



KROB LAW OFFICE, LLC
Attorneys at Law

MEMORANDUM

To: Palmer Lake Board of Trustees

From: Scotty P. Krob, Town Attorney

Date: May 27, 2025

Re: Eligibility Hearing on May 29, 2025

This memo is being provided to the Board of Trustees to assist the Board in conducting the eligibility hearing that is scheduled for Thursday, May 29, 2025.

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. 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 Colorado Constitution and the statutes that are discussed in this memo.
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 (and the property owner).

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. NONE OF THESE ISSUES ARE INVOLVED IN THE ELIGIBILITY HEARING SCHEDULED FOR MAY 29, 2025. THEY WILL BE THE SUBJECT OF FUTURE DISCUSSIONS BY THE BOARD.

MAY 29, 2025, ELIGIBILITY HEARING

The sole issue before the Board at the May 29th eligibility hearing is whether the property satisfies the criteria that are set forth one Colorado Constitution provision (Colo. Const. Art. II §30) and three Colorado statutes discussed below (Sections 31-12-108, 31-12-104, and 31-12-105, C.R.S.)

1. Colorado Constitution Article, Section 30 provides in relevant part:

(1) No unincorporated area may be annexed to a municipality unless one of the following conditions first has been met:

...

(b) The annexing municipality has received a petition for the annexation of such area signed by persons comprising more than fifty percent of the landowners in the area and owning more than fifty percent of the area, excluding public streets, and alleys and any land owned by the annexing municipality; ...

In this case, the Town has received a petition signed by persons comprising 100% of the landowners in the area and owning 100% of the area, excluding public streets, and alleys and Town owned land.

2. Section 31-12-108, C.R.S.

As part of adopting the resolution setting the eligibility hearing, Section 31-12-108, C.R.S. provides in relevant part:

...that the governing body will hold a hearing to determine if the proposed annexation complies with section 30 of article II of the state constitution and sections 31-12-104 and 31-12-105 or such provisions thereof as may be required to establish eligibility under the terms of this part 1.

3. Sections 31-12-104 and 31-12-105, C.R.S. The Criteria for Eligibility

While Section 30 of Article II of the Colorado Constitution and Section 31-12-108 set some of the procedural backdrop for eligibility, the essential statutory provisions are contained in Section 31-12-104 and 31-12-105, C.R.S. First, Section 31-12-104 is titled “Eligibility For Annexation” and it sets forth the criteria that property must satisfy in order to be eligible to be annexed. Then, Section 31-12-105, titled “Limitations,” lists certain limitations that would preclude the property from being annexed.

These two sections should be the sole focus of the Board’s efforts during the eligibility hearing.

Criteria under Section 31-12-104:

1. Contiguity: 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 three simultaneous annexations to accomplish contiguity.
2. Community of Interest. A community of interest exists between the area proposed to be annexed and the Town.
3. Urbanization. The area is urban or will be urbanized in the near future.
4. Integration. The area is integrated with or is capable of being integrated with the Town.
5. Inter-relationship among contiguity, community of interest, urbanization and integration.

The statute specifically provides that if the contiguity requirement is satisfied, such finding “shall be a basis for a finding of compliance” with the community of interest, urbanization, and integration requirements unless the Town Board 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.

Subpart a. does not apply by its express language, because there are no residents on the property proposed for annexation. With regard to subpart b., the sole owner of the property proposed to be annexed has not submitted a statement that they intend to use the land for agriculture for five years. The owner has indicated they intend for the land to be used for commercial development. While the Board may discuss subpart c., and the ability to extend Town services to the property, as noted above, a finding of contiguity shall be a basis for finding community of interest, urbanization, and integration unless 2 out of 3 of subparts a., b., and c., are shown.

Limitations under Section 31-12-105.

- 1. Land held in identical ownership will not be divided into separate parts as a result of the annexation.
- 2. 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.
- 3. No land can be included if it is the subject of a pending annexation petition with another municipality.
- 4. No land can be added to a school district without a resolution from the school board
- 5. No land can be annexed if the annexation would extend the Town's boundaries more than three miles.
- 6. If the required 1/6th 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.
- 7. If a portion of a platted street is proposed to be annexed the entire street must be annexed.

If the above criteria are satisfied and the limitations complied with, 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 the property 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 May 29, 2025, 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.