

ORDINANCE NO. 2012-06-054

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

**(2202 S. High Cross Road / Birkey's Farm Store, Inc. and
Richard M Noel)**

WHEREAS, Richard M. Noel and Birkey's Farm Store, Inc. request an annexation agreement to annex a 20.0 acre tract of land located east of High Cross Road and north of Windsor Road, and to be addressed as 2202 S. High Cross Road; and

WHEREAS, Richard M. Noel and Birkey's Farm Store, Inc. have concurrently submitted a General Area Plan and Combination Preliminary Plat/Final Plat for a 20.0 acre subdivision called DMT First Subdivision. Said Subdivision would create a 19.9-acre lot (Lot 1) to be developed as a Birkey's Farm Store; and

WHEREAS, at their May 24, 2012 meeting the Urbana Plan Commission approved the General Area Plan and Preliminary Plat and by a vote of 8-ayes and 0-nays recommended that the City Council approve the Final Plat for DMT First Subdivision. Approval of the Final Plat is necessary for approval of the annexation agreement.

WHEREAS, the terms of the proposed Annexation Agreement are consistent with the 2005 Comprehensive Plan, approved General Area Plan, approved Preliminary Plat, and proposed Final Plat for DMT First Subdivision.

WHEREAS, the requested variances to allow a freestanding sign which exceeds the standards of Table IX-1 (Freestanding Signs) of the Urbana Zoning Ordinance generally meet the variance criteria of Section XI-3.C.2.c.3 of the Urbana Zoning Ordinance.

WHEREAS, Birkey's Farm Store will pave all parking lots, access drives, off-street loading areas, and parking spaces with a hard surface. Due to damage to asphalt paving caused heavy farm equipment, areas for outdoor display and staging of equipment, as depicted in the site plan, will be surfaced with aggregate controlled for dust through regular treatments.

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

Section 1. The Annexation Agreement between the City of Urbana, Illinois, Richard M. Noel, and Birkey's Farm Store, 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.

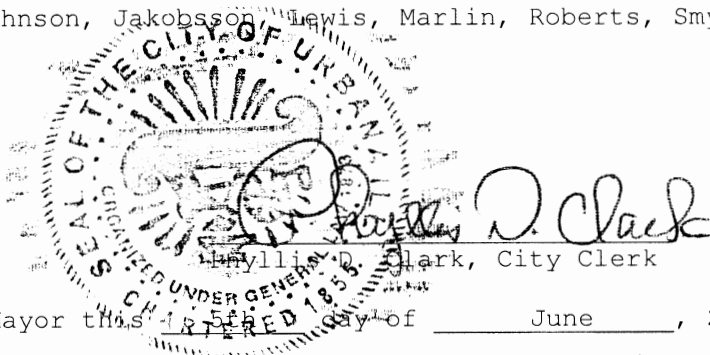
This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called of two-thirds of the members of the Corporate Authorities of the City of Urbana, Illinois, then holding office, at a regular meeting of said Council.

PASSED by the City Council this 4th day of June, 2012.

AYES: Bowersox-Johnson, Jakobsson, Lewis, Marlin, Roberts, Smyth, Stevenson

NAYS:

ABSTAINED:



APPROVED by the Mayor this 4th day of June, 2012.

CUA Smyth
Laurel Prussing, Mayor
By: Charles A. Smyth, Mayor Pro-tem



8 0 3 4 0 7 8
Tx:4015050

15N Recording Cover Sheet

ORDINANCE NO. 2012-06-054

AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF AN ANNEXATION AGREEMENT (2202 S. HIGH CROSS ROAD / BIRKEY'S FARM STORE, INC. AND RICHARD M. NOEL)

(AGREEMENT ATTACHED)

2012R21725
REC ON: 08/28/2012 2:23:00 PM
CHAMPAIGN COUNTY
BARBARA A. FRASCA, RECORDER
REC FEE: 36.00
PAGES 15
PLAT ACT: UPLAT PAGE:

Prepared for recording by:

Deborah J. Roberts, Deputy City Clerk

400 S. Vine Street, Urbana, IL 61801

16 Return to:

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

Annexation Agreement

(Richard M. Noel and Birkey's Farm Store, Inc.)

THIS Agreement is made and entered into by and between the **City of Urbana, Illinois**, (hereinafter sometimes referred to as the "Corporate Authorities" or the "City"), **Richard M. Noel** (hereinafter referred to as the "Owner"), and **Birkey's Farm Store, Inc.** (hereinafter referred to as the "Developer"). 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, Richard Noel is the Owner of record of a certain parcel of real estate located along the east side of High Cross Road/Illinois Route 130, to be addressed as 2202 S. High Cross Road, Urbana, IL 61802, the legal description of which real estate is set forth in Exhibit A attached hereto and referenced herein as Tract "A", or "the tract"; and

WHEREAS, Birkey's Farm Store, Inc. proposes to purchase and to develop the tract as a farm equipment sales and service center pursuant to obtaining relevant development approvals from the City and other authorities; and

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; and

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

WHEREAS, the tract is currently zoned Champaign County AG-2, Agriculture 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 City AG, Agriculture District, under the terms and provisions of the Urbana Zoning Ordinance in effect upon the date of annexation, 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 as AG, Agriculture generally reflects the goals, objectives and policies set forth in the City's 2005 Urbana Comprehensive Plan, as amended from time to time; 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 AND DEVELOPER

The Owner 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 A and that the Owner shall, within ninety (90) days of the approval of this Agreement 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 AG-2, Agriculture to City AG, Agriculture District. The Owner agrees that, unless changed upon the initiative of the Owner, 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 agrees 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. Signage: The Developer agrees that permanent freestanding signage along High Cross Road would be limited to one sign of no taller than twenty feet-six inches (20 ft, 6 in) inches in height above grade, and no larger in area than one hundred and forty-two (142) square feet per sign face, as depicted on attached Exhibit C. In conformance

with Section IX-4.F of the Urbana Zoning Ordinance, all other signage shall conform to the standards for a “Farm Equipment Sales and Service” business in the B-3, General Business District.

Section 5. Surfacing Plan and Dust Control: The Developer agrees to 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 Exhibit D to be used by the Developer as display, storage and staging areas. Such display, storage and staging 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.

Section 6. Land Uses. The Owner agrees that the uses of the tract shall be limited to those allowed within the City’s AG, Agriculture District as set forth in the City’s Zoning Ordinance.

Section 7. Building Code Compliance. The Developer agrees 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 8. Amendments Required. 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 tract, would be a breach of this Agreement, without first procuring a written amendment to this Agreement duly executed by the Owner 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, by enacting such ordinances as may be necessary and sufficient to legally and validly annex said tract to the City.

Section 2. Zoning. The Corporate Authorities agree to annex the tract with a zoning classification of AG, Agriculture. Additionally, the Corporate Authorities agree to grant a variance for free-standing signage and to approve an alternate surfacing plan as described in Sections 3 and 4 herein.

Section 3. Signage. The Corporate Authorities do hereby grant a variance to allow a free-standing monument-style sign at a height not to exceed 20 feet – 6 inches and with a sign face area not to exceed 142 square feet in area, as depicted in Exhibit C attached. This variance is necessary for visibility due to the relatively large right-of-way along Route 130 and the speeds of the vehicles along this roadway. In addition, per Article I, Section of this Agreement, the Developer agrees to combine it's free-standing sign allowances to a single sign.

In granting this variance, the Corporate Authorities do hereby affirm the following findings:

- (a) That the proposed variance will not serve as a special privilege because the variance requested is necessary due to special conditions and circumstances relating to the land or structure involved or to be used for occupancy thereof which is not generally applicable to other lands or structures in the same district;
- (b) The variance requested was not the result of a situation or condition having been knowingly or deliberately created by the Petitioner;
- (c) The variance will not alter the essential character of the neighborhood;
- (d) The variance will not cause a nuisance to adjacent property;
- (e) The variance represents generally the minimum deviation from requirements of the Zoning Ordinance necessary to accommodate the request;
- (f) The variance requested is the result of practical difficulties or particular hardship in the way of carrying out the strict letter of the Zoning Ordinance relating to the use, construction, or alteration of buildings or structures or the use of land.

Section 4. Surfacing Plan and Dust Control. Due to the particular impacts of moving heavy equipment on paved surfaces and extensive areas necessary for equipment display and storage, the Corporate Authorities agree to allow outdoor display, storage, and staging areas to be surfaced with aggregate rock and to be periodically treated with dust control measures, as depicted in Exhibit D. In accordance with Section VIII-3 of the Zoning Ordinance, the Zoning Administrator has determined that the areas shown in Exhibit D are not subject to the requirement for hard surface paving and shall adhere to the following criteria:

- a) The pavement design shall be such that any material composing the pavement and the soil underneath is not displaced by traffic movement in a manner that generates pollution in the air due to flying particles and causes damage, injury, or nuisance to the people/vehicles which use the facility.
- b) The design and construction of the pavement shall be such that the physical appearance, characteristics, performance, and rigidity of the surface that comes into direct contact with vehicles do not change with varying weather conditions. The form and texture of the surface shall be conducive to safe flow of traffic.
- c) Notwithstanding normal wear and tear, the surface and appearance of the parking lot shall be maintained to perform as originally designed.

Per Article I, Section 5 of this Agreement, the Developer agrees to apply additional dust reduction treatment as reasonably determined by the Developer or the then current owner of the tract and at such times as reasonably requested by the City in order to adhere to the criteria aforementioned.

Section 5. Utilities. The Corporate Authorities agree to allow the Developer to connect to existing public sanitary sewers on the west side of High Cross Road, in conformance with pertinent laws, codes, regulations, and permit requirements. Corporate Authorities additionally agree to apply their best efforts towards the completion of the East Urbana Interceptor project and to allow the Developer to connect to this sanitary sewer extension project at such time as it is constructed.

Section 6. 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 Owner 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 and 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 Owner and the City.

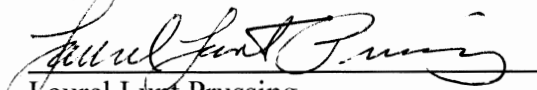
Section 4. Enforcement. The Owner and Corporate Authorities agree and hereby stipulate that any party to this Agreement may, by civil action, mandamus, action for writ of injunction or other proceeding, enforce and compel performance of this Agreement or the party not in default may declare this Agreement 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. Severability. If any provision of this Agreement is rendered invalid for any reason, such invalidation shall not render invalid other provisions of this Agreement which can be given effect even without the invalid provision.

Section 6. 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

August 13, 2012

Date

ATTEST:




Phyllis D. Clark
City Clerk

8/13/12

Date

Owner:

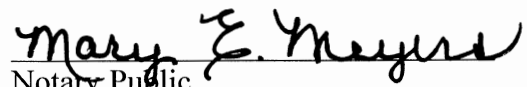


Richard M. Noel
Noel Farm Management

6-28-12

Date

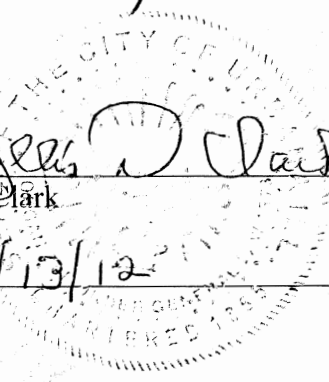
ATTEST:



Mary E. Meyers
Notary Public

06/28/2012

Date



Developer:




Jeff Hedge, Vice-President

Birkey's Farm Store, Inc.

7/3/2012
Date

ATTEST:



Notary Public

7/3/2012
Date



Exhibit A

Legal Description

PART OF THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 19 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, CHAMPAIGN COUNTY, ILLINOIS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER, THENCE NORTH 89 DEGREES 30 MINUTES 26 SECONDS EAST 104.99 FEET ALONG THE NORTH LINE OF SAID SOUTHWEST QUARTER TO THE EAST RIGHT-OF-WAY LINE OF ILLINOIS ROUTE 130 AS ESTABLISHED BY A RIGHT-OF-WAY PLAT BY REX A. BRADFIELD, ILLINOIS PROFESSIONAL LAND SURVEYOR 2537, DATED JULY 11, 1985, AND THE POINT OF BEGINNING. FROM SAID POINT OF BEGINNING, THENCE NORTH 89 DEGREES 30 MINUTES 26 SECONDS EAST 1,220.67 FEET ALONG THE NORTH LINE OF SAID SOUTHWEST QUARTER TO THE NORTHEAST CORNER OF THE WEST HALF OF SAID SOUTHWEST QUARTER; THENCE SOUTH 00 DEGREES 54 MINUTES 16 SECONDS EAST 677.71 FEET ALONG THE EAST LINE OF THE WEST HALF OF SAID SOUTHWEST QUARTER; THENCE SOUTH 89 DEGREES 30 MINUTES 26 SECONDS WEST 1,097.20 FEET; THENCE SOUTH 00 DEGREES 10 MINUTES 58 SECONDS EAST 312.00 FEET PARALLEL WITH THE WEST LINE OF SAID SOUTHWEST QUARTER; THENCE SOUTH 89 DEGREES 49 MINUTES 02 SECONDS WEST 132.00 FEET PERPENDICULAR TO THE WEST LINE OF SAID SOUTHWEST QUARTER TO SAID EAST RIGHT-OF-WAY LINE; THENCE NORTH 00 DEGREES 10 MINUTES 58 SECONDS WEST 988.98 FEET ALONG SAID EAST RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING, CONTAINING 20.00 ACRES, MORE OR LESS.

PIN: A PORTION OF 30-21-23-300-004

Exhibit B

Map of Tract

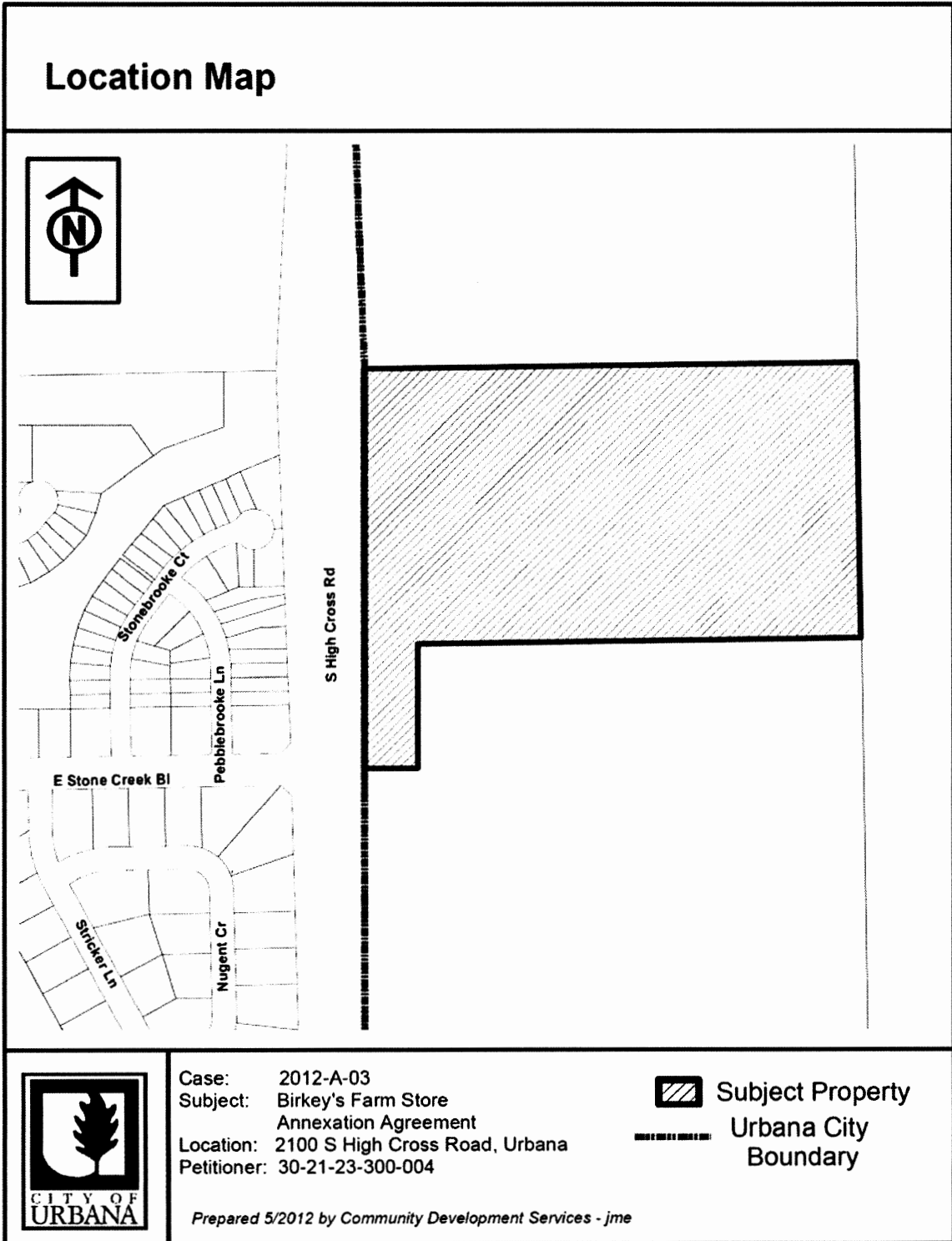
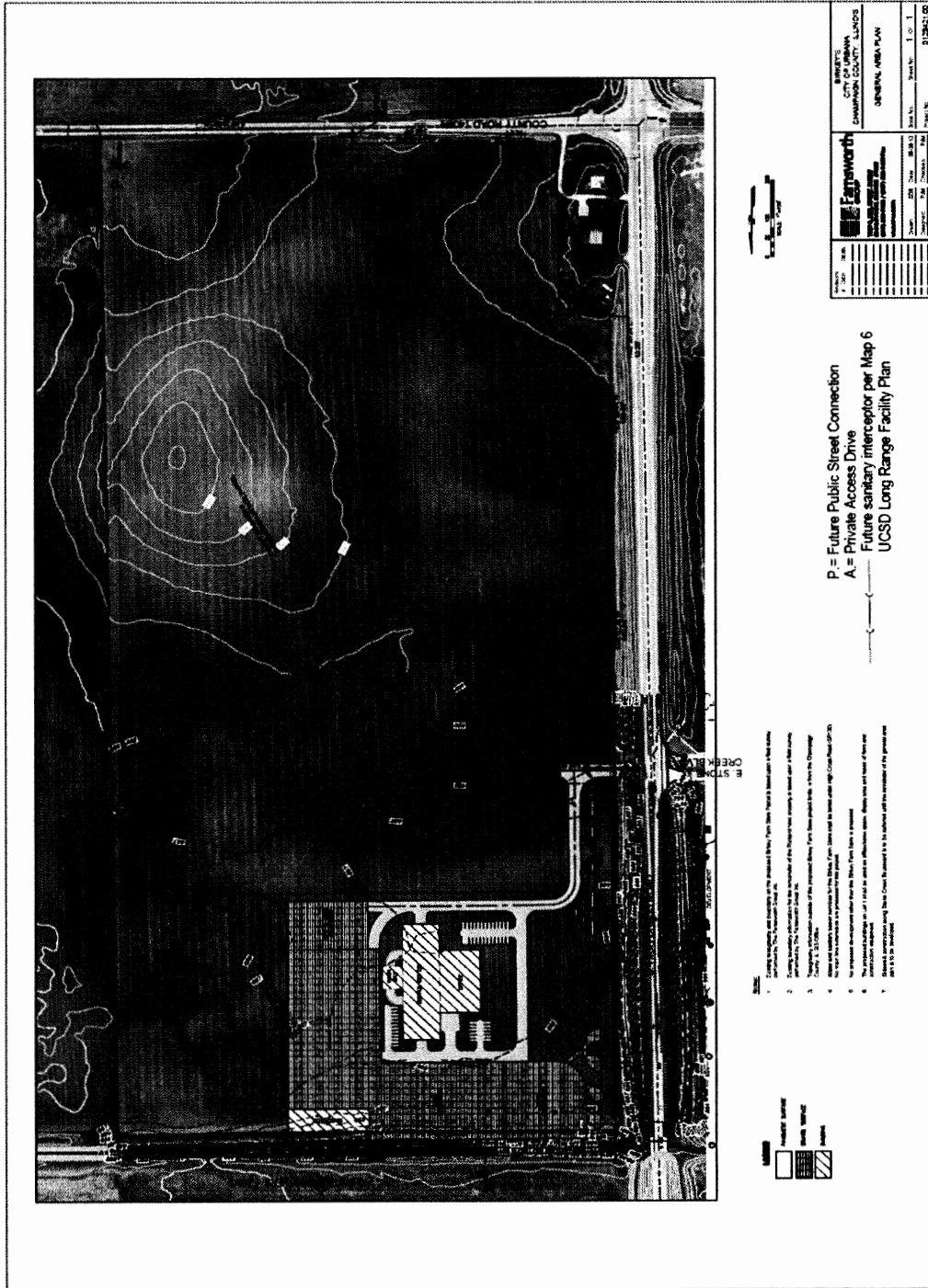


Exhibit C General Area Plan

(approved by Urbana Plan Commission May 24, 2012)



**Exhibit D
Site Paving Plan**

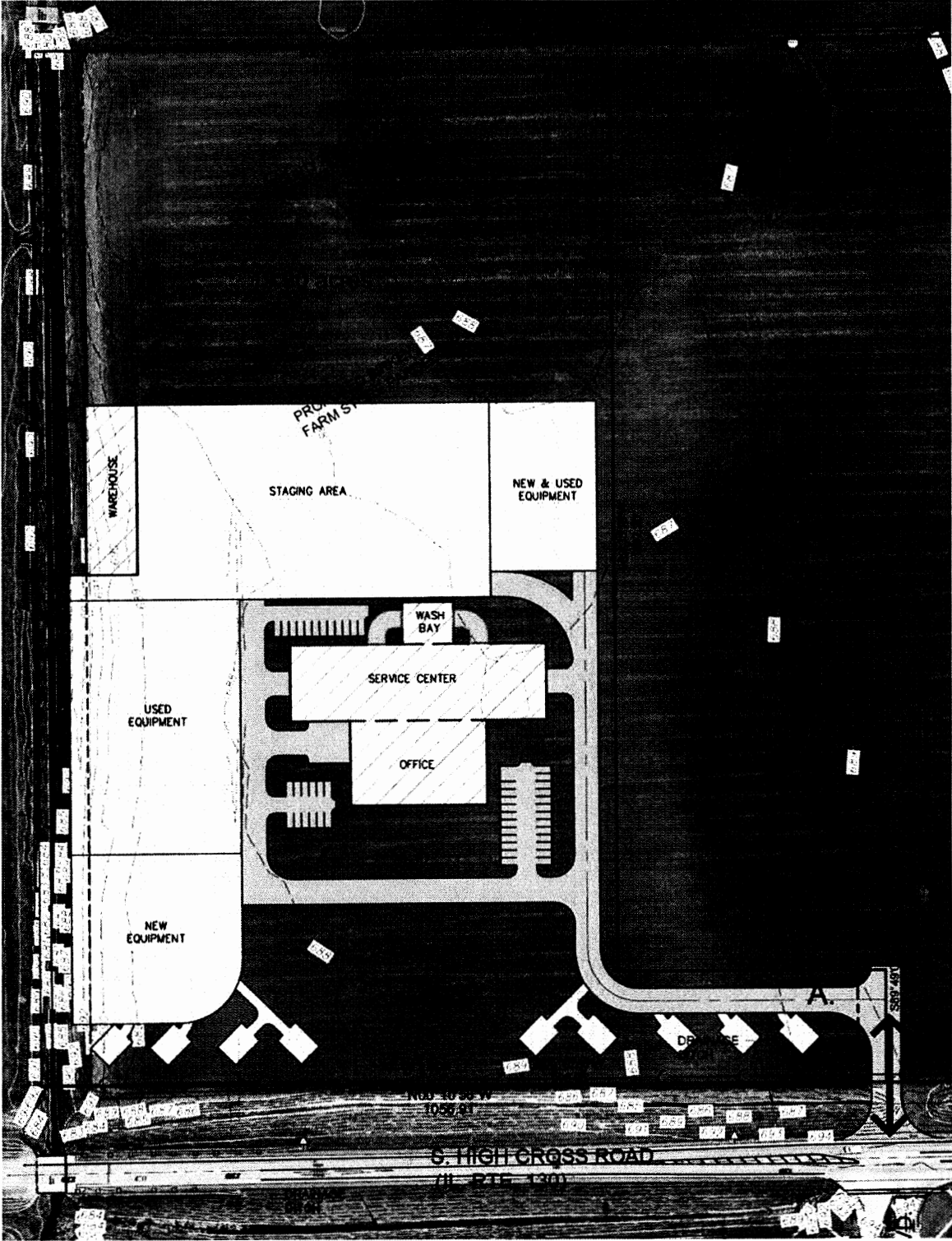


Exhibit E

Signage Plan

