

REPORT ON THE ALLEGRO SENIOR ASSISTED LIVING FACILITY

This report discusses the proposed Allegro senior assisted living facility (the “**Proposed Development**”) that Opus Development Company (“**Opus**”) has proposed for a nine-acre parcel at the northeast corner of the Trinity International University (“**Trinity**”) campus, immediately west of the fire station (the “**Site**”). The Village Board approved the Proposed Development on September 14, 2020.

What Is the Proposed Development?

The Proposed Development will be an age-in-place senior assisted living facility. It will include 80 independent living units that are self-contained (i.e., sleeping, bathroom, and cooking facilities). In addition, there will be 59 assisted living units and 21 memory-care units, all of which will be served by common dining facilities within the Proposed Development. The Proposed Development will include many high-end amenities with around the clock non-resident staff, and residents of the Proposed Development will pay \$3,500 - \$10,000 monthly.

As a senior facility, no person under 55 years of age will be allowed. Based on Opus’s experience with similar facilities, the average age of its residents will likely be in their mid-80s. No school children will be generated from the Proposed Development.

The design of the building and the planning for the Site (which can be found on the Village’s website) are consistent with all the existing Village standards, including 200’ setbacks from Half Day Road, high quality exterior design and finishes, extensive landscaping and buffering in accordance with longstanding Village standards, no drainage impacts for surrounding properties, and low-level lighting. The Proposed Development will be accessed via Half Day Road, so no Village streets will be impacted. The building has been positioned on the Site to be approximately 300 feet to the nearest home, and that portion of the building nearest the neighboring home will be only one-story high.

Importantly, the Site has been off the tax rolls for all these years as part of the Trinity campus. Upon the sale of the Site for the Proposed Development, it will be returned to the tax rolls. In the first year after it opens, it is anticipated that the Proposed Development will yield \$400,000 in new tax dollars for the local school districts, as well as additional \$150,000 in property tax revenue to the Village and other taxing bodies.

The Process

As you may recall, the Village received a petition last year seeking annexation and development approvals for the Beeson Nursery property at the northeast corner of Half Day and Waukegan Roads. There were many concerns about that proposal, and ultimately the Village Board decided not to annex that property.

In the course of the community discussions about the Beeson Nursery property, many residents urged the Village to have a community-wide discussion on the appropriateness of multi-family and other residential uses in the Village. In response to those requests, the Village Board passed a resolution on March 9, 2020 referring this issue to the Village’s Plan Commission/Zoning Board of Appeals (the “**PCZBA**”) for public hearings in the context of the Village Comprehensive Plan. That resolution acknowledged that residential units on the Trinity campus have existed for decades, and the Village Board asked the PCZBA how those and other non-single-family residences should be addressed in the Comprehensive Plan.

And then the pandemic hit.

The Village, like other governmental units, businesses, and households, has been adapting to new ways of doing business during the pandemic. One of the ways that the Village has continued its operations has been through the use of virtual meetings. The Illinois General Assembly has recognized that, in these unique circumstances, such virtual meetings are lawful, appropriate, and even necessary. As a result, on May 4, 2020, the PCZBA commenced its public hearings on possible amendments to the Comprehensive Plan to consider issues relating to multi-family and other non-single-family residential uses in Bannockburn. This public hearing was not only held pursuant to a published notice as required by law, it was also included on the Village's website ***[and referenced in the Village Newsletter]***.

After the PCZBA held its first public hearing on possible amendments to the Comprehensive Plan, the Village received an application for the Proposed Development. Given the nature of the Proposed Development, the Village Board determined in public session on May 11, 2020 that it would be best to have a preliminary public review of the Proposed Development to determine whether it was worthy of further public review and, if so, to better frame the discussion before the PCZBA on proposed amendments to the Comprehensive Plan. The Village Board held that public review on June 8, 2020, during which public comments and questions were entertained.

On July 6, 2020, pursuant to multiple additional public notices in the newspaper and on the Village website and dissemination of application materials through the website, the PCZBA began its public hearings regarding the Proposed Development by considering requests for changes to the Zoning Code to accommodate a senior assisted living facility, a request for a special use permit for the Proposed Development, and possible amendments to the Comprehensive Plan. The PCZBA also considered a tentative plat related to the Proposed Development and updates to the Trinity Campus Development Plan based on the Proposed Development. After detailed presentations, significant public comment, and many questions, the PCZBA continued these matters to its August meeting.

On August 3, 2020, the PCZBA reconvened the public hearings related to the Proposed Development and potential amendments to the Comprehensive Plan. Before that date, the Village published another public hearing notice regarding the Proposed Development, while also notifying residents of the PCZBA session via the website. The PCZBA first resumed its public hearings on the proposed zoning text amendments and special use permit for the Proposed Development, as well as its discussion of the tentative subdivision plat and the updated Trinity Campus Plan. Ultimately, the PCZBA recommended the text amendments, the granting of the special use permit for the Allegro proposal, the tentative plat, and the updated Campus Plan. After resuming the hearing on possible amendments to the Comp Plan, the PCZBA adjourned its meeting without continuing the public hearing or making a recommendation on any Comprehensive Plan amendments.

On August 8, 2020, the Village Board received a report of the PCZBA actions. The Village Board directed that approval documents be prepared regarding the zoning text amendments, the special use permit and tentative plat for the Proposed Development, and the updated Campus Plan in accordance with the PCZBA recommendation. In light of the PCZBA's inaction on the question of amendments to the Comprehensive Plan despite the passage of more than 180 days since the initial referral, the Village Board, in accordance with the Zoning Code and State law, directed that amendments to the Comprehensive Plan be prepared for consideration reflective of the Proposed Development.

On September 14, 2020, the Village Board heard further from residents and the interested public, and then deliberated on the Proposed Development. Ultimately, the Village Board unanimously approved zoning text amendments, a special use permit and tentative plat for the Proposed Development, an updated Campus Development Plan for Trinity, and discrete amendments to the Village's Comprehensive Plan.

Throughout these many meetings, the Village heard from residents. In addition to these many meetings, the Village has solicited and received dozens of written comments and questions about the Proposed Development. Opus and Trinity have addressed all of these questions in writing, which responses have been made available through the Village website. Additionally, the Village President sent six letters to the Village residents discussing matters related to the Proposed Development. The Village also maintained on its website for public access and review all the submittals and communications received about the Proposed Development.

In sum, despite the challenges of the pandemic, the Village not only complied with all legal requirements for considering the Proposed Development and amending the Comprehensive Plan, it took extraordinary efforts to keep the community informed and to seek input from residents.

The Approvals

The Village Board ultimately approved four actions in connection with the Proposed Development, to-wit:

- **Zoning Text Amendments:** Because senior assisted living facilities was not previously contemplated as a use in the Village's Zoning Code, the Village Board amended the regulations of the "C" College District to authorize such a use pursuant to a special use permit. The text amendments also made some technical changes to accommodate such a use within the College District regulations. In making these amendments, however, the Village Board also:
 - Limited senior assisted living facilities to the "C" College District while maintaining the 100-acre minimum lot size for a college campus.
 - Required senior assisted living facilities to have frontage on Route 22;
 - Required senior assisted living facilities to be on a site that is adjacent to institutional uses such as a college or fire station on 50 percent of its perimeter; and
 - Required a separation between senior assisted living facilities of 1,000 feet.

The upshot of the text amendments is that senior assisted living facilities are limited to the "C" College District, and there will effectively be only one such facility.

- **Special Use Permit:** The Village Board approved a special use permit for the Proposed Development based on the plans that had been submitted and reviewed by the Village staff, Village Engineer, and Village Forester. The special use permit includes provisions that:
 - Set the minimum lot size, maximum signage size, and grade for the Site;
 - Granted tentative plat approval to authorize the sale of the Site by Trinity to Opus;
 - Preclude development except in compliance with all applicable ordinances, laws, and regulations;

- Subject the Proposed Development to further approvals of the Village Engineer in conformity with the approved plans and the Architectural Review Commission;
 - Placed restrictions on the entry signage for the Proposed Development to avoid interference with Village utilities;
 - Established further criteria for submission and approval of a final plat, which is a prerequisite to the issuance of any building permits;
 - Established requirements for tree preservation, landscaping, as well as the payment of a tree replacement fee estimated to be approximately \$221,000;
 - Require payment of impact fees in the amount of \$160,000 to the Deerfield-Bannockburn Fire Protection District and to the Village in the amount of \$40,000 for police services;
 - Require Opus to reimburse the Village for all third-party costs (including consultant and legal fees) relating to the review, approval, and enforcement of the special use permit;
 - Limit transfers of the Site to financially capable parties approved by the Village;
 - Require the Proposed Development to abide by the Fair Housing Act; and
 - Require Opus to indemnify and defend the Village in the event of any lawsuits relating to the Proposed Development.
- Amendments to the Village’s Comprehensive Plan: The Village Board adopted a series of discrete amendments to the Comprehensive Plan that ensure that the Proposed Development will be consistent with the Comprehensive Plan. Such consistency is not only important with respect to the Proposed Development, but it helps to fortify the Village’s overall zoning pattern (particularly in the residential core comprised of the “A” and “B” Residence Districts) against potential challenges. The Comprehensive Plan amendments properly describe senior assisted living facilities as an “institutional use with ancillary housing elements,” not as a type of residential use.¹ The amendments to the Comprehensive Plan purposefully highlight that Trinity also is an institutional use with housing elements, making the senior assisted living facility a complementary use. Notably, the amendments to the Comprehensive Plan do not countenance multi-family residential development; to the contrary, the amendments state: **“The Village must be vigilant to ensure that residential development in the Village is limited to single-family development with Estate or Countryside character in the Village’s residential core.”**
 - Approval of Updated Trinity Campus Plan: The Village Board approved an updated campus plan for Trinity that reflects the anticipated sale of the Site and its development independent of the university.

¹ Assisted living facilities were classified under “Health Care” (Group 80) under the 1897 *Standard Industrial Classification Manual*, and the more current *North American Industrial Classification System (“NAICS”)* identifies senior assisted living facilities as being a “health care and social assistance” use (Group 62). See also Bannockburn Zoning Code §260-1225.J.

Anticipated Impacts of the Proposed Development

There are several perspectives from which one can assess the impacts of the Proposed Development. These include:

- Land Use. Although the Site is currently vacant, it has always been available for development pursuant to the “C” College zoning district requirements. Because the Proposed Development is an institutional use that is complementary to Trinity, and because the Proposed Development will conform to the “C” District development standards, the basic land use patterns resulting from the Proposed Development should be similar to what could have been developed by Trinity itself. Thus, the Proposed Development should ensure that the Site is consistent in character to the Trinity campus as described in the Comprehensive Plan.
- Zoning Precedent. Because of concerns regarding the precedent that approving the Proposed Development might have, the Village Board has taken several steps to blunt any such effect. First, the Zoning Code has been amended to limit senior assisted living facilities only to the “C” College Districts. Because distinct districts customarily have distinct uses, authorizing a use in one district typically is not relevant to uses in other zoning districts. Second, because of the limitations on assisted living facilities set forth in the zoning text amendment described above, there will not be an opportunity for another similar use to occur in the “C” District. Finally, because the Site is between two similar institutional uses, the Proposed Development is fully consistent with the uses of nearby properties and therefore does not introduce an uncharacteristic use to change development patterns.
- Financial: The Proposed Development will likely have a very favorable impact on the Village and its residents.
 - As noted above, the Proposed Development will yield over \$550,000 in new tax dollars of which approximately \$400,000 is for the local school districts and \$150,000 in property tax revenue to the Village and other taxing bodies.
 - Even to the extent that the Proposed Development has any service demands that might not be immediately offset by taxes, Opus will be paying \$200,000 in impact fees to the Village and the Fire Protection District.
 - The increase in equalized assessed value “EAV” of the proposed project will have the effect of lowering residents tax rates.
 - Looking at the possible alternative makes the favorable financial impact of the Proposed Development clearer. Trinity could develop the Site at a similar intensity for use by students and faculty; if this were done, the Village would have the same service demands generated from the Site, but the Site would produce no property tax revenue.
 - Moreover, were the Site developed as part of the Trinity campus, it could accommodate addition student- or faculty-families that might generate additional students at Bannockburn School. The Proposed Development will have no impact on the number of students in the Bannockburn School.
- Long-Term Viability of Trinity: The effects of the pandemic have been quite pronounced on institutions of higher learning. The sale of the Site will bring it much needed revenue to Trinity

to enhance its overall viability. Given the many contributions that Trinity offers the Bannockburn community (not to mention the risks of unknown future development if Trinity were to cease operations), helping Trinity maintain its viability through the approval of the Proposed Development is a benefit to the Bannockburn community.

Correcting Misinformation

Despite the Village's efforts to share factual information about the Proposed Development over the past months, misinformation has still been injected into the assessment of the merits of the Proposed Development. Some of the misinformation that warrants correction includes:

- The Site should just be left vacant. Trinity has the right to develop the Site. The fact that it has been vacant is not an assurance that it will stay that way. The Site is private property, and the owner (currently Trinity) can choose to develop it or not. That is not for the Village to decide.
- The Village did not follow proper procedures in approving the actions related to the Proposed Development. This is simply wrong. The Village satisfied all required statutory and ordinance procedures. Moreover, the Village provided additional public notices and made information full accessible via the Village website, which is ***not*** required by law.
- The Village will be sued for changing the Comprehensive Plan. The Comprehensive Plan is not a law; it is a statement of policy. Although relevant for evaluating subdivisions and zoning decisions, the Comprehensive plan has no independent force, and therefore no person has the right to sue the Village over the policies in the Comprehensive plan.
- Changing the Comprehensive Plan will change the character of the Village. The Comprehensive Plan merely is an articulation of the Village's character as it exists. It neither creates nor changes the Village's character. What can change the character of the Village is to have someone successfully challenge the Village's zoning. Making sure that the Village's zoning decisions are consistent with the Comprehensive Plan is a significant factor that courts weigh in assessing whether a zoning decision is proper. Thus, the recent amendments to the Comprehensive plan should protect the Village's zoning.
- The Proposed Development is a multi-family residential development. Although anyone can label the Proposed Development as they wish (you can even call it a kumquat), the fact of the matter is that only half of the housing units in the Proposed Development qualify as "dwelling units" under the definitions of the Zoning Code. Moreover, the housing units would have no relevance without the health services that are to be provided. As noted above, assisted living facilities are generally regarded as health care facilities, not residential developments.
- The Comprehensive Plan amendments endorse multi-family residential development in Bannockburn. As discussed above, this simply is not the case. In fact, the opposite is true. Moreover, the fact that the amendments to the Comprehensive Plan more plainly articulate

the longstanding uses and development at Trinity should help insulate the Village from potential claims of “exclusionary zoning” as applied in Illinois.

- The Village should only discuss changes to the Comprehensive Plan at in-person meetings, not virtual meetings. As discussed above, the virtual meetings conducted by the Village are fully authorized by law. Although in-person meetings with residents is certainly preferred, the COVID-19 pandemic has made that untenable. Like everyone else, the Village has been forced to adapt to the “new reality” brought upon us by the pandemic.
- Concerns of Village residents were ignored. To be sure, the decisions of the Village Board does not square with the position of opponents to the Proposed Development. That does not mean that the Village has ignored their concerns. In fact, the PCZBA and Village Board heard hours of testimony from those opponents. The Village Board members reviewed dozens of written comments to be apprised of how residents felt. The approval ordinances were very much influenced by the concerns that were articulated. Reaching a different conclusion from those opposed to the Proposed Development is a far cry from ignoring them. That is simply how different positions are reconciled under our democratic system.
- Considering the Proposed Development during the pandemic is “back door, manipulative politics”. Under the Constitution, people have the right to use their property, and they also have the right to petition government for relief. This includes zoning petitions. Our Zoning Code requires the Village to consider promptly zoning petitions that are presented. In this case, the owner of the Site filed its application for the Proposed Development during the pandemic, and the Village processed it as best it could under the circumstances. That is not “back door, manipulative politics”; it is adherence to existing law and respect for our Constitution.