

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT  
KENDALL COUNTY, ILLINOIS

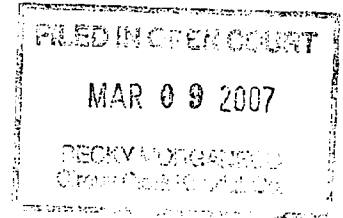
KYLE A. PRICE and MARTHA R. PRICE, co-trustees of  
the KYLE A. PRICE, Living Trust dated September 19, 1998,  
BRENT and JEAN WADSWORTH, STEVE P. BAZAN and  
MARION BAZAN, DAVID J. KISSER and JUNE M. KISSER,  
LOWELL P. IVERSON, GREGORY OLSON and BERNADINE  
OLSON, JOSEPH G. GILBERT and RITA L. GILBERT,  
JUDITH M. VANT, HAROLD A. SCHESSLER, MARY ANN  
KAWCZYNSKI, CLAUDIA A. FARIAS, ERIC DANFORTH  
and NANCY DANFORTH, ARTHUR D. CRAWFORD,  
DONALD and JENNIE MULVEY, DUANE L. ORTON and  
AUDREY K. ORTON,

Plaintiffs,

vs.

UNITED CITY OF YORKVILLE, an Illinois Municipal  
Corporation, CANNONBALL, LLC, HARLEM-IRVING, an  
Illinois Corporation, COOPER HOME FURNISHINGS, an  
Illinois Corporation,

Defendants.



No. 06 CH 0357

**SETTLEMENT AGREEMENT**

The Court being advised that the Plaintiffs and the Defendants have agreed to a settlement of this action, the terms of which are incorporated below:

A. The Plaintiffs, and each and every one of them, are the individuals named in the Complaint and particularly described in paragraphs 1 through 14 of the Complaint for Declaratory Judgment and Injunction.

B. The Defendant, United City of Yorkville, exercises jurisdiction and control over the property subject to this lawsuit.

C. The Defendant, Cooper Home Furnishings, Inc. was formerly the owner of the Subject Property and on October 25, 2006, executed a quit claim deed to Cooper Land Company,

Inc., an Illinois corporation, ("Cooper Defendants") which is presently the owner of the Subject Property.

D. The Defendant, Cannonball, LLC has an interest in the Subject Property by virtue of making the application for rezoning of the Subject Property and has a contract to purchase the property from the Cooper Defendants.

E. The Court finds that it has jurisdiction of all of the parties and the subject matter herein.

F. The Plaintiffs and the Defendants agree that it is in their best interests that this matter be fully and speedily resolved without any further resort to the Court for relief.

WHEREFORE, the parties adopt the following terms and conditions as their settlement agreement and acknowledge that the same are supported by sufficient consideration:

1. The parties agree that the validity of the Planned Development Zoning pursuant to Yorkville Ordinance 2006-95, approved and adopted September 26, 2006, and the Approved Plan shall be proven up in Court with the attorneys for the Plaintiffs and the attorneys for the Defendants present and participating in said prove up. Said prove up shall be scheduled for March 12, 2007 at 9:00 a.m.

2. Provided that the Trial Court enters a final judgment order finding the Planned Development Ordinance adopted by the United City of Yorkville valid and finding the Approved Plan reasonable and consistent with the applicable legal principals found in LaSalle National Bank v. The County of Cook, 12 Ill. 2d 40 (1957) and otherwise consistent with the Planned Development requirements contained in the United City of Yorkville's Zoning Ordinance and Subdivision Code, the remaining terms and conditions of this Settlement Agreement shall be in full force and effect.

3. Private Defendants and the City agree that the "Civic Use" identified on the site plan prepared by PFDA attached as Exhibit A shall not be used for a police station, provided, however, that Plaintiffs agree that it will not object to any future application to the City for a change in use of the Civic Use parcel from civic use to multi-family housing with single family housing along Cannonball Trail, with the single-family units along Cannonball Trail facing into the development parcel with each unit's driveway in the development parcel. The Private Defendants shall use reasonable commercial efforts to consummate a land exchange with the City involving the Civic Use parcel. The Private Defendants, pursuant to the City's approval, agree to reduce the cross-section on Blackberry Shore Lane from four-lanes to three-lanes. The Private Defendants agree to design and construct entry monuments on both sides of the entrance at Hickory Lane, provided, however, Plaintiffs, on or before May 1, 2008, shall secure for the Private Defendants the right to install such entry monuments, including but not limited to any easements or licenses necessary to enter onto private property in order to complete such installation. The design and cost of construction shall be mutually agreed to between the Private Defendants and the Plaintiffs living in the subdivision served by Hickory Lane. The Private Defendants agree that monument signs to be installed along Cannonball Trail as set forth on Exhibit A will be Type 3 signs as set forth on the attached Exhibit B and will not exceed four feet in height. The Private Defendants further agree to raise the height of the berms cross-hatched on the attached Exhibit C, designated "Berm Control Area" and adjacent to those outlots designated 11, 12, 13, 14 and 15, provided that (i) such increase in the height of the berms is consistent with sound and accepted engineering practices, (ii) the increase in the height of the berms will not require retaining walls or other means to stabilize immediately adjacent soils, (iii) the ratio of the width of the berm to its height in

the Berm Control Area will not exceed three feet in width to one foot in height in any direction, and (iv) the berm in the Berm Control Area will maintain the same footprint <sup>With Undulations</sup> set forth in the plans prepared by SEC Planning Consultants last dated January 27, 2007 and (v) the berms shall otherwise be in conformity with those plans and applicable law. The plantings called for on the berm shall be those as described in said plan.

4. Upon the later of (i) ten (10) business days after the time for filing an appeal has expired, and provided that no appeal is filed for within said time or (ii) ten business days after the Private Defendant Cannonball LLC has acquired the land that is the subject of this controversy from Defendant Cooper Home Furnishings, Inc. and Cooper Land Company, Inc., then the Private Defendant Cannonball LLC will pay to the Plaintiffs jointly, the sum of \$325,000.00 and their attorneys, Rathbun, Cservenyak & Kozol, LLC.

5. As a condition of this settlement agreement and the Plaintiff's obligations therein, Private Defendant/Counter-Plaintiff Cooper Home Furnishings, Inc. and Cooper Land Company, Inc., shall dismiss their counterclaim(s) against the Plaintiffs with prejudice, and each of them, upon the execution of this Settlement Agreement. As a further condition, each Plaintiff shall sign the Joinder attached to this Settlement Agreement. Such Joinder may be executed in counterparts and by facsimile transmission by the Plaintiffs, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6. All of the parties agree not to appeal or to participate in any appeal from the final judgment order entered herein.

7. In the event that an appeal is taken from the final judgment order, the Plaintiffs agree to put themselves on record in support of the Private Defendants' right to

construct the development pursuant to the Planned Development Ordinance and the Approved Plan with the modifications contained herein.

8. In the event of an appeal by the Plaintiffs, the terms set forth in paragraph 3 and paragraph 4 above will be of no force or effect.

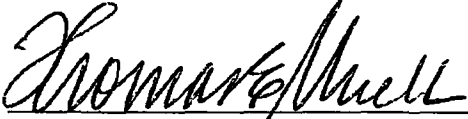
9. The attorneys for the Plaintiffs have represented to the Court that they are authorized by all of the named Plaintiffs to enter into this Settlement Agreement; said attorneys have explained the terms and conditions of this Settlement Agreement to all of the named Plaintiffs; and that said named Plaintiffs have affirmed to said attorneys that they understand the contents herein and agree to the terms and conditions contained herein.

10. The Plaintiffs and the Defendants agree that none of the parties to this proceeding shall recover of and from any other party any costs which such party has sustained in connection with this cause. All such costs having been paid and shall remain with and be taxed to the party which has heretofore incurred such costs. The parties further agree that this Settlement Agreement shall act as a mutual release by all parties of all claims brought in this matter or that could have been brought.

11. The Plaintiffs and the Defendants agree that this Court may retain jurisdiction of the above-entitled action for the purpose of construing, implementing and enforcing the provisions of this Settlement Agreement.

DATED: 3/9, 2007

ENTER:

  
\_\_\_\_\_  
Judge Thomas Mueller

AGREED:

Kyle A. Price and Martha Price, co-trustees of the  
Kyle A. Price Living Trust dated September 19, 1998,  
Brent Wadsworth, Jean Wadsworth, Steve P. Bazan,  
Marion Bazan, David J. Kisser, June M. Kisser,  
Lowell P. Iverson, Gregory Olson, Bernadine Olson,  
Joseph G. Gilbert, Rita L. Gilbert, Judith M. Vant,  
Harold A. Schessler, Mary Ann Kawczynski,  
Claudia A. Farias, Eric Danforth, Nancy Danforth,  
Arthur D. Crawford, Donald Mulvey, Jennie Mulvey,  
Duane L. Orton and Audrey K. Orton,

By: 

One of Their Attorneys  
Carl R. Buck  
Rathbun, Cservenyak & Kozol, LLC  
618 W. Main Street  
Plainfield, IL 60544  
(815) 577-9763  
Fax: (815) 577-9769

AGREED:

COOPER HOME FURNISHINGS, INC.  
COOPER LAND COMPANY, INC.

By: 

One of Its Attorneys  
Daniel J. Kramer  
Kelly A. Kramer  
Law Offices of Daniel J. Kramer  
1107A S. Bridge Street  
Yorkville, Illinois 60560  
(630) 553-9500  
Fax: (630) 553-5764

AGREED:

UNITED CITY OF YORKVILLE

By: 

One of Its Attorneys  
Michael D. Bersani  
Christopher J. Beck  
Hervas, Condon & Bersani  
333 Pierce Road, Suite 195  
Itasca, IL 60143  
(630) 773-4774  
Fax: (630) 773-4851

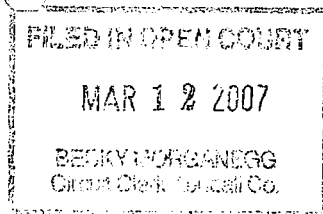
AGREED:

CANNONBALL LLC  
THE HARLEM IRVING COMPANIES, INC.

By: 

One of Their Attorneys  
Dallas C. Ingemunson  
Gregg Ingemunson  
Law Offices of Dallas C. Ingemunson PC  
226 S. Bridge St., PO Box 578  
Yorkville, Illinois 60560  
(630) 553-5622  
Fax: (630) 553-7958

Thomas R. Burney  
Glenn C. Sechen  
Deborah L. Mills  
Schain, Burney, Ross & Citron, Ltd.  
222 N. LaSalle Street, Suite 1910  
Chicago, Illinois 60601  
(312) 332-0200  
Fax: (312) 332-4514



222 N. LaSalle Street, Suite 1910  
Chicago, Illinois 60601  
(312) 332-0200  
Fax: (312) 332-4514

JOINDER

The undersigned persons below hereby join in the execution of this Settlement Agreement for the purposes of expressing his or her acknowledgement and approval of the terms and conditions of this Settlement Agreement.

KYLE A. PRICE, Living Trust dated September 19, 1998

By: Kyle A. Price Trustee By:  
Kyle A. Price

Martha R. Price, Trustee  
Martha R. Price

Kyle A. Price  
Kyle A. Price, individually

Martha R. Price  
Martha R. Price, individually

\_\_\_\_\_  
Brent Wadsworth

\_\_\_\_\_  
Jean Wadsworth

Steve P. Bazan  
Steve P. Bazan

Marion Bazan  
Marion Bazan

David J. Kissner  
David J. Kissner

June M. Kissner  
June M. Kissner

\_\_\_\_\_  
Lowell P. Iverson

Gregory Olson  
Gregory Olson

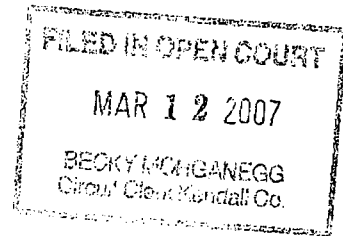
Bernadine Olson  
Bernadine Olson

Joseph G. Gilbert

Rita L. Gilbert

Judith M. Vant  
Judith M. Vant

Harold A. Schessler  
Harold A. Schessler



Mary Ann Kawczynski  
Mary Ann Kawczynski

Claudia A. Farias  
Claudia A. Farias

Eric Danforth  
Eric Danforth

Nancy Danforth  
Nancy Danforth

Arthur D. Crawford  
Arthur D. Crawford

Donald Mulvey  
Donald Mulvey

Jennie Mulvey  
Jennie Mulvey

Duane L. Orton  
Duane L. Orton

Audrey K. Orton  
Audrey K. Orton



JOINDER

The undersigned persons below hereby join in the execution of this Settlement Agreement for the purposes of expressing his or her acknowledgement and approval of the terms and conditions of this Settlement Agreement.

KYLE A. PRICE, Living Trust dated September 19, 1998

By:

Kyle A. Price

By:

Martha R. Price

Kyle A. Price, individually

Martha R. Price, individually

Brent Wadsworth

Jean Wadsworth

Steve P. Bazan

Marion Bazan

David J. Kisser

June M. Kisser

*Lowell P. Iverson*  
Lowell P. Iverson

Gregory Olson

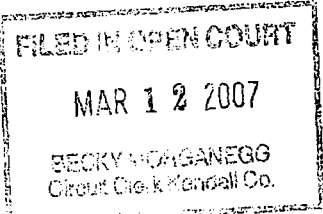
Bernadine Olson

Joseph G. Gilbert

Rita L. Gilbert

Judith M. Vant

Harold A. Schessler



**JOINDER**

The undersigned persons below hereby join in the execution of this Settlement Agreement for the purposes of expressing his or her acknowledgement and approval of the terms and conditions of this Settlement Agreement.

KYLE A. PRICE, Living Trust dated September 19, 1998

By:

Kyle A. Price

By:

Martha R. Price

FILED IN OPEN COURT

MAR 12 2007

BECKY MORGANEGG  
Circuit Clerk Kendall Co.

Kyle A. Price, individually

Martha R. Price, individually

Brent Wadsworth

Jean Wadsworth

Steve P. Bazan

Marlon Bazan

David J. Kisser

June M. Kisser

Lowell P. Iverson

Gregory Olson

Bernadine Olson

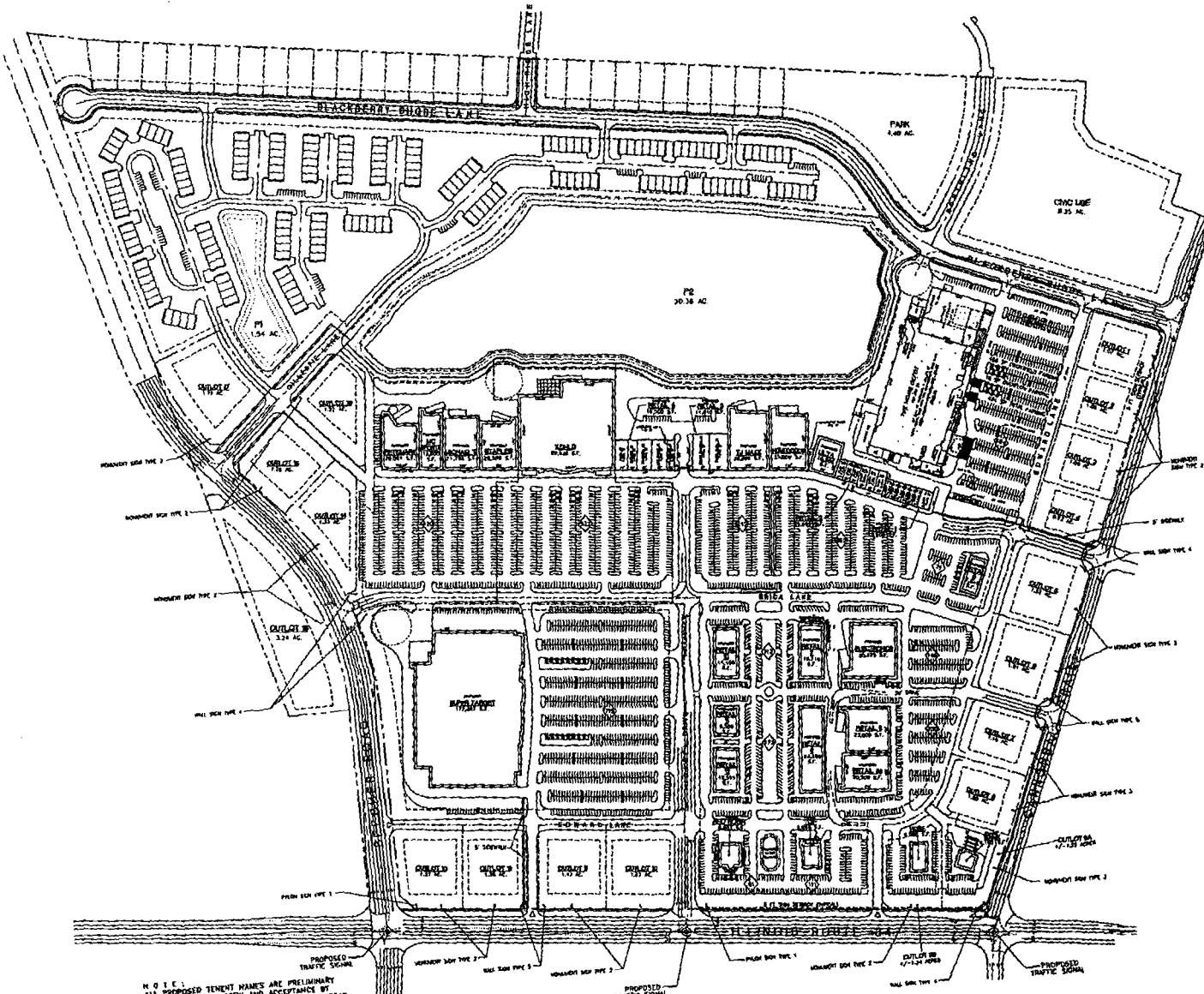
Joseph G. Gilbert

Rita L. Gilbert

Judith M. Vant

Harold A. Schessler

## EXHIBIT A



**GENERAL PROJECT DATA:**  
TOTAL SITE AREA.....47- 194.47 ACRES  
RESIDENTIAL SITE AREA.....47- 33.35 ACRES  
COMMERCIAL SITE AREA.....47- 108.34 ACRES  
DETENTION AREA.....47- 21.04 ACRES  
POND #1 AND POND #2.....47- 4.35 ACRES  
PARK AREA.....47- 8.35 ACRES  
CIVIC USE AREA.....47- 16.34 ACRES  
DEDICATED B.O.W. AREA.....47- 16.34 ACRES

**RESIDENTIAL SITE DATA:**  
TOTAL SITE AREA.....47- 33.35 ACRES  
TOTAL DWELLING.....702 UNITS  
AVERAGE DENSITY.....2.10/AC.

**SINGLE FAMILY PARCEL 1:**  
PARCEL AREA.....47- 0.89 ACRES  
TOTAL DWELLING.....28 UNITS  
DENSITY.....3.14/AC.

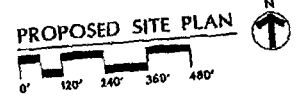
**MULTI-FAMILY PARCEL 2:**  
PARCEL AREA.....47- 24.66 ACRES  
TOTAL DWELLING.....984 UNITS  
DENSITY.....4.00/AC.

**COMMERCIAL SITE DATA:**  
TOTAL SITE AREA.....47- 108.34 ACRES  
TOTAL OUTLOT AREA.....47- 26.76 ACRES  
TOTAL G.L.A.....738,893 S.F.  
EXCLUDING OUTLOT PARKING REQD.....3,716 CARS  
BASED ON 1 CAR PER 100 S.F. OF FLOOR AREA FOR RETAIL  
& 3 CARS PER 100 S.F. OF FLOOR AREA FOR RESTAURANT  
TOTAL PARKING PROVIDED.....3,850 CARS

**HOME DEPOT PARCEL:**  
PARCEL AREA.....47- 10.47 ACRES  
TOTAL G.L.A.....102,867 S.F.  
RETAIL/OUTDOOR GARDEN CENTER  
TOTAL PARKING REQD.....510 CARS  
BASED ON 1 CAR PER 100 S.F. OF FLOOR AREA FOR RETAIL  
TOTAL PARKING PROVIDED.....486 CARS

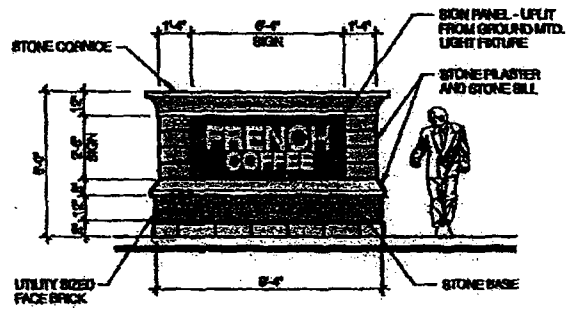
**KOHL'S PARCEL:**  
PARCEL AREA.....47- 8.53 ACRES  
TOTAL G.L.A.....89,738 S.F.  
TOTAL PARKING REQD.....450 CARS  
BASED ON 1 CAR PER 100 S.F. OF FLOOR AREA FOR RETAIL  
TOTAL PARKING PROVIDED.....532 CARS

**SUPER TARGET PARCEL:**  
PARCEL AREA.....47- 0.26 ACRES  
TOTAL G.L.A.....27,367 S.F.  
TOTAL PARKING REQD.....847 CARS  
BASED ON 1 CAR PER 100 S.F. OF FLOOR AREA FOR RETAIL  
TOTAL PARKING PROVIDED.....710 CARS



**NOTES:**  
ALL PROPOSED TENANT NAMES ARE PRELIMINARY  
AND SUBJECT TO REVIEW AND ACCEPTANCE BY  
THAT TENANT OR ITS AGENT. ALL BUILDING AREAS  
AND DIMENSIONS ARE APPROXIMATE AND SHOULD  
BE REVIEWED BY THE ARCHITECT IMMEDIATELY IF  
DISCREPANCIES ARE FOUND OR CHANGES TO THE  
"FOOT PRINT" ARE MADE OR TENANTS ARE  
SUBSTITUTED.

EXHIBIT B



MONUMENT SIGN - TYPE 3  
(OUTLOT SIGN)

## EXHIBIT C



IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT  
KENDALL COUNTY, ILLINOIS

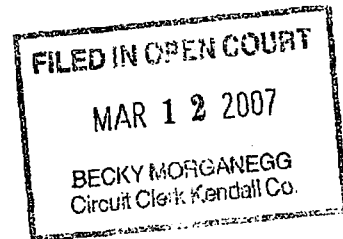
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MARION BAZAN, DAVID J. KISSER and JUNE M. KISSER,  
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JUDITH M. VANT, HAROLD A. SCHESSLER, MARY ANN  
KAWCZYNSKI, CLAUDIA A. FARIAS, ERIC DANFORTH  
and NANCY DANFORTH, ARTHUR D. CRAWFORD,  
DONALD and JENNIE MULVEY, DUANE L. ORTON and  
AUDREY K. ORTON,

Plaintiffs,

vs.

UNITED CITY OF YORKVILLE, an Illinois Municipal  
Corporation, CANNONBALL, LLC, HARLEM-IRVING, an  
Illinois Corporation, COOPER HOME FURNISHINGS, an  
Illinois Corporation,

Defendants.



No. 06 CH 0357

FINAL JUDGMENT ORDER

This cause coming on to be heard on the prove-up by the Defendants of the validity of the Planned Development Zoning adopted by the United City of Yorkville and the reasonableness of the mixed use commercial and residential development approved pursuant to that Zoning Ordinance and the Court being advised that the Plaintiffs and Defendants have agreed to such a prove-up and the Court being otherwise fully advised of the premises:

**THE COURT FINDS AS FOLLOWS:**

A. The Plaintiffs, and each and every one of them, are the individuals named in the Complaint and particularly described in paragraphs 1 through 6 and 8 through 14 of the Complaint for Declaratory Judgment and Injunction.



B. The Defendant, United City of Yorkville ("City"), exercises jurisdiction and control over the property subject to this lawsuit.

C. The Defendant, Cooper Home Furnishings, Inc. was formerly the owner of the Subject Property and on October 25, 2006, executed a quit claim deed to Cooper Land Company, Inc., an Illinois corporation, ("Cooper Defendants") which is presently the owner of the Subject Property.

D. The Defendant, Cannonball, LLC ("Private Defendants") has an interest in the Subject Property by virtue of making the application for rezoning of the Subject Property and has a contract to purchase the property from the Cooper Defendants.

E. The Subject Property consists of 194± acres and is located at the northeast corner of Beecher Road and US 34 in Yorkville, Kendall County, Illinois.

F. On September 26, 2006, the City adopted Ordinance No. 2006-95, An Ordinance Rezoning Certain Property in Furtherance of a Development Agreement ("Planned Unit Development Zoning").

G. The Planned Unit Development Zoning *inter alia* approved a mixed-use commercial and residential development generally consistent with the site plan attached as Exhibit A, hereto ("Approved Development").

H. On or about November 9, 2006, the Plaintiffs filed their Complaint for Declaratory Judgment and Injunction alleging *inter alia* that: their procedural due process rights were violated; the Planned Unit Development Zoning and the Approved Development are arbitrary and capricious; they diminish the property value of Plaintiffs' land; they are inconsistent with the Comprehensive Plan and Future Land Use Map adopted by the City; they constitute spot zoning; they constitute contract zoning; they bear no real or reasonable relation to the public health, safety, morals, comfort or general

welfare; they contravene and violate the various provisions of the Illinois Constitution; and they are otherwise unreasonable.

I. The Defendants and each and every one of them answered the Complaint and denied the material allegations set forth in Paragraph H above.

J. This Court set a trial on this cause for the week of March 12, 2007.

K. The Court is advised that the Plaintiffs and all of the Defendants have entered into a Settlement Agreement which fully and finally resolves the issues raised in the Complaint and that as part of the Settlement Agreement, the Plaintiffs have agreed that Defendants may put on proofs to establish the validity of the Planned Unit Development Zoning, the reasonableness of the proposed Approved Development, and the invalidity of the remaining claims in Plaintiffs' Complaint. *and is fully incorporated into this Final Judgment order*

NOW THEREFORE, UPON HEARING EXPERT TESTIMONY FROM TWO LAND PLANNERS AND A REAL ESTATE APPRAISER, THE COURT FINDS AND CONCLUDES AS FOLLOWS:

1. The Court has jurisdiction of both the subject matter and of the parties to this action and has jurisdiction and authority to enter into this Order.

2. The rezoning of the Subject Property from A-Agriculture District to Planned Unit Development is consistent with sound planning and zoning principals and practices.

3. The Planned Unit Development Zoning of the Subject Property and the Approved Development are consistent with the factors this Court is to consider in determining the validity of such a zoning ordinance and the reasonableness of such a use. Those factors are found *inter alia* in the case of LaSalle National Bank v. The County of Cook, 12 Ill.2d 40 (1957). The Court based on the evidence presented makes the following findings:

- A. The Planned Unit Development Zoning and the Approved Development are consistent and compatible with the existing uses and zoning of nearby property.
- B. The Planned Unit Development Zoning and the Approved Development shall not have any adverse affect upon adjacent land uses and will not adversely affect the market value of any of the surrounding property.
- C. The Planned Unit Development Zoning and the Approved Development promote the general health, safety, morals and welfare of the community and, in fact, provide substantial benefits and protections to the community.
- D. The Subject Property is highly suitable for the Planned Unit Development Zoning and the Approved Development.
- E. The Planned Unit Development Zoning and the Approved Development satisfy the standards pertaining to the length of time the property has been vacant as zoned considered in the context of land development in the vicinity of the Subject Property.
- F. There is a community need for the Planned Unit Development Zoning and the Approved Development.
- G. The Planned Unit Development Zoning and the Approved Development are generally consistent with the Comprehensive Plan and are the product of reasoned and purposeful decision making.
- H. The Planned Unit Development Zoning and the Approved Development are consistent with the relevant standards contained in the United City of Yorkville Zoning Ordinance and Subdivision Ordinance for a planned development.
- I. The Planned Unit Development Zoning and the Approved Development represent a reasonable use and a reasonable development plan for the Subject Property.

J. The Planned Unit Development Zoning and the Approved Development do not constitute spot zoning.

K. The Planned Unit Development Zoning and the Approved Development do not constitute contract zoning.

L. The procedures followed by the City, and the public hearings and meetings held by the City in connection with the adoption of the Planned Unit Development Zoning and the Approved Development satisfy procedural due process requirements and none of the Plaintiffs' procedural rights have been violated by virtue of the adoption of the Planned Unit Development Zoning.

**NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

1. The Planned Unit Development Zoning is a valid exercise of the police power, is constitutional and is otherwise valid.

2. The Planned Unit Development Zoning bears a real and substantial relationship to the public health, safety and welfare.

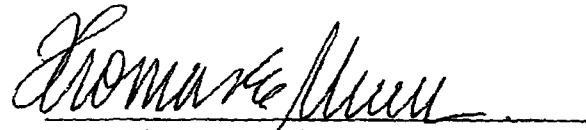
3. The Approved Development provides for the reasonable use and development of the Subject Property.

4. Neither the Plaintiffs nor the Defendants to this proceeding shall recover of and from any other party any costs which such party has sustained in connection with this cause. All such costs having been paid and shall remain with and be taxed to the party which has heretofore incurred such costs.

5. This Court shall retain jurisdiction of this cause for the purpose of construing, implementing and enforcing the provisions of this Final Judgment Order.

DATED: March 12, 2007

ENTER:

  
\_\_\_\_\_  
Judge Thomas Mueller

TRB/Cannonball-Yorkville/Final-Judgment-Order