

ORDINANCE NO. F-0228

AN ORDINANCE AUTHORIZING THE SIGNING OF AN
ANNEXATION AGREEMENT -
2S230 AND 2S242 SHAFFNER ROAD/LAVERY

WHEREAS, a written petition has been filed with the City Clerk of Wheaton, Illinois, requesting the annexation to the City of Wheaton, Illinois ("City"), of certain territory contiguous to the boundaries of the City and not within the corporate boundaries of any other municipality, pursuant to a proposed annexation agreement which sets forth the terms and conditions under which annexation shall take place; and

WHEREAS, pursuant to notice, a public hearing was conducted by the City Council on March 23, 1998, to consider the terms and conditions of the proposed annexation agreement; and

WHEREAS, an annexation agreement dated April 6, 1998, among the City and Terrence J. Lavery d/b/a Terrence Lavery Builders, Inc., and Matthew P. Basiletti and John C. Basiletti ("Owners") ("Annexation Agreement"), is the direct result of deliberations on the proposed Annexation Agreement pursuant to the public hearing and other meetings before the City Council and City Staff.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Wheaton, Du Page County, Illinois, pursuant to its home rule powers, as follows:

Section 1: The Mayor of the City is authorized and directed to sign, on behalf of the City, the Annexation Agreement, and the City Clerk is authorized and directed to attest to the signature of the Mayor and affix the corporate seal of the City thereon. A copy of the Annexation Agreement is on file in the Office of the City Clerk and is incorporated into this ordinance by this reference as though fully set forth herein.

Section 2: The Annexation Agreement shall be recorded in the Office of the Recorder of Deeds, DuPage County, Illinois, at the expense of the Owners.

Section 3: All ordinances or parts of ordinances in conflict with these provisions are repealed.

Section 4: This ordinance shall become effective from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.

ATTEST:

Emily M. Ceraso
City Clerk

James Carr
Mayor

Roll Call Vote:

Ayes: Councilman Gresk
Councilman Johnson
Councilwoman Johnson
Councilwoman Davenport
Councilman Eckhoff
Mayor Carr

Nays: None

Absent: Councilman Mork

Motion Carried Unanimously

Passed: April 6, 1998
Published: April 7, 1998

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT, made and entered into this 6th day of April 1998, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"); Terrence J. Lavery, Owner of 2S242 and 2S230 Shaffner Road d/b/a Terrence Lavery Builders Inc., 1577 Thornwood, Wheaton Illinois (herein after referred to as Owners).

WITNESSETH

WHEREAS, the Owners have an interest in or controls the real estate comprised of approximately 1.33 acres, a description of which is set forth on the Plat of Annexation, marked as Exhibit "A," which is attached to and made a part of this Agreement (said real estate will hereafter be referred to in its entirety as "Subject Property" or "Development"); and

WHEREAS, the Subject Property is contiguous to the corporate limits of the City; and

WHEREAS, the City has concluded that annexation of the Subject Property under the terms and conditions of this agreement would further the growth of the City, enable the City to control the development of the area, increase the taxable value of the property within the City, extend the corporate limits and jurisdiction of the City, permit the sound planning and development of the City, and otherwise enhance and promote the health, safety, and general welfare of the City; and

WHEREAS, pursuant to the provisions of Section 6.1, et.seq., of the Wheaton City Code and applicable provisions of the Illinois Revised Statutes and Illinois Constitution, a proposed annexation agreement in substance and form of the same as this Agreement was submitted to the

Wheaton City Council, and a public hearing was held thereon pursuant to notice as provided by ordinance and statute; and

WHEREAS, notice has been duly served in the manner provided by statute on the appropriate governmental entities; and an affidavit that service of said notice has been duly served has been placed on record with the Recorder of Deeds, DuPage County, Illinois.

NOW, THEREFORE, in consideration of the foregoing preambles and mutual covenants and agreements contained herein, the parties hereto agree as follows:

1. LEGAL CONFORMANCE WITH LAW. This Agreement is made pursuant to and in accordance with the provisions of the Wheaton City Code and applicable provisions of the Illinois Revised Statutes and Illinois Constitution.

2. PETITION TO ANNEX. The Owner has filed with the Clerk of the City, a petition pursuant to the provisions of Section 7-1-8 of the Illinois Municipal Code (Ill. Compiled Stat., Ch. 65, par. 5/7-1-8), conditioned upon the signing of this Agreement, to annex the Subject Property to the City. The petition is attached as Exhibit B. This Agreement in its entirety, together with the aforesaid petition for annexation, shall be null, void, and of no force and effect unless the Subject Property is validly zoned and classified under the City's Zoning Ordinance as hereinafter set forth and amended.

3. ANNEXATION ORDINANCE. Immediately upon the execution of this Agreement, the City Council will enact an ordinance annexing the Subject Property to the City.

4. REZONING. Immediately after the passage of the ordinance annexing the Subject Property, the City shall, without further hearing, adopt an amendment to its Zoning Map which is part of the Zoning Ordinance of the City and the Comprehensive Plan of the City, zoning and classifying the Subject Property in the R-2 Residential Zoning District.

5. **DEVELOPMENT STANDARDS.** The Plat of Resubdivision, attached as Exhibit C, has been reviewed by the corporate authorities of the City, and is hereby approved. The Subject Property shall contain a maximum of one (1) single family dwelling unit per lot. The Development of the Subject Property shall be in full conformance with the City's Zoning Ordinance, Subdivision Control Ordinance, Building Code, and other ordinances, codes, rules, and regulations of the City as they presently exist and as amended, except as varied and modified by the terms of this Agreement.

6. **SANITARY SEWER FACILITIES.** The Owners shall connect each single family home on the Subject Property to the sanitary sewer system at the time connection to City water is made. Owners shall pay all City permit fees in full force and effect pursuant to City Code at the time of the connection to the sanitary sewer main. The City agrees to cooperate in obtaining such permits as may be required from time to time by both Federal and State law, including (without limitation) the Illinois Environmental Protection Act, permitting the connection onto the sanitary lines of the Wheaton Sanitary District in order to develop and use the Subject Property. Owners agree to annex to the Wheaton Sanitary District.

7. **WATER FACILITIES.** Owners shall pay all City permit fees in full force and effect pursuant to City Code at the time of the connection to the water main.

8. **STORM WATER FACILITIES.** Owners agree to design and construct suitable storm water facilities for the Subject Property which comply with the requirements and standards contained in Chapter 34 of the Wheaton City Code, the DuPage County Countywide Stormwater and Flood Plain Ordinance, and all other applicable statutes and ordinances.

9. WHEATON PARK DISTRICT ANNEXATION. Owners agree to annex, pursuant to State Statute, the Subject Property to the Wheaton Park District within one (1) year of the date of this Agreement.

10. TREE PRESERVATION. The Owners shall meet the Tree Preservation requirements as set forth in Section 6.11 of the Wheaton Zoning Ordinance.

11. ANNEXATION AND PERMIT FEES. The amount of the permit, license, tap-on or connection fees imposed by the City which are applicable to or required to be paid by the Owners or successor developers, contractors, subcontractors, materialmen, or others performing work or supplying materials in connection with the development or construction of improvements on the development shall be the amount or rate of said fees in effect at the time of application for same.

12. BUILDING PLANS. The Developer shall be required to submit plans for the buildings to be constructed in the Development. A building permit must be obtained and the appropriate permit fee paid as required by the Wheaton ordinances for the buildings to be constructed in the Development.

13. STOP ORDERS. The City reserves the right to terminate and stop all activities at the job site, with written notice, to correct a situation which presents a direct hazard to the public health, safety, and welfare. Any such stop work order shall be issued in accordance with the provisions of the Wheaton City Code and adopted Building Codes.

14. CONFLICT IN REGULATIONS. The provisions of this Agreement shall supersede the provisions of any ordinances, codes, or regulations of the City which may be in conflict with the provisions of this Agreement.

15. AMENDMENT OF ANNEXATION AGREEMENT. This Agreement, and any

exhibit attached hereto, may be amended pursuant to the provisions of Chapter 6 of the City Code.

16. TIME OF THE ESSENCE. Time is of the essence of this Agreement.

17. INVALIDITY. If any provision of this Agreement, or any section, sentence, clause, phrase, or word, or the application thereof in any circumstances, is held invalid, the validity of the remainder of this Agreement and the application of such provision, section, sentence, clause, phrase, or word in any other circumstances shall not be affected thereby.

18. TERM OF AGREEMENT. This Agreement shall be binding upon the parties hereto, their respective successors and the assigns for a full term of ten (10) years from the date of this Agreement.

19. CONSEQUENCE OF NON-DEVELOPMENT. Any portion of the Subject Property which has not been completely developed in full compliance with this annexation agreement as of the termination date of this agreement shall automatically revert to the R-1 zoning classification without the necessity of a public hearing or City action; and any special use permit or other permission to develop the property granted herein shall automatically terminate.

20. INDEMNIFICATION. Owners shall indemnify and hold the City harmless from all injuries to persons and property which arise due to the negligence of the Owners, its agents, assigns, employees, contractors, and subcontractors. Owners shall indemnify and hold the City harmless from all causes of action, suits, judgments, settlements, legal fees, and all other costs which may be incurred by the City as a result of the aforesaid negligence. The Owners shall provide the City with certificates of insurance as required by any Subdivision Improvement Agreement hereafter entered between the City and the Owners.

21. **BINDING EFFECT.** This Agreement shall be binding upon the parties hereto, their heirs, executors, administrator, assigns, successors, and grantees.

22. **NOTICES.** Notices or other writings which any party is required to, or may wish to, serve upon any other party in connection with this Agreement shall be in writing and shall be delivered personally or sent by certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

A. Owners.

Terrence J. Lavery
Terrence Lavery Builders Inc.
1577 Thornwood
Wheaton, IL 60187

B. City of Wheaton.

City Clerk
City of Wheaton
303 West Wesley Street
Wheaton, Illinois 60189-0727

23. **RECORDING.** This Agreement shall be recorded in the Office of the Recorder of Deeds, DuPage County, Illinois at the expense of the Owners.

IN WITNESS WHEREOF, the Corporate authorities, the Owners have hereunto set their hands and seals, and have caused this instrument to be executed by their duly authorized officials and the Corporate seal attached here, all on the day and year first above written.

By

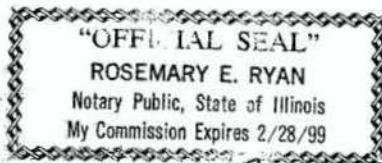

MAYOR

ATTEST:


CITY CLERK

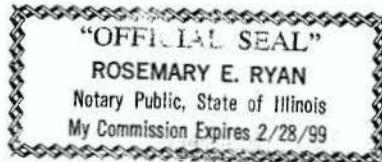
ATTEST:

Rosemary E. Ryan



ATTEST:

Rosemary E. Ryan



Teresa J. Lavery
OWNER, 2S230 SHAFFNER RD.

Teresa J. Lavery
OWNER, 2S242 SHAFFNER RD