



**DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES**

*Planning Division*

**m e m o r a n d u m**

**TO:** Mayor Laurel Lunt Prussing

**FROM:** Elizabeth H. Tyler, PhD, FAICP, Director

**DATE:** December 17, 2009

**SUBJECT:** Annexation Case No. 2009-A-07 and Plan Case No. 2120-M-09: Annexation agreement and request to rezone upon annexation a 1.6-acre tract of property at 2209 East Perkins Road from Champaign County CR, Conservation-Recreation District to City, R-1, Single-Family Residential Zoning District.

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**Introduction & Background**

James E. Tull Sr. is requesting an annexation agreement for a 1.6-acre parcel located at 2209 East Perkins Road. The subject property is located in Urbana Township within unincorporated Champaign County and is adjacent to the City boundary. An annexation petition will be submitted within 30 days of the approval of the annexation agreement by City Council.

The property contains two deteriorated structures: an uninhabitable single-family home and an accessory structure. The purchaser plans to demolish the existing structures and build a new home on the site. The property is currently zoned Champaign County CR, Conservation-Recreation, and the annexation agreement stipulates that the property will be rezoned to City R-1, Single-Family Residential zoning upon annexation. The proposed rezoning is consistent with the 2005 Urbana Comprehensive Plan.

On December 10, 2009, the Urbana Plan Commission held a public hearing on the proposed rezoning. The Plan Commission voted four ayes to one nay to forward the case to City Council with a recommendation for approval of the rezoning as presented.

**Issues and Discussion**

*Annexation Agreement*

James E. Tull Sr. has a contract to sell the subject property to Scott Plunk. The proposed agreement shall only become effective if it is approved by City Council and the property is sold to Mr. Plunk. At 186 feet wide, the property is less than the 200-foot minimum lot width in the County CR,

Conservation Recreation district. If not annexed, a variance would be required from the County in order to replace the house on the lot. In order to facilitate the sale of the property, Mr. Tull wishes to enter into an annexation agreement with the City to allow development of the property under the City's R-1 zoning designation. The proposed agreement includes a provision to rezone the property to bring it into conformance with the 2005 Urbana Comprehensive Plan, which designates the future land use of the area as Rural Residential. The agreement also requires the demolition of the existing deteriorated structures on the property and approves a variance to construct a building in which the primary residential use is smaller than the accessory storage space. The building is proposed to be around 4,000 square feet, with more than half of its floor area devoted to storage for heavy equipment and tools that are for personal use. The variance is proposed to be dependent upon three conditions:

- The building will be no larger than 4,032 square feet in area.
- No commercial uses will be allowed on the site.
- No storage of equipment will be allowed outdoors

### ***Zoning and Future Land Use***

The property is currently zoned County CR, Conservation-Recreation, and upon annexation, the property would be zoned City R-1, Single-Family Residential. The potential buyer, Scott Plunk, wishes to build a combination single-family residence and storage building. The 2005 Comprehensive Plan identifies the area as "Rural Residential" which is consistent with the proposed rezoning. The property is surrounded to the north and west by other single-family homes. Across Perkins Road to the northeast is a township equipment facility. To the east is undeveloped land that contains a pond. Directly to the south of the subject property is the Saline Ditch, and beyond that is land used for crop farming.

The Urbana Zoning Ordinance states:

*Residential Districts* generally are intended to provide desirable settings for residential uses within several density ranges described in Urbana's Comprehensive Plan, and for various types of dwelling units, with appropriate regulations regarding physical development. As appropriate, the districts also allow other uses compatible with residential areas, either as permitted or as conditional or special uses. Basic urban services and utilities, including adequate access and utilities, are necessary for these districts.

The *R-1, Single-Family Residential District* is intended to provide areas for single-family detached dwellings at low density.

The subject property is in an area that contains many single-family homes on large lots, which is compatible with the intent of the R-1 district. The subject property is 186 feet wide and varies in depth from 350 to 416 feet, totaling 70,760 square feet. It meets the development standards for the City's R-1 district, as it is larger than 9,000 square feet in area and complies with the minimum lot width of 80 feet.

## **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 in the annexation agreement.

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

The proposed R-1 zoning is consistent with adjacent land uses to the north and west. The surrounding areas are used for a mixture of single-family, agricultural and township purposes. Additionally, the proposed zoning is consistent with the City of Urbana Comprehensive Plan Future Land Use designation of Rural Residential.

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

Under Section IV-5 of the Urbana Zoning Ordinance, an automatic conversion from County to City zoning would result in the property being zoned CRE, Conservation-Recreation-Education. Under City CRE zoning, neither the current nor proposed single-family residential use would be allowed. Conversion to City R-1 will allow for use as a single-family residence. The agreement will allow for the removal of deteriorated structures on the property and maintenance of over-grown landscaping. The rezoning should not result in any negative impacts on property value.

*It should be noted that the Urbana 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 rezoning promotes the health, safety, morals or general welfare of the public.*

There would no negative impact on the health, safety, morals or general welfare of the public due to the proposed rezoning, as the proposed zoning district is consistent with the development in the surrounding area. The agreement will allow for the removal of deteriorated structures on the property and maintenance of over-grown landscaping.

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

If the property were not rezoned, the pending sale will not occur and the property will not be developed as planned. There would be no gain to the public, as the property would continue to contain a vacant house on an overgrown lot.

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

The rezoning will allow for the addition of a single-family property into the city. The property currently contains a single-family home. The existing home will be demolished and replaced with a larger building including both a dwelling and a large storage space for heavy equipment that will be for personal use. This future development will be subject to all the applicable development standards of the Zoning Ordinance. Under the terms of the agreement, no commercial uses will be allowed on the site.

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.*

The property contains a house which has not been occupied for at least two years.

### **Variance Criteria**

The purchaser wishes to build a combination single-family residence and storage building on the site. The front 800 to 900 square feet of this building will contain the principal use, which will be the single-family residence. Behind the residence will be an accessory storage space of at least 3,000 square feet. This storage space will be used for personal storage of tools and equipment. Section V-2 of the Urbana Zoning Ordinance states that an accessory use is permitted to accompany the principal use to which it is subordinate. Since the accessory use of storage space would not be subordinate to the principal residential use, use of the property will require a variance. City Council has the authority to grant variances as part of an annexation agreement per Section XI-14 of the Urbana Zoning Ordinance. Per Section XI-2 of the Zoning Ordinance, the following criteria are used to evaluate variances.

1. *Are there special circumstances or special practical difficulties with reference to the parcel concerned, in carrying out the strict application of the ordinance?*
2. *The proposed variance will not serve as a special privilege because the variance requested is necessary due to special circumstances relating to the land or structure involved or to be used for occupancy thereof which is not generally applicable to other lands or structures in the same district.*

There are special circumstances related to the land which make this variance necessary. The parcel is 186 feet wide, and does not meet the minimum lot width of 200 feet in the County CR, Conservation-Recreation district. In order to develop the parcel, the petitioner needs either a County variance or to annex into the City. Approval of this annexation agreement and variance will facilitate the sale of the property and bring it into the City, where it will be subject to City building and property maintenance codes. The parcel currently contains dilapidated structures and overgrown landscaping. The prospective purchaser is willing to demolish the dilapidated structures and properly maintain the landscaping, but requires a place to store his personal equipment.

3. *The variance requested was not the result of a situation or condition having been knowingly or deliberately created by the Petitioner.*

The petitioner and the prospective purchaser are requesting the variance in order to facilitate the purchase and annexation of the parcel.

4. *The variance will not alter the essential character of the neighborhood.*

The character of the neighborhood is semi-rural, with large houses on large lots, some with large accessory structures. Immediately adjacent to the subject parcel is a property with both a house of approximately 1,800 square feet and a 2,400 square-foot accessory storage structure. Along Perkins Road there are other single family homes with a footprint of more than 4,000 square feet. There are also at least three parcels in the area which have accessory structures that range in size from 4,400 to 5,700 square feet.

5. *The variance will not cause a nuisance to the adjacent property.*

The proposed variance will not cause a nuisance to the adjacent property. It will function primarily as a single-family home. The purchaser will store personal equipment and tools on site, and will not run a business from the property. Properties to the northeast, south and east of the subject property do not contain residences.

6. *The variance represents generally the minimum deviation from requirements of the Zoning Ordinance necessary to accommodate the request.*

The purchaser has indicated that this is the minimum size storage space in which he can store all of his personal equipment and tools.

## **Summary of Findings**

1. The proposed annexation agreement would allow for the annexation of a single-family parcel into the City, and for the removal of deteriorated structures from and improved maintenance of overgrown landscaping on that parcel.
2. The proposed R-1, Single-Family Residential Zoning District would be consistent with the current land use of the subject parcel and surrounding properties.
3. The proposed R-1, Single-Family Residential Zoning District would be consistent with the future land use designation of Rural Residential as specified by the 2005 Urbana Comprehensive Plan.

4. The proposed rezoning would not be detrimental to the public health, safety or general welfare.
5. The proposed rezoning appears to meet the LaSalle Case criteria.
6. The proposed annexation agreement would approve a variance allowing for the construction of a structure in which the accessory personal storage space would have a larger area than the primary residential use.
7. The proposed variance meets the City's variance criteria, in that it is due to special circumstances of the land, will not alter the essential character of the neighborhood, will not cause a nuisance to adjacent property, and represents the minimum necessary deviation from requirements of the Zoning Ordinance.
8. The proposed annexation agreement would prohibit non-residential uses on the site.

## **Options**

In Plan Case 2009-A-07 / 2120-M-09, City Council may:

- a. Approve the proposed annexation agreement as presented, including a zoning designation of R-1, Single-Family Residential for the site.
- b. Approve the proposed annexation agreement, including a zoning designation of R-1, Single-Family Residential for the site, subject to specific changes. (Note that the property owner would have to agree to any recommend changes).
- c. Deny the proposed annexation agreement.

## **Recommendation**

On December 10, 2009, the Urbana Plan Commission held a public hearing on the proposed rezoning. The Plan Commission voted four ayes to one nay to forward Plan Case 2009-A-07 / 2120-M-09 to City Council with a recommendation for approval of the annexation agreement and rezoning as presented. Staff concurs with this recommendation.

cc: James E. Tull, Sr. William Goldstein  
Scott Plunk Byron Balbach  
John Hall, Champaign County Zoning Administrator  
Donald Smith, Urbana Township Supervisor

Attachments: Exhibit A: Location and Aerial Map  
Exhibit B: Zoning Map

Exhibit C: Future Land Use Map

Exhibit D: Annexation Agreement

Exhibit E: Draft Minutes from the December 10, 2009 Plan Commission

ORDINANCE NO. 2009-12-128

An Ordinance Approving and Authorizing the Execution of an Annexation Agreement

(2209 E. Perkins Road / James E. Tull Sr.)

WHEREAS, an Annexation Agreement between the City of Urbana, Illinois, James E. Tull Sr., and Scott Plunk 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 1.6 acres located at 2209 East Perkins Road and said tract is legally described as follows:

Lot 102, except the west Twenty-Two (22) feet of even width thereof, of Tull's Replat Subdivision, a part of the NW  $\frac{1}{4}$  of Section 10, Township 19 North of the Third Principal Meridian located in Champaign County, Illinois, as recorded July 27, 2004 as Document # 2004R23616 in the Office of the Champaign County Recorder. Champaign County, Illinois.

WHEREAS, The City Clerk of Urbana, Illinois, duly published notice on the 5th day of December, 2009 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 Carroll Fire Protection District on the matter; and

WHEREAS, on the 21<sup>st</sup> day of December, 2009, 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 10<sup>th</sup> day of December, 2009, to consider the



proposed Annexation Agreement and the rezoning from Champaign County CR, Conservation-Recreation to the City R-1, Single-Family Residential Zoning District upon annexation in Plan Case Nos. 2009-A-07 and 2120-M-09; and

WHEREAS, by a vote of five ayes to one nay, the Urbana Plan Commission voted to forward the proposed Annexation Agreement and rezoning from Champaign County CR, Conservation-Recreation to the City R-1, Single-Family Residential Zoning District upon annexation in Plan Case Nos. 2009-A-07 and 2120-M-09 to the Urbana City Council with a recommendation for approval; 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 2005 Comprehensive Plan; and,

WHEREAS, the Urbana City Council has determined that the proposed rezoning contained within the Annexation Agreement is in conformance with the LaSalle Criteria; 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, Illinois, James E. Tull Sr., and Scott Plunk, a copy of which is attached and hereby incorporated by reference, be and the same is hereby authorized and approved.

Section 2. That the major variance contained within said Annexation Agreement, is hereby approved to allow for the construction of a combination residence and accessory storage building in which the accessory storage use is larger in area than the principal residential use, subject to the conditions required in the Agreement.

Section 3. 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 4. 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 \_\_\_\_\_, \_\_\_\_\_.

AYES:

NAYS:

ABSTAINS:

\_\_\_\_\_  
Phyllis D. Clark, City Clerk

APPROVED by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

\_\_\_\_\_  
Laurel Lunt Prussing, Mayor

**CERTIFICATE OF PUBLICATION IN PAMPHLET FORM**

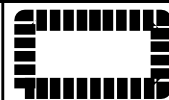
I, Phyllis D. Clark, certify that I am the duly elected and acting Municipal Clerk of the City of Urbana, Champaign County, Illinois. I certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2009, the corporate authorities of the City of Urbana passed and approved Ordinance No. \_\_\_\_\_, entitled "An Ordinance Approving and Authorizing the Execution of an Annexation Agreement (2209 E. Perkins Road / James E. Tull Sr.)" 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 \_\_\_\_\_, 2009, 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 \_\_\_\_\_, 2009.

# Exhibit A: Location and Aerial Map

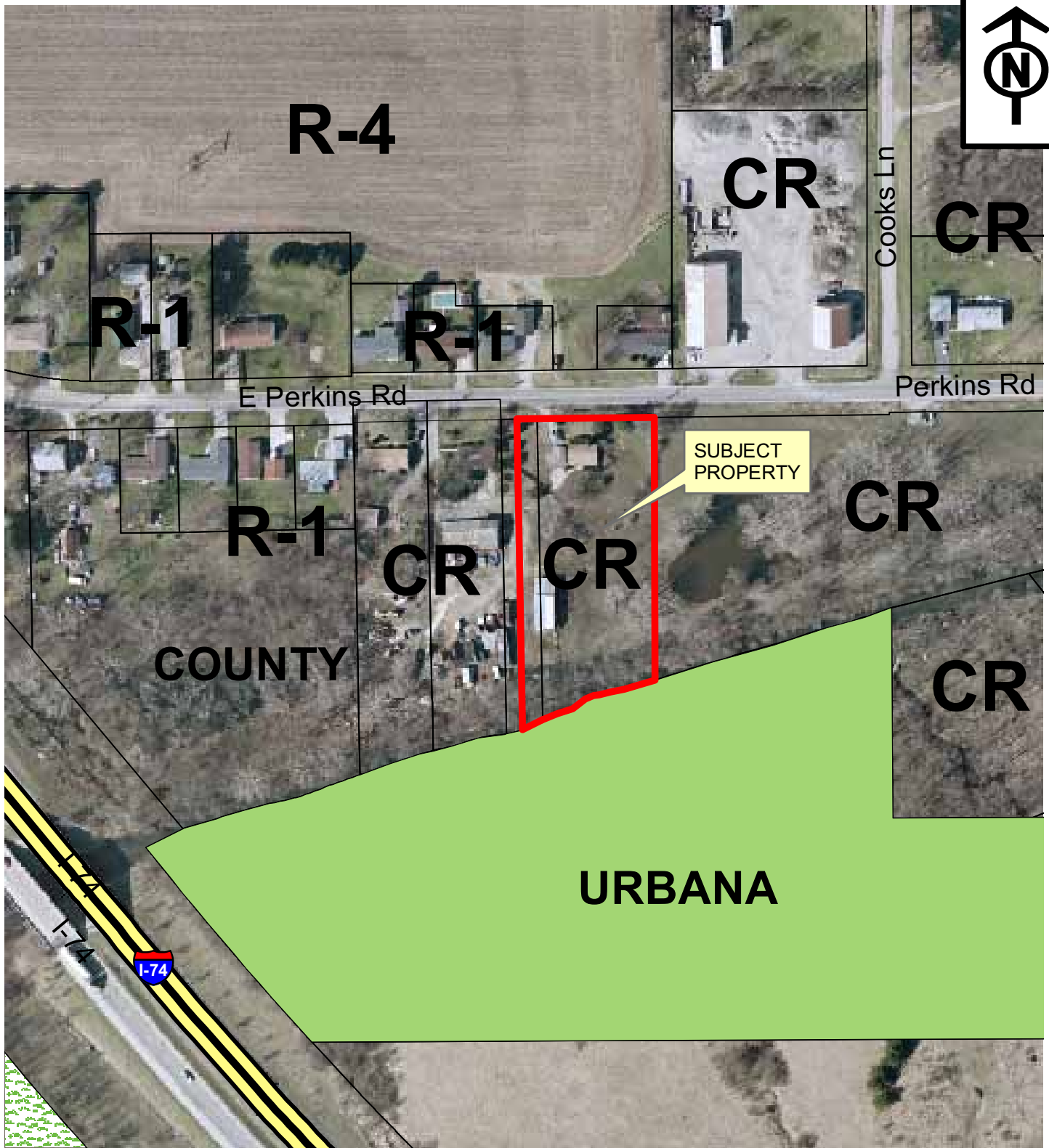


Plan Case: 2009-A-07 & 2120-M-09  
Description: Scott Plunk  
Annexation Agreement  
Location: 2209 E Perkins Road



Urbana

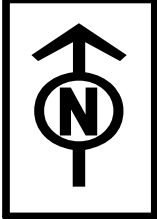
# Exhibit B: Zoning Map



Plan Case: 2009-A-07 & 2120-M-09  
Description: Scott Plunk  
Annexation Agreement  
Location: 2209 E Perkins Road

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# Exhibit C: Future Land Use Map



Plan Case: 2009-A-07 & 2120-M-09  
Description: Scott Plunk  
Annexation Agreement  
Location: 2209 E Perkins Road

Prepared 11/09 by Community Development Services - jme

# Annexation Agreement

(James E. Tull Sr.)

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 **James E. Tull Sr.** (hereinafter referred to as the "Owner"). The effective date of this Agreement shall be as provided in Article III, Section 6.

## WITNESSETH:

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

WHEREAS, James E. Tull Sr. is the Owner of record of a certain parcel of real estate located at 2209 East Perkins Road, the legal description of which real estate is set forth in Exhibit A attached hereto and referenced herein as Tract "A", or "the tract"; and

WHEREAS, Scott Plunk has agreed to purchase the tract if the tract is subject to the terms and conditions set forth in this annexation agreement and James E. Tull Sr., as owner is agreeable to accommodate such by signing as Owner, provided it is contingent upon finalization of the sale of the tract as further set forth in Article III, Section 6 below; and

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; and

WHEREAS, the tract is contiguous to the City of Urbana and may be immediately annexed; and

WHEREAS, the tract is currently zoned Champaign County CR, Conservation – Recreation in Champaign County and the City and the Owner 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 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 under R1, Single-Family Residential zoning generally reflects the goals, objectives and policies set forth in the City's 2005 Urbana Comprehensive Plan, as amended from time to time; and

WHEREAS, the Owner desires 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**

The Owner agrees to the following provisions:

**Section 1. Ownership and Annexation.** The Owner represents that the Owner is the sole record Owner of the property described in Exhibit A and that the Owner shall, within thirty (30) days of the effective date 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.

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 property. If the subject tract is to be platted for subdivision, the Owner agrees that the substance of this provision regarding annexation shall be included in the subdivision covenant and such will constitute a covenant running with the land. The Owner agrees for itself, 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. Authority to Annex.** The Owner agrees and hereby stipulates that the City, by its approval, execution or delivery of this Agreement does not in any way relinquish or waive any authority it may have to annex the tract in the absence of this Agreement.

**Section 3. Zoning.** The Owner acknowledges that upon annexation, the tract will be rezoned from Champaign County CR, Conservation-Recreation to City R-1, Single-Family Residential Zoning District. 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 Urbana Zoning Ordinance and this agreement as such may be amended from time to time.

**Section 4. Accessory Storage Area Variance:** It is understood and agreed that the following provisions are agreed to by the Owner because Scott Plunk wants them in the agreement and he anticipates that by assignment of the agreement to him after he becomes owner of the tract he will benefit thereby. Thus, the Owner, on his behalf, agrees to the following conditions of a Variance granted by Article II Section 3 of this Agreement, which



will allow the construction of a combination residence and accessory storage building in which the accessory storage use is larger in area than the principal residential use.

1. The combined area of the residential/storage building shall not exceed 4,032 square feet.
2. The storage area shall only be used for non-commercial uses, including the storage of vehicles, equipment, and materials which are the property of the Owner.
3. No equipment shall be stored outside of the building.

**Section 5. Land Uses.** The Owner agrees that the uses of the tract shall be limited to those allowed within Urbana's R1, Single-Family Residential Zoning District and shall not operate any commercial use on the tract.

**Section 6. Building and Zoning Code Compliance.** The Owner agrees to cause all new development, construction, remodeling or building additions on said tract to be in conformance with all applicable City of Urbana codes and regulations including building, zoning and subdivision codes.

**Section 7. Sewer Connection.** The Owner agrees to connect to the Urbana-Champaign Sanitary District public sewer upon the failure of the existing septic system on the property. The Owner agrees not to repair or replace the existing septic system upon failure.

**Section 8. Demolition of Structures.** The Owner agrees to demolish the existing house, garage, and accessory structure on the tract within 365 days of the effective date of this agreement.

**Section 9. Amendments Required.** 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 the Owner and the City. Said action includes petitioning for a county rezoning of said tract without written amendment to this Agreement.

## **ARTICLE II. REPRESENTATIONS AND OBLIGATIONS OF THE CORPORATE AUTHORITIES**

The Corporate Authorities agree to the following provisions:

**Section 1. Annexation.** 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. Zoning.** The Corporate Authorities agree to annex the tract with a zoning classification of R-1, Single-Family Residential, as defined in the City of Urbana Zoning Ordinance as such exists at the time of annexation of the tract. The Corporate Authorities agree that all applicable development regulations existing at the time of annexation will apply to said tract. The Corporate Authorities further agree that the granting of the Zoning Map Amendment would be consistent with the LaSalle Criteria established by the Illinois Supreme Court in LaSalle National Bank v. The County of Cook:

- a. The existing land uses and zoning of the nearby property.
- b. The extent to which property values are diminished by the restrictions of the ordinance.
- c. The extent to which the ordinance promotes the health, safety, morals or general welfare of the public.
- d. The relative gain to the public as compared to the hardship imposed on the individual property owner.
- e. The suitability of the subject property for the zoned purposes.
- f. 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.

**Section 3. Accessory Storage Area Variance:** The Corporate Authorities agree with this annexation agreement to grant a Variance to allow the Owner to construct a combination single-family home and storage building in which the accessory storage use is larger in area than the principal residential use. The total area of this structure shall not exceed 4,032 square feet. The Corporate Authorities further agree that the granting of this variance is consistent with the following criteria identified in Section XI-3 of the Urbana Zoning Ordinance, in that the variance:

- a. will not alter the essential character of the neighborhood;
- b. will not cause a nuisance to adjacent property;
- c. represents, generally, the minimum deviation from requirements of the Zoning Ordinance necessary to accommodate the request.

**Section 4. Amendments.** The City shall take no action nor omit to take action during the term of this Agreement which act or omission, as applied to the tract, would be a breach hereof, without first procuring a written amendment to this Agreement duly executed by the Owner, or the Owner's successors or assigns, of the portion of the tract which is directly the subject of the amendment.

## 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. By mutual agreement, the term of this Agreement may be extended.

If this Agreement imposes any obligation, restraint, or burden (hereinafter called collectively "obligation") on the Owner or the Owner's 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 life of this Agreement unless specific terms are expressly made binding beyond the life 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 Owner as to all or any part of the tract, and are further expressly made binding upon said City and the duly elected or appointed successors in office of its Corporate Authorities.

**Section 3. Binding Agreement upon parties.** The Corporate Authorities and Owner agree that no party will take 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 the Owner and the City.

**Section 4. Enforcement.** The Owner and Corporate Authorities agree and hereby stipulate that any 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 Owner, the City may refuse the issuance of any permits or other approvals or authorizations relating to development of the tract.

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

**Section 6. Effective Date.** It is understood and agreed that James E. Tull Sr., present owner of the tract, has signed this agreement as a condition of a pending sale of the tract

to Scott Plunk, and as such, this agreement shall become effective and binding only upon the recording of a deed in the office of the Champaign County Recorder, on or before the 1st day of July, 2010, conveying the title of the tract to Scott Plunk. If such deed is not recorded by such date, this agreement shall become null and void.

**Section 7. Assignment and Recording.** This agreement may be assigned by the Owner to Scott Plunk without prior approval of the Corporate Authorities. If such deed conveying the tract by the Owner to Scott Plunk is recorded with the office of the Champaign County Recorder, the Corporate Authorities shall record a certified copy of this agreement.

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

**Corporate Authorities**  
**City of Urbana:**

**Owner:**

\_\_\_\_\_  
Laurel Lunt Prussing  
Mayor

\_\_\_\_\_  
James E. Tull Sr.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**ATTEST:**

**ATTEST:**

\_\_\_\_\_  
Phyllis D. Clark  
City Clerk

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Purchaser:**

I certify that I have read this Agreement and approve of it; I will accept assignment of this Annexation Agreement to me by James E. Tull, Sr. after the deed conveying the said tract to me is recorded in the Champaign County (Illinois) Recorder's Office.

\_\_\_\_\_  
Scott Plunk

\_\_\_\_\_  
Date

**ATTEST:**

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Date

## **Exhibit A**

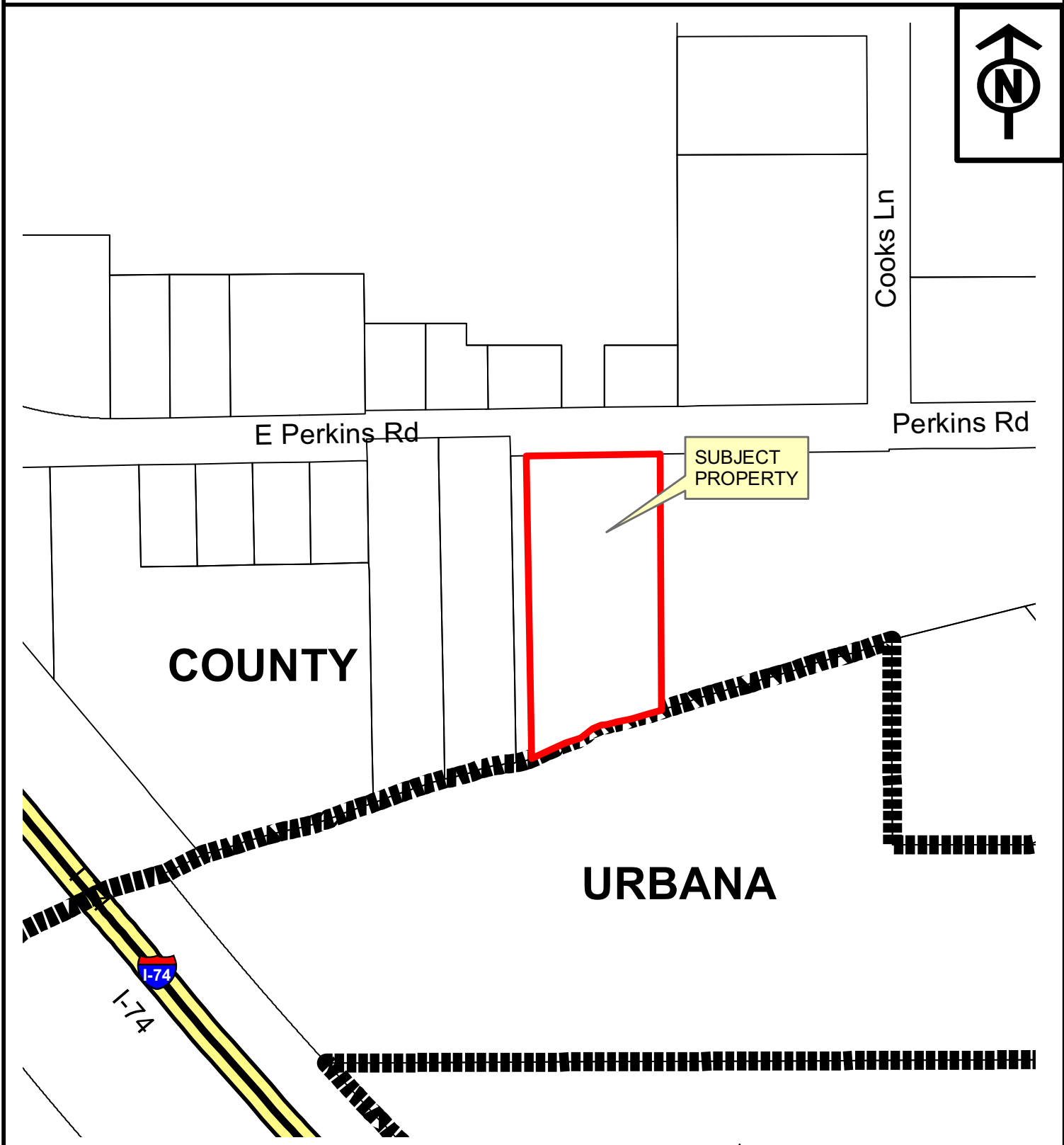
### **Legal Description**

Lot 102, except the west Twenty-Two (22) feet thereof, of Tull's Replat Subdivision, a part of the NW ¼ of Section 10, Township 19 North of the Third Principal Meridian located in Champaign County, Illinois, as recorded as Document #2004R23616 in the Office of the Champaign County Recorder, Champaign County, Illinois.

PIN:

Commonly known as 2209 East Perkins Road, Urbana.

# Exhibit B: Location Map



Plan Case: 2009-A-07  
Description: James E. Tull Sr.  
Annexation Agreement  
Location: 2209 E Perkins Road



**MINUTES OF A REGULAR MEETING**

**URBANA PLAN COMMISSION**

**DRAFT**

**DATE:** December 10, 2009

**TIME:** 7:30 P.M.

**PLACE:** Urbana City Building – City Council Chambers  
400 South Vine Street  
Urbana, IL 61801

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**MEMBERS PRESENT:** Andrew Fell, Lew Hopkins, Dannie Otto, Michael Pollock,  
Bernadine Stake

**MEMBERS EXCUSED:** Jane Burris, Tyler Fitch, Ben Grosser, Marilyn Upah-Bant

**STAFF PRESENT:** Robert Myers, Planning Manager; Jeff Engstrom, Planner I; Teri  
Andel, Planning Secretary

**OTHERS PRESENT:** Scott Plunk, Susan Taylor

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**NEW PUBLIC HEARINGS**

**Annexation Case No. 2009-A-07 and Plan Case No. 2120-M-09: Annexation Agreement and request to rezone upon annexation a 1.6-acre tract of property at 2209 East Perkins Road from Champaign County CR, Conservation-Recreation District to City, R-1, Single-Family Residential Zoning District.**

Jeff Engstrom, Planner I, presented these two cases together to the Plan Commission. He gave a brief background and description of the proposed site. He noted the zoning and future land use of the proposed property and of the surrounding properties. He reviewed the LaSalle National Bank criteria as they pertain to the proposed annexation rezoning. He read the options of the Plan Commission and presented staff's recommendation, which was as follows:

*Staff recommends that the Plan Commission forward these two cases to the City Council with a recommendation for approval of the proposed annexation agreement as presented.*

With no questions at this time for City staff, Chair Pollock opened the hearing up for public input. There were no comments or questions from the public. Chair Pollock, then, opened the hearing up for Plan Commission discussion and/or motion(s).



Mr. Hopkins understood that the Plan Commission was only considering the rezoning request and not the variance request that is part of the annexation agreement. In making sense of the zoning decision, the construction of a building in a residential zone that has 3,200 square feet of storage and 800 square feet of residence does not make sense as a long-term activity in a residential zoning district. Therefore, he is trying to figure out how much of this the Plan Commission should be dealing with or whether they should just ignore this. Chair Pollock commented that it would be up to each individual member to decide if these concerns of what might happen on the proposed property is reason enough to deny the rezoning request.

Robert Myers, Planning Manager, pointed out that it would be residential storage and not business storage. He recalled the Reynolds annexation where the property owner had a lot of personal storage. This is not such an unusual activity in rural areas. The Comprehensive Plan shows Rural Residential for the future land use. If the property was converted from County CRE to City CRE zoning, then the residential use would not be allowed. The lowest intensity residential district would be R-1, Single-Family Residential.

Mr. Hopkins wondered what it is about the particular expectation of this building that actually requires the proposed variance. Is there a limit on how big a garage can be relative to the other space in a house in the R-1 Zoning District? Mr. Fell responded that he knows through his work that a detached accessory structure can be no more than 750 square feet. Mr. Hopkins pointed out that this is not a detached accessory structure, because the storage area and the residential area will be all one structure.

Mr. Myers noted that the petitioner wants to protect his right to build prior to purchasing the land. The Zoning Ordinance states that residential storage is typically an accessory use. He wants some assurances that the City is okay with the proposed structure before he agrees to annex the property. The annexation agreement is a way of spelling out the rules.

Mr. Fell wondered if the proposed site is annexed, will there be any City responsibility or obligation for City services? Mr. Myers said yes. Chair Pollock stated that police and fire would respond upon annexation of the property. Mr. Myers added that City staff has looked at utility service extensively in terms of sewer. Staff knows what all the steps will be and when the sewer system will be required to be extended to this property.

Chair Pollock asked how far the property is located from an existing sewer line. Mr. Myers replied that the nearest point is basically across the street.

Mr. Otto had City staff to specify what would be required to extend the City services in terms of the sewer system. Mr. Engstrom responded that in terms of sewer service, there is an existing septic system that the Urbana-Champaign Sanitary District (UCSD) will allow the petitioner to reconnect to. When the septic system fails, then the petitioner will be required to hook up the UCSD public sewer, and it will be at the petitioner's cost.

Ms. Stake stated that she did not feel that the rezoning request should be passed. After looking at the variance request in the annexation agreement, she did not feel that she would want the proposed structure next door to her. She feels the rezoning request should be denied because of the variance request. The 3,200 square foot storage area goes against what the Comprehensive Plan shows for the area. She feels that something else would fit much better in this area.

Mr. Hopkins moved that the Plan Commission forward both Annexation Case No. 2009-A-07 and Plan Case No. 2120-M-09 to the City Council with a recommendation for approval. Mr. Fell seconded the motion.

Mr. Hopkins commented that he has the same concerns that Ms. Stake raised. However, what helps him think the proposed rezoning and variance are reasonable is the aerial photo (Exhibit B). Other properties that are adjacent to the proposed site are rural residential. He thinks that the City tries to articulate in the Comprehensive Plan the idea that the kind of residential in northeast Urbana is appropriately different and a particular kind of opportunity. A 4,000 square foot building is a big house, but compared to the layouts of some of the adjacent properties, it would be a step in the right direction and maybe an appropriate part of the mix on this road.

The final point is that it is not the Plan Commission's task to consider the details of the specific request for the variance. Therefore, he did not feel that they could get into that aspect of it.

Chair Pollock noticed that the red line, which outlines the subject property on Exhibit B, do not match the black lines, which represent the property lines. He pointed out that the property line goes right through the middle of where the proposed structure would be built. He asked City staff to address this. Mr. Myers explained that a subdivision of the property being completed along with the annexation. The subdivision request will clear up ambiguous property boundaries. Mr. Engstrom added that the property that is shown is from a previous subdivision plat that was done without permission. The property as outlined in the exhibit is shown as following approval of the subdivision plat.

Ms. Stake does not feel that the rezoning request should be approved. Rural residential does not mean that residents are not bothered by bad development. If she lived in rural residential, she would not want a huge building built next to her property. She feels the proposed structure would be making more of a mess and that by approving this would be a disservice to the other property owners in the area.

Scott Plunk, petitioner, asked permission to speak. With no objection from the Plan Commission, he approached the dais. He mentioned that the existing house is in terrible condition and is uninhabitable. The property was subdivided in 2004. At the time, the owner decided he wanted to take 50 feet off the west side of it and add it to his own residential property. This made the proposed site 153 feet wide. This was not in compliance with Champaign County zoning. So, in coming up with a deal with James Tull, the current owner, to purchase the subject property, he requested 28 feet of that 50 feet to become part of the subject property again. The red line should represent what the proposed property will be after the property is re-platted.

Mr. Plunk talked about the proposed building. He explained that he has a backhoe and plans to use it to clean up the property. He is a single person, so 800 square feet of residential is enough for him. He would like to clean the dead vegetation up this coming winter and construct the new building in the spring.

Mr. Otto inquired as to what the proposed building would look like. Mr. Plunk answered that it would be a pole-type building. It will have a concrete foundation. The façade will have windows, awnings and an overhang.

Mr. Otto asked about the setback from the front property line. Will it be similar to the adjacent properties? Mr. Plunk said that it would be at least 75 feet from Perkins Road. He does not want to be close to the road.

Mr. Otto wondered if it would be similar to the Township building across the street. Mr. Plunk said no. It would not be nearly as tall and he only wants to have one ten foot door. The other doors would be much smaller.

Mr. Otto asked City staff if the adjacent properties had been sent a legal notice about the proposed request. Mr. Engstrom said yes.

Ms. Stake wondered what the plans were for this area being zoned County CR. Chair Pollock pointed out that CR is a zoning designation not a plan. Mr. Myers said that County CR favors open spaces rather than intensive uses of a lot.

Mr. Otto inquired as to whether the petitioner asked the County for a rezoning of the property. Mr. Plunk said that since it is adjacent to the city boundary, it could be annexed. If it remains County CR, then he would not be allowed to build anything on this property. Mr. Engstrom noted that single-family residential is allowed in County CR; however, for this property it would not be conforming to the minimum lot width of the CR district. This is the reason why it is going forward as an annexation with rezoning to allow for the proposed development in the City.

Mr. Plunk noted that he does not plan to operate a business on the lot. He does not want the headaches. The main reason he has a backhoe is to clean the place up. He does not plan to drive it off the property every day.

Mr. Fell commented that he drives by this property at least twice a day. The property itself is an eyesore. The existing house is uninhabitable. He does not feel that a 4,000 square foot building would be out of place with what is in character of the rest of the neighborhood. One neighbor has 12-bay detached garage. Another neighbor has at least a 4,000 square foot pole barn right beside his house.

Chair Pollock stated that the Plan Commission is not here to pass judgment on what the structure will look like. They are only to decide if the requested zoning district is the highest and best use of the land. This is a rural area. It is a rural residence that is being proposed. Although it might not be what some of them choose to build to live in, this is not the issue. The Comprehensive Plan calls for maintaining this area as a significant wooded area. The proposed plans do not interfere with that and he supports the motion.

Roll call on the motion was as follows:

Chair Pollock	-	Yes	Mr. Otto	-	Yes
Mr. Hopkins	-	Yes	Mr. Fell	-	Yes
Ms. Stake	-	No			

The motion was approved by a vote of 4-1.

Mr. Myers noted that these two cases would go before the City Council on December 21, 2009.