



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

memorandum

TO: Bruce K. Walden, Chief Administrative Officer

FROM: Elizabeth H. Tyler, AICP, City Planner, Director

DATE: September 22, 2005

SUBJECT: Plan Case 2005-A-12a: An annexation agreement between the City of Urbana and Emulsicoat, Inc. for a 13.843 acre tract of land located at the extreme northwest corner of the city limits. The property is located approximately 825 feet west of Saline Court, and runs along the east edge of the Canadian National / Illinois Central railroad right of way, northward for approximately 2,500 feet. The parcel is currently located within unincorporated Champaign County and is proposed to be annexed into the City of Urbana.

Plan Case 1954-M-05: A proposed rezoning of a 13.843 acre tract of land located at the extreme northwest corner of the city limits from its current Champaign County AG-2, Agriculture Zoning District to the City of Urbana IN, Industrial Zoning District upon annexation into the City of Urbana.

Introduction

Emulsicoat, Inc. has petitioned the City of Urbana to annex a 13.843 acre tract of land they recently acquired from the adjacent railroad located at the extreme northwest corner of the City limits (see Location Map). The current Champaign County zoning designation for the site (known as Tract "A") is AG-2, Agriculture. The Urbana Zoning Ordinance Table IV-1 calls for direct conversion of property zoned County AG-2 to City AG zoning upon annexation. This case was brought to the Plan Commission for review because the petitioners have requested a change to City IN, Industrial upon annexation. The Annexation Agreement also includes the provision for a special use permit to allow the Emulsicoat operations on the southern portion of the site. A copy of the proposed Annexation Agreement is attached to this memorandum.

Background

All the cases regarding Emulsicoat Tract "A": the rezoning, annexation agreement with special use permit, and the annexation petition is being brought to a City Council Special Meeting for approval on Monday the 26th of September 2005. The approval of these related cases will facilitate a Land Trade Agreement between MACC of Illinois, Inc., and Emulsicoat, Inc. so that Emulsicoat can operate its plant on the subject site and on an adjacent 10.94 acre site located to the north and west of the current terminus of Saline Court (see attached map). The adjacent location is known as Lot 204 of North Lincoln Avenue Industrial Park #2A (NLAIP #2A). It is

the only lot in the major subdivision final plat of NLAIP #2A. The subdivision case is being reviewed as Plan Case 1952-S-05 and will also be brought to the City Council for approval on Monday September 26, 2005. Most of the proposed Emulsicoat plant will occupy Lot 204 fronting Saline Court and part will occupy Tract "A" which is adjacent to the rail line. One provision of the Annexation Agreement will require another subdivision case that will join the subject property Tract "A" to Lot 204. All the plan cases and requested City approvals are interdependent.

Emulsicoat currently has operations at 705 E. University Avenue in Urbana. The company operations are dependent on the availability of railway transport services to supply raw materials and deliver their products. The University Avenue site is currently served by a rail spur that has only one other customer. Because the rail line has few customers and a low number of train trips per week it may become uneconomical for the rail company to provide service. Emulsicoat is making appropriate plans by seeking this new location that has excellent transportation access to both road and rail services.

According to the petitioner, the subject property, Tract "A" and the adjacent Lot 204 on Saline Court meet their needs for assured rail access, and potential future expansion. At the same time they will continue to conduct business operations at the University Avenue facility.

Description of the Area

The site is located west of Lincoln Avenue and the Saline Branch drainage ditch. Immediately to the south and east is the Central Waste Transfer facility. Immediately to the east is Lot 204. To the north and east is agricultural land. To the west is the Canadian National Railway right-of-way. To the south is Tract "B", which is also owned by the petitioners. (See attached map)

Issues and Discussion

Annexation Agreement

A draft of the annexation agreement is attached to this memorandum. The draft agreement outlines obligations by both the Owner and the City. Under State Statute, annexation agreements are considered by the City Council via a public hearing. Also by statute, annexation agreements may include the negotiation of provisions that are customarily considered by other boards and commissions, such as zoning and subdivision requirements. This provision excludes the rezoning of land which must be considered at a public hearing with the Urbana Plan Commission. The Plan Commission reviewed the Annexation Agreement at their meeting on September 8, 2005 and voted 7 to 1 to forward it to City Council with a recommendation of approval. In addition, a Special Use Permit will be granted under the agreement

Proposed Rezoning

Emulsicoat proposes to establish an asphalt blending, storage and distribution plant on the southerly portion of the site. Asphalt blending, storage and distribution plants are not listed within the Table of Uses in the Urbana Zoning Ordinance. An industrial use of that nature would not be permitted in the City's Agricultural zoning district. Therefore the rezoning to industrial is

necessary to accommodate the Emulsicoat plant. Such “*Other Industrial Uses*” may be permitted in the IN Industrial zoning district under the provisions of Special Use Permit review.

The City Council is also considering Plan Case 1952-SU-05 which is a request by Emulsicoat for a Special Use Permit for the asphalt plant on Lot 204 of North Lincoln Avenue Industrial Park #2A. Most of the proposed Emulsicoat plant will occupy Lot 204 fronting Saline Court and part will occupy Tract “A” which is adjacent to the rail line.

Annexation Agreement Provisions

The attached agreement outlines a variety of provisions for the property to be annexed. In addition to the provisions for zoning designations, the following provisions are highlighted:

- The City agrees to grant a Special Use Permit to allow an asphalt blending, storage and distribution facility on the site.
- The Owner agrees to prepare and record a minor subdivision plat per the Urbana Subdivision and Land Development Code to combine Tract “A” and Lot 204 of North Lincoln Avenue Industrial Subdivision #2A as shown on the attached map within 60 days of the approval of this agreement.
- The Owner agrees to petition for the disconnection of said Tract “A” from Champaign School District Unit #4 and request annexation to Urbana School District #116 per the Illinois State Statute within 60 days of annexation into Urbana, in order to facilitate a proposed extension of the City’s Enterprise Zone to this property.

Comment:

The City of Urbana and City of Champaign have a boundary agreement that locates the subject site within the expansion / annexation territory of the City of Urbana. However that agreement does not apply to the school districts which operate as different entities. The subject site is located within the Champaign School District Unit #4 territory. The City of Urbana asserts that a tax revenue generating business on this tract should benefit the taxing bodies of the host City, including the host city’s school district, particularly if economic development assistance is requested such as the proposed extension of the City’s Enterprise Zone.

In addition the Owner agrees to the following conditions of the Special Use Permit:.

1. The Special Use Permit shall be applicable only to the confines of Tract “A” as depicted in the map and legal description attached to the Annexation Agreement.
2. The Special Use Permit is applicable only to the asphalt blending, storage, and distribution plant proposed in the application and depicted in the Site Diagram attached to the Annexation Agreement.
3. The layout of the site shall be in substantial conformity with the Site Diagram attached to the Annexation Agreement. Any significant deviation from this Site Diagram shall

require an amendment to the Special Use Permit and shall include review by the Urbana Plan Commission and approval by the Urbana City Council.

4. The Owner agrees that all operations, development, construction, or additions to its asphalt blending, storage and distribution plant on Tract "A" as depicted in the map and legal description attached to the Annexation Agreement shall be in conformity with all applicable State and Federal regulations including Environmental Protection regulations pertaining to chemical emissions, particulate emissions, dust, noise, odor, and groundwater protection.

Staff feels that the provisions within the annexation agreement are in the interest of all parties.

Comprehensive Plan

The proposed zoning designation would be consistent with the 2005 Comprehensive Plan Future Land Use Map (see attached map). The maps identify the area as most appropriate for Industrial uses. In addition the annexation and rezoning of the site is consistent with the following Goals and Objectives of the 2005 Comprehensive Plan:

Goal 27.0

Create a variety of industrial and office developments that can benefit from existing amenities such as convenient access to interstate and rail services and close proximity to the University of Illinois.

Objectives

- 27.1 Encourage the expansion of existing and the creation of new industrial and office park developments in appropriate locations, using a variety of development tools.
- 27.3 Capitalize on development sites with rail and highway access to promote industrial opportunities.
- 27.4 Pursue annexation of new areas (such as North Lincoln Avenue, East University Avenue, North Cunningham Avenue and Oak Street) for industrial development.

Proposed Use

As a part of the annexation agreement, a special use permit for an asphalt blending, storage and distribution facility is requested to facilitate the blending, storage and distribution of asphalt products used primarily in the construction of pavements. A variety of products would be stored in bulk tanks for distribution to road construction projects and portable hot mix asphalt plants. The Illinois Environmental Protection Agency (IEPA) closely monitors operation of asphalt blending and storage facilities for compliance with emission levels, and an operating permit is required. The facility will be substantially similar in operation to that of the Emulsicoat facility located at 705 E. University Avenue.

The proposed asphalt plant facility will be entirely compatible with the intent of the IN Industrial district.

The La Salle National Bank Criteria

In the case of La Salle National Bank v. County of Cook (the “La Salle” case), the Illinois Supreme Court developed a list of factors that are paramount in evaluating the legal validity of a zoning classification for a particular property. Each of these factors will be discussed as they pertain to a comparison of the existing zoning with that proposed by the Petitioner.

1. *The existing land uses and zoning of the nearby property.*

This factor relates to the degree to which the existing and proposed zoning districts are compatible with existing land uses and land use regulations in the immediate area.

The proposed IN, Industrial Zoning District for the tract would be consistent with the 2005 Comprehensive Plan. The plan identifies the area as most appropriate for Industrial uses.

2. *The extent to which property values are diminished by the restrictions of the ordinance.*

This is the difference in the value of the property as zoned for Agriculture and the value it would have if it were rezoned to Industrial to permit the proposed use.

Only a small part of the north end of the subject parcel is in agricultural use. The majority of the lot is vacant. Under IN, Industrial zoning designation agricultural cropping uses may continue because they are permitted by right. The Agricultural Zoning District does not permit industrial uses. The owners intend to establish an asphalt blending, storage and distribution facility on the vacant part of the tract. In order to do this rezoning to the IN district is necessary. The value of the property would be diminished with the Agricultural Zoning District since it would not allow for the owners intended use.

It should be noted that City Planning Division staff are not qualified as professional appraisers and that a professional appraiser has not been consulted regarding the impact on the value of the property. Therefore, any discussion pertaining to property values must be considered speculative and inconclusive.

3. *The extent to which the ordinance promotes the health, safety, morals or general welfare of the public.*

4. *The relative gain to the public as compared to the hardship imposed on the individual property owner.*

Questions 3 and 4 apply to the current zoning restrictions: do the restrictions promote the public welfare in some significant way so as to offset any hardship imposed on the property owner by the restrictions?

The proposed zoning will contribute to the welfare of the community and the district by allowing the development of a tract of land with excellent access to the adjacent rail facilities.

5. *The suitability of the subject property for the zoned purposes.*

The issue here is whether there are certain features of the property which favor the type and intensity of uses permitted in either the current or the proposed zoning district.

The property is located in an area that is planned for industrial uses and especially suited for that because of the excellent access to the adjacent rail facilities, and because it is compatible with other nearby industrial uses.

6. *The length of time the property has been vacant as zoned, considered in the context of land development, in the area, in the vicinity of the subject property.*

Another test of the validity of the current zoning district is whether it can be shown that the property has remained vacant for a significant period of time because of restrictions in that zoning district.

The property had previously been used in part for railway purposes, and in part for agriculture. The area around the site has development potential due to the access to rail facilities. It is anticipated the area will continue to see development pressure for industrial use.

Summary of Findings

On September 8, 2005 the Urbana Plan Commission made the following findings in relation to the proposed annexation agreement and rezoning.

1. The proposed IN, Industrial zoning would be consistent with the current Industrial zoning in the general vicinity.
2. The proposed annexation agreement includes provisions for the development of an asphalt blending, storage and distribution facility that will provide a convenient service to the community.
3. The proposed rezoning would not be detrimental to the public health, safety or general welfare.
4. The proposed rezoning is consistent with the Goals and Objectives of the 2005 Comprehensive Plan.
5. The proposed rezoning is consistent with the Future Land Use Map designation of the area in the 2005 Comprehensive Plan.
6. The proposed rezoning appears to generally meet the LaSalle Case criteria.
7. The proposed annexation agreement includes the granting of a Special Use Permit to allow the establishment of an asphalt blending, storage and distribution plant on the subject tract under the "*All Other Industrial Uses*" land use category in the IN, Industrial Zoning District.
8. The granting of the Special Use Permit is consistent with the established criteria identified in Section VII-6 of the Urbana Zoning Ordinance in that the use of an asphalt plant:
 - a. will be conducive to the public convenience at this location;
 - b. will be designed, located, and proposed to be operated so that it will not be unreasonably injurious or detrimental to the district in which it will be located, or otherwise injurious or detrimental to the public welfare; and
 - c. will conform to the applicable regulations and standards of, and preserves the essential character of, the district in which is shall be located.

Options

The City Council has the following options in **Plan Case 2005-A-12a and 1954-M-05**. The City Council may:

- a. Approve the Annexation Agreement and rezoning.
- b. Approve the Annexation Agreement and rezoning with modifications if agreed to by the Owner/Developer.
- c. Deny the Annexation Agreement and rezoning.

Recommendation

Staff supports the Plan Commission recommendation to **APPROVE** the proposed annexation agreement and rezoning in **Plan Case 2005-A-12a and 1954-M-05** as presented for the reasons articulated above.

Prepared By:

Paul Lindahl, Planner I

Attachments:

Proposed Ordinance
Location Map
Current Land Use Map w/ Aerial Photo
Future Land Use Map
Site Diagram
Draft Annexation Agreement with attachments
Draft Minutes from September 8, 2005 Plan Commission

Cc:

Emulsicoat, Inc. Attn: Rick Beyers, 705 E. University Ave. Urbana, IL 61802	Apcon Corp. Attn: John Peisker 2906 N. Oak Street P.O. Box 848 Urbana, IL 61803
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Daily & Associates, Engineers, Inc. Attn: Thomas Jordan 1610 Broadmoor Drive Champaign, IL 61821	Thomas, Mamer & Haughey, LLP Attn: James Green P.O. Box 560 Champaign, IL 61824-0560
Shirley Squires 3913 N. Lincoln Avenue Urbana, IL 61803	Blake Weaver 130 W. Main Urbana, IL 61801
Ken Mathis Somerset Township Supervisor 2808 N. Lincoln Avenue Urbana, IL 61803	Rick Wolken Somerset Township Road District Commissioner 2294 County Road, 1600 East Urbana, IL 61802
Bruce Knight City of Champaign Planning Department 102 N. Neil Street Champaign, IL 61820	

H:\Paul L\4 - PLAN Cases\2005\Emulsicoat Cases, 2005-A-12, 1953-S-05, 1952-SU-05\2005-A-12a, Agreement\2005-A-12a
AnxAgre1954-M-05 Emulsicoat Tract A CC memo v2 lib rev final.doc

An Ordinance Approving and Authorizing the Execution of an Annexation Agreement

(A tract of land contiguous to the northwest corner of the City limits adjacent to the Canadian National Railway / Plan Case 2005-A-05a, Emulsicoat, Inc.)

WHEREAS, an Annexation Agreement between the City of Urbana, Illinois and Emulsicoat, Inc has been submitted for the Urbana City Council's consideration, a copy of which is attached; and,

WHEREAS, said agreement governs a tract of land totaling approximately 13.89 acres located approximately 825 feet west of Saline Court, and runs along the east edge of the Canadian National / Illinois Central railroad right of way, northward for approximately 2,500 feet and is legally described as follows:

TRACT "A"

PART OF THE EAST ½ OF SECTION 31 AND PART OF THE SE ¼ OF SECTION 30, T. 20 N., R. 9 E. OF THE 3RD P.M., CHAMPAIGN COUNTY, ILLINOIS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 201 OF NORTH LINCOLN AVENUE INDUSTRIAL PARK SUBDIVISION NO. 2, RECORDED MAY 30, 2002 AS DOCUMENT NUMBER 2002R17213 IN THE OFFICE OF THE RECORDER, CHAMPAIGN COUNTY, ILLINOIS, SAID CORNER LYING 500.00 FEET NORMAL DISTANCE EASTERLY OF THE CENTERLINE SOUTHBOUND MAIN TRACK OF THE CN-IC RAILROAD, SAID POINT ALSO LYING ON THE EASTERLY RIGHT-OF WAY LINE OF SAID RAILROAD; THENCE N. 89°46'39" W., (URBANA HORIZONTAL CONTROL BEARING), ALONG THE EXTENDED NORTH LINE OF SAID LOT 201, 267.80 FEET TO A POINT LYING 244.50 FEET NORMAL DISTANCE EASTERLY OF SAID CENTERLINE OF THE SOUTHBOUND MAIN TRACK; THENCE N. 17°39'30" E., PARALLEL WITH SAID CENTERLINE, 2414.15 FEET; THENCE N. 70°29'17" E., 164.94 FEET TO A POINT LYING 375.94 FEET NORMAL DISTANCE EASTERLY OF SAID CENTERLINE, SAID POINT ALSO LYING ON THE EASTERLY RIGHT-OF WAY LINE OF SAID RAILROAD; THENCE S. 01°13'35" E., ALONG SAID EASTERLY RIGHT-OF-WAY LINE, 383.31 FEET TO A POINT LYING 500.00 FEET NORMAL DISTANCE EASTERLY OF SAID CENTERLINE; THENCE

S. 17°39'30" W., ALONG SAID EASTERLY RIGHT-OF-WAY LINE, PARALLEL WITH SAID CENTERLINE, 2070.89 FEET TO THE POINT OF BEGINNING, CONTAINING 602,981 SQUARE FEET OR (13.843 ACRES), MORE OR LESS, ALL SITUATED IN CHAMPAIGN COUNTY, ILLINOIS.

WHEREAS, the City Planner of Urbana, Illinois, duly published notice on the 12th day of September, 2005 in the News-Gazette, a newspaper of general circulation in the City of Urbana, that a public hearing would be held with the City Council of Urbana on the matter of the proposed Annexation Agreement and the proposed rezoning of the tract; and

WHEREAS, the City of Urbana, Illinois also mailed notice of the public hearing to each of the Trustees of the Eastern Prairie Fire Protection District on the matter; and

WHEREAS, on the 26th day of September, 2005, the Urbana City Council held a public hearing on the proposed Annexation Agreement; and

WHEREAS, prior to the aforesaid public hearing held by the Urbana City Council, after due and proper notice, a public hearing was held before the Urbana Plan Commission on the 8th day of September, 2005, to consider the proposed Annexation Agreement and the rezoning from Champaign County AG-2, Agriculture to the City IN, Industrial Zoning District upon annexation in Plan Case No. 2005-A-12a and 1954-M-05; and

WHEREAS, The Urbana City Council has determined that the proposed Annexation Agreement is in conformance with the goals and objectives of the City of Urbana's Official Comprehensive Plan; 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. That the Annexation Agreement between the City of Urbana and the Emulsicoat, Inc., a copy of which is attached and hereby incorporated by reference, is hereby authorized and approved.

Section 2. That the Mayor of the City of Urbana, Illinois, is hereby authorized to execute and deliver, and the City Clerk of the City of Urbana, Illinois, 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 _____, 2005.

AYES:

NAYS:

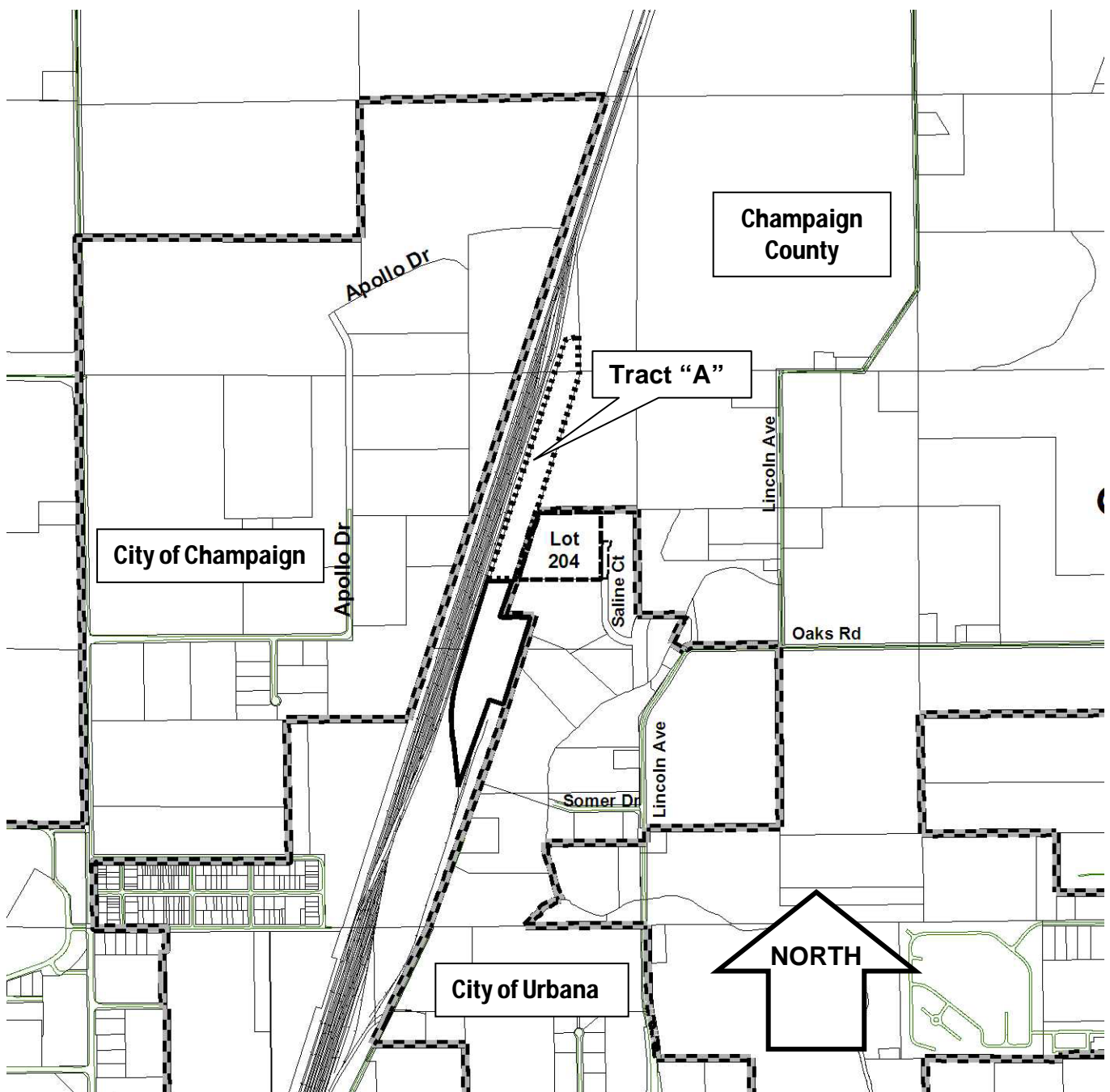
ABSTAINED:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____, 2005.

Laurel Lunt Prussing, Mayor

Location Map



Plan Cases:

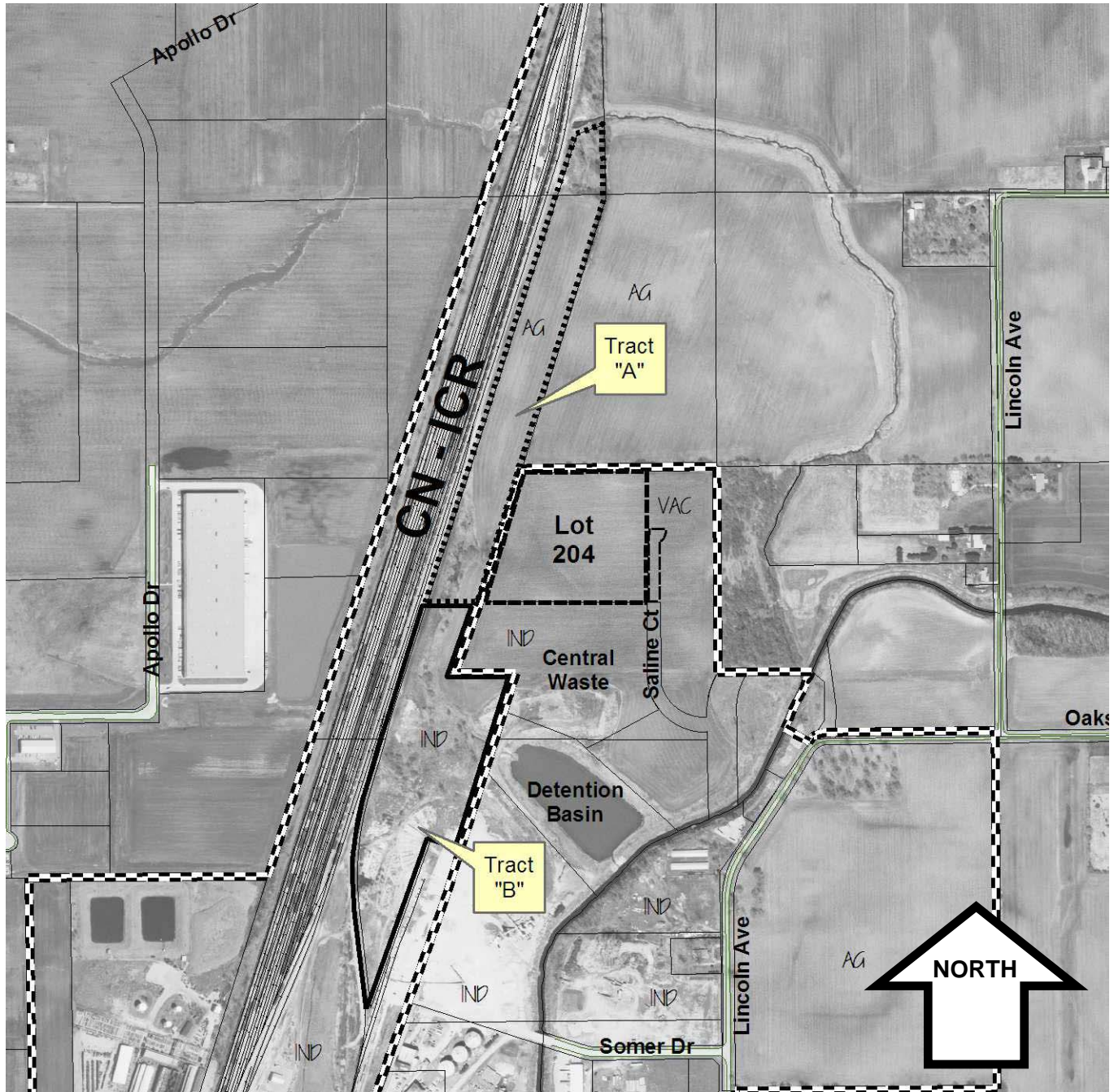
- 2005-A-12a Annexation Agreement
- 1954-M-05 Rezoning from County AG-2, Agriculture to City IN, Industrial
- 1953-SU-05 Special Use Permit for Asphalt Blending Plant
- 1952-S-05 North Lincoln Avenue Industrial Park subdivision #2A

Tract "A" = Subject Site of Annexation

City Limits [Dashed line symbol]



Existing Land Use Map



Plan Cases:

- 2005-A-12a Annexation Agreement
- 1954-M-05 Rezoning from County AG-2, Agriculture to City IN, Industrial
- 1953-SU-05 Special Use Permit for Asphalt Blending Plant
- 1952-S-05 North Lincoln Avenue Industrial Park subdivision #2A

Petitioner: Emulsicoat, Inc.

Prepared 9/22/05 by Community Development Services - pal

Subject Site = Lot 204
 Related Site = Tract "A"

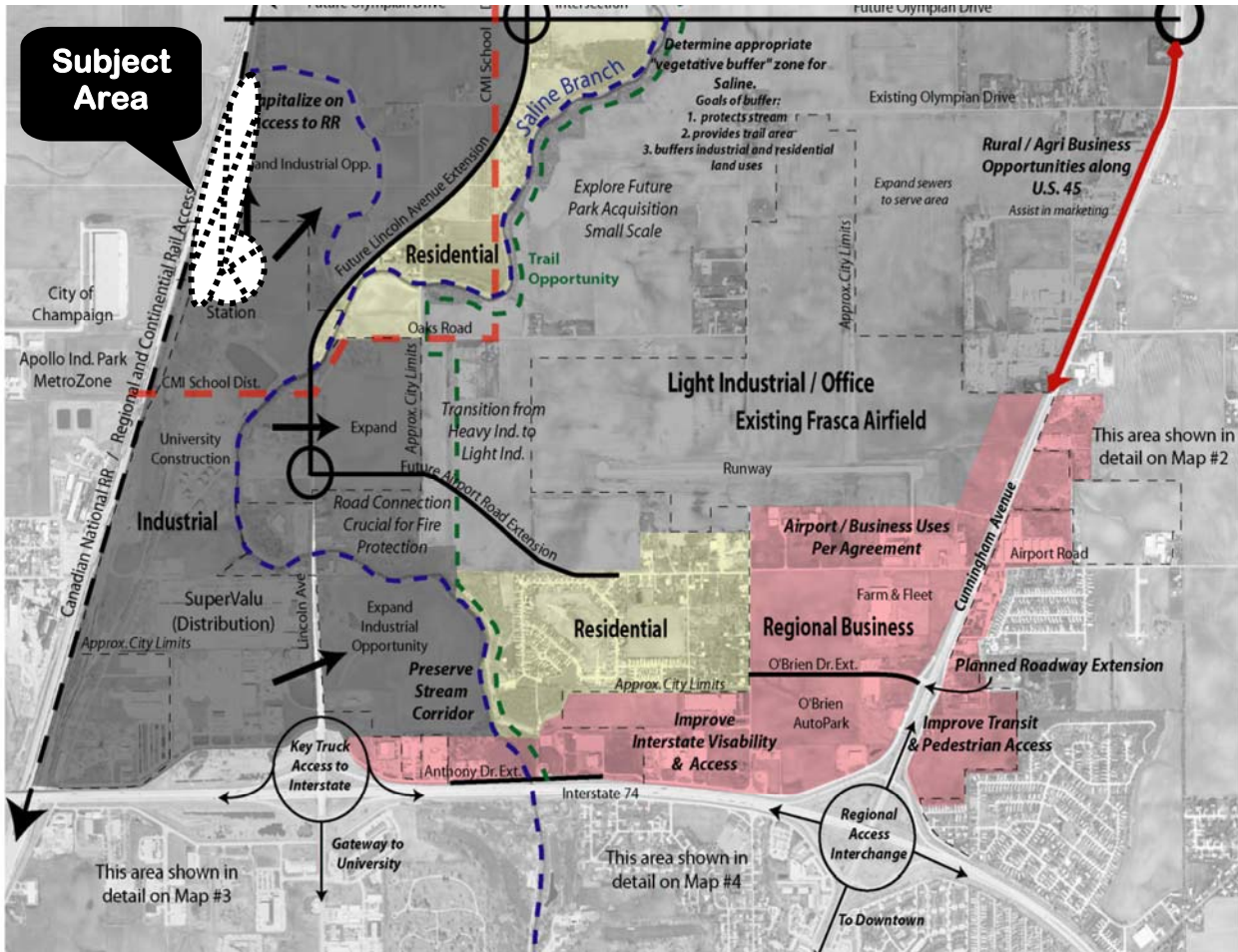
- AG - Agriculture
- VAC - Vacant
- IND - Industrial

City Limits - - - -



Future Land Use

Source: Detail from Comprehensive Plan Future Land Use Map # 1, p.72



NC
NC



Plan Cases:

- 2005-A-12a Annexation Agreement
- 1954-M-05 Rezoning from County AG-2, Agriculture to City IN, Industrial
- 1953-SU-05 Special Use Permit for Asphalt Blending Plant

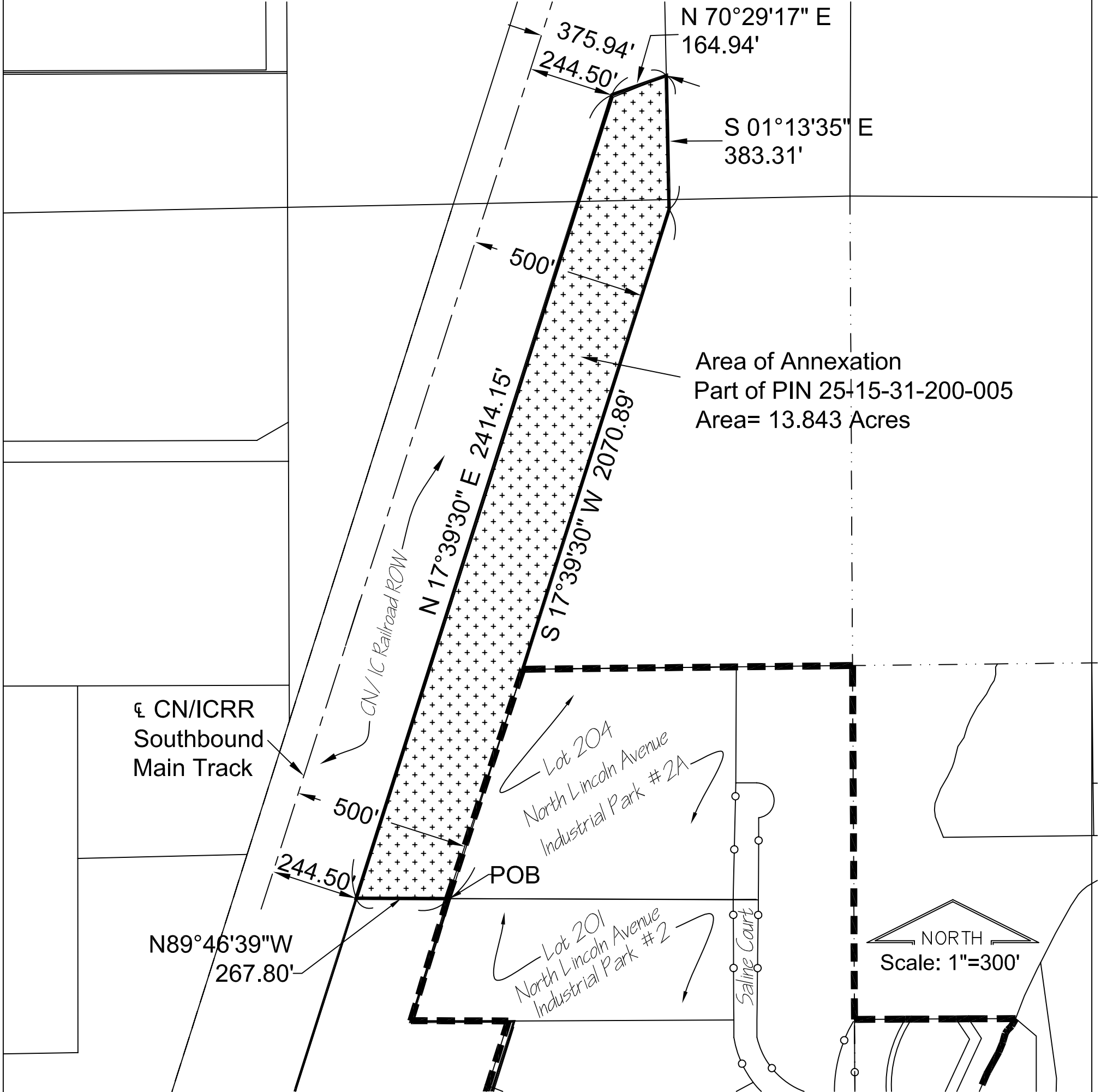
Petitioner: Emulsicoat, Inc.

Prepared 8/31/05 by Community Development Services - pal

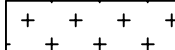


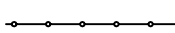
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Part of Permanent Parcel Number: 25-15-31-200-005



MAP SHOWING AREA
ANNEXED BY CITY
ORDINANCE #2005-09-136
CITY OF URBANA, ILLINOIS
CHAMPAIGN COUNTY
DATE: SEPTEMBER 26, 2005

- AREA OF ANNEXATION 
- EXISTING CITY LIMITS 
- NEW CITY LIMITS 
- RIGHT-OF-WAY 

**ENGINEERING
DIVISION** 

CITY ENGINEER/PUBLIC WORKS DIRECTOR

CAD: B.W.F. 09/21/05
CHECKED: W.R.G. 09/21/05

DRAFT Annexation Agreement

(Emulsicoat Incorporated / Tract "A" at CN Railway)

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 **Emulsicoat Incorporated** (hereinafter referred to as the "Owners"). 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, Emulsicoat Incorporated is the Owner of record of a certain parcel of real estate located along the east edge of the Canadian National / Illinois Central railroad right-of-way, the legal description of which real estate is set forth in Exhibit "A" attached hereto and referenced herein as Tract "A" or "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, the tract is contiguous to the City of Urbana, and both the Owner and the City determine that annexation of the tract is in the best interest of all parties; and

WHEREAS, the tract is currently zoned AG-2, Agricultural in Champaign County and the City and the Owners find it necessary and desirable that the tract be annexed to the City with a zoning classification of IN, Industrial, under the terms and provisions 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 with the city zoning district designation of IN, Industrial reflects the goals, objectives and policies set forth in the City's 2005 Comprehensive Plan, as amended from time to time; 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 OWNERS

The Owner agrees to the following provisions:

Section 1:

- (a) The Owner represents 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 approval of this agreement 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, the Owners 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 Owners shall file such written agreement with the City Clerk within thirty (30) days of the signing of such.
- (b) The 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. 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) The Owner agrees that if the Owner 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 accepts the City of Urbana zoning classification of IN, Industrial, as provided for in Article IV of the Urbana Zoning Ordinance. The Owner agrees that, unless changed upon the initiative of the Owner the said City zoning classifications for said tract shall remain in effect for the term of this Agreement, subject to the right of the Corporate Authorities to amend the Zoning Ordinance text even if such amendment affects the tract. The Owner agrees to use the tract only in compliance with the regulations and provisions of the Urbana Zoning Ordinance and this agreement as each may be amended from time to time.

Section 3. Special Use Permit: The Owner agrees to the following conditions of a Special Use Permit granted by Article II Section 3 of this Agreement, which will allow an asphalt blending, storage and distribution plant in the IN, Industrial zoning district as an “Other Industrial Use” which is permitted by Urbana Zoning Ordinance Table IV-1.

1. This Special Use Permit shall be applicable only to the confines of Tract “A” as depicted in the attached Exhibit “B” Map, and legally described in Exhibit “A”
2. The Special Use Permit is applicable only to the asphalt blending, storage, and distribution plant proposed in the application and depicted in the attached Exhibit “C” Site Diagram.
3. The layout of the site shall be in substantial conformity with Exhibit “C” Site Diagram. Any significant deviation from this Site Diagram shall require an amendment to the Special Use Permit granted herein and shall include review by the Urbana Plan Commission and approval by the Urbana City Council.
4. The Owner agrees that all operations, development, construction, or additions to its asphalt blending, storage and distribution plant on Tract “A” as depicted in the attached Exhibit “B” Map, and legally described in Exhibit “A” shall be in conformity with all applicable State and Federal regulations including Illinois Environmental Protection Agency regulations pertaining to chemical emissions, particulate emissions, dust, noise, odor, and ground water protection.

Section 4. Building Code Compliance: The Owner agrees to cause any 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 such construction. The Owner agrees to submit all building construction plans to the City of Urbana for review and further agrees to pay the required permit fees. The Owner further agrees to correct any deficiencies identified in said plan review.

Section 5. Subdivision: The Owner agrees to prepare and submit a minor subdivision plat per the Urbana Subdivision and Land Development Code to combine Tract “A” with Lot 204 of North Lincoln Avenue Industrial Subdivision #2A as shown on Exhibit B within 45 days of the approval of this agreement.

Section 6. School District Petition: The Owner agrees to petition for the disconnection of said Tract “A” from Champaign School District Unit #4 and request annexation to Urbana School District #116 per the Illinois State Statute, within 60 days of the approval of this agreement.

Section 7. Amendments: 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 IN, Industrial, in accordance with Article IV of the Urbana Zoning Ordinance upon annexation and as defined in the City of Urbana Zoning Ordinance as such exists at the time of annexation of tract. The Corporate Authorities agree that all applicable development regulations existing at the time of construction will apply to said tract.

Section 3. Special Use Permit: The Corporate Authorities agree with this annexation agreement to grant a Special Use Permit to allow the Owners to establish an asphalt blending, storage and distribution plant on Tract "A" under the "*All Other Industrial Uses*" land use category in the IN, Industrial Zoning District. The Corporate Authorities further agree that the granting of the Special Use Permit is consistent with the established criteria identified in Section VII-6 of the Urbana Zoning Ordinance in that the use of an asphalt plant:

- a. will be conducive to the public convenience at this location;
- b. will be designed, located, and proposed to be operated so that it will not be unreasonably injurious or detrimental to the district in which it will be located, or otherwise injurious or detrimental to the public welfare; and
- c. will conform to the applicable regulations and standards of, and preserves the essential character of, the district in which is shall be located.

Section 4. Enterprise Zone: The Corporate Authorities agree that upon annexation of said tract into Urbana School District #116, the Corporate Authorities shall request that the State of Illinois approve an amendment of the Urbana Enterprise Zone boundaries to include said tract.

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, lessees, 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 Owners agree that neither party will take any 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 Owners 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 Owners, 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 Owners 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 Owners 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:**

Owners:

Laurel Lunt Prussing, Mayor

Rick Beyers, VP & General Manager
Emulsicoat Incorporated

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 Description
- Exhibit B: Location Map
- Exhibit C: Site Plan

Exhibit "A"
Legal Description

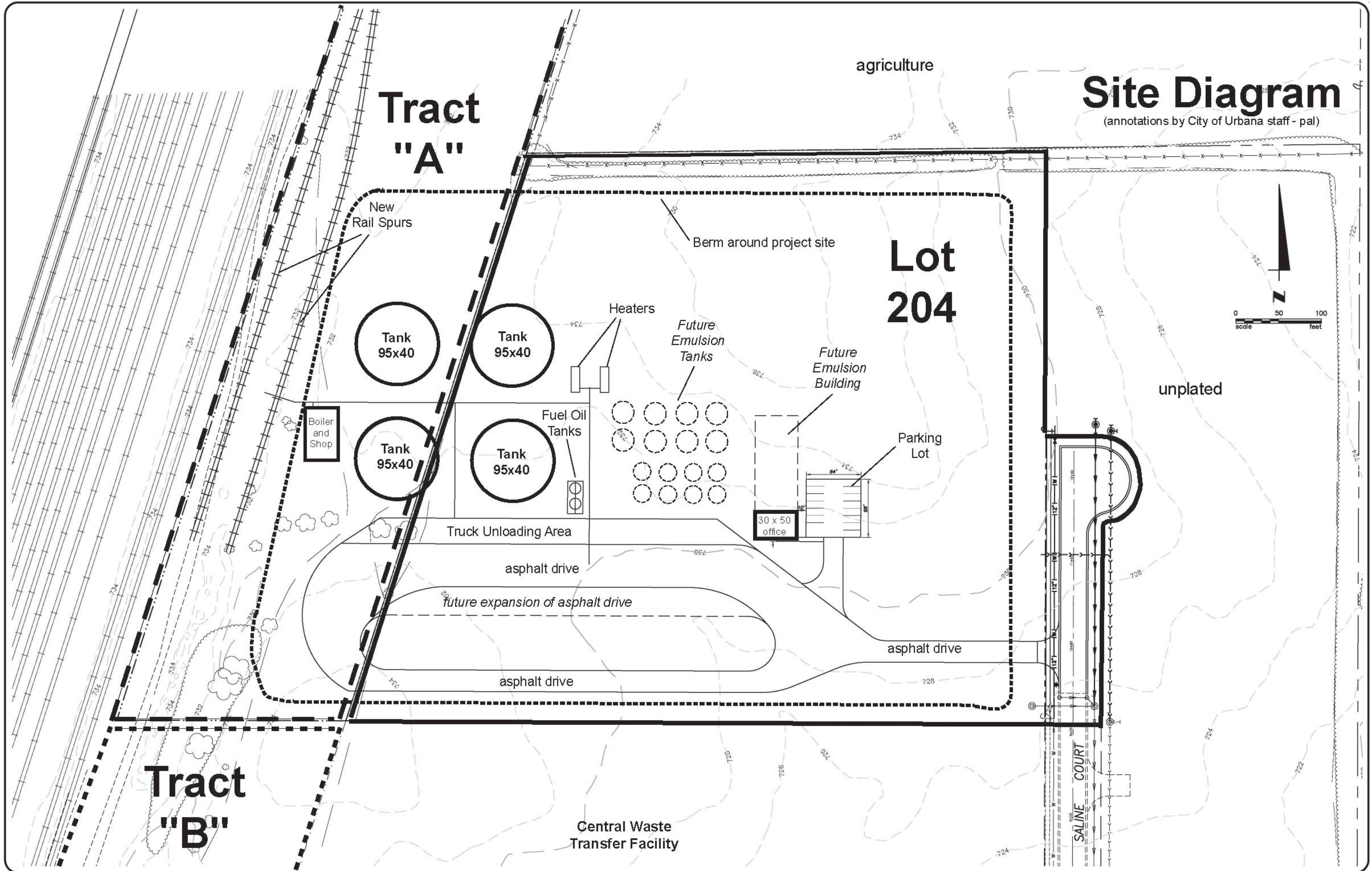
PART OF THE EAST ½ OF SECTION 31 AND PART OF THE SE ¼ OF SECTION 30, T. 20 N., R. 9 E. OF THE 3RD P.M., CHAMPAIGN COUNTY, ILLINOIS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 201 OF NORTH LINCOLN AVENUE INDUSTRIAL PARK SUBDIVISION NO. 2, RECORDED MAY 30, 2002 AS DOCUMENT NUMBER 2002R17213 IN THE OFFICE OF THE RECORDER, CHAMPAIGN COUNTY, ILLINOIS, SAID CORNER LYING 500.00 FEET NORMAL DISTANCE EASTERLY OF THE CENTERLINE SOUTHBOUND MAIN TRACK OF THE CN-IC RAILROAD, SAID POINT ALSO LYING ON THE EASTERLY RIGHT-OF-WAY LINE OF SAID RAILROAD; THENCE N. 89°46'39" W., (URBANA HORIZONTAL CONTROL BEARING), ALONG THE EXTENDED NORTH LINE OF SAID LOT 201, 267.80 FEET TO A POINT LYING 244.50 FEET NORMAL DISTANCE EASTERLY OF SAID CENTERLINE OF THE SOUTHBOUND MAIN TRACK; THENCE N. 17°39'30" E., PARALLEL WITH SAID CENTERLINE, 2414.15 FEET; THENCE N. 70°29'17" E., 164.94 FEET TO A POINT LYING 375.94 FEET NORMAL DISTANCE EASTERLY OF SAID CENTERLINE, SAID POINT ALSO LYING ON THE EASTERLY RIGHT-OF-WAY LINE OF SAID RAILROAD; THENCE S. 01°13'35" E., ALONG SAID EASTERLY RIGHT-OF-WAY LINE, 383.31 FEET TO A POINT LYING 500.00 FEET NORMAL DISTANCE EASTERLY OF SAID CENTERLINE; THENCE S. 17°39'30" W., ALONG SAID EASTERLY RIGHT-OF-WAY LINE, PARALLEL WITH SAID CENTERLINE, 2070.89 FEET TO THE POINT OF BEGINNING, CONTAINING 602,981 SQUARE FEET OR (13.843 ACRES), MORE OR LESS, ALL SITUATED IN CHAMPAIGN COUNTY, ILLINOIS.

**Exhibit ‘B
Location Map**

Site Diagram

(annotations by City of Urbana staff - pal)



MINUTES OF A REGULAR MEETING

URBANA PLAN COMMISSION

DRAFT

DATE: September 8, 2005

TIME: 7:30 P.M.

PLACE: Urbana City Building
400 South Vine Street
Urbana, IL 61801

MEMBERS PRESENT: Lew Hopkins, Ben Grosser, Randy Kangas, Michael Pollock, Bernadine Stake, Marilyn Upah-Bant, James Ward, Don White

MEMBERS EXCUSED: Laurie Goscha

STAFF PRESENT: Elizabeth Tyler, Director of Community Development Services; Paul Lindahl, Planner I; Teri Andel, Secretary

OTHERS PRESENT: Mary Atkinson, Joe Behrends, Rick Beyers, Hugh Gallivan, Jim Green, Dennis Roberts, Harold and Janet Sharlau, Susan Taylor, Scott Yates

1. CALL TO ORDER, ROLL CALL AND DECLARATION OF QUORUM

The meeting was called to order at 7:30 p.m., the roll call was taken, and a quorum was declared.

2. CHANGES TO THE AGENDA

There were none.

3. APPROVAL OF MINUTES

Mr. Ward moved to approve the minutes from the August 18, 2005 Plan Commission meeting as presented. Mr. Kangas seconded the motion. The minutes were approved by unanimous voice vote.

4. WRITTEN COMMUNICATIONS

There were none.

5. CONTINUED PUBLIC HEARINGS

There were none.

6. OLD BUSINESS

There was none.

7. NEW PUBLIC HEARINGS

Plan Case 1954-M-05 – A proposed rezoning of a 13.843-acre tract of land located at the extreme northwest corner of the city limits from its current Champaign County AG-2, Agriculture Zoning District, to the City of Urbana IN, Industrial Zoning District, upon annexation into the City of Urbana.

Plan Case 2005-A-12a – A proposed annexation agreement between the City of Urbana and Emulsicoat, Inc. for a 13.843 acre tract of land located at the extreme northwest corner of the city limits.

Plan Case No. 1952-SU-04 – Request by Emulsicoat, Inc. for a Special Use Permit to allow an asphalt blending, storage and distribution plant on a 10.94 acre site to be platted north of the current terminus of Saline Court located in Urbana’s IN Industrial Zoning District.

Chair Pollock opened all three cases at one time since they all had to do with the same project. He noted that the Plan Commission would need to make separate votes on each case.

Paul Lindahl, Planner I, gave the staff presentation for the rezoning request, annexation agreement and special use permit requested by Emulsicoat, Inc. He began by explaining that the special use permit request was for Lot 204, which had already been annexed into the City of Urbana. Tract A, which is located along the Canadian National Railway, was the property that the petitioner was proposing to annex into the City.

He described the surrounding properties noting the zoning and current land use of each, as well as that of the proposed properties for each case. He reviewed the site plan relating to the special use permit request. He explained that the description sheet for the IN, Industrial Zoning District does not list asphalt plant as one of the uses allowed. It does, however, have a “catch-all” category called, “All Other Industrial Uses Not Contained Herein”. Since an asphalt company is considered an industrial use but not listed on the description sheet, it falls under the “catch-all” category and requires a special use permit.

Mr. Lindahl pointed out that Tract A was currently zoned County AG-2, which converts to City AG, Agriculture. Because industrial uses are not permitted in the City’s AG Zoning District, the petitioner has filed a request for a rezoning of Tract A. He noted that as part of the annexation agreement, there would be another special use permit to allow part of the proposed asphalt plant to be located on Tract A.

He talked about drainage for the two properties. He explained that drainage for the entire two properties had been considered under the North Lincoln Industrial Subdivision Preliminary Plat. Drainage would be primarily served by the detention facility located a little south of Tract A and Lot 204.

He discussed issues that Emulsicoat, Inc. has with its current location on East University Avenue. The operations at this location are dependent upon availability of railway transport to supply raw materials and deliver their heated liquid asphalt products. There is only one other existing customer using the rail spur. Thus, there are a low number of train trips each week, and it may become uneconomical in the future for the rail company to provide service to Emulsicoat's current location. Emulsicoat, Inc. was planning for their future by considering relocation to the proposed area.

In addition, Emulsicoat, Inc. was interested in moving part of its operation to a location that does not have close-by residences. In the past, there have been complaints of odor being emitted by Emulsicoat, Inc. into the air. As a result, Emulsicoat has had to invest extra money into mitigation requirements.

Mr. Lindahl reviewed the criteria that pertained to the special use permit according to Section VII-6 of the Urbana Zoning Ordinance. He presented staff recommendations, which were as follows:

Plan Case # 1954-M-05 and 2005-A-12a: Based on the evidence presented in the written staff report, and without the benefit of considering additional evidence that may be presented during the public hearing, staff recommended that the Plan Commission forward these two cases to the Urbana City Council with a recommendation for approval.

Plan Case # 1952-SU-05: Based on the evidence presented in the written staff report, and without the benefit of considering additional evidence that may be presented during the public hearing, staff recommended that the Plan Commission recommend approval of the Special Use Permit as presented to the Urbana City Council with the following conditions:

- 1. The Special Use will be in effect only upon the City's approval and recording of a Major Subdivision Final Plat, which will legally create Lot 204 in substantial conformity with the attached Exhibit "H": Draft Final Plat of North Lincoln Avenue Industrial Park #2A.*
- 2. This Special Use Permit shall be applicable only to the confines of Lot 204 as depicted in attached Exhibit "E" Site Diagram, and legally described in Exhibit "G".*
- 3. The Special Use Permit is applicable only to the asphalt blending, storage, and distribution plant proposed in the application and depicted in the attached Exhibit "E" Site Diagram.*

4. *The layout of the site shall be in substantial conformity with Exhibit “E” Site Diagram. Any significant deviation from this Site Diagram shall require an amendment to the Special Use Permit and shall include review by the Urbana Plan Commission and approval by the Urbana City Council.*
5. *The activity allowed by the Special Use Permit on the site shall be limited to the blending, storage, and distribution of liquid asphalt, tar, and emulsion materials as described in the attached Exhibit “F” Special Use Application / Petition.*
6. *The Owner agrees that all operations, development, construction, or additions to its asphalt blending, storage and distribution plant on Lot 204 as depicted in the attached Exhibit “E” Site Diagram, and legally described in Exhibit “G” shall be in conformity with all applicable State and Federal regulations including Environmental Protection regulations pertaining to chemical emissions, particulate emissions, dust, noise, odor, and ground water protection.*
7. *The Owner agrees that any new development, construction, or additions on said Lot 204 shall be in conformance with all City of Urbana building, electrical, fire, and plumbing codes, orders or regulations in effect at the time of such construction. The Owner agrees to submit all building construction plans to the City of Urbana for review and further agrees to pay the required permit fees. The Owner further agrees to correct any deficiencies identified in said plan review.*

Mr. Hopkins asked if the special use permit request for Tract A would be granted through the approval of the annexation agreement. The special use permit for Lot 204 was a separate case that required approval of the City Council. The proposed asphalt plant would be located on both Tract A and Lot 204. Was this correct? Mr. Lindahl replied that was correct. The proposed facility would be located primarily on Lot 204, which was currently in the City limits. The rail access, part of the tanks, part of one of the water heating facilities would be proposed to be built on Tract A. The Plan Commission would specifically vote on the special use permit request for Lot 204. Ms. Tyler noted that this was the quickest way to do this in terms of processing the cases through the City. Otherwise, it would take considerably longer.

Ms. Stake referred to page 3 of the written staff report for the Special Use Permit request for Lot 204. She inquired as to what “...more intensive industrial uses which may have wider reaching environmental effects are permitted as special uses...” meant. What were the wider environmental effects that would require a special use permit? Mr. Lindahl responded by saying that an industrial plant of this nature, potential environmental effects might be noise, larger degree of truck traffic, or dust, for example.

Ms. Stake questioned if the petitioner used water. She wondered about the dust. Would the air quality not be good in the area because of the mixing of chemicals? Mr. Lindahl referred Ms.

Stake to ask this question of the petitioner. He stated that he was not an expert on the types of industrial chemicals that Emulsicoat uses or on the emissions those chemicals might have. He mentioned that Emulsicoat, Inc. was closely regulated by the Environmental Protection Agency (EPA) regulations for emissions of chemical concentrations, particulates in the air, and things of this nature. Elizabeth Tyler, Director of Community Development Services Department, explained that Emulsicoat, Inc. needed the special use permit because an asphalt plant use was not specifically listed in the Urbana Zoning Ordinance's Table of Uses.

Ms. Stake asked if all other industrial uses were monitored by the EPA. Ms. Tyler stated that it depended on what the operation was. EPA deals with waste generation, noise, dust levels, water emissions, and they protect our environment by requiring permits for a number of operations.

Mr. Grosser pointed out that the site plan in the special use permit packet was different than the site plan in the rezoning/annexation packet. He wanted to know which one was more accurate and up-to-date. Mr. Lindahl answered by saying that the Site Plan, Exhibit C, from the annexation agreement packet was the most current. Ms. Tyler explained that the petitioner had marked the attachments when they submitted the application. Meanwhile, the petitioner's engineer continued to work on the site plan and make changes to it.

Mr. Grosser inquired if there had been complaints from the residential neighborhood near the existing location. What was the nature of those complaints? Ms. Tyler stated the complaints were historic in nature and had to do with the odor that was being emitted from the plant. Emulsicoat, Inc. had to do extensive abatement to control odors. This is one of the reasons why the petitioner has proposed moving to the new location. It is further from residences. Because their current location is so near to residences, Emulsicoat, Inc. has had to do some extraordinary mitigation measures. The petitioners could speak more to the system that they were required to install and how it has helped. She does not know of any complaints being made in recent years.

Mr. Pollock stated that the Future Land Use Map shows a residential designation for the land to the east of the future Lincoln Avenue. He wondered how much residential already existed in this area and how far away this area was from the proposed facility? Mr. Lindahl replied it would be about half a mile. There were a number of rural residences located in the area that Mr. Pollock was talking about.

Mr. Pollock noticed that the Future Land Use map did not show what the Comprehensive Plan designation was for the area to the north of the proposed site. Mr. Lindahl mentioned that the Comprehensive Plan stops at Olympian Drive. Mr. Pollock commented that it appeared then that there was a small residential area within about a half of a mile and anything closer than that was all zoned or designated as Industrial.

Jim Green, lawyer for Emulsicoat, Inc., stated that they believe the proposal makes sense from a zoning and planning standpoint. It was consistent with Urbana's 2005 Comprehensive Plan.

Rick Beyers, Manager for Emulsicoat, Inc., talked about the odor issues. He said that it had happened around 10 years ago. It was a nuisance problem, rather than a health problem. They were currently using some of the best odor control in the whole country. They would be using

similar equipment at the new proposed facility. They have not had any complaints in the last two years.

Although they would not be moving the complete plant at the present time, they would be removing about 50% of their truck traffic. There is a possibility that the rest of the plant would be moved in the future. They could not financially move the entire plant at this time.

He mentioned that their current location is within 200 feet of the nearest residential area. He stated that they have outgrown their current location. They need to expand, and it is not possible in their current location. At the proposed site, they would sit next to a waste transfer station, rail yard, another asphalt plant, a concrete plant, and a rail switch. They were also concerned about the possibility of the rail becoming limited in the future at their current site. They believe that this move would be the ideal situation.

Mr. Hopkins inquired if there were types of operations that would remain at the existing plant that would be different if they were moved to the new location from what is allowed under the proposed special use permit. Mr. Beyers stated that the company would be doing the same thing as they currently are doing. They would only be moving part of their hot-oil operations. They currently make about 20 different products, some of which use distillates, which have a little bit more odor. They would probably be doing most of the hot-oil products at the new location and keep the emulsion at the current facility, which was about 30% of their business. Mr. Hopkins asked if the proposed special use permit conditions would cover anything that Emulsicoat moved to the new location if they moved the entire plant. Mr. Beyers said yes.

Mr. Grosser inquired about the petitioner's history of compliance with the EPA regulations. Have the EPA had any complaints? Mr. Beyers replied that the EPA could not ever find anything wrong with their operations other than the fact the nearby neighborhood was complaining about the odor. It was listed as a nuisance. Everyone has a different tolerance for odors. Emulsicoat, Inc. has dealt with these complaints as good as anyone in the country had dealt with similar complaints. Any time new technology had come out, Emulsicoat had gone with the new technology. They have spent millions of dollars at the current facility to deal with the odor issues. There were plants all over the country that have never touched the odor issues. The EPA has never had any problems. In fact, Emulsicoat has already applied for new permits for the new facility because it is a lengthy process.

Mr. Grosser inquired if the EPA inspected on a regular basis or what was the process. Mr. Beyers stated that the EPA comes by on a regular basis to perform a spot check.

Mr. Grosser questioned if there had been any other types of complaints other than odor in the past. Mr. Beyers replied no.

Ms. Stake asked if there was any toxicity in the odor. Where did the odor come from? Mr. Beyers answered by saying that their parent company, the Asphalt Institute, and several other agencies have been dealing with this for the last twenty years. They have many tests for asphalt fumes. They have never found any toxicity or other health problems.

Ms. Stake inquired if the petitioner used water for anything. Mr. Beyers stated that they use water for emulsion. Ms. Stake asked if they would be using water in the new facility. Mr. Beyers replied not at the current time. If, however, they move the entire plant to the new location, then they would use water. Ms. Stake questioned how much water they use. Mr. Beyers replied about three million gallons for the process. He added that they have backflow preventers, and the EPA regulates the water continuously. There were no issues with water. Ms. Stake wondered if any of the water would run into the Saline Ditch. Mr. Beyers said no. They would have a Spill Prevention Plan. The complete facility would be diked, so that no water would get off of their property. He mentioned that they were regulated by the government on this as well. He noted that asphalt does not penetrate soil. It cools off before it could penetrate.

Mr. Beyers went on to say that their product is used on every parking lot and County road system. Without asphalt, there would not be a road system. Their product was not toxic or it would not be used on the roads and parking lots. It does have an odor, and they feel that they have it controlled. As far as safety, temperature of the hot liquid is their biggest concern. They require their employees to get health checks on a yearly basis and have done so for several years. Asphalt is not a dangerous product.

Mr. Kangas asked if Emulsicoat, Inc. moved the entire operation to the new proposed site would they have enough room for the entire operation and for potential future expansion. Mr. Beyers said yes. He stated that the site plan shows a lot of smaller tanks. He pointed out that these smaller tanks would be for future expansion. In addition, they could also build a couple of large storage tanks. He went on to say that the only building on Tract A would be a couple of the smaller storage tanks and the rail spur for their current operations. The rest of Tract A could be used for expansion in the future.

Mr. White inquired if the petitioner planned to use the same equipment and design in the new facility. Mr. Beyers replied yes for now. It is the best on the market right now. It is a vapor recovery system. Mr. White questioned if the petitioner planned to keep the odor under control and not slack off since the distance between them and any residential areas would be greater. Mr. Beyers said that they would not slack off on the odor control. They planned to operate the new facility in the same manner that they presently operate.

Ms. Stake commented that she was pleased about the petitioner using the rail system. Do they own Tract A? Mr. Beyers said yes.

Mr. Hopkins asked if the berm around the edge of the site or around the tanks. Scott Yates, of Heritage (Parent company for Emulsicoat, Inc.), responded by saying that the berm would go around the perimeter of the entire property. Mr. Lindahl remarked that Exhibit "C", which is attached to the draft annexation agreement, is the most current site plan being proposed. It shows the berm going around the entire property.

Mr. Pollock suggested that staff get rid of any site plans that are not needed and only submit the most current site plan to the City Council. In addition, there was a typo on the case number for the special use permit on the agenda. It should read as Plan Case No. 1952-SU-05.

He went on to say that about ten years ago the City received massive complaints from the neighborhood near the existing location. The existing facility on University Avenue is right in the middle of a residential neighborhood. Emulsicoat, Inc. was in the process of expanding. The EPA came out and investigated a number of times after receiving a number of complaints. They found no proof that there were harmful effects, but regardless some of the residents said that they felt ill due to the odor. The reason he was asking questions about how close the nearest residential areas were to the proposed new location was because it would be much easier to ask about this ahead of time rather than after the fact. Emulsicoat, Inc. spent a lot of money on installing scrubbers and hoods to keep the odor down, even though they did not have to legally.

Janet Sharlau, resident of 3610 North Lincoln Avenue, pointed out that her family lives about a ¼ of a mile away from the proposed sites. Tract A butts up to her family's farmland, Squire Farms, on the north side. One of the property owners of Squire Farms was not notified by the City of this meeting, and this property owner would be impacted.

She went on to say that she was against changing Tract A into an Industrial Zoning District. It is currently farmland and has always been farmland. There was a row of trees on Tract A that would have to be removed before the petitioner could build on the site. This would allow all of the noise from the railroad to impact her home.

Another concern is that the proposed property will be close to where Olympian Drive is being proposed. Olympian Drive would also be going through Squire Farms, which creates an interest of business owners in her land. When and if Olympian Drive happens, her family would like the benefit of having businesses on their property. The types of business they would be interested in, such as fast food or retail businesses, would not be interested in locating there because of the Industrial zoning being so close.

The proposed site has been zoned Agriculture for a reason, because that was what the desire was. Two or three people decided that they wanted to put industry in the proposed vacant area. She remarked that the vacant area was her home and had belonged to her parents. It is not just a piece of land. Their home was just two years away from becoming a centennial farm.

Ms. Sharlau noted that part of the entry to and from the plant was said to be on the new Lincoln Avenue, which she stated that they had not seen any plans of this moving forward at this point. She thought Olympian Drive would first need to be constructed, and there were not any funds for that project. Therefore, they were a long way off from ever getting some structured road system in the proposed area.

She believed that the asphalt use was listed under Other Industrial Uses in the Industrial Zoning District description sheet to protect the residents in the area. Her family will be affected by the odor and noise. Emulsicoat, Inc. plans to operate 24 hours a day from May to November. The new facility would only be a ¼ of a mile away from her home. It would be very disruptive to their lives. She wanted to know how City staff could say that it would not be detrimental to her family's safety or general welfare.

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She showed pictures of the current area. She stated that the County was having to put coal packs on the roads due to the heavy traffic tearing them up. Some of the pictures showed stacks of asphalt and concrete behind her aunt's house down the road.

Mary Atkinson and Joe Behrends, residents of 3609 North Lincoln Avenue, pointed out that they live on the west side of Lincoln Avenue across the road from the Sharlau's home. Ms. Atkinson stated that four years ago they lost their home to the University of Illinois. They were lucky enough to find the five acres that they currently own and have built a home on it and improved the property. They intend to leave their property to their children.

She mentioned that they were concerned about the row of trees on Tract A. We have to think about what the world is coming to. We need to keep the trees. After all, the City of Urbana is known for its trees.

Mr. Behrends mentioned that they were not notified of this meeting. They learned of the meeting through a neighbor. He wondered how many other people in the neighborhood were not notified of this meeting or of this proposal. He was concerned about the dust, odor, lights, etc. They moved there because they like the rural country, and they believe that it should stay that way.

Mr. Grosser inquired if Mr. Behrends property was located in the City limits. Mr. Behrends replied no.

Harold Sharlau, resident of 3610 North Lincoln Avenue, reaffirmed that many other residents in the area did not get a notice for this meeting as well. They did not get a copy of the staff report until they arrived at this meeting. Therefore, he requested that the Plan Commission table these cases until the neighbors have had a chance to review this information and do some research on the noise level and odor. It seems like these cases are being rushed through.

Mr. Pollock asked City staff to briefly review the notification process. Ms. Tyler explained that staff notifies property owners within 250 feet of a proposed site. She noted that they tailor the notices to capture neighborhoods. Unfortunately in these cases, they were not able to capture everyone who was interested. Mr. Lindahl clarified that according to the Urbana Zoning Ordinance, staff was supposed to send a notice to the owners of record of the properties within 250 feet of a proposed site. For certain types of properties, staff use a proxy for the owners of record, because the owners of record are not always available. The proxy they use is the person who receives the tax bill for a neighboring property.

Mr. Grosser inquired if staff had placed a sign up at the proposed location. Mr. Lindahl replied no [due to lack of street access to the site].

Mr. Green and Mr. Beyers re-approached the Plan Commission to address some concerns that were mentioned. Mr. Green pointed out that Emulsicoat, Inc. did not currently own Lot 204. They were trying to expedite this process, because they have an agreement to exchange land directly south of Tract A for Lot 204 with MACC of Illinois. They look at this as a win-win situation, because then Emulsicoat, Inc. would have road access to Tract A along Saline Court.

He talked about the current truck traffic at the facility on east University Avenue. They had a lot of truck traffic in the Five Points vicinity along with the residential neighborhood, which created many inconsistencies with local traffic and the redevelopment of Five Points. Sixty percent of their truck traffic would be eliminated from this area by moving part of their operations to the proposed location. Truck traffic would occur south of the residential homes on Lincoln Avenue.

Mr. Kangas questioned how long the EPA permit process took. Mr. Beyers replied that it takes several months to apply for a permit from the EPA. This was the reason why they had already applied for permits at the new location.

Mr. Pollock inquired as to when the petitioner planned to begin building the new facility if these cases were approved by City Council. Mr. Beyers said that they would begin construction as soon as the plans are approved. He explained that another reason why they are trying to expedite this process is to be able to do winter fill by railway.

Mr. Green mentioned that this area was obviously an industrial area with Lot 204 having already been zoned industrial for a long time now. Tract A calls for industrial zoning in the 2005 Urbana Comprehensive Plan. There was already a Central Waste and a recycling plant located in the area. An asphalt plant would be less intrusive than some of the other heavy industrial uses already located in the area. Mr. Beyers said that some of the residents had talked about stockpiles of asphalt and concrete that currently exist. If the agreement to exchange properties goes through, then some of those stockpiles might be moved back to Tract B. Truck traffic would not be going by the residential homes, because he did not believe that the roads were approved for the truck weight limits. UPS and JM Jones are already using the part of Lincoln Avenue that Emulsicoat would be using. They do not want to start off on a bad track with their neighbors; however, they feel that this would be the best location for Emulsicoat, Inc. One other thing is that there would be no dust. They dealt with liquid products.

Ms. Stake wondered how much light they would need in order to operate 24 hours a day. Mr. Beyers responded by saying that they would use only enough light to be able to safely see. They would use plant lighting. The night operations would be limited. Most of their truck traffic starts at 3:00 a.m. and goes till noon. The lighting would be regulated as well. It would not be directed towards the residential homes. It would be directed towards Emulsicoat's property.

Mr. Hopkins asked where the right-of-way establishment for the Lincoln Avenue realignment stood. Had the right-of-way been determined? Ms. Tyler noted that the 2005 Urbana Comprehensive Plan shows the realignment. The aerial photo shows the portion of Lincoln Avenue that had already been reconstructed. Ms. Stake inquired who was paying for the reconstruction. Ms. Tyler said that it was a cost share with the City of Urbana, Champaign County and Central Waste.

Ms. Upah-Bant commented that she keeps going back to the 2005 Comprehensive Plan, and she sees the whole area slated for industrial development. She wondered why they did not hear some of these complaints during the process to update the Comprehensive Plan during the last three years.

Mr. Ward stated that when he looks at the Future Land Use map and at the future Lincoln Avenue extension, it appeared to him that Lincoln Avenue would almost go through the homes that were under discussion. Ms. Tyler did not believe that there would be any acquisition of homes. However, there might be acquisition of the right-of-way. She noted that there will be several phases of design. The location study set the general alignment, which had already been completed. The final engineering or any kind of right-of-way acquisition has not yet occurred.

Mr. Ward commented that this was an area that for quite some time had been under some jeopardy in terms of a change in land use. Clearly, the Future Land Use map indicates that the two properties were intended for future industrial expansion.

Ms. Stake did not feel that this was an emergency for them to vote on at this meeting. She believed that the Plan Commission should table the cases to give the residents a chance to talk about it. Therefore, she moved that the Plan Commission table these cases for two weeks to the next scheduled meeting. Ms. Upah-Bant seconded the motion.

Mr. Hopkins stated that although he sympathizes with the concerns that have been raised, he thought that the planning documents, the existing right-of-way documents, the planning for Olympian corridor, and the planning for the Lincoln Avenue realignment have addressed these concerns and identified this area as being appropriate for industrial use. The 2005 Comprehensive Plan particularly talks about taking advantage of the rail access in this area. The proposed use was one of two or three industrial activities in our region that was still taking advantage of rail access in their processes. Therefore, he believed that the Plan Commission had the backing to act upon these cases at this meeting.

Mr. Grosser agreed with Mr. Hopkin's comments. He added that Emulsicoat was a business willing to make a move that would be good for the community. They need to expand their business and are trying to move part of their operations to an area that would be more appropriate for this type of use.

Mr. Ward agreed with Mr. Hopkins and Mr. Grosser. He has a great deal of sympathy for the landowners, but this was not a new issue for this area. Central Waste was already located about the same distance from the homes. This area has been designated industrial in the Urbana Comprehensive Plan for quite some time. The plans for the extension of Lincoln Avenue and the development of Olympian Drive are not new. He did not see what the value of postponing this for two weeks would be except to simply delay.

Ms. Stake remarked that the City staff and those working with these types of issues have known for a long time that this area was designated to be industrial. However, the residents in the County do not always know what is going on in the City of Urbana until it really hits them. It would not hurt the City of Urbana to give the residents a chance to talk about it.

Ms. Tyler noted that Emulsicoat, Inc. does have urgency in their schedule of getting this approved and beginning construction. It has to do with the land transfer and the weather in order to begin construction. However, there may be a one week delay in presenting this to the City Council, so there would be three weeks remaining before final action.

Mr. Pollock called for a hand vote on the motion. The motion failed by a vote of 2 to 6.

Mr. White moved that the Plan Commission forward Plan Case No. 1954-M-05 to the Urbana City Council with a recommendation for approval. Mr. Ward seconded the motion.

Mr. Pollock commented that if he lived in the area that these folks are in, then he would not be happy about this. It will impact them. An extra two weeks will not gain too much. When he looks at the Future Land Use map and the other uses that have been allowed, the proposed rezoning would be appropriate. This is an area that is near the rail system, the proposed use is industrial and it is surrounded by industrial. In fact, the proposed site is surrounded by uses that are very likely more intensive than what was being recommended. Action is being taken that would be of great benefit to one particular neighborhood already in the City. He believed that this would be an appropriate thing to do for the benefit for the City in general, even if it might not be great for the folks living next door.

Ms. Upah-Bant agreed that was why she would probably vote in favor of it as well. It would benefit more people than it would harm. She would not be very happy about it either, but when she looks at the other possible uses in the Industrial Zoning District, the proposed use was not the worst thing that could go in there. From what she has heard about Emulsicoat, Inc., they sound like a pretty decent neighbor.

Roll call on the motion was as followed:

Mr. Grosser	-	Yes	Mr. Hopkins	-	Yes
Mr. Kangas	-	Yes	Mr. Pollock	-	Yes
Ms. Stake	-	No	Ms. Upah-Bant	-	Yes
Mr. Ward	-	Yes	Mr. White	-	Yes

The motion was passed by a vote of 7-1. Ms. Tyler noted that this would go before the City Council either on September 26, 2005 or October 3, 2005, depending on when the notice gets placed in the newspaper.

Mr. White moved that the Plan Commission forward Annexation Case No. 2005-A-12a to the Urbana City Council with a recommendation for approval. Mr. Ward seconded the motion. Roll call was as follows:

Mr. Hopkins	-	Yes	Mr. Kangas	-	Yes
Mr. Pollock	-	Yes	Ms. Stake	-	No
Ms. Upah-Bant	-	Yes	Mr. Ward	-	Yes
Mr. White	-	Yes	Mr. Grosser	-	Yes

The motion was passed by a vote of 7-1.

Mr. White moved that the Plan Commission forward Plan Case No. 1952-SU-05 to the Urbana City Council with a recommendation for approval. Mr. Ward seconded the motion.

Mr. Grosser asked that staff ensure that the correct copy of the site plan be submitted to the City Council for approval.

Roll call was as follows:

Mr. Kangas	-	Yes	Mr. Pollock	-	Yes
Ms. Stake	-	No	Ms. Upah-Bant	-	Yes
Mr. Ward	-	Yes	Mr. White	-	Yes
Mr. Grosser	-	Yes	Mr. Hopkins	-	Yes

The motion was passed by a vote of 7-1.

8. NEW BUSINESS

There was none.

9. AUDIENCE PARTICIPATION

There was none.

10. STAFF REPORT

Ms. Tyler reported on the following:

- Canaan Baptist Church Special Use Permit was granted by the City Council with the understanding that October 31, 2005 would be the completion date for the parking lot as well as the plan for the unmet parking.
- The City Council was working on creating goals for staff to work on reaching. Some of these goals include some zoning items such as creation of a Conservation District and the definition of family for the Zoning Ordinance.
- The next scheduled meeting for the Plan Commission is set for Thursday, September 22, 2005. There will be a special use permit for the Church of the Living God.
- The Planning Manager position is close to being filled. She hoped that the Plan Commission would get an opportunity to meet the top candidate.

11. STUDY SESSION

There was none.

12. ADJOURNMENT OF MEETING

Chair Pollock adjourned the meeting at 9:10 p.m.

Respectfully submitted,

Elizabeth Tyler, City Planner
Urbana Plan Commission