



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

m e m o r a n d u m

TO: Urbana Plan Commission

FROM: Jeff Engstrom, AICP, Planner I

DATE: December 4, 2009

SUBJECT: Annexation Case No. 2009-A-07 and Plan Case No. 2120-M-09: Annexation agreement and request to rezone upon annexation a 1.6-acre tract of property at 2209 East Perkins Road from Champaign County CR, Conservation-Recreation District to City, R-1, Single-Family Residential Zoning District.

Introduction & Background

James E. Tull Sr. is requesting an annexation agreement for a 1.6-acre parcel located at 2209 East Perkins Road. The subject property is located in Urbana Township within unincorporated Champaign County and is adjacent to the City boundary and will be annexed within 30 days of the approval of the annexation agreement by City Council.

The property contains two deteriorated structures: a vacant single-family home and an accessory structure. The property is currently zoned Champaign County CR, Conservation-Recreation, and the annexation agreement stipulates that the property will be rezoned to City R-1, Single-Family Residential zoning upon annexation. The proposed rezoning is consistent with the 2005 Urbana Comprehensive Plan.

Issues and Discussion

Annexation Agreement

James E. Tull Sr. has a contract to sell the subject property to Scott Plunk. At 186 feet wide, the property is less than the 200-foot minimum lot width in the County CR, Conservation Recreation district, and would require a variance in order to replace the house on the lot. In order to facilitate the sale of the property, Mr. Tull wishes to enter into an annexation agreement with the City to allow development of the property. The proposed agreement includes a provision to rezone the property to bring it into conformance with the 2005 Urbana Comprehensive Plan, which shows the area as Rural Residential. The agreement also requires the demolition of the existing deteriorated structures on the property and approves a variance to construct a building in which the primary residential use is

smaller than the accessory storage space. The building will be 4,032 square feet in area, with more than half of its floor area devoted to storage for personal equipment. No commercial uses will be allowed on the site.

For annexations that include a rezoning, a public hearing must be held by the Plan Commission to consider the rezoning. The Urbana City Council will hold a public hearing to consider the final provisions of the annexation agreement, including the variance request. The variance generally meets the City's variance criteria, in that it will not alter the essential character of the neighborhood, will not cause a nuisance to adjacent property, and represents the minimum necessary deviation from requirements of the Zoning Ordinance.

Zoning and Future Land Use

The property is currently zoned County CR, Conservation-Recreation, and upon annexation, the property would be zoned City R-1, Single-Family Residential. The potential buyer, Scott Plunk, wishes to build a combination single-family residence and storage building. The 2005 Comprehensive Plan identifies the area as "Rural Residential" which is consistent with the proposed rezoning. The property is surrounded to the north and west by other single-family homes. Across Perkins Road to the northeast is a township equipment facility. To the east is undeveloped land that contains a pond and several trees and bushes. Directly to the south of the subject property is the Saline Ditch, and beyond that is land used for growing crops.

The Urbana Zoning Ordinance states:

Residential Districts generally are intended to provide desirable settings for residential uses within several density ranges described in Urbana's Comprehensive Plan, and for various types of dwelling units, with appropriate regulations regarding physical development. As appropriate, the districts also allow other uses compatible with residential areas, either as permitted or as conditional or special uses. Basic urban services and utilities, including adequate access and utilities, are necessary for these districts.

The *R-1, Single-Family Residential District* is intended to provide areas for single-family detached dwellings at low density.

The subject property is in an area that contains many single-family homes on large lots, which is compatible with the intent of the R-1 district. The subject property is 186 feet wide and varies in depth from 350 to 416 feet, totaling 70,760 square feet. It meets the development standards for the City's R-1 district, as it is larger than 9,000 square feet in area and complies with the minimum lot width of 80 feet.

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 R-1 zoning is consistent with adjacent land uses to the north and west. The surrounding areas are used for a mixture of single-family, agricultural and township purposes. Additionally, the proposed zoning is consistent with the City of Urbana Comprehensive Plan Future Land Use designation of Rural Residential.

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

Under Section IV-5 of the Urbana Zoning Ordinance, an automatic conversion from County to City zoning would result in the property being zoned CRE, Conservation-Recreation-Education. Under City CRE zoning, neither the current nor proposed single-family residential use would be allowed. Conversion to City R-1 will allow for use as a single-family residence. The rezoning will allow for the removal of deteriorated structures on the property and maintenance of over-grown landscaping. The rezoning should not result in any negative impacts on property value.

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

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

There would no negative impact on the health, safety, morals or general welfare of the public due to the proposed rezoning, as the proposed zoning district is consistent with the development in the surrounding area. The rezoning will allow for the removal of deteriorated structures on the property and maintenance of over-grown landscaping.

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

If the property were not rezoned, the pending sale will not occur and the property will not be developed as planned. There would be no gain to the public, as the property would continue to contain a vacant house on an overgrown lot.

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

The rezoning will allow for the addition of a single-family property into the city. The property currently contains a single-family home. The existing home will be demolished and replaced with a larger building including both a dwelling and a large storage space for personal equipment. This future development will be subject to all the applicable development standards of the Zoning Ordinance. No commercial uses will be allowed on the site.

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 contains a house which has not been occupied for at least two years.

Summary of Findings

1. The proposed rezoning would allow for the annexation of a single-family parcel into the City, and for the removal of deteriorated structures from and improved maintenance of overgrown landscaping on that parcel.
2. The proposed R-1, Single-Family Residential Zoning District would be consistent with the current land use of the subject parcel and surrounding properties.
3. The proposed R-1, Single-Family Residential Zoning District would be consistent with the future land use designation of Rural Residential as specified by the 2005 Urbana Comprehensive Plan.
4. The proposed rezoning would not be detrimental to the public health, safety or general welfare.
5. The proposed rezoning appears to meet the LaSalle Case criteria.
6. The proposed annexation agreement would approve a variance allowing for the construction of a structure in which the accessory personal storage space would have a larger area than the primary residential use.
7. The proposed variance generally meets the City's variance criteria, in that it will not alter the essential character of the neighborhood, will not cause a nuisance to adjacent property, and represents the minimum necessary deviation from requirements of the Zoning Ordinance.
8. The proposed annexation agreement would prohibit non-residential uses on the site.

Options

The Plan Commission has the following options. In Plan Case 2009-A-07 / 2120-M-09, 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-1, Single-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-1, Single-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 Case 2009-A-07 / 2120-M-09 staff recommends **APPROVAL** of the proposed annexation agreement as presented.

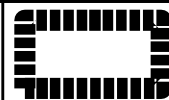
cc: James E. Tull, Sr.
William Goldstein
Scott Plunk
Byron Balbach
John Hall, Champaign County Zoning Administrator
Donald Smith, Urbana Township Supervisor

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

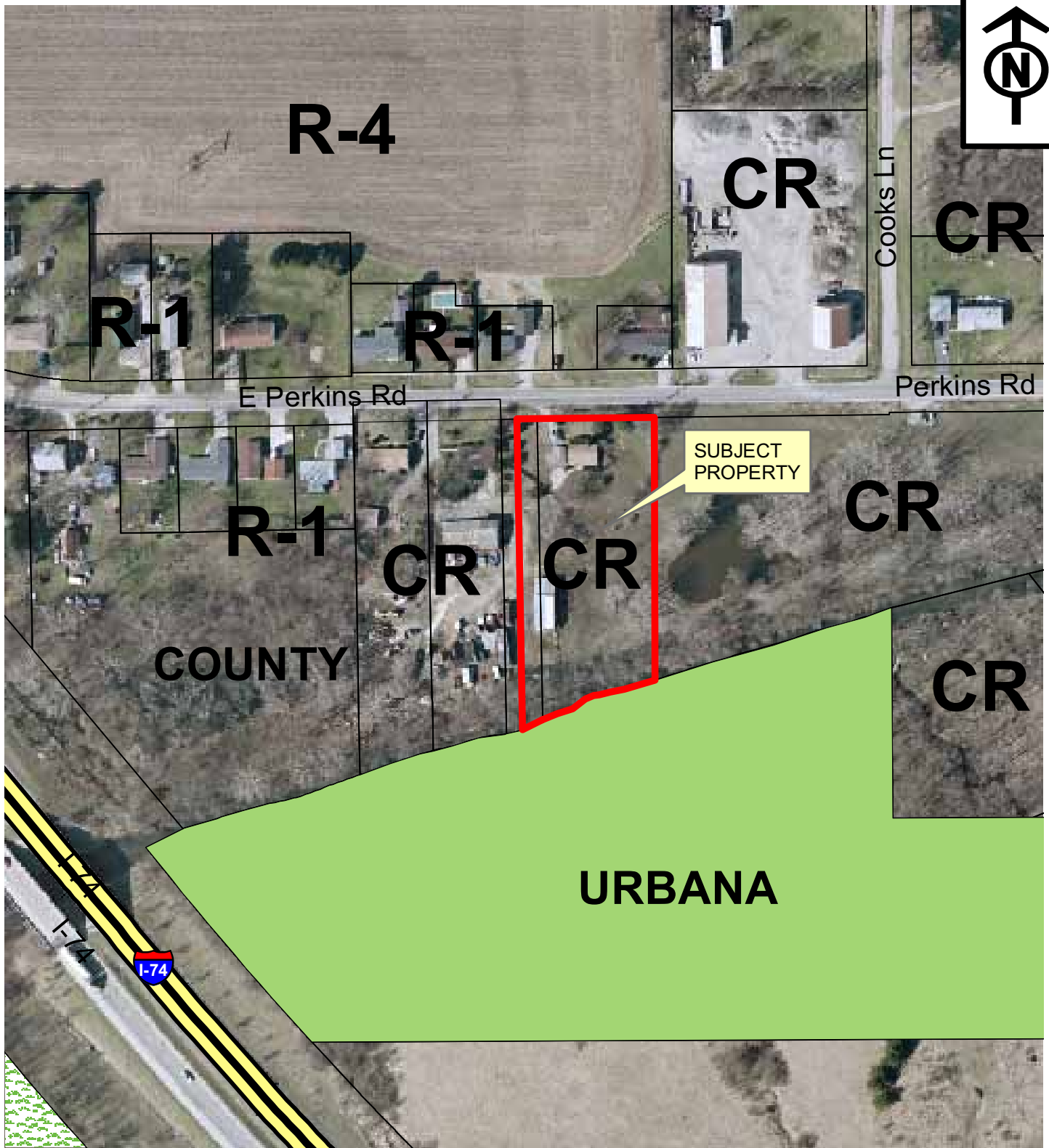


Plan Case: 2009-A-07 & 2120-M-09
Description: Scott Plunk
Annexation Agreement
Location: 2209 E Perkins Road



Urbana

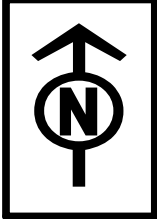
Exhibit B: Zoning Map



Plan Case: 2009-A-07 & 2120-M-09
Description: Scott Plunk
Annexation Agreement
Location: 2209 E Perkins Road

 CRE

Exhibit C: Future Land Use Map



Plan Case: 2009-A-07 & 2120-M-09
Description: Scott Plunk
Annexation Agreement
Location: 2209 E Perkins Road

Prepared 11/09 by Community Development Services - jme

Annexation Agreement

(James E. Tull Sr.)

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 **James E. Tull Sr.** (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, James E. Tull Sr. is the Owner of record of a certain parcel of real estate located at 2209 East Perkins Road, the legal description of which real estate is set forth in Exhibit A attached hereto and referenced herein as Tract "A", or "the tract"; and

WHEREAS, Scott Plunk has agreed to purchase the tract if the tract is subject to the terms and conditions set forth in this annexation agreement and James E. Tull Sr., as owner is agreeable to accommodate such by signing as Owner, provided it is contingent upon finalization of the sale of the tract as further set forth in Article III, Section 6 below; and

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; and

WHEREAS, the tract is contiguous to the City of Urbana and may be immediately annexed; and

WHEREAS, the tract is currently zoned Champaign County CR, Conservation – Recreation 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-1, Single-Family Residential, under the terms and provisions of the Urbana Zoning Ordinance in effect upon the date of annexation, 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 under R1, Single-Family Residential zoning generally reflects the goals, objectives and policies set forth in the City's 2005 Urbana Comprehensive Plan, as amended from time to time; 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. Ownership and Annexation. The Owner represents that the Owner is the sole record Owner of the property described in Exhibit A and that the Owner shall, within thirty (30) days of the effective date of this agreement 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.

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

Section 2. Authority to Annex. The Owner agrees and hereby stipulates 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 Owner acknowledges that upon annexation, the tract will be rezoned from Champaign County CR, Conservation-Recreation to City R-1, Single-Family Residential Zoning District. The Owner agrees that, unless changed upon the initiative of the Owner, 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 Owner agrees to use the tract only in compliance with the Urbana Zoning Ordinance and this agreement as such may be amended from time to time.

Section 4. Accessory Storage Area Variance: It is understood and agreed that the following provisions are agreed to by the Owner because Scott Plunk wants them in the agreement and he anticipates that by assignment of the agreement to him after he becomes owner of the tract he will benefit thereby. Thus, the Owner, on his behalf, agrees to the following conditions of a Variance granted by Article II Section 3 of this Agreement, which

will allow the construction of a combination residence and accessory storage building in which the accessory storage use is larger in area than the principal residential use.

1. The combined area of the residential/storage building shall not exceed 4,032 square feet.
2. The storage area shall only be used for non-commercial uses, including the storage of vehicles, equipment, and materials which are the property of the Owner.
3. No equipment shall be stored outside of the building.

Section 5. Land Uses. The Owner agrees that the uses of the tract shall be limited to those allowed within Urbana's R1, Single-Family Residential Zoning District and shall not operate any commercial use on the tract.

Section 6. Building and Zoning Code Compliance. The Owner agrees to cause all new development, construction, remodeling or building additions on said tract to be in conformance with all applicable City of Urbana codes and regulations including building, zoning and subdivision codes.

Section 7. Sewer Connection. The Owner agrees to connect to the Urbana-Champaign Sanitary District public sewer upon the failure of the existing septic system on the property. The Owner agrees not to repair or replace the existing septic system upon failure.

Section 8. Demolition of Structures. The Owner agrees to demolish the existing house, garage, and accessory structure on the tract within 365 days of the effective date of this agreement.

Section 9. Amendments Required. The Owner shall take no action or omit to take action during the term of this Agreement which action or omission, as applied to the tract, would be a breach of this Agreement, without first procuring a written amendment to this Agreement duly executed by the Owner and the City. Said action includes petitioning for a county rezoning of said tract without written amendment to this Agreement.

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 Owner, 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 R-1, Single-Family Residential. as defined in the City of Urbana Zoning Ordinance as such exists at the time of annexation of the tract. The Corporate Authorities agree that all applicable development regulations existing at the time of annexation will apply to said tract. The Corporate Authorities further agree that the granting of the Zoning Map Amendment would be consistent with the LaSalle Criteria established by the Illinois Supreme Court in LaSalle National Bank v. The County of Cook:

- a. The existing land uses and zoning of the nearby property.
- b. The extent to which property values are diminished by the restrictions of the ordinance.
- c. The extent to which the ordinance promotes the health, safety, morals or general welfare of the public.
- d. The relative gain to the public as compared to the hardship imposed on the individual property owner.
- e. The suitability of the subject property for the zoned purposes.
- f. 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.

Section 3. Accessory Storage Area Variance: The Corporate Authorities agree with this annexation agreement to grant a Variance to allow the Owner to construct a combination single-family home and storage building in which the accessory storage use is larger in area than the principal residential use. The total area of this structure shall not exceed 4,032 square feet. The Corporate Authorities further agree that the granting of this variance is consistent with the following criteria identified in Section XI-3 of the Urbana Zoning Ordinance, in that the variance:

- a. will not alter the essential character of the neighborhood;
- b. will not cause a nuisance to adjacent property;
- c. represents, generally, the minimum deviation from requirements of the Zoning Ordinance necessary to accommodate the request.

Section 4. 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 the Owner's successors or assigns, 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 twenty-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 Owner or the Owner's successors or assigns, which obligation extends beyond the termination date of this Agreement, such obligation may be released by the Urbana City Council enacting an Ordinance releasing such obligation by a majority vote of all Alderpersons then holding office and the recording of such Ordinance in the Champaign County Recorder's Office, Champaign County, Illinois.

Section 2. Covenant running with the land. The terms of this Agreement constitute a covenant running with the land for the life of this Agreement unless specific terms are expressly made binding beyond the life of this Agreement. Furthermore, the terms herein are hereby expressly made binding upon all heirs, grantees, lessees, executors, assigns and successors in interest of the Owner as to all or any part of the 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 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 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 may 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. 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. It is understood and agreed that James E. Tull Sr., present owner of the tract, has signed this agreement as a condition of a pending sale of the tract

to Scott Plunk, and as such, this agreement shall become effective and binding only upon the recording of a deed in the office of the Champaign County Recorder, on or before the 1st day of July, 2010, conveying the title of the tract to Scott Plunk. If such deed is not recorded by such date, this agreement shall become null and void.

Section 7. Assignment and Recording. This agreement may be assigned by the Owner to Scott Plunk without prior approval of the Corporate Authorities. If such deed conveying the tract by the Owner to Scott Plunk is recorded with the office of the Champaign County Recorder, the Corporate Authorities shall record a certified copy of this agreement.

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

James E. Tull Sr.

Date

Date

ATTEST:

ATTEST:

Phyllis D. Clark
City Clerk

Notary Public

Date

Date

Purchaser:

I certify that I have read this Agreement and approve of it; I will accept assignment of this Annexation Agreement to me by James E. Tull, Sr. after the deed conveying the said tract to me is recorded in the Champaign County (Illinois) Recorder's Office.

Scott Plunk

Date

ATTEST:

Notary Public

Date

Exhibit A

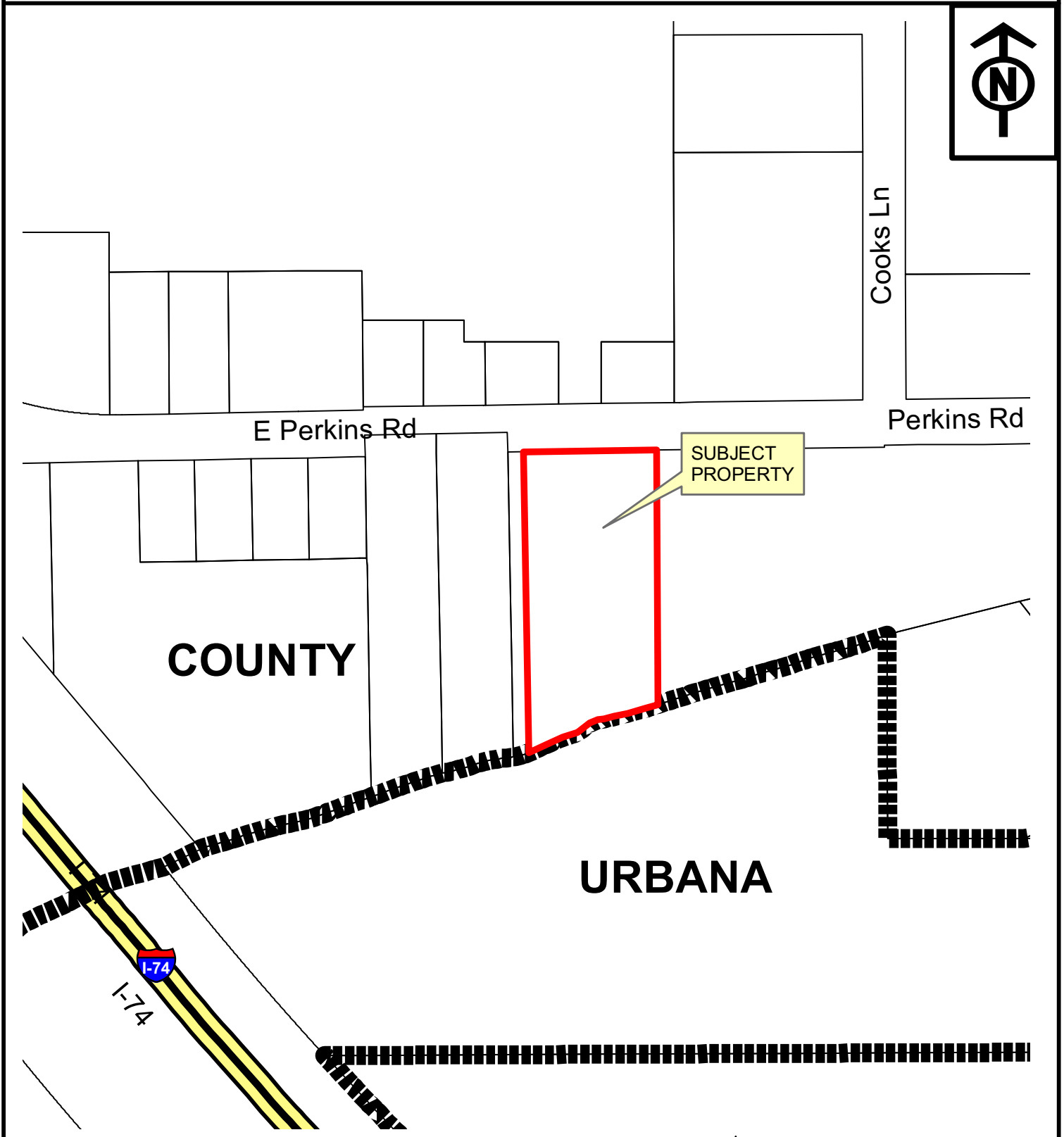
Legal Description

Lot 102, except the west Twenty-Two (22) feet thereof, of Tull's Replat Subdivision, a part of the NW ¼ of Section 10, Township 19 North of the Third Principal Meridian located in Champaign County, Illinois, as recorded as Document #2004R23616 in the Office of the Champaign County Recorder, Champaign County, Illinois.

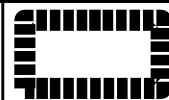
PIN:

Commonly known as 2209 East Perkins Road, Urbana.

Exhibit B: Location Map



Plan Case: 2009-A-07
Description: James E. Tull Sr.
Annexation Agreement
Location: 2209 E Perkins Road



Urbana