

December 1 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 and Prosecutor Gerald A. Innes being in their county offices.

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.loraincounty.us/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. - Annexation hearing – 41.9821 acres from Eaton Township to the Village of Grafton, Ohio – James R. White, Agent for Petitioner Kevin Flanigan, Authorized Member KNG, Ltd.

Clerk Upton stated the Petition was filed in the Board of Commissioners received on September 30, 2020 for a proposed regular Annexation of approximately 41.9821 acres in Eaton Township to the Village of Grafton for Petitioner Kevin Flanigan, authorized member for KNG, Ltd.

Letters were issued on October 1, 2020 to Craig Snodgrass, Auditor and Ken Carney, Engineer for review and accuracy

October 7, 2020, Resolution No 20-598 received and journalized annexation and set hearing for today, 62nd day

October 7, 2020, received by email from Village of Grafton, Ordinance 20-043 setting for services to be supplied to said annexation

October 20, 2020 received affidavit of notice to owners of surrounding area

November 5, 2020 received affidavit of notice from Agent that Village and Township were notified on October 9. October 26, received return letters as not deliverable as addressed unable to forward, first attempt after 19 days sitting at post office. October 28, these letters were hand delivered to Village and City

November 6, 2020 Certificate of filing form Auditor was received on proposed annexation

November 20, 2020 received by email affidavit of publication in Chronicle on November 19 2020 (received hard copy on 11/23/20)

November 30, 2020 received by email Engineer letter stating petition's legal description and accompanying map accurately describe perimeter of territory proposed to be annexed. Separately, Village will enter into an agreement with County to share maintenance of affected portion of Durkee Road in order to avoid segmentation of county road. As petitioners, territory runs to centerline of Durkee Road

Commissioner Kokoski asked Assistant County Prosecutor Innes to swear in anyone wishing to give testimony, he did

Commissioner Kokoski asked if any of the Attorney's had any comments and please state your name.

Attorney James White "JR", represent KNG and appreciates the Commissioners hearing this request. As Theresa stated, this is the petition for the annexation from Eaton Township to the Village of Grafton, approximate 42; 41.8921 acres of land into the Village. This is a development that is phase 4 and there are already 3 phases that have been built; Fiddlers Green is the name of the development and there is a phase 4 set to go in. The primary reason and will get into in a moment and KNG would like to annex to the Village is that when Mr. Flanigan built this development, he put in a lift station that is tied into the Village of Grafton's sewer systems and has the capacity to serve as to phase 4 with no additional cost whereas if he were to use LORCO through the township there would be extraordinary expense because they would have to put in a new lift station. It seems like a waste of resources, money and time to go that route to remain in Eaton. He will take this opportunity to go through the 6 factor test found in 709.33 and go through the procedural if the Commissioners entertain that, he would appreciate. The first factor is the petition meet all the requirements.

Assistant County Prosecutor Innes said Commissioners, there are 3 attorneys, do you want them to make an opening statement before JR gets to actual the substance or just proceed. JR said that would be fine as well

Commissioner Kokoski asked what other Attorney would like to give testimony, would that be you Al.

Attorney Al Schrader said he would be happy to do that. Mr. Innes said an opening statement.

Attorney Schrader said he will not go into detail, Eaton Township does oppose this annexation the fact is that there is a sewer agreement that requires Grafton in this particular area of the township to extend sewer without requiring annexation and will not go, have 3 other reasons that were outlined in a memo emailed to the Commissioners and or opposing counsel, Attorney White and Jerry Innes yesterday evening around 6 or 6:30 and that is all we have and we do oppose and would like to cross exam witnesses and have no objection to the procedure Attorney White suggested. That is it for his opening statement.

Commissioner Kokoski thanked him.

Assistant County Prosecutor Innes asked Gretchen Holderman from Grafton is here and asked if she would like to make a statement

Gretchen Holderman, Attorney for Grafton Village learned about Attorney Schrader's objections last night and reviewed the memorandum he sent to Mr. White and the Board and would submit the reasons that going to do during her presentations that those reasons or objections are without merit and petition for annexation should be accepted.

Commissioner Kokoski thanked her and said we will go back to JR then

Attorney White thanked her and was not sure if there was going to have a period to give substantive arguments and thanked them for the opportunity.

Commissioner Kokoski said we do have the requirements; 6 or 7 points and don't know if you want to read them all again. Attorney White said he does not need to read them all again, but want to bring up a few points. Commissioner Kokoski said ok

Attorney White said number one the petition meets all the requirements set forth. As far as the signers of the petition, there is only one owner here, the owner is in favor of the annexation it is his desire. The municipal corporation has to pass a resolution and state what services they would provide and has done that and delivered the same to the petitioners. The territory is not unreasonably large it is 41.98 acres of a residential subdivision that is already in place and the other phases are already been developed as he said. In the township, approximately 22 square miles, 14,080 acres and they are only seeking petition for 42 acres so it is not unreasonably large in his view. The big one, on balance, general good is served. When you look at case law, general good is looked at in large part as the desires of the property owners and villages

ability to provide services and the village is able to provide simply services to the land and would include sewer, water, electric, police, fire, ems and any other services authorized by the village. So the parcel will be well served and again in a way and again he wants to emphasize that the lift station that Mr. Price will testify to is \$250,000 so about a ¼ million dollar difference than Mr. Flanigan would have to absorb should the parcel stay in the township. He will also state that Mr. Price will state this cost is in normal time pricing and right now we are in COVID time pricing which has increased the cost of supplies and supply chains have been interrupted by the pandemic. So, this is a development that is already build out, ready to finish out, put new residents in new homes in Lorain County and provide them with affordable services that will not be passed onto the residents if a new lift station were not to be required at a ¼ million dollars. He said all the owners have expressed a desire and the last one is that no street or highway will be divided and as Theresa said the Village has agreed to take over maintenance and share the maintenance of Durkee with the county.

Attorney White said he would like to address Mr. Schrader and he had brought up and he will not go through all the procedural stuff because Theresa already did, but in his memo; Mr. Schrader addresses a certified mail issue that the petition had. This is no fault of petitioner on October 9, 2 days after Theresa sent an email to both him and Fiscal Officer of the Township and Mr. Monschein letting them know of the Resolution passed by the Board, letting them know when the hearing was scheduled and the contents and substance of petition He said you will see why that is important and will see why in a moment and to recognize that the Township got notice of it, same time that he did, same day, same exact email, so any notice problem caused by the mail didn't prejudice the township at all, they knew at the same time he knew at the same time he knew when the hearing would be held. But the statute does require that he send notice under 709.03B to Grafton and the Township and he did that 2 days after he received notice from Theresa, sending certified mail to both Grafton and the Township and statute provides that notice be given by certified mail and return receipt requested and he did that. He said it sat at the post office for 19 days, he does not work for the post office, obviously does not have control over how the mail is delivered and unfortunately sat there and it was properly address he got them both back from Grafton and the Township undeliverable, and that is outside the petitioners and the agent control, it happened. He will submit that notice be given by certified mail in his view the service requirement is met when he places it in the mail, he has no control of the mail after that. He said the Township claims they are prejudice as you can see in Mr. Schrader memorandum is just not true, they were not prejudice because they received the email containing the same thing the Commissioners passed at the same time he did. The formality to give notice by certified mail is a statutory obligation that he believes he met but they received notice at the same time he did, so they were well aware in fact he talked to Mr. Monschein about the hearing prior to deliver of this mail by phone. So they certainly knew that actual notice and confirmed that conversation. He stated that Mr. Schrader seeks to invalidate the statutory allowance for certified mail simply because the postal service has been a problem recently. He said the Commissioners should not buy that argument because the statute allows for this service method and current events don't invalidate statute structure and if the legislators meant to invalidate it, it would be by statute or amendment but it has not, so the requirement was met. Attorney White said as far as the resolution goes, resolution by the Village, Mr. Schrader has some arguments in his memorandum and will let Gretchen speak to those and she is obviously the attorney for the village. All others, like Theresa said notice requirements and procedural elements were met. He would also like to remind the Board, I am sure they are well aware, under section 709.015 substantial compliance with the procedural requirements is sufficient and he thinks they have sustainably complied and done everything in their power to ensure that the statutory requirements for procedurally met, thank you.

Commissioner Kokoski asked Attorney Schrader if he wanted to go next. Mr. Innes said he has the right to question JR if he wants to. Attorney Schrader said he has no questions for JR and might be more efficient if the plaintiffs put on their own case first and he would speak if this is ok with the Commissioners. Example, he invited Gretchen to comment on something, so perhaps we should hear from them first, then he will comment, he thinks it would be more efficient but would do whatever they want. Commissioner Kokoski said that is fine

Commissioner Kokoski asked Gretchen if she would like to go, Gretchen said sure she will do that. Mr. Innes asked if there was anybody, who all is tied in, Jason, Clerk said yes. He asked if there was anyone out there that wanted to ask JR a question. Clerk Upton stated that Jason is no longer on the zoom not what happened, he just came back. Mr. Innes said he is represented by counsel so he was just wondering if there was anyone else out there.

Jason Monschein, Eaton Township Trustee said he will speak at a certain time and will let the Attorney's keep talking and hold back for now. Mr. Innes asked do you see the 3rd 4th ... Having to change the facility planning areas. Attorney White said he could speak to that but was going to develop it through Attorney, Mr. Price testimony but he could speak to it and then ask him about it. He said basically how this works is that NOACA will not consider FPA change until annexation is complete, so the annexation is the horse and FPA changes is the cart so to speak. So one has to occur before the other and in his view, Mr. Schrader's asking to put the cart before the horse which does not work.

Attorney Schrader asked how much of the territory are you planning to ask NOACA to change the service area for, just your client's property or, he said sewers are a little different than annexations, there are certain areas because of topography and so on, it is easier to serve and not serve and they don't have a service area change of only 41 acres and how much would you anticipate to ask NOACA to change the sewer service area. Attorney White said Mr. Schrader as you know KNG is not going to be petitioning NOACA, the Village will and that is a better question for Mr. Price, Attorney Schrader said thank you and said he has not spoken yet, so he will hold off. Attorney White said he will call him. Mr. Innes asked if he wanted to proceed with his witnesses or does, or have Gretchen do something. Attorney White said however you would like to do Mr. Innes. Mr. Innes said why don't you go ahead a proceed with your witnesses.

Clerk Upton asked everyone to state their names clearly since we are all on zoom to make sure, go ahead sorry.

Joe Price, Village Administrator, Village of Grafton. Attorney White said he will ask some questions and proceed this way

Attorney White asked what services if any is the Village willing and able to provide for the parcel. Mr. Price said they would be including water and that would include an agreement with Rural Water but they would be the source of water and is the only one that supply there for hydrants for safety measures. Attorney White said there was a little interference. Mr. Price said they have 2 – 8" lines in this parcel and currently Rural Water has a 4" line and could not support the water needed to handle the fire emergency and for the number of fire hydrants that village would require for this development.

Attorney White said Joe, is it your opinion that the water that Village can supply, water supply would increase the safety of the residents or would be better as is without the additional infrastructure than what the township could provide. Mr. Price said that is a great question and the federal statute states any municipality village or city must require must supply the fire safety hydrants at no charge to the residents. He said whereas the township can select to choose to put in fire hydrants or supply and then the local water authority would charge for those fire hydrants. So the Village of Graton codified ordinance and federal statute states supplied at no charge would be supplied.

Attorney White asked if he could continue with the services. Mr. Price said we spoke of sanitary sewer and provided the map.

Attorney White displayed the map while he spoke. Attorney White said the map that should be displayed, Commissioner Kokoski said the 3rd map is up, is this correct, JR said it says Fiddlers Green for utilities, Clerk said yes, JR says it had 1, 2, 3, 4, 5, 6 on the right, Clerk said yes, JR said perfect, he appreciates you bearing with him he has not used this platform yet. Mr. Price said go down the list, but before that he wanted to state that they have a full time police department to provide safety services along with fire and ems. In regards to the map item #1 is the lift station that was already built by KNG back in around 2006 and put in 26' deep and by that standards you have to have enough fall by gravity to be able to eventually hit the lift station and then come up and be treated by Graton system, wastewater treatment plant in Grafton, so number 1 we already have a very deep lift station there and not only accommodates phase 1, phase 2 phase 3 and phase 4 of this project and that was designed and built by developer. Mr. Price said #2, you see the arrows that point down towards Willard Lane there is access to manholes there that are about 20'+ to accommodate the fall for that entire lot to go to the station that is located at the intersection and initially

lifts up and goes to Vivian Drive to Main street He said there are also existing connections to Grafton Electric, which is a public power utility and take a lot of pride and able to provide these 51 home sites, 51 new families in the county, these taxpayers and voters and Commissioners were involved in their project Beacon in Grafton and projected that in the year January 2022 would have their power cost adjustment down to zero and offer lowest electric rates in the county. He is proud to announce that they overachieved and hit that number last month so they are ahead of schedule and getting all the earmarks for that. By bringing that into the village they can provide village electric at the lowest rate in Lorain County He said #4, connections to the waterlines and in discussions with Rural Water and there is no definite decision yet and they know one way or another this development will be supplied by one of those two or both, depending on what Rural Water or Grafton wants to make a connection. He states that they are in discussing giving areas that are currently in the Grafton and they could or could not be involved. They have 3 stormwater retention basins onsite that controls stormwater and zero complaints on flooding with all the rain recently and had a conversation with Mr. Howard yesterday and they do plan to install additional pond retention systems in phase 4 and this would all be connected to the Village of Grafton's system. In regards to the only statement we had before with regards to LORCO and had discussions there is a 208 sewer district which is a sewer district that is adjustable, can be modified there are procedures that you have to go through and the Village can make that application until this is annexed in. But there are not even parts of Grafton 208, Eaton Estates that are much larger than this 41 acre parcel of land that is currently in Grafton sewer district but can't service it. We can try to get it to LORCO or the county but it seems that they are at odds to take it and it would be best served with our application to not only be to bring this into the Village of Grafton 208 district which has to go through application process through NOACA and EPA and have to prove they are better suited to serve this because LORCO sewer is only about 7' deep on Main Street and there is no way they are at fall. As Mr. White had said Mr. Flanigan would spend a ¼ million dollars and with covid involved could be another \$320,000 lift station for 51 homes and forcing each one of these homeowners to pay a higher price also higher price for their electricity. Another thing they take great pride in is that they threw down significant 8 figure prices to sell their sources because they also offer the lowest source cost per home for their residential homes in the village of Grafton. They don't feel it would be an issue with bringing this into our district but be clear we cannot make that application without the annexation.

Attorney White asked Joe if he wanted to show the distance to, Mr. Price said yes, show the next map showing the 1.34 mile distance from that lift station. Attorney White asked if you could see, Clerk said no the same. Mr. Price said the map shows the exact travel sewage of this entire 4 phase development the distance it travels, the path it travels to meet Grafton wastewater treatment plant facility. Mr. Price said the map shows now. He said why is this important first the wastewater treatment facility, they take a lot of pride in it how they maintain, how well improving and just had a bid to build a new 5000 square administration facility. The facility that is located is the only one of its kind with a 5 billion gallon retention pond that is a decompensation basin so that during a storm the rain water does not enter storm system like in the past it once did. If you look at the distance the 1.34 miles lift station to Village of Grafton lift station, where everything is treated, where they are completely complaint with EPA and then water is....Black River. If you follow the line to LORCO would be 25 miles at least distance before it receives a treatment plant and no lift station and you are creating a greater chance for failure or Of a system. So why would we do this to anyone and not keep it into the Grafton sewer system at the lower costs, shorter distance to treatment and facility that they know has above standards and exceed them in accordance with EPA.

Mr. Price said if you go to the next map shows the total outline of the development and all included in Village of Grafton. He stated you will have homeowners in one development, are you going to split them off into 2 separate HOA's. The village of Grafton that has standards that are required by ordinances that must have within a Homeowners association and would be all in the same voting block as a HOA in the municipality and have the same responsibilities of taking care of the streets and entire development and it is also part of the HOA to maintain common space and you see where the common space is up in the phase 4 and we want to have a continuation and have the HOA to have control all at the same time, so to separate them off you are almost creating a exclusionary segregation type situation if you don't keep this HOA under one HOA to manage this one subdivision. He brings this up because this is important we always seem to have these conflicts when it comes to maintain stormwater in today's world. He said this all he has.

Commissioner Kokoski asked if phase 4 is below the blue dotted line. Mr. Price said phase below the blue dotted line is currently phase 1, 2 and 3. Commissioner Kokoski said so phase 4, that is it there is no expansion after phase 4. Mr. Price said no.

Jason Monschein, Eaton Township Trustee asked if he could comment. Commissioner Kokoski said yes go ahead

Mr. Monschein showed a map and said keep this in mind for later and it is the 1988, 1989, 1987 annexation of the prisons. If you look at the map on the screen this is where the annexation took place but they are not connected. This is the 3 phases you are seeing right now. He said subplot 79 which is in the annexation description of the property we are talking about currently is right above that and just wanted, he will bring this up later, but in 1988 what is completed a development and where the annexation took place is on your screen and right above that on lot 79 in property description that will come into play. He pointed to the map and said right here is the point of annexation, here is the property that currently says HOA managed development and said please keep that in mind, this is all he had

Attorney Schrader asked if it was the appropriate time to ask questions or is Mr. Price not done. Attorney White said Mr. Price has accurately described the benefits of the parcel owner and services for these new residents, so you can go ahead Mr. Schrader.

Attorney Schrader asked Mr. Price where in Ohio law does it state that you cannot have a homeowner's association that covers the entire development whether it is in the city or township, there is none, is there. Mr. Price said he did not quote any law. Attorney Schrader said you said it would be a horrible thing to have 2 separate homeowners association and noting in the law suggest they have too. Why do you think that it would be a different homeowners association in the township. Mr. Price said he is not saying it would be but he is saying how do handle it when you have 2 different legislative bodies that you answer too. Mr. Price said he can give you examples, if you like, example where cities have been split. He said a home may sit in one community and the backyard sits in another and can't get stormwater go handle the backyard, so why not put this under one umbrella rather than having to deal with Eaton Township or Grafton Township on every issue that comes for authority, it is not law, it is common sense. Attorney Schrader said he is sorry, Mr., Price said it is common sense, he is not quoting any type of law. Mr. Monschein asked if Joe was refereeing to Fox Run, Arbor Court. Mr. Price said no not at all. Attorney Schrader said the point is you talked about the homeowner's association and the fact that there is nothing about a split in governmental entities that would prevent one homeowner's association and the example you just gave was; a split in the jurisdiction involving houses where the house was in one jurisdiction and the backyard was in another than lead to flooding or other road type issues. You did early state earlier that the homeowners association is in charge of maintaining the roads within the subdivision, is that not correct. Mr. Price said he did not say that. These are dedicated streets in Grafton once dedicated they are theirs. Attorney Schrader said is the homeowner's association in charge of drainage issues within the HOA, he assumes you already have one established since you have 3 phases built already. Mr. Price said there are currently HOA, currently class a and class b members and class b members still developer maintains control but the common space that is in a HOA that maintains for the future of the lots and usually have water fountains, etc. is all handled by the HOA. Attorney Schrader said as far as an HOA it does not matter if a Village of Township or both, there can be one HOA that covers the entire development, is that fair to say. Mr. Price said he would disagree. Attorney Schrader said thank you

Attorney Schrader said one other question and not knowing if putting up that map would be helpful or not you talked about wanting to change the sewer service area apparently LORCO does not agree with that, is that fair to say. Mr. Price said LORCO does not agree with anything that takes something away from them and can say that for certain. Attorney Schrader said ok, so that means that you will have to appeal to NOACA to have any hope to changing the sewer service area correct. Mr. Price said that would be correct, the only thing he has to prove to NOACA and to the Board of Commissioners is that Grafton would be better suited to serve that section of land. Attorney Schrader said there is no assurance, the only thing this annexation with regard to that issue, assures that you get to walk to the door and ask to change the service area this annexation does not guarantee that NEFCO would grant that sewer service area to Grafton from LORCO, correct. Mr. Price said that is correct. Attorney Schrader asked how big of an area are you going to ask that these sewer system or sewer service area be changed. Mr. Price

said no bigger than this parcel, no greater than this parcel we are discussing today. Attorney Schrader said you are only going to ask for 41.9 some acres change from Grafton, I am sorry from LORCO to Grafton. Mr. Price said that would be the only portion of our application, yes. Attorney Shrader said would you anticipate later asking other areas to be changed from LORCO to Grafton with regards to sewer service. Attorney White said he would object on speculation but you can go ahead. Attorney Schrader said it is important for the general good issue because it is larger than what the developer wants and also holds the effect on ballots of the township unincorporated area within ½ a mile so that is the reasons he is asking. He said let me asks this differently, is the Village of Grafton committing to not asking them for any further changes to the sewer service area in this portion of the township. Mr. Price said as he answered before as Mr. White very well-articulated, you are asking him to speculate and further more let's say there is another parcel, whatever that parcel might be in the future who is he today to make a commitment statement that for the popular or future popular he could not do that as an Administrator. Attorney Shrader said there are no plans currently in the city to make any other changes to the sewer service area. Attorney Holderman said she is going to object to that because it has already been answered and Mr. Price cannot commit to future plans of the Village of Grafton, it will be subjective based upon application of other parties, she thinks it is an improper question

Eaton Township Trustee Monschein said you have already highlighted the other areas in mediation and we know that your goal is to keep moving this around and get the Spitzer property and everything else jaded out of LORCO and LORCO should be hear representing but he can speak for them. He said Eaton and Carlisle pay into LORCO unless we want to consider Cinnamon Lakes that they picked up after the fact and believes Grafton has already been through this issue with Rural Water back in the 90's and got into heavy lawsuits and modifications of Fox Run. He said none of these utilities need to be changed, this property can already be serviced but he will let you guys speak and he will wait until comments further.

Mr. Innes said he thinks the question was does the Village have any current plans, so he thinks the witness can answer this limited question. Mr. Price said he would like to answer both parts. #1 the map that Jason Monschein showed was a discussion that we had about the JEDD and nothing to do with this residential property. Attorney White said can you explain what a JEDD district is. Mr. Price said a Joint Economic Development District we had discussions and would keep confidential and we hear someone testifying today. We discussed this area being a possible JEDD. Mr. Monschein said this is not true, this map from 1988, he was just referring to areas that were not going to be included within the JEDD therefore that would make him think there must be a change looking to happen for plans within the Village and this is not the map and nothing that he was sworn into or anything else, this was printed off last night. He said his main points are the only highlighted areas he will talk about later.

Attorney Schrader said his questions was, which was very well articulated by Jerry Innes, does the Village have any current plans to expand their sewer service area to take sewer service area away from Grafton exceeding the 41 acres, is there any current plans. Attorney Holderman said she is going to object, what does that have to do with this particular annexation. Attorney Schrader said it would certainly affect the general good because it was, it would then affect people in the unincorporated areas of the township and would be affecting the adversely because an appeal before NEFCO is long complicated and very uncertain as to who would win it and that creates a great deal of uncertainty and the meaning of unincorporated area of the township within a ½ mile and that is why the question is being asked, it goes to the general good issue.

Mr. Innes said these proceedings are all that informal and don't go by the formal laws of evidence and thinks the witness can go ahead and answer the question and let's move on. Mr. Price said he thought he answered the questions, no.

Attorney Schrader said the next question you would know about this because we have been involved in litigation. Back in when the prison was annexation there was a consent judgment entry entered into and all of that is still pending before the 9th district court of appeals. The one thing that Judge Rothgery ruled against him and the argument of the 100 foot strip but in doing so his opinion refers to the section of the sewer agreement that was entered into back then between the Village of Grafton and Townships. As an example of how you put language in that says it is supposed to be in perpetuity. Do you agree or understand the Village is subject to a consent judgment entry that requires to allow sewer service without annexation in perpetuity. Attorney Holderman objected. She stated this witness is not a proper witness to get this testimony from and also Mr. Schrader she would point out that Judge Rothgery clearly determined that the consent entry had nothing to do with a barrier of future annexation the point was made specifically to the consent of this agreement providing only to highlight the fact that there was no language that your clients had claimed that there was a suppose barrier future annexation, but this is not the forum that we are going to or not going to agree to this consent entry that has already been determined by the court not to stand for the propositions that your clients have claimed. So in her opinion you cannot properly ask this witness about that consent entry and she feels that you are trying to back door this, you lost at the trial court, there was no map included in the record. So the map that Mr. Monschein is trying to discuss is not even part of that cases not even an appropriate exhibit here and would ask that you please define your questions to this annexation and especially regard to the common good whether this annexation proves for the common good. Attorney Shrader said that might have been the longest. Mr. Innes said he has to agree with Gretchen on that, he means that you want to admit the consent entry and make your own arguments for your own witnesses but asking Mr. Price he does not... Attorney Schrader said he wants to make clear that he is not talking about the strip here, it is entirely part of the agreement and consent entry have already submitted that to the Commissioners and he believes that is the last question he has for Mr. Price.

Mr. Innes said he has a question and not sure that Mr. Price can answer this. He assumes that the current 3 phases are all served by Grafton Village, you already mentioned the roads, they take care of the roads and provide emergency services for the other 3 phases. Mr. Price said that is correct. Mr. Innes said ok, do you know how many acreages that is involved in the other 3 phases. Mr. Price said he does not have it, could look it up.

Attorney Schrader said is it the positions of Grafton that they will not extend sewer without annexation. Attorney White objected again it is speculation. Attorney Shrader said no, he is asking for the position currently the City, no the Village of Grafton with regard to your client the individual seeking this annexation. Is the position of the Village that they will not provide sewer service to Mr. Flanigan's development unless he annexes to the Village of Grafton. Attorney Holderman objected that is actually 2 different questions. You asked him if he was, Village of Grafton was going to provide services to territory not within the village and then you asked specifically relative to Mr. Flanigan's property. She said she also objects and don't know if this is the witness is prepared to answer what the Village would do in the future.

Attorney Schrader said Mr. Price is the Village Administrator and he did not think it was 2 questions, let him narrow a little bit more. Speaking just on the property owned by Mr. Flanigan subject of this annexation that the Commissioners are considering today is it your position as a Village of Grafton Administrator that the Village would not extend the sewer to Mr. Flanigan ;property that we are talking about today without annexation. Mr. Price said he has no position regarding that matter. Attorney Schrader said what is the City's position, Mr. Price said the Village would only be determined when it would be presented to them and if they were given options and he does not have the authority to make those decisions so he has no ... Attorney Schrader said do you know what the policy is within regards to extending sewer service to Mr. Flanigan's property without annexation. Mr. Price said no policy and have not had that discussion. Attorney Schrader said if this annexation were denied would this village of Grafton extend sewer service to Mr. Flanigan's property without annexation. Attorney White objects and the answer calls for speculations. Mr. Innes said he has answered he does not know Al. Attorney Schrader said thank you, that is all.

Mr. Monschein said Jerry. Mr. Innes said hang on Jason. He said Jason you have an attorney here who is and understand that we are kind of handcuffed a little it because unlike a normal process he would be able to turn to his attorney. Mr. Monschein said he usually stands up there on his own but right. Mr. Innes said unless you have a question for Mr. Price further testimony we will have to wait until Mr. Schrader presents his case. Mr. Monschein said ok, thank you.

Mr. Innes asked the Commissioners if they had any questions for Mr. Price. Commissioner Lundy said no not at this time.

Mr. Innes said ok, does JR have any more witnesses. Attorney White said no he does not have any more witnesses, thank you.

Mr. Innes said he guesses to the extent that we might as well have the opponent's case first and will move to Gretchen and asked if she had any testimony she wanted to offer. Attorney Holderman said she does not have any testimony but do have arguments if she may. Mr. Innes said we will hold off on that for a little later. She said ok.

Mr. Innes said ok, we are at Mr. Schrader. Attorney Schrader said his arguments and position and were attached and will go over those 4 arguments briefly and would certainly ask the Commissioners to allow as evidence the documents to be submitted attached to that...

The first...the statute clearly requires that there would be a resolution or ordinance of service and has to be an effective ordinance or resolution of services. The ordinance passed by the Village of Graton is not effective or valid because it does not contain a proper emergency clause and submitted 3 different supreme court cases for the Commissioners and their attorney to review. All of which says you cannot just say it is an emergency for the health and safety and welfare of the people of the Village. You have to have some reasons justification for the emergency and whether or not it really is an emergency you cannot argue but at least you have to justify than just say health, safety and welfare. Their emergency clause does not do that it just says for the health, safety and welfare there is no explanation as to why that ordinance would not require to receive the 3 different readings at 3 different village council meetings, so the ordinance itself is defective, so that is one reason to turn down this particular annexation.

The second issue is a little bit more difficult but the statute does clearly require that the agent for petitioner notify the clerks of the village and township within 5 days and not trying to negate the certified mail service, he uses it all the time, but the statute does not say you have to do by certified mail it also allows personal delivery and had that been the chosen method of delivery he would not be making this argument. The fact is by October rolled around this year pretty much everyone realized the US postal service was having a horrible time doing anything right. You can address a letter to the right address and come back undeliverable, certified mail or not. So we are suggesting this should still have been done. He thinks the indication that everyone got notice from the Clerk of the Commissioners is not a good argument simply because the duty is not on the Commissioners Clerk to give notice but rather than the Agent for the Petitioners. There is a reason presumably the legislators put that duty on the agent for petitioners. The next issue becomes if this is really procedural or not or substantive a procedural matter is one that of no particular importance and this is of some importance both the village and township clerks/fiscal officer had the right to receive this information in 5 days perhaps the village would have not been in such a hurry to do an emergency ordinance had they got the proper type of notice, but they didn't. The trustees having already been through one situation where this particular annexation was withdrawn and then resubmitted, believe that was the case, would not necessarily believe having, they would have to hear from the petitioner's agent that they were actually doing this. So he does not think it is procedural such that the substance compliance rule in the statute would apply. He simply does not believe it is a procedural issue, procedural would be like you did not allow cross examination or some minor thing you did not send it to adjacent owners at all.

Attorney White said how is that different procedural than giving notice to Village not to the adjacent landowners it is the same thing it is a notice requirement. Attorney Schrader said it is a different notice requirement because there is no duty on the landowners adjacent or across the street to do anything but there are duties on the both the Village and Township fiscal officers to let the Trustees know about it and get ready for a hearing and that sort of thing and that is yet another reason you can turn down this annexation.

Attorney Schrader said the arguments here are not in order of importance as you can tell because he already talked about number 2 first and then number one. Perhaps there are 2 other arguments, one he included a copy of the agreement that was entered into by the village and township with regard to annexation back when the prison was annexed. That was recognized in Judge Circigliano's consent judgement, consent decree and part c indicated in the decree itself, that Village of Grafton would enter into separate contract with the allowance of connection of certain township residents to the sewage treatment of the Village of Grafton upon such terms as may need to agree by the parties and that contract is incorporated herein into the judgement entry. They lost before the Judge Rothgery on a different issue and he is not arguing a thing about the 100 foot strip in this annexation. But, indirectly Judge Circigliano mentioned this particular annexation agreement and the consent entry and the sewer agreement that he refers to as a way to how the parties could indicate that something was in fact intended to be in perpetuity. Specially, Judge Rothgery said it is judgement entry at page 3 and will just quote this briefly "the court does not interpret the disputed section to mean that the Village of Grafton was forbidden from further annexation into the 100 foot portion of property that was excluded in the consent decree. There are two other places in the consent decree addressing annexation of property, which contain clear and unambiguous language that it was held in perpetuity (Sections C & D). Section 4(E). So he is referring to those particular parts there in the agreement and then when you look at the agreement he says contains language that means it is in perpetuity it was not just the next couple of years this is still in effect. He said section 6, the parties agree to allow designated areas of the township to connect into the existing Grafton wastewater treatment system without a precondition of annexation subject to the terms and conditions therein. This is a lengthy agreement but this language is there and this is the reason why. He will quote one other thing from the actual agreement itself, and then will be done reading things to you; one of the whereas clauses "the township and village which would be Eaton and Grafton Townships and Grafton Village agree that a purpose of this agreement is to allow certain areas of the townships in the area of highway 82 and highway 83 to tap into the sewer system without the precondition of annexation. So he is saying this agreement is still in affect and the Village has a duty under that agreement to provide sewers to this area without a precondition of annexation. The testimony and the reason that he started with that was because it folds into the main reasons you should deny this annexation and that is the parties have not at all proven the general good of the area will be served by this annexation. They have essentially pointed to the sewer issues as being the entire reason, it's going to cost the developer a whole lot of money according to them if they cannot hook into the Grafton sewer systems. He said general good as the Commissioners know it is a little bit bigger standard and you just don't look at the territory anymore and in the case cited by Attorney White that referred to the old standard of general good not the amended one the one that was amendment in 2002 that added language that you also have to look at least the area within a 1/2 mile of unincorporated areas of the township, not staying focus on the developer now you also have to look at the township areas.

Now, here is the problem it adverse effects that area within a 1/2 mile of unincorporated township land in the following ways;
 #1 – because it violates that consent entry the requirement they provided sewer without annexation, that hurts those people. Then that means that policy is going to apply with anybody to that 1/2 mile radius
 #2 – it is hard to believe that the sewer service area will be changed from LORCO to Grafton and that is its very difficult and he thinks the Commissioners know this you have been through it and could almost take judicial recognize of this fact. It is not easy to get a sewer service area changed through NEFCO there is a whole slew of requirements you have to go through which he will not burden the commissioners today with but that is not and ok you want it great, you go it, there is a whole lot of things you have to prove there are a lot of people that you have to convenience and he has never seen a request for 41 acres to change. Usually it is based upon topography, geography and which area can be best served with sewer and that is not one of the decisions the Commissioners have to make that is up to NEFCO. There is absolutely no certainty that NEFCO will allow that change in the sewer service area, so what does that do both to the landowner and other 1/2 area of township unincorporated land. For the developer that will put him in an uncertainty position and that is probably his choice. But that is an agreement that is not even good for the developer's property. Look at the rest of the area, right now, under that consent entry they have the insurance knowing that they could be served to this area without a precursor to this annexation. The testimony and the reason he started with that folds into one of the main reasons you should deny this annexation and that is the parties have not at all proven the general good of this area would be served with this annexation. They have essential pointed to the sewer issue being the entire reason, costing the developer a whole lot of money, according to them, if they cannot hook into the Grafton sewer system. But general good as the Commissioners know is a bigger standard, you just don't look at the territory anymore. The case as cited by Attorney White is the old standard of general good not the amendment one, the one that was amendment in 2002 that added language that you also have to look at least the area within 1/2 mile of unincorporated areas of the township, not just focus on the developer anymore you also have to look at the township areas. Here is the problem #1 it adversely effects that area within 1/2 mile of unincorporated township land in the following ways: #1 – Because it violates that consent entry the requirement that they provide sewers

without annexation, that hurts those people because that means that policy would apply to everybody in that ½ mile radius. #2 – It is hard to believe that the sewer service area is going to be changed from LORCO to Grafton, that is very difficult and the Commissioners know because they have been through it and you can almost take judicial cognice of this fact it is not easy to get a sewer service area changed through NEFCO there is a whole sleuth of requirements you have to go through which he will not burden the commissioners with today. But that is not a oh, you want it, you got it. There are a whole lot of things that you have to prove and a lot of people you have to convenience and never seen a request for 41 acres to change, usually it is based on topography, geography and which area could benefit and serve with sewer and that thank god is not one of the decisions the commissioners have to make, it is up to NEFCO. He said there is no certainty that NEFCO would allow that change in the sewer service area. So what does that do both to the landowner and the other ½ of the township area of unincorporated land. To the developer would put him in an uncertainty position which is his choice and that is an argument that is not even good for the general good of the developer's part. When you look at the rest of the area right now under that consent entry they have the insurance knowing that they could be served by sewer without annexation and in addition those people now if there is a sewer change would have uncertainty as to who would be able to serve their property with sewer. It is not just going to be the 41 acres it would have to be based on some logical topographical sewer type expert type factors and that would cost problems for the people in the unincorporated areas of the township. So that issue actually goes to the issue of general good. As to general good an ordinance that talks about sewer issue which is what they said was for the general good of the developer. You have a detriment to the other area within ½ mile of the unincorporated townships both Eaton and Grafton where the residents would have to substantial uncertainty of sewer when prior to that they had the certainty of a consent entry that said they could get it without annexation. You will have substantial uncertainty among those individuals to the sewer district as it could change and that goes to show a detriment to those people in the unincorporated area of the township. He said the commissioner's job on unbalance is to decide whether they shown through their testimony today that the general good would be served by the annexation. He would suggest that they haven't, they have not shown it to themselves all they are doing by this annexation is buying an effort by a result that is terribly uncertain by change the sewer service area and provides a substantial detriment to the unincorporated area of the township within a ½ mile. There has been absolutely no testimony by the petitioners for annexation on those folks within the unincorporated area so given they have no more witnesses they have not proved it is for the general good of the territory to be annexed. This is one of the requirements that the Commissioners have to prove that they did and to make it a little bit easier those are the objections they have. Attorney Schrader said they do not object to it being unreasonably large, Attorney White is correct the area is not unreasonably large it is only 41 acreage and that is not unreasonably large in anyone's mind. They do object to the burden of proof is on them for the general good and they have not proved it, they have attempted to prove it by an ordinance that is invalid because the emergency clause is incorrect. They tried to argue the effect only on their owner with no evidence as to what would happen to the unincorporated areas of the townships. The Townships are the only people that talked about that.

Attorney Schrader would ask that Jason Monschein, Jason I believe you were sworn and would ask that you testify now and to move this along, normally this is like a question and answer but just tell the Commissioners why in your opinion the people in the unincorporated area of the township within a ½ mile of this area to be annexed area the general good of their property would not be served by this annexation and then anything else.

Attorney White said objection, unless Mr. Monschein lives within a ½ mile of the parcel don't think he has the ability to without hersa, you would have to have witness that live within that ½ mile area, don't think Mr. Monschein can speak for and don't think that is appropriate at all.

Eaton Township Trustee Monschein said he has been elected by those people within the ½ mile radius. Attorney Schrader said the other condition to that is your witness does not live in the area seeking the annexation either, nor does he live in the unincorporated area of the township and he did not object to him being able, so. Attorney White said well he is objecting, now. Attorney Schrader said what is good for the goose is good for the gander the fact of the matter is that he may testify to these objections. He does not know of any case that says a township person cannot testify on the issue of general good and he will yield, he knows the Commissioners have Mr. Innes and will yield to him. Commissioner Kokoski said Jerry, she does not have a problem with Mr. Monschein giving his opinion if that is ok. Assistant County Prosecutor Innes said he understands that he can not speak for the residents but an elected official has some right, Commissioner Kokoski said that is what she is saying and think we should go ahead.

Attorney Schrader told Jason to state the facts and you are certainly entitled to state your opinion but state facts as well please, thank you.

Mr. Monschein said first of all out of the things said today as far as within a ½ mile or within the whole township that pays into LORCO and Carlisle and every time you move this corporation line and for 6 years he has heard the county is against annexation and this is first one, not only by legal documents we have from 88 and Lorain County judge has even seen and agreed with parts of that applies to today. Every time this corporation line moves, this is the first time the commissioners absolutely have a choice because there is nothing for the general good of this property that needs to go to Grafton or legally go to Grafton. Let's say, for example 2 things of the top of his head, you move this corporation line north, all of a sudden all the homes in Country Place a private development just north of the property we are talking about (held up a map showing it outlined in blue), these homes above that to the north all of a sudden that corporation line moves north restricted by certain things like in a municipality whether that be open burning, gun laws, etc. He keeps hearing talk about the need for a sewer that the developer put in, a sewer to go to Grafton, well Grafton required him to put in that pump station, or lift station and that was by the choice of Grafton he assumes and by their engineers and that is what he had to do then, and they have a sewer at the end of the last house of Durkee right next to this property so you can not tell him that this area has to be annexed because of the sewer and plus LORCO has loaned out though Avon Lake and he is sure that with there being 3 attorneys here could mention what that specific federal annexation is that does not come to his mind but does think it goes back to the Rural Water case back in 1994/1992 Fox Run case. He said if LORCO has loans out you cannot just take their area and expect to go to NOACA and have that lift when LORCO has a sewer there. This is their FPA and Grafton Village has had since 1988 to work on in this agreement with the county to provide a sewer to this area in which these first 3 phases were already annexed back in 1988 so this property just north speaking about today is just the very first one agreement that applies to this property that they signed that created all the income tax from the prison workers there and that is all they were concerned about then. #2 it has electric KLRE is there, it is a coop to say that to whatever fantastic things they have going on down there, that is fine but that is already served by electric LMRE and will serve it and water is Rural Water we have been through that before, Fox Run sewer, provides water to fox run its their service area like we are talking about the sewer. So we do not need Grafton Villages water, they will not provide the sewer without the preexisting condition of annexation like the consent decree said, it is like they think it does not exist. He said just like Judge Rothgery even cited that part being true it was the 100 foot that he did not agree with. He would also point out, and this is what Al said just as it states in the county commissioner's annexation manual under #5 the municipality adopts an ordinance stating what services they will provide to the territory to be annexed. We know that is in there whether it is legit or not that is between the attorneys and the approximate starting date for the provisions of the services. He stated they have not been told of any of the approximate starting dates and don't believe it is in the paperwork he looked through it while he was waiting to talk, because they cannot give you a starting date because there are 3 utilities there that you would have to force out of whether it is rural water, lmre and the biggest one being the sewers in which Eaton township residents are on the hook for that would have to be changed through NOACA a lengthy process because we have talked about it all morning. So that approximate start date is not even in the paperwork which is under #5, chapter 2 in the county commissioners annexation manual and goes on in chapter 3. He has heard a lot of things that basically state if it is annexed that we could do this or that but the general good is already there and if the county wants to do a TIF with the township to help alleviate some of a pump station feasibility prices or he is sure if the developer and his attorney would sit down with him and LORCO we could talk about all the tap in fees to put in the pump station if it is required, he does not have LORCO's engineers here but they do not need anything from Grafton they are fully staffed fire, ems and as the commissioners know the county sheriff is better equipped to protect the township residents than the police of Grafton village and that is not knocking anyone by any means so don't take it that way but they have all those things that are needed. He said as far as splitting a development in two this already happened on SR57 with Barrington Estates we have roads that are connected and just because someone's backyard meets up with someone's else backyard and one is in the city, one is in the township he has yet to see that problem.

Attorney Schrader said Jason. Commissioner Kokoski said Jason, she has a question. If the developer put in this additional pump station is LORCO sewer ready to receive that flow as it is right now. Mr. Monschein said yes in his talks with them but he can not speak for them even though he has spoke to them and said absolutley. He said that last house in Eaton Township is already connected to it, and he has heard the word speculation a few times here today and he guesses that we are speculating that a pump station is needed but that is not part of the general good here to affect the township residents that is to affect the developer is saying that he already had to put a pump station into grafton. But again, we could have been sitting down for the last 3 months, the commissioners, himself and representation from the village and petitioner and could have said do we need a pump station, could we do a JEDD, could LORCO workout something. Commissioner Kokoski said the way she is looking at it, it would cost each property owner about \$5,000 and pass this cost onto the property owners on top of the tap. Mr. Monschein said over time the property would be paying a lot of money into RITA if they are annexed into an unincorporated area. So right now, being in the township they are not paying RITA. He said he can not speak for all the taxes that Grafton may or may not have as far as additional levies or income taxes but they have minimal in the township overtime.

Commissioner Kokoski asked what the tap in fees are for LORCO that would be on top of the pump station or lift station. Mr Monschein said he does not know the price of the lift station but he can tell you that LORCO's tap fees are higher than the Village and will not deny that. Mr. Price, Grafton Village said \$8,000 compared to \$1800. Mr. Monschein said that he is not arguing and also not in charge of their utilities but to pay for the pump station he already cited something they could be doing let alone the fact that is already sewerred.

Commissioner Kokoski asked if there has been any discussions on flow agreements between the parties. Mr. Monschein said they have one for Barrington, Grafton and LORCO, but again Grafton and their representation has cut off the question everytime which is what they keep asking is that they won't provide sewer without the precondition of annexation which has already been settled by a consent entry by the court and theoretically this annexation is just not allowed to happen today. He said they would be happy to sit down since 1988 they wanted to do and work out an agreement and they have tried to, but here we are in the 9th district court of appeals and he would be happy to take it farther depending on the other 2 trustees opinion if it does not go their way currently.

Commissioner Kokoski said Jerry she remembers that old courtcase and could not read that map is that revelant in this case with the annexation, that old courtcase do we have to look at that to do something with this today. Mr. Innes said he does not. Atotrney Shrader said the only thing you have to look at today is the documents they submitted with that memo that has a copy of the written...Commsieorn Kokoski said Al, excuse you, she was asking Jerry that quesiton. Attorney Schrader said his apologies. Mr. Innes said it has been submitted to us but the previous case he does not think that it is going to be our repsonsibility to interperit what that document means. We can look at it view of the fact that we don't have any testimony that says that Mr.Price does not know or aware of any policy that Grafton has to annex to get sewer. He is not sure of the evidence that has been submitted so far proves that grafton is making that a condition, we can look at it but he is not sure that he can agree at this point that has been.....in this case. Commissioner Kokoski said ok.

Mr. Price, Grafton Village Administrator said Commissioner Kokoski said if he may. Mr Price said a couple of things and appreciate Mr Scharder mentioning stating the facts. He said he himself has and reflecting back to 1988 agrement and was mentioned at the last annexaiton hearing and does specifically state state route 82 and state route 83 to an area and they did testify months ago, 5-6 months ago, LORCO came in and eliminated that issue. He said this parcel, the closest part is 5,500 feet so it is greater than a mile and statute that Mr Monschein mention is 1926B a federal statute in regards to water only. You can not have occupancy in any public, private or whatever it may be but you can without sewer, electic and whatever else and everything is being thrown at the wall to see if it sticks. So he just wanted to make mention of those facts. Barrington is not pursea in an HOA as the adjaent subdivision which is Waterford, they are 2 separate subdivisions only connected by a road. He just wanted to point these things out since we are talking about facts. Thank you

Attorney Schrader said he did have a few more questions for Jason, Comsmieroner Kokoski said ok.

Attorney Schrader asked Jason you said we are doing this by zoom it procedural he send him a copy of the memoradum and attachments they submmitted into submision to the Commissioners yesterday, did he not. Mr. Monschein said correct. Attorney Schrader asked Jason if he looked at them and reviewed them. Mr. Monschein said he did but does not have it pulled up at the moment. Attorney Schrader said no problem, you don't need too, what he is going to ask is he would doubt as to if they are going to stipulate much of anything here, so he is going to ask Exhibit A is that a true and accurate copy of Judge Cirigilianos' decision in case 099892. Mr. Monschein said yes and it is on the 3rd page where he cited exactly. Mr. Schrader said ok, hold on he is only trying to identify the exhibits so he can get them into evidence, Mr. Monschein said yes. Mr. Schrader said Exhibit A you do keep a copy of that in the township records, do you not. Mr. Monschein said that is correct. Mr. Schrader said ok, is Exhibit B a true and accurate copy of Judge Rotghery's decision and here is a better case number 88CV099892 is that a true and accurate copy of his decision. Mr. Moncschein said yes, he is sorry he thought the first one he was referring to Rothgery but yes we have the consent decree, which was your question for #1 and yes and #2 Rothgery's decision is true and accurate and page 3 is where he talks about our citing today about the legality. Mr. Schrader said ok. Mr Schrader said just to be clear Exhibit B is Judge Rotgherys decision and that is a true and accurate copy of his decision and you keep a copy of that in the township records, Mr Monschein said yes. Mr. Schader said Exhibit A Judge Cirgiliano's decision, is that a true and accurate copy of that. Mr. Monschein said yes. Mr. Schrader said and attached to Judge Cirgiliano's deision and made a part of it is that sewer agreement we have been talking about all day, is that correct. Mr. Monschein said correct. Mr. Schrader said ok, he is done with that witness and he has one more to call but done with Jason, if Jason is finished.

Assistant County ProsecurorInnes asked if there was any cross examination.

Attorney White said he wants to ask Jason on October 7, when Theresa Upton sent the notice you received that correct. Mr. Monschein said is that your first filing or is it the one you withdrew. Mr. White said no, that is the second one. You got that notice that said the hearing date and time and Commissioners resolution and you called him about it, is that right. Mr. Monschein said when we talked we were talking about the first one and you said you were going to withdrawal it based upon some other things, so we spoke about the first one. Mr. White said we talked about the second one too, correct. Mr. Monschein said you said you would refile it. Mr. White said ok and you received notice from the Commissioners, correct. Mr. Monschein said yes, he does not have that date when that was. Mr. White said via email though, you did receive correct. Mr. Monschein said email he can not say for sure but mostly likely his email is full with the glw. Mr. White said there were 2 emails addressed corect. Mr. Monschein said he would have to check but eventually he is sure that he has a copy via email. Mr. White said he does not have anything further, unless Gretchen does.

Attorney Gretchen Holdernman said she does not have any questions, but she is preapred to give argument if you are ready to hear it. Mr. Innes said ok, just hold off on that for a little bit Grethen.

Assistant County Prosecuror Innes said Al, there are no other witness. Al said yes he is breifly going to call Kevin Flanigan on cross examaiton. Commissioner Kokoski asked Kevin to unmute his mic. Kevin said ok

Attorney Al Schrader said he could not see Kevin on the screen and just has a few questions. First of, do you understand from the Village of Grafton that they would not provide sewer service unless you annex. Mr. Flanigan said ya, it would be very difficult and significantly costly to go through LORCO and the lift station is desperatly needed to even come close to handling that property and operate how it falls of the back and they would have to go under the drainage to begin with. Mr. Schradder said ok, but your understanding is that unless you annex Grafton Village would not supply sewers to you is that right. Mr. Flanigan said yes at this point and time. Mr. Schrader said that is all he has for this witness

Attorney White said he does not have anything for Mr Flanigan unless Gretchen does. Ms. Holderman said no thank you. Mr. Schrader said that is all he has unless the Commissioners have questions for him or either of his witnesses

Assisant County Posecuror Innes asked if anyone has any witness or evidence at this time. Mr. Schrader said he is sorry. Mr. Innes repeated his questions. Attorney White said he does not

Mr. Innes said he has just one general question and he does not know if you can answer JR or Mr Price can, what happens if LORCO refuses. Commissioner Kokoski asked Jerry to wait one second because Commissioner Lundy lost his connection and trying to get back on so can we give him just a second if he can participate, Mr. Innes said I think we can. JR said he lost his a moment ago and ok now, Commissioner Kokoski said it must be the weather, JR said maybe, its still going out there, refeerring to snow at least in Elyria where he is, Commissioner Kokoski said yes it is. JR said he almost got stuck in his driveway. Mr. Schrader said he was afraid that his wife at home would go out so he came into the office and was not a particular easy drive in Akron. JR said he use to live in Akron and gets pretty snowy down there for some reason. Mr. Schrader said yes it does but not nearly the 18 inches of snow they were talking about but it was still bad enough. JR said his wife was home so he would have had to compete with playstation 4 today. Mr. Schrader said we might be related his wife takes the same approach as yours because when she wants to do something on the internet it does not matter, Mr. White said it is his kids and if his wife played video games that would be wonderful but she does other stuff well as she is a school teacher and off as well. Mr. Schrader asked how JR's dad was

Clerk said are you ok Matt, see that you are back on. Matt said yes. Commissioner Kokoski said alright

Mr Innes said he has one general question and maybe JR can answer or Mr. Price. What happens if LORCO and thinks he heard Mr. Price say that LORCO is against surrendering their FPA, but what if NOACA refuses to change the FPA. JR said he would probably have Mr Price speak to that he has done one FPA change with NOACA in City of Elyria but think that Mr. Price probably had more extensive dealings with them. Mr. Price said Mr. Schrader said that it was not an easy task and example they have Eaton Estates its not in the Village but in their FPA and Barrington is not in their 208 district but take it on a separate agreement with LORCO and had some issues with these agreements beause we are splitting things up and obviously with Grafton's resources they do a great job and trying to manage the agreements with the parties involved to stay in compliance. Mr. Innes said what you are saying is kind of like Commissioner Kokoski question you would do a flow agreement. Mr. Price said that would be and we have not had any discussions and will say that LORCO has attempted that NOACA try to..... and find these areas that are protected like in the 1926B federal mandate that is out there and even all the members of NOACA have rejected that into their rules of their organizations so the FPA can be adjusted and happens more often than people realize and it is just a matter of making application and in some cases not even making application where in this one situation, NOACA would Say it is an area that there is no way the county or LORCO would ever sewer this area would consider. So they have 2 areas of townships in their area of sewers that are in unincorporated areas.

Mr. Schrader said he thinks Jerry's question was, what happens if the annexation goes through but the sewer service area is not changed. Jerry can Kevin Flanigan answer that. Mr White said Jerry, is that what you were asking. Mr. Innes said yes, he is just trying to figure out what would happen if they said no. What would Mr. Flanigan have to do for sewers. Mr. Flanigan said again, he has not gone all that way to that point but he would have to say when it comes to development and would have to probably say would not do the project. Mr. Innes said ok, he was just curious. Commissioner Kokoski said she did not hear what he said, other than something about the project. Mr. Flanigan said if that was the case and he would hope that it would not be, but if that was the case then most likely the development would stop. Mr. Innes said he is saying that he would abandon the project. Commissioner Kokoski said ok. Mr. Flanigan said they would not be able to proceed. Mr. Monschein said that they would be said on speculate as it has been said throughout this morning here. Mr. Flaingan said a lot of people are speculating, Mr. Monschein said yes, we could work something out. JR said a lot of speculating going on. Mr. Monschein no one has sat down with them and talked about it. Mr Price said so the Commissioners understand if we had and start adding area after area after area into our sewer system how are they able to go into that jurisdiction and control their I&I when all of a sudden they flood their system with stormwater and knock everyone out of the sanitary sewer system area and that is the complication they are having with Barrington and Eaton and Midview schools and working with Midview School system and have the same complication with the county on the Arbor Court development, where there is a meter that should have been replaced 20 years ago and still have not gotten to. So they have those elements outside their jurisdiction that they have no control of, they pay them for it, don't get him wrong they pay to treat the sewage but don't when the damage is occuring when there is more than they can handle. This is why Grafton has spend \$3.5 million dollars on overflows that they constantly get so when does that stop or how can they forcibally give up their control and protection of the system when they have all those people attached to it including the people in their village, including people in Barrington and people in other developments like that and Midview school district. Mr. Monschein said a simple solution to that would be that you would want to stop adding jurisdiction or propoerty into, like you are trying to do right now and to both Barrington and the schools were tapped into before LORCO had pipes in the ground. So we need to solve it then just tap Barrington and schools into LORCO and you can handle your own residents and this property LORCO could handle and send it north. Mr. Price said you are wrong Mr Monschein on Barrington Park there is a flow agreement. Mr. Monschein said he understands that there is a flow agreement but there were no pipes in the ground when you had that agreement. Mr. Price said he done the quick math and to get the fall onto this parcel. Mr. Schradder said he objected, we are getting way way farther away from Jerry's question. Mr. Innes said yes he did not want to open a whole can of worms here.

Assistant County Prosecutor Innes said we are at the point of making closing arguments here. He asked if JR, JR said he would defer to Gretchen now if that is ok with you Jerry and then he would go after. Mr. Innes said he did have one question for Gretchen, sorry. Mr. Innes asked Gretchen what is the situation from the Village, do they require 3 readings. Ms. Holderman said that was going to be part of her argument and explain why they think the passage of 20-043 was proper but in any event based upon the law including the law Mr. Schrader provided that the resolution is proper, so if she can get those arguments submitted. Mr. Innes said just so you know he wanted to know that and also want to know what date it was passed he thinks it was early October, is that correct. Ms. Holderman said that is correct.

Mr. Innes said then lets go with closing arguments.

Attorney Gretchen Holderman said she wanted to point out that legislative action in question here is a resolution and not an ordinance and as the board is aware a resolution is a statement of support and her resolution no. 20-043 simply states that if the annexation is approved by this board that grafton is prepared to supply services. As you know you need this resolution because it is a prerequisite to consider in making your assessment of the petition for annexation. It is unlikely the board would pass or approve anenxation if utilities would not be provided. You also know that Grafotn is a charter municipality and pursuant to its charter articlee 4, section 10 states that council adopts its own rules relative to the passage of legislative and in additon to council is bond to revised code 705.15 regarding the passage of such legislation and the date of the meeting where 20-043 was passed was October 6, 2020 and at that meeting she did go back and reviewed the video of the meeting and there was discussion about the fact that the original annexation petition that had been filed by Mr. White on behalf of Mr. Flaingan had been withdrawn and refiled and there was more discussion between council members about the water utiltiy service to be provided. The resolution was passed unanimously all 5 council members were present and most critical point that disputes Mr. Schradders arguments. She said Mr. Schradder cases that he cited are distinquesably from the situation here and in fact they actually support Grafton's position regarding the passage of Grafton's resolution 20-043. She said 043 was properly passed pursusant to Grafton's own rules. However, she would note the 3 cases Mr. Schradder cited are not on point here. All 3 cases involved ordinances not resolutions in the Lofton case, supreme court highlighted the purpsoe of the statutory requirements require reasons for emergency only to satisfy voters that their representatives did have valid reasons for the necessity that the oridnaie was proprly based as an emergnecy. In fact it was passed in almost 60 days and in the Iliola Case which is the Youngstown case that cited the supreme court made very clear and in that case there was an instance....the ordinance in question was not properly passed as an emergency but since the time had passed that in fact the ordinance was then to take effect as it would be just like any other like it is the case in this resolution. She would submit the resolution 043 was appropriately passed and even if the board would determine that the emergency language was in proper than because of the passage of more than 30 days that at the very minimum it would be a regular resolution and still be properly before this board and still satisfies the requirement that Grafton verified it would be providing utility services if the annexation petition was granted. As the board is aware, in Ohio emergency resolution is final and not reviewable so they would submit the other cases cited by Mr. Schrader are actually cited in the other LE....locate....and that the notation about the fact that the legislation was just regular legislation would be disposit of any questions whether or not the emerency language some how void the the ordinance. In Iliola it absolutely did not void the fact

that particular language did not void the ordinance. Regarding Mr. Schrader's other cases they all dealt with referendums, and that is not the case here and would submit although Mr. Schrader has made argument relative to the general good not being served by this annexation he has presented no evidence that the general good would not be served and that. Finally she would mention the fact that it is not up to this board to interpret the intent of what the parties on the 30 year old consent decree and she would finally submit it is Mr. Schrader's interpretation to speculate that decree and thus far it has been cancelled by the trial court relative to his interpretation of the meaning and intent of the parties on that decree. She thinks that the petition is properly before the board and the board has the four points noted in Mr. Schrader's memo have been addressed and petition should be approved.

Commissioner Kokoski said ok, thank you. She asked Jerry if he had any other questions. Mr. Innes said no, we need to see if Mr. Schrader had any thing further he kind of did his closing earlier. Commissioner Kokoski asked Mr. Schrader if he had any further comments. Mr. Schrader said yes, is this closing then he is a bit confused. Commissioner Kokoski said yes.

Mr. Schrader said so briefly to sum up their position. He said the ordinance is invalid the fact the 30 days went by does not mean anything the reality is to pass a resolution or ordinance validly you either have to do by a correct emergency clause which would have to have a reason for or you have to read it 3 times. The reason for the emergency is to get around the 3 readings at 3 separate meetings. If the emergency clause was effective and not give any reasons and the 30 days don't mean anything because at no point that resolution or ordinance was read 3 different times at 3 different meetings all of which flow into the general good argument. Commissioner Kokoski asked if she could ask a question. How often does the Village meet, do they meet every week, every other week. Ms. Holderman said every other week, the 1st and 3rd Tuesday of the month. Commissioner Kokoski said if this was not passed as an emergency meeting and go through all 3 readings it would take you to what date. Ms. Holderman said she has to look at a calendar, Mr. Price said November 3. Ms. Holderman said thank you Joe. Commissioner Kokoski said so the time has already passed so its kind of a technicality, Mr. Schrader said no, Commissioner Kokoski said would this not just delay the inevitable. Mr. Innes said again, I don't mean to interrupt your close her but he is still not clear. He said Gretchen, are you saying because this is a resolution that it did not need 3 readings. Ms. Holderman said what she is saying is that Mr. Innes, if it were found that it was not worded as an emergency ordinance based upon the supreme court decision of Iliolla it specifically deals with that event where the language was not determined to be correct language for an emergency ordinance and it says that because however such ordinance was enacted on a date in particular and there was no challenge to its validity by a referendum proceeding or otherwise that pursuant to city charter it would just be a regular ordinance. So the board has said that it would just be the inevitable just after 3 readings it would be passed as a regular resolution. Mr. Innes said he understands the emergency argument and saw that in a case too, but all do respect to you Al, he does not believe the ordinance is ineffective and that is why he asked for the date when it passed but he is still struggling on the 3 readings. Ms. Holderman said in Grafton's rules they would normally do 3 readings unless it was deemed to be an emergency and there was discussion about the reason, there was discussion about the emergency language that Grafton felt was sufficient and was in fact the second time the petition was submitted to the board and council knew that time was of the essence over Mr. Flanigan's petition and council decided with a unanimous panel to pass the ordinance as an emergency. So yes, they do read 3 times ordinarily, unless they feel that it is an emergency and that is what happened in this case. Mr. Schrader said ok, and that is exactly what the problem is it was not a valid emergency clause and they have to have 3 readings if it is not a valid emergency clause. It is more than a procedural, that is why the statute requires 3 readings at 3 different meetings it gives the public 3 different chances to find out about it and address their local council members about it if they don't like it. Here this did not occur it passed as an emergency on 1st reading and the emergency clause was not properly done because it did not state the emergency. Commissioner Kokoski said it states health, welfare and safety it had some reason, right. Mr. Schrader said no, because the supreme court clearly states that health and welfare, you can not just say magic words you have to give a reason. For example, a valid reason would be the Commissioners are having a hearing 2 weeks from now and we don't have time, to do 3 readings, therefore we have to pass it as an emergency. That would at least say what the emergency was. Here they didn't it is almost like chanting halleluiah it did not mean anything. Commissioner Kokoski said she heard them say it was because it was a second attempt so pushed the time line so that was part of being the emergency. Mr. Schrader said the problem is that is not true either because it did not push the time line, Gretchen said they would of clearly had time to read it 3 different times and then it would have been effective sometime in early November and here we sit the 1st day of December, so they would of had time to do 3 readings with their council meetings every two weeks from October to November and they did not do it. Therefore in his view it is not valid for that reason, they did not give the residents a chance to hear this at 3 readings they brought it up at 1 meeting and it was over, so that is the legal argument with regards to the ordinance.

Commissioner Kokoski said Jerry, if he is correct is this a fatal flaw in this process is this a reason we have to deny this annexation or is it something for them to consider. Mr. Innes said yes it is a defect. Commissioner Kokoski said a fatal defect, Mr. Innes said yes.

Ms. Holderman said she would like to interject here and just say if this was not a valid emergency clause the remedy is not that the resolution is void, pursuant to the case law cited by Mr. Schrader that the imperfect is secured by the passage of time and there was no challenge and this is, just because it is passed as an emergency it did not just sneak up on the public, it is still published and still an opportunity to challenge it. She said the supreme court clearly says in that case Iliolla that it did not void the legislation which was an ordinance. Mr. Innes said he was not clear if there was 3 readings in the Iliolla, so you are saying unless the resolution is challenged within 30 days it is valid without 3 readings period. Ms. Holderman said she can say Mr. Innes, that in Iliolla, the supreme court said after finding there was a defect and it was only read 1 time and then passed as an emergency because there had been no challenge and because there had been the 30 day, the time frame had passed that the ordinance took effect in the same manner as regular ordinance and that is in the synopsis of the case on the first page. So, that is what she is saying and if there is a flaw, the flaw then has no impact or effect on the legitimacy of the resolution in question. Mr. Schrader said the fact remains that there was a requirement even Gretchen mentioned they read ordinances and resolutions 3 times in their normal course and there was not 3 readings on this and does not want to beat a horse to death but in his view that ordinance is invalid and if the commissioners need more research on that he would be more than happy to do it, and he came up with 3 separate court cases. He said this has already been a fairly long hearing so let him, try to do the closing and be done with it. To make it easier here is what they do not object to; there is no question that is not unreasonably large, the map is correct and legal description is correct and the engineers office said that and we agree with that. What they do object to is the procedural matters that were made in regards to notice they don't think that is matter than can be subject to the idea of the legal phase of escaping him, that it could be remedy. But here is the more important thing, this thing is just not for the general good of the area to be annexed and to the unincorporated areas of the township within 1/2 mile. First off, the burden of proof is not on Eaton Township here, it is on the petitioner. They are the ones that have to show it is for the general good. They mentioned not a word of the folks in the unincorporated area of a 1/2 mile, #1. #2, all that information that was given on the court order consent decree where the village agreed to provide sewer without annexation was so that you are aware so there is not requirement here legally or ability that you can not get sewer without annexing. While the Village was pretty reluctant to admit it, Mr. Flanigan when he was asked said yea he was under the understanding that he would not get sewer without annexation, you all heard him say that. So, it is really not for the general good, even if they allow the annexation it is uncertain that if the Village could ever provide any sewer to that area because that has to go through that NEFCO process, and that in itself is pretty dangerous and Mr. Flanigan indicated if NEFCO says no than he would not develop. It seems to him that this petition creates more problems for the petitioner and area of the township that is unincorporated within 1/2 mile. At that point and he thinks Jason and him both talked about this and gave you this evidence. If there is a petition to change that service area that creates substantial uncertainty in the minds of the folks that live in that unincorporated area within 1/2 mile and creates a problem for them. So for all those reasons we believe this particular annexation should be denied. He knows that Commissioner Lundy had said he prefers JEDD's and they do too and this is one for clear reasons to deny it is simply not for the good of the general good of the area to be annexed in the area within 1/2 mile of incorporated. Again, no evidence submitted on that issue at all and on the unincorporated area of 1/2 mile of the petitioners. The ordinance just on its own, defective than there is no ordinance in effect and that goes to the general good as well because this is the service that would be provided and this is why they annexed. So for all these reasons, they would respectfully request the Commissioners deny this request of annexation.

Commissioner Lundy said he would like to add something, he has been sitting there quietly listening and keep talking about NEFCO and the facilities planning area going to NOACA and his understanding is that if you are a municipality or village and once in that area would provide those services. He is not the attorney in the room and not an expert in the room but that has always been his understanding. He also has some other question he would hold for later.

Commissioner Kokoski said do we have any other closing arguments.

Eaton Township Trustee Monschein said he would like to add something if he could. Commissioner Kokoski said go ahead. Mr. Innes said Jason, your attorney has spoken for you and it is late to be adding evidence. Mr. Monschein said he would not say that it was evidence, this is a simply question for the Commissioners and they may not have it in front of them but in the County Commissioners annexation manual #5 of the 8 things that need to be met. The only thing he heard that needs to happen even though all the utilities are there is something to the extend that maybe the township would not put in fire hydrants in the development, that is ridiculous rural water will put in fire hydrants. #2 because of covid was these statutes made when covid was in effect because this goes back to 2001. He wants to ask one more thing out of the county commissioners annexation manual that don't think Al has mentioned and again, Jerry or whoever has this in front of them, under #5 the municipality adopted an ordinance stating what services it would provide to the territory to be annexed and the approximate starting date for the provision of services. Has anyone answered the approximate starting date, and they can't because none of these services are in their service district. For that fact alone, they don't meet #5 out of the county commissioners annexation manual for a regular annexation petition. There is no date listed and no one can give him a date here today. He knows that NOACA will be a lengthy process and we know that LORCO will go against it, LORCO has a sewer there LMRE is there for electric and Rural Water is there for water. When is the approximate starting date and the Commissioners will not get that answer because we can not have a definite answer not even an approximate. Mr. White said he could answer. Mr. Monschein said #2 on the general good of this territory you would be potentially annexing 51 sublots out of Eaton Township and the Township survives on property tax they don't have the income tax that they take out of all the workers paychecks like the folks that live in Grafton. He said levies and property taxes and you are telling him that it is the general good to annex these 51 homes that could be started tomorrow because all utilities are there just relys on some conversation between the developers, the attorneys, municipalites, townships. He said the municipality does not need to be involved, Grafton Village should not be involved in this just because there is an HOA problem, they could adopt the same language that is in their HOA as we have in the township and they already have zoning for this. So therefore, the Commissioners and Jerry do not meet item #5 or #7 out of the county commissioners annexation manual, they just don't. That is all he has, Commissioner Kokoski thanked Jason.

Commissioner Kokoski asked Mr. White if he had anything.

Attorney White said as for the start date of the services the law is clear stating that you will provide services upon approval by the board of commissioners is sufficient and there is case law out there and that is presumably why Mr. Schrader did not bring that up, he guesses, although he does not know, so that argument is irrelevant. He said another thing he wanted to point out is that Mr Schrader referred to these problems with the notice as procedural and in his closing statement he said procedural and the statute is also clear that substantial compliance is sufficient and he can not do anything further than put something in the mail and serve it that way. As to greater good, he thinks they put on sufficient evidence by far through Mr Price evidence and services would be passed on to the residents of the area to be annexed, the service to be provided would be superior at a lower cost and more convenience than what the township is able to provide. He does not know how that does not go towards the general good of these 51 homes. So you have 51 homes some probably new, some probably existing, some moving from another house in Lorain county to make new for others to these nice homes where these 51 families can live and families grow or otherwise it will just be vacant land and will remain vacant, that is what he has to say, thank you.

Attorney Gretchen Holderman asked if she could make one more point to the board. Commissioner Kokoski said go ahead Gretchen.

Ms. Holderman said thank you. She thinks she talked about the fact that Mr. Schrader cited case laws on ordinances and what they have in Grafton is a resolution and think she mentioned Revised Code 705.15 specifically that section deals with emergency clauses and the relevant to ordinance, Commissioner Kokoski said Gretchen you muted yourself and then said it is only proper to accept their resolution that appropriate did say they would provide the services upon annexation if annexation was approved by this board. She thinks everything is in place and that the greater good argument favors that....

Commissioner Kokoski asked if the Engineers office had any comments, you have been sitting there quietly Peter.

Peter Zwick, Engineers Office said no, he had submitted a report and the legal description of the territory is accurate and in addition to that they are in discussions with the Village regarding a road maintenance agreement for Durkee Road or Elm Street as it is called in the Village because of the segmentation. So that is all in his report.

Trustee Monschein said Lori, can he say something then. They don't meet #8 in the county commissioners annexation manual either, because therefore it states agreed too the road right of way and maintenance agreement, so if they are just in talks they have not met #5, #7 or #8, its not agreed too and he surely does not have it in front of him.

Mr. Price said it was passed.

Commissioner Lundy said madam Chair, said for the record he was concerned and everyone has a lot of work to do and deadlines are important and believe he heard from Mr. Schrader that everyone was comfortable in receiving the information yesterday from engineers office and wanted to make sure in fairness to everybody everyone had a chance to review that or if there was a need for more time. He said legal description and everything else accurate, but there is some loose ends to tie up on the agreement here too. He wanted to make sure everyone was comfortable receiving this at the last, somewhat at the last minute and everyone is comfortable or the parties need more time to review, that is one thing. The other thing with Jerry, he is still not comfortable if there is still a defect in emergency clause and that always gets to be tricky everywhere he has been, emergency clause, readings, waiving, so on and so forth so he don't know if he had exactly heard 100% confident in Jerry's opinion and wondering if Jerry needed more time to review and if so then maybe come back in a week to see where we are going to go on this.

Assistant County Prosecutor Innes said when we are done he was going to explain your options.

Options are A, you can discuss right now and decided it right now, openly

You can go into, this is a quiet judicial process so you can go into deliberations now or some other time.

If we are done with the hearing, we can official close and you would have 30 days to make a decision.

These are some options if we all wanted to think it about it a little bit, close the hearing and the commissioners will take in under deliberations and commissioners will make a decision within 30 days.

Commissioner Kokoski said we would have to make it by December 18, because this would be around our last meeting. Mr. Innes said he realizes that he is just telling you this would be your options. He said most likely we would all come back in a week or two like Matt said or whatever you thought once you looked over or ask him to get some more legal clarification.

Commissioner Kokoski said we would not have to open up a new hearing, we just do it as a part of our regular board business

Mr. Innes said if you close the hearing we are done, you just have to make a decision within 30 days.

Trustee Monschein said Lori, can he ask one thing. He said if we are tabling this or holding off can he ask that LORCO be invited to the next session because he has been asked a few times to speak on their behalf and he would like them to actually talk about this and their opinion for the commissioners whether or not the county and LORCO have the best relationship but that is the FPA there and that is why there is no starting date today because they are not going to give it up. So he would like to hear from LORCO's perspective on the said pump station apparently because their pipe is in the ground right there, let alone rural water and LMRE electric.

Commissioner Kokoski said we are not going to extend the hearing Jason, we are going to close the hearing today.

Mr. Innes said well, you do have that option too. We have to complete the hearings within 90 days and we are only at day 60. Mr. Monschein said he would like to see the road maintenance because there are 3 statues that they have not met in this manual #5, #7, #8.

Mr. Innes said you have an option that you can continue hearing itself to a week if you wanted.

Attorney White said he would like to say Jerry, if he may that the residents have been noticed, surrounding residents have been noticed, it was published in the paper and today was the hearing and certainly the township had all the opportunity in the world to bring LORCO in today and they did not. So he would just asked the Commissioners to consider that because the public interest already been notified that today was the day. So the Commissioners can do with that with what they wish.

Commissioner Lundy said there no way that LORCO would have been excluded and would have thought they would have been in the meeting.

Attorney Schradder said if he may and don't want to delay but answer Matt Lundy's question. Out of respect to the Commissioners that had read the letter from engineers office yesterday, reviewed it, don't disagree with it and he would not need any kind of time of extension on that and they rendered their opinion and don't have a problem with that. If someone else does he would be more than happy to do whatever the commissioners would like them to do. If you want additional research or briefs on the issue with the validity of the resolution/ordinance and he would be happy to try to do that even though he thought 3 supreme court cases would be sufficient. And, he does want to say that if the ordinance is not effective the statute does require if there is going to be a segmentation of the road and there will be based on the map and what engineers office wrote yesterday, statute does require the city to take responsibility for that. So someone usually the cart before the horse idea and that is where we are at here. The statue says here, by the annexation hearing the municipality will indicate that they will take responsibility for maintaining those roads if they are saying and they have not done it yet. So, that is an additional reasons the Commissioners might consider turning this down. Other than that he is more than happy to do whatever the Commissioners ask them to do.

Commissioner Kokoski said Commissioner Sweda.

Commissioner Sweda said yea, she has been waiting to jump in here. She would just like to weigh in on the conclusion that she has some significant question marks raised and that and would like that they either delay or receive more information and confer with Jerry Innes and would like to clear up some of the question marks that she feels are apparent and raised today.

Commissioner Kokoski said she agrees, she thinks we need more clarification from their legal counsel, she does not feel there needs to be additional testimony, she thinks she heard a lot today from all the different parties but think hearing more clarification from her legal counsel and thinks it would be her recommendation that we close the public hearing and not make a decision until a later date. Commissioner Sweda said is that a motion, Commissioner Kokoski said she would make that in form of a motion.

Commissioner Kokoski moved, seconded by Sweda to close the public hearing today. Commissioner Kokoski asked if there was any discussion. Commissioner Lundy, Clerk Upton said do we have a date. Mr. Innes said lets do a motion to close.

Clerk called for roll; Yeas: Kokoski, Sweda and Lundy / Nays: None

Motion carried.

_____ (discussion was held on the above)

JOURNAL ENTRY

Mr Innes said as far as the second issue it does not sound like anyone is going to make a motion today on a decision and you do not have to set a specific date just make a decision within 30 days, as indicated probably by the 18th. Commissioner Kokoski said we can put it on as an agenda item for our last meeting. Clerk said it would be the 16th. Mr. Innes said for the courtesy of all the parties, what did you say the 16th, Commissioner Kokoski said the 16th, Clerk said that is a Wednesday. Commissioner Kokoski said she would suggest that. Mr. Innes said for all parties that are present we probably will do it on the 16th so you want to link into our meeting that day, because we will have to do all the findings on this issue and think he will indicate to the counsels if they want to give him some stuff on case law he would appreciate it and he will tell them where he is right now. His reading of the court cases except for the ordinance does not meet the test of a valid emergency and agrees with Al on that but on the other hand, Gretchen is right, more than 30 days went by so he thinks as a regular resolution that would normally seem to him that a normal resolution would have to have 3 readings, but Gretchen is right the Iliola case seemed to valid that, that case even though it was one reading but don't recall that case specifying that law or factual says that it is ok. He said counsel he is still stimy and undecided on that one, but with 3 readings but actually it seems like Iliola said it was ok and he did not see any of those things on that so, anyone that can find anything on that he would be welcomed to receive.

Attorney Holderman asked Mr. Innes if they could get a week to get, Mr. Innes said we are going to be 2 weeks. Ms Holderman said thank you.

Commissioner Kokoski said ok, Commissioner Lundy you wanted an executive session.

Commissioner Lundy said he believes the Clerk has other business on the agenda before that. Commissioner Kokoski said that is going to be our other business.

Commissioner Lundy said he has an personnel matter that he would like the board to address and as a result of that personnel matter he would ask that we go into an executive session. Mr. Innes asked what sort of personnel, hiring, firing, wages. Commissioner Lundy said termination. Jerry said ok.

Commissioner Kokoski thanked everyone that came today and giving testimony it was a lot of good informaiton and appreciate all the time and effort you put into putting all this testimony to them today.

Attorney White asked if he could ask Jerry, if that was the only issue that you would like to be briefed on for legal. Mr. Innes said, Mr. White said just the ordinance issue. Mr. Innes said he is very comfortable in where he is going right now with the notice issue, the general good issue is really a factual issue and the only thing were he is going to give legal advise to the commissioners. Mr. White said thank you he appreciates that.

Commissioner Kokoski asked Clerk if she wanted to do her report before we go into an executive session.

Clerk Upton said she can but just saw Mr. Schradder say something but he is muted. Mr. Schradder said he apoloogizes, technology is a little beyond him and just wanted to make sure that they had a deadline getting the additional case law regarding the whether or not that ordinance is effective, is it one week from today. Mr. Innes said he will take it to the last day Al, we are not coming back to the 16th but the sooner you get it to him the more time he has to look at it. Mr. Schradder said great, thank you. He also thanked the Commissioners for the time and attention today. Mr. White echoed that, as well as Ms. Holderman _____ (discussion was held)

B.

OTHER BUSINESS

December 1, 2020

Nothing further but Lundy will request an executive session to discuss personnel/termination.

C

CLERK'S REPORT

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

JOURNAL ENTRY

Commissioner Lundy moved, seconded by Commissioner Kokoski to recess into an executive session at 11:59 a.m. with the zoom platform breakout room to discuss personnel issues/terminations. Upon roll call the vote taken thereon, resulted as: Ayes: All Lundy, Kokoski, & Sweda / Nays: None
Motion carried.

Commissioners reconvened and no action was taken

With no further business before the Board, Motion by Kokoski seconded by Sweda to adjourn at 12:54 p.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