



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

m e m o r a n d u m

TO: Mayor Laurel Lunt Prussing

FROM: Elizabeth H. Tyler, Ph.D., FAICP, Community Development Director

DATE: November 26, 2014

SUBJECT: Plan Case No. 2014-A-06: Annexation agreement for a 5.19-acre tract of property north of Perkins Road and east of Cooks Lane.

Plan Case No. 2245-M-14: Request to rezone a 5.19-acre tract of property north of Perkins Road and east of Cooks Lane from Champaign County CR (Conservation Recreation) to City AG (Agriculture) upon annexation.

Introduction & Background

The City of Urbana has received a request from Harold Whitlatch and Teresa Westenhaver to enter into an annexation agreement for a 5.19-acre parcel located north of Perkins Road and east of Cooks Lane and which will be assigned the address “1702 Cooks Lane”. The property is currently vacant; the owners would like to use the property for single-family residential and small-scale agricultural uses, such as growing hay or corn and raising animals such as fowl and rabbits. The proposed agreement would obligate the City to rezone the property from County CR (Conservation-Recreation) to City AG (Agriculture) upon annexation.

The property is not currently contiguous to the City of Urbana, but is within the City’s mile-and-a-half extraterritorial jurisdiction (ETJ) area. The property is also within 200 feet of the nearest sanitary sewer. The Urbana Subdivision and Development Code requires that any development taking place within 200 feet of a public sanitary sewer connect to the sanitary sewer (Sec. 21-41.C.(5)). A new permit would be required to connect to the Urbana & Champaign Sanitary District (UCSD) sanitary sewer. Under an intergovernmental agreement with the UCSD, any property owner outside the corporate limits of Urbana, but within the ETJ, that is required to secure a new connect permit must also agree to annex to the City of Urbana at such time as their property becomes contiguous to the municipal boundary. An annexation agreement is therefore required in this case.

The Urbana Plan Commission held a public hearing on the proposed amendment at their November 20, 2014 meeting. City staff presented the case and answered questions from the Plan Commission regarding the proposed rezoning of the property from County CR to City AG, and the requirements that the applicants connect to the sanitary sewer system and also enter into an

annexation agreement with the City. Following the public hearing, the Plan Commission voted to recommend approval by a vote of 4 ayes and 2 nays. One commissioner stated that they were in favor of the applicant's proposal, but voted "no" because they felt extending sewer into the area would eventually force more people to annex into the City who otherwise would choose to remain outside of the City. The other commissioner who voted "no" felt that allowing agricultural uses adjacent to rural residential uses was not appropriate.

Much of the discussion at the public hearing focused on the lack of clarity in defining agricultural uses in the Zoning Ordinance and on the absence of a "Rural Residential" zoning district in the City. The 2005 City of Urbana Comprehensive Plan identifies most of the area east of Brownfield Road and north of I-74 as "Rural Residential"; however, that designation has not been incorporated into the Zoning Ordinance as a separate district. The Plan Commission directed staff to study how to accommodate "Rural Residential" uses in the future, possibly by amending the Zoning Ordinance to include a Rural Residential Zoning District. They also would like for agricultural uses to be better defined in the ordinance. For example, "commercial breeding facility" is an allowable use in the AG, Agriculture Zoning District, but no definition for "commercial breeding facility" is included in the Zoning Ordinance. That makes it difficult to determine what qualifies as a "commercial breeding facility" and does not distinguish between less-intensive and more-intensive uses. Raising 6 peacocks or 25 rabbits is certainly less-intensive than operating a large-scale hog farm, but the Zoning Ordinance does not treat those uses differently. Staff is planning on incorporating the requested clarifications into an upcoming Zoning Ordinance omnibus text amendment.

Issues and Discussion

Annexation Agreement

Benefits of bringing the subject property into the City include future tax revenues and the ability to ensure code compliance and safety. In addition, the ability to extend sanitary sewer to the property is beneficial to the property owners and the City.

Section IV-5 of the Urbana Zoning Ordinance requires that a public hearing at the Urbana Plan Commission be held if the proposed zoning is not a direct conversion from County zoning to City zoning as stated in Table IV-1. According to Table IV-1, the direct conversion from County CR, Conservation-Recreation, would be to City CRE, Conservation-Recreation-Education. The applicants purchased the property intending to use it primarily for a new single-family residence. However, the Urbana Zoning Ordinance does not allow any residential uses in the CRE district. Therefore, a rezoning is required to allow the applicants to use their property as intended.

The Urbana Plan Commission held a public meeting on November 20, 2014 to discuss the rezoning of the property. Based on the applicants' intended uses of the property, the uses and zoning of surrounding properties, the designation of the property as "rural residential" in the 2005 Urbana Comprehensive Plan, and the application of the "La Salle criteria", it was

determined that the most appropriate zoning for the property would be City AG, Agriculture.

Proposed Rezoning

The property is currently zoned County CR (Conservation-Recreation), and upon annexation would be zoned City AG (Agriculture).

According to the Urbana Zoning Ordinance, the CRE, Conservation-Recreation-Education District

is intended to conserve natural and scenic areas for open space, recreational, and educational purposes, both public and private, and to preserve from unsuitable uses natural surface drainage courses and other areas whose physical characteristics, such as slope or susceptibility to flooding, make many forms of development inappropriate or potentially injurious to the public health or safety. The uses permitted in this district are primarily of low intensity, which would not interfere with natural conditions, and for which such conditions would not pose severe problems; areas developed for more intensive use, which include significant open space, or which provide educational or recreational facilities to the public, are also appropriate in this district.

The AG, Agriculture District

is intended to retain in agricultural and other compatible low intensity uses, areas 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 a lack of urban services and facilities.

The property is currently vacant; historically, it has been used for agriculture and open space. The applicants have submitted plans to build a single-family modular home on the site. They also plan to erect accessory structures, and may raise animals (such as fowl and rabbits) on a small scale and may produce hay or corn on the southern portion of the property. All of these intended uses would be allowed by right in the AG district. While the agricultural uses would be allowed in the CRE district, single-family residential uses would not be permitted. Single-family residences are permitted by right in the AG district.

The annexation agreement would allow the applicants to build a single-family residence plus accessory structures on the property for a combined area of no more than 4,000 square feet. Normally, the combined area of all structures would be limited to 2,700 square feet.¹ The City's limits on the size of accessory structures are designed mainly to prevent excessively-large garages from being built in residential areas within the City limits. Given the large size (5.19 acres) of the property and its rural context, staff feels that imposing the usual size limits on

¹ Section V-2.D.7 of the Urbana Zoning Ordinance limits the size of accessory structures on lots containing single- and two-family dwellings to 50%, or 1,000 square feet (whichever is smaller) of the footprint of the dwelling. The footprint of the dwelling in this case will be 1,800 square feet; accessory structures would therefore be limited to 900 square feet.

accessory structures in this case would be unduly restrictive. The applicants and City staff believe that 4,000 square feet is a reasonable restriction in this case.

Adjacent Land Uses and Zoning Designations

The property fronts on both Cooks Lane and Perkins Road. Cooks Lane is occupied primarily by residential uses near the subject site. The Perkins Road corridor is occupied mainly by residential and agricultural uses.

The following summarizes zoning and land uses for the subject site and surrounding property:

Location	Zoning	Existing Land Use	Comprehensive Plan Future Land Use
Site	County CR (Conservation-Recreation)	Vacant	Rural Residential
North	County CR (Conservation-Recreation)	Residential	Rural Residential
South	County CR (Conservation-Recreation)	Vacant	Rural Residential
East	County CR (Conservation-Recreation)	Agricultural	Rural Residential
West	County CR (Conservation-Recreation)	Institutional (Township Building)	Rural Residential

Comprehensive Plan

The subject site is designated “Rural Residential” in the 2005 City of Urbana Comprehensive Plan. The Comprehensive Plan defines “rural residential” as follows:

“The Rural Residential designation is intended primarily for single-family residential development in areas with unique natural features. Commonly located in areas beyond the corporate limits that may be served by septic systems. Lots are typically larger than in conventional subdivisions, although clustering of lots may be appropriate in order to protect natural amenities. Champaign County has zoning jurisdiction outside city limits.”

The La Salle National Bank Criteria

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

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

This factor relates to the degree to which the existing and proposed zoning districts are compatible with existing land uses and land use regulations in the immediate area.

The proposed AG, Agriculture zoning is consistent with the planned development of the property (a single-family home plus agricultural uses) and with the existing land uses and zoning of nearby properties. All surrounding properties are zoned County CR, Conservation-Recreation, which allows for the uses proposed by the applicant. In addition, the surrounding land uses are residential and agricultural, which are consistent with the proposed uses. The proposed AG, Agriculture zoning is the only City zoning that would allow all of the proposed uses.

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

This is the difference in the value of the property as CRE, Conservation-Recreation-Education and the value it would have if it were rezoned to AG, Agriculture.

Denying the proposed rezoning would prohibit residential use of the property, which would reduce the property's value. A direct conversion from County to City zoning would result in the subject property being in the CRE zoning district, which would create a zoning inconsistency as the CRE zoning district does not allow residential uses of any kind. The current County CR zoning district allows residential uses; furthermore, the 2005 City of Urbana Comprehensive Plan identifies the area the property is in as "rural residential", implying that residential uses should be allowed on the property. Currently, the City does not have a "rural residential" zoning district, but in terms of uses permitted, a closely-related zoning district to "rural residential" is the AG, Agriculture district. Given these circumstances, to not allow residential use of the site would both limit the value of the property and be inconsistent with the 2005 Comprehensive Plan.

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.*

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

Questions 3 and 4 apply 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 proposed rezoning should not jeopardize the health, safety, morals, or general welfare of the public. The property owners will be required to connect their single-family residence to the City's sanitary sewer system, which could be beneficial to the public, especially if neighboring property-owners choose to connect to the sewer system once it is extended. Should the rezoning be denied, there would be no relative gain to the public.

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 property is located in an area currently zoned County CR, Conservation-Recreation, and is identified as "rural residential" in the 2005 City of Urbana Comprehensive Plan. AG, Agriculture zoning is a City zoning designation which closely reflects current zoning and future land use of the property.

6. *The length of time the property has been vacant as zoned, considered in the context of land development, in the area, in the vicinity of the subject property.*

Another test of the validity of the current zoning district is whether it can be shown that the property has remained vacant for a significant period of time because of restrictions in that zoning district.

The property is currently vacant, but has been used for agriculture in the past. The most appropriate types of development for the property are low-intensity agricultural and residential uses. It is more likely that the property has remained vacant due to the requirement to connect to the sanitary sewer than it is due to the current zoning designation.

Summary of Findings

1. Harold E. Whitlatch and Teresa Westenhaver have requested that the City of Urbana enter into an annexation agreement for a 5.19-acre parcel located north of Perkins Road and east of Cooks Lane, and commonly referred to as 1702 Cooks Lane.
2. The property owners require a new permit to connect to the UCSD sanitary sewer, and as a result, require an annexation agreement with the City of Urbana.
3. The property owners request that the property be rezoned from County CR, Conservation Recreation, to City AG, Agriculture, as part of the annexation agreement.
4. The proposed AG, Agriculture Zoning District would allow for the property owners to use the property for both residential and agricultural uses.

5. The proposed AG, Agriculture Zoning District would be generally compatible with the “rural residential” future land use designation of the 2005 Urbana Comprehensive Plan.
6. The proposed rezoning would not be detrimental to the public health, safety or general welfare.
7. The proposed rezoning appears to generally meet the LaSalle Case criteria.

Options

In Plan Case 2014-A-06 / 2245-M-14, the City Council has the following options:

- a. Approve the proposed annexation agreement, including a zoning designation of AG, Agriculture for the subject property; or
- b. Approve the proposed annexation agreement, including a zoning designation of AG, Agriculture for the subject property, subject to recommended changes (note that the property owner would have to agree to any recommend changes); or
- c. Deny the proposed annexation agreement.

Recommendation

The Urbana Plan Commission on November 20, 2014, by a vote of 4 ayes and 2 nays, recommended **APPROVAL** of the proposed annexation agreement and rezoning as presented. City staff likewise recommends approval.

Prepared by:

Kevin Garcia, AICP
Planner II

cc: Harold Whitlatch and Teresa Westenhaver,

Attachments: Draft Ordinance
Exhibit A: Location & Existing Land Use Map
Exhibit B: Zoning Map
Exhibit C: Future Land Use Map
Exhibit D: Draft Annexation Agreement, including Memorandum of Contract
Exhibit E: Site Plan
Plan Commission Minutes - 11/20/2014 (Draft)

ORDINANCE NO. 2014-12-110

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

(1702 Cooks Lane / Harold E Whitlatch and Teresa Westenhaver)

WHEREAS, an Annexation Agreement between the City of Urbana, Illinois and Harold E Whitlatch and Teresa Westenhaver 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 5.19 acres located east of Cooks Lane and north of Perkins Road, to be assigned the address "1702 Cooks Lane", and said tract is legally described as follows:

**LOT TWO (2) OF WALNUT KNOLL SUBDIVISION OF A PART OF FLESSNER
SUBDIVISION IN CHAMPAIGN COUNTY, ILLINOIS, SITUATED IN CHAMPAIGN
COUNTY, ILLINOIS.**

PIN: 30-21-03-376-009; and

WHEREAS, the City Clerk of Urbana, Illinois, duly published notice on the 5th day of November, 2014 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 1st day of December, 2014; and

WHEREAS, the City of Urbana, Illinois also mailed notice of the public hearing to the Chief and each of the Trustees of the Carroll Fire Protection District on the 10th day of November, 2014; and

WHEREAS, on the 20th day of November, 2014, the Urbana Plan Commission held a public hearing on the proposed rezoning in the Annexation Agreement and voted 4 ayes and 2 nays to forward a recommendation of approval to the Urbana City Council; and

WHEREAS, on the 1st day of December, 2014, the Urbana City Council

held a public hearing on the proposed Annexation Agreement; 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 Harold E Whitlatch and Teresa Westenhaver, 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:

ABSTAINS:

Phyllis D. Clark, City Clerk

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

Laurel Lunt Prussing, Mayor

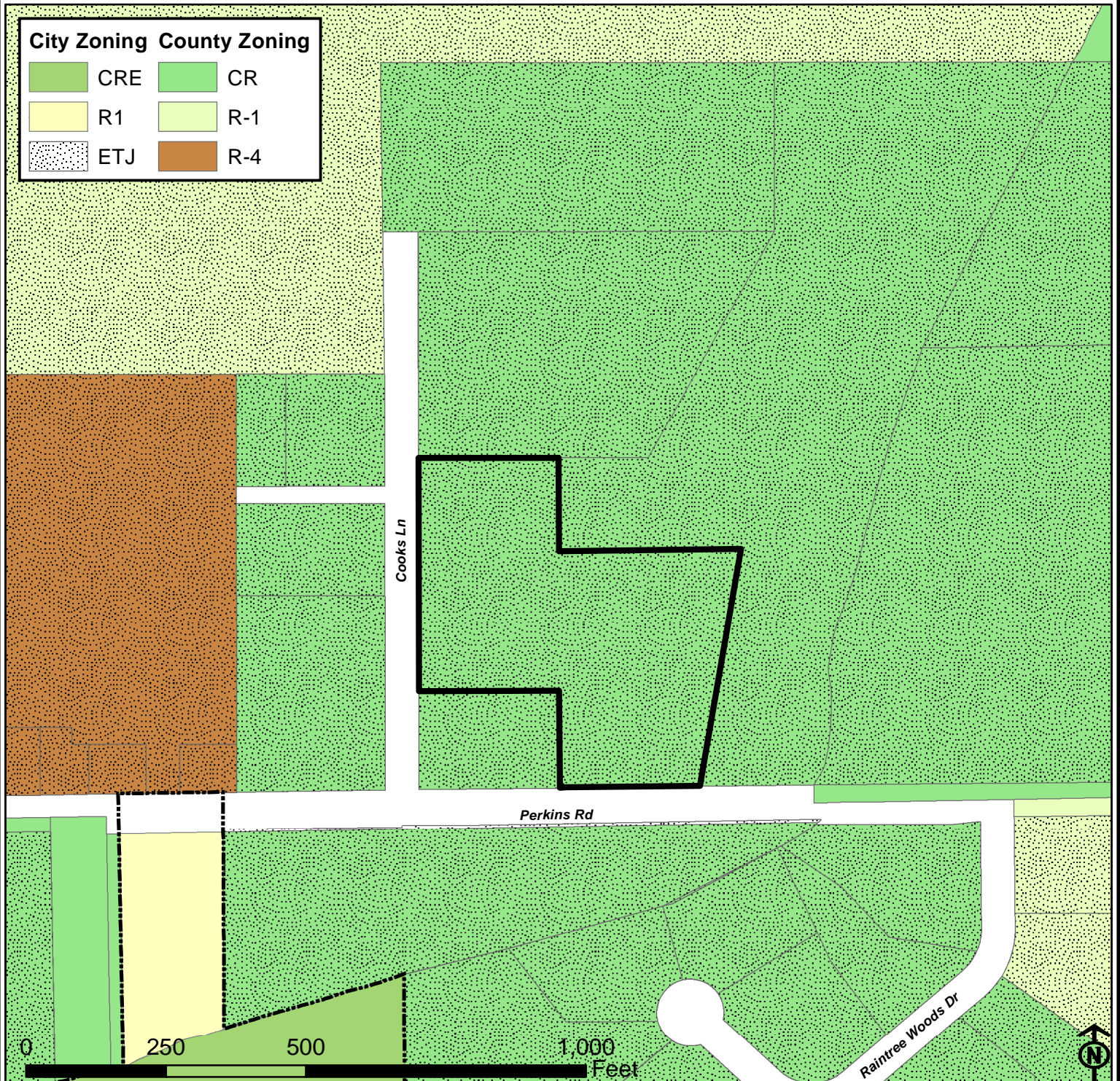
Exhibit A: Location & Existing Land Use Map



Case: 2014-A-06 & 2245-M-14
 Subject: Annexation Agreement & Rezoning
 Location: Cooks Lane and Perkins Road
 Petitioners: Harold E. Whitlatch & Teresa Westenhaver

- Subject Property
- Urbana Corporate Limits
- Sanitary Manhole
- Sanitary Water Main

Exhibit B: Zoning Map



Case: 2014-A-06 & 2245-M-14
 Subject: Annexation Agreement & Rezoning
 Location: Cooks Lane and Perkins Road
 Petitioners: Harold E. Whitlatch & Teresa Westenhaver



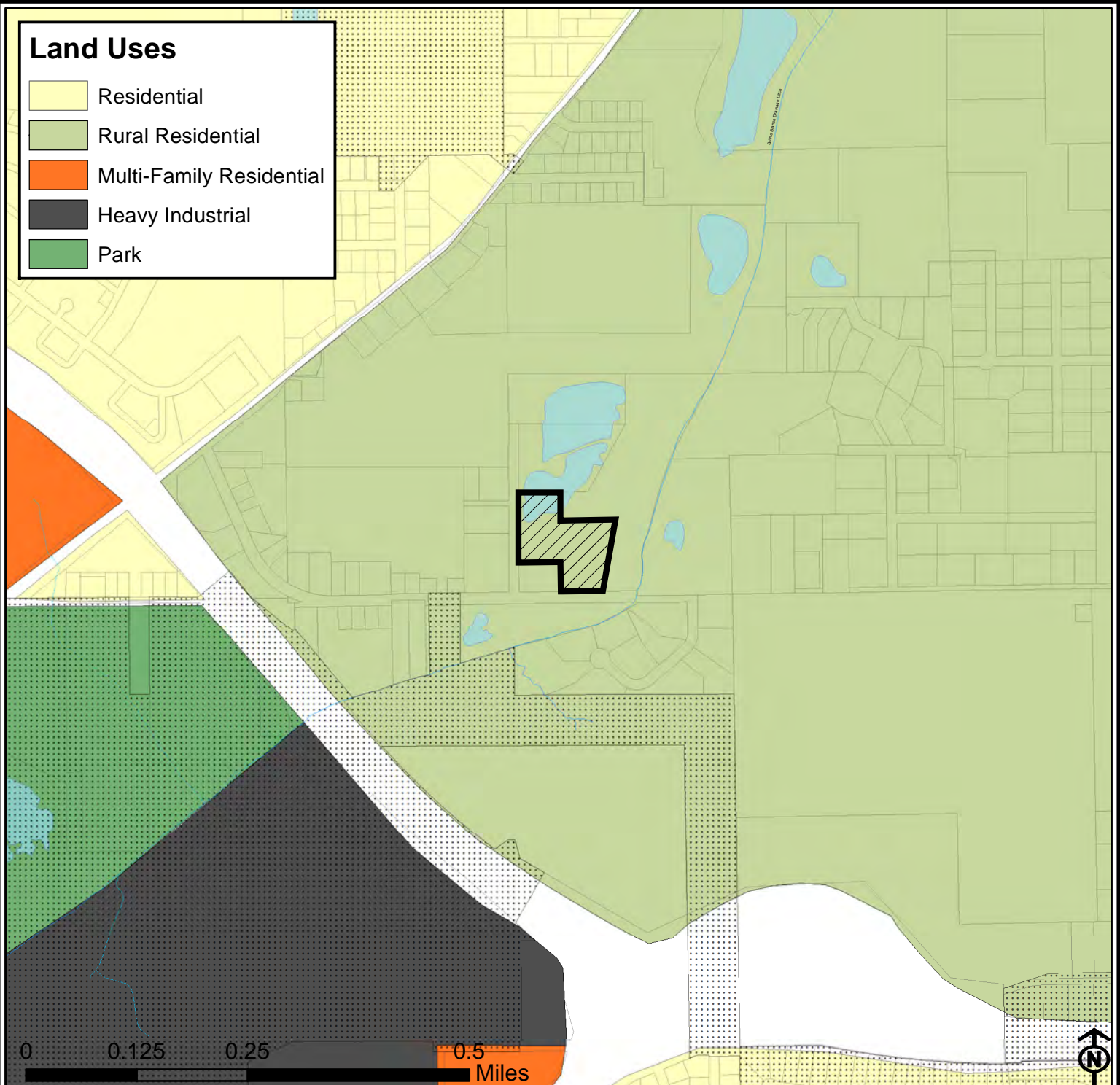
 Subject Property
 Urbana Corporate Limits

Exhibit C: Future Land Use Map



Case: 2014-A-06 & 2245-M-14
 Subject: Annexation Agreement & Rezoning
 Location: Cooks Lane and Perkins Road
 Petitioners: Harold E. Whitlatch & Teresa Westenhaver

Subject Property
 Urbana Corporate Limits

Exhibit D: Draft Annexation Agreement

Annexation Agreement

(Harold E. Whitlatch and Teresa Westenhaver)

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 Harold E. Whitlatch and Teresa Westenhaver (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, Harold E. Whitlatch and Teresa Westenhaver are the Owners of record of a certain 5.19-acre parcel of real estate located at Cooks Lane and Perkins Road, Urbana, Illinois, and having permanent index number 30-21-03-376-009, the legal description of which real estate is set forth in Exhibit A attached hereto and referenced herein as "the tract"; and

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

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

WHEREAS, the tract is currently zoned Champaign County CR, Conservation Recreation Zoning District 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 AG, Agricultural Zoning District, under the terms and provisions of the Urbana Zoning Ordinance in effect upon the date of annexation, 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 as AG, Agricultural Zoning District, generally reflects the goals, objectives and policies set forth in the City's 2005 Urbana Comprehensive Plan; and

WHEREAS, the City's 2005 Comprehensive Plan, as amended from time to time, designates the future land use of the tract as "Rural Residential", the Corporate Authorities find AG, Agricultural Zoning District the most appropriate zoning designation for the intended use; and

WHEREAS, the Owners desire to have the aforementioned real estate annexed to the City of Urbana upon certain terms and conditions hereinafter set forth in this Agreement.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS SET FORTH HEREIN, THE PARTIES AGREE AS FOLLOWS:

ARTICLE I. REPRESENTATIONS AND OBLIGATIONS OF THE OWNERS

The Owners agree to the following provisions:

Section 1. Ownership and Annexation. The Owners represent that the Owners are the sole owners of record of the tract described in Exhibit A, and said Owners agree to annex the tract to the City subject and pursuant to the provisions of this Agreement.

Concurrently with the execution of this Agreement, the Owners shall provide the City with a written petition, signed by the Owners and any electors residing on the tract, requesting annexation of the entire tract to the City in proper form to allow annexation of the entire tract when contiguous pursuant to the Illinois Municipal Code. The Owners shall provide the City with a new petition in accordance with this section within five (5) days of any change in the number or identities of the electors residing on the tract. Along with this Agreement, the owners will execute a Memorandum of Contract concerning this Agreement, attached hereto and labeled Exhibit C. The Memorandum of Contract will be recorded against the property at the expense of the City.

If the parcel has not already been annexed by the City, the Owners agree that the substance of this Section of the Agreement shall be included in any sales contract for the sale of any portion of the tract and that as a condition of any transfer of the whole or any part of the tract, the grantees shall sign at closing and submit to the City a signed petition for annexation within five (5) days of the closing on said transfer and thereafter shall submit a new petition for annexation within five (5) days of any change in the number or identities of the electors residing on the tract. The Owners agree that these requirements shall also be obligations on future owners as to the transfer to any subsequent grantees until the tract or portion thereof is annexed to the City. If the subject tract is to be platted for subdivision, the Owners agree that the substance of these provisions regarding annexation shall be included in the subdivision covenant.

The Owners agree for themselves, their successors 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 and costs of suit from all persons obligated to consent to annexation. The parties further 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. Authority to Annex. The Owners agree and hereby stipulate that the City, by its approval, execution or delivery of this Agreement does not in any way relinquish or waive any authority it may have to annex the tract in the absence of this Agreement.

Section 3. Zoning. The Owners acknowledge that upon annexation, the tract will be rezoned from Champaign County CR, Conservation Recreation Zoning District to City AG,

Agricultural Zoning District. The Owners agree that, unless changed upon the 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. For the term of this Agreement, the Owners shall not petition for a county rezoning of said tract without a written amendment to this Agreement.

Section 4. Land Uses. The Owners agree that for the term of this Agreement the uses of the tract shall be limited to uses permitted in the AG, Agricultural Zoning District as set forth in the Urbana Zoning Ordinance. The Owners shall be allowed to erect a single-family residence, plus accessory structures. The combined area of all structures shall not exceed 4,000 square feet.

Section 5. Building Code Compliance. The Owners agree to cause all new development, construction, remodeling or building additions on said tract to be in conformance with all applicable City codes and regulations including building, zoning and subdivision codes.

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

Section 2. Zoning. The Corporate Authorities agree to annex the tract with a zoning classification of AG, Agricultural.

Section 3. Land Uses. The Corporate Authorities agree to allow the Owners to erect a single-family residence, plus accessory structures. The combined area of all structures shall not exceed 4,000 square feet. In addition, the Corporate Authorities agree to allow the Owners to use the property for any use allowed in the AG Zoning District. Uses may include conducting row or pasture cropping on the site and raising or keeping livestock including, but not limited to, fowl, rabbits, and horses.

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 that either party files suit to enforce the terms of this Agreement, the period of time during which such litigation is pending shall not be included in calculating said twenty-year term. By mutual agreement, the term of this Agreement may be extended.

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 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 no party will take 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 the Owners and the City.

Section 4. Enforcement. The Owners 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 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. Recordation; 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 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.

Owners:

Harold E. Whitlatch

Teresa Westenhaver

State of Illinois)
) ss
County of Champaign)

SUBSCRIBED and SWORN to before me this _____day of _____, 2014.

Notary Public

**Corporate Authorities
City of Urbana:**

Laurel Lunt Prussing
Mayor

Date

ATTEST:

Phyllis D. Clark
City Clerk

Exhibits attached and made a part of this Agreement:

- Exhibit A: Legal Description
- Exhibit B: Location Map
- Exhibit C: Memorandum of Contract

Exhibit A

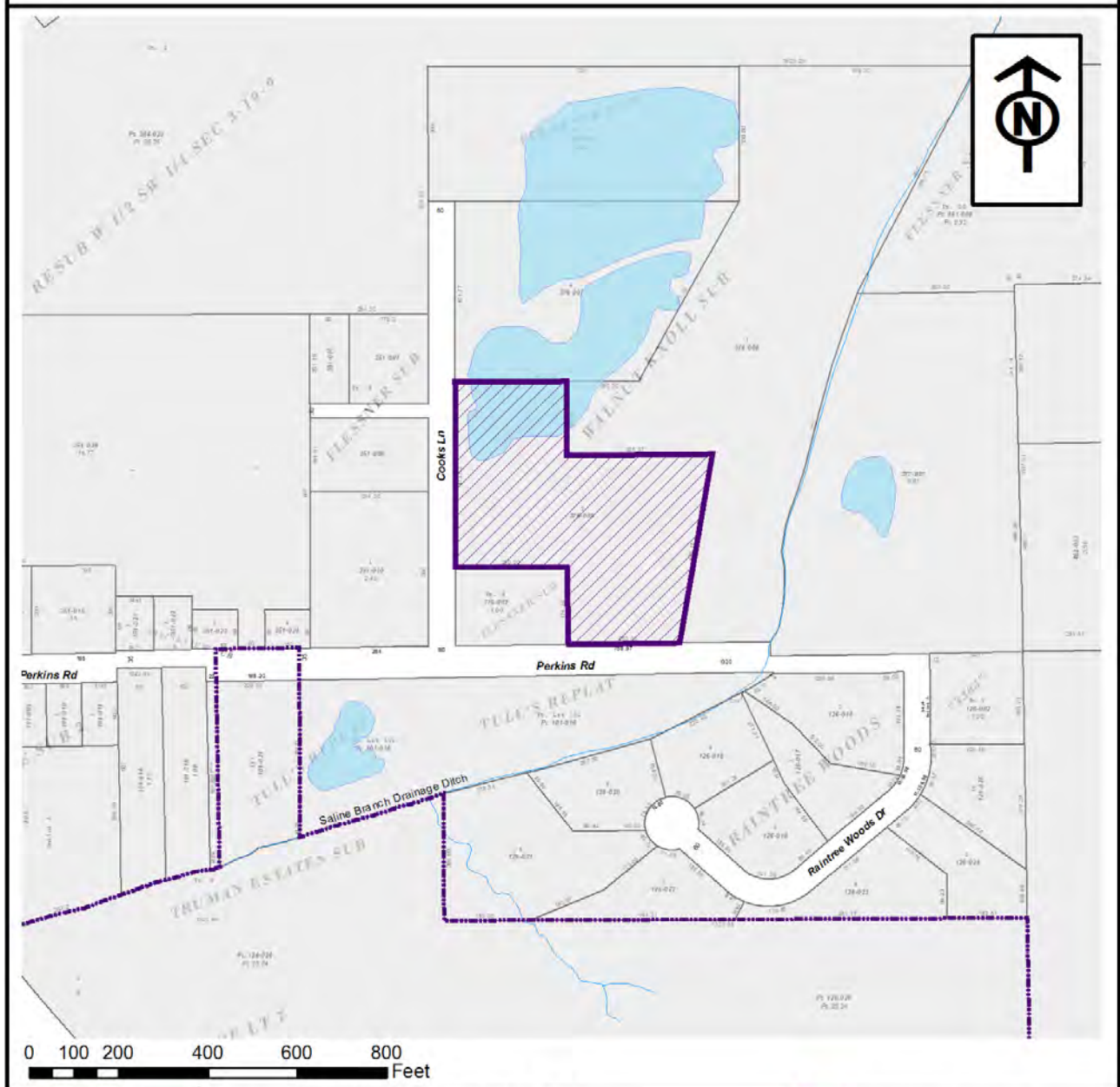
Legal Description

Lot Two (2) of Walnut Knoll Subdivision of a part of Flessner Subdivision in Champaign County, Illinois, situated in Champaign County, Illinois.

Permanent Index No. 30-21-03-376-009

Commonly known as Lot 2 Walnut Knoll Subdivision, Urbana, Illinois 61802

Exhibit B Location Map



Case: 2014-A-06 & 2245-M-14
 Subject: Annexation Agreement & Rezoning
 Location: Cooks Lane and Perkins Road
 Petitioners: Howard E. Whitlatch & Teresa Westenhaver

- Subject Property
- Urbana Corporate Limits

Prepared 10/20/14 by Community Development Services - kjg

MEMORANDUM OF CONTRACT

THIS MEMORANDUM OF CONTRACT is made between Harold E. Whitlatch and Teresa Westenhaver (“Owners”) and the City of Urbana, Illinois (“City”) pertaining to an annexation agreement between them dated [date], recorded on [date] as Document No. [Recorder’s document number], relating to the real property described below:

Lot Two (2) of Walnut Knoll Subdivision of a part of Flessner Subdivision in Champaign County, Illinois, situated in Champaign County, Illinois.

Permanent Index Number: 30-21-03-376-009

Commonly known as Lot 2 Walnut Knoll Subdivision, Urbana, Illinois 61802

Notice is hereby given of a provision in the aforesaid Agreement requiring said real property to be annexed to the City by the terms and conditions set forth in the Agreement and that, upon any transfer of said real property, the grantees shall sign at closing and submit to the City a signed petition for annexation within five (5) days of the closing on said transfer and thereafter shall submit a new petition for annexation within five (5) days of any change in the number or the identities of the electors residing on the property. Further, the terms of this Agreement shall constitute a covenant running with the land for the life of this Agreement unless otherwise provided therein.

IN WITNESS WHEREOF, the parties have executed this Memorandum on

_____.

Owners

Harold E. Whitlatch and Teresa Westenhaver
1565 Hancock Drive
Urbana, Illinois 61802

BY:

Harold E. Whitlatch

Teresa Westenhaver

STATE OF ILLINOIS)
)
COUNTY OF CHAMPAIGN) ss.

I, the undersigned, a notary public in and for the said County, in the State aforesaid do hereby certify that Harold E. Whitlatch and Teresa Westenhaver, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, 2014.

Notary Public

City of Urbana
City of Urbana
400 S. Vine Street
Urbana, IL 61801

BY:

Laurel Lunt Prussing
Mayor

ATTEST:

Phyllis D. Clark
City Clerk

Prepared By And Return To:
City of Urbana Legal Division
400 S. Vine Street
Urbana, IL 61801
Phone: 217-384-2464

Exhibit E: Site Plan



Case: 2014-A-06 & 2245-M-14
Subject: Annexation Agreement & Rezoning
Location: Cooks Lane and Perkins Road
Petitioners: Harold E. Whitlatch & Teresa Westenhaver

 Subject Property

MINUTES OF A REGULAR MEETING

URBANA PLAN COMMISSION

DRAFT

DATE: November 20, 2014

TIME: 7:30 P.M.

PLACE: Urbana City Building
Council Chambers
400 South Vine Street
Urbana, IL 61801

MEMBER PRESENT: Maria Byndom, Andrew Fell, Tyler Fitch, Lew Hopkins, Dannie Otto, Bernadine Stake

MEMBERS EXCUSED: Corey Buttry, David Trail

STAFF PRESENT: Jeff Engstrom, Interim Planning Manager; Kevin Garcia, Planner II; Teri Andel, Planning Administrative Assistant

OTHERS PRESENT: Carol McKusick, Harold & Teresa Whitlatch

NEW PUBLIC HEARINGS

Case No. 2014-A-06: Annexation agreement for a 5.19-acre tract of property north of Perkins Road and east of Cooks Lane

Plan Case No. 2245-M-14: A request by Harold Whitlatch and Teresa Westenhaver to rezone a 5.19-acre tract of property north of Perkins Road and east of Cooks Lane from Champaign County CR (Conservation Recreation) to City AG (Agriculture) upon annexation.

Chair Fitch opened these two cases together since they are related. Kevin Garcia, Planner II, presented these two cases to the Plan Commission. Using Exhibit A, he showed where the subject property is located just outside of City limits but within 200 feet of the nearest sanitary sewer connection, which is at the corner of Perkins Road and Cooks Lane. He talked about the benefits for the City of Urbana and for the petitioners to enter into an annexation agreement.

He explained that part of the proposed annexation agreement is a rezoning of the proposed site from County CR, Conservation Recreation, to City AG (Agriculture). Normally, when a property that is zoned County CR is annexed into the City the zoning converts to CRE, Conservation-Recreation-Education. However, in this case the petitioners plan to build a single-family home on the subject property, which is not allowed in the CRE Zoning District, so the

petitioners are requesting that their property be converted to AG should they ever be required to annex. In addition to building a house on the lot, they would like to raise some peacocks, rabbits, and maybe some other small animals. They also would like to produce some hay or corn on the southern part of the proposed site. All of these uses would be allowed by right in the AG Zoning District.

He noted that the 2005 Comprehensive Plan designates the future land use of the proposed site and surrounding properties as "Rural Residential". Rural residential is intended primarily for single-family residential development in areas with unique natural features and is commonly in areas beyond the corporate limits and on larger lots.

Mr. Garcia reviewed how the La Salle National Bank criteria pertain to the proposed rezoning. He read the options of the Plan Commission and presented City staff's recommendation for approval. He stated that he would answer any questions that the Commission had and pointed out that the petitioners were in the audience to answer questions as well.

Chair Fitch asked the Plan Commission if they had any questions for City staff.

Ms. Stake stated that she did not feel that the AG Zoning District fits well with the residential use. Mr. Garcia replied that the property is five acres, and the petitioners intend to build a single-family house and raise some fowl. The surrounding area is low-density residential with some agricultural uses. It is quite rural in its use as it is. City staff and the petitioners had discussed rezoning the property to R-1 upon annexation, but that would only allow the petitioners to raise animals on a small scale. The Comprehensive Plan calls for "rural residential" uses, and City staff believes that the proposed uses of the applicants would fit into rural residential. The problem is that the City has not created a rural residential zone. So, City staff tried to figure out what existing zoning districts most closely fit with rural residential, and they feel it would be the AG Zoning District. If the Plan Commission wanted to limit the uses allowed on the proposed site, then they could add language to the annexation agreement. Ms. Stake stated that we do not have a definition for "small animals". She felt that "rural residential" is a good idea. She does not want this residential area to be ruined.

Mr. Otto stated that Illinois has a right to farm legislation. He asked if the City's zoning supersedes the State's legislation. The Farm Bureau and other organizations have been concerned that cities not inhibit their right to have confinement agriculture. He asked what the restrictions are on the activities in an urban agriculture zone. Mr. Fitch replied that there is a whole range of uses. Some of the permitted uses include cropping, general agriculture, commercial breeding, farm equipment sales and service, plant nursery or greenhouse, roadside produce sales stand, and elementary or junior high school. He stated that they could talk about the uses more during Plan Commission discussion. Mr. Otto wanted to have the entire list of uses read into the record, so that everyone knows what could occur if the City approves the rezoning request.

Mr. Fell wondered if there were any other island properties that were located out of the City of Urbana that have been annexed. Mr. Garcia explained that the proposed case is for an annexation agreement, which means the property will not be annexed until it becomes

contiguous with the City limits. The agreement is for 20 years, so annexation of the subject property into City limits may never happen.

Mr. Fell asked if we disregard the farming aspect of the application, is there any zoning district that would allow the petitioners to build their house without requiring the annexation agreement. Mr. Garcia explained that any time a property owner applies for a permit from the Champaign-Urbana Sanitary District (UCSD) to hook into the sanitary sewer system and their property is within the extra-territorial jurisdiction (ETJ) area, then they are required to sign an annexation agreement. This is a long-standing agreement between the City of Urbana and UCSD.

Mr. Fell inquired if the petitioners subdivided the lot and moved the location of where they wanted to build their home so that it was not within 200 feet of the existing sewer connection, then would they still be required to connect to the sanitary sewer system. Mr. Garcia stated that the State of Illinois' requirement for connecting to an existing City sewer system is more restrictive than the City's requirement in that the State requires connection if a property is within 300 feet of an existing sewer connection. The City of Urbana needs to amend the Subdivision and Land Development Ordinance to meet the State's statute. He did not believe that the petitioners would be able to subdivide the subject property and build their home outside of the 300 feet. Mr. Engstrom added that the current Subdivision and Land Development Ordinance would require them to extend the sewer to the property line.

Mr. Fell wondered when something ceases to be a garden and becomes a farm. Mr. Garcia replied that the Zoning Ordinance says that the smallest farm is 5 acres. He is not sure how big a garden can be. Mr. Engstrom pointed out that the City would consider the property to be primarily a residential use and all the quasi agricultural uses to be accessories to that. Mr. Fell wondered if it was a big garden, then could it be just the opposite of that. Mr. Engstrom said maybe.

Mr. Otto asked if the property was zoned R-1 and they had a big garden plot and sold some sweetcorn off it, would that be in violation of the R-1 Zoning District. Mr. Garcia stated that the only agricultural uses allowed in the R-1 Zoning District is cropping. The petitioners would like to have some livestock, such as peacocks and a couple of horses. It is the non-cropping uses that make City staff believe the R-1 Zoning District would not be appropriate. He pointed out that the property is currently zone County CR, which would convert directly to City CRE, which would allow all agricultural uses. It is because the petitioners want to build a house on the property that they have to seek a different zoning than CRE.

Mr. Fell wondered if a conditional use permit could be granted to allow the petitioners to build a house in the CRE Zoning District. Mr. Garcia said no. The CRE Zoning District does not allow residential uses at all, and the petitioners' home would be the primary use of the property.

Mr. Fell asked if the sanitary connection was at the corner of Perkins Road and Cooks Lane. Mr. Garcia said yes. Mr. Fell questioned if all the surrounding properties are under annexation agreements then. Mr. Garcia said no. Most of the properties that already have homes on them have been around for a while. The subject property has not had a house on it for a very long time.

Ms. Stake questioned whether there was any other CR zoning in the area. Mr. Garcia replied that the swath going west and northeast are all zoned County CR Zoning District. The problem is that the City's CRE Zoning District does not allow the same thing that the County CR Zoning District allows. In terms of converting to a district that the City currently has, the AG Zoning District is the closest zoning district that matches the uses in the County CR Zoning District. Mr. Engstrom added that the property would remain County CR until it is annexed into the City, if it is ever annexed into the City.

There were no further questions for City staff. Chair Fitch read the procedures for a public hearing. He, then, opened the hearing up for public input.

Harold and Teresa Whitlatch, petitioners, approached the Plan Commission to speak. Ms. Whitlatch stated that they bought the property because they wanted to have a rural property to build a house on and to do some husbandry of peacocks and horses. There is a pond on the property and acreage that has been farmed for hay. They may want to grow hay as well. She noted that there is a big piece of the property along Perkins Road that is not buildable because it has electrical lines over it. The property is currently zoned County CR, which allows all of the uses that they want. When they started to build the house, they came upon the sewer issue. So, they met with City staff and found that the City's residential and conservation zoning districts do not fit all the uses they would like to be able to do. However, the City's AG Zoning District does fit.

Ms. Stake asked how many animals they planned to have. Ms. Whitlatch said that she did not know. Some of them will be small animals. They cannot have a hog farm because there is not footage space and buildings to do so. There are restrictions that they will have to abide by.

Ms. Stake wondered how close the subject property is to its neighboring properties. Ms. Whitlatch replied that everyone lives on five acres or more. Some of the neighbors have animals. Mr. Whitlatch added that the closest neighbor is probably 150 yards away. He went on to say that they would like to have about 6 peacocks, a few chickens, and about 25 to 30 rabbits. He is getting older and doesn't want to do a whole lot of work. He just wants to live there and have fun. Ms. Whitlatch pointed out that they would be under the restrictions of the agriculture zone, so there would be certain things that they could not do.

Mr. Fell asked if they had bought the subject property with the intention of building a house without knowing that they had to connect to the sanitary district. If they could choose between connecting to the sanitary sewer system and installing a septic system, what would be their choice? Mr. Whitlatch replied that the area is not conducive to installing a septic system. Mr. Fell asked if they had looked into installing a multi-flow system. Mr. Whitlatch stated that he is not interested in all of that. He likes the idea of connecting to the City sewer system.

Mr. Fitch asked City staff if it is a contractual requirement for the petitioners to have to sign an annexation agreement. Mr. Engstrom said yes. The City of Urbana has an intergovernmental agreement with the Champaign-Urbana Sanitary District. Mr. Fitch inquired if there were any

exception or waiver procedures built into the agreement. Mr. Engstrom replied not that he was aware of.

Mr. Hopkins stated that he was trying to think of a way to accomplish this that works for the City of Urbana and for the petitioners. It seemed to him that there may be a way to write into the annexation agreement a category for a rural residential zoning district that City staff would eventually add to the Zoning Ordinance. It could be easily done by taking the AG Zoning District and specifying the permitted uses in that district that will not be allowed on the subject parcel through the mechanism of the annexation agreement. The annexation agreement goes with the deed for the property, so it will be applied to future owners as well.

From his understanding, chickens and peacocks are already allowed in the R-1 Zoning District. Mr. Whitlatch responded saying that his understanding is that people can only have hens, no roosters.

Ms. Whitlatch commented that she wants to be allowed to have the uses without having to wait for the City to create a new zoning district. Mr. Hopkins replied that it may not matter to the petitioners about what uses are allowed and are not allowed, but they may not always be the owners of the property. There are many uses in the AG Zoning District that the City would not want to allow on the subject property in the future. Ms. Whitlatch responded that the City could always rezone the property in the future if they wanted to. Mr. Hopkins stated that it is not that easy to rezone a parcel. Rezoning only happens when there is a trigger.

Mr. Fell inquired as to who pays for the connection to the sanitary sewer system. Mr. Engstrom explained the petitioners would pay for it to begin with, but if the sewer system gets expanded to other properties in the area, then the petitioners could recapture some of the funds. The UCSD would maintain ownership of the sewer.

Mr. Fell asked if the property owners to the north and across Cooks Lane want to build houses, then they would have to enter into annexation agreements with the City as well, correct? Mr. Engstrom said that is correct. Mr. Garcia stated that he was contacted by two of the property owners within the 250-foot notification radius. They expressed their approval of the sanitary sewer system being extended because Cooks Lane is not good for having septic systems.

Ms. Byndom asked if other property owners who want to hook into the sanitary sewer system would have to pay to do so. Mr. Engstrom said yes, and the petitioners in these cases would be able to re-coop some of their money.

With no further questions for the petitioners, Chair Fitch asked if there were any other members of the audience who wished to speak either in favor of or against. There were none. So, Chair Fitch closed the public input portion of the hearing and opened it for Plan Commission discussion and/or motion(s).

Mr. Fitch commented that there are no waivers from the intergovernmental agreement, but he wants the petitioners to enjoy their property. Mr. Otto wondered why the Plan Commission would want to waiver from the intergovernmental agreement. The City of Urbana wants

annexation agreements and over time for the properties around the fringe to become part of the City. It is good for them to be connected to the sanitary sewer system and to the City water.

He is of the opinion that the AG Zoning District is the closest analog to the current County zoning. As a City, we may want to look at some of the characteristics of the current AG Zoning District and tighten the allowed uses up. He does not see much risk with the proposed annexation agreement and rezoning.

Mr. Fell believed that there are people who live in the area specifically because they do not want to live within the City limits. Approving this would kind of spider web the sewer system into the area and force people, who do not want to live inside the City limits, to annex into the City at some point in the future. He feels that it would be more appropriate to rezone the property in some way that allows the petitioners to build their house without having to enter into an annexation agreement.

Ms. Stake loves animals and being out on the farm. However, she was concerned that by approving the rezoning the City would be allowing the petitioners to do husbandry of animals close to neighbors that do not like it. It is a residential area for people.

Ms. Byndom asked if the two property owners that contacted City staff wanted to hook up to the sanitary sewer system, would they also be required to enter into an annexation agreement. Mr. Garcia clarified that the two property owners that contacted him only expressed concern about whether the petitioners planned to install a septic system. They were excited to hear that the sanitary sewer connection would be extended up Cooks Lane. The property owners did not express a desire to hook up to the sanitary sewer system. In fact, he believed one of the two was already connected. The area is not suited for septic systems.

Mr. Fell asked what prompts an annexation agreement. Mr. Engstrom explained that connection to the sanitary sewer system prompts an annexation agreement.

Mr. Otto recalled the background between the two cities (Champaign and Urbana) and the UCSD. There was a problem with developers planting subdivisions not contiguous to the cities and then paying to hook into the sanitary district. They were using the benefits of the metropolis but not paying the taxes. So, the cities entered into the intergovernmental agreement with the UCSD. Mr. Fell agreed that it is a good thing; however, he does not understand why a property owner does not have the choice to install a septic system if he/she wants and build a house without entering into an annexation agreement. Mr. Garcia stated that it is a state requirement, and it is also a requirement in the Subdivision and Land Development Ordinance.

Ms. Byndom agreed with Mr. Otto. She believed that it fits with the Comprehensive Plan designation of "Rural Residential". The area is not suited for septic systems. In addition, the value of the property might increase with being connected to the sanitary sewer system.

Chair Fitch summarized the Plan Commission's discussions. The decision is either to grant the petitioners' request or to accept the request with some language added into the annexation agreement that removes or limits some of the uses that are currently allowed in the AG Zoning

District. He did not feel that the Plan Commission was in the position to change the AG Zoning District or to create a Rural Residential Zoning District during this meeting.

The existing City CRE Zoning District does not allow people to do anything except to have quasi-public uses. The R-1 Zoning District depends on how the City views the big garden vs. small farm and what kind of animals would be allowed. It sounds like the petitioners want to do more than what is allowed in the R-1 Zoning District. The AG Zoning District is a closer fit to how they want to use the property. The concern though is that there are some uses allowed in the AG Zoning District that might not be compatible with a residential use.

Mr. Hopkins wondered in what sense the annexation agreement was before the Plan Commission. Mr. Engstrom stated that the annexation agreement was before the Plan Commission because it contained the rezoning. Since the annexation agreement was before the Plan Commission, they had the ability to change the language in the agreement if they wanted. City staff did the negotiations and hopefully came up with something that the City Council can accept.

Mr. Otto expressed concern with dragging this case out. The petitioners have a builder, are willing to pay the expenses for connecting to the sanitary sewer system and are willing to enter into an annexation agreement. The petitioners are willing to do what the City has asked to meet code. The City went through last year and tried to clean the Zoning Ordinance up and failed to do so with regards to the AG Zoning District and the uses allowed in it. Just because the City failed, it should not delay the petitioners from proceeding with their plans. He could not see how the City could tell the petitioners that they have to wait.

Mr. Otto moved that the Plan Commission forward Plan Case No. 2245-M-14 and Case No. 2014-A-06 to the City Council with a recommendation for approval. Mr. Hopkins seconded the motion.

Mr. Fell stated that he planned to vote against the annexation agreement not on the basis that he disagrees with anything the petitioners want to do. Their plans are fine, and he is in favor of their plans. He planned to vote against the agreement because there are people who live in the area that do not want the City boundary to extend out to their properties. Now the sanitary sewer connection will be extended up Cooks Lane and anyone wanting to hook into it or anyone who wants to build on their property will be forced into an annexation agreement with the City. He does not feel that this is right.

Mr. Fell moved a friendly amendment that the Plan Commission vote on the cases separately. Ms. Stake seconded the motion.

Mr. Otto expressed concern that Mr. Fell had an objection to decisions that were made beyond the Plan Commission's control. Essentially, Mr. Fell wanted to deny the petitioners the right to do what they want which was in compliance with the law. Mr. Fell believed it was the same reason they vote on rezonings, which is because it might affect someone else other than the petitioners. Mr. Otto commented that if they vote no on one case and yes on the other it is the

same as telling them that they cannot do what they want to do. Mr. Fitch ruled the amendment out of order because it is inconsistent with the original motion.

Ms. Byndom asked for clarification. They cannot do away with the annexation agreement because it is based on the intergovernmental agreement between the two cities and the UCSD. Mr. Fitch stated that the fact that the petitioners have to ask for an annexation agreement does not mean the City has to approve it.

Ms. Byndom stated that other property owners in the area do not have to hook up to the sanitary sewer system or sign annexation agreements just because the sanitary sewer system is extended towards them. Chair Fitch said that was correct.

Roll call was as follows:

Ms. Byndom	-	Yes	Mr. Fell	-	No
Mr. Fitch	-	Yes	Mr. Hopkins	-	Yes
Mr. Otto	-	Yes	Ms. Stake	-	No

The motion passed by a vote of 4-2. Mr. Engstrom noted that these cases would be forwarded to the City Council on Monday, December 1, 2014.

Mr. Otto requested that City staff present the zoning background for AG and introduce ways to improve it to the Plan Commission at a future meeting.