

FILED

2021 OCT -6 AM 10:59

BRANDEN C. MEYER
CLERK OF COURTS
FAIRFIELD CO. OHIO

IN THE COMMON PLEAS COURT OF FAIRFIELD COUNTY, OHIO

Jack Marchbanks, Director
Ohio Department of Transportation
1980 West Broad Street
P.O. Box 899
Columbus, Ohio 43216-0899

Plaintiff,

v.

Eichhorn Limited Partnership
c/o CPM Statutory Agent Corp., Registered Agent
950 Goodale Boulevard, Suite 200
Columbus, Ohio 43212

The Vinton County National Bank
Legal Department
112 West Main Street
McArthur, OH 45651

Dually Farms, LLC
c/o Nic Beveridge, Registered Agent
1930 Hamburg Road SW
Lancaster, Ohio 43130

Jon A. Slater, Jr., or successor
Fairfield County Auditor
210 East Main Street, Suite 201
Lancaster, Ohio 43130

and

CASE NO. **21CV 457**

JUDGE

JUDGE TRIMMER

PETITION TO
APPROPRIATE
PROPERTY AND TO
FIX COMPENSATION

James N. Bahnsen, or successor
Fairfield County Treasurer
210 East Main Street, Room 206
Lancaster, Ohio 43130

Defendants.

PETITION TO APPROPRIATE PROPERTY AND TO FIX COMPENSATION

1. Plaintiff is the duly appointed Director of the Ohio Department of Transportation and is authorized under Section 19, Article I of the Constitution of Ohio, Title 55 of the Ohio Revised Code and Chapter 163 of the Ohio Revised Code to bring this action to appropriate property for a public use and to determine compensation and damages, if any, to the residue for this appropriation.

2. Plaintiff intends to obtain and take possession of and enter upon the property being appropriated for the purposes of making, constructing, repairing or improving a state, U.S. or Interstate highway which shall be open to the public, without charge.

3. Attached hereto and incorporated herein by reference as Exhibit 1 is a copy of the *Findings, Declarations and Resolution to Appropriate* of the Director of Transportation, wherein the following are disclosed:

- (a) A statement of the purpose of the appropriation.
- (b) The identity of the highway to be made, constructed, repaired or improved.
- (c) The names and addresses, so far as can be ascertained, of those persons or entities that are the owners, as defined in R.C. 163.01, of the property to be appropriated.
- (d) The description of the property, and the rights, titles, interests, and estates therein, to be appropriated.

- (e) The amount Plaintiff has determined to be the fair market value of the property, and the rights, titles, interests, and estates therein, to be appropriated, together with damages, if any, to the residue thereof.
- (f) The identity of the entities other than the State of Ohio, if any, in the name of which all or a part of the property is being appropriated.

4. Plaintiff has complied with the requirements of R.C. 163.04 and R.C. 163.041 by providing and delivering a written Notice of Intent to Acquire and Good Faith Offer at least thirty days prior the filing of this action. The requirements of R.C. 163.04 have been met in that Plaintiff has been unable to agree on a conveyance or the terms of a conveyance, for any reason, with any owner or the guardian or trustee of any owner unless each owner is incapable of contracting in person or by agent to convey the property and has no guardian or trustee, each owner is unknown, or the residence of each owner is unknown to the agency and the residence of no owner can with reasonable diligence be ascertained.

5. Prior to or at the time of filing this Petition, Plaintiff has deposited with the Clerk of this Court a sum of money equal to the amount that Plaintiff determined to be the fair market value of the property, and the rights, titles, interests and estates therein, to be appropriated, and damages, if any, to the residue thereof.

6. Plaintiff has filed with the Fairfield County Engineer, or made available to the owner, a copy of the highway plans for the purpose of making available a description of the nature of the improvement or use which requires the appropriation, including any specifications, elevations, and grade changes already determined at the time of the filing of this petition, in sufficient detail to permit a determination of the nature, extent, and effect of the taking and improvement.

WHEREFORE, Plaintiff prays the Court will:

- A. Find that Plaintiff has complied with R.C. 163.01, *et seq.*, and is entitled to appropriate the subject property.
- B. Enter a judgment ordering the appropriation and possession of the real property or interest in real property and for the conveyance of the title to or easement interest in such property to the State of Ohio and/or to the entities other than the State of Ohio, if any, identified in Exhibit 1.
- C. Upon the failure of the owner to file an answer, pursuant to R.C. 163.09, declare the value of the property or property interest appropriated herein and of damages, if any, to the residue, to be in the sum stated in Plaintiff's Findings, Declarations and Resolution to Appropriate attached hereto as Exhibit 1.
- D. Cause a jury to be impaneled to make inquiry into and assess compensation to be paid and damages, if any, to the residue, for the appropriation of the within described property or property interests.
- E. Grant Plaintiff all such other relief to which Plaintiff might be entitled.

DAVE YOST
Ohio Attorney General



CORINNA V. EFKEMAN (0069363)
Associate Assistant Attorney General
Transportation Unit
Executive Agencies Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215
Corinna.Efkeman@OhioAGO.gov
(614) 466-4856; FAX (866) 411-5681
Attorney for Plaintiff

FINDINGS, DECLARATIONS & RESOLUTIONS

WHEREAS, it is necessary for the public convenience and welfare to acquire certain property for highway purposes, namely **Parcel(s) 1-SH1, 1-SH2 and 1-T**, which property is more particularly described below, to make, construct, repair or improve **State Route 37, Section 6.10, Fairfield County, Ohio; and**

WHEREAS, I have determined that **\$19,440** is the fair market value of the property, and the rights, titles, interests and estates therein, and the structures, if any, situated thereon, to be appropriated, together with damages, if any, to the residue thereof; and

WHEREAS, I have been unable to agree on a conveyance or the terms of a conveyance, for any reason, with any owner or the guardian or trustee of any owner unless each owner is incapable of contracting in person or by agent to convey the property and has no guardian or trustee, each owner is unknown, or the residence of each owner is unknown to the agency and the residence of no owner can with reasonable diligence be ascertained.

NOW, THEREFORE, BE IT DECLARED AND RESOLVED THAT:

1. I find it necessary to appropriate the property, and rights, titles, interests and estates therein, and the structures, if any, situated thereon, which is specifically described in Exhibit A attached hereto, for the purpose of making, constructing or improving the above- mentioned highway which shall be open to the public, without charge or one of the other statutory purposes for which the Director of Transportation may acquire property under Title LV of the Revised Code, such as, but not limited to, those purposes enumerated in Sections 5501.31 and 5519.01 of the Revised Code.

2. In accordance with R.C. 163.06(B), it is necessary and it is my intention to forthwith obtain and take possession of and enter upon and occupy the property appropriated.

3. Prior to or at the time of filing this action to appropriate property the sum of **\$19,440** which I had determined to be the value of the property appropriated and damages, if any, to the residue, shall be deposited with the Clerk of the court in which the action is brought.

4. The names and addresses of the owners, as defined in R.C. 163.01, of said of property, as far as can be ascertained, are:

Eichhorn Limited Partnership
c/o CPM Statutory Agent Corp., Registered Agent
950 Goodale Boulevard, Suite 200
Columbus, Ohio 43212

The Vinton County National Bank
Legal Department
112 West Main Street
McArthur, OH 45651

1 – Eichhorn Limited Partnership

EXHIBIT 1

Dually Farms, LLC
c/o Nic Beveridge, Registered Agent
1930 Hamburg Road SW
Lancaster, Ohio 43130

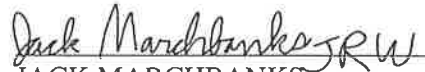
Jon A. Slater, Jr., or successor
Fairfield County Auditor
210 East Main Street, Suite 201
Lancaster, Ohio 43130

James N. Bahnsen, or successor
Fairfield County Treasurer
210 East Main Street, Room 206
Lancaster, Ohio 43130

The legal description(s) of the property, and rights, titles, interests and estates therein to be appropriated is (are):

See legal descriptions attached hereto as Exhibit A and incorporated herein by reference.

WITNESS my hand and seal given this 22nd day of September, 2021, at Columbus,
Franklin County, Ohio.



JACK MARCHBANKS
Director
Ohio Department of Transportation

EXHIBIT A

This page supplements and completes this parcel's legal description, which follows.

**PARCEL 1-SH1
FAI 37-06.10**

**PERPETUAL EASEMENT FOR HIGHWAY PURPOSES
WITHOUT LIMITATION OF EXISTING ACCESS RIGHTS**

Pursuant to R.C. 5713.04, the County Auditor shall deduct 2.436 acres of land more or less, of which the present road occupies 1.271 acres, from the value of the parcel which has Fairfield County Auditor's Permanent Parcel Number 0490261230.

Legal description for this parcel continues on succeeding 4 page(s).

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Ver. Date 09/11/20

PID 110412

**PARCEL 1-SH1
FAI-37-06.10
PERPETUAL EASEMENT FOR HIGHWAY PURPOSES
WITHOUT LIMITATION OF EXISTING ACCESS RIGHTS**

An exclusive perpetual easement for public highway and road purposes, including, but not limited to any utility construction, relocation and/or utility maintenance work deemed appropriate by the State of Ohio, Department of Transportation, its successors and assigns forever.

Grantor/Owner, for himself and his heirs, executors, administrators, successors and assigns, reserves all existing rights of ingress and egress to and from any residual area (as used herein, the expression "Grantor/Owner" includes the plural, and words in the masculine include the feminine or neuter).

[Surveyor's description of the premises follows]

Situated in the State of Ohio, County of Fairfield, Township of Walnut, and being a part of Section 29, Township 16, Range 18, being part of a 113.854 acre parcel conveyed to **EICHHORN LIMITED PARTNERSHIP**, by Official Record Volume 1477, Page 2270, and being more particularly described below:

Being a parcel of land lying right of the Centerline of Right of Way of FAI-37-06.10 made by Mead & Hunt for the Ohio Department of Transportation as recorded in Plat Book _____, Page _____ in the records of Fairfield County, and being located within the following described boundary points in the boundary thereof:

Beginning from a monument box set at the intersection of the Centerline of Right of Way of State Route 37 and the Centerline of Right of Way of State Route 256, said point being the southeast corner of Section 19, said point also being the southwest corner of Section 20, said point also being the northwest corner of Section 29, said point also being the northeast corner of Section 30, said point also being the northwest corner of the Grantor, said point also being the southwest corner of a 3.12 acre parcel conveyed to Chaos, LLC by Official Record Volume 1729, Page 1874, said point also being the northeast corner of a 6.91 acre parcel conveyed to Wagner Rentals, LLC, by Original Record Volume 1434, Page 2868, said point also being the southeast corner of a 6.94 acre parcel conveyed to MAC'S CONVENIENCE STORES LLC, by Original Record Volume 1734, Page 4486, said point also being at PI Station 18+34.80 of the Centerline of Right of Way of State Route 37 and at PI Station 26+23.94 of the Centerline of Right of Way of State Route 256, said point marking the **Principle Point of Beginning** for the

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parcel described herein;

1. **Thence South 87 Degrees 18 Minutes 17 Seconds East** along the Centerline of Right of Way of State Route 256, said line also being the northerly section line of Section 29 and southerly line of Section 20, said line also being the northerly line of the Grantor, said line also being the southerly line of said parcel conveyed to Chaos, LLC a distance of **231.67 feet** to Station 28+55.61 of the Centerline of Right of Way of State Route 256, said point being a northeastern corner of the Grantor, said point also being the northwest corner of a 0.086 acre parcel conveyed to the Village of Thurston, by Deed Volume 449, Page 565;
2. **Thence South 02 Degrees 41 Minutes 43 Seconds West** along an easterly line of the Grantor and the westerly line of said parcel conveyed to the Village of Thurston, passing through an iron pin found at a distance of 20.34 feet, a total distance of **55.00 feet** to an iron pin set 55.00 feet right of Station 28+55.61 of the Centerline of Right of Way of State Route 256;
3. **Thence North 87 Degrees 18 Minutes 17 Seconds West** parallel to the Centerline of Right of Way of State Route 256, a distance of **125.61 feet** to an iron pin set 55.00 feet right of Station 27+30.00 of the Centerline of Right of Way of State Route 256, said point also being 106.70 feet right of Station 17+81.06 of the Centerline of Right of Way of State Route 37;
4. **Thence South 54 Degrees 37 Minutes 36 Seconds West**, a distance of **49.63 feet** to an iron pin set 68.00 feet right of Station 17+50.00 of the Centerline of Right of Way of State Route 37;
5. **Thence South 03 Degrees 22 Minutes 29 Seconds West** parallel to the Centerline of Right of Way of State Route 37, a distance of **100.00 feet** to an iron pin set 68.00 feet right of Station 16+50.00 of the Centerline of Right of Way of State Route 37;
6. **Thence South 05 Degrees 05 Minutes 35 Seconds West**, a distance of **100.04 feet** to an iron pin set 65.00 feet right of Station 15+50.00 of the Centerline of Right of Way of State Route 37;
7. **Thence South 03 Degrees 22 Minutes 29 Seconds West** parallel to the Centerline of Right of Way of State Route 37, a distance of **400.00 feet** to an iron pin set 65.00 feet right of Station 11+50.00 of the Centerline of Right of Way of State Route 37;
8. **Thence South 06 Degrees 14 Minutes 13 Seconds West**, a distance of **100.12 feet** to an iron pin set 60.00 feet right of Station 10+50.00 of the Centerline of Right of Way of State Route 37;
9. **Thence South 03 Degrees 22 Minutes 29 Seconds West** parallel to the Centerline of Right of Way of State Route 37, a distance of **450.00 feet** to an iron pin set 60.00 feet right of Station 6+00.00 of the Centerline of Right of Way of State Route 37;

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10. Thence South 07 Degrees 39 Minutes 50 Seconds West, a distance of **401.12 feet** to an iron pin set on the existing easterly Right of Way line of State Route 37, said point being 30.00 feet right of Station 2+00.00 of the Centerline of Right of Way of State Route 37;

11. Thence North 86 Degrees 37 Minutes 31 Seconds West perpendicular to the Centerline of Right of Way of State Route 37, a distance of **30.00 feet** to the Centerline of Right of Way of State Route 37, said line also being the westerly line of Section 29 and the easterly line of Section 30, said line also being the westerly line of the Grantor, said line also being the easterly line of a 62.33 acre parcel conveyed to Wagner Rentals, LLC, by Original Record Volume 1434, Page 2871, to Station 2+00.00 of the Centerline of Right of Way of State Route 37;

12. Thence North 03 Degrees 22 Minutes 29 Seconds East along the Centerline of Right of Way of State Route 37, said line also being the westerly line of Section 29 and the easterly line of Section 30, said line also being the westerly property line of the Grantor, a portion of said line being the easterly line of said 6.91 acre and 62.33 acre parcels conveyed to Wagner Rentals, LLC, a portion of said line also being the easterly line of a 5.145 acre parcel conveyed to FARM CREDIT MID-AMERICA, FLCA by Original Record Volume 1633, Page 3038, a portion of said line also being the easterly line of a 3.099 acre parcel conveyed to Heather Mae Warner by Original Record Volume 1667, Page 3239, a distance of **1634.80 feet** to the **Principle Point of Beginning** and enclosing 2.436 acres, more or less of which the present road occupies 1.271 acres, resulting in a net take of 1.165 acres;

The above described area is all within Fairfield County Permanent Parcel Number 0490261230;

The iron pins set are 3/4 inch diameter x 30 inch long rebar with a 2 inch diameter aluminum cap marked ODOT R/W Mead & Hunt, Inc. 8294. Mag nails set are 1/2 inch diameter x 2 inch long steel nail. Monument Boxes Set are 1 inch steel rods with a 3 inch aluminum cap set encased in a monument box assembly. Concrete Monuments Set are 3/4 inch iron pins encased in an 8 inch diameter concrete cylinder with a 3 inch diameter aluminum cap. Both the Monument Box Set and Concrete Monuments Set (Reference Monument) are detailed by ODOT standard construction drawing RM-1.1, dated 7-18-14. These monument boxes and concrete monuments are set by the highway contractor under the direction of a Professional Surveyor.

Bearings are relative to Grid North of the Ohio State Plane, South Zone. The Values were based on control set in January, 2019 using the Ohio VRS projection set: Ohio South NAD 83(2011) Datum. Bearings are for the purpose of indicating angular measurement only.

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The Stations referred to herein are from the Centerline of Right of Way of State Route 37 or the Centerline of Right of Way of State Route 256, as found on Right of Way Plan FAI-37-06.10.

This description was prepared and reviewed under the supervision of Steven J., Scheid, Jr., P.S., 8294 of Mead & Hunt on September 11, 2020 from a survey made in January, 2019.



Steven J., Scheid, Jr., P.S.
Professional Surveyor 8294
September 11, 2020



EXHIBIT A

This page supplements and completes this parcel's legal description, which follows.

**PARCEL 1-SH2
FAI 37-06.10**

**PERPETUAL EASEMENT FOR HIGHWAY PURPOSES
WITHOUT LIMITATION OF EXISTING ACCESS RIGHTS**

Pursuant to R.C. 5713.04, the County Auditor shall deduct 0.080 acres of land more or less, of which the present road occupies 0.041 acres, from the value of the parcel which has Fairfield County Auditor's Permanent Parcel Number 0490261230.

Legal description for this parcel continues on succeeding 3 page(s).

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Ver. Date 09/11/20

PID 110412

PARCEL 1-SH2

FAI-37-06.10

PERPETUAL EASEMENT FOR HIGHWAY PURPOSES WITHOUT LIMITATION OF EXISTING ACCESS RIGHTS

An exclusive perpetual easement for public highway and road purposes, including, but not limited to any utility construction, relocation and/or utility maintenance work deemed appropriate by the State of Ohio, Department of Transportation, its successors and assigns forever.

Grantor/Owner, for himself and his heirs, executors, administrators, successors and assigns, reserves all existing rights of ingress and egress to and from any residual area (as used herein, the expression "Grantor/Owner" includes the plural, and words in the masculine include the feminine or neuter).

[Surveyor's description of the premises follows]

Situated in the State of Ohio, County of Fairfield, Township of Walnut, and being a part of Section 29, Township 16, Range 18, being part of a 113.854 acre parcel conveyed to **EICHHORN LIMITED PARTNERSHIP**, by Official Record Volume 1477, Page 2270, and being more particularly described below:

Being a parcel of land lying right of the Centerline of Right of Way of FAI-37-06.10 made by Mead & Hunt for the Ohio Department of Transportation as recorded in Plat Book _____, Page _____ in the records of Fairfield County, and being located within the following described boundary points in the boundary thereof:

Commencing from a monument box set at the intersection of the Centerline of Right of Way of State Route 37 and the Centerline of Right of Way of State Route 256, said point being the southeast corner of Section 19, said point also being the southwest corner of Section 20, said point also being the northwest corner of Section 29, said point also being the northeast corner of Section 30, said point also being the northwest corner of the Grantor, said point also being the southwest corner of a 3.12 acre parcel conveyed to Chaos, LLC by Official Record Volume 1729, Page 1874, said point also being the northeast corner of a 6.91 acre parcel conveyed to Wagner Rentals, LLC, by Original Record Volume 1434, Page 2868, said point also being the southeast corner of a 6.94 acre parcel conveyed to MAC'S CONVENIENCE STORES LLC, by Original Record Volume 1734, Page 4486, said point also being at PI Station 18+34.80 of the Centerline of Right of Way of State Route 37 and at PI Station 26+23.94 of the Centerline of Right of Way of State Route 256;

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Thence South 87 Degrees 18 Minutes 17 Seconds East, along the Centerline of Right of Way of State Route 256, said line also being the northerly line of Section 29 and the southerly line of Section 20, part of said line also being the northerly line of the Grantor, said line also being the southerly line of said parcel conveyed to Chaos, LLC, part of said line also being the northerly line of a 0.086 acre parcel conveyed to the Village of Thurston, by Deed Volume 449, Page 565, a distance of **281.67 feet** to Station 29+05.61 of the Centerline of Right of Way of State Route 256, said point being a northwest corner of the grantor, said point also being the northeast corner of said parcel conveyed to the Village of Thurston, said point also marking the **Principle Point of Beginning** for the parcel described herein;

1. **Thence South 87 Degrees 18 Minutes 17 Seconds East** along the Centerline of Right of Way of State Route 256, said line also being the northerly line of Section 29 and the southerly line of Section 20, said line also being the northerly line of the Grantor, said line also being the southerly line of said parcel conveyed to Chaos, LLC, a distance of **60.14 feet** to Station 29+65.75 of the Centerline of Right of Way of State Route 256, said point being the northeast corner of the Grantor, said point also being the northwest corner of a 1.00 acre parcel conveyed to ALEXIS A. HOWARD, by Official Record Volume 1566, Page 3299;

2. **Thence South 03 Degrees 22 Minutes 29 Seconds West** along an easterly line of the Grantor and the westerly line of said parcel conveyed to ALEXIS A. HOWARD, passing thru a mag nail found at 20.62 feet for a total distance of **55.00 feet** to an iron pin set 55.00 feet right of Station 29+65.10 of the Centerline of Right of Way of State Route 256;

3. **Thence North 87 Degrees 18 Minutes 17 Seconds West** parallel to the Centerline of Right of Way of State Route 256, a distance of **25.10 feet** to an iron pin set 55.00 feet right of Station 29+40.00 of the Centerline of Right of Way of State Route 256;

4. **Thence South 02 Degrees 41 Minutes 43 Seconds West** perpendicular to the Centerline of Right of Way of State Route 256, a distance of **10.00 feet** to an iron pin set 65.00 feet right of Station 29+40.00 of the Centerline of Right of Way of State Route 256;

5. **Thence North 87 Degrees 18 Minutes 17 Seconds West** parallel to the Centerline of Right of Way of State Route 256, a distance of **20.00 feet** to an iron pin set 65.00 feet right of Station 29+20.00 of the Centerline of Right of Way of State Route 256;

6. **Thence North 02 Degrees 41 Minutes 43 Seconds East** perpendicular to the Centerline of Right of Way of State Route 256, a distance of **10.00 feet** to an iron pin set 55.00 feet right of Station 29+20.00 of the Centerline of Right of Way of State Route 256;

7. **Thence North 87 Degrees 18 Minutes 17 Seconds West** parallel to the Centerline of Right of

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Way of State Route 256, a distance of **14.39 feet** to an iron pin set on a westerly line of the Grantor, said line also being the easterly line of said parcel conveyed to the Village of Thurston, said pin being 55.00 feet right of Station 29+05.61 of the Centerline of Right of Way of State Route 256;

8. Thence North 02 Degrees 41 Minutes 43 Seconds East along a westerly line of the grantor and easterly line of said parcel conveyed to the Village of Thurston, a distance of **55.00 feet** to the **Principle Point of Beginning** and enclosing 0.080 acres, more or less of which the present road occupies 0.041 acres, resulting in a net take of 0.039 acres;

The above described area is all within Fairfield County Permanent Parcel Number 0490261230;

The iron pins set are 3/4 inch diameter x 30 inch long rebar with a 2 inch diameter aluminum cap marked ODOT R/W Mead & Hunt, Inc. 8294. Mag nails set are 1/2 inch diameter x 2 inch long steel nail. Monument Boxes Set are 1 inch steel rods with a 3 inch aluminum cap set encased in a monument box assembly. Concrete Monuments Set are 3/4 inch iron pins encased in an 8 inch diameter concrete cylinder with a 3 inch diameter aluminum cap. Both the Monument Box Set and Concrete Monuments Set (Reference Monument) are detailed by ODOT standard construction drawing RM-1.1, dated 7-18-14. These monument boxes and concrete monuments are set by the highway contractor under the direction of a Professional Surveyor.

Bearings are relative to Grid North of the Ohio State Plane, South Zone. The Values were based on control set in January, 2019 using the Ohio VRS projection set: Ohio South NAD 83(2011) Datum. Bearings are for the purpose of indicating angular measurement only.

The Stations referred to herein are from the Centerline of Right of Way of State Route 256, as found on Right of Way Plan FAI-37-06.10.

This description was prepared and reviewed under the supervision of Steven J., Scheid, Jr., P.S., 8294 of Mead & Hunt on September 11, 2020 from a survey made in January, 2019.



Steven J., Scheid, Jr., P.S.
Professional Surveyor 8294
September 11, 2020

