

March 19, 1980

~~Mr. Raymond Griffen
37 Cleary Road
Lake Ronkonkoma, New York 11779~~

~~Dear Mr. Griffen:~~

Elwin McNamara has requested that I correspond with you to supplement your recent conversation with him regarding the incorporation of villages. Since I'm not sure how much background research you have done on this subject, I'll summarize some of the major procedural steps, and outline some of the practical considerations. For purposes of our discussion, I'll assume that the proposed incorporation will occur within one town. Where a proposed village will be located in two towns, the procedure for incorporation will vary somewhat.

A village in New York State might be called a "voluntary" corporation. That is, it is incorporated as the result of specific local action. In New York, these actions are taken -- and the village incorporated -- pursuant to a general law; the Village Law. No action of the State Legislature is required. The specific procedures are detailed in Article 2 of the Village Law.

Incorporation Requirements

Generally, any area in a town not part of an existing village may be incorporated as a village provided that the area has at least 500 regular inhabitants and meets the boundary requirements set forth in the Village Law.

Incorporation requires the filing of a petition either by (1) at least 20% of the resident owners of real property within the area or (2) the owners of more than 50% of the assessed valuation of real property within the area. The petition must be filed with the supervisor of the town in which the area is located, and must be accompanied by a deposit of \$1,000. Within a specified time frame, a public hearing must be held to determine the legal sufficiency of the petition. This public hearing is not conducted to determine if incorporation is in the "public interest" or to review objections per se to incorporation. It is only to determine if the petition and the proposed incorporation are in conformance with the provisions of Village Law. Ten days after the hearing, the supervisor must make a

a decision as to the legal sufficiency of the petition. This determination is subject to judicial review.

Election Procedures

If the petition is deemed to meet the requirements of the law, an election to determine the question of incorporation is then held within the territory which seeks to be incorporated as a village. Only the residents of the area proposed to be incorporated are eligible to vote in the referendum. The validity and regularity of the election are subject to judicial review.

Results of Referendum

The next step in the process depends upon the result of the referendum. If the voters reject the proposed incorporation, at least one year must pass before another proceeding for the incorporation of the same territory may be commenced. However, if the referendum result for incorporation is favorable and not challenged in the courts, the Town Clerk, within strict time limitations specified in law, must prepare and deliver a report of incorporation to the Secretary of State, the State Comptroller, State Board of Equalization and Assessment and to the County Clerk and the County Treasurer. Upon the receipt of the report of incorporation, the Secretary of State issues a certificate of incorporation. The village is incorporated as of the date of the filing of the report of incorporation by the Secretary of State in his office.

Village Officers

Once the village is incorporated, the initial village officer is an interim village clerk, appointed by the town clerk within five days after the filing of the certificate of incorporation in the town clerk's office. Then, another election must be scheduled within 35 days to select the first village officers. A mayor and four trustees are chosen at this election. The newly elected mayor and trustees must appoint a clerk and treasurer within five days after the first election. They also may appoint any other officers as are authorized by law.

Effect of Incorporation on Residents

What effect will incorporation have on the area residents? Under the Village Law, for a period of two years after the date of incorporation of a village, all town local laws, ordinances, rules and regulations which otherwise would apply within the village remain in effect. However, since newly incorporated villages have the same powers as other villages have, the village board may replace such legislation, including zoning, with legislation enacted by the village board prior to the expiration of the two-year period.

Town and district services are also continued for a limited period of time, as specified in the law, and their cost and expense during this period is budgeted, levied, and collected from the entire town or district as if the village had not been incorporated. This allows time for a rational decision to be reached regarding the retention or abolition of current services, and provides a transition period to implement the changes which must occur.

The continuation of district services beyond the time specified in law is a complex issue which should be investigated thoroughly. In general, it appears that if the district spans the newly created town-outside-village/village boundary the district may continue, while if the district is contained wholly within the boundaries of the village it ceases to exist. Both the Village Law and Town Law (Article 12) should be reviewed on this issue.

As for the fiscal impact on the residents of the proposed village, much will depend on the nature and scope of services the new village will seek to provide for its residents in addition to its required functions. A village must have a governing body, a clerk, and a fiscal officer, and is responsible for conducting elections. It also must maintain the assessment roll. In meeting these requirements, the village may combine the clerk and fiscal officer into one position (Clerk-Treasurer), and utilize the town's assessment roll (that portion which is applicable to the village). Aside from these required services, the village may wish to consider the following items: fire protection, water, sewer, garbage collection and disposal, police, zoning, planning, code enforcement, recreational facilities, streets and highways, etc. It should be noted that there is no legal requirement that any of these services be provided by the village. If, however, the village decides to provide any or all of these services,

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it may do so either by performing the work itself or by contracting it out to either a private firm or another public entity. In short, the dollar value will be dependent upon the number, type and level of services to be provided and the method by which they are to be accomplished.

Furthermore, residents of the newly incorporated village will continue to bear their share of the costs of general administration of town functions, including the salaries of town officers, even where the functions are less than townwide in scope, such as with town highways. The town budget breaks down highway costs into four specific items, with separate limitations and specific sources from which funds for each may be raised. Three of the four items are townwide charges which consequently impact on village taxpayers. Although village property may be exempted from assessment for items three and four (highway machinery costs and snow removal expenses), resulting in some fiscal relief for village taxpayers, this arrangement is at the option of the town.

On the revenue side, villages derive their income from real property taxation, charges for services provided (i.e., sewer and water rents), license and rental fees, penalties on taxes, a share of the State mortgage tax, and sharing in the county sales tax (which is at the discretion of the county). The new village would also be eligible for federal revenue sharing and state per capita aid. You may wish to contact Joseph D. Hilton, Director of Municipal Research and Statistics, State Department of Audit and Control, Alfred E. Smith Office Building, Albany, New York 12236 on this subject.

Also, it is important to remember that village residents will remain responsible for paying their proportionate share of the indebtedness and liabilities incurred for special district purposes established by the town for their benefit (e.g., sewer, water, light, fire, park, health, police or any other special district for municipal purposes). Again, please refer to the Village Law for a more complete understanding.

Fire Protection

One service of vital concern to residents of an area considering incorporation is that of fire protection. For purposes of our discussion, I will assume that fire protection is currently being provided to the area of proposed incorporation, either by means of a fire district or fire protection district. Therefore, the creation of fire protection coverage is not an issue.

It is important to note that the boundaries of existing fire or fire protection districts relative to the proposed village boundaries are a significant factor in determining the effect of incorporation on fire protection.

If the boundaries of the village are coterminous with, or wholly include the territory of a fire district, such fire district ceases to exist in accordance with the time frame indicated in law. But if the fire district spans the newly created town-outside-village/village boundary, it may continue as a fire district, unless the resident taxpayers of either the incorporated or unincorporated portion of the district petition the town board for a resolution excluding the territory of the village from the fire district.

A fire protection district cannot continue to exist in the village if the boundaries of the village are coterminous with, or wholly include, the territory of the fire protection district. If the fire protection district spans the newly created town-outside-village-village boundary, it does continue, unless the town board alters the boundary of the fire protection district to exclude the territory of the village from the fire protection district or dissolves the fire protection district.

Fire Protection Options

Where an existing district will not continue to serve the village, the newly incorporated village has two options: (1) to organize a fire department or (2) to contract out for fire protection services.

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All property of a fire district which ceases to exist automatically becomes the property of the village and probably would be used by the village fire department.

If the newly incorporated village decides to provide fire protection the expense is a village budget item and funds would be raised through the village budgeting process.

In considering this method of providing fire protection, one should also note that there is no change to the membership of all existing fire, hose, protective or hook and ladder companies and all authorized squads or other units of the district, except that they become a part of the village fire department. Also, the Volunteer Firemen's Benefit Law protection continues in effect and must be paid for by the village.

I hope that this information is of assistance to you. This office stands ready to assist and advise you with regard to any questions which may arise. Please feel free to contact us in that event.

Sincerely,

Eric W. Holm
Associate Municipal
Management Consultant

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