

3/22/2011
3/2/2011
2/21/2011

13-R-11

A RESOLUTION

**Approving a Plat of Subdivision for 2408 Orrington Avenue,
Former Site of Kendall College**

WHEREAS, the City of Evanston, Cook County, Illinois, (the "City") is a home rule unit of government under the Illinois Constitution of 1970; and

WHEREAS, Article VII, Section 6a of the Illinois Constitution of 1970 confers certain powers upon home rule units, among which are the powers to regulate for the protection of the public health, safety, and welfare; and

WHEREAS, the power to regulate land use, including subdivisions, is a legitimate means of promoting the public health, safety, and welfare; and

WHEREAS, Smithfield Properties XXXII, LLC ("Smithfield"), seeks to subdivide the property bounded by Orrington Avenue, Colfax Street, Sherman Avenue, and Lincoln Street, located in the City and commonly known as 2408 Orrington Avenue, the former site of Kendall College (the "Subject Property"), which is depicted in Exhibit A, attached hereto and incorporated herein by reference, into nineteen (19) lots, located in the City's R1 Residential Zoning District, for future residential development; and

WHEREAS, at its meeting of September 21, 2010, the Preservation Commission held a public hearing, pursuant to proper notice, to review the proposed subdivision of the Subject Property, received testimony and made written findings pursuant Section 2-9-12 of the Evanston City Code of 1979, as amended (the "City

Code”), that the proposed subdivision met the applicable standards, and recommended City Council approval thereof; and

WHEREAS, at its meetings of January 24, 2011, and February 14, 2011, the Planning and Development Committee of the City Council (“P&D Committee”) considered and discussed the proposed subdivision of the Subject Property, including the proposed alleyways and protection of trees on the Subject Property, and recommended City Council approval thereof; and

WHEREAS, the City Council has exhaustively considered citizen input and participation, and evaluated economic, zoning, planning, land use, due process, and other relevant factors in the course of its legislative deliberations regarding this Resolution; and

WHEREAS, at its meetings of February 14, 2011, February 28, 2011, March 14, 2011 and March 28, 2011, the City Council considered and adopted the records and recommendations of the P&D Committee,

WHEREAS, The City Council and Smithfield have agreed to modify the proposed subdivision in order to protect an existing oak tree that is located in the original proposed alleyway and that the City Council finds that such revision to the alleyway is minor and does not result in a significant modification to the original proposed subdivision and therefore does not require any further review by the Preservation Commission or the P&D Committee,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: That the foregoing recitals are found as fact and incorporated herein by reference.

SECTION 2: That, pursuant to Title 4, Chapter 13 of the City Code, the City Council hereby approves the Plat of Subdivision, attached hereto as Exhibit A and incorporated herein by reference.

SECTION 3: That Smithfield shall develop and use the Subject Property in substantial compliance with: all applicable resolutions and ordinances; its testimony and representations to the Preservation Commission, P&D Committee and the City Council; Exhibit A, the Plat of Subdivision; the Tree Preservation Plan, attached hereto as Exhibit B and incorporated herein by reference; and the Public Alley Construction Agreement, attached hereto as Exhibit C and incorporated herein by reference.

SECTION 4: That, pursuant to the Tree Preservation Plan, Smithfield shall use commercially reasonable efforts to not remove or damage any trees located in the parkway and indicated with green circles on said Plan during Smithfield's construction of the public alley. The provisions of this Section 4 shall be effective against Smithfield, but shall not be effective against any subsequent purchaser of a lot or lots for development of a single family home.

SECTION 5: That, pursuant to the Public Alley Construction Agreement and permits issued by the City, Smithfield shall construct the proposed alleys on the Subject Property, as indicated on the Plat of Subdivision.

SECTION 6: That Smithfield shall execute and record a covenant against Lot 8 in the Subdivision granting an option for the benefit of the City to obligate the owner of said Lot 8 to dedicate to the City, for no compensation, that portion of said lot 8

as depicted on Exhibit D attached hereto and incorporated herein by reference (the "Future Dedication Parcel") provided: (a) the oak tree existing on the Future Dedication Parcel as of the date hereof is removed or is destroyed; (b) the City agrees to improve, at the City's sole cost and expense, the Future Dedication Parcel as a public alley; and (c) the City exercises such option by written notice to the owner of said Lot 8 not later than three (3) years after the oak tree is removed or destroyed.

SECTION 7: That, within sixty (60) days of the effective date of this Resolution, Smithfield shall record, at its cost, a certified copy of this Resolution, together with all exhibits, with the Recorder of Deeds in Cook County, Illinois.

SECTION 8: That, when necessary to effectuate the terms, conditions, and purposes of this resolution, "Smithfield" shall be read as "Smithfield's agents, assigns, and successors in interest", provided however, it shall not be deemed to include the purchaser of a lot or lots for development of a single family home.

SECTION 9: The City agrees that the City will provide Lots 8, 9, 10 within the Subdivision with services similar in scope and nature to the services provided to the other lots in the Subdivision.

SECTION 10: That the City Manager or his designee is hereby authorized and directed to sign any documents necessary to implement this Resolution.

SECTION 11: That this Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.

Elizabeth B Tisdahl
Elizabeth B. Tisdahl, Mayor

Attest:

Rodney Greene
Rodney Greene, City Clerk

Adopted: March 28, 2011

EXHIBIT A

PLAT OF SUBDIVISION

EXHIBIT B

TREE PRESERVATION PLAN

EXHIBIT C

PUBLIC ALLEY CONSTRUCTION AGREEMENT

This Document Prepared By
and After Recording Return to:

Steven D. Friedland
Applegate & Thorne-Thomsen
322 S. Green Street
Suite 400
Chicago, IL 60607

PUBLIC ALLEY CONSTRUCTION AGREEMENT

This Public Alley Construction Agreement (this "**Agreement**") is made as of May 25, 2011, by and between Smithfield Properties XXXII, L.L.C., an Illinois limited liability company ("**Developer**") and the City of Evanston, an Illinois home rule municipality (the "**City**").

RECITALS

A. Developer owns that certain block of property in the City of Evanston bounded by Lincoln Avenue, Orrington Street, Colfax Street, and Sherman Avenue which is legally described on Exhibit A attached hereto (the "**Block**").

B. Developer applied to the City for a Subdivision of the Block, known as the Evanston Homes Resubdivision (the "**Subdivision**"). The City approved the Subdivision on March 28, 2011. Developer recorded the Subdivision with the Cook County Recorder of Deeds on May 18, 2011 as Document Number 1113834038.

C. The Subdivision includes a dedication of a new public alley (the "**Alley**"). The Developer and the City have agreed that the Alley will not connect to Lincoln Street but instead the Alley will dead-end 35 feet south of the south line of Lincoln Street. The land which is the continuation of the Alley to Lincoln Street is part of Lot 8 ("**Lot 8**") in the Subdivision (such portion of Lot 8 referred to as the "**Future Dedication Parcel**").

D. The Developer is responsible for paying for and constructing the improvements to the Alley in accordance with plans and specifications approved by the City (the "**Plans**").

E. The Developer agrees to execute and record a covenant against Lot 8 (the "**Lot 8 Covenant**") granting an option for the benefit of the City to obligate the owner of Lot 8 to dedicate to the City, for no compensation, the Future Dedication Parcel provided:

(a) the oak tree existing on the Future Dedication Parcel as of the date hereof is removed or is destroyed, (b) the City agrees to improve, at the City's sole cost and expense, the Future Dedication Parcel as a public alley; and (c) the City exercises such option by written notice to the owner of Lot 8 not later than 3 years after the oak tree is removed or destroyed.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained and other good and valuable consideration, Developer and the City covenant and agree as follows:

- 1) Construction of the Alley. Developer covenants and agrees to construct the Alley at Developer's sole cost and expense in accordance with the Plans. Subject to the approval of the Plans by the City, Developer will promptly commence construction of the Alley and diligently proceed to complete such construction, provided that Developer covenants to complete construction of the Alley in accordance with the Plans not later than two (2) years after the date the City approves the Plans.
- 2) License to Construct Alley. The City hereby grants Developer, and Developer's contractors, a license to construct the Alley in accordance with the Plans.
- 3) Insurance. Developer, at its sole cost and expense, shall maintain and keep in effect and shall cause its contractor's to maintain and keep in effect, comprehensive commercial general liability insurance in the minimum amount of \$2,000,000, covering, without limitation, any liability for personal injury, bodily injury (including, without limitation, death) and property damage arising out of Developer's acts or omissions in connection with the construction of the Alley. All general liability policies of insurance required herein shall name the City as an additional insured.
- 4) Certificate of Completion. Developer shall request from the City a certificate of completion ("Certificate of Completion") upon the completion of the Alley in accordance with the Plans. Within forty-five (45) days after receipt of a written request by Developer for a Certificate of Completion, the City shall provide Developer with either the Certificate of Completion or a written statement indicating in adequate detail how Developer has failed to complete the Alley in conformity with the Project, or is otherwise in default, and what measures or acts will be necessary, in the opinion of the City, for Developer to take or perform in order to obtain the Certificate of Completion. The Certificate of Completion shall be in recordable form, and shall, upon recording, constitute a conclusive determination of satisfaction and termination of the covenants in this Agreement with respect to Developer's obligations to construct the Alley.
- 5) Building Permits. The City shall have no obligation to issue a building permit for a single family home to be constructed on the Block until: (a) the issuance of the Certificate of Completion and (b) the Developer has executed and recorded with the Cook County Recorder of Deeds the Lot 8 Covenant against Lot 8.

- 6) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
- 7) Counterparts. This Declaration may be executed in counterparts, each of which upon such execution shall be deemed an original.

[Signatures on following pages]

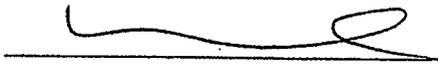
SIGNATURE PAGE

Developer and the City have caused this Agreement to be executed and delivered as of the date first above written.

Developer:

Smithfield XXXII, L.L.C., an Illinois limited liability company

HARRIS MANAGEMENT, LTD.

By: 

Name: W. HARRIS SMITH

Its: A Manager

NORWOL CORPORATION

By: 

Name: Robert Buino

Its: A Manager

The City:

City of Evanston, a home rule unit of local government located in Cook County, Illinois

By: 

Name: Wally Bobkiewicz

Its: City Manager

Approved as to form:



W. Grant Farrar
Corporation Counsel

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

I, Susanne Hall, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Wally Bobkiewicz, City Manager of the City of Evanston, is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such City Manager, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes there set forth.

GIVEN under my hand and official seal, this 25 day of May, 2011.

Susanne Hall
Notary Public

My Commission Expires: 10/18/14



EXHIBIT A

LEGAL DESCRIPTION

Lots 1 through 19, inclusive, in Evanston Homes Resubdivision, being a resubdivision of Evanston Homes Subdivision, being a subdivision of that part of the Southwest Quarter of Section 7, Township 41 North, Range 14 east of the Third Principal Meridian, in Cook County, Illinois.

Common Address: Block bound by Lincoln Street, Orrington Avenue, Colfax Street and Sherman Avenue

PINs: 11-07-110-015-0000
11-07-110-016-0000
11-07-110-017-0000
11-07-110-018-0000
11-07-110-019-0000
11-07-110-020-0000
11-07-110-021-0000
11-07-110-022-0000
11-07-110-023-0000
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11-07-110-030-0000
11-07-110-031-0000
11-07-110-032-0000
11-07-110-033-0000
11-07-110-034-0000
11-07-110-035-0000

EXHIBIT D

FUTURE DEDICATION PARCEL

EXHIBIT D

Future Dedication Parcel

