



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

m e m o r a n d u m

TO: Urbana Plan Commission

FROM: Maximillian Mahalek, Community Development Associate

DATE: June 12, 2015

SUBJECT: Plan Case No. 2015-A-01: Annexation agreement for an 8.35-acre tract of property at 3106 N. Cunningham Avenue.

Plan Case No. 2261-M-15: Request to rezone an 8.35-acre tract of property at 3106 N. Cunningham Avenue from Champaign County B-4 (General Business) to City IN-1 (Light Industrial/Office) upon annexation.

Introduction & Background

The City of Urbana has received a request from Green Vistas, LLC; DGS Properties, LLC; and Stark Excavating, Inc. to enter into an annexation agreement for an 8.35-acre parcel located along the east side of Cunningham Avenue between Airport Road and Oaks Road, addressed as 3106 N. Cunningham Avenue. The proposed agreement would include the rezoning of the property from County B-4 (General Business) to City IN-1 (Light Industrial/Office) upon annexation. It would confer a Special Use Permit for concrete ready-mix and asphalt production and sales, as well as aggregate material recycling and sales. The proposed agreement would also confer a Conditional Use Permit for the use of a construction yard on the subject property. The property is currently contiguous to the City of Urbana, and the annexation agreement would require the Owner to submit a petition to annex the property.

Under the terms of the Annexation Agreement (attached as Exhibit E to this memorandum), the property has been owned by Green Vistas, LLC (an affiliate of Mervis Industries, Inc.) since September of 2010. On February 20th, 2012, the Urbana City Council entered into an annexation agreement with Mervis Industries (Ordinance No. 2012-02-017) for the subject property, which included a rezoning from County B-4 (General Business) to City IN (Industrial) (for potential use as an expansion of Mervis Industries's recycling facility located to the south). Mervis Industries was never the owner-of-record for the subject property, and that agreement is now considered invalid. Green Vistas has determined that they do not need the subject property, and have agreed to sell it to DGS Properties, LLC (also an affiliate of Mervis Industries).

As a part of the Agreement, DGS Properties would purchase the property from Green Vistas, and lease it to its affiliate, Stark Excavating. Stark Excavating would utilize the site for the

manufacture and sale of concrete ready-mix and asphalt, as well as for aggregate material recycling and sales, as allowed by a Special Use Permit in the IN-1 (Light Industrial/Office). The Annexation Agreement provides for this Special Use Permit. The Agreement also provides Stark Excavating with a Conditional Use Permit that would allow them to operate a construction yard on the subject property.

Rezoning the subject property to IN-1 (Light Industrial/Office) will ensure zoning consistency for the area, as the tracts to the west and south are also zoned IN-1 (Light Industrial/Office).

When considering the Annexation Agreement, the Urbana Plan Commission is requested to recommend to the City Council whether to rezone the property from County B-4 to City IN-1 (Light Industrial/Office) as a part of the Agreement.

Adjacent Land-Uses and Zoning Designations

The property fronts Cunningham Avenue (US 45) at the northern edge of the City. This corridor is occupied by a mix of commercial, industrial, agricultural, and airport-related uses. Immediately to the north of the property are a construction yard and a construction equipment sales center, operated by Ennis Excavation and Equipment Sales. To the south is a recycling center operated by Mervis Industries. To the west, across Cunningham Avenue, and to the east, are farm fields.

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	B-4, General Business (County)	Vacant	Regional Business and Residential
North	B-4, General Business (County)	Construction Yard and Construction Equipment Sales Center	Regional Business and Residential
South	IN-1, Light Industrial/Office (City)	Recycling Center	Regional Business and Residential
East	AG-2, Agriculture (County)	Agriculture, Cropping	Residential
West	IN-1, Light Industrial/Office (City)	Agriculture, Cropping	Regional Business

Issues and Discussion

Annexation Agreement

Benefits of bringing the subject property into the City include future tax revenues, the ability to ensure code compliance and safety, and to bring utilities further north to allow for future

development. The Annexation Agreement states that the property will be rezoned to City IN-1 (Light Industrial/Office) upon annexation. According to Section IV-5 of the Urbana Zoning Ordinance, an annexation agreement is required if the proposed zoning is not a direct conversion from County zoning as listed in Table IV-1 of the Urbana Zoning Ordinance. Per Table IV-1, a direct conversion from County B-4 (General Business) would result in City B-3 (General Business) zoning.

Proposed Rezoning and Past Land-Use

The property is currently zoned County B-4 (General Business), and upon annexation, the property would be zoned City IN-1 (Light Industrial/Office). The subject property is occupied by a vacant commercial building which, until the spring of 2009, housed Malibu Bay Lounge, an adult entertainment establishment. The subject property also contains a vacant building that served as a small parking garage.

Special Use and Conditional Use Permits

Stark Excavating's planned aggregate recycling and sales, as well as concrete ready-mix and asphalt manufacturing and sales, would be allowed with a Special Use Permit in the IN-1 (Light Industrial/Office) district, per Table V-1 of the Urbana Zoning Ordinance. These uses would be compatible with the recycling center located to the south of the subject property owned by Mervis Industries. This Special Use Permit is provided for in Article I, Section 5 and Article II, Section 3 of the enclosed Annexation Agreement.

Concrete production consists of combining cement, sand, aggregates and additives into either a central mixing drum or dry batch tower then dispensing the product into a truck for delivery. Asphalt production involves mixing sand and aggregates with bituminous materials and dispensing the final product into trucks for delivery. Aggregate recycling consists of taking materials from demolition operations such as asphalt and concrete and stockpiling. These materials are crushed to specific gradations and sold as construction materials. They may be picked-up on site or delivered to customers. The actual financial transactions will take place off-site.

Stark Excavating's planned construction yard would be allowed with a Conditional Use Permit in the IN-1 (Light Industrial/Office) district, also per Table V-1 of the Urbana Zoning Ordinance. This use would also be compatible with the construction yard and the construction equipment sales center located to the north. This Conditional Use Permit is provided for in Article I, Section 6 and Article II, Section 4 of the enclosed Annexation Agreement. This construction yard would provide storage for materials, temporary construction or office trailers, and equipment for use on off-site projects. This yard would be located in the material storage areas shown in the site plan attached to the Annexation Agreement.

Section XI-14 of the Urbana Zoning ordinance allows for changes of zoning, and modifications to zoning requirements, within an annexation agreement. The parties to the agreement are restricted to those uses and conditions detailed in the Annexation Agreement and its attached

exhibits. These restrictions would also apply to any future owners or lessees of the subject property.

Site Plan

Exhibit C of the Annexation Agreement is the proposed site plan for the subject property, as provided by Stark Excavating. A roughly 14,700 square foot parking lot located at the entrance of the subject property will provide sufficient parking to meet the requirements of the Urbana Zoning Ordinance. The existing 5,378 square foot building on the site would be renovated and utilized for indoor storage. The former parking structure that is roughly 1,125 square feet in area would be demolished.

A scale area to be utilized by trucks would be composed of a slab and be roughly 3,000 square feet in area. It will also contain a six foot by six foot slab. The site will contain a roughly 48,048 square foot plant area with a ten foot by ten foot control shed. This would be where the asphalt and concrete ready-mix production would take place. To the south of that would be a 57,248 square foot area to be utilized for aggregate material recycling. Two material storage areas would also be present on the lot, one that would be roughly 84,000 square feet in area, and another that would be roughly 19,332 square feet in area. With the exception of the 5,378 square foot building being renovated, the ten foot by ten foot plant control shed, and the six foot by six foot shed located in the scale area, all areas on the property will be exposed to the elements. Buildings would take up 5,514 square feet of the lot, representing a floor-area-ratio of .015. This is far below the maximum allowed floor-area-ratio of 2, per Table VI-3 of the Urbana Zoning Ordinance. The floor-area-ratio of the subject property may be further reduced if the second floor of the 5,378 square foot building is removed.

Stark Excavating would maintain its office operations at 220 Wilbur Avenue in Champaign.

Agreement Conditions

As a part of the Annexation Agreement, DGS Properties and/or Stark Excavating will be required to extend the municipal water line located to the south of the subject property to the northern periphery of the subject property. Furthermore, DGS Properties and/or Stark Excavating agree to install a culvert to catch water shedding from the adjacent properties to the north. DGS Properties and Stark Excavating will also preserve existing ditches to convey water east-to-west along the south property line.

DGS Properties and Stark Excavating will be required to utilize the existing driveway located on the lot, which allows for right-only turns onto US 45, as well as right-only turns off of US 45.

DGS Properties and/or Stark Excavating agree to pave all parking lots, access drives, off-street loading areas, and parking spaces located on the subject property with a hard surface (except those areas to be used by Stark Excavating for material storage). Unpaved areas will be treated with dust control measures. Both parties also agree to follow all environmental regulations and building code requirements. *Stark Excavating and/or DGS Properties must obtain all required*

permits from local, state, and federal agencies. This includes IEPA permits for portable crushing and for the operation of a concrete ready-mix plant. These permits help to minimize emissions and noise produced by the crushing/recycling process, along with the concrete ready-mix and asphalt production process.

All landscaping plan must be submitted to the City prior to the development of the tract. This plan must reflect conformance with standards for screening of industrial storage and required landscape buffers, as listed by the Urbana Zoning Ordinance.

Comprehensive Plan

The 2005 City of Urbana Comprehensive Plan shows two future land-use designations for the subject property. The western portion of the subject property is identified as “Regional Business.” The Comprehensive Plan defines “regional business” as follows:

“Regional Business centers are intended to serve regional as well as local demand. Typically located in a high-visibility area that offers convenient access and parking. The intensity of development may range from large-scale “big box” uses to smaller-scale buildings supporting outlot business opportunities. Although Regional Business areas are typically oriented primarily to automobile traffic, their design should include adequate facilities for pedestrians, bicyclists and public transit.”

The eastern portion of the subject property is identified in the Comprehensive Plan as having a future land-use designation of “residential.” While not entirely consistent with the future land-use designation, the requested rezoning would ensure zoning consistency of the subject lot with the adjacent lot to the south, as well as with the lot to the west of US 45. It is important to note that the future land-use designations do not necessarily follow property lines as they are meant as a more general designation than are zoning districts.

Stark Excavating’s planned operations will serve the entire Champaign County region and therefore would be compatible with the “regional business” future land-use designation.

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 IN-1, Light Industrial/Office zoning is consistent with Stark Excavating's planned uses. The proposed rezoning is intended to bring the use of the tract into conformance with the zoning of the properties located to the south and west, which are located within the City. The subject property is located along the Cunningham Avenue regional business corridor at the edge of the City. The surrounding area is a mix of commercial, industrial, agricultural, and airport-related uses which are compatible with the proposed uses to take place on the subject property. Immediately to the north are a construction yard and construction equipment sales center, which are listed as a miscellaneous industrial use and an industrial use in Table V-1 of the Urbana Zoning Ordinance, respectively. To the south is a recycling center, which is also an industrial use, per Table V-1. To the west and east are farm fields.

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 City B-3, General Business and the value it would have if it were rezoned to City IN-1, Light Industrial/Office.

A direct conversion from County B-4 to City B-3 zoning would result in a zoning for the property that does not accommodate Stark Excavating's planned uses. Should the subject property not be rezoned, Stark Excavating would be unable to use the subject property as planned.

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 Annexation Agreement provides for all necessary controls to minimize any impact the proposed uses will have. 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 has access to the sewer and DGS Properties and/or Stark Excavating will be required to extend the municipal water line located to the south of the property to the northern periphery of the property. The site is generally suited for development. 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.*

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 has been vacant since spring 2009 when an adult entertainment establishment that was located there closed. Due to a State law, a new adult entertainment use cannot be established on this site.

Summary of Findings

1. Green Vistas, LLC; DGS Properties, LLC; and Stark Excavating, Inc. have requested that the City of Urbana enter into an annexation agreement for an 8.35-acre parcel along the east side of Cunningham Avenue between Airport Road and Oaks Road, addressed as 3106 N. Cunningham Avenue.
2. DGS Properties plans to purchase the property from Green Vistas, the current owner-of-record, and also plans to lease the property to Stark Excavating for the purposes of concrete ready-mix and asphalt production and sales; aggregate recycling and sales; and for use as a construction yard.
3. The proposed IN-1, Light Industrial/Office zoning district would allow for zoning consistency with adjacent properties.
4. A Special Use Permit will allow Stark Excavating to utilize the property for the manufacture and sale of concrete ready-mix and asphalt, as well for aggregate recycling and sales.
5. A Conditional Use Permit will allow Stark Excavating to utilize a construction yard on the property.
6. The proposed land-uses for the subject property would be compatible with the surrounding land-uses.
7. The proposed IN-1, Light Industrial/Office zoning district would be generally compatible with the future land-use designation of the subject property, as shown in the 2005 Urbana Comprehensive Plan.

8. The proposed rezoning would not be detrimental to the public health, safety or general welfare.
9. The proposed rezoning appears to generally meet the LaSalle Case criteria.

Options

The Plan Commission has the following options. In Plan Case 2015-A-01/2261-M-15, 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 IN-1, Light Industrial/Office for the subject property; or
- b. Approve the proposed annexation agreement, including a zoning designation of IN-1, Light Industrial/Office 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.

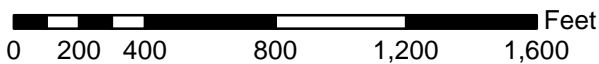
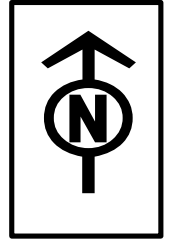
Staff Recommendation

In Plan Case 2015-A-01/2261-M-15 staff recommends **APPROVAL** of the proposed annexation agreement as presented.

cc: Stark Excavating, Inc.
DGS Properties, LLC
Green Vistas, LLC

Attachments: Exhibit A: Location & Existing Land-Use Map
Exhibit B: Zoning Map
Exhibit C: Future Land-Use Map
Exhibit D: Site Photo
Exhibit E: Annexation Agreement with Exhibits
Exhibit F: Enlarged Site Plan

EXHIBIT A: Location & Existing Land-Use Map



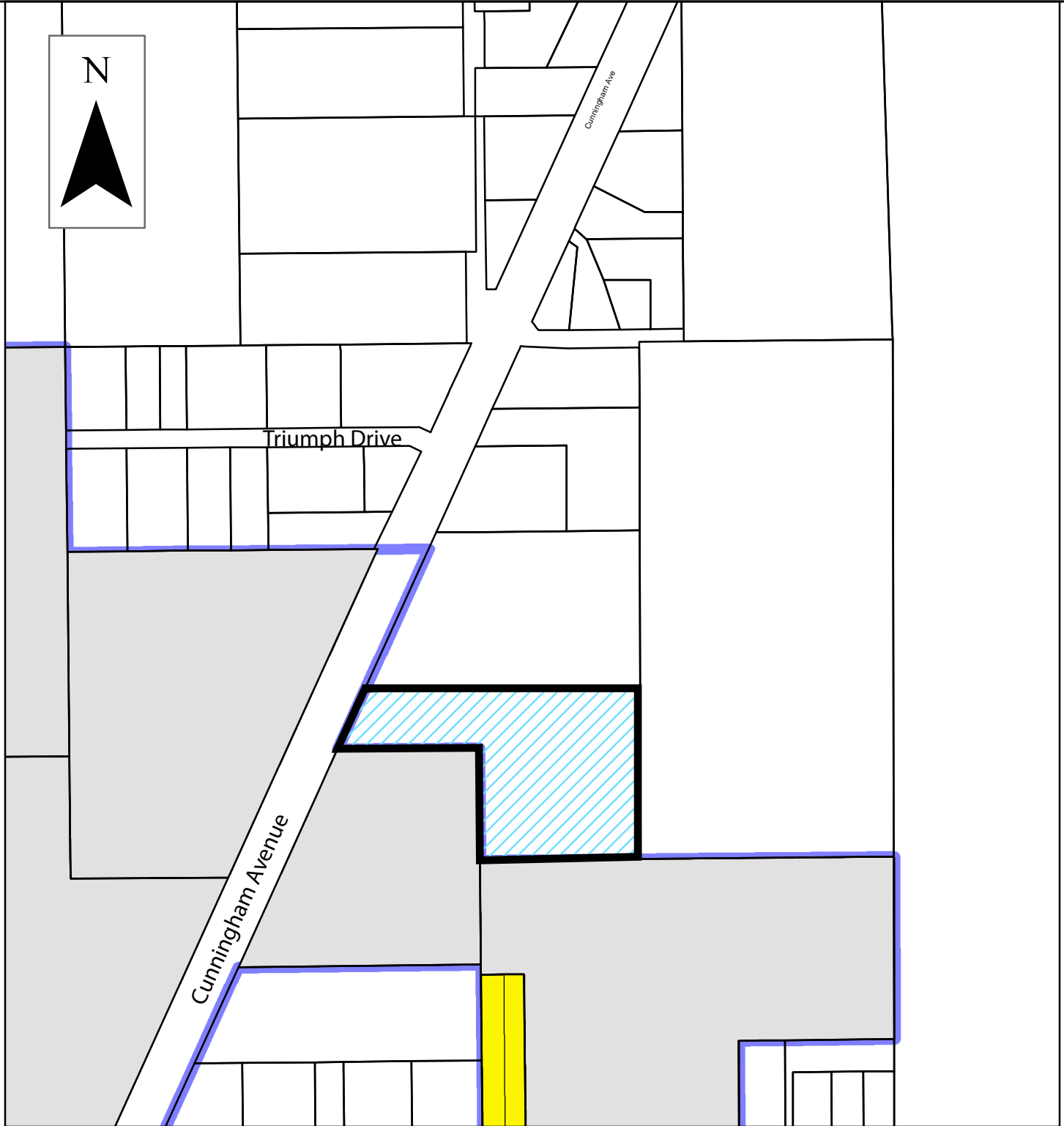
Case: 2015-A-01 & 2261-M-15
 Subject: Annexation Agreement including Rezoning
 Location: 3106 N Cunningham Avenue, Urbana
 Petitioner: Stark Excavating, Inc., DGS Properties, LLC, and Green Vistas, LLC

 Subject Property
 Corporate Limits

COM Commercial
 SFR Single-Family Residential

Prepared 6/8/2014 by Community Development Services - MRM

Exhibit B: Zoning Map



0 0.075 0.15
Miles

Cases: 2015-A-01 & 2261-M-15
Subject: Annexation Agreement Including Rezoning
Location: 3106 N. Cunningham Avenue, Urbana
Petitioner: Stark Excavating, Inc., DGS Properties, LLC, and Green Vistas, LLC




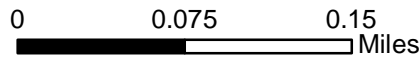
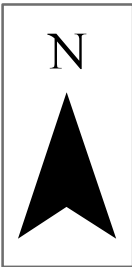
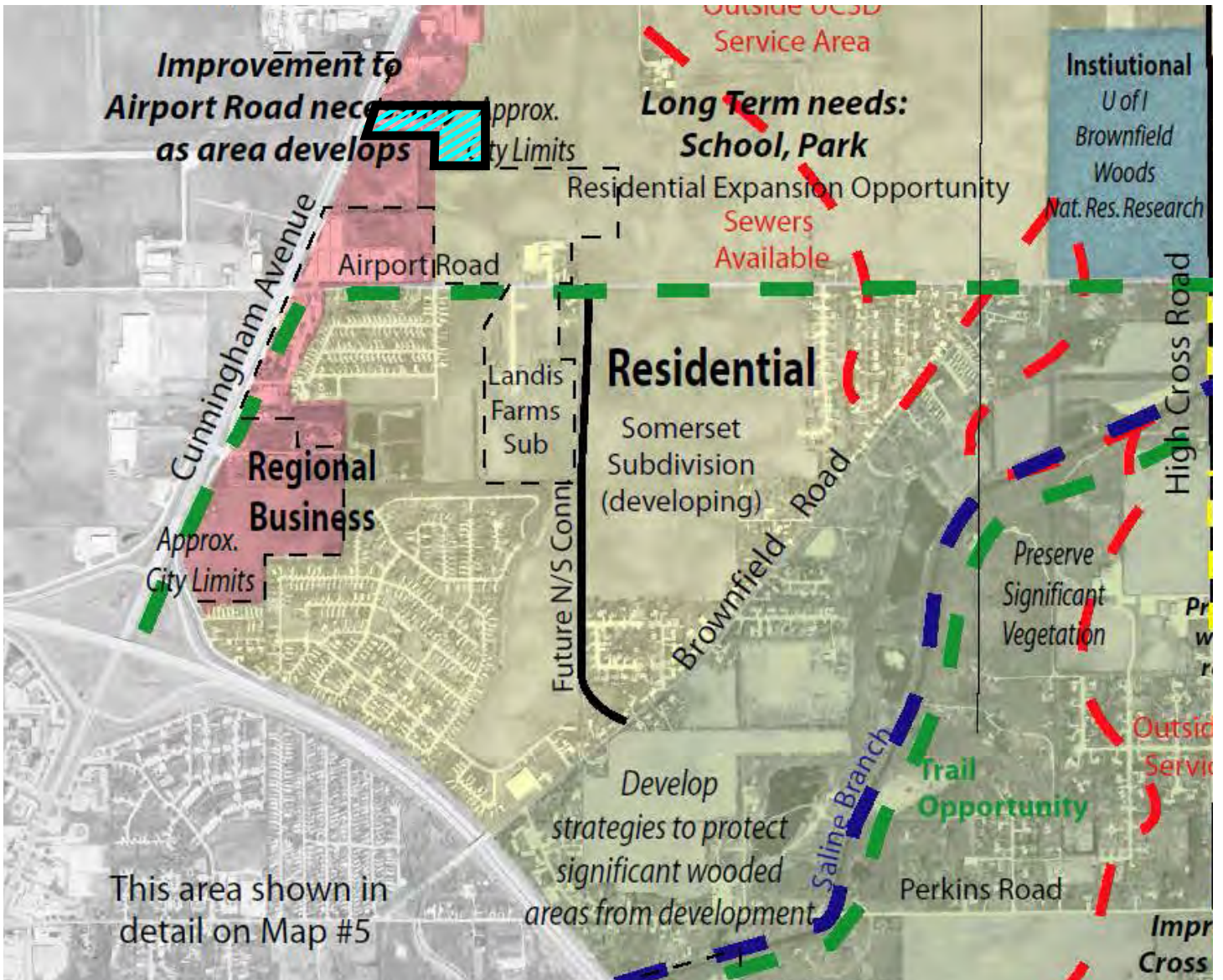
-  Subject Property
-  IN-1
-  R-2

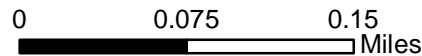
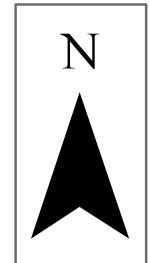
Exhibit C: (Page 1) Future Land-Use Map



 Subject Property

Cases: 2015-A-01 & 2261-M-15
 Subject: Annexation Agreement Including Rezoning
 Location: 3106 N. Cunningham Avenue, Urbana
 Petitioner: Stark Excavating, Inc., DGS Properties, LLC, and Green Vistas, LLC

Exhibit C (Page 2): Future Land-Use Map



 Subject Property

Cases: 2015-A-01 & 2261-M-15

Subject: Annexation Agreement Including Rezoning

Location: 3106 N. Cunningham Avenue, Urbana

Petitioner: Stark Excavating, Inc., DGS Properties, LLC, and Green Vistas, LLC

Exhibit D: Site Photo, Looking East



Annexation Agreement

(Green Vistas, LLC; DGS Properties, LLC; and Stark Excavating, Inc.)

THIS Annexation Agreement (“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"), **Green Vistas, LLC** (hereinafter sometimes referred to as the “Owner”), **DGS Properties, LLC** (hereinafter sometimes referred to as the "Developer"), and **Stark Excavating, Inc.** (hereinafter sometimes referred to as the “Tenant”).

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, the Owner is the owner of record of a certain parcel of real estate located at 3106 N. Cunningham Ave., Urbana, Illinois, the legal description of which real estate is set forth in Exhibit “B” attached hereto and referenced herein as "the tract"; and

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

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

WHEREAS, the Owner has been the owner of record of the tract since September 3, 2010; and

WHEREAS, on February 20, 2012, pursuant to Ordinance No. 2012-02-017, the Corporate Authorities entered into an agreement with Mervis Industries, Inc. to annex said tract into the City; and

WHEREAS, Mervis Industries, Inc. has never been the owner of record of said tract; and

WHEREAS, the previous annexation agreement regarding said tract is now void and said tract has not been annexed into the City; and

WHEREAS, the Developer proposes to purchase the tract from the Owner and to develop the tract for lease to its affiliate, the Tenant; and

WHEREAS, the Tenant proposes to utilize the tract for the manufacture and sale of concrete ready mix and asphalt, as well as aggregate recycling and related construction yard activities, and desires to obtain relevant approvals from the City and other authorities; and

WHEREAS, the tract is currently zoned B-4, General Business 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 IN-1, Light Industrial/Office under the terms and provisions of the Urbana Zoning Ordinance in effect upon the date of annexation, as amended from time to time, and subject to the terms and conditions set forth in this Agreement; and

WHEREAS, the Corporate Authorities find that annexation of the tract as described herein as IN-1, Light Industrial/Office, reflects the goals, objectives and policies set forth in the City's 2005 Comprehensive Plan, as amended from time to time; and

WHEREAS, the Owner desires to have the aforementioned real estate annexed to the City 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, TENANT, AND DEVELOPER

The Owner, Tenant, and Developer agree 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 “B” and that the Owner shall within thirty (30) days of a request of the Corporate Authorities, 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 B-4, General Business to City IN-1, Light Industrial/Office. The Owner agrees that, unless changed upon the initiative of the Owner and/or Developer, the said City zoning classification 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 the Developer, and the Tenant 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.

Section 4. Land Uses. The Owner and Developer agree that the uses of the tract shall be limited to those allowed within the IN-1, Light Industrial/Office district. The Tenant agrees that the uses of the tract shall be limited to those allowed by the Special Use Permit authorized in Article II, Section 3 of this Agreement, as well as by the Conditional Use Permit authorized in Article II, Section 4 of this Agreement.

Section 5. Special Use Permit. The Tenant agrees to the following conditions of a Special Use Permit, as granted by Article II, Section 3 of this Agreement, which will allow for the manufacturing and sale of concrete ready mix and asphalt on said tract, as well as aggregate

recycling and related sales on said tract, in the IN-1, Light Industrial/Office zoning district, which are permitted by Urbana Zoning Ordinance Table V-1 as Special Uses.

1. The Special Use Permit shall be applicable only to the confines of the tract, as depicted in the attached Exhibit "A" Location Map, and legally described in Exhibit "B."
2. The Special Use Permit approves only the manufacturing of ready-mix concrete and asphalt, as well as aggregate recycling, on said tract, as depicted in the attached Exhibit "C" Site Diagram.
3. The layout and operation shall substantially conform to the attached Site Diagram, as shown in Exhibit "C," along with any minor changes that may be necessary for the project to comply with City regulations including building, fire, and site development codes, as approved by the Zoning Administrator and to allow for specific needs of the Tenant.
4. The Tenant must obtain any and all permits as required by the Illinois Environmental Protection Agency.

Section 6. Conditional Use Permit. The Tenant agrees to the following conditions of a Conditional Use Permit granted by Article II, Section 4 of this Agreement, which will allow for the use of a construction yard on the tract, in the IN-1, Light Industrial/Office zoning district, which is permitted by Urbana Zoning Ordinance Table IV-1 as a Conditional Use.

1. The Conditional Use Permit shall be applicable only to the confines of the tract, as depicted in the attached Exhibit "A" Map, and legally described in Exhibit "B."
2. The Conditional Use Permit approves a construction yard on said tract, as depicted in the attached Exhibit "C" Site Diagram.
3. The layout and operation shall substantially conform to the attached Site Diagram, as shown in Exhibit "C," along with any minor changes that may be necessary for the project to comply with City regulations including building, fire, and site development codes, as approved by the Zoning Administrator and to allow for the specific needs of the Tenant.

Section 7. Utilities. An engineered Stormwater Management Plan and an Erosion and Sedimentation Control Plan shall be prepared and implemented consistent with the requirements of the Urbana Subdivision and Land Development Code. The Developer and/or Tenant shall extend the water line to the northern boundary of the tract prior to the issuance of a Certificate of Occupancy by the Corporate Authorities. Furthermore, the Developer and/or Tenant shall install a culvert to catch water shedding from the adjacent properties to the north. The Developer and Tenant shall preserve existing ditches to convey water east-to-west along the south property line. All work described in this section must be approved by the Illinois Department of Transportation, where required.

Section 8. Transportation Infrastructure. Per the direction of the Illinois Department of Transportation and the City Engineer, access to and from the site will be restricted to an existing right-turn-only driveway onto US Route 45. This driveway shall allow for right-turns leading into said tract eastbound from US Route 45, as well as right-turns leading out of said tract northbound onto US Route 45.

Section 9. Surfacing Plan and Dust Control: The Developer and/or Tenant shall pave all parking lots, access drives, off-street loading areas, and parking spaces located on the tract with a hard surface except such areas within the tract depicted in the attached Exhibit C to be used by the Tenant's for material storage. Such material storage areas may be surfaced with aggregate rock and such aggregate rock surfaced areas shall be periodically treated with dust control measures as reasonably determined by the Developer or the then current owner of the tract, and at such times as reasonably requested by the City Engineer.

Section 10. Environmental Controls. The Developer and Tenant shall comply with all applicable federal, state, and local environmental regulations. All runoff, noise, odors, dust or other emissions shall meet standards set forth by the Illinois Environmental Protection Agency. All required permits from federal, state, and local agencies, must be obtained as required.

Section 11. Building Code Compliance. The Developer and Tenant agree 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 12. Landscaping Plan. A landscaping plan must be submitted with the Corporate Authorities prior to development of the tract. This plan must reflect conformance with standards for screening of industrial storage and required landscape buffers, as required by the Urbana Zoning Ordinance.

Section 13. Amendments Required. The Owner (or in the event the tract is sold, the successor in interest) 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 (or in the event the tract is sold, the successor in interest) 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, as stipulated in Article I, Section 1 of this Agreement, 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 City IN-1, Light Industrial/Office.

Section 3. Special Use Permit. Through this Agreement the Corporate Authorities hereby grant the Urbana Zoning Administrator the authority to issue a Special Use Permit to allow the Tenant to manufacture and sell ready-mix concrete and asphalt on said tract, as well as to conduct aggregate recycling and related sales on said tract, in the IN-1, Light Industrial/Office district, subject to the conditions specified in Article I, Section 5 of this Agreement. Furthermore, the Corporate Authorities find that granting of the Special Use Permit is consistent with the established criteria identified in Section VII-4 of the Urbana Zoning Ordinance in that these uses:

- a. will be conducive to the public convenience at this location;
- b. will be designed, located, and proposed to be operated so that it will not be unreasonably injurious or detrimental to the district in which it will be located, or otherwise injurious or detrimental to the public welfare; and
- c. will conform to the applicable regulations and standards of, and preserves the essential character of, the district in which it shall be located.

Section 4. Conditional Use Permit. Through this annexation agreement the Corporate Authorities hereby grant the Urbana Zoning Administrator the authority to issue a Conditional Use Permit to allow the Tenant to operate a construction yard, in the IN-1, Light Industrial/Office district, subject to the conditions specified in Article I, Section 6. Furthermore, the Corporate Authorities find that granting of the Conditional Use Permit is consistent with the established criteria identified in Section VII-2 of the Urbana Zoning Ordinance in that this use:

- a. will be conducive to the public convenience at this location;
- b. will be designed, located, and proposed to be operated so that it will not be unreasonably injurious or detrimental to the district in which it will be located, or otherwise injurious or detrimental to the public welfare; and

- c. will conform to the applicable regulations and standards of, and preserves the essential character of, the district in which it shall be located.

Section 5. Utilities. The Corporate Authorities agree to allow the Developer and/or Tenant to extend the water line to the northern boundary of the tract, in conformance with pertinent laws, codes, regulations, and permit requirements. The Corporate Authorities will withhold a Certificate of Occupancy until the water line is extended to the northern boundary of the tract. The Corporate Authorities also agree to allow the Developer and/or Tenant to install a culvert to catch water shedding from the adjacent properties to the north. Furthermore, the Corporate Authorities agree to allow the Developer and the Tenant to preserve existing ditches to convey water east-to-west along the south property line, on the condition that such work meets all permitting requirements set forth by the Illinois Department of Transportation. All work described in this section must be approved by all appropriate local and state agencies as required, including the Illinois Department of Transportation.

Section 6. Surfacing Plan and Dust Control. Due to the particular impacts of moving heavy equipment on paved surfaces and the extensive areas necessary for material storage, as depicted in the attached Exhibit C, the Corporate Authorities agree to allow outdoor material storage areas to be surfaced with aggregate rock and to be periodically treated with dust control measures. Per Article I, Section 9 of this Agreement, the Developer and/or Tenant shall apply additional dust reduction treatment as reasonably determined by the Developer, Tenant, or the then current owner of the tract and at such times as reasonably requested by the City Engineer in order to adhere to the criteria aforementioned.

Section 7. Transportation Infrastructure. Per the direction of the Illinois Department of Transportation and the City Engineer, access to the tract will be allowed via a right-turn only driveway leading northbound onto US Route 45. This driveway shall allow for right-turns leading eastbound into said tract from US Route 45, as well as right-turns leading out of said tract northbound onto US Route 45.

Section 8. 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 Developer, the Owner, The Tenant, 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, the Developer, the Tenant, and the 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 Developer, the Tenant, the Owner, and the City.

Section 4. Enforcement. The Developer, the Owner, the Tenant, and the 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 Developer, the Tenant, or the Owner, the City may refuse the issuance of any permits or other approvals or authorizations relating to development of the tract.

Section 5. Transfer, Security Interests, and Leases. It shall not be a breach of this Agreement for the Owner, any subsequent owner, the Developer, the Tenant, or any subsequent tenant, to sell, lease, sublease or grant a security interest in the tract or any

part thereof to any third person provided such sale, sublease or grant shall be subject to the provisions of this Agreement.

Section 6. 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 7. Effective Date. The Corporate Authorities, the Developer, the Tenant, and the 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, the Developer, the Tenant, and the 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

Louis L. Mervis, Manager
Green Vistas, LLC

Date

Date

ATTEST:

ATTEST:

Phyllis D. Clark, City Clerk

Notary Public

Date

Date

Developer:

David Kenneth Stark, Jr.
Member
DGS Properties, LLC

Date

Gregory Todd Stark
Member
DGS Properties, LLC

Date

Sarah Suzanne Stark
Member
DGS Properties, LLC

Date

ATTEST:

Notary Public

Date

Tenant:

David Kenneth Stark
President
Stark Excavating, Inc.

Date

ATTEST:

Notary Public

Date

Exhibit A

Location Map

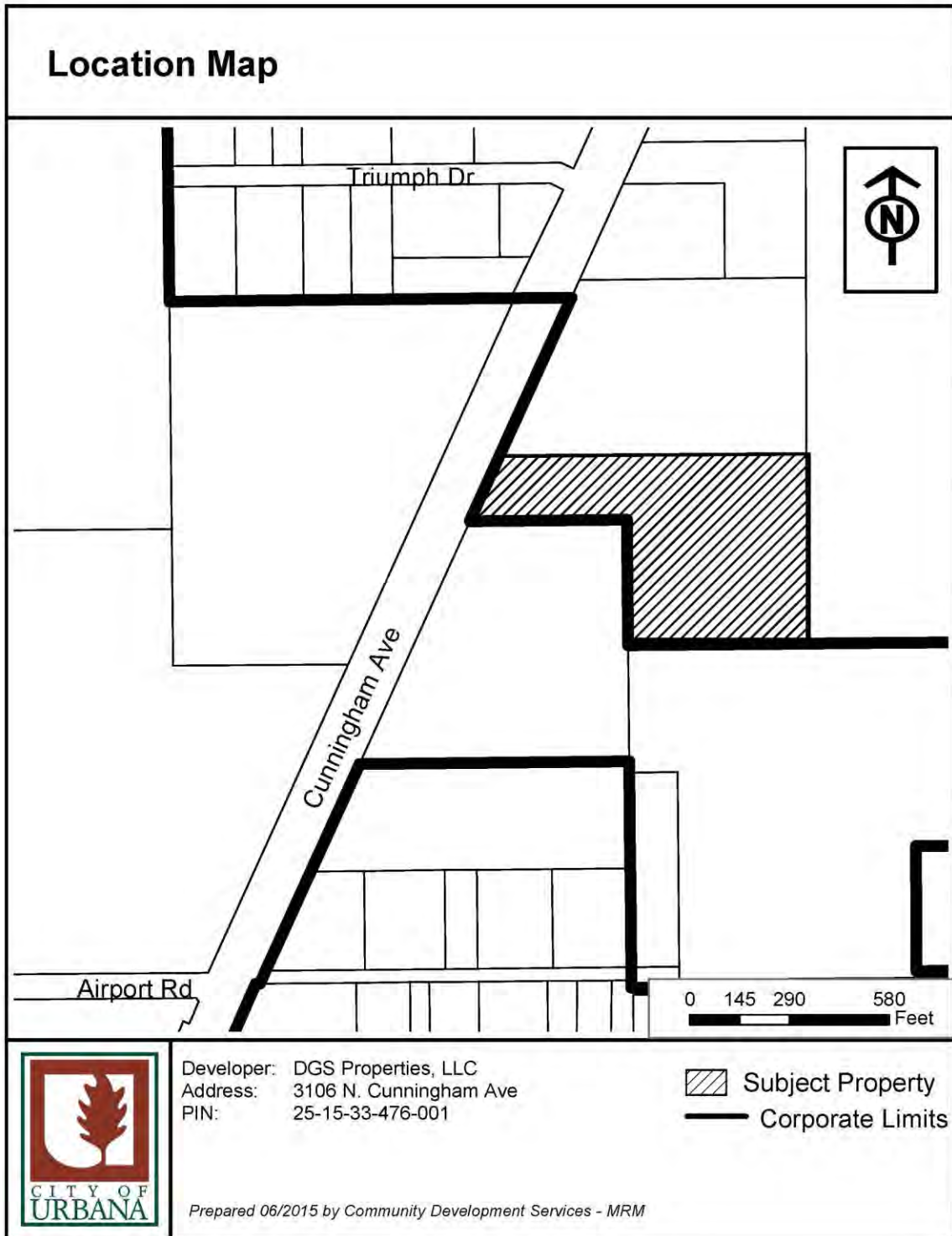


Exhibit B

Legal Description

“Part of the Southeast Quarter of Section 33, Township 20 North, Range 9 East of the Third Principal Meridian, Champaign County, Illinois, described as follows:

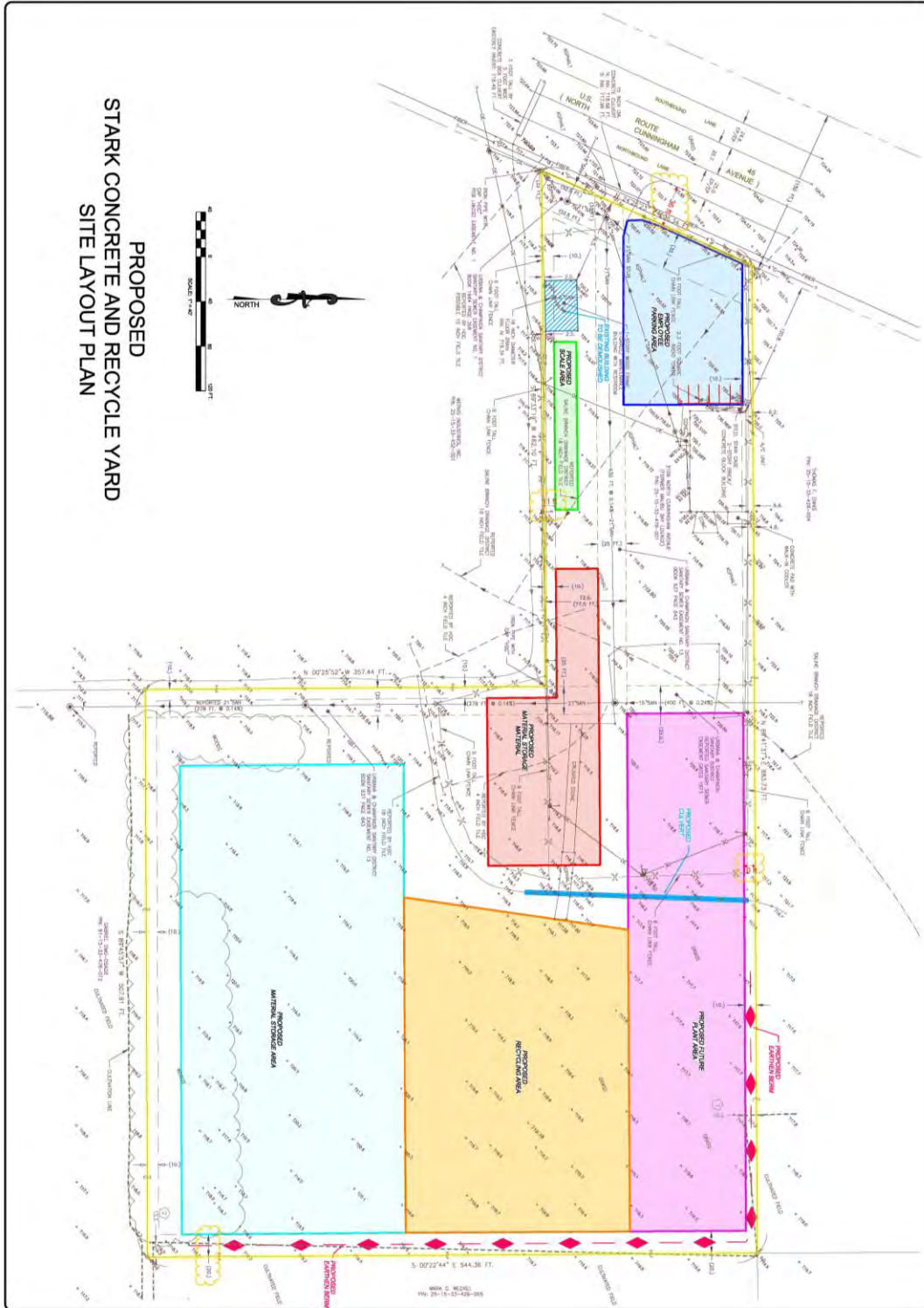
Beginning at a point which is 819.64 feet West and 1137.41 feet South of the Northeast Corner of the Southeast Quarter of Section 33, Township 20 North, Range 9 East of the Third Principal Meridian for a true point of beginning; thence 883 feet West to the East line of the right-of-way of Federal Highway Route 45, thence Southwesterly along said right-of-way line 206.78 feet; thence East 463.6 feet; thence South 357.6 feet; thence East 506.33 feet; thence North 544.19 feet to the true point of beginning, in Champaign County, Illinois.”

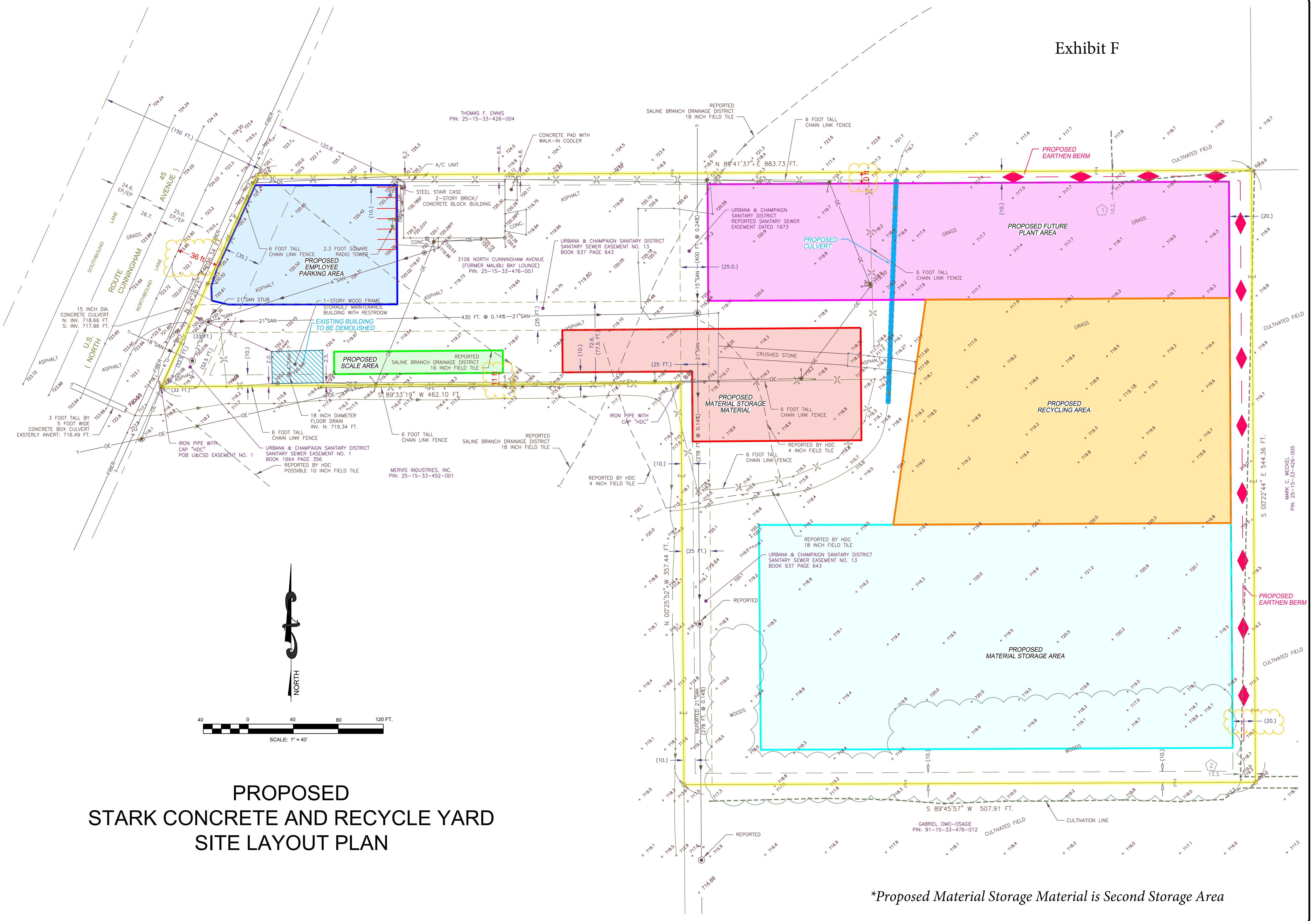
Permanent Index No. 25-15-33-476-001

Commonly known as 3106 N. Cunningham Avenue, Urbana, Illinois.

Exhibit C

Site Diagram





PROPOSED STARK CONCRETE AND RECYCLE YARD SITE LAYOUT PLAN

*Proposed Material Storage Material is Second Storage Area