



DEPT. OF COMMUNITY DEVELOPMENT SERVICES  
*PLANNING AND ECONOMIC DEVELOPMENT DIVISION*

m e m o r a n d u m

**TO:** Bruce K. Walden, CAO

**FROM:** April D. Getchius, AICP, Director

**DATE:** February 9, 2000

**SUBJECT:** An Ordinance Authorizing The Mayor To Execute An Annexation Agreement With Mercer Turner, As Trustee Of Land Trust No. U-1 Dated January 26, 1999 (Plan Case No. 1735-A-00)

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**Introduction.** The purpose of this ordinance is to approve and annexation agreement with Mercer Turner, as Trustee of Land Trust No. U-1 Dated January 26, 1999 for property located at 1805 North Cunningham Avenue. Since the annexation agreement provides for the property's direct conversion from County B-4 General Commercial to City B-3 General Business, the Agreement may be sent directly to City Council for consideration. Property owners within 250 feet of the subject site have been notified of the Council public hearing scheduled for 7:20 p.m. on February 14, 2000.

**Background.** The property consists of approximately 1.150 acres and had been used as a Shell gas station. The property owner is proposing to construct a new gas station facility on the site and ultimately additional development of stand-alone buildings consistent with the uses allowed in the B-3 zoning district.

The following is a summary of surrounding Comprehensive Plan Designations, land use and zoning:

|                  | Existing Use              | Comprehensive Plan Designation | Current Zoning                                        |
|------------------|---------------------------|--------------------------------|-------------------------------------------------------|
| Subject Property | Gas Station               | Commercial                     | B-4 General Commercial (County)                       |
| East             | Commercial                | Commercial                     | B-4 General Commercial (County); B-3 Highway Business |
| West             | Single Family Residential | Residential                    | R-1 Single Family Residence                           |
| North            | Commercial                | Commercial                     | B-3 General Business                                  |
| South            | Commercial                | Commercial                     | B-3 General Business                                  |

**Issues and Discussion.** The Annexation Agreement provides for the following:

- *Zoning.* The agreement provides for the direct conversion of the property from County B-4 to City B-3 zoning. This zoning is consistent with the City of Urbana’s Comprehensive Plan Designation.
- *Enterprise Zone.* The agreement requires the City to apply for the extension of the enterprise zone benefits to the site.
- *Site Plan.* The agreement requires that the owner develop the property in substantial conformance to the attached site plan.
- *Multiple buildings on a single lot.* The agreement allows the construction of multiple buildings on a single lot. This provision is generally considered and granted by the Zoning Board of Appeals. Recent changes to the Zoning Ordinance, however, allow the Council to approve this type of land use within the context of an annexation agreement without Zoning Board of Appeals approval.
- *Sanitary Sewer Service.* A private sanitary sewer currently serves the site. Staff will be working with the owners of the sewer and the Urbana Champaign Sanitary District (UCSD) to have that dedicated as a public sewer and the new development would connect new public sewer to it. Language in the agreement provides for this transfer subject to the property owners satisfying the UCSD requirements.
- *Right of Way Vacation.* The property owner is currently working with the Illinois Department of Transportation to acquire “excess” right of way along Cunningham Avenue and in front of the subject property. The agreement states that any use of the right of way must be in compliance with the City of Urbana zoning regulations.

**Fiscal Implications.** The annexation agreement does not create any unusual costs to the city and will provide new sales tax generation.

**Options.** The City Council Committee has the following options in this case:

- a. The Committee may forward the annexation agreement to the City Council for approval as submitted.
- b. The Committee may forward the agreement to the City Council for approval with changes. Please note that any changes the Committee suggests would need to be discussed with the property owner.
- c. The Committee may forward the annexation agreement to the City Council for denial.

**Recommendation.** Staff recommends that the Committee forward this agreement to the City Council for approval. The proposed agreement complies with the City of Urbana Comprehensive Plan designation of the property as commercial. In addition, new development along Cunningham Avenue will improve its appearance as a gateway into the City as older development is replaced.

The actual annexation of this property will be included for action on the February 21, 2000 Council agenda.

If you have any questions, please feel free to call me at 384-2439 or email me at [adgetchius@city.urbana.il.us](mailto:adgetchius@city.urbana.il.us).

c: Mercer Turner, Attorney  
Reed Berger, Economic Development Coordinator

**ORDINANCE NO. 2000-02-013**

**AN ORDINANCE AUTHORIZING THE MAYOR  
TO EXECUTE AN ANNEXATION AGREEMENT WITH MERCER TURNER, AS  
TRUSTEE OF LAND TRUST NO. U-1 DATED JANUARY 26, 1999  
Plan Case No. 1735-A-00**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA,  
ILLINOIS, as follows:**

**Section 1. That the Annexation Agreement between the City of Urbana and Mercer Turner, As Trustee Of Land Trust No. U-1 Dated January 26, 1999, in the form of a copy of said Agreement attached hereto and hereby incorporated by reference, be and the same is hereby authorized and approved.**

**Section 2. That the Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is hereby authorized to attest to said execution of said Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.**

**PASSED by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2000.**

**AYES:**

**NAYS:**

**ABSTAINED:**

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

**APPROVED by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2000.**

\_\_\_\_\_  
**Tod Satterthwaite, Mayor**

ANNEXATION AGREEMENT

**THIS Agreement, made and entered into by and between the City of Urbana, Illinois, (herein after sometimes referred to collectively as the "Corporate Authorities" or the "City") and Mercer Turner, as Trustee of Land Trust No. U-1 dated January 26, 1999 (hereinafter referred to as the "Owner"). The effective date of this Agreement shall be as provided in Article 111, 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, the Owner is the record owner of certain parcels of real estate located at Urbana Township, Illinois, and having permanent index numbers 30-21-04-351-017 and 30-21-04-351-016 the legal description of which real estate is set forth in Exhibit A attached hereto and referenced herein as "the tracts".**

**WHEREAS, the attached site plan, labeled Exhibit B, is a true and accurate representation of the tracts to be annexed to the City of Urbana under the provisions of this agreement.**

**WHEREAS, said Owner finds that in order to best utilize the Owner's property, it is desirous to annex the tracts to the City of Urbana pursuant to, and as provided for in this Annexation Agreement; and**

**WHEREAS, the tracts are currently zoned B-4, General Business in Champaign County and would directly convert to the City of Urbana's B-3, General Business zoning district classification upon annexation under the terms and provisions of the Urbana Zoning Ordinance; and**

**WHEREAS, the parties agree that the tracts shall be best utilized if zoned B-3, General Business in the City of Urbana; and**

**WHEREAS, the Urbana City Council finds annexing said tracts as described herein as B-3, General Business reflect the goals, objectives and policies set forth in the 1982 Urbana Comprehensive Plan, as amended from time to time; and**

**WHEREAS, such annexation will ensure that the City of Urbana will receive real estate taxes and other revenues and will enable the City to continue to enhance its tax base; and**

**WHEREAS, the Owner desires 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 PROMISES SET FORTH HEREIN, THE PARTIES AGREE AS FOLLOWS:

ARTICLE 1. REPRESENTATIONS AND OBLIGATIONS OF THE OWNER

**The Owner agrees to the following provisions:**

**Section 1. Annexation: The Owner represents that it is the sole record Owner of the tracts described in Exhibit A and that the Owner shall, within thirty (30) days of the City Council's approval of this Agreement, cause the tracts to be annexed to the City of Urbana by filing a legally sufficient annexation petition with all required signatures thereon, all in accordance with Illinois Statutes. Until annexation of the subject tracts occurs, Owner 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 tracts. The Owner shall file such written agreement with the City Clerk within thirty (30) days of the signing of such. (The City shall furnish to Owner the appropriate form to satisfy this obligation.)**

**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. If the subject tract is to be platted for subdivision, the Owner agrees that the substance of these provisions regarding annexation shall be included in the subdivision covenants and such will constitute a covenant running with the land. The Owner agrees for itself, successor and assigns, and all other persons intended herein to be obligated to consent to annexation, to cooperate in signing or joining in any petition for annexation for the subject tract and that mandamus would be an appropriate remedy in the event of refusal so to do, and, if the City has to resort to Court proceedings to enforce this obligation, the City shall be entitled to recover reasonable attorney's fees. The Parties agree that nothing in this section shall preclude the voluntary annexation of the subject tract or any portion thereof earlier than would otherwise be required.**

**Section 2. Zoning: The Owner agrees and acknowledges that upon annexation, said tracts will be converted from County B-4 General Commercial to City B-3 General Business. Owner further agrees that said zoning will remain in effect for the term of this Agreement, as it may be amended from time to time. Furthermore, the Owner agrees to abide by all applicable development regulations, except as otherwise provided herein.**

**Section 3. Amendments Required: 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 tracts, 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 tracts without a written amendment to this Agreement.**

**Section 4. Code Compliance: The Owner agrees to cause all new development, construction, or additions on said tracts to be in conformance with all City of Urbana building, electrical, fire, and plumbing codes, orders or regulations in effect at the time of annexation except as otherwise provided for herein. The Owner agrees to submit all building construction plans to the City of Urbana for review and further agrees to pay the building permit and associated fees.**

**Section 5. Disconnection: The Owner agrees and hereby stipulates that the Owner shall not take any action to disconnect the tracts from the City once it is annexed.**

#### **ARTICLE 11. REPRESENTATIONS AND OBLIGATIONS OF THE CORPORATE AUTHORITIES**

**The Corporate Authorities agree to the following provisions:**

**Section 1. Annexation: The Corporate Authorities agree to annex said tracts 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 tracts to the City.**

**Section 2. Zoning: The Corporate Authorities agree that the tracts will be zoned City B-3 General Business as defined in the City of Urbana Ordinance as such exists at the time of annexation of tracts. The Corporate Authorities agree that all applicable development regulations will apply to said tracts, except as otherwise provided herein. Furthermore, the Corporate Authorities agree not to rezone the property during the term of this Agreement without a rezoning petition executed by the property Owner requesting said change.**

**Section 3. Enterprise Zone: Upon annexation, the City agrees to immediately apply to the State of Illinois to cause the tracts to be included in the Urbana Enterprise Zone and agrees to assist the Owner in obtaining all benefits to which the Owner and/or the tracts are entitled and eligible to receive under the Urbana Enterprise Zone Program and the State of Illinois Enterprise Zone Act.**

**Section 5. Right-of-Way Vacation: The City agrees that once the Illinois Department of Transportation has conveyed the triangular parcel on the East side of the premises to the Owner, that the Owner may use said triangular parcel for any lawful purpose allowed in the B-3 General Business Zoning classification. Prior to the Illinois Department of Transportation conveying said premises to the Owner, the City will not interfere with the**

**Owner's use and enjoyment of said triangular parcel, provided that said use and enjoyment is not inconsistent with the B-3 General Business Zoning classification.**

**Section 6. Development: Except where the Illinois Department of Transportation regulates driveway access, the City will allow the Owner upon annexation to develop said tracts to be developed generally in conformity with the Proposed Site Plan which is attached hereto and made a part hereof as Exhibit C, provided said site plan complies with all other development regulations for the B-3 General Business zoning district. The City acknowledges said site plan includes multiple principal buildings on a single lot and approves said multiple principal buildings on a single lot without further approval of the Zoning Board of Appeals.**

**Section 7. Sanitary Sewer. The Corporate Authorities agree to accept the dedication of a collector sanitary sewer to serve the tracts subject to the Urbana Champaign Sanitary District's acceptance of an adjoining private sewer. If however, the UCSD dedication does not occur by the time the Owner is prepared to begin construction, the Corporate Authorities will allow said construction to connect to a private sewer subject to the City and UCSD's receipt of a letter from the property owner agreeing to maintain the private sewer, said sewer to be legally described or shown on a map. Said letter must be recorded with the land so that any future sale of a parcel would reflect the understanding of maintenance responsibilities. The property owner must also grant an access easement to the City and UCSD, primarily for the ability for UCSD to disconnect said sewer for non-payment.**

### 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 tracts 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 life of this Agreement unless specific terms are expressly made binding beyond the life of this Agreement. Furthermore, the terms herein are hereby expressly made binding upon all heirs, grantees, lessees, executors, assigns and successors in interest of the Owner as to all or any part of the tracts, and are further expressly made binding upon said city and the duly elected or appointed successors in office of its Corporate Authorities.**

**Section 3. Binding Agreement upon parties: The Corporate Authorities and Owner 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 tracts 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.**

**Section 4. Enforcement: The Owner and Corporate Authorities agree and hereby stipulate that any party to this Agreement may, by civil action, mandamus, action for writ of injunction or other proceeding, enforce and compel performance of this Agreement or declare this Agreement null and void in addition to other remedies available. Upon breach by the Owner, the city may refuse the issuance of any permits or other approvals or authorizations relating to development of the tracts.**

**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 Owner 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.**

**Section 7. Notices: Notices under the terms of this Agreement shall be considered given when deposited in the U.S. Mail, postage prepaid, first class certified, or delivered personally to:**

**Owner:  
Land Trust No. U- I  
c/o Jack O. Snyder  
202 North Prospect Road  
Bloomington, Illinois 61704**

**City:  
Mr. Bruce Walden  
City Manager  
400 South Vine Street  
Urbana, Illinois 61801**

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:

\_\_\_\_\_  
**Tod Satterthwaite, Mayor**

\_\_\_\_\_  
**Mercer Turner, as Trustee aforesaid**

\_\_\_\_\_  
**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 Descriptions**

**Exhibit B: Topographical Survey**

**Exhibit C: Proposed Site Plan**