



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES
Planning Division

m e m o r a n d u m

TO: Bruce Walden, Chief Administrative Officer

FROM: Elizabeth H. Tyler, AICP, Director

DATE: July 18, 2002

SUBJECT: Request for approval and authorization to execute an annexation agreement for 2606 Arlene Drive / Jerry Hess, Jr.

Introduction & Background

The Hess Annexation Agreement for 2606 Arlene Drive was signed on August 29, 2001 (attached) for the purposes of permitting an “emergency” sewer connection to the Urbana-Champaign Sanitary District (UCSD). The property is not currently located adjacent to the corporate limits of Urbana but is within the mile-and-a-half extraterritorial jurisdictional area. Under an intergovernmental agreement with the UCSD, any property owner outside the corporate limits of Urbana wishing to connect to sanitary sewer service and annex to the UCSD must also agree to annex to the City of Urbana at such time as their property is contiguous. A public hearing to consider the annexation agreement is scheduled for August 5, 2002 at 7:15 P.M.

The property information is as follows:

Property Location:	2606 Arlene Drive
Legal Description:	Lot 57 in Second Plat of Brownfield Subdivision, as per Plat recorded in Plat Book “P” at Page 62, situated in Champaign County, IL.
Acreage:	12,090 square feet
County Zoning:	R-1, Single-Family Residential
Urbana Zoning:	R-1, Single Family Residential (upon conversion when property is annexed)
Current Use:	Single-Family Residential
Comprehensive Plan Recommendation:	Residential (ETJA Plan)

Selected Applicable Comprehensive Plan Goals and Objectives

Several goals and recommendations from the 1982 Comprehensive Plan and the 1993 Extraterritorial Jurisdictional Area Plan support approval of the annexation agreement. The following is a partial list of these goals and recommendation.

From the 1982 Comprehensive Plan:

Goal 3.100 To organize and develop land uses and adjacent properties in a balanced and mutually compatible manner relative to the functional needs of the City.

Objective 3.110 Promote development in the City and surrounding unincorporated areas in a manner which minimizes conflicting land uses and/or adjacent development.

Policy 3.111 Review all land use changes that are controlled by the Zoning Ordinance, Subdivision Ordinance, or annexation procedures to ensure compatibility. The Special and Conditional Use permit and Planned Unit Development procedures in the Zoning Ordinance and annexation agreements are particularly useful tools for insuring the harmonious development of adjacent sites.

Goal 3.400 To create a compact community where the conversion of agricultural land, the cost of providing public services, and the use of energy are minimized.

Objective 3.410 Designate growth areas in a manner that minimizes the cost of providing public services.

Goal 5.100 To provide sound and attractive residential neighborhoods which meet the housing needs of the current and future population, are accessible to urban services and facilities, and in a manner which conserves land, energy and other resources.

Objective 5.130 Promote land use patterns which conserve energy.

Policy 5.131 Encourage new residential development to occur contiguous with existing development and within municipal boundaries or in areas which can be annexed.

From the 1993 ETJA Plan, General Recommendations:

1. The City should develop a comprehensive annexation policy.
 - 1.d. The policy should focus on residential areas and timing for their annexation. Some residential areas on the City's periphery may require substantial capital improvements because of either age, lack of maintenance, original substandard construction of improvements or a combination of these factors. However, these neighborhoods are urban developments that require urban

services. As a result, they should be annexed, but must perhaps be annexed gradually as their needs will compete with already limited municipal funds. As the City grows it must be able to meet the service needs that new annexations generate.

Options

The City Council has the following options in regard to the proposed annexation agreement:

1. Council may grant approval of the Hess Annexation Agreement for 2606 Arlene Drive.
2. Council may deny approval of the Davis Annexation Agreement for 2606 Arlene Drive.

Recommendation

Based on the intent of the intergovernmental agreements and on the goals and recommendations of the 1982 Comprehensive Plan and the 1993 Extraterritorial Jurisdictional Area Plan, staff recommends final approval of the annexation agreement.

Prepared by: _____
Rob Kowalski, Planning Manager

Attachments: Proposed Ordinance
Annexation Agreement without owner signature
Draft Annexation Agreement with owner signature

Cc: Bill Gray, Director, Public Works
Jerry Hess, Jr.; 2606 Arlene Drive

ORDINANCE NO. 2002-07-073

An Ordinance Approving and Authorizing the Execution of an Annexation Agreement

(2606 Arlene Drive / Hess)

WHEREAS, an Annexation Agreement between the City of Urbana, Illinois and Mr. Jerry Hess, Jr. has been submitted for the Urbana City Council's consideration, a copy of which is attached; and,

WHEREAS, said agreement governs a tract totaling approximately 12,090 square feet located at 2606 Arlene Drive and said tract is legally described as follows:

Lot 57 in Second Plat of Brownfield Subdivision, as per Plat recorded in Plat Book "P" at Page 62, situated in Champaign County, IL.

WHEREAS, the proposed Annexation Agreement is in conformance with the goals and objectives of the City of Urbana's Official Comprehensive Plan; and,

WHEREAS, after due and proper publication, the Urbana City Council held a public hearing on August 5, 2002 to consider said annexation agreement; and

WHEREAS, the Urbana City Council, having duly considered all matters pertaining thereto, finds and determines that the proposed annexation agreement will not negatively impact the City of Urbana and would be in the best interests of the City of Urbana and its citizens;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. The that Annexation Agreement between the City of Urbana, Illinois and Doug Price, a copy of which is attached and hereby incorporated by reference, be and the same is hereby authorized and approved.

Section 2. That the Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver, and the City Clerk of the City of Urbana, Illinois, be and the same is hereby authorized to attest to said execution of said Annexation Agreement, for and on behalf of the City of Urbana, Illinois.

Section 3. The City Clerk is directed to record a certified copy of this Ordinance and the Annexation Agreement herein approved, as amended, with the Recorder of Deeds of Champaign County, Illinois.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called of two-thirds of the members of the Corporate Authorities of the City of Urbana, Illinois, then holding office, at a regular meeting of said Council.

PASSED by the City Council this ____ day of _____, 2002.

AYES:

NAYS:

ABSTAINED:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____, 2002.

Tod Satterthwaite, Mayor

CERTIFICATE OF PUBLICATION IN PAMPHLET FORM

I, Phyllis D. Clark, certify that I am the duly elected and acting Municipal Clerk of the City of Urbana, Champaign County, Illinois. I certify that on the ____ day of _____, 2002, the corporate authorities of the City of Urbana passed and approved Ordinance No. _____, entitled "An Ordinance Approving and Authorizing the Execution of an Annexation Agreement (2606 Arlene Drive / Hess)" which provided by its terms that it should be published in pamphlet form. The pamphlet form of Ordinance No. _____ was prepared, and a copy of such Ordinance was posted in the Urbana City Building commencing on the ____ day of _____, 2002, and continuing for at least ten (10) days thereafter. Copies of such Ordinance were also available for public inspection upon request at the Office of the City Clerk.

DATED at Urbana, Illinois, this ____ day of _____, 2002.

Annexation Agreement

THIS Agreement is made and entered into by and between the **City of Urbana**, Illinois, (hereinafter sometimes referred to as the "Corporate Authorities" or the "City") and **Jerry Hess, Jr.** (hereinafter referred to as the "Owner"). The effective date of this Agreement shall be as provided in Article III, Section 6.

WITNESSETH:

WHEREAS, this Agreement is made pursuant to and in accordance with the provisions of Section 11-15.1-1 et seq., of the Illinois Municipal Code (65 ILCS 5/11-15.1-1); and

WHEREAS, Doug Price is the Owner of record of a certain 12,090 square foot parcel of real estate located at 2606 Arlene Drive, the legal description of which real estate is set form in Exhibit A attached hereto and referenced herein as "the tract".

WHEREAS, the attached map, labeled Exhibit B, is a true and accurate representation of the tract to be annexed to the City of Urbana under the provisions of this agreement.

WHEREAS, although the tract is not yet contiguous to the City of Urbana, said Owners find that in order to best utilize the Owners' property, it is desirous to annex the tracts to the City of Urbana when said tract becomes contiguous to the City, pursuant to, and as provided for in this annexation Agreement; and

WHEREAS, the City and the Owners find it necessary and desirable that the tract be annexed to the City with a zoning classification of R-1, Single-Family Residential, under the terms and provision of the Urbana Zoning Ordinance in effect upon the date of annexation, as amended, and subject to the terms and conditions set forth in this Agreement; and

WHEREAS, the Corporate Authorities find annexation of the tract as described herein reflects the goals, objectives and policies set forth in the City's 1982 Urbana Comprehensive Plan, as amended from time to time; and

WHEREAS, such annexation will ensure that the City of Urbana will receive real estate taxes and other revenues and will enable the City to continue to enhance its tax base; and

WHEREAS, the Owners desire to have the aforementioned real estate annexed to the City of Urbana upon certain terms and conditions hereinafter set forth in this Agreement.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS SET FORTH HEREIN, THE PARTIES AGREE AS FOLLOWS:

ARTICLE I. REPRESENTATIONS AND OBLIGATIONS OF THE OWNER (S)

The Owner agree(s) to the following provisions:

Section 1:

- (a) The Owner represent that the Owner is the sole record Owner of the tract described in Exhibit A and that the Owner shall, within thirty (30) days of the property becoming contiguous to the Urbana City limits cause the tract to be annexed to the City of Urbana by filing a legally sufficient annexation petition with all required signatures thereon, all in accordance with Illinois Statutes. Until annexation of the subject tract occurs, Owner shall require that any persons intending to reside thereon, whether as tenants or owners, shall, prior to residing thereon, irrevocably agree in writing to sign, join in, and consent to any petition for annexation of the subject tract. The Owner shall file such written agreement with the City Clerk within thirty (30) days of the signing of such.
- (b) Owner further agrees that the substance of this Section of the Annexation Agreement shall be included in any sales contract for the sale of any portion of the subject tract. If the subject tract is to be platted for subdivision, the Owner agrees that the substance of this provision regarding annexation shall be included in the subdivision covenants and such will constitute a covenant running with the land.
- (c) Owner agrees that if owners fail to include the substance of Section 1(a) of this Agreement in sales contracts or subdivision covenants, as provided herein, and if said annexation is delayed or contested by subsequent owner(s) as a result, the Owner shall be liable to the City for all real estate taxes and other taxes that would have been due to the City had annexation been able to proceed as outlined herein. The Owner agrees for themselves, successor and assigns, and all other persons intended herein to be obligated to consent to annexation, to cooperate in signing or joining in any petition for annexation for the subject tract and that mandamus would be an appropriate remedy in the event of refusal so to do, and, if the City has to resort to Court proceedings to enforce this obligation, the City shall be entitled to recover reasonable attorney's fees. The parties agree that nothing in this section shall preclude the voluntary annexation of the subject tract or any portion thereof earlier than would otherwise be required.

Section 2: The Owner agrees to accept the direct conversion of Champaign County zoning to City of Urbana zoning classification as provided for by the Urbana Zoning Ordinance Section IV-5 and as such exists at the time of annexation. Furthermore, the Owner agrees to abide by all applicable development regulations existing at the time of annexation.

Section 3: The Owner agrees to cause all new development, construction, or additions on said tract to be in conformance with all City of Urbana building, electrical, fire, and plumbing codes, orders or regulations in effect at the time of annexation. The Owner agrees to submit all building construction plans to the City of Urbana for review and further agree to pay the building permit fee just as though the construction were taking place within the Urbana City limits. The Owner further agrees to correct any deficiencies identified in said plan review. In addition, the Owner agrees that all construction will be subject to the same building and construction inspection requirements as construction projects within the City limits.

Section 4: The Owner shall take no action or omit to take action during the term of this Agreement which action or omission, as applied to the tract, would be a breach of this Agreement, without first procuring a written amendment to this Agreement duly executed by both the Owner and the City. Said action includes petitioning for a county rezoning of said tract without a written amendment to this Agreement.

ARTICLE II. REPRESENTATIONS AND OBLIGATIONS OF THE CORPORATE AUTHORITIES

The Corporate Authorities agree to the following provisions:

Section 1: The Corporate Authorities agree to annex said tract subject to the terms and conditions outlined in this Agreement, when properly and effectively requested to do so, by submission of a legally sufficient petition from the Owner, by enacting such ordinances as may be necessary and sufficient to legally and validly annex said tract to the City.

Section 2: The Corporate Authorities agree that the tract will be zoned R-3, Single and Two-Family Residential per the conversion of Champaign County zoning to City of Urbana zoning classification as provided for by the Urbana Zoning Ordinance or whatever zoning classification is provided for in such conversion table at the time of annexation. The Corporate Authorities agree that all applicable development regulations existing at the time of annexation will apply to said tract. Furthermore, although the Corporate Authorities agree not to rezone the property during the term of this Agreement without a rezoning petition executed by the property Owners requesting said change, the Corporate Authorities reserve the right to amend the Zoning Ordinance text even if such amendment affects the property. If the zoning district referenced herein is not in existence at the time of the annexation, the parties agree to reclassify said property to the most comparable zoning classification as is determined by the Zoning Administrator.

ARTICLE III: GENERAL PROVISIONS

Section 1: Term of this Agreement -- This Agreement shall be binding upon the parties hereto, and their respective successors and assigns, for a full term of twenty (20) years commencing as of the effective date of this Agreement as provided by the Illinois State Statutes, unless other provisions of this Agreement specifically apply a different term. To the extent permitted thereby, it is agreed that, in the event the annexation of subject tract under the terms and conditions of this Agreement is challenged in any court proceeding, the period of time during which such litigation is pending shall not be included in calculating said twenty-year term.

If this Agreement imposes any obligation, restraint, or burden (hereinafter called collectively "obligation") on the Owners, his/her (their) successors or assigns, which obligation extends beyond the termination date of this Agreement, such obligation may be released by the Urbana City Council enacting an Ordinance releasing such obligation by a majority vote of all Alderpersons then holding office and the recording of such Ordinance in the Champaign County Recorder's Office, Champaign County, Illinois.

Section 2. Covenant running with the land -- The terms of this Agreement constitute a covenant running with the land for the term of this Agreement unless specific terms are expressly made binding beyond the term of this Agreement. Furthermore, the terms herein are hereby expressly made binding upon all heirs, grantees, lessee, executors, assigns and successors in interest of the Owners as to all or any part of the tract, and are further expressly made binding upon said City and the duly elected or appointed successors in office of its Corporate Authorities.

Section 3. Binding Agreement upon parties -- The Corporate Authorities and Owner agree that neither party will take no action or omit to take action during the term of this Agreement which act or omission as applied to the tract would be a breach of this Agreement without first procuring a written amendment to this Agreement duly executed by both the Owners and the City.

Section 4. Enforcement -- The Owner and Corporate Authorities agree and hereby stipulate that either party to this Agreement may, by civil action, mandamus, action for writ of injunction or other proceeding, enforce and compel performance of this Agreement or declare this Agreement null and void in addition to other remedies available. Upon breach by the Owner, the City may refuse the issuance of any permits or other approvals or authorizations relating to development of the tract.

Section 5. Severability -- If any provision of this Agreement is rendered invalid for any reason, such invalidation shall not render invalid other provisions of this Agreement which can be given effect even without the invalid provision.

Section 6. Effective Date -- The Corporate Authorities and Owner intend that this Agreement shall be recorded in the Office of the Champaign County Recorder with any

expenses for said recording to be paid by the Corporate Authorities. The effective date of this Agreement shall be the date it is recorded; or if not recorded for any reason, the effective date shall be the date the Mayor signs the agreement on behalf of the City.

IN WITNESS WHEREOF, the Corporate Authorities and Owner have hereunto set their hands and seals, and have caused this instrument to be signed by their duly authorized officials and the corporate seal affixed hereto, all on the day and year written below.

**Corporate Authorities
City of Urbana:**

Owner:

Tod Satterthwaite, Mayor

Jerry Hess, Jr.

Date

Date

ATTEST:

ATTEST:

Phyllis D. Clark
City Clerk

Notary Public

Date

Date

Exhibits attached and made a part of this Agreement:

- Exhibit A: Legal Descriptions
- Exhibit B: Location Map
- Exhibit C: Timeframe for Code compliance

Exhibit "A"
Legal Description

Lot 57 in Second Plat of Brownfield Subdivision, as per Plat recorded in Plat Book "P" at Page 62, situated in Champaign County, IL.

