

COMMISSIONERS RECORD 52
FRANKLIN COUNTY
Commissioners' Proceedings for February 4, 2013

This document is a summarized version of the Board of Commissioners proceedings. The minutes are paraphrased, not verbatim. Access to an electronic audio recording of the meeting is available upon request.

The Honorable Board of Franklin County Commissioners met on the above date in a Special Board Meeting. Present for the meeting were Rick Miller, Chairman; Robert E. Koch, Chair Pro Tem; and Brad Peck, Member; Fred Bowen, County Administrator; and Mary Withers, Clerk to the Board. Meeting convened at 1:00 pm with the Pledge of Allegiance.

Public Hearing: The purpose of the public hearing shall be to review the petition for incorporation of the City of Riverview (Franklin County Auditor's Office number 2012-1) as set forth in RCW 35.02.070. The petition for incorporation, description of proposed boundaries of the territory to be incorporated, and map thereof may be inspected or copied during normal business hours at the Franklin County Auditor's Office located at 1016 North 4th Avenue, Pasco, Washington. (Hearing continued from December 5, 2012, and January 23, 2013)

Deputy Prosecutor Ryan Verhulp met with the Board. Present in audience: Roger Lenk, Leland Kerr, Steve Johnson, four other men, two other women and three TV reporters.

Mr. Verhulp reviewed the process followed by comments by Mr. Peck and Mr. Koch.

Mr. Miller asked if anyone in the audience would like to speak.

Leland Kerr, city attorney from the City of Pasco, gave the Board members a letter and read it into the record (Exhibit 1). Steve Johnson read a statement (Exhibit 2).

Roger Lenk spoke in favor of the petition for the incorporation of the City of Riverview and asked the Board to wait to make a decision until after a Superior Court decision.

There was lengthy discussion between the Board members and Mr. Verhulp as well as audience responses to questions from the Board members.

Motion – Mr. Koch moved to disapprove the petition because it does not meet the requirements. A proposed resolution was reviewed. Mr. Verhulp summarized the findings portion of a draft resolution. Second by Mr. Peck. 3:0 vote in favor.

ADJOURNMENT

Motion – Mr. Koch: I move to adjourn. Second by Mr. Peck. 3:0 vote in favor.

Adjourned at 2:06 pm.

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There being no further business, the Franklin County Board of Commissioners meeting was adjourned until February 6, 2013.

BOARD OF COUNTY COMMISSIONERS
FRANKLIN COUNTY, WASHINGTON



Rick Miller, Chairman



Robert E. Koch, Chairman Pro Tem



Brad Peck, Member

Attest:


Clerk to the Board

Approved and signed February 13, 2013.



KERR|LAW|GROUP

Leland B. Kerr
Attorney at Law
lkerr@kerrlawgroup.net

Patrick J. Galloway
Attorney at Law
pgalloway@kerrlawgroup.net

February 4, 2013

RECEIVED

FEB - 4 2013

Franklin County Commissioners

FRANKLIN COUNTY COMMISSIONERS

Mr. Rick Miller, Chairman
Mr. Robert E. Koch, Member
Mr. Brad Peck, Member
1016 North 4th Avenue
Pasco WA 99301-3706

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FEB - 4 2013

Franklin County Commissioners

RE: Incorporation Petition

Dear Franklin County Commissioners:

As evidenced by City of Pasco Ordinance No. 4077 (a copy of which was provided to the Franklin County Auditor on November 19, 2012), that portion of the "donut hole" identified as Annexation Area No. 2, was annexed into the City of Pasco effective January 1, 2013. As a result, that area has become integrated into the City of Pasco with municipal services being provided since that date.

As required by RCW 35.02.155, this annexed area must be withdrawn from the territory originally included by the incorporation petition.

"Territory that ultimately is annexed, as a result of the filing of such an annexation petition or adoption of such an annexation resolution during this ninety-day period, shall be withdrawn from the incorporation proposal."

Under the law, the removal of the annexed territory effectively requires the County to disapprove the petition for incorporation because it fails to comply with the requirements of RCW 35.02.010. That statute provides:

"Any contiguous area containing not less than one thousand five hundred inhabitants lying outside the limits of an incorporated city or town may become incorporated as a city or town operating under Title 35 or 35A RCW as provided in this chapter; PROVIDED, That no area which lies within five air miles of the boundary of any city having a population of fifteen thousand or more shall be incorporated which contains less than three thousand inhabitants."

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The remaining unincorporated portions within the "donut hole" are neither contiguous nor contain 3,000 inhabitants. The clear mandate of RCW 35.02.070 is that the petition for incorporation must be disapproved.

"A county legislative authority shall disapprove the proposed incorporation if, without decreasing the area proposed in the petition, it does not conform with RCW 35.02.010."

Since neither of the conditions required under RCW 35.02.010 remain fulfilled, the County Commissioners, as a matter of law, are required to disapprove the petition for incorporation.

The City wishes to emphasize that the existence of litigation does not change the statutory mandate.

The mere filing of litigation creates no presumption that the litigation is valid. On the contrary, the plaintiffs have the burden of proof to demonstrate by a preponderance of the evidence that they are entitled to the relief they seek. They also have the affirmative responsibility to move the case forward; otherwise, the case may be dismissed either by motion of the defendant or by action of the Superior Court Clerk. (CR 41(b)).

The plaintiffs in *Citizens for Lifestyle Preservation et al vs. City of Pasco et al*, Franklin County Cause No. 12-2-50849-9, have failed to take any steps to press this case forward to adjudication.

Without a Court Order invalidating the annexation, the annexation stands; as a result, the incorporation petition cannot proceed.

Therefore, it is respectfully requested that the Franklin County Board of Commissioners comply with the law and disapprove the proposed incorporation petition and election.

Respectfully yours,



Leland B. Kerr
KERR LAW GROUP

LBK/sla

cc: City of Pasco

Steve Johnson
2104 N. Road 68
Franklin Co., WA 99301
February 2, 2013

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FEB - 4 2013

Franklin County Commissioners

Franklin County Commission
1016 N. Fourth Street
Pasco, WA 99301

Brad Peck,
Rick Miller,
Robert Koch:

I just want to remind you of what your job is. Your job is to represent the will of the people, not your own will, not Gary Crutchfield's will of, but the people's will. That's what your job is.

It's also the job of the Pasco City Council - to represent the will of the people, but it appears that the petty tyrants on the Pasco City Council couldn't care less about the people. They think that they're the boss and that they can tell us how we're supposed to think.

The people! That's who the real boss is. The Franklin County Commission and the Pasco City Council just work for the people - that's all.

Sincerely,



Steve Johnson