



**KROB LAW OFFICE, LLC**  
Attorneys at Law

**MEMORANDUM**

**To: Palmer Lake Board of Trustees**

**From: Scotty P. Krob, Town Attorney**

**Date: December 6, 2024**

**Re: Eligibility Hearing on December 12, 2024**

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This memo is being provided to the Board of Trustees to assist the Board in conducting the eligibility hearing that is scheduled for Thursday, December 12, 2024.

As we have discussed in connection with previous annexations, annexations are governed primarily by Sections 31-12-101, et seq., of the Colorado Revised Statutes, as well as related provisions of the Colorado Constitution. There are three primary steps in an annexation where, as in this case, 100% of the owners of the property proposed for annexation desire to be annexed to the Town.

1. Step 1: Submission of annexation petition and map, and setting hearing for determining whether the property is eligible to be annexed. During this stage, the property owner drafts and files with the town clerk a petition asking to have their property annexed and attaching an annexation map showing the property in relation to the Town. Upon receipt of the petition and annexation map, the town clerk is to bring the matter to the Board of Trustees, and the Board adopts a resolution reflecting the intent of the property owner to annex to the Town, noting that the petition substantially complies with what annexation petitions are

supposed to contain, and setting the matter for a hearing (the “eligibility hearing”) to be held within 30 to 60 days. STEP 1 HAS BEEN COMPLETED.

2. Step 2. Eligibility hearing. At the date and time set by the Board for the eligibility hearing, the Board considers whether the petition and the property satisfy the requirements of the statutes, primarily Sections 31-12-104 and 31-12-105, C.R.S. Those requirements are discussed in greater detail, below.
3. Step 3. Annexation. This final step is the actual annexation of the property. This is a purely discretionary decision by the Board of Trustees. The Town is never obligated to annex property and the Town may determine the terms and conditions on which the property is to be annexed. Likewise (other than enclaves) a property owner cannot be compelled to annex their property to the Town. Annexation usually does not occur unless it is agreed to by both parties - the Town and the property owner. The terms of the agreement are usually set forth in an annexation agreement. Annexation is accomplished by the Town Board of Trustees adopting an annexation ordinance. The annexation ordinance usually approves the annexation thereby making the property a part of the Town, approves the annexation agreement, and zones the property. There is no set time within which the annexation is to be finalized. It can occur at the same time as the eligibility hearing or at some future date after the parties have finished negotiating the annexation agreement. NONE OF THESE ISSUES ARE INVOLVED IN THE ELEGIBILITY HEARING SCHEDULED FOR DECEMBER 12, 2024. ALL OF THEM WILL BE ADDRESSED AT LATER DATES.

## THE DECEMBER 12, 2024 ELIGIBILITY HEARING

The sole issue before the Board at the December 12<sup>th</sup> eligibility hearing is whether the property satisfies the criteria that are set forth in Section 31-12-104 and 31-12-105, of the Colorado Revised statutes to make it eligible to be annexed. Those criteria are as follows:

### Criteria under Section 31-12-104:

1. Not less than 1/6 of the perimeter of the area proposed to be annexed must be contiguous with the Town's boundary. Contiguity may be established by a series of annexations that may be accomplished simultaneously. The pending annexation proposes using a series of 6 simultaneous annexations to accomplish contiguity.
2. A community of interest exists between the area proposed to be annexed and the Town.
3. The area is urban or will be urbanized in the near future
4. The area is integrated with or is capable of being integrated with the Town.

As to criteria 2, 3, and 4, the statute specifically provides that where there is 1/6th contiguity, then items 2, 3, and 4 are satisfied unless the Town finds based on specific evidence that at least 2 of the following 3 exist:

- a. Less than 50% of the residents of the area proposed to be annexed use the Town's recreational, civic, social religious, industrial, or commercial facilities and less than 25% of the residents are employed in the Town. If there are no adult residents, this standard does not apply.
- b. At least ½ of the area proposed to be annexed is agricultural and the owners of such agricultural lands state their intention under oath to continue to devote the land to agricultural use for at least 5 years.
- c. It is not physically practicable to extend Town services to the property on the same terms and conditions that they are made available to other Town citizens.

#### Criteria under Section 31-12-105

5. Land held in identical ownership will not be divided into separate parts as a result of the annexation.
6. No land held in identical ownership that is larger than 20 acres will be included in the area proposed to be annexed, without the written consent of the land owner.
7. No land can be included if it is the subject of a pending annexation petition with another municipality.
8. No land can be added to a school district without a resolution from the school board
9. No land can be annexed if the annexation would extend the Town's boundaries more than three miles.
10. If the required 1/6<sup>th</sup> contiguity is achieved by annexing a public roadway, notice must be provided to all landowners along the roadway advising them of their right to seek annexation.
11. If a portion of a street is proposed to be annexed the entire street must be annexed.

If the above criteria are satisfied, the Board should adopt a resolution finding that the criteria have been satisfied and concluding that the property is eligible to be annexed. Please note that adopting a resolution finding property is eligible for annexation does not annex the property to the Town. As discussed above, annexation must occur by ordinance and would not happen, if at all, until a later meeting where the Board determines whether annexation is in the interest of the Town and, if so, what conditions should apply to the annexation.

If the Board finds that one or more of the criteria listed above, have not been satisfied, then the Board should adopt a resolution indicating that the property is not eligible for annexation and specifying which of the criteria were not satisfied.

Any public comment and discussion by the Board at the eligibility hearing on December 12, 2024, should be confined solely to the issues related to eligibility that are discussed above.

Any discussion of whether the Town should or should not ultimately annex the property, or whether such annexation would be beneficial to the Town, or what terms or conditions should apply to any such annexation should not be permitted until the future meeting where the question of annexation is addressed.

I look forward to our discussions.