100E and 1700N, St. Joseph.

Site Area: 9.1 acres split from 2 tracts (77.9-acres and 74.5 acres)

Time Schedule for Development: As soon as possible

**Prepared by: Susan Burgstrom, Senior Planner
John Hall, Zoning Administrator**

BACKGROUND

Petitioner John Ehler seeks to purchase a proposed 9.1-acre lot that would be split from two tracts. The lot split needs a variance from the County for creating a lot greater than three acres on Best Prime Farmland; Attachment C shows the soil types on the subject property and their relative Land Evaluation score. Should the variance be approved, recording a deed to the property will require a legal description prepared by either an attorney or a licensed surveyor, and there is no such legal description presently available. For purposes of the variance hearing, the Site Plan is an approximation of the proposed lot submitted by the petitioner, which P&Z Staff estimates to be 9.1 acres.

The petitioner seeks to create a lot from land with less than an acre in agricultural production. Part of the proposed lot was a homestead that existed prior to adoption of the Zoning Ordinance on October 10, 1973, but has since been abandoned. The southern 4.7 acres of the proposed lot is at a significantly lower elevation than the former home site and is in the flood hazard area.

P&Z Staff created a map showing a 2020 aerial of the main part of the proposed 9.1-acre lot with overlays of the flood hazard area and preliminary 2019 1-foot contour lines – see Attachment D. Staff also created a map showing the 2020 aerial of the entire 9.1-acre proposed lot (Attachment E) and a map with a 1973 aerial showing the entire proposed 9.1-acre lot (Attachment F).

The P&Z Department has not received any comments regarding the proposed variance, and staff does not propose any special conditions of approval.

EXTRATERRITORIAL JURISDICTION

The subject property is located within the one and one-half mile extraterritorial jurisdiction of the Village of St. Joseph, a municipality with zoning. Municipalities do not have protest rights on a variance and generally are not notified of such cases.

The subject property is located within St. Joseph Township, which has a Planning Commission. Townships with Plan Commissions have protest rights on a variance and receive notification of such cases.

EXISTING LAND USE AND ZONING

Table 1. Land Use and Zoning in the Vicinity

Direction	Land Use	Zoning
Onsite	Agriculture & prairie	AG-1 Agriculture
North	Agriculture	AG-1 Agriculture
East	Agriculture, residential	AG-1 Agriculture
West	Agriculture, pond	AG-1 Agriculture/ CR Conservation-Recreation
South	Agriculture, wooded area	CR Conservation-Recreation

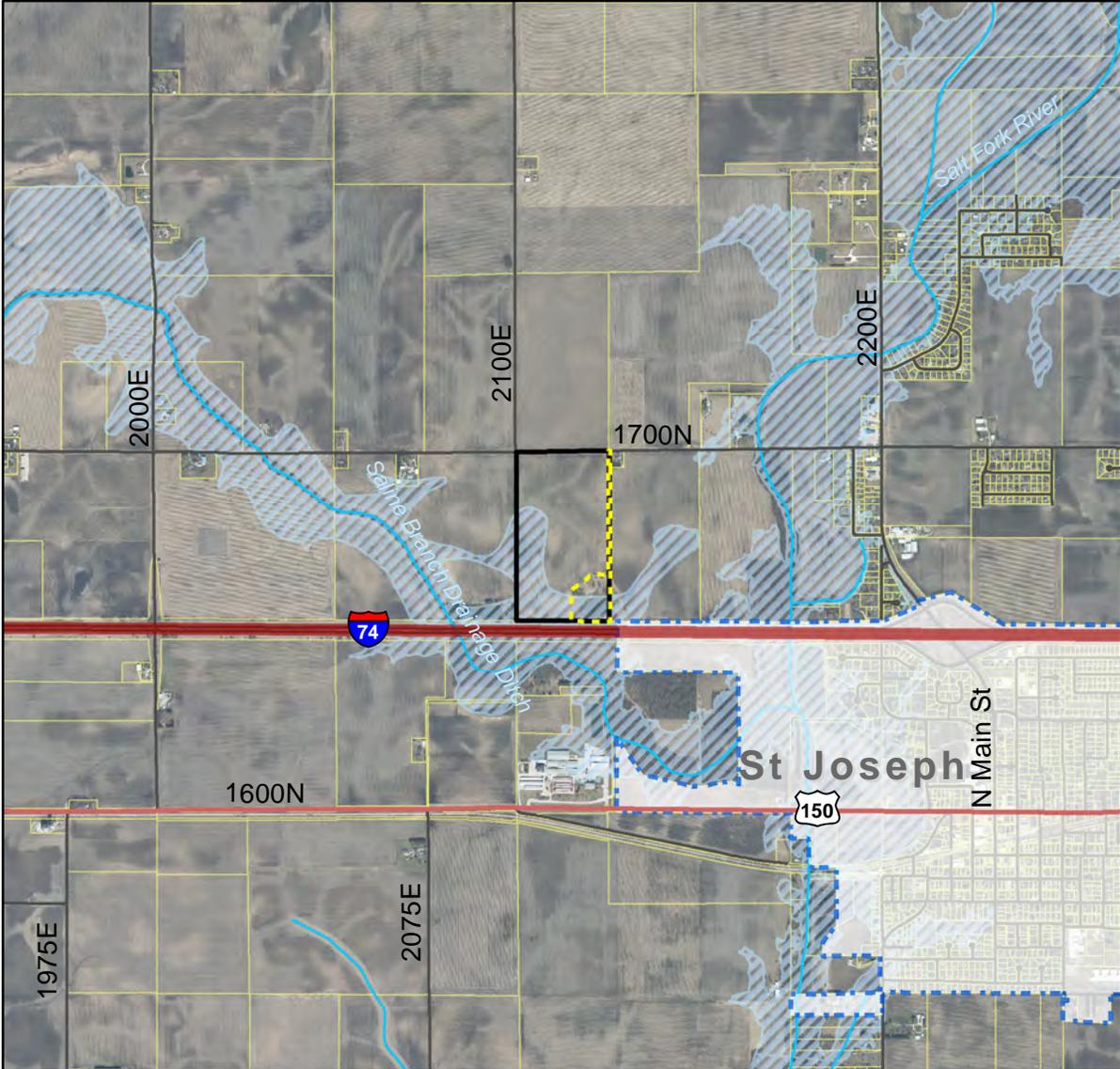
ATTACHMENTS

- A Case Maps (Location, Land Use, Zoning)
- B Site Plan received October 18, 2021
- C 2020 aerial photo with soil types overlay created by P&Z Staff on September 23, 2021
- D 2020 aerial photo with preliminary 2019 contour lines created by P&Z Staff on September 30, 2021
- E 2020 aerial photo with proposed lot split created by P&Z Staff on September 23, 2021
- F 1973 aerial photo with proposed lot split created by P&Z Staff on September 23, 2021
- G Site Images taken September 27, 2021
- H Summary of Evidence, Summary Draft Finding of Fact, and Final Determination for Case 024-V-21 dated October 28, 2021

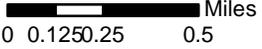
Location Map

Case 024-V-21
October 28, 2021

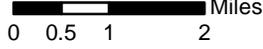
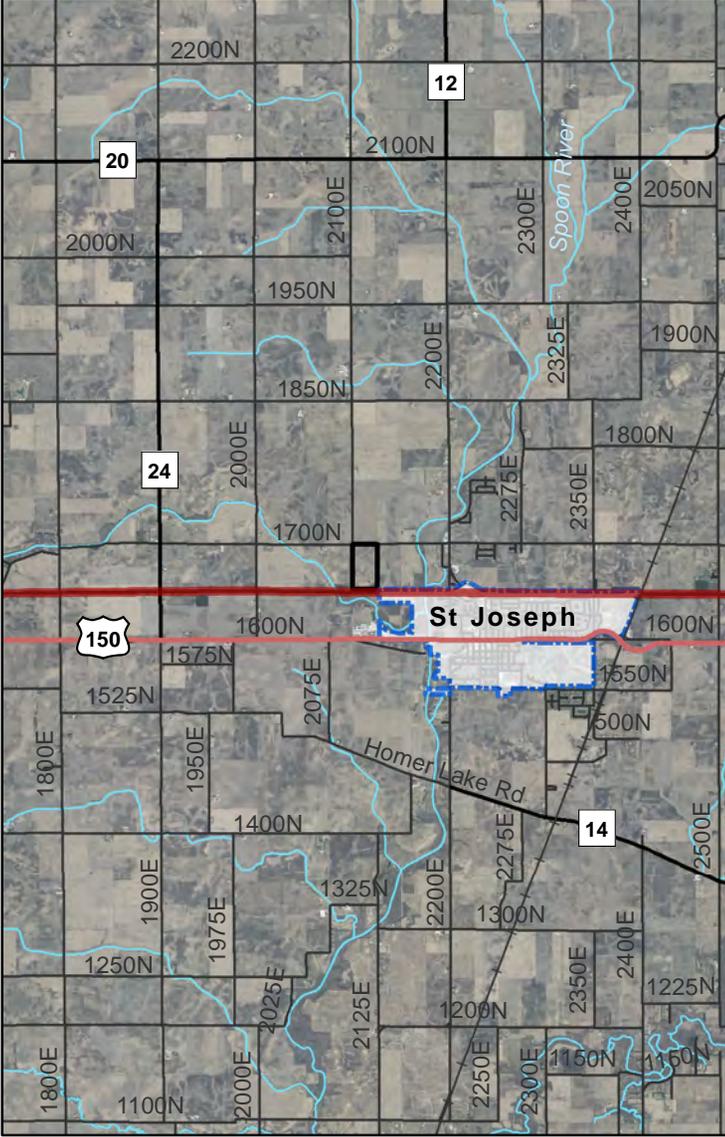
Subject Property



- Subject Property
- Proposed Lot
- Parcels
- Streams
- Flood Hazard Area
- Municipal Boundary



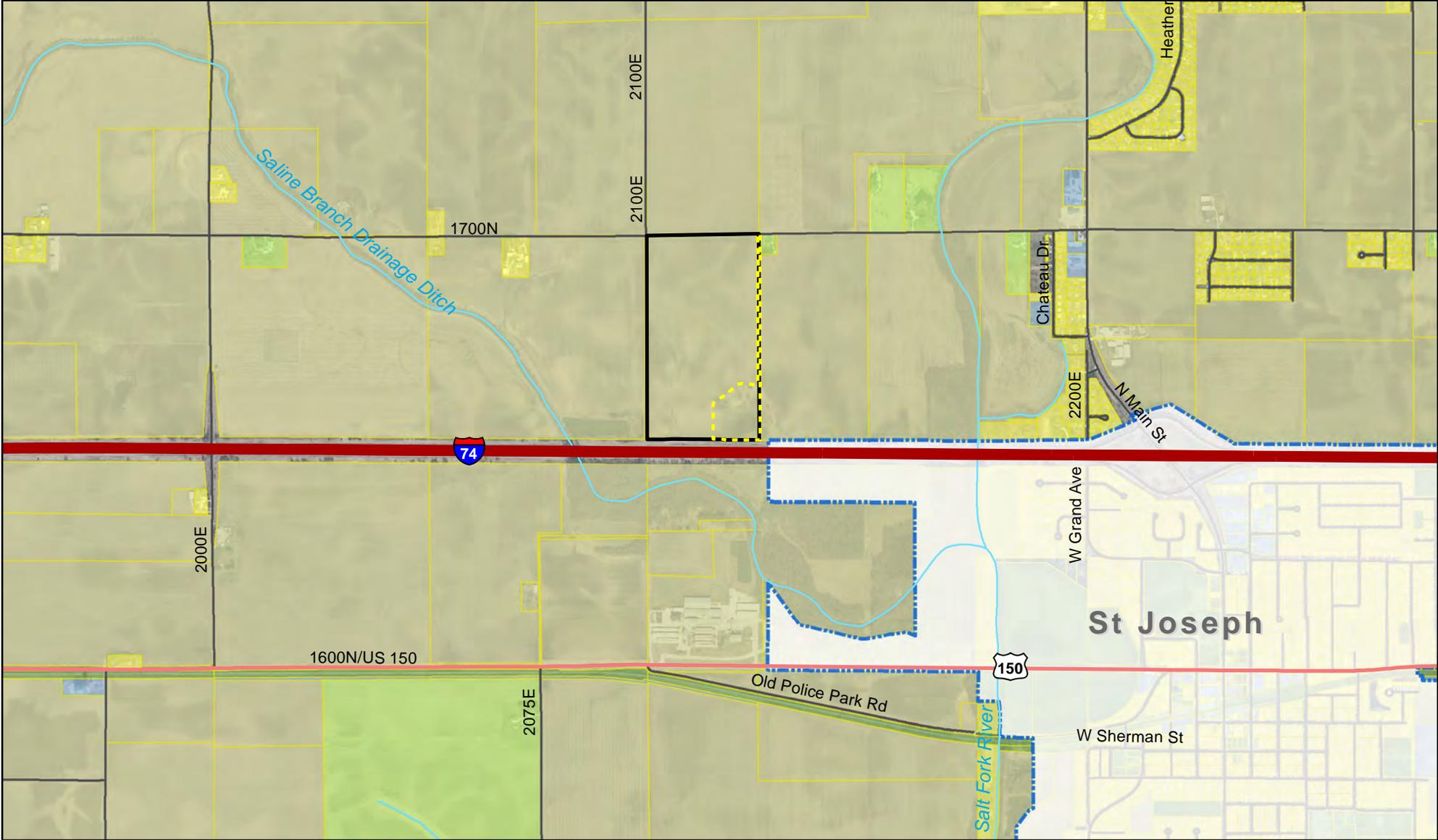
Property location in Champaign County



Champaign County
Department of
**PLANNING &
ZONING**

Land Use Map

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October 28, 2021



- Subject Property
- Proposed Lot
- Parcels
- Agriculture
- Ag/Residential
- Residential
- Commercial
- Tax Exempt

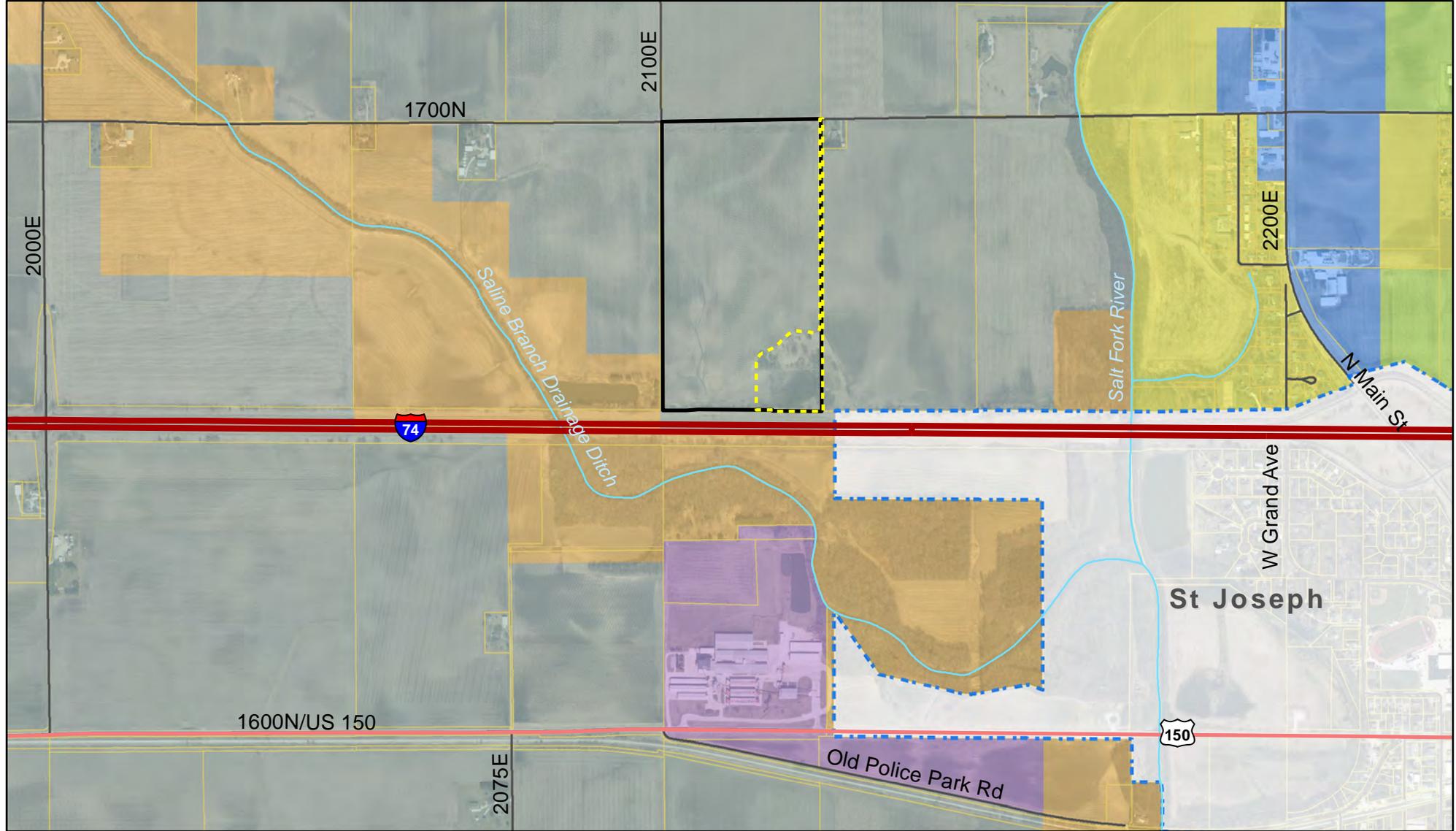
Feet
 0 425 850 1,700



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Zoning Map

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October 28, 2021

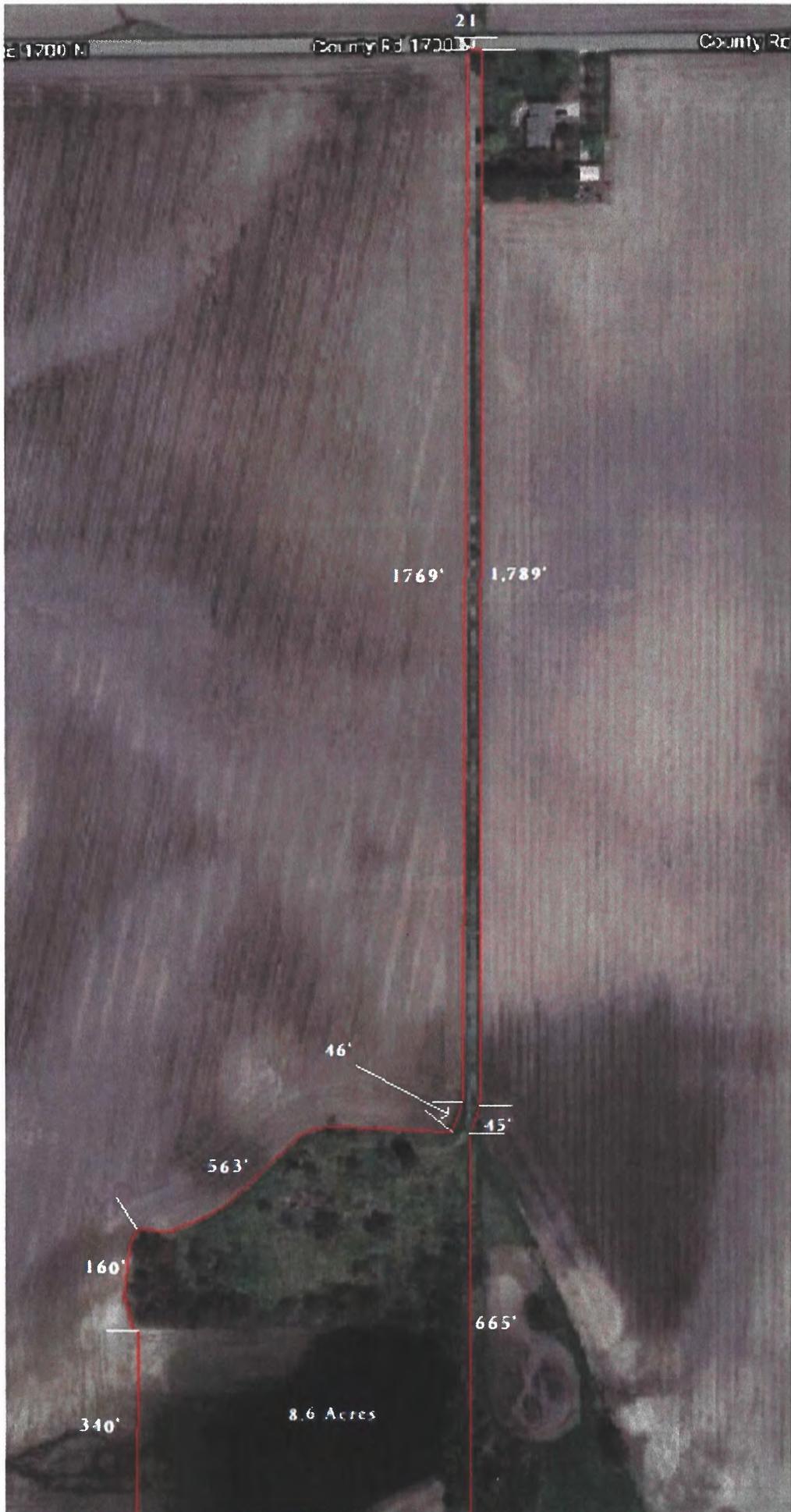


- Subject Property
- Proposed Lot
- Parcels
- Municipal Boundary
- CR Conservation Recreation
- AG-1 Agriculture
- AG-2 Agriculture
- Residential
- Commercial
- Light Industry

0 300 600 1,200 Feet



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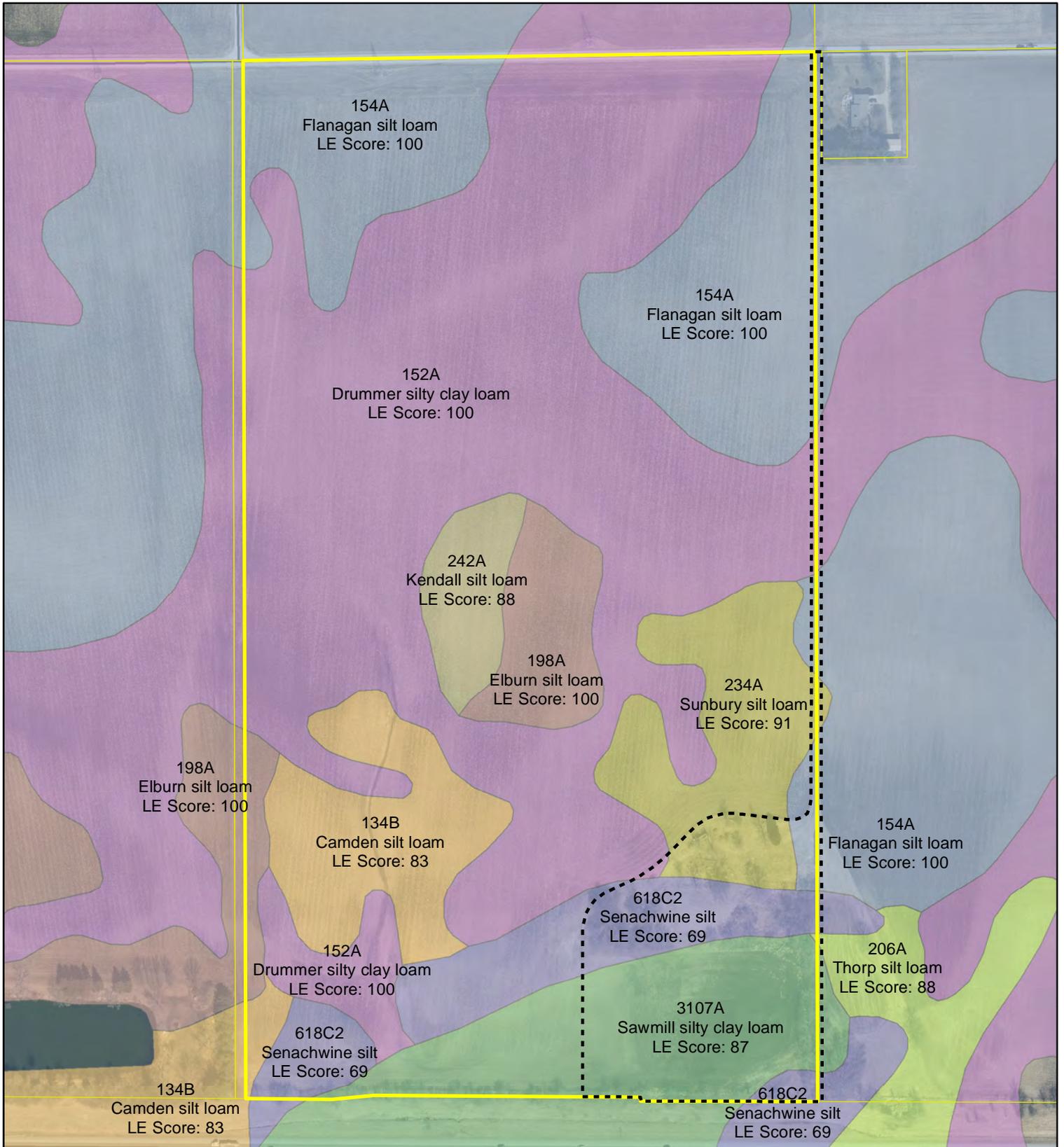
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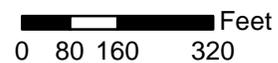
CHAMPAIGN CO. P & Z DEPARTMENT

Soils

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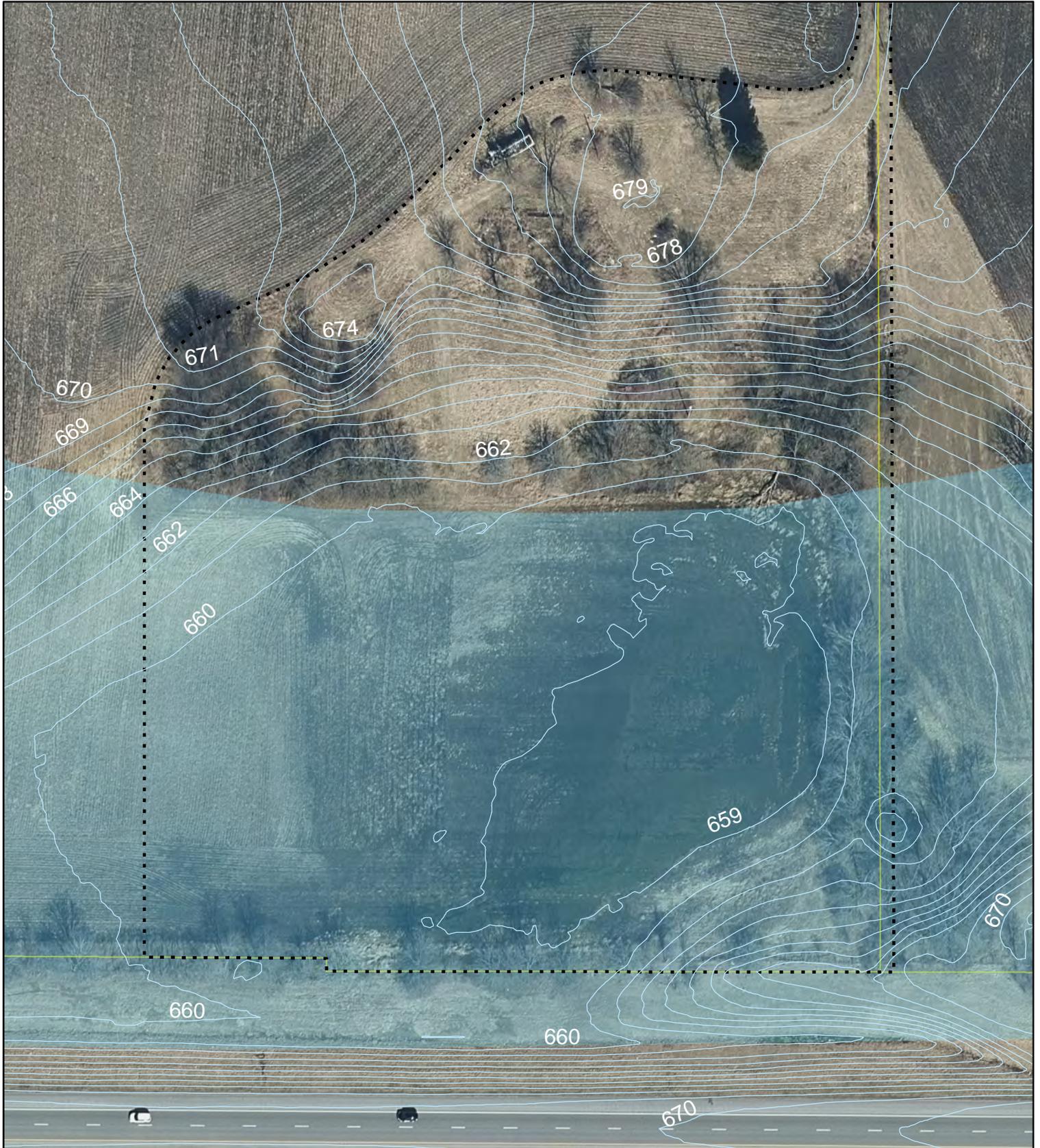
- Proposed Lot
- Subject Property
- Parcels



2020 aerial photo with 2019 preliminary contours

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Floodzone is about 4.65 acres of the proposed 9.1-acre lot
Access drive (not shown) is about 1 acre of proposed 9.1-acre lot



- Proposed Lot
- Parcels
- 2019 contour lines



2020 aerial photo with proposed lot split

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Legend
[Black dashed line] Proposed Lot
[Yellow line] Parcels

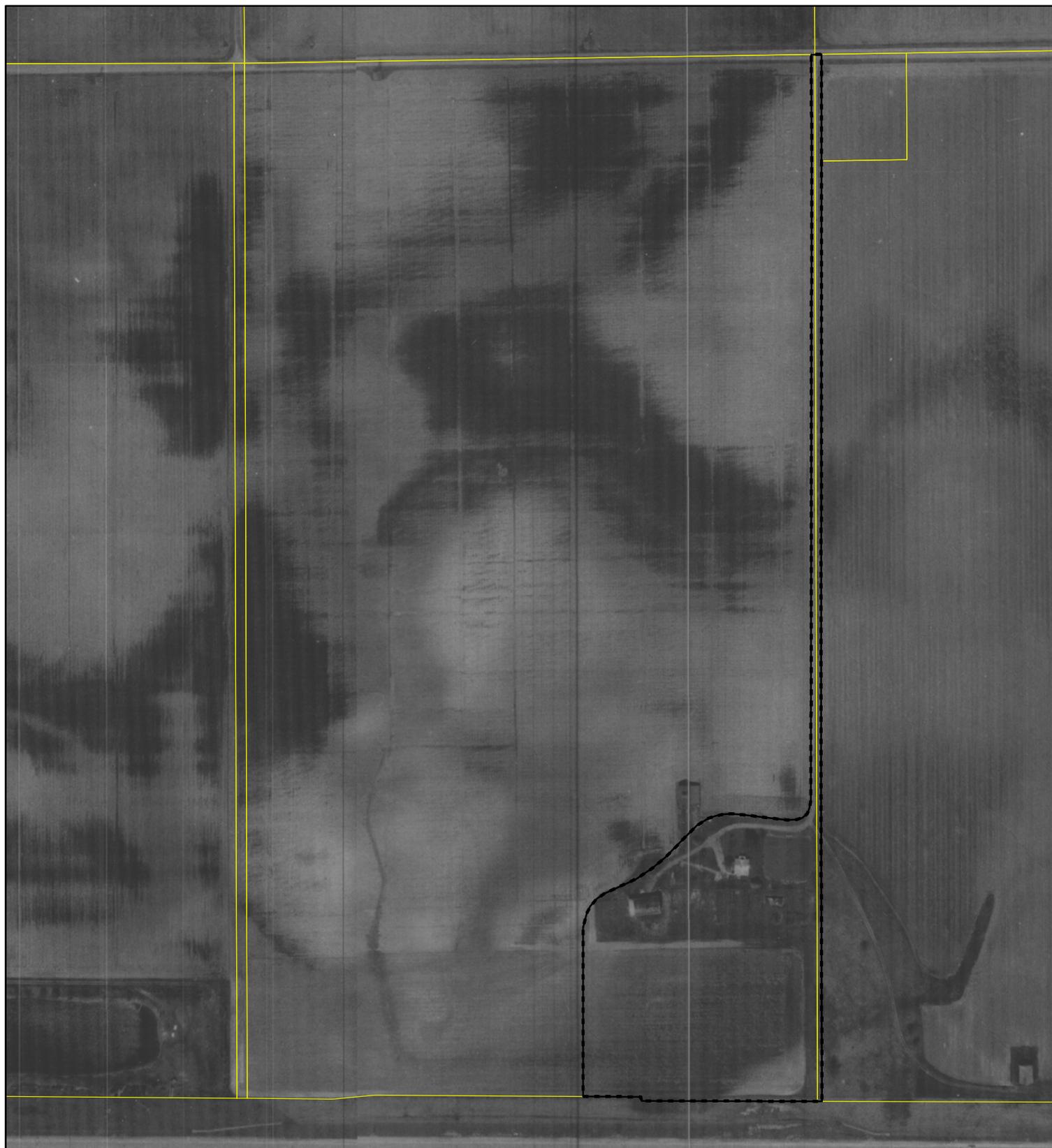
0 80 160 320 Feet



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1973 aerial photo with proposed lot split

Case 024-V-21
October 28, 2021



Legend

-  Proposed Lot
-  Parcels

0 80 160 320 Feet



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024-V-21 Site Images



**From CR 1700E facing south down access drive –
main part of proposed lot is ~1,800 feet south and to the west**



From entrance to main part of lot facing north along access drive

024-V-21 Site Images



From entrance to main part of proposed lot facing south



**From entrance to main part of proposed lot facing southwest –
appears that former home was behind trees at left**

024-V-21 Site Images



From west side of former home facing southeast to Interstate 74



**Down a short hill on south side of former home, facing southwest –
this is the floodplain area that is not in agricultural production**

024-V-21 Site Images



**Down a short hill on south side of former home, facing southeast –
this is the floodplain area that is not in agricultural production**



**From access drive just south of neighbor's house on CR 1700E, facing north –
About 1,450 feet north of the main part of the proposed lot**

PRELIMINARY DRAFT

024-V-21

**FINDING OF FACT
AND FINAL DETERMINATION
of the
Champaign County Zoning Board of Appeals**

Final Determination: ***{GRANTED/GRANTED WITH SPECIAL CONDITION(S)/DENIED}***

Date: ***{October 28, 2021}***

Petitioners: **John Ehler**

Request: **Authorize a variance for a 9.1-acre lot in lieu of the maximum allowed 3 acres in area for a lot with soils that are best prime farmland in the AG-1 Agriculture Zoning District, per Section 5.3 of the Champaign County Zoning Ordinance.**

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PRELIMINARY DRAFT

SUMMARY OF EVIDENCE

From the documents of record and the testimony and exhibits received at the public hearing conducted on **October 28, 2021**, the Zoning Board of Appeals of Champaign County finds that:

1. Petitioner John Ehler seeks to purchase a proposed 9.1-acre lot from two owners: Meier Farms II LLC (77.9-acre tract) and Donald Routh (74.5-acre tract).
2. The subject property is part of a 77.9-acre tract and approximately the west 15 feet of the adjacent 74.5-acre tract in the West Half of the Northwest Quarter of Section 10, Township 19 North, Range 10 East of the Third Principal Meridian in St. Joseph Township, commonly known as the farm ground at the southeast corner of the intersection of CR 2100E and 1700N, St. Joseph.
3. Regarding municipal extraterritorial jurisdiction and township planning jurisdiction:
 - A. The subject property is located within the one and one-half mile extraterritorial jurisdiction of the Village of St. Joseph, a municipality with zoning. Municipalities do not have protest rights on a variance and generally are not notified of such cases.
 - B. The subject property is located within St. Joseph Township, which has a Planning Commission. Townships with Plan Commissions have protest rights on a variance and receive notification of such cases.

GENERALLY REGARDING LAND USE AND ZONING IN THE IMMEDIATE VICINITY

4. Land use and zoning on the subject property and in the vicinity are as follows:
 - A. Both the 77.9-acre tract and the 74.5-acre tract are zoned AG-1 Agriculture and are in agricultural production with prairie in the southern part where the proposed lot would be.
 - B. Land to the north is zoned AG-1 Agriculture and is in agricultural production.
 - C. Land to the east is zoned AG-1 Agriculture and is in agricultural production with one residence.
 - D. Land to the south (on the south side of I-74) is zoned CR Conservation-Recreation and is a tract with wooded areas and land in agricultural production.
 - E. Land to the west is zoned AG-1 Agriculture to the north and CR Conservation-Recreation to the south, and is land in agricultural production with a pond.

GENERALLY REGARDING THE PROPOSED SITE PLAN

5. Regarding the site plan for the subject property:
 - A. The Site Plan received on October 18, 2021 shows an outline of the proposed lot. P&Z Staff review indicated the following existing and proposed features:
 - (1) There are no existing structures on the proposed lot, but more than half of the proposed lot is in the flood hazard area, and there are significant changes in elevation.

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- a. P&Z Staff created a map showing a 2020 aerial of the main part of the proposed 9.1-acre lot with overlays of the flood hazard area and preliminary 2019 1-foot contour lines.
 - b. P&Z Staff also created a map showing the 2020 aerial of the entire 9.1-acre proposed lot and a map with a 1973 aerial showing the entire proposed 9.1-acre lot.
- (2) The petitioner plans to construct a single-family dwelling on the proposed lot.
- B. There are no prior Zoning Use Permits for the subject property.
 - C. There are no prior Zoning Cases on or in the vicinity of the subject property.
 - D. The requested variance is for a lot size of 9.1 acres in lieu of the maximum area of 3 acres for lots on soils that are best prime farmland, per Section 5.3 of the Zoning Ordinance.

GENERALLY REGARDING SPECIFIC ORDINANCE REQUIREMENTS AND ZONING PROCEDURES

6. Regarding specific *Zoning Ordinance* requirements relevant to this case:
- A. The following definitions from the *Zoning Ordinance* are especially relevant to the requested variances (capitalized words are defined in the Ordinance):
 - (1) “AGRICULTURE” is the growing, harvesting and storing of crops including legumes, hay, grain, fruit and truck or vegetable crops, floriculture, horticulture, mushroom growing, orchards, forestry and the keeping, raising and feeding of livestock or poultry, including dairying, poultry, swine, sheep, beef cattle, pony and horse production, fur farms, and fish and wildlife farms; farm BUILDINGS used for growing, harvesting and preparing crop products for market, or for use on the farm; roadside stands, farm BUILDINGS for storing and protecting farm machinery and equipment from the elements, for housing livestock or poultry and for preparing livestock or poultry products for market; farm DWELLINGS occupied by farm OWNERS, operators, tenants or seasonal or year-round hired farm workers. It is intended by this definition to include within the definition of AGRICULTURE all types of agricultural operations, but to exclude therefrom industrial operations such as a grain elevator, canning or slaughterhouse, wherein agricultural products produced primarily by others are stored or processed. Agricultural purposes include, without limitation, the growing, developing, processing, conditioning, or selling of hybrid seed corn, seed beans, seed oats, or other farm seeds.
 - (2) “AREA, LOT” is the total area within the LOT LINES.
 - (3) “BEST PRIME FARMLAND” is Prime Farmland Soils identified in the Champaign County Land Evaluation and Site Assessment (LESA) System that under optimum management have 91% to 100% of the highest soil productivities in Champaign County, on average, as reported in the *Bulletin 811 Optimum Crop Productivity Ratings for Illinois Soils*. Best Prime Farmland consists of the following:
 - (a) Soils identified as Agriculture Value Groups 1, 2, 3 and/or 4 in the Champaign County Land Evaluation and Site Assessment (LESA) System;

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- (b) Soils that, in combination on a subject site, have an average LE of 91 or higher, as determined by the Champaign County LESA System; or
 - (c) Any development site that includes a significant amount (10% or more of the area proposed to be developed) of Agriculture Value Groups 1, 2, 3 and/or 4 soils, as determined by the Champaign County LESA System.
- (4) “LOT” is a designated parcel, tract or area of land established by PLAT, SUBDIVISION or as otherwise permitted by law, to be used, developed or built upon as a unit.
 - (5) “LOT LINES” are the lines bounding a LOT.
 - (6) “VARIANCE” is a deviation from the regulations or standards adopted by this ordinance which the Hearing Officer or the Zoning Board of Appeals are permitted to grant.
- B. Section 5.3 of the Zoning Ordinance Footnote 13 states:
- 13. The following maximum LOT AREA requirements apply in the CR, AG-1 and AG-2 DISTRICTS:
 - A) LOTS that meet all of the following criteria may not exceed a maximum LOT AREA of three acres:
 - 1) The LOT is RRO-exempt;
 - 2) The LOT is made up of soils that are BEST PRIME FARMLAND; and
 - 3) The LOT is created from a tract that had a LOT AREA greater than or equal to 12 acres as of January 1, 1998.
- C. Paragraph 9.1.9 D. of the *Zoning Ordinance* requires the ZBA to make the following findings for a variance:
- (1) That the requirements of Paragraph 9.1.9 C. have been met and justify granting the variance. Paragraph 9.1.9C. of the *Zoning Ordinance* states that a variance from the terms of the *Champaign County Zoning Ordinance* shall not be granted by the Board or the hearing officer unless a written application for a variance is submitted demonstrating all of the following:
 - a. That special conditions and circumstances exist which are peculiar to the land or structure involved which are not applicable to other similarly situated land or structures elsewhere in the same district.
 - b. That practical difficulties or hardships created by carrying out the strict letter of the regulations sought to be varied prevent reasonable and otherwise permitted use of the land or structures or construction on the lot.
 - c. That the special conditions, circumstances, hardships, or practical difficulties do not result from actions of the Applicant.
 - d. That the granting of the variance is in harmony with the general purpose and intent of the *Ordinance*.

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- e. That the granting of the variance will not be injurious to the neighborhood, or otherwise detrimental to the public health, safety, or welfare.
- (2) That the variance is the minimum variation that will make possible the reasonable use of the land or structure, as required by subparagraph 9.1.9 D.2.
- D. Paragraph 9.1.9 E. of the *Zoning Ordinance* authorizes the ZBA to prescribe appropriate conditions and safeguards in granting a variance.

GENERALLY REGARDING SPECIAL CONDITIONS THAT MAY BE PRESENT

- 7. Generally regarding the Zoning Ordinance requirement of a finding that special conditions and circumstances exist which are peculiar to the land or structure involved which are not applicable to other similarly situated land or structures elsewhere in the same district:
 - A. The Petitioner testified the following on the application: **“Property is over the maximum allowable 3 acres.”**
 - B. Regarding the soils that make up the subject property:
 - (1) The soil on the proposed 9.1-acre lot is BEST PRIME FARMLAND. It consists of 154A Flanagan silt loam, 152A Drummer silty clay loam, 234A Sunbury silt loam, 618C2 Senachwine silt, 3107A Sawmill silty clay loam, and 206A Thorp silt loam, and has an average LE of 83.
 - a. Best prime soils comprise 18% of the soils on the proposed tract, which meets the definition of Best Prime Farmland.
 - b. Much of the best prime farmland is in the access strip on the proposed lot.
 - C. Approximately 4.7 acres in the southern part of the proposed 9.1-acre lot is in the Special Flood Hazard Area. Most of this land is not in agricultural production. Any proposed construction in the SFHA requires a Floodplain Development Permit.

GENERALLY REGARDING ANY PRACTICAL DIFFICULTIES OR HARDSHIPS RELATED TO CARRYING OUT THE STRICT LETTER OF THE ORDINANCE

- 8. Generally regarding the Zoning Ordinance requirement of a finding that practical difficulties or hardships related to carrying out the strict letter of the regulations sought to be varied prevent reasonable and otherwise permitted use of the land or structures or construction on the lot:
 - A. The Petitioners testified the following on the application: **“None.”**
 - B. Without the variance, the petitioner be allowed to create a 3-acre lot, and approximately one acre of that would be for the access drive.
 - (1) If a 3-acre lot were created that avoided land in agricultural production, it would likely be developed north of the Special Flood Hazard Area, which would leave a difficult to access area in the southeast corner of the property that is currently not in agricultural production anyway.

PRELIMINARY DRAFT

GENERALLY PERTAINING TO WHETHER OR NOT THE PRACTICAL DIFFICULTIES OR HARDSHIPS RESULT FROM THE ACTIONS OF THE APPLICANT

9. Generally regarding the Zoning Ordinance requirement for a finding that the special conditions, circumstances, hardships, or practical difficulties do not result from the actions of the Applicant:
 - A. The Petitioners testified the following on the application: **“No.”**
 - B. There was a house on the subject property in the location where the petitioner wants to create the lot, as can be seen in the 1973 aerial photo.
 - C. Less than one acre of land would be taken out of production with the proposed lot split.

GENERALLY PERTAINING TO WHETHER OR NOT THE VARIANCE IS IN HARMONY WITH THE GENERAL PURPOSE AND INTENT OF THE ORDINANCE

10. Generally regarding the Zoning Ordinance requirement for a finding that the granting of the variance is in harmony with the general purpose and intent of the Ordinance:
 - A. The Petitioners testified the following on the application: **“The property is landlocked and would serve no other practical purpose than a single home dwelling.”**
 - B. The maximum lot size on best prime farmland requirement was first established by Ordinance No. 726 (Case 444-AT-04) on July 22, 2004. It was made permanent with Ordinance No. 773 approved December 20, 2005.
 - C. Ordinance No. 914 (Case 711-AT-12) approved on November 27, 2012, revised the best prime farmland definition to have a Land Evaluation (LE) rating of 91 or higher rather than the previous rating of 85 or higher.
 - D. The 9.1-acre lot area is 303% of the required three acre maximum, for a variance of 203%.
 - E. The requested variance is not prohibited by the *Zoning Ordinance*.

GENERALLY PERTAINING TO THE EFFECTS OF THE REQUESTED VARIANCE ON THE NEIGHBORHOOD AND THE PUBLIC HEALTH, SAFETY, AND WELFARE

11. Generally regarding the Zoning Ordinance requirement for a finding that the granting of the variance will not be injurious to the neighborhood, or otherwise detrimental to the public health, safety, or welfare:
 - A. The Petitioners testified the following on the application: **“The property once had a house on it. Has an existing driveway already so won’t change or disturb anything around it.”**
 - B. The St. Joseph Township Highway Commissioner has been notified of this variance, and no comments have been received.
 - C. The St. Joseph Township Supervisor has been notified of this variance, and no comments have been received.

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- D. The St. Joseph-Stanton Fire Protection District has been notified of this variance, and no comments have been received.

GENERALLY REGARDING ANY OTHER JUSTIFICATION FOR THE VARIANCE

12. Generally regarding and other circumstances which justify the Variance:
A. The Petitioner did not provide a response on the application.

GENERALLY REGARDING PROPOSED SPECIAL CONDITIONS OF APPROVAL

13. Regarding proposed special conditions of approval:

No special conditions are proposed at this time.

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DOCUMENTS OF RECORD

1. Application for Variance received September 17, 2021
2. Site Plan received October 18, 2021
3. Preliminary Memorandum dated October 19, 2021, with attachments:
 - A Case Maps (Location, Land Use, Zoning)
 - B Site Plan received October 18, 2021
 - C 2020 aerial photo with soil types overlay created by P&Z Staff on September 23, 2021
 - D 2020 aerial photo with preliminary 2019 contour lines created by P&Z Staff on September 30, 2021
 - E 2020 aerial photo with proposed lot split created by P&Z Staff on September 23, 2021
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SUMMARY DRAFT FINDINGS OF FACT

From the documents of record and the testimony and exhibits received at the public hearing for zoning case **024-V-21** held on **October 28, 2021**, the Zoning Board of Appeals of Champaign County finds that:

1. Special conditions and circumstances ***{DO / DO NOT}*** exist which are peculiar to the land or structure involved, which are not applicable to other similarly situated land and structures elsewhere in the same district because:
 - a. ***Approximately 4.7 acres in the southern part of the proposed 9.1-acre lot is in the Special Flood Hazard Area. Most of this land is not in agricultural production.***
 - b. ***Much of the best prime farmland is in the access strip on the proposed lot.***

2. Practical difficulties or hardships created by carrying out the strict letter of the regulations sought to be varied ***{WILL / WILL NOT}*** prevent reasonable or otherwise permitted use of the land or structure or construction because:
 - a. ***Without the variance, the petitioner be allowed to create a 3-acre lot, and approximately one acre of that would be for the access drive.***
 - b. ***If a 3-acre lot were created that avoided land in agricultural production, it would likely be developed north of the Special Flood Hazard Area, which would leave a difficult to access area in the southeast corner of the property that is currently not in agricultural production anyway.***

3. The special conditions, circumstances, hardships, or practical difficulties ***{DO / DO NOT}*** result from actions of the applicant because:
 - a. ***There was a house on the subject property in the location where the petitioner wants to create the lot, as can be seen in the 1973 aerial photo.***

4. The requested variance ***{SUBJECT TO THE PROPOSED CONDITION} {IS / IS NOT}*** in harmony with the general purpose and intent of the Ordinance because:
 - a. ***No land will be removed from agricultural production.***

5. The requested variance ***{SUBJECT TO THE PROPOSED CONDITION} {WILL / WILL NOT}*** be injurious to the neighborhood or otherwise detrimental to the public health, safety, or welfare because:
 - a. ***Relevant jurisdictions have been notified of this case, and no comments have been received.***

6. The requested variance ***{SUBJECT TO THE PROPOSED CONDITION} {IS / IS NOT}*** the minimum variation that will make possible the reasonable use of the land/structure because:

7. ***{NO SPECIAL CONDITIONS ARE HEREBY IMPOSED / THE SPECIAL CONDITIONS IMPOSED HEREIN ARE REQUIRED FOR THE PARTICULAR PURPOSES DESCRIBED BELOW:}***

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FINAL DETERMINATION

The Champaign County Zoning Board of Appeals finds that, based upon the application, testimony, and other evidence received in this case, that the requirements for approval in Section 9.1.9.C **{HAVE/HAVE NOT}** been met, and pursuant to the authority granted by Section 9.1.6.B of the Champaign County Zoning Ordinance, the Zoning Board of Appeals of Champaign County determines that:

The Variance requested in Case **024-V-21** is hereby **{GRANTED/ GRANTED WITH CONDITIONS/ DENIED}** to the petitioner, **John Ehler**, to authorize the following:

Authorize a variance for an 9.1-acre lot in lieu of the maximum allowed 3 acres in area for a lot with soils that are best prime farmland in the AG-1 Agriculture Zoning District, per Section 5.3 of the Champaign County Zoning Ordinance.

{SUBJECT TO THE FOLLOWING CONDITION(S):}

The foregoing is an accurate and complete record of the Findings and Determination of the Zoning Board of Appeals of Champaign County.

SIGNED:

Ryan Elwell, Chair
Champaign County Zoning Board of Appeals

ATTEST:

Secretary to the Zoning Board of Appeals

Date