ORDINANCE 11-19  Removed from the agenda 5-9-11

ANNEXING LAND TO THE CITY OF DEKALB COMMONLY KNOWN AS 1840 EAST LINCOLN HIGHWAY.

WHEREAS, James Lee Worrell, as trustee under the provisions of a declaration of Trust dated May 18, 2006 and Known as the James Lee Worrell 2006 Declaration of Trust to an undivided ¾ interest and Evelyn K. Worrell, as Trustee under the provisions of a declaration of trust dated May 18, 2006 and known as the Evelyn K. Worrell, 2006 Declaration of Trust, to an undivided ¾ interest are the owners of a certain parcel of property and has filed a petition for annexation with the City Clerk of the City of DeKalb, Illinois; and,

WHEREAS, a majority of the electors residing on the property have signed the petition, this territory is not within the Corporate Limits of any municipality, is contiguous to the City Limits of the City of DeKalb, and it is in the best interest of the City of DeKalb, Illinois, that this territory be annexed to the City; and,

WHEREAS, legal notices regarding the intention of the City of DeKalb to annex this territory have been sent to the public bodies required to receive notice, and all documents necessary to be filed are in full compliance with the Illinois Compiled Statutes 65 ILCS 5/11-7-1-13 et.seq.; now,

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL of the City of DeKalb, Illinois, as follows:

Section 1. The following described property:

PART OF ASSESSORS LOTS OF THE SOUTHWEST ¼ OF SECTION 24, ALL IN TOWNSHIP 40 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL IN DEKALB TOWNSHIP, DEKALB COUNTY, ILLINOIS.

as indicated on an accurate map of the territory, attached hereto and made a part of this Ordinance as Exhibit "A", is hereby annexed to the City of DeKalb, DeKalb County, Illinois.

Section 2. That the City Clerk of the City of DeKalb, Illinois, is hereby authorized and directed to record with the County Recorder of DeKalb County, Illinois, a certified copy of this Ordinance together with the above described map of said territory.

Section 3. That this territory shall be added to Aldermanic Ward 4.

Section 4. That this Ordinance shall be in full force and effect upon its passage and approval according to law.
PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, at a regular meeting held on the ____ day of __________, 2011 and approved by me as Mayor on the same day.

ATTEST:

__________________________  __________________________
STEVE KAPITAN, City Clerk    KRIS POVLSEN, Mayor
May 3, 2011

Mr. Mark Biernacki  
DeKalb City Manager  
200 South Fourth Street  
DeKalb, IL 60115

Re: Kishwaukee Country Club  
Annexation

Dear Mr. Biernacki:

I have been asked to represent Kishwaukee Country Club, Inc (KCC) in reference to the involuntary annexation petition which the City of DeKalb has initiated seeking to annex portions of KCC’s property currently located outside of the territorial limits of the City of DeKalb totaling 76.48 acres. (See Maps Area 5 and 6) For the reasons set forth below, KCC believes its property does not meet the minimum legal requirements to be forcibly annexed under Section 7-1-13 of Chapter 65 of the Illinois Revised Statutes.

Section 7-1-13 provides that a municipality may require annexation of any territory that is less than 60 acres in area and is wholly bounded by one or more municipalities, or by one or more municipalities and a forest preserve district. 65 IllCS 7-1-13e. This procedure, however, cannot be used when the area is larger than 60 acres. People ex rel. Universal Oil Products Co. v. Village of Lyons, 400 Ill. 82, 79 N.E. 2d 33 (1948). In 2005, the state legislature included park districts to the list of municipal properties whose boundaries can require property to be forcibly annexed. Since Areas 5 and 6 total more than 60 acres, the City can assert its right to forcibly annex the land only if each of the specific Areas are “wholly bounded” within the meaning of the statute.

Area 5, which is commonly referred to as the “back nine”, is a 57.24 acre tract which contains holes 9, 10, 11, 12, 13, and 14. There are no buildings or structures located on this tract, other than a permanent bathroom facility located on the ninth hole. Area 6 is a 19.6 acre tract which is unimproved and contains holes 8, 15 and 16. The only land mass that physically separates Area 5 from Area 6 is Greenwood Acres North, a public street, and the DeKalb Park District’s Nature Trail both of which are annexed to the City of DeKalb. In addition to the DeKalb Park District’s Nature Trail and Greenwood Acres North, Area 5 is bounded on the west by the Fairway Oaks subdivision, on the North by townhomes, and on the east by residences in
the Greenwood Acres subdivision, all of which are annexed to the City of DeKalb. There, however, is a 150 foot strip which lies south of KCC’s northern boundary line and immediately adjacent to Greenwood Acres Drive near its northern terminus where it intersects with Bethany Road. The land that is immediately east of this 150 foot strip is owned by Kishwaukee Hospital and is not annexed to the City of DeKalb.

With respect to Area 6, nothing physically separates this parcel from KCC’s remaining 67 acres which lie to the south of Area 6. Part of the argument that KCC’s property is subject to a forced annexation is based on Area 6 being “wholly bounded” by reason of a 25 foot wide strip of land that was annexed to the City of DeKalb in 1966. This 25 foot strip runs in a generally north to south direction along the Kishwaukee River. It connects an area of land that currently lies north of the golf course with an area of land south of the golf course. It is my understanding that at the time this strip was annexed, the land lying north of the golf course was not contiguous to the City of DeKalb, and therefore to establish “legal contiguity” for voluntary annexation purposes, the City annexed the 25 foot wide strip. Other than this 25 foot wide strip, which is now owned by KCC, Area 6 would not be “wholly bounded” by the City of DeKalb. By most expert legal opinions, this 25 foot strip annexation, if it had been challenged at the time, would have been found void and invalid. However, since more than 45 years has expired and the land is now contiguous to the City, the strip annexation itself cannot now be challenged. Nonetheless, even though the statute of limitation has run out, the legal question remains as to whether the City can utilize an otherwise illegal annexation to affirmatively assert its right to forcibly annex the subject land. Further, even if the City can utilize the annexation for purpose of claiming the subject property is wholly bounded, is a twenty five strip of land a sufficient boundary to constitute being “wholly bounded” within the meaning of Section 7-1-13. Based on my reading of the Illinois cases involving forced annexation, I do not believe the areas annexed to the City of DeKalb are legally sufficient to constitute boundaries which entitle the City to forcibly annex the subject properties under Section 7-1-13.

The leading case on the issue of public streets and their legal relevancy in forced annexation is West Suburban Bank v. City of West Chicago, 366 Ill. App. 1137 (2d District 2006). In West Suburban, the City of West Chicago sought to forcibly annex a 62.75 acre parcel which was bordered on the north, east and south either by DuPage County Forest Preserve District or the City of West Chicago. One of the property owners objected on grounds that the parcel was greater than 62.57 acres. Included in the 62.57 acres was the right-of-way for Route 64 which separated the subject property from the forest preserve district on the north. The total area within the right-of-way was approximately 5.43 acres. Route 64 was owned by the State of Illinois and not annexed to the City of West Chicago. The plaintiff property owner argued that in determining whether the area contained more than 60 acres, it was required that the highway right of way be included in the area calculation since it was not annexed. If added, the additional land within the highway would cause the subject property to constitute more than 60 acres. The court denied the plaintiff’s request to include the highway right of way property even though it
was not annexed to any municipality. The court found that as a matter of law adjacent public streets are automatically annexed to the far side, and therefore are to be disregarded in determining if the area sought to be annexed is greater than 60 acres. In a related argument, the plaintiff claimed that Route 64 when annexed was not a legally sufficient boundary under Section 7-1-13(d), which allows annexation of territory "wholly bounded by" "one or more municipalities and property owned by the State of Illinois, except highway right-of-way owned in fee by the State." The court once again found the plaintiff's argument missed the mark. Since all adjacent streets are automatically annexed to the far side under Section 7-1-1, the street is not what is relevant in determining if the property is wholly bounded, the relevant question is whether the street is "bounded" by one or more municipalities or a forest preserve district. In the subject case, the DuPage County Forest Preserve laid north of the north line of Route 64. Accordingly, the property annexed, which included Route 64, was "wholly bounded" under Section 7-1-13 (3) of the statute. That public streets are to be disregarded in calculating the total area to be annexed or in determining if the property is "wholly bounded" was reaffirmed by the Illinois Appellate Court in Bowers v. City of Rockford, 384 Ill App. 3d 655 (2008).

Even if we assume for purposes of argument that the 100 foot wide Nature Trail owned by the DeKalb Park District is a sufficiently wide territory within a park district to constitute a boundary for annexation purposes, Area 5 is not "wholly bounded" when the 150 foot strip along Greenwood Acres Drive is taken into consideration. All of the land lying immediately opposite this 150 foot strip is located in the County of DeKalb, and not within the City of DeKalb. Under the principal set forth in West Suburban v. City of West Chicago, the relevant legal inquiry is not whether the street is within a municipality, but whether the land boarding the street is within a municipality, a forest preserve or a park district. Since 150 feet of Area 5 is not "wholly bounded" within the meaning of Section 7-1-13 of the statute, the City may not forcibly annex this property even though it is less than 60 acres.

With respect to Area 6, again even if we assume the 100 foot wide Nature Trail owned by the DeKalb Park District is a sufficiently wide territory within a park district to constitute a legal boundary, the 25 foot strip annexed to the City of DeKalb is not, particularly, whereas here, the 25 foot strip is itself owned by the property owner whose land is being sought to be annexed. The law is clear that strip annexations are illegal and void, and even though an annexation cannot be attacked as void and invalid by reason of the statute of limitations, it would be a strange legal precedent if the City can now use the 25 foot strip to force annex land that would otherwise not be subject to force annexation. The 25 foot strip is not adjacent to or parallel with any other property within the City of DeKalb. Under Illinois case law, for land to be contiguous for voluntary annexation purposes it must have a sufficient common boundary with the annexing municipality and the land being annexed. To date, the smallest width of land that a court has found sufficient in size to authorize a voluntary annexation is a strip of land 300 feet wide. In re Annexation of Certain Territory to Village of Buffalo, 128 Ill. App. 2d 261 (2d Dist 1970). Land measuring less in width has been held legally insufficient. Eg. Wescom, Inc. v. Woodridge
Park District, 49 Ill. App. 3d 903 (2d Dist. 1977)(120.5 feet wide not sufficient); Wild v. People ex rel. Stephens, 227 Ill. 556 (190)(50 feet wide not sufficient); Cherry Valley Fire Protection District v. City of Rockford, Ill., 120 Ill. App. 2d 275 (2d Dist 1970)(20 feet wide not sufficient). If strips of land measuring less than 300 feet in width are not sufficient enough to support a voluntary annexation, how can such lesser amount be sufficient to support an involuntary forced annexation?

Aside from the legal issues, KCC believes there are many non-legal issues relative to its operations that distinguishes its property from those properties which the City of DeKalb has recently annexed. The first is its size. The total golf course including its main facility encompasses 144 acres. None of the other properties involved contiguous parcels of this size under one ownership. Second, is the use which is made of the property. It is a 18 hole golf course with associated practice facilities which requires active management and access to its own source of water for irrigation purposes and the ability to dispose its landscape waste on site. Much of the property is located within the Kishwaukee River flood plain/watershed and requires active management for drainage and erosion control along the banks of the river. The annexation of the unimproved property to the City will add another set of regulations, which might conflict with those regulations controlling the unimproved property located outside the City’s limits.

Although KCC is a private not for profit corporation, KCC offers its golf and social memberships to the entire public. Even for those citizens who do not golf, KCC provides the City of DeKalb with a 144 acre park-like open space at no cost. KCC is also the home practice course for Northern Illinois University mens and womens golf teams, and serves as the home course for all DeKalb High School golf matches. Indeed, KCC does contribute to the City’s tax revenue base, for its main facility and maintenance buildings located near Sycamore Road are annexed to the City of DeKalb, and KCC pays City sales taxes on all of the food, beverages and products sold or distributed at its main facility.

For all of the above reasons, KCC believes it should not be subject to a forced annexation and requests the City to withdraw its petition. Thank you.

Sincerely,

Charles G. Brown

CGB:bl
Enc: City of DeKalb Oct. 18, 2010 Correspondence

cc: Terry Bishop
October 18, 2010

NOTICE OF INTENT TO ANNEX

Pursuant to the Illinois Municipal Code 65 ILCS 5/7-1-13, notice is hereby given that the annexation of the territory described below is contemplated by the City of DeKalb, Illinois, to consider and take action on an ordinance annexing such territory at a regular meeting of the DeKalb City Council on November 22, 2010 at 7PM. Prior to the City Council passing such an ordinance a public hearing will be held to discuss force annexing your property. The public hearing will occur on November 8, 2010 at 7PM in the City Council chambers. You are invited to appear and be heard at the times and dates listed above.

The territory under consideration consists of seventeen (17) tracts of land totaling approximately 129.46 acres. Your property/properties is/are amongst the seventeen tracts of land under consideration and being more commonly known as Area 5 on the attached map.

The territory to be annexed is legally described as follows:

THAT PART OF THE NORTHWEST ¼ AND THE SOUTHWEST ¼ OF SECTION 12, ALL IN TOWNSHIP 40 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE NORTH SECTION LINE OF SECTION 12 AND THE WESTERLY RIGHT OF WAY OF GREENWOOD ACRES DRIVE; THENCE SOUTHERLY, ALONG SAID RIGHT OF WAY TO THE NORTHERNMOST POINT OF LOT 1, KISHWAUKEE PARK AREA 3; THENCE SOUTHWESTERLY, ALONG THE WESTERN BOUNDARY OF KISHWAUKEE PARK AREA 3, TO THE NORTHEAST CORNER OF LOT 13 OF SAID SUBDIVISION; THENCE CONTINUING SOUTHWESTERLY ALONG THE NORTH AND WEST PERIMETER OF SAID LOT 13, ALSO BEING THE WESTERN BOUNDARY OF KISHWAUKEE PARK AREA 3, TO THE WESTERNMOST CORNER OF SAID LOT 13; THENCE SOUTHEASTERLY ALONG THE SAID WESTERN BOUNDARY TO THE SOUTHWEST CORNER OF LOT 15 OF KISHWAUKEE PARK AREA 3; THENCE CONTINUING SOUTHEASTERLY ALONG THE WESTERN BOUNDARY OF FAIRWAYS PUD TO THE SOUTHWEST CORNER OF SAID SUBDIVISION; THENCE CONTINUING SOUTHEASTERLY ALONG THE WESTERN EDGE OF FAIRWAYS PUD UNIT 2 TO THE SOUTHWEST CORNER OF SAID SUBDIVISION; THENCE CONTINUING SOUTHEASTERLY ALONG THE WESTERN BOUNDARY OF KISHWAUKEE PARK AREA 7 TO THE SOUTHWEST CORNER OF LOT 1 IN SAID SUBDIVISION; THENCE SOUTHERLY ALONG SAID WESTERN BOUNDARY, 529.27 FEET TO A POINT ON THE WESTERN EDGE OF LOT 4, KISHWAUKEE PARK AREA 7; THENCE WESTERLY ALONG THE NORTHERN BOUNDARY OF KISHWAUKEE PARK AREA 7 TO THE NORTHWEST CORNER OF LOT 5 OF SAID SUBDIVISION, SUCH POINT ALSO BEING
ON THE NORTHEASTERLY BOUNDARY OF THE DEKALB NATURE TRAIL, PREVIOUSLY KNOWN AS THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD RIGHT OF WAY; THENCE CURVING NORTHEASTERLY ALONG THE NORTHEASTERLY BOUNDARY OF SAID DEKALB NATURE TRAIL TO THE SOUTHEAST CORNER OF LOT 1 OF FAIRWAY OAKS AREA 1; THENCE NORTHERLY ALONG THE EASTERN BOUNDARY OF SAID SUBDIVISION TO THE NORTHEAST CORNER OF LOT 18, FAIRWAY OAKS AREA 1; THENCE CONTINUING NORTHEASTERLY ALONG THE EASTERN BOUNDARY OF GOLF VILLAS OF FAIRWAY OAKS PUD TO THE POINT WHERE SAID BOUNDARY INTERSECTS WITH THE NORTH SECTION LINE OF SECTION 12; THENCE EASTERLY ALONG SAID SECTION LINE TO THE POINT OF BEGINNING; ALL IN DEKALB TOWNSHIP, DEKALB COUNTY, ILLINOIS.

If you have any further questions regarding this annexation, please contact my office at 815-748-2060 or planning@cityofdekalb.com.

Sincerely,

[Signature]

Derek Hiland
Principal Planner

Enclosure
October 18, 2010

NOTICE OF INTENT TO ANNEX

Pursuant to the Illinois Municipal Code 65 ILCS 5/7-1-13, notice is hereby given that the annexation of the territory described below is contemplated by the City of DeKalb, Illinois, to consider and take action on an ordinance annexing such territory at a regular meeting of the DeKalb City Council on November 22, 2010 at 7PM. Prior to the City Council passing such an ordinance a public hearing will be held to discuss force annexing your property. The public hearing will occur on November 8, 2010 at 7PM in the City Council chambers. You are invited to appear and be heard at the times and dates listed above.

The territory under consideration consists of seventeen (17) tracts of land totaling approximately 129.46 acres. Your property/properties is/are amongst the seventeen tracts of land under consideration and being more commonly known as Area 6 on the attached map.

The territory to be annexed is legally described as follows:

THAT PART OF THE SOUTHWEST ¼ OF SECTION 12 AND THE SOUTHEAST ¼ OF SECTION 11, ALL IN TOWNSHIP 40 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT AN ANGLE POINT ON THE BOUNDARY OF SAID PARCEL "B" OF THE ELLWOOD FARM PLAT AS RECORDED IN VOLUME "G" OF PLATS, PAGE 164, AS DOCUMENT 240632 IN THE DE- KALB COUNTY RECORDER'S OFFICE, DEKALB COUNTY, ILLINOIS WHICH POINT IS MARKED BY A STONE LOCATED ON THE SECTION LINE BETWEEN SECTION 11 AND SECTION 12 OF TOWNSHIP 40 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN, DEKALB COUNTY, ILLINOIS; SAID POINT BEING ALSO THE MOST SOUTHERLY CORNER OF LOT 1001 OF THE DEKALB AGRICULTURAL ASSOCIATION, INC. FARM PLAT AS RECORDED IN VOLUME "M" OF PLATS, ON PAGE 43, AS DOCUMENT NO. 315231 IN THE DEKALB COUNTY RECORDER'S OFFICE; THENCE NORTH 0 DEGREES 16' EAST (WHICH BEARING IS HEREAFTER USED AS A REFERENCE MERIDIAN FOR ALL OTHER BEARINGS IN THIS DESCRIPTION), ALONG SAID SECTION LINE, A DISTANCE OF 184.0 FEET; THENCE NORTH 8 DEGREES 29' EAST, A DISTANCE OF 205.5 FEET; THENCE NORTH 89 DEGREES 10' WEST, A DISTANCE OF 148.0 FEET; THENCE NORTH 7 DEGREES 53' WEST, A DISTANCE OF 430.0 FEET; THENCE NORTH 54 DEGREES 21' EAST, A DISTANCE OF 28.25 FEET FOR A POINT OF BEGINNING; THENCE SOUTH 7 DEGREES 53' EAST PARALLEL WITH AND 25 FEET DISTANT, EASTERLY, FROM THE FOURTH ABOVE-MENTIONED COURSE, A DISTANCE OF 420.1 FEET; THENCE SOUTH 89 DEGREES 10' EAST PARALLEL WITH AND 25 FEET DISTANT, NORTHERLY, FROM THE THIRD ABOVE-MENTIONED COURSE, A DISTANCE OF 155.1 FEET; THENCE...
SOUTH 8 DEGREES 29' WEST PARALLEL WITH AND 25 FEET DISTANT, EASTERLY, FROM THE SECOND ABOVE-MENTIONED COURSE, A DISTANCE OF 232.3 FEET; THENCE SOUTHERLY, A DISTANCE OF 123.0 FEET, MORE OR LESS TO AN INTERSECTING POINT ON THE WESTERLY SIDE OF LOT 11, BLOCK 1, OF KISHWAUKEE PARK AREA 1, SUCH POINT ALSO BEING 66.60 FEET NORTH OF THE SOUTHWEST CORNER OF SAID LOT 11, AS MEASURED ALONG THE WEST SIDE OF SAID LOT; THENCE NORTHEASTERLY TO THE NORTHWEST CORNER OF LOT 10, BLOCK 1, OF KISHWAUKEE PARK AREA 1; THENCE SOUTHEASTERLY TO THE SOUTHWESTERLY CORNER OF LOT 7, BLOCK 1, OF KISHWAUKEE PARK AREA 1; THENCE NORTHEASTERLY TO THE NORTHERNMOST CORNER OF LOT 1, BLOCK 1, OF KISHWAUKEE PARK AREA 1, SUCH POINT ALSO BEING ON THE SOUTHWESTERLY EDGE OF GREENWOOD NORTH RIGHT OF WAY; THENCE CURVING NORTHEASTERLY ALONG SAID SOUTHWESTERLY RIGHT OF WAY TO THE SOUTHEASTERN CORNER OF LOT 100, KISHWAUKEE PARK AREA 2; THENCE WASTERLY ALONG THE SOUTHERN BOUNDARY OF KISHWAUKEE PARK AREA 2 TO A POINT NEAR THE SOUTHWEST CORNER OF LOT 104 OF KISHWAUKEE PARK AREA 2, SUCH POINT BEING 16 FEET NORTHEAST OF SAID SOUTHWEST CORNER, AS MEASURED ALONG THE SOUTHERN BOUNDARY OF SAID LOT 104; THENCE CONTINUING SOUTHWESTERLY ALONG THE SOUTHERN BOUNDARY OF KISHWAUKEE PARK AREA 2 TO THE SOUTHWEST CORNER OF SAID SUBDIVISION; THENCE CONTINUING ALONG AN EXTENSION OF THE LAST DESCRIBED SOUTHWESTERLY COURSE TO THE POINT OF BEGINNING, ALL IN DEKALB TOWNSHIP, DEKALB COUNTY, ILLINOIS.

If you have any further questions regarding this annexation, please contact my office at 815-748-2060 or planning@cityofdekalb.com.

Sincerely,

Derek Hiland
Principal Planner

Enclosure