

**IN THE 12<sup>TH</sup> JUDICIAL CIRCUIT COURT  
WILL COUNTY, ILLINOIS**

<b>HOMER TOWNSHIP</b> , an Illinois	)	
township, et al.	)	
	)	
Plaintiffs,	)	
v.	)	2020 CH 808
	)	
<b>VILLAGE OF HOMER GLEN</b> ,	)	
an Illinois municipal corporation, et al.,	)	
	)	
	)	
Defendants.	)	

**PLAINTIFFS’ MOTION TO SUSPEND BRIEFING SCHEDULE AND  
FOR LEAVE TO FILE FIRST AMENDED COMPLAINT**

The Plaintiffs, by and through their attorneys Ancel Glink, P.C., move to suspend the briefing schedule established by the court on the Defendants’ Motions for Summary Judgment and for Leave to File their First Amended Complaint pursuant to Section 2-616(a) of the Illinois Code of Civil Procedure, 735 ILCS 5/2-616(a). In support thereof, the Plaintiffs state as follows:

1. On December 23, 2020, the Plaintiffs filed a Verified Complaint seeking a declaratory judgment and an injunction against the Defendants seeking to halt the plan of the Village of Homer Glen and the outgoing Homer Township Highway Commissioner to gift most of the property and assets owned by the Homer Township Road District, and paid for by taxpayers of the Road District, to the Village of Homer Glen.
2. Subsequently, the Defendants filed motions for summary judgment and this Honorable Court established a briefing schedule thereon.
3. The Plaintiffs seek leave to file a first amended complaint adding causes of action and correcting the original complaint. A copy of the proposed First Amended Complaint is attached hereto as Exhibit A.

4. In Illinois, courts are encouraged to freely and liberally allow the amendment of pleadings. *Lee v. Chicago Transit Authority*, 152 Ill. 2d 432, 467 (1992).

WHEREFORE, the Plaintiffs respectfully pray this Court enters an order suspending the briefing schedule established on the Defendants' Motions for Summary Judgment and permitting Plaintiffs to file a First Amended Complaint.

Respectfully submitted,



By: \_\_\_\_\_  
One of Plaintiff's Attorneys

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**EXHIBIT A**

**AFFIDAVIT OF PAMELA MEYERS**

STATE OF ILLINOIS )

COUNTY OF WILL )

**AFFIDAVIT**

I, Pamela Meyers, being under penalties provided by Section 1-109 of the Code of Civil Procedure, depose and state as follows:

1. I am a resident and taxpayer of Homer Township and the Village of Homer Glen and reside at 17709 Larkspur Court, Homer Glen, IL 60491.

2. I am the Supervisor of Homer Township.

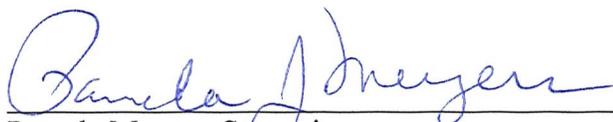
3. As Supervisor of Homer Township, I am the ex-officio treasurer for the Homer Township Road District.

4. As treasurer of the Homer Township Road District I have personal knowledge of the use and depreciation of Road District property.

5. The Road District's property is currently actively used to construct, maintain and repair the highways in the township road system.

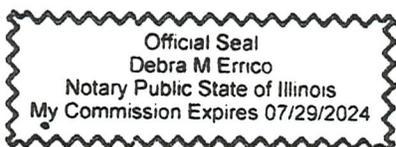
6. The electors of Homer Township Road District have not declared any Road District property as surplus nor authorized the sale of any Road District surplus personal property.

AFFIANT FURTHER SAYETH NAUGHT.

  
\_\_\_\_\_  
Pamela Meyers, Supervisor  
Homer Township

Subscribed and sworn to before me this 24 Day of February, 2020.

  
\_\_\_\_\_  
Notary Public



**IN THE 12<sup>TH</sup> JUDICIAL CIRCUIT COURT  
WILL COUNTY, ILLINOIS**

**HOMER TOWNSHIP**, an Illinois )  
township, Sean Reilley, Maria Reilley )  
Rich Polaski, Quinn Polaski, Ed Kalas, )  
Margaret Sabo, Ellen Moriarty, )  
Kathleen Kruczek, individually and in her )  
official her capacity as Clerk of the Homer )  
Township Road District, Kolbe Kruczek, )  
Jacob Kruczek, Pamela Meyers, )  
Individually and in her official capacity as )  
Treasurer of the Homer Township Road )  
District and Supervisor of Homer Township, )  
Ethel Rodriquez, George Offord, Cheryl )  
Bromberek, Bill Bromberek, Denise )  
Clements, Roy Adcock, Laura Adcock, )  
James Kuzma, Karen Szykowski )  
and Tom Fijan, )

Plaintiffs, )

v. )

2020 CH 808 )

**VILLAGE OF HOMER GLEN**, )  
an Illinois municipal corporation, the )  
**HOMER TOWNSHIP ROAD** )  
**DISTRICT**, an Illinois special district, )  
**MIKE DE VIVO**, in his official capacity )  
as Homer Township Road District )  
Highway Commissioner, )

Defendants. )

**VERIFIED FIRST AMENDED COMPLAINT FOR DECLARATORY  
JUDGMENT, PRELIMINARY AND PERMANENT  
INJUNCTION, ACCOUNTING AND OTHER RELIEF**

The Plaintiffs, Homer Township, an Illinois township, Sean Reilley, Maria Reilley, Rich Polaski, Quinn Polaski, Ed Kalas, Margaret Sabo, Ellen Moriarty, Kathleen Kruczek, Kolbe Kruczek, Jacob Kruczek, Pamela Meyers, Ethel Rodriquez, George Offord, Cheryl Bromberek, Bill Bromberek, Denise Clements, Roy Adcock, Laura Adcock, James Kuzma, Karen Szykowski,

**EXHIBIT A**

and Tom Fijan, by and through their attorneys, Ancel Glink, P.C., pursuant to 735 ILCS 5/11-101, and for their Verified Complaint for Declaratory Judgment, a Preliminary Injunction and a Permanent Injunction to prevent the unlawful distribution of Homer Township Road District personal property and the unlawful jurisdictional transfer of Road District highways, all to the Village of Homer Glen, states as follows:

1. The Village of Homer Glen (“Village”) was incorporated on the premise that it would never assess a municipal property tax upon its residents. As a result, the Village lacks funding to provide vital operations for certain common services, such a public works department. The Village, instead, has been contracting with the Homer Township Road District to provide services for far less than what it would cost to provide those services directly by the Village. Because of the way property tax laws work, this was accomplished by the Road District imposing a tax and with the Road District retaining those funds that would otherwise be distributed by law to the Village and with tax dollars received from non-Homer Glen sources funding the difference.

2. Late last summer, the Village of Homer Glen informed Homer Township Supervisor Pam Meyers that it was going to seize the assets (equipment and real property) of the Homer Township Road District (“the Road District”) and that it had convinced the Township’s Highway Commissioner, Mike DeVivo, to simply give such assets to the Village through a transfer of “stewardship,” which is a term that the Village made up and not a process established by law. The Village and Highway Commissioner planned to do this without regard to the fact that the Road District is funded by, and actually serves the residents of the unincorporated area of Homer Township (the “Township”), as well as portions of the City of Lockport, and Villages of Lemont and New Lenox, who also pay taxes to the Road District in addition to the Village of Homer Glen. In exchange for the Highway Commissioner signing away these assets owned by the taxpayers,

the Village would give him a job with the Village. The conveyance of all of the Road District's assets to the Village would allow the Village to suddenly have a public works department that was subsidized, in part, by taxpayers in other jurisdictions.

3. The Township knew there was no legal mechanism to abolish the Road District by, essentially, giving it away to the Village, but that if the electors of the Road District wanted to abolish it, they could do so by referendum. Accordingly, the Township Board placed the question of the abolition of the Homer Township Road District on the ballot for the November 3, 2020, election to determine the will of the electors.

4. On November 3, 2020, the electors overwhelmingly voted not to dissolve the road district with a vote of 11,632 no votes (approximately 56%) to 9,127 yes votes (approximately 44%).

5. Notwithstanding this vote, and in a deliberate and unlawful attempt to circumvent the will of the voters, the Village of Homer Glen and the Homer Township Highway Commissioner, Mike DeVivo, have fast tracked their efforts to gift the Road District's assets to the Village. This lawsuit seeks a declaration that such action is unlawful, and a permanent injunction to prevent the illegal transfer.

6. DeVivo has indicated that he has planned, with Homer Glen officials, to effectuate this transfer of the Road District's property and assets to the Village for several years. With this plan in mind DeVivo has intentionally misrepresented his plans to the Township Board each year while seeking approval of the Road District's budget and the Road District's levy, indicating that he needed funding for the Road District.

## **PARTIES**

7. Plaintiff Homer Township (the “Township”) is an Illinois township located in Will County, Illinois. Homer Township is comprised of unincorporated territory and all or parts of the City of Lockport, Village of Homer Glen, the Village of Lemont and Village of New Lenox. The Township is responsible for approval of the Road District’s budget and levy, as well as of all expenditures of Road District funds.

8. Sean and Maria Reilley are residents and taxpayers of unincorporated Homer Township and reside at 14559 S. 136th Avenue, Lockport, IL 60441.

9. Roy and Laura Adcock are residents and taxpayers of unincorporated Homer Township and reside at 16356 W. 146<sup>th</sup> Place, Lockport, IL 60441.

10. James Kuzma is a resident and taxpayer of unincorporated Homer Township and resides at 14633 S. 135<sup>th</sup> Avenue, Lockport, IL 60041.

11. Karen Szyndowski is a resident and taxpayer of unincorporated Homer Township and resides at 16001 S. Codo Drive, Lockport, IL 60441.

12. Tom Fijan is a resident and taxpayer of unincorporated Homer Township and resides at 16133 W. 151<sup>st</sup> Street, Homer Glen, IL 60491.

13. Ethel Rodriquez is a resident and taxpayer of unincorporated Homer Township and resides at 13950 Citation Drive, Orland Park, IL 60467.

14. George Offord and Denise Clements are residents and taxpayers of Homer Township and the City of Lockport and reside at 16953 Mohican Drive, Lockport, IL 60491.

15. Cheryl Bromberek and Bill Bromberek are residents and taxpayers of Homer Township and the City of Lockport and reside at 16355 W. 146<sup>th</sup> Place, Lockport, IL 60491.

16. Rich Polaski and Quinn Polaski are residents and taxpayers of Homer Township and the Village of Homer Glen and reside at 13841 S. Twin Oaks Court, Homer Glen, IL 60491.

17. Kathleen Kruczek, Kolbe Kruczek and Jacob Kruczek are residents and taxpayers of Homer Township and the Village of Homer Glen and reside at 13456 Maverick Trail, Homer Glen, IL 60491. Kathleen Kruczek is also the Township Clerk of Homer Township and the Clerk of the Homer Township Road District. In such capacity, she is responsible for attesting to all payouts of Road District funds.

18. Ed Kalas is a resident and taxpayer of Homer Township and the Village of Homer Glen and resides at 14712 Cricketwood Court, Homer Glen, IL 60491.

19. Margaret Sabo is a resident and taxpayer of Homer Township and the Village of Homer Glen and resides at 15340 S. Mallard, Homer Glen, IL 60491.

20. Ellen Moriarty is a resident and taxpayer of Homer Township and the Village of Homer Glen and resides at 13841 S. Twin Oaks Court, Homer Glen, IL 60491.

21. Pamela Meyers is a resident and taxpayer of Homer Township and the Village of Homer Glen and resides at 17709 Larkspur Court, Homer Glen, IL 60491. Pamela Meyers is also the Township Supervisor of Homer Township and the Treasurer of the Homer Township Road District.

22. Mike De Vivo (“De Vivo”) is the Homer Township Highway Commissioner. Per law, he is an official of plaintiff Homer Township.

23. The Village of Homer Glen (“Village”) is an Illinois municipal corporation located in Will County, Illinois.

## **ALLEGATIONS COMMON TO ALL COUNTS**

24. Homer Township Road District (“Road District”) is coterminous with Homer Township and serves the same constituents.

25. The Road District is a road district comprised of a single township in a county having township organization.

26. Each township in Will County is considered and is called a road district for all purposes relating to the construction, repair, maintenance, financing and supervision of township roads.

27. Homer Township includes territory within the municipalities of the Village of Homer Glen, the City of Lockport, the Village of Lemont and the Village of New Lenox.

28. Defendant De Vivo, the township highway commissioner, is a township official of Plaintiff, Homer Township.

29. Plaintiff Homer Township has statutory oversight obligations over the Defendant Homer Township Road District, which include approving the Road District’s budget, levy and the approval of all expenditures made by the Road District.

30. The resident Plaintiffs and taxpayers of each aforesaid municipality all pay taxes to the Road District. As a result, the resident Plaintiffs and taxpayers in all four municipalities have paid for the Road District’s property through taxation, in addition to the taxpayers in the Township who live in the areas that are not incorporated into a municipality.

31. The resident Plaintiffs and taxpayers each have an interest in the strict application of the law and each seeks to avoid the misappropriation of Road District property.

32. The sale of surplus real property of the Road District can be approved only by the township electors. 60 ILCS 1/30-50.

33. The Homer Township Board passed a resolution declaring that the property owned by the Road District is not surplus property. *See Resolution of Homer Township*, attached hereto as **Exhibit C**.

34. The Road District's equipment and materials used to construct, maintain and repair the highways in the township road system are personal property.

35. The Road District's equipment and materials are actively used to construct, maintain and repair the highways in the Township's road system. *See Affidavit of Pamela Meyers*, attached hereto as **Exhibit A**.

36. The electors of Homer Township Road District have not declared any of the Road District's property as surplus nor authorized the sale of any surplus personal property. *See Affidavit of Pamela Meyers*, attached hereto as **Exhibit A**.

37. Section 2-103 of the Highway Code states in pertinent part, "[t]he township and district road system includes all rural roads to which this Code applies under Section 1-103 and which are not a part of the State highway system, county highway system or municipal street system." 605 ILCS 5/2-103.

38. Section 2-104 of the Highway Code states in pertinent part, "The municipal street system of the several municipalities includes existing streets and streets hereafter established in municipalities which are not a part of the State highway system or county highway system." 605 ILCS 5/2-104.

39. Section 2-205 of the Highway Code states a Township road is, "any highway that is part of the township and district road system described in Section 2-103 and which, under the provisions of this Code, is under the immediate jurisdiction of a road district comprised of a single township in a county having township organization."

40. The Village already has jurisdiction over the highways located in the Village's highway system.

41. The Road District does not have jurisdiction over the highways located in the Village's highway system. 605 ILCS 5/6-203.

42. The Road District has jurisdiction over the highways located within Homer Township which are not State, County or municipal highways.

43. The Village does not have jurisdiction over any highways located outside its municipal boundaries.

44. The Defendant Highway Commissioner has indicated that he intends to declare that all of the Road District's assets, which were paid for by the Road District's taxpayers, are "surplus" for purposes giving all of the Road District's assets to the Village of Homer Glen for free or for rates far below market value.

45. At the November 3, 2020 general election, voters of the Homer Township Road District voted that the Road District should not be lawfully dissolved in accordance with the law.

46. The election of Township officers is scheduled for April 6, 2021. At that time, the office of Highway Commissioner will be elected. Upon information and belief, De Vivo and the Village seek to effectuate their transfer of all assets and property prior to the April 6, 2021 election so that any newly-elected Highway Commissioner would not be able to operate the Road District with its current assets and property

**COUNT I –  
DECLARATORY JUDGMENT THAT THE HOMER  
TOWNSHIP HIGHWAY COMMISSIONER DOES NOT HAVE  
INDEPENDENT AUTHORITY TO SELL OR CONVEY ROAD DISTRICT  
EQUIPMENT TO THE VILLAGE OF HOMER GLEN**

47. The Township realleges paragraphs 1 through 46 and incorporates the same as though fully restated herein.

48. On September 23rd, the Village unanimously adopted Resolution 20-009, A Resolution in Support of the Jurisdictional Transfer of Stewardship, including Real Estate and Assets, of the Homer Township Road District (HTRD) to the Village of Homer Glen (VHG) (the “Transfer Resolution”). A copy of the Transfer Resolution is attached hereto as **Exhibit B**.

49. The Transfer Resolution expresses an intent for the Village to acquire the real estate and personal property of the Road District for the purpose of operating its own public works department.

50. On October 12, 2020, the Village of Homer Glen held a public meeting regarding the transfer of stewardship between the Homer Township Road District and Village Of Homer Glen (the “October 12 Meeting”).

51. During the October 12 Meeting, George Yukich, Mayor of Homer Glen, expressed the Village’s intent to operate an independent public works department with the real estate and personal property of the Homer Township Road District.

52. During the October 12 Meeting, the Village staff made a presentation which expressed, “The final transfer of the real estate and assets will occur in the Spring of 2021.”

53. The Village staff presentation further stated, “State statute requires all taxing bodies to set their levy by the end of the calendar year. This means the Village Board must set the levy for next year, by mid-December of this year (2020).”

54. During the October 12 meeting, De Vivo expressed his intent to convey the Road District’s real estate and personal property to the Village of Homer Glen.

55. While all of the assets and real property of the Road District are being used for Road District purposes and would not properly be characterized as “surplus,” De Vivo has stated

that he intends to declare the assets and real property of the Road District as “surplus” for purposes of giving them away to the Village.

56. On information and belief, the Village has promised De Vivo employment by the Village in a position within the Village’s own public works department.

57. De Vivo does not have authority to give away the Road District’s personal property or to convey it for less than market value in this manner.

58. Despite De Vivo’s lack of authority, there is real and present conspiracy for the Village to take the Road District’s personal property without any consideration, and to convert such property that has been funded in part by non-Homer Glen taxpayers, so the Village can operate its own public works department subsidized, in part, by non-Homer Glen taxpayers.

WHEREFORE, the Township respectfully prays for this Court to enter an order:

- A. Declaring the Road District’s personal property is not surplus;
- B. Declaring that only the Road District’s electors have authority to approve the sale of Road District personal property;
- C. Declaring that De Vivo does not have authority to sell or convey Road District personal property; and
- D. Enjoining De Vivo and the Village from engaging in a conspiracy to take the Road District’s personal property to organize and operate the Village’s public works department.

**COUNT II – DECLARATORY JUDGMENT THAT THE VILLAGE OF HOMER GLEN DOES NOT HAVE JURISDICTION OVER THE HIGHWAYS IN UNINCORPORATED HOMER TOWNSHIP**

59. The Township realleges paragraphs 1 through 549 and incorporates the same as though fully restated herein.

60. The transfer of land rights associated with a highway is separate and distinct from a jurisdictional transfer. A jurisdictional transfer does not automatically occur with a transfer of land rights. *See Highway Jurisdiction Guidelines for Highway and Street Systems*, Illinois Department of Transportation, Bureau of Local Roads and Streets (March 2006) (the “Highway Jurisdiction Guide”).

61. When an agency has jurisdiction of a street or highway, that agency is responsible for the upkeep of that highway, including reconstruction, signing, maintenance, etc. All of these responsibilities remain with the agency until the jurisdiction is transferred to another highway authority.

62. The Illinois Department of Transportation (IDOT) supervises all jurisdictional transfers of highways.

63. When processing jurisdictional transfers, IDOT requests concurrence from the adjoining highway authorities since the jurisdictional transfer could have an impact on them; in addition, this also ensures that the adjoining entity is aware of the change in jurisdiction for future interaction.

64. The Village of New Lenox, the Village of Lemont, the City of Lockport have not concurred in the jurisdictional transfer of the highways in the township road system from the Road District to the Village.

65. The Village and the Road District have failed to undertake the steps required by IDOT to affect a jurisdictional transfer of the highways in the township road system from the Road District to the Village.

WHEREFORE, the Township respectfully prays for this Court to enter an order:

- A. Declaring that the Homer Glen Road District has jurisdiction over all the highways in the unincorporated territory within Homer Township;
- B. Declaring the Village of Homer Glen does not have jurisdiction over the highways in the unincorporated territory within Homer Township;
- C. Preventing the sale or transfer of the Road District's real estate to the Village of Homer Glen or declaring that any such sale or transfer will not result in a jurisdictional transfer of the highways in the township road system to the Village of Homer Glen; and
- D. Enjoining the Village of Homer Glen from exercising any jurisdiction over the highways in the unincorporated territory within Homer Township.

**COUNT III – PRELIMINARY AND PERMANENT INJUNCTION AGAINST  
THE ILLEGAL PURCHASE AND SALE OF ROAD DISTRICT PROPERTY**

66. The Township realleges paragraphs 1 through 65 and incorporates the same as though fully restated herein.

67. The Plaintiffs have a clearly ascertainable right to the continued operation of the Road District as an Illinois special district, including the provision of road and related services to constituents, and the retention of ownership Road District property which has been paid for with taxes collected, in part, from non-Homer Glen taxpayers.

68. The Plaintiffs have a clearly ascertainable right to the strict enforcement of the Illinois Township Code and the Illinois Highway Code, including the substantive and procedural requirements preceding the sale of Road District property.

69. The Plaintiffs' right to enforce the Illinois Township Code and the Illinois Highway Code to prevent an unlawful dissolution of the Road District and to retain ownership of Road District property is in need of immediate protection from the illegal conspiracy undertaken by the Village and DeVivo to seize the Road District's property in a manner not authorized by law.

70. The Village's unlawful seizure of the Road District's property will cause irreparable harm to the Plaintiffs insofar as the Road District will be rendered completely incapable of performing its statutory duties to construct, maintain and repair the highways in the township road system.

71. The Plaintiffs have no legal remedy for the Road District being rendered completely incapable of performing its statutory duties to construct, maintain and repair the highways in the township road system.

72. The balancing of the equities favors the Plaintiffs because the Defendants are attempting to (a) take assets of the Road District which were paid for, in part, by taxpayers outside of the Village of Homer Glen and convey them for less than fair market value to the Village, and (b) cause a de facto dissolution of the Road District, which has a statutory duty to perform road functions within its jurisdiction, which includes areas outside of the Village.

73. For the reasons described herein, the Plaintiffs have a likelihood of success on the merits because Village and DeVivo are attempting the transfer title to the Road District's property and to abolish the Road District in a manner not recognized by law and against the will of the electorate as expressed in the November 3, 2020 election.

74. WHEREFORE, the Plaintiffs respectfully pray this Court enters an order granting a preliminary and permanent injunction against the purchase, sale or transfer of any Road District property by DeVivo and the Village.

WHEREFORE, the Plaintiffs respectfully pray this Court enters an order granting a preliminary and permanent injunction against the purchase, sale or transfer of any Road District property by DeVivo and the Village.

COUNT IV – ACTION FOR AN ACCOUNTING  
(Plaintiff Meyers and the Township Board against Defendant DeVivo)

75. The Township realleges paragraphs 1 through 74 and incorporates the same as though fully restated herein.

76. DeVivo has stated publicly that he has been planning the transfer of the Road District's property and assets to Homer Glen "for years."

77. Pursuant to law, Illinois township boards approve budgets and levies for Illinois road districts.

78. Each year while DeVivo has been Homer Township Highway Commissioner, he has presented budgets and levies to the Homer Township Board for approval, certifying that the funds he sought in the budgets and levies were essential for the operations of the Road District. This includes the levy he presented in December 2020.

79. DeVivo never once disclosed to the Township Board that he intended to purchase property, make building improvements and acquire equipment with Road District taxpayer money simply to further his agenda of gifting the Road District's assets to Homer Glen.

80. Since 2015, DeVivo has done improvements to the Road District's primary building valued at \$2,647,602. He has built additions to property and built a new building in 2020. In addition, since 2020 he has been undertaking an extensive remodeling of his main building and offices.

81. In addition, each year DeVivo has purchased new equipment.

82. DeVivo now claims that most of his land, buildings and equipment that he has acquired are "surplus" and unnecessary.

83. DeVivo knew at the time he requested the Homer Township Board to adopt his budgets and levies that his ultimate goal was to turn over the property and equipment that would

be purchased with Homer Road District taxpayer funds to Homer Glen at little or no cost to Homer Glen at all.

84. DeVivo is falsely claiming these items are makes these claims so that he can transfer the land, buildings and equipment which were paid for by Road District taxpayers to Homer Glen for a total of \$10.

85. In the alternative, if DeVivo truly believes these items are surplus, he knew that at the time he make intentional misrepresentations to the Township Board that he was requesting that the Board approve taxpayer funding that was unnecessary and would be used for surplus items.

86. Based upon the fact that DeVivo has stated that he has been planning this “for years,” his representations to the Township to induce the Township Board to authorize his budget and adopt his levy were false and fraudulent.

87. As Homer Township Highway Commissioner, DeVivo had a fiduciary relationship with the Homer Township Supervisor, Pam Meyers, who is the Treasurer of the Road District, and with the Homer Township Board, which was obligated to pass his budget, levy and approve all expenditures of the Road District.

88. DeVivo repeatedly indicated to the Homer Township Board that the Road District’s assets and growth were necessary to maintain the Road District operations each time he directed expenditures of substantial tax dollars beginning in 2014 purchasing additional property and constructing a salt dome; making a large building addition completed in 2016; constructing a new building completed in 2020 and extensively remodeling the Road District’s main administrative center and office building. He has invested in upgrading and converting the water and sewer systems of the District properties suitable to hook on to Illinois American Water system lines and added sprinkler systems to the buildings.

89. As Homer Township only recently learned of DeVivo's plans to gift the Road District's assets to Homer Glen, it has a need for discovery to learn the details about when the plan was devised and the extent to which the Township Board was induced to act on DeVivo's misrepresentations.

90. DeVivo repeatedly indicated to the Homer Township Board that the District's assets and growth were necessary to maintain the Road District's operations each time he directed expenditures of substantial tax dollars beginning in 2014 purchasing additional property and constructing a salt dome; making a large building addition completed in 2016; constructing a new building completed in 2020 and extensively remodeling the District's main administrative center and office building. He has invested in upgrading and converting the water and sewer systems of the District properties suitable to hook on to Illinois American Water system lines and added sprinkler systems to the buildings.

91. DeVivo's misrepresentations to the Homer Township Board to induce the Board to approve a budget, levy and expenditures for items that DeVivo now claims are unnecessary were fraudulent.

92. DeVivo has breached his fiduciary duty to the Township by making false representations about the financial needs of the Road District which were ultimately not needed for the operations of the Road District, but instead so that he could deliver a pristine gift of a newly-improved facility and newly-purchased equipment to Homer Glen.

93. Plaintiffs Meyers and the Homer Township Board lack an adequate remedy at law to know how much money they appropriated and DeVivo expended towards properties and equipment that he intended all along to gift to Homer Glen, engaging in a misuse of Road District dollars.

WHEREFORE, the Plaintiffs respectfully pray this Court enters an order requiring discovery and an accounting of all funds expended by Homer Township Road District taxpayers for land, buildings and equipment that Defendant Michael DeVivo now is claiming is all surplus and to be gifted to Homer Glen and for such other and further or different relief as this Honorable Court Deems equitable and just.

Respectfully submitted,

PLAINTIFFS



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One of its attorneys

Adam B. Simon, #6243892  
[asimon@ancelglink.com](mailto:asimon@ancelglink.com)  
Keri-Lyn J. Krafthefer, #6199188  
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(312) 782-0943 Fax

**VERIFICATION BY CERTIFICATION**

Under penalties provided by Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in the attached instruments are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

  
Pamela Meyers

Subscribed and sworn to before me this 24 Day of February, 2021.

  
Notary Public



**EXHIBIT A**

**AFFIDAVIT OF PAMELA MEYERS**

STATE OF ILLINOIS        )  
  )  
COUNTY OF WILL         )

**AFFIDAVIT**

I, Pamela Meyers, having first been duly sworn under oath, depose and state as follows.:

1. I am a resident and taxpayer of Homer Township and the Village of Homer Glen and reside at 17709 Larkspur Court, Homer Glen, IL 60491.

2. I am the Supervisor of Homer Township and the ex-officio Treasurer for the Homer Township Road District.

3. I have personal knowledge of the facts set forth in this Affidavit and, if called to testify, would testify consistent with the statements herein.

4. I have been a resident of my current location, which is now in incorporated Homer Glen, since 1990, prior to the Village’s incorporation.

5. I was actively involved in the Village’s incorporation and in the Village’s previous attempts at incorporation prior to the one that succeeded.

6. The Village of Homer Glen was incorporated on the premise that it would not assess a municipal property tax upon its residents.

5. Prior to the instant lawsuit being filed, Homer Glen has never imposed a property tax, nor has it taxed to fund reserves to create a public works department.

6. Instead, Homer Glen has subcontracted out most of its public works functions to the Homer Township Road District.

7. The Homer Township Road District is a unit of local government serving (and taxing) residents of the Villages of Lemont, New Lenox, Homer Glen, the City of Lockport, and

residents of Homer Township who live in the areas of the township that are not located within the boundaries of a municipality.

8. The Road District imposes taxes on all properties within its boundaries.

9. The Township Board is responsible for approving the Road District's budget and levy.

10. Each year while Michael DeVivo ("DeVivo") has been the Homer Township Highway Commissioner, he has represented to the Township Board that his budget and levy amounts were necessary to operate the Road District and each year, including in December of 2020, based upon his representations, the Township Board has approved DeVivo's budget and levy in the amounts he presented.

11. Under the intergovernmental agreement terms, instead of Homer Glen paying money to the Road District for services, Homer Glen would forfeit its share of the Road District's revenues, which would otherwise be paid to Homer Glen.

12. Over the years, this has resulted in the other taxpayers in the Road District subsidizing Homer Glen because the services Homer Glen required under the intergovernmental agreement were greatly in excess of the funds "paid by" Homer Glen to the Road District. These services were provided for less money than required to provide the services, and for significantly less than it would cost Homer Glen to create a public works department to provide the services itself. Other taxpayers residing outside of the Village of Homer Glen absorbed the deficit spending required to provide the services to the Village.

13. Late last summer, the village president of Homer Glen, Mayor George Yukich, ("Yukich") contacted me and informed me that Homer Glen had been working with the

Township's Highway Commissioner, Mike DeVivo, to simply give Homer Glen all of the Road District's land and assets.

14. Yukich told me this would occur through a transfer of "stewardship."

15. Yukich informed me that Homer Glen was worried that any successor of DeVivo would not give the Village such an advantageous intergovernmental agreement.

16. Yukich informed me that their plan was that the Commissioner would terminate the Road District's employees and the Village would hire all the District's employees and would hire DeVivo to keep him employed so he did not have to be subjected to possible defeat at the April 6, 2021 election.

17. Yukich told me that Homer Glen would then take over the Road District roads, and service all of the communities being serviced by the Road District, and the unincorporated areas.

18. When I expressed surprise and concern that this was being planned without it ever having been discussed once at an open meeting, and without any knowledge or consent of any of the other involved public bodies, such as the township or the three other impacted municipalities, Yukich explained that it was a "done deal" and that nobody had to worry because once Homer Glen had the equipment, assets, land and power, it would treat everybody fairly and that Homer Glen would determine which assets and resources it would dedicate to all of the other municipalities and to the unincorporated areas of the township.

19. Yukich told me that Homer Glen was tired of "the tail wagging the dog," and that the residents of Homer Glen had paid for all of the Road District assets already by taxation, so it would be "double taxation" for Homer Glen residents to have to pay for a public works department.

20. I spoke with elected officials for the City of Lockport and they were not aware of this plan at all.

21. Subsequent to Yukich's conversation with me, Michael DeVivo has stated many times that this was his plan along with the Village's "for years," although it was never once discussed publicly in open session at the Homer Township Board meetings where he reports monthly or a Village Board meeting prior to Yukich approaching me.

22. Each year that DeVivo has been in office, he has certified to the Township Board that a certain dollar amount was necessary to be levied against all taxpayers in the Road District and, each year, the Township Board has approved the budgets, and levied the amounts, that DeVivo has certified was necessary to fund the road district.

23. On October 5, 2020, the Township Board adopted a resolution finding that all of the real and personal property of the Road District was essential to maintain, and that it was not "surplus property."

24. The Township Board placed the question of the abolition of the Homer Township Road District on the ballot for the November 3, 2020, election to determine the will of the all of the Township electors, not simply those living in Homer Glen.

25. On November 3, 2020, the electors overwhelmingly voted not to dissolve the road district with a vote of 11,632 no votes (approximately 56%) to 9,127 yes votes (approximately 44%).

26. Since the November 3, 2020 election, Homer Glen and DeVivo have fast tracked the gifting plan.

27. DeVivo did not file petitions to seek reelection as Highway Commissioner.

28. Neither of two highway commissioner candidates that have filed to run in the April 6, 2021 consolidated election support the gifting of the Road District's assets to Homer Glen, nor do they believe that most of the Road District's land and equipment are surplus property.

29. Prior to the time that this “done deal” was presented to me by Yukich the Township was unaware of this plan.

30. Prior to the time that this “done deal” was presented to me, the Village never once discussed this deal in open session at a Village Board meeting.

31. As treasurer of the Homer Township Road District I have personal knowledge of the use and depreciation of Road District property.

32. The Road District’s property is currently actively used to construct, maintain and repair the highways in the township road system.

33. The electors of Homer Township Road District have not declared any Road District property as surplus nor authorized the sale of any Road District surplus personal property.

34. Each year that DeVivo has been in office, he has certified to the Township Board that a certain dollar amount was necessary to be levied against all taxpayers in the Road District and, each year, the Township Board has levied the amount that DeVivo has certified was necessary to fund the road district.

35. DeVivo has never once mentioned that he believed most of the assets of the Road District were surplus or unnecessary.

36. In December, 2020, DeVivo certified that the operations of the Road District required the full amount of the Road District’s levy; not that he was seeking funds for his usual operations, buildings and equipment as an artifice only to convey them as unnecessary and surplus to Homer Glen near the beginning of the fiscal year for which he was levying the funds.

37. Based on DeVivo’s representations that the money was necessary, the Township Board has approved his budget and levy.

38. Neither the Township's electors nor the Township Board have declared the real or personal property that DeVivo intends to transfer to Homer Glen as "surplus" property.

39. DeVivo has stated publicly that he has been planning the transfer of the Road District's property and assets to Homer Glen "for years."

40. Each year while DeVivo has been highway commissioner, he has presented budgets and levies to the Homer Township Board for approval, certifying that the funds he sought in the budgets and levies were essential for the operations of the Road District. This includes the levy he presented in December 2020.

41. DeVivo never once disclosed to the Township Board that he intended to purchase property, make building improvements and acquire equipment with Road District taxpayer money simply to further his agenda of gifting the Road District's assets to Homer Glen.

42. Since 2015, DeVivo has done improvements to the Road District's primary building valued at \$2,647,602. He has built additions to property and built a new building in 2020. In addition, since 2020 he has been undertaking an extensive remodeling of his main building and offices.

43. In addition, each year DeVivo has purchased new equipment.

44. DeVivo repeatedly indicated to the Homer Township Board that the Road District's assets and growth were necessary to maintain the Road District operations each time he directed expenditures of substantial tax dollars beginning in 2014 purchasing additional property and constructing a salt dome; making a large building addition completed in 2016; constructing a new building completed in 2020 and extensively remodeling the Road District's main administrative center and office building. He has invested in upgrading and converting the water and sewer

systems of the District properties suitable to hook on to Illinois American Water system lines and added sprinkler systems to the buildings.

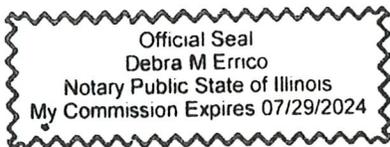
89. In reliance on DeVivo's representations, the Homer Township Board approved the budget, levy and expenditures for items that DeVivo now claims are unnecessary and surplus.

AFFIANT FURTHER SAYETH NAUGHT.

  
Pamela Meyers, Supervisor  
Homer Township

Subscribed and sworn to before me this 24<sup>th</sup> day of February, 2021.

  
Notary Public



**EXHIBIT B**

**A Resolution in Support of the Jurisdictional Transfer of Stewardship, including Real Estate and Assets, of the Homer Township Road District (HTRD) to the Village of Homer Glen (VHG)**

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**THE VILLAGE OF HOMER GLEN**  
**WILL COUNTY, ILLINOIS**

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**RESOLUTION**  
**NUMBER 20-009**

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**A RESOLUTION IN SUPPORT OF THE JURISDICTIONAL  
TRANSFER OF STEWARDSHIP, INCLUDING REAL ESTATE  
AND ASSETS, OF THE HOMER TOWNSHIP ROAD DISTRICT  
TO THE VILLAGE OF HOMER GLEN**

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**GEORGE YUKICH, Village President**  
**CHRISTINA NEITZKE-TROIKE, Village Clerk**

**BROQUE BACKAL**  
**CARLO CAPRIO**  
**KEITH GRAY**  
**RUBEN PAZMINO**  
**BETH RODGERS**  
**SHARON SWEAS**

Trustees

## **RESOLUTION NO. 20-009**

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### **A RESOLUTION IN SUPPORT OF THE JURISDICTIONAL TRANSFER OF STEWARDSHIP, INCLUDING REAL ESTATE AND ASSETS, OF THE HOMER TOWNSHIP ROAD DISTRICT TO THE VILLAGE OF HOMER GLEN**

WHEREAS, the Village of Homer Glen was incorporated on April 17, 2001; and upon incorporation, the Village was given ownership and stewardship of publicly owned assets, including public roads and rights-of-way within the new corporate boundaries; and

WHEREAS, the Village of Homer Glen, as a young village, entered into an Intergovernmental Agreement in 2003 with the Homer Township Road District to maintain and regulate the roads within the Village in substantially the same manner as before incorporation; and

WHEREAS, the Village of Homer Glen, Will County, Illinois (the "Village") is a home rule municipality pursuant to Section 6(a), Article VII of the 1970 Constitution of the State of Illinois, and as such may exercise any power and perform any function pertaining to its government and affairs (the "Home Rule Powers"); and

WHEREAS, the home rule status was approved via voter referendum on November 7, 2012 which demonstrated the strong public support of the Village of Homer Glen and the desire of its residents to control its own future and destiny; and

WHEREAS, over the past twenty years, the Village of Homer Glen and the Homer Township Road District have collaborated and worked together for the betterment of our residents and businesses; and

WHEREAS, the Village has continued to grow and evolve into the strong and self-sufficient village it is today; which now includes over 157 miles of village-owned streets and assets; and

WHEREAS, the unincorporated areas of Homer Township now comprise only approximately 18 miles of streets and will continue to decrease into the future; and

WHEREAS, the City of Lockport residents who reside within Homer Township have been paying road and bridge taxes to the Township without receiving full and fair services; and

WHEREAS, the Village of Homer Glen, Homer Township Road District, and the City of Lockport agree this is not fair government representation or taxation; and

WHEREAS, the Village will continue to grow, build and develop into the future, including the construction and maintenance of additional new roads, sidewalks, trails and other public infrastructure; and

WHEREAS, both the Homer Township Road Commissioner and the Homer Glen Village Board agree the Village should control its own future, including the planning, maintenance, budgeting,

and construction of its own public infrastructure - both present and future; and

WHEREAS, the Illinois Highway Code grants road districts the authority to exercise all the powers granted in the code, and specifically authorizes road districts to acquire by purchase, gift or legacy, and to hold property, both real and personal, for the use of its inhabitants, and again to sell and convey the same, and to make all such contracts as may be necessary in the exercise of the powers of the district (605 ILCS 5/6-107); and

WHEREAS, Illinois Highway Code allows for a road district to sell its surplus real estate and its idle personal property to a municipality. Specifically, Section 6-201.10 of the Illinois Highway Code grants commissioners of road districts “Authority to make agreements with the highway commissioner of any other road district or with the corporate authorities of any municipality located in the same county or in an adjoining county or with the county board of the county in which such road district is located or of any adjoining county, for the lease or exchange of idle machinery, equipment or tools belonging to the district, upon such terms and conditions as may be mutually agreed upon”; and

WHEREAS, the Illinois Local Government Property Transfer Act provides the legal mechanism for certain units of governments to transfer real estate between one another; and

WHEREAS, both the Village of Homer Glen and Homer Township Road District are units of governments and as such can employ the Illinois Local Government Property Transfer Act as the legal mechanism to accomplish the voluntary transfer of property between both governmental units; and

WHEREAS, the Illinois Highway Code can be employed as the legal mechanism to transfer the surplus real estate and personal property from the Homer Township Road District to the Village of Homer Glen;

NOW, THEREFORE, BE IT ORDAINED by the Village President and Village Board of Trustees of the Village of Homer Glen, Will County, Illinois. By and through its Home Rule Powers, as follows:

**Section 1: Recitals**

The foregoing recitals are hereby incorporated into this Resolution as if fully set forth herein.

**Section 2: Transfer of Stewardship Process**

The Village of Homer Glen intends to pursue the transfer of stewardship of the Township Road District. The Village commits to work collaboratively with all of the impacted parties to ensure a balanced and equitable transfer. These impacted parties include, but are not limited to, the City of Lockport and its residents residing within Homer Township, the unincorporated residents of Homer Township, the Homer Township Road District, the Homer Township Board and most importantly, the residents of the Village of Homer Glen.

#### **Section 4: Setting the Date for Public Informational Meetings**

The Village of Homer Glen hereby schedules the following public information meetings for the purpose of discussing the proposed transfer of stewardship:

October 6, 2020 – 7pm at Village Hall – 14240 W. 151<sup>st</sup> Street

October 12, 2020 – 7pm at Village Hall - 14240 W. 151<sup>st</sup> Street

These meetings will be open to the public to attend and will also be accessible via Zoom. Those in attendance will be required to wear face masks and adhere to social distancing requirements.

#### **Section 3: Effective Date**

This Resolution shall be in full force and in effect upon date of approval.

*The remainder of this page intentionally left blank*

Adopted this 23<sup>rd</sup> day of September pursuant to a roll call vote as follows:

	<b>YES</b>	<b>NO</b>	<b>ABSENT</b>	<b>PRESENT</b>
Backal				
Caprio				
Gray				
Pazmino				
Rodgers				
Sweas				
Yukich (Village President)				
<b>TOTAL</b>				

**APPROVED** by the Village President on September 23, 2020.

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George Yukich  
Village President

ATTEST:

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Christina Neitzke-Troike  
Village Clerk

**EXHIBIT C**

**RESOLUTION NO. HT2020-10-05-RES1**

**A RESOLUTION DECLARING THAT ALL REAL AND PERSONAL  
PROPERTY OF THE HOMER TOWNSHIP ROAD DISTRICT  
IS ESSENTIAL AND NOT SURPLUS PROPERTY**

**RESOLUTION NO. HT2020-10-05-RES1**

**A RESOLUTION DECLARING THAT ALL REAL AND PERSONAL  
PROPERTY OF THE HOMER TOWNSHIP ROAD DISTRICT  
IS ESSENTIAL AND NOT SURPLUS PROPERTY**

Whereas, Section 6-134 of the Illinois Highway Code, 605 ILCS 5/6-134, authorizes the board of trustees of any township located in a county with less than 3,000,000 inhabitants to, by resolution, submit a proposition to abolish the road district of that township to the electors at a general election or consolidated election; and

Whereas, the Board of Trustees (“Board”) of the Township of Homer (“Township”) has placed a question on the ballot for the November 3, 2020 election pursuant to Section 6-134 to determine whether the electors want to abolish the road district and;

Whereas, the assets of the Homer Township Road District include both real property and personal property that has been paid for by all of the taxpayers in the Road District, including taxpayers in Lockport, New Lenox, Lemont, Homer Glen and residents in the unincorporated areas of the Township; and

Whereas, the Homer Township Highway Commissioner has indicated that he intends to give all of the Road District’s assets to the Village of Homer Glen, thereby abolishing the Homer Township Road District himself without regard to the will of the voters, and without transparency or accountability, and without regard to the other taxpayers who purchased the property; and

Whereas, the real property and person property currently owned by the Homer Township Road District are essential to the performance of the Road District’s functions, either by the Road District or the Township in the event that the referendum passes; and

Whereas, the Highway Commissioner has no legal ability whatsoever to give away essential real property or personal property owned by the Road District, nor to declare such property as surplus as an artifice and sham as a means to convey the property to the Village of Homer Glen when the property really is not surplus property; and

Whereas, Section 30-50 of the Illinois Township Code specifies, in part, that the Township Board has the ability to determine whether road district property is surplus.

**Now, Therefore, Be It Resolved** by the Board of Trustees of Township of Homer, Will County, Illinois, as follows:

*Section 1. Incorporation of Preambles.* The Board hereby finds that all of the recitals contained in the preambles to this Resolution are full, true and correct and does incorporate them into this Resolution by this reference.

*Section 2. Declaration regarding Road District Property.* The Township Board hereby finds that all property owned by the Road District, whether real or personal, is necessary

to perform the current legal obligations of the Road District and, therefore, all real property and personal property owned by the Homer Township Road District is not surplus property and is essential to maintain.

**Section 3. Severability.** If any section, paragraph, clause or provision of this Resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

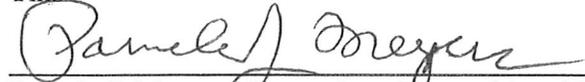
**Section 4. Repealer and Effective Date.** All ordinances, orders and resolutions and parts thereof in conflict herewith be and the same are hereby repealed, and this Resolution be in full force and effect forthwith upon its adoption.

Adopted:

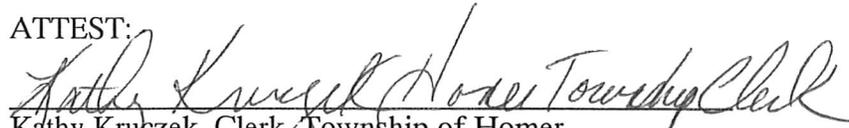
This 5<sup>th</sup> day of October 2020

APPROVED by Township Supervisor

This

  
 Pamela J. Meyers, Supervisor, Township of Homer

ATTEST:

  
 Kathy Kruczek, Clerk, Township of Homer

Township of Homer Trustees	Aye	Nay	Abstain	Absent
Tom Fijian Trustee	✓			
Ed Kalas Trustee	✓			
John Kruczek Trustee	✓			
George Offord Trustee			✓	
Pamela J. Meyers Township Supervisor	✓			