

**DATE:** May 15, 2023  
**TO:** Committee of the Whole-CD  
**FROM:** Scott Buening, Community and Economic Development Director  
**SUBJECT:** Ordinance 23-19 Authorizing Execution of an Annexation Agreement for Property at 2S214 Hart Road

**Summary:** Annexation agreement for property at 2S214 Hart Road.

- 1. Background:** As part of our efforts to annex the unincorporated “islands”, we have first solicited voluntary annexations from the areas that are being sought after for annexation. This property was requested to submit a voluntary petition to annex, but during discussions with the property owner, we discovered unique circumstances that warranted entering into an annexation agreement. In this case the property is larger than other lots in the area and has some unique uses that are already present on the property. It is used for residential and agricultural purposes as well as equestrian purposes.

Therefore, after discussion with the property owner staff feels that there are unique circumstances to warrant an individual annexation agreement for this property. This agreement is similar to others that were done in 2022 for properties on the east side of Hart Road. The agreement essentially grandfathers the existing F Farming provisions under Kane County regulations for this property during the term of the agreement. While we would place it in the R0 Single Family zoning district, the property owners would be allowed for the 20 year duration of the agreement to continue to use the property for agricultural uses and keeping of livestock, poultry (including chicken and waterfowl) and keeping and boarding of horses. Existing structures would be allowed to remain even if non-conforming as to size and setbacks, including the stable, pasture, a round pen and dirt turn out, a shed, chicken coop fencing and an above ground pool. New structures will need to comply with the R0 Zoning requirements. Several of these uses are allowed in the R0 District by right, but the agreement just ensures that for the duration of the agreement.

They would not be required to connect to City utilities unless and until they elect to do so or their system(s) fail where they cannot be reasonably repaired. They would agree to dedicate 40 feet for Hart Road at the City’s request since they own to the centerline of that road. The City only has a prescriptive easement to use that portion which would become City jurisdiction after annexation.

In order to approve of the agreement, a Public Hearing is required. The Public Hearing has been scheduled for the Committee of the Whole meeting on May 23, 2023 at 7:05 PM. At that time the Committee should open the hearing, take public testimony, if any, and then close the Public Hearing. The City Council may then act to approve of the annexation agreement at the next City Council meeting. Annexation would come at a later date with the surrounding properties as part of a voluntary annexation petition. As we had agreed

with other annexations, the City would handle all the paperwork necessary to complete the annexation. The property would be zoned R0 and would be in Ward 6 after annexation.

The City Council will need to pass the attached Ordinance Authorizing Execution of the Annexation Agreement by a 2/3 vote of the Corporate Authorities. Note that annexation will not occur at this time and will occur with a group of properties in the near future.

**2. Alternatives, including no action if viable:**

- **Approve the Annexation Agreement.**
- **Do not approve the Annexation Agreement.**

- **Budget Impact:** The total cost for documents and recording is about \$100.00.
- **Staffing Impact:** No impact on staffing.

**3. Timeline for actions:** If the public hearing is closed on May 23, the agreement could be approved at the City Council meeting on June 5, 2023.

**4. Staff recommendation:** Staff recommends approval of Ordinance 23-19 Authorizing Execution of an Annexation Agreement for Property at 2S214 Hart Road.

**5. Attachments:**

1. Ordinance 23-19 Authorizing Execution of an Annexation Agreement for Property at 2S214 Hart Road.
2. Annexation Agreement.
3. Legal Notice.
4. Area Map.

**CITY OF BATAVIA, ILLINOIS  
ORDINANCE 23-19**

**AN ORDINANCE AUTHORIZING THE EXECUTION OF AN  
ANNEXATION AGREEMENT BETWEEN JOHN P., GRETHCEN R. AND KARL J. FEHLING  
AND  
THE CITY OF BATAVIA  
FOR PROPERTY LOCATED AT 2S214 HART ROAD**

**ADOPTED BY THE  
MAYOR AND CITY COUNCIL  
\_\_\_ DAY OF \_\_\_\_\_, 2023**

Published in pamphlet form  
by authority of the Mayor  
and City Council of the City of Batavia,  
Kane & DuPage Counties, Illinois,  
This \_\_\_ day of \_\_\_\_\_, 2023

Prepared by:

City of Batavia  
100 N. Island Ave.  
Batavia, IL 60510

**CITY OF BATAVIA, ILLINOIS  
ORDINANCE 23-19**

**AN ORDINANCE AUTHORIZING THE EXECUTION OF AN  
ANNEXATION AGREEMENT BETWEEN JOHN P., GRETHCEN R. AND KARL J. FEHLING  
AND  
THE CITY OF BATAVIA  
FOR PROPERTY LOCATED AT 2S214 HART ROAD**

**WHEREAS**, it is in the best interests of the City of Batavia, Kane and DuPage Counties, Illinois, that a certain Annexation Agreement, and attached hereto as Exhibit 1, between John P., Grethcen R. and Karl J. Fehling (“Owners”) and the City of Batavia (“City”) be approved and executed; and

**WHEREAS**, the Owners are legal owners of record of the property at 2S214 Hart Road (“Territory”) which is the subject matter of such an agreement, are ready, willing, and able to enter into said Agreement and to perform the obligations as required thereunder; and

**WHEREAS**, the statutory procedures provided in 65 ILCS 11/1-15.1, as amended, as well as the requirements of the Batavia Municipal Code, for the execution of said Agreement have been fully complied with, including all notices to the public, notices to certain taxing jurisdictions, and the holding of certain public hearings;

**NOW, THEREFORE, BE IT HEREBY ORDAINED** by the City Council of the City of Batavia, Kane and DuPage Counties, Illinois as follows:

**SECTION 1:** That the Annexation Agreement attached hereto as Exhibit 1 is approved and the Mayor be and is hereby authorized and directed to execute, and the City Clerk is directed to attest, the said Annexation Agreement.

**SECTION 2:** That this Ordinance 23-19 shall be in full force and effect upon its presentation, passage and publication according to law.

CITY OF BATAVIA, ILLINOIS ORDINANCE 23-19

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**PRESENTED** to the City Council of the City of Batavia, Illinois, this \_\_\_\_ day of \_\_\_\_, 2023.

**PASSED** by the City Council of the City of Batavia, Illinois, this this \_\_\_\_ day of \_\_\_\_, 2023.

**APPROVED** by me as Mayor of said City of Batavia, Illinois, this \_\_\_\_ day of \_\_\_\_, 2023.

\_\_\_\_\_  
Jeffery D. Schielke, Mayor

Ward	Aldermen	Ayes	Nays	Absent	Abstain	Aldermen	Ayes	Nays	Absent	Abstain
1	Solfa					Baerren				
2	Leman					Wolff				
3	Ajazi					Chanzit				
4	Malay					Connelly				
5	Uher					Beck				
6	Cerone					Lanci				
7	Vogelsinger					Miller				
Mayor Schielke										
VOTE:		Ayes	Nays	Absent	Abstentions					
Total holding office:		Mayor and 14 aldermen								

ATTEST:

\_\_\_\_\_  
Kate Garrett, City Clerk

**EXHIBIT 1**

**ANNEXATION AGREEMENT  
BETWEEN THE CITY OF BATAVIA  
AND JOHN, GRETCHEN AND KARL FEHLING**

**NOW COMES John P., Gretchen R., and Karl J. Fehling**, the current owners of certain real property described in the attached Exhibit "A", hereafter referred to as the "Property" located at 2S214 Hart Road, Batavia, IL 60510, PIN 12-26-102-010, hereinafter collectively referred to as the "Owner" and the City of Batavia, an Illinois Municipality hereinafter referred to as the "City", who do hereby enter into this Annexation Agreement hereinafter referred to as the "Agreement" as follows:

**WHEREAS**, each party agrees that it is in the best interest of Owner and the City to annex the Property described in the attached Exhibit "A," and,

**WHEREAS**, the Property is approximately a 1.9 acre site currently improved with a single-family residence and accessory buildings and uses and is not presently located within the corporate limits of any municipality, but is contiguous to and may be annexed to the City of Batavia as provided Article 7 of the Illinois Municipal Code; and,

**WHEREAS**, due and proper notice of the proposed annexation has been given to the Trustees of the Batavia Fire Protection District, Batavia Township and the Batavia Township Commissioner of Highways, more than ten (10) days prior to any action being taken on the annexation of the property; and,

**WHEREAS**, all other and further notices, publications, procedures, public hearings and other matters attendant to the consideration and approval of this Agreement and the annexation and zoning of the Property have been given, made, held and performed by the City as required by Section 7-1-8 and Section 11-15.1-1 et seq. of the Illinois Municipal Code, and all other applicable statutes, and all applicable ordinances, regulations and procedures of the City. This Agreement is made and entered into by the parties pursuant to the provisions of Section 11-15.1-1 et seq. of the Illinois Municipal Code; and,

**WHEREAS**, the corporate authorities have duly considered all necessary petitions to enter into this Agreement, and have further duly considered the terms and provisions of the Agreement and have, by an ordinance duly adopted by a vote of two-thirds (2/3) of the Corporate Authorities then holding office, authorized the Mayor to execute, and the City Clerk to attest, this Agreement on behalf of the City.

**NOW THEREFORE**, the parties agree as follows:

1. City agrees to annex the Property to the City of Batavia within sixty (60) days of execution of this Agreement, and, at the same meeting, the corporate authorities shall enact such ordinances, adopt such resolutions, and take such other actions as are necessary to zone the Property as R0 Single Family District.

2. Owner agrees that upon the total failure of the existing septic system or upon development of the Property, whichever occurs first, Owner will connect to the City's sanitary sewer system at their cost if the sewer is within 200 feet of the building being served. If the extension is due to development, Owner agrees to pay all system extension costs pursuant to a subsequent amendment of this Agreement. Any connection shall be subject to any and all provisions within the Municipal Code, and City policies relating to the Sewer System including, but not limited to, payment of user charges which are applicable to other residential users of the system, and which may be modified from time to time.

3. Owner agrees that upon the total failure of the existing well system or upon development of the Property, whichever occurs first, Owner will connect to the City's water system at their cost if the water line is within 200 feet of the building being served. If the extension is due to development, Owner agrees to pay all system extension costs pursuant to a subsequent amendment of this Agreement. Any connection shall be subject to any and all provisions within the Municipal Code, and City policies relating to the Municipal Water System including, but not limited to, payment of user charges which are applicable to other residential users of the system, and which may be modified from time to time.

4. Owner agrees that upon the total failure of the existing electric system, upon expansion of the building, upgrading of the electrical service or development of the Property, whichever comes first, Owner will connect to the City's electric system at their cost if the electric line is within 200 feet of the building being served. If the extension is due to development, Owner agrees to pay all system extension costs per a subsequent amendment of this Agreement. Any connection shall be subject to any and all provisions within the Municipal Code, and City policies relating to the Electric System including, but not limited to, payment of user charges which are applicable to other residential users of the system, and which may be modified from time to time.

5. In consideration of the voluntary nature of this Agreement, the City shall waive the traditional annexation, plat preparation, and recording fees. All other fees shall be applicable upon construction or development of the Property. Upon development of the Property, this Agreement shall be amended, and all typical development fees shall be applicable. These include but are not necessarily limited to school and park land-cash fees, and fire and public works capital impact fees.

6. The zoning pursuant hereto shall create a permanent zoning classification for the Property (unless changed by the City at the Owner's or his successors in interest's request) which shall remain in effect throughout the term of this Agreement and thereafter until amended in the manner provided by law for the amendment of zoning classifications. Except for such amendment such zoning shall not expire at any time or upon the happening of any event or the failure of any event to occur.

7. The City represents and warrants that it owns, operates and maintains a potable water supply and distribution system within its borders and water mains within Hart Road which system and mains have, and at all times will have, sufficient capacity and pressure to

accommodate the anticipated potable water and fire protection needs of the Property. All inspection, tap-on and user fees assessed by the City in connection with the provision of potable water service to the Property shall be assessed at the same rate as those charged by the City to other similar users of City water service.

8. The Owner agrees to dedicate for public right-of-way the eastern portion of the Property to effectuate a forty (40) foot dedication of Hart Road (as measured from the centerline). The cost of plat preparation and recording shall be paid for by the City.

9. The Owner and City acknowledge that this Agreement is entered into for the Property as it currently exists in a "pre-development" status. At the time development is proposed for the property, Owner and City will amend this Agreement to more specifically address the development conditions to be considered at that time.

10. The City recognizes that there are certain uses that may be operating on the Property that are not in full compliance with City regulations. Provided the County continues to allow the uses currently operating on the Property, the City will recognize these uses as legal non-conforming uses under the City Zoning Code and may continue as they were prior to annexation. These uses include but are not limited to agricultural uses, raising and keeping of livestock, poultry (including chickens, and water fowl) and horses (including the boarding of horses).

11. In consideration of the acreage and the agricultural nature of the property, the parties agree that so long as they maintain a stable and/or continue to maintain horses on the Property, the Owner will be permitted to keep, board and add horses to the amount currently on the Property, provided that they are in compliance with County regulations. In addition to the stable, the property includes the following areas and structures which are legal under County regulations: a pasture; a round pen; a dirt turn-out; a shed; a chicken coop; fencing; and an above ground pool. Said areas and structures shall be permitted to remain so long as the County continues to allow them. Any new structure/stable will adhere to size and setback requirements in the Batavia Zoning Code.

12. This Agreement shall be binding upon the parties and their respective successors, bona fide purchasers, and assigns for twenty (20) years, commencing as of the date hereof, and for such further term as may hereinafter be authorized by statute, and by City Ordinance. If any of the terms of this Agreement, or the annexation or zoning of the property, is challenged in any Court proceeding, then, to the extent permitted by law, the period of time during which such litigation is pending shall not be included in calculating said twenty (20) year period. The expiration of the term of this Agreement shall not affect the continuing validity of the zoning of the Property or any ordinance enacted by the City pursuant to this Agreement.

13. Force Majeure. The occurrence of an event which materially interferes with the ability of a party to perform its obligations or duties hereunder which is not within the reasonable control of the party affected, not due to malfeasance, and which could not with the exercise of due diligence have been avoided ("Force Majeure"), including, but not limited to, fire, accident, labor difficulty, strike, riot, civil commotion, act of God, public health emergency, governmental orders, delay or errors by shipping companies or change in Law shall not excuse such party from



the performance of its obligations or duties under this Agreement, but shall merely suspend such performance during the continuation of Force Majeure. The party prevented from performing its obligations or duties because of Force Majeure shall promptly notify the other party hereto of the occurrence and particulars of such Force Majeure and shall provide the other party, from time to time, with its best estimate of the duration of such Force Majeure and with notice of the termination thereof. The party so affected shall use reasonable efforts to avoid or remove such causes of nonperformance. Upon termination of Force Majeure, the performance of any suspended obligation or duty shall promptly recommence. Neither party shall be liable to the other party for any direct, indirect, consequential, incidental, special, punitive or exemplary damages arising out of or relating to the suspension or termination of any of its obligations or duties under this Annexation Agreement by reason of the occurrence of Force Majeure.

14. Notices. Any notice required or permitted by the provision of this Agreement shall be in writing and sent by certified mail, return receipt requested, or personally delivered, to the parties at the following addresses, or at such other addresses as the parties may, by notice, designate:

If to the City:                    Laura Newman, City Administrator  
   City of Batavia  
   100 N. Island Avenue  
   Batavia, Illinois 60510

With a Copy to:                    Kevin Drendel, City Attorney  
   111 Flinn Street  
   Batavia, Illinois 60510

If to Owners:                        John, Gretchen and Karl Fehling  
   2S214 Hart Road  
   Batavia, IL 60510

With a Copy to:

15. This Agreement shall be binding upon the successors, heirs and assigns of each party thereto.


16. If any portion of this Agreement is determined to be invalid the remaining portions thereof shall be in full force and effect between Owner and the City.

*{SIGNATURE PAGE FOLLOWS}*


IN WITNESS WHEREOF the undersigned parties have executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

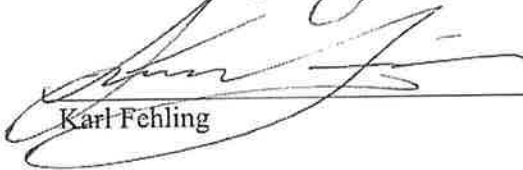
**CITY OF BATAVIA**

\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
John Fehling

**ATTEST:**  
\_\_\_\_\_  
City Clerk

  
\_\_\_\_\_  
Gretchen Fehling

  
\_\_\_\_\_  
Karl Fehling

Prepared By and Return To:  
  
Scott Buening  
City of Batavia  
100 N. Island Avenue  
Batavia, IL 60510

**EXHIBIT "A"**

Legal Description

LOT 1 IN PHILLIP F. CHILLEM'S RIVER PARK TERRACE, BATAVIA, TOWNSHIP OF  
BATAVIA, KANE COUNTY, ILLINOIS.

PIN: 12-26-102-010

Address: 2S214 Hart Road, Batavia, Illinois 60510

## NOTICE OF PUBLIC HEARING

**PUBLIC NOTICE** is hereby given to all persons concerned that on the 23rd day of May, 2023 at 7:05 p.m., in the City Council Chambers of the Municipal Building, 100 North Island Avenue, Batavia, Illinois 60510, a Public Hearing will be held wherein the City Council of the City of Batavia will meet as a Committee of the Whole to consider an Annexation Agreement between the City of Batavia and John P., Gretchen R. and Karl J. Fehling for the following property:

Lot 1 of Phillip F. Chillem's River Park Terrace, Batavia, in the Township of Batavia, Kane County, Illinois,  
PIN 12-26-102-010

25214 Hart Road, Batavia Illinois

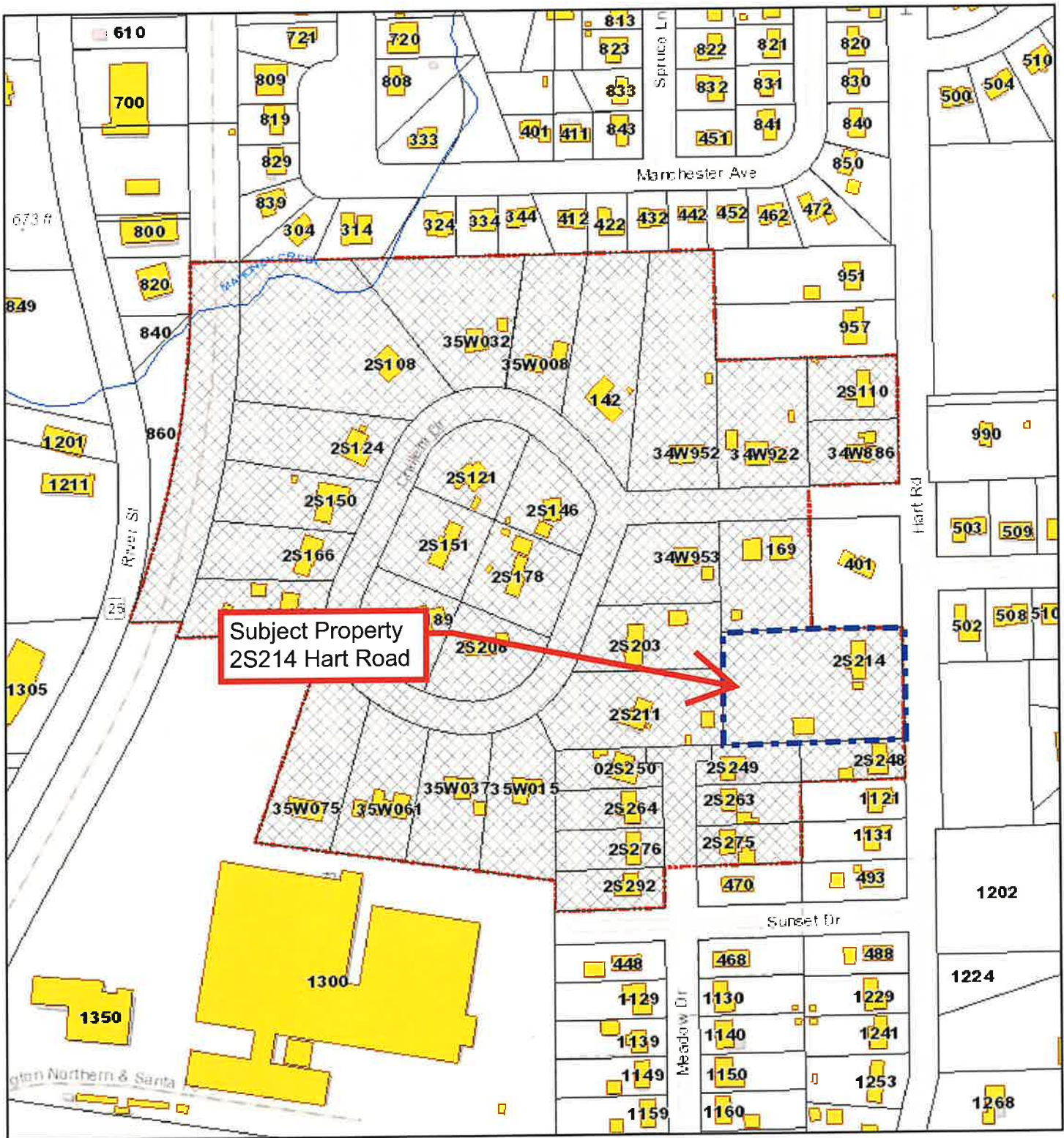
The proposed Annexation Agreement is on file with the City and is available for public inspection during normal business hours at the City of Batavia Community & Economic Development Department.

You are further notified that said proposed Annexation Agreement may be changed, altered, modified, amended or redrafted in its entirety after the public hearing. All persons interested, and in particular adjacent and adjoining property owners, are requested to attend said Hearing.

The public hearing may be continued to a further date, time and place without further notice or publication such as this notice.

Kate Garrett, City Clerk  
City of Batavia

# Web AppBuilder for ArcGIS

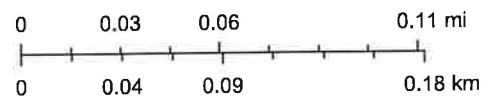


2/10/2023, 5:07:41 PM

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CITY LIMITS

BUILDINGS



Unincorporated

PARCELS

City of Batavia

CONDO PARCELS

CREEKS

ADDRESSES

County of Kane, Esri Canada, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA