

132



8 2 2 9 8 4 7
TX:4089598

Recording Cover Sheet

2017R17023
REC ON: 09/07/2017 10:21:11 AM
CHAMPAIGN COUNTY
MARK SHELDEN
REC FEE: 57.00
PAGES 13
PLAT ACT: OPLAT PAGE:

AN ORDINANCE APPROVING AN ANNEXATION
AGREEMENT (801 NORTH SMITH ROAD / DAVID
BORCHERS) [Ord. No. 2017-07-038]

*ORDINANCE

*ANNEXATION AGREEMENT

Prepared for recording by:
Kay Meharry, Adm. Asst.

400 S. Vine Street, Urbana, IL 61801

Return to:

(9) Charles A. Smyth, City Clerk
City of Urbana
400 S. Vine Street
Urbana, IL 61801

ORDINANCE NO. 2017-07-038

AN ORDINANCE APPROVING AN ANNEXATION AGREEMENT

(801 North Smith Road / David Borchers)

WHEREAS, an annexation agreement between the City of Urbana, Illinois, and David Borchers has been submitted for the Urbana City Council's consideration; and

WHEREAS, said agreement governs tracts totaling approximately 11.47 acres located at 801 North Smith Road, Urbana, Illinois, and said tracts are legally described as follows:

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 11.162 acres, more or less and being commonly known as 801 North Smith Road, and having a Permanent Identification Number of 30-21-10-301-001 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 35,305.380 S.F. (0.811 acres), more or less.; and

WHEREAS, on June 19, 2017, the City Clerk duly published Notice in *The News-Gazette*, a newspaper having general circulation in the City of Urbana, Illinois, that a public hearing would be held before the Urbana City Council on the matter of the proposed annexation agreement on August 7, 2017; and

WHEREAS, on July 26, 2017, the City Clerk also mailed notice of the public hearing to each of the Trustees of the Edge-Scott Fire Protection District, each Board of Urbana Township Trustee, and the Urbana Township Clerk, Supervisor, and Commissioner of Highways; and

WHEREAS, on July 6 and 20, and August 10, 2017, after due and proper notice, the Urbana Plan Commission held a public hearing to consider the proposed annexation agreement in Case No. 2017-A-02; and

WHEREAS, the Urbana Plan Commission voted 3 ayes and 4 nays to forward a recommendation of defeat to the Urbana City Council; and

WHEREAS, on August 7, 2017, the Urbana City Council held a public hearing on the proposed annexation agreement; and

WHEREAS, the City Council has determined that the proposed annexation agreement is in conformance with the goals and objectives of the City of Urbana's 2005 Comprehensive Plan; and

WHEREAS, the 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.

An annexation agreement between the City of Urbana, Illinois, and David Borchers, in substantially the form of the copy of said agreement attached hereto and hereby incorporated by reference, be and the same is hereby authorized and approved.

Section 2.

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 as so authorized and approved 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 corporate authorities then holding office (6 of 8 votes) of the City of Urbana, Illinois, at a meeting of the corporate authorities.

Section 4.

The City Clerk is directed to publish this Ordinance in pamphlet form by authority of the corporate authorities, and this Ordinance shall be in full force and effect from and after its passage and publication in accordance with Section 1-2-4 of the Illinois Municipal Code.


This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

PASSED BY THE CITY COUNCIL this 21st day of August, 2017.


AYES: Ammons, Brown, Hazen, Miller, Wu, Marlin

NAYS: Roberts

ABSTENTIONS:



Charles A. Smyth, City Clerk



The seal of the City of Urbana, Illinois, is circular with the text "CITY OF URBANA, ILLINOIS" around the perimeter. In the center, it says "SEAL OF THE CITY OF URBANA, ILLINOIS" and "ADOPTED 1853".

APPROVED BY THE MAYOR this 23rd day of August, 2017



Diane W. Marlin, Mayor

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," "Lumber Yard," 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 additional landscape screening beyond that required by the Urbana Zoning Ordinance as specified below:
 - (a) The Owner shall plant two alternating rows of evergreen trees at a rate of one tree for every 30 linear feet, or fraction thereof, in each row.
 - (b) Evergreen trees shall be at least four feet in height at the time of planting.
 - (c) There shall be a minimum distance of 15 feet between each row of evergreen trees.
 - (d) The Owner shall plant the first 200 feet of evergreen trees on the northeast frontage along Smith Road before Urbana issues a final certificate of occupancy for the construction yard.
- (5) Any subsequent development of the Property will require the planting of additional landscaping screening as provided in this section.
- (6) Any building must maintain a minimum setback of 25 feet from the eastern and southern boundaries of the Property.

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.

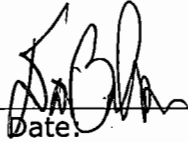
21. **Third-party beneficiaries.** This agreement is made for the mutual benefit of the parties hereto and is not intended to confer any rights to any third party. No third party may bring any action to enforce any of the terms herein.

[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


Date: _____


August 25, 2017

By: 
Diane Wolfe Marlin

Mayor

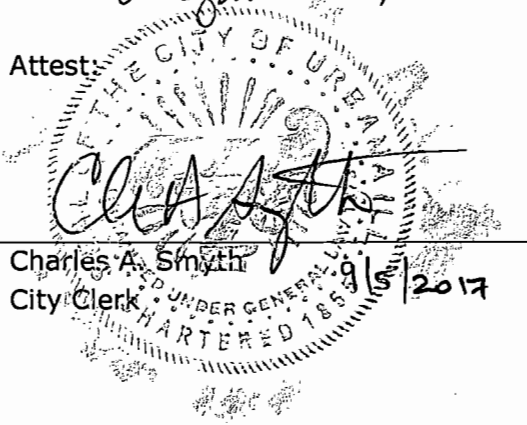
Date: August 25, 2017

Attest:


Charles A. Smyth

City Clerk

August 25, 2017



STATE OF ILLINOIS)

)

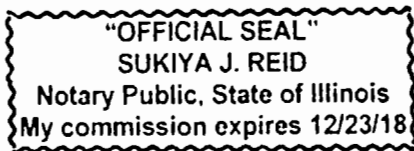
ss.

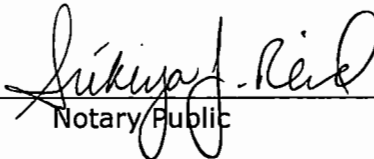
COUNTY OF CHAMPAIGN)

)

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 25th day of AUGUST 2017.




Notary Public

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

Exhibit A: Legal Description

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 11.162 acres, more or less and being commonly known as 801 North Smith Road, and having a Permanent Identification Number of 30-21-10-301-001 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 35,305.380 S.F. (0.811 acres), more or less.

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.

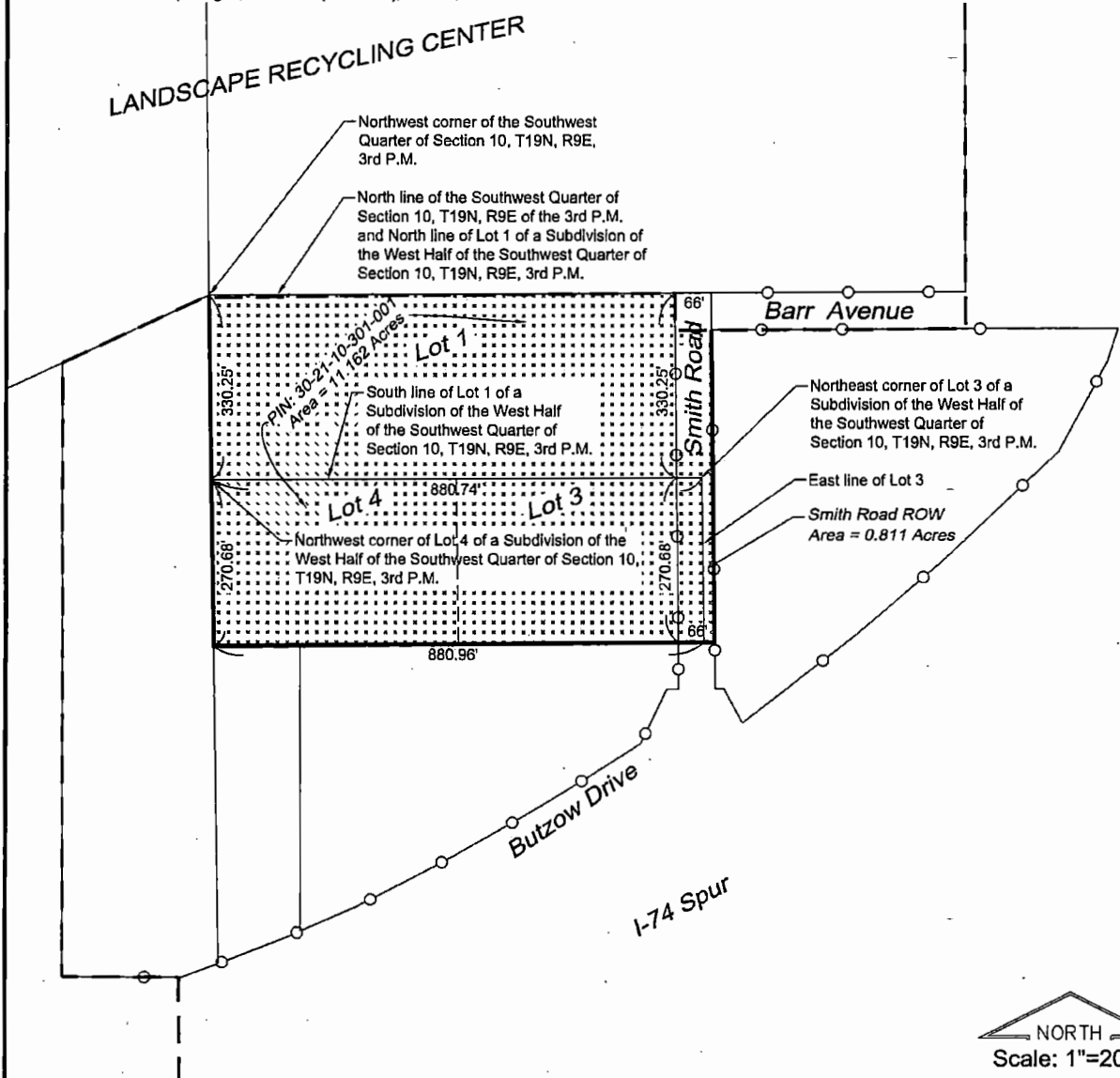
Except;

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 11.162 acres, more or less and being commonly known as 801 North Smith Road, and having a Permanent Identification Number of 30-21-10-301-001 all being situated in Urbana Township, Champaign County, Illinois.

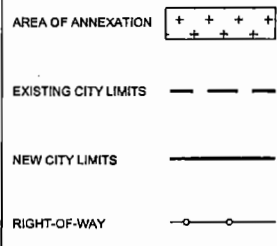
Together with the following described adjacent public Right-of-Way, which is by operation of the law, automatically annexed with the adoption of an annexation ordinance pertaining to this tract:

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 35,308.380 S.F. (0.811 acres), more or less.




NORTH
Scale: 1"=200'

MAP SHOWING AREA
ANNEXED BY CITY
ORDINANCE #2017-08-039
CITY OF URBANA, ILLINOIS
CHAMPAIGN COUNTY
DATE: AUGUST 21, 2017

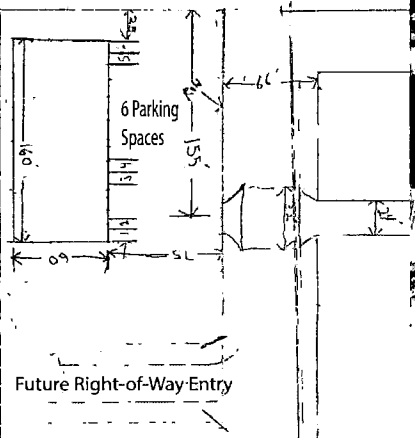


ENGINEERING DIVISION



William R. Gray
CITY ENGINEER/PUBLIC WORKS DIRECTOR

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



901
CITY OF URBANA

1210
CITY OF URBANA

Area = ± 2.87 Acres

Area = ± 2.87 Acres

LOT 2

LOT 1

100' Dia.
80' Dia.

New 31' W.
Public Street

Public Street
66' ROW

LOT 3

LOT 4

Area = ± 2.87 Acres

Area = ± 2.87 Acres

509
FLEX N GATE CORP

602
FLEX N GATE CORP

CHIEF ILLINI MHP LLC

ILLINOIS RETROLO'S LLC

Urban-Champaign Sanitary District

