

STATE OF WISCONSIN

VILLAGE OF SUSSEX

WAUKESHA COUNTY

ORDINANCE NO. 803

AN ORDINANCE TO CONDITIONALLY REZONE  
CERTAIN LANDS IN THE VILLAGE OF SUSSEX FROM  
B-2 REGIONAL BUSINESS DISTRICT,  
TO  
B-2 REGIONAL BUSINESS DISTRICT WITH A  
PLANNED DEVELOPMENT OVERLAY DISTRICT

WHEREAS: A petition has been filed by Roger Duchow, Concord Property Management LLC ("Petitioner") of certain lands in the Village of Sussex to rezone said property as described in Exhibit A attached hereto and incorporated herein ("Subject Property"); and

WHEREAS: Said rezoning petition was submitted to rezone the subject properties to B-2 Regional Business District with a Planned Development Overlay District as described on Exhibit A; and

WHEREAS: The Petitioner has supplied all required data pursuant to the Village of Sussex Zoning Code; and

WHEREAS: Upon due notice as required by Section 17.1300 of the Village Code, the Village Board and Plan Commission held a joint public hearing on July 16, 2015, as required by Section 17.0435(C)(4) of the Village Code; and

WHEREAS: The Plan Commission has reviewed the basis for approval described in Section 17.0435(D) of the Village Code and has made the following findings, subject to all terms and conditions of this zoning ordinance being satisfied:

1. That the petitioners for the proposed Planned Development Overlay District have indicated that they intend to begin the physical development of the PDO within nine (9) months following the approval of the petition and that the development will be carried out according to a reasonable construction schedule satisfactory to the Village.
2. That the proposed Planned Development Overlay District is consistent in all respects to the purpose of this Section and to the spirit and intent of this Ordinance; is in conformity with the adopted master plan or any adopted component thereof; and, that the development would not be contrary to the general welfare and economic prosperity of the community.
3. The proposed site shall be provided with adequate drainage facilities for surface and storm waters.
4. The proposed site shall be accessible from public roads that are adequate to carry the traffic that can be expected to be generated by the proposed development.

5. No undue constraint or burden will be imposed on public services and facilities, such as fire and police protection, street maintenance, and maintenance of public areas by the proposed development.
6. The streets and driveways on the site of the proposed development shall be adequate to serve the residents/ users of the proposed development and shall meet the minimum standards of all applicable ordinances or administrative regulations of the Village.
7. Public water and sewer facilities shall be provided.
8. The entire tract or parcel of land to be included in a Planned Development Overlay District is held under single Ownership or if there is more than one (1) owner, the petition for such PDO shall be considered as one (1) tract, lot or parcel, and the legal description must define said PDO as a single parcel, lot, or tract and be so recorded with the Register of Deeds.
9. The proposed development will be adequately served by off-street parking and truck service facilities.
10. The proposed development shall be adequately provided with and shall not impose any undue burden on public services and facilities such as fire and police protection, street maintenance, and maintenance of the public areas.
11. The locations for entrances and exits have been designed to prevent unnecessary interference with the safe and efficient movement of traffic on surrounding streets, and that the development will not create an adverse effect upon the general traffic pattern of the surrounding neighborhood.
12. The architectural design, landscaping, control of lighting, and general site development will result in an attractive and harmonious service area compatible with and not adversely affecting the property values of the surrounding neighborhood.

WHEREAS: The Village Plan Commission of the Village of Sussex has recommended to the Village Board of the Village of Sussex that said zoning change be made upon certain conditions; and

WHEREAS: The Village of Sussex has reviewed the basis for approval of the petition described in Section 17.0435(D) of the Village Code, and concurs with the Village Plan Commission, and makes the same findings, subject to all terms and conditions of this zoning ordinance being duly satisfied as required herein; and

WHEREAS: The Village Board of the Village of Sussex having carefully reviewed the recommendation of the Plan Commission of the Village of Sussex, having determined that all

procedural requirements and notice requirements have been satisfied, having given the matter due consideration, and having based its determination on the effect of the granting of such rezoning on the health, safety and welfare of the community, immediate neighborhood in which said use will be located, and having given due consideration to the municipal problems involved as well as the impact on the surrounding properties as to noise, dust, smoke and odor, and others hereby determine that the rezoning will not violate the spirit or intent of the Zoning Code for the Village of Sussex, will not be contrary to the public health, safety or general welfare of the Village of Sussex, will not be hazardous, harmful, noxious, offensive and will not for any other reason cause a substantial adverse effect on the property values and general desirability of the neighborhood as long as the operation is conducted pursuant to the following conditions and in strict compliance with the same and is consistent with the recommendation found in the Village of Sussex master plan.

NOW, THEREFORE, the Village Board of the Village of Sussex, Waukesha County, Wisconsin, do ordain as follows:

SECTION 1: The subject property as described on **Exhibit A** is hereby rezoned to B-2 Regional Business District with a Planned Development Overlay District and the Zoning Map of the Village of Sussex is hereby amended, subject to the terms and conditions described herein.

SECTION 2: The above rezoning and zoning map amendment is conditioned upon the following conditions, which must be complied with or this ordinance is null and void:

1. Presentation Compliance. The subject property must be developed in substantial conformity with the plans presented to the Plan Commission on March 19, 2015 and in substantial conformity with the presentation at the joint public hearing with the Plan Commission and Village Board on July 16, 2015 and reconvened on July 28, 2015 as presented shall be attached hereto and incorporated herein as **Exhibit B**.
2. Certified Survey Maps with Conditions. The Petitioner shall submit and receive all necessary approvals for the CSMs, and shall satisfy all conditions of the same.
3. Setbacks. The building setbacks shall be allowed to be no less than 20 feet for the street yard, and may be not less than 5 feet for side and rear yards. Parking and access shall be allowed across property lines with zero setbacks to promote shared driveways and efficient traffic flow.
4. Special Assessment. The payment of outstanding special assessments and any other invoices on or against this property must be paid in full prior to starting any site work.
5. Construction Sequencing Plan. Subject to the Developer submitting to and receiving approval from the Village Engineer a construction sequencing plan to ensure safe and adequate construction development of the site for public safety access,

utility development, and customer access at all times.

6. Required Plans and Engineer Satisfaction. Subject to the Petitioner submitting to and receiving written approval from the Village Plan Commission of all of the following plans for the entire subject property, prior to the rezoning ordinance taking effect. Said plans shall satisfy all comments, conditions, and concerns of the Village Engineer.
  - A. Utility Plans for the entire site including any necessary utility extensions or oversizing necessary to properly connect the development site's utilities with the Village system. Including, but not limited to:
    1. Sewer System Plans
    2. Water System Plans
    3. Storm water Management Plans with the appropriate maintenance requirements and outlots.
    4. Roadway improvements on County Highway VV and State Highway 164 need to be completed and approved within 1 year of the date of approval of this PDO.
  - B. Master Street Lighting Plan for the entire site.
  - C. Street Tree Plan and landscape plan
7. Cell Tower Relocation. The existing Cell Tower needs to have a plan approved and date certain for its relocation and or have been granted a legal non-conforming use permit.
8. Existing Structure. The existing building, the former Marcheese Dance Hall, shall be removed prior to construction activity on the site.
9. Developer's Agreement. Prior to development of the Subject Property or any portion thereof, the Developer of the Subject Lands or portion thereof is required to enter into a Developer's Agreement as approved by the Village prior to the approval of permits for grading and start of construction.
10. Professional Fees. Petitioner shall, on demand, reimburse the Village for all costs and expenses of any type that the Village incurs in connection with this rezoning petition, including the cost of professional services incurred by the Village (including engineering, legal, planning and other consulting fees) for the review and preparation of required documents or attendance at meetings or other related professional services for this application, as well as to enforce the conditions in this conditional rezoning ordinance due to a violation of these conditions.
11. Payment of Charges. Any unpaid bills owed to the Village by the owner of subject

lands or his or her tenants, operators or occupants, for reimbursement of professional fees (as described above); or for personal property taxes; or for real property taxes; or for licenses, permit fees or any other fees owed to the Village: shall be placed upon the tax roll for the subject property if not paid within thirty (30) days of billing by the Village, pursuant to Section 66.0627. Wisconsin Statutes. Such unpaid bills also constitute a breach of the requirements of this conditional rezoning ordinance that is subject to all remedies available to the Village, including possible cause for termination of the conditional rezoning ordinance.

12. Acceptance. Subject to the petitioner approving in writing the issuance of the conditional rezoning ordinance, and that the petitioner understands and accepts the same, and that upon failure to satisfy these conditions, this conditional rezoning ordinance is void, and the same is deemed not to have been approved, and the Petitioner will therefore need to re-commence the application process for rezoning of the property.
13. One Year to Satisfy Conditions. Subject to the petitioner satisfying all of the aforementioned conditions within one year of the Village Board adopting this conditional rezoning ordinance. The Village Board may grant additional time solely at the discretion of the Village Board upon request for an extension by the Developer.

SECTION 3: The Village Engineer is hereby authorized and directed to note this rezoning on the Official Zoning Map of the Village of Sussex upon successful development of the property and satisfaction of all conditions in section 2 of this Ordinance.

SECTION 4. SEVERABILITY. The several sections of this Ordinance are declared to be severable. If any section or portion thereof shall be declared by a decision of the court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and not affect the validity of all other provisions, sections or portions thereof the ordinance which shall remain in full force and effect. Any other ordinances are hereby repealed as to those terms that conflict.

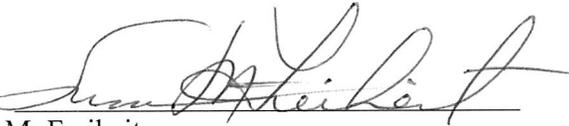
SECTION 5. EFFECTIVE DATE. This ordinance shall take effect immediately upon passage and posting or publication as provided by law.

Dated this 28<sup>th</sup> day of July, 2015.

VILLAGE OF SUSSEX

  
Gregory L. Goetz  
Village President

ATTEST:

  
Susan M. Freiheit  
Village Clerk-Treasurer

Published and/or posted this 5<sup>th</sup> day of AUGUST, 2015.

|

Rezoning Legal Description:

A part of Lot 2 of Certified Survey Map No. 7359 as recorded on May 13, 1994, in Volume 62 of Certified Survey Maps on Pages 225-227, as Document No. 1964188, and amended by Surveyor's Affidavit of Correction recorded on August 25, 1995, on Reel 2107, Image 1051-1052, as Document No. 2062028, Waukesha County Register of Deeds and being part of the Southwest Quarter (SW 1/4) of the Southwest Quarter (SW 1/4) of Section 22, Township 8 North, Range 19 East, Village of Sussex, Waukesha County, bounded and described as follows: Commencing at the southwest corner of said Southwest Quarter (SW 1/4); thence North 89°45'23" East along the south line of said Southwest Quarter (SW 1/4) 71.455 feet to a point on the east right-of-way line of Prospect Circle and the place of beginning of the land hereinafter to be described; thence northerly 190.122 feet along said east right-of-way line and the arc of a curve, radius of 11,371.560 feet, center lies to the west, chord bears North 01°51'55" East 190.120 feet; thence South 89°59'37" East along said east right-of-way line 8.660 feet; thence northeasterly 136.574 feet along said east right-of-way line and the arc of a curve, radius of 87.000 feet, center lies to the northwest, chord bears North 45°04'19.5" East 122.976 feet; thence North 01°37'20" West along said east right-of-way line 39.550 feet; thence northwesterly 92.877 feet along said east right-of-way line and the arc of a curve, radius of 126.000 feet, center lies to the southwest, chord bears North 23°38'16" West 90.789 feet; thence northwesterly 58.839 feet along said east right-of-way line and the arc of a curve, radius of 74.000 feet, center lies to the northeast, chord bears North 21°58'37" West 57.301 feet; thence North 00°48'58" East along said east right-of-way line 145.850 feet; thence North 57°07'33" East along said east right-of-way line 21.640 feet; thence North 00°48'37" East along said east right-of-way line 15.940 feet; thence North 87°14'02" East 200.214 feet; thence South 56°00'22" East 765.650 feet; thence South 33°59'38" West 246.751 feet to the south line of said Southwest Quarter (SW 1/4); thence South 89°45'23" West along said south line 760.253 feet to the place of beginning. Containing 388,078 square feet (8.9090 acres) of land.