

Appendix D

A Resolution of the Board of Commissioners of _____ County Establishing General Orders for the Hearing of Annexation Petitions

Special Note: Commissioners are urged to carefully review this sample resolution with the clerk, county administrator, and county prosecutor and make appropriate modifications prior to adoption.

_____ moved to adopt the following resolution:

WHEREAS, Amended Substitute Senate Bill 5 (Senate Bill 5) of the 124th General Assembly has been passed by the General Assembly and signed by the Governor; and

WHEREAS, the effective date of Senate Bill 5 is October 26, 2001; and

WHEREAS, it is appropriate for the county to establish guidelines and procedures regarding the processing of annexation petitions which are consistent with the provisions of Senate Bill 5; and,

WHEREAS, these procedures will help to insure compliance with the law and appropriate public involvement with the annexation process;

NOW THEREFORE BE IT RESOLVED by the Board of County Commissioners of _____ County as follows:

Section 1.0 Filing of Annexation Petition

A petition for annexation pursuant to Section 709.02 of the Ohio Revised Code (ORC) shall be filed by the agent for the petitions in the office of the clerk of the board. The original and three copies of the petition shall be provided to the Clerk who shall time stamp each document and return one copy to the agent for the petitioners.

Note: Because of the difficulty in reproducing maps and several other aspects of the petition which must be filed, the original and 3 copies are suggested. Distribution would be as follows: the original maintained in the master file; one copy provided to the county engineer; one copy placed in the file for public inspection; and the remaining copy placed in the commissioners "working file" for their use.

Section 1.1 Form of Annexation Petition

The petition when filed shall be in the form and comply with the provisions of ORC 709.02. Failure to file a complete petition in any respect shall be fatal to the petition and be cause for its dismissal.

Section 1.2 Initial Deposit for Costs and Fees

At the time of filing, the agent for the petitioners shall also pay the initial deposit for costs as authorized by ORC 709.014 and Resolution _____ Establishing Deposit and Fees Regulations for Cost Incurred in Annexation Proceedings. Subsequent costs shall be paid as provided in the Resolution.

Section 2.0 All Subsequent Filings

Any notice, request, or document associated with or required to be filed with the Board which relates to an annexation shall be filed in triplicate in the office of the Clerk who shall, upon receipt, time stamp all three copies and return one copy to the filing entity.

Note: Providing three copies of any filing to the Clerk allows for a copy to be placed in the master file and the file for public inspection. Returning a time stamped copy to the party filing a document provides the party filing the document with a dated receipt verifying the filing. This may be particularly important where a filing is time sensitive or is alleged to not have been filed.

Section 3.0 File for Public Inspection

Upon receipt of a petition for annexation, the Clerk shall create a duplicate file for public inspection. This file shall have placed into it and shall contain a copy of each and every document received and filed in the office of the Clerk that relates to the annexation. This file shall be available for inspection by any member of the public during the regular business hours of the office of the Clerk. A copy of any document in the file shall be provided to any member of the public within a reasonable time after its request and upon the payment of a reasonable cost for copying.

Note: Establishing a separate yet complete file for public inspection helps to preserve the integrity of the master annexation file and protect against loss, misplacement, or theft of a document which is a part of the annexation proceeding.

Section 3.1 Notice by Publication

For the purpose of the notice required to be published by the agent pursuant to ORC 709.03 (B) (3), the following newspapers are determined to be newspapers of general circulation in this county: _____.

Note: This provision lists which newspapers can be chosen by the agent to advertise the public notice of the hearing as required by the law. Selection of any one or more of these papers will ensure the agent that he/she has complied with the publication requirement.

Section 3.2 Public Comment

Public comment regarding a petition for annexation will be accepted by the Board during the session of the Board when the petition appears on the agenda as an item of business. The Board president shall have the discretion to limit comment to that which is relevant and non-repetitive.

Note: Although the statute is silent regarding the role of the public in the annexation process, this provision establishes the appropriate time when public comment will be accepted regarding an annexation petition.

Section 4.0 Review of Petitions Filed Pursuant to Section 709.021 of the Ohio Revised Code

A petition filed pursuant to ORC 709.021, seeking annexation under one of the special procedures provided for in ORC 709.022, 709.023, and 709.024, shall be reviewed by the Board to determine whether the contents of the petition meet the statutory requirements of Divisions (C), (D), and (E) of ORC 709.02 and any other particular statutory requirement specific to the section under which it was filed. Failure to meet a requirement shall be fatal to the petition, and the Board shall pass a resolution specifically identifying the deficiency and dismissing the petition. A petition dismissed by the Board may be re-filed at any time upon the correction of the deficiency.

Note: This provision provides a process by which “expedited” petitions, which undergo a “review” rather than a “hearing,” are checked to insure that the petitions actually contain the information they are required by statute and expands upon Section 1.1.

Section 5.0 Annexation Hearing

A hearing before the Board shall be held pursuant to ORC 709.024 (E) or 709.03. The hearing shall be public. The hearing shall commence upon the time and date established by the Board, however, may be continued until its completion at the discretion of the board.

Section 5.1 Personal Testimony

Any person providing testimony to the Board shall first be sworn.

Section 5.2 Affidavit Testimony

Affidavit testimony will be accepted by the Board, but only if the filing of the affidavit has complied with ORC 709.03 (C).

Section 5.3 Rights Conferred by Statute

Ohio law provides certain persons with various opportunities to request that certain actions be taken with regard to an annexation petition or hearing. These requests shall be made in writing and filed in the office of the clerk. The clerk may provide a form upon which these requests must be submitted. These requests include:

Withdrawal of signature, pursuant to ORC 709.03 (C)

Amendment of the petition, pursuant to ORC 709.031 (B)

Challenge of proof of authority to sign, pursuant to ORC 709.031 (C)

Request for the issue of subpoena, pursuant to ORC 709.032 (B)

Request for official court reporter, pursuant to ORC 709.032 (B)

Request for hearing transcript, pursuant to ORC 709.032 (B)

Section 5.4 Record of Hearing

Unless otherwise requested pursuant to ORC 709.032 (B), the official record of the hearing shall be taken by tape recording.

Section 5.5 Request for Copy of the Record

When a hearing is continued, upon recess for the day of that hearing, a necessary party may request a copy of the tape recording of the hearing conducted on that day. The copy will be provided to that party within _____ after the recess of the continued hearing. A copy of a tape recording of the complete hearing will be provided to any person making a written request. A person requesting a copy of a tape recording shall pay the actual cost for the preparation of the copy. In the case where an official court report is being used to record the hearing, a request for a written transcript of the hearing will be accepted as provided for in Section 2.3 of Resolution ____ Establishing Deposit and Fees Regulations for Cost Incurred in Annexation Proceedings.

Note: The first two sentences of this section provide for the opportunity for a “necessary party” to receive a copy of the current day’s proceedings. When a hearing runs over several days or may be held off and on over a long period of time, this provides a party with the opportunity to review the testimony currently before the board and, more appropriately, better prepare for the remainder of the hearing.

Section 5.6 Order of Hearing

The hearing before the Board will be conducted as follows:

- A. Opening statements
- B. Challenges to validity of petition signatures
 1. Owner’s request to void petition signature
 2. Challenges to proof of authority of person to sign
- C. Determination of the validity of the petition
- D. Disposition of procedural matters.
- E. Presentation of the case by the parties
 1. Agent for the petitioners’ case
 2. Municipality’s case
 3. Township’s case (or townships cases, if more than one is involved)
- F. Testimony from any other person wishing to support or contest the petition
- G. Closing statements
- H. Adjournment of hearing

Section 5.7 Continuance of the Hearing

The board may, within its discretion, continue a hearing. The necessity and timing of a continuance will be based upon consultation with the necessary parties in an attempt to be fair to all parties. A continuance will be granted in order to ensure that the hearing is completed in a timely manner and that all parties are given a reasonable opportunity to prepare for and present their case.

Note: There will be instances where a hearing on an annexation petition will be unable to be completed in one sitting. This provision gives guidance to the necessary parties with

regard to the factors that will be considered when deciding whether a continuance will occur.

Section 5.8 Post-hearing Briefs

Necessary parties to the hearing will be given the opportunity to file a post-hearing brief which will be incorporated into the record as a non-evidentiary exhibit. A post-hearing brief will be accepted within 14 days after the adjournment of the hearing. The brief should contain:

- A. Proposed findings of fact on each of the conditions for annexation as requested in either ORC 709.024 (F) or 709.033 (A)
- B. References to the hearing testimony or exhibits which support those findings
- C. Recommendation as to the decision of the board

Note: There are no provisions for a post-hearing brief provided in law; however, these briefs can be very useful to the Board in understanding the parties' positions as well as the strengths and weaknesses of their case. These briefs can be utilized to assist in making the appropriate decision.

Section 5.9 Decision of the Board

The Board shall render its decision within 30 days after the adjournment of the hearing.

This resolution was seconded by _____.

Roll call vote

_____	_____
_____	_____
_____	_____

Note: Upon adoption, Commissioners may want to send a copy of this resolution to all municipalities and townships in the county, to the county prosecutor, to the county bar association, and to the county law library.