



## 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:** August 4, 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.

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### **Introduction and Background**

This memorandum supplements the one presented for the July 20, 2017, Urbana Plan Commission meeting. At that meeting, several nearby residents spoke to the Commission about their concerns for noise, traffic, dust that would result from development on the site. There was also written correspondence from the ownership of the nearby mobile home parks expressing similar concerns. Members of the Plan Commission asked staff about the effects of traffic from developing the subject property. They also asked if Smith Road would indefinitely remain as the only access point for the neighborhood. They wanted to know if there were alternative circulation options with the vacant properties and Guardian Drive cul-du-sac to the west. Staff mentioned that the City Engineer and Urbana Township Road Commissioner indicated that Smith Road was capable of accommodating any traffic from the subject property being developed. The Plan Commission requested staff to explore alternatives to Smith Road serving as the only access point for the site. The Plan Commission voted unanimously, with five ayes to zero nays, to continue the case to the August 10, 2017, meeting.

### **Discussion**

#### ***Transportation***

The City Engineer has determined that an alternative traffic circulation for the site would likely not be possible and would not necessary. The Flex-N-Gate Corporation owns the property to the west of the site for future expansions of their facility and has indicated no inclination to make it available for a public right-of-way expansion. The City Engineer has also stated that Smith Road, east of Guardian Drive, has a traffic count of approximately 700 vehicles per day with a peak hour traffic

volume of 70 vehicles. He states that a high estimate for future build-out of the site with light industrial uses would generate no more than 600 vehicle trips per day with 60 vehicles in a peak hour, which is a maximum increase of one more vehicle per minute, with traffic predominantly heading eastbound in the morning and westbound in the evening. It is of his opinion that the volume increase would not impact the existing three-way stop at Guardian Drive and Butzow Drive and would not require any extra lanes, traffic signals, or physical improvements for the intersections at Guardian Drive and Butzow Drive or Guardian Drive and University Avenue. He also does not think that the traffic increase will impact City’s Level of Service for the area.

***Land Use Restrictions***

In response to concerns expressed about potential uses with the proposed IN-1, Light Industrial/Office, uses, the owner has agreed to restrict certain uses at the site. The annexation agreement has been revised to include language prohibiting the following uses from being allowed at the site during the twenty-year term of the agreement: Convenience Store, Motor Bus Station, Truck Terminal/Truck Wash, Automobile Truck, Trailer, or Boat Sales or Rental, Gasoline Station, Truck Rental, Truck Stop, and Towing Service.

***Screening***

To address concerns regarding noise, the owner has agreed to provide more landscape screening than what would be required by the Urbana Zoning Ordinance. The agreement has been amended to require evergreen trees to be planted at a ratio of one tree and three shrubs for every 30 linear feet along both the eastern and southern boundaries, rather than one tree and three shrubs every 40 linear feet as the Zoning Ordinance would require. The trees throughout the site would also be planted in conjunction with the development of any part of the property. With any development, a landscaping plan would have to be submitted with any building permit application. A final Certificate of Occupancy would be issued upon completion of the required landscaping. The property owner would be required to install landscaping for the Construction Yard he plans to develop with the Conditional Use Permit that would be granted in the Annexation Agreement.

The table summarizing zoning and land use in the memorandum dated July 14, 2017, included an incorrect zoning designation for the northern property. The table below shows the correct zoning designation of City AG, Agriculture.

<b>Location</b>	<b>Zoning</b>	<b>Existing Land Use</b>	<b>Comprehensive Plan Future Land Use</b>
Site	County AG-2 Agriculture	Vacant, Farmland (cropping)	Industrial
North	City AG, Agriculture	Retired Landfill, Arbor Division Office Building	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

## **Additions to Summary of Findings From Memorandum Dated July 15, 2017**

1. The Urbana Plan Commission first heard the case at their July 20, 2017 meeting. The Commission members voted to continue the case to the next meeting with inquiries about the impact of traffic from the site.
2. City Staff have determined that Smith Road and Butzow Drive, in their current state, could safely accommodate traffic from a fully developed subject property.

### **Staff Recommendation**

With the addition of provisions restricting uses and enhancing the screening of the site, and with the analysis provided by the City Engineer, based on the evidence presented to date without the benefit of considering additional evidence that may be presented at the public hearing, staff recommends that the Plan Commission recommends **APPROVAL** of the rezoning in the proposed annexation agreement as presented.

cc: David Borchers

Attachment: REVISED Draft Annexation Agreement

## 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. Land Use Restrictions. The Owner may use the Property for any permitted use allowed in the IN-1 Light Industrial/Office district, as provided for in the Urbana Zoning Ordinance, except the following: "Convenience Store," "Motor Bus Station," "Truck Terminal/Truck Wash," "Automobile Truck, Trailer, or Boat Sales or Rental," "Gasoline Station," "Truck Rental," "Truck Stop," and "Towing Service."
  - C. 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.
  - D. 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 and landscaping plans to Urbana for review and shall pay all building permit fees.

- (3) Conditional Use Permit. The Owner shall comply with 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 Property in accordance with Urbana Zoning Ordinance Table IV-1:
  - (a) The Conditional Use Permit will be applicable only to the confines of the Property.
  - (b) The Conditional Use Permit approves a construction yard on said Property, in the approximate location depicted in the attached Exhibit C General Area Plan.
- (4) Along with any Building Permit application, the Owner shall submit to Urbana a landscape plan for the southern and eastern boundaries of the Property to include landscape screening as specified below:
  - (a) The Owner shall plant evergreen trees and shrubs at a rate of one tree and three shrubs for every 30 linear feet or fraction thereof, rather than the Urbana Zoning Ordinance requirement of one tree and three shrubs for every 40 linear feet.
  - (b) Evergreen trees shall be at least four feet in height at the time of planting.
  - (c) The Owner shall plant the first 200 feet of evergreen trees and shrubs on the northeast frontage along Smith Road before Urbana issues a final certificate of occupancy for the construction yard.
  - (d) Any subsequent development of the Property will require the planting of landscaping screening.

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 shall 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.

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. 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 indemnify and defend Urbana, its officers, employees, and agents against all claims, liability, or damage, including without limitation attorney's fees, arising from or in any way related to the performance or failure to perform the provisions of this agreement, except to the extent caused by the gross negligence or willful misconduct of Urbana, its officers, employees, or agents. This section will survive the termination of 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.  
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



\_\_\_\_\_  
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, 3<sup>rd</sup> 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, 3<sup>rd</sup> 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.

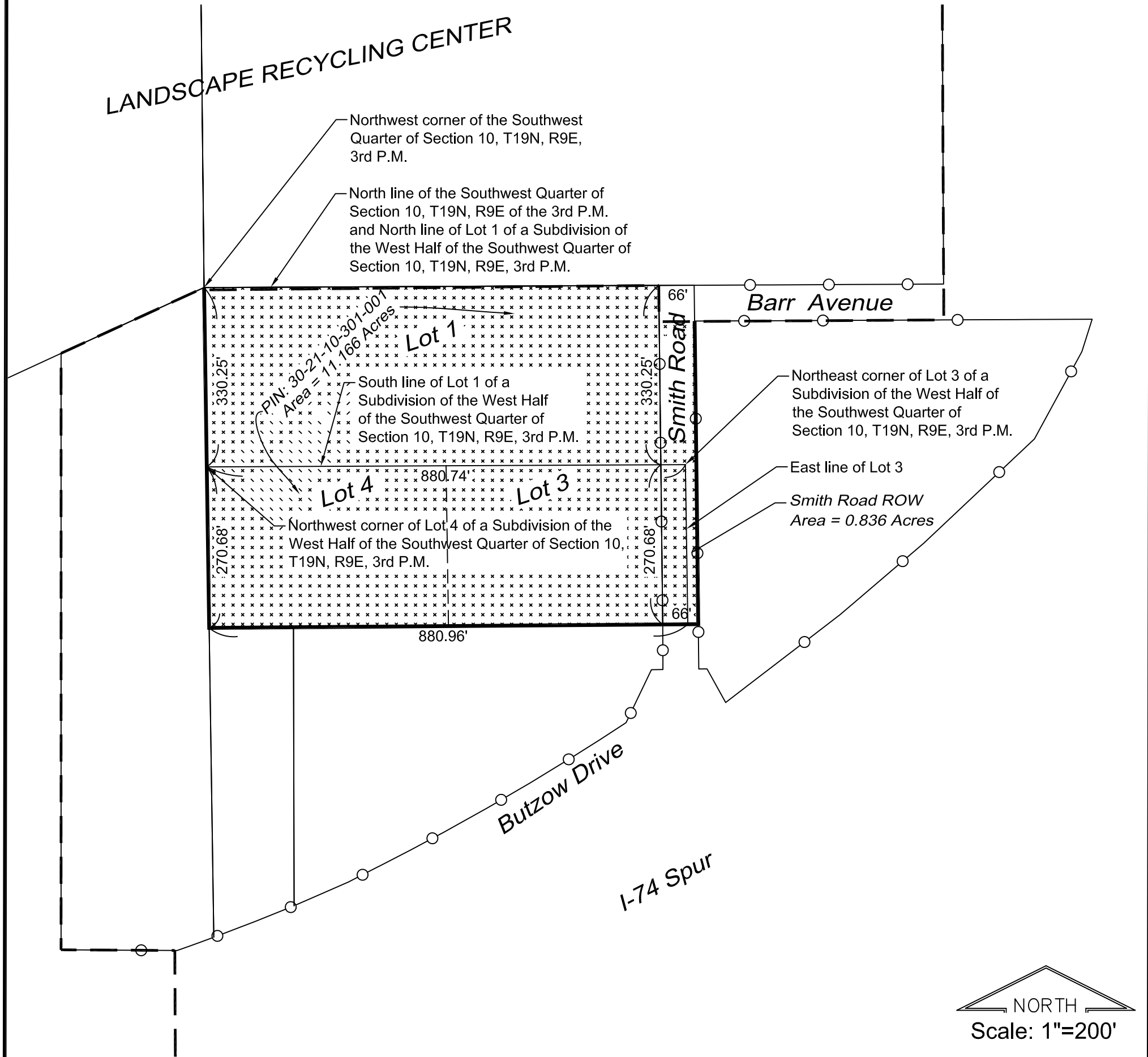
Except;

That portion of the Smith Road Right-of-Way lying within the above described tracts, containing 13,426,659 S.F. (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 S.F. (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

Exhibit C - General Area Plan



1210  
CITY OF URBANA

901  
CITY OF URBANA

Area = ± 2.87 Acres

Area = ± 2.87 Acres

LOT 2

LOT 7

100' Dia.  
80' Dia.

New 31' Wide  
Public Street

Public Street  
66' ROW

Future Right-of-Way Entry

6 Parking  
Spaces

Rear Loading  
Area

LOT 3

LOT 4

Area = ± 2.87 Acres

Area = ± 2.87 Acres

602  
FLEX N GATE CORP

509  
FLEX N GATE CORP

CHIEF ILLINI MHP LLC

59  
ILUR PORTFOLIO 5 LLC

