

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

24-W-SE-14 **SPECIAL EXCEPTION/ VARIANCE**
24-W-VAR-15 Horvath Communications/ Gilliom Farms, LLC
East US Highway 33

SEPTEMBER 24, 2024
AGENDA ITEM: 5

SUMMARY OF PROPOSAL

Current zoning: AG, Agricultural

Property area: 10,000± sq. ft. (lease area); 20.49 acres (parcel area)

The petitioner, potential lessee of the subject property, is requesting special exception approval for a communications tower to be constructed on the subject property located on US 33, about 1,400 feet west of 750 East, in Section 3 of Smith Township. The property is currently unimproved agricultural land.

The proposal is for a 195' tall monopole tower, inclusive of the lightning rod, within a 100'x100' leased equipment compound (additional 30' wide easement is to be used for the access drive). The site of the tower and equipment would be 65'x65' and enclosed by an 8' tall wooden fence and gate. It appears that a new drive cut would be required, and an address will need to be assigned.

Variances are necessary for encroachment of the equipment compound into the minimum 25' setback and for the elimination of landscaping around the compound. These are discussed below.

In the AG, Agricultural District, communication towers require a special exception through the Board of Zoning Appeals, and the requirements of Section 5.16, Telecommunication Facilities Standards, apply.

SECTION 5.16 STANDARDS

Below are the standards for new telecommunications towers listed in §5.16 of the zoning code, followed by staff's commentary.

- A. It shall be fully automated and unattended on a daily basis, and shall be visited only for periodic maintenance and emergencies.**
While not explicitly stated that it would be "fully automated and unattended", there are no occupied structures proposed in the submitted plans.

- B. A proposal for a new telecommunications tower shall only be approved if the applicant provides evidence that co-locating can not be done to provide the needed coverage. The applicant must submit coverage maps as if they are using the existing facilities/towers in the area. The applicant must demonstrate that adequate coverage can not be found by using other facilities/towers or other tall structures in the area...**
Per Indiana Code 8-1-32.3-15(f), it does not appear that this can be requested of an applicant.

- C. A propagation study will accompany an application for a new telecommunications tower (if co-location cannot be achieved.)**
Per Indiana Code 8-1-32.3-15(f), it does not appear that this can be requested of an applicant.

- D. Any proposed telecommunication tower shall be designed, and engineered structurally, electrically and in all other respects to accommodate both the applicants height and at least three (3) additional users. Towers must be designed to allow for future rearrangement of antennas upon the tower and accept antennas mounted at varying heights. The lot where the tower if located (or lease area) shall be large enough to accommodate all future anticipated accessory structures needed by future antenna users.**

There are three co-location mounts indicated on the proposed plans. The site plan suggests that there are sites in the equipment area for two additional users; more might be accommodated by rearranging utility connections.

- E. No part of any wireless telecommunications facility nor any lines, cables, equipment, wires or braces in connection with either shall at any time extend across or over any part of the right-of-way, public street, highway, sidewalk, trails or property line.**

This appears to be met.

- F. All antennas, tower and accessory structure constructed within the Whitley County Plan Commission jurisdiction, shall comply with the following requirements...**

If the special exception is approved, these standards will be verified as part of permit review.

- G. The following requirements shall apply:**

- 1. Minimum front, side and rear property setbacks equal to the height of the tower plus fifty (50) feet.**

While IC 8-1-32.3-17 may not allow this standard to be enforced as written based on the tower, the tower's 53.5' setback does appear to comply with the modified interpretation of the code. However, a variance approval is still needed as the setback of the equipment compound to the west property is 18'± rather than 25' required by the AG district.

- 2. Maximum height of tower; three hundred (300) feet.**

While IC 8-1-32.3-17 may not allow this standard to be enforced, it appears the proposal does meet this standard.

- 3. Maximum height of accessory structure; fifteen (15) feet.**

The proposed equipment would be approximately 10' in height.

- 4. Tower shall be placed no closer than five hundred (500) feet from any residential zoning district or commercial zoning district.**

The nearest residential zoning district is approximately 531' away.

- 5. An eight (8) foot high security fence shall completely surround the tower and equipment building.**

This standard appears to be met with a 8' wood fence, which will be verified during permit review.

- H. The following buffer plantings shall be located around the perimeter of the security fence of a wireless communications facility:**

- 1. An evergreen screen shall be planted around the entire facility.**

a. If hedges are used they shall be a minimum of five (5) feet tall and planted a maximum of ten (10) feet on center.

b. If evergreens are used they shall be a minimum of five (5) feet tall and planted a maximum of ten (10) feet on center.

A variance of this standard is requested, as the proposed wood fence would provide an equivalent amount of screening.

- 2. Existing vegetation (trees and shrubs) shall be preserved to the maximum extent possible.**

There appears to be no applicable vegetation on this site.

REVIEW CRITERIA

Indiana Code §36-7-4-918.2 and Section 10.9(A) of the Zoning Code authorize the Board to review special exceptions and state the criteria listed below upon which the Board must base its review. Staff's comments/proposed findings of fact under each criterion.

- 1. The special exception shall not involve any elements or cause any condition that may be dangerous, injurious, or noxious to any other property or persons, and shall comply with the performance standards;**

The proposed tower, in conjunction with the proposed setbacks and development standards, is designed to minimize danger to other property and person by avoiding collapse and mitigating injury if a collapse does occur. More generally, communications towers typically do not include noxious elements and would be expected to comply with the specific performance standards of §5.7, with the following comments:

"B. Electrical Disturbance: No use on a property shall cause electrical disturbance adversely affecting radio, television or other equipment in the vicinity."

Telecommunications towers of all kinds can produce interference to radio, television, and other equipment in the area. However, the zoning code is specific in stating that no use shall cause "electrical disturbance," which, for example, may occur when using unshielded electric industrial equipment. Further, resolving radio signal interference caused by other radio sources would fall under the authority of the Federal Communications Commission.

"D. Noise. No use on a property shall produce noise in such a manner as to be objectionable because of volume, frequency, intermittence, beat, shrillness, or vibration..."

Telecommunications equipment, or accessory equipment such as air conditioning, could generate noise. The proposed distances between the site and residences (at least 550'±) should be sufficient to mitigate objectionable sounds.

- 2. The special exception shall be sited, or oriented and landscaped to produce a harmonious relationship of building and grounds to adjacent buildings and properties;**

Given the open nature of the existing agricultural field, the proposed tower will be quite obvious from the highway. That said, the setback of 450'± from the road and the equipment screening would aid in creating a harmonious relationship to the area.

- 3. The special exception shall produce a total visual impression and environment that is consistent with the environment of the neighborhood;**

A telecommunications tower is an obviously different structure than the residences and farm buildings in the immediate neighborhood and so would have a different visual impression than those structures. However, that may not be "inconsistent" as there are a variety of permissible structures found in agricultural areas that are relatively different in form yet still consistent with the neighborhood, such as silos, grain elevators, high voltage power lines, and so on.

- 4. The special exception shall organize vehicular access and parking to minimize traffic congestion in the neighborhood; and**

The proposed communication tower would likely not create traffic congestion or access problems since there is negligible traffic generated from this use.

5. The special exception shall preserve the purpose of this Ordinance as stated in Section 1.4.

For the Board's reference, the following is Section 1.4 of the Ordinance:

This Ordinance is intended to guide the growth and development of the County in accordance with the Whitley County Comprehensive Plan and for the following purpose.

- A. *To secure adequate light, air, and convenience of access; and safety from fire, flood, and other dangers;*
- B. *To promote the public health, safety, comfort, convenience, morals and general welfare;*
- C. *To plan for the future development of the County to the end;*
 - 1. *That the community grows only with adequate public ways, utility, health, educational, and recreational facilities;*
 - 2. *That the needs of agriculture, industry, and business be recognized in future growth;*
 - 3. *That residential areas provide healthful surroundings for family life;*
 - 4. *That the growth of the community is commensurate with and promotes the efficient and economical use of public funds; and*
 - 5. *That the community strives for high aesthetic value, quality planning and design.*

The Comprehensive Plan generally does not give recommendations on wireless facilities, but it does give general recommendations in Objectives 4.5 and 4.8 about promoting infrastructure, particularly broadband infrastructure, for economic development. Objective 1.5 discusses protection of "rural character" from suburban or urban development, but telecommunications towers are not readily described as any particular type of development.

For convenience, Staff suggests that the purposes listed in §1.4 might be narrowed to striving for high aesthetic value and the promotion of public comfort and convenience as the primary considerations for the Board in this criterion. However, other purposes of course may factor into the Board's decision and findings.

REVIEW CRITERIA

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

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

The proposed variances of the west setback and landscaping will not likely be injurious to the public safety, health, and morals. The setback of 18'± for the proposed equipment compound is less than the 25' required generally for primary structures in the AG district; however, as utility equipment, the potential impacts on health and safety are negligible. The lack of landscaping around the equipment compound would not affect health or safety. The general welfare may be injured if practical difficulties specific to the property are not found.

2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and

It is not expected that this variance will adversely affect the value and use of the area adjacent to the property. The setback encroachment is for a utility compound, which, if it were an electrical substation or a sewer lift station, are frequently exempt from zoning rules, and so would have no more or less impact than such utilities. The requested exchange of landscaping for a solid fence should provide a comparable screening and mitigate any impacts.

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

The strict application of the Ordinance terms may or may not result in a practical difficulty. Again, the setback is more than the minimum required for other utility installations that would be relatively comparable to the proposed. The proposed alternative of a wood fence for screening in lieu of the landscaping required by code should meet the same objectives.

SUGGESTED CONDITIONS

If the Board moves to grant the special exception and variances, the following are suggested conditions of the approval:

1. The Special Exception is granted as presented and per the site plan.
2. The wood fence must be maintained in good condition so as to provide an opaque screen.

Date report prepared: 09/19/2024

BOARD OF ZONING APPEALS ACTION: VARIANCE

Findings of Fact Criteria

	Vote: Green		Sheiss		Wilkinson		Wolf		Wright	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
Criterion 1										
Criterion 2										
Criterion 3										

Motion: Grant
 Grant w/conditions
 Deny

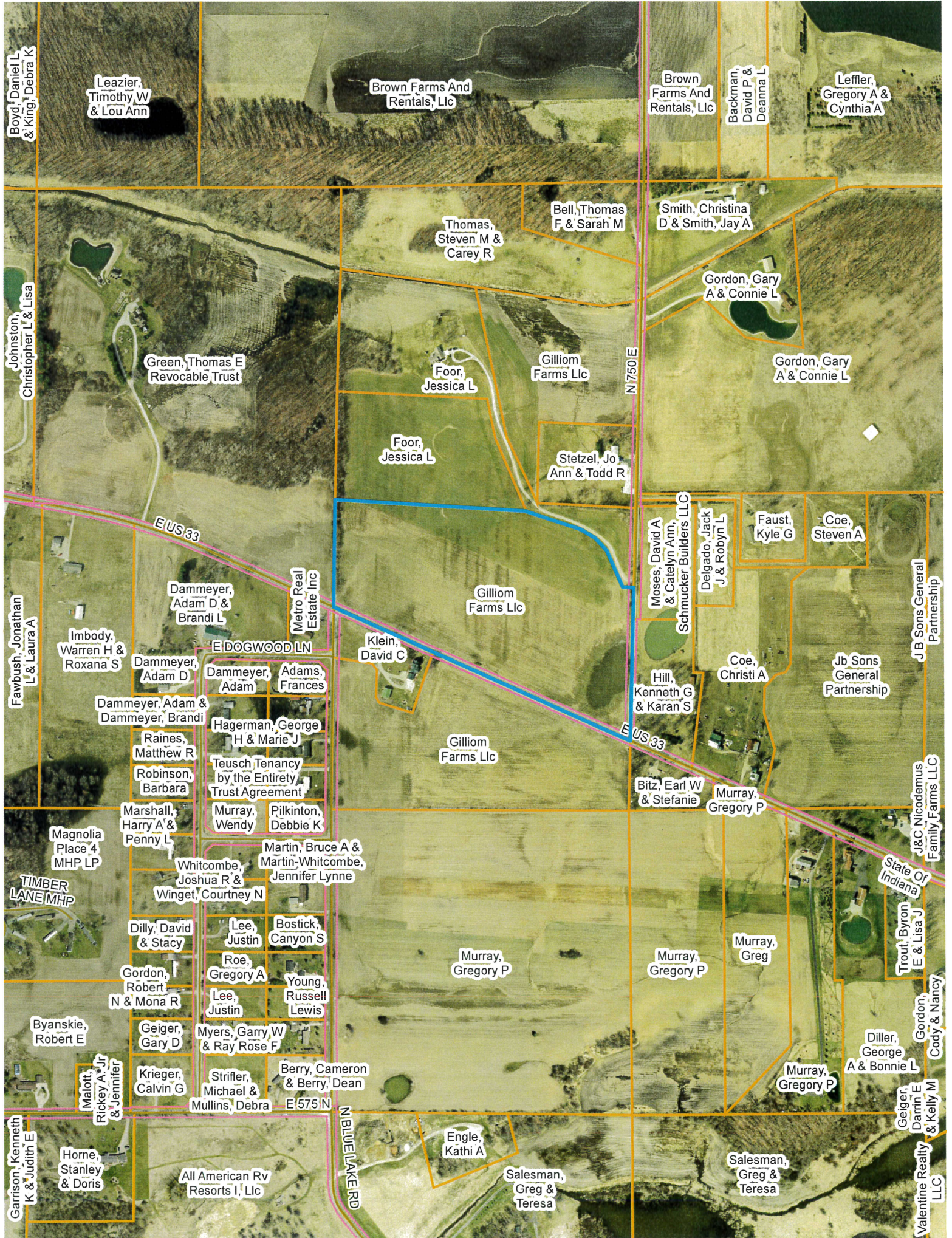
By: _____ Second by: _____

	Green	Sheiss	Wilkinson	Wolf	Wright
Yes					
No					
Abstain					

BOARD OF ZONING APPEALS RECORD OF ACTION: SPECIAL EXCEPTION

Motion: _____ By: _____ Second by: _____
 Approve _____
 Approve w/conditions _____
 Deny _____

	Green	Sheiss	Wilkinson	Wolf	Wright
Yes					
No					
Abstain					



Boyd, Daniel L & King, Debra K

Leazier, Timothy W & Lou Ann

Brown Farms And Rentals, Llc

Brown Farms And Rentals, Llc

Backman, David P & Deanna L

Leffler, Gregory A & Cynthia A

Johnston, Christopher L & Lisa

Thomas, Steven M & Carey R

Bell, Thomas F & Sarah M

Smith, Christina D & Smith, Jay A

Green, Thomas E Revocable Trust

Foor, Jessica L

Gilliom Farms Llc

Gordon, Gary A & Connie L

Gordon, Gary A & Connie L

Foor, Jessica L

Stetzel, Jo Ann & Todd R

EUS 33

N 750 E

Fawbush, Jonathan L & Laura A

Imbody, Warren H & Roxana S

Dammeyer, Adam D & Brandi L

Metro Real Estate Inc

Gilliom Farms Llc

Moses, David A & Catelyn Ann, Schmucker Builders LLC

Delgado, Jack J & Robyn L

Faust, Kyle G

Coe, Steven A

EIDOGWOOD LN

Klein, David C

EUS 33

Magnolia Place 4 MHP LP
TIMBER LANE MHP

Dammeyer, Adam D

Dammeyer, Adam

Adams, Frances

Gilliom Farms Llc

Bitz, Earl W & Stefanie

Murray, Gregory P

Hill, Kenneth G & Karan S

Coe, Christi A

Jb Sons General Partnership

J B Sons General Partnership

Marshall, Harry A & Penny L

Murray, Wendy

Pilkinton, Debbie K

Murray, Gregory P

Murray, Gregory P

Murray, Greg

State Of Indiana

J&C Nicodemus Family Farms LLC

Whitcombe, Joshua R & Jennifer Lynne

Winget, Courtney N

Martin, Bruce A & Martin-Whitcombe, Jennifer Lynne

Dilly, David & Stacy

Lee, Justin

Bostick, Canyon S

Murray, Gregory P

Murray, Gregory P

Murray, Greg

Trout, Byron E & Lisa J

Gordon, Robert N & Mona R

Roe, Gregory A

Young, Russell Lewis

Byanskie, Robert E

Geiger, Gary D

Myers, Garry W & Ray Rose F

Diller, George A & Bonnie L

Gordon, Cody & Nancy

Garrison, Kenneth K & Judith E

Home, Stanley & Doris

All American Rv Resorts I, Llc

N BLUE LAKE RD

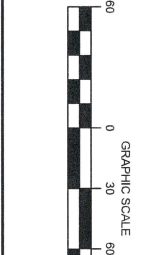
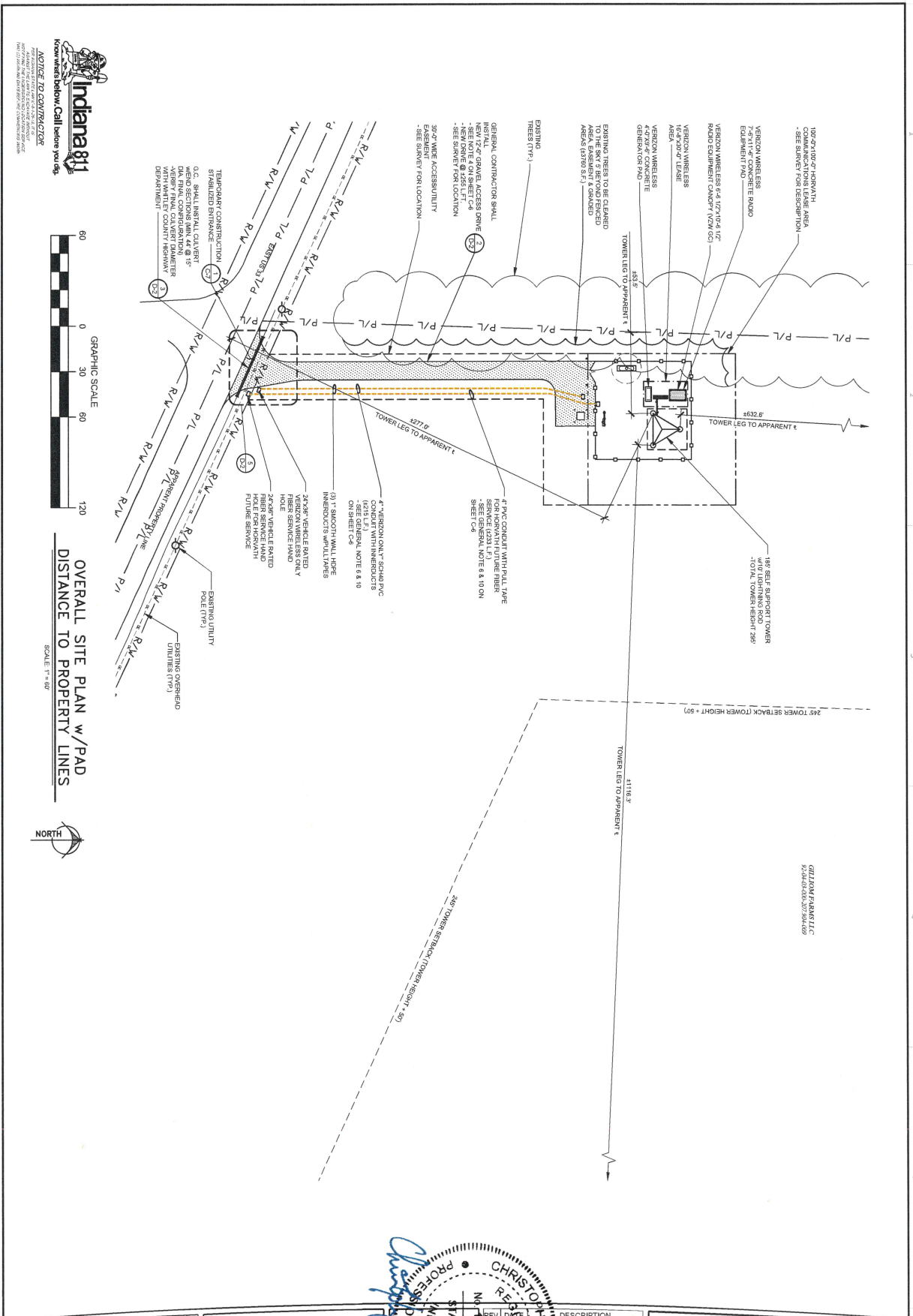
Engle, Kathi A

Salesman, Greg & Teresa

Salesman, Greg & Teresa

Valentine Realty & Kelly M LLC

Geiger, Darrin E & Kelly M



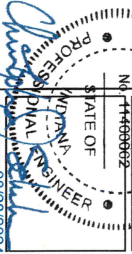
OVERALL SITE PLAN w/PAD DISTANCE TO PROPERTY LINES
 SCALE: 1" = 80'



ISSUED FOR:	DATE:
REVIEW:	DATE:
DESIGN:	DATE:
CONSTRUCTION:	DATE:
RECORD:	DATE:
PROJECT MANAGER:	DATE:
DESIGNER:	DATE:
APPRAISER:	DATE:
TRP:	DATE:

BLUE LAKE HV1610
 EAST US 33
 CHURUBUSCO, IN 46723

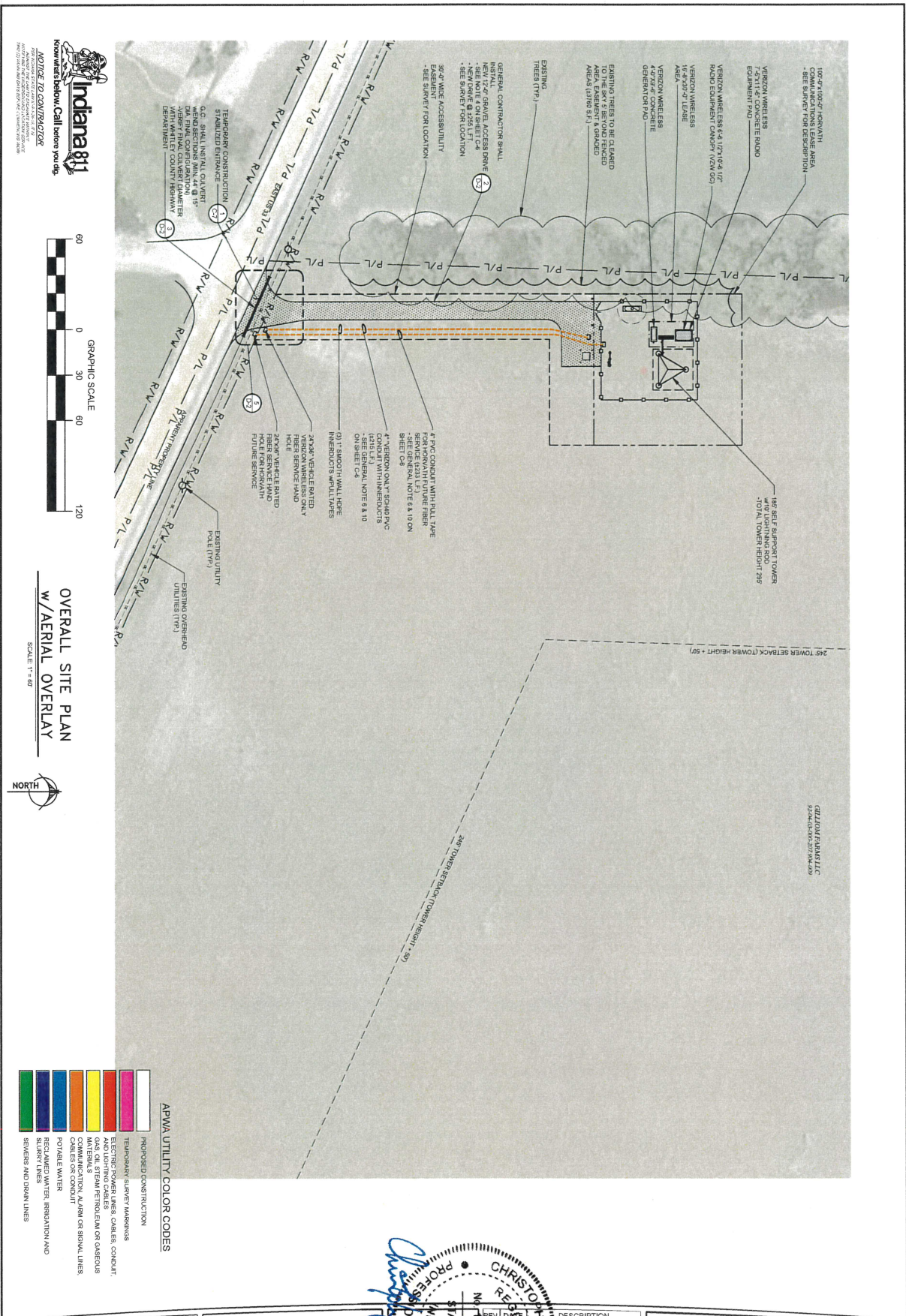
OVERALL SITE PLAN w/EQUIPMENT PAD DISTANCE TO PROPERTY LINES



REV.	DATE	DESCRIPTION
A	08/28/2024	ISSUED FOR 80% REVIEW
B	08/28/2024	REVISED PER COMMENTS
C	08/28/2024	REVISED PER COMMENTS
D	08/28/2024	REVISED PER NEW RFDS
E	08/28/2024	REVISED PER COMMENTS
F	08/28/2024	REVISED PER COMMENTS



520 South Main Street, Suite 215
 Evansville, IN 47710
 812.422.2100 Fax 812.422.2101



OVERALL SITE PLAN
 W/AERIAL OVERLAY
 SCALE: 1" = 60'



APWA UTILITY COLOR CODES

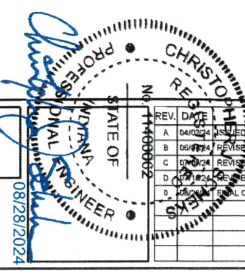
PROPOSED CONSTRUCTION	ISSUED FOR
TEMPORARY SURVEY ARRANGES	REBOUND
ELECTRIC POWER LINES, CABLES, CONDUIT, MAINTENANCE	REPAIR
GAS, OIL, STEAM, PETROLEUM OR GASEOUS CABLES OR CONDUIT	CONSTRUCTION
POTABLE WATER	RECORD
RECLAIMING WATER, IRRIGATION AND SILURRY LINES	PROJECT NUMBER
SEWERS AND DRAIN LINES	REPAIR
	TYP

DATE: 2023/05/92
 C-1

ISSUED FOR	REBOUND	REPAIR	CONSTRUCTION	RECORD	PROJECT NUMBER	REPAIR
	///	///	///	///		

BLUE LAKE HV1610
 EAST US 33
 CHURUBUSCO, IN 46723

OVERALL SITE PLAN
 W/AERIAL OVERLAY



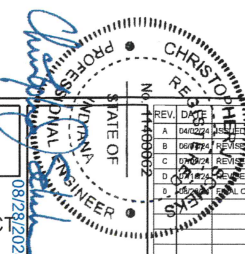
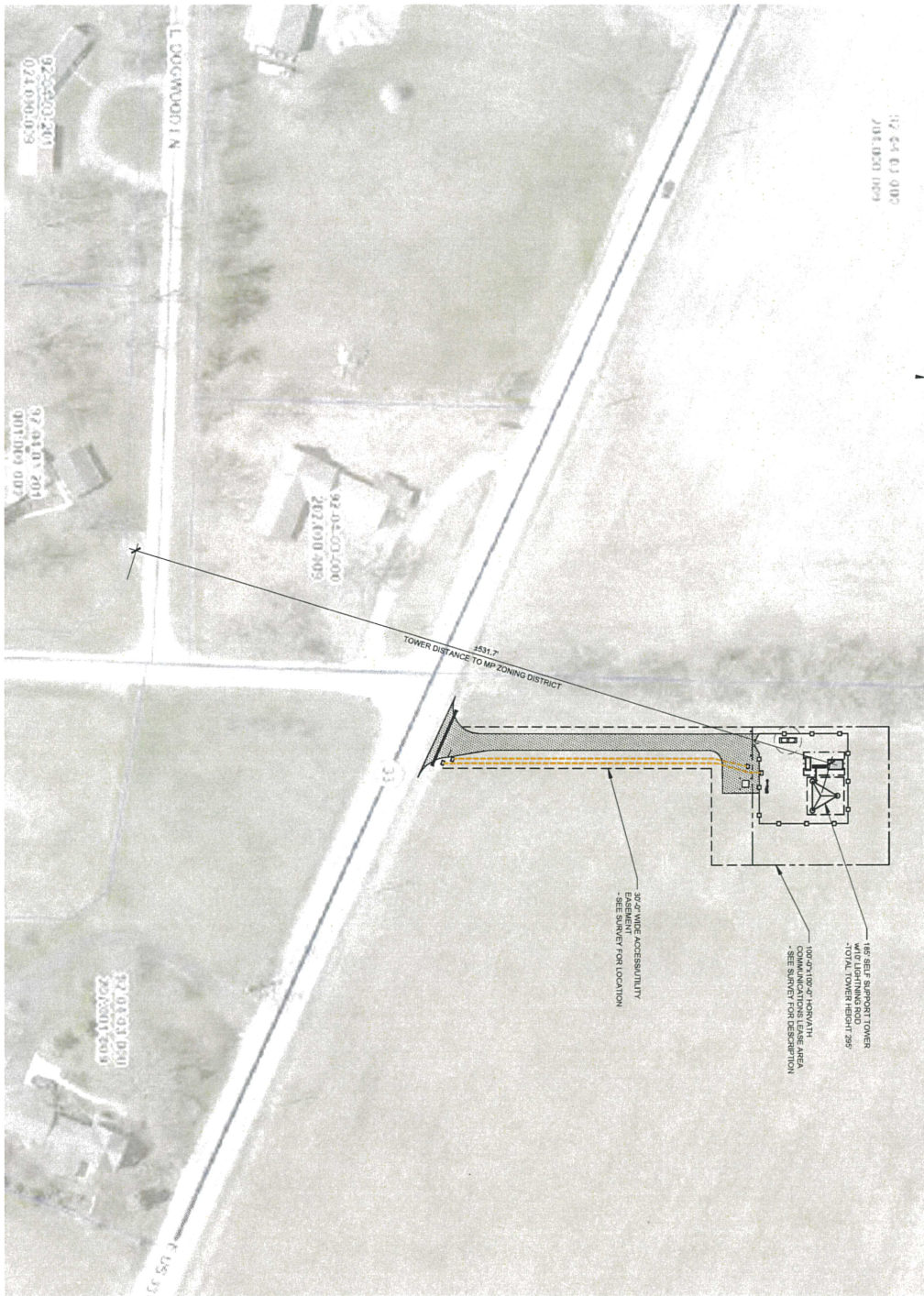
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E	08/28/2024	REVISED PER NEW RFD'S
F	08/28/2024	REVISED PER NEW RFD'S
G	08/28/2024	REVISED PER NEW RFD'S
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T	08/28/2024	REVISED PER NEW RFD'S
U	08/28/2024	REVISED PER NEW RFD'S
V	08/28/2024	REVISED PER NEW RFD'S
W	08/28/2024	REVISED PER NEW RFD'S
X	08/28/2024	REVISED PER NEW RFD'S
Y	08/28/2024	REVISED PER NEW RFD'S
Z	08/28/2024	REVISED PER NEW RFD'S





TOWER DISTANCE TO
MP ZONING DISTRICT

SCALE: 1" = 80'



BLUE LAKE HV1610
EAST US 33
CHURUBUSCO, IN 46723

TOWER DISTANCE
TO MP ZONING DISTRICT

08/28/2024

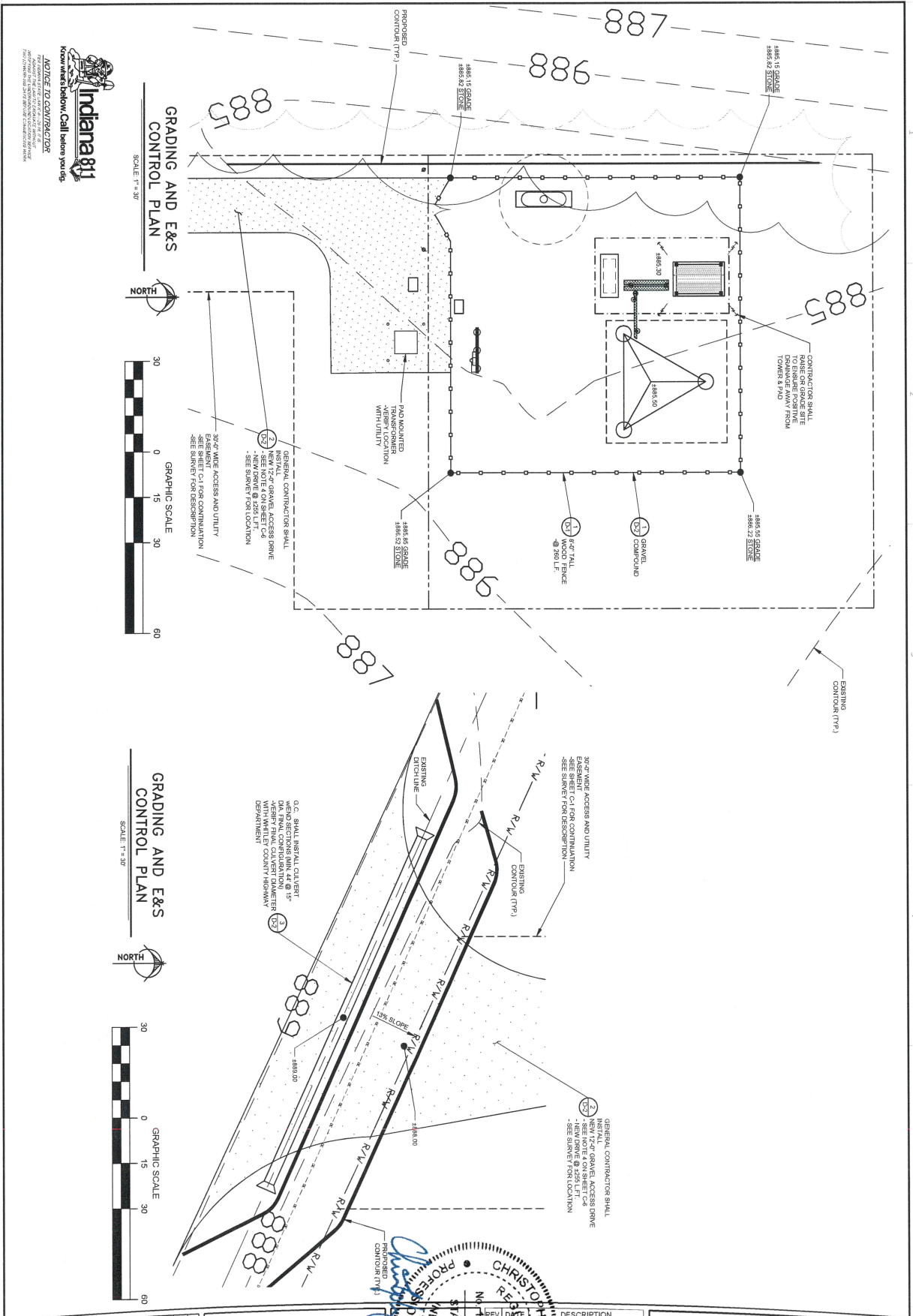
REV.	DATE	DESCRIPTION
A	08/28/2024	FOR 90% REVIEW
B		PER COMMENTS
C		PER COMMENTS
D		PER NEW RFD'S
E		PER LOCAL CD's



DESIGNED FOR:	
REVIEW:	
PERMIT:	
CONSTRUCTION:	
RECORD:	
PROJECT MANAGER:	
TIP:	

C-1B

2023/03/92

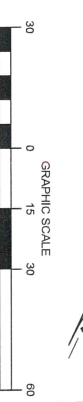


Indiana 811
 Know what's below. Call before you dig.
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 1-800-486-7263
 www.in.gov/811
 NOTICE TO CONTRACTOR:
 THE ABOVE INFORMATION IS FOR INFORMATIONAL PURPOSES ONLY. IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO VERIFY THE LOCATION AND DEPTH OF ALL UTILITIES PRIOR TO ANY EXCAVATION WORK.

GRADING AND E&S CONTROL PLAN
 SCALE: 1" = 30'



GRADING AND E&S CONTROL PLAN
 SCALE: 1" = 30'



C-2

ISSUED FOR	DATE
REVIEW	---
PERMIT	---
CONSTRUCTION	---
RECORD	---
PROJECT NUMBER	2023705.92
DRAWN	SKS
CHKD	---

BLUE LAKE HV1610
 EAST US 33
 CHURUBUSCO, IN 46723

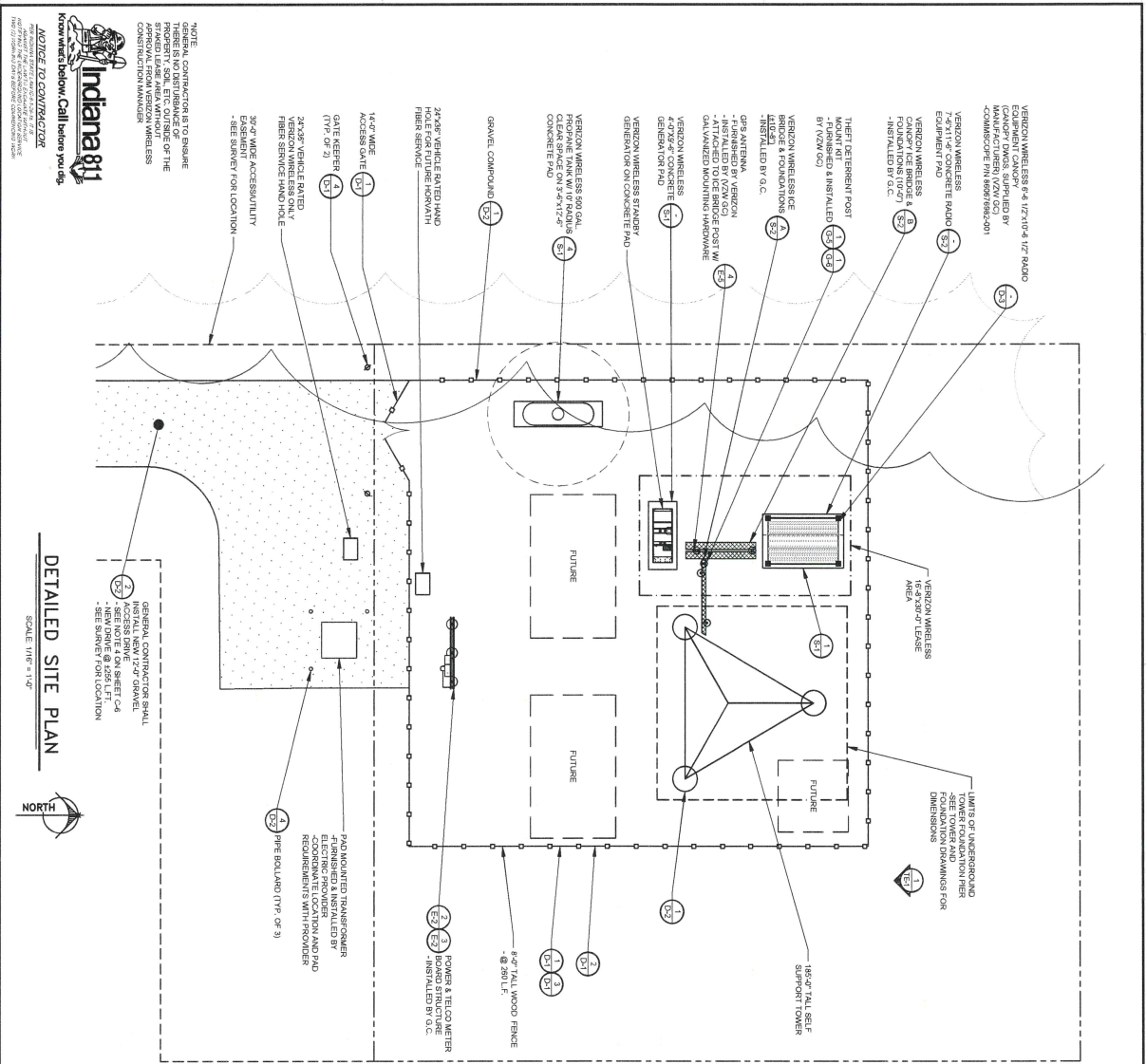
GRADING AND E&S CONTROL PLAN

Professional Engineer Seal for Christopher M. Skrschmer, State of Indiana, No. 116686022, dated 08/28/2024.

REV.	DATE	DESCRIPTION
A	04/02/24	ISSUED FOR 90% REVIEW
B	06/07/24	REVISED PER COMMENTS
C	07/24/24	REVISED PER COMMENTS
D	08/28/24	REVISED PER NEW RFDS
E	08/28/24	REVISED PER COMMENTS

HORVATH COMMUNICATIONS

GPD GROUP, INC.



DETAILED SITE PLAN
 SCALE: 1/8" = 1'-0"
 NORTH

LEGEND

	IRON PIN
	DRAINAGE LINE
	ACCESS
	GRAVEL COMPOUND
	CENTER LINE
	NEW FENCE LINE
	POWER POLE/OVERHEAD ELECTRIC
	EDGE OF NEW DRIVE
	EXISTING CONDUITS
	UNDERGROUND TELEPHONE CONDUIT
	FENCED COMPOUND
	CONCRETE
	ACCESS DRIVE

BLUE LAKE HV1610
 EAST US 33
 CHURUBUSCO, IN 46723

DETAILED SITE PLAN

REV.	DATE	DESCRIPTION
A	08/28/2024	ISSUED FOR 80% REVIEW
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C	08/28/2024	REVISED PER COMMENTS
D	08/28/2024	REVISED PER NEW RFD'S
E	08/28/2024	REVISED PER COMMENTS

CHRISTOPHER HORVATH
 REGISTERED PROFESSIONAL ENGINEER
 STATE OF INDIANA
 No. 114660-02
 08/28/2024

HORVATH COMMUNICATIONS

GPD GROUP, INC.
 15500 Lakeshore Blvd., Suite 201B
 Dallas, TX 75244
 (972) 232-7888

C-3

2023/05/92

ISSUED FOR:	80%
REVIEW:	80%
CONSTRUCTION:	80%
RECORD:	80%
PROJECT MANAGER:	SKRS
TYP:	SKRS

BLUE LAKE HV1610
 EAST US 33
 CHURUBUSCO, IN 46723

DETAILED SITE PLAN

HORVATH COMMUNICATIONS

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