

## **ORDINANCE NO. F-1245**

### **AN ORDINANCE AMENDING THE WHEATON ZONING MAP AND GRANTING A SPECIAL USE PERMIT FOR PLANNED UNIT DEVELOPMENT- F.E. WHEATON LUMBER COMPANY**

**WHEREAS**, written application has been made to amend the Zoning Map, which is attached to and forms a part of the Zoning Ordinance of Wheaton, Illinois, to rezone certain property and by the issuance of a special use permit for a Planned Unit Development in order to allow plat approval to consolidate the industrial properties owned by Wheaton Property Corp., rezoning of two properties along Union Avenue from R-4 to M-1, demolition of two existing structures (existing building #6 and the former Acme Screw Building), construction of four new structures (proposed buildings #6, 8, 9, 10), and approval of a special use for planned unit development for the entire F. E. Wheaton lumberyard facility, all on the property legally described herein within the city limits of Wheaton, Illinois, and commonly known as F.E. Wheaton Lumber Company; ("Subject Property") and

**WHEREAS**, pursuant to notice as required by the Illinois Municipal Code and the Wheaton Zoning Ordinance, a public hearing was conducted by the Wheaton Planning and Zoning Board on August 22, 2006, to consider the issuance of the special use permit; and the Board has recommended approval of the rezoning and the issuance of the special use permit for a planned unit development;

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Wheaton, Du Page County, Illinois, pursuant to its home rule powers, as follows:

**Section 1:** The following described property has been and continues to be zoned and classified in the M-1 Manufacturing District zoning classification:

THAT PART OF LOT 29 IN HENRY A. WHEATON'S AND RALPH L. WHEATON'S SUBDIVISION OF PART OF W.W. STEVENS ADDITION TO WHEATON AND PART OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF THE INTERSECTION OF UNION STREET, 482 FEET; THENCE SOUTH, ALONG A LINE MEASURED AT RIGHT ANGLES TO SAID SOUTH LINE OF UNION STREET AND WESTERN AVENUE, THENCE WESTERLY 146 FEET FOR A PLACE OF BEGINNING; THENCE SOUTH, ALONG A LINE MEASURED AT RIGHT ANGLES TO SAID SOUTH LINE OF UNION STREET 44.3 FEET; THENCE WEST, ALONG A LINE MEASURED PARALLEL TO SAID SOUTH LINE OF UNION STREET, TO THE CENTER LINE OF THE SAID LOT 29; THENCE NORTHEASTERLY, ALONG THE CENTER LINE OF SAID DRAINAGE DITCH AND ALONG THE WESTERLY LINE OF LOT 29, TO A POINT THAT IS 146 FEET FROM THE SOUTH LINE OF UNION STREET; THENCE EAST, ALONG A LINE MEASURED PARALLEL TO SAID SOUTH LINE OF UNION STREET, TO THE PLACE OF BEGINNING.

P. I. N. #05-17-227-026

LOT 29 (EXCEPT THAT PART OF SAID LOT LYING NORTH OF A LINE DRAWN 146.0 FEET SOUTH OF AND PARALLEL WITH THE SOUTH LINE OF UNION AVENUE, AND EXCEPT SOUTH 30.0 FEET OF THE NORTH 176.0 FEET OF THE WEST 100.0 FEET OF THE EAST 350.00 FEET OF THAT PART OF SAID LOT LYING SOUTH OF UNION AVENUE AND WEST OF THE WEST LINE OF LOTS 15 AND 22 OF W.W. STEVENS ADDITION TO WHEATON AND EXCEPT THE EAST 110.0 FEET OF THE NORTH 132.0 FEET OF SAID LOT LYING SOUTH OF WESTERN

AVENUE AND WEST OF THE WEST LINE OF LOT 23 IN SAID W.W. STEVENS ADDITION TO WHEATON, AND ALSO EXCEPT THAT PART OF SAID LOT 29 LYING WESTERLY OF A LINE DRAWN PARALLEL WITH AND 350.00 FEET WEST OF, AS MEASURED ON THE NORTH LINE, OF THE WEST LINE AND WEST LINE IF EXTENDED SOUTH, OF LOTS 15 AND 22 IN SAID W.W. STEVENS ADDITION TO WHEATON). IN HENRY W. WHEATON'S AND RALPH L. WHEATON'S SUBDIVISION OF PART OF W.W. STEVENS ADDITION TO WHEATON AND PART OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID HENRY W. WHEATON'S AND RALPH L. WHEATON'S SUBDIVISION AFORESAID, RECORDED ON NOVEMBER 12, 1924 AS DOCUMENT 184813, IN DUPAGE COUNTY, ILLINOIS.

P.I.N. #05-17-227-025

THE WEST 55.0 FEET OF THE EAST 110.00 FEET OF THE NORTH 132.0 FEET OF THAT PART OF LOT 29 LYING SOUTH OF WESTERN AVENUE AND WEST OF LOT 23 IN W.W. STEVENS ADDITION TO WHEATON, SAID LOT BEING IN HENRY W. WHEATON'S AND RALPH L. WHEATON'S SUBDIVISION OF PART OF W.W. STEVENS ADDITION TO WHEATON, SAID LOT 29 BEING IN HENRY W. WHEATON'S AND RALPH L. WHEATON'S SUBDIVISION OF PART OF W.W. STEVENS ADDITION TO WHEATON AND PART OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID HENRY W. WHEATON'S AND RALPH L. WHEATON'S SUBDIVISION AFORESAID, RECORDED ON NOVEMBER 12, 1924 AS DOCUMENT 184813, DUPAGE COUNTY, ILLINOIS

P.I.N. #05-17-227-022

THE EAST 55.0 FEET OF THE NORTH 132.0 FEET OF THAT PART OF LOT 29 LYING SOUTH OF WESTERN AVENUE AND WEST OF LOT 23 IN W.W. STEVENS ADDITION TO WHEATON, SAID LOT 29 BEING IN HENRY W. WHEATON'S AND RALPH L. WHEATON'S SUBDIVISION OF PART OF W.W. STEVENS ADDITION TO WHEATON AND PART OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID HENRY W. WHEATON'S AND RALPH L. WHEATON'S SUBDIVISION, AFORESAID, RECORDED ON NOVEMBER 12, 1924 AS DOCUMENT 184814, IN DUPAGE COUNTY ILLINOIS.

P.I.N. 05-17-227-023

THAT PART OF LOT 29 IN HENRY W. WHEATON'S AND RALPH L. WHEATON'S SUBDIVISION OF PART OF W.W. STEVENS ADDITION TO WHEATON AND PART OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID HENRY W. WHEATON'S AND RALPH L. WHEATON'S SUBDIVISION RECORDED NOVEMBER 12, 1924, AS DOCUMENT 184813, LYING WESTERLY OF A LINE DRAWN PARALLEL WITH AND 350.00 FEET WEST, AS MEASURED ON THE NORTH LINE, OF THE WEST LINE AND WEST LINE, IF EXTENDED SOUTH, OF LOTS 15 TO 22 IN SAID W.W. STEVENS ADDITION TO WHEATON EXCEPTING THEREFROM THE NORTH 190.13 FEET THEREOF (AS MEASURED AT RIGHT ANGLES), ALL IN DUPAGE COUNTY, ILLINOIS

P.I.N. #05-17-227-027

LOT 23 IN W.W. STEVENS ADDITION TO WHEATON, A SUBDIVISION OF PART OF THE

NORTHEAST QUARTER OF THE SECTION 17, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 10, 1909 AS DOCUMENT 97865, IN DUPAGE COUNTY, ILLINOIS.

P.I.N. #05-17-227-019

THE WEST 100 FEET OF THE EAST 350 FEET OF THE NORTH 176 FEET OF LOT 29 IN HENRY W. WHEATON'S AND RALPH L. WHEATON'S SUBDIVISION BEING A SUBDIVISION OF PART OF W.W. STEVEN'S ADDITION TO WHEATON AND PART OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 29 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID HENRY W. WHEATON'S AND RALPH L. WHEATON'S SUBDIVISION RECORDED NOVEMBER 12, 1924 AS DOCUMENT NUMBER 184813, IN DUPAGE COUNTY, ILLINOIS.

P. I. N. #05-17-227-003

The subject property is commonly known as 703 W. Wesley Street and 900, & 906 W. Union Avenue, Wheaton, IL 60187

**Section 2:** The Zoning Map, which is attached to and forms a part of the City Zoning Ordinance, is amended by removing the following-described property from the R-4 Residential District Zoning classification and adding and including it in the M-1 Manufacturing District Zoning classification:

THE WEST 75.0 FEET OF THE EAST 175.00 FEET OF THE NORTH 146.0 FEET OF LOT 29 IN HENRY W. WHEATON'S AND RALPH L. WHEATON'S SUBDIVISION, BEING A SUBDIVISION OF PART OF W.W. STEVENS ADDITION TO WHEATON AND PART OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID HENRY W. WHEATON'S AND RALPH L. WHEATON'S SUBDIVISION, RECORDED ON NOVEMBER 12, 1924 AS DOCUMENT 184813, IN DUPAGE COUNTY, ILLINOIS.

P.I.N. #05-17-227-005

THE WEST 75.0 FEET OF THE EAST 250.00 FEET OF THE NORTH 146.0 FEET OF THAT PART OF LOT 29 LYING SOUTH OF AND ADJOINING UNION STREET AND WEST OF THE WEST LINE OF LOTS 15 TO 22 IN W.W. STEVENS ADDITION TO WHEATON, SAID LOT 29 BEING IN HENRY W. WHEATON'S AND RALPH L. WHEATON'S SUBDIVISION OF PART OF W.W. STEVENS ADDITION TO WHEATON AND PART OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID HENRY W. WHEATON'S AND RALPH L. WHEATON'S SUBDIVISION AFORESAID, RECORDED ON NOVEMBER 12, 1924 AS DOCUMENT 184813, IN DUPAGE COUNTY, ILLINOIS

P.I.N. #05-17-227-004

The subject property is commonly known as the vacant property along Union Avenue, lying east of 900 W. Union Avenue, Wheaton, IL 60187.

**Section 3:** Pursuant to the Findings of Fact made and determined by the Planning and Zoning Board, a special use permit is hereby issued on the subject property to allow plat approval to consolidate the industrial properties owned by Wheaton Property Corp., rezoning of two properties along Union Avenue from R-4 to M-1, demolition of two existing structures (existing building #6 and the former Acme Screw Building), construction of four new structures (proposed buildings #6, 8, 9, 10), and approval of a special use for planned unit development for the entire F. E. Wheaton lumberyard, in full compliance with the Existing Conditions Exhibit prepared by Cemcon Ltd., dated May 3, 2002; the Final Plat of Subdivision, sheets 1 & 2, prepared by Cemcon Ltd., dated July 21, 2005 and bearing a revised date of June 6, 2006; the Final Site Development Plan, sheets 1 -7, prepared by Cemcon Ltd., dated December 29, 2003 and bearing a latest revision date of May 9, 2006; and the Landscape Plan prepared by Western DuPage Landscaping dated July 19, 2006; and in further compliance with the following conditions, restrictions, and requirements:

1. All proposed chain link fencing facing Union Avenue or abutting residential property shall be replaced with 8 ft. tall solid-type wood fencing.
2. The landscape plan shall be revised to provide more vegetative screening at the terminus of Lyon Avenue to block the view of the lumber yard from down the street.
3. The unused drive approaches along Union Avenue shall be removed from the landscape plan and parkway trees be planted in their place.
4. The applicant shall contribute to the City's sidewalk construction fund in lieu of constructing the sidewalk along the Union Avenue frontage of the site.
5. The "Autoturn Exhibit," dated September 6, 2006, showing adequate egress for trucks at the Union Avenue access point, shall be incorporated into the site plans.
6. The minimum pavement and building setbacks shown on the Existing Conditions Exhibit shall be allowed to be maintained.
7. Outside storage be permitted throughout the subject property with no setback requirements.
8. Developer shall enter into a Fire Lane Designation and Enforcement Agreement with the City in substantial compliance with Exhibit "A".

**Section 4:** The demolition of the existing structures to be demolished shall be authorized by this Ordinance. Demolition of said structures, however, shall be carried out in conformance with Wheaton City Code Chapter 22, Article XIV, with the exception that the Developer shall not be required to wait 30 days prior to commencing demolition from the date of submitting a

demolition permit application to the Building and Code Enforcement Department, and shall not be required to hold a “neighbor meeting” at least 30 days prior to submitting an application for building demolition.

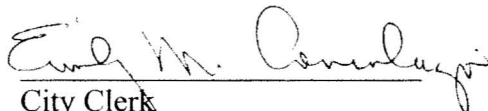
**Section 5:** Within ninety (90) days following the effective date of this Ordinance, Owner shall, at its expense, obtain and record a fifteen (15) feet wide temporary landscape easement (“**Temporary Landscape Easement**”) on those properties commonly known as 306, 312 and 314 Western Avenue and 812 and 816 Union (each an “**Adjacent Lot**” and collectively the “**Adjacent Lots**”), which Adjacent Lots are located adjacent to the subject property, zoned for residential use and owned by Owner or an entity affiliated with or controlled by Owner. The Temporary Landscape Easement shall be located on each of the Adjacent Lots along and contiguous with the rear boundary line of the Adjacent Lot (“**Temporary Easement Premises**”). In the event Owner or an entity affiliated with or controlled by Owner, acquires fee title to the property commonly known as 302 Western Avenue that property shall be added to and constitute a part of the Adjacent Lots and Owner shall obtain and record a Temporary Landscape Easement on said property as well. If after the effective date of this Ordinance the existing building structure or structures located on an Adjacent Lot is or are demolished and the Adjacent Lot thereafter remains vacant for a period of ninety (90) days without construction of a replacement structure having been commenced, the lessee of the subject property (“**Lessee**”) shall, at its expense, install a natural screen within the Temporary Easement Premises on the Adjacent Lot consisting of Austrian Pines or other evergreen tree species with a minimum planting height of six (6) feet and planted on centers recommended according to accepted nurserymen standards for the species planted (“**Temporary Landscape Materials**”). Lessee shall maintain the Temporary Landscape Materials located on an Adjacent Lot in a healthy condition until removal of the same is permitted under this Ordinance. The Temporary Landscape Materials located on an Adjacent Lot may be removed by the owner of the Adjacent Lot at any time following the commencement of construction of a primary building on the Adjacent Lot provided the owner proceeds in good faith and with due diligence to complete the construction of said structure within a reasonable time following the commencement thereof (“**Removal Trigger**”). Upon the occurrence of the Removal Trigger for an Adjacent Lot, Lessee’s obligation to maintain the Temporary Landscape Materials located on that lot shall terminate and the Temporary Landscape Easement shall provide that said easement shall automatically thereupon terminate and be of no further force or effect. If the owner of the Adjacent Lot elects to keep all or a portion of the Temporary Landscape Materials following the occurrence of the Removal Trigger, the owner of the Adjacent Lot shall thereafter own and maintain the preserved landscape materials and Lessee and Owner shall have no further obligation or responsibility with respect thereto. Anything contained in any ordinance, rule or regulation of the City now in existence or hereafter adopted to the contrary notwithstanding, the removal of all or any portion of the Temporary Landscape Materials from an Adjacent Lot for which the Removal Trigger has occurred shall not require replacement of or compensation for any of the landscape materials removed.

**Section 6:** All ordinances or parts of ordinances in conflict with these provisions are repealed.

**Section 7:** This ordinance shall become effective from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

Ayes: ROLL CALL VOTE:  
Councilman Bolds  
Councilwoman Corry  
Councilman Johnson  
Mayor Carr  
Councilman Levine  
Councilman Mouhelis

Nays: Councilman Suess

Absent: None

Motion Carried

Passed: December 18, 2006  
Published: December 19, 2006

**EXHIBIT "A"**

**FIRE LANE DESIGNATION AND ENFORCEMENT AGREEMENT**

THIS AGREEMENT is made and entered into this      day of      2006, by and between the City of Wheaton, an Illinois Municipal Corporation, 303 W. Wesley Street, Wheaton, Illinois 60189 (hereinafter referred to as "CITY") and \_\_\_\_\_ (hereinafter referred to as "OWNER(S)"), OWNER(S) of the property located at \_\_\_\_\_, within the corporate limits of the City of Wheaton, Illinois (hereinafter referred to as "Subject Property"), and which is legally described below:

(INSERT LEGAL(S) AND P.I.N(S))

**RECITALS**

WHEREAS, the OWNER(S) desire to establish Fire Lanes upon the Subject Property to improve the health and safety of the citizens of Wheaton; and

WHEREAS, the CITY believes that it is in the best interests of the public health and safety that Fire Lanes be established, maintained and enforced upon the Subject Property.

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the OWNER(S) and CITY agree to the following in regards to the Subject Property:

1. The CITY Fire Chief, Chief of Police or their designated representative and OWNER(S), shall identify the specific Fire Lane locations within the Subject Property which shall, pursuant to the terms of this Agreement and Ordinance No.      be regulated. The specific locations of the Fire Lane(s) to be enforced shall be as set forth on the Site Plan ("Plan")



attached hereto and fully incorporated into this Agreement as Exhibit “ ”. The CITY Fire Chief, Chief of Police or their designated representative and OWNER(S) or designated representative may from time to time mutually agree to amend the Fire Lane(s) location(s) as set forth in the Site Plan. At such time, the Site Plan shall be amended and appended to this Agreement as an Amended Exhibit “ ”.

2. The OWNER(S) are responsible for providing any required pavement markings.

3. The OWNER(S), at their sole expense, shall be responsible for obtaining, erecting and maintaining the appropriate signage in accordance with applicable CITY and State of Illinois regulations and specifications.

4. The CITY shall inspect and approve the signage prior to entering into this Agreement. The CITY Fire Chief, Chief of Police or their designated representative may require additional signage and/or pavement markings, if it is later determined that the inspected and approved signage does not provide adequate notification of the established fire lanes.

5. Upon execution of this Agreement, the CITY will enforce the Fire Lane parking and standing prohibitions and the Fire Lane maintenance requirements contained in Sections 70-355 and 30-2 of the Wheaton City Code in regards to the Subject Property. No “special duty” to third persons shall be imposed by this Agreement. The CITY’s enforcement obligation shall be legally the same as it is with all other ordinances.

6. This Agreement may be terminated by either party by providing not less than thirty (30) days notice to the other party of the intention to terminate this Agreement.

7. This Agreement shall be assignable by OWNER(S) to their successors in interest



upon the sale or lease of the Subject Property.

8. The OWNER(S) hereby agrees to release and hold harmless, indemnify and defend (including the payment of all costs and attorneys' fees) the CITY, its Officers, Agents and Employees, in connection with any and all actions or claims for any loss, damage, personal injury or death occurring as a consequence of the performance of this Agreement.

9. The sole remedy available to the OWNER(S), upon any breach of this Agreement by the CITY, shall be the termination of the Agreement. It is of the essence of this Agreement that the CITY shall not be liable in money damage for any breach of this Agreement.

10. Whenever notice to the CITY is required, it shall be addressed to:

City Clerk  
City of Wheaton  
303 West Wesley Street  
Wheaton, IL 60189-0727

Whenever notice to the Owner is required, it shall be addressed to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have executed this instrument by their duly authorized officers of the day and year first above written.

CITY OF WHEATON, ILLINOIS, a Municipal Corporation

BY: \_\_\_\_\_  
City Manager

ATTEST: \_\_\_\_\_  
City Clerk

BY: \_\_\_\_\_

ATTEST: \_\_\_\_\_