



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, City Planner

DATE: June 1, 2006

SUBJECT: Plan Case 1992-M-06: A request to rezone 801 E. Kerr from R-3, Single and Two-Family Residential to AG, Agriculture

Introduction

The Urbana Zoning Administrator has requested that the property at 801 E. Kerr be rezoned from R-3, Single and Two-Family Residential to AG, Agriculture. The property was recently involuntarily annexed (see Ord. No. 2006-04-052) into the City. During the annexation case, staff was unable to locate an owner, though American Legion Post 71 maintains the property. Table V-1. Table of Uses states that cemeteries are only permitted in the AG and CRE Zoning Districts, and that such uses require a Conditional Use Permit. The proposed rezoning will ensure the property is consistent with the 2005 Urbana Comprehensive Plan and surrounding land uses.

Issues and Discussion

The County zoning for this property was R-3, Multiple-Family Residential. As part of the annexation, the property was directly converted to City R-3. Ideally, the property would have been rezoned to City AG as part of an annexation agreement in order to ensure the continued cemetery use. However, staff was unable to locate an owner to execute an annexation agreement. The proposed rezoning will ensure the property's zoning is consistent with surrounding similar uses, the existing use of the property, and the 2005 Urbana Comprehensive Plan.

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 Eastlawn Cemetery immediately west of the property is already zoned AG, and the remaining property south of Kerr Avenue is zoned and used as parks. The proposed rezoning would ensure that the property's zoning is consistent with these 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 IN, Industrial and the value it would have if it were rezoned to B-3, General Business, to permit the proposed use.

The AG District would reduce the potential uses of the property, but would protect the existing use. Due to the presence of grave sites, it is highly unlikely that the property would ever be developed for residential 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 of zoning on the value of the property. Therefore, any discussion pertaining to specific property values should be considered speculative.

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.*

The question here applies 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 current zoning is not consistent with the historic and current use of the property as a cemetery. The current zoning is also inconsistent with the institutional future land use, as identified in the 2005 Urbana Comprehensive Plan.

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 proposed rezoning would not have an impact on the suitability of the property for the continued use as a cemetery.

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 is not vacant.

Background

The property has been used as a cemetery for many decades. In conversations with the American Legion, who maintains the property, many veterans are buried at the cemetery. The property is not a part of the Eastlawn Cemetery, which is located immediately west cemetery. There is one existing curb cut along Kerr Avenue, and a sidewalk that extends along the south side of the street.

At their May 18, 2006 meeting, the Plan Commission held a public hearing. After discussing the case, the Plan Commission voted 5 ayes to 0 nays to forward the case with a recommendation of approval to the City Council.

Adjacent Land Uses and Zoning Designations

The property is surrounded by residential and park uses. Immediately north of the property is Town and County apartments. To the west is the Eastlawn Cemetery, which is already zoned AG, Agriculture. To the South and East is Chief Shemauger Park. The property is located immediately east of Cunningham Avenue where the majority of properties are currently zoned B-3, General Business.

Zoning and Land Use Table

The following is a summary of surrounding zoning and land uses for the subject site:

| Location | Zoning | Existing Land Use | 2005 Comprehensive Plan – Future Land Use |
|------------------|------------------------------------------------------|-------------------|-------------------------------------------|
| Subject Property | R-3, Single and Two-Family Residential | Cemetery | Institutional |
| North | R-5, Medium High Density Multiple Family Residential | Apartments | Multi-Family Residential |
| South | CRE, Conservation Recreation Education | Parks | Parks/Recreations |
| East | CRE, Conservation Recreation Education | Parks | Parks/Recreations |
| West | AG, Agriculture | Cemetery | Institutional |

Summary of Findings

1. Staff has been unable to locate an owner for the property.
2. The property was directly converted to City R-3, Single and Two-Family Residential as part of the involuntary annexation approved in April 2006.
3. The proposed AG, Agriculture zoning for the subject property is generally consistent with the overall goals of the 2005 Urbana Comprehensive Plan and future land use intent for the area.

4. The adjacent Eastlawn Cemetery is already zoned AG, Agriculture. The areas south and east of the property are zoned CRE, Conservation Recreation Education and are used as parks.
5. The proposed rezoning would help protect and allow the continued use of the property as a cemetery.
6. The proposed rezoning appears to generally meet the LaSalle Case criteria.

Options

In Plan Case 1992-M-06, the City Council may:

1. Approve the rezoning.
2. Deny the rezoning.

Fiscal Impact

There will be no fiscal impact for the property, as the rezoning is intended to protect the continued use of the property as a cemetery.

Recommendation

Based on the evidence presented in the discussion above, staff concurs with the Plan Commission recommendation to **APPROVE** Plan Case No. 1992-M-06.

Prepared by:

Matt Wempe, Planner II

Attachments: Exhibit A: Location Map
Exhibit B: Zoning Map
Exhibit C: Existing Land Use Map
Exhibit D: Future Land Use Map
Exhibit E: Aerial Map

Cc: American Legion Post 71
107 N. Broadway
Urbana, IL 61801

ORDINANCE NO. 2006-06-069

AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF URBANA, ILLINOIS

(Rezoning of 801 E. Kerr Avenue from R-4, Medium Density Multiple-Family Residential to AG, Agriculture - Plan Case 1992-M-06)

WHEREAS, after due publication, a public hearing was held by the Urbana Plan Commission on May 18, 2006 concerning the petition filed in Plan Case No. 1992-M-06; and

WHEREAS, the requested rezoning is consistent with the goals and objectives and future land use maps of the City of Urbana 2005 Comprehensive Plan; and

WHEREAS, the requested rezoning is consistent with the La Salle case criteria; and

WHEREAS, the Urbana Plan Commission voted 5 ayes and 0 nay to forward the case to the Urbana City Council with a recommendation to approve the rezoning request of the properties herein described below from R-4, Medium Density Multiple-Family Residential to AG, Agriculture; and

WHEREAS, the findings of the Plan Commission indicate that approval of the rezoning request would promote the general health, safety, morals, and general welfare of the public.

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

Section 1. The Zoning Ordinance and Zoning Map of the City of Urbana, Illinois, are herewith and hereby amended to change the zoning classification of the following described area from R-4, Medium Density Multiple-Family Residential to AG, Agriculture.

LEGAL DESCRIPTION:

A part of the Northwest Quarter of Section 9, Township 19 North, Range 9 East of the Third Principal Meridian, Champaign County, Illinois, being more particularly described as follows:

All of Greenwood Cemetery as platted in Deed Record Book 19 at page 480, in the Office of the Recorder of Deeds, Champaign County, Illinois.

And;

All of William Harvey's 1st Addition to Greenwood Cemetery as platted in Plat Book "A" at page 263 in the Office of the Recorder of Deeds, Champaign County, Illinois.

Containing 1.78 acres, more or less, all situated in Urbana Township, Champaign County, Illinois.

Section 2. The City Clerk is directed to publish this Ordinance in pamphlet form by authority of the corporate authorities. This Ordinance shall be in full force and effect from and after its passage and publication in accordance with the terms of Chapter 65, Section 1-2-4 of the Illinois Compiled Statutes (65 ILCS 5/1-2-4).

PASSED by the City Council this _____ day of _____, 2006.

AYES:

NAYS:

ABSTAINS:

Phyllis D. Clark, City Clerk

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

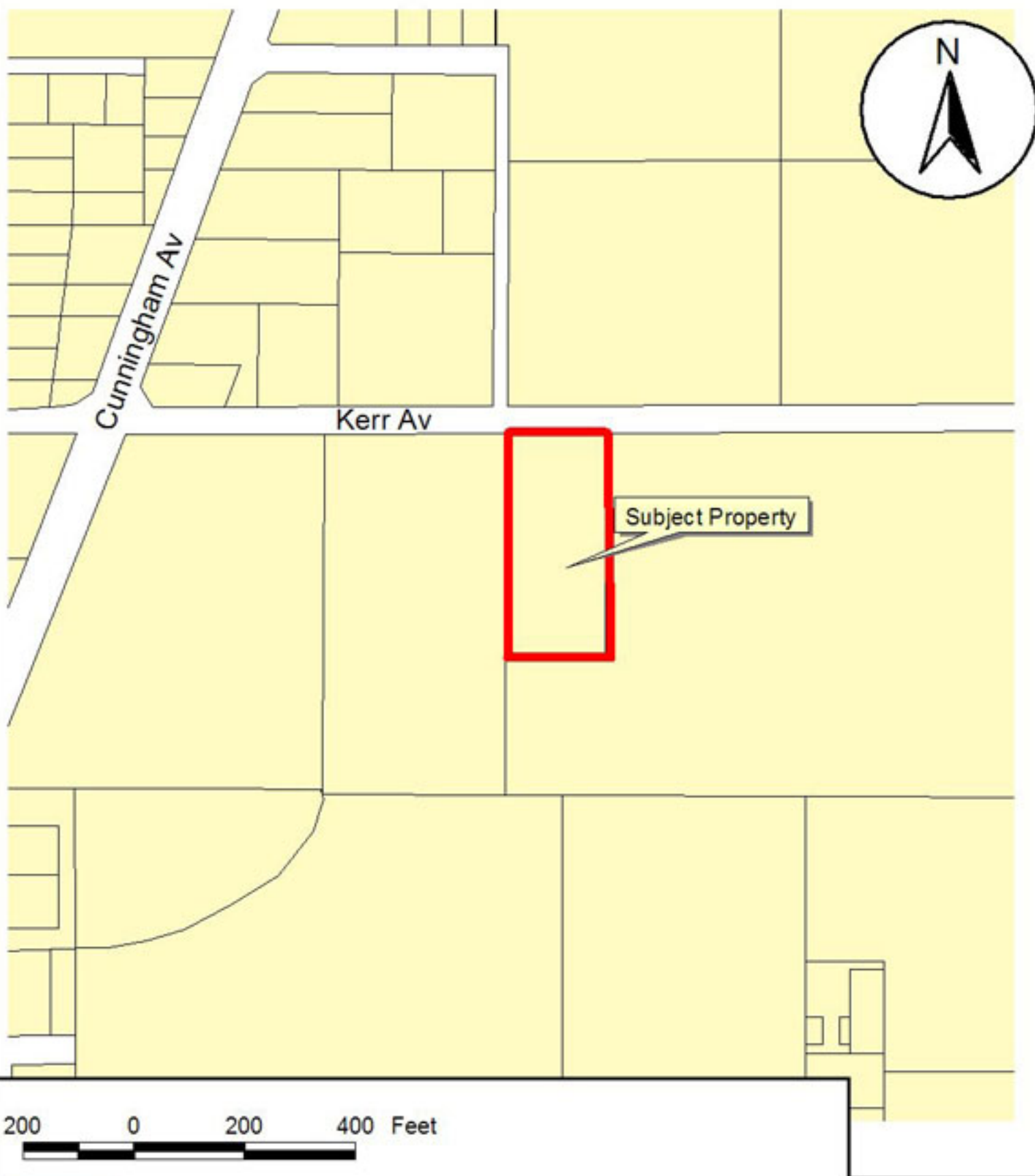
Laurel Lunt Prussing, Mayor

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 21st day of November, 2005, the corporate authorities of the City of Urbana passed and approved Ordinance No. _____, entitled: **"AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF URBANA, ILLINOIS** (Rezoning of 801 E. Kerr Avenue from R-4, Medium Density Multiple-Family Residential to AG, Agriculture - Plan Case 1992-M-06), 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 _____, 2005, 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.

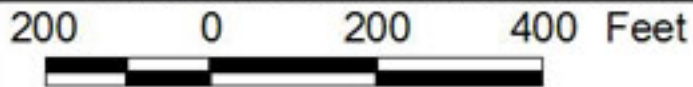
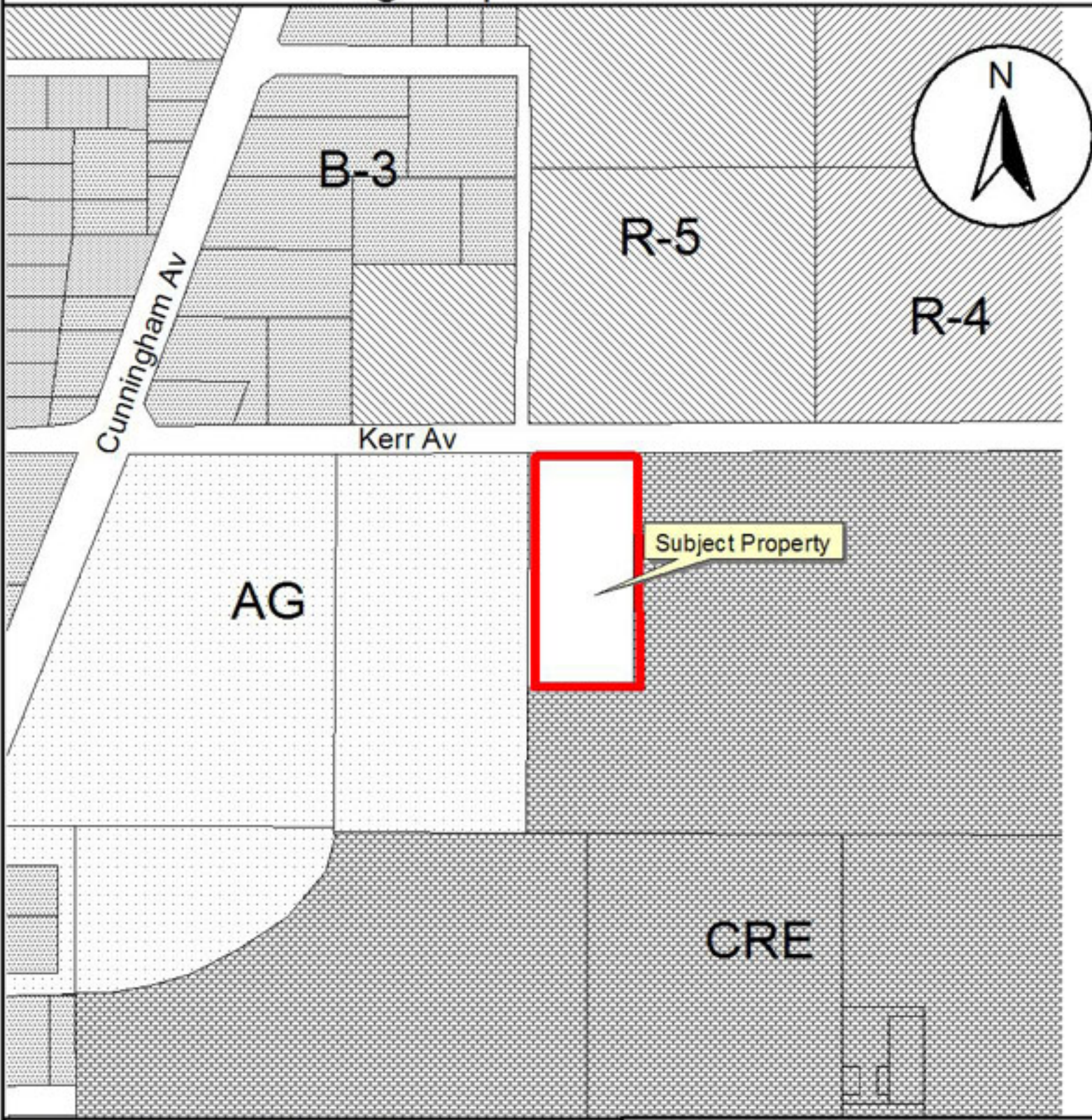
DATED at Urbana, Illinois, this _____ day of _____, 2006.

Exhibit A: Location Map



Plan Case: 1992-M-06
Petitioner: Urbana Zoning Administrator
Location: Kerr Avenue east of Cunningham Avenue
Description: Rezone from R-4 to AG

Exhibit B: Zoning Map

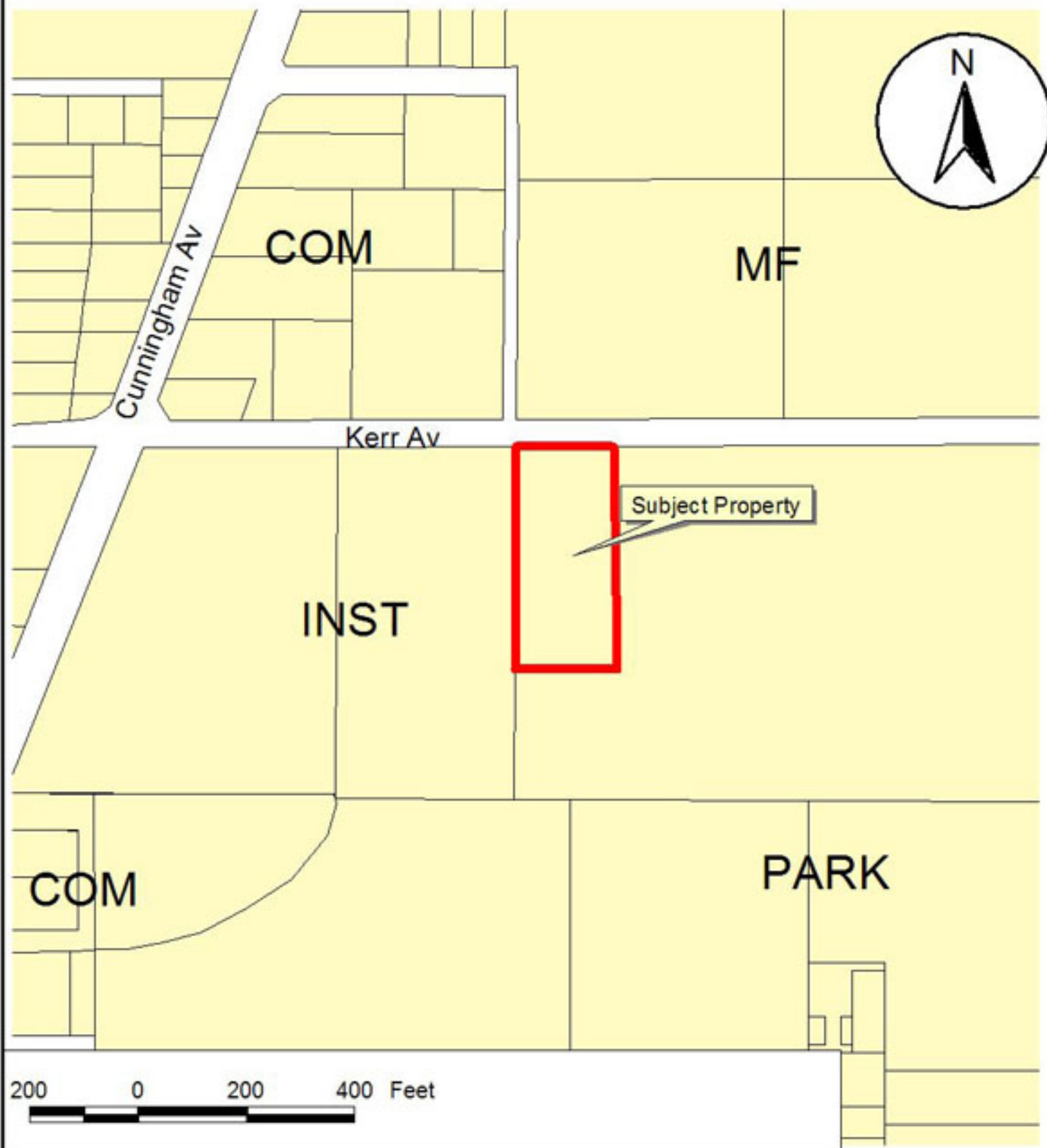


- AG - Agriculture
- B3 - General Business
- CRE - Conservation-Recreation-Education
- R4 - Medium Density Multiple-Family
- R5 - Medium High Density Multiple-Family



Plan Case: 1992-M-06
Petitioner: Urbana Zoning Administrator
Location: Kerr Avenue east of Cunningham Avenue
Description: Rezone from R-4 to AG

Exhibit C: Existing Land Use Map

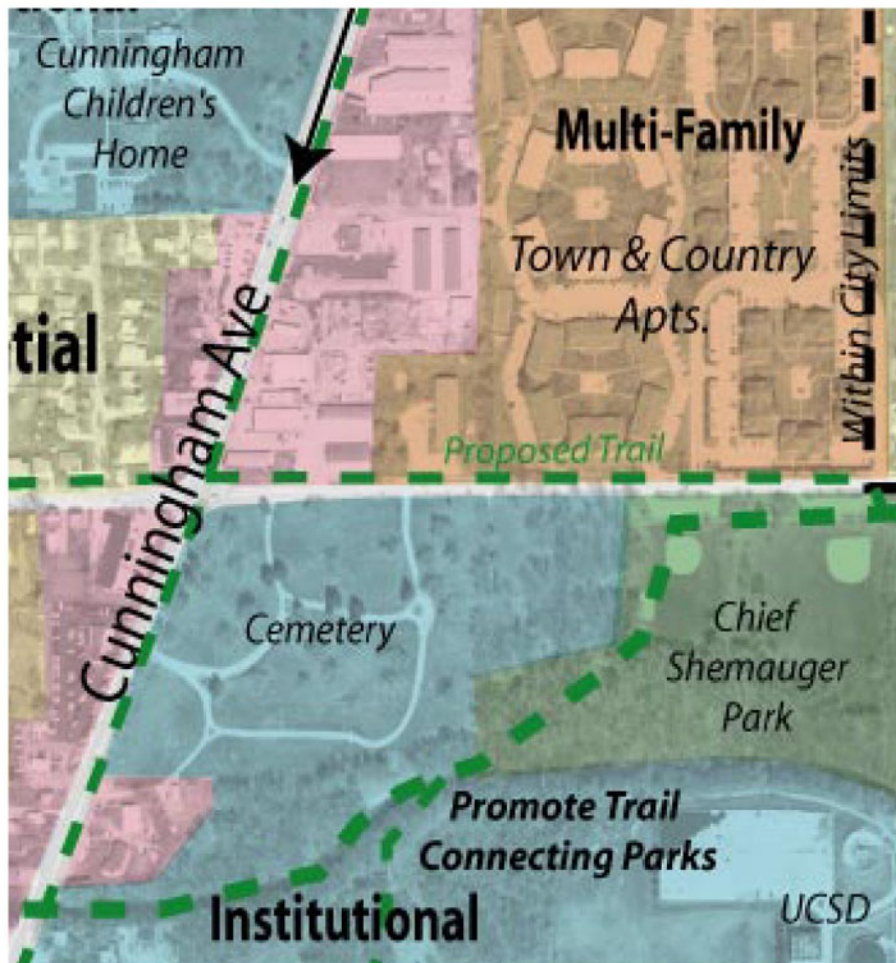


Plan Case: 1992-M-06
Petitioner: Urbana Zoning Administrator
Location: Kerr Avenue east of Cunningham Avenue
Description: Rezone from R-4 to AG

Prepared 4/28/2006 by Community Development Services - mhw

PARK - Parks and Recreation
COM - Commercial
INST-Institutional

Exhibit D: Future Land Use Map



Plan Case: 1992-M-06
Petitioner: Urbana Zoning Administrator
Location: Kerr Avenue east of Cunningham Avenue
Description: Rezone from R-4 to AG

Exhibit E: Aerial Map



Plan Case: 1992-M-06
Petitioner: Urbana Zoning Administrator
Location: Kerr Avenue east of Cunningham Avenue
Description: Rezone from R-4 to AG

Prepared 4/28/2006 by Community Development Services - mhw

MINUTES OF A REGULAR MEETING

URBANA PLAN COMMISSION

DRAFT

DATE: May 18, 2006
TIME: 7:30 P.M.
PLACE: Urbana City Building
400 South Vine Street
Urbana, IL 61801

MEMBERS PRESENT: Ben Grosser, Lew Hopkins, Michael Pollock, Bernadine Stake, Don White

MEMBERS EXCUSED: Jane Burris, Laurie Goscha, Marilyn Upah-Bant, James Ward

STAFF PRESENT: Jim Gitz, City Attorney; Elizabeth Tyler, Director of Community Development Services; Robert Myers, Planning Manager; Teri Andel, Planning Secretary

OTHERS PRESENT: Stevie Bean, Lisa Denson-Rives, Daron Utley

NEW PUBLIC HEARINGS

Plan Case 1992-M-06 – A request to rezone 801 East Kerr Avenue from R-3, Single and Two-Family Residential Zoning District, to AG, Agriculture Zoning District.

Mr. Myers gave the staff report for this case. He noted that the rezoning request is from the City of Urbana. City staff has been unable to identify the owners of the Greenwood Cemetery. He explained that since the property at 801 East Kerr Avenue was zoned County R-3, upon annexation it was directly converted to City R-3, Single and Two-Family Residential Zoning District. In order to protect and support the use as a cemetery, City staff would like to rezone the property to AG, Agriculture Zoning District. He described the surrounding properties and noted their land uses. He reviewed the La Salle National Bank Criteria as it pertained to this case. He summarized staff findings and read the options of the Plan Commission for this case. He presented staff's recommendation, which was as follows:

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 Plan Case No. 1992-M-06 to the Urbana City Council with a recommendation for approval.

Ms. Stake asked if most cemeteries are zoned AG rather than CRE, Conservation-Recreation-Education Zoning District. Mr. Myers said not necessarily. Ms. Stake inquired as to why City staff proposed to rezone this property to AG. Mr. Myers explained that it is because the East Lawn Cemetery which is next to the proposed site is zoned AG. The other reason is because a cemetery is a permitted use in the AG Zoning District.

Mr. Pollock questioned whether the Greenwood Cemetery is fenced off from the East Lawn Cemetery. Mr. Myers said no. Mr. Pollock inquired if the Greenwood Cemetery is fenced off from the Chief Shemauger Park. Mr. Myers stated that he did not recall.

Mr. Pollock asked what would happen if no one came forward to claim this property. Mr. Myers replied that it would be considered abandoned property, and there are state laws about dealing with abandoned property, and he believes there may be state laws dealing with abandoned cemeteries.

Mr. Hopkins moved that the Plan Commission forward this case to the City Council with a recommendation for approval. Mr. White seconded the motion. Roll call was as follows:

| | | | | | |
|-------------|---|-----|-------------|---|-----|
| Ms. Stake | - | Yes | Mr. Pollock | - | Yes |
| Mr. Hopkins | - | Yes | Mr. Grosser | - | Yes |
| Mr. White | - | Yes | | | |

The motion was passed by unanimous vote. Chair Pollock mentioned that this case would go before the City Council on June 5, 2006