



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

m e m o r a n d u m

TO: Laurel Lunt Prussing, Mayor

FROM: Elizabeth H. Tyler, FAICP, Director, Community Development Services

DATE: November 5, 2009

SUBJECT: Annexation Case No. 2009-A-06: Annexation Agreement between the City of Urbana and Maxey and Ruth Overmyer for a 0.34-acre tract of property known as 1913 Brownfield Road

Introduction & Background

Maxey and Ruth Overmyer are requesting approval of an annexation agreement for a property they own at 1913 Brownfield Road. The property totals 0.34 acres and is located northeast of the intersection of Interstate 74 and Brownfield Road (See Exhibit A). There is a single-family house on the parcel with a failed septic system. At their October 19, 2009 meeting, the Urbana City Council approved an emergency motion to allow a connection to the UCSD sewer system with the understanding that the Overmyers would sign an annexation agreement shortly thereafter.

The subject property is not currently contiguous to the city limits, but is within the mile-and-a-half extraterritorial jurisdictional area. As a result of the failed septic system a sanitary sewer connection is needed to serve the home. Under an intergovernmental agreement with the Urbana-Champaign Sanitary District (UCSD), any property owner outside the corporate limits of Urbana that is requesting to connect to the sanitary sewer service must also agree to annex to the City of Urbana at such time as their property is contiguous. To comply with the intergovernmental agreement between the City and the UCSD, the property owner is requesting approval of an annexation agreement.

A public hearing with the Urbana City Council concerning the proposed annexation agreement between the City and the Overmyers is scheduled for November 16, 2009 at 7:00 p.m. The annexation agreement is also on the agenda that evening for City Council consideration.

Issues and Discussion

The proposed annexation agreement outlines the basic provisions for annexing into the City of Urbana. (See Exhibit C) The City is providing no enhanced incentives to the owner in order to annex. The following is a discussion of specific provisions that are provided for in the proposed annexation agreement:

- Zoning and Future Land Use: The subject property is zoned R-1, Single Family Residence in unincorporated Champaign County. The agreement would provide for the direct conversion to the City's R-1, Single -Family Residential Zoning District upon annexation. The subject property is surrounded by residential uses to the east, west and north. The property to the south, across Brownfield Road, is used for agriculture. The future land use of the subject property is designated as "Residential" in the 2005 Urbana Comprehensive Plan. The proposed R-1 Zoning District would be consistent with the current use of the property, the current use of surrounding properties, and the future land use designation of the subject property in the Comprehensive Plan.
- Zoning Compliance: There are no special development provisions requested from the City. Any future construction on the property would be required to meet the development regulations of the Urbana Zoning Ordinance, as well as those of Champaign County until the property is officially annexed.
- Building Code Compliance: All future development, construction or additions would need to comply with City of Urbana building, electrical, fire and plumbing codes, orders or regulations.

Summary of Findings

1. The subject property is not currently contiguous to the city limits, but is within the mile-and-a-half extraterritorial jurisdictional area. A sanitary sewer connection is needed to replace the failing septic system; therefore, an annexation agreement is required under the agreement between the City and the Urbana-Champaign Sanitary District.
2. In accordance with Section IV-5 of the Urbana Zoning Ordinance, the proposed annexation agreement provides for the direct conversion from R-1, Single Family Residence in Champaign County to the City of Urbana R-1, Single-Family Residential Zoning District upon annexation to the City.
3. The proposed R-1 zoning designation would be consistent with the current use of the property, the current use of surrounding properties, and the future land use designation of the subject property in the 2005 Urbana Comprehensive Plan.
4. Any future development, construction or additions to the subject property would need to be in compliance with relevant zoning and building codes and ordinances of the City of Urbana.

Options

In Annexation Case 2009-A-06, the Committee of the Whole has the following options:

- a. Forward to City Council with a recommendation for approval; or

- b. Forward to City Council with a recommendation for approval, subject to recommended changes. (Note: The petitioner would have to agree to any recommended changes.)
- c. Forward to City Council with a recommendation for denial.

Staff Recommendation

Based on the analysis and findings presented in the discussion above, and without the benefit of considering additional evidence that may be presented at the public hearing, staff recommends that the Committee of the Whole forward the proposed Annexation Agreement in Case No. 2009-A-06 to the City Council with a recommendation for **APPROVAL**.

Prepared By:

Jeff Engstrom, Planner I

cc: Maxey and Ruth Overmyer
1913 Brownfield Road
Urbana, IL 61802

Attachments: Draft Ordinance Approving an Annexation Agreement
Exhibit A: Draft Annexation Agreement
Exhibit B: Location Map

ORDINANCE NO. 2009-11-119

AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF AN ANNEXATION AGREEMENT
(1913 Brownfield Road / Maxey & Ruth Overmyer)

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

WHEREAS, said agreement governs a tract totaling approximately 0.34 acres located at 1913 Brownfield Road and said tract is legally described as follows:

LOT 1 OF BURWELL'S SUBDIVISION OF LOT B OF THE FIRST PLAT OF PRAIRIE VIEW SUBDIVISION IN CHAMPAIGN COUNTY, AS PER PLAT RECORDED IN BOOK "Z" OF PLATS AT PAGE 138, SITUATED IN CHAMPAIGN COUNTY, ILLINOIS.

WHEREAS, the City Clerk of Urbana, Illinois, duly published notice on the 31st day of October, 2009 in the News-Gazette, a newspaper of general circulation in the City of Urbana, that a public hearing would be held before the Urbana City Council on the matter of the proposed Annexation Agreement on the 16th day of November, 2009; and

WHEREAS, the City of Urbana, Illinois also mailed notice of the public hearing to the Chief and each of the Trustees of the Carroll Fire Protection District on the 30th day of October, 2009; and

WHEREAS, on the 16th day of November, 2009, the Urbana City Council held a public hearing on the proposed Annexation Agreement; 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. The Annexation Agreement between the City of Urbana, Illinois and Maxey and Ruth Overmyer, a copy of which is attached and hereby incorporated by reference, be and the same is hereby authorized and approved.

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

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

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

PASSED by the City Council this _____ day of _____, 20____.

AYES:

NAYS:

ABSTAINS:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____, 20____.

Laurel Lunt Prussing, Mayor

Annexation Agreement

THIS Agreement is made and entered into by and between the City of Urbana, Illinois, (hereinafter sometimes referred to as the "Corporate Authorities" or the "City") and Maxey R. and Ruth A. Overmyer (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, Maxey R. and Ruth A. Overmyer are the Owners of record of a certain 0.34 acre parcel of real estate located at 1913 Brownfield Road, and having permanent index number(s) 30-21-03-302-011, the legal description of which real estate is set forth in Exhibit A attached hereto and referenced herein as "the tract".

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

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

WHEREAS, the tract is currently zoned R-1, Single Family Residence 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 R-1, Single-Family Residential, under the terms and provision of the Urbana Zoning Ordinance in effect upon approval of this Agreement, as amended, and subject to the terms and conditions set forth in this Agreement; and

WHEREAS, the Corporate Authorities find annexation of the tract as described herein reflects the goals, objectives and policies set forth in the City's 2005 Urbana Comprehensive Plan, as amended from time to time; and

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

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

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

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

The Owners agree to the following provisions:

Section 1:

- (a) The Owners represent that the Owners are the sole record Owners of the tract described in Exhibit A and that the Owners shall, within thirty (30) days of the property becoming contiguous to the Urbana City limits cause the tract to be annexed to the City of Urbana by filing a legally sufficient annexation petition with all required signatures thereon, all in accordance with Illinois Statutes. Until annexation of the subject tract occurs, 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 Owner shall file such written agreement with the City Clerk within thirty (30) days of the signing of such
- (b) Owners further agree that the substance of this Section of the Annexation Agreement shall be included in any sales contract for the sale of any portion of the subject tract. If the subject tract is to be platted for subdivision, the Owners agree 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) Owners agree that if Owners fail to include the substance of Section 1(a) of this Agreement in sales contracts or subdivision covenants, as provided herein, and if said annexation is delayed or contested by subsequent owners as a result, the Owners 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 Owners agree 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 Owners accept the City of Urbana zoning classification of R-1, Single-Family Residential, as provided for in Article IV of the Urbana Zoning Ordinance. The Owners agree that, unless changed upon initiative of the Owners 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 Owners agree to use the tract only in compliance with the Urbana Zoning Ordinance and this agreement as such may be amended from time to time.

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

Section 4: The Owners 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 Owners 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 Owners, by enacting such ordinances as may be necessary and sufficient to legally and validly annex said tract to the City.

Section 2: The Corporate Authorities agree that the tract will be zoned R-1, Single-Family Residential, in accordance with Article IV, Section IV-5 of the Urbana Zoning Ordinance upon approval of this Agreement and as defined in the City of Urbana Zoning Ordinance as such exists at the time of approval of this Agreement. The Corporate Authorities agree that all applicable development regulations existing at the time of annexation will apply to 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, their successors or assigns, which obligation extends beyond the termination date of this Agreement, such obligation may be released by the Urbana City Council enacting an Ordinance releasing such obligation by a majority vote of all Alderpersons then holding office and the recording of such Ordinance in the Champaign County Recorder's Office, Champaign County, Illinois.

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

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

Section 4. Enforcement -- The 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 the party not in default may 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:

Owner:

Laurel Prussing, Mayor

Maxey R. Overmyer

Ruth A. Overmyer

Date

Date

ATTEST:

ATTEST:

Phyllis D. Clark
City Clerk

Notary Public

Date

Date

Exhibits attached and made a part of this Agreement:

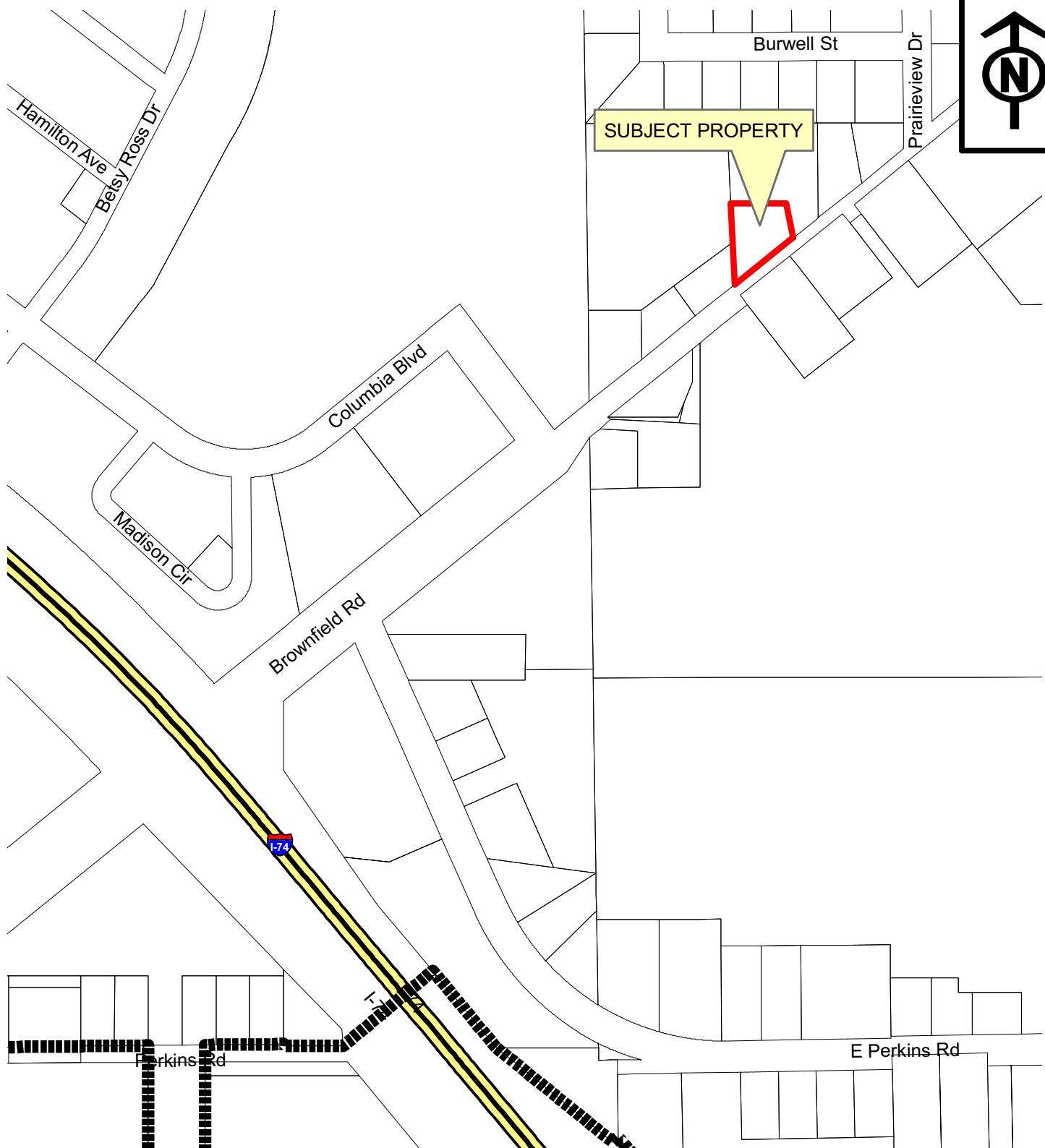
Exhibit A: Legal Descriptions
Exhibit B: Location Map

Exhibit A: Legal Description

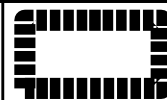
LOT 1 OF BURWELL'S SUBDIVISION OF LOT B OF THE FIRST PLAT OF PRAIRIE VEIW SUBDIVISION IN CHAMPAIGN COUNTY, ILLINOIS, AS PER PLAT BOOK "Z" OF PLATS AT PAGE 138, SITUATED IN CHAMPAIGN COUNTY, ILLINOIS.

Commonly known as 1913 Brownfield Road, Urbana, Illinois.

Exhibit B: Location Map



Plan Case: 2009-A-06
Description: Maxey & Ruth Overmyer
Annexation Agreement
Location: 1913 Brownfield Road



Urbana