

**Commissioners Minutes No. 1 – Delaware County  
Minutes of Regular Meeting Held June 1, 1999**

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**Pledge to the Flag**

**Approval of Resolutions and Minutes from Regular Meeting Held May 24 1999.**  
Commissioners Approved

**Public Comment**

None

**Approval to Pay Warrants Numbered 243562 through 244090.** Commissioners  
Approved

**Approval of Travel Expense Requests.** Commissioners Approved

**Approval of Transfer of Funds, Appropriations and Supplemental Appropriations.**  
Commissioners Approved

**Setting Date and Time for Hearing of Annexation Petition Filed For Annexation of 87.677 acres from Berkshire Township to the Village of Galena.** Hearing to be held August 2, 1999, at 7:30 PM. Commissioners Approved

**Approving Plans for Dornoch Estates, Section 2; Olive Green Road Bridge Plan; and Plat and Ditch Petition for Medallion Estates, Section 8.** Commissioners  
Approved

**Approving Subdividers Agreements for Desert Subdivision; Harvest Wind, Section 4 and Walker Wood, Sections 8 & 11.** Commissioners Approved

**Approval of Right-of-Way Work Permit Summary Sheet.** Commissioners  
Approved.

**Approval of Contract with Armstrong Steel Erectors for the Main Road Bridge Replacement.** Contract is in the amount of \$639,400.45. The estimated completion date is mid November. Commissioners Approved

**Approving Bid Specifications and Setting Bid Opening Date for Olive Green Bridge Replacement.** Date to be June 28, 1999, at 10:00 AM and estimate of cost is \$534,500.00. Commissioners Approved

**Approving Bid Specifications and Setting Bid Opening Date for June 21, 1999, at 9:45 AM.** This year the County program will have 26.62 miles; the Townships, Village of Powell, and The City of Delaware will have 31.66 miles. This contract will include 7 or 8 Townships, The Village of Powell, the City of Delaware, and The County of Delaware. The estimate for the complete contract will be \$3,500,000.  
Commissioners Approved

**Approving Agreement with Tartan Fields Golf Club LTD for the Construction and Maintenance of Structure over Concord Road.** This is a golf cart path/bridge over Concord Road. This contract spells out what guidelines must be maintained and provides for future needs if they should arise. Commissioners Approved

**Approval of Sanitary Sewer Plans for River Bend, Section 1; Tartan Fields, Phases 14 & 15 and Whitetail Meadows.** Commissioners Approved.

Mr. Ward thanked Mr. Pike for taking the Commissioners on a tour of the Zero Discharge Sewer Plant at Tartan Fields. He noted seeing the operation helped him to understand the process.

Mr. Ward as well as the other commissioners agreed that it is important that the County maintain these plants to insure they are maintained to the standards of the County Sanitary Engineer.

**Commissioners Minutes No. 1 – Delaware County  
Minutes of Regular Meeting Held June 1, 1999**

---

Mrs. Martin noted it was good to see the plant is just like the OECC, only much smaller.

**Approval of Sanitary Sewer Agreements with Woods of Dornoch, Section 1.**  
Commissioners Approved

**Approval of Grant Extension Form for The County's FY 97 Formula CDBG Program.** This is the JEGS project areas. It is the joint effort between the County and City of Delaware for road improvements and traffic signalization at this location. The state has approved the extension, and this resolution authorizes the signing of the contract for an extension to the end of 1999. Commissioners Approved

**Awarding Contract for the Brown Township Hall ADA Improvements.** Mr. Garver reported there was one bid for this project which was Countryside Construction at \$16,159.00. This is within the 10% allowable. Brown Township will provide \$1059.00 to complete the project financing. Commissioners Approved

**Accepting Roadwork Development Funds from the Ohio Department of Development for the Greif Brothers Expansion Project.** This is an agreement between Delaware County and the Ohio Department of Development for \$650,000 to help pay for necessary road improvements for the Greif Brothers Expansion Project. Mrs. Martin noted it is a pleasure to work with this company which has given so much to the community and continues to do so. Mr. Garver noted this will be a world class corporate park and will be an asset to the community. Commissioners Approved.

**Approval to Enter into a Contract with Emergitech, Inc. of Reynoldsburg, Ohio to Provide Public Safety Software and Professional Services.** Mr. Fisher explained this system will automate many of the manually performed functions and result in fast processing and more accurate and complete records. This is being done in modules – the complete cost of the entire package is \$323,253.00 Mr. Ward commented that he thinks it is good to do this in stages, in case the money is needed elsewhere, but he feels the EMS departments and the Citizens of Delaware County will benefit greatly from this project. Mrs. Martin commented that Mr. Fisher deserves recognition for the work and foresight he has shown in pushing forward for this equipment.

**Approval of Personnel Action Forms.** Commissioners Approved

**Annexation Hearing for 2.031 Acres of Land Located in Orange Township to the City of Columbus.**

Mr. Ward explained that the petitioner of this annexation is a relative; therefore, he will not participate in the discussion or vote on the application.

**Hearing was opened at 7:30 PM.**

The clerk certified that all the necessary papers were in order. Alisha Argust, representing the applicant was present to answer any questions.

Mr. Wuertz asked for verification that this annexation goes only to the roadway. Ms. Argust confirmed that to be true.

There being no opposition and no one wishing to give testimony, Mr. Wuertz closed the hearing at 7:34 PM.

Mrs. Martin noted that Mrs. Bell is the sole owner and there is no opposition; therefore, she moved to grant the annexation. Mr. Wuertz seconded. The Commissioners Approved.

**8:00 PM. Hearing to Vacate The Northern most 235 Feet of Basham Lane**

Mr. Wuertz opened the hearing at 8:00 AM.

**Commissioners Minutes No. 1 – Delaware County  
Minutes of Regular Meeting Held June 1, 1999**

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Mr. Walter Van Houten delivered a letter to the Commissioners. The Clerk read the Letter into the Record.

TO THE DELAWARE COUNTY COMMISSIONERS

THIS LETTER IS IN REFERENCE TO MY CONCERNS ON A TURN-A-ROUND  
AT THE END OF BASHAM LANE

I HAVE TURNED A BUS AROUND AT THE INTERSECTION OF BASHAM LANE AND TWIGG HUPP MANY TIMES. IT IS MY CONCERN THAT THIS IS NOT A SAFE TURN-A-ROUND EVEN WITH THE USE OF EMERGENCY FLASHERS, BACK UP LIGHTS AND SOUNDING A BACK UP WARNING SIGNAL. I DON'T FEEL THIS IS ENOUGH TO MAKE THIS A SAFE SITUATION. WITH THE 2 NINETY DEGREE TURNS, THEN BACKING UP ON THE ONE CURVE AND THEN DOWN HILL AT THE SAME TIME. THERE ARE TOO MANY THINGS TO WATCH AT THE SAME TIME. WE ALSO HAVE A GROWING COMMUNITY CAUSING INCREASED TRAFFIC OF PEOPLE WHO ARE NOT USED TO THE AREA. WHEN WE ADD BAD WEATHER TO THE SITUATION WE COULD BE ASKING FOR AN INCIDENT THAT CAN BE PREVENTED WITH A TURN-A-ROUND. THIS TURN-A-ROUND COULD ALSO BE USED BY EMERGENCY PERSONNEL AND UTILITY VEHICLES WHO OTHERWISE WOULD HAVE TO USE A PRIVATE DRIVEWAY WHICH IS NOT WIDE ENOUGH WITHOUT GOING INTO SOME ONES YARD

THANK YOU FOR YOUR CONSIDERATION AND TIME

RESPECTFULLY

PAUL LEVINGS  
BUS DRIVER AND CONCERNED CITIZEN

Mr. Wuertz added that Mr. Levings called him last week and expressed his concern regarding a turnaround.

Mr. Flahive, attorney for Mrs. Helber, spoke explained he feels there is only one issue this board needs to address; that being, has Kingston Township abandoned and not used this area in question for the last 21 years. He feels this is the only issue this board should consider. Fairness needs to be shown to Mrs. Helber. It is not her responsibility to be concerned about a turnaround. That is the responsibility of the School Board not Mrs. Helber and not this Board of Commissioners. He feels the ORC is clear that if the area has been abandoned, the vacation must be granted. No one has challenged Mrs. Helber's statement that this area has not been used or maintained by the township in the last twenty-one years.

Mrs. Martin commented that Mr. Grove has stated he used this land for access to his land and that hunters use the land for access to his property. Mr. Flahive stated he does not feel this is relevant to the application. What is relevant is that the township did not use this land or maintain the land. He stated, if the Township can say they used, improved or maintained this land, his client has no claim. If they cannot say that, according to the ORC the land must be vacated as Mrs. Helber has requested. He presented a new survey with distances indicated as was requested at the last hearing. He asked that the petition be amended to state Mrs. Helber is asking that the northern most 210 feet be vacated. This would lie between the current Helber driveway and the fence row at the rear of the property.

William D. Basham of 4511 Basham Lane stated he has lived on Basham Lane all his life, and the school bus used to come back the lane. He would like to see that again. His father gave this property to the township, and he feels it should not be given to anyone else.

**Commissioners Minutes No. 1 – Delaware County  
Minutes of Regular Meeting Held June 1, 1999**

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Mr. Flahive suggested that the Township go to the property owners and arrange for land for a turnaround. He went on to say, a turnaround is not the issue before this board. The issue is, "has the Township abandoned the land in question".

Mr. Jim Grove questioned if the code says **must** grant or **may** grant. Mr. Grove believes Mr. Whitney has stated at a previous meeting, "there is nothing written anywhere that they had to maintain a piece of vacant property". Mr. Grove believes this statement means the township did not have to maintain the property.

Mr. Gaschen explained that Mr. Flahive and Mr. Grove are looking at two different parts of the same section of code. 5553.042. He feels the code is saying the Township shall lose all rights to the right-of-way property if they have not used or maintained it for 21 years and a formal request for vacation is filed and granted by the Board of Commissioners. The township shall lose its rights only upon the petition to vacate and the Board making the decision to vacate.

Mrs. Martin then questioned if she was understanding correctly that even if the Township has not maintained or improved the roadway land for 21 years, the Commissioners are not required by law to vacate the land upon the request by petition. Mr. Gasham agreed that is how he reads the law.

Mr. Ward noted that is not what Mr. Whitney stated at the last meeting .

Mr. Grove added that he agrees the turnaround should be made, and if this vacation is granted, in years to come the Township may be forced to purchase land to make a turnaround. Mr. Grove presented minutes of the Township trustees meeting. He stated all three trustees voted for the road improvements.

Mr. Ward pointed out that when the decision to pave the road and apply for the grant was made, the trustees did not know they owned this strip of land.

Mr. Grove went on to say one Trustee did not want to turn the issue of removing the fence over to the courts, he wanted to try to talk to the Helbers and work it out.

In response to Mr. Wuertz's question, Mr. Grove stated he would give up part of his land for a turnaround if this vacation is not granted.

It was clarified that if the land is vacated, it would return to the original parcel from which it was taken. None of this land would go to Mr. Grove. His land would abut this property. Mr. Grove added he would be losing access to his property because the land is currently public land and if vacated it would be private land. Mr. Flahive agreed but added, Mr. Grove would not be land locked.

Mrs. Martin asked Mr. Van Houten, Kingston Township Trustee, if there has been any work performed on this land by the Township in the past 21 years. Mr. Van Houten stated he knows of no work beyond the fence the Helbers erected. He has only been a trustee for the last 12 years, and that is the only time frame he can definitely say no work was performed.

Discussed locations for a turnaround and how much land would be needed to complete a turnaround. Mr. Bauserman did not feel it could be constructed in a strip of 50 feet. He explained, to create a turnaround at the northern most point it would take the easement in question, and land from either the Helbers or the Lehnerts and Mr. Grove. To make a turnaround closer to the front of the easement, it would take land from the Helbers and the Lehnerts.

Mrs. Martin tried to find some common ground, some plan to construct a turnaround that would be acceptable to all the parties.

Mrs. Helber spoke explaining that from the very beginning she and her husband were not opposed to a turnaround being constructed. If the law says she should have the land, she does not understand why she is not granted her request. In response to Mr.

**Commissioners Minutes No. 1 – Delaware County  
Minutes of Regular Meeting Held June 1, 1999**

---

Flahive's question, she agreed to provide some of her land at the front of her property, not at the rear along the property line of Mr. Grove, for a turnaround.

Mr. VanHouten expressed concern as to what would happen if she sells her property. Mrs. Martin explained legal documents could be drawn that would protect the rights of the public to use the turnaround regardless of ownership of the property.

In response to Mr. Wuertz's question Mr. Bauserman explained, if the road was extended, Mr. Grove would still not have enough frontage to put in a road for access to his land to be able to subdivide it. Sixty feet is required for a road and he would not have that much frontage.

Mr. Gaschen believes the Commissioners have an option as to whether they must grant the vacation because the code states **may**. Mr. Flahive disagrees with Mr. Gaschen's interpretation of the code on this issue. He feels the word may is used as a method – may by resolution vs. going to court. He quoted Ohio Attorney General's opinion 1517 which he feels is clear that the road must be vacated if found to be abandoned for 21 years and a request for vacation is filed.

Mr. Grove stated that is only an opinion and not the law. It boils down to the welfare and interest of the public.

Once again trying to reach a compromise with the parties involved, Mrs. Martin noted that Mrs. Helber is willing to address the issue of proving land for a turnaround.

Mr. Ward commented he feels there is no choice on this matter. From the opinion provided by Mr. Whitney's office and what Mr. Whitney has said. If there has been no improvements, maintenance or access made on this property for 21 years, and the Township has admitted there were none of these done, then the property must be vacated because a petition has been received requesting the vacation.

Mr. Ward commented that from what Mr. Whitney told him, he feels there is no choice here.

Mr. Dane Gaschen added that from reading the statute he feels if the Commissioners find the area has been abandoned they may or may not grant the vacation, but regardless if they find it has been abandoned for 21 years, the Township cannot improve this portion of the road. The question would then be to vacate the land back to the land owners or allow the Township to retain the easement even though they could not improve the land in any way.

Mr. Wuertz then asked Mr. Gaschen to clarify if no action is taken by this board, could the Township improve the land. Mr. Gasham stated he is not sure, the safe thing to do would be to have a finding by the board.

Mr. Van Houten stated he can only say that the Trustees have done nothing to this site for the last twelve years, he cannot state with certainty that no work was done for twenty-one years. Mr. Wuertz and Mrs. Martin noted that he has not proved there has been any work completed in that time period.

Again Mr. Grove stated that he remembers Mr. Whitney saying there is nothing in the law that says the township has to improve the property. Mr. Gaschen explained that a private owner could lose land by adverse possession if it is abandoned. The township cannot lose the land, but it can, in his opinion, lose the right to improve it, if the Board finds it has been abandoned.

Mr. Ward then read the opinion supplied by Mr. Whitney's office.

Mr. Bauserman commented. Mr. Grove would like to keep his access, the Helbers would like to have their portion vacated, and everyone wants a turnaround. He suggested the Board vacate the Helber's portion of the right-of-way--33 feet, do not vacate the adjacent 17 feet which would maintain Mr. Grove's right to access his land.

**Commissioners Minutes No. 1 – Delaware County  
Minutes of Regular Meeting Held June 1, 1999**

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Mrs. Martin suggested that Mr. Bauserman work with the Trustees and property owners to seek an agreement.

Mr. Wuertz stated he would like to give the prosecutor time to research the legal questions. Is this a road or easement, and does the law say shall or may.

Mr. Ward commented that he feels this issue is quite simple. The 21 years has been determined, and it should be abandoned. The turnaround is a Township problem not for the Commissioners to address.

Mr. Basham again expressed his concerns. Mr. Ward tried to explain that the law says if the township has not maintained, or improved the right-of-way and a request to vacate is received, it must be granted. The turnaround has nothing to do with the issue of vacation.

In response to Mr. Wuertz's question, Mr. Gaschen stated he does not feel the issue of a turnaround should be considered when determining whether or not to vacate the road.

Mr. Ward asked Mr. Gaschen if the Commissioners have any discretion in this matter, or since the Township has admitted they have done nothing to this land for 21 years, are the Commissioners bound by law to vacate. Mr. Gaschen responded, since there is a question as to whether this is an easement or a road, he would like some time to research the issue.

The hearing was continued to July 12, 1999, at 9:30 AM.

**In The Matter of Public Hearing for Renewal of Real Property Transfer Tax for a Period of Ten Years.**

Mr. Wuertz opened the hearing at 9:20 PM

Sheriff Myers explained he would like this tax continued for 10 years which would give him stability in knowing he will have the funding to make it possible for him to supply Mr. Cannon the long range planning he requested. He would like this funding designated to be used for the operations of the sheriff department. He has met with the realtors association explaining how this money is used. He also has met with fire fighters organizations and the bar association. There were no objections raised from these organizations regarding this tax.

Mrs. Lorraine McLean, 369 Troy Road, homeowner, senior citizen and Realtor, spoke against the tax stating she feels it is unfair to the sellers of real estate. She supports the sheriff and his department, but she feels all citizens should fund this department and not just sellers of real estate.

Mrs. Martin noted this charge can be negotiated in the contract to be paid by the purchaser of real estate. Mrs. McLean expressed that she has not found that to happen.

Mr. Tom Price of 4839 Warrensburg Road spoke in favor of the continuation of the tax. He explained he is a member of the Farmland Preservation Task Force which is studying ways for funding. He would encourage the Commissioners to continue this tax, but to keep the disbursement of the monies open until the suggestions of the Farmland Preservation Task Force can be studied.

Mr. Ward then questioned Mr. Price as to how much tax is too much tax. Mr. Price responded there are reasons why the public will support taxes. Some people value quality of life and are willing to pay for that. Mr. Ward then asked him if he believes in taxation without representation. Taxing without giving the taxpayer the right to vote on that tax.

Mr. Price then stated he has cast his vote for Commissioners to make tough decisions, and if he does not like those decisions, he will vote the Commissioners out of office.

**Commissioners Minutes No. 1 – Delaware County  
Minutes of Regular Meeting Held June 1, 1999**

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He feels the right to make these decisions is given to the Commissioners by the taxpayers when they are elected into office. You cannot put every decision on the ballot.

Mr. Ward commented that funding the Sheriff's Department requires tough decisions, and he feels they can be addressed in other ways rather than taxing the people without giving them the opportunity to vote on the tax.

Mr. Wuertz commented that many decisions are made by the Commissioners that effect people's lives and pocket books as much as this tax would. No one considers putting those decisions on the ballot. There would be no need for Commissioners, if all issues were put on the ballot.

Mr. Ward then asked Mr. Wuertz "How much money is enough money for the County"

Mr. Wuertz responded, enough to provide the services the people are asking . When this tax was originally put in place, the people were asking for more protection from the Sheriff.

Mr. Ward then stated he is in favor of supporting the Sheriff's Department with people and supporting the Farm Land Preservation movement, but he wonders how much money is to be pulled from the people.

Mr. Price then noted, the people are not moving out of the county, they are not voting with their feet . There is a quality of life here, and the people are willing to pay taxes to keep this quality of life.

Sheriff Myers then explained that in 1999 this conveyance fee supported, 8 dispatchers, 12 deputies, 2 computer support personnel, and one Secretary plus providing 9 patrol cruiser and other equipment in the amount of \$900,000. In 1998 it generated \$800,000 which funded 12 deputies, 7 dispatchers, support personnel, and laptop computers and software for cruisers and updating radios.

Sheriff Myers then added he knows this is a tax. He does not feel every issue should go on the ballot. If that was the case there would be no need for elected officials. Elected officials are elected to their positions to make tough decisions.

Mr. Ward then commented that taxes should not be put on people without their say. If the people want this tax to be continued, they will vote for the tax.

There being no further business, the meeting adjourned.

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Debbie Martin

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Jim Ward

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Don Wuertz

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Letha George, Clerk to the Commissioners