
**VILLAGE OF SUGAR GROVE
BOARD REPORT**

TO: VILLAGE PRESIDENT & BOARD OF TRUSTEES
FROM: WALTER MAGDZIARZ, COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: ORDINANCE: HANNAFORD FARM ANNEXATION AGREEMENT AMENDMENT FOR LOT 69
(717 WHEATFIELD AVENUE)
AGENDA: JANUARY 7, 2020 REGULAR VILLAGE BOARD MEETING
DATE: DECEMBER 31, 2019

ISSUE

Shall the Village Board approve an Annexation Agreement Amendment pertaining to Hannaford Farm Lot 69 (717 Wheatfield Avenue).

DISCUSSION

The Hannaford Farm annexation agreement was approved on May 25, 2004. On March 20, 2007 the annexation agreement was amended for a requirement relating to improvement of the intersection of Bliss and Merrill Roads. The March 20, 2007 amendment also incorporated an October 3, 2006 amendment relating to architectural requirements that was approved by ordinance but not formally drafted at that date. Additionally, on September 16, 2008 the annexation agreement was amended for the funding mechanics of the Bliss and Merrill Road intersection, removing the permit limit prior to those improvements taking place, and deferring Capital Improvement Fees.

Due to the failure of the initial developer/owner of Hannaford Farm to complete the required public improvements and the subsequent failure of the bank backing the associated Letter of Credit guaranteeing the funds needed to complete the public improvements, the responsibility to complete these improvements falls to the successor/s, i.e., individual lot owners.

In 2009, the Village determined that each successor lot owner would be required to pay a fee to cover their portion of the overall outstanding public improvement costs. This fee in-lieu-of-development (FILOD) and associated changes to the annexation agreement are made a part of an annexation agreement amendment that needs to be processed for each lot. An amendment needs to be completed for each lot prior to issuance of a building permit and to remove the *lis pendens* recorded against the lot and any future subdivision improvement liabilities and obligations.

The owner of Lot 69 paid the current FILOD, thereby completing his obligations under the annexation agreement, and desires to remove the *lis pendens* from the lot in question.

The annexation agreement amendment acknowledges the lot owner has completed his obligations under the annexation agreement. Upon approval of the Ordinance, the Village is obligated to remove the *lis pendens* recorded against the lot.

The required public hearing was held on January 7, 2020.

Staff recommends approval of the Annexation Agreement amendment for Hannaford Farm Lot 69 (717 Wheatfield Avenue).

For your information, the Village Board has approved similar Annexation Agreement amendments to date for 27 lots in Hannaford Farm (attached). With the adoption of this annexation agreement amendment 54 undeveloped lots remain in Hannaford Farm to follow the same course of action.

ATTACHMENTS

- List of paid FILOD lots
- Ordinance Authorizing Execution of an Annexation Agreement Amendment (Hannaford Farm Lot 69)

COSTS

There are nominal Village Attorney costs and recording costs associated with the required action that is the responsibility of the Village.

RECOMMENDATION

That the Village Board approve an Ordinance Authorizing Execution of an Annexation Agreement Amendment for Hannaford Farm Lot 69 (717 Wheatfield Avenue).

Hannaford Farm Paid FILOD Lots

May 18, 2010:	Lot 104,	1011 Redbud Lane
June 1, 2010:	Lot 29,	1098 Chestnut Hill Lane
June 15, 2010:	Lot 35,	1014 Chestnut Hill Lane
November 1, 2011:	Lot 53,	1800 Hunters Ridge Lane
January 7, 2014:	Lot 62,	835 Wheatfield Avenue
February 4, 2014:	Lot 28,	494 Willow Street
March 4, 2014:	Lot 99,	1091 Redbud Lane
November 18, 2014	Lot 42,	1759 Hunters Ridge Lane
January 20, 2015	Lot 36,	990 Chestnut Hill Lane
February 17, 2015	Lot 55,	1830 Hunters Ridge Lane
August 6, 2019	Lot 116,	1885 Hunters Ridge Lane
August 20, 2019	Lot 46,	1722 Hannaford Drive
"	Lot 54,	1812 Hunters Ridge Lane
"	Lot 66,	765 Wheatfield Avenue
"	Lot 67,	747 Wheatfield Avenue
"	Lot 68,	731 Wheatfield Avenue
"	Lot 91,	1052 Wheatfield Avenue
"	Lot 96,	1139 Redbud Lane
"	Lot 98,	1107 Redbud Lane
"	Lot 100,	1075 Redbud Lane
"	Lot 101,	1059 Redbud Lane
"	Lot 103,	1011 Redbud Lane
"	Lot 108,	947 Redbud Lane
"	Lot 109,	915 Redbud Lane
"	Lot 110,	915 Redbud Lane
"	Lot 121,	900 Redbud Lane
"	Lot 130,	1134 Redbud Lane
November 5, 2019	Lot 59,	1900 Hunters Ridge Lane
November 5, 2019	Lot 60,	1918 Hunters Ridge Lane



**VILLAGE OF SUGAR GROVE
KANE COUNTY, ILLINOIS**

ORDINANCE NO. 2020-0107__

**AN ORDINANCE AUTHORIZING EXECUTION OF AN ANNEXATION AGREEMENT AMENDMENT FOR
HANNAFORD FARM LOT 69
(717 WHEATFIELD AVENUE)**

Adopted by the Board of Trustees and President of the Village of Sugar Grove
this 7th day of January 2020

Published in pamphlet form by authority of the Board of Trustees of the Village of Sugar Grove
this 7th day of January 2020

VILLAGE OF SUGAR GROVE

ORDINANCE NO. 2020-0107__

**AN ORDINANCE AUTHORIZING EXECUTION OF AN ANNEXATION AGREEMENT AMENDMENT FOR
HANNAFORD FARM - LOT 69
(717 WHEATFIELD AVENUE)**

WHEREAS, the Village of Sugar Grove (the "Village") is not a home rule municipality within Article VII, Section 6A of the Illinois Constitution and, pursuant to the powers granted to it under 65 ILCS 5/1-8 *et seq.*; and,

WHEREAS, Robert and Vonda Phillips (the "LOT OWNER" and/or "LOT DEVELOPER") have petitioned for an amendment to the Annexation Agreement for a portion of the Hannaford Farm development, specifically, Lot 69 in Hannaford Farm Subdivision Unit 2, and commonly known as 717 Wheatfield Ave; and,

WHEREAS, after due notice, the corporate authorities of the Village held a public hearing on January 7, 2020 on the proposed amended agreement, similar in form and substance to the Agreement attached hereto; and,

WHEREAS, the corporate authorities have approved this Agreement; and,

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Sugar Grove, Kane County, Illinois, as follows:

SECTION ONE: AMENDED ANNEXATION AGREEMENT

That the Amended Annexation Agreement entered into by and between the Village of Sugar Grove, an Illinois municipal corporation (the "Village"); and Robert and Vonda Phillips, (the "LOT OWNER" and/or "LOT DEVELOPER"); setting forth terms and conditions relating to the territory legally described in **Exhibit A** is hereby incorporated by reference in this ordinance as if fully set forth in the body hereof, a copy of which is attached hereto as **Exhibit B**. Said **Exhibit B** is hereby approved and the Village President and Clerk are hereby authorized and directed to execute said amended agreement on behalf of the Village of Sugar Grove.

SECTION TWO: RECORDING AND NOTICE

The Village Clerk is hereby further authorized and directed to record this ordinance along with all exhibits in the Office of the Recorder of Kane County.

SECTION THREE: GENERAL PROVISIONS

REPEALER: All ordinances or portions thereof in conflict with this ordinance are hereby repealed.

SEVERABILITY: Should any provision of this ordinance be declared invalid by a court of competent jurisdiction, the remaining provisions will remain in full force and effect the same as if the invalid provision had not been a part of this ordinance.

EFFECTIVE DATE: This ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

PASSED AND APPROVED by the President and Board of Trustees of the Village of Sugar Grove, Kane County, Illinois this 7th day of January 2020.

P. Sean Michels,
Village President

ATTEST: _____
Cindy L. Galbreath,
Village Clerk

	Aye	Nay	Absent	Abstain
Trustee Sean Herron	___	___	___	___
Trustee Ted Koch	___	___	___	___
Trustee Jen Konen	___	___	___	___
Trustee Heidi Lendi	___	___	___	___
Trustee Rick Montalto	___	___	___	___
Trustee Ryan Walter	___	___	___	___

Exhibit A

(Legal Description)

LOT 69 IN HANNAFORD FARM SUBDIVISION UNIT 2, BEING A SUBDIVISION LOCATED IN THE SOUTH HALF OF SECTION 4, TOWNSHIP 38 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN IN KANE COUNTY, ILLINOIS ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT NO. 2007K038156, IN THE KANE COUNTY, RECORDER'S OFFICE.

Commonly known as: 717 Wheatfield Avenue

Exhibit B

(Amended Annexation Agreement on following pages)

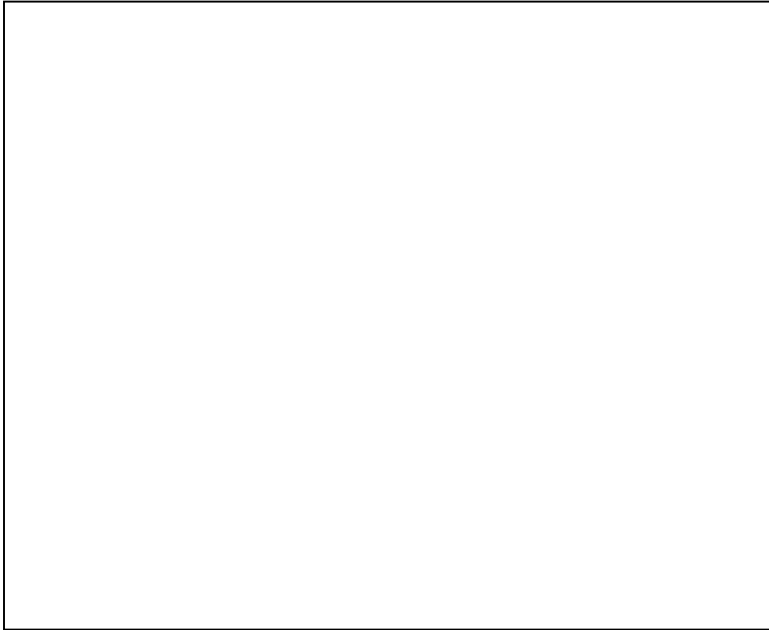
STATE OF ILLINOIS)
) ss
COUNTY OF KANE)

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 69)**

This Amendment to Annexation Agreement (the "Amendment"), is made and entered into this __th day of _____ 2019, by and between the VILLAGE OF SUGAR GROVE, a municipal corporation (the "VILLAGE"); and Robert and Vonda Phillips, owners of Lot 69 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 69, (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:

Cindy Galbreath,
Village Clerk

P. Sean Michels,
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 _____, 2019.

Notary Public

OWNER, LOT 69:

Robert Phillips

Vonda Phillips

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 _____, 2019.

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 69 in Hannaford Farm Subdivision Unit 2 being a subdivision located in the South half of Section 4, Township 38 North, Range 7 East of the Third Principal Meridian in Kane County, Illinois according to the plat thereof recorded as document number 2007K038156 in the Kane County Recorder's Office.

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