

ORDINANCE NO. 04 - 25

**AN ORDINANCE GRANTING A CONDITIONAL
USE AS A B-2 COMMUNITY BUSINESS DISTRICT PLANNED
DEVELOPMENT FOR LOTS 33, 34, 35, AND 36
IN FOX RIVER BLUFFS, UNIT 7, IN THE
VILLAGE OF EAST DUNDEE**

WHEREAS, the Village of East Dundee is a home rule unit of local government under and pursuant to Section 6 of Article VII of the Constitution of the State of Illinois, has the authority to exercise any power and perform any function pertaining to its government and affairs, including but not limited to the power to regulate for the protection of the public health, safety, morals and welfare; and

WHEREAS, a Petition for a Conditional Use as a Planned Development for the real estate described in Exhibit "A" attached hereto (hereinafter referred to as "Subject Realty"), has been filed with the Village of East Dundee, an Illinois municipal corporation ("VILLAGE"), by the following:

FRANK E. LITTLE, 266 Dunridge Circle, East Dundee, IL 60118 as to Lots 33 and 34;

JAMES HEALY and SHARON L. HEALY, 36W659 Richardson Road, East Dundee, IL 60118 as to Lots 35 and 36.

WHEREAS, the East Dundee Planning and Zoning Commission has held a public hearing on said petition in accordance with law; and

WHEREAS, the President and Board of Trustees of the VILLAGE has received the recommendation of the East Dundee Planning and Zoning Commission and has considered same; and

WHEREAS, the VILLAGE and OWNER have entered into a certain Annexation Agreement dated the 6th day of July, 2004, pertaining to the Subject Realty (the "Annexation Agreement").

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE BOARD OF THE VILLAGE OF EAST DUNDEE, COOK AND KANE COUNTIES, ILLINOIS, AS FOLLOWS:

SECTION 1: APPROVAL OF SPECIAL USE FOR PLANNED DEVELOPMENT.

Special Use as a B-2 Community Business District Planned Development subject to the variations, deviations, authorizations and restrictions provided herein be granted to the Subject Realty.

SECTION 2: DEVELOPMENT OF THE SUBJECT REALTY.

It is contemplated that the Subject Realty, consisting of approximately 0.905 acres (before roadway dedications contemplated hereby), will be developed by OWNER. Regardless of whether OWNER, or another third party acquires or develops any specific portion of the Subject Realty, the development of the Subject Realty shall be carried out in general conformity with the development standards hereinafter set forth in this Ordinance and the Commercial Plans, as hereafter defined.

A. APPROVED PLANS.

The following plans for the Subject Realty have been reviewed by the East Dundee Planning and Zoning Commission of the VILLAGE and after final review for conformity with Village ordinances by the Village Engineer and Attorney are hereby approved by the VILLAGE:

1. Preliminary Engineering (Exhibit "C");
2. Preliminary Landscape Plan (Exhibit "D");

The Preliminary Engineering and Preliminary Landscape Plan are sometimes referred to collectively as the "Commercial Plans." The Commercial Plans are approved by the VILLAGE in their entirety.

B. FINAL ENGINEERING PLAN

Notwithstanding the definition of a preliminary plan and the preliminary engineering plan as set forth in the Village's Subdivision Control Ordinance, OWNER shall be entitled to approval of its final engineering, final photometric plan, and final landscape plan so long as the same shall substantially conform to the Commercial Plans.

The VILLAGE shall approve or disapprove engineering plans in accordance with the Planned Development provisions of the VILLAGE'S Code of Ordinance (except as modified by this Ordinance).

C. ZONING AND LAND USE.

Except as otherwise provided in this Special Use Ordinance, the development and use of the Subject Realty shall comply with the standards established under the "B-2 Community Business District" zoning classification as set forth in the East Dundee Code of Ordinance, as amended. If there is any conflict between the regulations of the East Dundee Code of Ordinance, as amended from time to time, and this Conditional Use Ordinance, this Conditional Use Ordinance shall govern. In conjunction therewith, the VILLAGE hereby

approves the following standards to be applied to the Subject Realty under said zoning classification:

1. Uses. Those Special Uses listed below shall be approved for the Subject Realty.

- (a) Used car sales (applies only as to Lots 35 and 36)
- (b) Boat dealer
- (c) Bottled gas dealer
- (d) Camper sale
- (e) Motorcycle sales
- (f) Snowmobile sales and service
- (g) Tire, battery and accessory dealer
- (h) Trailer sale or rental

2. Enactment of Zoning Ordinance with Special Use for Planned Unit Development.

Notwithstanding any contrary provision of this Ordinance or the East Dundee Code of Ordinances, the following conditions, variations, and/or exceptions are hereby approved:

- (i) Lots 33 and 34 ("Project Site") shall be developed as a single B-2 zoning lot with a total area of 19,193 square feet. The proposed building location is approved as located on the Preliminary Engineering Plan.
- (ii) The 35 foot front yard setback of the Project Site is approved with a maximum building height of twenty five (25) feet.
- (iii) The Project Site shall be improved with the vehicular roadways and parking areas as set forth on the Preliminary Engineering Plan in the rear and side yards. "No Parking" signs shall be posted on the north and west sides of the Project Site to ensure that the traffic lanes are kept open. The Village is hereby authorized to enforce such "No Parking" areas pursuant to VILLAGE ordinance. Nine (9) parking spaces, of which one is hereby designated for handicapped parking, are approved for all uses under the B-2 zoning and the enumerated Special Uses as set forth herein.
- (iv) The Project Site may be covered with impervious surfaces material as depicted in the Preliminary Engineering Plan, so long as the final design of the dry wells is approved by the Village Engineer.
- (v) The open space area of six percent (6%) as depicted in the Preliminary Engineering Plan is approved, the requirement for a 10-foot interior parkway

is hereby waived and perimeter landscaping conforming to the landscape plans of Trinity Landscaping dating February 22, 2004, Exhibit "D" is hereby approved.

- (vi) No building shall be commenced until a photometric plan is submitted and approved by the Village staff as being in full conformity with the Village Code of Ordinances; provided that staff may require and Owner shall then provide more stringent lighting restrictions along the West side of the property to insure that the lighting on the West side does not create a nuisance or distraction to the residential use adjacent to the Project Site.
- (vii) Lots 35 and 36 shall be developed as a single B-2 zoning lot. There shall be a Reciprocal Easement Agreement in substantially the form set forth on Exhibit E attached hereto for the mutual benefit of the Project Site and Lots 35 and 36. The current use of Lots 35 and 36 for used car sales shall be allowed to continue.

D. CONSTRUCTION OF BUILDINGS AND APPURTENANCES WITHIN THE SUBJECT REALTY.

The OWNER and/or its successors and assigns, shall have the right to construct buildings, parking lots, driveways, utility lines, and other appropriate improvements within the Subject Realty, provided that same comply with the VILLAGE Code of Ordinance, or as otherwise provided in this Ordinance or the Annexation Agreement. The party seeking to construct such improvements upon any portion of the Subject Realty shall first obtain a building permit, and such other required permits therefore, from the VILLAGE in compliance with the applicable provisions of the VILLAGE Code of Ordinance, as hereby amended. Any building or buildings constructed on any portion of the Subject Realty may be constructed in phases and a portion of the building may be occupied if it meets all applicable ordinances for occupancy, including separation for fire purposes.

E. LANDSCAPING.

The Subject Realty shall be landscaped in substantial compliance with the Preliminary Landscape Plan attached hereto as Exhibit "D".

SECTION 3: VARIANCES.

To the extent that any element of the Commercial Plans approved pursuant to Section 2B above or otherwise under this Ordinance, deviate from the standards of the Subdivision Regulations, Zoning Ordinance, or other ordinance of the VILLAGE, of the East Dundee Code of Ordinance, or any amendments thereto, or any other VILLAGE ordinances, appropriate variations to the applicable ordinance shall be deemed to be granted hereby.

SECTION 4. PUBLIC IMPROVEMENTS - OBLIGATION TO MAINTAIN.

The respective owners of Lots 33 through 36 within the Subject Realty shall be obligated to reconstruct, repair, and provide ongoing maintenance of the storm water collection system facilities, including pipes, inlets, outlets, French drains, and structures connected thereto within its Lot.

SECTION 5: BUILDING CODE.

Except as otherwise provided in Section 10 herein, OWNER shall comply in all respects with the applicable provisions of the East Dundee Code of Ordinance and other VILLAGE ordinances pertaining to the construction of structures for human occupation in effect at the time the responsible OWNER, or its successors or assigns, makes application to the VILLAGE for a building permit or permits in connection therewith.

SECTION 6: APPLICABLE ORDINANCES.

Except as otherwise provided in this Ordinance, including but not limited to Section 3, OWNER shall comply in all respects with the applicable provisions of the East Dundee Code of Ordinance, as amended from time to time, and other VILLAGE ordinances pertaining to the development and use of the Subject Realty in effect at the time OWNER makes application to the VILLAGE for a building permit or permits in connection with the construction of buildings or structures on the Subject Realty, whether or not any of such ordinances are amended after the date hereof. In addition, the B-2 Community Business District zoning designation of the Subject Realty and this Ordinance shall survive the expiration of the Annexation Agreement governing the Subject Realty . There shall be no time limit to commence or complete construction on the Subject Realty from the effective date of this Ordinance, except as provided herein.

SECTION 7: BUILDING PERMITS.

No building permit shall be issued for construction of any structure on the Subject Realty until all approvals under Section 2 of this Ordinance are secured.

SECTION 8: OCCUPANCY PERMITS.

- A. No occupancy permit shall be issued for any building, except construction office facilities, on the Subject Realty until the storm water facilities, water system, sanitary sewer system, landscaping and streets through binder course are operational or installed and a certificate of completion has been issued therefor. In the event weather conditions do not permit landscaping to be completed, the VILLAGE shall accept a letter of credit in the amount of the estimated cost of such landscaping in lieu of the completion thereof, and upon the posting of such security the VILLAGE shall issue such occupancy permit.

- B. The VILLAGE shall not deny a temporary certificate of occupancy for any space within a building for the sole reason that other areas in the building are either incomplete or under construction.

SECTION 9: SOIL EROSION.

The responsible OWNER shall adhere to measures for the prevention of soil erosion during the various phases of construction of the development pursuant to the ordinances and any other applicable rules and regulations of the VILLAGE and the Kane County Storm Water Ordinance as adopted and modified by the VILLAGE. The erosion control plan attached to the Preliminary Engineering has been reviewed and approved by the VILLAGE Engineer.

SECTION 10: PUBLIC SANITARY SEWER REQUIRED.

Upon development, all of the Subject Realty shall be served by the VILLAGE'S sanitary sewer system. The construction and maintenance of individual, private on-site sewage treatment systems, including, but not limited to, septic tanks, septic absorption fields, and aerobic digesters, shall not be permitted.

SECTION 11: EXISTING WELLS.

Prior to VILLAGE'S acceptance of any water mains on the Subject Realty, OWNER shall plug existing water wells, if any, on the Subject Realty in conformity with the regulations of the Illinois State Water Survey and shall provide documentation to the VILLAGE that such plugging has been accomplished, all in form and substance reasonably acceptable to the VILLAGE.

SECTION 12: INCORPORATION OF PROVISIONS OF ANNEXATION AGREEMENT.

The provisions of the Annexation Agreement are hereby incorporated herein as if fully set forth herein, and shall be construed as part of the substance of this Ordinance.

SECTION 13: COMPLIANCE WITH LAWS AND REGULATIONS.

In the event that any one or more provisions of this Ordinance do not comply with any one or more provisions of the Illinois Compiled Statutes and the governing rules of the Water Pollution Control Board or the Federal or State Environmental Protection Agencies, then the VILLAGE and OWNER, and all of their respective successors and assigns, agree to cooperate to comply with said provisions which shall include, but not be limited to, the passage of resolutions and ordinances to accomplish such compliance.

SECTION 14: IEPA PERMITS:

Upon approval of final engineering by the VILLAGE Engineer, but prior to issuance of a construction permit by the Illinois Environmental Protection Agency, OWNER may commence construction of underground Public Improvements for such phase of development provided no such underground Public Improvements shall be connected to active utility lines or mains until all appropriate permits, including NPDES permits if required, have been duly issued by the Illinois Environmental Protection Agency for such phase of development.

SECTION 15: CONFLICT IN REGULATIONS AND ORDINANCES.

The provisions of this Ordinance shall supersede the provisions of any ordinance, code, or regulation of the VILLAGE, which may be in conflict with the provisions of this Ordinance.

SECTION 16: BINDING EFFECT, SUCCESSION IN INTEREST.

This Ordinance shall constitute a covenant running with the land and be binding upon and inure to the benefit of the parties hereto, their successors in interest, assignees and lessees, and upon any successor municipal authorities of the VILLAGE and successor municipalities. Except as otherwise expressly provided herein, upon the conveyance or assignment by OWNER of its interest in the Subject Realty to any successor, assign, or nominee, OWNER, as the case may be, shall be released from any and all further liability or responsibility under this Ordinance, and the VILLAGE shall thereafter look only to the successor, assign, or nominee of OWNER, concerning the performance of such duties and obligations of OWNER hereby undertaken.

SECTION 17: INCORPORATION OF EXHIBITS.

All exhibits attached to this Ordinance are hereby incorporated herein and made a part of the substance hereof.

SECTION 18: EFFECTIVE DATE. The effective date of this Ordinance shall be July ___, 2004.

SECTION 19. SEVERABILITY. If any section, paragraph, or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph, or provisions shall not affect any of the remaining provisions of this ordinance.

SECTION 20. REPEAL. All ordinances, resolutions, motions, or parts thereof in conflict herewith shall be and the same are hereby repealed.

SECTION 21. PUBLICATION. This ordinance shall be in full force and effect forthwith upon its adoption, approval, and publication in pamphlet form as provided by law.

Adopted this 6th day of July, 2004, pursuant to a roll call vote as follows:

AYES: Zaeske, Ruffalo, Bartels, Van Ostenbridge, President Ahrens.

NAYES: Scarpelli

ABSENT: Schock

Approved by me this 6th day of July, 2004.

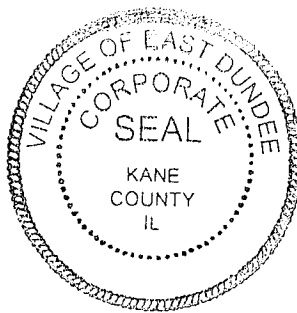
Roger Ahrens
ROGER AHRENS, President

Published in pamphlet form this 7th day of October, 2004, under the authority of the President and Board of Trustees.

ATTEST:

Jane E. Theis
JANE THEIS, Village Clerk

Recorded in the Village Records on October 7th, 2004.



SCHEDULE OF EXHIBITS

- A LEGAL DESCRIPTION OF SUBJECT REALTY
- B PLAT OF ANNEXATION
- C PRELIMINARY ENGINEERING PLAN
- D PRELIMINARY LANDSCAPE PLAN
- E RECIPROCAL EASEMENT AGREEMENT

EXHIBIT "A"
ANNEXATION PARCEL LEGAL DESCRIPTION

Lots 33, 34, 35 and 36 in Fox River Bluffs Unit 7, in the Township of Dundee, Kane County, Illinois.

EXHIBIT "B"
PLAT OF ANNEXATION

EXHIBIT "C"
PRELIMINARY ENGINEERING PLANS

EXHIBIT "D"
PRELIMINARY LANDSCAPE PLANS

EXHIBIT "E"
RECIPROCAL EASEMENT AGREEMENT