

Changing Jurisdictions Through Annexation + Road Vacation

KEGLER
BROWN
HILL +
RITTER

*Presented by
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Annexations in Ohio



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Annexation Processes

Expedited Type-1 (R.C. 709.022)

Annexation with the consent of all parties

Expedited Type-2 (R.C. 709.023)


Special annexation procedure where land is not excluded from township

Expedited Type-3 (R.C. 709.024)

Significant Economic Development Project

Type-4 (R.C. 709.03 et seq.)

Majority supported Annexation Process

An aerial photograph of a residential neighborhood, showing houses, streets, and green spaces. A semi-transparent dark gray rectangle is overlaid on the center, containing the text. The rectangle is framed by a thick yellow border.

Common Elements in **ALL** Annexations

Owners are the Annexation Petitioners

- ✓ **At least a majority of owners sign the annexation petition**

Special expedited proceedings require all owners defined and included by statute to sign the petition
- ✓ **“Owner” is defined by statute**
 - ✓ Any adult individual who is legally competent, the state or any political subdivision, and any firm, trustee, or private corporation that own “a freehold estate in land”
 - ✓ Owner is determined as of the date the petition is filed with the county commissioners

Owners are the Annexation Petitioners

- ✓ **Owner does not include**
 - ✓ Owners of "easements and any railroad, utility, street, and highway rights-of-way held in fee, by easement, or by dedication and acceptance" includes public road rights of way owned in fee by the state or a political subdivision, but:
 - ✓ does not include public road rights of way that are easements; and
 - ✓ does not include railroads whether held by the railroad in fee or by easement
 - ✓ The state or any political subdivision unless the entity signs the petition

Elements of the Petition

Signed and dated by at least a majority of owners

Includes an accurate description of the perimeter of the territory sought to be annexed

Includes an accurate map or plat

Identifies the name of the person to act as the agent for the petitioners

The territory must be contiguous with the municipal boundary





PROCESSING THE PETITION

*at the County
Commissioners*

- ✓ Petition is filed with the county commissioners in the county where the annexation territory is located
- ✓ If in multiple counties, filed in the county where the majority of the annexation territory lies
- ✓ There are statutory timelines for “review” or “hearing” and determination for each type of annexation
- ✓ The county commissioners (and, if appealed, courts) must hear and decide petitions involving the same territory in the order they were filed at the county commissioners
- ✓ Once approved by the county commissioners, the record must be delivered by the county to the municipality for processing

County Commissioners' Processing Timeline Varies by Type of Petition

County commissioners must determine the Petition:

Expedited Type 1 Petition

- ✓ At the next session after the commissioners' receipt of the petition

Expedited Type 2 Petition

- ✓ At the next regular session more than 25 days after the petition is filed if no objection is filed
- ✓ Not less than 30 nor more than 45 days after the petition was filed if an objection is filed

Expedited Type 3 Petition

- ✓ **If no objection is filed**, a hearing shall not be held and the commissioners shall grant the annexation at the next regular session within 30 days after the petition is filed
- ✓ **If an objection is filed**, a hearing shall be held on the petition at the commissioners' next regular session within 30 days after the petition is filed. Commissioners shall provide notice to the agent of the time and place of the hearing and the agent shall provide 5 days' notice to the parties and property owners

Type 4 Petition

- ✓ Board must enter the filing of the petition on its journal at its next regular session as its first official act
- ✓ Within 5 days after the filing of the petition, the Board must: (1) set the date, time and place for the **hearing** not less than 60 days nor more than 90 days after the petition is filed and notify the petitioner's agent; (2) **refer the legal description and map or plat** of the annexation territory **to the county engineer** for a report on the accuracy of the legal description of the perimeter, map or plat
- ✓ Commissioners shall enter upon their journal a resolution granting or denying the petition within 30 days after the hearing that includes specific findings of fact as to whether the statutory conditions of annexation have been met.

Notices of the Filing of + Any Review or Hearing on the Petition

The Petitioner's Agent has the obligation to serve and provide any required notices of the filing of the petition and any "hearing" on the petition

Expedited Type 1 Petition

- ✓ There is no notice, review or hearing required by statute

Expedited Type 2 Petition

- ✓ Notices of the filing of the petition are required to the municipal clerk, township fiscal officer, clerk of the county commissioners of any other county whose territory is included in the annexation and owners of property adjacent to the annexation territory
- ✓ The Petitioner's Agent is not required to provide notice of the Commissioners' "review" of the annexation petition

Expedited Type 3 + Type 4 Petition

- ✓ Same as the Expedited Type 2 process
- ✓ Additional notices are also required for any hearings that are held in a Type 3 or Type 4 petition



PROCESSING THE PETITION

by the Municipality

- ✓ Municipal auditor or clerk retains the annexation papers for 60 days after receipt of the record from the commissioners' clerk
- ✓ Municipal auditor or clerk presents the annexation papers to council at next **regularly scheduled meeting** following 60 days
- ✓ Municipal council must accept or reject petition within 120 days from when the annexation papers are presented to them
- ✓ If not timely accepted, annexation will be deemed rejected by operation of law

Municipality Processing of the Petition Following Acceptance

Following acceptance by the legislative authority, the municipal auditor or clerk shall make 4 copies of the annexation record, certify them and deliver one copy with filing/recording fees, if any, to:

County Auditor

County Recorder

County Board of Elections

Secretary of State

An aerial photograph of a residential neighborhood, showing houses, streets, and green spaces. A semi-transparent dark grey rectangle is overlaid on the center of the image, with a bright yellow border. Inside this rectangle, the text "Challenges to Annexations" is written in a bold, sans-serif font. "Challenges" is in yellow, and "to Annexations" is in white.

Challenges to Annexations

Who is **"Party"** to an Annexation

Annexation Proceedings

Appeals + Challenges



Mandamus

No appeal of an expedited annexation; only an action in mandamus by a "party" to compel the county commissioners to perform their duties required by law

A township is not a "party" to an Expedited Type 2 or a Type 3 Annexation



Appeal


Only permitted by an owner of territory being annexed who signed the petition in a Type 3 annexation

Type 4 annexation may be appealed by the agent for the petitioners, any owner of territory proposed to be annexed, a township whose territory is being annexed or a municipality to which the territory is sought to be annexed

A properly filed appeal stays all further local government proceedings on the annexation until the appeal is finally determined by the courts and the Commissioners' Clerk must retain the Commissioners' annexation record

After final court determination, the Commissioners must enter upon its journal a resolution accepting or denying the petition as determined by the courts



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Other Issues with **Annexations**

Annexation Agreements

- ✓ Between a municipality and township
- ✓ Owners, developers, county commissioners, state, or any person upon request may be parties with the consent of the municipality and township
- ✓ Statutes including liberal provisions for what may be included are to be liberally construed in favor of the parties to the agreements to carry out their terms (R.C. 709.192(C)(1) – (15))
- ✓ Cannot be in derogation of Ohio Constitution or constitutional or charter municipal powers
- ✓ Cannot share proceeds of any tax levy but may agree to reallocation of minimum mandated levies

Conformity of Township Boundaries

- ✓ Township boundaries may be conformed following certain types of annexations: Type 1 Annexations; Type 4 Annexations; Type 2 or Type 3 - only if it is provided in an Annexation Agreement or a Cooperative Economic Development Agreement
- ✓ If Township boundaries are conformed, payments will be due to the Township for 12 years on a sliding scale for a portion of real property taxes the Township would have been paid, but for the annexation unless there is a municipal/township agreement
- ✓ If Township boundaries are not conformed following annexation, the annexed territory will remain in the Township and subject to the township's real property taxes

Other Annexation Issues

- ✓ Standard of “Substantial Compliance with procedural requirements of annexation” and Commissioners’ duty to cure a procedural defect and not deny an annexation on that basis
- ✓ Standards on accuracy of legal description and map; scrivener’s errors
- ✓ Refiling of annexation petitions that are withdrawn or denied
- ✓ Contiguity
- ✓ **Majority petitions:** General good of the annexation territory and township within 1/2 mile radius; Unreasonably large annexation territories
- ✓ Road right of way and maintenance following annexation



Vacation of Roads



General Overview

Process by which a public road is removed from public use and transferred to the abutting landowners by operation of law

Counties have the authority to vacate county, township, and some state roads

This authority is held by the relevant Board of County Commissioners or relevant Joint Board of County Commissioners

See R.C. Chapter 5553

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Types of Roads

County Road

General Process

Multi-County Road

Township Road

State Highway



PROCESS FOR VACATION *of County Road*

- ✓ **Initiation: 2 Methods**
- ✓ **Initial Resolution +
Notice Requirements**
- ✓ **Report of County Engineer +
Final Resolution**
- ✓ **Record of Proceedings +
Final Order**

Initiation: 2 Methods

- ✓ The Board of County Commissioners can initiate a vacation of a county road when they are of the opinion that **it will be for the public convenience or welfare to do so**
- ✓ Landowners may also initiate a vacation of a county road by presenting a petition to the Board which is signed by at least 12 landowners residing in the county and in the vicinity of where such vacation is proposed
 - ✓ Petition must set forth general route and ending point of road
 - ✓ Upon presentation of a satisfactory petition, the Board will opine if such action is in accordance with the above standard

Initial Resolution + Notice Requirements

- ✓ Regardless of the method used, if the Board is of the relevant opinion, they must declare so by resolution
- ✓ The resolution must set forth: (1) general route and ending point of the road to be vacated; (2) a date when the Board will view the proposed vacation site; (3) a date when the Board will hold a final hearing on the matter
- ✓ Notice Requirements:
 - ✓ Must give notice of time + place for viewing and hearing once a week for 2 consecutive weeks in a newspaper of general circulation in county where action is to be taken; such notice must also state the character the action
 - ✓ Must send written notice via first class mail at least 20 days before date of hearing to landowners abutting the road to be vacated and to the Director of Natural Resources

Report of County Engineer + Final Resolution

- ✓ Upon viewing the proposed vacation site, if the Board considers such action to be of sufficient public importance, they must instruct the County Engineer to make a report
- ✓ The report must include: (1) survey and plat of proposed vacation; (2) description of center line and right of way lines; (3) the engineer's opinion for or against the proposed vacation
- ✓ County Engineer, at time of making the report, must set stakes at the ending points of each right of way and at other sufficient points on right of way lines
- ✓ On date of final hearing, Board must read the County Engineer's report and hear any relevant testimony
- ✓ If Board finds such improvement will serve the public convenience and welfare, they must enter such by resolution in their journal

Record of Proceedings + Final Order

- ✓ If the Board finds in favor of the proposed vacation, they must cause a record of the proceedings to be entered with the road records of the county by the County Engineer.
- ✓ The Board then orders the road vacated, and as a matter of law, the road ceases to be a public road



PROCESS FOR VACATION *of Multi-County Road*

- ✓ Generally, the same process with a few notable differences/caveats
- ✓ When the road to be vacated is along or upon a county line or crosses a county line, the Boards of County Commissioners of interested counties must sit as a **Joint Board of County Commissioners**
- ✓ In all hearings before a Joint Board, a majority vote of the Board of each county is necessary to establish any vacation
- ✓ The Joint Board appoints the County Engineer of **one** of the interested counties to act in the matter
- ✓ The Board of the county having the greatest population of any of the interested counties must keep a record of the proceedings



PROCESS FOR VACATION *of Township Road*

- ✓ **Initiation + Report**
- ✓ **Hearing + Notice**
- ✓ **Final Resolution**

Initiation + Report

- ✓ Board of Township Trustees may petition Board of County Commissioners to vacate a township road or portion thereof by passing a resolution that requests such
- ✓ Township Clerk must file resolution with the Board of County Commissioners and certify a copy to County Engineer
- ✓ Within 30 days of receipt, County Engineer must issue a written report to the Board of County Commissioners (similar in content to the one required for the county road process)

Hearing + Notice

- ✓ Board of County Commissioners must set a date for public hearing not more than 45 days after the resolution is filed with them from the Board of Township Trustees
- ✓ Notice must be sent by regular mail to abutting landowners no less than 21 days before the hearing
- ✓ After the hearing, the Board of County Commissioners determines if the vacation of the road would be for the public convenience and welfare
- ✓ If yes, the Board adopts a resolution by majority vote declaring the road to be vacated
- ✓ Board must file certified copies of its Resolution with Board of Township Trustees, County Recorder and County Engineer

IMPORTANT NOTE

If the Board of County Commissioners fails to vote on the issue of vacating the road within 60 days after the township files its resolution with them, the road specified in the resolution is deemed to be vacated



Final Resolution

- ✓ Once the certified copies of the resolution are filed as required, the Board of Township Trustees, by resolution, must order the road vacated
- ✓ The vacated road will pass, in fee, to the abutting landowners
- ✓ Permanent easement may be provided for utility companies as discussed earlier



PROCESS FOR VACATION *of State Highway*

- ✓ Same general process as highlighted for a county road, but at the outset the Board must receive the approval of the Director of Transportation
- ✓ Alternatively, the Director of Transportation can petition the Board to vacate a public highway in the same manner as landowners can under the country road process
- ✓ Follows the same procedure; Board must act upon petition from the Director within 30 days



Other Issues with Vacation

Things to Know

In any proceeding on a petition or resolution to vacate a road, the Board may determine the suitability of the road for public non-motorized vehicular recreational use (bike trail, hiking trail, etc.)

If Board finds that such use will not interfere with current land uses, it may vacate the road subject to a public right of way for such use

When a road is vacated that has utility equipment on, over, or under it, the utility company shall be deemed to have a permanent easement in the vacated road to maintain said equipment

Appeals Process

Any petitioner can appeal the order of the Board, or Joint Board, dismissing or refusing to grant the vacation petition

Any interested person can appeal an order granting a proposed vacation

If the order appealed is from a Joint Board, the appeal may be taken to the **probate court** of any county in which said vacation or part thereof is situated

A person through whose land a trail right of way has been preserved may file a petition to turn or change the route





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Ms. Cunningham is an attorney who practices in the areas of real estate, annexation, land use, zoning, development, tax incentives, eminent domain, local government, public and administrative law. She represents property owners, developers, and local governments as special counsel in these areas. Ms. Cunningham regularly appears before local government boards and commissions. Ms. Cunningham is also a trial lawyer and has litigated cases on these issues in all state courts, including the Supreme Court of Ohio and federal courts.

Ms. Cunningham is a former city law director (Hilliard), a former village solicitor (New Concord) and previously served as a member of the Franklin County Tax Incentive Review Council (TIRC), the Hilliard Housing Council, the Hickory Chase Community Authority Board of Trustees and served two terms as a commissioner of the Ohio Elections Commission.

Ms. Cunningham is among a select group of lawyers recognized as an Ohio Super Lawyer in Land Use, Zoning and Real Estate, a Band 1 attorney in Zoning/Land Use Law by *Chambers USA*. She was named "Lawyer of the Year" in Columbus and is recognized in the areas of Land Use, Zoning and Real Estate by *Best Lawyers in America* and recognized as Top Lawyer and Best Lawyer in Central Ohio in Land Use and Zoning Law by Columbus Business First and Columbus CEO.