

# Appeals of County Commissioners' Decision

## Introduction

One of the major changes included in SB 5 deals with the process of appealing the granting or denying of an annexation petition by the board of county commissioners. Under former ORC 709.07, any “person interested” or any other “person who appeared” at the annexation hearing could seek an injunction to prohibit the municipality from accepting the annexation. To prevail, the petition for injunction would have to allege and the court would have to find “by clear and convincing evidence” that:

- A. The annexation would adversely affect the legal rights or interests of the petitioner; and
- B. That either one of the following:
  1. There was error in the proceedings before the board or the board’s decision was unreasonable or unlawful, or
  2. There was error in the findings of the board.

Through case law, however, the courts had determined that only the approval of an annexation petition had to be challenged through an injunction action. Challenging the denial of an annexation petition was allowed under Chapter 2506. Since a Chapter 2506 appeal has a much lower standard of proof - “by a preponderance of the evidence” compared to an injunction’s standard of proof - “by clear and convincing evidence,” those who wished to appeal the denial of an annexation had both a much easier process and easier burden of proof to meet than those who wished to appeal the approval of an annexation. Thus, the case law made it much easier for the owners of property or their agent who sought annexation to prevail than for the township or a non-signing owner who wished to overturn the annexation.

Under the new ORC 709.07, all parties authorized to appeal either the granting or denying of an annexation petition by the commissioners are treated equally. An appeal can now only be taken to the common pleas court pursuant to ORC Chapter 2506, the Administrative Appeals Chapter of the Ohio Revised Code. The former provisions for an injunction have been repealed.

Any appeal of the granting or denying of an annexation petition by the board now will always be governed by ORC Chapter 2506. Generally speaking, a transcript of the board’s actions and all records relating to the annexation proceedings will be filed with the court, and the review by the court will be basically limited to the record made at the commissioners’ hearing. While under Chapter 2506 there is the opportunity to present additional evidence to the court, provisions designed to keep this from happening were placed in SB 5. These provisions include entitling the necessary parties to present evidence, examine and cross-examine witnesses, and comment on all evidence; the requirement that all witnesses be sworn; and giving subpoena power to the commissioners.

Under ORC Chapter 2506, the commissioners' decision in an annexation will be reviewed by the court and overturned by the court only if it finds the decision was "unconstitutional, illegal, arbitrary, capricious, unreasonable or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record." (ORC 2506.04)

## Appeal Rights Under SB 5

Because annexation is a statutory process, the General Assembly may limit the right of appeal and may specify who has the right to appeal. The following table shows by the type of annexation whether appeal rights are granted by the law, the parties who may appeal, and a reference to the specific Ohio Revised Code section.

Type of Annexation	Right to Appeal	Parties Who May Appeal	ORC Section
Regular Annexation	Yes	Agent for petitioners Owner of property in area to be annexed Municipality Township	709.07 (A)
Expedited Type 1 Annexation	No	N.A.	709.022 (B)
Expedited Type 2 Annexation	No	N.A.	709.023 (G)
Expedited Type 3 Annexation	No - If all parties consent.	N.A.	709.024 (D)
	Yes - If hearing is required and petition is denied.	Owner who signed the petition	709.024 (G)
Petition by Municipality for Municipal, County, or State-Owned Land	No	N.A.	709.16 (F)

## Necessary Parties to an Appeal

Regardless of who files an appeal, the law specifies that there are “necessary parties” to an annexation appeal. These “necessary parties” to an appeal have the right to fully participate in the litigation including filing briefs and participating in oral arguments. The “necessary parties” include:

- A. Agent for the petitioners.
- B. Any township in which territory proposed to be annexed is located.
- C. The municipality to which the territory is proposed to be annexed.

ORC 709.07 (A)

## Appeal Procedure

- A. Appeal must be taken within 30 days of the journalization of the commissioners’ decision (ORC 2505.07 and 709.033 (C)) by filing a notice of appeal with the board of county commissioners as required by ORC 2505.04.
- B. A copy of the notice of appeal must also be filed with the clerk of the court of common pleas.
- C. This filing of a copy of the notice of appeal acts as a “stay” against the clerk. The clerk can take no further action on the petition, such as delivering a certified copy of the decision to the municipality for its consideration pursuant to ORC 709.04.
- D. The clerk of the board shall file a complete transcript with the court within 40 days after the filing of the notice of appeal. The cost of the transcript shall be included as part of the “costs” of the appeal. (ORC 2506.02)
- E. Appeal may be had from the court of common pleas to the court of appeals to the Ohio Supreme Court.
- F. As long as the appeals are properly filed with the next highest court after a decision by the court considering the appeal the stay against the clerk of the board remains in place.
- G. After all appeals have been exhausted or the time to file an appeal from a court has expired, the board of county commissioners shall enter on its journal a resolution taking the action granting or denying the annexation as directed by last and highest reviewing court.
- H. If the determination of the court was to grant the annexation, the clerk of the board shall deliver a certified copy of the board’s journal entry in the case and the entire record of the annexation proceedings to the auditor or clerk of the municipal corporation to which the annexation is proposed.

ORC 709.033  
ORC 2505.04  
ORC 2505.07