



ORDINANCE NO. 2024-18

AN ORDINANCE VACATING PUBLIC RIGHT-OF-WAY

(That portion of County Road 500 West south of the intersection of County Road 500 West and County Road 100 North to a point south of the Whitelock Ditch culvert on County Road 500 West, a length of 1,650 feet.)

**BE IT ORDAINED**, by the Board of Commissioners of Wells County, Indiana, that:

**WHEREAS**, the Board of Commissioners of Wells County, Indiana, has received a Petition to Vacate Public Right-of-Way (the “Petition”), filed by Rock Creek Stone Quarry, Inc. (the “Petitioner”), which Petition seeks to vacate certain public road(s) as described above, pursuant to Ind. Code § 36-7-3-12; and

**WHEREAS**, the Petitioner, David A. Fiechter, Jason W. Fiechter, and Chase M. Fiechter, as tenants in common, and Brickley Farms LLC are the only owners of real property abutting and contiguous to the public road which the Petition seeks to vacate; and

**WHEREAS**, notice of public hearing and publication of public hearing have been given as prescribed by Ind. Code § 36-7-3-12 and Ind. Code § 5-3-1, and the proof of notice and publication has been filed with the Clerk of Wells County, Indiana; and

**WHEREAS**, the Board of Commissioners of Wells County, Indiana held a public hearing regarding the Petition on December 4, 2023, at 5:00 p.m., and following a subsequent notice held a second public hearing on September 3, 2024; and

**WHEREAS**, the Board of Commissioners of Wells County, Indiana, heard all of the pertinent facts relative to the Petition and all interested persons had an opportunity to be heard at the public hearing.

**NOW, THEREFORE**, by the powers vested in the Board of Commissioners of Wells County, Indiana, pursuant to Ind. Code § 36-7-3-12, it is hereby ordered and ordained that the public right-of-way described in the Petition and in this Ordinance Vacating Public Right-of-Way be vacated, subject to the terms and conditions set forth in this Ordinance.

**IT IS THEREFORE, ORDERED AND ORDAINED**, that the public right-of-way, which is more particularly described on Exhibit A and depicted in Exhibit B attached hereto and incorporated herein by this reference, shall be and is hereby vacated subject to and expressly conditioned upon the terms and conditions set forth in Exhibit C, specifically the creation of a new roadway depicted in Schedule C-1.

**IT IS FURTHER ORDERED AND ORDAINED**, that this Ordinance Vacating Public Right-of-Way and the vacation approved hereby does not deprive Heartland REMC, as a public utility, and Citizens Telephone Corporation, as a public utility, of the use of all or part of the public right-of-way vacated hereby due to their current occupancy and use of the right-of-way for its utility facilities, pursuant to Ind. Code § 36-7-3-16.

**IT IS FURTHER ORDERED AND ORDAINED**, that title to the above-described public right-of-way shall revert one-half each to the adjoining property owners.


**IT IS FURTHER ORDERED AND ORDAINED**, that the effectiveness of this vacation ordinance shall be delayed until December 31, 2025 and conditioned upon the Petitioner’s compliance with conditions set forth on Exhibit C attached hereto and incorporated herein by reference.

This Ordinance Vacating Public Right-Of-Way shall be in full force and effect from and after its passage, approval, and publication according to law.

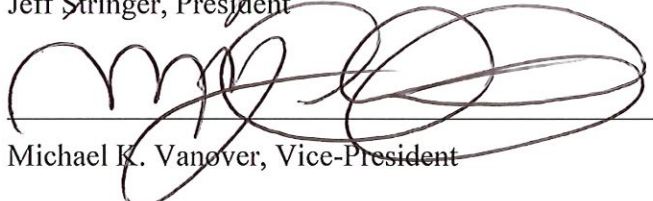
PASSED AND ADOPTED this 21<sup>st</sup> day of October, 2024.

**THE BOARD OF COMMISSIONERS OF  
THE COUNTY OF WELLS, INDIANA**

✓  
Aye                                
Nay

  
Jeff Stringer, President

✓  
Aye                                
Nay

  
Michael K. Vanover, Vice-President

✓  
Aye                                
Nay


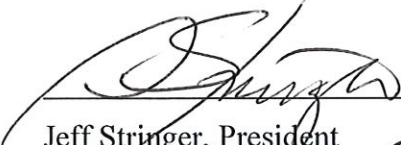
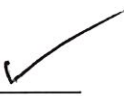
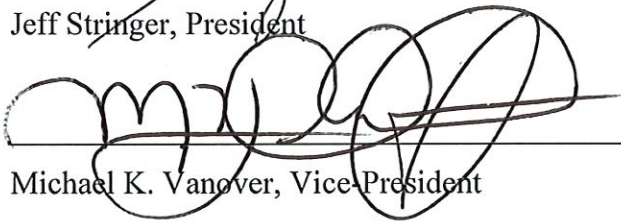
Not in Physical Attendance  
Blake Gerber, Member

ATTEST:  
  
Lisa McCormick, Auditor

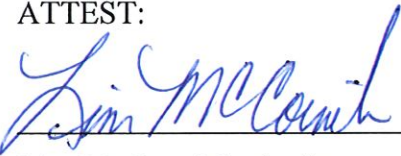
**WAIVER OF SECOND READING**

On motion duly made and seconded, the second reading of the foregoing resolution was unanimously waived, and the resolution shall be deemed effective immediately upon adoption.

**THE BOARD OF COMMISSIONERS OF  
THE COUNTY OF WELLS, INDIANA**

	_____	_____	
Aye	Nay		Jeff Stringer, President
	_____	_____	
Aye	Nay		Michael K. Vanover, Vice-President
_____	_____	_____	<i>Not in Physical Attendance</i>
Aye	Nay		Blake Gerber, Member

ATTEST:

  
\_\_\_\_\_  
Lisa McCormick, 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: Theodore T. Storer

This instrument prepared by: Theodore T. Storer, Attorney at Law, Beers Mallers LLP,  
110 West Berry Street, Suite 1100, Fort Wayne, IN 46802.

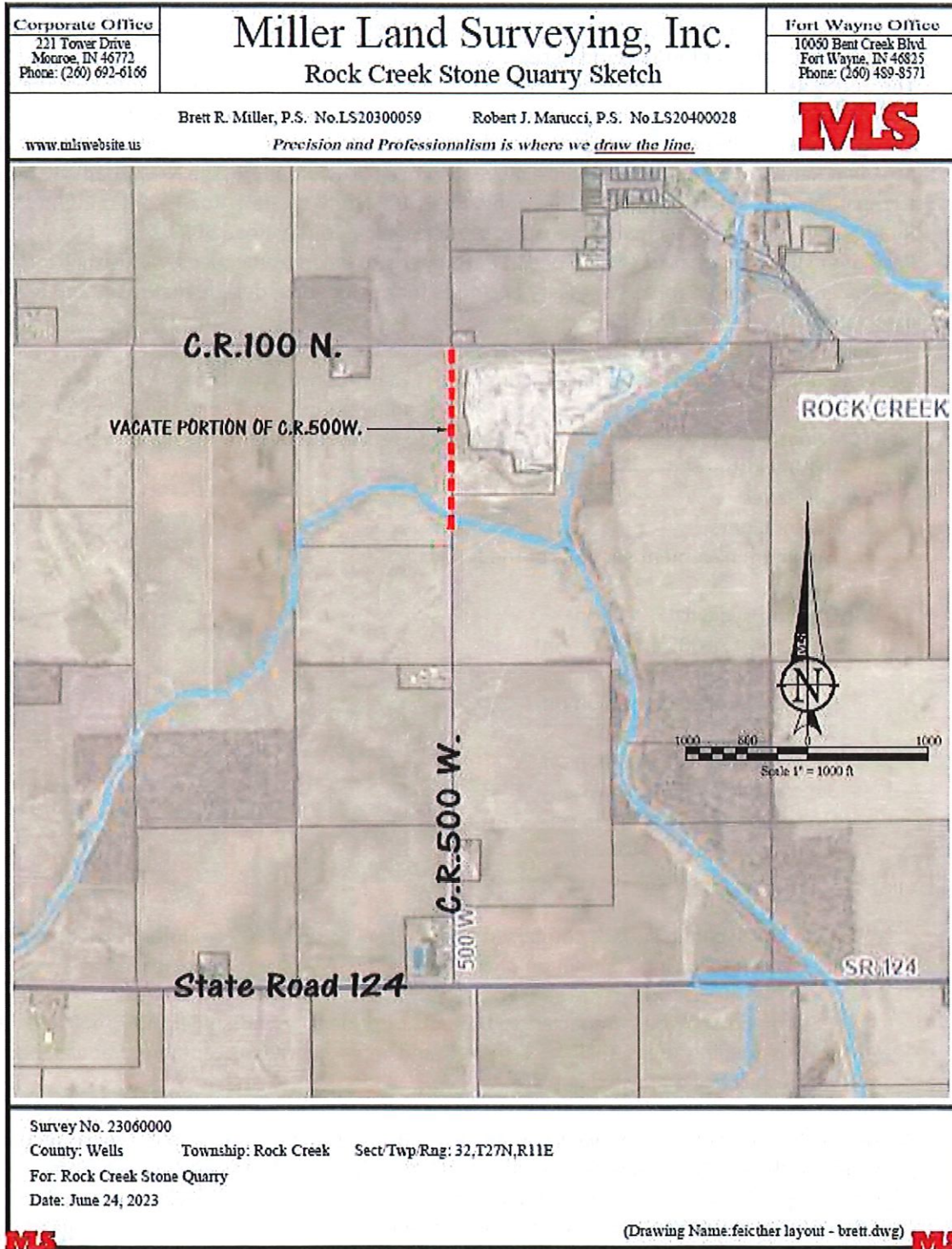
**EXHIBIT A**

**RIGHT-OF-WAY DESCRIPTION**

That portion of County Road 500 West south of the intersection of County Road 500 West and County Road 100 North to a point south of the Whitelock Ditch culvert on County Road 500 West, a length of 1,650 feet.

EXHIBIT B

SURVEY DRAWING



## EXHIBIT C

### CONDITIONS

1. The vacation shall take effect no sooner than December 31, 2025, subject to the satisfactory completion of all conditions found herein
2. The Petitioner shall comply with the existing recommendations of the County Surveyor and the County Highway Engineer with regard to the vacation of the existing right of way.
3. The Petitioner shall construct a relocation of County Road 500 West as shown on Schedule C-1 attached hereto and incorporated herein by reference ("New Road"). The New Road will retain to the public the ability to travel from County Road 100 North to State Road 124 via County Road 500 West despite the partial vacation of the existing County Road 500 West.
4. Petitioner shall construct the New Road at Petitioner's sole cost and expense. This shall include, but shall not be limited to, all necessary expenses for engineering, design, materials, and labor associated with the construction.
5. Petitioner shall construct the New Road in compliance with all applicable federal, state, and local laws and regulations, including existing Wells County construction specifications for public right of way, as set forth from time to time, but including but not limited to the following which were previously disclosed by the County Engineer to representatives of the Petitioners:

1. ROW width – 60ft
2. 10ft lanes
3. 1ft shoulders
4. Minimum pavement sections of the following:

0.06 ton/syd INDOT #11 on\*  
0.4 gal/syd AE90S emulsion on\*  
0.06 ton/syd INDOT #9 on  
0.4 gal/syd AE90S emulsion on  
0.06 ton/syd INDOT #9 on  
0.4 gal/syd AE90S emulsion on  
3in compacted INDOT #73 on  
6in compacted INDOT #53 on  
8in compacted #20 stone on  
Prepared subgrade\*\*

\*The final wearing surface comprised of INDOT #11's on AE90S emulsion, shall be applied the season following completion of all other elements of the pavement section.

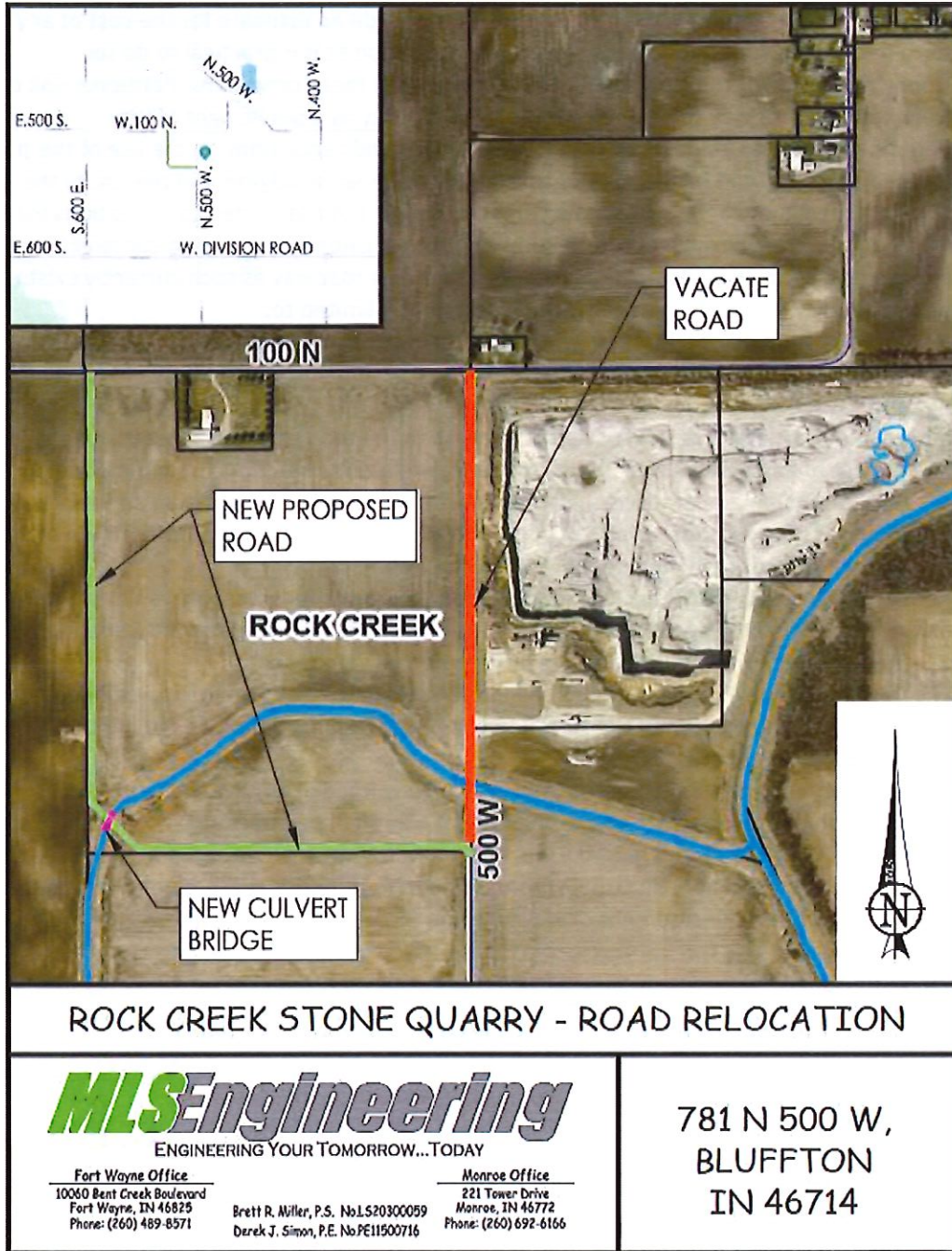
\*\*Subgrade shall be compacted to 95% max dry density and subject to proof roll. Any soft or yielding areas shall be removed and replaced with acceptable granular backfill which shall be compacted in place.

6. Petitioner shall provide a set of plans containing roadway stationing and layout, typical sections, plan and profile sheets showing ditch grades and cross pipes to address all drainage from adjacent properties, and details for a drainage structure proposed for the Whitelock Ditch crossing. The proposed structure for said crossing must meet design criteria for a 100-year storm and have a service life of no less than 75 years. The plans shall bear the seal of a

Professional Engineer registered in the State of Indiana. The plans shall be provided to Wells County for review prior to construction.

7. Petitioner shall also be responsible to reimburse Wells County for any third party professionals necessary to confirm the construction and condition of the New Road, including any necessary engineer or hydrologist. Wells County agrees to provide an estimate for the cost of any said third party review for Petitioner's consideration as soon as it is practical to do so.
8. Upon completion of the New Road in compliance with these conditions, Petitioner will cause the New Road right of way to be dedicated to Wells County as a public right of way.
9. Petitioner agrees to abide by all existing restrictions and regulations on the use of the proposed vacated roadway, and further agrees to exercise reasonable judgment in the use of the property as a good neighbor to the surrounding area, including, but not limited to, conditions for blasting in the quarry area, burning of refuse, lumber or other landscaping, and to construct an appropriate berm or landscaping barrier from the new roadway as such currently exists for its other roadway borders. This shall include, but not be limited to:
  - a. The construction of a fence or earthen berm of sufficient height and slope, parallel to and outside of any County right of way or drainage easement for the safety of vehicular traffic; and
  - b. All mining operations shall occur no closer than the required right of way, and shall be subject to any existing and future ordinances related to setbacks for mining operations;
  - c. All future mining operations shall be subject to appropriate application and approval process from the appropriate office(s) of Wells County, including consideration of any interest or benefit in moving the Whitelock Ditch.
10. Petitioner agrees to encourage appropriate traffic patterns for transport vehicles entering and exiting the adjacent properties owned by Petitioners to focus travel toward State Highways which are better able to withstand use by commercial vehicles.
11. The vacation of the existing County Road 500 West right of way shall be conditioned upon the completion and dedication of the New Road, subject to all the conditions found herein and no sooner than December 31, 2025.
12. Wells County shall confirm the dedication of the New Road in writing and upon such confirmation the vacation of the existing right of way shall be effective.
13. Petitioner shall prepare and record a written commitment to be recorded in the office of the Recorder for Wells County, Indiana, with the title to Petitioner's real estate to secure these conditions to the requested right of way vacation.

SCHEDULE C-1



01-18-2024