

# Expedited Type 3 Annexations: Petitions By All Property Owners For Undertaking A Significant Economic Development Project

## General Comments

Chapter 6 will deal with “Expedited Type 3 Annexations” -- those authorized under ORC 709.024. Expedited Type 3 Annexations are for the purpose of undertaking a significant economic development project.

In Expedited Type 3 Annexations, the territory annexed is not, at any time, to be excluded from the township under ORC 503.07. The territory, thus, remains subject to the township’s real property taxes. The only exception is in the case where an annexation agreement (ORC 709.192) or a cooperative economic development agreement (ORC 701.07) has been entered into that allows some or all of the territory to be excluded or removed from the township.

## Definition of a Significant Economic Development Project

The term “significant economic development project” means:

- A. One or more economic development projects that can be classified as:
  1. Industrial
  2. Distribution
  3. High Technology
  4. Research & Development
  5. Commercial
- B. These projects may include ancillary residential and retail uses.
- C. The projects also must satisfy all of the following criteria:
  1. Capital investment:
    - a) Total private real and personal property investment shall exceed \$10 million including:

ORC 709.024 (A)

- 1) Land
  - 2) Infrastructure
  - 3) New construction
  - 4) Reconstruction
  - 5) Installation of fixtures & equipment
  - 6) Additional inventory
- b) The \$10 million threshold excludes investment solely related to ancillary residential and retail elements.
  - c) The \$10 million threshold does not include payments in lieu of taxes under:
    - 1) ORC Chapter 725 -- Urban Renewal Debt Retirement Fund Program.
    - 2) ORC Chapter 1728 -- Community Redevelopment Corporation Program.
    - 3) ORC Sections 5709.40 -- 5709.43 -- Municipal Tax Increment Financing.
    - 4) ORC Sections 5709.73 -- 5709.75 -- Township Tax Increment Financing.
    - 5) ORC Sections 5709.78 -- 5709.81 -- County Tax Increment Financing.
2. Additional annual payroll:
    - a) creation of additional annual payroll greater than \$1 million, and
    - b) any payroll arising solely from any retail elements of the project is excluded.
  3. Project has been certified by the state Director of Development as meeting the real and personal property and payroll thresholds as specified above.

## Special Nature of Annexation Proceedings

Under an Expedited Type 3 Annexation, the annexation proceedings are conducted under ORC 709.02 (C), (D), and (E) and ORC 709.021 and ORC 709.024 to the exclusion of any other provision of ORC Chapter 709.

However, the following ORC Sections apply to the granting of this type of annexation:

- A. 709.014 -- Establishment of fee schedule and delegation of authority to county administrator or clerk. (see Chapter 1)
- B. 709.015 -- Substantial compliance of procedural requirements provision. (see Chapter 1)
- C. 709.04 -- Municipal consideration of annexation petition.
- D. 709.10 -- Annexation effective 30 days after municipality passes resolution/ordinance accepting annexation.
- E. 709.11 -- Annexation petition to be filed in county in which the majority of acreage of the territory is situated. (see Chapter 1)

- F. 709.12 -- Apportioning of indebtedness of annexed territory.
- G. 709.192 -- Annexation agreements. (see Chapter 10)
- H. 709.20 -- Residents in territory have same rights as other municipal residents upon completion of annexation.
- I. 709.21 -- No error in annexation proceeding shall invalidate annexation once it has become final.

## Annexed Area Not to Be Excluded from Township

Under an Expedited Type 3 Annexation, the territory annexed shall not at any time be excluded from the township under ORC 503.07. The annexed area, thus, remains subject to the township's real property taxes.

ORC 709.024 (H)

The only exception to this rule is if the municipality and township have entered into an annexation agreement (ORC 709.192) or a cooperative economic development agreement (ORC 701.07) that would allow such exclusion or removal from the township.

## Filing of Petition

### Contents of Petition

An Expedited Type 3 Annexation petition must be submitted to the clerk of the board of county commissioners of the county where the territory is located. The petition must specifically request that the board follow ORC 709.024. 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. It must contain the following information:

- A. Signatures of all the property owners of 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.
  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 a valid signature.
  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.

ORC 709.02 (C)  
ORC 709.021 (B)

## **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)  
ORC 709.021 (B)

## **Definition of Owner or Owners**

The term "owner" or "owners" means 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 state or political subdivision must sign the petition.
  2. Authorized agent of the state is the Director of Administrative Services.
  3. If an 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. 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 709.021 (B)

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 Excluded from Definition of Owner or Owners**

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.

ORC 709.02 (E)  
ORC 709.021 (B)

### **Definition of Party or Parties**

The “party” or “parties” to an Expedited Type 3 Annexation are:

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

ORC 709.021 (D)

### **Consideration of Petition**

The petition, signed by all the owners of land contiguous to a municipality, may be filed requesting the special procedure in ORC 709.024 be used. The petition is filed with the clerk of the board of county commissioners 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. After the petition is filed, 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. *Notices to Be Sent By Agent for Petitioners***

1. Within 5 days after filing the petition, the agent for the petitioners must notify:
  - a) Clerk of the legislative authority of the municipality to which annexation is proposed.
  - b) Clerk of each township any portion of which is included in the territory proposed to be annexed.
  - c) Clerk of board of county commissioners of any other county if land is located in another county.
  - d) Owners of property adjacent to the territory proposed to be annexed or adjacent to a road that is adjacent to that territory and located directly across the road from that territory.
2. The notice must refer to the time and date the petition was filed and the county in which it was filed. The notice must include:
  - a) Copy of the petition.
  - b) Any attachments or documents accompanying the petition as filed.
3. The notice to governmental bodies must be given by certified mail, return receipt requested, or by causing the notice to be personally served on the appropriate governmental officer, with proof of service being by affidavit of the person who delivered the notice.

ORC 709.024

4. The notice to property owners is sufficient if sent by regular U.S. mail to the tax mailing address listed on the county auditor's records.
5. Proof of service of the notice on each governmental official, but not on property owners, must be filed with the board of county commissioners.
6. The law does not provide any time requirement for this proof of service.

**C. *Township or Municipality Consents or Objects***

1. Within 30 days after the date the petition is filed, the municipality to which annexation is proposed and each township with land included in the proposed annexation may adopt an ordinance or resolution consenting or objecting to the annexation.
2. An objection to a proposed annexation by a municipality or township must be based solely on the conditions under which commissioners' rule on Type 3 Expedited Annexations as specified in ORC 709.024 (F). These conditions are listed later in this chapter in the section titled, "Conditions for Annexation in Expedited Type 3 Annexations."
3. As specified in ORC 709.024 (C) (1), failure to file an ordinance or resolution within 30 days of filing is deemed as consent to the proposed annexation by the municipality or township.

**D. *Filing of Statement of Municipal Services With Board of County Commissioners***

1. Within 20 days after receiving notification by the agent that the petition has been filed, the municipality to which annexation is proposed must adopt an ordinance or resolution relating to municipal services.
2. The ordinance or resolution must state what services the municipality will provide or cause to be provided to the territory proposed to be annexed, upon annexation.
3. The ordinance or resolution shall also include an approximate date by which the municipality will provide or cause to be provided the services .
4. If a hearing is to be held on the petition, the statement must be filed with the clerk at least 20 days before the date of the hearing.

**E. *Action by County Commissioners With Consent of All Parties***

If all parties to the annexation consent to the proposed annexation, no hearing shall be held. The board, at its next regular session shall adopt a resolution approving the annexation. There is no appeal in law or in equity of such approval.

**F. *Action by County Commissioners Without Consent of All Parties***

If all parties do not consent to the annexation, a hearing must be held on the petition. Objections to the petition must be based solely on the provisions specified in ORC 709.024 (F); these provisions are listed later in this chapter in the section titled "Conditions for Annexation in Expedited Type 3 Annexations." If objections are filed, the following procedure must be followed:

1. The board shall hear the petition at its next regular session.
2. The board shall notify the agent for the petitioners of the hearing date, time, and place.
3. The agent for the petitioners shall give notice to the parties and the owners of property adjacent to the territory proposed to be annexed or adjacent to a road that is adjacent to that territory and located directly across that road from that territory.

4. This notice must be sent within 5 days after receipt of the notice of the hearing from the board.
5. Notice to a property owner is sufficient if it is sent by regular United States mail to the tax mailing address listed on the county auditor's records.
6. At the hearing, the parties and any owner of property within the territory proposed to be annexed may appear, in person or by attorney, to support or contest the petition. The parties or their representatives are entitled to present evidence, examine and cross-examine witnesses, and comment on all evidence.
7. Within 30 days after the hearing the board shall enter upon its journal a resolution granting or denying the proposed annexation.
  - a) The board shall adopt a resolution granting the annexation if it finds, based upon a preponderance of the substantial, reliable, and probative evidence on the whole record, that each of the conditions for annexation has been met.
  - b) The resolution must include specific findings of fact as to whether or not each of the conditions for annexation has been met.

**G. *Transmittal to Municipality***

If the petition is granted, the clerk delivers a certified copy of the entire record of the annexation proceedings to the auditor or clerk of the municipality. The following items must be included:

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.

If the petition is denied, the statute does not give direction on notification to the parties; however, CCAO encourages notification be made.

## **Conditions for Annexation in Expedited Type 3 Annexations**

The following conditions must be met to approve an Expedited Type 3 Annexation:

- A. The petition meets all the requirements set forth in, and was filed in the manner provided in, ORC 709.021. (see technical checklist in Appendix Q) (ORC 709.024 (F) (1))
- B. The persons who signed the petition are owners of property located in the territory proposed to be annexed and they constitute all owners in the territory. (ORC 709.024 (F) (2))
- C. No street or highway will be divided or segmented by the boundary line between a township and municipality as to create a road maintenance problem, or if the street or highway will be so divided or segmented, the municipality has agreed, as a condition of annexation, to assume maintenance of that street or highway. (ORC 709.024 (F) (3))

**ORC 709.024 (F)**

- D. The municipality has adopted an ordinance or resolution containing a statement of municipal services. (ORC 709.024 (F) (4))
- E. The state Director of Development has certified that the project qualifies as a significant economic development project on the basis of the \$10 million property investment threshold and the \$1 million payroll threshold. (ORC 709.024 (F) (5))

## Appeals of Expedited Type 3 Annexations

If the board grants the petition, there is no appeal in law or in equity. The only person that has standing to appeal this type of annexation is an owner who signed the petition. Such an owner may appeal the denial of a proposed annexation by the board to the court of common pleas pursuant to ORC 709.07, within 30 days of denial. Subsequent appeals to the court of appeals and Ohio Supreme Court are also possible. If a final order of a court orders the board to grant the petition, the board must adopt a resolution granting the petition.

ORC 709.024 (G)

## Municipal Provision of Services

A municipality is entitled, in its sole discretion, to provide to the territory proposed to be annexed, services in addition to those services described in the statement of services it adopted and submitted to the board under ORC 709.024 (C) (2) after annexation occurs.

ORC 709.024 (I)

## Commentary on Statutory Ambiguities and Other Issues

- A. The law is vague and offers no specific direction for establishing a hearing date when the municipality or township(s) file an objection to the petition. While the law provides that unless all parties consent, a hearing must be held on the petition at the board's next regular session, it leaves two issues unresolved:
  - 1. While the law provides that all parties are given a 30 day period to consent or object, there is no direction given for when the hearing is to be held if a party objects at any time prior to the 30th day. Since it is clear that once an objection is filed that a hearing must be held, one interpretation is that the date for the hearing must be at the next regular session of the board following the receipt of an objection. Another interpretation is that no hearing should be scheduled until after the expiration of the 30 day period even if an objection is filed prior to the 30th day. Commissioners should consult the county prosecutor on this issue to formulate a county position on this issue. If the prosecutor believes the second interpretation is correct, CCAO advises commissioners to schedule a "tentative hearing" for the first regular session of the board after the expiration of 35 days after the petition is filed. This would account for the 30 days during which objections could be filed and 5 days for the agent to provide notices.
  - 2. While the law gives the agent a 5 day period to notify the parties and owner of the hearing date, it is entirely possible that an objection could occur so that the next regular session of the board will take place prior to the 5 day period the agent has to notify the parties of the date of the hearing. If this situation arises, it is recommended that the hearing be delayed until the next regular session after the expiration of the 5 day period during which notices must be sent by the agent.



- B. While the law provides for participation by the parties and property owners within the territory to be annexed, it does not provide for any involvement or public comment from any member of the public. However, since all sessions of the board are open to the public, it is within the discretion of the board to accept public comment during any hearing on the petition.
- C. There is no specific statutory authority given for the board to refer the legal description and map/plat to the county engineer for review. It is suggested that such action is inherent in the statutory language that the petition must contain an accurate legal description and plat/map. (ORC 709.02 (C) (2))
- D. Under an Expedited Type 3 Annexation no hearing is required if both the municipality and township(s) consent to the annexation. When no hearing is held, commissioners should take special care to assure that the petition is valid and the required conditions for annexation have been met. Such special care is advised by CCAO because in the absence of a hearing, the opportunity for parties to point out problems with the petition will be more limited than when a hearing is conducted.

For the petition to be valid, it must conform with all of the statutory requirements as outlined in this chapter. These include the petition and attachments being accurate and complete; the land is contiguous to the municipality; and, the owners who sign the petition are “owners” as now defined in ORC 709.02. In addition, commissioners should assure that the statement of municipal services has been filed. Finally, commissioners must assure that all of the conditions for an Expedited Type 3 Annexation have been met.

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

In the appendix of this manual, the following appendices may be helpful in processing an Expedited Type 3 Annexation:

- Appendix O      Procedural Flow Chart for Expedited Type 3 Annexations
- Appendix P      Procedural Checklist for Expedited Type 3 Annexations
- Appendix Q      Technical Checklist for Expedited Type 3 Annexations