

# Annexation Hearing Guidelines

## Introduction

The new annexation law provides two things in regards to annexation hearings. First, annexation hearings will be much more complicated to organize, conduct, and control. Second, conducting annexation hearings fairly and to the letter of the law will help to insure that the decision of the board of county commissioners will be upheld if appealed. Under the new law a hearing is not always required depending on the type of annexation that is proposed.

This chapter offers guidance for conducting an actual hearing for a regular annexation under ORC 709.03 for those petitions that have been filed by a majority of the land owners of the proposed territory to be annexed. In these hearings the legal standard for determining whether the annexation should be approved includes a list of conditions and more discretion for the commissioners.

This chapter looks at all of the issues and responsibilities a board will be confronted with as it conducts a regular annexation hearing under the new law. It can also be modified and applied to the other types of annexation petitions discussed in this manual.

## When Annexation Hearings Are Required

The following table summarizes when annexation hearings are required under SB 5:

Type of Annexation	ORC Section	Annexation Hearing Required	Other Procedures and Timelines
Regular Annexation	709.03 709.031 709.032 709.033	Yes	The date of the hearing must be not less than 60 nor more than 90 days after petition was filed.
Expedited Type 1 Annexation	709.022	No	Board adopts resolution granting petition at next regular session after the petition was filed, if it meets statutory requirements.

Type of Annexation	ORC Section	Annexation Hearing Required	Other Procedures and Timelines
Expedited Type 2 Annexation	709.023	No	<p>If both municipality and township(s) consent, the board adopts resolution granting petition at next regular session of board after consent ordinance/resolutions were filed, if it meets statutory requirements.</p> <p>If municipality or township(s) objects, the board "reviews" the petition and grants or denies the petition not less than 30 or more than 45 days after petition was filed. This "review," however, does not constitute a hearing.</p>
Expedited Type 3 Annexation	709.024	<p>No - If both municipality and township consent.</p> <p>Yes - If either municipality or township objects.</p>	<p>If both municipality and township consent, the board adopts resolution granting petition at next regular session of board after consent ordinance/resolutions were filed, if it meets the statutory requirements.</p> <p>If municipality or township objects, a hearing on the petition must be held at the next regular session of the board. (see "Commentary" item A in Chapter 6)</p>
Annexation of Municipal, County, or State-Owned Land by Petition of Municipality	709.13 709.14 709.15 709.16	No	<p>The board must adopt a resolution granting or denying the petition within 30 days of filing, if it meets all statutory requirements.</p> <p>Commissioners have complete discretion if land is owned by the county; must approve if land is owned by the municipality; and must approve for state-owned land if Director of Administrative Services consents.</p>

Where hearings are not required, the law requires commissioners grant or deny the petition within a specified time period, if the petition meets the statutory requirements. In these cases no formal hearing is held. It is unclear if the board may receive or accept comment on the proposed annexation, even though it is generally normal practice to allow for public comment during all sessions of the board.

## **Adoption of Resolution Governing the Annexation Process**

While not required by law, the board should consider adopting a resolution governing the process for annexations that come before it. The resolution should specify the procedure that will be followed for annexation hearings in the county and set out the requirements that must be met by the parties and participants in any annexation proceeding before the board. A sample resolution “General Order for Proceedings in Annexation Filed” is provided as Appendix D to this manual.

Commissioners should carefully study this resolution and review it with the clerk, county administrator, and county prosecutor prior to adoption. Some sections of this resolution may create additional administrative work for the board and its staff. However, CCAO believes most sections of the sample resolution will assist in the effective administration of the new law and will inform parties to the petition and the public of the “rules of the game.” Commissioners should understand, though, that after such a resolution has been adopted, the board must follow the general procedures and requirements set forth in the resolution. Naturally, the resolution can always be amended should practical problems become apparent.

## **Conducting the Hearing for a Regular Annexation**

Every county has its own tradition under which it conducts sessions of the board and holds public hearings. While it is understood that every county has unique procedures and protocol, the new annexation law will necessitate that certain aspects of a regular annexation petition come before the board in an organized and consistent manner. The following steps for conducting the annexation hearing are, thus, recommended.

Organizing the hearing by dividing it into six different stages should help to insure that the hearing proceeds in a logical sequence and that the record reflects compliance with various procedural and technical aspects of the law. Within the six recommended states of the hearing, CCAO is suggesting that certain steps be taken to assure compliance with the law. By dividing the hearing into stages and steps, the board will have a systematic and orderly manner to address each of the various issues involved in a regular annexation. This recommended process is designed to provide an efficient way for fairly processing an annexation petition on a regular annexation:

### **A. *Stage 1 - Convening the Hearing***

The hearing is called to order, introductions are made, the general procedure is explained and opening statements are made by the parties to the annexation.

### **B. *Stage 2 - Determination of Validity of Petition***

The second stage of the hearing includes a series of steps that helps the board to determine whether the petition, as filed and as before the board at the hearing, is valid. At the conclusion of this stage of the hearing, if the board finds the petition to not be valid, the board, after consulting with the county prosecutor, should dismiss the petition. If the petition is determined to be valid, then the board proceeds to the third stage of the hearing.

**C. Stage 3 - Consideration of Procedural Matters**

During this stage of the hearing, the board primarily looks at procedural questions to determine if all of the information that is to be before the board is present and whether anything stands in the way of the parties being able to present their full case to the board at that time. At this point, if certain required information is not yet before the board or likely to be unable to be presented at the hearing, the board may wish to continue the hearing to a date when necessary information will be able to be provided.

**D. Stage 4 - Hearing on the Merits of the Petition**

During this stage of the hearing, testimony is presented by the parties and other persons, and there is the examination and cross-examination of witnesses.

**E. Stage 5 - Concluding of the Hearing**

This stage of the hearing allows for closing statements by the parties and other final comments as it relates to how the board will proceed to make a decision on the petition.

**F. Stage 6 - Post Hearing Activities**

During this stage the board makes its decision by making findings of fact on each of the conditions for annexation. The resolution is journalized and transmitted to the parties as required by law.

The focus of this chapter is to detail these specific steps that comprise these recommended six stages of a regular annexation hearing.

## **Stage 1 Convening the Hearing**

### **Preliminary Matters**

- A. The hearing has been scheduled on a meeting agenda.
- B. The proper public notices of the meeting/hearing have been given.
- C. Room configuration:
  - 1. The room is set up so all parties will be able to see and hear each other and have adequate areas from which to work.
  - 2. A proper “gallery” for the public has been established.
  - 3. Making the record.
    - a) If tape recording, microphones are appropriately placed.
    - b) If video recording, the camera is in a position to have an unobstructed view of the proceedings and its microphone can “hear” the entire room. It is suggested that all persons identify themselves before they speak.
    - c) If a court reporter is used, the court reporter is located so that they can view and hear the entire proceedings. Note: the board may choose to use a court reporter.

## **Call to Order**

- A. Announce the “style” (how the particular case will be referred to) for the proceeding.
  - 1. State the name of the agent.
  - 2. State whether the board is proceeding on the petition.
    - a) As filed, or
    - b) As amended
      - 1) Date approved by the commissioners and the agent.
      - 2) At least 15 days prior to the hearing.
- B. Indicate the method by which the hearing will be recorded and identify who is responsible for operating the recording device or introduce the court reporter.
- C. Introductions.
  - 1. Commissioners.
  - 2. County prosecutor’s representative.
  - 3. The “necessary parties.”
    - a) Agent for the petitioners.
    - b) Representatives for municipality.
    - c) Representatives for the township(s).
- D. Refer to the Ohio law and board resolutions governing the proceeding.
  - 1. Hearing is held in accordance with ORC Chapter 709.
  - 2. The various resolutions the board has adopted for annexation proceedings:
    - a) General order.
    - b) Deposit and fee resolution.
    - c) Resolution assigning certain responsibilities to the clerk or county administrator.
  - 3. Indicate:
    - a) All witnesses will be sworn.
      - 1) Each witness will be sworn at the time they begin their testimony.
      - 2) May be sworn in by president of the board or court reporter.

Note: Witnesses may be sworn in as a group. If this is done; however, the president of the board should inquire when each person is called to testify if the person was previously sworn and remind the individual that they are under oath.
    - b) All witnesses will be subject to cross-examination by the necessary parties.
    - c) The commissioners may ask questions of a witness at any time.

d) Each necessary party will be given the opportunity to:

- 1) Present evidence.
- 2) Examine and cross-examine witnesses.
- 3) Comment on all evidence.

E. State the order in which the hearing will proceed.

1. Opening statements.
2. Challenges to validity of petition signatures.
  - a) Owner's request to remove petition signature.
  - b) Challenges to proof of authority of person to sign.
3. Determination of the validity of the petition.
4. Disposition of procedural matters.

Note: This may necessitate taking evidence solely on procedural matters prior to a presentation by the parties on the merits of the case.

5. Presentation of the case by the parties.
  - a) Agent for the petitioners case.
  - b) Municipality case.
  - c) Township case.
6. Testimony from any other person.
7. Closing statements.
8. Continuing the hearing, if necessary
9. Adjournment of hearing.

### **Opening Statements**

- A. An opening statement may be given by any necessary party.
- B. Is a concise summary of what the board is expected to hear during the proceeding given from the perspective of that party.

## **Stage 2 Determination of Validity of Petition**

### **Owner's Request to Remove Petition Signature**

- A. State that any owner who signed the petition may seek to have that signature removed from the petition by showing that it was obtained by:
  1. Fraud.

ORC 709.032 (D)

2. Duress.
  3. Misrepresentation in general.
  4. Misrepresentation relating to the provision of municipal services to the territory proposed to be annexed.
  5. Undue influence.
- B. Testimony on this issue must be given under oath and orally at the hearing.
1. Ask if there are owners who seek removal of their signature from the petition.
  2. The owner seeking to remove their signature from the petition must testify.
  3. Any other person may testify to support or rebut the owner's testimony.
- C. Any testimony given is subject to cross-examination by the necessary parties.
- D. Signature is void if a majority of the board finds that the signature was obtained under circumstances that did constitute fraud, duress, misrepresentation, or undue influence.
- E. If void, then board orders signature removed from petition as of date of petition filing.

### **Challenges to Proof of Authority of Person to Sign**

- A. The law authorizes a "challenge" to the authority of a person to sign the petition on behalf of an entity that is not a person or political subdivision.
- B. A request to challenge a signature has been properly made if it:
1. Was filed at least 15 days prior to the hearing.
  2. Was filed with both the board and the agent for the petitioners.
  3. Made by either:
    - a) Board of township trustees from a township containing territory proposed to be annexed.
    - b) Owner of real estate in territory proposed to be annexed.
  4. Does not challenge a signature on behalf of the state, political subdivision, or another natural being (i.e., an individual).
- C. Agent presents evidence that the owner authorized the person to sign on the owner's behalf through:
1. Affidavit excepted from the 15 day pre-hearing filing requirement.
  2. Testimony at the hearing.
- D. Board action (law is silent - majority vote is assumed).
1. Retains signature on petition if board finds:
    - a) Request was properly made.
    - b) "Evidence sufficient to establish ...the... authority" to sign.
  2. Otherwise, board removes signature from petition.

ORC 709.031 (C)

## **Determination that the Petition Is Valid**

- A. Signatures constitute a majority of owners of the property proposed to be annexed.
1. At time of filing, the petition on its face contained:
    - a) The signatures of “owners” as defined in ORC 709.02.
    - b) The signatures representing a majority of the owners of real estate in the territory proposed to be annexed.
  2. The removal of signatures due to one of the following reasons has not reduced the number of valid signatures below a majority of the owners.
    - a) The signature was not that of an “owner.”
    - b) Signatures withdrawn pursuant to ORC 709.03 (C).
      - 1) The notice to property owners required to be mailed to owners of property within the proposed territory to be annexed pursuant to ORC 709.03 (B) (2) which must contain a statement that an owner who signed the petition may remove their signature by:
        - i) Filing of notice of withdrawal with the clerk of the board.
        - ii) Within 21 days from the certification of date the notice was mailed.
      - 2) The notice of withdrawal was timely filed.
        - i) Clerk establishes the last date for withdrawal of a signature.
        - ii) Based upon the certification of the date of mailing of notice to the property owners required to be sent with the notice pursuant to ORC 709.03 (B) (2).
    - c) Signatures determined to be void pursuant to ORC 709.032 (D).
      - 1) Owner has appeared at the hearing and asked that their signature be removed from the petition.
      - 2) The board found that the signature was void because it was obtained through fraud, duress, misrepresentation, or undue influence.
      - 3) The board has ordered the signature removed from the petition.
    - d) Authority to sign was not established by “sufficient evident” pursuant to ORC 709.031 (C).
      - 1) A request to challenge a signature has been properly made in that it:
        - i) Was filed at least 15 days prior to the hearing.
        - ii) Was filed with the board and the agent for the petitioner.
        - iii) Made by either:
          - (A) Board of township trustees from a township containing territory proposed to be annexed.
          - (B) Owner of real estate in territory proposed to be annexed.

ORC 709.02  
ORC 709.03  
(B), (C) & (D)  
ORC 709.031  
(A) & (C)  
ORC 709.032 (D)

- 2) The agent presented evidence that the owner authorized the person to sign on the owner's behalf through
    - i) Affidavit (excepted from pre-hearing filing requirement).
    - ii) Testimony at the hearing.
  - 3) The board determined (assumed by a majority vote) there was "insufficient evidence" presented to establish the authority" to sign and removed signature from petition.
- B. Receive the report of the county engineer into the record pursuant to ORC 709.031 (A)
1. Receipt of report serves to support finding by the board as to the accuracy of:
    - a) Legal description of perimeter.
    - b) Map or plat of territory.
  2. Revised report from the county engineer if petition was amended.
- C. Agent has provided required evidence of notifications required to be made by the agent pursuant to ORC 709.03 (B).
1. Notice to governmental entities (ORC 709.03 (B) (1)) proof of service was filed with the board within 10 days of completion of service.
  2. Notice to property owners (ORC 709.03 (B) (2)) proof of service by notarized affidavit was filed with the board within 10 days after mailing of notice.
  3. Notice by publication (ORC 709.03 (B) (3)) proof of publication was filed with the board the earlier of either:
    - a) Within 10 days after publication, or
    - b) At the hearing.

## Stage 3 Consideration of Procedural Matters

### Disposition of Procedural Matters

- A. Procedural defects (ORC 709.015)
1. Identification of "procedural defect."
    - a) Request necessary parties to identify.
    - b) Board may identify.
    - c) Give necessary parties opportunity to present evidence on procedural issues.
  2. Determine whether substantial compliance with the procedural requirements has been met irrespective of the "procedural defect."
  3. If defect effects substantial compliance:
    - a) Indicate how defect is to be cured.

ORC 709.015  
ORC 709.03 (D)  
ORC 709.032  
(B) & (C)

- b) Direct the appropriate necessary party as to:
  - 1) How they shall cure defect as required by the board.
  - 2) Time frame under which defect shall be cured.
- B. Municipal statement of services (ORC 709.03 (D))
  - 1. Should have been filed by the municipality with the board at least 20 days prior to the hearing.
  - 2. Receive statement into the record of the proceeding.
- C. Use of affidavits (ORC 709.032 (C))
  - 1. Had to have been filed not later than 15 days before the hearing.
  - 2. Must be served upon all necessary parties pursuant to Civil Rule 5 B
  - 3. If submitted into evidence, affidavits are subject to comment by any necessary party.
- D. Status of subpoenas - if issued by the board pursuant to ORC 709.032 (B)
  - 1. Subpoenas were issued by the board.
    - a) Requested by a “necessary party.”
      - 1) Agent for the petitioner.
      - 2) Municipality to which annexation is proposed.
      - 3) Each township any portion of which is included within the proposed annexation.
    - b) On the board’s own initiative.
  - 2. Has there been a failure to comply with a subpoena and is enforcement to be sought from the court of common pleas by:
    - a) The board.
    - b) Any member of the board.
    - c) A “necessary party.”
  - 3. Enforcement follows ORC 2317.21 through 2317.26.
- E. Existence of a potential road maintenance problem (ORC 709.033 (A) (6))
  - 1. Does the petition on its face suggest the possibility of a road maintenance issue?
  - 2. Has the municipality agreed to assume maintenance?

## **Stage 4 Hearing on the Merits of the Petition**

### **Presentation of the Case by the Parties**

- A. Necessary parties present their cases in the following order:
  - 1. Agent for the petitioner case.

2. Municipality case.
  3. Township(s) case(s).
- B. Examination of a witness
1. Party calls witness.
  2. Witness is sworn.
  3. Party conducts its direct examination.
    - a) Board should mark exhibits used and enter them into the record.
  4. Other necessary parties cross-examination.
  5. Rebuttal testimony of witness from party.
  6. Board may allow re-cross-examination based upon rebuttal testimony offered.

*Note: Rules of discovery do not apply so there can be no requirement imposed on the parties to disclose their witnesses prior to the hearing.*

### **Testimony From Any Other Person**

- A. The law provides that “any person may appear in person or by attorney and, after being sworn, may support or contest the granting of the petition.”
- B. After the completion of the parties’ presentations:
  1. Ask if there is anyone present who wishes to support or contest the granting of the petition for annexation.
  2. Call them up to the witness chair.
    - a) Swear them in.
    - b) Have them state their name and address for the record.
    - c) Ask them if they support or oppose the annexation.
    - d) Remind them that the representatives of the necessary parties will be able to ask them questions after they have finished their testimony.
  3. Take their testimony.
  4. Allow the necessary parties to cross-examine.
  5. Thank and excuse the person.

ORC 709.032 (C)

## **Stage 5 Concluding the Hearing**

### **Closing Statements**

- A. A closing statement may be given by any necessary party.
- B. Is a concise summary of the testimony and evidence presented at the hearing and how it supports the position of that party.

## **Adjournment of Hearing**

- A. Announce that the hearing is now closed and the evidence and testimony received will constitute the record upon which the commissioners' will reach their decision.
- B. Advise the parties as to how they will be notified of the board's decision.
  - 1. Certified copy of the resolution.
  - 2. Sent to:
    - a) Agent for the petitioners.
    - b) Clerk of the legislative authority of the municipal corporation.
    - c) Clerk of each township in which territory proposed for annexation is located.
    - d) Clerk for the board of county commissioners of each county in which the territory proposed for annexation is located other than the county in which the petition is filed.
- C. Offer the parties the opportunity to file post-hearing briefs:
  - 1. The brief should contain:
    - a) Proposed findings of fact on each of the conditions for annexation.
    - b) References to the hearing testimony or exhibits which support those findings.
    - c) Recommendation as to what the decision of the commissioners should be.
  - 2. Give the date through which a post-hearing brief will be accepted and incorporated as a non-evidentiary exhibit of the record.
- D. Indicate that the parties can expect the board's decision within the time allowed by law.

## **Continuing the Hearing**

- A. Continuing the hearing is an inherent power of the board.
  - 1. There is no statute or case law governing continuations.
  - 2. The most important consideration is to attempt to be fair to all parties.
  - 3. The goal should be to ensure that the hearing is completed in a timely manner and all parties are given a reasonable opportunity to prepare for and present their case.
- B. Factors the board may wish to consider when deciding to continue a hearing:
  - 1. How much time the parties estimate it will take them to present their case.
  - 2. Does the board wish to allocate the entire day or only a partial day in hearing.
  - 3. How does the hearing effect the board's ability to conduct the rest of its business.
  - 4. Involve the parties in establishing a schedule for the hearing prior to beginning the hearing.

## Stage 6 Post Hearing Activities

### Decision of the Board

- A. By resolution - the board grants or denies the petition for annexation by entering a resolution on its journal. (ORC 709.033 (B))
- B. Timing - the decision must be rendered within 30 days after the hearing. (Note: Prior law allowed 90 days for the commissioners' decision.)
- C. Legal standard for decision - a preponderance of the substantial, reliable, and probative evidence on the whole record. (ORC 709.033 (A))
- D. Specific findings of fact required - the board's decision on each of the conditions for annexation (709.033 (A)(1)-(6)) must be supported by specific findings of fact taken from the record which supports the commissioners' decision on that issue

ORC 709.033

### Conditions for Annexation

- A. "The petition meets all the requirements set forth in, and was filed in the manner provided in, Section 709.02 of the Revised Code" in that:
  - 1. The real estate is "contiguous" to the municipal corporation to which annexation is proposed.
  - 2. The petition contains:
    - a) The names of the owners, their signatures, and date each signature was obtained.
    - b) A legal description of the perimeter of the proposed territory to be annexed.
    - c) A map or plat of the proposed territory to be annexed.
    - d) The name and address of the agent for the petitioners.
    - e) Lists of all the parcels and the name and mailing address of the owners of each parcel:
      - 1. Within the proposed territory to be annexed.
      - 2. That lie adjacent or directly across the street from the proposed territory to be annexed.
  - 3. That a majority of the territory proposed for annexation lies within the county.
- B. "The persons who signed the petition are owners of real estate located in the territory proposed to be annexed in the petition, and, as of the time the petition was filed with the board of county commissioners, the number of valid signatures on the petition constitute a majority of the owners of real estate in that territory." In order to be valid signatures:
  - 1. Signatures are of "owners" of property.
  - 2. Were not obtained more than 180 days before the date the petition was filed.
  - 3. Constitute a majority of the owners of the territory proposed for annexation.
- C. "The municipal corporation to which the territory is proposed to be annexed has complied with division (D) of section 709.03 of the Revised Code," the requirement to adopt by ordinance or

ORC 709.02  
ORC 709.033 (A)

resolution a statement indicating what services will be provided upon annexation, and an approximate date the services will be provided.

- D. "The territory proposed to be annexed is not unreasonably large."
- E. "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. As used ...here... 'surrounding area' means 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:* For a thorough discussion of the two elements of this condition for annexation, see Chapter 3.

- F. "No street or highway will be divided or segmented by the boundary line between a township and the municipal corporation as to create a road maintenance problem, or, if a street or highway will be so divided or segmented, the municipal corporation has agreed, as a condition of the annexation, that it will assume the maintenance of that street or highway. For the purposes of this division, 'street' or 'highway' has the same meaning as in section 4511.01 of the Revised Code."

### **Journalization of the Board's Decision**

- A. The decision to grant or deny the annexation is to be entered on the board's journal.
- B. Upon journalization the clerk is to send a certified copy of the resolution to:
  - 1. Agent for the petitioners.
  - 2. Clerk of the legislative authority of the municipality.
  - 3. Clerk of each township in which territory proposed to be annexed is located.
  - 4. Clerk for the board of county commissioners of each county in which the territory proposed to be annexed is located other than the county in which the petition is filed.

ORC 709.033 (B)

### **Clerk's Transmittal to the Municipality**

- A. Clerk is prohibited from taking any action during the 30 day period following the journalization of the decision to allow for an appeal to be filed.
- B. If no appeal has been filed within the 30 day period, the clerk:
  - 1. If the petition was granted:
    - a) Delivers a certified copy of the entire record of the annexation proceedings including:
      - 1. All resolutions of the board, signed by a majority of the members of the board.
      - 2. The petition.
      - 3. The map.
      - 4. All others papers on file.
      - 5. The recording of the proceedings, if available.
      - 6. All exhibits presented at the hearing.

ORC 709.033 (C)

- b) To the auditor or clerk of the municipal corporation to which the annexation was granted.
2. If the petition was denied:
  - a) Delivers a certified copy of the resolution denying the annexation.
  - b) Copies go to:
    1. The agent for the petitioners.
    2. The auditor or clerk of the municipality to which annexation was proposed.

## **Appeal**

### A. Legal Authority for Appeal

1. ORC 709.07 provides the statutory right of appeal from an annexation decision.
2. All appeals taken by any party are now governed by ORC Chapter 2506.
3. Parties who may appeal are specified in ORC 709.07 (A) as:
  - a) The agent for the petitioner.
  - b) Any owner within the territory proposed for annexation.
  - c) Any township which contains territory proposed for annexation.
  - d) The municipal corporation to which annexation is proposed.

ORC 709.07  
ORC 2505.04

### B. Notice of Appeal

1. Appeal of annexation is taken to the Court of Common Pleas for the county pursuant to ORC 709.07 (A).
2. Notice of appeal must:
  - a) Be filed with the clerk of the board. (ORC 2505.04)
  - b) Within 30 days after the journalization of the decision of the board. (ORC 2505.07)
  - c) A copy of the notice must also be filed with the clerk of court of common pleas.

*NOTE:* For a thorough discussion of the appeal process see Chapter 9.