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MINUTE BOOK # 22

AN ORDINANCE OF THE CITY OF CLEVELAND, TENNESSEE AMENDING THE CLEVELAND MUNICIPAL CODE TITLE 14 CHAPTER 2 SO AS TO ESTABLISH A PLANNED UNIT DEVELOPMENT (PUD) ZONING PURSUANT TO SECTION 4.1 OF THE AFOREMENTIONED TITLE 14 CHAPTER 2 WITH SAID PUD TO BE KNOWN AS "PUD 1" ON PROPERTY IDENTIFIED AS TAX MAP 34 PARCEL 52 AND MORE PARTICULARLY DESCRIBED HEREIN; ESTABLISHING SITE PLAN REQUIREMENTS AND TRANSPORTATION IMPROVEMENTS REQUIREMENTS; ESTABLISHING REQUIREMENTS FOR LANDSCAPING, BUFFERING AND LIGHTING; ESTABLISHING REQUIREMENTS FOR LITTER AND SOLID WASTE CONTROL AND DRAINAGE STRUCTURE MAINTENANCE; ESTABLISHING CONTROLS FOR SIGNAGE AND OUTDOOR STORAGE AND DISPLAYS AND TRUCK TRAFFIC; ESTABLISHING PERMITTED USES; STATING RESPONSIBILITY FOR PERMITS AND COMPLIANCE WITH LAWS AND VIOLATIONS OF THIS ORDINANCE; REQUIRING THE PROPER SUBDIVISION, DEEDING, AND DEDICATION OF THE SUBJECT PROPERTY; REQUIRING A PUD DEVELOPMENT PLAN AND THE EXECUTION OF A DEVELOPMENT ORDER BY THE DEVELOPER AND THE MAYOR AND PROVIDING FOR TIME LIMITS AND POSSIBLE REVERSION TO FORMER ZONING, AMENDMENTS TO THIS ORDINANCE, AND ERRORS AND OMISSIONS IN DEVELOPMENT ORDER; AND PROVIDING FOR CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE

WHEREAS the City of Cleveland, hereinafter "City", desires orderly land development in furtherance of the public welfare and has adopted the Planned Unit Development, hereinafter "PUD", process as an alternative development standard whereby to accomplish such development; and whereas the purchaser of the property described herein, Home Depot U.S.A., Inc., hereinafter referred to as "Developer", desires to enter into an agreement to be encompassed in a PUD Development Plan and development order for Developer to construct or cause to be constructed a building materials and home improvement store together with other prescribed types of development on four out parcels and various improvements to what is now or will be public property; and whereas City establishes a unique zoning district with special use restrictions and development standards for the property described herein by the adoption of this PUD, NOW THEREFORE BE IT ORDAINED:

Section 1. Property Description: the subject property contains thirty-seven acres more or less located generally at the northeast corner of Paul Huff Parkway and Mouse Creek Road, known as the McReynolds property, and more particularly described in Deed Book 262 Page 350 in the official records of Bradley County, Tennessee, Register of Deeds.

Section 2. Change in Zoning: the official zoning map shall be amended for the subject property to indicate that the zoning is PUD1 and Article 14 Chapter 2, of the Cleveland Municipal Code, the zoning ordinance, shall be amended to include PUD1 and all of the sections of this ordinance as they pertain to the development of the subject property. PUD1 shall be the zoning district for the subject property and the development standards for that district shall be as set forth below. PUD1 requires the execution of a development order by the mayor and the Developer prior to the development of the property for any of the uses permitted by this ordinance.

Section 3. Site Plan and Transportation Improvements: a site plan was shown in a drawing entitled "Proposed Landscape Plan The Home Depot Cleveland, TN" prepared by American Engineers, Inc. This plan was presented to the Cleveland Municipal Planning Commission September 24, 2002 and approved subject to City staff comments. The size, location, and configuration of the Home Depot site, parking, driveways, proposed road, parking, buffer area, detention pond, and out parcels shall be substantially the same as contained in the aforementioned site plan. The site plan shall be modified pursuant to the aforementioned comments of the City staff and shall include site engineering necessary for permitting. The site plan shall be modified as required by the City Engineer, whose approval shall not be unreasonably withheld, based upon his review of engineering drawings for the proposed site development, including but not limited to stormwater calculations, drainage systems design, paving details, and materials specifications. An objective of the site design, including the area east of the proposed roadway to South Mouse Creek, shall be the detention and gradual downstream release of water during significant rainfall events for the mitigation of downstream flooding. The on-site and off-site transportation improvements shall be designed and constructed by the Developer in accordance with City standards normally applicable to such improvements including: the proposed connector street from Paul Huff Parkway to Mohawk Drive; the traffic signal on Paul Huff Parkway at the proposed connector road; the widening of Mouse Creek Road to three lanes from Paul Huff Parkway to the project entrance; a left turn lane approximately 50 feet in length for southbound traffic on Mouse Creek Road at the project entrance; a right turn lane approximately 150 feet in length for westbound traffic on Paul Huff Parkway at Mouse Creek Road; a right turn arrow for southbound traffic on Mouse Creek Road at the Paul Huff Parkway intersection; two lanes for exiting vehicles at the site access points at Mouse Creek Road, Mohawk Drive, and the proposed connector road intersection with Paul Huff Parkway; a right turn lane with deceleration area from Paul Huff Parkway onto the proposed connector road; and a right turn lane with deceleration area from Paul Huff Parkway at the proposed right-in/right-out driveway. The Developer is also to construct a public access in the form of an eight-foot wide meandering concrete path traversing the subject property north to south near South Mouse Creek along a course to be determined in cooperation with the City Engineer. Landscaping and buffering described below are also to be incorporated into the development of the site. Unless otherwise provided by this ordinance, site design requirements for the project site including the Home Depot

site out parcels are to be as contained in the City's zoning ordinance as they would apply in the CH-Commercial Highway zoning district.

Section 4. Landscaping, Buffering, and Lighting: the landscaping for the site, excluding the out parcels, shall be in accordance with the landscape plan prepared by American Engineers, Inc. dated 10/04/02. Where existing trees shown on this landscape plan must be removed to accommodate any of the transportation improvements described above, said trees shall be replaced by the developer in a manner approved by the City's Director of Public Works. The landscape plan shall be modified to include planting details for the parking lot interior as coordinated with the lighting plan. Landscaping on the out parcels shall be of a high quality including, but not limited to, a band of turf, trees, and other plantings with an average width of at least twenty feet from the right-of-way along Paul Huff Parkway. Landscaping shall also be provided adjacent to buildings and parking areas within the out parcels. Landscaping throughout the site including Home Depot and the out parcels shall be professionally installed and maintained in perpetuity by the Developer or its assigns or successors in title. Maintenance shall include irrigation, fertilization, pest and disease control, trimming, mowing, raking, replacement of dead or diseased plants, and other such activities as may be appropriate to a high quality, professionally maintained landscape. The intention of the landscape provisions is to provide a high quality appearance and buffering effect for the residential areas near the subject property and to provide and enhanced streetscape. Lighting within the parking lots and other flood lighting on the site shall be directed into the subject property in a way that minimizes its effect on adjacent roadways and other nearby properties while achieving the necessary illumination of the subject property.

Section 5. Litter and Solid Waste Control and Drainage Structure Maintenance: the method of solid waste disposal for each use throughout the project site shall be as approved by the City's Director of Public Works. Dumpsters shall be on a concrete pad and shall be screened by a masonry enclosure. Storage for inedible fats or greases shall likewise be enclosed and, if adjacent to a dumpster, shall be separated from the dumpster by a concrete block wall. Litter and debris shall be removed from the parking lots and grounds throughout the project site on a regular basis such that these materials do not accumulate noticeably on-site or migrate to surrounding property. Removal of litter and debris shall include the removal of such materials from drainage structures and other areas where accumulations may occur. Maintenance of drainage structures including removal of sediment, debris, and intrusive vegetation, such that these drainage structures continue to function as designed shall be the continuing responsibility of the developer, or its assigns or successors in title, and shall include effective control of algae, mosquitoes, and other such concerns as may occur with wet stormwater detention areas; such control by the developer will be monitored by the City and shall include technically appropriate means that may include mechanical aeration, application of chemicals, and/or other means. Mechanical sweeping of the parking lot and driveway areas shall be performed regularly by the Developer to control dirt, litter, and debris.

Section 6. Signage, Outdoor Storage and Displays, and Truck Traffic: the proposed Home Depot monument sign adjacent to Mouse Creek Road shall be designed in consideration of its proximity to residential property with landscaping around the sign, a neutral color for the sign structure, and minimal illumination such as might be achieved by uplighting from the surrounding landscaping. The proposed monument sign shall not exceed 150 square feet. The proposed Home Depot pylon sign adjacent to Paul Huff Parkway shall not exceed 150 square feet in the portion devoted to Home Depot but an equal or lesser amount of additional sign area may be provided in this sign structure for businesses located on the out parcels. One monument sign not to exceed 150 square feet shall be allowed for each of the four out parcels, when such out parcel is developed, for purposes of advertising a business within the overall project site. Wall signage for Home Depot shall not exceed thirty percent of the wall area in the front elevation and wall signage for each out parcels shall not exceed two hundred-fifty square feet. Portable signs as defined in the City's zoning ordinance are prohibited on the project site except small (ten square feet or less) non-illuminated signs located at least fifty feet from any public right-of-way. Outdoor displays of merchandise and outdoor storage of goods and merchandise, including such storage as may be enclosed in trailers or containers, is prohibited within 50 feet of the Paul Huff Parkway right-of-way line. In no event shall any sign, display, or storage of merchandise be configured or located so as to block visibility for motorists within or adjacent to the subject property. Delivery truck traffic for Home Depot and the users of the out parcels shall enter and exit the subject property from Paul Huff Parkway and the proposed connector road and shall not be permitted on Mouse Creek Road or Mohawk Drive. The duty of the developer, the owners of the out parcels, and their successors or assigns with respect to delivery truck traffic is limited to their making reasonable efforts, through signs and normal delivery instructions to vendors and drivers, to notify the drivers of such trucks to not utilize Mouse Creek Road and Mohawk Drive. The development of the Home Depot and the out parcels shall incorporate site planning for delivery vehicles as appropriate to the use with the establishment of loading areas so as to avoid conflicts with other on-site traffic.

Section 7. Permitted Uses: the permitted uses for the project site including the Home Depot site and the out parcels are described in terms of the classifications found in the North American Industry Classification System, 1997 edition, hereinafter referred to as "NAICS". Unless otherwise noted it is the intention of this ordinance to allow all the types of businesses within the level of NAICS classification stated, with two-digit classifications being the most general as to business type and the six-digit classifications being the most specific as to business type. The broadest NAICS classifications are denoted by two digits and may include many specific types of businesses. In some cases exceptions to the NAICS classification are noted to add to or further restrict the uses that are allowed. These are the uses that are permitted by the PUD1 zoning classification and no other uses are allowed without amendment to this ordinance. The principally permitted uses are as follows:

4413 Automotive Parts, Accessories, and Tire Stores
442 Furniture and Home Furnishings Stores
443 Electronics and Appliance Stores
444 Building Material and Garden Equipment and Supplies Dealers
445 Food and Beverage Stores
446 Health and Personal Care Stores
448 Clothing and Clothing Accessories Stores
451 Sporting Goods, Hobby, Book, and Music Stores
452 General Merchandise Stores
453 Miscellaneous Store Retailers
511 Publishing Industries (excluding manufacturing and warehousing)
512 Motion Picture and Sound Recording Industries (excluding manufacturing and warehousing)
513 Broadcasting and Telecommunications (excluding manufacturing and warehousing)
514 Information Services and Data Processing Services.
52 Finance and Insurance
531 Real Estate
532 Rental and Leasing Services (excluding outdoor storage of vehicles and equipment for lease. NOTE: operation of a tool rental center by Home Depot and rental of delivery trucks by Home Depot to their customers are principally permitted uses on the Home Depot site)
54 Professional, Scientific, and Technical Services
55 Management of Companies and Enterprises
561 Administrative Support Services (excluding 561210 Facilities Support Services, 561710 Exterminating and Pest Control Services, 561730 Landscaping Services, 561740 Carpet and Upholstery Cleaning Services, 561910 Packaging and Labeling Services. NOTE: this does not exclude the Mailboxes, Etc.-type businesses found in many shopping centers or the the sale of landscaping materials or landscape design and installation services by Home Depot)
61 Educational Services
621 Ambulatory Health Care Services
7111 Performing Arts Companies
7139 Other Amusement and Recreation Industries
7221 Full Service Restaurants
7222 Limited Service Eating Places (includes fast-food with or without drive-through)
72232 Caterers
811211 Consumer Electronics Repair and Maintenance
811211 Computer and Office Machine Repair and Maintenance
811430 Footwear and Leather Goods Repair
8121 Personal care Services
81292 Photofinishing
92 Public Administration

The City specifically acknowledges that the PUD1 zoning classification permits the operation of a home improvement center similar to other retail stores operated as of the effective date by the Developer under the name "The Home Depot" including without limitation the operation of a tool rental center and outdoor garden center. The PUD1 zoning classification also permits the incidental rental of delivery trucks for customer use by the Home Depot. Conditional use provisions notwithstanding, the PUD1 zoning classification permits as a principally permitted use the Home Depot to carry out its own seasonal sales on the Home Depot site, including but not limited to Christmas trees. Convenience stores with or without gasoline sales and gasoline sales are specifically prohibited on the Home Depot site and the out parcels.

In addition, the following uses are specifically prohibited in the PUD1 zoning classification set forth herein. No portion of any out parcel may be leased, used or occupied as or for a funeral parlor, flea market, discotheque, skating rink, bar (a bar being defined for purposes of this PUD1 zoning classification as an establishment offering the sale of alcoholic beverages for consumption on the premises where such sales are not incidental to the sale of food for on-premises consumption in a bona fide fast food restaurant); unsupervised game room or amusement arcade, industrial manufacturing, truck stop, adult bookstore or establishment selling, exhibiting or distributing pornographic or obscene materials, massage parlor, so-called "head shop", body and fender shop, off-track betting parlor, booths for the sale of fire works, or sales by transient merchants.

Conditional uses may be permitted with conditional use approval of the Cleveland Municipal Planning Commission in accordance with the conditional use review and approval process in the zoning ordinance. Temporary seasonal uses of the property, such as for the sale of Christmas trees (except for the Home Depot site where such temporary seasonal uses are principally permitted), may be permitted as a conditional use but not within 50 feet of the Paul Huff Parkway right-of-way. Special events, excluding vehicle sales, flea markets, and sales of used merchandise may be permitted as a conditional use but not within 50 feet of the Paul Huff Parkway right-of way. Taxi stands, bus shelters, benches, picnic shelters, playground equipment, and similar amenities may be permitted as a conditional use. Only those conditional uses described herein may be permitted.

Section 8. Responsibility for Permits and Compliance with Laws and Violations of this Ordinance: the Developer and its assigns or successors in title is responsible for obtaining all federal, state, and local permits required for the construction of the proposed Home Depot and for construction on the out parcels and other construction on or adjacent to the site for which the Developer is responsible. The Developer and its assigns or successors in title shall carry out the construction on the project site in compliance with all applicable ordinances of the City of Cleveland, Tennessee, and also in compliance with applicable federal and state laws. Buildings shall be designed and constructed in accordance with adopted building codes and shall not be occupied until final inspections are complete and certificates of occupancy have been issued (permission for limited use of building after

substantial completion of construction for fixture installation, furnishing, store stocking, employee training and the like may be granted by the City's Building Official and such permission shall not be unreasonably withheld). Failure to develop, use, or maintain the subject property other than in conformity with all of the requirements of this ordinance is unlawful and shall be deemed a violation of the City's zoning ordinance and a nuisance subject to the penalties described in the zoning ordinance and any increased fine as may be allowed by state law.

Section 9. Lands to be Subdivided, Deeded or Dedicated by Developer: the Developer is required to prepare a preliminary and final plat for approval by the Cleveland Municipal Planning Commission and recording. (Nothing in this ordinance is intended to prohibit approval of a plat for this property by the Cleveland Municipal Planning Commission that would change lot lines or numbers of lots as contemplated herein, nor is the Cleveland Municipal Planning Commission prohibited from approving a plat that would necessitate other minor changes in site design where the resulting design would conform to the intent of this ordinance.) The plat shall show all property lines, easements, and rights-of-way and shall otherwise conform to the requirements of the City's subdivision regulations. The preliminary plat shall have approval by the Cleveland Municipal Planning Commission prior to the start of construction. The final plat shall have been approved by the Cleveland Municipal Planning Commission and recorded with the Bradley County Register of Deeds prior to the occupancy of any building on the site other than a temporary construction office. Portions of the subject property needed for public right-of-way for transportation improvements to be built by the developer as described above are to be dedicated to the City as public streets with a plat prepared accordingly. The plat shall show all existing easements, rights-of-way, and utilities. Land east of the proposed connector road and west of South Mouse Creek, unbuildable due to flood concerns, is to be deeded to the City of Cleveland, Tennessee for public purposes including but not limited to the eight-foot concrete path described above. The transfer of said land to the City may occur after the opening of the proposed Home Depot at the election of the Developer but such transfer may not be delayed by the Developer for more than 30 days after the store opening. All project-related transportation improvements in public rights-of-way are to be in the ownership and control of the City once accepted by the City. All portions of the property that come under control of the City shall be maintained by the City at its expense.

Section 10. PUD Development Plan and Development Order, Time Limit and Possible Reversion to Former Zoning, Amendments to this Ordinance, and Errors and Omissions in Development Order: after final approval of this ordinance, the Mayor and the Developer shall execute a development order, to be signed by both parties. The execution of the development order shall bring the PUD1 zoning and the terms of this ordinance into effect and shall bind the Developer to comply with all the terms of this ordinance in carrying out the development. The Development Order shall encompass the PUD Development Plan that includes the plans and drawings referenced herein as well as the requirements of this ordinance pertaining

to the development of the subject property. The Development Order shall also encompass the requirements of this ordinance as they pertain to the use and maintenance of the subject property after it is developed. The developer must have carried out a substantial development of this project within five years from the effective date of this ordinance or the City may cause the property to revert to its former zoning classification without liability for any damages. Substantial development shall in be interpreted to mean completion of construction on at least the Home Depot portion of the site and transportation improvements for which the Developer is responsible under this ordinance. This ordinance may be amended from time to time as necessary after review by the Planning Commission and approval by the City Council subsequent to a public hearing. Errors and omissions in the Development Order that can be corrected without conflicting with the terms of this ordinance may be corrected without amending this ordinance with the recommendation of the Cleveland Municipal Planning Commission and the signature of the Mayor and the Developer.

Section 11. Binding on Others: this ordinance and the Development Order shall be binding upon the Developer and its assigns, lessees, tenants, or successors in title. This ordinance and Development Order shall be a condition of all deeds, leases, or other instruments that convey a right to own or occupy all or a portion of the subject property for commercial or business purposes. Wherever this ordinance establishes a duty, responsibility, or right for the Developer, the term "Developer" is intended to encompass any assigns or successors in title. The term "Developer" is also intended to include any holding company or other entity established for the ongoing operation and maintenance of the development of the subject property including, but not limited to, common areas, joint use or joint access areas, and undeveloped portions of the property that are intended for development.

Section 12. Conflicts, Severability, and Effective Date: where this ordinance is in conflict with existing ordinances with respect to the development of this property the terms of this ordinance shall prevail unless stated otherwise herein. In the event that any portion of this ordinance is determined to be invalid by any court of competent jurisdiction, the remaining portions of this ordinance shall remain in full force and effect. This ordinance shall take effect upon after passage and upon the execution of the development order as described above, the public convenience and necessity requiring it.