



AGENDA ITEM EXECUTIVE SUMMARY

Title:	Proposed Annexation Agreement Between the City of St. Charles and GEORGE PORTER, as Trustee under that certain Declaration of Trust dated August 27, 1990, RICHARD PORTER and GARY PORTER, doing business as G.G.R. Partnership, an Illinois Partnership (Porter - Lot 5). The proposed annexation agreement relates to Lot 5 in the Porter Business Park for the approximately 1.29 acre site located at 1109 Porter Court and generally located east of the Foundry Business Park and south of The Timbers residential subdivision, St. Charles Township, Kane and DuPage Counties, Illinois.
Presenter:	Rita Tungare

Please check appropriate box:

	Government Operations		Government Services
	Planning & Development		City Council
X	Public Hearing- (12/17/12)		

Estimated Cost:	NA	Budgeted:	YES		NO	
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If NO, please explain how item will be funded:

Executive Summary:

At the 11/12/2012 Planning & Development Committee meeting staff presented an amendment to an annexation agreement for the Porter Business Park. The proposed modification would amend Subsection 5, Phase 3 of the annexation agreement which states the following:

*“Phase 3: The following work or improvements shall occur on or before December 31, 2010:
1. Demolition and removal of the existing residence on Lot 5.”*

At this time, there has not been a building permit submitted for lot 5 and the single-family home has not been demolished. Mr. Porter does not anticipate developing lot 5 in the near future.

At the time of the Planning & Development Committee meeting, staff presented an amendment that would permit the residence on Lot 5 to remain until a building permit for Lot 5 is approved by the City; or, until December 31, 2014, whichever comes first. The Planning & Development Committee recommended approval of the proposed amendment on 11/12/2012. The vote was 9-Aye to 0-Nay.

Since the November meeting, Mr. Porter has submitted a letter requesting that the time frame to demolish the residence be extended for 5 years or until December 31, 2017. Mr. Porter has explained his rationale for this new date in the attached letter dated 12/13/2012.

This item has been placed on tonight’s City Council agenda for a vote. If the City Council wishes to modify the time frame as requested by Mr. Porter, the agreement will need to be pulled off of the Omnibus Vote. Any action to extend the time frame by which Mr. Porter has to demolish the single-family dwelling unit can be incorporated into a motion made by the City Council to approve the annexation agreement amendment.

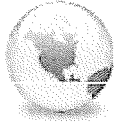
Attachments: *(please list)*

Letter from Richard Porter, dated 12/13/2012; Annexation Agreement Amendment.

Recommendation / Suggested Action *(briefly explain):*

Conduct the public hearing and close if all public comment has been taken.

<i>For office use only:</i>	<i>Agenda Item Number:</i>
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To: <morourke@stcharlesil.gov>,
Cc:
Bcc:
Subject: Re: Annexation Agreement Amendment
From: Richard Porter [REDACTED] - Thursday 12/13/2012 05:30 PM

History: This message has been replied to and forwarded.

1 attachment



St. Charles City Council Letter.docx

Hopefully this will still make the packet.

12/13/12

St. Charles City Council
2 East Main St.
St. Charles, Illinois 60174

To the City Council:

I can only hope this letter will make a difference in your decision making set before you as it relates to the Porter Business Park's PUD. What is proposed, I feel does not give the economy enough time to rebound and will bring us back to the same spot, in two years, as we are tonight. Economists and industry trend analysts do not foresee major changes in the property development industry over the next two years, thus the two year window is not enough time. Also the cost of another \$1,000.00 to have staff bring us to the very same spot as we are tonight makes no sense to me.

Another important consideration for extension beyond two years is the house residing in Porter Business Park has been rented to the same family for over 30 years. The husband diligently serves as a security watchdog keeping the buildings protected from local gang vandalism and other destructive actions. He retired after 50 years with Swift, but lost his wife to cancer a couple years ago. The amount of rent we charge is minimal, but it does offset our loan payment, helps someone in need, and gives a long-time resident a sense of dignity. From the city's perspective, revenue is still being generated from taxes, water, and electrical charges.

I believe a more reasonable timeframe would be 5 years tied to the issuance of a building permit. Should a building permit come to any of the three vacant lots in the park, the house would be torn down first. However; if a permit is not presented, please make the humane decision to let this family stay on the property for longer than 2 years.

Thank you for your time and understanding.

FIRST AMENDMENT
TO
ANNEXATION AGREEMENT

Porter

December 17, 2012

FIRST AMENDMENT
TO
ANNEXATION AGREEMENT
PORTER

THIS FIRST AMENDMENT TO ANNEXATION AGREEMENT (the "First Amendment") is made and entered into this 17th day of December, 2012, by and between the City of St. Charles, Kane and DuPage Counties, Illinois, an Illinois municipal corporation (the "City"), and GEORGE PORTER, as Trustee under that certain Declaration of Trust dated August 27, 1990, RICHARD PORTER and GARY PORTER, doing business as G.G.R. Partnership, an Illinois Partnership (hereafter collectively referred to as "Owner"; the City and Owner being sometimes referred to individually as the "Party" and collectively as the "Parties").

WITNESSETH:

WHEREAS, the City has previously entered into a certain Annexation Agreement ("Original Agreement") with the Owner, dated June 19, 2006 and recorded with the Kane County Recorder's Office as Document number 2008K054439; and,

WHEREAS, the Owner is the current owner of record of certain real estate legally described in Exhibit "A", which is attached hereto and incorporated herein (the "Subject Property"); and,

WHEREAS, the Parties desire to amend the Original Agreement as more fully set forth in this First Amendment; and,

WHEREAS, pursuant to 65 ILCS 5/11-15.1-1 *et seq.*, this proposed First Amendment has been submitted to the corporate authorities of the City, and, on December 17, 2012, a public hearing was held thereon by the corporate authorities pursuant to notice duly published in a newspaper of general circulation, all as provided by law; and,

WHEREAS, by a favorable vote of at least two-thirds (2/3) of the corporate authorities of the City then holding office, a resolution has heretofore been adopted authorizing the execution of this First Amendment.

NOW, THEREFORE, in consideration of the foregoing premises and in further consideration of the mutual covenants, conditions and agreements herein contained, the Parties hereto agree as follows:

Section 1. INCORPORATION OF RECITALS: The Parties hereby confirm the truth and validity of their respective representations and recitations set forth in the foregoing recitals and do further acknowledge that they are material to this First Amendment. Such recitals are hereby

incorporated into and made a part of this First Amendment as though they were fully set forth in this Section 1.

Section 2. INTEGRATION OF ANNEXATION AGREEMENT:

A. The provisions of this First Amendment shall be deemed by the Parties to be fully integrated into the Original Agreement. Said Original Agreement shall remain in full force and effect except to the extent that they are expressly modified by the terms of this First Amendment. Should any provision of the Original Agreement conflict with any provision of this First Amendment, the provisions of this First Amendment shall control.

B. Terms capitalized in this First Amendment and not otherwise defined herein shall have the meanings ascribed to those terms in the Original Agreement. Terms defined and capitalized herein shall have the meanings ascribed to those terms in this First Amendment and, to the extent such terms are also defined terms in the Original Agreement, the definitions of those terms as herein provided shall be deemed to control the interpretation of those terms in the Original Agreement.

Section 3. AMENDMENTS TO AGREEMENT:

A. That Section 5, entitled "Phasing of Development", is hereby amended as follows:

The following phrase is deleted: "PHASE 3: The following work or improvements shall occur on or before December 31, 2010:" and replaced with: "PHASE 3: The following work or improvements shall occur on or before December 31, 2014:"

B. That Section 19, entitled "NOTICE", is amended to reflect the following addresses:

If to the CITY: City of St. Charles
 2 East Main Street
 St. Charles, IL 60174
 Attention: Brian Townsend

With copy to: Gorski & Good, LLP
 211 S. Wheaton Avenue, Suite 305
 Wheaton, IL 60187
 Attention: Robin N. Jones

If to the OWNER: Richard Porter
 1041 Porter Court
 St. Charles, IL 60174

IN WITNESS WHEREOF, the Owner and City have executed this First Amendment to the Original Agreement, or have caused this First Amendment to the Original Agreement to be executed, by their duly authorized officers as of the date first above written.

CITY OF ST. CHARLES, an Illinois municipal corporation

By: _____
Donald P. DeWitte, Mayor

ATTEST:

Nancy Garrison, City Clerk

George Porter, as Trustee under that certain Declaration of Trust dated August 27, 1990

Richard Porter

Gary Porter

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Donald P. DeWitte, Mayor of the City of St. Charles, and Nancy Garrison, City Clerk of said City, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Mayor and City Clerk, respectively appeared before me this date in person and acknowledged that they signed and delivered the said instrument as their free and voluntary act and as the free and voluntary act of said City, for the uses and purposes therein set forth; and the said City Clerk then and there acknowledged that she, as custodian of the corporate seal of said City, did affix the corporate seal of said City to said instrument, as her own free and voluntary act and as the free and voluntary act of said City, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this _____ day of _____, 2012.

Notary Public

STATE OF ILLINOIS)
) SS.
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that GEORGE PORTER, as Trustee under that certain Declaration of Trust dated August 27, 1990, RICHARD PORTER and GARY PORTER, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, respectively appeared before me this date in person and acknowledged that they signed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this _____ day of _____, 2012.

Notary Public

EXHIBIT A
LEGAL DESCRIPTION

LOT 5 OF THE PORTER BUSINESS PARK SUBDIVISION RECORDED SEPTEMBER 25, 2006 AS DOCUMENT NUMBER 2006K104660, A SUBDIVISION OF PART OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, CONTAINING 1.29 ACRES, ALL IN THE CITY OF ST. CHARLES, ST. CHARLES TOWNSHIP, KANE COUNTY, ILLINOIS.