

**ORDINANCE NO. F-0950**

**AN ORDINANCE REZONING PROPERTY**  
**FROM I-1 INSTITUTIONAL TO R-7**  
**RESIDENTIAL AND GRANTING A SPECIAL USE PERMIT FOR**  
**A RESIDENTIAL PLANNED UNIT DEVELOPMENT FOR PROPERTY BORDERED**  
**BY THE ILLINOIS PRAIRIE PATH RIGHT OF WAY, WASHINGTON STREET,**  
**NAPERVILLE ROAD, WILLOW AVENUE AND REBER STREET (NATIONAL LOUIS**  
**UNIVERSITY/COURTHOUSE PROPERTY)**

WHEREAS, Courthouse Land Development, LLC (hereinafter "Developer") has filed an application to re-zone the property generally located at 200 South Naperville Road and further bordered by Willow Avenue, Reber Street, Washington Street and the Illinois Prairie Path (hereinafter "the Property") from an I-1 Institutional District to an R-7 Residential Zoning District (PUD) for purposes of constructing in conformance with a Final Planned Unit Development a residential development containing approximately 206 condominium units, 50 townhomes, and other site amenities for the benefit of an anticipated home association; and

WHEREAS, the Property is well suited to act as a transition zone between itself and surrounding office, commercial and residential uses; and

WHEREAS, the Property has unique features by virtue of the presence of the old DuPage County Courthouse and former State's Attorneys Office Buildings, which the Developer intends to adaptively reuse; and

WHEREAS, the Property lends itself to an imaginative design of coordinated land uses directed at providing safe and desirable living and working environments characterized by an unified building and site development program, preservation of some existing architectural features of the site, to provide other amenities for the Property so as to not adversely impact the surrounding zoning uses; and

WHEREAS, the proposed use of the Property involves at least twelve living units in an R-7 Zoning District and therefore qualifies for Planned Unit Development pursuant to Section 5.11B3 of the Wheaton Zoning Ordinance; and

WHEREAS, a Planned Unit Development (hereinafter "PUD") for the Property is essential to promote harmonious architectural styles, building forms, building masses and building relationships and because of the reuse of existing structures on the Property and between the development and its surroundings; and

WHEREAS, a PUD will promote the efficient use of land by way of more economical development of utilities, services and other features; and

WHEREAS, R-7 Re-Zoning of the Property in the absence of the approval of Final PUD Plans, as defined in Section 5 hereof, would not be in the best interests of the public health, safety and welfare because it would be inconsistent with the City's intent to have the Property

reuse existing structures and a unified development of complimentary architecture, density and uses; and

WHEREAS, pursuant to notices required by the Illinois Municipal Code and Wheaton Zoning Ordinance, Public Hearings were conducted by the Wheaton Planning and Zoning Commission, July 27 and August 10, 2004 to consider re-zoning the property from I-1 Institutional to R-7 Planned Unit Development with a Special Use/PUD; and

WHEREAS, the Developer, has submitted Planned Unit Development documents to the City which contemplate the resolution of certain issues associated with: a potential partial or complete vacation of a portion of Naperville Road north of Liberty Drive, potential acquisition and re-location of a Commonwealth Edison Electric Sub-Station and various specific site details are more thoroughly resolved; and

WHEREAS, the PUD Plans, as defined in Section 2 of this ordinance, contemplate the vacation of a portion of north Naperville Road which the Corporate Authorities of the City of Wheaton believe is conceptually viable from a Planning and Zoning standpoint and will conduct a public hearing to consider, in conformance State Statute, and in conjunction with the Developer's submission of the Final PUD Plans; and

WHEREAS, the Corporate Authorities of the City of Wheaton have reviewed the Developer's written applications as well as the PUD Plans and find them in general conformance with applicable Ordinances, subject to the deviations from said Ordinances as contained in the PUD Plans, and the City Council's determination that proper use and development of the property in the R-7 Zoning District will require City Council approval of the Final PUD Plans; and

NOW THEREFORE, be it Ordained by the City Council of the City of Wheaton, DuPage County, Illinois pursuant to its home rule powers as follows:

**SECTION 1. PROPERTY:** The real Property legally described in Exhibit A, which is attached hereto and incorporated herein as a fully set forth (hereinafter "Property") is hereby re-zoned from I-1 Institutional to R-7 Residential and granted a Special Use Permit for a residential Planned Unit Development provided that the final Planned Unit Development is in substantial conformance with the Planned Unit Development Plans described in Section 2.

**SECTION 2. PUD PLANS:** Pursuant to the finding of fact determined by the Wheaton Planning and Zoning Commission a Special Use Permit for a Planned Unit Development is hereby issued by the City in favor of the Property to allow for the construction and use of a residential Planned Unit Development, and other amenities on the Property in compliance with the provisions of this Ordinance, provided that the development of the PUD is in substantial conformance with the following Planned Unit Development documentation (individually a "PUD Plan" and collectively the "PUD Plans"):

- a. Plat of Survey, prepared by Webster, McGrath & Ahlberg, Ltd., dated June 11, 2004 which is attached hereto and incorporated herein as Exhibit 1.

b. The following Plans prepared by Antunovich Associates

1. Site Plan, dated June 11, 2004
2. Landscape Plan, dated June 11, 2004
3. Lower Level Parking Plan #1, dated June 11, 2004
4. Upper Level Parking Plan #2, dated June 11, 2004
5. Typical Residential Plan #3, dated June 11, 2004
6. Typical Unit Plan – Condominiums, dated June 11, 2004
7. Typical Unit Plan – Townhomes, dated June 11, 2004
8. Signage Plan for the Property, dated June 11, 2004
9. Willow Avenue Condominium Elevation dated June 11, 2004
10. Naperville Road Condominium Elevation, dated June 11, 2004
11. Liberty Drive Townhome Elevation dated June 11, 2004
12. Washington Street Townhome Elevation, dated June 11, 2004
13. Old DuPage County Courthouse, dated June 11, 2004
14. Old State's Attorney Office Building, dated June 11, 2004
15. Site/Building Sections, dated June 11, 2004
16. Enlarged Right of Way Plan, dated August 10, 2004 all of which are attached hereto and incorporated herein as if fully set forth as group Exhibit 2(a-p)

c. Preliminary Engineering Plans, prepared by Jacob & Hefner Associates, P.C., sheets 1-2, dated June 10, 2004 which is attached hereto and incorporated herein as Exhibit 3.

d. Right of Way Redevelopment Plans & Specifications, prepared by the Focus Development, Inc., Airhart Construction, Antunovich Associates, and Jacob & Hefner Associates, undated which are attached hereto and incorporated herein as Exhibit 4.

e. State's Attorney's Building First Floor Amenity Pool Terrace Plan, prepared by Focus Development, Airhart Construction, and Antunovich Associates, dated June 27, 2004 which is attached hereto and incorporated herein as Exhibit 5.

f. Typical Courthouse Residential Plan, Prepared by Focus Development, Airhart Construction, and Antunovich Associates, dated July 27, 2004 which is attached hereto and incorporated herein as Exhibit 6.

g. Mechanical Unit Screening Detail Condominium Building Roof, prepared by Focus Development, Airhart Construction, and Antunovich Associates, dated July 27, 2004 which is attached hereto and incorporated herein as Exhibit 7.

**SECTION 3. PUD PLANS:** The development of the Property shall be in substantial conformity with the PUD Plans with respect to the size and location of access drives, parking facilities, free standing signs and buildings. Buildings shall generally be constructed in those locations depicted on the PUD Plans except that the PUD Plans may be revised without the revision being considered contrary to the "substantial conformance" requirement of Section 2 so long as:

- a. the revision of the PUD Plans is a result of the vacation or non-vacation of a portion of Naperville Road located at the approximate terminus of Naperville Road and does not lead to an increase in site density; and/or
- b. the revision is in consequence of the Developer's ability or inability to acquire fee simple title to and relocate the electrical sub-station owned by Commonwealth Edison and said revision does not lead to increase in density; and/or
- c. the revised PUD Plan does not result in an increased density on the Property or the incorporation of non-complimentary architecture or significant relocation of buildings, and/or
- d. the revisions involve changes to floor plans or non-substantial modifications to exterior architectural building elevations consistent with the overall architectural integrity of the PUD.

**SECTION 4.** It shall not be considered "substantial conformance" with the PUD Plans if any of the Final PUD Plans are submitted which:

- a. do not reuse the existing old Courthouse building for residential condominiums while maintaining the exterior architectural integrity of the old Courthouse building; or
- b. do not reuse the former States Attorney's building on the property as an amenities building for the residential development and maintain the general architectural integrity of the old States Attorney's building; or
- c. fail to receive final Planned Unit Development approval within twenty four (24) months of the passage of this Ordinance unless the failure of the Developer to receive final PUD approval is due to no fault of the Developer; or
- d. substantially modify the PUD Plans in a manner inconsistent with the overall integrity and the consistency of the PUD Plans as they pertain to architectural design and density; or
- e. increase densities above those set forth in the PUD Plans.

**SECTION 5.** No building permits shall be issued for the construction of buildings until the Developer has received approval from the City of final engineering, final plat of subdivision and final landscape plan for the PUD, as well as each revised PUD Plan, if any, which is not in substantial conformance with the PUD Plans as approved herein ("Final PUD Plans"). All Final PUD Plans submitted by Developer which are in substantial conformance with the PUD Plans shall require review and approval solely by the City Council without further public notice or hearing. In the event a Final PUD Plan as submitted by Developer is not in substantial

conformance with the PUD Plans such non-conforming plan shall be submitted to the Planning and Zoning Board for further hearing and review as provided in Section 5.11.F. of the Wheaton Zoning Ordinance.

SECTION 6. In addition to being in substantial compliance with the PUD Plans the Final PUD plans as described in Section 5 shall also:

- a. comport with the requirements of Section 5.11 et seq. of the Wheaton Zoning Ordinance except as may be qualified herein;
- b. provide for the demolition of the 1960's era jail and Courthouse addition, prior to the commencement on any construction of residential units;
- c. convert the historic State's Attorney building on the site to an amenities building to serve the residential units on the Property, which amenities shall include: a sales office, a sports club, meeting rooms, management offices and other lawful uses consistent with the PUD plans;
- d. receive approval of exterior facade building materials;
- e. receive approval of a final landscape plan;
- f. receive final engineering approval;
- k. provide for fire lane enforcement agreements with the City of Wheaton to be determined by the Wheaton Fire Chief;
- l. provide a plan for accommodation of site generated trash; and
- m. submit Homeowner's Association Declarations of Covenants and Restrictions for the reasonable approval of the City Attorney which prohibit the Homeowner's Associations unilateral amendment of provisions which grant direct benefits to the City of Wheaton.

SECTION 7. The City may unilaterally, upon written notice to the property owner, petition to rezone the property from R-7 Residential Zoning to I-1 Institutional Zoning upon occurrence of any of the following:

- a. failure of the developer to secure approval of the Final PUD Plans within two (2) years of passage of this Ordinance unless the Developer's failure is due to no fault of the Developer; or



- b. the entry of a final non appealable order by a court of competent jurisdiction that any part of or all of this Ordinance is invalid; or
- c. If within 24 months after approval of the Final PUD Plans the Developer has not made substantial progress in the construction of improvements for occupancy, unless an extension is granted by the City Council.

SECTION 8. The term Developer, as used in this Ordinance, shall include Courthouse Land Development, LLC, its successors and assigns.

SECTION 9. SCHOOL AND PARK DISTRICT CONTRIBUTIONS. The Developer shall make school and park contributions as follows:

- a. pay cash contributions, in lieu of land donations to the school district in conformance with Chapter 62, Section 62- 329(c) of the Wheaton City Code; and
- b. pay cash contributions, in lieu of land donations to the City for park purposes in conformance with Chapter 62, Section 62-329(b) donations. This donation shall be made in (3) installments. The first installment shall be made upon issuance of the first building permit for a residential structure. Said first installment shall be used by the City to reimburse Developer for all of the costs incurred by Developer for the design, construction, supervision and City approval of the improvements over, upon and within any portion of the Naperville Road Right of Way vacated to facilitate development of the PUD for the benefit of adjacent park property in accordance with the PUD Plans ("Vacated ROW Improvements"). Said reimbursement shall be made by the City to Developer within sixty (60) days following the completion and City approval of the Vacated ROW Improvements. In the event the Developer completes the construction of the Vacated ROW Improvements prior to the issuance of said first building permit, the Developer shall submit proof of payment of said costs pertaining thereto to the City in lieu of paying said first installment to the City. The second installment shall be paid to the City on the one year anniversary date of the first payment. The third installment shall be paid to the City on the one year anniversary date of the second payment. The Corporate authorities of the City find, and the Developer agrees that the contributions required by this sub section for the Vacated ROW Improvements are uniquely and specifically attributable to serve the needs of the PUD.

SECTION 10. Should the Developer abandon the PUD development and file litigation against the City of Wheaton in effort to develop the Property within the R-7 Zoning District without a

PUD in substantial conformance with this Ordinance the Developer shall reimburse the City its costs of defense including reasonable attorneys, expert fees and court costs.

SECTION 11. By executing this Ordinance the Developer acknowledges, agrees and covenants that the Property should not be developed in the R-7 Zoning District in the absence of approved Final PUD Plans.

SECTION 12. All ordinances and parts of Ordinances in conflict with or inconsistent with the provisions of this ordinance are hereby repealed to the extent of any such conflict or inconsistency.

SECTION 13. If any or all of this Ordinance is deemed invalid by entry of a final non appealable order by a Court of competent jurisdiction, no portion of the Ordinance shall remain valid except Section 7 hereof authorizing the City to take action to rezone the Property from R-7 Residential to I-1 Institutional.

SECTION 14: This Ordinance shall become effective after its passage, approval and publication in pamphlet form in the manner described by law.

  
Mayor

ATTEST:

  
City Clerk

Ayes:

Roll Call Vote:  
Councilman Mork  
Councilman Mouhelis  
Councilman Bolds  
Councilwoman Corry  
Mayor Carr  
Councilwoman Johnson

Nays:

None

Absent:

Councilman Johnson

Motion Carried Unanimously

Passed: September 20, 2004  
Published: September 21, 2004

Exhibit A – Legal Description  
(Courthouse Square)

The subject property is legally described as:

PARCEL 1: ALL THAT PROPERTY DESCRIBED AS THE COURTHOUSE BLOCK IN WARREN L. WHEATON'S 2<sup>ND</sup> ADDITION TO WHEATON IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 28, 1869 AS DOCUMENT NO. 11488.

PARCEL 2: LOT 1 (EXCEPT THAT PART DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF LOT 1; THENCE SOUTH ALONG THE WEST LINE OF LOT 1, 50 FEET; THENCE EAST AND PARALLEL TO THE SOUTH LINE OF LOT 1, 100 FEET; THENCE NORTH AT RIGHT ANGLES TO LAST DESCRIBED LINE 75.29 FEET, MORE OR LESS, TO THE NORTHERLY LINE OF LOT 1; THENCE SOUTHWESTERLY ALONG THE NORTHERLY LINE OF LOT 1, 105.27 FEET, MORE OR LESS, TO THE NORTHWEST CORNER OF LOT 1 AND THE POINT OF BEGINNING) IN BURCKAL'S ASSESSMENT PLAT OR PART OF BLOCK 1 IN WARREN L. WHEATON'S SECOND ADDITION TO WHEATON, BEING A SUBDIVISION IN THE WEST ½ OF THE SOUTHEAST ¼ AND THE EAST ½ OF THE SOUTHWEST ¼ OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID BURCKAL'S ASSESSMENT PLAT RECORDED MARCH 4, 1933 AS DOCUMENT 334382, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 3: ALL THAT PART OF BLOCK 2 LYING EAST OF A STRAIGHT LINE DRAWN ACROSS SAID BLOCK AT A RIGHT ANGLE WITH THE SOUTH LINE THEREOF THROUGH A POINT ON SAID SOUTH LINE, THAT IS 77.2 FEET WEST, MEASURED ON SAID SOUTH LINE, OF THE SOUTHEAST CORNER OF SAID BLOCK 2 AND LYING SOUTHERLY OF THE PREMISES CONVEYED TO THE AURORA, ELGIN AND CHICAGO RAILWAY COMPANY BY DEED RECORDED APRIL 20, 1901 AS DOCUMENT 73859, IN WARREN L. WHEATON'S SECOND ADDITION TO WHEATON, A SUBDIVISION OF PART OF THE SOUTHEAST ¼ AND PART OF THE EAST ½ OF THE SOUTHWEST ¼ OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 28, 1869 AS DOCUMENT 11488, IN DUPAGE COUNTY, ILLINOIS.

P.I.N. 05-16-318-001, 05-16-319-002, 05-16-312-002