



AGENDA ITEM # 18

AGENDA ITEM EXECUTIVE SUMMARY

Village Board Meeting

August 23, 2021

Item Title: Annexation Policy Discussion

**Staff Contact: Jason Bielawski, Village Administrator
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VILLAGE BOARD ACTION

Discuss the Village’s current annexation policy and ordinances regarding the installation of sidewalks.

Executive Summary:

In December 2018, the Board adopted an ordinance finalizing the requirements for pre-annexations within the Village. As a reminder, the Village considers a pre-annexation when the property desires to connect to utilities but is not contiguous to the Village boundary (therefore ineligible for actual annexation) and agrees to annex once they are contiguous. Article XVI of Chapter 2 of the Code of Ordinances, which is attached, codified some past practices and policy decisions made by previous Village Boards and instituted new terms to address concerns with the lack of consistency in pre-annexation agreements.

Specifically, Section 2-293(e) requires that upon annexation, the property shall install sidewalks “including all work necessary to make ready the area for the sidewalk installation.” It also allows “if weather conditions make the installation of the sidewalk unreasonable during the six (6) months, the owner shall post a bond in an amount equal to one hundred and ten percent (110%) of the village engineer’s estimate of construction to guarantee installation when whether permits.”

Other conditions that impact sidewalk installation for annexations include:

- Corner lots → more linear feet of installation that an interior lot (2 sides)
- Slope/Topography → slopes of existing ground may impact where and how the sidewalk is constructed (ADA accessibility, water runoff, etc.)
- Stormwater issues → many roads do not have curbs and gutters, installation of a sidewalk may require new culverts or additional grading work to address stormwater issues and comply with stormwater ordinance
- Utility conflicts → existing infrastructure such as lift stations
- Building Codes/Construction Standards → installation must adhere to ADA codes and other standards

Given the listed conditions and other factors that impact the installation of sidewalks, particularly when the annexing property isn't constructing a new home, each property could have unique circumstances that make the installation more difficult and/or costly. Based on this, staff is seeking direction on the following questions:

1. Should all annexation agreements include a requirement to install sidewalks?
2. If yes, should the requirement be identical to the requirement for pre-annexation agreements which is all costs associated with installation?
3. Are there any unique conditions or circumstances that the Board wants staff to consider or identify as part of the annexation process?

If the Village Board wants to require sidewalks without any exceptions, then staff will no longer provide any estimates for homeowners. Instead the process for obtaining costs and installing sidewalks would require the homeowner apply for a building permit. The building permit process would require the submittal of design plans which are reviewed by building and engineering staff to ensure the design and installation adhere to code and construction standards and address any of the listed conditions regardless of cost.

Implications:

Is this item budgeted? n/a

Any other implications to be considered? Since December 2018 when Article XVI of Chapter 2 was adopted, the Village Board has approved three annexation agreements that include the installation of sidewalks. Below summarizes the terms of the agreements and status of sidewalk installation:

- 1) 2019-4033 – 150 Sycamore – Sidewalks on Sycamore installed, sidewalks on Plum Grove to be installed prior to certificate of occupancy issuance for new house
- 2) 2019-4069 – 301 W Maple – Within 6 months of annexation, applied for permit, never resubmitted per engineering review (staff sending notice about requirement to install)
- 3) 2020-4107 – 814 Crest – Installation required prior to certificate of occupancy issuance for new home currently under construction

Attachments:

Article XVI of Chapter 2 of the Roselle Code of Ordinances

**ARTICLE XVI. AN ORDINANCE ESTABLISHING REQUIREMENTS FOR THE
PROVISION OF VILLAGE SERVICES FOR NON-CONTIGUOUS PROPERTIES OUTSIDE
THE CORPORATE BOUNDARIES OF THE VILLAGE OF ROSELLE¹**

Sec. 2-291. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Property or properties. Property or properties shall mean real property located outside the corporate boundaries of the Village of Roselle which is not contiguous to the village.

Village services. Village services in this article shall mean potable water and/or sanitary sewer service.

(Ord. No. 2018-3991, § 1, 12-3-18)

Sec. 2-292. Provision of village services to non-contiguous unincorporated properties.

Properties shall not connect to, or maintain a connection to, village services, unless:

- (a) Those properties, as of the adoption of this ordinance, have an existing and legally effective pre-annexation agreement; or
- (b) Those properties apply for and execute pre-annexation agreements and also have an executed recordable restrictive covenant, which shall survive the termination of the annexation agreement and which shall, at a minimum, contain the terms and conditions set forth in sections 2-293 and 2-294 of this article;
- (c) The pre-annexation agreement and restriction covenant shall be subject to approval of the corporate authorities of the village; and
- (d) Applicants for pre-annexation shall comply with all other fees, costs, and procedures of the village as are applicable for annexations.

(Ord. No. 2018-3991, § 1, 12-3-18)

Sec. 2-293. Pre-annexation agreements, terms, and conditions.

The corporate authorities shall retain their sole legislative discretion in determining whether or not to approve the pre-annexation of any property located outside of the village's corporate boundaries. Pre-annexation

¹Editor's note(s)—Ord. No. 2018-3991, § 1 Editor's note(s)—, adopted December 3, 2018 added art. XVI, §§ 2-291 Editor's note(s)—2-295 as herein set out. Ord. No. 2340A-93, § 32, adopted June 28, 1993, repealed former art. XVI, §§ 2-291 Editor's note(s)—2-293, which pertained to the department of public safety.

agreements approved for properties provided village services shall, at a minimum, contain the following terms and conditions:

- (a) Twenty-year terms; and
- (b) Shall be binding upon the property owners, successors, and assigns; and
- (c) Shall be recorded by the village clerk against the effected property at the pre-annexed owner's sole cost and expense; and
- (d) Shall agree to annexation, should the village, by its corporate authorities, elect annexation when the property becomes contiguous to the corporate boundaries of the village; and
- (e) That the property when annexed shall install public sidewalks in conformance with chapter 18, section 18-9(a) and (b) of the Roselle Village Code, including all work necessary to make ready the area for the sidewalk installation, no later than six (6) months from the date of the adoption of the annexation agreement. If weather conditions make the installation of the sidewalk unreasonable within the concrete industries' customs and practices for adverse weather installation during the six (6) months, the owner shall post a bond in an amount equal to one hundred and ten (110) percent of the village engineer's estimate of construction to guarantee installation when weather permits; and

Sec. 18-9. Sidewalk to be constructed when building built.

- (a) Sidewalks shall be constructed along the public streets at the owner's expense for each building hereafter erected within the village. Such sidewalks shall extend for the full frontage of all lots along the streets and shall be erected in accordance with other ordinances of the village.
- (b) No certificate of occupancy shall be issued permitting any occupancy in any building until the sidewalk requirements as set forth in this section have been completely met.

- (f) The property owner of a property posting a bond may contract with a contractor to perform the sidewalk work when the weather permits and apply the bond posted pursuant to subsection (e) of this section towards that construction; and
- (g) If any owner is unwilling to comply with any term or condition of the pre-annexation agreement, the village may initiate litigation to enforce the agreement and the owner: (a) shall reimburse the village for any and all reasonable costs and expenses, including attorneys' fees and expert witness fees resulting from the village's efforts to enforce the terms of the pre-annexation agreement; or (b) or the corporate authorities of the village may elect in their sole discretion to refuse annexation of the property and disconnect the village services without further process of law; and
- (h) As long as the pre-annexation agreement remains in effect, the village shall provide sanitary sewer and/or water services to the property if the property owner is not in breach of the pre-annexation agreement and has paid all applicable sewer and/or water fees to the village.

(Ord. No. 2018-3991, § 1, 12-3-18)

Sec. 2-294. Restrictive covenant.

Independent of the pre-annexation agreement, an owner shall execute a covenant which shall run with the land, prepared by the village attorney and submitted to the village board for its consideration and approval. All covenants shall, at a minimum, contain the conditions set forth in the annexation agreement, but shall not be subject to its 20-year limitation.

(Ord. No. 2018-3991, § 1, 12-3-18)

Sec. 2-295. Disconnection appeals and material defenses.

Any owner being provided sewer and/or water service by the village services who does not have a pre-annexation and covenant with the village shall be disconnected from service subject only to the following defenses:

- (a) That the owner has a pre-annexation agreement that is existing and legally effective prior to the adoption of this article; and
- (b) That the owner has submitted an application for a pre-annexation agreement and covenant fully consistent with the terms and conditions of this article, as of the date of any hearing scheduled to contest disconnection; and
- (c) That the owner has applied for a well and/or septic field permit with the County of DuPage or County of Cook and has a contract with a contractor to install the well and/or septic field; and
- (d) No other defenses shall be legally material; and
- (e) The owner of a property contesting disconnection pursuant to the terms of this subsection shall have sixty (60) days from the adoption of this article to file their written appeal including all documents supporting a material defense of subsections 1, 2, and 3 of this subsection. The notice of appeal shall specify which specific defense allowed by this subsection of the article is asserted. If documents supporting the appeal are not filed in conjunction with the appeal, the appeal shall be stricken as inadequate as a matter of law; and
- (f) The appeals shall be filed with the village's community development department and shall include all documents supporting the material defenses; and
- (g) Hearings on material defenses shall be conducted by the hearing officer who conducts code violations and hearings under chapter 24, section 24-2 of the Village Code; and
- (h) The owner shall have the opportunity to appear at the hearing before the hearing officer to submit any evidence establishing a material defense; and
- (i) If the hearing officer determines that the material defense is proven by a preponderance of the evidence, the hearing officer shall deny the village's petition for disconnection. Where the hearing officer determines that the defense is not proven by a preponderance of the evidence, the hearing officer shall set a date for disconnection.

(Ord. No. 2018-3991, § 1, 12-3-18)