

Ordinance No. 95-40

**AN ORDINANCE APPROVING AN ANNEXATION AGREEMENT
WITH JAMES SGRO, PAUL ADAMI AS ADMINISTRATOR, AND THE FIRST
NATIONAL BANK OF SPRINGFIELD AS TRUSTEE OF THE ESTATE OF
ALEXANDER JONES III**

WHEREAS, on June 5, 1995, pursuant to notice published as prescribed by statute, the corporate authorities of the Village of Chatham conducted a public hearing regarding an annexation agreement with James Sgro, Paul Adami as Administrator of the Will Annexed of the Estate of Alexander J. Jones III, and First National Bank of Springfield, Illinois, as Trustee of the Family Trust created under the will of Alexander J. Jones III, a copy of which is attached hereto;

WHEREAS, on June 5, 1995 the Planning Commission met pursuant to notice published as prescribed by statute, conducted a public hearing to consider the zoning contemplated by the Annexation agreement, and recommended approval of zoning the subject property as R-1 upon annexation as set forth in the Agreement;

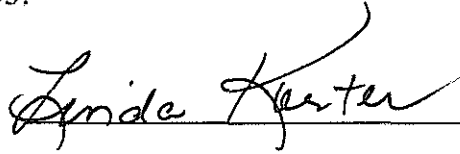
NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF CHATHAM, SANGAMON COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1: That certain annexation agreement attached hereto by and between the Village of Chatham, Illinois, James Sgro, Paul Adami, in his capacity as Administrator of the Will Annexed of the Estate of Alexander J. Jones III, and the First National Bank of Springfield, in its capacity as trustee of the Family Trust created under the will of Alexander J. Jones III, is hereby approved.

SECTION 2: The President is directed to execute said agreement as amended on behalf of the Village, and the proper officers of the Village are authorized and directed to carry out said annexation agreement according to its terms.

SECTION 3: This Ordinance is effective immediately.

PASSED this 5th day of June, 1995.



VILLAGE PRESIDENT

ATTEST:


Village Clerk

AYES: Krueger, Williamsen, Baliva, Miller, Joswiak, McGuire

NAYS: _____

PASSED: 6/5/95

APPROVED: 6/5/95

ABSENT: _____

This Space for Recorder

ANNEXATION AGREEMENT

THIS AGREEMENT is made by James Sgro ("Developer"), Paul E. Adami, Administrator of the Will Annexed of the Estate of Alexander J. Jones III, and First National Bank of Springfield, Illinois, as trustee of the Family Trust created under the will of Alexander J. Jones, (Adami and the Bank are together referred to herein as "Owner") and the Village of Chatham, Illinois (the "Village"), an Illinois municipal corporation, both of Sangamon County, Illinois, and is effective this 5 day of June, 1995.

WHEREAS, Owner is the record owner of property legally described on Exhibit A attached hereto ("the Property"), a map of which is attached hereto as Exhibit B;

WHEREAS, Developer and Owner have entered into a contract whereby, subject to this Agreement, Owner has agreed to sell the Property to Developer;

WHEREAS, the Property is located in unincorporated Sangamon County, Illinois, but is not yet contiguous to the corporate limits of the Village;

WHEREAS, the Developer wishes to annex the Property to the Village and obtain an initial zoning upon annexation of R-1;

WHEREAS, annexation and development of the Property in the Village is anticipated to increase the property tax revenues to the Village and provide an attractive mix of residential development within the Village;

WHEREAS, the Developer has requested and the Village is willing to provide certain financial incentives in connection with this project, which should provide for the orderly development of the Property at little or no cost to the Village;

WHEREAS, the development proposed by the Developer will provide a benefit to the entire Village by fixing the northeast edge of the Village and making possible longstanding plans for annexation east of Lake Springfield; and the Village is therefore willing to fund the construction of certain utility improvements as set forth herein.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

ANNEXATION

1. Owner and Developer have petitioned to annex the Property conditional upon this Agreement and the Property becoming contiguous to the Village.
2. When the Property becomes contiguous to the Village, then an annexation ordinance in such form as shall be approved by counsel for the Village, shall be enacted by the President and Board of Trustees within 45 days of the Property becoming contiguous.
3. Such annexation shall be expressly conditioned and contingent upon the simultaneous classification of the property as R-1. Any ordinance annexing the property or any part thereof without simultaneous initial zoning classification of R-1 shall be void unless this Agreement has been amended as hereafter provided.

PRELIMINARY PLAN AND FINAL PLATS

4. a. Developer shall, at a time to be determined by the Developer, and after closing of the contract between Owner and Developer, submit a preliminary plan for the Property for consideration by the Village in accordance with the then-current Village Subdivision Ordinance. If the preliminary plan complies with Village ordinances and is consistent with this Agreement, it shall be approved by the Village. The Developer shall file final subdivision plats, up to three in number, subdividing the Property in accordance with the Subdivision Ordinance. These plats shall be approved by the Village in accordance with law, provided they comply with the ordinances of the Village and statutes of the State of Illinois and are generally in accordance with the preliminary plan and this Agreement.

b. If Sangamon County asserts subdivision jurisdiction over the Property, then Developer may at his option follow Sangamon County subdivision procedures; provided, however, that any public improvements shall be constructed to Village Subdivision Ordinance standards unless to do so would violate County ordinances. Upon annexation of the Property, the Village shall accept any public improvements which were accepted by Sangamon County.

ZONING AND BUILDING

5. a. Upon enactment of an ordinance annexing the Property, then without additional action required of Owner or the Developer, the Property shall be classified by ordinance in the R-1 zoning classification, without further hearing before any administrative or legislative body of the Village. Prior to executing this Agreement, this zoning has been considered by the appropriate administrative bodies of the Village.

b. The Village Building Code shall apply within the Property prior to its

annexation. If Sangamon County asserts building code jurisdiction over the Property, structures built thereon shall nevertheless comply with the Village Building Code unless to do so would violate County building regulations.

FINANCIAL INCENTIVES AND UTILITIES

6. a. Conditioned upon approval by any appropriate governmental body required to issue a permit and subject to the other subsections of this paragraph, the Village agrees to ~~pay the actual~~ ^{RECC} construct an electric service line and a water main to the boundary of the Property, sufficient in capacity to serve the anticipated improvements on the Property, the precise location of which shall be determined by consulting engineers for the Village and Developer.

b. The parties hereto recognize that the Village's right to serve the Property with retail electric service in the event that it has not been annexed is subject to legal and regulatory uncertainty. The parties also recognize that Rural Electric Convenience Cooperative ("RECC") claims the right to serve the Property, and has represented to the parties that it can make available an electric rate for the Property which is competitive with Chatham's rate. The Village will use best efforts to annex the Property by the time Developer is ready to install the electric system. If the Property is not annexed by that date, the Village shall use best efforts to obtain a waiver by RECC of its rights, if any, to serve the Property.

c. In the event that RECC serves the Property with retail electric service, then when the Property becomes contiguous to the Village and is annexed, the Village shall use best efforts to negotiate a purchase of the electric system within the Property from RECC in accordance with the provisions of the Illinois Municipal Code and the Electric Supplier Act. In

accordance with Section 11-117-7.1 of the Illinois Municipal Code, Owner and Developer hereby elect, for themselves and all subsequent grantees of land within the Property, to take service from the Village at the time of annexation. This election shall be incorporated into the subdivision covenants.

d. In the event Village constructs the retail electric system in the Property, the Village shall waive its normal policy of charging Developer \$1800 per lot, subject to a 50% rebate; the Village shall construct the system entirely at Village's expense.

e. The parties recognize that the Village and RECC have commenced negotiations respecting an agreement pursuant to Section 11-117-7.1 of the Illinois Municipal Code to delineate boundaries of their respective service areas. RECC has represented to Owner that should such an agreement be reached, it will be able to provide the Property with electricity at a rate higher than Chatham's rate but lower than RECC's rate. Should the Village in its discretion enter into such an agreement with RECC which would place the Property in RECC's service area, the Village shall have no obligations under subparagraphs (a) through (d) of this paragraph, and the service provider election made pursuant to subparagraph (c) shall be void.

GENERAL

7. This Agreement shall not be construed as a limitation on the Village's right to adopt or amend ordinances of general applicability, including the zoning and subdivision ordinances, or the applicability of such ordinances to the Property. However, in the event of a conflict between the Village ordinances and this Agreement, this Agreement shall prevail.

8. The Property shall be entitled to police protection upon execution of this Agreement and, after acceptance of streets in accordance with the Village Subdivision Ordinance, to

roadway maintenance services; and shall receive all other Village services received by residents of the Village. It shall be subject to the ordinances, control and jurisdiction of the Village in all respects, the same as property owned by the Village within its corporate limits. Should Sangamon County assert subdivision and building code jurisdiction over the Property, public improvements and private improvements shall be constructed to the standards contained in the Village Subdivision and Building Code Ordinances, unless to do so would violate County ordinances and regulations.

9. All notices and other communications required under this Agreement shall be in writing and delivered either personally or by depositing the same, postage pre-paid, to the parties at the following addresses (or such other addresses as may be designated by the parties from time to time):

- A. James Sgro
15 Fairview Lane
Springfield, IL 62707

 - B. Village of Chatham, Illinois
Attention: Village Administrator
117 East Mulberry Street
Chatham, IL 62629
- [Copy to Village Attorney]
- C. Paul Adami
Mohan Alewelt Prillaman & Adami
One Old State Capitol Plaza Suite 325
Springfield Illinois 62704

10. This Agreement is binding upon the parties hereto, their respective heirs, executors, personal representatives, corporate authorities, administrators, successors and assigns. This Agreement and all provisions herein shall be a covenant running with the land legally

described in Exhibit A hereto. This Agreement shall be effective for twenty years from the date of execution.

11. Time shall be of the essence of this Agreement.

12. This Agreement shall only be amended by a writing, signed by the parties and approved by the Village by ordinance. After execution of this agreement, changes in zoning or variances requested and granted pursuant to Village Ordinances shall not require formal amendment of this Agreement.

13. The Village shall enact such ordinances, execute such documents, and issue such permits and certificates as shall be required by this Agreement and any ordinance adopting it.

14. Developer shall, at his expense, record this Agreement with the Sangamon County Recorder of Deeds within 30 days of its execution.

15. In event of a breach of this Agreement, any of the parties may secure the specific performance of the covenants and agreement herein contained, and may be awarded actual, but not consequential, damages for failure of performance, or both, or in the alternative, may obtain rescission and, if permitted by law, disconnection for material failure of performance.

16. Any party alleged to be in breach of this agreement shall have thirty days after receipt of written notice of the breach to cure the breach prior to the other party seeking any remedy.

17. The failure of the parties to insist upon the strict and prompt performance of the terms, covenants, agreement, and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall

continue in full force and effect.

18. If the performance of any covenant to be performed hereunder by any party is delayed as a result of circumstances which are beyond the reasonable control of such party (which circumstances may include acts of God, war, acts of civil disobedience, strikes or similar acts), the time for such performance shall be extended by the amount of time of such delay.

19. Without the prior written consent of Developer, the Village shall not, with respect to any of the Property for the initial five (5) years of this Agreement and thereafter with respect to any portion of the Property until it has been part of an approved final plat for three (3) years:

A. Levy against any real or personal property within the Property, any special assessment of special tax for the cost of any improvements in or for the benefit of the Property; or

B. Undertake any local improvements in, on or for the benefit of the Property pursuant to the imposition of a special assessment or special tax against the Property or any portion thereof; or

C. Levy or impose additional taxes on the Property, in any manner provided by law for the provision of special services or for the payment of debt incurred in order to provide such special services.

20. Nothing herein shall prevent the Village from levying or imposing additional taxes upon the Property in the manner provided by law, which are applicable to and apply equally to all other territory within the Village.

21. At such time as Owner delivers a deed to the Property to Developer, Owner's obligations under this Agreement shall be assumed by Developer, and Owner shall have no

further obligations to the Village.

22. In the event of litigation brought by any other governmental entity or electric service provider involving questions of jurisdiction over or the right to serve the Property, the Village shall at its expense retain counsel to represent the interests of Developer and Owner. The parties anticipate that counsel for the Village and for Developer and Owner shall be the same person. In the event they perceive there is a conflict in such litigation between their interests and that of the Village, Owner and Developer may retain separate counsel at their expense to represent their interests.

23. If within ^{PER 45}~~60~~ days of execution hereof the Property is not annexed and further, the Village has not entered into a service area agreement with RECC under which the Property will receive an electric rate comparable to Chatham's rate, Owner and Developer may terminate this contract in their discretion upon 15 day's written notice; if during the 15 day notice period, the Village secures a service area agreement with RECC or annexes the Property, the notice of termination shall be ineffective.

24. In the event the Property is not conveyed by Owner to Developer by September 27, 1995, this Agreement may be terminated at the option of Owner or the Village by written notice to all parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the 5 day of June, 1995.

James M. Sgro
JAMES SGRO

VILLAGE OF CHATHAM, ILLINOIS

BY: Linda Koester
LINDA KOESTER, President

Attest: Barbara J. Diekhous
Village Clerk

Paul Adami
PAUL ADAMI, solely in his capacity as Administrator of the Will
Annexed of the Estate of Alexander J. Jones III, and not personally.

FIRST NATIONAL BANK OF SPRINGFIELD, SOLELY IN ITS
CAPACITY AS TRUSTEE OF THE FAMILY TRUST CREATED
UNDER THE LAST WILL OF ALEXANDER J. JONES III, AND
NOT PERSONALLY

BY: [Signature]
Trust Officer

EXHIBIT A

Part of the Southeast Quarter of the Southeast Quarter of Section 9, described as follows:

Beginning at the Southwest corner of the Southeast Quarter of the Southeast Quarter of said Section 9, thence North on the Quarter Quarter Section line 44.53 feet; thence deflecting to the right $90^{\circ}-00'-00''$, 10.80 feet to a point on the right of way line of County Highway #40 as it is presently occupied; thence North on said right of way line and deflecting to the left from last described course, $80^{\circ}-59'-00''$, 155.82 feet; thence deflecting to the left $7^{\circ}-40'-20''$, 34.55 feet; thence deflecting to the right $7^{\circ}-17'-00''$, 112.20 feet to a point on a curve to the right of radius of 224.11 feet; thence Northeasterly on said curve for a chord distance of 61.03 feet, said chord deflecting to the right $26^{\circ}-59'-40''$ from last described course; thence deflecting to the right from aforescribed chord $10^{\circ}-35'-50''$, 97.64 feet; thence deflecting to the right $65^{\circ}-57'-30''$, 49.14 feet to a point on a curve to the left of radius of 1185.92 feet; thence Southeasterly on said curve for a chord distance of 233.16 feet, said chord deflecting to the right $24^{\circ}-41'-55''$, from last described course; thence deflecting to the left from aforescribed chord $4^{\circ}-46'-05''$, 346.23 feet; thence deflecting to the left $16^{\circ}-06'-30''$, 65.36 feet to a point on the Section line; thence deflecting to the right $153^{\circ}02'-00''$ on said South line 679.69 feet to the point of beginning, containing 3.83 acres, more or less.

Also, part of the Southeast Quarter of the Southeast Quarter of Section 9, described as follows:

From the Southwest corner of the Southeast Quarter of the Southeast Quarter of said Section 9, North on the Quarter Quarter Section line, 1252.76 feet; thence East at right angles 42.81 feet to a point on the right of way line of County Highway #40 as it is presently occupied, said point being the point of beginning, thence East on said right of way line 1213.24 feet to a point on the West right of way line of F.A. I-55 as it is presently occupied; thence deflecting to the right on said right of way line $88^{\circ}-32'-40''$, 846.00 feet; thence deflecting to the right $2^{\circ}-49'-30''$, 283.00 feet to a point on the North right of way line of County Highway #40; thence deflecting to the right $89^{\circ}-08'-40''$, 134.30 feet; thence deflecting to the right $4^{\circ}-10'-10''$, 271.35 feet; thence deflecting to the right $12^{\circ}-46'-50''$, 264.46 feet; thence deflecting to the left $11^{\circ}-21'-50''$, 108.15 feet to a point on a curve to right of radius of 1105.92 feet; thence Northwesterly on said curve for a chord distance of 285.75 feet, said chord deflecting to the right $36^{\circ}-07'-50''$ from last described course; thence deflecting to the right $17^{\circ}-16'-50''$ from aforescribed chord, 191.83 feet; thence deflecting to the right $10^{\circ}-22'-33''$, 377.06 feet; thence deflecting to the right $13^{\circ}-02'-34''$, 216.88 feet; thence deflecting to the right $8^{\circ}-18'-08''$, 88.30 feet to the point of beginning, containing 26.74 acres, more or less.

EXHIBIT A

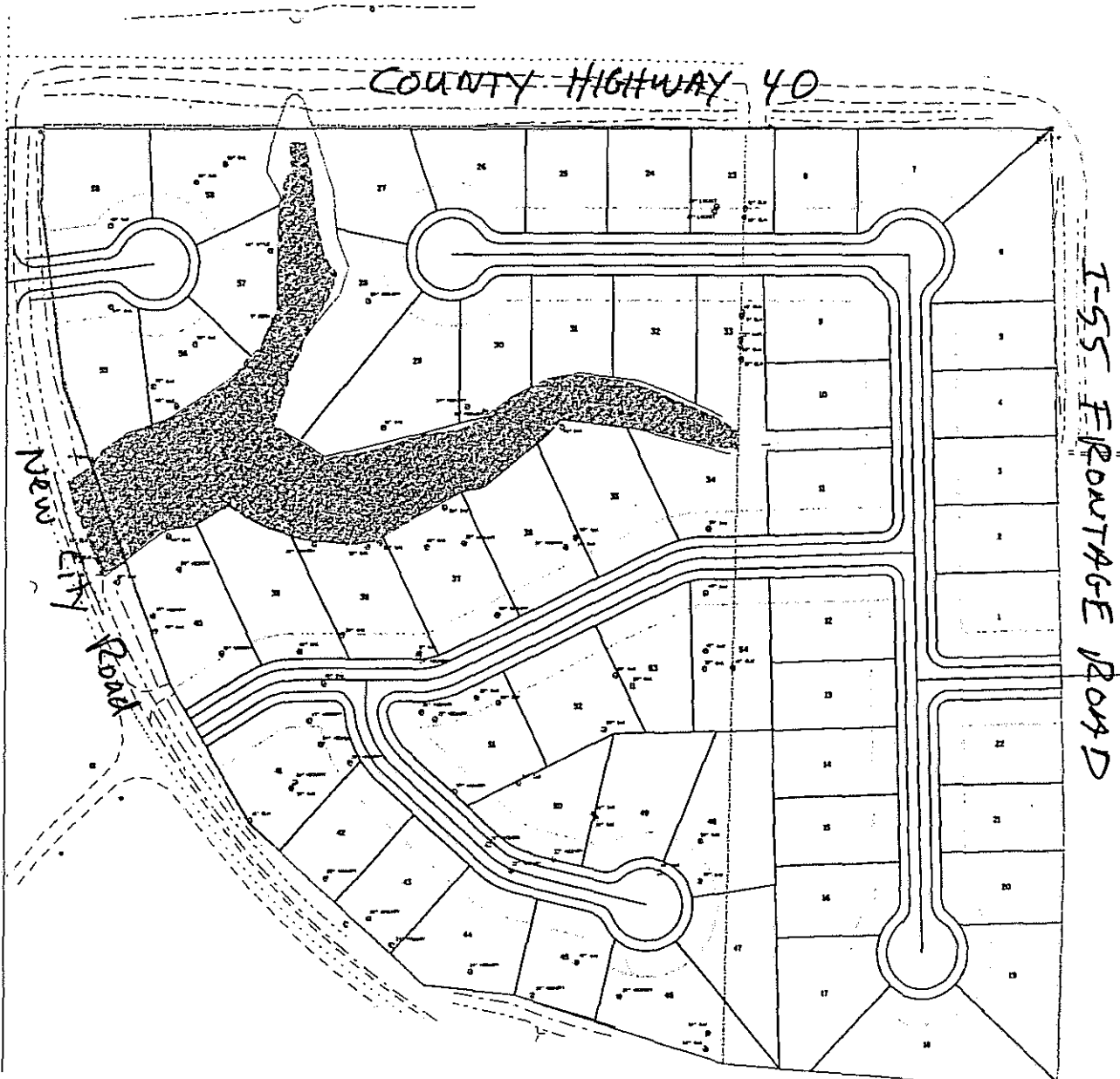


EXHIBIT B

ORDINANCE CERTIFICATE

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)


I, the undersigned, do hereby certify that I am the duly qualified and acting Village Clerk of the Village of Chatham, Sangamon County, Illinois.

I do further certify that the ordinance attached hereto is a full, true, and exact copy of Ordinance No. 95-40, adopted by the President and Board of Trustees of said Village on the 5 day of June 1995, said Ordinance being entitled:

AN ORDINANCE APPROVING AN ANNEXATION AGREEMENT WITH JAMES SGRO, PAUL ADAMI AS ADMINISTRATOR, AND THE FIRST NATIONAL BANK AS TRUSTEE OF THE ESTATE OF ALFRED JONES III

I do further certify that prior to the making of this certificate, the said Ordinance was spread at length upon the permanent records of said Village, where it now appears and remains.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Village this 5 day of June, 1995.



Village Clerk

DRAKE, NARUP & MEAD, P.C.

ATTORNEYS AT LAW

107 East Allen Street

Post Office Box 7257

SPRINGFIELD, ILLINOIS 62791-7257

DAVID L. DRAKE
RICHARD H. NARUP
RANDALL A. MEAD
MATTHEW D. BILINSKY

TELEPHONE: (217) 528-9776
FAX: (217) 528-9401
E-MAIL: DNMP1@AOL.COM

June 9, 1995

Ms. Barb Bickhaus
City Clerk
117 East Mulberry Street
Chatham, Illinois 62629

RE: Our File No. 1125
James Sgro

Dear Ms. Bickhaus:

Please find enclosed herewith Ordinance No. 95-40, An Ordinance Approving An Annexation Agreement with James Sgro, Paul Adami, As Administrator, And The First National Bank Of Springfield As Trustee Of The Estate Of Alexander Jones III which has been signed by all parties.

Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very truly yours,

DRAKE, NARUP & MEAD, P.C.

By Richard H. Narup
Richard H. Narup VLP

RHN/vlp

Enclosure: As indicated.