

**ORDINANCE 98 - 26**

**Approving a Rezoning A-1 to R-3, Special Use Planned Development  
and Final Plat of Subdivision  
THE WOODS OF SILVER SPRINGS**

WHEREAS, William Barbier, known as the 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 subdivision for 57 single family lots with a common area for stormwater management and conservation easement; and

WHEREAS, said petitions did pertain to one tract of land approximately 103 acres located along the Fox River Road and Fox Road in Fox Township with the Parcel Identification Numbers of 04-02-200-005 and 04-38-477-001; and

WHEREAS, said property is further described as two parts within Exhibit A: Legal Description - Property to be Re-Zoned and Exhibit B: Legal Description - Property to be Donated; and

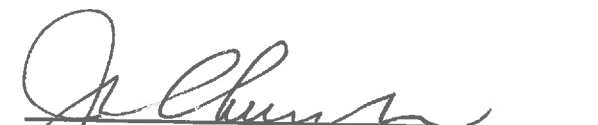
WHEREAS, all procedures required by the Kendall County Zoning Ordinance were followed including notice for public hearing, findings of fact by the Zoning Board of Appeals; and


WHEREAS, the Kendall County Board finds that said petitions do comply with all Kendall County ordinances.

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 Barbier parcel at Fox 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 C.
3. A final plat of subdivision for said tract of land entitled "Final Plat of Subdivision - The Woods of Silver Springs."

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**  
**PROPERTY TO BE RE-ZONED**

*that part of the Southeast Quarter of Section 35, Township 37 North, Range 6 East of the Third Principal Meridian, part of the Northwest Quarter of Section 1 and part of the Northeast Quarter of Section 2, Township 36 North, Range 6 East of the Third Principal Meridian described as follows: Commencing at the Northeast corner of said Section 2; thence southwesterly along the North Line of said Section 2, a distance of 186.12 feet to a stone monument on an old claim line; thence South 13°27'56" East, 738.53 feet to a stone monument at an angle point in said old claim line for a point of beginning; thence North 13°27'56" West 566.26 feet; thence North 64°58'32" West, 261.38 feet; thence North 11°05'07" East, 254.98 feet; thence North 53°14'30" West, 915.48 feet; thence North 05°41'35" West, 84.01 feet; thence South 57°22'16" West 1213.21 feet to the East line of a tract of land described as Parcel Three in a Deed recorded as Document 70-105; thence South 00°05'37" East along said East line 1770.0 feet to the center line of Fox Road; thence North 88°22'02" East along said center line 1280.69 feet; thence northerly at right angles to said center line 330.0 feet; thence North 88°22'02" East, parallel with said center line, 456.0 feet; thence South 01°37'58" East 255.0 feet; thence South 43°22'02" West 42.43 feet; thence South 01°37'58" East 45.0 feet to said center line; thence North 88°22'02" East along said center line 130.0 feet; thence North 01°37'58" West 45.0 feet; thence North 46°37'58" West 42.43 feet; thence North 01°37'58" West 255.0 feet; thence North 88°22'02" East 397.63 feet to said old claim line; thence North 13°00'19" West, 501.43 feet to the point of beginning in Fox Township, Kendall County, Illinois.*

**EXHIBIT B**  
**LEGAL DESCRIPTION**  
**PROPERTY TO BE DONATED**

*That part of the Southeast Quarter of Section 35, Township 37 North, Range 6 East of the Third Principal Meridian described as follows: Beginning at the Northwest corner of a subdivision known as "The Woods of Silver Springs, Fox Township, Kendall County, Illinois"; thence North 57°22'16" East along the northwesterly line of Lots 10, 11, 12, 13 and 60 of said subdivision, 1231.21 feet to an angle in the North line of said subdivision; thence North 05°41'35" West 350.0 feet to the southerly bank of the Fox River; thence westerly along said southerly bank, 1004.59 feet to the West line of said subdivision extended from the South; thence South 00°05'37" East along said extended westerly line 999.57 feet to the point of beginning in Fox Township, Kendall County, Illinois and containing 16.654 acres.*

**THIS INSTRUMENT WAS  
PREPARED BY AND RETURN  
RECORDED DOCUMENT TO:**

John P. Duggan  
Lowe & Steinmetz, Ltd.  
407 W. Galena Blvd.  
P.O. Box 1625  
Aurora, IL 60507-1625

STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF KENDALL    )

**PLANNED UNIT DEVELOPMENT AGREEMENT**  
**THE WOODS OF SILVER SPRINGS**

This Planned Unit Agreement (hereinafter referred to as "AGREEMENT"), is made and entered into this 20th day of October, 1998, by and between the COUNTY OF KENDALL (hereinafter referred to as "KENDALL") a body politic, and UNION BANK OF OTTAWA, NOT INDIVIDUALLY BUT SOLELY AS TRUSTEE UNDER A TRUST AGREEMENT DATED FEBRUARY 17, 1994 AND KNOWN AS TRUST NO. 1057 and WILL BARBIER (hereinafter jointly and severally referred to as "OWNER" and "DEVELOPER").

**WITNESSETH**

WHEREAS, OWNER owns fee simple title to the real property which is legally described in Exhibit "A" attached hereto, consisting of approximately 86.565 acres, more or less (hereinafter referred to as "PROPERTY"); and

WHEREAS, it is the desire of OWNER/DEVELOPER 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 Planned Unit Development (hereinafter "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

WHEREAS, OWNER/DEVELOPER and KENDALL have or will perform and execute all acts required by law to effectuate such development; and

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WHEREAS, the parties to this AGREEMENT wish to amend the zoning classification pursuant to the R-3 Single Family Residence District P.U.D., and have held the required Public Hearing for approval of its zoning classification, Concept Plan, Preliminary Plan and Engineering Plan 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 rezoning 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, OWNER/DEVELOPER, and KENDALL have executed all Petitions and other documents that are necessary to accomplish the rezoning and platting of the PROPERTY in KENDALL; and

WHEREAS, it is the desire of KENDALL and OWNER/DEVELOPER that the development of the PROPERTY proceed, subject to the Ordinances, Codes and Regulations of KENDALL as amended; and

WHEREAS, in accordance with the powers granted to KENDALL by the provisions of the County Zoning Ordinance, inclusive and relating to its acts 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.

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B. Further, the County of Kendall agrees to approve the Final Plat of Subdivision of Development which is made a part hereof; and which shall be developed with a maximum of 57 Single Family Lots in general conformance with The Final Plat, Exhibit "B" incorporated herein by reference; dated by surveyor James Olson on October 20, 1998.

C. KENDALL and OWNER/DEVELOPER 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 or referred to herein.

D. KENDALL agrees to allow OWNER/DEVELOPER to release storm water from the development's storm water management system 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, with the variation that the depth of planned stormwater storage in the dry bottom facilities is greater than the four feet (4') Kendall County Maximum as justified by the natural land contours.

2. FEES.

OWNER/DEVELOPER, upon submission of a request for approval of a Final Plat for each Phase or Unit of the Subdivision, agrees 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 CONDITIONS.

A. OWNER/DEVELOPER agrees to dedicate to Kendall County by and as shown on the Final Plat the 50 feet of right-of-way on the north side of Fox Road from the existing centerline of Fox Road across the adjoining boundary to provide for the future expansion of said road by the Kendall County.

B. OWNER/DEVELOPER shall execute and record a "Open Space , Storm Water Management and Conservation Easement" as to the Open Space, Storm Water Management and Conservation Easement of the subject PROPERTY in a format acceptable to the Kendall County Plat Officer, Kendall County States Attorney, and OWNER, providing the terms and conditions of said Open Space and Storm Water Management and Conservation Easement.

C. OWNER/DEVELOPER shall dedicate the 16.654 acres of open space (Please see Exhibit "B" for Legal Description) in the northwesterly corner of the Property shown on the project Concept Plan to the Illinois Department of Natural Resources to be added to Silver Springs State Park, if accepted by the Illinois Department of Natural Resources, or, if not, to hold same permanently as open space in the Homeowners Association to be established, provided same shall

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be conveyed to the Illinois Department of Natural Resources, the Kendall County Forest Preserve District, or such other governmental entity as would hold same consistent with the purpose of this dedication as directed by the Kendall County Board.

— This 16.654 Acre Parcel is not part of the 86.565 acres described as Exhibit "A", and is not rezoned hereby but remains A-1, General Agricultural District.

4. SUBDIVISION IMPROVEMENTS.

A. Setback requirements shall be in conformance with the R-3 Zoning Classification of the Kendall County Zoning Ordinance.

B. The length of the cul-de-sac for Polo Field Drive may be constructed as shown on the Final Plat, which varies the Kendall County maximum length for cul-de-sacs under the County Ordinance of 1,000 feet to approximately 1,400 feet.

C. OWNER/DEVELOPER shall be permitted a waiver of the depth to width ratios of 2.5 (lot width at building line equal to 40% of the lot depth) requirements in relation to lots 1, 9 through 15, 17, 23, 36 through 39, 43 through 45 and 52 as shown on the Final Plat of Subdivision, and said waiver is hereby approved.

D. The area designated as Open Space and Storm Water Management Easement of Lots 58 and 59 and as Open Space and Storm Water Management Easement and conservation Easement as to Lot 60 shall remain as a common open space to be conveyed to and managed by a Not-For-Profit Homeowner's Association, in keeping with the purposes shown on the Final Plat and in the Declaration of Covenants, Conditions and Restrictions of the Homeowner's Association which shall be incorporated by OWNER/DEVELOPER, and shall consist of 57 voting members, one vote being allowed for each lot of the subject development.

E. Each lot shall be served by an individual well and septic system or mechanical waste treatment system, with a service maintenance agreement in writing being a mandatory requirement of OWNER/DEVELOPER, KENDALL, and the Homeowner's Association.

F. Maximum effort shall be given to preservation of all living trees having a greater than 6" circumference at a measurement of 3 feet above the ground.

G. No lot shall be permitted to be resubdivided so long as the subject real property remains in unincorporated Kendall County.

H. A fifty foot (50') Conservation Easement is to be created on the rear fifty feet (50') of lots 10, 11, 12 and 13 as shown on the Final Plat. The lots encumbered with the

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Conservation Easement shall contain the following additional restrictions necessary to protect the natural condition of the property:

a. No buildings, structures, or improvements of any kind, including but not limited to houses, garages or other accessory buildings, may be constructed within the Conservation Easement.

b. No tree over four inches (4") in diameter at 3.5 feet above the ground may be removed without prior review and written approval by the Homeowner's Association.

c. No lot grading within the conservation easement area is allowed, and all of this area must remain vegetatively stabilized.

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 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



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111 W. Fox St.  
Yorkville, IL 60560

Copy to Kendall County  
States Attorney:

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

OWNER/DEVELOPER:

Union Bank of Ottawa  
as Trustee under  
Declaration of Trust  
dated February 17, 1994  
and known as Trust Number 1057  
c/o Will Barbier  
3175 N. Route 71  
Ottawa, IL 61350

Attorney for  
OWNER/DEVELOPER:

John P. Duggan  
Lowe & Steinmetz, Ltd.  
407 W. Galena Blvd.  
P.O. Box 1625  
Aurora, IL 60507-1625  
Facsimile: (630) 897-9500

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.

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 exercised 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.

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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 PROPERTY, which is not conveyed or under development as provided herein, may be used for farming purposes, regardless of the underlying zoning, until developed.

11. WILL BARBIER hereby discloses that he is the sole OWNER/DEVELOPER of the subject real PROPERTY under the terms of a trust.

12. OWNER/DEVELOPER shall cause the removal of any on-site debris prior to the application for any building permit on a lot where debris is present.

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

**KENDALL:**

COUNTY OF KENDALL

By:   
County Board Chairman

Dated: 10/20/98

Attest:   
County Clerk

**OWNER/DEVELOPER:**

Union Bank of Ottawa as Trustee under Declaration of Trust dated February 17, 1994 and known as Trust Number 1057.

By: \_\_\_\_\_  
Trust Officer

Attest: \_\_\_\_\_

By: \_\_\_\_\_  
Will Barbier

## Exhibit "A"

to the Planned Unit Development Agreement

### The Woods of Silver Springs

*A Subdivision in Fox Township, Kendall County, Illinois*

*that part of the Southeast Quarter of Section 35, Township 37 North, Range 6 East of the Third Principal Meridian, part of the Northwest Quarter of Section 1 and part of the Northeast Quarter of Section 2, Township 36 North, Range 6 East of the Third Principal Meridian described as follows: Commencing at the Northeast corner of said Section 2; thence southwesterly along the North Line of said Section 2, a distance of 186.12 feet to a stone monument on an old claim line; thence South 13°27'56" East, 738.53 feet to a stone monument at an angle point in said old claim line for a point of beginning; thence North 13°27'56" West 566.26 feet; thence North 64°58'32" West, 261.38 feet; thence North 11°05'07" East, 254.98 feet; thence North 53°14'30" West, 915.48 feet; thence North 05°41'35" West, 84.01 feet; thence South 57°22'16" West 1213.21 feet to the East line of a tract of land described as Parcel Three in a Deed recorded as Document 70-105; thence South 00°05'37" East along said East line 1770.0 feet to the center line of Fox Road; thence North 88°22'02" East along said center line 1280.69 feet; thence northerly at right angles to said center line 330.0 feet; thence North 88°22'02" East, parallel with said center line, 456.0 feet; thence South 01°37'58" East 255.0 feet; thence South 43°22'02" West 42.43 feet; thence South 01°37'58" East 45.0 feet to said center line; thence North 88°22'02" East along said center line 130.0 feet; thence North 01°37'58" West 45.0 feet; thence North 46°37'58" West 42.43 feet; thence North 01°37'58" West 255.0 feet; thence North 88°22'02" East 397.63 feet to said old claim line; thence North 13°00'19" West, 501.43 feet to the point of beginning in Fox Township, Kendall County, Illinois, as shown by the plat hereon drawn which is a correct representation of said survey and subdivision.*

**Exhibit "B"**

**to the Planned Unit Development Agreement**

**The Woods of Silver Springs**

*A Subdivision in Fox Township, Kendall County, Illinois*

**16.654 acre tract to be conveyed to Illinois Department of Natural Resources  
or otherwise held as open space per paragraph 3.C of this Agreement**

***Legal Description for Will Barbier No. 5990  
Tract to be conveyed to State Park***

***That part of the Southeast Quarter of Section 35, Township 37  
North, Range 6 East of the Third Principal Meridian described as follows:  
Beginning at the Northwest corner of a subdivision known as "The Woods  
of Silver Springs, Fox Township, Kendall County, Illinois"; thence North  
57°22'16" East along the northwesterly line of Lots 10, 11, 12, 13 and 60  
of said subdivision, 1231.21 feet to an angle in the North line of said  
subdivision; thence North 05°41'35" West 350.0 feet to the southerly bank  
of the Fox River; thence westerly along said southerly bank, 1004.59 feet  
to the West line of said subdivision extended from the South; thence  
South 00°05'37" East along said extended westerly line 999.57 feet to the  
point of beginning in Fox Township, Kendall County, Illinois and containing  
16.654 acres.***