



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

m e m o r a n d u m

TO: Urbana Plan Commission

FROM: Christopher Marx, Planner I

DATE: July 14, 2017

SUBJECT: Plan Case Nos. 2307-M-17 and 2017-A-02: A proposed annexation agreement between the City of Urbana and David Borchers, including rezoning a property from County AG-2 (Agricultural) to City IN-1 (Light Industrial/Office), for an 11.47-acre parcel located west of Smith Road and north of Coachman Drive at 801 North Smith Road in Champaign County, Illinois 61802. The Agreement will also provide for a Conditional Use Permit to allow a Construction Yard.

Introduction

The City of Urbana has received a request from David Borchers to enter into an annexation agreement for an 11.47-acre parcel located in eastern Urbana. The parcel is west of Smith Road and north of Coachman Drive and will be assigned the address of 801 North Smith Road. The property is currently vacant and used for farmland. The owner would like to develop a portion of the site for his construction business while continuing to use the lot for agricultural cropping. He plans to develop the other portions of the property at a later date. The proposed agreement would obligate the City to rezone the property from the County's AG-2 Agriculture district to the City's IN-1, Light Industrial/Office zoning district. The agreement would also confer a Conditional Use Permit to allow the use of a construction yard on the subject property.

When considering the Annexation Agreement, the Urbana Plan Commission is charged with recommending to the City Council whether to rezone the property from County AG-2 to City IN-1 (Light Industrial/Office) as a part of the Agreement.

Background

The property at 801 North Smith Road is contiguous to the City and is within 200 feet of the nearest sanitary sewer line. Sec. 21-41.C.(5) of the Urbana Subdivision and Development Code requires that any development taking place within 200 feet of an existing public sanitary sewer be connected to the sanitary sewer. The Urbana and Champaign Sanitary District (UCSD) requires any property owner outside of the city limits needing a new sanitary sewer connection to agree to be annexed by the City of. An annexation agreement is therefore required for Mr.

Borchers to develop any portion of his property that requires a new sanitary sewer connection. Since the property is already contiguous to the City, an annexation petition must follow immediately as stated in the agreement.

Land Uses and Zoning Designations

The subject property is adjacent to the central-eastern boundary of the City near the intersection of Illinois Route 130 and Interstate 74. It is zoned in Champaign County’s AG-2 Agriculture zoning district. In the City’s Comprehensive Plan, its future land use designation is “Industrial.” If it were to be annexed into the City, its direct zoning district conversion would be to the City’s AG, Agriculture zoning district.

The surrounding area is a diverse mix of residential, light industrial, and conservation open space. Towards the north, there is a retired landfill and the City-owned Landscape Recycling Center on land that is zoned CRE - Conservation-Recreation-Education. Towards the east and south are mobile home parks that are zoned in the County’s R-5 Manufactured Home Park district. Towards the west is vacant land owned by the Flex-N-Gate Corporation that is zoned in the County’s R-4 Multiple Family Residence district. There is a narrow sliver of land towards the south that is vacant and zoned in the County’s R-5 Manufactured Home Park district. In the City’s Comprehensive Plan, the future land use designations for the properties to the north and west is Heavy Industrial. The designation for the properties to the east and south is Multifamily.

The property fronts on both Smith Road and near the intersection of Smith Road and Barr Avenue. Both streets serve as roads to access the nearby mobile home parks and the Landscape Recycling Center.

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

Location	Zoning	Existing Land Use	Comprehensive Plan Future Land Use
Site	County AG-2 Agriculture	Vacant, Farmland (cropping)	Industrial
North	City CRE - Conservation-Recreation-Education	Landscape Recycling Center, Retired Landfill, Greenspace	Industrial
South	County R-5 Manufactured Home Park	Vacant, Mobile Home Park	Multifamily
East	County R-5 Manufactured Home Park	Mobile Home Park	Multifamily
West	County R-4 Multiple Family Residence	Vacant	Industrial

Comprehensive Plan

The 2005 City of Urbana Comprehensive Plan shows a future land-use designation as “Industrial” for the subject property. It also includes a notation for the area to “Determine

Opportunities for Development” and to “Encourage Expansion” of the nearby Flex-N-Gate facility. While the Comprehensive Plan does not define “Industrial,” it defines “Light Industrial/Office”:

Light Industrial/Office areas typically are planned developments that are less intensive than heavy industrial areas, including professional services, warehousing, and distribution facilities.

The Comprehensive Plan defines the classification of “Heavy Industrial” as:

Heavy Industrial areas are intense land uses heavily dependent on transportation facilities and significant amounts of land and are generally incompatible with residential uses.

The property is currently vacant and used for farmland. The property owner has submitted plans to develop a construction yard on a portion of the property while allowing the rest of the property to be farmed while being developed into light industrial uses in the future. Agriculture that involves cropping is permitted by-right in the City’s IN-1 district while a construction yard requires a Conditional Use Permit. The Conditional Use Permit can be approved by City Council as a part of the Annexation Agreement. The proposed IN-1 zoning district would be the lowest zoning available that would accommodate the current agricultural uses, the proposed Construction Yard, and future light industrial uses. IN-1 zoning would allow uses consistent with the “Industrial” future land use designation.

The following goals and objectives from Urbana’s Comprehensive Plan are pertinent to this case:

Goal 15.0 Encourage compact, contiguous and sustainable growth patterns.

Objective 15.1 Plan for new growth and development to be contiguous to existing development where possible in order to avoid “leapfrog” development.

Objective 15.2 Extend utilities and services in an orderly fashion to encourage compact, contiguous growth.

Objective 15.3 Pursue annexation strategies that promote orderly development.

Goal 16.0 Ensure that new land uses are compatible with and enhance the existing community.

Objective 16.1 Encourage a mix of land use types to achieve a balanced growing community.

Objective 16.3 Encourage development in locations that can be served with existing or easily extended infrastructure and city services.

Goal 17.0 Minimize incompatible land uses.

Objective 17.1 Encourage a mix of land use types to achieve a balanced growing community.

Objective 17.2 Where land use incompatibilities exist, promote development and design controls to minimize concerns.

Goal 26.0 Improve the appearance of Urbana’s commercial and industrial areas.

Objective 26.3 Seek private as well as public investments to enhance the city’s commercial and industrial areas.

Goal 27.0 Create a variety of industrial and office developments that can benefit from existing amenities such as convenient access to interstate and rail services and close proximity to the University of Illinois.

Objective 27.1 Encourage the expansion of existing and the creation of new industrial and office park developments in appropriate locations, using a variety of development tools.

Objective 27.2 Provide for adequate services and incentive packages to promote East University Avenue and North Lincoln Avenue as industrial park areas.

Objective 27.3 Capitalize on development sites with rail and highway access to promote industrial opportunities.

Objective 27.4 Pursue annexation of new areas (such as North Lincoln Avenue, East University Avenue, North Cunningham Avenue and Oak Street) for industrial development.

Goal 28.0 Develop a diversified and broad, stable tax base.

Objective 28.1 Encourage an appropriate balance of residential, commercial and industrial growth.

Objective 28.2 Promote appropriate development opportunities through annexation, development agreements, and, where appropriate, economic incentives.

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 service to the property is beneficial to the property owners and the City for future growth.

Proposed Rezoning

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 Zoning Ordinance, an annexation agreement is required if the proposed zoning is not a direct conversion from the County zoning designation as listed in Table IV-1 of the Zoning Ordinance. Per Table IV-1, a direct conversion from County AG-2 (Agriculture) would result in the City's AG, Agriculture, zoning district. The City's AG zoning district would not permit the planned future uses for the site nor would it be consistent with the Comprehensive Plan future land use designation of "Industrial."

According to the Zoning Ordinance, the IN-1, Light Industrial/Office zoning district has the following description:

"The IN-1, Light Industrial/Office District is intended to provide land for employment centers related to research and development, engineering and testing, office uses, warehousing, and limited manufacturing and industrial activities that will not have an adverse effect upon the district in which it is located. In addition, some low intensity commercial uses may be permitted in this district to provide convenient goods and services for employees and patrons in the zoning district. Higher intensity commercial uses are generally prohibited. Low intensity industrial uses are permitted by right or as a special use, depending on the attributes of the proposed land use."

The proposed IN-1 zoning would fit the planned future uses at the site, be consistent with the Comprehensive Plan future land use designation of "Industrial," and be compatible with the adjacent residential uses.

Past Land Uses

The historical use of the property has been agricultural. There was a long-time single-family home on the property which has since been demolished.

Site Plan and General Area Plan

The Annexation Agreement features a General Area Plan for the property in Exhibit C, as shown in the agreement draft. The plan represents the approximate location of any future public right-

of-way and how the property might be subdivided for any future development.

The site will contain a 10,000 square foot structure on the northeast corner of the property to house Mr. Borchers' construction yard business. The building will be used for construction work, materials storage, and general office space related to the business. It would be set back approximately 70 feet from Smith Road. There would be a parking lot to the east of the building with approximately 5-7 parking spaces based on requirements in the Zoning Ordinance for a warehouse or similar use. On the west side of the building would be three loading docks for materials to be placed onto vehicles. The Floor-Area Ratio of 0.019 would be well below the maximum allowed ratio of 2.0 as required in the Zoning Ordinance. While the property would retain much of its vacant space used for farmland, there is no open space requirement for the IN-1 district in the Zoning Ordinance.

As part of the construction yard's Conditional Use Permit, it must meet standards for buffering and screening from residential uses as required in the Zoning Ordinance. A landscaping and screening plan must be submitted to the Zoning Administrator for review and approval, prior to the development of the tract. The site will also be required to meet any standards for stormwater detention as determined by the City Engineer.

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 the surrounding uses of the Landscape Recycling Center, Flex-N-Gate facility, and the retired landfill. The subject property would be required to install buffering and screening from the mobile home parks towards the south and east. The Zoning Ordinance requires industrial uses and parking lots to be screened with fences or landscaping of four to six feet in height from any residential uses. The proposed rezoning is appropriate for the proposed use of a construction yard, with the acquisition of a Conditional Use Permit, and for future light industrial 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 AG-2 Agriculture and the value it would have if it were rezoned to IN-1, Light Industrial/Office.

The value of the subject property would increase with the addition of a construction yard use. The expansion of utilities and sewers along with a potential new street within the tract would create opportunities for future developments that would also increase the property's value. The property's ability to continue to be farmed would help preserve its current value as well.

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 would not jeopardize the health, safety, morals, or general welfare of the public. The property owner would be required to connect any facility to the City's sanitary sewer system, which could be beneficial to the public. He would also be required to provide screening and buffering protections, as required in the Urbana Zoning Ordinance, from any residential uses. The Annexation Agreement provides necessary controls to minimize any impact of the proposed uses. 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 AG-2 Agriculture and is identified as "Industrial" in the 2005 City of Urbana Comprehensive Plan. IN-1, Light Industrial/Office is a City zoning designation which closely reflects nearby zoning and future land use designations of the property. The property's location near a state highway and Interstate 74 make it appropriate for industrial uses that require close access to major transportation routes. The site is vacant and generally suited for new development of an industrial use.

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 historically been used for agriculture and a single-family home and has never been developed. The most appropriate types of development for the property are light industrial uses. To permit these types of uses, this proposed rezoning upon annexation would be required.

Conditional Use Permit

The property owner's planned construction yard would be allowed with a Conditional Use Permit in the IN-1, Light Industrial/Office District, per Table V-1 of the Urbana Zoning Ordinance. This Conditional Use Permit is provided for in Section 4.B.3 and Section 5 of the enclosed Annexation Agreement. This construction yard would provide storage for materials, equipment for use on off-site projects, and general work space for the property owner's business. This yard would be located in the northeast portion of the property as shown in the site plan attached to the Annexation Agreement.

According to Section VII-2.A of the Urbana Zoning Ordinance, an application for a Conditional Use Permit shall meet the following requirements shown in italics. City Staff analysis follows each criterion.

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

The subject property is located in close proximity to other industrial uses. It also is next to the intersection of State Highway 130 and Interstate 74, allowing for quick access to transportation if necessary. The use of the subject property as a construction yard would help facilitate its regionally-offered services. The proposed use would be consistent with nearby industrial land uses and zoning and be set back and screened from the existing residential uses to the east and south.

2. That the proposed use is designed, located, and proposed to be operated so that it will not be unreasonably injurious or detrimental to the district in which it shall be located, or otherwise injurious to the public welfare.

The use of the subject property as a construction yard would not be injurious to the public at this location. The parties to the Annexation Agreement will meet all local, state, and federal environmental and use regulations, including screening and buffering requirements from the adjacent residential uses. The proposed use would not generate a significant increase in traffic, and will require the public sanitary sewer to be extended to serve the site.

3. That the proposed use conforms to the applicable regulations and standards of, and preserves the essential character of, the district in which it shall be located, except where such regulations and standards are modified by Section VII-3.

The character of the IN-1, Light Industrial/Office District will be preserved with the proposed use. It will be consistent with the industrial character of the nearby uses of the Landscape Recycling Center and Flex-N-Gate. The proposed use would conform to all applicable

regulations in the IN-1, Light Industrial/Office District, and similarly meet all other applicable local, state, and federal regulations, including any requirement to screen parking and construction yard storage.

Summary of Findings

1. David Borchers has requested that the City of Urbana enter into an Annexation Agreement for an 11.47-acre parcel located west of Smith Road and north of Coachman Drive, to be addressed and commonly known as 801 North Smith Road.
2. The property owner is requesting that the property be rezoned from Champaign County's AG-2 Agriculture zoning district to the City of Urbana's IN-1, Light Industrial/Office zoning district upon annexation.
3. The property owner is requesting that a Conditional Use Permit for the use of a Construction Yard on the site.
4. The proposed IN-1, Light Industrial/Office zoning district would allow for the property owner to use to the property for a light industrial use, agriculture, and future development.
5. The proposed IN-1, Light Industrial/Office zoning district would be generally compatible with the "Industrial" future land use designation of the 2005 Urbana Comprehensive Plan.

Regarding the Rezoning and La Salle Criteria

6. The proposed zoning would be compatible with the existing zoning and land uses of the immediate area.
7. The property values would not be diminished by the proposed rezoning.
8. The proposed rezoning promotes the health, safety, morals, and general welfare of the public.
9. The proposed rezoning presents a gain compared to any hardship imposed on the individual property owner.
10. The property is suitable for the proposed rezoning.
11. The property has been indefinitely vacant.

Regarding the Conditional Use Permit

12. The existing land uses and zoning are compatible with the proposed construction yard.
13. The proposed use of construction yard is designed, located, and proposed to be operated so that it will not be unreasonably injurious or detrimental to the district in which it shall be located, or otherwise injurious to the public welfare.
14. The proposed use of construction yard conforms to the applicable regulations and standards of, and preserves the essential character of, the district in which it shall be located, except where such regulations and standards are modified by Section VII-3 of the Zoning Ordinance.

Options

The Plan Commission has the following options. In Plan Case Nos. 2307-M-17 and 2017-A-02, 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

Based on the evidence presented to date, and without the benefit of considering additional evidence that may be presented prior to or at the public hearing, staff recommends that the Plan Commission recommends **APPROVAL** of the proposed annexation agreement with rezoning as presented.

cc: David Borchers

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

Exhibit A: Location & Existing Land Use Map



Case: Plan Case Nos. 2307-M-17 and 2017-A-02:
Subject: Annexation Agreement and Rezoning
Location: 801 North Smith Road
Petitioner: David Borchers

 Subject Property

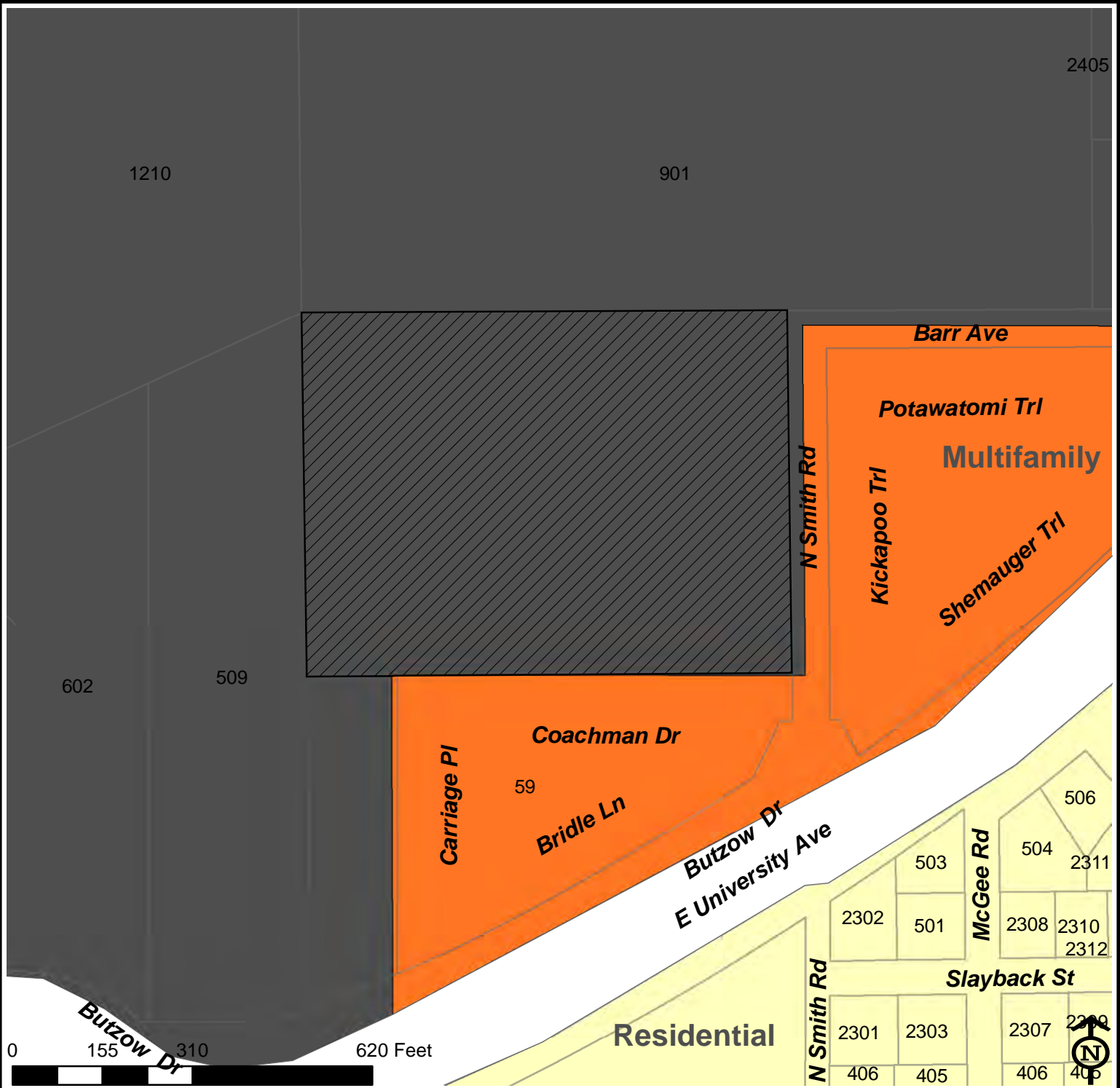
Exhibit B: Zoning Map



Case: Plan Case No. 2307-M-17 and 2017-A-02
 Subject: Annexation Agreement and Rezoning
 Location: 801 North Smith Road
 Petitioner: David Borchers

	AG		B-3		R-1
	B-3		B-4		R-2
	AG-1		CR		R-3
	AG-2		I-1		R-4
	B-2		I-2		R-5

Exhibit C: Future Land Use Map



Case: Plan Case Nos. 2307-M-17 and 2017-A-02:
 Subject: Annexation Agreement and Rezoning
 Location: 801 North Smith Road
 Petitioner: David Borchers

- Residential
- Multi-Family Residential
- Industrial
- Subject Property

Annexation Agreement

This Annexation Agreement is made between the City of Urbana, Illinois ("Urbana") and David Borchers, (the "Owner"), each a "party" and together the "parties," and is effective on the last date signed by a party hereto. The parties agree as follows:

1. **The Property.** The Owner is the owner of record of the real property commonly known as 801 North Smith Road, having permanent index number 30-21-10-301-001, consisting of approximately 11.47 acres in unincorporated Champaign County (the "Property"). The Property is legally described on Exhibit A. Exhibit B is a true and accurate representation of the Property.
2. **Annexation.**
 - A. The Owner and Urbana shall take all actions necessary or appropriate to cause the Property to be validly annexed to Urbana as provided in this agreement and pursuant to the provisions of 65 ILCS 5/11-15.1-1 et seq., as amended. The Property is contiguous to Urbana and may be immediately annexed.
 - B. The Owner hereby waives all rights to disconnect the Property from Urbana during the term of this agreement.
3. **Zoning.**
 - A. Classification. Upon passage of the ordinance annexing the Property to Urbana, Urbana shall classify the Property as part of the IN-1, Light Industrial/Office zoning district. Urbana shall not rezone the Property during the term of this agreement except upon a written amendment to this agreement.
 - B. Ordinance amendments. Urbana reserves the right to amend the Urbana City Code and the Urbana Zoning Ordinance even if such amendment affects the Property. During the twenty (20) years following the effective date of this agreement, unless the Owner or successor or successors in title consent, Urbana shall not enforce any ordinance applicable to the Property relating to subdivision controls, zoning, official plans, or occupancy permits and related restrictions that is more restrictive or that imposes greater obligations than (1) the ordinances of Urbana in force on the effective date of this agreement; or (2) the terms of this agreement.
 - C. Rezoning. The Owner shall not petition for Champaign County rezoning of the Property without a written amendment to this agreement.
4. **Owner's duties.**
 - A. Before annexation. At all times prior to annexation, the Owner shall have the following duties.
 - (1) Compliance with law. Except as otherwise provided in this agreement, the Owner shall use the Property in compliance with all applicable federal and state laws and all Urbana zoning and building codes and regulations in effect on the effective date of this agreement or an amendment thereto.

- (2) Annexation petition upon transfer. As a condition of a transfer of ownership of the whole or any part of the Property, the Owner shall require the new owner and all electors who will reside on the Property so conveyed to sign a legally sufficient irrevocable petition for annexation. Not more than 10 days after the transfer occurs, the Owner shall deliver such petition to Urbana's Planning Division Manager. As a condition of any subsequent sale of the whole or any part of the Property, the Owner shall also require the subsequent owner to obtain an irrevocable petition for annexation from succeeding buyers and electors who will reside on the property and to deliver such petition to Urbana's Planning Division Manager not more than 10 days after the transfer occurs, for as long as this agreement is in effect. If the Owner fails to comply with this subsection, and if annexation of the Property or any part of it is delayed or contested by any subsequent owner as a result, the Owner shall be liable to Urbana for all real estate taxes and other taxes that would have been due to Urbana had annexation been completed as provided herein.
- (3) Recording of covenants. If Urbana has not already annexed the Property, the Owner shall record covenants in a form approved by Urbana's Legal Division containing notice that each subsequent owner and elector residing on the Property is required to sign a petition for annexation at Urbana's request. In addition to recording this notice in the covenants applicable to the whole Property, the Owner shall record this notice in the chain of title of each individual permanent index number assigned to any division of the Property.

B. After annexation. At all times after annexation, the Owner shall have the following duties.

- (1) Zoning designation. The Owner shall comply with all applicable provisions of the Urbana Zoning Ordinance, including those relating to non-conforming structures and uses. The Owner shall accept the Urbana IN-1 Light Industrial/Office zoning classification, as provided for in the Urbana Zoning Ordinance, as amended.
- (2) Code compliance. The Owner shall comply with all Urbana ordinances in effect unless expressly waived or varied in this agreement. The Owner shall cause all new development, construction, or additions on the Property to comply with the site plan for the Property, if any, and all codes, rules, regulations, orders, and other requirements of Urbana. The Owner shall submit all building construction plans to Urbana for review and shall pay all building permit fees.
- (3) Conditional Use Permit. The Owner agrees to the following conditions of a Conditional Use Permit granted by Section 5.B 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 the Urbana Zoning Ordinance Table IV-1 as a Conditional Use:
 - (a) The Conditional Use Permit shall be applicable only to the confines of the tract, as depicted in the attached Exhibit B, and legally described in Exhibit A.

- (b) The Conditional Use Permit approves a construction yard on said tract, in the approximate location depicted in the attached Exhibit C General Area Plan.
- (c) The site conforms to any screening and landscaping requirements for off-street parking and construction yard uses as required in the Zoning Ordinance.

5. **Urbana's duties.** Urbana shall have the following duties.

- A. Annexation. Urbana shall annex the Property in accordance with the terms and conditions set forth in this agreement. Urbana shall enact all ordinances and resolutions necessary to effectuate this agreement.
- B. Conditional Use Permit. Urbana hereby grants the Urbana Zoning Administrator the authority to issue a Conditional Use Permit to allow the Owner to operate a construction yard in the IN-1, Light Industrial/Office zoning district, subject to the conditions specified in Section 4.B.3 of this agreement. Furthermore, Urbana finds 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 the use:
 - (1) Will be conducive to the public convenience at that location;
 - (2) 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
 - (3) Will conform to the applicable regulations and standards of, and preserves the essential character of, the district in which it shall be located.

6. **Owner's representations.** The Owner represents to Urbana as follows.

- A. Consent of lender. If a mortgage or other lien encumbers the Property, the Owner has provided Urbana with a written acknowledgement from each mortgagee, lienholder, and holder of any security interest affecting title to the Property, or any part thereof, that this agreement will at all times inure to the benefit of and be binding upon such mortgagee, lienholder, or other person having an interest in the Property.
- B. Authority. The person signing this agreement on behalf of the Owner has been authorized and empowered to enter into this agreement by and on behalf of such Owner, and this agreement is a legal, valid, and binding obligation of the Owner, enforceable against the Owner in accordance with its terms.
- C. Petition for annexation. The Owner has filed with Urbana a written petition signed by the Owner and all electors residing on the Property requesting annexation of the Property to Urbana and being in proper form to allow annexation of the Property pursuant to the Illinois Municipal Code, as amended.

7. **Urbana's representations.** Urbana represents to the Owner as follows:
- A. **Authority.** The person signing this agreement on behalf of Urbana has been authorized and empowered to enter into this agreement by and on behalf of Urbana; and Urbana has taken or will take all actions necessary to authorize the execution, delivery, and performance of this agreement.
 - B. **Public hearings.** Prior to execution of this agreement, Urbana has held all public hearings required by law.
8. **Term.** This agreement will be binding upon the parties and their respective successors and assigns for 20 years commencing as of the effective date of this agreement. If any of the terms of this agreement, or the annexation or zoning of the Property, is challenged in any court proceeding, or if Urbana files a court action to enforce this agreement, then, to the extent permitted by law, the period of time during which such litigation is pending will not be included in calculating the term of this agreement. The expiration of the term of this agreement will not affect the continuing validity of the zoning of the Property or any ordinance enacted by Urbana pursuant to this agreement.
9. **Enforcement.** Any party, or the successor or successors in title of any party hereto, may either in law or in equity, by suit, action, mandamus, injunction, or other proceedings enforce, and compel performance of this agreement. Upon breach by the Owner, or the successor or successors in title of the Owner, Urbana may refuse the issuance of any permits or other approvals or authorizations relating to development of or construction on the Property.
10. **Indemnification.** The Owner shall defend and indemnify Urbana from any and all claims arising from the Owner's construction activities under this agreement.
11. **Entire agreement; amendments.** This agreement constitutes the entire agreement between the parties, supersedes all other agreements or understandings between them pertaining to the matter of this agreement, and may not be modified or rescinded except by a writing signed by both parties.
12. **Assignment.** The Owner's rights and privileges provided pursuant to this agreement are personal to the Owner and are not assignable or voluntarily transferable by the Owner without the express written consent of Urbana, which consent shall not be unreasonably withheld. Such consent will not constitute an amendment to this agreement and may be given without the requirement of notice or a public hearing, except as required by the Illinois Open Meetings Act. The Owner's obligations, undertakings, and guarantees specifically made in this agreement will continue in full force and effect and will not be affected insofar as Urbana is concerned by any sale, transfer, or assignment of any interest in any portion of the Property.
13. **Notices.** Except where the terms of this agreement expressly provide otherwise, the parties shall give all notices required or permitted by this agreement in writing, addressed as set forth below, unless another address is provided in writing. Notices will be deemed given when personally delivered; deposited in the U.S. mail, postage prepaid, first class; or delivered to a commercial courier.

Urbana: City of Urbana Planning Division Manager, 400 S. Vine Street, Urbana, Illinois 61801

Owner: David Borchers, 203 S Staley Road, Champaign, Illinois 61822

14. **Waiver.** The failure of either party to insist upon the strict and prompt performance of any term, covenant, or condition of this agreement will not be deemed to waive or to relinquish that party's right thereafter to enforce any such term, covenant, or condition unless the party's waiver is in writing.

15. **Severability.** If any court of competent jurisdiction invalidates any provision of this agreement, other than the provisions relating to the requested zoning changes and the ordinances adopted in connection therewith, such provision will be deemed to be excised here from, and the invalidity thereof shall not affect any of the other provisions contained herein.

16. **No presumption.** The parties have had full opportunity to review and to participate in the drafting of this agreement and all documents attached as exhibits. Accordingly, the parties shall construe this agreement without regard to any presumption or other rule of construction whereby any ambiguities within this agreement would be construed or interpreted against the party causing the document to be drafted.

17. **City Council approval.** This agreement will be valid only after the Urbana City Council approves it by resolution or ordinance.

18. **Covenant running with the land.** The terms of this agreement constitute a covenant running with the land and will inure to the benefit of and be binding upon the successors in title and assigns of the Owner and each of them, as to all or any part of the Property, and upon the successor municipalities of Urbana and the successor corporate authorities of each of them.

19. **Recording of agreement.** Not more than 30 days after the effective date of this agreement, Urbana shall record this agreement, or a suitable memorandum hereof, in the Champaign County Office of the Recorder of Deeds at the Owner's sole cost and expense.

20. **Exhibits.** All exhibits and schedules attached to this agreement are incorporated into this agreement and are made a part of this agreement by this reference.

21. **Third-party beneficiaries.** This agreement is made for the mutual benefit of the parties hereto and is not intended to confer any rights to any third party. No third party may bring any action to enforce any of the terms herein.

[SIGNATURE PAGE FOLLOWS]

The duly authorized representatives of the Owner and Urbana are signing this agreement on the dates stated below their signatures.

David Borchers

City of Urbana, Illinois

David Borchers
Date:

By: _____
Diane Wolfe Marlin
Mayor
Date:

Attest:

Charles A. Smyth
City Clerk

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 David Borchers personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he or she signed, sealed and delivered the said instrument as his or her free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____ 2017.

Notary Public

Attachments: Exhibit A Legal Description
 Exhibit B Annexation Plat
 Exhibit C General Area Plan

Exhibit A - Legal Description

The West Six (6) Acres of Lot One (1) of a Subdivision of the West $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of Section Ten (10), Township Nineteen (19) North, Range 9 East of the Third P.M., according to the division of the Estate of Jacob Smith, deceased, as shown by Plat in Circuit Court record "D" page 223, Records of Champaign County, Illinois.

AND;

Commencing at the $\frac{1}{4}$ corner to Sections 9 and 10, T19N, R9E, 3rd P.M., thence South 330.25 feet to the NW corner of Lot 4 of a Subdivision of the West $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 10, T19N, R9E, 3rd P.M., as shown by the Commissioners Plat of the Estate of Jacob Smith, deceased, Circuit Court Record D page 224; for a point of beginning – thence East along the North line of Lots 4 and 3 of said Subdivision 880.74 feet to the NE corner of said Lot 3; thence South along the East line of said Lot 3, 270.68 feet; thence West parallel with the North line of said Lots 3 and 4, 880.96 feet to the West line of said Lot 4; thence North along the West line of said Lot 4, 270.68 feet to the point of beginning, containing 5.474 acres, situated in Champaign County, Illinois.

Exhibit B - Location Map/Annexation Plat

A part of the Southwest Quarter of Section 10, Township 19 North, Range 9 East of the Third Principal Meridian, Champaign County, Illinois being more particularly described as follows:

The West 6 acres of Lot 1 of a Subdivision of the West Half of the Southwest Quarter of Section 10, Township 19 North, Range 9 East of the Third Principal Meridian, according to the division of the Estate of Jacob Smith, deceased, as shown by Plat in Circuit Court Record 'D' at Page 223, Records of Champaign County, Illinois;

AND,

Commencing at the Quarter corner to Sections 9 and 10 Township 19 North, Range 9 East of the Third Principal Meridian; thence South 330.25 feet to the Northwest corner of Lot 4 of a Subdivision of the West Half of the Southwest Quarter of Section 10, Township 19 North, Range 9 East of the Third Principal Meridian, according to the division of the Estate of Jacob Smith, deceased, as shown by Plat in Circuit Court Record 'D' at Page 224, for a point of beginning; thence East along the North line of Lots 4 and 3 of said Subdivision, 880.74 feet to the Northeast corner of said Lot 3; thence South along the East line of said Lot 3, 270.68 feet; thence West parallel with the North line of said Lots 3 and 4, 880.96 feet to the West line of said Lot 4, thence North along the West line of said Lot 4, 270.68 feet to the point of beginning, of Champaign County, Illinois.

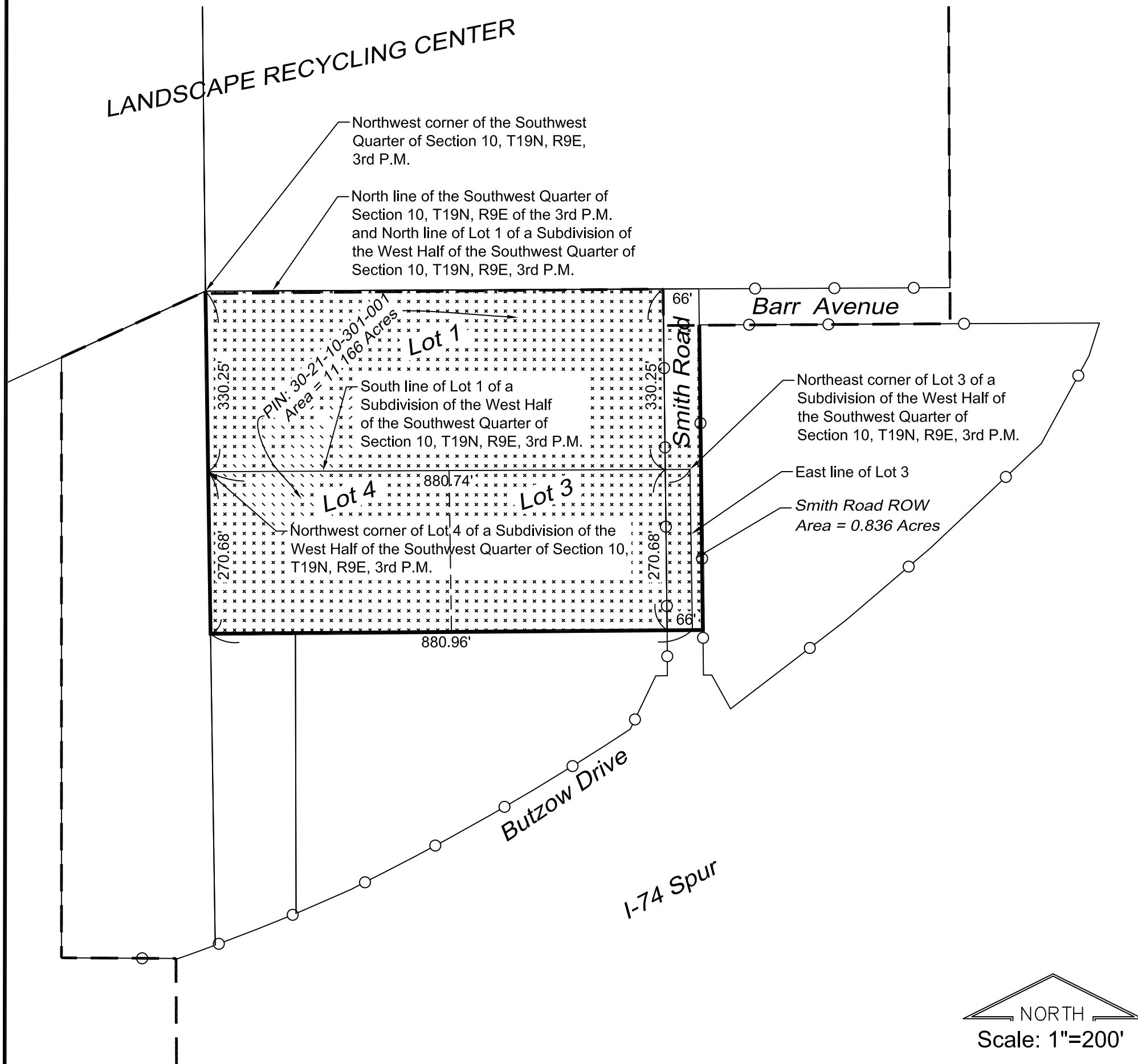
Except;

That portion of the Smith Road Right-of-Way lying within the above described tracts, containing 13,426,659 SF. (0.308 acres), more or less.

Said tracts containing 11.116 acres, more or less and being commonly known as 801 North Smith Road, and having a Permanent Identification Number of 3021-10301-001 all being situated in Urbana Township, Champaign County, Illinois.

Together with the following described adjacent public Right-of-Way, which is by operation of the law, automatically annexed with the adoption of an annexation ordinance pertaining to this tract:


That portion of Smith Road Right-of-Way, not previously annexed into the City of Urbana, lying adjacent to the herein annexed tract, being sixty-six feet (66) in width and encompassing 36,425,616 SF. (0.836 acres), more or less.



MAP SHOWING AREA
ANNEXED BY CITY
ORDINANCE #2017-XX-XXX
CITY OF URBANA, ILLINOIS
CHAMPAIGN COUNTY
DATE: AUGUST XX, 2017

AREA OF ANNEXATION	
EXISTING CITY LIMITS	
NEW CITY LIMITS	
RIGHT-OF-WAY	

ENGINEERING DIVISION



CITY ENGINEER/PUBLIC WORKS DIRECTOR

CAD: B.W.F. 7/10/2017
CHECKED: W.R.G. 7/11/2017

