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2009R07371

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03/18/2009 04:03:34PM
CHAMPAIGN COUNTY
RECORDER
BARBARA A. FRASCA
REC FEE: 32.00
RHSPS Fee:
REV FEE:
PAGES 11
PIAT ACT: 0
PIAT PAGE:

Recording Cover Sheet

ORDINANCE NO. 2008-12-146

AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF AN ANNEXATION AGREEMENT (109 COUNTRY CLUB ROAD / MENNENGA CONSTRUCTION, INC.)

(AGREEMENT ATTACHED)

Prepared for recording by:

Deborah J. Roberts, Deputy City Clerk

400 S. Vine Street, Urbana, IL 61801

\Return to:

Phyllis D. Clark, City Clerk
City of Urbana
400 S. Vine Street
Urbana, IL 61801

**AN ORDINANCE APPROVING AND AUTHORIZING
THE EXECUTION OF AN ANNEXATION AGREEMENT**

(109 Country Club Road / Mennenga Construction, Inc.)

WHEREAS, an Annexation Agreement between the City of Urbana, Illinois and Mennenga Construction, Inc. has been submitted for the Urbana City Council's consideration, a copy of which is attached; and

WHEREAS, said agreement governs a tract totaling approximately 9,148 square feet located at 109 Country Club Road and said tract is legally described as follows:

Lot 1 in Hazel Thompson's Subdivision of Lots 1 and 2 of Block 5 of Parkview Subdivision of Lots 5, 6, 11, and 12 of a subdivision of the Northeast East ¼ of Section 8, Township 19 North, Range 9 East of the Third Principal Meridian, as per plat recorded in Plat Book "G" at page 138, situated in Champaign County, Illinois. PIN No.: 30-21-08-202-007.

WHEREAS, the City Clerk of Urbana, Illinois, duly published notice on the 28th day of November, 2008 in the News-Gazette, a newspaper of general circulation in the City of Urbana, that a public hearing would be held before the Urbana City Council on the matter of the proposed Annexation Agreement on the 15th day of December, 2008; and

WHEREAS, the City of Urbana, Illinois also mailed notice of the public hearing to each of the Trustees of the Eastern Prairie Fire Protection District on the 3rd day of December, 2008; and

WHEREAS, on the 15th day of December, 2008, the Urbana City Council held a public hearing on the proposed Annexation Agreement; and

WHEREAS, prior to the aforesaid public hearing held by the Urbana City Council, after due and proper notice, a public hearing was held before the

Urbana Plan Commission on the 4th day of December, 2008, to consider the proposed Annexation Agreement in Case No. 2091-M-08; and

WHEREAS, The Urbana City Council has determined that the proposed Annexation Agreement is in conformance with the goals and objectives of the City of Urbana's Official Comprehensive Plan; and

WHEREAS, the Urbana City Council, having duly considered all matters pertaining thereto, finds and determines that the proposed annexation agreement will not negatively impact the City of Urbana and would be in the best interests of the City of Urbana and its citizens

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. The Annexation Agreement between the City of Urbana, Illinois and Mennenga Construction, Inc., a copy of which is attached and hereby incorporated by reference, be and the same is hereby authorized and approved.

Section 2. That the Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver, and the City Clerk of the City of Urbana, Illinois, be and the same is hereby authorized to attest to said execution of said Annexation Agreement, for and on behalf of the City of Urbana, Illinois.

Section 3. The City Clerk is directed to record a certified copy of this Ordinance and the Annexation Agreement herein approved, as amended, with the Recorder of Deeds of Champaign County, Illinois.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called of two-thirds of the members of the City Council of the City of Urbana, Illinois, then holding office, at a regular meeting of said Council.

PASSED by the City Council this 15th day of December

2008

AYES: Barnes, Bowersox, Gehris, ~~LeWig~~, Roberts, Smyth, Stevenson

NAYS:

ABSTAINS:



APPROVED by the Mayor this 18th day of December,

2008

Laurel Lunt Prussing
Laurel Lunt Prussing, Mayor

ENHANCED ANNEXATION AGREEMENT

THIS Agreement, made and entered into by and between the City of Urbana, Illinois, (herein after sometimes referred to collectively as the "Corporate Authorities" or the "City") and Mennenga Construction, Inc. (hereinafter referred to as the "Owner"). The effective date of this Agreement shall be as provided in Article III, Section 6.

WITNESSETH:

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

WHEREAS, Mennenga Construction, Inc. is the Owner of record of a certain 0.21 acre parcel of real estate located at 109 Country Club Road, and having permanent index number 30-21-08-202-007, the legal description of which real estate is set form in Exhibit A attached hereto and referenced herein as "the tract."

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

WHEREAS, although the tract is not yet contiguous to the City of Urbana, said Owner finds that in order to best utilize the Owner's property, it is desirous to annex the tract to the City of Urbana when said tract becomes contiguous to the City, pursuant to, and as provided for in this annexation Agreement; and

WHEREAS, the tract is currently zoned R-1, Single Family Residential in Champaign County and the City and the Owner find it necessary and desirable that the tract be annexed to the City with a zoning classification of R-3, Single and Two-Family Residential, under the terms and provision of the Urbana Zoning Ordinance in effect upon approval of this Agreement, as amended, and subject to the terms and conditions set forth in this Agreement; and

WHEREAS, the Corporate Authorities find annexation of the tract as described herein reflects the goals, objectives and policies set forth in the City's 2005 Urbana Comprehensive Plan, as amended from time to time; and

WHEREAS, such annexation will ensure that the City of Urbana will receive real estate taxes and other revenues and will enable the City to continue to enhance its tax base; and

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

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

ARTICLE I. REPRESENTATIONS AND OBLIGATIONS OF THE OWNER

The Owner agrees to the following provisions:

Section 1:

- (a) The Owner represents that the Owner is the sole record Owner of the tract described in Exhibit A and that the Owner shall, within thirty (30) days of the property becoming contiguous to the Urbana City limits 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. Until annexation of the subject tract occurs, Owner shall require that any persons intending to reside thereon, whether as tenants or owners, shall, prior to residing thereon, irrevocably agree in writing to sign, join in, and consent to any petition for annexation of the subject tract. The Owner shall file such written agreement with the City Clerk within thirty (30) days of the signing of such.
- (b) 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 tract. 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 covenants and such will constitute a covenant running with the land.
- (c) Owner agrees that if owner fails to include the substance of Section 1(a) of this Agreement in sales contracts or subdivision covenants, as provided herein, and if said annexation is delayed or contested by subsequent owners as a result, the Owner shall be liable to the City for all real estate taxes and other taxes that would have been due to the City had annexation been able to proceed as outlined herein. The Owner agrees for himself, 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: The Owner acknowledges that upon annexation the tract will be rezoned from County R-1 to City R-3. Owner agrees that, unless changed upon the initiative of the Owner, the said City zoning classification for the 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. Owners agree to use the tract only in compliance with the Urbana Zoning Ordinance as such may be amended from time to time.

Section 3: The Owner agrees to cause all new development, construction, or additions on said tracts to be in conformance with all City of Urbana building, electrical, fire, and plumbing codes, orders or regulations in effect at the time of annexation. The Owner agrees to submit all building construction plans to the City of Urbana for review and further agrees to pay the building permit fee just as though the construction were taking place within the Urbana City limits. The Owner further agrees to correct any deficiencies identified in said plan review. In addition, the Owner agrees that all construction will be subject to the same building and construction inspection requirements as construction projects within the City limits.

Section 4: The Owner shall take no action or omit to take action during the term of this Agreement which action or omission, as applied to the tracts, would be a breach of this Agreement, without first procuring a written amendment to this Agreement duly executed by both the Owner and the city. Said action includes petitioning for a county rezoning of said tracts without a written amendment to this Agreement.

ARTICLE II. REPRESENTATIONS AND OBLIGATIONS OF THE CORPORATE AUTHORITIES

The Corporate Authorities agree to the following provisions:

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

Section 2: The Corporate Authorities agree that the tract will be zoned City R-3, Single and Two-Family Residential upon its annexation to the City. Furthermore, although the Corporate Authorities agree not to rezone the property during the term of this Agreement without a rezoning petition executed by the property Owner requesting said change, the Corporate Authorities reserve the right to amend the Zoning Ordinance text even if such amendment affects the property. If the zoning district referenced herein is not in existence at the time of the annexation, the parties agree to reclassify said property to the most comparable zoning classification as is determined by the Zoning Administrator.

Section 3: The Corporate Authorities agree that all applicable development regulations as are in force as of the date hereof will apply to said tract, except as otherwise provided below:

- a. Lot Width. The Corporate Authorities agree to permit the following variations for lot width:
 - 1) Lot Width Less Than 60 Feet, Section VI-3.D of the Urbana Zoning Ordinance. The Corporate Authorities hereby grant a variance to permit said tract, platted before December 21, 1970, to be less than the required 60-foot width for a lot in the R-3

District. The approximate width of said tract is 52 feet.

- 2) Lot Width for a Duplex, Section VI-3.C and Table VI-3, Footnote 13 of the Urbana Zoning Ordinance. The Corporate Authorities hereby grant a variance to permit a duplex on said tract, although said tract has an average width of less than 60 feet.

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. 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.

If this Agreement imposes any obligation, restraint, or burden (hereinafter called collectively "obligation") on the Owner, their 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, mortgagees, lessees, executors, assigns and successors in interest of the Owner as to all or any part of the tract, and are further expressly made binding upon said City and the duly elected or appointed successors in office of its Corporate Authorities.

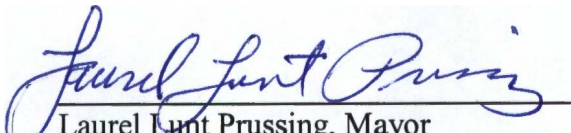
Section 3. Binding Agreement upon parties -- The Corporate Authorities and Owner agree that neither party will take action or omit to take action during the term of this Agreement which act or omission as applied to the tract would be a breach of this Agreement without first procuring a written amendment to this Agreement duly executed by both the Owner and the City.

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

Section 5. Effective Date -- The Corporate Authorities and 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.

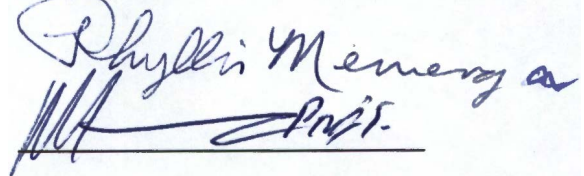
IN WITNESS WHEREOF, the Corporate Authorities and Owner have hereunto set their hands and seals, and have caused this instrument to be signed by their duly authorized officials and the corporate seal affixed hereto, all on the day and year written below.

**Corporate Authorities
City of Urbana:**


Laurel Lunt Prussing, Mayor


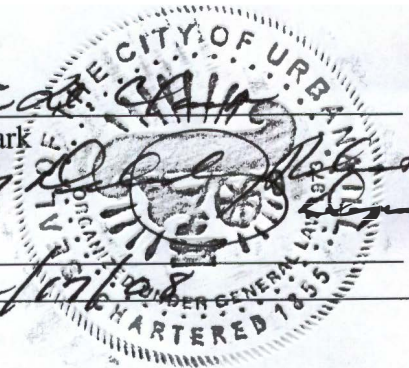
December 17, 2008
Date

Owner:

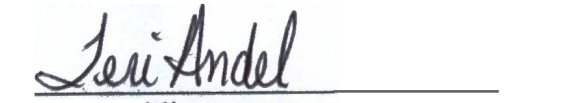

Phyllis Memery

Dec 4, 2008
Date

ATTEST:


Phyllis D. Clark
City Clerk

12/17/08
Date

ATTEST:


Teri Andel
Notary Public
"OFFICIAL SEAL"
TERI ANDEL
Notary Public, State of Illinois
My commission expires 08/09/10
12/04/2008
Date

Exhibits attached and made a part of this Agreement:

- Exhibit A: Legal Description
- Exhibit B: Location Map

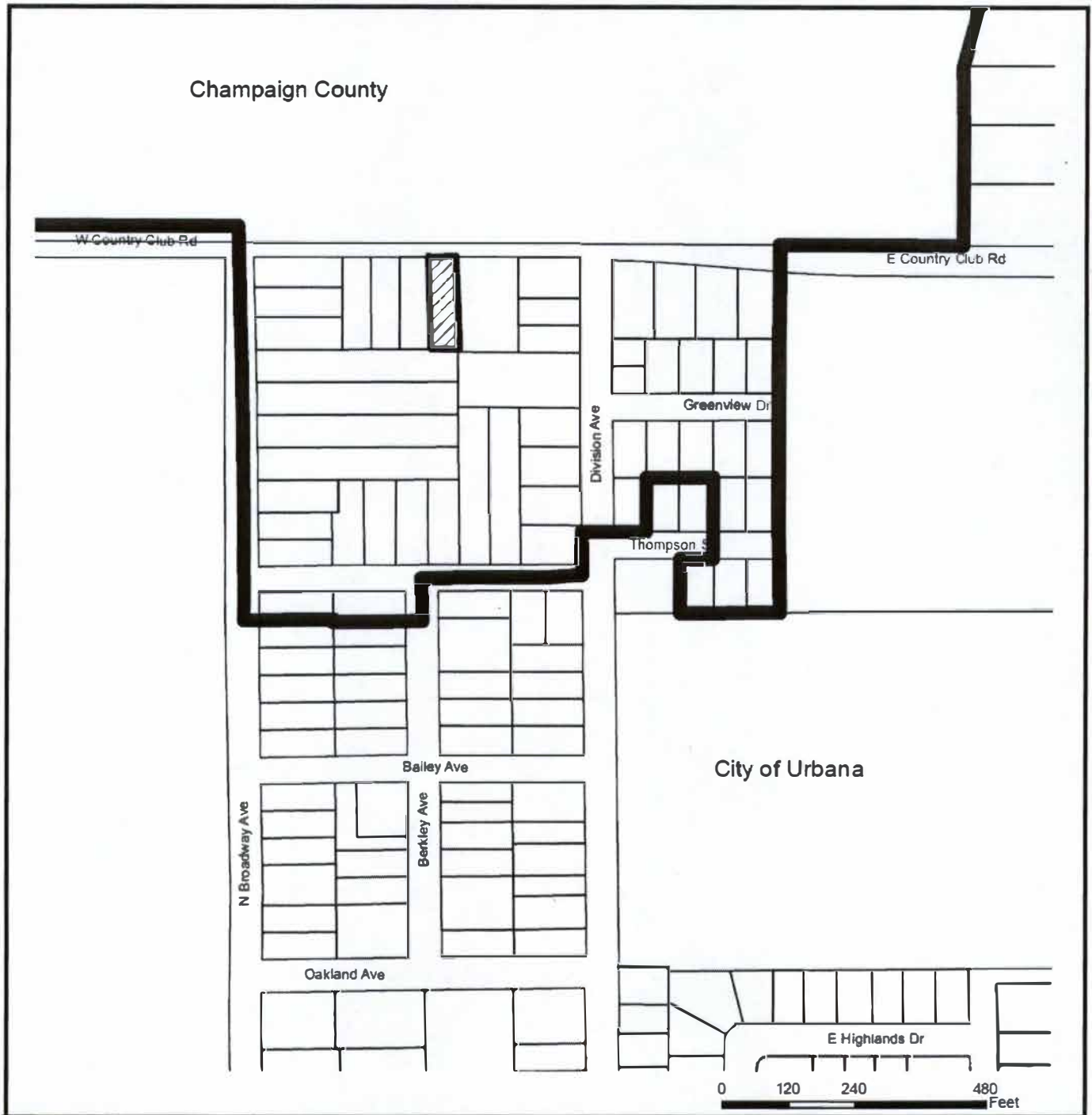
EXHIBIT A: LEGAL DESCRIPTION

Lot 1 in Hazel Thompson's Subdivision of Lots 1 and 2 of Block 5 of Parkview Subdivision

of Lots 5, 6, 11, and 12 of a subdivision of the Northeast East $\frac{1}{4}$ of Section 8, Township 19 North, Range 9 East of the Third Principal Meridian, as per plat recorded in Plat Book "G" at page 138, situated in Champaign County, Illinois.

PIN No.: 30-21-08-202-007.

EXHIBIT B: Location Map



Plan Case: 2091-M-08
Annexation Case: 2008-A-04
Petitioner: Mennenga Construction, Inc.
Location: 109 Country Club Road
Description: Request an annexation agreement with the City that will re-zone the property to R-3 upon annexation



Subject Property



City Boundary

Prepared 11/08 by Community Development Services - rfb