

Request For Board Action

REFERRED TO BOARD: August 17, 2015

AGENDA ITEM NO: 8

ORIGINATING DEPARTMENT: Administration

SUBJECT: An Ordinance Memorializing a Pre-annexation Agreement Accepting a Grant of Easement and Authorizing the Extension of Water Services

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

At the April 20, 2015 Village Board meeting, the Village Board approved a resolution authorizing the execution of a pre-annexation agreement with Northbridge Church. The Resolution approved the agreement in principle and provided a certainty to the petitioner that an agreement was pending. In order to be legally binding on all parties, the pre-annexation agreement needs to be re-adopted in ordinance form, and executed by all owners of record for the subject party. The location of the water easement that has been agreed to has been reviewed and found to be acceptable by staff. The engineering plans for the site containing water main extension details has been reviewed and also found to be acceptable pending final permitting by the IEPA.

History:

Northbridge Church has purchased property east and adjacent to the IDI development on 172 along the eastern flank of the Village. They are planning the construction of a church on that property and are desirous of having water service from the Village for fire flow. At this time they are proceeding to develop the property in unincorporated Lake County. Due to the strategic location of the property being in position to allow extensions of the water mains to property east on 173 and to allow further annexation to the Village eastward, an agreement has been developed to allow the Village to serve the property with water and maintain the ability to extend the Village to the east while the property remains in unincorporated territory. The Church will provide a water easement to allow the extension of the water main to the east. The term of the agreement is 20 years and allows the church at least 5 years to remain in the county without being forced to annex and thereafter they would annex and extend water mains if a property to the east needs water or annexation.

FINANCIAL IMPACT: None

DOCUMENTS ATTACHED:

1. Resolution
2. Agreement

RECOMMENDED MOTION:

MOTION TO APPROVE An Ordinance Memorializing a Pre-annexation Agreement Accepting a Grant of Easement and Authorizing the Extension of Water Services

ORDINANCE NO. _____

**AN ORDINANCE MEMORIALIZING A PREANNEXATION AGREEMENT,
ACCEPTING A GRANT OF EASEMENT
AND AUTHORIZING THE EXTENSION OF WATER SERVICE**

WHEREAS, the Northbridge Church, Inc. is the owner of certain property located on the north side of Illinois Route 173 west of Crawford Road which is contiguous to the Village, and

WHEREAS, the Northbridge Church property is currently unincorporated and is not served with municipal water, and

WHEREAS, the Northbridge Church previously petitioned the Village for the right to connect to its existing water line, which currently terminates immediately west of the Church's property, and

WHEREAS, the Village Board previously agreed in principle to authorize the Mayor and Administrator to execute a preannexation agreement, and

WHEREAS, the said draft preannexation agreement was prepared by the Village Attorney in the form attached as Exhibit A hereto, which form is acceptable to the Northbridge Church, and

WHEREAS, the Northbridge Church has further caused a plat of easement to be drawn up in a form that is substantially acceptable to the Village, subject to possible minor modifications on legal descriptions and minor engineering details, and

WHEREAS, the said plat of easement is attached as Exhibit B hereto, and

WHEREAS, the Village Attorney has prepared a Deed of Dedication of Easement to accompany the said plat, which is attached as Exhibit C hereto, and

WHEREAS, the Corporate authorities deem it appropriate to take the next step by accepting the said easement and authorizing the extension of the Village's water main, consistent with the terms and conditions of the Exhibit A preannexation agreement,

NOW THEREFORE, BE IT ORDAINED by the Village of Antioch, Lake County, Illinois, as follows:

SECTION ONE: The preannexation agreement, attached as Exhibit A is hereby approved and memorialized, including specifically, but without limitation, the agreements for the Northbridge Church to provide a water utility easement to the Village, and for the Village to permit the Northbridge Church to install an extension of the Village's water main and to connect to it.

SECTION TWO: The plat of easement set forth as Exhibit B hereto is hereby approved.

SECTION THREE: The deed of dedication of easement set forth as Exhibit C hereto is hereby approved.

SECTION FOUR: The Mayor, Administrator and all Village officials are directed to execute the preannexation agreement and all related documents and to take all other necessary or helpful steps to effectuate all of the terms, spirit and intent of the preannexation agreement.

SECTION FIVE: The Clerk and Village Attorney are directed to record a certified copy of this Ordinance, including the preannexation agreement, the plat of easement, and the deed of dedication as soon as practical.

SECTION SIX: The Administrator is directed to take all actions necessary to allow the installation and extension of the water main within the demised easement, and the connection thereto, subject to all applicable codes and sound engineering practices.

SECTION SEVEN: This resolution shall take effect immediately upon passage.

PASSED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF ANTIOCH, ILLINOIS,
ON THIS ____ DAY OF _____, 2015.

ATTEST:

LAWRENCE M. HANSON, MAYOR

LORI K. FOLBRICK, VILLAGE CLERK

ANNEXATION AND EASEMENT AGREEMENT
(Northbridge Church)

This Annexation and Easement Agreement is entered into this ____ day of _____, 2015 between the Corporate Authorities of the Village of Antioch, Lake County, Illinois (the "Village") and the Northbridge Church, Inc., an Illinois not-for-profit corporation, being the owners (collectively the "Owners") of real estate in unincorporated Lake County, Illinois (the "Real Estate"), all as listed in Exhibit A (legal description) which Exhibit is attached and incorporated herein for the purpose of setting forth the terms under which the Village agrees to provide water service and annex the Real Estate, and the Owners agree to be annexed to the Village.

The overall intent of the Parties as expressed in this Agreement is as follows:

- A. To provide potable water to the Real Estate to serve its future intended uses;
- B. To maintain as far as practical the spirit and intent of the Village's Route 173 Corridor Plan and its Corridor Planning Principles;
- C. To encourage orderly growth of the Village, and preserving the capacity of the Village to expand eastward along Illinois Route 173;
- D. To maintain the integrity of the Village's existing, long-established plans of providing municipal services to properties within its boundaries as an incentive to foster the orderly growth and the development of future opportunities for the Village and its citizens; and
- E. To allow the Owners to construct the final build-out of their planned facility, under the provisions of the current Lake County Building and Planning standards, irrespective of the Village's own Route 173 Corridor plans, and the Village's building and zoning requirements.

1. Authority. This Agreement is entered into pursuant to 65 ILCS 5/7-1-8 and 5/11-15/1-1 et seq., which provides, in pertinent part:

Sec. 11-15.1-1. The corporate authorities of any municipality may enter into an annexation agreement with one or more of the owners of record of land in unincorporated territory. That land may be annexed to the municipality in the manner provided in Article 7 at the time the land is or becomes contiguous to the municipality. The agreement shall be valid and binding for a period of not to exceed 20 years from the date of its execution.

All notices, hearings and other requirements of the above-quoted statute and of Article 7 of the Illinois Municipal Code have been given, held and met and that all other prerequisites for annexation of the Real. Estate, whether statutory or imposed by Village ordinance or other rule, have been fulfilled.

The Parties to this Agreement agree that the above quoted statutory authority authorizes all the terms and conditions of this Agreement and each Party expressly waives any right or claim, which such Party may have to challenge the validity of this Agreement or any provision hereof. In the event of such challenge, the non-challenging Party shall be entitled to reimbursement from such challenging Party for all attorney's fees, court costs, and all other costs and expenses incurred in defending such challenge.

2. Agreement Approved. The Village has adopted an ordinance authorizing the execution of this Agreement, the Corporate Authorities having duly approved the terms hereof, and which ordinance authorized and directed the Mayor and Clerk to execute this Agreement by a vote of ____ in favor and ____ opposed, the vote having been taken at a duly convened meeting of the Board of Trustees held at 7:30 P.M. on the ____ day of _____, 2015.

By affixing their signatures hereto, the Owners consent to the terms of annexation and easement all as set forth herein.

3. Annexation. The Village agrees to annex the Real Estate promptly upon the sooner of (a) the adoption of an annexation ordinance effectuating the annexation of any property contiguous to the Real Estate on its eastern limits that is necessary for contiguity purposes to annex any such property to the Village, but no sooner than five years from the date of issuance of the Certificate of Occupancy for the Phase 1 Building, (b) the subsequent written request of the Owners or (c) the expiration of a period of nineteen years and nine months from the date of this Annexation Agreement. The Village shall not exercise any municipal authority over the territory, nor impose any charge, fee, cost or other expense on the territory until the territory is annexed as aforesaid. It is specifically provided, however:

a) Contemporaneous with executing this Agreement, the Owners shall execute an easement agreement in the form attached as Exhibit B hereto, granting two easements as follows:

i) The applicant shall dedicate a land set aside for roadway and right of way expansion purposes for the development of Illinois Route 173, consistent with the State of Illinois Plans Phase 1 plans, and proposed IDOT cross section;

ii) Outside of the limits of the ultimate IDOT right of way set-aside, the Petitioner shall reserve an exclusive municipal utility easement to the benefit of the Village of Antioch, not less than 10 feet in width, located where mutually agreed between the Parties, to the extent that the location of the easement does not interfere with the proposed use of the property as identified in Exhibit ____, attached hereto, extending said easement to the eastern limits of its parcel and positioned to be contiguous to the existing watermain easement to the west;

b) Thereafter, during the construction of the church building aforesaid, the Owners shall cause a sixteen inch (16") water line to be laid into the said easement, of the same diameter, materials and approximate depth of placement as the one currently stubbed into

the west end of the Real Estate, which pipe shall extend across the entire Route 173 frontage and stub at the east end of the Real Estate subject to the provisions of Paragraphs 3e) and 4a) below;

c) The construction of the said water line shall meet all applicable codes and regulations of the State of Illinois and the Village of Antioch, and may include one or more fire hydrants;

d) The Village shall permit the Owners to connect their building to the water line, pursuant to all applicable codes, during the construction phase, both for potable water supply and for building sprinklers as may be required by the applicable building codes;

e) Notwithstanding the foregoing, the Owners may apply for and the Village shall grant a deferral of a portion of the water line from the service point to the eastern limits of the parcel, however the Owner shall commit to the utility installation within 6 months of the deferral being called by the Village of Antioch, but in no case prior to 5 years from the date of the issuance of the Certificate of Occupancy for the Phase 1 building; and such a call shall be made at such time as the connection of additional water service is required for other improvements within the area of the Real Estate;

f) The water supplied to the Real Estate by the Village shall be provided at the same rate the Village charges to residential customers with properties located within Village limits.

4. Deferment. The Village is aware of and acknowledges the intentions of the Owners to build their facility in unincorporated Lake County pursuant to the applicable Lake County Building and Zoning Codes, and aside from the provisions set forth in this Agreement, and upon annexation, the Village shall deem all existing uses on the Real Estate to be legal uses, even if not then conforming with otherwise applicable Village Codes; provided further that in the event the annexation is accomplished at a period in time when the Owners have applied for and received building permits from Lake County, but have not completed construction of those improvements, the Village shall honor those permits and allow the construction to occur in conformity therewith under the County's codes and land use regulations. Additionally, it is further agreed as follows:

a) The water line need only be initially installed to a point where it services the Owners' building and shall be properly stubbed at that point; further expansion of the line

to the eastern end of the Real Estate shall only be required when the line is needed either to serve the next adjoining parcel to the east, or in the event the Village moves forward with construction of the connection to Lake Michigan water which has been under discussion for several years now without definitive action being currently set; , but in no case prior to 5 years from the date of the issuance of the Certificate of Occupancy for the Phase 1 Building. If the Village determines that it is in the best interest of the Village to install the additional portion of the water line to the eastern end of the Real Estate prior to said time, it shall be done at the expense of the Village or another, subject to reimbursement by the Owner no sooner than 5 years from the date of the issuance of the Certificate of Occupancy for the Phase 1 Building.

b) Notwithstanding the provisions of section 4 a immediately hereinabove, the parties agree and covenant to meet and negotiate in good faith to consider accelerating the annexation in the event a property owner appears and presents a petition to annex to the Village prior to the running of the 5 year period that is otherwise applicable.

5. Grandfathered Use. Upon annexation of the Real Estate pursuant to the terms hereof, the Village agrees to permit the same uses of the parcels in the Real Estate as exist on the date of this Agreement, including specifically the planned use for a church and multi-function religious-affiliated facility unless other uses are agreed between the Village and the Owners.

6. Duration. This Agreement shall remain in full force and effect for a period of twenty years from the date hereof, unless the Parties mutually agree to modify or terminate this Agreement.

7. Merger. This Agreement and the documents referred to herein are intended to serve as the joint final expression of the Parties' intent, and no modifications of any of these

documents shall be valid unless in writing, duly approved by the Owners and the Corporate Authorities of the Village of Antioch and executed by the Owners, Mayor and Clerk.

8. Non-Annexation. It is understood that the annexation process requires the affirmative vote of a majority of the corporate authorities of the Village, and that the persons occupying the positions within the corporate authorities and that it is not possible to predict what who those persons might be and what they may wish to vote on this topic at some future term, particularly considering that this vote could occur a number of years following execution of this Annexation Agreement, and for that reason, should the corporate authorities fail to vote in favor of the annexation at the time the matter is brought before it for consideration within the term of this agreement, the Owners shall be freed from all further obligations hereunder and may remain within the unincorporated area of Lake County, however they shall be entitled to purchase water through the water main described herein.

9. Notices. Any and all notices required hereunder shall be delivered in hand or by certified mail, return receipt requested, to the following:

Owners:

Northbridge Church, Inc.
Attn: Mark Albrecht
229 Depot Street
Antioch, IL 60002

Village:

Village Clerk
874 Main Street
Antioch, IL 60002

(forward to signature page)

IN WITNESS WHEREOF, the Village and Owners have entered into this Annexation Agreement all as of the date first above written.

Village of Antioch, an Illinois Municipal Corporation
by:

LAWRENCE M. HANSON, Mayor

Attest:

LORI K. FOLBRICK, Clerk

Northbridge Church, Inc., an Illinois not-for-profit corporation
by:

Frank Unick, Director

Jeffrey Wills, Director

Michael Mitchell, Director

Mark Albrecht, Director

Timothy Handorf, Director

Randy Mohrbacher, Director

Prepared by and
Mail to:
Robert J. Long
19 North County St.
Waukegan, IL 60085

DEED OF DEDICATION OF EASEMENT

FOR AND IN CONSIDERATION of the execution of a pre-annexation agreement setting forth mutual covenants, and upon a due and proper petition presented by the Grantor, and for other good and valuable consideration, the receipt and sufficiency of which is hereby expressly admitted, the undersigned Grantor, NORTHBRIDGE CHURCH, INC., an Illinois not-for-profit corporation, does hereby quitclaim, grant and convey to the Grantee, the VILLAGE OF ANTIOCH, a municipal corporation, a permanent utility easement over and upon the following parcel of land, hereinafter described as the “subject property”:

That part of the West 19.64 acres of the South 1/2 of Government Lot 1 of the Northwest 1/4 of Section 18, Township 46 North, Range 11 East of the Third Principle Meridian; also the South 500 feet of the East 105 feet of Lot 2 of the Northwest 1/4 of Section 18, Township 46 North, Range 11, East of the Third Principal Meridian, (excepting therefrom the West 5.00 feet of the South 500 feet of the East 105 feet of said Lot 2, according to a boundary line agreement recorded June 5, 2009 as document number 6481613), in Lake County, Illinois, described as follows:

Beginning at a point on a line 85.00 feet northerly of and parallel with the centerline of West Illinois Route 173 per plat of survey of survey line for IL Route 173 construction Section 135 and 135X (W & RS-1) revised June 1, 1971, at the intersection with a line 100.00 feet westerly of and parallel with the East line of Government Lot 2 in the Northwest Quarter of said Section 18; thence easterly, along a line 85.00 feet northerly of, and parallel with, said centerline, to a point on the easterly line of said West 19.64 acres; thence northerly along said easterly line to a point on a line, 95.00 feet northerly of and parallel with said centerline; thence westerly along said parallel line, to a point on a line 100.00 feet westerly along said parallel line, to a point on a line 100.00 feet westerly of and parallel with the east line of said Government Lot 2, thence southerly along said parallel line to the point of beginning.

Commonly known as 18724 Route 173, Antioch, Illinois,

PIN numbers 03-181-00-020

THE EASEMENT SO GRANTED is specifically limited to the following terms and conditions:

- A. A permanent, exclusive easement is hereby reserved for and granted to the Village of Antioch, and its respective successors and assigns, to install, renew, extend, operate, maintain and remove, from time to time, facilities used in connection and/or distribution of water service. This easement shall extend in, under, across, along and upon the surface of the property shown and labeled in the attached Plat of Easement;
- B. The grant of easement includes the full right of unobstructed access for ingress and egress to the described easement, the right to cut, trim or remove pavements, trees, bushes, and roots as may reasonably be required incident to the right herein given, and the right to enter upon the servient estate and any adjoining lands of the Grantor for all these purposes;
- C. The covenants, conditions and restrictions set forth in this Deed and in the Plat of Annexation shall run with the land;
- D. The Grantor shall not construct any permanent improvements upon the subject property or erect any barriers to its use for the stated purpose without the written advance approval of the Village;
- E. Installation of access and egress roadways, including pavement, curbs, gutters and the like shall not be considered permanent improvements which violate the provisions of this Agreement;
- F. If the Village does perform any maintenance, installation or removal of a utility line within the subject property, it shall not be obliged to do more than regrade the dirt to a level condition and surface grade the area with black dirt and grass seed;
- G. This grant of easement does not affect the obligations of the Grantor to pay for the entire cost of installing the water line required by the terms and conditions of the Parties' Preannexation Agreement referenced hereinabove;
- H. This is not homestead property;
- I. All other rights in the subject property are reserved to the Grantor.

IN WITNESS WHEREOF, I have set my hand and seal this ____ day of _____, 2015.

NORTHBRIDGE CHURCH, INC., Grantor, by:

Michael Mitchell, Director

Mark Albrecht, Director

Randy Mohrbacher, Director

STATE OF ILLINOIS)
)
COUNTY OF LAKE) SS:

I, the undersigned, a Notary Public in and for the said County in the State aforesaid, DO HEREBY CERTIFY that Michael Mitchell, Mark Albrecht, and Randy Mohrbacher personally known to me to be the same persons whose names are subscribed to the foregoing instrument appeared before me this day in person, and they acknowledged that they signed, sealed and delivered the said instruments as their free and voluntary act, for the corporate uses and purposes therein set forth.

Given under my hand and notarial seal, this ____ day of _____, 2015.

NOTARY PUBLIC