

THE DULY ELECTED MEMBERS OF THE BOARD OF COUNTY COMMISSIONERS OF WASHINGTON COUNTY, OHIO, MET IN REGULAR SESSION ON DECEMBER 20, 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 9:00 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 Trustee Gary Doan, Karen Doan, Flite Freimann from Washington County Department of Job and Family Services, Glen and Marcia Pawloski, Tom Alberts, Jim Raney, Geoff Schenkel, Kathy and Steve Hutchinson, Charles Thompson, County Engineer Roger Wright, Chad Adkins from *The Marietta Times*, and Clerk Rick Peoples.

**Washington County Commissioners
AGENDA
9:00 a.m., December 20, 2018**

9:00 Business Meeting
9:30 Tim Cole, Director of Humane Society of Mid-Ohio Valley – Update
10:00 Flite Freimann, Director, Job and Family Services – Personnel
10:30 Roger Wright, County Engineer – OPWC Projects

UNFINISHED BUSINESS

Addendum to Labor Agreement, Developmental Disabilities
Re-appointment to Children Services Board

NEW BUSINESS

Approve Agenda
Approval of previous meeting's minutes
Additional Appropriation – JFS
Advance – JFS
Transfer – County General
Transfer – Engineer
Transfer – Soil & Water
Then & Now's
Request to Lease Vehicles – JFS
Contract with Career Center - JFS
Court Order to Install Sewer Line in Devola
Engagement Letter for Devola Sewer Construction Legal Services
Letter from Prosecutor, Conflict of Interest
Annual DTAC Report from Treasurer
Invoice #4, W.P. Snyder Restoration Project, Phase III
Request to Proceed with Solicitation of Bids to Serve as Depository of County Funds
Engineer - Contract with Bob Lane's Welding for Emergency Landslip Repair on CR 33
Engineer – Agreement with ADR & Assoc. for Design of Landslip Shaft Wall on CR 42
Engineer – Road Maintenance Agreement with AEP

DATES TO REMEMBER

Courthouse Closed, **Tuesday**, December 25, Christmas Day
Special Meeting, 4:00 p.m., **Monday**, December 31, to Adopt Appropriations for 2019
Courthouse Closed, **Tuesday**, January 1, New Year's Day
Monthly County Home Meeting, 8:30 a.m., **Tuesday**, January 8, at County Home
Annual Organizational Meeting, 9:30 a.m., **Thursday**, January 10
Finance Committee, 10:00 a.m., **Tuesday**, January 15, in Conference Room A

RE: APPROVAL OF AGENDA

Mr. White moved and Mr. Feathers seconded a motion to approve the agenda, with the following adjustments:

Add: Memorandum of Understanding – Child Support Enforcement Agency
Letter of Engagement for Bond Counsel
Additional Appropriation - Engineer
Delete: Additional Appropriation – JFS
Advance - JFS

A calling of the roll resulted in the following vote: Rick Walters aye, David White aye, Ron Feathers aye. Motion passed.

RE: APPROVAL OF MINUTES

Mr. Feathers moved and Mr. White seconded a motion to dispense with the reading and approve the minutes of the December 13, 2018 Regular Meeting.

A calling of the roll resulted in the following vote: Rick Walters aye, David White aye, Ron Feathers aye. Motion passed.

RE: ADDITIONAL APPROPRIATION

Mr. White moved and Mr. Feathers seconded a motion to approve request for the following additional appropriation:

<u>Department</u>	<u>Account</u>	<u>Amount</u>
Engineer	210-0542-57100	\$ 68,981.20

A calling of the roll resulted in the following vote: Rick Walters aye, David White aye, Ron Feathers aye. Motion passed.

RE: TRANSFERS

Mr. White moved and Mr. Feathers seconded a motion to approve the following requests for transfer of funds:

<u>Department</u>	<u>From</u>	<u>To</u>	<u>Amount</u>
County General	100-0101-53400	100-0109-51001	\$ 1,313.61
	100-0101-53400	100-0170-51001	\$ 451.13
	100-0101-53400	100-0240-53000	\$ 130.00
	100-0101-53400	100-0240-51101	\$ 0.23
	100-0101-53400	100-0700-51101	\$ 37.76
Engineer	210-0541-57100	200-0540-49100	\$ 68,981.20
Soil & Water	200-2040-54400	200-2040-51001	\$ 3,000.00

A calling of the roll resulted in the following vote: Rick Walters aye, David White aye, Ron Feathers aye. Motion passed.

RE: THEN & NOW'S

Mr. Feathers moved and Mr. White seconded a motion to approve the following Then & Now's:

Dept	Account	Vendor	Amount
Sheriff	100-0381-54400	Insight	\$ 165.50
Sheriff	100-0381-53000	Monroe Co. Treasurer	\$ 276.25

A calling of the roll resulted in the following vote: Rick Walters aye, David White aye, Ron Feathers aye. Motion passed.

RE: REQUEST TO LEASE VEHICLES

Mr. White moved and Mr. Feathers seconded a motion to approve a request from Flite Freimann, Director of Washington County Department of Job and Family Services, to lease three (3) vehicles from C&C Dodge Toyota.

A calling of the roll resulted in the following vote: Rick Walters aye, David White aye, Ron Feathers aye. Motion passed.

RE: CONTRACT WITH CAREER CENTER

Mr. Feathers moved and Mr. White seconded a motion to approve a contract between the Washington County Department of Job and Family Services (JFS) and the Washington County Career Center (Career Center), in the amount not to exceed \$9,450.00, during the period January 7, 2019 through May 31, 2019, for the Career Center to provide appropriate training programs for eligible JFS clients, as prepared and requested by Flite Freimann, Director, Washington County Department of Job and Family Services.

A calling of the roll resulted in the following vote: Rick Walters aye, David White aye, Ron Feathers aye. Motion passed.

RE: MEMORANDUM OF UNDERSTANDING, CSEA

Mr. White moved and Mr. Feathers seconded a motion to approve a Memorandum of Understanding between the Washington County Department of Job and Family Services and the Washington County Commissioners, on behalf of the Child Support Enforcement Agency (CSEA), whereby JFS may disburse to CSEA, during the period January 1, 2019 through December 31, 2019, up to \$180,000.00, for TANF and Comprehensive Case Management and Employment activities, and to allow Mr. Walters to sign the Memorandum, as prepared and requested by Kim Hinkle, Director, Washington County Child Support Enforcement Agency.

A calling of the roll resulted in the following vote: Rick Walters aye, David White aye, Ron Feathers aye. Motion passed.

RE: COURT ORDER TO INSTALL SEWER LINE IN DEVOLA

Mr. White moved and Mr. Feathers seconded a motion to proceed with compliance of a ruling from Judge Linton D. Lewis, Jr., received November 29, 2018, ordering the Commissioners to proceed with planning for and construction of a sewer system to service the entire Devola area.

Commissioner Feathers said the Commissioners for the past nearly six years put everything they could into an effort to fight the Ohio Environmental Protection Agency (EPA), eventually enlisting the services of the Washington County Prosecutor's Office. That all came to an abrupt end, though, on November 29, 2018, when Judge Lewis rendered his Order in favor of the EPA and against the County, and directed the County to proceed with planning and construction of a new sewer line in the community of Devola. After discussing the Order with two legal teams, he said, it was determined an appeal would most likely not result in favor of the County, and could actually incur additional expense to the County.

Mr. Feathers said this is not what he desired, or expected. He said the Court essentially "threw out the science" and rendered its decision solely on the commitment the previous Commissioners made to the EPA.

Responding to questions from Tom Alberts about how the sewer line will be constructed, where the line will run, and how it will connect to his house, Commissioner White said it is too early to know answers. He said the Commissioners will keep the community informed by conducting public meetings as soon as more information is known. Mr. Alberts said he appreciates all the hard work of the Commissioners in fighting this mandate from the EPA.

Marcia Pawloski said she, too, appreciates the work of the Commissioners. She said she's been taught that "you're innocent until proven guilty", but the EPA has found Devola households guilty even though there is no stench in the air, no unacceptable levels of nitrates, and no damage to health. She said it is completely unfair that Devola residents have to accept the ruling rendered by Judge Lewis.

President Walters said the court order is going strictly back to contract law, noting the previous Commissioners had agreed to sewer Devola.

Glen Pawloski also thanked the Commissioners for standing up to the EPA. Quoting another Devola resident, Mr. Pawloski said this action required by the EPA "might be legal, but it certainly isn't honest". He said he remembers when there were overflow crowds at Commissioners' meetings objecting to the requirement to transition from septic to sewer. He reminded the Commissioners over 400 Devola property owners, representing a majority of those properties impacted, signed a petition against the EPA's directive and encouraging the Commissioners to continue the fight on their behalf. He said Mr. Feathers once said he would fight this "all the way to the Supreme Court". He asked if that is no longer true.

Mr. Feathers said this effort to fight the EPA has been time-consuming. He said the Commissioners represent not only those residents in Devola, but approximately 61,000 Washington County citizens. He said the Court and the EPA have put the Commissioners, and the County, in an impossible situation. Mr. Feathers said unless the Commissioners are willing to risk the huge financial penalty that might be incurred as a result of continued refusal to sewer Devola, further court action is not feasible. He said the Commissioners are in a "bureaucratic minefield", and he cannot be responsible for the millions of dollars in penalties that could be assessed. Mr. Feathers apologized for not being successful in his effort on behalf of the residents of Devola. He said while he never promised to stop this action of the EPA, he did say he'd put up a fight. He said "we fought, but we did not lose".

Ms. Pawloski asked what he meant by "we did not lose". Mr. Feathers said this Order by the Court does not require financial penalty to be paid, which could have been in the millions of dollars. He said it does, however, require the County to proceed with planning and construction.

Mr. Feathers said he will not vote to appeal the Order of the court. He said the County has incurred relatively little cost in fighting this battle, approximately \$2,000. Commissioner White noted legal advisors believe the County would have little-to-no chance for success in appeal.

Kathy Hutchinson asked who would be responsible for repair if contractors damage landscaping during construction of this sewer line. Mr. White said he believes the homeowner would be responsible, but it is too soon to determine that.

Mr. Pawloski said that if federal law is superior to state law, with recent changes in regulations the EPA must use "reasonable benefit/cost analysis" before requiring such action as is now required in Devola. He noted both the Health Department and scientific tests have determined there is no health risk caused by levels of nitrate in the soil of Devola. He said the Commissioners have until December 29 to appeal this court order, and he encouraged the Commissioners to table any action and postpone their decision until "the eleventh hour".

Commissioner White said he believes the only acceptable action that might now be taken is for property owners to file their own suit against the EPA.

President Walters asked for a vote on the matter at hand.

A calling of the roll resulted in the following vote: Rick Walters aye, David White aye, Ron Feathers aye. Motion passed.

President Walters read a press release he had prepared.

Mr. White moved and Mr. Feathers seconded a motion to enter the document in the record of proceedings, as it speaks for all three Commissioners.

Press Release

Washington County Commissioners

In September of 2012, a previous Board of Commissioners and unelected officials from the Ohio Environmental Protection Agency entered into an agreement to sewer parts of Devola. This decision has regrettably resulted in a deprivation of property rights for several Devola landowners.

Over the past five years, this Board of Commissioners has argued that any decision regarding the rights of individual property owners should be made by a court of law because this Board of Commissioners believes in open hearings and transparency.

Throughout this process, the Board of Commissioners has held numerous public meetings to hear from affected residents and to communicate its intent to have the requirement to sewer be determined by an impartial tribunal.

This spring, after failed negotiations, the Ohio EPA filed a lawsuit to compel the Board of Commissioners to begin construction of the sewer.

During the week of November 29, after written arguments were presented by both parties, the Court ordered the Board of Commissioners to begin the process of sewerage in the areas included within the Director's Final Findings and Orders. No other areas in Washington County are impacted by this decision.

While we are disappointed with the Court's decision, we appreciate that we had a chance to present our arguments. The Court found that the changed circumstances were not enough to meet the terms and conditions of the 2012 Director's Final Findings and Orders. In short, the Court did not agree that the implementation of the reverse osmosis system had sufficiently addressed the nitrate contamination in the ground water.

Working with the EPA, we will develop a General Plan and reasonable time line for the construction and implementation of the sewer system.

We regret that the decisions of the prior Board of Commissioners will create an economic burden for not only the landowners in the impacted areas of Devola, but also for all of our current sewer customers. However, as we have done throughout this process, the Board of Commissioners will continue to keep the public informed and will do everything that it can do to lessen the burdens for the landowners involved.

A calling of the roll resulted in the following vote: Rick Walters aye, David White aye, Ron Feathers aye. Motion passed.

RE: ENGAGEMENT LETTER FOR DEVOLA SEWER CONSTRUCTION LEGAL SERVICES

Mr. Feathers moved and Mr. White seconded a motion to accept an engagement letter for Devola sewer construction legal services from Bricker & Eckler, Attorneys at Law, at the blended rate of \$350.00 per hour for any attorney from that firm that works on the project.

Commissioner White said although he identified some areas of concern with the approach being taken by the Bricker & Eckler firm, he has since gotten clarification and resolution and he is satisfied with the proposal.

Commissioner Feathers said the legal firm will help the Commissioners with all aspects of the project. He said such a huge project requires legal expertise from start to finish. He said Bricker & Eckler will first work with the EPA to determine an appropriate timeline for the project. Mr. Feathers said total fees to be paid to Bricker & Eckler might reach between \$30,000 and \$50,000 over the life of the project, but that is a good investment.

Mr. Alberts asked for assurance, which he received from the Commissioners, that experienced civil engineers will be involved in planning for this construction.

A calling of the roll resulted in the following vote: Rick Walters aye, David White aye, Ron Feathers aye. Motion passed.

RE: ENGAGEMENT LETTER FOR BOND COUNSEL FOR DEVOLA SEWER PROJECT

Mr. Feathers moved and Mr. White seconded a motion to accept an engagement letter for Devola sewer project bond counsel from Bricker & Eckler, Attorneys at Law, at a fixed-fee to be determined at the time the method of project financing is confirmed.

A calling of the roll resulted in the following vote: Rick Walters aye, David White aye, Ron Feathers aye. Motion passed.

RE: LETTER FROM PROSECUTOR KEVIN RINGS

The Commissioners acknowledged receipt of a letter from Prosecutor Kevin Rings dated December 17, 2018, responding to a request from the Commissioners for an opinion as to whether his office would have a conflict of interest in representing the Washington County Commissioners in any litigation which may arise in relation to the proposed merger of Washington County Department of Job and Family Services and Washington County Children Services Agency. President Walters said Mr. Rings determined there would be a conflict of interest, as his office currently represents both the Commissioners and Children Services.

RE: ENGAGEMENT OF ATTORNEY(S) FOR LEGAL SERVICES RELATING TO PROPOSED MERGER OF JFS AND CHILDREN SERVICES

Mr. Feathers moved and Mr. White seconded a motion to engage Bricker & Eckler, Attorneys at Law, to represent the Board of Commissioners of Washington County in the event of any legal action brought forward in the proposed merger of Washington County Department of Job and Family Services and Washington County Children Services Agency.

Commissioner Feathers said attorney representation will be required if there is a "frivolous" suit filed by Tim Loughry, President of the Board of Directors of the Children Services Agency, as the Prosecutor determined he cannot represent the Commissioners.

A calling of the roll resulted in the following vote: Rick Walters aye, David White aye, Ron Feathers aye. Motion passed.

RE: ANNUAL DTAC REPORT FROM TREASURER

The Commissioners acknowledged receipt of an annual DTAC report for the year ending December 14, 2018, reflecting total revenue of \$48,893.09, appropriations of \$124,847.00, estimated expenses of \$39,355.57, and anticipated fund balance of \$228,584.09.

RE: INVOICE FOR W.P. SNYDER, JR. RESTORATION PROJECT

Mr. White moved and Mr. Feathers seconded a motion to approve invoice #4 for the W.P. Snyder, Jr. Restoration Project, Phase III, in the amount of \$65,500.00, contractor Lepi Enterprises.

The Clerk said this is the final draw from the contractor for this project, which has experienced significant delay due to river flooding. He said the invoice was prepared by Fred Smith at the Ohio History Connection, and has been reviewed by the Ohio Department of Transportation.

A calling of the roll resulted in the following vote: Rick Walters aye, David White aye, Ron Feathers aye. Motion passed.

RE: SOLICITATION OF BIDS FOR DEPOSITORY OF FUNDS

Mr. Feathers moved and Mr. White seconded a motion to proceed with solicitation of bids to serve as the depository of Washington County public funds during the period May 1, 2019 through April 30, 2023.

The Clerk explained what will transpire in this process of receiving proposals from banks to work with the County, and that he is working with County Treasurer Tammy Bates on the bid requirements.

A calling of the roll resulted in the following vote: Rick Walters aye, David White aye, Ron Feathers aye. Motion passed.

RE: CONTRACT WITH BOB LANE'S WELDING FOR EMERGENCY LANDSLIP REPAIR

Mr. Feathers moved and Mr. White seconded a motion to approve contracting with Bob Lane's Welding, in the amount of \$22,383.28, for emergency landslip repair of County Road 33, as requested by County Engineer Roger Wright.

A calling of the roll resulted in the following vote: Rick Walters aye, David White aye, Ron Feathers aye. Motion passed.

RE: AGREEMENT WITH ADR & ASSOCIATES FOR DESIGN SERVICES

Mr. Feathers moved and Mr. White seconded a motion to approve an Agreement with ADR & Associates, Inc., in the amount of \$23,000.00, for professional services in the design of a drilled shaft wall for landslip repair on County Road 42, as requested by County Engineer Roger Wright.

A calling of the roll resulted in the following vote: Rick Walters aye, David White aye, Ron Feathers aye. Motion passed.

RE: ROAD MAINTENANCE AGREEMENT

Mr. Feathers moved and Mr. White seconded a motion to approve a Road Maintenance Agreement with AEP Ohio Transmission Company, Inc., including CR 76, CR 8, and CR 340, for ingress and egress of equipment scheduled for use in AEP's upcoming installation of new transmission lines from Macksburg to Devola, as requested by County Engineer Roger Wright.

Mr. Wright said this agreement requires AEP to assume responsibility for repair of any damage caused by the transport of heavy equipment on county roads during the project.

A calling of the roll resulted in the following vote: Rick Walters aye, David White aye, Ron Feathers aye. Motion passed.

RE: UPDATE ON THE HUMANE SOCIETY OF THE MID OHIO VALLEY

Tim Cole, Director of the Humane Society of the Mid Ohio Valley, updated the Commissioners on the care and disposition of animals at the Shelter over the past year. He noted through November 30, 2018 the Shelter had taken in 861 dogs and 1,062 cats. He reported a live disposition of 80% of animals at the Shelter, and euthanizing of 57 animals. Mr. Cole said the year has been very busy at the Shelter, and hasn't slowed down in November like normal. He said he is pleased to report the adoption rate this year is approximately 25% higher than in recent years, largely due to changes in adoption requirements.

President Walters thanked Mr. Cole for all he does for the animals and the Humane Society, and especially for making policy changes to allow for more adoptions in Washington County.

RE: COMMENTS FROM VISITORS

Muskingum Township Trustee Gary Doan wished the Commissioners a Merry Christmas. Geoff Schenkel said it is always good to hear things directly, rather than to read them or hear them on the news, and he thanked the Commissioners for the opportunity to attend their meeting. Jim Raney also wished everyone attending a Merry Christmas, and reported he is attending the meeting as a new member of the Humane Society of the Mid Ohio Valley Board of Directors. Commissioner Feathers thanked him for agreeing to serve on the Board of Directors and for learning more about the activities at the Shelter and what is expected of him as a Board member.

RE: PERSONNEL ISSUES AT JFS

Flite Freimann, Director of the Washington County Department of Job and Family Services, informed the Commissioners Kelly Bauerbach will retire from his Department on January 31, 2019, following more than thirty (30) years of service to Washington County. He noted her last day of work, however, will be December 28, 2018.

Mr. Freimann said he is pleased to report a continuing and expanding agreement with the Washington County Boys & Girls Club to provide invaluable after school care not only at the Club, but also at several schools around the County.

Mr. Freimann said he is also very pleased that he is meeting monthly with representatives from Washington State Community College, Washington County Career Center, and Building Bridges to Careers to address and improve workforce development initiatives for Washington County residents.

RE: EXECUTIVE SESSION

Mr. White moved and Mr. Feathers seconded a motion to enter into Executive Session to discuss personnel issues, including compensation and employment of public employees.

A calling of the roll resulted in the following vote: Rick Walters aye, David White aye, Ron Feathers aye. Motion passed, and the Commissioners entered Executive Session at 10:05 a.m. President Walters invited Flite Freimann, Director of Washington County Department of Job and Family Services, to attend.

The Commissioners returned to Regular Session at 10:17 a.m.

Mr. White moved and Mr. Feathers seconded a motion to allow the Director of the Washington County Department of Job and Family Services to implement appropriate changes to the management structure at the Department of Job and Family Services.

A calling of the roll resulted in the following vote: Rick Walters aye, David White aye, Ron Feathers aye. Motion passed.

RE: OPWC PROJECTS

County Engineer Roger Wright provided to the Commissioners an updated Township Road Mileage report, noting the townships receive more 1% Permissive Sales Tax funds per mile of roadway than the County Engineer receives for County roadways. He noted his department's share of Permissive Tax funds is decreasing, but the need for road and bridge funds is increasing. He said there is no allocation of Permissive Sales Tax funds for bridge repair and/or replacement.

Mr. Wright reviewed with the Commissioners two upcoming projects partially funded by the Ohio Public Works Commission (OPWC). The first project, roadway base stabilization, requires \$468,000 in-kind work and local contribution, and \$400,000 in loans from OPWC. The second project, roadway resurfacing, requires \$217,000 in-kind work and local contribution, and \$131,000 in loans from OPWC. Mr. Wright asked the Commissioners to consider providing the \$150,000 in local contribution for the first project, and \$91,000 in local contribution for the second project.

RE: ADJOURNMENT

Mr. Feathers moved and Mr. White seconded a motion to adjourn. A calling of the roll resulted in a unanimous vote in favor. The meeting adjourned at 10:30 a.m.

_____, President

_____, Vice President

_____, Member

_____, Clerk