



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

m e m o r a n d u m

TO: The Urbana Plan Commission

FROM: Matt Wempe, Planner II

DATE: May 11, 2006

SUBJECT: Plan Case 1992-M-06: A request to rezone 801 E. Kerr from R-3, Single and Two-Family Residential to AG, Agriculture

Introduction

The Urbana Zoning Administrator has requested that the property at 801 E. Kerr be rezoned from R-3, Single and Two-Family Residential to AG, Agriculture. The property was recently involuntarily annexed (see Ord. No. 2006-04-052) into the City. During the annexation case, staff was unable to locate an owner, though American Legion Post 71 maintains the property. Table V-1. Table of Uses states that cemeteries are only permitted in the AG and CRE Zoning Districts, and that such uses require a Conditional Use Permit. The proposed rezoning will ensure the property is consistent with the 2005 Urbana Comprehensive Plan and surrounding land uses.

Background

The property has been used as a cemetery for many decades. In conversations with the American Legion, who maintains the property, many veterans are buried at the cemetery. The property is not a part of the Eastlawn Cemetery, which is located immediately west cemetery. There is one existing curb cut along Kerr Avenue, and a sidewalk that extends along the south side of the street.

Adjacent Land Uses and Zoning Designations

The property is surrounded by residential and park uses. Immediately north of the property is Town and County apartments. To the west is the Eastlawn Cemetery, which is already zoned AG, Agriculture. To the South and East is Chief Shemauger Park. The property is located immediately east of Cunningham Avenue where the majority of properties are currently zoned B-3, General Business.

Zoning and Land Use Table

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

Location	Zoning	Existing Land Use	2005 Comprehensive Plan – Future Land Use
Subject Property	R-3, Single and Two-Family Residential	Cemetery	Institutional
North	R-5, Medium High Density Multiple Family Residential	Apartments	Multi-Family Residential
South	CRE, Conservation Recreation Education	Parks	Parks/Recreations
East	CRE, Conservation Recreation Education	Parks	Parks/Recreations
West	AG, Agriculture	Cemetery	Institutional

Issues and Discussion

The County zoning for this property was R-3, Multiple-Family Residential. As part of the annexation, the property was directly converted to City R-3. Ideally, the property would have been rezoned to City AG as part of an annexation agreement in order to ensure the continued cemetery use. However, staff was unable to locate an owner to execute an annexation agreement. The proposed rezoning will ensure the property’s zoning is consistent with surrounding similar uses, the existing use of the property, and the 2005 Urbana Comprehensive Plan.

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 Eastlawn Cemetery immediately west of the property is already zoned AG, and the remaining property south of Kerr Avenue is zoned and used as parks. The proposed rezoning would ensure that the property’s zoning is consistent with these 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 IN, Industrial and the value it would have if it were rezoned to B-3, General Business, to permit the proposed use.

The AG District would reduce the potential uses of the property, but would protect the existing use. Due to the presence of grave sites, it is highly unlikely that the property would ever be developed for residential 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 of zoning on the value of the property. Therefore, any discussion pertaining to specific property values should be considered speculative.

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.*

The question here applies 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 current zoning is not consistent with the historic and current use of the property as a cemetery. The current zoning is also inconsistent with the institutional future land use, as identified in the 2005 Urbana Comprehensive Plan.

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 proposed rezoning would not have an impact on the suitability of the property for the continued use as a cemetery.

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 is not vacant.

Summary of Staff Findings

1. Staff has been unable to locate an owner for the property.
2. The property was directly converted to City R-3, Single and Two-Family Residential as part of the involuntary annexation approved in April 2006.

3. The proposed AG, Agriculture zoning for the subject property is generally consistent with the overall goals of the 2005 Urbana Comprehensive Plan and future land use intent for the area.
4. The adjacent Eastlawn Cemetery is already zoned AG, Agriculture. The areas south and east of the property are zoned CRE, Conservation Recreation Education and are used as parks.
5. The proposed rezoning would help protect and allow the continued use of the property as a cemetery.
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 1992-M-06, the Plan Commission may:

1. Forward this case to City Council with a recommendation for approval.
2. Forward this case to City Council with a recommendation for 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 Case No. 1992-M-06 to the Urbana City Council with a recommendation for **APPROVAL**.

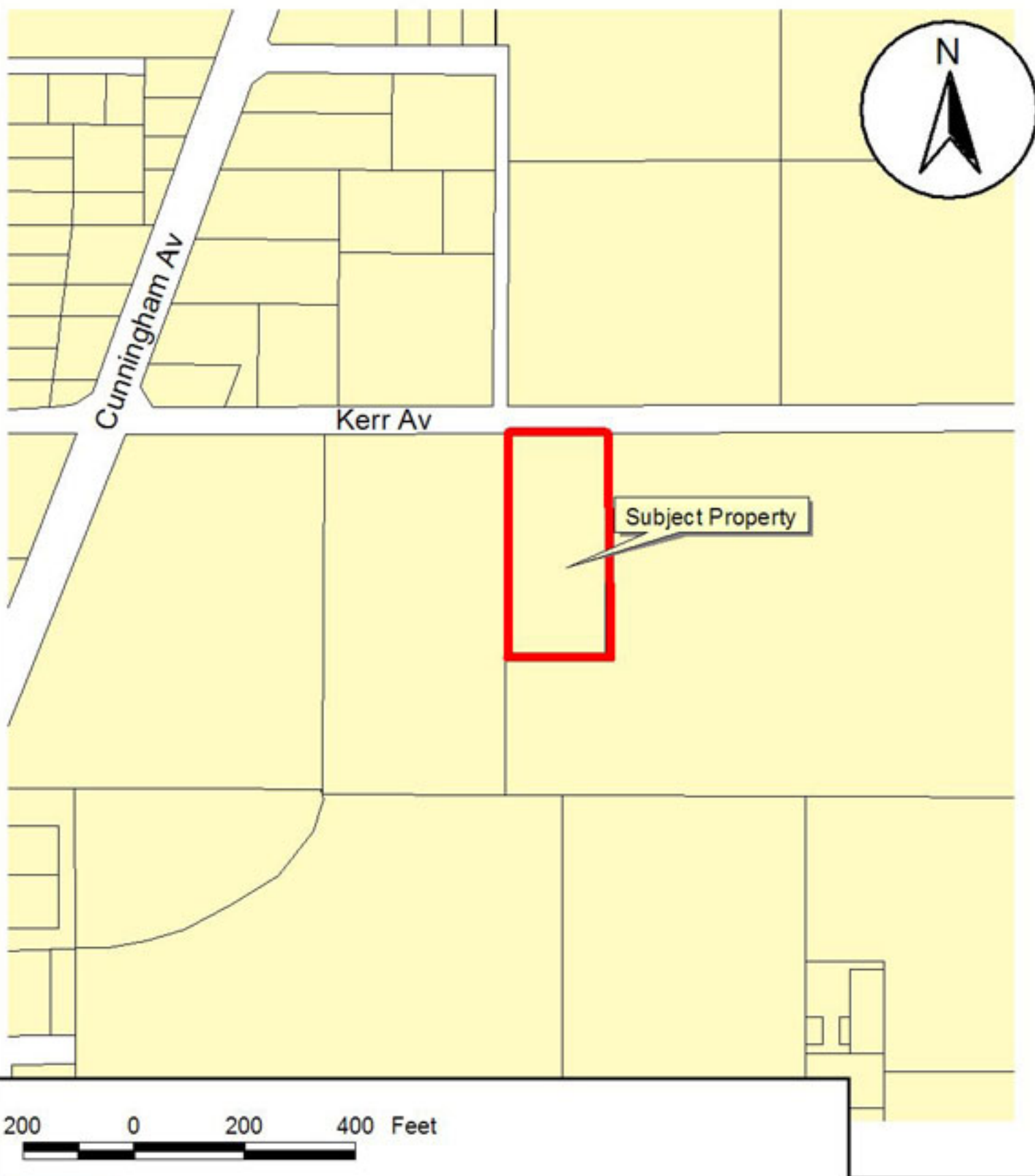
Prepared by:

Matt Wempe, Planner II

Attachments: Exhibit A: Location Map
Exhibit B: Zoning Map
Exhibit C: Existing Land Use Map
Exhibit D: Future Land Use Map
Exhibit E: Aerial Map

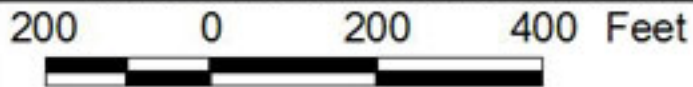
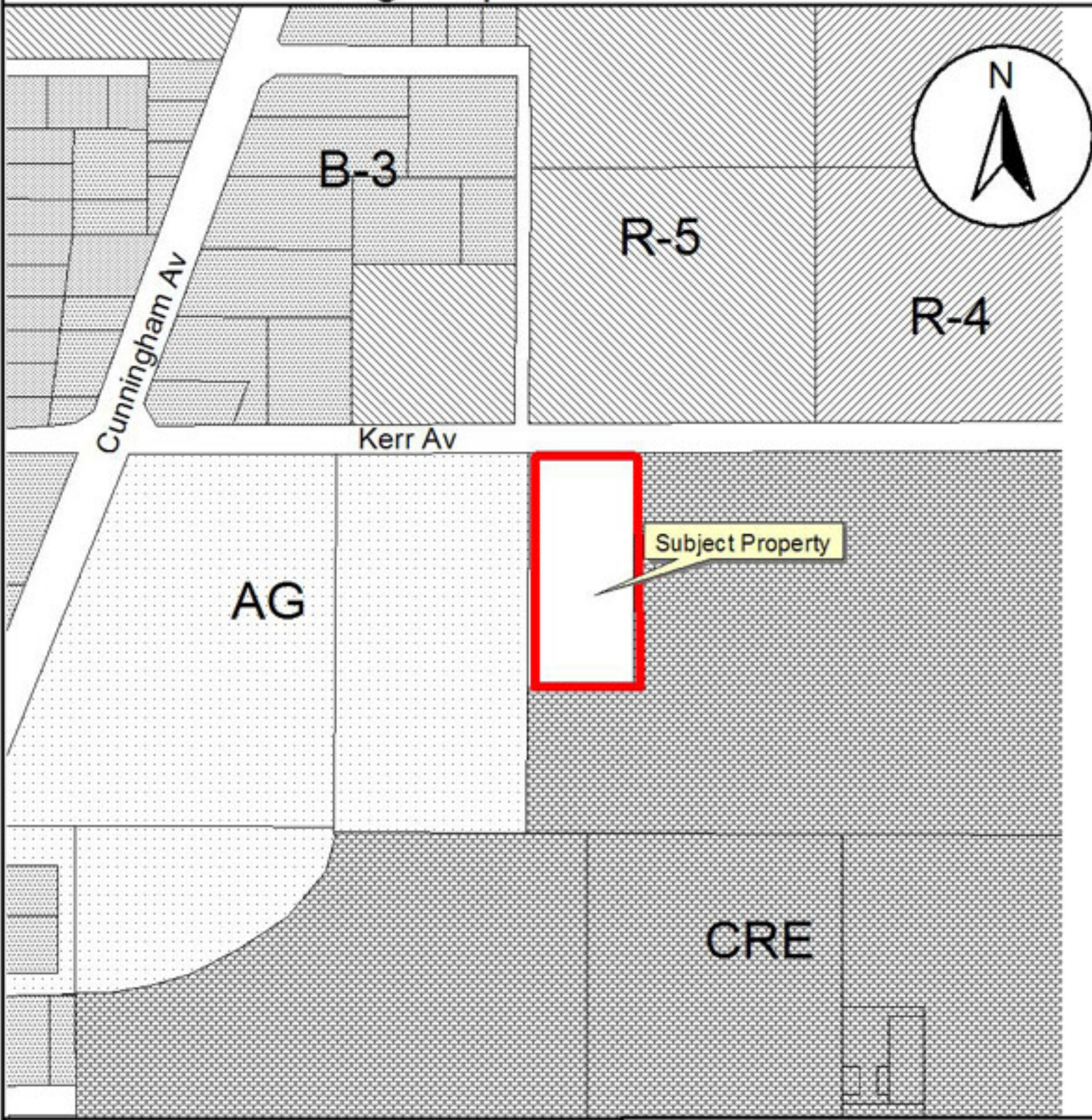
Cc: American Legion Post 71

Exhibit A: Location Map



Plan Case: 1992-M-06
Petitioner: Urbana Zoning Administrator
Location: Kerr Avenue east of Cunningham Avenue
Description: Rezone from R-4 to AG

Exhibit B: Zoning Map

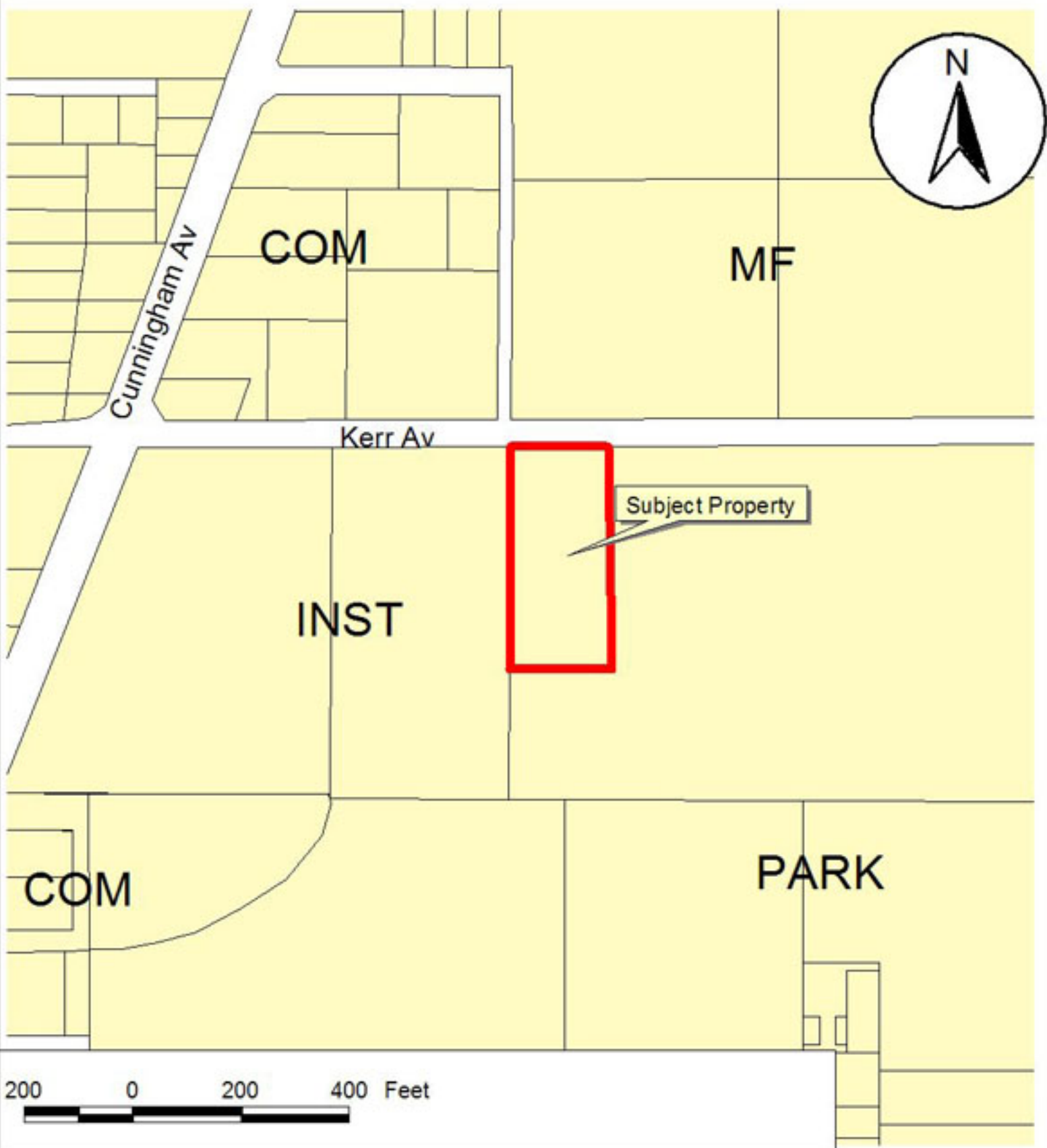


- AG - Agriculture
- B3 - General Business
- CRE - Conservation-Recreation-Education
- R4 - Medium Density Multiple-Family
- R5 - Medium High Density Multiple-Family



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Exhibit C: Existing Land Use Map

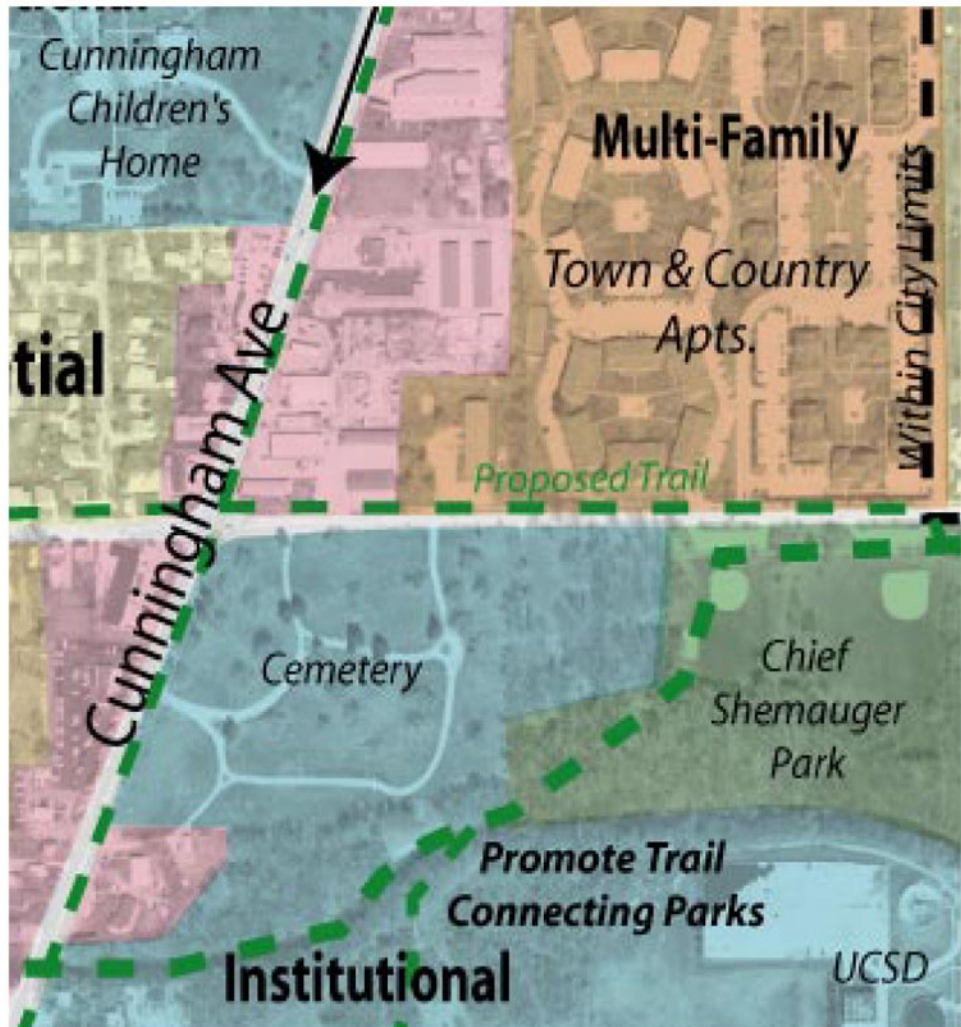


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PARK - Parks and Recreation
COM - Commercial
INST-Institutional

Exhibit D: Future Land Use Map



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Exhibit E: Aerial Map



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