

ORDINANCE NUMBER 09 - 33

**ORDINANCE ESTABLISHING A SPECIAL SERVICE AREA NO. 5
FOR THE ROCK ROAD BUSINESS PARK
AND THE LEVY OF A SPECIAL TAX THEREFORE
IN THE VILLAGE OF EAST DUNDEE, IL**

WHEREAS, the Village of East Dundee, an Illinois Municipal corporation (the "Village"), situated in Kane and Cook Counties, Illinois, is a home rule municipality as contemplated under Article VII, Section 6, of the Constitution of the State of Illinois, and the passage of this Ordinance constitutes an exercise of the Village's home rule powers and functions as granted in the Constitution of the State of Illinois; and

WHEREAS, pursuant to Article VII, Section 7, of the Constitution of the State of Illinois in force as of July 1, 1971, the Village possesses the constitutional and statutory authority to establish special service areas; and

WHEREAS, special service areas are established pursuant to the provisions of Public Act 88-455, the Illinois Special Service Area Tax Law, 35 ILCS 200/27-5 *et seq.* (the "Law"), which provides for the levying or imposing taxes for the provision of special services to areas within the boundaries of home rule municipalities, non-home rule municipalities and counties and pursuant to the Law; and

WHEREAS, the President and Board of Trustees of the Village of East Dundee having determined that it is in the public interest that the area hereinafter described as a special service area for the purposes set forth herein and to be designated as the Rock Road Business Park Special Service Area No. 5. of the Village (the "Area"), be established; and formed to provide special services, as determined by the Village in its sole discretion without any obligation whatsoever to do so, to real property commonly known as Rock Road Business Park Special Service Area No. 5. as depicted on Exhibit A, attached hereto and made a part hereof, within the Village of East Dundee, and legally and commonly described in Exhibit B, attached hereto and made a part hereof (the "Area"), including but not limited to the following:

1. Maintenance and repair of stormwater detention areas within the Area, including but not limited to those portions of Lot 7 and Lot 8 of the Area designated in the Master Utility Plans prepared by Haeger Engineering, LLC dated May 10, 2002 and last revised March 3, 2003, for the Area, as maintained in the office of the Village and identified as Pond A and Pond B, respectively, and which benefit the Area, in a manner which is consistent and as may be required by the applicable regulations of the Village and other common area property within the Area including but not limited to maintenance of landscaping, including grass and shrub trimming, tree plantings, fertilizing and dead material replacement as deemed necessary and appropriate by the Corporate Authorities;

2. All legal, administration and professional fees related to the operation and maintenance of Special Service Area No. 5 as deemed necessary and appropriate by the Corporate Authorities;

which would constitute the special municipal services (collectively, the "Special Services") to be provided in and to the proposed Special Service Area No. 5; and

The permanent tax identification numbers currently assigned to the area are 03-25-276-003; 03-25-276-004; 03-25-276-005; 03-25-276-006; 03-25-276-007; 03-25-276-008; 03-25-276-009; 03-25-276-010; 03-25-276-011; 03-25-276-012; 03-25-276-013; 03-25-276-014; 03-25-426-008; 03-25-426-009; and 03-25-426-010;

Annual taxes shall be assessed and levied for said special municipal services in said Area, on property in said Area in addition to all other municipal taxes; provided that the special annual tax shall be levied upon the equalized assessed value of the property in said Area in an amount not to exceed \$1,000. This tax shall be levied for an indefinite period of time commencing during and in the years subsequent to the date of this Ordinance, as hereinafter provided. Said taxes shall be in addition to all other taxes provided by law and shall be levied pursuant to the provisions of the Property Tax Code. Notwithstanding the foregoing, the special service area shall be "dormant", and shall take effect only if the applicable owners association or property owner fails to maintain, repair or replace the aforesaid required items and the Village chooses to assume some of all of said responsibilities. The Village shall not activate the Special Service Area unless the Village has given the landowner 30 days prior written notice of the defects complained of (via certified mail) to the property address, and an additional 30 days has thereafter expired in which the responsibilities of the landowner have not been fulfilled (or substantial action has not been taken, if complete compliance would reasonably take more than 30 days). However, the Village may annually levy hereunder up to the maximum rate specified herein for the cost for the said services, as said services become necessary and are provided for.

WHEREAS, the Corporate Authorities of the Village found that the Area is compact and contiguous and constitutes a separate and distinct subdivision of the Village; that the Area will benefit specially from the Special Services to be provided; that the Special Services are in addition to municipal services provided to the Village as a whole; and it is therefore in the best interests of the Village that the levy for special taxes against said Area for the Special Services be provided; and

WHEREAS, a public hearing was held on the 8th day of September, 2009 at 7:00 p.m., at the East Dundee Village Hall, 120 Barrington Avenue, East Dundee, Illinois 60118, to consider the creation and establishment of Special Service Area No. 6 of the Village of East Dundee in the territory legally and commonly described in Exhibit B of this Ordinance; and

WHEREAS, notice of the public hearing was published at least once not less than 15 days prior to the public hearing in one or more newspapers of general circulation in the Village of East Dundee, Illinois, specifically, the *Daily Herald*. In addition, notice by mailing was given by depositing said notice in the United States mail addressed to the person or persons in whose name the general taxes for the last preceding year were paid on each lot, block, tract or parcel of land lying within the proposed Special Service Area No. 5. Said notice was mailed not less than

10 days prior to the time set for the public hearing. In the event taxes for the last preceding year were not paid, the notice was sent to the person last listed on the tax rolls prior to that year as the owner of the property; and

WHEREAS, all persons affected by the proposed formation of the Village of East Dundee Special Service Area No. 5 were given an opportunity to be heard regarding the proposed formation of and the boundaries of the Special Service Area No. 5 and were given the right to object to the formation of the proposed special service area and the levy of taxes affecting the Area within 30 days from the adjournment of said public hearing; and

WHEREAS, this ordinance is being considered after the deadline for the owners and electors within the Area to object to the formation, establishment and creation of the proposed Special Service Area, the boundaries of the proposed Special Service Area and the levy of an annual tax sufficient to pay for the Special Services within the Special Services Area; and

WHEREAS, no objections of any kind were received by the Village or the Village Clerk regarding the formation of the proposed Special Service Area No. 5 or the levy of taxes affecting the Area except as provided in the Notice, a true, correct and certified copy of which is attached as Exhibit C.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of East Dundee, Kane and Cook Counties, Illinois, as follows:

SECTION 1: The recitals and findings set forth above are hereby incorporated into this Ordinance by this reference as if fully set forth herein. All defined terms herein shall have the same meaning and definition as those defined terms set forth in the recitals.

SECTION 2: That Special Service Area No. 5 is hereby established and consists of the Area, said real property being depicted in Exhibit A hereof and legally and commonly described in Exhibit B hereof. The term of the Special Service Area No. 5 is perpetual.

SECTION 3: The provision of the Special Services, as determined by the Village in its sole discretion without any obligation whatsoever to do so and as defined above, to the Area shall be financed by the levy of an annual tax not to exceed the total annual amount of \$1000, as equalized, of the real property within the Special Service Area. Under no circumstances shall the provision of such Special Services by the Village constitute an acceptance of any personal property or real property within the Area.

SECTION 4: Prior to the Village's adoption of any amendment to the original levy pursuant to the proposed special service area, the Village shall send 30 days' advance written notice to the registered agent of any owners association formed by the developer or owners of parcels within the Area, an Illinois not for profit corporation (the "Association"), notifying the Association that it intends to undertake any Special Services and/or adopt an amendment to the original levy contemplated by the Special Service Area because the Association has failed to properly maintain the Service Area and which notice identifies such deficiencies. In the event that: i) the Associations does not maintain, repair or replace the storm water and drainage systems being retention ponds, storm water detention easements, detention areas, appurtenant fixtures, structures of the storm water or drainage systems, wetlands, entry features, private roadways, signs, open spaces, outlots, streetlights, common areas, or elements in a manner

consistent with the standards or practices of the Village with respect to other similarly situated or comparable property or facilities owned by the Village and in the manner described in the notice of the Village, or ii) in the Village's reasonable opinion, the Association has not adequately established a sufficient reserve fund in advance of the end of such above-described infrastructures' useful life to replace such infrastructure in accordance with sound engineering practices or other obligations relative to the Incidental Take Agreement, then in either event the Village, in its discretion, without any obligation to do so, may undertake such Special Services and adopt an amendment to the original levy pursuant to this Ordinance. In the event that no such Association is formed, or having been formed is no longer in existence at such time, then the Village shall send such notice to the owners of record of all parcels contained within the Area, then in such event the Village, in its discretion and without any obligation to do so, may undertake such Special Services and adopt a levy pursuant to such Special Services Area Ordinance.

SECTION 5: If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any Court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate or nullify the remainder thereof, which remainder shall remain and continue in full force and effect.

SECTION 6: That any section or provision of this ordinance that is construed to be invalid or void shall not affect the remaining sections or provisions which shall remain in full force and effect thereafter.

Adopted this 16th day of November, 2009, pursuant to a roll call vote as follows:

AYES: 7 - Trustees Gorman, Ruffalo, Lynam, Miller, Cichowski, VanOstenbridge, President Bartels

NAYES: 0

ABSENT: 0

Approved by me this 16th day of November, 2009.

Jerald Bartels

JERALD BARTELS, President

Published in pamphlet form this 18th day of November, 2009, under the authority of the President and Board of Trustees.

ATTEST:

Jennifer Rehberg
JENNIFER REHBERG, Village Clerk

Recorded in the Village Records on November 18th, 2009.

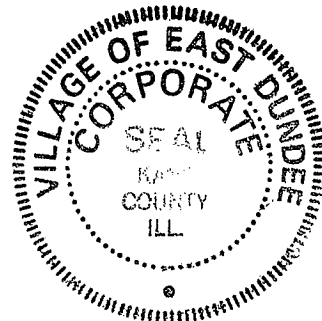


EXHIBIT A
Map of Northgate Manor Unit 2

EXHIBIT B

Legal and Common Description

LOTS 1 THROUGH 8 IN NORTHGATE MANOR UNIT 2, BEING A RESUBDIVISION OF PART OF LOTS 2 THRU 5, 7 THRU 9, AND 16 THRU 19 IN FOX RIVER BLUFFS UNIT 1 AND PART OF LOTS 24 AND 25 IN NORTHGATE MANOR UNIT 1 BEING SUBDIVISIONS OF PART OF SECTIONS 23 AND 26, TOWNSHIP 42 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE VILLAGE OF EAST DUNDEE, KANE COUNTY, ILLINOIS.

Such Area is commonly known as the Northgate Manor Unit 2 consisting of 3.55 acres, more or less, and is a tract of land located along Madison Street west of Howard Street.

EXHIBIT C

NOTICE OF PUBLIC HEARING ON THE PROPOSED ESTABLISHMENT OF SPECIAL SERVICE AREA NUMBER 5 FOR THE ROCK ROAD BUSINESS PARK AND THE LEVY OF A SPECIAL TAX THEREFORE IN THE VILLAGE OF EAST DUNDEE ("VILLAGE")

PUBLIC NOTICE IS HEREBY GIVEN that on Tuesday, September 8, 2009, at 7:00 p.m. in the East Dundee Village Hall, 120 Barrington Avenue, East Dundee, Illinois 60118, a public hearing will be held by the President and Board of Trustees (the "Corporate Authorities") of the Village of East Dundee, an Illinois home rule municipal corporation, to consider forming a Special Service Area consisting of the territory described as follows (the "Area"):

LOTS 1 THROUGH 12 IN ROCK ROAD BUSINESS PARK, BEING A SUBDIVISION AND RESUBDIVISION OF PART OF THE NORTHEAST QUARTER AND THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 42 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN KANE COUNTY, ILLINOIS.

Such Area is commonly known as the Rock Road Business Park consisting of 46.33 acres, more or less, and is a tract of land located at the northeast corner of Higgins Road (State Route 72) and Commonwealth Drive.

All persons affected by the proposed formation of the East Dundee Special Service Area No. 5 will be given an opportunity to be heard regarding the formation of and the boundaries of the Special Service Area and may object to the formation of the special service area and the levy of taxes affecting the Area.

The purpose of the formation of the Village of East Dundee Special Service Area No. 5 in general is to provide the following special services, including but not limited to:

1. Maintenance and repair of stormwater detention areas within the Area, including but not limited to those portions of Lot 7 and Lot 8 of the Area designated in the Master Utility Plans prepared by Haeger Engineering, LLC dated May 10, 2002 and last revised March 3, 2003, for the Area, as maintained in the office of the Village and identified as Pond A and Pond B, respectively, and which benefit the Area, in a manner which is consistent and as may be required by the applicable regulations of the Village and other common area property within the Area including but not limited to maintenance of landscaping, including grass and shrub trimming, tree plantings, fertilizing and dead material replacement as deemed necessary and appropriate by the Corporate Authorities;
2. All legal, administration and professional fees related to the operation and maintenance of Special Service Area No. 5 as deemed necessary and appropriate by the Corporate Authorities;

which would constitute the special municipal services (collectively, the "Special Services") to be provided in and to the proposed Special Service Area No. 5; and

The permanent tax identification numbers currently assigned to the area are 03-25-276-003; 03-25-276-004; 03-25-276-005; 03-25-276-006; 03-25-276-007; 03-25-276-008; 03-25-276-009; 03-25-276-010; 03-25-276-011; 03-25-276-012; 03-25-276-013; 03-25-276-014; 03-25-426-008; 03-25-426-009; and 03-25-426-010; and

The term of the proposed Special Service Area would be perpetual and the nature of the Special Services is maintenance; and

Such Special Services may be provided by the Village in its sole discretion without any obligation to do so. The provision of any such Special Services shall not constitute an acceptance or assumption of responsibility by the Village for any real or personal property within the Area; and

Under no circumstances shall the provision of such Special Services by the Village or its contractors constitute an acceptance of any personal property or real property within the Area by the Village.

A special tax will be considered at the public hearing, to be levied annually and not exceed \$1000 per annum, as equalized, to be levied against the Area.

Prior to the Village's adoption of any levy pursuant to the proposed special service area, the Village shall send 10 days' advance written notice to the registered agent of any owners association formed by the developer or owners of parcels within the Area, an Illinois not for profit corporation (the "Association"), notifying the Association that it intends to undertake any Special Services and/or adopt the levy contemplated by the Special Service Area. In the event that the Association does not maintain, repair or replace the storm water and drainage systems being retention ponds, storm water detention easements, detention areas, appurtenant fixtures, structures of the storm water or drainage systems, or elements in a manner consistent with the standards or practices of the Village with respect to other similarly situated or comparable property or facilities owned by the Village, then in such event the Village, in its discretion, without any obligation to do so, may undertake such Special Services pursuant to such Special Service Area Ordinance. In the event that no such Association is formed, or having been formed is no longer in existence at such time, then the Village shall send such notice to the owners of record of all parcels contained within the Area, then in such event the Village, in its discretion and without any obligation to do so, may undertake such Special Services pursuant to such Special Services Area Ordinance.

At the hearing, all interested persons affected by the formation of such Special Service Area, including all persons owning taxable real estate therein and electors residing therein, will be given an opportunity to be heard. The hearing may be adjourned by the Village's Corporate Authorities without further notice to another date other than a motion to be entered upon the minutes of its meeting fixing the time and place of its adjournment. At the public hearing, or at the first regular meeting of the Corporate Authorities thereafter, the Corporate Authorities may delete area from such proposed Special Service Area; provided, however, that such Special Service Area must still be a contiguous area as provided in the Law.

If a petition signed by at least 51 percent of the electors residing within the proposed Special Service Area and by at least 51 percent of the owners of record of the land included within the boundaries of the proposed Special Service Area is filed with the Village Clerk within 60 days following the final adjournment of the public hearing objecting to the creation of the Special Service Area or the levy or imposition of a tax, no such Special Service Area may be created nor tax levied or imposed.

A copy of this public notice will be recorded with the Kane County Recorder's Office and filed with the Kane County Clerk's Office.

An accurate map of the Area is on file with the Village and available for public inspection.

Dated this 20th day of August 2009.