

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :
Joint Petition of Norfolk :
Souther Railway Company : Case No. 19-180-RR-UNC
and CSX Transportation, :
Inc. To Close The Franklin :
Street Crossings (DOT :
Bos. 481482D and 518257V) :
In Orange Township, :
Delaware County, Ohio. :

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PROCEEDINGS

Before Jesse Davis and Nick Walstra, Administrative
Law Judges, for the Public Utilities Commission of
Ohio, via WebEx, called at 10:00 a.m. on Tuesday,
October 12, 2021.

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Tuesday Morning Session,
October 12 2021.

- - -

ALJ DAVIS: Go on the record. Good morning, everyone. The Public Utilities Commission of Ohio has assigned for hearing at this time and place Case No. 19180-RR-UNC, which is captioned In The Matter of the Joint Petition of Norfolk Southern Railway Company and CSX Transportation, Incorporated to Close the Franklin Street Crossings (DOT Nos. 481482D and 518257V) in Orange Township, Delaware County, Ohio.

My name is Jesse Davis, I'm the Administrative Law Judge assigned by the Public Utilities Commission to hear the case, and with me is Administrative Law Judge Nick Walstra.

With all that said, and preliminary matters taken care of, I'd like to start with taking formal appearances of the parties in the case, so can we have on behalf of the Petitioners?

MR. TALBOTT: Yes, your Honor. Casey Talbott on behalf of Co-Petitioner Norfolk Southern Railway Company.

MR. EVANS: In is Lee Evans on behalf of Co-Petitioner CSX Transportation, Inc.

1 ALJ DAVIS: Thank you. And on behalf of
2 the Delaware County Commissioners?

3 MR. HOCHSTETTLER: Thank you, your
4 Honor. Aric Hochstettler, Staff Attorney for the
5 Board of County Commissioners, business address is 91
6 North Sandusky Street, Delaware, Ohio, 43015.

7 ALJ DAVIS: Thank you. And on behalf of
8 Orange Township?

9 MS. HUBER: Good morning, your Honor.
10 Jennifer Huber, 0090547, the law firm of Brosius,
11 Johnson & Griggs, located at 1600 Dublin Road, Suite
12 100, in Columbus, Ohio 43215 for Orange Township,
13 along with...

14 MS. DONNAN: Julia Donnan, 0092577, same
15 business address.

16 ALJ DAVIS: Thank you. And just to
17 note, today's hearing is being transcribed by a Court
18 Reporter, and if you could all, and your witnesses,
19 please just be mindful and try to -- given the nature
20 of our web-based hearing and the way that sometimes
21 there can be a lag and things like that, to just
22 adjust accordingly.

23 And with that said, I would start with
24 the Co-Petitioners to call their first witness.

25 MR. TALBOTT: Yes, your Honor. Casey

1 Talbott on behalf of Co-Petitioner Norfolk Southern
2 Railway Company, as we had indicated, as our first
3 witness we would call Ernest Leon Jackson.

4 I would note for the Court Reporter that
5 in our prefiled we misspelled Ernest's name, we added
6 an "a" to it. It's supposed to be E-r-n-e-s-t, so
7 our apologies in that regard, but you may need to
8 promote him to a participant or something, or Micah
9 may need to, but that's our first witness.

10 ALJ DAVIS: Thank you.

11 MR. SCHMIDT: Mr. Jackson, you've been
12 promoted. If you can enable your audio and video.
13 Mr. Jackson, are you there?

14 MR. TALBOTT: He was on standby. I am
15 calling him right now. There you go.

16 ALJ DAVIS: I think you're muted,
17 Mr. Jackson.

18 MR. TALBOTT: Go off the record for a
19 second.

20 ALJ DAVIS: Yes, let's go off the record
21 for a moment.

22 (Recess taken.)

23 ALJ DAVIS: So with that said, let's go
24 back on the record. Welcome, Mr. Jackson. If I
25 could ask you to raise your right hand. Do you swear

1 or affirm that what you're about to tell is the
2 truth?

3 MR. JACKSON: Yes, sir.

4 ALJ DAVIS: Thank you. Counsel, you may
5 proceed.

6 MR. TALBOTT: Yes, your Honor.

7 - - -

8 Ernest Jackson,
9 being first duly sworn, as prescribed by law, was
10 examined and testified as follows:

11 DIRECT EXAMINATION

12 By Mr. Talbott:

13 Q. Mr. Jackson, this is Casey Talbott. On
14 October 5, 2021, we submitted prefiled testimony on
15 your behalf with supporting exhibits. Of course, you
16 have seen that.

17 As you sit here today, do you stand by
18 and reaffirm the testimony which was submitted?

19 A. Yes, sir. Yes, sir, I do.

20 Q. Okay. Thank you. Mr. Jackson, a number
21 of the other lawyers may have some questions for you,
22 but that's it from me for now. Thank you.

23 A. Thank you.

24 ALJ DAVIS: Thank you, Mr. Talbott. Is
25 there any cross-examination of this witness from

1 Delaware County?

2 ALJ WALSTRA: Mr. Talbott, can we
3 actually mark those exhibits now in the record?

4 MR. TALBOTT: Yes. Yes, for sure,
5 however you'd like to do that. With regard to -- if
6 that was Aric, with regard to Mr. Jackson -- I don't
7 know who asked that question.

8 ALJ WALSTRA: It was me.

9 MR. TALBOTT: With regard to
10 Mr. Jackson, we had Exhibits 1 through 4, they are
11 Petitioner's Exhibits 1 through 4.

12 And, Mr. Jackson, I guess I should ask,
13 have you had the opportunity to review those exhibits
14 and do you stand by those as well?

15 THE WITNESS: Yes, sir, I have.

16 MR. TALBOTT: Okay. Thank you.

17 ALJ WALSTRA: Thank you.

18 ALJ DAVIS: Thank you, Mr. Talbott. So
19 those shall be marked Co-Petitioners Exhibits 1
20 through 4.

21 (EXHIBITS MARKED FOR IDENTIFICATION.)

22 MR. TALBOTT: Yes, that's fine by us,
23 thank you. And I think that was the agreement of the
24 parties as well, I believe.

25 MR. HOCHSTETTLER: May I proceed, your

1 Honor?

2 ALJ WALSTRA: Just to double-check. So
3 Exhibit 1, is that his actual testimony, or is that
4 the first attachment?

5 MR. TALBOTT: Your Honor, it is the
6 first attachment. So his testimony was not -- was
7 not marked as an exhibit, it was prefiled.

8 There were three Google aerials which
9 were 1, 2, and 3 of the Franklin Street area from
10 further away, a little closer, and then a little
11 closer, and then the fourth was -- Exhibit 4 was a --
12 I think it's called a run card that the parties have
13 been using throughout this proceeding.

14 ALJ WALSTRA: I would say we typically
15 will mark the prefiled testimony as an exhibit.
16 Would that throw off all your numbering if we do that
17 now, or if we add it to the end, or something like
18 that?

19 MR. TALBOTT: Anything that your Honor
20 and the parties are comfortable with. I don't know
21 if the other parties did that, either, so -- but we
22 don't have any problem.

23 It might -- for the sake of what we have
24 done previously, it might make sense to mark his as
25 Exhibit -- I know we have got 10 petitioner exhibits,

1 so if we want to call this his prefiled testimony 11,
2 and that would be fine, but we would defer to the
3 Hearing Officers in that regard.

4 ALJ WALSTRA: We can mark it as
5 Petitioner's Exhibit 11.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 ALJ WALSTRA: And that way just for
8 briefing and for orders we have a reference point,
9 that makes it easier.

10 MR. TALBOTT: Fine here. Thank you.

11 ALJ DAVIS: Thank you. So just to
12 reiterate there that we have the attachments in the
13 order they are attached marked as Exhibits 1 through
14 4 to Mr. Jackson's testimony, and then his testimony
15 is marked as Petitioner's Exhibit 11, just for
16 clarity for the Court Reporter.

17 With that said, cross-examination,
18 Mr. -- on behalf of the County?

19 MR. HOCHSTETTLER: Yes. Thank you, your
20 Honor.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Hochstettler:

24 Q. Good morning, Mr. Jackson.

25 A. Good morning.

1 Q. I'm going to refer you to page 3 of your
2 written testimony. You indicated that Franklin
3 Street Crossings have 64 vehicles per day; is that
4 correct?

5 A. Yes, that's what is in the latest
6 inventory report that I reviewed.

7 Q. And your data does not break down what
8 vehicles comprise those 64, correct?

9 A. I'm sorry, could you repeat that last
10 question?

11 Q. Your data does not break down what
12 vehicles comprise those 64, correct?

13 A. I think that number complies with
14 vehicle crossings. The type of vehicles, I don't
15 think that data is collected, I am not sure.

16 Q. And you could not testify with certainty
17 whether those are trips -- residents within the
18 Unincorporated Village of Lewis Center, correct?

19 A. When I rely on traffic vehicle counts I
20 rely on the information provided by the FRA
21 inventory.

22 Q. You could not testify whether any of
23 those vehicle trips are an ambulance from Delaware
24 County Medic 3?

25 A. I couldn't hear that last question

1 because the phone quality is breaking up, but all I
2 can testify to is the count listed on the FRA
3 inventory report.

4 Q. And you indicated that you're familiar
5 with the Unincorporated Village, you've actually
6 visited there and observed these crossings, correct?

7 A. Correct.

8 Q. And there are residential dwellings on
9 Franklin Street west of the railroad tracks, correct?

10 A. I'm sorry, the call quality is not good,
11 but you asked a question about residency?

12 Q. I'll try again. There are residential
13 dwellings on the west side of the railroad tracks?

14 A. Correct, there are residential buildings
15 on the west side of the railroad tracks.

16 Q. And while you were in Lewis Center did
17 you see any church buildings on Franklin Street?

18 A. I didn't make note to observe any
19 certain building feature like whether or not they are
20 churches, I just recognize that there are residential
21 buildings on west side of the tracks.

22 Q. And I'm going to refer you to -- this
23 would be Norfolk Southern Exhibit 2, which is
24 attached to your testimony.

25 A. Okay.

1 Q. And on that exhibit there is an
2 indication of a North Unitarian Universalist Church
3 on Franklin Street, do you see that?

4 A. Yes, I see it.

5 Q. And then on the same exhibit there is a
6 reference to a Lewis Center Freewill Baptist Church
7 which appears to be on Church Street and Center
8 Street in Lewis Center; is that correct?

9 A. Yes, that's on the exhibit.

10 Q. And what about any commercial
11 properties, did you -- while you were in Lewis Center
12 yourself, did you observe any commercial properties
13 in Lewis Center on the west side of the railroad
14 tracks?

15 A. I can't comment on whether or not the
16 properties were commercial or not. I looked at
17 households and I just drove the area.

18 Q. Prior to the petition being filed, you
19 didn't have any discussions with Delaware County EMS
20 personnel about the impact the closure would have on
21 Medic 3; is that correct?

22 A. Conversations between me myself, and
23 emergency personnel, no, there hasn't been, no.

24 Q. And also in your written testimony you
25 identified -- I think what you referred to as a

1 fourth quadrant in reference to the run cards; is
2 that correct?

3 A. I apologize, I couldn't hear that last
4 question.

5 MR. HOCHSTETTLER: I would just -- your
6 Honor, I'm wondering if everybody else is having
7 difficulty hearing me, because I want to know whether
8 it's on my end.

9 MS. HUBER: We can hear you.

10 THE WITNESS: I apologize.

11 MR. HOCHSTETTLER: If there was
12 something I needed to do I wanted to take care of it.
13 By Mr. Hochstettler:

14 Q. I'll just repeat my question.

15 Mr. Jackson, in your written testimony,
16 you have identified an area with respect to the run
17 cards as the fourth quadrant. That would be the
18 Kroger area on the west side of the railroad tracks,
19 is that correct?

20 A. The fourth quadrant, yes, I have
21 identified quadrants and I realize that one of the
22 quadrants is on the west side of the track, correct.

23 Q. And there was a reference in your
24 testimony to an area called the Kroger area. Is that
25 the same as the fourth quadrant?

1 A. I'm familiar with that area as the
2 Kroger quadrant, yes.

3 Q. But that quadrant also includes the
4 Unincorporated Village of Lewis Center, correct?

5 A. Could you repeat that last question.

6 Q. That area also includes the
7 Unincorporated Village of Lewis Center; is that
8 correct?

9 A. I'm not privy to what is included and
10 what is incorporated and what is not. I'm familiar
11 with what is the quadrant, but Corporate Lewis
12 Center, I'm not aware of that.

13 Q. Are you aware of why it's referred to in
14 some of the testimony as the Kroger area?

15 A. Repeat that last question, all I heard
16 was the Kroger area.

17 Q. In your testimony and in other testimony
18 that you reviewed, you're indicating that there's an
19 area referred to as the Kroger area. Is that in
20 reference to the development at U.S. 23?

21 A. If U.S. 23 is the area situated in the
22 quadrant of the western portion of what we're
23 describing, the area is on the roundabout, I would
24 describe that as the Kroger area based on my visit.

25 Q. But that also includes the residential

1 dwellings that you observed west of the railroad
2 tracks, correct?

3 A. I believe the residential area is part
4 of that quadrant.

5 Q. Now I'm going to refer back to Norfolk
6 Southern Exhibit 2 attached to your written
7 testimony. Are you able to identify Delaware County
8 Medic 3 on that exhibit?

9 A. On Exhibit 2, yes, I can.

10 Q. Looking at that exhibit in a landscape
11 format with the railroad tracks running north and
12 south, is the EMS station the white roof building on
13 the -- it would be the northeast quadrant of Franklin
14 Street and the railroads?

15 A. Yes, I recognize that building on the
16 northeast quadrant as the building we're talking
17 about.

18 Q. Based on your identification of where
19 Medic 3 is, and your experience in driving on
20 Franklin Street, going from Medic 3 to West Franklin
21 Street would take longer using Lewis Center Road
22 Crossings than the Franklin Street Crossings,
23 correct?

24 A. Can you repeat that last question,
25 because you're still breaking up? You mentioned

1 something about taking longer. I apologize.

2 MR. HOCHSTETTLER: If the Court Reporter
3 has that could she read it back to him?

4 THE WITNESS: Things are still blurry.
5 Casey, are you able to come through clearer as well,
6 because it's still blurry. It sounds like a radio
7 station, I apologize.

8 MR. TALBOTT: Leon, I can hear you, I
9 can hear Aric as well.

10 (Question read back.)

11 THE WITNESS: By definition it would
12 take longer.

13 By Mr. Hochstettler:

14 Q. And, Mr. Jackson, I recognize in your
15 testimony your experience in railroad crossing
16 safety, but you're not an expert in emergency medical
17 services or emergency dispatch communications,
18 correct?

19 A. I'm not an expert in any of those
20 communications or dispatch, but I do work with them.

21 MR. HOCHSTETTLER: Nothing further.
22 Thank you.

23 ALJ DAVIS: Thank you. Is there any
24 cross-examination for this witness from Orange
25 Township?

1 MS. HUBER: Yes, your Honor. Thank you.

2 - - -

3 CROSS-EXAMINATION

4 By Ms. Huber:

5 Q. Good morning, Mr. Jackson. I'm Jennifer
6 Huber. I'm going to ask you some questions on behalf
7 of Orange Township. Can you hear me okay?

8 A. Okay. Yes, ma'am.

9 Q. Okay. Thank you. First, why don't the
10 Franklin Street Crossings have active warning
11 devices? And by that I think we mean lights and/or
12 gates.

13 A. That question would be best asked of the
14 railroad. The railroad works with the local highway
15 authority agencies to determine what is warranted at
16 each crossing as far as warning devices.

17 Q. Okay. In your opinion, why don't those
18 crossings have active warning devices?

19 A. I really don't have an opinion towards
20 it because even though I've driven the area plenty of
21 times, I'm not overly familiar with the area. I rely
22 on the warranty of active warning devices on the
23 local highway authorities which rely on the counties,
24 which rely on the townships.

25 Q. Okay. You've testified that you're the

1 manager of grade crossing safety, is that correct?

2 A. Yes, ma'am.

3 Q. Okay. So from a grade crossing safety
4 perspective, would active warning devices at this
5 location make the street crossings safer?

6 A. In my personal opinion, I don't believe
7 active warning devices makes crossings safer, I think
8 driver behavior makes crossings safer.

9 Q. Do active warning devices typically
10 generally cost more than passive devices?

11 A. In my experience, the installation of
12 active warning devices is more expensive than the
13 installation of passive warning devices.

14 Q. Okay. Thank you. You testified, and it
15 seems to me that you based some of your testimony on
16 the understanding that those who are opposed to
17 closing the crossings are opposed because it would
18 be -- your term was on the basis of convenience. Is
19 that correct?

20 A. I believe convenience is a factor in the
21 opposition of this crossing closure.

22 Q. Okay. So a factor, but not necessarily
23 the only one?

24 A. I don't believe it's the only factor,
25 but I know how convenience works.

1 Q. Okay. Are you saying that to mean that
2 you think it's the controlling factor?

3 A. I'm not sure how to answer that last
4 question. Can you repeat that one?

5 Q. Do you think that convenience is the
6 controlling, the main factor here?

7 A. I wouldn't like to opine on what is the
8 controlling factor on the opposition of this closing.

9 Q. Sure, but you based your testimony on, I
10 think, the basis that convenience is at least -- at
11 least a factor, and perhaps a main factor, or do I
12 have that wrong?

13 A. It's a factor, it's a known factor, but
14 I would not like to rank the factors.

15 Q. Okay. So do you think all of the
16 factors that you're aware of, do you think they weigh
17 equally?

18 A. I would still not like to rank the
19 factors. I do believe that there are multiple
20 factors why people would not like the crossing
21 closed, but I would not like to rank them only
22 because I'm just a manager of grade crossing safety,
23 I look at all these areas equally.

24 Q. Okay. Thank you. Do you think that a
25 cost savings to the railroad is a good reason to

1 close a useful crossings?

2 A. Although that is one of the many
3 factors, the factor that I work with is safety when
4 it comes to possible consolidation of crossings. The
5 cost savings is one thing, but the elimination of
6 incidence and the elimination of exposures is
7 another.

8 Q. To my knowledge, there have only been
9 two vehicular incidents at the Franklin Street
10 Crossings in recent memory. Is that your
11 understanding?

12 A. My understanding is that since the FRA
13 has been keeping record, there has been more than
14 two.

15 Q. Okay. Do you know what that number is?

16 A. I believe four, if we were to go to the
17 inventory data base that keeps up with vehicular
18 incidents.

19 Q. And do you know how long -- how far back
20 those -- that recordkeeping goes?

21 A. They typically go back to the 1970s.

22 Q. Did you say 1970s?

23 A. 1970s.

24 Q. Thank you. So to summarize that, there
25 have been four incidents, or you believe based on the

1 records you've seen that there have been four
2 vehicular incidents at the Franklin Street Crossings
3 since the 1970s?

4 A. The last time I checked the FRA database
5 on the history of those cases, it has four.

6 Q. Thank you. Are you aware that one of
7 those incidents, I believe, was a suicide? Is that
8 your understanding?

9 A. I have heard rumors that it was a
10 suicide. I would be reluctant to determine if it's
11 suicide unless there's a coroner's report, but I tend
12 to keep up with the incidents no matter the origin
13 behind them.

14 Q. And this is a little more of a
15 clarifying question. In your written testimony you
16 testified that you, quote, had the opportunity to
17 review or discuss testimony of certain of the
18 Township and County witnesses, unquote.

19 So I just want to clarify, when you're
20 talking about testimony of Township and County
21 witnesses, you mean the depositions and the public
22 hearing transcript, right?

23 A. I'm sorry, you started breaking up when
24 you mentioned public hearing. I have reviewed
25 testimony provided to me by counsel before this

1 meeting, however.

2 Q. And by that do you mean the depositions?

3 A. Yes.

4 Q. Okay. I am going to follow up on a
5 question that Mr. Hochstettler asked you about your
6 emergency medical training or lack, and I want to
7 clarify.

8 Are you now or have you ever been in
9 charge of reviewing, preparing, or maintaining safety
10 service coverage for the area we're talking about?

11 A. You were breaking up on that last
12 question, but you asked me if I have ever been in
13 charge of reviewing emergency logistics. No, I have
14 not.

15 Q. Okay. And you didn't prepare those sort
16 of plans or logistics either, right?

17 A. As part of my work I work with local
18 highway agent authorities that are familiar with the
19 area that provides me guidance, and part of that
20 guidance has to do with the EMS services, so in an
21 indirect way I have.

22 Q. Can you go into a little more detail on
23 that? What does that look like when you work with
24 other folks on safety services?

25 A. Basically the testimony of Ms. Stout

1 outlines that. I work closely with the officials,
2 and especially officials familiar with the areas, to
3 make sure that we are not consolidating crossings
4 that could be a hindrance to EMS services.

5 Q. Okay. You said you worked with DOT
6 officials?

7 A. OID people specifically.

8 Q. Okay. But not the Orange Township Fire
9 Department, Fire and EMS, correct?

10 A. Not directly. Not directly, no.
11 Basically the local highway authorities have been a
12 liaison between the railroad and the local emergency
13 services.

14 Q. Okay. So just to clarify, not Orange
15 Township, and for the same reason not Delaware County
16 either, directly?

17 A. Not directly.

18 Q. Understood. Okay. So in light of that
19 testimony, you also testified that, quote, there's no
20 impact on EMS getting -- and then you referenced the
21 western quadrant, or let's say it's the Kroger area,
22 unquote.

23 Is that your opinion, or do you have a
24 professional basis for that statement?

25 A. Based on my opinion, that is my

1 assessment of that. It's one-sixth of a mile.
 2 That's the length of a football field. And based on
 3 the fact that based on length, I believe this would
 4 be a good closure based on how far the crossings are
 5 apart, I have looked at that.

6 Base don the length, it is my opinion
 7 that the detour is negligible. I don't believe that
 8 there's a demonstrable need for this crossing based
 9 on the fact that it is just over 300 feet from the
 10 adjacent crossing that can handle additional traffic.

11 Q. Thank you. So you just said negligible,
 12 but your testimony was no impact. Which one?

13 A. It's negligible. So yes, I will stick
 14 with my testimony. But of course I have measured
 15 this area and if I had to quantify it, I will. But I
 16 do stick to my testimony that there's no impact on
 17 EMS services to that western quadrant.

18 Q. Okay. And just some follow-up
 19 questions. I appreciate your bearing with me. You
 20 don't live in the Township, do you?

21 A. No, ma'am, I don't.

22 Q. And you don't work in the Township
 23 either, do you?

24 A. I do not. Even though I go to Ohio
 25 often, I do not live there.

1 Q. Okay. Do you drive in this area of
2 Orange Township on a regular basis?

3 A. By regular, what do you mean?

4 Q. However you want that to mean. I mean,
5 you define regular. If you're saying yes, Jen, I go
6 weekly, or monthly, or annually, you may define
7 regular.

8 A. I try to visit this area of Ohio at
9 least three times a year.

10 Q. Okay. Would you say that you're
11 familiar with the traffic patterns on Lewis Center
12 Road?

13 A. Based on the FRA data, yes.

14 MS. HUBER: Thank you, Mr. Jackson, I
15 don't have any further questions for you.

16 THE WITNESS: Thank you, Ms. Huber.

17 ALJ DAVIS: Thank you. Is there any
18 redirect by Mr. Talbott?

19 MR. TALBOTT: Yes, your Honor, there is.

20 - - -

21 REDIRECT EXAMINATION

22 By Mr. Talbott:

23 Q. Mr. Jackson, can you hear me?

24 A. Yes, sir.

25 Q. Okay. You talked about the Medic 3

1 station on the east side -- you talked about the
2 Medic 3 station on the east side of the tracks. Can
3 that Medic 3 station get to the Kroger area via
4 Franklin Street south, or must it divert to Lewis
5 Center?

6 A. Currently it can use Franklin Street,
7 but it can use Lewis Center if Franklin Street is no
8 longer there.

9 Q. I'm talking about can it get all the way
10 to the Kroger area, all the way to Kroger via
11 Franklin itself?

12 A. Oh, yeah, I apologize. Yes, it can get
13 to the Kroger area using Lewis Center Road.

14 Q. Okay. And that's not my question. My
15 question is this: Yes, everybody acknowledges that
16 Medic 3 can get to Kroger via Lewis Center.

17 I'm asking can it get all the way -- can
18 it get all the way to the Kroger area via Franklin,
19 or does it have to go over to Lewis Center?

20 A. No, it has both accesses available, but
21 Lewis Center is an option, it doesn't have to go
22 there.

23 Q. Okay. Mr. Jackson, so we're clear,
24 because I don't think you're understanding me -- and
25 it could be because of the phone connection -- is

1 Franklin a through street?

2 A. Franklin is simply a cut-through street
3 that leads to this roundabout, so it's not completely
4 necessary to get to the Kroger area for the EMS.

5 Q. Approximately how long is Franklin
6 Street?

7 A. Franklin Street is roughly about
8 one-third of a mile, based on my measurements.

9 Q. Did you say approximately one-third of a
10 mile?

11 A. Yes.

12 Q. Okay. And so if you're going to Kroger,
13 the only way to get to Kroger is if you're traveling
14 on Lewis Center, correct?

15 A. Yes.

16 Q. Okay. Mr. Jackson, how far is the Lewis
17 Center roadway from Franklin?

18 A. About a sixth of a mile.

19 Q. Is that the same as six-one-hundredths
20 of a mile?

21 A. Yes, I'm sorry. Yes, six-one-hundredths
22 of a mile, just over a football field length.

23 Q. And that comes from the mileposts on the
24 FRA and PUCO databases, correct?

25 A. Yes.

1 MR. HOCHSTETTLER: Objection, your
2 Honor, he's leading this witness.

3 By Mr. Talbott:

4 Q. Mr. Jackson, I want you to assume that
5 the Ohio Rail Development Commission, Ms. Stout,
6 testified that this crossing currently ranks No. 31
7 on the State's hazard ranking. Did you hear that?

8 A. Yes, ranks 31.

9 Q. Assuming lights and gates -- assuming
10 lights and gates were to go in here, is that
11 something Norfolk Southern would pay for, or is that
12 something that would be Section 130 money through the
13 Ohio Rail Development Commission? Who would pay for
14 lights and gates?

15 A. It is my understanding that if the ORDC
16 has a hazard ranking and they would like to install
17 lights and gates at a crossing, it would be 130 --

18 Q. So the ORDC would pay for it?

19 A. Yes, the ORDC would definitely
20 facilitate it, but it would be paid for by the folks
21 other than Norfolk Southern to install active warning
22 devices at Franklin Street, yes.

23 Q. Okay. And that's basically taxpayer
24 money, correct?

25 A. It is my understanding that it's coming

1 from Section 130 money.

2 MR. HOCHSTETTLER: Objection.

3 ALJ DAVIS: Let me interrupt for a
4 moment here. Mr. Talbott, let's keep to open
5 questions, please.

6 MR. TALBOTT: Okay. We'll do so, your
7 Honor. We'll try. I'm doing the best I can with the
8 phone. So -- but I'm almost done, anyway.

9 By Mr. Talbott:

10 Q. Mr. Jackson, would putting lights and
11 gates at this crossing change the character of the
12 roadway itself?

13 A. No, I don't think it will.

14 Q. Okay. Do lights -- do vehicular/train
15 collisions occur at crossings that have lights and
16 gates?

17 A. I'm sorry, Casey, you're going to have
18 to repeat that last question.

19 Q. Yeah, I'm hearing some papers rattling.
20 I don't know what that is, but maybe if other people
21 would mute, it might help. I don't know, maybe that
22 will help. But let me try one more time.

23 Mr. Jackson, do vehicular collisions
24 occur at crossings with lights and gates? Let me
25 repeat it, because -- okay.

1 A. I have a bad audio, I apologize.

2 Q. Is it possible -- Strike that.

3 Do vehicular collisions occur at
4 crossings that are equipped with active warning
5 devices?

6 A. Oh, yes, it is possible that
7 crossings -- incidents can occur at crossings with
8 active warning devices.

9 MR. TALBOTT: Thank you. That's all I
10 have.

11 ALJ DAVIS: Thank you, Mr. Talbott. Is
12 there any re-cross based on this redirect,
13 Mr. Hochstettler?

14 MR. HOCHSTETTLER: Briefly, your Honor.

15 - - -

16 RE CROSS-EXAMINATION

17 By Mr. Hochstettler:

18 Q. Mr. Jackson, I didn't see in your
19 written testimony that you had indicated that the
20 Franklin Street Crossings were the 31st most
21 hazardous crossing in the State. Is that your
22 testimony?

23 A. I would have to look that up, but I have
24 the same access to the public website, WBAPS, that
25 the ORDC has access to, which they base their hazard

1 ratings on, yes.

2 Q. And that hazard rating, does it also
3 factor in the number of vehicles per day?

4 A. The number of vehicles per day I believe
5 is factored into their hazard rating.

6 Q. And if there were a vehicular/train
7 incident at a crossing with only 64 vehicles, would
8 that cause the hazard rating to be higher than if
9 there were a train/vehicle incident at a crossing
10 with 10,000 vehicles per day?

11 A. I can't comment on how the FRA comes up
12 with the calculations of the hazard ratings, I
13 apologize.

14 MR. HOCHSTETTLER: Nothing further.
15 Thank you.

16 ALJ DAVIS: Thank you. Is there any
17 recross based -- I'm sorry? Sorry, I thought I heard
18 someone else. Is there any recross on behalf of
19 Orange Township based on the redirect?

20 MS. HUBER: No, your Honor. Thank you.

21 ALJ DAVIS: Thank you. With that said,
22 Mr. Jackson, thank you for testifying. Micah, you
23 can put Mr. Jackson back to attendee.

24 (Witness excused.)

25 ALJ DAVIS: And the Co-Petitioners can

1 call their next witness.

2 MR. EVANS: This is Lee Evans, and the
3 Co-Petitioners would call Amanda DeCesare as our next
4 witness.

5 ALJ WALSTRA: Before we get there,
6 Mr. Talbott, do you want to move your exhibits?

7 MR. TALBOTT: Mr. Walstra, I did not
8 hear that.

9 ALJ WALSTRA: Do you want to move your
10 exhibits into admission?

11 MR. TALBOTT: Sure. We would move, at
12 this point, to admit exhibits -- Co-Petitioner
13 Exhibits 1 through 4, plus No. 11, although I will
14 state for the record that I think counsel are -- by
15 agreement, I think all the exhibits are coming in,
16 but we can deal with that as we go.

17 ALJ WALSTRA: Any objection to the
18 admission of those Exhibits 1, 2, 3, 4, and 11?

19 MS. HUBER: No your Honor.

20 MR. HOCHSTETTLER: No objection.

21 ALJ WALSTRA: Hearing none, those will
22 be admitted.

23 (EXHIBITS ADMITTED INTO EVIDENCE.)

24 ALJ WALSTRA: And we can proceed with
25 Mr. Evans' witness.

1 MR. EVANS: Amanda, are you wired for
2 sound and ready to go?

3 MS. DE CESARE: Testing. Can you hear
4 me?

5 ALJ DAVIS: Yes. Can I ask you to raise
6 your right hand? Do you swear or affirm that what
7 you're about to tell is the truth?

8 MS. DE CESARE: Yes.

9 ALJ DAVIS: Thank you very much,
10 Mr. Evans you may proceed.

11 - - -

12 Amanda DeCesare,
13 being first duly sworn, as prescribed by law, was
14 examined and testified as follows:

15 DIRECT EXAMINATION

16 By Mr. Evans:

17 Q. Would you state your full name, please,
18 Amanda?

19 A. Amanda Jean DeCesare.

20 Q. And just for the record, you're employed
21 by CSX Transportation, Inc., is that correct?

22 A. Yes.

23 Q. Did you assist and participate in the
24 preparation of some prefiled testimony in this
25 matter?

1 A. Yes.

2 Q. And do you have a copy of that handy
3 should you need it?

4 A. I do.

5 Q. And attached to that there was an
6 exhibit, specifically a diagnostic survey form. Do
7 you recall that?

8 A. Yes.

9 Q. And did you attend that diagnostic
10 survey when it occurred?

11 A. Yes.

12 Q. And is that a -- to the best of your
13 knowledge, a true and accurate copy of the diagnostic
14 survey form from the survey for this particular
15 crossing?

16 A. Yeah, it looks like it.

17 Q. Okay. Regarding your prefiled
18 testimony, if I asked the same questions here today
19 that were asked at the time the prefiled testimony
20 was prepared, would your answers be the same?

21 A. Yes.

22 Q. And I just -- I noted that we did not
23 ask you your educational background in there, and
24 just for the record, could you tell us what your
25 college degree or degrees are in, please?

1 A. Sure. I attended Michigan Technological
2 University. I have a Bachelor's Degree in
3 construction management and an Associate's Degree in
4 civil engineering technology.

5 Q. Okay. Thank you.

6 MR. EVANS: I have no further questions
7 of the witness. In terms of the exhibits, I would
8 indicate that the prefiled exhibit of the survey
9 attached to her prefiled testimony was marked as an
10 Exhibit A, but in the Petitioner's exhibits,
11 submitted prior to the hearing, it's Exhibit 8, and
12 then as far as her pretrial testimony, I would
13 propose that it be marked as Petitioner's Exhibit 12.

14 ALJ DAVIS: Thank you, Mr. Evans, they
15 shall be marked as such. Her testimony shall be
16 Petitioner's Exhibit 12, and the attachment therein
17 would be Petitioner's Exhibit 8.

18 (EXHIBITS MARKED FOR IDENTIFICATION.)

19 MR. EVANS: And I have no further
20 questions.

21 ALJ DAVIS: Is there any
22 cross-examination for this witness, Mr. Hochstettler?

23 MR. HOCHSTETTLER: Yes. Thank you, your
24 Honor.

25 - - -

CROSS-EXAMINATION

By Mr. Hochstettler:

Q. Good morning.

A. Good morning.

Q. I'm going to refer you to the exhibit that is attached to your prefiled testimony, and that is the diagnostic review team survey, correct?

A. Yes.

Q. And reviewing that exhibit, no representatives from Delaware County EMS or the Delaware County Engineer's office were present; is that correct?

A. The only thing I'm not sure about is who EM Agent Hughes -- who they were there for, if it's an engineering firm, I'm not sure who they were representing, but correct, I don't see anyone labeled from the engineer's office.

Q. Or Delaware County EMS, correct?

A. Correct.

Q. And prior to filing this petition you never had any discussions with any representative from Delaware County EMS in regards to the impact on Delaware County Medic No. 3, correct?

A. I personally have not. I know that Lee Evans has in some manner.

1 Q. Prior to filing the petition?

2 A. You're going to have to ask that from
3 Lee, I don't know.

4 MR. EVANS: You can only answer what you
5 know. I can't really answer for you, but if the
6 answer is I don't know, then you don't know.

7 THE WITNESS: I don't know.

8 By Mr. Hochstettler:

9 Q. There is an EMS station, Delaware County
10 EMS station, adjacent to the railroad tracks on
11 Franklin Street; is that correct?

12 A. Are you referring to the one that is
13 Station 3?

14 Q. Yes.

15 A. Yes.

16 Q. And while you were conducting this site
17 survey, did you visit Medic 3 station?

18 A. I did not go inside the station. I did
19 drive past as I came in off Lewis Center Road down
20 Third Street and then on to Franklin Street.

21 Q. In your prefiled testimony you indicate
22 that the Franklin Street Crossings have a hazard
23 rating in the State of 39th most hazardous crossing
24 in the State. Is that your testimony?

25 A. Yeah, I got that number from the PUCO.

1 They are actually in charge of ranking the crossings
2 in the State. The railroad does not rank them.

3 Each state actually has a little bit of
4 a different ranking method depending on what they
5 determine as the most pertinent information in that
6 state. So the most recent ranking as of last week or
7 so was 39th from Jill Henry at the PUCO.

8 Q. And am I correct in saying then that you
9 could not testify as to how that ranking is
10 calculated?

11 A. Generally I know that things that go
12 into -- that are factored in are the train count, the
13 train speed, the traffic count, and the traffic
14 speed -- maybe the accident rating, but I don't know
15 that for sure because I don't do those rankings
16 myself.

17 Q. Are you aware of a fatality at the
18 tracks within the last ten years? This would be the
19 Franklin Street Crossings, to be clear.

20 A. I am not familiar with any accidents
21 that have happened at the crossings. I know that
22 there have been accidents, but I don't know if they
23 were fatalities or not.

24 Q. You also don't have any knowledge of
25 whether someone living on Franklin Street on the west

1 side of the railroad tracks has ever had a heart
2 attack?

3 A. I do not know.

4 Q. You also don't know whether someone
5 living on Franklin Street west of the railroad tracks
6 has ever had a stroke?

7 A. I don't know.

8 Q. What about respiratory distress, anybody
9 living on Franklin Street west of the tracks, you
10 don't know whether anyone has ever suffered
11 respiratory distress?

12 A. I have no knowledge of anyone's personal
13 health history on the west side of the track.

14 Q. And during your visit to -- and we'll
15 just call it Lewis Center. It's an Unincorporated
16 Village, but we'll just call it Lewis Center, the
17 actual community at the railroad tracks, okay?

18 While you were there did you observe any
19 residential dwellings on Franklin Street?

20 A. I would categorize the west side of the
21 tracks as a residential area. I did not pay any
22 specific attention to what type of houses or
23 dwellings were there.

24 MR. HOCHSTETTLER: Thank you. Nothing
25 further.

1 ALJ DAVIS: Thank you. Is there any
2 cross-examination for this witness from Orange
3 Township?

4 MS. HUBER: Yes, your Honor. Thank you.

5 - - -

6 CROSS-EXAMINATION

7 By Ms. Huber:

8 Q. Good morning, Ms. DeCesare.

9 A. Good morning.

10 Q. I'm Jennifer Huber. I'm going to ask
11 you some questions on behalf of Orange Township, if
12 you don't mind.

13 A. No problem.

14 Q. You testified in your prefiled testimony
15 about the Franklin Street Crossings being
16 practically -- I'm going to use your words, quote --
17 one crossing, unquote.

18 In the railroad's view, is there really
19 only like one of those crossings, is there good
20 reason to close one of them, but because it's really
21 all combined, you don't have that option practically?

22 A. Can you restate the question?

23 Q. Sure. Because we're talking about two
24 or three tracks of lines crossing at Franklin Street,
25 are they all the same level of concern, or safety

1 issues to the railroads?

2 A. I can only speak for CSX.

3 Q. Sure.

4 A. In that case we only have one track, so
5 we only have the one there, which means that we are
6 concerned about the safety at the crossings.

7 Q. Okay. Why don't the Franklin Street
8 Crossings have active warning devices, in your
9 opinion?

10 A. The determination on what type of
11 warning devices are going to be installed at a
12 crossing is made during a diagnostic team review,
13 which we have for the survey, which we have as the
14 exhibit. The survey recommended that the crossing be
15 closed.

16 Q. Okay. You testified in reference to
17 sworn testimony of Delaware County and Orange
18 Township officials. I just want to clarify, when
19 you're talking about that sworn testimony, you're
20 referring to the depositions, correct?

21 A. What number are you referring to on my
22 testimony so I can just read it and make sure we're
23 talking about the same thing?

24 Q. No. 24, about partway down in your
25 answer.

1 A. So it says, "Further, based on my
2 understanding of the sworn testimony provided by
3 Orange Township and Delaware County personnel, the
4 impact of the closure of Franklin Street Crossing on
5 the operation of the Delaware County EMS station
6 located to the northeast quadrant of the crossing
7 would be negligible."

8 And what I mean by that is that that is
9 a summary of the testimony that was given to me by
10 Lee Evans, our lawyer.

11 Q. Okay. I'm just clarifying, there have
12 been -- what you may not know is there's several
13 rounds of what I'll call testimony and documentation
14 in this case. You saw the depositions, right?

15 A. I actually have gotten this information
16 directly from Lee. I myself did not -- I did not
17 read the actual documents, this is information given
18 to me by my lawyer -- our lawyer, CSX's lawyer.

19 Q. Okay. So you received a summary of the
20 testimony, you didn't review it particularly?

21 A. Correct.

22 Q. Okay. Do you have any emergency medical
23 or safety service experience or training?

24 A. No.

25 Q. Are you now or have you ever been in

1 charge of reviewing, preparing, or maintaining a
2 safety service coverage for an area?

3 A. No.

4 Q. So referring back to your answer in No.
5 24, you said, quote, would be negligible.

6 A. Yes, and the reason I said that is
7 because the territory of -- or the run card that
8 showed the Station 3 showed that most of their
9 territory was actually on the same side of the track
10 that they are on, so they don't have to cross the
11 track to serve their territory, is my understanding.

12 Q. Okay. But if we were looking at the
13 way -- the impact on service to the west side of the
14 tracks, would your answer be different?

15 A. I don't have -- I don't have enough
16 knowledge about that. All I know is that per the map
17 that was provided, that that station does not serve
18 the west side of the track, so I don't know who
19 serves the east side of the track, but I guess that's
20 all I have to say.

21 Q. Okay. So have you evaluated the impact
22 of the closure of this crossing on emergency vehicle
23 traffic and response times for the entire Delaware
24 County?

25 A. I have not. That's not in my expertise.

1 Q. You've also testified that, quote, it
2 has been observed that high school students use this
3 crossing to get around school buses backed up on
4 Lewis Center Road, unquote.

5 A. Yes, that was testimony. I don't
6 remember who said that specifically, but that was
7 something that was said at the diagnostic team
8 review, and they said that because school buses have
9 to stop at the crossings and look both ways, the
10 students that were in line trying to get to school
11 behind them would cut around through Franklin Street
12 to cross the tracks to avoid the backup caused by the
13 buses, which was implied that that was more risky
14 behavior because they were taking a shortcut to go
15 around faster and cross the tracks.

16 Q. Okay. Would it seem reasonable to you
17 if I said that emergency vehicles and residents of
18 the area do the same thing?

19 A. I am not sure.

20 Q. I mean, can we imply, I think for the
21 purposes of this conversation, that if high schoolers
22 are doing it, probably more than just high schoolers
23 are crossing the tracks at that crossing?

24 A. I would say what they are doing is an
25 unsafe way of crossing the tracks, but I don't know

1 what else that implies.

2 Q. I guess I'm just asking in just your
3 experience as a person who drives a car on roads, if
4 some people are using that crossing to circumvent
5 school buses or other traffic backed up on the Lewis
6 Center Road, wouldn't it make sense that a lot of
7 people do that?

8 MR. EVANS: I'll just object. I've let
9 it go, but this requires speculation which I don't
10 think the witness can really address.

11 MS. HUBER: Okay, I'll move past it.

12 By Ms. Huber:

13 Q. Are you recommending closure of all of
14 the crossings that are ranked 1 through 38 most
15 hazardous?

16 A. I don't know what 1 through 38 are.

17 Q. If this crossing is listed as No. 39 --
18 which is your testimony, right?

19 A. Yes.

20 Q. Is the recommendation that crossings 1
21 through 38 should also be closed?

22 MR. EVANS: So I have to object, lack of
23 foundation. It's not been established that CSX is
24 involved with crossings 1 through 38, or that this
25 witness has made any recommendation regarding any of

1 them, so I think that's an unfair question.

2 MS. HUBER: I'll reframe it.

3 By Ms. Huber:

4 Q. Are any other CSX crossings involved in
5 Nos. 1 through 38?

6 A. I don't know. I don't rank the
7 crossings, the PUCO would have to tell you that.

8 Q. And just a couple final close up
9 questions. You don't live in the Township, do you?

10 A. No.

11 Q. And you don't work in Orange Township
12 either?

13 A. No.

14 Q. Do you drive in this area of the
15 Township on a regular basis?

16 A. I will say that before COVID, when I
17 traveled, I used to visit multiple areas of my
18 four-state territory multiple times a month, say
19 three to four times a month; however, now I don't
20 travel at all.

21 Q. How long has it been since you have
22 traveled like that?

23 A. Before COVID. So you know, probably
24 late 2019.

25 Q. Would you say that you're familiar with

1 the traffic patterns of Lewis Center Road?

2 A. I'm familiar with the vehicular count
3 and I'm familiar with the crossing because I've been
4 there, so that is my knowledge base basically.

5 Q. Okay. But not necessarily how the
6 traffic ebbs and flows through in a typical day,
7 those kinds of things?

8 A. Right. The Township would be the one
9 that would have that information.

10 MS. HUBER: Okay. Thank you. I don't
11 have any further questions for you.

12 THE WITNESS: Okay.

13 ALJ DAVIS: Thank you. Is there any
14 redirect for this witness, Mr. Evans?

15 MR. EVANS: Very briefly, your Honor.

16 - - -

17 REDIRECT EXAMINATION

18 By Mr. Evans:

19 Q. Ms. DeCesare, regarding the comments
20 that were made at the diagnostic survey meeting at
21 the crossing concerning the high school kids cutting
22 around buses, is it your belief, did that come from
23 someone local to the area? You didn't know that, I
24 assume, do you know who -- without knowing their
25 name, do you know if it was someone from the area?

1 A. Give me one second, I'm going to close
2 the door here, the cleaning lady just came in.

3 No, I don't know -- I don't remember.
4 It was back in 2012. I don't remember specifically
5 who said that, so I can't give any details of that.

6 Q. Okay. You were asked some questions
7 about who was in attendance, and in terms of anyone
8 from Delaware County.

9 From the list of attendees in
10 Petitioner's Exhibit 8, and from your recollection,
11 do you have an understanding as to whether there were
12 individuals there from Orange Township?

13 A. Yes, there are three listed. The one
14 person, I don't remember who he is with is, Scott
15 Overturf, so that could have been from, to the
16 previous question, the County or EMS office. I don't
17 remember who that is.

18 Q. Okay. And lastly -- last couple
19 questions. I think you were listening to testimony
20 earlier and referred to Franklin Street as a cut
21 through street that has a beginning and end much
22 different than what Lewis Center does; is that right?

23 A. Yes.

24 Q. Is it your understanding that if medics
25 from the Medic 3 station needed to get from their

1 location east of the crossings to an area west of the
2 crossing, after Franklin Street is closed, would they
3 still be able to do that using Lewis Center?

4 A. Yes, they would still be able to do
5 that. And further, there have been previous times
6 the crossing was closed for a longer amount of time
7 over the last few years, and there was no issue with
8 responding, according to the testimonies that we
9 referenced here.

10 MR. EVANS: Thank you. That's all the
11 questions I have.

12 ALJ DAVIS: Thank you.
13 Mr. Hochstettler, is there any recross based on this
14 redirect?

15 MR. HOCHSTETTLER: Yes. Thank you, your
16 Honor.

17 - - -

18 RECROSS-EXAMINATION

19 By Mr. Hochstettler:

20 Q. During your site visit did you actually
21 personally observe these bus stops with high school
22 students traveling over the Franklin Street
23 Crossings?

24 A. I don't recall what time the visit was
25 at, but I don't really remember there being many cars

1 at all using the crossing, or any kind of vehicles at
2 all.

3 The point of the time comment being I
4 don't know if it was during 8:00 or 3:00 p.m., or the
5 busy school route times.

6 Q. You didn't personally observe a school
7 bus stopped at Lewis Center Road Crossings, correct?

8 A. No.

9 MR. HOCHSTETTLER: Nothing further.
10 Thank you.

11 ALJ DAVIS: Thank you. Ms. Huber, do
12 you have any recross based on the redirect?

13 MS. HUBER: I don't, your Honor. Thank
14 you.

15 ALJ DAVIS: Thank you very much,
16 Ms. DeCesare. Thank you for testifying. You are
17 free to stand down.

18 (Witness excused.)

19 ALJ DAVIS: With that said, is that --
20 that's your last witness from the Petitioners?

21 MR. EVANS: Aside from some deposition
22 testimony, yes.

23 ALJ DAVIS: Okay. That's great. Then
24 Mr. Evans, Mr. Talbott, I think we can go ahead and
25 proceed in that direction. Mr. Evans, could you move

1 the exhibits.

2 MR. EVANS: I apologize. Yes, I would
3 move that Petitioner's Exhibit 8, being the
4 diagnostic survey, and -- be admitted into evidence,
5 as well as the prefiled testimony of Amanda DeCesare,
6 which I think we have agreed would be marked as
7 Exhibit 12.

8 ALJ DAVIS: Are there any objections?

9 MR. HOCHSTETTLER: No objection, your
10 Honor.

11 MS. HUBER: No objection.

12 ALJ DAVIS: Thank you. The testimony is
13 admitted as Exhibit 12, and the report would be as
14 Exhibit 8.

15 (EXHIBITS ADMITTED INTO EVIDENCE.)

16 ALJ DAVIS: Thank you.

17 MR. EVANS: Thank you, your Honor.

18 ALJ DAVIS: With the exhibits admitted,
19 Mr. Evans or Mr. Talbott, you may proceed.

20 MR. TALBOTT: Thank you, your Honor.
21 This is Casey Talbott. As I'd indicated, we were
22 going to read portions of the previously filed
23 depositions of certain of the County and township
24 witnesses. We were going to start with former Fire
25 Chief Matthew Noble.

1 MR. SCHMIDT: Ms. Rawlings, you've been
2 promoted. If you can enable your audio and video.

3 MR. TALBOTT: And actually -- so we have
4 got -- Ms. Rawlings is going to help with a couple of
5 the Other township or County witnesses, I have my
6 associate sitting here next to me who is going to
7 read the part of Noble.

8 So instead of me reading question and
9 answer, I'm going to read the question, and my
10 associate Nicholas Bartlett is going to read the
11 answer. Again, this is the deposition of Chief
12 Matthew G. Noble.

13 ALJ WALSTRA: Before we do that, I mean,
14 is this the understanding of all the parties as --

15 MR. HOCHSTETTLER: No, your Honor. In
16 fact, I would move -- we have discussed stipulating
17 to the admissibility of all the deposition
18 transcripts, as well as the fact that the public
19 hearing transcript is a part of the record.

20 From the County's standpoint we don't
21 see any purpose to reading from those transcripts if
22 they are already part of the record.

23 Petitioners are certainly capable of
24 citing to any parts of those in their post hearing
25 brief. In the interest of time, I would move that we

1 just stipulate to the admissibility of those
2 transcripts and move on.

3 ALJ WALSTRA: Orange Township,
4 Ms. Huber, do you have any opinion on this?

5 MS. HUBER: We are in agreement with
6 Mr. Hochstettler.

7 MR. TALBOTT: Mr. Walstra, we had
8 understood from previous discussions that we would --
9 and from our filing, an ability to read -- to read at
10 least select parts as part of our case in chief.

11 We understand that that won't be
12 particularly exciting, but there's some important
13 information. If -- so we have tried to streamline
14 it, but, you know, our best estimate is it might go
15 ten minutes per witness.

16 If that's something that the Hearing
17 Officer is not inclined to entertain, then as Aric
18 said, we have got -- you know, we have the
19 stipulation that all of the depositions are in
20 evidence, and all of our proffered exhibits are in
21 evidence as well. That would be, I guess, 1 through
22 10 plus now 11 and 12.

23 So we welcome -- we understood we were
24 going to have some ability to read. I don't know,
25 Lee, if you want to chime in. I want to make sure we

1 do this right by the parties and the Hearing
2 Officers.

3 MR. EVANS: Your Honors, we had
4 previously filed the transcript, we have previously
5 submitted prefiled testimony of a sense in terms of
6 referring to pages and lines, and the proposed
7 reading of transcripts is even a subset of that.

8 We're probably talking about what was
9 originally eight to ten hours of deposition testimony
10 that we have, I think can be read -- could be read
11 into evidence in about perhaps an hour and 15 minutes
12 or so.

13 However, we understand the proposed
14 stipulation and that everything comes in, and that we
15 can refer to everything. I would -- and so whatever
16 the Hearing Officer -- whatever you determine, we
17 certainly are willing to abide by.

18 It does seem, in putting on our case,
19 that we have an obligation to meet the burdens -- our
20 burden of proof, and we wanted to make sure that the
21 record is clear from this hearing that we think we
22 can do so.

23 I would note that there are sort of two
24 different categories. There are two witnesses that
25 we were going to read, Mr. Noble, former Chief Noble,

1 and Ms. Stout from ORDC, who will not be testifying
2 at all.

3 So the other individuals are scheduled,
4 as I understand it unless something has changed, to
5 be direct examined and cross-examined later in the
6 proceeding.

7 Ms. Stout, in particular, and Chief
8 Noble, that's not the case, and so it seems, if
9 nothing else, that perhaps those two -- select
10 excerpts of those two ought to be read so that the
11 full flavor of the issues that they address would be
12 before the Judge.

13 ALJ WALSTRA: But in regards to both
14 these witnesses, they both have been deposed and it's
15 the understanding of all parties that those
16 depositions will be made part of the record, am I
17 understanding that right?

18 MR. HOCHSTETTLER: Yes, your Honor.

19 MR. TALBOTT: That is correct, your
20 Honor.

21 MS. HUBER: Yes.

22 ALJ WALSTRA: I'm inclined to let the
23 depositions stand as they are. We can kind of
24 formally go through with the agreement that you guys
25 have to have that be admitted.

1 And then, you know, I assume the parties
2 are intending to have briefs after this, and you guys
3 can cite to those specific lines in terms of the
4 parts you guys want to highlight.

5 Somewhat in the matter of judicial
6 efficiency, I don't know if we necessarily have to go
7 through that. Obviously you'll have your briefs, and
8 this isn't a jury trial, so I think we can still get
9 the flavor of that, and that message can get across.

10 And I'm sure co-counsel there wants to
11 debut his acting performance and is ready to go, but
12 I think we can -- if you guys just want to discuss
13 the agreement to the -- and your stipulation to the
14 admission of the depositions, I think that should be
15 sufficient, and you guys can cite to that in your
16 briefs, it will be part of the official record and we
17 can as well rely on that in our order -- in the
18 Commission's order.

19 MR. EVANS: This is Lee Evans, your
20 Honor, and I'm certainly fine with that. I guess my
21 understanding of the stipulation, which I would need
22 to make sure that the transcripts -- all of the
23 transcripts that have been filed are admitted as a
24 whole and can be referenced for all purposes in the
25 briefs, and in addition, there were some -- not a

1 lot, but there were some objections raised during the
2 course of the depositions, and it would be my
3 understanding, if we're doing it this way, that any
4 of those deposition objections would be waived so
5 that we can, without fear, cite to various testimony
6 if it happened to be the subject of a deposition. So
7 that's the only thing I would add to what I think the
8 stipulation should be.

9 MR. HOCHSTETTLER: Your Honors, speaking
10 for Delaware County, but I had already referenced
11 this last week that I would be willing to waive any
12 objections that I raised in those depositions.

13 I do not believe there were -- I
14 reviewed them again just to make sure, there were not
15 any objections of which I instructed one of my
16 witnesses to not answer a question.

17 So I'm fine with that being part of the
18 agreement. That was my understanding when we
19 discussed it last week.

20 MR. TALBOTT: Your Honor, Casey Talbott
21 on behalf of Co-Petitioner Norfolk Southern. If
22 that's the Hearing Officers' inclination, I share
23 Lee's concern that Stout and Noble are a little
24 different, particularly Stout, she's the ORDC
25 witness, that be want to make darn sure we bring that

1 before the -- before the Commission.

2 But if the Hearing Officers' inclination
3 is to, in lieu of reading, go with the deposition
4 transcripts are deemed submitted with their exhibits,
5 and our Exhibits 1 through 12, we can rely upon
6 those, then I think, you know, that's fine, and then
7 we move on to the County and Township witnesses.

8 ALJ WALSTRA: So how many depositions do
9 we have that would be adding to the record, five?

10 MR. TALBOTT: Let me look just to be
11 sure. We have got -- your Honor, we have got
12 Noble --

13 ALJ WALSTRA: Why don't we take this one
14 by one, mark them as exhibits, and then move for
15 their admission. Does that work?

16 MR. TALBOTT: Yes, your Honor. So Noble
17 would be 13, N-o-b-l-e, Brandt is B-r-a-n-d-t, that
18 would be 14. Next would be Keating, K-e-a-t-i-n-g,
19 his deposition would be 15.

20 Next would be Riley, that's R-i-l-e-y,
21 that would be 16. Next is the ORDC witness we
22 referenced, that's Stout, S-t-o-u-t, that would be
23 17.

24 And that is -- and then we would have
25 the testimony from the public hearing, which I don't

1 know if your inclination would be to call that No.
2 18, or if that's something separate.

3 (EXHIBITS MARKED FOR IDENTIFICATION.)

4 ALJ WALSTRA: That is already part of
5 our official record. That's like -- as much as like
6 today's transcript will be on the docket and can be
7 referenced in brief for an order, same goes for the
8 public hearing. Those five depositions then?

9 MR. EVANS: That is correct, I believe.

10 ALJ WALSTRA: And is there any objection
11 to the admission of those five exhibits?

12 MR. HOCHSTETTLER: No objection from
13 Delaware County, your Honor.

14 MS. HUBER: We have no objection for
15 Orange Township, thank you.

16 ALJ WALSTRA: Petitioners' Exhibits 13,
17 14, 15, 16, and 17 will be admitted to the record.

18 (EXHIBITS ADMITTED INTO EVIDENCE.)

19 ALJ WALSTRA: I just want to be clear
20 because I feel like those numbers jumped around.

21 MR. TALBOTT: I think I botched them.

22 ALJ WALSTRA: I mean, it's fine as long
23 as we're all on the same page, because obviously
24 there's some missing numbers in the middle, so I just
25 want to make sure we're on the --

1 MR. TALBOTT: So we're on the same page,
2 we have Noble as 13, Brandt 14, Keating 15, Riley 16,
3 and Stout 17. Is that it?

4 ALJ WALSTRA: That is what I have, yes.

5 MR. TALBOTT: I may have messed that up
6 the first time, I apologize.

7 ALJ WALSTRA: I just want to make sure
8 we don't have an Exhibit 5, 6 or 7, or 9, 10.

9 MR. TALBOTT: We do, your Honor. Those
10 are exhibits that have been shared with the parties
11 ahead of time.

12 ALJ WALSTRA: Okay. Also part of your
13 prior stipulation you're saying?

14 MR. TALBOTT: Yeah, that's our
15 understanding, that we would be offering the
16 witness -- pardon me, Exhibits 1 through 10, which
17 were the prefiled exhibits, also 11 and 12, which
18 would be the prefiled as to Jackson and DeCesare, and
19 then 13 through 17, which would be the depositions
20 previously filed.

21 ALJ WALSTRA: Okay. But now that we're
22 officially on the record, I just want to get for the
23 Court Reporter, so that is the understanding of all
24 the parties then as well as -- because I believe 5,
25 6, 7, and 9 and 10 have not been formally introduced

1 on to the record, but it's the -- from my
2 understanding it's the parties' understanding that
3 these will be admitted to the record; is that
4 correct?

5 MR. HOCHSTETTLER: No, your Honor, I'm
6 going to need some clarification on those. Looking
7 through the materials that I have in my file, I don't
8 see a reference to those.

9 So I just want to make sure I'm not
10 missing them and have an opportunity to review them.
11 Perhaps I don't have any objection, but I just need
12 clarification first.

13 MS. DONNAN: The Township would agree to
14 that as well, we need some additional clarification
15 on 5 through --

16 MS. HUBER: 5, 6, 7, 9, and 10, I think.

17 MS. DONNAN: Correct.

18 ALJ WALSTRA: Mr. Evans, could you
19 identify those, please?

20 MR. TALBOTT: Yes. And these went out
21 to all counsel, I can't -- I think it was through
22 Courtney Rawlings. It was a link, but I will -- so
23 Petitioner's Exhibit 1 was of the --

24 ALJ WALSTRA: Why don't we do this?
25 It's noon right now, we have been going for two

1 hours. We can take like an hour break for lunch, get
2 sorted out on what exhibits are what, come back on
3 the record at, say, 1:10, and then hopefully we'll
4 know what all the exhibits are, we can discuss those,
5 and then Delaware and Orange can go forward with
6 their witnesses. Does that work?

7 MR. HOCHSTETTLER: Yes, your Honor.

8 MR. TALBOTT: Would you like counsel to
9 stay on the call right now to talk about these
10 exhibits?

11 ALJ WALSTRA: Why don't we do that at --
12 why don't we do that at 1:10, and just make sure we
13 have everything in order.

14 If you want to email or whatever to say
15 what the exhibits are, that's fine, or if you guys
16 want to talk off line off the record, that's fine.
17 Make sure we're all on the same page.

18 MR. TALBOTT: I think Courtney is on the
19 line and she could, I guess re-forward the Exhibits 1
20 through 10, we don't -- 11 and 12 have already gone
21 out.

22 The prefilled 1 to 10 I believe were in a
23 link and we understand -- we understood that we were
24 collectively okay with those exhibits.

25 ALJ WALSTRA: So are we all on the same

1 page? We'll reconvene in about an hour, and
2 hopefully then we can get these exhibits sorted out
3 and then I believe you guys will rest with your case
4 in chief and go forward?

5 MR. TALBOTT: I mean, Aric and Jennifer,
6 Julie, I assume you got that email last week with the
7 link to the exhibits.

8 MR. HOCHSTETTLER: I got email, I got no
9 link. I'm looking at it right now. So I'm happy to
10 stay on, we'll let the Judges go have some lunch.

11 I don't eat lunch on hearing days, so
12 I'm happy to stay on and work through this so that
13 we're ready to go at 1:10.

14 ALJ WALSTRA: Valerie, we're off the
15 record.

16 (Lunch recess from 12:10 to 1:10.)

17 ALJ WALSTRA: We will go back on the
18 record. During break we kind of tried to sort out
19 the exhibits here, so if Mr. Talbott, Mr. Evans, if
20 you just want to identify the exhibits for us that
21 haven't been formally marked yet.

22 (EXHIBITS MARKED FOR IDENTIFICATION.)

23 MR. EVANS: Sure. This is Lee Evans.
24 I'll certainly take a whack at it. I think we
25 previously had referenced and moved into evidence 1

1 through 4, actually 1 through 5 -- no, 1 through 4.

2 5 and 6, as noted by counsel a moment
3 ago, are composite exhibits that -- of public record
4 documents, I think it's fair to say, that were
5 attached to the petition in this matter.

6 And it's my understanding that counsel
7 have no objection to 6 and 7. 8, we previously dealt
8 with through testimony. 9 is a resolution dated
9 April 19, 2021 that was passed by the Orange Township
10 trustees, and 10 is a composite exhibit of
11 communications related to that.

12 And it's my understanding based on the
13 discussion a few moments ago off the record, that
14 counsel has no objection to 9 or 10 either. And I
15 think that's all of the exhibits that we didn't
16 previously deal with during the course of testimony.

17 ALJ WALSTRA: Okay. Thank you.

18 MR. TALBOTT: If I could jump in, by way
19 of housekeeping, 11 is the Jackson prefile and the 12
20 is the DeCesare prefile, and then 13 is Noble, 14,
21 Brandt, 15, Keating, 16, Riley, 17, Stout, the
22 transcripts from their depositions.

23 ALJ WALSTRA: All of those other have
24 previously been admitted, so is there any objection
25 to 5, 6, 7, 9 and 10 being admitted into the record?

1 MR. HOCHSTETTLER: No objection, your
2 Honor.

3 MS. HUBER: No objection.

4 ALJ WALSTRA: Thank you, those will all
5 be admitted then.

6 (EXHIBITS ADMITTED INTO EVIDENCE.)

7 ALJ WALSTRA: And anything further from
8 the Petitioners?

9 MR. EVANS: Nothing further from CSX.

10 MR. TALBOTT: And nothing further from
11 Norfolk Southern, your Honor.

12 ALJ WALSTRA: Thank you.

13 ALJ DAVIS: Thanks, everybody, for
14 waiting as we walked through all of that. With the
15 Petitioner's case in chief closed, I would say we can
16 move along to the County. Mr. Hochstettler.

17 MR. HOCHSTETTLER: Thank you, your
18 Honor. First as an initial matter, Delaware County
19 will be introducing seven exhibits, all of which have
20 been previously filed and submitted to counsel.

21 Exhibits 1 through 4 are documents that
22 have been previously marked and they are referenced
23 in direct testimony.

24 And we would also ask your Honors to
25 mark as Delaware County Exhibit 5 the prepared direct

1 testimony of Robert Riley, Exhibit 6 the prepared
2 direct testimony of Patrick Brandt, and Exhibit 7,
3 the prepared direct testimony of Glen Keating, and
4 then we'll seek introduction of those as we pick them
5 up in the ordinary course.

6 ALJ DAVIS: Thank you. They are so
7 marked.

8 (EXHIBITS MARKED FOR IDENTIFICATION.)

9 MR. HOCHSTETTLER: And our first witness
10 is Mr. Robert Riley.

11 MR. SCHMIDT: Mr. Riley, you've been
12 promoted. If you could enable your audio and video.

13 ALJ DAVIS: Hello, Mr. Riley. Could I
14 ask you to raise your right hand. Do you swear or
15 affirm that what you're about to tell is the truth?

16 MR. RILEY: Yes, I do.

17 ALJ DAVIS: Thank you very much. You
18 may proceed, Mr. Hochstettler.

19 - - -

20 Robert Riley,
21 being first duly sworn, as prescribed by law, was
22 examined and testified as follows:

23 DIRECT EXAMINATION

24 By Mr. Hochstettler:

25 Q. Good afternoon, Mr. Riley. I'm having a

1 little difficulty hearing you, and I can hear
2 everybody else, so if there's any way to sit closer
3 to the microphone, please do that.

4 A. I'll do that.

5 Q. Mr. Riley, do you have before you what
6 has been marked as Delaware County Exhibit 5, which
7 is your prepared direct testimony?

8 A. Yes.

9 Q. And did you have an opportunity to
10 review and approve that written testimony prior to
11 filing?

12 A. Yes.

13 Q. Do you have any corrections or updates
14 you wish to make to your written testimony?

15 A. No.

16 Q. And you also provided what has been
17 previously marked as Delaware County Exhibits 1 and
18 2. Could you please describe what is marked as
19 Exhibit 1?

20 A. Yes, Exhibit 1, I believe, this figure
21 which is a map showing the vicinity of Lewis Center,
22 the Unincorporated Village of Lewis Center and the
23 Franklin Street Crossing.

24 Q. Does that exhibit also depict the Home
25 Road concept?

1 A. It does. It shows a general layout of
2 the proposed North Road extension east of Route 23
3 showing the various phases of that project.

4 Q. And Exhibit 2, could you please just
5 briefly describe Exhibit 2?

6 A. Exhibit 2 is a similar map. It shows in
7 more detail the facing of the proposed Home Road
8 extension, the portion that has already been built,
9 and the remaining phase 4, which is referred to by
10 the County as the Home Road grade separation, being
11 phase 4A, and phase 4B which would be the final
12 connection to Lewis Center Road.

13 Q. And do Exhibits 1 and 2, do they record
14 and document activity of your office and are they
15 truly copies of the records your office created for
16 that purpose?

17 A. Yes.

18 Q. And at this time if I were to ask you
19 all of the questions contained in your direct
20 testimony, would your answers be the same as written?

21 A. Yes.

22 MR. HOCHSTETTLER: Thank you, Mr. Riley.
23 Your Honors, I tender the witness for
24 cross-examination.

25 ALJ DAVIS: Thank you, counsel. On

1 behalf of the Petitioners, Mr. Talbott, Mr. Evans,
2 whichever, or do you have any cross-examination?

3 MR. TALBOTT: Yes, your Honor. Casey
4 Talbott.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Talbott:

8 Q. Mr. Riley, I'm having a little trouble
9 picking up your mic as well, not as much trouble as
10 with Mr. Jackson earlier, but anything you could do
11 to keep your voice up would sure be appreciated,
12 okay?

13 A. Okay.

14 Q. Can you hear me okay?

15 A. Yes, I can hear you fine.

16 Q. All right. Mr. Riley, in your direct
17 exam you purported to offer an opinion regarding the
18 negative impact closing Franklin may have on Medic 3
19 EMS response time, correct?

20 A. Can you refer me to the line where
21 that's located?

22 Q. Well, in general, didn't you purport to
23 offer an opinion that closing Franklin could
24 potentially negatively impact Medic 3's response
25 time?

1 A. Yeah, there is a statement in my
2 testimony to that effect.

3 Q. Okay. Out of curiosity, Mr. Riley,
4 whose opinion or answer was that, was it yours or was
5 it the County's counsel? Did you prepare that or did
6 he prepare it?

7 A. This is my testimony.

8 Q. Okay. I'm a little confused about it.
9 Do you remember when we took your discovery
10 deposition earlier this year?

11 A. I do.

12 Q. Okay. Do you have a copy of that
13 transcript in front of you?

14 A. Yes, I do.

15 Q. I want to look at page 10 of your
16 deposition, and I'm on Line 21, and I'm going to read
17 a statement to you. My question was, "All right. So
18 in the event Medic 3 is serving any areas to the
19 east, the closure of the Franklin Street Crossing
20 would have no apparent impact because the -- the
21 responder would have no need to traverse the tracks,
22 is that safe to say?"

23 There was an objection from your
24 counsel, and then I followed by saying, "Or are you
25 uncomfortable talking about that? I just -- do you

1 deal much with the emergency responders? Is that
2 something that's in your bailiwick or outside?"

3 Your answer, I want to make sure I'm
4 reading this correctly, was, "It's not something I
5 deal with with any regularity, so no, I'm not --
6 probably not the right person to ask about that."

7 I said, "Okay. So if we're going to
8 talk to County or Township witnesses about Medic 3,
9 and where, what areas it services and how it
10 accomplishes that, there would be better people on
11 the County or Township to talk to than you, is that
12 fair?" And your answer was, "That's fair:

13 Did I read that correctly?

14 A. It took me a moment to find page 10. I
15 was looking for that. I think I found what you just
16 read, so I would stand by what I said previously.

17 Q. All right. Now I'm on page 16, I said,
18 "Okay. If you could turn to page 16, line 4." I
19 said, "Okay. So again, any questions with regard to
20 the national industry standard, what that is, and
21 whether and to what extent the County and Township
22 are able to comply, and whether and to what extent
23 that would be impacted or may be impacted by railroad
24 closures for any period of time, other witnesses
25 would be better in that regard, fair?" And your

1 answer was, "That's fair." Did I read that
2 correctly?

3 A. Yes.

4 Q. Okay. And then last, on page 47, line
5 18, I asked, "Okay. And then -- and as far as even
6 assuming both crossings are closed, you're not in a
7 position to speak to how that impacts emergency
8 response time, and particularly whether such response
9 can be provided consistent with the national -- in
10 compliance with the national standards; is that
11 correct? That's what you told us earlier today,
12 right?"

13 Your answer was, "I could speak to
14 general traffic, but not specifically to emergency
15 traffic." Did I read that correctly?

16 A. You read it correctly.

17 Q. Okay. So we did attempt to ask you
18 about emergency response three times in three
19 different ways, and in your deposition you'd
20 indicated you weren't comfortable weighing in on
21 that, correct?

22 A. I don't know that I would characterize
23 it quite that way. I am comfortable talking about
24 the path of emergency vehicles relative to the
25 pattern and travel over roads, but I'm not

1 comfortable talking about which particular medics or
2 other emergency equipment are closest based on
3 current run assignments or run cards, that's just not
4 something I'm familiar with.

5 Q. Well, you answered truthfully back in
6 your deposition, correct?

7 A. Yes.

8 Q. And on each of those occasions you opted
9 to defer to others, correct?

10 A. With regard to specifics about emergency
11 response, and what I mean by that is the particular
12 specifics relating to certain emergency vehicles
13 responding to certain addresses, I would defer to
14 others on that.

15 Q. I'll move on. In your direct exam you
16 also testified that Franklin is wide enough for two
17 vehicles going in the opposite direction to pass each
18 other. Do you remember saying that?

19 A. I do.

20 Q. Okay. Let's chat for a minute about
21 that. First, you're with the County, correct?

22 A. I'm with the County Engineers office.

23 Q. Yeah, and Franklin is not a county road,
24 is it?

25 A. It is a Township road, but you may be

1 aware that the County Engineers office, by statute,
2 acts on behalf of the -- of townships in matters
3 relating to roads and bridges.

4 Q. Fair to say you don't drive down the
5 road as often as Lewis Center residents?

6 A. That's fair.

7 Q. Okay. Have you read their testimony
8 from the public hearing?

9 A. No, I haven't.

10 Q. Let me ask a better question. Did you
11 go to the public hearing that the PUCO held in this
12 matter back on July 9, 2019?

13 A. No, I didn't.

14 Q. Okay. And I think you just said you've
15 not read the transcript from that either?

16 A. That's correct.

17 Q. Okay. So the -- do you know a gentleman
18 named David Dill who lives on Franklin Street?

19 A. I don't believe so.

20 Q. Okay. I'm going to read just a couple
21 sentences from Mr. Dill's testimony. Page 29 of the
22 transcript from the public hearing, line 12, and it
23 says this: Our streets -- "Our streets are little
24 and narrow. Two cars can't pass at the same time on
25 any street in the village, no place. Even if you

1 gate Franklin Street, two cars can't pass, it's one
2 car wide."

3 And then that paragraph ends. "There's
4 not a place in the village where two cars can pass
5 each other, somebody has to pull over."

6 Have you ever heard that testimony
7 before I just read it to you?

8 A. No.

9 Q. Okay. I'll move on again. I want to
10 talk to you for a few minutes about detours. You
11 recall back in June to August of 2019 when Lewis
12 Center was closed for roundabout construction,
13 correct?

14 A. Yes.

15 Q. For that three-month period this traffic
16 was detoured to Orange Road to the south and to
17 Shanahan to the north, correct?

18 A. That is correct.

19 Q. All right. Importantly, it was not
20 detoured to Franklin, was it?

21 A. It was not detoured to Franklin Street,
22 that is correct.

23 Q. And, Mr. Riley, that's because Franklin
24 is not a through street, is it?

25 A. Well, Franklin Street would not have

1 been a feasible detour because it would not connect
2 beyond the closure point at Home Road on the
3 northwest.

4 Q. Franklin is a short road, it's less than
5 a third of a mile long, correct?

6 A. Yes, it's about a third of a mile.

7 Q. Okay. And so the record is clear, when
8 your office -- the County Engineers office
9 establishes local detours, it directs through traffic
10 not to Franklin, but to other adjacent crossings,
11 correct?

12 A. You're referring to a detour from Lewis
13 Center Road?

14 Q. Sure, yes. Let's use that as an
15 example.

16 A. So yes, a detour for Lewis Center Road
17 would be routed to another road, not to Franklin
18 Street.

19 Q. Right. It would be routed to Orange to
20 the south or Shanahan to the north, correct?

21 A. Yeah, most likely, depending on what --
22 where exactly it is in Lewis Center.

23 Q. All right. Let's chat for a moment
24 about traffic. Lewis Center is practically on top of
25 Franklin -- I should say more accurately it's

1 six-one-hundredths of a mile away, correct?

2 A. That sounds about right. I think it's
3 325 feet.

4 Q. Okay. So you -- have you measured that?

5 A. I have.

6 Q. Okay. So I've got six-one-hundredths of
7 a mile away based on the FRA and PUCO database,
8 you're talking about the length of a football field,
9 right?

10 A. Yes, roughly.

11 Q. Okay. And am I correct, Lewis Center is
12 approximately 8,000 to 10,000 vehicles a day?

13 A. That is correct.

14 Q. All right. And you admit that by
15 design, Lewis Center could absorb approximately --
16 could accommodate approximately double that, about
17 15,000 to 20,000 vehicles per day, correct?

18 A. The road itself can. I'm not sure that
19 the crossing can because of the slower speed at the
20 crossing.

21 Q. Well, when -- you recall when we took
22 your deposition you told us that Lewis Center could
23 absorb approximately double that, about 15- to 20,000
24 vehicles a day?

25 A. That is what I said. That's referenced

1 to the capacity of Lewis Center Road, but not
2 necessarily the crossing where traffic has to slow
3 down to, say, five to ten miles per hour.

4 Q. All right. If I'm looking at your
5 deposition, page 45 -- I'll go back to page 37 to --
6 you told us that -- the question was, "How would you
7 describe the traffic patterns on Lewis Center Road at
8 the rail crossings in general?"

9 You said, "On Lewis Center there, if
10 you're asking about a traffic volume, my
11 understanding is that average daily traffic is
12 somewhere in the neighborhood of maybe 8,000 to
13 10,000. Franklin is a lot less than that." Did I
14 read that correctly?

15 A. Yes.

16 Q. Okay. Next question. "In terms of
17 Lewis Center Road, in terms of capacity of that road,
18 how does that traffic volume fit into the capacity of
19 the road?"

20 Answer: "So Lewis Center Road is a
21 two-lane road currently. The capacity of a two-lane
22 road depends on a lot of different factors; speed
23 limit, number of intersections. But generally
24 speaking, may be in the neighborhood of 15- to
25 20,000 -- 15- to 20,000 in this case." Did I read

1 that correctly?

2 A. Yes.

3 Q. Okay. And then -- all right. I'll move
4 on.

5 Franklin, on the other hand, experiences
6 approximately 64 vehicles a day, correct?

7 A. Yes.

8 Q. Okay. And you told us that in your
9 direct exam, right?

10 A. Yes.

11 Q. All right. So on average, if we would
12 close Franklin Street, we would be redirecting
13 approximately 2.66 vehicles per hour -- if my math is
14 right, we'd be looking at about 2.66 vehicles per
15 hour, correct?

16 A. Yeah, if you assume every hour is equal,
17 but I understand it would be approximately that on
18 average.

19 Q. Okay. Yes. Let's talk -- you mentioned
20 a Home Road in your direct exam, and then with regard
21 to some questions a few minutes back, so I want to
22 talk about that for a second.

23 Fair to say the Home Road overpass has
24 been discussed for years, hasn't it?

25 A. Yeah, that's fair to say.

1 Q. Yeah. I mean, I think one of the
2 witnesses in the public hearing told us that they
3 talked about it for 16 to 17 years anyway. Is that
4 consistent with your understanding?

5 A. I know it's been talked about since
6 probably 2008. That's when there was a pending
7 development at that time prior to the recession that
8 would have included that road.

9 Q. And based on your direct testimony,
10 you're estimating a target completion date of five or
11 so years out, so into 2016, best case scenario,
12 correct?

13 A. Yeah, my current projection based on the
14 current project schedule is to start construction in
15 2025, and that's based on the schedule that the
16 County and the consulting engineer that is currently
17 under contract with the County --

18 Q. And my question is your target
19 completion date for the overpass would be 2026; is
20 that correct?

21 A. That is correct.

22 Q. All right. Fair to say there's no
23 guarantee that this is going to happen; is that fair?

24 A. Well, insofar as there's no guarantees
25 about much of any road project, that's fair. I would

1 say it's more accurate to say there's a commitment on
2 behalf of the County to build this project, but
3 obviously the County is not the sole party involved,
4 it would take from the railroads to make sure they
5 are on schedule.

6 Q. And my question is, there's no guarantee
7 it's going to happen, right?

8 A. That's fair to say.

9 Q. Okay. And if it happens, Mr. Riley,
10 there's no guarantee as to when it's going to happen,
11 fair?

12 A. That's fair.

13 Q. I mean, we could very -- even if
14 everything -- if all the moving parts come together,
15 and it's not just the County that commits or the
16 State or the feds or the railroads, property owners,
17 property acquisition, et cetera, this could very
18 easily go into not just 2026, but 2027, 2028, 2029,
19 we don't know when it's going to happen, right?

20 A. Well, you said easily. I don't know
21 that I would characterize it as easily happen.

22 Q. If this happens, there's no guarantee as
23 to when it happens, fair?

24 A. That's fair.

25 Q. All right. In the meantime, Mr. Riley,

1 in the intervening years, is the County willing to
2 assume the liability risk in the event an accident
3 occurs?

4 A. I don't know that that's something the
5 County can legally do.

6 Q. Well, let me ask it this way: You're
7 aware, as you sit here, that the Ohio Rail
8 Development Commission doesn't like this crossing,
9 Norfolk Southern doesn't like it, CSX doesn't like
10 it, you're aware of that, right?

11 A. I'm aware that the railroads don't like
12 this crossing. I haven't heard that opinion directly
13 from ORDC, but it doesn't --

14 Q. Would it surprise you -- would it
15 surprise you to learn that the ORDC testified in this
16 case, and that the testimony was that they want to
17 see this crossing closed? Would that be news or a
18 surprise to you?

19 A. That wouldn't be a surprise to me.

20 Q. Okay. And I'll represent to you that we
21 already see Norfolk Southern, CSX want it closed and
22 they would like it closed yesterday, today, they want
23 it closed.

24 If the County wants to keep it open,
25 then I'm just asking whether the County is willing to

1 accept any responsibility that comes with that?

2 MR. HOCHSTETTLER: I'm going to object
3 to the question. Mr. Riley is not in a position to
4 make a commitment of that nature. He can't answer
5 the question, I think it's just a question without
6 any proper foundation whatsoever.

7 By Mr. Talbott:

8 Q. Counsel may have given you the answer,
9 but do you have an answer to that, Mr. Riley? I
10 mean, I'll take it as a no that as you sit here today
11 the County is not willing to accept the
12 responsibility, is that fair?

13 A. I'm not sure that the County can legally
14 do that. I think what you're talking about is
15 probably not something within the ability of the
16 County to agree to.

17 Q. Okay. All right.

18 MR. TALBOTT: That's all I have for
19 Mr. Riley. Thank you.

20 ALJ DAVIS: Thank you, Mr. Talbott. Is
21 there any other cross-examination for this witness?

22 MR. EVANS: This is Lee Evans. I have
23 no further cross for this witness.

24 ALJ DAVIS: Thank you, Mr. Evans.
25 Mr. Hochstettler, is there any redirect?

1 MS. DONNAN: Actually the Township has
2 some cross-examination.

3 ALJ DAVIS: Okay.

4 - - -

5 CROSS-EXAMINATION

6 By Ms. Donnan:

7 Q. Mr. Riley, my name is Julia Donnan. Our
8 office represents Orange Township in this matter.
9 Just got a couple questions for you.

10 You've already talked about the capacity
11 for Lewis Center in your direct testimony. I believe
12 on pages 6 and 7 you reference that the current
13 capacity -- pardon me, the current traffic of Lewis
14 Center is about 10,000 a day at the railroad tracks.

15 Mr. Talbott referenced that and
16 discussed the overall capacity of Lewis Center Road,
17 and you referenced that the road can handle
18 approximately 15- to 20,000 vehicles a day, but with
19 the -- the railroad track is a -- a capacity
20 restriction. So what is the capacity of the -- at
21 the railroad?

22 A. I think the capacity of Lewis Center
23 Road at the crossing is closer to 10,000 because,
24 generally speaking, capacity on a roadway is related
25 to the travel speed, so a lower travel speed would

1 yield a lower traffic capacity.

2 Q. And furthermore in your testimony, you
3 reference that the current -- pardon me, let me get
4 the language right -- the peak flow at the railroad
5 is over a thousand vehicles an hour. So would that
6 be consistent with that 10,000 a day, peak at a
7 thousand an hour, and 10,000 a day?

8 A. Yes, those figures were based on actual
9 traffic counts taken by Delaware County in 2017 and
10 2018.

11 Q. Okay. So with that, is the railroad
12 crossing basically at capacity at this time?

13 A. Yeah, it would be my opinion that the
14 crossing is if not at capacity, then very, very near
15 capacity.

16 Q. So it would be -- it would be incorrect
17 to say that the -- that the railroad crossing is
18 capable of absorbing twice the current flow of
19 traffic up to 20,000?

20 MR. TALBOTT: Objection, your Honor,
21 that's a leading question from a party with a
22 commonality of interest.

23 ALJ DAVIS: The objection is sustained.

24 By Ms. Donnan:

25 Q. So is the Lewis Center -- I'm sorry, the

1 Lewis Center crossing, is that capable of absorbing
2 20,000 -- 20,000 vehicles a day?

3 A. No, it's not.

4 Q. Is it capable of absorbing 15,000 a day?

5 A. I don't think it is.

6 MS. DONNAN: I have no further
7 questions. Thank you.

8 ALJ DAVIS: Thank you.

9 Mr. Hochstettler, now let me ask, do you have any
10 redirect?

11 MR. HOCHSTETTLER: I do. Thank you.

12 - - -

13 REDIRECT EXAMINATION

14 By Mr. Hochstettler:

15 Q. Mr. Riley, during your
16 cross-examination, Mr. Talbott asked you about the
17 closure of Lewis Center Road in 2019, and that the
18 detour -- your testimony was that the detour for that
19 closure was to Orange Road and Shanahan Road.

20 Is Franklin Street a viable detour route
21 from a traffic standpoint to Lewis Center Road?

22 A. No, Franklin Street would not have been
23 a viable detour for that particular closure because
24 the closure point was further west than Franklin
25 Street extends, so it would not have allowed traffic

1 to circumvent the closure.

2 Q. A part of that project was the
3 construction of a roundabout at North Road and Lewis
4 Center Road. Does that roundabout include a stub
5 street to the south?

6 A. It does.

7 Q. What is that stub street?

8 A. It's known as Green Meadows Drive.

9 Q. And where is currently -- where is Green
10 Meadows Drive currently?

11 A. Green Meadows Drive extends from the
12 south -- it begins at U.S. 23 in the vicinity of
13 Polaris Parkway and extends all the way north to Home
14 Road where it currently terminates.

15 Q. And you were also asked about Franklin
16 Street lacking connectivity. Is it possible that
17 Franklin Street could be connected to the Green
18 Meadows extension in the future?

19 A. Yes. And in fact, the Delaware
20 County -- the County Engineers office is currently
21 finalizing plans for that segment of Green Meadows
22 Road between -- excuse me, Green Meadows Drive
23 between Home Road and the stub to the roundabout at
24 North Road.

25 Q. You had testified that Franklin Street

1 would not be -- would not have been a viable detour
2 for traffic when Lewis Center Road was closed.

3 When Lewis Center Road is opened, but
4 maybe temporarily closed at the railroad crossing, is
5 Franklin Street a viable alternative route for
6 emergency response?

7 A. Yes, it would be.

8 Q. And Franklin Street, you were also asked
9 about the width. Have you driven on Franklin Street?

10 A. Yes, many times. I actually drove that
11 road this morning.

12 Q. And do you have -- do you have
13 information about the actual width of that road?

14 A. Yeah, the width of the pavement does
15 vary. There are sections of the road that are
16 probably in the ballpark of 14 to 15 feet wide, at
17 the widest points it's probably 18 to 20 feet wide,
18 so it does vary the length of Franklin Street.

19 Q. Is that consistent with the width of
20 township roads in general?

21 A. Yeah, there are quite a few township
22 roads that are in that same width category which are
23 still considered two-lane road.

24 Q. And you were also asked about the Home
25 Road extension, and Mr. Talbott asked you several

1 questions trying to establish some question about the
2 certainty of that project.

3 You testified that your timing, based on
4 current planning, is the 2024 to 2026 time frame.
5 What actions has the County taken in furtherance of
6 that project?

7 A. The County has taken a number of actions
8 to advance the project. The most recent action that
9 I can think of would be that the County Commissioner
10 has authorized a final design contract with HDR,
11 which is the consulting engineer who is preparing the
12 final engineering plans. That was done in May.

13 HDR is currently in the process of
14 developing, as I said, the final engineering for that
15 project, and certainly will be in consultation with
16 the railroads during that course. The current
17 project schedule has that project being --
18 construction starting in 2025 and complete in 2026.

19 Q. And looking at Delaware County
20 Exhibit 2, which you had previously described, what
21 is the current terminus of Home Road?

22 A. Home Road currently terminates at Green
23 Meadows Drive. It is the gray shaded portion of that
24 exhibit. That portion was completed in September of
25 2020.

1 Q. And since you are referring to phase 4
2 on that exhibit, and in your testimony, is it fair to
3 say that phases 1 through 3 are complete?

4 A. Yes.

5 Q. And has the County acquired real
6 property for phase 4?

7 A. Yes.

8 Q. How much -- how much in funds has the
9 County expended to date, if you are aware, on the
10 Home Road extension project?

11 A. It's fair to say it's in excess of \$10
12 million. I'd have to look to come up with a more
13 exact figure, but I would be able to say with
14 certainty it's over \$10 million.

15 Q. And as a part of your planning for the
16 Home Road overpass, has your office been asked to do
17 any conceptual plannings with respect to new County
18 buildings in the vicinity of the Home Road extension?

19 A. Yes.

20 Q. Can you elaborate, please?

21 A. Yes. The County Commissioner's office
22 asked our office to look into the feasibility of
23 locating potential replacements or a relocation of
24 EMS Station 3 to be nearby the relocated -- excuse
25 me, the realigned Home Road.

1 I would refer to Exhibit 2 showing the
2 red portion of that exhibit near the phase 4B, just
3 to the west of that.

4 MR. HOCHSTETTLER: I don't have anything
5 further. Thank you.

6 MR. TALBOTT: Your Honor, this is Casey,
7 I would have a very limited recross to address the
8 direct from the Township, and then a new topic or two
9 that Aric just broached. It should be two minutes or
10 less.

11 ALJ DAVIS: Okay. One quick question
12 for Mr. Hochstettler before we move into recross.

13 Mr. Hochstettler, do you happen to have
14 a line on Mr. Brandt just in the interest of having a
15 witness ready for when Mr. Riley is finished?

16 MR. HOCHSTETTLER: He's now waiting.

17 ALJ DAVIS: We didn't see him connected
18 so I wasn't sure --

19 MR. HOCHSTETTLER: I know he connected
20 earlier just to make sure everything was working. I
21 don't see him here, I'll just send him a message. My
22 view attending is not working, so I don't -- he's not
23 there, I'll just send a message to make sure he's
24 ready.

25 ALJ DAVIS: Thank you. Mr. Talbott. If

1 you'd like, you can proceed with recross.

2 MR. TALBOTT: Thank you.

3 - - -

4 RECROSS-EXAMINATION

5 By Mr. Talbott:

6 Q. Mr. Riley, do you have an ability to put
7 your video back on just so I can see you?

8 A. Yes.

9 Q. If you're amenable to that. Okay,
10 perfect.

11 Township counsel asked you whether the
12 rail crossing itself on Lewis Center could absorb
13 20,000 vehicles a day, and I think you said no, you
14 didn't think it could. Same response with regard to
15 15,000, correct?

16 A. Yes.

17 Q. Okay. But the current -- the current
18 traffic volume on Lewis Center is 8- to 10,000
19 vehicles a day, that's your own testimony, correct?

20 A. Yeah, that was my testimony, and that
21 was confirmed more recently with my direct testimony
22 that was submitted last week, I believe, in which I
23 further researched the traffic volumes based on
24 actual counts.

25 Q. So you're not -- if you are, so be it,

1 but you're not trying to tell the Hearing Officer
2 that in your expert opinion Lewis Center could not
3 absorb an additional 64 vehicles a day? Are you
4 telling him that?

5 A. That's not what I'm -- that's not what
6 I'm saying.

7 Q. Okay. Thank you. And then did I hear
8 you to say this Medic 3 station that we're talking
9 about, that the plan is to relocate that away from
10 Franklin?

11 A. Well, I can't speak to whether that is
12 the plan, all I can say is that our office has been
13 asked to look into whether that's actually feasible,
14 and to develop maybe a concept of what that would
15 look like, which we have done.

16 Q. And fair to say the standard width for
17 an urban lane is about 10 feet, correct?

18 A. That's generally correct.

19 Q. Okay. And I was out there a week ago.
20 I measured it, close to what you did, in some places
21 as little as 13 feet. You measured at about 14 in
22 certain spots, correct?

23 A. That's what I said.

24 Q. So it's -- so if other witnesses are
25 testifying that two cars can't comfortably pass while

1 travelling on Franklin, at least in certain parts,
2 they have got to pull over, that's not a surprise to
3 you, correct, by your own measurements?

4 A. Well, you just said comfortably. My
5 testimony earlier was that two vehicles can pass, and
6 I think they can do it safely.

7 At the narrowest points I do think that
8 might involve perhaps the right side of the vehicle
9 being on the gravel berm or slightly off the
10 pavement, but I'm not sure that that would
11 characterize it as a one lane road or that vehicles
12 can't pass at all.

13 In fact, I passed a vehicle this morning
14 at about 8:00 in the morning, a resident that pulled
15 into a driveway just as I passed them, and we both
16 slowed down to be careful, but it was in the section
17 that was approximately 16 feet wide.

18 Q. So there's going to be other County
19 witnesses, Township witnesses we think that will
20 speak to that, but Dill -- in particular, Dill, that
21 Witness Dill, assuming he testified to that, he's not
22 playing us straight, that you got to pull over in
23 certain -- that you've actually got to pull over,
24 only one vehicle can pass at a time, this guy who has
25 lived there all his life, he's not playing us

1 straight, fair?

2 A. No, that's not fair. I think it's how
3 you characterize that. I mean, can you pass? If
4 that's what the question is, I think you can. Do you
5 have to slow down or maybe get off the edge of the
6 berm, then the answer would be yes.

7 MR. TALBOTT: All right. Thanks, that's
8 all I have. Thank you, your Honor.

9 ALJ DAVIS: Thank you. Is there any
10 further recross?

11 MR. EVANS: Your Honor, Lee Evans. Just
12 briefly, very briefly.

13 - - -

14 RECROSS-EXAMINATION

15 By Mr. Evans:

16 Q. Mr. Riley, you testified about this
17 notion of Green Meadows Drive being extended, and I
18 think you indicated that it currently stops at Home
19 Road; is that correct?

20 A. Correct.

21 Q. And did you put any prognostication on
22 the year when that -- when that project might happen
23 at all?

24 A. I was not asked that, but I'd be happy
25 to do that.

1 Q. Well, as we sit here today, do you know
2 that?

3 A. Yes, I do. The County's current plan is
4 to start construction on that project late in 2022
5 and complete it by the end of 2023.

6 Q. Okay. And that would then -- is that
7 separate and apart from any idea of connecting
8 Franklin Street to Green Meadows?

9 In other words, is that part -- you
10 mentioned that Franklin Street, I take it,
11 conceivably could be connected with Green Meadows.
12 Is that part of the planned project right now?

13 A. Yeah, that would be a final design
14 element we would want to consult with Orange Township
15 on, which we have not done, but basically in a
16 nutshell, the road -- Green Meadows Drive would
17 extend past the end of Franklin Street, so that it
18 would be a very relatively small matter to connect
19 the pavement on Franklin Street over to the new Green
20 Meadows Drive.

21 Q. And would Green Meadows then connect to
22 Lewis Center?

23 A. Yes.

24 Q. Okay. But that part of the plan, you
25 haven't even broached that subject with -- in terms

1 of connecting Franklin Street, you haven't broached
2 that with Orange Township, correct?

3 A. We have not.

4 Q. And if there was a project that involved
5 connecting Franklin Street to Green Meadows, would
6 you anticipate that that would involve a widening of
7 Franklin Street beyond the -- there's been much
8 testimony already about the width of Franklin Street.
9 Would that change if that were to occur?

10 A. I don't know that that would be the
11 case. Again, this -- that connection would be a
12 matter we would like to discuss with Orange Township,
13 but we have not had an opportunity to do that yet.

14 Q. Okay. And you would agree with me that
15 when you were deposed in this matter, we asked you a
16 fair number of questions about the Home Road project,
17 essentially some of the same questions you've been
18 asked her today regarding width of the street,
19 Franklin Street, and you would agree that there was
20 never any mention when we previously took your
21 deposition about this Green Meadow project, correct?

22 A. I don't believe there was.

23 MR. EVANS: Okay. That's all I have.

24 ALJ DAVIS: Thank you very much.

25 Mr. Riley, thank you for your testimony. You would

1 now be able to stand down.

2 (Witness excused.)

3 ALJ DAVIS: Mr. Hochstettler, would you
4 call your next witness?

5 MR. HOCHSTETTLER: Delaware County would
6 call Patrick Brandt.

7 ALJ DAVIS: Hello, Mr. Brandt. Thank
8 you for being here. If I could ask you to raise your
9 right hand. Do you swear or affirm that what you're
10 about to tell is the truth?

11 MR. BRANDT: I do.

12 ALJ DAVIS: Thank you very much. You
13 may proceed.

14 - - -

15 Patrick Brandt,
16 being first duly sworn, as prescribed by law, was
17 examined and testified as follows:

18 DIRECT EXAMINATION

19 By Mr. Hochstettler:

20 Q. Mr. Brandt, do you have before you what
21 has been marked as Delaware County Exhibit 6, which
22 is your prepared testimony?

23 A. Yes, sir.

24 Q. And did you have an opportunity to
25 review and approve that written testimony prior to

1 filing?

2 A. I have.

3 Q. And do you have any corrections or
4 updates you wish to make to your written testimony?

5 A. No, sir.

6 Q. And in your written testimony there are
7 references to Delaware County Exhibits 3 and 4,
8 Exhibit 3 being a run card map. Would you just
9 briefly describe what that exhibit is?

10 A. Yes. That is the geographical area of
11 Orange Township broken down into different run card
12 segments that tells our captain who to send on what
13 area based on the calls for service.

14 Q. And could you briefly describe
15 Exhibit 4, which is a run report that you had pulled
16 from your system?

17 A. That's an Excel spreadsheet that we
18 pulled. That shows all the calls that were, I
19 believe -- yes, it was just for that run card area of
20 361-M3-1, and that was all the runs in that area, and
21 that provides you the dispatch time, the location,
22 and route time.

23 Q. And do Exhibits 3 and 4, Delaware County
24 Exhibits 3 and 4, report and document the activity at
25 your office, and are they true copies of the records

1 your office created for that purpose?

2 A. Yes.

3 Q. And if I were to ask you all of the same
4 questions that are contained in your written
5 testimony, would your answers be the same day?

6 A. Yes, sir.

7 MR. HOCHSTETTLER: At this time, your
8 Honors, I would tender the witness for
9 cross-examination.

10 ALJ DAVIS: Thank you, counsel. Do the
11 Petitioners -- Mr. Talbott, do you have
12 cross-examination?

13 MR. EVANS: Actually, this is Lee Evans,
14 I'll at least begin with some cross-examination.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Evans:

18 Q. Good afternoon, Mr. Brandt.

19 A. Good afternoon, sir.

20 Q. You may recall that I took your
21 deposition some time ago, I think it was January of
22 this year. And at that time when you gave that
23 deposition, you were aware that the -- that the
24 County and Orange Township were taking a position
25 that was opposed to closure of this crossing,

1 correct?

2 A. Yes.

3 Q. And at that time you -- although I think
4 your department had run some raw data regarding some
5 run times, perhaps even at our request through
6 counsel, you had not done any analysis of run data
7 regarding Medic 3 or Medic 361 as you have now,
8 correct?

9 A. Yes, I've provided those reports, and
10 obviously the one that's in there currently.

11 Q. Right. And so the analysis that is part
12 of your prefiled testimony, that is a more recent
13 thing done based upon your recent printing of
14 additional raw data up through sometime in August of
15 this year, correct?

16 A. Yeah, it went through August 31st, I
17 believe.

18 Q. All right. And I reviewed your prefiled
19 testimony, and it's my understanding that your
20 analysis relates primarily -- or goes to the question
21 of the impact of closure of the Franklin Street
22 crossing on Medic 3's response time to the area west
23 of the crossing, correct?

24 A. Yes.

25 Q. And I think you referenced the Exhibit 3

1 and the map of the various run cards. Just for the
2 record, what is the designation given to the run card
3 that is west of the tracks that includes the Kroger
4 area?

5 A. That would be the 361-M3-1.

6 Q. Okay. We can agree, just to get a
7 couple things out of the way, that closure of the
8 Franklin Street crossing would have no impact on
9 Medic 3's ability to respond to calls east of the
10 crossing, whether they are in Lewis Center east of
11 the crossing, or in other call areas further east,
12 because Medic 3 would not have to negotiate these
13 tracks to get to those areas, correct?

14 A. That is correct. Everything east they
15 would not have to go over the tracks.

16 Q. And geographically speaking, the
17 majority of Medic 3's response area, at least as
18 currently figured, is east of the crossing, correct?

19 A. Correct.

20 Q. Geographically?

21 A. Yes.

22 Q. Your focus in your analysis, in your
23 prefilled testimony, is EMS response as opposed to
24 fire response, correct?

25 A. Yes.

1 Q. And that is because, at least in part,
2 as we look at those run cards, the railroad tracks
3 serve as somewhat of a dividing line between the run
4 cards for fire response with Station 362, which is
5 located on the east side of the tracks, being the
6 responding fire department over there, and 361 being
7 the responding fire department on the west side of
8 the tracks, correct?

9 A. Correct.

10 Q. And in terms of creation of those run
11 cards regarding the fire response, that's not by
12 chance, correct?

13 A. That is designated by the Fire Chief.

14 Q. Understood. But in terms of fire
15 response, I think you've agreed with me before that
16 there is an effort to have responding fire
17 departments start from the same side of the tracks as
18 the response location to eliminate having to cross
19 tracks and any related issues?

20 A. With the fire department, yes, that was
21 one of the original things from the Township.

22 Q. Right. So in terms of fire response,
23 given the way the run cards are established, and the
24 locations of Stations 362 and 361, we can agree that
25 in terms of fire response to the west of the

1 crossing, the closure of Franklin Street would have
2 no impact on that, correct?

3 A. Not on fire.

4 Q. Right. In terms of your analysis since
5 you were deposed as referenced in your prefiled
6 testimony, you used, if I understand it, CAD data for
7 runs to the 361-M3-1 area for years 2018 through 2021
8 to a date you indicated earlier in August, correct?

9 A. Yes. That's what we pulled.

10 Q. As a general proposition, I think you're
11 indicating in your testimony that you found that
12 Medic 3 tended to respond more quickly to 361-M3-1
13 than did Medic 361. Is that what -- among other
14 things what you're trying to say in your testimony?

15 A. Yes, that Medic 3 did respond quicker to
16 those areas versus Medic 361.

17 Q. All right. When you looked at the runs
18 that you looked at -- and I guess we should identify
19 for the record, the printout that we're talking about
20 was marked as Exhibit 4 by the County, and I think
21 another exhibit by the -- similar printout, if not
22 identical by the Township, but would you agree with
23 me that Exhibit 4 is that printout CADD run that
24 we're talking about?

25 A. Yes, the Excel spreadsheet you're

1 talking about that adds Orange --

2 Q. Yes.

3 A. Yes.

4 Q. Okay. And in looking at that
5 document -- and am I correct that you asked it to
6 print out runs to this particular run card, 361-M3-1
7 for both Medic 3 and Medic 361; is that right?

8 A. That document has any -- I believe it
9 has any Orange Township unit that was in that area.
10 I don't believe I limited it.

11 Q. I'm sorry. That would include Medic 3
12 and Medic 361, correct?

13 A. Yes.

14 Q. And in looking at that document, and as
15 you look at runs to this area, you were focused on --
16 I realize there are others -- other responders that
17 went to this area, but your focus was Medic 3 and
18 Medic 361 primarily, correct?

19 A. Yes.

20 Q. And as you look at this printout
21 considering runs from those two locations,
22 specifically Medic 3, there's no way for you to look
23 at any particular run and determine the precise route
24 that Medic 3 took to get to that area west of the
25 crossing?

1 A. No, I would not.

2 Q. So you cannot tell us, of the Medic 3
3 runs reflected on Exhibit 4, how often Medic 3
4 used -- went from its station on Third Street to
5 Lewis Center Road versus going some other way, you
6 have no way of knowing that?

7 A. No, the only thing I can show you is who
8 got there first.

9 Q. Okay. And I think even in your
10 testimony, your written prefiled testimony, it refers
11 to Franklin Street as a potential alternative or
12 viable alternative for Medic 3 -- excuse me, for
13 Medic 3 if for some reason they decide not to go to
14 Lewis Center, correct?

15 A. Yes, if they need to go into the village
16 they would use, obviously, Franklin because it's
17 easier for them to get around.

18 Q. All right. But if they are going to the
19 361-M3-1 over closer to Route 23 to respond to those
20 various businesses over there, you don't -- you have
21 no way of knowing how they got there, as to whether
22 they went to Lewis Center or not, correct?

23 A. You'd have to ask the crews.

24 Q. And one of the messages you're trying to
25 convey, I think, is that their response time from

1 what you saw in this run report that is Medic 3's
2 response time, was -- was acceptable; I mean,
3 throughout that period of time they responded to that
4 area in an acceptable way from your standpoint,
5 correct, in terms of the amount of time it took?

6 A. I mean, in the amount of time they
7 responded, yes. I mean, I didn't get any complaints.

8 Q. Right. So we know that, however, Medic
9 3 responded in connection with these runs that are
10 reflected on this report, and we can't say that they
11 didn't go to Lewis Center Road initially as part of
12 their response, what we do know is that the end
13 result, the response time from what you've seen in
14 this report, was acceptable?

15 A. Yes.

16 Q. And Delaware County follows sort of the
17 national standard that I think we have talked about
18 before in terms of response times that -- where the
19 goal is to respond in eight minutes or less, correct?

20 A. I don't follow that rule, I follow my --
21 because that's not within my department, that's in
22 EMS's department. I follow -- -I have different
23 rules that govern the dispatching that I'm concerned
24 about.

25 Q. Okay. You told us about that before,

1 where you're looking at the amount of time between
2 when the call comes in and when they hit the road,
3 those kind of timelines?

4 A. Yes. The State audits me on the way
5 of -- the time of receipt to the time I get the
6 dispatch out. And the response time is EMS's
7 standard, not a 9-1-1 standard.

8 Q. But nevertheless, you're aware of an EMS
9 general standard of eight minutes, and it would be
10 your hope and Delaware County's hope that you would
11 comply with that standard, correct?

12 A. I would think they would, or they are
13 aware of it. I'm aware of it through their behalf.

14 Q. And you would agree that if Franklin
15 Street crossing is closed, Medic 3 can still travel
16 the roughly -- I think earlier it was referenced as
17 roughly a football field, to Lewis Center Road on
18 Third Street, and they can still respond to this area
19 west of the crossing by crossing the Lewis Center
20 tracks, that would not change even if Franklin Street
21 is closed, correct?

22 A. So they respond from their location and
23 they can turn left onto Lewis Center from -- Yes,
24 they can -- Yes.

25 Q. Okay. You also -- you looked at the

1 issue of Medic 3 responding to Lewis Center Road --
 2 Lewis Center addresses that are located west of the
 3 crossing, correct?

4 A. Lewis Center addresses west of it, yes.

5 Q. Yeah. And you found -- and you
 6 indicated in your prefiled testimony that you found
 7 that Medic 3 responded in less than two minutes to
 8 those addresses in Lewis Center west of the crossing
 9 in all but one case, I believe?

10 A. I believe that is correct.

11 Q. And again, you don't know for a fact how
 12 they -- how the Medic 3 responded to those in Lewis
 13 Center west of the crossing, whether they went across
 14 Franklin Street or went out to Lewis Center and came
 15 back in, there's no way for you to tell that looking
 16 at the run report?

17 A. No, I do not know their response travel
 18 route.

19 Q. And you have not, as we sit here today,
 20 done anything to time how long it would take for
 21 Medic 3 to travel out to Lewis Center Road on Third
 22 Street, go across that crossing and come back in one
 23 of the other Lewis Center streets, you have not done
 24 anything to determine the length of time that would
 25 take?

1 A. Nope.

2 Q. If I indicated to you that going from
3 east -- or going from the Medic 3 location out to
4 Lewis Center across the tracks and back in, without
5 lights and -- flashing lights and siren, and not in
6 response mode, that that would take somewhere
7 around -- a normal vehicle, around a little less than
8 30 seconds; would you have any reason to dispute
9 that?

10 A. Other than what time of day it was,
11 considering what other traffic that is going, I don't
12 know the variable on it.

13 Q. Okay. I think you found by looking at
14 the data that --and you're representing that it took
15 three times longer for 361 to get to the -- to
16 addresses west of -- in Lewis Center west of the
17 crossing, do you recall saying that?

18 A. Yes, I have my data here.

19 Q. Okay. And so that is -- that would
20 be -- you have already told us that the Medic 3 was
21 responding in two minutes or less, correct?

22 A. Correct.

23 Q. And so 361, if we're looking to 361 to
24 get to one of these addresses in Lewis Center west of
25 the crossing, three times two minutes, or less is no

1 more than six minutes, correct?

2 A. That would be correct.

3 Q. And 361 -- I'm sorry, the addresses in
4 Lewis Center west of the crossing, those would -- in
5 terms of this run area, 361-M3-1, those would be kind
6 of at the furthest reaching, wouldn't they, of
7 361-M3-1 for Station 361?

8 In other words, that's going to be kind
9 of the outer limits that they would be traveling
10 within that particular run area?

11 A. I would say yes, because it's there, but
12 you also have to look are there any houses on North
13 Drive there that go -- you're right, that would be
14 the furthest to the west, so unless there's -- Yes, I
15 would go -- your right. I want to make sure I'm
16 thinking right.

17 Q. I need to ask you a few questions about
18 Exhibit 4, and I want to indicate first of all for
19 the record that I don't think there's anything I'm
20 going to ask that is going to endeavor to cull out
21 any personal information or where we would be running
22 afoul of some discussions we had earlier about
23 needing to protect that during the course of
24 testimony.

25 But do you have a copy of Exhibit 4,

1 which is the Excel spreadsheet, handy?

2 A. Yes, I do have one.

3 Q. And I'm not going to try to dig into the
4 weeds of this document too much. I'll represent to
5 you that I think it's a 15-page document with each
6 page consisting of a bunch of lines, very --
7 relatively small print. Is that what you have in
8 front of you?

9 A. I'm looking at the Excel spreadsheet
10 electronically.

11 Q. In any event, when it's printed out,
12 it's about 15 pages of data. Does that seem about
13 right?

14 A. I would say so. It's 1,200 rows.

15 Q. And we just -- of course we just got
16 this exhibit last week, and I think you just prepared
17 it somewhere around the end of August, somewhere in
18 there?

19 A. Somewhere in there. I'd have to look at
20 the date when I ran it for.

21 Q. All right. I want to ask you a couple
22 of questions. First, you were comparing --
23 endeavoring to compare the time noted, the in route
24 time, that would be the time that the medic,
25 whichever one we're looking at, started, correct, or

1 left the station?

2 A. Yes.

3 Q. And then you're comparing that to on
4 scene, correct?

5 A. Correct.

6 Q. And in terms of looking at this issue of
7 which medic as between Medic 3 and Medic 361 can
8 respond more quickly, it's not the time of arrival on
9 the clock that is the key, we're looking at the
10 difference between the in route time and the on scene
11 that would tell us something about the travel time
12 that they experienced to get from the station to that
13 location?

14 A. Yes. The in route time is when they
15 mark us and say they are responding, and the on scene
16 time is when they mark us and say they are at the
17 location.

18 Q. Okay. And there are a few different
19 scenarios I just wanted to run by you, and I need to
20 get into the weeds a little bit here for a second.

21 If you have the first page of the
22 Exhibit 4 in front of you, I'm not sure what the
23 easiest way is to direct you to a line, a particular
24 run. Is it CADD number?

25 A. Yes, can you give me -- it should be

1 Column A. The first one is year, and then the second
2 one is -- CADD number is B. If you can give me the
3 year and CADD number, I can find it.

4 Q. Okay. And I want to focus on -- one of
5 the things you did, among other things, was to look
6 at -- you tried to look at runs to this area where
7 both Medic 3 and Medic 361 were called on the same
8 call and responded to the same call, correct?

9 A. Yes.

10 Q. So if I could ask you to take a look at
11 CADD No. 54657. On my exhibit it's about halfway
12 down the first page, and there's actually two runs in
13 2018 with that particular CADD number. Do you see
14 it?

15 A. I only have one for 2018, 54657. Let me
16 see if -- is that to the 6515 Pullman.

17 Q. 6515 Pullman. And mine shows a run,
18 they are both 5-9-2018, they are both going to that
19 Pullman Drive address, one says M361 and one says M3?

20 A. Okay. Give me one second.

21 ALJ WALSTRA: Mr. Hochstettler, what
22 column is the confidential information?

23 MR. HOCHSTETTLER: The confidential
24 information is in Column F. Since this is a business
25 address, I'm less concerned about it. I was more

1 concerned about the Column F in residential
2 addresses.

3 MR. EVANS: For the record, this is an
4 address that I think has already been referenced in
5 his prefiled testimony, this Pullman Drive address.

6 MR. HOCHSTETTLER: Yeah, I have no
7 concerns with this address because it is a -- that's
8 a medical facility, and -- based on the testimony
9 that's been submitted, and so there's no way to track
10 that back to an individual.

11 So I'm not concerned about Column F with
12 respect to these particular runs, I just want to make
13 sure that Mr. Brandt -- I see it on my chart, so --

14 ALJ WALSTRA: I see it too.

15 THE WITNESS: Hold on, let me resort
16 mine. I might have a sort on. Okay, I got it.
17 Sorry. That is a filter on my side, sorry.

18 By Mr. Evans:

19 Q. So you have in front of you now that
20 first page that includes this CADD number 54657, and
21 it is in fact showing a run by M3, which I assume is
22 Medic 3?

23 A. Yes.

24 Q. And M361, which is Medic 361?

25 A. Correct.

1 Q. And they are going to the same location,
2 correct?

3 A. Correct.

4 Q. And if you look at the in route and on
5 scene times there, there is an in route time listed
6 for both units, correct?

7 A. Correct.

8 Q. Looks like M3, Medic 3, was in route a
9 little bit ahead of M361, correct?

10 A. Correct.

11 Q. And then the next column in this
12 particular case, it says null, which to me means that
13 information for 361 was not recorded, correct?

14 A. Correct. They did not -- on this
15 situation they did not make it on the scene.

16 Q. So there is no way for you to know why
17 that was, that they didn't make it on the scene?

18 A. From looking at that data, Medic 3 made
19 it on the scene at 15:22, and at 15:23 they marked
20 Medic 361 in service, so they canceled them.

21 Q. Okay. So there's nothing to compare
22 there in that particular run in terms of run times
23 for the two units, correct?

24 A. No, you can tell by 15:22.

25 Q. You have to bear with me, because we

1 haven't seen this -- or your analysis until recently,
2 so I'm not trying to waste yours or anybody's time,
3 but I'm trying to make sure we understand for the
4 record.

5 Could I refer you then to what for me is
6 the second page of this data? It's -- what did we
7 call this. It's CADD number 39071. And again, there
8 should be two runs with that number.

9 A. Yes, I see it.

10 Q. And again, we're talking about M361 and
11 M3, right?

12 A. Correct.

13 ALJ WALSTRA: Can I get that number
14 again?

15 MR. EVANS: You bet. 39701.

16 ALJ WALSTRA: Okay. Thank you.

17 MS. DONNAN: Can you provide the date
18 for that?

19 MR. EVANS: Well, yes. April 4, 2018.

20 MS. DONNAN: Thank you.

21 By Mr. Evans:

22 Q. And if we look at that -- those time
23 entries, the in route time, they were in route
24 within, looks like one second of each other?

25 A. Correct.

1 Q. And M361 got there at 16:01:42, and M3
2 got there at 16:01:24, correct?

3 A. Correct.

4 Q. So if you do the math -- and what we
5 need to do is compare the time in route versus the
6 time on scene, correct?

7 A. Yes.

8 Q. In this particular instance they got to
9 this facility -- M361 left, as we noted, one second
10 later, correct?

11 A. Correct.

12 Q. And M3, based upon this data, arrived --
13 their travel time to get there was approximately 17
14 seconds faster; is that right?

15 A. For Medic 3, yes.

16 Q. Okay. Just bear with me, a couple more
17 times to make sure I understand this.

18 A little bit further down that second
19 page there's another CADD number 138819, the date is
20 10-29 of '18.

21 A. You're correct.

22 Q. Okay. And the -- the in route time for
23 M361 is 16:51:20 as compared to 16:50:34 for M3,
24 correct?

25 A. 16:50:34, that is correct.

1 Q. M361 left the station, based upon their
2 in route time, about 46 seconds after the other --
3 after M3, correct?

4 A. Yes, from 15:34 to 15:20.

5 Q. But if you look at the actual travel
6 time for M361, it arrived at the scene, actually just
7 comparing the two travel times, six seconds faster in
8 travel than M3 did.

9 A. Okay.

10 Q. Is that right? Okay. And then one last
11 one, I promise, and that is -- I think this is the
12 sixth page back, and it's CADD number 67363. It's
13 June 4 of 2018.

14 A. Okay.

15 Q. And the call came into both at 15:27 and
16 zero seconds, do you see that?

17 A. Yes.

18 Q. The in route time for -- make sure I'm
19 looking at the right one -- M361 was 15:28:41 as
20 compared to M3 at 15:27:38, correct?

21 A. Yes.

22 Q. And again, doing that math between the
23 in route time and the on scene time, M361 left -- was
24 in route a minute and 3 seconds after M3, correct?

25 A. Correct.

1 Q. But if you do the math on the travel
2 time, that difference between on scene and in route,
3 the travel time was equal, 2 minutes and 29 seconds;
4 is that right?

5 A. Yep, I'm looking at it quickly.

6 Q. So we can agree that arrival time at the
7 scene, just the fact that one gets there before the
8 other doesn't equate to a difference in travel time,
9 right?

10 A. Well, there's -- I think there's another
11 variable we need to look at, is where were they
12 coming from on those calls. I don't know if we know
13 that exact location where they were responding from.

14 Q. Well, I certainly don't know, and you
15 don't know that either?

16 A. No, I don't know if they are in the
17 station, that would be the question.

18 Q. All right. In terms of these data
19 points along the lines of what we looked at where
20 Medic 3 and Medic 361 are responding to the same
21 call, I'll represent to you that in going through
22 this report, that we found 18 -- approximately 18
23 data points where that similar situation occurred,
24 where both 361 and M3 were dispatched to the same
25 incident at or around the same time. Does that seem

1 about right to you? Any reason to doubt that?

2 A. I don't have any reason to doubt your
3 data, but I've not reviewed that -- I'd have to look
4 at those particular ones.

5 Q. And there's going to be post hearing
6 briefs and we'll probably need to delve into this a
7 little more at that time, but I'm trying to make sure
8 I understand how the printout works.

9 A. That's fine.

10 Q. I've represented that there were 18 data
11 points where there were these two runs going
12 essentially at or around the same time.

13 Of those 18, we found that there were
14 six where there was no way to measure the time from
15 departure to arrival because one entry or another
16 said null. We looked at one of those at the
17 beginning. So of those 18, we found six of that
18 kind.

19 Do you have any reason -- this document
20 will speak for itself, but as we sit here right now,
21 you have no reason to dispute that?

22 A. No, sir.

23 Q. Similarly, we found five entries of that
24 kind where Medic 3 actually arrived more quickly in
25 terms of travel time, got there more quickly than

1 Medic 361. And you don't have any basis to dispute
2 that subject of what the document says, correct?

3 A. Correct.

4 Q. We found two where it appeared that the
5 travel time between 361 and Medic 3 was equal,
6 identical travel time. I think we looked at one of
7 those.

8 You have no reason to dispute that,
9 again, subject to the document speaking for itself,
10 that there may be a couple entries of that kind?

11 A. Yeah, no reason to dispute what you're
12 reading.

13 Q. All right. And then we found -- of the
14 18 data points, we found five where Medic 361, that
15 its travel time was actually faster than what the
16 Medic 3 travel time was.

17 Do you have any reason to dispute that
18 there are -- whether you can agree to five out of 18,
19 but any reason to dispute that that would occur
20 sometimes that Medic 361 could get their faster than
21 Medic 3?

22 A. No, because like I said, I don't know
23 where they are responding from. They could have been
24 at the grocery store.

25 Q. Let's see here. So of the 18 data

1 points we found, seven of those occasions involved a
2 response by Medic 361 that was either the same or
3 faster than the response time for Medic 3. Any
4 reason to dispute that?

5 A. Not right off the top, no.

6 Q. You are aware that there have been times
7 in the past when Lewis Center Road, Franklin Street,
8 or both crossings were closed for a short period of
9 time for repairs, correct?

10 A. Yes.

11 Q. And as I recall, on those occasions,
12 although I don't think you can pinpoint when those
13 were, that you and your department would get notice
14 of the pending closure of the crossing, correct?

15 A. Yes.

16 Q. And I think you testified to it earlier
17 that when there is an event like that, a crossing
18 closure for some form of railroad maintenance, that
19 the Fire Chief can change the run cards during that
20 period based upon that closure, correct?

21 A. Yes, he has the option to.

22 Q. And I think I represented before that
23 there was an occasion in the past, I think it was in
24 2010, when Franklin Street and Lewis Center crossing
25 were both closed for a railroad project. Am I

1 correct that you don't recall that specifically?

2 A. Not in 2010, no.

3 Q. Or any time since then?

4 A. I want to say there was one not that
5 long ago, but I don't remember if it was both of them
6 or not.

7 Q. In any event, if Franklin Street
8 crossing were closed permanently, it would again
9 be -- fall to the Fire Chief to look at the run cards
10 and determine whether a change in the run card would
11 be required?

12 A. Yes, correct, it goes to the Fire Chief.

13 Q. You recall that Lewis Center Road was
14 closed, I think when we -- when I took your
15 deposition we thought it was maybe just a few months,
16 but I think since then some prefiled testimony has
17 indicated that Lewis Center Road was closed for about
18 six months for construction after the roundabout. Do
19 you recall that occurrence?

20 A. Yes.

21 Q. And it's your recollection that the
22 Orange Township Fire Chief at the time changed the
23 run card for 361-M3-1 such that the 361 medic had
24 primary responsibility for this area west of the
25 tracks, correct?

1 A. That is correct.

2 Q. And when I took your deposition, I made
3 you aware of the fact that the -- former Chief Noble
4 had testified that during that six-month closure when
5 Medic 361 had primary responsibility to respond to
6 the area west of the crossing, they did not have to
7 add any medic units or vehicles at that station, and
8 you had no -- as I understand it, you had no
9 information to the contrary?

10 A. That is correct.

11 Q. And they also didn't have to hire any,
12 or put any additional medics on staff at any
13 particular shift at 361 during that six-month time
14 period, you testified to that, and you're not aware
15 of anything to the contrary?

16 A. I'm not aware of anything.

17 Q. And you are not aware of any adverse
18 outcomes in terms of response time to this area we
19 have been talking about during that six-month period
20 that Lewis Center Road was closed?

21 A. I'm not aware of any.

22 Q. And you also cannot point to any
23 negative outcome in terms of response time or related
24 to response time to this area west of the crossing
25 that resulted as a result of the prior closures of

1 grade crossings at either Lewis Center or Franklin
2 Street, correct?

3 A. Our office wasn't contacted, no.

4 Q. And in your position, you would expect
5 to be made aware of adverse outcomes caused by an
6 unacceptable EMS response time, that would be
7 something that typically at least would cross your
8 desk?

9 A. It would go to the EMS Chief or Fire
10 Chief first.

11 Q. Lewis Center Road -- I'm sure you've
12 driven Lewis Center Road many times, correct?

13 A. Yes, sir.

14 Q. It's a two-lane road with very little
15 berm on the side of the road between that location
16 where the tracks are and Route 23, would you agree
17 with that description?

18 A. Correct.

19 Q. As you get a little bit closer to Route
20 23, I think it gets to be a little bit wider area
21 there, a little bit more in the way of a berm?

22 A. It's three lanes now up there through
23 there on the other side of the school now.

24 Q. And you agree that if a train is passing
25 through the area where Franklin Street and Lewis

1 Center crossings are located, that train, just based
2 on common sense, is going to block both crossings for
3 about the same length of time, clearing one just
4 before the other, depending on which direction the
5 train is going, correct?

6 A. I think if it's going to block one, it's
7 going to block the other one.

8 Q. Right. You've been out there, the two
9 crossings are only about a football field apart,
10 right?

11 A. Correct.

12 Q. And if a train is going southbound, for
13 example, it's going to -- coming from southbound,
14 it's going to clear the Lewis Center Road shortly
15 before it clears the Franklin Street crossing,
16 correct?

17 A. Absolutely.

18 Q. Route 23, on the other hand, on which --
19 you would expect Medic 361 to respond to this area,
20 the Kroger area, via Route 23, correct?

21 A. Eventually they would jump on to Route
22 23, yes.

23 Q. And Route 23 in that area between where
24 the station is located and where they would likely
25 get on Route 23 to head up to this -- this area we're

1 talking about, you would agree that Route 23 is a
2 wider road as compared to Lewis Center, correct?

3 A. Yes.

4 Q. And there are typically at least two
5 lanes in each direction, correct?

6 A. On 23, yes.

7 Q. On 23. And there is sometimes a third
8 turn lane that would be there for traffic going north
9 on Route 23?

10 A. There is a third turn lane in the
11 middle.

12 Q. And the -- the berms -- there is more of
13 a berm on the side of Route 23 than what you find
14 most places on Lewis Center Road, correct?

15 A. Yes.

16 Q. And of course, a medic responding from
17 361 doesn't have to go across any railroad tracks,
18 correct, to get up to this area?

19 A. No.

20 Q. In addition to not having to worry about
21 train tracks and blocked crossings, if your Medic 361
22 heading up Route 23 to respond to this area with your
23 flashers -- your lights and siren going, as a driver
24 of that vehicle you've got more options to you as far
25 as how to get around any existing traffic than you

1 would if you were on Lewis Center?

2 A. Yeah.

3 Q. When we last deposed you there was some
4 discussion about automatic vehicle location system,
5 do you recall that?

6 A. Yes, sir.

7 Q. And as I understood it from testimony at
8 that time, that system was scheduled to go in effect
9 around the end of August of this year, is that
10 accurate?

11 A. It was scheduled, yes. A portion of it
12 has --

13 Q. I'm sorry. What did you say?

14 A. A portion of that has.

15 Q. Okay. So it is going into place, but
16 it's not fully in place yet; is that correct?

17 A. That is correct.

18 Q. And you would agree that that AVL system
19 allows the -- the intention is to allow the dispatch
20 of the closest EMS to a scene even if that EMS unit
21 is on the road?

22 A. Yes.

23 Q. So that the intention is that it would
24 be -- there would be less instances where the
25 responding medic would be responding from a

1 stationary location at one of their stations?

2 A. Yes, the GPS information would dedicate
3 it.

4 Q. Okay. And your analysis that we have
5 talked about some here comparing the run times and
6 travel times in Exhibit 4, fair to say that doesn't
7 really in any way take into account the impact, if
8 any, of the automatic vehicle location system?

9 A. Correct.

10 Q. You don't have any data at this point to
11 indicate exactly how that is going to impact response
12 time through this run card area we have been talking
13 about; is it fair to say you don't know how it's
14 going to pan out?

15 A. We do not have any data, so I do not
16 know.

17 Q. But that is a system that you're
18 planning to put into place?

19 A. Yes.

20 Q. It's just taking a little longer, as
21 things often do, than you were original planning,
22 correct?

23 A. That is correct.

24 Q. Almost done here. When I took your
25 deposition, we discussed the response area -- or we

1 discussed the emergency response to this run card,
2 361-M3-1, in the event that Medic 3 is already
3 responding to another call in the territory that is
4 to the east of their station, and I think you agreed
5 at that time that that is something that over time
6 you would expect dose occur, that they are already
7 responding to something and therefore can't be the
8 first responder to this 361-M3-1?

9 A. There's potential of that, yes.

10 Q. I'm sorry?

11 A. There is potential of them being tied up
12 on another call.

13 Q. Okay. And the -- my point in raising
14 that is if that's the case, that's already a
15 situation where Medic 361, as the next closest medic,
16 if possible, would be the medic that would respond to
17 361-M3-1, because Medic 3 is over on the eastern part
18 of their -- of their territory, that's the way that's
19 set up, right?

20 A. Yes, they would be next in.

21 Q. And the same kind of thing could happen
22 once they have picked up a patient at whatever
23 location, obviously there's a component of it
24 depending on the circumstance, can be taking that
25 patient to one of the area hospitals, correct?

1 A. Yes, as they are transporting, yes.

2 Q. Transporting. And some of those -- like
3 St. Ann's I guess or -- for example, would be
4 relatively close, but they might be -- depending on
5 the circumstance and the injury, they might be headed
6 to Children's or OSU, and that's a further drive?

7 A. Correct.

8 Q. And if they are going -- on their way to
9 a hospital, whichever one it is, and a call calls in
10 at 361-M3-1, currently they aren't in a position to
11 respond to that, correct?

12 A. No, they would be too far away at the
13 hospital.

14 Q. Right. So in that instance, Medic 361,
15 unless they are also tied up at that point -- but
16 there's a hierarchy set up, as I understand it, but
17 the ideal world would be the next one down the
18 hierarchy, M361 would respond to the new emergency;
19 is that right?

20 A. Yes, sir.

21 Q. Chief McNeil -- I assume you know Chief
22 McNeil, he's relatively new to the job, but do you
23 work with and interact with him from time to time?

24 A. Yes, I have worked with him.

25 Q. I don't know if he -- you probably have

1 not had any reason to review his prefiled testimony?

2 A. I have not seen his.

3 Q. Okay. Give me one second. I've got too
4 many papers here.

5 Okay. Chief McNeil indicates -- he's
6 asked upon review of the exhibit, I think the same
7 exhibit we have been looking at, approximately how
8 many runs have the Orange Township medics made to the
9 areas covered by 361-M3-1, and he says, "Upon review
10 of the exhibits, I would say the Orange Township
11 medics have made approximately 159 runs to the area
12 covered by 361-M3-1." That's not a number you have
13 in your mind or handy; is that correct?

14 A. No, I'd have to calculate it up.

15 Q. Okay. And your printout, assuming he's
16 looking at the same one, it covered, among other
17 years, 2019 when there was a closure -- Lewis Center
18 Road was closed for the roundabout construction,
19 correct?

20 A. Yes.

21 Q. So as we look at -- assuming just for
22 the moment that the Chief is right in terms of his
23 indication of 159 trips by 361 to that area, that
24 would include the six-month period of time where they
25 were the primary responder because Lewis Center Road

1 was closed for road construction?

2 A. Yeah, assuming that.

3 Q. And that would also -- in looking at
4 those number of runs by M361, that would include
5 those circumstances that we looked at a few of where
6 both units were called in response to the same
7 incident -- we looked at a few of those, but that
8 total number of runs by M361 would include those
9 types of responses where both are going, correct?

10 A. If he's using the data that he had that
11 we're talking about, then yes, I would agree.

12 Q. Okay. And I realize you have to --
13 that's an assumption I'm asking you to make, but the
14 other --

15 MS. DONNAN: Pardon me, Mr. Evans. I
16 apologize for interrupting, but just to make sure
17 that the record is clear, in th Chief's testimony,
18 that 159 run area, that relates to Medic 361 and 362
19 to the area. Those are the two township medics. So
20 I just wanted to make sure for the sake of clarity.
21 I apologize for interrupting.

22 MR. EVANS: No problem.

23 By Mr. Evans:

24 Q. Another reason -- understanding
25 counsel's point that maybe not all 159 are Medic 361,

1 we can determine that easily enough, I guess, but in
 2 terms of -- another reason that Medic 361 would be
 3 traveling that area, in addition to the ones we have
 4 already discussed, is that notion that we have
 5 already just talked about, that Medic 3 is
 6 preoccupied doing another run to another area of
 7 their territory, or transporting a patient to a
 8 hospital, that would be another reason that 361 would
 9 already be headed up there with the current -- with
 10 both crossings open, correct?

11 A. It's based on the nature code. So if
 12 the nature of the run is a full arrest or some type,
 13 then the Chief automatically has two medics being
 14 dispatched on the call. It's not always a single
 15 medic response.

16 Q. We talked earlier about the fact that
 17 you don't -- you can't tell from this printout what
 18 route Medic 3 took to get to 361-M3-1 when
 19 responding, correct?

20 A. I don't know how they traveled, no.

21 Q. Right. And you have not read or had
 22 occasion to read -- Well, strike that.

23 Did you attend the public hearing that
 24 was held in this matter almost -- I think about a
 25 couple years ago now, where members of the community,

1 including Lewis Center, provided comments under oath?

2 A. I was not there.

3 Q. Okay. I just want to ask you a question
4 about -- there was an individual by the name of
5 Mr. Stabl, make sure I get his first name, Jamie
6 Stabl, and he -- I'm going to read just a paragraph
7 or so of what he said.

8 He said, "They also state that the EMS
9 can use the Franklin Street crossing to enter less
10 congested parts of Lewis Center Road. Lewis Center
11 Road is congested, and it's because when a train is
12 coming, traffic will back up a hundred cars one way
13 and a hundred cars going the other way.

14 "EMS can get out. I've seen them get
15 out. They have their siren on. People stop, they
16 get out. They come out on the west side 40 yards
17 from the track, they have their lights on, they go.

18 "They come out on the other side only 60
19 yards, so saying it's a less congested area if they
20 have to go over on the west side, I feel is just not
21 the case.

22 "But I've seen them -- but I've seen and
23 that's there. The difference between 40 yards on one
24 side and 60 yards, that's not an issue. It's
25 congested, it's congested, but EMS can always get

1 out."

2 I assume you don't know Mr. Stabl?

3 A. No, sir.

4 Q. Never discussed this with him, correct?

5 A. Nope. No, sir.

6 Q. Do you have any reason to believe that
7 when he was testifying about simply as to his
8 observations about EMS's ability to get out onto
9 Lewis Center Road, that he was in any way not being
10 truthful?

11 A. I wouldn't say he's not being truthful,
12 but I don't know if I agree with the statement.

13 Q. Well, all we can agree to is that he's a
14 long-time resident of Lewis Center and he's testified
15 what his observation over the years has been, and
16 that's -- you have no dispute with that, correct?

17 A. No, just be time of day would be the
18 question that's involved.

19 MR. EVANS: Okay. I believe that's all
20 the questions I have. Thank you.

21 ALJ DAVIS: Thank you, Mr. Evans. Is
22 there any additional cross-examination for this
23 witness?

24 MR. TALBOTT: There is, Mr. Davis. I
25 promise it will be brief.

1 ALJ DAVIS: Please proceed, Mr. Talbott.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Talbott:

5 Q. Mr. Brandt, do you need a quick break,
6 or are you okay?

7 A. No, I'm good. Go ahead, sir.

8 Q. Okay. Should be quick. I want to
9 clarify a few things just so the record is clear.
10 Medic 3, that's the name of the building that is
11 adjacent to the tracks, correct?

12 A. Correct.

13 Q. And it's -- it's on the northeast
14 quadrant where Franklin intersects with the tracks,
15 right?

16 A. Yes.

17 Q. And it's -- to be more clear, it's on
18 the east side of the tracks, right?

19 A. Yes, sir.

20 Q. And Medic 3 provides EMS services only?

21 A. Yes, sir.

22 Q. Okay. The majority of its response area
23 is to the east side of the tracks, or the same side
24 it's on, correct?

25 A. Yes.

1 Q. I think it services a total of four
2 quadrants. It has primary service obligation for
3 four quadrants. Three of the four are on the east,
4 one is to the west, correct?

5 A. Yes.

6 Q. Okay. With respect to Medic 3's ability
7 to serve any quadrants to the east, we agree that the
8 closing of Franklin would have no apparent impact
9 because it doesn't have to cross the tracts, correct?

10 A. Correct.

11 Q. Okay. With respect to Medic 3's ability
12 to serve the west, if Franklin was closed what Medic
13 3 would need to do would be to divert approximately
14 one-tenth of a mile to Lewis Center Road; is that
15 correct?

16 A. Yes.

17 Q. Okay. And Medic 3 has to do that
18 anyway, right? Medic 3 has to divert to Lewis Center
19 in order to get out to the Kroger area, correct?

20 A. Correct.

21 Q. If Franklin is closed, it diverted a
22 block sooner, if Franklin is not ordered closed by
23 the PUCO, it can divert a block later, correct?

24 A. Correct.

25 Q. And the reason for that is Franklin is

1 not a through street, correct?

2 A. Yes.

3 Q. So if -- we're not concerned about any
4 quadrants to the east. The quadrant to the west, if
5 it's going to the Kroger area, so out far west, it's
6 just not -- it's actually six-one-hundredths of a
7 mile to Lewis Center and go, correct?

8 A. Correct.

9 Q. Basically the same thing as far as we
10 know it does now, correct?

11 A. Yes, sir.

12 Q. Okay. If it's going to service the
13 homes on the immediate west of the track, what it
14 needs to do is divert six-one-hundredths of a mile
15 north to Lewis Center, and then it's got to divert
16 six-one-hundredths of a mile back; that is what is
17 added to the trip, correct?

18 A. Okay.

19 Q. So --

20 A. I haven't measured it, but I'll go with
21 you.

22 Q. Yeah, if other witnesses will testify
23 that it's six-one-hundredths of a mile from Lewis --
24 Lewis Center to Franklin, you don't have any reason
25 to dispute that, right?

1 A. No, sir.

2 Q. Okay. And so what we would be adding to
3 the homes -- to the service of the homes immediately
4 west of the track, we'd be adding approximately
5 twelve-one-hundredths of a mile in EMS travel,
6 correct?

7 A. Yes, sir.

8 MR. TALBOTT: Okay. That's all I have,
9 thanks.

10 ALJ DAVIS: Thank you. Is there any
11 cross on behalf of Township?

12 MS. DONNAN: Just a couple of questions,
13 your Honor. Thank you.

14 - - -

15 CROSS-EXAMINATION

16 By Ms. Donnan:

17 Q. Hi, Mr. Brandt. My name is Julia
18 Donnan. Our office represents Orange Township. I
19 just have a couple of clarifying questions for you.

20 I don't believe that you were on the
21 call -- in the hearing earlier, however we received
22 testimony from a -- written testimony from a couple
23 of railroad witnesses who had previously reviewed
24 your deposition, and based on their interpretation of
25 your deposition, I just want to ask you a couple

1 clarifying questions.

2 A. Sure.

3 Q. So when Mr. Jackson, in his prefiled
4 testimony, and then once again confirmed in his
5 testimony today, stated that if the Franklin
6 Crossings close, quote, there's no impact, unquote,
7 in terms of EMS response time to that -- to the
8 Kroger area which is the northwest -- kind of
9 northwest area located -- to the northwest of the
10 tracks. Do you agree with that statement?

11 A. That if the Franklin Street is closed,
12 there would be no impact?

13 Q. Correct.

14 A. Depends on if Lewis Center Street is
15 closed as well or not.

16 Q. But in terms of the Franklin Street
17 crossing being closed, in your written testimony --
18 pardon me, your direct testimony you stated that it
19 would negatively impact emergency response times.

20 MR. TALBOTT: Objection, if you don't
21 know if the Lewis Center one closes.

22 MR. EVANS: Objection, this is
23 commonality of interest here.

24 MS. DONNAN: Our office did not question
25 this witness in the direct testimony. We have a

1 railroad witness saying based on that interpretation
2 they believe this, our office has not had the
3 opportunity to ask these questions of Mr. Brandt.

4 I recognize that the County and Township
5 do have similar interests, however these are not our
6 witnesses. The County and Railroad have had the
7 opportunities to question about the various type --
8 testimony of each person, the Township would like to
9 have that opportunity as well.

10 MR. TALBOTT: We would join the
11 objection. It's leading by a party with commonality
12 of an interest. We don't have objection to her
13 asking the questions a different way, just the way
14 she's doing it.

15 By Ms. Donnan:

16 Q. Mr. Brandt, in your opinion will there
17 be negative -- just to confirm the information you
18 put in your direct testimony, will there be a
19 negative impact on EMS if the Franklin Street
20 crossing is closed?

21 A. Yes.

22 MS. DONNAN: Thank you. I have no
23 further questions.

24 ALJ DAVIS: Thank you.
25 Mr. Hochstettler, do we have redirect?

1 MR. HOCHSTETTLER: Yes, briefly.

2 - - -

3 REDIRECT EXAMINATION

4 By Mr. Hochstettler:

5 Q. Mr. Brandt, you testified in response to
6 a question on cross-examination that the run card
7 areas for which Medic 3 is the primary EMS responder,
8 that it is geographically a majority of the east side
9 of the tracks.

10 What is your experience in terms of run
11 volume as opposed to geographic area for Medic 3?

12 A. The run volume for Medic 3? Can you
13 rephrase, make sure I understand your question?

14 Q. You had testified about geographically a
15 majority of that area is east of the tracks.

16 A. Right.

17 Q. What about run volume for Medic 3 west
18 of the tracks versus east of the tracks?

19 A. More to the west because of the school
20 and the commercial industry.

21 Q. And several of the individual runs that
22 you were asked to review on the spreadsheet were for
23 6515 Pullman. Are you familiar -- you testified that
24 that is an OSU medical facility; is that correct?

25 A. That is correct.

1 Q. Okay. And is that closer to Medic 361
2 than the other properties that you identified in your
3 testimony, being the Lewis Center proper, the actual
4 village, Olentangy schools and Lewis Center United
5 Methodist Church?

6 A. Is Medic 361 closer to that location?

7 Q. Is 6515 Pullman closer to 361 than those
8 other locations you identified?

9 A. Yes, because it's further to the west.

10 MR. HOCHSTETTLER: I don't have any
11 further questions.

12 ALJ DAVIS: Thank you very much, Mr.
13 Hochstettler. I think due to the commonality of
14 interest, we're going to go ahead and let Orange
15 Township go first on the recross, and then we'll do
16 that on the next witness.

17 MS. DONNAN: We have no further
18 questions. Thank you.

19 ALJ DAVIS: Thank you. Is there recross
20 from Petitioners here?

21 MR. EVANS: No further questions by Lee
22 Evans on behalf of CSX.

23 MR. TALBOTT: Your Honor, I have just
24 one if I may. May I go ahead and proceed? Are you
25 okay with that?

1 ALJ WALSTRA: Go ahead.

2 MR. TALBOTT: Thank you.

3 - - -

4 RECROSS-EXAMINATION

5 By Mr. Talbott:

6 Q. Mr. Brandt, first, thank you for your
7 time today. Even assuming the Franklin crossings are
8 closed, would it surprise you if another witness or
9 witnesses has testified that Medic 3 would maintain
10 primary response obligation as to the Kroger area?

11 A. No, it would not surprise me.

12 MR. HOCHSTETTLER: I'm going to object
13 to the scope of the question. My redirect was two
14 questions. This didn't come up in his initial
15 cross-examination. It's beyond the scope of the
16 redirect.

17 MR. TALBOTT: It's my only -- it's in
18 response -- I don't recall, it's a response to the
19 Township, or one of you asked a question that
20 triggered this. It's the only line of question I
21 have.

22 ALJ WALSTRA: We'll allow the question.

23 MR. TALBOTT: Thank you.

24 By Mr. Talbott:

25 Q. I think your answer was no, it would not

1 surprise you, is that correct, Mr. Brandt?

2 A. Yes, it wouldn't surprise me.

3 Q. So this concern as to the Kroger area --
4 strike that.

5 The reason it wouldn't surprise you is
6 because Medic 3 is serving it now satisfactorily, and
7 the only way it gets there is through Lewis Center,
8 right?

9 A. I'm not sure which way they travel to
10 get there, but yes, they have either side of the
11 track.

12 Q. I mean, it can't get there through
13 Franklin, it has to get there through Lewis Center,
14 right?

15 A. Once it closes, if it closes.

16 Q. Well, even now if it's open, Medic 3, if
17 it's going to the Kroger area, has to get out to
18 Lewis Center and take that to Kroger?

19 A. That is correct.

20 Q. And that doesn't change, if Franklin
21 closes, it does the same thing and it stays the
22 primary responder, right?

23 A. It's up to the Chief, but I would assume
24 they would maintain.

25 MR. TALBOTT: Thanks. That's all I

1 have. Thanks.

2 ALJ DAVIS: Thank you very much. Thank
3 you for your testimony, Mr. Brandt. You are
4 dismissed.

5 (Witness excused.)

6 ALJ DAVIS: So, Mr. Hochstettler, I
7 understand our last witness was Mr. Keating who
8 needed some time. Is he ready and present to go?

9 MR. HOCHSTETTLER: He's in the wing, so
10 I think he's available, yes.

11 ALJ DAVIS: Hello, Mr. Keating. May I
12 ask you to raise your right hand? Do you swear or
13 affirm that what you're about to tell is the truth?

14 MR. KEATING: I do.

15 ALJ DAVIS: Thank you very much. You
16 may proceed, Mr. Hochstettler.

17 - - -

18 Glen Keating,
19 being first duly sworn, as prescribed by law, was
20 examined and testified as follows:

21 DIRECT EXAMINATION

22 By Mr. Hochstettler:

23 Q. Mr. Keating, you have before you what
24 has been marked as Delaware County Exhibit 7, which
25 is your prepared direct testimony?

1 A. I do.

2 Q. And did you have an opportunity to
3 review and approve the written testimony prior to
4 filing?

5 A. Yes.

6 Q. And was there any additional information
7 that you wanted to add to your training and education
8 to your testimony?

9 A. Yes, sir, there actually is. Line
10 number 11 for that question, training and education,
11 I want to add in that I'm also a registered
12 respiratory therapist. I graduated from Columbus
13 State Community College in 2010 with a degree in
14 respiratory care.

15 Q. And at this time if I were to ask you
16 all of the questions contained in your direct
17 testimony, would your answers be the same as written
18 subject to the additional information you just
19 provided?

20 A. Yes.

21 MR. HOCHSTETTLER: Thank you, your
22 Honor. I tender the witness for cross-examination.

23 ALJ DAVIS: Thank you. Is there
24 cross-examination for this witness from Orange
25 Township?

1 MS. DONNAN: There is.

2 - - -

3 CROSS-EXAMINATION

4 By Ms. Donnan:

5 Q. Hi, Captain Keating. My name is Julia
6 Donnan. Our office represents Orange Township. I
7 just have a couple of questions for you today. Have
8 you driven with, quote, sirens on through your
9 jurisdiction before?

10 A. Yes.

11 Q. Can you describe that for us boring
12 lawyers who have to sit in our offices what it's
13 like?

14 A. I currently have an office myself, so I
15 don't get to do as much of it as I used to. I've
16 been a paramedic now with Delaware County since 2008,
17 so done a fair amount of it, especially down in the
18 southern part of the County.

19 So our station is in Lewis Center. Our
20 station is in Delaware, Genoa Township, and in
21 Sunbury. Those have a pretty solid amount of traffic
22 associated with it, so lights and sirens sometimes
23 can even be a little bit more difficult than if we
24 just went with normal traffic.

25 Some of the other areas in the County

1 have a little bit -- have a little more sparse
2 traffic, so lights and sirens are the -- we move
3 pretty quickly.

4 Q. So you mentioned in some parts of the
5 County it can be more difficult -- more difficult
6 with sirens than without sirens. Can you kind of
7 expand on that a little bit?

8 A. Sometimes it's just difficult to
9 struggle to get down the street because cars have to
10 go in a -- cars have to have a place to go in order
11 for us to be able to overtake them and have the
12 right-of-way.

13 Q. Okay. So would you describe those -- I
14 guess, how would you describe some of those roads
15 where this happens?

16 A. You know, really could be any road. It
17 could be -- for example, I know we're talking a lot
18 about Lewis Center Road.

19 For example, as you cross over the
20 tracks headed west there's a pretty sizable ditch, so
21 to have a car pull to the right like they are
22 supposed to, if they in fact do that, to have them
23 pull to the right sometimes could put them into a
24 ditch, and so they move over as far as they can, but
25 sometimes it's not enough for us.

1 Q. So on Lewis Center Road, can it be
2 difficult to get around vehicles with sirens going?

3 A. Yes.

4 Q. Okay. Can you describe -- can you go a
5 bit into more detail in regards to some of the
6 situations where there might be more traffic, what --
7 what is driving with sirens like?

8 A. Are you talking about specific times of
9 day, or any other just details of driving with lights
10 and sirens?

11 Q. I guess all of the things that impact --
12 that impact your ability to drive with sirens.

13 A. Sure. The amount of traffic is a big
14 one. The condition of the road, the width of the
15 road as, you know, the number of intersections, the
16 type of intersections, whether it be just a stop sign
17 or traffic lights, those things can all impact our
18 ability to travel with lights and sirens.

19 Q. Do you travel with lights and sirens any
20 where on 23?

21 A. Yes.

22 Q. And can you describe what that's like?

23 A. Again, a lot of it is some of those
24 factors that I just spoke of. As far as the big one
25 is going -- is the traffic volume, itself.

1 Part of 23 is a divided highway with a
2 grass medium. Obviously we are not able to drive
3 through that. Part of 23 has a center turn lane
4 which can be a method for us to drive if that's
5 available, but again, that depends on the specific
6 part of 23 that we're driving on.

7 Q. Okay. If I were to say if the Franklin
8 Street crossing closes that there would be no impact
9 on EMS response time, what do you think about that
10 statement?

11 A. I'd have to -- I'd have to disagree. I
12 think that in general, you know, Lewis Center Road is
13 probably the primary route in which Medic 3 travels,
14 but it's not the exclusive route that Medic 3
15 travels.

16 So I know there's a lot of discussion of
17 what happens when the Lewis Center Road crossing
18 closes, and I agree that in these situations that
19 would have an impact in the ability for Medic 3 to
20 travel west on the other side of the railroad tracks
21 should the Franklin Street crossing close.

22 MS. DONNAN: I don't have any further
23 questions.

24 ALJ DAVIS: Thank you. On behalf of the
25 Petitioner's, cross-examination?

1 MR. EVANS: Yes, your Honor. Lee Evans
2 again.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Evans:

6 Q. Good afternoon, Mr. Keating. How are
7 you?

8 A. I'm well. How are you, sir?

9 Q. Fine. Thank you. Just to pick up where
10 you just left off, the instance where -- when
11 Franklin Street crossing were -- is closed, if Lewis
12 Center were closed for a railroad project, do you
13 have knowledge that there's been closure of one or
14 both crossings in the past, within the past 10 or 12
15 years in Delaware County?

16 A. Yes.

17 Q. And when that happens, I think you're
18 aware that there is communication, in this instance
19 from the railroad, to the Delaware County such that
20 Emergency Medical Services becomes aware that there's
21 going to be a closure, correct?

22 A. Provided it's a planned closure, yes.

23 Q. And when there is such a closure, the
24 Fire Chief's involved, Fire Chief or Fire Chiefs
25 involved with making changes, temporarily or

1 otherwise, to the run card such that the primary
2 responder to a given area is different during that
3 period of time?

4 A. That is correct.

5 Q. In your position, as I understand it,
6 you administer the emergency -- Delaware emergency
7 department's continuous quality improvement program,
8 correct?

9 A. Correct.

10 Q. And as part of doing that, you review
11 run data, correct?

12 A. Correct.

13 Q. And I think you indicated in your
14 prefiled testimony that you have as Delaware
15 Exhibit 4 -- it's a lengthy spreadsheet showing
16 various runs to 361-M3-1; is that correct?

17 A. Correct.

18 Q. And counsel will be happy to know I'm
19 not going to go through that in any kind of detail
20 like I did with the last witness.

21 I do want to understand, though, it was
22 my impression from the prefiled testimony that the
23 previous witness, Mr. Brandt, was more involved in
24 preparing that document, although you have certainly
25 reviewed it?

1 A. Yes.

2 Q. And with respect to that document,
3 Exhibit 4, that tells us something about runs that
4 were made to 361-M3-1, including runs made by Medic 3
5 and by Medic 361, correct?

6 A. Correct.

7 Q. What we can't tell from that printout in
8 terms of Medic 3's response to this run area -- when
9 I say this run area, it's the 361-M3-1, so I don't
10 have to keep saying that -- but what we can't tell in
11 looking at Exhibit 4 in terms of Medic 3 is how they
12 got there.

13 We don't know if they left the station,
14 made a left, went one football field length and made
15 a left on to Lewis Center, or whether they went a
16 different way, we can't tell that from that report,
17 correct?

18 A. That is correct.

19 Q. As I understand it, the report review on
20 a regular basis provides average times for medic
21 units such as Medic 3 in terms of in the vernacular,
22 I guess, how quickly they get out the door, time
23 spent at the scene, and time spent at the hospital;
24 is that correct?

25 A. Correct.

1 Q. The regular report that you look at does
2 not routinely call out response times, travel times?

3 A. So to clarify, it does include that;
4 however, our key metrics for our quality improvement
5 are more focused on the three metrics you mentioned
6 earlier.

7 Q. All right. So you're able to get to
8 that data if you want to, but in terms of your use of
9 your report and your monthly use of that report,
10 you're more focused on those other areas that I
11 indicated?

12 A. Me personally, yes.

13 Q. Nevertheless, it is Delaware County's
14 goal to meet what I understand to be a meet or
15 exceed -- what I understand to be a national standard
16 of eight minutes or less for medic response times?

17 A. Correct.

18 Q. And Delaware County -- as a whole,
19 Delaware County medic responders including Medic 3,
20 from your experience, are typically well under that
21 eight-minute standard, are they not?

22 A. As far as other agencies, I would have
23 to assume that yes, they are, given positioning and
24 things like that. Really the only one I can testify
25 to hard numbers is Medic 3.

1 Q. Okay. And Medic 3 typically is --
2 responds well below that -- that eight-minute
3 standard, correct?

4 A. Correct.

5 Q. Given your position and job title and
6 duties, including continuous quality improvement, if
7 there was a concern on the part of a constituent or
8 supervisors in the department about extensive
9 response time by any unit, but including Medic 3, you
10 would anticipate that you would become aware of that,
11 correct?

12 A. Correct.

13 Q. And it's correct to state that you do
14 not recall being made aware of any problem involving
15 excessive run time or response time involving Medic 3
16 really at any point in the past; is that correct?

17 A. Yes. I do want to add the caveat that I
18 was appointed into this position in August of 2019.

19 Q. So you're saying that prior to that you
20 would not necessarily be privy to that; is that
21 correct?

22 A. Correct, unless it directly affected my
23 group.

24 Q. But since August of 2019, you can speak
25 to the fact that you're not aware of any concerns

1 related to response time by Medic 3?

2 A. Correct.

3 Q. And that includes -- Well, strike that.

4 We talked, when I spoke to you before
5 when your deposition was taken, about instances where
6 either Franklin Street crossing or Lewis Center
7 crossing, or both, have been closed in the past for a
8 railroad project of some sort, and I believe you were
9 generally aware that that has and can occur, correct?

10 A. Correct.

11 Q. You don't -- I don't think you have any
12 particular recollection of any particular incident in
13 the past five to ten years where that occurred, but
14 you're generally aware that it's occurred; is that
15 right?

16 A. Yes.

17 Q. And in terms of Medic 3's response time,
18 you're not aware of any response time problems that
19 came to your attention, excessive run times problems
20 involving Medic 3, when either one or both of the
21 crossings in question, Franklin Street or Lewis
22 Center, were closed for a railroad project; you're
23 not aware of any response time issues, correct?

24 A. Correct.

25 Q. And we also talked about the closures of

1 Lewis Center Road west of the tracks for the
2 construction of a roundabout in 2019.

3 Some of that, from what you just told
4 me, would have been before you were in your current
5 position; is that true?

6 A. Yes.

7 Q. It's been established through various
8 prefiled testimony that that closure was actually
9 about six months long from April until sometime in
10 the fall, so some of that would have occurred or
11 taken place after you were in your current position?

12 A. Yeah, without having the dates in front
13 of me, I would assume so.

14 Q. Okay. When did you assume your current
15 position, did you tell me what month it was?

16 A. It was August of 2019.

17 Q. All right. So in terms of response time
18 issues by Medic 3 related to that closure --
19 actually, let me ask it this way: In terms of medic
20 response times to this area we're talking about,
21 361-M3-1, during the time period of the roundabout
22 construction, you're not aware of any problems that
23 came across your desk in terms of being able to
24 respond in a timely fashion to that area, correct?

25 A. I'm not aware of any, correct.

1 Q. There was some discussion and some
2 questions by counsel for Orange Township related to
3 what it's like to travel with sirens and flashing
4 lights and so forth, and on Lewis Center Road as
5 compared to Route 23.

6 You would agree that based on the
7 physical characteristics of Route 23 as compared to
8 Lewis Center Road -- Well, strike that. Let me go
9 through it individually.

10 You would agree that Route 23 has a
11 better or wider berms than the majority of Lewis
12 Center Road, correct?

13 A. Correct.

14 Q. Some places on 23 there is a center turn
15 lane that might -- I think you referenced it earlier,
16 that might be available to a medic that was trying to
17 make its way through traffic?

18 A. Correct.

19 Q. And of course, Route 23 is two lanes in
20 each direction, whereas Lewis Center Road in most
21 locations, until you get close to 23, is a two-lane
22 road going one lane in each direction, correct?

23 A. Correct.

24 Q. So the medic that's driving the medic
25 unit in response to a call, if he's driving on Route

1 23, as a general proposition he or she has more
2 options available to them to negotiate around traffic
3 than a medic who is responding on Lewis Center Road;
4 is that correct?

5 A. Yes.

6 Q. And you would agree that regardless of
7 whether the Franklin Street crossing is closed or
8 not, in terms of Medic 3 getting to the area that's
9 designated as 361-M3-1, as simply a matter of
10 geography, they have to travel essentially north for
11 about a tenth of a mile or less, it's been described
12 earlier as a football field, to get to Lewis Center
13 Road and then they have to go west, correct?

14 A. Correct.

15 Q. That distance that they travel going
16 north, whether they are doing it on the east side or
17 the west side of the crossing, isn't going to change,
18 the total distance to the response area is going to
19 be essentially the same, correct?

20 A. Correct.

21 Q. And if Medic 3 is responding to a call,
22 emergency call that has come in, it would be
23 typical -- maybe you tell me if I'm wrong. Would it
24 be fair to say by policy, they would typically be
25 responding lights and sirens?

1 A. Yes. We do have a small hand full of
2 response types that do not involve lights and sirens.

3 Q. The majority of emergency calls to
4 361-M3-1 would involve lights and sirens, correct?

5 A. Yes.

6 Q. And the motoring public is required by
7 law, when one of these medics is in -- is responding
8 with sirens and lights, to pull off to the right and
9 give them the right-of-way; is that correct?

10 A. Yes.

11 Q. And you obviously -- you don't live in
12 Lewis Center, correct?

13 A. Correct.

14 Q. You get over there from time to time as
15 part of your work, I assume specifically on occasion
16 to go to the Medic 3 facility?

17 A. I was there earlier today, yes.

18 Q. Okay. And obviously you don't work --
19 since you don't work or live there -- you do not
20 directly work out of the Medic 3 facility on a
21 regular basis, correct?

22 A. Correct.

23 Q. You're not there in Lewis Center at or
24 near the Medic 3 unit the majority of the time when
25 they are responding to a call?

1 A. Right.

2 Q. There was a public hearing in connection
3 with this matter where the public was invited to come
4 and comment; it's been a couple of years ago now. Am
5 I correct in understanding or assuming that you
6 personally did not attend that?

7 A. Correct.

8 Q. All right. I want to just briefly --
9 and there's part of a question -- read a short
10 section of a -- some testimony provided by Mr. Jamie
11 Stabl who indicated he's a long-time resident of
12 Lewis Center.

13 He said, "They also state that the EMS
14 can use the Franklin Street crossing to enter less
15 congested parts of Lewis Center Road.

16 "If Lewis Center Road is congested and
17 it's because when a train is coming traffic will back
18 up a hundred cars one way and a hundred cars going
19 the other way, EMS can get out. I've seen them get
20 out.

21 "They have their siren on. People stop,
22 they get out. They come out on the west side 40
23 yards from the track. They have their lights on,
24 they go. They come out on the other side, it's only
25 60 yards, so saying it's a less congested area, if

1 they have to go over on the west side, I feel it's
2 just not the case that I've seen, and that's there.

3 "The difference between 40 yards on one
4 side and 60 yards, that's not an issue. It's
5 congested. It's congested, but EMS can always get
6 out."

7 This is an individual who lives there
8 who was under oath when he provided this testimony
9 based upon his observations. You don't have any
10 basis to dispute his testimony at least as far as
11 what his observations were?

12 A. I think -- yeah, I think the
13 observations are reasonable.

14 Q. Okay. You are not aware, Mr. Keating,
15 are you, of any consideration within Delaware County
16 EMS of installing a flashing signal on Lewis Center
17 Road at or near the intersection of Third Street when
18 Medic 3 is exiting and needs to exit onto Lewis
19 Center Road? You're not aware of any consideration
20 of that?

21 A. I haven't heard anything about that.

22 Q. However, when you were asked that
23 question when your deposition was taken a while back,
24 it was my understanding that you thought that would
25 be a good idea, or at least worth considering. Is

1 that still the case?

2 A. Anything we can do to get the traffic's
3 attention of an upcoming emergency vehicle I believe
4 is a good idea.

5 Q. And there currently are no signs on
6 Lewis Center Road telling traffic not to block
7 various intersections, including a particular Third
8 Street when it comes out onto Lewis Center?

9 A. Correct.

10 Q. And you're similarly not aware of any
11 discussions within Delaware County EMS about posting
12 signs telling the motoring public not to block those
13 intersections?

14 A. Correct.

15 Q. If a medic is in route and is blocked by
16 a moving train at a particular crossing, it is the
17 medic's discretion -- within the medic's discretion
18 as to whether they are to wait -- whether they wait
19 for the train to clear, or whether they seek another
20 route; is that correct?

21 A. Correct.

22 Q. And your experience as a medic and in
23 your position with Delaware, is that typically more
24 often than not they choose to wait for the train to
25 pass; is that correct?

1 A. Yes.

2 Q. And it probably goes without saying,
3 you're generally familiar with the run cards that
4 apply to Medic 3, correct?

5 A. Correct.

6 Q. And the majority -- there are more of
7 those run cards that apply to Medic 3 that are on the
8 east side of the crossing than are on the west side,
9 correct?

10 A. Correct.

11 Q. In fact, there's only the one that we
12 have been more focused on, 361-M3-1, that is on the
13 west side of the tracks, correct?

14 A. Correct.

15 Q. And so the closure of Franklin Street
16 crossing, if that happens, would have no impact on
17 the ability of Medic 3 to service its territories
18 that are east of the crossing?

19 A. Correct.

20 MR. EVANS: Give me one second here.

21 (Pause.)

22 MR. EVANS: I think that's all the
23 questions I have. Thank you very much.

24 ALJ DAVIS: Thank you. Mr. Talbott, do
25 you have cross?

1 MR. TALBOTT: Yes, your Honor, very
2 limited. Thank you.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Talbott:

6 Q. Captain Keating, good to see you today.
7 I've just got a hand full of questions for you. You
8 flirted with some of this with regard to CSX counsel,
9 I want to make sure I understand and the record is
10 clear.

11 From the time you've taken over as
12 Captain of EMS, at least specifically as to Medic 3,
13 your response times have in fact been at an
14 acceptable level with regard to the national
15 standard, correct?

16 A. Correct.

17 Q. Okay. And you've been able to meet
18 those national standards regardless of whether
19 Franklin was closed, Lewis Center was closed, or both
20 happened to be closed at once; you're still finding a
21 way to meet the national standard, correct?

22 A. Correct.

23 Q. All right. Lee asked you some questions
24 about Medic 3's ability to serve the east, so I'll
25 just confirm my understanding of that.

1 Three of its service areas are through
2 the east -- or are to the east the same side of the
3 tracks that the station is located on, correct?

4 A. Correct.

5 Q. So closing Franklin, no impact, right?

6 A. Correct.

7 Q. Okay. With regard to the west, if I
8 understand you, even assuming Franklin is closed,
9 your expectation would be that Medic 3 would maintain
10 primary responsibility for the run card currently
11 assigned to the 361-M3-1 quadrant, correct?

12 A. That would be at the discretion of the
13 Fire Chief, but I would assume that there would be no
14 changes.

15 Q. Okay. And the reason for that, that's
16 the -- includes the Kroger area, correct?

17 A. Correct.

18 Q. Okay. And the reason why you would
19 expect that it would remain the primarily responsible
20 EMS is its got to get there, in essence, the same way
21 it gets there now, correct?

22 A. Yes.

23 Q. Okay. And I got confused when Township
24 counsel asked you a question about if the -- the
25 Lewis Center isn't the exclusive way Medic 3 could

1 get to the Kroger area. If I understood it, it is,
2 right? I mean, Franklin doesn't add to that equation
3 as far as actually getting there, right?

4 A. Well, perhaps I misunderstood the
5 original question from the Township, but I thought
6 they were just speaking about going west, period.

7 Q. Okay.

8 A. Headed towards the Kroger, I would
9 assume they would take Lewis Center Road. Ultimately
10 that's up to the crew's discretion.

11 Q. Okay. But -- and I'll ask it just to
12 make sure the record is clear, that the reason you'd
13 expect that Medic 3 would remain -- would maintain
14 primary responsibility for the Kroger area is if it's
15 going to the Kroger area, in essence it's got to get
16 there the same way it gets there now, it's got to go
17 out to Lewis Center and then head west, right?

18 A. Correct.

19 Q. Okay. It either heads immediately to
20 Lewis Center from Medic 3, or it heads a block later,
21 but either way it's got to head due north to Lewis
22 Center, right?

23 A. Yes.

24 Q. And that's about six-one-hundredths of a
25 mile, or football field?

1 A. Based off a rough estimation, yes.

2 MR. TALBOTT: That's all I have. Thank
3 you, your Honor, and thank you Captain Keating.

4 ALJ DAVIS: Thank you.

5 Mr. Hochstettler, is there redirect?

6 MR. HOCHSTETTLER: Yes, your Honor.

7 - - -

8 REDIRECT EXAMINATION

9 By Mr. Hochstettler:

10 Q. Captain Keating you were asked about the
11 time period 2019 when Lewis Center Road gets closed
12 for roundabout construction. And during that time
13 you testified, I believe, that the primary EMS
14 responder on the run card was changed to Medic 361.
15 Is that your testimony?

16 A. Yes.

17 Q. And that you did not have any knowledge,
18 at least during your period starting in August of
19 2019, of any negative response times or bad outcomes
20 for patients?

21 A. Correct.

22 Q. I'm wondering if you could explain how
23 you would know if there's a bad outcome for a
24 patient?

25 A. So ultimately, I mean, the outcome would

1 have to come through feedback from the hospital
2 system.

3 We have pretty good rapport with the
4 hospitals to receive that feedback, but it's not a
5 hundred percent. And that would only pertain to
6 specifically runs -- calls for service which we were
7 directly involved with as in we transported the
8 patient.

9 Any other case where the patient was
10 transported by another agency, whether it be Orange
11 Township or somebody else, we would not really be
12 privy to that direct feedback due to current privacy
13 regulations. Did I answer the question?

14 Q. Yes. Are you able, looking at the
15 reports that you have available, to know whether a
16 bad patient outcome was the result of response time?

17 A. No, there's too many variables in play
18 when it comes to the outcomes, so without -- I mean,
19 it's possible to look at it, but so many times
20 there's a lot of variables involved.

21 Q. You were asked about the national
22 standard. You testified that that is eight minutes.
23 Is that a per run standard that you look at on an
24 individual run basis, or is that an average?

25 A. In general, it's an average. But if we

1 look and find -- if we look and find something out of
2 place or something out of sorts, we'll break it down
3 into individual runs.

4 Q. Talking about meeting the national
5 standard, is that an average of your response times,
6 or do you have a grade based on per runs?

7 A. I mean, in general, if we can exceed
8 that eight-minute response time, that's really going
9 to benefit patients, especially in respect to time
10 critical illness, which is really the sole purpose of
11 EMS services, is to serve patients when they are
12 suffering from some sort of a time critical illness.

13 In that kind of situation eight minutes
14 is great, but the sooner we can get there, the better
15 we can help prevent any further decompensation in the
16 patient's condition.

17 Q. And following that answer, why are
18 response times important? Why -- you said the sooner
19 you can get there the better. Do you have an example
20 of one of those higher or highest priority runs?

21 A. Probably the most prominent one would be
22 a cardiac arrest where a patient's heart has stopped
23 beating and their lungs have stopped moving air and
24 the patient stopped breathing.

25 In situations like that we found that

1 the earlier we can -- the earlier that patient
2 receives care from EMS, specifically chest
3 compressions, specifically defibrillation, the sooner
4 that happens, the better chance that we have of the
5 patient making a full recovery from that cardiac
6 arrest.

7 Q. And one of the -- one of the items that
8 you updated, or I suppose it is the item you updated
9 in your written testimony, is you added to your
10 education and experience that you are a respiratory
11 therapist. In that training and your paramedic
12 training, are you familiar with cerebral hypoxia?

13 A. Yes.

14 Q. And what is cerebral hypoxia?

15 A. Basically a lack of blood flow -- I'm
16 sorry, correction -- a lack of oxygen, whether it be
17 due to no oxygen in the blood, a lack of blood flow,
18 or a pump problem, a heart problem, preventing oxygen
19 from traveling through the -- in the blood and going
20 into the cells of the brain.

21 Q. And when you're considering an event
22 where blood flow has stopped or oxygen is not being
23 provided to the brain, is looking at the national
24 standard of eight minutes, is that how you would
25 measure success, eight minutes, or is it something

1 less than that?

2 A. The earlier the better, period. Eight
3 minutes is without -- with decreased blood flow for
4 the brain or any vital organs will definitely cause
5 irreversible damage.

6 Q. Are you able to testify about the time
7 at which brain damage occurs?

8 A. You'll have to forgive me --

9 MR. EVANS: I just object to the
10 foundation and qualifications. I mean, he's got a
11 lot of qualifications. He's not, as I understand it,
12 a medical doctor and I object to the question on
13 those grounds.

14 MR. HOCHSTETTLER: We'll just move on,
15 Captain Keating. I think you've testified
16 sufficiently that eight minutes is not necessarily
17 the most beneficial benchmark, so I'll move on.

18 By Mr. Hochstettler:

19 Q. You were also asked about whether, as a
20 result of the closing of the Franklin Street
21 Crossings, if that were to occur, that you did not
22 believe that there would be a change to Medic 3 being
23 the primary EMS responder to area 361-M3-1.

24 A. Correct.

25 Q. But in your testimony, I just want to be

1 clear, in your opinion will there be an impact on
2 response times to village addresses that would be
3 within the Unincorporated Village of Lewis Center
4 west of the tracks?

5 A. I believe so, yes.

6 Q. And would there be an impact in having
7 the loss of an alternate crossing to Lewis Center
8 Road?

9 A. My personal opinion is that the Franklin
10 Street crossing to get to the other side to the
11 village -- to the west side of the Village of Lewis
12 Center, the Franklin Street crossing is the most
13 direct route.

14 Q. And you indicated that in response to a
15 question that Delaware County Exhibit 4 -- that the
16 run data that Mr. Brandt provided, you admitted that
17 that does not provide route data, so you are not able
18 to say how Medic 3 responded to a run?

19 A. Correct.

20 Q. But do you have information about
21 whether Medic 3 uses the Franklin Street process?

22 A. I'm sorry, can you restate that?

23 Q. Do you have information about whether
24 Medic 3 actually uses the Franklin Street Crossings?

25 A. Yes, because we have done it -- I've

1 worked on Medic 3 before in my previous role where we
2 have taken the Franklin Street crossing.

3 MR. HOCHSTETTLER: I have nothing
4 further at this time.

5 ALJ DAVIS: Thank you. Recross,
6 Ms. Donnan?

7 MS. DONNAN: Township has nothing
8 further. Thank you.

9 ALJ DAVIS: Is there any recross from
10 Petitioners?

11 MR. EVANS: Just a couple of questions,
12 your Honor.

13 - - -

14 RE CROSS-EXAMINATION

15 By Mr. Evans:

16 Q. Mr. Keating, it's correct to say that in
17 terms of Medic 3's responses to addresses on the west
18 side of the -- in Lewis Center proper on the west
19 side of the crossing, you don't -- you don't know if
20 they always respond using Franklin Street, or if they
21 sometimes go out to Lewis Center and come back in,
22 correct?

23 A. Correct. It's my assumption they would
24 take Franklin Street, it seems like the most direct
25 route.

1 Q. Okay. And we talked about the fact that
2 from Exhibit 4 that you've reviewed, there's no way
3 for you to look at that to determine what particular
4 route Medic 3 took, correct?

5 A. Correct.

6 Q. And you personally, and if you know,
7 Delaware EMS has not done any study or made any
8 effort to determine the additional time that would be
9 involved to go to the west side of the crossing into
10 Lewis Center by going that football field or so out
11 Third Street to Lewis Center, making the left and
12 coming back in one of the other cross streets, you've
13 not personally timed that or are not aware of anyone
14 who has timed that, correct?

15 A. Correct.

16 Q. But presumably, if it was an urgent
17 situation that in responding to a call, they would
18 make that -- Medic 3 would make that move with their
19 lights and flashers on, correct?

20 A. Yes.

21 Q. And if I indicated to you that in terms
22 of making that move in a regular vehicle without
23 flashers and without siren going from the Medic 3 out
24 to the Lewis Center and coming back in, that that
25 could be accomplished within 30 seconds, would you

1 have any reason to dispute that?

2 A. It would honestly truly have to come
3 down to time of day and the amount of traffic
4 probably.

5 Q. And we previously talked about what the
6 obligations are of motor vehicle drives when there is
7 an approaching ambulance, correct?

8 A. Yes.

9 MR. EVANS: That's all the questions I
10 have.

11 ALJ DAVIS: Thank you. Mr. Talbott, do
12 you have recross?

13 MR. TALBOTT: Yes, just a quick question
14 or two.

15 - - -

16 RECROSS-EXAMINATION

17 By Mr. Talbott:

18 Q. Captain Keating, you said you hadn't
19 studied the time of that, but if we're talking about
20 the village addresses to the immediate west, if
21 Franklin is closed, so the record is clear, it adds
22 about six-one-hundredths of a mile travel time to the
23 north, and then another six-one-hundredths of a mile
24 travel time to the south, correct?

25 A. More or less, yes.

1 MR. TALBOTT: Okay. That's all I have.
2 Thank you.

3 ALJ DAVIS: Okay. Thank you. That
4 would be it for the witnesses for the County, yes,
5 Mr. Hochstettler?

6 MR. HOCHSTETTLER: I have no more
7 witnesses. I would move for the admission of
8 Delaware County Exhibits 1 through 7.

9 ALJ DAVIS: Are there any objections to
10 the admission of the exhibits?

11 MR. EVANS: No objection for CSX.

12 MR. TALBOTT: No objection, your Honor,
13 thank you.

14 MS. DONNAN: No objection.

15 ALJ DAVIS: Thank you. Seeing no
16 objection --

17 MR. HOCHSTETTLER: Delaware County rests
18 it's case.

19 ALJ DAVIS: -- the exhibits will be
20 admitted.

21 (EXHIBITS ADMITTED INTO EVIDENCE.)

22 ALJ DAVIS: Just as a brief segue, is
23 everybody still comfortable to finish today? We
24 may -- we may push a little bit beyond 5:00, but if
25 everyone is okay with that and is prepared and

1 comfortable with that, I'd like to just proceed with
2 our last two witnesses.

3 I would ask if anyone, particularly our
4 Court Reporter, needs a small break just to perhaps
5 rest her hands or voice.

6 MS. DONNAN: We might want a five-minute
7 break if possible.

8 MR. TALBOTT: Your Honor, I'm fine
9 pushing forward with your approval, but I'd welcome a
10 couple minutes.

11 ALJ DAVIS: Then why don't we say we'll
12 reconvene at 4:00 p.m.

13 (Recess taken.)

14 ALJ WALSTRA: Mr. Davis, you can take it
15 over.

16 ALJ DAVIS: Okay. With everybody back,
17 the Township, is your witness ready?

18 MS. DONNAN: Yes, I've got Chief Nathan
19 McNeil sitting next to me.

20 ALJ DAVIS: Okay. Great. Do you swear
21 or affirm what you're about to tell is the truth?

22 CHIEF MC NEIL: I do.

23 ALJ DAVIS: Thank you very much.

24 MS. DONNAN: And I'll start with the
25 Township's Exhibits. So the Township has an

1 Exhibit A, which is referenced in Chief's direct
2 testimony. This is also a confidential --
3 confidential run report.

4 Our office has been in communication
5 with the Docketing Division, and I think we have
6 sorted out why it was not uploaded to the
7 confidential docket, but we'll get that taken care
8 of. So that would be Exhibit A.

9 Township Exhibit B would be the Prepared
10 Testimony of Chief McNeil, and Exhibit C will be the
11 Prepared Direct Testimony of Michele Boni.

12 ALJ DAVIS: Thank you. Those are so
13 marked.

14 (EXHIBITS MARKED FOR IDENTIFICATION.)

15 - - -

16 Chief Nathan McNeil,
17 being first duly sworn, as prescribed by law, was
18 examined and testified as follows:

19 DIRECT EXAMINATION

20 By Ms. Donnan:

21 Q. Okay. Chief, did you contribute --
22 prepare direct testimony, which is in front of you
23 listed as Exhibit B, did you prepare this testimony
24 and previously submit it?

25 A. Yes, ma'am.

1 Q. And can you describe Exhibit A, which
2 was attached to that exhibit?

3 A. Yes, ma'am. The run card.

4 Q. Can you speak up a little?

5 A. Yes, ma'am, the run card.

6 Q. And if -- if I were to ask you those
7 questions again today, would your answers be the
8 same?

9 A. Yes, they would.

10 Q. Thank you.

11 MS. DONNAN: And in the Chief's
12 testimony he reserved the right to supplement that
13 testimony. I'd like to ask him a few clarifying
14 questions.

15 By Ms. Donnan:

16 Q. Chief, have you driven in Orange
17 Township with -- in an emergency vehicle with sirens
18 on?

19 A. Yes, I have.

20 Q. And can you describe what that
21 experience is like?

22 A. Depends on the day. When it's later in
23 the day especially between, I would say, 3:00 and
24 6:00 in the afternoon, even with lights and sirens it
25 is very hard to make it through.

1 Fortunately our lights and sirens don't
2 create places for people to move, so it is congested
3 and it does make traveling very difficult to get
4 through there.

5 So lights and sirens are mainly for
6 warning and letting people know we're coming;
7 however, getting them to be able to move out of the
8 area is very hard.

9 Q. Okay. So there are some roads where --
10 that are more conducive to people moving out of the
11 way than others?

12 A. Yes.

13 Q. Can you describe some of the roads that
14 are difficult for people to get out of your way?

15 A. Well, 23 definitely is one of those
16 areas. Lewis Center is one of those areas. Orange
17 Road would be another area, and that's right in our
18 area that we use to get to many different areas in
19 our response.

20 Q. Okay. In addition to just general
21 people on the road, are there other things that
22 impact whether or not you're able to drive through
23 with sirens on?

24 A. Yes. I mean, of course, you know, if
25 there's a train blocking the tracks, if the tracks

1 are closed to be worked on, and there's other
2 possible road work, construction being done, that
3 would also make us have to go a different route.

4 Q. Okay. In regards to the Lewis Center
5 Road crossing and the Franklin crossings, are you
6 aware of any planned closures?

7 A. Yes, between the 20th of October, and I
8 believe it's the 22nd of October, they are going to
9 be closing Lewis Center and Franklin to do work, and
10 then Orange Road will close, I believe on the last
11 day that the other ones are being worked on.

12 Q. Okay. And when the Lewis Center Road
13 and the Franklin crossing are closed, what does that
14 mean for the Township?

15 A. That means that the -- that does not
16 give us any option to have Medic 3 be able to respond
17 except for going around the east side.

18 The -- to get to the area that everybody
19 has been talking about, the Kroger area it was
20 described as, that area is approximately 1.2 I think
21 miles, 1.3 miles from Medic 3's facility.

22 When it goes around -- when they have to
23 go around either to Shanahan via South Old State
24 Road, or Orange, you're adding 12 minutes or 14
25 minutes of drive time.

1 And I know lights and sirens, they make
2 a lot of noise and everything, but that's 12 or 14
3 minutes on a normal day. When it's heavy traffic,
4 and with lights and sirens, it still does delay our
5 response.

6 So instead of getting there in four to
7 six minutes, you're looking at getting there anywhere
8 from possibly nine to ten minutes depending on
9 traffic.

10 Q. So when this double closure happens, you
11 expect the Township -- will the Township respond to
12 the Kroger area that we have been talking about?

13 A. Yes, we always respond to it.

14 MS. DONNAN: Okay. No further
15 questions. The witness is available for cross.

16 ALJ DAVIS: Thank you.

17 Mr. Hochstettler, do you have cross for this witness?

18 MR. HOCHSTETTLER: Yes.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Hochstettler:

22 Q. Chief McNeil, I understand you've not
23 been in your current position for a long time, but is
24 a part of your role reviewing subdivision plats?

25 A. Yes.

1 Q. And what is your role in reviewing
2 subdivision plats for Orange Township?

3 A. To clarify about when I'm dealing --
4 when I'm reviewing stuff, how we respond and how
5 we're going to respond to it. And what should the
6 run cards be is what you're asking, correct?

7 Q. I'm actually asking about subdivision
8 plats where somebody is actually going to be doing a
9 development. Does the fire department review those
10 for emergency access purposes?

11 A. Yes, my office, they do look at the
12 residential areas, the commercial areas, anything to
13 be built. They work with zoning hand-in-hand to make
14 sure that things are properly addressed for anything
15 to do with fire or public safety.

16 Q. And when you're looking for emergency
17 access for any development, are you only looking at
18 road facilities that are up to public road standards,
19 or are you looking at other alternatives in addition
20 to just public roads?

21 A. I would say we're looking for -- public
22 roads are -- we need roads that can handle the weight
23 of our apparatus, so when you're looking at roads, I
24 would say roads are our main concern as far as
25 getting access, but that we also are looking for the

1 best way possible to get to whatever call that we're
2 trying to respond to.

3 Q. Why is it important to have alternative
4 emergency access?

5 A. Because stuff happens. You know,
6 there's road construction, there's -- there might be
7 a minor accident that has happened somewhere that's
8 blocking the traffic to get to a major -- a cardiac
9 arrest or something else. So there's numerous things
10 that you need to have, you can't have a single point
11 of failure.

12 MR. HOCHSTETTLER: I have no further
13 questions. Thank you.

14 ALJ DAVIS: Thank you. Is there
15 cross-examination on behalf of Co-Petitioners?

16 MR. TALBOTT: Yes, your Honor, Casey
17 Talbott. I have one housekeeping question first
18 because I don't know how WebEx works.

19 I think our invite was until 5:00, and I
20 think this witness will be pretty quick, we'll be
21 wrapped up before then, but I want to make sure we're
22 not going to all get booted off at 5:00. Do you have
23 a way of kicking that out a little bit?

24 Micha, as far as I know, as long as
25 you're here it stays open and it's no problem.

1 MR. TALBOTT: All right. Thank you.

2 MR. SCHMIDT: You're correct.

3 MR. TALBOTT: I was just worried if we
4 go off we might not get him back.

5 MR. SCHMIDT: No, nobody gets booted
6 until I boot them.

7 MR. TALBOTT: If you could boot Aric, we
8 would appreciate it. I'm kidding. Aric, I'm
9 kidding.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Talbott:

13 Q. All right. I am all set. Chief McNeil,
14 my name is Casey Talbott. I represent Norfolk
15 Southern Railway Company, one of the Petitioners.
16 Thank you for your time today.

17 I've had the opportunity to review your
18 direct exam. I have some questions for you. As Aric
19 alluded to, you've only been on board here for a
20 short time, I think since the spring of '21, correct?

21 A. Yes, sir.

22 Q. All right. Fair to say you're learning
23 as you go, right?

24 A. Yes, sir. I mean, there's, I'll call
25 them Township-isms, you know, Orange-isms, but

1 responding to emergencies is pretty much the same
2 across internationally.

3 Q. Okay. Well, your predecessor, Chief
4 Noble -- I assume you met him as he was transitioning
5 out and you were coming in?

6 A. Unfortunately I did not get a chance to
7 meet him as he left about five months before I got
8 here.

9 Q. Okay. But he was -- is it your
10 understanding he was with the Township in the Fire
11 Department for about 17 years?

12 A. Yes, sir.

13 Q. All right. In your direct exam you
14 acknowledge that you adopt Chief Noble's deposition
15 testimony, correct?

16 A. Yes, sir, I read through it.

17 Q. Well, it was more than reading through
18 it. Let's look at your direct testimony. On page 9
19 you told us that -- pardon me, it was page 10, line
20 5 -- "Do you have any disagreement with Chief Noble's
21 testimony or his analysis regarding the necessity of
22 the Franklin Street crossing?" Your answer was,
23 "No," correct?

24 A. Yes, sir.

25 Q. So you've got no disagreement with Chief

1 Noble's testimony, correct?

2 A. No, sir.

3 Q. Am I correct?

4 A. Yes, sir.

5 Q. Okay. And, Chief, how about the County
6 witnesses, do you adopt their testimony as well?

7 A. I only heard some of the County
8 witnesses.

9 Q. Okay. Did you hear that today, or had
10 you reviewed their direct testimony or their
11 depositions? What have you heard from the County?

12 A. Just what I have heard in the past hour
13 that I've been here, I would say.

14 Q. So you had a chance to sit through
15 Captain Keating's testimony, for instance?

16 A. Yes.

17 Q. Okay. Any disagreement with Captain
18 Keating?

19 A. No, sir.

20 Q. All right. You've testified -- you've
21 testified some about Medic 3. That's EMS only,
22 correct?

23 A. Yes, sir.

24 Q. And so the record is clear, as the
25 Township Fire Chief -- Strike that.

1 So the record is clear, the Township
2 doesn't run EMS out of Medic 3, does it?

3 A. No, sir.

4 Q. The County does, right?

5 A. Yes, they are mutual aid partners.

6 Q. Okay. But the County rounds EMS out of
7 Medic 3, right?

8 A. Yes.

9 Q. Okay. And in fact, as Chief Noble
10 admitted, you as township Fire Chief have no
11 oversight responsibility as to Medic 3, correct?

12 A. Unless we're on a large scale emergency
13 where I was in command, then I would have overall
14 incident command, but normal every day, no.

15 Q. In general, as township Fire Chief, you
16 have no oversight responsibility as to the County's
17 Medic 3 station, correct?

18 A. No.

19 Q. Am I correct?

20 A. Yes.

21 Q. Okay. You'd agree with me, Chief
22 McNeil, that Medic 3 is located on the east side of
23 the tracks, correct?

24 A. Yes, sir.

25 Q. And that Medic 3 has primary

1 responsibility for four separate service areas in the
2 County, correct?

3 A. Yes, sir.

4 Q. Three of those service areas are located
5 on the east side of the tracks, meaning the same side
6 as the Medic 3 building, right?

7 A. Yes, sir.

8 Q. So clearly, closing the Franklin Street
9 Crossings would have no impact on Medic 3's ability
10 to provide prompt service to those areas, correct?

11 A. No, sir.

12 Q. Am I correct?

13 A. Yes, sir.

14 Q. Okay. You're saying no, and I'm looking
15 for a yes, so I might remind you of that a few times,
16 okay?

17 A. Yes, sir.

18 Q. With respect to the only service area to
19 the west, that's area 361-M3-1, also known as the
20 Kroger area, to get there Medic 3 has to divert over
21 to Lewis Center Road, correct?

22 A. Yes, sir.

23 Q. Okay. That's the road that's
24 approximately six-one-hundredths of a mile to the
25 north of Franklin, right?

1 A. Yes, sir.

2 Q. Okay. So closing the Franklin crossings
3 would mean that Medic 3 would have to cut over a
4 block sooner than if it crossed the Franklin Street
5 crossing and diverted over then, correct?

6 A. Yes, sir.

7 Q. Assuming County witnesses testified that
8 earn in instances where the Franklin crossings have
9 been closed Medic 3 has been able to provide prompt
10 service to the Kroger area well within the national
11 standard, would you dispute that?

12 A. No, sir.

13 Q. All right. In order to get to that
14 Kroger area, so we're on the same page, I think I
15 asked this, but Medic 3 has to go to Lewis Center, it
16 doesn't get there via Franklin itself, right?

17 A. Yes, sir.

18 Q. Okay. And you're aware, I assume, that
19 the County built an additional EMS station on the
20 west side of the tracks, correct?

21 A. You're talking about 10, correct?

22 Q. No, I was actually referring to -- we
23 can talk about 10 if you want. I was referring to
24 361. I think that's the newest station, isn't it?

25 A. Well, yes, that's the Township, that's

1 the Fire Department.

2 Q. Okay. All right. If I said -- I said
3 County and I should have said township, right? Okay.

4 So the -- in or about 2004 the Township
5 built Station 361 on the new -- on the west side of
6 the tracks, right?

7 A. Yes, sir.

8 Q. Okay. And you're responsible for that
9 station, right?

10 A. Yes, sir.

11 Q. So you got 362 on the east side of the
12 tracks, you've got 361 on the west, right?

13 A. Yes, sir.

14 Q. With regard to 361, fair to say it
15 doesn't have to cross any tracks to get to area
16 361-M3-1, correct?

17 A. On a normal day, yes, you're correct.

18 Q. Okay. And we're talking about U.S. 23.
19 Would you agree with other witnesses that EMS has
20 more options, many more options, when traveling on 23
21 than it would have on Lewis Center, for instance?

22 A. Yes, to a point, sir.

23 Q. All right. And some of these things
24 that would help its travel on 23 would include 23 has
25 two lanes in each direction plus a center turn lane,

1 correct?

2 A. Yes, sir.

3 Q. All right. The lanes are wider,
4 correct?

5 A. Yes, except for 5:00 in the afternoon.

6 Q. Well, the lanes are wider on U.S. 23
7 than they are on Lewis Center, aren't they?

8 A. Yes, sir.

9 Q. All right. And then you also have
10 greater berm area on 23 than you have on Lewis
11 Center, correct?

12 A. Yes, sir.

13 Q. All right. You got higher speed limits
14 on 23 than have you on Lewis Center, correct?

15 A. Yes, sir.

16 Q. Okay. At some point on direct you were
17 speaking to a concern at both Franklin and Lewis
18 Center crossings are closed. I want -- and I think
19 you know this, but you're aware that this petition is
20 to close the Franklin crossings only, correct?

21 A. Yes, sir.

22 Q. All right. You know that we're not
23 seeking to close the Lewis Center crossings, right?

24 A. Yes, sir. I was talking about for when
25 they are working on both areas of the track.

1 Q. Well, you just heard Keating on that, so
2 let me ask you about it.

3 On the rare occasion when both Franklin
4 and Lewis Center crossings are closed, do you dispute
5 the testimony of other witnesses, including Keating,
6 that even in that rare event there's been no
7 appreciable impact on the County's ability to service
8 its residents well within the national industry
9 standard?

10 A. I would not totally agree with that,
11 sir.

12 Q. Okay. But you did hear the testimony,
13 correct?

14 A. I did.

15 Q. Okay. Chief, I assume -- I think you
16 testified earlier you've been out to the Franklin
17 Street crossing?

18 A. Yes, sir.

19 Q. You would agree it's not a through
20 street, right?

21 A. Yes, sir.

22 Q. It's about a third of a mile long?

23 A. Yes, sir.

24 Q. You'd agree with me that it's narrow in
25 certain places, less than two car lengths -- or two

1 cars wide?

2 A. Yes, sir.

3 Q. All right. You'd agree with me that the
4 crossing itself is humped, meaning it's not level,
5 it's up and down and then up and down again, correct?

6 A. Yes, sir.

7 Q. All right. You'd agree with me that
8 there's a fairly sizable gap between the three
9 tracks, correct?

10 A. Yes, sir.

11 Q. You've got the two Norfolk Southern
12 tracks, and then you got about enough space to park a
13 semi truck before you get to the CSX track, right?

14 A. Yes, sir.

15 Q. All right. And you'd agree with me that
16 the Lewis Center crossing is protected by passive
17 warning devices -- Strike that.

18 You'd agree with me that Franklin
19 crossings are protected by passive warning devices as
20 opposed to active, correct?

21 A. Yes, sir.

22 Q. All right. Lewis Center, on the other
23 hand, it's about six-one-hundredths of a mile away,
24 it's protected by active warning devices, right?

25 A. Yes, sir.

1 Q. All right. Chief, playing us straight
2 here, from a safety perspective, you can't be excited
3 about the Franklin Street Crossings, is that fair?

4 A. I do believe that it offers an easier
5 path for pedestrians, and kids on bikes, especially.

6 Q. Okay. And I'm asking you a different
7 question. You don't like this crossing, do you?

8 A. Do I like the crossing? I mean, I have
9 an opinion, but if it means that a vehicle can get to
10 a call, yes, I do.

11 Q. So you're not concerned about anything
12 we just discussed that the road is narrow, the
13 crossing is humped, it's up and down and up and down
14 again, there's a gap between the three tracks, and
15 it's got passive warning devices; that to you doesn't
16 pose a safety concern, is that fair?

17 A. I wouldn't say that. All together,
18 that's assuming something.

19 Q. What is it assuming?

20 A. That's not a total true statement.
21 There are always concerns with railroad tracks.

22 The other day when I had three kids on a
23 bike on Lewis Center in front of me going over and
24 barely trying to get through because there's no
25 sidewalk, there's nothing, I stopped and led them

1 across while people were beeping.

2 I mean, that's a concern and that
3 started and that -- there's safety concerns no matter
4 what you talk about when it comes to a railroad.

5 Q. Let me ask this: You mentioned
6 the -- well, let me come back to that.

7 The -- as you talk about Home Road for a
8 second, are you aware of the Home Road overpass
9 proposal?

10 A. Yes, sir.

11 Q. Okay. And I think you mentioned in your
12 direct exam that assuming that was constructed, that
13 this would resolve your concerns as to closing
14 Franklin; is that true?

15 A. Yes, sir.

16 Q. Okay. You're relatively new here. Are
17 you aware that this project has been discussed for
18 nearly 20 years?

19 A. Me being new, sir --

20 Q. You don't know either way?

21 A. I don't know how long it's been
22 discussed, sir. No, I do not.

23 Q. Okay. And as you sit here today, you
24 can't guarantee us that it's going to be built, is
25 that fair?

1 A. I can't guarantee -- I'm sorry?

2 Q. Yeah, you can't guarantee us as you sit
3 here today that this Home Road overpass is going to
4 come to fruition; is that true?

5 A. Yes, sir.

6 Q. Okay. And assuming it comes to
7 fruition, and all the moving parts come together, you
8 can't guarantee to us when it's going to be built, is
9 that fair?

10 A. Yes, sir.

11 MR. TALBOTT: Okay. That's all I have.
12 Thank you.

13 ALJ DAVIS: Thank you, counsel.
14 Mr. Evans, do you have cross?

15 MR. EVANS: I have a few questions, your
16 Honor.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Evans:

20 Q. Good afternoon, Chief. I'm Lee Evans.
21 I represent the other railroad here, CSX.

22 Regarding this issue of apparently an
23 impending closure of the crossings for some railroad
24 work, do you have any knowledge of the history of
25 closures of Franklin Street crossing, Lewis Center

1 crossing, or both, over say the last ten years or so?

2 A. Sir, the only knowledge I have is what
3 I've experienced so far here personally, but also
4 from when I -- I think it was June or July the last
5 time they closed, and I asked questions because they
6 wanted to close all three of them at the same time,
7 which was going to hurt our response.

8 We're weren't going to be able to get
9 anywhere, so I called and spoke to someone from the
10 contractor who deals with the railroad, I'm not sure
11 who, but one of the things I heard that, one, when
12 they close a section, it's not -- both railroads
13 don't do the work at the same time, so one route --
14 one department does it one time, and then a couple
15 months the other railroad will work on that area.

16 So I know that's been a problem over the
17 years of those being closed at the same time and
18 trying to work together, which is something I'm
19 trying to improve the process of speaking to your
20 representatives to make sure that we're not creating
21 more difficulties.

22 Q. Okay. Well, getting back to my
23 question, if the records show that there's been three
24 instances since 2010 where one crossing, either
25 Franklin Street or Lewis Center, or on one occasion

1 both were closed, you don't have any information to
2 indicate that it's been more frequent than that,
3 correct?

4 A. I think since I've been here it's been
5 twice and there's going to be one next week. I think
6 that's --

7 Q. And before they are closed, you're aware
8 that the closure is coming and have -- as you've
9 described, have had input in that regard, correct?

10 A. Yes, I've been made aware, and I was
11 able to make -- give input, yes.

12 Q. Okay. And if the Lewis -- Well, strike
13 that.

14 There are other -- under the current
15 configuration with both crossings in existence and
16 open, there are circumstances that would result in
17 Medic 361 responding to this 361-M3-1 run card area,
18 correct?

19 A. Yes, sir.

20 Q. We have talked about them with some
21 other witnesses, and I don't know how much of that
22 you were present for, but you would agree that
23 currently with both crossings open, M361 would
24 sometimes be in a position to respond to -- well, if
25 it's all right with you we'll use the Kroger

1 territory rather than go through the series of
2 numbers -- the Kroger territory, because Medic 3 is
3 responding to another call somewhere else east of the
4 crossing, you would agree that that occurs, correct?

5 A. Yes, sir.

6 Q. It could also occur that Medic 361 would
7 respond to this area because Medic 3 is tied up with
8 transport to one of the Columbus area hospitals,
9 correct?

10 A. Yes, sir.

11 Q. And there are times when -- and as I
12 understand it, you've reviewed an exhibit that --
13 it's the County Exhibit 4. I think maybe it has a
14 different designation from the Township, but it's a
15 printout of runs to the Kroger area over a
16 several-year period of time. You've reviewed that,
17 correct?

18 A. Yes, sir.

19 Q. And I think it was review of that that
20 allowed you to indicate in your prefiled testimony
21 that -- I'm looking on page 5 of the testimony where
22 you said that upon review of the exhibit, I would say
23 the Orange Township medics have made approximately
24 159 runs to the area covered by 361-M3-1, correct?

25 A. Yes.

1 Q. Page 5 near the bottom of your --

2 A. So between 361 and 362, both stations,
3 yes.

4 Q. All right. And that's over the course
5 of the period of time covered by that run spreadsheet
6 printout that you reviewed, correct?

7 A. Yes, sir.

8 Q. And is it your understanding that was --
9 as I understand it, that's 2018, 2019, '20 and '21
10 sometimes up through some time August, is that your
11 understanding?

12 A. Yes, sir, I believe so.

13 Q. All right. And are you aware of a
14 breakdown between -- as between 362 and 361 in terms
15 of that total of 159, how much was 362 versus 361
16 going to this particular run card area?

17 A. I don't believe I broke it down that
18 much, sir.

19 Q. All right. Would it be your
20 anticipation, given their physical location, that
21 361's proximity to that area as compared to 362, that
22 more of those runs would be 361 than 362?

23 A. Yes, sir.

24 Q. And when 361 responds, they respond
25 typically using Route 23/High Street, correct?

1 A. Yes, sir.

2 Q. And you referenced the potential for bad
3 outcomes for patients, but as we sit here today, and
4 realizing you have only been in your position
5 since -- I think you said last spring, correct?

6 A. April.

7 Q. April.

8 -- you're not aware of any bad outcomes
9 related to delayed response times to 361-M3-1, are
10 you?

11 A. No, sir, I'm not.

12 Q. I'm not going to get into the details on
13 this, we did with another witness. You have not
14 gotten into your review of Exhibit 4, the
15 spreadsheet, to determine -- try to determine the
16 difference in response times as between M -- Medic 3
17 and Medic 361 to this area, have you?

18 A. Have I looked -- compared them, no.

19 Q. Okay. And the document will speak for
20 itself and there was some testimony on this earlier,
21 but if that spreadsheet actually shows that on the
22 occasions when M361 -- Medic 361 and Medic 3 were
23 both dispatched for the same call, that there were
24 response occasions where Medic 361 responded more
25 quickly than Medic 3, you would have no reason to

1 dispute that if that's what the document shows?

2 A. I would not.

3 Q. And it is your -- as you state in your
4 direct testimony on page 9, it's your belief that
5 completion of the Home Road extension would address
6 your concerns from an EMS perspective, correct?

7 A. Yes, sir.

8 Q. Closure of the -- Well, strike that.

9 You have not done any study or attempted
10 to determine what the response time would be using
11 the theoretical Home Road connector, if that's used
12 from Medic 3's current location or some other
13 location east where it might be located east of the
14 crossing, you have no idea what that response time to
15 this area would be using the Home Road connector?

16 A. No, sir, I've not.

17 Q. And in doing your -- any planning that
18 you would do in your position, is it fair to say that
19 you have not been provided with any specific date by
20 which you should count on the Home Road extension
21 being in place?

22 A. No, sir.

23 MR. EVANS: That's all the questions I
24 have.

25 ALJ DAVIS: Thank you. Ms. Donnan, is

1 there redirect?

2 MS. DONNAN: No redirect. Thank you.

3 ALJ DAVIS: Thank you. With that said,
4 thank you very much, Chief McNeil. You are
5 effectively dismissed.

6 (Witness excused.)

7 ALJ DAVIS: Ms. Donnan, your next
8 witness?

9 MS. DONNAN: We will be calling Michele
10 Boni.

11 ALJ DAVIS: Good afternoon, Ms. Boni.
12 Thank you for attending. Can I ask you to raise your
13 right hand? Do you swear or affirm that what you're
14 about to tell is the truth?

15 MS. BONI: I do.

16 ALJ DAVIS: Thank you very much.
17 Ms. Huber, you may proceed.

18 MS. HUBER: Thank you, your Honor.

19 - - -

20 Michele Boni,
21 being first duly sworn, as prescribed by law, was
22 examined and testified as follows:

23 DIRECT EXAMINATION

24 By Ms. Huber:

25 Q. Michele, did you contribute to written

1 testimony for this case?

2 A. I did, yes.

3 Q. Is that it in front of you marked as
4 Township Exhibit C?

5 A. Yes.

6 Q. If I asked you those questions that are
7 contained in Exhibit C today, would you answer them
8 the same way that you did in Exhibit C?

9 A. I would, yes.

10 Q. Thank you.

11 MS. HUBER: Your Honor, Ms. Boni is
12 available for any cross-examination.

13 ALJ DAVIS: Thank you.

14 Mr. Hochstettler, do you have cross for this witness?

15 MR. HOCHSTETTLER: I do. Thank you.

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Hochstettler:

19 Q. Ms. Boni, in your employment with Orange
20 Township, are you familiar generally with street
21 addresses and subdivisions within the Township?

22 A. I am, yes.

23 Q. Now, at the public hearing in this
24 matter several residents testified, and one of those
25 was Teresa Wickline whose address, according to the

1 transcript, is 1354 Church Street. Are you familiar
2 with Church Street?

3 A. Yes.

4 Q. Is that within the Unincorporated
5 Village of Lewis Center, or somewhere else in the
6 Township?

7 A. That is in Lewis Center Village, yes.

8 Q. Also testifying were Dave and Geri Dill,
9 address of 1557 Franklin Street. Is that also within
10 the Village?

11 A. It is, yes.

12 Q. And Fred Lecrone also testified. His
13 address is 1425 Church Street, is that also within
14 the Village?

15 A. That is, yes.

16 Q. And Mr. Stabl, Jamie Stabl testified,
17 his address is 6266 Westwick Place, is that within
18 the Unincorporated Village of Lewis Center?

19 A. I do not believe so.

20 Q. Are you familiar with where the Park
21 Shore subdivision is?

22 A. I am, yes.

23 Q. And is that over by Alum Creek State
24 Park?

25 A. Yes.

1 Q. That's not within the Unincorporated
2 Village of Lewis Center?

3 A. That is correct.

4 Q. The Unincorporated Village of Lewis
5 Center, you're generally familiar with that as well;
6 is that right?

7 A. Yes.

8 Q. Are there residential dwellings within
9 the Village?

10 A. There are, yes.

11 Q. Are they on both the east and west side
12 of the railroad tracks?

13 A. Yes.

14 Q. What about any churches, are you aware
15 of any churches in the Village?

16 A. There are, yes.

17 Q. What about commercial properties or
18 businesses, are there any businesses within the
19 village?

20 A. There are, yes, right on Lewis Center
21 Road.

22 MR. HOCHSTETTLER: I don't have any
23 additional questions. Thank you.

24 ALJ DAVIS: Thank you.

25 Cross-examination on behalf of the Petitioners?

1 MR. TALBOTT: Yes, your Honor.

2 ALJ DAVIS: Please proceed.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Talbott:

6 Q. Afternoon, Ms. Boni. My name is Casey
7 Talbott on behalf of Norfolk Southern. I've had the
8 opportunity to hear your direct exam and hear your
9 comments and have some questions for you.

10 First, I want to speak for a minute
11 about the convenience factor to the Lewis Center
12 township homes on the immediate east and west sides
13 of the Franklin Street Crossings.

14 Have you yourself ever measured how far
15 it is from Franklin Street to Lewis Center Road?

16 A. I have not measured it myself, no.

17 Q. So to the extent other witnesses and the
18 public records establish that it's about
19 six-one-hundredths of a mile away, you don't dispute
20 that, fair?

21 A. Fair, I do not dispute.

22 Q. So by way of distance with respect to
23 convenience, we'd be adding approximately
24 twelve-one-hundredths of a mile to the residents'
25 path of travel, that would be six-one-hundredths from

1 Franklin to Lewis Center and then another
2 six-one-hundredths back, is that accurate?

3 A. Yes.

4 Q. All right. Let's talk about traffic for
5 a second. Are you aware of how many vehicles a day
6 Lewis Center has versus Franklin?

7 A. I am not aware of that, no.

8 Q. Okay. Assume a county engineer witness
9 testified that Lewis Center could absorb -- Strike
10 that.

11 Assuming a county engineer testified
12 that Franklin experiences approximately 64 vehicles a
13 day, would you be in a position to dispute that?

14 A. I would not.

15 Q. Okay. Assuming the County witness
16 testified, the County engineer, assistant County
17 engineer, testified that Lewis Center would be
18 capable of absorbing 64 vehicles a day even at the
19 crossing, would you be in a position to dispute that?

20 A. I would not.

21 Q. Okay. If Franklin Street has 64
22 vehicles a day as the County witness has admitted, if
23 my math is right, if we close Franklin, we'd be
24 diverting, on average, approximately 2.66 vehicles
25 per hour. Does that sound about right?

1 A. Sounds right, yes.

2 Q. All right. Next I want to talk to you,
3 Ms. Boni, about the EMS service. The Medic 3 station
4 is operated by the County, not the Township, correct?

5 A. Correct.

6 Q. So fair to say that the County witnesses
7 would be in a better position than you would to speak
8 about how Medic 3 operates, is that fair?

9 A. Correct.

10 Q. And as Chief Noble -- former Fire Chief
11 Noble admitted that the Township has no oversight
12 responsibility as to Medic 3, would you agree with
13 that?

14 A. Yes.

15 Q. And you certainly don't as the Township
16 administrator, correct?

17 A. Correct.

18 Q. In any event, Medic 3 is located on the
19 east side of the tracks, right?

20 A. Yes.

21 Q. Do you know or have you heard how many
22 service areas or quadrants Medic 3 has primary
23 response duty for?

24 A. I do not know that information.

25 Q. Okay. So if other folks said that they

1 have -- that Medic 3 has primary response duty for a
2 total of four service areas, you wouldn't dispute
3 that, fair?

4 A. I would not.

5 Q. If the testimony is that three of them
6 are to the east of the tracks, so no impact by
7 closing Franklin, you wouldn't dispute that, fair?

8 A. I would not.

9 Q. Okay. So that leaves us with the fourth
10 quadrant, that's -- do you know the number of that?
11 361-M3-1, do those numbers mean anything to you?

12 A. No.

13 Q. Okay. Are you familiar with Kroger out
14 west on Lewis Center Road?

15 A. I am, yes.

16 Q. Okay. So there's been some
17 communication about the Kroger area, another term for
18 that service area. Would you agree with me that
19 Medic 3 can't get to the Kroger area via Franklin
20 itself, correct?

21 A. Correct.

22 Q. It's got to go to Lewis Center -- even
23 if it crosses the tracks on Franklin, it's then got
24 to immediately divert over to Lewis Center about
25 six-one-hundredths of a mile away, right?

1 A. That is correct.

2 Q. So if we close the Franklin crossings,
3 Medic 3 would have to divert over immediately as
4 opposed to a block or two later, correct?

5 A. Correct.

6 Q. If they wanted to head to the Kroger
7 area they'd have to divert immediately as opposed to
8 a block or two later, right?

9 A. Correct.

10 Q. Okay. And the reason for that is
11 Franklin is not a through street, right?

12 A. Correct.

13 Q. Okay. If they are going to get there
14 they have got to take Lewis Center. So in your
15 direct exam, when you say closing Franklin would
16 require EMS to utilize Lewis Center to get in and out
17 of this area of the Township, I was a little confused
18 by that, because Lewis Center Road is the only way to
19 get out of this area of the Township even now, right?

20 Franklin doesn't get you out, if you
21 want to get out of this area of the Township you got
22 to go on Lewis Center, right?

23 A. Correct.

24 Q. Okay. Ms. Boni, you're aware that in
25 response to this petition the Public Utilities

1 Commission of Ohio scheduled this matter for what's
2 called a public hearing?

3 A. I am aware of that, yes.

4 Q. All right. Are you aware that that
5 hearing was held back on July 9 of 2019?

6 A. I do not recall the date, but that
7 sounds around that time, yes.

8 Q. Sounds about right, okay. And not only
9 was the hearing held, it was held right there at a
10 local library. Are you aware of that?

11 A. I'm not aware of the location, I was not
12 involved at that time.

13 Q. Okay. Did you go to the hearing? I
14 assume no?

15 A. No.

16 Q. Okay. Have you ever taken the time,
17 Ms. Boni, to read the comments, or read the testimony
18 from the evidentiary hearing?

19 A. I did not, no.

20 Q. Okay. Are you aware that a total of
21 seven residents showed up?

22 A. I am not aware of the number of
23 residents.

24 Q. But if seven showed up at least to
25 testify, you wouldn't dispute that, correct?

1 A. Correct.

2 Q. Now -- or seven people showed up, yeah.
3 If two of the folks who testified -- if they
4 acknowledged that the EMS concern was overstated or
5 just not existent, would that -- I mean, is that news
6 to you, or did you already know that, that two of
7 them don't agree that there's an EMS concern at all?

8 A. I was not aware of that, no.

9 Q. Well, the folks' testimony will speak
10 for themselves.

11 I want to spend a few moments with you
12 about the Home Road overpass which you referenced in
13 your direct exam. You're saying the Township
14 objected to the closure of Franklin unless and until
15 the Home Road overpass is completed, correct?

16 A. That is correct.

17 Q. Okay. And you infer that once the Home
18 Road overpass is completed, then the Township has no
19 objection to closure, correct?

20 A. Correct.

21 Q. You're aware, Ms. Boni, that this
22 overpass project has been discussed for years and
23 years?

24 A. I am, yes.

25 Q. One of the folks at the public hearing

1 said to his recall it had been discussed for 16, 17
2 years. Are you in a position to dispute that?

3 A. I'm not.

4 Q. Fair to say, Ms. Boni, that there's no
5 guarantee that this overpass is ever going to get
6 built, right?

7 A. Correct.

8 Q. And assuming it gets built, there's no
9 guarantee as to when, is that fair?

10 A. I'd have to rely on the County Engineers
11 for that.

12 Q. All right. We know that best case
13 scenario, based on the County, is that their goal is
14 to get this thing built by 2026, that's the earliest.
15 Are you aware of that or not?

16 A. I am aware of the completion, estimated
17 completion date, yes.

18 Q. Okay. And as you said, it's an
19 estimated completion date, a whole lot of moving
20 parts have to come together to make that happen,
21 right?

22 A. That is correct.

23 Q. The -- Ms. Boni, in the interim, until
24 this thing gets built, if it gets built at all, is
25 the Township willing to accept liability for the

1 Franklin Street Crossings?

2 MS. HUBER: I'm going to object to that
3 question, your Honor, for reasons we talked about
4 when another witness was testifying.

5 I'm not sure how an appointed official
6 of a township, who is not either an elected official
7 or used to operating the entire board of three
8 people, which would be the Board of Trustees for the
9 Township, how she could opine or commit on the
10 Township's behalf.

11 MR. TALBOTT: If I could speak. I guess
12 your Honor, I would object to the objection, it's a
13 speaking objection. That's disfavored under Ohio
14 law, and it is -- the witness can either -- can
15 answer -- the witness can say I'm not in a position
16 because of my title, the witness can say no, we
17 won't, but let me -- let me ask the question a
18 different way and maybe that will remove the
19 objection.

20 By Mr. Talbott:

21 Q. You're aware, as you sit here today,
22 Ms. Boni, that the Ohio Rail Development Commission,
23 Norfolk Southern, and CSX, don't like the crossing
24 from a safety perspective and they want it closed;
25 you're aware of that?

1 A. I am.

2 Q. Okay. And on behalf of the Township,
3 you're the -- I mean, you're the Township witness,
4 there wasn't a trustee to come here today, right? I
5 mean, you're not aware of any of the trustees coming
6 here to testify, right?

7 A. Correct.

8 Q. Okay. You're the designated witness,
9 right?

10 A. Correct.

11 Q. Okay. You're here to speak on behalf of
12 the Township, right?

13 A. Yes.

14 Q. Okay. So I'm asking you -- and if the
15 answer is no, that you can't answer it, just tell me.
16 I'm asking -- we want it closed, we want it closed
17 yesterday.

18 You guys want to keep it open at least
19 through 2026, if that goes forward, longer, whatever.
20 And I'm asking you, pending that construction, is the
21 Township willing to accept responsibility for any
22 accidents which occur in the interim? If you can't
23 answer it, you can tell me.

24 A. I'm not in a position to answer that.

25 Q. Okay. And is that -- okay. All right.

1 Ms. Boni, last thing I want to talk to you about --
2 excuse me -- is your testimony with respect to how
3 this case proceeded, how this petition proceeded.

4 In your direct exam you state that from
5 early 2019 through early 2021 the Township engaged in
6 discussions with the railroad companies about the
7 potential closure of the Franklin Street Crossings,
8 correct?

9 A. Correct.

10 Q. And this culminated on April 19, 2021,
11 when the Township adopted a resolution agreeing to
12 accept the Ohio Rail Development Commission's
13 proposal to close the Franklin Street Crossings,
14 right?

15 A. Correct.

16 Q. Okay. I want to cover a bit more
17 history with you. And I understand that some of this
18 may have preceded your involvement with the Township,
19 but I want to know if you know about it or not, or
20 whatever your answer is, you'll tell me.

21 Are you aware that these closure
22 conversations went on long before 2019?

23 A. I am aware that conversation happened
24 before 2019, but I could not give you a -- how many
25 years or months it involved.

1 Q. Well, you're surely aware there was a
2 diagnostic survey performed out of this crossing in
3 year 2012; you're aware of that?

4 A. I was not involved in that time, no.

5 Q. Okay. I want to ask you -- there's been
6 some questions about who was or wasn't represented at
7 that, and I want to ask you whether you know these
8 folks or if you've heard of them from previously
9 being involved with the Township, so I want to ask
10 you some names. This is from back in 2012. Scott
11 Overturf or Overhold, something like that?

12 A. Overturf, yes.

13 Q. Who was he?

14 A. He was our -- he was a consultant that
15 we hired as part of the Parks and Roads Department at
16 that time.

17 Q. How about Beth Hugh, H-u-g-h, I think it
18 is?

19 A. So yes, she was our parks and
20 maintenance director.

21 Q. Okay. How about Gail Messmer,
22 M-e-s-s-m-e-r, who was Gail?

23 A. She was our township administrator. I
24 believe her term ended at 2016.

25 Q. Okay. So she was at some point before

1 you, a number of administrators back?

2 A. Yes.

3 Q. Okay. How about Rob Quiggly, do you
4 know that name?

5 A. Yes, he was a former Orange Township
6 trustee.

7 Q. How about Debbie Toronto?

8 A. She is a current Orange Township
9 trustee.

10 Q. Okay. Was she back in 2012 as well, or
11 you don't know what her role was then?

12 A. She was. I believe she's been with the
13 Township for ten years.

14 Q. Okay. The folks I went through, most of
15 them -- I think all of them except for Overturf, if
16 I'm pronouncing that right, all had
17 OrangeTownship.org emails, so they were all
18 affiliated with the Township, correct?

19 A. Correct.

20 Q. Okay. All right. And you're aware that
21 as a result of that diagnostic, the Franklin Street
22 crossings were identified as closure candidates,
23 correct?

24 A. I believe so. I was not part of the
25 diagnostics review.

1 Q. And are you aware that for years and
2 years after the 2012, the Ohio Rail Development
3 Commission, not the railroad companies, spearheaded
4 discussions with the Township toward closing these
5 crossings? Are you aware of that?

6 A. I am aware there were discussions, but
7 that's as far as I know.

8 Q. When those discussions didn't bear
9 fruit, you're aware that the railroads filed a
10 petition back in January of 2019 to close the
11 crossings, correct?

12 A. Correct.

13 Q. Okay. And then we fast forward to -- to
14 July 9, 2019, that's when the Orange County residents
15 had a chance to come out and weigh in at the public
16 hearing?

17 A. As mentioned before, I'm not familiar
18 when that happened, but I do know there was a public
19 meeting.

20 Q. Okay. You're aware the public hearing
21 occurred, you're not certain as to the date, right?

22 A. Correct.

23 Q. Okay. And I guess this is
24 importantly -- Ms. Boni, are you aware, as you sit
25 here today, that in early 2021, as the petition was

1 proceeding, the Township came to the railroad
2 companies and asked us to close these crossings? Are
3 you aware of that or not?

4 A. I am aware there was conversation with
5 the trustees, but I'm -- I do not know what steps
6 were made.

7 Q. Do you know whether they came to us at
8 that point, or whether we came to them, or you don't
9 know either way?

10 A. I do not know either way.

11 Q. Okay. All right. In any event,
12 Ms. Boni, on April 29, 2021, the Township adopted
13 Resolution 21140 (sic) agreeing to close the Franklin
14 Street Crossings, correct?

15 A. On April 19th, yes.

16 Q. I said April 29 because I don't read my
17 own writing. I appreciate you bringing that to my
18 attention.

19 So April 19, 2021, that's when the
20 Township adopted the resolution, correct?

21 A. Correct.

22 Q. All right. Ms. Boni, do you have -- I
23 want to direct your attention to that resolution. We
24 have marked it for the record as Petitioner's
25 Exhibit 9. Do you have that before you? What's

1 that?

2 A. We're getting it.

3 Q. Great. Thank you.

4 A. I have it, yes.

5 Q. Okay. Great. And you've read that
6 before today, correct?

7 A. Yes.

8 Q. All right. I want to talk to you just
9 for a few minutes, go through a few things. Let's
10 look at the title. It's -- RES stands for
11 resolution, right?

12 A. Yes.

13 Q. It's got the number 21-40 (sic), and the
14 title is quote, Action accepting the Proposal of the
15 Ohio Rail Development Commission, ORDC, CSX
16 Transportation, CSX, and Norfolk Southern Railway
17 Company, NS, for the closure of public grade
18 crossings on Franklin Street TR1041, did I read that
19 correctly?

20 A. Resolution No. 21-140, yes.

21 Q. If I misspoke on that, I apologize.
22 Okay. Otherwise I read the title of this resolution
23 correctly?

24 A. Yes.

25 Q. All right. And then let's look at

1 paragraph 2 of the preamble. Second paragraph down
2 it says quote, "Whereas a proposal has been made to
3 change the character of Franklin Street TR1041 by
4 prohibiting vehicular and pedestrian traffic over the
5 at grades CSX and NS crossings, thereby benefitting
6 the safety of the traveling public." Did I read that
7 correctly?

8 A. Yes.

9 Q. Let's go down to the last "Whereas"
10 clause, and it states quote, Whereas the proposal has
11 been submitted to the Township, and the Township
12 finds the proposal to be in the best interest of the
13 community, in that it will enhance the safety of the
14 traveling public, end quote. Did I read that
15 correctly?

16 A. Correct.

17 Q. And then if we look at Section 1, it
18 says quote, The Board hereby authorizes and approves
19 changing the character of Franklin Street by
20 barricading and prohibiting vehicular and pedestrian
21 traffic across the at grade railroad crossings
22 traversing the street, end quote. Did I read that
23 correctly?

24 A. Yes.

25 Q. All right. Ms. Boni, fair to say that

1 the Board moved to adopt this resolution by and
2 through the Board's chair, that's Mr. Grumbles,
3 correct?

4 A. Correct.

5 Q. That motion was seconded by Ms. Toronto,
6 a trustee, correct?

7 A. Correct.

8 Q. And the requisite two of three trustees,
9 specifically Grumbles and Toronto, voted to adopt the
10 resolution, with the third trustee not voting against
11 it, but rather abstaining, correct?

12 A. Correct.

13 Q. All right. And this is the resolution,
14 the one we just talked about, that I've misstated
15 three times, Resolution No. 21-140, that's the one
16 that was passed approximately nine years after the
17 diagnostic survey was conducted in 2012 when
18 consolidation was discussed, correct?

19 A. If that's when the time started,
20 correct.

21 Q. Okay. And it's the resolution that was
22 passed years and years after discussion with the
23 other interested parties, correct?

24 A. Again, I don't know the time frame, but
25 correct.

1 Q. Okay. Well, it's certainly the
2 resolution that was passed after the petition was
3 filed and the public hearing held, right?

4 A. Correct.

5 Q. And it's the resolution that was
6 passed -- Well, strike that, because you don't know
7 who came to who.

8 I was going to ask you if it was the
9 resolution that was passed after the Township came to
10 us in early '21, but you don't know that either way?

11 A. I do not know that, no.

12 Q. And then approximately a month later,
13 Ms. Boni, is when the trustees reneged on this, they
14 took action purporting to rescind the resolution,
15 correct?

16 A. Correct.

17 Q. All right. Fair to say, Ms. Boni, when
18 the Township took that action, renege, rescission,
19 whatever you want to call it, the Township's lawyer,
20 Christopher Best, was so beside himself that that
21 very same day he became aware, he withdrew as
22 Township counsel; is that correct?

23 A. That is correct.

24 Q. Okay. And that was on -- by way of
25 email to the ORDC dated May 24 of 2021. It's part of

1 Petitioner's Exhibits 10, do you have that before
2 you?

3 A. One minute.

4 Q. Pardon me?

5 MS. HUBER: One minute please.

6 MR. TALBOTT: It's back toward the back,
7 if that helps.

8 MS. HUBER: I'm not sure we have that in
9 front of us, Casey. If you'd like me to get it I
10 might be able to get it.

11 MR. TALBOTT: It's Christopher Best's
12 email of May 24 to Matt Diederichs and other involved
13 counsel in this case. So it was toward the back of
14 Plaintiff Exhibit 10 -- or Petitioner's Exhibit 10.

15 MS. HUBER: I'm not sure we have that.
16 By Mr. Talbott:

17 Q. It's only two sentences. I'm going to
18 read it and see if this sounds generally familiar,
19 and then I'm about done.

20 This is a Monday, May 24. Were you --
21 okay. Counsel, Mr. Diederichs, that's ORDC guy, "On
22 Friday evening the Orange Township Board of Trustees
23 voted to rescind Resolution 21-140 which agreed to
24 settle the Franklin Street case. As a result this
25 office is filing a Notice of Withdrawal for both the

1 Township and engineer in this matter."

2 Is that generally consistent with your
3 understanding?

4 A. I recall that email, yes.

5 Q. Okay. You've seen it before?

6 A. I have, yes.

7 Q. All right. Thank you.

8 MR. TALBOTT: Your Honor, that's all I
9 have for Ms. Boni. Of course, Mr. Evans may have
10 some questions as well. Ms. Boni, thank you for your
11 time.

12 ALJ DAVIS: Thank you. Mr. Evans?

13 MR. EVANS: Your Honor, Lee Evans. I do
14 not have any questions at this time.

15 ALJ DAVIS: Thank you. Ms. Huber, do
16 you have redirect?

17 MS. HUBER: I don't have any redirect,
18 your Honor. Thank you.

19 ALJ DAVIS: Thank you.

20 MS. HUBER: At this point I would ask
21 your Honor to admit Township Exhibits A, B, and C
22 into the record, please.

23 (Witness excused.)

24 ALJ DAVIS: Are there any objections?

25 MR. TALBOTT: This is Casey, and I

1 apologize, could you tell me again what those
2 exhibits were, just so my notes are clear, A, B, and
3 C?

4 MS. HUBER: Sure. Exhibit A is Chief
5 McNeil's exhibit, the run card, the spreadsheet.
6 Exhibit B is Chief McNeil's direct testimony,
7 prefiled direct testimony, Exhibit C is Michele
8 Boni's prefiled direct testimony.

9 MR. TALBOTT: On behalf of Norfolk
10 Southern, your Honor, no objection to those exhibits.

11 MR. EVANS: This is Lee Evans. My only
12 inquiry is regarding Exhibit B. Can we indicate for
13 the record that that is essentially -- or is an
14 identical exhibit to County Exhibit 4? Is there any
15 representation that it differs in any way?

16 MS. DONNAN: So Exhibit A, that would be
17 township Exhibit A, the run card. I think in general
18 we do agree that it's likely the same document.

19 The only reason we have not identified
20 it as a Joint Exhibit is because Chief's direct
21 testimony references it as Exhibit A.

22 And so if we -- if the parties decide to
23 identify it as something else, that leaves the
24 possible gap in his direct testimony.

25 MR. EVANS: Okay. Was it received by

1 the Township from the County? I mean, can we
2 understand that it is -- aside from that distinction
3 that you just made, that it is one in the same?

4 MS. DONNAN: Correct. I think we are
5 fine on that. I think we would just prefer to --
6 certainly if people have a preference to reference
7 one or the other, I think that's fine, but just for
8 the purposes of making sure his direct testimony is
9 consistent with that, it has an exhibit attached to
10 it, we just want to make sure that it gets submitted.

11 MR. TALBOTT: This is Casey. I don't
12 have it before me. Is that -- the one you're talking
13 about now, is that the confidential one that -- or
14 this is a different exhibit all together, it's the
15 confidential one?

16 MS. DONNAN: It's the confidential one,
17 correct.

18 MR. TALBOTT: And I think, Aric, you
19 represented that that is basically the same one --
20 whatever we're going to call it, it's the same
21 exhibit that you had entered before?

22 MR. HOCHSTETTLER: My understanding is
23 that Patrick Brandt prepared that report. He
24 distributed it to me and I authorized him to
25 distribute it on request to the Township, and that

1 has then been distributed to everybody, and it would
2 contain the same information, but since it left our
3 door, I can't confirm that. I've not compared it
4 line by line.

5 MR. TALBOTT: No objection here, your
6 Honor. And as far as how we handle the numbering or
7 the lettering of it, I'll defer to you folks.

8 MR. EVANS: No objection.

9 ALJ WALSTRA: In terms of briefs, can we
10 just refer to like Delaware County Exhibit 4 just so
11 we're consistent in there? That way we're not
12 bouncing back and forth and having briefs referencing
13 different things, just -- like as to what
14 Mr. Hochstettler said, I think that's a very good
15 point, ever since it left his hand, and it's quite a
16 big document and I don't feel like going through
17 right now to make sure it's exactly the same or
18 somebody formatted it differently or something.

19 And the testimony I believe will be
20 consistent with what he references. You can check
21 the attachment in terms of -- to make sure his
22 testimony is consistent, or that it makes sense just
23 to what he's referring to.

24 But in terms of briefs, if we can just
25 try to stick to the Delaware County Commissioner's

1 Exhibit 4.

2 MR. EVANS: That makes sense. No
3 objection.

4 MR. TALBOTT: Yes, fine here, too.

5 ALJ WALSTRA: Orange County Exhibits A,
6 B, and C will be admitted.

7 (EXHIBITS ADMITTED INTO EVIDENCE.)

8 ALJ WALSTRA: We'll set initial briefs
9 will be due December 3rd, and reply will be due
10 December 17th. Anything further?

11 MR. TALBOTT: Oranges Township rests as
12 well? They rested, right?

13 MS. HUBER: Yes, we did.

14 MR. TALBOTT: Well, congratulations. I
15 think we got it done in a day.

16 MR. EVANS: My apologies again for the
17 delay at the beginning. I can't explain my IT
18 department, but it is what it is, so I appreciate
19 your patience.

20 ALJ DAVIS: No problem.

21 ALJ WALSTRA: Well, thank you all, and
22 we'll talk to you guys shortly.

23 (Thereupon, the hearing was
24 adjourned at 5:20 p.m.)

25 - - -

CERTIFICATE

I do hereby certify that the foregoing
is a true and correct transcript of the proceedings
taken by me in this matter on Tuesday, October 12,
2021, and carefully compared with my original
stenographic notes.

Valerie J. Grubaugh,
Court Reporter and Notary
Public in and for the State
of Ohio.

My commission expires August 11, 2026.

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Case No(s). 19-0180-RR-UNC

Summary: Transcript October 12th 2021 In the Matter of the Joint Petition of Norfolk Southern Railway Company and CSX Transportation, Inc. To Close The Franklin Street Crossings (DOT Bos. 481482D and 518257V) In Orange Township, Delaware County, Ohio. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Grubaugh, Valerie