

**ORDINANCE NO. 08-2022**

**AN ORDINANCE APPROVING  
A SPECIAL USE PERMIT FOR AN ANIMAL HOSPITAL**

***(Red Barn Animal Hospital – Northwest Corner of Route 72 and Center Drive)***

**WHEREAS**, Red Barn Holdings, LLC (“***Applicant***”) is the contract purchaser of the property generally located at the northwest corner of Route 72 and Center Drive, Gilberts, Illinois, which property is more specifically described in ***Exhibit A*** (the “***Property***”); and

**WHEREAS**, the current owner of the Property is Thomas Burbulis Holdings, LLC (“***Owner***”); and

**WHEREAS**, the Applicant currently operates the Red Barn Animal Hospital located at 141 E. Higgins Road in the Village; and

**WHEREAS**, the Applicant desires to relocate its established animal hospital operation to a new and expanded facility on the Property; and

**WHEREAS**, the Applicant also desires to operate an animal boarding operation on the Property in conjunction with the animal hospital use; and

**WHEREAS**, the Property is currently zoned in the C-1 Commercial District and is subject to that certain Annexation Agreement and Development Agreement dated April 27, 2005, and recorded on June 13, 2005 in the Office of the Recorder of Deeds of Kane County, Illinois as Doc. No. 2005K066197 (“***Annexation Agreement***”), governing the territory known as the Gilberts Town Center; and

**WHEREAS**, the Annexation Agreement provides that animal hospitals and similar uses are allowed on the Property subject to the issuance of a special use permit; and

**WHEREAS**, under Section 4-3 of the Gilberts Unified Development Ordinance (“***UDO***”), animal hospitals, veterinary clinics, and similar and compatible uses are allowed in the C-1 Commercial District subject to the issuance of a special use permit; and

**WHEREAS**, the Applicant, with the permission of the Owner, has applied for a special use permit to develop and construct an animal hospital and animal boarding facility on the Property; and

**WHEREAS**, pursuant to notice duly published, the Gilberts Plan Commission/Zoning Board of Appeals held a public hearing and reviewed the Applicant’s request for a special use permit on April 13, 2022; and

**WHEREAS**, at the conclusion of the public hearing on April 13, 2022 the Gilberts Plan Commission/Zoning Board of Appeals voted to recommend approval of the special use permit to allow the Applicant to develop and operate an animal hospital and animal boarding facility on the Property, subject to certain conditions; and

**WHEREAS**, the Village Board makes the following findings of fact in reference to the application for approval of the special use permit to allow for the operation of an animal hospital and animal boarding facility on the Property:

1. The proposed special use complies with all provisions of the C-1 Commercial District.
2. The proposed special use will not be unreasonably detrimental to the value of other property in the neighborhood in which it is to be located or to the public welfare at large. The Property has been zoned C-1 for many years and has remained vacant, the Applicant will provide appropriate fencing and buffering, and the proposed special use will allow an established business to expand while staying in the Village, thereby encouraging economic development in Gilberts.
3. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the special use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations.
4. Adequate utility, drainage, and other necessary facilities have been or will be provided for the Property.
5. The proposed special use, where such developments and uses are deemed consistent with good planning practice, can be operated in a manner that is not detrimental to the permitted developments and uses in the district, can be developed and operated in a manner that is visually compatible with the permitted uses in the surrounding area; shall conform to the applicable regulations of the district; and is deemed essential or desirable to preserve and promote the public health, safety, and general welfare of the Village.

**WHEREAS**, based on the findings of fact detailed above, the Village Board has determined that the Applicant's request meets the standards of both state statute, the Annexation Agreement, and the UDO for approval of a special use permit for the Property, subject to the conditions set forth in this Ordinance.

**NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES** of the Village of Gilberts, Kane County, Illinois as follows:

**Section 1. Recitals.** The recitals are incorporated into this Section 1 as if fully set forth.

**Section 2. Special Use Permit.** Subject to the conditions set forth in Section 3 of this Ordinance, the Village Board of Trustees hereby approves a special use permit for the Applicant to develop and operate an animal hospital and animal boarding facility on the Property.

**Section 3. Conditions.** The approval granted pursuant to Section 2 of this Ordinance is conditioned upon and limited by the following conditions, the violation of any of which shall, in the discretion of the President and Board of Trustees, be grounds for the repeal and revocation of the approval granted by Section 2 this Ordinance in accordance with applicable law. In addition, any violation of this Ordinance will be deemed a violation of the UDO and subject the Owners to enforcement proceedings accordingly.

- A. **Dog Park Fencing.** The Applicant must provide open style fencing around the proposed private dog park on the Property as approved by the Village Administrator.
- B. **Compliance with Plans.** The development, maintenance, and use of the Property will be in substantial conformance with the plans attached hereto as ***Exhibit B.***
- C. **No Authorization of Work.** This Ordinance does not authorize commencement of any work on the Property. Except as otherwise specifically provided in writing in advance by the Village, no work of any kind may be commenced on the Property pursuant to the approvals granted in this Ordinance unless and until all conditions of this Ordinance precedent to that work have been fulfilled and after all permits, approvals, and other authorizations for the work have been properly applied for, paid for, and granted in accordance with applicable law, including, without limitation, final engineering approval.
- D. **Compliance with Laws.** The UDO, the Annexation Agreement (while in effect), the Building Code, and all other applicable Village ordinances and regulations shall continue to apply to the Property, and the development and use of the Property must comply with all laws and regulations of all other federal, state, and local governments and agencies having jurisdiction.

**Section 4. Failure to Comply.** Upon failure or refusal of the Applicant to comply with any or all of the conditions, restrictions, or provisions of this Ordinance, the approvals in Section 2 this Ordinance for the Property ("***Conditioned Approval***"), will, at the sole discretion of the Board of Trustees, by ordinance duly adopted, be revoked and become null and void; provided, however, that the Board of Trustees will not revoke the Conditioned Approval unless it first provides the Applicant with two months advance written notice of the reasons for revocation and an opportunity to be heard at a regular meeting of the Board of Trustees regarding the revocation. In the event of revocation, the development and use of the Property will be governed solely by the regulations of the C-1 Commercial District, as the same may, from time to time, be amended. Further, in the event of revocation, the Village Administrator and Village Attorney are authorized and directed to bring all zoning enforcement action as may be appropriate under the circumstances. The Applicant acknowledges that public notices and hearings have been held with respect to the adoption of this

Ordinance, have considered the possibility of the revocation provided for in this Section 4, and agree not to challenge any revocation on the grounds of any procedural infirmity or any denial of any procedural right, provided that the notice to the Owner required by this Section 4 is given.

**Section 5. Binding Effect; Non-Transferability.** The privileges, obligations, and provisions of each and every section of this Ordinance are for the sole benefit of, and shall be binding on, the Applicant. Nothing in this Ordinance will be deemed to allow the Special Use Permit granted pursuant to this Ordinance to be transferred to any person or entity without a new application for approval for any person or entity other than the Applicant.

**Section 6. Severability.** In the event a court of competent jurisdiction finds this Ordinance or any provision hereof to be invalid or unenforceable as applied, such finding shall not affect the validity of the remaining provisions of this ordinance and the application thereof to the greatest extent permitted by law.

**Section 7. Repeal and Saving Clause.** All ordinances or parts of ordinances in conflict herewith are hereby repealed; provided, however, that nothing herein contained shall affect any rights, actions, or cause of action which shall have accrued to the Village of Gilberts prior to the effective date of this Ordinance.

**Section 8. Effective Date.** Upon its passage and approval according to law, this Ordinance shall, by authority of the Board of Trustees, be published in pamphlet form; provided, however, that this Ordinance shall be of no force or effect unless and until the Applicant has executed and filed with the Village its unconditional agreement and consent, in the form attached to this Ordinance as *Exhibit C*, within 30 days following the passage of this Ordinance.


**PASSED BY VOTE OF THE BOARD OF TRUSTEES** of the Village of Gilberts, Kane County, Illinois, this 19 day of April 2022.

	<u>Ayes</u>	<u>Nays</u>	<u>Absent</u>	<u>Abstain</u>
Trustee Jeanne Allen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Dan Corbett	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Lou Hacker	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Brandon Coats	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Justin Redfield	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee David LeClercq Sr.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
President Guy Zambetti	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

APPROVED this 19 day of April, 2022.



  
\_\_\_\_\_  
Village President Guy Zambetti

ATTEST:   
\_\_\_\_\_  
Village Clerk, Courtney Baker

**Exhibit A**

*Description of the Property*

LOT 290 IN GILBERT TOWN CENTER-UNIT 1A, BEING A PART OF THE NORTH HALF OF SECTION 24, AND PART OF THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 42 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN THEREOF RECORDED NOVEMBER 22, 2005 AS DOCUMENT 2005K140427, AND ANY AMENDMENTS SUBSEQUENT THERETO IN KANE COUNTY, ILLINOIS.

PIN: 02-24-155-003

**Exhibit B**  
*Plans*

**Exhibit C**

*Unconditional Agreement and Consent*

Pursuant to Section 8 of Ordinance No. \_\_\_\_\_, and to induce the Village to grant the approvals provided for in that Ordinance, the undersigned acknowledges for itself and its successors and assigns in title to the Property that it:

1. has read and understand all of the terms and provisions of Ordinance No. \_\_\_\_\_;
2. hereby unconditionally agrees to accept, consent to, and abide by all of the terms, conditions, restrictions, and provisions of this Ordinance, the UDO, and all other applicable codes, ordinances, rules, and regulations;
3. acknowledges and agrees that the Village is not and shall not be, in any way, liable for any damages or injuries that may be sustained as a result of the Village's issuance of any permits for the use of the Property, and that the Village's issuance of any permit does not, and shall not, in any way, be deemed to insure the owner or lessee against damage or injury of any kind and at any time;
4. acknowledges that the public notices and hearings have been properly given and held with respect to the adoption of the Ordinance, have considered the possibility of the revocation provided for in the Ordinance, and agree not to challenge any revocation on the grounds of any procedural infirmity or any denial of any procedural right; and
5. represents and acknowledges that the person signing this Unconditional Agreement and Consent is duly authorized to do so on behalf of the Applicant.

**Red Barn Holdings, LLC**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_