

Testimony of Gregory B. Horn
City Manager
Centerville, Ohio
In Opposition to HB 277
Before the House State and Local Government Committee
December 3, 2013

Chairman Blair and Committee Members:

My name is Greg Horn and I am the City Manager for the City of Centerville, Ohio, a southwestern Ohio community of approximately 24,000 residents, located 10 miles south of the City of Dayton, within Montgomery and Greene Counties. I have been a City Manager for 35 years, serving three Ohio cities for the past 33 years.

I am testifying today in opposition to HB 277. HB 277, as proposed, would severely limit the last practical opportunity for geographic growth for Ohio's cities and villages which are largely forced to utilize the Type II Expedited Annexation process. In 2001, after nearly two years of debate and negotiation, the Ohio General Assembly adopted SB 5, which was considered to be comprehensive annexation reform for our State. I, like many of my colleagues in municipal government, was not enamored with the final legislation and felt that all annexation options other than the Type II Expedited format were tilted in favor of the townships. Nonetheless, that was the framework we were left to work within.

The arguments made concerning ownership as proposed then by SB 5 and as it exists today, were that oftentimes public institutions such as universities and school districts did not want to have to take sides and become embroiled in annexation issues. Through SB 5 the ownership definition was specifically designed to allow such entities to sign an annexation petition if they desired (allowing them to be single owners themselves), or if they chose not to sign, they would not be counted in opposition against a neighboring property owner who wanted their property annexed. This language was carefully crafted after much negotiation. More than a year of discussions took place to balance the interests of all parties. The current language is not the result of some drafting oversight, as some proponents of HB 277 would now like to argue.

Some ten years later, HB 50 was proposed to require all political entities owning property within an annexed area to be required to sign the annexation petition. HB 50, as proposed, would have severely restricted the only truly effective method of annexation remaining for most of Ohio's municipalities, the Type II Expedited format. Fortunately, after weeks of testimony by governments and private developers, the legislature saw fit to again avoid going down this path. HB 50 was amended, and the end result was that any financial advantage to cities or villages by annexing government-owned land through the Type II process was eliminated, as employees working at those locations would be exempt from paying City tax.

Now, less than two years later, Ohio's urban townships are back at the door wanting to effectively stop most annexations in this State by again requiring that every government entity owning land within any proposed annexed area be required to sign the annexation petition and thus, retain total veto power over adjacent development projects. HB 277, if passed, will clearly stifle the ability of Ohio's cities and villages to work together with developers in encouraging economic development at a time when such development is absolutely vital to the future of this State.

For those that believe that HB 277 will not be a death knell for future annexations and their ensuing development projects, just look at what is already happening within Ohio. Large urban townships are becoming increasingly aggressive with land purchases, creative zoning techniques and the establishment of bogus trail systems all in an effort to halt annexations. I have included today, along with my written testimony, two exhibits. Exhibit A denotes Deerfield Trails, Inc. in the Mason, Ohio area and Exhibit B denotes Washington Township Trails, Inc. in the Centerville, Ohio area. This concept is being peddled by an area law firm as an anti-annexation tactic. In the case of the Washington Township effort, it was created and funded with township monies with no public discussion, no reference within their budget, and a former Township Trustee was charged to head the 'not for profit' effort.

A couple of weeks ago before this Committee, testimony was provided by a township official east of Centerville and one west of Centerville. In both cases, our community was painted as an annexation aggressor. To our east in Greene County, Centerville has had ONE annexation in 200 years. That was a 100% owner-petitioned annexation filed under the Type II format. Sugarcreek Township saw fit to challenge Centerville and the land owners for over six years. Even though we recently won a unanimous Ohio Supreme Court decision, they have re-filed litigation, essentially claiming the court didn't really mean what was stated in their opinion. And so, the litigation goes on. The result, a 225 acre, \$130 million development continues to be delayed. In the case of Washington Township, of which Centerville has been a part of for some 200 years, most annexation efforts have been met with similar tactics. Chairman Blair is certainly familiar when Centerville annexed 400 plus acres of City-owned land in the early 1990's for the development of The Golf Club at Yankee Trace. The Washington Township Trustees sued Centerville for two years, and our community prevailed again in that case with another unanimous Supreme Court decision that paved the way for the construction of what is now a 27-hole golf facility with 900 homes in excess of \$300 million of development. Washington Township, since that time, has purchased millions of dollars of land with unbudgeted funds and no public discussion. While it is labeled as future open space, it has set idle for years and is nothing more than an attempt to keep property owners from annexing to the southern and western portions of Centerville.

It is extremely ironic that we are gathered here today to consider this piece of legislation with the political atmosphere that exists in Ohio. Two task forces traveled our State just a few years ago. A great deal of testimony was gathered on the need to streamline Ohio government and how we need to collaborate and consolidate. The case was made time

and time again that we have too many political jurisdictions, all competing for limited tax dollars, all tripping over each other with far too much duplication. So what is the answer? I submit that it is not the passage of legislation like HB 277. This is an attempt to make urban township government stronger, more permanent, more everlasting at the expense of private land owners and surrounding municipalities.

While the majority of our country does not even have townships, townships in Ohio have taken a new direction. They began as a unit of measurement, evolved into assisting with rural road and cemetery services. Traditionally, they were lessened in size and scope as our villages grew into cities and our cities grew into urban centers, growing methodically from their core outwardly.

Now Townships have become a means to an end – an end in and of themselves. Ohio is among only a handful of states that have townships and municipalities coexisting and we have created and encouraged a new oxymoron – the urban township, growing to 20, 30, 40, even 60,000 in population. While the Ohio Township Association likes to describe township government as grass roots and closer to the people, our new urban townships don't fit the mold. Urban townships through their own organization representing some 20 townships above 25,000 in population (known as CLOUT) constantly lobby for more authority, more regulatory control, and more taxing options. Take a look at the Ohio Township Association website: More zoning control to "mirror municipal authority," the ability to adopt their own subdivision regulations, expanded planning authority, new firearms control measures, more support from their county engineers, veto authority for TIFS, increased authority for utilizing JEDDS, municipal water and sewer services without annexation, expanded cell tower authority, impact fee authority on developers, expanded wind farm regulatory control, relief from indigent burial responsibility, the authority to charge fees to heavy commercial vehicle owners that use township roads, and the authority to set speed limits and road weight limits. Townships also want the right to establish their own courts. But ironically, they only want financial audits every 4 years instead of every two years, they don't want ethics filing requirements for their elected officials and they want bond limits lowered on their fiscal officers.

Most surprisingly, you won't read anywhere that the urban townships want responsibility for county roads, bridges and culverts, or responsibility for State road maintenance, traffic signals and related storm sewer systems. And you won't read that they want the right to pay for their fair share for county prosecutors, county jails, court services planning services, or the true value of services they receive from their local sheriff's departments.

Mr. Chairman and members of this committee, does this sound like Ohio is headed toward increased regionalization, collaboration and consolidation? I would submit that we are going in the opposite direction, and HB 277 will only aggravate this problem.

When will the important issues come before this committee to truly bring structural change to Ohio's archaic local government system? Under Ohio law, villages are required to become cities and take on significant responsibilities when reaching a

population of 5,000. When will our "urban townships" of 20, 30, 40 and even 60,000 residents be required to merge or incorporate or even be required to take on their fair share of responsibility in this State?

HB 277, as proposed, only serves to exacerbate the local government problems and structural inequities that already exist. I submit to you that HB 277 will only be one more nail in the coffin of Ohio's cities and villages and will mean more obstacles, uncertainty, expense and delays for private developers and private land owners throughout this State. Please put a stop to this ill-advised, overly-restrictive legislation and vote no on HB 277.

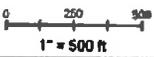
I thank you for your time.

Respectfully submitted,

Gregory B. Horn
City Manager
City of Centerville

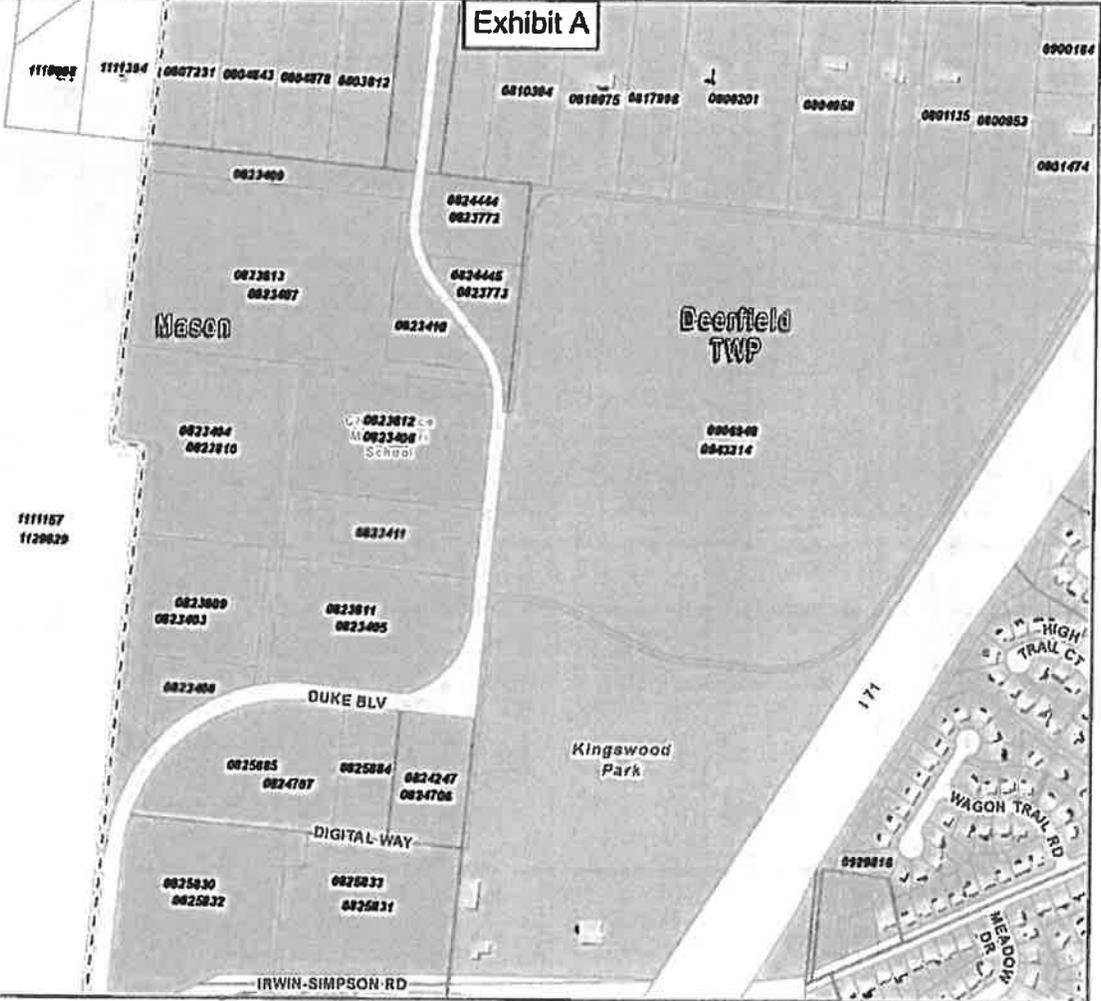
Warren County Legend

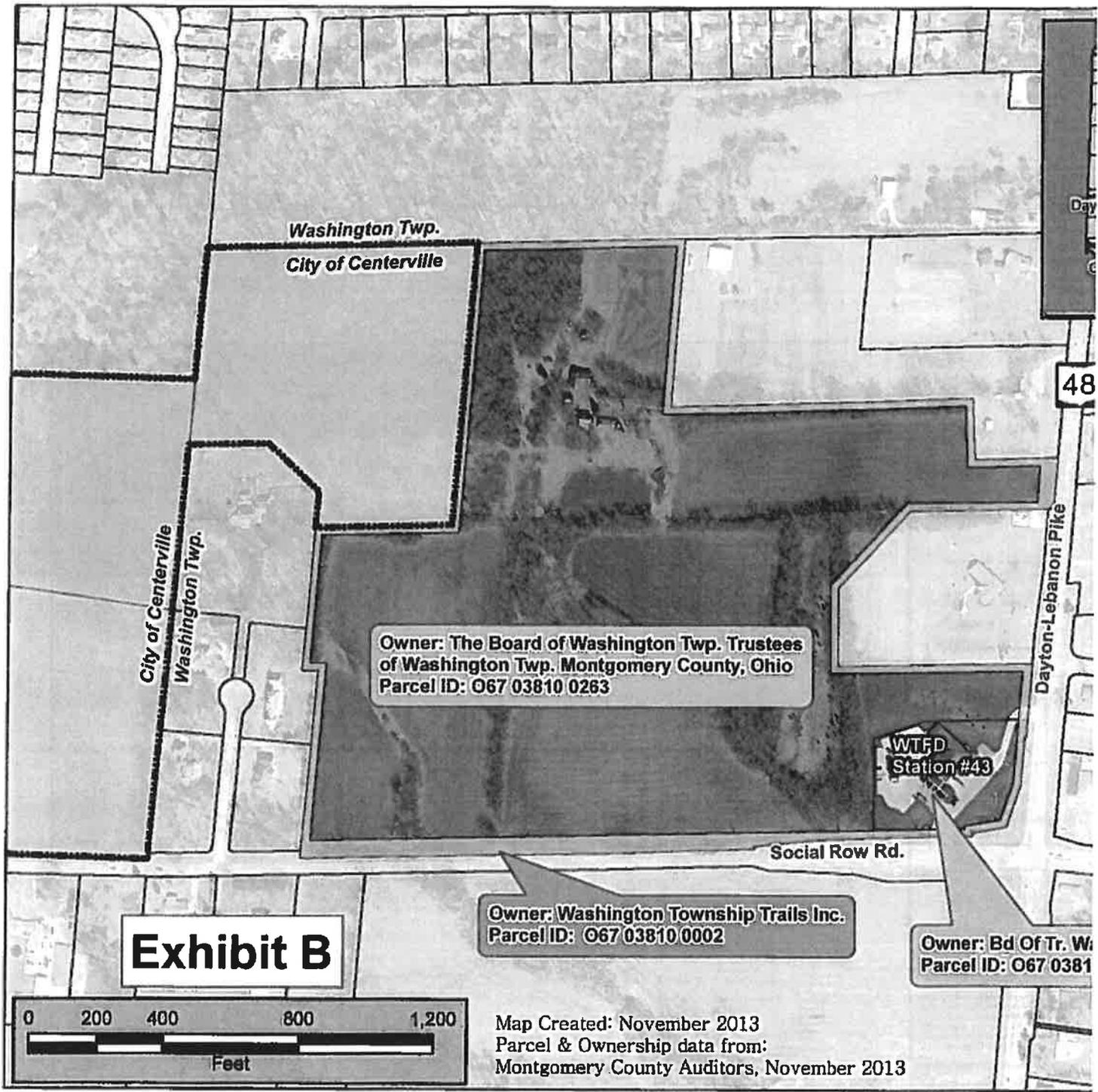
- Interstate
- US Route
- State Route
- Local Road
- County Boundary
- Auditors Tract Line
- Civil Township Line
- Corporate Line
- Overpass Line
- Parcel Line
- ROW Unknown Width
- Road R/W
- School Line
- Section Line
- Subdivision Lot Line
- Subdivision Lot Line
- Township & Range
- Tract Line
- VMS Line
- Municipal Road Line



This is a product of the Warren County GIS Department. The data depicted here has been developed with extensive cooperation from other county departments as well as federal, state and local government agencies. Warren County expressly disclaims responsibility for damages or liability that may arise from the use of this map. Any resale of this information is prohibited, except in accordance with a licensing agreement.
 Copyright 2009 Warren County GIS
 Generated 12/22/2013 4:23:35 PM

Exhibit A





Washington Twp.
City of Centerville

City of Centerville
Washington Twp.

Owner: The Board of Washington Twp. Trustees
of Washington Twp. Montgomery County, Ohio
Parcel ID: 067 03810 0263

WTFD
Station #43

Social Row Rd.

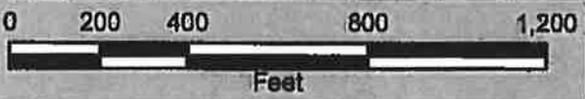
Dayton-Lebanon Pike

48

Exhibit B

Owner: Washington Township Trails Inc.
Parcel ID: 067 03810 0002

Owner: Bd Of Tr. W.
Parcel ID: 067 0381



Map Created: November 2013
Parcel & Ownership data from:
Montgomery County Auditors, November 2013

House Bill 277
Opponent Testimony
House State and Local Government Committee
City of Centerville Economic Development Administrator
Nathan E. Cahall

December 3, 2013

Good afternoon Chairman Blair, Vice Chair Anielski, Ranking member Clyde, members of the committee. My name is Nathan Cahall and I am currently the economic development administrator for the City of Centerville. I would like to thank the committee for the opportunity to provide opponent testimony related to House Bill 277.

HB 277 represents an assault on private property rights, an obstacle to orderly and sustainable economic development, and the injection of politics into what should be an objective, administrative process per the ORC. The current Type II expedited annexation process is a result of "annexation reform" efforts more than a decade ago. It expedites the annexation process for a property, but there are some tradeoffs. At the end of the process, the property owner(s) are not held hostage by the need to have the annexing municipality and the township come to some sort of pre-annexation agreement, but their land still remains in the township and subject to taxation by the township; often for services not provided to the property after annexation. This system of tradeoffs allows for property owners and developers to be able to exercise their property rights free of arbitrary roadblocks caused by intergovernmental infighting while still leaving the township no worse off financially since it continues to have taxing powers over the property. In the case of Centerville, both of our townships benefit financially from this arrangement since they can still collect taxes for road, police, and general government levies without having to serve those annexed areas. Some might argue that is not fair or equitable, but those were the tradeoffs agreed to in order to liberate the development community and private property owners from the quagmire of litigation that annexations all too often created across Ohio before the reforms were put in place.

I think it's of paramount importance to clarify what we are really talking about here today because it is all too often lost in the fray of debate. We are talking today about private property rights. Everything else is secondary in my view. It was determined to be secondary more than a decade ago, as well. I hear, on an almost weekly basis, rhetoric from township officials arguing that cities and villages are guilty of "land grabs" and that the land annexed is the township's land. The most obvious point is often lost upon these folks. The land is not the municipality's or the township's. It is the private property owner's land. And why should we continue to place roadblocks in the way of private property owners who merely wish to exercise their rights, within reasonable parameters, to choose the jurisdiction in which they wish to develop or hold their land? Municipalities and townships can stand before you and wage this fight. This fight, however, only has one true loser...private property owners and their rights. Current annexation law, rightfully so, ensures that under the Type II expedited format, public bodies that happen to own land cannot block the rights of private property owners and free economic choice.

This proposed bill focuses on two aspects of current annexation law. The first deals with the definition of an "owner" for purposes of determining that 100% of the owners within a proposed annexation area are amenable to annexing. The second deals with a signatory's ability to remove its signature from an annexation petition once filed. Both of these proposed changes create moral hazards, hold hostage the rights of private property owners, and further tip the scales in favor of retarding the growth of municipalities and favoring the enrichment of large urban townships already exorbitantly subsidized by state and county revenues while residents in cities have to pay full price for their services.

HB 277 would create an ability for a signatory to a petition to remove its signature seven days from the date of service of the petition to the township fiscal officer. This creates more time and opportunities for opponents of an annexation, usually the neighboring township, to pressure property owners or even extort them. Sugarcreek Township, whose administrator testified before you previously, has already used this method of assassinating possible annexations and job growth. Sugarcreek Township feared that a land owner would annex into Centerville a few years ago. The township threatened to establish a TIF district on the owner's land and impose indebtedness upon it that would adversely impact its future development. The land owner folded to the threats and entered into a temporary non-annexation agreement. This proposed language would allow townships more time to run out in the middle of the night and pull these sorts of stunts. It also shows that arguments centered on "protecting township revenues" are really red herrings. In this case, we had a township that was willing to TIF all of its property tax revenues. This was all done based on just a rumor that an annexation was possibly in the works. Just think what shenanigans could be unleashed after a formal petition filing.

Let me provide you with another example of exploiting a loophole in the law by a township to soothe its hysterical paranoia over annexations. Washington Township, which is one of Centerville's neighboring townships, hastily gave away township-owned land as a means to block annexations in the future after Centerville approved the annexation previously mentioned by the township's person in her testimony to this committee last week. Without perhaps adhering to Title 5 of the ORC as best as I can discern, although I am not a legal expert, the township gave free land completely surrounding its property at the intersection of State Route 48 and Social Row Road to a private third party called "Washington Township Trails Inc.". The transfer was a subterfuge in my view. According to public records and the township's meeting minutes, it transferred the land shown in submitted Exhibit A to a nebulous nonprofit that did not even exist until the time of the land giveaway. The nonprofit is headed by a gentleman named Lee Snyder. He is a former township trustee with what some would say is a checkered past. Mr. Snyder now serves as a member of the township's zoning commission where he can potentially run into the same issues as he did as a trustee. As a sitting township official, his paper nonprofit was given free land. According to township meeting minutes, it also appears as if the township spent taxpayer dollars to pay the law firm that filed the nonprofit's business filings. So let's recap: we have a legally questionable land transfer to a former trustee and sitting zoning commission member for free, with the township appearing to pay the legal bills, all for the sake of blocking an annexation sometime in the future that has no financial or material impact on its land or operations. It only serves to hamper the private property rights of others.

The second major issue this bill would change is what parties are considered a required signature for the filing of a Type II expedited petition. As the committee knows, the Type II expedited filing is the only one where public entities are not considered an owner for purposes of determining 100% owner support of an annexation. This goes back to the tradeoffs I touched upon before. This difference is by no means a loophole or unintended nuance in the statutes. As those who have or will testify before this body, counting public entities as non-owners was no accident when the legislature revamped annexation law over a decade ago. HB 277 would create horrible consequences for private property owners, public bodies other than townships, and taxpayers in general because it sets the stage for a moral hazard to be acted upon by townships and/or sympathetic public bodies in league with them to halt annexations.

Let's start with a rehash of consequences on private property owners. This bill would now place the exercise of their property rights to annex in the hands of veto wielding public entities that might stand between them and the borders of a surrounding municipality. Are we as a state willing, for example, to tell some private property owner whose well has failed that he or she cannot annex into a neighboring village or city for water and sewer services merely because some park district or township owns a bike trail or nature nook in between their land and the corporate boundaries? Private property owners will now have to discern what added goodies they have to provide to garner support of the public entity; one to which he/she probably already funds through the payment of taxes yet stands to act against his/her personal property interests. This creates uncertainty for the property owner and/or developers which more times than not can lead to the abandonment of projects that could create economic growth and jobs. Free markets do not operate efficiently with the specter of uncertainty casting a shadow.

As for public bodies other than townships that happen to be included in a proposed annexation territory, HB 277 complicates their worlds, as well. For example, let's say a school district owns a piece of vacant land along the border of a village or city for a future school building. An owner of property on the other side of the school's land wishes to annex into the municipality, but that can only happen if the school board signs the petition. The school board now has to enter an arena it has never had to participated in before; one in which agreeing to the annexation may alienate certain political interests in the unincorporated portion of its district. Not agreeing to the annexation poses equally bad outcomes because it will be telling its voters in the municipality that they are second class citizens since being located in their city or village is a perceived negative. HB 50, passed out of this committee last session, addressed the one remnant piece of the equation that anyone could have argued about by exempting the earning of public employees within the newly annexed area for local income taxation purposes. Frankly, the annexation referenced by the Washington Township person a few weeks ago before this committee was one in which our school district actually appreciated the fact that they were not an owner for purposes of filing the annexation. They serve residents and voters in both the city and the township and did not wish to be placed in the middle of the issue where all of their options were a loser.

In any case, inserting public bodies that simply happen to own land in an annexation territory into the mix, with all reasonable concerns and impacts already addressed by the statutes, only further politicizes the process which is why annexation reform was taken up over a decade ago.

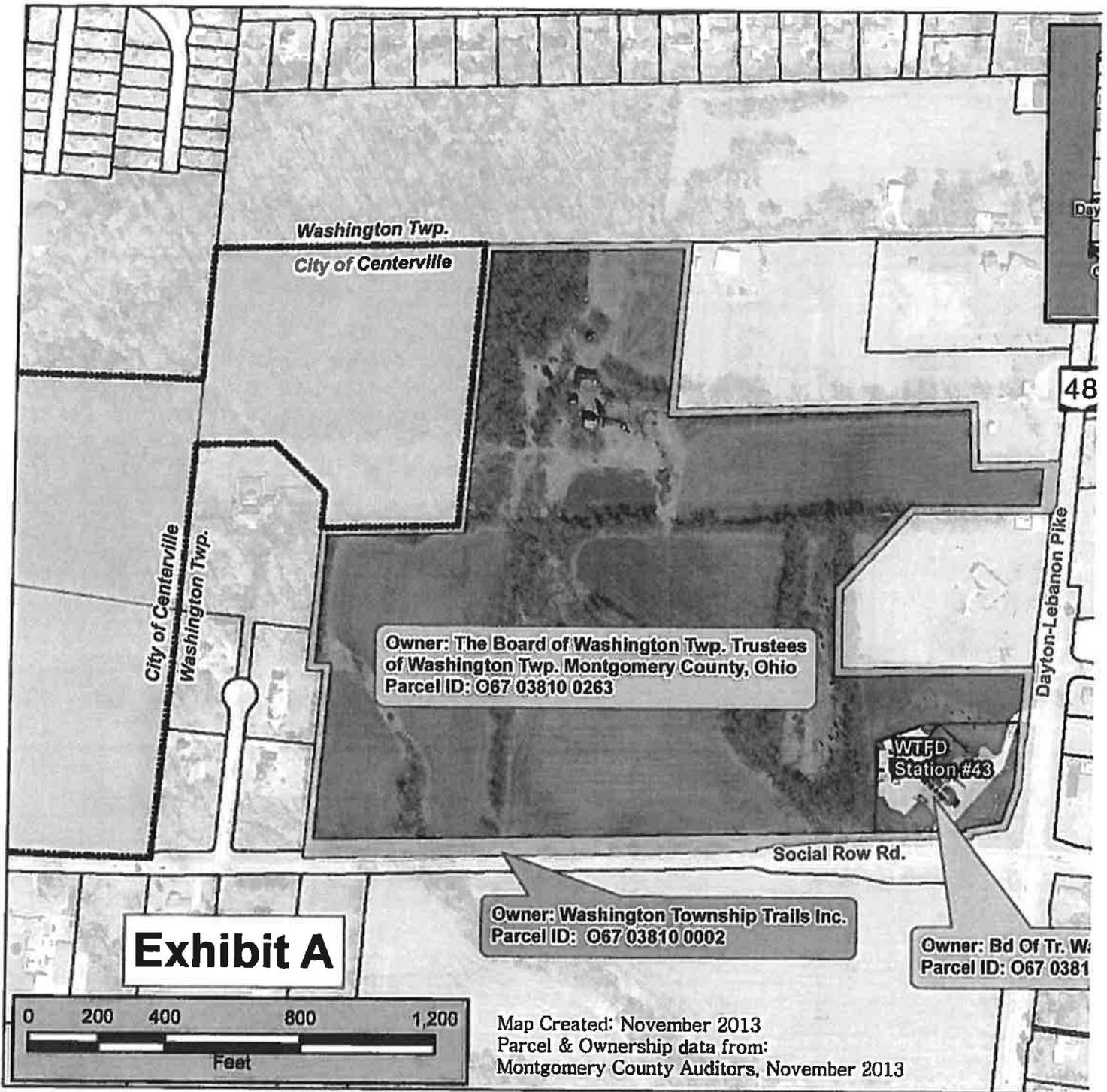
HB 277 provides many public bodies a gift of power in these types of proceedings that they would prefer not to be given.

Now, let's move onto the third issue with changing the definition of "owner" under the statute. HB 277 would no longer distinguish between a private and a public property owner, regardless of the annexation method utilized. This creates a moral hazard that would lead to the waste of taxpayer dollars across Ohio. Townships would now have an incentive to purchase land for no other public purpose than to block annexations, wasting tax dollars that are needed for other services and needs. Is this something we really want to incentivize?

Annexation is not a dirty word. It is how villages and cities grow, create economic growth and jobs, and serve the needs of private property owners who often times merely seek public utilities service or more proper zoning regulations. Otherwise, you are saying that those Ohioans who happen to live in a village or a city are somehow lesser. Townships are a temporary form of government. That fact has been lost somehow along the way. They can be merged, divided, or even abolished by a board of county commissioners by simply majority vote. Both legally and fiscally, these entities were historically designed to manage more rural populations, with municipalities designed to manage the growth and public policy issues encountered by areas of more concentrated and intense development. If a township wishes to cause a cessation to annexations, it already has options under current law. It can merge with a contiguous municipality, it can enter into JEDDs, and it can incorporate itself. Additionally, the argument that this change in law will encourage more cooperation and collaboration amongst local government entities rings hollow. This proposal will do the exact opposite. Cooperation almost always occurs when two parties realize that they can achieve and gain more collectively than separately. This bill creates more of an environment where certain political subdivisions benefit more by operating autonomously than collaborating with others. If a subset of "aggrieved", suburban townships wants static jurisdictional borders, they already have the means to make that happen.

Like I said before, HB 277 represents an assault on private property rights, an obstacle to orderly and sustainable economic development, and the injection of politics into what should be an objective, administrative process per the ORC. I strongly urge this committee to dismiss this bill in its entirety and defend the rights of private property owners across this state.

I wish to thank the committee for allowing me to address it on this matter and I am happy to answer any questions. Thank you.



Washington Twp.
City of Centerville

City of Centerville
Washington Twp.

Owner: The Board of Washington Twp. Trustees
of Washington Twp. Montgomery County, Ohio
Parcel ID: 067 03810 0263

WTFD
Station #43

Social Row Rd.

Exhibit A

Owner: Washington Township Trails Inc.
Parcel ID: 067 03810 0002

Owner: Bd Of Tr. W
Parcel ID: 067 0381



Map Created: November 2013
Parcel & Ownership data from:
Montgomery County Auditors, November 2013

REVISED

H.B. 277

Beginning with R.C. 709.02 several statutes were enacted that govern the ability of a municipal corporation to annex areas into the boundaries of the municipality.

In one method the municipality and the township agree to the annexation. In a second method the annexation is for a purpose of undertaking a significant economic development project. To my knowledge this method has not been used.

The third method is generally known as a “Type II Annexation.” It is this “Type II Annexation” that we are involved with here.

H.B. 277 would make changes to “Type II Annexations” that would allow eliminating them from the uses currently beneficial to municipalities and the State of Ohio.

Bear in mind that the townships are not eliminated if a Type II

Annexation occurs. In fact, the continued existence of any involved Township is guaranteed under the current law.

The inside millage of the Township will continue to be levied for the benefit of the Township under the statutes.

The Township will continue in existence so long as the whole Township is not annexed to a municipality. This is the current law.

The Township will continue to receive its inside millage and the Township voted millage.

We believe that adequate protection of the owners of the land that seek annexation is provided under the existing law. At the same time the Township's powers are not diminished. One might say that Type II Annexation protects the owner of land and is fair to the Townships that are affected.

We would ask that H.B. 277 not be approved.

John E. Gotherman
Counsel