



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

MEMORANDUM

TO: The Urbana Plan Commission

FROM: Rob Kowalski, AICP, Planning Manager
Lisa Fitzgerald, Planning Intern

DATE: November 14, 2003

SUBJECT: Plan Case No. 1871-A-03: Request to annex three tracts of property totaling approximately 31 acres on the south side of Colorado Avenue east of Philo Road; and

Plan Case No. 1871-M-03: Request to rezone a three-acre tract from Champaign County R-2, Single-Family Residence to City, B-3, General Business upon annexation. Property located on the south side of Colorado Avenue approximately 394 feet east of Philo Road.

Introduction

John Hingtgen and Virgil Naugle are owners of three separate tracts of land totaling approximately 31 acres on the south side of Colorado Avenue east of Philo Road. The property is commonly referred to as the "Golliday Tract" and is not annexed into the City of Urbana. Mr. Hingtgen and Mr. Naugle currently own and operate the Renner-Wikoff funeral home immediately west of the site located at 1900 South Philo Road. They have purchased the land from Betty Golliday and wish to annex the property and have the majority of it developed. A portion of the land to be annexed is proposed to be rezoned to City B-3, General Business. The remainder of the tracts are proposed to be annexed and directly converted from the existing Champaign County R-2, Single-Family Residence zoning to City R-2, Single-Family Residential zoning. The owners have contracted with Tatman Enterprises, Inc. to develop a Residential Planned Unit Development (PUD) and a Single-Family Residential subdivision on the majority of the property. The Residential Planned Unit Development would include a 75-room Senior Retirement Center, 38 residential owner-occupied condominiums for a 55 and older population, and a 25-lot single-family detached subdivision. The three-acre tract directly east of the funeral home is proposed for the potential future development of a banquet center to serve the funeral home.

The charge of the Plan Commission is to conduct a public hearing to consider the annexation agreement and the requested rezoning of the three acre tract.

Background

There are three tracts proposed for annexation. Tract I is a three-acre tract located directly behind the funeral home. Tracts II and III consist of 5.63 acres and 22.37 acres respectively and are immediately east of Tract I. The tracts are currently used for agricultural purposes and do not contain any developed structures. The current zoning of the property is R-2, Single-Family Residence in Champaign County. The site has been wholly surrounded by the corporate limits for many years and is less than 60 acres although there has been no action to annex the property without a pending development proposal. Development of the site requires annexation into the City of Urbana since sanitary sewer connections will be necessary.

The site is partially served by Colorado Avenue to the north. Colorado Avenue currently terminates approximately 1,200 feet east of the intersection of Philo Road. A major component of the proposed annexation and development of the tracts is the improvement and completion of Colorado Avenue to connect to Stone Creek Boulevard. Colorado Avenue is planned to be an urban, collector classification of roadway providing a major east-west connection for southeast Urbana.

Adjacent Land Uses and Zoning Designations

Surrounding the site are multi-family residential (Sunnycrest II apartments), commercial, and park (Osco Drug, Picadilly Liquors, Lohmann Park) uses to the north; single-family residential to the east (Stonecreek), single- and multi-family residential to the south (Eagle Ridge Subdivision); and business and institutional uses to the west (Renner-Wikoff Funeral Home and Grace United Methodist Church).

COMPREHENSIVE PLAN DESIGNATION, ZONING, AND LAND USE TABLE

Direction	Comprehensive Plan	Zoning	Land Uses
Site	Professional Office / 1993 ETJ Plan	R-2 Single-Family Residential / Champaign County	Agricultural
North	Institutional Public, Low and Medium Density Residential, Commercial	R-4 Medium Density Multi-Family Residential, CRE Conservation/Recreation, B-3 General Business	Park District, Apartments, Commercial

East	Low Density Residential	R-2 Single-Family Residential	Residential subdivision (Stone Creek)
South	Low Density Residential	R-1 Single-Family Residential, R-4 Multi-Family Residential	Residential subdivision (Eagle Ridge)
West	Commercial, Institutional	B-3 General Business, R-4 Multi-Family Residential	Commercial, Institutional

Issues and Discussion

Annexation Agreement

An annexation agreement is currently being negotiated between the City, Owners and Developer. A draft of the agreement is attached to this memorandum. Under State Statute, annexation agreements are considered by the City Council via a public hearing. A public hearing for the agreement has been scheduled for December 1, 2003 with the Urbana City Council. Also by statute, annexation agreements may include the negotiation of provisions that are customarily considered by other boards and commissions, such as zoning and subdivision requirements. This provision excepts the rezoning of land which must be considered at a public hearing with the Urbana Plan Commission.

The attached draft annexation agreement outlines provisions for obligations by the Owners, Developer and Corporate Authorities. Under the agreement, the City agrees to directly convert the majority of the property to City, R-2, Single-Family Residential zoning and to rezone the three acre tract to B-3, General Business. The agreement also specifies the obligations for issues related to infrastructure improvements, taxes, code compliance, etc. The draft agreement is attached to the memorandum.

Proposed Rezoning

The agreement stipulates that the request to rezone the property to B-3, General Business is made for the purposes of establishing a banquet center in conjunction with the funeral home to the west. It is common for annexation agreements to list land uses that are normally permitted by right in a district but agreed to be prohibited under the terms of the agreement. In this case, the owner and city have agreed to prohibit the establishment of multi-family residential uses on the three-acre tract. The rezoning to B-3 appears to be appropriate considering the tract is adjacent to business zoning and is located in close proximity to the Sunnycrest commercial center. It will also be adequately be served by public utilities once Colorado Avenue is improved.

Proposed Residential Planned Unit Development / Single-Family Subdivision

The remaining 28 acres of the site is proposed to be annexed and directly converted from County R-2 to City R-2 zoning. The Urbana Zoning Ordinance currently allows the direct conversion of zoning without the need to conduct a public hearing. The agreement also specifies that the City agrees to grant

a Special Use Permit to establish a *Residential Planned Unit Development* in the R-2, Single-Family district. The Urbana Zoning Ordinance permits Residential PUDs as a special use in the R-2 zoning district. The proposed Residential Planned Unit Development includes two primary components, a Senior Retirement Center and 38 residential condominiums. Although these uses are typically established in multi-family zoning districts, the Urbana Zoning Ordinance permits *any* residential use that is permitted in *any* residential zone provided that a detailed site plan is approved as a component of the special use permit review. Development of the site must remain in strict compliance with the approved plan. The components of the development are as follows:

Senior Retirement Center

The Developer proposes a 75-room Senior Retirement Center to be built that would include a mixture of one and two-bedroom units. The facility would have dining facilities and may contain some accessory medical services. The facility is proposed to be very similar to the Canterbury Ridge development on Amber Lane in Urbana. The center would contain 62 parking spaces and would have a significant amount of open space surrounding the building (see attached site plans).

Residential Condominiums

East of the Senior Retirement Center the Developer proposes 38 residential condominiums. The condos are proposed to be owner-occupied and marketed to a 55 years and older population. The development would contain seven four-plexes and ten duplexes. Buyers of the units would purchase the condo itself as opposed to a subdivided lot. The grounds are proposed to be maintained by a homeowners association and would include all the condos centered around a detention pond as an amenity with a walking path circling the pond. Both the Senior Retirement Center and condominiums are proposed to be access by private streets that would be gated and maintained by the association. All infrastructure will be built to city standards.

Single-Family Residential Subdivision

Directly east of the condominiums the Developer is proposing a conventional single-family residential subdivision. The 25-lot subdivision is *not* a component of the PUD and will be required to meet all the requirements of city codes and ordinances except where the annexation agreement permits applicable waivers. All the infrastructure for the subdivision will be public and dedicated to the City consistent with standard subdivision development.

Exhibit “D” of the draft annexation agreement identifies a site plan and project data for the Planned Unit Development. The project data indicates an overall gross density of 6.68 dwelling units per acre for the site. The floor area ratio of the PUD is proposed to be 0.18 and the open space ratio is approximately 0.82. The project data satisfy the development requirements for Residential PUDs as specified in the Urbana Zoning Ordinance under Table VII-2.

Development in the Area / Comprehensive Plan

The property is located in an area of Urbana that has experienced relative growth in the past ten years. The growth of Stone Creek and Eagle Ridge subdivisions to the east and south and the development of the Sunnycrest II apartments to the north have surrounded this property now creating an infill development situation. The proposed development of a Senior Retirement Center and a 55 years and older condominium developments seems to also satisfy a growing demand in southeast Urbana of housing opportunities for an aging population. Similar developments of Canterbury Ridge and the zero lot-line condominiums on Amber Lane have been successfully marketed over the past several years. The close proximity of the site to a major commercial node also makes residential uses attractive for development.

The 1993 Extraterritorial Jurisdictional Area Plan identified this site as appropriate for professional office uses. Although the site has been identified as appropriate for office uses, a number of issues present themselves in achieving this land use. The current saturation of office development in Champaign-Urbana along with the necessary infrastructure improvements to Colorado Avenue may have presented a large challenge for achieving office development on the tract.

Current draft future land use plans for the update to the Comprehensive Plan identify this site as appropriate for a mixture of residential uses. The Comprehensive Plan Steering Committee have indicated a vision for a mix of residential land uses at this location as an appropriate transition from the high density apartments to the north and the lower-density residential development to the south and east.

Meeting with Urbana Park District

A portion of Tract III is directly adjacent to Lohmann Park on the north. The proposed site plan would extend Colorado Avenue directly south of the park. On October 29, City staff met with Urbana Park District staff members to review the Developer's preliminary plans. Park District staff had no immediate concerns about the proposed plans and indicated that it appeared to be a suitable use adjacent to the park. The exact alignment of Colorado Avenue extended is still be engineered and it is unlikely that the roadway will be located on Lohmann Park but rather directly south.

The construction of Colorado Avenue extended, which would connect Colorado Avenue with Stone Creek Boulevard, would create a remainder piece of property to the north due to the location of the stub at Stone Creek Boulevard. This leftover land would be of potential interest to the Park District as an addition to Lohmann Park. It was also noted in discussions that the completion of Colorado Avenue will create better access to the park.

Eagle Ridge Neighborhood Meeting

In recent years residents of the Eagle Ridge Subdivision to the south have expressed great interest in the development of the Golliday Tract. In particular, there has been a long-standing concern about any potential development of high-density residential apartments. On November 6, a special neighborhood meeting was held for the residents of the Eagle Ridge Subdivision, which includes condominium and single-family residential homeowners. The purpose of the meeting was to introduce the development proposal to the residents prior to the public hearing so input could be gathered. Approximately 50 residents attended the meeting along with the owners, development a city staff. The owners of the tracts expressed to the residents that their reason for purchasing the land and contracting with a developer was to prevent a land use they viewed as incompatible with the area neighborhoods and the funeral home. The Developer, Paul Tatman, also expressed these same concerns for the neighborhood. Mr. Tatman presented to the residents the site design and illustrations of the proposed senior retirement center, the 55-and-over condominium complex, and single-family residential lots. City staff explained the annexation and zoning process for the tracts as well as the plans to extend Colorado Avenue. The meeting involved a lengthy question and answer period about the proposal. It appeared that many residents were supportive of the proposal and appreciated the ability to accommodate the development as a Planned Unit Development which does not require the land to be rezoned to a multi-family residential zoning district.

Comprehensive Plan Goals, Objectives and Policies

In considering the zoning map amendment for the three-acre tract, the Plan Commission must consider effects upon the public health, safety, comfort, morals and general welfare of the community. The City's Comprehensive Plan and zoning law decisions in the Illinois Courts provide a framework for this consideration.

The proposed Comprehensive Plan map amendment should be considered in light of other goals, objectives and policies contained in the 1982 Comprehensive Plan. The following goals and policies of the 1982 Urbana Comprehensive Plan relate to this case:

Objective 1.410

Promote the redevelopment and conservation of urbanized areas.

Goal 3.100

To organize and develop land uses and adjacent properties in a balanced and mutually compatible manner relative to the functional needs of the City.

Goal 3.110

Promote development in the City and surrounding unincorporated areas in a manner which minimizes conflicting land uses and/or adjacent development.

Goal 4.100

To increase sources of municipal revenues required to continue providing existing and future increased levels of municipal services.

Objective 4.100

Increase the proportion of land uses which produce municipal revenues equal to, or in excess of, the cost of required services.

Policy 4.111

Promote mixtures of compatible uses, improvements in services and facilities, aesthetics and public convenience, in existing commercial and industrial developments.

Policy 4.113

Facilitate expansion plans of local businesses, commercial and industrial concerns.

Goal 6.100

To increase and diversify the tax base of the City of Urbana.

Objective 6.110

Encourage the promotion of commercial and industrial development which is compatible with the character, environment, and resources of the community.

Policy 6.112

Support rezoning petitions for land that has been identified as having the greatest potential within the parameters of the Plan for commercial and industrial development.

The following goals and policies of the ETJA Plan relate to this case:

Goal 15.100 To assure a balance between the growth of Urbana and Urbana's quality of life, new development must be encouraged but must also enhance rather than threaten Urbana's community standards.

Goal 15.200 To assure that municipal services can be extended to adequately serve a rapidly growing municipal territory.

Objective 15.210. Assess the cost of annexations and developments so that developments are contributing their fair share of the increased cost of municipal services and/or capital improvements.

Objective 15.220 Control development in the ETJA so that properties adjacent to or near City limits develop first to prevent scattered development in the outer reaches of the ETJA.

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 rezoning to B-3, General Business would be generally consistent with existing B-3 zoning designations adjacent to the property and in the general vicinity. The site is proposed to be used in conjunction with the adjacent funeral home which is zoned B-3, General Business. The majority of the nearby Sunnycrest commercial center is also zoned B-3, General Business.

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

This is the difference in the value of the property as zoned for industrial and the value it would have if it were rezoned to commercial to permit the proposed use.

The subject site is located in an area that is well-suited for commercial development because it is near a major commercial center for the community. The current zoning of R-2, Single Family does not appear to diminish the value of the property considering its location adjacent to B-3, General Business zoning.

It should be noted that City Planning Division staff are not qualified as professional appraisers and that a professional appraiser has not been consulted regarding the impact on the value of the property. Therefore, any discussion pertaining to property values must be considered speculative 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 zoning and future commercial development will contribute to the welfare of the community by offering convenient access to goods and services and increase the city's overall tax base.

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.

As stated above, this property is located in an area that is ideal for commercial zoning. The specific feature for this property is its close proximity to a major commercial center and the intent to use the property in conjunction with the neighboring business. The subject parcel is in a fully developed portion of Urbana and is adequately served by public streets and utilities.

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 subject parcel has been used for agricultural purposes and has never been developed. One of the contributing factors of the property being undeveloped is the fact that it requires annexation and rezoning to be used for commercial purposes.

Summary of Staff Findings

1. The proposed B-3, General Business zoning district for the subject site would be consistent with the current B-3 zoning in the general vicinity.
2. The proposed annexation agreement includes provisions for a Residential Planned Unit Development that will establish an appropriate mix of residential uses that will serve as a transition between adjacent high-density and low-density development.
3. The rezoning is proposed in order for the site to be developed as a supporting development to the adjacent funeral home which is also zoned B-3, General Business.
4. The location of the site, which is adjacent to the commercially zoned funeral home and the Sunnycrest commercial center, makes it appropriate for commercial development.

5. The proposed rezoning to the B-3, General Business zoning district would allow for the commercial redevelopment of the property which would be a benefit to the community and contribute to the tax revenues of the city.
6. The proposed rezoning would not be detrimental to the public health, safety or general welfare.
7. The proposed rezoning appears to generally meet the LaSalle Case criteria.

Options

The Plan Commission has the following options for recommendations to the City Council. In Plan Case 1871-A-03, the Plan Commission may:

- a. The Plan Commission may forward the Annexation Agreement to the City Council with a recommendation for approval.
- b. The Plan Commission may forward the Annexation Agreement to the City Council with a recommendation for denial.
- c. The Plan Commission may forward the Annexation Agreement to the City Council with a recommendation for approval with recommended modifications.

The Plan Commission has the following options for recommendations to the City Council. In Plan Case 1871-M-03, the Plan Commission may:

- a. The Plan Commission may forward the rezoning request to the Urbana City Council with a recommendation of approval.
- b. The Plan Commission may forward the rezoning request to the Urbana City Council with a recommendation of denial.

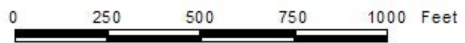
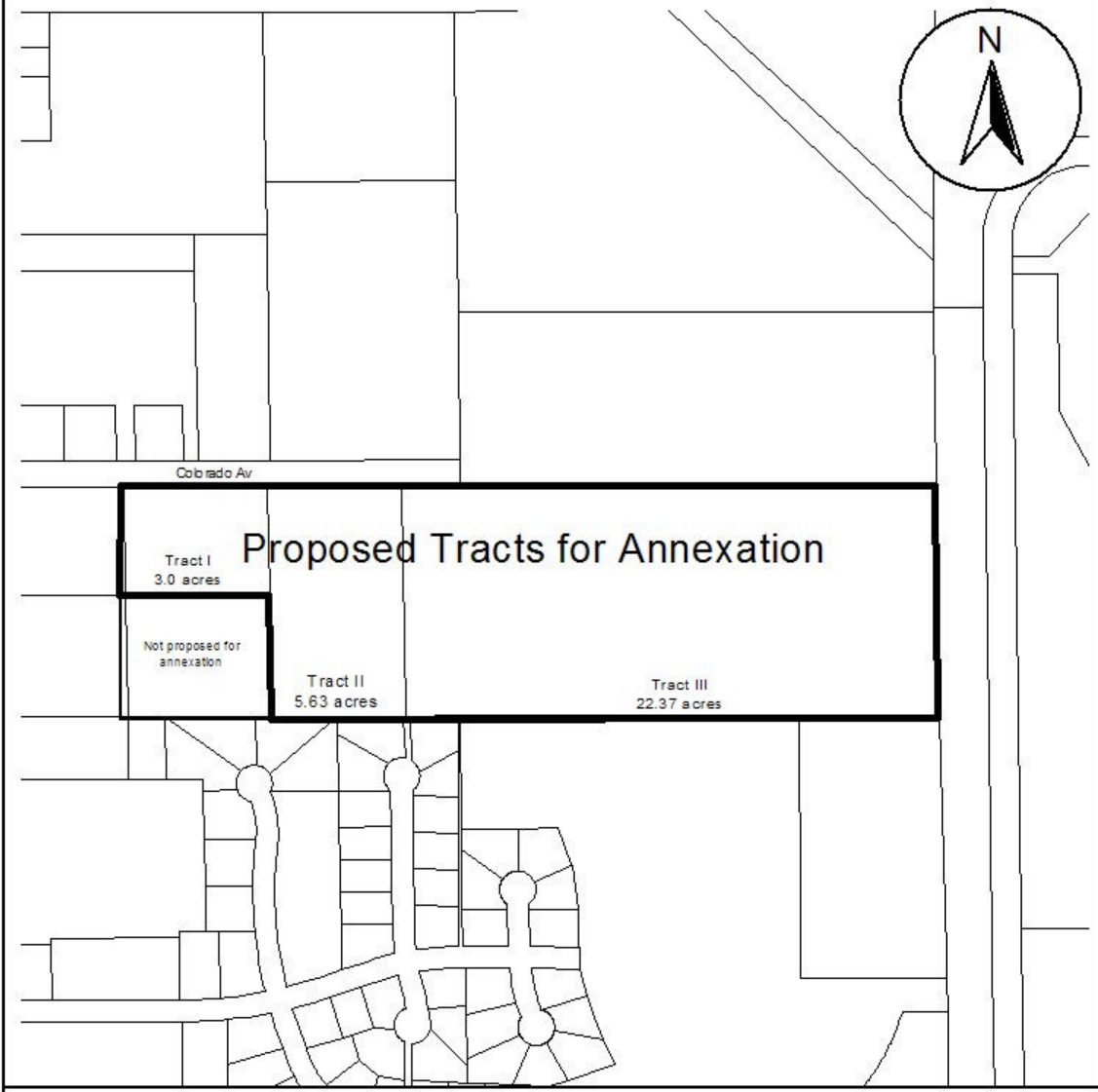
Staff Recommendation

Based on the evidence presented in the discussion above, and without the benefit of considering additional evidence that may be presented at the public hearing, **staff recommends that the Plan Commission forward Plan Cases No. 1871-M-03 and 1871-A-03 to the Urbana City Council with a recommendation for approval.**

c: John Hingtgen, Owner
Virgil Naugle, Owner
Paul Tatman, Developer
Ben Jones, Eagle Ridge

Attachments: Exhibit A, Location Map
Exhibit B, Zoning Map
Exhibit C, Existing Land Use Map
Exhibit D, Future Land Use Map
Exhibit E, Aerial Photo
Exhibit F, Proposed Draft Future Land Use Map
Exhibit G, Draft Annexation Agreement with attachments
Exhibit H, Neighborhood Notification
Exhibit I, Eagle Ridge Neighborhood Meeting Notice and Sign-in Sheet

Exhibit "A": Location Map



Petitioner: John Hingtgen and Virgil J. Naugle
South side of Colorado Ave. east of Philo Rd.
Golliday Tract
1871-A-03 Golliday Tract Annexation Agreement
1871-M-03 Rezone from County R-2 to City B-3 General Business for Tract I
Prepared November 5, 2003 by Community Development Services - lof


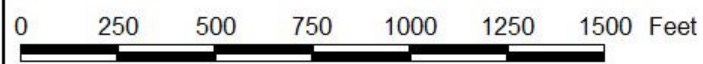
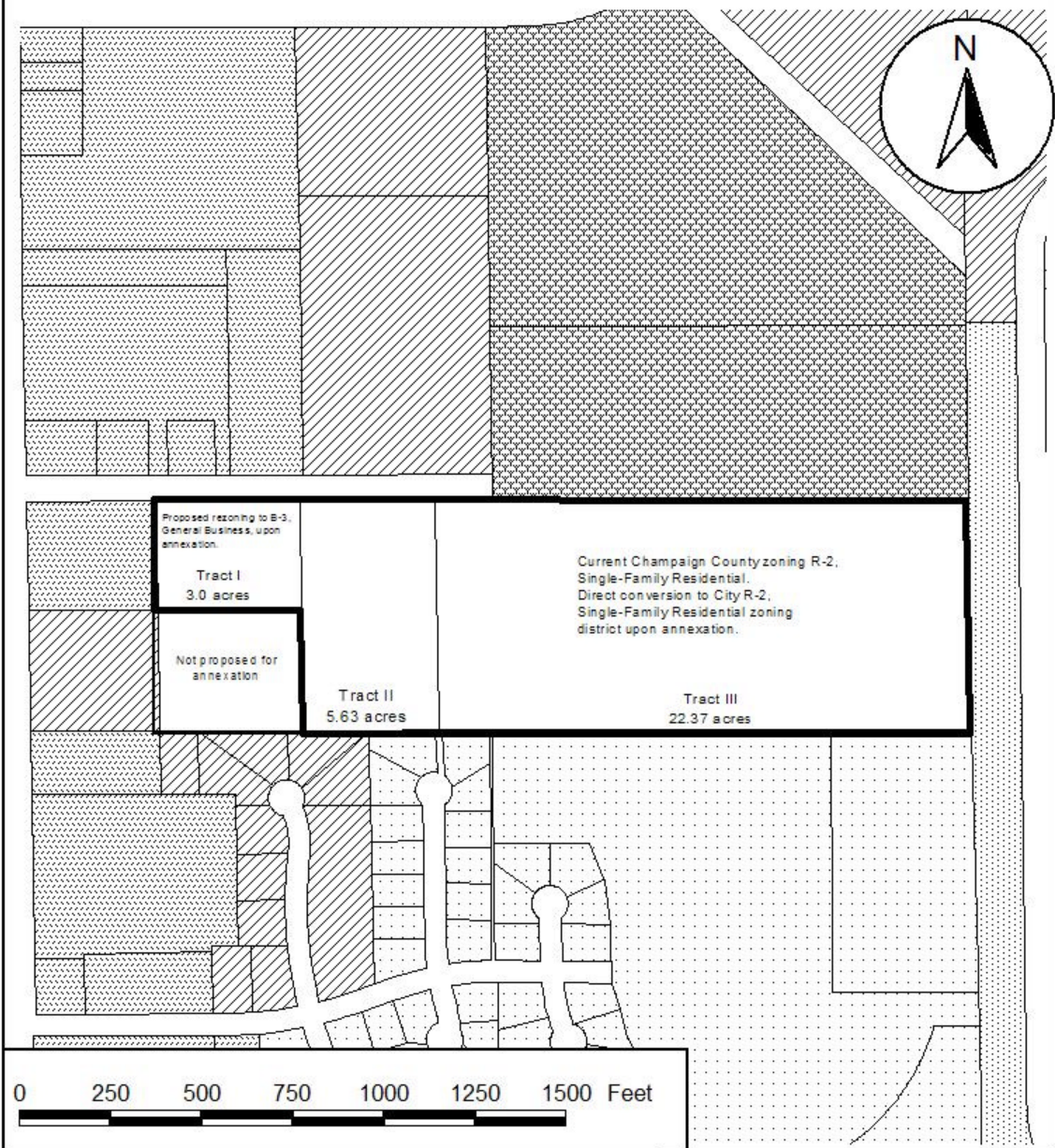

 Properties Within 250+ Feet

Exhibit "B": Zoning Map




 Petitioner: John Hingtgen and Virgil J. Naugle
 South side of Colorado Ave. east of Philo Rd.
 Golliday Tract
 1871-A-03 Golliday Tract Annexation Agreement
 1871-M-03 Rezone from County R-2 to City B-3 General Business for Tract I
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



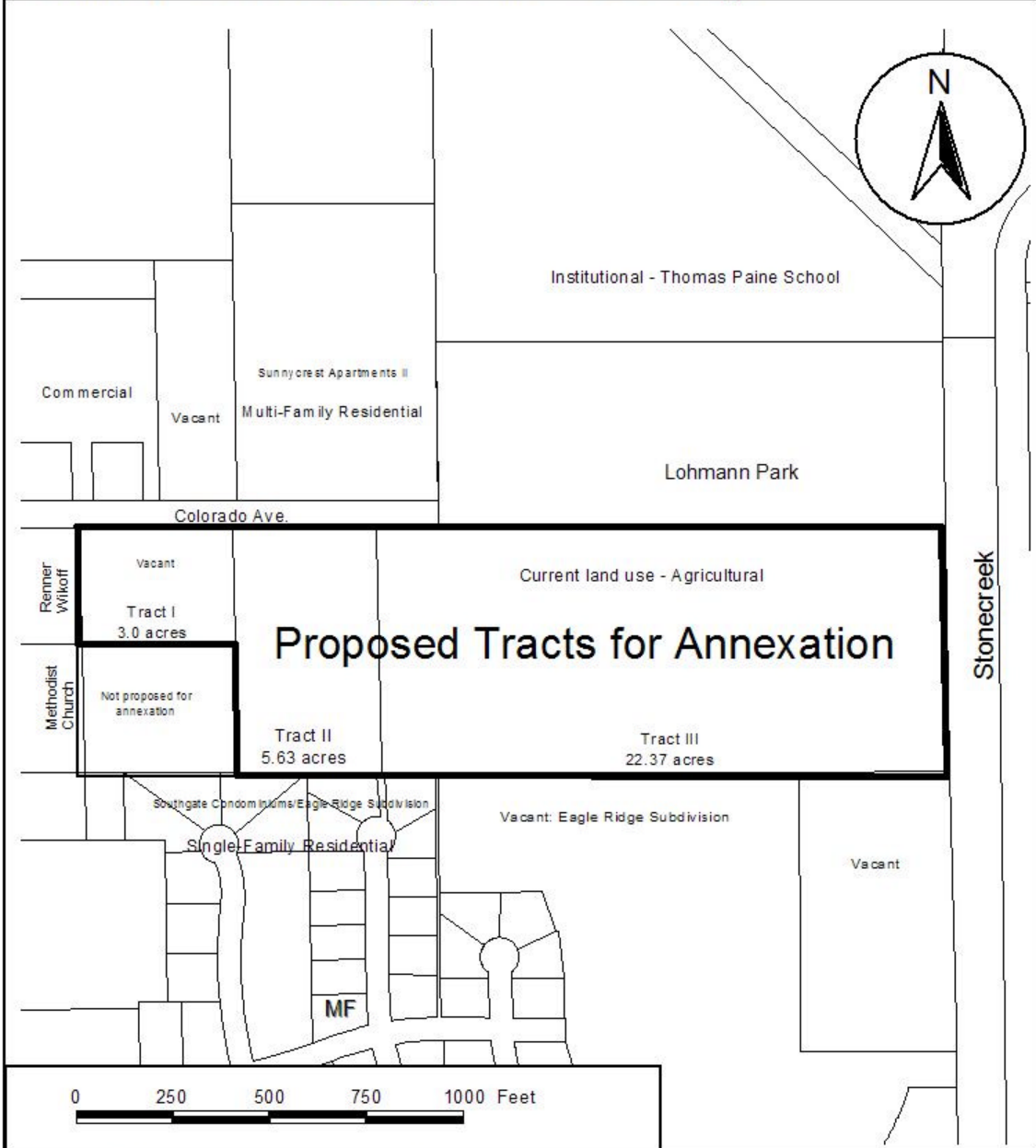
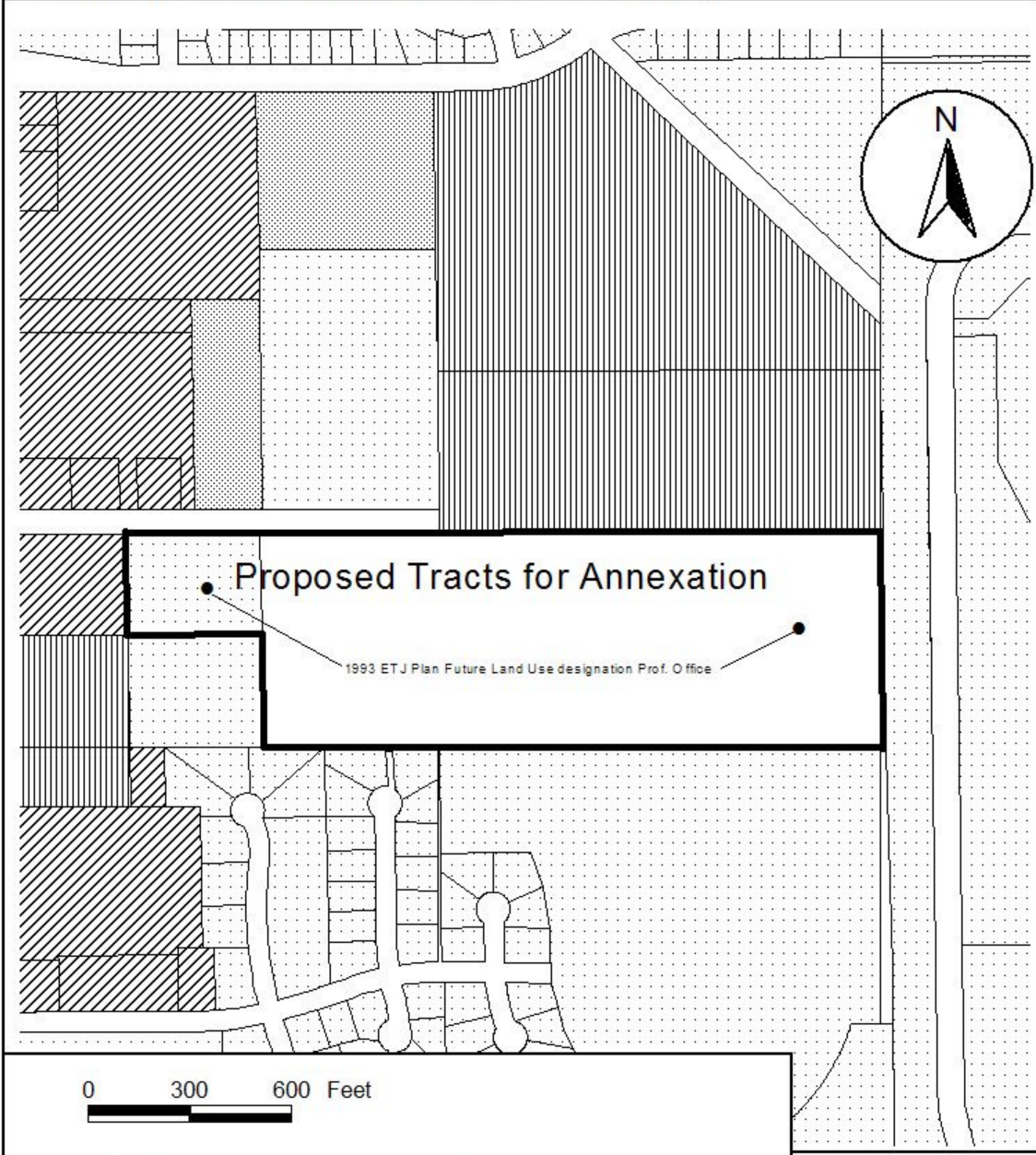
-  B3 - General Business
-  CRE - Conservation-Recreation-Education
-  R1 - Single Family
-  R3 - Single- and Two-Family
-  R4 - Medium Density Multiple-Family

Exhibit "C": Existing Land Use Map



Petitioner: John Hingtgen and Virgil J. Naugle
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 Golliday Tract
 1871-A-03 Golliday Tract Annexation Agreement
 1871-M-03 Rezone from County R-2 to City B-3 General Business
 for Tract I
 Prepared November 5, 2003 by Community Development Services - lcf

Exhibit "D": Future Land Use Map



Petitioner: John Hingtgen and Virgil J. Naugle
South side of Colorado Ave. east of Philo Rd.
Golliday Tract
1871-A-03 Golliday Tract Annexation Agreement
1871-M-03 Rezone from County R-2 to City B-3 General
Business for Tract I
Prepared November 5, 2003 by Community Development Services - lcf





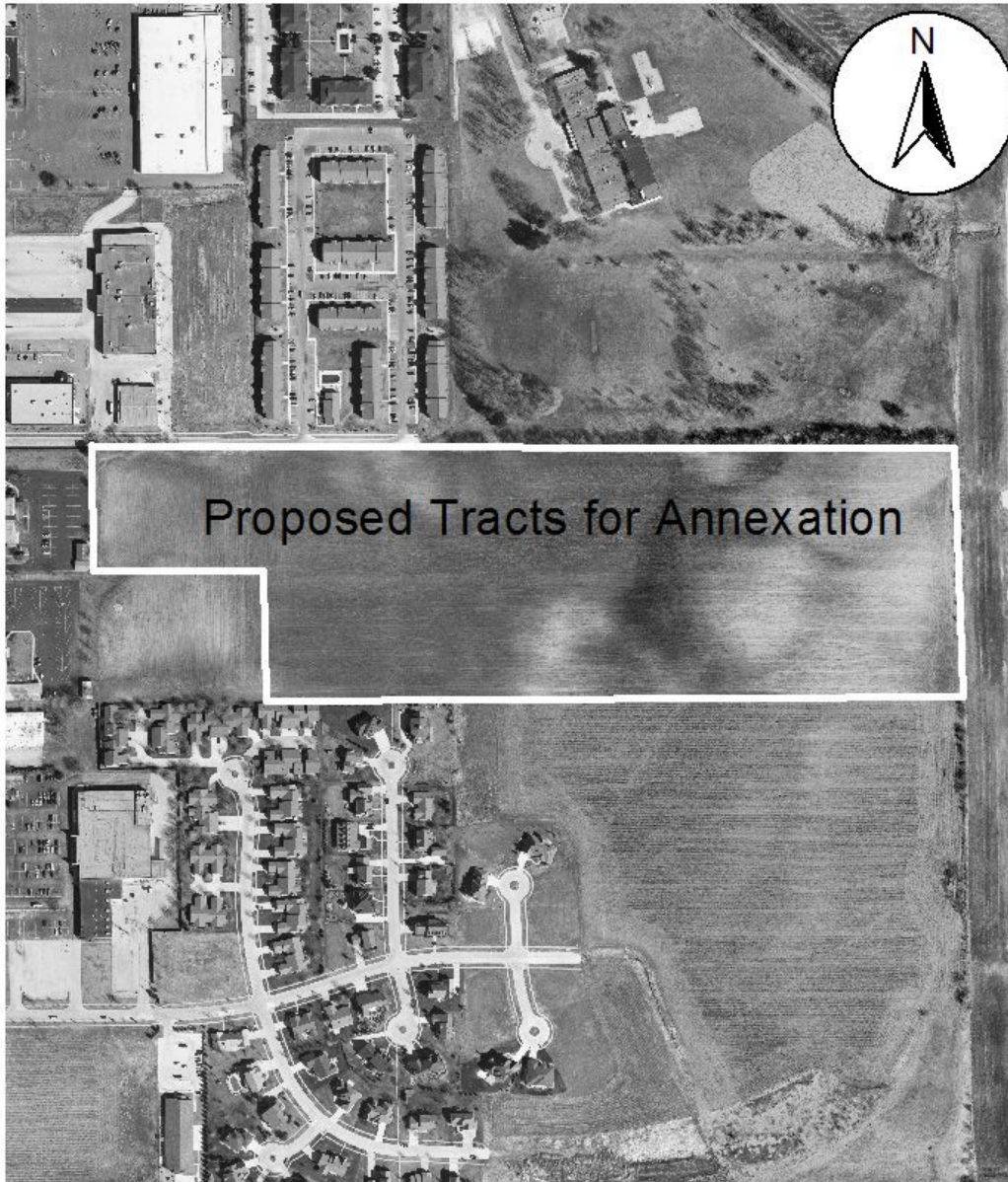
-  Commercial
-  High Density Residential
-  Low Density Residential
-  Institutional

Exhibit "E": Aerial



Petitioner: John Hingtgen and Virgil J. Naugle
South side of Colorado Ave. east of Philo Rd.
Golliday Tract
1871-A-03 Golliday Tract Annexation Agreement
1871-M-03 Rezone from County R-2 to City B-3 General Business for Tract I

Prepared November 5, 2003 by Community Development Services - lcf

EXHIBIT "G"
DRAFT 11/14.2003

Hingtgen & Naugle
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 John J. Hingtgen and Virgil J. Naugle (hereinafter referred to as the "Owners") and the Tatman Enterprises, Inc. (hereinafter referred to "Developer"). 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, John J. Hingtgen and Virgil J. Naugle are the Owners of record of three contiguous real estate tracts totaling approximately 31 acres, located on the South side of Colorado Avenue east of Philo Road, and having permanent index numbers of 30-21-21-200-026, 30-21-21-200-034, and 30-21-21-200-035 the legal descriptions of which real estate is set form in Exhibit "A" attached hereto; and

WHEREAS, the attached map, 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; and

WHEREAS, the Owners have entered into a contract with Tatman Enterprises, Inc. (Developer) to develop a Senior Retirement Center, 38 residential condominiums as a Residential Planned Unit Development (PUD), and a single-family residential subdivision on Tract II and Tract III of the site as described in the this agreement; and

WHEREAS, the Owners have future intentions of constructing a banquet center on Tract I that will serve the neighboring funeral home and require business zoning; and

WHEREAS, all three tracts are contiguous to the City of Urbana, and said Owners and the City determine that immediate annexation of the tracts is in the best interest of both parties; and

WHEREAS, all three tracts are currently zoned R-2, Single-Family Residence in Champaign County; and

WHEREAS, Tracts II and III as described in Exhibit "A" will directly convert to City R-2, Single-Family Residential Zoning upon annexation under the terms and provisions of the Urbana Zoning Ordinance and this agreement; and

WHEREAS, the City and Owners find it necessary and desirable that Tract I, as described in Exhibit "A" be rezoned to the B-3, General Business Zoning District upon annexation for the future purposes of constructing a banquet center to be used in conjunction with the adjacent funeral home under the terms and provisions of the Urbana Zoning Ordinance and this agreement; 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 and Developer 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 AND/OR DEVELOPER

The Owners and/or Developer agree to the following provisions:

Section 1. Ownership. The Owners represent that the Owners are the sole record Owner of the tracts described in Exhibit "A" and that the Owners shall, within thirty (30) days of the 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, the Owners shall require that any persons intending to reside thereon, whether as tenants or owners, shall, prior to residing thereon, irrevocably agree in writing to sign, join in, and consent to any petition for annexation of the subject tract. The Owners shall file such written agreement with the City Clerk within thirty (30) days of the signing of such. The City shall furnish to Owner the appropriate form to satisfy this obligation.

The Owners further agree that the substance of this Section of the Annexation Agreement shall be included in any sales contract for the sale of any portion of the subject tracts. If the subject tracts are to be platted for subdivision, the Owners agree that the substance of this provision regarding annexation shall be included in the subdivision covenant and such will constitute a covenant running with the land.

Section 2. Title Interests. The Owners represent that there are no mortgages or lien holders or holders of any security interest affecting title to the Tracts I, II and III described herein.

Section 3. Authority to Annex. The Owners agree and hereby stipulate that the City, by its approval, execution or delivery of this Agreement does not in anyway relinquish or waive any authority it may have to annex the Tracts in the absence of this Agreement.

Section 4. Zoning. The Owners agree to accept the direct conversion of the Champaign County R-2, Single-Family Residence Zoning District to the City R-2, Single-Family Residential Zoning District as provided for by the Urbana Zoning Ordinance Section IV-5 and as such exists at the time of annexation for Tracts II and III as described in Exhibit "A". The Owners acknowledge that upon annexation, Tract I as described in Exhibit "A" will be rezoned from the County R-2, Single-Family Residence Zoning District to City B-3 General Business. The Owners agree that, unless changed upon the initiative of the Owners the said City zoning classification for all tracts 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 tracts. The Owners agree to use the tracts only in compliance with the Urbana Zoning Ordinance and this agreement as such may be amended from time to time.

Section 5. Allowed Uses for Tract I. The Owners agree that multi-family residential land uses shall not be permitted on Tract I as described in Exhibit "A" unless the tract is rezoned to a multi-family residential zoning district. Any rezoning of the parcel shall require a public hearing with the Urbana Plan Commission and final approval from the Urbana City Council in accordance with the provisions of the Urbana Zoning Ordinance.

Section 6. Residential Planned Unit Development (PUD) Plan. The Owners/Developer agree that this annexation agreement hereby approves a Special Use Permit to establish a Residential Planned Unit Development (PUD) for Tract II and a portion of Tract III herein called "PUD Tract" and described in Exhibit "C". The Owner/Developer further agrees that the development of the PUD Tract shall be in strict conformance to the attached site plan and project data attached hereto as Exhibit "D" and shall include the establishment of a Senior Retirement Center and 38 residential condominiums. The Owner/Developer agrees that any substantial deviations from the approved Residential PUD Plan as determined by the Zoning Administrator shall require an amendment of this agreement. This amendment process shall include a review of the proposed deviations by the Urbana Plan Commission under a public hearing process as described in the Urbana Zoning Ordinance. The Urbana City Council shall make a final determination pertaining to the appropriateness of the proposed deviations to the approved PUD.

Section 7. Single-Family Residential Subdivision. The Owners/Developer agree that the remaining portion of Tract III east of the described PUD Tract shall be developed as a single-family residential subdivision as illustrated and attached hereto as Exhibit "E". Minor adjustments to the layout of the single-family residential subdivision from the attached site plan in Exhibit "E" may be authorized as final engineering and surveying for the alignment of Colorado Avenue extended is determined. The subdivision must satisfy the requirements of the Urbana Subdivision and Land Development Code as well as the Urbana Zoning Ordinance.

Section 8. Subdivision Plat Preparation. The Developer agrees to prepare Preliminary and Final Subdivision Plats for Development in substantial conformance with the layout shown in the attached site plans and in compliance with the City of Urbana Subdivision and Land Development Code except as waived under Section II.5.

Section 9. Infrastructure Improvements:

- A. **Colorado Avenue.** The Developer agrees to construct all public improvements for Colorado Avenue adjacent to Tracts II and III as described in Exhibit “A” as an urban, collector-classified roadway. The Developer shall construct improvements to the south half of Colorado Avenue from the western parcel line of Tract II as described in Exhibit “A” to its current terminus, and to fully construct the continuation of Colorado Avenue from its current terminus to the stub connector at Stone Creek Boulevard. As set forth in Article II of this agreement, the City will reimburse the Developer the portion of the engineering and construction fees of the improvements to Colorado Avenue beyond the initial \$400,000 paid by the Developer. Engineering fees shall include all surveying, design, testing services, plans and specifications, and full time construction inspection, engineering and staking for Colorado Avenue. The Developer shall provide unit prices for work to be performed. Unit prices are subject to review and acceptance of the City Engineer prior to commencement of work. The Developer’s engineer and the City Engineer shall meet as necessary to develop an approved set of plans. Colorado Avenue shall be constructed as a collector consistent with the standards of the City of Urbana Land Development and Subdivision Code.

The engineering design and construction of Colorado Avenue shall include an eight-foot multi-use path on the south side of Colorado Avenue instead of the standard requirement of a four-foot sidewalk. The purpose of the path is to connect the existing multi-use path at Philo Road and Colorado Avenue to a planned multi-use path at Colorado Avenue and Stone Creek Boulevard. The Corporate Authorities agree to pay for the difference in cost for construction between the standard four-foot sidewalk and an eight-foot multi-use path.

The Developer obligation for the engineering and construction of Colorado Avenue shall include the approximately 100-foot long segment on the adjacent property to the east necessary to connect Colorado Avenue to Stone Creek Boulevard. The Developer agrees to assist the Corporate Authorities in coordinating with the neighboring property owner to dedicate the necessary right-of-way consistent with the approved preliminary plat for Stone Creek Subdivision. The Corporate Authorities will prepare and record a plat to dedicate the right-of-way.

The Owners agree to dedicate right-of-way on the south side of Colorado Avenue from Philo Road to the eastern parcel line of Tract I. The right-of-way dedication shall be 33-feet measured from the centerline of Colorado Avenue. The purpose

of the dedication is to allow future improvements to Colorado Avenue that will upgrade the roadway to a collector-classified street. The right-of-way shall be dedicated at request of the Corporate Authorities. The Corporate Authorities agree to prepare and record the proper dedication plats to necessitate the dedication.

- B. Infrastructure within the Residential Planned Unit Development.** The Developer agrees that all infrastructure within the Planned Unit Development shall be constructed to the standards of City codes and ordinances but shall not be dedicated to the City and shall be privately maintained by a private homeowners association. A waiver of the Subdivision and Land Development Code to allow only one five foot wide sidewalk to be built along the interior of the private drive shall be permitted by the Corporate Authorities.
- C. Infrastructure within the Single-Family Residential Subdivision.** The Developer agrees that all infrastructure within the Single-Family Residential Subdivision shall be constructed to the standards specified in the City of Urbana Subdivision and Land Development Code except as waived under Section II.5. The Developer agrees to accommodate a five foot wide walkway between two single-family residential lots on the south side of the development in order to connect future pedestrian facilities from Eagle Ridge Subdivision to the sidewalk along the proposed roadway. The exact location and width of the right-of-way shall be determined by the Developer and City Engineer upon platting of the single-family residential subdivision. The width of the sidewalk shall be five feet and meet all construction standards for sidewalks in the Subdivision and Land Development Code.

Section 10. Timing of Construction. The Developer agrees to commence development within 24 months from execution of this agreement and to complete construction of Colorado Avenue within 12 months of commencing development. An extension of 12 months or less may be authorized upon written agreement from the Corporate Authorities. If the development is not commenced and construction of Colorado Avenue is not completed in this timeframe, the Corporate Authorities shall not be responsible for payment of the shared costs for construction as specified in this agreement.

Section 11. Dedication of Improvements and Easements. The Developer agrees to dedicate public improvements, including public streets and rights-of-way, and to provide necessary easements for utilities as a part of the subdivision plat(s) for the Development. However, the proposed stormwater detention basin shall be the responsibility of the future Homeowner's Association for the Development and shall not be dedicated to the City. An acceptable stormwater detention basin operation and maintenance plan and the responsible party to operate and maintain such basin plan shall be reviewed and approved by the City Engineer prior to the release of a Performance Bond.

Section 12. Invoices and Change Orders: The Developer shall make all payments to the construction contractor, engineer, and their respective subcontractors and

subconsultants, material suppliers, etc. for the construction of Colorado Avenue. The Developer shall invoice the City in accordance with the cost described in Article I, Section 8. Payments shall be made to the Developer within thirty (30) days after the City receives the invoices although no payment shall be due prior to July 1, 2004. The Developer shall provide reasonable documentation to the City regarding the actual cost of the work as costs are incurred and submit invoices based upon percentage of completion, less a five percent retainage pending final completion. Any change orders for work other than that approved per Article I, Section 8 shall first be approved by the City Engineer. Failure to do so may result in no compensation by the City for work performed. Lien waivers must be submitted prior to final payment.

Section 13. Code Compliance. The Owners/Developers 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. The Owners further agree to correct any deficiencies identified in said plan review.

Section 14. Amendments. The Owners/Developer shall take no action nor omit to take action during the term of this Agreement which act or omission, as applied to the Tracts, would be a breach hereof, without first procuring a written amendment to this Agreement duly executed by both the Owners/Developer and the City. Said action includes petitioning for a county rezoning of said tracts(s) without a written amendment to this Agreement.

It shall not be a breach of this Agreement for the Owner to sell or grant a security interest in the Tract(s) to any third person provided such sale or grant shall be subject to the provisions of this Agreement and provided that the substance of this Annexation Agreement shall be included in any sales contract for the sale of any portion of the subject tract.

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 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 Owners, by enacting such ordinances as may be necessary and sufficient to legally and validly annex said tract to the City.

Section 2. Zoning. The Corporate Authorities agree that Tract I as described in Exhibit "A" will be zoned B-3, General Business as provided by the Urbana Zoning Ordinance upon its annexation to the City. The Corporate Authorities further agree that Tract II and Tract III as

described in Exhibit “A” will directly convert from Champaign County R-2, Single Family Residence zoning to City R-2, Single-Family Residential zoning. The Corporate Authorities agree that all applicable development regulations existing at the time of annexation will apply to said tracts. Furthermore, although the Corporate Authorities agree not to rezone the property during the term of this Agreement without a rezoning petition executed by the property Owners requesting said change, the Corporate Authorities reserve the right to amend the Zoning Ordinance text even if such amendment affects the property.

Section 3. Residential Planned Unit Development (PUD). The Corporate Authorities agree to approve a Special Use Permit for a Residential Planned Unit Development (PUD) Plan on Tract II and a portion of Tract III herein described as the PUD Tract in Exhibit “C”. The Special Use Permit for the Residential PUD is approved for a Senior Retirement Center and 38 residential condominium development as illustrated in this agreement and shall be developed in strict conformance to the attached plans and site data attached as Exhibit “D”.

Section 4. Infrastructure Improvements.

- A. **Colorado Avenue** – The Developer is obligated to provide engineering and construction of the improvement of Colorado Avenue north of Tracts II and III as outlined in Article I. The Corporate Authorities agree to reimburse the Developer for engineering and/or construction costs that exceed \$400,000 of the total cost of improvements. No reimbursement shall be due prior to July 1, 2004. Determination and agreement of unit prices for engineering and construction is specified in Article I, Section 9.

With assistance from Developer, The Corporate Authorities agree to coordinate with the adjacent property owner to the east to secure a dedication of right-of-way in order to foster the connection of Colorado Avenue to Stone Creek Boulevard. The dedication and connection of the roadway shall be consistent with the approved preliminary plat for Stone Creek Subdivision. The Corporate Authorities agree to prepare and record a plat to dedicate the right-of-way.

The Corporate Authorities agree to pay for the difference in cost for construction between the standard four-foot sidewalk and an eight-foot multi-use path along the south side of Colorado Avenue.

The Corporate Authorities agree to prepare a record a right-of-way dedication plat dedicating 33-feet of right-of-way on the south side of Colorado Avenue from Philo Road to the eastern parcel line of Tract I. The purpose of the dedication plat is to ensure adequate right-of-way necessary for the complete improvement of Colorado Avenue to a collector classified level of roadway.

- B. **Infrastructure within the Single-Family Residential Subdivision.** The Corporate Authorities agree to accept all dedicated infrastructure within the

Single-Family Residential Subdivision subject to the requirements of the Urbana Subdivision and Land Development Code.

Section 5. Waivers to the Subdivision and Land Development Code – The Corporate Authorities agree to three waivers to the Subdivision and Land Development Code. 1) to permit a 28-foot wide street width from back of curb to back of curb for all public streets within the single-family residential subdivision; 2) to allow a 25-foot wide pavement width from back of curb to back of curb for the private street within the Residential Planned Unit Development; and 3) to allow a waiver to construct a five-foot sidewalk on only one-side of the private drive within the Residential Planned Unit Development. The sidewalk shall be constructed along the interior of the private drive.

Section 6. Tax Reimbursement. During the term of this Agreement, the City agrees to pay the Owners an amount equal to the difference between the real estate taxes which would be paid for each of the tracts if they were located outside the City and the amount paid as real estate taxes for each of the tracts when inside the City on an annual basis within sixty (60) days of submission by the Owner to the City Community Development Director of the paid tax bill for each of the tracts and a written computation of such difference. For Tract I as described in Exhibit “A” the tax reimbursement shall be paid until such time as a building permit is issued for development on the tract. For Tracts II and III as described in Exhibit “A” the tax reimbursement shall be paid until such time as a final plat is recorded. At such time as a final plat is recorded, the Owner shall not be entitled to any payment for the tax liability which accrues on that portion of the Tract which is the subject of the final plat.

Section 7. Amendments - The City shall take no action nor omit to take action during the term of this Agreement which act or omission, as applied to the Tract, would be a breach hereof, without first procuring a written amendment to this Agreement duly executed by the Owner, or Owners of the portion of the Tract which is directly the subject of the amendment.

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 five-year term. By mutual agreement, the term of this Agreement may be extended.

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 Owners 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 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 tracts 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 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 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:**

Owners:

Tod Satterthwaite, Mayor

Paul J. Hingtgen

Date

Date

Virgil J. Naugle

Date

ATTEST:

ATTEST:

Phyllis D. Clark
City Clerk

Notary Public

Date

Date

Developer:

Paul Tatman

Date

ATTEST:

Notary Public

Date

Exhibits attached and made a part of this Agreement:

Exhibit "A": Legal Descriptions of Tract I, Tract II and Tract III

Exhibit "B": Map of Tracts to be annexed.

Exhibit "C": Legal Description and map of Tracts approved for Planned Unit Development and Single-Family Residential Subdivision. Referred to in the agreement as "PUD Tract"

Exhibit "D": Site Plan and Project Data for Residential Planned Unit Development

Exhibit "E": Site Plan for Single-Family Residential Subdivision

Exhibit “A”

Legal Descriptions and map of Tract I, Tract II and Tract III

Tract I:

A part of the Northeast Quarter of Section 21, Township 19 North, Range 9 East of the Third Principal Meridian, more particularly described as follows:

The North One-half of the East One-half of the West 789.90 feet of the North 661.71 feet of the South Half of the Northeast Quarter of Section 21, Township 19 North, Range 9 East of the Third Principal Meridian. Containing approximately 3 acres.

Being the same tract as described in a Warranty Deed, dated April 29, 1992 and recorded in Book 1815 at page 858, as Document Number 92R13184, in the Office of the Recorder of Deeds, Champaign County, Illinois.
PIN# 30-21-21-200-026

Tract II:

The North 661.75 feet of the East 370.04 feet of the West 1159.94 feet of the Southwest Quarter of the Northeast Quarter of Section 21, Township 19 North, Range 9 East of the Third Principal Meridian, situated in Champaign County, Illinois. Containing approximately 5.63 acres.
PIN# 30-21-21-200-034

Tract III:

The North Half of the South Half of the Northeast Quarter of Section 21, Township 19 North, Range 9 East of the Third Principal Meridian, Except all that part that lies West of the East line of the following described tract of land: The North 661.75 feet of the East 370.04 feet of the West 1159.94 feet of the Southwest Quarter of the Northeast Quarter of Section 21, Township 19 North, Range 9 East of the Third Principal Meridian, situated in Champaign County, Illinois. Containing approximately 22.37 acres.
PIN# 30-21-21-200-035

Exhibit “B”

Maps of Tracts to be Annexed

Exhibit “C”

Legal Description and map of Tracts approved for Planned Unit Development and Single-Family Residential Subdivision

Legal Description for tract approved for Residential Planned Unit Development

The North 661.75 feet of the East 370.04 feet of the West 1159.94 feet of the Southwest Quarter of the Northeast Quarter of Section 21, Township 19 North, Range 9 East of the Third Principal Meridian, all situated in Champaign County, Illinois.

And

The North Half of the South Half of the Northeast Quarter of Section 21, Township 19 North, Range 9 East of the Third Principal Meridian, Except the east 730 feet thereof Except all that part that lies West of the East line of the following described tract of land;

The North 661.75 feet of the East 370.04 feet of the West 1159.94 feet of the Southwest Quarter of the Northeast Quarter of Section 21, Township 19 North, Range 9 East of the Third Principal Meridian, all situated in Champaign County, Illinois.

Legal Description for tract approved for Single-Family Residential Subdivision

The East 730 feet of the following described parcel.

The North Half of the South Half of the Northeast Quarter of Section 21, Township 19 North, Range 9 East of the Third Principal Meridian, except all that part that lies West of the East line of the following described tract of land;

The North 661.75 feet of the East 370.04 feet of the West 1159.94 feet of the Southwest Quarter of the Northeast Quarter of Section 21, Township 19 North, Range 9 East of the Third Principal Meridian, all situated in Champaign County, Illinois.

Exhibit “D”

Residential Planned Unit Development (PUD)

Site Plan and Project Data

Legal Description of Residential PUD:

The East 730 feet of the following described parcel.

The North Half of the South Half of the Northeast Quarter of Section 21, Township 19 North, Range 9 East of the Third Principal Meridian, except all that part that lies West of the East line of the following described tract of land.

The North 661.75 feet of the East 370.04 feet of the West 1159.94 feet of the Southwest Quarter of the Northeast Quarter of Section 21, Township 19 North, Range 9 East of the Third Principal Meridian, all situated in Champaign County, Illinois.

Legal Description for tract approved for Single-Family Residential Subdivision

The North 661.75 feet of the East 370.04 feet of the West 1159.94 feet of the Southwest Quarter of the Northeast Quarter of Section 21, Township 19 North, Range 9 East of the Third Principal Meridian, all situated in Champaign County, Illinois.

And

The North Half of the South Half of the Northeast Quarter of Section 21, Township 19 North, Range 9 East of the Third Principal Meridian, except the east 730 feet thereof.

And also except all that part that lies West of the East line of the following described tract of land.

The North 661.75 feet of the East 370.04 feet of the West 1159.94 feet of the Southwest Quarter of the Northeast Quarter of Section 21, Township 19 North, Range 9 East of the Third Principal Meridian, all situated in Champaign County, Illinois.

Planned Unit Development Information:

Total Number of Dwelling Units

Senior Retirement Center: Total of 75 units.

Condominiums: Total of 38 units. Seven four-plexes totaling 28 units and Five duplexes totaling 10 units.

Proposed lot coverage of buildings and structures, as a percentage of the total area

Senior Retirement Center = 49,000 square feet

Four-plex Condos. = 30,254 square feet

Duplex Condos. = 21,500 square feet

Total Square Footage = 100,754 square feet

Total Square Footage of Residential PUD Site = 740,955.6 square feet

Total Percentage of lot coverage for structures = 14%

Approximate gross and net residential densities.

Total Number of Dwelling Units = 113

Total Number of Acres = 17.01

Gross Density = 6.64 dwelling units per acre

Net Density (exclude public facilities) = 7.8 dwelling units per acre (113 units / 14.48 ac)

Approximate Floor Area Ratio and Open Space Ratio

Floor Area Ratio = .18 (59,202 + 21,500 + 49,000 / 740,955.6)

Open Space Ratio = .82 (740,955.6 – 129,702.1 / 740,955.6)

Approximate Floor Area Ratio and Open Space Ratio

Floor Area Ratio = .18 (59,202 + 21,500 + 49,000 / 740,955.6)

Open Space Ratio = .82 (740,955.6 – 129,702.1 / 740,955.6)

Common Open Space

Exact areas and square footages to be determined upon development. Common areas to include detention basin with walking trail loop in center of condominium development; walking trail and green space at north end of Senior Retirement Center; and passive green space area to southwest of Condominiums and Senior Retirement Center.

Off-Street Parking Provided.

Senior Retirement Center = 62 spaces (58 regular and 4 handicapped)
Condominiums = 152 spaces (two in each garage, two in each driveway)

Areas and Streets intended to be Public

All open space, parking areas and internal streets are intended to be private and not publicly maintained.

Screening / Buffering

Site plan indicates fencing to be provided along perimeter of site. Significant greenspace buffer to be used as open space between proposed development and existing Eagle Ridge Subdivision to the south.

Illuminated Areas

Lighting to meet codes of City of Urbana including parking lot lighting for the Senior Retirement Center to be directed downwards towards parking lot. Condominiums to have typical “porch lights” at front doors.

Exhibit “E”

Site Plan for Single-Family Residential Subdivision