

RESOLUTION 2008-87

11-12-08

RESOLUTION BY THE FINANCE AND BUDGETARY COMMITTEE AUTHORIZING THE EXECUTION OF OCTOBER 2008 AMENDMENT TO A DEVELOPMENT AGREEMENT WITH JOSJEN LLC AND MOBILE REDUCTION SPECIALISTS INC. IN REGARD TO SPECIAL ASSESSMENTS ON LORI LANE

WHEREAS, there is a need to clarify certain rights and responsibilities under previous agreements with JosJen LLC and Mobile Reduction Inc. in regard to special assessments on Lori Lane; and

WHEREAS, the parties have negotiated and created an October 2008 Amendment to Development Agreement which addresses special assessments on Lori Lane.

NOW THEREFORE, the Village Board of the Village of Sturtevant, Racine County, Wisconsin does hereby resolve:

1. That the execution of the October 2008 Amendment to Development Agreement with JosJen LLC and Mobile Reduction Inc. as set forth in Exhibit A which is attached hereto and incorporated herein is authorized and approved; and
2. The Village President and the Village Clerk are authorized to sign any agreements or other documents necessary to carry out the intent of this resolution.

Adopted by the Village Board of the Village of Sturtevant, Racine County, Wisconsin, this 18th day of November, 2008.

Village of Sturtevant

By _____
Steven Jansen, President

Attest _____
Mary Hanstad, Village Clerk

**OCTOBER, 2008 AMENDMENT TO
DEVELOPMENT AGREEMENT**

This is an Amendment, made and effective as of the date last executed by any party below, to the Development Agreement (hereinafter, "Agreement") that was entered into on or about September 1, 1998 by and between the Village of Sturtevant (hereinafter, "Village"), JosJen LLC and Mobile Reduction Specialists, Inc. (JosJen LLC and Mobile Reduction Specialists, Inc. collectively, "Developers").

WITNESSETH:

WHEREAS, the Agreement controlled Developers' division of a certain tract of land within the Village into 4 parcels (denominated therein as Parcels 1 through 4, with Parcel 4 being unrelated to this Amendment)("the Development"), including specifically addressing the imposition and collection of special assessments attributable to 80% of the costs of the roadway, water, sanitary and storm sewer improvements constructed by the Village to facilitate the Development ("Total Special Assessments"); and,

WHEREAS, the Agreement provided that Developers would immediately pay a special assessment attributable to Parcel 2, equating to 25% of the Total Special Assessment, in annual installments over a 10-year period, at 7% interest, commencing on January 1, 2000 and terminating on January 31, 2010. To date, Developers have made these installment payments when due, and the special assessment on Parcel 2 is not in dispute; and,

WHEREAS, the Agreement further created two deferred special assessments, on Parcel 3 and Parcel 1, each representing 25% of the Total Special Assessment and each of which was deferred "until such time as the parcel is sold by Developers or the parcel is developed for other than its current use (parcel is presently vacant)" ("Deferred Special Assessments"). The Agreement was silent as to the Deferred Special Assessments' repayment terms after activation; and,

WHEREAS, a dispute has arisen between the parties regarding whether either of the Deferred Special Assessments has been activated by certain uses to which the Developers have put Parcels 1 and 3 since the Agreement was executed, and the parties have agreed to resolve this dispute as provided in this Amendment.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. The above recitals are accepted by the parties as being true and correct.

2. The Deferred Special Assessment on Parcel 3, which parcel is more specifically described in the Agreement, will remain deferred until 2010, at which time the Deferred Special Assessment, equal to 25% of the Total Special Assessment, shall be activated and paid by Developers to the Village in equal annual installments over a ten-year period, at an interest rate of 7% per annum, with the first payment due on or before January 31, 2011.

3. The Deferred Special Assessment on Parcel 1, which parcel is more specifically described in the Agreement, will remain deferred until such time as: (1) Parcel 1 is used for any purpose other than the Parcel's current use, which is the planting, harvesting, advertising for and sale of trees; or, (2) Parcel 1 is sold; or, (3) Parcel 1 is improved by the erection or construction of any structures or improvements on the parcel, other than such signage as is on the parcel as of the effective date of this Amendment.

4. Once activated by the occurrence of any of the conditions set forth in Paragraph 3, the Deferred Special Assessment on Parcel 1, equal to 25% of the Total Special Assessment, shall become due and payable to the Village as provided herein. If the Deferred Special Assessment on Parcel 1 is activated while Parcel 1 is owned by Developers, Developers shall have the option to pay such assessment in equal annual installments over a ten-year period at an interest rate of 7% per annum. If the Deferred Special Assessment on Parcel 1 is activated by the sale of Parcel 1, the full amount of the Deferred Special Assessment shall become immediately due and payable as of the closing date.

5. In consideration of the above, Developers have constructed on Parcel 3 a concrete driveway apron from the existing curb opening to the right-of-way line, and also installed a base course of crushed aggregate from the driveway apron to the storage bins currently on the parcel, including under a staging area on the parcel to be used for the loading and unloading of materials from the storage bins. Because Developers did not contact the Village Building Inspector prior to such construction, however, the Building Inspector was unable to inspect the preparation for the driveway apron prior to its installation, and therefore was unable to confirm the adequacy, under the Village Code, of the driveway apron's foundation and construction. Developers therefore accept full responsibility for such driveway apron and agree, on their behalf and on behalf of their successors in interest, to replace the driveway apron at their cost in the event of any future failure. The construction work described in this paragraph is not an occurrence which will activate the Deferred Special Assessment on Parcel 3, other than as provided in Paragraph 2.

6. In consideration of the above, Developers have constructed on Parcel 1 a concrete driveway apron from the existing curb opening along Lori Lane to the right-of-way line, and also installed a 10-foot wide by 50-foot long tracking pad, 12 inches thick and comprised of 3-inch to 6-inch clear stone, which shall be used exclusively for all street access to Parcel 1, unless and until Developers also construct a driveway apron and tracking pad, of equal size and construction, from the parcel's present 87th Street curb cut. Because Developers did not contact the Village Building Inspector prior to such construction, however, the Building Inspector was unable to inspect the preparation for the driveway apron prior to its installation, and therefore was unable to confirm the adequacy, under the Village Code, of the driveway apron's foundation and construction. Developers therefore accept full responsibility for such driveway apron and agree, on their behalf and on behalf of their successors in interest, to replace the driveway apron at their cost in the event of any future failure. The construction work described in this paragraph is not an occurrence which will activate the Deferred Special Assessment on Parcel 1.

7. Developers agree to take all reasonable measures to prevent the tracking of excess dirt from Parcel 1, Parcel 2, or Parcel 3 onto the public streets, and further agree to remove any and all dirt that does accumulate in the public streets from Parcel 1, Parcel 2 or Parcel 3 no later than the end of each working day.

8. Developers need not obtain any conditional use permits for any use to which Parcel 1, Parcel 2 or Parcel 3 is being put as of the effective date of this Amendment, nor shall Developers be in violation of the Village zoning code owing to the absence of any such conditional use permits. In the event of a substantial change in the use or in the conditions of use of Parcel 1, Parcel 2, or Parcel 3, however, Developers shall obtain a conditional use permit for each parcel as provided by the Village zoning code.

9. The parties agree that this Amendment shall run with the land and shall be binding on all future successors and assigns of any interests in the property addressed by this Amendment and by the original Agreement. The Village shall cause this Amendment to be recorded in the Racine County Register of Deeds Office.

10. In all other respects not addressed by this Amendment, the Agreement shall remain in full force and effect.

[SIGNATURE PAGES FOLLOW]

