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A newly recognized defense to disconnection petitions

By David W. McArdle

This article is intended to provide direction for municipalities faced with petitioners seeking disconnection from the municipal corporate limits. Just when the municipality thinks it is going to lose the disconnection proceeding because the petitioner meets all of the required elements, a recent Illinois Appellate Court decision, *Gaylor v. Village of Ringwood*, 2006 WL 242 506 (2nd Dist. Jan. 1, 2006), offers some hope—a defense to disconnection where an annexation agreement is in place.

Section 7-3-6 of the Illinois Municipal Code provides a very clear recipe for property owners to disconnect from the village municipal limits. That Section provides, in part, as follows:

The owner or owners of record of any area of land consisting of one or more tracts lying within the corporate limits of any municipality may have such territory disconnected which (1) contains 20 or more acres; (2) is located on the border of the municipality; (3) if disconnected, will not result in the isolation of any part of the ordinances, if any, of such municipality will not be unreasonably disrupted; (4) if disconnected, the growth prospects and planning and zoning ordinances, if any, of such municipality will not be unreasonably disrupted; (5) if disconnected, no substantial disruption will result to existing municipal service facilities, such as, but not limited to, sewer systems, street lighting, water mains, garbage collection and fire protection; (6) if disconnected the municipality will not be unduly harmed through loss of tax revenue in the future... If the court finds that the allegations of the petition are true and that the area of land is entitled to disconnect-

tion it shall order the specified land disconnected from the designated municipality.

In *Gaylor*, the Village and Landowner entered into an annexation agreement that set forth the terms under which the Landowner's property would be annexed to the Village of Ringwood. The agreement was entered into in 1997 and the property was annexed into the Village. The Village also rezoned the property at the time of annexation, from A-1 agricultural district, to I-1, light industry. In addition to rezoning, the Landowner was granted the right to certain B 3, general business district uses and frontage variations for the various subdivision lots contemplated to be created.

In 2000, pursuant to the terms of the annexation agreement, the Village approved the final plat of subdivision of the Gaylor Business Park.

The annexation agreement contained no provisions dealing in any way with the topic of disconnection. The Village performed all of its obligations under the annexation agreement and the Landowner accepted the benefits of the annexation agreement.

The terms of the annexation agreement provided that, after 50 percent of the lots in the subdivision had been sold, the Village would become responsible for the maintenance of the streets and the street lighting. As of the time of the lawsuit, 50 percent of the lots in the subdivision required to trigger the Village's obligation under the annexation agreement had not been sold. The annexation agreement also provides that its terms were covenants running with the land and that the Agreement would be for a 20 year term.

In 2003, the Landowner filed a petition to disconnect the property from the Village municipal boundaries. The Village thereafter filed an answer and counterclaim, seeking to enforce the 20-year term of the annexation agreement. Eventually, the parties stipulated to the facts. As part of the stipulation, the parties recited that the Landowner's proposed disconnection satisfied the statutory conditions required for disconnection under section 7-3-6. The parties filed cross-motions for summary judgment, with the Landowner seeking an order disconnecting the property from the Village and the Village seeking an order denying the disconnection. The trial court found in favor of the Landowner and entered an order allowing the disconnection. The appellate court reversed, finding that the existence of an annexation agreement implied that the Landowner contracted away its right to disconnect.

Prior to *Gaylor*, the municipality had an extraordinary uphill battle to win a case when the petitioner submitted some evidence on all six elements of the disconnection statute. In fact, prior to *Gaylor*, this writer has never found a case where the municipality was victorious. The *Gaylor* court reasoned that the disconnection statute actually lists two conditions that must be satisfied before the court orders disconnection: (1) the allegations of the petition (all six required elements) must be found to be true; and (2) the land must be entitled to disconnection. The court further found that it must interpret the statutory language as requiring that in order to grant a disconnection petition, the trial court must find both of these conditions satisfied. No court has previously focused on

the second element of the statute, i.e., "that the land must be entitled to disconnection."

The appellate court found that the existence of an annexation agreement implies that the parties contracted away their rights to sever the property from the annexing municipality for the life of the agreement. There-

fore, the existence of an annexation agreement would present an affirmative defense to a petition for disconnection and prohibit the Landowner from petitioning for disconnection.

The *Gaylor* court has established an alternative defense municipalities may take

when faced with disconnection petitions and existing annexation agreements. This should provide for a successful resolution in favor of the municipality in all circumstances, even where the annexation agreement does not specifically address the issue of disconnection. ■

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