

COUNCIL WORKSHOP ITEM

ITEM: Continuation of the Council's public hearing regarding the **annexation agreement** concerning property located on the west side of Fairview Avenue approximately 217 feet south of 63rd Street, Downers Grove, IL (PIN 09-20-209-007); Ronald A. Sievers, Owner; James F. Russ, Jr., Attorney/Petitioner. And also, the related petition for rezoning upon annexation, ZBA Case File **MC-13-01**, A preannexation petition seeking rezoning from County R-4, Single Family Residential to Village B-2, General Retail Business District upon annexation.

DATE: April 15, 2002

PREPARED BY: Kenneth Rathje, Director of Planning Services

PURPOSE: To enter into an annexation agreement and to obtain rezoning upon annexation from County R-4, Single Family Residential to Village B-2, General Retail Business District.

DISCUSSION:

At its December 5, 2001 meeting, the Zoning Board of Appeals recommended by a vote of 3:2 that the Village Council approve the requested rezoning petition upon annexation. The majority of the Board made this recommendation as they believed the proposed rezoning subject to the limiting terms of the proposed annexation agreement provided for a reasonable transition between the commercial areas to the North and East and the adjacent areas to the South and West and is consistent with the zoning of the surrounding area and with the provisions of the Village's Future Land Use Plan.

The Zoning Board of Appeal's recommendation regarding the proposed rezoning was workshopped by the Council on January 22, 2002. The related public hearing regarding the annexation agreement was conducted by the Village Council on February 5, 2002, and was continued in order to allow the petitioner to meet with the surrounding property owners.

Per the suggestion of the Village Council, the petitioner met with the neighbors on March 16, 2002 to discuss this issue. Both the petitioner and the neighbors have advised Staff that they will each be presenting their positions at the Council's April 23, 2002 workshop meeting.

ATTACHMENTS:

1. Letter to Mayor and Council from Zoning Board of Appeals Chairman Dated January 16, 2002
2. Draft Minutes of the Zoning Board of Appeals Public Hearing on December 5, 2001
3. Staff Findings regarding Case MC-13-01, with attachments
4. Council Workshop Minutes regarding the proposed rezoning upon annexation, dated January 22, 2002
5. Minutes of the Council public hearing regarding the annexation agreement, dated February 5, 2002.
6. Draft Resolution Authorizing Execution of an Annexation Agreement
7. Draft Annexation Ordinance
8. Draft Rezoning Ordinance

RECOMMENDATION:

To place the annexation agreement and the rezoning ordinance on a future Active Agenda to consider rezoning the subject property from County R-4, Single Family Residential to Village B-2, General Retail Business upon its annexation.



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January 16, 2002

Mayor Brian Krajewski and Village Council
Village of Downers Grove
801 Burlington Avenue
Downers Grove, IL 60515

RE: MC-13-01 A preannexation petition seeking annexation and rezoning from County R-4, Single Family Residential to Village B-2, General Retail Business District. The property is located on the West side of Fairview Avenue approximately 217 feet South of 63rd Street, Downers Grove, Illinois (PIN 09-20-209-007); Ronald A. Sievers, Owner; James F. Russ, Jr., Attorney/Petitioner

Dear Mayor Krajewski and Village Council:

At its December 5, 2001 meeting, the Zoning Board of Appeals made the following unanimous recommendation in case MC-13-01:

Mr. Domijan moved that in case MC-13-01 the Board recommend to the Village Council to approve the petition for rezoning to B-2 upon annexation. Mr. Gray seconded the Motion.

AYES: Mr. Domijan, Mr. Gray, Chairman White

NAYS: Mr. Benes, Mr. Lukas

The Motion to recommend approval passed 3:2.

The Board made this Motion as they believed the request for rezoning to Village B-2, upon annexation, would serve as the best buffer between the commercial and residential zoning based upon the stipulations of the proposed preannexation agreement.

Sincerely,

William White

William White,
Chairman

WW/tmh

1
2 **Petitioner's Presentation:**
3

4 Mr. James Russ, attorney in Downers Grove with offices at 4915 Main Street,
5 stated he was representing the petitioner in this case. The petitioner is
6 requesting annexation to the Village Downers Grove and is before the Board
7 requesting rezoning upon annexation. The property would be automatically
8 annexed at R-1 zoning, and the petitioner is requesting that it be zoned as B-2
9 instead. He described the property size, noting it was surrounded by Village B-
10 2 zoning to the north, Village R-3 zoning to the west, Westmont B-2 zoning to
11 the east, and unincorporated County R-4 zoning to the south.
12

13 Mr. Russ said the petitioner proposes to build a single-story brick building to
14 be used for professional office use, not retail use. Mr. Russ advised that Mr.
15 Ronald Sievers, owner and developer of the property, has been in contact with
16 the surrounding neighbors. Neighbors to the immediate west expressed some
17 concerns as to what was to be developed, and in particular the location of the
18 parking lot and the setbacks of the building. In an effort to meet the neighbors'
19 concerns, Mr. Sievers has developed a preannexation agreement limiting what
20 can be developed on the site. He has provided a site plan as a base for the
21 design of what would be built on the property. Mr. Russ said that the
22 petitioner has agreed to a 30 foot setback on the west side of the site, rather
23 than 20 feet, and a 10 foot setback on the south side of the property rather
24 than the required 5 feet. A 5 foot setback line would be on the north side
25 adjacent to the commercial, although none is required under the Zoning
26 Ordinance.
27

28 Mr. Russ said that Mr. Sievers has developed this same type of building on
29 Belmont Avenue, north of Maple Avenue, and along Plainfield Road in Darien.
30 Both of those buildings are surrounded by residential property. Mr. Russ said
31 that although the Future Land Use Plan shows the property as residential at
32 0-6 dwelling units per acre, the petitioner believes the one-story building is less
33 intense than what could otherwise be developed under B-2 zoning. He said the
34 proposed use serves as a good transition between the adjacent business and
35 residential properties. He said the design has taken into account several of the
36 concerns expressed by neighbors to the west. The use, according to the
37 proposed annexation agreement, will be limited to office space and not retail
38 space.
39

40 Mr. Russ noted that Mr. Sievers has done a lot of work in the Village and has a
41 reputation for working closely with the neighbors. He has had discussions
42 concerning potential buffering from the neighbors as well, and will comply with
43 all of the building and zoning regulations required by the Village.

1 Mr. Benes said that the site shows a 14.57 foot setback, but noted that the
2 building could go to 5 feet under the Ordinance. Mr. Russ said the building
3 could go to zero setback on the north and 5 feet on the south; however, the
4 petitioner is proposing 14.57 feet instead. Mr. Benes asked whether the
5 preannexation agreement would limit it to 14.57 feet. Mr. Russ said the
6 agreement limits it to the 5 foot and 10 foot setbacks. Under the conditions of
7 the proposed annexation agreement, the side yards could change slightly, but
8 could never go beyond those proposed minimum setbacks.

9
10 Mr. Benes said that the plan calls for a single-story general office building. He
11 said the agreement does not state anywhere that the building would be a
12 maximum of one-story. Mr. Russ said if it is not in the agreement, it would,
13 however, be acceptable to Mr. Sievers to put that in the agreement. Mr. Benes
14 asked what would happen if the agreement was accepted, and the property was
15 sold to another developer. Mr. Russ said the agreement is binding for a 20-
16 year time frame.

17
18 Mr. Gray asked about the curb cut for the parking lot adjacent to the animal
19 hospital. Mr. Russ said the animal hospital is on the east side of Fairview. Mr.
20 Gray said he thought they would have to extend the left turning lane to provide
21 access and asked whether that would present a problem. Mr. Russ said he
22 believes there was a left-turn lane already in existence to accommodate this
23 property.

24
25 Mr. Lukas asked if they really needed the approval of the Zoning Board of
26 appeals for this project, and Mr. Russ said they needed the recommendation of
27 the Board for the proposed B-2 zoning designation, but not for the project
28 design. The petitioner has agreed by the preannexation agreement to commit
29 to the developmental design submitted. Mr. Lukas asked whether they could
30 go to the County for this, and Mr. Russ said they could if it was not approved
31 by the Village.

32
33 Mr. Gray said there would be an advantage if the Village could keep control of
34 the property rather than having it remain under County jurisdiction.

35
36 Mr. Domijan questioned stormwater runoff for the property. Mr. Russ said that
37 would be determined by the Village engineering staff. If there is a necessity for
38 stormwater detention on this property, Mr. Sievers has indicated it would be
39 built into the parking area.

40
41 Mr. Domijan referred to the driveway question from Mr. Gray, stating that as a
42 point of information there might be a blind spot for the driveway due to the

1 slight rise in the roadway. Mr. Russ said if that is correct, adjustments would
2 be worked out as determined by the Village's Code Compliance Department.

3
4 Chairman White asked for verification that if the Board recommended the
5 requested rezoning, the petitioner is aware that he would have to comply with
6 all of the zoning requirements that are not the purview of the Zoning Board of
7 Appeals. Mr. Russ said that was correct.

8
9 There being no further discussion at this time, Chairman White called upon
10 staff to make its presentation.

11
12 **Staff's Presentation:**

13
14 Mr. Rathje stated that the petitioner has filed a pre-annexation rezoning
15 petition for a 0.9331 acre parcel of land located on the West side of Fairview
16 Avenue approximately 217 feet South of the South line of 63rd Street. The
17 petitioner is requesting that the subject property be designated as B-2, General
18 Retail Business District. This petition is being filed with an annexation
19 agreement that the petitioner has proposed which limits the extent of
20 development of the site to a form considerably more restrictive than is possible
21 under the B-2 zoning district standards.

22
23 Mr. Rathje described the subject property as having a width of 143.15 feet, a
24 depth that ranges between 283.99 feet as measured on the North and 283.89
25 feet as measured on the South with an area of approximately 40,646 square
26 feet or 0.9331 acres. The property had been improved with a single family
27 residence; however, the petitioner had the residence razed as it had become
28 blighted and had been viewed by many to be a nuisance.

29
30 Mr. Rathje noted that the subject property fronts on Fairview Avenue which is
31 classified on the Village's Future Land Use Plan as a Minor Arterial roadway.
32 This section of Fairview Avenue has been improved by the Village as a three-
33 lane cross section that includes one lane each for northbound and southbound
34 traffic and a center lane for left turns. This improvement widens near the
35 north end of the subject property to accommodate the Fairview Avenue and
36 63rd Street intersection.

37
38 Mr. Rathje informed the Board that the subject property is shown on the
39 Village's Future Land Use Plan with a land use designation of Residential @ 0-6
40 dwelling units per acre, which is comparable to the Village's R-1 through R-4,
41 single family residential zoning districts. He added that although the Land Use
42 Plan has the subject property designated as noted, its location places it in a
43 somewhat transitional area. The land to the North of the subject property is
zoned Village B-2, General Retail Business, and is improved with a commercial

1 plaza which includes a video rental business and a pizza restaurant. To the
2 East of the subject property between the South line of 63rd Street and a point
3 approximately 494 feet southerly thereof, the property is zoned Westmont B-2.
4 This area is developed with several commercial uses including a retail business
5 plaza, a drive-in bank and an animal hospital that specializes in the care of
6 cats. He noted that the commercial area to the East of the subject property
7 extends to a point approximately 134 feet South of the South line of the subject
8 property. To the West of the subject property is an area of improved single
9 family residential lots zoned Village R-3, single family residential and to the
10 South of the subject property are a series of lots similar in size to the subject
11 property which are zoned County R-4, single family residential.
12

13 Mr. Rathje said that the petitioner has indicated that it is his company's intent
14 to construct a relatively small office building on the subject property. In
15 anticipation of making this petition to the Village, the developer told Staff that
16 he has met with some of the adjacent residential neighbors. It has been
17 reported to the Village Staff that the neighbors do not find a small office project
18 objectionable; however, the petitioner perceived that the neighbors were looking
19 for some assurances that the development of the property would be in a form
20 as was suggested to them by the developer. To that end, the petitioner has
21 proposed that the annexation and rezoning of the subject property be
22 undertaken under the provisions of an annexation agreement.

3
24 Specifically, Mr. Rathje said the annexation agreement provides that the
25 property will be annexed by the Village with a zoning designation of B-2,
26 General Retail Business; however, the use of the subject property would be
27 limited to business/professional offices for a period of 20 years from the
28 approval date of the agreement. He said the agreement clarifies that
29 professional business use shall not involve retail sales except as incidental to a
30 professional and/or business office use.
31

32 Mr. Rathje stated the proposed agreement incorporates a conceptual site plan
33 which depicts both a likely form in which the subject property will be developed
34 as well as the minimum front side and rear yards to which the developer may
35 develop. The site plan anticipates that the side yard on the North will at the
36 closest point measure 14.57 feet, the South side yard will at the closest point
37 measure 14.57 feet and the rear yard will measure 29.09 feet. In the event
38 that the petitioner needs to make certain modifications to the building's area or
39 dimensions in order to accommodate the needs of a specific tenant or buyer,
40 the annexation agreement and the site plan exhibit have been prepared
41 showing the minimum yard requirements under which development of the site
42 may take place. Specifically, the minimum default side yard on the North is to
43 be five feet, compared to the B-2, General Retail Business zoning district

1 provision which requires a zero side yard when located adjacent to a B-2,
2 General Retail Business zoned property. The minimum side yard along the
3 South is to be ten feet for the building and five feet for the parking lot
4 compared to the B-2, General Retail Business zoning district provision of five
5 feet when located adjacent to a residentially zoned property. A minimum rear
6 yard of 20 feet is to be provided along the West side of the property which is
7 consistent with the B-2, General Retail Business zoning district provisions
8 when located adjacent to a residentially zoned property.

9
10 Mr. Rathje said that Mr. Blondin, the Village Attorney, has reviewed the form
11 and language of the petitioner's proposed annexation agreement and has
12 agreed that, provided minor modifications are made, the Board and Council
13 could move forward with the petition if the proposed is found to be acceptable.
14 Mr. Rathje noted that the Village Council would need to conduct a public
15 hearing concerning the proposed annexation agreement.

16
17 Mr. Rathje concluded that the petitioner is seeking approval of a pre-
18 annexation zoning petition which seeks to have the subject property designated
19 B-2, General Retail Business District upon the property's annexation. This
20 petition has been filed together with a pre-annexation agreement, which
21 proposes to limit the use of the property to business/professional offices for a
22 period of 20 years from the approval date of the agreement. Although the
23 proposed rezoning differs from what the Village's Future Land Use Plan
24 anticipates for the subject property, he said that consideration could be given
25 to the transitional location of the subject property as well as to the zoning and
26 the actual uses of the adjacent property within the Village of Downers Grove to
27 the North and West, within the Village of Westmont to the East and within the
28 unincorporated DuPage County lands to the South. Further consideration
29 should be given to the character of Fairview Avenue adjacent to the subject
30 property.

31
32 Mr. Domijan asked Mr. Rathje what would happen at the end of the 20-year
33 period. Mr. Rathje said that B-2 zoning would remain as the underlying zoning
34 and would be applicable in the form it would exist at that time. He noted, for
35 example, that the Village's downtown area is zoned B-2 which includes a broad
36 category of uses including restaurants, offices and other uses. When the
37 annexation agreement expires, the rules of the B-2 zoning designation at that
38 time will apply.

39
40 There being no further questions from the Board, Chairman White called upon
41 those in the audience wishing to speak in favor of the petition. There being
42 none, he called for those in opposition to the petition.

43

1 Mr. Anthony DiSalvo of 6339 Devane Court indicated that his property is
2 located behind the proposed site. He then distributed a letter to the Board
3 stating concerns about the proposed development for the record. He then
4 asked those in the audience opposed to the proposal to stand, and the majority
5 of the audience stood up. When he asked who was in favor of it, everyone sat
6 down. Mr. DiSalvo then asked a number of questions as stated in his letter
7 dated December 5, 2001.

8
9 Chairman White asked whether Mr. DiSalvo understood the explanation of the
10 annexation agreement, and that the agreement would restrict the building to
11 offices and professional use. Mr. DiSalvo said that if it were restricted for the
12 time being it would be acceptable if it were legally enforceable.

13
14 Mr. Gray said that an office building would exclude retail sales. Chairman
15 White said that his understanding was that if it was an eye doctor, the doctor
16 could sell glasses, etc. However, it could not be a retail store.

17
18 Mr. DiSalvo continued with his questions. He asked that Mr. Sievers not be
19 allowed to sell the property undeveloped once it is rezoned. He also asked for
20 information as to how many tenants could occupy the building. Mr. DiSalvo
21 expressed concern as to where the B-2 zoning would stop if this were approved.

22
23 Mr. DiSalvo then asked questions about water detention since the site is below
24 one acre in size and will be changed from a 70% non-pervious area to 100%
25 pervious.

26
27 Chairman White asked if Mr. DiSalvo was proposing that nothing should be
28 built on the site. Mr. DiSalvo said the site should remain residential.

29
30 Mr. DiSalvo then brought up concerns of safety issues, particularly concerning
31 access by emergency vehicles. He also brought up the fact that the proposed
32 setback may be reduced to 10 feet. He proposed that the setbacks be
33 increased rather than allowing a decrease from the setbacks as proposed. Mr.
34 DiSalvo said that there are 25 children on Devane. He believes the only value
35 to this development would be added tax values to the Village.

36
37 Chairman White addressed Mr. DiSalvo's second question, asking if the
38 building were restricted to a single-story office, would he still object. Mr.
39 DiSalvo said if it all coincides with size, water retention, setbacks, etc., it would
40 be acceptable.

41
42 Chairman White then spoke to Item #3 of Mr. DiSalvo's letter, stating that
43 regarding the sale of the property, the agreement is binding to the future owner

1 of the property for 20-years. He asked if Mr. DiSalvo was concerned that the
2 agreement might be a trick of sorts, and Mr. DiSalvo said yes. However, if the
3 agreement is binding, that concern is eliminated.

4
5 Mr. Domijan asked how Mr. DiSalvo would propose transitioning from the
6 business to the residential district now. Mr. DiSalvo said that there is no
7 transition needed. Those who purchased their homes knew what was there,
8 and they paid a premium to be located behind the unincorporated residential
9 area of Downers Grove. Family Video was already there. He does not see a
10 need for commercial zoning in this area. He said that Mr. Sievers has done a
11 good job in downtown Downers Grove and he should stay there.

12
13 Mr. Gray asked about value and whether there was any information regarding
14 negative impact on the value of the homes on Devane. Mr. DiSalvo said he was
15 going to have an appraiser provide documentation to show the difference in
16 value of property on the west side of Devane versus the east side. He added
17 that there is a petition being passed around to other residents who oppose this
18 development.

19
20 Chairman White asked if they think there should be a house there, and Mr.
21 DiSalvo said that was correct.

22
23 Chairman White said that water detention is not the purview of this Board. The
24 Village has specific rules regarding water retention and if those rules are not
25 complied with, they cannot build on the site. He said that they have to rely on
26 the assumption that the engineering plans will comply with the requirements of
27 the Ordinance. He explained that there is an Ordinance which must be met,
28 and if it is not met there will be no building. He said that if there is a problem
29 with stormwater, it is not with this Board but with the people who wrote and
30 enforce the stormwater ordinance.

31
32 Mr. Benes stated that the concerns of this Board are directed to land use.

33
34 Chairman White said that, of course, the Board is concerned about safety, and
35 trusts and assumes that the building will comply with all life safety issues
36 they are required to comply with. That is what those departments are for. He
37 said this Board is not to second guess the Village's authority on those other
38 issues.

39
40 Mr. DiSalvo asked about transition areas and where this will stop. He said that
41 Family Video was there when he purchased the house knowing it was 200
42 yards from his back window. He did not purchase it knowing that in the

1 summer he can look out his back window and see someone taking a cigarette
2 break in his back yard.

3
4 Ms. Carol O'Neil of 6326 Fairview said her property adjoins the subject site to
5 the south, and they were never approached regarding the development of the
6 site. They bought their farmhouse in 1962 when the land was surrounded by
7 farms. Ms. O'Neil said they purchased two lots to protect their investment and
8 to allow them to have horses. They've taken good care of their century-old
9 farmhouse and are not speculators but have a vested interest in their homes.
10 She said that should take precedence. They are very much opposed to
11 commercial building and a parking lot next to their property as it will affect the
12 residential resale of their property. Ms. O'Neil said they intend to stay on their
13 property as long as possible. No one will want to buy it for horses with
14 commercial property next door. There will be a domino effect. This
15 development will change the character of the neighborhood, as the
16 neighborhood should be kept residential as stated in the Future Land Use
17 Plan. Ms. O'Neil said when the proposal came in some years ago for the video
18 store on the corner of 63rd and Fairview, the residents were happy that the
19 Zoning Board of Appeals recommended against the video store which was to
20 serve as the buffer between the commercial and residential area; however, now
21 that is being reconsidered with this proposed office space. She said that the
22 residents are concerned because the Board is a recommending body and may
23 not have the final word.

24
25 Mr. Benes asked Ms. O'Neil about the property across the street which is a cat
26 hospital, and whether the residents had any say in that development. She
27 responded that was the first corner developed. It was developed all at one time.
28 She said this subject property is an opportunity for the residents to stop the
29 commercial movement down Fairview. She said they will lose more trees, and
30 it will have a domino effect forcing them to rezone their property because no
31 one will purchase it as residential. Ms. O'Neil said they need places to build
32 homes, not offices.

33
34 Mr. Gray said looking at the Westmont property there's construction behind
35 the site. Ms. O'Neil said there will be subdivision of single-family homes. They
36 are not rezoned. Mr. Gray said the value of property and the scarcity of single-
37 family lots in the Village might be appreciably moved up. He said he thought
38 Westmont would like their property for townhome development. He said the
39 residents might have pressure to sell as it is prime property.

40
41 Ms. O'Neil said they bought their land 39 years ago and perhaps some day they
42 will make money on it, but they deserve that. They did not buy the property
43 five months ago.

1 Chairman White noted that Ms. O'Neil lives on the Downers Grove side of the
2 boundary agreement line, and her property cannot go into Westmont. It will
3 always be Downers Grove. Mr. Rathje confirmed that statement. Ms. O'Neil
4 said that her property is in unincorporated Downers Grove.
5

6 Mr. Bill VanBuren of 6576 Fairview said they bought property across from
7 Fairview Village before Devane was built. That was open space, and they
8 feared multi-family housing or commercial would go in there. He said there are
9 homes being built on lots along 63rd Street in Westmont. He stated that the
10 point is traffic. He has two girls, aged 7 and 4, who walk their dog. There is a
11 blind spot for traffic at the bank. He added the traffic for Family Video is
12 horrible. Nobody uses their blinkers. Mr. Van Buren said they should get
13 police reports for the number of accidents at the intersection. He said he felt
14 the unincorporated properties should be annexed, but they should be kept
15 residential. He noted that everything past the video store is residential, and he
16 would like to see an end put to the commercial area.
17

18 Mr. Leonard Potempa of 6351 Devane said the fact that the commercial
19 property on the Westmont side extends 130 feet south is irrelevant. He also
20 said the statement that the "developer has met with residents" is incorrect.
21 Neither he nor his wife were contacted about the existence of this project until
22 one of his neighbors told him about it. He asked whether the developer talked
23 to anyone at all. Mr. Potempa said that he is firmly opposed to using that
24 property as anything but single family residential. Mr. Potempa quoted from
25 statements made regarding the annexation agreement and asked who would
26 pay his legal bills to enforce the agreement if it were not honored. He added
27 that 20 feet of grass is not enough for the rear yard. Mr. Potempa said the
28 residents need to know the names and office addresses of all the Council
29 members so they can contact them before this is acted upon. Chairman White
30 said they can obtain that information from the Village Clerk at Village Hall.
31

32 Ms. Andrea Van Buren of 6576 Fairview said that it is her opinion that the B-2
33 zoning for Family Video was done behind people's backs, and it set a
34 precedent. She said it is an unlikely transition to have single-family housing
35 right at Family Video's back door. That zoning was a mistake. Ms. Van Buren
36 said that 63rd Street is getting ugly. Someone needs to sacrifice and preserve
37 the residential area. She said that if the mistake of zoning Family Video had
38 not occurred, it would be a residential lot. Ms. Van Buren said the neighbors
39 should not have to deal with another White Hen Pantry.
40

41 Ms. Kelly Kania of 6340 Devane said there are fourteen residences on Devane
42 Court, and there are more expensive lots on the west side than on the east
43 side. She said the traffic on Fairview is already bad, and it is difficult to make

1 a left turn from 63rd Street. She asked if the Board recommends against this
2 proposal, what do the residents then need to do. She asked how the residents
3 can win this situation. This is her first zoning meeting, and even if the Board
4 voted in the residents' favor, the Council will have a public meeting also.
5 Chairman White said this will go on a Council meeting agenda and the
6 residents would attend that meeting and make their feelings known.

7
8 Mr. Benes said the residents on the west side of Devane are adjacent to the
9 microwave towers. Ms. Kania said that was correct. It is a quiet neighborhood.
10 The towers are not attractive neighbors, but they are not bad neighbors. She
11 said, however, that she purchased into that situation as it was there when she
12 bought. Mr. Benes asked if they moved there before Family Video, and Ms.
13 Kania said they moved afterwards. She said that Family Video is hardly an
14 issue because of the large houses that have been built between her house and
15 Family Video. Mr. Benes asked if they would see this proposed development
16 from their property, and Ms. Kania said they might not see it, but she thinks
17 there are still negative aspects.

18
19 Chairman White asked if anyone has any different points to make. He said the
20 Board knows that all residents support what has been said already.

21
22 Ms. Gina Vattino of 6346 Devane commented that the neighborhood is a quiet
23 area, but they can hear the cars, people talking, people outside smoking
24 cigarettes. When she bought the house, she knew the parking lot was there.
25 She wishes it wasn't there. Since Family Video is not a 9-5 business, she has a
26 security system in her home.

27
28 Mr. Joseph Zimmecker, Jr., of 6345 Devane said there is a passion in the
29 neighborhood regarding this proposal. He asked that the Board continue the
30 meeting to give residents more time to look into things such as the police
31 reports, appraisals, etc., if the case is continued. He said they would like to
32 detain the Council action as well. The residents were not privy to the findings
33 before this meeting.

34
35 Mr. Daniel Carlson of 6336 Devane said that the property should remain
36 residential. He stated that there is noise from the microwave towers. He knew
37 it was there, but did not know about the noise from the air-conditioning and
38 microwave systems. They bought their property also knowing they were
39 adjacent to residential property. He also fears the domino theory and how this
40 will effect the remainder of Fairview.

41

1 Mr. Gray said the Reporter is the Village paper and it has a Village Corner
2 section which lists the agenda and date of the Board meetings. Everything is
3 published in that paper.

4
5 Mr. Rathje added that there are three forms of advertisement concerning
6 Zoning Board of Appeals petitions including the publication of a legal notice in
7 the paper, posting of a sign on the subject property giving the time and date of
8 the meeting, and notification to residents by direct mail.

9
10 Mr. Carlson said it is not the publication of the meeting he was referring to. He
11 said this was the first time the residents saw the staff findings which were
12 presented to the Board.

13
14 There being no further comments from the public, Chairman White asked Mr.
15 Russ if he wished to respond to the comments made.

16
17 Mr. Russ said that the proposed office use is a good buffer. It is less intense
18 than what could be put on the property, such as a multi-family development if
19 a strip of property were obtained along Fairview. The proposed development
20 will mirror the development on Westmont's side of Fairview, but will be less
21 intense. Regarding neighbor concerns, Mr. Russ said that Mr. Sievers did meet
22 with some neighbors because he developed the site plan based upon neighbor
23 comments. He also said that Mr. DiSalvo was given a copy of the site plan
24 prior to the meeting. Mr. Russ said he thought it to be a good project, less
25 intense that what could be placed there, and it would serve as a good buffer for
26 the residential area.

27
28 Chairman White asked about the Westmont property that was zoned B-2 and
29 whether the Village objected in court on that site. Mr. Rathje said in the 1970s
30 the Village received a petition to rezone the property at the northwest corner of
31 Fairview and 63rd Street. The zoning request was denied and it went to court
32 and was settled with an Agreed Order that permitted construction of a medical
33 office building. The property at the southwest corner was a petition for B-2
34 zoning. He said he believed there was a majority recommendation by the
35 Zoning Board against that rezoning. He noted that there was never an issue of
36 offices at the southwest corner. Ultimately, the Council voted in favor of the
37 rezoning of the southwest corner to B-2.

38
39 Chairman White reiterated that it was the northwest corner which the Board
40 recommended against and which went to court.

41
42 Mr. Bob Melson said that on the map the northwest corner shows R-2 zoning
43 and asked for an explanation. Mr. Rathje explained that when there is a court-

1 supervised decision over zoning, the underlying zoning remains the same as it
2 was prior to the dispute. The court substitutes its determination for the
3 Village's determination of regulating land via zoning. Although it is still zoned
4 R-2 single-family residential, the court replaces the zoning with a specific set of
5 standards under which the property will be developed.

6
7 There being no further discussion or comments, Chairman White closed the
8 opportunity for further public comment.

9
10 **Board's Deliberations:**

11
12 Mr. Lukas said the Board is hearing loud and clear that the residents would
13 like to have a line drawn in the sand at the south line of the Family Video
14 property. It is a judgment call. He said the residents bought the land at a
15 premium, and probably wondered what the surrounding area would be. The
16 maps they would have seen showed the zoning as residential and the Future
17 Land Use Plan maps as residential as well. He said it is his thought that right
18 now it is not time for commercial zoning.

19
20 Chairman White asked if he considers this proposal less intensive or less
21 intrusive than commercial.

22
23 Mr. Gray said he would still like to have some professional testimony
24 concerning property values. Chairman White agreed, however, noted that none
25 was presented.

26
27 Mr. Benes said many years ago there was development along 75th Street and
28 the encroachment of commercial and multiple family dwellings. A boundary
29 was set at one time that 75th Street would be a residential street, but then
30 developers wanted residential south of 71st Street and the Village authorized
31 commercial zoning. Mr. Benes said regarding 63rd Street, he doesn't care what
32 is in Westmont. He is interested in Downers Grove. From the Tollway going
33 south, there is all type of commercial zoning on the south side to Belmont. He
34 reviewed the type of zoning along 63rd Street up to the microwave towers,
35 noting it was interspersed with residential. Someone purchased the property
36 and developed Devane, and the houses sold. These are their homes. He asked
37 why they have to constantly allow encroachment into residential areas. He
38 said this property does not have to change to commercial, and it is the
39 developer's opinion to claim it is a buffer zone. Mr. Benes said it should be
40 stopped right where it currently ends.

41
42 Chairman White said the reality is that Family Video has been built. It is
43 better than what it could have been if it were denied. Regarding the subject
44 proposal, he thought it was better than what it could be if it went to court, and

1 they were compelled to change it to B-2 zoning. His concern is that if they
2 draw the line in the sand, it could become worse. Emotionally, the residents
3 want residential zoning, but he said that perhaps there's some way to strike a
4 deal. He suggested there could be more negotiations as to the look of the
5 building, etc. He reminded that this could go to Court, and the Court would
6 have the power to overturn the Village's decision in this case. The Court might
7 look at the existence of Family Video and that is the risk.

8
9 Mr. Benes said the Court could look both ways, but they cannot fear the
10 courts. He has a residence in Downers Grove, and he represents residential
11 owners. He does not want encroachment. He said the people should start
12 fighting encroachment right now. Mr. Benes said that we are going to control
13 what is within our boundaries. The County doesn't want that little pocket. He
14 wants to keep that site residential. He is not impressed that Family Video is on
15 the corner. That's water over the dam.

16
17 Chairman White said that if the line in the sand could be maintained it would
18 be one thing. He does not know that a court would keep it residential, and if
19 not, it could be worse than the proposed annexation agreement presently
20 before the Board and Council.

21
22 Mr. Lukas said that all they are doing is prolonging the date of the loss of trees.
23 If they deny the petition, they could be back here again.

24
25 Mr. Benes asked whether that hurts.

26
27 Chairman White reiterated that he believed it could be more obtrusive than
28 what Mr. Sievers' plan proposes, and could get worse. In this case they have
29 an agreement and know that it's going to be built and enforced for twenty
30 years. They are setting a precedent to decrease the intrusion by enforcing an
31 annexation agreement limiting the use to only an office building and are not
32 looking at open-ended B-2 zoning.

33
34 Mr. Benes said he likes Mr. Sievers and his building, but he doesn't like
35 encroachment.

36
37 Chairman White said he also does not like encroachment.

38
39 Mr. Domijan commented that it is always better when the site is in the Village's
40 jurisdiction as it can be better controlled.

41
42 Chairman White said he would rather see a home there as well, but the
43 proposed agreement is better than what could occur there.

1 Mr. Benes said that the Board provides their response to the Council, and he
2 said the Board should say that they believe the encroachment should stop
3 here. Forget what is located on the other corners.

4
5 Chairman White asked if there was any other perspective. Hearing none,
6 Chairman White indicated that he would entertain a Motion

7
8 **Mr. Benes moved that in case MC-13-01 the Board recommend to the**
9 **Village Council that the petition for rezoning to B-2 upon annexation be**
10 **denied. Mr. Lukas seconded the Motion.**

11
12 Chairman White clarified for the Board that an affirmative vote in this Motion
13 would be a vote to deny the petition. Roll was called.

14
15 **AYES: Mr. Benes, Mr. Lukas,**
16 **NAYS: Mr. Domijan, Chairman White**
17 **ABSTAIN: Mr. Gray**

18
19 **The Motion failed with a tie vote.**

20
21 Mr. Gray said he abstained because there are strong arguments on both sides,
22 and he is the newest member of the Board. He agrees with the neighbors and
23 also with the developer. He agrees that this proposal would be the least
24 offensive type of buffer.

25
26 Chairman White said they have a tie vote with no recommendation. Mr. Rathje
27 said the Board needs to dispose of the item with a recommendation either in
28 favor of or against the petition. This Motion essentially is a non-
29 recommendation. Chairman White said that a new motion would then be in
30 order.

31
32 Chairman White then called for a short break so that he could have a
33 parliamentary procedure discussion with Staff. When the Board reconvened,
34 Chairman White asked if there was another Motion. Prior to the Motion
35 Chairman White explained to the audience that the Board's recommendation to
36 the Village Council is not binding, and that the Village Council either could
37 vote with or against the Board's recommendation. He noted that the audience
38 members should attend the Council meeting on this petition when it is on the
39 Agenda.

40
41 **Mr. Lukas moved that in case MC-13-01 that the Zoning Board of Appeals**
42 **send a negative recommendation to the Council on rezoning the property**
43 **to B-2 upon annexation. Mr. Benes seconded the Motion.**
44

1 **AYES: Mr. Lukas, Mr. Benes**
2 **NAYS: Mr. Domijan, Mr. Gray, Chairman White**

3
4 **The Motion failed 3:2.**

5
6 Chairman White said that the Motion failed. Mr. Rathje commented that the
7 Board needed to have a Motion with a majority in support of the Motion. An
8 unidentified member of the audience announced that the discussion between
9 Staff and the Board members gives the appearance of an impropriety.
10 Chairman White explained to the audience that the parliamentary conversation
11 which had taken place earlier was solely about the effect of the abstention vote
12 of Mr. Gray. Mr. Rathje said that the discussion he had was with only one
13 Board member, and the determination was that another Motion was required.

14
15 **Mr. Domijan moved that in case MC-13-01 the Board recommend to the**
16 **Village Council to approve the petition for rezoning to B-2 upon**
17 **annexation. Mr. Gray seconded the Motion.**

18
19 **AYES: Mr. Domijan, Mr. Gray, Chairman White**
20 **NAYS: Mr. Benes, Mr. Lukas**

21
22 **The Motion to recommend approval passed 3:2.**

23
24 Mr. Rathje commented that, for the record, the Board members may desire to
25 explain their votes.

26
27 Mr. Benes said his no vote represents his emphatic disapproval of any zoning
28 other than residential that extends any farther south on Fairview than what
29 presently exists. He wants no other businesses further south on Fairview.

30
31 Mr. Lukas said his no vote is to preserve the residential nature of the
32 neighborhood. He is not recommending that it necessarily be single family, but
33 he does recommend residential.

34
35 Mr. Rathje said that this is likely to go to the Council Workshop on or after the
36 22nd of January.

37
38 Chairman White said that the Council may or may not agree with the Board's
39 recommendation. He said that the residents should plan to attend that
40 meeting which will be held in the Council Chambers at 6:30 PM. Mr. Rathje
41 recommended that the residents contact Village Hall or look in the papers for
42 the actual date of the Council meeting at which this petition will be considered.

43

PUBLIC HEARING: **MC-13-01** A preannexation petition seeking annexation and rezoning from County R-4, Single Family Residential to Village B-2, General Retail Business District. The property is located on the West side of Fairview Avenue approximately 217 feet South of 63rd Street, Downers Grove, Illinois (PIN 09-20-209-007); Ronald A. Sievers, Owner; James F. Russ, Jr., Attorney/Petitioner

FINDINGS:

1. The petitioner has filed a pre-annexation rezoning petition for a 0.9331 acre parcel of land located on the West side of Fairview Avenue approximately 217 feet South of the South line of 63rd Street. The petitioner is requesting that the subject property be designated as B-2, General Retail Business District. This petition is being filed along with an annexation agreement that the petitioner has proposed. The form of the proposed annexation agreement has been prepared to limit the extent of development of the site to a form considerably more restrictive than is possible under the B-2 zoning district standards.

2. The subject property has a width of 143.15 feet, a depth that ranges between 283.99 feet as measured on the North and 283.89 feet as measured on the South with an area of approximately 40,646 square feet or 0.9331 acres. Until earlier this year, the property had been improved with a single family residence. The petitioner had the residence razed as it had become blighted and had been viewed by many to be a nuisance.

The subject property fronts on Fairview Avenue, which is classified on the Village's Future Land Use Plan as a Minor Arterial roadway. This section of Fairview Avenue has recently been improved by the Village as a three-lane cross section that includes one lane each for northbound and southbound traffic and a center lane for left turns. This improvement widens near the north end of the subject property to accommodate the Fairview Avenue and 63rd Street intersection.

3. The subject property is shown on the Village's Future Land Use Plan with a land use designation of Residential @ 0-6 dwelling units per acre. This land use designation is comparable to the Village's R-1 through R-4, single family residential zoning districts.

Although the Land Use Plan has the subject property designated as noted, its location places it in a somewhat transitional area. More specifically, the land to the North of the subject property is zoned Village B-2, General Retail Business, and is improved with a commercial plaza which includes a video rental business and a pizza restaurant. To the East of the subject property between the South line of 63rd Street and a point approximately 494 feet southerly thereof, the property

is zoned Westmont B-2. This area is developed with several commercial uses including a retail business plaza, a drive-in bank and an animal hospital that specializes in the care of cats. It may be of interest to note that the commercial area to the East of the subject property extends to a point approximately 134 feet South of the South line of the subject property. To the West of the subject property is an area of improved single family residential lots zoned Village R-3, single family residential and to the South of the subject property are a series of lots similar in size to the subject property which are zoned County R-4, single family residential.

4. The petitioner has indicated that it is his company's interest to construct a relatively small office building on the subject property. In anticipation of making this petition to the Village, the developer has met with some of the adjacent residential neighbors. It has been reported to the Village Staff that the neighbors do not find a small office project objectionable; however, the petitioner perceived that they were looking for some assurances that the development of the property would be in a form as was suggested to them by the developer. To that end, the petitioner has proposed that the annexation and rezoning of the subject property be undertaken under the provisions of an annexation agreement.

More specifically, the annexation agreement provides that the property will be annexed by the Village with a zoning designation of B-2, General Retail Business, however, that the use of the subject property be limited to business/professional offices for a period of 20 years from the approval date of the agreement. The agreement clarifies that professional business use shall not involve retail sales except as incidental to a professional and/or business office use.

The proposed agreement incorporates a conceptual site plan. The site plan depicts both a likely form in which the subject property will be developed as well as the minimum front side and rear yards to which the developer may develop. The site plan for instance anticipates that the side yard on the North will at the closest point measure 14.57 feet, the South side yard will at the closest point measure 14.57 feet and the rear yard will measure 29.09 feet. In the event that the petitioner needs to make certain modifications to the building's area or dimensions in order to accommodate the needs of a specific tenant or buyer, the annexation agreement and the site plan exhibit have been prepared showing the minimum yard requirements under which development of the site may take place. Specifically, the minimum default side yard on the North is to be five feet, compared to the B-2, General Retail Business zoning district provision which requires a zero side yard when located adjacent to a B-2, General Retail Business zoned property. The minimum side yard along the South is to be ten feet for the building and five feet for the parking lot compared to the B-2, General Retail Business zoning district provision of five feet when located adjacent to a residentially zoned property. A minimum rear yard of 20 feet is to be provided along the West side of the property which is consistent with the B-2, General

Retail Business zoning district provisions when located adjacent to a residentially zoned property.

Mr. Blondin has reviewed the form and language of the petitioner's proposed annexation agreement and has provided his comments. A copy of his comments have been included for the Board's consideration.

CONCLUSION:

The petitioner is seeking approval of a pre-annexation zoning petition which seeks to have the subject property designated B-2, General Retail Business District upon the property's annexation. This petition has been filed along with a pre-annexation agreement, which proposes to limit the use of the property to business/professional offices for a period of 20 years from the approval date of the agreement. Although the proposed rezoning differs from what the Village's Future Land Use Plan anticipates for the subject property, consideration should be given to the transitional location of the subject property as well as to the zoning and the actual uses of the adjacent property within the Village of Downers Grove to the North and West, within the Village of Westmont to the East and within the unincorporated DuPage County lands to the South. Further consideration should be given to the character Fairview Avenue adjacent to the subject property.

KJR:amd
Attachments
11/30/01

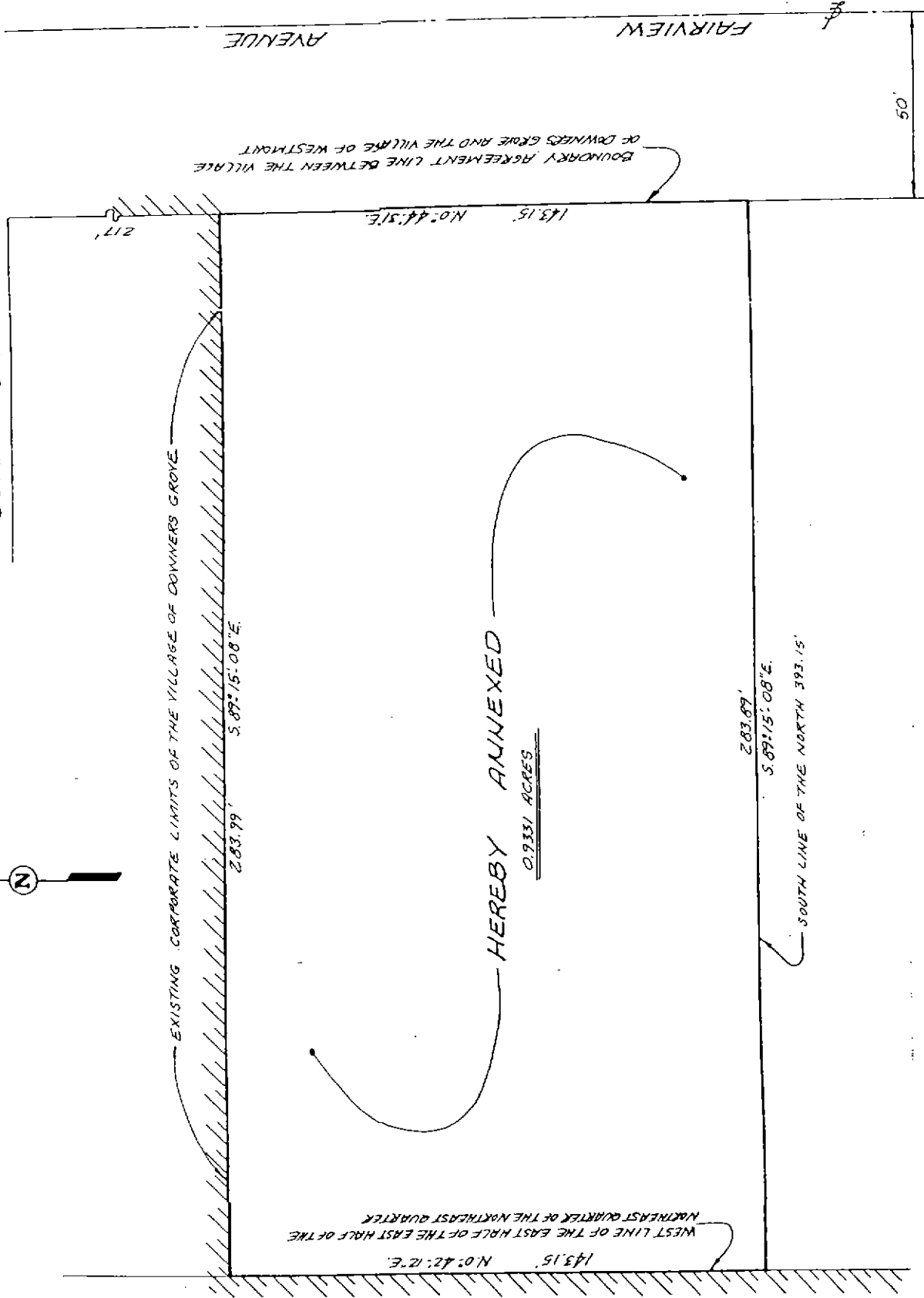
MC-13-01

PLAT OF ANNEXATION TO THE VILLAGE OF DOWNERS GROVE

LEGAL DESCRIPTION
THE SOUTH 143.15 FEET OF THE NORTH 393.15 FEET OF THE EAST HALF OF
THE EAST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER
OF SECTION 20, TOWNSHIP 38 NORTH, RANGE 11 EAST OF THE THIRD
PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.



63rd STREET





MC-13-01

VILLAGE OF DOWNERS GROVE, ILLINOIS
Petition for a Map Amendment to the Zoning Ordinance

To: The Zoning Board of Appeals
Village of Downers Grove
801 Burlington Avenue
Downers Grove, Illinois 60515-4776

\$400.00 Fee for Individuals and
Non-Public Bodies

Application Number MC-13-01
Date Filed 11/8/01

Application must be filed in TRIPLICATE. Two copies of a Registered Surveyor's Plat of Survey must accompany the application.

1. Applicant Ronald A. Sievers by James F. Russ, Jr. Telephone 630/969-2300

Address 4915 Main Street, Downers Grove, IL 60515

2. Owner(s) Ronald A. Sievers Telephone 630/960-3750

Address 1000 Maple Avenue, Downers Grove, IL 60515

3. Applicant is (check one) [X] Attorney [] Agent [] Other (specify)
(NOTE: A letter of authorization from owner must be submitted)

4. Present owner acquired title to the property on (date) June, 2001

5. Location of property The west side of Fairview Avenue, South of 63rd Street.

Square foot area approximately 40,630 sq.ft. Acreage .9331 acres

6. Legal Description of property and P.I.N. # The South 143.15 Feet of the North 393.15 Feet of the East Half of the Northeast Quarter of the Northeast Quarter of Section 20, Township 38 North, Range 11 East of the Third Principal Meridian, in DuPage County, Illinois.

P.I.N. 09-20-209-007

7 Present zoning classification DuPage County R-4

8. Proposed zoning classification Village of Downers Grove B-2

9. Is this a pre-annexation zoning petition? [X] Yes [] No

10. Has applicant previously sought to rezone the property or any part of it? [] Yes [X] No

When? To what zoning classification

11. Is an improvement planned? [X] Yes [] No When? Upon annexation

12. What will be the actual use of the improvement? single story general office use building

13. A list of the names and addresses of all persons to whom the latest general real estate tax bills were sent for all property situated within 250 feet of the subject property: See attached.

(Attach list of names and addresses, if room provided is insufficient.)

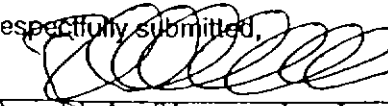
I hereby certify that these statements and all accompanying statements and drawings are true and correct to the best of my knowledge.

Dated: 9/26/07 19

MC-13-01

Respectfully submitted,

Signature of Applicant:


Ronald A. Sievers by James F. Russ, Jr., attorney

Date forwarded to Plan Commission _____

Recommendation of Plan Commission _____

Date of Public Hearing _____

Action Taken by the Board _____

Signature of Chairman: _____

Date submitted to Village Council _____

Action Taken by the Council _____

Dated: _____ 19 _____

**ANNEXATION AGREEMENT WITH
SIEVERS DEVELOPMENT COMPANY
FOR CERTAIN PROPERTY LOCATED SOUTH OF 63RD STREET
AND WEST OF FAIRVIEW AVENUE, DU PAGE COUNTY, ILLINOIS**

This Agreement made and entered into this _____ day of _____, 20___, by and between the Village of Downers Grove, an Illinois municipal corporation (hereinafter referred to as the "Village") and SIEVERS DEVELOPMENT COMPANY (hereinafter referred to as the "Owners"),

WITNESSETH:

WHEREAS, the Owners are the owners of record of certain real estate, commonly known as 6320 Fairview Avenue, Downers Grove, IL and located south of 63rd Street and west of Fairview Avenue, Dupage County, Illinois, and legally described on Exhibit A. (hereinafter referred to as the "Property"); and

WHEREAS, the parties hereto desire that the Property be annexed to the Village on the terms and under the conditions hereafter set forth; and

WHEREAS, the Property is not located within the corporate boundaries of any municipality, but is within the planning area of the Village, as established by boundary agreements with adjacent municipalities, and is contiguous to the Village; and

WHEREAS, the parties wish to enter into a binding agreement with respect to the future annexation of the Property and to provide for various other matters related directly or indirectly to said future annexation, in accordance with the provisions of Ill. Rev. Stat., Ch. 24, Sec. 11-15.1-1 et seq.; and

WHEREAS, the Village Council has determined that the annexation of the Property would further the orderly growth of the Village and promote the general welfare of the Village.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, terms and conditions herein set forth, the Owners and the Village agree as follows:

1. The provisions of the preamble herein above set forth are hereby restated and incorporated herein by reference.
2. The following documents are hereby incorporated into and made a part of this agreement by reference:

Exhibit A - Site Plan dated 9/19/01.

For purposes of this agreement, the Petitioner shall be held to the minimum front, side and rear yard setback as provided pursuant to said site plan. All other site elements are subject to

modification consistent with the Village of Downers Grove zoning and other applicable ordinances.

3. The Owners shall submit to the Village together with this agreement an executed Petition for Annexation and plat of annexation in the form provided by law. The Owners shall pay all fees associated with this Agreement including publication fees and recording fees.

4. The Village agrees to annex the property upon the terms and conditions set forth in this agreement.

5. In order to permit the development of the property, or any part thereof, the Village hereby agrees to classify and zone as provided herein.

- a. Immediately following passage of the annexation of the property, the Village agrees to adopt an ordinance zoning the property B2 under the Village of Downers Grove Zoning Ordinance. Following the passage of the ordinance zoning the property and upon submittal of all required documentation, the owner agrees to limit the use of this property to business/professional office use for a period of twenty (20) years from the date of this agreement. Professional business use shall not involve retail sales except as incidental to a professional and/or business office use.

6. The Village shall assess, and the Owner shall pay, the public works and stormwater review and inspection fees, as established, and from time to time amended, in sections 20-15 and 26.76.8 of the Downers Grove Village Code.

7. Any development of the property shall be in substantial conformance with the site plan. Provided, however, amendments or variations to such plans may be approved by the Village from time to time in accordance with this Agreement or applicable Village ordinances and such amendments or variations shall not require the amendment of this agreement. Village ordinances, codes, rules, regulations, and specifications generally in effect and applicable throughout the Village at the time approval of any modification is granted shall apply to any subject not specifically addressed within this agreement.

8. This Agreement shall be binding upon the Owners, as well as the Owners' successors, assigns and heirs. This Agreement shall constitute a covenant running with the land and shall be binding upon all persons taking any interest or right in the Property after the date of this Agreement is executed by the Village. Any person acquiring any rights or interest in the Property after the date of this Agreement shall be bound by the terms thereof and shall be deemed to have accepted and approved this Agreement in full.

9. The Owners and the Village respectively agree to do all things necessary or appropriate to cause the Property to be duly and validly annexed to the Village. The Owner shall assist the Village and take all actions or steps necessary to accomplish said annexation.

10. The parties to this Agreement or their successors or assigns, may, in either law or equity, by suit, action, mandamus, injunction, or other proceedings in court, enforce and compel the performance of this Agreement, including suits for specific performance.

11. This Agreement may only be amended by written instruments signed by the parties.

12. The term of this Agreement shall be twenty (20) years from the date of execution hereof.

13. If any portion of this Agreement shall be declared invalid, the same shall not affect the validity of this Agreement as a whole, other than the part so declared invalid.

14. The undersigned Owner(s) warrant(s) that he constitute all owner(s) of the Property and that he have full authority and power to sign the Agreement and the petition submitted herewith and that they have not and will not take any action to change ownership in the Property until after this Agreement is recorded.

IN WITNESS WHEREOF this Agreement has been duly executed by whose names are subscribed below or on the signature pages attached hereto from time to time, and which pages are specifically incorporated herein.

OWNER(S)

VILLAGE OF DOWNERS GROVE

RONALD A. SIEVERS

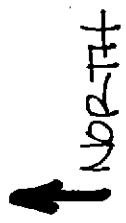
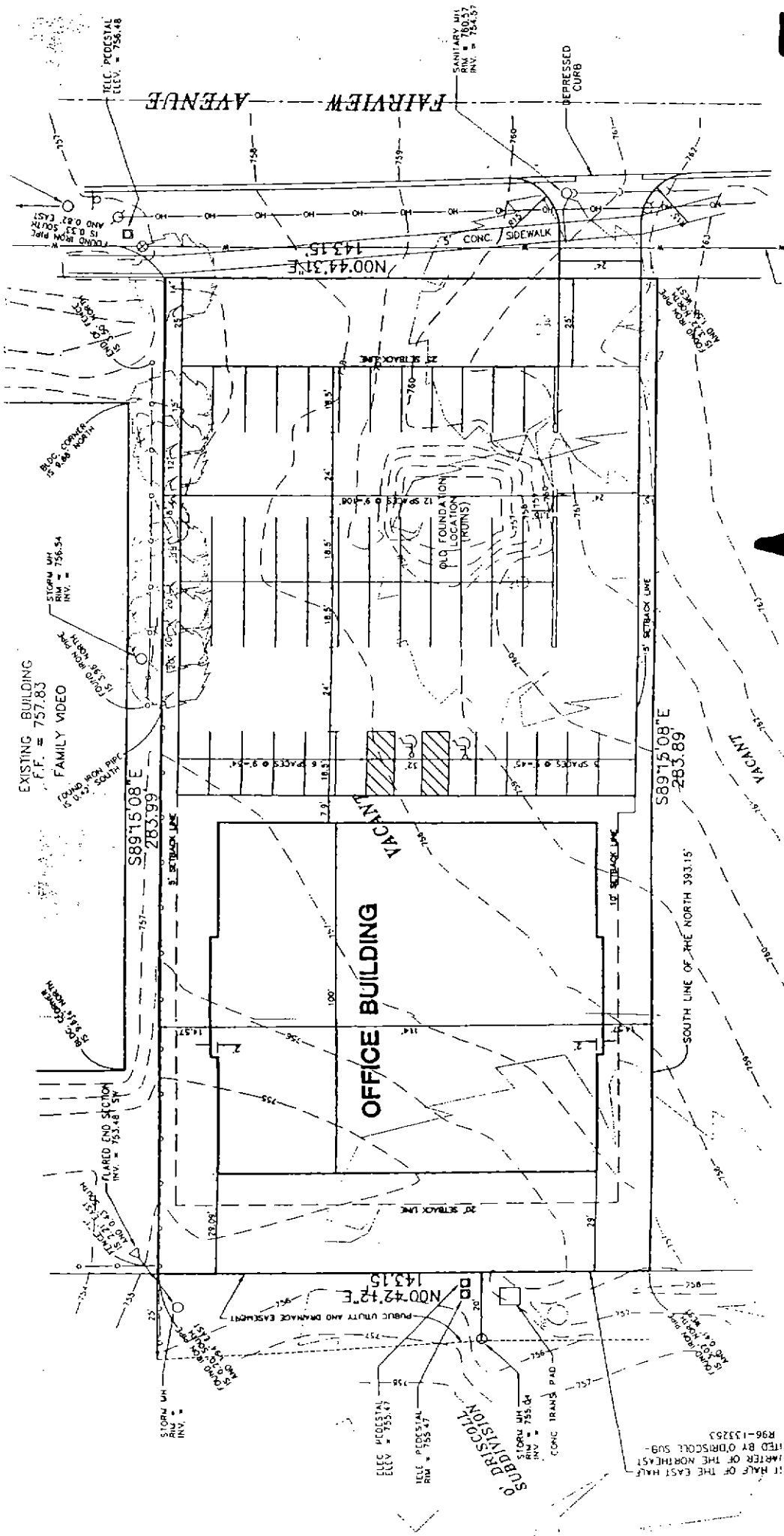
By: _____

Attest: _____
Village Clerk

Subscribed and sworn to before me
this ____ day of _____, 2001.

Notary Public

10-31-20



SITE PLAN
ATTACHMENT TO
ANNEXATION AGREEMENT

1/2 HALF OF THE EAST HALF
PARTER OF THE NORTH EAST
BY O'DRISCOLL SUB-
R96-133253

TAXPAYERS WITHIN 250 FEET OF SUBJECT PROPERTY

09-20-209-005	K & E Enterprises 1022 East Adams Springfield, IL 62703
09-20-209-006	K & E Enterprises 1022 East Adams Springfield, IL 62703
09-20-209-007	Subject Property
09-20-209-008	Nield, Robert E. and Carol L. 6326 Fairview Downers Grove, IL 60516
09-20-209-009	Nield, Robert E. and Carol L. 6326 Fairview Downers Grove, IL 60516
09-20-209-052	Lenckos, Walter and Doreen 6357 Davane Court Downers Grove, IL 60516
09-20-209-053	Potempa, Leonard and Norma 6351 Davane Court Downers Grove, IL 60516
09-20-209-054	Zinnecker, Jr., Emmet and C. 6345 Davane Court Downers Grove, IL 60516
09-20-209-055	DiSalvo, Anthony S. 6339 Davane Court Downers Grove, IL 60516
09-20-209-056	McCracken, Peggy A. 6333 Davane Court Downers Grove, IL 60516
09-20-209-057	Hashmi, Fouzia 6327 Davane Court Downers Grove, IL 60516

09-20-209-058 O'Driscoll, Daniel
6321 Davane Court
Downers Grove, IL 60516

09-20-209-059 Camacho, Ricardo
6324 Davane Court
Downers Grove, IL 60516

09-20-209-060 Bandukwala, Shezadk
6330 Davane Court
Downers Grove, IL 60516

09-20-209-061 O'Driscoll, Daniel
1241 Richfield Court
Woodridge, IL 60517

09-20-209-062 Kania, Jeffrey E. and Kelly
6340 Davane Court
Downers Grove, IL 60516

09-20-209-063 Vattimo, David C. and Gina
6346 Davane Court
Downers Grove, IL 60516

09-20-209-064 Garofalo, David A.
6352 ~~6532~~ Davane Court
Downers Grove, IL 60516

09-21-100-009 Downers Grove National Bank
Attn: Control Department
1027 Curtiss
Downers Grove, IL 60515

09-21-100-010 Wu, Wei T. and Ching
6321 Fairview #B
Westmont, IL 60559

09-21-100-011 Barclay, Bill and Sandy
7 S 460 Dunwood Drive
Naperville, IL 60540

MC-13-01

09-21-100-012	Davorkos, Theodore and Toula 1007 South Cypress Drive Mt. Prospect, IL 60056
09-21-100-013	Harris Bank Hinsdale Trust No. L-3571 50 South Lincoln Hinsdale, IL 60521
09-21-100-006	Smyth, Jeffery and Joan 6325 Fairview Westmont, IL 60559
09-21-100-007	Harris Bank Naperville Trust 5828 1284 Rickert Road Naperville, IL 60540
09-21-100-008	Fairmont Retirement Corp. 962 Honest Pleasure Naperville, IL 60524

MC-13-01

LEGAL NOTICE: VILLAGE OF DOWNERS GROVE NOTICE OF PUBLIC HEARING - Notice is hereby given that a public hearing will be held by the Zoning Board of Appeals at 7:30 p.m. on Wednesday, December 5, 2001 in the Council Chambers of the Village Hall, 801 Burlington Avenue, Downers Grove, Illinois, on a preannexation petition seeking rezoning upon annexation from County R-4, Single Family Residential to Village B-2, General Retail Business District. The property is located on the West side of Fairview Avenue approximately 217 feet South of 63rd Street (PIN 09-20-209-007) and is legally described as follows:

The South 143.15 feet of the North 393.15 feet of the East Half of the East Half of the Northeast Quarter of the Northeast Quarter of Section 20, Township 38 North, Range 11, East of the Third Principal Meridian, in DuPage County, Illinois

Individuals with a disability requiring a reasonable accommodation in order to participate in any meeting should contact the Community Information Officer at (630) 434-5500 prior to the meeting. Wheelchair access may be gained through the side (South) entrance of Village Hall.

All interested persons should attend this hearing and will be given an opportunity to be heard. The hearing may be continued from time to time without further public notice. Zoning Board of Appeals, William White, Chairman. Published in the Downers Grove Reporter, Friday, November 16, 2001.

MC-13-01



VILLAGE OF DOWNERS GROVE, ILLINOIS
Petition for a Map Amendment to the Zoning Ordinance

To: The Zoning Board of Appeals
Village of Downers Grove
801 Burlington Avenue
Downers Grove, Illinois 60515-4776

\$400.00 Fee for Individuals and
Non-Public Bodies

Application Number MC-13-01

Date Filed 11/8/01

Application must be filed in TRIPLICATE. Two copies of a Registered Surveyor's Plat of Survey must accompany the application.

1. Applicant Ronald A. Sievers by
James F. Russ, Jr. Telephone 630/969-2300

Address 4915 Main Street, Downers Grove, IL 60515

2. Owner(s) Ronald A. Sievers Telephone 630/960-3750

Address 1000 Maple Avenue, Downers Grove, IL 60515

3. Applicant is (check one) Attorney Agent Other (specify) _____

(NOTE: A letter of authorization from owner must be submitted)

4. Present owner acquired title to the property on (date) June, 2001

5. Location of property The west side of Fairview Avenue, South of 63rd Street.

Square foot area approximately 40,630 sq.ft. Acreage .9331 acres

6. Legal Description of property and P.I.N. # The South 143.15 Feet of the North 393.15 Feet of the
East Half of the Northeast Quarter of the Northeast Quarter of Section 20, Township
38 North, Range 11 East of the Third Principal Meridian, in DuPage County, Illinois.

P.I.N. 09-20-209-007

7. Present zoning classification DuPage County R-4

8. Proposed zoning classification Village of Downers Grove B-2

9. Is this a pre-annexation zoning petition? Yes No

10. Has applicant previously sought to rezone the property or any part of it? Yes No

When? _____ To what zoning classification _____

11. Is an improvement planned? Yes No When? Upon annexation

12. What will be the actual use of the improvement? single story general office use building

13. A list of the names and addresses of all persons to whom the latest general real estate tax bills were sent for all property situated within 250 feet of the subject property: See attached.

(Each list of names and addresses, if room provided is insufficient.)

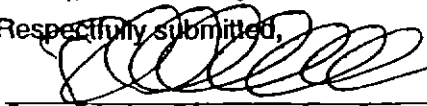
(Over)

I hereby certify that these statements and all accompanying statements and drawings are true and correct to the best of my knowledge.

Dated: 9/26/01 19

Respectfully submitted,

Signature of Applicant:


Ronald A. Sievers by James F. Russ, Jr., attorney

Date forwarded to Plan Commission _____

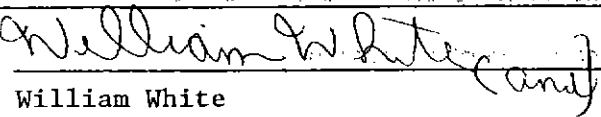
Recommendation of Plan Commission _____

Date of Public Hearing December 5, 2001

Action Taken by the Board Zoning Board of Appeals recommended by a vote of 3 to 2 that the

Village Council approve the requested rezoning petition upon annexation.

Signature of Chairman:


William White

Date submitted to Village Council _____

Action Taken by the Council _____

Dated: _____ 19 _____

ORDINANCE NO. _____

**AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING ORDINANCE
OF THE VILLAGE OF DOWNERS GROVE, ILLINOIS, CODIFIED AS
CHAPTER 28 OF THE DOWNERS GROVE MUNICIPAL CODE, AS AMENDED
TO REZONE THE PROPERTY LOCATED ON THE WEST SIDE OF FAIRVIEW AVENUE
APPROXIMATELY 217 FEET SOUTH OF 63RD STREET (PIN 09-20-209-007)**

WHEREAS, the real estate commonly known as PIN 09-20-209-004 and hereinafter described has been classified as R-1 Single Family Residence under the Comprehensive Zoning Ordinance of the Village of Downers Grove; and,

WHEREAS, the owner or owners of said real estate have requested that such property be rezoned as hereinafter provided; and

WHEREAS, it appears that the Zoning Board of Appeals of the Village of Downers Grove has given the required public notice, and has conducted a public hearing respecting said requested rezoning in accordance with applicable law; and

WHEREAS, making due allowance for existing conditions, the conservation of property values, the development of the property in conformance to the official Comprehensive Plan of the Village of Downers Grove, and the current uses of the property affected, the Council has determined that the proposed rezoning is for the public good.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Downers Grove, in DuPage County, Illinois, as follows:

SECTION 1. The Comprehensive Zoning Ordinance of the Village of Downers Grove, Illinois, codified as Chapter 28 of the Downers Grove Municipal Code (which ordinance as heretofore amended, is hereinafter referred to as the "Zoning Ordinance"), is hereby further amended by changing to "B-2, General Retail Business District" the zoning classification of the following described real estate, to wit:

The South 143.15 feet of the North 393.15 feet of the East Half of the East Half of the Northeast Quarter of the Northeast Quarter of Section 20, Township 38 North, Range 11, East of the Third Principal Meridian, in DuPage County, Illinois (PIN 09-20-209-004)

SECTION 2. The official zoning map shall be amended to reflect the change in zoning classification effected by Section 1 of this ordinance.

SECTION 3. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 4. This ordinance shall be in full force and effect from and after its passage and publication in pamphlet form as provided by law.

Mayor

Passed:

Published:

Attest: _____

Village Clerk

APP # MC-13-01

Anthony DiSalvo
6339 Davane Court
Downers Grove, IL 60516

December 5, 2001

Dear Zoning Board of Appeals,

My neighbors and I ask that you please consider the issues regarding the rezoning of the property located at 63rd and Fairview, directly behind Family Home Video. Many of the neighbors were unable to attend this evening, but have primarily the same questions and concerns.

We have the following questions and concerns regarding this parcel and the rezoning of it. As your constituents we look to you as protection regarding the rezoning and development of this parcel and ask that all the items listed be addressed before any decisions are made.

Zoning Issues

1. How can the Zoning Board of Appeals consider the rezoning of this parcel without full plans of what is going to be built, with regards to the building, type of tenants, number of tenants, use of the building, appearance, height/roof line. (ex. "Tony's Hot Dogs" vs. "The Law Offices of Jones and Johnson.")
2. The proposed rezoning of this parcel is B-2. The corner of 63rd and Farview is currently classified as B-2 zoning. If B-2 allows for a fast food restaurant, a cellular phone retailer, and a video rental outlet, **what types of businesses can we expect at this location?** Furthermore, if it is going to be rezoned there should be a restricted use or a special use regarding this property (stipulations regarding hours) so we don't end up with a 24-hour or a late-night business operation.
3. If the property is going to be rezoned there should be stipulations requiring that an office building be constructed within 3-5 years by Mr. Seavers and not allow him to sell the property undeveloped. Example: How do we know that Mr. Seavers doesn't have a pending sale with McDonalds Corporation or another similar franchise, upon successful rezoning of the property?
4. If an office building is going to be built, how many tenants would occupy the building? At a minimum of 4 parking spaces per 1000 square feet, how does this building support additional employees and visitors?
5. Where will this stop? If this parcel is rezoned we could see the remainder of Fairview rezoned. How do we know that Mr. Seavers doesn't have options on other parcels on Farview and that he isn't taking them on one at a time to avoid detention issues, or other issues?

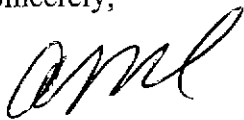
Site Issues

- 1) I understand that County Ordinance on water detention is to be provided on parcels that are one acre or greater. Per the plat of survey, this property is 7% short of requiring water detention. Will detention be considered and/or provided considering that this parcel is going to be changed from 100% pervious area to a non-pervious area of 70%.
- 2) Have the safety issues regarding a building of this size been considered? How would emergency vehicles access the rear of the building in case of a fire and how could they maneuver in the proposed parking lot? In addition, has providing a security fence and proper screening been considered?
- 3) If the Board is considering the rezoning of this site I would like the Board to consider the geometrics of the site to allow a variance of the 25 feet front yard set back, reducing it to 10 feet, and increasing the rear yard set back the 15 feet, to a total 40 feet. Additionally, the "findings" regarding the site plan anticipate certain side and rear yard set backs, these dimensions must be specific and guaranteed. Rather than allowing the developer "to make certain modifications to the building area or dimensions" at will, as stated.

It doesn't make sense that we would erect a condominium complex in our downtown area on a parcel that would be ideal for an office building site, and rezoning a residential parcel in the far south and east sides of Downers Grove to commercial.

In closing, we are well aware that Mr. Seavers is involved in Downer Grove politics, and has helped to rebuild our downtown area. We recommend that he continue his efforts in this area or find parcels that can properly and safely accommodate commercial zoning.

Sincerely,



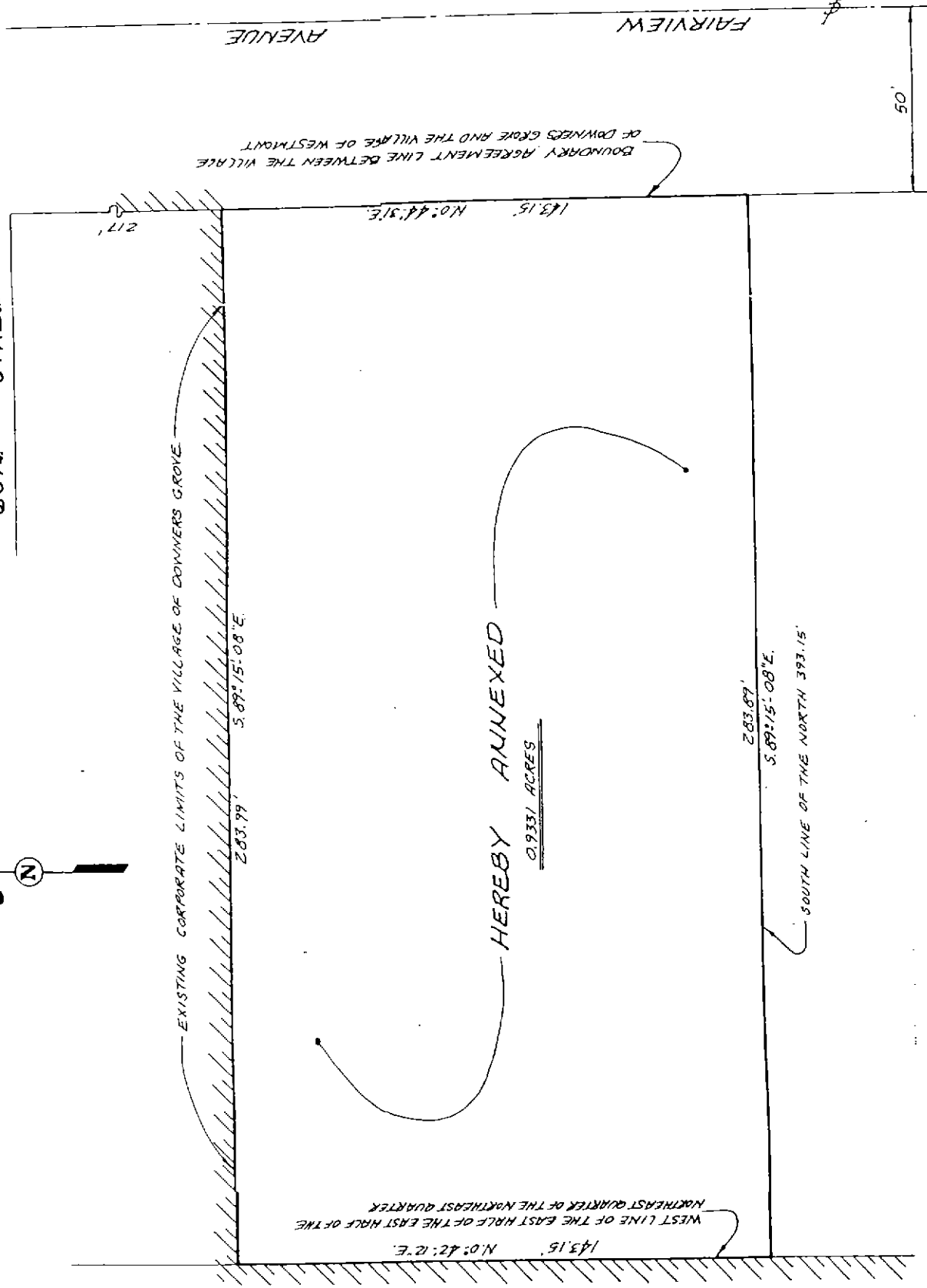
Anthony S. DiSalvo

PLAT OF ANNEXATION TO THE VILLAGE OF DOWNERS GROVE

LEGAL DESCRIPTION
THE SOUTH 1/2 OF THE NORTH 393.15 FEET OF THE EAST HALF OF
THE EAST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER
OF SECTION 20, TOWNSHIP 38 NORTH, RANGE 11 EAST OF THE THIRD
PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.



63rd STREET



MC-13-01

Commissioner Tully said that they have to be sensitive to budget issues, but he noticed that this Council has made a commitment to safety, which sometimes transcends budget issues. It is difficult to put a price tag on safety.

Commissioner Gilbert agreed that the Village can afford to be safe.

Christopher Dunne, 5732 Fairmount, said he chaired the TCD II committee, which submitted its final report about 8 years ago. He read the recommendation made at that time which were to install sidewalks on one side of each through street in the Village. The 15 members of the TCD II made that recommendation.

5. ZBA Recommendations:

- a. **MC-12-01 Proposed annexation and rezoning of 4520 Drendel Road to Village R-4 Single Family upon annexation.**

Ken Rathje, Director of Planning, said that the owner of the property at 4520 Drendel Road wishes to annex to the Village to obtain Village water. Mr. Rathje said that the property would be zoned to R-4 single-family residential, and the petition received a unanimous recommendation from the Zoning Board of Appeals.

- b. **MC-13-01 Proposed rezoning of property on west side of Fairview south of 63rd Street to Village B-2 upon annexation, Sievers.**

Mr. Rathje said the subject property is located on the west side of Fairview Avenue approximately 271 feet south of 63rd Street. He said that the Village's Future Land Use Plan shows this area with a land use designation of residential 0-6. Mr. Rathje said that the petitioner is seeking an annexation of the property with a rezoning to B-2. The property is bounded by Village B-2 on the north and Westmont B-2 on the east. The south is R-4 Single Family in DuPage County, and the west is R-3 Single Family in the Village of Downers Grove. The building is approximately 11,000 square feet. The petitioner recognized the Village's Future Land Use plan and, in an attempt to work out a compromise position, submitted an annexation agreement along with the petition for rezoning. The annexation agreement stipulates the use would be limited to business/professional uses only for a period of 20 years. Mr. Rathje said that the building could accommodate general offices as well as medical offices. He said there is a fair amount of additional parking provided in the plan to accommodate an assortment of office uses. He indicated that the Zoning Board of Appeals had a 3:2 split vote for a positive recommendation. The ZBA took into consideration that Fairview is a minor arterial roadway and the presence of commercial zoning on the Westmont side. The terms of the annexation agreement include limitations on land use, a site plan including a front yard setback of 25 feet, and a parking field with space for 49 cars. The proposed building is shown as approximately 11,000 s.f. with the possibility to expand to 13,900 s.f.

Commissioner Zabloudil commented that he was present at the Zoning Board of Appeals meeting. There were some emotional concerns expressed about the future use of the property. He said if any residents are present this evening they can come to the podium. With respect to comments made at the meeting about a violation of the Open Meetings Act, there was no violation as the discussion was held in accordance with the Act. Regarding the rezoning itself,

Mr. Sievers has done fine work in the Village. He has seen his work and likes it. However, the people who bought property in that location felt the area was zoned residential. There was a lot of discussion that evening regarding the rezoning. Commissioner Zabloudil said that the residents should understand that if the Village denies the petition for rezoning, the petitioner has the option of going back to the County and building in accordance with County zoning. He said there is no telling what the County might approve for that site. He personally would prefer that the zoning is not changed, and he would support that because the residents moved into a site that had residential property on the subject site. The Commissioner said that developers charge a premium price for property backing up to commercial zoning.

Commissioner Gilbert said if the Village turns this request down, the County can decide what goes on that site. Their rules are much looser than the Village's in this regard.

Commissioner Schnell said that this site is different than other B-2 designations in the area. She expressed her concern about the domino effect. There is a difference between the subject site and the corner site. People who bought homes to the west knew that Family Video was on that corner. The homeowners to the west bought thinking the subject site would be residential. She said that she believed the Village could make a strong case to the County. Family Video was supposed to serve as the transitional zoning from the north to the south.

Commissioner McConnell asked about the designation of the property if it were annexed and zoned residential. Mr. Rathje said it could be R-3 single-family, or it could also become R-5A for multi-family. The property is similar in nature to the Rosol landbank project and could accommodate townhomes. It could also accommodate an apartment building designation.

The Mayor asked whether they can annex the property, or is a petition necessary. Mr. Rathje said in this situation they have to have a petitioner's request.

The Mayor said that if this is not approved, the petitioner could go to the County. Mr. Rathje said it is zoned R-4 in the County, which is similar to Village R-4. The Mayor asked if they would be able to get another R zoning in the County that might allow an apartment building. Mr. Rathje said if the County chose to allow residential zoning, this property is at the edge of the Village and the County, or even a Court, would take into account the land use pattern of the surrounding area. Mr. Rathje said that the County could grant a B-2 or even an R-6.

Commissioner McConnell asked about stormwater issues for the site. Mr. Rathje said that given the site plan presented there appears to be substantial opportunity to provide stormwater storage through a pipe system or in the parking area. The parcel is less than one acre of land, and the petitioner could provide payment in lieu of storage as well. Detention would have to be determined.

Commissioner Tully said he read the Zoning Board of Appeals minutes. He asked about the definition of the Professional/business office. Mr. Rathje said it is not a defined term in the Zoning Ordinance but would revert to a common definition such as an attorney, architect, office function versus being in the business of selling goods.

Commissioner Tully said he assumed that the definition could be included as part of the annexation agreement, and Mr. Rathje said that was correct.

Commissioner Tully asked how enforcement of the annexation agreement would take place. Mr. Rathje said that the annexation agreement retains provisions that obligate successors and assigns the owner to adhere to the requirements established by the annexation agreement.

Commissioner Tully then asked how enforcement actually takes place and whether the Village would have to seek enforcement against the new owner. Mr. Rathje said that the Village would not be in a position to issue permits that were contrary to the terms of the annexation agreement. The petitioner would have to go to court to void the provisions of the agreement. Commissioner Tully asked how they would overturn the requirements.

Village Attorney Daniel Blondin said it would be very difficult to overturn the restrictions, unless they could show that the restriction was unconscionable at the time it was established.

Commissioner Tully asked if this would be a situation where the Village or residents would have to take the new owner to court if they wanted to do something not permitted by the agreement. Attorney Blondin said that if the developer is doing something inappropriately, it might have to be referred to the courts. It would be a matter of enforcing a contract right instead of a police power. Attorney Blondin said that when the Council votes on the annexation agreement it will require five approval votes. If the property remains in the County, the Village still has the right of objecting to County rezoning.

Commissioner Tully said he understood that many concerns were raised about the agreement. He asked if there was a method by which the zoning could be revisited by default at the end of the twenty years period. Village Attorney Blondin said there might be. There is a common term called "contract zoning" which courts have looked at more favorably over the past ten years. He said he would have to review that in greater detail.

Commissioner Tully said that comments were made that this property would not get annexed into Westmont. Mr. Rathje said that there is a boundary agreement line that goes down Fairmount Avenue. The Mayor said that there are ten years left in that agreement.

Commissioner Tully asked if there were any criteria that the Council could look at in reviewing this to guide their decision. Mr. Rathje said it is discretionary on the part of the Council whether or not to rezone the property. Secondly, the Future Land Use Plan is also a guide regarding the zoning. In addition, surrounding land uses, the characteristics of the roadway, etc., can all be part of the decision-making process.

Commissioner Tully said he is struggling with this issue. There is an attraction in keeping it residential given its location. He said that it strikes him that this opportunity is unique in the sense that there is an opportunity for the Village, on behalf of the residents, to require a substantial amount of restrictions on the use of this property that it could not get in other circumstances. He said sometimes it is better to be less satisfied by something you can control, than to be horrified by something over which you have no control. He gave 31st and Highland as an example of what could happen. He said there may be a unique opportunity here for further negotiating to come up with something that he would consider a perfect settlement—that is a settlement that makes both sides equally unhappy.

Commissioner Sisul asked Mr. Rathje to explain the concept of a buffer to residential properties. Mr. Rathje said that a buffer is a transition between dissimilar uses. In the case at hand, Family

Video and Barone's Pizza development about the north line of the property . The site was designed with transitional characteristics in terms of parking, fencing, etc. The notion of a transition between Family Video and the elements to the south are evident. An office use has a significantly different operation than retail. Typically they do not have night time or weekend activities.

Commissioner Sisul asked why the Village would not annex this property itself. Mr. Rathje said they would need to have the agreement of the property owner to annex. He said he will look into a forced annexation as a possibility, but they would have to annex the entire area.

Village Attorney Blondin said the Village entered into an agreement with the owners on Fairview Avenue that it would not annex their property for a period of a few years.

Commissioner Sisul said he would like to see the minutes of the Workshop for the discussion of the Family Video development. He said that in many ways this is an ideal project for a buffer, as Mr. Sievers has done work in the Village before. He sticks to a traditional design and structure that has more of a residential flavor than typical commercial properties. He said that perhaps there are other ways to create the transition and place other restrictions such as hours of operation on the site. He asked if that was discussed, and Mr. Rathje said it was not discussed or proposed at the Zoning Board of Appeals. Commissioner Sisul said he would like to see a negotiated settlement on this with the petitioner and the residents as well. He said he is concerned about this because it came to the Council with a divided vote, and very strong dissent. He said he thinks the Council needs to be sure that when they move on this they are giving clear directions to the ZBA to enable them to deal with similar issues before them in the future. He asked the Council that when they make their decision on this issue, they make it a clear direction. He believes the divided votes are because the ZBA Commissioners do not know how the Village wants to move in this type of situation.

Commissioner Zabloudil asked if the site directly south of the subject site would be a forced annexation if it were incorporated into the Village. Mr. Rathje responded that the property to the south would most likely be via a voluntary request for annexation. The subject site at that time would be in a position where the Village could force-annex it, as it would close the gap to the property to the south. It would then be automatically zoned R-1 single-family residential by default, unless there is a petition for rezoning.

The Mayor said he received a number of phone calls over the years when the property was boarded up and trashed. Since it was unincorporated, the County had to be contacted and it took a long time to clean up the site. He said it would be easy to deny the annexation and rezoning; however, the Mayor said he is concerned by all the unincorporated property surrounding the site. He does not think the property owner will build a single-family house on that site, or subdivide it. He believes the County may give the B-2 zoning, and if the property stays as is, the petitioner will probably go to the County.

The Mayor called for a short recess. Upon reconvening, he called for discussion from residents regarding the rezoning of the property. He said that he believed the Council would like to see this as a buffer zone. He would like to hear from the residents and the petitioner as well as to why the petitioner wants to annex to the Village.

Jim Russ, 4915 Main Street, attorney for the petitioner, said the petitioner wants to be part of the Village. Mr. Sievers has been a developer in the Village for a very long time, and would rather build in the Village. At some time the property will come into the Village, whether voluntarily or not. Mr. Russ said that the property will never be a single-family residence again. Fairview Avenue is becoming a busier street, so the property may become multi-family or business. The petitioner wanted to be sensitive to the surrounding residential area and that was the purpose for providing the site plan and annexation agreement. Mr. Sievers said he is willing to sit down with the neighbors and Village and discuss options. Mr. Russ said that Mr. DiSalvo, one of the dissenting residents whose home is directly behind the subject property, would be willing to discuss potential building construction. The petitioner has said he would commit to a one-story office building. Mr. Russ said this is a business transaction for Mr. Sievers. He has not gone through architectural drawings or engineering as there is no definite plan at this time. They tried to provide a footprint of a possible building on the property. Mr. Sievers said he welcomes the opportunity to meet with staff and surrounding residents. Mr. Russ said he is concerned about the way conversation has been moving regarding forced-annexations, and strategies for forced annexations. The Village needs to be sensitive to the properties that are unincorporated.

Commissioner Gilbert said they are not talking about forced annexations, but they are trying to understand what would happen if the property is not annexed. Mr. Russ said comments were made about annexing the property to the south to force annex the property when it is surrounded. Commissioner Gilbert said he understands the interpretation by Mr. Russ, but said he did not think that was the direction the Council was moving.

Carol Nield, 6326 Fairview Avenue, said she lives immediately south of the subject site, and has lived there for 39 years. They are concerned about the property being rezoned. She remembers the Family Video meeting and how that site was called the buffer between commercial 63rd Street and the residential property. She asked how the Council would like to live next to a commercial site and parking lot with 49 cars. Ms. Nield said she wants it to remain residential. Ms. Nield said that the petitioner only spoke to one resident, and not the residents in general, as is stated in the minutes.

The Mayor said that the Council understood that many residents are against this petition.

Ms. Nield said that comments were made that Westmont will not dictate the Village's rezoning. There were comments made that the Westmont property is farther south than the subject site. She said the property was bought as a single unit. If the Council rezoned this property it will be the very first parcel to be rezoned that faces Fairview Avenue. The Westmont property was part of one large rezoning of the corner. Mrs. Nield said she made a quick survey of property in four directions from 63rd and Fairview. There are 16 empty commercial office buildings in that area. In addition, 63rd and Fairview looks commercial when driving by; however, walking the site shows that the trees serve as a buffer. She disagrees that no one will build a house there. Recently a builder petitioned to build two beautiful homes on Fairview south of 68th Street. In the past few years some beautiful expensive homes were built on Fairview Avenue. If the office building is built with a 49-car parking lot, she asked what happens if after a year or two the Nield's do not want to live there any more and a developer wants their property for additional office buildings. She asked how the Council can say no to them if they don't say no to Mr. Sievers. The rezoning for the subject site is not for just the one lot, but will effect all of Fairview Avenue.

The Mayor said that the Commissioners emphasized that they do not want to see a domino effect. The concern is that if this goes to the County, or to the Courts, they would allow business zoning in all likelihood. Even if the Village or the County denied it, the petitioner could challenge it. Village Attorney Blondin said the Courts would look at the trend of development and the nature of the surrounding area.

Commissioner Gilbert asked Mrs. Nield if she is willing to accept the risk of the County or Court making the decision about this property if the Village denies the petition. Mrs. Nield said the decision should not be made out of fear of what might happen. Commissioner Gilbert said that is the dilemma they must look at. He understands that she has lived there 39 years and does not want it to change to commercial. He is not sure it is wise for them to turn down a known entity for something that we don't know. He said it is not that they do not agree with the plight of the residents. The problem is what may happen. Mrs. Nield said she does not think the County is about to be bothered by one little piece of property. The Mayor said that the County would have to rule.

Anthony DiSalvo, 6339 Davane Court said this is a difficult decision and the Council seems as confused as the neighbors are on this issue. The residents are looking for a solution. Maybe the neighbors can meet with Mr. Sievers. He is not in favor of a 15,000 square foot office building which will depreciate the value of his home. He said that Commissioner Zabloudil attended the meeting. The residents are not in favor of this development, but he does not know where they stand in terms of details of the construction, limitations, security issues, etc. Those things need to be determined. He has lived in the neighborhood for 1-1/2 years and paid a premium for his property. He said there is a builder present at the meeting who built many of the homes in the area and knew that the area was residential. Mr. DiSalvo said that Mr. Grey, who is on the Zoning Board of Appeals, said he wanted to see a market analysis done by a professional to determine what marketability problems there might be with the commercial building. Mr. DiSalvo disagrees with Commissioner Zabloudil regarding a violation of the Open Meetings Act that night. Mr. DiSalvo said he feels there was a violation of the Open Meetings Act as there were three members who went back in the chamber and talked with each other.

The Mayor said before allegations are made, Mr. DiSalvo should speak with the Village Attorney about his concerns. Mr. DiSalvo said that three members conferred in front of him. The Mayor said he should bring specific allegations to the Village Attorney. Mr. DiSalvo said that Chairman White was nervous when speaking about it. He believes that there were violations of the Illinois Open Meetings Act. Mr. DiSalvo asked if this buffer would truly be transitional. He asked why they are looking at Westmont to determine what is being done in Downers Grove. The Mayor said no one in the Village is looking at Westmont to determine what will be done in the Village. The concern is what will happen if the property remains in the County, and the County will consider the surrounding area, which includes Westmont. The Mayor said the Village can easily deny the annexation and the Courts will also take into account the surrounding area.

Mr. DiSalvo said he does not know what the minutes were when the Family Video was built, but he is sure there were provisions made for no fast-food restaurant. There is a fast-food restaurant at that location. Commissioner Sisul said that is not accurate. The restriction was for a drive-up facility.

The Mayor said that the Council shares the concerns of the residents about what is going to go in at that location. Someone is going to build something there.

Mr. DiSalvo said that there are homes on Fairview that have been built and sold. He referenced the home on 63rd and Main, across from the Ace Hardware, which was built and sold. He said the residents are looking for a solution.

Commissioner Tully said the best solution is to come up with something everyone can live with. The problem is that the Village has no control over that property now at all. It is not in the Village of Downers Grove. If it is annexed into the Village, the Village has the opportunity to define what will be there. He repeated that no one will be happy with the final outcome. He feels a negotiated solution will be the best possible outcome. It is the Council's job to think about what may happen in the future; that is what they were elected to do. If they focus only on the here and now they are not doing their job. They must think about what will happen next. He sees this as an opportunity to define what will happen to one lot, put many restrictions on it so that it does not have a domino effect. Another developer may not agree with the conditions placed on the subject lot, which is the purpose of the restrictions. Putting this in the hands of the County or worse, the Courts who do not have to consider what the Village and residents want, would not be a solution.

The Mayor said that there are still many questions the Council has with regards to stormwater and the general project. They do not have enough details, and he said they will probably have to revisit this again before bringing it to a vote. They would also like to see Mr. Sievers and the residents meet to discuss any possible options.

Village Attorney Blondin said that there will be a public hearing on February 5 to discuss the annexation agreement. The Mayor said they will not vote on it that night as they need more information and discussion, and it will probably not be up for a vote before February 19.

Commissioner Schnell said a comment was made that the southeast corner was made commercial at one time and asked if they were annexed separately or as a group. She asked for information regarding this. She also asked if it makes a difference if they were annexed as a group.

The Mayor said they can follow-up with Westmont. Attorney Blondin said how it got to be what it is today does not matter to the Court in making a determination.

Mr. DiSalvo asked when the issues of flood control, parking, etc., will be decided.

Commissioner Sisul said there would be restrictions placed as to what would be built on the site. Those restrictions would continue with the property.

Commissioner Gilbert asked that Mr. DiSalvo and other residents meet with the staff to discuss some of the details. This is not a simple issue of saying "we don't like it, we're not going to do it." He believes meeting with staff may help the residents understand the process a bit better, and clear up some of the misconceptions and confusion.

Commissioner Sisul said the developer has a reputation of dealing with people, and his attorney has been willing to meet with people in the past. He said that they have been very cooperative in the past.

Mr. DiSalvo said he believes the property should be annexed and remain single-family. He believes that Mr. Sievers can build a quality house that will sell at that location.

Commissioner Tully said if this petition came in as R-1 there would be no need for discussion at this time.

Kelly Kania, 6340 Davane Court said in all likelihood the property will be rezoned and will not be residential. She asked that some of the residents be officially brought into the negotiations with the attorney for the petitioner to express their reservations. The Mayor said that Commissioner Gilbert said he would like the Village Manager to facilitate a meeting with the residents. Mr. Russ said he would be willing to sit in on meetings with the staff and residents as well.

Mike Farrington, 5211 Lee Avenue, said that a number of residents want to speak on the sidewalks, and asked if they can come to the next Council meeting on February 5. The Mayor said they can do it at the end of this meeting, or speak at the Council meeting on February 5 under General Comments.

The Mayor said that the request has been made for the Village staff, residents, the petitioner's attorney, Village Attorney and Mr. Rathje to meet regarding this petition. It is set for a public hearing on the annexation, but the Council will not be voting on it. He asked that the residents designate some people to represent them for a meeting.

Commissioner Sisul said there was discussion at today's Land Use Seminar regarding a conservation easement, and he asked the Village Attorney to look into this. Attorney Blondin said there are several different ways that can be used. He will look into this. The question is whether the parties could come to an agreement.

6. Plan Commission Recommendations:

- a. **File 1066 – Final Plat of Subdivision, Boundary Road at Lee Avenue, Ponstein.** Mr. Rathje said that Ponstein Builders came before the Plan Commission for a final plat of subdivision approval for an eight-lot subdivision located at Lee and Boundary. The Village Council granted preliminary approval in June of 2001. The petitioner has provided \$24,222.04 in School and Park District fees. Engineering plans were sent to Burke and received a preliminary memo from Kay Whitlock that the wetlands were dealt with in an appropriate manner.

Commissioner McConnell asked about the engineering and stormwater and whether Ponstein Builders is aware the Village is looking at this. Mr. Rathje said that Mr. Ponstein's engineer has been involved.

- b. **PD #18 Annual Extension of Downers Park Plaza Planned Development.** Mr. Rathje said this has been a yearly request by the owners of Downers Park Plaza. There are two sites still undeveloped. The preliminary PUD was approved in 1978.

Commissioner Sisul said they are looking to keep Dominicks in this location. Mr. Rathje said that is one of the reasons they have held the site to the east in abeyance, so as to create additional opportunities for Dominicks. There are no restrictions that he is aware of at this time.

7. **Budget Review Process Timeline.** The Manager said that the timeline is on target. Staff would like to know if there are any time critical items to be considered.
8. **An Ordinance Amending Certain Purchasing Policies.** The Manager said that last year a policy was adopted regarding the Village Manager's purchasing authority from \$10,000 to \$15,000. In order to remain consistent with that, the provisions of Section 2-79(b)(3) would have to be amended regarding the Community Events expenditures.
9. **Phase I – Downers Grove Estates Rezoning.** The Manager asked Amanda Brown to address this item.

Amanda Browne, Planner, said that the rezoning was presented in September of 2001, and delayed due to an error in the legal publication. The lot in question was removed, and will be presented in February. All other properties are included in this rezoning.

STANDING COMMITTEE REPORTS - None

ATTORNEY'S REPORT

Attorney Blondin reviewed the following items presented to Council: 1) a resolution authorizing execution of an agreement between the Village of Downers Grove and Suburban Bus Division of the Regional Transportation Authority (PACE); 2) an ordinance amending parking restrictions on Gilbert Avenue; 3) an ordinance restricting parking on Webster; 4) an ordinance restricting parking on 41st Street; 5) an ordinance annexing 4520 Drendel Road to the Village of Downers Grove; 6) an ordinance amending the Comprehensive Zoning Ordinance of the Village of Downers Grove, Illinois, codified as Chapter 28 of the Downers Grove Municipal Code, as amended to rezone 4520 Drendel Road; 7) a resolution approving the final plat of subdivision for Boundary Hill Subdivision; 8) an ordinance extending the preliminary site plan for Venture Planned Development #18; 9) an ordinance amending the purchasing policy of the Village of Downers Grove; 10) an ordinance amending the Comprehensive Zoning Ordinance of the Village of Downers Grove, Illinois, passed and approved April 19, 1965, as amended, to rezone Phase I of the Downers Grove Estates/Meadowlawn Subdivision (R-1 to R-3); and 11) an ordinance amending the Comprehensive Zoning Ordinance of the Village of Downers Grove, Illinois, passed and approved April 19, 1965, as amended, to rezone Phase I of the Downers Grove Estates/Meadowlawn Subdivision (R-1 to R-4)

There being no further discussion, the Workshop meeting was adjourned at 9:55 p.m.

April K. Holden
Village Clerk

tmh

simple motion to approve the matrix as presented. That will simplify the process in his opinion.

Commissioner Tully said he does not necessary think they must formally accept the matrix. The Council long ago approved the concept of the matrix which is a measure of what will be done.

Commissioner Gilbert said this has always been a volatile issue. There is always pro and con on any given block—half want them and half do not. He said that formally accepting the matrix for the year does away with some of the controversy. This is an ongoing concern and bone of contention.

Commissioner Zabloudil agreed that they should agree to move forward on this issue.

Commissioner McConnell asked if this would then be done every year, or once.

The Mayor said it would be done every year because there may be changes in traffic patterns or busing programs that would require a change.

Commissioner McConnell said that it seems that the P&T Committee has been given direction on how to evaluate the matrix, and asked whether they still need to say that they are approving it each year.

Commissioner Tully said he is fine with a Resolution. It's a matter of semantics as to whether it is "approving" or "accepting." The matrix is a measurement tool that exists. He has no problem with accepting it. He has a problem with approving it because it suggests that the Council has done an independent analysis of every criteria.

Commissioner Zabloudil said that it is really an acceptance of a recommendation regarding the recommended streets to be done for the coming year.

The Mayor directed the Village Attorney to draft a Resolution "accepting" the matrix.

5. Public Hearings

Annexation Agreement - West Side of Fairview South of 63rd Street (09-20-209-007)

MC-13-01

Mayor Krajewski called the public hearing to order at 7:35 p.m. to consider a proposed annexation agreement for the property located on the west side of Fairview Avenue, approximately 217 feet south of 63rd Street. Notice of this hearing was published in the Downers Grove Reporter on January 11, 2002. He reviewed the procedure to be followed for the public hearing, then asked staff to summarize the item.

Village Attorney Blondin said this public hearing concerns the Annexation Agreement of the property on the west side of Fairview south of 63rd Street. He noted that under this Annexation Agreement the Council agrees to annex the property which is about .93 acres. The property would come into the Village as B-2 under the annexation agreement. Pursuant to law, the zoning hearing regarding this site has been conducted. Minutes from the January 22 meeting related to MC-13-01 will be made part of tonight's public hearing for the annexation agreement. He said the attorney for the petitioner is present. He further indicated that many of the items in the Annexation Agreement have been reviewed and discussed. The zoning issue is driving this particular annexation agreement. Attorney Blondin said the annexation agreement itself would remain in effect for a period of 20 years.

James Russ, attorney for the petitioner, said that the petitioner and staff would like to offer the residents in that area an opportunity to sit down and discuss this petition. He said that Mr. DiSalvo, one of the residents, has contacted Mr. Russ saying he is not in a position to meet with him at this time. The petitioner is still ready to meet with the residents.

Mayor Krajewski asked that staff also meet with the petitioner in regard to stormwater issues. Mr. Russ said that was the logical next step.

Commissioner Tully said the Council had the benefit of reviewing the minutes from 1996 for the Family Video parcel on the southwest corner of Fairview and 63rd Street. He found those to be enlightening and had a big impact on him. He said he would like to see a negotiated resolution to this issue. He is somewhat disturbed that two weeks have gone by with no discussion. He understands that the petitioner has made attempts to meet with the residents.

Mayor Krajewski asked the Attorney when this must be placed for a vote. Attorney Blondin said it is an annexation agreement and they can set it for a vote when they want it voted upon. There is no specified time frame.

Carmela Zinnecker, 6345 Davane, said she lives kitty-corner to the subject property. She said when they considered purchasing their property about 3-1/2 years ago the builder described the development and told them that the property behind them was residential. Based upon the information they received they chose to buy the house. If the subject property had been zoned commercial they would not have purchased their home on that block. The Mayor asked whether the builder told them the property was unincorporated, and she responded that she did not remember talking about that. Ms. Zinnecker then described the block and the relationship formed with the neighbors, saying they participate in many activities with each other. There are 25 children on the block between the ages of several months to 12 years old. She has three children between 5 and 10 years of age and she is not concerned about safety for her children since traffic is minimal. Ms. Zinnecker said she wanted the Council to be mindful of the Zoning Board of Appeals vote as it was a 3-2 vote. She said that both Commissioners Zabloudil and Schnell preferred that the zoning would not be changed. She said that Commissioner Schnell also stated that Family Video was to serve as the only transitional site between the commercial and residential area. She indicated that Mr. Rathje also said that the Village's Future Land Use Plan showed the property in question as residential. Ms. Zinnecker said she understands that if this is denied by the Village, it will go back to the County.

The Mayor noted that the concern is not the County, but what the Courts might do if this case went to Court based upon denial by the Village and County. The Courts tend to look at the trend in the area, and there is no way of telling what decision they might make.

Attorney Blondin said most importantly they would look at the trend of development in the area, and the surrounding property.

Ms. Zinnecker asked whether the Village has the right to object to the County zoning, and the Mayor said that was correct. There was then some general discussion as to the procedures to be followed in various scenarios.

Commissioner Tully noted that the northwest corner of 63rd and Fairview has a commercial use for a medical building pursuant to litigation.

Commissioner Schnell said that the property is still zoned residential, but by Court Order has a business use on it.

Commissioner Tully said that is an example of why the Council is concerned. Even though it is residential, the Court directed that the medical facility could be built on that site.

Ms. Zinnecker then read a letter into the record from Carol & Bob Nield, and other residents who were not able to attend the meeting. The Mayor said that the Council received both an

e-mail and letter from them. Ms. Zinnecker said that the Niels spoke with a Mr. Potter of the County Board who told them that the County Board would take the Village's decision under consideration.

The Mayor said that there are many issues to consider here. He said that Mr. Potter is probably right in his statement; however, the Council's concern is whether the petitioner goes to Court.

Commissioner Sisul said the Court looks at it to determine what the highest and best use for the property is, irrespective of how the Village or County have zoned the site. This could become beyond the Village's control, and he said there have been instances when the Village has set a particular use for a site only to be overturned by the Courts.

The Mayor said that Mr. Rathje noted at the Workshop that this could be voted as a higher R-6 zoning which could allow for a ten-unit apartment building on the site.

Ms. Zinnecker said they need to also look at half-million dollar homes further south on Fairview, some of which are incorporated into the Village and others in Darien. She said Mr. Sievers wants a one-story building of 11,000 square feet with 49 parking spaces. She does not believe that a parking lot for 49 parking spaces for an office building of that size is sufficient. The office building at Fairview Medical is approximately 11,900 square feet and has about 80 parking spaces. The Mayor said that the Village's parking requirements for a medical facility is more than for another use. If the building were all medical, there would not be enough parking spaces as required in the Zoning Ordinance. Mr. Rathje said the current plan is that the entire building would not be a medical center.

Ms. Zinnecker said Sievers built an office building of a similar size on Belmont. The parking lot is 39-40 spaces. Some of the residents have voiced their concerns regarding employees of the office building parking in their driveways. The Mayor said there was a concern regarding an unincorporated business with sales forces. The Council authorized no parking signs. Ms. Zinnecker said she thinks a similar situation will occur on Fairview.

Ms. Zinnecker said that the parking lot at Family Video is full on Thursdays thru Saturdays and the overflow will go into the office building parking. She said she could see the overflow going onto her block. She is very concerned about the safety of her children. She said she was speaking on behalf of some of the residents. She said that it was stated that Mr. Sievers was willing to work with the residents. She spoke with the residents of Bending Oaks and according to them Mr. Sievers has not kept some of the promises he made to them. They told her that there were problems getting him to take care of things, and it has taken almost two years for him to take care of some problems. She wants to see something that will work for the Village, but also for the residents. She asked the Village Council not to rezone the property.

The Mayor noted that they need five positive votes to approve the annexation agreement.

Dr. Tony Prasnika, 6425 Davane Court, said he occupies the building on Fairview Avenue as a doctor and has done so for about five years. He said it is a very busy area and there have been a number of accidents and near-accidents. He noted that Fairview Avenue is not a flat street, so the ingress and egress make visibility for northbound traffic difficult. He said this building would add to the existing hazardous situation. At the last Council meeting many Commissioners spoke about their commitment to safety, and he asked that they consider safety in considering this proposal. Homes bordering businesses have been bought and sold, but it was with the knowledge that the businesses were already there. He said there is a perception that this property would not be appropriate for building single-family homes. He said they should look at Davane Court and note that 12 homes border commercial property.

Dr. Prasnika said that Mr. DiSalvo and his neighbors chose not to border businesses. He said that Mr. Sievers does good work in the Village, but is thumbing his nose at the wishes of the community. He thinks that there is a unique opportunity here if the residents could work with Mr. Sievers to develop the property as residential.

Brinsley Lewis, 6431 Davane Court, said he paid a premium price for his home. He asked at what point the Village Council will draw a line in the sand and not allow B-2 zoning rather than residential. He asked that the Council not base its choice based on a position of fear and hypothetical situations. Mr. Lewis said that he would rather take his chances and have Mr. Sievers to go Court on the issue. He said he would respect the Council decision to preserve their neighborhoods.

The Mayor said there are six lots on Fairview that are unincorporated and there is the risk of a Domino effect. He agreed that the Village would like to see it continue as residential.

Christine Fregeau, 1918 Elmore, said she lives in a Sievers development. There needs to be some sensitivity on both sides of this. Residents are being asked to take a leap of faith regarding Mr. Siever's intentions and those of the Council. She said the leap of faith to the Council doing the right thing is a safe way to go. She suggested a mailing to the residents to let them know the Council is being responsive to the residents' concerns and to a negotiated resolution or agreement as much as the Council is able to guide that. Regarding businesses adjacent to residential area, she said some of the residents on Challen Place were extremely disappointed in what they were assured would not happen in terms of the buffer between the townhouses and their custom homes on Challen. She asked the Council to oversee the setbacks.

Theresa Stewart, 6413 Davane, said she shared the feelings expressed. As a realtor, she has seen homes built in the oddest areas. She noted the caliber of homes down Fairview, including the Darien Club, which are expensive homes. She would prefer to see this parcel remain residential.

Commissioner Tully summarized that everyone would like to see it as a single-family residence. Mr. Sievers as a property owner has the right to ask for rezoning. He said that this, however, is a unique opportunity to tell someone what to do with that property, and define exactly what will get built on that site. He said that the petitioner has offered to compromise and work with staff and residents. He said that would reduce the gamble. He said there are so many restrictions in the annexation agreement that he does not see that a Domino effect will occur. Commissioner Tully said with respect to concerns about living up to promises, that is the purpose of an annexation agreement. It is put in writing, and he is encouraged by the level of flexibility that the petitioner is showing. His concern is the gamble that someone else not connected to the Village will be making the decision on this site. He said that traffic information and stormwater information has not yet been submitted, and that will be an issue of consideration.

Commissioner McConnell said she was disappointed to hear that there has been no contact between the developer and the residents. She said they must take advantage of this opportunity. She said that the petitioner has indicated they are willing to be open to ideas.

Commissioner Schnell said that this particular lot is different from the northwest corner of Fairview, as it is not a corner. She also encouraged the residents and petitioner to take advantage of the opportunity to discuss the issue. There may be no agreement, but at least they will have attempted to move through the process.

Commissioner Zabloudil asked the Attorney about the trend of development in the area, and if

the Court takes into account whether the surrounding developments are new or established. Attorney Blondin said that if a particular parcel of property has been unused for a long period of time, that is considered. He said that all the terms they are using are just factors that the Courts could weigh. The Courts would probably look at the most recent development.

Commissioner Zabloudil said he is not surprised there has been no communication because he does not think they want to meet. He said covenants could be placed on the property but there is no way to determine its effect since it is unincorporated property. He noted that the residents made a choice when they purchased their property, and Mr. Sievers has made a choice regarding the subject property.

Commissioner Gilbert said he will be thinking hard on this item. He does not think that he is willing to allow this to move into the Courts for rezoning. They could end up with something worse. Mr. Sievers is a long-term respected builder in the Village. However, Mr. Sievers can decide to simply sell the property and the same problem could come up again. Commissioner Gilbert said he is concerned about what could happen if the Court system were brought into this situation. He said he is not sure he is willing to turn it loose into that forum.

Commissioner Sisul said that the issues are well framed, and he is looking forward to the additional discussion.

The Mayor said that this item is not going to be placed on any Active Agenda for a vote in the near future. He said the Council encourages staff, and Mr. Russ and Mr. Sievers to meet with the residents and discuss the various concerns.

There being no further discussion, Mayor Krajewski adjourned the public hearing at 8:35 and called for a brief recess.

6. Consent Agenda

COR 00-00773 Claim Ordinance: No. 5413, Payroll, January 11, 2002

Sponsors:Accounting

A motion was made to Approve this file on the Consent Agenda.

Indexes: N/A

COR 00-00774 Claim Ordinance: No. 5415, Payroll, January 25, 2002

Sponsors:Accounting

A motion was made to Approve this file on the Consent Agenda.

Indexes: N/A

BIL 00-00775 List of Bills Payable: No. 5416, February 5, 2002

Sponsors:Accounting

Commissioner Gilbert questioned items BO443 and SH671.

Commissioner McConnell commented on several \$200 - \$300 cell phone bills.

The Manager reviewed the cell phone plan.

Commissioner Zabloudil suggested negotiating a cell phone package as part of the rental of the towers.

A motion was made to Approve this file on the Consent Agenda.

DRAFT

RESOLUTION NO. ____

**A RESOLUTION AUTHORIZING EXECUTION OF AN ANNEXATION AGREEMENT
BETWEEN THE VILLAGE OF DOWNERS GROVE AND
SIEVERS DEVELOPMENT COMPANY FOR CERTAIN PROPERTY
LOCATED SOUTH OF 63RD STREET AND WEST OF FAIRVIEW AVENUE**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Annexation Agreement (the "Agreement"), between the Village of Downers Grove (the "Village") and Sievers Development Company (the "Owners"), for certain conditions related to the annexation of property located south of 63rd Street and west of Fairview Avenue, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____

Village Clerk

**ANNEXATION AGREEMENT WITH
SIEVERS DEVELOPMENT COMPANY
FOR CERTAIN PROPERTY LOCATED SOUTH OF 63RD STREET
AND WEST OF FAIRVIEW AVENUE, DU PAGE COUNTY, ILLINOIS**

This Agreement made and entered into this _____ day of _____, 20____, by and between the Village of Downers Grove, an Illinois municipal corporation (hereinafter referred to as the "Village") and SIEVERS DEVELOPMENT COMPANY (hereinafter referred to as the "Owners"),

WITNESSETH:

WHEREAS, the Owners are the owners of record of certain real estate, commonly known as 6320 Fairview Avenue, Downers Grove, IL and located south of 63rd Street and west of Fairview Avenue, Dupage County, Illinois, and legally described on Exhibit A. (hereinafter referred to as the "Property"); and

WHEREAS, the parties hereto desire that the Property be annexed to the Village on the terms and under the conditions hereafter set forth; and

WHEREAS, the Property is not located within the corporate boundaries of any municipality, but is within the planning area of the Village, as established by boundary agreements with adjacent municipalities, and is contiguous to the Village; and

WHEREAS, the parties wish to enter into a binding agreement with respect to the future annexation of the Property and to provide for various other matters related directly or indirectly to said future annexation, in accordance with the provisions of Ill. Rev. Stat., Ch. 24, Sec. 11-15.1-1 et seq.; and

WHEREAS, the Village Council has determined that the annexation of the Property would further the orderly growth of the Village and promote the general welfare of the Village.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, terms and conditions herein set forth, the Owners and the Village agree as follows:

1. The provisions of the preamble herein above set forth are hereby restated and incorporated herein by reference.
2. The following documents are hereby incorporated into and made a part of this agreement by reference:

Exhibit A - Site Plan dated 9/19/01.

For purposes of this agreement, the Petitioner shall be held to the minimum front, side and rear yard setback as provided pursuant to said site plan. All other site elements are subject to

modification consistent with the Village of Downers Grove zoning and other applicable ordinances.

3. The Owners shall submit to the Village together with this agreement an executed Petition for Annexation and plat of annexation in the form provided by law. The Owners shall pay all fees associated with this Agreement including publication fees and recording fees.

4. The Village agrees to annex the property upon the terms and conditions set forth in this agreement.

5. In order to permit the development of the property, or any part thereof, the Village hereby agrees to classify and zone as provided herein.

a. Immediately following passage of the annexation of the property, the Village agrees to adopt an ordinance zoning the property B2 under the Village of Downers Grove Zoning Ordinance. Following the passage of the ordinance zoning the property and upon submittal of all required documentation, the owner agrees to limit the use of this property to business/professional office use for a period of twenty (20) years from the date of this agreement. Professional business use shall not involve retail sales except as incidental to a professional and/or business office use.

6. The Village shall assess, and the Owner shall pay, the public works and stormwater review and inspection fees, as established, and from time to time amended, in sections 20-15 and 26.76.8 of the Downers Grove Village Code.

7. Any development of the property shall be in substantial conformance with the site plan. Provided, however, amendments or variations to such plans may be approved by the Village from time to time in accordance with this Agreement or applicable Village ordinances and such amendments or variations shall not require the amendment of this agreement. Village ordinances, codes, rules, regulations, and specifications generally in effect and applicable throughout the Village at the time approval of any modification is granted shall apply to any subject not specifically addressed within this agreement.

8. This Agreement shall be binding upon the Owners, as well as the Owners' successors, assigns and heirs. This Agreement shall constitute a covenant running with the land and shall be binding upon all persons taking any interest or right in the Property after the date of this Agreement is executed by the Village. Any person acquiring any rights or interest in the Property after the date of this Agreement shall be bound by the terms thereof and shall be deemed to have accepted and approved this Agreement in full.

9. The Owners and the Village respectively agree to do all things necessary or appropriate to cause the Property to be duly and validly annexed to the Village. The Owner shall assist the Village and take all actions or steps necessary to accomplish said annexation.

10. The parties to this Agreement or their successors or assigns, may, in either law or equity, by suit, action, mandamus, injunction, or other proceedings in court, enforce and compel the performance of this Agreement, including suits for specific performance.

11. This Agreement may only be amended by written instruments signed by the parties.

12. The term of this Agreement shall be twenty (20) years from the date of execution hereof.

13. If any portion of this Agreement shall be declared invalid, the same shall not affect the validity of this Agreement as a whole, other than the part so declared invalid.

14. The undersigned Owner(s) warrant(s) that he constitute all owner(s) of the Property and that he have full authority and power to sign the Agreement and the petition submitted herewith and that they have not and will not take any action to change ownership in the Property until after this Agreement is recorded.

IN WITNESS WHEREOF this Agreement has been duly executed by whose names are subscribed below or on the signature pages attached hereto from time to time, and which pages are specifically incorporated herein.

OWNER(S)

VILLAGE OF DOWNERS GROVE

RONALD A. SIEVERS

By: _____

Attest: _____

Village Clerk

Subscribed and sworn to before me
this ____ day of _____, 2001.

Notary Public

DRAFT

Annex property - 09-20-209-007

ORDINANCE NO. _____

**AN ORDINANCE ANNEXING THE PROPERTY LOCATED ON THE WEST SIDE OF
FAIRVIEW AVENUE APPROXIMATELY 217 FEET SOUTH OF 63RD STREET
(PIN 09-20-209-007) TO THE VILLAGE OF DOWNERS GROVE, ILLINOIS**

WHEREAS, there have been filed with the Clerk of the Village of Downers Grove, in DuPage County, Illinois, verified petitions requesting annexation to said Village of PIN 09-20-209-007, located on the west side of Fairview Avenue approximately 217 feet south of 63rd Street, as hereinafter described and hereafter referred to as the "Territory"; and

WHEREAS, it appears that the owner or owners of record of each parcel of land within the Territory and at least fifty-one percent (51%) of the electors, if any, residing therein, have joined in said petition; and

WHEREAS, it appears to be in the best interests of the Village of Downers Grove to annex the Territory.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Downers Grove, in DuPage County, Illinois, as follows:

SECTION 1. The following described real estate, together with any public streets or highways adjacent to or within the Territory described that have not been previously annexed to any municipality, is hereby annexed to the Village of Downers Grove, to wit:

The South 143.15 feet of the North 393.15 feet of the East Half of the East Half of the Northeast Quarter of the Northeast Quarter of Section 20, Township 38 North, Range 11, East of the Third Principal Meridian, in DuPage County, Illinois (PIN 09-20-209-004)

SECTION 2. A certified copy of this ordinance, together with an accurate map of the Territory hereby annexed shall be recorded in the office of the Recorder of DuPage County and shall be filed with the County Clerk of DuPage County by the Clerk of the Village.

SECTION 3. All ordinances or resolutions, or parts thereof, in conflict with the provisions of this ordinance be and are hereby repealed.

SECTION 4. This ordinance shall be in full force and effect from and after its passage and publication in the manner provided by law.

Mayor

Passed:

Published:

Attest: _____
Village Clerk

1\wp8\ord.02\Sievers-Anx

DRAFT

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE VILLAGE OF DOWNERS GROVE, ILLINOIS, CODIFIED AS CHAPTER 28 OF THE DOWNERS GROVE MUNICIPAL CODE, AS AMENDED TO REZONE THE PROPERTY LOCATED ON THE WEST SIDE OF FAIRVIEW AVENUE APPROXIMATELY 217 FEET SOUTH OF 63RD STREET (PIN 09-20-209-007)

WHEREAS, the real estate commonly known as PIN 09-20-209-004 and hereinafter described has been classified as R-1 Single Family Residence under the Comprehensive Zoning Ordinance of the Village of Downers Grove; and,

WHEREAS, the owner or owners of said real estate have requested that such property be rezoned as hereinafter provided; and

WHEREAS, it appears that the Zoning Board of Appeals of the Village of Downers Grove has given the required public notice, and has conducted a public hearing respecting said requested rezoning in accordance with applicable law; and

WHEREAS, making due allowance for existing conditions, the conservation of property values, the development of the property in conformance to the official Comprehensive Plan of the Village of Downers Grove, and the current uses of the property affected, the Council has determined that the proposed rezoning is for the public good.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Downers Grove, in DuPage County, Illinois, as follows:

SECTION 1. The Comprehensive Zoning Ordinance of the Village of Downers Grove, Illinois, codified as Chapter 28 of the Downers Grove Municipal Code (which ordinance as heretofore amended, is hereinafter referred to as the "Zoning Ordinance"), is hereby further amended by changing to "B-2, General Retail Business District" the zoning classification of the following described real estate, to wit:

The South 143.15 feet of the North 393.15 feet of the East Half of the East Half of the Northeast Quarter of the Northeast Quarter of Section 20, Township 38 North, Range 11, East of the Third Principal Meridian, in DuPage County, Illinois (PIN 09-20-209-004)

SECTION 2. The official zoning map shall be amended to reflect the change in zoning classification effected by Section 1 of this ordinance.

SECTION 3. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 4. This ordinance shall be in full force and effect from and after its passage and publication in pamphlet form as provided by law.

Mayor

Passed:

Published:

Attest: _____

Village Clerk