



**BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO**

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***C. MICHAEL KILBURN
PAT ARNOLD SOUTH
DAVID G. YOUNG***

**BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO**

MINUTES: Regular Session – March 31, 2009

The Board met in regular session pursuant to adjournment of the March 26, 2009, meeting.

C. Michael Kilburn - present

David G. Young - present

Pat Arnold South - present

Tina Davis, Clerk – present

Minutes of the March 12, 17, 24 and 26, 2009, meetings were read and approved.

- 09-0447 A resolution was adopted to Rescind Resolution #09-435 approving an Appropriation Decrease within Fund #101-1240. Vote: Unanimous
- 09-0448 A resolution was adopted to Extend the Bid Opening Date for the FY2008 City of Franklin Water Pressure Reducer Project. Vote: Unanimous
- 09-0449 A resolution was adopted to accept Tax Incentive Review Council Recommendations for 2008 Enterprise Zone Programs. Vote: Unanimous
- 09-0450 A resolution was adopted to approve and enter into Agreement with Dun & Bradstreet, Inc. Vote: Unanimous
- 09-0451 A resolution was adopted to Amend Resolution #09-410 approving end of 240-day Probationary Period and Pay Increase for Andrew Allgeyer within the Warren County Department of Job and Family Services, Children Services Division.
Vote: Unanimous
- 09-0452 A resolution was adopted to enter into Contract with American Suncraft Construction Company for the 1.5 Million Gallon Snider Road Elevated Storage

Tank Protective Coatings Project. Vote: Unanimous

09-0453 A resolution was adopted to approve various Refunds. Vote: Unanimous

09-0454 A resolution was adopted to approve a Supplemental Appropriation within the Workforce Investment Act Fund #258. Vote: Unanimous

09-455 A resolution was adopted to approve Appropriation Decreases within various Funds. Vote: Unanimous

09-0456 A resolution was adopted to approve Appropriation Adjustment within Building & Zoning Inspection Fund #101-2300. Vote: Unanimous

09-0457 A resolution was adopted to authorize payment of Bills. Vote: Unanimous

09-0458 A resolution was adopted to approve Operational Transfer within Emergency Services Fund #101-1112. Vote: Unanimous

DISCUSSIONS

On motion, upon unanimous call of the roll, the Board entered executive session at 9:02 a.m. to discuss personnel matters within Children Services pursuant to Ohio Revised Code Section 121.22 (G) (1) and imminent litigation within the Water and Sewer Department pursuant to Ohio Revised Code Section 121.22 (G)(3) and exited at 10:12 a.m.

On motion, upon unanimous call of the roll, the Board entered into executive session at 10:12 a.m. to discuss acquisition of property pursuant to Ohio Revised Code Section 121.22 (G) (2) and exited at 11:04 a.m.

On motion, upon unanimous call of the roll, the Board accepted and approved the consent agenda.

Larry Collins, Sons of Union Veterans of the Civil War, was present along with Jim Houston and Chris Sparks, to inform the Board of the planning of a ceremony to take place in Carlisle on June 20, 2009, to honor the last Civil War soldier from Warren County to die.

He stated that the gentleman's name is John Cafferty Winters and he was married to Sara Hendrickson and is buried in the Presbyterian Church Cemetery in the Village of Carlisle.

Mr. Collins then stated that their organization is partially funding the project and that the church has agreed to make a donation. He then stated that any financial support would be appreciated.

Commissioner Kilburn stated his commitment to a donation on behalf of Stine-Kilburn Funeral Home.

Upon discussion, the Board requested to be kept informed on the ceremony when more details become available.

J. William Duning, Agent to annex 164.69 acres to the Village of South Lebanon, was present for the Board to consider the Expedited Type 2 annexation petition filed on February 25, 2009.

Commissioner Kilburn explained to those present that this is not a public hearing will the Board will consider anyone who desire to speak relative to this topic to be heard.

Mr. Duning stated that the petition meets all the legal and technical requirement of the Ohio Revised Code. He stated that the Village of South Lebanon has filed an Ordinance of Services, Support and Land Use Buffer, and then requested the Board to approve the annexation petition.

Tom Swope, Attorney for Deerfield Township, stated the following:

1. The property proposed to be annexed is not contiguous pursuant to ORC 709.01 as defined by the Supreme Court in a "unified community".
2. This petition is not a unanimous petition because 7 or 8 acres of land owned by TEJ Holdings is not listed as an owner or contain a signature and they are property owners within the annexed area.
3. Stated that this is a "land grab" by the Village of South Lebanon and they are using the river to connect properties.

Warren Ritchie, Attorney for Hamilton Township, stated the following:

1. The land proposed to be annexed is not contiguous pursuant to ORC 709.02 as stated by Mr. Swope.

2. Per the Ohio Revised Code, the owner of the river land within the annexation petition is TEJ Holdings and they did not sign the petition and are not listed as an owner as stated by Mr. Swope.

Becky Ehling, Hamilton Township Trustee, stated that this is the fourth time that South Lebanon has tried to annex this land. She stated that this is clearly a “snake” annexation and serves no purpose and requested the Board to reclude themselves or postpone a decision until such time as the Maineville Annexation case is decided by the Court.

Chris Ramono, Deerfield Township Trustee, stated that this petition is not a 100% annexation petition. He stated that the residents of Deerfield Township look to them for leadership in making decisions that are in the best interest of its citizens. He then stated that this is a land grab and stated his concern that South Lebanon will try to annex the adjacent park land.

Commissioner Young stated, pursuant to the Ohio Revised Code, a Board of Commissioners is very limited on what can be considered when rendering a decision on an expedited annexation. He stated that the law states that the Board shall approve the annexation petition if the seven conditions are met. He then requested an opinion from Bruce McGary, Chief Deputy Prosecutor, relative to this petition.

Commissioner Kilburn then questioned Neil Tunison, County Engineer, if in his opinion; the petition contains all property owners of record.

Mr. Tunison stated that, the legal descriptions contained in the annexation petition are accurate and meet the requirements of the Ohio Revised Code.

Commissioner Young then questioned if there is additional real estate that is part of the TEJ Holdings property that is not listed on the deed.

Mr. Tunison stated that TEJ Holdings could have written the legal description on their deed to go to the center of the stream but did not.

Commissioner South questioned if the Engineer’s Office determined that the river is not part of the real estate that this taxed.

Mr. Tunison stated that he does not make that determination; it is made by the County Auditor.

Mr. Swope questioned who owns the land in question.

Mr. Tunison stated that there is no specific owner and he feels it is public domain.

There was much discussion relative to who owns the 7 to 8 acres.

Bob Fox, Director of the Tax Map Department, stated that a review was done on all deeds of record. He stated that the Map Room views this property as being owned by the State of Ohio in trust for the people of Ohio and that no one pays taxes on this land.

Commissioner Kilburn stated his opinion that it comes down to the question of is to fair to approve or deny this annexation. He then stated that if the other side of the petition does not feel the decision was correct, they can appeal to the Court of Common Pleas.

Joe Walker, attorney for Deerfield Township, stated that an expedited petition for annexation cannot be appealed.

Bruce McGary stated he does not want the Board to consider the fairness of the petition. He only wants the Board to determine if the seven condition of the Ohio Revised Code has been met.

Mr. Swope stated that the Board should consider case law he provided, that stated the property owner owns to the center line of the river regardless of the description on the deed pursuant to a Supreme Court decision.

Mr. Duning stated his opinion that Hamilton Township was unprofessional in not giving notice of the objection and that Deerfield Township was unprofessional in not giving notice of the brief that was filed. He then requested the Board to hear from Bruce McGary.

Commissioner Young then requested Mr. McGary's counsel.

Mr. McGary provided the following opinion:

1. ORC 709.012 (E)(1)-Mr. Swope is arguing 709.02 applied and he feels this is not accurate. He stated that only ORC 709.02 (C), (D) and (E) applies.
2. The 5% contiguity should be considered as stated in the ORC and previously considered by this Board.

Mr. McGary then reviewed the seven conditions that must be considered to approve an expedited type 2 annexation petition.

Commissioner Young questioned if there is 100% ownership within the petition.

Mc McGary stated that the legislature said in the ORC that a township has a right to file an objection to the annexation but nothing more. The Board must consider that conditions within the ORC have been met and must rely on the County Engineer to make the determination relative to 100% owner signatures and who the owners of land are. Per the Tax Map Department, those conditions have been met.

Commissioner Kilburn stated that the agent has the ability to go back and include TEJ Holdings in the petition. He then questioned if TEJ Holdings wants to annex.

Mr. Ramono stated that no one knows what TEJ Holdings would want.

Commissioner Young stated that the law gives the Board the authority to determine if all property owners are included in the annexation petition. He stated that he does not feel they have been. He then moved to deny the annexation petition due to Ohio Revised Code Section 709.023 (E)(2) not being met.

Commissioner South seconded Mr. Young's motion.

Mr. Duning stated that the agent can delete a portion of an annexation petition. He then requested the Board to continue this discussion to give him the opportunity to consider that option.

Commissioner South then withdrew her second and Commissioner Young withdrew his motion.

Upon discussion, on motion, upon unanimous call of the roll, the Board continued this discussion to April 7, 2009, at 11:00 a.m.

On motion, upon unanimous call of the roll, the Board entered into executive session at 12:45 p.m. to discuss pending litigation with the Chief Deputy Prosecutor pursuant to Ohio Revised Code Section 121.22 (G)(3) and exited at 1:30 p.m.

Upon motion the meeting was adjourned.

C. Michael Kilburn, President

David G. Young

Pat Arnold South

I hereby certify that the foregoing is a true and correct copy of the minutes of the meeting of the Board of County Commissioners held on March 31, 2009, in compliance with Section 121.22 O.R.C.

Tina Davis, Clerk

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