

RESOLUTION NO. 017-2023

A RESOLUTION RECOGNIZING THE SUPPORT OF THE CITY OF FINDLAY, OHIO OF PROCEEDING WITH FILING AN APPEAL OF THE DENIAL OF THE COUNTY ROAD 212/COUNTY ROAD 236 ANNEXATION THROUGH THE COURT OF COMMON PLEAS, HANCOCK COUNTY, OHIO.


WHEREAS, the City of Findlay, Ohio has been working to reconfigure the County Road 212/County Road 236 intersection to provide a better route for truck traffic outside of downtown, creating an overall safer intersection, furthering enhancing the County Road 212/County Road 99 area as an industrial corridor; and

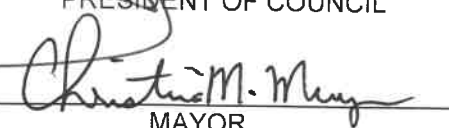
WHEREAS, in April 2022, the City of Findlay, Ohio was informed by the Hancock County Engineer that the City of Findlay, Ohio could not complete this project because the entire roadway was not within City Corporation limits, thus the City of Findlay, Ohio immediately began work to complete the annexation; and

WHEREAS, in June 2023, the Hancock County Board of Commissioners denied the annexation request (see Resolution No. 432-23 attached as Exhibit A), thus necessitating the need for the City of Findlay, Ohio to appeal the denial, and

BE IT RESOLVED by the Council of the City of Findlay, State of Ohio:

SECTION 1: That Findlay City Council is in full support of the Mayor of the City of Findlay, Ohio filing an appeal of the denial of the County Road 212/County Road 236 annexation through the Court of Common Pleas of Hancock County, Ohio, taking the necessary action to pursue the annexation of the aforementioned property, thus providing a significant community safety and economic benefit to the City of Findlay and Hancock County.



PRESIDENT OF COUNCIL


MAYOR

PASSED July 18, 2023

ATTEST Denise DeVore
CLERK OF COUNCIL

APPROVED July 18, 2023

RECEIVED
JUL 07 2023
MAYOR'S OFFICE

RESOLUTION

June 29, 2023
Resolution No. 432-23

RE: PETITION OF FOR ANNEXATION OF A TOTAL OF 15.043 ACRES OF LAND
IN ~~XELLEN TOWNSHIP~~ TO THE CITY OF FINDLAY, HANCOCK COUNTY,
OHIO ^{Cass and Marion Townships}
TKB

The Board of County Commissioners of Hancock County, Ohio, met in regular session on the 29th day of June, 2023, with the following commissioners present:

Timothy Bechtol _____, Michael Pepple _____, and _____.

The Clerk advised that the Board followed the notice requirements of Section 121.22 of the Revised Code and the implementing rules adopted by the Board pursuant thereto for the meeting.

Pepple _____, moved for the adoption of the following resolution:

WHEREAS, the Commissioners of Hancock County, State of Ohio, proceeded on the 30th day of May, 2023, to hear the petition submitted by Philip L. Rooney, attorney and agent for the owners of the property described in the petition for annexation of 15.043 acres of land in Cass and Marion Townships to the City of Findlay, Hancock County, Ohio, filed, March 31, 2023, and having in open hearing heard all of the persons desiring to be heard for or against the granting of the petition, and having considered all the facts with reference thereto, being fully advised; and

WHEREAS, the Commissioners make the following findings, based upon the exhibits and testimony presented at the hearing of this matter:

1. The Petition contains all of the matters required by Ohio Revised Code, Section 709.02 including, without limitation:
 - a. A full description and accurate map or plat of the territory to be annexed;
 - b. A statement of the total number of owners of real estate in the territory to be annexed;
 - c. The name of the person to act as agent for the petitioners.
2. The territory sought to be annexed is adjacent and contiguous to the City of Findlay, Ohio.
3. Notice of the petition and the hearing has been published as required by law, and all notices of filing the petition and the hearings thereon have been given and delivered as required by law.

- 4. The persons whose names are subscribed on the petition are owners of real estate in the territory sought to be annexed, and as of the time the petition was filed, the number of valid signatures on the petition constituted a majority of the owners of real estate in the territory proposed to be annexed. No signatures have been withdrawn pursuant to Ohio Revised Code, Sections 709.03 and 709.031.
- 5. The map or plat and the description of the territory contained in the petition are accurate.
- 6. The City of Findlay has complied with Division (B) of Ohio Revised Code, Section 709.031.
- 7. The territory sought to be annexed is not unreasonably large.
- 8. The general good of the territory sought to be annexed will not be served if the annexation petition is granted and the annexation is allowed.

NOW THEREFORE BE IT RESOLVED, by the Board of Commissioners of Hancock County, Ohio, that the prayer of the Petition for the annexation of 15.043 acres of property in in Cass and Marion Townships be annexed to the City of Findlay be **DENIED**.

Bechtol, seconded the resolution and the roll being called upon its adoption, the vote resulted as follows:

Board of Hancock County Commissioners

absent
William L. Bateson, President

Timothy K. Bechtol yes
Timothy K. Bechtol, Vice-President

Michael W. Pepple yes
Michael W. Pepple, Commissioner

ATTEST:

Lynn Taylor
Lynn Taylor, Clerk
Board of Hancock County Commissioners

DATE: June 29, 2023

Auditor
L. Land
City of Findlay
P. Rooney; CR.212/236 Annexation File
G:CF/Annexation/212-236 Cass-MarionFinalRes

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF HANCOCK COUNTY, OHIO**

IN RE:

**THE ANNEXATION OF 15.043
ACRES OF LAND, FROM CASS
AND MARION TOWNSHIPS TO
THE CITY OF FINDLAY,
HANCOCK COUNTY, OHIO
(County Road 212/236 Annexation)**

**MEMORANDUM OPINION AND
DECISION OF THE BOARD OF
COUNTY COMMISSIONERS**

This matter having come on for hearing on the 30th day of May, 2023, at the offices of the Hancock County Commissioners upon the Petition submitted by Philip L. Rooney, attorney and agent for petitioners, of a certain tract of land described as:

A tract of land being 15.043 acres of land being part of the South Half of Section 33 and part of the Southwest Quarter of Section 34, Cass Township and also being part of the Northwest Quarter, part of the Northeast Quarter and part of the Southeast Quarter of Section 4 and part of the Northwest Quarter and part of the Southwest Quarter of Section 3, Marion Township, County of Hancock, State of Ohio, and referred to as the "County Road 212/236 Annexation"

A full description being set forth fully in the attachment hereto and incorporated herein as if fully rewritten.

FINDINGS OF FACT:

The Board of County Commissioners for Hancock County, Ohio, in relation to the foregoing petition and upon the evidence, exhibits, statements and arguments submitted at the hearing thereon make the following findings of fact:

1. The Petition was filed in the Office of the Board of County Commissioners on March 31, 2023, and said Petition was entered upon the record of the proceedings of the Board on April 4, 2023.
2. The Clerk of the Board of County Commissioners filed the Petition with the Office of the Hancock County Auditor on April 4, 2023, and the hearing on the Petition was held on May 30, 2023 at 11:00 a.m., not less than sixty (60) days nor more than ninety (90) days after the Petition was filed with the Auditor's Office.

3. The Clerk of the Board of County Commissioners, on April 4, 2023, notified the Agent for the Petitioners of the time and place for the hearing on the Petition.
4. Publication of the Notice of the Petition was accomplished in the Findlay Courier, a newspaper of general circulation in Hancock County, Ohio on May 2, 2023.
5. The Annexation Petition, contained a full description and accurate map of the territory sought to be annexed; a statement purporting to identify the number of owners of the real estate in the territory sought to be annexed; and the names of the person acting as agent for the Petitioners.
6. The Petition was signed by a majority of the owners of the real estate in the territory proposed to be annexed, a copy of said petition is hereto attached and identified as Hearing Exhibit 1.
7. No petitioner, having signed the Petition, has sought to have his or her name removed therefrom pursuant to Ohio Revised Code Sections 709.03 or 709.032.
8. Each Petitioner present at the hearing was given the opportunity, through representative counsel, to speak as to the merits of the Petition.
9. There were questions for the agent of petitioner regarding traffic signals being placed at the intersection of CR 212/236, but no one spoke in opposition to the petition. The petitioner indicated that a traffic signal light was not planned for the intersection.
10. The Board was approached at subsequent regularly scheduled County Commissioners meeting by two Cass Township Trustees speaking in opposition if there is not to be a light. The Trustees indicated that they would have attended the hearing to lodge protest had they not been told that a light was going to be placed at the intersection.
11. The Board of Commissioners requested additional information to support the statements by City of Findlay Engineer, Jeremy Kalb that the traffic surveys did not warrant the expense of a traffic signal light at the intersection.
12. Instead of providing the additional evidence, City of Findlay Mayor, Christina Muryn attended a regular Board of Commissioners meeting to indicate that there was not going to be a traffic signal light at the intersection.
13. Evidence was presented at hearing which evidenced delivery of the publication notice to the Clerks of the Cass and Marion Township Trustees and Clerk of the Findlay City Council.
14. The conflicting information given to area residents and the Boards of Cass and Marion Township Trustees leads this Board to find evidence to indicate that the general good of the area proposed to be annexed would not be served by the granting of the petition. It is the belief of this Board that the intersection as proposed by the City of Findlay would present a

danger to the traffic other than truck traffic.

CONCLUSIONS OF LAW:

In determining whether annexation will or will not be granted in any instance, the County Commissioners are invested with a wide discretion, and they may and should take into consideration all matters substantially affecting the rights and interests of all parties concerned in the proceedings. (20 O.Jur. 3rd p. 407) The methods of annexation are purely statutory and therefore the decision of the Commissioners is dictated by and must comply with the statutory law.

Prior to the question of annexation being submitted to the Commissioners for their determination, the statute places certain responsibilities upon the Petitioners. When the Petition is submitted by adjacent property owners, Ohio Revised Code, Section 709.02 has the following requirements:

1. Application shall be in the form of a Petition;
2. Addressed to County Commissioners;
3. Signed by a majority of the owners;
4. Contain a full description and accurate map;
5. Contain a statement of the number of owners; and
6. Contain the name of person to act as agent for petitioner.

In the present case, these requirements have been met.

The next statutory requirement in the annexation process is for the Petition to be filed in the office of the Board of County Commissioners and appropriately entered upon the record of the Board's proceedings, then filed in the County Auditor's Office. (See Ohio Revised Code Section 709.03) The Clerk of the Board of County Commissioners has satisfied each of these requirements.

The Board has the further requirement after the Petition is filed to set the matter for a hearing, naming the place and time the hearing will be held, which hearing cannot be earlier than sixty (60) days not later than ninety (90) days after the Petition was filed. (See Ohio Revised Code Section

709.031) A review of the dates above substantiate that these requirements were met.

The burden then shifts to the agent for the Petitioner to comply with the balance of both of Ohio Revised Code Sections 709.03 and 709.031. In the present case the evidence gives no indication that the statutory requirements were not met.

Further, Ohio Revised Code Section 709.031 provides that after the agent has delivered the notice of publication to the Clerk of the legislative authority of the municipal corporation:

(B) ... the municipal legislative authority shall, by ordinance or resolution, adopt a statement indicating what services, if any, the municipal corporation will provide to the territory proposed for annexation upon annexation (Emphasis added).

City of Findlay Resolution No. 008-2023, states that the Village intends to make available certain specified services. As stated in Petition for Annexation of 162.631 v. Hahn, 52 Ohio App. 3d 8 at 16 (1988), A... the city should state the services that the city will provide:

(Emphasis added).

The statute is important when considered with Ohio Revised Code Section 709.033. That statute, Section 709.033 provides that after the hearing on a petition to annex, the board of county commissioners shall enter an order upon its journal allowing the annexation if it finds, based upon a preponderance of the substantial reliable, and probative evidence on the whole record, that each of the conditions set forth in section 709.033 have been met.

Although the agent for the petitioners has complied with the provisions of Section 709.033(A)(1)-(4), the provisions of section 709.033(A)(5) has not been met by the preponderance of substantial, reliable, and probative evidence.

As a result of all evidence presented to the Board at hearing regarding the annexation of 15.043 acres of land from Cass and Marion Townships to the City of Findlay, Hancock County,

Ohio, the record **does not** suggest that a granting of the annexation would be on balance, in the general good of the of the area. Accordingly, the Commissioners do not have authority to go forward with the consideration of the petition or to grant the petition for annexation.

This memorandum and opinion entered upon the record of the Board of Hancock County Commissioners this 27th day of June, 2023.

Board of Hancock County Commissioners

Absent
William L. Bateson, President

Timothy K. Bechtol
Timothy K. Bechtol, Vice-President

Michael W. Pepple
Michael W. Pepple, Commissioner

ATTEST:

Lynn Taylor
Lynn Taylor, Clerk
Board of Hancock County Commissioners

DATE: June 29, 2023

APPROVED:

Lucinda M. Land
Lucinda M. Land
Assistant Hancock County Prosecutor