



**AGENDA ITEM # 9A/B**

**AGENDA ITEM EXECUTIVE SUMMARY  
Village Board Meeting  
March 26, 2018**

**Item Title:** 23W684 Walnut Street Pre-Annexation

**Staff Contact:** Patrick Watkins, Community Development Director

**VILLAGE BOARD ACTION**

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| <ol style="list-style-type: none"><li><b>1. Conduct a Public Hearing for the Pre-Annexation of 23W684 Walnut Street.</b></li><li><b>2. Pass an Ordinance Authorizing Execution of a Pre-Annexation Agreement for 23W684 Walnut Street.</b></li></ol> |
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**Executive Summary:**

Attached is a public hearing notice that was published in the *Daily Herald on March 9, 2018* for a pre-annexation agreement for 23W684 Walnut Street. James and Alicia Helms, owners of 23W684 Walnut Street, had a pre-annexation agreement that allowed the property to connect to the Village's sewer that expired in 2012. The Helms' have agreed to the terms for a new Pre-Annexation agreement in order to remain connected to Village sewer.

The Committee of the Whole directed staff to proceed with contacting the owners of properties that have expired pre-annexation agreements. As directed by the Committee, the new pre-annexation agreement requires that the property owner pay 110% of the estimated cost for a sidewalk at the time of approval of the agreement. We have offered a five (5) year, interest free payment plan to all property owners.

The subject property is currently zoned R-3 Single Family Residence District in Unincorporated DuPage County. The pre-annexation agreement states that upon annexation to the Village of Roselle, the property will be zoned R-1 Single Family Residence District.

**Implications:**

**Is this item budgeted?** N/A

**Any other implications to be considered?** The Helms' will pay \$4,950 into the Village's Sidewalk Fund.

**Attachments:**

Aerial

Plat of Survey  
Ordinance Authorizing the Execution of a Pre-Annexation Agreement

23W684 WALNUT STREET  
PUBLIC HEARING NOTICE  
PETITION FOR PRE-ANNEXATION

PUBLIC HEARING NOTICE  
NOTICE IS HEREBY given that the Roselle Village Board will hold a Public Hearing on Monday, March 26, 2018. 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 Helms for the purpose of pre-annexation on property legally described as follows:  
LOT 9 IN BLOCK 21 IN THE SECOND ADDITION TO ROSELLE COUNTRY-SIDE, 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 19, 1948 AS DOCUMENT 551835 AND AS CORRECTED BY CERTIFICATE OF CORRECTION RECORDED SEPTEMBER 10, 1948 AS DOCUMENT 553789 IN DUPAGE COUNTY, ILLINOIS.  
PIN02-10-103-013  
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 in Daily Herald March 9, 2018 (4495176)

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Published on  
March 9, 2018

**ORDINANCE 2018-**  
**AN ORDINANCE AUTHORIZING EXECUTION**  
**OF A 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, there has been presented to the Corporate Authorities a proposed Annexation Agreement (hereinafter "Agreement"), between the Village and the owner of record of real estate, *James and Alicia Helms* (hereinafter "Owner"), 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 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 *March 26, 2018*, 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 Agreement, have determined that it is in the best interest of the Village to enter into said Agreement with the Owner 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 Pre-Annexation Agreement, a copy of which is attached hereto and incorporated herein

as if fully set forth in "Attachment A," between the Village and the Owner 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 COUNRYSIDE, 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 fourteen (14) days from the date of the passage of this Ordinance, the Owner executes a true and correct copy of the Agreement; returns it to the Clerk of the Village for execution and recording; and submits the cash security bond for sidewalks. 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 pay the amount for the sidewalk as required by the Pre-Annexation Agreement (Attachment A) shall be a material breach of the 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 fourteen (14) day written notice to the owner, petitioner or petitioner's successor.

SECTION 5: Upon passage, approval, publication of this Ordinance as required by law, as well as upon execution of the Agreement 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 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. For purposes of the Agreement, the term "Owners" shall include all subsequent owners, successors, heirs, or assigns of the Property.

SECTION 7: If any part or portion of this Ordinance and/or the Agreement is declared invalid by a court of competent jurisdiction, such partial invalidity shall not affect the remainder of this Ordinance, and the application of this Ordinance to the Property (other than those portions of the Property to which it should have been held invalid) shall not be affected thereby, unless the invalidity would contravene the primary purpose and intent of the Agreement. If any part or portion of this Ordinance is declared invalid then the Village shall undertake reasonable legislative steps to correct such invalidity.

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 Agreement by the Owner and the Mayor of the Village.

AYES:

NAYS:

ABSENT:

PASSED and APPROVED this 26<sup>th</sup> day of March, 2018.

PUBLISHED in pamphlet form this 26<sup>th</sup> day of March, 2018.

VILLAGE OF ROSELLE:

ATTEST:

\_\_\_\_\_  
Clerk, Village of Roselle, Illinois

\_\_\_\_\_  
Mayor, Village of Roselle, Illinois

**ATTACHMENT "A"**

**PRE-ANNEXATION AGREEMENT**

*(insert ordinance number here)*

*23W684 Walnut Street*

THIS PRE-ANNEXATION AGREEMENT (hereinafter "Agreement"); made and entered into this 26<sup>th</sup> day of March, 2018, between the VILLAGE OF ROSELLE, an Illinois municipal corporation located in DuPage and Cook Counties, Illinois (hereinafter "Village"); and *James and Alicia Helms* (hereinafter "Owner").

WITNESSETH

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

WHEREAS, the Property is not contiguous to the Village Corporate Limits, but the Village has concluded that entering into this pre-annexation agreement for the Property under the terms and conditions of this Agreement will enable the Village to control development of the area, permit the sound planning and development of the Village, and otherwise enhance and promote the health, safety and general welfare of the Village; and,

WHEREAS, pursuant to the provisions of the Roselle Village Code and applicable provisions of the Illinois Compiled Statutes and Illinois Constitution, a proposed Petition for Pre-Annexation in substance and form of the same as this agreement was submitted to the Mayor and Board of Trustees of the Village of Roselle, and a public hearing was held on *March 26, 2018* thereon pursuant to the notices provided by ordinance and statute; and,

WHEREAS, the Property is currently a single family residence and in unincorporated DuPage County zoned R-3, with a lot area of 18,696 square feet, which is qualified to be classified as a R-1 District in the Roselle Zoning Code.

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

1. LEGAL CONFORMANCE WITH LAW. This Agreement is made pursuant to, and in accordance with, the provisions of the Roselle Village Code and applicable provisions of the Illinois Compiled Statutes and the Illinois Constitution.

2. PETITION TO ANNEX. The Owner has filed with the Village Clerk a proper petition, pursuant to the provisions of the Illinois Municipal Code (65 ILCS 5/7-1-8), conditioned on the execution of this Agreement, to annex the Property to the Village. This agreement in its entirety, together with the aforesaid Petition for Pre-Annexation, shall be null, void, and of no effect unless the Property is validly zoned and classified under the Village's Zoning Ordinance as hereinafter set forth and amended.

3. ANNEXATION ORDINANCE. Once the Property becomes contiguous to the Corporate Limits of the Village of Roselle, the Village, at its sole discretion, may thereafter enact an ordinance annexing the Property to the Village. Within thirty (30) days of notice from the Village of its intent to annex the Property the Owner, at Owner's sole expense, shall prepare and submit to the Village a Plat of Annexation accurate and fully depicting the Property.

4. REZONING. Upon annexation, the Property shall cease being zoned by DuPage County as R-3 District and shall be zoned R-1 District in conformance with the Village of Roselle Zoning Ordinance.

5. DEVELOPMENT/CONSTRUCTION STANDARDS. Any future development of or construction on the Property shall be in full compliance with the Village of Roselle Zoning Ordinance, Subdivision Regulations, Building Code and other ordinances, codes, rules and regulations of the Village pertaining to the development of the Property to be annexed, except as may be specifically amended pursuant to the terms of this Agreement.

6. VARIATIONS IN LOCAL CODES. Unless stated in the annexation or rezoning ordinances pertaining to the Property, there shall be no specific variations from the Village's ordinances, rules and codes which have been requested or which are permitted with respect to the development / construction of the Property. The Owner may subsequently apply for specific variations from the Village's ordinances, rules and codes



without amending this Agreement, provided, however, such applications shall satisfy all standards related to variations.

7. UTILITIES AND PUBLIC IMPROVEMENTS. As a condition of this Agreement, the Owner has previously received connection to and service from, or will be required to connect and receive service from, the following Village utilities and public improvements. The Owner agrees that any connection to these Village utilities and public improvements shall be done in accordance with Village engineering standards, the Village Code, and such extension, and all costs related thereto, shall be the responsibility of the Owner and/or the Owner's contractor:

a. Sanitary Sewer Facilities. The Owner shall remain connected to the Village's sanitary sewer after the approval of the pre-annexation agreement.

b. Water Facilities. The Owner agrees to connect to the Village's water main within 180 days when such water main being available at the edge of the petitioner's property or across the street from the petitioner's property. The Owner agrees to cap the well on the Property upon connection to the Village's water.

c. Public Sidewalk. If there is no public sidewalk on contiguous public right of way the Petitioner, at the time of approval of this pre-annexation agreement, shall pay the Village, in cash, an amount equal to 110% of the engineer's estimate of costs for the construction of a public sidewalk along Walnut Street for all public right of way contiguous to the Property.

Failure to post the cash 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 and the Village utilities from the Property upon fourteen (14) day written notice to the owner, petitioner or petitioner's successor, and the petitioner, or petitioner's successors, by the petitioner's execution of this Agreement shall have fully waived and released 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 the utilities.

8. ANNEXATION AND PERMIT FEES. The amount of annexation permit, license, inspection, tap-on, recapture or connection fees imposed by the Village, which are applicable to, or required by, Village Ordinances or Resolutions are to be paid by the Owner.

9. FIRE PROTECTION DISTRICT TAXES. Pursuant to the provisions of the Illinois Municipal Code (70 ILCS 705/20) or any successor statute, the Owner shall reimburse the Village in full and upon annexation for all taxes due from the Village to any fire protection district as a result of a fire protection district disconnection resulting from this annexation.

10. ROSELLE PARK DISTRICT. The Property is currently within the boundaries of, and subject to taxation by, the Roselle Park District.

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

12. AMENDMENT OF PRE-ANNEXATION AGREEMENT. This Agreement and any exhibits attached hereto may be amended pursuant to the provisions of the Roselle Village Code, Zoning Ordinance and Illinois Municipal Code.

13. INVALIDITY. Other than Paragraphs 7 a, b and c, or this paragraph 13 or 14, of this Agreement if any provision of this Agreement, or any section, sentence, clause, phrase, or word, or the application thereof in any circumstances is held invalid, the validity of the remainder of this Agreement and the application of such provisions, section, sentence, clause, phrase or word in any other circumstances shall not be affected thereby. If Paragraph 7 a, b or c, or this paragraph 13 or 14 or any portion thereof, is declared invalid, this entire Agreement shall be null, void and without effect and the Village shall have the right to disconnect all water or sewer utilities instantly.

14. TERM OF AGREEMENT. This Agreement 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 this Agreement.

For purposes of this agreement, the term "Owner" shall include all subsequent owners of the property.

15. RECORDING. This Agreement shall be recorded by the Village Clerk in the DuPage County Recorder's Office at the expense of the Owner.

16. APPROVAL. This Agreement shall not be effective unless the Owner of the Property, within the time limit set forth in the Ordinance approving this Agreement, affixes a signature to a true and correct copy of this Agreement, acknowledging that the Owner has reviewed and accepts the provisions of this Agreement. Failure of the Owner to execute this agreement within the time limit shall void the pre-annexation and/or annexation of this property and any Village obligations set forth herein, including but not limited to providing sanitary sewer service to the property.

17. DEFEND AND HOLD HARMLESS. The Owner agrees to defend and hold the Village harmless from any and all actions, causes of action, claims, litigation in law or chancery, attorney's fees, and costs required to defend against efforts by anyone to set aside this pre-annexation, annexation or the terms of this Agreement.

18. NOTICES. Notices or other writings which any party is required to, or may wish to serve upon any other party in connection with this Agreement, shall be in writing and shall be delivered personally or sent by certified or registered mail, return receipt requested, postage prepaid, to the other parties of this Agreement.

**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

OWNER:

\_\_\_\_\_

*James Helms*

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 \_\_\_\_\_, 2017.

Notary Public

PLAT OF SURVEY

OF LOT 7 IN BLOCK 21 IN SECOND ADDITION TO RABBIT HOLE TRACT, 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 CORRECTED BY AFFIDAVIT OF CORRECTIA RECORDED SEPTEMBER 10, 1948, AS DOCUMENT 552739, IN DUPAGE COUNTY, ILLINOIS.

Exhibit B



STATE OF ILLINOIS S.S.  
COUNTY OF DUPAGE

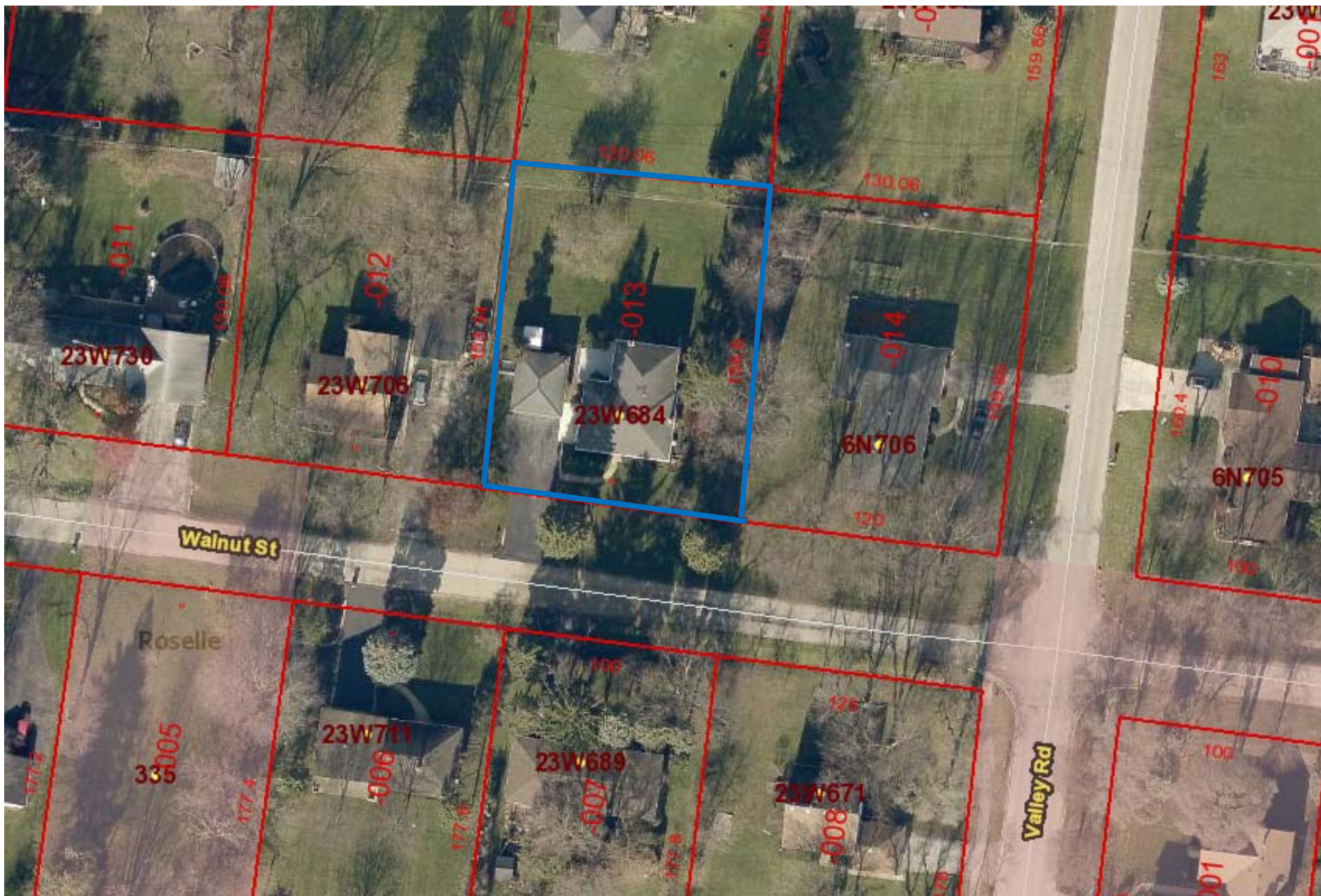
THIS IS TO CERTIFY THAT I, AN ILLINOIS LAND SURVEYOR, HAVE SURVEYED THE PROPERTY DESCRIBED IN THE ABOVE CAPTION(S) AS SHOWN BY THE ANNEALED PLAT WHICH IS A CORRECT AND TRUE REPRESENTATION OF SAID SURVEY.

GIVEN UNDER MY HAND AND SEAL AT LOMBARD, ILLINOIS, THIS 22ND DAY OF MARCH, A.D. 1973.  
*Glen W. Krusch*  
ILLINOIS LAND SURVEYOR NO. 1500

BUILDINGS LOCATED AS SHOWN ON THIS PLAT.  
22ND DAY OF MARCH, A.D. 1973.  
*Glen W. Krusch*  
ILLINOIS LAND SURVEYOR NO. 1500  
COMPARE DESCRIPTION AND POINTS BEFORE BUILDING AND REPORT ANY APPARENT DIFFERENCE TO THE SURVEYOR.

REFER TO DEED OR GUARANTEE POLICY FOR BUILDING LINE RESTRICTIONS NOT SHOWN ON PLAT OF SURVEY.  
**GLEN D. KRUSCH**  
LAND SURVEYOR  
555 SOUTH EDSON AVENUE  
LOMBARD, ILLINOIS 60148  
PHONE 627-7587  
Order No. 5167-73  
File No. 254  
FOR SAMUEL KRITEN

# 23W684 Walnut Street – Aerial



— Subject Property

— Current Village Limits

