

**September 1, 2022**

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**CITY OF NAPERVILLE, ILLINOIS**  
**CITY OF NAPERVILLE HEINEN BUSINESS DISTRICT PLAN**

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**Prepared By:**  
**City of Naperville, Illinois**  
**&**  
**Kane, McKenna and Associates, Inc.**

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# **I. INTRODUCTION**

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## **Background**

The City of Naperville (the "City") has identified an area on the southwest corner of E Chicago Avenue and Olesen Drive (the proposed "Business District") that would benefit from the utilization of a business district designation as specifically provided for in 65 ILCS 5/11-74.3-1 et. seq., as amended (the "BD Act" or "Business District Act"). The Business District Act authorizes Illinois municipalities to designate an area within the municipality as a "Business District" as defined in the BD Act. A Business District must be established in conformance with a specific plan officially approved by the City Council (the "City Council") of the City after holding a public hearing on the proposed designation. Kane, McKenna and Associates, Inc. ("KMA") has been retained to assist the City in determining the eligibility of the area in accordance with the BD Act and in preparing this Business District Plan.

The proposed Business District (sometimes referred to as the "Study Area" therein) includes a strategic shopping center within the City, including the former Butera Fruit Market ("Butera") and adjacent strip center ("Center"). The proposed Business District is legally described in Appendix A and graphically depicted in Appendix B. The proposed Business District is generally bounded by Pembroke Park to the south, E Chicago Avenue to the north, Olesen Drive to the east, and Pembroke Road to the west, and consists of approximately 7.35 acres. The proposed Business District is presently owned by JPS Properties, LLC, with a purchase agreement with Heinen's, Inc. (the "Developer").

The proposed Business District consist of approximately 68,000 square feet of retail space which was constructed in 1974. The historic lease rates have been below other grocery anchored centers in Naperville. The Study Area has had persistent vacancies, most recently resulting in the closing of the Butera. In speaking with the Butera tenant in the center, grocery store sales have never met potential because of the conditions in the center. The Butera portion is 100% vacant, and the adjacent Center has approximately 40% of total square feet vacant. Combined, 80% of the Study Area's retail square footage remains vacant.

The Developer has indicated that several factors present on the site make the current retail as built a challenge to reuse. Additionally, the site drainage was constructed based on the design standards of "ponding" detention in 1974. This detention method has created many safety and health issues. The approved stormwater detention for the site has contributed to the site not being successful historically. Standing water has many harmful effects including propagation of mold and mildew, deterioration of building and parking lot, and safety issues for pedestrian and vehicular traffic, especially in the winter season. Developer hired Manhard Consulting Engineers to study the stormwater issues. Manhard report notes the surrounding areas including two Naperville Park District properties, apartment property, and roadways all add stormwater to the site. The City Planning Department Stormwater Detention Code would require at least 30% more detention capacity in its current code as compared to 1974.

The majority of the center has had no significant upgrades in more than 45 years. The lack of investment in the building leads to inefficiencies: utility waste, safety issues, accessibility, and other features lacking in a modern building built to today's code.

Developer working with the City and consultants, if BD is approved, will design a modern stormwater detention facility. Best engineering practices will raise the surface grade of the site and install a mix of underground and surface detention. Due to the infrastructure improvements needed on site, the 46,000 square feet of the former grocery may or may not need to be demolished. If the existing structure is demolished, a new modern center will be developed in its place.

### **Municipal Powers Under the BD Act**

In accordance with the BD Act, the City may exercise the following powers in carrying out a business district development plan:

- (1) To make and enter into all contracts necessary or incidental to the implementation and furtherance of a business district plan. A contract by and between the municipality and any developer or other nongovernmental person to pay or reimburse said developer or other nongovernmental person for business district project costs incurred or to be incurred by said developer or other nongovernmental person shall not be deemed an economic incentive agreement under Section 8-11-20 of the BD Act, notwithstanding the fact that such contract provides for the sharing, rebate, or payment of retailers' occupation taxes or service occupation taxes (including, without limitation, taxes imposed pursuant to subsection (10) the municipality receives from the development or redevelopment of properties in the business district. Contracts shall be binding upon successor corporate authorities of the municipality and any party to such contract may seek to enforce and compel performance of the contract by civil action, mandamus, injunction, or other proceeding.
- (2) Within a business district, to acquire by purchase, donation, or lease, and to own, convey, lease, mortgage, or dispose of land and other real or personal property or rights or interests therein; and to grant or acquire licenses, easements, and options with respect thereto, all in the manner and at such price authorized by law. No conveyance, lease, mortgage, disposition of land or other property acquired by the municipality or agreement relating to the development of property, shall be made or executed except pursuant to prior official action of the municipality. No conveyance, lease mortgage, or other disposition of land owned by the municipality, and no agreement relating to the development of property, within a

business district shall be made without making public disclosure of the terms and disposition of all bids and proposals submitted to the municipality in connection therewith.

- (2.5) To acquire property by eminent domain in accordance with the Eminent Domain Act.
- (3) To clear any area within a business district by demolition or removal of any existing buildings, structures, fixtures, utilities, or improvements, and to clear and grade land.
- (4) To install, repair, construct, reconstruct, or relocate public streets, public utilities, and other public site improvements within or without a business district which are essential to the preparation of a business district for use in accordance with a business district plan.
- (5) To renovate, rehabilitate, reconstruct, relocate, repair, or remodel any existing buildings, structures, works, utilities, or fixtures within any business district.
- (6) To construct public improvements, including but not limited to buildings, structures, works, utilities, or fixtures within any business district.
- (7) To fix, charge, and collect fees, rents, and charges for the use of any building, facility, or property or any portion thereof owned or leased by the municipality within a business district.
- (8) To pay or cause to be paid business district project costs. Any payments to be made by the municipality to developers or other nongovernmental persons for business district project costs incurred by such developer or other nongovernmental person shall be made only pursuant to the prior official action of the municipality evidencing an intent to pay or cause to be paid such business district project costs. A municipality is not required to obtain any right, title, or interest in any real or personal property in order to pay business district project costs associated with such property. The municipality shall adopt such accounting procedures as shall be necessary to determine that such business district project costs are properly paid.
- (9) To apply for and accept grants, guarantees, donations of property or labor or any other thing of value for use in connection with a business district project.
- (10) If the municipality has by ordinance found and determined that the business district is a blighted area under this Law, to impose a retailers' occupation tax and a service occupation tax in the business district for the planning, execution, and implementation of business district plans and to pay for business district project costs as set forth in the business district plan approved by the municipality.

- (11) If the municipality has by ordinance found and determined that the business district is a blighted area under this Law, to impose a hotel operators' occupation tax in the business district for the planning, execution, and implementation of business district plans and to pay for the business district project costs as set forth in the Business District Act for the business district project costs.

Pursuant to the Business District Act, the service occupation and retailers' occupation taxes may be imposed at a rate not to exceed one percent (1%) of the gross receipts from sales of tangible personal property within the business district and must be imposed in quarter percent (0.25%) increments. The taxes may not be imposed on "tangible personal property titled or registered with an agency of this State's government or food for human consumption that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food that has been prepared for immediate consumption), prescription and nonprescription medicines, drugs, medical appliances, modifications to a motor vehicle for the purposes of rendering it usable by a disabled person, and insulin, urine testing materials, syringes, and needles used by diabetics, for human use." The hotel operators' occupation tax may be imposed at a rate of not to exceed one percent (1%) of the gross rental receipts from the rental leasing or letting of hotel rooms within the business district (excluding, however, gross rental receipts from the rental leasing or letting of a hotel to permanent residents, as defined in the Hotel Operators' Occupation Tax Act), must be imposed in quarter percent (0.25%) increments.

Pursuant to the Business District Act, the business district tax allocation fund, in which the taxes described above are deposited, shall be dissolved no later than 270 days following payment of the last distribution of taxes that retire all proposed Business District costs and obligations. These Service Occupation and Retailers Occupation taxes, if imposed, shall be collected by the Illinois Department of Revenue and then disbursed to the City for up to 23 years, pursuant to the statute. The Hotel Operators Occupation tax shall be administered and collected by the City.

In accordance with the Business District Act, the Plan sets forth the necessity for, the objectives of and the development program for the proposed Business District in the City. All appendices to this Plan are incorporated herein by this reference thereto.

### **City Goals and Objectives**

The 2022 City's Land Use Master Plan designates the Future Land Use for the Study Area as a Neighborhood Center. The City's stated goals and objectives for this use include:

- Encourage commercial businesses that offer goods and services catering to adjacent residential neighborhoods.
- Require necessary buffering and screening to ensure an appropriate transition between neighborhood centers and adjacent lower-intensity place types.
- Allow an appropriate mix of uses that creates an active district and serves the needs of adjacent neighborhoods.

- Provide parking through surface parking lots.

To further the above-stated general goals of the City, certain objectives have been specified for the proposed Business District and are outlined below (note: the objectives are area wide in nature and each objective does not need apply to a single project):

- To support the redevelopment of vacant or underutilized properties within the proposed Business District, and to stabilize occupancy and usage;
- To provide for the necessary rehabilitation of retail space required to support the proposed uses within the proposed Business District and to facilitate redevelopment of the proposed Business District as a whole;
- To provide for the necessary public improvements to support the proposed uses within the proposed Business District and facilitate redevelopment of the proposed Business District as a whole;
- To improve pedestrian and vehicular traffic safety and circulation throughout the proposed Business District as a whole;
- To undertake selected public street, utility and other site improvement projects that are essential to the continuation of the proposed Business District for use in accordance with this Plan; and
- To ensure that redevelopment within the proposed Business District is both coordinated and comprehensive.

## **II. QUALIFICATION CRITERIA**

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Business District development and redevelopment is specifically provided for in Business District Act. Pursuant to the Act, the City Council may designate a specific area of the City as a business district only after the holding of a public hearing and the making of a formal finding that:

- 1) The business district, on the whole, has not been subject to growth and development through investment by private enterprises or would not reasonably be anticipated to be developed or redeveloped without the adoption of the business district plan; and,
- 2) The business district on the whole conforms to the comprehensive plan for the development of the municipality as a whole.

Additionally, the City Council may designate a specific area as a business district with the authority to levy an additional Service Occupation and Retailers Occupation tax after the holding of a public hearing and the making of a formal finding that the area conforms to the following definition:

“Blighted area” means an area which by reason of the predominance of defective, non-existent, or inadequate street layout, unsanitary or unsafe conditions, deterioration of site improvements, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire or other causes, or any combination of those factors, retards the provision of housing accommodations or constitutes an economic or social liability, an economic underutilization of the area or a menace to the public health, safety, morals, or welfare.”

The proposed Business District, as it currently exists, demonstrates factors which support its qualification as a blighted area under the above definition. These include deterioration of site improvements and buildings. The presence of these factors is described below. Their presence alone, and in combination, constitute an economic liability and economic underutilization of the area as a whole.

### **Deterioration of Site Improvements:**

Deterioration refers to any physical deficiencies or disrepair in buildings or site improvements requiring treatment or repair. This would include buildings with major defects in the secondary building components (e.g., doors, windows, porches, gutters and downspouts, fascia materials, etc.), and major defects in primary building components (e.g., foundations, frames, roofs, etc.). The condition of roadways, alleys, curbs gutters, sidewalks, off-street parking and surface areas may also evidence deterioration, as well as surface cracking, crumbling, potholes, depressions, loose paving materials, and weeds protruding through the concrete and asphalt surfaces.



The Study Area components examined were of the following types:

**Basic Structural** — Includes the basic elements of a building: foundation walls, load bearing walls and columns, floor structure, roof and roof structure.

**Structural Components** — Includes normal additions to structures such as porches and steps, window and window units, doors and door units, chimneys, tuck points and gutters and downspouts.

**Infrastructure Components** — Includes parking lots, curbs, pylons, drainage, fire hydrants.

Per site visits conducted by KMA staff, and supported by photographs and oral and written history, much of the surface parking lot suffers from deterioration to Infrastructure Components as evidenced by cracked asphalt, pavement, some cracked curbs, and surface asphalt in need of resurfacing. Additionally, the surface parking lot suffers from chronic flooding, a drainage issue caused by dated design standards and inadequate pipe size.

The buildings in the Study Area suffer from deterioration such as cracks in the walls, mold and mildew, need for tuckpointing, rusted metal car barriers, and rusted fencing around the rear dock. Furthermore, the buildings were constructed more than 45 years ago with little by means of investment since. This functional obsolescence of the Basic Structural elements of the buildings contributes to the continued high vacancy of the shopping center.

The proposed redevelopment would significantly improve upon the Study Area challenges through:

- Demolition of obsolete structures
- Raising the lot several feet
- Construction of new stormwater detention
- Construction of new buildings to better suit developer needs
- Construction of new surface parking lot and landscaping

**Other Findings:**

- 1) With respect to the finding that “the proposed Business District on the whole constitutes an economic underutilization of the area,” this finding is present based upon the analysis related to declining sales taxes well as vacancy within the proposed Business District.
- 2) Pursuant to the Act, the City makes the finding that the proposed Business District “constitutes an economic or social liability.” Based upon the low retail lease rates as compared to other grocery anchored centers in the city and persistent vacancies present in the proposed Business District, and lag or decline in EAV relative to the City, the “economic liability” finding is present. The Study Area has declined in Equalized Assessed Valuation when compared to the City as a whole, as seen in the following chart.

EAV Trend for Study Area

<b>Study Area</b>	<b>2021</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>	<b>2017</b>	<b>2016</b>
<b>BD EAV</b>	\$1,635,750	\$1,606,350	\$1,536,880	\$1,536,880	\$1,485,050	\$1,431,370
<b>Annual % Change</b>	1.8%	4.5%	0.0%	3.5%	3.8%	-
<b>City of Naperville</b>	\$5,322,195,144	\$5,245,520,933	\$5,014,220,207	\$4,882,224,062	\$4,682,910,002	\$4,468,983,831
<b>City of Naperville (No BD)</b>	\$5,320,559,394	\$5,243,914,583	\$5,012,683,327	\$4,880,687,182	\$4,681,424,952	\$4,467,552,461
<b>Annual % Change</b>	1.5%	4.6%	2.7%	4.3%	4.8%	6.3%
<b>CPI</b>	4.70%	1.20%	1.80%	2.40%	2.10%	1.30%

Source: DuPage County and U.S. Bureau of Labor Statistics

As part of this Plan’s preparation, the City hereby makes a formal finding that the proposed Business District is a “blighted area” pursuant to the requirements of the Business District Act due to deterioration of site improvements and buildings, and furthermore, that the proposed Business District constitutes an economic liability and economic underutilization of the area to the City in its present condition and use.

### **III. BUSINESS DISTRICT DESCRIPTION**

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#### **General Description**

The proposed Business District is generally described as those properties bounded by Pembroke Park to the south, E Chicago Avenue to the north, Olesen Drive to the east, and Pembroke Road to the west, and consists of approximately 7.35 acres.

#### **Legal Description**

The legal description of the proposed Business District is included in Appendix A. The proposed Business District includes only parcels of real property that will be directly and substantially benefit from this Plan.

#### **Name of the Proposed Business District**

The name of the proposed Business District shall be “City of Naperville Heinen Business District.”

## **IV. BUSINESS DISTRICT REDEVELOPMENT**

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### **Business District Policy Criteria**

The City will implement the following guidelines to direct development activities within the proposed Business District:

- 1) Preserve and create an environment within the proposed Business District which will promote the economic and social welfare of the City including opportunities for new retail/commercial growth.
- 2) Exercise powers provided for under the Business District Act in the promotion of the public interest and enhancement of the tax base and tax revenues to the City.
- 3) Enhance the economic well-being and strengthen the retail/commercial sector within the proposed Business District by encouraging private investment and reinvestment through public financing vehicles, if necessary, to increase business activity, attract sound and stable commercial growth, create and retain job opportunities and enhance and diversify the tax base.
- 4) Address the need for economic feasibility, cost efficiency and economies of scale in development through encouragement of coordinated development of projects. The City will review projects on an individual basis in order to determine the need for assistance.
- 5) Provide necessary public infrastructure that enhances the proposed Business District to create an attractive service and/or shopping environment to encourage and support private investment.

### **Private Development Actions**

The City is committed to being prudent regarding the use of public resources in the assistance of economic development activities. Accordingly, City assistance for economic development located within the proposed Business District, as generally described below, will require thorough City review of the need for specifically requested public assistance. The City Council will need to approve the terms of assistance in the form of a development agreement with any developer or business proposals. Private development actions would be expected to conform to the guidelines set forth above.

Ownership will need to evidence capacity to implement the proposed project and it must conform to the appropriate City planning provisions. The City seeks to expand and diversify its economic and tax base. Accordingly, the project must serve to improve the economic tax base of the City.

## **General Project Description**

The City intends to provide or enter into agreements with developers or other private sector interests to provide certain public and private improvements in the proposed Business District. City projects may include

- Rehabilitation of existing commercial space for re-tenanting and reuse;
- Installation, repair and/or relocation of public utilities including construction or replacement of the public utility mains, service lines and related system improvements;
- Installation, repair and/or relocation of certain street improvements including construction or replacement of roadways, traffic signalization and other surface improvements;
- Facilitation of site preparation including the acquisition, subdivision or consolidation of property to support coordinated redevelopment within the proposed Business District; and
- Facilitating certain other public or private improvements that are essential to the preparation of the proposed Business District for use in accordance with this Plan, but which are located outside of the geographic boundaries of the proposed Business District.

## **Business District Project Costs for 23 Year Term**

Estimated business district project costs are shown below (the “Business District Project Costs”). Adjustments to these cost items may be made without amendment to the Plan. The costs represent estimated amounts and do not represent actual City commitments or expenditures. The “Total Maximum Business District Expenditure Amount” set forth in Table 1 shall constitute a ceiling on the aggregate amount of possible expenditures of funds in the proposed Business District, over the 23-year term of the proposed Business District.

**Table 1. Proposed Business District Project Costs for 23-Year Term**

Project Description	Estimated Cost
(a) Site Preparation and Improvement Costs	\$ 3,400,000
(b) Professional Costs, Miscellaneous Costs and Contingency	\$ 1,000,000
Developer’s Expenditure Amount	\$ 4,400,000

The Developer will request Business District funding for reimbursement of costs it incurs for improving the stormwater and detention area for the adjacent lands including streets, Park District area, apartments, along with site’s stormwater and detention needs. The Developer will not use Business District funds for any of its other building improvements. The Developer will pay for all the improvements, including stormwater and detention needs, and not obligate the City to issue

any bonds or debt obligations. The Developer will request of the City Business District funds to 0.5 % of gross sales tax.

All project cost estimates are in 2022 dollars and are subject to inflationary adjustments. Adjustments between the estimated line-item costs above are expected. The individual costs will be reevaluated in light of the nature of the private development and resulting tax revenues as the project is considered for public financing alternatives that the City may provide.

The amounts of the line-items set forth above are not intended to place a specific limit on the described line-item expenditures. Adjustments may be made in line items within the Total Maximum Expenditure Amount, either increasing or decreasing individual line-item costs.

Adjustments to these cost items may be made without amendment to the Plan as long as the Total Maximum Expenditure Amount is not exceeded.

### **Issuance of Obligations**

The City may issue obligations pursuant to the Business District Act in order to pay for business district project costs. The obligations may be secured by the business district Taxes and other sources the City deems appropriate.

One or more series of obligations may be issued from time to time in order to implement the Business District Plan. Obligations issued by the City pursuant to the Business District Plan and the Business District Act shall be retired pursuant to the requirements of said Act.

## V. CITY PUBLIC FINANCING ASSISTANCE

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The City has an obligation to be prudent with the use of public resources in commercial development activities. For this reason, it is very important that, whenever the use of public financing is at issue in relation to commercial redevelopment goals for a proposed project, the City have a process in place to govern conditions under which it will make private development incentives available.

That process must allow for adequate analysis of a request for public financial assistance and the evaluation of the project to determine if it meets the needs and objectives of the City. All this should be incorporated into a business district redevelopment agreement which may only become effective with approval by the City Council. This process should include the following steps.

- 1) The private entity (owner, developer, tenant) approaches City for specific private development incentives assistance and presents a request to the City.
- 2) City will review request. If deemed a potentially viable and beneficial project, City will begin review of development project.
- 3) City will review and analyze information submitted by the applicant. Any additional information required by the City shall be submitted in a timely manner.
- 4) If request is deemed feasible, then the request may be processed by the City.
- 5) City attorney will initiate preparation and negotiation of a Business District development agreement.
- 6) City staff will undertake negotiations regarding the proposed development project and business district development plan with the applicant.
- 7) The development project will then be presented with City staff recommendation for review and approval by the City Council.

*Note: Many of the steps noted above may be consolidated depending upon the timetable and characteristics of the development project.*

## **VI. SOURCES OF FUNDS TO PAY DEVELOPMENT PROJECT COSTS**

Upon designation of the proposed Business District by City ordinance, the City intends to impose the service occupation tax and the retailer's occupation tax provided for by the Business District Act within the proposed Business District at a rate of up to 0.5% of gross sales for the term of the proposed Business District (the "Special Business District Taxes"). Said Special Business District Taxes shall be a source of funding for paying business district project costs within the proposed Business District and any obligations incurred by the City to pay such business district project costs.

A separate City ordinance shall also be adopted by the City Council that shall create a separate fund entitled the "Naperville Heinen Business District Tax Allocation Fund" in order to receive the Special Business District Taxes from the Illinois Department of Revenue. Pursuant to the Business District Act, all Special Business District Taxes shall be deposited into this special fund.

The Special Business District Taxes shall be discontinued upon such date that all obligations issued payable from such Special Business District Taxes are fully paid upon maturity or otherwise, unless otherwise extended by the City.



## **VII. ESTABLISHMENT AND TERM OF THE BUSINESS DISTRICT**

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The establishment of the proposed Business District shall become effective upon adoption of an ordinance by the City Council adopting this Plan and designating the Business District. Development agreements between the City and any developer or other private party shall be consistent with the provisions of the Business District Act and this Plan.

Pursuant to the Business District Act, the Special Business District Taxes described in Section VI may not be imposed for more than 23 years pursuant to the provisions of the Business District Act. It is expected that the proposed Business District shall expire upon termination of the imposition of the Special Business District Taxes.

## **VIII. FORMAL FINDINGS**

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Based upon the information described in Section II, and the attached appendices, the City Council hereby finds and determines as follows:

- 1) The proposed Business District on the whole has not been subject to growth and development by private enterprises or would not reasonably be anticipated to be developed or redeveloped without the adoption of this Plan; and,
- 2) The Business District Plan conforms to the City's Comprehensive Plan for the development of the municipality as a whole; and,
- 3) The proposed Business District is qualified as defined in the Business District Act by a predominance of deterioration of site improvements and adjacent roadways; and,
- 4) The proposed Business District is "blighted" as defined by the Act; and,
- 5) The proposed Business District is a contiguous area.

## **IX. PLAN AMENDMENTS**

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The City Council may amend this Plan from time to time by adopting an ordinance providing for such amendment in accordance with the Business District Act.

## **APPENDIX A: Legal Description**

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**APPENDIX B: Proposed  
Boundary Map**

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