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FURTHER RESOLVED, that the Town of Clarkstown will after construction thereof maintain the said sidewalk, as set forth above.

FURTHER RESOLVED: That the resolution duly adopted by the Town Board on Nov. 14, 1960, is hereby rescinded.

Seconded by Mr. Frohling.

Vote: all yes.

Mr. Danko moved the following resolution:

RESOLVED, that upon the recommendation of the Town Engineer and the Superintendent of Highways, deed from Rockland Properties, Inc. to Lin ft. of Poplar St., 195.5 Lin. Ft. of Spruce St. and 151.5 Lin. Ft. the Town of Clarkstown conveying 1236.27 Lin Ft. of Cedar ~~St.~~ be accepted pending the clearing of ditch, and be it

FURTHER RESOLVED, that said roads be included in the Town Highway System, and that the Town Attorney be directed to record the deed.

Seconded by Mr. Welchman.

Vote: all yes.

On resolution by Mr. Danko, seconded by Mr. Welchman, Special Town Board Meeting was adjourned,

Signed,

*Anne E. O'Connor*  
Anne E. O'Connor,

Town Clerk

In the Matter of The Incorporation  
of the Village of North Clarkstown

Public Hearing held on August 6, 1962, three o'clock, P.M.  
at Camp Norge, Town of Clarkstown, New York, to permit objections to the proposition for incorporation.

Appearances:

Honorable Paul Mundt, Clarkstown Supervisor, Presiding  
Clifford J. Freund, Esq., Town Attorney  
John W. Walber, Esq., Dep. Town Attorney  
Edw. A. Donnelly Esq., Attorney for the opponents of the proposition for incorporation.

Maurice Phillips, Esq., on behalf of the opponents of the proposition for incorporation.

Orville H. Mann, Esq., Attorney for the proponents of the proposition for incorporation.

MR. MUNDT: Ladies and Gentlemen: There has been criticism, both from the proponents and the opponents of the incorporation of the Village of North Clarkstown, as to the hour that we are meeting. The explanation for that is that this is unlike any other public hearing which confronts a township and its people in the sense that all public



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I wouldn't waste the Supervisor's time by arguing the merits of incorporation or against incorporation, and shall stick strictly to the statute. The statute is very explicit in what it requires as to the filing of the proposition for incorporation. It even lists the objections that may be filed. It calls for fifty freeholders to sign the proposition, and consents of one-third of the property owners. Undoubtedly if only forty-nine people had signed this proposition, there wouldn't be any public hearing because there would be no point to it. So, strictly, the question has to be, at the beginning of this hearing, conceded that the proposition in its basic form complies with the statute, or there would be no hearing.

Now, the statute is very specific on what it states. In one instance down there under Section Three of the Village Law it refers to the consents of one-third of the property owners. Now, in reference to that, I am filing herewith an objection: First, that the persons who signed the consents attached to the incorporation, each individual one claimed to be an owner of one-third or more of the property owners. Of course he is not. So, that consent in itself is invalid.

Second, Each one signed according to the assessed valuation that he owned and, therefore, they are not the owners of one-third more than the property assessed in the area.

Thirdly: The statute specifically refers to consent in the singular and not consents that must be signed. And the consents that are attached there are individual consents and at the time they were signed they were not attached to the proposition.

I also object to the consent of one Angus Deming on there in that it was signed by an attorney in fact and there is no provision in the law for an attorney in fact to sign a consent.

Further, the consents are not in the form required by the statute. It is hard to tell whether the signatures that are attached there are consenting to the proposition or whether they are certifying that they are property owners. If you will look at the consents that are attached here, there is no place for it. They fill in the place where there is property owner on deed. That doesn't say they consented to that, that just certifies they are a property owner on the deed.

Also the acknowledgment on that consent. The acknowledgment swears that the person who witnessed the signature knows the signature, It doesn't say that they acknowledge that consent.

As to the consents, I filed objections on those grounds.

(Papers referred to handed to Mr. Freund.)

As to the objection that the area is more than three square miles, we are also filing objections that the area is more than three square miles.

First, the description doesn't contain any meets and bounds description, doesn't contain any degrees. It uses the boundary lines of farms to obtain the dimensions. From those farm lines, you have to refer to outside sources. There is also a question that some of those farm lines may be overlapping. Therefore, the description is inaccurate, and there is no way of actually telling what land is encompassed in the area. Also I might call attention to the fact that the descriptions run to the center of the road. Now, these roads are going to be partly in the village and partly in the town. Is the town going to service one half and the village going to service the other half? How about snow plows?

That the area cannot be measured; we state the fact that measuring the area actually encompassed in the descriptions to the best that you can, and including the slopes and the hills that are there, that they actually average over three square miles, even if the outside boundary line perimeter may not, and the statute refers to the area that is within the area. The actual area in there is over three square miles and therefore is not eligible for incorporation.

Now, as far as the population is concerned, the population requirement is at least five hundred people. They enumerate 607 people on there but they do not make any designation or eliminate any of those who may be summer residents who have a home in another area where children are attending school. The statute, again, specifically states that the summer residents, people who rent for the summer, must be excluded, and if they have children attending school in another area they cannot be included. We do not know whether there is or is not over five hundred people in the area. And, if they own another home in another area, unless they have abandoned that residence they are excluded, and if they have children attending school in another area they cannot be included. We do not know whether there are or are not over five hundred people in the area, and if they own another home in another area, unless they have abandoned that residence they are not eligible to sign the consents here.

Now, going back to the main objection--of course, they are all main objections but the most substantial one is that the area is over <sup>and</sup> three square miles. I believe that if we have a check made on that--we can offer evidence after some of the other hearings down there--- will find that the area that has been checked on the assessment maps does exceed, including the slopes and the area as it appears, the acreage that appears on the assessment maps exceeds three square miles, that it comes to three square miles, point something or other, on that.

MR. MUNDT: Thank you

MR. PHILLIPS: Mr. Supervisor, I am assisting Mr. Donnelly.

MR. DONNELLY: Mr. Phillips will give some evidence as to the area that is encompassed.

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MR. PHILLIPS: In computing the area involved in this particular proposition, we took every parcel listed within the area on the tax assessment map. We calculated the acreage involved and we have reduced this figure to 1926.48 acres. The area of three square miles computed mathematically is 1920 acres. According to the tax assessment map, the proposed territory is 6.48 acres in excess of three square miles. This is presuming the tax map is accurate. In addition to which, we entirely left out of our calculation roughly seven miles of roads included within the territory described. Based on the tax assessment map, based on road acreage figures, this proposition is in excess of three square miles.

MR. MANN: May I be heard, Mr. Supervisor?

MR. MUNDT: Yes.

MR. MANN: First, I would like to remark as to Mr. Donnelly's comments in which he criticizes the form of these consents. The form of these consents is prescribed by the Village Law. It is spelled right out in the statute. It is quite obvious to anyone looking at these consents that the practice here followed has been that which has always been followed in similar instances, namely, we have a number of counterparts of the same consent. It isn't practical to take one piece of paper which might be about three or four yards long around and have each person sign in order. What happened was we made different counterparts of these consents, and each consent clearly shows on its face that the owner has a certain parcel of land with a specified assessed value in a particular amount. I don't think there is anything to that point at all.

MR. DONNELLY: Mr. Supervisor--

MR. MUNDT: Each individual will be allowed to conclude his statement.

MR. MANN: I would like to finish my remarks. Then you will be heard.

MR. MUNDT: You will be heard.

MR. DONNELLY: What I would like to bring up is that the purpose of the hearing is to hear objections, not anything else.

MR. MANN: I am arguing on the objections, Mr. Freund. He made the objections and I think I have a right to a reply on his objections.

MR. FREUND: That is some assistance to the Supervisor in arriving at his conclusion, and I would say--

MR. MANN: The law says the objections must be in writing. He said a great deal orally and I don't know any reason why, if he is allowed to talk orally and not just reduce his objections to writing, why I don't have a right to reply.

MR. FREUND: If you will stick right to the objections, that will assist in arriving at the decision, and I don't see anything wrong with it.

MR. FRIED: I might say I have no intent to debate the merits here and I think the Supervisor and Town Attorney have quite properly ruled that the merits are not before you for consideration.

As to the population, we think that everyone who signed these consents and signed the petition here is a bona fide resident of the area. The statute clearly says that the objectors have the burden of proof to demonstrate otherwise. There is nothing here to indicate any single person on our list is not a bona fide resident.

Now, as to measuring the square miles here, we have had an engineer measure the square miles. We allege in our petition that the area is less than three square miles. I submit that the objectors have the burden of proof of demonstrating otherwise. Now, as far as trying to make a compilation of area from the tax map, we all know that the Clarkstown tax map is in the present in the course of revision, we know there are errors in it, and, certainly, the last way in the world to measure the size of this area would be by adding up all of the areas given in the various parcels on the tax map. I think if they claim, honestly claim, here that this area is less than three square miles they should produce an engineer to state he measured it and what he found. If, as Mr. Donnelly said, that you can't measure the area here, I don't know how on earth you would ever measure any area. We think that has been done. That is all I have to say.

MR. MUNDT: Do you have any further comment, Mr. Donnelly?

MR. DONNELLY: Yes. As to the question of the enumeration of the census, I think that the unnamed newborn twins of Mr. and Mrs. James Horowitz do not comply with the residence requirement that they must be a resident for at least one year. So, that is one of the points that substantiates my objections.

MR. MUNDT: Is that incorporated in your written statement?

MR. DONNELLY: Yes, sir.

MR. MUNDT: Are there any other comments, ladies and gentlemen?

You can see that we have tried to conduct this according to law. We are sorry we had to select a day of this nature.

What remains now, as I understand it-- and the Town Attorney will have to correct me if I am wrong because I am certainly acting under the advise of the Town Attorney, who interprets the law for we laymen on the Board--I, as I understand it, have ten days.

MR. FREUND: Ten days unless you adjourn it and I see no reason at the present time to adjourn this hearing. Then within ten days after you have to determine whether the papers filed comply with the law; that is all that has to be done.

MR. MUNDT: In which case there would be, if the decision is favorable this would imply a vote would be taken and a date set, probably some time in September, as I recall; is that right?

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MR. DONNELLY: Mr. Supervisor, the testimony that was given here, will we have a chance to subscribe to it so there won't be any technicality if an appeal is taken?

MR. FREUND: That is what the stenographer is here for.

MR. DONNELLY: Because the statute specifically states that the testimony will be taken and subscribed by the parties giving it, so I don't want it to be adjourned and then foreclosed of the right of signing that testimony.

MR. MUNDT: It will be ready within ten day.

MR. DONNELLY: Mr. Phillips is the only one who has subscribe to it.

MR. MUNDT: Unless there is any other comment, I would reiterate that there was no intention to muzzle any opinion one way or the other.

Is there anyone else who wishes to file?

MRS. BERRY: (Mrs. James A. Berry, residing at 12 Red Hook Road, New City, N.Y.) The question I have is how is the time and place of these general elections set?

MR. MUNDT: This is also spelled out by the law. The hours are set. Everything is set.

MRS. BERRY: The same as the general election?

MR. MUNDT: I believe the hours are different.

MRS. BERRY: Or this five o'clock in the afternoon idea?

MR. MUNDT: One to eight.

MRS. BERRY: Would the attorney read me the section, please?

MR. FREUND: One to eight. I don't know the section offhand.

"Within five days after the right to an election is complete, the town clerk with whom the proposition and other papers are filed shall give notice of an election to be held in such territory at a specified time and place. The notice shall be signed by the town clerk and posted in ten conspicuous places." So you do get notice of it.

MR. MANN: Section Ten, last sentence. "Between one and eight."

MR. FREUND: "Such election shall be held at a convenient place in such territory between the hours of one o'clock in the afternoon and eight o'clock in the evening, but shall not be held upon a day of a town meeting or a general election in a town in which any part of the proposed village is situated."

MRS. BERRY: Thank you.

MR. HERLIHY: (Michael J. Herlihy, 420 Buena Vista Road, New City, N.Y.) In regard to Mr. Mann's statement that the outline which has been questioned was prepared by a licensed survey or engineer, I wonder if it might be possible to find out whether this man has signed and certified as to the correctness and accuracy of this.

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MR. MUNDT: Has he, Mr. Freund?

MR. FREUND: Not that I know of.

MR. MANN: I believe we have a statement. I don't believe it is necessary because the petition alleges the area and that is accepted unless controverted. The objectors again have the burden of proof. Now, we do have a certificate. Would you like to have it delivered? I don't think it is necessary but we will be glad to do it.

MR. MUNDT: Deliver it within ten days.

MR. MANN: We will deliver it within twenty-four hours to Mr. Freund,

MR. PHILLIPS: May I make a comment on that: While it is true that the objectors have the burden of proof, it should be as a matter of law that the petitioners have also a burden, the burden set forth in the statute. The statute recites that the area must be less than three square miles. If the area proposed is greater than three square miles. the petition itself is void ab initio. They have an initial burden and I do not think that they have put forth here any proof carrying their initial burden that this area is less than three square miles.

MR. MANN: That just isn't the way the law reads.

MR. PHILLIPS: The burden of going forward is on the petitioner.

MR. MUNDT: AS you know, Mr. Phillips, this is something concerning which I shall have to rely on the Town Attorney because we are in areas of law.

MR. FREUND: On that point, Mr. Phillips, on the area, again let me say that it says that the Supervisor has to determine whether or not that is so. Well, neither the Supervisor nor myself are engineers. I shall advise the Supervisor how to proceed to check that. There is a way of doing it. In fact, it is already being done.

MR. MUNDT: Are there any other comments?

MR. DONNELLY: May I ask the Town Attorney does your engineer find it sufficient to check?

MR. FREUND: We will give you that answer within a ten-day period.

MR. DONNELLY: Thank you.

MR. MUNDT: Any other comments?

MR. SIEGEL: (Jacob Siegel, 201 Zukor Road, New City, N.Y.) I don't know if this is the time or place--I am a resident and a taxpayer. I would like to know what the reason of all this incorporating or separating. It was never explained. I was never notified about such a proposition.

MR. MUNDT: Well, I hate to disappoint you but this isn't the time or place.

MR. SIEGEL: That is what I thought.

MR. MUNDT: We must go by the book.

MR. SIEGEL: I understand. I just thought maybe it is possible to find out the reason. If this is not the place, where can I find out?

MR. MUNDT: I believe this is up to the people within the area. If they elect to hold a meeting to discuss this, that is something which is

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outside the purview of the town board.

MR. SIEGEL: I did call a few residents and nobody knew why. I thought this would be explained here.

MR. ANDERSON: (Terence Anderson, 160 South Mountain road, New City, N.Y.) You are the same person to whom I spoke on the phone?

MR. SIEGEL: Yes.

MR. ANDERSON: Am I to understand you asked me the reason for the incorporation and I didn't answer?

MR. SIEGEL: I just want to know what the benefits or--the advantages or disadvantages of this proposition are.

MR. MUNDT: Gentlemen, I am going to have to cut this discussion short because it's warm and it's going to get warmer, I suspect.

MR. PHILLIPS: Are we closing the meeting or are we adjourning it?

MR. MUNDT: We are closing it.

MR. PHILLIPS: Does that mean no further evidence may be put forth?

MR. MUNDT: As I understand it.

MR. PHILLIPS: Then, I object to the introduction of the certificate by Mr. Mann at a future date.

MR. MUNDT: According to the Town Attorney, we don't need it.

MR. FREUND: The Supervisor can make his own independent investigation because he has means at his disposal.

MR. PHILLIPS: The certificate of Mr. Mann will not be taken?

MR. FREUND: If you object to it. I don't see any reason for it. It is in the record they have one. Your testimony that it is over three square miles is like their testimony that it isn't.

MR. MANN: We would like to hold the meeting open for ten minutes. If there is any question about it, let's get it.

MR. FREUND: There is no need for this. We are going to check it ourselves.

MR. MANN: All right.

MR. FREUND: We have independent means.

MR. MANN: If there is any objection to producing this certificate which we have and which we can bring right here in ten minutes-- unfortunately Mr. Wagner said he couldn't be here--we will go and get it. On the other hand, I can't see any harm would be accomplished by handing it to Mr. Freund. It speaks for itself.

MR. PHILLIPS: I would just like to examine it.

MR. MANN: We will be glad to make a copy and give it to you.

MR. PHILLIPS: I would like it handed in at this meeting.

MR. MANN: You are responsible for holding the meeting open if that is the way the Supervisor rules.

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Mr. PHILLIPS: I don't control the meeting.

Mr. MUNDT: According to the Town Attorney, there is no need to solicit this document and, therefore, I am ruling that after one additional comment we will be closing this meeting. The additional comment is I would like it shown on the record that we thank the owners of Camp Norge for allowing us to use their premises. And again I would like to say we have tried to follow the law solely. The Town Board and your Supervisor are not vocal instruments in this particular matter, we are merely following the law.

Thank you all for coming. Keep reading your newspapers for further information on this subject.

(Whereupon the public hearing was closed.)

Subscribed and sworn to before S/ Maurice Phillips me this 15 day of August, 1962.

S/Florence Blauvelt, Notary Public

SPECIAL TOWN BOARD MEETING

Town Hall

August 7, 1962

Present: Messrs. Danko, Northrup, Welchman, Mundt.

Mr. Mundt called special Town Board Meeting to order.

Mr. Northrup moved the following resolution:

Resolved that, upon the written request of the Assessor, the temporary appointment of Mrs. Mildred Kathryn Aber, 44 Leona Ave., New City, New York, as clerk-typist in the office of the Assessor be continued from August 1st, 1962 for a period of three months at a salary of \$1.75 per hour.

Seconded by Mr. Danko.

All voted yes.

Mr. Danko moved the following resolution:

RESOLVED, that Mr. Bertram W. Deutsch, 385 Kings Highway, Valley Cottage, New York, be provisionally appointed, pending Civil Service examination, CLEANER, effective August 8, 1962, at an annual salary of \$4,000.00, to fill the vacancy created by the resignation of Anthony Frascino.

Seconded by Mr. Northrup.

All voted yes.

Mr. Danko moved the following resolution:

RESOLVED, that Mr. Bertram W. Deutsch, 385 Kings Highway, Valley Cottage, New York, be provisionally appointed, pending Civil Service Certification, Dog Warden, effective August 8<sup>th</sup>, 1962 at an annual salary of \$1200.00, to fill the vacancy created by the resignation of Anthony Frascino.