

November 17 2020

The Board of Commissioners of Lorain County, Ohio met this day in a regular meeting at 9:30 a.m. by doing a Zoom Platform with Live Streaming with Commissioner Lori Kokoski, President being at home, Commissioner Sharon Sweda, Vice-President being at home, Commissioner Matt Lundy, Member being at home, County Administrator James R. Cordes being at home and Theresa L. Upton, Clerk in her county office and Prosecutor Gerald A. Innes being in the public hearing room.

NOTICE: COMMISSIONERS MEETINGS ARE CLOSED TO THE PUBLIC DUE TO THE COVID-19 PANDEMIC.
THE COMMISSIONERS WILL BE DOING A ZOOM PLATFORM WITH LIVE STREAMING THE BOARD MEETING AT [LorainCounty.us/watch](https://www.loraincountyohio.gov/watch) AND <https://www.facebook.com/LCGov>

JOURNAL ENTRY

Commissioners said the Pledge of Allegiance.

Commissioner Lundy gave an inspirational word

The following business was transacted

A.

HEARING

9:30 a.m. - Vacation hearing - paper streets known as Arlington Road and Bellaire Road along with the undeveloped section of existing Dellwood Road, Grafton Township

Clerk Upton stated the proposed Vacation of paper streets known as Arlington Road and Bellaire Road along with the undeveloped section of existing Dellwood Road, Grafton Township, Ohio was received on September 30, 2020

These streets Dellwood Road (60'), Bellaire Road (60') and Arlington Road (60') in Kingsley Acres, Original Lot No. 25 and 36 recorded Plat in Volume 12, Page 29 and containing 9.59 acres of land more or less but subject to all legal highways. Except therefrom easterly 1, 385 feet plus or minus of Dellwood Road (60') and containing 1.92 acres of land

September 30, 2020 Clerk notified County Engineer to review and utility companies Columbia Gas, Ohio Edison, Windstream, RLCWA, Grafton Cable Communications and ODNR for easement purposes.

Res#20-597, adopted October 7, 2020 received and journalized said petition and scheduled the view and hearing

October 9, 2020, email was received from Mr. Robert Klaiber, Lorain County Engineers Office stating "The plat and legal description accurately describe the streets to be vacated"

October 13, 12 notifying letters were sent to property owners that signed the petition along with abutting property owners

October 20, a notification letter was sent to Lee A Sooy Trustee, Lee A Sooy Trust as per instructed by Trustee Weigel and Assistant Prosecutor Innes

October 20 & 27, notice of said view & hearing was published in Chronicle Telegram

October 26 email received from Nick Willis, Associate Field Engineer, Columbia Gas, stated "there are no facilities within the proposed streets to be vacated, therefore, he approves this vacate without reservation

Commissioner Kokoski said there are a lot of people in the public hearing room today and Jerry Innes in present as well and asked Assistant County Prosecutor Innes to swear in anyone wishing to give testimony, he did

Commissioner Kokoski asked if anyone from the Engineers Office would like to give comments.

Clerk stated Mr. Klaiber is on zoom with us.

Mr. Robert Klaiber said their office did prepare the legal description and certify that it was correct. He brought this point up several months ago when this petition was submitted to their office that if this street is vacated you will create parcels that are landlocked. Right now, the parcels could be un landlocked by consolidating them to existing parcels to create frontage, but if the board were to approve this you would be creating landlocked parcels. There is a process to go through to consolidate so everyone would have frontage on their property.

Commissioner Sweda aid by unlandlocking does anyone lose current property by unlandlocking. Commissioner Kokoski said accessibility. Commissioner Sweda said she is talking about anybody loosing private property to remove the condition. Mr. Klaiber said no. Some of the existing owners on Center Road that could consolidate their parcels to have access to Center Road validating the parcels. The condition that existing right now, if the street were to be vacated you would create landlocked parcels.

Commissioner Kokoski asked if anyone had any questions for Bob

Commissioner Kokoski asked if any Township Trustees would like give testimony.

Clerk Upton stated there are 3 Township Trustees present in the public hearing room and not sure who is coming up first and Carl, Christine and Andrew are here. Commissioner Kokoski she sees Carl is coming up.

Carl Weseymeyer, Grafton Township Trustee said hello, Commissioners. He stated what he has is a number of. Clerk Upton said Carl please state your name for the record.

Mr. Weseymeyer, Law Road said he had a number of people come to him over the year wanting to talk about vacating these paper streets. When we talk about these streets they are completely paper. This all started back in 1927 and in so you would think that more would have been done. A section of Dellwood was build but never finished and there is a section of that is only on paper and never been build, so it is not like we are taking or getting rid of any street at all, we are just getting rid of something that is on paper. The people that own property on both sides of Dellwood that is not build have stated they do not want a street put in it. Also on Arlington Road that comes off State Route 83 we have 2 other residents that have the same feeling. He said Arlington Road would go between their 2 properties, and it is not like it has never been build so we are not taking anything away and they would like to see the paper street go away also. He said as far as the Township's concern he learned back in 2016 after going through an Ohio Township Association conference, that a township defiantly the township has liability with these easements and they strongly recommended that we vacate. So back in 2016, he approached Mr. Innes to get direction in how to proceed with that. Since then he had a section of Law Road vacated which was being unused and unmaintained and this obviously did not get to very quickly. This the main reason the township is involved in order to get rid of the liability issues. As Mr. Klaiber said with consolidation of lots 2 of the property owners that own the individual lots along these streets and if they were to consolidate then everything would have access to a road. He stated that Mr. Dubeck who has land along Bellaire and Dellwood would have access to a cul de sac on Dellwood which by the way he actually granted an easement to Grafton Township back in 2005 to put in a cul de sac on that road. So, he does not know if he was every thanked for that but he was happy that they were able to put a cul de sac on that road by back. He said Mr. Dudek has access to Dellwood and if Mr. Kistner were to consolidate his lots would have access to State route 83. He said no one else has issues of being landlocked. At this time that is all he has to say.

Commissioner Kokoski asked if any of the other Trustees wanted to comment.

Assistant Prosecutor Innes said he would like to ask Mr. Klaiber a couple of questions, Commissioner Kokoski said ok

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Mr. Innes asked Mr. Klaiber and he asked you to look at the plat and is he correct that the streets were not dedicated or accepted on the plat. Mr. Klaiber said yes, he sent him an email and the map is very old and the language that was used at that time was no official dedication presa

Mr. Innes said and we were unable to find any subsequent resolution. Mr. Klaiber said he would not even know where to look for something like that. He said as the Trustee pointed out this was platted back in 1927, April of 1927. Mr. Innes said thank you Commissioner Sweda said were these disclosed on the subsequent deeds of the property that it affects. Mr. Klaiber said Commissioner, what they would have done is that these streets were part of a subdivision and deeds would actually indicate the subplot numbers in the subdivision there would be no such description of the property except the subplot number in the subdivision. Commissioner Sweda said not an easement, would that reflect on a parcel. Mr. Klaiber said no because this was a platted subdivision that the lots went up to the right of way, Commissioner Sweda said ok.

Commissioner Lundy said he just wants to note for clarification for anyone watching that it states Peter Zwick on the screen but Mr. Bob Klaiber is the one that is present today.

Commissioner Lundy said he would like to ask a question of the law director, what is the liability of exposure, assistant prosecutor, sorry, what is the liability exposure to the townships for having these streets. He said the trustees indicated they have liability exposure, he is just trying to figure out what the liability exposure would be not aware of any litigation that has been brought to the township concerning these. Mr. Innes said the township has an obligation to maintain their roads in safe and passable fashion and does not mean they have to be paved or graveled or something like that and wanted to get on the record that these roads have not been formally accepted and in his opinion that obligation does not arise until those roads are formally accepted or dedicated in some fashion. Now, as Carl mentioned part of Dellwood, and you can dedicate it by indicated on the plat that they are accepted but this has never been done in Lorain County to his knowledge. Commissioner Kokoski said Jerry, are you saying that if it is a paper street it can not be liability, it has to be paved, how is it a liability if it has never been put in. Mr. Innes said that is what he is trying to explain. Once a road is put in and what they are talking about down at the state if you have a road that has been accepted then you just never improved or done anything, technically you have a liability because you have a road that is not passable. He does not know that this exist in this particular incident because it has never been accepted or dedicated in some other common law fashion. He said the Trustee association still tries to get these roads vacated just so they are to clear the air and then you create a problem because then you have a document over at the engineers and recorder's office that indicated there are streets there and you have people that are not sophisticated enough to realize that does not indicated that there is a street there and be mislabeled. He said if it is a street and paper street and not have impact to people then it certainly is the appropriate thinking and would hear from some parties that feel they are impacted and would be of interest coming forth.

Commissioner Lundy said at this point if it has never been, Mr. Innes said he does not believe the township has a liability here because it has not been dedicated. He does not have the evidence of what happened in 1927 and someone could come in and present evidence and based on what he knows he has never seen that these roads have been dedicated or accepted. Commissioner Lundy said at this point then the township nor the county has any liability issues because it has never been dedicated or accepted. Mr. Innes said yes that would be his thinking. Commissioner Lundy said ok.

Commissioner Kokoski asked if there were any other townships wanting to make a comment. If not we can move onto the property owner that are in favor of this vacation

Commissioner Kokoski said she does not see anyone coming up. Mr. Innes said there is someone coming. Commissioner Kokoski said please state your name and address for the record.

William Peters, 36214 Dellwood Road, and is one of the property owners for the vacation. To begin with ORC 5553.10, affected 1972 said the road or part thereof remains unopened for 7 years shall maintain ... in authority shall be vacated in ability and establishment of the authority of proceeding thereof shall be void. So these roads are paper roads and should have been vacated in 1979 and they haven't so the liability in his opinion is irrelevant. There is an obligation to vacate these roads by the government. The detrimental impact is the roads were created. Quite frankly in all, the only reasons these roads are being vacated is being brought up for an issue is because of the people opposing them is for the issue of development to be put in by Reasar development. They are wanting to build a road to and extend Dellwood to get access to that when they when they already have access from state route 57. If Dellwood were extended it would increase traffic on that road, people would be going faster because there is no dead end and would endanger the children all along that road. He can not speak for Mr. Dudeck but would think that he would have similar minds, they are both veterans of the Marine Corp and enjoy the peace and tranquility afford by that cul de sac, a dead end road and would like use of that 1.93 acres of land and he does not see how anyone can oppose the vacation of those paper roads especially for their direct financial benefit of land that they have no right to. That is all he has to say. Commissioner Kokoski thanked him

Commissioner Kokoski asked if there was anyone else in favor of the vacation, come up sir.

Craig Dudek, 7432 Root Road, North Ridgeville and does not know exactly what year his grandfather bought that property he has a pretty good feeling he bought from Kingsley Acres and don't know if it was a development company back that or what. He said he is the 3rd generation owner of that property and when he is gone it will go to his sons, when they are gone it will go to his grandsons. If we would have wanted it developed, him and his wife would not live in North Ridgeville their address would have been Dellwood. If the road where to be put through and the property to the west were to be developed he could no longer use his property for what he uses it for. He can't see where he would be 500 feet from a dwelling to discharge a firearm and that would change his way of life and he owns it, they use to camp out there, go out there for family picnics and feel that like Mr. Peters does. This is not the first time that this has come up about vacating those roads and when he was asked to get the easement back in 2005, they said what can they do for him. He asked then if he could have those paper roads removed, and after a short period of time he was told no. If they put in paper road to extend Dellwood he believes there is another street that is Arlington or Bellaire that would actually put in then which is also a paper road and would cut his property right in half. Thank you.

Commissioner Kokoski thanked Jessica for wiping down the podium and asked if there was anyone else, Mr. Innes said someone else is walking up. Commissioner Kokoski said she sees him, thank you

Hello, I am Brian Douglas, 16088 Avon Belden Road an Arlington paper road runs along the side of his property and have lived there over 30 years and maintain, planted and taking care of this property and has been abandoned for 90 years and don't see at this point changing the status of that. It would change how they use their back property and it would be very detrimental to what they have established over the last 30 years. That is what he has to say and appreciates it. Commissioner Kokoski said ok, thank you for your comments.

Commissioner Kokoski asked if there was anyone else coming up, Jessica said yes there is someone coming.

Sue Norris, 16124 Avon Belden Road, and share the other have of Arlington Road next to Douglas' and have been there 36 years and when they moved there, there was no other houses around their property because at that time George Fox was farming all that property around them and there were no roads other than Dellwood on that property that he owned. Everything was abandoned there was no roads other than Dellwood it was all farmland and gradually they have seen other houses build on the other lots and they have maintained that property every since and have taken care of it and would be no benefit to anyone the township or anyone to have access to the road of Arlington and to divide Douglas' property and theirs to get access to more of the property behind them when they can get access when they farmed the property through access of that other property back there. She said she enjoys seeing, they had 5 deer go across their property yesterday and to enjoy some of that outdoor life as they are getting crowded more and more with development and it is a sad state of affairs if people want to crowd out the lively hood of people because they want to have more development that is their choice but they also should not take the livelihood of those people that

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chose to live out there in the country because of roads or paper roads just because they want to come out there. She said taking Arlington between her and Douglas would serve no purpose. Commissioner Kokoski thanked her.

Commissioner Kokoski said she has a question for Mr. Klaiber. Say we got rid of these paper roads would it prevent a developer coming in their if they sold their property, they still would be able to build even if there were no roads associated with the land right now. People can still develop if they choose to if they sold that king farm, correct. Mr. Klaiber said you would just end up with a different layout, any of the property owners facing state route 83, that could become a new driveway to get back in there. Commissioner Kokoski said with vacation question we do have some landlocked properties if we were to vacate the roads in the back, that is what you said earlier. Mr. Klaiber said yes that is the big problem, like Trustee Carl pointed out you could consolidate those parcels that have frontage on public right of way but problem you have at this time is that those parcels may or may not be consolidated if you were to vacate you create land locked parcels. Commissioner Kokoski said ok.

Commissioner Kokoski said is there anyone else that is in favor of the project that would like to speak before she opens it up to those opposed. Commissioner Sweda said Commissioner, madame President can she ask a question of our counsel. Commissioner Kokoski said yes. Commissioner Sweda said Jerry, when she thinks Mr. Peters reference ORC back form 1972 what occurs, do you have an interpretation on that. Mr. Innes said there are 3 or 4 statutes regarding this and has never been able to reconcile all of them and from talking with Attorney Breunig who will speak against this the language is there and does say shall and you will get into some areas and what happens to taking against some landowners that are claiming to be landlocked and who actually pays them for that. Because if these lands are actually landlocked then they go to, they get split to the adjacent landowners and thinks that Mr. Breunig is going to maybe today or continue this that there is some law that suggest those adjoining landowners should compensate the person that is taking land away from and does say shall, but there are some and there are some 3or 4 statutes and he has been looking at them for 29 years and never been able to completely reconcile the language because some of those statues clearly indicated like Mr. Peters says that you can come in and there is even a statute that says that after 7 years the township loses their right and can the township legally come in and improve. He has also seen some cases that say that the landowners can sue to prevent that and then there are some the other statute that indicates there are some that you have to protect the landowners that would be landlocked. That is a roundabout answering your question but Mrs. Sweda. Commissioner Sweda said thank you. Mr. Innes said unfortunately there have not been many cases that have truly gone higher up in the courts so we are really looking at minimum cases there are no supreme courts cases to get us through this. Commissioner Sweda said thank you. Commissioner Lundy said the legislators do a good job of keeping the attorneys confused and themselves confused.

Tim Flurry, 36122 Dellwood said the and he is the last house on Dellwood at the cul de sac and this and when he bought the property about 9 years ago it was a bank owned home and there was not a lot of information that was given to them on this. He did sit down with the building commissioner at that time, he is not the current zoning inspector but the one at the time and he assured him that the paper roads, the township was working on to vacate them and that they, and street would not go through and they were going through the process of vacating these. So they purchased their property based upon the fact that this was a dead end road and rural area trying to get away from the developments that they previously came from. So they kind of did their homework before they bought their property and if he thinks anyone would have done their homework that they would have known that these paper roads and never dedicated as a real road. Commissioner Kokoski thanked him.

Commissioner Kokoski said anyone else, ok, is she coming up.

Michelle Medder, 36108 Dellwood and wanted to come to them from a public safety background and her credentials are put in charge of Medina County transit system, been invited by the State of Ohio many times when they are writing their From a safety stand point. As recently, federal with Cleveland Hopkins. So, Dellwood is a tight community, working with the Sheriff and don't have to tell you that there has been a lot of crime in Lorain County. They have a street watch that goes on so there concern also is the increase in traffic which of course will increase the risk of injury to animal, children and property damage, theft. Other than that, some of them have livestock on the property and about 20 years ago there was a case that went through Orville Courts because one family tired to sue another because a family member was injured by livestock. They tried to go through courts for an attractive nuisance so one of her fares with a development going through there, she has a horses, a mustang and William Peters has live stock as well and what attractive nuisance would that cause from them with the development going in with their animals and just want to bring that to their attention and the aspect of safety watch so you have everything you are looking at, thank you.

Jessica said there is someone else coming, Commissioner Kokoski said ok.

Kathy Flurry, 36122 Dellwood Road and wanted to say her and her husband bought this property as a bank owned property and chose to have a one family income and because of that bought the bank owned home so they could afford and put a lot of sweat and blood into their property so they could get to where it is at and to add a lot of value which is why they bought the property. The other thing she wanted to point out was that they do not in Grafton Township have their own police department and with that increasing traffic on our back road they could not get the police out them quickly as someone that has a police department. She said they have had experiences with that where they have had to call police and it would be 9 o clock at night and they would be some place in Lorain county and they could not get there fast and to put more traffic in there would increase calls to the police department and it would also decrease their value go down by taking that away from them and not be a dead end street, that is it, thank you, Commissioner Kokoski said thank you.

Commissioner Lundy said madame chair, if he could say for everyone in the room and for a public health safety for employees please make sure that you are covering your nose and mouth with your masks please. He thinks that is what has been recommended by the health department for the safety of everyone, thank you.

Commissioner Kokoski said anyone else, don't see anyone else, so we will open to anyone that is in opposition.

Attorney Erik Breunig, 411 East Avenue, Elyria attorney representing Dennis and Amanda Reasar which are both here today and they are in opposition thus the reasons why they are here today. He said he would like to note for the record and he did discuss this with Mr. Innes he is making an oral motion of sorts. He would like to see this hearing bifurcated in the sense if commission does find for the property owners that are advocating for this vacation at this point he would like to have this hearing bifurcated in the sense that he would discuss compensation at a later date because he has not had the time or means at this point to engage parcels and such of that nature and would be a highly contested matter anyway. He would like that noted for the record and for the sake of procedure sort of knock out that issue first and hopefully when there is no line of opposition in thinking it would be an important part of this discussion because what we are really talking about is advocating property rights of interest of certain property owners so and weighting that abrogation of property rights against a public benefit of having streets vacated for the speculative reasons for public health and safety and people in general and he understands that people do not want to have a development in their backyard. That are certainly people who live in the townships and he is one of them so he understands that wanting a development in their backyard and we are not necessarily talking about that. He wants to clarify for the record that his clients have not clearly said they are putting in a development or no intention of doing that in the immediate future and may not do it at all but to say that they purchased their property, that Dennis and Amanda Reasar in the 40 acres parcels that abuts Dellwood Drive if you are looking at the map that's been provided. So he would just say that this about vacation of streets but has multiple effects. It has the effect as Mr. Klaiber had pointed out removing access to platted lots in a subdivision. Those lots may not have direct access to a road, so they may not have access that this time, may not be buildable at this time, but they are none the less platted lots in a subdivision and thinks that Mr. Innes and Mr. Klaiber would probably agree with him and would think that they would it is just not a simple as consolidating those lots to get access to them and frontage on a right of way because your own standards of real estate conveyance that have been propagated in your own county by the with commissioners, engineers and auditors prohibits

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consolidation of sublots you would have to do a subdivision for that. Again all these property owners that have divided sublots down there can not just simply obtain a new survey, legal description and file a new deed and have a consolidated lot with access and road frontage on state route 83 that just is not possible based on your conveyance standards, he would like to point that out. Mr. Breunig said there has been a lot of talk about liability to the township and Mr. Innes did say and weigh in that there is no liability and he would attend to agree with him. There are a couple of reasons why and one of those reasons is that like all political subdivisions, like the commissioners lead the biggest subdivision around so you are well aware of this is chapter 2744 of the revised code and is subdivision immunity. So as Mr. Innes pointed out there is a duty to maintain roads that are in existence but that usually only goes to construction defect and if there is no construction than there can not be a defect. So that is one other reason and he would look at the townships motion to vacate this it is trying to appease the property owners on Dellwood and State route 83 that don't want a subdivision in there and making up this reason of immunity, not immunity, liability and to short of giving justidiation for making this request. Again you are looking at chapter 5553 of the Ohio revised code and as hi and Jerry have discussed there seems to be some contradictory language in there, from what you can and cannot take into account for street vacation when you must vacate, when you may vacate and one of the property owners mentions 5553.10 requiring, report requiring a road be vacated in 7 years from an order opening up a road. He said him and Jerry talked a little about this yesterday and before the meeting today. He pointed out to him that there is some case law that differentiates between a platting of streets and an order opening up the streets. These are 2 different things. These streets have been platted meaning they have vested property owners with certain right along them. The road itself has not been extended or an order by the commissioners opening it and that does not mean that it can't or won't be open in the future. So, to him that statue requiring the street to be vacated in 7 years in not applicable because there was never an order opening it up. He said the commissioners and he think Jerry had Bob do research on this and there has been no indication that the commissioners by resolution or by plat ordered the opening of any of these roads. If they had, it would cause that statue of limitations that was mentioned in 5553.10 to..... That has never been to rung, there is no requirements that the street be vacated at this point. He said so that means your decision today is entirely permissive you may find that it is in the public interest to vacate the road by definitions and you may also find that it is not in the public interest to vacate the road. He said you have nothing mandatory today to discern.

Attorney Breunig said another statue is 5553.09 and wants to make sure that this is stated on the record as well. It says if the vacation is not sufficient importance and that means if the commissioners find the reasons to vacate the road but find that it is not a specific importance to have the county pay for that vacation or pay for the compensation of property owners than you may find the property owners are benefited by that, so to him that is anyone speaking in favor of it. He said they would pay the actual cost to compensate the property owners that were being denied of their rights. He wonders how many people would still want to have that road vacated if they had to pay compensation to other owners whose property rights they are denying.

Attorney Broening said it has been mentioned by some of these property owners that they did their homework and moved out here because they liked the atmosphere they like a small tight knit neighborhood, tight knit community. He said he would like to point out that anyone that bought this property or bought these properties here on these platted roads and platted sublots also did their homework because it is on record. He said take his clients for example they knew that they might have the ability at some point to extend Dellwood Road and does not mean they are going to, but there was an expectation there. He said an expectation based on records that are located at the county. When you take away something that is something of record, you are taking away a right of property owners to access a public street, in this case they purchased as part of their overall purchase of the property. It is not just the land there are other rights associated with that. He said Commissioner Sweda is aware of that as her career in real estate and there are multiple rights involved when you purchase the property and can include surface rights, can include mining or oil right and in this case it includes the right of access to the streets on to which those properties abut and the rights to extend those streets are public and make them buildable roads.

Mr. Breunig said if you proceed with the vacation today you are doing so, knowing that you are taking away compensable property rights from certain property owners, his clients as well as others, and others may speak against this today, he is not sure he is the first. He would again, to keep in mind that those rights are compensable and the compensation that could be payable to them could be significant. Again, purchase something with a certain expectation in mind and a certain bundle of rights that goes along with it.

Mr. Breunig said these are the main points he wanted to bring to the Commissioners and obviously there are some legal issues that Jerry and him have discussed a little bit and wish there might be other questions at some point and obviously would not presume anything and Jerry is your legal counsel not him and the law surrounding this as Jerry pointed out there are not any upper level case law on this, and the most recent case he found on this was the 4th district in 1984 out of Ross County and that is the one that talks about an order opening the road verses platting the road and there is not a whole lot of authority here. He said with a lack of a good statutory structure and a lack of case law giving you much guidance and what he would submit to the commissioners because the statue does not guide you otherwise he would ask that you do this in a similar fashion as you some of the other hearings that come before you and note his experience with annexations and have been involved with you on that before where there is a definite balance of the burdens and detriments test. He said while it is not statutorily propagated here he would think that it would be an appropriate analog just because again you are talking about burden of some property owners by taking away right verses benefiting other property owners with a perceived benefit of not having another development hearing. He said with that he hit on the points that he wanted to today and he will remain available for questions or any other comments or concerns that may arise based on anyone else who would be speaking, thank you.

Commissioner Kokoski thank him

Commissioner Kokoski asked if there was anyone else that would like to speak about not approving this today. She said Jerry, Mr. Breunig brought up the compensation and if in deed we would have to compensate the property owners for the taking of their property would that come from the residents or would the county have to make that compensation if that is the case. Mr. Innes said well what Mr. Breunig indicated was that if taking could be established that someone would have to compensate those owners it could be in discretion of the county to divvy that up and determine that the county pays for or doesn't. With respect to Mr. Breunig motion he would recommend to the commissioners and ought to defer to making the decision today and he is not looking for a through brief but would ask that Mr. Breunig supply him with a case law or citations that he has could be helpful and do a recent search of some of the points that were brought up because some of the simplest things that have a merit legal things. He said what he heard today he heard thing that suggestion possible inscribed rights, right that would merit compensation and would like to further research on that.

Commissioner Kokoski said and if there were damages then to get an idea of what those damages would be. Mr. Innes said again all parties have that same opportunity.

Mr. Breunig said may he commissioners, Commissioner Kokoski said Mr. Breunig. Mr. Breunig said thank you and he agrees with that Mr. Innes and he would request he has a week or so depending on the holiday and what the commissioners decide at this point, to submit a brief to Mr. Innes but then he would also and make sure when we come back in for a decision based upon Mr. Innes research surrounding the brief and present that to the commissioners and be clear and would hope to see happen just a decision on that point on whether or not it is beneficial to vacate the road and then to continue the rest of the hearing. He said he does not want to have his clients necessarily spend the money on the necessary appraisals and what not to determine any damages that would flow from that until we get a decision on part 1. Then on part 2 would be compensation and who is paying that compensation.

Commissioner Kokoski asked Mr. Innes if he wanted her to make a motion to continue this to a later date and do we have to actual designate the date when that would be. Commissioner Kokoski asked Theresa if there was a time frame they are looking at. Mr. Innes said yes so we do not have to advertise. Clerk Upton said that is correct, we are coming into the holidays and the end of the year so, a new board and do you want to try to finish and get it done this year, correct. Commissioner Kokoski said it is up to the board. Commissioner Sweda said yes get it done this year. She said she thinks the homeowners and everyone involved has a desire to bring this to some kind of closure and conclusion and rolling over to a new administration may cause problems, sending down the road might take some time.

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Commissioner Lundy said if he could, he would just add that he has always been sensitive to private property rights and he has always been strong in that position and at the same time he knows, going back to his council days we always had issues with stub streets, whether to open up these stub streets and the concern of how it increased traffic. Then he would have members of the safety forces coming to him and say, councilman at the time well you need to get ambulances in and out or what it may be. He said cul de sacs believe him, he thinks everyone loves cul de sacs and everyone that lives on a street and he lives on a street there that gets heavy traffic and it is nice and wide and be amazed by the speeds he sees and it truly amazes him. He said the unfortunate thing here, there was piece in the land before all these things came up and now we have a difficult decision here to make sure we take into account private property rights and then at the same time being very sensitive to the fact of the concerns of the folks that have lived there a very long time, wanting their way of life to remain how it is. He certainly thinks we need to look at what brought forth legally and what has to be looked at and desire of his colleagues to wrap it up before the end of this year so that folks know where this thing is going before 2021 and hopes that it will be a better year because it was just a more difficult thing to deal with in 2020.

Commissioner Sweda said one thing she is asking is she is not asking for haste in fact that it would require a greater time frame she would obviously defer to resolving this is the most efficient way possible and the most equitable way an if timing is a factor, in no way is she suggesting that we accelerate for that benefit. So she wanted to add that.

Clerk Upton stated that Mr. Breunig had a comment. Mr. Breunig said thank you Theresa and Commissioners. He wanted to go back to Mr. Lundy's comments because he thinks they are excellent comments and think your comparison to stub streets in council and what not, and would remind the commissioners that if you decide with them and not vacate the road at this time, it is not necessary the end of the story as far as development goes. There are multiple steps that still have to be taken to actually putting a development in gear and wanted to remind them again, as far as his clients are concern, there are no plans to do that at this point. He said right now they are just there to prevent a property right from being taken. Again they bought with the certain expectation that in the future they might want to do something, maybe not they don't know, but even if that is the case there would be multiple opportunities in the future with the township trustee level and the county level to weigh those concerns with any potential development that would come of this. Right now, all we are talking about is not abridging that media right. Those developments if they should ever come to fruition would still have to go through all the procedures, all engineering, all zoning requirements, that would be required in a subdivision to be established with the county.

Mr. Innes said he believes there is someone coming up. Commissioner Kokoski said she cannot hear him.
Clerk said there is someone that is standing in the back of the room.

Kathy Flurry said she want to point out that she bought a piece of property and she had an expectation that it was going to have access to a paper road she would feel that it would be her responsibility to go to the township, trustees and say what the statue of these roads. If they had, then they would have been told that these roads are being vacated and that was the plan. She feels that was a responsibility that would fall on to them that they did not do that homework. That is all she had to say.

Mr. Innes said when you were asking if we could bump this to December 2 for determination of the issue. The problem is that should we proceed we would have to squeeze in the final thing on the 16th. He said he is not sure if we will have any meetings after that. Clerk Upton said did you say December 2, Commissioner Kokoski said the 16th. He said that is the only scenario he says in finishing this before the end of the year. Clerk said December 1st we already have a hearing this day, a Commissioners meeting an annexation is that morning you could do later that day or the 15th or thereafter it is up to the Board to what they want to do. We could schedule another public hearing on the 15th if we had to verses the 16th. Clerk said there is someone at the podium.

Commissioner Kokoski said mam, did you want to say something.

Sue Norris said she understands the peoples concern about Dellwood and the safety. She lives on route 83 and for the last 36 years and when they moved there the traffic was very little but over the last 36 years the traffic and speed has increased considerably and the number of people in her ditch have increased considerably and the accidents on route 83 between 57 and 303. She said in the next 2 years the state is going to put 2 cul de sacs at 303, at down by 303 and the park and fire station that will increase the traffic even more and the speeding even more and that is going to make the residents on 83 and the district between 303 and 57 harder to access their driveways. The people at Dellwood are going to have an even harder time with safety getting out of their street to get out on the road and there is more traffic coming out of Dellwood they are going to have more safety issues then they do now. If you increase the traffic coming out of Dellwood there are going to be more accidents and probably be more deaths then there have been occurring on route 83 between 303 and 57 than there have been in the last 30 years. She thinks the commissioners need to consider that also even if this family has access to 57 rather than 83 it is something they need to consider more than compensation.

Commissioner Lundy said he knows the Chair is needing to leave shortly so. Commissioner Kokoski said actually her meeting got cancelled so she has all the time that we need. Commissioner Lundy said ok.

Commissioner Lundy said do we have a genral consensus that we need the legal minds to meet and look things over and we are going to have no decision will be made today then we just need to settle on a date.

Commissioner Kokoski said she does not know if rushing it at the end of this year is going to get us to where we got to go this may need to wait to the beginning of 2021.

Commissioner Kokoski said Mr. Breunig. Mr. Breunig said he appreciates that everyone wants a well informed decision but at the same time if you delay it he thinks that we almost would want to start the process over with another street view if we are looking at another panel deciding this. He said his preference is that at this point the 3 of you are very familiar with it at this point and would say and you have looked at it and don't know if Jerry would agree with this but a lot of this will come down to legal issues and if he and Jerry could work those out then you would have time to schedule them in hopefully at time to render a decision based upon legal briefs would be submitted and don't want to make t hat presumption for you. He understands that this is will be a deliberated process and understands that whatever you decide to do and will state for the record that we have a panel that started this and would think he would like to see this through rather than incurring additional time, fees, cost, etc. to do that. He does not think it would be fair to the new panel to render a decision based on a street view that occurred by a previous panel testimony today and that would be his concur today, thank you.

Commissioner Kokoski said it would just be a matter of the new panel going out to view the vacation area just like they did and does not think that is a huge issue for anyone, but. She asked the Board if they had any preference on what should happen. Commissioner Lundy asked Jerry what does the law say on that. So you have new people in the chairs are they a continuation on the previous view that took place by the commissioners or because they have not physically been on site now they have to be on site. Mr. Innes said they would have to review as far as hearing whether they felt sufficient able to view a transcript of this hearing and meetings that occurred that would be up to them but that would be discussed as to other proceedings we have going forward and he would think that the new board would want to have some sort of additional hearing where they would ask their own questions and such.

Mr. Douglas asked if he could speak. Commissioner Kokoski said sure. Mr. Douglas said he disagrees with the counsel, he said eventually they are all homeowners and not attorneys this is a new process to them and they have not done this very often. He said to rush thought this without allowing them the opportunity to feel their way through this and decide what is going to happen it would be very detrimental to all of them. He thinks that we should not rush through anything until they can get proper representation and find out exactly what they are going to do. He said he appreciates that. Commissioner Kokoski said ok.

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Commissioner Kokoski said maybe the other owners want to get their own attorneys to represent them. Commissioner Lundy said for the record they have been following the time lines and notifications that have been set forth by law so he does not want to anyone thinks that we just establish that on our own timelines and guidelines. Commissioner Sweda said she would given anyone the opportunity in seeking counsel. Commissioner Lundy said sure.

Commissioner Kokoski said she is open to either waiting until next year, it is up to you and would recommend that they wait and not rush things. Clerk Upton said you want to continue the hearing, is that what she is hearing. Commissioner Kokoski said yes defiantly want to continue the hearing just don't know if they want to continue it to this year or next year. Commissioner Sweda said one thing she can say is that if we are looking at compensatory damages or subsequent lawsuits then that is a decision that has to be probably made by the folks that would be fighting that charge. Clerk Upton said the only thing she can say is that if we wait until next year she can not really give a date and time today Jerry because she is not sure what the board wants to do and they have not viewed, so she would have to schedule a view before a hearing, correct. Mr. Innes said yes, we have some time, Clerk Upton said correct. Mr. Innes asked Theresa when was this filed. Clerk said it was filed September 30 and you have within 90 days and then you can continue, today is the 50th day. Mr. Innes said we have a 60 day....Commissioner Lundy said if there is a continuation then the start clocks again. Mr. Breunig said you have to render a decision within that amount of time. Commissioner Lundy said within 90 days. Clerk said correct. Commissioner Lundy said we are 50 days in, Clerk said correct we are at the 50th day today so we have 40 days, she does not know if you can continue and then make a decision after. Mr. Breunig said a decision has to be rendered.

Mr. Breunig asked Jerry what if we do it as a bifurcation and the decision on the vacation would be rendered within the time period and he would think that they are willing to put off the compensatory issue if they bifurcated the to the new panel because that is more like a condensation decision anyways because the decision has already been rendered and then it is just determining the amount of damages. Again he is just spit balling here Jerry, the property owners are not the only ones who are not the only ones not familiar with this process Commissioners, he said him and Jerry are not really either because there is not much law around this. He thinks with the time constraints in the situation and the new panel coming in he just thinks...that would be a fair solution to determine whether or not the vacation is done by this panel and would have you guys decide that in the statutory time limits that him and Jerry are discussing and he does not necessarily have a problem with the new panel seeing that because that is going to be a several day hearing on its own, just based on the just what the values and appraisals so to speak. Commissioner Lundy said it looks like we have 43 days remaining in the year and are at 50 days. Clerk said 12/27 would be your 90th day. Commissioner Lundy said 12/27 would be the 90th day. Mr. Innes aske Theresa were she got the 90 days from. Clerk said the fix a date, she is going by the 90 days where you just view not less than fix the view not less than 10 not more than 90 days after the view. The view was just only did on the 2nd. Commissioner Kokoski said then it should be 90 days for the view. Clerk said no. Mr. Innes said hang on, give him just a moment to see where that statue. Commissioner Kokoski said 90 days from the view takes us from what. Clerk said it takes us into January but she does not think she can realistically but a date somewhere in January without the new board, because she does not know when they are going to meet. She knows that the organizational meeting will be 2nd day of January but other than that. Commissioner Kokoski said the 2nd Monday, right, Clerk said correct.

Mr. Breunig said Jerry it is 5553.045 c he thinks, no d, 60 days or it is deemed to be vacated. Jerry said 045. That is what he is looking at but there are a bunch of sections, Mr. Breunig said it is section d. The board of county commissioners determine that it is 2nd paragraph d, if the board of commissioners deem not to vote on the vacation of the road within 60 days after the township resolution is filed. Commissioner Kokoski said when was it filed, Commissioner Lundy said when was it filed, Clerk said September 30th. Mr. Innes said he is just saying it is under .045, that is a petition by the trustees and we are not proceeding under that. Mr. Breunig said right but that is for the township trustees. Mr. Breunig said he thought the township trustees did it. The residents took this to the township and township brought it to the commissioners. Is that correct, Theresa is that right. Clerk said the township filed it on behalf of the township residents. Mr. Breunig said then it is right, it is applicable and his concern there is that if they don't render a decision than it is deemed vacated and then his appeal time starts running. So he thinks we have until, don't think we can take this into December. He said by agreement can they, he could it might be a legal issue, but he thinks he could extend that out by a little bit and arguably waive any defect if we agreed to not vacate until a later hearing, but he is only talking about it for this panel to do it in December. He is not talking about an extended continuance.

Commissioner Lundy said it would also give the residents more opportunity if they wanted to secure legal counsel.

Mr. Breunig said his concern Commissioner, the wording in the statue says if you don't make this decision within, Commissioner Lundy said by the end of November and he did not know that was the time frame counselor he thought our clock was on a different time line. Mr. Breunig said he did too and was focusing on different statutes when he was preparing his arguments and now that he is aware of that, Commissioner Lundy said end of November is what we are looking at. Mr. Breunig said he thinks so and he would obviously defer to Jerry but he thinks that is fairly clear. He said at this point we are more discussing on their side as the objecting party waiving the time line how far out that it can be because it is mandatory language.

Commissioner Lundy said should we stand at ease for a 10-15 minutes and give Jerry a chance to look and don't want to put him under the gun.

Mr. Innes said in reading the statute to require a decision on vacating the road by November 30 are you ok with that, we were hoping to extend this just a day or two to December 1. Mr. Breunig said he would want to get extend of all parties if we do this Jerry, but the statutory is very clear if a decision is not rendered in 60 days that it is hereby rendered and that is obverse to his side and they are the ones who would and would prefer to take out a little bit but only so much. Mr. Innes said if the township did not waive it then they could come and say this happened by law, Mr. Breunig said that is true.

Mr. Weseymeyer said Jerry, he has to ask a question it says on the petition. Clerk said Carl will need to come to the podium. Mr. Innes said he is coming up and we are getting confused because there are 3 different statues and they all have 3 different time limits, Mr. Breunig said right. Commissioner Kokoski said nothing is easy, that is why we have attorney's in the room. Mr. Innes said the statue we are working with the commissioners have to render a decision within 60 days of the time the petition was filed and if they don't it is deemed vacated.

Mr. Weseymeyer said he completely understand that Mr. Innes but the question he has is since this was a petition by the property owners, does that make a difference there. Mr. Innes said it does and that is a different statue there. Mr. Breunig said it was a petition by the property owners through the trustees and they made a petition to the commissioners. Mr. Weseymeyer said ok, so that gives him and he don't want to, and make sure that everyone is on board with what is going on. Mr. Breunig said that is what we are trying to do. Clerk said timeout, is there a microphone or something in there that Erik could use. Commissioner Kokoski said we can not have 2 people talking at the same time. Clerk said sorry Jess, Jess said is Cameron listening. Clerk said it is down below. Commissioner Kokoski said can we just have them take turns, Clerk said yes but I can not have them both talk at the same time and hear them both.

Mr. Weseymeyer said so what you are asking is just to extend a couple of days to the 2nd of December, the timeline. Commissioner Lundy said the topic was brought up if the new incoming board should make the decision based upon litigation or compensation that would roll out as a result of the decision

Mr. Weseymeyer said he is also confused by the statute and said as a trustee technically they would have to start all over is that not what you are saying, but don't know if you can because it has already been filed. Commissioner Lundy said that would be a question of Jerry if you are able to rescind your resolution but at the same time it affects the petition.

Commissioner Kokoski said stand right there Erik so we can see you.

Mr. Breunig said he guesses what we are really talking about Carl, is an agreement that would extend the statutory date and only subject to Jerry weighing in and could only extend the date that is required by statute by 3, Carl said ok. Mr. Breunig said as Jerry pointed out and we don't extend the date and the commissioners do not make a decision the vacation is granted and that is obviously affects them. Carl said right. Mr. Breunig said he does not want to see the commissioners making a permanent decision denying or making a decision to extend the decision. Commissioner Kokoski said Jerry would it behoove them to rescind this application and start over from scratch. Mr. Innes said you can always do that. Mr. Innes said he is still. Commissioner Lundy said Commissioner Kokoski then he wonders if they would have to go through the whole

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petition process again. Clerk Upton said yes they would. Commissioner Lundy said they would. Commissioner Kokoski said is there a fee that we are talking about. Clerk said there is a fee. Commissioner Kokoski said we could waive the fee unless you are just talking about the time and effort to resubmit it. Commissioner Lundy said he does not know if that is fair to have someone gather signatures again. Mr. Innes said Commissioners, he is suggesting we take a 15 minute break so he can see exactly what has been filed. Commissioner Lundy said right. Mr. Innes said because it can make a big difference. Mr. Innes said the introductory sentence a petition to vacate states we proceed with a petition from Township Trustee Weigel on behalf of the residents, so. All that, Commissioner Kokoski said we need to go in, Mr. Innes said we need to get that cleared because a petition from the township and need to take a break and ask the trustees what they did and come over and see Theresa. Commissioner Kokoski said do we want a 15 minute break then and come back at, what time is it, Commissioner Lundy said 11:15, 11:20 so time in there, Commissioner Kokoski said 11:20, Commissioner Lundy said does that work for you Jerry, or do you need more than that, 11:20, Mr. Innes said yes that is fine. Clerk said Cameron are we going to cut the live feed then or just stay on, how do we do this, because we are live. Commissioner Kokoski said just mute all the mics, Clerk said ok then mute all mics for now. Commissioner Kokoski said just mute everybody.

Commissioners came back on the screen at 11:22 a.m. and Commissioner Lundy said when we resume he will probably have a legal question, he is trying to figure out how he is required to make a decision when there has been no official dedication of the streets and never been accepted. Commissioner Sweda said we are still public right now, but have not begun. Commissioner Lundy said all these hypotheticals, sorry his mind is running

Commissioner Sweda said one of the things she reviewed was. Clerk said we are live but Jerry and Erik are still talking and looking at dates and basically came up with next Wednesday unless they withdrawal at this point, so that is where we are at. Commissioner Sweda said are we public, Commissioner Kokoski said yes we are public. Clerk said they are going back and forth on different issues thus far. Commissioner Kokoski said this is a complicated issue and don't do so often. Clerk said Jerry is talking with the township trustees right now and once he comes back we will reconvene. Commissioner Lundy said they are not social distancing in the back of the room there. Clerk said they are all wearing masks. Commissioner Kokoski said hope they are covering their nose and mouth, Clerk said they are and we are doing the best in the situation we have and think Jessica went through a whole bottle of disinfect wipes. Commissioner Sweda said Jessica is wiping everything, Commissioner Kokoski said good job Jessica

Commissioner Kokoski asked if Jerry was ready. Jerry said can you hear him, Clerk said yes. Mr. Innes said they have decided absolutely nothing and after looking at it, his conclusion is and we are talking about 2 different, 3 different statutes. One is a petition by the township board of trustees to vacate. One is a petition by 12 residents to vacate. He said 2 different petition, unfortunately 2 different procedures, dramatically 2 different procedures. He said you have a petition that was signed by 12 residents and no where in there does it state that it is being submitted by the board of trustees, however it was delivered by the township just in a similar fashion like we do ditch petitions, the trustees help facilitate it for the residents and the township or trustees paid the filing. He said his view of that situation is that it is a petition filed by the residents, ok, which means we have no time limits at all. He said as you recall we have had street vacations that we have continued for very lengthy times. If it is a petition signed by the board of trustees that is controlled by that 60 days limit and understandably Erik, Mr. Breunig has concern with regard to what we might think or someone else with regard to that petition and he may be stuck on that. Mr. Breunig said so, typically in court Jerry and him could find one thing and then in court they find something else then they may lead their way out of an appropriate case with no relief for his client and unfortunately he cannot in good conscious to that. Commissioner Kokoski said then can we have township trustees just rescind theirs and then just go with the residents. Mr. Innes said his view is that it would have to be rescinded by the residents and discussed that with them a little bit but understandably they have not had much time with what they want to do either, so. Commissioner Kokoski said she thought the township trustees petition was the one that gave us a 60 day time frame and the residents was we can go as long as we wanted to, Mr. Innes said right, Commissioner Kokoski said then why don't we have the township trustees rescind theirs. Mr. Innes said because his opinion is that the township trustees did not file it. Commissioner Sweda said now she has a question. Mr. Innes said this is where in his opinion is was filed by the residents so therefore the residents have to withdrawal. Commissioner Sweda said her question is, that we have been hearing comments that this was a concern of the township's liability but then the liability but yet they are not the first to file and she is concerned about that. Mr. Innes said they still have an interest and he is going to suggest that we continue this until the Commissioners meeting next Wednesday and it will give the residents time to think about what they want to do and will give you the commissioners time to think do you want to go forward and decide or bump this down the road. Commissioner Lundy said he would just guess also if there is another issue here that don't we have a technicality, legal technically since there has been no dedication of these streets and there has been no acceptance, don't we have, it is almost like he is making a decision on something that is imaginary like it is Santa Clause drive, something that does not exist, because nothing has been dedicated and nothing has been accepted. Mr. Innes said that is one of those issues that he wants to research a little more. Commissioner Lundy said ok. Commissioner Sweda said she agrees with Mr. Lundy the only thing is, is that there is constructive notice and it exist through the county auditor site and all of the mapping. There was constructive notice that it existed so whether or not, that is like a place holder and does not see that is ambiguous. Commissioner Lundy said ok Attorney Sweda. Mr. Innes said again, what he is saying is lets give it a week a thoughtful decision and however we look at it we have to do something next week, either withdraw it or grant it, or deny it, or do something next week. Commissioner Lundy said he would like that issue researched though since we don't have an official dedication or acceptance and he understands in what Commissioner Sweda was bringing up but he guesses he was even going back to the starting point too. Commissioner Kokoski said do we want to make a motion. Mr. Innes said he would recommend a motion to next Wednesday or have a special meeting.

Commissioner Kokoski moved to continue this to the next Wednesday meeting, Mr. Innes said at 9:30 Commissioner Sweda seconded that. Mr. Innes said Theresa what time do we do that. Clerk said we start board at 9:30 a.m. ,put on agenda or specific time. Commissioner Kokoski said 9:45, Clerk said do you want to do this at the beginning of your meeting or do you want it say at 11 o clock so we can get through the other board business regular meeting. Commissioner Kokoski said she thinks lets do the board meeting first then go into this one. Clerk said ok. Commissioner Lundy said 11 o clock is fine. Commissioner Sweda said what about do we have a Tuesday available, Clerk said we have, hold on, Commissioner Sweda said for the public sake. Clerk said we have the day before the 24th we can do that if you are in agreeance to that instead of our regular board day, the continuance of the public hearing at do it at 9:30. Commissioner Sweda said she is just throwing it out there. Mr. Innes said his guess is that there is not going to be too much in terms of testimony and the merits of what we should do, so the public is probably not going to have to be here, here. Commissioner Lundy said he did not expect this to be as complicated as it was today either so his preference is to do it Wednesday at 11 after board. Clerk said is that agreeable. Mr. Innes said there are a couple more residents that said they want to say something, commissioners. Clerk said she has a motion and second, do you want to withdrawal and hear from those other residents first. Commissioner Sweda withdrew her second, Commissioner Kokoski withdrew her motion, Clerk said ok.

William Peters said there were some statements earlier about lot consolidation and difficulty about that. He said in 2017 he consolidated lots and it was not difficult not a bad process whatsoever. He said Mr. Kistner the owner that owns the majority of those properties could easily consolidate those and have access both on Dellwood and 83. He said he is failing to see how there would be any undo hardship on the Resars when they had direct road access on 57. Even if wanted to develop they could, they would just have to inconvenience themselves to drive down their road rather than driving down his and Mr. Dudek's'. Thank you

Carl Weseymeyer again, he is just going along with what Mr. Peters just said and he is not real sure how, when back in the day that this was plotted out in 1927 and whoever owned the property, Kingsley, well they owned all the property. He said since then only part of the street had been put in and part of Dellwood, but the other parts nothing has been done and in fact they have been selling off property knowing that this subdivision would have been done. Because why would you sell off these large parcels without a street so a long time ago, he thinks the owners knew that this was not going to happen. The streets are there they are only on paper they don't represent anything. He said his big question is like for Mr. Peters and Mr. Dudek there is this paper, line drawn across their property, so if the township is told they don't have any liability, they have no control over that property then how does Mr. Reasar get the authority to go on that property. He said this is owned by Mr. Dudek and

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owned by Mr. Peters, how does Mr. Reasar go across their property to do any work, especially if the township has no skin in the game, he guesses that is the word to put but along with them we also have Mr. Douglas and Mrs. Bush and have the exact same situation as they own the property and the township has no liability because they have nothing there, so how do they have the authority to have anybody go on that property to put in a street. He thinks that is just some more argument that this is just a mess, it has been a mess every since it was started and he thinks what the commissioners need to do is to end the mess, clean it up this has gone on long enough, thank you.

Mr. Breunig said Commissioners can he just say one quick word. It is really not about what his clients may or may not intend to do and there has been a lot of speculation of what they intend to do and there is nothing and find it ironic that nothing has been sent by them, as far as their intentions are. He also finds it a little strange when this was filed in September when his clients closed on this in June, it is not like they have owned this property since 1927 and just been sitting on it and not doing anything. He said as Commissioner Sweda rightfully pointed out that this is a platted street and people who purchase property in the county, purchase it with knowledge of the conditions that are there, yet with what the county and townships have put into place over the years. So contrary to what has been said there is a true and absolute property right to access 2 side streets. He said that is not just about his clients he is representing them today but there are other platted sublots back there that would be entirely cut off. He said he does not know what would happen but say between now and then, say Mr. Kistner, which he has not been here to testify what if he transferred one of those sublots before you rendered a decision on that you would have a landlocked parcel owned by somebody else that could not be consolidated, whether it would be consolidated by deed or you would have to resub divide this which he thinks is the correct and only way the county auditors would let this go through is irrelevant. He said his client's intentions or anyone else's intentions, assumed intentions or speculated intension are irrelevant when you come down to 5th amendment constitutional property right and this would be an inverse conditions. He said this would absolutely be compensable if this happens. So he just wanted to make that clear for the record and he is free to come back here next Tuesday or Wednesday at the commissioner's pleasure however you want to handle this but do think there is enough question at fact as to what kind of hearing this is and under what statutory code and want to make sure a decision is rendered of 60 days within a petition because he can not have his clients risk any kind of lose of statutory rights that they could otherwise. He apologized for putting you in that position but he just doesn't know and don't want to put them in that position where the statue requires it and if you don't do it in time and don't do anything in that time, it is deemed vacated and that is a huge loss to his clients and he apologies and never like putting you in difficult situation like that but unfortunately with the vagueness of these statutes and with a responsibility to his clients he does not have that choice either, thank you

Tim Flurry said he just wanted to, one of the statements that keep coming up is the that this was a platted street but this was even discussed beforehand and it was not platted it is not an official its just on paper, it has never been platted it has never gone through the official whatever you want to call plats and wanted to make that clarification that it was not platted.

Mr. Breunig said he hates to do this, and the purpose for the record but it absolutely is platted, the difference of opinion comes to whether the dedication on the plat is an order by the commissioners opening up a road those if arguing are 2 different things based upon the statue. But it is absolutely platted and you will find in the record as part of the petition that was filed on September 30 2020, a plat of proposed road vacation and on that plat of a road vacation, you have all these lots listed here and they are listed as sublots, they are sublots of a subdivision so that means they have been platted. He said there is a legal distinction whether or not they have been dedicated or accepted and an order opening up the road are roads that we need to go down but those again are an issue that him and Mr. Innes has stated they will trade correspondence and briefs on this issue and Mr. Innes will advise you once he has had a chance to review his legal citations and what not, but again he just wants to state clearly for the record, that this has been platted and people that purchase property when a subdivision has been platted can clearly see that plat and those property rights that have been associated with them, thank you.

Mr. Innes asked if there has been a motion.

RESOLUTION NO. 20-696

In the matter of continuing the vacation hearing of)
Paper streets known as Arlington Road and Bellaire)
Road along with undeveloped section of existing)
Dellwood Road, Grafton Township until Wednesday)
November 25 2020 at 11:00 a.m.)

November 17, 2020

WHEREAS, today was the day for the hearing on the vacation hearing of Paper streets known as Arlington Road and Bellaire Road along with undeveloped section of existing Dellwood Road, Grafton Township; and

WHEREAS, testimony was given today and legal briefs will be submitted between counsels.

NOW, THEREFORE BE IT RESOLVED, that we do hereby continue the vacation hearing until Wednesday, November 25, 2020 at 11:00 a.m.

Commissioner Kokoski moved, seconded by Sweda to adopt. Clerk called for discussion. Upon roll call the vote taken thereon, resulted as: Ayes: All Kokoski, Sweda and Lundy/ Nays: None
Motion carried.

_____ (discussion was held on the above)

JOURNAL ENTRY

Commissioner Kokoski said thank you for attending and giving you all the testimony

B.

OTHER BUSINESS

There was nothing.

C

CLERK'S REPORT

#1. Wednesday, December 2, 2020 at 9:30 a.m., Commissioners meeting

JOURNAL ENTRY

November 17, 2020

With no further business before the Board, Motion by Kokoski seconded by Sweda to adjourn at 11:42 a.m. Ayes: Kokoski Sweda & Lundy / Nays: None
Motion carried.

The meeting then adjourned.

_____)Commissioners
Lori Kokoski, President)
)
_____)of
Sharon Sweda, Vice-president)
)
_____)Lorain County
Matt Lundy, Member)Ohio

Attest: _____, Clerk
Theresa L. Upton, Clerk