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Smith/Upstans

BEFORE THE COMMON COUNCIL OF  
THE CITY OF LEBANON, INDIANA

ORDINANCE NO. 93- 13

**AN ORDINANCE ANNEXING CERTAIN REAL ESTATE  
INTO THE CITY OF LEBANON, INDIANA,  
AND ASSIGNMENT OF ZONING CLASSIFICATION**

WHEREAS, C. Cole Warren, has previously filed a voluntary Petition for Annexation and Assignment of Zoning Classification, seeking to annex into the City of Lebanon, Indiana, a certain tract of real estate which is adjacent and contiguous to the existing northern boundary of the City of Lebanon, consisting of 4.0170 acres, more or less, as hereinafter described; and

WHEREAS, the Plan Commission of the City of Lebanon conducted a Public Hearing upon said petition on June 17, 1991, pursuant to proper notice, and recommended that such annexation request be approved and assigned a zoning classification of PB-2 under the City of Lebanon Zoning and Master Plan; and

WHEREAS, all procedural requirements for said annexation have been satisfied through ongoing negotiations with the City of Lebanon, its department of utilities, and others, for the purpose of this voluntary annexation sought by the Petitioner; and

WHEREAS, the area proposed for annexation has utilities available and accessible, including water, gas and

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DULY ENTERED FOR TAXATION  
August 24, 1993  
Conrad J. James  
AUDITOR BOONE COUNTY

MARY ALICE BALDWIN  
RECORDER OF BOONE COUNTY  
LEBANON, INDIANA 46052  
Misc BK 138 PG 500

telephone, and is within the electrical service territory of the Lebanon Municipal Utilities; and

**WHEREAS**, the Common Council of the City of Lebanon has deemed the voluntary petition appropriate and that the annexation proposed has been conducted pursuant to the Lebanon City Zoning Code and the Indiana Statutes governing annexation; and

**WHEREAS**, the City of Lebanon has previously adopted a study identifying areas appropriate for annexation, and an overall plan, to provide for a policy to serve the areas proposed for annexation with governmental and proprietary services by way of agreements with the property owner seeking annexation. In addition, the City of Lebanon and the property owner seeking annexation have evaluated the proposed costs and methods of implementing the provision of municipal services which may be unavailable from the municipality to the area which consists of a written agreement relating to the extension of such capital improvements, which agreement shall constitute covenants which shall be recorded and run with the land. The same shall bind the current and future owners of the property sought to be voluntarily annexed as part of the overall fiscal plan for development of the newly annexed territory.

**NOW, THEREFORE, BE IT ORDAINED** by the Common Council of the City of Lebanon, Indiana:

**Section 1.** The following described land, as hereinafter specifically described, be, and the same is,

hereby annexed to and declared a part of the City of  
Lebanon, Indiana, to-wit:

A part of the East Half and a part of the West Half of the Southeast Quarter of Section 24, Township 19 North, Range 1 West, City of Lebanon, Center Township, Boone County, Indiana, being the remaining parcel of land (having excepted therefrom the Indiana State Highway right-of-way and the current acquisition of property by the Indiana Department of Transportation, Project ST-111-1 (C), Code 2497, Parcel 36, dated 4-18-91), of the C. Cole Warren property, as recorded in Deed Record 221, pages 36 and 37, more fully described by:

Commencing at the Northwest corner of the East Half of the Southeast Quarter of said Section 24; thence South 89 degrees 38 minutes 29 seconds East, along the quarter section line and the approximate centerline of County Road 250 N, a measured distance of 186.20 feet; 187.44 feet by record deeds; thence South 00 degrees 07 minutes 34 seconds West, along the east described line of the Turner property, as recorded in Deed Record 198, page 372, and the Labraico property, as recorded in Deed Record 163, page 140, a distance of 559.68 feet to the point of beginning (being the original northeast corner of the tract described and as conveyed from Thompson to Sipes, Deed Record 137, pages 377 and 378); thence continuing South 00 degrees 07 minutes 34 seconds West, along the west described line of the Sagamore Center, Inc. property, as recorded in Deed Record 235, pages 174 and 175, as re-established by survey completed by Anderson & Associates, September 1971, a distance of 349.00 feet; thence South 83 degrees 40 minutes 55 seconds West, along the occupation line and possession line, a distance of 432.81 feet to the east described line of the aforesaid current acquisition of property by the Indiana Department of Transportation, as recorded in Deed Record 239, page 172; thence, along the following courses of said east line of the State of Indiana, as described: North 04 degrees 41 minutes 02 seconds West 47.07 feet; North 10 degrees 23 minutes 40 seconds West, 100.00 feet; North 13 degrees 15 minutes 25 seconds West, 200.25 feet; North 10 degrees 23 minutes 40 seconds West, 58.40 feet; thence, leaving said east line, bearing North 89 degrees 52 minutes 19 seconds West, along the south described line of the Labraico property, as recorded in Deed Record 163, page 140, a distance

of 509.29 feet to the point of beginning, containing 4.0170 Acres, being subject to all easements and restrictions of record.

The above described tract is entirely contained within the historical description of the C. Cole Warren property as recorded in Deed Record 221, pages 36 and 37.

**Section 2.** The boundaries of the City of Lebanon shall be, and the same are, hereby declared to be extended so as to include all of the real estate hereinabove described as part of the City of Lebanon, Indiana, and the City's Boundary Ordinance shall be amended accordingly.

**Section 3.** The area proposed for such annexation is within the assigned service territory of the municipally owned electric utility. All other utilities are available and accessible to the area excepting sanitary sewer. The owner seeking voluntary annexation has executed an agreement for extension of capital services for the area in the form of a covenant running with the land. The Common Council of the City of Lebanon, Indiana, makes specific note of the Petitioner's preference that the annexed area be serviced by the Lebanon Municipal Utilities.

The City of Lebanon has previously adopted a policy on annexation of contiguous real estate as identified in Resolution No. 87-14. In addition, the Council adopts herewith a resolution approving a written fiscal plan establishing a policy for the provisions of service to areas proposed for annexation which are substantially equivalent in standard and scope to the services furnished

by the City of Lebanon to other areas of the City which have characteristics of topography, patterns of land utilization and population density similar to the territory annexed herein.

**Section 4.** Pursuant to the recommendation of the Lebanon City Plan Commission, the real estate identified herein is hereby assigned a zoning classification of PB-2, pursuant to the provisions of the Zoning Code of the City of Lebanon, Indiana.

**Section 5.** The newly annexed territory shall be assigned to Councilmatic District No. 5 consisting of Precincts No. 9, 12, as provided by City ordinance.

**Section 6.** This ordinance shall be in full force and effect from and after its passage, promulgation, approval by the Mayor, legislative body, and publication in accordance with the laws of this State.

**ALL OF WHICH IS PASSED AND ADOPTED** by the Common Council of the City of Lebanon, Boone County, State of Indiana, on the 23 day of August, 1993.

**PRESIDING OFFICER:**

  
James H. Acton, Mayor

COUNCILPERSONS:

Jack Bland  
Douglas W. Campbell  
John W. Lasley  
Eric D. Hungate

Anne Good  
David L. Leuck  
James K. Urban

ATTEST:

Laurie Gross  
 Laurie Gross,  
 Clerk-Treasurer, City of  
 Lebanon, Indiana

Presented by me to the Mayor of the City of Lebanon,  
 Indiana, this 23rd day of August, 1993.

Laurie Gross  
 Laurie Gross, Clerk-Treasurer  
 City of Lebanon, Indiana

Signed and approved by me this

23 day of August, 1993.

James H. Acton  
 James H. Acton, Mayor  
 City of Lebanon, Indiana

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**AGREEMENT RELATING  
TO EXTENSION OF  
CAPITAL IMPROVEMENTS**

MARY ALICE BALDWIN  
RECORDER OF BOONE COUNTY  
LEBANON, INDIANA, 46052  
*Mae* BK 138 PG 406

THIS AGREEMENT, executed on this 23<sup>rd</sup> day of AUGUST, 1993, by and between the City of Lebanon, Indiana, by its Board of Public Works (hereinafter "City") and C. Cole Warren (hereinafter "Warren"), WITNESSETH:

WHEREAS, Warren owns a certain tract of unimproved real estate contiguous to the boundaries of the City of Lebanon, containing 4.0170 acres, more or less, the legal description of which is set forth on Exhibit "A" attached hereto (hereinafter the "the Real Estate"), which is currently in the process of being annexed into the corporate boundaries of the City of Lebanon; and

WHEREAS, I.C. 36-4-3-13(d) (5) provides that services of a capital improvement nature, including street construction, street lighting, sewer facilities, and storm water drainage facilities, will be extended and provided to annexed territories by municipalities within three (3) years after the effective date of the annexation in the same manner as those services are provided to other areas within the corporate boundaries with similar topography, patterns of land use and population density; and

WHEREAS, Warren does not have current plans for development of the real estate and desires not to bear substantial costs of making capital improvements to the entire area until additional development alternatives and

possibilities are explored, which process may take longer than three (3) years from the date of annexation; and

**WHEREAS**, alternatives for development of this particular area subject to annexation are occurring on a day-to-day basis which would preclude commitment to a definite plan of development of such capital services; and

**WHEREAS**, the City does not desire to compel Warren to extend capital improvements into the Real Estate within three (3) years of annexation so long as Warren or any subsequent owner of the Real Estate, understands that the cost of extending such services shall remain the obligation of the owner/developer of the subject Real Estate to the annexation regardless of when such improvements may be made; and

**WHEREAS**, the parties have reached an agreement for the waiver of the three year development requirement in accordance with the above, the terms of which are as set forth below.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein contained, it is agreed between the City and Warren as follows:

1. In the event that the annexation of the Real Estate contemplated is accomplished by the Common Council of the City of Lebanon, Warren, may, but shall not be required to, provide services of a capital improvement nature, including street construction, street lighting, sewer facilities, water facilities, and storm water drainage facilities,



within three years following the effective date of such annexation. However, to the extent any of such capital improvements are not made within three years of annexation, the cost of providing the additional services shall remain the obligation of Warren or any successor owner of the Real Estate.

2. This obligation shall be a permanent covenant running with the Real Estate and, unless modified or rescinded in a writing approved by the Board of Public Works and Common Council of the City of Lebanon, shall be binding on any successor owner of the Real Estate. This agreement shall be recorded in the Office of the Recorder of Boone County, Indiana, to put all future owners of the Real Estate on notice of this agreement.

3. In the event the proposed annexation between the City and Warren would not be approved, this agreement shall be null and void and not binding on the parties.

WITNESS our hands and seals on the date set forth above.

C. COLE WARREN

*C Cole Warren*

BOARD OF PUBLIC WORKS OF THE CITY OF LEBANON, INDIANA

*James H. Acton*  
James H. Acton  
*Douglas W. Campbell*  
Douglas W. Campbell  
*John W. Lasley*  
John W. Lasley  
BOW

This instrument prepared by David F. Truitt, Attorney At Law, 129 North Meridian Street, Lebanon, Indiana 46052, (317) 482-0710.

LEGAL DESCRIPTION

A part of the East Half and a part of the West Half of the Southeast Quarter of Section 24, Township 19 North, Range 1 West, City of Lebanon, Center Township, Boone County, Indiana, being the remaining parcel of land (having excepted therefrom the Indiana State Highway right-of-way and the current acquisition of property by the Indiana Department of Transportation, Project ST-111-1 (C), Code 2497, Parcel 36, dated 4-18-91), of the C. Cole Warren property, as recorded in Deed Record 221, pages 36 and 37, more fully described by:

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The above described tract is entirely contained within the historical description of the C. Cole Warren property as recorded in Deed Record 221, pages 36 and 37.

EXHIBIT "A"

PRELIMINARY FISCAL PLAN

ANNEXATION OF THE PROPERTY  
OF  
C. COLE WARREN

INTRODUCTION

The following is a preliminary fiscal plan for the annexation of a tract of real estate directly adjacent to the current boundaries of the City of Lebanon on its northern boundary (hereinafter referred to as the "Annexation Area"). This property has been proposed for annexation in a cooperative effort between C. Cole Warren and the City of Lebanon and is deemed to be a voluntary annexation. The Petitioner is requesting the assignment of a zoning classification of PB-2, pursuant to a hearing which was conducted by the Lebanon City Plan Commission in a previous public meeting pursuant to the requirements of the Lebanon City Zoning Code. The Petitioner for the voluntary annexation is providing a written agreement of covenants which shall run with the land and bind successors in interest for the necessary extension of capital services to the area by agreement between the City of Lebanon and the Petitioner for annexation. The area in question has municipal utilities available and accessible to the area proposed for annexation.

1. Location. The Annexation Area consists of a tract of real estate directly north of the area commonly known as the Aldi Grocery and is bordered on the east by the Sagamore property and is bordered on the west by the roadway

known as State Road 39 on the west. The tract is identified as the "**Warren Tract**" consisting of 4.0170 acres. Exhibit "A" attached hereto generally reflects the Annexation Area per highlights. The area is contiguous to the City of Lebanon for the required touching of current City boundaries and is generally located in the southeast quarter of Section 24, Township 19 North, Range 1 West, Center Township, Boone County, Indiana.

2. **Topography.** The topography of the Annexation Area is generally flat and comparable with the area surrounding the annexed property.

3. **Patterns of Land Use.** The land has generally been used for residential purposes. The Annexation Area is directly adjacent to another area just recently annexed to the City of Lebanon for purposes of business development. There is believed to be adequate access to the real estate for appropriate hook-up of required electricity, gas, sanitary sewer, and water utilities.

4. **Zoning Classification.** The zoning classification to be assigned to the property upon the approval of the Lebanon Common Council is that of PB-2, pursuant to the recommendation and resulting public hearing conducted by the Lebanon City Plan Commission. This classification is compatible with land currently zoned in the same fashion directly south and west of the property as established in the City's Master Plan.

5. Population Density. As of the date of the Petition to annex, as submitted by Mr. Warren, there is one family living in the area proposed for annexation on a rental basis. Comparable areas existing within the City limits specifically include the area directly adjacent in all directions of the proposed Annexation Area. Local fire and police protection is already available in this general area as well as capital services such as street construction, storm sewer facilities, water, gas, telephone and electricity.

6. General Relationship to City Services. As noted above, there are already existing City services available to the surrounding real estate, and the Petitioner, and the City of Lebanon, are aware that Petitioner, or his successors, by separate agreement, may be required at his own cost to extend water, sewage and/or storm sewer lines to the existing facilities as agreed upon between the City and the Petitioner.

7. Provision of Services.

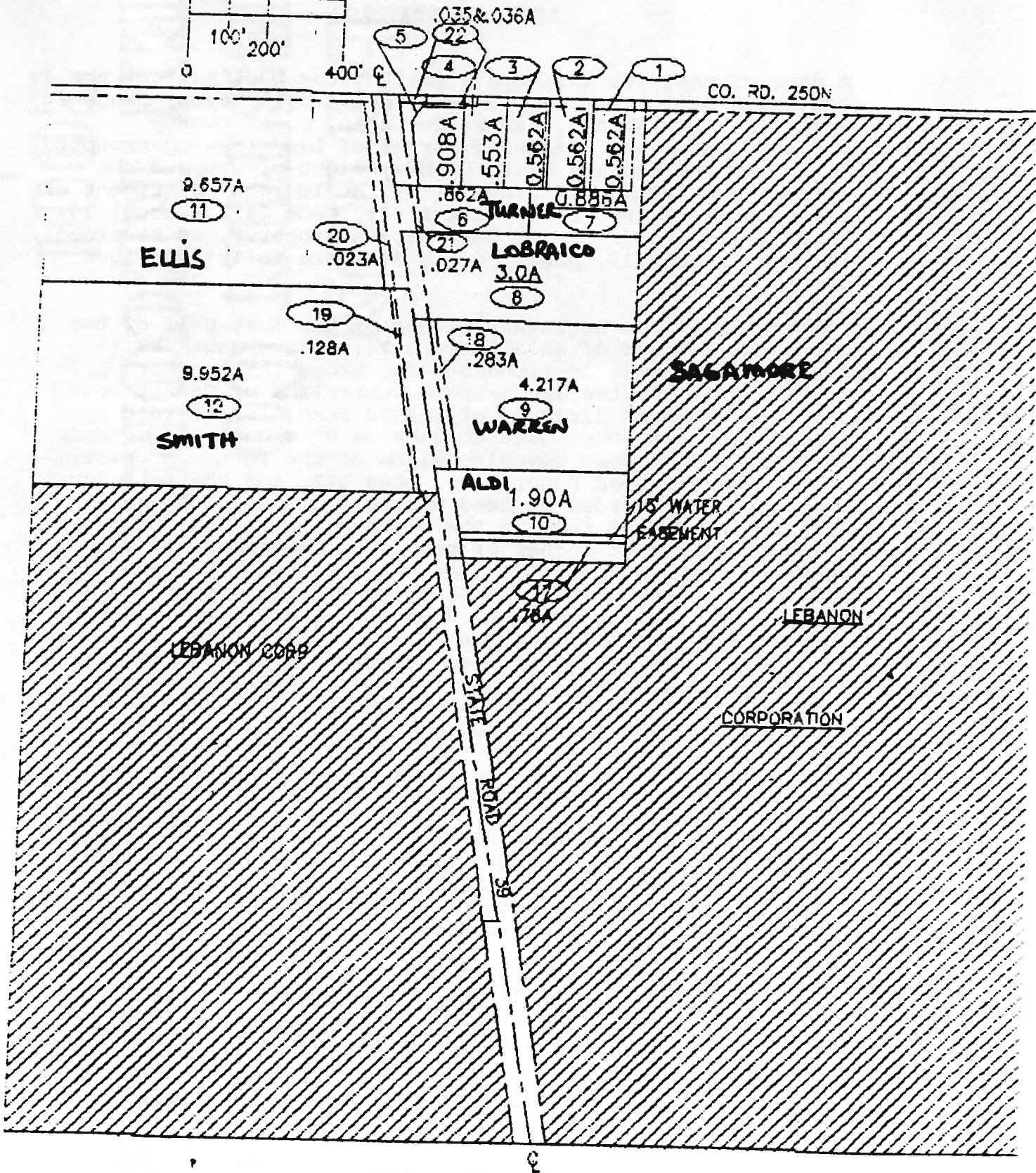
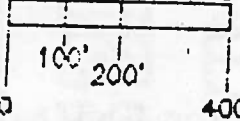
(a) Sanitary Sewer Service, Water Distribution, Fire Hydrants, Storm Drainage, Street and Road Maintenance. All of said items are recognized as being the subject of a certain agreement between the Petitioner and the City of Lebanon which will require the extension of these services, at the Petitioner's or his successor's cost, unless modified by agreement with the City of Lebanon, which is the subject of a separate agreement between the Petitioner and the City of Lebanon.

(b) Police and Fire Protection. Police and fire services are already serving the area directly adjacent the Annexation Area. It is not anticipated that any additional officer overtime or vehicle costs will be incurred as a consequence of the Annexation Area.

(c) Animal Control, Refuse Collection, Parks and Recreation. The Annexation Area is intended for the development of business uses and is therefore not anticipated that it will cause a significant demand on animal control. Refuse collection in the area will likely be supplied by private and outside contractors to the businesses locating in the annexed area. The Annexation Area is located within one mile of Lebanon's Memorial Park.

S.E. 1/4 SEC. 24 - T. 19N. - R. 1W. 149

SCALE 1"=200'



LEGAL DESCRIPTION

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