



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning and Economic Development Division

m e m o r a n d u m

TO: Bruce K. Walden, Chief Administrative Officer

FROM: Rob Kowalski, AICP, Senior Planner

DATE: August 16, 2001

SUBJECT: Plan Case 1790-A-01, An Amendment to An Annexation Agreement with the East Urbana Development Corporation originally approved on August 5, 1991.

Plan Case 1790-S-01, Revised Preliminary and Final Subdivision Plat of Beringer Commons with requested waivers.

Introduction

The East Urbana Development Corporation is the developer of Beringer Commons Subdivision. They have submitted a request for a revised preliminary and final subdivision plat as well as a proposed amendment to the 1991 annexation agreement. The developer is also requesting waivers from the subdivision code related to street width.

Background

Beringer Commons Subdivision is a residential development that was originally started in Champaign County and has been gradually annexed into the city. Since the late 1980s, the East Urbana Development Corporation has platted and constructed two phases of Beringer Commons Subdivision which include a total of 95 single-family lots and 12 common lot line sites. The original plat identified four separate lots zoned R-4 and designated for common lot line development. To date, only one of these lots has been platted and built upon. The developer is now requesting a revision in the preliminary plat to relocate one of these R-4 lots to the area of the site where the other common lot line lots are either built or planned for.

Since the preliminary plat was subject to the original annexation agreement approved in 1991, the request is to revise both the plat and the agreement. The amendment to the agreement also offers the opportunity to add specific language ordered by a circuit court resulting from a recent court

settlement regarding the annexation of property in Beringer Commons. The proposed final plat of Beringer Commons Section 4 will allow the development of 55 more lots for the subdivision which will contain a mix of the single-family lots and common lot line lots.

The Urbana Plan Commission held a public hearing on August 9, 2001 to consider the proposal and voted unanimously 5-0 to recommend approval of the request to the Urbana City Council. For additional information on the case, please refer to the case memorandum to the Urbana Plan Commission dated August 2, 2001.

Discussion

There are two separate requests for consideration. These requests include an amended annexation agreement with a rezoning, and a revised preliminary and final plat with waivers.

Amendment to the Annexation Agreement

The previously approved 1991 annexation agreement included the preliminary subdivision plat and listed the provisions of that plat including the zoning of specific tracts related to the lotting pattern. In order to revise the preliminary plat and change the zoning of specific tracts, the previously approved annexation agreement must be revised as well so the agreement is consistent with the new plat and zoning. Amending the agreement gives the city the opportunity to add revisions that were recently ordered by a Circuit Court of Champaign County in August of 2000 relating to a settlement between the City and the East Urbana Development Corporation. In June of 2000, the City of Urbana and the East Urbana Development Corporation reached a settlement related to a lawsuit to annex a portion of the Beringer Commons site that was under a petition to annex. The Stipulation and Consent Decree ordered by the court identified specific language in the previously approved annexation agreement that has been required to be revised. This language relates to building construction conformance to city codes and tax reimbursement of the differential tax money between the city and the unincorporated tax rate for individual lots. The language is included on pages one and two of the amended agreement.

Rezoning

The original Beringer Commons preliminary plat designated four lots for R-4 zoned common lot line development. The original preliminary plat shows three of the lots clustered together along Rutherford Drive at the southeast portion of the tract while one lot (Lot 441) is shown in the center of the tract. The request is to revise the preliminary plat to relocate Lot 441 to where the single-family lots are currently planned and shown as lots 411, 607-614. This would require a rezoning of this area to R-4 since it is now R-2. This change would achieve the goal of locating all the common lot line development in one area along Rutherford Drive. The current Lot 441 would then need to be rezoned back to R-2. Current single-family lots 411, 607-614 would then be relocated to where lot 441 is currently shown on the preliminary plat. An illustration of the requested rezoning is shown on page 3. These rezonings are requested in an area where no lots have been final platted and no homes have been built. There are also no residencies within 250

feet of the requested areas to be rezoned.

Revised Preliminary and Final Subdivision Plat with Waivers

The only changes to the original preliminary subdivision plat relate to the lotting pattern of lots 441, 411 and 607-614 as described. There are no revisions requested related to the street network, utilities, access or drainage. Along with the request to revise the lotting pattern, the petitioner has requested two waivers to the Subdivision and Land Development Code requesting to street width. A waiver is requested to allow Rutherford Drive to be 25 feet wide and all other streets with the exception of Beringer Circle to be 28 feet wide instead of the required 31 feet. The developer explains that the waivers are justified because Rutherford Drive will not allow parking and will actually have little curb space available for parking since the design of the common lot line homes will have driveways that occupy the majority of the lot width. The request for 28-foot wide streets on all other streets is a common waiver that has been granted for similar developments. The Plan Commission found that the requested waivers are justified and will not negatively affect the public safety or welfare.

The developer is requesting approval of a final plat for Beringer Commons Subdivision Number 4. The plat will create an additional 55 lots within the development. Of the 55 lots, 3 will be the remaining R-4 lots reserved for common lot line development. The remaining 52 lots will be single-family residential lots zoned R-2. The R-4 lots will be further subdivided at a later date to accommodate the common lot line townhomes. The requested final plat is entirely consistent with the preliminary plat as requested to be revised. The plat will complete Rutherford Drive from its current terminus up to Beringer Circle. The plat will also complete the Beringer Circle loop including its access connection to High Cross Road. Artesia Road will also be completed within the development. The appropriate agencies have been sent a copy of the proposed final plat and have been given the opportunity to comment on it. Urbana Public Works will be reviewing final construction plans and will be setting a bond for the improvements.

Summary of Findings

For Plan Case 1790-A-01:

1. The amendment to the 1991 annexation agreement will be consistent with the update to the preliminary plat for Beringer Commons Subdivision.
2. The amendment to the annexation agreement incorporates language ordered by the Champaign Circuit Court relating to building code compliance and tax reimbursement.
3. The rezoning of Tract “A” to R-4, Medium Density Multiple Family Residential and Tract “B” to R-2, Single Family Residential would help meet a number of the goals, objectives, and policies of the Urbana Comprehensive Plan and would be consistent with existing and planned land uses in the vicinity.
4. On August 9, 2001 the Urbana Plan Commission found that the proposed zoning designation generally meets the LaSalle Case criteria.

For Plan Case 1790-S-01:

1. The proposed revised preliminary plat is generally consistent with the previously approved preliminary plat as it relates to the road network, access, drainage and utilities.
2. The proposed Final Plat is consistent with the revised preliminary plat
3. The proposed revised preliminary and final plats are consistent with the Comprehensive Plan land use and roadway designations for the site.
4. The proposed revised preliminary and final plats will allow a consistent distribution of land uses by allowing the common lot line development to be centered on Rutherford Drive.
5. With the exception of the requested waivers for street pavement width, the revised preliminary and final plats are consistent with the requirements of the Urbana Subdivision and Land Development Code.
6. On August 9, 2001 the Plan Commission found that the requested waivers will not be harmful to other properties and would not negatively impact the public health, safety and welfare of the community nor impede the attainment of goals and objectives contained in the Comprehensive Plan.

Options

The City Council has the following for these cases. In Plan Case 1790-A-01 and 1790-S-01, the City Council may:

- a. Approve of the proposed amendment to the annexation agreement, including the requested rezonings and approve the revised preliminary and final plat with the request waivers.
- b. Approve of the proposed amendment to the annexation agreement, including the requested rezonings and approve the revised preliminary and final plat with the request waivers, subject to recommended changes.
- c. Deny the proposed amendment to the annexation agreement, including the requested rezonings and deny the revised preliminary and final plat along with the requested waivers.

Staff Recommendation

Staff recommends that the City Council adopt the recommendation of the Plan Commission and approve both Plan Cases 1790-A-01 and 1790-S-01 along with the requested waivers.

Attachments: Proposed Ordinance for Amended Annexation Agreement
 Proposed Amended Annexation Agreement
 Proposed Ordinance for Combination Revised Preliminary and Final Plat
 Beringer Commons Sect. 4
 Combination Revised Preliminary and Final Plat Beringer Commons Sect. 4
 August 9, 2001 Plan Commission Minutes

c: Ivan Richardson, Beringer Commons

ORDINANCE NO. 2001-08-096

An Amendment to an Annexation Agreement With the East Urbana
Development Corporation

(To Include Provisions for a Revised Preliminary Subdivision Plat
Called Beringer Commons - Plan Case No. 1790-A-01)

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

Section 1. That an Amended Agreement by and between the
City of Urbana and the East Urbana Development Corporation, in
the form of the copy of said Amended Agreement attached hereto
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 authorized to attest to said execution of said Amended
Agreement as so authorized and approved for and on behalf of the
City of Urbana, Illinois.

PASSED by the City Council this _____ day of _____, 2001.

AYES:

NAYS:

ABSTAINED:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____,
2001.

Tod Satterthwaite, Mayor

An Amendment to An Annexation Agreement between the City of Urbana and the East Urbana Development Corporation approved by Ordinance No 9192-20 on August 5, 1991.

(Between the City of Urbana and the East Urbana Development Corporation)

THIS Amendment made and entered into by and between the City of Urbana, Illinois, (herein after sometimes referred to collectively as the "Corporate Authorities" or the "City") and the East Urbana Development Corporation (hereinafter referred to as the "Owners").

WITNESSETH:

WHEREAS, this Amendment 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 East Urbana Development Corporation is the Owner and Developer of an approximately 140 acres tract of land (except for those tracts previously platted and sold) generally located at the intersection of U.S. Route 150\Illinois Route 130 and High Cross Road now more commonly known as Beringer Commons Subdivision the original preliminary plat of which is illustrated in Exhibit "B" hereto; and

WHEREAS, the East Urbana Development Corporation and the City previously entered into an Annexation Agreement which was approved by Ordinance No 9192-20 on August 8, 1991 (hereinafter referred to as the "previously approved annexation agreement" and attached hereto as Exhibit "A"); and

WHEREAS, a Stipulation and Consent Decree has been issued by the Circuit Court of the Sixth Judicial Circuit of Champaign County on August 1, 2000 (case number 00-CH-110) which requires certain modifications to the previously approved annexation agreement relative to building construction conformance to City building codes and reimbursement of the differential tax money between the city and unincorporated tax rate for individual lots, to wit:

"c. Effective July 6, 2000, and Article I Section 4 and Article II Section 4 of the Annexation Agreement notwithstanding, the following language shall apply: All construction shall be in conformance with the City of Urbana building codes and Owner shall apply for all building and construction permits as required by City of Urbana Code of Ordinances. If, however there is disagreement between City staff and the developer or builder regarding the code's interpretation or application, the Developer, Builder or Owner shall have the right to appeal to the City of Urbana's Chief Administrative Officer for determination prior to or instead of exercising any formal appeal process provided for by Ordinance.

Furthermore, all permit fees shall not exceed the cost of fees charged by Champaign County, as amended from time to time for single-family zoning permits.”

“d. Effective July 6, 2000, and Article II Section 3 of the Annexation Agreement notwithstanding, the following language shall apply: The Corporate authorities shall by October 1st of each year reimburse Owner (Developer) by a payment equal to the difference between the City of Urbana tax rate and the unincorporated rate on such parcels until the sale of an individual lot to an individual home owner or builder, at which time the payments to Owner (Developer) shall cease as to such lot, but the Corporate authorities shall reimburse the then owner of each such individual lot the difference between the City of Urbana tax rate and the unincorporated rate for seven (7) consecutive years after such sale as determined annually. The sale of a lot shall be evidenced by the date of the deed transferring ownership from the Developer to the homeowner. It shall be the responsibility of the homeowner to initially request the tax rebate and to notify the City of any sale of the property during the seven (7) year rebate period”; and

WHEREAS, the previously approved annexation agreement annexed and zoned certain lots described as Tract II as R-2, Single-Family Residential and certain lots described as Tract III as R-4, Medium Density Multiple Family Residential under the terms of the Urbana Zoning Ordinance; and

WHEREAS, the previously approved annexation agreement permitted development for Tract II as single-family detached homes and development for Tract III as attached common lot line residential development; and

WHEREAS, the Owners and City desire to amend the previously approved annexation agreement as shown in Exhibit “A” and the approved preliminary plat as shown in Exhibit “B” to include provisions required by the Stipulation and Consent Decree ordered August 1, 2000 and to allow for R-4 zoning and common lot-line development on lots originally annexed with R-2 zoning and shown on the originally approved preliminary plat as 411 and 607-614 (shown as Tract “A”) and to allow for R-2 zoning and single-family residential development on the lot originally annexed with R-4 zoning shown on the originally approved preliminary plat as lot 441 (shown as Tract “B”); and

WHEREAS, the Owners have submitted an updated preliminary plat shown as Exhibit “C” which illustrates the revisions to the zoning and lotting pattern; and

WHEREAS, the attached legal descriptions, labeled Exhibit “D”, are a true and accurate representation of the tracts to be rezoned under the provisions of this amendment; and

WHEREAS, the Owners desire to have the previously approved annexation agreement amended 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 THAT THE PREVIOUSLY APPROVED ANNEXATION AGREEMENT SHOULD BE AMENDED AS SET FORTH HEREIN.

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

The Owners agree to the following provisions:

Section 1. Ownership: The Owners represent that they are the sole record Owners of the tracts described in Exhibit “D”.

Section 2. Decree: The Owners recognize their rights and responsibilities as set forth in the Stipulation and Consent Decree (No. 00-CH-110) ordered of August 1, 2000 which affects Article I, Section 4 of the previously approved annexation agreement concerning conformance to the City of Urbana building codes.

Section 3. Zoning Classification: The Owners agree that Tract “A” will be rezoned from City R-2, Single Family Residential to City R-4, Medium Density Multiple Family Residential and that Tract “B” will be rezoned from City R-4, Medium Density Multiple Family Residential to City R-2, Single Family Residential upon adoption of the amendment to the previously approved annexation agreement.

The Owner agrees that Article I Section 13 of the previously approved annexation agreement shall be amended to read as follows:

“Owner agrees that the residential density of any development on Lots 1301-1312, 452, 453 and 455 as illustrated on the updated preliminary plat, regardless of densities allowed by zoning ordinance regulation, shall not exceed 10 dwelling units per net acre of said lots.”

The Owner agrees that Article I Section 14 of the previously approved annexation agreement shall be amended to read as follows:

“The Owner agrees that all lots with the exception of Lots 1301-1312, 200, 400A, 400B, 700, 452, 453, 455 and lot at the southeast corner of the site reserved for future neighborhood commercial shall be restricted to single-family detached housing only. The Owner further agrees that any change in the use as described herein shall constitute an amendment to this Agreement and require a public hearing before the Urbana Plan Commission, notification of adjoining property owners within 250 feet of Tracts I, II, III, and IV and approval of the Urbana City Council.”

Section 4. Preliminary Plat: The Owners and Developer agree that the updated preliminary plat shown in Exhibit “C” shall supercede the original preliminary plat and that development shall be in substantial conformance with the uses and layout of the updated preliminary plat.

Section 5. Development Regulations: The Owners and Developer agree to abide by all applicable development regulations existing at the time of the adoption of the amendment to the previously approved annexation agreement with the exception of those regulations listed in Article II Section 5 of this Amendment.

Section 6. Disconnection: The Owner agrees and hereby stipulates that the Owner shall not take any action to disconnect either Tract “A” or Tract “B” from the City during the remaining term of this agreement.

ARTICLE II. REPRESENTATIONS AND OBLIGATIONS OF THE CORPORATE AUTHORITIES

The Corporate Authorities agree to the following provisions:

Section 1. Annexation Agreement: The Corporate Authorities agree to amend the previously approved annexation agreement of said tracts subject to the terms and conditions outlined in this Amendment, within thirty (30) days of the effective date of this Amendment.

Section 2. Decree: The Corporate Authorities acknowledge its rights and responsibilities under the Stipulation and Consent Decree (No. 00-CH-110) ordered of August 1, 2000 specifically language which affects Article II, Section 3 and Article II, Section 4 of the previously approved annexation agreement.

Section 3. Tax Reimbursement: In the case of all lots platted and annexed after July 1, 2000, the Corporate Authorities shall reimburse the Owner (Developer) by a payment equal to the difference between the City of Urbana tax rate and the unincorporated rate on such parcels until the sale of an individual lot to an individual home owner or builder, at which time the payments to Owner (Developer) shall cease as to such lot, but the Corporate authorities shall reimburse the then owner of each such individual lot the difference between the City of Urbana tax rate and the unincorporated rate for seven (7) consecutive years after such sale as determined annually. The sale of a lot shall be evidenced by the date of the deed transferring ownership from the Developer to the homeowner. It shall be the responsibility of the homeowner to initially request the tax rebate and to notify the City of any sale of the property during the seven (7) year rebate period. Furthermore, this section shall also apply to lots 302-306 of Beringer Commons Subdivision Section Number 3 provided said lot(s) are annexed to the City prior to December 31, 2001.

Section 4. Zoning Classification: The Corporate Authorities agree that Tract “A” as shown in Exhibit “B” will be rezoned from City R-2, Single Family Residential to City R-4, Medium

Density Multiple Family Residential and that Tract “B” as shown in Exhibit “B” will be rezoned from City R-4, Medium Density Multiple Family Residential to City R-2, Single Family Residential upon adoption of the amendment to the previously approved annexation agreement.

Section 5. Development Regulations: The Corporate Authorities agree that Section 7 of the previously approved annexation agreement shall be amended to add the following additional waivers:

“The Corporate Authorities agree to waive requirement 21-36(A) of the Subdivision and Land Development Code and to allow the reduction of the pavement width for Rutherford Drive from the required 31 feet to 25 feet from back to back of curb. The pavement width reduction is only permitted where Rutherford Drive serves common lot line development. There shall be no parking permitted along this length of Rutherford Drive.”

“The Corporate Authorities agree to waive requirement 21-36(A) of the Subdivision and Land Development Code and to allow the reduction of the pavement width for all streets with the exception of Rutherford Drive as described in Section 3(A) and Beringer Circle from the required 31 feet to 28 feet from back to back of curb.”

Section 6. Final Development Plat: The Corporate Authorities agree to grant approval for the final development plat of the tracts in substantial conformance with the uses and layout shown in Exhibit “C”, and as consistent with the Urbana Land Development and Subdivision Code and with any approved waivers of said code.

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:

Tod Satterthwaite, Mayor

East Urbana Development Corp.

Date

Date

ATTEST:

Phyllis D. Clark
City Clerk

Notary Public

Date

Date

Exhibits attached and made a part of this Agreement:

Exhibit A: Previously approved annexation agreement

Exhibit B: Originally approved preliminary plat

Exhibit C: Updated preliminary plat

Exhibit D: Legal descriptions

Exhibit “A”
Previous Annexation Agreement

Exhibit "B"
Originally Approved Preliminary Plat

Exhibit "C"
Updated Preliminary Plat

Exhibit "D"
Legal Description

TRACT "A"

**LEGAL DESCRIPTION OF TRACT
PROPOSED TO BE REZONED FROM R-2 TO R-4
IN BERINGER COMMONS SUBDIVISION**

PART OF THE SE 1/4 OF SECTION 10, T. 19N., R. 9E. OF THE 3RD P.M., MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 306 IN BERINGER COMMONS SUBDIVISION NO. 3 AS RECORDED JUNE 19, 1998 AS DOCUMENT NO. 98R18228 IN THE RECORDER'S OFFICE OF CHAMPAIGN COUNTY, ILLINOIS; THENCE NORTHEASTERLY ALONG THE FUTURE NORTHWEST RIGHT-OF-WAY LINE OF RUTHERFORD DRIVE, A CURVE TO THE LEFT, CONVEX TO THE SOUTH, WITH A RADIUS OF 220.00 FEET AND AN INITIAL TANGENT BEARING OF S. 88°51'34"E., A DISTANCE OF 145.87 FEET TO A POINT OF TANGENCY; THENCE N. 53°09'03" E. ALONG SAID FUTURE NORTHWEST RIGHT-OF-WAY LINE, 426.47 FEET TO A POINT OF CURVATURE; THENCE NORTHWESTERLY ALONG SAID NORTHWEST RIGHT-OF-WAY LINE, A CURVE TO THE LEFT, CONVEX TO THE EAST, WITH A RADIUS OF 220.00 FEET, A DISTANCE OF 132.83 FEET TO THE TRUE POINT OF BEGINNING;

THENCE N. 71°26'32" W., 154.33 FEET; THENCE N. 10°39'54" E., 40.22 FEET; THENCE N. 00°53'48" W., 264.12 FEET; THENCE N. 38°45'50" W., 87.79 FEET; THENCE S. 89°03'26" W., 68.88 FEET; THENCE S. 70°14'30" W., 72.68 FEET; THENCE N. 37°38'34" W., 39.67 FEET; THENCE N. 00°56'34" W., 147.83 FEET TO A POINT ON THE FUTURE SOUTH RIGHT-OF-WAY LINE OF BERINGER CIRCLE; THENCE N. 89°03'26" E. ALONG SAID FUTURE SOUTH RIGHT-OF-WAY LINE, 365.00 FEET TO A POINT ON THE FUTURE WEST RIGHT-OF-WAY LINE OF RUTHERFORD DRIVE; THENCE S. 00°56'34" E. ALONG SAID FUTURE WEST RIGHT-OF-WAY LINE, 506.95 FEET TO A POINT OF CURVATURE; THENCE SOUTHWESTERLY ALONG SAID FUTURE WEST RIGHT-OF-WAY LINE, A CURVE TO THE RIGHT, CONVEX TO THE EAST, WITH A RADIUS OF 220.00 FEET., A DISTANCE OF 74.88 FEET TO THE POINT OF BEGINNING,

CONTAINING 2.753 ACRES, MORE OR LESS, ALL SITUATED IN THE CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS, SAID TRACT ANTICIPATED TO BE LOT 452 IN BERINGER COMMONS SUBDIVISION NO. 4 AND DEPICTED AS LOT

**452 ON THE UPDATED PRELIMINARY PLAT FOR BERINGER COMMONS DATED
JULY 19, 2001.**

**PREPARED BY THOMAS B. JORDAN, ILLINOIS PROFESSIONAL LAND
SURVEYOR NO. 2014, ON JULY 19, 2001**

TRACT "B"

**PROPOSED TO BE REZONED FROM R-4 TO R-2
IN BERINGER COMMONS SUBDIVISION**

**SHOWN AS LOT 441 ON THE APPROVED PRELIMINARY PLAT FOR BERINGER
COMMONS DATED JUNE 27, 1991**