

ORIGINAL

REPORT TO BOARD OF COUNTY COMMISSIONERS  
OF DELAWARE COUNTY, INDIANA

To the Honorable:

Board of County Commissioners of Delaware County, Indiana

Dear Board Members:

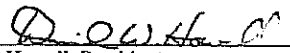
The Delaware-Muncie Metropolitan Plan Commission hereby submits to you the following report on an application filed by Larry & Kathryn Simmons, 101 West Royerton Rd., Muncie, Indiana, requesting to rezone the real estate owned by Larry & Kathryn Simmons, 101 W. Royerton Rd., Muncie, Indiana, as described in the attached application. The application is proposing to rezone the land from the R-1 Residence Zone to the BV Variety Business Zone.

WHEREAS, the Commission has given reasonable regard to the Comprehensive Plan; current conditions and the character of current structures and use in each district; the most desirable use for which the land in each district is adapted; the conservation of property values throughout the jurisdiction; and responsible growth and development.

NOW THEREFORE, the Delaware-Muncie Metropolitan Plan Commission favorably recommended (7-0) the application for rezoning.

DELAWARE-MUNCIE METROPOLITAN  
PLAN COMMISSION OF DELAWARE  
COUNTY, INDIANA

BY:

  
\_\_\_\_\_  
David Howell, President

  
\_\_\_\_\_  
Marta Moody, Secretary

ORDINANCE NO. 2009.019

ORDINANCE TO AMEND  
THE DELAWARE COUNTY COMPREHENSIVE ZONING ORDINANCE

WHEREAS, the Board of County Commissioners of Delaware County, Indiana, has given reasonable regard to the comprehensive plan; current conditions and the character of the current structures and uses in each district; the most desirable use for which the land in each district is adapted; the conservation of property values throughout the jurisdiction; and responsible growth and development.

NOW, THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, INDIANA, as follows:

Section 1. That the Delaware County Comprehensive Zoning Ordinance, theretofore adopted by the Board of County Commissioners of Delaware County, Indiana, on the 11th day of December, 1973, be amended, changed and supplemented so as to include in the BV Variety Business Zone the following described real estate located in Delaware County, Indiana, to wit:

see attached legal description

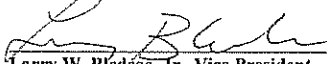
Section 2. That no structures shall be placed on said lot or parcel of land except in compliance with the Delaware County Comprehensive Zoning Ordinance of Delaware County, Indiana.


Section 3. That this Ordinance shall be in full force and effect from and after its passage by the Board of County Commissioners of Delaware County, Indiana.

The above Ordinance passed [vetoed] by the Board of County Commissioners of Delaware County, Indiana, this 13 day of May, 2009.


BOARD OF COUNTY COMMISSIONERS  
DELAWARE COUNTY, INDIANA

  
Todd Donati, President


  
Larry W. Bledsoe, Jr., Vice President

  
Don Dunnuck, Member

ATTEST:

  
Judy Rust, Auditor of Delaware  
County, Indiana

Presented to us in regular session this 7<sup>th</sup> day of May, 2009 and by us FAVORABLY RECOMMENDED (7-0); this 7<sup>th</sup> day of May, 2009.

  
Marta Moody, Secretary  
Delaware-Muncie Metropolitan Plan  
Commission

A part of the NE ¼ of Section 21, Township 21N, Rge. 10E, Ham. Twp., Del. Co., Ind., as more particularly described as follows: beginning 256.5' south of the SW corner of N. Walnut St. and W. Royerton Rd.-CR 500N; then west 577.50' then south 158'; then east 577.50'; then north 158' to the point of beginning, est. to contain 2.1 acres, more or less. As recorded by deed 2002, 06460, in the Delaware County Recorder's office.



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### Application for Rezoning: Filled Out On-line

#### DELAWARE-MUNCIE METROPOLITAN PLAN COMMISSION PROPOSED ZONING CHANGE

#### APPLICATION

Jurisdiction: (Check One)

Submitted: 4-17-09

Delaware County

Case No.: MPC 3-087

City of Muncie

(1) Applicant: Larry D. Simmons, Kathryn R. Simmons

Address: 101 W. Royerton Rd Phone: 747-5126

City, St. Zip: Muncie, Indiana 47303

(2) Record of Applicant's Ownership:

A.  By Deed:

Deed Book No. & Page No.: 2002, 06460

Date of Deed: Aug. 26, 2002

B.  By Recorded Contract:

Misc. Book No. & Page No.: \_\_\_\_\_

Date of Contract: \_\_\_\_\_

C.  By Unrecorded Contract:

Date of Contract: \_\_\_\_\_

Name of Contract Seller: \_\_\_\_\_

Book No. & Page No. of Deed in Seller's Name: \_\_\_\_\_

(3) Legal Description of Property in which rezoning is requested: (From the Deed or Abstract)

See attached Deed

(4) Common Address of Property involved: (If in the City, give street address; if in the County, give county roads and distances.)

SOUTH OF  
101 W. Royerton Road,

(5) Proposed Zoning Change: (Give exact zone classification.)

From the Residence Zone1 Zone

To the BV  
VARIETY BUSINESS  
ZONE

(6) Intent and Purpose of Proposed Change: (Specify use contemplated on property.)

Farm Winery

(7) Will the Owner develop the property for the use specified in Item 6 or does owner intend to sell property for the purpose specified?

Owner will develop for use

(8) State how the proposed change will not adversely affect the surrounding area.

Owner currently operates green house on adjoining property and intends to grow grapes in ~~farming~~ zone and process in variety business zone. residential

(9) Will certain variances be requested if the proposed zoning change is granted? (If yes, list the variances)

No

(10) Has the applicant provided stamped, addressed envelopes to send notices of this rezoning to all property owners within 300 feet? yes

Has the applicant discussed this rezoning with these owners personally? no  
(If answer is yes, give their attitudes toward the rezoning.)

(11) Are there any restrictions, easements and/or covenants governing the property prohibiting its use for the purpose specified in this application?  
(If answer is yes, attach copy of same and/or explain.)

no

**AFFIDAVIT**

(I or We) Larry D. Simmons and Kathryn N. Simmons  
being duly sworn, depose and say that I/We am/are the owner(s)/contract owner(s) and contract seller(s) of property involved in this application and that the foregoing signatures, statements, and answers herein contained and the information herewith submitted are in all respects true and correct to the best of my/our knowledge and belief.

Signed Larry Simmons  
Kathryn Simmons

Subscribed and sworn to before me this 16<sup>th</sup> day of April, 2009.

Mary C. Hiser  
Notary Public Mary C. Hiser  
5-5-16  
Commission Expires

**DO NOT WRITE IN THIS SPACE**

The foregoing application has been inspected by me and was submitted to the Delaware-Muncie Metropolitan Plan Commission Office in accordance with all the formal requirements. If properly advertised by the applicant, this application will be heard by the Plan Commission in Public hearing on the 7<sup>th</sup> day of May, 2009.

Signed [Signature]  
Date 4-17-09



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L.M.

DED 2002 06460

11  
3

AUG 30 2002

023735

*DeW. Marlow*  
Recorder, Delaware County

File No: 221348  
Parcel Number: 07-21-226-005 and 07-21-226-004

**CORPORATE WARRANTY DEED**

*This Indenture Witnesseth*, That Waldo's Greenhouses, Inc. **Convey(s) and Warrant(s)** to Larry D. Simmons and Kathryn A. Simmons, husband and wife for the sum of One & 00/100 Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the following described real estate in Delaware County, in the State of Indiana:

A part of the Northeast Quarter of Section 21, Township 21 North, Range 10 East, more particularly described as follows, to-wit: Beginning at the Northeast corner of the Northeast Quarter of Section 21, Township 21 North, Range 10- East, running thence South on the East line of the said Northeast Quarter 573.85 feet; thence West parallel with the South line of the Northeast Quarter of the Northeast Quarter of Section 21 577.5 feet; thence North parallel with the said East line of the Northeast Quarter of Section 21 573.15 feet to the North line of the Northeast Quarter of Section 21; thence East on the North line of the said Northeast Quarter of Section 21 577.5 feet to the place of beginning. Estimated to contain 7.603 acres, more or less.

**Subject To** any and all easements, assessments, agreements, and restrictions of record.

The undersigned person executing this deed on behalf of Grantor represents and certifies that she is a duly elected officer of Grantor and has been fully empowered, by proper resolution of the Board of Directors of Grantor, to execute and deliver this deed; that Grantor has full corporate capacity to convey the real estate described herein; and that all necessary corporate action for the making of such conveyance has been taken and done.

Grantor certifies under oath that no Indiana Gross Income Tax is due or payable in respect to the transfer made by this deed.

*In Witness Whereof*, Grantor has executed this deed this 26<sup>th</sup> day of August, 2002.

Waldo's Greenhouses, Inc.

By: *Jane E. Spence* PRESIDENT  
Jane E. Spence, President

**STATE OF INDIANA, COUNTY OF DELAWARE, SS:**

Before me, a Notary Public in and for the said County and State, personally appeared, Jane E. Spence, President of Waldo's Greenhouses, Inc. who acknowledged the execution of the foregoing Deed for and on behalf of said Grantor, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 26<sup>th</sup> day of August, 2002.

My Commission Expires: November 5, 2007

*Anna Leah Patty*  
Anna Leah Patty, Notary Public  
Residing in Randolph County

This instrument prepared by: James W. Trulock, Attorney at Law.

Send tax bills to: 2014 North Walnut Street, Muncie, IN 47303

Duly Entered for Taxation  
Transfer Fees \$ 5.00

AUG 29 2002

*Jane E. Spence*  
DELAWARE CO AUDITOR

ORIGINAL

**EXCERPT FROM THE:**

DELAWARE-MUNCIE METROPOLITAN PLAN COMMISSION  
CASE ANALYSIS  
MAY, 2009

**MPC 3-09Z**

**LARRY & KATHRYN SIMMONS**

**Description & Location:** Just south of 101 W. Royerton Rd.-CR 500N, Hamilton Twp.

Travel north on Walnut to just south of 101 W. Royerton Rd., which is located on the southwest corner of Royerton and Walnut. There is a vacant 4.2 acre parcel which abuts the home and the G & M in the Country Nursery, but only the northern 2.1 acres is the subject of the rezoning.



*Land to  
be  
rezoned*



*Land to be  
rezoned*

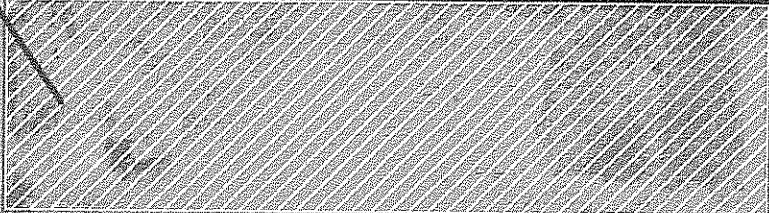


# MPC 3-09Z SIMMONS Request to rezone from R-1 Residence Zone to BV Variety Business Zone



WALNUT

ROYERTON



4.2

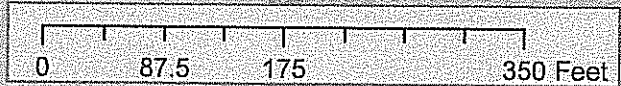
Farming

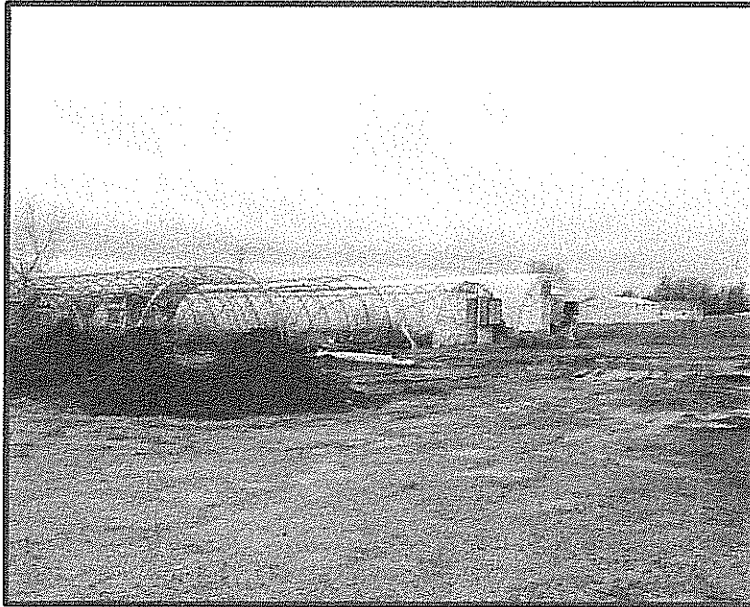
Residence Zone 1

226

577-50

547-50





Greenhouses on abutting property

**Streets:** Walnut St. is classified as a Secondary Arterial with an 80' proposed ROW and Royerton Rd. is classified as a Local Road with a 50' proposed ROW.

**Land Use:** The land use for the surrounding area is farming and residential.

**Zoning:** The zoning for this 2.1 acre parcel is R-1 Residence Zone. The current nursery property is zoned BV Variety Business Zone.

**Request:** The request is to allow the 2.1 acre parcel to be rezoned from R-1 Residence Zone to the BV Variety Business Zone. The applicant would like to tear down 2 of the current greenhouses on the nursery property and build a winery with wine tasting and the selling of wine. The proposed building will be located partially on the current BV zoned property and partially on the proposed property to be rezoned. The properties in question will need to be deeded together. The remaining 2.1 acres to the south of the subject 2.1 acres will require a variance to allow the growing of grape vineyards (which is a farm use) in an R-1 Residence Zone.

**MPC 4-09Z** Initiated by the DELAWARE-MUNCIE METROPOLITAN PLAN COMMISSION and owned by the INDIANA-AMERICAN WATER COMPANY and the RED TAIL CONSERVANCY, INCORPORATED.

**Description & Location:** All that property bordered by Windsor Rd.-CR 300S on the north and CR 650S on the south; bordered by CR 461E/475E on the west and CR 544E/560E on the east and 4 parcels between The Cardinal Greenway & CR 461E, just north of CR 650S all in Perry Twp.

**Streets:** The roads surrounding Prairie Creek (ring roads) are classified by the Thoroughfare Plan Map as follows: Windsor Rd.-300S (on the north side of Prairie Creek) is a Secondary Arterial with an 80' proposed right-of-way; CR 650S (on the south side) is a Scenic Route with a 70' proposed right-of-way; CR 544E/566E (on the east side) is classified as a Secondary Arterial with an 80' proposed right-of-way and CR 461E/462E/475E (on the west side) is a Scenic Route with a 70' proposed right-of-way.

**Land Use:** The land use is mixed with recreational, residential, farming and some commercial uses.

**Zoning:** The zoning is R-1 Residence Zone and F Farming Zone.

**Request:** The request is to rezone the properties to RC Recreation & Conservation Zone in order to carry out the recommendation in the Prairie Creek Master Plan. In 2005 the Prairie Creek Steering Committee was created and comprised of several local agencies such as the Muncie Parks Superintendent; the County Extension Agent; Perry Elementary School Corporation; Sierra Club; the Plan Commission staff; Delaware County Engineer; Bureau of Water Quality; Board of Realtors; Delaware County Health Department; Indiana-American Water Company; Ball State University Natural Resources and Environment Management, Architecture & Design; Cardinal Greenway; the Soil & Water Conservation District and some property owners near Prairie Creek. After study and input from the public the Committee made recommendations for the development of the Prairie Creek Master Plan which was approved and adopted by the Plan Commission, City Council and the County Commissioners in 2007.

On page 90, of the document the following is listed: Goal B: Protect and enhance the long term ecological health and water quality of the Prairie Creek Reservoir and supporting watershed. Objective 1: Control developmental impacts in immediate vicinity of the reservoir. Objective 1a: Rezone the area within the "ring road" to the conservation/recreation zone.

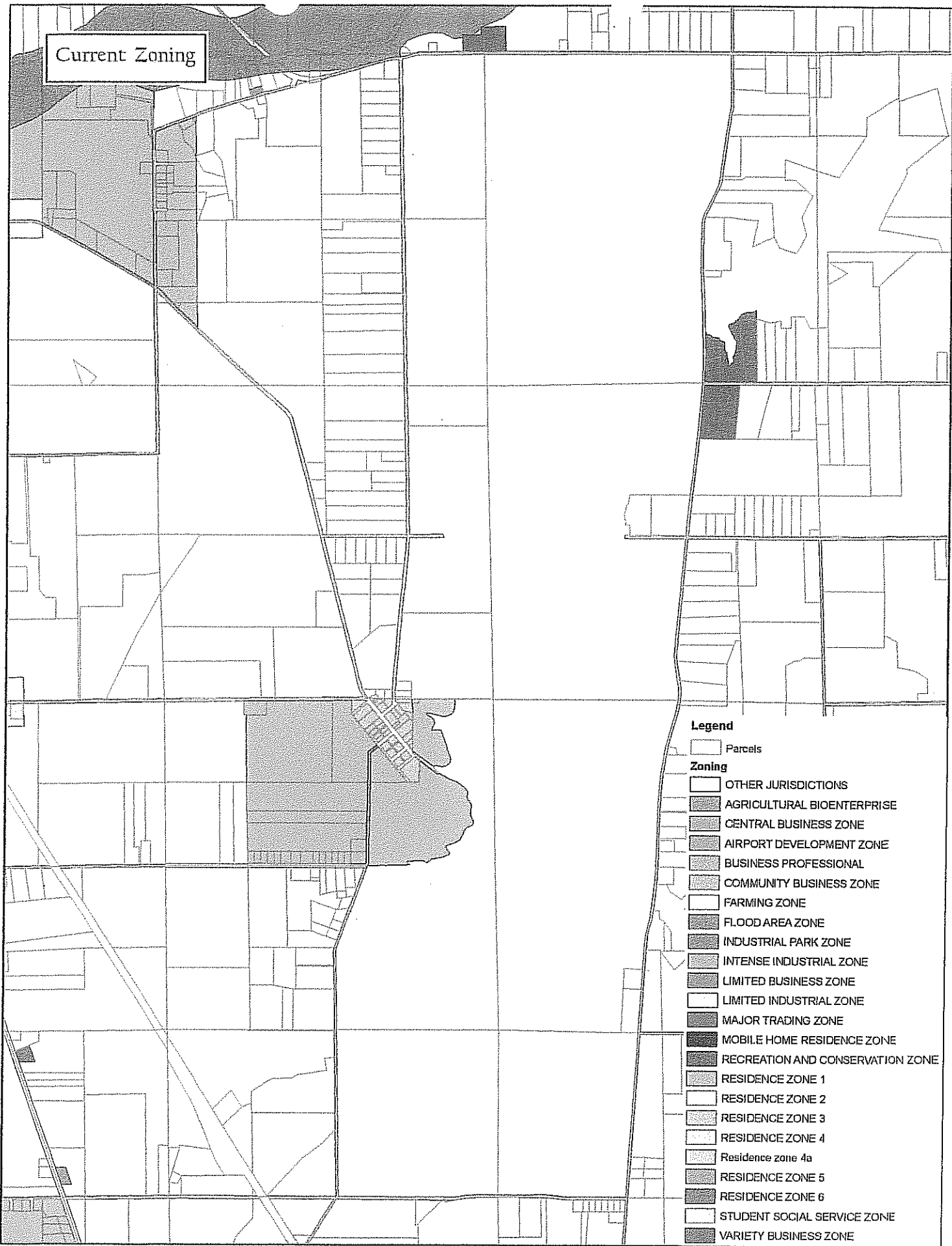
The Plan Commission appointed a Committee to study Objective 1a and the following recommendations regarding the rezoning are as follows:

1. Rezone all Indiana-American Water Company (IAWC) parcels inside the "ring roads" that are currently classified in the F Farming Zone to the RC Recreation and Conservation Zone.

2. Rezone the IAWC parcels and the Red Tail Conservancy parcels located outside the "ring road" at the southwest corner of the reservoir from the F Farming Zone to the RC Recreations and Conservation Zone.
3. Retain the existing R-1 Residence Zone in and around the New Burlington area.
4. Institute additional development standards, through appropriate ordinance amendments, as follows:
  - a. Inside the ring road, no development shall occur below an elevation of 1,016" above sea level or the 250' buffer in 4c., whichever is more restrictive.
  - b. No new individual on-site sewage disposal system (OSDS) shall be permitted inside the ring road.
  - c. A 250' no-development-buffer shall be established along the shoreline of the reservoir.
  - d. No subdivision served by individual OSDS shall be permitted in the Prairie Creek Watershed.

At the April, 2009 MPC meeting the Commission passed the aforementioned recommendations with the exception that the R-1 Residence Zone, near the New Burlington area, shall be included in the rezoning to the RC Zone and that any development within the proposed RC Zone shall require site plan approval. The proposed rezoning map is attached.

Current Zoning



**Legend**

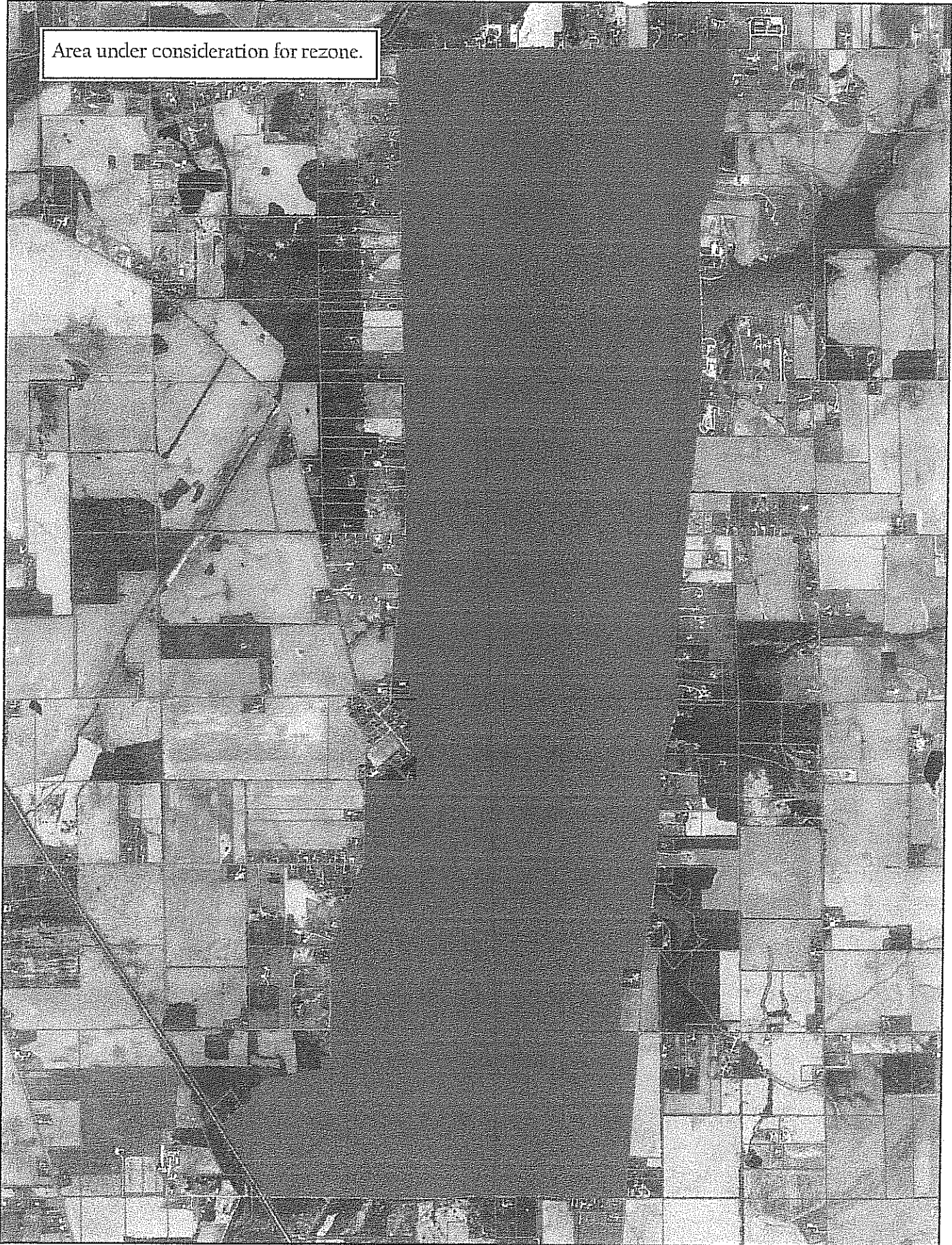
Parcels

**Zoning**

- OTHER JURISDICTIONS
- AGRICULTURAL BIOENTERPRISE
- CENTRAL BUSINESS ZONE
- AIRPORT DEVELOPMENT ZONE
- BUSINESS PROFESSIONAL
- COMMUNITY BUSINESS ZONE
- FARMING ZONE
- FLOOD AREA ZONE
- INDUSTRIAL PARK ZONE
- INTENSE INDUSTRIAL ZONE
- LIMITED BUSINESS ZONE
- LIMITED INDUSTRIAL ZONE
- MAJOR TRADING ZONE
- MOBILE HOME RESIDENCE ZONE
- RECREATION AND CONSERVATION ZONE
- RESIDENCE ZONE 1
- RESIDENCE ZONE 2
- RESIDENCE ZONE 3
- RESIDENCE ZONE 4
- Residence zone 4a
- RESIDENCE ZONE 5
- RESIDENCE ZONE 6
- STUDENT SOCIAL SERVICE ZONE
- VARIETY BUSINESS ZONE

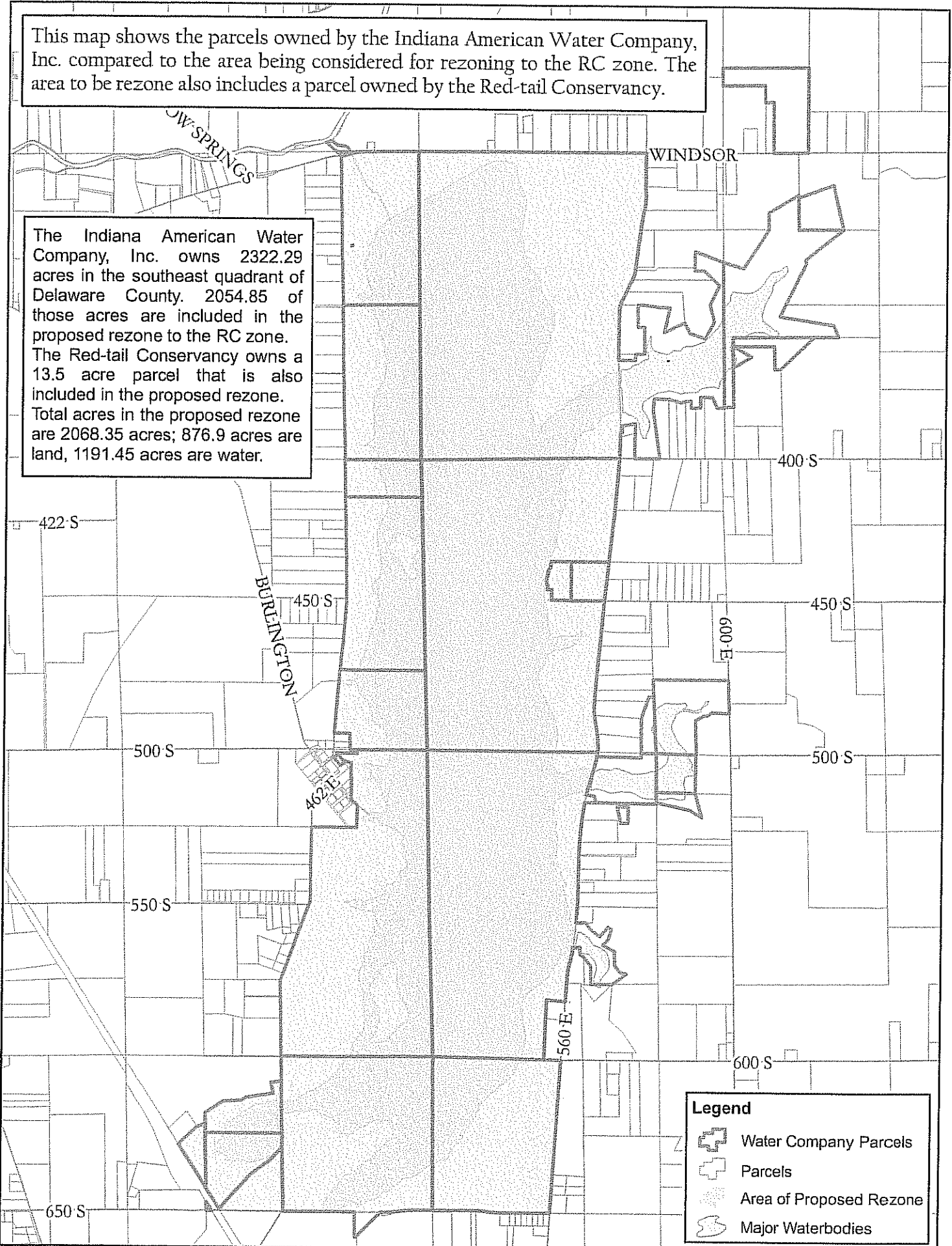


Area under consideration for rezone.



This map shows the parcels owned by the Indiana American Water Company, Inc. compared to the area being considered for rezoning to the RC zone. The area to be rezoned also includes a parcel owned by the Red-tail Conservancy.

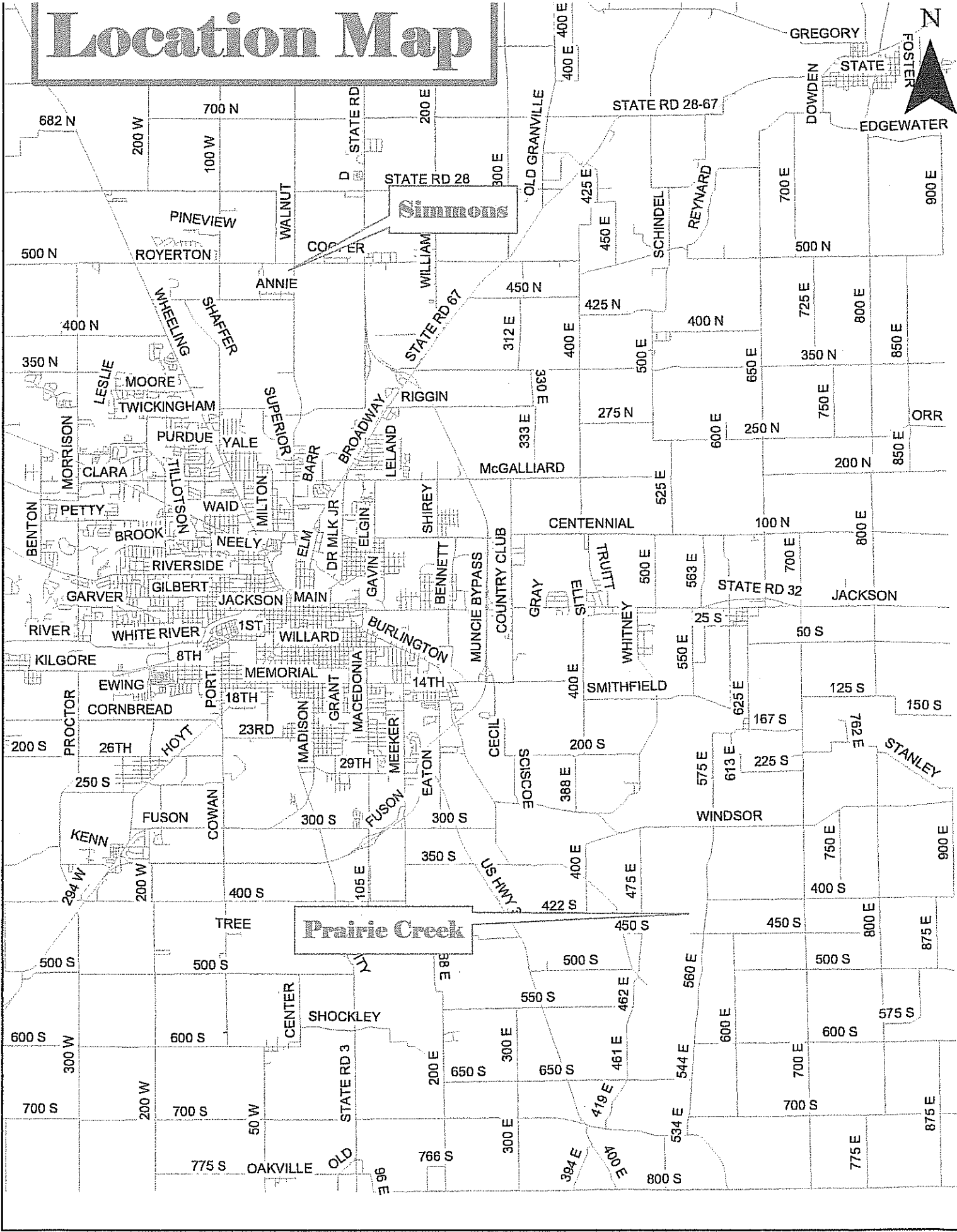
The Indiana American Water Company, Inc. owns 2322.29 acres in the southeast quadrant of Delaware County. 2054.85 of those acres are included in the proposed rezone to the RC zone. The Red-tail Conservancy owns a 13.5 acre parcel that is also included in the proposed rezone. Total acres in the proposed rezone are 2068.35 acres; 876.9 acres are land, 1191.45 acres are water.



**Legend**

- Water Company Parcels
- Parcels
- Area of Proposed Rezone
- Major Waterbodies

# Location Map



**Gimmons**

**Prairie Creek**