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Re: Written Testimony to Ohio House Local Government Committee Concerning House Bill 113

Thank you for the opportunity to provide this written testimony concerning House Bill 113. More specifically, this testimony is to voice significant concerns with the bill's proposed changes to annexation law. I am an attorney who has dedicated my career to assisting property owners and businesses in navigating the complexities of Ohio annexation, zoning, and other land use laws for 21+ years. In my estimation, over this time period I have been involved in annexations concerning over 10,000 acres of property, making me uniquely qualified to weigh in on these issues.

Current annexation law has served Ohio well by providing opportunities to utilize multiple procedures when considering annexation of land to a municipality. Each has its own unique tradeoffs for property owners, investors in economic development projects, townships, and annexing municipalities. For instance, the Expedited Type 1 annexation procedure opens the door for collaboration in the form of an annexation agreement between an annexing municipality and the unincorporated township from which the land is being annexed, and in exchange there are no limitations on the amount of property that may be annexed using a single annexation petition, nor any minimum percentage requirement for a property's contiguity with a municipal boundary beyond having a portion of the property's boundary touching the corporate limits. On the other hand, the Expedited Type 2 annexation procedure contemplates the scenario where a township and an annexing municipality are unable to reach such an agreement. It protects townships by requiring the annexed property to remain within their taxing jurisdictions even after it is brought into village or city boundaries, and limits an annexation using this procedure to 500 acres while providing a requirement of a minimum of 5% contiguity with the boundary of the annexing municipality. These choices provide landowners with options.

Prior the most recent wide-ranging overhaul of Ohio annexation law in the early 2000s, the only annexation procedure available for use by property owners is one that still remains available today and is now referred to as the "regular" annexation procedure. Property owners seeking to annex land were (and under the current "regular" annexation process are) required to demonstrate several subjective elements in order for a board of county commissioners to approve an annexation petition. These include(d) a determination of whether or not the territory proposed for annexation is "unreasonably large" and whether or not the "general good" is to be served by the annexation. However, the annexation statute (then and now) provides no guidance on how these tests are met, and prior to the amendments to Ohio annexation law passed in 2001 court actions were commonplace to review these determinations and to create applicable tests based on the circumstances applying to a particular annexation petition. This needlessly clogged state court

dockets and forced landowners and business investors to pursue annexations at great risk of time and money because of the requirement to have vague tests by county commissioners and the courts.

The anecdote to this uncertainty has been the availability of the expedited annexation procedures that the General Assembly enacted in 2001. None of these procedures include subjective components that apply to a board of county commissioners' decision on an annexation petition. Rather, a petitioner for annexation can expect certainty of result, so long as a petition meets all of the objective statutory criteria. Contrary to current law, House Bill 113 (if approved) would inject a subjective component into every available annexation procedure under Ohio law, by requiring boards of county commissioners to discern that the "general good" is being served by the annexation, even when an expedited procedure is used.

This determination in each individual annexation request will be in the eye of the beholder. In rural areas next to growing municipalities, some may view expansion and growth as positives. Others may see it as an infringement on their way of life and may believe that the "general good" is served by stopping development in its tracks. In many parts of Ohio, public utilities services are not available in unincorporated areas. Development of even a small magnitude requires those services. It stands to reason that oftentimes the disapproval of an annexation with the passage of House Bill 113 will be based on the disapproval of development in and of itself---a question that is more appropriately answered in the context of zoning. Perspective is everything when a subjective factor such as the consideration of the "general good" is in play. With the passage of House Bill 113, the decision on each annexation request will be driven by the politics of the day.

An example is the best way to highlight the point. In recent years the State of Ohio has become an ideal location for major economic development projects. These projects are highly competitive across states. Assume that House Bill 113 becomes law and a major employer wants to invest \$900 million in a new facility that will create 500 new jobs with an average salary of \$70,000/year. The scope of the project is such that it needs 300 acres of undeveloped land in order to be constructed. In many parts of Ohio, the most likely place to find this land is on the outskirts of a municipality that can provide the services that the project will need.

However, the company seeking to make this investment operates within a highly regulated and proprietary industry and therefore cannot publicly reveal the details of the project beyond broad commitments and requires non-disclosure agreements ("NDAs") to be executed by all who are involved in the process. Now presume that NDAs are signed. During the annexation hearing the county commissioners ask for specific information on the type of use that will be associated with the company's investment. Beyond generalities, the petitioning landowner and company are unable to elaborate. The commissioners then decide that the "general good" cannot be demonstrated due to a lack of available information, and as a result they disapprove the annexation. Under expedited annexation procedures in Ohio, appeals of the denial of an annexation by county commissioners are not appealable to court and House Bill 113 (as proposed) does not change this restriction. Therefore, the project is lost and ultimately decides to relocate to another state.

This scenario is very real. If the annexation law changes, here are just some of the issues that would be facing the company when considering the State of Ohio for its project:

1) Is there an annexation procedure available to use other than the Expedited Type 2 procedure, given the 200-acre limitation? (Note that this does not even take into account the minimum contiguity requirement, which is much more difficult to meet for large amounts of acreage, especially at 20%.) For instance, what is the likelihood that the township and municipality that are involved will approve a mutually acceptable annexation agreement?

2) Should the company spend valuable time and significant sums of money that are at substantial risk, given the lack of predictability as to the county commissioners' finding on the subject of the "general good"?

3) Is that time and money better spent in a state where there are due process protections, given that a decision on the "general good" of an annexation in Ohio cannot be appealed?

The truth is, a site selector for a company with this sort of project is very likely to eliminate the State of Ohio from even a long list of locations for the project if the business must be exposed to the amount of risk and uncertainty that House Bill 113 will bring into existence. From the site selector's perspective there is no need to place company assets and timing in limbo when inevitably there are many other locations where these variables are not in play.

Put very simply, House Bill 113 is bad for business in Ohio. While it may in some respects have validity in serving a limited subset of specific communities, such sweeping changes to annexation law will have unintended and far-reaching negative ripple effects throughout the state's economy. Therefore, I am respectfully urging the Ohio House Local Government Committee not to recommend passage of this proposed legislation.

Sincerely,



Aaron L. Underhill