



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

M E M O R A N D U M

TO: Bruce K. Walden, Chief Administrator Officer

FROM: Elizabeth H. Tyler, AICP, City Planner, Director

DATE: July 26, 2005

SUBJECT: Plan Case No. 1948-A-05: Annexation agreement for a 3.22-acre tract of property at 2803 E. Airport Road / Elmer and Betty Weemer

Plan Case No. 1948-M-05: Request to rezone a 3.22-acre tract of property at 2803 E. Airport Road from Champaign County C-R, Conservation-Recreation Zoning District to City, R-2, Single-Family Residential Zoning District upon annexation.

Introduction & Background

The Weemer property is located at 2803 East Airport Road in unincorporated Champaign County. The 3.22-acre parcel is situated on the southeast corner of Airport and Brownfield Roads. Four separate residential buildings are located on the lot, including single- and multi-family units. The petitioners wish to connect to the Urbana-Champaign Sanitary District, which requires that they commit to annex into the city once the property becomes contiguous.

For the past several months the petitioners have worked with city staff to negotiate an annexation agreement that would allow a sanitary sewer connection and ensure that the site conforms to city regulations. Due to the number of buildings on the lot, a private sanitary lift station is required to provide sanitary sewer service to the entire parcel. The petitioners have been working with the Illinois Environmental Protection Agency (IEPA) to acquire the necessary permits to operate the lift station. IEPA has stated that they will not issue the permit until ownership of the lift station is explicitly resolved. The annexation agreement requires the creation of a homeowners association to own, maintain and operate the lift station in the event that the property is ever subdivided. Until such time, the owner of the property will be responsible.

The property is currently zoned County C-R, Conservation-Recreation and is proposed to be annexed as City R-2, Single-Family Residential. The proposed zoning is consistent with the property as developed, and is the same zoning designation of other properties in the area.

Issues and Discussion

Annexation Agreement

The attached agreement outlines a variety of provisions for zoning and land use. In addition to the change in zoning districts, the following provisions are highlighted:

- The Owners agree if the property is proposed to be divided or any of the structures are individually sold, the Owners will prepare and submit a subdivision plat to the city.
- The Owners agree to cause all new development, construction, or additions on the tract to be in conformance with all applicable codes in effect at the time of construction.
- The Owners will be wholly responsible for construction, operation and maintenance of the private sanitary lift station. At such time the property is subdivided, a homeowners association will be created to take over these duties. The lift station will conform with all IEPA standards.

The establishment of a homeowners association and identification of its duties will be contained in the Owner's Certificate, which is recorded with the subdivision plat. This ensures that the city, UCSD or any other entity besides the property owner(s) would not be responsible for the lift station. This provision is required by the IEPA as a condition of the lift station permit.

Proposed Rezoning

The property is currently zoned County C-R, Conservation-Recreation. As stated, the purpose of this zone is to restrict development in floodprone areas and to protect the natural and scenic beauty of stream corridors. Residential development of any kind is prohibited in this district. Upon annexation, the property would be zoned City R-2, Single-Family Residential. The majority of uses present on the property are allowed in this zoning district. Given that the property and surrounding area have already developed as single-family residential, the R-2 Zoning District is appropriate for the property. The 2005 Comprehensive Plan identifies the area as "rural residential" and outlines ways for development to occur in a manner that does not overly impact the natural amenities of the area.

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.*

Although multiple residential buildings exist on the property, the site was developed at a low density. This is consistent with the surrounding area, which has developed primarily as single-family homes on larger lots. The City R-2 Zoning District is consistent with other developments in the area, such as Landis Farm and Somerset subdivisions.

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

The property is already developed in a manner consistent with the proposed zoning, so there would be minimal impact on property values. County C-R, Conservation-Recreation prohibits residential uses and could negatively impact property value based on the current land use.

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.*

The area has already development in a manner inconsistent with the existing zoning district. The intent of the proposed zoning district is not to allow further construction, but to ensure that the property is maintained by a standard that reflects the existing land use.

4. *The relative gain to the public as compared to the hardship imposed on the individual property owner.*

The property is located in an area that consists primarily of single-family residences. Zoning the property as such would ensure that the appropriate regulations are applied to the property.

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

The property is already developed in an “urban” manner, as are surrounding properties, which is consistent with the proposed zoning district. The site is generally suited for the development. The annexation agreement includes provisions that will ensure any future development will meet 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.*

The property is not currently vacant.

Summary of Findings

1. The proposed R-2, Single-Family Zoning District would be consistent with the current single-family zoning in the general vicinity.
2. The proposed R-2, Single-Family Zoning District would be consistent with the 2005 Urbana Comprehensive Plan.
3. The proposed annexation agreement includes provisions for the development of a private sanitary lift station to provide sanitary sewer service to the property in conformance with Illinois EPA standards.
4. The proposed annexation agreement includes provisions for the establishment of a homeowners association to operate and maintain the lift station in the event the property is ever subdivided.
5. The proposed annexation agreement includes provisions for the preparation of a subdivision plat for city approval at such time as the property is subdivided or individual structures are sold.
6. The proposed rezoning would not be detrimental to the public health, safety or general welfare.
7. The proposed rezoning appears to generally meet the LaSalle Case criteria.

Options

The Plan Commission has the following options. In Plan Case 1948-A-05 / 1948-M-05, the Plan Commission may:

- a. Forward this case to City Council with a recommendation for approval of the proposed annexation agreement, including a zoning designation of R-2, Single-Family Residential for the site.
- b. Forward this case to City Council with a recommendation for approval of the proposed annexation agreement, including a zoning designation of R-2, Single-Family Residential for the site, subject to recommended changes. (Note that the property owner would have to agree to any recommended changes).
- c. Forward this case to City Council with a recommendation for denial of the proposed annexation agreement.

Staff Recommendation

In Plan Case 1948-A-05 / 1948-M-05 staff recommends **APPROVAL** of the proposed annexation agreement as presented.

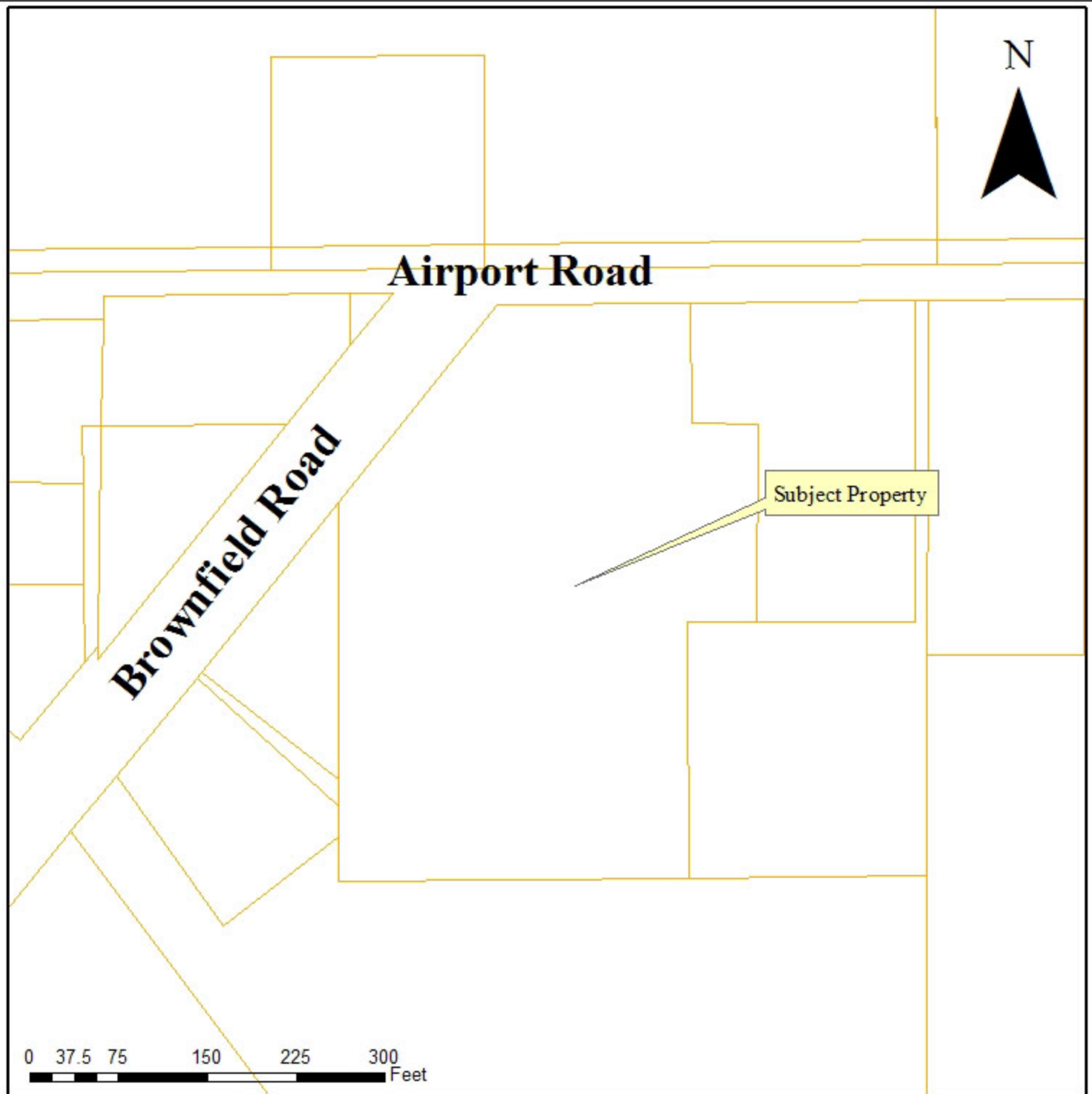
Prepared By:

Matt Wempe, Planner I

cc: Elmer Weemer
Merle Ingersoll, HDC Engineering

Attachments: Location Map
Zoning Map
Comprehensive Plan Map
Aerial Map
Draft Annexation Agreement

Exhibit A: Location Map



Plan Case No. 1948-A-05: Annexation Agreement between the City of Urbana and Elmer and Betty Weemer for a 3.22-acre tract of property located on the southeast corner of Airport and Brownfield Roads

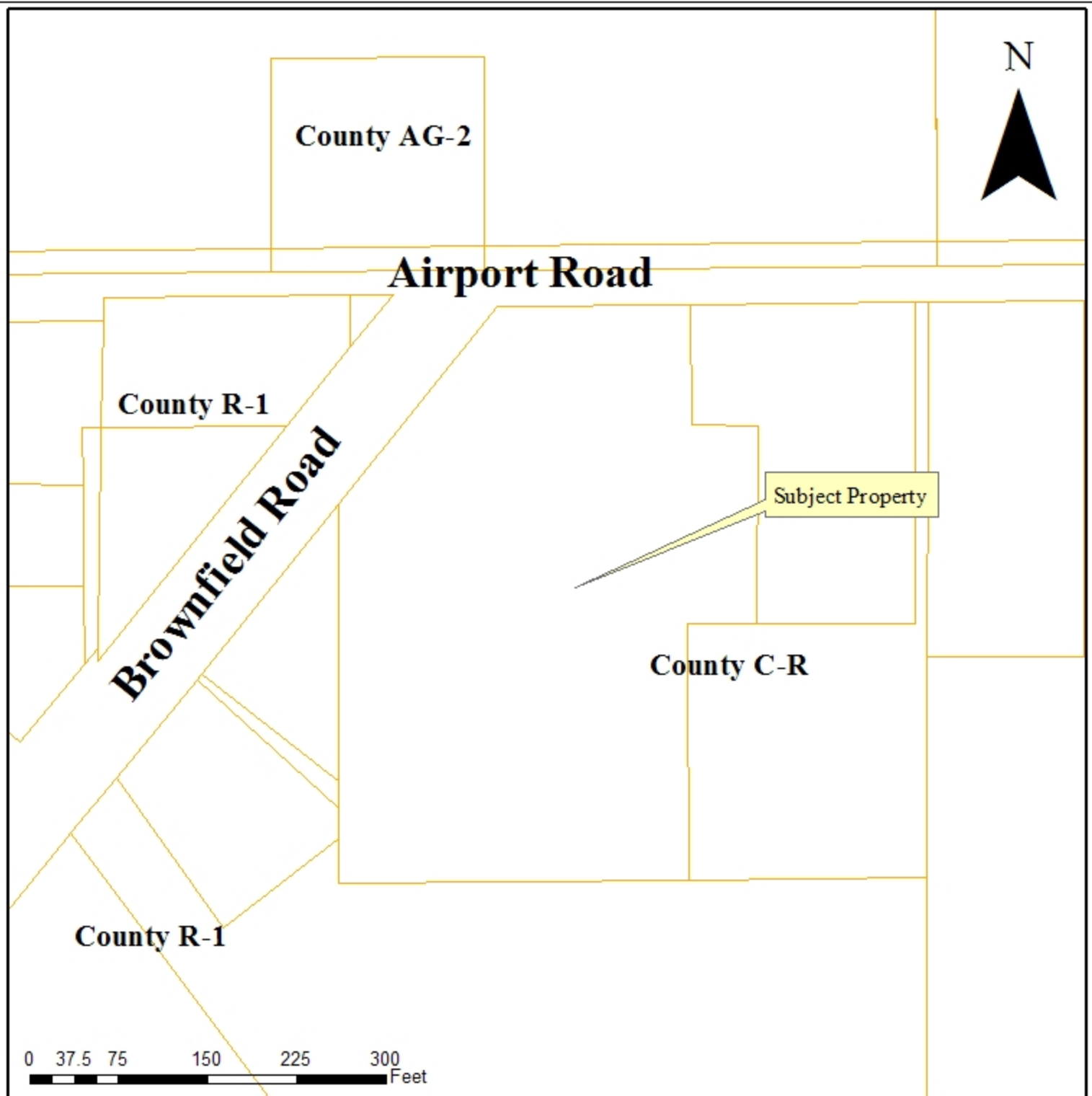


Plan Case No. 1948-M-05: Request to rezone approximately a 3.22-acre tract of property located on the southeast corner of Airport and Brownfield Roads from Champaign County C-R, Conservation-Recreation to City of Urbana R-2, Single-Family Residential upon annexation.

**Petitioner: Elmer and Betty Weemer
Address: 2803 East Airport Road**

Prepared 7/29/2005 by Community Development Services - nhlw

Exhibit B: Zoning Map



Plan Case No. 2005-A-09: Annexation Agreement between the City of Urbana and Elmer and Betty Weemer for a 3.22-acre tract of property located on the southeast corner of Airport and Brownfield Roads



Plan Case No. 1948-M-05: Request to rezone approximately a 3.22-acre tract of property located on the southeast corner of Airport and Brownfield Roads from Champaign County C-R, Conservation-Recreation to City of Urbana R-2, Single-Family Residential upon annexation.

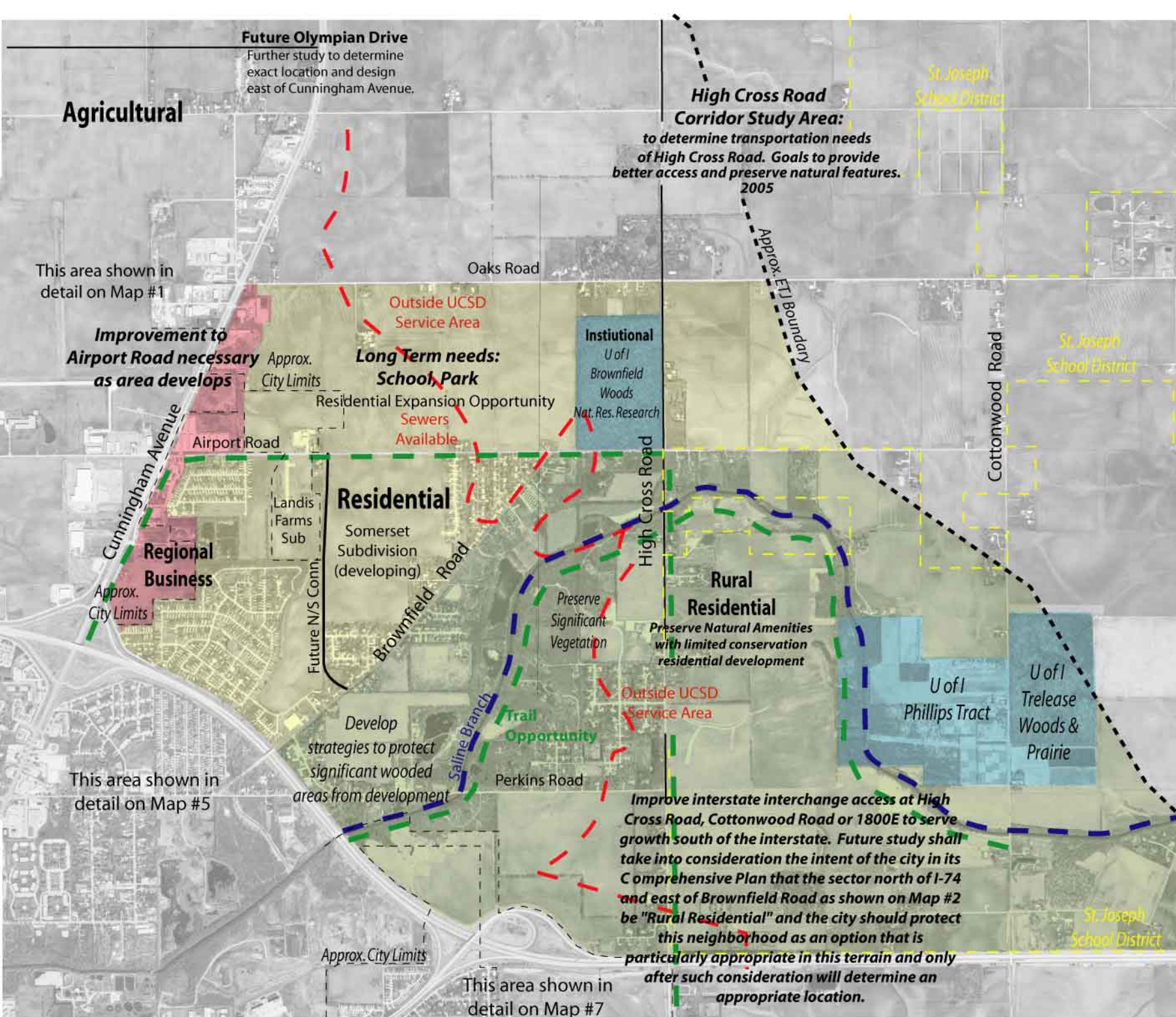
Petitioner: Elmer and Betty Weemer
Address: 2803 East Airport Road

Prepared 7/29/2005 by Community Development Services - nlnw

County AG-2: Agricultural
County C-R: Conservation-Recreation
County R-1: Single-Family Residential

Map #2

Northeast Urbana / Champaign County



ADOPTED

April 11, 2005

Map Created by City of Urbana
Community Development Services Dept.

Exhibit D: Aerial Map



Plan Case No. 1948-A-05: Annexation Agreement between the City of Urbana and Elmer and Betty Weemer for a 3.22-acre tract of property located on the southeast corner of Airport and Brownfield Roads



Plan Case No. 1948-M-05: Request to rezone approximately a 3.22-acre tract of property located on the southeast corner of Airport and Brownfield Roads from Champaign County C-R, Conservation-Recreation to City of Urbana R-2, Single-Family Residential upon annexation.

**Petitioner: Elmer and Betty Weemer
Address: 2803 East Airport Road**

Prepared 7/29/2005 by Community Development Services - nkhw

Annexation Agreement

(2803 East Airport Road / Elmer and Betty Weemer)

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 **Elmer and Betty Weemer** (hereinafter referred to as the "Owners"). 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, Elmer and Betty Weemer are the Owners of record of a certain parcel of real estate located at 2803 East Airport Road, the legal description of which real estate is set forth 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 Owners find that in order to best utilize the Owners' property, it is desirable to annex the tracts 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 C-R, Conservation-Recreation 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 R-2, Single-Family Residential, under the terms and provisions of the Urbana Zoning Ordinance in effect upon the date of annexation, as amended, and subject of the terms and conditions set forth in this Agreement; and

WHEREAS, the Corporate Authorities find annexation of the tract as described herein as R-2, Single-Family Residential 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 and zoning designation will allow Elmer and Betty Weemer to continue to utilize their current use of the site as single and multi-family residential; and

WHEREAS, the Owners desire to have the aforementioned real estate annexed to the City of Urbana upon certain terms and conditions hereinafter set forth in this Agreement at such time as the property is contiguous to the corporate limits.

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 OWNERS

The Owners agree to the following provisions:

Section 1:

- (a) The Owners represent that the Owners are the sole record Owners of the tract described in Exhibit A and that the Owners 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, the Owners 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 Owners shall file such written agreement with the City Clerk within thirty (30) days of the signing of such.
- (b) The Owners further agree 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 Owners agree 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) The Owners agrees that if owners fail 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 owner(s) as a result, the Owners 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 Owners agree for themselves, 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 Owners accept the City of Urbana zoning classification of R-2, Single-Family Residential, as provided for in Article IV of the Urbana Zoning Ordinance. The Owners agree that, unless changed upon the initiative of the Owners 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 Owners agree 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 3: The Owners agree that at any such time subsequent to execution of this agreement that the property is proposed to be divided or any of the structures are to be sold individually the Owners will prepare and submit to the City of Urbana a subdivision plat to be recorded under the requirements of the City of Urbana Subdivision and Land Development Code.

Section 4: The Owners agree to cause any new development, construction, or additions on said tract to be in conformance with all City of Urbana building, electrical, fire, and plumbing codes, orders or regulations in effect at the time of such construction. The Owners agree to submit all building construction plans to the City of Urbana for review and further agree to pay the building permit fee. The Owners further agree to correct any deficiencies identified in said plan review. In addition, the Owners agree that all construction will be subject to the same building and construction inspection requirements as construction projects within the City limits.

Section 5: The Owners 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 both the Owner and the City. Said action includes petitioning for a county rezoning of said tract without a written amendment to this Agreement.

Section 6: In order to comply with Illinois EPA permit requirements, the Owners intend to install a private sanitary lift station. The Owners shall be wholly responsible for construction, operation and maintenance in conformance with Illinois EPA requirements. At such time as the property is subdivided (see Section 3), a homeowners association shall be established to operate and maintain the private sanitary lift station in conformance with Illinois EPA requirements. Establishment of the homeowner's association and identification of its duties shall be contained within the Owner's Certificate to be recorded along with the subdivision plat(s).

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 R-2, Single-Family Residential, in accordance with Article IV, Section IV-5 of the Urbana Zoning Ordinance upon annexation and as defined in the City of Urbana Zoning Ordinance as such exists at the time of annexation of tract. The Corporate Authorities agree that all applicable development regulations existing at the time of construction will apply to said tract.

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.

If this Agreement imposes any obligation, restraint, or burden (hereinafter called collectively "obligation") on the Owners, his/her (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 term of this Agreement unless specific terms are expressly made binding beyond the term 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 Owners 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 Owners agree that neither party will take any 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 Owners and the City.

Section 4. Enforcement -- The Owners and Corporate Authorities agree and hereby stipulate that either 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 declare this Agreement null and void in addition to other remedies available. Upon breach

by the Owners, 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 Owners 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.

Section 7. Irrevocability – In consideration of the City of Urbana granting approval allowing an Urbana-Champaign sanitary sewer connection pursuant to Resolution No. 9394-R13, this offer of annexation agreement is not revocable for a period of ninety (90) days from the date of execution.

IN WITNESS WHEREOF, the Corporate Authorities and Owners 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:

Owners:

Laurel Lunt Prussing, Mayor

Elmer Weemer

Date

Date

Betty Weemer

Date

ATTEST:

ATTEST:

Phyllis D. Clark
City Clerk

Notary Public

Date

Date

Exhibits attached and made a part of this Agreement:

Exhibit A: Legal Description

Exhibit B: Location Map

Exhibit "A"
Legal Description

PART OF THE NORTH 5 7/8 ACRES OF LOT 1 OF A SUBDIVISION OF THE WEST 1/2 OF THE NE 1/4 OF SECTION 3, T. 19N., R. 9 E. OF THE 3RD P.M., AS SHOWN IN THE PARTITION OF JOHN BROWNFIELD ESTATE BEING CHANCERY NO. 845, FILED JUNE 19, 1953 (BEING THE SAME AS LOT 12 IN THE ASSESSOR'S PLAT OF THE NORTH 1/2 OF SECTION 3, T. 19N., R. 9 E. OF THE 3RD P.M., PER PLAT RECORDED IN DEED RECORD 19, PAGE 599), BEING A PART OF THE NW 1/4 OF THE NE 1/4 OF SECTION 3, T. 19N., R. 9 E. OF THE 3RD P.M., SITUATED IN CHAMPAIGN COUNTY, ILLINOIS, EXCEPT:

THE NORTH 133 FEET OF THE WEST 200 FEET OF THE EAST 210 FEET OF LOT 1 AND THE SOUTH 167 FEET OF THE NORTH 200 FEET OF THE WEST 144 FEET OF THE EAST 154 FEET OF SAIL LOT 1, SITUATED IN CHAMPAIGN COUNTY, ILLINOIS, CONTAINING 0.156 ACRES, MORE OR LESS.

**Exhibit “B
Location Map**