



## DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

### MEMORANDUM

**TO:** The Urbana Plan Commission

**FROM:** Rob Kowalski, AICP, Planning Manager

**DATE:** April 1, 2004

**SUBJECT:** Plan Case No. 1887-A-04: Annexation Agreement between the City of Urbana, Michael Augustino Maggio and Bushman, LLC for a 2.71 acre tract of property located at the southwest corner of Lincoln Avenue and Bradley Avenue commonly referred to as 1501 North Lincoln Avenue; and

Plan Case No. 1887-M-04: Request to rezone a 2.71-acre tract 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 commonly referred to as 1501 North Lincoln Avenue.

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### Introduction and Background

At the southwest corner of Lincoln Avenue and Bradley Avenue is a 2.71-acre parcel that has never been developed. The property has not been annexed into the City of Urbana although it is wholly surrounded by the city limits. Bushman, LLC is under contract to purchase the property from the Anthony Joseph Maggio estate. They intend to annex the property and subdivide it into two parcels creating a 2.08-acre parcel to the north and a 0.63-acre parcel to the south. The annexation agreement describes the intention of Bushman, LLC to develop a gas station, convenience store and “quick service restaurant” on the 2.08-acre northern parcel. The 0.63-acre southern parcel would remain undeveloped and marketed for a future commercial development. Development of the site requires annexation into the City of Urbana since sanitary sewer connections will be necessary.

The property is currently zoned B-2, Neighborhood Business in Champaign County. Under the current regulations of the Urbana Zoning Ordinance, upon annexation to the City the tract would directly convert to City B-1, Neighborhood Business zoning. It is recommended that the tract be instead zoned B-3, General Business given its location on a primary arterial roadway and considering the proposed use for the site. Rezoning the tract from its direct conversion of B-1,

Neighborhood Business Zoning District to the B-3, General Business Zoning District requires a public hearing with the Urbana Plan Commission.

Past practice has been for the Plan Commission to consider the proposed annexation agreement in conjunction with the public hearing for the rezoning. A separate public hearing with the Urbana City Council is required to officially consider the annexation agreement. That hearing is scheduled for April 19, 2004.

### **Adjacent Land Uses and Zoning Designations**

The site is situated at the southwest corner of the intersection of Lincoln Avenue and Bradley Avenue which is a major arterial intersection.

Surrounding the site are institutional uses to the south, east and west. To the east is the Illinois-American Water Company North Wellfield. To the west across Lincoln Avenue is the Vineyard Church, to the south is the City of Urbana Fire Station, and to the north across Bradley Avenue is the multi-family development Melrose Apartments.

#### **COMPREHENSIVE PLAN DESIGNATION, ZONING, AND LAND USE TABLE**

<b>Direction</b>	<b>Comprehensive Plan</b>	<b>Zoning</b>	<b>Land Uses</b>
Site	Commercial	B-2 Neighborhood Business / Champaign County	Undeveloped
North	Medium Density Residential	R-4 Medium Density Multi-Family Residential	Melrose Apartments
East	Medium Density Residential	R-4 Medium Density Multiple-Family Residential	Vineyard Church
South	Institutional (Public)	R-2, Single-Family Residential	City of Urbana Fire Station
West	Institutional (Utilities)	R-2, Single-Family Residential	Illinois-American Water Company Wellhead.

## **Issues and Discussion**

### **Annexation Agreement**

The annexation agreement is currently being negotiated between the City, Owners and Developer. A draft of the agreement is attached to this memorandum. Under State Statute, annexation agreements are considered by the City Council via a public hearing. A public hearing for the agreement has been scheduled for April 19, 2004 with the Urbana City Council. Also by statute, annexation agreements may include the negotiation of provisions that are customarily considered by other boards and commissions, such as zoning and subdivision requirements. This provision excludes the rezoning of land which must be considered at a public hearing with the Urbana Plan Commission.

The attached draft annexation agreement outlines obligations by the Owners, Developer and the City. Under the agreement, the Developer agrees to construct a gas station, convenience store and a “quick service restaurant” as depicted on the site plan exhibit. The developer also agrees to provide any and all necessary infrastructure improvements necessary for the development. This includes proper access control measures on Lincoln Avenue. There are no financial incentives by the City being offered for the development.

### **Proposed Rezoning**

The property could automatically covert to City B-1, Neighborhood Business Zoning upon annexation and avoid the need for a public hearing for zoning. However, staff has recommended to the developer that the City B-3, General Business Zoning District is better suited for the area and for a gas station, convenience store and restaurant. Under the current regulations of the Urbana Zoning Ordinance, these uses could be allowed in the B-1 zone although there would need to be a number of additional variances and waivers granted to allow the anticipated intensity of this development in the B-1 zone. Considering the parcels location on two primary arterial roadways and along a major entryway corridor to the University of Illinois, staff felt that the more appropriate zoning for the parcel would be B-3. The location of the parcel is focused more on the roadway frontage rather than within a residential neighborhood area.

The rezoning to B-3 appears to be appropriate considering the tract is located in an area where numerous other parcels are zoned B-3 and there are regional and community-scale serving businesses already established.

### **Development in the Area / Comprehensive Plan**

The property is located in an area of Urbana that has experienced relative commercial growth in the past ten years. This area of Lincoln Avenue is desirable for commercial development considering its close proximity to the Interstate 74 interchange and the fact that the roadway is designated as the entrance to the University of Illinois. In this area the corridor contains a mix of older and newer commercial development. Newer developments include a Harley Davidson dealer as well as the Ramada and Holiday Inn hotels. Melrose Apartments and University Commons Apartments have also increased the demand for convenience services in the area.

The 1982 Comprehensive Plan identified this site as appropriate for a commercial land use. The current draft future land use plans for the update to the Comprehensive Plan also identify this site as appropriate for a commercial development as stresses the need to promote infill development.

**Correspondence from Illinois-American Water Company**

The site is located immediately east of the Illinois-American Water Companies North Wellfield. This wellfield is partially used as a production well for water. Illinois-American Water Company representatives were contacted early in the process to comment on the proposal and determine what impacts could be realized. The Illinois Groundwater Protection Act (IGPA) requires that underground storage tanks be setback a minimum of 400 feet from the production wells. According to the development site plan, the tanks would be located approximately 600 feet from the well. Attached is a letter from Illinois American Water Company indicating their approval and overall comments.

**Comprehensive Plan Goals, Objectives and Policies**

In considering the zoning map amendment for the tract, the Plan Commission must consider effects upon the public health, safety, comfort, morals and general welfare of the community. The City's Comprehensive Plan and zoning law decisions in the Illinois Courts provide a framework for this consideration.

The proposed Comprehensive Plan map amendment should be considered in light of other goals, objectives and policies contained in the 1982 Comprehensive Plan. The following goals and policies of the 1982 Urbana Comprehensive Plan relate to this case:

*Objective 1.410*

Promote the redevelopment and conservation of urbanized areas.

*Goal 3.100*

To organize and develop land uses and adjacent properties in a balanced and mutually compatible manner relative to the functional needs of the City.

*Goal 3.110*

Promote development in the City and surrounding unincorporated areas in a manner which minimizes conflicting land uses and/or adjacent development.

*Goal 4.100*

To increase sources of municipal revenues required to continue providing existing and future increased levels of municipal services.

*Objective 4.100*

Increase the proportion of land uses which produce municipal revenues equal to, or in excess of, the cost of required services.

*Policy 4.111*

Promote mixtures of compatible uses, improvements in services and facilities, aesthetics and public convenience, in existing commercial and industrial developments.

*Policy 4.113*

Facilitate expansion plans of local businesses, commercial and industrial concerns.

*Goal 6.100*

To increase and diversify the tax base of the City of Urbana.

*Objective 6.110*

Encourage the promotion of commercial and industrial development which is compatible with the character, environment, and resources of the community.

*Policy 6.112*

Support rezoning petitions for land that has been identified as having the greatest potential within the parameters of the Plan for commercial and industrial development.

The following goals and policies of the ETJA Plan relate to this case:

*Goal 15.100 To assure a balance between the growth of Urbana and Urbana's quality of life, new development must be encouraged but must also enhance rather than threaten Urbana's community standards.*

*Goal 15.200 To assure that municipal services can be extended to adequately serve a rapidly growing municipal territory.*

*Objective 15.210. Assess the cost of annexations and developments so that developments are contributing their fair share of the increased cost of municipal services and/or capital improvements.*

*Objective 15.220 Control development in the ETJA so that properties adjacent to or near City limits develop first to prevent scattered development in the outer reaches of the ETJA.*

**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 by the Petitioner.

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 rezoning to B-3, General Business would be generally consistent with existing B-3 zoning designations in the general vicinity of the site. The rezoning and pending development is also consistent with the large number of businesses in the area along Lincoln Avenue which also contain B-3, General Business zoning.

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 zoned for Neighborhood Business and the value it would have if it were rezoned to General Business to permit the proposed use.

The site is currently zoned for commercial purposes in Champaign County and could be directly converted to the City Neighborhood Business zoning classification. Considering the fact that the location of the parcel is at the intersection of two arterial roadways and not within close proximity to a residential neighborhood, the site is more appropriately zoned for General Business rather than Neighborhood Business.

It should be noted that 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 zoning and future commercial development will contribute to the welfare of the community by offering convenient access to goods and services and increase the city's overall tax base.

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.

As stated above, this property is located in an area that is ideal for commercial zoning. The specific feature for this property is its location along Lincoln Avenue and its relative close proximity to the Interstate 74 interchange. The subject parcel is in a fully developed portion of Urbana and is adequately served by public streets and utilities.

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 never been developed. It is not clear if the specific reason for this property not being developed is directly related to its existing zoning district.

## **Summary of Staff Findings**

1. The proposed B-3, General Business zoning district for the subject site would be consistent with the current B-3 zoning in the general vicinity.
2. The proposed annexation agreement includes provisions for the development of a gas station, convenience store and “quick service restaurant” that will provide convenience services to the area.
3. The location of the site, which is at the intersection of two arterial roadways, makes it appropriate for commercial development.
4. The proposed rezoning to the B-3, General Business zoning district would allow for the commercial redevelopment of the property which would be a benefit to the community and contribute to the tax revenues of the city.
5. The proposed rezoning would not be detrimental to the public health, safety or general welfare.
6. The proposed rezoning appears to generally meet the LaSalle Case criteria.

## **Options**

The Plan Commission has the following options for recommendations to the City Council. In Plan Case 1887-A-04, the Plan Commission may:

- a. The Plan Commission may forward the Annexation Agreement to the City Council with a recommendation for approval.
- b. The Plan Commission may forward the Annexation Agreement to the City Council with a recommendation for denial.
- c. The Plan Commission may forward the Annexation Agreement to the City Council with a recommendation for approval with recommended modifications.

The Plan Commission has the following options for recommendations to the City Council. In Plan Case 1887-M-04, the Plan Commission may:

- a. The Plan Commission may forward the rezoning request to the Urbana City Council with a recommendation of approval.
- b. The Plan Commission may forward the rezoning request to the Urbana City Council with a recommendation of denial.

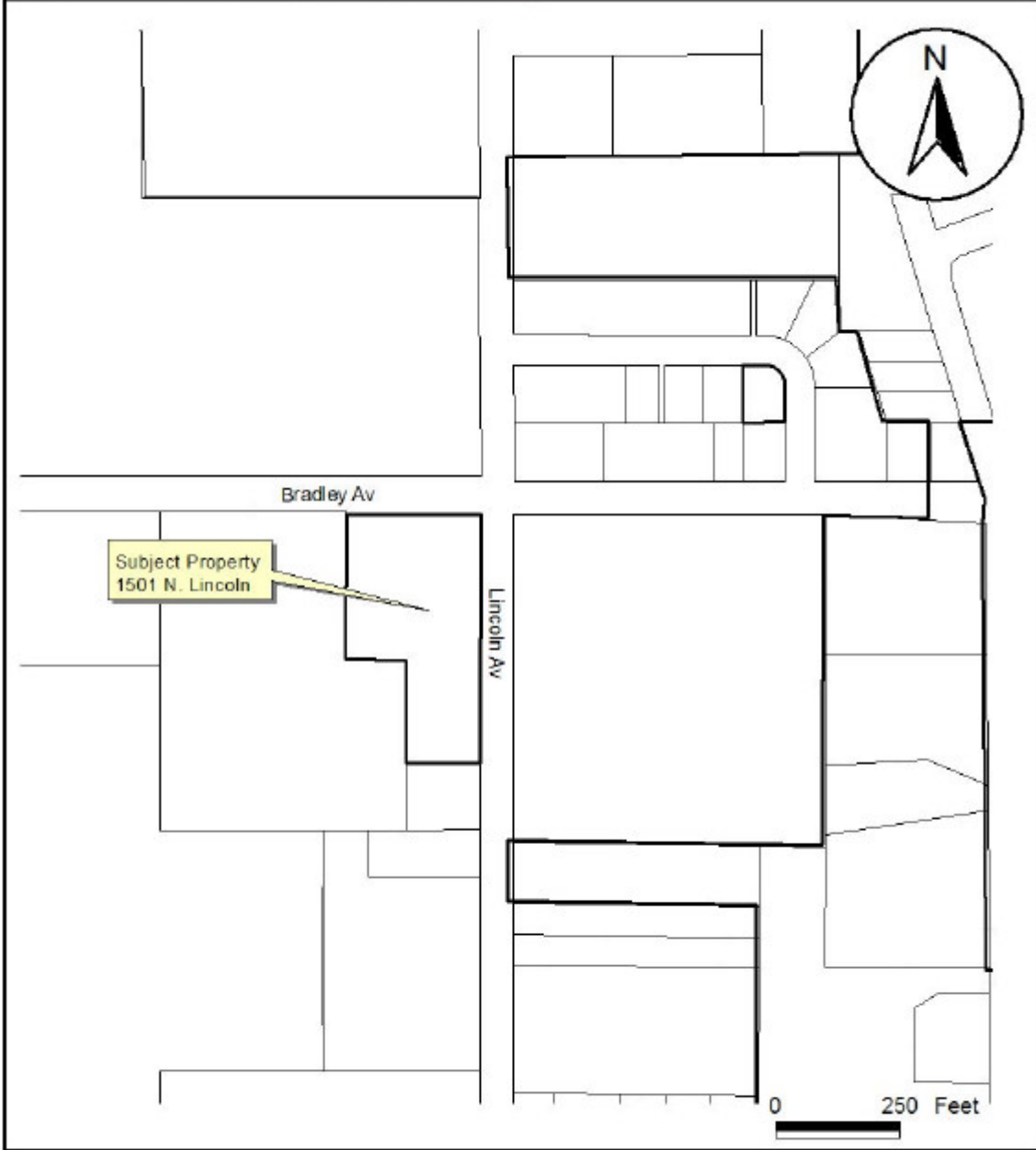
### **Staff Recommendation**

Based on the evidence presented in the discussion above, and without the benefit of considering additional evidence that may be presented at the public hearing, **staff recommends that the Plan Commission forward Plan Cases No. 1887-M-04 and 1887-A-04 to the Urbana City Council with a recommendation for approval.**






# Exhibit "A": Location Map

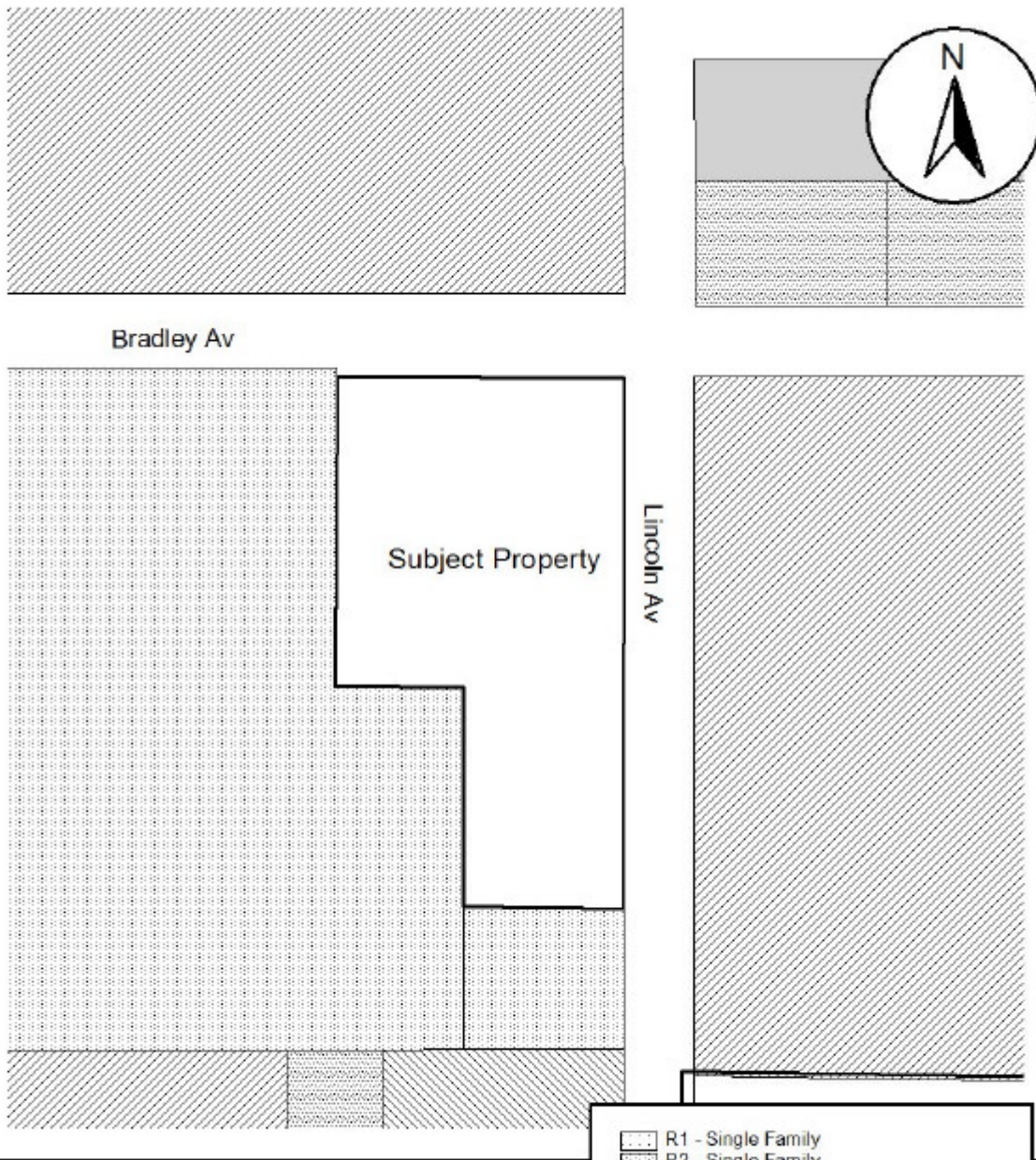


1887-M-04  
1501 N. Lincoln  
Petition to Rezone from  
Champaign Co. B-2, to City B-3,  
General Business








 Subject Property

Prepared 3/16/04 by Community Development Services - mbe

# Exhibit "B": Zoning Map



1887-M-04  
1501 N. Lincoln  
Petition to Rezone from  
Champaign Co. B-2, to City B-3,  
General Business

-  R1 - Single Family
-  R2 - Single Family
-  R3 - Single- and Two-Family
-  R4 - Medium Density Multiple-Family
-  R5 - Medium High Density Multiple-Family
-  B3 - General Business
-  IN - Industrial

# Exhibit "C": Existing Land Use Map

Multi-Family Residential  
Melrose Apartments

Business  
Sportland



## Bradley Avenue

Vacant -  
Subject Property

Institutional - Vineyard Church

Illinois American Water


Lincoln Avenue

Institutional

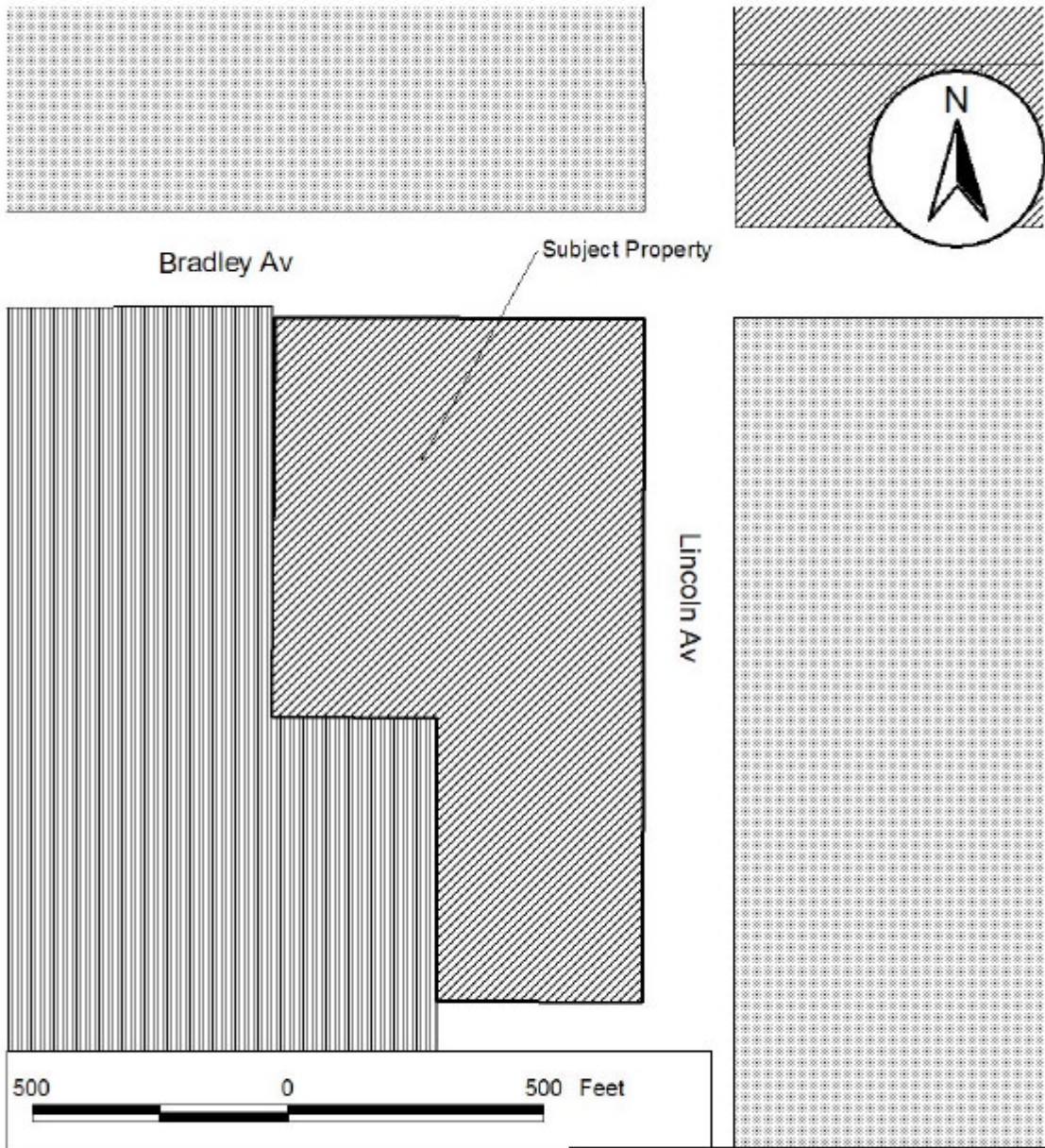
60 0 60 120 180 240 Feet






1887-M-04  
1501 N. Lincoln  
Petition to Rezone from  
Champaign Co. B-2, to City B-3,  
General Business

 Subject Property

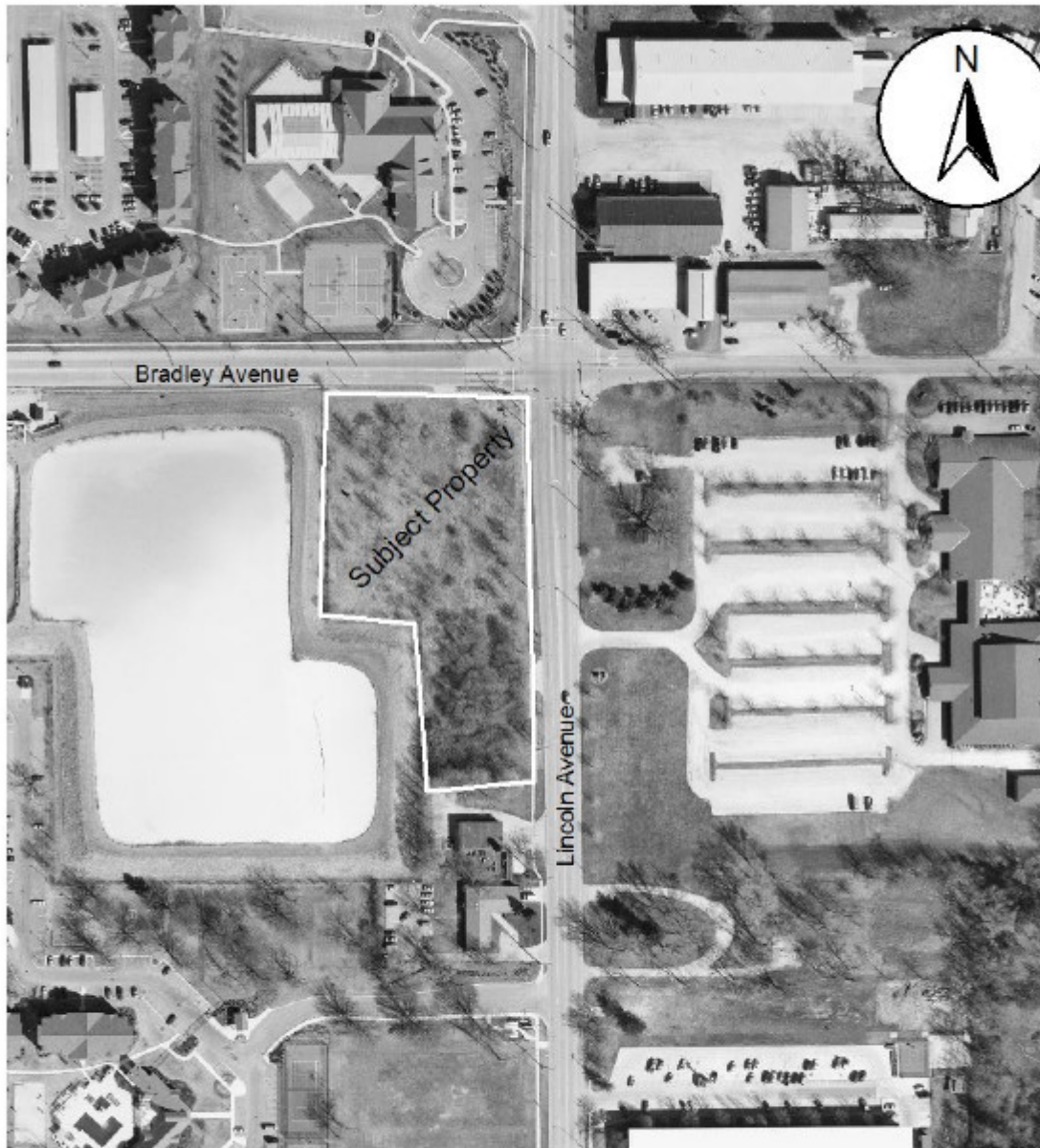
# Exhibit "D": Future Land Use Map



1887-M-04  
1501 N. Lincoln  
Petition to Rezone from  
Champaign Co. B-2, to City B-3,  
General Business

-  Medium Density Residential
-  Institutional
-  Commercial

## Exhibit "E" : Aerial Photo



1887-M-04  
1501 N. Lincoln  
Petition to Rezone from  
Champaign Co. B-2, to City B-3,  
General Business



**1501 North Lincoln Avenue  
Annexation Agreement**

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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. 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 9. 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 10. 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. [note: City Attorney recommends this text remain. We are unable to freeze zoning text amendments in an annexation agreement. However, to our knowledge, none of our zoning text amendments have ever negatively impacted a newly annexed or developed area. ]

**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 C 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 five-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

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

City Clerk

\_\_\_\_\_  
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.

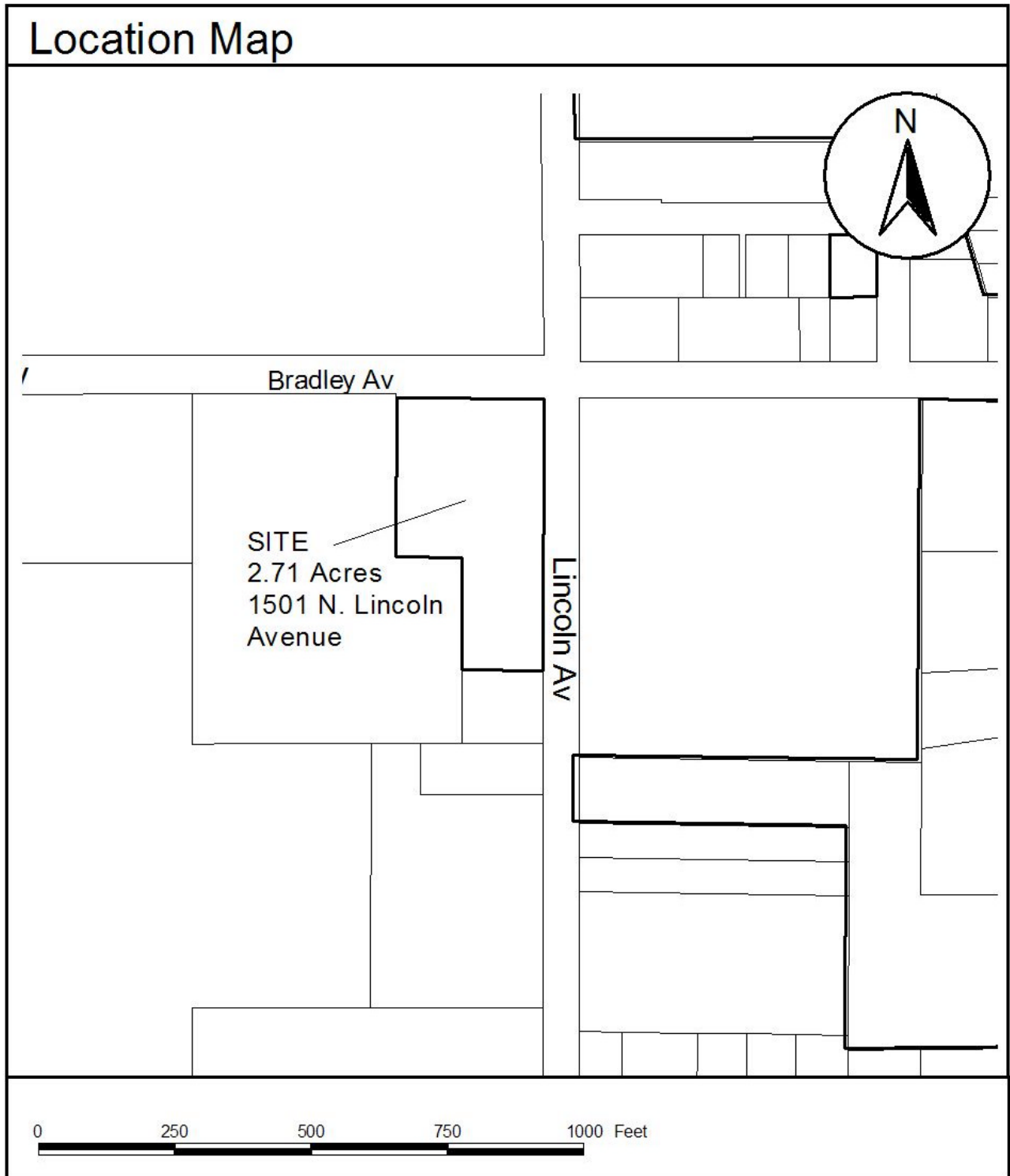
**Exhibit “A”**

**Legal Description of Tract**

*Insert Legal Description*

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

Exhibit “B”



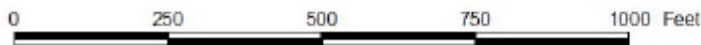
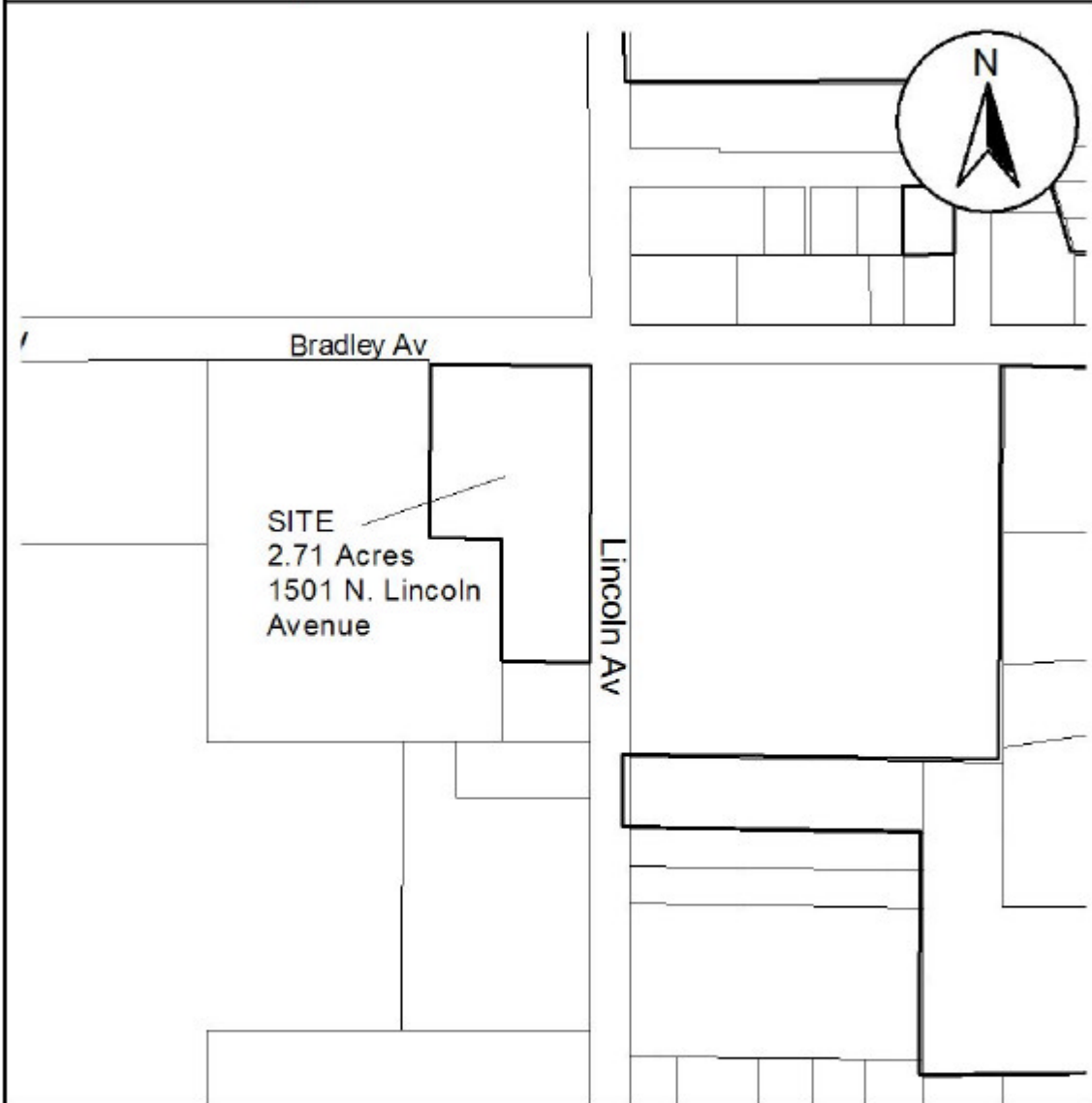
1501 North Lincoln Avenue Annexation  
Owner: Anthony Maggio  
Developer: Macs Convenience Stores, LLC



**Exhibit “C”**

**Proposed Site Plan**

# Location Map



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

Prepared February 18, 2004 by Community Development Services