

ORDINANCE NUMBER 2022- 05

GRANTING MAJOR AMENDMENTS TO A SPECIAL USE PERMIT FOR A LANDSCAPING BUSINESS GRANTED BY ORDINANCE 2007-10 PERTAINING TO THE NUMBER OF EMPLOYEES, OUTSIDE STORAGE REQUIREMENTS, AND SITE PLAN ON PROPERTY ZONED A-1 AGRICULTURAL AT 3485 ROUTE 126 AND IDENTIFIED BY PARCEL IDENTIFICATION NUMBER 06-09-400-005 IN NA-AU-SAY TOWNSHIP

WHEREAS, Section 13:08 of the Kendall County Zoning Ordinance permits the Kendall County Board to issue special use permits, place conditions on special use permits, amend special use permits, and provides the procedure through which special use permits are granted and amended; and

WHEREAS, the property which is the subject of this Ordinance has been, at all relevant times, and remains currently located within the A-1 Agricultural Zoning District and consists of approximately 5.5 acres located at 3485 Route 126 (PIN: 06-09-400-005) in Na-Au-Say Township. The legal description for the subject property is set forth in Exhibit A attached hereto and incorporated by reference, and this property shall hereinafter be referred to as “the subject property.”; and

WHEREAS, on March 20, 2007, the Kendall Board adopted Ordinance 2007-10 which granted a special use permit for the operation of a landscaping business at the subject property; and

WHEREAS, condition 1 of Ordinance 2007-10 set the maximum number of employees reporting to the subject property at 40; and

WHEREAS, condition 2 of Ordinance 2007-10 required that the site be developed in conformance with a site plan; and

WHEREAS, conditions 3 and 8 of Ordinance 2007-10 required that no equipment, vehicles, and non-growing landscaping materials be stored outdoors; and

WHEREAS, on or about October 19, 2021, Greg Dady on Behalf of DTG Investments, LLC, hereinafter be referred to as “Petitioner”, submitted a request for a major amendment to the special use permit granted by Ordinance 2007-10 by changing the number of employees reporting to the site, amending the site plan, and removing the requirement forbidding the storage of equipment, vehicles, and non-growing landscaping outdoors at the subject property; and

WHEREAS, on or about October 7, 2014, the Kendall County Board granted a special use permit for the operation of a cleanup restoration/service business at the subject property; and

WHEREAS, following due and proper notice by publication in the Kendall County Record on November 18, 2021, the Kendall County Zoning Board of Appeals conducted a public hearing on December 13, 2021, at 7:00 p.m., in the County Boardroom, at the Kendall County Office Building located at 111 W. Fox Street in Yorkville, at which the Petitioner’s attorney presented evidence, testimony, and exhibits in support of the requested major amendment to an existing special use permit and zero members of the public testified in favor of the request and one member of the public testified in opposition; and

WHEREAS, based on the evidence, testimony, and exhibits, the Kendall County Zoning Board of Appeals has made their Findings of Fact and recommended approval of the major amendment to an existing special use permit with conditions as set forth in the Findings of Fact and Recommendation of the Kendall County Zoning

Board of Appeals, dated December 13, 2021, a true and correct copy of which is attached hereto as Exhibit B;
and

WHEREAS, the Kendall County Planning, Building and Zoning Committee of the Kendall County Board has reviewed the testimony presented at the aforementioned public hearing and has considered the Findings of Fact and Recommendation of the Kendall County Zoning Board of Appeals, and has forwarded to the Kendall County Board a recommendation of denial of the requested major amendment to an existing special use permit with conditions; and

WHEREAS, the Kendall County Board has considered the recommendation of the Planning, Building and Zoning Committee and the Findings of Fact and Recommendation of the Kendall County Zoning Board of Appeals, and has determined that said petition is in conformance with the provisions and intent of the Kendall County Zoning Ordinance; and

WHEREAS, this major amendment to an existing special use permit shall be treated as a covenant running with the land and is binding on the successors, heirs, and assigns as to the same special use conducted on the property; and

NOW, THEREFORE, BE IT ORDAINED, BY THE COUNTY BOARD OF KENDALL COUNTY, ILLINOIS, as follows:

1. The Findings of Fact and Recommendation of the Kendall County Zoning Board of Appeals attached hereto as Exhibit B is hereby accepted and the Findings of Fact set forth therein are hereby adopted as the Findings of Fact and Conclusions of this Kendall County Board.
2. The Kendall County Board hereby grants approval of Petitioner's petition for major amendments to an existing special use permit allowing the operation of a landscaping business on the subject property subject to the following conditions:
 - A. Conditions 1 (pertaining to number of employees), 2 (pertaining to the site plan), 3 (pertaining to outside storage of commercial vehicles), and 8 of Ordinance 2007-10 shall be repealed. The remaining conditions and restrictions in Ordinance 2007-10 shall remain in force and valid.
 - B. The site shall be developed substantially in accordance with the site plan attached hereto as Exhibit C. The property owner or operators of the business allowed by this special use permit may remove the frame residence, garage, wood frame machine shed, and corn crib without amending the site plan.
 - C. The owners of the business allowed by the special use permit shall maintain the parking areas shown on the site plan and in substantially the same location as depicted on the site plan attached hereto as Exhibit C. The parking area north of the building shall be gravel and the parking lot south of the building shall be asphalt. Any expansions of either parking lots shall require an amendment to the special use permit.
 - D. The building located on the northeast corner of the property inside the floodplain as shown on the site plan attached hereto as Exhibit C shall not be used as part of the business allowed by this special use permit.
 - E. The owners of the businesses allowed by this special use permit shall diligently monitor the property for leaks from equipment and vehicles parked and stored on the subject property and shall promptly clean up the site if leaks occur.

- F. Any new structures constructed or installed on the property shall not be considered for agricultural purposes and must secure applicable building permits.
- G. Equipment and vehicles related to the business allowed by the special use permit may be stored outdoors.
- H. None of the vehicles or equipment parked or stored on the subject property related to the business allowed by the special use permit shall be considered agricultural vehicles or agricultural equipment.
- I. All of the vehicles and equipment stored on the subject property related to the business allowed by the special use permit shall be maintained in good condition with no deflated tires and shall be licensed if required by law.
- J. Except for the purposes of loading and unloading, all landscape related materials shall be stored indoors or in the designated outdoor storage bins as shown on the site plan attached hereto as Exhibit C. The maximum height of the bins or "tents" shall be thirty feet (30') and shall look substantial like the structures shown in Exhibit D. The maximum storage heights inside the storage bins shall be capped at twenty-five feet (25'). No miscellaneous storage of vehicles, machinery, or equipment shall occur in the storage bins.
- K. One (1) maximum four foot by eight foot (4' X 8') freestanding sign may be located on the subject property. The sign may be illuminated.
- L. No landscape waste generated off the property can be burned on the subject property.
- M. A maximum of fifteen (15) employees of the business allowed by this special use permit, including the owners of the business allowed by this special use permit, may report to this site for work. No employees shall engage in the sale of landscaping related materials on the property.
- N. No retail customers of the business allowed by this special use permit shall be invited onto the property by anyone associated with the use allowed by this special use permit.
- O. The hours of operation of the business allowed by this special use permit shall be Monday through Saturday from 6:00 a.m. until 5:00 p.m. Business operations may occur outside the hours of operation in the event of bad weather and snow removal. The owners of the business allowed by this special use permit may reduce these hours of operation.
- P. The noise regulations are as follows:
 - Day Hours: No person shall cause or allow the emission of sound during daytime hours (7:00 A.M. to 10:00 P.M.) from any noise source to any receiving residential land which exceeds sixty-five (65) dBA when measured at any point within such receiving residential land, provided; however, that point of measurement shall be on the property line of the complainant.
 - Night Hours: No person shall cause or allow the emission of sound during nighttime hours (10:00 P.M. to 7:00 A.M.) from any noise source to any receiving residential land which exceeds fifty-five (55) dBA when measured at any point within such receiving residential land provided; however, that point of measurement shall be on the property line of the complainant.

EXEMPTION: Powered Equipment: Powered equipment, such as lawn mowers, small lawn and garden tools, riding tractors, and snow removal equipment which is necessary for the maintenance of property is exempted from the noise regulations between the hours of seven o'clock (7:00) A.M. and ten o'clock (10:00) P.M.

- Q. At least one (1) functioning fire extinguisher and one (1) first aid kit shall be on the subject property. Applicable signage stating the location of the fire extinguisher and first aid kit shall be placed on the subject property.
 - R. The owners of the business allowed by this special use permit acknowledge and agree to follow Kendall County's Right to Farm Clause.
 - S. The conditions and restrictions contained in Ordinance 2014-29 shall be separate and enforceable from the conditions and restrictions contained in Ordinance 2007-10 and this major amendment to an existing special use permit.
 - T. The property owner and operator of the business allowed by this special use permit shall follow all applicable Federal, State, and Local laws related to the operation of this type of business, including but not limited, the public health protection standards for properties in the floodplain contained in the Kendall County Stormwater Management Ordinance.
 - U. The operators of the business allowed by the special use permit shall not allow landscaping to create line of site obstructions along Route 126.
 - V. Failure to comply with one or more of the above conditions or restrictions could result in the amendment or revocation of the special use permit.
 - W. If one or more of the above conditions is declared invalid by a court of competent jurisdiction, the remaining conditions shall remain valid.
3. This major amendment to an existing special use permit shall be treated as a covenant running with the land and is binding on the successors, heirs, and assigns as to the same special use conducted on the property.
4. The Zoning Administrator and other appropriate County Officials are hereby authorized and directed to amend the Official Zoning Map of Kendall County to reflect this special use permit.

IN WITNESS OF, this ordinance has been enacted by a majority vote of the Kendall County Board and is effective this 18th day of January, 2022.

Attest:



Kendall County Clerk
Debbie Gillette



Kendall County Board Chairman
Scott R. Gryder

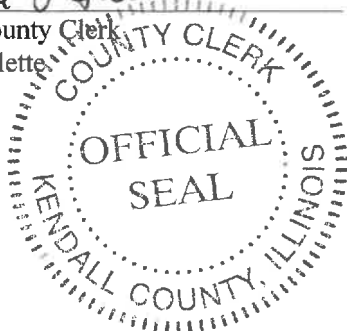


EXHIBIT A

LEGAL DESCRIPTION

THAT PART OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 9 AND THAT PART OF THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 16 ALL IN TOWNSHIP 36 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING NORTHERLY OF THE CENTER LINE OF ILLINOIS ROUTE 126 BEING DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID SOUTHEAST QUARTER OF SECTION 9; THENCE NORTH 1 DEGREE 36 MINUTES 40 SECONDS WEST ALONG THE WEST LINE OF SAID SOUTHEAST QUARTER, 260.00 FEET; THENCE NORTH 88 DEGREES 44 MINUTES 53 SECONDS EAST, 335.00 FEET; THENCE SOUTH 1 DEGREE 39 MINUTES 11 SECONDS EAST, 677.39 FEET TO THE CENTER LINE OF SAID ROUTE 126; THENCE SOUTH 80 DEGREES 28 MINUTES 31 SECONDS WEST ALONG SAID CENTER LINE, 338.17 FEET TO THE WEST LINE OF SAID NORTHEAST QUARTER; THENCE NORTH 1 DEGREE 40 MINUTES 39 SECONDS WEST, ALONG SAID WEST LINE, 466.05 FEET TO THE POINT OF BEGINNING, IN THE TOWNSHIP OF NA-AU-SAY, KENDALL COUNTY, ILLINOIS, EXCEPT THAT PART DEDICATED FOR ROAD PURPOSES PER DOCUMENT NUMBER 2001-24468, RECORDED DECEMBER 18, 2001.

(PERMANENT INDEX NUMBER 06-09-400-005-0000)

Exhibit B

The Kendall County Zoning Board of Appeals reviewed the Petition on December 13, 2021. Zero (0) members of the public testified in favor of the request and one (1) member of the public testified in opposition to the request. On the same date, the Kendall County Zoning Board of Appeals approved the following findings of fact by a vote of six (6) in favor and zero (0) in opposition with Member Vickery abstaining.

That the establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare. The operation of the special use will not be detrimental to the public health, safety, morals, comfort, or general welfare provided that the operator of the business allowed by this special use permit develops the site according to the submitted site plan, follows the agreed upon hours of operation, and follows the Kendall County Inoperable Vehicle Ordinance, Kendall County Junk and Debris Ordinance, and Kendall County Stormwater Management Ordinance, and related ordinances.

That the special use will not be substantially injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood. The Zoning classification of property within the general area of the property in question shall be considered in determining consistency with this standard. The proposed use shall make adequate provisions for appropriate buffers, landscaping, fencing, lighting, building materials, open space and other improvements necessary to insure that the proposed use does not adversely impact adjacent uses and is compatible with the surrounding area and/or the County as a whole. Provided that the business operates as proposed, no injury should occur to other property and property values should not be negatively impacted.

That adequate utilities, access roads and points of ingress and egress, drainage, and/or other necessary facilities have been or are being provided. Adequate utilities exist on the site based upon the number of proposed employees at the property. No additional buildings are planned for the site. The Petitioners are aware that parking cannot occur in the front yard setback. Route 126 is a State maintained road and should be able to handle the traffic. The Petitioners are aware that floodplain exists on the property and certain materials cannot be stored in the floodplain per the Kendall County Stormwater Management Ordinance.

That the special use shall in all other respects conform to the applicable regulations of the district in which it is located, except as such regulations may in each instance be modified by the County Board pursuant to the recommendation of the Zoning Board of Appeals. This is true because the Petitioners are not asking for any variances.

That the special use is consistent with the purpose and objectives of the Land Resource Management Plan and other adopted County or municipal plans and policies. True, the proposed use is consistent with an objective found on Page 10-11 of the Kendall County Land Resource Management Plan which calls for "a strong base of agricultural, commercial and industry that provide a broad range of job opportunities, a healthy tax base, and improved quality of services to County residents."

RECOMMENDATION

On December 13, 2021, the Kendall County Zoning Board of Appeals issued the following recommendation by a vote of six (6) in favor and one (1) in opposition.

Approval subject to the following conditions and restrictions:

1. Conditions 1 (pertaining to number of employees), 2 (pertaining to the site plan), 3 (pertaining to outside storage of commercial vehicles), and 8 of Ordinance 2007-10 shall be repealed. The remaining conditions and restrictions in Ordinance 2007-10 shall remain in force and valid.
2. The site shall be developed substantially in accordance with the submitted site plan. The property owner or operators of the business allowed by this special use permit may remove the frame

residence, garage, wood frame machine shed, and corn crib without amending the site plan.

3. The owners of the business allowed by the special use permit shall maintain the parking areas shown on the site plan and in substantially the same location as depicted on the submitted site plan. The parking area north of the building shall be gravel and the parking lot south of the building shall be asphalt. Any expansions of either parking lots shall require an amendment to the special use permit.
4. The building located on the northeast corner of the property inside the floodplain as shown on the submitted site plan shall not be used as part of the business allowed by this special use permit.
5. The owners of the businesses allowed by this special use permits shall diligently monitor the property for leaks from equipment and vehicles parked and stored on the subject property and shall promptly clean up the site if leaks occur.
6. Any new structures constructed or installed on the property shall not be considered for agricultural purposes and must secure applicable building permits.
7. Equipment and vehicles related to the business allowed by the special use permit may be stored outdoors.
8. None of the vehicles or equipment parked or stored on the subject property related to the business allowed by the special use permit shall be considered agricultural vehicles or agricultural equipment.
9. All of the vehicles and equipment stored on the subject property related to the business allowed by the special use permit shall be maintained in good condition with no deflated tires and shall be licensed if required by law.
10. Except for the purposes of loading and unloading, all landscape related materials shall be stored indoors or in the designated outdoor storage bins as shown on the submitted site plan. The maximum height of the bins or "tents" shall be thirty feet (30') and shall look substantial like the structures shown in submitted picture. The maximum storage heights inside the storage bins shall be capped at twenty-five feet (25'). No miscellaneous storage of vehicles, machinery, or equipment shall occur in the storage bins.
11. One (1) maximum four foot by eight foot (4' X 8') freestanding sign may be located on the subject property. The sign may be illuminated.
12. No landscape waste generated off the property can be burned on the subject property.
13. A maximum of fifteen (15) employees of the business allowed by this special use permit, including the owners of the business allowed by this special use permit, may report to this site for work. No employees shall engage in the sale of landscaping related materials on the property.
14. No retail customers of the business allowed by this special use permit shall be invited onto the property by anyone associated with the use allowed by this special use permit.
15. The hours of operation of the business allowed by this special use permit shall be Monday through Saturday from 6:00 a.m. until 5:00 p.m. Business operations may occur outside the hours of operation in the event of bad weather and snow removal. The owners of the business allowed by this special use permit may reduce these hours of operation.
16. The noise regulations are as follows:
Day Hours: No person shall cause or allow the emission of sound during daytime hours (7:00 A.M. to 10:00 P.M.) from any noise source to any receiving residential land which exceeds sixty-five (65)

dBA when measured at any point within such receiving residential land, provided; however, that point of measurement shall be on the property line of the complainant.

Night Hours: No person shall cause or allow the emission of sound during nighttime hours (10:00 P.M. to 7:00 A.M.) from any noise source to any receiving residential land which exceeds fifty-five (55) dBA when measured at any point within such receiving residential land provided; however, that point of measurement shall be on the property line of the complainant.

EXEMPTION: Powered Equipment: Powered equipment, such as lawn mowers, small lawn and garden tools, riding tractors, and snow removal equipment which is necessary for the maintenance of property is exempted from the noise regulations between the hours of seven o'clock (7:00) A.M. and ten o'clock (10:00) P.M.

17. At least one (1) functioning fire extinguisher and one (1) first aid kit shall be on the subject property. Applicable signage stating the location of the fire extinguisher and first aid kit shall be placed on the subject property.
18. The owners of the business allowed by this special use permit acknowledge and agree to follow Kendall County's Right to Farm Clause.
19. The conditions and restrictions contained in Ordinance 2014-29 shall be separate and enforceable from the conditions and restrictions contained in Ordinance 2007-10 and this major amendment to an existing special use permit.
20. The property owner and operator of the business allowed by this special use permit shall follow all applicable Federal, State, and Local laws related to the operation of this type of business, including but not limited, the public health protection standards for properties in the floodplain contained in the Kendall County Stormwater Management Ordinance.
21. Failure to comply with one or more of the above conditions or restrictions could result in the amendment or revocation of the special use permit.
22. If one or more of the above conditions is declared invalid by a court of competent jurisdiction, the remaining conditions shall remain valid.
23. This special use permit shall be treated as a covenant running with the land and is binding on the successors, heirs, and assigns as to the same special use conducted on the property.

Exhibit D

