

PLAT COMMITTEE

February 8, 2023

Case Number: 2022-VAC-005

Property Address: 1105 Prospect Street and 1121 Shelby Street (*Approximate Address*)

Location: Center Township, Council District #21

Petitioner: FS Theatre, LLC., by David Kingen and Emily Duncan

Zoning: C-S

Request: Vacation of the first east-west alley north of Morris Street, being 15 feet in width, beginning at the east right-of-way line of Shelby Street, east 159.53 feet to the southeast corner of Lot 4 of Block 2, Martindale's South Addition, with a waiver of the Assessment of Benefits.

Vacation of the first east-west alley north of Morris Street, being 12.88 feet in width, beginning at the southeast corner of Lot 4 of Block 2, Martindale's South Addition, east 39.13 feet to the southwest corner of Lot 6 of Block 2, Martindale's South Addition, with a waiver of the Assessment of Benefits.

Waiver Requested: Waiver of assessment of benefits

Current Land Use: Commercial

Staff Reviewer: Allison Richardson, Senior Planner

PETITION HISTORY

This is the sixth hearing for this petition.

This petition was granted a continuance for cause from the August 10, 2022 hearing to the September 14, 2022 hearing, from the September 14, 2022 hearing to the October 12, 2022 hearing, from the October 12, 2022 hearing to the November 9, 2022 hearing, and from the November 9, 2022 hearing to the December 14, 2022 hearing, and from the December 14, 2022 hearing to the February 8, 2023 hearing..

At the November 9, 2022 hearing, the plat committee asked Staff if any commitments should be adopted if they were to approve the vacation against Staff's recommendation. Staff suggested that if the alley is to be vacated, that vehicle access should be removed on Shelby Street by removing the curb cut and installing a sidewalk. The petition was continued to December 14, 2022 to provide time for the Petitioner to submit commitments. The Petitioner has submitted a commitment to install a chain or gate to limit vehicle access, but not remove it. This commitment does not meet the intent of Staff's suggestion as discussed during the hearing. If vehicle access is to remain, it is further evidence that the vacation is not in the public interest and that the alley should remain.

The Petitioner provided an updated site plan on January 30, 2023 showing proposed improvements for the outdoor seating and service areas. See exhibit in staff report. Staff continues to **recommend denial** of the vacation. If approved against Staff's recommendation the plan shall be amended so that the proposed gate must be setback from the sidewalk and include planter boxes or similar landscaping to

separate the private and public space, and the wall between the outdoor dining and loading areas shall be no more than six feet tall.

STAFF RECOMMENDATION

RECOMMENDED MOTION (denial): That the Plat Committee find that the proposed vacation is not in the public interest, and that the Plat Committee deny the adoption of Declaratory Resolution 2022-VAC-005.

If approved against Staff's recommendation, the Petitioner must submit a commitment to remove the curb cut and install a sidewalk on Shelby Street.

PETITION OVERVIEW

SUMMARY

The subject site includes the right-of-way for a platted alley that separates 1105 Prospect Street and 1121 Shelby Street. This alley was platted prior to the construction of Morris Street to the south. This request would remove the alley from public use and is intended to be used for outdoor dining. Staff does not believe that the vacation is in the public interest. There are several loading and service areas within this alley that would be affected by a vacation; if approved, any expansion of the existing loading bays or mechanical systems would require variances for being located within a front yard.

Staff would suggest that the alley could be utilized temporarily using Special Event Permits. This could permit right-of-way closures for outdoor dining or other events without requiring a vacation petition.

It is unclear if the addition of outdoor dining would cause the existing loading and service bays to be removed at this site. The ordinance requires that loading areas and other equipment are within a rear yard or alleys rather than front yards or other public right-of-way. Staff would not support a vacation that would create a non-compliance. The vacation of this alley would also create buildable area, which is not supported by Staff. Expansion of the building would possibly require relocating of loading areas and equipment that would place them on busy streets with direct frontage. Staff would not support this type of development.

PROCEDURE

Neither the Division of Planning nor the Plat Committee, Hearing Examiner or Metropolitan Development Commission determines how vacated right-of-way is divided. The approval of a vacation petition only eliminates the public right-of-way. The vacation approval does nothing more. A Petitioner will not receive a deed or other document of conveyance after the approval of a vacation.

The general rule under Indiana case law is that when a street or highway is vacated or abandoned the title to the land reverts to the abutting property owners. This rule exists by virtue of the fact that the abutting landowner owns to the center of the street or highway subject only to an easement for the public to the use of the street or highway. *Gorby v. McEndarfer* 135 Ind.App. 74, *82, 191 N.E.2d 786, **791 (Ind.App.1963). However, there are possible exceptions to this general rule.

After a vacation of public right-of-way, the county assessor determines how the vacated right-of-way will be assessed for tax purposes.

Petitioners and abutters of the vacated right-of-way should consult their own attorneys for advice regarding the ownership of the vacated right-of way.

ASSESSMENT OF BENEFITS

The Petitioner has requested a waiver of the Assessment of Benefits for the subject right-of-way. Since this is an improved alley, Staff would not recommend approval of the waiver.

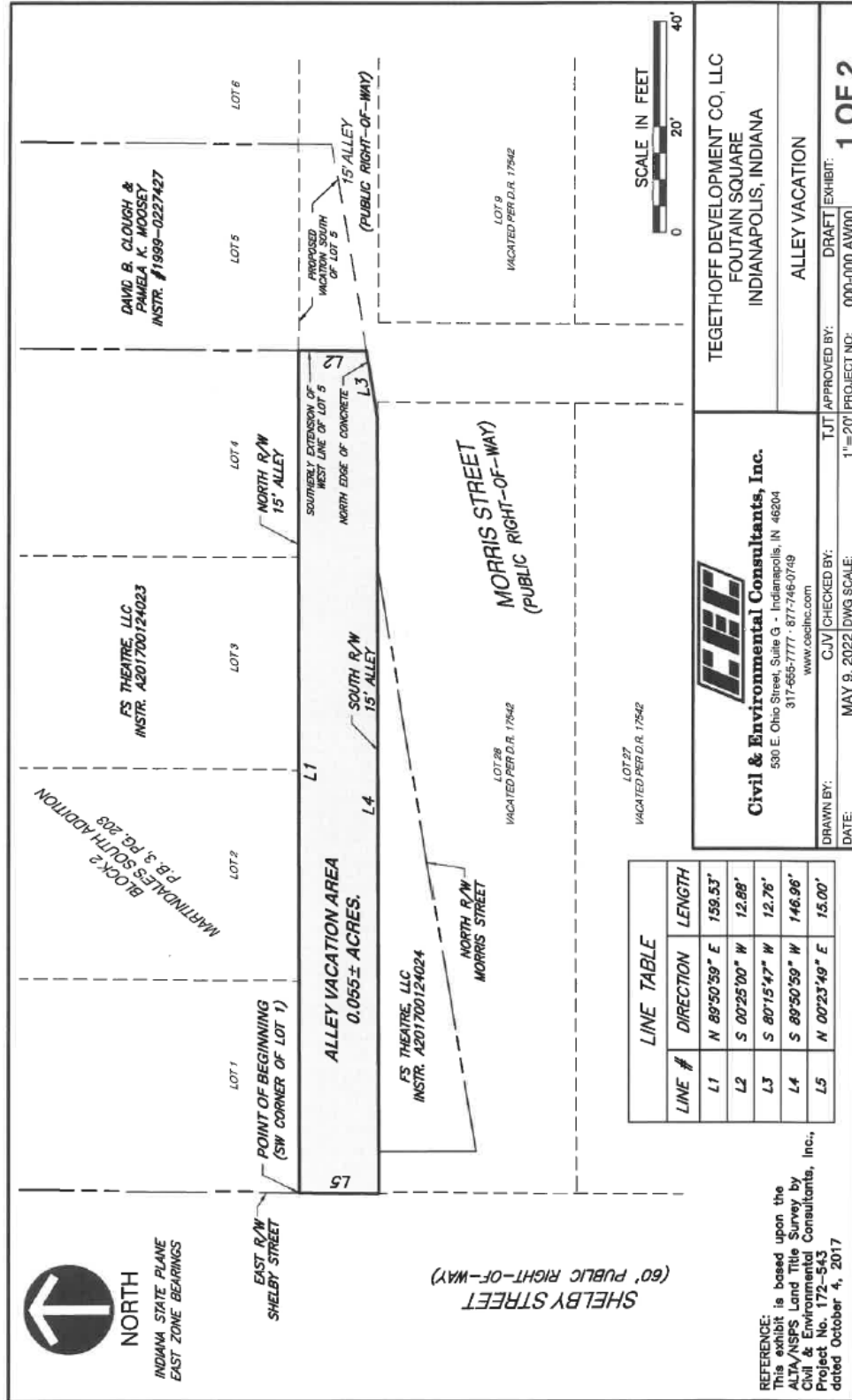
GENERAL INFORMATION

Existing Zoning	C-S	
Existing Land Use	Commercial	
Comprehensive Plan	Suburban Neighborhood	
Surrounding Context	<u>Zoning</u>	<u>Land Use</u>
North:	C-3 / MU-2	Commercial
South:	C-4	Commercial
East:	D-5 / C-4	Single-Family Residential / Commercial
West:	C-4	Commercial
Thoroughfare Plan		
Kindig Road	Local Street	50-feet existing and proposed
Katherine Drive	Local Street	70-foot existing and 50-feet proposed
Petition Submittal Date	June 15, 2022	

EXHIBITS



Aerial Photo 1972



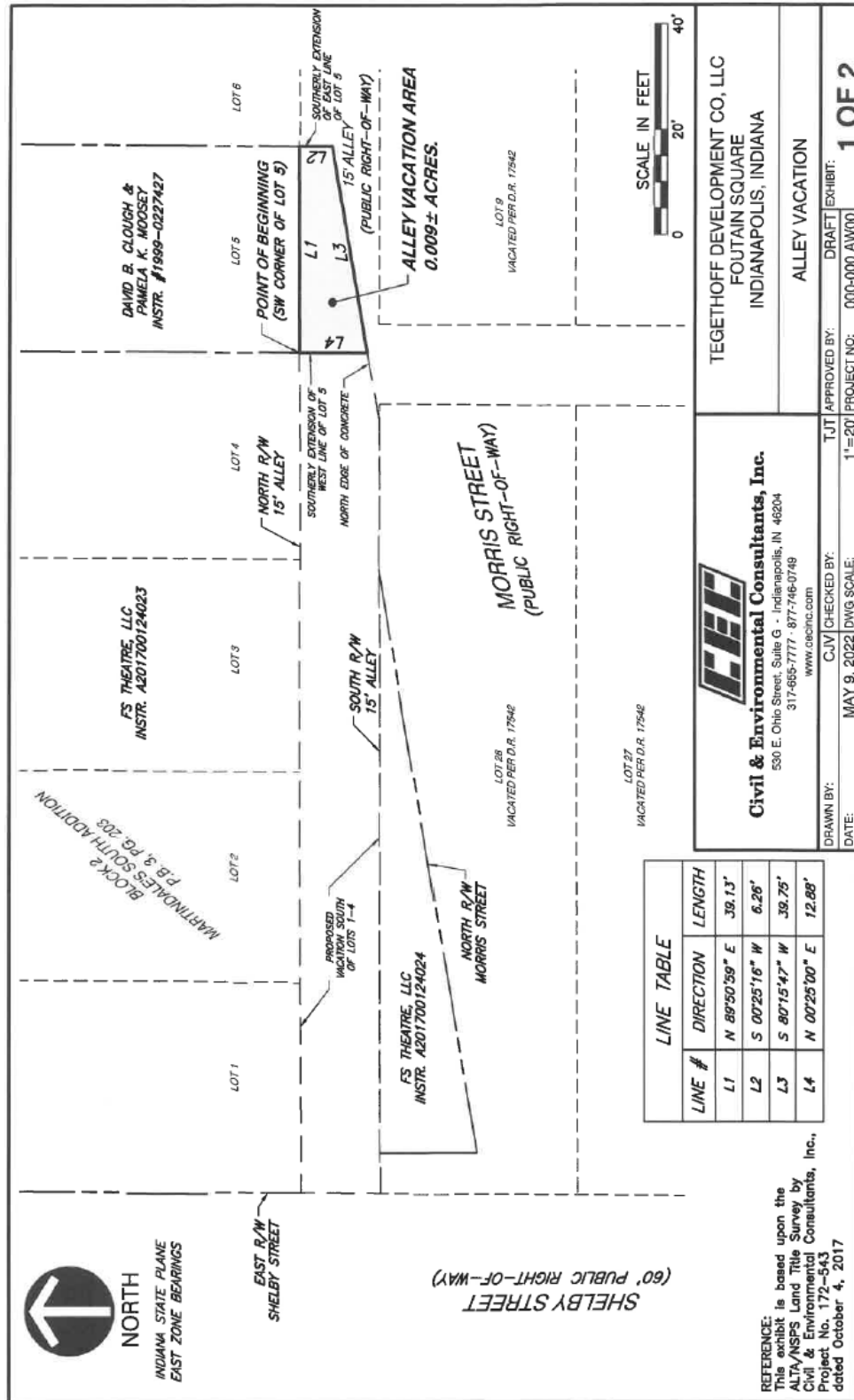
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ALLEY VACATION

1 OF 2

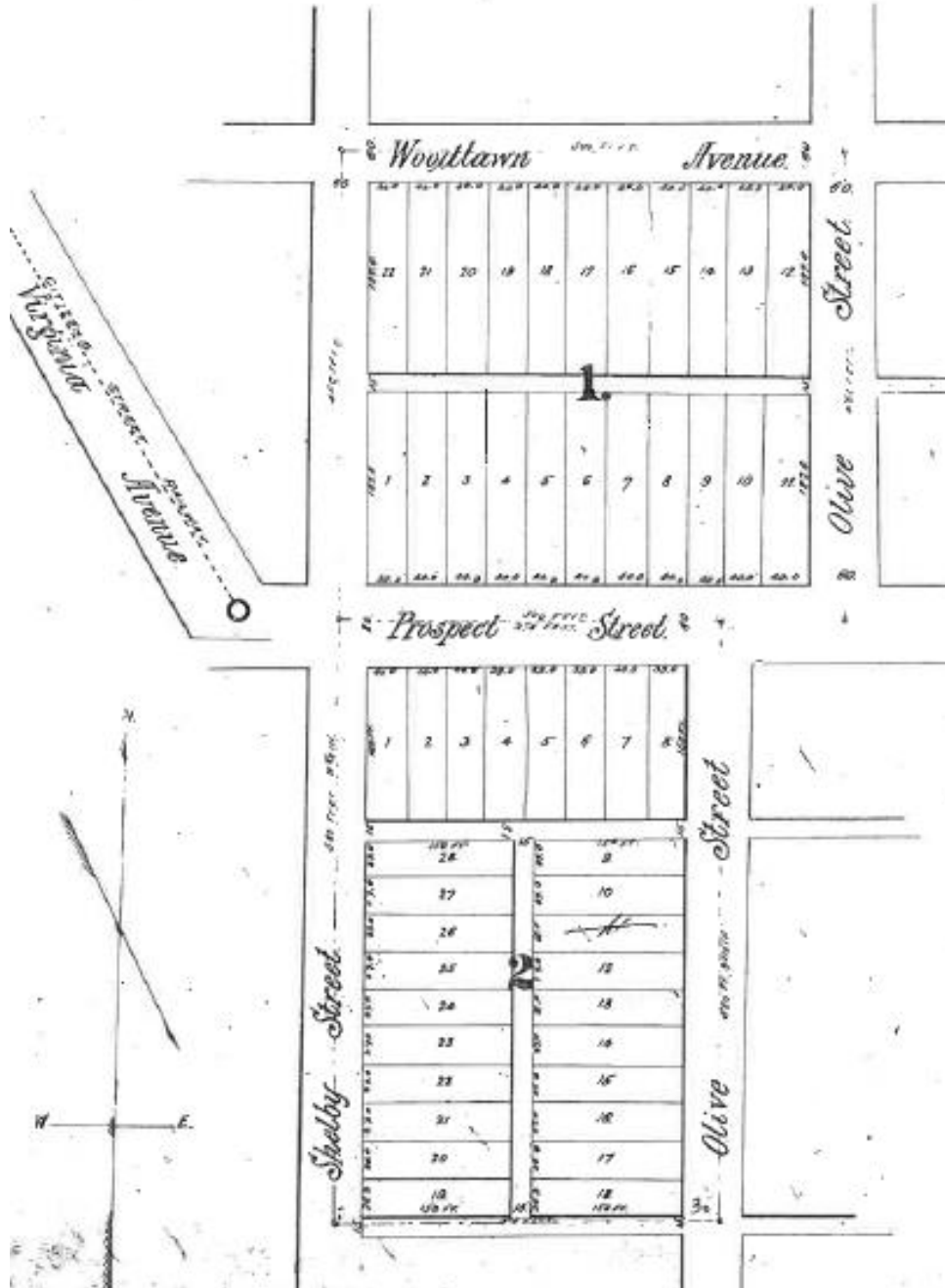
DRAWN BY: MAY 9, 2022 DWG SCALE: 1"=20' PROJECT NO: 000-000.AW000 DRAFT EXHIBIT: 1 OF 2



[illegible]

Plat Map

*Martindale's South Addition
 To
 Indianapolis.*



PHOTOS



View of the intersection of the alley and Morris Street, facing west



East facing view of the alley. 1105 Prospect Street shown left, 1121 Shelby Street shown right.



View from intersection of the alley with Shelby Street; facing southeast



View from intersection of the alley with Shelby Street; facing northeast



View from the intersection of Shelby Street and Morris Street, facing east