

IN THE CIRCUIT COURT OF THE NINETEENTH  
JUDICIAL CIRCUIT, LAKE COUNTY, ILLINOIS

FILE

FEB 9 1996

*Shirley M. Coffey*  
CIRCUIT CLERK

VILLAGE OF METTAWA, )  
 )  
 Plaintiff, )  
 )  
 vs. ) Case No. 94-MR-610  
 )  
 COUNTY OF LAKE, )  
 )  
 Defendant. )

SETTLEMENT STIPULATION

COMES NOW the Plaintiff the VILLAGE OF METTAWA ("Mettawa") and Intervenor W.W. GRAINGER, INC. ("Grainger") and stipulate as follows:

1. Mettawa and Grainger are desirous of resolving the pending litigation between Mettawa and Grainger on mutually acceptable and beneficial terms.
2. Mettawa and Grainger have agreed to settle the pending litigation on the terms and conditions set out in this Settlement Stipulation.
3. Mettawa and Grainger have the lawful authority to and each has been duly authorized to enter into this Settlement Stipulation.
4. Mettawa and Grainger have satisfied and complied with each and every condition precedent to entering into this Settlement Stipulation.
5. The court has jurisdiction over the subject matter of the complaint and the parties thereto.
6. Grainger is the owner of a 525 acre parcel of land which is located in Lake County in the southwest quadrant of the intersection of State Route 60 and I-294, the North-South Tollway. Grainger's property is adjacent to Mettawa.
7. In this litigation, Mettawa challenges the validity of Lake County Resolution No. 2934 which rezoned Grainger's property to Urban (U), Estate (E) and Open Space (OS). The zoning classifications of Grainger's property established by Lake County Resolution No. 2934 are described in Exhibit 1 to this Settlement Stipulation which is attached hereto and incorporated herein.
8. Grainger agrees that within twenty-eight (28) days after the entry of a Final Judgment incorporating the terms and conditions of this Settlement Stipulation, Grainger shall file a petition

for voluntary annexation with the Village for that portion of Grainger's property which is designated as Estate (E) by Lake County Resolution No. 2934. The petition for voluntary annexation shall be conditioned on the approval of the Annexation Agreement which is attached hereto as Exhibit 2 and is incorporated herein.

9. Grainger agrees that notwithstanding the Estate zoning granted by Lake County, no more than twenty seven (27) single family, detached dwelling units shall be developed on that portion of Grainger's property which was designated as Estate (E) by Lake County Resolution No. 2934. Mettawa agrees that the portion of Grainger's property which was designated as Estate (E) by Lake County Resolution No. 2934 may be subdivided into one or more developable lots and non-development outlots so long as the number of dwelling units which is developed does not exceed twenty-seven (27) and so long as no developable lot is less than 20,000 square feet. Grainger agrees that the fee simple title and right to develop two (2) of the authorized twenty seven (27) dwelling units shall be conveyed to Mettawa pursuant to this Settlement Stipulation.

10. Mettawa agrees that notwithstanding any provision of the Zoning Ordinance or Subdivision Regulations of the Village of Mettawa, the development of the single family detached dwellings on that portion of Grainger's property which was designated as Estate (E) by Lake County Resolution No. 2934 shall be carried out according to the provisions of Exhibit 2 to this Settlement Stipulation.

11. Within twenty-eight (28) days after the entry of a Final Judgment incorporating the terms and conditions of this Settlement Stipulation, Grainger shall convey two (2) buildable five acre parcels of land, together with the right to develop a single family detached dwelling on each parcel and access to a public road, at a location east of Riverwoods Road to be determined by Grainger in order that Mettawa may maintain standing in its proprietary capacity as an adjacent and/or affected landowner under Illinois law in regard to unincorporated land which lies to the north and south of that portion of Grainger's property which was designated as Estate (E) by Lake County Resolution No. 2934 which lies to the east of Riverwoods Road. The conveyance of the two parcels of land shall be subject to a reversionary interest in favor of Grainger which reserves to Grainger, for a period of two (2) years from the date of the conveyance, the absolute and unqualified right to exchange two platted lots in substantially the same location for the two (2) five acre parcels of land, provided that Mettawa shall have approved the plat of subdivision which creates the lots. Mettawa agrees that Grainger's reversionary interest in the two (2) five (5) acre parcels is an adequate ownership in such parcels to allow Grainger to prepare and obtain approval of a plat of subdivision which includes those properties. It is understood between Grainger and Mettawa that Grainger intends to prepare a plat of subdivision of that portion of Grainger's property which is designated Estate (E) by Lake County Resolution No. 2934 as soon as practicable and that Mettawa will cooperate in the preparation and approval of such plat of subdivision.

12. Within twenty-eight (28) days after entry of a Final Judgment incorporating the terms and conditions of this Settlement Stipulation, Grainger shall file a petition for voluntary annexation of a ten (10) foot border along a portion of Grainger's property which is designated as Urban (U) by Lake County Resolution No. 2934. The property to be annexed is described in Exhibit 3 which is attached hereto and incorporated herein. The petition for voluntary annexation shall be subject to

the Annexation Agreement which is attached hereto as Exhibit 4 and is incorporated herein.

13. Mettawa agrees that in the event that the property contiguous to the ten (10) foot border which is annexed to Mettawa pursuant to Paragraph 12 hereof is fully developed, in whole or in part, within the Village of Mettawa, Grainger may apply to Mettawa to disconnect that ten foot border in whole or in part and Mettawa will not unreasonably withhold its approval of such disconnection. For the purposes of this Paragraph 13, the term "fully developed" shall mean legally committed to development at a gross density of one (1) dwelling unit per five (5) acres or such other development as Mettawa may approve.

14. The provisions of this Settlement Stipulation shall become effective upon the adoption of a resolution by the Lake County Forest Preserve District authorizing and directing the President of the Lake County Forest Preserve District to execute and file a petition for voluntary annexation of that portion of Grainger's property which was zoned Open Space (OS) by Lake County Resolution No. 2934 into the corporate limits of Mettawa. The resolution shall provide that the petition for voluntary annexation shall be filed with Mettawa within ten (10) days after the District takes title to the property and that the annexation shall be subject to an annexation agreement approved by the Lake County Forest Preserve District which agreement shall be attached to, and approved by, said resolution.

15. Grainger agrees that residents of Mettawa may connect to the potable water transmission line provided for in the Public Facilities Agreement between Grainger and the County which is attached hereto as Exhibit 5 and incorporated herein ("Water and Sewer Agreement") provided that such residents bear any additional capital cost attendant to such construction; and pay a pro rata share of the capital cost of constructing the potable water transmission line to Grainger. Mettawa agrees and understands that in the event residents of Mettawa desire to connect to the potable water transmission line provided for in Exhibit 5, neither Grainger or the County shall have any obligation or be in any way responsible for obtaining approvals and agreements required for the extension of potable water service from the County-Vernon Hills Waterworks System as that system is defined in Exhibit 5 to this Settlement Stipulation to properties within the corporate limits of the Village.

16. On the effective date of this Settlement Stipulation, the Village will issue any and all permits required for the construction of the sewer and water transmission lines provided for in the Water and Sewer Agreement, including but not limited to permits required by sections 5.104, 5.105, 7.401 and 7.402 of the Municipal Code of the Village of Mettawa and by Village Ordinance No. 312 and letters of "no objection" to other permitting entities at the local, regional, state or federal level, as specifically requested by Grainger or the applicable agency. The permits shall be issued in the name Grainger or its designee as is appropriate and necessary to construct the transmission lines. Grainger agrees that construction on the sewer and water transmission lines will not be commenced within the corporate boundaries of Mettawa, from the eastern side of St. Mary's Road to the DesPlaines River, until entry of Final Judgment as provided in Paragraph 28. Nothing in this Paragraph shall be construed to mean or constitute an agreement that Mettawa has any regulatory authority in regard to the activities of the County of Lake in regard to the provision of water or sewer facilities and is without prejudice to Grainger's position that such permits are not required. Nothing

in this Paragraph shall be construed to mean or constitute an agreement that Mettawa does not have any regulatory authority in regard to the activities of the County of Lake in regard to the provision of water or sewer facilities.

17. Mettawa agrees to and shall promptly process any and all applications for development approval which Grainger may be required to submit to Mettawa from time to time in regard to the Estate (E) property, provided that such applications comply with the standards and requirements established in the Municipal Code of the Village of Mettawa as modified by the terms and conditions of this Settlement Stipulation. Mettawa agrees that it shall act upon such applications within sixty (60) days after receipt of a complete application for development approval. If Mettawa does not act upon the application within such time period, Mettawa hereby agrees that such application for development approval shall be deemed approved.

18. A. Mettawa agrees that:

(1) Grainger may use the sewer capacity which is available under the Water and Sewer Service Agreement which is attached hereto and incorporated herein as Exhibit 5 to serve the development provided for in this Settlement Stipulation on that portion of Grainger's property which is designated as Estate (E) and Urban (U) by Lake County Resolution No. 2934.

(2) Grainger may assign whatever sewer capacity is available under Exhibit 5 which Grainger, in its sole discretion determines to be in excess of Grainger's needs, to any person or entity for the sole and exclusive purpose of serving single family detached dwellings which are developed at a gross density of one (1) dwelling unit per five (5) acres within the corporate limits of Mettawa and are subject to restrictions and covenants in the form of a properly recorded conservation easement in perpetuity which limits the use of the property to single family detached dwellings at a gross density of one (1) dwelling unit per five (5) acres.

B. Grainger agrees that:

(1) In the event that Grainger proposes to assign (or is required to assign by a court of competent jurisdiction) sewer capacity which is determined to be in excess of Grainger's own needs to another entity or person to serve development other than single family detached dwellings at a gross density of one (1) dwelling unit per five (5) acres within the corporate limits of Mettawa as provided for in Paragraph 18 A (2) of this Settlement Stipulation, Grainger shall give Mettawa written notice of the intent to assign and a "right of first refusal" in regard to the sewer capacity proposed to be assigned.

(2) In the event that Grainger proposes to use sewer capacity to serve development other than single family detached dwellings at a gross density of one (1) unit per five (5) acres on any land other than as provided for in Paragraph 18 A of this Settlement Stipulation, Grainger shall give Mettawa written notice of the intent to so use and a "right of first refusal" in regard to the sewer capacity proposed to be so used.

(3) Mettawa shall have five (5) years from the receipt of written notice

of intent to assign or so use to exercise the "first right of refusal."

C. For the purposes of this Paragraph 18, "another entity or person" shall mean individuals or entities which are not owned and controlled by Grainger.

D. Grainger acknowledges that the purpose for the first right of refusal is to provide Mettawa with an opportunity to provide sanitary sewer service to residential development within the corporate limits of Mettawa and to afford Mettawa an adequate opportunity to budget therefor in accordance with the Comprehensive Plan of Mettawa.

19. Grainger agrees that the first office building for which a certificate of occupancy is issued on that portion of Grainger's property designated as Urban (U) by Lake County Resolution No. 2934 shall not exceed eighty (80) feet in height. Thereafter, no building shall exceed ninety (90) feet in height. For the purposes of this paragraph, the height of a building shall be measured from the highest point of the natural grade which lies beneath the footprint of the building. A topographical map of existing elevations will be provided to Mettawa within thirty (30) days of the effective date of this Settlement Stipulation.

20. Grainger agrees that any outdoor lighting which is installed on any portion of that portion of Grainger's property which is designated as Urban (U) by Lake County Resolution No. 2934 shall be of a design which limits the visibility of the light emitted by such lights toward adjacent parcels of land.

21. Grainger agrees that it will use its best efforts to be a good corporate citizen in the vicinity of Mettawa and that Grainger will implement such reasonable measures with its employees in regard to hours of operation and access to and from that portion of Grainger's property which is designated as Urban (U) by Lake County Resolution No. 2934 which would minimize any adverse impacts which might result from such operation and access.

22. Grainger agrees that, for a period of five (5) years from the date of the execution of this Settlement Stipulation, no more than one hundred thousand (100,000) square feet of office floor area which Grainger develops on that portion of Grainger's property which is designated as Urban (U) by Lake County Resolution No. 2934 may be occupied by entities other than Grainger.

23. Grainger agrees that in the event any office floor area which Grainger develops, on that portion of Grainger's property which was designated as Urban (U) by Lake County Resolution No. 2934, is occupied by entities other than Grainger during the period of five (5) years from the date of the execution of this Settlement Stipulation, that Grainger shall not permit more than three (3) entities other than Grainger to occupy the premises at any one time.

24. Grainger further agrees that in the event that Grainger develops additional office floor area for which a certificate of occupancy is issued during the period between the fifth anniversary and the tenth anniversary of the execution of this Settlement Stipulation and in the event that such additional office floor area is equal to or greater than ten percent (10%) of the office floor area developed during the first five (5) years after the date of execution of this Settlement Stipulation,



such additional floor area shall be subject to the limitations set out in Paragraphs 22 and 23 for a period of five (5) years from the date a certificate of occupancy is issued for such additional office floor area.

25. Grainger agrees that in the event that Mettawa requests that Lake County adopt the "LML Agreement," Grainger shall affirmatively support Mettawa's request provided that the LML Agreement is modified to reflect the designation of Grainger's property in the 1994 update to the Lake County Framework Plan.

26. Grainger agrees to submit plans for all signage proposed to be constructed along the Route 60 frontage of Grainger's property to Mettawa for informational purposes at least thirty (30) days prior to the construction of any such signage.

27. On the effective date of this Settlement Stipulation Mettawa agrees to give written notice by U.S. Mail of the execution of this Settlement Stipulation to each current resident and/or property owner in Mettawa at an address determined from the most recent tax rolls. The written notice shall be agreed upon by Mettawa and Grainger and at a minimum shall advise such residents and/or property owners of the general terms and conditions set out in this Settlement Stipulation and shall state that a Final Judgment incorporating the terms and conditions of this Settlement Stipulation will be entered by the Circuit Court of Lake County thirty (30) days after the date that written notice of this Settlement Stipulation is given.

28. If after thirty (30) days of the mailing of the notice required in Paragraph 27, no resident or property owner of Mettawa or other person or entity shall file suit challenging the validity of Lake County Resolution No. 2934, a Final Judgment incorporating the terms and conditions of this Settlement Stipulation shall be entered by the Court on joint motion of the parties. The Final Judgment shall include an order of dismissal with prejudice against the County of Lake. The Final Judgment shall be substantially in the form of Exhibit 6 attached hereto and incorporated herein. Mettawa and Grainger agree that the Circuit Court of Lake County shall retain jurisdiction over the parties to enforce the terms and conditions of this Settlement Stipulation. In the event that a resident, property owner or other person shall file suit challenging the validity of Lake County Resolution No. 2934 prior to the entry of the Final Judgment, Grainger may, within seven (7) days after Grainger receives notice of the filing of such suit, void this Settlement Stipulation by providing Mettawa with written notice thereof.

29. Mettawa and Grainger agree that the terms and conditions of this Settlement Stipulation shall inure to the benefit of their respective successors and assigns and that such terms and conditions shall be covenants running with the land.

30. Mettawa agrees that it will take no action or authorize any other person or entity to take action which would violate the terms and conditions of County Resolution No. 2934 or those certain covenants and restrictions appurtenant to the property which is the subject of Resolution No. 2934 which have been recorded by Grainger with the Lake County Recorder of Deeds. Nothing in this Paragraph shall limit Mettawa's right to enforce any term or condition of this Settlement Stipulation which is more restrictive than the terms and conditions of County Resolution No. 2934

or those certain covenants and restrictions.

31. Mettawa hereby waives its powers of taxation and subdivision control if any in regard to that portion of the Grainger property which was designated as Urban (U) by Lake County Zoning Resolution No. 2934 which is not annexed to Mettawa so long as the property is developed in accordance with the provisions of Resolution No. 2934. This waiver shall have no effect in the event that Grainger should voluntarily annex the Urban property to Mettawa. Mettawa agrees that it will take no action which interferes with or adversely affects Grainger's right to develop its office campus according to the provisions of Lake County Zoning Resolution No. 2934.

32. Grainger agrees that nothing in this Settlement Stipulation shall relieve or otherwise affect Grainger's obligations under Lake County Zoning Resolution No. 2934 or those certain covenants and restrictions appurtenant to the property which is the subject of Resolution No. 2934 or the Water and Sewer Agreement attached as Exhibit 5.

33. Within ten (10) days after entry of a Final Judgment incorporating the terms and conditions of this Settlement Stipulation, Grainger shall record the Final Judgment and this Settlement Stipulation with the Lake County Recorder of Deeds.

34. Provided that Grainger shall have complied with each and every term and condition of this Settlement Stipulation, Mettawa agrees that, for and in consideration of the promises of compliance and/or performance as well as the release granted to it in Paragraph 35, for itself and on behalf of its successors, assigns, officers, employees, agents, independent contractors and representatives, does hereby remise, release and forever discharge Grainger, their successors, heirs, assigns, officers, employees, agents and independent contractors and representatives, from any and all claims, actions, liabilities, judgments, debts, demands, damages, sums of money, accounts, compensation of all forms and descriptions, contracts, covenants, promises, representations and transactions which it has had or now has against Grainger for or by any reason of or in any way related to any matter, transaction, course of conduct, contract, cause or thing whatsoever, including without limitation of the foregoing: certain incidents, facts, and circumstances of which are involved with an action pending in the Circuit Court for the Nineteenth Judicial Circuit, Lake County, Illinois entitled Village of Mettawa v. County of Lake, Case No. 94 MR 610, conditioning this release upon performance by Grainger of their obligations under the terms and conditions of this Settlement Stipulation.

35. Provided that Mettawa shall have complied with each and every term and condition of this Settlement Stipulation, Grainger agrees that, for and in consideration of the promises of compliance and/or performance as well as the release granted to it in Paragraph 34, for themselves and on behalf of their successors, assigns, officers, employees, agents, independent contractors and representatives, does hereby remise, release and forever discharge Mettawa, its President and trustees, its successors, heirs, assigns, officers, employees, agents and independent contractors and representatives, from any and all claims, actions, liabilities, judgments, debts, demands, damages, sums of money, accounts, compensation of all forms and descriptions, contracts, covenants, promises, representations and transactions which they have had or now have against Mettawa for or by any reason of or in any way related to any matter, transaction, course of conduct, contract, cause

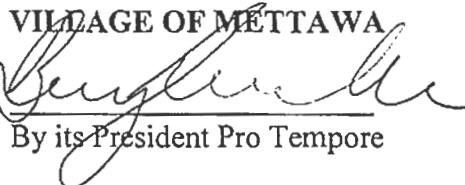
or thing whatsoever, including without limitation of the foregoing: certain incidents, facts, and circumstances of which are involved with an action pending in the Circuit Court for the Nineteenth Judicial Circuit, Lake County, Illinois entitled Village of Mettawa v. County of Lake, Case No. 94 MR 610, conditioning this release upon performance by Mettawa of its obligations under the terms and conditions of this Settlement Stipulation.

36. Upon execution of this Settlement Stipulation including all exhibits hereto, Mettawa and Grainger agree to jointly move the Circuit Court of Lake County to stay any further proceedings in this litigation pending entry of a Final Judgment and or written notice from Grainger that the Settlement Stipulation is void pursuant to Paragraph 28 of this Settlement Stipulation. If this case proceeds to trial pursuant to Paragraph 28, then no party may use as evidence, argue or refer to or utilize in any way the existence of or the terms of this Settlement Stipulation or the fact that Grainger may have started or completed the construction of the sewer pursuant to the Water and Sewer Agreement.

37. In the event that this Settlement Stipulation shall become void pursuant to the provisions of Paragraph 28 of this Settlement Stipulation, this matter shall be returned to the Court's calendar and shall be scheduled for a trial on the merits as soon thereafter as possible, subject only to a period of not less than sixty (60) days to complete any and all discovery which is then deemed necessary by a party. Mettawa and Grainger agree that nothing in this Settlement Stipulation shall be deemed a waiver of any procedural rights which the parties hereto may have under the Illinois Supreme Court Rules and the Illinois Code of Civil Procedure in the event that this matter is returned to the trial docket.


38. Mettawa and Grainger agree that in the event that Mettawa or Grainger shall default on any term or condition of this Settlement Stipulation and shall fail to cure such default within ninety (90) days after receiving notice of such default, Grainger or Mettawa, as the case may be, shall be entitled to rescission of any and all obligations under this Settlement Stipulation and all actions by Grainger or Mettawa, as the case may be, shall then become null and void *ab initio*. In the event of a dispute in regard to any party's compliance with the duties and obligations of this Settlement Stipulation, such dispute shall be submitted to the Circuit Court of Lake County for adjudication of the dispute.

AGREED the 20<sup>th</sup> day of  
October, 1995

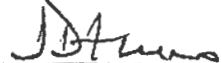
VILLAGE OF METTAWA  
  
By its President Pro Tempore



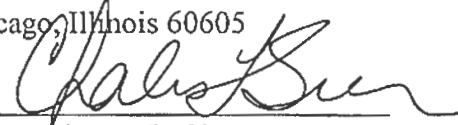
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By:   
Charles L. Siemon

**ACKNOWLEDGED**

Counsel of record for the County of Lake is aware of the terms and conditions of this Settlement Stipulation and as counsel has no objection to it being entered by the court in this matter. In addition, counsel for the County agrees that if litigation proceeds, the County will be bound by the terms of Paragraphs 36 and 37.

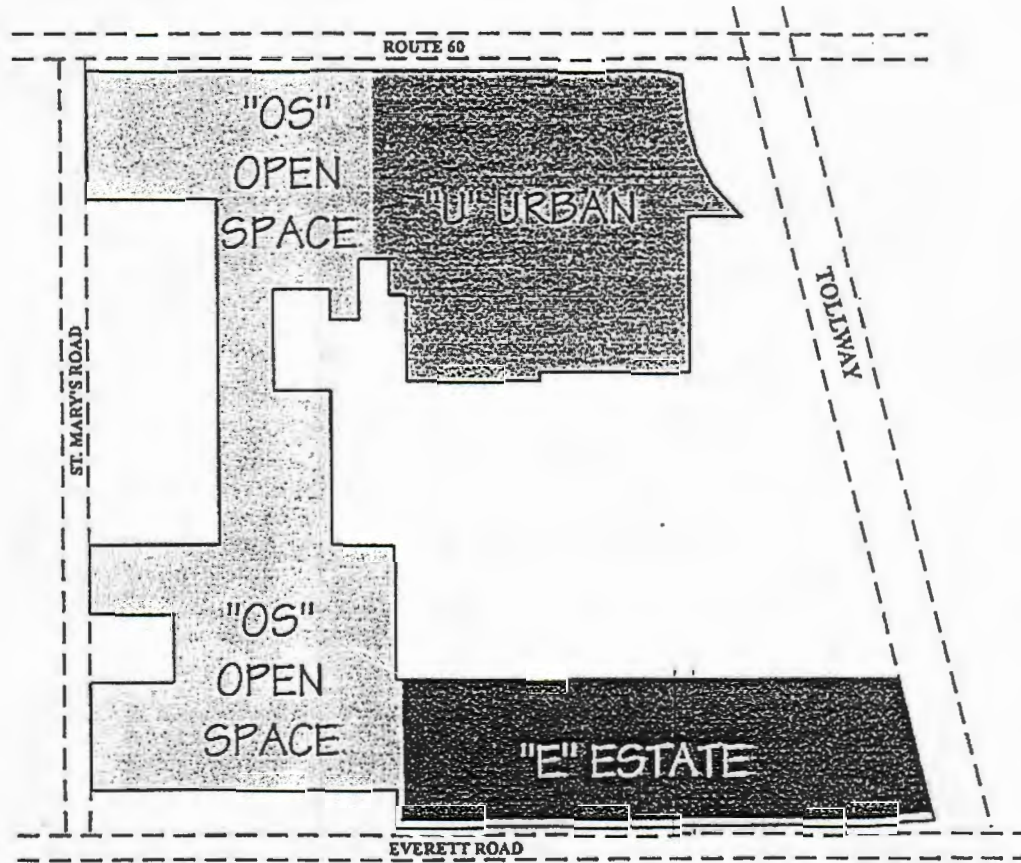


## SETTLEMENT STIPULATION

### EXHIBIT LIST

- Exhibit 1 - Zoning Map of Grainger's Property
- Exhibit 2 - Annexation Agreement for Estate Property
- Exhibit 3 - Graphic Depiction of Urban Parcel Border to be Annexed
- Exhibit 4 - Annexation Agreement for Urban Parcel Border
- Exhibit 5 - Public Facilities Agreement
- Exhibit 6 - Final Judgment Form

# EXHIBIT 1



NOT TO SCALE