

**Commissioners Minutes No. 1 – Delaware County
Minutes of Regular Meeting Held October 4, 1999**

Pledge to the Flag

Approval of Resolutions and Minutes from Regular Meeting Held September 27, 1999. Commissioners Approved

Public Comment

Mrs. Martin reported that committees have been organized to address the issue of saving the Bellpoint Bridge. She asked that \$500.00 be provided from the General Fund as seed money for this group to use for postage and other expenses. Mr. Ward stated his belief- this is money well spent. Mrs. Martin reported the group is working in several areas trying to come up with funding mechanisms for the project. On a motion made by Mr. Ward and seconded by Mrs. Martin, the Board voted to approve this expenditure.

Mr. Andrew Halter asked the status of the possible purchase of property on Union Street for the Administration Building . Mr. Wuertz reported that the appraisals are ready, and initial contacts will be made this week with the property owners.

Approval to Pay Warrants Numbered 253071 through 253572. Commissioners Approved

Approval of Travel Expense Requests. Commissioners Approved

Approval of Transfer of Funds, Appropriations and Supplemental Appropriations.

Mr. Ward asked for an explanation of the \$150,000 supplemental appropriation to Sanitary Engineer – Services and Charges. Mr. Pike explained this is needed for inspection fees due to the large amount of growth within the County this year. The subdivision growth has been higher than projected. Commissioners Approved

Approval of Boundary Line Changes in Orange Township to Make the Boundaries of Land Annexed to City of Westerville (3.0) Acres Coterminous with the Corporate Boundaries of the City of Westerville. Commissioners Approved

Approval of Subdivision Plats for Whitetail Meadows, Deseret, and Villages of Oak Creek, Phase 10, Part A and Ditch Maintenance Petitions for Villages of Oak Creek, Phase 10, Part A & B and Village At Alum Creek, Section 4.

Commissioners Approved

Acceptance of Bonding for Deseret and Whitetail Meadows. Commissioners Approved

Approval of Subdivider's Agreement for Westerville Reserve. Commissioners Approved

Approval of Road Name Changes in Thorton Woods, and Northern Lakes, Section 7 in Genoa Township. Commissioners Approved

Acceptance of Roads in Thorton Woods and Northern Lakes, Section 7. Commissioners Approved

Authorizing Stop Conditions in Thorton Woods and Northern Lakes, Section 7. Commissioners Approved

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

Authorization of Speed Limit Reduction Request on Blayney Road. Mr. Ward inquired from Mr. Bauserman if he has the petition request to lower the speed limit on Bunty Station Road. Mr. Bauserman noted they have received the petition and the request for a study has been added to the list. Commissioners Approved

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Approval of Resolution of Support for the Efforts of Railwatch in Educating the Public About Railroad Safety. Mr. Wuertz read the resolution into the record.

IN THE MATTER OF SUPPORTING THE EFFORTS OF RAILWATCH IN EDUCATING THE PUBLIC ABOUT RAILROAD SAFETY:

WHEREAS; there is a train accident in the United States approximately every ninety minutes;

WHEREAS; trains daily carrying hazardous materials passes through Delaware County and each one has the potential to derail resulting in a spill and/or property damage causing the evacuation of people living nearby;

WHEREAS; According to the Federal Railroad Administration, more than 80% of the public crossings in the United States are unprotected by lights and gates; in Delaware County there are 25 of 63 such crossings (~40%); and

WHEREAS; the Delaware County Task Force Committee has urged support of this group as desired by The Angels on Track Foundation as part of its efforts to promote railroad safety in its Railroad Grade Crossing Upgrade grant program.

THEREFORE BE IT RESOLVED that the Delaware County Board of Commissioners supports RailWatch and its efforts to educate the public about railroad safety and joins RailWatch in urging the United States Congress to perform a complete and thorough investigation concerning railroad safety.

Mr. Bauserman reported the Railroad Task Force has worked closely with his office and the task force has done a great deal of work. This committee has been very hard working and have taken charge of the program. Mr. Bauserman commented, he is very proud of their efforts and their dedication.

Mrs. Martin commented that she noticed the nice videos and handouts that this group provided at this years fair. She noticed the youth of our county observing these videos, and she was impressed with the information provided. She commented that if one life is saved from this, of course it is worth the effort. She commended the group for their hard work.

Mr. Wuertz stated he has been privileged to have served as the Commissioner's representative on this committee. There have been many hours spent reviewing every crossing in the County with a very strict criteria of points to be studied.

Mr. Ward commented that Mr. Seidle has provided him with information regarding this item. He noted that RailWatch is out of Texas and he wondered how much we know about RailWatch. Mr. Wuertz responded that the Angels on Track Foundation was started by the parents of a young man who was killed at a railroad crossing. When representatives of the Angels on Track Foundation attended the committee meeting, they were very supportive of the RailWatch organization. He noted this resolution is urging the United States Congress to conduct a thorough investigation which would put pressure on the Railroads to address crossings. Mr. Wuertz feels the railroads need to be more involved and take more responsibility for this issue. Commissioners Approved

Approval of Establishing a Prioritization of Railroad Crossing Upgrade Needs in Delaware County and Authorizing Submittal of a Grant Application to the Angels on Track Foundation.

Mr. Charles Sheets, Chairman of the Railroad Task Force in Delaware County, explained this application is for grant money and it will pay up to \$40,000.00 for each crossing

Mr. Sheets explained the Angels on Track Foundation was started by Vickie and Denny Moore parents of a teenage son who was killed at a railroad crossing. They received \$5,200,000.00 from a law suit against ConRail for the death of their son. They use the interest from that money to upgrade crossings. They started in Stark and Wayne Counties and have expanded to a larger area. They now have several counties in the

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midwest involved in the program Mr. Sheets contacted them and became involved with the foundation. In order to qualify for this grant money, you must 1) have a railroad task force in place, 2) have an education program. 3) inventory all the crossing, 4) prioritize the need for upgrades to the crossings. . They also support the effort to get the railroads more involved and take responsibility for the crossing safety.

Mrs. Martin commented that this county owes Mr. Sheets a debt of appreciation for bringing the information he read in the newspaper to the attention of this Board so this project could be undertaken and this task force organized. He showed initiative, and he deserves to be recognized for his efforts. Other members of the task force present were: Sam Haas, Mike Crawford, Guy Thomas, Bob Ford and Paul Price.

Mr. Wuertz added that Mr. Sheets has been the driving force, and he certainly deserves recognition for all the work he has put into this project.

Mr. Sheets then gave credit to his co- chairman Mr. Hass and the Committee which he said was faithful supporters of the program.

Mr. Butch Seidle commented he would like to echo the sentiment's stated earlier. He noted this citizens committee was the hardest working of any he has seen in his 30 years in public services. Their dedication was outstanding.

Annexation Hearing for 87.677 Acres of Land from Berkshire Township to the Village of Galena

Mr. Wuertz reconvened the hearing at 7:35 p.m.

All those wishing to speak were sworn to truthful presentations.

Mr. Wuertz asked Mr. Whitney to report his ruling on whether Mr. Ward's request to subpoena was appropriate.

Mr. Whitney responded, as he understands Mr. Ward was requesting that one of the parties signing the petition for annexation be called to determine if any type of fraud was used to obtain her signature. Judge Markus ruled that no member of the Board should act as an adversary of either side of an annexation. To call someone and ask this type of question would be taking sides in the process and would be improper. Due to the research he has done regarding this point, he now feels this board does not hold subpoena power in an annexation hearing.

Liz Hazelbaker representing CountryTyme and Mrs. Miller reviewed again the requirements for annexation and noted they have all been meet by the applicants.

Mr. Ward asked what is the size of Galena . Mr. Cannon responded it is 436 acres.

Mr. Dick Czerniak of 8201 Dustin Road stated, in his research he feels there are grounds to justify that the land owners in the area not in the annexation do have the right to be considered when grating or denying an annexation. He noted the possible contamination of the Hoover Reservoir which supplies water for 500,000 people daily certainly should be considered for the general good of the whole area He noted that Judge Markus's decision stated the general good of the territory is ordinarily served, if it serves the good of the majority of the land owners. The fact that he used the word ordinarily could indicate that the other land owners could be considered. He went on to say another court has said the general good of the territory sought to be annexed is not son

ominous with whether the simple majority have signed the annexation petition. If that were the case, there would be no need for this hearing. The good of the territory is to be determined by this board, not just because people signed the petition. As Mr. Czerniak reads the law, it is up to the petitioners to prove that the general good is being served, and they have not proven their case on this point.

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He went on to say at the last hearing he provided newspaper clipping speaking to the possibility that the Village of Galena may have a hard time managing the sewer system. Unless the conditions change, the City of Galena will be missing three important offices, the Mayor, the Clerk and a City Council Member. If law suits come as a result of this annexation, of sewer service failures, etc. how will the City of Galena pay for the legal cost as well as other fees. He noted Mr. Whitney's ruling on the subpoena power and read Judge Marcus's opinion footnote on page 8 (*It is not appropriate for the Board to Build a case for or against annexation.*) He feels this would be true if you questioned the property owner of your own volition without any reason. However, he brought it up at the August meeting that there might have been some pressure put on the property owner to sign, and Mrs. Smith brought it up at the September meeting. He feels questioning the property owner would only be responding to the concerns brought forth.

Mr. Wuertz then added this is a mute point since Mrs. Miller provided an affidavit stating she willingly signed and wants the annexation.

Mr. Jeff Porter, Assistant City Attorney of Columbus, was present representing the City of Columbus. After reading a section of the Code, he asked the Commissioners to consider his interpretation of that code to be that the people who may petition to annex to a municipal corporation are the owners of real estate that is adjacent to the municipal corporation. In this case, the owners of the property that is adjacent to the municipal corporation is the City of Columbus, and the City is opposed to the annexation. Mr. Whitney asked if he has case law to support this. He responded he did not, but it is the straight reading of 709.02 and the meaning of adjacent within the determination of Ohio Law. He feels it is clear from the meaning of the Code.

Mrs. Martin asked if this has come up in other cases, and is there case law to support that. Mr. Whitney responded there is case law supporting that adjacent property owners do not have to be signator in support of the petition.

Mr. Porter further stated he feels there was gerrymandering in this petition that was unlawful. He feels the contiguous property is being used to their gain. Mr. Wuertz and Mrs. Martin noted that Columbus has done this very thing in the past when it was to their advantage to get what they wanted, now they are arguing the other side of the argument since this is not what they want in this case. Mrs. Martin stated it can't be both ways. Mr. Ward stated this is being done every day in court. A different client, a different argument.

Mr. Porter repeated that he feels that Middleton vs. McGee supports his argument, and he encouraged the Commissioners to deny the petition to annex.

Mr. Wuertz commented that the City of Columbus has expressed concern that the City of Columbus's drinking water could be contaminated. He asked if Columbus has been testing and monitoring the septic systems in the area to make sure they are not contaminating the water supply? Mr. Porter did not know if the individual septic systems were checked. He did know the water for the City of Columbus is monitored daily for safety. Mr. Wuertz then stated there are hundreds of home in the drainage of Hoover Reservoir, and if a number of those septic systems were to fail, that could be a health hazard as well.

Mr. Frank Celio asked Mr. Porter if he was aware that the City of Columbus currently has a high pressure sewer line in this area. Mr. Porter responded he was not aware of this.

Ms. Margaret French of 9087 Dustin Road a land owner in the area expressed concern for the traffic that will be generated with this development. She noted there is a blind spot on Dustin Road, and with increased traffic, there could be major traffic problems in the area. She added Galena is having trouble supporting itself, and they have no police force. Mrs. Martin explained the Sheriff is responsible for law enforcement in the area. Ms. French stated she has called the sheriff, and it takes an hour for a response. The County is too large for the Sheriff to respond effectively and quickly. She does not feel

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Galena can handle this project. She encouraged the Commissioners to deny the petition.

Mr. Mike Boye of 9061 Dustin Road presented a map showing wildlife that is currently present in the nature preserve. He fears this development will harm this wildlife. He encouraged the Commissioners to deny the annexation.

Mr. James Hamilton, 8571 Dustin Road voiced his opposition to the annexation. He stated his children ride bikes and roller blade on Dustin Road. If more traffic comes, they will not be able to utilize the road. This development will effect his family's life by bringing traffic congestion. He moved from Gahanna to get away from congestion. He knew there would be housing on this property at some time. He did not oppose the 16 house development proposed by CountryTyme, but he feels this new proposal for up to forty-eight houses is not acceptable. Mr. Wuertz reminded all that zoning controls the number of homes, not the annexation.

Mrs. Martin asked Mr. Pike to clarify some points. In response to Mrs. Martin's questions, Mr. Pike explained the County owns the treatment plant and maintains the plant, the Village of Galena owns the lines and maintains the lines. He explained there are two lift stations maintained by the Village of Galena and it is most likely the problem of sewage backing up into homes would have been a malfunction of the lift station. The treatment plant has the capacity to handle the additional purposed development. Mrs. Martin then asked Mr. Pike if he would have any concerns regarding a sewer line near the Hoover Reservoir with regards to drinking water safety. He responded, the County currently has three similar instances where sewer lines run under bodies of water—2 under Alum Creek near Powell Road and Worthington Road intersection—Alum Creek just north of Cheshire Road Bridge. These have been in services for several years. It is his opinion if the system is properly installed and maintained, there should be no problems.

Mr. Ward asked how many taps are on the Galena system. Mr. Pike did not know the number of taps, but did know it is only about ¼ of the capacity.

Mike Boye clarified the lines go under Alum Creek Reservoir. Mr. Pike stated that was correct.

Mr. Frank Celio stated he has completed a study per ODOT standards and there is adequate site distance on Dustin Road for a public road. The entrance to the development would be designed by the County Engineer and a traffic study would have to be prepared and provided to him. He is investigating two routes for the sanitary sewer and only one would require a force main which would go north along St. Rt. 3 up to the intersection of Galena Road and tie into a lift station. The second route and preferred route would be along Dustin Road with the permission of Berkshire Township.

Mr. Boye commented he understands Berkshire Township is opposed to the Dustin road plan, and the State of Ohio is opposed to the Rt. 3 plan. Mr. Celio stated neither have stated they are opposed.

Ms. French stated this route would be very close to the cemetery.

Mr. Ward asked if the route through the preserve has been ruled out. Mr. Celio stated if the City of Columbus would give permission they certainly would like to go through the preserve. He feels it would be safe to do so. Mr. Ward then stated as he recalls, there was testimony that Galena would use eminent domain to go through the preserve. Ms. Hazelburger stated there was a mention of eminent domain by the Columbus attorney, but she did not mention any use of eminent domain.

Mr. Ward commented that he knows from personal knowledge that the Health Department does test and monitor septic systems and aeration systems. He also noted he has seen the way the City of Columbus tests the water and feels sure it is monitored closely for safety.

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Mrs. Martin asked Mr. Whitney to clarify the point of gerrymandering. He responded that the courts have upheld that gerrymandering is permitted. Polaris is an example of this, the City of Columbus gerrymandered the annexation so the majority of the voters would be in Franklin County allowing the annexation to be heard in Franklin County with the Conrail right of way being the contiguous area. Case law is clear. Regarding the Village of Galena not having a full council and a clerk -- Mr. Whitney responded, if there were no Commissioners and no Clerk for the County, the County would not shut down. The Village of Galena has stated they can provide services; therefore, that commitment stands as acceptable. According to Judge Marcus's opinion, it is not the role of the Commissioners to go through with a fine tooth comb the business of the Village of Galena.

Mrs. Martin explained to Ms. French that the good of the territory around the area to be annexed cannot be considered. It is only the good of the territory to be annexed that can be considered.

Ms. Hazelbaker added it is the policy of the State of Ohio that it is more prudent for the environment to have centralized sanitary sewer than to have septic systems. It is common in the State of Ohio to have sewer lines cross creeks, rivers and reservoirs. She added she does not understand why the City of Columbus is against the annexation since they currently have approximately 14 acres of land in the Village of Galena on the other side of the creek. Other concerns expressed are valid but should be addressed as development plans.

Mr. Czerniak asked Ms. Hazelbaker how the general good of the territory will be served with this annexation. She responded, the centralized sanitary sewer is for the general good of the territory. This is a significant improvement. She explained she has provided information in her brief to back up this comment. (brief is available in file at the Commissioners office).

Mr. Ward asked if people in the area surrounding will have the option of hooking into the sewer line. Mr. Celio stated the line would be large enough and be capable of accepting hook ups, but he did not know if that would be permitted unless they annexed into Galena. A Galena Council member responded that to his knowledge there is no one on the sewer line outside the corporate limits of Galena except the camp grounds which was a special situation.

Mr. Boye commented that he feels the referendum on the ballot on November 2, 1999, will pass, and if the annexation is not granted, there will be only 6 homes on this property not 16 homes. Six septic systems as opposed to 48 homes linked to a sewer system. The overall good of this development with relation to sewage would be that 6 septic systems would be better for the general good. Mrs. Martin commented that she respects Mr. Boye and realizes this is his opinion, but the environment is better served with centralized sewer than septic systems. Mr. Wuertz added centralized sewer is monitored more closely than septic systems.

Mr. Ward moved to close the hearing, and Mrs. Martin seconded. The vote was unanimous.

The Commissioners discussed the possibility of giving their decision at this meeting. Mr. Wuertz and Mrs. Martin stated they are ready to render their decision. Mr. Ward felt there was new information given, and he would like time to review the new information.

Mr. Wuertz stated, considering the court cases and the ruling given when you analyze the five areas the Commissioners are able to consider, he feels this is a clear cut case. It all comes down to what the land owners want for their property. There was even a case where the services provided would be less after the annexation than they were before and the court ruled-- if the property owners are willing to accept less services, it is their right to do so.

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Commissioner Ward did not want to vote on this annexation until after the upcoming election on November 2, 1999. He did not want to do anything that might influence voters.

Discussed the upcoming referendum vote and how the outcome of this hearing and the outcome of the vote is two separate issues. It was decided to schedule the decision for this annexation on **November 29, 1999, at 7:15 p.m.**

Approval of Delaware County Hazardous Materials Plan. Mike Crawford presented the plan and explained the changes made in the plan from previous years which are minor housekeeping changes. Commissioners Approved

Approval of Sanitary Sewer Plans for Orchards at Big Bear Farms and Bryn Mawr at Delaware Section 2. Commissioners Approved

Approval of Sanitary Subdivider’s Agreements for Westerville Reserve, Phases 1 & 2. Commissioners Approved

Approval to Execute Lease Agreement for Suite 1 (Probate and Juvenile Court) at 94 North Union Street. Mr. Hanson gave a brief overview of the lease and explained this area will be used for a third court room and an office for the Family Court Program which entails concentrated efforts to work with parents of abused and neglected children. This is very intensive oversight by the magistrate and case management. Mr. Rodman has stated he would have no problem with the County Maintenance Department doing work on the building. Mr. Hanson clarified for Mrs. Martin that there is money in the grant for furnishings and remodeling. Mr. Wuertz checked on the cost of the rental per square footage and he discovered the charge in this contract is in line with the going rate. Commissioners Approved

Authorizing the Execution of Grant Agreement for the County’s FY 99 Formula CDBG Program. Commissioners Approved

Approval to Modify the Bid Opening Date and Time for the Ostrander Accessible Restroom Project. Commissioners Approved

There being no further business, the meeting adjourned.

Deborah Martin

James D. Ward

Donald Wuertz

Letha George, Clerk to the Commissioners