



AGENDA ITEM # 9C/D

**AGENDA ITEM EXECUTIVE SUMMARY
Village Board Meeting
October 14, 2019**

Item Title: **Amendment to a Pre-Annexation Agreement for 23W684 Walnut Street**

Staff Contact: Patrick Watkins, Community Development Director

VILLAGE BOARD ACTION

- | |
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| <ol style="list-style-type: none">1. Conduct a Public Hearing for an Amendment to the Pre-Annexation Agreement for 23W684 Walnut Street.2. Pass an ordinance authorizing execution of an Amendment to the Pre-Annexation Agreement for 23W684 Walnut Street. |
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Executive Summary:

Attached is a public hearing notice that was published in the *Daily Herald on September 27, 2019* for a public hearing for the amendment to the pre-annexation agreement for 23W684 Walnut Street. Mr. & Mrs. Helms, the property owners, had a pre-annexation agreement approved by the Village Board on March 26, 2018. This agreement required them to pay for 110% of the engineer’s estimate of costs for a sidewalk in front of their property. As the Village Board has since changed the sidewalk policy for pre-annexations, they have requested an amendment to their agreement so that they are no longer required to make payments for sidewalks. Instead they will install sidewalks upon annexation, which is memorialized in a recordable, restrictive covenant that ensures that all future pre-annexation agreements beyond the 20 year limits of the agreements adopted tonight, if necessary, cannot change the existing sidewalk terms (installing them at the time of annexation).

Upon approval of the amendment to the agreement, staff will process a refund of the amount already paid by Mr. & Mrs. Helms on their sidewalk.

Implications:

Is this item budgeted? N/A

Any other implications to be considered? N/A

Attachments:

Public Hearing Notice
Aerial

Ordinance Authorizing the Execution of an Amendment to the Pre-Annexation
Agreement
Restrictive Covenant

DAILY HERALD

9/27/2019

23W684 WALNUT DR.

Public Hearings & Notices

PUBLIC HEARING NOTICE
 NOTICE IS HEREBY given that the Roselle Village Board will hold a Public Hearing on Monday, October 14, 2019. The Village Board will meet at 7:00pm in the Roselle Village Hall, 31 South Prospect Street, Roselle, Illinois to consider the petition of James Joseph Helms and Alicia Lynne Helms as Co-Trustees of the Helms Family Revocable Living Trust Dated September 13, 2017 for the purpose of an amendment to a pre-annexation agreement on property legally described as follows:

LOT 9 IN BLOCK 21 IN THE SECOND ADDITION TO ROSELLE COUNTRYSIDE, A SUBDIVISION OF PART OF SECTIONS 3 AND 10, TOWNSHIP 40 NORTH RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 13, 1948 AS DOCUMENT 551835 AND AS CORRECTED BY CERTIFICATE OF CORRECTION RECORDED SEPTEMBER 10, 1948 AS DOCUMENT 553789 IN DUPAGE COUNTY, ILLINOIS.
 PIN02-10-163-013

The common name is 23W684 Walnut Street, Roselle, Illinois.
 At present, the property is improved with a detached single family residence and in unincorporated DuPage County zoned R-3 (Single Family Residence District). The Village Board will consider R-1 Single Family Residence District zoning upon annexation.

Persons having questions or seeking additional information may contact the Village of Roselle Community Development Department at (630) 671-2806 for additional information.
 All persons will have an opportunity to speak at such time and place.
 Publish by Sunday, September 29, 2019.
 Published in Daily Herald September 27, 2019 (4532957)

NOTICE OF

Probate
 THE CIRCUIT COURT OF THE TENTH JUDICIAL DISTRICT OF ILLINOIS
 IN AND FOR THE COUNTY OF DUPAGE
 PROBATE DEPARTMENT
 31 SOUTH PROSPECT STREET
 ROSELLE, ILLINOIS 60170
 NOTICE OF THE DEATH OF
 Mark Edward Ex-anklin Street, 34.
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 Daily Herald
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23W684 Walnut Street – Aerial



— Subject Property

— Current Village Limits



ORDINANCE 2019-4050
AN ORDINANCE AUTHORIZING EXECUTION
OF AN AMENDMENT TO THE PREANNEXATION AGREEMENT FOR
23W684 Walnut Street

WHEREAS, the Village of Roselle is an Illinois municipal corporation located in DuPage and Cook Counties, Illinois (hereinafter “Village”); and,

WHEREAS, the Mayor and Board of Trustees of the Village are sometimes referred to hereinafter as the “Corporate Authorities”; and,

WHEREAS, the Village’s desire to maintain control over its municipal borders is the predominant policy underlying its willingness to enter into this agreement; and,

WHEREAS, there has been presented to the Corporate Authorities an Amendment to a Pre-Annexation Agreement (hereinafter “Amendment”) approved by Ordinance 2018-3965 between the Village and the owners of record of real estate, James Joseph Helms and Alicia Lynne Helms as Co-Trustees of the Helms Family Revocable Living Trust Dated September 13, 2017 (hereinafter “Owners”), for the property located at 23W684 Walnut Street (hereinafter “Property”), pursuant to the provisions of Section 11, Division 15.1 of the Illinois Municipal Code; and,

WHEREAS, the amended Agreement is attached hereto and incorporated herein as if fully set forth as “Attachment A”; and,

WHEREAS, the Property is hereinafter legally described in the body of this Ordinance; and,

WHEREAS, a public hearing to consider the Agreement was held on October 14, 2019, by the Corporate Authorities, after proper public notice pursuant to the provisions of applicable statutes; and,

WHEREAS, the Corporate Authorities, after considering the testimony and evidence presented at said public hearing, and after making further investigation of the matters set forth in the proposed Amendment, have determined that it is in the best interest of the Village to enter into said Amendment with the Owners of the Property.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Board of Trustees of the Village of Roselle, an Illinois Municipal Corporation located in DuPage and Cook Counties, Illinois, as follows:

SECTION 1: The recitations, descriptions, and definitions in the foregoing recitals are incorporated herein as if fully set forth.

SECTION 2: That the Mayor of the Village of Roselle is hereby authorized to execute, and the Clerk of the Village of Roselle is hereby directed to attest to, that certain Amendment, a copy of which is attached hereto and incorporated herein as if fully set forth in "Attachment A," between the Village and the Owners of the Property, bearing a parcel index number of 02-10-103-013, and legally described as follows:

LOT 9 IN BLOCK 21 IN THE SECOND ADDITION TO ROSELLE COUNTRYSIDE, A SUBDIVISION OF PART OF SECTIONS 3 AND 10, TOWNSHIP 40 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 13, 1948 AS DOCUMENT 551835 AND AS CORRECTED BY CERTIFICATE OF CORRECTION RECORDED SEPTEMBER 10, 1948 AS DOCUMENT 553789 IN DUPAGE COUNTY, ILLINOIS.

SECTION 3: This Ordinance shall automatically become null and void without further action of the Corporate Authorities unless, within thirty (30) days from the date of the passage of this Ordinance, the Owner executes a true and correct copy of the Agreement. The Corporate Authorities, upon receipt of a written request from the Owner, may grant extensions to this section in their sole discretion.

SECTION 4: Failure to construct the sidewalk within six (6) months of the passage of an Annexation Ordinance as required by the Amendment (Attachment A) shall be a material breach of the Amended Pre-Annexation Agreement and fully absolve and release the Village of any obligation, or any other common law or equitable theory of law, to provide any Village utilities, whatsoever to the property. In this instance, Village staff shall disconnect the property and the Village utilities from the property upon thirty (30) day written notice to the owner, petitioner or petitioner's successor.

SECTION 5: Upon passage, approval, and publication of this Ordinance as required by law, as well as upon execution of the Amendment by the Owners, and the Mayor of the Village, the Clerk of the Village shall record this Ordinance, and all exhibits, in the Office of the Recorder of the County of DuPage. All costs associated with recording shall be solely at the Owner's expense.

SECTION 6: This Ordinance and the Amendment shall be binding upon the parties hereto, their respective successors, heirs, administrators, contract purchasers, executors, grantees, and assigns for a full term of twenty (20) years from the date of execution hereof.

SECTION 7: If any part or portion of this Ordinance and/or the Amendment is declared invalid by a court of competent jurisdiction, such partial invalidity shall render the Ordinance and Agreement null and void and without legal effect, and the Village's provision of Village water and/or sewer services shall terminate.

SECTION 8: All ordinances and parts of ordinances in conflict or inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such conflict or inconsistency.

SECTION 9: This Ordinance shall be in full force and effect from and after its passage, approval, publication in pamphlet form as provided by law, and execution of the Amendment by the Owner and the Mayor of the Village.

AYES:

NAYS:

ABSENT:

PASSED and APPROVED this 14th day of October, 2019.

PUBLISHED in pamphlet form this 15th day of October, 2019.

ATTEST:

Clerk, Village of Roselle, Illinois

VILLAGE OF ROSELLE:

Mayor, Village of Roselle, Illinois

ATTACHMENT "A"

AMENDMENT TO PRE-ANNEXATION AGREEMENT

2019-4050

(23W684 Walnut Street)

THIS AMENDMENT (hereinafter "Amendment"); made and entered into this 14th day of October, 2019, between the VILLAGE OF ROSELLE, an Illinois municipal corporation located in DuPage and Cook Counties, Illinois (hereinafter "Village"); and James Joseph Helms and Alicia Lynne Helms as Co-Trustees of the Helms Family Revocable Living Trust Dated September 13, 2017 (hereinafter "Owners").

WITNESSETH

WHEREAS, the parties hereto have entered into a certain Pre-Annexation Agreement on March 26, 2018; and,

WHEREAS, the Owners control the real estate at 23W684 Walnut Street, Roselle, Illinois (hereinafter "Property"), as illustrated on the Plat of Survey, marked as Exhibit C, which is attached hereto and made a part hereof this Amendment; and,

WHEREAS, the undersigned Owners understand that they do not have any legal duty or obligation to sign this Amendment and may, as an alternative, have their property disconnected from Village water and/or sewer services and replace those services with a well and/or septic field; and,

WHEREAS, the parties hereto desire to amend the pre-annexation agreement in order to establish an enforceable covenant with the Village of Roselle to provide those protections recited herein for the Village of Roselle to provide water and/or sewer services to the Owner's Property while at the same time obligating the Owner to comply with the terms of this covenant in order to be entitled under the terms of this Amended Agreement to water and/or sewer services; and,

WHEREAS, the undersigned Owners acknowledge and covenant that execution of this Amendment is not based on legal advice provided by the Village, its attorney, employees or agents, and that the undersigned has been given ample opportunity to confer with other advisors of their choosing in deciding whether to execute this restrictive covenant or Amendment; and,

WHEREAS, the Village of Roselle has no legal obligation to provide water and/or sewer services to unincorporated properties in absence of a written agreement to do so; and,

WHEREAS, the Village has the power to control its corporate boundaries, its municipal water and sewer systems (“Village Services”), both within and outside its corporate boundaries; and,

WHEREAS, the Village has the power to “contract and be contracted with” 65 ILCS 5/2-2-12; and,

WHEREAS, it is the mutual understanding of the Village and the Owner that the Village would not approve this Amendment for the Property in absence of a corresponding contract/covenant related to the provision of Village water and/or sewer services after expiration of 20 years.

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

1. Paragraph 7.c. is hereby repealed and rescinded in its entirety and replaced with the following:

c. Public Sidewalk. If there is no public sidewalk on contiguous public right of way along Walnut Street the Petitioner shall install a sidewalk no later than six (6) months from the date of the adoption of an Annexation Ordinance, per Section 3 of this agreement, and in accordance with Article XVI, Section 2-293(e) and Section 2-293(f) of the Roselle Village Code of Ordinances.

Failure to construct the sidewalk in accordance with the above sections shall be a material breach of this agreement and fully absolve and release the Village’s obligation under this agreement, or any other common law or equitable theory of law, to provide any Village utilities whatsoever to the Property. In this instance, the Village shall have the unmitigated right to disconnect the Property from the Village water and/or sewer services upon thirty (30) days’ written notice to the owner, petitioner or petitioner’s successor. Petitioner fully waives and releases the Village from any and all claims, actions, causes of action, damages,

injuries, costs, actual or consequential damages, or expenses associated with the disconnection of Village water and/or sewer.

2. The following section is added to the Agreement and incorporated herein as fully set forth:

RESTRICTIVE COVENANT. The Corporate Authorities find that the Owner has submitted an executed contract/covenant for the continuing provision of Village Services. Neither this Agreement nor the restrictive covenant will become effective until this Agreement is executed by the Owner as required by Section 3 of the “Ordinance Authorizing Execution” of Ordinance 2018-3961. The restrictive covenant is a material element of this Amendment and is incorporated herein as fully set forth as Exhibit “B.” If this Amendment and the restrictive covenant are not both executed by the Owner within thirty (30) days of the adoption of the Ordinance approving this Amendment, both shall become null and void and will cause the disconnection of any Village Service to the Property.

3. Any Owner seeking to set aside this covenant/contract upon losing the litigation shall reimburse the Village for all its reasonable attorneys’ fees or costs.

4. This Amendment and the corresponding contract/covenant constitute the full and final agreement between the Village and the undersigned all prior agreed upon terms and conditions being set forth herein. This agreement may not be modified or amended in any fashion or manner other than by agreement of the parties.

5. Each and every provision of the Pre-Annexation Agreement not inconsistent with the provisions of this Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have hereunder set their hands and seals on the day and year first above written.

VILLAGE OF ROSELLE

Village Mayor

Attest:

Village Clerk

OWNERS: James Joseph Helms and Alicia Lynne Helms as Co-Trustees of the Helms Family Revocable Living Trust Dated September 17, 2013

James Joseph Helms, Co-Trustee

Alicia Lynne Helms, Co-Trustee

Date: _____

STATE OF ILLINOIS, County of _____ ss

I, the undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that _____ is personally known to me to be the same persons whose name is subscribed to the foregoing instrument as such _____ appeared before me this day in person and acknowledged that he signed and delivered the said instrument at his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth, and the said, as custodian of the corporate seal of said corporation, did affix the corporate seal of said corporation to said instrument, as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposed therein set forth.

GIVEN under my hand and Notary Seal this _____ day of _____, 2019.
Notary Public

EXHIBIT "B"
**CONTRACT COVENANT PERTAINING TO CONTINUING PROVISION
OF VILLAGE SERVICES**

RECITALS

WHEREAS, the Village of Roselle ("Village") has no legal obligation to provide water and/or sewer services to unincorporated properties in absence of a written agreement to do so; and,

WHEREAS, the Village has the power to control its corporate boundaries, its municipal sewer and water systems, both within and outside its corporate boundaries; and,

WHEREAS, the Village has the power to "contract and be contracted with" 65 ILCS 5/2-2-12; and,

WHEREAS, the undersigned owners and the Village wish to establish an enforceable contract covenant (sometimes "Covenant") to provide those protections recited herein for the Village to provide water and sewer services to the owners' Property while at the same time obligating the owner to comply with the terms of this covenant in order to be entitled under the terms of this covenant to water and sewer services; and,

WHEREAS, the Owners and Village acknowledge that the mutual rights and obligations set forth in this agreement are supported by adequate consideration; and,

WHEREAS, the undersigned owners understand that they ("Owners") does not have any legal duty or obligation to sign this contract covenant and may, as an alternative, have their property disconnected from Village water and sewer services and request that the County of DuPage permit a well and septic field for the Property; and,

WHEREAS, the undersigned owners acknowledge and covenant that this agreement is not based on legal advice provided by the Village, its attorney, employees or agents, and that the undersigned owners have been given ample opportunity to confer with an attorney or other advisors of his or her choosing in deciding whether to execute this restrictive covenant agreement; and,

WHEREAS, it is the mutual understanding of the Village and the Owners that the Village would not approve this contract covenant or, the related Pre-Annexation Agreement in absence of an understanding that this agreement is within the Village's municipal powers to control its corporate boundaries and the provision of its sewer services.

NOW, THEREFORE, the undersigned owners, being the owners of the following legally described Property: LOT 9 IN BLOCK 21 IN THE SECOND ADDITION TO ROSELLE COUNTRYSIDE, A SUBDIVISION OF PART OF SECTIONS 3 AND 10,

TOWNSHIP 40 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 13, 1948 AS DOCUMENT 551835 AND AS CORRECTED BY CERTIFICATE OF CORRECTION RECORDED SEPTEMBER 10, 1948 AS DOCUMENT 553789 IN DUPAGE COUNTY, ILLINOIS (hereinafter "Property") hereby covenants and agrees, and the Village of Roselle hereby accepts, the terms and conditions set forth in this restrictive covenant as follows:

1. That the foregoing Recitals are incorporated herein as if fully set forth as representing the understanding and the intent of the parties and its substantive terms and conditions. Where the term "Village" is used in this restrictive covenant it shall mean the Corporate Authorities of the Village of Roselle.
2. The undersigned owners, its successors and assigns, in order to maintain access to Village of Roselle potable water and/or sewer services (hereinafter "Services") only as those Services are being provided as of the first date of execution of this covenant/contract _____, 2019 as approved by Ordinance 2019-_____ and for a period not to exceed the rule against perpetuities, agrees to the following terms and conditions which shall apply to the Property in order for it to qualify to continue to receive Village Services.
3. That if the Property does not become contiguous to the Village of Roselle and is not annexed within the twenty (20)-year period of the Pre-Annexation Agreement adopted in conjunction with approval of this agreement, the Property shall be entitled to receive Services only if the owners submit a proposal to enter into a new Pre-Annexation Agreement with the Village under the identical terms and conditions as the Pre-Annexation Agreement approved and in effect for the Property at the time this Covenant Agreement is also approved. The application for a renewed Pre-Annexation Agreement shall be filed no less than sixty (60) days prior to the expiration of the Pre-Annexation Agreement.
4. Any owner not agreeing to enter into a new Pre-Annexation Agreement with the Village at the time of the prior Pre-Annexation Agreement's expiration, hereby agrees that the Village, in its sole discretion, shall have the right to terminate Village Services at any time after a thirty (30)-day written notice from the Village to the owner.
5. Once an approved application for a renewed pre-annexation agreement has been filed with the Village by an owner, it shall remain valid and effective until accepted by the Corporate Authorities of the Village. There shall be no time limitation on the Village's acceptance of the application. If the application is timely made, the Village Shall agree to a new pre-

annexation agreement for the Property so long as the pre-annexation agreement is the same as the pre-annexation agreement that expired.

6. Nothing in this covenant shall be interpreted to require the Village to extend or provide additional Services not specifically provided by the Village to the Property as of the date of the approval of this covenant/contract.
7. During the term of this covenant, owners shall comply with all ordinances of general application related to Village Services applicable to any other resident of the Village. Failure to comply with all Village ordinances shall result in termination of the Village's Service upon thirty (30) days' notice of termination to the owner.
8. If there is no public sidewalk on contiguous public right-of-way along Walnut Street, the Petitioner shall install a sidewalk no later than six (6) months from the date of the adoption of an Annexation Ordinance, and in accordance with Article XVI, Section 2-293(e) and Section 2-293(f) of the Village of Roselle Code of Ordinances. Failure to construct the sidewalk in accordance with the Pre-Annexation Agreement shall be a material breach of this Covenant Agreement and the Pre-Annexation Agreement and fully absolve and release the Village's obligation under this Covenant Agreement and Pre-Annexation Agreement, or any other common law or equitable theory of law, to provide any Village utilities whatsoever to the Property. In this instance, the Village shall have the unmitigated right to disconnect the Property from Village Services upon thirty (30) days written notice to the owner, petitioner, or petitioner's successor. Petitioner fully waives and releases the Village from any and all claims, actions, causes of action, damages, injuries, costs, actual or consequential damages, or expenses associated with the disconnection of Village Services.
9. This agreement shall be recorded by the Village Clerk at the owners' expense.
10. Should any Court invalidate or declare all or any portion or provision of this covenant/contract, invalid or unenforceable, the corresponding Pre-Annexation Agreement, shall become null and void and without effect, and the Village's duty to provide Village Services to a property shall terminate. Any Owner seeking to set aside this covenant/contract upon losing the litigation shall reimburse the Village for all its reasonable attorneys' fees or costs.
11. Integration. Other than the corresponding pre-annexation agreement, this Agreement constitutes the full and final agreement between the Village and the undersigned owners all prior agreed terms and conditions

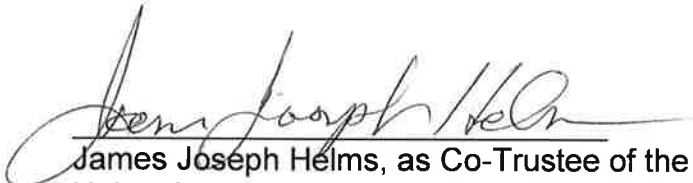
being set forth herein. This agreement may not be modified or amended in any fashion or manner other than by mutual agreement of the parties.


12. Exclusive jurisdiction and venue for any litigation related to this matter shall be in the 18th Judicial Circuit Court, DuPage County, Wheaton, Illinois.
13. This contract covenant shall run with the land and be binding upon the parties hereto, their respective successors, heirs, purchasers, contract purchasers, administrators, executors, grantees and assigns, and all subsequent owners during its term.

Mayor, Village of Roselle

ATTEST:

Village Clerk, Village of Roselle


James Joseph Helms, as Co-Trustee of the
Helms Family Revocable Living Trust Dated
September 13, 2017


Alicia Lynne Helms, as Co-Trustee of the
Helms Family Revocable Living Trust Dated
September 13, 2017

ATTEST:

