



LORAIN COUNTY

Board of Commissioners
Betty Blair Lori Kokoski Ted Kalo

County Administrator
James R. Cordes
440-329-5760

Assistant County Administrator
Ronald F. Twining
440-329-5530

Clerk of Board
Theresa Upton
440-329-5103

Animal Control Officer
J. A. Szelempa Sr.
440-326-5997

Budget Director
Lisa Hobart
440-329-5201

Charles Berry Bridge Supervisor
Charles Mackin
440-244-2137

Children & Family Council
Melissa Stefano
440-284-4467

Community Development
440-328-2323

E-9-1-1 Director
Robin Jones
440-329-5444

Emergency Management
& Homeland Security Director
Thomas Kelley
440-329-5117

Golden Acres Administrator
Jeri Dull
440-988-7210

Human Resources Department
440-329-5150

IT Director
Ernie Smith
440-329-5786

Lorain County Transit
Robin Bulan
440-328-2490

Maintenance Director
Dennis Shawver
440-329-5326

Office on Aging Director
Patricia Littleron
440-329-4818

Office Services Supervisor
Jennifer Demich
440-329-5115

Purchasing Director
Yvonne Newton
440-329-5240

Records Center Supervisor
Lynn Wallace-Smith
440-326-4866

Solid Waste Director
Daniel Billman
440-329-5442

Special Projects Manager
Karen Davis
440-329-5102

Workforce Development Director
Vivian Alexander
440-284-1830

May 9, 2008

Art Weber, Clerk
City of Elyria
328 Court Street
Elyria, Ohio 44035

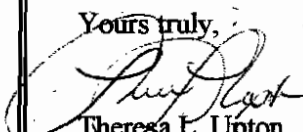
Dear Mr. Weber:

Enclosed is a complete transcript of the granted regular Annexation from Carlisle Township to the City of Elyria, Ohio.

This annexation was granted by Resolution 06-154 on March 2, 2006 for 226.13 acres from Carlisle Township to the City of Elyria, Ohio – Attorney James Taylor and Eric Breunig, Agents for Petitioners; Elbert Investments, LLC, The United Polish Club of Elyria, Ohio and Westbrook Meadows, Ltd.

The time has lapsed on the appeal process, therefore this annexation is hereby granted.

Yours truly,


Theresa E. Upton
Clerk

tlu

Enclosure

Cc: Marlene Joy Thompson, Financial Officer – Carlisle Township
Mark Stewart, LC Auditor/Attn: Rosemary Wirth
Kenneth P. Carney, LC Engineer
Judy Nedwick, LC Recorder
Ted Spillman, Tax Map
Alex Heyd, Board of Elections
Robin Jones, Director 9-1-1
Gerald A. Innes, LC Assistant Prosecutor
File

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The Law Firm of
TAYLOR & BREUNIG CO., L.P.A.
"The Barristers Building"
409 East Avenue, Suite B
Elyria, Ohio 44035-5717

2008 MAY -5 A 10:12

JAMES N. TAYLOR
KURT A. BREUNIG

ERIK A. BREUNIG

TELEPHONE: (440) 323-5700
FACSIMILE: (440) 284-2818
WEBSITE: BARRISTERS-TBR.COM

TERESA L. UPTON
CLERK

May 2, 2008

Theresa L. Upton
Clerk, Lorain County Board of Commissioners
226 Middle Avenue
Elyria, Ohio 44035

RE: Annexation of 226.13 acres from Carlisle Township to Elyria
Resolution No. 06-154

Dear Theresa:

As you may be aware from your discussions with Assistant Prosecutor Gerald Innes, the time period for further appeal on the above-referenced annexation has lapsed. Therefore, I am requesting that you deliver a certified copy of the journal entry of Resolution No. 06-154 granting the above-referenced annexation to the auditor or clerk of the City of Elyria. Additionally, the entire record of the annexation proceedings, including all signed resolutions of the board, the petition, map, and all other papers on file, the transcript of the proceedings, and exhibits presented at the hearing, will need to be delivered as set forth in Ohio Revised Code Section 709.07, which I have enclosed for your reference. I also enclose for your reference a copy of the journal entry and decision of the Ninth District Court of Appeals.

As always, thank you for your attention and cooperation. If you have any questions, please feel free to contact me.

Very truly yours,

TAYLOR & BREUNIG CO., L.P.A.

By: 
Erik A. Breunig

EAB:df
Enclosure(s)
CC: Jerry Innes, Esq.
Al Schrader, Esq.
Pete Shilling, Esq.

709.07 Appeals.

(A) The agent for the petitioners, any owner of real estate in the territory proposed for annexation, any township in which territory proposed for annexation is located, and the municipal corporation to which the territory is proposed to be annexed may file an appeal under Chapter 2506. of the Revised Code from a resolution of the board of county commissioners granting or denying the petition. The agent for the petitioners, any township in which the territory proposed for annexation is located, and any municipal corporation to which the territory is proposed to be annexed are necessary parties in an appeal. The filing of a notice of appeal with the clerk of the board of county commissioners shall operate as a stay of execution upon that clerk and all parties to the appeal, which stay shall not be lifted until the court having jurisdiction over the proceedings enters a final order affirming or reversing the decision of the board of county commissioners and the time limits for an appeal of that final order have passed without a notice of appeal being filed.

(B) Any party filing an appeal from the court of common pleas or court of appeals decision in an annexation matter shall serve on the clerk of the board of county commissioners a time-stamped copy of the notice of appeal. Upon issuance of a final order of any court regarding an annexation appeal, the clerk of the court shall forward a certified copy of the court's order to the clerk of the board of county commissioners that rendered the annexation decision that was appealed.

(C) If, after all appeals have been exhausted, the final determination of the court is that the petition for annexation should be granted, the board of county commissioners shall enter on its journal a resolution granting the annexation, if such a resolution has not already been journalized, and the clerk of the board shall deliver a certified copy of that journal entry and of the entire record of the annexation proceedings, 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, the transcript of the proceedings, and exhibits presented at the hearing relating to the annexation proceedings, to the auditor or clerk of the municipal corporation to which annexation is proposed. The municipal auditor or clerk shall lay these certified papers, along with the copy of the court's order, before the legislative authority at its next regular meeting. The legislative authority then shall proceed to accept or reject the petition for annexation as provided under section 709.04 of the Revised Code.

(D) If, after all appeals have been exhausted, the final determination of the court is that the petition for annexation should be denied, the board of county commissioners shall enter on its journal a resolution denying the annexation, if such a resolution has not already been journalized.

Effective Date: 10-26-2001



**COURT OF APPEALS
NINTH JUDICIAL DISTRICT
LORAIN COUNTY, OHIO
LORAIN COUNTY JUSTICE CENTER
225 COURT STREET
ELYRIA, OHIO 44035**

TO: JAMES N TAYLOR
409 EAST AVE, STE B
ELYRIA, OH 44035

* * * * *

CARLISLE TOWNSHIP BOARD OF TRUSTEES

CASE NO. 07CA009142

VS.

CITY OF ELYRIA

, Court of Appeals

* * * * * NOTICE * * * * *

Pursuant to **Appellate Rule 30**, Notice is hereby given that judgment was rendered in the above captioned case and was entered upon the journal of the Court on MARCH 17, 2008.

A certified copy has been sent to the trial court.

Distribution: All parties or attorneys of record.







LORAIN COUNTY

Board Of Commissioners

Betty Blair

Ted Kalo

Lori Kokoski

Administrator

James R. Cordes
440-329-5760

Clerk Of Board
Theresa Upton
440-329-5103

Ombudsman
Larry Allen
440-329-5488

Solid Waste Director
Daniel Billman
440-329-5442

Children & Family Council Director
Juan Molina Crespo
440-284-4467

Projects Manager
Karen Davis
440-329-5102

Human Resources Department
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Golden Acres Administrator
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E-9-1-1 Director
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Shelley Marzocco
440-326-5201

IT Director
Ernie Smith
440-529-5786

Maintenance Director
Dennis Shawver
440-329-5326

Community Development Director
Ronald F. Twining
440-328-2323

Records Center Supervisor
Lynn Wallace-Smith
440-526-4866

Lorain County Transit Manager
Thomas Ferguson
440-329-5545

March 2, 2006

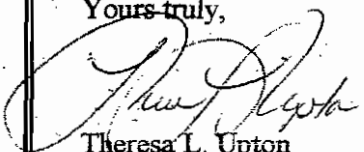
James N. Taylor, Agent
409 East Avenue, Suite B
Elyria, Ohio 44035

Dear Attorney Taylor:

Enclosed is a copy of Resolution No 06-154, adopted by the Lorain County Board of Commissioners on March 2, 2006 granting a regular Annexation Petition of 226.13 acres from Carlisle Township to the City of Elyria, Ohio.

If there are no appeals within thirty (30) days a complete transcript will be submitted to the City of Elyria.

Yours truly,


Theresa L. Upton
Clerk

tlu
Enclosure

Cc: Barbara VanMeter, Financial Officer, Carlisle Township
Art Weber, Clerk, City of Elyria
Ken Carney, LC Engineer
Mark Stewart, LC Auditor/Attn: Rosemary Wirth
File

RESOLUTION NO. 06-154

In the matter of granting the annexation of)
226.13 acres from Carlisle Township to) March 2, 2006
the City of Elyria. Attorney James N.)
Taylor, Agent)

WHEREAS, the Lorain County Board of Commissioners meet on October 24 and 25, 2005 to conduct a two day public hearing on the proposed Annexation of 226.13 acres from Carlisle Township to the City of Elyria. Attorney James N. Taylor, Agent; and

WHEREAS, a petition and map for annexation were filed with the Clerk of the Board of Commissioners on February 10, 2005 for a proposed regular annexation and the same was set on for public hearing on April 21, 2005 (70th day) by Resolution No. 05-167A on February 17, 2005; and

WHEREAS, letters were issued to Mark Stewart, Lorain County Auditor and Ken Carney, Lorain County Engineer asking for review and accuracy of the Petition and Map; and

WHEREAS, February 22, 2005 received an affidavit from Attorney Taylor notifying residents and clerks; and

WHEREAS, February 22, 2005 received letter from County Engineer reviewing the map and description stating 226.13 acres of land in Sections 4, 6 and 7 of Carlisle Township to the City of Elyria. Section 4 has 19.44 acres, Section 6 has 85.18 acres and Section 7 has 131.15 acres. Description follows the map correctly and is contiguous and adjacent to the City of Elyria. There is a concern about a narrow portion of land proposed to be annexed (80' wide) consisting of Indian Hollow Road right-of-way that connects 124 acres on west side of Indian Hollow Road with the 102 acres on east side of Indian Hollow Road. This 80' section of Indian Hollow Road (County Road) would cause problems for emergency, safety, repairs, utilities and reconstruction of the road; and

WHEREAS, Attorney Schrader submitted a request for proof of authority and notice of appearance; and

WHEREAS, March 7, received \$250 deposit from Carlisle Township on the Court Reporter; and

WHEREAS, March 8, received letter from Jerome & Patty Rybicki, Indian Hollow Road, objecting; and

WHEREAS, March 14, received Ordinance No. 2005-25 from the City of Elyria indicating services to be provided upon annexation; and

WHEREAS, March 17, received Certificate of Filing from County Auditor on Resolution No. 05-167A; and

WHEREAS, March 30, received affidavit of notice to publish in the Chronicle Telegram on September 14, 2005; and

WHEREAS, April 11, received form letters objecting from: Charlotte & Randy Sizemore, 245 Miller Court, Elyria and Janice C. Brooks, President – Carlisle Historical & Biographical Society; and

WHEREAS, April 12, received flyer from Buyer Family, Robson Road, and letter from James Pugh, Grafton Road - objecting; and

WHEREAS, April 18, received letter from Dennis R. Manns, 1853 Grafton Road, objecting; and

WHEREAS, April 21, received letter from Walter & Ann Bring, Butternut Ridge objecting; and

WHEREAS, April 21, received confirmation from Agent Taylor, Attorney Schrader & City of Elyria – Law Director Terry Shilling to continue the April 21 annexation hearing to August 1 in order to attempt negotiations of CEDA and/or JEDD agreements. Commissioners by Resolution No. 05-348 continued this public hearing until August 1 at 9:30 a.m.; and

WHEREAS, May 6, received Certificate of Filing from County Auditor on Resolution #05-348; and

WHEREAS, July 28, Commissioners Resolution No. 05-627, continued the public hearing from August 1 until September 12 at 9:30 a.m., being done by the request of both parties and petitioner; and

WHEREAS, August 1, received confirmation from Agent Taylor, Attorney Schrader & City of Elyria – Law Director Terry Shilling to continue the August 1 annexation hearing to September 12 and 13 in order to continue the attempt of negotiations of CEDA and/or JEDD agreements; and

WHEREAS, August 2, received Certificate of Filing from County Auditor on Resolution #05-627; and

WHEREAS, September 2, received confirmation from Agent Taylor, Attorney Schrader to continue the annexation hearings on September 12 and 13 on the intent of the parties that all three Commissioners be present for the hearings; and

WHEREAS, September 3, letter from Barbara Pitts and Jean Eastin, 135 Mallard Creek Run, LaGrange asking the Commisisoners to use their influence with LORCO to insure that all Carlisle Township is considered for future sewers; and

WHEREAS, September 8, Commissioners Resolution No. 05-750A continued the hearing from September 12 and 13, 2005 at 9:30 a.m., until October 24 and 25, 2005 at 9:30 a.m.; and

WHEREAS, September 13, received Certificate of Filing from County Auditor; and

WHEREAS, October 2, letter signed by 17 Carlisle Township residents objecting to the annexation and any future attempts to annex any part of Carlisle Township; and

WHEREAS, October 13, Agent Taylor filed with the Clerk to the Lorain County Board of Commissioners three subpoenas to be served for Mark Stewart, Lorain County Auditor; Chris Eichenlaub, Elyria Safety Service Director; and William Holtzman, Lorain County Engineer's Department; and

WHEREAS, October 14, Sheriff's Civil Office served all three subpoenas; total miles were 2 miles each; and

WHEREAS, October 14, letter from Midge & Jack Carmon, LaGrange objecting; and

WHEREAS, Assistant County Prosecutor Innes said the Clerk has indicated that all procedural statutory issues have been met; and

WHEREAS, Assistant County Prosecutor Innes administered an oath to all persons testifying according to law and the evidence presented was tendered through stipulations of the Attorney for Petitioners, Attorney for Carlisle Township and the City of Elyria with full transcript prepared by Court Reporters; Cefaratti Group, Cleveland, Ohio on October 24, 2005 and Kathleen A. Hopkins & Associates, Elyria, Ohio on October 25, 2005; and

WHEREAS, December 8, Resolution No. 05-978 continued the decision on this annexation for February 2, 2006 requested by all; Attorney Schrader - Carlisle Township, Attorney Taylor-Agent for Petitioners and City of Elyria in order to discuss negotiations relating to an agreement. Unless either party indicates that discussions have stalled the Board of Commissioners can place a decision on their agenda sooner; and

WHEREAS, February 2, Resolution No. 06-71, continued the decision on the annexation for 30 days requested by all; Attorney Schrader - Carlisle Township, Attorney Taylor-Agent for Petitioners and City of Elyria in order to discuss negotiations relating to an agreement. The decision will be held on March 2, 2006 at 9:30 a.m.; and

Said Legal Description reads as follows:

Situated in the Township of Carlisle, County of Lorain and State of Ohio. Being known as part of Carlisle Township Sections Nos. 4, 6 and 7 are more definitely described as follows:

Beginning at the intersection of the centerline of the Elyria-Medina Road, also known as Grafton Road and the centerline of Indian Hollow Road, 60 feet wide;

Thence southerly in the centerline of Indian Hollow Road, a distance of about 579 feet to the northeasterly corner of "Parcel No.3" conveyed to Elbert Investments, LLC as recorded in Lorain County Recorder's Instrument No.20040042579;

Thence westerly in the northerly line of said "Parcel No.3", a distance of about 30 feet to a point in the westerly sideline of Indian Hollow Road; said point is the principal place of beginning;

Thence continuing westerly in the northerly line of said "Parcel No.3", a distance of about 252 feet to an angle point therein;

Thence northerly in the easterly line of said "Parcel No.3", a distance of about 288.30 feet to an angle point therein and a point in the southerly line of Southwood Subdivision No.1 as recorded in Volume 17, Page 39 of Lorain County Plat Records;

Thence westerly in the northerly line of said "Parcel No.3" and southerly line of Southwood Subdivision No.1 and south line of Southwood Subdivision No.2 as recorded in Volume 20, Page 7 of Lorain County Plat Records, a distance of about 1258.37 feet to the southeasterly corner of Southwood Subdivision No.3 as recorded in Volume 30, Page 43 of Lorain County Plat Records; said point being an angle point in the existing corporation line of the City of Elyria;

Thence continuing westerly in the northerly line of said "Parcel No.3" and southerly line of Southwood Subdivision No.3 and existing southerly corporation line of the City of Elyria, a distance of about 1017.03 feet to the northwesterly corner of Parcel No.3" and an angle point in the existing corporation line of the City of Elyria;

Thence southerly in the westerly line of said "Parcel No.3", and existing easterly corporation line of the City of Elyria, a distance of about 357.60 feet to an angle point therein;

Thence easterly, leaving said corporation line, in the southerly line of said "Parcel No.3", a distance of about 356.84 feet to an angle point therein;

Thence southerly in the westerly line of said "Parcel No.3" and in the westerly line of Parcel No. 2" conveyed to Elbert Investments, LLC as recorded in Lorain County Recorder's Instrument No.20040042579, a distance of about 660 feet to the northeasterly corner of land conveyed to The United Polish Club, Inc. as recorded in Lorain County Recorder's Instrument No.20000693744;

Thence westerly in The United Polish Club's northerly line, a distance of about 2610.75 feet to a point in the easterly sideline of Middle Avenue, 60 feet wide;

Thence southerly in the easterly sideline of Middle Avenue, a distance of about 200 feet to a point in The United Polish Club's southerly line;

Thence easterly in The United Polish Club's southerly line, a distance of about 270.25 feet to an angle point therein;

Thence southerly in The United Polish Club's westerly line, a distance of about 460.01 feet to The United Polish Club's southwest corner;

Thence easterly in The United Polish Club's southerly line, a distance of about 2341.90 feet to a point in the westerly line of the above referenced "Parcel No.2" conveyed to Elbert Investments, LLC, recorded as aforesaid;

Thence southerly in the westerly line of said "Parcel No. 2", a distance of about 84.48 feet to the southwest corner thereof;

Thence easterly in the southerly line of said "Parcel No. 2", and in the southerly line of "Parcel No. 1" conveyed to Elbert Investments, LLC as recorded in Lorain County Recorder's Instrument No.20040042579 and in the easterly extension thereof (crossing Indian Hollow Road), a distance of about 2215 feet to a point in the easterly sideline of Indian Hollow Road;

Thence southerly in the easterly sideline of Indian Hollow Road, a distance of about 426.21 feet to an angle point therein;

Thence continuing southerly in the easterly sideline of Indian Hollow Road, a distance of about 1011.53 feet to an angle point therein;

Thence continuing southerly in the easterly sideline of Indian Hollow Road, a distance of about 4.3 feet to a point in the southerly line of "Parcel No. 1" conveyed to Westbrook Meadows, Ltd. as recorded in Lorain County Recorder's Instrument No.20020877062; said point being also in the northerly line of Ridgewood Allotment as recorded in Volume 17, Page 3 of Lorain County Plat Records;

Thence easterly in the southerly line of said "Parcel No. 1" and northerly line of Ridgewood Allotment, a distance of about 506.43 feet to the northeasterly corner of said Ridgewood Allotment and a point in the line between Carlisle Township Sections Nos. 6 and 7;

Thence southerly in the easterly line of Ridgewood Allotment and Section Line, a distance of about 487.80 feet to the northwesterly corner of Ridgewood Subdivision No. 2 as recorded in Volume 18, Page 8 of Lorain County Plat Records;

Thence easterly in the northerly line of Ridgewood Subdivision No. 2, said line being also the southerly line of "Parcel No. 1" conveyed to Westbrook Meadows Ltd., recorded as aforesaid, a distance of about 1744.13 feet to an angle point therein;

The following six courses are in the generally easterly, southerly and westerly lines of said "Parcel No. 1":

Thence northerly, a distance of about 269.80 feet to an angle point;

Thence continuing northerly, a distance of about 233.50 feet to an angle point;

Thence easterly, a distance of about 17.73 feet to an angle point;

Thence northerly, a distance of about 246.91 feet to an angle point;

Thence easterly, a distance of about 27.02 feet to an angle point;

Thence southerly, a distance of about 694.89 feet to an angle point;

Thence easterly in the southerly line of said "Parcel No. 1", said line being also the northerly right-of-way line of U.S. Route 20 and Ohio Route 301, a distance of about 206.85 feet to the southeasterly corner of said "Parcel No. 1";

The following seven courses are in the generally easterly and northerly lines of said "Parcel No. 1";

Thence northerly, a distance of about 649.53 feet to an angle point;

Thence westerly, a distance of about 5.66 feet to an angle point;

Thence northerly, a distance of about 462.90 feet to an angle point;

Thence westerly, a distance of about 280.08 feet to an angle point;

Thence northerly, a distance of about 266.37 feet to an angle point;

Thence westerly, a distance of about 17.73 feet to an angle point;

Thence northerly, a distance of about 368.97 feet to a point in the southwesterly sideline of the Elyria-Medina Road, 60 feet wide;

Thence northwesterly in the southwesterly sideline of the Elyria-Medina Road, a distance of about 381.16 feet to a point in the westerly line of the aforesaid "Parcel No.1" conveyed to Westbrook Meadows Ltd.;

Thence southerly in the westerly line of "Parcel No.1", a distance of about 341.30 feet to an angle point therein;

Thence westerly in the northerly line of "Parcel No. 1", a distance of about 566.19 feet to an angle point therein;

Thence northerly in the easterly line of "Parcel No. 1", a distance of about 304.52 feet to an angle point therein;

Thence westerly in the northerly line of "Parcel No. 1", a distance of about 854.43 feet to an angle point therein and a point in the line between Carlisle Township Sections Nos. 6 and 7;

Thence southerly in the westerly line of "Parcel No. 1" and Section Line, a distance of about 99.57 feet to an angle point;

Thence westerly in the northerly line of said "Parcel No. 1" and in the westerly extension thereof (crossing Indian Hollow Road), a distance of 538.53 feet to a point in the westerly sideline of Indian Hollow Road;

Thence northerly in the westerly sideline of Indian Hollow Road, a distance of about 297.50 feet to a point in the northerly line of "Parcel No. 1" conveyed to Elbert Investments, LLC as recorded in Lorain County Recorder's Instrument No. 20040042579;

Thence westerly in the northerly line of said "Parcel No. 1", a distance of about 339.15 feet to an angle point therein;

Thence northerly in the easterly line of said "Parcel No. 1", a distance of about 118 feet to an angle point therein and a point in the southerly line of "Parcel No. 2" conveyed to Elbert Investments, LLC, recorded as aforesaid;

Thence easterly in the southerly line of said "Parcel No. 2", a distance of about 339.15 feet to a point in the westerly sideline of Indian Hollow Road;

Thence northerly in the westerly sideline of Indian Hollow Road, a distance of about 1000 feet to the principal place of beginning;

Enclosing a parcel containing about 226.13 acres of land of which about 19.44 acres are contained within Carlisle Township Section 4, about 85.18 acres are contained within Carlisle Township Section 6, and about 121.51 acres are contained within Carlisle Township Section No. 7 but subject to all legal highways.

The name of the person to act as agent for the undersigned petitioners is James N. Taylor, Esq., Taylor, Breuning & Robinson Co., L.P.A. 409 East Avenue, Suite B, Elyria, Ohio 44035, Telephone: (440) 323-5700, Fax (440) 284-2818.

ELBERT INVESTMENTS, LLC

Date: 2-9-05 By/Lorne J. Elbert, Jr., Managing Member

THE UNITED POLISH CLUB OF ELYRIA, OHIO

Date: 2-9-05 By: Robert J. Pluta, President

WESTBROOK MEADOWS, LTD

Date: 2-9-05 By: Maurice Shave, Member-Manager

And;

NOW, THEREFORE BE IT RESOLVED, by the Lorain County Board of Commissioners of Lorain County, Ohio that;

- I. The Board makes the following findings upon the evidence and testimony presented (a complete transcript containing verbatim testimony is kept at the office of the Clerk of the Board of Commissioners):

The necessary requirements are in the record for notification and have been complied with. The petitioners are owners of the territory of property proposed to be annexed, there has been no dispute of the validity of the petitioner's signatures and those signatures constitute a majority of the territory proposed to be annexed on the date of petition.

- A. The petition meets all the requirements set forth in, and was filed in the manner provided in Section 709.02 of the Revised Code in that:
1. The real estate is "contiguous" to the municipal corporation to which annexation is proposed.
 2. The petition contains:
 - a. The name of the owners, their signatures, and date each signature was obtained.
 - b. A legal description of the perimeter of the proposed territory to be annexed.
 - c. A map or plat of the proposed territory to be annexed.
 - d. The name and address of the agent for the petitioner.
 - e. Lists of all the parcels and the name and mailing address of the owners of each parcel:
 1. Within the proposed territory to be annexed.
 2. That lie adjacent or directly across the street from the proposed territory to be annexed.
 3. That a majority of the territory proposed for annexation lies within the county.
- B. The persons who signed the petition are owners of real estate located in the territory proposed to be annexed in the petition, and, as of the time the petition was filed with The Board of County Commissioners the number of valid signatures on the petition constitute a majority of the owners of real estate in that territory. In order to be valid signatures:
1. Signatures are of "owners" of property.
 2. Were not obtained more than 180 days before the date the petition was filed.
 3. Constitute a majority of the owners of the territory proposed for annexation.

- C. The City of Elyria to which the territory is proposed to be annexed has complied with division (D) of section 709.03 of the Revised Code, the requirement to adopt by ordinance or resolution a statement indicating what services will be provided upon annexation and approximate date the services will be provided. The statement that services will be provided "upon annexation" complies with the statutory requirement of stating the approximate date for providing services.
- D. No street or highway will be divided or segmented by the boundary line between Carlisle Township and the City of Elyria as to create a road maintenance problem, or, if a street or highway be so divided or segmented, the City of Elyria has agreed, as a condition of the annexation, that it will assume the maintenance of that street or highway. For the proposes of division, "street" or "highway" has the same meaning as in section 4511.01 of the Revised Code.

II. The Board further finds the territory to be annexed is not unreasonably large.

Said finding is made upon consideration of the following:

- (1) The geographic character, shape, and size of the territory to be annexed in relation to the territory to which it will be annexed, and in relation to the territory remaining after the annexation is completed;
- (2) The ability of the annexing city to provide the necessary municipal services to the added territory; and
- (3) The effect on remaining township territory if annexation is permitted.

The evidence presented demonstrates that annexation of 226.13 acres has not been found to be unreasonably large in numerous court decisions.

Although the configuration of the territory is somewhat irregular, the entire area has developed in a similar pattern; this annexation will not be inconsistent with that pattern or present new burdens upon the city or township. The City of Elyria will be able to provide utility, safety and emergency services to the territory. The response time will not be significantly different from services currently provided within the township.

The removal of the territory from the Township will not cause the tax base of the Township to be so eroded or depleted so as to not permit the Township to continue on and provide goods and services to the township residents. In the immediate future, the Township will be gaining considerable tax revenue.

- III. The Board further finds that on balance, the general good of the territory proposed to be annexed will be served, benefits to the territory proposed to be annexed and the surrounding area will outweigh the detriments to the territory proposed to be annexed and the surrounding area, if the annexation is granted. As used here "surrounding area" means the territory within the unincorporated area of any township located one-half mile or less from any of the territory proposed to be annexed.

Said finding was supported by the evidence that:

- A. The good of the territory will be served/benefits to the territory.

The annexation will provide sewers to the area. Other alternative sewer systems are not likely to occur for years, if at all. Petitioners have already waited several years for alternative sewer access to become available.

Sewer access will enable petitioners, the Polish Club to build a pavilion, club house and recreational facilities, which can not be presently done through septic or mound systems.

The other petitioners plan to build residential developments, which in addition to sewer accessibility will be enhanced in the City due to increased density.

Emergency, fire and police service will be provided by full time units.

- B. Benefits to the surrounding area

Increased development opportunities will increase the tax base of the properties and make additional revenue available to both the City and the Township.

The immediate and long term increase in commercial use of the area will result in jobs and economic opportunities needed in an area with a depressed economy.

The increase in families and development provide needed growth to the area.

- C. Detriments to the surrounding area

The extension of the irregular shape of the area creates some potential for disruption and confusion of services. The increased development and commercial activity reduces the rural nature of the area. After several years the township could lose some of its tax base.

Cooperation between the City, County, and Township officials should keep problems with provision of services to a minimum and temporary. After a short adjustment period, cooperative efforts should allow for a smooth transition in services.

Commercial and residential growth appear to be a natural expansion in the areas accessed by this annexation. Some growth is healthy for all the affected entities.

The Township will receive a short term, but substantial increase in tax revenue. The Township will have sufficient time to plan and use this increased revenue to alleviate the long term impact.

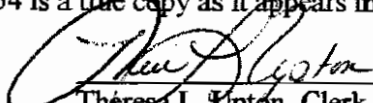
BE IT FURTHER RESOLVED, that;

- I. Based upon the findings of fact that all the conditions of annexation as contained in Revised Code 709.033 have been met, the petition for annexation as presented is granted.
- II. The Clerk be directed to enter this resolution upon the journal of the Board and send a certified copy to Attorney James N. Taylor, Agent for petitioners, Clerk of City, and the Financial Officer of Township Carlisle.
- III. The Clerk, if no appeal is filed within thirty days of journalization of this resolution, be directed to deliver a certified copy of the entire record to the Clerk to the City Elyria.

Motion by Kalo, seconded by Blair to adopt Resolution. Ayes: Kalo & Blair / Nay: Kokoski

Motion carried. _____ (discussion was held on the above)

I, Theresa L. Upton, Clerk to the Lorain County Board of Commissioners do hereby certify that the above Resolution No. 06-154 is a true copy as it appears in Journal No. 06 on date of February 2, 2006


Theresa L. Upton, Clerk

APPEALS

STATE OF OHIO)
)ss:
COUNTY OF LORAIN

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

MAR 17 A 11:13

CARLISLE TOWNSHIP BOARD
OF TRUSTEES

C. A. No. 07CA009142

Appellant

9th APPELLATE DISTRICT

v.

CITY OF ELYRIA, et al.

Appellees

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 06 CV 145716

DECISION AND JOURNAL ENTRY

Dated: March 17, 2008

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

SLABY, J.

{¶1} Appellant, Carlisle Township Board of Trustees (“Carlisle Township”) appeals the decision of the Lorain County Court of Common Pleas affirming the Lorain County Board of Commissioner’s (“Board”) decision to allow the annexation of 226.13 acres of land located in Carlisle Township to the City of Elyria (“Land”). We affirm.

{¶2} On February 10, 2005, Elbert Investments, LLC, the United Polish Club, and Westbrook Meadows, Ltd. (“Petitioners”) filed an annexation petition with the Board to annex the Land to the City of Elyria (“Petition”). A hearing was

held before the Board on October 24 and October 25, 2005. On February 2, 2006, the Board granted the Petition pursuant to R.C. 709.033 (“Decision”). Carlisle Township timely appealed the Decision to the Lorain County Court of Common Pleas. On March 5, 2007, the trial court affirmed the Decision (“Judgment Entry”). Carlisle Township timely appealed the Judgment Entry and raises three assignments of error.

Assignment of Error One

“The trial court erred in affirming the [Board’s] decision to allow the annexation by misapplying the ‘approximate date’ standard set forth in O.R.C. § 709.03(D).”

Assignment of Error Two

“The trial court erred in affirming the [Board’s] decision to allow the annexation by misapplying the ‘common good’ standard set forth in O.R.C. § 709.033(A)(5).”

Assignment of Error Three

“The trial court erred in affirming the [Board’s] decision to allow the annexation by misapplying the ‘unreasonably large’ standard set forth in *In re: Petition to Annex 331.2142 Acres of Land*, 2004-Ohio-1425 (9th Dist. 2004).”

{¶3} Carlisle Township appeals the Judgment Entry asserting that the trial court erred in affirming the Decision for three reasons: (1) Elyria Ordinance No. 2005-25, which set forth the services Elyria would provide to the Land, failed to include an “approximate date” such services would be provided as required by R.C. 709.033(A)(3) and R.C. 709.03(D); (2) evidence failed to establish that the annexation would be for the “general good,” as required by R.C. 709.033(A)(5);

and (3) evidence established that the Land is “unreasonably large” in violation of R.C. 709.033(A)(4), which term has been defined by this Court in *In re: Petition to Annex 331.2142 Acres of Land*, 9th Dist. No. 03CA0101-M, 2004-Ohio-1425, at ¶21.

{¶4} As we stated in *In re Petition to Annex 331.2142 Acres*, “[a]n order affirming a petition to annex a property may be appealed pursuant to R.C. 2506.01.” *Id.* at ¶7, citing *Smith v. Granville Twp. Bd. of Trustees* (1998), 81 Ohio St.3d 608, 612. A trial court reviews an administrative order pursuant to R.C. 2506.04, which states:

“[T]he court may find that the order, adjudication, or decision is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record. Consistent with its findings, the court may affirm, reverse, vacate, or modify the order, adjudication, or decision, or remand the cause to the officer or body appealed from with instructions to enter an order, adjudication, or decision consistent with the findings or opinion of the court. The judgment of the court may be appealed by any party on questions of law as provided in the Rules of Appellate Procedure and, to the extent not in conflict with those rules, Chapter 2505 of the Revised Code.”

{¶5} This Court explained the review process for an appeal of a grant of a petition for annexation in *In re Petition to Annex 331.2142 Acres*, in which we stated:

“The administrative ruling is initially appealed to the court of common pleas, which weighs the evidence in the record and may consider new or additional evidence. *Smith*, 81 Ohio St.3d at 612, 693 N.E.2d 219, citing *Dudukovich v. Lorain Metro. Hous. Auth.* (1979), 58 Ohio St.2d 202, 207, 389 N.E.2d 1113. The decision of

the court of common pleas may then be appealed to an appellate court on questions of law. *Smith*, 81 Ohio St.3d at 613, 693 N.E.2d 219. An appellate court's function, however, does not involve a determination as to the weight of the evidence. *In re Annexation of 1,544.61 Acres*, (1984), 14 Ohio App.3d 231, 233, 14 Ohio B. 259, 14 Ohio App.3d 231, 470 N.E.2d 486. This Court's inquiry is limited to a determination of whether we can say, as a matter of law, that the decision of the common pleas court is not supported by a preponderance of reliable, probative and substantial evidence. *Kisil v. Sandusky* (1984), 12 Ohio St.3d 30, 34, 12 Ohio B. 26, 12 Ohio St.3d 30, 465 N.E.2d 848; see, also, *Dudukovich*, 58 Ohio St.2d at 208, 389 N.E.2d 1113." *CMK, Ltd. v. Bd. of County Commrs.*, 9th Dist. No. 02CA008185, 2003-Ohio-5160, at ¶ 7." Id. at ¶ 8.

{¶6} The Board may grant a petition for annexation pursuant to R.C.

709.033, which states, in relevant part:

"(A) After the hearing on a petition for annexation, the board of county commissioners shall enter upon its journal a resolution granting the annexation if it finds, based upon a preponderance of the substantial, reliable, and probative evidence on the whole record, that each of the following conditions has been met:

"(3) The municipal corporation to which the territory is proposed to be annexed has complied with division (D) of section 709.03 of the Revised Code.

"(4) The territory proposed to be annexed is not unreasonably large.

"(5) On balance, the general good of the territory proposed to be annexed will be served, and the benefits to the territory proposed to be annexed and the surrounding area will outweigh the detriments to the territory proposed to be annexed and the surrounding area, if the annexation petition is granted. As used in division (A)(5) of this section, 'surrounding area' means the territory within the unincorporated area of any township located one-half mile or less from any of the territory proposed to be annexed."

{¶7} Here, Carlisle asserts that the Decision was not supported by a preponderance of the substantial, reliable and probative evidence with regard to R.C. 709.033(A)(3)-(5). Accordingly, Carlisle maintains that the trial court erred in affirming the Decision.

R.C. 709.033(A)(3)

{¶8} R.C. 709.033(A)(3) requires the petitioner to comply with R.C. 709.03(D), which states:

“Upon receiving the notice described in division (B)(1) of this section, the legislative authority of the municipal corporation shall adopt, by ordinance or resolution, a statement indicating 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.” (Emphasis added).

{¶9} The Board asserts that Elyria ordinance 2005-25 complies with R.C. 709.03(D) and Carlisle disagrees. The ordinance states, in relevant part:

“Section 1. That the City of Elyria will provide *upon annexation* to said Territory owned by [Petitioners], the same services that the City regularly and customarily provides to the real property located within the City of Elyria[.]” (Emphasis added).

{¶10} As noted by the trial court and both parties, this is an issue of first impression in Ohio. The trial court notes that because of the length of the annexation process in this case, any specific date picked by Elyria to include in the ordinance would have been arbitrary. The trial court also noted that because the Land was vacant, “no one would be negatively affected by any interruption in

services that may be caused by the omission of a specific date.” The Judgment

Entry stated:

“Because the intent of the statute seems to be to protect those in an area proposed for annexation from any interruption in services, and because no such circumstance exists in this case, the phrase ‘upon annexation’ is a sufficient indicator of the approximate date that services would be provided.”

{¶11} The Judgment Entry finally noted that, even if a more specific date was required under R.C. 709.03(D), “the parties have substantially complied with all procedural elements of the statute,” which is sufficient under R.C. 709.015, which states:

“The procedural requirements set forth in sections 709.02 to 709.21 of the Revised Code are directory in nature. Substantial compliance with the procedural requirements of those sections is sufficient to grant the board of county commissioner’s jurisdiction to hear and render its decision on a petition for annexation filed under those sections. The board shall cure a procedural defect and shall not deny a petition for annexation solely upon the basis of procedural defects.”

{¶12} Appellee/Petitioners assert that its date “upon annexation” is better than an “approximate date” as it is a date certain. Petitioners maintain that pursuant to the ordinance, services would be available the day the annexation was granted, which is a definite time, not just an approximate time.

{¶13} We hold that the Judgment Entry on this issue is supported by a preponderance of reliable, probative and substantial evidence. Carlisle’s main argument is one of statutory interpretation and construction. Carlisle asserts that because the language “approximate date” is not ambiguous, its language cannot be

“enlarged or construed in any way other than that which its words demand.” *Kneisley v. Lattimer-Stevens Co.* (1988), 40 Ohio St.3d 354, 357. We do not need to determine whether the words “approximate date,” are ambiguous as they are, by their very nature, not intended to mean a date certain. We hold that there is a preponderance of reliable, probative and substantial evidence to support the trial court’s determination that “upon annexation” is an approximate date sufficient to satisfy either R.C. 709.03 or R.C. 709.15. See *50/50 Construction, Inc. v. Mole Construction Co.* (Sept. 16, 1983), 6th Dist. No. L-83-002.

R.C. 709.033(A)(5)

{¶14} Carlisle asserts that, in determining whether the annexation would serve the general good of the Land and surrounding territory, the trial court disregarded the expert testimony of Mark Majewski who, according to Carlisle Township, “showed that the detriments caused by the annexation to the area to be annexed and to the unincorporated area of the Township within one-half (1/2) mile outweighed the benefits to the area.” Petitioners argue that the trial court did not disregard Mr. Majewski’s testimony, it just balanced it against other testimony that demonstrated that Land and surrounding territory would benefit from the annexation. We agree.

{¶15} The trial court found that the Board’s decision that, “the general good standard had been met by Petitioners” was “supported by a preponderance of the evidence.” The court noted that Petitioners produced evidence that, “all

property owners in the territory proposed for annexation would benefit from City sewer access, as well as other services such as full-time police and fire departments.” The trial court summarized other evidence produced by the Petitioner:

“[T]he surrounding area as well as the area proposed for annexation would benefit from new housing stock that would spur additional growth and development[;]

“the annexation would result in financial gain for the Township in the twelve years immediately following the annexation[.]

{¶16} The court also concluded that, “sewer access is a legitimate reason for annexation. See *Bakies v. Perrysburg*, 108 Ohio St.3d 361, 2006-Ohio-1190; *Clark v. Green Cty. Combined Health Dist.*, 108 Ohio St.3d 427, 2006-Ohio-1326.” (Emphasis sic).

{¶17} The trial court did not disregard Mr. Majewski’s testimony, but instead weighed it against that of the Elyria safety services director and county engineer who refuted Mr. Majewski’s testimony by testifying that “the City can and will provide the necessary services to the area, that the City has annexed parcels of similar shape and size in the past, and that road maintenance will not be a problem once the City assumes maintenance duties as specified in the services ordinance.”

{¶18} We hold that the trial court’s determination that the annexation supported the general good is supported by a preponderance of reliable, probative and substantial evidence.

R.C. 709.033(A)(4)

{¶19} Carlisle finally argues that the trial court erred in disregarding the expert testimony offered by Carlisle of the “shoe-string” effect on Carlisle and the damage that would occur to the sense of community of Carlisle after annexation, when it determined that the Land was not unreasonably large. Petitioners argue that the trial court properly applied the “unreasonably large” standard set forth by this Court in *In re Annexation of 1,544.61 Acres of Northhampton Twp.*, 14 Ohio App.3d 231. We agree.

{¶20} In *In re Annexation of 1,544.61 Acres*, we set forth the standard by which to determine whether property to be annexed is unreasonably large under R.C. 709.033(A)(4), stating that “ [a]ny issue of ‘reasonableness’ necessitates a comparison, a weighing of pros and cons. Therefore, the determination of [what is] unreasonably large requires a three-pronged analysis * * * :

“(1) the geographic character, shape and size (acreage) of the territory to be annexed in relation to the territory to which it will be annexed (the city), and in relation to the territory remaining after the annexation is completed (the remaining Township area); * * *

“(2) the ability of the annexing city to provide the necessary municipal services to the added territory. (Geographic as well as financial ‘largeness’ may be considered. * * *)

“(3) the effect on remaining township territory if annexation is permitted. If the territory sought to be annexed is so great a portion of the township’s tax base that the annexation would render the remaining township incapable of supporting itself, then the Board might reasonably conclude the proposed annexation is unreasonably large, although such annexation would benefit the territory sought to be annexed.” Id. at 233, quoting *Herrick v. Bd. of County Commrs.* (Jan. 23, 1980), 9th Dist. No. 9425, at 6.

See, also *In re Petition to Annex 331.2142 Acres*, 2004-Ohio-1425, at ¶21.

{¶21} The trial court considered Carlisle’s expert testimony and noted that the Board had weighed it against other factors, “including prior annexations into the City that were of irregular shape, as well as the testimony of the Elyria safety service director that the City could and would service such a territory and that the City had had no problems in the past when it annexed similarly shaped parcels.” The Judgment Entry also pointed out that 100% of the property owners of the Land were in favor of the annexation and that the Petitioners could have added other property to arbitrarily make the Land more regular in shape as long as at least 50% of the property owners would have signed the annexation petition. The trial court then cited to other cases with land of similar shape and size that were found not to be unreasonably large.

{¶22} As to the second of the “unreasonably large” factors, the trial court again noted the Elyria safety director’s testimony that the city was willing and able to provide services to the Land upon annexation.

{¶23} Finally, as to the third “unreasonably large” factor, the trial court found that, “there will clearly be a significant increase in revenue for the area after

annexation[], *** the effect on [Carlisle's] ability to continue to provide services to its residents will be minimal, *** the City has further agreed to assume road maintenance on road that will be segmented by annexation.”

{¶24} Accordingly, we hold that the trial court's determination that the Land was not unreasonably large is supported by a preponderance of reliable, probative and substantial evidence.

{¶25} Each of Carlisle's assignments of error is overruled and the judgment of the Lorain County Court of Common Pleas is affirmed.

Judgment Affirmed.

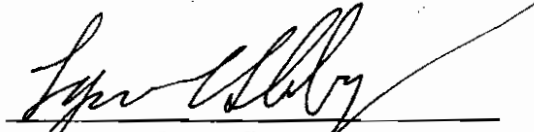
The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this

judgment to the parties and to make a notation of the mailing in the docket,
pursuant to App.R. 30.

Costs taxed to Appellant.



LYNN C. SLABY
FOR THE COURT

MOORE, P. J.
DICKINSON, J.
CONCUR

APPEARANCES:

ALFRED E. SCHRADER, Attorney at Law, for Appellant.

TERRY S. SHILLING, Law Director, for Appellee.

GERALD A. INNES, Assistant Prosecutor, for Appellee.

ERIK A. BREUNIG and JAMES N. TAYLOR, Attorneys at Law, for Appellee.