



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

m e m o r a n d u m

TO: Laurel Lunt Prussing, Mayor

FROM: Elizabeth H. Tyler, FAICP, Director

DATE: February 16, 2012

SUBJECT: Plan Case No. 2012-A-01: Annexation agreement for an 8.14-acre tract of property at 3106 N Cunningham Avenue.

Plan Case No. 2169-M-12: Request to rezone an 8.14-acre tract of property at 3106 N Cunningham Avenue from Champaign County B-4 (General Business) to City IN (Industrial) upon annexation.

Introduction & Background

The City of Urbana has received a request from Mervis Industries, Inc. to enter into an annexation agreement for an 8.14-acre parcel located east of Cunningham Avenue between Airport Road and Oaks Road and addressed as 3106 N Cunningham Avenue (Location Map attached). The proposed agreement would obligate the City to rezone the property from County B-4 (General Business) to City IN (Industrial) upon annexation.

The subject property is contiguous to the City of Urbana, adjacent to the petitioners' planned recycling center which is already in the City. Mervis Industries were granted a Special Use Permit on February 2, 2009 by Ordinance No. 2009-02-006. Rezoning the subject property to IN (Industrial) will ensure zoning consistency for Mervis Industries' adjacent land holdings.

As part of their planned recycling center, Mervis Industries will extend water service to the parcel containing the recycling center. Once the water line has been extended, the City of Urbana would then process an annexation petition to formally annex the property into the City. The Urbana Fire Department has asked that the actual annexation of the parcel be delayed until such time as the water line extension is in place to ensure that they can adequately protect the property. Mervis Industries has agreed to this request. However, it is important to the petitioner to proceed with the annexation agreement at this time in order for the Industrial Zoning designation on the property be set.

At their February 9, 2012 meeting, the Urbana Plan Commission reviewed the proposed rezoning for the subject property and voted 6 ayes and 0 nays to forward a recommendation of approval to the City Council.

A public hearing with the Urbana City Council concerning the proposed annexation agreement between the City and Mervis Industries is scheduled for February 20, 2012 at 7:00 p.m. The annexation agreement is also on the agenda that evening for City Council consideration.

Issues and Discussion

Annexation Agreement

Benefits of bringing the subject property into the City include future tax revenues, ability to ensure code compliance and safety, and to bring utilities further north to allow for future development. The annexation agreement states that the property will be rezoned to City IN (Industrial) upon annexation. According to Section IV-5 of the Urbana Zoning Ordinance, an annexation agreement is required if the proposed zoning is not a direct conversion from County zoning as stated in Table IV-1. Per Table IV-1, Table of Uses, a direct conversion from County B-4 (General Business) would result in City B-3 (General Business) zoning.

Proposed Rezoning

The property is currently zoned County B-4 (General Business), and upon annexation, the property would be zoned City IN (Industrial). The subject property is occupied by a vacant commercial building which until the spring of 2009 housed Malibu Bay Lounge, an adult entertainment establishment. Due to a State law, a new adult entertainment use cannot be established on this site. Although Mervis Industries does not currently have plans to develop the lot, the rezoning would facilitate future expansion of their recycling center. Any future expansion of the recycling center would require a Special Use Permit.

Adjacent Land Uses and Zoning and Future Land Use Designations

The property fronts on Cunningham Avenue (Route 45) at the northern edge of the City. This corridor is occupied by a mix of commercial, industrial, agricultural, and airport uses. Immediately north of the property is a construction yard, zoned County B-4, General Business District. To the south is a currently vacant lot where the planned Mervis recycling center will be located, zoned City IN, Industrial. To the west, across Cunningham Avenue, and to the east, are farm fields.

The 2005 City of Urbana Comprehensive Plan shows two future land use designations for the subject property. The western portion of the subject property is identified as “Regional Business”. The Comprehensive Plan defines “regional business” as follows:

“Regional Business centers are intended to serve regional as well as local demand. Typically located in a high-visibility area that offers convenient access and parking. The intensity of development may range from large-scale “big box” uses to smaller-scale buildings supporting outlot business opportunities. Although Regional Business areas are typically oriented primarily to automobile traffic, their design should include adequate facilities for pedestrians, bicyclists and public transit.”

The eastern portion of the subject property is identified in the Comprehensive Plan as having a future land use designation of “residential”. While not entirely consistent with the Future Land Use designation, the requested rezoning would ensure zoning consistency of the subject lot with Mervis Industries’ adjacent land holdings and would avoid a “split” future land use designation of the property. It is important to note that the Future Land Use designations do not necessarily follow property lines as they are intended to be a more general designation than are zoning districts. Although Mervis does not currently have plans to develop the site, rezoning to IN, Industrial would facilitate any future expansion of their planned recycling center to the south. Recycling centers are allowed in the Industrial Zoning District with a Special Use Permit. Mervis’ planned recycling center to the south will serve the entire Champaign County region and therefore is compatible with the “regional business” future land use designation. As the subject property is an additional Mervis land holding, the proposed rezoning would therefore be compatible with the regional business Comprehensive Plan designation for the site.

The La Salle National Bank Criteria

In the case of *La Salle National Bank v. County of Cook* (the “La Salle” case), the Illinois Supreme Court developed a list of factors that are paramount in evaluating the legal validity of a zoning classification for a particular property. Each of these factors will be discussed as they pertain to a comparison of the existing zoning with that proposed by the Petitioner.

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

This factor relates to the degree to which the existing and proposed zoning districts are compatible with existing land uses and land use regulations in the immediate area.

The proposed IN, Industrial zoning is consistent with Mervis Industries’ planned recycling center site, which is already in the City. The proposed rezoning is intended to facilitate any future expansion of the recycling center and to ensure zoning consistency for Mervis’ adjacent land holdings. The subject property is along a regional business corridor at the edge of the City on Cunningham Avenue. The surrounding area is occupied by a mix of commercial, industrial, agricultural, and airport uses. Immediately north is a construction yard, which is an Industrial use under the Table of Uses in the Urbana Zoning Ordinance. To the south is the planned recycling center, which will be a regional commercial business and is zoned IN, Industrial. To the west and east are farm fields.

2. *The extent to which property values are diminished by the restrictions of the ordinance.*

This is the difference in the value of the property as B-3, General Business and the value it would have if it were rezoned to IN, Industrial.

A direct conversion from County to City zoning would create an inconsistency in zoning for Mervis’ land holdings. Recycling centers are permitted only in the Industrial Zoning District and by Special Use. Should the subject property not be rezoned, Mervis may be unable to expand onto this property which they own.

It should be noted that the Urbana City Planning Division staff are not qualified as professional appraisers and that a professional appraiser has not been consulted regarding the impact on the value of the property. Therefore, any discussion pertaining to property values must be considered speculative and inconclusive.

3. *The extent to which the ordinance promotes the health, safety, morals or general welfare of the public.*
4. *The relative gain to the public as compared to the hardship imposed on the individual property owner.*

Questions 3 and 4 apply to the current zoning restrictions: do the restrictions promote the public welfare in some significant way so as to offset any hardship imposed on the property owner by the restrictions?

The proposed rezoning should not jeopardize the health, safety, morals, or general welfare of the public. Should the rezoning be denied, there would be no relative gain to the public.

5. *The suitability of the subject property for the zoned purposes.*

The issue here is whether there are certain features of the property which favor the type and intensity of uses permitted in either the current or the proposed zoning district.

The property has access to sewer and will have access to water when the recycling center to the south is built. Should the property be redeveloped, the owner would be required to extend the water line to the north. Extension of water to the site prior to actual annexation will be important for the ability to fight fires on the site. For this reason, the Urbana Fire Department has asked that the annexation into the City occur at such time as the water line and hydrants are in place. The site is generally suited for development. Any future development would be subject to all the applicable development standards of the Zoning Ordinance.

6. *The length of time the property has been vacant as zoned, considered in the context of land development, in the area, in the vicinity of the subject property.*

Another test of the validity of the current zoning district is whether it can be shown that the property has remained vacant for a significant period of time because of restrictions in that zoning district.

The property has been vacant since Spring 2009 when an adult entertainment establishment that was located there closed. Due to a State law, a new adult entertainment use cannot be established on this site.

Summary of Findings

1. Mervis Industries, Inc. has requested that the City of Urbana enter into an annexation agreement for an 8.14-acre parcel located east of Cunningham Avenue between Airport Road and Oaks Road, and addressed as 3106 N Cunningham Avenue.
2. The proposed IN, Industrial zoning designation would allow zoning consistency for Mervis Industries' adjacent land holdings and allow for potential future expansion of Mervis' planned recycling center.
3. The proposed IN, Industrial Zoning District would be generally compatible with the future land use designation of the 2005 Urbana Comprehensive Plan.
4. The proposed rezoning would not be detrimental to the public health, safety or general welfare.
5. The proposed rezoning appears to generally meet the LaSalle Case criteria.
6. The Urbana Plan Commission held a public hearing on February 9, 2012 to consider the rezoning and voted 6 ayes and 0 nays to forward a recommendation of approval to the City Council.

Options

In Plan Case 2012-A-01 / 2169-M-12, the City Council has the following options:

- a. Approve the Annexation Agreement as presented, including a zoning designation of IN, Industrial for the subject property.
- b. Approve the Annexation Agreement as presented, including a zoning designation of IN, Industrial for the subject property, subject to specific changes. (Note that the property owner would have to agree to any recommended changes.)
- c. Deny the proposed Annexation Agreement.

Recommendation

On February 9, 2012, the Urbana Plan Commission held a public hearing on the proposed rezoning. The Plan Commission voted six ayes and zero nays to forward Plan Case 2012-A-01 / 2169-M-12 to City Council with a recommendation for approval of the annexation agreement and rezoning as presented. Staff concurs with this recommendation.

Prepared By:

Rebecca Bird, Planner II

cc: Mervis Industries: 3295 E Main Street, Danville, IL 61834

Attachments: Draft Ordinance Approving an Annexation Agreement
 Draft Annexation Agreement
 Exhibit A: Location Map

ORDINANCE NO. 2012-02-017

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

(3106 N Cunningham Avenue / Mervis Industries, Inc.)

WHEREAS, an Annexation Agreement between the City of Urbana, Illinois and Mervis Industries, 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 8.14 acres located at 3106 North Cunningham Avenue and said tract is legally described as follows:

Part of the Southeast Quarter of Section 33, Township 20 North, Range 9 East of the Third Principal Meridian, Champaign County, Illinois, described as follows:

Beginning at a point which is 819.64 feet West and 1137.41 feet South of the Northeast Corner of the Southeast Quarter of Section 33, Township 20 North, Range 9 East of the Third Principal Meridian for a true point of beginning; thence 833 feet West to the East line of the right-of-way of Federal Highway Route 45; thence Southwesterly along said right-of-way line 206.78 feet; thence East 463.6 feet; thence South 357.6 feet; thence East 506.33 feet; thence North 544.19 feet to the true point of beginning, in Champaign County, Illinois.

Permanent Index No.: 25-15-33-476-001

WHEREAS, the City Clerk of Urbana, Illinois, duly published notice on the 5th day of February, 2012 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 20th day of February, 2012; and

WHEREAS, the City of Urbana, Illinois also mailed notice of the public hearing to the Chief and each of the Trustees of the Carroll Fire Protection District on the 30th day of January, 2012; and

WHEREAS, on the 9th day of February, 2012, the Urbana Plan Commission held a public hearing on the proposed rezoning in the Annexation Agreement and voted 6 ayes and 0 nays to forward a recommendation of approval to the Urbana City Council; and

WHEREAS, on the 20th day of February, 2012, the Urbana City Council held a public hearing on the proposed Annexation Agreement; 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 Mervis Industries, 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 ____ day of _____, 20____.

AYES:

NAYS:

ABSTAINS:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this ____ day of _____, 20____.

Laurel Lunt Prussing, Mayor

Annexation Agreement

(Mervis Industries, 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") and Mervis Industries, 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, Mervis Industries, Inc. is the Owner of record of a certain parcel of real estate located at 3106 N. Cunningham Ave., Champaign County, Illinois, the legal description of which real estate is set forth in Exhibit B attached hereto and referenced herein as "the tract"; and

WHEREAS, the attached map, labeled Exhibit A, 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 B-4, General Business Zoning District in Champaign County and the City and the Owners find it necessary and desirable that the tract be annexed to the City with a zoning classification of IN, Industrial 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 IN, Industrial, generally reflects the goals, objectives and policies set forth in the City's 2005 Urbana Comprehensive Plan, as amended from time to time, and which Plan designates the future land use as "Regional Business"; 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. 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 thirty (30) days of a request by the City ~~the approval of this agreement~~ cause the tracts 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 B-4, General Business Zoning District to City IN, Industrial Zoning District. The Owner agrees that, unless changed upon the initiative of the Owner, the said City zoning classifications 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. Land Uses. The Owner agrees that the uses of the tract shall be limited to those allowed by the Urbana Zoning Ordinance within the IN, Industrial Zoning District either by right, by Special Use Permit, or by Conditional Use Permit, as the case may be.

Section 5. Building Code Compliance. The Owner agrees to cause all new development, construction, remodeling or building additions on said tracts to be in conformance with all applicable City of Urbana codes and regulations including building, zoning and subdivision codes.

Section 6. 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 tracts 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 IN, Industrial.

Section 3. 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 tracts, 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 tracts 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:

Owner:

Laurel Lunt Prussing, Mayor

Date

Date

ATTEST:

ATTEST:

Phyllis D. Clark, City Clerk

Notary Public

Date

Date

Exhibit A
Map of Tract

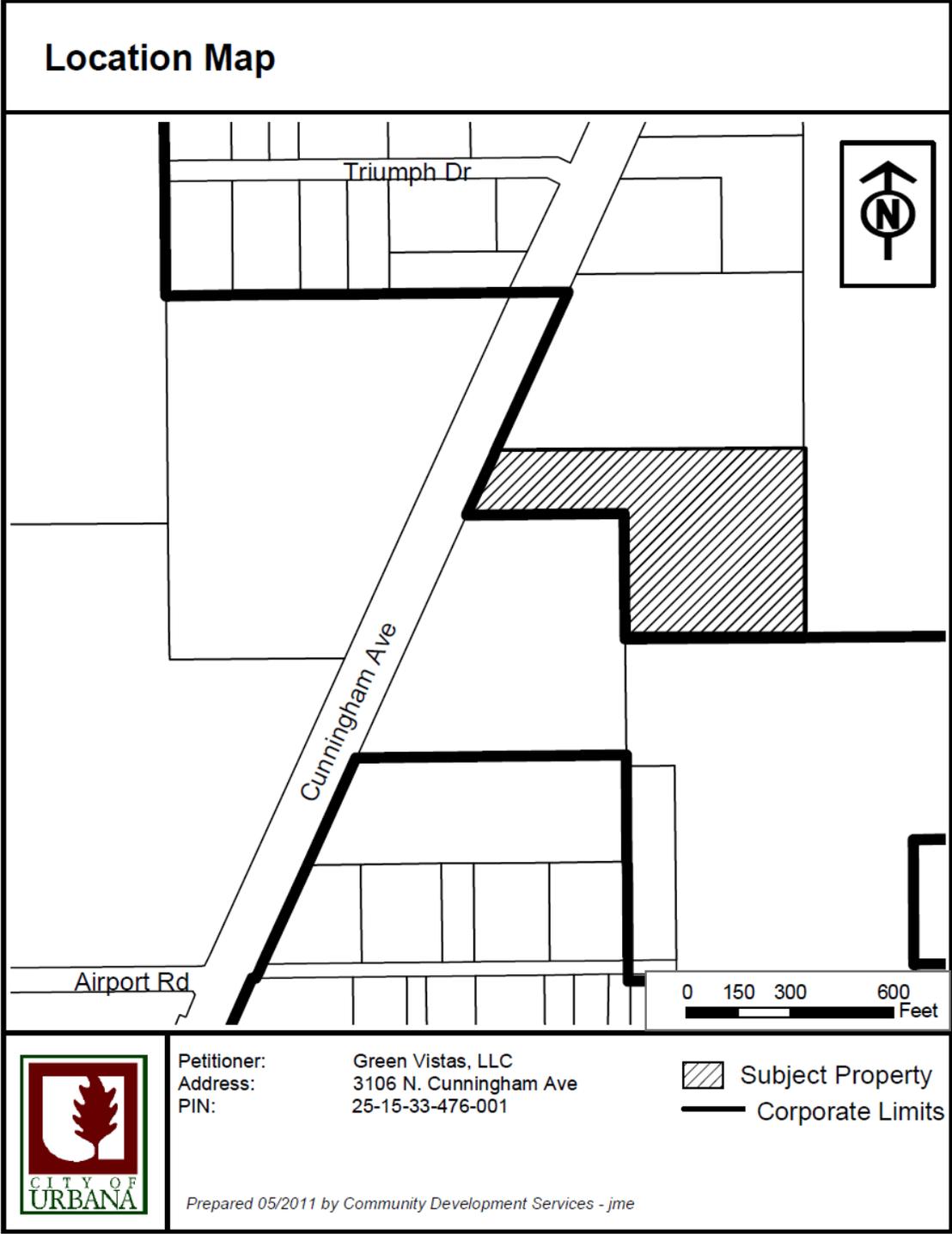


Exhibit B

Legal Description

Part of the Southeast Quarter of Section 33, Township 20 North, Range 9 East of the Third Principal Meridian, Champaign County, Illinois, described as follows:

Beginning at a point which is 819.64 feet West and 1137.41 feet South of the Northeast Corner of the Southeast Quarter of Section 33, Township 20 North, Range 9 East of the Third Principal Meridian for a true point of beginning; thence 833 feet West to the East line of the right-of-way of Federal Highway Route 45; thence Southwesterly along said right-of-way line 206.78 feet; thence East 463.6 feet; thence South 357.6 feet; thence East 506.33 feet; thence North 544.19 feet to the true point of beginning, in Champaign County, Illinois. Containing 8.14 acres, more or less.

Permanent Index No. 25-15-33-476-001

Commonly known as 3106 N. Cunningham Avenue, Urbana, Illinois.