

The Washington Township Board of Trustees met in Special Session on January 31, 2012, at 8:00 a.m. at the Washington Township Government Center, 8200 McEwen Road. President Paulson opened the meeting and led the Pledge of Allegiance. Mr. Zobrist was excused.

CITIZEN CONCERNS

Mr. Greg Horn, 194 Laurel Oak Drive, Centerville, expressed a concern as a resident of the community. He indicated a telephone call was placed yesterday about 9:00 a.m. to check and see if there was a special meeting today. It was confirmed. A copy of the agenda was requested as well as any legislation that was potentially being enacted today. The caller was told that there was nothing available, but they would check with staff. Another call was placed at approximately 12:00 p.m. yesterday with a similar request. Again, no answer was given as to whether there was any legislation prepared for today. Another call was made at 3:00 p.m. yesterday and was told a couple of different things. At 4:00 p.m. yesterday, Nathan Cahall stopped by the Township and asked for a copy of the legislation. He was told there was no legislation and perhaps it was being prepared. No definitive answer was given as to what the meeting was really about.

Last night, Mr. Horn indicated he spoke to Ms. Lightle at a function they were attending and asked if there was legislation for today and what it pertained to. He was told that he could see the legislation after it was passed. He wanted to pass this information along for the record. He thought it was a poor way to operate and it did not seem to him to be proper protocol with normal operating procedures. He questioned whether it is an Ohio Revised Code violation.

DEPARTMENTAL BUSINESS

GENERAL

Staff has prepared a resolution in accordance with Section 709.023 of the Ohio Revised Code objecting to the proposed annexation of 96.5 acres, more or less, from Washington Township to the City of Centerville, pursuant to a petition for annexation filed with the Board of Commissioners of Montgomery County, Ohio, on January 6, 2012. Ms. Lightle read the Resolution as follows:

RESOLUTION NO. R2012-003

RESOLUTION OBJECTING TO PETITION TO ANNEX 96.5 ACRES, MORE OR LESS, IN WASHINGTON TOWNSHIP TO THE CITY OF CENTERVILLE

WHEREAS, the Washington Township Board of Trustees is the chief legislative body of Washington Township;

WHEREAS, a petition has been filed with the Montgomery County Board of Commissioners to annex approximately 96.5 acres, more or less, in Washington Township, Montgomery County, into the City of Centerville;

WHEREAS, said petition was filed pursuant to R.C. 709.023, which provides an opportunity for the Township to adopt a resolution consenting or objecting to the proposed annexation by filing a resolution with the Board of County Commissioners; and

WHEREAS, R.C. 709.023(F) mandates that the Board of County Commissioners denies an annexation petition filed under R.C. 709.023 if all conditions have not been met.

NOW, THEREFORE, BE IT RESOLVED, that the Washington Township Board of Trustees objects to the subject proposed annexation on the following grounds:

1. R.C. 709.023 requires that the annexation can be granted only if the Board of County Commissioners finds that each of the seven conditions specified in division (E) of R.C. 709.023 has been met. All seven conditions have not been met. Therefore, this requirement precludes this Board of County Commissioners from granting the annexation for the following reasons:
 - A. The condition for approval set forth in R.C. 709.023(6), which requires that the City "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," has not been met.
 - B. The condition for approval set forth in R.C. 709.023(7), which requires that, "if a street or highway will be divided or segmented by the boundary line between the township and the municipal corporation as to create a road maintenance problem, the municipal corporation to which annexation is proposed has agreed as a condition of the annexation to assume the maintenance of that street or highway or to otherwise correct the problem."
2. The petition filed is misleading and inaccurate and does not serve to inform the public as to what property is being annexed. The petition states that the petitioner, Yankee Development Group, which owns a mere sliver of roadway within the 96.5 acres sought to be annexed, is the owner of 100% of the property to be annexed to the City of Centerville, Ohio. It further states that "[T]he number of owners in the territory sought to be annexed is one (1) and the number of owners who signed the petition is one (1)." In fact, as set forth in the map attached as Exhibit "B" to the petition, the petitioner seeks to annex into the City not only the roadway over which he has ownership, but also seven (7) separate tracts of land. Four of those tracts are owned by the Board of Trustees of Washington Township, two are owned by the Board of Commissioners of Montgomery County, Ohio, and one is owned by the Board of Education of the City of Centerville, Ohio.

Section 709.02 (E), which defines "owner," provides as follow:

(E) As used in sections 709.02 to 709.21, 709.38 and 709.39 of the Revised Code, **"owner"** or **"owners"** means any adult individual who is legally competent, **the state or any political subdivision** as defined in section 5713.081 of the Revised Code, and any firm, trustee, or private corporation, any of which is seized of a freehold estate in land; except that easements and any railroad, utility, street, and highway rights-of-way held in fee, by easement, or by dedication and acceptance are not included within those meanings; and no person, firm, trustee, or private corporation, the state, or any political subdivision, that has become an owner of real estate by a conveyance, the primary purpose of which is to affect the number required to sign a petition for annexation, is included within those meanings. For purposes of sections 709.02 to 709.21 and 709.39 of the Revised Code, the state or any political subdivision shall not be considered an owner and shall not be included in determining the number of owners needed to sign the petition unless an authorized agent of the state or the political subdivision signs the petition. The authorized agent for the state shall be the director of administrative services.

R.C. 709.02(E) clearly identifies political subdivisions as “owners,” and the term “political subdivision” includes, pursuant to R.C. 5713.081, “townships, municipalities, counties, school districts, boards of education, all state and municipal universities, park boards, and any other entity whose ownership of real property would constitute public ownership.” Beyond that, R.C. 709.02 provides that political subdivisions are to be counted for purposes of determining the number of owners needed to sign a petition only if they do, in fact, sign. That portion of R.C. 709.02 is applicable only to the issue of the number of signatures required to initiate the annexation process under Section 709.023. If the political subdivisions choose to sign, they will be counted in the number of owners’ signatures required. If they choose not to sign, they will not be counted as owners for purposes of meeting the signature requirement. That does not mean they are not owners of property within the territory—as this petition states. Accordingly, the petition is misleading and inaccurate. The use of the term “owner” in the petition before the Commissioners is not to delineate the number of property owners whose signature may be required to meet the signature requirement, but rather to represent the number of property owners whose land is involved in the proposed annexation. A citizen reading the petition would be led to believe that only property owned by Yankee Development Group is to be annexed into the City of Centerville. That, of course, is far from correct. Such a misleading and inaccurate representation justifies the invalidation of the pending petition.

3. Although Montgomery County, Washington Township, and the City of Centerville Board of Education are property owners within the territory proposed to be annexed, they were not given the opportunity to review the petition and determine whether they would sign the petition, and thereby be counted in the number of owners required to sign the petition.
4. As a property owner in the territory sought to be annexed, the Board of Commissioners of Montgomery County, Ohio, has a conflict of interest and cannot rule upon the requested annexation.

R.C. 709.023(F) provides that “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.”

As set forth above, since each of the statutory grounds has not been met, the petition must be denied as required by R.C. 709.023(F).

Further, the Township Board of Trustees hereby reserves the right to raise additional reasons why the petition should not be approved and to address the objections herein raised, based upon conditions and circumstances at the time of the meeting at which the Board of County Commissioners reviews the petition, pursuant to R.C. 709.023(E).

BE IT FURTHER RESOLVED, that

The Washington Township Board of Trustees urges this Board of County Commissioners to issue a resolution denying the pending petition for the annexation of 96.5 acres, more or less, in Washington Township to the City of Centerville.

The Board of Trustees hereby authorizes the filing of this Resolution with the Montgomery County Board of Commissioners within the timeframe provided by statute, and

further authorizes any Trustee or the Board's designated representative to speak on behalf of the Board of Trustees at the review regarding said annexation petition.

It was moved by Mr. Berry, seconded by Mrs. Young to approve the above resolution.

Vote on Motion: Berry, aye; Young, aye; Paulson, aye. R2012-003

**Roll Call: Paulson, aye;
Young, aye;
Berry, aye.**

TOWNSHIP ADMINISTRATOR'S REPORT

None.

TRUSTEE COMMENTS

None.

ADJOURNMENT: 8:14 A.M.

All formal actions of the Board of Trustees of Washington Township concerning and relating to the adoption of resolutions and/or motions passed at this meeting were adopted in an open meeting; and of any of its committees resulting in such formal action, were in meetings open to the public, in compliance with the law, including Section 121.22 of the Ohio Revised Code.

President

Fiscal Officer