



ST. CHARLES  
SINCE 1834

### AGENDA ITEM EXECUTIVE SUMMARY

Title: Motion to Approve a Resolution Accepting and Authorizing the Mayor to Execute an Encroachment Agreement by and between the City of St. Charles and Eric Gauthier and Francoise Gauthier of 917 Jeffrey Court, St. Charles, Illinois

Presenter: Rita Tungare

*Please check appropriate box:*

<input type="checkbox"/>	Government Operations	<input type="checkbox"/>	Government Services
<input type="checkbox"/>	Planning & Development	<input checked="" type="checkbox"/>	City Council (3-4-2013)

Estimated Cost:	N/A	Budgeted:	<input type="checkbox"/> YES	<input type="checkbox"/> NO
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If NO, please explain how item will be funded:

**Executive Summary:**

In 1999, a permit was issued by the City for the construction of an in-ground swimming pool in the rear yard of the home located at 917 Jeffrey Court. The pool was constructed and a final inspection was performed and approved by the City a few months after permit issuance.

City staff was recently made aware that a portion of the constructed pool encroaches into an existing utility and drainage easement. The property owners have contacted the City and requested an encroachment agreement that will allow the pool to remain in its current location until such time that it is reconstructed or removed. The attached encroachment agreement would accomplish this and will also be necessary should the current property owners sell their home in the future. It should also be noted that there are not any City owned utilities currently located in this easement.

This is a "non-exclusive" license agreement and has been reviewed by the City's attorney.

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

Encroachment Agreement

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

Recommend approval of a Resolution Accepting and Authorizing the Mayor to Execute an Encroachment Agreement by and between the City of St. Charles and Eric Gauthier and Francoise Gauthier

*For office use only:*

*Agenda Item Number:* IA

**City of St. Charles, Illinois  
Resolution No. 2013-**

**A Resolution Accepting and Authorizing the Mayor to Execute an  
Encroachment Agreement by and between the City of St. Charles and  
Eric Gauthier and Francoise Gauthier of 917 Jeffrey Court, St. Charles,  
Illinois**

**Presented & Passed by the  
City Council on March 4, 2013**

NOW THEREFORE, be it resolved by the authorities of the City of St. Charles that the City Council hereby accepts an Encroachment Agreement by and between the City of St. Charles and Eric and Francoise Gauthier of 917 Jeffrey Court, St. Charles, Illinois and that the Mayor is hereby authorized to execute an Encroachment Agreement by and between the City of St. Charles and Eric and Francoise Gauthier of 917 Jeffrey Court, St. Charles, Illinois.

PRESENTED to the City Council of the City of St. Charles, Illinois this 4th day of March 2013.

PASSED by the City Council of the City of St. Charles, Illinois this 4th day of March 2013.

APPROVED by the Mayor of the City of St. Charles, Illinois this 4th day of March 2013.

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Donald P. DeWitte, Mayor

ATTEST:

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Nancy Garrison, City Clerk

COUNCIL VOTE:

Ayes:

Nays:

Absent:

Abstain:

## **ENCROACHMENT AGREEMENT**

This Encroachment Agreement (hereinafter the "Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the City of St. Charles, Kane and DuPage Counties, Illinois ("City"), and Eric Gauthier and Francoise Gauthier, the owners of certain real property with a common street address of 917 Jeffrey Court, St. Charles, Kane County, Illinois ("Owners"); the City and Owners are sometimes hereinafter collectively referred to as the Parties ("Parties") or individually as the Party ("Party").

### **WITNESSETH:**

**WHEREAS**, Owners own certain real property commonly known as 917 Jeffrey Court, Kane County, St. Charles, Illinois, and legally described on Exhibit "A" attached hereto, ("Owners' Property"); and

**WHEREAS**, the City has a 20' utility and drainage easement for public utility and drainage purposes over and upon Owners' Property as depicted in the survey attached as Exhibit "B" and incorporated herein by reference ("Easement"); and

**WHEREAS**, in November, 1999, Owners completed construction of an in-ground swimming pool, pool deck and patio ("Pool"), consistent with City ordinances as evidenced by the Certificate of Occupancy issued November 24, 1999 by the City, a copy of which is attached hereto as Exhibit "C"; and

**WHEREAS**, the Pool as constructed encroaches upon the Easement on the south side of Owners' Property; and

**WHEREAS**, the City and Owners are now desirous of entering into this Agreement to provide a public record of the City's consent to construct the Pool as built, subject to the terms contained herein.

**NOW, THEREFORE**, in consideration of the foregoing promises and of the covenants and conditions hereinafter contained, the adequacy and sufficiency of which the Parties hereto hereby stipulate, the Parties hereby agree as follows:

1. Incorporation of Recitals. The Recitals hereinabove are hereby incorporated into and made a substantive part of this Agreement as though they were fully set forth in this Paragraph.

2. Grant of License. The City, in consideration of the sum of One (\$1.00) Dollar and other good and valuable consideration paid to City, the receipt and sufficiency of which is hereby acknowledged, hereby grants to the Owners a non-exclusive License ("License") solely for the

purpose of evidencing its consent for the Pool as built and allowing the Pool to continue to remain on the Easement on the Owners' Property, subject to the terms, conditions and limitations herein specified together with any exhibits attached hereto and incorporated herein by reference.

3. No Expansion of License. The Pool shall not in any manner be expanded, added to or enlarged within the Easement beyond the area depicted in the survey previously attached hereto and incorporated herein as Exhibit "B".

4. Modifications to Pool. The Pool shall not in any manner be reconstructed, expanded, modified or improved within the Easement without prior written consent of the City, solely in the City's discretion.

5. Maintenance of Pool. Owners shall continuously maintain the Pool in good structural condition and repair at all times, and shall comply with all applicable federal, state and local laws, statutes, ordinances rules and regulations. Access to utilities located in the Easement shall not be compromised in any manner.

6. Owners' Responsibilities. Owners are responsible for the cost of installation, maintenance, and removal of such Pool and are responsible for any damage caused to the Owners' Property resulting from such installation, maintenance, and removal.

7. Indemnification. To the fullest extent permitted by law, Owners agree to indemnify, defend, protect, and hold harmless the City, its corporate authorities, officers, employees, agents and volunteers from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, all costs and cleanup actions of any kind, and all costs and expenses incurred in connection therewith, including but not limited to reasonable attorney's fees, expert witness fees and costs of defense (collectively, the "Losses") resulting from Owners' acts or omissions hereunder. If any judgment shall be rendered against the City, its officials, employees, agents and volunteers in any such action, the Owners shall, at their own expense, satisfy and discharge the same. The foregoing notwithstanding, under no circumstances shall the issuance of any permit or certificate provided for under the St. Charles Municipal Code to the Owners or another person or entity constitute an act of negligence or willful misconduct. Nothing set forth in this Agreement shall be deemed a waiver by the City of any defenses or immunities relating to Owners or their property, or to any person or entity or their property, that are or would be otherwise available to the City or its corporate authorities, officers, employees, agents, and volunteers under the provisions of the Illinois Local Government and Governmental Employees Tort Immunity Act, or that are otherwise available to local governments and their corporate authorities, officers, employees, agents and volunteers under the common law of the State of Illinois or the United States of America. The provisions of this Section shall survive the expiration or earlier termination of this Agreement or renewal thereof.

8. Rights of Utility Companies. Owners understand and agree that various utilities, telecommunications, and cable/video service providers, including but not limited to: Ameritech, NICOR, AT&T Cable Services, Comcast and their successors and assigns (“Utility Companies”), may have certain rights pertaining to the Owners’ Property and that this Agreement does not in any way affect or diminish the rights of those other public utility companies.

9. License Only. This Agreement shall not be construed to grant any interest in realty or any other possessory interest beyond a non-exclusive license to the Owners.

10. Termination. This Agreement shall automatically terminate in the event that the Pool is ever removed and its use permanently terminated. Upon such termination and removal, the Owners shall restore the area to the condition existing immediately prior to the installation of the Pool.

11. Relationship of Parties. Nothing contained in this Agreement, nor any act of the City, shall be deemed or construed by any of the Parties, or by a third person, to create any relationship of third party beneficiary, or principal or agent, or of limited or general partnership, or of joint venture, or of any association or relationship involving the City.

12. Successors. This Agreement shall bind and inure to the benefit of the Parties hereto, any subsequent purchasers of the Owners’ Property and their respective successors and legal representatives; provided however, Owners may not assign their rights under this Agreement without the prior written consent of City, except to a subsequent purchaser of Owners’ Property.

13. Notices. All notices or demands required or desired to be furnished pursuant to the terms of this Agreement shall be in writing, delivered personally or by certified mail, return receipt requested, with postage prepaid, the combination of which shall constitute proper delivery to the proper addresses:

City of St. Charles  
ATTN: City Administrator  
Two East Main Street  
St. Charles, Illinois 60174

Eric and Francoise Gauthier  
917 Jeffrey Court  
St. Charles, Illinois 60174

Any address provided herein may be changed by written notice to the other Party set forth above. All notices given in conformity herewith shall be deemed received and effective on the date of personal delivery or, if given by mail, two (2) days following deposit with the U.S. Mail in conformance with this Section.

14. Waiver. No failure by either Party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement, or to exercise any right or remedy upon a breach thereof, will constitute a waiver thereof. Any Party hereto, by notice to the other

Party, may, but will be under no obligation to, waive any of its rights or any condition to its obligations hereunder, or any duty, obligation or covenant of the other Party hereto. No waiver will affect or alter any other covenant, agreement, terms or condition of this Agreement, all of which shall continue in full force and effect.

IN WITNESS WHEREOF, we have set our hands and seals the day and year first above written.

CITY OF ST. CHARLES, ILLINOIS,  
a Municipal Corporation

OWNERS

By: \_\_\_\_\_  
Donald P. DeWitte, Mayor

\_\_\_\_\_  
Eric Gauthier

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Francoise Gauthier

EXHIBIT "A"

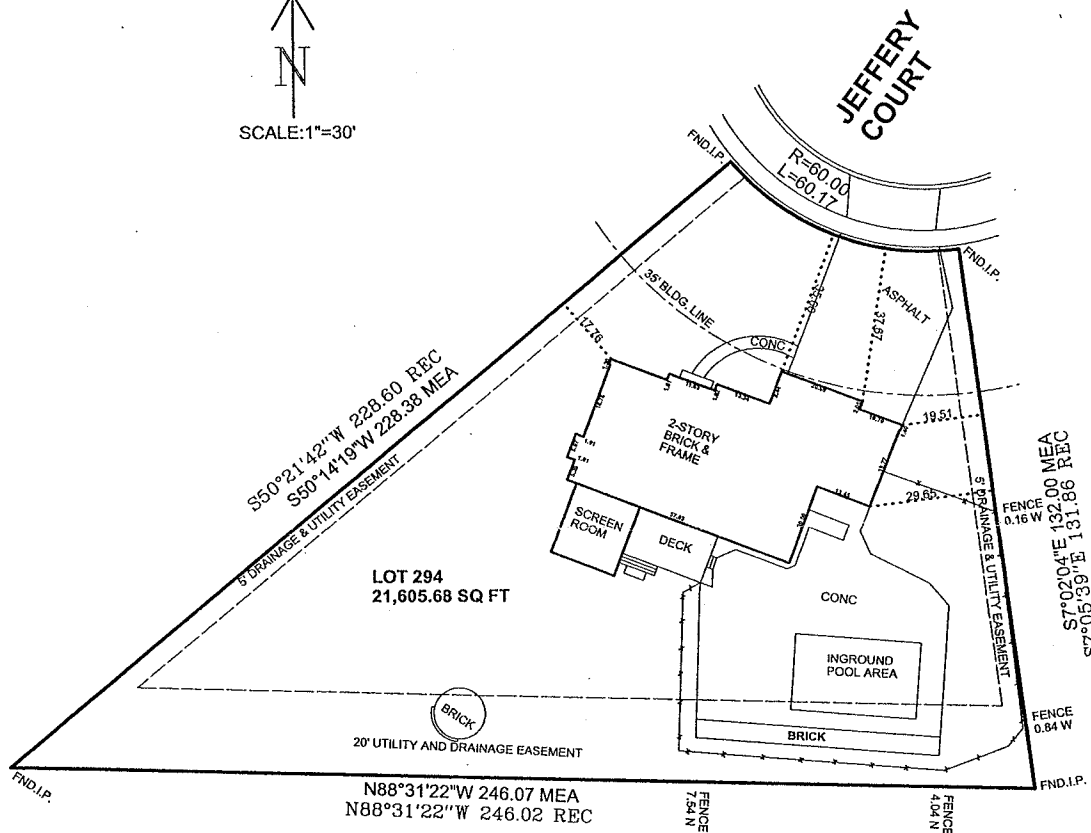
LOT 294 IN THE HUNT CLUB UNIT 3, BEING A SUBDIVISION OF PART OF THE WEST 1/2 OF SECTION 26, IN TOWNSHIP 40 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN IN THE CITY OF ST. CHARLES, IN KANE COUNTY, ILLINOIS ACCORDING TO THE PLAT THEREOF RECORDED MAY 20, 1993 AS DOCUMENT 93K35746.

# PLAT OF SURVEY

## DALE FLOYD LAND SURVEYING L.L.C.

2600 KESLINGER ROAD SUITE A  
 GENEVA, ILLINOIS 60134  
 PHONE: 630-232-7705 FAX: 630-232-7725

LOT 294 IN THE HUNT CLUB UNIT 3, BEING A SUBDIVISION OF PART OF THE WEST 1/2 OF SECTION 26, IN TOWNSHIP 40 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN IN THE CITY OF ST. CHARLES, IN KANE COUNTY, ILLINOIS ACCORDING TO THE PLAT THEREOF RECORDED MAY 20, 1993 AS DOCUMENT 93K35746. COMMONLY KNOWN AS: 917 JEFFREY COURT, ST. CHARLES, ILLINOIS.



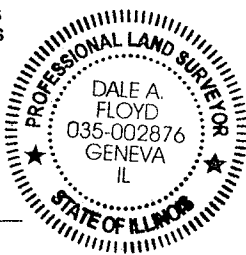
NOTE: THIS PROFESSIONAL SERVICE CONFORMS TO THE CURRENT ILLINOIS MINIMUM STANDARDS FOR A BOUNDARY SURVEY

COMPARE ALL POINTS BEFORE BUILDING BY THE SAME AND AT ONCE REPORT ANY DIFFERENCE

STRUCTURE LOCATED AND INITIAL SURVEY COMPLETED 11-20-2012

ILLINOIS PROFESSIONAL LAND SURVEYOR NO. 035-002876

JOB NO. 001112-13



STATE OF ILLINOIS S.S.  
 COUNTY OF KANE

WE, DALE FLOYD LAND SURVEYING L.L.C., A PROFESSIONAL DESIGN FIRM, LICENSE NO. 184-004129 DO HEREBY CERTIFY THAT THE ABOVE DESCRIBED PROPERTY HAS BEEN SURVEYED IN THE MANNER REPRESENTED ON THE PLAT HEREON DRAWN.

DIMENSIONS ARE SHOWN IN FEET AND DECIMAL PARTS THEREOF.

GENEVA, ILLINOIS 11-21 A.D. 2012

ILLINOIS PROFESSIONAL LAND SURVEYOR NO. 035-002876

LICENSE EXPIRATION DATE 11-30-2012



City of St. Charles  
Building and Zoning Division



Certificate of Occupancy

Permit: 99-23726

This Certificate is Hereby Granted to: Eric Dantre

For the Address of: 917 Jeffrey Ct

Type of construction: Pool

Issued this 24th Day of November, 19 99

Building Inspector: \_\_\_\_\_, 19\_\_

Plumbing Inspector: PS Paul J. ..., 11-24, 1999

Fire Inspector: \_\_\_\_\_, 19\_\_

REMARKS: \_\_\_\_\_  
\_\_\_\_\_