



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

m e m o r a n d u m

TO: Mayor Diane W. Marlin

FROM: John A. Schneider, MPA, Community Development Manager

DATE: August 10, 2017

SUBJECT: An Ordinance Approving An Annexation Agreement (801 North Smith Road/David Borchers)

An Ordinance Annexing Certain Territory To the City of Urbana (801 North Smith Road/David Borchers)

Introduction

The City of Urbana has received a request from David Borchers to enter into an Annexation Agreement and to annex an 11.47-acre parcel located in eastern Urbana. The parcel is west of Smith Road and north of Coachman Drive and has been assigned the address of 801 North Smith Road. The property is currently vacant and used for farmland. The owner would like to develop a portion of the site for his construction business while continuing to use the lot for agricultural cropping. He plans to develop the other portions of the property at a later date. The proposed agreement would obligate the City to rezone the property from the County's AG-2 Agriculture district to the City's IN-1, Light Industrial/Office zoning district. The agreement would also confer a Conditional Use Permit to allow the use of a construction yard on the subject property. As the property is contiguous to the City boundary, the annexation would take effect as soon as its Annexation Petition is signed into ordinance by the City.

Background

The property at 801 North Smith Road is contiguous to the City and is within 200 feet of the nearest sanitary sewer line. Sec. 21-41.C.(5) of the Urbana Subdivision and Development Code requires that any development taking place within 200 feet of an existing public sanitary sewer be connected to the sanitary sewer. The Urbana and Champaign Sanitary District (UCSD) requires any property owner outside of the city limits needing a new sanitary sewer connection to agree to be annexed by the City. An annexation agreement is therefore required for Mr. Borchers to develop any portion of his property that requires a new sanitary sewer connection. Since the property is already contiguous to the City, an annexation petition must follow immediately as stated in the agreement.

Past Land Uses

The historical use of the property has been agricultural. There was a single-family home on the property which has since been demolished.

Land Uses and Zoning Designations

The subject property is adjacent to the central-eastern boundary of the City near the intersection of Illinois Route 130 and Interstate 74. It is zoned in Champaign County’s AG-2 Agriculture zoning district. In the City’s Comprehensive Plan, its future land use designation is “Industrial.” If it were to be annexed into the City, its direct zoning district conversion would be to the City’s AG, Agriculture zoning district.

The surrounding area is a diverse mix of residential, light industrial, and conservation open space. Towards the north, there is a retired landfill and the office space for the City’s Arbor Division that is zoned in the City’s AG, Agriculture district. Towards the east and south are mobile home parks that are zoned in the County’s R-5 Manufactured Home Park district. Towards the west is vacant land owned by the Flex-N-Gate Corporation that is zoned in the County’s R-4 Multiple Family Residence district. There is a narrow sliver of land towards the south that is vacant and zoned in the County’s R-5 Manufactured Home Park district. In the City’s Comprehensive Plan, the future land use designations for the properties to the north and west is Heavy Industrial. The designation for the properties to the east and south is Multifamily.

The property fronts on both Smith Road and near the intersection of Smith Road and Barr Avenue. Both streets serve as roads to access the nearby mobile home parks and the Landscape Recycling Center.

The following summarizes zoning and land uses for the subject site and surrounding properties:

Location	Zoning	Existing Land Use	Comprehensive Plan Future Land Use
Site	County AG-2 Agriculture	Vacant, Farmland (cropping)	Industrial
North	City AG, Agriculture	Retired Landfill, Arbor Division Offices	Industrial
South	County R-5 Manufactured Home Park	Vacant, Mobile Home Park	Multifamily
East	County R-5 Manufactured Home Park	Mobile Home Park	Multifamily
West	County R-4 Multiple Family Residence	Vacant	Industrial

Comprehensive Plan

The 2005 City of Urbana Comprehensive Plan shows a future land-use designation as “Industrial” for the subject property. It also includes a notation for the area to “Determine Opportunities for Development” and to “Encourage Expansion” of the nearby Flex-N-Gate facility. While the Comprehensive Plan does not define “Industrial,” it defines “Light Industrial/Office”:

Light Industrial/Office areas typically are planned developments that are less intensive than heavy industrial areas, including professional services, warehousing, and distribution facilities.

The Comprehensive Plan defines the classification of “Heavy Industrial” as:

Heavy Industrial areas are intense land uses heavily dependent on transportation facilities and significant amounts of land and are generally incompatible with residential uses.

The property is currently vacant and used for farmland. The property owner has submitted plans to develop a construction yard on a portion of the property while allowing the rest of the property to be farmed while being developed into light industrial uses in the future. Agriculture that involves cropping is permitted by-right in the City’s IN-1 district while a construction yard requires a Conditional Use Permit. The Conditional Use Permit can be approved by City Council as a part of the Annexation Agreement. The proposed IN-1 zoning district would be the lowest zoning available that would accommodate the current agricultural uses, the proposed Construction Yard, and future light industrial uses. IN-1 zoning would allow uses consistent with the “Industrial” future land use designation.

The following goals and objectives from Urbana’s Comprehensive Plan are pertinent to this case:

Goal 15.0 Encourage compact, contiguous and sustainable growth patterns.

Objective 15.1 Plan for new growth and development to be contiguous to existing development where possible in order to avoid “leapfrog” development.

Objective 15.2 Extend utilities and services in an orderly fashion to encourage compact, contiguous growth.

Objective 15.3 Pursue annexation strategies that promote orderly development.

Goal 16.0 Ensure that new land uses are compatible with and enhance the existing community.

Objective 16.1 Encourage a mix of land use types to achieve a balanced growing community.

Objective 16.3 Encourage development in locations that can be served with existing or easily extended infrastructure and city services.

Goal 17.0 Minimize incompatible land uses.

Objective 17.1 Encourage a mix of land use types to achieve a balanced growing community.

Objective 17.2 Where land use incompatibilities exist, promote development and design controls to minimize concerns.

Goal 26.0 Improve the appearance of Urbana’s commercial and industrial areas.

Objective 26.3 Seek private as well as public investments to enhance the city’s commercial and industrial areas.

Goal 27.0 Create a variety of industrial and office developments that can benefit from existing amenities such as convenient access to interstate and rail services and close proximity to the University of Illinois.

Objective 27.1 Encourage the expansion of existing and the creation of new industrial and office park developments in appropriate locations, using a variety of development tools.

Objective 27.2 Provide for adequate services and incentive packages to promote East University Avenue and North Lincoln Avenue as industrial park areas.

Objective 27.3 Capitalize on development sites with rail and highway access to promote industrial opportunities.

Objective 27.4 Pursue annexation of new areas (such as North Lincoln Avenue, East University Avenue, North Cunningham Avenue and Oak Street) for industrial development.

Goal 28.0 Develop a diversified and broad, stable tax base.

Objective 28.1 Encourage an appropriate balance of residential, commercial and industrial growth.

Objective 28.2 Promote appropriate development opportunities through annexation, development agreements, and, where appropriate, economic incentives.

Issues and Discussion

Annexation Agreement

Benefits of bringing the subject property into the City include future tax revenues and the ability to ensure code compliance and safety. In addition, the ability to extend sanitary sewer service to the property is beneficial to the property owners and the City for future growth. The agreement includes a rezoning of the property to IN-1, Zoning District, and a Conditional Use Permit for a Construction Yard.

Proposed Rezoning

The Annexation Agreement states that the property will be rezoned to City IN-1, Light Industrial/Office upon annexation. According to Section IV-5 of the Zoning Ordinance, an annexation agreement is required if the proposed zoning is not a direct conversion from the County zoning designation as listed in Table IV-1 of the Zoning Ordinance. Per Table IV-1, a direct conversion from County AG-2 (Agriculture) would result in the City's AG, Agriculture, zoning district. The City's AG zoning district would not permit the planned future uses for the site nor would it be consistent with the Comprehensive Plan future land use designation of "Industrial."

According to the Zoning Ordinance, the IN-1, Light Industrial/Office zoning district has the following description:

"The IN-1, Light Industrial/Office District is intended to provide land for employment centers related to research and development, engineering and testing, office uses, warehousing, and limited manufacturing and industrial activities that will not have an adverse effect upon the district in which it is located. In addition, some low intensity commercial uses may be permitted in this district to provide convenient goods and services for employees and patrons in the zoning district. Higher intensity commercial uses are generally prohibited. Low intensity industrial uses are permitted by right or as a special use, depending on the attributes of the proposed land use."

The proposed IN-1 zoning would fit the planned future uses at the site, be consistent with the Comprehensive Plan future land use designation of "Industrial," and be compatible with the adjacent residential uses.

The La Salle National Bank Criteria

In the case of *La Salle National Bank v. County of Cook* (the "La Salle" case), the Illinois Supreme Court developed a list of factors that are paramount in evaluating the legal validity of a zoning classification for a particular property. Each of these factors will be discussed as they pertain to a comparison of the existing zoning with that proposed in the annexation agreement.

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

This factor relates to the degree to which the existing and proposed zoning districts are compatible with existing land uses and land use regulations in the immediate area.

The proposed IN-1, Light Industrial/Office zoning is consistent with the surrounding uses of the Landscape Recycling Center, Flex-N-Gate facility, and the retired landfill. The subject property would be required to install buffering and screening from the mobile home parks towards the south and east. The Zoning Ordinance requires industrial uses and parking lots to be screened with fences or landscaping of four to six feet in height from any residential uses. The proposed rezoning is appropriate for the proposed use of a construction yard, with the acquisition of a Conditional Use Permit, and for future light industrial uses.

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

This is the difference in the value of the property as AG-2 Agriculture and the value it would have if it were rezoned to IN-1, Light Industrial/ Office.

The value of the subject property would increase with the addition of a construction yard use. The expansion of utilities and sewers along with a potential new street within the tract would create opportunities for future developments that would also increase the property's value. The property's ability to continue to be farmed would help preserve its current value as well.

It should be noted that the Urbana City Planning Division staff are not qualified as professional appraisers and that a professional appraiser has not been consulted regarding the impact on the value of the property. Therefore, any discussion pertaining to property values must be considered speculative and inconclusive.

3. The extent to which the ordinance promotes the health, safety, morals or general welfare of the public.

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

Questions 3 and 4 apply to the current zoning restrictions: do the restrictions promote the public welfare in some significant way so as to offset any hardship imposed on the property owner by the restrictions?

The proposed rezoning would not jeopardize the health, safety, morals, or general welfare of the public. The property owner would be required to connect any facility to the City's sanitary sewer system, which could be beneficial to the public. He would also be required to provide screening and buffering protections, as required in the Urbana Zoning Ordinance, from any residential uses. There are also use restrictions and extra screening requirements in the Annexation Agreement to minimize any impact on the property. Should the rezoning be denied, there would be no relative gain to the public.

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

The issue here is whether there are certain features of the property which favor the type and intensity of uses permitted in either the current or the proposed zoning district.

The property is located in an area currently zoned County AG-2 Agriculture and is identified as "Industrial" in the 2005 City of Urbana Comprehensive Plan. IN-1, Light Industrial/Office is a City zoning designation which closely reflects nearby zoning and future land use designations of the property. The property's location near a state highway and Interstate 74 make it appropriate for industrial uses that require close access to major transportation routes. The site is vacant and generally suited for new development of an industrial use.

6. The length of time the property has been vacant as zoned, considered in the context of land development, in the area, in the vicinity of the subject property.

Another test of the validity of the current zoning district is whether it can be shown that the property has remained vacant for a significant period of time because of restrictions in that zoning district.

The property has historically been used for agriculture and a single-family home and has never been developed. The most appropriate types of development for the property are light industrial uses. To permit these types of uses, this proposed rezoning upon annexation would be required.

General Area Plan and Conditional Use Permit

The Annexation Agreement features a General Area Plan for the property in Exhibit C, as shown in the agreement draft. The plan represents the approximate location of any future public right-of-way and how the property might be subdivided for future development.

The site is proposed to contain a 10,000 square foot structure on the northeast corner of the property to house Mr. Borchers' construction yard business, which would require a Conditional Use Permit. The building will be used for construction work, materials storage, and general office space related to the business. It would be set back approximately 70 feet from Smith Road. There would be a parking lot to the east of the building with approximately 5-7 parking spaces based on requirements in the Zoning Ordinance for a warehouse or similar use. On the west side of the building would be three loading docks for materials to be placed onto vehicles. The Floor-Area Ratio of 0.019 would be well below the maximum allowed ratio of 2.0 as required in the Zoning Ordinance. While the property would retain much of its vacant space used for farmland, there is no open space requirement for the IN-1 district in the Zoning Ordinance.

The property owner's planned construction yard would be allowed with a Conditional Use Permit in the IN-1, Light Industrial/Office District, per Table V-1 of the Urbana Zoning Ordinance. This Conditional Use Permit is provided for in Section 4.B.3 and Section 5 of the Annexation Agreement. This construction yard would provide storage for materials, equipment for use on off-site projects, and general work space for the property owner's business. This yard would be located in the northeast portion of the property as shown in the site plan attached to the Annexation Agreement.

As part of the construction yard's Conditional Use Permit, it must meet standards for buffering and screening from residential uses as required in the Zoning Ordinance. A landscaping and screening plan must be submitted to the Zoning Administrator for review and approval, prior to the development of the tract. The site will also be required to meet any standards for stormwater detention as determined by the City Engineer.

Conditional Use Permit Criteria

According to Section VII-2.A of the Urbana Zoning Ordinance, an application for a Conditional Use Permit shall meet the following requirements shown in italics. City Staff analysis follows each criterion.

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

The subject property is located in close proximity to other industrial uses. It also is next to the intersection of State Highway 130 and Interstate 74, allowing for quick access to transportation if necessary. The use of the subject property as a construction yard would help facilitate its regionally-

offered services. The proposed use would be consistent with nearby industrial land uses and zoning and be set back and screened from the existing residential uses to the east and south.

2. That the proposed use is designed, located, and proposed to be operated so that it will not be unreasonably injurious or detrimental to the district in which it shall be located, or otherwise injurious to the public welfare.

The use of the subject property as a construction yard would not be injurious to the public at this location. The parties to the Annexation Agreement will meet all local, state, and federal environmental and use regulations, including screening and buffering requirements from the adjacent residential uses. The proposed use would not generate a significant increase in traffic, and will require the public sanitary sewer to be extended to serve the site. The Annexation Agreement would require screening from residential uses for any portion of the property that is developed.

3. That the proposed use conforms to the applicable regulations and standards of, and preserves the essential character of, the district in which it shall be located, except where such regulations and standards are modified by Section VII-3.

The character of the IN-1, Light Industrial/Office District will be preserved with the proposed use. It will be consistent with the industrial character of the nearby uses of the Landscape Recycling Center and Flex-N-Gate. The proposed use would conform to all applicable regulations in the IN-1, Light Industrial/Office District, and similarly meet all other applicable local, state, and federal regulations, including any requirement to screen parking and construction yard storage.

Urbana Plan Commission Meeting on July 20, 2017

The Urbana Plan Commission heard the rezoning of the Annexation Agreement at their meeting on July 20, 2017. At the meeting, nearby residents expressed concerns about future development of the subject property and traffic along Smith Road. The Plan Commission voted to continue the case to their next meeting on August 10, 2017. The Commission requested more information from City staff regarding the traffic implications of the site. The minutes from that meeting are attached as Exhibit E and correspondence from a nearby resident and a representative from mobile home park ownership are attached as Exhibit F.

The City Engineer has determined that an alternative traffic circulation for the site would likely not be possible and would not necessary. The Flex-N-Gate Corporation owns the property to the west of the site for future expansions of their facility and has indicated no inclination to make it available for a public right-of-way expansion. The City Engineer has also stated that Smith Road, east of Guardian Drive, has a traffic count of approximately 700 vehicles per day with a peak hour traffic volume of 70 vehicles. He states that a high estimate for future build-out of the site with light industrial uses would generate no more than 600 vehicle trips per day with 60 vehicles in a peak hour, which is a maximum increase of one more vehicle per minute, with traffic predominantly heading eastbound in the morning and westbound in the evening. It is of his opinion that the volume increase would not impact the existing three-way stop at Guardian Drive and Butzow Drive and would not require any extra lanes, traffic signals, or physical improvements for the intersections at Guardian Drive and Butzow Drive or Guardian Drive and University Avenue. He also does not think that the traffic increase will impact City's Level of Service for the area.

In response to concerns expressed during the Plan Commission public hearing about potential uses with the proposed IN-1, Light Industrial/Office, uses, the owner has agreed to restrict certain uses at the site. The annexation agreement includes language prohibiting the following uses from being allowed at the site during the twenty-year term of the agreement: Convenience Store, Motor Bus Station; Truck Terminal/Truck Wash; Automobile Truck, Trailer, or Boat Sales or Rental; Gasoline Station; Truck Rental; Truck Stop; and Towing Service.

To address concerns regarding noise, the owner has agreed to provide more landscape screening than what would be required by the Urbana Zoning Ordinance. The agreement has been amended to require evergreen trees to be planted at a ratio of one tree and three shrubs for every 30 linear feet along both the eastern and southern boundaries, rather than one tree and three shrubs every 40 linear feet as the Zoning Ordinance would require. The trees throughout the site would be planted in conjunction with the development of any part of the property. With any development, a landscaping plan would have to be submitted with any building permit application. A final Certificate of Occupancy would be issued upon completion of the required landscaping. The property owner would be required to install the landscaping for the Construction Yard he plans to develop with the Conditional Use Permit that would be granted in the Annexation Agreement.

Fiscal Impact

The City would gain tax revenue from the subject property being annexed into the City and partially developed as a construction yard. Based on calculations of tax revenue, assessments, and square footage of similar business locations in the Urbana area, a construction yard on the subject property might provide annual tax revenues of approximately \$9,325.40. The share of property taxes provided directly to the City would be approximately \$1,188.98. The public services required for a construction yard are expected to be minimal. The annexed property would also provide more tax revenue in the future as it is further developed.

Summary of Findings

1. David Borchers has requested that the City of Urbana enter into an Annexation Agreement for and annex an 11.47-acre parcel located west of Smith Road and north of Coachman Drive, to be addressed and commonly known as 801 North Smith Road.
2. The property owner is requesting that the property be rezoned from Champaign County's AG-2 Agriculture zoning district to the City of Urbana's IN-1, Light Industrial/Office zoning district upon annexation.
3. The property owner is requesting that a Conditional Use Permit for the use of a Construction Yard on the site.
4. The proposed IN-1, Light Industrial/Office zoning district would allow for the property owner to use to the property for a light industrial use, agriculture, and future development.

5. The proposed IN-1, Light Industrial/Office zoning district would be generally compatible with the “Industrial” future land use designation of the 2005 Urbana Comprehensive Plan.
6. The property is contiguous to the City boundary and therefore may be annexed immediately.
7. The Urbana Plan Commission discussed the case at their July 20, 2017, meeting. The Commission members voted to continue the case to the August 10, 2017, meeting with inquiries about the impact of traffic from the site.
8. City Staff have determined that Smith Road and Butzow Drive, in their current state, could safely accommodate traffic from a fully developed subject property.
9. Provisions have been included in the Annexation Agreement to prohibit several potential uses and to increase the screening requirement than what would otherwise be required by the Urbana Zoning Ordinance to mitigate impacts of the site on the adjacent residential uses.

Regarding the Rezoning and La Salle Criteria

10. The proposed zoning would be compatible with the existing zoning and land uses of the immediate area.
11. The property values would not be diminished by the proposed rezoning.
12. The proposed rezoning promotes the health, safety, morals, and general welfare of the public.
13. The proposed rezoning presents a gain compared to any hardship imposed on the individual property owner.
14. The property is suitable for the proposed rezoning.
15. The property has been indefinitely vacant.

Regarding the Conditional Use Permit

16. The existing land uses and zoning are compatible with the proposed construction yard.
17. The proposed use of construction yard is designed, located, and proposed to be operated so that it will not be unreasonably injurious or detrimental to the district in which it shall be located, or otherwise injurious to the public welfare.
18. The proposed use of construction yard conforms to the applicable regulations and standards of, and preserves the essential character of, the district in which it shall be located, except where such regulations and standards are modified by Section VII-3 of the Zoning Ordinance.

Options

Regarding the Ordinance Approving an Annexation Agreement, the City Council has the following options:

- a. **Approve** the ordinance with a vote of two-thirds approval; or
- b. **Approve** the ordinance, **subject to recommended changes** to the Annexation Agreement (note that the property owner would have to agree to any recommend changes) with a vote of two-thirds approval; or
- c. **Deny** the ordinance.

Regarding the Ordinance Annexing Certain Territory, the City Council has the following options:

- a. **Approve** the ordinance; or
- b. **Deny** the ordinance.

Recommendation

The Urbana Plan Commission opened the public hearing on July 6, 2017, and heard testimony at the July 20, 2017, meeting, and continued the hearing to the August 10, 2017 meeting.. The staff recommendation to the Plan Commission is to recommend that City Council approve the agreement and rezoning. Staff will report on the August 10, 2017, Plan Commission vote at the August 14, 2017, Committee of the Whole meeting.

Based on the evidence presented to date, and without the benefit of considering additional evidence that may be presented at the continued public hearing, staff recommends that the City Council **APPROVE** the proposed annexation agreement and the annexation petition as presented.

Prepared by:
Christopher Marx, AICP - Planner I

cc: David Borchers

Attachments: - Ordinance Approving an Annexation Agreement
 - Draft Annexation Agreement with Exhibits
 - Ordinance Annexing Certain Territory to the City of Urbana
 - Annexation Plat
 Exhibit A: Location & Existing Land Use Map

Exhibit B: Zoning Map
Exhibit C: Future Land Use Map
Exhibit D: Annexation Petition
Exhibit E: Plan Commission draft minutes from July 20, 2017
Exhibit F: Communications

ORDINANCE NO. 2017-08-038

**AN ORDINANCE APPROVING AN ANNEXATION
AGREEMENT**

(801 North Smith Road / David Borchers)

WHEREAS, an Annexation Agreement between the City of Urbana, Illinois, and David Borchers has been submitted for the Urbana City Council's consideration; and

WHEREAS, said agreement governs a tract totaling approximately 11.47 acres located at 801 North Smith Road, Urbana, Illinois, and said tract is legally described as follows:

A part of the Southwest Quarter of Section 10, Township 19 North, Range 9 East of the Third Principal Meridian, Champaign County, Illinois being more particularly described as follows:

The West 6 acres of Lot 1 of a Subdivision of the West Half of the Southwest Quarter of Section 10, Township 19 North, Range 9 East of the Third Principal Meridian, according to the division of the Estate of Jacob Smith, deceased, as shown by Plat in Circuit Court Record "D" at Page 223, Records of Champaign County, Illinois;

AND;

Commencing at the Quarter corner to Sections 9 and 10 Township 19 North, Range 9 East of the Third Principal Meridian; thence South 330.25 feet to the Northwest corner of Lot 4 of a Subdivision of the West Half of the Southwest Quarter of Section 10, Township 19 North, Range 9 East of the Third Principal Meridian, according to the division of the Estate of Jacob Smith, deceased, as shown by Plat in Circuit Court Record "D" at Page 224, for a point of beginning; thence East along the North line of Lots 4 and 3 of said Subdivision, 880.74 feet to the Northeast corner of said Lot 3; thence South along the East line of said Lot 3, 270.68 feet; thence West parallel with the North line of said Lots 3 and 4, 880.96 feet to the West line of said Lot 4, thence North along the West line of said Lot 4, 270.68 feet to the point of beginning, of Champaign County, Illinois.

Except;

That portion of the Smith Road Right-of-Way lying within the above described tracts, containing 13,426.659 S.F. (0.308 acres), more or less.

Said tracts containing 11.116 acres, more or less and being commonly known as 801 North

Smith Road, and having a Permanent Identification Number of 30-21-10-301-001 all being situated in Urbana Township, Champaign County, Illinois.

and

WHEREAS, a Legal Notice was published on the 19th day of June, 2017, in *The News-Gazette*, a newspaper having general circulation in the City of Urbana, Illinois, that a public hearing would be held before the Urbana City Council on the matter of the proposed annexation agreement on the 7th day of August, 2017; and

WHEREAS, a Notice was mailed to each Trustee of the Edge-Scott Fire Protection District; each Board of Urbana Township Trustee; and the Urbana Township Clerk, Supervisor, and Commissioner of Highways, said notices being mailed on the 26th day of July, 2017; and

WHEREAS, on the 7th day of August, 2017, 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 6th and 20th day of July, 2017, and the 10th day of August, 2017, to consider the proposed annexation agreement in Case No. 2017-A-02, including the rezoning from County AG-2 Agricultural to City IN-1 Light Industrial/Office in Case No. 2307-M-17, and voted _ ayes and _ nays to forward a recommendation of _____ to the Urbana City Council; and

WHEREAS, the City Council has determined that the proposed annexation agreement is in conformance with the goals and objectives of the City of Urbana's 2005 Comprehensive Plan; and

WHEREAS, the 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, Champaign County, Illinois, as follows:

Section 1. An annexation agreement between the City of Urbana, Illinois, and David

Borchers, in substantially the form of the copy of said agreement attached hereto and hereby incorporated by reference, be and the same is hereby authorized and approved.

Section 2. 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 as so authorized and approved 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 of two-thirds of the Corporate Authorities of the City of Urbana, Illinois, then holding office at a regular meeting of the Corporate Authorities, the “ayes” and “nays” being called:

AYES:

NAYS:

ABSENT:

ABSTAINED:

Charles A. Smyth, City Clerk

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

Diane W. Marlin, Mayor

Annexation Agreement

This Annexation Agreement is made between the City of Urbana, Illinois ("Urbana") and David Borchers, (the "Owner"), each a "party" and together the "parties," and is effective on the last date signed by a party hereto. The parties agree as follows:

1. **The Property.** The Owner is the owner of record of the real property commonly known as 801 North Smith Road, having permanent index number 30-21-10-301-001, consisting of approximately 11.47 acres in unincorporated Champaign County (the "Property"). The Property is legally described on Exhibit A. Exhibit B is a true and accurate representation of the Property.
2. **Annexation.**
 - A. The Owner and Urbana shall take all actions necessary or appropriate to cause the Property to be validly annexed to Urbana as provided in this agreement and pursuant to the provisions of 65 ILCS 5/11-15.1-1 *et seq.*, as amended. The Property is contiguous to Urbana and may be immediately annexed.
 - B. The Owner hereby waives all rights to disconnect the Property from Urbana during the term of this agreement.
3. **Zoning.**
 - A. Classification. Upon passage of the ordinance annexing the Property to Urbana, Urbana shall classify the Property as part of the IN-1 Light Industrial/Office zoning district. Urbana shall not rezone the Property during the term of this agreement except upon a written amendment to this agreement.
 - B. Land Use Restrictions. The Owner may use the Property for any permitted use allowed in the IN-1 Light Industrial/Office district, as provided for in the Urbana Zoning Ordinance, except the following: "Convenience Store," "Motor Bus Station," "Truck Terminal/Truck Wash," "Automobile Truck, Trailer, or Boat Sales or Rental," "Gasoline Station," "Truck Rental," "Truck Stop," and "Towing Service."
 - C. Ordinance amendments. Urbana reserves the right to amend the Urbana City Code and the Urbana Zoning Ordinance even if such amendment affects the Property. During the twenty (20) years following the effective date of this agreement, unless the Owner or successor or successors in title consent, Urbana shall not enforce any ordinance applicable to the Property relating to subdivision controls, zoning, official plans, or occupancy permits and related restrictions that is more restrictive or that imposes greater obligations than (1) the ordinances of Urbana in force on the effective date of this agreement; or (2) the terms of this agreement.
 - D. Rezoning. The Owner shall not petition for Champaign County rezoning of the Property without a written amendment to this agreement.

4. **Owner's duties.**

A. Before annexation. At all times prior to annexation, the Owner shall have the following duties.

- (1) Compliance with law. Except as otherwise provided in this agreement, the Owner shall use the Property in compliance with all applicable federal and state laws and all Urbana zoning and building codes and regulations in effect on the effective date of this agreement or an amendment thereto.
- (2) Annexation petition upon transfer. As a condition of a transfer of ownership of the whole or any part of the Property, the Owner shall require the new owner and all electors who will reside on the Property so conveyed to sign a legally sufficient irrevocable petition for annexation. Not more than 10 days after the transfer occurs, the Owner shall deliver such petition to Urbana's Planning Division Manager. As a condition of any subsequent sale of the whole or any part of the Property, the Owner shall also require the subsequent owner to obtain an irrevocable petition for annexation from succeeding buyers and electors who will reside on the property and to deliver such petition to Urbana's Planning Division Manager not more than 10 days after the transfer occurs, for as long as this agreement is in effect. If the Owner fails to comply with this subsection, and if annexation of the Property or any part of it is delayed or contested by any subsequent owner as a result, the Owner shall be liable to Urbana for all real estate taxes and other taxes that would have been due to Urbana had annexation been completed as provided herein.
- (3) Recording of covenants. If Urbana has not already annexed the Property, the Owner shall record covenants in a form approved by Urbana's Legal Division containing notice that each subsequent owner and elector residing on the Property is required to sign a petition for annexation at Urbana's request. In addition to recording this notice in the covenants applicable to the whole Property, the Owner shall record this notice in the chain of title of each individual permanent index number assigned to any division of the Property.

B. After annexation. At all times after annexation, the Owner shall have the following duties.

- (1) Zoning designation. The Owner shall comply with all applicable provisions of the Urbana Zoning Ordinance, including those relating to non-conforming structures and uses. The Owner shall accept the Urbana IN-1 Light Industrial/Office zoning classification, as provided for in the Urbana Zoning Ordinance, as amended.
- (2) Code compliance. The Owner shall comply with all Urbana ordinances in effect unless expressly waived or varied in this agreement. The Owner shall cause all new development, construction, or additions on the Property to comply with the site plan for the Property, if any, and all codes, rules, regulations, orders, and other requirements of Urbana. The Owner shall submit all building construction and landscaping plans to Urbana for review and shall pay all building permit fees.

- (3) Conditional Use Permit. The Owner shall comply with the following conditions of a Conditional Use Permit granted by Section 5.B of this agreement, which will allow for the use of a construction yard on the Property in accordance with Urbana Zoning Ordinance Table IV-1:
 - (a) The Conditional Use Permit will be applicable only to the confines of the Property.
 - (b) The Conditional Use Permit approves a construction yard on said Property, in the approximate location depicted in the attached Exhibit C General Area Plan.
- (4) Along with any Building Permit application, the Owner shall submit to Urbana a landscape plan for the southern and eastern boundaries of the Property to include landscape screening as specified below:
 - (a) The Owner shall plant evergreen trees and shrubs at a rate of one tree and three shrubs for every 30 linear feet or fraction thereof, rather than the Urbana Zoning Ordinance requirement of one tree and three shrubs for every 40 linear feet.
 - (b) Evergreen trees shall be at least four feet in height at the time of planting.
 - (c) The Owner shall plant the first 200 feet of evergreen trees and shrubs on the northeast frontage along Smith Road before Urbana issues a final certificate of occupancy for the construction yard.
 - (d) Any subsequent development of the Property will require the planting of landscaping screening.

5. **Urbana's duties.** Urbana shall have the following duties.

- A. Annexation. Urbana shall annex the Property in accordance with the terms and conditions set forth in this agreement. Urbana shall enact all ordinances and resolutions necessary to effectuate this agreement.
- B. Conditional Use Permit. Urbana shall issue a Conditional Use Permit to allow the Owner to operate a construction yard in the IN-1 Light Industrial/Office zoning district, subject to the conditions specified in Section 4.B.3 of this agreement.

6. **Owner's representations.** The Owner represents to Urbana as follows.

- A. Consent of lender. If a mortgage or other lien encumbers the Property, the Owner has provided Urbana with a written acknowledgement from each mortgagee, lienholder, and holder of any security interest affecting title to the Property, or any part thereof, that this agreement will at all times inure to the benefit of and be binding upon such mortgagee, lienholder, or other person having an interest in the Property.
- B. Petition for annexation. The Owner has filed with Urbana a written petition signed by the Owner and all electors residing on the Property requesting

annexation of the Property to Urbana and being in proper form to allow annexation of the Property pursuant to the Illinois Municipal Code, as amended.

7. **Urbana's representations.** Urbana represents to the Owner as follows:
 - A. **Authority.** The person signing this agreement on behalf of Urbana has been authorized and empowered to enter into this agreement by and on behalf of Urbana; and Urbana has taken or will take all actions necessary to authorize the execution, delivery, and performance of this agreement.
 - B. **Public hearings.** Prior to execution of this agreement, Urbana has held all public hearings required by law.

8. **Term.** This agreement will be binding upon the parties and their respective successors and assigns for 20 years commencing as of the effective date of this agreement. If any of the terms of this agreement, or the annexation or zoning of the Property, is challenged in any court proceeding, or if Urbana files a court action to enforce this agreement, then, to the extent permitted by law, the period of time during which such litigation is pending will not be included in calculating the term of this agreement. The expiration of the term of this agreement will not affect the continuing validity of the zoning of the Property or any ordinance enacted by Urbana pursuant to this agreement.

9. **Enforcement.** Any party, or the successor or successors in title of any party hereto, may either in law or in equity, by suit, action, mandamus, injunction, or other proceedings enforce, and compel performance of this agreement. Upon breach by the Owner, or the successor or successors in title of the Owner, Urbana may refuse the issuance of any permits or other approvals or authorizations relating to development of or construction on the Property.

10. **Indemnification.** The Owner shall indemnify and defend Urbana, its officers, employees, and agents against all claims, liability, or damage, including without limitation attorney's fees, arising from or in any way related to the performance or failure to perform the provisions of this agreement, except to the extent caused by the gross negligence or willful misconduct of Urbana, its officers, employees, or agents. This section will survive the termination of this Agreement.

11. **Entire agreement; amendments.** This agreement constitutes the entire agreement between the parties, supersedes all other agreements or understandings between them pertaining to the matter of this agreement, and may not be modified or rescinded except by a writing signed by both parties.

12. **Assignment.** The Owner's rights and privileges provided pursuant to this agreement are personal to the Owner and are not assignable or voluntarily transferable by the Owner without the express written consent of Urbana, which consent shall not be unreasonably withheld. Such consent will not constitute an amendment to this agreement and may be given without the requirement of notice or a public hearing, except as required by the Illinois Open Meetings Act. The Owner's obligations, undertakings, and guarantees specifically made in this agreement will continue in full force and effect and will not be affected insofar as Urbana is concerned by any sale, transfer, or assignment of any interest in any portion of the Property.

13. **Notices.** Except where the terms of this agreement expressly provide otherwise, the parties shall give all notices required or permitted by this agreement in writing, addressed

as set forth below, unless another address is provided in writing. Notices will be deemed given when personally delivered; deposited in the U.S. mail, postage prepaid, first class; or delivered to a commercial courier.

Urbana: City of Urbana Planning Division Manager, 400 S. Vine Street, Urbana, Illinois 61801

Owner: David Borchers, 203 S. Staley Road, Champaign, Illinois 61822

14. **Waiver.** The failure of either party to insist upon the strict and prompt performance of any term, covenant, or condition of this agreement will not be deemed to waive or to relinquish that party's right thereafter to enforce any such term, covenant, or condition unless the party's waiver is in writing.

15. **Severability.** If any court of competent jurisdiction invalidates any provision of this agreement, other than the provisions relating to the requested zoning changes and the ordinances adopted in connection therewith, such provision will be deemed to be excised here from, and the invalidity thereof shall not affect any of the other provisions contained herein.

16. **No presumption.** The parties have had full opportunity to review and to participate in the drafting of this agreement and all documents attached as exhibits. Accordingly, the parties shall construe this agreement without regard to any presumption or other rule of construction whereby any ambiguities within this agreement would be construed or interpreted against the party causing the document to be drafted.

17. **City Council approval.** This agreement will be valid only after the Urbana City Council approves it by resolution or ordinance.

18. **Covenant running with the land.** The terms of this agreement constitute a covenant running with the land and will inure to the benefit of and be binding upon the successors in title and assigns of the Owner and each of them, as to all or any part of the Property, and upon the successor municipalities of Urbana and the successor corporate authorities of each of them.

19. **Recording of agreement.** Not more than 30 days after the effective date of this agreement, Urbana shall record this agreement, or a suitable memorandum hereof, in the Champaign County Office of the Recorder of Deeds at the Owner's sole cost and expense.

20. **Exhibits.** All exhibits and schedules attached to this agreement are incorporated into this agreement and are made a part of this agreement by this reference.

21. **Third-party beneficiaries.** This agreement is made for the mutual benefit of the parties hereto and is not intended to confer any rights to any third party. No third party may bring any action to enforce any of the terms herein.
The duly authorized representatives of the Owner and Urbana are signing this agreement on the dates stated below their signatures.

David Borchers

City of Urbana, Illinois

_____ Date:

By: _____

Diane Wolfe Marlin

Mayor

Date:

Attest:

Charles A. Smyth

City Clerk

STATE OF ILLINOIS)
) ss.
COUNTY OF CHAMPAIGN)

I, the undersigned, a notary public in and for the said County, in the State aforesaid do hereby certify that David Borchers personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he or she signed, sealed and delivered the said instrument as his or her free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____ 2017.

Notary Public

- Attachments: Exhibit A Legal Description
- Exhibit B Annexation Plat
- Exhibit C General Area Plan

Exhibit A - Legal Description

The West Six (6) Acres of Lot One (1) of a Subdivision of the West $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of Section Ten (10), Township Nineteen (19) North, Range 9 East of the Third P.M., according to the division of the Estate of Jacob Smith, deceased, as shown by Plat in Circuit Court record "D" page 223, Records of Champaign County, Illinois.

AND;

Commencing at the $\frac{1}{4}$ corner to Sections 9 and 10, T19N, R9E, 3rd P.M., thence South 330.25 feet to the NW corner of Lot 4 of a Subdivision of the West $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 10, T19N, R9E, 3rd P.M., as shown by the Commissioners Plat of the Estate of Jacob Smith, deceased, Circuit Court Record D page 224; for a point of beginning – thence East along the North line of Lots 4 and 3 of said Subdivision 880.74 feet to the NE corner of said Lot 3; thence South along the East line of said Lot 3, 270.68 feet; thence West parallel with the North line of said Lots 3 and 4, 880.96 feet to the West line of said Lot 4; thence North along the West line of said Lot 4, 270.68 feet to the point of beginning, containing 5.474 acres, situated in Champaign County, Illinois.

Exhibit B - Location Map/Annexation Plat

A part of the Southwest Quarter of Section 10, Township 19 North, Range 9 East of the Third Principal Meridian, Champaign County, Illinois being more particularly described as follows:

The West 6 acres of Lot 1 of a Subdivision of the West Half of the Southwest Quarter of Section 10, Township 19 North, Range 9 East of the Third Principal Meridian, according to the division of the Estate of Jacob Smith, deceased, as shown by Plat in Circuit Court Record 'D' at Page 223, Records of Champaign County, Illinois;

AND,

Commencing at the Quarter corner to Sections 9 and 10 Township 19 North, Range 9 East of the Third Principal Meridian; thence South 330.25 feet to the Northwest corner of Lot 4 of a Subdivision of the West Half of the Southwest Quarter of Section 10, Township 19 North, Range 9 East of the Third Principal Meridian, according to the division of the Estate of Jacob Smith, deceased, as shown by Plat in Circuit Court Record 'D' at Page 224, for a point of beginning; thence East along the North line of Lots 4 and 3 of said Subdivision, 880.74 feet to the Northeast corner of said Lot 3; thence South along the East line of said Lot 3, 270.68 feet; thence West parallel with the North line of said Lots 3 and 4, 880.96 feet to the West line of said Lot 4, thence North along the West line of said Lot 4, 270.68 feet to the point of beginning, of Champaign County, Illinois.

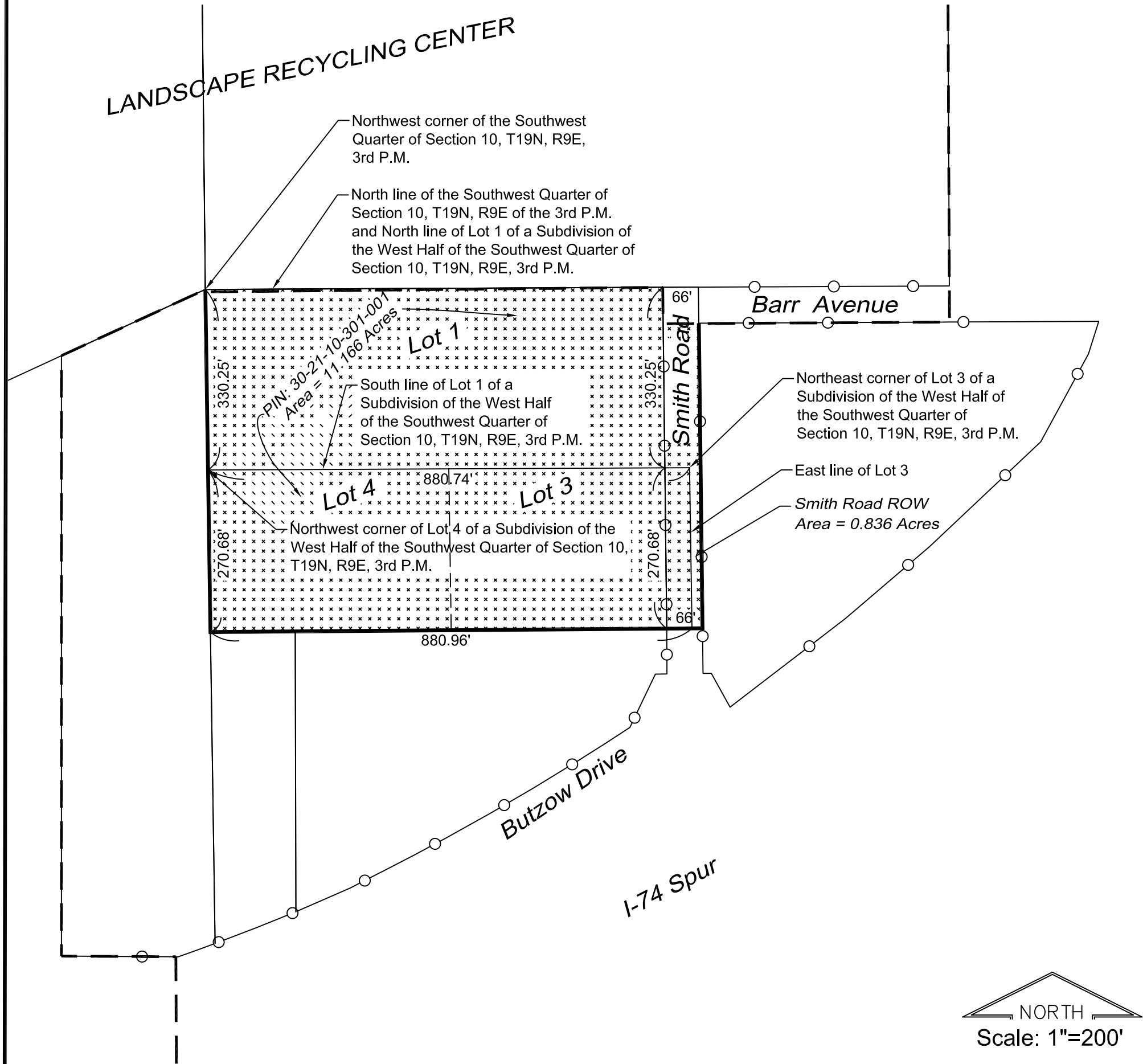
Except;

That portion of the Smith Road Right-of-Way lying within the above described tracts, containing 13,426,659 S.F. (0.308 acres), more or less.

Said tracts containing 11.116 acres, more or less and being commonly known as 801 North Smith Road, and having a Permanent Identification Number of 3021-10301-001 all being situated in Urbana Township, Champaign County, Illinois.

Together with the following described adjacent public Right-of-Way, which is by operation of the law, automatically annexed with the adoption of an annexation ordinance pertaining to this tract:


That portion of Smith Road Right-of-Way, not previously annexed into the City of Urbana, lying adjacent to the herein annexed tract, being sixty-six feet (66) in width and encompassing 36,425,616 S.F. (0.836 acres), more or less.



MAP SHOWING AREA
ANNEXED BY CITY
ORDINANCE #2017-XX-XXX
CITY OF URBANA, ILLINOIS
CHAMPAIGN COUNTY
DATE: AUGUST XX, 2017

AREA OF ANNEXATION	
EXISTING CITY LIMITS	
NEW CITY LIMITS	
RIGHT-OF-WAY	

ENGINEERING DIVISION



CITY ENGINEER/PUBLIC WORKS DIRECTOR

CAD: B.W.F. 7/10/2017
CHECKED: W.R.G. 7/11/2017

901
CITY OF URBANA

Area = ± 2.87 Acres

LOT 2

100' Dia.

80' Dia.

Area = ± 2.87 Acres

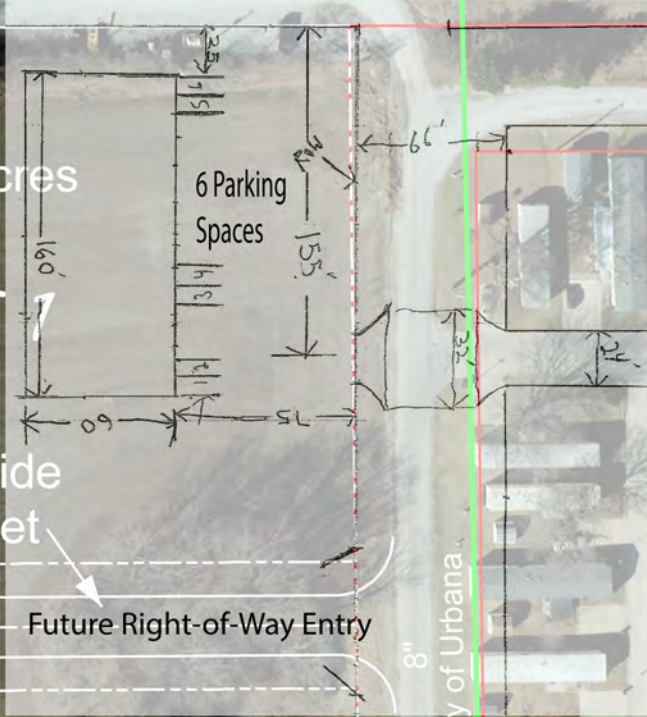
Rear Loading Area

LOT 1

New 31' Wide Public Street

Public Street
66' ROW

Future Right-of-Way Entry



LOT 3

Area = ± 2.87 Acres

LOT 4

Area = ± 2.87 Acres

Barr Ave

Potawatomi Trl

CHIEF ILLINI MHP LLC

Kickapoo Trl

Shemauqer Trl

N Smith Rd

District

E University Ave

Coachman Dr

Exhibit C - General Area Plan

ORDINANCE NO. 2017-08-039

AN ORDINANCE ANNEXING CERTAIN TERRITORY TO THE CITY OF URBANA

(801 North Smith Road / David Borchers)

WHEREAS, the hereinafter described territory is situated in unincorporated territory adjacent to and contiguous to the City of Urbana, Illinois, is part of the Edge-Scott Fire Protection District, and includes certain territory within the Urbana Township, and notice was given to the Trustees of said Fire Protection District; the Board of Township Trustees; and the Township Clerk, Supervisor, and Commissioner of Highways, said notices being mailed on July 14, 2017, that this Ordinance would be voted upon at the regular meeting of this Council at August 7, 2017, and the affidavit of mailing such notices will be duly recorded with the Recorder of Deeds of Champaign County, Illinois; and

WHEREAS, a written petition signed by all of the Owners of Record and at least fifty-one percent (51%) of the electors residing therein, of all land within such territory, has been filed with the City Clerk of the City of Urbana, Illinois, requesting annexation thereof to the City of Urbana; and

WHEREAS, the City Council passed Ordinance No. _____ approving and authorizing the execution of an annexation agreement; and

WHEREAS, the territory to be annexed by this Ordinance is presently located within Champaign County's AG-2 Single Family Residence zoning district and upon annexation will be classified upon annexation as City of Urbana IN-1 Light Industrial/Office, in accordance with the above-referenced annexation agreement; and

WHEREAS, said petition complies with all requirements of the law; and

WHEREAS, the majority of the Members of the Council are of the opinion that it would be for the best interests of the people of the City of Urbana, Illinois, that said territory be annexed to and made a part of the said City.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Urbana, Champaign County, Illinois, as follows:

Section 1. The following described territory be and the same is hereby annexed to the City of Urbana, Illinois:

A part of the Southwest Quarter of Section 10, Township 19 North, Range 9 East of the Third Principal Meridian, Champaign County, Illinois being more particularly described as follows:

The West 6 acres of Lot 1 of a Subdivision of the West Half of the Southwest Quarter of Section 10, Township 19 North, Range 9 East of the Third Principal Meridian, according to the division of the Estate of Jacob Smith, deceased, as shown by Plat in Circuit Court Record "D" at Page 223, Records of Champaign County, Illinois;

AND;

Commencing at the Quarter comer to Sections 9 and 10 Township 19 North, Range 9 East of the Third Principal Meridian; thence South 330.25 feet to the Northwest corner of Lot 4 of a Subdivision of the West Half of the Southwest Quarter of Section 10, Township 19 North, Range 9 East of the Third Principal Meridian, according to the division of the Estate of Jacob Smith, deceased, as shown by Plat in Circuit Court Record "D" at Page 224, for a point of beginning; thence East along the North line of Lots 4 and 3 of said Subdivision, 880.74 feet to the Northeast comer of said Lot 3; thence South along the East line of said Lot 3, 270.68 feet; thence West parallel with the North line of said Lots 3 and 4, 880.96 feet to the West line of said Lot 4, thence North along the West line of said Lot 4, 270.68 feet to the point of beginning, of Champaign County, Illinois.

Except;

That portion of the Smith Road Right-of-Way lying within the above described tracts, containing 13,426.659 S.F. (0.308 acres), more or less.

Said tracts containing 11.116 acres, more or less and being commonly known as 801 North Smith Road, Urbana, Illinois, and having a Permanent Identification Number of 30-21-10-301-001 all being situated in Urbana Township, Champaign County, Illinois.

Section 2. The City Clerk is authorized and directed to record a certified copy of this Ordinance, together with an accurate map of the territory herein above described, in the Office of the Recorder of Deeds and in the Office of the County Clerk and County Election Authority of Champaign County, Illinois.

Section 3. The Zoning Ordinance of the City of Urbana, Illinois, and the Zoning Map of the City of Urbana, Illinois, are hereby amended to classify the territory herein annexed as IN-1 Light Industrial/Office upon annexation in accordance with an annexation agreement approved and authorized on August 21, 2017 by Ordinance No. _____.

Section 4. The territory annexed herein is assigned to City of Urbana Ward 5.

Section 5. To avoid uncertainty regarding public safety responsibilities concerning the property herein annexed, this Ordinance shall take effect at noon on the 10th day following its passage by the Urbana City Council.

This Ordinance is hereby passed by the affirmative vote, the “ayes” and “nays” being called, of a majority of the corporate authorities (5 of 8 votes) of the City of Urbana, Illinois, at a meeting of said corporate authorities.

AYES:

NAYS:

ABSENT:

ABSTAINED:

Charles A. Smyth, City Clerk

APPROVED BY THE MAYOR this ____ day of _____, 2017.

Diane W. Marlin, Mayor

A part of the Southwest Quarter of Section 10, Township 19 North, Range 9 East of the Third Principal Meridian, Champaign County, Illinois being more particularly described as follows:

The West 6 acres of Lot 1 of a Subdivision of the West Half of the Southwest Quarter of Section 10, Township 19 North, Range 9 East of the Third Principal Meridian, according to the division of the Estate of Jacob Smith, deceased, as shown by Plat in Circuit Court Record "D" at Page 223, Records of Champaign County, Illinois;

AND;

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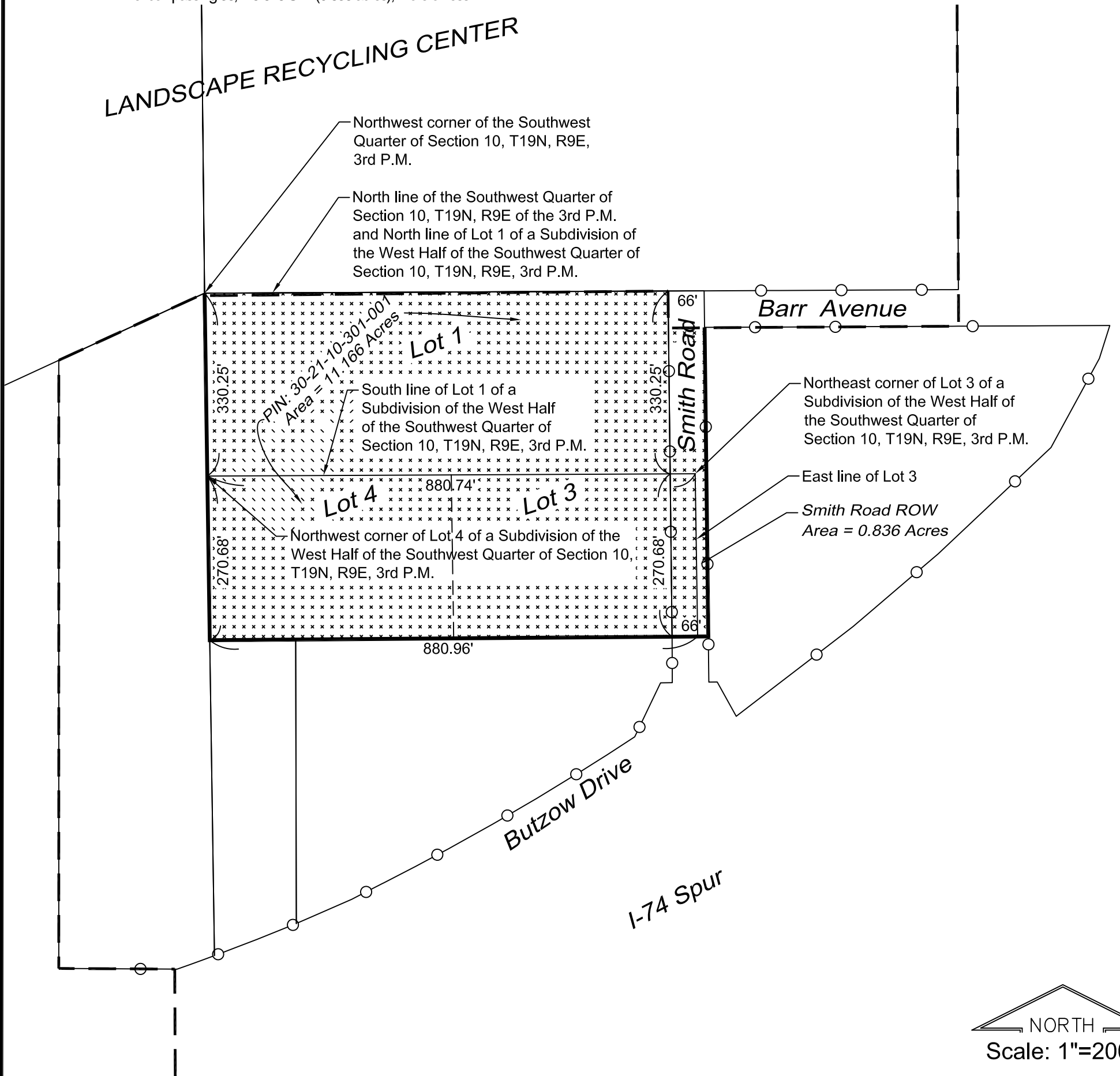
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Said tracts containing 11.116 acres, more or less and being commonly known as 801 North Smith Road, and having a Permanent Identification Number of 30-21-10-301-001 all being situated in Urbana Township, Champaign County, Illinois.

Together with the following described adjacent public Right-of-Way, which is by operation of the law, automatically annexed with the adoption of an annexation ordinance pertaining to this tract:

That portion of Smith Road Right-of-Way, not previously annexed into the City of Urbana, lying adjacent to the herein annexed tract, being sixty-six feet (66') in width and encompassing 36,425.616 S.F. (0.836 acres), more or less.



MAP SHOWING AREA
ANNEXED BY CITY
ORDINANCE #2017-XX-XXX
CITY OF URBANA, ILLINOIS
CHAMPAIGN COUNTY
DATE: AUGUST XX, 2017

AREA OF ANNEXATION	++++
EXISTING CITY LIMITS	----
NEW CITY LIMITS	_____
RIGHT-OF-WAY	—○—○—

**ENGINEERING
DIVISION**



CITY ENGINEER/PUBLIC WORKS DIRECTOR

CAD: B.W.F. 7/10/2017
CHECKED: W.R.G. 7/11/2017

Exhibit A: Location & Existing Land Use Map



Case: Plan Case Nos. 2307-M-17 and 2017-A-02:
Subject: Annexation Agreement and Rezoning
Location: 801 North Smith Road
Petitioner: David Borchers

 Subject Property

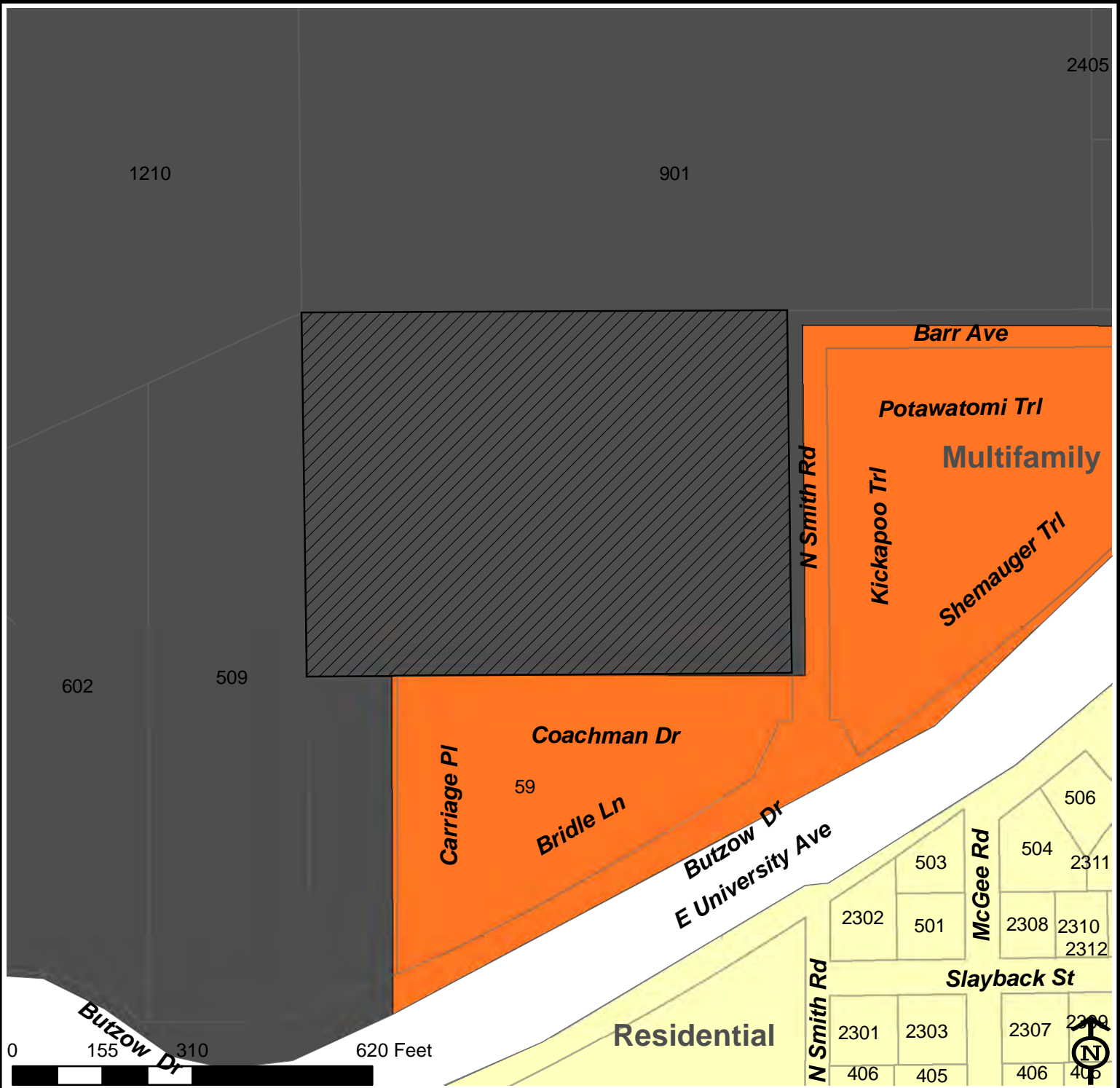
Exhibit B: Zoning Map



Case: Plan Case No. 2307-M-17 and 2017-A-02
 Subject: Annexation Agreement and Rezoning
 Location: 801 North Smith Road
 Petitioner: David Borchers

	AG		B-3		R-1
	B-3		B-4		R-2
	AG-1		CR		R-3
	AG-2		I-1		R-4
	B-2		I-2		R-5

Exhibit C: Future Land Use Map



Case: Plan Case Nos. 2307-M-17 and 2017-A-02:
 Subject: Annexation Agreement and Rezoning
 Location: 801 North Smith Road
 Petitioner: David Borchers

- Residential
- Multi-Family Residential
- Industrial
- Subject Property



Petition for Annexation

ANNEXATION

DO NOT WRITE IN THIS SPACE - FOR OFFICE USE ONLY

Date Request Filed _____ Annexation Case No. _____

PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION

1. APPLICANT CONTACT INFORMATION

Name of Applicant(s): _____ Phone: _____

Address (*street/city/state/zip code*): _____

Email Address: _____

Property Interest of Applicant(s) (*Owner, Contract Buyer, etc.*): _____

2. OWNER INFORMATION

Name of Owner(s): _____ Phone: _____

Address (*street/city/state/zip code*): _____

Email Address: _____

Is this property owned by a Land Trust? Yes No

If yes, please attach a list of all individuals holding an interest in said Trust.

3. PROPERTY INFORMATION

Location of Subject Site: _____

PIN # of Location: _____

Lot Size: _____

Current Zoning Designation: _____

Proposed Zoning Designation: _____

Current Land Use (*vacant, residence, grocery, factory, etc*): _____

Proposed Land Use: _____

Present Comprehensive Plan Designation: _____

Legal Description (*If additional space is needed, please submit on separate sheet of paper*): _____

To the City Council of the City of Urbana
Champaign County, Illinois

The Applicant, _____; respectfully states under oath:

That I, _____ (*applicant*), am either the sole owner or am authorized by the owner(s) of record of the following legally described land (hereinafter sometimes referred to as the "Tract"), except any public right-of-way property wit: (*Insert Legal Description*)

All situated in Champaign County, Illinois.

Together with the following described adjacent public right-of-way which is by operation of the law, automatically annexed with the adoption of an Annexation Ordinance pertaining to this parcel:

Also known for reference as _____ Urbana, Illinois,
(*street address*)

having permanent identification number (PIN) _____ .

That said territory is not situated within the corporate limits of any municipality, but is contiguous to the City of Urbana, Illinois.

That at least fifty-one percent (51%) of any and all electors (registered voters) residing in said Tract have signed this petition.

APPLICANT(S) RESPECTFULLY REQUESTS:

1. That the above described Tract(s) be annexed to the City of Urbana by Ordinance of the Mayor and City Council of the City of Urbana, pursuant to Section 7-1-8 of Chapter 24 of the Illinois Municipal Code of the State of Illinois, as amended.
2. That said Tract be annexed in accordance with the terms of the annexation agreement passed by the City Council on _____, 20 _____ as Ordinance No. _____ and approved by the Mayor of the City of Urbana.

NOTE: All property owners must sign this annexation petition. In the case of corporate ownership, the person(s) signing must be authorized to do so by the corporation board.

Dated this _____ day of _____, 20_____

OWNER(S):

By: _____

By: _____

By: _____

By: _____

Subscribed and sworn to before me this _____ day of _____, 20_____.

Notary Public

Seal

My Commission Expires: _____ day of _____, 20_____.

The undersigned, being electors (registered voters) residing in said Tracts, respectfully state under oath:

1. I am currently registered to vote in Champaign County, Illinois and currently reside in said Tracts.
2. I have read and understand the petition to annex said Tracts and hereby and herewith join in the petition for annexation of said Tracts to the City of Urbana.

ELECTORS:

SIGNATURE

ADDRESS (PLEASE PRINT)

1. _____
2. _____
3. _____

COUNTY OF CHAMPAIGN)
) SS
 STATE OF ILLINOIS)

I, _____, Notary Public in the aforesaid County and State, do hereby certify that each of the persons who signed this petition personally appeared before me and acknowledged that they signed the said petition as their free and voluntary act for the uses and purposes set forth therein.

 Notary Public

Seal

My Commission expires the _____ day of _____, 20_____.

PLEASE RETURN THIS FORM ONCE COMPLETED TO:

City of Urbana
Community Development Department Services
Planning Division
400 South Vine Street, Urbana, IL 61801
Phone: (217) 384-2440
Fax: (217) 384-2367

MINUTES OF A REGULAR MEETING

URBANA PLAN COMMISSION

DRAFT

DATE: July 20, 2017

TIME: 7:30 P.M.

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

MEMBERS PRESENT: Barry Ackerson, Jane Billman, Andrew Fell, Tyler Fitch, Lew Hopkins, Christopher Stohr

MEMBERS EXCUSED: David Trail, Daniel Turner

STAFF PRESENT: Lorrie Pearson, Planning Manager; Christopher Marx, Planner I; Teri Andel, Administrative Assistant II

OTHERS PRESENT: David Borchers, Lynn Borchers, Gary Crawl, Allen Dial, Martina Dial, Ginny McCarrey, Dottie Norman, Chris Wasson

1. CALL TO ORDER, ROLL CALL AND DECLARATION OF QUORUM

Chair Fitch called the meeting to order at 7:31 p.m. Roll call was taken and a quorum was declared present.

2. CHANGES TO THE AGENDA

There were none.

3. APPROVAL OF MINUTES

The minutes from the July 6, 2017 regular meeting were presented for approval. Mr. Fell moved to approve the minutes as presented. Mr. Hopkins seconded the motion. The minutes were then approved by unanimous voice vote as written.

4. COMMUNICATIONS

- Email from Nancy Kostro
- Letter from Daniel J. Bornt

5. CONTINUED PUBLIC HEARINGS

Plan Case Nos. 2307-M-17 and 2017-A-02: A proposed annexation agreement between the City of Urbana and David Borchers, including rezoning a property from County AG-2 (Agricultural) to City IN-1 (Light Industrial/Office), for an 11.47-acre parcel located west of Smith Road and north of Coachman Drive at 801 North Smith Road in Champaign County, Illinois 61802.

Chair Fitch re-opened these items on the agenda. Christopher Marx, Planner I, introduced the cases by presenting background information on the subject property and noting the purpose for rezoning the property to City IN-1 upon annexation. He noted the zoning, current land uses and future land use designations of the subject property and of the surrounding adjacent properties. He reviewed the General Area Plan and the LaSalle National Bank criteria as they pertain to the proposed rezoning case. He presented staff's recommendation for approval. He mentioned the two communications that were received and distributed prior to the start of the meeting. He stated that Planning staff consulted with the City Engineer about the state of Smith Road and was informed that the City's Public Works Department would be responsible for maintaining Smith Road upon annexation. Lorrie Pearson, Planning Manager, noted a correction that the zoning to the north was AG, Agriculture.

Chair Fitch asked if any members of the Plan Commission had questions for City staff.

Mr. Hopkins asked if the City would only be responsible for the portion of Smith Road that fronts the subject property. Ms. Pearson said that was correct.

Mr. Hopkins inquired as to who owns the property to the west of the subject property. Mr. Marx replied that it is owned by Flex-N-Gate Corporation.

Mr. Hopkins asked if the City had a right-of-way planned for the extension of Guardian Drive to the north. Ms. Pearson stated that Guardian Drive has been platted to have a cul-de-sac at the north end; however, it has not been constructed. The City does have right-of-way for this.

Mr. Hopkins wondered if the cul-de-sac and the B-3, General Business, zoning of 602 North Guardian Drive was part of an annexation agreement. Mr. Marx stated that he would need to research it.

Mr. Stohr inquired about the zoning for 509 North Smith Road. Mr. Marx pointed out that it is currently zoned County R-4. Mr. Stohr asked if it was unusual to sandwich industrial zoning between residentially zoned parcels. Ms. Pearson answered saying that if 509 North Smith Road were to be developed, it would likely require connection to the sanitary sewer, which would trigger annexation into the City of Urbana. As a result, it would come before the Plan Commission as a rezoning case.

With no further questions for City staff, Chair Fitch opened the hearing for public input from the audience. He reviewed the process of a public hearing.

David Borchers, applicant, approached the Plan Commission to speak. He stated that he and his wife recently purchased the property and would like to build their construction business on the proposed site. He addressed the concerns expressed in Mr. Bornt's letter that was received by City staff. They would not be manufacturing any construction materials on the subject property. They would not have any dump trucks coming to and from the property after the business is constructed. There will be an occasional semi-truck delivering construction materials to the site; however, most of the time deliveries will be via Federal Express and United Parcel Services (UPS). Although they have a total of about 12 employees and while some employees may come to the subject property to pick up materials or drop off leftover materials from a job site, there will only be about three employees on the subject property on average most of the time. They plan to have approximately six parking spaces landscape the subject property as required. They also plan to farm the remainder of the property that would not be developed. The trucks they own are smaller than the trucks that the City's Arbor Division uses, so there would not be much impact on the existing roads. Some clients might drop off some blueprints, but there would not be much traffic. The hours they would be at the subject property would be from 6:00 a.m. to 6:00 p.m.

Mr. Ackerson questioned why he requested to rezone to industrial. Mr. Borchers replied that he requested the rezoning to be able to locate his construction business on the proposed site. He plans to construct a Morton building for his business. He found that he was required to get an annexation agreement because he wants to connect to the sanitary sewer line.

Mr. Fell noticed that the loading area would be on the rear of the building. He asked how much of the back section of the proposed site would be paved. Mr. Borchers explained that they would not have a loading dock. There would be a concrete pad in front of the overhead door.

Mr. Fitch wondered what kind of contracting their company did. Mr. Borchers explained that they do commercial and office buildings.

Mr. Fitch asked if they store materials outside or inside. Mr. Borchers answered it would mostly be ceiling tiles, drywall and metal studs. Some materials would be stored on a rack behind the building; however, most of the materials would be stored inside.

Mr. Fitch asked if they would be selling materials or supplies. Mr. Borchers replied no.

Mr. Stohr noticed that there were three other lots. Ms. Pearson explained that was a conceptual sketch that was created to help City staff understand what the potential development of the site could be. This was not a preliminary or final plat. Mr. Borchers clarified that he was not asking to subdivide the property.

Martina Dial approached the Plan Commission to speak. Her husband and she own the property directly to the east. She did not believe that it would be in the best interest of the neighborhood to rezone the subject property to industrial and allow the use of construction yard. This neighborhood is a small area serviced by a single frontage oil and chip road. She reviewed the history of the area noting a landfill was placed there in 1982 against the wishes of the residents in the area. Per the Hoseman Agreement, the City of Urbana is responsible for maintaining the frontage along Barr Avenue; however, this does not happen. Her husband and she have mowed

the right-of-way for 34 years. The road has only been resurfaced twice in the last decade. They continue to pay taxes to the township, but do not receive snow plow removal services. The City plows in front of the landfill but ends up plowing them in deeper. The Waste Reclamation Site installed a gate to allow big trucks to come and go via the small residential neighborhood rather than through the public access to University Avenue. She addressed Mr. Hopkins question about who maintains Barr Street. She stated that there was a dispute between the City and the township, and yet her husband ends up plowing from Smith Road to their house. A gun range has been constructed on top of the surface of the closed landfill. The sound of guns being fired impacts the nature with deer and coyotes. 602 North Guardian Drive and 509 North Smith Road are owned by Guardian West, and they do nothing to maintain either property. Semi drivers park on Guardian Drive waiting to pick up or deliver to Guardian West creating a blind intersection at University Avenue. In closing, she stated that the City of Urbana is lousy neighbors and do not maintain their properties.

Ginny McCarrey approached the Plan Commission to speak. She stated that she lives in Chief Illini Trailer Park. She knows the Borchers and confirmed that they have a small business. However, sometimes semis get lost trying to find Guardian West and end up driving through the mobile home park because they cannot get turned around. Therefore, she requested that if the Borchers have a semi delivering materials that they provide a large enough space for semis. She wondered if when the City plowed in front of the Borchers property if they planned to lift the blade so they wouldn't plow the rest of the road that was not annexed into the City. That would be odd.

Allen Dial approached the Plan Commission to speak. He expressed concern about the entire subject parcel being rezoned to industrial and only a small portion being used for the Borchers' construction building. Agreements mean nothing unless someone enforces them. Any light industrial uses could be constructed on the remainder of the property. Mr. Fitch read the list of uses that would be allowed if rezoned to industrial. Mr. Dial stated that some of the uses could increase traffic tremendously.

Chris Wasson approached the Plan Commission to speak. He mentioned that he is a manager for both Carriage Estates and Chief Illini Mobile Home Parks. He noted that most of their concerns were stated in the letter that was submitted by their legal services and is now part of the record. He agreed with Mr. Dial's concerns about other industrial uses being developed on the subject property later in the future. He expressed concern about the danger of semi drivers parking on Butzow Drive. It forces other traffic to go into oncoming lanes in order to exit the intersection.

Mr. Borchers re-approached the Plan Commission. He stated that the big concern seemed to be about semi traffic at the intersection of Guardian Drive and Butzow Drive, which he did not have any control over. They would not have many deliveries made by semis. If one does come to deliver materials to them, the semi drivers would have ample space to turn around.

He does not have any plans to develop more of the subject property. He only wants to construct an office/storage area for his business. His property would not be desirable for retail because there is no visible frontage.

Ms. Dial re-approached the Plan Commission to point out that Peter B's Automotive also has no frontage visibility, but it has been in business in the neighborhood for 20+ years. Visibility is not the issue. Also, she did not feel that the big concern was semis but rather the fact that the people who make agreements do not enforce them. The concern with semis is a perfect example of how an agreement is not being enforced. The Landfill rules were not enforced. Their concern is not with the Borchers' business, but with the list of other uses that could be developed on the subject property in the future.

With no further comments or questions from members of the audience, Chair Fitch closed the public input portion of the hearing and opened it up for Plan Commission discussion and/or motion(s).

Mr. Stohr expressed concern about having industrial zones located so close to residential. Even though the applicant claims to have a small business use, the remainder of the property would likely be developed fully.

Mr. Fell wondered if City Engineering staff had reviewed this to determine if storm water retention would be required. Ms. Pearson replied that both the City Engineer and the Assistant City Engineer have reviewed this case. It is always a requirement that if storm water management is needed, then it be part of the development plan. This is not required at this stage of the process.

Mr. Hopkins stated that he was not prepared to proceed with this case at this time. It is a classic case of a very messy transition from an accidental street pattern, ownership pattern, development pattern into a very different one. He hoped that they would be able to do a better job. Many of neighbors' concerns expressed during this hearing reinforces that there are road layout options that need to be considered, sewer layout options (some of which already exist) and the City implicitly already owns some of the right-of-way. There is another annexation agreement with zoning in place that is inconsistent with the City's Comprehensive Plan. There is a road platted in the agreement that does not solve the trucking issues. The implied plat in the proposed agreement would not solve the trucking problem. The Comprehensive Plan has designated the proposed property as industrial and the comments in the plan are consistent with notion that the area should be developed. He felt it could be done in a better way by focusing on street layout and organization of the plat; not the usage. The only consideration for the Plan Commission is the zoning change, but making the zoning change does not consider the use like a Zoning Board of Appeals discussion would do. To consider zoning, the Plan Commission needs to focus on access, street network layout and the way it works. The way it is currently presented does not work.

Mr. Ackerson stated that it is important to keep in mind that the request was to rezone the entire lot. He was sympathetic to the residents who live in the area; however, when looking at the larger picture, this area was clearly planned to be developed. He believed that Light Industrial zoning makes sense for the subject property. The issues that Mr. Hopkins raised have to do with how to make Light Industrial work, so he would need to hear more to understand it.

Mr. Fitch commented that he was in agreement. He has a question about the use because the range of possible uses that would be compatible with a property such as this that is stuck between

industrial and residential, there are not many zoning districts that would make the transition without a hard stop. This is why he asked the applicant if the use would be a construction yard. IN-1 (Light Industrial) is the lowest zone in which a construction yard is allowed, and that is only by a conditional use permit. He read the definition of *construction yard*.

Mr. Fell asked if the conditional use permit would apply to the entire lot even if it was subdivided at some point in the future or would the permit remain only with the lot which contains the Borchers’ business. Ms. Pearson replied that Exhibit C – General Area Plan of the proposed annexation agreement indicates where the business would be located on the subject property, which is where the conditional use permit would only apply.

Mr. Ackerson mentioned that agriculture would not be allowed in a business zone and Mr. Borchers indicated in his testimony that he planned to continue to farm the remainder of the property. Ms. Pearson pointed out that the annexation agreement allows the City to add in uses or take out uses. So, if they had to pick a different zoning district that would allow what is intended and what would be amendable to the neighborhood, the City could include in the proposed annexation agreement that the agriculture use would be allowed. However, this would only be good for the term of the annexation agreement, which is 20 years maximum.

Ms. Billman expressed her concerns. They were as follows: 1) future land use by a new owner – what could happen then? 2) the impact on the current homeowners now and 3) the fact that there is only one road going in and out.

Mr. Hopkins asked about procedural strategies with regards to the annexation agreement. Ms. Pearson said that it was possible to continue the hearing to a future meeting. She noted the dates for this case to be heard by Committee of the Whole and to be considered by City Council.

Mr. Hopkins moved that the Plan Commission continue this case to the August 10th meeting. The issue of concern is infrastructure and the access not only to the proposed parcel but the organization of access to all of the parcels including, but not limited to, 509 North Smith Road, the mobile home parks, the subject property, 602 Guardian Drive, the Guardian Road agreement, access to the Landfill and the access to the City garage. Mr. Stohr seconded the motion. Roll call on the motion was as follows:

Ms. Billman	-	Yes	Mr. Fell	-	Yes
Mr. Fitch	-	Yes	Mr. Hopkins	-	Yes
Mr. Stohr	-	Yes	Mr. Ackerson	-	Yes

The motion was passed by unanimous vote.

6. OLD BUSINESS

There was none.

7. NEW PUBLIC HEARINGS

There were none.

8. NEW BUSINESS

There was none.

9. AUDIENCE PARTICIPATION

There was none.

10. STAFF REPORT

There was none.

11. STUDY SESSION

There was none.

12. ADJOURNMENT OF MEETING

The meeting was adjourned at 8:52 p.m.

Respectfully submitted,

Lorrie Pearson, Secretary
Urbana Plan Commission



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July 19, 2017

Via Email – cdmarx@urbanaindinois.us

Christopher Marx
Planner 1
Community Development Services
City of Urbana
400 South Vine St.
Urbana, IL 61801

Re: David Borchers Proposed Annexation and Rezoning
Address: 801 North Smith Road
Case: Plan Case Nos. 2307-M-17 and 2017-A-02

Dear Mr. Marx:

RV Horizons, Inc. is the management company and duly authorized agent for two separate mobile home communities that border the proposed area of annexation and redevelopment identified above. Those communities are (1) Chief Illini Motor Home Park to the east containing 65 home sites; and (2) Carriage Estates to the south containing 61 home sites (collectively, “Our Communities”). We oppose the current proposed plans to annex and rezone the property from agricultural to light industrial/office, and also oppose the development of a “construction yard” on any portion of the property.

The residents of Our Communities are of modest means. They include single parent households, or families where both parents work, sometimes more than one job, and they have worked hard to have a nice, safe, affordable place to call home. And the stability that results from families having a home benefits the City of Urbana as a whole. The proposed plans for annexation and redevelopment – including a noisy, busy, dust and dirt generating construction yard – if approved by the City will:

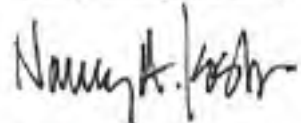
- materially and forever alter the surrounding landscape of Our Communities;
- damage and degrade Our Communities’ home sites and the homes situated on them, most of which are owned individually by our residents;
- result in an almost constant nuisance from the added noise and traffic;
- disrupt our residents peaceful enjoyment of their homes and Community;
- drive potential, hard-working future families and single residents to seek homes elsewhere because no one wants to live next to a construction yard or light industrial/office development; and

- serve to further stigmatize people who live in mobile home communities.

Everyone deserves to have a nice, clean, safe place to live and Our Communities continually strive to provide that for what is traditionally an under-served segment of the population. If the proposed plan to annex and rezone is approved, the City of Urbana will send the message that it does not value affordable housing and it does not value the families that live there. Please demonstrate the City's support for affordable housing unspoiled by the ravages of industrial sprawl and recommend the denial of the proposed annexation and redevelopment.

We request that this letter be presented to the Planning Commission and included in the record of the public hearing scheduled for Thursday, July 20, 2017 at 7:30 p.m.

Very truly yours,



Nancy A. Kostro
Vice President of Legal Services

cc: Peter Reinert, Senior Vice President & General Counsel
John Portman, Real Estate Counsel
Frank Sheppard, Regional Vice President
Robert Hesselmann, District Manager
Natalie Sibbing, Community Manager, Chief Illini
Christopher Wasson, Community Manager, Carriage

Plan Commission

City of Urbana

Attn: Christopher Marx, Planner I

RE: 801 North Smith Road Parcel
Proposed Annexation & Rezoning

As a resident residing contiguous to this parcel, and informed by City of this proposal by letter dated 5 July 2017, I have the following concerns that I would like the Commission to take under consideration:

- (1) The rezoning from County AG-2 to City IN-1 must necessarily have an impact on both Carriage Estates and Chief Illini Mobile Home Parks adjacent to the property simply by its no longer being bucolic agricultural farmland. Assurances must be made to the residents here that no negative impacts be made in regards to unwarranted noise or odors resulting from commercial operations, now and in the future. Specifically, we would adamantly oppose any such operations as permanent large-scale trucking transportation involving semis or dump trucks (and their storage) into and out of the parcel. Similarly, we would oppose any operations involving the regular use of heavy machinery, or assembly plants/facilities/warehouses involving manufacturing or shipping and receiving operations of any kind where noise and odors would be a daily part of the facility's business.
- (2) We will oppose any enterprise that will significantly impact the traffic conditions on this portion of Smith/Butzow, which is a narrow, tar-and-chip gravel road maintained by the county/Urbana Township with no other outlet besides its entrance from Guardian Dr. Any further development must keep this in mind, as the road currently is the only access for the residents of the mobile home parks in addition to access for the City garage and brush disposal site, and already bears a significant traffic load.

Thank you,

Daniel J. Bornt
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Urbana IL

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