

BASIL A. PATERSON  
Secretary of State



STATE OF NEW YORK

**DEPARTMENT OF STATE**

162 WASHINGTON AVENUE  
ALBANY, NEW YORK 12231

March 13, 1980

Mr. Don Reed  
5 Norwood Street  
Albany, NY 12203

Dear Mr. Reed:

This is in response to your inquiry of March 12, 1980 wherein you requested information concerning the incorporation of a new village.

The procedure for incorporating a village is found in Article 2 of the Village Law. It requires that a territory containing a population of at least 500 regular inhabitants, and which is not part of a city or village, and which either contains less than 5 square miles; or is coterminous with school, fire, fire protection, fire alarm, town special or town improvement district; or is coterminous with parts of the boundaries of more than one school, fire, fire protection, fire alarm, town special or town improvement district where all of which are wholly contained within such limits and within one town; or is coterminous with the entire boundaries of a town. Census data can be obtained from the N.Y.S. Department of Commerce, Bureau of Business Research, Twin Towers, 99 Washington Ave., Albany, NY 12245, which data is necessary to determine whether the area to be incorporated meets the statutory criteria. 252

If the criteria are met, then a petition must be filed by either at least 20% (twenty percent) of the residents of such territory who are qualified to vote in the town, or the owners of more than 50% (fifty percent) in assessed valuation of the real property in such territory.

Village Law § 2-202(2)(b) sets out the contents of the petition, which must be filed with the town supervisor with a deposit of \$1,000 (one thousand dollars) to cover expenses. See § 2-236 & § 2-237 relating to payment of expenses.

The town supervisor(s) with whom the petition has been filed must post notice of a hearing in 5 public places of the territory in his town and publish such notice at least twice within 20 days of receipt of the petition. The hearing shall be held within 30 days of receipt of the petition for the purpose of determining the legal sufficiency of the petition. Within 10 days after the hearing is concluded the supervisor(s) shall determine whether the petition is legally sufficient. The decision, with copies of the notice, objections and

minutes must be filed within 15 days after the hearing is concluded with the town clerk. Judicial review of the decisions relating to the legal sufficiency of the petition is available if instituted within 30 days of the filing of the decision through an Article 78 proceeding. An election to determine the question of incorporation must be held within the territory seeking to become incorporated. Specific time limits and notice requirements for the election are set out in §§ 2-212 and 2-214 of the Village Law. A majority of the valid votes cast is needed to incorporate. If less than a majority is attained, the proposal is rejected, and at least one year from the date of election must pass before another proceeding for incorporation may commence.

After 10 days and within 15 days from the filing of the certificate of election certifying that a majority of votes favored incorporation, and if no proceeding is instituted challenging the election, the town clerk must prepare and deliver a report of incorporation to the secretary of state, state comptroller, state board of equalization and assessment and to the county clerk and treasurer, and to the clerk of any other town in which any part of the territory is located. Village Law § 2-232 sets out in detail the contents of the required report. Upon the date of the filing of that report with the Secretary of State, the village is incorporated. The Secretary of State will issue a certificate of incorporation. However, incorporation is effective at a later date for certain purposes, (see Village Law § 2-234). The incorporation is effective immediately for the purposes of appointing officers, holding meetings of the trustees, appointing a zoning commission, engaging clerical assistants to the town clerk, etc. Various other matters, mainly financial, are postponed to the first day of January next succeeding the date of incorporation.

The town supervisor appoints a resident of the village to be village clerk within 5 days after the filing of the certificate of incorporation in the town clerks' office. After 30 and within 35 days of the appointment of the village clerk, the first election must be held to elect a mayor and 4 trustees. It is the responsibility of the village clerk to post and publish notice of this election within 10 days after his appointment. As soon as is practical after the election, the trustees and mayor shall appoint a clerk and a treasurer and such officers as are authorized by law.

For a period of two years after the date of incorporation of a village, all local laws, ordinances, rules or regulations which were effective in the town on the date of incorporation, remain effective in the village. However, the village board may replace such legislation, including zoning, with its own laws prior to the two year period. Most towns and district services are continued to the incorporated area from the date of incorporation until the first day of June following the first day of January next succeeding such date of incorporation. Note that newly incorporated villages have the same powers as other villages.

Mr. Don Reed

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The effect of incorporation on various districts is set out in Village Law § 2-254.

The fiscal impact of incorporation on the residents depends largely on the nature and scope of services which the village will provide. The village will derive revenue from real property taxation, charges for services provided, receipts from county sales tax, federal revenue sharing and state per capita aid. For further information, you may wish to contact Al MacNamara at 474-3642 or at 162 Washington Ave., Albany, NY 12231; or Jean Wickert, Director of Municipal Research and Statistics, State Department of Audit and Control, Alfred E. Smith Office Bldg., Albany, NY 12236.

I trust this information is helpful to you. Please feel free to contact us if we can be of further assistance.

Sincerely,

*Ellen McDonald*

Ellen McDonald  
Attorney

EM/jp