



OFFICE OF THE CITY MANAGER
MEMO

TO: Members of Worthington City Council

FROM: Matt Greeson, City Manager
Michael Minister, Director of Law

DATE: March 11, 2011

SUBJECT: PROPOSED ANNEXATION OF THE VILLAGE OF RIVERLEA TO THE CITY OF WORTHINGTON

Introduction. Several months ago, we met at the request of Attorney Duncan Aukland who resides in the Village of Riverlea and represents several resident electors of the Village who desire to annex Riverlea into Worthington. Mr. Aukland advised us that he would soon begin the annexation process by filing a petition to that effect with the Riverlea Village Clerk. Shortly thereafter and at their request, we met with Riverlea Mayor Cusack, Village Solicitor Mershon and two members of the Riverlea Village Council to discuss the procedure for the proposed annexation and related issues. The Law Director met once more with Mr. Aukland to discuss the annexation procedure required by Ohio law.

Annexation Method. Pursuant to Ohio law, the “petition method” for proposing an annexation is being used where, as here, two municipal corporations are involved. Under that method, petitioners obtain the signatures of at least 25% of the number of Riverlea electors who voted in the last municipal election (i.e. 2009) and have those signatures verified under oath by the Board of Elections. If the 25% requirement is met, the Riverlea Village Council shall (within 30 days of receipt of a copy of the verified petition), pass an ordinance declaring its intention to enter into negotiations with Worthington. The Riverlea Village Clerk shall file a certified copy of the ordinance with the Worthington City Council.

Initial Procedure. As set forth above, the Riverlea Village Council must pass an ordinance declaring its intention to enter into annexation negotiations with Worthington and appointing 3 commissioners to represent Riverlea. Passage of the ordinance by the Riverlea Village Council is required within 30 days after presentation of the petition to the Riverlea Village Clerk. A certified copy of the ordinance shall be served on Worthington City Council who has up to 30

days to pass an ordinance authorizing annexation negotiations and appointing 3 commissioners to act on behalf of the City of Worthington.

Current Status. As anticipated, Mr. Aukland circulated a petition seeking to have 25% of the resident electors of Riverlea request that the Riverlea Village Council pass an ordinance declaring its intent to enter into annexation negotiations with Worthington and to appoint 3 commissioners to represent Riverlea in those negotiations. On February 12, 2011, the Franklin County Board of Elections notified the Clerk-Treasurer of the Village of Riverlea that the petition had the requisite number of signatures. On February 22, 2011, Riverlea Village Council passed Ordinance 01-2011 the title of which reads as follows: “An Ordinance declaring an intent to enter into annexation negotiations with the City of Worthington, Ohio and to declare an emergency.” The Ordinance appointed 3 commissioners, all of whom are members of Riverlea Village Council. They include Kirk McHugh, Scott Gordon and Eric MacGilvray. On March 11, 2011, we received a certified copy of Ordinance 01-2011. We hope to have a discussion as early as Monday evening about how you want to proceed. A copy of Ordinance 01-2011 is attached to this memorandum.

Applicable Ohio Revised Code Sections (Edited and Paraphrased).

The provisions of the Ohio Revised Code governing the procedure to be used when a village seeks annexation into a city were enacted 58 years ago by the Ohio General Assembly. We are unable to locate anyone who has used the procedure. However, we are prepared to assist in taking the issue to a conclusion. Following are some of the provisions of Chapter 709 of the Ohio Revised Code. Some sections are difficult to understand, so we attempted to edit and paraphrase in the hope of better comprehension.

Section 709.24 – Petition for Annexation; Appointment of Commissioners

- If there is presented to Riverlea Village Council a petition to be annexed to Worthington signed by Riverlea resident electors numbering not less than twenty-five percent (25%) of the number of electors who voted in such election in Riverlea, the Riverlea Village Council shall take steps to select and appoint three commissioners to represent Riverlea in annexation proceedings. If the petition is accompanied by a certificate, under oath, from the Clerk of the Franklin County Board of Elections to the effect that the petition contains the requisite percentage, the Riverlea Village Council shall, within 30 days of the presentation of the petition, pass an ordinance declaring its intention to enter into negotiations with Worthington with which annexation is proposed and Riverlea shall appoint the three commissioners to represent Riverlea in such negotiations.

Section 709.25 – Ordinance or Petition; Procedure - Not Applicable

- This Section is not applicable in that it deals with whether an annexation is for a “corporate purpose” or a “school purpose.”

Section 709.26 – Designation of Commissioners for Negotiations

- Upon the passage of the Riverlea ordinance, the Clerk of the Riverlea Village Council shall submit a certified copy of it to the Worthington City Council. Within 30 days after Worthington City Council receives the certified copy of the ordinance, it may pass an ordinance designating 3 commissioners to represent Worthington in such annexation negotiations.

Section 709.27 – Procedure on Failure of Worthington to Designate Commissioners

- If, within 30 days after receipt of the Riverlea Ordinance, the Worthington City Council fails to pass an ordinance designating 3 commissioners to represent the City of Worthington then, upon receipt of a petition signed by resident electors of a number not less than 25% of the number of electors voting at the last previous regular municipal election of the City of Worthington, petitioning Worthington City Council to take such action as is necessary to initiate such proceedings and to appoint 3 commissioners to represent it, Worthington City Council shall pass an ordinance appointing such commissioners.

Section 709.28 – Conditions of Annexation

- The commissioners shall proceed to arrange the conditions of annexation and report the result of their action to the Village Council and the City Council, respectively, within 120 days from the date of the appointment of commissioners of the City. If commissioners are unable to agree within the 120 days, the Franklin County probate judge will appoint an additional commissioner who shall not be a resident of either Worthington or Riverlea. The additional commissioner shall act with the other commissioners in arranging conditions of annexation, and the conclusions arrived at and agreed upon by any 4 of the commissioners shall be the conditions upon which the annexation shall be submitted to the voters of Worthington and Riverlea, and the findings thus arrived at shall be reported by the commissioners to the Worthington City Council and Riverlea Village Council.

Section 709.29 – Submission of Annexation Question to a Vote; procedure

- Within 30 days after filing conditions of annexation, the Worthington City Council and Riverlea Village Council shall order the question of annexation upon the conditions contained in the report of the commissioners, to be submitted to a vote at the next regular election or primary election, occurring not less than 90 days after the filing of such conditions with the Board of Elections. Each ordinance shall prescribe the manner in which the submission shall be made and shall be published by posters or otherwise for at least 20 days prior to the time fixed for the election, in such manner as the legislative authority deems most expedient, and a printed copy of such conditions shall be mailed to each voter of such municipal corporations, as shown by the registration books.

Section 709.30 – Assent to Annexation; election

- Worthington City Council may by ordinance assent to such annexation and waive the submission of such question to the electors of the City of Worthington. If, within 30 days of the passage of an ordinance, a petition, signed by 25% of the voters of the City of Worthington is filed requesting that such election be held, such waiver shall be of no effect, and provision shall be made for the holding of such election. Such petition shall be filed with the board of elections, and upon finding such a petition sufficient such Board of Elections shall notify the Worthington City Council affected thereby, and shall prepare to conduct such election.

Annexation Steps Involving Two Municipal Corporations

Village of Riverlea and City of Worthington

1. Petitioners obtain signatures on Petition proposing to annex the Village of Riverlea into the City of Worthington.
2. Petition filed with Riverlea Village Council seeking appointment of three (3) commissioners to discuss conditions of annexation with representatives of the City of Worthington.
3. Within 30 days of the filing of the Petition, Riverlea Village Council shall pass an ordinance declaring its intention to enter into negotiations with Worthington, and to appoint the three commissioners to represent Riverlea.
4. Upon passage of the Riverlea ordinance, Clerk of Riverlea Village Council sends certified copy to Worthington City Council.
5. Within 30 days after Worthington City Council receives the certified Riverlea Ordinance, it may pass an ordinance designating three (3) commissioners to represent Worthington in annexation negotiations.
6. If, within 30 days after Worthington receives the certified Riverlea ordinance, Worthington City Council fails to pass an ordinance designating three (3) commissioners to represent the City then, upon receipt of a petition signed by not less than 25% of the number of Worthington electors who voted in the last municipal election (2009), petitioning City Council to take such action as is necessary to initiate such proceedings and appoint 3 commissioners, Worthington City Council shall pass an ordinance appointing such commissioners.
7. At this point in the process, Riverlea and Worthington have decided either to enter negotiations or not. If they have, see 8 below. If not, stop reading.
8. The Riverlea and Worthington commissioners shall proceed to arrange conditions of annexation and report the result of their action to Riverlea Village Council and

Worthington City Council within 120 days from the date that Worthington appointed its 3 commissioners.

9. If commissioners are unable to agree on conditions of annexation, Franklin County Probate Judge will appoint an additional commissioner (who is not a Worthington or Riverlea resident) to work on arranging conditions of annexation, and the conclusions arrived at and agreed upon by any 4 commissioners shall be the conditions submitted to the voters of Worthington and Riverlea.
10. Within 30 days after filing conditions, Riverlea Village Council and Worthington City Council shall order the question of annexation to be submitted to a vote at the next regular election occurring not less than 90 days after filing the conditions of annexation.
11. Worthington City Council may by ordinance assent to such annexation and waive the submission of such question to electors of the City. Within 30 days of the passage of the ordinance, 25% of the people can file a petition asking that the election be held. In such case, the waiver shall be of no effect and the election shall proceed.

ORDINANCE NO. 01-2011

**AN ORDINANCE DECLARING AN INTENT TO ENTER INTO ANNEXATION
NEGOTIATIONS WITH THE CITY OF WORTHINGTON, OHIO, AND TO DECLARE AN
EMERGENCY**

Introduced by Mr. Gordon .

WHEREAS, on February 12, 2011, the Clerk-Treasurer of the Village received correspondence from the Deputy Director of the Franklin County Board of Elections that included copies of a petition filed with that Board of Elections expressing a desire that the territory of the Village of Riverlea be annexed to the City of Worthington, Ohio, an adjacent municipality thereto, and requesting that the Council of the Village of Riverlea appoint commissioners to discuss with such City the conditions of annexation; and

WHEREAS, such correspondence included an assertion by the Deputy Director of the Board of Elections that the petitions were circulated pursuant to Ohio Revised Code Section 709.24 and that the Board of Elections had determined that such petitions contained the number of signatures required under such statute; and

WHEREAS, Council of the Village of Riverlea has determined to treat such correspondence as the filing of a petition under Ohio Revised Code Section 709.24, and to consider such petition as filed in accordance with such statute and to proceed in response thereto as required by applicable law, including specifically Sections 709.23 to 709.33, inclusive, of the Ohio Revised Code.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE
OF RIVERLEA, STATE OF OHIO:**

Section 1. DECLARATION OF INTENTION; APPOINTMENT OF COMMISSIONERS. That Council of the Village of Riverlea, Ohio, hereby declares its intention to enter into negotiations with the City of Worthington, Ohio, regarding annexation of the entire territory of the Village of Riverlea to the City of Worthington. Council of the Village of Riverlea does hereby appoint the following three persons as commissioners, pursuant to Section 709.24, Ohio Revised Code, to represent the Village in such negotiations:

Kirk McHugh

Scott Gordon

Eric MacGilvray.

Such commissioners are authorized to perform all the duties required of commissioners under Sections 709.23 to 709.33, inclusive, of the Ohio Revised Code, including specifically to arrange the conditions of any proposed annexation and to report the results of their actions to the Council of the Village of Riverlea within 120 days from the date of the appointment of commissioners to represent the City of Worthington, if so appointed, or by such other date as required by law. Each commissioner shall continue in office until resignation or the earlier completion of the duties required by law.

Section 2. SUBMISSION TO WORTHINGTON. That the Clerk-Treasurer of the Village is hereby authorized and directed to submit a certified copy of this Ordinance to the City Council of the City of Worthington, Ohio, within 30 days after its effective date and the completion of the publication hereof as required by applicable law.

Section 3. EMERGENCY; EFFECTIVE DATE. The Council of the Village of Riverlea hereby determines that it is necessary that this Ordinance take effect at the earliest possible date in order to provide for the operation of the municipality, and for the immediate preservation of the public peace, health, safety and general welfare of the municipality. Such emergency exists in that applicable Ohio law requires actions by the Clerk-Treasurer of the Village be authorized and taken at a time before which this Ordinance would otherwise be effective, but for this emergency provision. Accordingly, this Ordinance shall be in full force and effect immediately upon its passage.

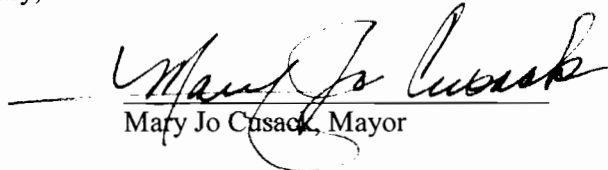
Section 4. OPEN MEETINGS. This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council and that all deliberations of this Council that resulted in those formal actions were in meetings open to the public in compliance with law.

Section 5. PUBLICATION. That pursuant to Ohio Revised Code Section 731.25, the Council of the Village of Riverlea hereby determines that publication of this Ordinance in a newspaper is unnecessary and does hereby determine that this Ordinance, or a summary of this Ordinance, shall be published by posting copies of this Ordinance or a summary hereof in the five following places which are determined to be the five most public places in the Village of Riverlea, Ohio:

1. The Circle on West Riverglen Drive.
2. The Ravine Park on West Riverglen Drive.
3. The Northwest corner of Beverly Place and Dover Court.
4. Lot 75 on West Riverglen Drive.
5. Lot 7 on West Southington Avenue.

Copies of this Ordinance shall be posted continuously in the above-mentioned places for a period of fifteen (15) days.

Passed this 22nd day of February, 2011.


Mary Jo Cusack, Mayor

ATTEST:


Pamela M. Colwell, Clerk-Treasurer

I hereby certify that on the 23rd day of February, 2011, I posted a copy of the above Ordinance, in accordance with the provisions of this Ordinance and Ohio Revised Code Section 731.21, in each of the five places heretofore designated by Council as the most public places in the Village of Riverlea and that the same remained there posted continuously for fifteen (15) days.


Pamela M. Colwell, Clerk-Treasurer