



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, FAICP, Community Development Director

**DATE:** July 30, 2015

**SUBJECT:** Plan Case No. 2015-A-01: Annexation Agreement for an 8.35-acre tract of property at 3106 N. Cunningham Avenue.

Plan Case No. 2261-M-15: Request to rezone an 8.35-acre tract of property at 3106 N. Cunningham Avenue from Champaign County B-4, General Business to City IN-1, Light Industrial/Office upon annexation.

---

**Introduction**

At the July 13, 2015 Special Meeting of the Urbana City Council, Staff presented the Urbana Plan Commission's recommendation for adopting an Annexation Agreement regarding the 8.35-acre tract located at 3106 N. Cunningham Avenue, including a requested rezoning from Champaign County B-4, General Business to City, IN-1, Light Industrial/Office upon annexation. This Agreement would provide a Special Use Permit to Stark Excavating, Inc. to allow concrete ready-mix and asphalt production and sales, as well as aggregate material recycling and sales. The proposed Annexation Agreement would further confer a Conditional Use Permit to Stark Excavating, Inc. to allow the use of a construction yard on the subject tract.

Action regarding the proposed Agreement was deferred by the Urbana City Council to the City Council meeting of August 3, 2015. Any action on the proposed Agreement is to immediately follow a separate public hearing to be held on the action.

In the subject heading of Staff's memorandum to the Urbana City Council dated July 9, 2015, it was stated that the subject tract was 8.14-acres in area. The subject tract is actually 8.35-acres in area. This larger area was listed in the required legal notifications.

Following Staff's presentation regarding the Plan Commission's recommendation at the July 13, 2015 meeting, the Urbana City Council inquired about three issues: (1) storm water drainage from the subject tract, (2) the potential for a noise disturbance created by the proposed use, and (3) screening between the subject tract and a non-contiguous residential lot to the south. These three issues are addressed below.

## Discussion

### *Drainage*

City Council inquired if particulates would be present in the storm water run-off from the subject tract. Per Article One, Section Seven and Article Two, Section Five of the proposed Agreement, the parties to the Agreement will install a culvert to catch water shedding from the adjacent properties to the north. The parties will also preserve existing ditches to convey water east-to-west along the subject tract's southern property line. All work must be approved by the Illinois Department of Transportation, where required.

The City of Urbana Public Works Department has approved the preliminary site plan for the proposed use. Drainage plans will be drawn by the parties to the Agreement as a part of their final site plan, and these plans must be approved the City's Public Works Department, per Article One, Section Ten of the proposed Agreement. The following statement of approval has been provided by Bill Gray, Director of Public Works:

*"City staff will review the [final] site plans to check for compliance with local, state and federal regulations. Currently at other locations in Urbana there exists a hot mix asphalt plant, concrete batch plant, and concrete/asphalt recycling facilities that are in compliance to our knowledge with these regulations. City staff has no reason to doubt Stark's ability to comply. Stark has similar operations in the Bloomington area."*

Brad Jameson, a representative of Stark Excavating, Inc., has stated that particulates from the planned concrete production process will be filtered through dust collectors, while the planned asphalt production process will not create particulates. Any crushing operations (a part of the planned recycling operations) will utilize water sprayers to minimize the production of dust, ensuring compliance with the Illinois Environmental Protection Agency's regulations.

City Staff will work with the applicant to ensure that all regulations at the local, state, and federal level are met.

### *Noise*

The Urbana City Council inquired into the planned hours of operation on the subject tract. Representatives from Stark Excavating, Inc. have stated that they typically begin operations at 7:00 AM and terminate operations by 4:00 PM Monday through Friday. On some occasions when a specific project requires it, work during night hours or Saturdays may take place, and very rarely will operations take place on a Sunday. In addition, the parties to the Agreement are required to meet the requirements of the Urbana Noise Ordinance, including a limit of 55 decibels from the hours of 10:00 PM to 7:00 AM, and 60 decibels at all other times. Any excessive noise created on the subject tract that violates the Urbana Noise Ordinance will be treated as a nuisance by City Staff.

Per Council's inquiry, Mervis Industries' recycling center located to the south of the subject tract operates from 8:00 AM to 4:00 PM Monday through Friday and from 8:00 AM to 12:00 PM on Saturdays. No limits to hour of operations, or noise produced from those operations, were incorporated into the Special Use Permit granted to Mervis Industries.

A lot zoned R-2, Single-Family Residential, addressed as 1714 E. Airport Road, is located roughly 370 feet to the south of the subject tract, while the actual residence on that property is located roughly 872 feet to the south. It is expected that the significant distance between the subject tract and the residence on this lot will minimize any potential noise disturbance created by the proposed use. The owner and resident of that property, Gregory Reynolds, has stated to Staff that they have no objection to the noise that will be created by regular and off-hour operations on the subject tract, as long as all noise levels remain within the regulations of the Urbana Noise Ordinance.

### *Screening*

If the requested rezoning is approved, the subject tract will be zoned IN-1, Light Industrial/Office. The two lots to the south of the subject tract are located within the city limits and are also zoned IN-1, Light Industrial/Office. Per Section VI-6 of the Urbana Zoning Ordinance, no screening would be required along the southern border of the subject tract due to the adjacency of industrial zoning. Other screening provisions required by the Urbana Zoning Ordinance must be met, per Article One, Section Twelve of the proposed Agreement. The site plan included in the proposed Agreement shows that an earthen berm will provide screening along the eastern and northern borders of the subject tract.

Council inquired about the possible visual impacts of the planned use on the existing residence located at 1714 E. Airport Road. Per discussions with Stark Excavating, Inc., they have pledged to go beyond the required screening regulations to ensure an existing line of trees along the southern property of the subject tract be preserved (see image provided in Exhibit F). The only vegetation to be removed is that which obstructs existing drainage patterns. Gregory Reynolds, the owner and resident of the residential property to the south of the subject tract, as noted above, has voiced his approval for Stark Excavating, Inc.'s plans. This approval is stated in the following email he sent to City Staff on July 16, 2015:

*"...I have agreed to the business proposal that Jason at Stark Excavating has shown me for the property on Rt. 45 in Urbana, just north of my house. It is my understanding that the tree line will remain in place on the south side of their property as a buffer for noise and appearance. I have no problem with their proposed development. I am aware that there will be occasional night operation, but within the noise ordinance. I am fine with this also."*

As seen in Exhibit F, much of the view of the subject tract from the residential structure is also blocked by the resident's storage buildings. Additionally, in accordance with the Zoning Ordinance, at such time as the industrially zoned lot located between the residential lot and the subject tract is developed, screening will be required between this industrial lot and the residential lot.

## **Options**

In Plan Case 2015-A-01/2261-M-15, the City Council has the following options:

- a. Approve, the proposed Annexation Agreement with a two-thirds vote, including a zoning designation of IN-1, Light Industrial/Office for the subject tract, as well as issuance of a Conditional Use Permit and a Special Use Permit to Stark Excavating, Inc.; or
- b. Approve the proposed Annexation Agreement with a two-thirds vote, including a zoning designation of IN-1, Light Industrial/Office for the subject tract, as well as issuance of a Conditional Use Permit and a Special Use Permit to Stark Excavating, Inc., subject to recommended changes (note that the parties to the Annexation Agreement would have to agree to any recommend changes); or
- c. Deny the proposed Annexation Agreement.

## **Recommendation**

On June 25, 2015, the Urbana Plan Commission held a public hearing and voted five ayes and zero nays to forward Plan Case 2015-A-01/2261-M-15 to City Council with a recommendation for approval of the proposed Annexation Agreement and rezoning, as presented. Staff concurs with this recommendation.

---

Prepared by:  
Maximillian Mahalek  
Community Development Associate

cc: Stark Excavating, Inc.; DGS Properties, LLC; Green Vistas, LLC

Attachments:

Draft Ordinance Approving an Annexation Agreement  
Annexation Agreement with Exhibits  
Exhibit A: Location & Existing Land-Use Map  
Exhibit B: Zoning Map  
Exhibit C: Future Land-Use Map  
Exhibit D: Site Photo  
Exhibit E: Enlarged Site Plan  
Exhibit F: Photos of Subject Tract from Non-Contiguous Residential Property Located to South  
(Looking North)  
Excerpt of Approved Minutes from June 25, 2015 Plan Commission Meeting

**ORDINANCE NO. 2015-07-068**

**AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF AN ANNEXATION  
AGREEMENT**

(3106 N. Cunningham Avenue / Green Vistas, LLC / DGS Properties, LLC /  
Stark Excavating, Inc.)

WHEREAS, an Annexation Agreement between the City of Urbana, Illinois; Green Vistas, LLC; DGS Properties, LLC; and Stark Excavating, Inc. 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 8.35 acres located at 3106 North Cunningham Avenue and said tract is legally described as follows:

Part of the Southeast Quarter of Section 33, Township 20 North, Range 9 East of the Third Principal Meridian, Champaign County, Illinois, described as follows:

Beginning at a point which is 819.64 feet West and 1137.41 feet South of the Northeast Corner of the Southeast Quarter of Section 33, Township 20 North, Range 9 East of the Third Principal Meridian for a true point of beginning; thence 883 feet West to the East line of the right-of-way of Federal Highway Route 45; thence Southwesterly along said right-of-way line 206.78 feet; thence East 463.6 feet; thence South 357.6 feet; thence East 506.33 feet; thence North 544.19 feet to the true point of beginning, in Champaign County, Illinois.

Permanent Index No.: 25-15-33-476-001

WHEREAS, the City Clerk of Urbana, Illinois, duly published notice on the 16<sup>th</sup> day of July, 2015 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 3<sup>rd</sup> day of August, 2015; 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 14<sup>th</sup> day of July, 2015; and

WHEREAS, on the 25<sup>th</sup> day of June, 2015, the Urbana Plan Commission held a public hearing on the proposed rezoning in the Annexation Agreement and voted 5 ayes and 0 nays to forward a recommendation of approval to the Urbana City Council; and

WHEREAS, on the 3<sup>rd</sup> day of August, 2015, 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 has determined that the use planned under the proposed Annexation Agreement meets the criteria of a Special Use Permit, as established by the Urbana Zoning Ordinance; and,

WHEREAS, the Urbana City Council has determined that the use planned under the proposed Annexation Agreement meets the criteria of a Conditional Use Permit, as established by the Urbana Zoning Ordinance; 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; Green Vistas, LLC; DGS Properties, LLC; and Stark Excavating, Inc., 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 \_\_\_\_\_, 2015.

AYES:

NAYS:

ABSTAINS:

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

APPROVED by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
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 \_\_\_\_\_, 2015, 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 (3106 N. Cunningham Avenue / Green Vistas, LLC / DGS Properties, LLC / Stark Excavating, Inc.) 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 \_\_\_\_\_, 2015, 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 \_\_\_\_\_, 2015.



## **Annexation Agreement**

**(Green Vistas, LLC; DGS Properties, LLC; and Stark Excavating, Inc.)**

THIS Annexation Agreement (“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"), **Green Vistas, LLC** (hereinafter sometimes referred to as the “Owner”), **DGS Properties, LLC** (hereinafter sometimes referred to as the "Developer"), and **Stark Excavating, Inc.** (hereinafter sometimes referred to as the “Tenant”).

### **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, the Owner is the owner of record of a certain parcel of real estate located at 3106 N. Cunningham Ave., Urbana, Illinois, the legal description of which real estate is set forth in Exhibit “B” attached hereto and referenced herein as "the tract"; and

WHEREAS, the attached map, labeled Exhibit “A,” is a true and accurate representation of the tract to be annexed to the City under the provisions of this Agreement; and

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

WHEREAS, the Owner has been the owner of record of the tract since September 3, 2010; and

WHEREAS, on February 20, 2012, pursuant to Ordinance No. 2012-02-017, the Corporate Authorities entered into an agreement with Mervis Industries, Inc. to annex said tract into the City; and

WHEREAS, Mervis Industries, Inc. has never been the owner of record of said tract; and

WHEREAS, the previous annexation agreement regarding said tract is now void and said tract has not been annexed into the City; and

WHEREAS, the Developer proposes to purchase the tract from the Owner and to develop the tract for lease to the Tenant; and

WHEREAS, the Tenant proposes to utilize the tract for the manufacture and sale of concrete ready mix and asphalt, as well as aggregate recycling and related construction yard activities, and desires to obtain relevant approvals from the City and other authorities; and

WHEREAS, the tract is currently zoned B-4, General Business 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 IN-1, Light Industrial/Office under the terms and provisions of the Urbana Zoning Ordinance in effect upon the date of annexation, as amended from time to time, and subject to the terms and conditions set forth in this Agreement; and

WHEREAS, the Corporate Authorities find that annexation of the tract as described herein as IN-1, Light Industrial/Office, reflects the goals, objectives and policies set forth in the City's 2005 Comprehensive Plan, as amended from time to time; and

WHEREAS, the Owner desires to have the aforementioned real estate annexed to the City 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,  
TENANT, AND DEVELOPER**

The Owner, Tenant, and Developer agree 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 “B” and that the Owner shall within thirty (30) days of a request of the Corporate Authorities, 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 B-4, General Business to City IN-1, Light Industrial/Office. The Owner agrees that, unless changed upon the initiative of the Owner and/or Developer, the said City zoning classification 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 the Developer, and the Tenant 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 4. Land Uses.** The Owner and Developer agree that the uses of the tract shall be limited to those allowed within the IN-1, Light Industrial/Office district. The Tenant agrees that the uses of the tract shall be limited to those allowed by the Special Use Permit authorized in Article II, Section 3 of this Agreement, as well as by the Conditional Use Permit authorized in Article II, Section 4 of this Agreement.

**Section 5. Special Use Permit.** The Tenant agrees to the following conditions of a Special Use Permit, as granted by Article II, Section 3 of this Agreement, which will allow for the manufacturing and sale of concrete ready mix and asphalt on said tract, as well as aggregate

recycling and related sales on said tract, in the IN-1, Light Industrial/Office zoning district, which are permitted by Urbana Zoning Ordinance Table V-1 as Special Uses.

1. The Special Use Permit shall be applicable only to the confines of the tract, as depicted in the attached Exhibit "A" Location Map, and legally described in Exhibit "B."
2. The Special Use Permit approves only the manufacturing of ready-mix concrete and asphalt, as well as aggregate recycling, on said tract, as depicted in the attached Exhibit "C" Site Diagram.
3. The layout and operation shall substantially conform to the attached Site Diagram, as shown in Exhibit "C," along with any minor changes that may be necessary for the project to comply with City regulations including building, fire, and site development codes, as approved by the Zoning Administrator and to allow for specific needs of the Tenant.
4. The Tenant must obtain any and all permits as required by the Illinois Environmental Protection Agency.

**Section 6. Conditional Use Permit.** The Tenant agrees to the following conditions of a Conditional Use Permit granted by Article II, Section 4 of this Agreement, which will allow for the use of a construction yard on the tract, in the IN-1, Light Industrial/Office zoning district, which is permitted by Urbana Zoning Ordinance Table IV-1 as a Conditional Use.

1. The Conditional Use Permit shall be applicable only to the confines of the tract, as depicted in the attached Exhibit "A" Map, and legally described in Exhibit "B."
2. The Conditional Use Permit approves a construction yard on said tract, as depicted in the attached Exhibit "C" Site Diagram.
3. The layout and operation shall substantially conform to the attached Site Diagram, as shown in Exhibit "C," along with any minor changes that may be necessary for the project to comply with City regulations including building, fire, and site development codes, as approved by the Zoning Administrator and to allow for the specific needs of the Tenant.

**Section 7. Utilities.** An engineered Stormwater Management Plan and an Erosion and Sedimentation Control Plan shall be prepared and implemented consistent with the requirements of the Urbana Subdivision and Land Development Code. The Developer and/or Tenant shall extend the water line to the northern boundary of the tract prior to the issuance of a Certificate of Occupancy by the Corporate Authorities. Furthermore, the Developer and/or Tenant shall install a culvert to catch water shedding from the adjacent properties to the north. The Developer and Tenant shall preserve existing ditches to convey water east-to-west along the south property line. All work described in this section must be approved by the Illinois Department of Transportation, where required.

**Section 8. Transportation Infrastructure.** Per the direction of the Illinois Department of Transportation and the City Engineer, access to and from the site will be restricted to an existing right-turn-only driveway onto US Route 45. This driveway shall allow for right-turns leading into said tract eastbound from US Route 45, as well as right-turns leading out of said tract northbound onto US Route 45.

**Section 9. Surfacing Plan and Dust Control:** The Developer and/or Tenant shall pave all parking lots, access drives, off-street loading areas, and parking spaces located on the tract with a hard surface except such areas within the tract depicted in the attached Exhibit C to be used by the Tenant's for material storage. Such material storage areas may be surfaced with aggregate rock and such aggregate rock surfaced areas shall be periodically treated with dust control measures as reasonably determined by the Developer or the then current owner of the tract, and at such times as reasonably requested by the City Engineer.

**Section 10. Environmental Controls.** The Developer and Tenant shall comply with all applicable federal, state, and local environmental regulations. All runoff, noise, odors, dust or other emissions shall meet standards set forth by the Illinois Environmental Protection Agency. All required permits from federal, state, and local agencies, must be obtained as required.

**Section 11. Building Code Compliance.** The Developer and Tenant agree 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 12. Landscaping Plan.** A landscaping plan must be submitted with the Corporate Authorities prior to development of the tract. This plan must reflect conformance with standards for screening of industrial storage and required landscape buffers, as required by the Urbana Zoning Ordinance.

**Section 13. Amendments Required.** The Owner (or in the event the tract is sold, the successor in interest) 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 (or in the event the tract is sold, the successor in interest) 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, as stipulated in Article I, Section 1 of this Agreement, 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 City IN-1, Light Industrial/Office.

**Section 3. Special Use Permit.** Through this Agreement the Corporate Authorities hereby grant the Urbana Zoning Administrator the authority to issue a Special Use Permit to allow the Tenant to manufacture and sell ready-mix concrete and asphalt on said tract, as well as to conduct aggregate recycling and related sales on said tract, in the IN-1, Light Industrial/Office district, subject to the conditions specified in Article I, Section 5 of this Agreement. Furthermore, the Corporate Authorities find that granting of the Special Use Permit is consistent with the established criteria identified in Section VII-4 of the Urbana Zoning Ordinance in that these uses:

- 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 it shall be located.

**Section 4. Conditional Use Permit.** Through this annexation agreement the Corporate Authorities hereby grant the Urbana Zoning Administrator the authority to issue a Conditional Use Permit to allow the Tenant to operate a construction yard, in the IN-1, Light Industrial/Office district, subject to the conditions specified in Article I, Section 6. Furthermore, the Corporate Authorities find that granting of the Conditional Use Permit is consistent with the established criteria identified in Section VII-2 of the Urbana Zoning Ordinance in that this use:

- 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 it shall be located.

**Section 5. Utilities.** The Corporate Authorities agree to allow the Developer and/or Tenant to extend the water line to the northern boundary of the tract, in conformance with pertinent laws, codes, regulations, and permit requirements. The Corporate Authorities will withhold a Certificate of Occupancy until the water line is extended to the northern boundary of the tract. The Corporate Authorities also agree to allow the Developer and/or Tenant to install a culvert to catch water shedding from the adjacent properties to the north. Furthermore, the Corporate Authorities agree to allow the Developer and the Tenant to preserve existing ditches to convey water east-to-west along the south property line, on the condition that such work meets all permitting requirements set forth by the Illinois Department of Transportation. All work described in this section must be approved by all appropriate local and state agencies as required, including the Illinois Department of Transportation.

**Section 6. Surfacing Plan and Dust Control.** Due to the particular impacts of moving heavy equipment on paved surfaces and the extensive areas necessary for material storage, as depicted in the attached Exhibit C, the Corporate Authorities agree to allow outdoor material storage areas to be surfaced with aggregate rock and to be periodically treated with dust control measures. Per Article I, Section 9 of this Agreement, the Developer and/or Tenant shall apply additional dust reduction treatment as reasonably determined by the Developer, Tenant, or the then current owner of the tract and at such times as reasonably requested by the City Engineer in order to adhere to the criteria aforementioned.

**Section 7. Transportation Infrastructure.** Per the direction of the Illinois Department of Transportation and the City Engineer, access to the tract will be allowed via a right-turn only driveway leading northbound onto US Route 45. This driveway shall allow for right-turns leading eastbound into said tract from US Route 45, as well as right-turns leading out of said tract northbound onto US Route 45.

**Section 8. 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 Developer, the Owner, The Tenant, 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, the Developer, the Tenant, and the 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 Developer, the Tenant, the Owner, and the City.

**Section 4. Enforcement.** The Developer, the Owner, the Tenant, and the 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 Developer, the Tenant, or the Owner, the City may refuse the issuance of any permits or other approvals or authorizations relating to development of the tract.

**Section 5. Transfer, Security Interests, and Leases.** It shall not be a breach of this Agreement for the Owner, any subsequent owner, the Developer, the Tenant, or any subsequent tenant, to sell, lease, sublease or grant a security interest in the tract or any



part thereof to any third person provided such sale, sublease or grant shall be subject to the provisions of this Agreement.

**Section 6. 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 7. Effective Date.** The Corporate Authorities, the Developer, the Tenant, and the Owner intend that this Agreement shall be recorded in the Office of the Champaign County Recorder with any expenses for said recording to be paid by the Corporate Authorities. The effective date of this Agreement shall be the date it is recorded; or if not recorded for any reason, the effective date shall be the date the Mayor signs the Agreement on behalf of the City.

IN WITNESS WHEREOF, the Corporate Authorities, the Developer, the Tenant, and the 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:**

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

\_\_\_\_\_  
Date

**ATTEST:**

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

\_\_\_\_\_  
Date

**Owner:**

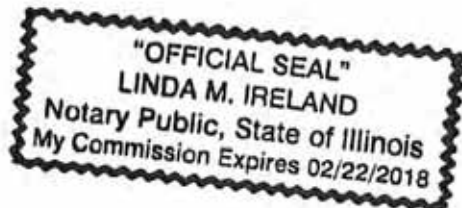
*[Handwritten Signature]*  
\_\_\_\_\_  
Louis L. Mervis, Manager  
Green Vistas, LLC

*7/6/15*  
\_\_\_\_\_  
Date

**ATTEST:**

*[Handwritten Signature]*  
\_\_\_\_\_  
Notary Public

*7-6-15*  
\_\_\_\_\_  
Date



**Developer:**

DK Stark  
David Kenneth Stark, Jr.  
Member  
DGS Properties, LLC  
7/1/15  
Date

Gregory Todd Stark  
Gregory Todd Stark  
Member  
DGS Properties, LLC  
7/1/15  
Date

Sarah Suzanne Stark  
Sarah Suzanne Stark  
Member  
DGS Properties, LLC  
7/1/15  
Date

**ATTEST:**

Karrie Hilt  
Notary Public  
7/1/15  
Date



**Tenant:**

DK Stark  
David Kenneth Stark  
President  
Stark Excavating, Inc.  
7/1/15  
Date

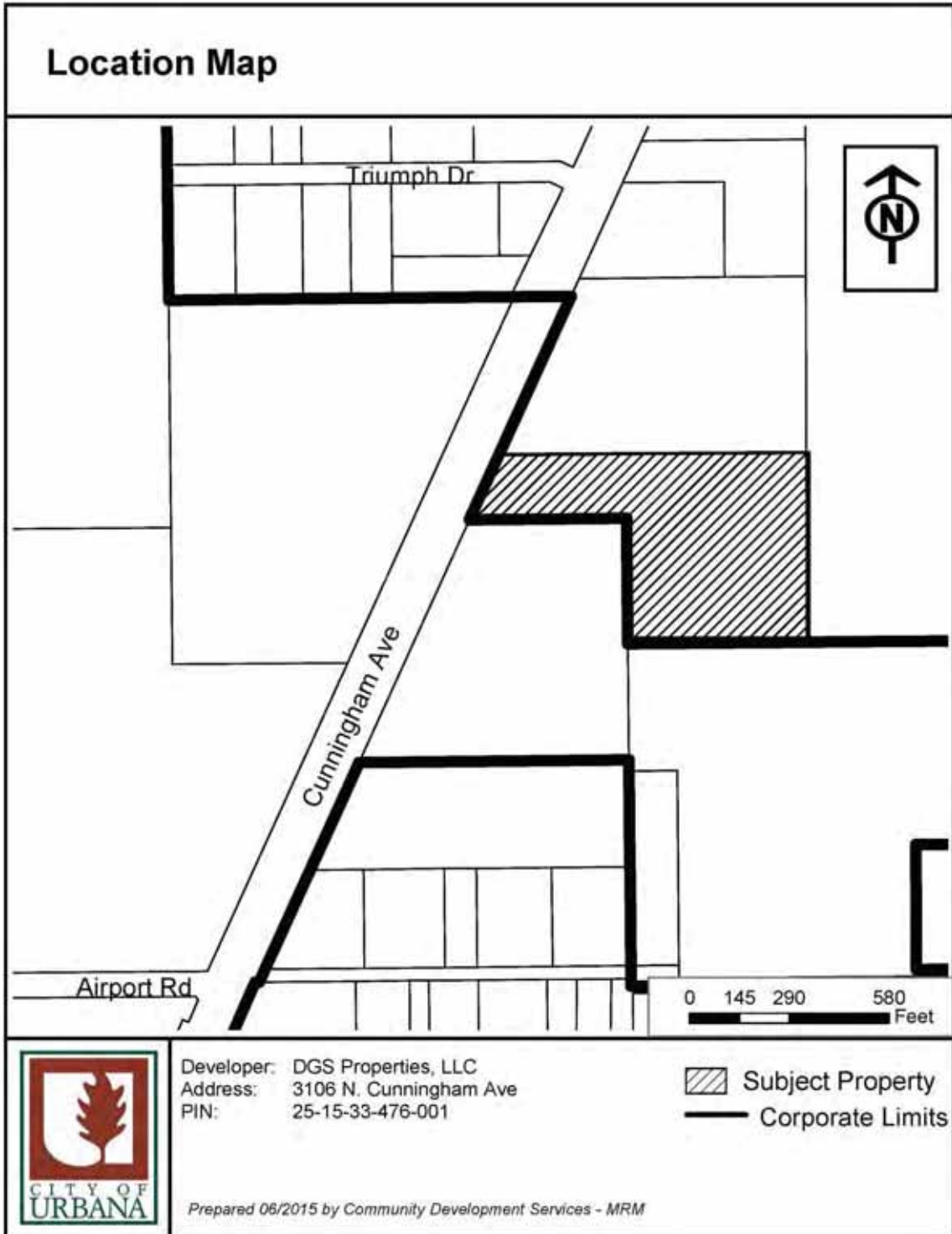
**ATTEST:**

[Signature]  
Notary Public  
7/1/15  
Date



Exhibit A

Location Map



**Exhibit B**

**Legal Description**

“Part of the Southeast Quarter of Section 33, Township 20 North, Range 9 East of the Third Principal Meridian, Champaign County, Illinois, described as follows:

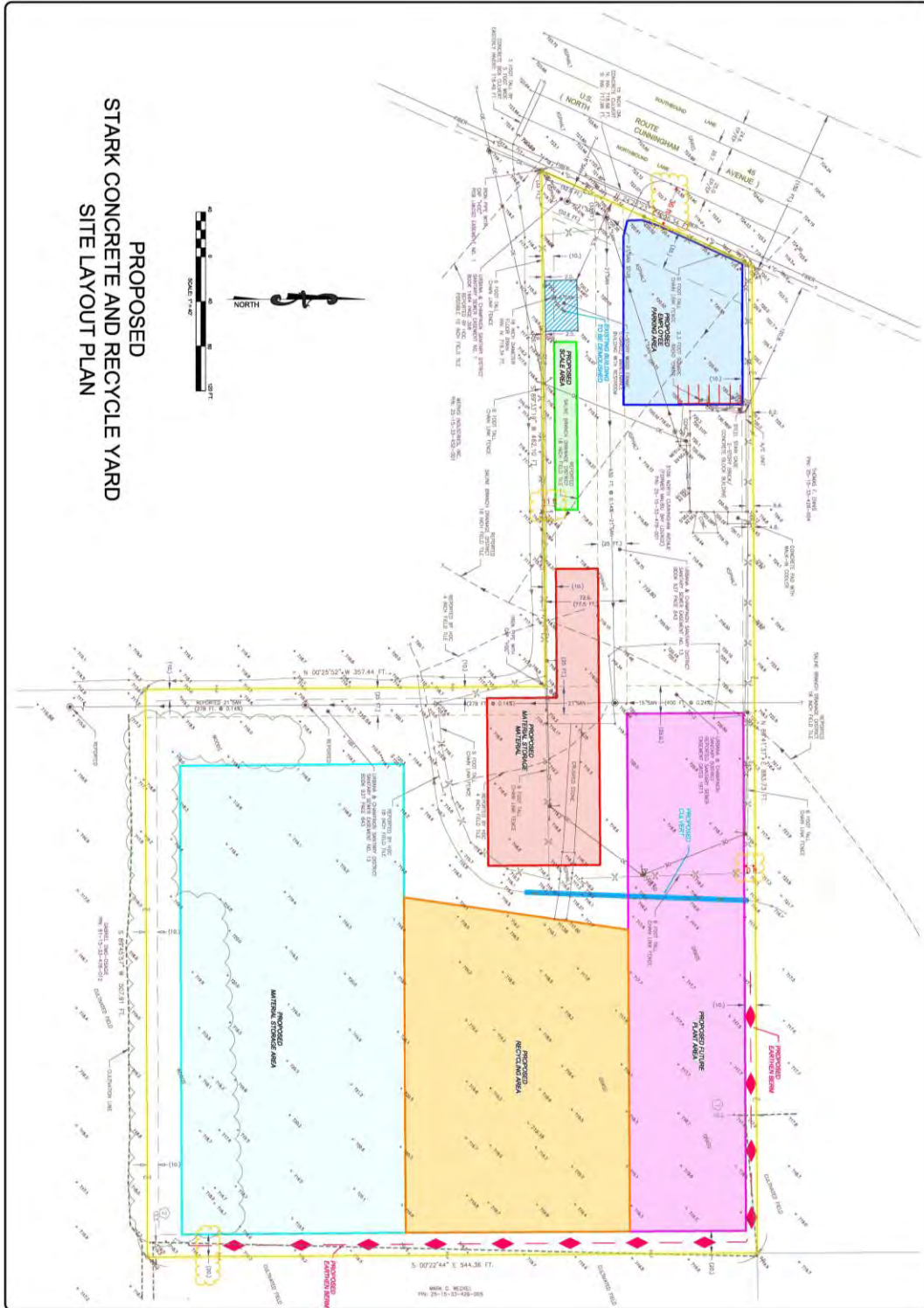
Beginning at a point which is 819.64 feet West and 1137.41 feet South of the Northeast Corner of the Southeast Quarter of Section 33, Township 20 North, Range 9 East of the Third Principal Meridian for a true point of beginning; thence 883 feet West to the East line of the right-of-way of Federal Highway Route 45, thence Southwesterly along said right-of-way line 206.78 feet; thence East 463.6 feet; thence South 357.6 feet; thence East 506.33 feet; thence North 544.19 feet to the true point of beginning, in Champaign County, Illinois.”

Permanent Index No. 25-15-33-476-001

Commonly known as 3106 N. Cunningham Avenue, Urbana, Illinois.

# Exhibit C

## Site Diagram





# EXHIBIT A: Location & Existing Land Use Map



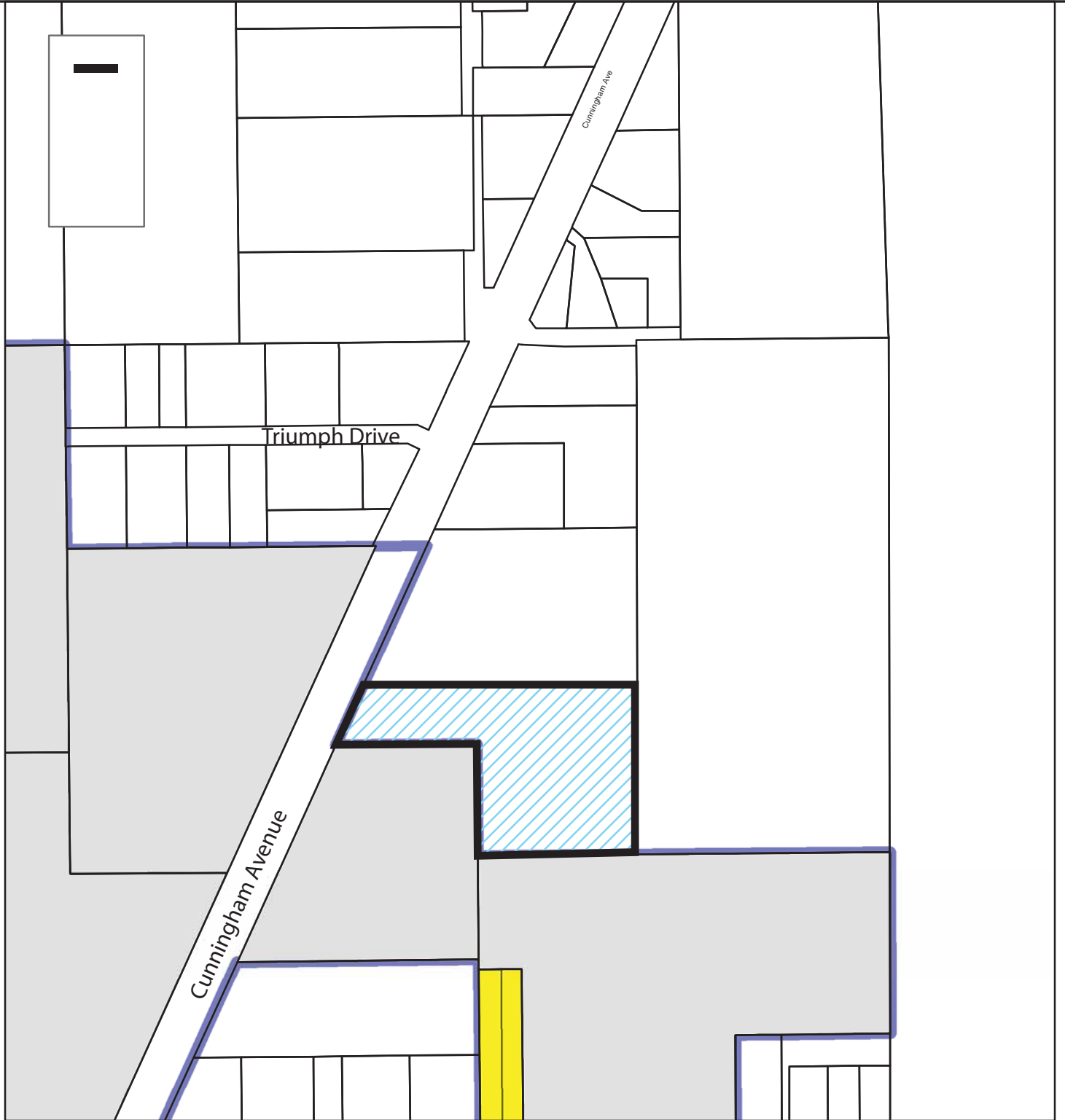
F



Case: 2015-A-01 & 2261-M-15  
Subject: Annexation Agreement including Rezoning  
Location: 3106 N Cunningham Avenue, Urbana  
Petitioner: Stark Excavating, Inc., DGS Properties, LLC, and Green Vistas, LLC




 Subject Property  
 Corporate Limits

# Exhibit B: Zoning Map



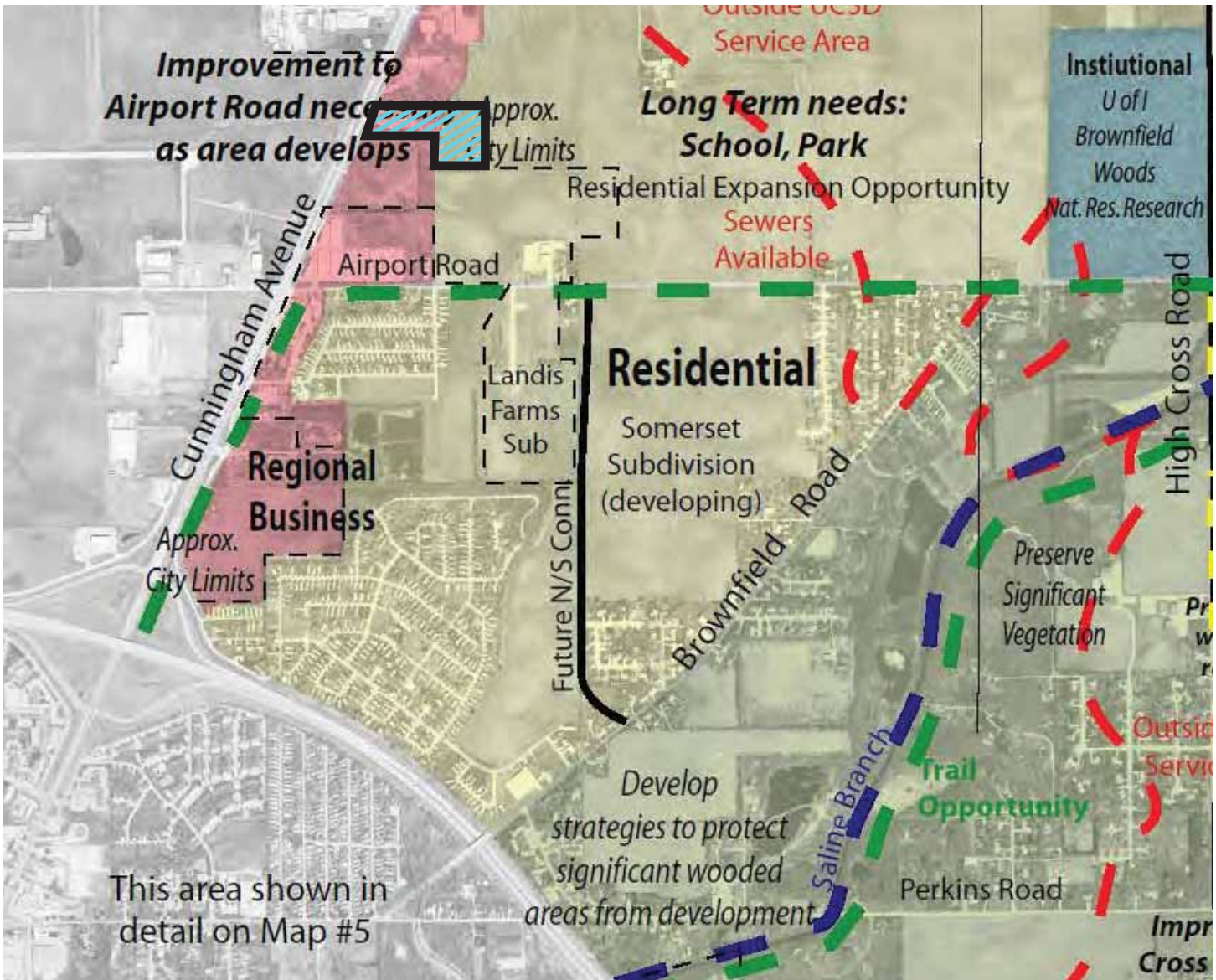
0 0.075 0.15  
Miles

Cases: 2015-A-01 & 2261-M-15  
Subject: Annexation Agreement Including Rezoning  
Location: 3106 N. Cunningham Avenue, Urbana  
Petitioner: Stark Excavating, Inc., DGS Properties, LLC, and Green Vistas, LLC

-  Subject Property
-  IN-1
-  R-2



# Exhibit C: (Page 1) Future Land-Use Map



This area shown in detail on Map #5



0 0.075 0.15 Miles

 Subject Property

Cases: 2015-A-01 & 2261-M-15

Subject: Annexation Agreement Including Rezoning

Location: 3106 N. Cunningham Avenue, Urbana

Petitioner: Stark Excavating, Inc., DGS Properties, LLC, and Green Vistas, LLC



# Exhibit C a e : Future Land Use Map



0 0.075 0.15  
Miles

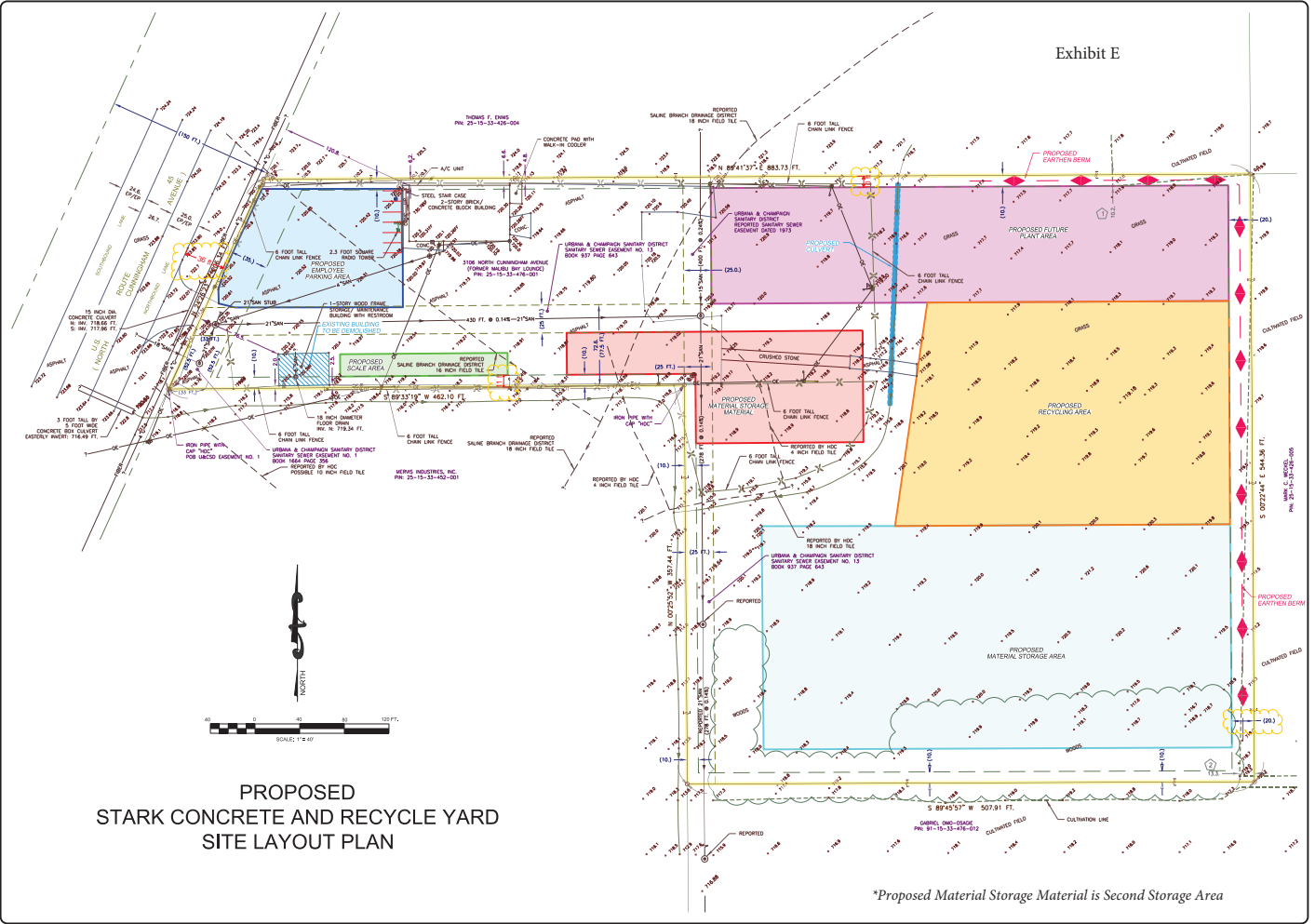
 Subject Property

Cases: 2015-A-01 & 2261-M-15  
Subject: Annexation Agreement Including Rezoning  
Location: 3106 N. Cunningham Avenue, Urbana  
Petitioner: Stark Excavating, Inc., DGS Properties, LLC, and Green Vistas, LLC

Exhibit D: Site Photo, Looking East



Exhibit E



PROPOSED  
STARK CONCRETE AND RECYCLE YARD  
SITE LAYOUT PLAN

\*Proposed Material Storage Material is Second Storage Area

**Exhibit F: Photos of Subject Tract from Non-Contiguous Residential Property Located to South (Looking North)**



**MINUTES OF A SPECIAL MEETING**

**URBANA PLAN COMMISSION**

**EXCERPT OF  
APPROVED  
MINUTES**

**DATE:** June 25, 2015

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

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

---

**MEMBER PRESENT:** Maria Byndom, Andrew Fell, Tyler Fitch, Lew Hopkins,  
Christopher Stohr

**MEMBERS ABSENT:** Corey Buttry, Dannie Otto, David Trail

**STAFF PRESENT:** Lorrie Pearson, Planning Manager; Christopher Marx, Planner I;  
Maximillian Mahalek, Planning Intern; Teri Andel, Administrative  
Assistant I

**OTHERS PRESENT:** Karen Carlson, Melany Jackson, Brad Jameson, James Moreland,  
Audra Owens, Malinda Wallick, Jason Wissmiller

---

**NEW PUBLIC HEARINGS**

**Case No. 2015-A-01 – Annexation agreement for an 8.35-acre tract of property at 3106 North Cunningham Avenue.**

**Plan Case No. 2261-M-15 – A request to rezone an 8.35-acre tract of property at 3106 North Cunningham Avenue from Champaign County B-4 (General Business) to City IN-1 (Light Industrial/Office) upon annexation.**

Chair Fitch opened the public hearing for these two cases. Maximillian Mahalek, Planning Intern, presented the cases to the Plan Commission. He began by stating a correction to the written staff memorandum – Green Vistas, LLC and DGS Properties, LLC are not affiliates. He continued his presentation by noting the location of the proposed site. He talked about the previous annexation agreement with Mervis Industries in 2012. Since Mervis Industries never owned the property, the 2012 agreement has been deemed invalid. He talked about the proposed annexation agreement and rezoning. He described the proposed site and the surrounding adjacent properties noting the zoning, current land uses and future land use designations of each. He referred to the Exhibit F, Site Plan, and talked about the use of each area of the property. He reviewed the conditions of the proposed annexation agreement and the LaSalle National Bank



criteria as they pertain to the proposed rezoning. He read the options of the Plan Commission and presented City staff's recommendations for approval.

Mr. Fell assumed that the neighboring properties were notified of this hearing and no communications meant no objections. Mr. Mahalek replied yes.

Mr. Stohr asked for clarification on the stormwater provisions. Mr. Mahalek explained that Planning staff worked with Public Works staff to ensure that stormwater concerns were addressed. A culvert will be installed to catch water shedding properties to the north. Furthermore, the existing ditches that convey water east to west along the property will need to be preserved.

Mr. Stohr wondered where the water would go after it is collected. Mr. Mahalek stated that there is a stream located to the east of the subject property that is where runoff collects.

Mr. Stohr questioned if the increased runoff would cause problems for the owner of the adjacent field. Ms. Pearson explained that at this stage, Public Works only requests a general idea about how stormwater will be addressed. Details would be engineered later and would be required to meet the City's subdivision and land development code. Chair Fitch commented that in a recent subdivision case, the owner had to submit a stormwater management plan. In fact, there were problems with their plan because it did not originally meet with the City's approval.

Mr. Fell assumed that as part of their stormwater management and Environment Protection Agency (EPA) regulations, they will be required to watch what they are doing to the agricultural properties. Mr. Mahalek replied that all EPA regulations must be enforced. He knows that Stark Excavations and the developer are working with the IEPA with regards to permits for their operations. He assumed that any negative impacts that the project might have on surrounding properties would be minimized through current regulations.

Mr. Stohr inquired as to which way the stream to the north runs. Mr. Mahalek replied that a representative from Stark could provide a more detailed answer.

With no further questions, Chair Fitch opened the hearing up for public input.

Brad Jameson and Jason Wissmiller, of Stark Excavation, approached the Plan Commission to answer any questions. Mr. Jameson mentioned that they have met with the Commissioners of the Saline Branch Drainage District. Some of the commissioners are also the farmers of the adjacent fields to the east. They welcomed Stark Excavation in this arrangement as Stark can improve the farmer's drainage tile as part of the proposed development. Mr. Wissmiller explained that some of the drainage tile is choked up with tree roots, and Stark plans to work with the Saline Branch Drainage District to clear the tile and repair it.

With regards to the stream that flows through the property, it heads to the southwest. It comes onto the property from the northeast and heads directly west through a culvert that is under Cunningham Avenue.

There was no further public input. Chair Fitch opened the hearing for Plan Commission discussion and/or motion(s).

Ms. Byndom expressed her concern for the 2005 Comprehensive Plan calls for a future designation of residential for the area. Chair Fitch stated that he also had concerns about this. The Comprehensive Plan calls for residential in the back part of the proposed site and regional commercial for the front part. Mr. Mahalek pointed out that the Comprehensive Plan future land use designations do not match the actual property lines in some areas.

Mr. Hopkins stated that the logic of the plan is to give rough indications of relationships. The outline is actually regional business not industrial, but the way it is drawn is based largely on what was already there. However, the implication is that the corridor is thought of as being a regional business corridor, so how deep a given lot or how large a given parcel is was not really taken into account in the plan. Therefore, he did not see this being countered to the intent of Cunningham Avenue being regional business. There is an additional interpretation, which is industrial as regional business.

This proposal and the Mervis Recycling Center would be the end of the runway. The notion of a big box store or something similar would not happen. The City of Urbana has its big box corridor on Philo Road and on East Main Street. As a result, he does not see the proposed use as being inconsistent with the 2005 Comprehensive Plan.

Chair Fitch noted that there are two different land use descriptions. Regional business is distinct from Light Industrial and Office. Regional business talks about large scale big box stores to smaller scale buildings and outlot opportunities. The Industrial designation mentions industrial uses as well as professional services. He agreed in Light Industrial there is often a lot of overlap. The proposed use might be termed as regional business, not by zoning but by practical application. So, he is not too concerned about the future designation in the Comprehensive Plan as well.

Ms. Byndom wondered what type of residential does the Comprehensive call for in the proposed area. Chair Fitch stated that the Comprehensive Plan did not get that specific. He presumed that if the residential would butt up against a regional commercial center that it would be multi-family residential.

Mr. Stohr moved that the Plan Commission forward Plan Case No. 2261-M-15 to the City Council with a recommendation for approval. Mr. Fell seconded the motion. Roll call on the motion was as follows:

Mr. Hopkins	-	Yes	Mr. Stohr	-	Yes
Ms. Byndom	-	Yes	Mr. Fell	-	Yes
Mr. Fitch	-	Yes			

The motion was approved by unanimous vote.

Mr. Fell moved that the Plan Commission forward Case No. 2015-A-01 to the City Council with a recommendation for approval. Mr. Hopkins seconded the motion. Roll call on the motion was as follows:

Mr. Stohr	-	Yes	Ms. Byndom	-	Yes
Mr. Fell	-	Yes	Mr. Fitch	-	Yes
Mr. Hopkins	-	Yes			

The motion was approved by unanimous vote. Mr. Mahalek noted that these two cases would be forwarded to the City Council on July 13, 2015.