



## DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

*Planning Division*

### **memorandum**

**TO:** The Urbana Plan Commission

**FROM:** Paul Lindahl, Planner I

**DATE:** September 1, 2005

**SUBJECT: Plan Case 2005-A-12a:** An annexation agreement between the City of Urbana and Emulsicoat, Inc. for a 13.843 acre tract of land located at the extreme northwest corner of the city limits. The property is located approximately 825 feet west of Saline Court, and runs along the east edge of the Canadian National / Illinois Central railroad right of way, northward for approximately 2,500 feet. The parcel is currently located within unincorporated Champaign County and is proposed to be annexed into the City of Urbana.

**Plan Case 1954-M-05:** A proposed rezoning of a 13.843 acre tract of land located at the extreme northwest corner of the city limits from its current Champaign County AG-2, Agriculture Zoning District to the City of Urbana IN, Industrial Zoning District upon annexation into the City of Urbana.

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## **Introduction**

Emulsicoat, Inc. has petitioned the City of Urbana to annex a 13.843 acre tract of land they recently acquired from the adjacent railroad located at the extreme northwest corner of the City limits (see Exhibit "A" Location Map). The current Champaign County zoning designation for the site (known as Tract "A") is AG-2, Agriculture. The Urbana Zoning Ordinance Table IV-1 calls for direct conversion of property zoned County AG-2 to City AG zoning upon annexation. This case comes to the Plan Commission for review because the petitioners have requested a change to City IN, Industrial upon annexation. The Annexation Agreement also includes the provision for a special use permit to allow the Emulsicoat operations on the southern portion of the site. A copy of the proposed Annexation Agreement is attached to this memorandum.

## **Background**

All the cases regarding Emulsicoat Tract "A": the rezoning, annexation agreement with special use permit, and the annexation petition will go to the City Council regular meeting for approval on Monday the 19<sup>th</sup> of September 2005. The approval of these related cases will facilitate a Land Trade Agreement between MACC of Illinois, Inc., and Emulsicoat, Inc. so that Emulsicoat can operate its plant on the subject site and on an adjacent 10.94 acre site located to the north and west of the current terminus of Saline Court (see attached map). The adjacent location is known as Lot 204 of North Lincoln Avenue Industrial Park #2A (NLAIP #2A). It is the only lot in the

major subdivision final plat of NLAIP #2A. The subdivision case is currently being reviewed as Plan Case 1952-S-05 and will also go to the City Council for approval on Monday September 19, 2005. Most of the proposed Emulsicoat plant will occupy Lot 204 fronting Saline Court and part will occupy Tract "A" which is adjacent to the rail line. One provision of the Annexation Agreement will require another subdivision case that will join the subject property Tract "A" to Lot 204. All the plan cases and requested City approvals are interdependent.

Emulsicoat currently has operations at 705 E. University Avenue in Urbana. The company operations are dependent on the availability of railway transport services to supply raw materials and deliver their products. The University Avenue site is currently served by a rail spur that has only one other customer. Because the rail line has few customers and a low number of train trips per week it may become uneconomical for the rail company to provide service. Emulsicoat is making appropriate plans by seeking this new location that has excellent transportation access to both road and rail services.

According to the petitioner, the subject property, known as Tract "A" and the adjacent Lot 204 on Saline Court meet their needs for assured rail access, and potential future expansion. At the same time they will continue to conduct business operations at the University Avenue facility.

**Description of the Area**

The site is located west of Lincoln Avenue and the Saline Branch drainage ditch. Immediately to the south and east is the Central Waste Transfer facility. Immediately to the east is Lot 204. To the north and east is agricultural land. To the west is the Canadian National Railway right-of-way. To the south is Tract "B", which is also owned by the petitioners. (See Exhibit "A" Location Map)

The following is a summary of surrounding zoning and land uses for the subject site:

**Zoning and Land Use Table\***

	<b>Zoning</b>	<b>Existing Land Use</b>	<b>Future Land Use per 2005 Comprehensive Plan</b>
<b>Site</b>	County AG-2, Agriculture	Agriculture / Vacant	Industrial
<b>North</b>	County AG-2, Agriculture	Agriculture	Industrial
<b>South</b>	County AG-2, Agriculture	Industrial / Vacant	Industrial
<b>East north part</b>	County AG-2, Agriculture	Agriculture	Industrial
<b>East south part</b>	City IN, Industrial	Vacant	Industrial
<b>West</b>	County AG-2, Agriculture	Rail right of way	Industrial

\*(Please refer to the attached Zoning, Existing Land Use, and Future Land Use maps for further information.)

## **Issues and Discussion**

### **Annexation Agreement**

A draft of the annexation agreement is attached to this memorandum. The draft agreement outlines obligations by both the Owner and the City. Under State Statute, annexation agreements are considered by the City Council via a public hearing. 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. In addition, a Special Use Permit will be granted under the agreement

### **Proposed Rezoning**

Emulsicoat proposes to establish an asphalt blending, storage and distribution plant on the southerly portion of the site. Asphalt blending, storage and distribution plants are not listed within the Table of Uses in the Urbana Zoning Ordinance. An industrial use of that nature would not be permitted in the City's Agricultural zoning district. Therefore the rezoning to industrial is necessary to accommodate the Emulsicoat plant. Such "*Other Industrial Uses*" may be permitted in the IN Industrial zoning district under the provisions of Special Use Permit review. Pursuant to the Urbana Zoning Ordinance, the Plan Commission must recommend approval or denial of the Rezoning and Annexation Agreement and forward it to City Council for action.

Plan commission is also considering Plan Case 1952-SU-05 which is a request by Emulsicoat for a Special Use Permit for the asphalt plant on Lot 204 of North Lincoln Avenue Industrial Park #2A. Most of the proposed Emulsicoat plant will occupy Lot 204 fronting Saline Court and part will occupy Tract "A" which is adjacent to the rail line.

### **Annexation Agreement Provisions**

The attached agreement outlines a variety of provisions for the property to be annexed. In addition to the provisions for zoning designations, the following provisions are highlighted:

- The City agrees to grant a Special Use Permit to allow an asphalt blending, storage and distribution facility on the site.
- The Owner agrees to prepare and record a minor subdivision plat per the Urbana Subdivision and Land Development Code to combine Tract "A" and Lot 204 of North Lincoln Avenue Industrial Subdivision #2A as shown on Exhibit B within 60 days of the approval of this agreement.
- The Owner agrees to petition for the disconnection of said Tract "A" from Champaign School District Unit #4 and request annexation to Urbana School District #116 per the Illinois State Statute within 60 days of annexation into Urbana, in order to facilitate a proposed extension of the City's Enterprise Zone to this property.

*Comment:*

*The City of Urbana and City of Champaign have a boundary agreement that locates the subject site within the expansion / annexation territory of the City of Urbana. However that agreement does not apply to the school districts which operate as different entities. The subject site is located within the Champaign School District Unit #4 territory. The City of Urbana asserts that a tax revenue generating business on this tract should benefit the taxing bodies of the host City, including the host city's school district, particularly if economic development assistance is requested such as the proposed extension of the City's Enterprise Zone.*

In addition the Owner agrees to the following conditions of the Special Use Permit:.

1. This Special Use Permit shall be applicable only to the confines of Tract "A" as depicted in the attached Exhibit "B" Map, and legally described in Exhibit "A"
2. The Special Use Permit is applicable only to the asphalt blending, storage, and distribution plant proposed in the application and depicted in the attached Exhibit "C" Site Diagram.
3. The layout of the site shall be in substantial conformity with Exhibit "C" Site Diagram. Any significant deviation from this Site Diagram shall require an amendment to the Special Use Permit and shall include review by the Urbana Plan Commission and approval by the Urbana City Council.
4. The Owner agrees that all operations, development, construction, or additions to its asphalt blending, storage and distribution plant on Tract "A" as depicted in the attached Exhibit "B" Map, and legally described in Exhibit "A" shall be in conformity with all applicable State and Federal regulations including Environmental Protection regulations pertaining to chemical emissions, particulate emissions, dust, noise, odor, and groundwater protection.

Staff feels that the provisions within the annexation agreement are in the interest of all parties.

### **Comprehensive Plan**

The proposed zoning designation would be consistent with the 2005 Comprehensive Plan Future Land Use Map (see exhibit "D"). The maps identify the area as most appropriate for Industrial uses. In addition the annexation and rezoning of the site is consistent with the following Goals and Objectives of the 2005 Comprehensive Plan:

#### **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.

#### **Objectives**

- 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.

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

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

### **Proposed Use**

As a part of the annexation agreement, a special use permit for an asphalt blending, storage and distribution facility is requested to facilitate the blending, storage and distribution of asphalt products used primarily in the construction of pavements. A variety of products would be stored in bulk tanks for distribution to road construction projects and portable hot mix asphalt plants. The Environmental Protection Agency (EPA) closely monitors operation of asphalt blending and storage facilities for compliance with emission levels, and an operating permit is required. The facility will be substantially similar in operation to that of the Emulsicoat facility located at 705 E. University Avenue.

The proposed asphalt plant facility will be entirely compatible with the intent of the IN Industrial district.

### **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 IN, Industrial Zoning District for the tract would be consistent with the 2005 Comprehensive Plan. The plan identifies the area as most appropriate for 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 zoned for Agriculture and the value it would have if it were rezoned to Industrial to permit the proposed use.

Only a small part of the north end of the subject parcel is in agricultural use. The majority of the lot is vacant. Under IN, Industrial zoning designation agricultural cropping uses may continue because they are permitted by right. The Agricultural Zoning District does not permit industrial uses. The owners intend to establish an asphalt blending, storage and distribution facility on the vacant part of the tract. In order to do this rezoning to the IN district is necessary. The value of the property would be diminished with the Agricultural Zoning District since it would not allow for the owners intended use.

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 will contribute to the welfare of the community and the district by allowing the development of a tract of land with excellent access to the adjacent rail facilities.

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 that is planned for industrial uses and especially suited for that because of the excellent access to the adjacent rail facilities, and because it is compatible with other nearby industrial uses.

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 had previously been used in part for railway purposes, and in part for agriculture. The area around the site has development potential due to the access to rail facilities. It is anticipated the area will continue to see development pressure for industrial use.

## **Summary of Staff Findings**

1. The proposed IN, Industrial zoning would be consistent with the current Industrial zoning in the general vicinity.
2. The proposed annexation agreement includes provisions for the development of an asphalt blending, storage and distribution facility that will provide a convenient service to the community.
3. The proposed rezoning would not be detrimental to the public health, safety or general welfare.
4. The proposed rezoning is consistent with the Goals and Objectives of the 2005 Comprehensive Plan.
5. The proposed rezoning is consistent with the Future Land Use Map designation of the area in the 2005 Comprehensive Plan.

6. The proposed rezoning appears to generally meet the LaSalle Case criteria.
7. The proposed annexation agreement includes the granting of a Special Use Permit to allow the establishment of an asphalt blending, storage and distribution plant on the subject tract under the “*All Other Industrial Uses*” land use category in the IN, Industrial Zoning District.
8. The granting of the Special Use Permit is consistent with the established criteria identified in Section VII-6 of the Urbana Zoning Ordinance in that the use of an asphalt plant:
  - a. will be conducive to the public convenience at this location;
  - b. will be designed, located, and proposed to be operated so that it will not be unreasonably injurious or detrimental to the district in which it will be located, or otherwise injurious or detrimental to the public welfare; and
  - c. will conform to the applicable regulations and standards of, and preserves the essential character of, the district in which is shall be located.

## Options

The Plan Commission has the following options for recommendations to the City Council. In Plan Case **2005-A-12a**, 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 approval with recommended modifications. Note that modifications to the agreement must be agreed upon by both the City and the Petitioners.
- c. The Plan Commission may forward the Annexation Agreement to the City Council with a recommendation for denial.

The Plan Commission has the following options for recommendations to the City Council. In Plan Case **1954-M-05**, 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. 1954-M-05 and 2005-A-12a to the Urbana City Council with a recommendation for approval.**

Attachments:

- Exhibit A: Location Map
- Exhibit B: Zoning Map
- Exhibit C: Current Land Use Map w/ Aerial Photo
- Exhibit D: Future Land Use Map
- Exhibit E: Site Diagram
- Exhibit F: Draft Annexation Agreement with attachments
- Exhibit H: Legal Notification

Cc:

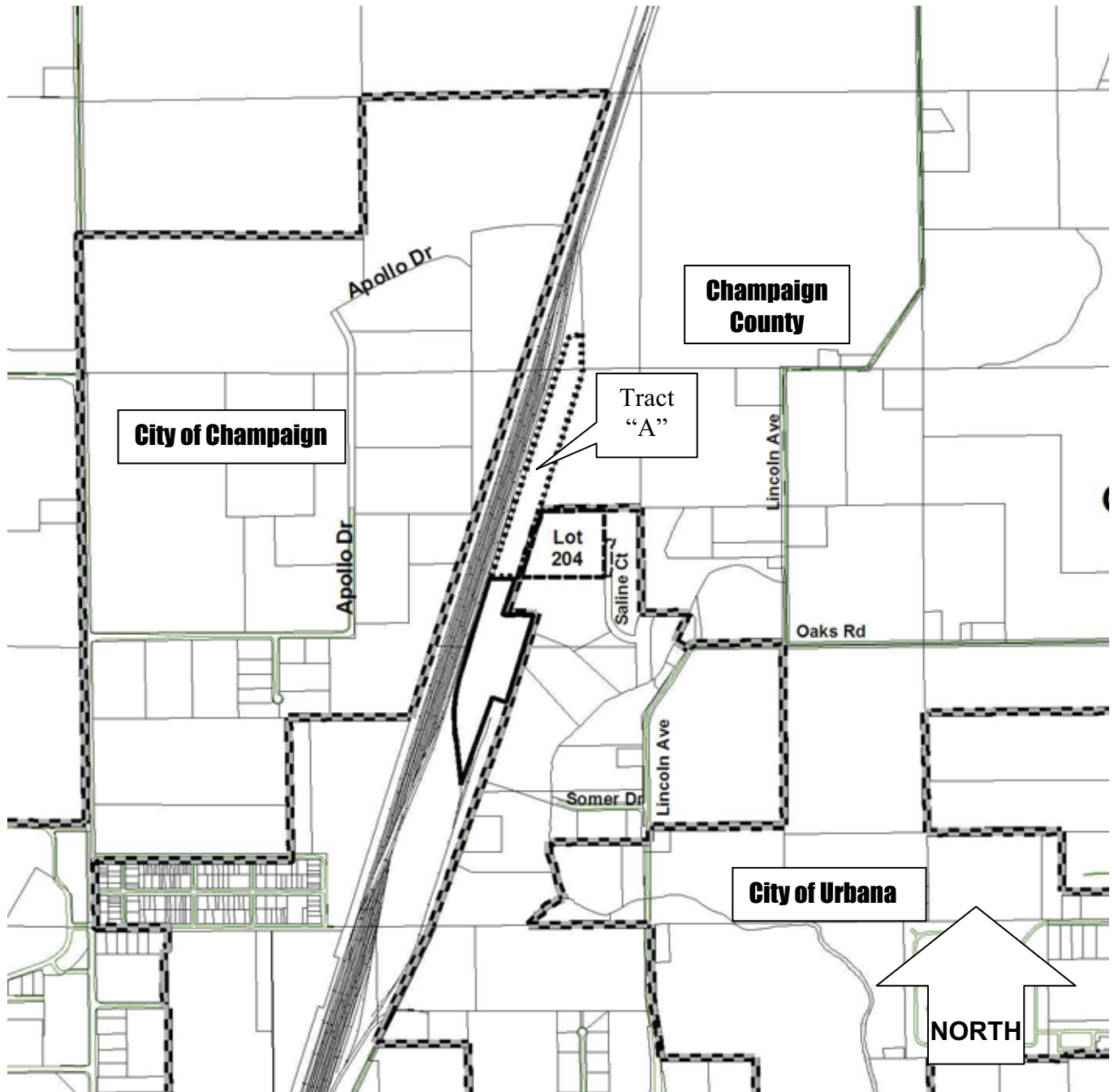
Emulsicoat, Inc. Attn: Rick Beyers, 705 E. University Ave. Urbana, IL 61802	Apcon Corp. Attn: John Peisker 2906 N. Oak Street P.O. Box 848 Urbana, IL 61803
Daily & Associates, Engineers, Inc. Attn: Thomas Jordan 1610 Broadmoor Drive Champaign, IL 61821	Thomas, Mamer & Haughey, LLP Attn: James Green P.O. Box 560 Champaign, IL 61824-0560
Shirley Squires 3913 N. Lincoln Avenue Urbana, IL 61803	Blake Weaver 130 W. Main Urbana, IL 61801
Ken Mathis Somerset Township Supervisor 2808 N. Lincoln Avenue Urbana, IL 61803	Rick Wolken Somerset Township Road District Commissioner 2294 County Road, 1600 East Urbana, IL 61802
Bruce Knight City of Champaign Planning Department 102 N. Neil Street Champaign, IL 61820	

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# Location Map

# EXHIBIT "A"




**Plan Case 2005-A-12:** a proposed annexation agreement for a 13.843 acre tract of land.  
**Plan Case 1954-M-05:** a proposed rezoning of a 13.843-acre tract of land from Champaign County AG-2, Agriculture Zoning District to the City of Urbana IN, Industrial

**Petitioner:** Emulsicoat, Inc  
**Location:** CN – IC Railway Right-of-Way located at the extreme northwest corner of the city limits. The property is located approximately 825 feet west of Saline Court

*Prepared 9/01/05 by Community Development Services - pal*

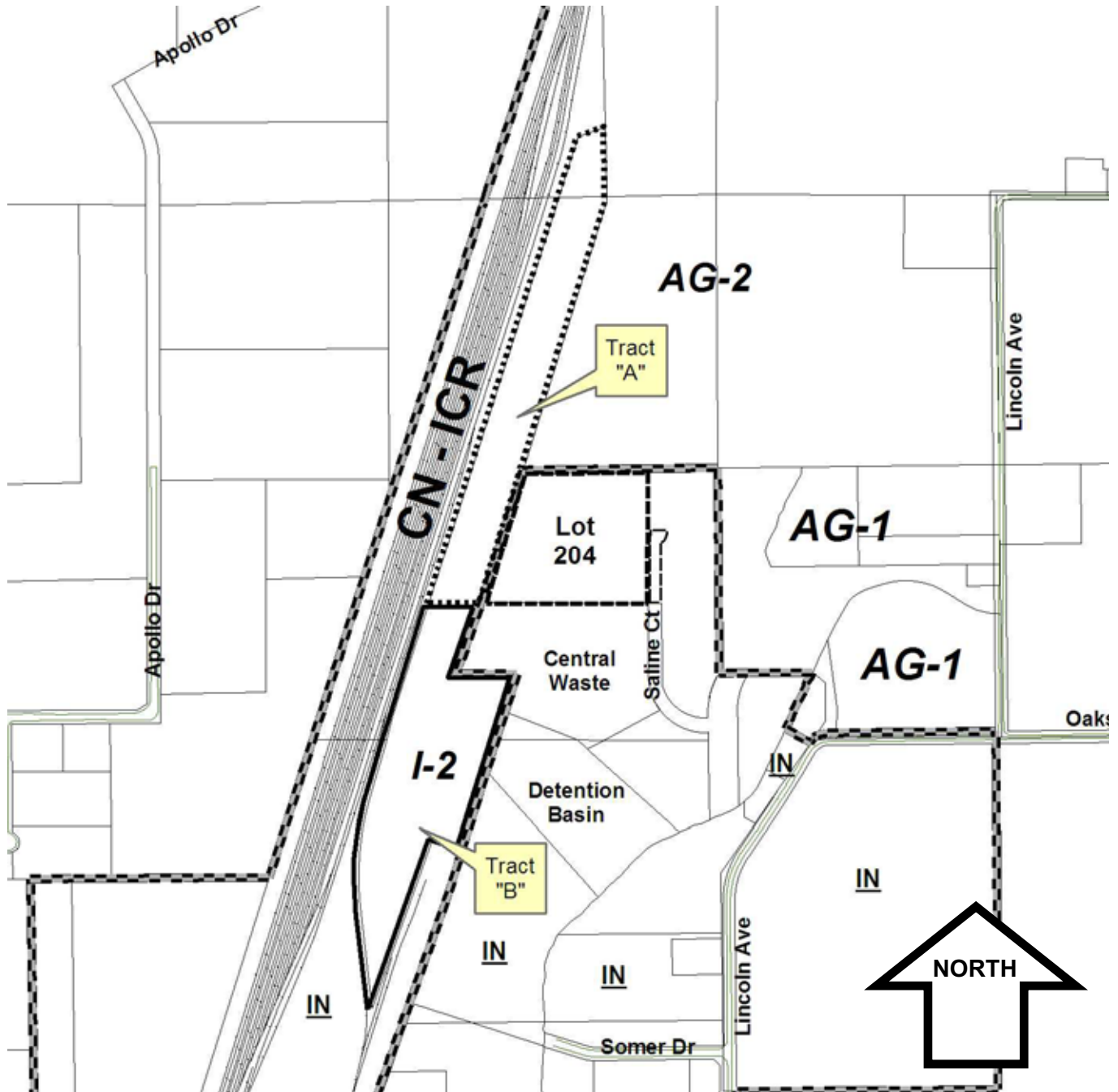
Subject Site = Tract "A"

Related Site = Lot 204

City Limits 

# Zoning Map

# EXHIBIT "B"



**Plan Case 2005-A-12:** a proposed annexation agreement for a 13.843 acre tract of land.  
**Plan Case 1954-M-05:** a proposed rezoning of a 13.843-acre tract of land from Champaign County AG-2, Agriculture Zoning District to the City of Urbana IN, Industrial

**Petitioner:** Emulsicoat, Inc  
**Location:** CN – IC Railway Right-of-Way located at the extreme northwest corner of the city limits. The property is located approximately 825 feet west of Saline Court

Prepared 9/01/05 by Community Development Services - pal

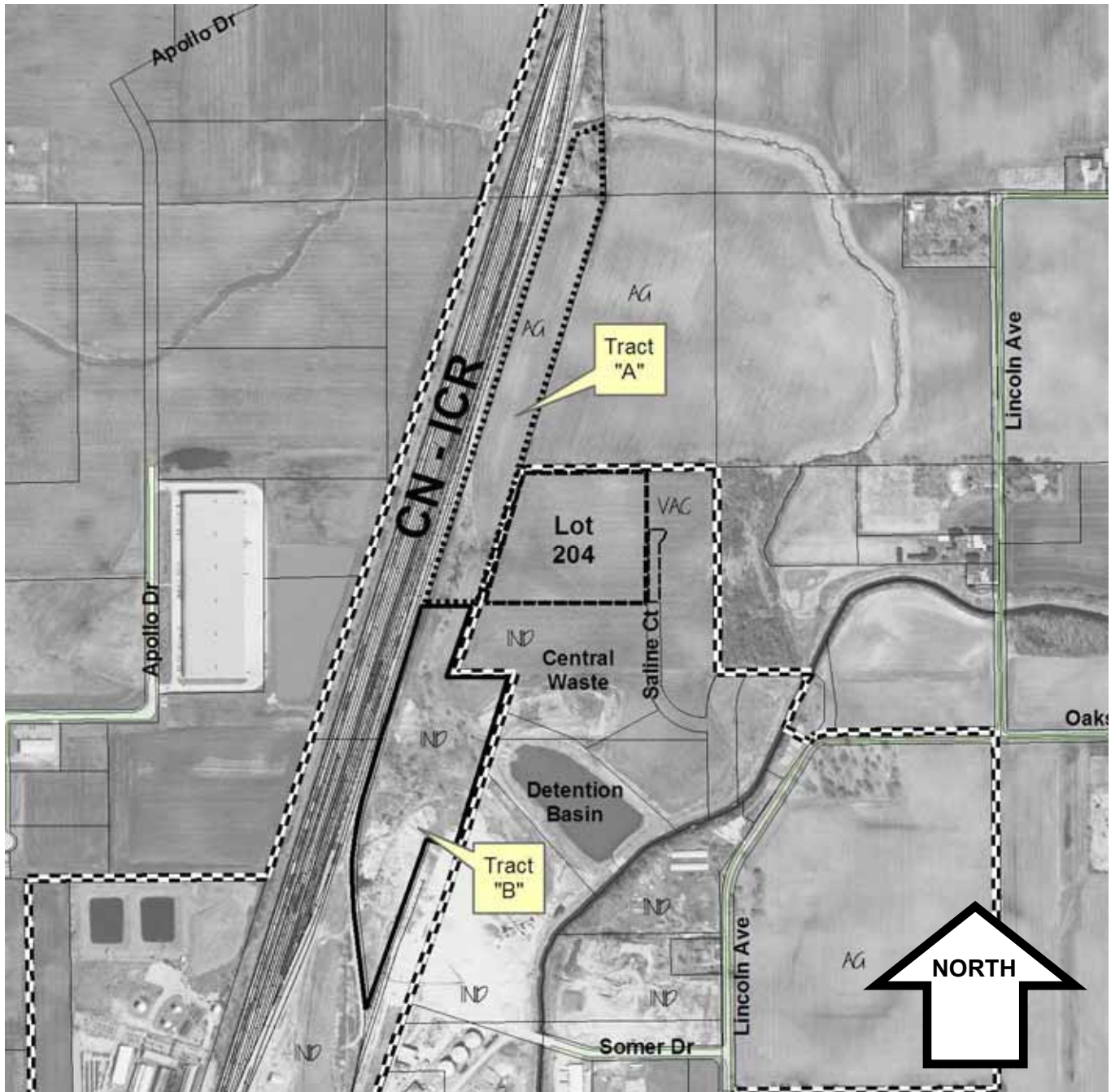
Subject Site = Lot 204  
 Related Site = Tract "A"

- AG-1 - County Agriculture
- AG-2 - County Agriculture
- I-2 - County Industrial
- IN - City Industrial

City Limits

# Existing Land Use Map

# EXHIBIT "C"



**Plan Case 2005-A-12:** a proposed annexation agreement for a 13.843 acre tract of land.  
**Plan Case 1954-M-05:** a proposed rezoning of a 13.843-acre tract of land from Champaign County AG-2, Agriculture Zoning District to the City of Urbana IN, Industrial

**Petitioner:** Emulsicoat, Inc  
**Location:** CN – IC Railway Right-of-Way located at the extreme northwest corner of the city limits. The property is located approximately 825 feet west of Saline Court

Subject Site = Lot 204  
 Related Site = Tract "A"

- AG - Agriculture
- VAC - Vacant
- IND - Industrial

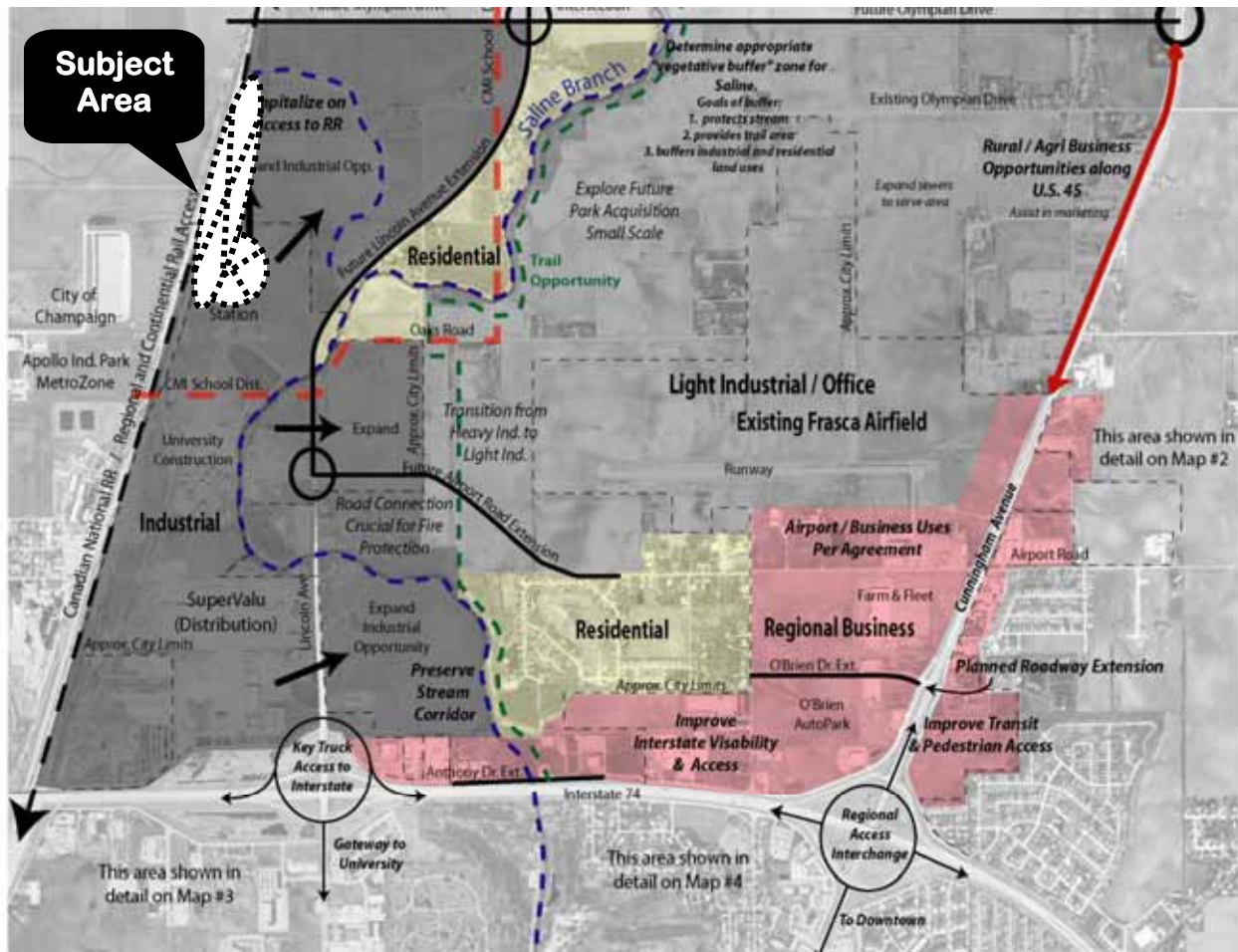
City Limits



# Future Land Use

# EXHIBIT "D"

Source: Detail from Comprehensive Plan Future Land Use Map # 1, p.72



Nc  
Nc



**Plan Cases:**

- 2005-A-12a      Annexation Agreement
- 1954-M-05      Rezoning from County AG-2, Agriculture to City IN, Industrial
- 1953-SU-05      Special Use Permit for Asphalt Blending Plant

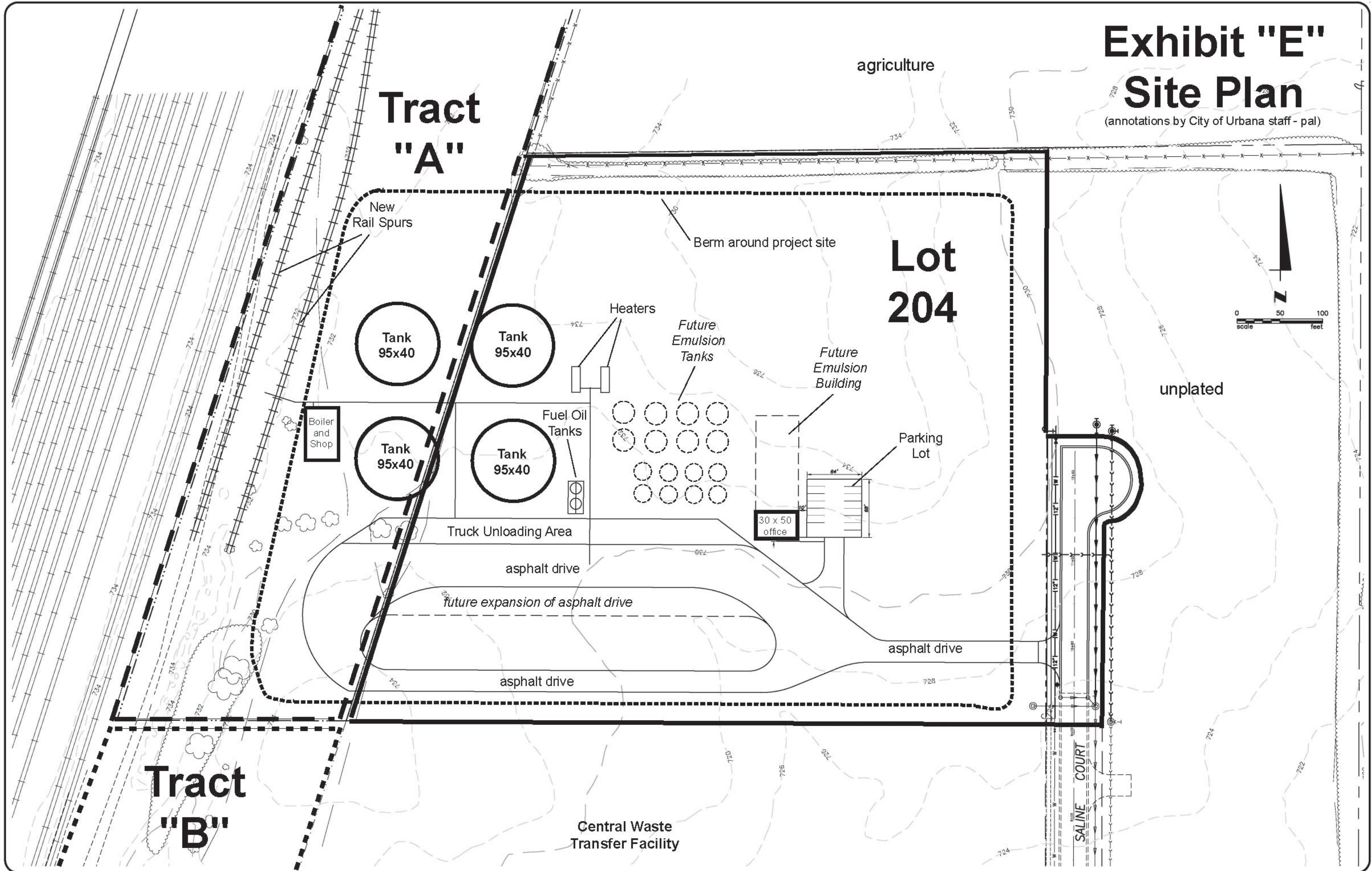
**Petitioner:**      Emulsicoat, Inc.

Prepared 8/31/05 by Community Development Services - pal



# Exhibit "E" Site Plan

(annotations by City of Urbana staff - pal)





(Emulsicoat Incorporated Tract "A" at CN Railway)

THIS Agreement is made and entered into by and between the **City of Urbana, Illinois**, (hereinafter sometimes referred to as the "Corporate Authorities" or the "City") and **Emulsicoat Incorporated** (hereinafter referred to as the "Owners"). 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, Emulsicoat Incorporated is the Owner of record of a certain parcel of real estate located along the east edge of the Canadian National / Illinois Central railroad right-of-way, the legal description of which real estate is set forth in Exhibit "A" attached hereto and referenced herein as Tract "A" or "the tract".

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.

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

WHEREAS, the tract is currently zoned AG-2, Agricultural in Champaign County and the City and the Owners find it necessary and desirable that the tract be annexed to the City with a zoning classification of IN, Industrial, under the terms and provisions of the Urbana Zoning Ordinance in effect upon the date of annexation, as amended, and subject to the terms and conditions set forth in this Agreement; and

WHEREAS, the Corporate Authorities find annexation of the tract as described herein with the city zoning district designation of IN, Industrial reflects the goals, objectives and policies set forth in the City's 2005 Comprehensive Plan, as amended from time to time; and

WHEREAS, the Owners 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 OWNERS**

The Owner agrees to the following provisions:

### **Section 1:**

- (a) The Owner represents 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 tract to be annexed to the City of Urbana by filing a legally sufficient annexation petition with all required signatures thereon, all in accordance with Illinois Statutes. Until annexation of the subject tract occurs, the Owners shall require that any persons intending to reside thereon, whether as tenants or owners, shall, prior to residing thereon, irrevocably agree in writing to sign, join in, and consent to any petition for annexation of the subject tract. The Owners shall file such written agreement with the City Clerk within thirty (30) days of the signing of such.
- (b) The Owner further agrees that the substance of this Section of the Annexation Agreement shall be included in any sales contract for the sale of any portion of the subject tract. The Owner agrees that the substance of this provision regarding annexation shall be included in the subdivision covenants and such will constitute a covenant running with the land.
- (c) The Owner agrees that if the Owner fail to include the substance of Section 1(a) of this Agreement in sales contracts or subdivision covenants, as provided herein, and if said annexation is delayed or contested by subsequent owner(s) as a result, the Owner shall be liable to the City for all real estate taxes and other taxes that would have been due to the City had annexation been able to proceed as outlined herein. The Owner agrees for themselves, 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:** The Owner accepts the City of Urbana zoning classification of IN, Industrial, as provided for in Article IV of the Urbana Zoning Ordinance. The Owner agrees that, unless changed upon the initiative of the Owner the said City zoning classifications 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 agrees to use the tract only in compliance with the regulations and provisions of the Urbana Zoning Ordinance and this agreement as each may be amended from time to time.

**Section 3. Special Use Permit:** The Owner agrees to the following conditions of a Special Use Permit granted by Article II Section 3 of this Agreement, which will allow an asphalt blending, storage and distribution plant in the IN, Industrial zoning district as an “Other Industrial Use” which is permitted by Urbana Zoning Ordinance Table IV-1.

1. This Special Use Permit shall be applicable only to the confines of Tract “A” as depicted in the attached Exhibit “B” Map, and legally described in Exhibit “A”
2. The Special Use Permit is applicable only to the asphalt blending, storage, and distribution plant proposed in the application and depicted in the attached Exhibit “C” Site Diagram.
3. The layout of the site shall be in substantial conformity with Exhibit “C” Site Diagram. Any significant deviation from this Site Diagram shall require an amendment to the Special Use Permit granted herein and shall include review by the Urbana Plan Commission and approval by the Urbana City Council.
4. The Owner agrees that all operations, development, construction, or additions to its asphalt blending, storage and distribution plant on Tract “A” as depicted in the attached Exhibit “B” Map, and legally described in Exhibit “A” shall be in conformity with all applicable State and Federal regulations including Environmental Protection regulations pertaining to chemical emissions, particulate emissions, dust, noise, odor, and ground water protection.

**Section 4. Building Code Compliance:** The Owner agrees to cause any new development, construction, or additions on said tract to be in conformance with all City of Urbana building, electrical, fire, and plumbing codes, orders or regulations in effect at the time of such construction. The Owner agrees to submit all building construction plans to the City of Urbana for review and further agrees to pay the required permit fees. The Owner further agrees to correct any deficiencies identified in said plan review.

**Section 5. Subdivision:** The Owner agrees to prepare and submit a minor subdivision plat per the Urbana Subdivision and Land Development Code to combine Tract “A” with Lot 204 of North Lincoln Avenue Industrial Subdivision #2A as shown on Exhibit B within 45 days of the approval of this agreement.

**Section 6. School District Petition:** The Owner agrees to petition for the disconnection of said Tract “A” from Champaign School District Unit #4 and request annexation to Urbana School District #116 per the Illinois State Statute, within 60 days of the approval of this agreement.

**Section 7. Amendments:** The Owner 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 both the Owner and the City. Said action includes petitioning for a county rezoning of said tract without a written amendment to this Agreement.

## **ARTICLE II. REPRESENTATIONS AND OBLIGATIONS OF THE CORPORATE AUTHORITIES**

The Corporate Authorities agree to the following provisions:

**Section 1:** 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:** The Corporate Authorities agree that the tract will be zoned IN, Industrial, in accordance with Article IV of the Urbana Zoning Ordinance upon annexation and as defined in the City of Urbana Zoning Ordinance as such exists at the time of annexation of tract. The Corporate Authorities agree that all applicable development regulations existing at the time of construction will apply to said tract.

**Section 3. Special Use Permit:** The Corporate Authorities agree with this annexation agreement to grant a Special Use Permit to allow the Owners to establish an asphalt blending, storage and distribution plant on Tract "A" under the "*All Other Industrial Uses*" land use category in the IN, Industrial Zoning District. The Corporate Authorities further agree that the granting of the Special Use Permit is consistent with the established criteria identified in Section VII-6 of the Urbana Zoning Ordinance in that the use of an asphalt plant:

- a. will be conducive to the public convenience at this location;
- b. will be designed, located, and proposed to be operated so that it will not be unreasonably injurious or detrimental to the district in which it will be located, or otherwise injurious or detrimental to the public welfare; and
- c. will conform to the applicable regulations and standards of, and preserves the essential character of, the district in which is shall be located.

**Section 4. Enterprise Zone:** The Corporate Authorities agree that upon annexation of said tract into Urbana School District #116, the Corporate Authorities shall request that the State of Illinois approve an amendment of the Urbana Enterprise Zone boundaries to include said tract.

## **ARTICLE III: GENERAL PROVISIONS**

**Section 1: Term of this Agreement** -- This Agreement shall be binding upon the parties hereto, and their respective successors and assigns, for a full term of twenty (20) years commencing as of the effective date of this Agreement as provided by the Illinois State

Statutes, unless other provisions of this Agreement specifically apply a different term. To the extent permitted thereby, it is agreed that, in the event the annexation of subject tract under the terms and conditions of this Agreement is challenged in any court proceeding, the period of time during which such litigation is pending shall not be included in calculating said twenty-year term.

If this Agreement imposes any obligation, restraint, or burden (hereinafter called collectively "obligation") on the Owners, his/her (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 term of this Agreement unless specific terms are expressly made binding beyond the term 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 Owners as to all or any part of the tract, and are further expressly made binding upon said City and the duly elected or appointed successors in office of its Corporate Authorities.

**Section 3. Binding Agreement upon parties** -- The Corporate Authorities and Owners agree that neither party will take any action or omit to take action during the term of this Agreement which act or omission as applied to the tract would be a breach of this Agreement without first procuring a written amendment to this Agreement duly executed by both the Owners and the City.

**Section 4. Enforcement** -- The Owners and Corporate Authorities agree and hereby stipulate that either 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 declare this Agreement null and void in addition to other remedies available. Upon breach by the Owners, 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 and Owners 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 and Owners 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:**

**Owners:**

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

\_\_\_\_\_  
Rick Beyers, VP & General Manager  
Emulsicoat Incorporated

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**ATTEST:**

**ATTEST:**

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

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Exhibits attached and made a part of this Agreement:

- Exhibit A: Legal Description
- Exhibit B: Location Map
- Exhibit C: Site Plan

**Exhibit "A"**  
**Legal Description**

PART OF THE EAST ½ OF SECTION 31 AND PART OF THE SE ¼ OF SECTION 30, T. 20 N., R. 9 E. OF THE 3<sup>RD</sup> P.M., CHAMPAIGN COUNTY, ILLINOIS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 201 OF NORTH LINCOLN AVENUE INDUSTRIAL PARK SUBDIVISION NO. 2, RECORDED MAY 30, 2002 AS DOCUMENT NUMBER 2002R17213 IN THE OFFICE OF THE RECORDER, CHAMPAIGN COUNTY, ILLINOIS, SAID CORNER LYING 500.00 FEET NORMAL DISTANCE EASTERLY OF THE CENTERLINE SOUTHBOUND MAIN TRACK OF THE CN-IC RAILROAD, SAID POINT ALSO LYING ON THE EASTERLY RIGHT-OF-WAY LINE OF SAID RAILROAD; THENCE N. 89°46'39" W., (URBANA HORIZONTAL CONTROL BEARING), ALONG THE EXTENDED NORTH LINE OF SAID LOT 201, 267.80 FEET TO A POINT LYING 244.50 FEET NORMAL DISTANCE EASTERLY OF SAID CENTERLINE OF THE SOUTHBOUND MAIN TRACK; THENCE N. 17°39'30" E., PARALLEL WITH SAID CENTERLINE, 2414.15 FEET; THENCE N. 70°29'17" E., 164.94 FEET TO A POINT LYING 375.94 FEET NORMAL DISTANCE EASTERLY OF SAID CENTERLINE, SAID POINT ALSO LYING ON THE EASTERLY RIGHT-OF-WAY LINE OF SAID RAILROAD; THENCE S. 01°13'35" E., ALONG SAID EASTERLY RIGHT-OF-WAY LINE, 383.31 FEET TO A POINT LYING 500.00 FEET NORMAL DISTANCE EASTERLY OF SAID CENTERLINE; THENCE S. 17°39'30" W., ALONG SAID EASTERLY RIGHT-OF-WAY LINE, PARALLEL WITH SAID CENTERLINE, 2070.89 FEET TO THE POINT OF BEGINNING, CONTAINING 602,981 SQUARE FEET OR (13.843 ACRES), MORE OR LESS, ALL SITUATED IN CHAMPAIGN COUNTY, ILLINOIS.

**Exhibit ‘B  
Location Map**



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division  
400 S. Vine  
Urbana, IL 61801  
(217) 384-2440

August 26, 2005

Dear Property Owner:

A public hearing will be held by the Urbana Plan Commission on **Thursday, September 8, 2005 at 7:30 P.M.** in the Urbana City Council Chambers, 400 South Vine Street, Urbana, Illinois, at which time and place the Commission will consider an Annexation Agreement in Plan Cases **2005-A-12 and 1954-M-05.**

**Plan Case 2005-A-12** is a proposed annexation agreement between the City of Urbana and Emulsicoat, Inc. for the annexation and development of a 13.843 acre tract of land located at the extreme northwest corner of the city limits. The property is located approximately 825 feet west of Saline Court, and runs along the east edge of the Canadian National / Illinois Central railroad right of way, northward for approximately 2,500 feet. The parcel is currently located within unincorporated Champaign County and is proposed to be annexed into the City of Urbana.

**Plan Case 1954-M-05** is a proposed rezoning of the above referenced 13.843-acre tract of land from its current Champaign County AG-2, Agriculture Zoning District to the City of Urbana IN, Industrial Zoning District upon annexation into the City of Urbana.

The said proposed annexation agreement will contain additional terms that govern the zoning, use and general development of said tracts. You are further notified that said proposed annexation agreement might be changed, altered, modified, amended or redrafted in its entirety after the public hearing.

You have been sent this notice because you are a nearby property owner. The Urbana Plan Commission welcomes your comments at the public hearing, or in writing if received prior to the hearing. If you have any specific questions about the request, please do not hesitate to contact me.

Sincerely,

Paul Lindahl  
Planner I

Enclosure: Location Map

Persons with disabilities needing services or accommodations for this hearing should contact the Community Development Services Department at 384-2440, or the City of Urbana's Americans with Disabilities Act Coordinator at 384-2466, or TTY 384-2360.

## LEGAL PUBLICATION

Plan Case No. 2005-A-12 and 1954-M-05

### NOTICE OF PUBLIC HEARING IN REGARD TO A PROPOSED ANNEXATION AGREEMENT AND REZONING

**NOTICE IS HEREBY GIVEN** to all interested persons that a public hearing will be held by the Plan Commission of the City of Urbana, Illinois, on **Thursday, September 8, 2005 at 7:30 P.M.** in the Urbana City Council Chambers, 400 S. Vine Street, Urbana, Illinois, at which time and place the Commission will consider a request in Plan Cases **2005-A-12 and 1954-M-05**.

**Plan Case 2005-A-12** is a proposed annexation agreement between the City of Urbana and Emulsicoat, Inc. for the annexation and development of a 13.843 acre tract of land located at the extreme northwest corner of the city limits. The property is located approximately 825 feet west of Saline Court, and runs along the east edge of the Canadian National / Illinois Central railroad right of way, northward for approximately 2,500 feet. The parcel is currently located within unincorporated Champaign County and is proposed to be annexed into the City of Urbana.

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### LEGAL DESCRIPTION:

PART OF THE EAST ½ OF SECTION 31 AND PART OF THE SE ¼ OF SECTION 30, T. 20 N., R. 9 E. OF THE 3<sup>RD</sup> P.M., CHAMPAIGN COUNTY, ILLINOIS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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Detailed information on this case is available at the City of Urbana Community Development Services Department, 400 South Vine Street, Urbana, Illinois 61801. The case is subject to change during the public hearing process.

All persons desiring to be heard for or against said request may appear at said meeting and be heard thereon. Persons with disabilities needing services or accommodations for this hearing should contact the Community Development Services Department at 384-2440 or the City of Urbana's American with Disabilities Act Coordinator at 384-2466 or TTY at 384-2360.

Dated: August 24, 2005

URBANA PLAN COMMISSION

By: Michael Pollock, Chairperson