



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

m e m o r a n d u m

TO: Urbana Plan Commission

FROM: Kevin Garcia, Planner II

DATE: November 14, 2014

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

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

Introduction & Background

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

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

Staff requests that the Plan Commission recommend to the City Council whether to rezone the property from County CR to City AG as part of the draft annexation agreement.

Issues and Discussion

Annexation Agreement

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

According to Section IV-5 of the Urbana Zoning Ordinance, a public hearing at the Urbana Plan Commission is required if the proposed zoning is not a direct conversion from County zoning as stated in Table IV-1. Per Table IV-1, Table of Uses, a direct conversion from County CR (Conservation-Recreation) would result in City CRE (Conservation-Recreation-Education) zoning. The Urbana Zoning Ordinance does not allow residential uses in the CRE district. A single-family residence would therefore not be allowed in the City's CRE zoning district but would be permitted by right in the City's AG (Agriculture) zoning district.

The draft annexation agreement states that the property will be rezoned to City AG (Agriculture) upon annexation.

Proposed Rezoning

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

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

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

The AG, Agriculture District

is intended to retain in agricultural and other compatible low intensity uses, areas where soil and topographic conditions are suitable for these uses, and into which the intrusion of urban uses would be inappropriate or untimely due to a lack of urban services and facilities.

The property is currently vacant; historically, it has been used for agriculture and open space.

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

Adjacent Land Uses and Zoning Designations

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

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

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

Comprehensive Plan

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

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

The La Salle National Bank Criteria

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

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

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

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

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

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

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

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

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

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

Questions 3 and 4 apply to the current zoning restrictions: do the restrictions promote the public welfare in some significant way so as to offset any hardship imposed on the property owner by the restrictions?

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

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

The issue here is whether there are certain features of the property which favor the type and intensity of uses permitted in either the current or the proposed zoning district.

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

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

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

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

Summary of Staff Findings

1. Harold E. Whitlatch and Teresa Westenhaver have requested that the City of Urbana enter into an annexation agreement for a 5.19-acre parcel located north of Perkins Road and east of Cooks Lane, and commonly referred to as 1702 Cooks Lane.
2. The property owners require a new permit to connect to the UCSD sanitary sewer, and as a

result, require an annexation agreement with the City of Urbana.

3. The property owners request that the property be rezoned from County CR, Conservation Recreation, to City AG, Agriculture, as part of the annexation agreement.
4. The proposed AG, Agriculture Zoning District would allow for the property owners to use the property for both residential and agricultural uses.
5. The proposed AG, Agriculture Zoning District would be generally compatible with the “rural residential” future land use designation of the 2005 Urbana Comprehensive Plan.
6. The proposed rezoning would not be detrimental to the public health, safety or general welfare.
7. The proposed rezoning appears to generally meet the LaSalle Case criteria.

Options

The Plan Commission has the following options. In Plan Case 2014-A-06 / 2245-M-14, the Plan Commission may forward this case to the City Council with a recommendation to:

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

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 recommend **APPROVAL** of the proposed annexation agreement as presented.

cc: Harold Whitlatch and Teresa Westenhaver

Attachments: Exhibit A: Location & Existing Land Use Map
Exhibit B: Zoning Map
Exhibit C: Future Land Use Map
Exhibit D: Draft Annexation Agreement, including Memorandum of Contract
Exhibit E: Site Plan

Exhibit A: Location & Existing Land Use Map



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



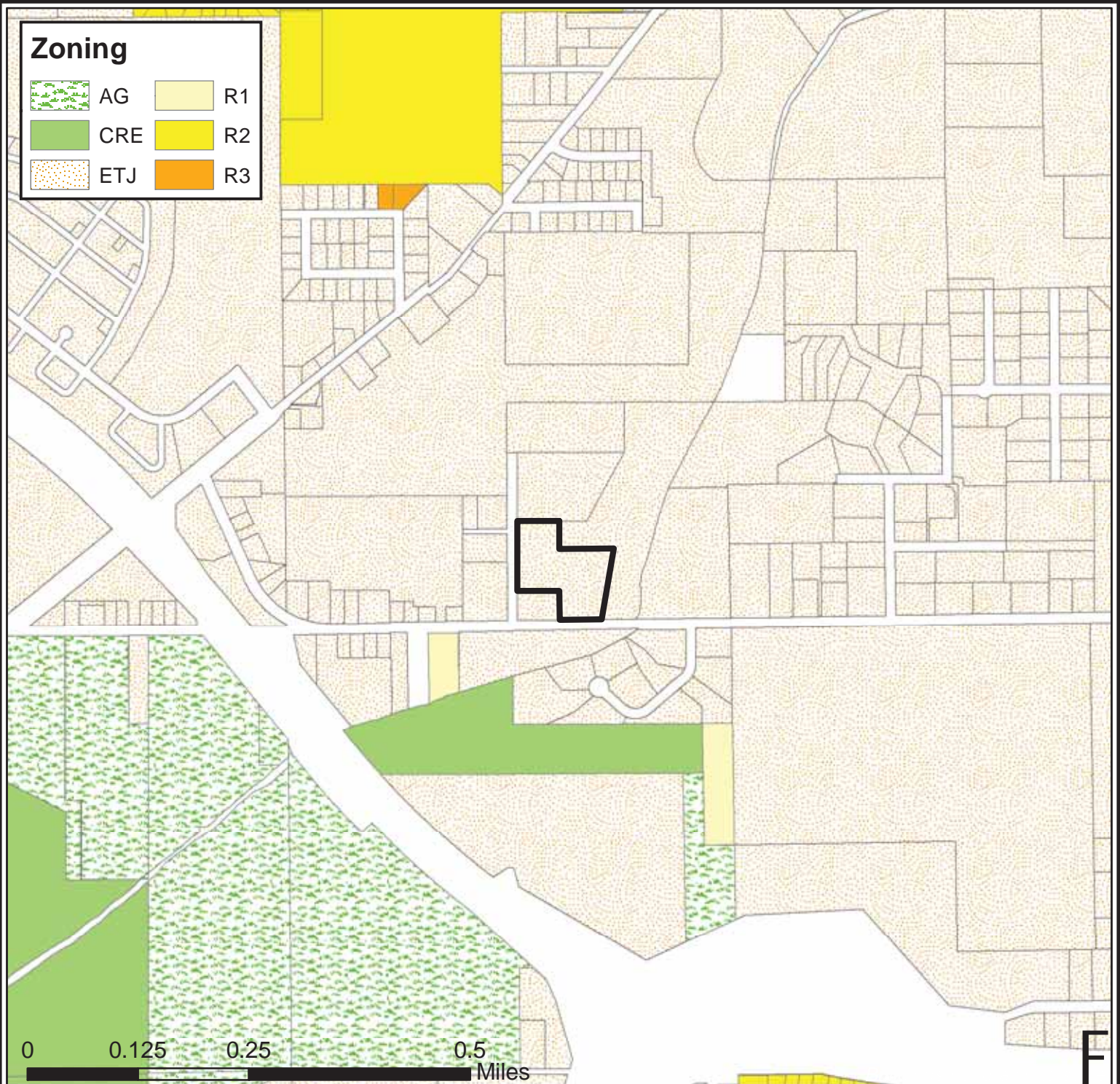
-  Subject Property
-  Urbana Corporate Limits

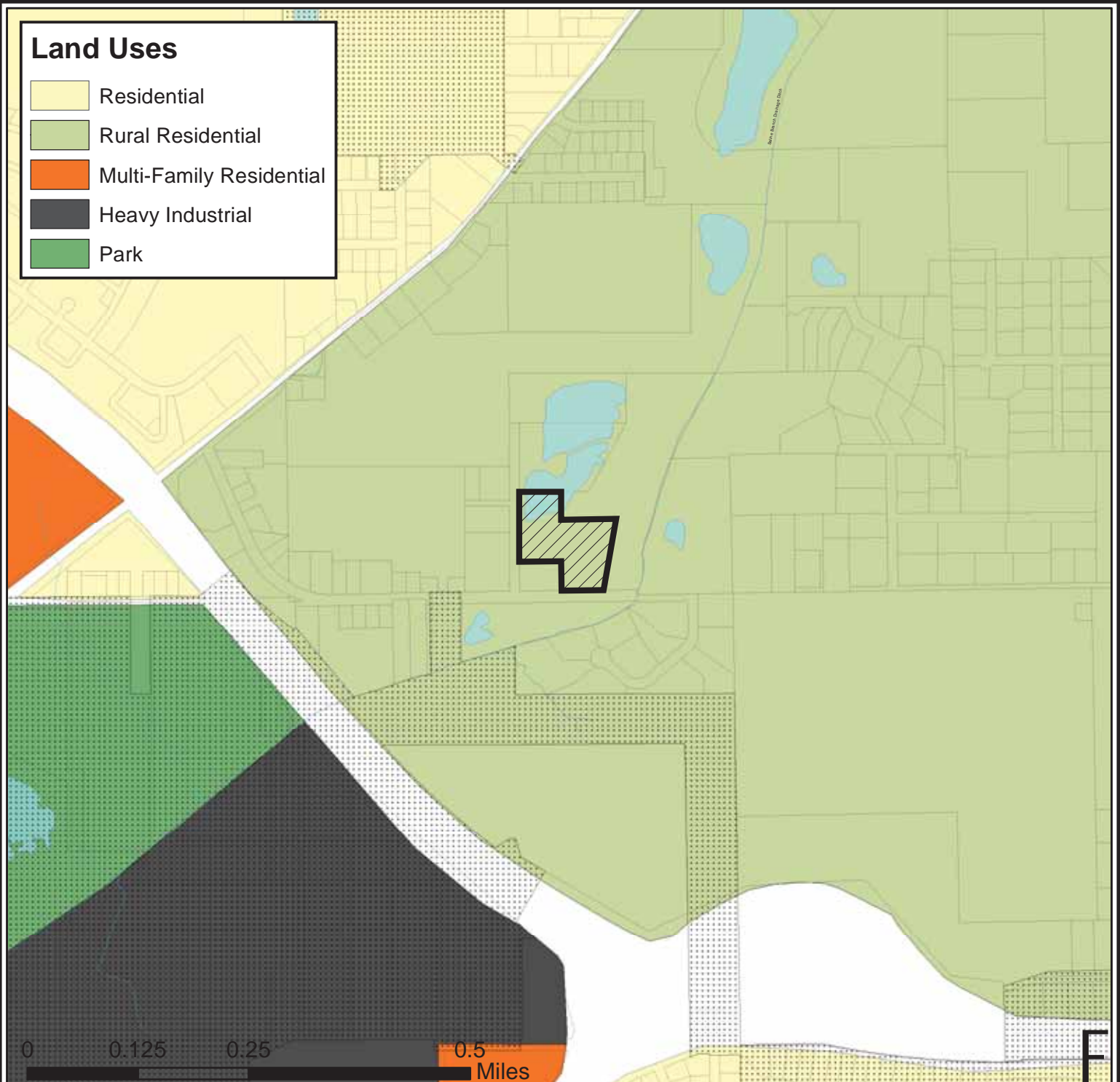
Exhibit B: Zoning Map





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

 Subject Property

Exhibit C: Future Land Use Map



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

 Subject Property
 Urbana Corporate Limits

Annexation Agreement

(Harold E. Whitlatch and Teresa Westenhaver)

THIS Agreement is made and entered into by and between the City of Urbana, Illinois, (hereinafter sometimes referred to as the "Corporate Authorities" or the "City") and Harold E. Whitlatch and Teresa Westenhaver (hereinafter referred to as the "Owners"). The effective date of this Agreement shall be as provided in Article III, Section 6.

WITNESSETH:

WHEREAS, this Agreement is made pursuant to and in accordance with the provisions of Section 11-15.1-1 et seq., of the Illinois Municipal Code (65 ILCS 5/11-15.1-1); and

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

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

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

WHEREAS, the tract is currently zoned Champaign County CR, Conservation Recreation Zoning District in Champaign County and the City and the Owners find it necessary and desirable that the tract be annexed to the City with a zoning classification of AG, Agricultural Zoning District, under the terms and provisions of the Urbana Zoning Ordinance in effect upon the date of annexation, and subject to the terms and conditions set forth in this Agreement; and

WHEREAS, the Corporate Authorities find annexation of the tract as described herein as AG, Agricultural Zoning District, generally reflects the goals, objectives and policies set forth in the City's 2005 Urbana Comprehensive Plan; and

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

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

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

ARTICLE I. REPRESENTATIONS AND OBLIGATIONS OF THE OWNERS

The Owners agree to the following provisions:

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

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

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

The Owners agree for themselves, their successors and assigns, and all other persons intended herein to be obligated to consent to annexation, to cooperate in signing or joining in any petition for annexation for the subject tract and that mandamus would be an appropriate remedy in the event of refusal so to do, and, if the City has to resort to Court proceedings to enforce this obligation, the City shall be entitled to recover reasonable attorney's fees and costs of suit from all persons obligated to consent to annexation. The parties further agree that nothing in this section shall preclude the voluntary annexation of the subject tract or any portion thereof earlier than would otherwise be required.

Section 2. Authority to Annex. The Owners agree and hereby stipulate that the City, by its approval, execution or delivery of this Agreement does not in any way relinquish or waive any authority it may have to annex the tract in the absence of this Agreement.

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

Agricultural Zoning District. The Owners agree that, unless changed upon the initiative of the Owners, the said City zoning classifications for said tract shall remain in effect for the term of this Agreement, subject to the right of the Corporate Authorities to amend the Zoning Ordinance text even if such amendment affects the tract. The Owners agree to use the tract only in compliance with the Urbana Zoning Ordinance and this Agreement as such may be amended from time to time. For the term of this Agreement, the Owners shall not petition for a county rezoning of said tract without a written amendment to this Agreement.

Section 4. Land Uses. The Owners agree that for the term of this Agreement the uses of the tract shall be limited to uses permitted in the AG, Agricultural Zoning District as set forth in the Urbana Zoning Ordinance. The Owners shall be allowed to erect a single-family residence, plus accessory structures. The combined area of all structures shall not exceed 3,600 square feet.

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

ARTICLE II. REPRESENTATIONS AND OBLIGATIONS OF THE CORPORATE AUTHORITIES

The Corporate Authorities agree to the following provisions:

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

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

Section 3. Land Uses. The Corporate Authorities agree to allow the Owners to erect a single-family residence, plus accessory structures. The combined area of all structures shall not exceed 3,600 square feet. In addition, the Corporate Authorities agree to allow the Owners to use the property for any use allowed in the AG Zoning District. Uses may include conducting row or pasture cropping on the site and raising or keeping livestock including, but not limited to, fowl, rabbits, and horses.

ARTICLE III: GENERAL PROVISIONS

Section 1. Term of this Agreement. This Agreement shall be binding upon the parties hereto, and their respective successors and assigns, for a full term of twenty (20) years commencing as of the effective date of this Agreement as provided by the Illinois State Statutes, unless other provisions of this Agreement specifically apply a different term.

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

Section 2. Covenant Running with the Land. The terms of this Agreement constitute a covenant running with the land for the life of this Agreement unless specific terms are expressly made binding beyond the life of this Agreement. Furthermore, the terms herein are hereby expressly made binding upon all heirs, grantees, lessees, executors, assigns and successors in interest of the Owners as to all or any part of the tract, and are further expressly made binding upon said City and the duly elected or appointed successors in office of its Corporate Authorities.

Section 3. Binding Agreement upon Parties. The Corporate Authorities and Owners agree that no party will take action or omit to take action during the term of this Agreement which act or omission as applied to the tract would be a breach of this Agreement without first procuring a written amendment to this Agreement duly executed by the Owners and the City.

Section 4. Enforcement. The Owners and Corporate Authorities agree and hereby stipulate that any party to this Agreement may, by civil action, mandamus, action for writ of injunction or other proceeding, enforce and compel performance of this Agreement or the party not in default may declare this Agreement null and void in addition to other remedies available. Upon breach by the Owners, the City may refuse the issuance of any permits or other approvals or authorizations relating to development of the tract.

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

Section 6. Recordation; Effective Date. The Corporate Authorities and Owners intend that this Agreement shall be recorded in the Office of the Champaign County Recorder with any expenses for said recording to be paid by the Corporate Authorities. The effective date of this Agreement shall be the date the Mayor signs the Agreement on behalf of the City.

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

Owners:

Harold E. Whitlatch

Teresa Westenhaver

State of Illinois)
) ss
County of Champaign)

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

Notary Public

**Corporate Authorities
City of Urbana:**

Laurel Lunt Prussing
Mayor

Date

ATTEST:

Phyllis D. Clark
City Clerk

Exhibits attached and made a part of this Agreement:

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

Exhibit A

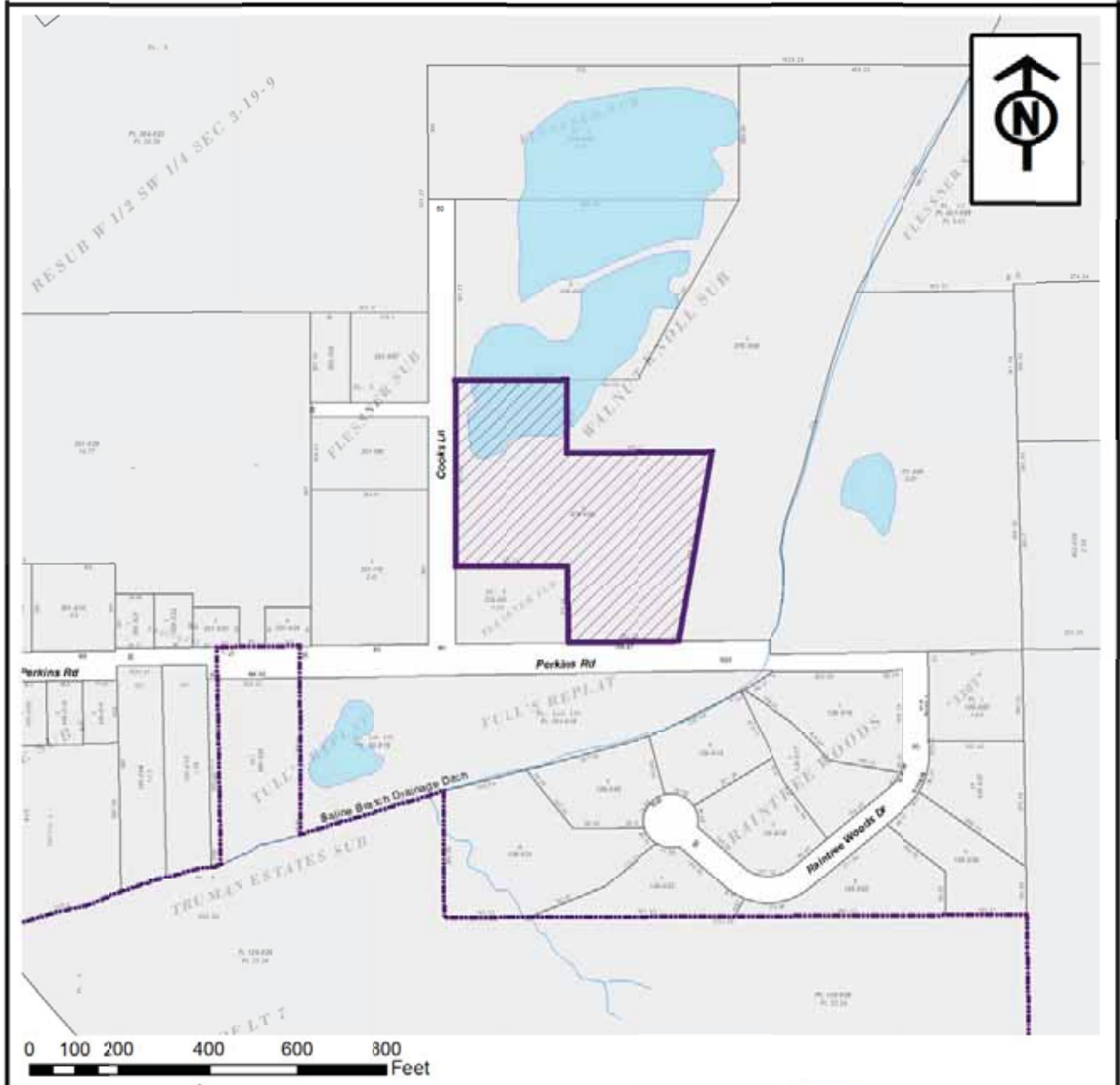
Legal Description

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

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

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

Exhibit B Location Map



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

- Subject Property
- Urbana Corporate Limits

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

MEMORANDUM OF CONTRACT

THIS MEMORANDUM OF CONTRACT is made between Harold E. Whitlatch and Teresa Westenhaver (“Owners”) and the City of Urbana, Illinois (“City”) pertaining to an annexation agreement between them dated _____, relating to the real property described below:

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

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

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

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

IN WITNESS WHEREOF, the parties have executed this Memorandum on

_____.

Owners

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

BY:

Harold E. Whitlatch

Teresa Westenhaver

STATE OF ILLINOIS)
) ss.
COUNTY OF CHAMPAIGN)

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

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

Notary Public

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

BY:

Laurel Lunt Prussing
Mayor

ATTEST:

Phyllis D. Clark
City Clerk

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

Exhibit E: Site Plan



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

 Subject Property