

MONTGOMERY COUNTY BOARD OF COMMISSIONERS

ORDINANCE 2021-32

AN ORDINANCE APPROVING THE REQUEST OF JUDITH COTTRELL AND REZONING A CERTAIN PARCEL OF LAND IN THE 1800 EAST BLOCK OF COUNTY ROAD 300 SOUTH FROM AGRICULTURAL TO RESIDENTIAL

WHEREAS, Judith Cottrell (Cottrell) filed a proposal to rezone from Agricultural to Residential a 53-acre parcel of land in the 1800 East block of County Road 300 South in Montgomery County, parcel 54-10-16-400-024.001-025 (the legal description for the parcel is attached as Exhibit A); and

WHEREAS, Cottrell intends to develop the property into a 35-lot single family residential subdivision; and

WHEREAS, the Montgomery County Plan Commission published notice of a public hearing and conducted a public hearing on the proposal on August 25, 2021; and

WHEREAS, the Plan Commission considered Cottrell's request, comments by the public, the case report and comments by the Zoning Administrator and approved a favorable recommendation, with one condition, by a vote of 8-0 on August 25, 2021; and

WHEREAS, the Plan Commission's recommendation was made with one condition, specifically, that Cottrell donate to the County right-of-way along County Road 300 South 42.5 feet from the center of County Road 300 South and running along the entire southern boundary of the 53-acre parcel;
And

WHEREAS, Cottrell also agreed to notify lot purchasers of the general rights of farmers under the Right To Farm Act to continue farming the land adjacent to the subject parcel and specifically that the exercise of these rights means that farmers will operate large equipment with lights at all hours of the day and night, that there will be noise and dust during farming operations, and that farmers will likely apply animal waste to the fields.

WHEREAS, the Plan Commission properly certified its recommendation to the Montgomery County Board of Commissioners on August 25, 2021; and

WHEREAS, the Board of Commissioners published notice of a public hearing on the proposal and conducted a public hearing on September 27, 2021; and

WHEREAS, the Board of Commissioners, having considered the certification of the Plan Commission, presentations of the Zoning

Administrator and Cottrell, and comments from the public, and having paid reasonable regard to this evidence and

1. the Montgomery County Comprehensive Plan;
2. the current conditions and the character of current structures and uses in each zoning district;
3. the most desirable use for which the land in each district is adapted;
4. the conservation of property values throughout the unincorporated area of Montgomery County; and
5. responsible development and growth

now finds as follows:

1. Rezoning this real estate from Agricultural to Residential is consistent with the Comprehensive Plan as it will encourage and facilitate residential development;
2. the approval will not be injurious to the public health, safety, morals and general welfare of the community;
3. the use and character of land and structures in the area adjacent to the subject site and in the area generally is agricultural and residential and will not be affected in a substantially adverse manner;

4. the approval of the rezone request will likely increase the value of surrounding agricultural and residential property and will not substantially and adversely impact the value property in the area of the subject property;

5. the approval of the requested rezone is consistent with the interests of responsible development and growth in that the condition imposed will provide for proper road right-of-way, will not unduly burden South Montgomery Schools, County or State roads and highways, or unduly burden utility providers;

6. the proposed use of the property as residential is consistent with the most desirable use of the property in the district given the need for housing in Montgomery County; and

7. that the requested proposal to rezone the subject land should be granted, with the conditions recommended by the Plan Commission; and

IT IS, THEREFORE, ORDAINED that the request by Judith Cottrell to rezone real estate certain 53-acre parcel, located at the 1800 East block of County Road 300 South in Montgomery County, parcel 54-10-16-400-024.001-025, and described more particularly in Exhibit A, from Agricultural to Residential is hereby approved, subject to the following condition:

1. **Right-of Way Donation:** Property owner is required to donate 42.5 feet of right-of-way to Montgomery County on the north side of County Road 300 South, from the southwest corner

of the parcel on County Road 300 South to the southeast corner of the parcel on County Road 300 South, in order to facilitate the construction of road improvements to County Road 300 South which are necessary because of development. The south boundary of this donated right-of-way will be the existing centerline of County Road 300 South.

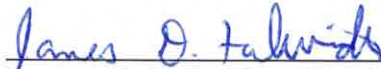
IT IS FURTHER ORDAINED that, consistent with the commitment of Cottrell, Cottrell will notify purchasers of lots prior to closing farmers have the right under the Right To Farm Act to continue farming the land adjacent to the subject parcel and specifically that the exercise of these rights means that farmers will operate large equipment with lights at all hours of the day and night, that there will be noise and dust during farming operations, and that farmers will likely apply animal waste to the fields.

IT IS FURTHER ORDAINED that the subject real estate is hereby rezoned to Residential, subject only to the condition contained in this ordinance, and the Zoning Administrator is directed to record this ordinance, change the Zoning Maps, which are incorporated into the Zoning Ordinance, in order to reflect this rezone, and to maintain a record of the conditions contained in this approval.

IT IS FURTHER ORDAINED that this ordinance is effective upon adoption.

Adopted: September 27, 2021. Montgomery County Board of
Commissioners

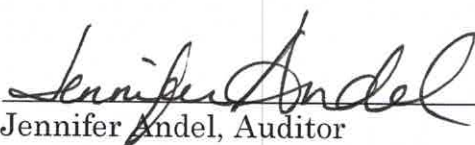
John Frey, President




James D. Fulwider, Vice President



Dan Guard, Member

Attest: 
Jennifer Andel, Auditor

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.

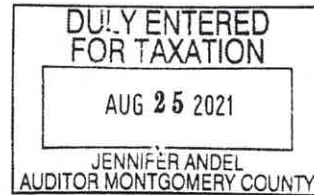


Daniel L. Taylor

This instrument prepared by Daniel L. Taylor, Indiana Supreme Court
#11337-54, Taylor, Chadd, Minnette, Schneider & Clutter, P.C., 105 North
Washington Street, Crawfordsville, Indiana 47933. Telephone 765-361-9680.

EXHIBIT A

202106110 TD \$25.00
08/26/2021 08:59:15A 5 PGS
JENNIFER BENTLEY
Montgomery County Recorder IN
Recorded as Presented



TRUSTEE'S DEED

THIS INDENTURE WITNESSETH, Judith Kay Cottrell, as Trustee, and her successor trustees, under a written Revocable Trust Declaration dated June 27, 2006 and amended July 19, 2021 (Grantor), conveys to Erika R. Strock, Trustee of The DJC Asset Protection Trust, dated July 19, 2021 and Dale R. Cottrell and Judith K. Cottrell, husband and wife, ***retain a one percent (1%) life estate interest*** (Grantees) for no consideration, the receipt and sufficiency of which is hereby acknowledged, the following described real estate in Montgomery County, Indiana:

SEE ATTACHED LEGAL DESCRIPTION

NOTICE: This instrument has been prepared solely from information and on instructions by our client. No title opinion or other title evidence has been furnished by the attorney in connection with its preparation. Grantee herein has instructed the attorney preparing this instrument that he does not desire a title opinion even though said attorney encouraged grantee to acquire one.


Dale R. Cottrell and Judith K. Cottrell retain a one percent (1%) life estate interest

Subject to all taxes now lien and to become a lien thereon.

Subject to all legal highways, right-of-way, easements and restrictions of record.

IN WITNESS, WHEREOF, Grantor has executed this deed on the 19th day of July 2021.

GRANTOR


Judith Kay Cottrell, as Trustee, and her successor trustees, under a written Revocable Trust Declaration dated June 27, 2006

ACKNOWLEDGEMENT

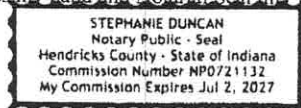
STATE OF INDIANA)

) SS:

COUNTY OF HENDRICKS)

Before me, a Notary Public in and for said County and State, personally appeared Judith Kay Cottrell, as Trustee, and her successor trustees, under a written Revocable Trust Declaration dated June 27, 2006 and amended July 19, 2021, who acknowledged the execution of the foregoing Trustee's Deed, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 19th day of July 2021.





TAX STATEMENTS TO: 40 Copperleaf Drive, Crawfordsville, IN 47933- Grantee's address
This instrument prepared by Doris G. Brauman Moore, RN, JD, attorney at law, 128 East Main Street, Brownsburg, IN 46112.

I affirm, under penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Doris G Brauman Moore

ATTACHMENT A

The following described real estate situated in Montgomery County, Indiana, to-wit:

The west half of the northwest quarter of Section 21, Township 18 North, Range 4 West, containing 80 acres, more or less. (Tract No. 54-10-21-200-008.000-025)

EXCEPT: Part of the west half of the northwest quarter of said Section 21, Township 18 North, Range 4 West, described as follows:

Beginning 1006.50 feet south of the stone located at the northwest corner of said west half, at a railroad spike set in County Road 100 East on the section line, and running thence south 88 degrees 36 minutes 20 seconds east 663.60 feet to a concrete end post; thence south 364.27 feet to an iron pin; thence south 86 degrees 48 minutes 15 seconds west 664.42 feet to a railroad spike set in County Road 100 East on the section line; thence north 417.46 feet to the place of beginning, containing 5.95 acres, more or less;

ALSO EXCEPT: A part of the West Half of the Northwest Quarter of Section 21, Township 18 North, Range 4 West, Montgomery County, Indiana, and being that part of the grantors' land lying within the right-of-way lines depicted on the attached Right-of-Way Parcel Plat, marked Exhibit "B", described as follows: Beginning at the northwest corner of said section designated as point "54" on said plat; thence South 89 degrees 31 minutes 51 seconds East 1321.38 feet along the north line of said section to the northeast corner of said half quarter section; thence South 0 degrees 28 minutes 09 seconds West 45.00 feet along the east line of said half quarter section to point "2401" designated on said plat; thence North 89 degrees 31 minutes 51 seconds West 546.70 feet to point "2404" designated on said plat; thence South 87 degrees 36 minutes 25 seconds West 100.12 feet to point "2403" designated on said plat; thence North 86 degrees 40 minutes 06 seconds West 100.12 feet to point "2402" designated on said plat; thence North 89 degrees 31 minutes 51 seconds West 520.00 feet to point "2405" designated on said plat; thence South 13 degrees 21 minutes 42 seconds West 55.45 feet to point "2406" designated on said plat; thence South 39 degrees 10 minutes 25 seconds West 32.65 feet to the east boundary of County Road 100 East designated as point "2407" on said plat; thence South 89 degrees 08 minutes 36 seconds West 19.00 feet to the west line of said section; thence North 0 degrees 51 minutes 24 seconds West 125.00 feet along said west line to the point of beginning and containing 1.451 acres, more or less, inclusive of the presently existing right-of-way which contains 0.563 acres, more or less, for a net additional taking of 0.888 acres, more or less.

Containing after said exceptions 73 acres, more or less.

Also, all that part of the east half of the southeast quarter of Section 16, Township 18 North, Range 4 West, south of the centerline of County Road 265 S and also except,

Beginning at the southwest corner of said east half quarter section; thence east 8 rods; thence north 10 rods; thence west 8 rods; thence south 10 rods to the place of beginning, containing after said exception 53.47 acres, more or less, in Montgomery County, Indiana. (Tract No. 54-10-16-400-024.001-025)

Also, part of the southeast quarter of Section 20, Township 18 North, Range 4 West, described as follows:

Beginning at the southeast corner of said section, and running thence north 160 rods; thence west 100 rods, more or less, to the center line of the track of the Railway formerly known as the Logansport, Crawfordsville and Southwestern; thence southwesterly along said center line to the south line of said section; thence east 149 rods, more or less, to the place of beginning, except the south 10 rods of the east 20 rods to the west half of said southeast quarter containing 1½ acres, and except the right-of-way of said railroad, and containing after said exceptions, 115 acres, more or less, and also except:

Beginning at the northeast corner of said southeast quarter of Section 20, run thence south 650 feet to a point of beginning; thence run west 700.5 feet; thence south 300 feet; thence east 700.5 feet; thence north 300 feet, to a point of beginning, containing 4.82 acres, subject to legal highways.

EXCEPT

Part of the Southeast Quarter of Section Twenty (20), Township Eighteen (18) North, Range Four (4) West, South Union Township, Montgomery County, Indiana, more particularly described as follows:

Beginning at a magnetic nail on the East line of said Southeast Quarter, 858.54 feet South 00 Degrees 21 Minutes 24 Seconds East of a Mag Spike marking the Northeast corner of said Southeast Quarter; THENCE South 00 Degrees 21 Minutes 24 Seconds East along said East line for a distance of 50.00 feet to a magnetic nail; THENCE leaving said East line and running South 89 Degrees 42 Minutes 33 Seconds West for a distance of 356.31 feet to a 5/8" X 24" capped rebar marked Deckard Srvy, (herein referred to as a Deckard rebar); THENCE South 01 Degrees 57 Minutes 32 Seconds West for a distance of 164.27 feet to a Deckard rebar; THENCE South 89 Degrees 43 Minutes 41 Seconds West for a distance of 48.66 feet to a Deckard rebar; THENCE South 01 Degrees 22 Minutes 00 Seconds West for a distance of 374.22 feet to a Deckard rebar; THENCE South 85 Degrees 05 Minutes 10 Seconds West for a distance 246.10 feet to a Deckard rebar; THENCE North 01 Degrees 10 Minutes 12 Seconds West for a distance of 742.09 feet to a Deckard rebar; THENCE North 89 Degrees 19 Minutes 44 Seconds East for a distance of 234.03 feet to a Deckard rebar; THENCE South 00 Degrees 20 Minutes 57 Seconds East for a distance of 135.54 feet to a Deckard rebar; THENCE North 89 Degrees 42 Minutes 33 Seconds East for a distance of 444.70 feet to the place of beginning, containing 4.922 acres, more or less.

Subject to a right of way for County Road 100E along a portion of the East side of the above described tract and together with and subject to all other rights of way, covenants, easements and restrictions of record.

LEGAL DESCRIPTION CONTINUED ON FOLLOWING PAGE

All that part of the northeast quarter of Section 20, in Township 18 North, Range 4 West, that is situate east of the easterly right-of-way line of the L.C. & S. W. Railway (now known as the Vandalia) containing 75.11 acres, more or less, except the following described tract:

Beginning at the point of intersection of the east right-of-way line of said railway and the centerline of the east and west county road No. 300 S., thence east 300 feet; thence south 933.56 feet to and for a place of beginning; thence east 650.15 feet to the centerline of the north and south county road No. 100 E., thence south 450.02 feet; thence west 1205.8 feet to the east right-of-way line of said railway; thence in a northeasterly direction following the right-of-way line of said railway 395.8 feet; thence east 481.4 feet; thence north 60 feet to the place of beginning, containing 11.36 acres, more or less, and also except:

Beginning at a point of intersection of the east right-of-way line of said railway and the center line of the east and west county road No. 300 S.; thence east 300 feet; thence south 993.56 feet; thence west 481.4 feet to the east right-of-way line of the above said railway; thence in a northeasterly direction following the right-of-way line of said railway 1009.6 feet to the place of beginning, containing 8.911 acres, more or less, and containing after said exception 164.919 acres, more or less, in Montgomery County, Indiana.

Also, except the tract conveyed by warranty deed to the Board of Commissioners of Montgomery County, Indiana in Instrument No. 200601711, recorded on March 23, 2006, in the Office of the Recorder of Montgomery County, Indiana, and described as follows, to-wit:

A part of the Northeast Quarter of Section 20, Township 18 North, Range 4 West, as follows: Beginning at the northeast corner of said section designated as point "54" on said plat; thence South 0 degrees 51 minutes 24 seconds East 125.00 feet along the east line of said section; thence South 89 degrees 08 minutes 36 seconds West 19.00 feet to the west boundary of County Road 100 East designated as point "2301" on said plat; thence North 43 degrees 28 minutes 15 seconds West 33.97 feet to point "2303" designated on said plat; thence North 9 degrees 48 minutes 09 seconds West 56.14 feet to point "2202" designated on said plat; thence South 89 degrees 39 minutes 37 seconds West 593.88 feet to the west line of the grantor's land; thence North 0 degrees 20 minutes 23 seconds West 45.00 feet to the north line of said section; thence North 89 degrees 39 minutes 37 seconds East 644.21 feet along said north line to the point of beginning and containing 0.742 acres, more or less, inclusive of the presently existing right-of-way which contains 0.299 acres, more or less, for a net additional taking of 0.443 acres, more or less. (Tracts No. 54-10-20-800-004.000-025 and 54-10-20-100-001.000-025)

Also, the northwest quarter of the northwest quarter of Section 22, Township 18 North, Range 4 West, containing 40 acres, more or less, in Montgomery County, Indiana.

Except: Beginning at a 5/8-inch rebar found marking the northwest corner of said section; thence north 90 degrees 00 minutes 00 seconds east along the north line of said section, 660.00 feet to a 5/8-inch rebar set; thence south 00 degrees 05 minutes 01 second west, 140.00 feet to a 5/8-inch rebar set; thence north 90 degrees 00 minutes 00 seconds west, 660.00 feet to a rebar found and the west line of said section; thence north 00 degrees 05 minutes 01 second east along said west line 140.00 feet to the point of beginning of this description, containing 2.121 acres. (Tract No. 54-10-22-200-003.001-025 and 54-10-22-200-003.000-025)

Also, the east half of the northwest quarter of Section 21, Township 18 North, Range 4 West, containing 80 acres, more or less. (Tract No. 54-10-21-100-007.000-025)

Also, a strip 40 rods wide of equal width off of the north side of the southwest quarter of Section 21, Township 18 North, Range 4 West, containing 40 acres, more or less.

Except the following described tract:

Beginning 50 feet south of the northwest corner of said southwest quarter for a place of beginning; thence east 424.25 feet; thence south 405.4 feet; thence west 424.25 feet; thence north 405.4 feet to the place of beginning, containing 4.18 acres, more or less.

ALSO EXCEPT the following described tract:

Part of the southeast quarter of Section 21, Township 18 North, Range 4 West, described as follows:

Beginning 556.75 feet south of the northwest corner of said southwest quarter and running thence east 399.75 feet; thence south 98.17 feet; thence west 399.75 feet; thence north 101.35 feet to the place of beginning, containing .91 acre, more or less.

ALSO EXCEPT: Part of the southwest quarter of Section 21, Township 18 North, Range 4 West, Montgomery County, Indiana, described as follows: Beginning 455.40 feet south of the northwest corner of the southwest quarter and running thence east 424.25 feet; thence south 101.35 feet; thence west 424.25 feet; thence north 101.35 feet to the place of beginning, containing .99 acre, more or less.

ALSO EXCEPT: A part of the East Half of the Northwest Quarter of Section 21, Township 18 North, Range 4 West, Montgomery County, Indiana, and being that part of the grantors' land lying with the right-of-way lines depicted on the attached Right-of-Way Parcel Plat, marked EXHIBIT "B", described as follows: Beginning at the northeast corner of said half quarter section designated as point "75" on said plat; thence South 0 degrees 42 minutes 56 seconds East 50.01 feet along the east line of said half quarter section; thence North 89 degrees 27 minutes 56 seconds West 1.06 feet to point "2601" designated on said plat; thence North 89 degrees 31 minutes 51 seconds West 125.69 feet to point "2607" designated on said plat; thence South 86 degrees 10 minutes 49 seconds West 200.56 feet to point "2606" designated on said plat; thence North 89 degrees 31 minutes 51 seconds West 250.00 feet to point "2605" designated on said plat; thence North 85 degrees 43 minutes 00 seconds West 150.33 feet to point "2604" designated on said plat; thence North 89 degrees 31 minutes 51 seconds West 450.00 feet to point "2603" designated on said plat; thence North 85 degrees 47 minutes 54 seconds West 153.62 feet to the west line of said half quarter section designated as point "2401" on said plat; thence North 0 degrees 28 minutes 09 seconds East 45.00 feet to the north line of said section; thence South 89 degrees 31 minutes 51 seconds East 1329.01 feet along said north line to the point of beginning and containing 1.733 acres, more or less, inclusive of the presently existing right-of-way which contains 0.519 acres, more or less, for a net additional taking of 1.214 acres, more or less.

ALSO EXCEPTING THEREFROM those parcels transferred to Jason and Shasta Cottrell by deeds recorded in Montgomery County Recorder's Office Instrument Numbers 200302552, 200302553, 200302554, 200207110, 200207111, 200207112.