



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

m e m o r a n d u m

TO: Urbana Plan Commission

FROM: Paul Lindahl, Planner I

DATE: May 18, 2007

SUBJECT: Plan Case No. 2039-M-07: Request to rezone an approximately 0.90-acre tract of property at 1714 E. Airport Road from IN, Industrial Zoning District to R-2, Single-Family Residential Zoning District

Preface

This case is the same as was first heard by the Plan Commission on April 19, 2007. At that hearing the Plan Commission voted 8-0 forward the case to City council with a recommendation of approval. Due to an error in the legal description for that case, we are asking the Plan Commission to re-hear and re-consider the request to rezone a tract of property at 1714 E. Airport Road from IN, Industrial Zoning District to R-2, Single-Family Residential Zoning District.

None of the pertinent background information in the case has changed and the petitioner's positions and City recommendations are unchanged.

Introduction & Background

The petitioner, Gregory Reynolds, is requesting a rezoning of a part of his property at 1714 E. Airport Road. The petitioners are requesting a rezoning for that portion of the property within the City limits from IN, Industrial to R-2, Single Family Residential. The Reynolds property is comprised of two lots: one in the City of Urbana and one in unincorporated Champaign County. The property contains a house and an accessory structure that were built across the lot line by a previous owner so that the structures are partially in the city and partially in the county. The subject property is used as a single-family residence.

An annexation agreement for the Reynolds lot located outside the City was approved by the Urbana Plan Commission and City Council in 2006 but is being returned to the Plan Commission and City Council in May and June 2007 for re-approval due to the error in legal descriptions. The facts of the case and the substance of the agreement reached remain unchanged.

The annexation agreement was necessitated by location of the structures crossing the lot line and the petitioner's wish to preserve their right to reconstruct the accessory structure should it ever need to be replaced. The petitioners have subsequently worked with the City to bring the subject property

into compliance with City of Urbana codes, and that joint effort includes obtaining a Zoning Map Amendment for the portion of the subject property in the City.

The annexation agreement stipulates that the portion of the subject property in Champaign County will be rezoned to R-2, Single-Family Residential, upon annexation. The portion of the subject property in the City is currently zoned IN, Industrial and the annexation agreement stipulated that this portion should be rezoned to City R-2, Single-Family Residential zoning.

The proposed rezoning will bring the property into conformance with the use regulations of the Urbana Zoning Ordinance which does not permit single family residences in the Industrial zoning district. The rezoning will correct the current split zoning on the property and prevent its continuation when the western portion is annexed into the City as R-2 Single Family Residential.

Concurrent Efforts

The Zoning Board of Appeals has heard Case 2007- MAJ-02 which is a major variance to allow an accessory structure in excess of 1,000 square feet for that portion of the accessory structure located within the City. The major variance case will have no impact on the proposed rezoning.

The purpose of the annexation agreement, this rezoning case, ZBA variance case, and a Subdivision Case (1903-S-04) to combine the two lots of the subject property, is to jointly correct all outstanding issues with the petitioner’s property.

Staff has been working on this case with the petitioners’ attorney for several months and has come to the concluding stages of a resolution agreed upon by all parties.

Surrounding Properties

The property is currently surrounded by a mixture of industrial (north of Airport Road) and residential (south of Airport Road) land uses. The 2005 Urbana Comprehensive Plan indicates the future land use for the area as Residential, with Regional Business along US Route 45.

Direction	Zoning	Existing Land Use	Comprehensive Plan - Future Land Use
Site	West half - County AG-2, Agriculture East half - City IN, Industrial	Residential	Regional Business
North	IN, Industrial	Vacant	Regional Business
East	IN, Industrial	Agriculture	Residential
South	County AG-2, Agriculture, and County R-5, Mobile Home Park	Residential	Residential
West	County B-3, Highway Business	Mini-Warehouse	Regional Business

Issues and Discussion

Rezoning 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 for evaluating the legal validity of a zoning classification for a particular property.

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

The subject property is currently surrounded by a mixture of industrial (north of Airport Road) and residential (south of Airport Road) land uses. The parcel immediately east of the property is zoned Industrial and is undeveloped (in agricultural use). The 2005 Urbana Comprehensive Plan indicates a future land use for the area of Residential, with Regional Business to the west along US Route 45. The portion of the subject property in Champaign County will be rezoned to R-2, Single-Family Residential upon annexation.

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

The subject property is already developed in a manner consistent with the proposed zoning, so there would be minimal impact on property values. The IN, Industrial Zoning District severely restricts residential uses and could negatively impact property values based on the current land use.

It should be noted that the Urbana 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.*

The subject property has already developed in a manner inconsistent with the existing zoning district. The intent of the proposed rezoning to the R-2 Single Family Residential zoning district is to ensure that the subject property is maintained by a standard that reflects the existing land use.

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

The subject property is located in an area that largely consists of single-family residences. Further, the 2005 Urbana Comprehensive Plan designates the future land use of the subject property and the areas to the east and south as Residential. The rezoning will correct the current split zoning on the property and prevent its continuation when the western portion is annexed into the City as R-2 Single Family Residential. The proposed zoning would ensure that the appropriate regulations are applied to the subject property.

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

The subject property and the surrounding properties are already developed in an “urban” manner, which is consistent with the proposed zoning district.

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.*

The subject property is not currently vacant.

Summary of Findings

1. The petitioners property is currently located in both unincorporated Champaign County and the City of Urbana. The subject of this case is that portion of the property which is located in the City limits and is currently zoned IN, Industrial.
2. That portion of the petitioner’s property located in Champaign County is the subject of a pending annexation agreement. This agreement stipulates a number of approvals including a major variance and rezoning.
3. The proposed R-2, Single-Family Residential Zoning District would be consistent with the current land use of the property and surrounding area.
4. The proposed R-2, Single-Family Residential Zoning District would be consistent with the future land use designation of Residential stated in the 2005 Urbana Comprehensive Plan.
5. The rezoning will correct the current split zoning on the property and prevent its continuation when the western portion is annexed into the City as R-2 Single Family Residential. The proposed zoning would ensure that the appropriate regulations are applied to the subject property.
6. The proposed rezoning would not be detrimental to the public health, safety or general welfare.
7. 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 2039-M-07, the Plan Commission may:

1. Forward this case to the City Council with a recommendation for approval.
2. Forward this case to the City Council with a recommendation for denial.

Staff Recommendation

Based on the analysis and findings 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. 2039-M-07 to the Urbana City Council with a recommendation for **APPROVAL**.

cc: Jeff Wampler
Erwin, Martinkus & Cole
P.O. Box 1098
Champaign, IL 61824-1098

Greg Reynolds
1714 E. Airport Road
Urbana, IL 61802

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

Annexation Agreement

(1714 East Airport Road / Gregory and Denise Reynolds)

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 **Gregory and Denise Reynolds** (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, Gregory and Denise Reynolds are the Owners of record of a certain parcel of real estate located at 1714 East Airport Road totaling approximately 1.80 acres, the legal description of which real estate is set forth in Exhibit "A" attached hereto and referenced herein as "the tract"; 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 tract is located within the Champaign County AG-2, Agricultural Zoning District; and

WHEREAS, the Corporate Authorities and the Owners find it necessary and desirable that the tract be annexed to the City with a zoning classification of R-2, Single-Family Residential, 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 reflects the goals, objectives and policies set forth in the City's 2005 Urbana 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 Owners agree to the following provisions:

Section 1. Ownership and Annexation:

- (a) The Owners represent that the Owners are the sole record Owners of the tract described in Exhibit A and that the Owners 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. The Owners shall not file a petition for the disconnection of the tract from the City.
- (b) The Owners 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 tract. If the subject tract is to be platted for subdivision, the Owners agree 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 Owners agree that if the Owners 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 Owners 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 Owners agree 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. Zoning: The Owners acknowledge that upon annexation, the tract will be rezoned from County AG-2, Agricultural to City R-2, Single-Family Residential. The Owners agree that, unless changed upon the initiative of the Owners, 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. Furthermore, the Owners agree to abide by all applicable development regulations existing at the time of annexation.

Section 3. Adjacent Territory Rezoning: The Owners agree to submit an application to rezone the portion of the Owners' property currently located within the corporate limits (see Exhibit C) from City IN, Industrial to City R-2, Single-Family Residential within 90 days of the approval of this agreement.

Section 4. Subdivision: The Owners agree to prepare and record a minor subdivision plat per the Urbana Subdivision and Land Development Code within 90 days of the approval of this Agreement. The minor subdivision plat shall combine the portion of the Owners' land in unincorporated Champaign County (west half) with the portion within the corporate limits (east half) to create a single lot (see Exhibit C). The Owners further agree to dedicate 40 feet of right-of-way along Airport Road as part of the minor subdivision plat and include a deferral for sidewalk construction on the minor subdivision plat.

Section 5. Accessory Structure Variance: The Owners agree to submit an application for a Major Variance to permit an increase in the maximum size of an accessory structure up to 3,500 square feet per the Urbana Zoning Ordinance within 90 days of the approval of this Agreement. The Major Variance application shall pertain to the portion of the accessory structure located within the corporate limits (see Exhibit C).

ARTICLE II. REPRESENTATIONS AND OBLIGATIONS OF THE CORPORATE AUTHORITIES

The Corporate Authorities agree to the following provisions:

Section 1. Agreement to Annex: 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 Owners, 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 will be zoned City R-2, Single-Family Residential upon annexation and as defined in the City of Urbana Zoning Ordinance as such exists at the time of annexation of the tract. 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 Owners requesting said change, the Corporate Authorities reserve the right to amend the Zoning Ordinance text even if such amendment affects the property. The

Corporate Authorities further agree that the granting of the Zoning Map Amendment would be consistent with the LaSalle Criteria established by the Illinois Supreme Court in *LaSalle National Bank v. The County of Cook*:

- a. The existing land uses and zoning of the nearby property.
- b. The extent to which property values are diminished by the restrictions of the ordinance.
- c. The extent to which the ordinance promotes the health, safety, morals or general welfare of the public.
- d. The relative gain to the public as compared to the hardship imposed on the individual property owner.
- e. The suitability of the subject property for the zoned purposes.
- f. 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.

Section 3. Adjacent Territory Rezoning: The Corporate Authorities agree to consider approval of a Zoning Map Amendment for the portion of the Owners' property in the corporate limits from IN, Industrial to R-2, Single-Family Residential, as shown in Exhibit C, in order to provide for consistent zoning of the Owners' property.

Section 4. Subdivision: The Corporate Authorities agree to approve a minor subdivision plat per the Urbana Subdivision and Land Development Code to combine the portion of the Owners' land in unincorporated Champaign County (west half) with the portion within the corporate limits (east half) to create a single lot (see Exhibit C), including a deferral for sidewalk construction along the north side of Airport Road adjacent to the Owners' property. The City Engineer shall not require sidewalk construction until such time as a sidewalk exists on adjacent properties on either side of the tract.

Section 5. Accessory Structure Variance: The Corporate Authorities hereby grant a Variance to allow the portion of the 3,500 square foot accessory structure located outside the corporate limits, in excess of the 1,000 square feet permitted by the Zoning Ordinance, as illustrated in Exhibit B. This additional size will permit the Owners to maintain the accessory structure, which was constructed prior to any of the Owners' land incorporating into the City of Urbana. Until the Major Variance is approved, the accessory structure shall be considered legally non-conforming. The Corporate Authorities further agree that the granting of this variance is consistent with the established criteria identified in Section XI-3 of the Urbana Zoning Ordinance, in that the variance:

- a. will not serve as a special privilege because the variance requested is due to special conditions and circumstances relating to the land or structure involved or

to be used for occupancy thereof which is not generally applicable to other lands or structures in the same district;

- b. was not the result of a situation or condition having been knowingly or deliberately created by the Owner or Developer;
- c. will not alter the essential character of the neighborhood;
- d. will not cause a nuisance to adjacent property;
- e. represents, generally, the minimum deviation from requirements of the Zoning Ordinance necessary to accommodate the request.
- f. is the result of practical difficulties or particular hardship in the way of carrying out the strict letter of the Zoning Ordinance relating to the use, construction, or alteration of buildings or structures or the use of land.

Section 6. Adjacent Territory Accessory Structure Variance: The Corporate Authorities agree to consider approval of a Major Variance to allow the portion of the 3,500 square foot accessory structure located within the corporate limits, in excess of the 1,000 square feet permitted by the Zoning Ordinance, as illustrated in Exhibit C. This additional size will permit the Owners to maintain the accessory structure, which was constructed prior to any of the Owners' land incorporating into the City of Urbana.

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, 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, lessee, 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 no 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. Contingent Agreement. This Agreement shall be contingent upon the successful execution (a.) of the obligations set forth in Articles I and II, and (b.) of all necessary Agreements and approvals. If any of these contingencies are not fulfilled, then this Annexation Agreement shall be null and void. In all cases requiring the approval of the Corporate Authorities, such Corporate Authorities shall not unreasonably withhold such approval.

Section 7. 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 Owner 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:

Laurel Lunt Prussing, Mayor

Gregory Reynolds

Date

Date

Denise Reynolds

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 Requirements Map

Exhibit "A"
Legal Description

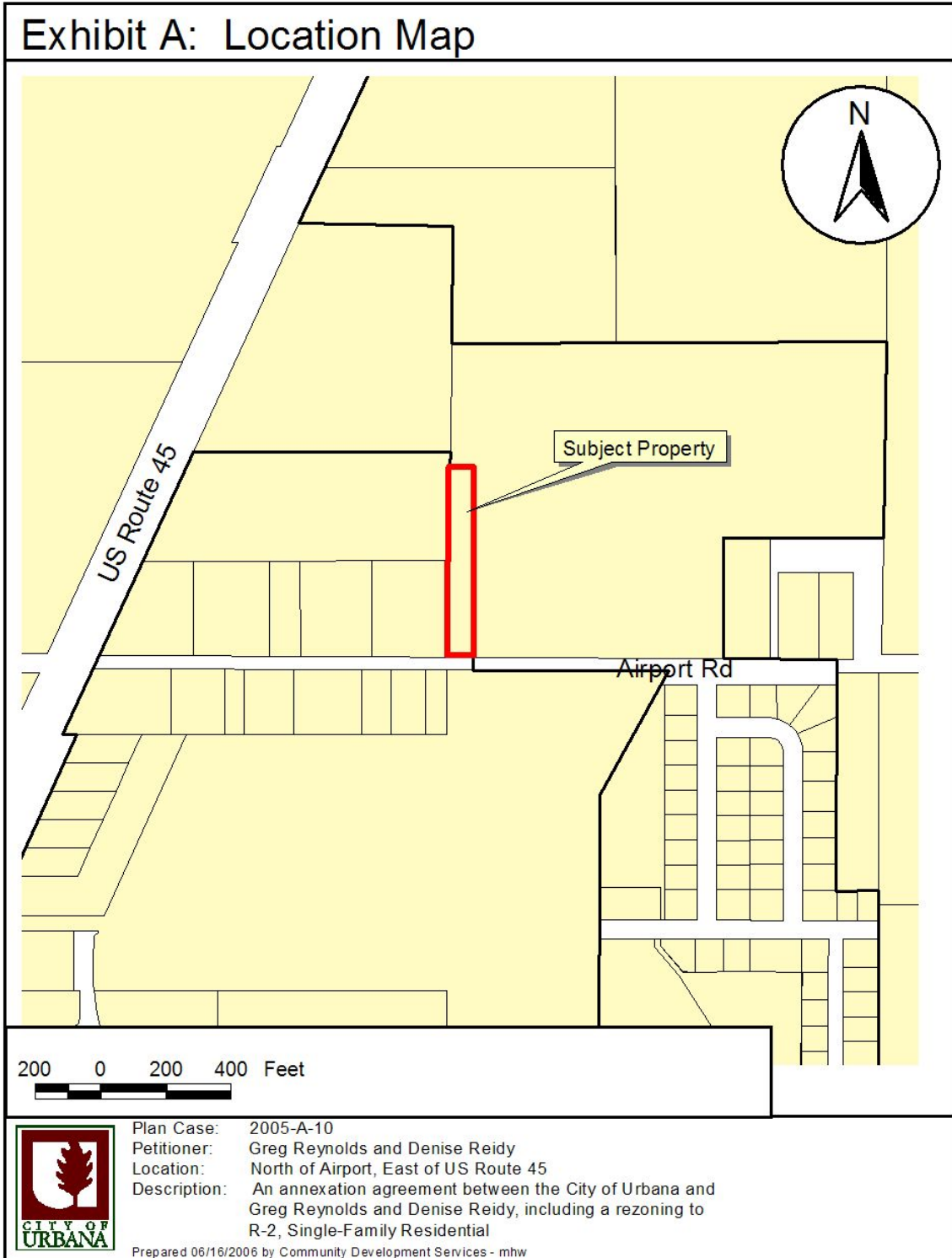
PART OF THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 20 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN IN CHAMPAIGN COUNTY, ILLINOIS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 20 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, THENCE NORTH 605 FEET; THENCE EAST 72 FEET; THENCE SOUTH 605 FEET AND THENCE WEST 72 FEET TO THE POINT OF BEGINNING, IN CHAMPAIGN COUNTY ILLINOIS.

COMMON ADDRESS: 1714 E, AIRPORT ROAD, URBANA, IL 61802

PIN NO.: 25-15-33-476-002

**Exhibit B
Location Map**



**Exhibit C
Site Requirement Map**

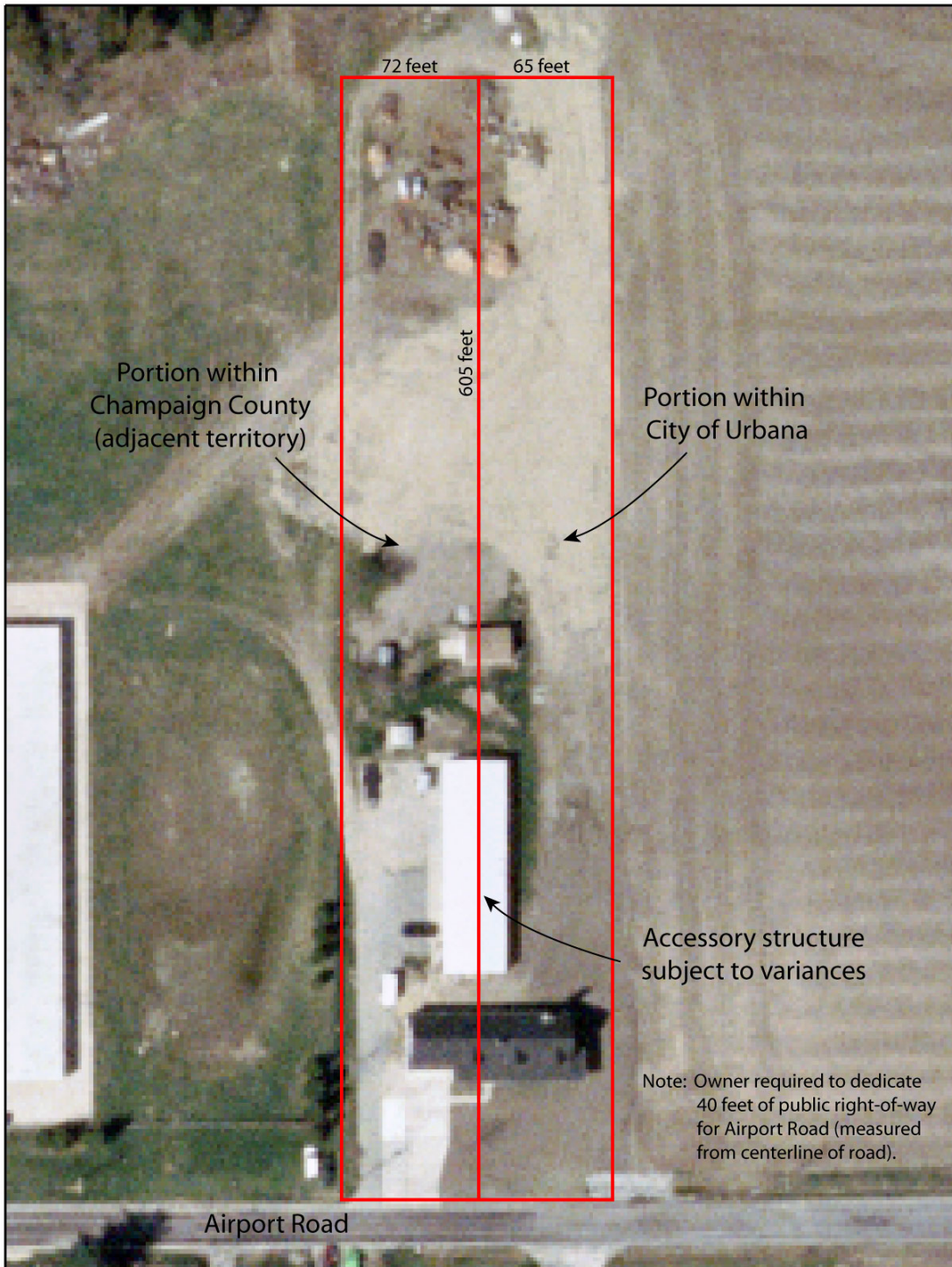
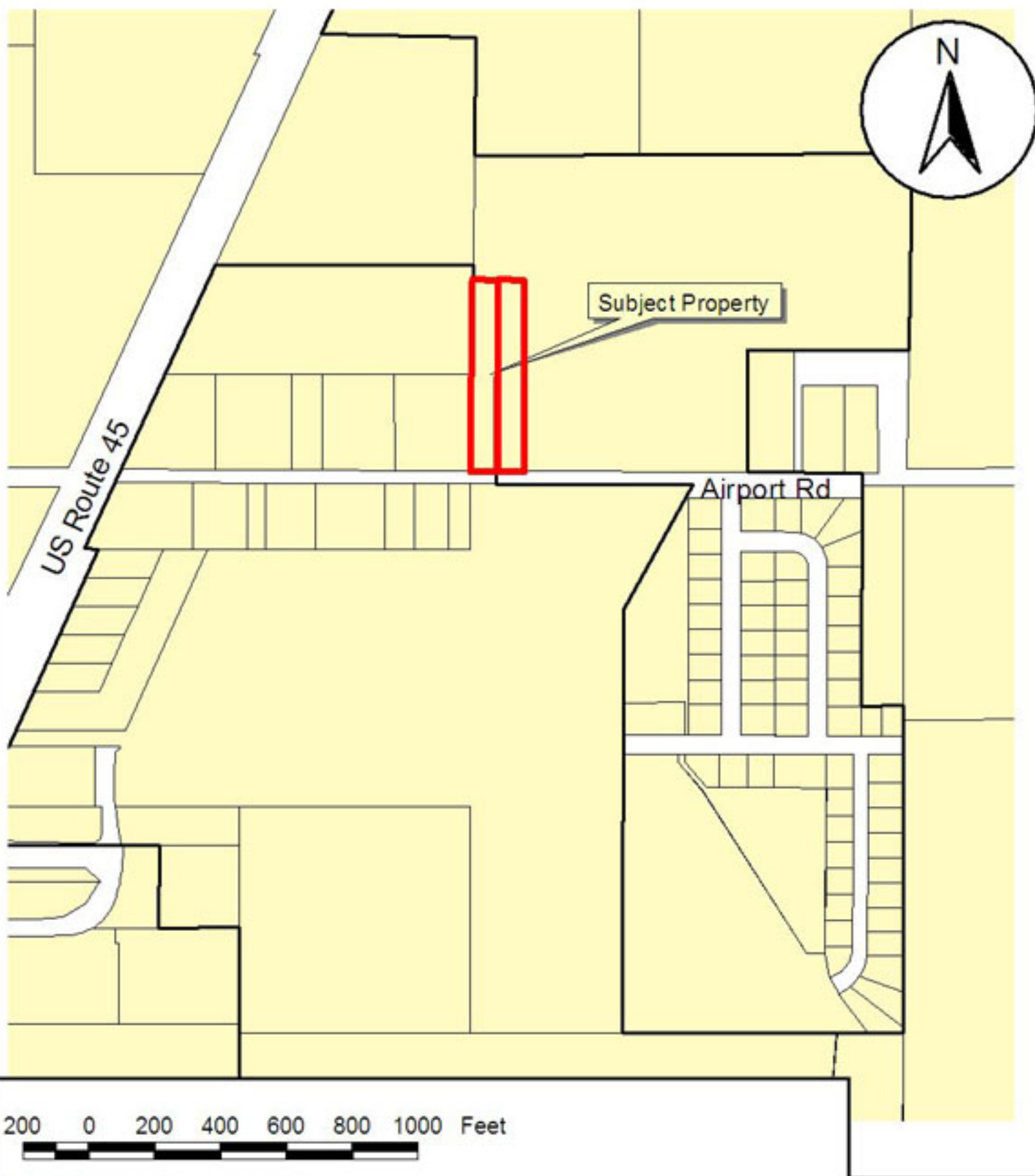


Exhibit A: Location Map



Plan Case: 2039-M-07
Subject: Rezoning IN, Industrial to R2, Single Family Residential

ZBA Case: 2007-MAJ-2
Subject: A Major Variance request for a 3,500 square foot accessory structure

Petitioner: Greg Reynolds
Location: North of Airport, East of US Route 45

Prepared 03/29/2007 by Community Development Services - mhw

Exhibit B: Zoning Map

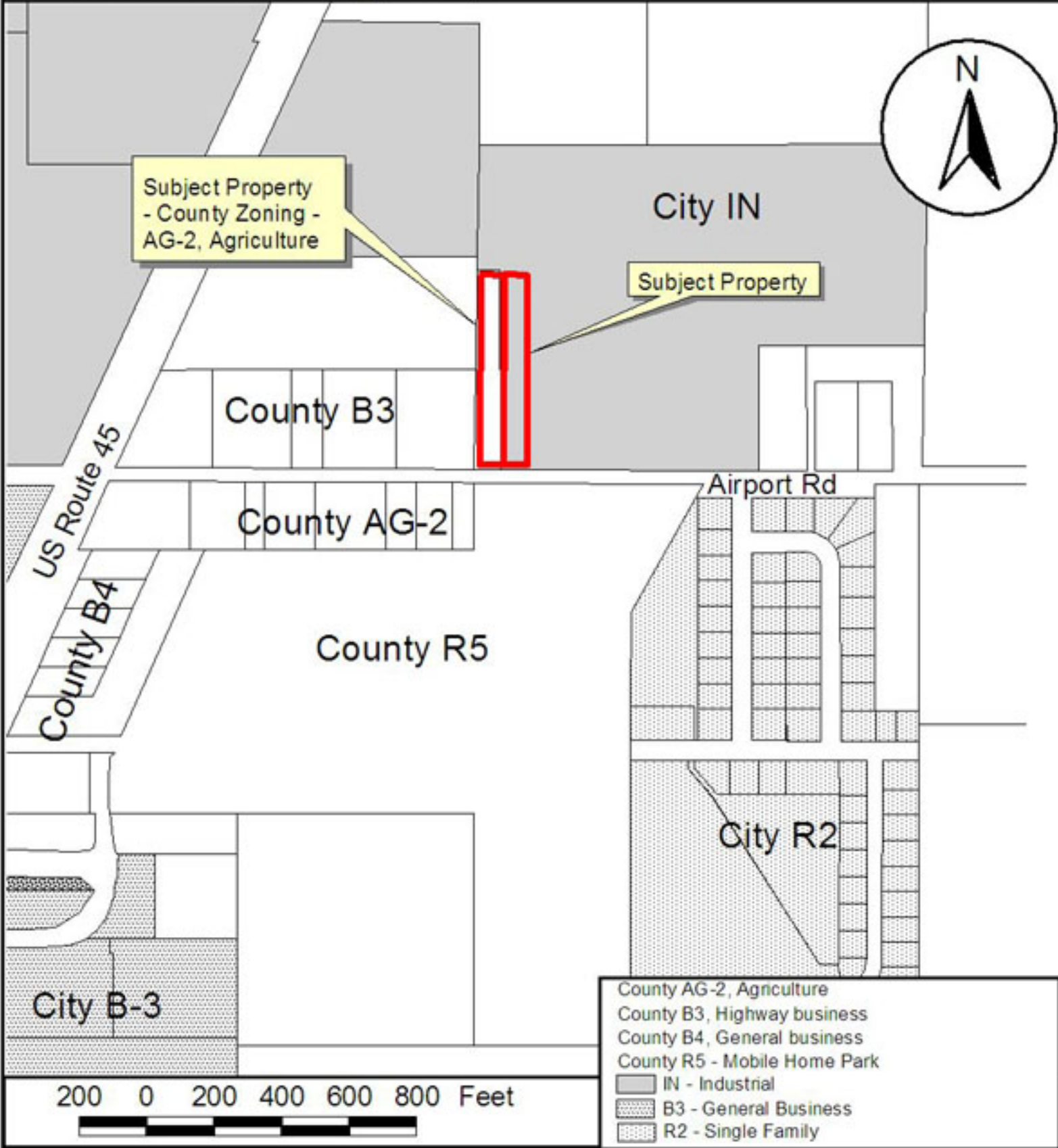
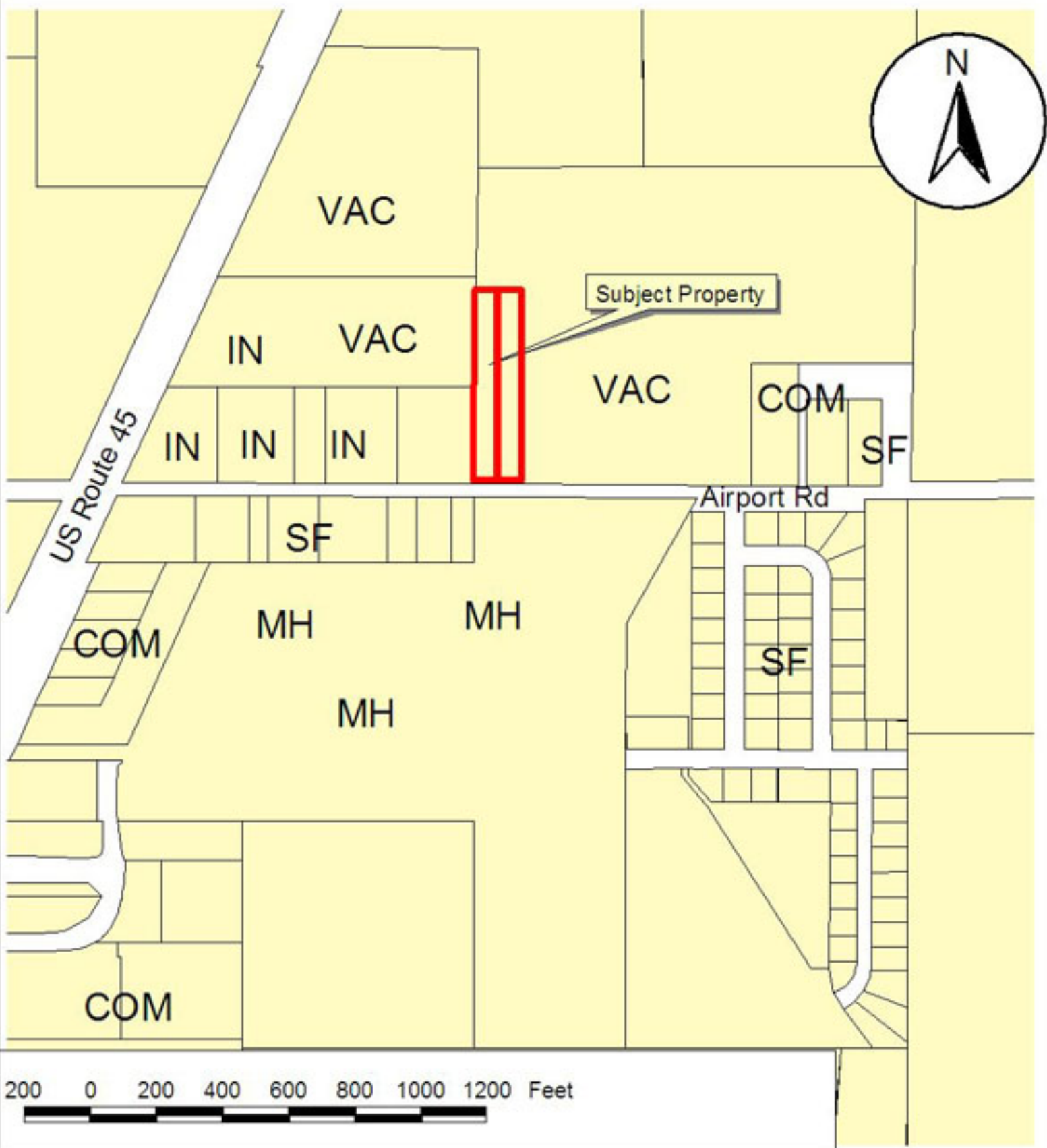


Exhibit C: Existing Land Use Map



Plan Case: 2039-M-07
Subject: Rezoning IN, Industrial to R2, Single Family Residential

ZBA Case: 2007-MAJ-2
Subject: A Major Variance request for a 3,500 square foot accessory structure
Petitioner: Greg Reynolds
Location: North of Airport, East of US Route 45
Prepared 03/29/2007 by Community Development Services - mhw

SF - Single Family
IN - Industrial
COM - Commercial
MH - Mobile Homes
VAC - Vacant

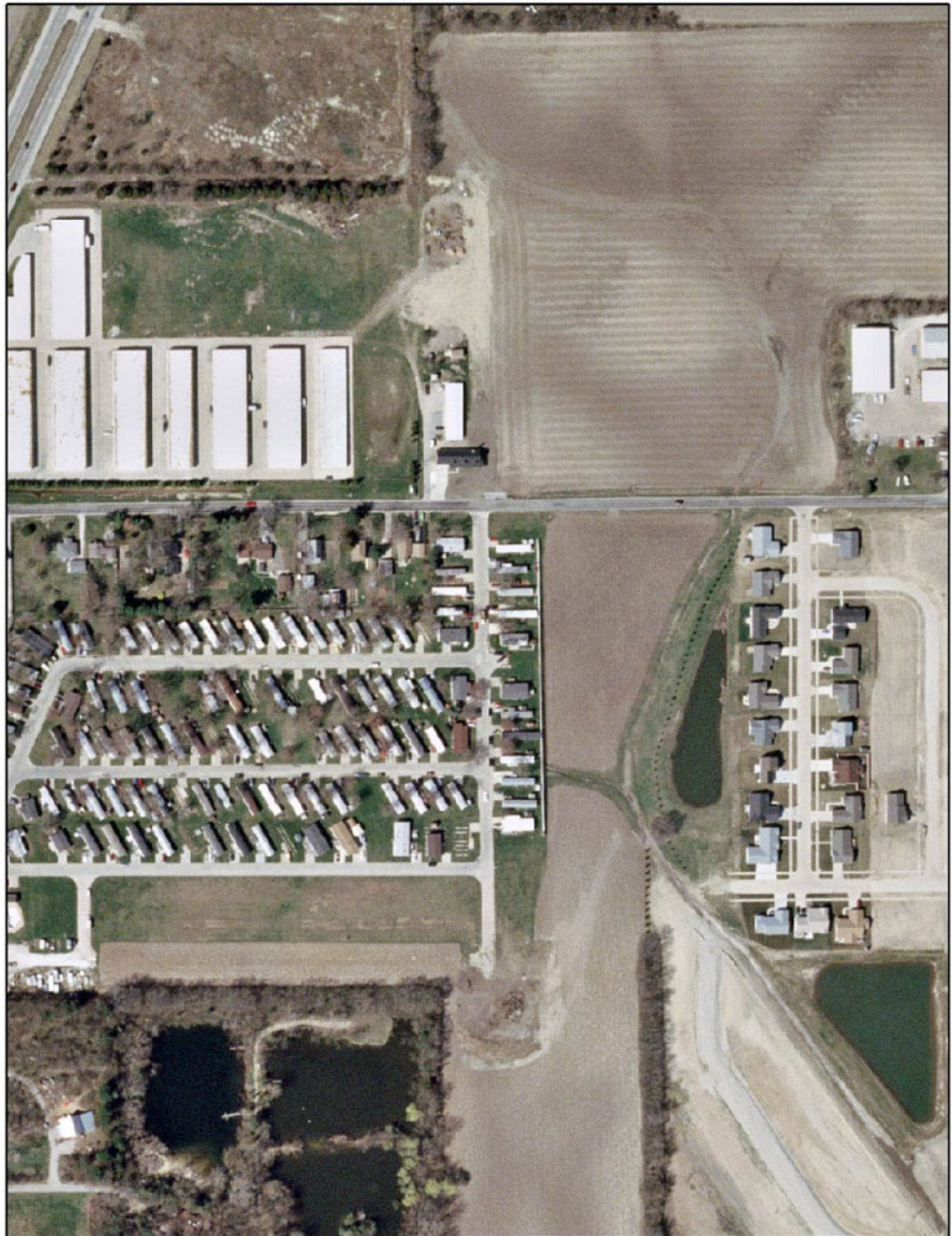
Exhibit D: Future Land Use Map



Plan Case: 2039-M-07
Petitioner: Gregory Reynolds
Location: North of Airport, East of US Route 45
Description: Rezone 1714 E. Airport to R-2, Single-Family Residential



Exhibit E: Aerial Map



Plan Case: 2039-M-07
Petitioner: Gregory Reynolds
Location: North of Airport, East of US Route 45
Description: Rezone 1714 E. Airport to R-2, Single-Family Residential