



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

m e m o r a n d u m

TO: The Urbana Plan Commission

FROM: Lisa Karcher, Planner II

DATE: January 16, 2009

SUBJECT: CCZBA 635-AM-08: Request by Country Arbors Nursery, Inc. to amend the Champaign County Zoning Map from AG-1, Agriculture to AG-2, Agriculture for a 41.5 acre tract of land located at 1742 CR 1400N

Introduction

A petition has been submitted to Champaign County requesting a zoning map amendment for a 41.5 acre parcel at 1742 CR 1400N from AG-1, Agriculture District, to AG-2, Agriculture District. The property is more commonly known as Country Arbors Nursery.

The property lies within one and one-half miles of the Urbana city limits. By state law, the City has an obligation to review zoning decisions within this “extra-territorial jurisdiction” (ETJ) area for consistency with the City’s Comprehensive Plan. The Plan Commission must vote to make a recommendation to the City Council to either “protest” or “not protest” the rezoning. The Urbana City Council will review the Commission’s recommendation and vote to either approve or defeat a resolution of protest. Should the City Council enact a protest of the County rezoning, under State law the County Board could not approve the application except by a three-fourths super majority of affirmative votes.

The Champaign County Board of Appeals considered the case on January 15, 2009 and continued the case to January 29, 2009. The case is anticipated to be forwarded to the Environmental Land Use Committee and the full County Board in February.

Background

According to case documentation received from the Champaign County Department of Planning and Zoning, the Country Arbors Nursery has operated on the subject site for the past 22 years. The nursery use predated the adoption of the Champaign County Zoning Ordinance and is therefore considered a nonconforming use. The legally non-conforming use can continue to be operated provided that no expansion takes place. In addition, County staff has noted that “to properly authorize the existing business it should be rezoned to AG-2 and a Special Use Permit (SUP) for operating a ‘Garden Shop’ be obtained.” The owners have consequently applied to

Champaign County to rezone the 41.5 acres from AG-1 to AG-2 and to obtain a Special Use Permit for a “Garden Shop” on 8.5 acres of the subject property.

The subject property is zoned AG-1. Properties to the north, south, east and west is also zoned AG-1. The surrounding property is for the most part used for agricultural purposes with single-family residences dispersed throughout.

Further background information on the rezoning case, including location and zoning maps, is included with the attached Champaign County Department of Planning and Zoning preliminary memorandum. (See Exhibit D) The following discussion of the issues involved will summarize the essential parts of this information as it pertains to the City’s planning jurisdiction.

Issues and Discussion

County Zoning

According to the Champaign County Zoning Ordinance, the intent of the AG-1, Agriculture Zoning District is:

“...to protect the areas of the County where soil and topographic conditions are best adapted to the pursuit of agricultural uses and to prevent the admixtures of urban and rural uses which would contribute to the premature termination of agricultural pursuits.” (Section 5.1.1)

The County’s Zoning Ordinance defines the intent of the AG-2, Agriculture Zoning District as follows:

“...to prevent scattered indiscriminate urban development and to preserve the agricultural nature within areas which are predominately vacant and which presently do not demonstrate any significant potential for development. This district is intended generally for application to areas within one and one-half miles of existing communities in the County.” (Section 5.1.2)

A “garden shop”, for which the retail portion of the nursery is considered, is not permitted in the AG-1 Zoning District. It is however permitted as a special use in the AG-2 Zoning District. Rezoning the property to AG-2 would allow for the owners to apply for a special use permit to make the existing use conforming and therefore allow for future expansion. In addition, the AG-2 Zoning District is more appropriate in this case due to the location of the property in the ETJ.

Urbana Zoning and 2005 Comprehensive Plan

The City of Urbana’s 2005 Comprehensive Plan, Future Land Use Map shows the future land use of the property as “Agricultural.” The plan defines this land use classification as:

“Agricultural land uses are those that involve crop cultivation and production, the raising of livestock and uses that support agriculture, such as feed stores and silos.”

In the event the subject property is annexed into the City, its County zoning designation would be converted to a City zoning designation on the basis of Urbana Zoning Ordinance Table IV-1. Should the subject property be rezoned to County AG-2, the zoning would automatically convert to AG, Agriculture unless otherwise provided for through an annexation agreement. According to the Urbana Zoning Ordinance, the intent of the AG, Agriculture Zoning District is:

“...to retain in agricultural and other compatible low intensity uses, area where soil and topographic conditions are suitable for these uses, and into which the intrusion of urban uses would be inappropriate or untimely due to lack of urban services and facilities.”

A “plant nursery or greenhouse” is a permitted by right in Urbana’s AG Zoning District, and a “garden shop” is permitted as a conditional use per the Urbana Zoning Ordinance. Based on the above information, Staff finds that the rezoning from AG-1 to AG-2 zoning designation in the County would be consistent with the goals and objectives of the 2005 Comprehensive Plan and that the current use of the property would be consistent with the AG Zoning District in the City of Urbana.

The La Salle National Bank Criteria

In the case of *La Salle National Bank v. County of Cook (La Salle)*, 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 subject property contains a garden shop and related nursery, while the surrounding area consists primarily of farmland with single-family residence scattered throughout. County zoning of the subject property and the surrounding subject properties to the north, south, east and west is AG-1. AG-2 Zoning exists within a mile of the subject property to the north and west. The proposed AG-2 zoning designation would be consistent with the current land use. In addition it is consistent with the zoning of property abutting the corporate limits of the City of Urbana, and within a mile of the subject property.

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 and the value it would have if it were rezoned to permit the proposed use.

It is unknown as to the impact, if any, the rezoning will have on the value of surrounding properties; however, it is assumed that the value of the subject property would be positively impacted because the rezoning would not only allow for the existing use, but also for its growth.

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.

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 subject as well as the surrounding properties are zoned AG-1. The nature of the existing use can be in broad terms considered an agricultural use. Rezoning the property to AG-2 would “legitimize” the current use, specifically the retail portion of the use. Rezoning the properties from AG-1 to AG-2 is not anticipated to change the use such that it will negatively impact surrounding properties. However, it would be beneficial to the owners as well as the general public in that the existing business could continue and ultimately expand.

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 location of the property within one and one-half miles of the City of Urbana is consistent with the intent of the AG-2 Zoning District. The AG-2 Zoning District is also consistent with the current use of the property. In addition, the City of Urbana Comprehensive Plan Future Land Use designation of Agricultural is also consistent with the existing development.

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. The Country Arbors Nursery has operated on the property for the past 22 years.

Summary of Staff Findings

1. The site is within the City’s Extra-territorial Jurisdiction.

2. The proposed rezoning is consistent with the Urbana Comprehensive Plan Future Land Use agricultural designation for the site and surrounding areas.
3. The proposed rezoning and land use is generally compatible with the surrounding County zoning and land uses.
4. The evaluation of the LaSalle Criteria reiterates the findings above. The proposed zoning change is acceptable because the site and surrounding area are generally suitable for the proposed zoning district.

Options

In CCZBA Case No. 635-AM-08, the Plan Commission has the following options:

- a. Forward the plan case to the City Council with a recommendation of “no protest” to the proposed map amendment; or
- b. Forward the plan case to the City Council with a recommendation of “protest” to the proposed map amendment.

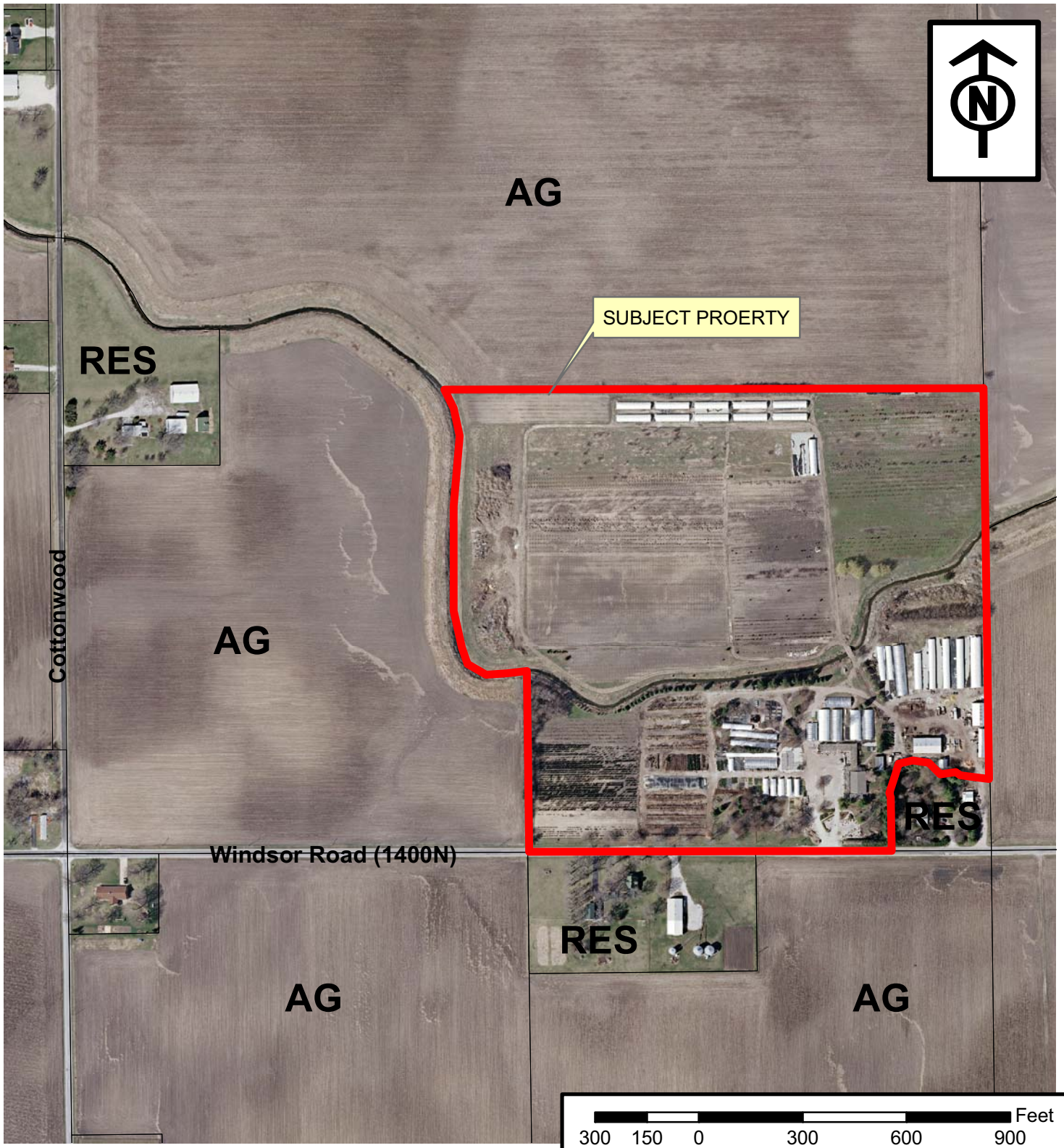
Staff Recommendation

Based upon the findings above, Staff recommends that the Plan Commission forward to the City Council a recommendation to **defeat a resolution of protest**.

Attachments: Exhibit A: Location and Existing Land Use Map
Exhibit B: Existing Zoning
Exhibit C: Urbana Comprehensive Land Use Map
Exhibit D: Champaign County Zoning Board of Appeals Case No. 635-AM-08
Staff Memo

cc: John Hall, Champaign County Planning and Zoning

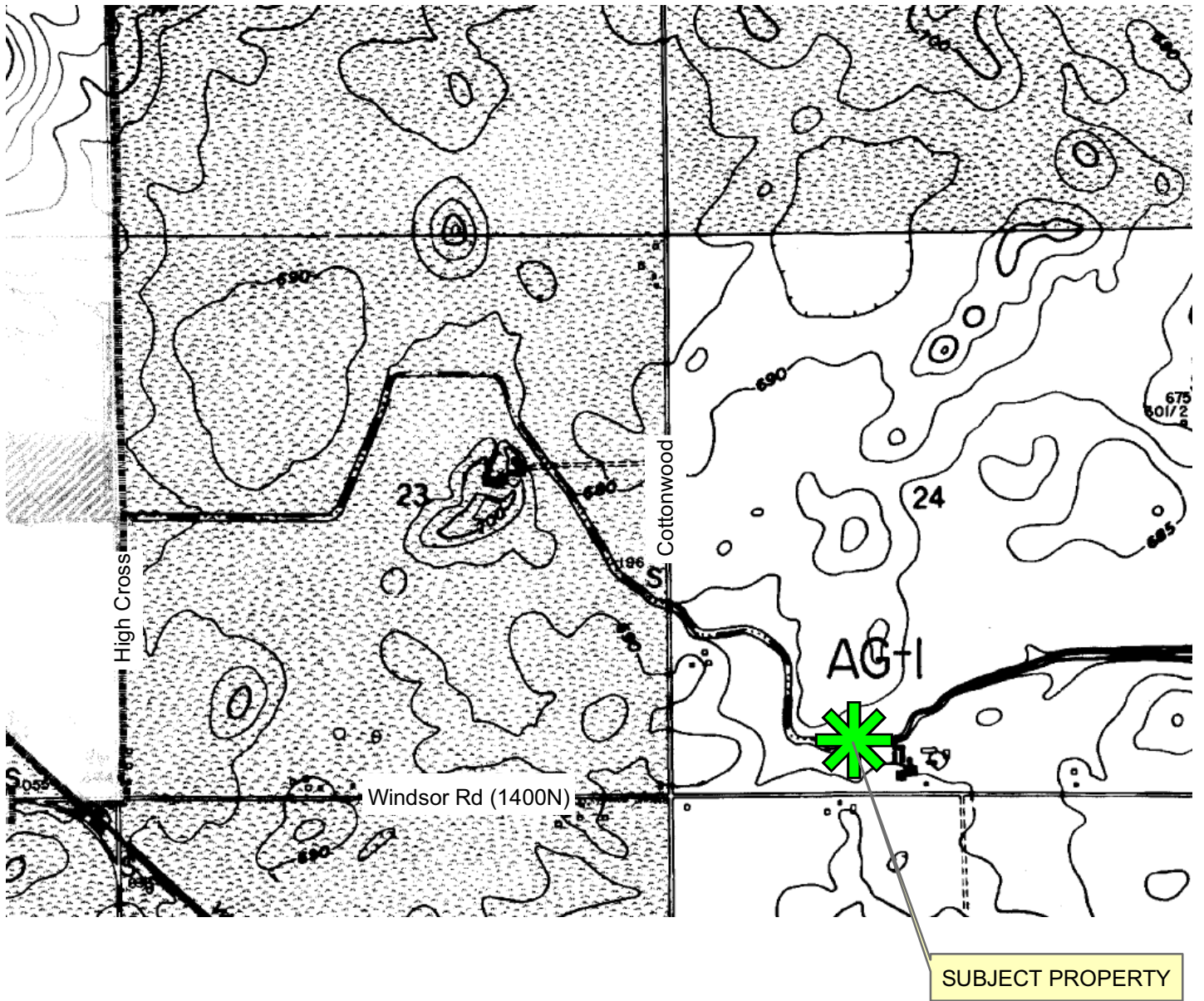
EXHIBIT A: Location and Existing Land Use Map



Plan Case: CCZBA No. 635-AM-08
Petitioner: Country Arbors Nursery, Inc.
Location: 1742 CR 1400N
Description: Amend Champaign County Zoning Map from AG-1, Agriculture to AG-2, Agriculture

AG - Agriculture
RES - Residential

EXHIBIT B: Existing Zoning (Champaign County)



Plan Case: CCZBA No. 635-AM-08
Petitioner: Country Arbors Nursery, Inc.
Location: 1742 CR 1400N
Description: Amend Champaign County Zoning Map from AG-1, Agriculture to AG-2, Agriculture



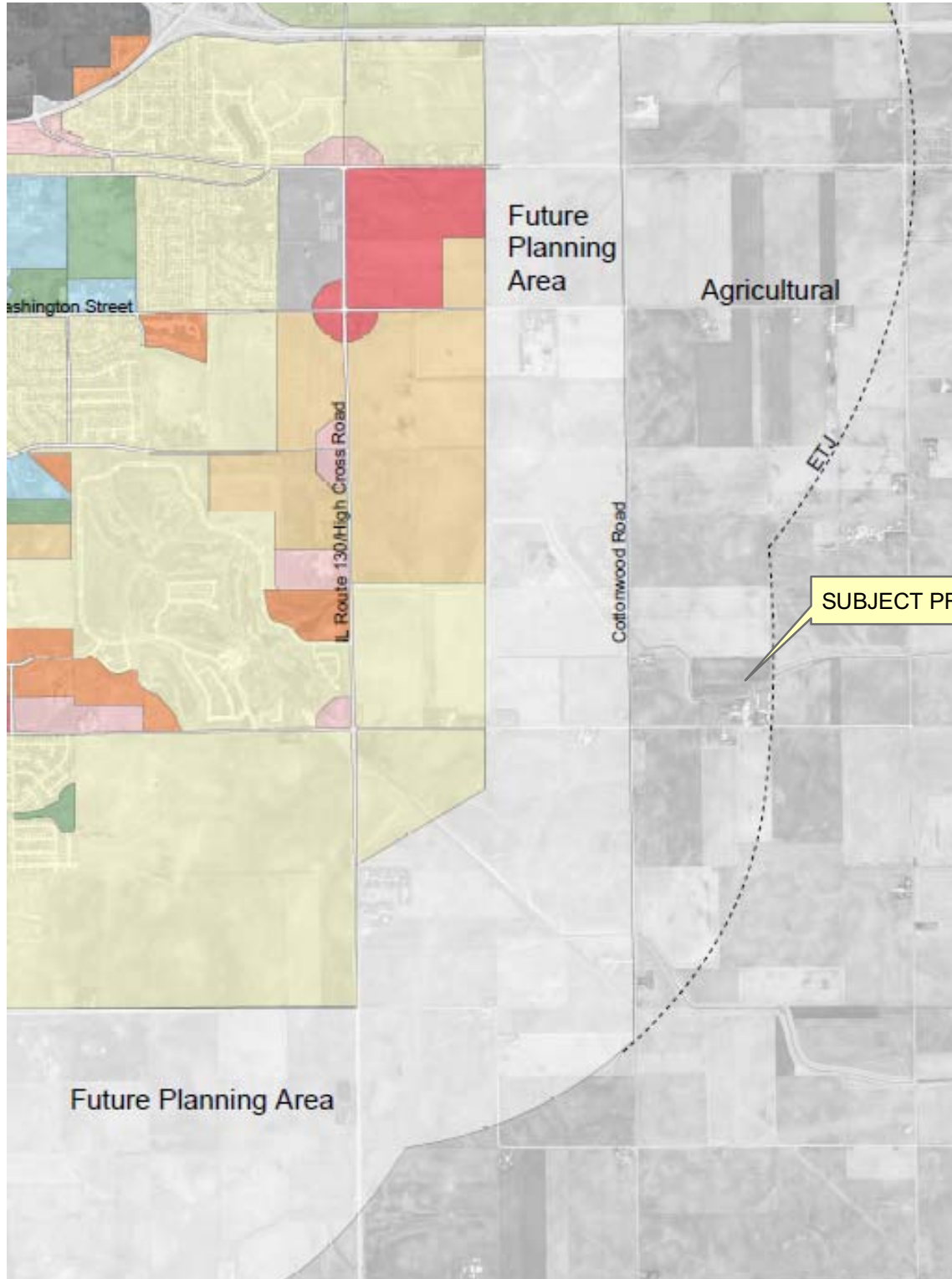
-  AG-1
-  AG-2

EXHIBIT C: Urbana Comprehensive Land Use Map



Plan Case: CCZBA No. 635-AM-08

Petitioner: Country Arbors Nursery, Inc.

Location: 1742 CR 1400N

Description: Amend Champaign County Zoning Map from AG-1, Agriculture to AG-2, Agriculture

CASE NO. 635-AM-08

PRELIMINARY MEMORANDUM

January 9, 2009

Champaign
County
Department of



Petitioners: **Country Arbors, Inc.; P. Terence Cultra, President, and T. Shane Cultra, Vice President**

Request: **Amend the Zoning Map to change the zoning district designation from the AG-1 Agriculture Zoning District to the AG-2 Agriculture Zoning District.**

Site Area: **41.5 acres**

Location: **An approximately 42 acre tract that is approximately the Southeast Quarter of the Southwest Quarter of Section 24 of Urbana Township and commonly known as Country Arbors Nursery, 1742 CR 1400N, Urbana.**

Brookings
Administrative Center
1776 E. Washington Street
Urbana, Illinois 61802

Time Schedule for Development:
Immediate

Prepared by: **J.R. Knight**
Associate Planner
John Hall
Zoning Administrator

(217) 384-3708
FAX (217) 328-2426

BACKGROUND

In 1987, Co-petitioner P. Terence Cultra became co-owner, along with his brother, of Wandell Nurseries, a non-conforming use that pre-dated the adoption of the *Zoning Ordinance* on October 10, 1973. They renamed the business Country Arbors Nursery.

Staff and the owners of the subject property first discussed the property on September 20, 1988, and staff indicated that the use as it existed at that time could continue to be operated as a legally non-conforming use provided that no expansion took place. Staff also indicated that to properly authorize the existing business it should be rezoned to AG-2 and a Special Use Permit (SUP) for operating a "Garden Shop" be obtained.

Applications to rezone the entire subject property from AG-1 to AG-2 and for a SUP as a "Garden Shop" were submitted on September 23, 2008.

EXISTING LAND USE AND ZONING

Table 1 summarizes the land use and zoning on the subject property and adjacent to it.

Table 1. Land Use and Zoning In The Vicinity Of The Subject Property

Direction	Land Use	Zoning
Onsite	Country Arbors Nursery, Inc.	AG-1 Agriculture
North	Farmland	AG-1 Agriculture
East	Farmland	AG-1 Agriculture
West	Farmstead	AG-1 Agriculture
South	Farmland	AG-1 Agriculture

CONSIDERATIONS IN MAP AMENDMENTS

In addition to the relevant goals and policies, the following concerns are also standard considerations in any rural map amendment.

- **Street Access**
- **Traffic Conditions**
- **Natural Resource Report**
- **Flood Prone Area Designation**
- **Drainage Conditions**
- **Availability of Water and Sanitary Sewer**
- **Fire Protection**
- **Area, Height, & Placement Regulations**

POLICIES & GOALS WITHOUT CLEAR CONFORMANCE

The Draft Finding of Fact includes staff recommendation regarding the degree of conformance or achievement of certain policies and goals when the conformance or achievement is very clear. At this time, there are no goals and policies that do not have clear conformance.

ATTACHMENTS

A Case Maps for Cases 635-AM-08 and 636-S-08 (Location, Land Use, Zoning)

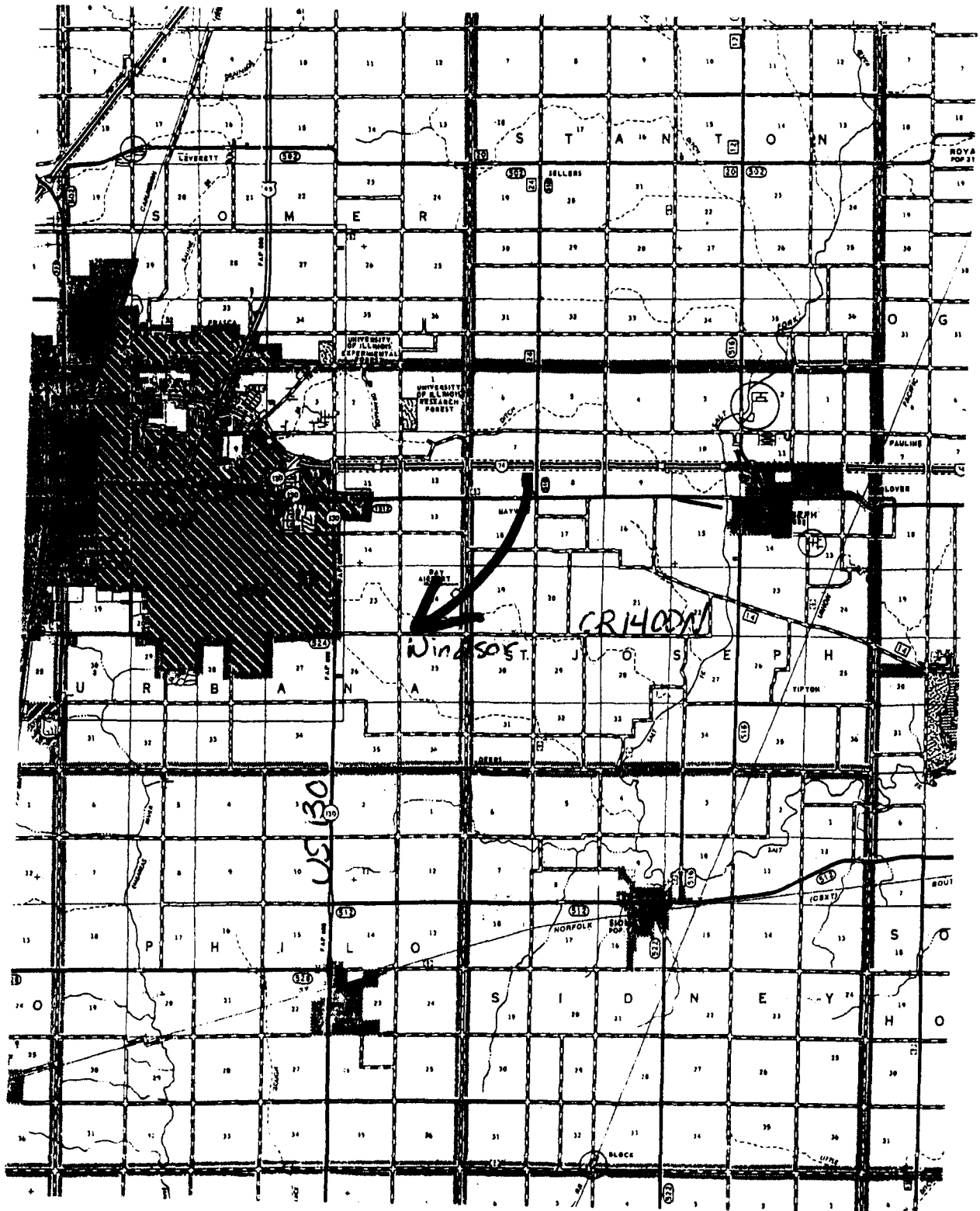
B Preliminary Finding of Fact for Case 635-AM-08

(Also see the Preliminary Memorandum for Case 636-S-08 for other attachments)

ATTACHMENT A. LOCATION MAP

Cases 635-AM-08 and 636-S-08

JANUARY 9, 2009



Champaign
County
Department of

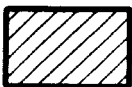
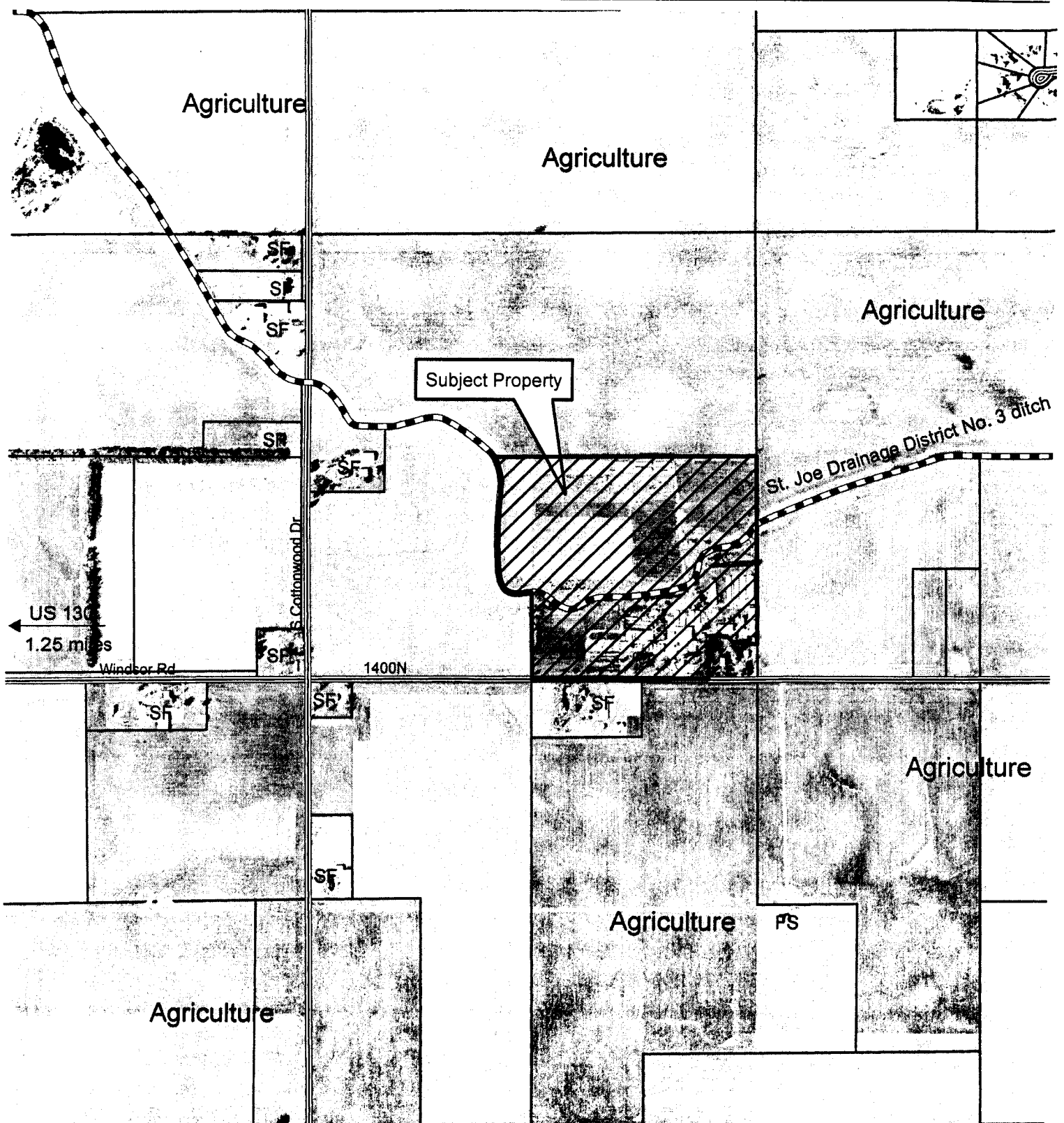
PLANNING &
ZONING



ATTACHMENT A. LAND USE MAP

Cases 635-AM-08 and 636-S-08

JANUARY 9, 2009



Area of Concern



Single Family



Farmstead



NORTH

1 inch equals 800 feet

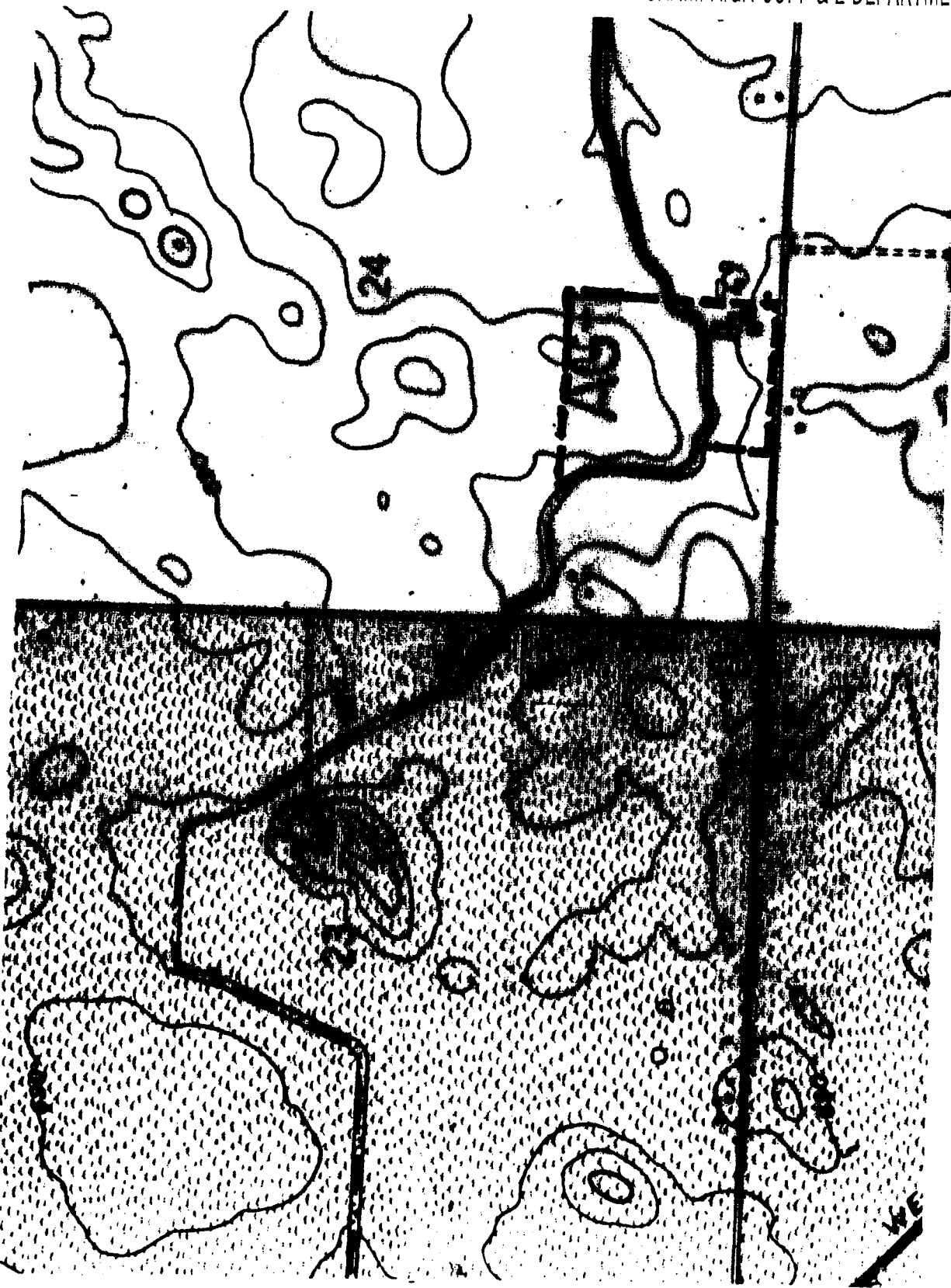
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RECEIVED

SEP 23 2008

ZONING

CHAMPAIGN CO. P & Z DEPARTMENT



KEY

	AG-1 Agriculture		R-1 Single Family Residence		B-2 Neighborhood Business		B-5 Central Business
	AG-2 Agriculture		R-2 Single Family Residence		B-3 Highway Business		I-1 Light Industry
	CR Conservation-Recreation		R-3 Two-family Residence		B-4 General Business		I-2 Heavy Industry
	Area of Concern		R-4 Multiple Family Res.		B-1 Rural Trade Center		
			R-5 Mobile Home Park				

Champaign County
Department of
PLANNING & ZONING
1303 N. Cunningham Avenue
Urbana, Illinois
61801
Telephone: (217) 384-3708
FAX (217) 328-2426

SCALE 1" = 500'
0 100' 200'

24

AVG

1400'

PRELIMINARY DRAFT

635-AM-08

**FINDING OF FACT
AND FINAL DETERMINATION
of
Champaign County Zoning Board of Appeals**

Final Determination: ***{ RECOMMEND ENACTMENT / RECOMMEND DENIAL }***

Date: January 9, 2009

Petitioners: Country Arbors Nursery, Inc, P. Terence Cultra, President, and T. Shane Cultra, Vice President

Request: Amend the Zoning Map to change the zoning district designation from the AG-1 Agriculture Zoning District to the AG-2 Agriculture Zoning District

FINDING OF FACT

From the documents of record and the testimony and exhibits received at the public hearing conducted on **January 29, 2009**, the Zoning Board of Appeals of Champaign County finds that:

- *1. The petitioner, Country Arbors, Inc., owns the subject property. Co-petitioner P. Terence Cultra is the President of Country Arbors, Inc. Co-petitioner T. Shane Cultra is the Vice President of Country Arbors, Inc.
2. The subject property is an approximately 42 acre tract that is approximately the Southeast Quarter of the Southwest Quarter of Section 24 of Urbana Township and commonly known as Country Arbors Nursery, 1742 CR 1400N, Urbana. The legal description of the subject property is as follows:

Tract I:

That part of the Southwest Quarter of the Southwest Quarter of Section 24, Township 19 North, Range 9 East of the Third Principal Meridian, in Champaign County, Illinois, lying East of the current center line of the drainage ditch of District No. 3 of St. Joseph Township, Illinois.

Tract II:

The Southeast Quarter of the Southwest Quarter of Section 24, Township 19 North, Range 9 East of the Third Principal Meridian, in Champaign County, Illinois, EXCEPT a tract described as follows:

* Same evidence as in related Zoning Case 636-S-08

PRELIMINARY DRAFT

ITEM 2. CONTINUED

Beginning at an iron pipe survey monument found over a stone survey monument at the Southeast Corner of the Southwest Quarter of Section 24, Township 19 North, Range 9 East of the Third Principal Meridian, in Champaign County, Illinois; thence along the South line of the Southwest Quarter of said Section 24, on an assumed bearing of North 89 Degrees 33 Minutes 58 Seconds West, a distance of 284.79 feet, to an iron pipe survey monument set; thence North 00 degrees 16 Minutes 55 Seconds East, a distance of 83.50 feet, to an iron pipe survey monument set; thence, North 03 Degrees 57 Minutes 27 Seconds West, a distance of 100.02 feet, to an iron pipe survey monument set; thence, North 20 Degrees 23 Minutes 56 Seconds East, a distance of 68.00 feet, to an iron pipe survey monument set; thence, North 63 Degrees 49 Minutes 04 Seconds East, a distance of 15.00 feet, to an iron pipe survey monument set; thence, North 76 Degrees 24 Minutes 17 Seconds East, a distance of 23.01 feet, to an iron pipe survey monument set; thence, South 86 Degrees 00 Minutes 26 Seconds East, a distance of 30.01 feet, to an iron pipe survey monument set; thence, South 80 Degrees 41 Minutes 13 Seconds East, a distance of 23.00 feet, to an iron pipe survey monument set; thence, South 54 Degrees 16 Minutes 47 Seconds East, a distance of 23.00 feet, , to an iron pipe survey monument set; thence, South 37 Degrees 57 Minutes 07 Seconds East, a distance of 23.00 feet, to an iron pipe survey monument set; thence, North 89 Degrees 58 Minutes 56 Seconds East, a distance of 45.01 feet, to an iron pipe survey monument set; thence, South 52 Degrees 34 Minutes 27 Seconds East, a distance of 14.00 feet, to an iron pipe survey monument set; thence, South 87 Degrees 52 Minutes 41 Seconds East, a distance of 90.17 feet, to an iron pipe survey monument set on the East line of the Southeast Quarter of the Southwest Quarter of said Section 24; thence, South 00 Degrees 00 Minutes 48 Seconds East along the East line of the Southeast Quarter of the Southwest Quarter of Section 24, a distance of 211.99 feet, to the Point of Beginning, all situated in Champaign County, Illinois.

→ *3. The subject property is located within the one and one-half mile extraterritorial jurisdiction of the City of Urbana. Municipalities with zoning have protest rights on all rezonings and they are notified of such cases.

4. Regarding comments by petitioners, when asked on the petition what error in the present Ordinance is to be corrected by the proposed change, the petitioners indicated the following:

“A. Wish to build commercial greenhouses – requires AG-2 zoning.

B. Business growth has exceeded AG-1 minor business allowances, now requires AG-2 major business zoning.

C. Interest in building AG-1 residential airport has been dropped.

D. Future expansion will require AG-2 zoning (refer to Master Plan).”

5. Regarding comments by the petitioners when asked on the petition what other circumstances justify the amendment the petitioners indicated the following:

ITEM 5. CONTINUED

“To not build the commercial greenhouses would have a negative impact upon local municipalities, universities, and park districts. See Attachment IV.”

GENERALLY REGARDING LAND USE AND ZONING IN THE IMMEDIATE VICINITY

- *6. Land use and zoning on the subject property and in the vicinity are as follows:
 - A. The subject property is currently zoned AG-1 Agriculture and is in use as Country Arbors Nursery. The subject property is proposed to be rezoned to the AG-2 District in this case, and a portion of the subject property is proposed for a Special Use Permit (SUP) as a “Garden Shop” in related Case 636-S-08.
 - B. Land on all sides of the subject property is zoned AG-1 and is in use as farmland.
 - C. There is a small lot on the southeast corner of the subject property that is zoned AG-1 and is in use as a single family dwelling.

GENERALLY REGARDING THE EXISTING AND PROPOSED ZONING DISTRICTS

- 7. Regarding the existing and proposed zoning districts:
 - A. Regarding the general intent of zoning districts (capitalized words are defined in the Ordinance) as described in Section 5 of the Ordinance:
 - (1) The AG-1 Agriculture DISTRICT is intended to protect the areas of the COUNTY where soil and topographic conditions are best adapted to the pursuit of AGRICULTURAL USES and to prevent the admixture of urban and rural USES which would contribute to the premature termination of AGRICULTURAL pursuits.
 - (2) The AG-2 Agriculture DISTRICT is intended to prevent scattered indiscriminate urban development and to preserve the AGRICULTURAL nature within areas which are predominately vacant and which presently do not demonstrate any significant potential for development. This DISTRICT is intended generally for application to areas within one and one-half miles of existing communities in the COUNTY.
 - B. Regarding the general locations of the existing and proposed zoning districts:
 - (1) The AG-1 District is generally located throughout the county in areas which have not been placed in any other Zoning Districts.
 - (2) The AG-2 District is generally a belt that surrounds the larger municipalities and villages.
 - C. Regarding the different uses that are authorized in the existing and proposed zoning districts by Section 5.2 of the Ordinance:
 - (1) There are 10 types of uses authorized by right in the AG-1 District and there are 12 types of uses authorized by right in the AG-2 District:
 - (a) The following 10 uses are authorized by right in both districts:
 - Single family dwellings;

PRELIMINARY DRAFT

ITEM 7.C.(1)(A) CONTINUED

- Subdivisions of three lots or less;
 - Agriculture;
 - Roadside Stand operated by Farm Operator;
 - Minor Rural Specialty Business;
 - Plant Nursery
 - Christmas Tree Sales Lot;
 - Off-premises sign within 660 feet of interstate highway;
 - Off-premises sign along federal highway except interstate highways; and
 - Temporary Uses
- (b) The following two uses are authorized by right in the AG-2 District but are not authorized by any means in the AG-1 District:
- Country club or golf course; and
 - Commercial breeding facility
- (2) There are 39 types of uses authorized by Special Use Permit (SUP) in the AG-1 District and 73 types of uses authorized by SUP in the AG-2 District:
- (a) The following 39 uses may be authorized by SUP in both districts:
- Hotel with no more than 15 lodging units;
 - Residential Planned Unit Development;
 - Major Rural Specialty Business;
 - Artificial lake of one or more acres;
 - Mineral extraction, quarrying, topsoil removal, and allied activities;
 - Elementary School, Junior High School, or High School;
 - Church, Temple, or church related temporary uses on church property;
 - Municipal or Government Building;
 - Adaptive Reuse of Government buildings for any use permitted by right;
 - Penal or correctional institution;
 - Police station or fire station;
 - Library, museum or gallery;
 - Public park or recreational facility;
 - Sewage disposal plant or lagoon;
 - Private or commercial transmission and receiving tower (including antennas) over 100 feet in height;
 - Radio or Television Station;
 - Electrical Substation;
 - Telephone Exchange;
 - Residential Airport;
 - Restricted Landing Area;
 - Heliport-Restricted Landing Areas
 - Farm Chemicals and Fertilizer Sales;
 - Livestock Sales Facility and Stockyards;
 - Slaughter Houses

ITEM 7.C.(2)(A) CONTINUED

- Grain Storage Elevator and Bins;
- Riding Stable;
- Commercial Fishing Lake;
- Cemetery or Crematory;
- Pet Cemetery;
- Kennel;
- Veterinary Hospital;
- Off-premises sign farther than 660 feet from an interstate highway;
- Contractors Facilities with no outdoor operations or storage;
- Contractor Facilities with outdoor operations and/or storage;
- Small Scale Metal Fabricating Shop;
- Gas Turbine Peaker;
- Wind Turbine (1-3 turbines);
- Sawmills, Planing Mills, and related activities; and
- Pre-Existing Industrial Uses (existing prior to October 10, 1973)

(b) The following 34 uses may be authorized by SUP in the AG-2 District, but are not authorized by any means in the AG-1 District:

- Two-family dwellings (duplexes);
- Home for the aged;
- Nursing Home;
- Travel Trailer Camp;
- Commercial Greenhouse;
- Greenhouse (not exceeding 1,000 square feet);
- Garden Shop;
- Water Treatment Plant;
- Public Fairgrounds;
- Motor Bus Station;
- Truck Terminal;
- Railroad Yards and Freight Terminals;
- Airport;
- Heliport/Helistop;
- Mortuary or Funeral Home;
- Roadside Produce Sales Stand;
- Feed and Grain (sales only);
- Artist Studio;
- Antique Sales and Service;
- Amusement Park;
- Resort or Organized Camp;
- Bait Sales;
- Country club Clubhouse;
- Lodge or private club;
- Outdoor commercial recreational enterprise;

PRELIMINARY DRAFT

ITEM 7.C.(2)(B) CONTINUED

- Private indoor recreational development;
- Public Camp or picnic area;
- Seasonal hunting or fishing lodge;
- Stadium or coliseum;
- Outdoor Theater;
- Aviation sales, service, or storage;
- Self-storage Warehouses, not providing heat and utilities to individual units;
- Landscape Waste Processing Facility; and
- Wood Fabricating Shop and Related Activities

GENERALLY REGARDING WHETHER THE SUBJECT PROPERTY IS WITHIN A MUNICIPAL ETJ AREA

9. Regarding any relevant municipal or township jurisdiction:
 - A. Amendments to the Champaign County Zoning Map can be protested by any zoned municipality within one-and-one-half miles of the subject property and/or the township in which the subject property is located if it has a township plan commission. In the event of either a municipal or township protest, a three-fourths majority of the County Board will be required to grant the rezoning request instead of a simple majority.
 - B. The subject property is located within the mile-and-a-half extraterritorial planning jurisdiction of the City of Urbana, which has a comprehensive Plan. The City has received notice of this request, and no comments have been received at this time.

REGARDING CHAMPAIGN COUNTY LAND USE GOALS AND POLICIES

10. The Land Use Goals and Policies were adopted on November 29, 1977, and were the only guidance for County Map Amendments until the Land Use Regulatory Policies-Rural Districts (LURP's) were adopted on November 20, 2001, as part of the Rural Districts Phase of the Comprehensive Zoning Review (CZR). The LURP's were amended September 22, 2005, but the amendment contradicts the current Zoning Ordinance and cannot be used in concert with the current Zoning Ordinance. The LURP's adopted on November 20, 2001, remain the relevant LURP's for discretionary approvals (such as map amendments) under the current Zoning Ordinance. The relationship of the Land Use Goals and Policies to the relevant LURP's is as follows:
 - A. Land Use Regulatory Policy 0.1.1 gives the Land Use Regulatory Policies dominance over the earlier Land Use Goals and Policies.
 - B. The Land Use Goals and Policies cannot be directly compared to the Land Use Regulatory Policies because the two sets of policies are so different. Some of the Land Use Regulatory Policies relate to specific types of land uses and relate to a particular chapter in the land use goals and policies and some of the Land Use Regulatory Policies relate to overall considerations and are similar to general land use goals and policies.

GENERALLY REGARDING POLICIES FOR AGRICULTURAL LAND USE

11. There are six policies related to agricultural land uses in the Land Use Goals and Policies. The agricultural land use policies are relevant because the property is proposed to be changed from the AG-1 District to the AG-2 District. The following agricultural land use policies do not appear to be relevant to any specific map amendment:
 - A. Policy 1.1 of the Land Use Goals and Policies states that the Environmental and Land Use Committee will study the possibility of creating several agricultural districts which would provide one or more districts for agricultural uses, only, while other districts would permit limited non-agricultural uses.
 - B. Policy 1.3 of the Land Use Goals and Policies states that the Environment and Land Use Committee and the Board of Appeals will work towards applying the concepts of development rights transfer, planned unit development, cluster development and special use permits to insure, when and where necessary, that development of non-agricultural uses is compatible to adjacent agricultural activities.
 - C. Policy 1.4 of the Land Use Goals and Policies states that the Environment and Land Use Committee will examine the zoning classification of lands on the urban periphery for the possibility of rezoning lands from district classifications which encourage productive farming.
 - D. Policy 1.5 of the Land Use Goals and Policies states that the Environment and Land Use Committee and the County Board will encourage the development of tax assessment policies which will discourage the unnecessary conversion of agricultural land to non-agricultural uses.
 - E. Policy 1.6 of the Land Use Goals and Policies states that the Environment and Land Use Committee and the County Board will initiate a coordinated effort among local units of government to create uniform standards and procedures to review developments proposed for agricultural areas.
12. Policy 1.2 of the Land Use Goals and Policies states that the Board of Appeals and the County Board will restrict non-agricultural uses to non-agricultural areas or
 - i. those areas served by:
 - adequate utilities
 - transportation facilities, and
 - commercial services or
 - ii. those areas where non-agricultural uses will not be incompatible with existing agricultural uses.
- A. The following policies relate to adequacy of utilities:
 - (1) Policy 7.3 states that the County Board will encourage development only in areas where both sewer and water systems are available. In areas without public sewer and water systems, development may occur only if it is determined that individual septic systems can be installed and maintained in a manner which will not cause contamination of aquifers and groundwater and will not cause health hazards. Requests for development

PRELIMINARY DRAFT

ITEM 12.A.(1) CONTINUED

should demonstrate that wastewater disposal systems, water supply, fire and police protection are adequate to meet the needs of the proposed development.

- (2) Policy 7.3A states that new subdivisions and zoning changes should meet these (7.3 above) standards and will be considered where they are not in conflict with the goals and policies of this Plan.

B. The proposed map amendment **CONFORMS** to Policy 1.2 because of the following:

- (1) The existing business is a mix of agricultural and non-agricultural activities that benefit from proximity to other agricultural uses.
- (2) The adequacy of utilities and transportation facilities for the existing use on the subject property is reviewed in related Zoning Case 636-S-08, and special conditions required to ensure that there is no negative impact on the District have been proposed.

REGARDING GOALS FOR AGRICULTURAL LAND USES IN THE LAND USE GOALS AND POLICIES

13. The agricultural land use goals are relevant because the property is proposed to be changed from the AG-1 District to the AG-2 District. The first agricultural land use goal of the Land Use Goals and Policies is as follows:

Preservation and maintenance of as much agricultural land in food and fiber production as possible, and protection of these lands from encroachment by non-agricultural uses.

- A. Based on the existing use the proposed map amendment **ACHIEVES** this goal because of the following:
 - (1) It will allow an established use that is made up of a mix of agricultural and non-agricultural activities to continue to operate.
 - (2) The AG-2 District is intended for application within one and one-half miles of existing communities in the county, and the subject property is within one and one-half miles of the City of Urbana.
 - (3) The AG-2 District is also intended to prevent scattered indiscriminate urban development.

14. The second agricultural land use goal of the Land Use Goals and Policies is as follows:

Establishment of an agricultural land classification system based on productivity. Improvement of rural drainage systems.

This goal does not appear to be relevant to relevant to any specific map amendment.

REGARDING GENERAL LAND USE POLICIES

- 15. There are two general land use policies in the Land Use Goals and Policies. The second land use policy is not relevant to any specific map amendment.
- 16. The first general land use policy is the following:

The County Board, the Environmental and Land Use Committee and the Zoning Board of Appeals will follow the policies of:

- i. encouraging new development in and near urban and village centers to preserve agricultural land and open space;
- ii. optimizing the use of water, sewer, and public transportation facilities; and reducing the need for extending road improvements and other public services.

Based on the review of the relevant agricultural land use policies and goals, the proposed map amendment **CONFORMS** to this policy because the proposed rezoning is intended to allow an existing use that is made up of a mix of agricultural and non-agricultural activities to continue to operate on the urban periphery.

REGARDING GENERAL LAND USE GOALS

- 17. There are five general land use goals for all land use in the Land Use Goals and Policies. Three of the general land use goals are not relevant to the proposed map amendment for the following reasons:
 - A. The first and fifth general land use goals are not relevant to any specific map amendment.
 - B. The second general land use goal is so generally stated that it is difficult to evaluate the degree of achievement by the proposed map amendment.
- 18. The third general land use goal is as follows:

Land uses appropriately located in terms of:

- i. utilities, public facilities,
- ii. site characteristics, and
- iii. public services.

The proposed map amendment **ACHIEVES** the third general land use goal based on the following:

- A. **CONFORMS** with Policy 1.2 related to utilities, public facilities, and public services (see item 12);
- B. The proposed rezoning **ACHIEVES** in regards to site characteristics based on the following:
 - (1) The AG-2 District is intended to apply to areas within one and one-half miles of existing communities and the subject property is within one and one-half miles of the City of Urbana, but the subject property is not currently zoned in the AG-2 District.

PRELIMINARY DRAFT

ITEM 18.B. CONTINUED

- (2) The subject property is located with the one and one half mile extraterritorial jurisdiction of the City of Urbana and can be located on the Future Land Use Map of the City of Urbana 2005 Comprehensive Plan. The subject property is located in the Future Planning Area which will be considered in a future update to the 2005 plan. It is currently indicated to be used as either Agriculture or no specific land use.

19. The fourth general land use goal is as follows:

Arrangement of land use patterns designed to promote mutual compatibility.

Overall the fourth general land use goal will **BE ACHIEVED** by the proposed map amendment based on conformance with the preceding policies or achievement of the preceding goals.

GENERALLY REGARDING COMPLIANCE WITH THE LAND USE REGULATORY POLICIES—RURAL DISTRICTS

20. The LURP's were originally adopted on November 20, 2001 as part of the Rural Districts Phase of the Comprehensive Zoning Review. The LURP's were amended September 22, 2005, but the amendment contradicts the current Zoning Ordinance and cannot be used in concert with the current Zoning Ordinance. The LURP's adopted on November 20, 2001, remain the relevant LURP's for discretionary approvals (such as map amendments) under the current Zoning Ordinance.
21. Regarding compliance with relevant Land Use Regulatory Policies (LURP's):
 - A. LURP 1.4.1 states that non-agricultural land uses will not be authorized unless they are of a type not negatively affected by agricultural activities or else are located and designed to minimized exposure to any negative effect caused by agricultural activities.

The proposed rezoning **ACHIEVES** this policy because the AG-2 District is intended to allow an existing use that is made up of a mix of agricultural and non-agricultural activities to continue to operate. Compatibility of that use will be determined in related Zoning Case 636-S-08.

- B. LURP 1.4.2 states that non-agricultural land uses will not be authorized if they would interfere with farm operations or would damage or negatively affect the operation of agricultural drainage systems, rural roads or other agriculture-related infrastructure.

The proposed rezoning **ACHIEVES** this policy because the AG-2 District is intended to allow an existing use that is made up of a mix of agricultural and non-agricultural activities to continue to operate. Compatibility of that use will be determined in related Zoning Case 636-S-08.

- C. LURP 1.5.2 states that development that requires discretionary review will not be allowed on best prime farmland unless the site is well suited, overall, for the proposed land use.

The proposed rezoning **ACHIEVES** this policy because the proposed rezoning is for property that is well suited to the proposed use.

ITEM 21. CONTINUED

- D. LURP 1.5.3 states that development that requires discretionary review will not be allowed if the existing infrastructure, together with the improvements proposed, is inadequate to support the proposed development effectively and safely without undue public expense.

The proposed rezoning *ACHIEVES* this policy because the existing infrastructure is adequate to serve the proposed use.

- E. LURP 1.5.4 states that development that requires discretionary review will not be allowed if the available public services are inadequate to support the proposed development effectively and safely without undue public expense.

The proposed rezoning *ACHIEVES* this policy because the existing public services are adequate to serve the proposed use.

- F. LURP's 1.6.1 states that in all rural areas, businesses and other non-residential uses will be allowed if they support agriculture or involve a product or service that is provided better in a rural area than in an urban area.

The proposed rezoning *ACHIEVES* this policy because the existing use is made up of a mix of agricultural and non-agricultural activities that benefit from a rural location.

- G. LURP 1.6.2 states that on the best prime farmland, businesses and other non-residential uses will not be authorized if they take any best prime farmland out of production unless they also serve the surrounding agricultural uses or an important public need; and cannot be located in an urban area or on a less productive site; or the uses are otherwise appropriate in a rural area and the site is very well suited to them.

The proposed rezoning *ACHIEVES* this policy because the proposed use cannot be located in an urban area or on a less productive site; and the proposed use is appropriate in a rural area and the site is very well suited to it.

GENERALLY REGARDING ANALYSIS OF THE LASALLE FACTORS

22. In the case of *LaSalle National Bank of Chicago v. County of Cook* the Illinois Supreme Court reviewed previous cases and identified six factors that should be considered in determining the validity of any proposed rezoning. Those six factors are referred to as the *LaSalle* factors. Two other factors were added in later years from the case of *Sinclair Pipe Line Co. v. Village of Richton Park*. The *Champaign County Zoning Ordinance* does not require that map amendment cases be explicitly reviewed using all of the *LaSalle* factors but it is a reasonable consideration in controversial map amendments and any time that conditional zoning is anticipated. The proposed map amendment compares to the *LaSalle* and *Sinclair* factors as follows:

- A. ***LaSalle* factor: The existing uses and zoning of nearby property.**

(1) This property is surrounded by land principally used for farmland.

PRELIMINARY DRAFT

ITEM 22.A. CONTINUED

- (2) The only residential property that directly abuts the subject property is a single family dwelling at the southeast corner of the subject property. Both the existing use and the residential property are established uses with no apparent history of conflict.
 - (3) The populated area closest to the subject property is the City of Rantoul, approximately one and one quarter-mile away.
 - (4) The nature of the existing uses of nearby properties appears to be compatible with the AG-2, Agriculture Zoning District.
- B. **LaSalle factor: The extent to which property values are diminished by the particular zoning restrictions.**
- (1) It is impossible to establish values without a formal real estate appraisal which has not been requested nor provided and so any discussion of values is necessarily general.
 - (2) In regards to the value of nearby agricultural properties, it is not clear if the requested rezoning would have any effect as this property is mostly farmland as well.
 - (3) In regards to the value of the subject property the proposed rezoning will have some impact on value. The proposed rezoning is intended to allow an existing use to continue to operate and grow at its current location.
- C. **LaSalle factor: The extent to which the destruction of property values of the plaintiff promotes the health, safety, morals, and general welfare of the public.**
- (1) As reviewed above, there is no appraisal available as evidence of value and any discussion of value at this time can only be general in nature.
 - (2) There is no evidence indicating that there will be any destruction of property values.
- D. **LaSalle factor: The relative gain to the public as compared to the hardship imposed on the individual property owner.**
- (1) The proposed rezoning appears to create a mutually beneficial situation for the public and the property owner as the amount of land in the AG-2 District will be increased in an area where it is intended to apply and the property owner can continue to operate and grow their business at their current location.
- E. **LaSalle factor: The suitability of the subject property for the zoned purposes.**
- (1) The subject property has been determined to be suited by the degree of conformance to various policies and the degree of achievement of various goals from the Land Use Goals and Policies and the Land Use Regulatory Policies – Rural Districts (see above).

ITEM 22. CONTINUED

- F. **LaSalle factor: The length of time the property has been vacant as zoned considered in the context of land development in the vicinity of the subject property.**
 - (1) The subject property has not been vacant, as it has been in use as Country Arbors Nursery for the past 22 years.

- G. **Sinclair factor: The need and demand for the use.**
 - (1) The existing business has operated in its current location for the past 22 years.

- H. **Sinclair factor: The extent to which the use conforms to the municipality's comprehensive planning.**
 - (1) The City of Urbana 2005 Comprehensive Plan Future Land Use Map indicates the subject property as part of the Future Planning Area that will be addressed in future updates to the 2005 Comp Plan.

PRELIMINARY DRAFT

DOCUMENTS OF RECORD

1. Application for Rezoning from Country Arbors, Inc. and P. Terence Cultra, with attachments:
 - A Petitioner's Attachment I. Legal Description and Deeds of subject property
 - B Petitioner's Attachment II. Copy of Section 5.2 of *Zoning Ordinance* Table of Authorized Uses
 - C Petitioner's Attachment III. Map of Generalized Zoning in Champaign County
 - D Petitioner's Attachment IV. Proposed Site Plan
 - E Petitioner's Attachment V. Country Arbors Nursery, Inc. 1991 Strategic Plan
 - F Petitioner's Attachment VI. Photographs and Plans of proposed greenhouse structures

2. Preliminary Memorandum for Case 635-AM-08, with attachments
 - A Case Maps for Cases 635-AM-08 and 636-S-08 (Location, Land Use, Zoning)
 - B Preliminary Finding of Fact for Case 635-AM-08(Also see the Preliminary Memorandum for Case 636-S-08 for other attachments)

FINAL DETERMINATION

Pursuant to the authority granted by Section 9.2 of the Champaign County Zoning Ordinance, the Zoning Board of Appeals of Champaign County determines that:

The Map Amendment requested in **Case 635-AM-08** should *{BE ENACTED/NOT BE ENACTED}* by the County Board.

The foregoing is an accurate and complete record of the Findings and Determination of the Zoning Board of Appeals of Champaign County.

SIGNED:

Debra Griest, Chair
Champaign County Zoning Board of Appeals

ATTEST:

Secretary to the Zoning Board of Appeals

Date