

**SPECIAL SESSION OF THE ASHTABULA COUNTY BOARD OF COMMISSIONERS**

Old Courthouse 25 West Jefferson St., 2nd Floor Jefferson, OH 44047

**November 20, 2019**

The Board of Ashtabula County Commissioners met in session; the Board President called the meeting to order and the Pledge of Allegiance was said.

**Members Present:** President, J. P. Ducro IV, Vice-President and Commissioner Kathryn L. Whittington

**Absent:** Casey R. Kozlowski **Board Staff Present:** County Administrator Janet Discher and Clerk of the Board Lisa Hawkins.

**Motion To Approve Today's Agenda:**

**MOTION:** Whittington moved the adoption, Kozlowski seconded. **DISCUSSION:** None

**VOTE: Yeas:** Ducro, Kozlowski, Whittington **Nays:** None **Abstained:** None **Absent:** None

Whereupon the agenda was declared approved unanimously.

**THE BOARD PRESIDENT INTRODUCED AND ENTERTAINED A MOTION FOR THE FOLLOWING RESOLUTION:**

**RESOLUTION NUMBER 2019-386 DENYING THE EXPEDITED TYPE 2 ANNEXATION OF CERTAIN TERRITORY IN THE TOWNSHIP OF ORWELL TO THE VILLAGE OF ORWELL (D. MICHAEL YOUNG AND CAROL A. YOUNG PROPERTY), PARCEL NO. 38-014-00-007-00**

The Board of County Commissioners of Ashtabula County, Ohio, met on the 19<sup>th</sup> day of November, 2019, in regular session at the offices of said Board in the Old Courthouse Building, 2<sup>nd</sup> Floor, 25 W. Jefferson St., Jefferson, Ohio, with the following members present: J. P. Ducro IV, Kathryn L. Whittington.

WHEREAS, On Wednesday, October 9, 2019, a petition for annexation pursuant to ORC 709.021(A) and 709.023(A) was filed with the Clerk of the Board, in the offices of the Ashtabula County Commissioners; and

WHEREAS, D. Michael Young has been appointed as agent for the property currently situated in the Township of Orwell; and

WHEREAS, The Board of Commissioners now comes to enter upon the record the denial of the petition; and

WHEREAS, the Board of Commissioners find as follows:

- (A) The petition asks the Board to follow ORC 709.023 (Expedited Type 2 Annexation Petition);
- (B) The petition includes signatures of all property owners in the territory proposed to be annexed. (ORC 709.021[B])
- (C) All signatures are of 'owners' as defined in ORC 709.02 (E)
- (D) Each signature includes a date it was obtained and no signature was obtained more than 180 days before petition was filed
- (E) Petition includes an accurate legal description of the perimeter of the territory proposed to be annexed and an accurate map or plat of territory;
- (F) Petition includes the name of an Agent;

WHEREAS, other information that was filed with the petition but is not part of the petition, includes:

- (G) 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 proposed to be annexed or directly across the road when the road is adjacent to the territory proposed to be annexed that includes the name, mailing address and permanent parcel number of owners;
- (H) The real estate is contiguous to municipality to which annexation is proposed;
- (I) Petition includes statutory disclosure statement in bold face, capital letters regarding waiver of appeal rights 709.022(B);
- (J) Land is located in only one county
- (K) proof of certified mailings of notice to Orwell Village and Orwell Township and copies of notices sent to all adjacent property owners has been submitted, (within 5 days after filing the petition).
- (L) Orwell Village had until Tuesday, October 29, 2019, (20 days after the petition is filed) to adopt an ordinance for municipal statement of services (ORC 709.023) or a municipal statement of incompatible land use and zoning buffer if area to be annexed is currently subject to county or

township zoning (709.023 (D)). Orwell Village adopted Resolution 19-11-01R on November 3, 2019 and filed on November 4, 2019 with the Board of Commissioners, indicating village services shall not be provided on behalf of the annexation petition filed by D. Michael Young and Carol Young on or about October 9, 2019 pursuant to the requirements set forth under ORC 709.023 and declaring an emergency.

- (M) Orwell Village adopted Resolution 19-11-02R in Objection of Annexation of Certain Property owned by D. Michael Young pursuant to the requirements set forth under O.R.C. 709.023 and declaring an emergency on November 3, 2019, and filed with the Board of Commissioners on November 4, 2019.

WHEREAS, ORC 709.023 (C) states, in part, within twenty days after the date that the petition is filed, the legislative authority of the municipal corporation to which annexation is proposed **shall** adopt an ordinance or resolution stating what services the municipal corporation will provide, and an approximate date by which it will provide them, to the territory proposed for annexation, upon annexation; and

WHEREAS, there was no such Resolution adopted by October 29, 2019, (20 days after the petition was filed), there was a Resolution adopted on November 3, 2019 and filed with the Board of Commissioners on November 4, 2019, stating village services shall not be provided; and

WHEREAS, ORC 709.023 (E), Number 6 states the municipal corporation to which annexation is proposed has agreed to provide to the territory proposed for annexation the services specified in the relevant ordinance or resolution adopted under division (C) of this section; and

WHEREAS, under ORC 709.023 (F), if the board of county commissioners finds that one or more of the conditions specified in division (E) of this section have not been met, it shall enter upon its journal a resolution that states which of those conditions the board finds have not been met and that denies the petition; and

WHEREAS, all of the elements under 709.023 (E) were reviewed by the Board of Commissioners, as required; and

WHEREAS, Subsection E (6) has not been met, therefore this Board of Commissioners hereby denies the petition; now

THEREFORE, BE IT RESOLVED, By the Board of Commissioners of Ashtabula County, Ohio, that the annexation of territory located in the Township of Orwell to be annexed into the Village of Orwell, as owned by D. Michael Young and Carol A. Young and further described in the petition is hereby denied; and such denial is hereby entered upon the journal of the Ashtabula County Board of Commissioners.

BE IT FURTHER RESOLVED, in accordance with 709.023, the Clerk of the Board shall proceed as provided in division of (C)(1) of section 709.033, which states the Clerk will deliver a certified copy of the entire record of the annexation proceeding, including all resolutions of the board, signed by a majority of the members of the board, the petition, map, and all other papers on file, except that no recording or hearing exhibits would be involved, to the auditor or clerk of the municipal corporation to which annexation is proposed.

**MOTION:** Whittington moved the adoption, Ducro seconded. **DISCUSSION:** None

**VOTE: Yeas:** Ducro, Whittington **Nays:** None **Abstained:** None **Absent:** Kozlowski

Whereupon the resolution was declared passed unanimously. Commissioner Ducro moved the adoption to amend the resolution to include Subsection E (6) has not been met, therefore this Board of Commissioners hereby denies the petition, Commissioner Whittington 2<sup>nd</sup> the amendment.

**VOTE: Yeas:** Ducro, Whittington **Nays:** None **Abstained:** None **Absent:** Kozlowski

Whereupon the resolution was declared passed unanimously.

**Work Session- Orwell Annexation Review**

J. P. Ducro IV, Kathryn Whittington, Lisa Hawkins, Nick Iarocci, Catherine Colgan Press: Jon Wysochanski, Richard Slusher, Gazette

The Clerk stated there are 2 resolutions for consideration of the Board at the Special meeting at 2:00 p.m.

The petition and accompanying documents in the matter of the Young annexation were reviewed. The petition has met all requirements per ORC 709.023. The ORC 709.023 Section C, E and F were discussed at length. The question, does the Village agree pursuant to 709.023 (E) 6, regarding the statement of services being received within the 20 days. If the Board of Commissioners recognize E 6 is not met, under Subsection F, the Board shall deny the petition. There is no case law on this section of annexation. Clearly the Village of Orwell did object. We believe this requires an agreement by the Village of Orwell for services. There is no appeal provision, but does not preclude a new petition. Error in the interpretation in the statute, ORC 709.023 was discussed, what services municipal corp. will provide and when. E 6 says has agreed, if Orwell files an ord. there is at least police and fire by law, the resolution states no services. Mr. Hamper stated E 6 doesn't require they agree to services, just detailing what services. Nick Iarocci is confident his advice to Commissioners is strong. If they didn't timely file within the 20 days, question is does E 6 apply. What happens if they never file. The question becomes did the municipality pass a resolution. Discussion ensued regarding the Village providing no services. Mr. Hamper's client understands based upon if the resolution is adopted granting the annexation, no services would be provided. He feels his client has grounds. C does not require the municipality, adopted outside the 20 days, it is not adopted under C of the 709.023. It would be annexed in with no services. F – Commissioners have to find that all of the conditions have been met. The statute contemplates that all 7 conditions will apply in every case. It is a poorly drafted statute. Prosecutor recommended the annexation be denied.

**ADJOURNMENT:**

The President and Clerk of the Board hereby certify that this is a true and accurate record of the minutes of the November 20, 2019 session. All deliberations concerning official business and formal actions by this Board of Ashtabula County Commissioners were conducted in an open public meeting.

CERTIFIED:

ATTESTED:

\_\_\_\_\_  
PRESIDENT

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CLERK

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COMMISSIONERS

OF

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ASHTABULA COUNTY