



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

m e m o r a n d u m

TO: Laurel Lunt Prussing, Mayor

FROM: Elizabeth H. Tyler, FAICP, Director, Community Development Services

DATE: January 15, 2009

SUBJECT: Plan Case Nos. 2008-A-02 and 2089-M-08: Annexation agreement and Request to rezone a 0.41-acre tract of property at 1707 East Airport Road from Champaign County AG, Agriculture District to City, R-2, Single-Family Residential Zoning District upon annexation.

Introduction & Background

Carl and Beverly Andres are requesting an annexation agreement for a 0.41-acre parcel located at 1707 East Airport Road. The subject property is located in Urbana Township within unincorporated Champaign County and is approximately 800 feet east of the City boundary. The property is within the City of Urbana's 1.5-mile extraterritorial jurisdiction.

The property contains a single-family home. The property is currently zoned Champaign County AG, Agriculture, and the annexation agreement stipulates that the property will be rezoned to City R-2, Single-Family Residential zoning upon annexation. The proposed rezoning is consistent with the 2005 Urbana Comprehensive Plan.

On January 8, 2009, the Urbana Plan Commission held a public hearing to consider this case and voted 5 to 0 to recommend approval of the annexation agreement with the proposed rezoning. On January 20, 2009, the Urbana City Council will hold a public hearing to consider this case.

Issues and Discussion

Annexation Agreement

Last year the petitioners' septic system failed and they needed an emergency connection to the Urbana-Champaign Sanitary District sewer system. In order for properties in Urbana's extra-territorial jurisdiction to establish a new connection to the UCSD sewer system, the applicant must agree to annex to the City of Urbana. The Urbana City Council passed a motion on July 21, 2008 to

request the UCSD allow the emergency connection prior to the approval of an annexation agreement. The proposed agreement includes a provision to rezone the property to bring it into conformance with the 2005 Urbana Comprehensive Plan.

Proposed Rezoning

The property is currently zoned County AG, Agriculture, and upon annexation, the property would be zoned City R-2, Single-Family Residential. The property contains a single-family residence. The 2005 Comprehensive Plan identifies the area as “residential” which is generally consistent with the proposed rezoning. The property is surrounded to the east and west by other single-family homes which are not within city limits. Across Airport Road to the north is a mini-warehouse facility. Directly to the south of the subject property is a mobile home park.

The La Salle National Bank Criteria

In the case of La Salle National Bank v. County of Cook (the “La Salle” case), the Illinois Supreme Court developed a list of factors that are paramount in evaluating the legal validity of a zoning classification for a particular property. Each of these factors will be discussed as they pertain to a comparison of the existing zoning with that proposed in the annexation agreement.

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

The proposed zoning is consistent with the surrounding properties to the east and west. Additionally, the proposed zoning is generally consistent with the City of Urbana Comprehensive Plan. The surrounding areas are developed as a mixture of single-family and mobile home units. There is a development of single-family homes, zoned R-2, within city limits, approximately 800 feet east of the subject property.

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

A direct conversion from County to City zoning would result in the property being zoned City AG, Agriculture. While single-family homes are allowed in that district, the property is not suited for agriculture use as it is only 0.41 acres in size. The City requires parcels in the AG district to be at least one acre in area. Conversion to City R-2 will allow for continued use as a single-family residence and should not result in any negative impacts on property value.

It should be noted that the Urbana City Planning Division staff are not qualified as professional appraisers and that a professional appraiser has not been consulted regarding the impact on the value of the property. Therefore, any discussion pertaining to property values must be considered speculative and inconclusive.

3. *The extent to which the ordinance promotes the health, safety, morals or general welfare of the public.*

There would no negative impact on the health, safety, morals or general welfare of the public due to the proposed rezoning, as the proposed zoning district is consistent with the development in the surrounding area.

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

The proposed rezoning would ensure that the petitioner's property is developed in a manner consistent with the surrounding area. Zoning the property as such would ensure that the appropriate regulations are applied to the property.

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

The property already contains a single-family home. Any future development would be subject to all the applicable development standards of the Zoning Ordinance.

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 property is not currently vacant.

Summary of Findings

1. The proposed annexation agreement is required by the City's agreement with the Urbana-Champaign Sanitary District to allow for the subject property to obtain sanitary sewer service.
2. The proposed R-2, Single-Family Residential Zoning District would be consistent with the current land use of the subject parcel and surrounding properties.
3. The proposed R-2, Single-Family Residential Zoning District would be generally consistent with the future land use designation of the 2005 Urbana Comprehensive Plan.
4. The proposed rezoning would not be detrimental to the public health, safety or general welfare, and would allow regulatory consistency with the parcels surrounding the subject property.
5. The proposed rezoning appears to meet the LaSalle Case criteria.

Options

In Plan Case 2008-A-02 / 2089-M-08, the City Council may:

- a. Approve the Annexation Agreement.
- b. Approve the Annexation Agreement with modifications if agreed to by the Owner.
- c. Deny the Annexation Agreement.

Recommendation

In Plan Case 2008-A-02 / 2089-M-08 staff concurs with the January 8, 2009 Plan Commission decision, with a vote of five ayes and zero nays, to recommend **APPROVAL** of the proposed annexation agreement as presented.

Prepared By:

Jeff Engstrom, AICP, Planner I

cc: Carl and Beverly Andres, 1707 Airport Rd

John Hall, Champaign County Zoning Administrator

Donald Smith, Urbana Township Supervisor

Attachments: Exhibit A: Location and Existing Land Use Map
Exhibit B: Future Land Use Map
Exhibit C: Draft Annexation Agreement

ORDINANCE NO. 2009-01-003

**AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF AN
ANNEXATION AGREEMENT**

(1707 East Airport Road / Carl and Beverly Andres)

WHEREAS, an Annexation Agreement between the City of Urbana, Illinois and Carl and Beverly Andres has been submitted for the Urbana City Council's consideration, a copy of which is attached; and,

WHEREAS, said agreement governs a tract totaling approximately 18,587 square feet located at 1707 East Airport Road and said tract is legally described as follows:

The West Eighty-nine and Thirty-six Hundredths (89.36) feet of the East Two Hundred Sixty and Thirty-six Hundredths (260.36) feet of the North Two Hundred Eight (208) feet of the Northwest Quarter of the Northeast Quarter of Section Four (4) in Township Nineteen (19) North, Range Nine (9) East of the Third Principal Meridian, all being situated in Champaign County, Illinois. PIN No.: 30-21-04-201-006.

WHEREAS, the City Clerk of Urbana, Illinois, duly published notice on the 5th day of January, 2009 in the News-Gazette, a newspaper of general circulation in the City of Urbana, that a public hearing would be held before the Urbana City Council on the matter of the proposed Annexation Agreement on the 20th day of January, 2009; and

WHEREAS, the City of Urbana, Illinois also mailed notice of the public hearing to each of the Trustees of the Carroll Fire Protection District on the 5th day of January, 2009; and

WHEREAS, on the 20th day of January, 2009, the Urbana City Council held a public hearing on the proposed Annexation Agreement; and

WHEREAS, prior to the aforesaid public hearing held by the Urbana City Council, after due and proper notice, a public hearing was held before the Urbana Plan Commission on the 8th day of January, 2009, to consider the proposed Annexation Agreement and the rezoning from Champaign County AG-2, Agriculture to City R-2, Single-Family Residential District in Plan Case Nos. 2008-A-02 and 2089-M-08; and

WHEREAS, by a vote of five ayes to zero nays, the Urbana Plan Commission voted to forward the proposed Annexation Agreement and rezoning from Champaign County AG-2, Agriculture to City R-2, Single-Family Residential District in Case Nos. 2089-M-08 to the Urbana City Council with a recommendation for approval; and

WHEREAS, The Urbana City Council has determined that the proposed Annexation Agreement is in conformance with the goals and objectives of the City of Urbana's Official Comprehensive Plan; and,

WHEREAS, the Urbana City Council, having duly considered all matters pertaining thereto, finds and determines that the proposed annexation agreement will not negatively impact the City of Urbana and would be in the best interests of the City of Urbana and its citizens;

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

Section 1. The Annexation Agreement between the City of Urbana, Illinois and Carl and Beverly Andres, a copy of which is attached 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 Annexation Agreement, for and on behalf of the City of Urbana, Illinois.

Section 3. The City Clerk is directed to record a certified copy of this Ordinance and the Annexation Agreement herein approved, as amended, with the Recorder of Deeds of Champaign County, Illinois.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called of two-thirds of the members of the Corporate Authorities of the City of Urbana, Illinois, then holding office, at a regular meeting of said Council.

PASSED by the City Council this ____ day of _____, 20__.

AYES:

NAYS:

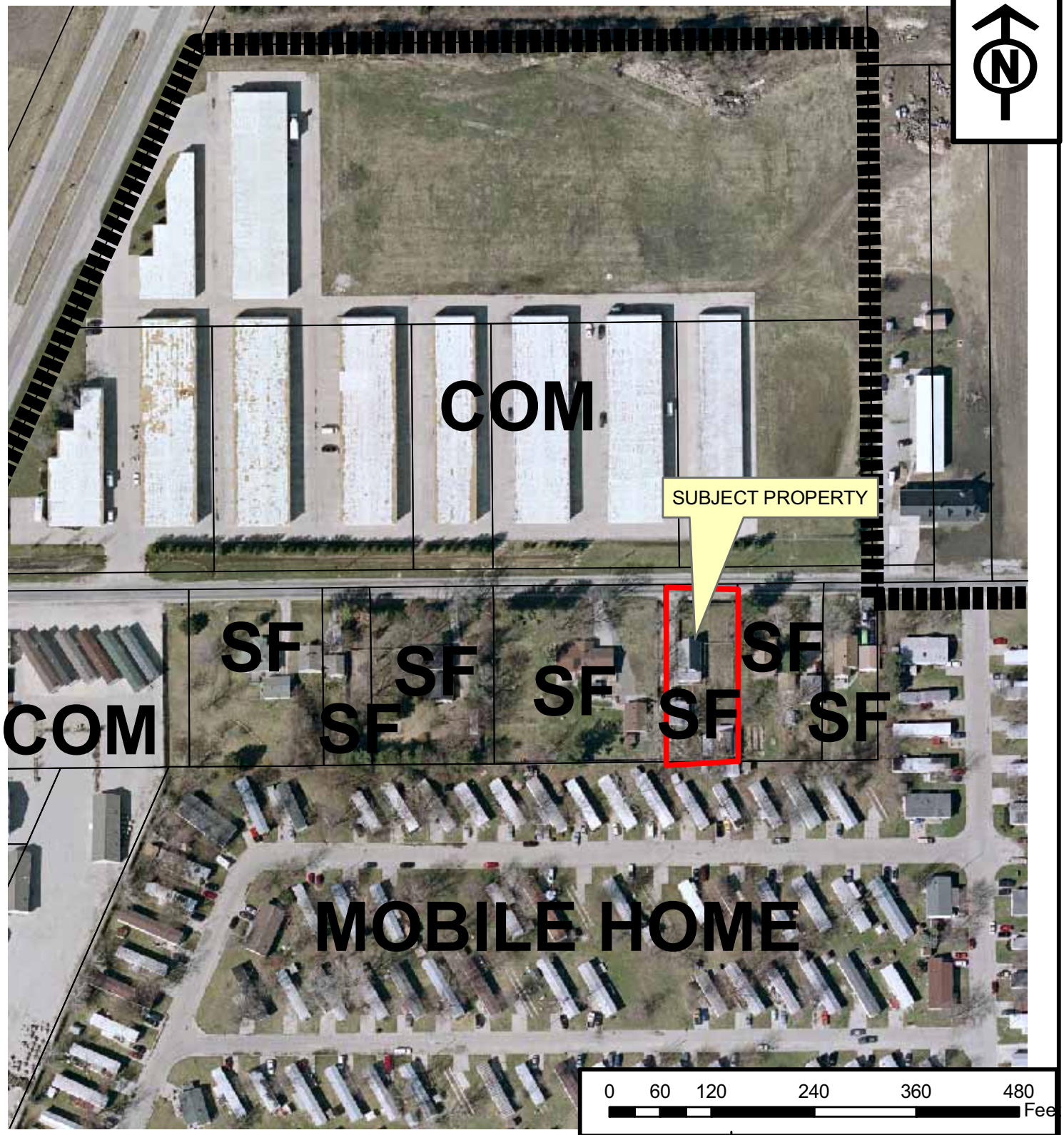
ABSTAINED:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of
_____, 20__.

Laurel Prussing, Mayor

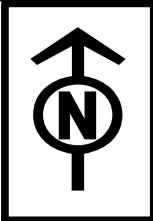
Exhibit A: Location and Existing Land Use Map



Plan Case: 2008-A-02, 2089-M-08
Description: Carl Andres Annexation Agreement
Location: 1707 East Airport Road



Exhibit B: Future Land Use Map



Plan Case: 2008-A-02, 2089-M-08
Description: Carl Andres Annexation Agreement
Location: 1707 East Airport Road

Prepared 07/08 by Community Development Services - jme

Annexation Agreement

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 Carl and Beverly Andres (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, Carl and Beverly Andres are the Owners of record of a certain 0.40 acre parcel of real estate located at 1707 East Airport Road, and having permanent index number(s) 30-21-04-201-006, the legal description of which real estate is set forth in Exhibit A attached hereto and referenced herein as "the tract".

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

WHEREAS, although the tract is not yet contiguous to the City of Urbana, said Owners find that in order to best utilize the Owners' property, it is desirous to annex the tract to the City of Urbana when said tract becomes contiguous to the City, pursuant to, and as provided for in this annexation Agreement; and

WHEREAS, the tract is currently zoned AG- Agricultural in Champaign County and the City and the Owners find it necessary and desirable that the tract be annexed to the City with a zoning classification of R-2, Single-Family Residential, under the terms and provision of the Urbana Zoning Ordinance in effect upon approval of this Agreement, 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, 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 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 OWNER (S)

The Owners agree to the following provisions:

Section 1:

- (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 property becoming contiguous to the Urbana City limits 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, 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 Owner shall file such written agreement with the City Clerk within thirty (30) days of the signing of such
- (b) 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) Owners agree that if 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 owners 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: The Owners accept the City of Urbana zoning classification of R-2, Single-Family Residential, as provided for in Article IV of the Urbana Zoning Ordinance. The Owners agree that, unless changed upon initiative of the Owners the said City zoning classifications for said tract shall remain in effect for the term of this Agreement, subject to the right of the Corporate Authorities to amend the Zoning Ordinance text even if such

amendment affects the tract. The Owners agree to use the tract only in compliance with the Urbana Zoning Ordinance and this agreement as such may be amended from time to time.

Section 3: The Owners agree to cause all new development, construction, or additions on said tract to be in conformance with all City of Urbana building, electrical, fire, and plumbing codes, orders or regulations in effect at the time of annexation. The Owners agree to submit all building construction plans to the City of Urbana for review and further agree to pay the building permit fee just as though the construction were taking place within the Urbana City limits. The Owners further agree to correct any deficiencies identified in said plan review. In addition, the Owners agree that all construction will be subject to the same building and construction inspection requirements as construction projects within the City limits.

Section 4: The Owners agree that any buildings or structures, other than single-family or agricultural structures, existing at the time of annexation must be brought into conformance with the City of Urbana Existing Structures Code in a time frame agreed to by the City of Urbana and the Owners and attached as Exhibit C hereto, except that any immediate health or life safety threats must be brought into compliance immediately.

Section 5: The Owners shall take no action or omit to take action during the term of this Agreement which action or omission, as applied to the tract, would be a breach of this Agreement, without first procuring a written amendment to this Agreement duly executed by both the Owners and the City. Said action includes petitioning for a county rezoning of said tract without a written amendment to this Agreement.

ARTICLE II. REPRESENTATIONS AND OBLIGATIONS OF THE CORPORATE AUTHORITIES

The Corporate Authorities agree to the following provisions:

Section 1: The Corporate Authorities agree to annex said tract subject to the terms and conditions outlined in this Agreement, when properly and effectively requested to do so, by submission of a legally sufficient petition from the Owners, by enacting such ordinances as may be necessary and sufficient to legally and validly annex said tract to the City.

Section 2: The Corporate Authorities agree that the tract will be zoned R-2, Single-Family Residential, in accordance with Article IV, Section IV-5 of the Urbana Zoning Ordinance upon approval of this Agreement and as defined in the City of Urbana Zoning Ordinance as such exists at the time of approval of this Agreement. The Corporate Authorities agree that all applicable development regulations existing at the time of annexation will apply to said tract.

ARTICLE III: GENERAL PROVISIONS

Section 1: Term of this Agreement -- This Agreement shall be binding upon the parties hereto, and their respective successors and assigns, for a full term of twenty (20) years commencing as of the effective date of this Agreement as provided by the Illinois State Statutes, unless other provisions of this Agreement specifically apply a different term. To the extent permitted thereby, it is agreed that, in the event the annexation of subject tract under the terms and conditions of this Agreement is challenged in any court proceeding, the period of time during which such litigation is pending shall not be included in calculating said twenty-year term.

If this Agreement imposes any obligation, restraint, or burden (hereinafter called collectively "obligation") on the Owners, 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 the party not in default may declare this Agreement null and void in addition to other remedies available. Upon breach by the Owners, the City may refuse the issuance of any permits or other approvals or authorizations relating to development of the tract.

Section 5. Severability -- If any provision of this Agreement is rendered invalid for any reason, such invalidation shall not render invalid other provisions of this Agreement which can be given effect even without the invalid provision.

Section 6. Effective Date -- The Corporate Authorities and Owners intend that this Agreement shall be recorded in the Office of the Champaign County Recorder with any

expenses for said recording to be paid by the Corporate Authorities. The effective date of this Agreement shall be the date it is recorded; or if not recorded for any reason, the effective date shall be the date the Mayor signs the agreement on behalf of the City.

IN WITNESS WHEREOF, the Corporate Authorities and Owners have hereunto set their hands and seals, and have caused this instrument to be signed by their duly authorized officials and the corporate seal affixed hereto, all on the day and year written below.

Corporate Authorities
City of Urbana:

Owner:

Laurel Prussing, Mayor

Carl Andres

Beverly Andres

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: Location Map

Exhibit A: Legal Description

The West Eighty-nine and Thirty-six Hundredths (89.36) feet of the East Two Hundred Sixty and Thirty-six Hundredths (260.36) feet of the North Two Hundred Eight (208) feet of the Northwest Quarter of the Northeast Quarter of Section Four (4) in Township Nineteen (19) North, Range Nine (9) East of the Third Principal Meridian, all being situated in Champaign County, Illinois.

Commonly known as 1707 East Airport Road, Urbana, Illinois.

MINUTES OF A REGULAR MEETING

URBANA PLAN COMMISSION

DRAFT

DATE: January 8, 2009
TIME: 7:30 P.M.
PLACE: Urbana City Building
400 South Vine Street
Urbana, IL 61801

MEMBERS PRESENT: Tyler Fitch, Michael Pollock, Bernadine Stake, Marilyn Upah-Bant, Don White

MEMBERS EXCUSED: Jane Burris, Ben Grosser, Lew Hopkins

STAFF PRESENT: Robert Myers, Planning Manager; Rebecca Bird, Planner I; Teri Andel, Planning Secretary

OTHERS PRESENT: Shirley Stillinger, Susan Taylor

NEW PUBLIC HEARINGS

Annexation Case No. 2008-A-02 and Plan Case No. 2089-M-08: A request by Carl and Beverly Andres for an annexation agreement for a 0.41-acre tract located at 1707 East Airport Road, including rezoning from Champaign County AG, Agriculture District, to City R-2, Single-Family Residential Zoning District, upon annexation.

Robert Myers, Planning Manager, presented these two cases together to the Plan Commission. He explained the purpose for the proposed annexation agreement and rezoning, which is due to the failed septic tank that the petitioners experienced last summer. He briefly described the proposed site and the surrounding properties and talked about the proposed rezoning. He presented City staff's recommendation, which was as follows:

In Plan Case 2008-A-02/2089-M-08 staff recommends approval of the proposed annexation agreement as presented in the written staff report.

Ms. Upah-Bant inquired as to why City staff recommends converting the property to R-2, Single-Family Residential, rather than R-1, Single-Family Residential Zoning District. Mr. Myers explained that he believed it was due to the lot size and width. City staff wanted to ensure that the proposed property would conform to the zoning requirements.

Ms. Stake mentioned that the written staff report states the proposed property is “generally” consistent, it “should” not and “should” be and it “appears” to meet the LaSalle National Bank criteria. Why not just say it “is” consistent? “Generally” means what? Mr. Myers replied that it means that the proposed property complies with criteria, but there may be in some small ways that it does not absolutely, positively comply.

Ms. Stake moved that the Plan Commission forward Annexation Case No. 2008-A-02 and Plan Case No. 2089-M-08 to the City Council with a recommendation for approval. Mr. White seconded the motion. Roll call on the motion was as follows:

Mr. Fitch	-	Yes	Mr. Pollock	-	Yes
Ms. Stake	-	Yes	Ms. Upah-Bant	-	Yes
Mr. White	-	Yes			

The motion was passed by unanimous vote.

Mr. Myers noted that these two cases would go before the City Council on January 20, 2009.