

TEMPORARY RESOLUTION NO. 125-10

PERMANENT RESOLUTION NO. 131-10

A RESOLUTION AUTHORIZING THE SERVICE-SAFETY DIRECTOR TO ENTER INTO A PRE-ANNEXATION AGREEMENT COVERING .134 +/- ACRES IN GREENFIELD TOWNSHIP

WHEREAS, Property consisting of .134 +/- acres in Greenfield Township, Fairfield County, Ohio, which area is generally described in the legal description and survey attached as Exhibit A; is the subject of an annexation Petition filed with the County Commissioners and

WHEREAS, said property is contiguous to the City, and would benefit from municipal services provided by the City, including water, sanitary sewer, police, fire and EMS services;

BE IT RESOLVED BY COUNCIL OF THE CITY OF LANCASTER, STATE OF OHIO

SECTION 1. That the Service-Safety Director is authorized to enter into a Pre-Annexation Agreement attached as Exhibit B for .134 +/- acres in Greenfield Township, in its substantial form.

SECTION 2. The Pre Annexation Agreement in the form presently on file with the Clerk of Council is hereby approved and authorized with changes therein not inconsistent with this Resolution and not substantially adverse to the City and which has been tentatively approved by the Service-Safety Director. The Service-Safety Director for and in the name of the City, is hereby authorized to execute the Final Pre Annexation Agreement in this matter, provided further that the approval of changes thereto by the Service-Safety Director, and their character not being substantially adverse to the City, shall be evidenced conclusively by the execution thereof. This Council further authorizes the Service-Safety Director for and in the name of the City, to execute any amendments or changes to the Final Pre Annexation Agreement, which amendments are not inconsistent with this Resolution and not substantially adverse to the City.

SECTION 3. That this resolution shall take effect and be in force from and after the earliest period allowed by law.

Passed: 11/8/2010 after 2nd reading. Vote: Yeas 8 Nays 0

Approved: 11-12-10

Clerk:

Jeressa Lee Sandy

Kenneth D. Cu
President of Council

Offered by:

Melody L. Bobbitt

D. Henth
Mayor

Second by:

Steve F. Johnson
Requested by Law Committee

**PETITION FOR ANNEXATION OF 0.134± ACRES
FROM GREENFIELD TOWNSHIP TO THE CITY OF LANCASTER**

To the Board of Commissioners of Fairfield County, State of Ohio:

Now comes the undersigned Petitioner, being the sole owner of certain real property situated in the County of Fairfield, Township of Greenfield, which property is contiguous and adjacent to the City of Lancaster, to wit, see the legal description attached hereto as Exhibit "A."

The undersigned Petitioner requests that said real property be annexed to the City of Lancaster in accordance with the statutes of the State of Ohio, specifically §709.023, as a "Type Two" expedited proceeding. There is one (1) owner of real estate in the territory sought to be annexed.

The territory sought to be annexed with this Petition has a total perimeter boundary of 393.31 feet, a minimum of which 239.28 feet (60.8%) is contiguous to the City of Lancaster.

No island of unincorporated area is being created by this annexation.

Crabbe, Brown & James, LLP, 111 S. Broad Street, Suite 209, Lancaster, Ohio, 43130, is hereby authorized to act as Agent for the Petitioner in securing such annexation. Said Petitioner's Agent is hereby authorized to make any or all amendments and/or deletions to the Petition, map, plat or description which, in their absolute and complete discretion, are proper under the circumstances then existing. In addition, the Petitioner's Agent is authorized to make such amendments and/or deletions to the Petition, map, plat or description in order to correct any discrepancy or mistake noted by the County Engineer, or other, in their examination of the Petition, map, plat or description. Amendments to correct the map, plat or description may be made by the presentation of an amended map, plat or description to the Board of County Commissioners on, before or after the date set for hearing of this Petition.

An accurate map approved by the Fairfield County Engineer is attached hereto and made a part of this Petition as Exhibit "B."

WHOEVER SIGNS THIS PETITION EXPRESSLY WAIVES THEIR RIGHT TO APPEAL IN LAW OR EQUITY FROM THE BOARD OF COUNTY COMMISSIONERS' ENTRY OR ANY RESOLUTION PERTAINING TO THIS SPECIAL ANNEXATION PROCEDURE, ALTHOUGH A WRIT OF MANDAMUS MAY BE SOUGHT TO COMPEL THE BOARD TO PERFORM ITS DUTIES REQUIRED BY LAW FOR THIS SPECIAL ANNEXATION PROCEDURE.

WHOEVER SIGNS THIS PETITION EXPRESSLY WAIVES THEIR RIGHT TO APPEAL IN LAW OR EQUITY FROM THE BOARD OF COUNTY COMMISSIONERS' ENTRY OR ANY RESOLUTION PERTAINING TO THIS SPECIAL ANNEXATION PROCEDURE, ALTHOUGH A WRIT OF MANDAMUS MAY BE SOUGHT TO COMPEL THE BOARD TO PERFORM ITS DUTIES REQUIRED BY LAW FOR THIS SPECIAL ANNEXATION PROCEDURE.

By: _____
Jay Nauman, Owner/Petitioner

Date: _____

*Owner of Parcel No.: 014-0097800, situated at the intersection of Ety and Columbus-Lancaster Roads.

**ANNEXATION AGREEMENT
WITH THE
CITY OF LANCASTER, OHIO**

This ANNEXATION AGREEMENT (the "Agreement") is made this ____ day of _____, 2010 by and among Jay Nauman, an individual resident of the State of Ohio (herein "Owner") and the City of Lancaster, Ohio (the "City") in order to document their mutual agreements with respect to the proposed annexation and development of the Owner's Property to the City.

RECITALS

WHEREAS, the Owner is the owner of a certain 0.134 acres presently located in the Township of Greenfield, Fairfield County, Ohio, as more fully described on the attached Exhibit A (the "Property") and as shown on the site plan attached as Exhibit B;

WHEREAS, there exists a large billboard sign located on the Owner's property;

WHEREAS, the Owner desires to retain the existing on site use and to enhance the signage by converting it to an electronic billboard;

WHEREAS, the City desires to have the Property situated within the City of Lancaster;

WHEREAS, due to the Property's limited area and shape, the Parties contemplate the signage to be the improvement;

WHEREAS, the Parties have entered into this Agreement for the purpose of documenting their mutual agreements with respect to the annexation and development of the Property, as set forth herein;

WHEREAS, the City desires to capture any revenues generated by the Property improvements which necessitates processing of the annexation and approvals in a timely manner.

WHEREAS, the Owner is bound to certain other agreements and time deadlines associated with the Property, which necessitates timely approval and processing by the City, including passage of the legislation and approvals discussed herein after the statutory wait period for annexation under Ohio law, and

WHEREAS, the Parties acknowledge time is of the essence with respect to this matter, and that approvals not received by dates and time lines set forth herein may jeopardize the Owner's plans for improvement. Said improvements and revenue generated therefrom are in the best health, safety and welfare interests of the City and its residents.

NOW THEREFORE, in consideration of the mutual rights, obligations and undertakings

the parties hereby agree as follows:

1. Owner's Agreement to Petition for Annexation. Owner agrees to take the following action(s):

- a). The Owner _____ a Petition for Annexation of the Property to the City and has agreed to diligently pursue the annexation process.
- b). The Owner shall submit a site plan ("Site Plan") for the intended improvement of the property, which Site Plan shall be attached hereto as Exhibit B.
- c). The Owner shall submit detailed signage information which information shall be attached hereto as Exhibit C, and subparts.
- d). The Owner hereby agrees to make application for all approvals for the proposed development, which applications will be processed as set forth herein.

2. City's Agreements. The City agrees to take each of the following actions in connection with the annexation and development of the Property:

- a). The City shall cooperate with and assist Owner in facilitating the annexation of the Property to the City as promptly as possible. The City will adopt a municipal services ordinance which agrees to provide the Property with water, sanitary sewer, storm sewer, police, fire and EMS services which services shall be available immediately upon annexation. The City agrees not to object to the annexation, and further agrees to finally accept the annexation following the statutory wait period set forth by Ohio Revised Code. The City agrees to pass and approve all necessary legislation for this Agreement.
- b). Zoning Classification/Site Plan Approval. The City hereby agrees to receive and process the zoning and other administrative and development plan approvals on a concurrent time line with the annexation process, such that all zoning or other approvals shall be considered and approved during the statutory wait period for the final annexation. As an integral part of the annexation process for the Property, the City shall adopt an ordinance and take all other actions required by applicable rules and regulations to reclassify the Property as General Commercial, General Commercial District and as shown on the Site Plan attached hereto as Exhibit B, which will permit Owner's intended use of the Property and improvement as shown. Said zoning shall be completed and secured on or before the date of final annexation acceptance and shall become effective immediately upon the City's formal acceptance of the annexation.
- c). Signs. The City will allow a contemporaneous filing with the Board of

Zoning Appeals during the pendency of the annexation.

3. Representations and Warranties. The parties make each of the following representations and warranties as of the effective date of this Agreement. These representations and warranties are given as partial consideration for and as a material inducement to the execution of this Agreement and each shall survive the execution, delivery and performance of this Agreement.

a). Owner's Warranty Regarding Power and Authority Owner warrants and represents that he has the capacity to enter into this Agreement.

b). City's Warranty regarding Power and Authority. The City warrants that it has the power, authority, and capacity to enter into, and to deliver and perform this Agreement and all transactions contemplated by this Agreement without the consent of any additional persons, boards or any other group or entity. Each person executing this Agreement on behalf of the City represents and warrants that he or she has full power and has been authorized to do so by appropriate actions by the governing body of the City.

c). Valid and Binding. Each party represents and warrants that this Agreement creates a valid, binding, and enforceable obligation and that this Agreement is enforceable against the warranting party in accordance with its terms.

d). This Agreement shall not create any third party beneficiaries, or rights and benefits of such to the terms, conditions and/or commitments as set forth herein or as may thereafter flow herefrom.

4. Miscellaneous Provision. The following provisions are also an integral part of this Agreement.

a). Further Assurances. Each party agrees to cooperate fully with the other and to execute any additional instruments, documents, or agreements reasonably requested by the other party in order to carry out and fulfill all of the intents and purposes of this Agreement. Upon failure of any term or condition of this Agreement, or referendum of any legislation needed to effectuate this Agreement, and regardless of when, the City shall agree to and pursue a detachment of the Property from the City, pursuant to applicable Ohio law and Section (d) below.

b). Entire Agreement/Amendments. This Agreement shall be construed to include all of the Exhibits referenced in and attached to this Agreement. This Agreement constitutes the entire agreement of the parties and supersedes all prior discussions, negotiations, proposals and agreements between the parties (whether written or oral) and it may not be amended or modified except by a written

amendment executed by all of the parties.

c). Agreement Not Severable. Each provision in this Agreement is a material aspect of the consideration anticipated by the parties. Therefore, if any provision of this Agreement is ultimately determined to be invalid or unenforceable then the entire Agreement shall be deemed to have been cancelled, unless the parties specifically reaffirm the remaining terms and provisions in a written amendment hereto.

d). Annexation Unsuccessful. In the event that the annexation or other approvals needed to permit the billboard use as contemplated set forth in this Agreement are unsuccessful, the City agrees to promptly (i.e., within 30 days) proceed with Owner's request for detachment of the Property. City agrees to fully support and take all steps necessary to ensure detachment if for any reason annexation and subsequent approvals are not successful.

IN WITNESS WHEREOF, the parties have executed this Agreement with the intention that it shall be effective as of the date written above.

OWNER:
JAY NAUMAN

CITY:
THE CITY OF LANCASTER

By: _____
Jay Nauman

By: _____

Its: _____

[Notary Signage on Page 5 of 6]

STATE OF OHIO }
COUNTY OF FAIRFIELD } ss:

On this ____ day of _____, 2010, before me, the undersigned officer, personally appeared, _____, on behalf of the City of Lancaster, known to me (or satisfactorily proven to be the person whose name is subscribed to the within instrument) and acknowledged that he/she executed the same for the purposed therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(seal)

Notary Public

STATE OF OHIO }
COUNTY OF FAIRFIELD } ss:

On this ____ day of _____, 2010, before me, the undersigned officer, personally appeared **Jay Nauman**, on his own behalf, and acknowledged that he/they executed the same for the purposed therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(seal)

Notary Public

EXHIBITS

- A. Legal Description of Property
- B. Site Plan with Improvements
- C. Sign Information