
**VILLAGE OF SUGAR GROVE
BOARD REPORT**

TO: VILLAGE PRESIDENT & BOARD OF TRUSTEES
FROM: WALTER MAGDZIARZ, COMMUNITY DEVELOPMENT DIRECTOR
DANIELLE MARION, PLANNING AND ZONING ADMINISTRATOR
SUBJECT: PUBLIC HEARING: HANNAFORD FARM ANNEXATION AGREEMENT AMENDMENT FOR LOT 43 (1672 HANNAFORD DRIVE)
AGENDA: JUNE 21, 2022 REGULAR VILLAGE BOARD MEETING
DATE: JUNE 17, 2022

ISSUE

Shall the Village Board hold a public hearing to consider an amendment of the Hannaford Farm Annexation Agreement for Lot 43 (1672 Hannaford Drive).

DISCUSSION

The Annexation Agreement amendment is necessary in order to capture costs for completion of certain public improvements in the incomplete subdivision. In this instance, the owner of Lot 43 has paid the current required fee-in-lieu-of-development (FILOD). The Annexation Agreement amendment is specific to Lot 43 and acknowledges the property owner has completed all of his obligations under the terms of the Annexation Agreement.

ATTACHMENTS

- Public hearing notice for amendment of the Hannaford Farm Annexation Agreement for Lot 43
- Annexation Agreement Amendment for Hannaford Farm Lot 43

COSTS

The only cost associated with the requested action is the public hearing notice publication cost.

RECOMMENDATION

That President Konen open the public hearing to accept public comments on the Annexation Agreement Amendment for Hannaford Farm Lot 43 (1672 Hannaford Drive) and that the public hearing be subsequently closed.

NOTICE OF PUBLIC HEARING

Notice is hereby given to all persons that the Sugar Grove Village Board will hold a public hearing on June 21, 2022 at 6:00 p.m. at the Village Hall Boardroom, 10 S. Municipal Drive, Sugar Grove, Illinois, for the purpose of considering an amendment to the annexation agreement regarding a tract of land in Hannaford Farm Unit 1 subdivision and legally described as follows:

Lot 43 in Hannaford Farm Unit 1, being a subdivision of part of the southeast $\frac{1}{4}$ of section 4 and the northeast $\frac{1}{4}$ of section 9, township 38 north, range 7 east of the third principal meridian, according to the plat thereof recorded December 14, 2004 as document 2004K159382, in the Village of Sugar Grove, Kane County, Illinois

and commonly known as 1672 Hannaford Drive.

All interested persons are invited to attend the public hearing and will be given an opportunity to be heard. Be advised, the proposed annexation agreement amendment may be changed, altered, modified, amended, or redrafted in part or in its entirety after the public hearing. You are further advised the Public Hearing may be adjourned to dates certain without further notice.

A copy of the proposed text amendment is available for inspection at the Community Development Department during normal business hours, or at www.sugargroveil.gov.

If you have questions regarding this petition, you may direct them to the Community Development Department, 601 Heartland Drive, Sugar Grove, Illinois 60554. Normal business hours are 8:00 a.m. to 4:30 p.m. Monday through Friday.

By order of the Corporate Authorities of the Village of Sugar Grove, Illinois this 2nd day of June 2022.

Alison Murphy,
Village Clerk

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STATE OF ILLINOIS)
) ss
COUNTY OF KANE)

Prepared by:

Laura Julien
Mickey, Wilson, Weiler, Renzi,
Lenert & Julien, P.C.
140 S. Municipal Drive
Sugar Grove, IL 60554

Return to after recording:

Village Clerk
Village of Sugar Grove
10 S. Municipal Drive
Sugar Grove, IL 60554

**LOT BY LOT AMENDMENT TO ANNEXATION AGREEMENT
(Hannaford Farm Subdivision Lot 43)**

This Amendment to Annexation Agreement (the "Amendment"), is made and entered into this ____ day of June 2022, by and between the VILLAGE OF SUGAR GROVE, a municipal corporation (the "VILLAGE"); and Kevin and Kristen Otterness, owners of Lot 43 as successor Developer and Owner of said lot (the "LOT OWNER" and/or "LOT DEVELOPER") individually referred to as "Party" and collectively referred to as "Parties."

WITNESSETH

WHEREAS, LOT OWNER owns fee simple interest to the property which is legally described in **Exhibit "AA"**, attached hereto, consisting of Lot 43, (the "LOT"), and which was the subject of an Annexation Agreement recorded on July 8, 2004 in Kane County as Document number 2004K090340 (and subsequently amended); and,

WHEREAS, it is the desire of LOT OWNER and LOT DEVELOPER to amend the annexation agreement for this portion of the original development (pursuant to Section 16A) only to address changes in circumstances since the time of the original agreement was passed; and,

WHEREAS, due to the failure of the initial developer and owner of the property to complete the required public improvements, and the failure of the financial institution backing the Letters of Credit to provide the funds needed to completed these same improvements it falls to the successor LOT DEVELOPER/LOT OWNER to complete said public improvements pursuant to Section 16A and 18 of the original Annexation Agreement for the Property; and,

WHEREAS, in consideration of the negotiations between the Parties, the Parties have agreed that if the LOT OWNER/LOT DEVELOPER complies with all obligations of the annexation agreement and pays to the Village an additional impact fee (as noted herein) to address this LOT OWNER' s obligations for the Public Improvements and related improvements and expenses of development the Village will allow the LOT OWNER to develop this Lot.

WHEREAS, all notices required by law relating to amending the original annexation agreement of the Property to the VILLAGE have been given to the persons or entities entitled to such notice pursuant to the applicable provisions of the Illinois Compiled Statutes; and,

WHEREAS, the Corporate Authorities of the VILLAGE have duly affixed and completed the time for a public hearing on this Amendment and pursuant to legal notice have held (or will have held prior to execution) such hearing thereon all as required by the provisions of the Illinois Compiled Statutes; and,

WHEREAS, in accordance with the powers granted to the VILLAGE by the provisions of 65 ILCS 5/11-15.1-1 through 15.1-5, inclusive, relating to Annexation Agreements, the parties hereto wish to enter into a binding Amendment to Annexation Agreement and to provide for various other matters related directly or indirectly to the annexation of the LOT as authorized by the provisions of said statutes; and,

NOW, THEREFORE, in consideration of the mutual covenants, agreements and conditions herein contained, and by authority of and in accordance with the aforesaid statutes of the State of Illinois, the parties agree as follows:

1. SECTION 24 CREATED.

Section 24 is hereby created as follows:

Prior to this amendment of the annexation agreement for this property, the LOT OWNER/LOT DEVELOPER was responsible for various improvements and related expenses listed on **Exhibit BB**. In lieu of completion of said items listed on **Exhibit BB**, the LOT OWNER/LOT DEVELOPER shall pay, at issuance of the building permit the amount of fifteen thousand, five hundred ninety-five dollars and forty cents (\$15,595.40) (subject to the next paragraph of this Section 24), in satisfaction of this LOT's obligation for the items listed on **Exhibit BB**. LOT OWNER/LOT DEVELOPER shall otherwise comply with all remaining obligations of the Annexation Agreement and development ordinances of the Village. All remaining sections of the Annexation Agreement (and previous amendments, if applicable to this LOT) shall remain in full force and effect.

Until paid, the above referenced fee may be changed by the VILLAGE at its discretion as to amount and timing by adoption of a motion or resolution by the Village Board of Trustees. Said adjusted fee shall be effective 30 days after passage of said motion or resolution.

2. SECTION 25 CREATED.

Section 25 is hereby created as follows:

The Parties acknowledge and agree that the terms and conditions of this Amendment, including the payment of new fees, have been reached through a process of good faith negotiation both by Parties and through counsel, and represent terms and conditions that are deemed by the Parties to be fair,

reasonable, acceptable and contractually binding upon each of them and not affecting any other lot or owner other than the LOT, LOT DEVELOPER and LOT OWNER herein and that the VILLAGE is free to negotiate additional amendments (with the same or different terms) with other lot owners without affecting in any way, the validity or enforceability of this Amendment and Agreement. Further this Amendment shall not be construed to benefit any third party, nor act as a release of any other owner, developer or surety's obligations under the original annexation agreement, any amendments thereto, the ordinances of the Village, the Letters of Credit previously posted, the liability of the issuing bank(s) or the FDIC in its action relative to said sureties.

By entering into this agreement, the LOT OWNER/LOT DEVELOPER (and its successors and assigns) hereby waives and releases any and all claims against the VILLAGE, its officers, agents, consultants, and assigns for any and all claims or damages of any type or character, including the costs of defending any such claims or damages, (including reasonable attorney's fees for attorneys to be chosen at the discretion of the VILLAGE) as a result of the actions of the VILLAGE in filing *lis pendens* and notices of breach, denial of building permits or other actions taken by the VILLAGE to insure the cure of the breach of the Annexation Agreement.

3. SECTION 26 CREATED.

Section 26 is hereby created as follows:

The LOT OWNER and LOT DEVELOPER agree that prior to issuance of a building permit they shall execute and have recorded upon their LOT (and have their LOT subjected to said covenants) the covenants attached hereto as **Exhibit CC**.

4. SECTION 27 CREATED.

Section 27 is hereby created as follows:

The LOT OWNER/LOT DEVELOPER agree as condition of the issuance of the building permit and of this Amendment that LOT OWNER/LOT DEVELOPER shall install at its own expense, the required sidewalk and parkway tree requirements for the LOT in question. To the extent that said sidewalk and/or parkway tree already exist for said LOT, should the LOT OWNER/LOT DEVELOPER damage said sidewalk or parkway tree, it shall be responsible for repair and/or replacement of same. The LOT OWNER/LOT DEVELOPER agree as condition of the issuance of the building permit, and of this Amendment, that it shall also be responsible for insuring that the water service connections, sanitary service connections function to the Village standards (as determined by the Village Engineer) for said LOT and that the LOT OWNER/LOT DEVELOPER shall also be responsible for any and all parkway restoration for said LOT. LOT OWNER/LOT DEVELOPER shall at the time of issuance of the Building permit for said LOT, post a \$5,000.00 cash escrow for any damage to public improvements occurring during construction. Said escrow, if not used, shall be returned (without interest) to LOT OWNER/LOT DEVELOPER upon issuance of the final certificate of occupancy for said LOT.

5. REMAINDER OF AGREEMENT UNAFFECTED; AMENDMENT INTEGRATED IN AGREEMENT, TERM.

The Parties hereby agree and acknowledge that the remaining provisions of the original annexation agreement and previous amendments which are not referenced or amended by this Amendment shall remain in effect for the term of the Agreement. For purposes of construing the

provisions of the Agreement, the Parties agree that this Amendment shall be fully integrated into the Agreement from and after its execution by the Parties. This Amendment shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns including, but not limited to, successor owner of record, successor developers, lessees and successor lessees, and upon any successor municipal authority of the VILLAGE and successor municipalities for a period of twenty (20) years from the later of the date of execution hereof and the date of adoption of the ordinances pursuant hereto.

IN WITNESS WHEREOF, the parties have executed this Annexation Agreement the day and year first above written.

VILLAGE:

Village of SUGAR GROVE, an Illinois
municipal corporation

ATTEST:

Alison Murphy,
Village Clerk

Jennifer Konen,
Village President

STATE OF ILLINOIS)
)
COUNTY OF KANE)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that _____ and _____, personally known to me to be the Village President and Village Clerk, respectively, of the Village of Sugar Grove, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledge that as such Village President and Village Clerk, they signed and delivered the said instrument as President and Village Clerk caused the corporate seal of said Village to be affixed thereto, pursuant to authority, given by the Village of Sugar Grove Village Trustees as the free and voluntary act and deed of said Village for the uses and purposes set forth.

Given under my hand and official seal, this ____ day of _____, 2022.

Notary Public

OWNER, LOT 43:

Kevin Otterness

Kristen Otterness

STATE OF ILLINOIS)
)
COUNTY OF KANE)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that _____ and _____, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and as the free and voluntary act and deed for the uses and purposes set forth.

Given under my hand and official seal, this ____ day of _____, 2022.

Notary Public

LIST OF EXHIBITS

Exhibit AA	Legal Description of Lot
Exhibit BB	List of Public Improvements being addressed for this Lot only by payment of an additional fee
Exhibit CC	Covenants to be recorded against Lot

EXHIBIT AA

Legal Description

Lot 43 in Hannaford Farm Unit 1, being a subdivision of part of the southeast $\frac{1}{4}$ of section 4 and the northeast $\frac{1}{4}$ of section 9, township 38 north, range 7 east of the third principal meridian, according to the plat thereof recorded December 14, 2004 as document 2004K159382, in the Village of Sugar Grove, Kane County, Illinois.

EXHIBIT BB

Public Improvements

The improvements include some grading to accommodate the overland flow route, sanitary sewer manhole repairs and adjustments, valve vault and fire hydrant repairs and adjustments, storm sewer and structure repairs, adjustments and installation, curb and gutter repairs, pavement patching and replacement as required, surface course installation on roadways of the internal subdivision and Denny Road, minor sidewalk repairs, signage repairs and replacement, streetlight repairs, landscaping, minor restoration within the right of way adjacent to common areas, bike path repairs, additional bike path installation and replacement along Wheatfield and Redbud, soil erosion control necessary to complete these improvements, record drawing preparation, and fees associated with engineering, attorney, and snowplowing for the Hannaford Farm subdivision.

EXHIBIT CC

Conditions, Covenants and Restrictions

Conditions Covenants and Restrictions (CCR's) recorded as
document number 2011K026408 in the Kane County Recorder's Office