



**DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES**

*Planning Division*

**m e m o r a n d u m**

**TO:** Urbana Plan Commission

**FROM:** Rebecca Bird, Planning Associate

**DATE:** November 26, 2008

**SUBJECT:** Plan Case No. 2008-A-04: Annexation agreement for a 0.21-acre tract of property at 109 Country Club Road

Plan Case No. 2091-M-08: Request to rezone a 0.21-acre tract of property at 109 Country Club Road from Champaign County R-1, Single Family Zoning District to City, R-3, Single and Two-Family Residential Zoning District upon annexation.

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**Introduction & Background**

Mennenga Construction, Inc. is requesting an annexation agreement for a 0.21-acre parcel located at 109 Country Club Road. The subject property is located in Urbana Township within unincorporated Champaign County and is not contiguous to the City of Urbana. The property is within the City of Urbana's 1.5-mile extraterritorial jurisdiction.

The property is currently zoned Champaign County R-1, Single-Family, and the annexation agreement stipulates that the property will be rezoned to City R-3, Single and Two-Family Residential zoning upon annexation. The proposed rezoning is consistent with parcels within the City of Urbana to the south of the subject property and is generally consistent with the 2005 Urbana Comprehensive Plan.

**Issues and Discussion**

*Annexation Agreement*

The petitioner is proposing to construct a duplex on said tract, which requires a new sanitary sewer permit from the Urbana-Champaign Sanitary District (UCSD). The annexation agreement states that the property will be rezoned to City R-3, Single and Two-Family Residential upon annexation. The agreement additionally outlines two variations from the Urbana Zoning Ordinance regarding lot width.

### ***Proposed Rezoning***

The property is currently zoned County R-1, Single-Family Residential, and upon annexation, the property would be zoned City R-3, Single and Two-Family Residential. The petitioner is planning to construct a duplex on the tract, although it currently houses a single-family residence. On September 25, 2008, Champaign County approved a special use permit to allow the construction and use of a duplex on said tract. The 2005 Comprehensive Plan identifies the area as “residential” which is generally consistent with the proposed rezoning. There is a cluster of parcels within the City of Urbana to the south of the subject property zoned R-3.

### **The La Salle National Bank Criteria**

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

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

The proposed zoning is consistent with a cluster of parcels located within the City of Urbana to the south of the subject property. Additionally, the proposed zoning is generally consistent with the City of Urbana Comprehensive Plan. The surrounding areas are developed as a mixture of single-family and duplex uses, both of which are allowed by right in the City R-3 zoning district.

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

A direct conversion from County to City zoning would not allow the construction of a duplex on the subject tract. The petitioner has a special use permit from Champaign County to allow the construction and use of a duplex on said tract. A direct conversion would diminish the property value of said tract.

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

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

There would be minimal impact, if any, on the health, safety, morals or general welfare of the public due to the proposed rezoning as the proposed zoning district is consistent with the development in the surrounding area.

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

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

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

The property already has access to sewer, water, and other public infrastructure, and is generally suited for redevelopment. Any future development would be subject to all the applicable development standards of the Zoning Ordinance.

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

The property is not currently vacant.

## **Summary of Findings**

1. The proposed R-3, Single and Two-Family Residential Zoning District would be consistent with the current land use of the subject parcel and surrounding properties.
2. The proposed R-3, Single and Two-Family Residential Zoning District would be generally consistent with the future land use designation of the 2005 Urbana Comprehensive Plan.
3. The proposed annexation agreement includes two variations from the Urbana Zoning Ordinance regarding lot width.
4. The proposed rezoning would not be detrimental to the public health, safety or general welfare, and would allow regulatory consistency with the parcels to the south of the subject property.
5. The proposed rezoning appears to generally meet the LaSalle Case criteria.

## **Options**

The Plan Commission has the following options. In Plan Case 2008-A-04 / 2091-M-08, the Plan Commission may:

- a. Forward this case to City Council with a recommendation for approval of the proposed annexation agreement, including a zoning designation of R-3, Single and Two-Family Residential for the site.
- b. Forward this case to City Council with a recommendation for approval of the proposed annexation agreement, including a zoning designation of R-3, Single and Two-Family Residential for the site, subject to recommended changes. (Note that the property owner would have to agree to any recommend changes).
- c. Forward this case to City Council with a recommendation for denial of the proposed annexation agreement.

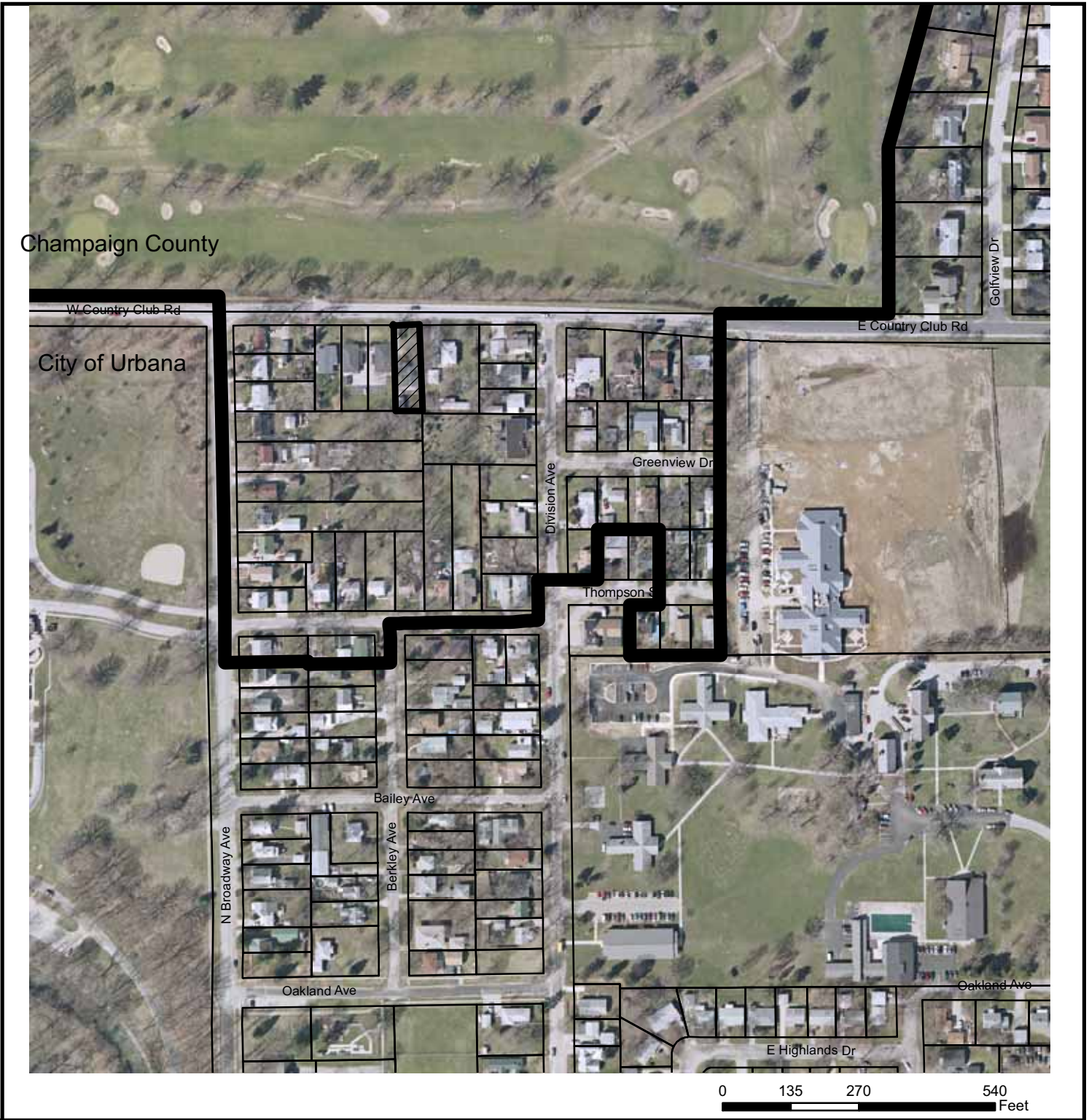
### **Staff Recommendation**

In Plan Case2008-A-04 / 2091-M-08 staff recommends **APPROVAL** of the proposed annexation agreement as presented.



cc: Merl Mennenga, petitioner

Attachments:      Exhibit A: Location and Aerial Map  
                         Exhibit B: Zoning Map  
                         Exhibit C: Future Land Use Map  
                         Exhibit D: Draft Annexation Agreement

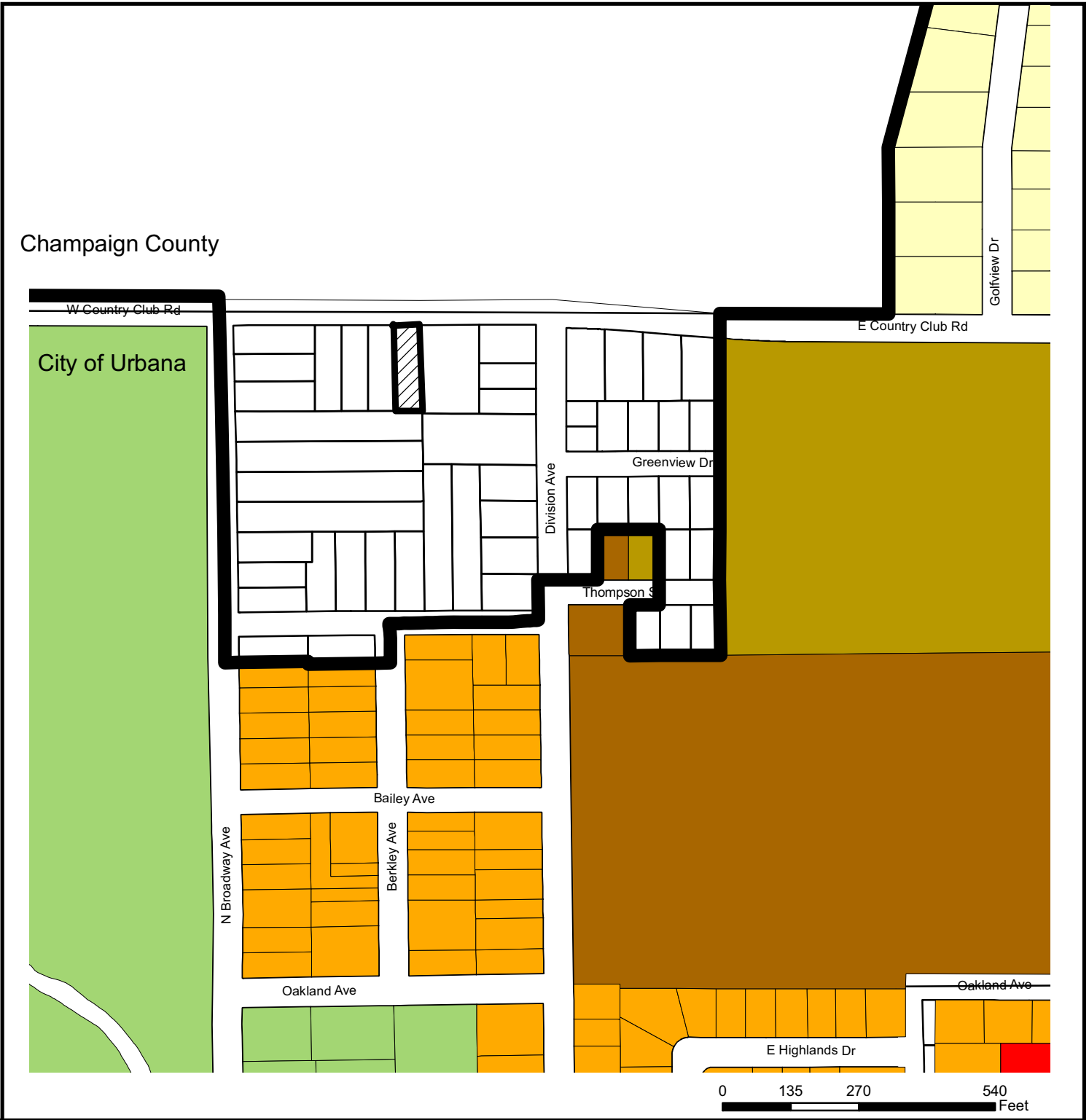
# EXHIBIT A: Location and Aerial Map



**Plan Case:** 2091-M-08  
**Annexation Case:** 2008-A-04  
**Petitioner:** Mennenga Construction, Inc.  
**Location:** 109 Country Club Road  
**Description:** Request an annexation agreement with the City that will re-zone the property to R-3 upon annexation









 Subject Property  
 City Boundary

# EXHIBIT B: Existing Zoning Map

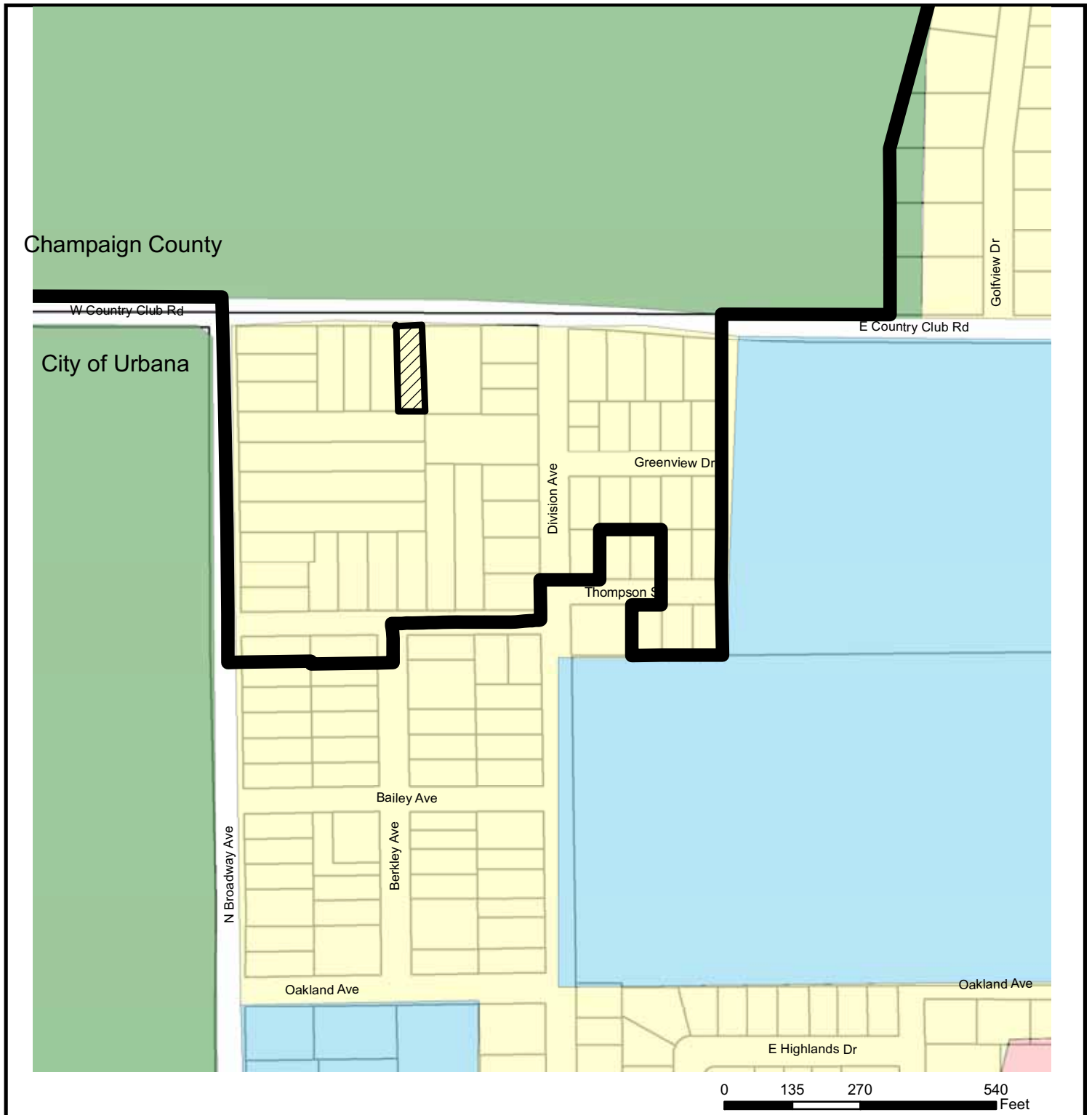


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*Prepared 11/08 by Community Development Services - rlb*






-  Subject Property
-  City Boundary
-  R3
-  R1
-  R4
-  CRE
-  R5
-  B3

# EXHIBIT C: Future Land Use Map



**Plan Case:** 2091-M-08  
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*Prepared 11/08 by Community Development Services - rlb*

-  Subject Property
-  City Boundary
-  Residential
-  Institutional
-  Park

## **Exhibit D. Draft Annexation Agreement**

### **ENHANCED 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 Mennenga Construction, Inc. (hereinafter referred to as the "Owner"). 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, Mennenga Construction, Inc. is the Owner of record of a certain 0.21 acre parcel of real estate located at 109 Country Club Road, and having permanent index number 30-21-08-202-007, the legal description of which real estate is set form in Exhibit A attached hereto and referenced herein as "the tract."

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

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

WHEREAS, the tract is currently zoned R-1, Single Family Residential in Champaign County and the City and the Owner find it necessary and desirable that the tract be annexed to the City with a zoning classification of R-3, Single and Two-Family Residential, under the terms and provision of the Urbana Zoning Ordinance in effect upon approval of this Agreement, as amended, and subject to the terms and conditions set forth in this Agreement; and

WHEREAS, the Corporate Authorities find annexation of the tract as described herein reflects the goals, objectives and policies set forth in the City's 2005 Urbana Comprehensive Plan, as amended from time to time; and

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



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

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

#### ARTICLE I. REPRESENTATIONS AND OBLIGATIONS OF THE OWNER

The Owner agrees to the following provisions:

**Section 1:**

- (a) The Owner represents that the Owner is the sole record Owner of the tract described in Exhibit A and that the Owner shall, within thirty (30) days of the property becoming contiguous to the Urbana City limits cause the tract to be annexed to the City of Urbana by filing a legally sufficient annexation petition with all required signatures thereon, all in accordance with Illinois Statutes. Until annexation of the subject tract occurs, Owner shall require that any persons intending to reside thereon, whether as tenants or owners, shall, prior to residing thereon, irrevocably agree in writing to sign, join in, and consent to any petition for annexation of the subject tract. The Owner shall file such written agreement with the City Clerk within thirty (30) days of the signing of such.
- (b) Owner further agrees that the substance of this Section of the Annexation Agreement shall be included in any sales contract for the sale of any portion of the subject tract. If the subject tract is to be platted for subdivision, the Owner agrees that the substance of this provision regarding annexation shall be included in the subdivision covenants and such will constitute a covenant running with the land.
- (c) Owner agrees that if owner fails to include the substance of Section 1(a) of this Agreement in sales contracts or subdivision covenants, as provided herein, and if said annexation is delayed or contested by subsequent owners as a result, the Owner shall be liable to the City for all real estate taxes and other taxes that would have been due to the City had annexation been able to proceed as outlined herein. The Owner agrees for himself, successor and assigns, and all other persons intended herein to be obligated to consent to annexation, to cooperate in signing or joining in any petition for annexation for the subject tract and that mandamus would be an appropriate remedy in the event of refusal so to do, and, if the City has to resort to Court proceedings to enforce this obligation, the City shall be entitled to recover reasonable attorney's fees. The parties agree that nothing in this section shall preclude the voluntary annexation of the subject tract or any portion thereof earlier than would otherwise be required.

**Section 2:** The Owner acknowledges that upon annexation the tract will be rezoned from County R-1 to City R-3. Owner agrees that, unless changed upon the initiative of the Owner the said City zoning classification for the 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. Owners agree to use the

tract only in compliance with the Urbana Zoning Ordinance as such may be amended from time to time.

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

**Section 4:** The Owner shall take no action or omit to take action during the term of this Agreement which action or omission, as applied to the tracts, would be a breach of this Agreement, without first procuring a written amendment to this Agreement duly executed by both the Owner and the city. Said action includes petitioning for a county rezoning of said tracts without a written amendment to this Agreement.

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

The Corporate Authorities agree to the following provisions:

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

**Section 2:** The Corporate Authorities agree that the tract will be zoned City R-3, Single and Two-Family Residential upon its annexation to the City. 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 Owner requesting said change, the Corporate Authorities reserve the right to amend the Zoning Ordinance text even if such amendment affects the property. If the zoning district referenced herein is not in existence at the time of the annexation, the parties agree to reclassify said property to the most comparable zoning classification as is determined by the Zoning Administrator.

**Section 3:** The Corporate Authorities agree that all applicable development regulations as are in force as of the date hereof will apply to said tract, except as otherwise provided below:

- a. Lot Width. The Corporate Authorities agree to permit the following variations for lot width:

- 1) Lot Width Less Than 60 Feet, Section VI-3.D of the Urbana Zoning Ordinance. The Corporate Authorities hereby grant a variance to permit said tract, platted before December 21, 1970, to be less than the required 60-foot width for a lot in the R-3 District. The approximate width of said tract is 52 feet.
- 2) Lot Width for a Duplex, Section VI-3.C and Table VI-3, Footnote 13 of the Urbana Zoning Ordinance. The Corporate Authorities hereby grant a variance to permit a duplex on said tract, although said tract has an average width of less than 60 feet.

### **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. To the extent permitted thereby, it is agreed that, in the event the annexation of subject tract under the terms and conditions of this Agreement is challenged in any court proceeding, the period of time during which such litigation is pending shall not be included in calculating said twenty-year term.

If this Agreement imposes any obligation, restraint, or burden (hereinafter called collectively "obligation") on the Owner, 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, mortgagees, lessees, executors, assigns and successors in interest of the Owner 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 Owner agree that neither 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 both the Owner and the City.

**Section 4. Enforcement** -- The Owner and Corporate Authorities agree and hereby stipulate that any party to this Agreement may, by civil action, mandamus, action for writ of injunction or other proceeding, enforce and compel performance of this Agreement or the party not in default declare this Agreement null and void in addition to other remedies

available. Upon breach by the Owner, the city may refuse the issuance of any permits or other approvals or authorizations relating to development of the tract.

**Section 5. Effective Date** -- The Corporate Authorities and Owner intend that this Agreement shall be recorded in the Office of the Champaign County Recorder with any expenses for said recording to be paid by the Corporate Authorities. The effective date of this Agreement shall be the date it is recorded; or if not recorded for any reason, the effective date shall be the date the Mayor signs the agreement on behalf of the City.

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

**Corporate Authorities  
City of Urbana:**

**Owner:**

\_\_\_\_\_  
Laurel Lunt Prussing, Mayor

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**ATTEST:**

**ATTEST:**

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

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Exhibits attached and made a part of this Agreement:

- Exhibit A: Legal Description
- Exhibit B: Location Map

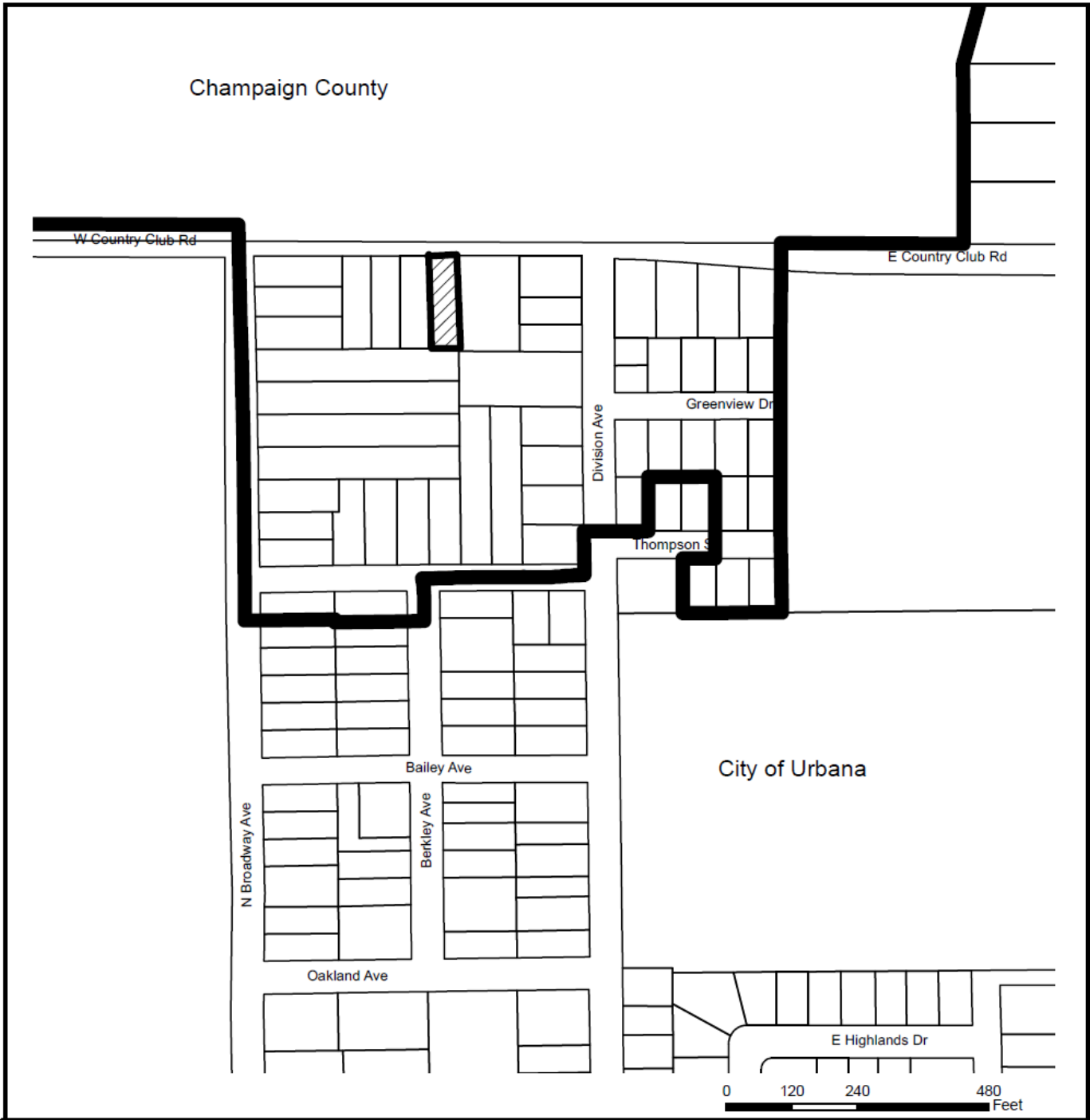
**EXHIBIT A: LEGAL DESCRIPTION**

Lot 1 in Hazel Thompson's Subdivision of Lots 1 and 2 of Block 5 of Parkview Subdivision of Lots 5, 6, 11, and 12 of a subdivision of the Northeast East ¼ of Section 8, Township 19 North, Range 9 East of the Third Principal Meridian, as per plat recorded in Plat Book "G" at page 138, situated in Champaign County, Illinois.



PIN No.: 30-21-08-202-007.

DRAFT

# EXHIBIT B: Location Map



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