

Case No. 127458

IN THE SUPREME COURT OF ILLINOIS

CHICAGO TITLE LAND TRUST
COMPANY, as Trustee and as Successor to
North Star Trust Company, Successor to Harris
Bank, Successor to First National Bank, under
a Trust Agreement Dated October 21, 1979 and
known as Trust Number 1689, by HENRY E.
JAMES, the Holder of the Power of Direction
and the owner of the Beneficial Interest of the
Land Trust.

Plaintiffs/Appellants

vs.

VILLAGE OF BOLINGBROOK,

Intervenor/Defendant/Appellee

On Appeal from the Appellate Court
Of Illinois, Third District

Appellate Case No: 3-19-0564

Petition Allowed by Supreme Court:
September 29, 2021

Rule 307(a)(1) Appeal from the
Circuit Court for the 12th Judicial
Circuit Will County, Illinois

Circuit Court Number 15 MR 2972

Honorable Roger D. Rickmon
Judge Presiding

Date of Order: September 24, 2019

Supreme Court rule which confers
jurisdiction upon the reviewing
Court: Supreme Court Rule 315

**BRIEF OF THE PLAINTIFFS/APPELLANTS, CHICAGO TITLE LAND
TRUST CO. AND HENRY E. JAMES**

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NATURE OF THE CASE

This appeal concerns the Third District Appellate Court’s split decision, with Justice O’Brien dissenting, rendered in *Chicago Title Land Trust Company v. Village of Bolingbrook*, 2021 IL App (3d) 190564-U, (the “Decision”), A001-009¹, that reversed and remanded an injunction entered against the Appellee/Intervenor/Defendant, THE VILLAGE OF BOLINGBROOK (the “Village”), enjoining the Village from attempting to force annex the Plaintiffs’ property a second time after its first attempt was declared a sham and nullity, *Chicago Title Land Trust Co. v. County of Will*, 2018 IL App (3d) 160713, ¶46 (“*James I*”), A149-158, and while Plaintiff’s Complaint for Administrative Review, Declaratory Judgment and Mandamus (the “Zoning Complaint”), C.Supp.032-148, was pending against the Village and the Defendant, THE COUNTY OF WILL (the “County”). Despite the fact that the Zoning Complaint that requested the County issue a lot frontage variance and building permit, in which the Village had intervened and was a named defendant, was still pending when the injunction was issued, the majority held the Plaintiffs/Appellants, CHICAGO TITLE LAND TRUST COMPANY and HENRY E. JAMES (collectively referred to as “James”) had to file a separate complaint against the Village in order to be entitled to injunctive relief against the Village. The majority also concluded that James’ need for an injunction had expired ignoring the undisputed facts that no final judgment had been entered in the Zoning Complaint, the variance and building permit had not been issued which the trial court simultaneously ordered issued in the same order granting the injunction and that without injunctive relief the variance and building

¹ Appellants’ Rule 342 Appendix is cited as A__; the Supporting Record is cited as C_; and the Supplemental Supporting Record as C.Supp.__

permit would be negated by the Village's second forced annexation. A057-059. The Appellate Court also failed to consider its own ruling from *James I* and recognize that the Village's second forced annexation was an attempt to circumvent that ruling and negate the power of the trial court to order the variance and building permit James had long-sought.

No issues are raised by the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Did the Third District commit error when it held that James was required to file a separate complaint against the Village, an intervener at its own request and a named defendant to the Zoning Complaint, in order to seek injunctive relief against the Village preventing it from circumventing the trial court's jurisdiction to grant relief on the Zoning Complaint and ignoring the Appellate Court's own holding in *James I*.

2. Whether James' need for injunctive relief expired when the trial court ordered the County to issue the lot frontage variance and building permit sought by the Zoning Complaint despite the undisputed fact neither had occurred, and thus the Zoning Complaint was still pending because a final judgment had not been entered.

3. Did the Third District fail to apply the law of the case doctrine and consider its ruling entered in *James I* in dissolving the injunction.

STATEMENT OF JURISDICTION

The Decision was rendered by the Third District on May 24, 2021, A001-009. On June 11, 2021, James filed Plaintiff's Illinois Supreme Court Rule 367 Petition for Rehearing, A010-031, which was denied by the Appellate Court, with Justice O'Brien dissenting, on June 16, 2021. A032. On July 21, 2021, James timely filed Plaintiffs Rule

315 Petition for Leave to Appeal to Illinois Supreme Court. A033-035. Leave to Appeal was allowed by this Court on September 29, 2021. A056. On October 12, 2021, James filed his Notice of Election to File Additional Brief. Jurisdiction exists pursuant to Supreme Court Rule 315.

STATUTORY PROVISIONS INVOLVED

This appeal relates to the standing of an intervenor and authority of a court to control a party who intervenes in a lawsuit pursuant to *735 ILCS 5/2-408 – Intervention*. A full text of the statute is included in the Appendix. A138-139.

Although not directly related to this appeal, the Village’s first and second attempts to force annex James’ properties were brought pursuant to *65 ILCS 5/7-1-13 – Annexation*. A full text of the statute is included in the Appendix. A140-141.

STATEMENT OF FACTS

The Property

James is the owner of a vacant parcel of land located in DuPage Township, unincorporated Will County, Illinois that lies along Interstate I-55 South Frontage Road (“Frontage Road”) east of Veterans Parkway that contains approximately 3.08 acres (the “Property”); and measured at its lot line to Frontage Road, has 60-feet of frontage. C.Supp.033 & 049, A137. James also owns an approximate 2.5-acre parcel zoned A-2 – Agricultural that contains a farmhouse, under the County’s jurisdiction, located immediately adjacent and to the northeast of the Property along Frontage Road that was, in addition to the Property, the target of the Village’s attempts to force annex both properties, the first of which was declared a sham in *James I.* 2018 IL App (3d) 160713 ¶ 42. Located to the east of both of James’ properties is Commonwealth Edison’s

(“ComEd”) right-of-way with overhead power lines that extends several miles through unincorporated Will County (the “ComEd Property”). C000074-000076.

James purchased the vacant Property in April 1979 and it originally contained 6.18 acres. A137. After purchasing the Property in 1979, James applied for and received a zoning map amendment from the County that rezoned the entire 6.18 acres of the Property from A-1 Agricultural to I-2 Industrial with a special use permit issue for a guard house residence for a mini-warehouse development under the Will County Zoning Ordinance dated July 20, 1978 (the “1978 Ordinance”) in effect at the time. C.Supp.034, 051-052. Pursuant to the 1978 Ordinance, outdoor storage on a vacant lot was a permitted use under the I-2 zoning. C.Supp.034, C000155. Although the 1978 Ordinance required I-2 properties to have 80-feet of frontage to a roadway, James was not required to obtain a lot frontage variance for the Property as the 1978 Ordinance measured the lot frontage as the distance between the side lot lines at the established 30-foot front yard building setback line. C000155. Utilizing the 1978 Ordinance measuring point, the Property had 128.98 feet of frontage satisfying the lot frontage requirements for I-2 zoned properties under the 1978 Ordinance. C000155 & C000159. It was not until the County passed a new Zoning Ordinance on December 20, 1984 that the County stopped measuring lot frontage at the building setback line for I-2 zoned properties; however, 80-feet was still the minimum lot frontage requirement. December 20, 1984 Zoning Ordinance, p 175 – Lot Frontage.

In 1989, the County approved a division and consolidation petition dividing off the back landlocked 3.10 acres of the vacant Property and consolidating the 3.10-acres into an adjacent 5-acre parcel and the County’s 2018 Tax Assessment Map depicting these parcels

is included in the Appendix. A137². Ownership of the back 3.10-acres was transferred by James to the adjacent owner pursuant to exception 3 of the Plat Act, *765 ILCS 205/1(a)(3)*. The vacant Property's 60-feet of frontage measured along its lot line to Frontage Road was not impacted by this division and consolidation. A137, C000159.

From 1979 until 1989, the Property remained vacant until after the division and consolidation of the back 3.10 acres into the adjacent 5-acre parcel, when James applied for and received from the Illinois Department of Transportation, who had jurisdiction over Frontage Road, an access permit to Frontage Road for the Property. C.Supp.034. After receiving the access permit to Frontage Road, the County allowed James to erect a six-foot high chain link fence surrounding approximately 1 acre of the Property. C.Supp.034. After the fence was constructed, James began using and has continually used the fenced in area of the Property for outdoor storage of automobiles, pickup trucks, and other vehicles, including the parking of semi-trailers containing automobile parts. C.Supp.034.

The Village's Complaints and Ordinance Litigation

In 2013, Mayor Roger Claar of the Village made a complaint to the zoning authorities of the County concerning the appearance of the Property. C.Supp.035. After being notified of the Village's complaints, James took steps to improve the appearance of the Property including installing privacy screening slats in the existing fence and removing any inoperable or unlicensed vehicles or trailers. C.Supp.035. Nonetheless, the County conducted an administrative hearing and brought an enforcement action against James in the circuit court, Will County Case No. 13 OV 4444, (the "Ordinance Litigation").

² The Tax Assessment Map was attached as Exhibit # 1 to Plaintiff's Reply in Support of Plaintiff's Motion for Judgment on the Pleadings filed February 8, 2019 with the trial court.

C.Supp.035. At trial on the Ordinance Litigation, the trial court found that James' current use of the Property for outdoor storage without a building did not comply with the County's current Zoning Ordinance that no longer allowed outdoor storage without a building on the Property; and despite James' consistent use of the Property for outdoor storage without a building since 1989, as allowed by the 1978 Ordinance in effect when the Property was rezoned to I-2 in 1979, the use of the Property for outdoor storage without a building was not considered a legal non-conforming grandfathered use which James could continue. C.Supp.035 & 082.

The 1st County Application

Rather than appeal the judgment entered in the Ordinance Litigation, James, at the recommendation of the County's planning staff, filed a special use permit application for outdoor storage without a building. C.Supp.054-059. Despite the County recognizing "the subject property has existed in the current configuration since at least September 27, 1989," C.Supp.064, which includes only ever having 60 feet of frontage measured at its lot line along Frontage Road and the County approving of a fence installed at a height of 6 feet in 1989, the County also required James to file a variance request for lot frontage from 80 feet to 60 feet and a variance request for fence height from 4 feet to 6 feet, together with the special use application in order to bring the Property into compliance with the County's current Zoning Ordinance (collectively this special use application and variances requests are referred to as the "1st County Application"). C.Supp.054-59.

In response to the 1st County Application, the Village passed a resolution of the Village's Mayor and Board of Trustees objecting to James' 1st County Application, C.Supp.071-075; and representatives of the Village, including Mayor Claar, appeared and

objected at each and every public hearing conducted by the County on the 1st County Application. A060, C.Supp.036-040, C000029. Although the County Board continued James' special use request for outdoor storage over the objection of Mayor Claar, the County Board did not continue James' appeal of the County's Planning and Zoning Commission's denial of two variance requests included in the 1st County Application. C.Supp.038-039. Instead, the County Board approved of James' fence height variance request but denied James' lot frontage variance. C.Supp.039. This made James' request for a special use for outdoor storage without a building meaningless and it was withdrawn by James. C.Supp.039.

The 2nd County Application

In his continuing efforts to come into compliance with the Zoning Ordinance, and based on the recommendation of the County's planning staff, James filed a second application for the lot frontage variance from 80-feet to 60-feet in conjunction with an application requesting the County issue a building permit to allow him to construct a pole barn (collectively the "2nd County Application"), instead of a request for a special use permit for outdoor storage without a building as originally requested in the 1st County Application. C.Supp.108-129. One of the requirements for issuance of the building permit to construct the pole barn was for James to obtain approval of a site plan for the pole barn from the local highway authority which had jurisdiction over South Frontage Road, which had been transferred by the Illinois Department of Transportation to the Village. C.Supp.037-038. James through his engineer, submitted a request that the Village's Engineer approve the site plan for the pole barn, C.Supp.103-104; and although the Village's Engineer informed James the proposed pole barn did not increase the intensity of

the use of the Property, the Village's Engineer could not approve his request without approval from his director, Mayor Claar and the Village's full board. C.Supp.106. Thereafter, the Village refused to review James' site plan as part of the 2nd County Application and never issued an approval or denial of James' site plan. C.Supp.038.

Although the Village refused to review James' site plan, the County's planning staff recommended approval of the 2nd County Application. C.Supp.131-140. At the public hearings conducted by the County on the 2nd County Application, representatives of the Village, including Mayor Claar, continued to appear at each public hearing and object to the 2nd County Application. A060, C.Supp.040. Despite the County's Land Use Committee recommending approval of the lot frontage variance and the Property only ever having 60 feet of frontage to South Frontage Road measured at the lot line, on November 19, 2015, the County Board denied the lot frontage variance request which made the application for a building permit to construct the pole barn a nullity. C.Supp.040.

The Zoning Complaint and the Village's Request to Intervene

On December 22, 2015, James filed the Zoning Complaint against the County. C.Supp.032-148. On January 15, 2016, the Village filed the Village of Bolingbrook's Motion to Intervene as a Defendant as a Matter of Right (the "Motion to Intervene"), brought pursuant to 735 ILCS 5/2-408 (the "Intervention Statute") requesting to be named a defendant to the Zoning Complaint. A060-061. An Agreed Order was entered by the trial court granting the Motion to Intervene on January 20, 2016 naming the Village as a defendant to the Zoning Complaint. C000024. The County and the Village were granted an extension and time to file an answer or responsive pleadings to the Zoning Complaint by March 23, 2016. C000024. While the County filed an Answer to the Zoning Complaint

on March 11, 2016, and despite being granted several additional extensions to file an answer or responsive pleadings to the Zoning Complaint up and through May 11, 2016, the Village elected to never answer the Zoning Complaint. A031.

The Sham ComEd Annexation and First Forced Annexation

Instead of answering the Zoning Complaint, the Village approached ComEd and entered into an annexation agreement with ComEd (the “1st ComEd Annexation Agreement”), in which ComEd agreed to allow approximately 5.12 acres of the larger adjacent ComEd Property to be annexed into the Village (the “ComEd Strip”). *James I*, 2018 IL App (3d) 160713 ¶ 6-7, C000075. The Village then relied on the annexation of the ComEd Strip to claim the Property and the other adjacent 2.5-acre parcel owned by James along Frontage Road where wholly bound by the Village so the Village could force annex James’ properties pursuant to *65 ILCS 5/7-1-13*. C000031, 000106. Over James’ written objections delivered to the Village on May 9, 2016, at its Village Board meeting on May 10, 2016 the Village adopted an ordinance force annexing both of James’ properties into the Village. *James I*, 2018 IL App (3d) 160713 ¶ 18-19.

Both the Village and the County filed Motions to Dismiss the Zoning Complaint based on the forced annexation; and on May 20, 2016 James filed a Motion for Judgment on the Pleadings on the Zoning Complaint (the “Motion for Judgment”). C.Supp.027. After the forced annexation of his properties, the trial court granted James leave to file a Complaint in Quo Warranto (the “Quo Warranto Complaint”) attacking the Village’s forced annexation of his properties that was consolidated into this action. C000025-000106. The Motions to Dismiss filed by the County and the Village against the Zoning Complaint and James’ Motion for Judgment were entered and continued pending the

outcome of the Quo Warranto Complaint. C.Supp.027. The Village elected to not file an answer to the Quo Warranto Complaint and moved for summary judgment; and James moved for judgment on the pleadings on the Quo Warranto Complaint, which the parties agreed to treat as cross-motions for summary judgment. *James I*, 2018 IL App (3d) 160713 ¶ 22-24. On November 17, 2016, the trial court denied James' request for judgment on the pleading on the Quo Warranto Complaint with prejudice and granted the Village's motion for summary judgment. C000107. This ruling was appealed to the Appellate Court by James and was the subject matter of *James I*.

On May 18, 2018, the Appellate Court issued its ruling in *James I* which included the following findings:

- A. There was undisputed evidence the Village had initiated contact with ComEd to annex the ComEd Strip "to allow the Village to [involuntarily] annex the adjacent properties." *James I*, 2018 IL App (3d) 160713 ¶ 35.
- B. "The 1st ComEd Annexation Agreement itself "revealed both parties contractually agreed that ComEd's petition for voluntarily annexation was a product of 'the request of the Village'" and undertaken by ComEd "as an accommodation to the Village." *Id* at ¶ 36.
- C. There was "no evidence or testimony establishing a basis for this court to conclude that ComEd had any independent interest to become part of the Village." *Id* at ¶ 37.
- D. The "undisputed language" of the 1st ComEd Annexation Agreement itself confirmed the Village had made an "unusual promise to not tax ComEd or subject ComEd to the enforcement of the Village's regulations and zoning requirements" and it was "even more curious that the Village also promised to allow ComEd to disconnect from the Village within one year after the annexation agreement" or "in as little as six months if the Village was unsuccessful in force annexing the James property." *Id* at ¶ 39.

Based on these findings, the court concluded "that the voluntary annexation of the ComEd Property, subject to certain 'clever' contingencies, represents a sham transaction created exclusively for the purpose of allowing the Village to reach the James property." *Id* at ¶

42. The decision of the trial court was reversed and the case was remanded back to the trial court with instructions that judgment be entered in James' favor on the Quo Warranto Complaint. *Id* at ¶ 48-49. The Village's Petition for Leave to Appeal to the Supreme Court was subsequently denied by this Court on September 26, 2018. *Chicago Title and Land Trust Co. v. County of Will*, 424 Ill.Dec. 431 (2018).

The Motion for Judgment on the Zoning Complaint

After the mandate from *James I* was filed with the trial court on November 2, 2018, pursuant to the instructions of the Appellate Court, judgment was entered in James' favor and against the Village on the Quo Warranto Complaint on November 28, 2018, C000161, C.Supp.024-025. However, the Zoning Complaint still remained pending against the County and the Village and a briefing schedule was entered on James' previously filed Motion for Judgment. C.Supp.027. Although the Village never answered the Zoning Complaint, it was allowed to file the Village of Bolingbrook's Response to Plaintiff's Motion for Judgment on the Pleadings, in which it requested it be given leave to file an answer to the Zoning Complaint almost 3 years after it was filed. A029-031. Despite never answering the Zoning Complaint, the Village was allowed and did participate in all of the hearings on the Motion for Judgment which, after several continuances on the trial court's own motion, finally proceed to hearing on May 15, 2019 and was taken under advisement with the trial court to rule by June 11, 2019. C000170, C.Supp.027-031, A029-031. There is no dispute the trial court did not enter the order granting Plaintiff's Motion for Judgment until September 24, 2019 which the trial court admitted was due to its own delay. A057-059, C000259, C000286:10-19.

The 2nd ComEd Annexation Agreement

The Village disagreed with the decision in *James I* as it expressed in the detachment ordinance it was required to pass due to the mandate and the judgment ordered by the Appellate Court which stated:

WHEREAS, notwithstanding the Village's clear authority to annex the above referenced property and notwithstanding that the Village complied with all laws and requirements for annexation of the above property, the Appellate Court of Illinois, Third District, issued an opinion (Judge Holdridge dissenting) on May 18, 2018 finding that the annexations were a nullity and reversing the decision of the Circuit Court of Will County, which had previously upheld the annexations; C0000252.

As the parties waited for the trial court to rule on the Motion for Judgment and rather than allow the case come to its natural conclusion, the Village approached ComEd again seeking to annex property owned by ComEd to wholly bound both James' two properties along Frontage Road (the "2nd ComEd Annexation"). C000258. At the Village Board's June 25, 2019 Meeting to approve the 2nd ComEd Annexation, the Village's meeting minutes reflect:

Mayor Claar explained that we did this once before with Commonwealth Edison. There was an objection filed. It went all the way to the Appellate Court in Ottawa and wasted a lot of taxpayer dollars. The vote was two to one to uphold the objection filed in the Will County Circuit Court. The Village went back to Commonwealth Edison and renegotiated the annexation agreement. The board just passed this annexation and it will stand. The Village will incorporate all that land and you will see a new map in the near future. *Minutes of the Regular Meeting of the Mayor and Board of Trustees of the Village of Bolingbrook – June 25, 2019*, p. 8, C000258.

The annexation agreement the Village and ComEd entered into as part of the 2nd ComEd Annexation (the “2nd ComEd Annexation Agreement”), C000200-000218 was similar to the 1st ComEd Annexation Agreement in that by way of summary and not limitation: the Village gave up its right to regulate any of ComEd’s property, C000201; the Village agreed to not tax any of ComEd’s property, C000202; the Village agreed to not acquire any of ComEd’s property wherever located via eminent domain, C000202 and the Village agreed to not contest a disconnection petition disconnecting any of its property from the Village. C000204. As part of the 2nd ComEd Annexation, the Village also granted ComEd additional concessions confirming its property would not be regulated by the Village summarized as follows:

- A. The Village created a new zoning district named the UD District that waived the Village’s Property Maintenance Regulations, Noise Ordinance, lot size and bulk regulations, regulations about the number of structures and the provisions of its Nonconformities Ordinance, C000212, A141-148;
- B. It zoned all ComEd properties included in the 2nd ComEd Annexation, this new UD District zoning classification; C000212-123; and
- C. It rezoned all ComEd properties already zoned and a part of the Village, regardless of their current zoning classification, to the UD District. C000213.

Included within the land annexed into the Village under the terms of the 2nd Annexation Agreement, was approximately 2.18-acres of the ComEd Strip from 1st ComEd Annexation (the “2nd ComEd Strip”) that enabled the Village to claim its boundaries wholly bound James’ properties. C000119, C000196, C000222 .

At its August 27, 2019 Village Board meeting, the Village passed Ordinance 19-068, which authorized the Village to notify James it was going to try to force annex his properties again pursuant to *65 ILCS 5/7-1-13*. C000178. Both the Village's minutes from the August 27, 2019 meeting, https://www.bolingbrook.com/vertical/sites/%7B55EB27CA-CA9F-40A5-A0EF-1E4EEF52F39E%7D/uploads/Minutes_08.27.19.pdf and the video of the August 27, 2019 Village Board meeting at time stamp 1:04:29 – 1:05:35, <https://boxcast.tv/view/village-of-bolingbrook-board-meeting-082719-915405>, public records the Village approved on September 10, 2019 but did not release until the first week of November, 2019 while this case was in the middle of the second appeal before the Appellate Court, specifically reference that this second forced action was directed at Plaintiff, Henry E. James and the Property.

The Motion to Stay and the September 24th Trial Court Order

After being notified on August 27, 2019 that the Village passed another ordinance seeking to force annex his properties, on August 28, 2019 James responded by filing the Motion to Stay requesting the trial court rule on the pending Motion for Judgment and stay the Village from force annexing the Property a second time while the Zoning Complaint was still pending. A059-061. At the September 4, 2019 presentment date of the Motion to Stay, the trial court orally stated it was granting the Motion for Judgment in James' favor, was going to order the County to grant the variance and issue the building permit and just needed additional time to finalize its written order. C000265:8-14. As the Village was prepared to proceed forward with this second forced annexation at the Village Board Meeting scheduled for September 24, 2018, the trial court set an expediated briefing

schedule and hearing date was scheduled for September 20, 2018 on the Motion to Stay. C000188, C000266:8-19.

In response to the Motion to Stay, the Village filed the *Village of Bolingbrook's Motion to Strike Plaintiff's Motion to Stay*, C000189-000240; and James responded by filing *Plaintiff's Response to Village of Bolingbrook's Motion to Strike Plaintiff's Motion to Stay* on September 18, 2019. C000243-000258. At the September 20, 2019, hearing on the Motion to Stay, the trial court acknowledged that it should have granted the Motion for Judgment months earlier and reconfirmed it was going to order the County to grant a variance and issue a building permit. C000286:10-19, C000290:22-24. The trial court also declared it did not “see any significant difference between the first attempt to annex and the second,” and concluded the second attempt to force annex the Property was “a collateral attack upon the Appellate Court’s judgment” from *James I* and the trial court granted James’ request to stay the Village from force annexing the Property a second time while the Zoning Complaint was still pending. C000289:1-21. The matter was continued to September 24, 2019 for the entry of a written order. C000290:22-24. On September 24, 2019, after additional arguments were heard, C000293-309, the trial court entered an interlocutory order (the “September 24th Order”), that contained the following findings of the trial court:

1. That the second attempt of the Village of Bolingbrook to involuntarily annex Plaintiff’s property as contained in its proposed Ordinance 19-068 scheduled for a public hearing and action by the Village on September 24, 2019 is a collateral attack on the jurisdiction of the Appellate Court.
2. The Plaintiff’s property rights will be irreparably harmed by the action of the Village of Bolingbrook in involuntarily annexing Plaintiff’s property.
3. That Plaintiff has a likelihood of success on the merits of the previously decided quo warranto action and that the Plaintiff has no adequate remedy at law without

the entry of an order enjoining the Village from proceeding upon its involuntarily annexation of Plaintiff's property.

4. That the Village's new annexation agreement with ComEd does not address all of the issues raised by the Appellate Court in that this Court questions that the annexation of the ComEd property is only an accommodation of the Village so it can involuntarily annex the Plaintiff's property. A057-059.

Based on these findings, the trial court:

- A. Denied the Village's Motion to Strike;
- B. Granted the Motion to Stay and enjoined the Village from force annexing the Property as contemplated by Village Ordinance No. 19-068 scheduled for hearing before the Village Board on September 24, 2019 until such time as the Village seeks relief from the Appellate Court, with no reason to delay enforcement of the Order; and
- C. Granted the Motion for Judgment and ordered the County to grant the lot frontage variance and issue a building permit to James after it reviewed James' previously submitted plans it had never reviewed. A057-059, C000295:20-297:21.

Due in part to the Covid-19 Pandemic, the County did not issue the building permit until June 4, 2020, with an initial expiration date of June 4, 2021 which has been since extended to June 4, 2022. A021. Pursuant to Supreme Court Rule 307(a)(1), the Village appealed the portion of the interlocutory September 24th Order enjoining the Village from force annexing James' properties to the Appellate Court. C000001-000008. The Village and the County did not appeal the portions of the September 24th Order that granted the Motion for Judgment and ordered the County to grant a lot frontage variance and issue a building permit to James. C000001-000008.

The Decision

On May 24, 2021, the Third District, with Justice O'Brien dissenting, issued the Decision overturning the injunction entered against the Village in the September 24th Order. Decision, 2021 IL App (3d) 1900564-U ¶ 16-19. The majority concluded that

under either a *de novo* or abuse of discretion standard of review, without clarifying which standard of review it was utilizing, that despite the pending status of the Zoning Complaint against the Village, the trial court erred in granting the Motion to Stay since James did not have a separate complaint pending against the Village. *Id* at ¶ 16 (“Because no complaint was filed or pending against the Village when plaintiff filed the motion for preliminary injunction, the court erred by granting the motion”). Further, the majority opined that because the trial court had ordered the County to grant a variance and issue a building permit James had no right in need of protection. *Id* at ¶ 17.

James timely filed the Petition for Rehearing on June 11, 2021, which the majority denied on June 16, 2021, with Justice O’Brien dissenting and confirming she would have granted the Petition for Rehearing. A010-032. James filed the Rule 315 Petition on July 20, 2021, A033-055; and this Court granted James leave to appeal on September 29, 2021. A056.

ARGUMENT

I. THE MAJORITY’S CONCLUSION THAT JAMES WAS REQUIRED TO FILE A SEPARATE COMPLAINT AGAINST THE VILLAGE TO ENJOIN THE VILLAGE FROM INTERFERING WITH THE AUTHORITY OF THE TRIAL COURT AND CIRCUMVENTING THE RULING IN *JAMES I* WHILE THE ZONING COMPLAINT WAS PENDING WAS ERRONEOUS.

A. STANDARD OF REVIEW

Orders granting a motion to stay are injunctive in nature and reviewable under Supreme Court Rule 307. *TIG Ins. Co. v. Canel*, 389 Ill.App.3d 366, 371 (1st Dist. 2009) “The decision to grant or deny a preliminary injunction rests within the sound discretion of the trial court and on review the decision will not be disturbed absent an abuse of discretion.” *People ex rel. Klaeren v. Village of Lisle*, 202 Ill.2d 164, 177 (2002).

Likewise, since a trial court has the inherent power to control the parties before it, a court's ruling on a motion to stay is reviewed under an abuse of discretion standard, *State Farm Fire & Casualty Company v. John*, 2017 IL App (2d) 1701193 ¶ 18. In granting a motion to stay, not only is the court's inherent power to control the parties before it considered, but "trial courts consider a variety of factors, including the orderly administration of justice, judicial economy, comity, prevention of multiplicity, vexation, and harassment." *Lisk v. Lisk*, 2020 IL App (4th) 190364 ¶ 23. If there are controversies that involve the same subject matter, in its discretion "a court may stay the proceeding in one matter to see whether the disposition of one action may settle the other." *Id.*

Under the abuse of discretion standard, "the only question before the court of review is whether there was a sufficient showing to sustain the order of the trial court." *Callis, Papa, Jackstadt & Halloran, P.C. v. Norfolk and Western Ry. Co.*, 195 Ill.2d 356, 366 (2001). In determining whether a stay or injunction was proper, the question for the reviewing court is not whether the reviewing court agrees with the trial court but "whether the trial court acted arbitrarily without the employment of conscientious judgment or, in light of all the circumstances, exceeded the bounds of reason and ignored recognized principles of law so that substantial prejudice resulted." *State Farm Fire & Casualty Company*, 2017 IL App (2d) 1701193 ¶ 18. Only pure legal questions involving injunctions are reviewed *de novo*. *World Painting Co., LLC v. Costigan*, 2012 IL App (4th) 110869 ¶ 12.

Before the Appellate Court, the Village contended the standard of review should be *de novo*. *Decision*, 2021 IL App (3d) 190564-U ¶ 13. As the trial court made factual findings in the September 24th Order concerning James' need for injunctive relief, James

argued the standard of review should be abuse of discretion. *Id.* The majority declined to confirm the standard of review it was utilizing and stated it would reach the same result regardless of the standard applied; however, Justice O'Brien in the dissent, opined the abuse of discretion standard should apply. *Id.* at ¶ 13 & 23. Since the trial court made factual findings in the September 24th Order confirming James was entitled to the injunctive or stay relief requested in the Motion to Stay, the review of the Appellate Court should have been abuse of discretion. At a minimum, the majority's conclusion attacking James' need for a preliminary injunction and discussed in Section II of this Argument, is a factual finding made by the trial court and should have been reviewed under the abuse of discretion standard. Therefore, James contends the standard of review should be abuse of discretion; however, regardless of the standard of review applied, the Decision should be overturned.

B. THE DECISION IGNORES THE WELL-ESTABLISHED ROLE OF AN INTERVENOR AND THE UNDISPUTED FACT THE ZONING COMPLAINT WAS STILL PENDING AGAINST THE VILLAGE WHEN INJUNCTIVE RELIEF WAS ENTERED.

The crux of the majority's reasoning behind reversing the injunction or stay issued against the Village was that James did not have a separate pending complaint against the Village: "[b]ecause no complaint was filed or pending against the Village when the plaintiff filed the motion for preliminary injunction, the court erred by granting the motion." *Id.* at ¶ 16. The majority's reasoning ignores the well-established role of an intervenor and the undisputed fact that when the Motion to Stay was granted, there was a pending a complaint against the Village, the Zoning Complaint, in which the Village requested it be named as a Defendant but never answered. A31.

It is clear that the Intervention Statute expressly grants an intervenor of all the rights of an original party: “[a]n intervenor shall have all of the rights of an original party.” 735 *ILCS 5/2-408(f)*. Intervention in of itself is not an independent proceeding but rather considered “an ancillary and supplemental one which must be in subordination to the main proceeding.” *People ex rel. Scott v. Illinois Protestant Children’s Home, Inc.*, 95 Ill.App.3d 552, 558 (1st Dist. 1981). Once intervention is granted, an intervenor has the right to take any action that a party to the litigation would be entitled to do so. *In re Petition for Submittal of Question of Annexation to the Corporate Authorities of Joliet*, 282 Ill.App.3d 684, 691 (3rd Dist. 1996). An intervenor even has the right to oppose the actions of both parties in a litigation. *Seil v. Board of Sup’rs of Will County*, 93 Ill.App.2d 1, 8 (1968). Even if the original complaint is dismissed, the intervenor has to the right establish a controversy and prosecute it to the end to protect the intervenor’s rights. *Id. citing Gage v. Cameron*, 212 Ill. 146, 171-172 (1904) (“An intervenor has the right to claim the benefit of the original suit, and to prosecute it to judgment.”); *see also St. James Dormitory, Inc. v. Site, Inc.*, 53 Ill.App.3d. 120, 123 (5th Dist. 1977) *citing to Gage*, 212 Ill. at 171-172.

However, an intervenor’s rights are not unfettered and without check as the intervenor “shall not raise new issues ... or add new parties” and “shall not interfere with the control of the litigation, as justice and the avoidance of undue delay may require.” *Seil*, 93 Ill.App.2d at 8. As this Court declared long ago “[t]he intervenor must take the suit as he finds it.” *Wightman v. Evanston Yaryan Co.*, 217 Ill. 371, 380 (1905). An intervenor “is bound by the record of the case at the time of his intervention” and “can interfere only so far as is necessary to prove his right.” *Id.* More specifically, an intervenor cannot:

“contest the plaintiff’s claim against the defendant, or raise an issue as to the formality of the pleadings or the regularity of the procedure in the principal cause;

nor can he plead exceptions having for their object the dismissal of the action. He cannot change the issue between the parties, nor raise a new one. He cannot insist upon a change in the form of procedure, nor delay the trial of the action.” *Id.*

“The reason for thus qualifying the right to intervene rests upon the principal that parties to a suit have the right to proceed with it to final judgment or decree from interference by others.” *Id.* More importantly, if an intervenor “desires to obstruct the litigation, except as qualified in the foregoing, they must do so by an original action.” *Id.* These are well-established rules of intervention that are not sufficient upon themselves but to be applied with the fundamental purpose to expediate litigation. *Strader v. Board of Ed. of Community Unit School Dist. No 1 of Coles County*, 351 Ill.App. 438, 455 (3rd Dist. 1953).

The majority’s reasoning that James was required to file a separate complaint against the Village ignores that James already had a pending complaint against the Village, the Zoning Complaint. It also ignores that the Village, at its own initiative, requested to intervene and be named a defendant to the Zoning Complaint and submitted to the jurisdiction of the trial court. In fact, the name of the Motion to Intervene, Village of Bolingbrook’s Motion to Intervene **as a Defendant** as a Matter of Right, A057-58 confirms the Village’s request to be named a Defendant to the Zoning Complaint. Once the Motion to Intervene was granted, by an Agreed Order, the Village not only became a named Defendant to the Zoning Complaint, it submitted to the jurisdiction of the trial court. C000024.

There is no dispute the Zoning Complaint was still pending against both the County and the Village when the Motion to Stay was granted. The September 24th Order was not a final judgment that disposed of the Zoning Complaint as the Village appealed the injunction contained in the September 24th Order pursuant to Supreme Court Rule

307(a)(1). C000001-000008. The majority committed clear error when it based its decision to overturn the injunction based on the inaccurate determination that there was no complaint pending against the Village when the Motion to Stay was entered. This conclusion ignores the undisputed fact the Zoning Complaint was and is still pending against the Village and should not have been a reason to overturn the injunction entered by the trial court.

C. ADOPTING THE MAJORITY’S REASONING WOULD ESTABLISH A DANGEROUS PRECEDENT THAT THWARTS THE ABILITY OF A TRIAL COURT TO CONTROL AN INTERVENOR AND WOULD BE A WASTE OF JUDICIAL ECONOMY.

To adopt the majority’s reasoning would create a dangerous precedent that thwarts the ability of a trial court to control intervenors under its jurisdiction and would require parties to file additional, unnecessary and duplicative pleadings just to protect their rights to proceed to final judgment without obstruction from others. In the interest of judicial economy, intervention is favored. *Urban Partnership Bank v. Chicago Title Land Trust Co.*, 2017 IL App (1st) 162086 ¶ 27. However, the Intervention Statute specifically prohibits the intervenor from conduct that would “interfere with the control of the litigation, as justice and avoidance of undue delay may require.” 735 ILCS 5/2-408(f). The Intervention Statute further confirms an intervenor is bound by the orders of the court, including orders that may have been entered prior to intervention. 735 ILCS 5/2-408(d). It’s axiomatic then that an intervenor is bound by the orders of the court after the intervenor has intervened. To hold otherwise would eliminate the inherent power of courts to control parties under their jurisdiction.

As an intervenor the Village was free to contest the pleadings of both James and the County and the Village, could have elected to file its own answer to the Zoning

Complaint after being granted numerous opportunities and had the right to pursue the case to judgment to protect its right if the Zoning Complaint was dismissed and its rights were still in need of protection, but its rights were not unfettered. As an intervenor, the Village had no right to interfere with the control of the litigation, create unnecessary delays, unduly complicate the matter, change or raise new issues or interfere with James' right to proceed with the Zoning Complaint to final judgment. Once the Village intervened in the Zoning Complaint, the Zoning Complaint was the proper forum regarding any actions by the Village that would obstruct the natural progression of the Zoning Complaint. *Wightman*, 217 Ill. at 380.

Why then is James required to file an additional, duplicative and unnecessary complaint simply seeking to prevent the Village from thwarting the ability of the trial court to grant James the relief requested or interfering with the natural progression of the Zoning Complaint? Do all parties moving forward have to file unnecessary and duplicative complaints against intervenors just to prevent the intervenor from acting outside of the well-established rights of an intervenor? Adopting the majority's reasoning that James had to file a separate complaint against the Village in order to challenge a second forced annexation after the first annexation was declared a sham and to prevent the Village from extinguishing the relief the trial court had just granted, would frustrate the ability of the trial court to control and enter orders against an intervenor. This would establish a dangerous precedent that would require the filing of additional, duplicative and unnecessary pleadings simply so a trial court could enforce its orders against an intervenor already under its jurisdiction and a party to pending lawsuit. This is clearly in contradiction with the Intervention Statute and the well-established role of an intervenor in a lawsuit who

cannot interfere with the natural progression of the case. Courts should have the ability to control the actions of an intervenor without the requirement that a non-intervenor party file a separate and unnecessary complaint directly against the intervenor in order for the court to control the intervenor. This dangerous precedent created by the Appellate Court should not stand.

The majority erroneously ignored that there was a complaint pending against the Village, the Zoning Complaint, which the Village never answered, when it rendered the Decision. As the crux of the Decision is based on this incorrect assumption, this warrants a reversal of the Decision. The majority further ignores that since the Village was an intervenor, the Zoning Complaint was the proper forum to attack the Village's attempts to thwart the ability of the trial court to grant the relief requested by James so no additional complaint should be necessary. To adopt the majority's reasoning would create a dangerous precedent that frustrates the ability of a trial court to control intervenors under its jurisdiction and would require parties to file unnecessary and duplicative litigation wasting the time and resources of the judicial system. The Appellate Court clearly erred when it overturned the injunction entered against the Village based on this reasoning and the Decision must be overturned.

II. JAMES' NEED FOR INJUNCTIVE RELIEF DID NOT EXPIRE WHEN THE TRIAL COURT FINALLY ORDERED THE COUNTY TO ISSUE A BUILDING PERMIT ON SEPTEMBER 24, 2019.

A. STANDARD OF REVIEW

Whether the plaintiff is entitled to injunctive relief to protect his rights under the facts of the case, is a question of fact and the standard of review should be an abuse of discretion. *Vaughn v. City of Carbondale*, 2016 IL 119181 ¶ 22-23. The reviewing court

is not determining if it agrees with the trial court, but rather was the decision of the trial court arbitrary, capricious or exceeded the bounds of reason in the light of the circumstance to cause substantial prejudice to the party enjoined. *State Farm Fire & Casualty Company*, 2017 IL App (2d) 1701193 ¶ 18. While the Appellate Court did not indicate the standard it was utilizing, the appropriate standard given the majority's conclusion concerning James' need for injunctive relief would be an abuse of discretion as the majority overturned the factual finding of the trial court that James required injunctive relief to protect his property rights. However, there is no evidence in the record that shows the trial court's factual determination that James was in need of injunctive relief was an abuse of discretion.

B. JAMES HAS DEMONSTRATED HE HAS A NEED FOR INJUNCTIVE RELIEF TO PROTECT HIS PROPERTY RIGHTS.

In conclusory fashion and without any discussion as to why the trial court's finding that James had demonstrated the need for the injunctive relief was arbitrary or capricious, the majority concluded that James' request for injunctive relief expired when the trial court ordered the County to issue a building permit. Decision, 2021 IL App (3d) 190564- U ¶ 17. This conclusion ignores that although the County had been ordered to grant the variance and issue the building permit on September 24, 2019, James need for injunctive relief had not expired because there was a still need to ensure the permit was issued and James was allowed to complete the construction of the pole barn pursuant to the permit and obtain an occupancy permit without any interference from the County or the Village.

It is well established that in order to be entitled to a preliminary injunction, the moving party must demonstrate: "(1) a clearly ascertained right in need of protection; (2) irreparable harm in the absence of an injunction; (3) no adequate remedy at law for the injury; and (4) the likelihood of success on the merits." *Klaeren*, 202 Ill.2d at 177. On

review, the question is whether or not the movant demonstrated there is a fair question concerning the existence of the claimed rights. *Id.* The purpose of a preliminary injunction is to preserve the status quo, the last peaceful, uncontested status which proceeded the controversy, pending a trial on the merits. *Postma v. Jack Brown Buick, Inc.*, 157 Ill.2d 391, 397 (1993). While it is hard to determine what elements the majority has concluded James has not satisfied since the conclusion was made without discussion by the majority, Decision, 2021 IL App (3d) 190564-U ¶ 17; James has demonstrated there is a fair question that he has protectable property rights in need of protection that have not expired and injunctive relief was proper.

It is well established that private property rights are legal rights of the owner that “must be protected from governmental overreaching.” *Forest Preserve Dist. of Du Page County v. West Suburban Bank*, 161 Ill.2d 448, 456 (1994). While a zoning classification or building permit may not be a vested right in need of protection, this Court has created an exception to this rule:

“[W]here there has been a substantial change of position, expenditures or incurrence of obligations made in good faith by an innocent party under a building permit or in reliance upon the probability of its issuance, such party has a vested property right and he may complete the construction and use of the premises for the purposes originally authorized, irrespective of subsequent zoning or a change in zoning classification.” *1350 Lake Shore Associates v. Randall*, 401 Ill.App.3d 96, 102 (1st Dist. 2010) quoting *People ex rel. Skokie Town House Builders, Inc. v. Village of Mortgage Grove*, 16 Ill.2d 183, 191 (1959).

The whole purpose of this exception is to protect land owners and prevent unfairness to those who have made a change in position on good-faith reliance on the issuance of a building permit or a prior zoning classification. *1350 Lake Shore Associates*, 401 Ill.App.3d at 103; see also *Cribbin v City of Chicago*, 384 Ill.App.3d 878, 887 (1st Dist. 2008).

From 1989 to 2013, James was never notified that his storage of automobiles and trailers on the Property was an illegal use which is not surprising considering it was a legal use when the Property was purchased and rezoned by the County in 1979. Since 2013, after the Village complained about the Property and when the court determined James' use of the Property was not grandfathered and allowed under the County's current Zoning Ordinance in the Ordinance Litigation, James has spent eight (8) years attempting to bring the Property into compliance with the Zoning Ordinance. There is also no dispute that the Village has continually opposed and hindered his attempts to bring the Property into compliance. This includes entering into the 1st ComEd Annexation Agreement to wholly bound the Property to force annex it, conduct that was declared a sham and an improper attempt to reach the Property in *James I*.

However, when it became apparent the trial court was going to grant James the relief long-sought, the Village took steps to force annex the Property again based on a highly suspect second annexation agreement with ComEd strikingly similar to the sham annexation agreement with ComEd from *James I*. Upon a second annexation of the Property to the Village, the building permit the trial court had just ordered the County to issue would become a nullity as jurisdiction of the Property would be transferred to the Village. Moreover, upon annexation the Village would rezone the Property to its E-1 or Estate Residential zoning classification. C000245. Even under the Village's Nonconformities Ordinance, James would only gain a right to his continued use if the Property if such use was established as a lawful use prior to zoning reclassification. A142-148.

Building the pole barn and allowing James to obtain an occupancy permit through the building permit would allow James to continue the legal and proper use of his property, even if the Village forced annexed the property, as confirmed by its own Nonconformities Ordinance, Sec 54-861 – Authority to continue. A144. The Village’s rushed attempt to force annex the Property a second time would have negated and nullified the building permit just ordered issued by the trial court and the fact that this was the Village’s intent was confirmed by Mayor Claar at the August 27, 2019 Village Board Meeting when the Village passed Ordinance 19-068 authorizing notice that the Village was going to force annex the Property a second time. While conspicuously not released until November 2019, the Village’s public video recording of the August 27, 2019 Village Board Meeting confirm Mayor Claar repeatedly refers to the Property as “a junkyard,” and expresses his displeasure with Plaintiff, Henry E. James (Edward) and the ruling in *James I*, and his displeasure with the County’s enforcement actions and the Village’s intention to take control of the Property. Village of Bolingbrook, *Village of Bolingbrook Board Meeting 8.27.19*, 1:04:29 – 1:05:35 <https://boxcast.tv/view/village-of-bolingbrook-board-meeting-082719-915405>.

Enjoining the Village from force annexing the Property a second time before the Zoning Complaint has ended not only maintains the status quo it protects James’ vested rights in the Property and his rights to continue to use the Property under its current I-2 Zoning Classification with the County. The mere fact the trial court ordered the County to issue the permit did not end James’ need for protection. Despite the County admitting it had James’ plans for the pole barn no later than May 6, 2016, on September 24, 2019 when the County was ordered to issue the building permit the County admitted it had not even

started to review the plans submitted by James. C000295:20-297:21. In fact, due in part to the Covid-19 Pandemic, the County did not issue the building permit until June 4, 2020, with an initial expiration date of June 4, 2021 which has been since extended to June 4, 2022. A021.

The logical and reasonable consequences of the trial court ordering the issuance of the building permit is to allow James time to complete the construction pursuant to the building permit and obtain a certificate of occupancy which would, in all respects, cure all of the alleged zoning violations contended by the County and that had been vigorously initiated and prosecuted by the Village, and allow him to continue such lawful use if the Property was ultimately annexed into the Village. When the interlocutory September 24th Order was entered, the trial court still had jurisdiction to enforce its order, including the authority to enjoin parties from interfering with the order, as no final order had been entered by the trial court. The injunction would be lifted after the judgment on the Zoning Complaint becomes final which cures any concerns the majority expressed about not having a vehicle “to halt the operation of the preliminary injunction.” Decision, 2021 IL App (3d) 190564-U ¶ 16.

These facts confirm James has demonstrated the first two elements required for injunctive relief, that he had property rights in need of protection and would suffer irreparable harm if the Motion to Stay was not granted. While not addressed by the Appellate Court, there should be no dispute that James did not have an adequate remedy at law. If the Village’s second forced annexation was allowed to proceed, the only way James could potentially contest the forced annexation and protect the relief the trial court had just granted him was by filing a second complaint in *quo warranto*, which James could not

legally file until after the second forced annexation of the Property was complete, something that had not occurred when the injunction was entered. *Petition of Kildeer to Annex Certain Property*, 162 Ill.App.3d 262, 271 (2nd Dist. 1987). Not only would the forced annexation immediately negate the relief just granted by the trial court, the proposed rezoning of the Property as part of the second forced annexation would immediately eliminate James' continued use of the Property since 1989. Moreover, it would require James to indulge in potentially years of additional litigation to protect his property rights and the long-sought after relief the trial court had just granted while not being allowed to utilize the Property in the same manner it has been used since 1989. Enjoining the Village now during the remaining pendency of the Zoning Complaint preserves the status quo and allows James time to bring the Property into compliance with the County's Zoning Ordinance which allows James to continue the current long-standing use of the Property, even if later annexed into the Village. Without the injunction, the status quo would be dissolved, the relief granted by the trial court would be nullified and James' continued use of the Property since 1989 would become illegal all of which confirm James has no adequate remedy at law to protect his rights.

There is also no dispute that James had a likelihood of success on merits as the trial court granted James the relief requested absent interference from the Village, something the majority ignored but Justice O'Brien found relevant:

“Although the trial court's written order states it was finding a likelihood of success on the quo warranto complaint, that conclusion was incomplete in light of the other findings made by the trial court. The plaintiff demonstrated a likelihood of success on the merits of his request for a building permit, absent interference from the Village.” *James I*, ¶ 23 [underline added].

The Third District misapprehended the impact of the interlocutory order issued on September 24, 2019 by the trial court ordering the County to issue a building permit. The trial court did not commit reversible error when it found James demonstrated the necessary elements for injunctive relief and enjoined the Village to protect James' vested property rights so he could continue to use the Property in the same manner as James has since 1989. Without the injunction, James' continued use of the Property would have immediately become illegal and the variance and building permit would have been nullified. The Village should not be allowed to squash and extinguish James' property rights and allow the Village to circumvent and extinguish the relief granted by the trial court to James. The Appellate Court was incorrect when it concluded the James' need for injunctive relief has expired. The injunction entered by the trial court should be upheld.

III. THE THIRD DISTRICT FAILED TO APPLY THE LAW-OF-THE-CASE DOCTRINE TO THE VILLAGE'S RENEWED ATTEMPT TO INVOLUNTARILY ANNEX JAMES' PROPERTY

A. STANDARD OF REVIEW

Whether or not the law of the case doctrine applies, which "prohibits the reconsideration of issues that have already been decided by a reviewing court in a prior appeal," is a question of law reviewed *de novo*. *In re Christopher K.*, 217 Ill.2d 348, 363-364 (2005). While the law of the case doctrine is binding on the Appellate Court, it does not apply to the Supreme Court, as the Supreme Court has inherent power to review "all matters properly raised and passed in the course of litigation." *People v. Hoskins*, 235 Ill.2d 453, 470 (2009). While the law of the case doctrine does not bind this Court, it would be appropriate for this Court to review under a *de novo* standard whether the Appellate Court failed to apply the law of the case doctrine.

**B. THE MAJORITY FAILED TO CONSIDER ITS OWN RULING IN
JAMES I WHEN IT ELECTED TO NOT CONSIDER THE TERMS
OF THE 2ND COMED ANNEXATION AGREEMENT.**

Despite holding in *James I* that the use of only a small portion of ComEd's larger property to wholly bound James' properties, was a product of the request of the Village done as an accommodation to the Village by ComEd which contained numerous "unusual promises" and "clever contingencies" confirming the agreement was sham transaction created exclusively to allow the Village to unnaturally bound James' properties, the Appellate Court failed to consider its prior ruling in violation of the law of the case doctrine. *James I*, 2018 IL App (3d) 160713 ¶ 42. "Under the law of the case doctrine, issues presented and disposed of in a prior appeal are binding and will control in the circuit court on remand as well as in the appellate court in a subsequent appeal." *Reich v. Gendreau*, 308 Ill.App.3d 825, 829 (2nd Dist. 1999). "The law of the case doctrine encompasses a court's explicit decisions and issues decided by necessary implication." *Id.* "Like other preclusion doctrines, such as *res judicata* and collateral estoppel, the law-of-the-case doctrine prevents a defendant from taking two bites of the same apple." *Diocese of Quincy*, 2016 IL App (4th) 150193, ¶27. Issues previously decided include both questions of fact and law. *Radwill v. Manor Care of Westmont, IL, LLC*, 2013 IL App (2d) 120957 ¶ 8. Moreover, "[q]uestions of law that are decided [in] a previous appeal are binding on the trial court on remand as well as the appellate court in subsequent appeals." *Id* quoting *Long v. Elborno*, 397 Ill.App.3d 982, 989 (1st Dist. 2010). The two recognized exceptions to the law of the case doctrine are if: "(1) a higher reviewing court makes a contrary ruling on the same issue subsequent to the lower court's decision; or (2) a

reviewing court finds that its prior decision was palpably erroneous.” *Radwill*, 2013 IL App (2d) 120957, ¶ 9.

In this case, neither of the exceptions to law of the case apply but the issue of the Village approaching ComEd and ComEd allowing the Village to utilize a small strip of ComEd’s larger right-away as an accommodation to force-annex James’ properties was already declared a sham transaction and nullity that cannot be used to create contiguous boundaries with James’ properties but which were “created exclusively for the purpose of allowing the Village to reach the James property.” *James I*, 2018 IL App (3d) 160713, ¶42 & 46.

The second attempt to force annex James’ Property is nothing more than an attempt by the Village to circumvent the holding of *James I* while the Zoning Complaint was still pending and conspicuously right before the trial court finally granted James his variance and building permit. If allowed to proceed, the forced annexation would have essentially nullified the relief granted to James by the trial court. The similarities between the 1st ComEd Annexation and 2nd ComEd Annexation Agreement are striking. The 2nd ComEd Annexation Agreement still contains the Village’s “unusual promise to not tax ComEd or subject ComEd to the enforcement of the Village regulations and zoning requirements” and both agreements allowed ComEd to disconnect without objection from the Village. C000201-000202, C000204, C000212. The motive of the Village is also the same this second time around, it wanted to wholly bound and control James’ properties, publicly confirmed by Mayor Claar several times. C000258; *Village of Bolingbrook Board Meeting 8.27.19*, 1:04:29 – 1:05:35 <https://boxcast.tv/view/village-of-bolingbrook-board-meeting-082719-915405>.

The trial court recognized that on its face the 2nd ComEd Annexation did not address the holding in *James I*, which was the “law of the case,” determined that it did not “see any significant difference between the first attempt to annex and the second” and found the Village’s second forced annexation “is a collateral attack upon the Appellate Court’s judgment.” C000289:1-15, A057-058. The trial court also reiterated the following concerning the terms of the 2nd Annexation Agreement compared to the terms of the 1st ComEd Annexation Agreement: “[s]o I think some of those problems haven’t been resolved by the time you have drafted a new annexation agreement, proceeded to another forced annexation. Those things are still there.” C000304:12-15. “[T]hose things are not cured by the subsequent efforts by the Village to force annex this property. Those concerns of the Appellate Court have not been addressed.” C000305:16-18. The trial court also noted that the Appellate Court’s opinion “talks about the improper motivation and the improper expansion of the boundaries” and again this is “the law of this case.” C000299:5-8. Therefore, it was proper for the trial court to grant the Motion to Stay and maintain the status quo and stop the Village from force-annexing the James’ properties before James had a chance to act on the building permit that was finally being ordered issued when you consider the trial court found the 2nd ComEd Annexation Agreement did not address the holdings and judgment ordered to be entered in *James I*.

Yet, the majority completely ignored its ruling in *James I* and failed to even address the striking similar terms of the two ComEd Annexation Agreements, but this Court should. James should not be required to wait until the Village has completed its second forced annexation of the Property, changed the zoning of the Property and eliminated James’

ability to use the Property in the same manner as it has been utilized since 1989. Nor should James be forced to file another complaint in *quo warranto* against the Village, which he could not do so until the forced annexation occurred which would extinguish his protected rights; when the terms of the 2nd ComEd Annexation Agreement and the conduct of the Village in seeking a second forced annexation does not address and attempts to circumvent the holding from *James I* that was the law of the case. It was proper for the trial court to apply the law of the case doctrine and enter the injunction against the Village to protect James' rights in need of protection that the trial court was in the process of awarding to James and clearly needed protection from the overzealous Village. It was wholly improper for the majority to allow the Village a second attempt at completing its sham annexation of the Property in disregard of the holding in *James I*, the right of James to pursue the Zoning Complaint to judgment and the authority of the trial court to enter judgment in James' favor. This Court should not allow the Appellate Court to ignore its rulings and not apply the law of the case and the Decision must be overturned.

CONCLUSION

Since 2013, James has had to respond to the constant complaints of the Village concerning the Property. He has spent over eight (8) litigating the Zoning Complaint alone. Now, when the end was finally in sight and the trial court was in the process of granting James the ability to bring the Property into compliance with the County's Zoning Code something James has long sought and would have obtained absent interference from the Village; the Village interfered once again. On similar facts already declared to be sham, the Village attempted to force annex the Property a second time essentially making any relief granted by the trial court a nullity and a clever way to circumvent the holding of

James I. The whole purpose of the Motion to Stay was to maintain the status quo until James has the opportunity to complete the construction of the pole barn pursuant to the building permit the trial court had just ordered issued but had not been issued so he could continue his continued use of the Property since 1989 until the Zoning Complaint proceeded to final judgment. The injunction was necessary to protect James' property rights and to protect the integrity of the long-sought after relief just granted by the trial court, both of which would have been extinguished if the Property was forced annexed into the Village a second time.

If allowed to stand, not only would the Decision condone the Village's improper conduct, the Decision would set a dangerous precedent that flies in the face of the Intervention Statute and the well-established role of an intervenor that would negate the ability of a trial court to control an intervenor already under the jurisdiction of the court unless some party to the lawsuit files additional, duplicative and unnecessary complaints against the intervenor wasting the time and resources of the judicial system. In light of all of the circumstance in the record, there is nothing that shows the injunction entered by the trial court was arbitrary or capricious or exceeded the bounds of reason or ignored recognized principles of law so that substantial prejudice resulted to the Village. The Motion to Stay, which would naturally be dissolved upon the entry of a final judgment on the Zoning Complaint, was necessary to protect to James' property rights in need of protection and to ensure the relief finally granted to James would not be immediately nullified by Village's second attempt to force annex the Property during the pendency of the Zoning Complaint based on conduct that the law of the case doctrine already dictated

was sham. For the reasons stated herein, the Decision of the Appellate Court must be overturned.

Respectfully submitted,

Plaintiffs-Appellees, CHICAGO TITLE LAND TRUST COMPANY, as Trustee and as Successor to North Star Trust Company, Successor to Harris Bank, Successor to First National Bank, under a Trust Agreement Dated October 21, 1979 and known as Trust Number 1689, by HENRY E. JAMES, the Holder of the Power of Direction and the owner of the Beneficial Interest of the Land Trust.

By: /s/ Michael R. Martin
one of their attorneys

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SUPREME COURT RULE 341(C) CERTIFICATE OF COMPLIANCE

I, Michael R. Martin, an attorney, certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of the brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 37 pages.

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VERIFICATION AND CERTIFICATE OF SERVICE

Under penalties as provided for by law pursuant to Section 1-109 of the Code of Civil Procedure, I, Michael R. Martin, an attorney, hereby certifies that the statements made in this instrument are true and correct, except those matters therein to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes to be true and I caused to be served a copy of the foregoing **Brief of the Plaintiffs/Appellants, Chicago Title Land Trust Co. and Henry E. James and Appellant's Rule 342 Separate Appendix, Volume I of I** to the following parties by electronic mail at the email addresses stated below and also filed the Brief and Appendix with the Court's Odyssey eFileIL System on November 3, 2021.

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Justice Schmidt concurred in the judgment.
Justice O'Brien dissented.

ORDER

¶ 1 *Held.* The court erred in entering a preliminary injunction where there was no underlying complaint pending.

¶ 2 The intervenor, the Village of Bolingbrook (the Village), appeals from an order enjoining proceedings to involuntarily annex property that was subject to a pending zoning action filed by the plaintiff, the Chicago Title Land Trust Company, against the defendants, Will County, its zoning commission, and individual members of the commission.

¶ 3 FACTS

¶ 4 The plaintiff owns a three-acre parcel of land in Will County as trustee, with Henry James as the beneficial owner. The plaintiff sought, *inter alia*, a special use permit for outdoor storage and filed an application for a variance for lot frontage with Will County, which included obtaining a building permit for a pole barn. The county zoning commission denied the request after a public hearing. The plaintiff appealed, and the county board denied the plaintiff's appeal.

¶ 5 On December 22, 2015, the plaintiff filed a complaint for administrative review, declaratory judgment, and mandamus against the defendants. The plaintiff argued that it was unable to construct a building on the property absent the variance. The Village moved to intervene in that action, which was granted on January 20, 2016.

¶ 6 On June 28, 2016, the plaintiff filed a *quo warranto* complaint against the Village in the zoning case, alleging that the property subject to the zoning complaint was involuntarily annexed by the Village by the adoption of an ordinance, pursuant to section 7-1-13 of the Illinois Municipal Code (Code) (65 ILCS 5/7-1-13 (West 2016)). The *quo warranto* complaint sought to invalidate

the involuntary annexation, arguing that the annexation was a sham transaction because the Village entered into an annexation agreement with Commonwealth Edison (ComEd) in order to create a contiguous boundary for forcibly annexing the plaintiff's property. The trial court granted summary judgment in favor of the Village, and the plaintiff appealed.

¶ 7 On appeal, the majority reversed and remanded, finding that the ComEd annexation was a sham transaction. *Chicago Title Land Trust Co. v. County of Will*, 2018 IL App (3d) 160713. On remand to the trial court, the plaintiff filed a motion for judgment on the pleadings on the *quo warranto* complaint. The trial court granted the motion on November 28, 2018, thus disposing of the *quo warranto* action. However, the plaintiff's action against the defendants remained pending. The plaintiff filed a motion for judgment on the pleadings. A hearing was held on the motion in May 2019, but the court did not issue a ruling at that time.

¶ 8 Meanwhile, in June 2019, the Village entered into a new annexation agreement with ComEd, which contained different terms than the previous agreement. After the execution of the agreement, the Village proposed a new ordinance to annex the plaintiff's property. The plaintiff received notice of the new involuntary annexation and filed a three-page motion on August 28, 2019, titled "Plaintiff's Motion for Entry of an Order on Will County to Issue a Building Permit to Plaintiff and to Stay the [Village] on Force Annexing the Plaintiff's Property Until the Court has Ruled in this Case." The plaintiff's motion asked the court to enter a ruling as to its action against the defendants and requested the court to "[s]tay the [Village's] second attempt to force annex the Plaintiff's property until the final disposition of this lawsuit." The motion cursorily stated, "the Plaintiff's property rights are in need of protection and there is a likelihood of Plaintiff succeeding on the merits of the underlying case and the Plaintiff will suffer irreparable harm in the

absence of the issuance of a stay of the [Village] forced annexing of Plaintiff's property and the Plaintiff has no other adequate remedy at law."

¶ 9 On September 4, 2019, the parties appeared in court. The court stated that it had reached a decision on the plaintiff's motion for judgment on the pleadings in the case against the defendants, it was in the process of typing up the decision, and "[it] granted the motion for judgment on the pleadings, and the order is going to tell [the defendants] to issue a permit." The court gave the Village time to file a response to the plaintiff's pending motion.

¶ 10 The Village filed a motion to strike the plaintiff's motion on September 11, 2019, arguing that the motion was a motion for a preliminary injunction, which was procedurally defective because it was not supported by a complaint and was substantively deficient because it contained nothing more than one sentence summarizing the elements necessary for a preliminary injunction.

¶ 11 A hearing was held on the Village's motion to strike and the plaintiff's motion for a preliminary injunction on September 20, 2019. The court denied the Village's motion to strike and granted the plaintiff's motion for a preliminary injunction. The court issued a written decision on September 24, 2019, which stated, *inter alia*:

"1. That the second attempt of the [Village] to involuntarily annex the Plaintiff's property as contained in its proposed [ordinance] scheduled for public hearing and action by the Village on September 24, 2019, is a collateral attack on the jurisdiction of the Appellate Court.

2. That Plaintiff's property rights will be irreparably harmed by the action of the [Village] in involuntarily annexing the Plaintiff's property.

3. That Plaintiff has a likelihood of success on the merits of the previously decided *quo warranto* action and that Plaintiff has no adequate remedy at law without the entry

of an order enjoining the Village from proceeding upon its involuntary annexation of Plaintiff's property.

4. That the Village's new annexation agreement with ComEd does not address all of the issues raised by the Appellate Court in that this Court questions that the annexation of the ComEd property is only an accommodation of the Village so it can involuntarily annex the Plaintiff's property."

The court further stated that the Village was "enjoined from again attempting to involuntarily annex Plaintiff's property *** until such time as the [Village] seeks relief from the Appellate Court." In the same decision, the trial court issued its written order granting the plaintiff's motion for judgment on the pleadings and ordered the defendants to issue a variance for lot frontage and a building permit. The Village filed an interlocutory appeal.

¶ 12

ANALYSIS

¶ 13

On appeal,¹ the Village argues that the court erred in granting the plaintiff a preliminary injunction. Generally, we consider the court's decision to grant or deny a preliminary injunction for an abuse of discretion. *Smith v. Department of Natural Resources*, 2015 IL App (5th) 140583, ¶ 22. We find an abuse of discretion only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would adopt the court's view. *Id.* However, we consider the decision *de novo* where the trial court did not make any factual findings and solely ruled on a question of law. *Id.* ¶ 23. While the parties disagree which standard of review applies, here, where the court made factual findings, but the question on appeal is one of law, we find that under either standard our analysis remains the same.

¹We note that the Village filed a motion to strike portions of the plaintiff's appellee brief. We find that the plaintiff's brief substantially complies with Illinois Supreme Court Rule 341 (eff. May 25, 2018) and deny the motion to strike. However, to the extent that the plaintiff cites to any facts or arguments that were not before the trial court when it made its ruling, this court will not consider those items.

¶ 14 The Village specifically argues that the court erred in granting the preliminary injunction because it was not supported by a complaint and no complaint remained pending against the Village. We agree. It is clear that, when seeking a preliminary injunction, the plaintiff must file a complaint. Richard A. Siebel, *Injunctions*, in Illinois Civil Practice: Preparing for Trial, §§ 4.40-.41 (Ill. Inst. for Cont. Legal Educ. 2012); *People ex rel. Carter v. Hurley*, 4 Ill. App. 2d 24, 27 (1954).

“ ‘The application for temporary restraining order or preliminary injunction may be included in the original complaint, in which case the complaint must be verified, or it may be requested by motion filed at the same time or later and supported by proper affidavits. Even though requested in the complaint, a motion is necessary in order to bring it to the attention of the court and in order to settle the question of notice and bond.’ ” *Kolstad v. Rankin*, 179 Ill. App. 3d 1022, 1029 (1989) (quoting 3 C. Nichols, Illinois Civil Practice § 2276, at 23 (rev. vol. 1987)).

¶ 15 The very purpose and nature of a preliminary injunction contemplates the filing of a complaint. The movant must show: (1) a clearly ascertained right in need of protection, (2) irreparable harm without an injunction, (3) no adequate remedy at law, and (4) a likelihood of success on the merits. *People ex rel. Klaeren v. Village of Lisle*, 202 Ill. 2d 164, 177 (2002). Without an underlying complaint, the court cannot consider the likelihood of success on the merits of the case. Moreover, the purpose of a preliminary injunction is to preserve the status quo pending a decision on the merits of the case. *Hartlein v. Illinois Power Co.*, 151 Ill. 2d 142, 157 (1992). A preliminary injunction, thus, remains in place until the conclusion of, and decision on the merits in, the underlying case.

¶ 16 Here, the plaintiff did not file a complaint with its motion for preliminary injunction and there was no complaint against the Village pending in the trial court as a final disposition had been entered in the previous *quo warranto* action. There are no merits of an underlying case for the court to assess if such a complaint is not filed. While the plaintiff and the court considered the *quo warranto* action when determining the likelihood of success, this final adjudicated case could not be the basis for the plaintiff to obtain a preliminary injunction. The new agreement between ComEd and the Village provided different clauses and facts than that at issue in the *quo warranto* action. Without filing a complaint regarding the new agreement, the plaintiff could not challenge the validity of the new agreement. Further, if there was no complaint on which a final decision could be reached, there would be nothing to halt the operation of the preliminary injunction. Because no complaint was filed or pending against the Village when the plaintiff filed the motion for preliminary injunction, the court erred by granting the motion.

¶ 17 We also note that the plaintiff's motion specifically requested a preliminary injunction until a building permit was granted in the case against the defendants. The court orally granted the plaintiff the building permit on September 4, 2019, which was followed by a written order on September 24, 2019. By the very relief requested by the plaintiff, the plaintiff's request for a preliminary injunction should have expired when the court ordered the defendants to issue a building permit.

CONCLUSION

¶ 18 The order of the circuit court of Will County is reversed and remanded.

¶ 19 Reversed and remanded.

¶ 20 JUSTICE O'BRIEN, dissenting:

¶ 21 I respectfully dissent from my colleagues for the following reasons.

¶ 22 The plaintiff and the defendants were parties to a pending zoning case at the time of the filing of the plaintiff's motion seeking injunctive relief. Although the plaintiff had already been granted a judgment on the pleadings in the quo warranto proceedings, in accordance with this court's instructions on remand, the trial court had not made a final ruling in the zoning case and still had jurisdiction over the parties and controversy. See *Brigando v. Republic Steel Corp.*, 180 Ill. App. 3d 1016, 1020 (1989) (a trial court generally retains jurisdiction over a case pending before it until a final judgment is entered); see also 735 ILCS 5/2-408(f) (West 2016) (an intervenor has all the rights of an original party). The trial court found that the Village's second annexation agreement with ComEd was an attempt to circumvent the appellate court's authority as set forth in the mandate to the trial court upon remand and found injunctive relief necessary to protect the plaintiff from irreparable harm.

¶ 23 The likelihood of success on the merits necessarily depends on the relief sought. The plaintiff sought injunctive relief for the purpose of completing the process of obtaining a building permit from the county and constructing a building on the property in accordance with the current applicable county zoning ordinance. The trial court had already indicated that it was going to order the county to grant the plaintiff its requested variance and building permit, but the building permit was further delayed since the building plans had never been reviewed by the county. Thus, the relief sought by the plaintiff was an injunction preventing the Village from acting on any effort to circumvent the trial court's order. Although the trial court's written order states that it was finding a likelihood of success on the quo warranto complaint, that conclusion was incomplete in light of the other findings made by the trial court. The plaintiff demonstrated a likelihood of success on the merits of his request for a building permit, absent interference from the Village. In addition, as noted by the majority, the trial court concluded that the new ComEd annexation agreement did not

address all of the issues that resulted in this court finding that the first annexation of ComEd was a sham transaction. The trial court did not abuse its discretion and I would affirm the order enjoining proceedings to involuntarily annex the plaintiff's property. See *Klaeren*, 202 Ill. 2d at 177 (a trial court's decision regarding a preliminary injunction is reviewed for an abuse of discretion).

No. 3-19-0564

IN THE APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT

CHICAGO TITLE LAND TRUST
COMPANY, as Trustee and as Successor to
North Star Trust Company, Successor to Harris
Bank, Successor to First National Bank, under
a Trust Agreement Dated October 21, 1979 and
known as Trust Number 1689, by HENRY E.
JAMES, the Holder of the Power of Direction
and the owner of the Beneficial Interest of the
Land Trust.

Plaintiffs/Appellees

vs.

COUNTY OF WILL, a body politic and
corporate, the WILL COUNTY PLANNING
and ZONING COMMISSION, an agency of
Will County, LENARD VALLONE, an
individual, BARBARA PETERSON, an
individual, KIMBERLY MITCHELL, an
individual, HUGH STIPAN, an individual,
SCOTT LAGGER, an individual, MICHAEL
CARRUTHERS, an individual, and THOMAS
WHITE, an individual,

Defendants

vs.

VILLAGE OF BOLINGBROOK,

Intervenor/Appellant

PEOPLE OF THE STATE OF ILLINOIS,
ex. rel. CHICAGO TITLE LAND TRUST
COMPANY, as Trustee and as Successor to
North Star Trust Company, Successor to Harris
Bank, Successor to First National Bank, under
a Trust Agreement Dated October 21, 1979 and
known as Trust Number 1689, by HENRY E.

Appeal from the Circuit Court
of the Twelfth Judicial Circuit,
Will County, Illinois

Case No. 15 MR 2972

The Honorable
Roger D. Rickmon,

Judge Presiding

**(PLAINTIFF'S RULE 367
PETITION FOR
REHEARING)**

JAMES, the Holder of the Power of Direction and the owner of the Beneficial Interest of the Land Trust, and MIDLAND STATE BANK, under a trust agreement known as Trust Number 1901, by HENRY E. JAMES, the Holder of the Power of Direction and the owner of the Beneficial Interest of the Land Trust

Plaintiffs

vs.

VILLAGE OF BOLINGBROOK,

Defendant

PLAINTIFFS' ILLINOIS SUPREME COURT RULE 367 PETITION FOR REHEARING

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First National Bank, under a Trust Agreement Dated
October 21, 1979 and known as Trust Number 1689,
by HENRY E. JAMES, the Holder of the Power of
Direction and the owner of the Beneficial Interest of
the Land Trust.

ORAL ARGUMENT REQUESTED

Pursuant to Illinois Supreme Court Rule 367, Plaintiffs/Appellees, CHICAGO TITLE LAND TRUST COMPANY, as Trustee and as Successor to North Star Trust Company, Successor to Harris Bank, Successor to First National Bank, under a Trust Agreement Dated October 21, 1979 and known as Trust Number 1689, by HENRY E. JAMES, the Holder of the Power of Direction and the owner of the Beneficial Interest of the Land Trust (collectively referred to as “James”), by and through its attorneys, Dunn, Martin & Miller, Ltd., respectfully petitions this Court for rehearing of the Court’s decision rendered on May 24, 2021, which reversed and remanded the portion of the trial court’s September 24, 2019 written order that entered an injunction against the Defendant/Intervenor/Appellee, THE VILLAGE OF BOLINGBROOK (the “Village”) enjoining the Village from attempting to force annex James’ property a second time while the litigation was still pending. In support of this Rule 367 Petition for Rehearing, James states as follows.

INTRODUCTION

On December 22, 2015, James filed his Complaint for Administrative Review, Declaratory Judgment and Mandamus (the “Zoning Complaint”), C.Supp.032-148, concerning the Defendant, THE COUNTY OF WILL’S (the “County), denial of a variance application and the issuance of a building permit that the County requested James file to allow him to construct a pole-barn on his property and bring his continued use of his property since 1989 into compliance with the County’s Zoning Ordinance. Immediately after the Zoning Complaint was filed, the Village requested to intervene and become a named defendant in the Zoning Complaint, which request was granted by the trial court on January 20, 2016. The Village was also twice granted leave to answer or otherwise plead

to the Zoning Complaint: on January 20, 2016, by March 23, 2016 and again on March 23, 2016 by May 11, 2016 but never did so. Presumably the Village elected to not answer or otherwise plead to the Zoning Complaint because on May 10, 2016 it passed an ordinance attempting to involuntarily annex James' property. In response to this forced annexation, the trial court granted James leave to file a Complaint in Quo Warranto (the "Quo Warranto Complaint") attacking the Village's forced annexation of his property; and also stayed James' Motion for Judgment on the Pleadings filed on May 20, 2016 ("Motion for Judgment") and the County's and the Village's motions to dismiss based on the forced annexation, pending the resolution of the Quo Warranto Complaint. Ultimately, this Court issued its ruling in *Chicago Title Land Trust Co. v. County of Will*, 2018 IL App (3d) 160713, ¶46 ("*James I*") on May 18, 2018 that declared the Village's forced annexation of James' property a sham and reversed and remanded the case back to the trial court with a mandate the trial court enter judgment in favor of James and against the Village on the Quo Warranto Complaint. After the mandate from *James I* was filed with the trial court on November 2, 2018, on November 28, 2018 the trial court entered judgment in James' favor and against the Village on the Quo Warranto Action.

However, the case did not end there as the Zoning Complaint and James' previously filed Motion for Judgment were still pending against both the County and Village, who was still party to the lawsuit. On December 4, 2018, a briefing schedule was set on the Motion for Judgment and both the Village and the County were granted leave to file responses to the Motion for Judgment; and after several continuances the Motion for Judgment finally proceeded to hearing on May 15, 2019 and was taken under advisement by the trial court to rule by June 11, 2019. At no point during the pendency of this litigation,

despite requesting to intervene and be named a defendant, has the Village ever filed an answer to the Zoning Complaint. The Village last requested additional time to file an answer to the pending Zoning Complaint on January 18, 2019 in the Village of Bolingbrook's Response to Plaintiff's Motion for Judgment on the Pleadings, sec. Conclusion, a true and correct copy of which is attached hereto as Exhibit # 1. There is no dispute the trial court did not rule on and grant Plaintiff's Motion for Judgment until September 24, 2019 which it admitted was due to its own delay. C.000286.

Rather than allow the Zoning Complaint to come to its natural and proper conclusion, and while the parties were waiting for a decision on the Motion for Judgment, the Village attempted to circumvent the holding of *James I* and the authority of the trial court to issue a variance and building permit to James, by once again attempting to force annex James' property based on an annexation agreement with Commonwealth Edison similar to the sham annexation agreement with Commonwealth Edison that was the subject matter of *James I*. Akin to *James I*, the new annexation agreement with Commonwealth Edison confirms the Village once again approached Commonwealth Edison to annex their property for the sole purpose of force annexing James' property, as admitted by the Village's Mayor. C000258. After James was notified on August 27, 2019 that the Village passed another ordinance seeking to force annex his property, on August 28, 2019 he responded by filing Plaintiff's Motion for Entry of an Order on Will County to Issue a Building Permit to Plaintiff and to Stay the Village of Bolingbrook on Force Annexing the Plaintiff's Property until this Court has Ruled on this Case (the "Motion to Stay"), C.000171-187, which requested the trial court rule and grant the Motion for Judgment and order the County to issue a building permit so James could build his long sought after pole

barn; and requested that the trial court stay the Village's second attempt to force annex James' property while the Zoning Complaint was still pending. On September 24, 2019, the trial court granted the Motion for Judgment and granted the Motion for Stay by issuing its September 24, 2019 interlocutory order, which the Village appealed pursuant to Illinois Supreme Court Rule 307(a). On May 24, 2021, this Court issued a Rule 23 Order (the "Decision") overturning the injunction entered against the Village on September 24, 2019.

James now files this Petition for Rehearing, pursuant to Illinois Supreme Court Rule 367 and within twenty-one (21) days of the Decision, to bring to this Court's attention two (2) issues that were overlooked or misapprehended by the majority concerning the reversal of the injunction entered against the Village preventing it from attempting to force annex James' property while the Zoning Complaint was still pending. Specifically, James is petitioning this Court for rehearing on the following issues:

- I. The majority's conclusion that James was required to file another complaint directly against the Village, a party to the Zoning Complaint, which it elected to never answer, in order to be entitled to injunctive relief to prevent the Village from circumventing the decision contained in *James I* and the authority of the trial court to enter an order in the pending litigation, Decision, ¶ 16; and
- II. That the trial court's order on the County to issue James his long sought-after variance and building permit to build a pole-barn "expired" James's need for the entry of a stay or injunction to prevent the Village's interference with that building permit and the issuance of an occupancy permit based on the building permit while the Zoning Complaint was still pending and the trial court had jurisdiction over the Village, Decision, ¶ 17.

This Petition for Rehearing should not be construed as a waiver of any arguments raised by James in the appeal, or of James' right to file a petition for leave to appeal to the Illinois Supreme Court within the time specified by the Illinois Supreme Court Rules.

REASONS WHY THE PETITION SHOULD BE GRANTED

I. THE MAJORITY IMPROPERLY HELD JAMES NEEDED TO FILE A SEPARATE COMPLAINT AGAINST THE VILLAGE, AN INTERVENOR AND PARTY TO THE LAWSUIT, TO PREVENT THE VILLAGE FROM CIRCUMVENTING AND THIS COURT'S DECISION IN *JAMES I* AND THE AUTHORITY OF THE TRIAL COURT TO ENTER AN ORDER IN THE PENDING LITIGATION.

The majority's decision to overturn the injunction is based on an improper assumption that James needed to file a separate complaint against the Village because the Quo Warranto Complaint had been decided, in order for James to prevent the Village from circumventing this Court's decision in *James I* and the authority of the trial court to grant James a building permit. Decision, ¶ 17 ("Because no complaint was filed or pending against the Village when the plaintiff filed the motion for preliminary injunction, the court erred by granting the motion). To support this holding, the majority made the following conclusions in the Decision to support its decision to overturn the injunction issued against the Village:

- (a) "Without an underlying complaint, the court cannot consider the likelihood of success on the merits of the case," Decision, ¶ 15;
- (b) "There are no merits of an underlying case for the court to assess if such a complaint is not filed," Decision, ¶ 16; and
- (c) "Without filing [of] a complaint regarding the new agreement, the plaintiff could not challenge the validity of the new agreement." Decision, ¶ 16.

The majority ignores the role of the Village as an intervenor in the Zoning Complaint who had requested to become a defendant to the Zoning Complaint; ignores the majority's own statement that when the Motion to Stay was granted, "plaintiff's action [the Zoning Complaint] against the defendants remained pending," Decision, p 3; and ignores that the September 24, 2021 order granting the Motion to Stay and granting the Motion for Judgment was not a final order so the trial court still had jurisdiction over the Village.

Pursuant to the intervention statute:

"[a]n intervenor shall have all the rights of an original party, except that the court may in its order allowing intervention, whether discretionary or a matter of right, provide that the applicant shall be bound by orders or judgments, theretofore entered or by evidence theretofore received, that the applicant shall not raise issues which might more properly have been raised at an earlier stage of the proceeding, that the applicant shall not raise new issues or add new parties, or that in other respects the applicant shall not interfere with the control of the litigation, as justice and the avoidance of undue delay may require." 735 ILCS 5/2-408.

It is well-settled that based on this statutory language "an intervenor must take a case as he finds it and cannot change a proceeding by introducing new matters not relevant to the controversy or which unduly complicate it." *Home Ins. Co., Inc. v. Lorelei Restaurant Co., Inc.*, 83 Ill.App.3d 1083, 1087 (1980). As this Court recognized long ago, "the fundamental purpose of these rules is to expediate litigation" and "the rules are not sufficient unto themselves but are to be applied with that objective in view." *Strader v. Board of Ed. of Community Unit School Dist. No. 1 of Coles County*, 351 Ill.App 451, 455 (3rd Dist. 1953).

Therefore, there was a pending complaint against the Village when the Motion to Stay was filed and ultimately granted on September 24, 2019, the Zoning Complaint, which complaint is still pending as no final order has been entered in the Zoning Complaint. This was clearly overlooked or misapprehended by the majority. As Justice O'Brien stated in

her dissent, “the trial court had not made a final ruling in the zoning case and still had jurisdiction over the parties and controversy.” Order, p 8. This includes the Village, an intervenor who at its own request, submitted to the jurisdiction of the trial court and requested to be named a defendant to the Zoning Complaint. Ordering the County to issue the building permit was not a final order completely disposing of the Zoning Complaint, which is admitted by the Village who filed its appeal pursuant to Illinois Supreme Court Rule 307(a), Brief and Argument of Defendant-Appellant, p 4, conceding the trial court still had jurisdiction over the Village and the Zoning Complaint was and is still pending.

An intervenor takes the case as is. It is bound by the previous court orders and pleadings and is within the jurisdiction of the trial court. An intervenor cannot take steps to interfere with the control of the litigation. The Village at its own request became a defendant in the Zoning Complaint and submitted to the jurisdiction of the trial court. Its second attempt to force annex James’ property right before the trial court was finally going to order the County to issue his long sought-after building permit, which annexation would nullify the building permit, is nothing more than attempt to circumvent this Court’s ruling in *James I* and the authority of the trial court. The Village cannot knowingly and on its own accord, request to be named a defendant to the Zoning Complaint, a complaint it has never answered, and then just simply ignore and attempt to circumvent the orders of the trial court when it looks like it is going to lose the litigation. It would be improper to allow the Village to come into the case as an intervenor as a defendant to the Zoning Complaint; but then also require James to file a separate complaint against the Village just to have the trial court’s orders enforced and not interfered with by the Village. The majority’s decision to overturn the trial court’s granting of the Motion to Stay relies solely on an erroneous

assertion that no complaint was pending against the Village despite the existence of the Zoning Complaint that the Village never answered. It allows the Village to pursue a second forced annexation of James' property and nullifies the building permit the County was ordered to issue and negates the favorable decision obtained by James after extensive litigation. There was no abuse of discretion by the trial court and the appeal must be reheard.

II. JAMES' REQUEST FOR INJUNCTIVE RELIEF DID NOT EXPIRE WHEN THE TRIAL COURT FINALLY ORDERED THE COUNTY TO ISSUE A BUILDING PERMIT ON SEPTEMBER 24, 2019.

In the Decision, the majority also stated that James' request for injunctive relief expired when the trial court ordered the County to issue him a building permit. Decision, ¶ 17. This statement ignores that the September 24, 2019 trial court order ordering the County to issue a building permit did not end the litigation, it was an interlocutory order that was appealed by the Village pursuant to Rule 307(a), and that injunctive relief was necessary to protect James vested property rights and to ensure the County and Village complied with the trial court's order requiring the County issue a building permit.

A land owner does not gain a vested right merely by filing for a building permit. *1350 Lake Shore Associates v. Healey*, 223 Ill.2d 607, 622 (2006). However, an owner can gain a vested right to build and utilize the property under its current zoning classification when the permit was filed even if the governing authority after the building permit is filed proposes to amend its zoning classification that would make the proposed use illegal. *Id.* While zoning authorities have the right to amend zoning classifications of property, an owner obtains a vested right in a prior zoning classification "where the owner sustained a significant change of position, by either making substantial expenditures or

incurring substantial obligations, in good-faith reliance upon the probability of the issuance of a building permit.” *1350 Lake Shore Associates v. Randall*, 401 Ill.App.3d 96, 102 (1st Dist. 2010). The whole purpose of this exception is to protect land owners and prevent unfairness to those who have made a change in position on good-faith reliance on the issuance of a building permit or a prior zoning classification. *Id* at 103; *see also Cribbin v City of Chicago*, 384 Ill.App.3d 878, 887 (1st Dist. 2008).

The trial court ordering the County to issue the building permit did not expire James need to protect his vested property rights; nor did it end the Zoning Complaint, it was an interlocutory order, as admitted by the Village. The logical and reasonable consequences of ordering the issuance of the building permit is to allow James time to complete the construction pursuant to the building permit and obtain a certificate of occupancy which would, in all respects, cure all of the alleged zoning violations initiated at the County level, that had been vigorously initiated and prosecuted by the Village. The injunction or stay would be lifted after the judgment on the Zoning Complaint becomes final which cures any concerns the majority expressed about not having a vehicle “to halt the operation of the preliminary injunction.” Decision, ¶ 16. After ordering the County to issue the building permit, the trial court still had jurisdiction to enforce its order, including the authority to enjoin parties from interfering with the order, as no final order had been entered by the trial court. The authority to dissolve the injunction when it is appropriate also remains with the trial court.

Building the pole barn and allowing James to obtain an occupancy permit through the building permit would allow James to continue the legal and proper use of his property, even if the Village forced annexed the property. However, the Village’s rushed attempt to

force annex James' property a second time before the building permit was ordered issued and before an occupancy permit was issued, negates and nullifies the building permit ordered by the trial court. Also, the second forced annexation would cause James to lose all of his property rights to continue to use the property in the manner he has done since 1989. If the forced annexation occurs, the jurisdiction of the property changes from the County to the Village and the ordinances of the Village apply and the County building permit would be nullified because the County would lose jurisdiction of the property. Moreover, James' property, was zoned I-2 Industrial in 1979 under the Will County Zoning Ordinance and still maintains an I-2 zoning classification under the Will County Zoning Ordinance. If annexed by the Village the property will be zoned E-1 Estate Residential under the Village's Zoning Ordinance. If that occurred not only would James lose his right to construct the pole barn which would qualify the property as a legal nonconforming use under the Village's Zoning Ordinance, he would lose his right to use his property in the same continuous manner he has done since 1989.

Even though the trial court ordered the County to issue the building permit on September 24, 2019 and despite having James' plans for his pole barn since no later than May 6, 2016, the County admitted on September 24, 2019 it had not started to review the plans submitted by James. C.000295-000296. In fact, the County did not complete its review of the plans and did not issue the permit until June 4, 2020. Due to the impact of the Covid-19 Pandemic, James was unable to have a contractor construct the pole barn and, as a result, the building permit has been extended by the County and does not expire until June 4, 2022. The injunction barring the forced annexation of James' property should remain in effect until such time as an occupancy permit is issued by the County or until the

building permit expires on June 4, 2022. The majority misapprehended the impact of the interlocutory order issued on September 24, 2019 by the trial court and was clearly erroneous when it stated that James request for injunctive relief had expired. This issue should be reheard.

CONCLUSION

The majority clearly overlooked or misapprehended that at the time the Motion to Stay was granted, the trial court not only had jurisdiction over the Village, but that pursuant to the Village's own request to be an intervenor it was a named defendant to the Zoning Complaint, which was still pending. As the basis for the majority's reversal of the injunction is that there was no complaint pending against the Village, the appeal must be reheard as this is a drastic departure from well-settled role of an intervenor. Further, it is clear that James still has property rights in need of protection. The trial court ordering the issuance of the building permit did not dispose of the litigation, which is clearly confirmed as this was an interlocutory appeal, and the fact the County did not start to review the building permit plans and did not issue the building permit until June 4, 2020, well after the order entered on September 24, 2019. The injunction was and is still necessary to protect James' property rights and to prevent the Village from interfering with the orders of the trial court and its authority as well as the holding of this court in *James I*, which is the law of the case. For these reasons, James respectfully petitions this Court for rehearing of this interlocutory appeal.

Wherefore, Plaintiffs-Appellants, People of the State of Illinois, ex. rel. Chicago Title Land Trust Company, as Trustee and as Successor to North Star Trust Company, Successor to Harris Bank, Successor to First National Bank, under a Trust Agreement Dated October 21, 1979 and known as Trust Number 1689, by Henry E. James, the Holder of the Power of Direction and the owner of the Beneficial Interest of the Land Trust, and Midland State Bank, under a trust agreement known as Trust Number 1901, by Henry E. James, the Holder of the Power of Direction and the owner of the Beneficial Interest of the Land Trust, pray that this Honorable Court grant this Petition for Rehearing, grant oral argument on the issues set forth above and grant such further relief it deems just and proper.

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CHICAGO TITLE LAND TRUST
 COMPANY, as Trustee and as
 Successor to North Star Trust Company,
 Successor to Harris Bank, Successor to
 First National Bank, under a Trust
 Agreement Dated October 21, 1979 and
 known as Trust Number 1689, by
 HENRY E. JAMES, the Holder of the
 Power of Direction and the owner of the
 Beneficial Interest of the Land Trust.

By: /s/ Michael J. Martin

SUPREME COURT RULE 341(C) CERTIFICATE OF COMPLIANCE

The undersigned attorney certifies that this Petition for Rehearing conforms to the requirements of Rule 367(a). The length of the Petition for Rehearing, excluding the pages containing the Rule 341(d) cover, the Rule 341(c) certificate of compliance, the exhibit and the certificate of service is 12 pages.

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CHICAGO TITLE LAND TRUST
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 Successor to North Star Trust Company,
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 HENRY E. JAMES, the Holder of the
 Power of Direction and the owner of the
 Beneficial Interest of the Land Trust.

By: /s/ Michael J. Martin

CERTIFICATE OF SERVICE

I, Michael J. Martin, an attorney, hereby certifies that I caused to be served a copy of the foregoing Petition for Rehearing of Plaintiffs/Appellees by electronic mail to the following parties and also filed with the Court's Odyssey eFileIL System on June 11, 2021.

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By: /s/ Michael J. Martin

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**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS**

CHICAGO TITLE LAND TRUST COMPANY, as
Trustee and as Successor to North Start Trust
Company, Successor to Harris Bank, Successor to
First National Bank, under a Trust Agreement Dated
October 21, 1979 and known as Trust Number
1689, by HENRY E. JAMES, Holder of the Power of
Direction and Beneficial Interest of the Land Trust.

Plaintiff,

vs.

Case No. 15 MR 2972

COUNTY OF WILL, a body politic and corporate,
the WILL COUNTY PANNING and ZONING
COMMISSION, LENARD VALLONE, an individual,
BARBARA PETERSON, an individual, KIMBERLY
MITCHELL, an individual, HUGH STIPEN, an
individual, SCOTT LAGGER, an individual,
MICHAEL CARRUTHERS, an individual, and
THOMAS WHITE, an individual.

Defendants.

NOTICE OF FILING

To:

Michael Martin
DUNN, MARTIN, MILLER &
HEATHCOCK, LTD.
15 W. Jefferson Street, Suite 300
Joliet, IL 60432

James Glasgow, Will County State's Attorney
c/o Matthew Guzman, Assistant
State's Attorney
121 N. Chicago Street
Joliet, IL 60432

PLEASE TAKE NOTICE that on January 18, 2019, the undersigned caused to be filed via electronic filing with the Clerk of the Circuit Court of the Twelfth Judicial Circuit, Will County, Illinois, **VILLAGE OF BOLINGBROOK'S RESPONSE TO PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS**, a copy of which is hereby served upon you.

/s/ M. Neal Smith
M. NEAL SMITH

CERTIFICATE OF SERVICE

I, M. NEAL SMITH, an attorney, certify that I caused a copy of the foregoing Notice and the document referenced therein to be served upon the above-named individuals at their above-referenced addresses by U.S. Mail, postage pre-paid this 18th day of January, 2019.

/s/ M. Neal Smith

M. NEAL SMITH

Kenneth M. Florey (kflorey@robbins-schwartz.com)
M. NEAL SMITH (nsmith@robbins-schwartz.com)

ROBBINS, SCHWARTZ, NICHOLAS,

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631 E. Boughton Road, Suite 200

Bolingbrook, IL 60440

630/929-3639

Cook County No. 91219

819054 v1

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS**

CHICAGO TITLE LAND TRUST COMPANY, as
Trustee and as Successor to North Start Trust
Company, Successor to Harris Bank, Successor to
First National Bank, under a Trust Agreement Dated
October 21, 1979 and known as Trust Number
1689, by HENRY E. JAMES, Holder of the Power of
Direction and Beneficial Interest of the Land Trust.

Plaintiff,

vs.

Case No. 15 MR 2972

COUNTY OF WILL, a body politic and corporate,
the WILL COUNTY PANNING and ZONING
COMMISSION, LENARD VALLONE, an individual,
BARBARA PETERSON, an individual, KIMBERLY
MITCHELL, an individual, HUGH STIPEN, an
individual, SCOTT LAGGER, an individual,
MICHAEL CARRUTHERS, an individual, and
THOMAS WHITE, an individual.

Defendants.

**VILLAGE OF BOLINGBROOK'S RESPONSE TO PLAINTIFF'S MOTION FOR
JUDGMENT ON THE PLEADINGS**

NOW COMES defendant VILLAGE OF BOLINGBROOK ("Village"), and for its
Response to Plaintiff's Motion for Judgment on the Pleadings, hereby states as follows:

INTRODUCTION

Plaintiff was the owner of a 6.18 acre parcel, but in 1989 he sold 3.10 acres to a
third party, kept 3.08 acres for himself and obtained new PIN numbers for each parcel.
As a result of his actions, Plaintiff created an illegal lot and created the situation for which
he now blames Will County and the Village of Bolingbrook. Essentially, this action is about
Plaintiff's disagreement with the final decision of the Will County Board ("Will County") to
deny Plaintiff's application for a lot frontage variance. Plaintiff wanted Will County to fix

his illegal lot situation that was his own doing and he is now upset that the County did not do so. Overturning Will County's variance decision is a high bar—Plaintiff must establish that Will County's decision was arbitrary and capricious—a difficult task even when a plaintiff has favorable facts, and a task Plaintiff certainly cannot accomplish by his mere pleadings in this case. Accordingly, Plaintiff's motion for judgment on the pleading should be denied and the Village granted leave to file an answer.¹

Furthermore, Plaintiff pled his December 2015 Complaint as a challenge to Will County's variance decision. Now, however, Plaintiff has moved for judgment on the pleadings based on a new theory: instead of challenging the decision of Will County, it seems Plaintiff wants this Court to declare that he was not obligated to obtain a variance in the first instance. This is a different legal issue than Plaintiff plead in his Complaint. If Plaintiff wants to advance this theory, he should have pled it in the Complaint. Certainly it is unfair for Plaintiff to now advance the theory in a motion for judgment on the pleadings when the pleadings do not even contain the theory.

ARGUMENT

I. Plaintiff is not entitled to judgment on the pleadings.

The Village hereby adopts by reference the arguments made by Will County in the County's "Response to Plaintiff's Motion for Judgment on the Pleadings" which was filed December 31, 2018. Will County made the correct decision and Plaintiff is not entitled to benefit from his creation of an illegal parcel.

¹ Shortly after the Village intervened in this matter, it filed a motion to dismiss based on its annexation of the Plaintiff's property, and the underlying pleadings in this matter were put on hold during the quo warranto proceedings and the appeal. For these reasons, the Village has not answered Plaintiff's underlying complaint.

Additionally, the Village notes that Will County's decision was a legislative one per section 5-12012.1 of the Counties Code, which provides in part:

Any decision by the county board of any county, home rule or non-home rule, in regard to any petition or application for a special use, **variance**, rezoning, or other amendment to a zoning ordinance shall be subject to **de novo judicial review as a legislative decision**, regardless of whether the process in relation thereto is considered administrative for other purposes...

55 ILCS 5/5-12012.1 (2019) (emphasis added).

The phrase "de novo judicial review as a legislative decision" means that the question of whether Will County's variance decision should be upheld is decided by this court under the same standards applied when legislative decisions are challenged. *Our Savior Evangelical Lutheran Church v. Saville*, 397 Ill. App. 3d 1003, 1027, N.E.2d 1143, 1162 (2d Dist. 2009). This means that Plaintiff must plead and prove facts that, if true, show that Will County variance decision was arbitrary and capricious. *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 316, 891 N.E.2d 839 (2008), quoting *La Salle National Bank of Chicago v. Cook County*, 12 Ill. 2d 40, 46 145 N.E.2d 65 (1957). Legislative decisions of local governments will be upheld using rational basis review—that is, if they represent a rational means to accomplish a legitimate purpose. *Figiel v. Chicago Plan Commission*, 408 Ill. App. 3d 223 at 78 (1st Dist. 2011).

As the Illinois Supreme Court recently stated, "[z]oning is primarily a legislative function, and it is within the province of local governmental bodies to determine the use of land and to establish zoning classifications." *Gurba v. Community High School District No. 155*, 2015 IL 118332, ¶ 11. With the addition of *de novo* review, the intent of section 5–12012.1 was to narrow the range of judicial inquiries into municipal zoning decisions. *Conaghan v. City of Harvard*, 2016 IL App (2d) 151034, ¶ 53.

Plaintiff's Complaint does not even satisfy the fact pleading standard for this type of challenge, much less the standard for Plaintiff to obtain a judgment on the pleadings (i.e. that a court can determine a plaintiff is entitled to relief just by looking at the face of a complaint). Consequently, the Motion for Judgment on the Pleadings should be denied.

II. Plaintiff's Complaint does not seek a declaration that a frontage variance is not required.

Plaintiff's Complaint is a challenge to Will County's decision to deny Plaintiff's variance request, not a complaint challenging the need for a variance in the first instance. In contrast, Plaintiff's Motion for Judgment on the Pleadings seeks a declaration that no variance is even required. It is unfair for Plaintiff to now advance the theory in a motion for judgment on the pleadings when the pleadings do not even contain the theory.

CONCLUSION

WHEREFORE, the Village respectfully requests that Plaintiff's Motion for Judgment on the Pleadings be denied, that the Village be given leave to file an answer to the Complaint by a date certain, and for such other and further relief as this Court deems appropriate.

Respectfully submitted,

VILLAGE OF BOLINGBROOK

By: /s/ M. Neal Smith
M. Neal Smith, one of their Attorneys

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STATE OF ILLINOIS
THIRD DISTRICT APPELLATE COURT



Matthew G. Butler
Clerk of the Court
815-434-5050

1004 Columbus Street
Ottawa, Illinois 61350
TDD 815-434-5068

June 16, 2021

Michael J. Martin
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Joliet, IL 60432

RE: Chicago Title Land Trust Co. v. County of Will, et al.
General No.: 3-19-0564
County: Will County
Trial Court No: 15MR2972

The Court has this day, June 16, 2021, entered the following order in the above entitled case:

Appellees' Petition for Rehearing is DENIED.

Justices Holdridge and Schmidt concur in the denial. Justice O'Brien would grant the petition.

A handwritten signature in black ink, appearing to read 'M. G. Butler', is written over a horizontal line.

Matthew G. Butler
Clerk of the Appellate Court

c: James William Glasgow
Matthew L. Guzman
Michael Rusnak Martin
Robert Wilder

No. _____

IN THE SUPREME COURT OF ILLINOIS

CHICAGO TITLE LAND TRUST
COMPANY, as Trustee and as Successor to
North Star Trust Company, Successor to
Harris Bank, Successor to First National Bank,
under a Trust Agreement Dated October 21,
1979 and known as Trust Number 1689, by
HENRY E. JAMES, the Holder of the Power
of Direction and the owner of the Beneficial
Interest of the Land Trust,

Plaintiff-Appellee

vs.

VILLAGE OF BOLINGBROOK,

Intervenor-Appellant,

(The County Of Will, a Body Politic and
Corporate, the Will County Planning and
Zoning Commission, an Agency of Will
County, Lenard Vallone, an Individual,
Barbara Peterson, an Individual, Kimberly
Mitchell, an Individual, Hugh Stipan, an
individual, Scott Lager, an Individual,
Michael Carruthers, an Individual, and
Thomas White, an Individual, Defendants).

On Appeal from the Appellate Court
Of Illinois, Third District

Case No: 3-19-0564

Date of Rule 23 Order: May 24, 2021

Petition for Rehearing Denied:
June 16, 2021

Appeal from the Circuit Court for the
12th Judicial Circuit
Will County, Illinois

Circuit Court Number 15 MR 2972

Honorable Roger D. Rickmon
Judge Presiding

Date of Order: September 24, 2019

Supreme Court rule which confers
jurisdiction upon the reviewing
Court: Supreme Court Rule 315

**PLAINTIFFS RULE 315 PETITION FOR LEAVE TO APPEAL TO THE
ILLINOIS SUPREME COURT**

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Michael R. Martin (Attorney No. 6288388)
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E-FILED
7/21/2021 10:49 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK

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Counsel for Plaintiffs-Appellees,
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as Successor to North Star Trust Company, Successor to Harris
Bank, Successor to First National Bank, under a Trust
Agreement Dated October 21, 1979 and known as Trust Number
1689, by HENRY E. JAMES, the Holder of the Power of
Direction and the owner of the Beneficial Interest of the Land
Trust.

ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

I.	PRAYER FOR LEAVE TO APPEAL	1
II.	JUDGMENT BELOW	1
III.	POINTS RELIED UPON FOR REVIEW	2
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I. PRAYER FOR LEAVE TO APPEAL

Pursuant to Illinois Supreme Court Rule 315, Plaintiffs/Appellees, CHICAGO TITLE LAND TRUST COMPANY, as Trustee and as Successor to North Star Trust Company, Successor to Harris Bank, Successor to First National Bank, under a Trust Agreement Dated October 21, 1979 and known as Trust Number 1689, by HENRY E. JAMES, the Holder of the Power of Direction and the owner of the Beneficial Interest of the Land Trust (collectively referred to as “James”), by and through its attorneys, Dunn, Martin & Miller, Ltd., respectfully petitions for leave to appeal the judgment entered on May 24, 2021 by the Illinois Appellate Court for the Third District in *Chicago Title Land Trust Company v. Village of Bolingbrook*, 2021 IL App (3d) 190564-U, (the “Decision”) A001-009¹ and subsequent denial on June 16, 2021 of Plaintiffs Illinois Supreme Court Rule 367 Petition for Rehearing (the “Petition for Rehearing”), A010-032.

II. JUDGMENT BELOW

The Decision, a Rule 23 Order, with Justice O’Brien dissenting, reversed and remanded the portion of the trial court’s September 24, 2019 written order (the “September 24th Order”), C.000259-000261, which entered an injunction against the Appellant/Defendant/Intervenor, THE VILLAGE OF BOLINGBROOK (the “Village”) that halted the Village’s second attempt to force annex James’ property before the trial court could enter judgment in James favor and against Defendants, the COUNTY OF WILL (the “County”) and the Village, an intervenor defendant, on James’ Complaint for Administrative Review, Declaratory Judgment and Mandamus (the “Zoning Complaint”). C.Supp032-148. The Village filed an interlocutory appeal of the September 24th Order contesting the entry of

¹ Citations to this Petitions Appendix are cited as “A__”; citations to the Appellant’s Supporting Record are cited as “C_”; and citations to Appellee’s Supplementary Supporting Record are cited as “C.Supp__”.

the injunction, C000001-000007; and on May 24, 2021, the Third District Appellate Court issued the Rule 23 Decision overturning the injunction entered as part of the September 24th Order. A001-090. On June 16, 2021, the Appellate Court denied James' Petition for Rehearing. A032. Neither party filed a petition for publication.

III. POINTS RELIED UPON FOR REVIEW

The Court should grant leave to appeal for the following reasons:

1. The Third District's opinion that James was required to file a separate complaint against the Village despite the Village being a named defendant in the Zoning Complaint which still pending and which the Village elected to never answer, ignores the well-established role of an intervenor in a lawsuit. If allowed to stand, the Decision would establish a dangerous precedent that flies in the face of the intervention statute, would thwart the ability of a trial court to control the actions of an intervenor and require parties to file additional, duplicitous, unnecessary complaints against intervenors already subject to the jurisdiction of the court in order to prevent collateral attacks on judgments entered by the trial court.
2. The Third District erroneously concluded that the trial court ordering the County to issue James his long-sought after building permit as part of the September 24th Order expired the need for injunctive relief to prevent the Village from interfering with the building permit and the issuance of an occupancy permit based on the building permit while the Zoning Complaint was still pending.
3. The Third District failed to apply the law of the case doctrine and consider its own ruling entered in *Chicago Title Land Trust Co. v. County of Will*, 2018 IL App (3d) 160713, ¶46 ("*James I*"), C.Supp001-023, by ignoring a second sham annexation of a

neighboring property initiated by the Village not the adjoining property owner, in an attempt, admitted by the Village, to circumvent the trial court's jurisdiction in the zoning case in order to force annex James' property a second time before James was allowed to obtain a court ordered building permit and an occupancy permit arising out of the building permit.

IV. STATEMENT OF FACTS

James, by and through his land trust, is the owner of 3.08 vacant lot located in unincorporated DuPage Township, Will County, Illinois that lies along Interstate I-55 South Frontage Road east of Veterans Parkway (the "Property"). C.Supp033. James purchased the Property in 1979; and at the time of his purchase, the County rezoned the Property from A-1 Agricultural to I-2 Industrial under the then current Will County Ordinance, which at the time permitted outdoor storage on a vacant lot as a permitted use. C.Supp034. The Property remained vacant from 1979 until 1989 when James applied for and received an access permit from the Illinois Department of Transportation to South Frontage Road; and James erected a chain link fence around approximately 1 acre of the Property and began using the fenced area for the outdoor storage of automobiles, pickup trucks and other vehicles. C.Supp034. This use of the Property has been continuous since 1989. C.Supp034.

In 2013, the Mayor of the Village, Roger C. Claar, made a complaint to the County regarding the Property; and in response, James installed screening slats in the existing fence and cleaned up and removed various piles of debris located on the Property. C.Supp035. Despite these efforts, the County conducted an Administrative Hearing that found James was in violation of the County's Zoning Ordinance Section 93.004 *Public Nuisance* and Section 155-7.20-D *Prohibited Uses*; and subsequently brought an enforcement action against James, Will County Case No. 13 OV 4444 (the "Enforcement Litigation"). C.Supp035.

The Enforcement Litigation proceed to trial and the trial court found in favor of the County and against James as it had determined that by the time James had put the Property to use for outdoor storage in 1989, outdoor storage was no longer a permitted use under the County's I-2 Zoning Ordinance in the absence of the existence of an enclosed building or a special use permit that permitted outdoor storage. C.Supp035. Rather than appeal the judgment entered in the Enforcement Litigation, at the request of the County, James applied for a special use permit for outdoor storage and two variance applications: (1) for lot frontage from 80 feet to 60 feet as the Property has always only had 60 feet of frontage; and (2) a variance for the height of the fence from 4 feet to 6 feet, the height of the current fence. C.Supp035.

Although the County's staff recommended approval of James' special use application for outdoor storage and two variance applications, the Village passed a Resolution of the Village's Mayor and Trustees objecting to James' special use and variance applications and representatives of the Village, including the Mayor, appeared and objected to James' special use and variance applications at the public hearings before the County's Planning and Zoning Commission (the "PCZ"), the County's Land Use Committee and the full County Board. C.Supp035-036. Ultimately, the full County Board denied James' variance application for the lot frontage despite the Property only ever having 60 feet of lot frontage, a denial that made James' special use application for outdoor storage meaningless. C.Supp038-039.

In his continuing effort to come into compliance with the County's Zoning Ordinance and based on the suggestions of the County's staff, on March 31, 2015 James filed a second variance application for the lot frontage and a building permit application to build a pole-barn on the Property. C.Supp039. Among other requirements, these new applications also required

James to obtain approval from the local highway authority who had jurisdiction over South Frontage Road, the Village, for the construction of the pole-barn. C.Supp038. Despite the Village's Engineer admitting the proposed pole-barn did not increase the intensity of use of the Property, the Village's Engineer stated he could not approve the project without receiving authorization from his director and the Village's authorities. C.Supp038. Nonetheless, the County issued a staff report recommending approval of James' request for a lot frontage variance and the issuance of a building permit so James could build a pole-barn on the Property. C.Supp039.

However, the Village and its representatives, including Mayor Claar, continued to appear at the County's public meetings on these new applications, including the November 29, 2015 full County Board meeting in which, once again and despite the Property only ever having 60 feet of frontage, the full County Board denied James' variance application. C.Supp039-041.

On December 22, 2015, James filed the Zoning Complaint against the County concerning the County's denial of his variance application for lot frontage and refusal to issue a building permit to allow James to construct a pole-barn on the Property so he could bring his continued use of the Property since 1989 into compliance with the County's current Zoning Ordinance. C.Supp032-148. Immediately, after the Zoning Complaint was filed, the Village requested to intervene and become a named defendant in the Zoning Complaint, which request was granted by the trial court on January 20, 2016. C000024. Twice, on January 20, 2016 and by March 23, 2016 and again on March 23, 2016 and by May 11, 2016, the trial court granted the Village leave to answer or otherwise plead to the Zoning Complaint but the Village never answered the Zoning Complaint. C000024.

Presumably, the Village elected to not answer or otherwise plead to the Zoning Complaint because on May 10, 2016 it passed an ordinance attempting to involuntarily annex James' property by forced annexation together with an adjoining parcel also owned by James. C000029. In response, the trial court granted James leave to file a Complaint in Quo Warranto Complaint (the "Quo Warranto Complaint") attacking the Village's forced annexation of his properties that relied solely on a suspect annexation agreement with Commonwealth Edison (the "ComEd Annexation") in order to wholly surround James' properties. C000025-000106. The trial court also stayed James' Motion for Judgment on the Pleadings filed on May 20, 2016 ("Motion for Judgment") and the County's and the Village's motions to dismiss based on the Village's forced annexation, pending the resolution of the Quo Warranto Complaint. Ultimately, the Third District issued its ruling in *James I* that declared the Village's forced annexation of James' properties and the ComEd Annexation a sham and reversed and remanded the case back to the trial court with a mandate for the trial court to enter judgment in favor of James and against the Village on the Quo Warranto Complaint. C.Supp001-023. On September 26, 2018, this Court denied the Village's Petition for Leave to Appeal concerning the decision entered in *James I*. C.Supp026. After the mandate from *James I* was filed with the trial court on November 2, 2018, the trial court entered judgment in James' favor and against the Village on the Quo Warranto Action on November 28, 2018. C000161, C.Supp024-025.

The case did not end there as the Zoning Complaint and James' previously filed Motion for Judgment were still pending against both the County and Village, who was still party to the lawsuit. C.Supp027-031. On December 4, 2018, a briefing schedule was set on the Motion for Judgment and both the Village and the County were granted leave to file

responses to the Motion for Judgment. C.Supp027. After several continuances and after the matter was fully briefed by James, the County and the Village, the Motion for Judgment finally proceeded to hearing on May 15, 2019 and was taken under advisement by the trial court to rule by June 11, 2019. C000170. There is no dispute the trial court did not rule on and grant Plaintiff's Motion for Judgment until September 24, 2019 which the trial court admitted was due to its own delay. C000259, C000286:10-19.

Rather than allow the Zoning Complaint to come to its natural and proper conclusion, and while the parties were waiting for a decision on the Motion for Judgment, the Village attempted to circumvent the holding of *James I* and the authority of the trial court to issue a lot frontage variance and order the County to issue a building permit, by once again attempting to force annex James' property based on a new annexation agreement with Commonwealth Edison similar to the sham ComEd Annexation that was the subject matter of *James I*. C000171-000258. Akin to *James I*, the new annexation agreement with Commonwealth Edison confirmed the Village once again approached Commonwealth Edison to annex its property for the sole purpose of force annexing James' property, as admitted by the Village's Mayor. C000258. After James was notified on August 27, 2019 that the Village passed another ordinance seeking to force annex his property, on August 28, 2019 he responded by filing Plaintiff's Motion for Entry of an Order on Will County to Issue a Building Permit to Plaintiff and to Stay the Village of Bolingbrook on Force Annexing the Plaintiff's Property until this Court has Ruled on this Case (the "Motion to Stay"), C000171-000187. The Motion to Stay requested the trial court rule and grant the Motion for Judgment and order the County to issue a building permit so James could build his long sought-after pole barn; and also requested that the trial court stay the Village's second attempt to force annex James' property

while the Zoning Complaint was still pending. C000171-000187. On September 24, 2019, the trial court granted the Motion for Judgment and granted the Motion for Stay by issuing the September 24th Order, an interlocutory order, which the Village appealed pursuant to Illinois Supreme Court Rule 307(a). C0000001-0000007, C000259. On May 24, 2021, the Third District, with Justice O'Brien dissenting, issued the Decision overturning the injunction entered against the Village on September 24, 2019. A001-009. James timely filed the Petition for Rehearing on June 11, 2021, which the majority of the Third District denied on June 16, 2021 with Justice O'Brien dissenting and confirming she would have granted the Petition for Rehearing. A010-032

V. ARGUMENT

A. Requiring James to file a separate complaint against the Village while the Zoning Complaint was still pending and it was a named defendant to the Zoning Complaint in order to prevent the Village from circumventing the authority of the trial court to grant James his long sought-after relief would establish a dangerous precedent and contradicts the well-established status of an intervenor in a lawsuit and the ability of a trial court to control the actions of an intervenor.

It is well established that “[i]ntervention is not an independent proceeding but is an ancillary and supplemental one which must be in subordination to the main proceeding.” *People ex rel. Scott v. Illinois Protestant Children’s Home, Inc.*, 95 Ill.App.3d 552, 558 (1st Dist. 1981). Pursuant to the intervention statute, “an intervenor shall have all the rights of an original party” provided an intervenor “shall not raise new issues ... or add new parties” and “shall not interfere with the control of the litigation, as justice and the avoidance of undue delay may require.” 735 ILCS 5/2-408. It has been consistently held that “an intervenor must take a case as he finds it and cannot change a proceeding by introducing new matters not relevant to the controversy or which unduly complicate it.” *Home Ins. Co., Inc. v. Lorelei*

Restaurant Co., Inc., 83 Ill.App.3d 1083, 1087 (1980). As the Third District recognized long ago, “the fundamental purpose of these rules is to expediate litigation” and “the rules are not sufficient unto themselves but are to be applied with that objective in view.” *Strader v. Board of Ed. of Community Unit School Dist. No. 1 of Coles County*, 351 Ill.App 451, 455 (3rd Dist. 1953).

The crux of the Decision to overturn the injunction entered by the trial court is based on the majority’s opinion that James needed to file a separate complaint against the Village in order to prevent the Village from circumventing the decision rendered in *James I*, which had become the law of the case, and the authority of the trial court to grant the Motion for Judgment and order the County to issue James his long-sought after building permit. A.007, ¶ 16 (“Because no complaint was filed or pending against the Village when the plaintiff filed the motion for preliminary injunction, the court erred by granting the motion”). However, this holding clearly ignores the role of the Village as an intervenor in a lawsuit; and ignores that a complaint was pending against the Village when the injunction was ordered, the Zoning Complaint, something the majority even recognized was still pending: “plaintiff’s action [the Zoning Complaint] against the defendants remained pending.” A003, ¶ 7.

The Village at its own request became a defendant in the Zoning Complaint and submitted to the jurisdiction of the trial court. As an intervenor, the Village takes the case as is. It is bound by the orders of the trial court, is within the jurisdiction of the trial court and cannot interfere with the control of the litigation. The Village cannot knowingly and on its own accord, request to be named a defendant to the Zoning Complaint, a complaint it has never answered, and then just simply ignore and attempt to circumvent the orders of the trial

court when it looks like it is going to lose the litigation by once again attempting to force annex James' Property to nullify the building permit the trial court was ordering be issued.

It would be improper to allow the Village to come into the case as an intervenor as a defendant to the Zoning Complaint; but then also require James to file a separate complaint against the Village just to have the trial court's orders enforced and not interfered with by the Village. Accordingly, this Court's review is warranted to eliminate this dangerous precedent that flies in the face of the intervention statute and the role of an intervenor in a lawsuit; but has also now added a second requirement that requires parties to file additional, duplicative and unnecessary complaints against intervenors who have requested to become a party to the lawsuit just to have the trial court's orders enforced.

B. JAMES' REQUEST FOR INJUNCTIVE RELIEF DID NOT EXPIRE WHEN THE TRIAL COURT FINALLY ORDERED THE COUNTY TO ISSUE A BUILDING PERMIT ON SEPTEMBER 24, 2019.

In the Decision, the majority also improperly concluded that James' request for injunctive relief expired when the trial court ordered the County to issue him a building permit. A007, ¶ 17. This conclusion ignores that the September 24th Order that granted the injunction and ordered the County to issue a building permit did not end the Zoning Complaint as it was an interlocutory order that was appealed by the Village pursuant to Rule 307(a). The trial court ordering the County to finally issue the building permit did not expire James' need for injunctive relief to protect his vested property rights. There was still a need to ensure the County and Village complied with the trial court's order requiring the County to issue a building permit to James.

A land owner does not gain a vested right merely by filing for a building permit. 1350 *Lake Shore Associates v. Healey*, 223 Ill.2d 607, 622 (2006). However, an owner can gain a

vested right to build and utilize property under its current zoning classification when a permit was filed even if the governing authority after the building permit is filed proposes to amend its zoning classification that would make the proposed use illegal. *Id.* While zoning authorities have the right to amend zoning classifications of property, an owner obtains a vested right in a prior zoning classification “where the owner sustained a significant change of position, by either making substantial expenditures or incurring substantial obligations, in good-faith reliance upon the probability of the issuance of a building permit.” *1350 Lake Shore Associates v. Randall*, 401 Ill.App.3d 96, 102 (1st Dist. 2010). The whole purpose of this exception is to protect land owners and prevent unfairness to those who have made a change in position on good-faith reliance on the issuance of a building permit or a prior zoning classification. *Id.* at 103; *see also Cribbin v City of Chicago*, 384 Ill.App.3d 878, 887 (1st Dist. 2008).

The logical and reasonable consequences of ordering the issuance of the building permit is to allow James time to complete the construction pursuant to the building permit and obtain a certificate of occupancy which would, in all respects, cure all of the alleged zoning violations contended by the County and that had been vigorously initiated and prosecuted by the Village. After the September 24th Order, the trial court still had jurisdiction to enforce its order, including the authority to enjoin parties from interfering with the order, as no final order had been entered by the trial court. The injunction would be lifted after the judgment on the Zoning Complaint becomes final which cures any concerns the majority expressed about not having a vehicle “to halt the operation of the preliminary injunction.” Decision, ¶ 16.

Building the pole barn and allowing James to obtain an occupancy permit through the building permit would allow James to continue the legal and proper use of his property, even

if the Village forced annexed the property. However, the Village's rushed attempt to force annex James' property a second time before the building permit was ordered issued and before an occupancy permit was issued, negates and nullifies the building permit ordered by the trial court. The second forced annexation would cause James to lose the property's industrial I-2 zoning classification under the County Ordinance and all of his property rights to continue to use the property in the manner he has done since 1989. If the forced annexation occurs, the jurisdiction of the property changes from the County to the Village and the ordinances of the Village apply and the County building permit would be nullified because the County would lose jurisdiction of the property as the Village intended to annex the Property into the Village with a E-1 Estate Residential zoning classification under the Village's Zoning Ordinance. C000245. If that occurred not only would James lose his right to construct the pole barn which would qualify the property as a legal nonconforming use under the Village's Zoning Ordinance, he would lose his right to use his property in the same continuous manner he has done since 1989.

Even though the trial court ordered the County to issue the building permit on September 24, 2019 and despite having James' plans for his pole barn since no later than May 6, 2016, the County admitted on September 24, 2019 it had not started to review the plans submitted by James. C000295-000296. In fact, the County did not complete its review of the plans and did not issue the permit until June 4, 2020. Due to the impact of the Covid-19 Pandemic, James was unable to have a contractor construct the pole barn and, as a result, the building permit has been extended by the County and does not expire until June 4, 2022. The injunction barring the forced annexation of James' property should remain in effect until such time as an occupancy permit is issued by the County or until the building permit expires on

June 4, 2022. The Third District misapprehended the impact of the interlocutory order issued on September 24, 2019 by the trial court and was clearly erroneous when it stated that James request for injunctive relief had expired. This Court should not allow the Village to squash and extinguish James' property rights so easily, which alone warrants a review by this Court.

C. THE THIRD DISTRICT FAILED TO APPLY THE LAW-OF-THE-CASE DOCTRINE TO THE VILLAGE'S RENEWED ATTEMPT TO INVOLUNTARILY ANNEX JAMES' PROPERTY

"Under the law of the case doctrine, issues presented and disposed of in a prior appeal are binding and will control in the circuit court on remand as well as in the appellate court in a subsequent appeal." *Reich v. Gendreau*, 308 Ill.App.3d 825, 829 (2nd Dist. 1999). "The law of the case doctrine encompasses a court's explicit decisions and issues decided by necessary implication." *Id.* "Like other preclusion doctrines, such as *res judicata* and collateral estoppel, the law-of-the-case doctrine prevents a defendant from taking two bites of the same apple." *Diocese of Quincy*, 2016 IL App (4th) 150193, ¶27. Issues previously decided include both questions of fact and law. *Radwill v. Manor Care of Westmont, IL, LLC*, 2013 IL App (2d) 120957 ¶ 8. Moreover, "[q]uestions of law that are decided [in] a previous appeal are binding on the trial court on remand as well as the appellate court in subsequent appeals." *Id. quoting Long v. Elborno*, 397 Ill.App.3d 982, 989 (1st Dist. 2010).

The two recognized exceptions to the law of the case doctrine are if: "(1) a higher reviewing court makes a contrary ruling on the same issue subsequent to the lower court's decision; or (2) a reviewing court finds that its prior decision was palpably erroneous." *Radwill*, 2013 IL App (2d) 120957, ¶ 9.

In this case, the issue of the Village approaching and using Commonwealth Edison to force-annex the James Property has already been decided. In *James I*, the Appellate Court concluded that the Village's voluntary annexation of the Commonwealth Edison property was

a sham transaction “created exclusively for the purpose of allowing the Village to reach the James property.” *James I*, 2018 IL App (3d) 160713, ¶42. “Therefore, in light of our conclusion that the ComEd annexation was a sham transaction, we hold that the ComEd annexation is a nullity and cannot be used to create contiguous boundaries with the James property.” *Id.* at ¶46.

The second attempt to force annex James’ Property is nothing more than an attempt by the Village to repeat this same sham transaction that was shot down in *James I*. It was proper for the trial court to grant the Motion to Stay and maintain the status quo and stop the Village from force-annexing the James Property a second time before James had a chance to act on the building permit that was finally ordered issued. There was no subsequent ruling by this Court that has negated the holding of *James I*; and the Third District did not find its ruling in *James I* palpably erroneous.

The Appellate Court was bound by its previous decision from *James I*; and cannot rescind the injunction that if rescinded allows the Village to pursue a second attempt utilizing the Commonwealth Edison property to force annex the James’ Property without addressing the holding of *James I*. Therefore, it was proper for the trial court to apply the law of the case doctrine and enter the injunction. However, it was wholly improper for the Third District to ignore and disregard its own holding in *James I* and allow the Village a second attempt at a sham annexation. This Court should not allow the Appellate Court to ignore its rulings and not apply the law of the case, thus review by this Court is necessary.

VI. APPENDIX

James has attached an appendix of the following documents:

1. May 24, 2021 Appellate Court Order (A.1-9);

2. Plaintiffs Illinois Supreme Court Rule 367 Petition for Rehearing (A.10-30); and
3. June 16, 2021 Appellate Court Order (A.31).

VII. CONCLUSION

The Third District clearly overlooked or misapprehended that at the time the Motion to Stay was granted, the trial court not only had jurisdiction over the Village, but that pursuant to the Village's own request of intervention, it was a named defendant in the Zoning Complaint, which was still pending. The basis for the majority's reversal of the injunction was there was no complaint pending against the Village. As this is a drastic departure and ignores the well-settled role of an intervenor, this Court must review the Decision. Further, it is clear that James still has property rights in need of protection. The trial court ordering the issuance of the building permit did not dispose of the Zoning Complaint, clearly confirmed as this was an interlocutory appeal filed by the Village, and the fact the County did not start to review the building permit plans and did not issue the building permit until June 4, 2020, well after the order entered on September 24, 2019. The injunction was and is still necessary to protect James' property rights and to prevent the Village from interfering with the orders of the trial court and its authority as well as the holding of this court in *James I*, which is the law of the case. For these reasons, James respectfully petitions this Court for review of the Decision.

Wherefore, Plaintiffs-Appellees, CHICAGO TITLE LAND TRUST COMPANY, as Trustee and as Successor to North Star Trust Company, Successor to Harris Bank, Successor to First National Bank, under a Trust Agreement Dated October 21, 1979 and known as Trust Number 1689, by HENRY E. JAMES, the Holder of the Power of Direction and the owner of the Beneficial Interest of the Land Trust, pray that this Honorable Court grant this Petition,

allow the Plaintiffs to file a brief in support of this petition, reverse the decision of the Appellate Court contained in its May 24, 2021 order and grant such further relief this Court deems just and proper.

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Respectfully submitted,

Plaintiffs-Appellees, CHICAGO TITLE
 LAND TRUST COMPANY, as Trustee and
 as Successor to North Star Trust Company,
 Successor to Harris Bank, Successor to First
 National Bank, under a Trust Agreement
 Dated October 21, 1979 and known as Trust
 Number 1689, by HENRY E. JAMES, the
 Holder of the Power of Direction and the
 owner of the Beneficial Interest of the Land
 Trust.

By: _____
 one of their attorneys

SUPREME COURT RULE 341(C) CERTIFICATE OF COMPLIANCE

I certify that this Petition for Leave to Appeal Pursuant to Supreme Court Rule 315 conforms to the requirements of Rules 341(a) and (b). The length of the brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 17 pages.

Plaintiffs-Appellees, CHICAGO TITLE LAND TRUST COMPANY, as Trustee and as Successor to North Star Trust Company, Successor to Harris Bank, Successor to First National Bank, under a Trust Agreement Dated October 21, 1979 and known as Trust Number 1689, by HENRY E. JAMES, the Holder of the Power of Direction and the owner of the Beneficial Interest of the Land Trust.

By: /s/ Michael J. Martin
one of their attorneys

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September 29, 2021

In re: Chicago Title Land Trust Company, etc., Appellant, v. Village of
Bolingbrook, Appellee. Appeal, Appellate Court, Third District.
127458

The Supreme Court today ALLOWED the Petition for Leave to Appeal in the above
entitled cause.

We call your attention to Supreme Court Rule 315(h) concerning certain notices which
must be filed.

Very truly yours,

A handwritten signature in cursive script that reads "Carolyn Taft Gosbell".

Clerk of the Supreme Court

STATE OF ILLINOIS)
) SS
COUNTY OF WILL)

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**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS**

CHICAGO TITLE LAND TRUST COMPANY,
as Trustee and as Successor to North Star Trust
Company, Successor to Harris Bank, Successor to
First National Bank, under a Trust Agreement
Dated October 21, 1979 and known as Trust
Number 1689, by HENRY E JAMES, the Holder
of the Power of Direction and the owner of the
Beneficial Interest of the Land Trust.

Plaintiff,

vs

COUNTY OF WILL, a body politic and corporate,
the WILL COUNTY PLANNING and ZONING
COMMISSION, an agency of Will County,
LENARD VALLONE, an individual, BARBARA
PETERSON, an individual, KIMBERLY
MITCHELL, an individual, HUGH STIPAN, an
individual, SCOTT LAGGER, an individual,
MICHAEL CARRUTHERS, an individual, and
THOMAS WHITE, an individual,

Petitioners,

vs

VILLAGE OF BOLINGBROOK,

Intervenor.

Case No: 15 MR 2972

FILED
19 SEP 20 AM 11:25
ILL. COUNTY COURT
WILL COUNTY COURT ANNEX

COURT ORDER

THIS CAUSE coming for hearing on Plaintiffs' Motion to Stay the Village of
Bolingbrook on force annexing the Plaintiff's property and the Village of Bolingbrook's Motion
to Strike Plaintiff's motion, and after hearing, the Court being fully advised in the premises,

THE COURT FINDS:

1. That the second attempt of the Village of Bolingbrook to involuntarily annex the
Plaintiff's property as contained in its proposed Ordinance No. 19-068 scheduled for public
hearing and action by the Village on September 24, 2019 is a collateral attack on the jurisdiction

15 MR 2972
9/24/19 Order

of the Appellate Court

2. That Plaintiff's property rights will be irreparably harmed by the action of the Village of Bolingbrook in involuntarily annexing the Plaintiff's property.

3. That Plaintiff has a likelihood of success on the merits of the previously decided quo warranto action and that Plaintiff has no adequate remedy at law without the entry of an order enjoining the Village from proceeding upon its involuntary annexation of Plaintiff's property.

4. That the Village's new annexation agreement with ComEd does not address all of the issues raised by the Appellate Court in that this Court questions that the annexation of the ComEd property is only an accommodation of the Village so it can involuntarily annex the Plaintiff's property.

IT IS HEREBY ORDERED THAT:

- A. The motion of the Village of Bolingbrook to Strike is denied.
- B. The motion of the Plaintiff to stay the Village of Bolingbrook from force annexing its property is granted and the Village of Bolingbrook is enjoined from again attempting to involuntarily annex Plaintiff's property as contemplated by Ordinance No 19-068 scheduled for hearing by the Village at its September 24, 2019 meeting, until such time as the Village of Bolingbrook seeks relief from the Appellate Court and that there is no just reason to delay enforcement of this Order.
- C. That Plaintiff's Motion for Judgment on the Pleadings is granted and the County of Will is ordered to issue a variance for lot frontage from 80 feet to 60 feet for the Plaintiff's property and the County of Will Building

Department is ordered to issue a building permit provided the submitted plans and all the applicable County Code requirements for issuance of said building permit are satisfied for the Plaintiff to construct a pole barn upon the plans and documents previously submitted by the Plaintiff and the Plaintiff shall comply with all other ordinances of the County regarding submitting applications for permits, supplying appropriate bonds and payment of filing fees and engineering fees, and all other customary and usual requirements of the County of Will for the construction of a pole barn on Plaintiff's property.

Date: September 24, 2019

Entered

Judge



Michael J. Martin – 1781960
Michael R. Martin – 6288388
Dunn, Martin, Miller & Heathcock, Ltd
15 West Jefferson Street, Suite 300
Joliet, Illinois 60432
mikejmartin@willcountylaw.com
mikermartin@willcountylaw.com

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS**

CHICAGO TITLE LAND TRUST COMPANY, as)
Trustee and as Successor to North Start Trust)
Company, Successor to Harris Bank, Successor to)
First National Bank, under a Trust Agreement Dated)
October 21, 1979 and known as Trust Number)
1689, by HENRY E. JAMES, Holder of the Power of)
Direction and Beneficial Interest of the Land Trust.)

Plaintiff,)

vs.)

Case No. 15 MR 2972

COUNTY OF WILL, a body politic and corporate,)
the WILL COUNTY PANNING and ZONING)
COMMISSION, LENARD VALLONE, an individual,)
BARBARA PETERSON, an individual, KIMBERLY)
MITCHELL, an individual, HUGH STIPEN, an)
individual, SCOTT LAGGER, an individual,)
MICHAEL CARRUTHERS, an individual, and)
THOMAS WHITE, an individual.)

Defendants.)

**VILLAGE OF BOLINGBROOK'S MOTION TO INTERVENE AS A
DEFENDANT AS A MATTER OF RIGHT**

NOW COMES intervenor, VILLAGE OF BOLINGBROOK, by and through its attorneys, ROBBINS, SCHWARTZ, NICHOLAS, LIFTON & TAYLOR, LTD., and for its Motion to Intervene as a Defendant as a Matter of Right, hereby states as follows:

1. Plaintiff filed the above captioned matter on December 22, 2015.
2. The Village of Bolingbrook appeared before the Will County Planning and Zoning Commission as well as the Will County Board and submitted oral or written statements with respect to the decision the Plaintiff appeals from in this matter.

FILED
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CLERK CIRCUIT COURT
WILL COUNTY, ILLINOIS

3. As required by the Administrative Review Law, 735 ILCS 5/3-107(c), within 30 days of the filing of the complaint in the above captioned case, Plaintiff sent notice to the Village advising the Village of its right to intervene in this matter.

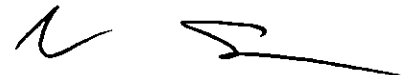
4. Said notice advising the Village of its right to intervene was mailed to the Village on December 22, 2015.

5. Per the Administrative Review Law, 735 ILCS 5/3-107(c), upon application to this court within 30 days of the mailing of the notice or right to intervene, the Village is entitled to intervene in this matter as a matter of right because the Village appeared before the Will County Planning and Zoning Commission as well as the Will County Board and submitted oral or written statements with respect to the decision the Plaintiff appeals from.

WHEREFORE, the Village respectfully requests that it be granted leave to intervene in this matter, that it be granted 30 days to answer or otherwise plead, and for such other and further relief as this Court deems appropriate.

Respectfully submitted,

VILLAGE OF BOLINGBROOK

By: 
M. Neal Smith, one of their Attorneys

Kenneth M. Florey (kflorey@robbins-schwartz.com)
M. Neal Smith (nsmith@robbins-schwartz.com)
ROBBINS, SCHWARTZ, NICHOLAS, LIFTON & TAYLOR, LTD.
631 E. Boughton Road, Suite 200
Bolingbrook, IL 60440-3098
630-929-3639
630-783-3231 – Facsimile

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS**

CHICAGO TITLE LAND TRUST COMPANY, as
Trustee and as Successor to North Star Trust Company,
Successor to Harris Bank, Successor to First National
Bank, under a Trust Agreement Dated October 21, 1979
and known as Trust Number 1689,
by HENRY E. JAMES, the Holder of the Power of
Direction and the owner of the Beneficial Interest of the
Land Trust.

Plaintiff,

vs.

Case No: 15 MR 2972

COUNTY OF WILL, a body politic and corporate, the
WILL COUNTY PLANNING and ZONING
COMMISSION, an agency of Will County, LENARD
VALLONE, an individual, BARBARA PETERSON, an
individual, KIMBERLY MITCHELL, an individual,
HUGH STIPAN, an individual, SCOTT LAGGER, an
individual, MICHAEL CARRUTHERS, an individual,
and THOMAS WHITE, an individual,

Petitioners,

vs.

VILLAGE OF BOLINGBROOK,

**PLAINTIFF'S MOTION FOR ENTRY OF AN ORDER
ON WILL COUNTY TO ISSUE A BUILDING PERMIT TO PLAINTIFF
AND TO STAY THE VILLAGE OF BOLINGBROOK ON
FORCE ANNEXING THE PLAINTIFF'S PROPERTY
UNTIL THE COURT HAS RULED IN THIS CASE**

NOW COMES the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, ex. rel. CHICAGO
TITLE LAND TRUST COMPANY, as Trustee and as Successor to North Star Trust Company,
Successor to Harris Bank, Successor to First National Bank, under a Trust Agreement Dated October 21,
1979 and known as Trust Number 1689, by Henry E. James, the Holder of the Power of Direction and the
owner of the Beneficial Interest in the Land Trust, and for Plaintiff's Motion, states as follows:

1. That the Plaintiff has filed and the parties have argued to the Court Plaintiff's Motion for Judgment on the Pleadings and the Court, after hearing arguments, took the matter under advisement on May 15, 2019.

2. That the Court has not rendered a decision or entered further orders regarding the future conduct of the case.

3. That the Plaintiff has now received a notice from the Village of Bolingbrook indicating that the Village it intends to again force annex the property which is the subject of this lawsuit.

4. That after September 24, 2019 the County of Will may again lose jurisdiction of the property which is the subject of this lawsuit and the Plaintiff may again be forced to challenge the second forced annexation of its property as it previously successfully challenged the first forced annexation in the Appellate Court. See Agenda of the Village of Bolingbrook for its August 27, 2019 Regular Meeting, Item #5 under Ordinances, together with the attached proposed Ordinance attached hereto and incorporated herein as Exhibit #1.

5. That Plaintiff has provided the County with all that was required of Plaintiff in order for the County to issue a building permit for a pole barn and if the Court enters an order requiring the issuance of the permit before September 24, 2019, any forced annexation and rezoning of the property by the Village of Bolingbrook will be subject to the property being considered a legal non-conforming use.

6. That the Plaintiff will be seriously prejudiced by the Village of Bolingbrook force annexing and rezoning Plaintiff's property, particularly before the Court rules in this case and the attempts by the Village of Bolingbrook for a second time to attempt to force annex the Plaintiff's property is a direct interference with the jurisdiction of this Court.

7. That the Plaintiff's property rights are in need of protection and there is a likelihood of Plaintiff succeeding on the merits of the underlying case and the Plaintiff will suffer irreparable harm in the absence of the issuance of a stay of the Village of Bolingbrook forced annexing of Plaintiff's property and the Plaintiff has no other adequate remedy at law.

WHEREFORE, Plaintiffs, PEOPLE OF THE STATE OF ILLINOIS, ex. rel. CHICAGO TITLE LAND TRUST COMPANY, as Trustee and as Successor to North Star Trust Company, Successor to Harris Bank, Successor to First National Bank, under a Trust Agreement Dated October 21, 1979 and known as Trust Number 1689, by HENRY E. JAMES, the Holder of the Power of Direction and the owner of the Beneficial Interest in the Land Trust, and MIDLAND STATE BANK, under a trust agreement known as Trust Number 1901, by HENRY E. JAMES, the Holder of the Power of Direction and the owner of the Beneficial Interest in the Land Trust, pray this Court as follows:

- A. Ordering the County of Will to issue a building permit to the Plaintiff for the construction of a pole barn on the property prior to the September 24, 2019 proposed forced annexation of Plaintiffs' property by the Village of Bolingbrook.
- B. Stay the Village of Bolingbrook's second attempt to force annex the Plaintiff's property until the final disposition of this lawsuit.

Respectfully submitted,

CHICAGO TITLE LAND TRUST COMPANY,
under a Trust Agreement Dated October 21, 1979
and known as Trust Number 1689, by HENRY E.
JAMES, Holder of the Power of Direction and
Beneficial Interest of the Land Trust,

By:  _____
one of their attorneys

Michael J. Martin-ARDC#1781960
Douglas E. Heathcock -ARDC# 6216222
DUNN MARTIN, MILLER & HEATHCOCK, LTD.
15 W. Jefferson Street, Suite 300
Joliet, Illinois 60432
mikejmartin@willcountylaw.com

**IN THE CIRCUIT COURT FOR THE 12TH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS**

CHICAGO TITLE LAND TRUST COMP ANY, as)
Trustee and as Successor to North Star Trust Company,)
Successor to Harris Bank, Successor to First National)
Bank, under a Trust Agreement Dated October 21, 1979)
and known as Trust Number 1689,)
by HENRY E. JAMES, the Holder of the Power of)
Direction and the owner of the Beneficial Interest of the)
Land Trust.)

Plaintiff,)

Case No. 2015-MR-002972

v.)

COUNTY OF WILL, a body politic and corporate, the)
WILL COUNTY PLANNING and ZONING)
COMMISSION, an agency of Will County, LENARD)
VALLONE, an individual, BARBARA PETERSON, an)
individual, KIMBERLY MITCHELL, an individual,)
HUGH STIPAN, an individual, SCOTT LAGGER, an)
individual, MICHAEL CARRUTHERS, an individual,)
and THOMAS WHITE, an individual,)

Petitioners)

v.)

VILLAGE OF BOLINGBROOK,)

Defendant.)

**VILLAGE OF BOLINGBROOK'S
MOTION TO STRIKE PLAINTIFF'S MOTION TO STAY**

NOW COMES the Defendant, Village of Bolingbrook, by and through its attorneys,
ODELSON & STERK, LTD and moves this Honorable Court for entry of an order striking
Plaintiff's purported motion to stay the Village of Bolingbrook from annexing Plaintiff's property.

In support thereof, the Village states as follows:

Procedural History and Background

1. Plaintiff filed the original complaint in this matter in December 2015. The original
complaint was directed against Will County and contained counts seeking administrative review,
declaratory relief and mandamus.

2. Thereafter, in January 2016, this Court granted the Village of Bolingbrook's motion to intervene.

3. In June 2016, Plaintiff requested and was granted leave to file a quo warranto action against the Village.

4. In November 2016, this Court granted summary judgment in favor of the Village in the quo warranto case and Plaintiff appealed that ruling to the Third District Appellate Court.

5. In May 2018, the Third District Appellate Court reversed this Court, holding, in essence, that the annexation of ComEd property which permitted the involuntary annexation of the subject property, was a sham.

6. In November 2018, Plaintiff moved for entry of judgment (summary judgment) in this Court based on the Third District's ruling and on November 28, 2018, this Court entered judgment as to the quo warranto action.

7. Plaintiff's action against Will County remained pending before this Court after the parties briefed and argued Plaintiff's motion for judgment on the pleadings as to Plaintiff's claims against Will County.

Plaintiff's Current Motion

8. Most recently, on August 30, 2019, Plaintiff filed a motion ostensibly seeking two things: 1) a ruling on the previously briefed motion for judgment on the pleadings as to Plaintiff's claims against Will County; and 2) asking that this court "[s]tay the Village of Bolingbrook's second attempt to force annex the Plaintiffs property until the final disposition of this lawsuit."

9. According to the motion, "the Plaintiffs property rights are in need of protection and there is a likelihood of Plaintiff succeeding on the merits of the underlying case and the Plaintiff will suffer irreparable harm in the absence of the issuance of a stay of the Village of Bolingbrook forced annexing of Plaintiffs property and the Plaintiff has no other adequate remedy at law.

10. As this Court knows, these are the elements required to obtain temporary or preliminary injunctive relief.

11. As such, Plaintiff's motion, although styled as a "motion to stay," is, in fact, a motion for a preliminary injunction and, as such, it is procedurally improper and must be stricken.

12. It is well-established that a motion for preliminary injunctive relief must be supported by some sort of complaint. "The application for temporary restraining order or preliminary injunction may be included in the original complaint, in which case the complaint must be verified, or it may be requested by motion filed at the same time [as the complaint] or later and supported by proper affidavits. Even though requested in the complaint, a motion is necessary in order to bring it to the attention of the court and in order to settle the question of notice and bond." *Kolstad v. Rankin*, 179 Ill. App. 3d 1022, 1029 (1989), quoting 3 C. Nichols, Illinois Civil Practice § 2276, at 23 (rev. vol. 1987).

13. In other words, a motion for preliminary or temporary injunctive relief merely accelerates, on a temporary basis, the relief a party seeks in its complaint, or preserves the status quo pending a resolution on the merits, of the complaint brought by the party seeking the injunction. *Keeshin v. Schultz*, 128 Ill. App. 2d 460, 468 (Ill. App. Ct. 1970) ("the most frequently used basis for such injunctions, namely, [is] the preservation of the status quo pending final determination on the merits of the complaint").

14. Indeed, a fundamental factor to be considered in the issuance of preliminary injunctive relief is a likelihood of success on the merits – the merits of the underlying complaint. See *People ex rel. Fahner v. Steel Container Corp.*, 102 Ill. App. 3d 369, 374 (1981) ("The merits which are viewed are those of the underlying cause of action, and not the merits of the preliminary injunction motion").

15. In the instant case, there is no underlying complaint against the Village for this Court to consider the Plaintiff's likelihood of success on the merits.

16. The quo warranto action was resolved in Plaintiff's favor on November 28, 2018, after the Third District Appellate Court reversed this Court's decision and this Court entered judgment in Plaintiff's favor.

17. Accordingly, the previous controversy between Plaintiff and the Village is no longer a live controversy.

18. The previous controversy is resolved and the facts now are completely different. Since the Third District's decision, the Village has undertaken to address the issues raised by the appellate court.

19. After the Third District's decision, the Village entered into a new and different annexation agreement with ComEd and passed an ordinance annexing the ComEd property. See **Exhibit 1**, Annexation Agreement between the Village and ComEd, entered into in June 2019 and **Exhibit 2**, Annexation Ordinance.

20. Because the annexation agreement between the Village and ComEd - which permits the Village to annex the subject property – is completely different, Plaintiff cannot simply rely on the previous quo warranto action.

21. Accordingly, if Plaintiff intends to attempt to avoid the involuntary annexation, Plaintiff must file some type of Complaint against the Village which seeks declaratory and injunctive relief prohibiting Village's renewed (and different) annexation of the property.

Plaintiff's Motion for Preliminary Injunction Is Substantively Insufficient

22. Even ignoring the fact that the purported "motion to stay" is completely improper procedurally, it should be denied because it is substantively insufficient.

23. It is well-established that in order to "establish entitlement to preliminary injunctive relief, a plaintiff must show (1) a clearly ascertainable right in need of protection, (2) irreparable harm without protection of that right, (3) no adequate remedy at law, and (4) a substantial likelihood of success on the merits of the underlying action. *Maday v. Twp. High Sch. Dist. 211*, 2018 IL App

(1st) 180294, ¶ 40, 127 N.E.3d 795, 804, case dismissed, 124 N.E.3d 499 (Ill. 2019), citing *Caro v. Blagojevich*, 385 Ill. App. 3d 704, 708 (2008).

24. The failure to establish any one of these elements requires the denial of the preliminary injunction. *Maday* citing *Yellow Cab Co. v. Production Workers Union of Chicago & Vicinity, Local 707*, 92 Ill. App. 3d 355, 356 (1980).

25. Moreover, a “preliminary injunction is an extraordinary remedy, which is warranted only in the most urgent of circumstances when serious harm will result if an injunction is not issued.” *Grchan v. Illinois State Labor Relations Bd.*, 291 Ill. App. 3d 571, 573 (1997).

26. Ignoring the first three elements and assuming *arguendo* that Plaintiff can establish same¹, it should be abundantly clear to this Court that the motion contains no substantive information whatsoever from which any court could conclude that Plaintiff could establish the element of likelihood of success on the merits because a) there is no actual complaint pending in this Court, and b) even ignoring that deficiency, Plaintiff’s motion, which seeks extraordinary relief, contains absolutely no factual information whatsoever from which to draw such a conclusion.

Conclusion

The entry of a preliminary injunction is an extraordinary remedy. The Village is legally permitted to proceed with the annexation of the subject property, unless and until Plaintiff can meet the high bar required to obtain injunctive relief and demonstrate to this Court that the annexation is legally improper. Plaintiff has not attempted to so because it has filed no complaint related to the new annexation and, even if this Court grants Plaintiff leave to correct the obvious deficiencies in the purported “motion to stay,” Plaintiff will not be able to establish a likelihood of

¹ In the absence of a proper motion for preliminary injunction and proper, fully developed arguments in support of a preliminary injunction, it is virtually impossible for the Village to develop meaningful counter-arguments. For example, can Plaintiff ever actually establish that there is no adequate legal remedy if the Village’s annexation makes the construction of a pole barn impossible?

success on the merits of such a hypothetical complaint.

Accordingly, Plaintiff's purported motion to stay must be stricken as procedurally improper or, in the alternative, should be denied as substantively insufficient.

WHEREFORE, the Village of Bolingbrook respectfully requests this Honorable Court to enter an order striking Plaintiff's purported "motion to stay" the Village from annexing the property, or in the alternative, denying the motion as substantively insufficient, and for any additional relief the Court deems proper.

Respectfully submitted,
VILLAGE OF BOLINGBROOK

By: /s Robert Wilder

Robert Wilder
ODELSON & STERK, LTD.
3318 West 95th Street
Evergreen Park, IL 60805
(708) 424-5678
rwilder@odelsonsterk.com

R2019043725

KAREN A. STUKEL
WILL COUNTY RECORDER
RECORDED ON
07/10/2019 12:47:07 PM
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PAGES: 31
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PUBLISHED IN PAMPHLET FORM FOR THE FOLLOWING:

ORDINANCE 19-047

APPROVING ANNEXATION AGREEMENT WITH COMMONWEALTH
EDISON COMPANY (SUBJECT TO VILLAGE ATTORNEY APPROVAL)

VILLAGE CLERK

VILLAGE OF BOLINGBROOK

P.I.N. #s: 12-02-21-400-004-0000; 12-02-28-200-001-0010; 12-02-28-200-001-0020; 12-02-16-200-018-0000

PREPARED BY & MAIL TO:

VILLAGE CLERK'S OFFICE
VILLAGE OF BOLINGBROOK
375 W. BRIARCLIFF RD.
BOLINGBROOK, IL 60440

EXHIBIT 1

1831C * x

ORDINANCE NO. 19-047

**ORDINANCE APPROVING ANNEXATION AGREEMENT WITH
COMMONWEALTH EDISON COMPANY
(SUBJECT TO VILLAGE ATTORNEY APPROVAL)**

WHEREAS, Commonwealth Edison Company is the Owner (identified hereinafter as the "Owner"), of the following described property:

THE WEST 210.00 FEET (MEASURED AT RIGHT ANGLES) OF THAT PART OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 37 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH AND EAST OF THE SOUTHERLY LINE OF U.S. ROUTE 66 (INTERSTATE 55), AS DESCRIBED IN THE GRANT OF HIGHWAY RECORDED MAY 19, 1982 AS DOCUMENT NUMBER R82-10258, IN WILL COUNTY, ILLINOIS;

AND ALSO;

THE WEST 210.00 FEET (MEASURED AT RIGHT ANGLES) OF THAT PART OF THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 37 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING NORTHERLY OF THE NORTHERLY RIGHT OF WAY LINE OF NAPERVILLE ROAD (ALSO KNOWN AS VETERANS PARKWAY) AS SHOWN ON DOCUMENT NUMBER 573067, RECORDED JANUARY 14, 1944, ALL IN WILL COUNTY, ILLINOIS.

AND ALSO;

THE WEST 210 FEET (MEASURED AT RIGHT ANGLES) OF LOTS 2 AND 7 IN SCHOOL TRUSTEES SUBDIVISION OF SECTION 16, TOWNSHIP 37 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THE SOUTH 750.00 FEET OF THE WEST 210.00 FEET (MEASURED AT RIGHT ANGLES) OF SAID LOT 7), ALL IN WILL COUNTY, ILLINOIS.

(hereinafter referred to as the "Subject Property"); and

WHEREAS, the Village of Bolingbrook and the Owner wish to enter into a binding agreement (the "Annexation Agreement") with respect to annexation, zoning and development of the Subject Property, and to other related matters, pursuant to the provisions of Division 15.1 of Article Eleven of Chapter 65 of the Illinois Compiled Statutes, upon the terms and conditions contained in said agreement; and

WHEREAS, an annexation petition has been filed by the Owner of the Subject Property; and

WHEREAS, the Subject Property is presently contiguous to the Village; and

WHEREAS, all public hearings as required by law have been held by the different departments, commissions, boards, and other governmental bodies of the Village, and each has submitted various reports and recommendations, or both, required of them; and

WHEREAS, the annexation of the Subject Property to the Village will be beneficial to the Village, will properly and beneficially extend the corporate limits and the jurisdiction of the Village, will permit the sound planning and development of the Village, and will otherwise promote the proper growth and general welfare of the Village;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND BOARD OF TRUSTEES OF THE VILLAGE OF BOLINGBROOK, WILL AND DUPAGE COUNTIES, ILLINOIS, AS FOLLOWS:

SECTION ONE: The Mayor and Board of Trustees find as facts the recitals hereinabove set forth.

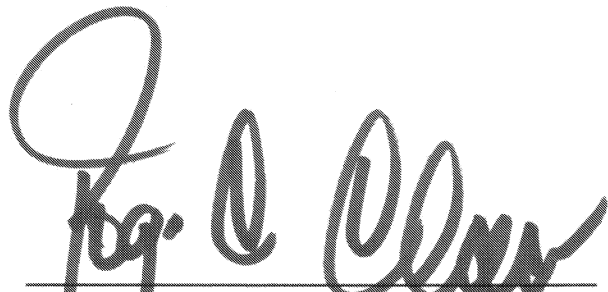
SECTION TWO: The Annexation Agreement attached hereto as Exhibit 1 shall be, and is hereby approved, and the Mayor is hereby authorized and directed to execute and the Village Clerk is hereby authorized and directed to attest said Annexation Agreement in substantially the form attached hereto as Exhibit 1.

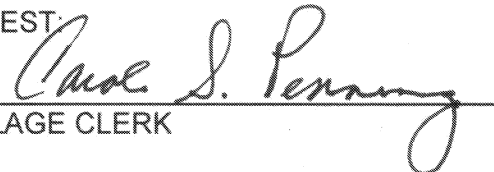
SECTION THREE: This Ordinance shall be in full force and effect from and after its passage, by a vote of at least two-thirds of the corporate authorities now holding office, and approval in the manner provided by law.

PASSED THIS 25th DAY OF JUNE, 2019.

AYES:	7	Zarate, Lawler, Basta, Watts, Carpanzano, Jaskiewicz
		Mayor Roger C. Claar
NAYS:	0	None
ABSENT:	0	None

APPROVED THIS 25th DAY OF JUNE, 2019


MAYOR

ATTEST:

VILLAGE CLERK

PUBLISHED BY THE VILLAGE CLERK, IN PAMPHLET FORM, BY AUTHORITY OF THE CORPORATE AUTHORITIES OF THE VILLAGE OF BOLINGBROOK ON JUNE 26, 2019.

JM\860043\6/20/19

MLL J. J.

STATE OF ILLINOIS)
COUNTIES OF WILL) SS
AND DU PAGE)

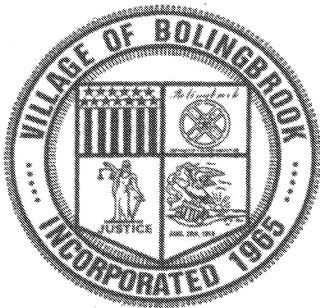
I, Carol S. Penning, certify that I am the duly elected and acting Village Clerk of the Village of Bolingbrook, Will and DuPage Counties, Illinois.

I further certify that on June 25th, 2019, the Corporate Authorities of such municipality passed and approved Ordinance 19-047 entitled:

APPROVING ANNEXATION AGREEMENT WITH COMMONWEALTH EDISON COMPANY
(SUBJECT TO VILLAGE ATTORNEY APPROVAL)

The pamphlet form of Ordinance 19-047 including the Ordinance and a cover sheet, thereof, was prepared on June 26th, 2019. Copies of such Ordinance are available for public inspection upon request in the office of the Village Clerk.

DATED at Bolingbrook, Illinois, this 26th day of June, 2019.



Carol S. Penning

Carol S. Penning, CMC
VILLAGE CLERK

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT (the "Agreement") is made and entered into as of this 26 day of June, 2019 by and between Commonwealth Edison Company, an Illinois corporation ("ComEd"), and the Village of Bolingbrook, an Illinois municipal corporation located in Will and DuPage Counties, Illinois (the "Village").

RECITALS:

A. ComEd owns certain land lying outside of the corporate limits of the Village, which land is occupied by electrical and communications facilities owned and operated by ComEd and other utilities and is legally described in Exhibit A attached hereto and made a part hereof (the "Property").

B. ComEd utilizes the Property for business operations of itself and its parent company, subsidiaries and affiliates (such business entities to be called collectively the "ComEd Companies") as well as the business operations of other utilities, and uses incidental or in any way related thereto or resulting therefrom (collectively, "Operations"), including without limitation the construction, installation, reconstruction, maintenance, repair, upgrade, expansion, addition, modification, renewal, replacement, relocation, removal, use and operation of electrical and communications systems, equipment, structures, improvements and facilities, including, without limitation, transmission and distribution facilities, whether now existing or hereafter to be installed, in, at, over, under, along or across the Property (collectively, the "Facilities") or any related use and development of the Property by the ComEd Companies or other utilities.

C. The Property is not included within the corporate limits of any other municipal corporation, has no electors residing on it and may be annexed to the Village as provided under Section 7-1-8 of the Illinois Municipal Code, 65 ILCS 5/7-1-8. ComEd has expressed an interest in having the Property incorporated into the boundaries of the Village.

E. The Mayor and members of the Board of Trustees of the Village (collectively, the "Corporate Authorities"), after due and careful consideration, have concluded that the annexation of the Property on the terms and conditions hereinafter set forth would further the growth and development of the Village and promote the best interests of the Village.

F. ComEd and the Village wish to enter into a binding agreement with respect to said annexation, to zoning and development, and to other related matters, pursuant to the provisions of Division 15.1 of Article Eleven of Chapter 65 of the Illinois Compiled Statutes, upon the terms and conditions contained in this Agreement.

G. A proposed annexation agreement substantially in substance and in form of this Agreement was submitted to the Corporate Authorities, and after a public hearing was held thereon pursuant to notice as required by statute, said proposed annexation agreement was approved by resolution passed by a vote of two-thirds of the Corporate Authorities.

H. The Village has held any required public hearings and adopted a zoning amendment in the form of Exhibit B attached hereto and made a part hereof (the "Zoning Amendment") which implements a Utility District as part of Chapter 29 of the Bolingbrook Municipal Ordinance, known as the Bolingbrook Zoning Ordinance.

I. The Village has held any required public hearings to rezone the Property and other ComEd right-of-way property located within the Village to the Utility District.

J. The Village has notified each and every fire protection district, library district and other entity or person entitled to notice prior to the annexation of the Property in accordance with all requirements of applicable law.

K. Any public hearings required by law have been held regarding the annexation and this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual covenants and agreements herein contained, it is hereby agreed by the Village and ComEd as follows:

1. Recitals and Exhibits. All of the foregoing recitals and the Exhibits attached hereto, are hereby incorporated into this Agreement as though fully set forth herein.

2A. Annexation Petition. Upon the occurrence of the Condition Precedent described in Section 2B hereof, ComEd shall execute and file with the Village Clerk a proper petition in the form of Exhibit D attached hereto and made a part hereof (the "Petition") to annex the Property to the Village. The Village hereby agrees to annex the Property upon the terms and conditions contained in the Petition and this Annexation Agreement.

2B. Conditions Precedent. ComEd's obligation to execute and file the Petition described in Section 2A hereof is hereby expressly made conditional upon the occurrence or fulfillment of the following condition precedent ("Condition Precedent"): The absence of any change in circumstances which in ComEd's reasonable judgment obviates the need for the annexation of the Property by the Village in light of the Village's stated municipal objectives. ComEd's execution and filing of the Petition is deemed fulfillment of the Condition Precedent.

ComEd shall have no obligation to file the Petition until the Condition Precedent has occurred or been fulfilled. The parties may extend any deadlines set forth in this Agreement by mutual assent without the necessity of amending this Agreement. Assent by the Village may be given by the Village Attorney or Senior Administrator without additional authorization or direction from the Corporate Authorities.

3. Zoning. In connection with its desire to have the Property located within the boundaries of the Village, ComEd has expressed to the Village a desire to have all of the ComEd right-of-way property located in the Village rezoned from I-1 Limited Industrial and R-3 Single Family to the Utility District (UD) within the Village. Accordingly, contemporaneously with the annexation of the Property into the Village, the Village agrees to rezone the Property and all of the ComEd right-of-way properties that are located north of I-55 from I-1 Limited Industrial and R-3 Single Family to the UD zoning district by passing an ordinance substantially in the form of Exhibit C attached hereto and made a part hereof (the "Zoning Amendment"). The UD zoning district designation shall apply so long as the rezoned properties are used in whole or in part for Operations, as that term is defined above.

4. Jurisdiction. The Village hereby acknowledges and agrees that the Property is used by the ComEd Companies and other utilities for Operations. The Village also acknowledges and agrees that ComEd, the ComEd Companies and other utilities owning facilities on the Property, including the use of

the Property by such entities, may currently be exempt from zoning regulation under Section 5-12001 of the Illinois Counties Code (55 ILCS 5/12001) and/or be subject to the jurisdiction of the Illinois Commerce Commission and other applicable State and Federal regulatory agencies and that such jurisdiction fully pre-empts, as set forth in this Agreement, any and all such jurisdiction, regulation or control that the Village may attempt to exercise over the Property. Accordingly, the Village hereby further agrees to the following jurisdictional matters and conditions regarding ComEd, the ComEd Companies and the Property:

- (a) Notwithstanding any provision of the Bolingbrook Municipal Code to the contrary (including specifically Sections 3-202(B) and 3-407 of the Bolingbrook Zoning Ordinance), and recognizing that ComEd is a public utility subject to regulation by the Illinois Commerce Commission, the Village hereby acknowledges and agrees that any ordinances, regulations, codes, resolutions, maps or other items having the force of law relating to zoning, subdivision controls, planning, land use, plats, fences, public safety or health, antennae, building or occupancy permits, parking, loading areas, hours of operation, the environment, emissions or other controls, wetlands, flood control, tree preservation and trimming or any related matter (together with any amendments thereto or replacements thereof and all additional laws or items having the force of law related to any such matters that may be adopted in the future by the Village, being referred to hereinafter collectively as the "Village Regulations") which restrict or are inconsistent with Operations shall not be applicable to the Property
- (b) Recognizing that ComEd is a public utility subject to regulation by the Illinois Commerce Commission, as long as the uses of the Property are for Operations, the Village will not suffer or permit any of the Village Regulations to be applied or enforced at any time or in any manner against all or any portion of the Property, irrespective of the source of the Village's authority. The Village acknowledges and agrees that its current Village Regulations do not prohibit, limit or otherwise affect in any manner the ownership, use or operation by ComEd, the ComEd Companies or any other utilities of all or any portion of the Property.
- (c) Recognizing that ComEd is a public utility subject to regulation by the Illinois Commerce Commission, in no event shall the Village condemn, take or exercise any power of eminent domain (or induce or encourage other entities to commence any such proceedings) relative to all or any portion of the Property, without the prior written consent of ComEd and, if applicable, the Illinois Commerce Commission
- (d) Any and all roadways and driveways located on the Property shall be deemed to be private and not public roadways and the Village shall not have authority over their operation, until such time as the roadways and driveways are dedicated to the Village by ComEd in ComEd's sole discretion
- (e) Notwithstanding the foregoing and anything contained in this Agreement to the contrary, the Village acknowledges and agrees that in no event shall ComEd's entering into this Agreement be deemed to constitute a waiver or limitation of any right, claim (including, without limitation, any claim to exemption, pre-emption or non-applicability) or privilege which ComEd or the ComEd Companies may have under applicable law, whether on account of the status of ComEd or another ComEd Company as a electric utility or otherwise. Nothing contained herein shall be deemed to confer upon any State, Federal or local regulatory agency any jurisdiction, authority or control not otherwise conferred upon such body under applicable law.

(f) The provisions of this Agreement shall supersede any and all provisions of the Village Regulations that may be in conflict or inconsistent with the provisions of this Agreement.

5. No Further Annexation of ComEd Property. Except for the annexation of the Property pursuant to the terms of this Agreement, the Village shall not annex, nor take or support any action or activity that has, or could directly or indirectly have, the intent, purpose, effect or result of annexing or attempting to annex to the Village or to any other municipality or unit of local government any other portion of property owned by ComEd without the express prior written consent of ComEd, which consent may be withheld for any or no reason.

6. Real Estate Taxes, Assessments and Other Impositions.

(a) The Village hereby agrees to cooperate fully with ComEd and to exercise all reasonable efforts with the appropriate township assessor's office(s) in order to ensure that for the 2019 tax year and thereafter one or more separate property tax identification numbers will be issued for the Property to become effective as soon as practicable upon the annexation of the Property pursuant to this Agreement. The Village hereby agrees to cooperate fully with ComEd and to exercise all reasonable efforts with the appropriate township assessor's office in order to ensure that the tax parcel(s) for the Property shall be classified for assessment purposes with the classification sought by ComEd that results in the lowest possible assessed value.

(b) The Village agrees to abate all taxes and assessments (other than generally applicable property taxes) that may otherwise be levied by the Village upon the Property. Without limiting the generality of the foregoing (and excluding generally applicable property taxes), the Village shall not, at any time, impose upon all or any portion of the Property any tax, assessment, charge or fee of any kind or nature whatsoever against the Property, irrespective of the source of the authority therefor; provided, however, that if the Village is prohibited by law from not assessing any such tax or charge against ComEd or the Property, the Village expressly agrees to provide rebates or otherwise make payments to ComEd in the amount of such assessment or charge.

7. Expense Reimbursement/Waiver/Notice obligations. In connection with the matters described herein and notwithstanding anything to the contrary in the Bolingbrook Municipal Code, the Village hereby waives any fees, impositions, charges, donations or other payments or exactions of any kind or nature whatsoever, including without limitation application fees, or other charges imposed for annexations or for processing applications for zoning amendments, it being acknowledged and agreed that no such charges shall be imposed on ComEd in connection with the subject matter of this Agreement.

Further, and notwithstanding anything to the contrary in the Bolingbrook Municipal Code, the Village shall be solely responsible for the notification obligations set forth in Section 8-1002 of the Bolingbrook Municipal Code without cost or obligation to ComEd.

8. Indemnity. The Village hereby agrees to indemnify, defend (with counsel acceptable to ComEd) and hold harmless ComEd, the Exelon Corporation, a Pennsylvania corporation, their respective affiliated entities, and the officers, directors, employees, agents, legal representatives, successors and assigns of each of them (collectively, the "ComEd Indemnitees") from and against any and all losses, damages, claims, actions, proceedings, costs, expenses (including, without limitation, reasonable attorneys' fees and costs) and other liabilities incurred by any of the ComEd Indemnitees or asserted by the Village or any other party against any or all of such ComEd Indemnitees that result or arise from the annexation or proposed annexation or disconnection of the Property or the failure of the Village to observe any of its covenants or obligations under this Agreement. Without limiting the generality of the

foregoing, the Village hereby agrees to pay for all reasonable legal costs and expenses incurred by ComEd or any of the ComEd Indemnitees in connection with (a) any challenge by the Village or any other party, other than a ComEd Indemnatee, to (i) the annexation or proposed annexation or disconnection of the Property pursuant to the terms and conditions of this Agreement or (ii) the enforceability of all or any of the provisions of this Agreement, or (b) any other claims, controversies, negotiations, or transactions between ComEd and the Village or any other party, whether or not a court action is filed, related to the subject matter of this Agreement. The Village acknowledges and agrees that the foregoing indemnity constitutes a material portion of the bargained for consideration received by ComEd in exchange for its agreement to have the Property annexed to the Village hereunder. The Village further acknowledges and agrees that it is contractually bound by the foregoing indemnity to appropriate such funds as may be required from time to time to satisfy the Village's obligations hereunder. This Section shall survive the termination of this Agreement.

9A. Further Assurances. The Village and the Corporate Authorities agree to enact such resolutions and ordinances, do all things necessary or appropriate, or take such other action as may be necessary or desirable to enable the Village and the Corporate Authorities to comply with the terms of this Agreement and to permit ComEd to realize the full benefit hereof, including, without limitation, entering into, executing and delivering extensions to the term of this Agreement, as provided in Section 12 of this Agreement. In addition, the Corporate Authorities agree to do all things that may be necessary from time to time to enable ComEd to continue to use the Property and the structures and improvements located thereon for Operations, including specifically, electric utility purposes or uses incidental or related thereto.

9B. No Third Party Beneficiaries. If ComEd elects not to file a petition for annexation to the Village pursuant to this Agreement or obtains the disconnection of its Property pursuant to Section 11, neither party shall have any continuing obligation to the other party, except the terms and conditions of Section 4 and 8 of this Agreement shall survive the expiration or termination of this Agreement. ComEd's consideration of and, if applicable, its execution of this Agreement shall in no way be deemed to confer any rights on any third parties and ComEd and the Village hereby disclaim the existence of any third party beneficiaries of this Agreement.

10. Defense and Enforcement of Agreement. The parties agree to the following terms and conditions regarding the defense and enforcement of their respective rights and obligations under this Agreement:

(a) ComEd, subject to its right to indemnification under Section 8 hereof, and the Village shall take all actions necessary or appropriate to defend the validity of this Agreement and all actions taken and all documents executed pursuant to or in connection with this Agreement.

(b) This Agreement shall be enforceable in any court of competent jurisdiction by each of the parties hereto by any appropriate action at law or equity, including without limitation any action to secure the performance of the representations, promises, covenants, agreements and obligations contained herein, by mandamus, specific performance, injunction or otherwise, or by any action to obtain money damages for a breach of this Agreement. The parties acknowledge that any failure by either of them to perform their respective representations, promises, covenants, agreements or obligations under this Agreement will cause immediate and irreparable harm for which no adequate legal remedy will be available. Accordingly, each party waives all defenses to requests for equitable relief based on the purported absence of immediate, irreparable harm or the availability of adequate legal remedies.

(c) The failure of either party to insist upon the strict enforcement and prompt performance of the representations, promises, covenants, agreements and obligations set forth in this Agreement shall not constitute or be construed as a waiver or relinquishment of such party's right thereafter to enforce any such representation, promise, covenant, agreement or obligation, but the same shall continue in full force and effect.

(d) The rights and remedies set forth in this Agreement (including ComEd's right and remedy of disconnection as set forth in Section 11 hereof) are non-exclusive and cumulative in nature. Either party may exercise any one or more of the rights or remedies described herein or resort to any other remedy available to such party at law or in equity without first exhausting and without impairing any right or remedy afforded hereby.

(e) Before any failure of any party to perform any obligation arising from this Agreement shall be deemed to constitute a breach, the party claiming the breach shall notify the defaulting party and demand performance. No breach of this Agreement shall have been found to occur if performance is commenced to the reasonable satisfaction of the complaining party within thirty (30) days of the receipt of such notice and is thereafter diligently pursued.

11. Right to Disconnect. The Village and ComEd hereby agree that this Agreement does not prevent ComEd (including its successors and assigns) from disconnecting from the Village, if ComEd is otherwise eligible to disconnect from the Village pursuant to the Illinois Municipal Code and applicable law, and ComEd and its successors and assigns (without any obligation to do so) may elect to disconnect from the Village all or any portion of the Property, at any time during the term of this Agreement upon the occurrence of any of the following conditions:

(a) The Village breaches, in any material respect, or fails to perform any material obligation in a timely manner, any of the Village's representations, warranties, undertakings, indemnities, consents or agreements contained in their Agreement.

(b) The term of this Agreement expires without extension or renewal (on the same terms and conditions as contained herein) for an additional twenty-five (25) year period (unless such 25 year renewal term is prohibited by any law made applicable to this Agreement, in which event such extension or renewal shall be for the maximum period permitted by applicable law).

(c) The Village fails to rezone the Property and the other ComEd right-of-way within the Village to the UD concurrently with the annexation of the Property pursuant to the terms and conditions hereof.

Should ComEd desire to disconnect at some point in the future, and if ComEd is otherwise eligible under the Illinois Municipal Code and applicable law, the Village will cooperate fully and in good faith to achieve such disconnection and will have no defense or objection to the form or substance of any action taken to effect such disconnection. Nothing contained in this Agreement shall be deemed to impair or limit any rights of disconnection otherwise available to ComEd under applicable law.

12. Term of Agreement. This Agreement shall be valid and binding upon the Village and ComEd, and their respective successors and assigns, for a period of seventy-five (75) years from and after the date of its execution; provided, however, that if such seventy-five (75)-year term as applied to this Agreement shall be held invalid by a court of competent jurisdiction, the term shall be the maximum term permitted by applicable law as of the date of this Agreement or such longer term as may be subsequently

allowed. Notwithstanding anything to the contrary contained in this Agreement, the terms and provisions of Sections 4 and 8 of this Agreement shall survive the expiration or termination of this Agreement. Unless the parties shall otherwise agree in writing, the term of this Agreement shall be extended upon the expiration of the initial term hereof for additional twenty-five (25)-year periods. The Village shall conduct any public hearing that may be required in connection with such extensions. In the event it is determined by a court of competent jurisdiction that any such extension is invalid under law made applicable to this Agreement, the term of this Agreement shall be extended for the maximum period of time permitted by applicable law. This Agreement shall survive the annexation of the Property and shall not be merged into or expunged in whole or in part by the annexation of the Property.

13. Binding Effect of Agreement/Amendments. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors, assigns, lessees or licensees. The Village and ComEd agree that the benefits and burdens under this Agreement are not personal but run with the land comprising the Property. This Agreement may be amended in writing from time to time with the consent of the parties hereto pursuant to statute.

14. Severability/Invalidity. If any clause, phrase, provision or portion of this Agreement or the application thereof to any person or circumstance shall be held to be invalid or unenforceable under applicable law by a court of competent jurisdiction, such invalidity or unenforceability shall not affect, impair or render invalid or unenforceable any other provision of this Agreement, nor shall it affect the application of such clause, phrase, provision or portion hereof to any other persons or circumstances, and the parties agree to amend this Agreement by replacing the invalid or unenforceable term with such other terms and conditions as will give the fullest possible effect, within the limits of applicable law, to the intentions and understandings of the parties as set forth in this Agreement. Notwithstanding the foregoing, in the event that any of the terms and conditions contained in Sections 4, 5, 6, 7, 8, 9A, 9B, 10, 11 or 12 hereof are determined by a court of competent jurisdiction to be invalid or unenforceable in any material respect, then, at ComEd's option, the Property may be declared to have been invalidly annexed, and in such event, ComEd shall be entitled to obtain an order disconnecting the Property from the Village as an invalidly annexed parcel in the manner provided under Section 7-1-48 of the Illinois Municipal Code, 65 ILCS 5/7-1-48.

15. Regulatory Approval. This Agreement may be subject to the approval of one or more regulatory agencies. If this Agreement is subject to such approval, the parties agree to jointly seek such approval. If such approval is denied after the annexation of the Property hereunder, such annexation shall be null and void and ComEd shall have the right to seek disconnection of the Property, unless ComEd and the Village, in the exercise of their sole individual discretion, agree to any modifications of this Agreement that may be required to obtain the approval of the subject regulatory agency.

16. Authority. The Village hereby represents and warrants that this Agreement was authorized and approved by the Corporate Authorities pursuant to its Resolution **[or Ordinance]** No. 19-047 adopted on June 25, 2019, and that no further action is required in order for this Agreement to constitute the legally binding obligation of the Village, enforceable in accordance with the terms and conditions hereof. Each party to this Agreement hereby represents and warrants to the other that it has full power and authority to execute, deliver and perform their respective obligations under this Agreement in accordance with its terms and conditions.

17. Counterparts. This Agreement may be executed in a number of identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one agreement.

18. Electronic Signatures. A facsimile or electronic signature on this Agreement, any amendment hereto or any notice delivered hereunder shall have the same legal effect as an original signature; provided that, without limitation on the foregoing, each Party agrees to deliver to the other as promptly as practicable an original counterpart.

19. Notices. All notices required by this Agreement shall be in writing and shall be deemed to have been properly given, and deemed effective if (a) hand delivered (effective upon delivery), (b) sent by a nationally recognized overnight delivery service (effective one (1) business day after delivery to such courier), or (c) sent by facsimile or by electronic transmission (effective upon confirmation of transmission not later than 5:00 pm Chicago time on a business day; provided a copy shall also be sent within one business day thereafter in a manner provided by clause (a) or (b) above), in each case, addressed as follows:

Notice to the Village shall be addressed as follows:

Village of Bolingbrook
Attn: Planning and Zoning Administrator
375 W. Briarcliff Road
Bolingbrook, IL 60440

with a copy to:

Robbins Schwartz
631 E. Boughton Road, Suite 200
Bolingbrook, IL 60440

Notices to ComEd shall be addressed as follows:

Commonwealth Edison
Attention: Director, Real Estate
Three Lincoln Centre – 4th Floor
Oakbrook Terrace, Illinois 60181

with a copy to:

Exelon Business Services Company, LLC
Attention: Asst. General Counsel – Real Estate
10 South Dearborn St., 49th Floor
Chicago, Illinois 60603

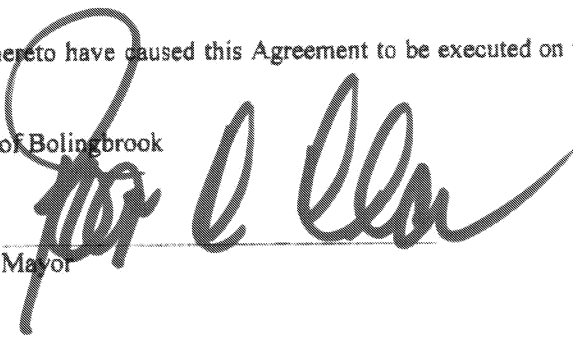
or to such other or additional addresses as either Party may designate by written notice to the other Party.

19. Corporate capacities. The parties acknowledge and agree that the individuals who are members of the group constituting the Corporate Authorities of the Village are entering into this Agreement in their corporate capacities as members of such group and shall have no personal liability in their individual capacities.

[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.


Village of Bolingbrook

By: 
Title: Mayor

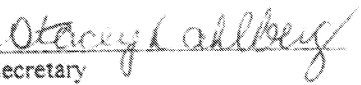
ATTEST:


Village Clerk

COMMONWEALTH EDISON COMPANY

By: 
Acting Director of Real Estate and Facilities


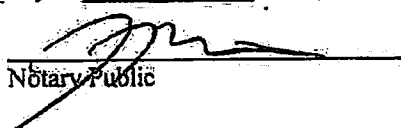
ATTEST:


Secretary

10/1/2021

STATE OF ILLINOIS)
) SS
 COUNTY OF DUPAGE)

I, John Mishevski, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Joe T. Gilchrist, the Acting Director of Real Estate and Facilities of COMMONWEALTH EDISON COMPANY, an Illinois corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer, appeared before me this day in person, and acknowledged that he signed and delivered the said instrument as her own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

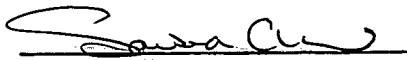
Given under my hand and notarial seal this 24 day of June, 2019.


 Notary Public

STATE OF ILLINOIS)
) SS
 COUNTY OF Will)

I, Sandra Clark, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Roger C. Clark, personally known to me to be the Mayor of the Village of Bolingbrook, and Carol S. Penning, personally known to me to be the Clerk of said Village, both of whom are personally known to me to be the same persons whose names are subscribed to the acceptance of the foregoing instrument as such Mayor and Village Clerk, appeared before me this day in person, and acknowledged that they signed and delivered such acceptance for and on behalf of said Village and caused the corporate seal of said Village to be affixed thereto as their free and voluntary act, and as the free and voluntary act of said Village for the uses and purposes therein set forth, pursuant to a written resolution duly passed by the Mayor and Board of Trustees of said Village on the 26 day of June, 2019.

Given under my hand and notarial seal this 26 day of June, 2019

OFFICIAL SEAL
 SANDRA CLARK
 NOTARY PUBLIC, STATE OF ILLINOIS
 My Commission Expires Oct. 27, 2021


 Notary Public

List of Exhibits:

Exhibit A	Property Legal Description
Exhibit B	Utility District form of text amendment
Exhibit C	Property Zoning Amendment
Exhibit D	Form of Petition for Annexation

EXHIBIT "A"**LEGAL DESCRIPTION**

Real Estate Tax Index Nos.:

A total of ~~1.52~~
1.51 acres, more or less.

EXHIBIT A

THE WEST 210.00 FEET (MEASURED AT RIGHT ANGLES) OF THAT PART OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 37 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH AND EAST OF THE SOUTHERLY LINE OF U.S. ROUTE 66 (INTERSTATE 55), AS DESCRIBED IN THE GRANT OF HIGHWAY RECORDED MAY 19, 1982 AS DOCUMENT NUMBER R82-10258, IN WILL COUNTY, ILLINOIS;

AND ALSO;

THE WEST 210.00 FEET (MEASURED AT RIGHT ANGLES) OF THAT PART OF THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 37 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING NORTHERLY OF THE NORTHERLY RIGHT OF WAY LINE OF NAPERVILLE ROAD (ALSO KNOWN AS VETERANS PARKWAY) AS SHOWN ON DOCUMENT NUMBER 573067, RECORDED JANUARY 14, 1944, ALL IN WILL COUNTY, ILLINOIS;

AND ALSO;

THE WEST 210 FEET (MEASURED AT RIGHT ANGLES) OF LOTS 2 AND 7 IN SCHOOL TRUSTEES SUBDIVISION OF SECTION 16, TOWNSHIP 37 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THE SOUTH 750.00 FEET OF THE WEST 210.00 FEET (MEASURED AT RIGHT ANGLES) OF SAID LOT 7), ALL IN WILL COUNTY, ILLINOIS.

EXHIBIT B – FORM OF UTILITY DISTRICT TEXT AMENDMENT**PART 5 - UTILITY DISTRICTS.****SECTION 4-501. UD UTILITY DISTRICT****(A) Permitted Uses.**

Notwithstanding anything to the contrary in Section 3-106 hereof, the construction, installation, reconstruction, maintenance, repair, upgrade, expansion, addition, modification, renewal, replacement, relocation, removal, use and operation of electrical and communications systems, equipment, structures, improvements and facilities, including, without limitation, transmission and distribution facilities and other substations and other improvements supporting such facilities.

(B) Conditions of Use.

For facilities owned or operated by an owner that is a regulated utility with the Illinois Commerce Commission or that are within the jurisdiction of a regional transmission organization, the Federal Energy Regulatory Commission or the Federal Communications Commission:

1. Neither the Village's Property Maintenance Regulations (Village Municipal Code, Chapter 27) are applicable, nor are the regulations of Sections 33-1201 through 1203 of the Village Municipal Code.
2. Notwithstanding anything to the contrary in Section 3-408 hereof, with respect to the Zoning Ordinance, no Lot Size Requirements, Bulk Regulations (including those set forth in Article 5), Number of Structures on a Zoning Lot, Landscaping Regulations (Article 30) or Non-Conformities (Article 10) shall be applicable.
3. Permitting fees and inspection fees are inapplicable.

(C) Existing Improvements. Article 10 shall not apply to any improvements existing as of the date hereof which do not fall within the scope of this Section.

ORDINANCE 19-049

**AN ORDINANCE REZONING LAND IN THE VILLAGE OF BOLINGBROOK,
WILL AND DUPAGE COUNTIES, STATE OF ILLINOIS**

WHEREAS, in connection with the annexation of certain ComEd property, the Village of Bolingbrook has agreed to rezone the annexed property and also certain additional ComEd property that is already within the boundaries of the Village, with the property to be rezoned referenced herein as the "Property" and legally described on Exhibit A; and

WHEREAS, all hearings required to be held before agencies or commissions of the Village took place pursuant to proper legal notice, including the public hearing on the 17th day of April, 2019 before the Village of Bolingbrook Planning Commission, to consider the rezoning request; and

WHEREAS, the requested rezoning for that part of the Property to be annexed is from the E-R Estate Residence District to the designation of Utility District (UD) in the Village of Bolingbrook; and

WHEREAS, the requested rezoning for that part of the Property already in the boundaries of the Village is from I-1 Limited Industrial and R-3 Single Family districts to the Utility District (UD); and

WHEREAS, the Village of Bolingbrook Planning Commission recommended approval of the requested rezoning;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND BY THE BOARD OF TRUSTEES OF THE VILLAGE OF BOLINGBROOK, WILL AND DUPAGE COUNTIES, ILLINOIS AS FOLLOWS:

SECTION ONE: The Mayor and Board of Trustees hereby find that all of the recitals contained in the preamble to this Ordinance are true, correct and complete and are hereby incorporated by reference thereto and made a part hereof.

SECTION TWO: Notwithstanding anything to the contrary in Sections 3-202(B) and 3-407 of the Village of Bolingbrook Zoning Ordinance, the land legally described on Exhibit "A" shall be rezoned to the Utility District in the Village of Bolingbrook.

SECTION THREE: The Village Clerk is hereby authorized to note the Utility District designation made by this Ordinance upon the official zoning map of the Village.

SECTION FOUR: In the event that any provision or provisions, or portion or portions of this Ordinance shall be declared to be invalid or unenforceable by a court of competent jurisdiction, such adjudication shall in no way affect or impair the validity or enforceability of any of the remaining provisions or portions of this Ordinance that may be given effect without such invalid or unenforceable provision or provisions, portion or portions.

SECTION FIVE: All ordinances or parts of ordinances conflicting with any of the provisions of this Ordinance shall be and the same is hereby repealed.

SECTION SIX: The Village Clerk is hereby directed to publish this Ordinance in pamphlet form.

SECTION SEVEN: 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 THIS 25th DAY OF JUNE, 2019.

AYES:	6	Zarate, Lawler, Basta, Watts, Carpanzano, Jaskiewicz
NAYS:	0	None
ABSENT:	0	None

APPROVED THIS 25th DAY OF JUNE, 2019

MAYOR

ATTEST:

VILLAGE CLERK

PUBLISHED BY THE VILLAGE CLERK, IN PAMPHLET FORM, BY AUTHORITY OF THE CORPORATE AUTHORITIES OF THE VILLAGE OF BOLINGBROOK ON JUNE 26, 2019.

JM\860045\6/20/19

STATE OF ILLINOIS)
COUNTIES OF WILL) SS
AND DU PAGE)

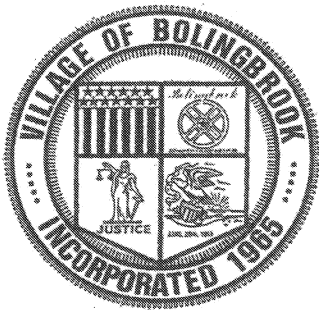
I, Carol S. Penning, certify that I am the duly elected and acting Village Clerk of the Village of Bolingbrook, Will and DuPage Counties, Illinois.

I further certify that on June 25th, 2019, the Corporate Authorities of such municipality passed and approved Ordinance 19-049 entitled:

**REZONING LAND IN THE VILLAGE OF BOLINGBROOK, WILL AND DUPAGE COUNTIES,
STATE OF ILLINOIS**

The pamphlet form of Ordinance 19-049 including the Ordinance and a cover sheet, thereof, was prepared on June 26th, 2019. Copies of such Ordinance are available for public inspection upon request in the office of the Village Clerk.

DATED at Bolingbrook, Illinois, this 26th day of June, 2019.



Carol S. Penning

Carol S. Penning, CMC
VILLAGE CLERK

EXHIBIT A

PART OF P.I.N. 12-02-21-400-004

THE WEST 210.00 FEET (MEASURED AT RIGHT ANGLES) OF THAT PART OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 37 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH AND EAST OF THE SOUTHERLY LINE OF U.S. ROUTE 66 (INTERSTATE 55), AS DESCRIBED IN THE GRANT OF HIGHWAY RECORDED MAY 19, 1982 AS DOCUMENT NUMBER R82-10258, IN WILL COUNTY, ILLINOIS;

AND ALSO;

PART OF P.I.N. 12-02-28-200-001

THE WEST 210.00 FEET (MEASURED AT RIGHT ANGLES) OF THAT PART OF THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 37 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING NORTHERLY OF THE NORTHERLY RIGHT OF WAY LINE OF NAPERVILLE ROAD (ALSO KNOWN AS VETERANS PARKWAY) AS SHOWN ON DOCUMENT NUMBER 573067, RECORDED JANUARY 14, 1944, ALL IN WILL COUNTY, ILLINOIS;

AND ALSO;

P.I.N. 12-02-16-200-018

THE WEST 210 FEET (MEASURED AT RIGHT ANGLES) OF LOTS 2 AND 7 IN SCHOOL TRUSTEES SUBDIVISION OF SECTION 16, TOWNSHIP 37 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THE SOUTH 750.00 FEET OF THE WEST 210.00 FEET (MEASURED AT RIGHT ANGLES) OF SAID LOT 7), ALL IN WILL COUNTY, ILLINOIS.

AND ALSO;

P.I.N. 12-02-04-200-001

W 210 FT OF W 110 ACS OF THE NE 1/4 OF SEC 4, T37N-R10E.

AND ALSO;

P.I.N. 12-02-04-400-001

THE W 210 FT OF THE SE1/4 N OF RD IN SEC. 4, T37N-R10#.

AND ALSO;

P.I.N. 12-02-04-400-003

A TRACT OF LAND, 210 FT WIDE, LYG S OF THE S'LY ROW LN OF ROYCE RD, AND LYG N OF THE E BRANCH OF THE DU PAGE RIVER, BEING A PRT OF THE SE1/4 OF SEC. 4, T37N-R10E AS DESC IN BK 1458, PG 7 RECORDED AS DOC# 745964.

AND ALSO;

P.I.N. 12-02-09-200-001

THE W'LY 210 FT AS DESC IN BK 1473 PG 7, BEING A SUB OF PRT OF THE W1/2 OF THE NE1/4 OF SEC 9, T37N-R10E.

AND ALSO;

P.I.N. 12-02-09-400-001

THE W'LY 210 FT AS DESC IN BK A SUB OF PRT OF THE W1/2 OF THE SE1/4.

AND ALSO;

P.I.N. 12-02-16-200-019

THE S 750 FT OF THE W 210 FT OF LOT 7 IN SCHOOL TRUSTEE'S SUB OF SEC 16, T37N-R10E.

AND ALSO;

P.I.N. 12-02-16-400-001

THE W 210 FT OF THE LOT 10 IN SCHOOL TRUSTEES SUB, A SUB OF PRT OF THE W1/2 NE1/4 IN SEC 16, T36N-R10E.

AND ALSO;

P.I.N. 12-02-16-400-003

THE W 210 FT OF LOT 15 IN SCHOOL TRUSTEES SUB, A SUB OF PRT OF THE W1/2 NE1/4 IN SEC 16, T36N-R10E.

AND ALSO;

P.I.N. 12-02-21-200-001

THE W 210 FT OF THE S1/2 OF THE S1/2 OF THE NE1/4 OF SEC. 21, T37N-R10E.

AND ALSO;

P.I.N. 12-02-21-200-003

THE W 210 FT S 3/4 OF THE NE1/4 (EX THAT PRT TAKEN FOR RD DED PER R90-55512).

AND ALSO;

P.I.N. 12-02-21-400-001

THE W 210 FT N OF THE CNTRLN OF I-55 OF THE E1/2 OF THE SE1/4 OF SEC. 21, T37N-R10E.

**PETITION FOR ANNEXATION
SUBMITTED PURSUANT TO 65 ILCS 5/7-1-8
COMMONWEALTH EDISON PROPERTY**

**TO: THE MAYOR AND MEMBERS OF THE
BOARD OF TRUSTEES OF THE VILLAGE OF
BOLINGBROOK, WILL AND DUPAGE COUNTIES, ILLINOIS**

COMMONWEALTH EDISON COMPANY ("COMED") ("PETITIONER")

RESPECTFULLY STATES TO ITS KNOWLEDGE THE FOLLOWING UNDER OATH:

- A. Petitioner is the sole owner of record title to that territory that is legally described on Exhibit A attached hereto and made a part hereof (the "Property").
- B. The Property is not situated within the corporate limits of any municipality and is contiguous to the corporate limits of the Village of Bolingbrook (the "Village").
- C. No electors reside on the Property.
- D. This Petition is submitted by Petitioner ComEd in accordance with the terms and conditions of the Annexation Agreement attached hereto and incorporated herein as Exhibit B, approval of which is anticipated at the Village Board's regular meeting of June 25, 2019 (the "Annexation Agreement").

**NOW, THEREFORE, PETITIONER HEREBY RESPECTFULLY REQUESTS THE
FOLLOWING:**

- 1. That the Property be annexed to the Village by an ordinance passed and approved by the Mayor and Board of Trustees of the Village of Bolingbrook pursuant to Section 7-1-8 of the Illinois Municipal Code, as amended.
- 2. That annexation of the Property be subject to the terms and conditions of the Annexation Agreement.
- 3. That such further action be taken by the Village as may be necessary or appropriate to effect, in accordance with law, the annexation of the Property to the Village only so long as it is subject to the Annexation Agreement.

PETITIONER:

COMMONWEALTH EDISON COMPANY

By: Joe T. Gilchrist

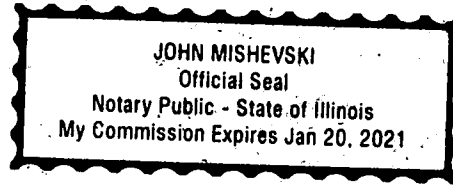
Joe T. Gilchrist, Acting Director of Real Estate and Facilities

Dated: 6/24/2019

STATE OF ILLINOIS)

COUNTY OF DUPAGE)

) SS



I, John Mishevski, a notary public in and for the County and State aforesaid, do hereby certify that Joe T. Gilchrist, Acting Director of Real Estate and Facilities, personally known to me to be the person whose name is subscribed to the foregoing Petition for Annexation, appeared before me this day in person and acknowledged that s/he signed and delivered said Petition for Annexation, in his/her capacity as Acting Director of Real Estate and Facilities of Commonwealth Edison Company, as his/her own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes set forth therein.

GIVEN under my hand and notarial seal this 24 day of JUNE, 2019.

 A handwritten signature in cursive script, appearing to read "John Mishevski".

Notary Public

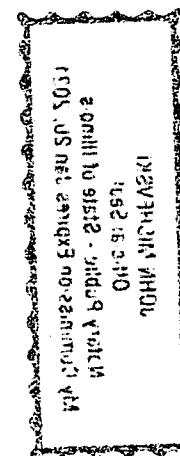


EXHIBIT A TO PETITION FOR ANNEXATION
COMMONWEALTH EDISON COMPANY PROPERTY

EXHIBIT A TO PETITION FOR ANNEXATION
COMMONWEALTH EDISON COMPANY PROPERTY

THE WEST 210.00 FEET (MEASURED AT RIGHT ANGLES) OF THAT PART OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 37 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH AND EAST OF THE SOUTHERLY LINE OF U.S. ROUTE 66 (INTERSTATE 55), AS DESCRIBED IN THE GRANT OF HIGHWAY RECORDED MAY 19, 1982 AS DOCUMENT NUMBER R82-10258, IN WILL COUNTY, ILLINOIS;

AND ALSO;

THE WEST 210.00 FEET (MEASURED AT RIGHT ANGLES) OF THAT PART OF THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 37 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING NORTHERLY OF THE NORTHERLY RIGHT OF WAY LINE OF NAPERVILLE ROAD (ALSO KNOWN AS VETERANS PARKWAY) AS SHOWN ON DOCUMENT NUMBER 573067, RECORDED JANUARY 14, 1944, ALL IN WILL COUNTY, ILLINOIS;

AND ALSO;

THE WEST 210 FEET (MEASURED AT RIGHT ANGLES) OF LOTS 2 AND 7 IN SCHOOL TRUSTEES SUBDIVISION OF SECTION 16, TOWNSHIP 37 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THE SOUTH 750.00 FEET OF THE WEST 210.00 FEET (MEASURED AT RIGHT ANGLES) OF SAID LOT 7), ALL IN WILL COUNTY, ILLINOIS.

EXHIBIT B TO PETITION FOR ANNEXATION

ANNEXATION AGREEMENT TO BE CONSIDERED AT VILLAGE BOARD JUNE 25, 2019
MEETING

R2019043726

KAREN A. STUKEL
WILL COUNTY RECORDER
RECORDED ON
07/10/2019 12:47:08 PM
REC FEE: 41.00
IL RENTAL HSNG:
PAGES: 15
KAK

PUBLISHED IN PAMPHLET FORM FOR THE FOLLOWING:

ORDINANCE 19-048

ANNEXING CERTAIN TERRITORY TO THE VILLAGE FOR
COMMONWEALTH EDISON COMPANY CONSISTING OF ±19.59
ACRES (SUBJECT TO PUBLIC SERVICES DIRECTOR APPROVAL)

VILLAGE CLERK

VILLAGE OF BOLINGBROOK

P.I.N. #s: 12-02-21-400-004-0000; 12-02-28-200-001-0010; 12-02-28-200-001-0020; 12-02-16-200-018-0000

PREPARED BY & MAIL TO:

VILLAGE CLERK'S OFFICE
VILLAGE OF BOLINGBROOK
375 W. BRIARCLIFF RD.
BOLINGBROOK, IL 60440

EXHIBIT 2

19015c X

ORDINANCE 19-048

**ORDINANCE ANNEXING CERTAIN TERRITORY TO THE VILLAGE FOR
COMMONWEALTH EDISON COMPANY CONSISTING OF ±19.59 ACRES
(SUBJECT TO PUBLIC SERVICES DIRECTOR APPROVAL)**

WHEREAS, Section 6(a) of Article VII of the 1970 Constitution of the State of Illinois provides that any municipality which has a population of more than 25,000 is a home rule unit, and the Village of Bolingbrook, Will and DuPage counties, Illinois, with a population in excess of 25,000 is, therefore, a home rule unit and, pursuant to the provisions of said Section 6(a) of Article VII, may exercise any power and perform any function pertaining to its government and affairs, including, but not limited to, the power to tax and to incur debt; and

WHEREAS, pursuant to 65 ILCS 5/7-1-8, a petition was filed by Commonwealth Edison Company, the Owner (identified hereinafter as the "Owner"), for annexation to the Village of Bolingbrook of the following described property:

THE WEST 210.00 FEET (MEASURED AT RIGHT ANGLES) OF THAT PART OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 37 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH AND EAST OF THE SOUTHERLY LINE OF U.S. ROUTE 66 (INTERSTATE 55), AS DESCRIBED IN THE GRANT OF HIGHWAY RECORDED MAY 19, 1982 AS DOCUMENT NUMBER R82-10258, IN WILL COUNTY, ILLINOIS;

AND ALSO;

THE WEST 210.00 FEET (MEASURED AT RIGHT ANGLES) OF THAT PART OF THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 37 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING NORTHERLY OF THE NORTHERLY RIGHT OF WAY LINE OF NAPERVILLE ROAD (ALSO KNOWN AS VETERANS PARKWAY) AS SHOWN ON DOCUMENT NUMBER 573067, RECORDED JANUARY 14, 1944, ALL IN WILL COUNTY, ILLINOIS.

AND ALSO;

THE WEST 210 FEET (MEASURED AT RIGHT ANGLES) OF LOTS 2 AND 7 IN SCHOOL TRUSTEES SUBDIVISION OF SECTION 16, TOWNSHIP 37 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THE SOUTH 750.00 FEET OF THE WEST 210.00 FEET (MEASURED AT RIGHT ANGLES) OF SAID LOT 7), ALL IN WILL COUNTY, ILLINOIS.

(hereinafter referred to as the "Subject Property"); and

WHEREAS, there are no electors residing on the Subject Property; and

WHEREAS, the Subject Property is not within the corporate limits of any municipality but is contiguous to the Village of Bolingbrook; and

WHEREAS, legal notices regarding the intention to the Village to annex the Subject Property have been sent to all public bodies required to receive such notice by state statute; and

WHEREAS, copies of such notices required to be recorded, if any, have been recorded in the Office of the Recorder of Deeds of Will County, Illinois; and

WHEREAS, the Owner and the Village have entered into a valid and binding annexation agreement relating to the Subject Property; and

WHEREAS, all public hearings, submissions and other legal requirements have been accomplished in full compliance with the terms of said annexation agreement and with statutes of the State of Illinois and the ordinances of the Village of Bolingbrook; and

WHEREAS, the Mayor and Board of Trustees believe and hereby declare it to be in the best interests of the Village that the Subject Property be annexed thereto;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND BOARD OF TRUSTEES OF THE VILLAGE OF BOLINGBROOK, WILL AND DUPAGE COUNTIES, ILLINOIS, IN THE EXERCISE OF ITS STATUTORY AND HOME RULE POWERS, AS FOLLOWS:

SECTION ONE: The Mayor and Board of Trustees find as facts the recitals hereinabove set forth.

SECTION TWO: The Subject Property, being indicated on an accurate map of the annexed territory, which is attached hereto as Exhibit 1 (Plat of Annexation) and made a part hereof, is hereby annexed to the Village of Bolingbrook.

SECTION THREE: That the Village Clerk is hereby directed to record with the Recorder of Deeds and to file with the County Clerk of Will County a certified copy of this Ordinance, together with the accurate map of the territory annexed appended to said Ordinance. Notice of the annexation shall further be provided to the appropriate election authorities and post office branches serving the Subject Property.

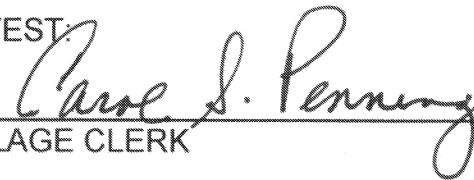
SECTION FOUR: This Ordinance shall be in full force and effect from and after its passage, by a vote of a majority of the corporate authorities now holding office, and approval in the manner provided by law.

PASSED THIS 25th DAY OF JUNE, 2019.

AYES:	7	Zarate, Lawler, Basta, Watts, Carpanzano, Jaskiewicz Mayor Roger C. Claar
NAYS:	0	None
ABSENT:	0	None

APPROVED THIS 25th DAY OF JUNE, 2019


MAYOR

ATTEST:

VILLAGE CLERK

PUBLISHED BY THE VILLAGE CLERK, IN PAMPHLET FORM, BY AUTHORITY OF THE CORPORATE AUTHORITIES OF THE VILLAGE OF BOLINGBROOK ON JUNE 26, 2019.

JM\860046\6/20/19

11/3/21
11/3/21

STATE OF ILLINOIS)
COUNTIES OF WILL) SS
AND DU PAGE)

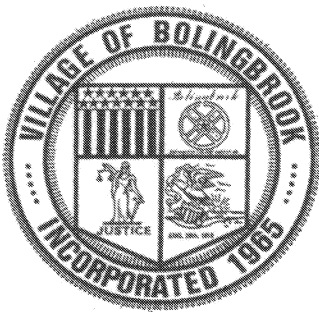
I, Carol S. Penning, certify that I am the duly elected and acting Village Clerk of the Village of Bolingbrook, Will and DuPage Counties, Illinois.

I further certify that on June 25th, 2019, the Corporate Authorities of such municipality passed and approved Ordinance 19-048 entitled:

ANNEXING CERTAIN TERRITORY TO THE VILLAGE FOR COMMONWEALTH EDISON COMPANY CONSISTING OF ±19.59 ACRES (SUBJECT TO PUBLIC SERVICES DIRECTOR APPROVAL)

The pamphlet form of Ordinance 19-048 including the Ordinance and a cover sheet, thereof, was prepared on June 26th, 2019. Copies of such Ordinance are available for public inspection upon request in the office of the Village Clerk.

DATED at Bolingbrook, Illinois, this 26th day of June, 2019.



Carol S. Penning

Carol S. Penning, CMC
VILLAGE CLERK

PREPARED BY/MAIL TO:
VILLAGE OF BOUNGBROOK/CLERK'S OFFICE
375 W. BRAIRCLIFF ROAD
BOUNGBROOK, IL 60440

A109

PLATE 075-48-03-384-073



SUBMITTED - 15466630 - Michael Martin - 11/3/2021 4:53 PM

AFFIDAVIT OF SERVICE

VILLAGE OF BOLINGBROOK

UTILITY EASEMENT AREAS FOR COMED (19.59 ACRES)

P.I.N. NUMBERS: 12-02-21-400-004-0000, 12-02-28-200-001-0010, 12-02-28-200-001-0020, & 12-02-16-200-018-0000 (total of \pm 19.59 acres)

PREPARED BY & MAIL TO:

VILLAGE CLERK'S OFFICE
VILLAGE OF BOLINGBROOK
375 W. BRIARCLIFF RD.
BOLINGBROOK, IL 60440



Bolingbrook

a place to grow



AFFIDAVIT OF SERVICE

Roger C. Claar
Mayor

Carol S. Penning
Village Clerk

Michael T. Lawler
Deputy Mayor
&
Village Trustee

Village Trustees

Mary S. Alexander-Basta
Michael J. Carpanzano
Robert M. Jaskiewicz
Sheldon L. Watts
Maria A. Zarate

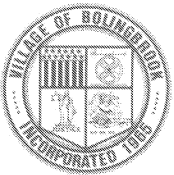
STATE OF ILLINOIS)
COUNTY OF DUPAGE) SS.
COUNTY OF WILL)

Carol S. Penning, being first duly sworn, deposes and says on oath that, as Village Clerk of the Village of Bolingbrook, she did cause the foregoing notice regarding the utility easement areas for ComEd annexation to be served upon the following:

Supervisor of DuPage Township
Trustees of DuPage Township
Clerk of DuPage Township
Others: ComEd c/o Scott E. Saef

Mailing true and correct copies of the same by certified mail to the aforesaid persons at the addresses hereby attached on the 5th day of June, 2019, by 5:00 P.M. by depositing the same in the United States mail at Bolingbrook, Illinois, postage prepaid.

James S. Boan
Village Attorney
Robbins - Schwartz



375 W. Briarcliff Road
Bolingbrook, Illinois
60440-3829

www.bolingbrook.com

(630) 226-8400
FAX: (630) 226-8409
TDD: (630) 226-8402

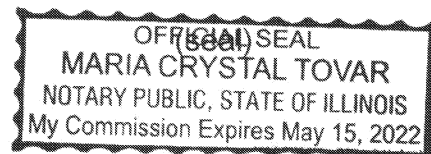
Recycled For A Better Environment



SUBSCRIBED AND SWORN to before
me this 5th day of June, 2019.

Notary Public

Carol S. Penning
Village Clerk



TREE CITY USA

A Community of 76,344

**IN THE MATTER OF THE ANNEXATION
OF CERTAIN PROPERTY TO THE VILLAGE
OF BOLINGBROOK, ILLINOIS**

A copy of the Public Notice of Proposed Annexation of Property located in DuPage Township has been sent certified mail to the **DUPAGE TOWNSHIP BOARD** as follows:

Felix George, Supervisor
DuPage Township Board
419 Justine Ave
Bolingbrook, IL 60440

Maripat Oliver, Trustee
DuPage Township Board
527 Cottonwood Cir.
Bolingbrook, IL 60440

Dennis Raga, Trustee
DuPage Township Board
4 Derbyshire Court.
Bolingbrook, IL 60440

Ken Burgess, Trustee
DuPage Township Board
437 Berkshire Ave
Romeoville, IL 60441

Alyssia Benford, Trustee
DuPage Township Board
1517 Somerfield Dr.
Bolingbrook, IL 60490

Kulsum Ali, Clerk
DuPage Township Board
3 Arbury Court
Bolingbrook, IL 60440

Revised 03/29/19

NOTICE OF PUBLIC HEARING FOR ANNEXATION

Pursuant to the provisions of the Illinois Municipal Code (65 ILCS 5/7-1-1 et seq. and 5/7-1-8 et seq.) as amended, you, as Supervisor of DuPage Township, are hereby notified that the Village of Bolingbrook will consider the annexation of the Subject Property, herein below described as follows:

PIN #s: 12-02-21-400-004-0000, 12-02-28-200-001-0010, 12-02-28-200-001-0020, & 12-02-16-200-018-0000

THE WEST 210.00 FEET (MEASURED AT RIGHT ANGLES) OF THAT PART OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 37 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH AND EAST OF THE SOUTHERLY LINE OF U.S. ROUTE 66 (INTERSTATE 55), AS DESCRIBED IN THE GRANT OF HIGHWAY RECORDED MAY 19, 1982 AS DOCUMENT NUMBER R82-10258, IN WILL COUNTY, ILLINOIS;

AND ALSO;

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AND ALSO;

THE WEST 210.00 FEET (MEASURED AT RIGHT ANGLES) OF LOTS 2 & 7 IN SCHOOL TRUSTEES SUBDIVISION OF SECTION 16, TOWNSHIP 37 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THE SOUTH 750 FEET OF THE WEST 210 FEET (MEASURED AT RIGHT ANGLES) OF SAID LOT 7), ALL IN WILL COUNTY, ILLINOIS.


The Corporate Authorities of the Village will consider and hear testimony as to an ordinance authorizing the execution of an annexation agreement, and annexation of the Subject Property at a Regular Meeting of the Village President and Board of Trustees on June 25, 2019, at 8:00 p.m., at the Village Hall, 375 West Briarcliff Road, Bolingbrook, Illinois, or such subsequent meeting to which the matter may be duly continued.

The Subject Properties are commonly known as, and generally located at, and more particularly described as:

A tract of properties comprising approximately 19.59 acres of land centrally located within Village of Bolingbrook, utility easement areas for ComEd to run all their high voltage wires for electricity.

At the aforesaid time and place you may appear and be heard in connection with the aforesaid proposed annexation if you so see fit.

Dated: June 5, 2019
(ComEd Annexation)



Carol S. Penning, CMC
VILLAGE CLERK
VILLAGE OF BOLINGBROOK

NOTICE OF PUBLIC HEARING FOR ANNEXATION

Pursuant to the provisions of the Illinois Municipal Code (65 ILCS 5/7-1-1 et seq. and 5/7-1-8 et seq.) as amended, you, as Clerk of DuPage Township, are hereby notified that the Village of Bolingbrook will consider the annexation of the Subject Property, herein below described as follows:

PIN #s: 12-02-21-400-004-0000, 12-02-28-200-001-0010, 12-02-28-200-001-0020, & 12-02-16-200-018-0000

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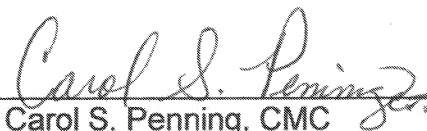
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Dated: June 5, 2019
(ComEd Annexation)



Carol S. Penning, CMC
VILLAGE CLERK
VILLAGE OF BOLINGBROOK

NOTICE OF PUBLIC HEARING FOR ANNEXATION

Pursuant to the provisions of the Illinois Municipal Code (65 ILCS 5/7-1-1 et seq. and 5/7-1-8 et seq.) as amended, you, as Trustee of DuPage Township, are hereby notified that the Village of Bolingbrook will consider the annexation of the Subject Property, herein below described as follows:

PIN #s: 12-02-21-400-004-0000, 12-02-28-200-001-0010, 12-02-28-200-001-0020, & 12-02-16-200-018-0000

THE WEST 210.00 FEET (MEASURED AT RIGHT ANGLES) OF THAT PART OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 37 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH AND EAST OF THE SOUTHERLY LINE OF U.S. ROUTE 66 (INTERSTATE 55), AS DESCRIBED IN THE GRANT OF HIGHWAY RECORDED MAY 19, 1982 AS DOCUMENT NUMBER R82-10258, IN WILL COUNTY, ILLINOIS;

AND ALSO;

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Dated: June 5, 2019
(ComEd Annexation)



Carol S. Penning, CMG
VILLAGE CLERK
VILLAGE OF BOLINGBROOK

**IN THE MATTER OF THE ANNEXATION
OF CERTAIN PROPERTY TO THE VILLAGE
OF BOLINGBROOK, ILLINOIS**

Notice of Proposed Annexation of Property has been sent by certified mail to:

ComEd
c/o Scott E. Saef, Sidley Austin LLP
1 S. Dearborn #900
Chicago, IL 60603

Revised 03/29/19

NOTICE OF PUBLIC HEARING FOR ANNEXATION

Pursuant to the provisions of the Illinois Municipal Code (65 ILCS 5/7-1-1 et seq. and 5/7-1-8 et seq.) as amended, you, as Property Owner, are hereby notified that the Village of Bolingbrook will consider the annexation of the Subject Property, herein below described as follows:

PIN #s: 12-02-21-400-004-0000, 12-02-28-200-001-0010, 12-02-28-200-001-0020, & 12-02-16-200-018-0000

THE WEST 210.00 FEET (MEASURED AT RIGHT ANGLES) OF THAT PART OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 37 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH AND EAST OF THE SOUTHERLY LINE OF U.S. ROUTE 66 (INTERSTATE 55), AS DESCRIBED IN THE GRANT OF HIGHWAY RECORDED MAY 19, 1982 AS DOCUMENT NUMBER R82-10258, IN WILL COUNTY, ILLINOIS;

AND ALSO;

THE WEST 210.00 FEET (MEASURED AT RIGHT ANGLES) OF THAT PART OF THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 37 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING NORTHERLY OF THE NORTHERLY RIGHT OF WAY LINE OF NAPERVILLE ROAD (ALSO KNOWN AS VETERANS PARKWAY) AS SHOWN ON DOCUMENT NUMBER 573067, RECORDED JANUARY 14, 1944, ALL IN WILL COUNTY, ILLINOIS.

AND ALSO;

THE WEST 210.00 FEET (MEASURED AT RIGHT ANGLES) OF LOTS 2 & 7 IN SCHOOL TRUSTEES SUBDIVISION OF SECTION 16, TOWNSHIP 37 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THE SOUTH 750 FEET OF THE WEST 210 FEET (MEASURED AT RIGHT ANGLES) OF SAID LOT 7), ALL IN WILL COUNTY, ILLINOIS.


The Corporate Authorities of the Village will consider and hear testimony as to an ordinance authorizing the execution of an annexation agreement, and annexation of the Subject Property at a Regular Meeting of the Village President and Board of Trustees on June 25, 2019, at 8:00 p.m., at the Village Hall, 375 West Briarcliff Road, Bolingbrook, Illinois, or such subsequent meeting to which the matter may be duly continued.

The Subject Properties are commonly known as, and generally located at, and more particularly described as:

A tract of properties comprising approximately 19.59 acres of land centrally located within Village of Bolingbrook, utility easement areas for ComEd to run all their high voltage wires for electricity.

At the aforesaid time and place you may appear and be heard in connection with the aforesaid proposed annexation if you so see fit.

Dated: June 5, 2019
(ComEd Annexation)


Carol S. Penning, CMC
VILLAGE CLERK
VILLAGE OF BOLINGBROOK

PREPARED BY/MAIL TO:
VILLAGE OF BOLINGBROOK/CLERK'S OFFICE
375 W. BRAIRCLIFF ROAD
BOLINGBROOK, IL 60440

THE WEST 23.8102 FIELD (DISCLOSED AS NORTH ANGLE) OF THE NORTHWEST QUARTER OF SECTION 23, TOWNSHIP 37 NORTH, RANGE 103, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTHWEST AND EAST OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF INTERSECTION 30, AS DESCRIBED IN THE GRANT OF MORTGAGE RECORDED MAY 15, 1967 AS DOCUMENT NUMBER 863-36533, IN WELLS COUNTY, IOWA;

AND ALSO;

THE WEST 23.8102 FIELD (DISCLOSED AS NORTH ANGLE) OF THE NORTHWEST QUARTER OF SECTION 23, TOWNSHIP 37 NORTH, RANGE 103, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTHEASTLY OF THE NORTHEASTLY END OF WEST LINE OF RAPHAEL ROAD (ALSO KNOWN AS VETERANS PARKWAY) AS SHOWN ON DOCUMENT NUMBER 573662, RECORDED JANUARY 14, 1968, ALL IN WELLS COUNTY, IOWA.

TOTAL AREA TO BE ADJUTED = 457,122 SQUARE FEET OR APPROX 10.46 ACRES.

LIMITS OF THE VILLAGE OF BOLINGBROOK

COMMONWEALTH EDISON COMPANY
THREE LINCOLN CENTRE (5TH FLOOR)
OAKBROOK TERRACE, IL 60181

VILLAGE BOARD

STATE OF ILLINOIS)
COUNTIES OF WILL) ss.
AND DUPAGE

APPROVED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF BOURNEBROOK, WILL AND CLAYTON COUNTIES

KLING: KL DAY OF: July 22 A.D. 20 14
 SIGNED: Joe C. Bell
 ATTEST: Carol L. Perry



EXERCISES

STATE OF ILLINOIS)
COUNTY OF WILL) ss

THIS IS TO CERTIFY THAT I, GEORGE H. SKILLAVIK, ILLINOIS PROFESSIONAL LAND SURVEYOR NO. 035-2393, HAVE PREPARED THIS PLAT FROM EXISTING PLATS AND RECORDS FOR THE PURPOSE OF ANNEXATION TO THE VILLAGE OF BOUNDBROOK, ILLINOIS, AS SHOWN BY THE PLAT HEREON DRAWN. DISTANCES ARE SHOWN IN FEET AND

GIVEN UNDER MY HAND AND SEAL THIS 25th DAY OF June A.D. 2019

George H Skufail
ILLINOIS PROFESSIONAL LAND SURVEYOR NO. 635-2582
LICENSE EXPIRES: NOVEMBER 30, 2028.



DOOR H. SCHAYE P.L.R. 039-003550 EXPIRATION DATE 11/30/2020
STACY L. STORMY P.L.R. 039-003415 EXPIRATION DATE 11/30/2020
PROFESSIONAL DESIGN FIRM NO. 154008760
1641 ARMYWAY DRIVE
ANNANDALE HILLS, N.Y. 11703
PHONE 516-261-7777 FAX 516-261-1200

Page 1 of 1

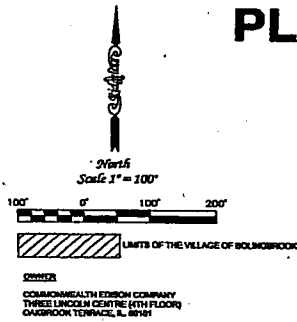
Rev. Date:	Rev. Description:
6/5/04	PERMITS FOR EXCAVATING
	ON 10 AC. FLAND
Drawn By: TLO	Drawn Date: 11/1/04
Checked By: JLO	Checked Date: 11/1/04
Scale: 1"=40'	
VILLAGE OF BURLINGTON	
Project Number: 2019-0116	

PLAT OF ANNEXATION
TO
THE VILLAGE OF BOLINGBROOK
OF

THE WEST 250.00 FEET (MEASURED AT RIGHT ANGLES) OF LOTS 2 AND 7 IN SCHOOL TRUSTEES SUBDIVISION OF SECTION 16, TOWNSHIP 37 NORTH, RANGE 20 EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPT THE SOUTH 75.00 FEET OF THE WEST 250.00 FEET (MEASURED AT RIGHT ANGLES) OF SAID LOT 7, ALL IN WILL COUNTY, ILLINOIS.

TOTAL AREA TO BE AMENDED = 396,730 SQUARE FEET OR 9.086 ACRES MORE OR LESS

P.L.N. #13-08-16-309-018
Ordinance # 19-019
PREPARED BY MAIL TO:
• VILLAGE OF BOLLINGBROOK CLERK'S OFFICE
375 W. BRADCLIFF ROAD
BOLLINGBROOK, IL 60440



VILLAGE BOARD

STATE OF ILLINOIS)
COUNTIES OF WILL,)
AND DU PAGE

APPROVED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF SOULSBROOK, WILL AND DURAGE
COUNTIES, NEW YORK
THIS 21st DAY OF July A.D. 19
SIGNED: [Signature]
VILLAGE CLERK
ATTEST: [Signature]
VILLAGE CLERK

**SURVEYOR'S CERTIFICATE**

STATE OF ILLINOIS)
COUNTY OF WILL) ss

THIS IS TO CERTIFY THAT I, GEORGE H. BRULAYK, ILLINOIS PROFESSIONAL LAND SURVEYOR NO. 605-2384, HAVE PREPARED THIS PLAT FROM EXISTING PLATS AND RECORDS FOR THE PURPOSE OF ANNEXATION TO THE VILLAGE OF BOLLINGBROOK, ILLINOIS, AS SHOWN BY THE PLAT HEREON DRAWN. DISTANCES ARE SHOWN IN FEET AND DECIMAL PARTS THEREOF.

GIVEN UNDER MY HAND AND SEAL THIS 25th DAY OF June, A.D. 20 19

George H. Liska, Jr.
ILLINOIS PROFESSIONAL LAND SURVEYOR NO. 035-2380
LICENSE EXPIRES: NOVEMBER 30, 2020



CINNAMON CREEK UNIT - 2

UNIT - 5
SUGARBROOK

ANNEXED

HERBY

Page 1 of 1

MICHAEL H. SELIGMAN P.L.S. 028-002880 EXPIRATION DATE 11/30/2021
 STACY L. STONANT P.L.S. 028-003410 EXPIRATION DATE 11/30/2020
 PROFESSIONAL DESIGN FIRM NO. 124-004766

[illegible]

STATE OF ILLINOIS)
) SS
COUNTY OF WILL)

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS**

CHICAGO TITLE LAND TRUST COMPANY, as
Trustee and as Successor to North Star Trust Company,
Successor to Harris Bank, Successor to First National
Bank, under a Trust Agreement Dated October 21,
1979 and known as Trust Number 1689, by HENRY E.
JAMES, the Holder of the Power of Direction and the
owner of the Beneficial Interest of the Land Trust.

Plaintiff,

vs.

Case No: 15 MR 2972

COUNTY OF WILL, a body politic and corporate, the
WILL COUNTY PLANNING and ZONING
COMMISSION, an agency of Will County, LENARD
VALLONE, an individual, BARBARA PETERSON,
an individual, KIMBERLY MITCHELL, an
individual, HUGH STIPAN, an individual, SCOTT
LAGGER, an individual, MICHAEL CARRUTHERS,
an individual, and THOMAS WHITE, an individual,

Petitioners,

vs.

VILLAGE OF BOLINGBROOK,

Intervenor.

**PLAINTIFF'S RESPONSE TO VILLAGE OF BOLINGBROOK'S MOTION TO
STRIKE PLAINTIFF'S MOTION TO STAY**

NOW COMES Plaintiff, CHICAGO TITLE LAND TRUST COMPANY, as Trustee and as Successor to North Star Trust Company, Successor to Harris Bank, Successor to First National Bank, under a Trust Agreement Dated October 21, 1979 and known as Trust Number 1689, by Henry E. James, the Holder of the Power of Direction and the owner of the Beneficial Interest in the Land Trust (hereinafter "Plaintiff"), by and through its attorneys, Dunn, Martin, Miller & Heathcock, Ltd., and for Plaintiff's Response to the Village of Bolingbrook's Motion to Strike Plaintiff's Motion to Stay states as follows:

1. The Intervenor, Village of Bolingbrook (the "Village") in its Motion to Strike Plaintiff's Motion to Stay (the "Motion to Strike") requests the Court to strike Plaintiff's request to stay the Village's second attempt or scheme to force annex the Plaintiff's property which is the subject of this lawsuit and the subject of Plaintiff's Motion for Entry of an Order on Will County to Issue a Building Permit to Plaintiff and to Stay the Village of Bolingbrook on Force Annexing the Plaintiff's Property Until the Court Has Ruled in this Case (the "Motion to Stay"). However, the Village's arguments that the Motion to Stay is procedurally improper and substantially insufficient are based on incorrect factual and legal assertions and the Village's second scheme to force annex the Plaintiff's property is nothing more than an attempt to circumvent the authority of this Court and interfere with the Court's jurisdiction and that if the Village's second scheme to force annex the Plaintiff's property is allowed to continue before this case is disposed of it would cause irreparable harm to Plaintiff's property rights. Therefore, the Motion to Strike must be denied and the Court should grant Plaintiff's Motion to Stay the second attempt by the Village of Bolingbrook to force annex of the Plaintiff's property incorporated in Ordinance 19-068, which annexation will be considered by the Village at its regular meeting of September 24, 2019 (a copy

of which is attached to the Motion to Stay) and the Court should stay the Village from force annexing Plaintiff's property until the final disposition of this lawsuit.

2. Although the Village has provided a brief procedural history and background of the case in the Motion to Strike, the Village has completely ignored that this Court on September 4, 2019 stated on the record that it was granting Plaintiff's Motion for Judgment on the Pleadings filed May 20, 2016 (the "Motion for Judgment") and was entering judgment in Plaintiff's favor on Plaintiff's Complaint for Administrative Review, Declaratory Judgment and Mandamus (the "Complaint") and ordering Will County to issue a building permit; and that the Court just needed some additional time to finalize the written order it was preparing granting the relief. Therefore, the arguments raised by the Village that Plaintiff has not shown a likelihood of success on the merits are essentially moot and have no legal basis as Plaintiff cannot only show a likelihood of success but has succeeded in this litigation.

3. The Plaintiff's property rights will be directly affected by the Village's forced annexation of Plaintiff's property which will be annexed into the Village under an E-1 or Estate Residential zoning which ignores the existing I-2 Industrial zoning classification under the Will County Ordinance which has existed since 1979 on the property and ignores the order issued by this Court which will allow the Plaintiff to construct a pole barn and store antique automobiles and antique automobile parts in the building and in licensed trailers on the property as Plaintiff has long desired and requested the County to permit, all of which has been allowed by the County except for a variance for frontage from 60 feet to 80 feet which is the subject matter of the challenge by the Plaintiff in its lawsuit which is being contested by the Defendant, Village of Bolingbrook.

4. The Village ignores its standing as an intervenor in this lawsuit when it argues that a complaint must be pending against it in order to grant the Motion to Stay. It is well established

that an intervenor must take the suit as he finds it, may not change issues between the parties or raise new issues or delay the natural prosecution of the case. *Hurley v. Finley*, 6. Ill.App.2d. 23, 26-27 (4th Dist. 1955). There is also no dispute that the rules of equity apply to intervention. *Id.* Simply put an intervenor has all the rights of an original party and shall be bound by the order or judgments of the court. 735 ILCS 5/2-408. Therefore, at its own request and pursuant to its own Motion to Intervene as a Defendant as a Matter of Right filed January 15, 2016, the Village has submitted to the jurisdiction of this Court, is bound by its orders and should be not be allowed to attempt to circumvent the judgment of the Court by trying to force annex Plaintiff's property a second time before this case has been disposed of especially in light of the Court's oral ruling on September 4, 2019 granting the Motion for Judgment in Plaintiff's favor on the complaint pending against the Defendant, the Village of Bolingbrook.

5. A Court has broad discretion in granting a motion to stay and can consider such factors as the “‘ordinary administration of justice and judicial economy’, as well as its inherent authority to control the disposition of the cases before it.” *TIG Ins. Co v. Canel*, 389 Ill.App.3d 366, 375 (1st Dist. 2009) *citing Estate of Bass*, 375 Ill.App.3d 62, 68 (1st Dist. 2007); *see also Cullinan v. Fehrenbacher*, 2012 IL App (3d) 120005 ¶ 10 (A circuit court may stay proceedings as part of its inherent authority to control the disposition of the case and such a decision will not be overturned absent an abuse of discretion). Plaintiff also does not dispute that an order granting a motion to stay may act or be treated as an injunction that prevents a party from circumventing the authority of the Court, *see TIG Ins. Co*, 389 Ill.App.3d at 371.

6. The Village of Bolingbrook's second attempt to force annex the Plaintiff's property is nothing more than a pretext by the Village of Bolingbrook to both collaterally attack the decision of the Appellate Court and to interfere with the jurisdiction of this Court in resolving the issues

before it. The zoning complaint which addresses the failure of the county to issue a variance for frontage so that the Plaintiff could obtain a building permit to construct a pole barn began in 2013 on a complaint against the Plaintiff property owner filed by the Mayor of the Village of Bolingbrook, Roger Claar. Following administrative hearings on the complaint and the Plaintiff's legislative request for zoning relief from the County of Will including the variance for frontage which was denied by the County, the Plaintiff filed this lawsuit to order the County to issue the building permit and to declare that a variance was not needed in order for the Plaintiff to obtain its building permit. At every step in the process, the Village of Bolingbrook appeared at all of the public meetings and expressed objections, presented witnesses and presented evidence and on many occasions the Mayor of the Village of Bolingbrook, Roger Claar, testified. While the Village, in its motion to strike, indicates that the second scheme to force annex the Plaintiff's property proposes a "new and different" annexation agreement with ComEd. There is no showing that the second forced annexation of Plaintiff's property is a logical extension of the Village boundaries and that the ComEd annexation in the second scheme is something other than a sham to voluntary annex the ComEd property in order to obtain a corridor to force annex Plaintiff's property. The second scheme of forced annexation is nothing more than a sham transaction with new "clever" contingencies as described by the Appellate Court when it rejected the first scheme. In fact, the true intent of the Village can be seen from Ordinance No. 19-015 approving the plat of detachment ordered by this Court, a copy of which is attached hereto as Exhibit #1. A review of recitals 3, 4 and 5 (recitals highlighted) show that the Village's findings regarding the plat of detachment can be only interpreted as a challenge to the ruling of the Appellate Court to which it reluctantly submits. It is clear that the Village considered the ruling of the Appellate Court with sour grapes and blatantly indicates in the motion to approve the ordinance that "the Village is

working with ComEd to subvert that ruling and re-annex the ComEd property to comply the conditions in the Court's ruling." See Exhibit #1. Board Minutes, page 8, Ordinance 19-015 Approving Plat of Detachment, statement highlighted.

This is a clear statement that ComEd and the Village of Bolingbrook are not working together on a natural progression and extension of the Village boundaries. Instead, the Village's purpose is to again scheme up a plan to force annex Plaintiff's property in order to collaterally attack the final judgment order of the Appellate Court following the denial of the Village of Bolingbrook's petition for leave to appeal the Appellate Court's ruling to the Illinois Supreme Court.

7. The Village's second attempt to force annex Plaintiff's property is nothing more than an attempt to circumvent the Court's inherent authority to control the disposition of the case before it. As this Court is well aware and as more fully described in explicit detail in paragraphs 19 through 40 of the Complaint, the Village since at least 2013 has repeatedly and continually attempted to interfere with Plaintiff's property rights, including but not limited to, previously attempting to force annex Plaintiff's property based on a "sham transaction created exclusively for the purpose of allowing the Village to reach the James property" See *Chicago Title Land Trust Company v. County of Will*, 2018 IL App (3d) 160713, ¶ 42. Now when it finally appears Plaintiff will be provided the building permit from Will County that should have been issued in December 2015 to allow Plaintiff to build a legal conforming pole barn and use its property in legal conformance Will County's Zoning Ordinance; the Village is again attempting to circumvent the Court's jurisdiction by again trying to force annex the Plaintiff's property before the Court issues its written order.

8. Pursuant to the Village's own Zoning Ordinance, Article 10 – Non-Conformities, Plaintiff is afforded certain protections regarding structures and uses of its property so long as the structure or use was previously allowed. However, the Village by rushing to attempt to force annex Plaintiff's property before the Court has entered its written order granting judgment in favor of the Plaintiff is nothing more than an attempt to interfere with Plaintiff's property rights. In addition, should the Village be allowed to force annex Plaintiff's property either prior to or immediately after the entry of a written order granting Plaintiff judgment, it would not only circumvent the Court's authority to control the outcome of this case; but it would impact the ability of the other defendants, namely the County of Will, to appeal the decision of the Court in granting the Plaintiff's Motion for Judgment.

9. Moreover, Plaintiff does not have an adequate remedy at law in this matter. It is axiomatic that Plaintiff cannot challenge the forced annexation of its property by quo warranto until after the annexation has been complete, something that has not occurred. *See Petition of Village of Kildeer to Annex Certain Property*, 162 Ill.App.3d 262, 271 (2nd Dist. 1987). Plaintiff has now spent over six (6) years litigating its property rights and has finally won. This new scheme to force annex Plaintiff's property is nothing more than a spiteful attempt by the Village to further deprive Plaintiff of its property rights.

10. The Village's Mayor, Roger Claar, who has been the driving force behind the Village's actions regarding Plaintiff's property, has summed up the Village's intent best when he stated at the Village's Board Meeting on June 25, 2019 discussing the second attempt to annex the adjacent property owned by Commonwealth Edison so the Village could attempt to force annex Plaintiff's property the following:

“Mayor Claar explained that we did this once before with Commonwealth Edison. There was an objection filed. It went all the way to the Appellate Court in Ottawa and wasted a

lot of taxpayer dollars. The vote was two to one to uphold the objection filed in the Will County Circuit Court. The Village went back to Commonwealth Edison and renegotiated the annexation agreement. The board just passed this annexation and it will stand. The Village will incorporate all that land and you will see a new map in the near future.” A true and correct copy of the June 25, 2019 minutes are attached hereto as Exhibit # 2. Pps 7 and 8, language highlighted on page 8.

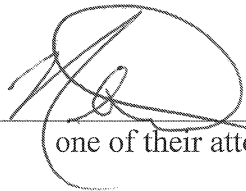
Not only is the Mayor's description inaccurate, it clearly confirms the Village is acting with malice by attempting to force annex the Plaintiff's property and not following the purposes and dictates of the annexation process outlined in the Municipal Code. Allowing the Village to proceed once again with its forced annexation would be error, and would irreparably injure Plaintiff's property rights and would leave the Plaintiff with no adequate remedy at law while the Village circumvents and ignores the authority of this Court. The Motion to Strike should be denied, the Court should enter an order staying the Village's attempts to force annex Plaintiff's property pending the final resolution of this case and require no bond of the Plaintiff for the stay order consistent with the protection of Plaintiff's due process rights as dictated in the line of cases following *202 Ill.2d 164*, *Supreme Court of Illinois, The PEOPLE ex rel. Robert J. KLAEREN II et al., Appellees, v. VILLAGE OF LISLE et al., Appellants*.

WHEREFORE, Plaintiff, prays this Court enter an order granting the following relief:

- A. Denying the Village of Bolingbrook's Motion to Strike Plaintiff's Motion to Stay;
- B. Granting Plaintiff's request to stay the Village of Bolingbrook's attempt to force annex the Plaintiff's property by Ordinance 19-068 scheduled for consideration and enactment by the Village Board at its regular meeting of September 24, 2019 and stay any and all future attempts by the Village of Bolingbrook to force annex the Plaintiff's property until the final disposition of this lawsuit; and,
- C. To require no bond of the Plaintiff for the issuance of the stay order.

Respectfully submitted,

By: CHICAGO TITLE LAND TRUST
COMPANY, as Trustee and as Successor to
North Star Trust Company, Successor to
Harris Bank, Successor to First National Bank,
under a Trust Agreement Dated October 21,
1979 and known as Trust Number 1689, by
Henry E. James, the Holder of the Power of
Direction and the owner of the Beneficial
Interest in the Land Trust

By:  _____
one of their attorneys

Michael J. Martin – 1781960
Michael R. Martin – 6288388
Dunn, Martin, Miller & Heathcock, Ltd.
15 West Jefferson Street, Suite 300
Joliet, Illinois 60432
mikejmartin@willcountylaw.com
mikermartin@willcountylaw.com

ORDINANCE 19-015

**ORDINANCE APPROVING PLAT OF DETACHMENT (I-55 AND VETERANS
PARKWAY)**

WHEREAS, Section 6(a) of Article VII of the 1970 Constitution of the State of Illinois provides that any municipality which has a population of more than 25,000 is a home rule unit, and the Village of Bolingbrook, Will and DuPage counties, Illinois, with a population in excess of 25,000 is, therefore, a home rule unit and, pursuant to the provisions of said Section 6(a) of Article VII, may exercise any power and perform any function pertaining to its government and affairs, including, but not limited to, the power to tax and to incur debt; and

WHEREAS, the Village, as authorized pursuant to section 7-1-8 of the Illinois Municipal Code, annexed certain ComEd property into the boundaries of the Village by Ordinance 16-019 and thereafter, pursuant to section 7-1-13 of the Illinois Municipal Code, annexed certain additional contiguous property into the boundaries of the Village by Ordinance 16-047; and

WHEREAS, notwithstanding the Village's clear authority to annex the above referenced property and notwithstanding that the Village complied with all laws and requirements for annexation of the above property, the Appellate Court of Illinois, Third District, issued an opinion (Judge Holdridge dissenting) on May 18, 2018 finding that the annexations were a nullity and reversing the decision of the Circuit Court of Will County, which had previously upheld the annexations; and

WHEREAS, the Illinois Municipal Code provides that upon judicial determination that an annexation is invalid, the municipality is required to prepare and record a plat with the county recorder detaching and disconnecting the property that was judicially determined to have been invalidly annexed; and

WHEREAS, though the Mayor and Board of Trustees disagree with the reasoning of the opinion of the Appellate Court of Illinois, Third District, they hereby declare that it is necessary to approve the Plat of Detachment, which is attached hereto and made a part hereof, in order to be in compliance with the directives of the courts of this state and with the requirements of the Illinois Municipal Code;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND BOARD OF TRUSTEES OF THE VILLAGE OF BOLINGBROOK, WILL AND DU PAGE COUNTIES, ILLINOIS, IN THE EXERCISE OF ITS HOME RULE POWERS, AS FOLLOWS:

SECTION ONE: The foregoing recitals are hereby incorporated in this Section as if said recitals were fully set forth herein.

SECTION TWO: The Plat of Detachment, which is attached hereto and made a part hereof as Exhibit A, shall be and is hereby approved, and the Village Clerk shall be

and is hereby authorized and directed to record said Plat with the Recorder of Deeds of Will County.

SECTION THREE: The Village Clerk is hereby authorized and directed to notify the Will County Clerk of the Plat of Detachment and the recording of same.

SECTION FOUR: This ordinance shall be in full force and effect from and after its passage, approval and publication in the manner provided by law.


PASSED THIS 26TH DAY OF FEBRUARY, 2019.

AYES:	6	Zarate, Lawler, Watts, Hoogland, Morales, Jaskiewicz
NAYS:	0	None
ABSENT:	0	None

APPROVED THIS 26TH DAY OF FEBRUARY, 2019.


MAYOR

ATTEST:


VILLAGE CLERK

PUBLISHED BY THE VILLAGE CLERK, IN PAMPHLET FORM, BY AUTHORITY OF THE CORPORATE AUTHORITIES OF THE VILLAGE OF BOLINGBROOK ON FEBRUARY 27, 2019.

JM\827269\2/7/19

Voice vote. Motion carried.

ORDINANCE 19-013

APPROVING SPECIAL USE PERMIT FOR A PLANNED DEVELOPMENT FOR A RESTAURANT WITH EXTENDED HOURS OF OPERATION (PERLA NEGRA MARISCOS) – 235 S. BOLINGBROOK DRIVE:

Motion Hoogland, second Watts to pass an ordinance approving Special Use Permit for a Planned Development for a restaurant with extended hours of operation (Perla Negra Mariscos) – 235 S Bolingbrook Drive.

The applicant, Adan Barrios has purchased the restaurant building at 235 S. Bolingbrook Drive (formerly Buchos) and plans to redevelop it as a Mexican seafood business named Perla Negra Mariscos. The applicant would like to add a 954 sq. ft. addition to the existing 2,860 sq. ft. building. He would like to be open daily from 10:00 a.m. to 11:00 p.m. Code allows until 10:00 p.m. weekdays. This Ordinance approves the building addition and a Special Use Permit for the extended hours of operation. The Plan Commission has reviewed and recommends approval.

ROLL CALL:	Yea	6	Zarate, Lawler, Watts, Hoogland, Morales, Jaskiewicz
	Nay	0	None
	Absent	0	None

Motion carried.

ORDINANCE 19-014

AMENDING ARTICLE 13 OF CHAPTER 17 OF THE MUNICIPAL CODE REGARDING GOLF CART OPERATION:

Motion Morales, second Lawler to pass an ordinance amending Article 13 of Chapter 17 of the Municipal Code regarding golf cart operation.

One of the benefits to living on a golf course is the potential to be able to use a golf cart to get to the golf course. Illinois Motor Vehicle Code (625 ILCS 5/11-1426.1) allows Municipalities to authorize the use of golf carts on "non-highway" streets. The Ordinance authorizes the use of golf carts (provided the cart meets the statutory requirements) on streets in Americana Estates, Patriot Place and Liberty Green subdivisions. Statutory requirements include headlights, brake lights, rear view mirror, steering and braking mechanisms, front and rear reflective warning, etc.

ROLL CALL:	Yea	6	Zarate, Lawler, Watts, Hoogland, Morales, Jaskiewicz
	Nay	0	None
	Absent	0	None

Motion carried.

ORDINANCE 19-015

APPROVING PLAT OF DETACHMENT (I-55 AND VETERANS PARKWAY):

Motion Watts, second Zarate to pass an ordinance approving Plat of Detachment (I-55 and Veterans Parkway)

This Ordinance approves a Plat of Detachment regarding ±21.876 acres of property located south of I-55 off Veterans Parkway. On February 29, 2016 the Village voluntarily annexed 3.08 acres of ComEd property. On March 8, 2016 it involuntarily annexed 18.796 acres of property. One of the 3 affected landowners filed suit challenging the annexation. The trial court agreed with the Village and the Appellate Court reversed. This Ordinance implements the court order and disconnects the contested property. The Village is working with ComEd to re-annex the property to comply with the conditions in the court's ruling.

ROLL CALL: Yea 6 Zarate, Lawler, Watts, Hoogland, Morales, Jaskiewicz
 Nay 0 None
 Absent 0 None

Motion carried.

QUESTIONS FROM AUDIENCE/PRESS: None

TRUSTEE COMMENTS AND REPORTS:

Trustee Zarate

Reminded residents to change their clocks on Sunday, March 10th and to change the batteries on smoke and carbon monoxide detectors. She mentioned that through the Lent season, the Nest Bar and Grill Restaurant will be having an All You Can Eat Fish Fry every Friday.

Trustee Lawler

Congratulated those Village employees that were honored by the VFW and the American Legion; mentioned the upcoming Lions Club St. Patrick's Day Dinner and Dance event; congratulated the 40-year-old Community Service Council on their building expansion and recent ribbon cutting – the additional space will allow them to serve more individuals in need of counseling; and shared information on Compass Church's food pantry to help needy families.

Trustee Watts

Congratulated the Village employee recipients from the Police, Fire and Public Service Departments on their recognition; welcomed Lon Shank back to the Plan Commission; provided details on the Million Dollar Women event; "Reach for the Stars" fundraiser hosted by the Midwest Christian Montessori Academy; and the AMITA Health Bolingbrook Hospital St. Paddy's Half Marathon & 5K Run/Walk.

Trustee Hoogland

Provided details on the Great Chefs Tasting Party and Auction to benefit the Center for Disability Services to be held at the Bolingbrook Golf Club; and gave information on the Village wide "Spring Clean Up" that will be held on the last week in March on your normal garbage pickup day – Unlimited bulk items and unlimited amounts of refuse will be picked up.

Trustee Morales

Shared information on the Coffee with the Chief program which is held each month at different locations throughout the Village. It will be held in March at the Bolingbrook Police Department. He gave details on the 4th Annual Rotary Mac and Cheese Cook-off to be held at New Life Lutheran Church. He congratulated all the award winners.

Trustee Jaskiewicz

Thanked the VFW and American Legion for recognizing Village employees for their service and congratulated tonight's recipients. He also encouraged residents to attend the Rotary's Mac and Cheese event and provided details on the different types of Macaroni and Cheese. He added that there will be other food vendors participating.

Mayor Claar mentioned that playoffs for State Champions started and the Bolingbrook Basketball team successfully beat Joliet. He congratulated the basketball team players.

He also talked about the low voter turnout in the Chicago Primary election and gave details of possible results of the top two contenders.

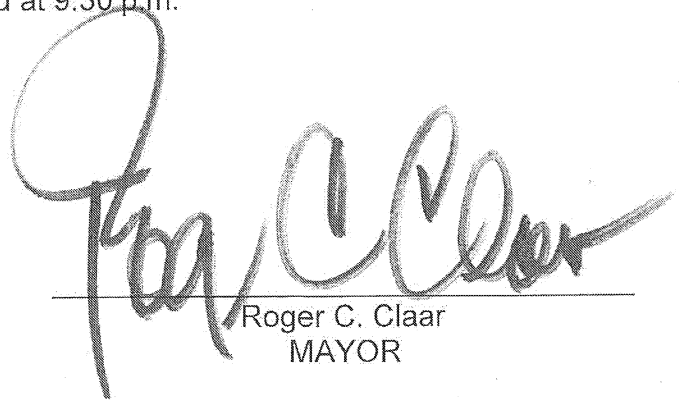
He encouraged residents to do their research regarding the candidates that are running for public office in Bolingbrook for the Village, Park, Library and School for the Tuesday, April 2, 2019 Consolidated Election.

EXECUTIVE SESSION: None

ADJOURNMENT:

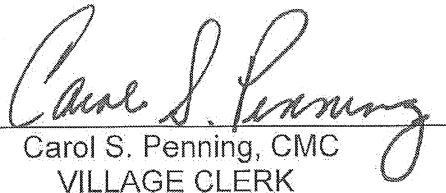
Motion Watts, second Morales to adjourn the meeting.

Voice vote. Motion carried and meeting adjourned at 9:30 p.m.



Roger C. Claar
MAYOR

ATTEST:



Carol S. Penning, CMC
VILLAGE CLERK

ORDINANCE 19-048**ANNEXING CERTAIN TERRITORY TO THE VILLAGE FOR COMMONWEALTH EDISON COMPANY CONSISTING OF ±19.59 ACRES (SUBJECT TO PUBLIC SERVICES DIRECTOR APPROVAL)**

Motion Zarate, second Basta to pass an ordinance annexing certain territory to the Village for Commonwealth Edison Company consisting of ±19.59 acres (Subject to Public Services Director Approval).

This Ordinance annexes four parcels of ComEd property totaling 19.59 acres into the corporate limits of the Village. The plat of annexation is being finalized and need signatures before recording.

ROLL CALL: Yea 7 Zarate, Lawler, Basta, Watts, Carpanzano, Jaskiewicz
Mayor Roger C. Claar
Nay 0 None
Absent 0 None
Motion carried.

Mayor Claar explained that he only votes on board agenda items when there is a tie vote and/or on an annexation.

PC 19-14**APPROVAL OF A REZONING FROM E-R ESTATE RESIDENCE, R-3 SINGLE FAMILY RESIDENCE AND I-1 LIMITED INDUSTRIAL TO UD UTILITY DISTRICT, VILLAGE OF BOLINGBROOK PUBLIC SERVICES AND DEVELOPMENT; APPLICANT**

Motion Watts, second Basta to accept a Plan Commission Report PC. 19.14 for approval for a rezoning from E-R Estate Residence, R-3 single family residence and I-1 Limited industrial to UD utility District, Village of Bolingbrook Public Services and Development; Applicant.

Voice vote. Motion carried.

ORDINANCE 19-049**REZONING LAND IN THE VILLAGE OF BOLINGBROOK, WILL AND DUPAGE COUNTIES, STATE OF ILLINOIS**

Motion Lawler, second Zarate to pass an ordinance rezoning land in the Village of Bolingbrook, Will and DuPage Counties, State of Illinois.

This Ordinance rezones ±114.2 acres of Commonwealth Edison right-of-way from its current zoning and rezones the property (15 parcels) to UD Utility District.

ROLL CALL: Yea 6 Zarate, Lawler, Basta, Watts, Carpanzano; Jaskiewicz
Nay 0 None
Absent 0 None
Motion carried.

Mayor Claar explained that we did this once before with Commonwealth Edison. There was an objection filed. It went all the way to the Appellate Court in Ottawa and wasted a lot of taxpayer dollars. The vote was two to one to uphold the objection filed in the Will County Circuit Court. The Village went back to Commonwealth Edison and renegotiated the annexation agreement. The board just passed this annexation and it will stand. The Village will incorporate all that land and you will see a new map in the near future.

PC 19.22

APPROVAL OF A SPECIAL USE PERMIT FOR A PLANNED DEVELOPMENT, MIT US, INC., 562 W. BOUGHTON ROAD, ALEX KRAVCHENKO, MIT US, INC.; APPLICANT

Motion Basta, second Lawler to accept a Plan Commission Report PC. 19.22 for approval for a Special Use Permit for a Planned Development, MIT US, INC. 562 W. Boughton Road, Alex Kravchenko. MIT US, INC. Applicant.

Voice vote. Motion carried.

ORDINANCE 19-050

APPROVING SPECIAL USE PERMIT FOR A PLANNED DEVELOPMENT FOR A PROFESSIONAL OFFICE (MIT US, INC.) – 562 W. BOUGHTON ROAD

Motion Basta, second Zarate to pass an ordinance approving a Special Use Permit for a Planned Development for a professional office (MIT US, INC) – 562 W. Boughton Road.

MIT US, Inc. and Barons Holdings LLC are logistics and transportation service providers. They would like to lease 1,808 sq. ft. of tenant space at 562 W. Boughton Road (Oak Square Center) for use as a dispatch center. Oak Square is zoned B-2 Community Retail. Non-sales tax generating businesses need a special use permit to locate in business zoned districts. The Plan Commission has reviewed and recommends approval.

ROLL CALL:	Yea	6	Zarate, Lawler, Basta, Watts, Carpanzano, Jaskiewicz
	Nay	0	None
	Absent	0	None

Motion carried.

PC 19-23

APPROVAL OF A SPECIAL USE PERMIT FOR A PLANNED DEVELOPMENT, VETERANS PREMIER CHARITY RAFFLE, 481 W. BOUGHTON ROAD, LARRY SHAVER, VETERANS PREMIER CHARITY RAFFLE; APPLICANT

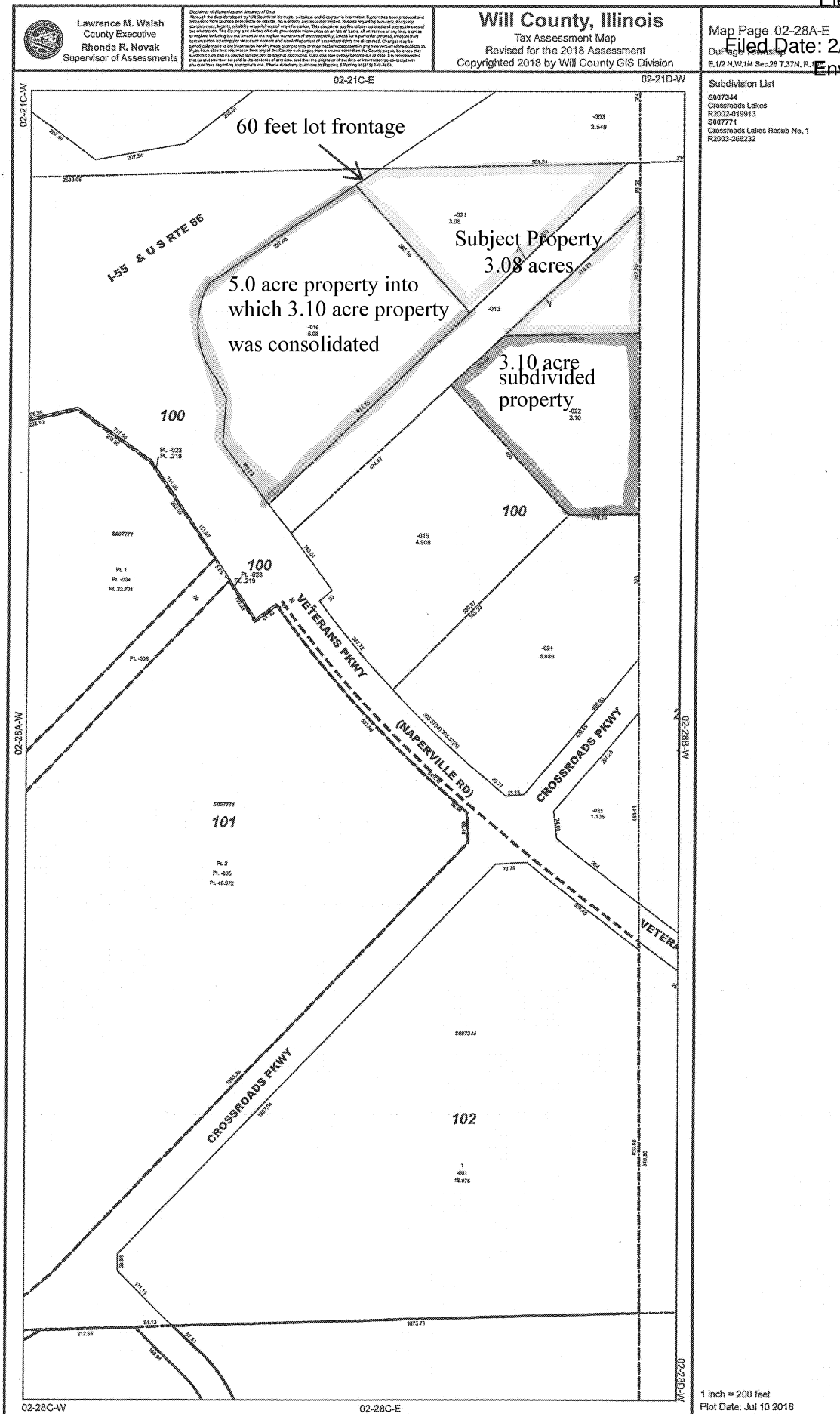
Motion Jaskiewicz, second Carpanzano to accept a Plan Commission Report PC. 19.23 for approval of a Special Use Permit for a Planned Development, Veterans Premier Charity Raffle, 481 W. Boughton Road, Larry Shaver, Veterans Premier Charity Raffle; Applicant.

Voice vote. Motion carried.

ORDINANCE 19-051

APPROVING SPECIAL USE PERMIT FOR A PLANNED DEVELOPMENT FOR A BINGO HALL (VETERANS PREMIER CHARITY RAFFLE) – 481 W. BOUGHTON ROAD

Motion Lawler, second Watts to pass an ordinance approving a Special Use Permit for a Planned Development for a Bingo Hall (Veterans Premier Charity Raffle) – 481 W. Boughton Road.



West's Smith-Hurd Illinois Compiled Statutes Annotated

Chapter 735. Civil Procedure

Act 5. Code of Civil Procedure (Refs & Annos)

Article II. Civil Practice (Refs & Annos)

Part 4. Parties (Refs & Annos)

735 ILCS 5/2-408

Formerly cited as IL ST CH 110 ¶ 2-408

5/2-408. Intervention

Currentness

§ 2-408. Intervention. (a) Upon timely application anyone shall be permitted as of right to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant will or may be bound by an order or judgment in the action; or (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property in the custody or subject to the control or disposition of the court or a court officer.

(b) Upon timely application anyone may in the discretion of the court be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common.

(c) In all cases involving the validity of a constitutional provision, statute or regulation of this State and affecting the public interest, the State upon timely application may in the discretion of the court be permitted to intervene.

(d) In all cases involving the validity of an ordinance or regulation of a municipality or governmental subdivision of this State and affecting the public interest, the municipality or governmental subdivision upon timely application may in the discretion of the court be permitted to intervene.

(e) A person desiring to intervene shall present a petition setting forth the grounds for intervention, accompanied by the initial pleading or motion which he or she proposes to file. In cases in which the allowance of intervention is discretionary, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(f) An intervenor shall have all the rights of an original party, except that the court may in its order allowing intervention, whether discretionary or a matter of right, provide that the applicant shall be bound by orders or judgments, theretofore entered or by evidence theretofore received, that the applicant shall not raise issues which might more properly have been raised at an earlier stage of the proceeding, that the applicant shall not raise new issues or add new parties, or that in other respects the applicant shall not interfere with the control of the litigation, as justice and the avoidance of undue delay may require.

Credits

P.A. 82-280, § 2-408, eff. July 1, 1982. Amended by P.A. 82-783, art. IV, § 27, eff. July 13, 1982.

Formerly [Ill.Rev.Stat.1991, ch. 110, ¶ 2-408](#).

735 I.L.C.S. 5/2-408, IL ST CH 735 § 5/2-408

Current through P.A. 102-178 of the 2021 Reg. Sess. Some statute sections may be more current, see credits for details.

End of Document

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West's Smith-Hurd Illinois Compiled Statutes Annotated

Chapter 65. Municipalities

Act 5. Illinois Municipal Code (Refs & Annos)

Article 7. Territory

Division 1. Annexation (Refs & Annos)

65 ILCS 5/7-1-13

Formerly cited as IL ST CH 24 ¶ 7-1-13

5/7-1-13. Annexation

Effective: August 19, 2011

Currentness

§ 7-1-13. Annexation.

(a) Whenever any unincorporated territory containing 60 acres or less, is wholly bounded by (a) one or more municipalities, (b) one or more municipalities and a creek in a county with a population of 400,000 or more, or one or more municipalities and a river or lake in any county, (c) one or more municipalities and the Illinois State boundary, (d) except as provided in item (h) of this subsection (a), one or more municipalities and property owned by the State of Illinois, except highway right-of-way owned in fee by the State, (e) one or more municipalities and a forest preserve district or park district, (f) if the territory is a triangular parcel of less than 10 acres, one or more municipalities and an interstate highway owned in fee by the State and bounded by a frontage road, (g) one or more municipalities in a county with a population of more than 800,000 inhabitants and less than 2,000,000 inhabitants and either a railroad or operating property, as defined in the Property Tax Code (35 ILCS 200/11-70), being immediately adjacent to, but exclusive of that railroad property, (h) one or more municipalities located within a county with a population of more than 800,000 inhabitants and less than 2,000,000 inhabitants and property owned by the State, including without limitation a highway right-of-way owned in fee by the State, or (i) one or more municipalities and property on which a federally funded research facility in excess of 2,000 acres is located, that territory may be annexed by any municipality by which it is bounded in whole or in part, by the passage of an ordinance to that effect after notice is given as provided in subsection (b) of this Section. Land or property that is used for agricultural purposes or to produce agricultural goods shall not be annexed pursuant to item (g). Nothing in this Section shall subject any railroad property to the zoning or jurisdiction of any municipality annexing the property under this Section. The ordinance shall describe the territory annexed and a copy thereof together with an accurate map of the annexed territory shall be recorded in the office of the recorder of the county wherein the annexed territory is situated and a document of annexation shall be filed with the county clerk and County Election Authority. Nothing in this Section shall be construed as permitting a municipality to annex territory of a forest preserve district in a county with a population of 3,000,000 or more without obtaining the consent of the district pursuant to Section 8.3 of the Cook County Forest Preserve District Act¹ nor shall anything in this Section be construed as permitting a municipality to annex territory owned by a park district without obtaining the consent of the district pursuant to Section 8-1.1 of the Park District Code.

(b) The corporate authorities shall cause notice, stating that annexation of the territory described in the notice is contemplated under this Section, to be published once, in a newspaper of general circulation within the territory to be annexed, not less than 10 days before the passage of the annexation ordinance, and for land annexed pursuant to item (g) of subsection (a) of this Section, notice shall be given to the impacted land owners. The corporate authorities shall also, not less than 15 days before the passage of the annexation ordinance, serve written notice, either in person or, at a minimum, by certified mail, on the taxpayer of record of the proposed annexed territory as appears from the authentic tax records of the county. When the territory to be annexed lies wholly or partially within a township other than the township where the municipality is situated, the annexing

municipality shall give at least 10 days prior written notice of the time and place of the passage of the annexation ordinance to the township supervisor of the township where the territory to be annexed lies. If the territory to be annexed lies within the unincorporated area of a county, then the annexing municipality shall give at least 10 days' prior written notice of the time and place of the passage of the annexation ordinance to the corporate authorities of the county where the territory to be annexed lies.

(c) When notice is given as described in subsection (b) of this Section, no other municipality may annex the proposed territory for a period of 60 days from the date the notice is mailed or delivered to the taxpayer of record unless that other municipality has initiated annexation proceedings or a valid petition as described in Section 7-1-2, 7-1-8, 7-1-11 or 7-1-12 of this Code has been received by the municipality prior to the publication and mailing of the notices required in subsection (b).

Credits

Laws 1961, p. 576, § 7-1-13, eff. July 1, 1961. Amended by Laws 1963, p. 2157, § 1, eff. July 31, 1963; Laws 1967, p. 3333, § 1, eff. Aug. 26, 1967; P.A. 77-1699, § 1, eff. July 1, 1972; P.A. 81-895, § 1, eff. Jan. 1, 1980; P.A. 83-358, § 16, eff. Sept. 14, 1983; P.A. 84-1045, § 1, eff. Nov. 26, 1985; P.A. 86-769, § 2, eff. July 1, 1990; P.A. 87-895, Art. 3, § 3-17, eff. Aug. 14, 1992; P.A. 94-396, § 5, eff. Aug. 1, 2005; P.A. 95-931, § 5, eff. Jan. 1, 2009; P.A. 95-1039, § 5, eff. March 25, 2009; P.A. 96-1000, § 245, eff. July 2, 2010; P.A. 96-1048, § 5, eff. July 14, 2010; P.A. 96-1049, § 5, eff. July 14, 2010; P.A. 97-333, § 165, eff. Aug. 12, 2011; P.A. 97-446, § 5, eff. Aug. 19, 2011.

Formerly Ill.Rev.Stat.1991, ch. 24, ¶ 7-1-13.

Footnotes

¹ 70 ILCS 810/8.3

65 I.L.C.S. 5/7-1-13, IL ST CH 65 § 5/7-1-13

Current through P.A. 102-178 of the 2021 Reg. Sess. Some statute sections may be more current, see credits for details.

ARTICLE XI. - NONCONFORMITIES

DIVISION 1. - GENERALLY

Secs. 54-777—54-805. - Reserved.

DIVISION 2. - SUBSTANDARD LOTS OF RECORD

Sec. 54-806. - Authority to utilize.

In any residence district, notwithstanding the regulations imposed by any other provision of this division, a single-family detached dwelling which complies with the restrictions in section 54-807 may be erected on a lot that is not less than 25 feet in width, consisting entirely of one tract of land that:

- (1) Has less than the prescribed minimum lot area, width, depth, or all three;
- (2) Is shown by a recorded plat or deed to have been owned separately and individually from adjoining tracts of land at a time when the creation of a lot of such size or width at such location would not have been prohibited by any zoning ordinance; and
- (3) Has remained in separate and individual ownership from adjoining tracts of land continuously during the entire time that the creation of such lot has been prohibited by the applicable chapter or ordinances.

(Code 1973, ch. 29, § 10-101)

Sec. 54-807. - Required side yards.

Construction permitted by section 54-806 shall comply with all the regulations (except lot area, width and depth) applicable to single-family dwellings in the zoning district in which the lot in question is located; provided, however, that the following side yard requirements shall apply in place of the side yard requirements otherwise applicable:

- (1) A dwelling shall be placed on the lot so as to provide a yard on each side of the dwelling;
- (2) The sum of the widths of the two side yards on each lot shall be not less than the smaller of:
 - a. 25 percent of the width of the lot; or
 - b. The minimum total for both side yards prescribed by the bulk regulations for the zoning district.
- (3) No side yard shall be less than ten percent of the width of the lot and in no case less than three feet.

(Code 1973, ch. 29, § 10-102)

Secs. 54-808—54-837. - Reserved.

DIVISION 3. - NONCONFORMING STRUCTURES

Sec. 54-838. - Authority to continue.

Any structure which is devoted to a use which is permitted in the zoning district in which it is located, but which does not comply with the applicable bulk, height, or floor area requirements or is located on a lot which does not comply with the applicable lot or yard requirements, or both, may be continued for the period of its normal useful life, so long as it remains otherwise lawful, subject to the restrictions in section 54-839 through section 54-841, and section 54-889 through section 54-892.

(Code 1973, ch. 29, § 10-201)

Sec. 54-839. - Enlargement, repair, alterations.

Any such structure, described in section 54-838, may be enlarged, maintained, repaired or remodeled; provided, however, that no such enlargement, maintenance, repair or remodeling shall either create any additional nonconformity or increase the degree of the existing nonconformity of all or any part of such structure, except that as to structures located on a lot that does not comply with the applicable lot size requirements, the side yard requirements shall be determined by section 54-807. Notwithstanding the provision of this section, an addition may be constructed to a principal residential structure that is lawfully nonconforming with respect to the exterior side yard setbacks provided such addition maintains the same or a greater exterior side yard setback than such principal residential structure.

(Code 1973, ch. 29, § 10-202; Ord. No. 76-074, 7-13-1976)

Sec. 54-840. - Damage or destruction.

If any structure described in section 54-838 is damaged or destroyed, by any means, to the extent of more than 50 percent of the cost of replacement of the structure new, such structure shall not be restored unless it shall thereafter conform to the regulations of the zoning district in which it is located. A structure which is located on a lot that does not comply with the applicable lot size requirements shall not in any event be required to provide a side yard that exceeds the yard requirements of section 54-807. When a structure is damaged to the extent of 50 percent or less of the cost of replacement of the structure new, no repairs or restoration shall be made unless a zoning certificate is obtained and restoration is actually begun within one year after the date of such partial destruction and is diligently pursued to completion; provided, however, that any structure used for residential purposes on a lot the size of which would make the rebuilding thereof nonconforming, may be so rebuilt so long as the new structure is used for a single-family residence and conforms to the applicable lot size and dimensional requirements to the same extent as the structure destroyed.

(Code 1973, ch. 29, § 10-203)

Sec. 54-841. - Moving.

No structure described in section 54-838 shall be moved in whole or in part for any distances whatever, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved.

(Code 1973, ch. 29, § 10-204)

Secs. 54-842—54-860. - Reserved.

DIVISION 4. - NONCONFORMING USES

Sec. 54-861. - Authority to continue.

Any lawfully existing nonconforming use of part or all of a structure, or any lawfully existing nonconforming use of land not involving a structure or involving only a structure which is accessory to such use of land, may be continued, so long as it remains otherwise lawful, subject to the regulations contained in section 54-862 through section 54-870, and section 54-889 through section 54-892.

(Code 1973, ch. 29, § 10-301)

Sec. 54-862. - Ordinary repair and maintenance.

- (a) Normal maintenance and incidental repair or replacement, installation, or relocation of non-bearing walls, non-bearing partitions, fixtures, wiring or plumbing may be performed on any structure that is devoted in whole or in part to a nonconforming use; provided, however, that this subsection shall not be deemed to authorize any violation of section 54-863 through section 54-869.
- (b) Nothing in this chapter shall be deemed to prevent the strengthening or restoration to a safe condition of a structure in accordance with an order of a public official who is charged with protecting the public safety and who declares such structure to be unsafe and orders its restoration to a safe condition, provided such restoration is not otherwise in violation of section 54-866.

(Code 1973, ch. 29, § 10-302)

Sec. 54-863. - Remodeling.

No structure that is devoted in whole or in part to a nonconforming use shall be remodeled unless the entire structure and use thereof shall thereafter conform to all regulations of the zoning district in which it is located.

(Code 1973, ch. 29, § 10-303)

Sec. 54-864. - Extension.

A nonconforming use shall not be extended, expanded, enlarged or increased in intensity. Such prohibited activity shall include, without being limited to:

- (1) Extension of such use to any part of a structure or land area other than one occupied by such nonconforming use on the effective date of this division or on the effective date of the ordinance from which this section is derived of a subsequent amendment hereto that causes such use to become nonconforming.
- (2) Extension of such use within a building or other structure to any portion of the floor area that was not occupied by such nonconforming use on the effective date of the ordinance from which this division is derived or on the effective date of a subsequent amendment hereto that causes such use to become nonconforming. However, a nonconforming use may be extended throughout any part of a structure that was lawfully and manifestly designed or arranged for such use on such effective date.
- (3) Operation of such nonconforming use in such manner as to conflict with, or to further conflict with if

already conflicting on the effective date of the ordinance from which this chapter is derived (or on the effective date of a subsequent amendment hereto that results in such use becoming nonconforming), any performance standards established for the district for which such use is located.

(Code 1973, ch. 29, § 10-304)

Sec. 54-865. - Enlargement.

No structure that is devoted in whole or in part to a nonconforming use shall be enlarged or added to in any manner unless such structure and the use thereof shall thereafter conform to the regulations of the district in which it is located.

(Code 1973, ch. 29, § 10-305)

Sec. 54-866. - Damage or destruction.

If any structure that is devoted in whole or in part to a nonconforming use is damaged or destroyed, by any means, to the extent of more than 50 percent of the cost of replacement of the structure new, such structure shall not be restored unless such structure and the use thereof shall thereafter conform to all regulations of the zoning district in which it is located. When such damage or destruction is 50 percent or less of the cost of replacement new, no repairs or restoration shall be made unless a zoning certificate is obtained and restoration is actually begun within one year after the date of such partial destruction and is diligently pursued to completion.

(Code 1973, ch. 29, § 10-306)

Sec. 54-867. - Moving.

No structure that is devoted in whole or in part to a nonconforming use, shall be moved in whole or in part for any distance whatever, to any other location on the same or any other lot, unless the entire structure and the use thereof shall thereafter conform to all regulations of the zoning district in which it is located after being so moved. No nonconforming use of land shall be moved in whole or in part for any distance whatever, to any other location on the same or any other lot, unless such use shall thereafter conform to all regulations of the zoning district in which it is located after being so moved.

(Code 1973, ch. 29, § 10-307)

Sec. 54-868. - Change in use.

A nonconforming use shall not be changed to any use other than a use permitted in the zoning district in which the use is located. When a nonconforming use has been changed to any permitted use, it shall not thereafter be changed back to a nonconforming use. For purposes of this section, a use shall be deemed to have been so changed when an existing nonconforming use shall have been terminated and a permitted use shall have commenced and continued for a period of seven days.

(Code 1973, ch. 29, § 10-308)

Sec. 54-869. - Abandonment or discontinuance.

- (a) When a nonconforming use of land, not involving a structure, or involving only a structure which is accessory to nonconforming use of land, is discontinued or abandoned, for a period of two consecutive months (regardless of reservation of an intent not to abandon or to resume such use), such use shall not thereafter be re-established or resumed. Any subsequent use or occupancy of such land shall comply with the regulations of the zoning district in which such land is located.
- (b) When a nonconforming use of a part or all of a structure which was designed and intended for a use which is permitted in the zoning district in which such structure is located is discontinued or abandoned for a period of two consecutive months (regardless of any reservation of an intent not to abandon or to resume such use), such use shall not thereafter be re-established or resumed. Any subsequent use or occupancy of such structure shall comply with the regulations of the zoning district in which such structure is located.
- (c) When a nonconforming use of a part or all of a structure which was not designed and intended for any use which is permitted in the zoning district in which such structure is located is discontinued or abandoned for a period of six consecutive months (regardless of any reservation of an intent not to abandon or to resume such use), such use shall not thereafter be re-established or resumed. Any subsequent use or occupancy of such structure shall comply with the regulations of the zoning district in which such structure is located.

(Code 1973, ch. 29, § 10-309)

Sec. 54-870. - Nonconforming accessory uses.

No use which is accessory to a principal nonconforming use shall continue after such principal use shall have ceased or terminated.

(Code 1973, ch. 29, § 10-310)

Secs. 54-871—54-888. - Reserved.

DIVISION 5. - ELIMINATION OF NONCONFORMING USES AND STRUCTURES

Sec. 54-889. - Procedure.

In accordance with authority granted to municipalities for the elimination of nonconforming uses and structures in 65 ILCS 5/11-13-1, it is declared to be the policy of the village to eliminate the uses and structures.

- (1) The zoning administrator shall inventory the nonconforming uses and structures in the village and shall determine the assessed valuation, normal useful life, and years in existence for each. Such inventory and determinations shall be kept on file by the zoning administrator and be a matter of public record.
- (2) The zoning administrator shall notify in writing the owner of each parcel of land or each structure which has been determined to be nonconforming, at least once every year. Such notice shall contain:
 - a. The normal useful life of the use or structure as determined;
 - b. The date at which it has been determined the use was commenced; and
 - c. The assessed valuation of the use or structure as determined.
- (3) Nothing in this section shall apply to nonconforming structures to which section 54-840 or section 54-890 do not apply.

(Code 1973, ch. 29, § 10-401)

Sec. 54-890. - Elimination of nonconforming buildings and structures.

- (a) Any structure or building, all or substantially all of which is designed or intended for a use not permitted in the district in which it is located shall be removed and its use thereafter cease, or shall be converted to a building or structure designed or intended for a use permitted in the district in which it is located at the end of its useful life as determined by the zoning administrator. Nothing in this section 54-890 shall apply to structures used for residential purposes in residential zoning classifications.
- (b) Condemnation of nonconforming buildings and structures. The village, at any time, and from time to time, by ordinance duly enacted:
 - (1) May acquire by condemnation any nonconforming building or structure, all or substantially all of which is designed or intended for a use not permitted in the district in which it is located, and all land which is necessary or appropriate for the rehabilitation or redevelopment of the area blighted by such nonconforming building or structure;
 - (2) May remove or demolish all such nonconforming buildings and structures so acquired;
 - (3) May hold and use any remaining property for public purposes; and
 - (4) May sell, lease or exchange such property as is not held for public purposes, subject to the provisions of this comprehensive amendment, or any amendment hereto.
- (c) No such acquisition by condemnation shall be made until such time as the plan commission, at the request of the board of trustees, or upon its own initiative, has made a study of the area within which such nonconforming building or structure is located and has filed a written report on such study with the board of trustees.

(Code 1973, ch. 29, § 10-402)

Sec. 54-891. - Elimination of nonconforming use of land.

- (a) The nonconforming use of land shall be discontinued and cease ten years from the date of the adoption of the ordinance from which this section is derived in each of the following cases:
 - (1) Where no buildings or structures are employed in connection with such use;
 - (2) Where the only buildings or structures or other physical improvements employed are accessory or incidental to such use or have an assessed valuation of less than \$2,000.00; or
 - (3) Where such is maintained in connection with a conforming building or structure; except that inadequate off-street parking facilities used in connection with a building the use of which complies with the requirements of the district in which it is located, may be continued for so long as the premises are used for a permitted use.
- (b) A nonconforming use of land which is accessory to the nonconforming use of building or structure shall be discontinued on the same date the nonconforming use of the building or structure is discontinued.
- (c) Nothing in this section shall require the elimination of a nonconforming use of land for residential purposes.

(Code 1973, ch. 29, § 10-403; Ord. No. 80-057, 10-7-1980)

Sec. 54-892. - Appeals.

An appeal from the determinations made by the zoning administrator under this section shall be appealable to the zoning board of appeals in the same fashion as any other decision of the zoning administrator.

(Code 1973, ch. 29, § 10-404)

Secs. 54-893—54-917. - Reserved.



KeyCite Yellow Flag - Negative Treatment

Distinguished by [I-57 and Curtis, LLC v. Urbana and Champaign Sanitary District](#), Ill.App. 4 Dist., August 26, 2020

2018 IL App (3d) 160713
Appellate Court of Illinois, Third District.

CHICAGO TITLE LAND TRUST COMPANY,
as Trustee and as Successor to North Star Trust
Company, Successor to Harris Bank, Successor
to First National Bank, [Under](#) a Trust Agreement
Dated October 21, 1979 and Known as Trust No.
1689, by Henry E. James, the Holder of the Power
of Direction and the Owner of the Beneficial
Interest of the Land Trust, Plaintiff–Appellant,
v.

The COUNTY OF WILL, a Body Politic and
Corporate, The Will County Planning and Zoning
Commission, an Agency of Will County, Lenard
Vallone, an Individual, Barbara Peterson, an
Individual, [Kimberly Mitchell](#), an Individual,
Hugh Stipan, an Individual, [Scott Lager](#), an
Individual, Michael Carruthers, an Individual,
and Thomas White, an Individual, Defendants
(Village of Bolingbrook, Intervenor–Appellee).

Appeal No. 3–16–0713

|

Opinion filed May 18, 2018

Synopsis

Background: Landowner whose property was acquired by village through involuntary annexation brought a quo warranto action against the village, alleging that village had acquired the adjacent property through a sham transaction in order to force annexation of landowner's property. The Circuit Court, Will County, Roger D. Rickmon, J. granted summary judgment for village. Landowner appealed.

[Holding:] The Appellate Court, [Wright, J.](#), held that annexation of the adjacent property was a sham transaction, precluding village's acquisition of landowner's property.

Reversed and remanded with directions to enter judgment for landowner.

[Holdridge, J.](#), dissented with opinion.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

West Headnotes (2)

[1] Municipal Corporations [Grounds for and objections to annexation](#)

Village's annexation of property adjacent to landowner's property, pursuant to the adjacent property owner's petition for voluntary annexation, was a sham transaction to allow village to acquire the landowner's property by involuntary annexation, and therefore, both annexations were invalid; the adjacent owner had no independent interest in becoming part of the village, but only petitioned for voluntary annexation because village proposed it, and parties' annexation agreement contained village's promise not to tax the adjacent owner or subject it to enforcement of village regulations and zoning requirements, and also allowed adjacent owner to disconnect from the village within one year. [65 Ill. Comp. Stat. Ann. 5/7-1-13](#).

[1 Cases that cite this headnote](#)

[2] Municipal Corporations [Ordinances annexing or detaching territory](#)

Village ordinance purporting to voluntarily annex landowner's property was premature and, therefore, null; ordinance was subject to terms of parties' annexation agreement, such agreement included a timetable for certain contractual conditions that prevented the village from taking any action on the landowner's voluntary annexation petition prior to a given date, and based on such date, the agreement could not have become contractually binding until more than three months after the ordinance was purportedly enacted. [65 Ill. Comp. Stat. Ann. 5/7-1-13](#).

[1 Cases that cite this headnote](#)

Appeal from the Circuit Court of the Twelfth Judicial Circuit, Will County, Illinois. Circuit No. 15–MR–2972, Honorable Roger D. Rickmon, Judge, Presiding.

Attorneys and Law Firms

Michael J. Martin, Douglas E. Heathcock, and Michael R. Martin, of Dunn, Martin, Miller & Heathcock, Ltd., of Joliet, for appellant.

Marshall N. Smith Jr. and Kenneth M. Florey, of Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd., of Bolingbrook, for intervenor-appellee.

OPINION

JUSTICE WRIGHT delivered the judgment of the court, with opinion.

***1112 **175** ¶ 1 Plaintiff, Henry E. James, appeals from the trial court's November 17, 2016, order granting the Village of Bolingbrook's motion for summary judgment in plaintiff's *quo warranto* action against the Village of Bolingbrook. Plaintiff contends that the Village of Bolingbrook entered into a sham voluntary annexation agreement with an adjacent property owner in order to create contiguous boundaries to reach his property, in violation of Illinois annexation law and public policy. Further, plaintiff argues that the Village of Bolingbrook lacked statutory authority to involuntarily annex plaintiff's property because plaintiff's property was not “wholly bounded” by one or more municipalities at the time of the passage of the May 10, 2016, ordinance attempting to involuntarily annex plaintiff's property. We reverse and remand with directions.

¶ 2 FACTS

¶ 3 This case involves a *quo warranto* action to invalidate the involuntary annexation of plaintiff Henry E. James's land into the Village of Bolingbrook (the Village). Plaintiff is the beneficial owner of two separate land trusts, each containing a parcel of real property located in unincorporated Du Page Township, in Will County (collectively, the “James property”).

¶ 4 One parcel consists of a 3.08–acre vacant lot (the “three-acre parcel”), situated along the Interstate I–55 south frontage

road, east of Veterans Parkway. The other parcel consists of an approximately two-acre lot with a farmhouse (the “two-acre parcel”).

¶ 5 I. ComEd's Petition for Voluntary Annexation

¶ 6 On November 4, 2015, the Village's counsel drafted a letter to a senior real estate representative of Commonwealth Edison (ComEd), addressing the Village's proposal to voluntarily annex a parcel of land owned by ComEd (ComEd property). The Village's counsel explained that “[a]nnexing this property will allow the Village to annex the adjacent properties.”

¶ 7 On February 29, 2016, ComEd submitted a petition for voluntary annexation pursuant to section 7–1–8 of the Illinois Municipal Code (65 ILCS 5/7–1–8 (West 2016)) to the Village. ComEd's petition requested that the ComEd property be annexed “subject to the satisfaction of the Conditions Precedent and the Condition Subsequent in the ComEd Annexation Agreement.” ComEd also requested that the Village take such further action as may be necessary or appropriate to effect, in accordance with the law, the annexation of the ComEd property into the Village “only so long as it is subject to the Annexation Agreement.”

¶ 8 On March 8, 2016, the Village approved the terms of the ComEd annexation agreement, referenced in ComEd's petition for voluntary annexation. The recitals to the approved ComEd annexation agreement state as follows, in relevant part:

“At the request of the Village, ComEd has agreed to have the Property annexed ***1113 **176** to the Village as an accommodation to the Village and in reliance upon the representations and assurances of the Village, as documented herein, that (i) annexation of the Property will not result in any additional restrictions (including without limitation any municipal regulations) or any financial burdens of any kind or nature whatsoever being imposed by the Village or third parties on the ownership, use, and operation of the Property by ComEd or the ComEd Companies (except for generally applicable property tax levies, but not special assessments or levies attributable to special service areas), and (ii) the Village will fully and faithfully perform and observe during the term of this Agreement of all of the terms and conditions to be performed or observed by the Village hereunder.”

Section 2B of the ComEd annexation agreement provided as follows:

“2B. Conditions Precedent and Subsequent. ComEd's obligation to execute and file the Petition described in Section 2A hereof and maintain it on file with the Village, and the annexation of ComEd's Property pursuant to the Petition and this Agreement are hereby expressly made conditional upon the occurrence or fulfillment of the conditions precedent set forth below. The conditions precedent (collectively the ‘Conditions Precedent’) are as follows:

* * *

(b) The absence of any change in circumstances which in ComEd's reasonable judgment is likely to have a material adverse effect on ComEd or the ComEd companies.

(c) The absence of any change in circumstances which in ComEd's reasonable judgment obviates the need for the annexation of the Property by the Village in light of the Village's stated municipal objectives.”

¶ 9 Immediately following the list of conditions precedent, section 2B of the ComEd annexation agreement provides as follows:

“In the event that each and all of the Conditions Precedent have not occurred or been fulfilled on or before June 30, 2016, this Agreement, at the option of ComEd exercisable by written notice to the City, shall terminate and ComEd shall have no obligation to file the Petition or consent to the annexation of the Property or any other portion of ComEd's property. The parties may extend the deadlines set forth in this Section by mutual assent without the necessity of amending this Agreement. Assent by the Village may be given by the Village Attorney or Senior Administrator without additional authorization or direction from the Corporate Authorities.”

¶ 10 According to section 3(b) of the ComEd annexation agreement, the ComEd property is not subject to any ordinances, regulations, or codes. Further, the Village expressly agreed not to permit any of the Village regulations to be applied or enforced against the ComEd property in section 3(c) of the ComEd annexation agreement “irrespective of the source of the Village's authority.”

¶ 11 Section 5(a) of the ComEd annexation agreement provides, in relevant part:

“The Village hereby agrees to cooperate fully with ComEd and to exercise all reasonable efforts with the appropriate township assessor's office in order to ensure that the tax parcel(s) for the Property shall be classified for assessment purposes as vacant agricultural land or as any classification otherwise available for vacant land that results in the lowest possible assessed value.”

*1114 **177 Section 5(b) of the ComEd annexation agreement provides that “[t]he Village agrees to abate all taxes and assessments (other than generally applicable property taxes) that may otherwise be levied by the Village upon the [ComEd] Property.”

¶ 12 As part of the approved ComEd annexation agreement, the Village agreed to waive any fees and charges that could be imposed on ComEd for annexations or for processing applications for zoning amendments in section 6 of the ComEd annexation agreement. Section 7 of the ComEd annexation agreement contains the Village's promise to indemnify ComEd from and against any and all losses, damages, and claims incurred by ComEd that arise from the annexation or from the disconnection of the ComEd property.

¶ 13 Section 10 of the approved ComEd annexation agreement, titled “Right to Disconnect,” provides that ComEd may elect to disconnect from the Village all or any portion of the annexed property after one year has passed from the date of the property's annexation and if the disconnection of the property would not, under section 7–1–1 of the Municipal Code (65 ILCS 5/7–1–1 (West 2016)), disrupt the contiguity of the territory within the Village. Section 10 also provides that ComEd has a right to disconnect after six months from the date of the agreement if there is a territory immediately adjoining the ComEd property remaining under the jurisdiction of Will County and outside the boundaries of any municipality. Finally, section 10 states, in relevant part, that “[t]he Village will cooperate fully and in good faith to achieve such disconnection and will have no defense or objection to the form or substance of any action taken to effect such disconnection.”

¶ 14 II. Ordinance No. 16–019 Annexing ComEd Property

¶ 15 In addition to approving the terms of the ComEd annexation agreement on March 8, 2016, on the same

date, the Village also enacted ordinance No. 16–019, titled, “Ordinance 16019 Annexing Certain Territory to the Village for Commonwealth Edison Company Consisting of +5.12 Acres and Located South of I–55 and East of Veterans Parkway.” Ordinance No. 16–019 provided, in relevant part:

“WHEREAS, the Owner and the Village have entered into a valid and binding annexation agreement related to the Subject Property; and

WHEREAS, all public hearings, submissions and other legal requirements have been accomplished in full compliance with the terms of said annexation agreement and with statutes of the State of Illinois and the ordinances of the Village of Bolingbrook[.]”

Section one of ordinance No. 16–019 declares that “[t]he Mayor and Board of Trustees find as facts the recitals hereinabove set forth.” Ordinance No. 16–019 provides the annexation of the ComEd property was effective and in full force on the date the ordinance was passed on March 8, 2016.

¶ 16 III. Involuntary Annexation of the James Property

¶ 17 On April 12, 2016, the Village enacted ordinance No. 16–033, titled “Ordinance 16–033 Authorizing Notice of Contemplated Involuntary Annexation of Certain Unincorporated Territory.” Thereafter, notice was published in The Bugle, a newspaper of general circulation in Will County, not less than 10 days before the passage of the annexation ordinance. Not less than 15 days before the passage of the ordinance annexing the James property, the Village served written notice on the taxpayers of record for the property and gave all required notices to the applicable government bodies entitled to notice by statute.

***1115 **178** ¶ 18 On May 9, 2016, plaintiff sent a written objection to the Village. This written objection alleged that the Village's prior annexation of the ComEd property constituted a gross abuse of the annexation process because the sole purpose of the annexation of the ComEd property was to enable the Village to force annex the James property by manipulating the boundaries of the Village to create contiguity. The objection alleged the preceding annexation of the ComEd property, at the Village's request, violated Illinois public policy.

¶ 19 On May 10, 2016, the Village involuntarily annexed the James property into the Village by adopting and

passing ordinance No. 16–047, titled, “Ordinance 16–047 Involuntarily Annexing Certain Unincorporated Territory.” Ordinance No. 16–047 stated that the Village was proceeding under section 7–1–13 of the Municipal Code ([65 ILCS 5/7–1–13 \(West 2016\)](#)) to annex unincorporated territory containing 60 acres or less that is wholly bounded by one or more municipalities.

¶ 20 IV. The *Quo Warranto* Action

¶ 21 On June 28, 2016, plaintiff filed his complaint in *quo warranto* in case No. 15–MR–2972 in the circuit court of Will County, contesting the involuntary annexation of the James property. On August 1, 2016, the Village filed a motion for summary judgment as to the complaint in *quo warranto*.

¶ 22 On August 1, 2016, plaintiff filed a motion for judgment on the pleadings in the *quo warranto* action. In the motion, plaintiff asserted that the James property was not wholly bounded by one or more municipalities on the date of the involuntary annexation on May 10, 2016. Further, plaintiff argued that the voluntary annexation of the ComEd property, a necessary precursor to the involuntary annexation of the James property, was a sham transaction that violated the purpose of the annexation statute and was contrary to public policy.

¶ 23 According to the Village's response in opposition to plaintiff's motion for judgment on the pleadings in the *quo warranto* action, filed on September 8, 2016, the Village sought to annex the ComEd property because “[t]he addition of the previously unincorporated ComEd property to the Village had the effect of wholly bounding the James property by municipal territory, thereby satisfying one of the prerequisites for involuntary annexation” under section 7–1–13 of the Municipal Code ([65 ILCS 5/7–1–13 \(West 2016\)](#)).

¶ 24 Both parties agreed that the trial court should treat their motions as cross-motions for summary judgment. After the motions were fully briefed, the trial court heard arguments on the motions on October 7, 2016. At the hearing, plaintiff's counsel argued as follows, in relevant part:

“And what they've done here is they've created a total sham by giving Com Ed not [*sic*] a right to leave the Village or disconnect at any time after one year elapsed. So what they did was they didn't—and this is—they didn't naturally

extend their boundaries, bring in a property that would be subject to their ordinances, and generate tax revenue for the, for the taxpayer.

What they did is they made an agreement to get the property that would wholly bound and force-annex our property by making an agreement that's clearly a sham.

* * *

So what they did is they temporarily brought in a property owner, not into the Village, because it's really not in the Village. It's not subject to its ordinances. It's not zoned. It's not a taxpayer. And that is a complete sham.

***1116 **179** And that invalidates the, the forced annexation because if you think about that, what are the implications of that? They could do—any village could then make any deal with anybody and let 'em walk later, and then force annex the property and extend its boundaries. And then after that property leaves, we're in the Village and we're force annexed against our will.”

¶ 25 Next, the Village's counsel argued that “the terms of the annexation agreement [between the Village and ComEd] are not relevant for this Court to look at.” Further, the Village's counsel stated, in relevant part:

“The courts aren't gonna get down on that. They're just gonna look at the face of the ordinance. Have the Article VII steps been properly taken? If they have, it's a valid annexation.

* * *

So that's—counsel's doing his job, and doing an excellent at it, trying to throw some mud around and call this a sham and attribute evil motives on the Village, which clearly are not present. It's—I understand it's his job. Inappropriate to, to allege some sort of fraudulent activity, though [*sic*] those terms around. It is not appropriate.

It's a valid—we followed the Article VII steps to the T for both properties. And unfortunately for counsel, that's the end of the discussion.”

¶ 26 In response to the Village's counsel's argument, the trial court commented, “I think what he meant to say was ‘clever,’ not ‘fraudulent.’ ” The trial court later elaborated, “That's why I said ‘clever.’ It works.”

¶ 27 The trial court took the matters under advisement until November 17, 2016. On November 17, 2016, the trial court granted the Village's motion for summary judgment and denied plaintiff's motion for judgment on the pleadings with prejudice. The trial court also made a finding under [Illinois Supreme Court Rule 304\(a\)](#) (eff. Mar. 8, 2016) that there was no just reason to delay enforcement or appeal of the decision. Plaintiff filed a notice of appeal on that same date, November 17, 2016.

¶ 28 ANALYSIS

[1] ¶ 29 The trial court granted summary judgment in favor of the Village concerning plaintiff's complaint in *quo warranto*. On appeal, plaintiff submits that the trial court's decision must be overturned because the undisputed facts reveal that ComEd did not have an independent desire to have its property annexed to the Village, but submitted the petition for voluntary annexation at the request of the Village. Plaintiff contends that the annexation of the ComEd property was a sham proceeding desired by the Village, not ComEd, in order to fulfill the statutory requirements for the Village to go forward with the involuntary annexation of the James property once the James property was newly and “wholly bounded” by one or more municipalities, as required by section 7–1–13(a) of the Municipal Code. [65 ILCS 5/7–1–13\(a\)](#) (West 2016).

¶ 30 Relying on the holding in [In re Petition for Annexation to the Village of Bull Valley](#), 392 Ill. App. 3d 577, 332 Ill.Dec. 8, 912 N.E.2d 194 (2009), the Village requests this court to ignore any events that took place before March 8, 2016, the date the ComEd property was annexed to the Village, and focus solely on the legality of the Village's actions that took place after that date.

¶ 31 Summary judgment should be granted only where the pleadings, depositions, and admissions on file, together with any affidavits and exhibits, when viewed in ***1117 **180** the light most favorable to the nonmoving party, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. [735 ILCS 5/2–1005\(c\)](#) (West 2016); [Pekin Insurance Co. v. Pulte Home Corp.](#), 404 Ill. App. 3d 336, 339, 343 Ill.Dec. 830, 935 N.E.2d 1058 (2010). An appellate court reviews summary judgment orders *de novo*. [People ex rel. Alvarez v. Price](#), 408 Ill. App. 3d 457, 461, 350 Ill.Dec. 105, 948 N.E.2d 174 (2011).

¶ 32 Our supreme court has stated: “It is fundamental that a municipality has no power to extend its boundaries unless and except in the manner authorized by the legislature so to do.” *City of East St. Louis v. Touchette*, 14 Ill. 2d 243, 249, 150 N.E.2d 178 (1958). Hence, the outcome determinative issue in this appeal is whether evidence of subterfuge may be considered by this court in determining the validity of the ComEd annexation.

¶ 33 First, we observe that the trial court described the Village's course of conduct concerning the annexation proceedings as “clever” but “not fraudulent.” We agree there is no evidence of fraud on the Village's part. However, we reject the Village's contention that this court may *not* properly consider the Village's conduct prior to the March 8, 2016, annexation of the ComEd property because this approach is contrary to well established case law interpreting the plain language of section 7–1–3 of the Municipal Code (65 ILCS 5/7–1–3 (West 2016)) and section 7–14 of the Municipal Code (65 ILCS 5/7–1–4 (West 2016)).

¶ 34 Our supreme court, in *City of East St. Louis v. Touchette*, concluded from a reading of the entire annexation statute that the statute contemplates “the filing of objections to the petition or ordinance for *any matter going to the validity thereof* * * *, as well as for the four specific objections set forth in section [7–1–3].” (Emphasis added.) *City of East St. Louis*, 14 Ill. 2d at 248, 150 N.E.2d 178. Moreover, Illinois courts have repeatedly and consistently considered evidence of subterfuge in determining the validity of a particular annexation. For example, in *In re Petition to Annex Certain Real Estate to the City of Joliet*, 144 Ill. 2d 284, 162 Ill.Dec. 34, 579 N.E.2d 848 (1991), our supreme court stated that it was appropriate for the court “to inquire into the circumstances surrounding conveyances accomplished immediately prior to the filing of the petition for annexation,” which would allow the court to determine if the petitioners were “attempt[ing] to manipulate the [annexation] statute in ways the legislature never intended.” *Id.* at 292, 162 Ill.Dec. 34, 579 N.E.2d 848. Additionally, courts have scrutinized the sometimes creative attempts of municipalities to annex property, particularly where these attempts are “merely a subterfuge to reach outlying areas.” (Internal quotation marks omitted.) *People ex rel. Village of Forest View v. Village of Lyons*, 218 Ill. App. 3d 159, 166, 161 Ill.Dec. 50, 578 N.E.2d 177 (1991); see also *In re Petition to Annex Certain Real Estate to the City of Joliet*, 144 Ill. 2d at 290–92, 162



Ill.Dec. 34, 579 N.E.2d 848 (considering petitioners' alleged “bad faith and subterfuge” in determining the validity of an annexation); *People ex rel. Village of Long Grove v. Village of Buffalo Grove*, 160 Ill. App. 3d 455, 462, 111 Ill.Dec. 965, 513 N.E.2d 408 (1987) (“strip or corridor annexations, point-to-point touching, and cornering do not satisfy the contiguity requirement because they are merely a subterfuge to reach outlying areas”). Our supreme court has stressed that “[i]t is axiomatic that a party cannot circumvent the purpose of the [annexation] statute by doing indirectly what he cannot do directly.” *1118 **181 *In re Petition of the Village of Kildeer to Annex Certain Territory*, 124 Ill. 2d 533, 547, 125 Ill.Dec. 333, 530 N.E.2d 491 (1988).



¶ 35 In this case, the record contains undisputed evidence that the Village initiated contact with ComEd by letter on November 4, 2015, when the Village's counsel addressed the topic of voluntary annexation to a senior real estate representative of ComEd. In the letter, the Village's counsel explained that, “[a]nnexing this property will allow the Village to [involuntarily] annex the adjacent properties.”

¶ 36 Thereafter, acting on the Village's desires, ComEd submitted a petition for voluntary annexation to the Village on February 29, 2016. However, this petition included a contingency that ComEd would seek voluntary annexation of ComEd's property into the Village “only so long as it is subject to the Annexation Agreement” to be considered by the Village on March 8, 2016. Importantly, the recitals in the approved ComEd annexation agreement, dated March 8, 2016, reveal both parties contractually agreed that ComEd's petition for voluntary annexation was a product of “the request of the Village” and undertaken by ComEd “as an accommodation to the Village.”

¶ 37 In addition, the record does not contain any evidence or testimony establishing a basis for this court to conclude that ComEd had any independent interest to become a part of the Village. This fact alone distinguishes the facts of *Bull Valley* from the case at bar. *Bull Valley*, 392 Ill. App. 3d at 587, 332 Ill.Dec. 8, 912 N.E.2d 194. In *Bull Valley*, the property owners seeking voluntary annexation provided testimony in the trial court regarding their independent reasons for their request for voluntary annexation. *Id.* On this basis, the court in *Bull Valley* concluded the property owners, not the Village, had been the precipitating force for

the voluntary annexation.  *Id.* at 587–88, 332 Ill.Dec. 8, 912 N.E.2d 194.

¶ 38 Further, in  *Bull Valley*, the property owners and the Village did not formalize their preannexation discussions into a formal written annexation agreement. Any caveats expressed by the property owners prior to the voluntary annexation proceedings in that case were withdrawn before the property owners submitted their petition to the Village in that case.  *Id.* at 581, 332 Ill.Dec. 8, 912 N.E.2d 194.

Here, unlike in  *Bull Valley*, the Village and ComEd reached a formal written annexation agreement containing caveats and then referenced the formal, but contingent, agreement between the Village and ComEd as part of the voluntary annexation ordinance approved by the Village on March 8, 2016. These distinguishing facts render the Village's reliance on  *Bull Valley* to be unpersuasive.

¶ 39 Having concluded that the existing case law allows this court to consider the circumstances prior to March 8, 2016, we focus on the undisputed language of the ComEd annexation agreement dated March 8, 2016. This approved formal agreement contained the Village's unusual promise not to tax ComEd or subject ComEd to the enforcement of the Village's regulations and zoning requirements once voluntary annexation occurred. It is even more curious that the Village also promised to allow ComEd to disconnect from the Village within one year after the annexation date, according to section 10 of the ComEd annexation agreement. Further, as evidence of the Village's true goal, we cannot ignore the undisputed fact that section 10 of the ComEd annexation agreement had the effect of allowing ComEd to disconnect from the Village in as little as six months if the Village was unsuccessful in force annexing the James property. This fact is very telling in our view.

***1119 **182** ¶ 40 Plaintiff argues public policy becomes intertwined in the issues raised in this appeal because disconnection is a matter of statewide concern. See *La Salle National Trust, N.A. v. Village of Mettawa*, 249 Ill. App. 3d 550, 577, 186 Ill.Dec. 665, 616 N.E.2d 1297 (1993). In section 10 of the ComEd annexation agreement, the Village agrees to “cooperate fully and in good faith to achieve such disconnection and will have no defense or objection to the form or substance of any action taken to effect such disconnection.” Plaintiff relies on section 7–3–6 of the Municipal Code (65 ILCS 5/7–3–6 (West 2016)) to support

the public policy argument by pointing out that the statutory scheme prohibits disconnection of less than 20 or more acres but ComEd agrees to not raise an objection if ComEd requests to disconnect the 5.12 acres.

¶ 41 As noted by Justice Holdridge in his dissent, this public policy argument is defeated by section 7–3–4 of the Municipal Code (65 ILCS 5/7–3–4 (West 2016)). Section 7–3–4 of the Municipal Code allows the corporate authorities of a municipality the discretion to disconnect an area of any size, including a 5.12 acre area, under certain circumstances. Thus, the Village's promise to cooperate fully by not raising a defense to disconnection of a parcel does not appear contrary to the statute. Nonetheless, ComEd's petition makes it abundantly clear that ComEd was not interested in pursuing voluntary annexation unless the Village could promise effortless future disconnection proceedings once the forced annexation of the James property became final.

¶ 42 Here, we conclude that the voluntary annexation of the ComEd property, subject to certain “clever” contingencies, represents a sham transaction created exclusively for the purpose of allowing the Village to reach the James property. On this basis, we ignore this sham transaction and conclude that the James property was not “wholly bounded” by one or more municipalities, as required by section 7–1–13 of the Municipal Code, on May 10, 2016, when ordinance No. 16–047 was adopted. Thus, the Village failed to meet its burden of proving compliance with section 7–1–13 of the Municipal Code at the time the ordinance purporting to involuntarily annex the James property was enacted. 65 ILCS 5/7–1–13 (West 2016).

[2] ¶ 43 Next, in the interest of a complete analysis, we address plaintiff's second argument on appeal regarding the premature enactment of ordinance No. 16–019 to voluntarily annex the ComEd property on March 8, 2016. In support of this argument, plaintiff submits section 2B of the ComEd annexation agreement included a timetable for certain contractual conditions that prevented the Village from taking any action on the ComEd annexation petition prior to June 30, 2016. Consequently, we focus on section 2B of the ComEd annexation agreement set forth below:

“In the event that each and all of the Conditions Precedent have not occurred or been fulfilled on or before June 30, 2016, this Agreement, at the option of ComEd exercisable by written notice to the City, shall terminate and ComEd shall have no obligation to file the Petition or consent to the

annexation of the Property or any other portion of ComEd's property.”

¶ 44 Based on the plain language of section 2B of the ComEd annexation agreement set forth above, we conclude that the ComEd annexation agreement did not become contractually binding on both parties until June 30, 2016, at the earliest. Therefore, we conclude that the voluntary annexation ordinance No. 16–019, which was subject to the terms of the ComEd annexation *1120 **183 agreement, was prematurely approved by the Village in March 2016. The case law requires our court to treat the premature annexation of the ComEd property as a nullity. See *People ex rel. Village of Forest View*, 218 Ill. App. 3d at 164, 161 Ill.Dec. 50, 578 N.E.2d 177. Consequently, we hold that the undisputed facts do not establish the James property was “wholly bounded” by one or more municipalities on May 10, 2016, when ordinance No. 16–047 was adopted, as required by section 7–1–13 of the Municipal Code for an involuntary annexation. 65 ILCS 5/7–1–13 (West 2016).

¶ 45 Contrary to the Village's position on appeal, the continuity of boundaries cannot be established retroactively to justify a prior attempt to force annex a property. See *People ex rel. Hopf v. Village of Bensenville*, 132 Ill. App. 2d 907, 910, 272 N.E.2d 50 (1971) (holding that the burden is on the Village “to prove compliance with the statute at the time the annexation ordinance was passed”). We conclude that the subsequent fulfillment of the conditions of the preannexation agreement on June 30, 2016, did not relate back to March 8, 2016, in order to make the ComEd annexation effective.

¶ 46 Therefore, in light of our conclusion that the ComEd annexation was a sham transaction, we hold that the ComEd annexation is a nullity and cannot be used to create contiguous boundaries with the James property. In addition, we conclude that the annexation of the ComEd property was premature and ineffective because the conditions precedent to the ComEd annexation agreement had not occurred or been fulfilled. For these reasons, we conclude that plaintiff's property was not “wholly bounded” by one or more municipalities, as required by section 7–1–13 of the Municipal Code, at the time of the passage of the May 10, 2016, ordinance attempting to involuntarily annex plaintiff's property. Hence, ordinance No. 16–047, purporting to annex the James property, is a nullity. We reverse and remand to the trial court with directions to enter judgment in favor of plaintiff on his complaint in the *quo warranto* action.

¶ 47 CONCLUSION

¶ 48 The judgment of the circuit court of Will County is reversed and remanded with directions.

¶ 49 Reversed and remanded with directions.

Justice O'Brien concurred in the judgment and opinion.

Justice Holdridge dissented, with opinion.

¶ 50 JUSTICE HOLDRIDGE, dissenting:


¶ 51 I dissent. In my view, the ComEd annexation and the Village's subsequent annexation of the James property were both valid and effective. None of the facts recounted by the majority suggests otherwise. The majority erroneously reverses the trial court's grant of summary judgment in favor of the Village on two separate grounds.



¶ 52 First, the majority concludes that the Village's annexation of ComEd's property was “invalid” because it was a “sham” transaction initiated by the Village for the sole purpose of facilitating the Village's subsequent annexation of the James property. In assessing the validity of an annexation, a reviewing court's sole function is to “determine whether the petitioners have complied with the procedures” prescribed by the legislature in the Illinois Municipal Code (Code) (65 ILCS 5/1–1–1 *et seq.* (West 2016)). *In re Petition to Annex Certain Territory to the Village of North Barrington*, 144 Ill. 2d 353, 361, 162 Ill.Dec. 66, 579 N.E.2d 880 (1991); see also *1121 **184 *In re Annexation of Certain Territory to the Village of Deer Park*, 358 Ill. App. 3d 92, 100, 294 Ill.Dec. 379, 830 N.E.2d 791 (2005) (“Generally the court's role is limited in annexation proceedings to determining whether there has been compliance with the statutory requirements for annexation * * *”).



¶ 53 In this case, it is undisputed that (1) ComEd voluntarily submitted a petition for annexation pursuant to section 7–1–8 of the Code (65 ILCS 5/7–1–8 (West 2016)), (2) the Village subsequently passed an ordinance to annex the ComEd property, as required by section 7–1–8 of the Code, (3) the Village subsequently passed a separate ordinance to involuntarily annex the James property, as required by

section 7–1–13(a) of the Code (65 ILCS 5/7–1–13(a) (West 2016)), (4) the Village authorities published timely notice to the impacted landowners as directed by section 7–1–13(b) of the Code (65 ILCS 5/7–1–13(b) (West 2016)), and (5) the Village's annexation of the ComEd property, if effective, would have created contiguity with the James property sufficient to allow the Village's subsequent involuntary annexation of the James property under section 7–1–13 of the Code. It is also undisputed that James had the opportunity to file objections to the Village's annexation of his property, and did so. Accordingly, the parties do not dispute that the letter of all the applicable statutory requirements were observed.

¶ 54 Nevertheless, James argued, and the majority holds, that the spirit of those statutory requirements was violated because the intent of the parties to the ComEd annexation agreement, and the Village's purpose in instigating that annexation, rendered the annexation invalid. Specifically, the majority concludes that the ComEd annexation was an invalid “sham” annexation because (1) the ComEd annexation proceedings were initiated by the Village, and ComEd agreed to voluntarily annex its territory to the Village purely as an “accommodation” to the Village; (2) there is no evidence suggesting that ComEd had “any independent interest to become part of the Village”; (3) the Village initiated the ComEd annexation solely to achieve contiguity with James property, which enabled the Village to involuntarily annex the James property; and (4) ComEd agreed to annex its property to the Village only upon certain conditions, including the Village's contractual agreement not to tax or regulate ComEd after the annexation and the Village's agreement not to object to ComEd's disconnection from the Village within one year of the annexation agreement (or within six months if the Village did not succeed in annexing the James property).

¶ 55 None of these facts renders the ComEd annexation invalid. When a landowner submits an annexation petition knowingly and of his own volition, as ComEd did here, the fact that a municipality instigated or encouraged the petition is of no legal significance.  *In re Petition for Annexation to the Village of Bull Valley*, 392 Ill. App. 3d 577, 587, 332 Ill.Dec. 8, 912 N.E.2d 194 (2009) (rejecting the argument that an annexation petition signed by the appropriate landowners but “facilitated and encouraged by an interested municipality” may be considered valid “only if the landowners make first contact with the municipality,” and ruling that “we see nothing in the Code to prohibit a landowners' annexation petition, even if encouraged by a municipality that could not directly annex the subject territory, where the landowners




voluntarily execute the petition”); see also  *Deer Park*, 358 Ill. App. 3d at 100, 294 Ill.Dec. 379, 830 N.E.2d 791 (“it is difficult to conceive that the circuit court could * * * deny an otherwise valid [annexation] petition merely because [a municipality] encouraged petitioners' efforts *1122 **185 to secure annexation of the property”). The intentions of the parties to an annexation agreement (*i.e.*, a municipality's reasons for encouraging the annexation and a landowner's reasons for filing an annexation petition) *are legally irrelevant*.  *Bull Valley*, 392 Ill. App. 3d at 587, 332 Ill.Dec. 8, 912 N.E.2d 194 (rejecting the argument that, for an annexation petition to be valid, the municipality encouraging or facilitating the annexation and the landowners must “have identical interests” and ruling that “[t]he process that led the landowners to their knowing and voluntary decision to execute the [annexation] petition has no relevance under the Code”). All that matters is whether the landowner knowingly and voluntarily submits an annexation petition and, if so, whether the statute's procedural requirements for voluntary annexation are met. As noted above, it is undisputed that each of these requirements were met in this case.

¶ 56 The majority further suggests that the ComEd annexation was invalid because the annexation agreement provided that the Village would not tax or regulate ComEd after annexation and would not object to ComEd's subsequent disconnection from the Village. However, none of these promises by the Village invalidated the ComEd annexation. To the contrary, the Code expressly authorizes a municipality to agree to such terms in an annexation agreement. See  65 ILCS 5/11–15.1–2(b),  (e–5) (West 2016) (stating that an annexation agreement may provide for the abatement of taxes and the amendment of certain existing regulatory requirements). Moreover, the Code authorizes a municipality to consent to disconnection (65 ILCS 5/7–3–4 (West 2016)), and an annexation agreement may include an enforceable promise by a municipality to allow for disconnection if the conditions of the proposed annexation are not met. *Elm Lawn Cemetery Co. v. City of Northlake*, 94 Ill. App. 2d 387, 393–94, 237 N.E.2d 345 (1968) (holding that a municipality's promise in an annexation agreement to allow for disconnection if an event contemplated by the parties did not occur was enforceable and did not render the annexation invalid). Thus, the promises the Village made in the annexation agreement did not flout either the letter or the spirit of the Code.

¶ 57 The majority further maintains that the Village's promise not to object to disconnection in this case was against

public policy because section 7–3–6 of the Code authorizes the disconnection of territory within a municipality only if the territory contains 20 or more acres, whereas the ComEd territory at issue in this case contains only 5.12 acres. *Supra* ¶ 40. However, section 7–3–6 addresses land that is disconnected by court procedure, *i.e.*, without the municipality's consent. 65 ILCS 5/7–3–6 (West 2016). A different section of the Code (section 73–4) addresses land disconnected by corporate authorities (*i.e.*, disconnection with the consent of a municipality). 65 ILCS 5/7–3–4 (West 2016). The latter section gives a municipality the discretion to disconnect “any territory” within its boundaries and on its border (subject to certain procedural requirements) without regard to the size of the territory to be disconnected. Accordingly, the Village's consent to disconnection of the ComEd property in this case did not contravene the Code or otherwise violate public policy.

¶ 58 The cases upon which the majority relies are distinguishable. See *supra* ¶ 34. In each of those cases, the party seeking annexation engaged in some type of subterfuge or chicanery in order to circumvent statutory requirements or to thwart other landowners from blocking the annexation. See *In re Petition to Annex Certain Real Estate to the City of Joliet*, 144 Ill. 2d 284, 162 Ill.Dec. 34, 579 N.E.2d 848 (1991);

 ***1123 **186** *In re Petition of the Village of Kildeer to Annex Certain Territory*, 124 Ill. 2d 533, 125 Ill.Dec. 333, 530 N.E.2d 491 (1988);  *City of East St. Louis v. Touchette*, 14 Ill. 2d 243, 150 N.E.2d 178 (1958); *People ex rel. Village of Forest View v. Village of Lyons*, 218 Ill. App. 3d 159, 166, 161 Ill.Dec. 50, 578 N.E.2d 177 (1991);  *People ex rel. Village of Long Grove v. Village of Buffalo Grove*, 160 Ill. App. 3d 455, 462, 111 Ill.Dec. 965, 513 N.E.2d 408 (1987). In each of these cases, the reviewing court held that one or more of the statutory requirements for annexation (*e.g.*, notice to affected landowners, contiguity, statutory limits on the size of the parcel to be annexed) were not satisfied. Here, by contrast, the Village acted transparently and complied with all applicable statutory requirements. It *did not* engage

in trickery, manipulation, fraud, concealment, or subterfuge. The most the Village can be accused of doing is enticing ComEd to agree to annex its property to the Village in order to create contiguity with the James property so the Village could involuntarily annex the latter. As noted above, such enticement does not render the ComEd annexation invalid. Whether this conduct was good policy is a matter left to the municipality's discretion and is beyond the scope of this court's review.

¶ 59 As a second ground for reversal, the majority contends that the annexation of the ComEd property was “premature and ineffective” because the conditions precedent to the ComEd annexation agreement had not occurred or been fulfilled at the time the Village passed an ordinance to annex the ComEd property. See *supra* ¶¶ 43–46. I disagree. The ComEd annexation agreement provided that the conditions precedent to ComEd's obligations under the agreement could be satisfied at any time “on or before June 30, 2016” and that satisfaction of those conditions was based on ComEd's judgment alone. ComEd did not object when the Village passed an ordinance to annex the ComEd property on March 8, 2016. Nor has ComEd ever argued that the agreement's conditions precedent have not been fulfilled to ComEd's satisfaction. It appears that ComEd implicitly found the conditions precedent satisfied before June 20, 2016, as was its right under the agreement. Accordingly, neither the agreement, nor the ordinance which incorporated the agreement's terms, was invalid or ineffective.

¶ 60 For the reasons set forth above, I conclude that the Village's annexations of both the ComEd and the James properties were valid and effective. I would therefore affirm the trial court's grant of summary judgment in favor of the Village.

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