

IN THE SUPREME COURT OF OHIO

State of Ohio, *ex rel*,
Butler Township Board of Trustees,

Relator-Appellant,

v.

Montgomery County Board of County
Commissioners, *et al.*,

Respondents-Appellees.

: Supreme Court Case No. 09-0186
:
:
: On Appeal from the
: Montgomery County Court of Appeals
: Second Appellate District
:
: Court of Appeals
: Case No. CA 022664
:

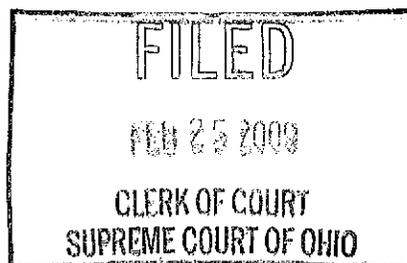
MEMORANDUM IN OPPOSITION TO JURISDICTION OF
APPELLEE, JOSEPH P. MOORE, AGENT FOR ANNEXATION
PETITIONER, WATERWHEEL FARM, INC.

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**STATEMENT OF WHY THIS CASE IS NOT OF PUBLIC OR
GREAT GENERAL INTEREST.**

This is a fact specific case involving the property and rights of Waterwheel Farm, Inc. (“Waterwheel”), the sole owner of 78.489 acres of land in Butler Township, Union County, Ohio to annex its property into the city of Union and the long standing efforts of Butler Township to prevent that annexation. Waterwheel has twice petitioned the Montgomery County Board of County Commissioners (“Commissioners”) to annex the property now before this Court to the city of Union. Each petition utilized the R.C. 709.023 “Special procedure of annexing of land into municipal corporation when land is not to be excluded from township,” commonly referred to as an “expedited type-2 annexation.”

Waterwheel and this identical property were before this Court in *State ex rel. Butler Twp. Bd. of Trustees, et al. v. Montgomery Cty Bd. of Cty. Cmmrs.*, 112 Ohio St.3d 262, 2006-Ohio-6411. As part of the first petition, Waterwheel sought to annex a slightly larger 79.840 acre annexation territory that not only included Waterwheel’s property but also included 1.351 acres of road “right of way” within and adjacent to the annexation territory. Waterwheel signed the petition for its property, but the owners of included right of way did not sign. In that case, this Court recognized that annexation is a “property right” of the holder of an “undeniable and definite property ownership interest” to petition to annex its land into a municipality and determined that fee owners of land underlying the right-of-way were owners required to sign an annexation petition. *Id.* at {¶46}. Waterwheel’s first annexation then failed because it did not contain 100% of the property owners’ signatures.

In October 2007, Waterwheel filed the annexation now before this Court, including *only* its 78.489 acre property. Appellant Township objected to the petition on the grounds that the annexation failed to meet the seventh condition of annexation. R.C. 709.023(E)(7). The

township claimed that Jackson Road would be segmented from the annexation so as to create a road maintenance issue. The city had previously adopted a resolution committing to provide the road maintenance upon annexation. The county commissioners, after review, approved the petition. The township then filed a declaratory judgment, mandamus and preliminary and permanent injunction action in the common pleas court seeking to stop the processing of the annexation petition by requiring the county commissioners to rescind their resolution granting the annexation and restrain the acceptance of the annexation petition by the Union City Council. The township claimed the commissioners erred because they made no express finding on R.C. 709.023(E) and (F). On motion, the trial court dismissed the township's complaint for lack of standing. It also found that the commissioners properly granted Waterwheel's annexation petition on the merits. The court of appeals affirmed the trial court finding the petition met all of the statutory criteria for annexation on the merits, the county commissioners had a duty to approve the petition and that the township had no standing.

Butler Township urges this Court to take jurisdiction of a case in which both courts below have affirmed: (1) the well recognized right of a property owner to choose the political subdivision in which it desires its land to be annexed; and (2) the county commissioners' duty to approve a 100% property owner supported expedited type-2 annexation that meets all of the statutory criteria for annexation. The township tacitly admits that its objection is procedural at best and could be corrected. The township's argument is that the county commissioners must officially set out findings on each element of the statute and a failure of the county commissioners to find no confusion in a highway split requires the annexation be done over. There is no public or great general interest in this case. There is no conflict in the law among the jurisdictions who have considered and applied it. This is simply a continuation of Butler Township's persistent opposition to the annexation of any unincorporated territory into the city

of Union. This Court should not permit the township to continue to infringe upon the rights of the owner to annex its land by accepting discretionary jurisdiction of this case.

It is well established that “annexation is strictly a statutory process.” *In re Petition to Annex of 320 Acres to Village of South Lebanon* (1992), 64 Ohio St.3d 585, 591. It is the policy of the state of Ohio to favor the annexation of unincorporated territory to municipal corporations, and to give an owner of property freedom to choose the governmental subdivision in which he desires his property to be located. *City of Middletown v. McGee* (1988), 39 Ohio St.3d 284, 285. The only rights and remedies in annexation are those granted by the General Assembly. The General Assembly has complete discretion in determining the process for the alteration of municipal boundaries and the territorial area of municipal corporations and other political subdivisions, and to set out the rights and interests of any person in that process.

In 2001, the General Assembly adopted Am. Sub. Senate Bill 5 creating a comprehensive statutory scheme that establishes four methods of annexation. One process is a quasi-judicial proceeding before the county commissioners that requires only a majority of owners to support the annexation petition.¹ See R.C. 709.03 *et seq.* The other three methods are “special expedited” administrative proceedings that are only available when “all of the owners of real estate” within a particular territory request annexation and specific statutory conditions are met. See R.C. 709.021 through 709.024. As this Court recognized in the first case involving this same Waterwheel property, “some of the overall goals of the bill-including those of the new expedited procedures-were to promote consistency in decision-making by putting in place firm standards to govern the consideration of annexation petitions, to improve the efficiency of annexations by

¹ The majority supported petition process provides for a balancing of the rights and interests of the property owners and active participation of the political subdivisions. It includes rights of discovery, powers of subpoena, an evidentiary hearing before the county commissioners and rights of appeal. The majority supported annexation process is not an issue in this case.

creating the expedited processes, and to promote cooperation among local governments.” *State ex rel. Butler Twp. Bd. of Trustees v. Montgomery Cty. Bd. of Cty. Cmmrs., supra* at ¶8.

The first expedited process (“expedited type-1”) is available when the municipality and township enter into an annexation agreement (R.C. 709.192) or cooperative economic development agreement (R.C. 701.07) and consent to the annexation with the support of all of the property owners. R.C. 709.022. The statute allows the township and municipality to change some of the statutory consequences of annexation by agreement and cooperatively facilitate development. They may agree upon such as the provision of public services, facilities, and permanent improvements, payment of service fees, changing of township boundaries under Chapter 503, the reallocation of the minimum mandated levies established pursuant to R.C. 5705.31 and the application of tax abatement statutes within the territory covered by the annexation agreement among other items. There is no statutory remedy available when an expedited type-1 annexation is granted.

The second expedited process (“expedited type-2”) applies when the property to be annexed will remain in the township following annexation. R.C. 709.023 establishes seven conditions for annexation. The only condition at issue in this case is R.C. 709.023(E)(7) requiring a municipality to serve all segmented streets or highways if a road maintenance problem is created by the boundary of the annexation territory. Following an expedited type-2 annexation, the municipality and township will be concurrent and overlapping.² Buffer zoning is

² The general statutes affecting overlapping subdivisions will be applied. For example, the General Assembly has determined: (1) townships have no authority over, nor can they receive, revenues for former township roads that are located in a municipal corporation (R.C. 5575.10); (2) taxes within the ten-mil limitation (inside millage) are re-apportioned following annexation when the territory is not removed from the township (R.C. 5705.315); (3) property in an expedited type-2 annexation cannot be excluded from the township (absent an agreement) following annexation and “thus, remains subject to the township’s real property taxes” (R.C. 709.023(H)); (4) townships have no authority to zone property located in incorporated

required for future uses in the annexed territory that are clearly incompatible with uses in the unincorporated adjacent township. R.C. 709.023(C). The petitioning owners must consent to the buffer and waive any right they have to sue on any issue relating to a buffer requirement or to request a variance or exemption from it. R.C. 709.023(C) and (A). The city must serve all segmented streets or otherwise correct any maintenance issues. Taxes within the ten-mill limitation (inside millage) are reapportioned. R.C. 5705.315. The property remains subject to township real property taxes. R.C. 709.023(H).

Because of all of the requirements in R.C. 709.023, the concurrent jurisdictions in the annexation area and the legislative balance of the interests affected, the legislature deliberately limited the remedies available in an expedited type-2 annexation and who could avail themselves of the remedy. There is no appeal in law or equity from an expedited type-2 annexation. R.C. 709.023(G). Townships and municipalities are not made parties to the owners' annexation proceedings. R.C. 709.021(D). The governmental interests (township and municipality) are limited to objections and review before the county commissioners. R.C. 709.023(D). If an annexation petition is denied, the county commissioners must identify the criteria that have not been met. R.C. 709.023(G). The petitioning owners may file a writ of mandamus to compel the commissioners to act. R.C. 709.023(G). The owners must waive their right of appeal and acknowledge their right of mandamus in the annexation petition itself. R.C. 709.023(A).

The third expedited process ("expedited type-3") involves a "significant economic development project" certified by the state director of development. R.C. 709.024. There is a

territory (R.C. 519.02); and (5) township zoning remains in place following annexation only until the municipal corporation zones the property (R.C. 519.18); among other consequences. Ohio courts have held that the general statutory authority of a township to enter contracts and spend money associated with annexation in R.C. 505.62 is not a grant of standing in any legal proceedings on annexation. See *In re Annexation of 311.8434 Acres of Land* (1992), 64 Ohio St.3d 581, 585, and *Washington Tp. Bd. of Trustees v. City of Mansfield City Council*, Richland App. 03 CA 85, 03 CA 97, 2004-Ohio-4299.

hearing before the county commissioners if the township or municipality objects to the annexation but any challenge to the commissioners' decision is limited. Only "[a]n owner who signed the petition may appeal a decision of the board of county commissioners *denying* the proposed annexation under section 709.07 of the Revised Code. No other person has standing to appeal the board's decision in law or in equity. If the board *grants* the annexation, there shall be no appeal in law or in equity." R.C. 709.024(G).

Annexations foster economic growth and development throughout the state of Ohio. Its uncertainty and delay forestalls development. Annexation often provides the only mechanism by which a property can obtain vital public services and utilities, particularly sewer and water, as in this case. (The city of Union has both a municipal water and sewer utility and neither is available to Waterwheel in unincorporated Butler Township). Annexation may also permit various economic incentives, land uses, grants, infrastructure improvements, services, facilities, or public debt participation for owners and property that are not available in an unincorporated area or more favorable in a municipality. For a property owner, annexation can mean millions of dollars -- the difference in value of vacant land or a developed parcel. Uncertainty and delay can cause significant economic loss.

The township narrowly framed the issues before the courts below in its jurisdictional memorandum to avoid any focus on rights of the owner or the merits of the annexation, both of which are determinative in this case. This Court has long recognized the right of a property owner to choose the governmental subdivision in which it desires its property to be located. See *Middletown v. McGee, supra, In re Annexation of 118.7 Acres in Miami Twp.* (1990), 52 Ohio St.3d 124, 127 and *Smith v. Granville* (1998), 81 Ohio St.3d 608, 614. The General Assembly has also made the choice of the property owner in annexing a key consideration.

The three special 100% owner annexation processes are part of a comprehensive scheme designed to allow owners to exercise their right to annex their property and to accelerate the process when the objective standards of the individual expedited processes are met. Expedited annexations promote cooperation among local governments when 100% of the owners support an annexation and prescribe statutory consequences of annexation when no intergovernmental agreements are entered. It promotes consistency in decision-making, predictable outcomes, and a streamlined process that is critical to the rights of property owners and the economic growth, development and well-being of the state of Ohio. Continuous delays by judicial processes were not the goal. It was one of the failures of the previous law.

The statutory limitations placed by the General Assembly upon owners, townships, municipalities, and even adjoining property owners to challenge 100% owner supported expedited annexations do not make this a case of public or great general interest. A township has no legal right or interest in or standing to complain about its statutory authority or the statutory consequences of every expedited type-2 annexation. The territory remains in the township.

The established process affords the township more protection than it has under the general law, former annexation law, or in the new majority annexation petition process where property can be removed from the township and its tax base and no buffering of land uses and municipal road service in problematic areas are not required. Nonetheless, Butler Township claims it will be “harmed” because if the property is annexed, it will no longer receive road and bridge millage from the annexation territory. Those funds will no longer be received because the statute only permits them for roads in unincorporated areas because once annexed, the township will no longer have any obligation or authority to provide any services to that road. R.C. 5575.10.

The township also claims harm because it loses its “right to determine land use issues in the annexed territory” or participate in decisions on tax incentives for the construction of infrastructure or the development of the property. A township and power to zone is limited to property that is in the unincorporated township. R.C. 519.02, *et seq.* Any incompatible land uses in the annexation territory will be buffered. To the extent that development occurs through economic incentives involving real property taxes, the real property tax consequences depend upon the statutory provisions of each incentive. The township may enjoy an increase in taxes it would not otherwise have received because the municipality is providing services and improvements that a township cannot provide which allows the property to develop and increase in value. In an expedited type-2 annexation, the township could, as here, benefit from development that otherwise could simply not occur.

The decision of the court of appeals is supported by the language of R.C. 709.023, consistent with an owner’s right to choose the jurisdiction in which its property should be located, conforms to the state policy encouraging annexation, and fits with the overall statutory scheme for annexation adopted by the General Assembly in R.C. Chapter 709. This is not a matter of public or great general interest. It is in the public interest to encourage progress and investment in the state of Ohio, not to lose opportunities due to the uncertainties and delays caused by the constant challenges of townships to annexations that undisputedly meet the statutory conditions prescribed by the General Assembly.

For all the reasons set forth herein and for the additional reasons set forth in the Memoranda in Opposition filed by the Montgomery County Board of County Commissioners, the city of Union and the Ohio Municipal League, Appellee, Joseph P. Moore, Agent for Waterwheel Farm, Inc. urges this Court to decline jurisdiction and allow the well-reasoned opinion of the Court of Appeals of Montgomery County, Ohio to stand.

ARGUMENT IN OPPOSITION TO
APPELLANT'S PROPOSED PROPOSITIONS OF LAW.

Appellant's Proposition of Law No. 1. A board of trustees of a township, territory of which is included in an annexation petition filed pursuant to R.C. 709.023, and that files an objection to the annexation petition pursuant to R.C. 709.023(D), is "any party" as that term is used in R.C. 709.023(G), and, therefore, has standing to seek a writ of mandamus "to compel the board of county commissioners to perform its duties under this section," as provided in R.C. 709.023(G).

It is well established that townships are creatures of statute and have no common law or inherent power. *In re Petition for Incorporation of the Village of Holiday City* (1994), 70 Ohio St.3d 365, *Trustees of New London Twp. v. Miner* (1875), 26 Ohio St. 452, 456 (neither the township nor its trustees are invested with the general powers of a corporation; hence the trustees can exercise only those powers conferred by statute). Any right a township has to participate in annexation proceedings and any remedy a township has to challenge an annexation are statutory rights and remedies. *Id.*, see also *Lawrence Twp., Stark Cty. Ohio Bd. of Twp. Trustees v. Canal Fulton*, 5th Dist. No. 2007CA00010, 2007-Ohio-6115, ¶21-22.

The General Assembly granted townships the right to object to an expedited type-2 annexation petition and have the commissioners review the annexation.³ R.C. 709.023(D). The township claims it has a statutory the right to: (1) preliminarily and permanently enjoin the city of Union from accepting the annexation, (2) collaterally challenge the merits of the annexation by way of declaratory judgment, and (3) compel the commissioners by writ of mandamus to rescind their 'void' resolution granting the annexation. Appellant cites no statute imposing a duty on county commissioners to rescind a resolution granting annexation, and Appellee is not aware of any. None of the rights or challenges asserted by the township are permitted within the statutory framework of the annexation statutes as held by the trial court and court of appeals.

³ If the municipality and the township consent to the annexation, or do not timely object (deemed consent), the board of county commissioners must grant the petition at its next regular session. R.C. 709.023(D).

This Court has repeatedly held that R.C. Chapter 709 provides exclusive remedies for annexation and recognized that declaratory judgment and an R.C. Chapter 2727 injunction are not causes of action that can be utilized to challenge annexations that have been granted. *State ex rel. Albright v. Court of Common Pleas of Delaware Cty.* (1991), 60 Ohio St.3d 40. The Fifth District Court of Appeals also found in expedited annexation proceedings that “[W]here the law provides a statutory scheme for review of an issue, injunction or declaratory action does not lie outside of that scheme. * * * [A]ll of the trustees rights and claims are limited to the statutory scheme for annexation contained in Title VII of the Revised Code.” The law is clear and without conflict. Challenges to expedited type-2 annexations are strictly limited to the remedies provided in R.C. 709.023, which do not include declaratory judgment or injunction. Neither the township, nor any other person including an owner, may challenge an annexation in a separate action for declaratory judgment or injunction.

R.C. 709.023 does provide exclusive remedies. The sole remedy of townships and municipalities is the timely objection to the annexation before the county commissioners and has the annexation reviewed. R.C. 709.023(D). Any objection is limited to identification of how the petition fails to meet the conditions set forth in R.C. 709.023(E). Since the property will remain in the township and be in both jurisdictions if annexed, no remedy is granted beyond the county commissioners. *See Lawrence Twp., Stark Cty. Ohio Bd. of Twp. Trustees v. Canal Fulton*, 2007 CA 00010, 2007-Ohio-6115, ¶22.

The sole remedy for petitioning owners is “a writ of mandamus to compel *the board of county commissioners to perform its duties.*” R.C. 709.023(G). Owners are required to waive their right of appeal on the annexation petition itself and acknowledge their right of mandamus. R.C. 709.023(A). A board of county commissioners only has a duty to make an express finding upon any individual criteria for annexation *that is not met*, and “shall enter upon its journal a

resolution that states which of those conditions the board finds have not been met.” R.C. 709.023(F). There is no similar requirement when an annexation is granted. The purpose of identifying these conditions is to allow an owner to identify any condition that was not met by the annexation petition and exercise the owner’s right to bring an action in mandamus, if appropriate. Once an annexation petition is granted, the commissioners have performed their statutory duties. They no longer have jurisdiction over the annexation petition. There is simply no duty to compel.

Appellant Township claims it may bring a mandamus action because R.C. 709.023(G) permits ‘any party’ to bring an action in mandamus. However, a township is not a ‘party’ to the owner’s petition or proceedings. The definition of a “party” in expedited annexation proceedings is included in the general provisions that apply to all expedited annexations not in R.C. 709.023. R.C. 709.021(D).

R.C. 709.021(A) provides that expedited annexation proceedings (R.C. 709.022, 709.023 and 709.024) “shall be conducted under those sections *to the exclusion of any other provisions of this chapter* unless otherwise provided in this section or the special procedure section chosen.” Townships, municipal corporations, and the agent for the petitioners are only named as “parties” in expedited type-1 (R.C. 709.022) and expedited type-3 (R.C. 709.024) proceedings, not in expedited type-2 proceedings (R.C. 709.023). R.C. 709.021(D). A statutory definition of “party” is really only necessary to provide rights to “persons” other than the annexation petitioners and their agent. The petitioner’s agent and owners are the only true parties. The omission of townships and cities as “parties” to R.C. 709.023 annexation proceedings was not an oversight. The General Assembly intended to eliminate challenges to ‘uncomplicated’ annexations and allow property owners to annex their land to municipalities and develop their

land in tailored administrative proceedings without the time and expense involved in years of litigation and challenges by townships in which the property will remain.

Appellant Township urges this Court to accept jurisdiction of its meritless challenge to the validity of Waterwheel's annexation based upon hypothetical examples of 'unlawful' annexations in which it presumes a board of county commissioners would blatantly ignore the objective statutory criteria of annexation and grant an annexation over township objection. The township's argument presumes that public officials will ignore the law with impunity or will act in confusion. These extreme examples are not the case before this Court. Appellee urges this Court not to take discretionary jurisdiction of this case based upon a "hypothetical presumption" that someday, not this case, some public official may act unlawfully. This is a real case that affects the property rights of Waterwheel, not a hypothetical absurdity. This Court should decline jurisdiction and permit the annexation of Waterwheel's land to become final.

The 100% owner supported expedited annexation process is part of a statutory scheme to advance and encourage annexations that are unanimously supported by the property owners seeking annexation and meet prescribed conditions. There is no remedy provided to any "party" in an expedited type-1 annexation. Challenges to expedited type-2 and type-3 annexations are available only to petitioning owners and only when the annexation is denied. In an expedited type-2 annexation, an owner may bring mandamus to compel the county commissioners to perform their duty when the failings of the conditions are identified and the annexation has been denied. Only the owner may appeal a denial in an expedited type-3 annexation. There is no remedy available to an owner, township or municipality beyond its participation in the county commissioners' proceedings when any expedited annexation is granted.

The General Assembly gave townships significant statutory protections in expedited type-2 annexations, including a guarantee that the annexed territory would be buffered from

incompatible uses, without any road maintenance issues, and remain in the township (unless the township consents to detachment), and subject to township real property taxes. In so doing, the remedy provided to township in expedited type-2 annexations was objecting at the commissioners' proceedings.

Appellant's Proposed Proposition of Law No. 2. A board of county commissioners reviewing an annexation petition filed pursuant to R.C. 709.023 has a clear legal duty under the statute to make a finding in its resolution approving the annexation that all seven conditions required for annexation, set forth in R.C. 709.023(E), have been met.

County commissioners must perform one of two clear legal duties following their review of an expedited type-2 annexation petition. The county commissioners "shall" either: (1) grant the annexation by resolution when the R.C. 709.023(E) conditions are met; or (2) adopt a resolution stating which conditions have not been met and deny the petition. The township quotes only a portion of R.C. 709.023(E) to support its claim that the commissioners have a duty to make specific findings upon each and every R.C. 709.023(E)(1) through (7) criteria. R.C. 709.023(E) and (F) provide (emphasis added):

(E) Unless the petition is granted under division (D) of this section, not less than thirty or more than forty-five days after the date that the petition is filed, the board of county commissioners *shall review* it to determine if each of the following conditions has been met:

* * *

(F) Not less than thirty or more than forty-five days after the date that the petition is filed, if the petition is not granted under division (D) of this section, the board of county commissioners, *if it finds* that each of the conditions specified in division (E) of this section has been met, *shall enter upon its journal a resolution granting the annexation*. If the board of county commissioners *finds that one or more of the conditions specified in division (E) of this section have not been met*, it shall enter upon its journal a resolution *that states which of those conditions the board finds have not been met and that denies the petition*.

Upon objection, the commissioners have a duty to *review* an expedited type-2 annexation and then: (1) "*shall enter upon its journal a resolution granting the annexation*" when, as here, the R.C. 709.023(E) conditions *have been met* or (2) when any condition *is not met*, "enter upon its

journal a resolution that states which of those conditions the board finds have not been met and [deny] the annexation. R.C. 709.023(F) (emphasis added). Thus, the commissioners are only required to expressly identify and make specific findings upon select criteria of R.C. 709.023(E)(1) through (7) when they rely upon the condition to *deny* an annexation.

If the legislature intended the county commissioners to make specific findings of fact as to each criteria in R.C. 709.023, it would have expressly required it as it did for an R.C. 709.024 expedited type-3 annexation petition (“[t]he resolution shall include specific findings of fact as to whether or not each of the conditions listed in this division has been met.”) and a majority petition (“[t]he resolution shall include specific findings of fact as to whether each of the conditions listed in divisions (A)(1) to (6) of this section has been met.” R.C. 709.033(B)). There is no similar requirement in an R.C. 709.023 expedited type-2 annexation.

Both the Second District Court of Appeals below and the Fifth District Court of Appeals have held that county commissioners are not required to make specific findings on each of the statutory conditions when an expedited type-2 annexation is granted. The Fifth District considered the issue twice, when Lawrence Township filed actions in declaratory judgment, injunction and mandamus challenging two separate expedited type-2 annexations to Canal Fulton on the grounds that the county commissioners failed to make express findings on each statutory annexation. In each case, the Fifth District Court of Appeals found a board of county commissioners is not required to make express findings that analyze how all of the seven conditions in R.C. 709.023(E) have been met.

The first case, *Lawrence Twp., Stark Cty. Ohio Bd. of Twp. Trustees v. Canal Fulton*, 2007 CA 00010, 2007-Ohio-6115, was cited and relied upon by the Second District Court of Appeals below. The Fifth District Court of Appeals held no express finding had to be made and the township lacked standing to challenge the decision of the board (and questioned whether “a

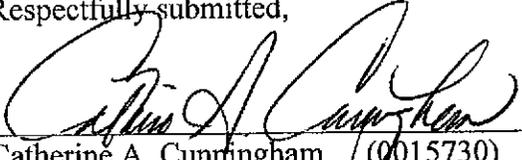
township or township board of trustees meets the definition of a “party’ for the purposes of R.C. 709.023(G).”) The Appellant cites the second case and erroneously asserts that the court of appeals cited and relied upon it. It did not. See *Lawrence Twp., Stark Cty. Ohio Bd. of Twp. Trustees v. Canal Fulton*, Stark App. No. 2007CA00308, 2008-Ohio-2690. In *Lawrence II*, the standing of the township to bring an action for declaratory judgment, mandamus, and injunctive relief was not challenged. In considering the merits of the township’s assertion that the commissioners failed to make express findings upon each statutory condition in an expedited type-2 annexation, the Fifth District Court of Appeals again held that R.C. 709.023(E) and (F) do not require specific findings of fact when an annexation is granted, even when a township objects to the annexation. Courts that have addressed the issue are all in agreement: the county commissioners do not have to make express findings on each element of R.C. 709.023(E) when an annexation is granted.

Even assuming, *arguendo*, the commissioners were required to make specific findings, they were not required to address R.C. 709.023(E)(7) because the annexation did not segment or otherwise divide a roadway and cause a road maintenance issue. It is undisputed this annexation met all of the statutory criteria and commissioners had a statutory duty to grant the petition.

CONCLUSION

Appellee, Joseph P. Moore, Agent for the Petitioner Waterwheel Farm, Inc. and Waterwheel Farm, Inc. urge this Court to refuse to accept jurisdiction in this case and allow Waterwheel to complete the annexation of its property to the city of Union.

Respectfully submitted,


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served upon the following parties by regular U.S. mail, postage pre-paid, on the 25th day of February, 2008:

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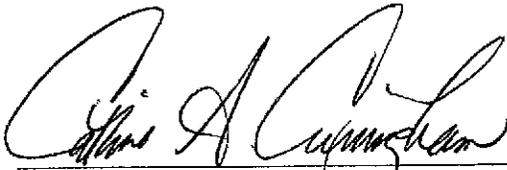
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