

ORDINANCE 98 - 25

**Approving a Rezoning A-1 to R-3, Special Use Planned Development
and Final Plat of Re-Subdivision
HITEMAN - FARM COLONY LOT 61**

WHEREAS, Dale and Mary Hiteman, owner and intended developer, did petition Kendall County for a zoning map amendment from A-1 to R-3 and a Special Use for a residential planned development and a re-subdivision for 7 single family lots with a common area for a conservation easement; and

WHEREAS, said petitions did pertain to one tract of land approximately 17 acres with an existing home and accessory buildings, which shall remain, located at 78 Country Road in Section 43 of Oswego Township; and

WHEREAS, all procedures required by the Kendall County Zoning Ordinance were followed including notice for public hearing, findings of fact, and recommendation by the Zoning Board of Appeals; and

WHEREAS, the Kendall County Board finds that said petitions do comply with all Kendall County ordinances and are in the best interest of Kendall County.


NOW, THEREFORE, BE IT ORDAINED, that the Kendall County Board hereby grants approval of the following:

1. A zoning map amendment from A-1 to R-3 on the tract of land commonly known as the Hiteman parcel at 78 Country Road and legally described on Exhibit A.
2. A Special Use Permit for a residential planned development on said tract of land as provided in Exhibit B.
3. A final plat of subdivision for said tract of land entitled "Final Plat of Hiteman Subdivision - Oswego Township - Kendall County - Illinois."

IN WITNESS OF, this ordinance has been enacted on October 20, 1998.



John A. Church
Kendall County Board Chairman



Paul Anderson
Kendall County Clerk

EXHIBIT A
LEGAL DESCRIPTION

That part of Lot 61, Farm Colony, Oswego Township, Kendall County, Illinois which lies westerly of the southeasterly line extended southwesterly of Lot 14 of Farm Colony, Unit 2 (except therefrom Lot 15 of Farm Colony, Unit 2) in Oswego Township, Kendall County, Illinois.

STATE OF ILLINOIS)
) ss
COUNTY OF KENDALL)

August 25, 1998

PLANNED UNIT DEVELOPMENT AGREEMENT
DALE HITEMAN AND MARY HITEMAN
A RE-SUBDIVISION OF
FARM COLONY LOT 61

This Planned Unit Development Agreement (hereinafter referred to as "AGREEMENT"), is made and entered into this ___ day of _____, 1998, by and between the COUNTY OF KENDAL (hereinafter referred to as "KENDALL") a body politic, and DALE HITEMAN and MARY HITEMAN, (hereinafter referred to as "OWNER"),

WITNESSETH

WHEREAS, OWNERS own fee simple title to the real property which is legally described in Exhibit "A" attached hereto, consisting of approximately _____ acres, more or less (hereinafter referred to as "PROPERTY"); and

WHEREAS, it is the desire of OWNERS to develop the subject PROPERTY in KENDALL in accordance with the terms of this AGREEMENT and the ordinances of KENDALL; and

WHEREAS, KENDALL through its Building and Zoning Committee of the County Board previously recommended the Property be zoned R-3 Single Family Residence District P.U.D.; and it is the desire of all parties to facilitate its development pursuant to the terms and conditions of this AGREEMENT and the Ordinances of KENDALL, and also pursuant to a Development Agreement and Additional Covenants entered into in writing between OWNERS and the FARM COLONY HOMEOWNERS ASSOCIATION, copies of which have been recorded of record with the Kendall County Recorder of Deeds, and which are binding as to the subject property; and

WHEREAS, OWNERS and KENDALL have or will perform and execute all acts required by law and by said written agreements with the FARM COLONY HOMEOWNERS ASSOCIATION to effectuate such development; and

WHEREAS, the parties to this AGREEMENT wish to amend the zoning classification

pursuant to the R-3 Single Family Residence District, and have held the required Public Hearing for approval of its zoning classification, Concept Plan, Preliminary Plan and Engineering pursuant to the procedures set out in the R-3 General Residence District - Planned Unit Development (Special Use) as contained in the County of Kendall Zoning Ordinance; and

WHEREAS, all notices required by law relating to the re-zoning and Planned Unit Development process pursuant to the R-3 General Residence District have been given for the Property to the persons or entities entitled thereto, pursuant to the applicable provisions of the Illinois Compiled Statutes and County Ordinances, and

WHEREAS, the County Board of Kendall has duly affixed the time for consideration of this AGREEMENT; and

WHEREAS, in reliance upon the development of the PROPERTY in the manner proposed, OWNERS and KENDALL have executed all Petitions and other documents that are necessary to accomplish the re-zoning and platting of the PROPERTY in KENDALL; and

WHEREAS, it is the desire of KENDALL and OWNERS that the development of the PROPERTY proceed, subject to the ordinances, codes and regulations of KENDALL as amended as well as pursuant to the recorded agreements with the FARM COLONY HOMEOWNERS ASSOCIATION; and

WHEREAS, in accordance with the powers granted to KENDALL by the provisions of the County Zoning Ordinance, inclusive, relating to its act and the Kendall County Zoning Ordinance for Planned Unit Developments, and the parties hereto wish to enter into a binding agreement with respect to the PROPERTY and to provide for various other matters related directly or indirectly to the zoning and development of the PROPERTY, as authorized by, the provisions of said statutes; and

NOW, THEREFORE, in consideration of the mutual covenants, agreements and conditions herein contained, and by authority of and in accordance with the aforesaid statutes of the State of Illinois, the parties agree as follows:

1. ZONING.

- A. Contemporaneously with the approval of this AGREEMENT, KENDALL shall adopt an Ordinance amending the Zoning Map of the County to Zone the subject PROPERTY which shall be classified to zone the subject property R-3 Single Family District P.U.D. in terms of performance standards and as a Planned Unit Development. This will be a Zoning Map change only and not a text amendment.
- B. Further the County of Kendall agrees to approve the Concept Plan and Final

Plat of Subdivision of Development which are made a part hereof; and which shall be developed with a maximum of 7 Single Family Lots in general conformance with Exhibit "B" incorporated herein by reference; dated February 12, 1998; and in conformance with the Final Plat dated _____, 1998 which is incorporated herein by reference as Exhibit "C".

- C. KENDALL and OWNERS agree that the PROPERTY shall be developed in substantial compliance with the ordinances of KENDALL, and this AGREEMENT, together with the Drawings and Exhibits attached hereto; and in conformance with the recorded agreements with the FARM COLONY HOMEOWNERS ASSOCIATION.
- D. KENDALL agrees to allow OWNERS/DEVELOPERS to release storm water from the development's storm water management system at a rate not in excess of .15 CFS in conformance with the Kendall County Storm Water Run-Off Ordinance, and in conformance with the Engineering Design approved the Drainage Consulting Engineer of Kendall County.

2. FEES.

OWNERS, upon submission of a request for signatures on the Final Plat of the Subdivision, agree to pay all fees as required by County Ordinances. The County School and Park Land-Cash Fees shall be payable in accordance with the ordinances existing in KENDALL at the time of approval of this AGREEMENT.

3. DONATIONS AND CONTRIBUTIONS.

- A. OWNERS shall execute and record a "Conservation Easement" as to the rear portion of Lot 7 consisting of _____ acres, more or less; and legally described in the attached Exhibit "D" in a format acceptable to the Kendall County Plat Officer, Kendall County States Attorney, and OWNERS, providing the terms and conditions of said Conservation Easement; as well as naming the Kendall County Forest Preserve Commission as the enforcement agency, pursuant to Illinois Compiled Statutes.
- B. Said Conservation Easement shall prohibit the use of the area contained thereon from the development of any permanent structures. Further, said Conservation Easement Area shall at no time be permitted to be subdivided or developed for residential, manufacturing, or commercial purposes. It being the intent of the parties that the area encumbered with the Conservation Easement shall be maintained permanently as an open space and buffer area now and in the future when the Van Emmon-Reservation Road right-of-way is extended adjacent to the subject Conservation Easement Area.

- C. The OWNERS of Lot 7 may use the area impressed with the Conservation Easement for pasture in conjunction with the horse barn located on Lot 7. For so long as a horse use continues on Lot 7 the area encumbered with the Conservation Easement may be used as pasture or for hay in support of the horse use on Lot 7. In the event there is an interruption of 5 years or more at any time during the life of this Agreement from the presence of horses on Lot 7, the condition of this Planned Unit Development Agreement that horses may be maintained on said Lot shall terminate automatically. Upon the termination of that special use, public access to residents of FARM COLONY HOMEOWNERS ASSOCIATION in the original unit, as well as the unit being developed under the terms of this Agreement may be had for walking, picnicking, and open space passive purposes excluding the use of construction of permanent structures and motorized vehicles of any type. For purposes of access to the open space area, once the horse use is terminated on the Conservation Easement area, the members of the FARM COLONY HOMEOWNERS ASSOCIATION and this unit shall have access along the two pedestrian easements granted as part of the Final Plat process herein and denoted on the Final Plat of Subdivision.
- D. In the event the OWNERS of Lot 7 desire to convey to the FARM COLONY HOMEOWNERS ASSOCIATION, and in the event FARM COLONY HOMEOWNERS ASSOCIATION desires to take title to the open space area, the parties may agree to the transfer of ownership of said Conservation Easement area to the FARM COLONY HOMEOWNERS ASSOCIATION. Nothing contained herein shall require either party mandatorily to so transfer title. The transfer of title to the FARM COLONY HOMEOWNERS ASSOCIATION of the subject Conservation Easement area shall not be considered a re-subdivision of the subject property, nor in any way a violation of this Agreement.

4. SUBDIVISION IMPROVEMENTS.

- A. Set back requirements shall be in conformance with the R-3 Zoning Classification of the Kendall County Zoning Ordinance.
- B. The configuration of all lots as shown on the Final Plat of Subdivision is hereby approved.
- C. Each lot shall be served by the common water system of the FARM COLONY HOMEOWNERS ASSOCIATION and shall contribute the hook-up fee contained in the recorded agreements with the FARM COLONY HOMEOWNERS ASSOCIATION at time of hook-up to the system well and

each lot shall be signed by septic system, or mechanical waste treatment system, with a service maintenance agreement in writing being a mandatory requirement of KENDALL, and the Homeowners Association.

- D. No lot shall be permitted to be re-subdivided.
- E. Construction of residences or accessory structures in the subject development shall be in conformance with Kendall county Ordinances and all recorded agreements with the FARM COLONY HOMEOWNERS ASSOCIATION.

5. TIME IS OF THE ESSENCE.

It is understood and agreed by the parties hereto that time is of the essence in this AGREEMENT, and that all parties will make every reasonable effort, to expedite the subject matter hereof. It is further understood and agreed by the parties that the successful consummation of this AGREEMENT requires their continued cooperation.

6. BINDING EFFECT.

This Planned Unit Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns including, but not limited to, successor owners of record, successor developers, and upon any successor County authority of KENDALL. In the event any portion of this AGREEMENT is deemed unenforceable by a Court of competent jurisdiction the remaining portion shall be binding upon all parties.

7. NOTICES AND REMEDIES.

Upon a breach of this AGREEMENT, any of the parties in any court of competent jurisdiction, by any action or proceeding at law or in equity, may exercise any remedy available at law or equity.

Before any failure of any party of this AGREEMENT to perform its obligations under this AGREEMENT shall be deemed to be a breach of this AGREEMENT, the party claiming such failure shall notify in writing, certified mail/return receipt requested, the party alleged to have failed to perform, state the obligation allegedly not performed and the performance demanded.

Notice shall be provided at the following addresses:

KENDALL:

Kendall County Plat Office
c/o Kendall County Zoning Office
111 W. Fox St.
Yorkville, Illinois 60560

Copy to Kendall County
States Attorney:

Kendall County States Attorney
807 W. John St.
Yorkville, Illinois 60560

OWNERS:

Dale Hiteman and Mary Hiteman
589 Foxwood Dr.
Westville, IN 46391

Attorney for OWNERS:

Law Offices of Daniel J. Kramer
1107A S. Bridge Street
Yorkville, Illinois 60560

8. AGREEMENT TO PREVAIL OVER ORDINANCES.

In the event of any conflict between this AGREEMENT and any ordinances of KENDALL in force at the time of execution of this AGREEMENT or enacted during the pendency of this AGREEMENT, the provision of this AGREEMENT shall prevail to the extent of any such conflict or inconsistency. In the event any portion of this AGREEMENT is in conflict with the private Development Agreement between the OWNER and Farm Colony Homeowners Association, the more strictly enforced agreement shall control.

9. PARTIAL INVALIDITY OF AGREEMENT.

If any provision of this AGREEMENT (except those provisions relating to the requested rezoning of the Property identified herein and the ordinances adopted in connection herewith), or its application to any person, entity, or property is held invalid, such provision shall be deemed to be excised herefrom and the invalidity thereof shall not affect the application or validity of any, other terms, conditions and provisions of this AGREEMENT and, to that end, any terms, conditions and provisions of this AGREEMENT are declared to be severable.

If, for any reason during the term of this AGREEMENT, any approval or permission granted hereunder regarding plans or plats of subdivision or zoning is declared invalid, KENDALL agrees to take whatever action is necessary to reconfirm such plans and zoning ordinances effectuating the zoning, variations and plat approvals proposed herein.

10. USE OF PROPERTY FOR FARMING.

Any portion of the Conservation Easement of the PROPERTY, which is not under development as provided herein, may be used for hay or cover crop purposes.

IN WITNESS WHEREOF, the parties have executed this Planned Unit Agreement the day and year first above written.

KENDALL:
COUNTY OF KENDALL

By: *J. Church*
County Board Chairman

Dated: 10/20/98

Attest: *Paul Anderson*
County Clerk

OWNERS:

DALE HITEMAN

Dated: _____

MARY HITEMAN

Dated: _____

Law Offices of Daniel J. Kramer
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630.553.9500