



## SE 24-05 – Dutch Bro’s Coffee Drive-Through – 7893 East U.S. Highway 36

Planning & Building Department Staff Report

April 15, 2025

Board of Zoning Appeals, Public Hearing

Paul J. Lambie, Senior Planner

<b>A. PETITION NUMBER</b>	SE 24-05 Dutch Bro’s Coffee Drive-Through – 7893 East U.S. Highway 36
<b>B. APPLICANT</b>	Pavilion Development Co. c/o Tim Davies
<b>C. LOCATION</b>	7893 East U.S. Highway 36, Avon, IN 46123 Northwest portion of Lowe’s Addition, Lot 1
<b>D. PARCEL SIZE</b>	~0.75 acre
<b>E. LAND USE &amp; ZONING</b>	Zoned C-2: General Commercial and is located within Tier One of the US HWY 36 Overlay Zoning District.
<b>F. ACTION REQUESTED</b>	Requesting approval of a Special Exception to allow for a Drive-Through facility within Tier One of the US Highway 36 Overlay Zoning District.
<b>G. HISTORY</b>	<p>This overall lot, improved with a home improvement warehouse store, received plat approval via petitions MAP(P) 00-03, MAP(F) 00-04, &amp; MAP(A) 00-11, and received development plan review via petitions SPR(P) 00-11, SPR(F) 00-15 &amp; SPR(A) 00-25.</p> <p>A petition to create an outlet, MIP 06-01 was denied.</p> <p>A petition to revise the location of a vehicular connection to Vista Park Way, DPR(A) 06-26, was approved subject to submission of an access easement within 30 days, which did not occur.</p> <p>This petition, SE 24-05, along with VAR 24-07, was continued from the December 17, 2024 BZA hearing, to the January 21, 2025 BZA hearing, at the request of the petitioner.</p>
<b>H. ADDITIONAL COMMENTS FOR APRIL 15, 2025</b>	This petition, along with VAR 24-07, was continued from the February 18, 2025 hearing to the April 15, 2025 hearing at the request of the petitioner.



	<p>No additional information has been submitted at the time of this report, however, the petitioner has been in communication with staff about potential solutions. Staff would support an additional continuance, to the June 17, 2025 hearing, to allow time for submission and review of a plan to address the required connection to Vista Park Way.</p>
<p><b>I. ADDITIONAL COMMENTS FOR FEBRUARY 18, 2025</b></p>	<p>This petition, along with VAR 24-07, was continued from the January 21, 2025 hearing to the February 18, 2025 hearing at the request of the petitioner in order to review and respond to documentation regarding the obligation to provide a connection to Vista Park Way.</p> <p>The planning staff participated in a call at the request of representatives of the property owner (Lowe’s) on February 7, 2025 to answer questions and clarify staff’s position on the need to provide a vehicular access to Vista Park Way and the Town’s willingness to work with Lowe’s to find a mutually agreeable solution.</p> <p>No additional information has been submitted at the time of this report. Staff would support an additional continuance, if requested by the petitioner, to allow time to submit a plan to address this outstanding obligation.</p>
<p><b>J. STAFF COMMENTS (JANUARY 21, 2025)</b></p>	<p>This is a request for approval of a Special Exception to allow for a Drive-Through Facility within Tier One of the US Highway 36 Overlay Zoning District. The drive-through would serve a coffee shop on approximately ¾-acre located at the northwest corner of the 19-acre property currently improved with a Lowe’s home improvement warehouse store (see Exhibit A).</p> <p>The proposed drive-through, as depicted on the included sketch plan, shows two drive-through service lanes along the west and north perimeter of the proposed “outlot”, merging into one lane to complete transactions at the west side of the proposed building (see Exhibits B &amp; C). The US Highway 36 Overlay prohibits drive-through components including stacking spaces, menu boards, and pick-up windows from being located within the front yard between buildings and US Highway 36. A variance petition, VAR 24-07, is pending to allow for the proposed drive-through layout.</p> <p>Staff is concerned that the proposed site layout is contrary to what is intended by the UDO for the reasons stated in the staff</p>



	<p>report for VAR 24-07.</p> <p>Additionally, as indicated in the staff comments to Criteria One and Two, staff is concerned by the property owner’s continued lack of compliance in providing the required vehicular access to Vista Park Way, which was a component of the site’s development plan approvals in 2000 (see Exhibits D-G). The Throughfare Plan continues to document the need for vehicular east-west cross access between Dan Jones Road and Vista Park Way (see Exhibits H &amp; I), and this need is likely to be exacerbated by INDOT’s proposed Added Travel Lane project that is currently designed to include a center divider median along this portion of U.S. 36 which would further limit access between U.S. 36 and both this site and adjacent properties (see Exhibit J).</p>
<p><b>K. STATUTORY FINDINGS</b></p>	<p>The Board of Zoning Appeals shall approve, conditionally approve or deny Special Exceptions. A Special Exception may be approved under IC 36-7-4-918.2 only upon a determination in writing that it meets the criteria adopted in the community’s local zoning ordinance – see Town of Avon Unified Development Ordinance, Chapter 8.8 for the criteria, listed below:</p> <p><b><i>Note: the first four (4) criteria must be met; the last three (3) are additional items the Board may consider</i></b></p> <p><b>Criterion 1: Will the operation of the use be detrimental to or endanger the public’s health, safety, or general welfare:</b></p> <p><i>Petitioner Response: “The use will not be detrimental to or endanger the public’s health, safety, or general welfare as the drive thru is located facing the east side yard of US 36 with stacking to the west side of building. Therefore, the drive through will be screened from US 36 by additional landscaping.”</i></p> <p><b>Staff does not understand the petitioner’s response, but would concede that a landscape plan has been submitted that proposes shrubs and trees between the drive-through queue and the U.S. 36 right-of-way. However, staff is concerned that</b></p>



the Lowe's property has never provided the vehicular access point at Vista Park Way that was proposed when the site received development plan review approval in 2000. The failure to provide this vehicular access was a concern in 2006 when a request to create an outlot (MIP 06-01) at this property was denied. The Town of Avon Thoroughfare Plan continues to identify the need for an east-west collector street in the general location of where the Lowe's property fronts upon Vista Park Way. The petitioner has indicated to staff that the property owner does not plan to fulfill its obligation to provide this vehicular access point. Staff believes that it would be detrimental to public safety and general welfare to provide approvals for additional development of this property until the requirement to provide vehicular cross access between Vista Park Way and Dan Jones Road has been achieved. Staff does not believe this finding has been met.

**Criterion 2: Will the operation be injurious to the use and enjoyment of other properties in the immediate vicinity or substantially diminish or impair property values within the specific zoning district?**

*Petitioner Response: "Continued operation of the drive-through during normal business hours will not be injurious to the use and enjoyment of other properties as adjacent land uses also have similar exterior drive-throughs. Hours of operation are consistent with adjacent businesses."*

Staff concurs with the petitioner's general assertion on this finding. However, staff believes that continued failure to fulfill the outstanding obligation to provide vehicular cross access between Vista Park Way and Dan Jones Road would continue to be injurious to the nearby properties that would benefit from that alternative route to safely reach the arterial network via a signalized intersection. Staff does not believe this finding has been met.

**Criterion 3: Will the use be served adequately by essential public facilities and services such as highways, streets, police**



**and fire protection, drainage structures, refuse disposal, water, sewer, and schools?**

*Petitioner Response: "The land use will have adequate essential public facilities and services as public access is from US 36 with all utilities adjacent to the site. Stormwater measures will be provided per Town of Avon Stormwater Management Ordinance."*

**Staff concurs with the petitioner's general assertion on the finding.**

**Criterion 4: Will the use create excessive additional requirements at public expense for public facilities and services, or be detrimental to the economic welfare of the community or result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance?**

*Petitioner Response: "The special exception allowing a drive through will not create additional requirements at the public expense or cause loss of a natural/historic feature of importance in the Town of Avon. The majority of Dutch Bros's customers are "pass-by" trips, not creating new trip generations."*

**Staff concurs with the petitioner's general assertion on this finding.**

***In addition to the above criteria, the Board may consider the following:***

**Criterion 5: Does the proposed Special Exception meet the requirements and standards of this ordinance and is it compatible with adjacent properties and neighborhoods?**

*Petitioner Response: "The proposed drive-through special exception meets all the other requirements and standards as well as follows the precedent of adjacent properties with similar features."*



A more detailed review of the standards of the UDO would occur at the time of submission of detailed plans for a development plan review. At this time though, it appears that the submitted site plan would meet the standards of the UDO, aside from the pending variance request to allow drive-through components in front of the building. Staff believes this finding would be met.

**Criterion 6: Does the proposed Special Exception make adequate provision for public services, provide adequate control over vehicular traffic, provide for and protect designated common open space and further the amenities of light and air, recreation and visual enjoyment?**

*Petitioner Response: "The drive through special exception is compliant with other sections of the Unified Development Ordinance."*

Staff believes that the proposed variance to allow the drive-through queue in front of the building would be contrary to the aesthetic intended by the UDO and would, thus, not further visual enjoyment along the U.S. 36 corridor. Therefore, staff does not believe this finding would be met.

**Criterion 7: Is the proposed Special Exception in alignment with the general objectives of the Comprehensive Plan?**

*Petitioner Response: "The drive through special exception is an allowable feature within businesses applicable to the property zoning classification which is the following Avon Comprehensive Plan for this area."*

The 2017 Future Land Use Cluster Map does not provide a specific land use recommendation for this property. Therefore, the site's existing C-2 zoning, which allows retail uses with drive-through facilities, is supported by the Plan. Staff finds that use of this property for a drive-through coffee shop would not be in conflict with the Comprehensive Plan.

**CONDITIONS**



	<p>Per IC 36-7-4-918.5, the Board may impose reasonable conditions as a part of the Board’s approval.</p>
<b>L. RECOMMENDATION</b>	<p>Staff recommends <b>denial</b> of this Special Exception as proposed.</p> <p>Staff would recommend approval, if the property owner provided a two-way vehicular access point to Vista Park Way and if the site plan was revised to relocate the drive-through queue from in front of the building in compliance with the ordinance.</p> <p>As a note to the applicant, although building elevations would not be reviewed until the time of Development Plan Review submission, it is clear that the elevations included with this filing would not meet the minimum glazing requirements of UDO 2.10(O)(2)e.</p>

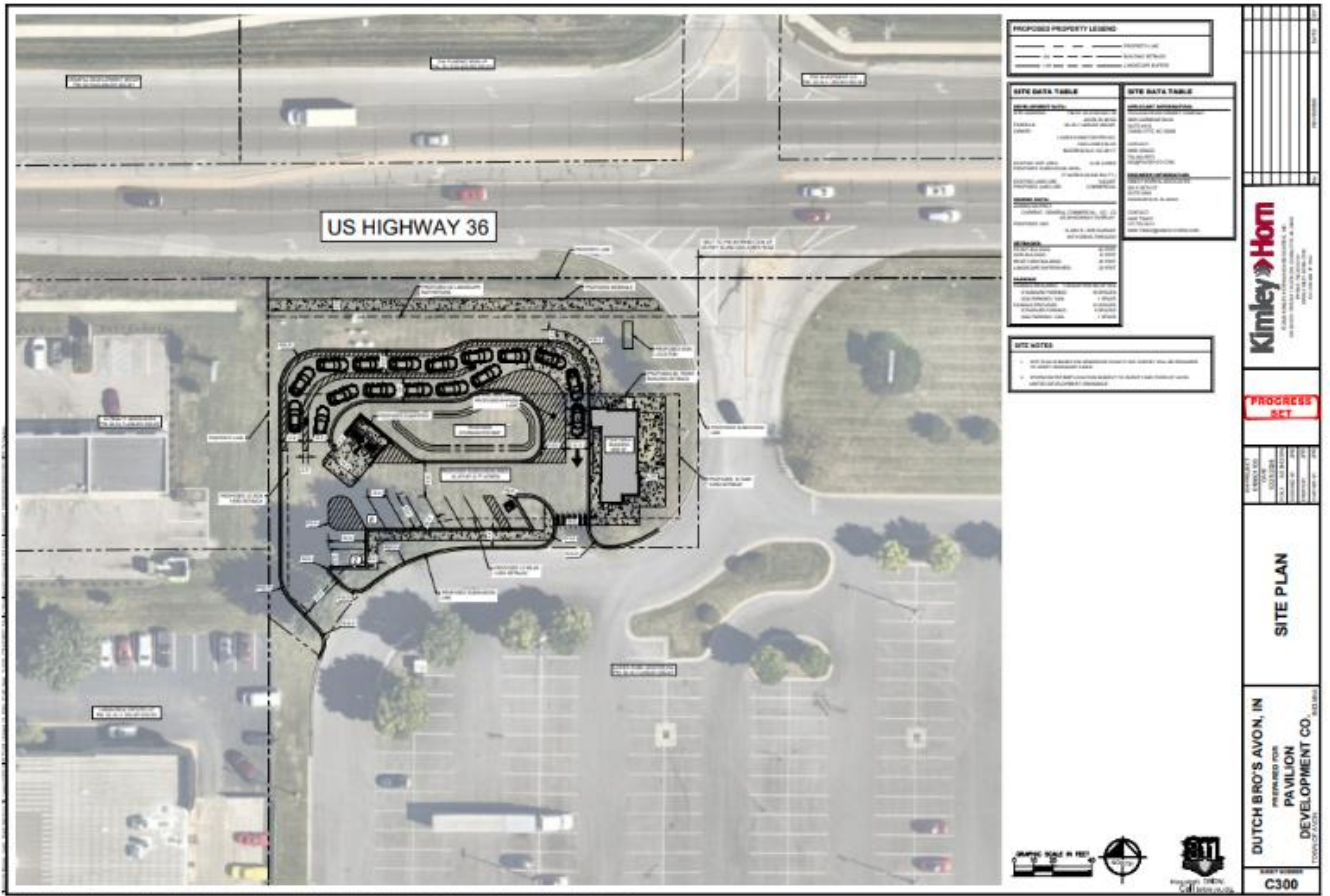


## Exhibit A – Location Map





## Exhibit B –Proposed Development / Sketch Plan



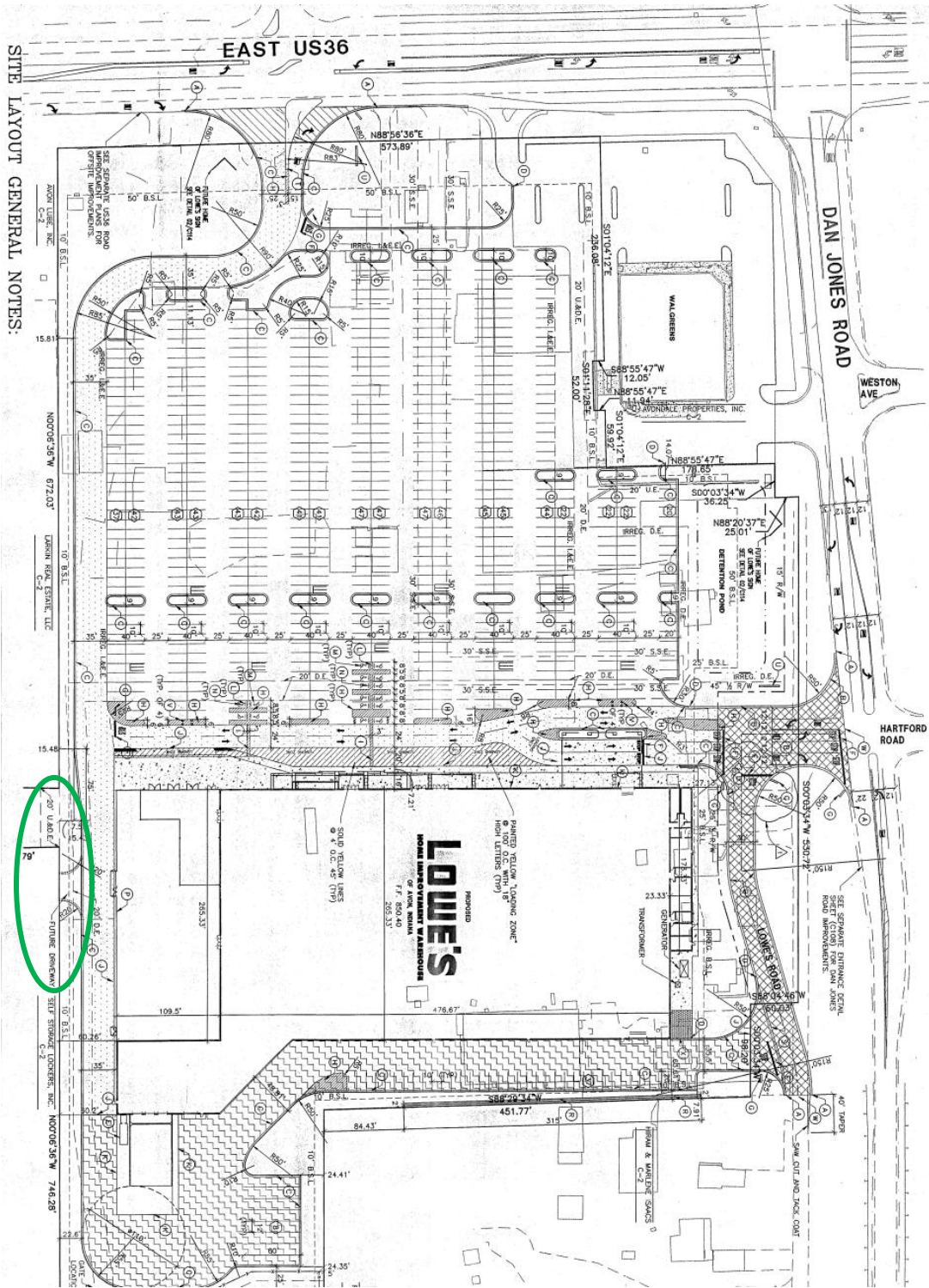








### Exhibit F – Site Plan Approved with SPR(A) 00-25



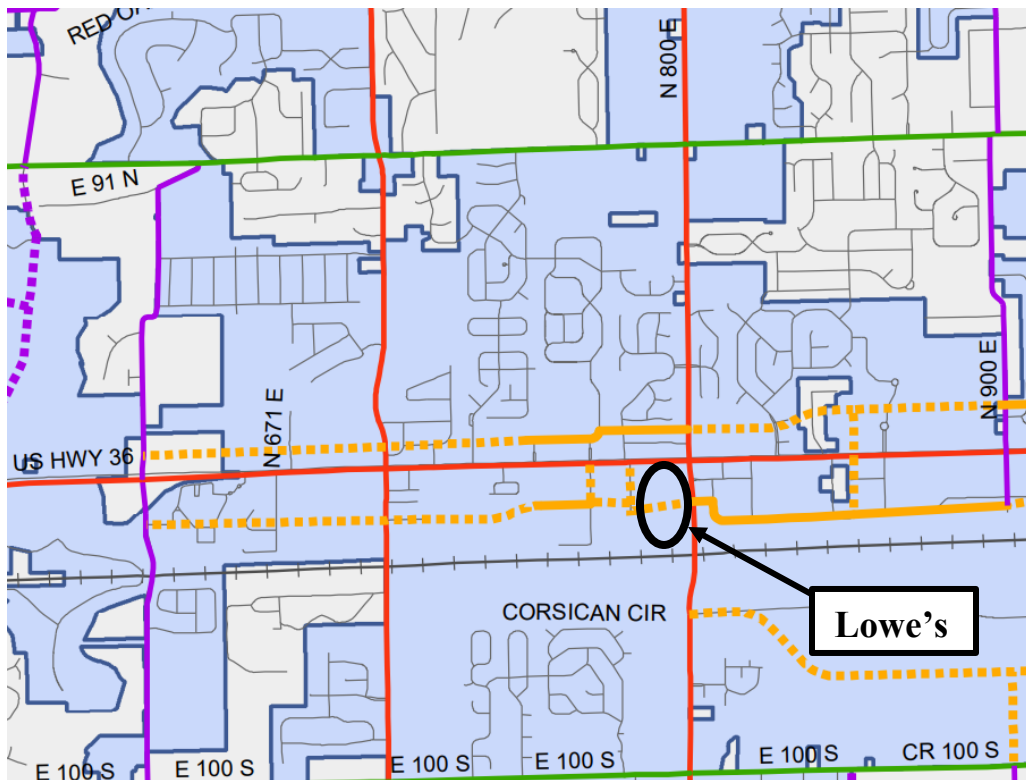
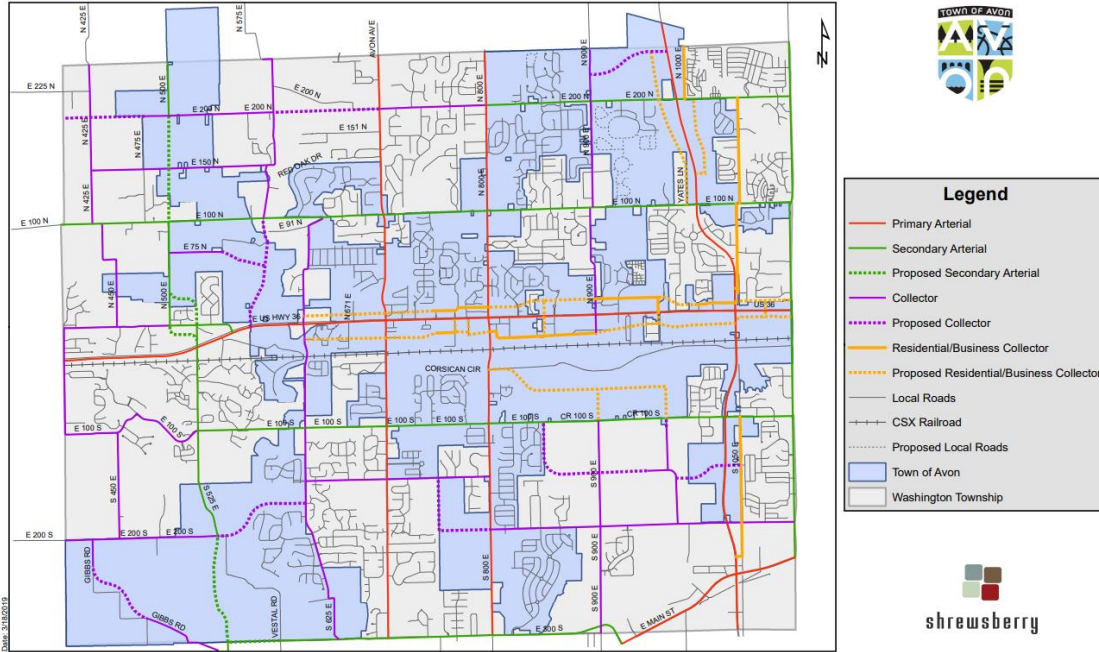
SITE LAYOUT GENERAL NOTES:





# Exhibit H – Town of Avon Thoroughfare Plan

### Map 11 - 2028 Thoroughfare Plan



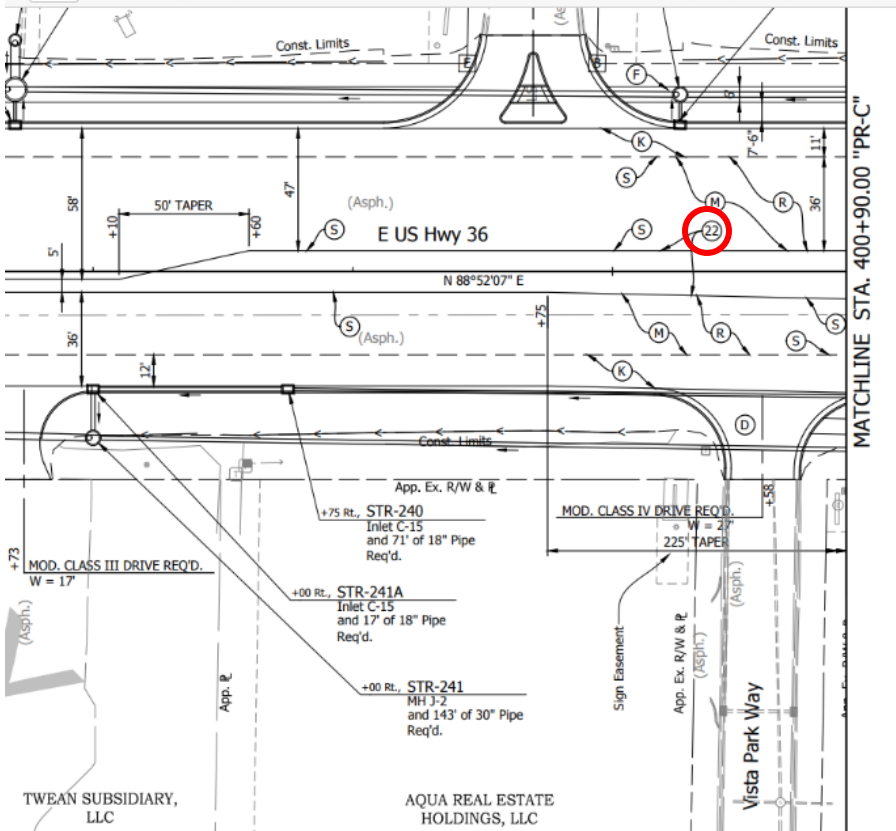
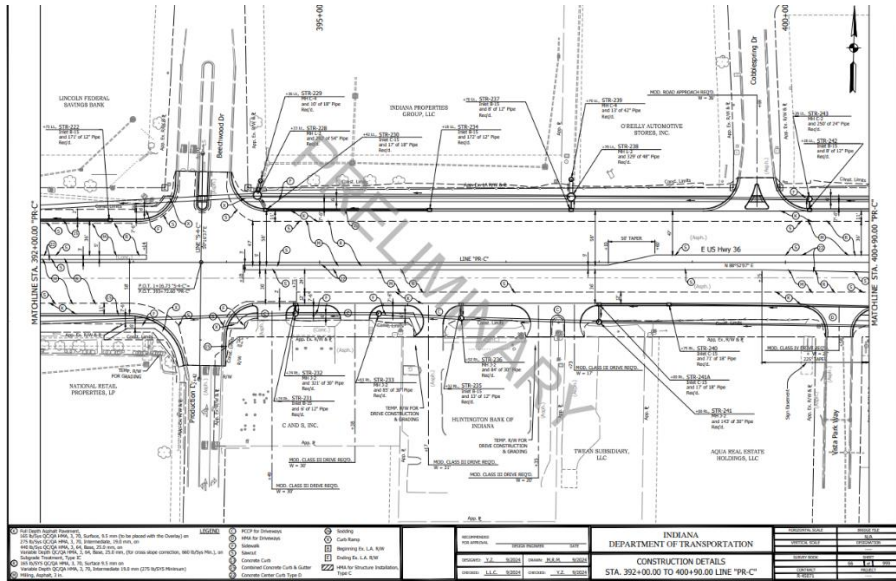


## Exhibit I – Zoomed-in View of Town of Avon Thoroughfare Plan





## Exhibit J – U.S. 36 Expansion Plan Adding Concrete Median



**22** Concrete Center Curb Type D



**Exhibit K – Site Photos**



**1) View of site facing east from northwest corner of proposed “outlot”**



**2) View of site facing west from northeast corner of proposed “outlot”**



**Exhibit K – Site Photos**



**3) View from proposed “outlot” facing north from Lowe’s parking lot.**



**4) View from proposed “outlot” facing south to Lowe’s parking lot.**



**Exhibit K – Site Photos**



**5) View of Lowe's property facing east from Vista Park Way.**