

IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO

State of Ohio *ex rel.* Frank J. Amedia
3445 Winners Circle
Canfield, Ohio 44406,

Relator,

v.

Mahoning County Board of County
Commissioners
21 W. Boardman St., 2nd Floor
Youngstown, Ohio 44503,

Respondent.

Case No. 17CN2632

Judge KRICHBAUM

PETITION FOR
WRIT OF MANDAMUS
(with Verification Affidavit)

Parties

1. Relator, Frank J. Amedia, is agent for petitioners in an annexation petition (the "Annexation Petition") filed pursuant to R.C. §709.023 seeking to annex to the City of Canfield, Mahoning County, Ohio certain property located in Canfield Township, Mahoning County, Ohio containing 18.83 acres, more or less. A copy of the Annexation Petition is attached hereto as Exhibit A and made a part hereof.

2. Respondent, Mahoning County Board of County Commissioners (the "Board of County Commissioners" or the "Board"), is a governmental body statutorily charged under R.C. §709.023(F) with the limited and non-discretionary duty to enter upon its journal, within the timeframe mandated by said statute, a resolution granting the annexation if it finds that each of the conditions specified in R.C. §709.023(E) has been met.

Jurisdiction

3. Mandamus is the proper remedy pursuant to R.C. §709.023(G), which states in pertinent part, “any party may seek a writ of mandamus to compel the board of county commissioners to perform its duties under this section.”

4. Mandamus is also the proper remedy because Relator has no adequate remedy at law.

5. This honorable court has jurisdiction over mandamus petitions generally pursuant to R.C. §2731.02.

Facts and Complaint

6. A verifying affidavit is being filed herewith.

7. On June 2, 2017, Relator filed the Annexation Petition with the clerk of the Board of County Commissioners. (See Exhibit A. See also ¶1 of the Board’s Resolution RES 17-09-029 attached hereto as Exhibit B and made a part hereof.)

8. Based on the June 2, 2017 filing date of the Annexation Petition, the Board’s original deadline to perform its statutory duty was July 17, 2017 because R.C. §709.023(F) requires the Board to grant or deny this type of annexation petition not less than thirty or more than forty-five days after the date that the petition is filed. (R.C. §709.023(F); see ¶5 of Exhibit B.)

9. On June 27, 2017, the Board of County Commissioners received a resolution from Canfield Township objecting to the Annexation Petition. (See ¶4 of Exhibit B.)

10. On or about July 17, 2017, at the request of the Board, Relator consented to extend the Board’s deadline until August 17, 2017. (See ¶6 and ¶7 of Exhibit B; Relator disagrees that he or the City of Canfield requested the extension but acknowledges that he consented thereto.)

11. On or about July 27, 2017, at the request of the Board and others, Relator again consented to extend the Board's deadline until August 31, 2017. (See ¶8 of Exhibit B.)

12. On or about July 27, 2017, at the request of the Board and others, Relator yet again consented to extend the Board's deadline until September 30, 2017. (See ¶9 of Exhibit B.) Relator informed the Board that Relator would not consent to extend the Board's deadline beyond September 30, 2017. (See email chain between the Board's clerk and Relator's counsel attached as Exhibit C and made a part hereof.)

13. On or about September 26, 2017, the Board, without Relator's consent and against Relator's objections, met in regular session and voted to unilaterally extend the statutory deadline an additional sixty (60) days. (See ¶¶10-end of Exhibit B; see also Exhibit C.)

14. The Board had no authority to unilaterally extend the deadline beyond September 30, 2017.

15. September 30, 2017 has passed and the Board of County Commissioners has failed, in clear violation of its statutory obligation under R.C. §709.023(F) to determine whether the conditions specified in R.C. §709.023(E) have been met and either grant or deny the Annexation Petition.

Remedy Sought

16. A peremptory writ in the first instance under R.C. §2731.06 is the appropriate remedy because the right to require the Board's performance under R.C. §709.023(F) is clear and it is apparent that no valid excuse can be given for not doing it. Alternatively, an alternative writ should be issued.

Wherefore, Relator prays for judgment in his favor and respectfully demands that this honorable court:

- a) Issue a peremptory writ of mandamus compelling the Board of County Commissioners to immediately enter upon its journal a resolution granting the annexation if it finds that each of the conditions specified in division (E) of §709.023 has been met, or if it finds that one or more of the conditions specified in division (E) of §709.023 have not been met, immediately enter upon its journal a resolution that states which of those conditions it finds have not been met and that denies the petition;
- b) If this Court does not issue a peremptory writ of mandamus, then issue an alternative writ commanding the Board to appear and show cause why a final writ in the above terms should not issue;
- c) In either event, award Relator his courts costs and reasonable attorney's fees associated with bringing this action; and
- d) Grant such other and further relief as the Court deems equitable, just, and proper.

Respectfully Submitted,


James A. Tadla, Esq. (#0044040)

Attorney for Relator

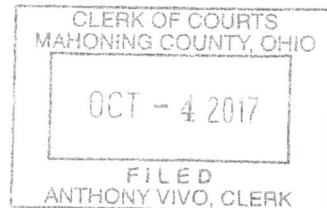
803 Texas Ave.

McDonald, OH 44437-1631

phone: (330) 707-4000

fax: (330) 288-0441

email: jtadla@tadla.com



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State of Ohio *ex rel.* Frank J. Amedia,

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Case No. 17 CV 2632

Judge R. Scott Krichbaum

MEMORANDUM IN SUPPORT
OF
WRIT OF MANDAMUS

Facts

On June 2, 2017, Relator filed an annexation petition pursuant to R.C. §709.023 seeking to annex to the City of Canfield, Mahoning County, Ohio certain property located in Canfield Township, Mahoning County, Ohio containing 18.83 acres, more or less (the “Annexation Petition”). (Petition ¶1.) The original statutory deadline of July 17, 2017 for Respondent (the “Board”) to grant or deny the Annexation Petition was extended three (3) times with the consent of Relator, eventually to September 30, 2017. (Petition ¶¶10-12.) On September 26, 2017, without Relator’s consent and despite Relator’s objection, the Board unilaterally extended the Annexation Petition for an additional sixty (60) days. (Petition ¶13.) Relator is petitioning this court to issue writ of mandamus compelling the Board to perform its clear, non-discretionary duty under R.C. §709.023(F).

The substantive facts are undisputed. The Board’s Resolution RES 17-09-029 (attached as Exhibit B to the Petition) is consistent with the facts set forth above.

Argument

I. The Board Has Failed to Timely Perform Its Non-Discretionary Statutory Duty

Prior to the passage of new statutes in 2001, all annexations in Ohio initiated by private property owners followed a single basic procedure, with the requirement that "a majority of the owners" in a specific territory sign the petition to initiate an annexation. (State ex Rel. v. Bd. of Commrs., 112 Ohio St. 3d 262, a63 - Ohio: Supreme Court 2006.) One of the major innovations of the new statutory scheme was the establishment of three new specific procedures that allow for expedited annexations when *all* the property owners within a territory to be annexed sign an annexation petition. *Id.* (*Emphasis added.*) One of these new procedure, established by R.C. §709.023, is commonly called an expedited type-2 annexation and applies when the property to be annexed to the municipality will remain within the township despite the annexation. *Id.* The case at bar involves an expedited type-2 annexation. (Petition ¶1; RES 17-09-029 ¶1.)

Unlike majority-owner annexation petitions, the standard by which the board of county commissioners is to grant or deny an expedited type-2 annexation is clerical – the board has no discretion. For example, in a majority-owner annexation, the Board is required to determine whether the territory to be annexed is “unreasonably large,” a clearly discretionary standard. However, in a Type 2 annexation, the Board is tasked with merely verifying that the territory proposed for annexation does not exceed five hundred acres. (Compare R.C. §709.033(A)(4) with R.C. §709.023(E)(3).) In majority-owner annexations, the Board uses its discretion to determine whether “[o]n 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”. (R.C. §709.033(A)(5).) However, in Type-2 annexations the Board is not required, and more importantly *not permitted*, to so determine. To the contrary, once the Board verifies that the conditions for a Type 2 annexation are met, the Board *must* grant the annexation. (R.C. §709.023(F).)

Furthermore, annexations brought under R.C. §709.023 (like the one in this case) are commonly known as *expedited* type-2 annexations because they are meant to be just that, *expedited*. This intent to fast-track is clear based upon the relatively short period of time the statute provides to the Board to verify whether the listed conditions have been met. R.C. §702.023(F) states, in pertinent part:

“Not less than thirty or more than forty-five days after the date that the petition is filed, [...] 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.” (R.C. §702.023(F); emphasis added.)

Accordingly, the Board has a clear, non-discretionary duty under statute to timely perform. In this case, the Board has failed to do so despite Relator consenting to more than doubling the time provided under the statute. The Board’s unilateral action to take an additional 60 days must not be allowed to stand.

II. A Writ of Mandamus is the Proper Remedy

The extraordinary writ of mandamus is the proper remedy in this matter. “Annexation is strictly a statutory process. Consequently, the procedures for annexation and for challenging an annexation must be provided by the General Assembly.” (*State ex Rel. v. Clark Cty. Bd. of Commrs.*, 174 Ohio App. 3d 631 - Ohio: Court of Appeals, 2nd Appellate Dist. 2007, citing, *In re Petition to Annex 320 Acres to S. Lebanon* (1992), 64 Ohio St.3d 585, 591, 597 N.E.2d 463.) In expedited type-2 annexations such as the case at bar, the General Assembly specifically set forth writ of mandamus as the applicable remedy. R.C. §709.023(G) states, “any party may seek *a writ of mandamus to compel the board of county commissioners to perform its duties under this section.*” (R.C. §709.023(G); *emphasis added.*)

Furthermore, a peremptory writ in the first instance is appropriate in this case. According to R.C. §2731.06, a court may allow a peremptory mandamus “when the right to require the performance of an act is clear and it is apparent that no valid excuse can be given for not doing it. In this case, Relator has

the right to require the Board perform its clear statutory duty, and the Board has no valid excuse for not doing it.

Conclusion

The Board has failed to timely perform its clear, non-discretionary duty under R.C. §709.023. A writ of mandamus is the proper remedy to compel the Board to perform its statutory duties forthwith. Therefore, Relator's petition for writ of mandamus is well founded and the writ should issue.

Respectfully Submitted,



James A. Tadla, Esq. (#0044040)

Attorney for Relator

803 Texas Ave.

McDonald, OH 44437-1631

phone: (330) 707-4000

fax: (330) 288-0441

email: jtadla@tadla.com

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Remedy Sought

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