

VILLAGE OF LOMBARD  
REQUEST FOR BOARD OF TRUSTEES ACTION  
For Inclusion on Board Agenda

\_\_\_\_\_ Resolution or Ordinance (Blue) \_\_\_\_\_ *Waiver of First Requested*  
\_\_\_\_\_ Recommendations of Boards, Commissions & Committees (Green)  
  X   Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: William T. Lichter, Village Manager

DATE: January 28, 2004 (B of T) Date: February 5, 2004

TITLE: 1S232 & 1S280 Fairfield Avenue (Hidden Valley Condominiums)

SUBMITTED BY: Department of Community Development *DCH*

BACKGROUND/POLICY IMPLICATIONS:

The Department of Community Development transmits for your consideration documentation requesting direction relative to a court-controlled annexation of the Hidden Valley Condominium development at 1S232 and 1S280 Fairfield Avenue. (DISTRICT #3)

Please place this item on the February 5, 2004 Board of Trustees agenda.

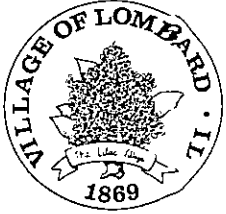
Fiscal Impact/Funding Source:

Review (as necessary):

Village Attorney X _____	Date _____
Finance Director X _____	Date _____
Village Manager X <u>W. T. Lichter</u>	Date <u>1/28/04</u>

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.





## MEMORANDUM

**TO:** William T. Lichter, Village Manager

**FROM:** David A. Hulseberg, AICP, Director of Community Development 507

**DATE:** February 5, 2004

**SUBJECT:** Hidden Valley Condominiums – Court Controlled Annexation

This memorandum requests direction from the Village Board relative to a proposed court controlled annexation of the Hidden Valley Condominium development at 1S232 & 1S280 Fairfield Avenue.

### **BACKGROUND**

The Hidden Valley Condominiums consist of two 33-unit condominium buildings and three parking garages, which were constructed in the late 1970s. Attachments A and B show the existing location of the subject property for your reference.

Insignia Homes received annexation and zoning approvals from the Village Board in 2003 to construct a 40-unit townhouse development on an adjacent vacant tract, known as Fairfield Glen townhomes (PC 03-21). A provision within the annexation agreement required the developer to work with the Hidden Valley Condominium Association and the Village to effectuate an annexation petition of the condominiums. State Statutes require that for voluntary annexations, all property owners of record and at least 51 percent of all electors must sign a petition for annexation. In this case, every ownership interest of every unit within Hidden Valley would have to sign the petition for annexation. However, not all of the condominium unit owners are willing to sign the petition, so a voluntary annexation cannot be pursued.

As an alternative, staff has been working with the Association and Insignia Homes to effectuate a court-controlled annexation of the condominiums via a court supervised petition. State Statutes (65 ILCS 5/7-1-2 et. seq.) provides for such an annexation, as follows:

1. A written petition is signed by a majority of the electors in the subject area requesting annexation;
2. The petition is filed with the Circuit Court Clerk;
3. Proper notification is given to applicable districts and affected owners;
4. A hearing is held by a presiding judge, who will consider the annexation petition and any objections to the annexation;

5. The presiding judge will either enter an order directing the request for annexation be submitted to the Corporate Authorities for final action or will dismiss the petition should any objections be deemed valid; and
6. Final approval of the annexation by the Village Board.

The Association has been able to secure annexation signatures of 82 percent of the homeowners to date. Of the twelve owners that did not sign, six refused and six could not be reached.

For your reference, a copy of Village Board Policy 87-2: Annexation Guidelines is also attached. The provisions associated with court supervised annexations as proposed are noted on pages 9 through 14 of the Annexation Guidelines attachment.

### **RECOMMENDATION**

Staff recommends that this item be placed on the February 5, 2004 Village Board agenda under Items for Separate Action. Staff believes that signatures of 82 percent constitute a large enough percentage to proceed with the court-controlled process and is seeking concurrence from the Board accordingly.

Please note that should the Board authorize the court-controlled annexation process to continue, it does not obligate the Board to accept the annexation – the Board will consider that issue upon receipt of the order from the presiding judge at the completion of the hearing process.

**ROOSEVELT RD**

**B4**

**B3PD**

High Point Centre

**13TH PL**

**GRACE ST**

**14TH ST**

Proposed  
Fairfield Glen  
Townhomes  
(approved  
as R4PD)

**PINE LN**

**14TH PL**

Hidden Valley  
Condominiums

**LOMBARD AV**

**FAIRFIELD AV**

**MARYS LN**

**15TH PL**

GR

Fairfield School

**16TH ST**

Providence Glen

**R2PD**

**16TH PL**

**Attachment B**

**ROOSEVELT RD**

**13TH PL**

**14TH ST**

**GRACE ST**

**PINE LN**

**14TH PL**

**LOMBARD AV**

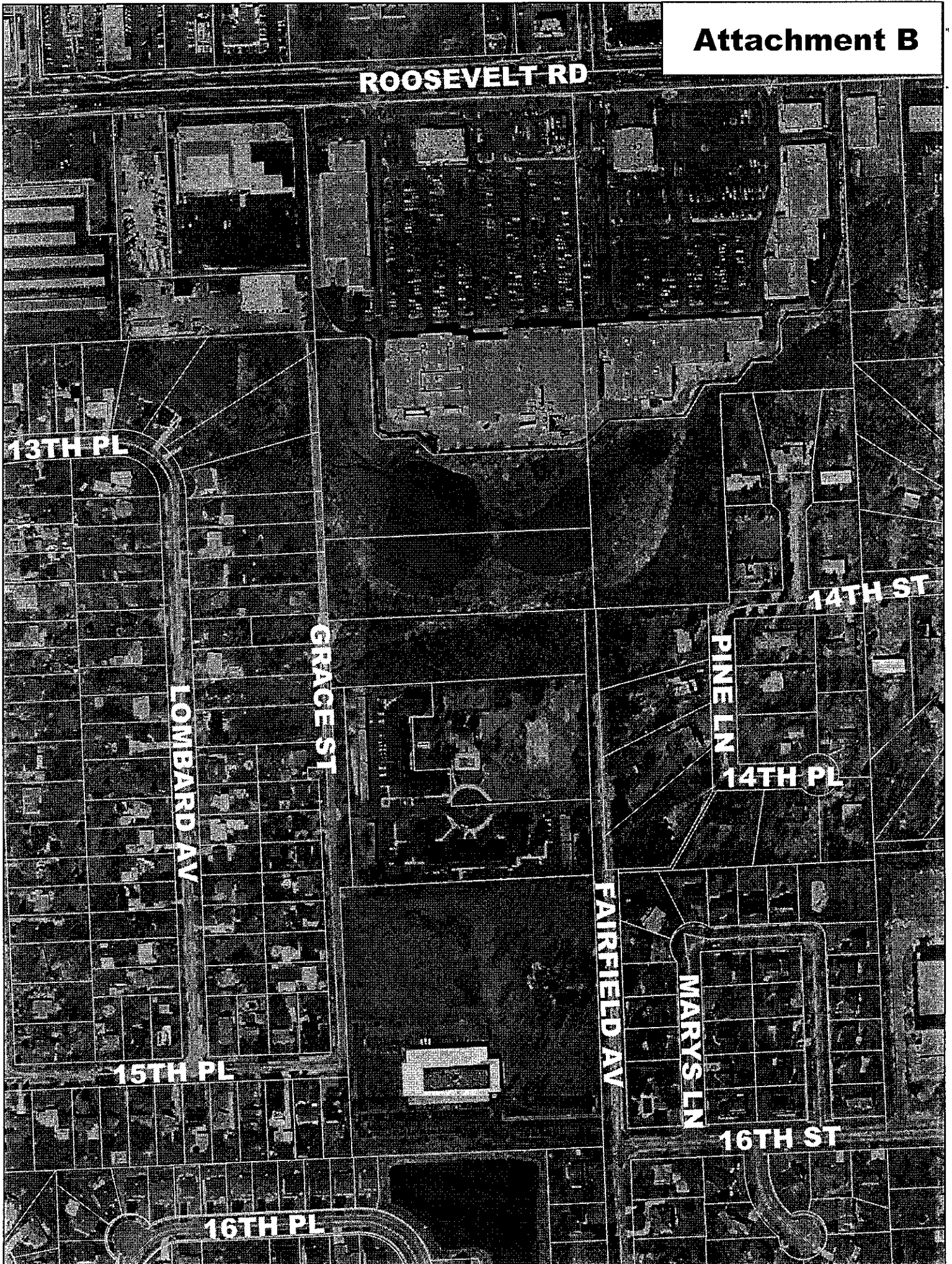
**FAIRFIELD AV**

**MARYS LN**

**15TH PL**

**16TH ST**

**16TH PL**





## VILLAGE OF LOMBARD

### VILLAGE BOARD POLICY MEMORANDUM

Subject: **Annexation Guidelines**

Number: 87-2

Date: April 9, 1987

#### **I. Purpose**

This policy outlines established guidelines intended to facilitate the orderly annexation of unincorporated areas into the Village of Lombard.

#### **II. Procedures/Guidelines**

A) There are four (4) Illinois State Statutory requirements which must be fulfilled for any type of annexation. These requirements are:

1) The area to be annexed must be unincorporated, and not incorporated into another municipality.

2) The area must be contiguous to the Village; however, real estate owned by a school district need only be adjacent.

3) Proper notice must be given to all fire protection and library districts which exercise jurisdiction over the area.

4) The new boundary of the Village as described in the petition for annexation must extend to the far side of any adjacent roadway and must include the entire land area of all roadways located within the area to be annexed.

B) Annexations made prior to any primary or general election shall be effective the day after the date of such primary or general election.

C) A certified copy of the ordinance, court decree, or resolution of annexation, together with an accurate map of the territory annexed must be filed with the Office of the DuPage County Recorder within ninety (90) days after the final step in the Village annexation process is completed. When annexation is voluntary, the annexation ordinance and the accompanying map of the annexation territory must also be filed with the DuPage County Clerk. The Plat of Annexation must be prepared by a registered land

surveyor or a duly employed municipal engineer registered under the laws of the State of Illinois, provided such engineer has had training in the field of civil engineering.

D) Liquor dispensing operations located in annexed territory may continue to operate in the same manner as they did before the annexation unless and until the license for the operation is changed by public referendum.

E) Identical petitions can be circulated, binding them into one (1) document, and filing them as a single petition with a total of the required number of signatures or more.

F) Territory annexed into the Village shall be automatically classified into the Village's R-1 Single-Family Residence District as specified in the Lombard Zoning Ordinance. However, when necessary, the territory shall be rezoned to more properly reflect the existing or proposed use of the land.

G) The Village can forcibly annex railroad property.

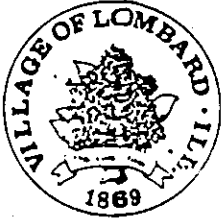
H) The Civil Practice Act shall apply to supplement the procedural provisions of the Annexation Act where the latter is silent. This Act provides that the practice of common law and equity shall prevail over all matters not regulated by statute or rule of court.

### **III. Legislation/Documentation**

A) Village of Lombard Annexation Guidelines.

B) Minutes, Village Board Meeting of April 9, 1987.





VILLAGE OF LOMBARD  
ANNEXATION GUIDELINES

November, 1986

Prepared by:  
Lombard Planning & Zoning Dept.

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## CHAPTER 1: PURPOSE

The annexation policies and guidelines described herein are intended to facilitate the orderly annexation of unincorporated areas into the Village of Lombard. This document is further designed to clearly set forth those procedures governing the annexation of land and specify those factors to be considered when evaluating an annexation proposal. In doing so, the annexation policies and guidelines described herein are intended to allow the Village to:

- A. Protect its interest, and maintain control of the uncompensated demands made upon the Village facilities and/or services from unincorporated areas.
- B. Protect residential, business, commercial, office, and industrial areas within the Village from encroachment by incompatible unincorporated uses and to ensure that land allocated to a class of uses shall not be usurped by other inappropriate unincorporated uses.
- C. Avoid the inappropriate development of unincorporated lands and to provide for adequate drainage, curbing of erosion, and reduction of flood damage.
- D. Provide a more rational pattern of relationships between incorporated and unincorporated land uses for the mutual benefit of residents, patrons, and employees.
- E. Avoid and prevent the overcrowding of unincorporated land, thereby ensuring proper living, shopping, and working conditions within such areas.
- F. Promote the recognition of aesthetics as a value and a standard throughout and around the Village.
- G. Lessen and avoid congestion on the public streets and highways.
- H. Ensure the provision of public necessities such as water, sewers, streets, and parks.
- I. Eliminate, isolate, or control the location of unavoidable nuisance-producing unincorporated uses.

- J. Conserve the taxable value of land and improvements throughout the Village.
- K. Advance the goals and objectives of the Lombard Comprehensive Plan.
- L. Incrementally work toward or expand the Village to its desired final boundaries.
- M. Improve the quality of services provided to those areas on the periphery of the community.

## CHAPTER 2: INTENT

The process of annexation is a necessary reality of any growing community. Facilitating the provision of public services, annexation can also often aid in the equitable distribution of the financial burden to those benefitting from the services.

It is the intent of this annexation policy to provide guidance and to aid in the necessary procedural and decision-making processes that are required when reviewing annexation proposals.

It is not the intent of this policy, nor would it be practical or equitable, to provide a standardized equation with preset results by which all annexation proposals are evaluated. While there are certain similarities from one (1) annexation proposal to another, the differences between annexation cases are significant enough to warrant a case-by-case analysis.

## CHAPTER 3: ANNEXATION STIPULATIONS AND REQUIREMENTS

### A. Factors Which Must Be Present In Any Statutory Annexation

There are four (4) Illinois State Statutory requirements which must be fulfilled for any type of annexation whether they are court controlled or non-court controlled. These requirements are:

1. The area to be annexed must be unincorporated, and not incorporated into another municipality.
2. The area must be contiguous to the Village; however, real estate owned by a school district need only be "adjacent" (See exhibits A and B).
3. Proper notice must be given to all fire protection and library districts which exercise jurisdiction over the area.
4. The new boundary of the Village as described in the petition for annexation must extend to the far side of any adjacent roadway and must include the entire land area of all roadways located within the area to be annexed.

### B. Other Considerations

There are several other significant considerations which are important in understanding how the annexation statute operates.

#### 1. Annexations Prior to Elections

No annexation made prior to any primary election to be held within the municipality affected thereby and after the time for filing petitions as a candidate for nomination to any office to be chosen at such primary election, or made within sixty (60) days prior to any general election to be held within the Village shall be effective until the day after the date of such primary or general election, as the case may be.

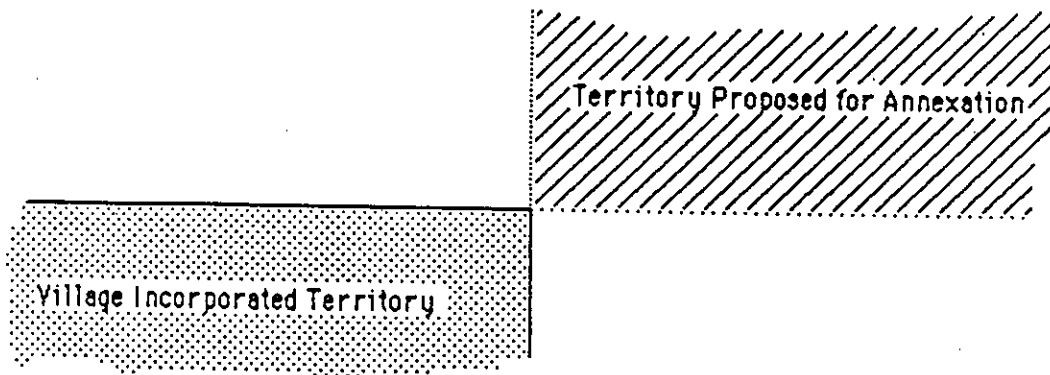
#### 2. Filing Requirements

A certified copy of the ordinance, court decree, or resolution of annexation, together with an accurate map of the territory annexed must be filed with the office of the DuPage County Recorder within ninety (90) days after the final step in the Village annexation process is completed. When annexation is voluntary,

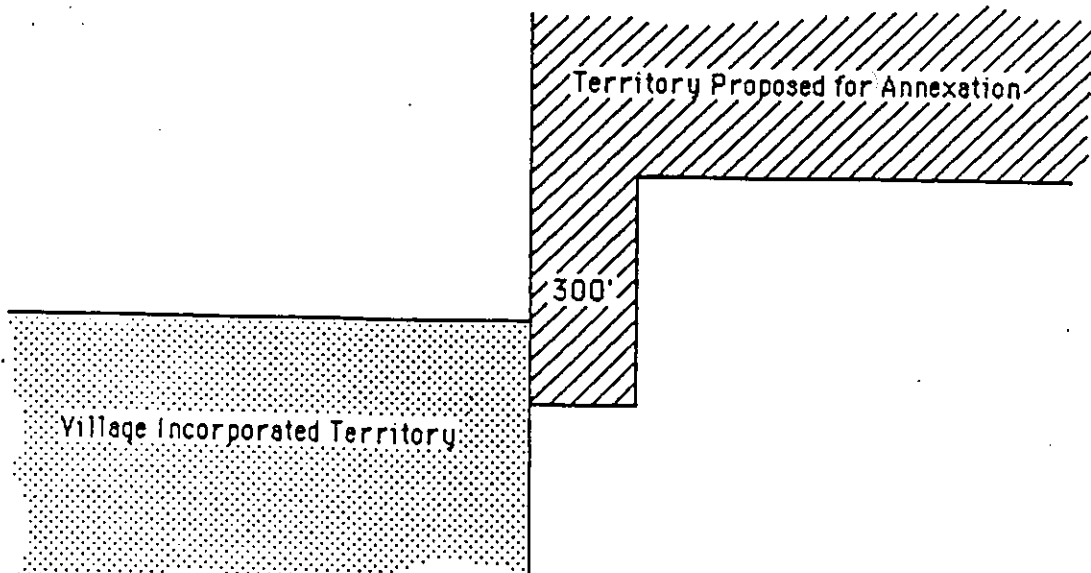
EXHIBIT A

CONTIGUITY FOR NON-HIGHWAY  
ANNEXATION

"Cornering" does not constitute contiguity.



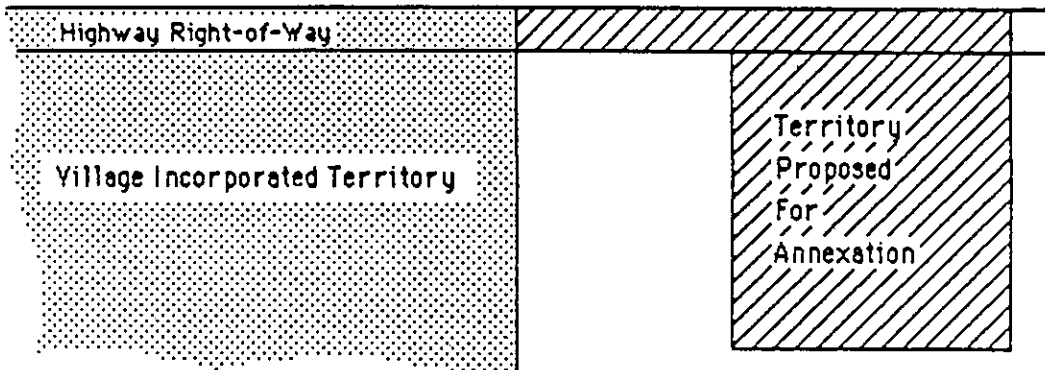
A strip of non-highway property 300 feet wide is enough to establish contiguity.



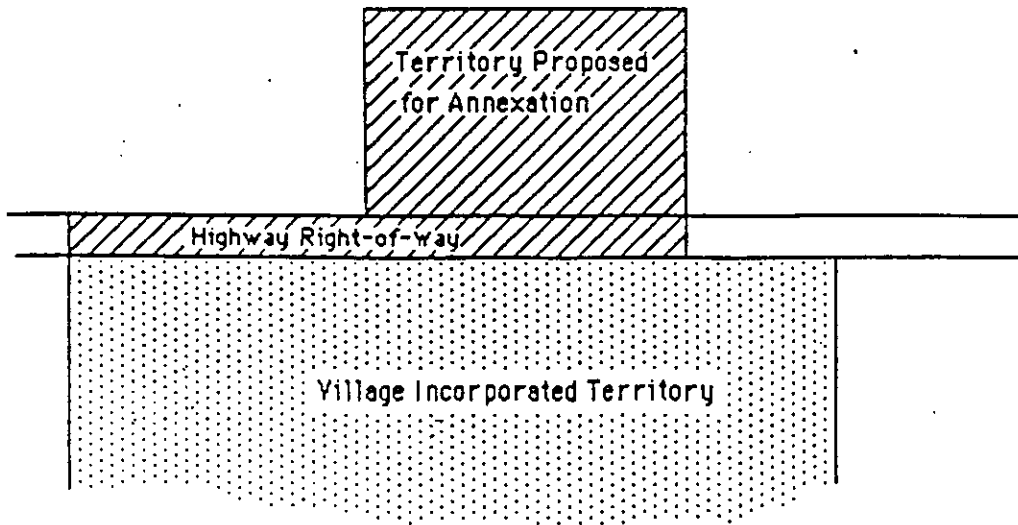
# EXHIBIT B

## CONTIGUITY FOR HIGHWAY ANNEXATION

Invalid "strip" annexation; no contiguity.



Valid highway annexation; "adjacent and parallel to."





the annexation ordinance and the accompanying map of the annexation territory must also be filed with the DuPage County Clerk. The Plat of Annexation must be prepared by a registered land surveyor or a duly employed municipal engineer registered under the laws of the State of Illinois, provided such engineer has had training in the field of civil engineering.

3. Annexation of Liquor Dispensing Operation

Liquor dispensing operations located in annexed territory may continue to operate in the same manner as they did before the area was annexed unless and until the license for the operation is changed by public referendum.

4. Multiple Petitions

It is possible to circulate identical petitions, binding them into one (1) document, and filing them as a single petition with a total of the required number of signatures or more.

5. Automatic Zoning of the Annexed Land

Territory annexed into the Village shall be automatically classified into the Village's R-1 Single-Family Residence District as specified in the Lombard Zoning Ordinance. However, when necessary, the territory shall be rezoned to more properly reflect the existing or proposed use of the land.

6. Annexing Railroad Right-of-Way

The Village can forcibly annex railroad property.

7. Application of the Civil Practice Act

The Civil Practice Act shall apply to supplement the procedural provisions of the Annexation Act where the latter is silent. This Act provides that the practice of common law and equity shall prevail over all matters not regulated by statute or rule of court.

## CHAPTER 4: METHODS OF ANNEXATION

There are two (2) basic types of annexing territory in the State of Illinois;

1. Court controlled annexations; and,
2. Non-court controlled annexations.

Under each of these two (2) broad types there are several individual methods of annexing land, the application of which will depend on the specific situation faced by the petitioner or the Village. (See Exhibit "C")

In addition, there is a preliminary step which can be taken in each type of annexation, which can limit or expand the impact of the annexation itself. This preliminary step is an annexation agreement which is explained in Chapter Five (5) of this article.

### Court Controlled Annexations

There are three (3) methods of court controlled annexations, two (2) at the initiation of the property owners and electors, and one (1) at the initiation of the Village.

#### A. Court Supervised Petition for Annexation

This method of annexation is very useful when a group of property owners wishes to have property annexed to the Village, when they do not control all of the land in the described area, and/or when their property is not immediately contiguous to the nearest boundary of the Village. It can also be used as a tool to force annexation of property into the Village, if the Village can cooperate with the other property owners in the unincorporated area to have them petition the court for annexation and if the territory to be annexed is laid out in such a fashion that the objecting property owner cannot have his property removed without destroying the contiguity of the remaining parcels of property.

The Village itself and the owners and electors are the principal parties in the annexation decision, under this method. The procedure is as follows:

#### The Annexation Petition and Its Filing

1. The annexation petition must contain a description of the area to be annexed. The area to be annexed must include the far side of any adjacent roadway

## EXHIBIT C

### METHODS OF ANNEXATIONS

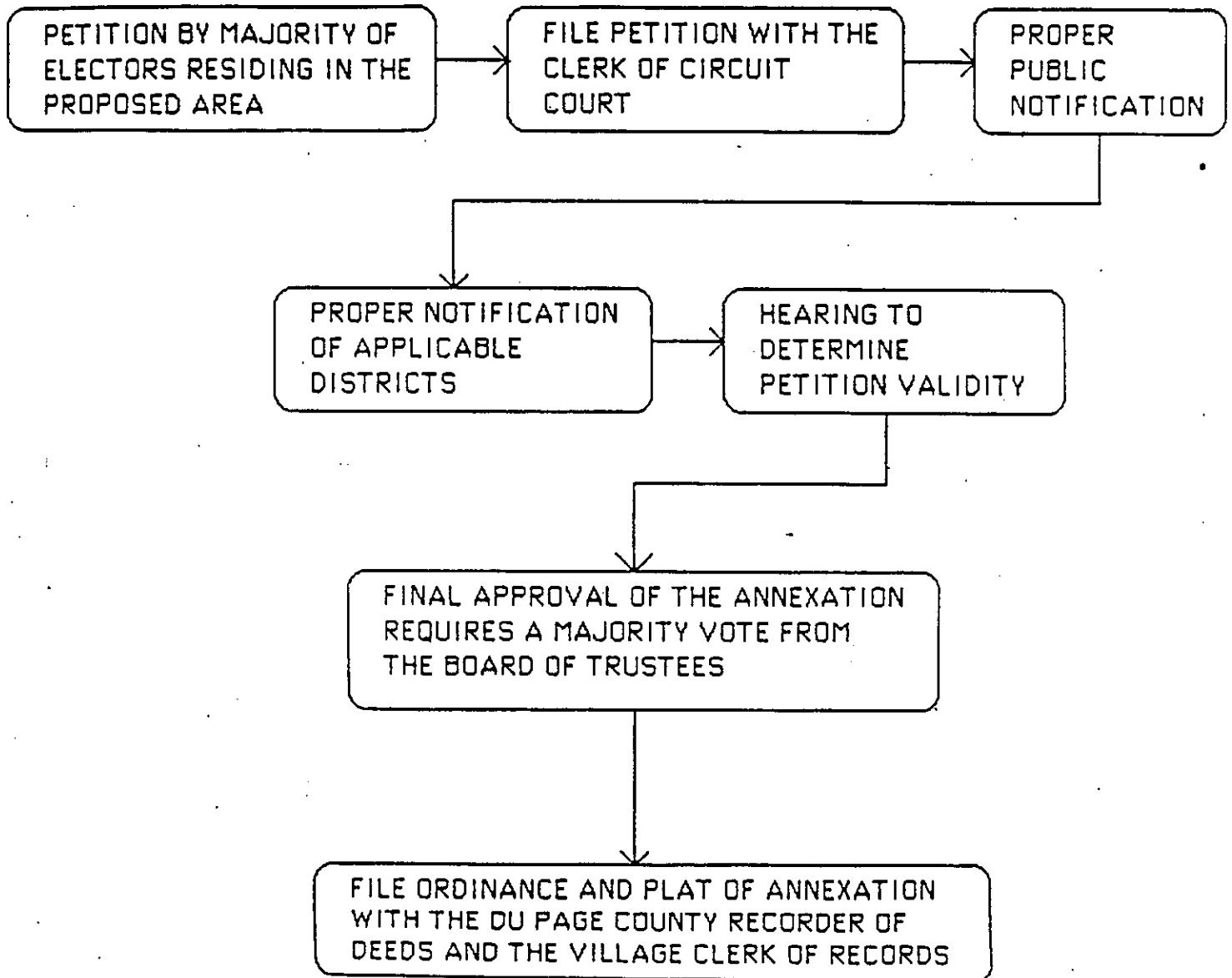
#### Court Controlled Annexation

- A. Court Supervised Petition For Annexation
- B. Court Supervised Petition For Annexation  
With An Election
- C. Court Supervised Ordinance For Annexation  
Initiated by the Village With An Election

#### Non-Court Controlled Annexation

- A. Voluntary Annexation
- B. Voluntary Annexation of Surrounded Territory
- C. Non-Voluntary Annexation / Forced Annexation
- D. Annexation of Property Owned By A Public Body

## COURT SUPERVISED PETITION FOR ANNEXATION



NOTE: Please refer to the Annexation policy text for detailed procedural and time-frame requirements.

and must also include the entire area of all roadways within the area to be annexed. There is no restriction as to the maximum or minimum size of the property which can be included against the objection of its owner, and there is no restriction that all of the property of each property owner be included in the petition.

2. The petition must allege that the properties are contiguous and are not within the corporate limits of any municipality.
3. The petition must be signed by a majority of the owners of record and by a majority of the electors residing in the territory at the time that the petition is filed with the Clerk of the court. An affidavit that the petition has been signed by the above parties as well as by owners of fifty percent (50%) of the property must be submitted. There is no requirement, however, that the petition when originally filed with the court be signed by owners of fifty percent (50%) of the property to be annexed. An elector is anyone who is registered to vote. This is mandatory, and the accompanying affidavit must attest thereto, only after the hearing removing any periphery property of objecting property owners from the property to be annexed.
4. It is not possible to annex two (2) separate tracts of land in a single petition in a court controlled annexation.
5. The petition must request annexation specifically to the Village and must request that the circuit court submit the question of annexation to the corporate authorities of the Village.
6. The petition must be filed with the Clerk of the circuit court along with a ten dollar (\$10) filing fee. The judge of the circuit court will then fix a date for hearing the petition.
7. Notice of the hearing must be given in the newspaper(s) published in the Village or in a newspaper in general circulation in both the Village and the area petitioning to be annexed. This notice shall be given not more than thirty (30) days nor less than fifteen (15) days before the hearing. The notice shall state:

- a. The fact that the petition has been filed.
  - b. The description of the area to be annexed.
  - c. The name of the annexing municipality (Village of Lombard)
  - d. The date fixed for the court hearing.
8. A copy of the notice must be filed with the Village.
  9. Notice of the court hearing on the annexation petition must be given to all applicable fire protection, library district, and park district trustees. The trustees of each district must be notified in writing by certified or registered mail or by personal service ten (10) days before any court hearing. An affidavit that such notice has been sent must be filed with the Village Clerk of Lombard. Failure to give notice in the required fashion will invalidate the annexation procedures. Notices must also be given to the Township Commissioner of Highways and the Township Supervisor.
  10. Once it has been filed with the circuit court, no petitioner may withdraw from the petition without the consent of the majority of the other petitioners or unless the court finds that his signature was obtained by fraud or misrepresentation.
  11. At least fifty percent (50%) of all owners of record must sign the annexation petition. This can include all title holders who were beneficiaries of a land trust, who received title shortly before the annexation petition was filed.

#### Objections

1. Objections by an "interested party" must be filed with the Clerk of the circuit court not less than five (5) days prior to the date fixed for the hearing. A resident-petitioner of the Village is an "interested party". An objector must be a natural, artificial, or quasi-artificial person, and he or she must be named in the pleadings.
2. Objections filed after the statutory period may be stricken by the court at the motion of the petitioner. However, objectors who file after the statutory time limit and after the court has reached

a decision on the validity of the annexation petition but who raise the question of proper notice and proper jurisdiction, may have the court consider their pleas.

3. The objectors can petition the court to remove their property from the property to be annexed if such property is on the periphery of the area to be annexed and if its removal would not destroy the contiguity of the property to be annexed. The objectors can also raise objections attacking the validity of the annexation proceedings and their compliance with statutory requirements. Objectors can waive their right to have their property excluded from the annexation and can elect to stand on their attacks to the validity of that annexation petition. Once the annexation petition has been filed with the court, only an objecting property owner can request to have his/her property removed from the property to be annexed.
4. The complaint in objection to the annexation petition can allege any of the following:
  - a. The property described in the petition is not contiguous with the Village.
  - b. The requisite number of electors or owners of record have not signed the petition.
  - c. The description of the territory in the petition is "inadequate".
  - d. The objector's property includes all of the following:
    - 1) It is on the perimeter of the territory to be annexed.
    - 2) It is not desired to be annexed by the objector.
    - 3) It is not necessary to establish contiguity with the Village.
5. Any matters going to the validity of an annexation petition including the four (4) objections set forth in the Statute are proper subjects of objection.

## The Hearing

The purpose of the hearing is to determine the validity of the annexation petition. If the petition is found valid, the court should:

- a. Enter an order describing the territory to be annexed.
- b. Find that the petition conforms to the requirements of this section of the state laws.
- c. Direct that the question of annexation be submitted to the Village authorities.
- d. Direct that a copy of the order requiring that the annexation question to be submitted to the Village authorities be sent to the Village Clerk.

The presiding judge has wide discretion to allow amendments to the annexation petition.

## Action of the Village Authorities

Final approval of the annexation requires a majority vote of the Village Board of Trustees. In keeping with the current policy of the Village Board of Trustees, public participation will occur at this time.

If the petition is denied, the question can still be submitted to the electors of the Village if a petition for a referendum is filed within thirty (30) days of the Board's denial.

## Filing Requirements

Following the hearing, a certified copy of the annexation ordinance, together with an accurate map of the annexed property must be filed with the office of the DuPage County Recorder. This must be done within ninety (90) days after the final step in the annexation process is completed.

The Plat of Annexation must be prepared by a registered land surveyor or a duly employed municipal engineer registered under the laws of the State of Illinois, provided such engineer has had training in the field of civil engineering.



B. Court Supervised Petitions For Annexation With An Election

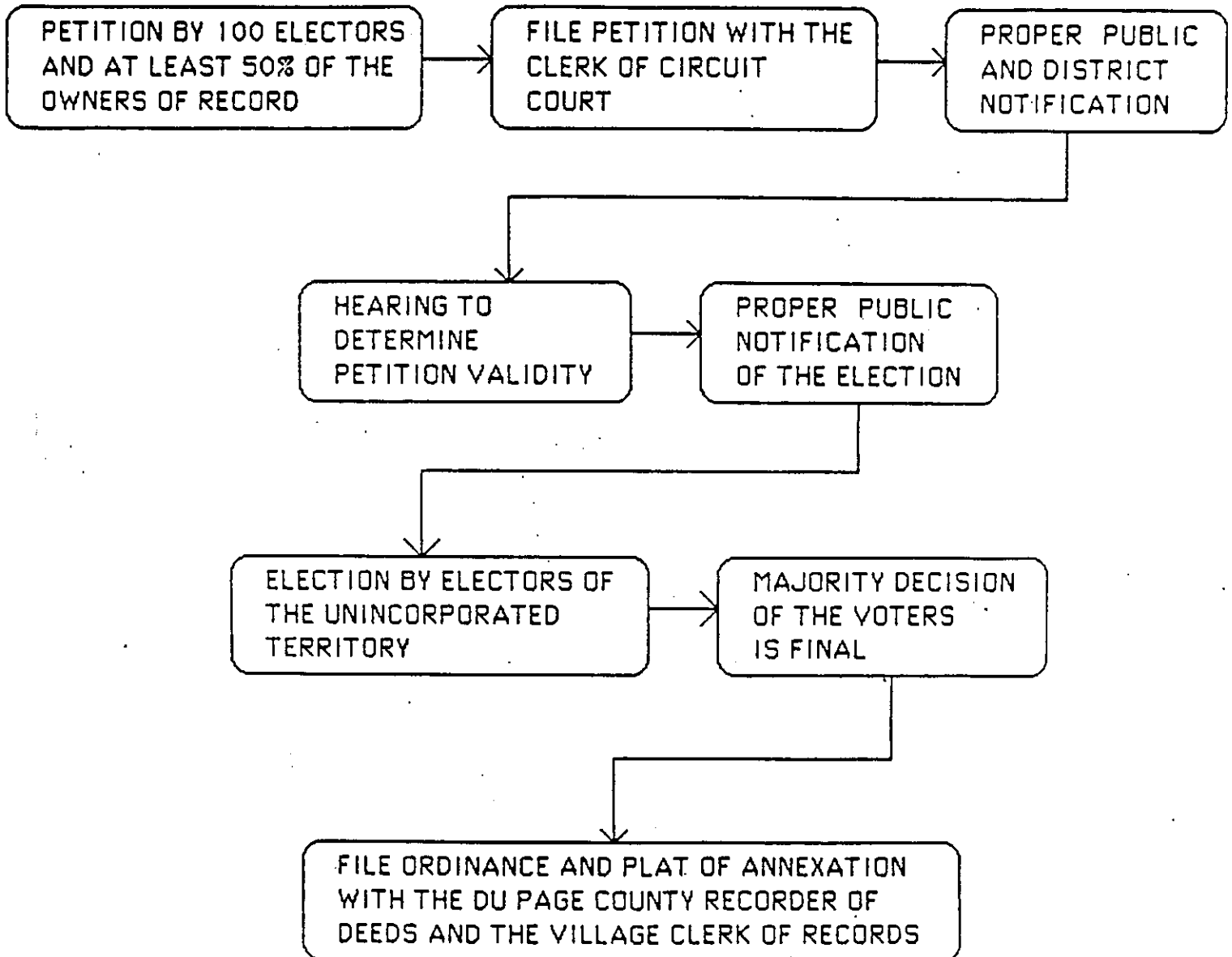
This method of annexation is nearly identical to the previously described method of annexing property, but the quantitative elements are much more precise. The petition must be signed by at least one-hundred (100) electors, and by the owners of record of at least fifty percent (50%) of the property. The territory to be annexed must be less than one (1) square mile in area; contain more than five hundred (500) inhabitants, must not be contiguous to any municipality having more than 100,000 persons, and cannot include any tract of land in excess of ten (10) acres without the express approval of the owner(s) of record. As a result, this method of annexation is rarely used due to its more restrictive requirements. The necessary procedure of this method is identical to the previously described method, except that an election in the unincorporated area is additionally required. This method of annexation would only be of use in a most unusual situation.

C. Court Supervised Ordinance for Annexation Initiated by the Village with an Election

With this annexation procedure, the Village initiates the action by passing an ordinance describing the area which it wants to annex. It presents this ordinance to the circuit court which sets a hearing date, and after proper notice, considers the validity of the petition after first removing the property at the periphery of the territory to be annexed, the owners of which do not desire to be annexed into the Village. If the ordinance is valid, an election is held in the unincorporated territory described in the ordinance. The decision of the voters is final, with a majority of the electors necessary to approve the annexation.

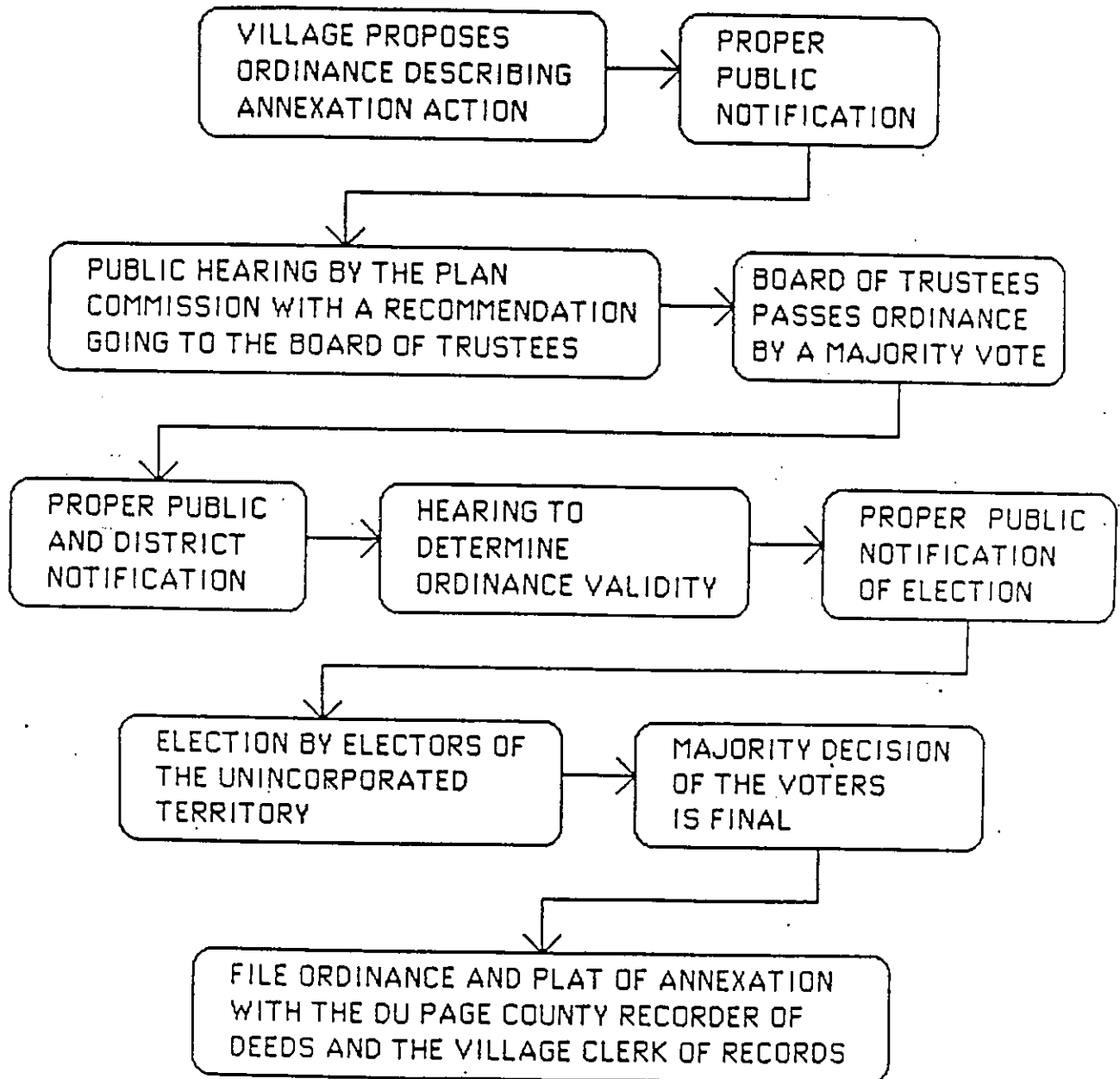
This method of annexation can be used in several instances. First, this method can be employed to annex a subdivided area adjacent to the Village. With the Village initiating the action, the requirement that fifty percent (50%) of the electors and fifty percent (50%) of the owners of the area to be annexed sign an annexation petition is avoided. This removes organization work and petition signing which can be very time consuming if there are a large number of property owners and electors in the territory. All that is required is that fifty percent (50%) of the electors vote in favor of the annexation in a vote on the issue.

COURT SUPERVISED PETITION FOR ANNEXATION  
WITH AN ELECTION



NOTE: Please refer to the Annexation policy text for detailed procedural and time-frame requirements.

COURT SUPERVISED ORDINANCE FOR ANNEXATION  
INITIATED BY THE VILLAGE WITH AN ELECTION



NOTE: Please refer to the Annexation policy text for detailed procedural and time-frame requirements.

Second, this method of annexation can also be used by the Village to establish priority over an area, and thus will totally exclude the ability of other municipalities to annex any portion of the territory described. This is at best a delaying tactic and cannot be used to "tie up" property in excess of ten (10) acres. However, since the Village initiates the action, this annexation technique can be used in the most timely fashion from the viewpoint of the Village.

Third, this annexation technique can also be used in conjunction with a consenting land owner to annex his land when separated by an objecting land owner with a parcel of property less than ten (10) acres in size. Since there is no requirement that the land owners of parcels of less than ten (10) acres must approve the annexation, the Village may pass an ordinance for annexation to include the land of the consenting land owner as well as that of the objecting land owner. The territory described will be annexed.

#### The Ordinance and Its Filing

1. The ordinance must contain a description of the area to be annexed. The area to be annexed must include the far side of any adjacent roadway and must also include the entire area of all roadways within the area to be annexed. Failure to include the required highway right-of-way will invalidate the annexing ordinance.
2. The ordinance must allege that the property is contiguous and "not within the corporate limits of any municipality." Failure to do so will subject the ordinance for annexation to a motion to dismiss because it is legally considered substantially insufficient.
3. The area to be annexed as described in the annexation ordinance cannot include property in excess of ten (10) acres without the consent of the owner, unless:
  - a. It is subdivided, or
  - b. It is bounded on three (3) sides by land subdivided into lots or blocks, or if separated from such lands by the right-of-way of railroads or other public utility or public highway.

This does not permit a municipality to carve out a piece of land less than ten (10) acres from a larger tract under one (1) ownership and annex it by ordinance without the consent of the owner.

4. It is not possible to annex two (2) separate tracts of land in a single petition in a court controlled annexation.
5. The ordinance must request annexation of the area specifically to the Village of Lombard and must request the judge of the circuit court to submit the question of the annexation to the electors of the unincorporated area.
6. The ordinance must be filed with the Clerk of the circuit court along with a ten dollar (\$10) filing fee.
7. The judge of the circuit court must fix a date for hearing the ordinance which is not less than twenty (20) nor more than thirty (30) days from the date when the ordinance was filed.
8. Notice of the hearing must be given in a newspaper(s) of general circulation in the Village and in the area to be annexed. Notice must be given not more than thirty (30) nor less than fifteen (15) days before the hearing. The notice must:
  - a. State that the ordinance has been filed.
  - b. Give a description of the territory to be annexed.
  - c. Give the name of the annexing municipality (Village of Lombard).
  - d. Give the date fixed for the hearing.
9. A copy of the notice must be filed with the Lombard Village Clerk.
10. Notice of the court hearing on the annexation ordinance must be given to all applicable fire protection, library, and park district trustees. The trustees of each district must be notified in writing by certified or registered mail or by personal service ten (10) days before any court hearing. An affidavit that such notice has been sent must be filed with the Clerk of court in which the annexation proceedings are pending. Failure to give notice in the required fashion will invalidate the annexation proceedings.

## Objections and the Hearing Process

The applicable guidelines and specifications for objections and the hearing process for the "Court Controlled Annexations" were described earlier under Section "A" of this Chapter.

## Election in the Unincorporated Territory

1. Providing that the annexation ordinance is valid, the court will:
  - a. Fix a date for a special election for the electors in the unincorporated territory to consider the annexation (this date shall be within sixty (60) days after the order of the court is entered).
  - b. Establish and fix the boundaries of one or more precincts within the unincorporated territory.
  - c. Designate one polling place for each precinct.
  - d. Appoint three (3) judges for each polling place and fix their compensation not to exceed ten dollars (\$10) per day.
2. A notice of the special election must be published at least twenty (20) days prior thereto by one (1) publication in a newspaper having general circulation in the unincorporated territory.
3. All cost must be borne by the municipality.
4. The election must be conducted in accordance with the Election Code, with the canvass of the votes cast in the manner prescribed by the court.
5. The decision of the voters is final with a majority of the electors necessary to approve the annexation.

## Filing Requirements

Following the hearing and the election in the unincorporated area, a certified copy of the annexation ordinance, together with an accurate map of the annexed property must be filed with the office of the DuPage County Recorder. This must be done within ninety (90) days after the final step in the annexation process is completed.

The Plat of Annexation must be prepared by a registered land surveyor or a duly employed municipal engineer registered under the laws of the State of Illinois, provided such engineer has had training in the field of civil engineering.

### Non-Court Controlled Annexation

There are several methods of non-court controlled annexations.

#### A. Voluntary Annexation

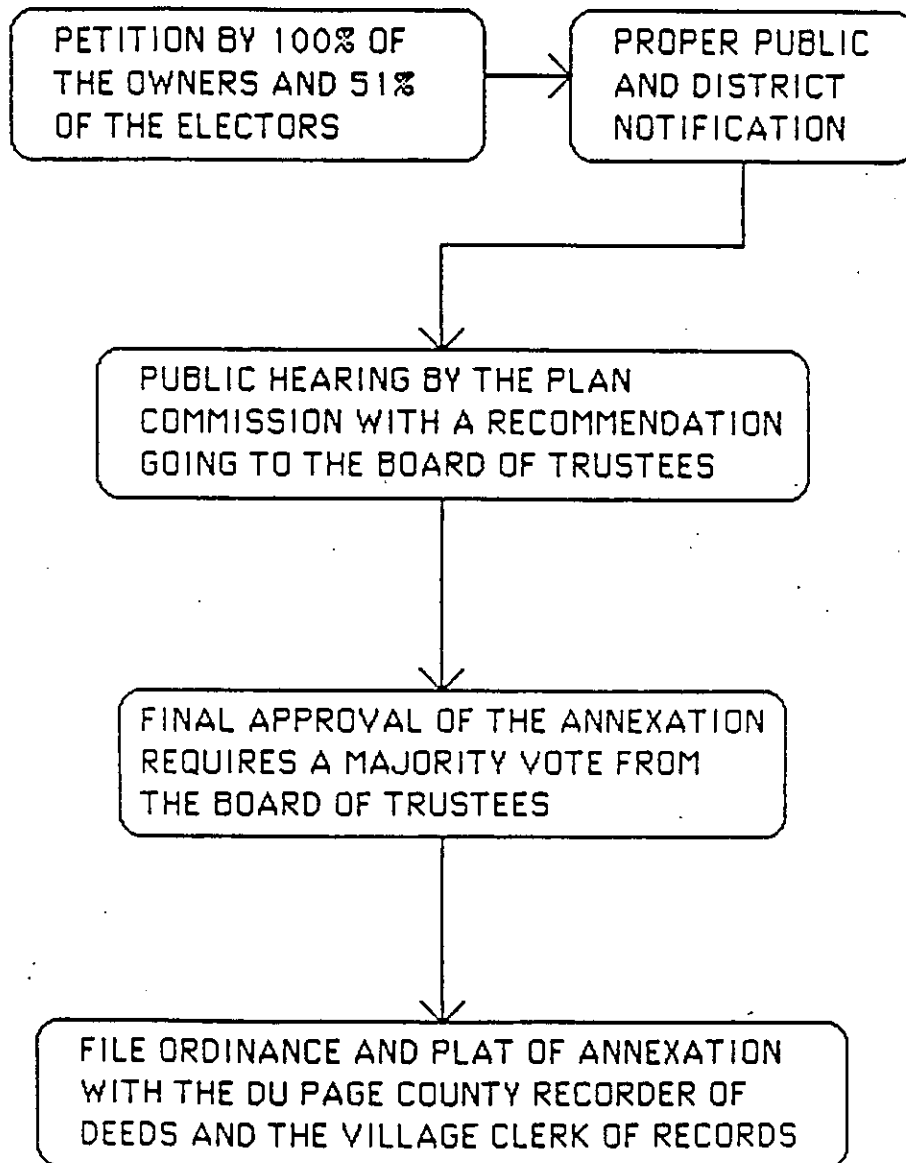
This is the easiest, simplest, and most popular method of annexing land in Illinois. All that is required, in addition to the general requirements discussed previously, is that a petition for annexation be prepared by the owners and electors of the area to be annexed. This petition must be signed by one-hundred percent (100%) of the property owners and fifty-one percent (51%) of the electors, if any, residing within the area to be annexed. The petition is presented to the Village Plan Commission for public hearing, and the property is annexed if a majority of the Village Board of Trustees acting upon the recommendation of the Plan Commission, vote in favor of the annexation; otherwise it is denied.

### Procedural Process

The petition and its filing:

1. The petition for annexation must describe the area to be annexed and must allege that the area is contiguous with the existing boundaries of the Village and is not within the corporate limits of of any other municipality. The area to be annexed must include the far side of any adjacent roadway and must also include the entire area of all roadways within the area to be annexed. Failure to include the required highway right-of-way will invalidate the annexation petition.

## VOLUNTARY ANNEXATION



NOTE: Please refer to the Annexation policy text for detailed procedural and time-frame requirements.



2. The petition must request annexation to the Village and must state that no electors reside in the described territory or that at least fifty-one percent (51%) of them join in the petition. It must be stated under oath.
3. The petition must be signed by all of the owners of record, along with fifty-one percent (51%) of the electors, if any, and must be filed with the Lombard Village Clerk. An elector is anyone who is registered to vote. There is no right of withdrawal in this type of annexation proceeding.
4. Notice of the date that the matter will be presented to the Village Board of Trustees must be given to all applicable fire protection and library district trustees. The trustees of each such district must be notified in writing by certified or registered mail or by personal service ten (10) calendar days prior to the first date set by the Village Board of Trustees for the adoption of the annexation ordinance. An affidavit that such notice has been sent must be filed with the DuPage County Recorder of Deeds. Failure to give notice in the required fashion will invalidate the annexation proceedings. Notices must also be sent to the Township Commissioner of Highways and the Township Supervisor.

Action of the Village Authorities:

1. The Village Plan Commission, and ultimately the Village Board of Trustees constitute the statutory conditions upon which they can exercise power. The sufficiency of the petition for annexation is determined at the time of passage of the ordinance of annexation.
2. A majority vote of the Village Board of Trustees, acting upon the recommendation of the Plan Commission after its public hearing, is required to annex the property in question. The vote must be by "ayes" and "nays" entered on the legislative records.
3. A certified copy of the annexation ordinance, together with an accurate map of the annexed area must be filed with the office of the County Recorder of Deeds where the property is located and also with the Village Clerk of Lombard. This must be done within ninety (90) days after the final step in the annexation process is completed. In addition, the annexation ordinance and the accompanying map must also be filed with the DuPage County Clerk. The Plat of Annexation must be prepared by a registered land surveyor or a duly employed municipal engineer registered under the laws of the State of Illinois, provided such engineer has had training in the field of civil engineering.

## B. Voluntary Annexation of Surrounded Territory

This method of annexation is limited to unincorporated areas which are wholly bounded by two (2) or more municipalities. The entire area is annexed if a majority of the property owners of the area first sign a petition for annexation to the Village of Lombard as one of the boundary municipalities, and if the Village Board of Trustees pass the annexing ordinance, it is annexed. The only additional limitation is that the area cannot increase the area of the Village by more than one-third (1/3) of its pre-annexation size.

There is no size limitation on the property which can be annexed over the objection of its owner. However, since the area to be annexed has to be wholly bounded by two (2) or more municipalities, it can only be used in a very few fact situations.

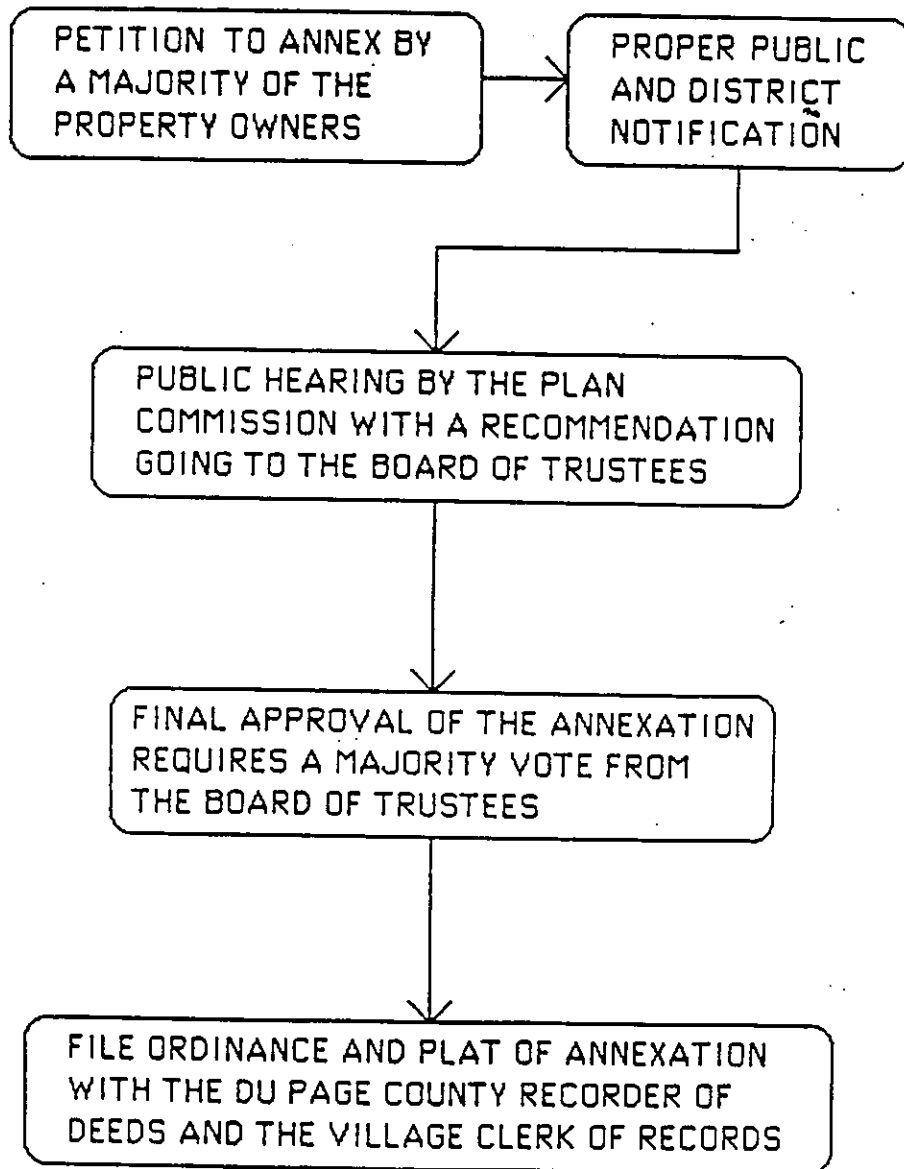
### Procedural Process

1. The petition for annexation must be signed by a majority of the property owners.
2. The territory to be annexed must:
  - a. Be bounded on all sides by at least two (2) municipalities.
  - b. Must not increase the size of the Village by more than one-third (1/3) of its pre-annexation size.
3. Notice must be given in a newspaper(s) of general circulation in the territory to be annexed at least ten (10) days before the annexation ordinance is passed.
4. Annexation is effected through passage of an annexation ordinance by the Village Board of Trustees acting upon the recommendation of the Plan Commission after its public hearing. A copy of the annexing ordinance and an accurate map of the territory shall be recorded with the DuPage County Recorder of Deeds.

## C. Non-Voluntary/Forced Annexation

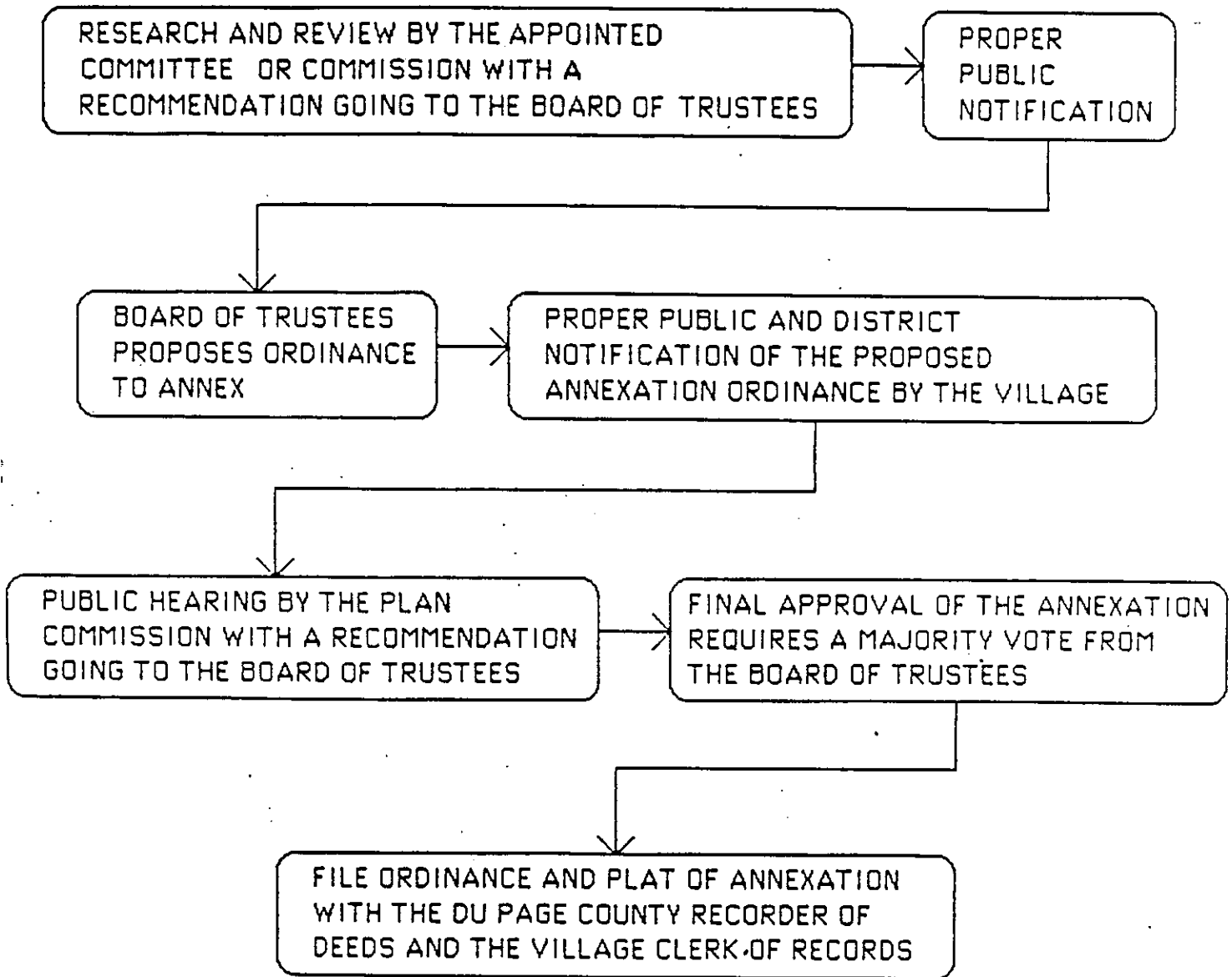
Under this annexation procedure, the action is begun and ended by the Village itself. The conditions under which this power can be exercised, however, are severely limited.

# VOLUNTARY ANNEXATION OF SURROUNDED TERRITORY



NOTE: Please refer to the Annexation policy text for detailed procedural and time-frame requirements.

NON-VOLUNTARY ANNEXATION  
/FORCED ANNEXATION



NOTE: Please refer to the Annexation policy text for detailed procedural and time-frame requirements.

One (1) of the requirements of this method is that the territory to be annexed must be "wholly bounded". The concept of "wholly bounded" though is not totally absolute. De minimis gaps in the perimeter around the territory in question will not abrogate the "wholly bounded" requirement. A gap of eight-tenths (8/10) of one percent (1%) in the total perimeter is a de minimis gap.

### Procedural Process

Unincorporated areas which can be forcibly annexed at the will of the Village must have the following characteristics:

1. Be sixty (60) acres in size or less.
2. Be wholly bounded by:
  - a. One (1) or more municipalities.
  - b. One (1) or more municipalities and a river or lake.
  - c. One (1) or more municipalities and an Illinois State Boundary Line.
  - d. One (1) or more municipalities and property owned by the State of Illinois, except highway right-of-way owned in fee by the state.
3. The Village has the power to forcibly annex wholly bounded portions of railroad right-of-way which are less than sixty (60) acres in size.

The initial annexation research and review process is carried out by a Committee or Commission deemed appropriate by the Village Board of Trustees. This Committee or Commission will then make recommendations to the Board of Trustees when appropriate. The Board of Trustees formally proposes an ordinance to annex. Notice of the intended passage of the annexation ordinance must be:

1. Published in a newspaper(s) of general circulation within the territory to be annexed at least ten (10) days before the passage of the annexation ordinance.
2. Given to all applicable fire protection and library districts which exercise jurisdiction over any portion of the territory to be annexed. The trustees of each such district must be notified in writing by certified or registered mail ten (10) days before the passage of the annexation ordinance. An affidavit that such notice has been sent must be filed with the DuPage County Recorder of Deeds. Failure to give notice in the required fashion will invalidate the annexation proceedings.

The ordinance must describe the area to be annexed. The area to be annexed must include the far side of any adjacent roadway and must also include the entire area of all roadways within the area to be annexed. Failure to include the required roadway right-of-way will invalidate the annexation ordinance.

A public hearing is held before the Plan Commission, after which their recommendation is made to the Board of Trustees. Final approval of the annexation requires a majority vote from the Board of Trustees.

A certified copy of the annexation ordinance, together with an accurate map of the territory annexed must be filed with the DuPage County Recorder of Deeds. This must be done within ninety (90) days after the annexation ordinance is passed. The Plat of Annexation must be prepared by a registered land surveyor or a municipal engineer with training in civil engineering.

D. Annexation of Property Owned By a Public Body

There are four (4) different methods of annexing property owned by a public body, depending on the type of public body owning the property.

1. Property Owned by the State or any Board, Agency, or Commission of the State

Property which is owned by the State of Illinois or any of its boards, agencies, or commissions can be annexed in a two (2) step method. First, the Village has to pass a resolution to annex the property. Second, this annexation resolution must be approved by either the Governor of the State of Illinois, or by the governing authority of the state board, agency, or commission. Without such approval, there is no annexation.

2. Property Owned by the Village

Property which is owned by the Village of Lombard can be annexed by resolution of the Village alone, provided that the property is contiguous, uninhabited, and unincorporated.

3. Property Used for Roadway Purposes

Roadway right-of-way under the jurisdiction of the State Department of Public Works and Buildings or DuPage County or township highway department may be annexed by the Village by its own annexation ordinance. The Village may not under this provision annex any



## CHAPTER 5: ANNEXATION AGREEMENTS

Except for the annexation of a single-family lot, all proposed annexations to the Village of Lombard should include an annexation agreement between the Village and the owner(s) of the property petitioning for land annexation. Illinois law provides that, "property may be annexed to a municipality subject to certain conditions specified in an annexation agreement between a municipality and owners of record of the property to be annexed."

### A. Reasons for Annexation Agreements

The provisions of the Illinois State Statutes which govern annexation agreements do not create a specific additional method of annexing property to the Village. Any property which is the subject of an annexation agreement must be annexed to the community pursuant to one (1) of the available statutory methods. An annexation agreement does, however, provide a means by which the property owners and the Village may enter into a contract which will control various aspects of the use and development of that property after it is annexed.

The contract between the property owner and the Village spells out the various duties and responsibilities of both parties with respect to the property. Although an annexation agreement can be used in any annexation of existing developed property, it is tailor made for the development of raw land. The annexation agreement is especially attractive from the perspective of the owner-developer, since the contract typically provides that the property will not be rezoned during the length of the agreement. This is crucial for the development of a large tract of land when the construction planned for will take several years.

This agreement is also desirable to the developer since it can insure that municipal fees to be collected from the development of the property will be increased only in accordance with the agreement and that the same limitations may also apply to the building and subdivision codes of the community. All of this reduces the possibility of unpredictable change occurring in the future, and thus encourages the development of the large tracts of property.

The Village is also interested in the annexation agreement since it can negotiate with the developer to specify his site plans and architectural design in advance and require that he abide by them. It can also provide a vehicle for shifting some of the utility costs



to the developer, who may donate a school site, provide the monies for the extension of a sewer line to his property, construct improvements to the adjacent roadway network, pre-pay the tap-on fees for the expansion of the sewage treatment plans, and/or donate monies to various public bodies.

The development of any large tract of land requires substantial investment of both time and money by the developer and the various public bodies. Both parties have an interest in the "proper" development of the land, although these interests are frequently not identical. The annexation agreement provides a vehicle for detailed negotiation and compromise between the respective parties to reach a point of mutual agreement.

B. Annexation Agreement Contents (Also see Exhibit "D")

Each annexation agreement may include the following:

1. A provision that the area will be annexed according to Article 7 of the Lombard Municipal Code.
2. A provision that various Village ordinances will be continued in effect, be amended, or continue in effect as amended. These ordinances can include any ordinance relating to subdivision controls, zoning, official plan, and building, housing and related restrictions. This is subject to the proviso that any public hearing required by law to be held before the adoption of any ordinance amendment, as specified in the annexation agreement, will be held prior to the execution of the agreement, and all ordinance amendments provided in the agreements shall be enacted according to law.
3. A provision limiting increases in the permit fees required by the Village.
4. A provision that the owner shall contribute either land or monies, or both, to the Village and to other Village corporations having jurisdiction over all or part of the land.
5. A provision granting utility franchises for the land.
6. A provision allowing any other matter not inconsistent with the provisions of the Lombard Municipal Code, nor forbidden by law.

# EXHIBIT D

## PROVISIONS FOUND IN ANNEXATION AGREEMENTS

### Recital of Purposes

- Description of intent of parties in entering into a contract
- Description of bargaining objectives, including a listing of public benefits
- Description of detriments which are likely to occur if any party should become in default of the contract

### Contract Enforcement Provisions

- Effective date conditioned upon specific events
- Definition of terms
- Performance of covenants
- Procedures for declaring a default
- Remedies for default or failure of conditions
- Arbitration procedures, if any
- Procedures for enforcing covenants to be attached upon the conveyance of deeds
- Procedures for providing required notices
- Conditions for assignment of obligations
- Amendment procedures
- Agreements to execute specified documents
- Declaration of governing laws
- Severability of terms in the event any are declared illegal or void

### Land Use Provisions

- Zoning designations upon annexation
- Number, location and types of units to be permitted
- Topographical features, including floodplains and slopes
- Preservation of existing features
- Proposed roadways, parking areas, recreational and other public facilities, water and sewer lines, and retained open space
- Deeding and dedication of land, water rights, rights-of-way and easements for public purposes

### Specific Responsibilities for Public Improvements

- Public improvements required by developer
- Public improvements not required by developer
- Public improvements to be made by the Village
- Municipal services to be provided by the Village
- Schedule of public improvements
- Agreements to phase development to public improvements

### Financial agreements

- Taxation, including abatements and special districts
- Fees, including Village consultants, inspections, permits, utility taps, site plan review and annexation processing
- Schedule of expected fiscal impacts on Village's operating and capital budgets
- Cost sharing for public improvements, including public financing, and developer contributions
- Performance bonds and alternative forms of performance security

### Environmental and Construction Provisions

- Stormwater management facilities
- Grading standards
- Sediment control during construction
- Use, stockpiling and transportation of sand and gravel
- Storage of construction debris
- Use and location of construction trailers
- Access routes to construction sites
- Retention/replacement of trees
- Landscaping along rights-of-way
- Buffers and visual screens for transition between uses

### Special Provisions

- Conditions to which contract duties are subject
- Agreements to cooperate in obtaining approvals required by other governmental bodies
- Agreements to provide additional municipal services
- Acknowledgements of needs or conditions about which the parties are unable to make commitments
- Contributions to off-site improvements or programs

### Exhibits

- Maps
- Property descriptions
- Schedules
- Staff/consultant reports
- Authorizations to enter into agreement

C. Applicability

An annexation agreement may be incorporated as part of any annexation of areas to the Village as provided in Article 7 of the Lombard Municipal Code. Thus, an annexation agreement can be included as part of a voluntary petition between the property owners and the Village. It can also be incorporated as part of an annexation where the owners of record and the electors present a petition of annexation to the circuit court. Conceivably, it can also be used along with the forced annexation provisions, although the motive to do so would be very slight on the part of the Village.

D. Parties

The parties to the annexation agreement must be the Village and one or more of the owners of record of the area to be annexed which will be subject to the provisions of the contract. Moreover, the agreement is binding on the successor owners of record of the land which is the subject of the agreement and upon successor Village Boards of Trustees. This insures that the annexation agreement will bind the development corporation or other purchasers who have options on the property at the time that the owner of record enters into the agreement. This provision also protects the owner of the property from subsequent changes of the corporate authorities who might be unwilling to abide by the decisions of a previous administration. Both sides are protected from any changes due to the subsequent sale of the land or election of other officials for the term of the annexation agreement. The annexation agreement or a memorandum of the agreement should be recorded with the DuPage County Recorder of Deeds. This will insure against the real or manufactured surprise of a subsequent purchaser of the property who discovers he has bought the agreement along with the land.

E. Term and Amendment of the Agreement

The length of the annexation agreement is limited by Illinois State Statute to ten (10) years for non-home rule communities. The relatively long length of the term of the annexation agreement ensures that the provisions stipulated in the agreement will probably not lapse until the development of the entire parcel is completed.

The Village Board of Trustees must hold a public hearing upon the proposed annexation agreement or amendment thereof, with notice given in a newspaper(s) of general circulation thirty (30) to fifteen (15) days before the date of the meeting as specified in the notice. The agreement and any amendment thereto shall be executed as amended by the Village President only after an ordinance authorizing such execution or amendment has been passed by a vote of two-thirds (2/3) of the membership of the Village Board of Trustees.

F. Enforcement

Any party to the agreement may by civil action, mandamus or other proceeding, enforce and compel performance of the agreement. Declaratory relief under the Declaratory Judgment Act has been held to be an appropriate remedy for determining the right of the parties under an annexation agreement.

## CHAPTER 6: EVALUATION OF ANNEXATION COSTS AND BENEFITS

Depending upon the individual circumstances, the annexation of unincorporated areas may either benefit the Village or place a strain on an already limited budget through the need to provide additional services and infrastructure improvements. Similarly, annexation into the Village may either benefit the annexing property owners through the provision of needed public services or further drain a limited household budget by increasing the taxes of a homeowner.

Recognizing this, it is important for both the Village and annexing property owners alike to carefully weigh the costs and benefits they will incur from an annexation. The following is a summary of those factors which should be evaluated in considering each annexation proposal.

### A. Costs

#### 1. Incurred by the Village

- a. Provision of necessary infrastructure improvement and maintenance costs
  - Rights-of-way
  - Streets
  - Streetlighting
  - Sidewalks
  - Sanitary sewers
  - Storm sewers
  - Water mains
- b. Provision of Fire and Police protection
- c. Potential reduction of public non-resident fees
  - Sewer service
  - Water service
  - Library district
- d. Alienation of property owners, if annexation is forcible.

#### 2. Incurred by Annexing Property Owners

- a. Annexation application fee, if annexation is voluntary
- b. Village property tax

- c. Village utility tax
- d. Village utility fees
- e. Business permits and licenses, when applicable

B. Benefits

1. Received By the Village

- a. Increased tax revenue
  - Property taxes
  - Utility taxes
  - Intangible, utility franchise, real estate transfer, and dog taxes
- b. Impact fees
  - Transportation infrastructure fees and/or improvements
  - Utility infrastructure fees and/or improvements
  - Park donations and/or improvements
  - Other donations and/or improvements
- c. Increased revenue from licenses and permits
  - Village building, sign, and zoning permits, when applicable
  - Village business permits, when applicable
  - Beer and liquor licenses, when applicable
  - Fines and forfeitures
- d. Increased revenue from utility fees
  - Water and sewer fees
- e. Intergovernmental revenues
  - State grants and revenue sharing based on population and/or area

2. Received By Annexing Property Owners

- a. Direct financial benefits
  - Fire insurance premiums will generally be smaller

- Homeowners' insurance premiums will usually be smaller
- Water rates may be reduced
- Sewer rates may be reduced
- Paying Village taxes will normally result in larger federal and state income tax deductions

b. Benefits through the Provision of Services

- More responsive fire protection
- Increased police protection/security
- More responsive infrastructure maintenance
- Street improvements
- Street lighting
- Water service
- Sewer service
- Village library and park services and use
- Increased political representation, voting power

C. Other Factors To Be Considered

1. The existing tax base of the area(s) to be annexed
2. New industry or new development anticipated in the area(s)
3. The predisposition of the residents and property owners involved in annexation
4. The coincidence of the areas with such physical and natural features as railroad tracks, streams, major utility easements, and the like



TO ADD TO THE AGENDA

11. It was moved by Trustee VanDenEeden that the Lombard Village Board add to the agenda as an emergency item the concrete pavement rehabilitation contract, seconded by Trustee Davis. Upon roll call:

Ayes: Vazquez, VanDenEeden, Francis, Davis & Manna  
Nays: None

Motion Carried

AWARD CONTRACT--CONCRETE PAVEMENT REHABILITATION

12. It was moved by Trustee Francis that the Lombard Village Board concur with the recommendation of the Public Works Department and award a contract to the lowest responsible bidder, Triggi Construction, Inc, of Medinah, in the amount of \$265,295.00, seconded by Trustee Davis. Upon roll call:

Mr. Frank Nardulli, 442 N. Austin, Chicago, spoke regarding his bid and explained that the addendum sent out was not received until April 8, 1987 and he was unable to include it's in the bid. It was explained to Mr. Nardulli that once all bids are opened no changes can be made.

Ayes: Vazquez, VanDenEeden, Francis, Davis & Manna  
Nays: None

Motion Carried

\* CONCUR WITH PLAN COMMISSION RECOMMENDATION--ANNEXATION GUIDELINES

13. It was moved by Trustee Davis that the Lombard Village Board concur with the recommendation of the Plan Commission and Annexation Committee to approve the final draft of the Lombard Annexation Guidelines, seconded by Trustee VanDenEeden. Upon roll call:

Ayes: Vazquez, VanDenEeden, Francis, Davis & Manna  
Nays: None

Motion Carried

ADOPT ORDINANCES 2944, 2945, 2946, RESOLUTIONS R-92-87 & R-93-87, AGREEMENT WITH IDOT FOR BUTTERFIELD ROAD IMPROVEMENTS

14. It was moved by Trustee VanDenEeden that the Lombard Village Board adopt an MFT Resolution R-92-87 authorizing agreement with IDOT regarding Butterfield Road improvements, seconded by Trustee Manna. Upon roll call:

Ayes: Vazquez, VanDenEeden, Francis, Davis & Manna  
Nays: None

Motion Carried

It was moved by Trustee VanDenEeden that the Lombard Village Board adopt Resolution R-93-87 a resolution authorizing the Clerk and President to sign an agreement regarding Butterfield Road improvements, seconded by Trustee Davis. Upon roll call:

Ayes: Vazquez, VanDenEeden, Francis, Davis & Manna  
Nays: None

Motion Carried

It was moved by Trustee VanDenEeden that the Lombard Village Board suspend the rules, waive first reading and pass on second and final reading Ordinance #2944, an ordinance regarding

