

**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: IA

Title:

Motion to approve an Ordinance Rescinding and Repealing the City of St. Charles' Prior Annexation, Zoning Entitlements and Subdivision of Certain Property Pursuant to Ordinance Nos. 2019-M-47 and 2019-Z-24 (Brooke Toria Estates).

Presenter:

Rita Tungare

Meeting: City Council

Date: February 3, 2020

Proposed Cost: N/A

Budgeted Amount: N/A

Not Budgeted: ☐**Executive Summary** (*if not budgeted please explain*):

On 12/16/19, City Council held a public hearing on a proposed annexation of a 4.4-acre, 16-lot single-family subdivision known as Brooke Toria Estates (also referred to as Smith Road Estates). Subsequent to the hearing and approval of a Resolution to enter into an Annexation Agreement, Council also approved Ordinance No. 2019-M-47, which annexed the property to the City, and Ordinance No. 2019-Z-24, which approved zoning entitlements and subdivision.

After City Council approval of the ordinances described above, it was discovered that written notice of the annexation was not effectively served upon the Fox River & Countryside Fire and Rescue District. Failure to effect proper notice as required by State statute rendered the annexation (Ord. 2019-M-47) and zoning entitlement/subdivision (Ord. 2019-Z-24) ineffective. Therefore, the City is required to rescind and repeal these ordinances. The previously approved Annexation Agreement remains in place and valid.

Ordinances re-approving the annexation and zoning entitlements/subdivision are on the Council agenda subsequent to this item.

Required written notice of the City's intent to annex the property has effectively been served to all required entities including the Fox River & Countryside Fire and Rescue District; staff has confirmed that all notices have been successfully delivered.

**Attachments** (*please list*):

Ordinance Rescinding Annexation, Zoning Entitlements &amp; Subdivision for Brooke Toria Estates

**Recommendation/Suggested Action** (*briefly explain*):

Motion to approve An Ordinance Rescinding and Repealing the City of St. Charles' Prior Annexation, Zoning Entitlements and Subdivision of Certain Property Pursuant to Ordinance Nos. 2019-M-47 and 2019-Z-24 (Brooke Toria Estates).

**City of St. Charles, Illinois**  
**Ordinance No. 2020-\_\_\_\_\_**

**An Ordinance Rescinding and Repealing the City of St. Charles’  
Prior Annexation, Zoning Entitlements and Subdivision of Certain  
Property Pursuant to Ordinance Nos. 2019-M-47 and 2019-Z-24**

WHEREAS, a valid petition, signed on behalf of the V&M Investment and Remodeling Group, LLC (the “Owner”) as legal owner of record of all land within the territory herein described in Exhibit “A” (the “Subject Property”), was filed with the City of St. Charles, Illinois (the “City”), requesting annexation of the Subject Property to the City pursuant to a mutually agreed annexation agreement; and

WHEREAS, on December 16, 2019, the City adopted Resolution No. 2019-124, entitled *A Resolution Authorizing the Mayor and City Council to Enter Into a Certain Annexation Agreement (Brooke Toria Estates)*, which Resolution duly authorized a valid and binding agreement ("Annexation Agreement") between the City and the Owner; and

WHEREAS, on December 16, 2019, the City also adopted Ordinance No. 2019-M-47, entitled *An Ordinance Annexing Certain Unincorporated Territory to the City of St. Charles, Illinois (Brooke Toria Estates)*, which ordinance was passed proposing to annex the Subject Property in accordance with the provisions of the Annexation Agreement; and

WHEREAS, on December 16, 2019, the City also adopted Ordinance No. 2019-Z-24, entitled *An Ordinance Granting Approval of a Map Amendment, Special Use for Planned Unit Development, PUD Preliminary Plan and Final Plat of Subdivision for Brooke Toria Estates*, which ordinance was passed proposing to entitle and subdivide the Subject Property in accordance with the Annexation Agreement; and

WHEREAS, subsequent to the passage of Ordinance Nos. 2019-M-47 and 2019-Z-24, the City discovered that proper notice of the annexation was not perfected as required by the Illinois Municipal Code, 65 ILCS 5/7-1-1 *et seq.*; more specifically, written notice was not effectively served upon the trustees of the Fox River & Countryside Fire Rescue District and an affidavit of such service was not filed with the DuPage County Recorder; and

WHEREAS, the City's failure to effect proper notice as set forth in Section 7-1-1 of the Illinois Municipal Code (65 ILCS 5/7-1-1) rendered the attempted annexation of the Subject Property pursuant to Ordinance No. 2019-M-47 void and the subsequent entitlement and subdivision pursuant to Ordinance No. 2019-Z-24 ineffective; and

WHEREAS, the City, as a home rule municipality, possesses broad authority to “exercise any power and perform any function pertaining to its government and affairs” in accordance with Article VII, § 6 of the Illinois Constitution of 1970; and

WHEREAS, the City Council finds it necessary to declare that the attempted annexation of the Subject Property pursuant to the passage of Ordinance No. 2019-M-47 is null and void and

the entitlement and subdivision of the Subject Property pursuant to the passage of Ordinance No. 2019-Z-24 is ineffective.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ST. CHARLES, KANE AND DUPAGE COUNTIES, ILLINOIS AS FOLLOWS:

1. The facts and statements contained in the preambles to this Ordinance are found to be true and correct and are hereby adopted as part of this Ordinance.

2. That attempted annexation of the Subject Property pursuant to Ordinance No. 2019-M-47, entitled *An Ordinance Annexing Certain Unincorporated Territory to the City of St. Charles (Brooke Toria Estates)*, passed and approved on December 16, 2019, is hereby rescinded and repealed, and Ordinance No. 2019-Z-24, entitled *An Ordinance Granting Approval of a Map Amendment, Special Use for Planned Unit Development, PUD Preliminary Plan and Final Plat of Subdivision for Brooke Toria Estates*, is hereby rescinded and repealed.

3. That after the adoption and approval hereof the Ordinance shall (i) be printed or published in book or pamphlet form, published by the authority of the Council, or (ii) within thirty (30) days after the adoption and approval hereof, be published in a newspaper published in and with a general circulation within the City of St. Charles.

PRESENTED to the City Council of the City of St. Charles, Illinois, this 3<sup>rd</sup> day of February 2020.

PASSED by the City Council of the City of St. Charles, Illinois, this 3<sup>rd</sup> day of February 2020.

APPROVED by the Mayor of the City of St. Charles, Illinois, this 3<sup>rd</sup> day of February 2020.

\_\_\_\_\_  
Raymond P. Rogina, Mayor

ATTEST:

\_\_\_\_\_  
Charles Amenta, City Clerk

COUNCIL VOTE:

Ayes:

Nays:

Absent:

Abstain:

**EXHIBIT A**

**LEGAL DESCRIPTION**

LOTS 16, 17 AND 18 IN PETRAUSKAS' SECOND SUBDIVISION OF PART OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 24, 1966 AS DOCUMENT R66-42231, IN DUPAGE COUNTY, ILLINOIS.