

THE DULY ELECTED MEMBERS OF THE BOARD OF COUNTY COMMISSIONERS OF WASHINGTON COUNTY, OHIO, MET IN SPECIAL SESSION ON JANUARY 22, 2018 IN ACCORDANCE WITH OHIO REVISED CODE 305.05, WITH THE FOLLOWING MEMBERS PRESENT: RICK G. WALTERS, PRESIDENT, DAVID A. WHITE, VICE PRESIDENT, AND RONALD L. FEATHERS, MEMBER. THE MEETING WAS CALLED TO ORDER AT 10:00 A.M. BY THE PRESIDENT OF THE BOARD. MR. WALTERS LED THOSE ATTENDING IN THE PLEDGE OF ALLEGIANCE TO OUR FLAG.

Also attending were Muskingum Township Trustees Gary Doan and Ken Schilling, Warren Township Trustees Jeff Knowlton and Joe Vickers, Belpre Township Trustees Asa Boring and Curt Welch II, Fearing Township Trustee Allen Miller, Liberty Township Trustee Dale Lauer, County Engineer Roger Wright, County Prosecutor Kevin Rings, Assistant Prosecutor Nicole Coil, Washington County Board of Health President Dick Taylor, Washington County Board of Health Member Richard Daniell, Michael McCauley and Dave Hendrickson from the City of Marietta, Janelle Patterson from *The Marietta Times*, Todd Baucher from WTAP News, Brett Wharff from WMOA Radio, Clerk Rick Peoples, and many visitors interested in the Commissioners' response to the Ohio Attorney General pertaining to the proposed Devola sewer project, including:

Ingrid Baumann	Robert Baumann	Kermit Stoffel
Nancy Szabo	Don Johnson	Sharon Dearth
Vicki Ayers	John Richardson	Eric Anderson
Robert Vernon	Steve Porter	Richard Best
Sandy Best	Glen Pawloski	Marcia Pawloski
Don Atkins	Judy Atkins	Gary Douglas
Kathy Douglas	Tom Chalfant	Bruce Hill
Steve Hutchinson	Dale Ford	Jedd Butler
Gary Forsyth	Roger Kalter	Larry Schwendeman
Jim Settlage	Leonard Stevens	James Bonnette
L.G. Moody	Cassidi Shoaf	Gerald McGregor
Marcus Riley	Susan Francis	K.D. Francis
Dwaine Berg	David Browne	Michael Gulliver
Bruce Kelbaugh	Dan Latstetter	Paul Morse
Bill Jahn	Paul Rauch	Alan Ralston
John Trautner	Sue McKnight	Tom Pabst
Patty Rhoades	Georgia Hall	Kathie Wagner
Chad Schwendeman	Steve Schoonover	Helen Leach
Barb McFarland	Delbert McFarland	John Ellis
Susan Ellis	Joe Lang	Joe Sailer
Janet Sailer	Joshua Porter	Sid Bowers
Carol Lang	Keith Kimmich	Kevin Gutberlet
Emerson Shimp	AlCoffman	Richard Lank
Craig Hill	Leo Gandor	Tom Alberts
Lisa Riley	Kim McMichael	Art Mendicino
Jerry Jenks	Ed Russell	

President Walters welcomed those attending this Special Meeting, and explained the purpose of the meeting is to consider a response to the Ohio Attorney General's letter dated January 8, 2018, requesting the Commissioners to accept the terms of the consent order presented to them as it pertains to the sewerage of properties in the community of Devola.

Mr. Walters invited comments from those attending:

Roger Kalter said the Washington County Commissioners came to the City of Marietta and asked for help in correcting the water pollution problem in Devola. He said during the past several years much testing has been done, which has proven that contamination of soil continues. Mr. Kalter noted some residents in Devola want to transition from septic to sewer, but are intimidated by neighborhood "bullies" and are not comfortable speaking up about it. He said in 2018 all Marietta City residents are paying more for sewer plant upgrades because the County hasn't complied with the Intergovernmental Agreement. Mr. Kalter noted the County actually turned down \$1.4M in low-interest loans and grants for financial assistance for the Devola project. He said now every Washington County homeowner is going to pay the price. Mr. Kalter noted Commissioner David White agreed to the Intergovernmental Agreement when he was serving on Marietta City Council.

Jim Settlage asked who exactly is impacted by this action of the Ohio EPA. Commissioner White said the five incorporated villages in the County do not include Vincent or Devola. He said there is no intent to sewer other communities at this time.

Kevin Gutberlet said he bought a house in Devola a few years ago, and property taxes have increased significantly since he moved in. He said he keeps his septic tank clean and in good repair. He asked why he should have to pay for others who may not keep their septic systems in good order. He said if he is told he needs to repair his system, he does just that and others should as well.

Ingrid Baumann asked what the recourse is for someone who has a failing septic system. She asked if her system fails and she can't legally have her drywell replaced, and she doesn't own the required one acre for leach field, then there's nothing she can do that would comply with Health Department and EPA regulations.

Washington County Health Department Board of Directors President Dick Taylor said it is true that drywells are no longer permitted, and there have been no new drywells in Washington County since 2006. He said although the regulations require at least one acre for a leach field, there may be a variance allowed for good cause.

Washington County Assistant Prosecutor Nicole Coil said the drywell issue is confusing. Noting that drywells have not been allowed since 2010, she said there seems to be some confusion about drywells in place before that time. Ms. Coil noted the Ohio EPA Director believes all drywells are now illegal, but legal counsel for the EPA suggests that drywells installed prior to 2010 are grandfathered in and are indeed legal.

Mr. Taylor explained the difference between a drywell and a leach field. He said even if they sewer all of Devola and Oak Grove there is no assurance the nitrates level in the soil will decrease. He noted the impact of agriculture along the rivers could be significant, and may forever cause elevated levels of nitrates. Mr. Taylor said the Ohio EPA seems to have a much lower acceptable level for nitrates than other parts of the country.

Richard Best asked if agriculture up the Muskingum River toward Lowell and Beverly could negatively impact nitrate levels in this area.

Mr. Taylor noted drinking water was the original problem identified by the EPA, but that has now changed to ground water. He said it is evident nitrate levels are lowering since the reverse osmosis system was installed in Devola. He said he believes this requirement by the EPA to sewer Devola is a secondary attempt to correct a problem that is already remedied.

Ed Russell said the Ohio EPA and project engineer informed Devola residents of a problem with nitrates in drinking water at a public meeting in Devola on or about October 5, 2010. He noted nothing was said at that time about drywells or septic systems. Mr. Russell said a \$2M reverse osmosis system fixed the problem, but now they're focusing on ground water contamination. Mr. Russell said e-Coli has been mentioned in communications from the Ohio EPA. He said a new sewer system won't prevent e-Coli, as all animals carry it. He said Devola voters elected the Commissioners to represent them, not City Council. Mr. Russell said he doesn't consider the Intergovernmental Agreement to be a legal document, and he doesn't believe Marietta City Council can levy taxes on property owners outside the City limits.

Kim McMichael said he owns property in the City of Marietta. He said he wonders who is paying the most for the sewer plant upgrade. He said it sounds like it is a losing proposition to fight this issue any longer.

Ms. Coil said at this point the Ohio EPA isn't fighting the science of the matter, but more the fact that the prior Commissioners agreed to do something and the current Commissioners aren't following through.

Larry Schwendeman noted the reason the majority of people are at this meeting is to ask the Commissioners to continue the fight against the Ohio EPA. He said a large portion of Devola residents signed a petition urging them to continue the fight.

Joshua Porter said he has lived in Devola for six or seven years, but has always lived with a septic system. He said his concern is over the estimated cost to homeowners, which he says seem to be increasing as time goes on. He said he wonders why Devola homeowners are being forced to pay for something they don't want or need.

President Walters reminded those attending that the sole purpose of the meeting is to address something that was signed and agreed upon by prior Commissioners.

Mr. Porter noted the prior Commissioners apparently entered into agreement with the Ohio EPA without talking with local residents who would be significantly impacted.

Belpre Township Trustee Asa Boring said this discussion and action by the Commissioners is about what happened in the past, and how it might impact the future. He noted his township experienced a similar situation when Woodlawn Acres was required by the Ohio EPA to be sewered. He said one family simply could not afford the high cost to homeowners, and were forced to move. Mr. Boring said according to the local Health Department there has been only one e-Coli incident reported in Washington County, and there has never been a death due to e-Coli. He said even though Devola and Oak Grove are now the target areas, there will be others in the future. Noting the EPA hasn't yet finished their studies, he said he wonders why they are pressing the issue at this time. Mr. Boring said this appears to be a "power-play" by the Ohio EPA.

Asking for a show of hands of those in favor of sewerage Devola, Gary Forsyth counted three. The remainder of those attending, he said, are apparently not in favor or transitioning from septic to sewer.

Keith Kimmich quoted Thomas Jefferson: "... we must not let our leaders load us with perpetual debt ...". He said he has lived in Devola for 59 years, and believes "the socialists want us to pay \$86 to save them \$24." Mr. Kimmich said he wishes the previous Commissioners were here so they could answer some questions. He said only a few Devola residents actually want this proposed sewer system, along with the City of Marietta.

Bill Jahn said he lives in Oak Grove. He said lawn fertilizer can result in higher levels of nitrates near the EPA's testing sites, so there is no assurance septic tanks are contaminating groundwater. He noted everyone seems to be concerned about the local area's soil and water, but communities like Newark, Coshocton, and nearby to Youngstown have water running to Marietta and entering the Ohio River. He said surface water drains from farms all along the rivers, through Marietta and on to the Mississippi River. Mr. Jahn said he was told the cost to homeowners might be spread over 20 or 30 years, but the tap-in fee and other costs must be paid up front. He said the hidden fees must also be considered.

Noting the overdig for new residential construction can be up to 12' to achieve 10', Steve Hutchinson said he wonders how much overdig will be needed to construct a sewer line to achieve 18'.

Glen Pawloski, a Devola resident, thanked those attending for their support and their persistence. He said he personally has counted 557 homes in the Devola sewer target area, and questioned why the Ohio EPA suggested there are 320 homes and the former Commissioners referred to 400 homes. Mr. Pawloski suggested the number of homes listed by the EPA may have been low to make the original \$5.9M project more appealing. Mr. Pawloski said the average cost per OEPA's June 2011 report, page 24 (320 houses), is \$18,437 per homeowner, not \$10,000 or \$14,750 the former Washington County Commissioners had projected for 400 homes. He said the ratio scalability of the \$5.9M project to 557 Phase-2 homes is over \$10.2M. Mr. Pawloski said the Devola community does not need or want this double remedy. He noted at least 239 Devola properties are noted on a petition urging the Commissioners to continue to fight in their favor of not sewerage Devola.

Commissioner White moved and President Walters seconded a motion to direct the Washington County Prosecutor to respond to the Ohio Attorney General, on behalf of the Washington County Commissioners, that the Washington County Commissioners accept the terms of the consent order requiring sewer construction along Lawton Road by July 1, 2020, and the remainder of the unsewered parts of Devola by July 1, 2025.

Commissioner White said his decision is not based on his ideology nor is it his desire. He said it is purely one of pragmatism. He said he has made no secret of the fact that he has always known it would eventually come to this, and the Commissioners are now at a horrible crossroads. Any route the Commissioners choose, Mr. White said, is a very rocky and uncomfortable one. He said he is in the position of selecting the least damaging path for all concerned. Options presented by Mr. White include:

1. Acquiesce to the demand of the Ohio Attorney General. He noted it will be an eight year process of constructing the infrastructure necessary to collect waste from Devola – not cheap, unfair, and not easy.
2. Refuse and attempt to defend the Commissioners' action in court. He said the County has only the very slightest of chances of winning, and after spending scores of thousands of dollars, perhaps even hundreds of thousands of dollars, the County would then only be in a temporary state of success. The Attorney General would then undoubtedly file an appeal. Against them with unlimited resources, the County would be compelled to spend more multiple thousands of dollars and stand even less chance of winning, Mr. White said he believes. All this money from the County, he said, is money that belongs to the citizens of Washington County. And finally, after countless thousands are expended, Mr. White said, the County might possibly gain the opportunity to go all the way to the Supreme Court. He noted every argument the County can possibly bring against this is actually a constitutional property rights issue. After all of this, Mr. White said, the County will have spent hundreds of thousands of dollars, perhaps even a million. He told those attending that these dollars are not only their dollars, but also those of the entire citizenry of Washington County.
3. Likely a result of having gone to court over this matter, Mr. White said, would be this third option of a partial win for both parties. He said the court might (and probably would) decide that the 2012 order is valid, but would modify it with different completion dates. He noted this is exactly what the Attorney General is giving the County now, and they are promising no penalties ... penalties which, by the way, can be millions of dollars!

Mr. White said the only practical thing to do is to begin. Noting he doesn't like it, Mr. White said any other path is extremely hazardous and would be very costly to everyone.

Mr. White said he would be remiss not to point out the great successes the Commissioners, as a group working with many of those in the audience, have been able to accomplish. He noted the 2012 orders required a start date of 2013, but it is now 2018 and the project hasn't yet begun. He said he believes no one has ever stood in the gap and pushed back the EPA for five years! He noted the EPA has also acquiesced to allowing the County eight years to complete the project, and they also acquiesced to foregoing any penalty.

Mr. White said he knows this is a disappointment to many of those attending, but he offered these words of encouragement:

"This is far from a capitulation. On the contrary, I would categorize this as a precedent-setting victory. We have achieved what very few, if any, have ever been able to accomplish when dealing with a bureaucratic monster. To be certain, we did not totally annihilate the dark side, but negotiated an end to this that is the least harmful to our people.

I congratulate each and every one of you for fighting the good fight and beating up the giant.

Thank you.”

Commissioner Feathers assured those attending that he and his colleagues are not ignoring the Devola community members’ best interests. He said Washington County residents have elected people in the past, and they will elect people in the future. Noting significant ongoing dysfunction in other levels of government, Mr. Feathers said nobody seems to care what local government is doing. He said what is being done to the residents of Devola is “more dangerous than anything Bill Clinton, Barack Obama, or Donald Trump can do to them”. He said all three Commissioners have put much thought and prayer into their decisions. Mr. Feathers said the County is being threatened with payment of \$11M, but now is not the time to stop the fight. He said the Commissioners should not surrender, not give up, and let a judge decide. Mr. Feathers noted the City of Marietta has spent over \$170,000 to fight the County, but the County has spent less than \$700.

President Walters called for a vote.

Calling of the roll resulted in the following vote: Ronald Feathers no, David White aye, Rick Walters no. Motion failed.

RE: ADJOURNMENT

Mr. White moved and Mr. Feathers seconded a motion to adjourn. A calling of the roll resulted in a unanimous vote in favor. The meeting adjourned at 11:12 a.m.

_____, President

_____, Vice President

_____, Member

_____, Clerk