

RESOLUTION NO. 99-54

In the matter of continued hearing on the proposed)
Annexation of approximately 5.88 acres in Amherst) January 21, 1999
Township to the City of Amherst, Ohio; Attorney,)
Robert Gargas, Agent for Petitioners)

WHEREAS, Commissioner Blair reconvened the meeting and opened the continued hearing from December 17, 1998 for the proposed Annexation of approximately 5.88 acres in Amherst Township to the City of Amherst, Ohio. Attorney Robert Gargas, Agent for Petitioners; and

WHEREAS, Commissioner Blair stated that at the first hearing there were several questions raised, and the Commissioners asked the Prosecutor's Office to address some of these issues. Commissioner Blair read Mr. Innes' letter as follows:

"Several issues were raised during the initial hearing pertaining to this matter which I have since reviewed.

1. Notice to the Township

I checked with Jean Thomas, Clerk for Amherst Township. She confirmed that she did receive the required notice from Attorney Gargas.

2. Number of parcels

It appears that there was an error in the original petition declaring there to be five parcels rather than six. Attorney Gargas did request an amendment, which is permissible in the discretion of the Commissioners, since the change does not enlarge the area indicated in the map. The number of signatures on the petition is still sufficient.

I have suggested to Attorney Gargas that a written request for amendment should be made with the Commissioners. I would recommend that this be allowed, in that it is a technical error which does not appear to impact on the "general good" issue.

3. Donald Buchs

There were conflicting statements regarding the desires of this owner. Again, I have indicated to Attorney Gargas that I believe the Commissioners would like to have this straightened out. It is not a critical element to the proceedings, but certainly an important one. If the Commissioners wish, he can be subpoenaed.

4. "General good" issue

The critical issue in annexation proceedings is the "general good" of the property being annexed. Although the Commissioners may hear testimony regarding the impact on the Township and the City, such information would not be very important unless the Commissioners were undecided after weighing other factors. In other words, it would only come into play as a sort of tiebreaker if all other factors were equal.

The main thing for the Commissioners to decide is whether the annexation is best for the property being annexed. In this respect, the desires of the landowners are probably the single most critical element, although it is not the whole ball game. Courts have repeatedly stated that the goal of the annexation statutes is to respect the right of people to choose what government entity they desire to be ruled under. However, it has been noted that if it were to be a mere matter of choice by the people, all that would be necessary would be the petition itself and there would be no need for a hearing. It is clear that something more must be shown.

The usual factors are governmental services. Most frequently, the need for sewer service is a strong factor favoring annexation. The Commissioners should also compare other services such as fire, police, waste collection, ambulance, land use planning and zoning. (I should remark that there was an assertion that there is better ambulance service in Amherst City. The Commissioners should be advised that Amherst City and Amherst Township are in a joint ambulance district and thus receive the same service.) One argument that I found

compelling was that there were adjacent properties in two jurisdictions. It is easy to see the benefits of having the parcels in one jurisdiction.

Keep in mind that the benefit is to be for the property, not the property owner. There was a suggestion that one owner wants the annexation so that he can join the Amherst City Fire Department. That would be a personal benefit to the owner, which would not justify annexation of the land.

Although the Commissioners have not generally been any more specific than to say that it is for the general good of the property when approving or denying an annexation, the Commissioners are supposed to make findings. Due to the contested nature of this proceeding, some consideration should be given to listing some reasons for the eventual decision.

Although, I am sure no one wants to start again from the beginning, it might be worthwhile to have the attorneys briefly summarize their reasons pro and con. I expect Mr. Gargasz will be more detailed in his presentation. It was fairly obvious that he had not anticipated there to be opposition represented by counsel. I am sure he will do some research before the next hearing and cover some reasons which the case law has used as a basis for annexation.

5. Procedures

Questioning of the petitioner should be allowed, although this should not come in the form of cross examination as used in a trial. The Commissioners may also allow questioning of any and all witnesses. Once again, this is not supposed to be done like a formal court trial, and the Commissioners have great leeway with respect to what they will allow. Certainly, the Commissioners do not have to put up with objections and so forth. If the attorneys begin getting in the way too much, the Commissioners, have the right to simply say "look, we want to hear what this person has to say and we will decide if it is relevant or important."

Very truly yours, S/Gerald A. Innes, Assistant Prosecuting Attorney"

WHEREAS, Commissioner Blair commented that there were also conflicting statements in written form, by property owner Don Buchs. Attorney Gargasz has submitted for this Board's consideration, a signed affidavit from Mr. Buchs, which reads as follows:

"AFFIDAVIT IN SUPPORT OF ANNEXATION - State of Ohio / Lorain County ss:
I, Donald Buchs, being first duly sworn, state as follows:

1. That on December 16, 1996 I wrote a letter to Daniel J. Gross expressing my position that I have no objection to the proposed annexation as set forth and described in the petition as approved by the Lorain County Engineer and as has been advertised in the notice published in the Amherst News Times and which is presently before the Lorain County Commissioners. I do not oppose the small portion of my real property being annexed to the City of Amherst as has been recommended by the Lorain County Engineer in this matter. I have no objection to the annexation of a portion of my real property as would occur. After talking with Mr. Gross, I realized that I had nothing to fear and that I should not oppose the annexation so I provided the letter in an attempt to express my approval to the proposed annexation. A true copy of my December 16, 1998 letter is attached hereto.

2. I did previously have a talk with attorney Robert A. Brindza, however, I feel that I was wrongfully pressured into executing the affidavit, which has been submitted to the Lorain County Commissioners on December 17, 1998.

3. I was pressured into believing that if I did not cooperate with attorney Robert A. Brindza and his other clients that I would experience problems with Amherst Township concerning my land and its usage. This is why I executed the affidavit that my attorney Robert A. Brindza had prepared.

4. I direct that attorney Robert A. Brindza cease all efforts on my behalf which in any way seek to impair the proposed annexation. In fact, I direct that he take every step to ensure that the annexation as has been proposed by Mr. Gross occur. I further direct my Attorney Robert A. Brindza to take such steps as may be required to ensure that I have no future problems from the Amherst Township Trustees and Amherst Township, Ohio on any matter relating to my use of my real property.

5. Further Affiant Sayeth Naught S/Donald Buchs" (was sworn in the presence of Nancy D. Brotko, Notary Public, State of Ohio on January 21, 1999)

WHEREAS, Commissioner Blair said that the Prosecutor's letter has addressed many of the issues that were raised at the December 17, 1998 meeting; and

WHEREAS, Jerry Innes, Assistant Prosecutor administered an oath to anyone wishing to testify at today's hearing. Attorney Gargas said that he noted for the record that there was a statement by Mr. Sliman who is an officer of the entity that currently owns Sublot 32, which indicates that this entity, which is a successor to the CJS Development, Inc. has no objections to this proposed annexation. This will demonstrate that all of the six (6) property owners are requesting this annexation; and

WHEREAS, Attorney Robert Brindza, representing Amherst Township Trustees stated for clarification of the record, he is withdrawing as Counsel for Mr. Buchs based upon his affidavit. Mr. Brindza stated that there were a few comments in Mr. Buchs affidavit that indicated he was pressured by him and the Township Trustees to sign the affidavit, and not at any time did he make any threats, coerced making him sign or else. Mr. Buchs came to his own decision at that time.

WHEREAS, Attorney Brindza said that he had not received a copy of the statement from Mr. Sliman, and if it is not in "affidavit" form he requests the Board not consider this because it was not under oath and he is not here to testify under oath as to his position on annexation. With respect to Mr. Gargas's attempt to amend the annexation petition by adding CJS Development's parcel, he objects because this is the first time that he has received notice of any amendment and it has not been served on the Township in accordance with statutory procedures, and would request the Commissioners require the filing and resubmission of a new Annexation Petition encompassing the properties involved with the Petition as amended today; and

WHEREAS, Attorney Gargas said the legal description has been approved by the Lorain County Engineer, and all of these property owners have expressed their approval and desire for this Annexation; and

WHEREAS, Dan Gross, property owner and Petitioner stated that he does have a personal reason for this annexation, but his property is partially in the City of Amherst and in the Township, and he has electrical, water, and sewer services provided through the City of Amherst. His children attend Amherst City Schools and use the public library. Mr. Gross feels he is more a citizen of Amherst City than the Township and would like to consolidate his parcel within the City of Amherst; and

WHEREAS, Mr. Urig, Amherst Township Trustee wanted to clarify on the Notification to the Township. Upon research the Township did receive the notification, And at that time the statement made to the best of his knowledge he did not now the Clerk received the notification; and

WHEREAS, Mr. Leoni, Amherst Township Trustee said his position as Trustee, is to oppose any annexation of land in the Township to any municipality. Annexation only inhibits Amherst Township's ability to function as a viable political Subdivision of this State. The impact of the annexation is to increase tax base to the Municipality, but causes long-term effects.

NOW, THEREFORE, BE IT RESOLVED, based upon testimony received, and Information provided, we do hereby grant the amendment of Petition as submitted by Attorney Gargas, which reads as follows:

"Please consider this letter the formalization of my oral amendment to the petition to change the number of landowners from 5 to 6. CJS Development, Inc. is the owner of Sublot 32 located in the Kempton Woods Estates Subdivision No. 3 recorded Vol. 57, Pages 6-7 of the Lorain County Plat Map Records; Sublot 32 is known as Permanent parcel Number 05-00-016-101-146. This amendment does not add to the territory embraced by the legal description of the proposed real property to be annexed to the City of Amherst, Ohio. The portion of Sublot 32 included in the territory embraced by the legal description of the proposed real property to be annexed to the City of Amherst, Ohio is shown on the colored portion of the map attached hereto. The remaining uncolored portion of Sublot 32 is already located within the City of Amherst, Ohio.

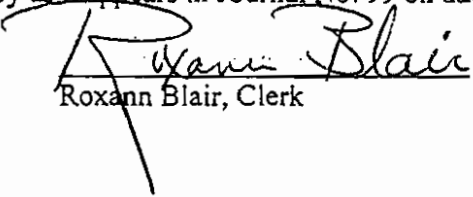
I make this formalized request for amendment pursuant to the authority of the provisions of R.C. §709.032. Thank you for your considerations in this matter.

Very truly yours, S/Robert J. Gargas, Esq."

Motion by Ross, seconded by Blair to adopt Resolution. Ayes: All with Exception of Commissioner Vasi, absent, due to illness.

Motion carried.

I, Roxann Blair, Clerk to the Lorain County Board of Commissioners do hereby certify that the above Resolution No. 99-54 is a true copy as it appears in Journal No. 99 on date of January 21, 1999.


Roxann Blair, Clerk

RESOLUTION NO. 99-95

In the matter of granting Annexation of approximately)
5.88 acres in Amherst Township to the City of Amherst) January 21, 1999
Ohio, Attorney Robert Gargas, Agent)

BE IT RESOLVED, we do hereby grant the Annexation of approximately 5.88 acres in Amherst Township to the City of Amherst, Ohio, based upon the following: Annexation is beneficial to government services this property will receive; this Annexation will serve the good of the territory to be annexed; the territory is not unreasonably large and the balance of detriment to the Township of Amherst does not outweigh the potential general good of the territory to be annexed; and

FURTHER BE IT RESOLVED we hereby grant annexation of the following described territory;

Situated in Original Amherst Township Lot Number 16, County of Lorain, and State of Ohio and being more particularly described as follows:

Commencing at an iron pin found in a monument box located in the centerline of Pyle-South Amherst Road and the northerly line of the lands conveyed to Francis D. and Betty L. Kelleher by deed recorded in Volume 1241 Page 866 of the Lorain county Record of Deeds;

Thence N. 37 Degrees 08 minutes 00 seconds E, in the centerline of Pyle-South Amherst road a distance of 185.12 feet to a point in the centering of Pyle-South Amherst Road;

Thence N. 56 Degrees 37 minutes 59 seconds W. in a line a distance of 30.07 feet to a point in the northwesterly line of Pyle-South Amherst Road and the principal point of beginning of the land hereinafter described;

Thence continuing in the said line N. 56 Degrees 37 minutes 59 seconds W. a distance of 349.41 feet to an iron pin found;

Thence S. 37 Degrees 08 minutes 00 seconds W. a distance of 125.00 feet to an iron pin found:

Thence S. 56 Degrees 37 minutes 59 Second E. in a line a distance of 12.66 feet to an iron pin found,

Thence S. 30 Degrees 45 minutes 00 seconds W. a distance of 39.20 feet to an iron pin found in the northerly line of the Richard and Jean Rice Property as recorded in Volume 1135 Page 41 and Volume 1262 Page 324 of the Lorain county Record of Deeds;

Thence in said northerly line N. 65 Degrees 06 minutes 00 seconds W. to a point in the centerline of Beaver Creek and the current corporation line of the City of Amherst;

Thence meandering in the centerline of Beaver Creek and the corporation line of the City of Amherst in a northeasterly and then a southeasterly direction to a point;

Thence continuing in the centerline of Beaver Creek and the corporation line of the City of Amherst meandering in an easterly and then southeasterly direction to a point, said point being located 210 feet at a bearing of North 34 Degrees 12 minutes 00 seconds W. from a point on the centerline of Pyle-South Amherst Road;

Thence S. 51 Degrees 43 minutes 00 seconds W. in a line to a point on the westerly line of property, owned now or formerly by Don Buchs as recorded in Volume 1228, Page 521 of the Lorain County Records;

Thence S. 34 Degrees 12 minutes 00 seconds E. in the said westerly line a distance of 179.92 feet to an iron pin found and the northwesterly line of Pyle-South Amherst Road;

Thence in the northwesterly line of Pyle-South Amherst Road S. 51 Degrees 43 minutes 00 seconds W. a distance of 120.84 feet to an angle point in the northwesterly right-of-way line

Thence S. 37 Degrees 08 minutes 00 seconds W. in the northwesterly right-of-way line a distance of 20.10 feet to the principal point of beginning of the land herein described, containing 5.88 acres of land be the same more or less;

Description prepared by Patrick A. McGannon Registered Professional Surveyor Number 7154 from available records and not an actual survey.

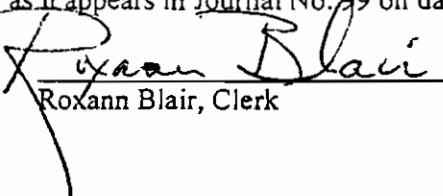
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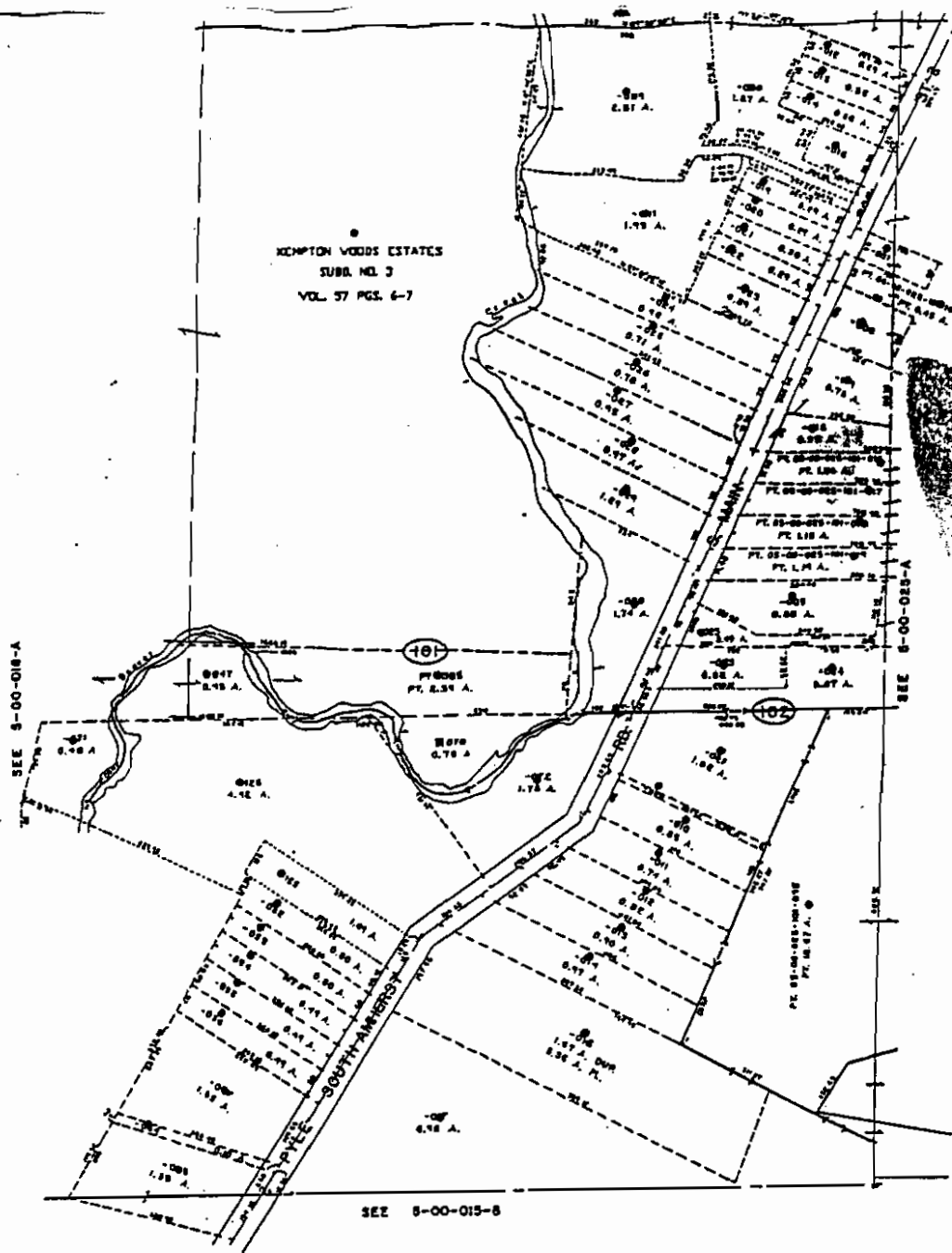
BE IT FURTHER RESOLVED, a certified copy of the final transcript of this Board Of Commissioners relating to the findings and orders of this Board together with the accompanying map and petition and all other papers pertaining thereto, shall be delivered to the City of Amherst, Ohio

Motion by Ross, seconded by Blair to adopt Resolution. Ayes: All with Exception of Commissioner Vasi, absent, due to illness.

Motion carried.

I, Roxann Blair, Clerk to the Lorain County Board of Commissioners do hereby certify that the above Resolution No. 99-54 is a true copy as it appears in Journal No. 99 on date of January 21, 1999.


Roxann Blair, Clerk



AMHERST TWP.
SCALE 1"=100'

E ly PT. LOT 16

REVISED 11-6-11
5-00-016-B



LORAIN COUNTY AUDITOR'S OFFICE
MARK R. STEWART
LORAIN COUNTY AUDITOR

LORAIN COUNTY ENGINEER'S OFFICE
KENNETH P. CARNEY SR.
LORAIN COUNTY ENGINEER

www.loraincounty.com/auditor
auditor.stewart@juno.com

NOTE: THIS MAP IS NOT TO SCALE

FROM TRANSFER
9/9/99

1/10

Certified as a True and Exact Copy of the Original.

Olga Smith
Clerk of Council

ORDINANCE NO. 0-99-69

AN ORDINANCE TO ACCEPT THE ANNEXATION TO THE CITY OF AMHERST A PARCEL OF LAND LOCATED IN AMHERST TOWNSHIP BEING APPROXIMATELY 5.88 ACRES.

WHEREAS, a Petition for the annexation of certain territory in Amherst Township was duly filed by Attorney Robert J. Gargas, as agent for Petitioners Dan Gross, Janet Gross, Ernest Papay, and Dorothy Papay; and

WHEREAS, the said Petition was duly considered by the Board of County Commissioners of Lorain County on January 21, 1999; and

WHEREAS, the Board of County Commissioners approved the annexation of said territory to the City of Amherst as hereinafter described by Resolution 99-54; and

see third page

WHEREAS, the Board of County Commissioners certified the transcript of the proceedings in connection with said annexation with the map and Petition required in connection therewith to the City Clerk; and

WHEREAS, sixty (60) days from the date of said filing with the City Clerk has now lapsed in accordance with the provisions of Ohio Revised Code Section 709.04.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the City of Amherst, County of Lorain, and State of Ohio:

SECTION 1. That the proposed annexation as applied for in the Petition of Attorney Robert J. Gargas, as agent for Petitioners Dan Gross, Janet Gross, Ernest Papay, and Dorothy Papay, and filed with the Board of County Commissioners of Lorain County, Ohio, on October 5, 1998, in which said Petition prayed for an annexation to the City of Amherst, of certain territory located on Pyle South Amherst Road, as hereinafter described and which said Petition was approved for annexation to the City of Amherst by the Board of County Commissioners on January 21, 1999, be and the same hereby is accepted. Said territory is situated in the Township of Amherst, County of Lorain, State of Ohio, and being more specifically described in Exhibit "A", attached hereto and incorporated herein for all purposes. The certified transcript of the proceedings for annexation with an accurate map of said territory, together with the Petition for its annexation and other papers relating to the proceedings thereto of said County Commissioners are on file with the Clerk of this Council and have been for more than sixty (60) days.

SECTION 2. That the Clerk of Amherst City Council be and hereby is authorized and directed to make two copies of this ordinance, to each of which shall be attached a copy of the map, accompanying the Petition for annexation, a copy of the transcript of the proceedings of the Board of County Commissioners relating thereto and a certificate as to the correctness thereof. The Clerk of Amherst City Council shall

WATKINS

WAYNE
P. E. C.

then forthwith deliver one copy to the County Recorder of Lorain County, Ohio, and one copy to the Secretary of State of the State of Ohio, and to do all things as required by law.

SECTION 3. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 Ohio Revised Code.

WHEREFORE, this ordinance shall be in full force and effect at the earliest time period permitted by law.

1st reading 4/12/99
2nd reading 4/26/99
3rd reading 5/10/99

Wayne A. Whyte
PRESIDENT OF COUNCIL

PASSED May 10, 1999

05-11-99
APPROVED

ATTEST Olga S. Suvich

John Higgins
MAYOR

Approved as to form by:

Alan W. Anderson

Alan W. Anderson, Director of Law

Filed with the Mayor: 5/11/99

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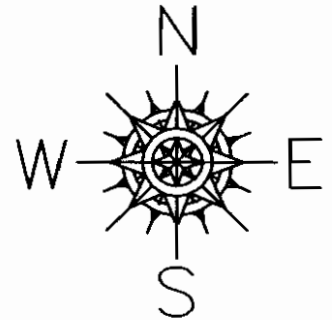
Bearings used are to an assumed meridian and are used to describe angles only.

PARENT PARCEL: XXXXXXXXX

CHILD PARCEL: XXXXXXXXXXXX

STARTING POINT: XXXXXXXXXX

NO. 00259-X



SEE SPLIT NO. 99-00010-X

ALREADY DONE

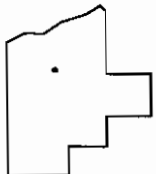
*MAP
UPDATED
4/25/00 T.S.*

ANNEXATION TO AMHERST

ORD. NO. 0-99-69

RES. No. 99-54 passed 1-21-99

*TS
3-31-00*



SPLITS/DEEDS PROCESSED
LORAIN COUNTY TAX MAP DEPARTMENT
226 MIDDLE AVE. ELYRIA, OHIO

SURVEYED BY: NONE

CLOSURE: CAN'T RUN

MAP PAGE(S): 05-00-016-A & B

APPROVED BY: I. SPILLMAN DATE: 02/10/00

SCALE: 1" = 50' PRIOR INSTRUMENT: XXXXXXXXX