



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

MEMORANDUM

TO: Bruce K. Walden, Chief Administrator Officer

FROM: Elizabeth H. Tyler, AICP, City Planner, Director

DATE: April 29, 2004

SUBJECT: Plan Case No. 1887-A-04: Annexation agreement for a 2.71-acre tract of property at 1501 North Lincoln Avenue. Located on the southwest corner of Lincoln Avenue and Bradley Avenue.

Plan Case No. 1887-M-04: Request to rezone a 2.71-acre tract of property at 1501 North Lincoln Avenue from Champaign County B-2, Neighborhood Business to City, B-3, General Business upon annexation. Property located on the southwest corner of Lincoln Avenue and Bradley Avenue.

Background

On April 19th the Urbana City Council discussed the proposed annexation and rezoning of 1501 North Lincoln Avenue. No action was taken on the matter because the official public hearing for the annexation agreement was scheduled for May 3, 2004. At the meeting on the 19th the Council directed staff to incorporate language in the agreement pertaining to the design of the underground storage tanks and piping as well as including language regarding stormwater runoff and the use of Best Management Practices.

Enclosed is the final draft of the proposed agreement that includes this language and also requirements for lighting on the canopy. New language is underlined in the agreement. Also enclosed is an updated copy of the proposed adopting ordinance.

For further information on the case, please refer to the staff memorandum prepared for City Council and dated April 15, 2004.

Staff Recommendation

In Plan Case 1887-A-04 / 1887-M-04 staff recommends **APPROVAL** of the proposed annexation agreement and rezoning as presented.

Prepared By:

Rob Kowalski, Planning Manager

cc: Jeff Marshall
Design and Planning
250 Franklin Street
Columbus, IN 47201

Attachments: Proposed Ordinance
Revised Proposed Annexation Agreement

ORDINANCE NO. 2004-04-044

An Ordinance Approving and Authorizing the Execution of an Annexation Agreement
(1501 North Lincoln Avenue Annexation Agreement / Approximately 2.71 acres on the
southwest corner of Lincoln Avenue and Bradley Avenue. Plan Case No. 1887-A-04 & 1887-M-
04)

WHEREAS, an Annexation Agreement between the City of Urbana, Illinois, Michael Augustino Maggio, and Bushman, LLC 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 2.71 acres located on the southwest corner of Lincoln Avenue and Bradley Avenue more commonly referred to as 1501 North Lincoln Avenue legally described as follows:

The East 183 feet and the North 325 feet of the West 120 feet of the East 303 feet of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter of Section 7, Township 19 North, Range 9 East of the Third Principal Meridian;

EXCEPT the South 136 feet of the West 150 feet of the East 183 feet of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter of Section 7, Township 19 North, Range 9 East of the Third Principal Meridian;

AND ALSO EXCEPT those parts of the land dedicated or conveyed for public road purposes by document no. 850144 recorded July 27, 1960 in Book 652 at page 1045, by document no. 76R 2759 recorded February 20, 1976 in Book 1073 at page 800, and by document no. 93R 7978 recorded April 7, 1993 in Book 1897 at page 627;

In Champaign County, Illinois.

PIN #: 30-21-07-226-008

WHEREAS, the City Clerk of Urbana, Illinois, duly published notice on the 19th day of April, 2004 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 Eastern Prairie Fire Protection District on the matter; and

WHEREAS, on the 3rd day of May, 2004, 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 8th day of April, 2004, to consider the proposed Annexation Agreement and the rezoning from Champaign County B-2, Neighborhood Business to the City B-3, General Business Zoning District upon annexation in Plan Case No. 1887-A-04 and 1887-M-04; and

WHEREAS, The Urbana City Council has determined that the proposed Annexation Agreement is in conformance with the goals and objectives of the City of Urbana's Official Comprehensive Plan; and,

WHEREAS, the Urbana City Council, having duly considered all matters pertaining thereto, finds and determines that the proposed annexation agreement will not negatively impact the City of Urbana and would be in the best interests of the City of Urbana and its citizens;

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

Section 1. The that Annexation Agreement between the City of Urbana, Illinois, Michael Augustino Maggio, and Bushman, LLC., 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 _____, 2004.

AYES:

NAYS:

ABSTAINED:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____, 2004.

Tod Satterthwaite, Mayor

1501 North Lincoln Avenue
Annexation Agreement

THIS Agreement, 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 Michael Augustino Maggio, as Executor and Trustee under the Last Will and Testament of Anthony Joseph Maggio (hereinafter referred to as the "Owner") and Bushman , LLC (hereinafter referred to "Developer"). 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, Michael Augustino Maggio, as Executor and Trustee under the Last Will and Testament of Anthony Joseph Maggio, is the Owner of record of real estate tracts totaling approximately 2.71 acres, located at the southwest corner of Lincoln Avenue and Bradley Avenue, having an address of 1501 North Lincoln Avenue, and having a permanent index numbers of 30-21-07-226-008 the legal description of which real estate is set form in Exhibit "A" attached hereto; 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 Owner has entered into a contract with Bushman LLC (Developer) to sell the property for the purpose of developing of a convenience store, gas station and quick service restaurant as described in the this agreement; and

WHEREAS, the tract is contiguous to the City of Urbana, and said Owner, Developer and the City determine that immediate annexation of the tract is in the best interest of all parties; and

WHEREAS, the tract is currently zoned B-2, Neighborhood Business in Champaign County; and

WHEREAS, the City, Owner and Developer find it necessary and desirable that the tract, as described in Exhibit "A" be rezoned to the B-3, General Business Zoning District upon annexation for the purposes of establishing a convenience store, gas station and quick service restaurant under the terms and provisions of the Urbana Zoning Ordinance and this agreement; and

WHEREAS, the Urbana City Council finds annexing said tract as described herein as City B-3, General Business reflects the goals, objectives and policies set forth in the 1982 Comprehensive Plan, as amended from time to time; and

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

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

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

ARTICLE I. REPRESENTATIONS AND OBLIGATIONS OF THE OWNER AND/OR DEVELOPER

The Owner/Developer agree to the following provisions:

Section 1. Ownership and Annexation. The Owner/Developer represent that the Owner is the sole record Owner of the tract described in Exhibit "A" and that the Owner shall, within thirty (30) days of the approval of this agreement cause the tracts 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/Developer further agree that the substance of this Section of the Annexation Agreement shall be included in any sales contract for the sale of any portion of the subject tracts. If the subject tracts are to be platted for subdivision, the Owner/Developer 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/Developer 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. Title Interests. The Owner/Developer represent that there are no mortgages or lien holders or holders of any security interest affecting title to the tract described herein.

Section 3. Authority to Annex. The Owner/Developer agrees and hereby stipulates that the City, by its approval, execution or delivery of this Agreement does not in anyway relinquish or waive any authority it may have to annex the Tract in the absence of this Agreement.

Section 4. Zoning. The Owner/Developer acknowledges that upon annexation, the tract as described in Exhibit “A” will be rezoned from Champaign County B-2, Neighborhood Business Zoning District to City B-3, General Business Zoning District. The Owner/Developer agrees that, unless changed upon the initiative of the Owner/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/Developer 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 5. Building Code Compliance. The Owner/Developer agrees to cause all new development, construction, or additions on said tract to be in conformance with all applicable City of Urbana codes and regulations.

Section 6. Subdivision. The Owner/Developer agrees to prepare and record a subdivision plat per the Urbana Subdivision and Land Development Code to subdivide the existing tract into two parcels. One lot will be approximately 2.08 acres in area and the other lot will be approximately 0.63 acres in area.

Section 7. Site Improvements. The Owner/Developer agrees that upon development of the site, the existing depressed curb and gutter along Lincoln Avenue shall be replaced with a barrier curb and gutter and a raised center barrier median shall be installed on Lincoln Avenue to prohibit left turns into or out of the right in and right out driveway at the Owner/Developer’s expense. The Owner/Developer agrees to obtain all necessary City permits to provide said improvement. The Owner/Developer further agrees that all access to tract(s) from Lincoln Avenue and Bradley Avenue shall be provided as generally depicted on the Proposed Site Plan shown as Exhibit “C”. All site improvements shall be reviewed and approved by the City Engineer in accordance with the adopted codes, ordinances, and laws of the City of Urbana.

Section 8. Underground Storage Tank Infrastructure. The Owner/Developer agrees to comply with all requirements of the 35 Illinois Administrative Code, Part 616, SubPart H for the design of the underground storage tanks. The Owner/Developer agrees to install underground storage tanks that are double-walled and product piping that is double-walled and installed within a chase pipe. Building permit and construction plan documents submitted to the City of Urbana for permitting shall identify that these provisions are included in the construction plans submitted to the Illinois State Fire Marshall.

Section 9. Best Management Practices. The Owner/Developer agrees to utilize Best Management Practices for management of stormwater runoff on site. The construction

plans submitted to the City of Urbana shall identify the Best Management Practice(s) utilized in accordance with recommendations identified in Phase II of the Clean Water Act as they relate to storm water design.

Section 10. Lighting. The Owner/Developer agrees to use lighting under the pump island canopy so that the burn area of the lamps are not directly visible from off-site.

Section 8. Fence. The Owner/Developer agrees to install a six-foot high chain link fence on the south property line of the 0.63-acre parcel immediately adjacent to the Urbana Fire Station upon completion of construction of the convenience store. Fencing along the property line shall be in conformance to the requirements of the Urbana Zoning Ordinance once a commercial development is approved for the 0.63-acre parcel.

Section 9. Sanitary Sewer. The Owner/Developer agrees to install and pay for the extension of an 8" public sanitary sewer that will provide service to the tract(s) necessary for development of the site. Construction plans to extend the sanitary sewer shall be reviewed and approved by the City Engineer in accordance with the rules, regulations, codes, laws and ordinances of the City of Urbana and the State of Illinois. Said extension will require an IEPA permit and the City will assist, as required, the Owner/Developer in obtaining said permit.

Section 10. Disconnection. The Owner/Developer agrees and hereby stipulates that the Owner/Developer shall not take any action to disconnect the tracts from the City once it is annexed.

Section 11. Amendments Required. The Owner/Developer 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, Developer and the City. Said action includes petitioning for a county rezoning of said tracts 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 that the tract as described in Exhibit "A" will be zoned B-3, General Business as provided by the Urbana Zoning Ordinance upon

its annexation to the City. The Corporate Authorities agree that all applicable development regulations existing at the time of annexation will apply to said tract. Furthermore, although the Corporate Authorities agree not to rezone the property during the term of this Agreement without a rezoning petition executed by the property Owner requesting said change, the Corporate Authorities reserve the right to amend the Zoning Ordinance text even if such amendment affects the property.

Section 3. Development. The Corporate Authorities agree to allow the Owner/Developer upon annexation to develop the tract in general conformity with the Proposed Site Plan attached hereto as Exhibit “C”. The Proposed Site Plan includes the establishment of a convenience store, gasoline station, and restaurant with a drive-through facility. The proposed development shall be developed in accordance with all applicable city codes and regulations except as specified in this Agreement.

Section 4. Liquor License. The City agrees to make available a Class ~~B~~BB Liquor License to a qualified applicant for the convenience store upon annexation.

Section 5. Freestanding Signs. Upon development of the site in general conformance with the site plan depicted in Exhibit C, the Owner/Developer shall be allowed to place up to one free-standing sign on each of the two business frontages of the 2.08-acre portion of the site, for a total of two (2) free-standing signs. In addition, a third free-standing sign shall be allowed on the 0.66-acre portion of the site. To maximize visibility and allow room for required pricing information on the gas station signs, the allowed sign area for the two signs on the 2.08-acre portion of the site shall be varied to permit up to 82 square feet per sign face. The proposed signs shall meet the requirements of the Urbana Zoning Ordinance in all other respects.

Section 6. Canopy Signage. In order to promote visibility of the gas station and in recognition of reduced signage elsewhere on the site, the Corporate Authorities agree to grant a variance to allow up to 18 square feet of signage on each side of the proposed canopy fascia.

Section 7. 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 Owners, or their 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 and/or Developer, their successors or assigns, which obligation extends beyond the termination date of this Agreement, such obligation may be released by the Urbana City Council enacting an Ordinance releasing such obligation by a majority vote of all Alderpersons then holding office and the recording of such Ordinance in the Champaign County Recorder's Office, Champaign County, Illinois.

Section 2. Covenant running with the land -- The terms of this Agreement constitute a covenant running with the land for the 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 and/or Developer as to all or any part of the tracts, 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, Owner, and Developer 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 tracts would be a breach of this Agreement without first procuring a written amendment to this Agreement duly executed by the Owner, the Developer, and the City.

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

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

Section 6. Effective Date -- The Corporate Authorities, Owner, and Developer 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, Owner and Developer 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

Michael Augustino Maggio, as
Executor and Trustee under the Last
Will and Testament of Anthony
Joseph Maggio

Date

Date

ATTEST:

ATTEST:

Phyllis D. Clark
City Clerk

Notary Public

Date

Date

Developer:

Bushman, LLC

Date

ATTEST:

Notary Public

Date

Exhibits attached and made a part of this Agreement:

Exhibit "A": Legal Description

Exhibit "B": Map of Tract to be annexed.

Exhibit "C": Site Plan and Project Data for Convenience Store, Gasoline Station and Restaurant.

Exhibit “A”

Legal Description of Tract

The East 183 feet and the North 325 feet of the West 120 feet of the East 303 feet of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter of Section 7, Township 19 North, Range 9 East of the Third Principal Meridian;

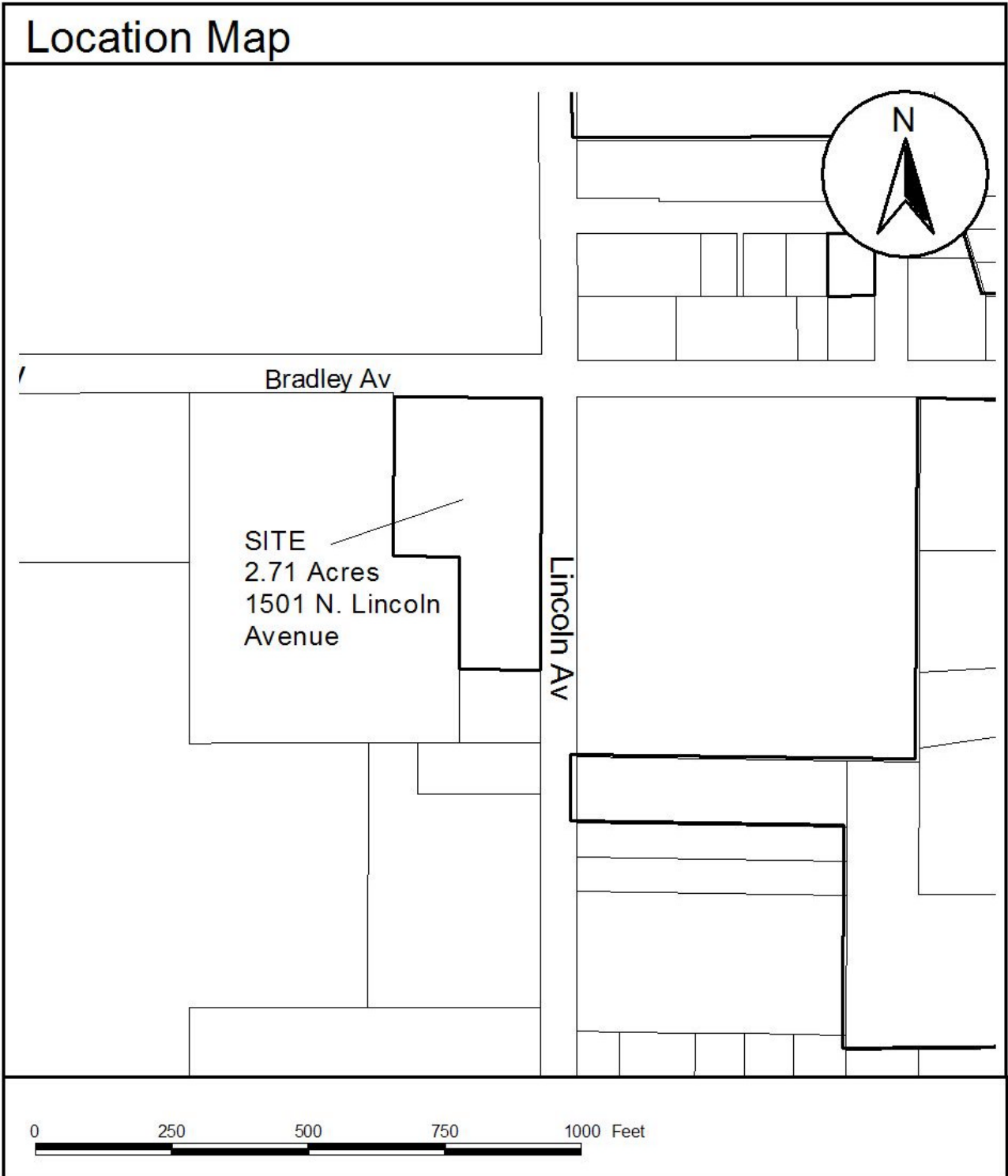
EXCEPT the South 136 feet of the West 150 feet of the East 183 feet of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter of Section 7, Township 19 North, Range 9 East of the Third Principal Meridian;

AND ALSO EXCEPT those parts of the land dedicated or conveyed for public road purposes by document no. 850144 recorded July 27, 1960 in Book 652 at page 1045, by document no. 76R 2759 recorded February 20, 1976 in Book 1073 at page 800, and by document no. 93R 7978 recorded April 7, 1993 in Book 1897 at page 627;

In Champaign County, Illinois.

PIN #: 30-21-07-226-008

Exhibit "B"



1501 North Lincoln Avenue Annexation
Owner: Anthony Maggio
Developer: Macs Convenience Stores, LLC

Prepared February 18, 2004 by Community Development Services

Exhibit “C”

Proposed Site Plan