

PIN:
07-03-402-027

ADDRESS:
1420 WEST DIEHL ROAD
NAPERVILLE, IL 60563

PREPARED BY:
CITY OF NAPERVILLE
LEGAL DEPARTMENT
630/420-4170

RETURN TO:
CITY OF NAPERVILLE
CITY CLERK'S OFFICE
400 SOUTH EAGLE STREET
NAPERVILLE, IL 60540

PZC Case #19-1-138

ORDINANCE NO. 20 - _____

**AN ORDINANCE APPROVING THE FINAL
PLANNED UNIT DEVELOPMENT PLAT
FOR MCDOWELL POINT**

RECITALS

1. **WHEREAS**, TWG Development, LLC, 333 Pennsylvania Street, Suite 100, Indianapolis, IN 46204 ("**Petitioner**") has petitioned the City of Naperville for approval of a Final Planned Unit Development (PUD) Plat and associated exhibits for real property located at 1420 W. Diehl Road, Naperville, Illinois, legally described on **Exhibit A** and depicted on **Exhibit B** ("**Subject Property**"), to allow for development of a one hundred and seventy-four (174) multi-family residential building which shall be age-restricted as set forth herein; and
2. **WHEREAS**, AG Investors III, L.L.C., 1000 Devonshire Avenue, Naperville, Illinois is the current owner of the Subject Property ("**Owner**"); and

3. **WHEREAS**, Petitioner and/or their successors, assigns, and transferees shall own the Subject Property in fee simple prior to recordation of this Ordinance and the Final PUD Plat; and
4. **WHEREAS**, the Subject Property is currently zoned OCI (Office, Commercial and Institutional District) with a conditional use for the McDowell Point Planned Unit Development; and
5. **WHEREAS**, the Petitioner has petitioned the City of Naperville for approval of a Final Planned Unit Development (PUD) Plat for McDowell Point as depicted on **Exhibit C**; and
6. **WHEREAS**, on July 17, 2018, the City Council of the City of Naperville passed Ordinance 18-092 pertaining to the Subject Property approving a conditional use in the OCI zoning district to allow an age-restricted, multi-family residential building; a conditional use for a planned unit development; and, a preliminary planned unit development plat for McDowell Point including deviations to the following sections of the Naperville Municipal Code: (i) Section 6-9-3 (Schedule of Off Street Parking Requirements) to allow for a decrease in the number of required off-street parking spaces from 392 spaces to 304 spaces; (ii) Section 6-7F-5 (OCI, Area Requirements) to allow for a decrease in the required minimum lot area from 2,600 square feet per dwelling unit to 2,068 square feet per dwelling unit; and (iii) Section 6-7F-8 (OCI, Height Limitations/Bulk Regulations) to increase the permitted maximum height of the proposed building to be constructed on the Subject Property from 43 feet to 54 feet, 8 inches; and

7. **WHEREAS**, the proposed Final PUD Plat for McDowell Point, as depicted on **Exhibit C**, is in substantial conformance with the Preliminary PUD Plat for McDowell Point
8. **WHEREAS**, the City Council finds that, subject to the terms and conditions set forth and referenced herein, the requested Final PUD plat for the Subject Property meets the Standards for Granting a PUD as provided in **Exhibit D** attached hereto; and
9. **WHEREAS**, prior to recordation of the Final PUD Plat attached as **Exhibit C**, the Petitioner shall finalize engineering plans, to be approved by the City and the County of DuPage, which provide for design and construction of a crosswalk across Diehl Road for the safety of pedestrian traffic; and
10. **WHEREAS**, the provisions of this Ordinance shall be binding upon the Owner and Petitioner and their successors, assigns, and transferees; and
11. **WHEREAS**, the City Council has determined that the Final PUD Plat for McDowell Point should be granted as provided herein.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NAPERVILLE, DUPAGE AND WILL COUNTIES, ILLINOIS, in exercise of its home rule powers, as follows:

SECTION 1: The foregoing Recitals are incorporated as though fully set forth in this Section 1. All exhibits referenced in this Ordinance shall be deemed incorporated and made part hereof.

SECTION 2: The Final Planned Unit Development Plat for McDowell Point, attached to this Ordinance as **Exhibit C**, is hereby approved subject to the terms and conditions set forth in the Recitals and each Section hereof.

SECTION 3: Petitioner shall design and construct the Diehl Road Crosswalk as approved by the City and DuPage County; it shall be constructed and approved prior to

issuance of a final occupancy permit for the Subject Property, or such other timeline as agreed upon in writing by the City Engineer.

SECTION 4: The Final Landscape Plan for McDowell Point, attached to this Ordinance as **Exhibit E**, is hereby approved.

SECTION 5: The Building Elevations for McDowell Point, attached to this Ordinance as **Exhibit F**, are hereby approved.

SECTION 6: Deviations to Sections 6-9-3 (parking requirements), 6-7F-5 (minimum lot area), and 6-7F-8 (building height) of the Naperville Municipal Code, as approved by Ordinance 18-092 and depicted on **Exhibit G**, remain in full force and effect.

SECTION 7: Age Restriction. Use of the Subject Property is approved on the express condition that it shall at all times be owned and operated as an age-restricted community as set forth herein and in the Naperville Municipal Code, as amended from time to time; and as set forth in the Fair Housing Amendments Act of 1988 as amended from time to time including but not limited to the provisions of the “Housing for Older Persons Act of 1995” (“**HOPA**”). The approvals contained herein are contingent upon recordation with the DuPage County Recorder of the age restriction covenant (“**Age Restriction Covenant**” or “**Covenant**”) attached hereto as **Exhibit H** for the Subject Property which Covenant shall run with the land in perpetuity, shall be recorded prior to recordation of the Final Planned Unit Development Plat, and which shall be referenced on the Final Planned Unit Development Plat. The Age Restriction Covenant shall be implemented and enforced by the Owner. The Covenant shall run to the benefit of, and according to its terms, may also be enforced by the City of Naperville, and/or Indian Prairie School District #204. The Covenant may only be released or modified on written

agreement of the owner of the Subject Property and by a two-thirds vote of the corporate authorities of the City and the Indian Prairie School District #204 school board. Notwithstanding the foregoing, the Age Restriction Covenant attached as **Exhibit H** may be revised at the request of School District #204 subject to the approval of the Petitioner and the City.

SECTION 8: School and Park Contributions.

8.1 School Donation. No land cash school contribution shall be required as long as the Subject Property remains an age restricted community in compliance with the Age Restriction Covenant referenced herein. Prior to any modification or release of the Covenant which results in students from the Subject Property being eligible to attend any school within School District #204 (other than residents enrolled in non-credit adult education classes), the owner of the Subject Property shall be obligated to pay the entire amount of school donation for the Subject Property calculated upon the provisions of the Naperville Municipal Code then in effect. Failure to pay such amount prior to recordation of a modification or release of the Covenant shall not relieve the owner of the Subject Property from liability for payment thereof.

8.2 Park Donation. As long as the Subject Property remains an age restricted community in compliance with the Age Restriction Covenant, the Owner shall only be required to pay to the Naperville Park District \$812,938.21. Prior to any modification or release of the Age Restriction Covenant which lowers any of the age-related requirements thereof, the owner of the Subject Property shall be obligated to pay any balance of the amount of the park donation for the Subject Property due calculated upon the provisions of the Naperville Municipal Code then in effect. Failure to pay such amount prior to

recordation of a modification or release of the Covenant shall not relieve the owner of the Subject Property from liability for payment thereof.

In addition to a reduction in the park donation due to operation of the Subject Property in compliance with the provisions of the Age Restriction Covenant, Owner is also eligible for a 10% credit in the total park donation amount due to the provision of private open space for recreation areas and facilities pursuant to Section 7-3-5:1.3 (Dedication of Park Lands and School Sites or For Payments of Fees in Lieu of: Credit for Private Open Spaces and Recreation Areas). The Petitioner has negotiated an agreement with the Naperville Park District regarding said 10% credit and required amenities which is attached to this Ordinance and made part hereof, as **Exhibit I**.

SECTION 9: All fees and conditions as stated in Ordinance 18-092 remain in full force and effect.

SECTION 10: This Ordinance is subject to all conditions and requirements set forth in the Naperville Municipal Code, as amended from time to time.

SECTION 11: The City Clerk is authorized and directed to record this Ordinance and its Exhibits with the DuPage County Recorder.

SECTION 12: This Ordinance shall be in full force and effect from and after its passage and approval.

PASSED this _____ day of _____, 2020.

AYES:

NAYS:

ABSENT:

APPROVED this _____ day of _____, 2020.

Steve Chirico
Mayor

ATTEST:

Pam Gallahue, Ph. D.
City Clerk