

**THE DULY ELECTED MEMBERS OF THE BOARD OF COUNTY COMMISSIONERS OF WASHINGTON COUNTY, OHIO, MET IN SPECIAL SESSION WITH REPRESENTATIVES FROM THE CITY OF MARIETTA ON AUGUST 19, 2015 IN ACCORDANCE WITH OHIO REVISED CODE 305.05, WITH THE FOLLOWING MEMBERS PRESENT: DAVID A. WHITE, PRESIDENT, RICK G. WALTERS, VICE PRESIDENT, AND RONALD L. FEATHERS, MEMBER. THE MEETING WAS CALLED TO ORDER AT 9:00 A.M. BY MARIETTA CITY SAFETY-SERVICE DIRECTOR JONATHAN HUPP.**

Also attending were:

Bill Jahn	Bill Dauber	Ed Russell	Earl Worstell
Edith Newman	Alfreda Huck	Paul Rauch	Linda Forsyth
Laura Bradley	Dale Ford	Rob Myers	Keith Kimmich
John Hambrick	Dick Taylor	L.G. Moody	Kevin Francis
David Miller	Robert H. Vernon	Richard Daniell	Walter O'Connor
Mary O'Connor	Diane Fleming	Phillip Fleming	Gary W. Douglas
Frances Brown	Ines Allen	Jacob Grasley	Angela Grasley
David Carver	Jeajun Carver	Steven Pfeiffer	Elaine A. Huck
Gregory T. Dent	Tom Stephanik	William Stuchel	Tom Pabst
Marcia Pawloski	Glen Pawloski	Gary W. Miller	Steve Hutchinson
Kathy Hutchinson	Ingrid Baumann		

Janelle Patterson from *The Marietta Times*  
Todd Baucher from WTAP News  
Justin Bradley from WMOA Radio

Joe Matthews, Mayor, City of Marietta  
Paul Bertram, Law Director, City of Marietta  
Jonathan Hupp, Safety Service Director, City of Marietta  
Joe Tucker, Engineer, City of Marietta  
Roger Kalter, Councilman, City of Marietta  
Mike McCauley, Councilman, City of Marietta  
Tom Vukovic, Councilman, City of Marietta  
Kathy Downer, Councilman, City of Marietta  
Michael Mullen, Councilman, City of Marietta  
Nancy Johnson, Clerk of Council, City of Marietta

Alison Cauthorn, Assistant Prosecutor, Washington County  
Nicole Coil, Assistant Prosecutor, Washington County  
Rick Peoples, Commissioners' Clerk, Washington County

**AGENDA: Washington County Commissioners  
Special Meeting  
AGENDA  
9:00 a.m., August 19, 2015  
Lookout Park Community Center  
801 Lancaster Street  
Marietta**

The Board of Washington County Commissioners will discuss with representatives from the City of Marietta the Intergovernmental Agreement for Sanitary Sewer Services.

**MEETING SUMMARY:**

Mr. Hupp stated the purpose of the meeting is to discuss the Intergovernmental Agreement. He distributed and read aloud a Notice and Agenda prepared by the City. The Notice and Agenda stated:

*Pursuant to Article IV.G (page 10) of the Intergovernmental Agreement for Sanitary Sewer Services (the "Agreement") entered on May 12, 2011 between the City of Marietta (the "City") and Washington County (the "County"), the City hereby provides this written notice on August 19, 2015, that it is the City's position that the County is in breach of the Agreement, including but not limited [to] the County's failure [to] comply with its obligations set forth in Article II (pages 4-6) of the Agreement.*

*Pursuant to Article IV.G of the Agreement, the City is entering into good faith negotiations for a period of 30 days in an attempt to settle issues with regard to the County's breach of the Agreement. The City would like to use the meeting scheduled with the County on August 19, 2015 to begin these discussions. The City requests that the County provide detailed information at the August 19, 2015 meeting with regard to the following preliminary issues and obligations of the County as set forth in Article II.A (page 4) of the Agreement:*

**Funding.** *Status of the County's funding for construction of wastewater collection systems for areas of Washington county set forth in the Agreement and connection dates set forth in*

*Schedule A (existing Devola sewer customers, Oak Grove-Phase One, future Devola sewer customers, Oak Grove Phase Two); and*

**Permits.** *Status of the County obtaining permits for the wastewater collection systems for areas of Washington County set forth in the Agreement and connection dates set forth in Schedule A; and*

**Construction.** *Status of the County's bids or other activities to commence construction of the wastewater collection systems for areas of Washington County set forth in the Agreement and connection dates set forth in Schedule A; and*

**Ordinances or Resolutions.** *Status of the County adopting and enforcing ordinances, resolutions, or other rules and regulations providing for sanitary sewer service charges to customers served by the County's wastewater systems, as set forth in Article II.E (page 5) of the Agreement.*

Following the order of the Agenda for the meeting, Mr. Hupp asked the Commissioners if they have arranged funding for construction of wastewater collection system(s) for areas of Washington County listed in Schedule A of the Intergovernmental Agreement.

Commissioners' President White noted none of the current Commissioners were in office at the time of entering into this Intergovernmental Agreement. He said the Commissioners are currently working with the Ohio EPA to revise the scope of the project in Devola.

City Engineer Joe Tucker said he is aware the County had secured a \$1,000,000 low-interest loan and a \$400,000 grant, but lost those awards due to lack of significant progress with the project in Devola.

Mr. Hupp asked if there are other plans to fund construction project(s).

Commissioner Feathers said there are no other plans at this time, as the County is awaiting revision of project scope from the Ohio EPA.

City Law Director Paul Bertram said the involvement of the Ohio EPA has nothing to do with this Intergovernmental Agreement. He said the City believes the County is in breach of the Agreement, and he needs to know the intent of the County with regard to the contract entered into on May 12, 2011.

Mr. White said it would be the "epitome of idiocy" to proceed with a project before the EPA and County agree upon the scope of the project.

Commissioner Feathers noted the new water system in Devola has had a positive impact on Devola. He questioned whether it is right to remove personal property rights of citizens outside the City of Marietta to fund an operation of the City.

Mr. Bertram again noted the Ohio EPA has no part in this contract between the City and the County. He said there is an Agreement in place, and the County is not adhering to the provisions of that Agreement.

Mr. Hupp also said the Agreement is between the two entities, and the Ohio EPA has no part in it. He said he cannot stop the Agreement. He asked the Commissioners how they are moving forward with the Agreement, regardless of the EPA's work with the County on the Devola project. He also asked the status of a sewer project in Oak Grove.

Mr. White said the County cannot be expected to move forward with any project in Oak Grove until the issues with Devola are resolved.

Moving to the next topic on the Agenda, Mr. Hupp asked the Commissioners if they have obtained any permits.

Mr. White said the County has no permits at this time. Mr. Feathers said the County had a permit for Devola but it expired due to concerns over the scope of the project. He said he has no idea why this Intergovernmental Agreement was signed without impacted Devola residents being considered and consulted. Mr. Feathers said he doesn't understand why Oak Grove is included in the Agreement, as appropriate tests have yet to be conducted in and around Oak Grove. He noted the County is willing to start to pay for its share of capital costs as per the Agreement, but the Commissioners are not willing to remove personal property rights simply because this Agreement is in place.

Mr. Hupp re-phrased this statement from Mr. Feathers to: "The Commissioners are willing to walk away from a signed Agreement."

Commissioner Walters said the County is prepared to pay its 11.7% share of construction cost as noted in the Agreement.

Mr. Hupp commented the upgrades to the City's wastewater treatment plant were designed and built with anticipated additional flow from outlying communities.

Mr. White said he disputes that statement from Mr. Hupp. He said he was a member of

Marietta City Council at the time the Agreement was entered into. He said City Wastewater Plant Superintendent Steve Elliott assured City Council extra flow could be accommodated with adjustments to the (then) existing wastewater treatment plant.

Mr. Feathers asked Mr. Hupp if the upgraded plant needed to run at full capacity to be effective.

Mr. Hupp said it is his understanding the system needs to run at "certain" capacity to be efficient and effective. He apologized for the absence from this meeting of Steve Elliott, who could better answer the questions from the Commissioners. He said Mr. Elliott was unable to attend due to medical issues.

City Engineer Joe Tucker informed those attending that the Intergovernmental Agreement was not hastily entered into by either party, and public meetings were held at which the Commissioners were involved.

Mr. Tucker said, with regard to Oak Grove and Reno, the County hired a sanitary engineer to do an extensive study and review prior to the Commissioners entering the Agreement. He agreed conditions change over time, but he said the City needs to know the County's intent.

Mr. White said the Commissioners are awaiting definite direction from the EPA before moving forward with any sewer project.

Responding to Mr. Hupp's question if the Commissioners have reviewed the recent Ohio EPA Director's Modified Findings & Orders, Mr. White said the Commissioners have reviewed it and they are preparing a response to not accept those Orders as written.

Addressing the third item on the Agenda, Mr. Hupp asked the Commissioners if they have planned or started construction of wastewater collection systems in any of the areas of Washington County set forth in Schedule A of the Agreement.

Mr. White said the County cannot do any construction project until it is on "solid ground" with the Ohio EPA.

Explaining how the 11.7% County share was calculated, Mr. Tucker noted:

Schedule A of the Agreement includes numbers of homes that would be connected to a sewer line from each community.

The perception that the new wastewater treatment plant is dependent upon new customers is incorrect.

Debt service is calculated in the 11.7%.

Additional flow and revenues from new customers are critical to the design, capacity and operation of the plant.

There is no additional surcharge to new customers.

Mr. White and Mr. Hupp agreed the Agreement is fair in its cost sharing between the City and the County.

Mr. Hupp asked the Commissioners to formulate a plan and communicate that plan to the City as quickly as possible.

To Mr. White's comment that the Commissioners appreciate this meeting which was originally requested in April of 2014, Mr. Bertram responded that the City has indeed met with the County since then. He said the City now wants to move forward with the Intergovernmental Agreement, no matter what the EPA says. He also said the City wants to know what the County is going to do about this "completely legal" Agreement. Mr. Bertram indicated the City is ready to work with the County on timeline issues, if that is the only roadblock. He said the City needs to know when homes in Devola and Oak Grove will be brought online.

Mr. White said he believes 30 days to respond is not realistic. He noted the EPA apparently continues to want all homes in Devola and Oak Grove sewerred, and he doesn't agree with that.

Commissioner Feathers said that while the Agreement may be "fair" to both the City and the County, he believes it is incumbent upon all elected officials to look out for the rights of citizens and it is out of the scope of the authority of the Commissioners to demand tie in.

Mr. Tucker said he has read the cost estimate for construction may be between six and seven million dollars. He asked the Commissioners if there has been a study of installing the sewer line(s) behind homes, rather than in streets, to reduce costs.

Mr. Feathers said that has been reviewed, but due to the layout of homes in Devola the costs would not be significantly lower. He said at no point has the County stopped considering the situation in Devola, and the goal with the EPA is to address the "hot spots" in Devola only and thereby protect the rights of all residents in that community.

Mr. Tucker then asked if the Commissioners have tried to determine a cost analysis by year for Devola residents.

Mr. Feathers said the Commissioners have worked with the County Commissioners Association of Ohio (CCAO) and area legislators to determine an assessment to homeowners is possible over the life of a loan. He said a payout over 40 years is not feasible, but over 30 years is. He noted an assessment per household might be approximately \$10,000. Mr. White said there are additional costs involved for homeowners, such as removal or destruction of existing septic system, which will make the financial burden severe.

Commissioner Walters commented he is new to the position of Commissioner, but he was aware of the Devola situation when he ran for the office. He said he understands how homeowners feel in being told to tie in when they believe it is not necessary. He said he also understands there needs to be consideration of the Agreement with the City, which will require development of a new timeline. Mr. Walters said that can't be done until issues are resolved with the EPA.

At this point Mr. Hupp invited comments from visitors to the meeting.

Greg Dent asked if any elected official has the right to change this Intergovernmental Agreement. Mr. Bertram said legislators are indeed bound by actions of predecessors. He said contracts are binding, but with consideration by both parties modifications to the Agreement can certainly be made. Mr. Bertram said this Intergovernmental Agreement is a binding contract for forty (40) years. Issues today, he said, are how to modify the Agreement to the satisfaction of both the City and the County.

Mr. Dent then expressed his concern that this particular meeting was held during the day. He suggested that public meetings, at which public input is sought, should be held at times most convenient to the public. Mr. Hupp said it was difficult to coordinate schedules of all parties involved. Mr. Bertram said the first meeting to discuss these sewer issues was actually held in January of 2004, resulting in a flow study to be initiated by the City. Commissioner Feathers noted there have been public meetings in Devola in the evening hours, with more than 300 residents attending.

Ed Russell said there was a town meeting in Devola on October 5, 2010 to present nitrate issues in the water. He said the new water system installed as a result of those issues has corrected the nitrate situation in Devola. Mr. Russell said this is the first he'd heard about payment option over a 30-year period. He said he heard the Modified Orders from the EPA may result in a cost of \$19,000 to \$25,000 per homeowner, which will likely result in 15 to 20 Lawton Road residents being forced into nursing homes or to live with children due to financial hardship. Mr. Russell said the Ohio Revised Code requires the Commissioners to bring it before citizens prior to signing such an Agreement, or the result is taxation without representation. Consequently, he said he considers this Agreement to be null and void because it was illegally entered into.

Robert Vernon said he is enraged that no City Council members attending the meeting have spoken to the issue at hand. He congratulated Commissioner Feathers for speaking up for the citizens. Mr. Vernon said Devola residents, even those along Lawton Road, don't want the City's sewer line. He said he hasn't heard any concerns for the residents of Devola from City Council. He noted there are now no nitrates in the drinking water in Devola, he believes public meetings should be held at times when the public can attend, and he is disappointed Devola residents don't have any vote in this matter. Mr. Bertram said his job is to work on behalf of the City of Marietta. He noted there is a contract in place and he is responsible to see that terms of that agreement are upheld. To that, Mr. Vernon said this project is apparently about to happen and the rights of those in Devola have been eliminated. Mayor Matthews informed Mr. Vernon that he was not in office when this Agreement was signed. He said the Commissioners, rather than the City, should have notified him of the meeting. He asked why the Commissioners have not sought grants to lower the cost to Devola residents. Mr. Vernon commented the Devola residents don't want any sewer service from the City of Marietta. Commissioner White recalled that he was on City Council at the time the Agreement was signed, and he signed it only with the assurance that additional flow from the County could be accommodated with adjustments to the existing wastewater treatment plant. Councilman Michael Mullen noted the County was at that time under an inordinate amount of pressure from the EPA to address other issues. He said the County approached the City to work jointly in a fair agreement to move forward in the best interests of citizens of both the City of Marietta and those of Washington County. Mr. Mullen said the two entities should be working with "the folks in Columbus" to help pay for this system they are requiring, rather than revising this Intergovernmental Agreement. He informed visitors attending the meeting there was no intent to develop the Agreement behind their backs. Mr. Vernon said he doesn't believe residents in Oak Grove and Reno will be any more receptive to such an Agreement than those in Devola. He said Devola residents simply don't want the City's sewer line in Devola.

Mayor Matthews clarified the misconception that this particular meeting is a public hearing. Instead, he said, it is a public meeting. He explained the difference between a hearing and a meeting.

Mr. Tucker noted for Mr. Vernon and others that the City's sewer line actually ends around Ewing School, at which point the County's sewer line runs to Devola.

Kathy Hutchinson noted this is an Intergovernmental Agreement, with established timelines. She said the timelines haven't been met, which renders the Agreement to be not viable. She asked if the entire Agreement should be considered null and void, and if a new Agreement

should be developed. Mr. Bertram said this contract is still a valid 40-year agreement, but it can be modified as needed. He said part of the Agreement has been met, but the remainder needs to be adjusted.

Glen Pawloski said, regarding wastewater treatment plant operations, a stress test could be, or should have been, used. Mr. Tucker responded he is not aware of any stress test having been done. Mr. Pawloski then said when the 2004 flow study was done, economic conditions in this area were strong. He said he believes the wastewater treatment plant enlargement is not necessary, and the City of Marietta is desperate for "lost taxpayers and lost revenues". Mr. Pawloski said, in his opinion, the City's assessment of the treatment plant situation is based upon outdated data, and Phase III of the upgrade is not now needed. To that, Mr. Tucker responded the treatment plant upgrade is not being developed based upon outdated data. He shared with Mr. Pawloski the flow capacity and average daily flow for the plant.

Mr. Hupp said there is a contract in place that has financial ramifications if breached, so the City now wants to work with the County to review and possibly modify the Agreement.

L.G. Moody said rather than fighting between people, the City, the County and the EPA should determine what is reasonable and appropriate. He said sewer is coming to Devola, so efforts should be focused on working together to make that happen in a responsible manner.

Steve Hutchinson read aloud a letter dated August 17, 2015 from Richard Daniell, President of the Washington County Board of Health, to Craig Butler, Director of the Ohio EPA, and the Washington County Commissioners. (That letter is on file in the Commissioners' Office.)

Laura Bradley noted her concern is the proposed Devola project is making Devola property very unattractive, to both buyers and sellers. In response, Mr. Hupp said that, although he is not a realtor, he is aware of Devola properties being marketed as "with sewer".

Ingrid Baumann asked if Lawton Road residents will incur some sort of financial penalty if they are the only ones to be sewerred. Mr. Bertram said the original Intergovernmental Agreement is predicated upon all of Devola being sewerred, but the Commissioners are working with the EPA to lower that project scope. As such, he said he cannot address any "penalties". Mr. Hupp said the same low-to-no interest loans and grants are available to the County as they are to the City, which may lower the cost to Devola homeowners. Mr. Tucker offered to work with the County on application for loans and grants to U.S. Army Corps of Engineers, Ohio EPA, Appalachian Regional Commission (ARC), Ohio Public Works Commission (OPWC), Ohio Water Development Authority (OWDA), and others that might be supportive of the project.

Ms. Malone asked if anyone has the authority to declare the Intergovernmental Agreement null and void. Mr. Hupp explained the difference between the water treatment plant and the wastewater treatment plant, and noted the Putnam Water Association addressed the water problem in Devola. Attorneys at the meeting said both parties to the Agreement must agree to any changes to the Agreement.

Mr. Pawloski asked the City representatives to request an end to this Agreement, and to work with the Commissioners to do just that. Mr. Hupp noted the EPA says there are still issues in Devola, and a sewer system is imminent. Mr. Pawloski reminded Mr. Hupp that he just heard a request from the President of the Washington County Board of Health to terminate the orders from the EPA since there is no longer a problem in Devola. Marcia Pawloski noted recent voluntary inspections of many septic systems in Devola revealed no problems. Mr. Pawloski then asked the City administration to dismiss Phase III of its wastewater treatment plant upgrade.

Mayor Matthews said the County will likely incur a fine as a result of noncompliance with the Intergovernmental Agreement.

Mr. Tucker suggested an evening public meeting with the City, the County, and the Ohio EPA would be most beneficial at this point.

The meeting adjourned at 11:15 a.m.

\_\_\_\_\_, President

\_\_\_\_\_, Vice President

\_\_\_\_\_, Member

\_\_\_\_\_, Clerk

