

# Regular Annexations: Petitions by at Least 51% of Property Owners

## General Comments

This chapter will discuss those annexation petitions that contain the signatures of at least a majority of the property owners of the territory proposed to be annexed. These annexations will be referred to as “regular annexations.” Subsequent chapters will deal with each of the three types of annexations that require all of the property owners to sign the petition. Such annexations are referred to as “expedited annexations.” Another chapter of this manual will deal with annexations involving county, municipal, or state-owned land where the municipality is the petitioner.

Unlike other annexation procedures, the regular annexation process does not require the territory annexed to remain within the township(s) of origin. However, if the territory is removed, the law requires the municipality to compensate the township(s) for its loss of revenue. This compensation, sometimes referred to as “reparations,” is further discussed in Chapter 11 of this manual.

## Filing of Petition

### Contents of Petition

A majority of the owners of real estate contiguous to a municipality may petition for annexation. The petition is filed with the clerk of the board of county commissioners of the county in which the territory is located. If the territory is situated in more than one county, the annexation proceedings are to be in the county where the majority of acreage of the territory is located. The petition must contain the following information:

- A. Signatures of a majority of the property owners in the territory proposed to be annexed. To be a valid signature, it must be the signature of the owner of the property as of the date the petition is filed.

ORC 709.02 (C)

1. The person who signs or the circulator of the petition must write the date the signature was made next to the owner’s name.
2. Any signature obtained more than 180 days before the petition is filed is not counted in determining whether the petition contains a majority of the property owners.
3. Any owner who signed the petition may have the signature removed before the document is

filed by delivering a signed statement to the agent for the petitioners asking to have it removed. If the agent receives such a statement, the agent must strike through the signature, deleting it from the petition.

- B. Accurate legal description of the perimeter of the territory proposed to be annexed.
- C. Accurate map or plat of the territory.
- D. Name of person or persons to act as the agent for the petitioners. The agent may be an official, employee, or agent of the municipality to which annexation is proposed.

### **Other Information that Must Be Filed With the Petition But Is Not a Part of the Petition**

Other information that must be filed with the petition, but is not a part of the petition includes:

- A. List of all tracts, lots, or parcels in the territory proposed to be annexed, and all tracts, lots, or parcels located adjacent to the territory to be annexed or directly across the road when the road is adjacent to the territory to be annexed.
- B. The list is to include for each tract, lot, or parcel:
  - 1. Name of owner.
  - 2. Mailing address of owner.
  - 3. Permanent parcel number from the county auditor's permanent parcel numbering system (ORC 319.28).
- C. Any error in the list shall not affect the validity of the petition.

ORC 709.02 (D)

### **Definition of Owner or Owners**

The definition of "owner" or "owners" includes any of the following who is seized of a freehold estate in land:

- A. Any adult individual who is legally competent.
- B. The state or any political subdivision as defined in ORC 5713.081.
  - 1. Authorized agent of the state or political subdivision must sign the petition.
  - 2. Authorized agent of the state is the Director of Administrative Services.
  - 3. If authorized agent does not sign, the state or political subdivision shall not be considered an owner and shall not be included in determining the number of owners needed to sign the petition.
- C. Any firm, trustee, or private corporation, except:
  - 1. If the owner is a corporation, partnership, business trust, estate, trust, organization, association, group, institution, or society, the petition must be signed by a person authorized to sign for that entity.

ORC 709.02 (E)  
ORC 709.031 (C)

2. Township trustees and owners of property in the territory proposed to be annexed may request that proof be presented that the person signing was authorized to sign.

In addition, an owner is determined as of the date the petition is filed with the board of county commissioners.

A person who owns more than one parcel of real estate, either individually or as a tenant in common or by survivorship tenancy, shall be counted as one owner.

### **Ownership Interests Specifically Excluded From Definition of Owner or Owners**

ORC 709.02 (E)

Items specifically excluded from the definition of “owner” or “owners” include:

- A. Easements.
- B. Any railroad, utility, street, or highway rights-of-way held in fee, by easement, or by dedication and acceptance.
- C. Any person, firm, trustee, private corporation, the state, or any political subdivision that has become an owner of real estate if the primary purpose of the conveyance is to affect the number of owners required to sign an annexation petition.

## **Steps Leading to the Hearing**

After the petition is filed and prior to holding the hearing, the following steps are involved:

### **A. *Petition Entered Upon Journal***

The clerk of the board shall cause the petition to be entered upon the journal of the board at its next regular session. This is the first official act of the board on the petition.

### **B. *Referral to County Engineer***

Within 5 days after the petition is filed, the clerk shall refer the legal description of the perimeter and the map or plat to the county engineer for a report on the accuracy of these documents.

ORC 709.03  
ORC 709.031  
ORC 709.032

### **C. *Hearing Date Set***

Within 5 days after the petition is filed, the board shall set a date, time, and place for the hearing.

1. The date must be not less than 60 nor more than 90 days after the petition was filed.
2. The board may appoint the clerk or the county administrator to set hearing dates (ORC 709.014 (B)).

### **D. *Notice of Hearing to Agent for the Petitioners***

1. The board must notify the agent for the petitioners of the date, time, and place of the hearing.
2. The board may appoint the clerk or the county administrator to provide notice to the agent for the petitioners (ORC 709.014 (B)).

#### **E. Notice Provided by Agent for the Petitioners**

Upon notification of the date, time, and place of the hearing, the agent for the petitioners must:

1. Within 5 days, cause written notice of the filing of the petition; the date and time of filing; and the date, time, and place of hearing to be delivered to:
  - a) Clerk of each township that has land included in the petition.
  - b) Clerk of the legislative authority of the municipality to which annexation is proposed.
  - c) Clerk of the board of county commissioners of any other county if the land is located in another county.
  - d) The notice must include:
    - 1) The date and time the petition was filed.
    - 2) The county in which it was filed.
    - 3) A copy of the petition.
    - 4) A copy of any other attachments or documents that accompanied the petition as it was filed.
  - e) This notice must be given by certified mail, return receipt requested, or by personally serving the clerks. Proof of service in the case of personal service is an affidavit of the person who delivered the notice to the clerk.
2. Within 10 days, send by regular mail the following information to the following individuals:
  - a) All owners within the territory to be annexed.
  - b) All owners of property adjacent and directly across the street from the territory proposed to be annexed.
  - c) The mailing must include the following items:
    - 1) A copy of the notice the board sent to the agent for the petitioners setting the date, time, and place of the hearing.
    - 2) Map of territory proposed to be annexed.
    - 3) A statement indicating where the full petition can be reviewed.
    - 4) A statement that any owner who signed the petition may remove the signature from the petition by filing with the clerk a written notice of withdrawal within 21 days after the date the agent mailed the notice.
    - 5) A certification of the date the agent mailed the notice to property owners.

#### **F. Agent Files Proof of Service with Board of County Commissioners**

1. Within 10 days after the date of completion of service, the agent of the petitioners shall file proof of service of notice on the township(s), municipality and with the board of county commissioners of another county, if applicable.
2. Within 10 days after mailing the notices to the property owners, the agent shall file with the

board of county commissioners a notarized affidavit that a notice was sent by regular mail to the property owners.

**G. *Removal of Signatures From Petition***

An owner who signed an annexation petition may remove that signature by filing with the clerk a written notice of withdrawal. This notice must be filed within 21 days after the agent mailed the notice of the hearing to the owner. After this date signatures may only be withdrawn or removed at the hearing if the board finds that the signature was obtained under circumstances that constitute fraud, duress, misrepresentation, or under influence.

**H. *Agent to Publish Notice in Newspaper***

The agent for the petitioners must cause notice of the substance of the petition and the date, time and place of the hearing to be published in a newspaper of general circulation within the county. The notice must be published at least once and at least 7 days prior to the hearing date. If land is located in more than one county, the notice must be published in all counties.

**I. *Agent to File Proof of Publication With Board of County Commissioners***

Within 10 days after the notice is published, the agent must file proof of publication with the board. If the notice was published fewer than 10 days before the hearing, the proof of publication must be filed at the hearing.

**J. *County Engineer to File Report With Board of County Commissioners***

At least 25 days before the hearing, the county engineer must file a report with the board on the accuracy of the legal description of the perimeter and the map or plat. This report is not conclusive upon the board. Failure by the county engineer to make this report does not affect the jurisdiction or duty of the board to proceed.

**K. *Municipal Statement of Services Filed With Board of County Commissioners***

At least 20 days before the hearing, the legislative authority of the municipality must file with the board an ordinance or resolution that includes a statement indicating what services it will provide to the territory to be annexed and an approximate date it will provide these services. The municipality is entitled, in its sole discretion, to provide additional services.

**L. *Amending Territory Proposed to Be Annexed***

At least 15 days before the hearing, the petition may be amended by the board if the amendment does not add territory to the petition. This can only be done with the consent of the agent for the petitioners. No notice of this action is required.

If the petition is so amended, the board may re-refer the legal description of the perimeter and the map or plat to the county engineer if these items have been revised. The county engineer shall then file a written report on the accuracy of these items on or before the hearing. Again, the report is not conclusive upon the board, and failure to make the report does not affect the jurisdiction or duty of the board to proceed.

**M. *Property Owners Or Township Trustees May Request Verification that Persons Who Signed Petition Were Authorized to Sign***

1. At least 15 days before the hearing, the board of township trustees of any township containing territory proposed to be annexed or any owner of property in the area proposed to be annexed

may request reasonable proof of the authority of a person signing the petition on behalf of any person other than a natural being, the state, or a political subdivision. The request must be in writing and filed with both the board of county commissioners and with the agent for the petitioners.

2. If such a request is filed, the agent for the petitioners shall present to the board at the hearing sufficient evidence by affidavit or testimony to establish that the person was authorized to sign the petition. If the board does not find sufficient evidence in this regard, it must remove the signature from the petition.

#### **N. *Filing of Affidavits***

1. At least 15 days before the hearing, affidavits may be filed with the board. However, the board must accept an affidavit after the 15 day period if the purpose of it is to establish the affiant's authority to sign the petition.
2. Affidavits may be in support of or against the annexation.
3. Affidavits also must be served upon the necessary parties, which includes the municipality to which annexation is proposed, each township with land in the area proposed to be annexed, and with the agent for the petitioners at least 15 days before the hearing.
4. Affidavits must be served upon these "necessary parties" as provided in Rule 5 (B) of the Rules of Civil Procedure.
5. An affidavit establishing the affiant's authority to sign the petition may be filed at the hearing when a request has been made for reasonable proof to be presented establishing the authority for a person to sign the petition.

#### **O. *Request for Court Reporter at Hearing***

No later than 7 days before the hearing, a request for a court reporter may be filed with the board. The request must be accompanied by a deposit that must be established in a fee or deposit resolution by the board.

## **The Hearing**

On the date, time, and place previously determined, the board of county commissioners holds the public hearing on the annexation. It may be at either a regular or special session of the board. CCAO believes that statute does not require the hearing to be completed in one day. As is current practice, the hearing may be continued to a subsequent date or dates.

Following are the major provisions of law that apply to the hearing on a regular annexation petition.

### **Record of Hearing**

The board must make a record of the hearing by electronic or some other suitable method. A request may be filed for the board to provide an official court reporter.

- A. Request must be submitted at least 7 days before the hearing.
- B. A request for a court reporter must be accompanied by a deposit to pay costs.

**ORC 709.032 (B)**

- C. A request that record be transcribed may be filed with the board at any time, although this is usually done at the end of the hearing. There is no duty to transcribe unless a request is made and is accompanied by an amount to cover the cost of transcription.
- D. A fee and deposit resolution should specify amounts of deposit and cost of transcription.

### **Necessary Parties to an Annexation**

Necessary parties to the regular annexation proceeding have certain rights that other persons do not have at an annexation hearing. These rights are explained throughout this chapter. Necessary parties include:

- A. The municipality to which annexation is proposed.
- B. Each township, any portion of, which includes territory proposed to be annexed.
- C. The agent for the petitioners.

ORC 709.032 (A)

### **Issuance of Subpoenas by Board of County Commissioners**

The board is granted authority to issue subpoenas on its own initiative. However, the board must issue a subpoena if requested by a “necessary party.”

- A. Subpoenas may be for witnesses.
- B. Subpoenas may be for documents including books, papers, correspondence, memoranda, agreements, or other documents or records that are relevant or material to the petition.
- C. Subpoenas are directed to the county sheriff of the county where the witnesses, documents, or records are found.
- D. Subpoenas are served and returned in the same manner as allowed by the common pleas court in criminal cases.
- E. Fees and mileage expenses of the county sheriff and witnesses are the same as allowed by common pleas court in criminal cases. (ORC 311.17 (A) (8) subpoena - \$1.00; and ORC 311.17 (B) (1) mileage - \$0.50 for first mile and \$0.20 each additional mile.)
- F. Fees and mileage expenses must be paid in advance by the party requesting the board to issue a subpoena.
- G. If the board issues subpoenas on its own initiative, CCAO believes the expenses may be paid out of fees charged by the board.
- H. Fees related to the subpoena should be included in fee resolution.

ORC 709.032 (B)

### **Enforcement of Subpoenas**

In the case of disobedience or neglect of a subpoena or refusal of a witness to testify to any matter regarding which the witness may be lawfully interrogated, the court of common pleas may compel obedience.

- A. The board of county commissioners or any member of the board, or a necessary party must apply to common pleas court.

ORC 709.032 (B)

- B. Court may impose obedience by contempt proceedings as in the case of disobedience of the requirements of a subpoena issued from the court or refusal to testify in court.
- C. An owner of a company, firm, partnership, association, or corporation that is subpoenaed may have an agent or attorney appear on behalf of the owner before the board of county commissioners.

### **Testimony at Hearing**

- A. At the hearing, any person may appear, in person or by attorney, and after being sworn, may support or contest the annexation.
- B. Necessary parties or their representatives are entitled to:
  - 1. Present evidence.
  - 2. Examine witnesses.
  - 3. Cross-examine witnesses.
  - 4. Comment on all evidence, including affidavits.

ORC 709.032 (C)

### **Removal of Signatures at Hearing**

- A. While signatures may be removed from the petition prior to the hearing, any owner who signed the petition may appear at the hearing in an effort to have the owner's signature removed from the petition.
- B. The owner must be sworn as provided in ORC 305.21.
- C. The owner may testify that the signature was obtained by:
  - 1. Fraud.
  - 2. Duress.
  - 3. Misrepresentation, including misrepresentation relating to the provision of municipal services to the territory proposed to be annexed.
  - 4. Undue influence.
- D. Any person, after being sworn, may testify orally in support of or rebuttal to the testimony of the owner.
- E. The owner and any witness who testifies are subject to cross-examination by the necessary parties.
- F. If a majority of the board finds that the owner's signature was obtained under circumstances constituting fraud, duress, misrepresentation, or under influence, it shall find the signature to be void.
- G. The board orders the signature removed from the petition.
- H. Signature is removed as of the time the petition was filed.

ORC 709.032 (D)

## The Decision by the Board of County Commissioners

- A. Within 30 days after the conclusion of the hearing, the board must adopt a resolution granting or denying the petition for annexation and enter it upon the board's journal.
- B. In granting or denying the petition, the resolution must include specific findings of fact as to whether each of the conditions listed in ORC 709.033 (A) (1) to (6) have been met. These conditions are listed later in this chapter in the section titled "Conditions for Annexations."
- C. The board shall grant the petition if it finds that each of the conditions listed in ORC 709.033 (A) (1) to (6) have been met, based upon a preponderance of the substantial, reliable, and probative evidence on the whole record.
- D. Upon journalization of the resolution granting or denying a petition, which resolution must include the specific findings of fact as to whether each of the conditions listed in Division (A) (1)-(6) of ORC 709.033 has been met, the clerk must send a certified copy to:
1. The clerk of the legislative authority of the municipality to which annexation is proposed.
  2. The clerk of each township in which territory proposed to be annexed is located.
  3. The clerk of the board of county commissioners of other counties if the territory proposed to be annexed is located in another county.
  4. The agent for the petitioners.
- E. The clerk shall take no further action until the expiration of 30 days after journalization of the resolution. During this 30 day period, appeals may be taken pursuant to ORC 709.07.
- F. If after the expiration of the 30 day period no appeal has been filed and the petition was granted, the clerk shall deliver a certified copy of the entire record of the annexation proceedings to the auditor or clerk of the municipality. The entire record includes:
1. All resolutions of the board, signed by a majority of the members of the board.
  2. The petition.
  3. The map.
  4. All other papers on file.
  5. The recording of the proceedings, if a copy is available.
  6. Exhibits presented at the hearing.
- G. If after the expiration of the 30 day period no appeal has been filed and the petition was denied, the clerk shall send a certified copy of the resolution denying the annexation to:
1. The agent for the petitioners.
  2. The clerk of the municipality to which annexation was proposed.
- H. If an appeal is filed under ORC Chapter 2506, a notice of appeal to the common pleas court is filed with the clerk. This notice of appeal operates as a stay of execution upon the clerk.

ORC 709.033  
ORC 709.07

- I. After the common pleas court rules on the case, the clerk of courts must send a certified copy of the court order to the clerk.
- J. If a party appeals to the Court of Appeals or Supreme Court, this party must file a time stamped copy of the notice of appeal with the clerk of the board. This notice of appeal also serves as a stay of execution on the clerk.
- K. The stay upon the clerk shall not be lifted until the appropriate court issues a final order affirming or reversing the decision of the board and the time limits for additional appeals as specified in the certified copy of a court order sent by the clerk of courts has passed without the clerk receiving an additional notice of appeal.
- L. When appeals have been exhausted and if the court determines that the petition should be denied, the board must adopt a resolution denying the annexation, but only if the board's original action was to approve the annexation.
- M. When appeals have been exhausted and if the court determines that the petition should be granted, the board must adopt a resolution granting the petition if the original action of the board was denial. If the petition was originally granted, a new resolution is not required.
- N. The clerk shall then deliver a certified copy of that journal entry and the entire record of the proceedings to the auditor or clerk of the municipality to which annexation is proposed. This includes:
  - 1. All resolutions of the board, signed by a majority of the members of the board.
  - 2. The petition.
  - 3. The map.
  - 4. All other papers on file.
  - 5. The transcript of the proceedings, if available. (If not, CCAO advises a recording of the proceedings, if a copy is available.)
  - 6. Exhibits presented at the hearing.

## Conditions for Annexation

- A. When granting or denying a regular annexation, the board must adopt a resolution. The resolution must include specific findings of fact as it relates to each condition for annexation.
- B. If the board grants the annexation, the decision is based upon a preponderance of the substantial, reliable, and probative evidence on the whole record.
- C. Following are the conditions that must be met to grant a regular annexation petition. These conditions are discussed in greater detail in Chapter 3 of this manual.
  - 1. The petition meets all the requirements set forth in, and was filed in the manner provided in, ORC 709.02. (see technical checklist in Appendix H)
  - 2. The persons who signed the petition are owners of real estate located in the territory proposed to be annexed.
  - 3. The number of valid signatures on the petition constituted a majority of the owners of real estate in the territory as of the date the petition was filed.

ORC 709.033 (A)

4. The municipality has complied with ORC 709.03 (D), the requirement to adopt by ordinance or resolution and submit a statement indicating what services it will provide and an approximate date it will provide the service to the territory proposed to be annexed, upon annexation.
5. The territory is not unreasonably large.
6. On balance, the general good of the territory proposed to be annexed will be served, and the benefits to the territory proposed to be annexed and the surrounding area will outweigh the detriments to the territory proposed to be annexed and the surrounding area, if the annexation petition is granted.

“Surrounding area” is defined as the territory within the unincorporated area of any township located one-half mile or less from any of the territory proposed to be annexed.

Note: This condition is extensively discussed in the next chapter of this manual.

7. No street or highway will be divided or segmented by the boundary line between a township and the municipality as to create a road maintenance problem. If a street or highway will be so divided or segmented, the municipality has agreed, as a condition of the annexation, that it will assume the maintenance of that street or highway.

## **Refer to Appendix for Flow Chart and Checklists**

In the appendix of this manual, the following appendices may be helpful in processing a regular annexation:

Appendix F	Procedural Flow Chart for a Regular Annexations
Appendix G	Procedural Checklist for a Regular Annexations
Appendix H	Technical Checklist for a Regular Annexations