

LORAIN COUNTY

Board of Commissioners

Matt Lundy Ted Kalo Lori Kokoski

County Administrator
James R. Cordes
440-329-5760

Clerk of Board of Commissioners
Theresa Upton
440-329-5103

Animal Control Officer
Timothy Pihlblad
440-326-5997

Budget Director
Lisa Hobart
440-329-5201

Charles Berry Bridge
Superintendent
Al Zocchi
440-244-2137

Children & Family Council
Director
Melissa Stefano
440-284-4467

Community Development
Director
Don Romancak
440-328-2323

E-9-1-1 Director
Tracy Slagle
440-329-5444

Emergency Management &
Homeland Security Director
Thomas Kelley
440-329-5117

Facilities Management Director
Karen Davis
440-329-5102

Human Resources Department
440-329-5150

IT Director
Ernie Smith
440-329-5786

Lorain County Crime/Drug Lab
Director
Emmanuel de Leon
440-329-5636

Lorain County Transit
440-329-5525

Office of Sustainability
Coordinator
Michael Challender
440-328-2361

Purchasing
440-329-5240

Records Center Supervisor
Denise Lindak
440-326-4866

Solid Waste Director
Keith Bailey
440-329-5442

Workforce Development Director
Mike Longo
440-284-1834

September 19, 2016

Grafton Village
960 Main Street
Grafton, Ohio 44044

Dear Mayor DiVencenzo:

Enclosed is Resolution No. 16-580 adopted by the Lorain County Board of Commissioners on September 14, 2016 rejecting the Municipal Owned Land Annexation Petition of 0.6563 acres from Eaton Township to the Village of Grafton. Mayor David DiVencenzo, Agent.

This is being forwarded for your information and files.

Sincerely,

Theresa L. Upton
Clerk

tlh
Enclosure

cc. Amy Barnhart, Clerk – Grafton Village
Francis Walker, FO – Eaton Township
Ken Carney, LC Engineer
Craig Snodgrass, LC Auditor
File

RECEIVED
2016 SEP 20 PM 2:31
KEN CARNEY
LORAIN COUNTY ENGINEER

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RESOLUTION NO. 16-580

In the matter of rejecting the Municipal Owned Land)
Annexation Petition of 0.6563 acres from Eaton)
Township to the Village of Grafton. Mayor David)
DiVencenzo, Agent)
September 14, 2016

WHEREAS, A Municipal Owned Land Annexation Petition and Map were filed in the Board of Commissioners received by the Clerk on August 18, 2016 for the proposed Annexation of approximately 0.6563 acres in Eaton Township to the Village of Grafton, Ohio; and

WHEREAS, letters were issued to Craig Snodgrass, Lorain County Auditor and Kenneth P. Carney, Lorain County Engineer asking for review and accuracy of the Petition and Map (There is no requirement to send these documents to the Auditor or Engineer, but did so as information status); and

WHEREAS, Resolution No. 16-546, adopted August 31, 2016 received and journalized this Petition and scheduled a decision on the proposed annexation on Commissioners agenda for September 14, 2016 (which is the 27th day); and

WHEREAS, Engineer by letter dated August 29, 2016, "reports that the legal description and accompanying plat map accurately describe the perimeter of the territory that the Village of Grafton now petitions for annexation"; and

WHEREAS, this being the 27th day of said petition for a decision by the Lorain County Board of Commissioners.

Attorney Al Schrader, representing Eaton Township stated they just discovered this last night, and being part of his fault he was in a car accident and was doing research. He stated the Engineers office did a review and stated the description is correct, but he wants to point out that it is not. The Ohio Attorney General Opinion 2016-019 "even if Engineer Office states it is correct, the final decision is the Board of Commissioners". Here is what is wrong with it, in the simplest terms; look at Exhibit A, which is the legal description of the land to be annexed, it refers to permanent parcel #028 and that is also the number in Commissioners Resolution No. 16-546 dated August 29, 2016, where this date was set and accepted annexation petition. During the 30 day time period, it is determined if the petition/legal description is correct, there is little to approve for this, other than the legal description is right. He stated the last three numbers of the legal description on current parcel of Exhibit A, which is in the resolution as reference is #028, the correct permanent parcel number ends in #280, which is the number cited in the Lorain County Engineers letter dated August 30, 2016 to Commissioners. In addition to #280, is the permanent parcel number stated in the actual petition, but is not the number on the legal description and in addition the Village resolution 16-021 also refers to the proper #280. Essentially what we have is Village annex permanent parcel #280, but legal description refers to #028 and he has no idea what this is, and the point is the legal description is incorrect with the wrong permanent parcel number. He also stated that Eaton Township Trustee Monschein discovered another issue regards to the map.

Eaton Township Jason Monschein said the legal description for the map that was provided does not give a correct parcel number and or on the map provided. This is a Commissioners decision based on Ohio Revised Code to approve where the County Engineer ok'd is just a resource for the Commissioners. There is no parcel number on the map either is referencing the parcel. The map just shows a shaded in area in black and it has neighboring parcel numbers but not the parcel number, or the two different parcels numbers listed in legal description. With that, speaking on behalf of the Trustees this is incorrect.

Commissioner Lundy said this the 27th day and we need to make sure that research is done on the questions being raised.

County Administrator Cordes asked if this is the land going to the school. Trustee Monschein said correct and there is support from 2 other townships because of Midview taxpayers are also concerned with information that has been given that this is not a walking path, and is one step to get the property.

Attorney Schrader stated he believes the intent of the Village of Grafton was to annex the part that Mr. Cordes mention to the school but they cited the wrong permanent parcel number on the legal description but it was correct in the petition and cover letter. He assumes that Mr. Cordes question was directed to Assistant County Prosecutor Innes. Mr. Cordes said he knows this was a debated issue with the path to the school and these parcels are being used by the township and village to accomplish the same thing. Trustee Monschein said he believes this is smoke and mirrors, no path back there because it is a development, this parcel is a wooded area behind homes that are in the development. His problem is that in this development there are already sidewalks and during these phases of the development there will be sidewalks in the public view out in the open to get to school and there is also paperwork that the developer will be putting the sidewalk to the next property, hence there is no reason to have a sidewalk in the woods.

Mr. Cordes said this is Barrington Estates, Trustee Monschein said correct. Trustee Monschein said Barrington and technically sometime before 2013 this is still in the township because the agreement with LORCO and Village. This was not support by Township or County and this land has already been denied once and just parceled off. Mr. Cordes said the sewer agreement with Grafton occurred awhile back and with Mr. Yost and the other side is Fiddlers Green, Kevin Flanigan by Durkee Road. Trustee Monschein said the Township would like to be a good neighbor and work together.

Assistant County Prosecutor Innes said he is not clear on the map, the wrong parcel. Trustee Monschein said the legal description states the incorrect parcel number and it is up to the Commissioners to determine and it is wrong and not on the map itself.

Attorney Schrader said they are not attacking the map, just the legal description because it contains the wrong permanent parcel number. They were here a month ago and the legal description was wrong then and the Village withdrew. We are now standing here again, and the statue requires the petition to do very little but have to have an accurate legal description. They are stating it is not an accurate legal description because of the wrong permanent parcel number and not asking for a rash decision. Trustee Monschein said there are so many more entities or people against or for, and in accordance with AG option; "if the legal description of the perimeter and map or plat of the territory proposed to be annexed is inaccurate the boundaries of the proposed territory ascertain or boundaries not ascertain the petition would be denied. He stated the Ohio Revised Code is against the township and eventually the Village will get it right and he wants it right. Mr. Cordes said ultimately when they file it correctly there is little the commissioners can do, it is like a pass through on this annexation petition.

Township Monschein said correct based upon this annexation he agrees this petition is against the township based upon the Ohio revised code but in the opinion it should be corrected.

Commissioner Kokoski said we are just delaying the inevitable. Attorney Schrader said correct, but he said #028 permanent parcel number, not sure what this refers to in the county. He suggests if this was a regular annexation and there is a lot of disagreement with this property, the township thinks it is safer for kids if they are walking along the sidewalk where there is traffic opposed to way in the back. There is a disadvantage and recognize that this is not one the commissioners can adjudicate, the issue right now is the legal description and map is correct or not and what they are saying is; if you do not use the correct permanent parcel number then we could be annexing something somewhere else and eventually they will get it right and recognize that and because the legal description is not correct and incorrect number we ask that it be turned down.

Commissioner Kalo asked if the Commissioners have the right to amend. Assistant County Prosecutor said no, Commissioners do not amend an annexation petition.

Mayor David Divencenzo, Grafton Village said their legal and engineer's office has reviewed and thinks it's just a trailing zero. Commissioner Kokoski said the permanent parcel numbers look like the last three numbers has been inverted, transposed the numbers. Mr. Cordes said unfortunately the board can not correct it. Mr. Cordes asked the Mayor to explain what Grafton is doing with these parcels. Mayor Divencenzo said the Village is working with Mr. Bob Yost, Developer and building a walking path off SR57, no sidewalks now, this would be a safe pathway to school behind the development and the intentions are to get this done. There is one parcel still needed. Mr. Cordes said the parcels can be developed through the safe routes to school. Mayor Dicencenzo said yes and the County health department has a \$50,000 grant available and Metro Parks looking to participate. Mr. Cordes asked if the Village would collaborate with the township at all. Mayor said sure, if they would like to reach out to them. Trustee Monschein said Village administrator did reach out to Eaton and did not converse well at first but now has a understanding. He said common sense is not to put a sidewalk back in the woods and in LORCO contract 1.2 d, developers put in sidewalk to keep kids up front, the common sidewalk would connect to Timber Trail. He has heard that the other parcel they would like to annex is wetlands and nature preserve.

Assistant County Prosecutor Innes said the law says annexation procedures he represents the Commissioners not the Trustees but in his opinion under the AG opinion the "issue whether or not the legal description is accurate, in fact it's up to the Commissioners to determine. The purpose of legal description is to determine exact location and size territory and even though the description doesn't seem perfect it is the object of submission is for the commissioners to reasonable ascertain the limits and boundaries of the territory. The law also states that purpose of annexation laws is encouraged to municipalities. Despite his opinion to the townships benefit of the boundary of territory is to identify the description of the property and the commissioners say it is accurate could move forward. As a practical matter he does not like that there is a question on the documents and it should be corrected and fixed but it does only delay the evitable.

Commissioner Lundy said the legal description is inaccurate and ascertain boundaries wrong parcel don't want confusion so it should be rejected on this basis.

NOW, THEREFORE BE IT RESOLVED, by the Lorain County Board of Commissioners of Lorain County, Ohio that upon review of the documents submitted and the testimony given today, the following findings are made:

The Petition contains the signatures of all the property owners in the territory to be annexed.

1. The Petition set forth that under an ordinance of the municipality the territory describes in the petition was authorized to be annexed.
2. The legal description of the perimeter of the territory is not accurate and ascertain to the boundaries based upon the permanent parcel number
3. The Petition contains an accurate map or plat of the territory proposed to be annexed.
4. The Petition contains the name of the person acting as statutory agent for the petitioners.

BE IT FURTHER RESOLVED that:

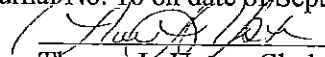
1. Upon the findings that all of the conditions of annexation as contained in Revised Code Section 709.16 have not been met, the Petition as presented is hereby rejected.

Motion by Lundy seconded by Kalo to reject said resolution. Upon roll call the vote taken thereon resulted as: Ayes: all.

Motion carried.

(discussion was held on the above)

I, Theresa L. Upton, Clerk to the Lorain County Board of Commissioners do hereby certify that the above Resolution No. 16-580 is a true copy as it appears in Journal No. 16 on date of September 14, 2016.


Theresa L. Upton, Clerk