



**BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO**

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***TOM ARISS
PAT ARNOLD SOUTH
DAVID G. YOUNG***

**BOARD OF COUNTY COMMISSIONERS
WARREN COUNTY, OHIO**

MINUTES: Regular Session – November 18, 2014

The Board met in regular session pursuant to adjournment of the November 13, 2014, meeting.

Pat Arnold South - present

Tom Ariss - absent

David G. Young - present

Tina Osborne, Clerk - present

Minutes of the November 13, 2014 meeting were read and approved.

- 14-1772 A resolution was adopted to approve Permanent Employment and Pay Increase for Jacqualin Ruffner as Custodial Worker I for the Facilities Management Department. Vote: Unanimous
- 14-1773 A resolution was adopted to approve Permanent Employment and Pay Increase for Wesley Baker as Custodial Worker I for the Facilities Management Department. Vote: Unanimous
- 14-1774 A resolution was adopted to approve Permanent Employment and Pay Increase for Joshua Courtney as Custodial Worker I for the Facilities Management Department. Vote: Unanimous
- 14-1775 A resolution was adopted to approve Appointment to the Warren County Board of Developmental Disabilities. Vote: Unanimous
- 14-1776 A resolution was adopted to approve Appointments to the Warren County Rural Zoning Commission and the Board of Zoning Appeals. Vote: Unanimous
- 14-1777 A resolution was adopted to Appoint David G. Young to the Ohio-Kentucky-Indiana Regional Council of Governments Board of Trustees and Martin Russell as Alternate. Vote: Unanimous

- 14-1778 A resolution was adopted to approve the Contract for Police Protection with the Board to Township Trustees of Deerfield Township, on behalf of the Warren County Sheriff's Office. Vote: Unanimous
- 14-1779 A resolution was adopted to approve and enter into Agreement with One Site Dental, Inc. to provide Dental Services to the inmates at the Warren County Jail. Vote: Unanimous
- 14-1780 A resolution was adopted to approve County Motor Vehicle Tax (CVT-342) for the City of Middletown in the amount of \$73,212.00. Vote: Unanimous
- 14-1781 A resolution was adopted to approve an Emergency Replacement of the Two Heat Units at Well #4 and #6 at the North Wellfield. Vote: Unanimous
- 14-1782 A resolution was adopted to approve an Emergency to the Electrical Panel at the Otterbein Water Tower. Vote: Unanimous
- 14-1783 A resolution was adopted to Transfer Vehicle no longer being utilized by the Warren County Water and Sewer Department to the Warren County Agricultural Society. Vote: Unanimous
- 14-1784 A resolution was adopted to affirm "Then and Now" requests pursuant to Ohio Revised Code 5705.41(D) (1). Vote: Unanimous
- 14-1785 A resolution was adopted to approve various Refunds. Vote: Unanimous
- 14-1786 A resolution was adopted to approve a Subdivision Public Improvement Performance and Maintenance Security Agreement Release for Major League Development for Shadow Lake in Clearcreek Township. Vote: Unanimous
- 14-1787 A resolution was adopted to approve an Appropriation Decrease for Prosecutor's Crime Victim Grant Fund #245. Vote: Unanimous
- 14-1788 A resolution was adopted to approve Appropriation Decrease in Community Development Fund #261. Vote: Unanimous
- 14-1789 A resolution was adopted to accept an Amended Certificate and approve Supplemental Appropriation into Sheriff's Office LOEB Grant Fund #267. Vote: Unanimous
- 14-1790 A resolution was adopted to approve Supplemental Appropriation into TASC Substance Abuse Monitoring Fund #284-(2910)-2911. Vote: Unanimous
- 14-1791 A resolution was adopted to approve Supplemental Appropriation within Facilities Management Fund #467. Vote: Unanimous

- 14-1792 A resolution was adopted to approve Appropriation Adjustments within Sheriff's Office Fund #101-2210 and #101-2200. Vote: Unanimous
- 14-1793 A resolution was adopted to approve Appropriation Adjustment within Probate Court Fund #101-1250. Vote: Unanimous
- 14-1794 A resolution was adopted to approve Appropriation Adjustments within Board of Elections Fund #101-1300. Vote: Unanimous
- 14-1795 A resolution was adopted to approve Appropriation Adjustments within Emergency Services/Communications Center Fund #101-2850 and Emergency Services/Wireless 911 Fund #219. Vote: Unanimous
- 14-1796 A resolution was adopted to approve Appropriation Adjustment within Emergency Services / EMA Fund #264. Vote: Unanimous
- 14-1797 A resolution was adopted to authorize payment of Bills. Vote: Unanimous
- 14-1798 A resolution was adopted to approve Variance and Appeal of Conditions required for an Access Permit on Bethany Road in Deerfield Township for CT Devco, Inc. Vote: Unanimous
- 14-1799 A resolution was adopted to authorize Reimbursement to Monte and Kathy Stinson for property damage caused by a sewer backup at 5329 Harveysburg Road. Vote: Unanimous
- 14-1800 A resolution was adopted to ratify and confirm tentative assessment and determine to proceed with the design and construction of a sanitary sewer extension in the Irwin-Simpson Road Sewer Improvement Area in the Warren County Sewer District. Vote: Unanimous
- 14-1801 A resolution was adopted to reduce the amount of an Irrigation Meter Tap In Fee for the City of Middletown. Vote: Unanimous
- 14-1802 A resolution was adopted to approve the Transfer of Tina Powell to the position of Fiscal Coordinator within Warren County OhioMeansJobs Department from Cashier/Receptionist within Warren County Water and Sewer Department. Vote: Unanimous
- 14-1803 A resolution was adopted to authorize the posting of the "Cashier/Receptionist" position within the Water and Sewer Department, in accordance with Warren County Personnel Policy Manual, Section 2.02 (A). Vote: Unanimous

DISCUSSIONS

On motion, upon unanimous call of the roll, the Board accepted and approved the consent agenda.

The Board observed a moment of silence in memory of Warren County Corrections Officer Ciera Greene who passed away at the age of 23 on November 15, 2014.

ADJUDICATORY HEARING

VARIANCE AND APPEAL OF CONDITIONS REQUIRED FOR AN ACCESS PERMIT ON BETHANY ROAD IN DEERFIELD TOWNSHIP FOR CT DEVCO, INC.

The Board met this 18th day of November 2014, to consider the Variance and Appeal of Conditions required for an Access Permit of CT Devco, Inc., owner of record, for access to Bethany Road in Deerfield Township for the Villages of Crooked Tree Subdivision located within the City of Mason.

Commissioners South opened the public hearing by stating the time and purpose of the hearing and requesting the clerk to identify the following:

- i) The name and address of the Owner
- ii) Whether the Owner has a licensed attorney designated as its Agent or Representative in the Request
- iii) Identify each document filed with you in support of THE REQUEST
- iv) The Resolution # and Date setting THE REQUEST for an Administrative Hearing
- v) How and When was this Administrative Hearing advertised and do you have proof of publication

Commissioner South then read the Order for Proceedings as follows:

A. The Order for Proceeding

1st : The Board will hear from the **COUNTY ENGINEER** or his **DESIGNEE** first who will testify under oath. The **COUNTY ENGINEER** or his **DESIGNEE** will be subject to cross-examination by the **OWNER** or **OWNER'S** attorney.

2nd : The **OWNER** will be heard second. The **OWNER** will be given a reasonable opportunity to appear and testify in person under oath, may be represented by an attorney, and have a Court Reporter present at **OWNER'S** sole cost. **OWNER** is also entitled to call and examine witnesses who testify under oath, and to present documentary evidence into the Record.

3rd : **PROPOSERS** will be heard third. Any person who wishes to testify under oath in favor of the **REQUEST FOR VARIANCE AND APPEAL OF CONDITIONS** will be heard, and to present documentary evidence into the Record.

4th : **OPPOSERS** will be heard fourth. Any person who wishes to testify under oath in opposition to the **REQUEST FOR VARIANCE AND APPEAL OF CONDITIONS** will be heard, and to present documentary evidence into the Record. If an **OPPOSER** elects to testify in opposition to the **REQUEST**, the **OPPOSER** will be subject to cross-examination by the **OWNER** or **OWNER'S** attorney.

5th : **OWNER** may speak last. **OWNER** will be afforded the opportunity to testify under oath again and present any rebuttal evidence or rebuttal witnesses the **OWNER** desires to refute evidence or testimony offered by any Opponents.

B. The Rules for the Hearing

1) As President of the Board of Warren County Commissioners I shall administer an oath to each person who elects to testify, and our Clerk shall keep minutes. All proceedings shall be recorded and made a part of the Record.

2) The **OWNER** shall be given a reasonable opportunity to present the **OWNER'S** case, as the **OWNER** bears the burden of proof.

3) The **OWNER** or the **OWNER'S** Attorney may elect to cross-examine **PROPOSERS** and **OPPOSERS**. However, the **OWNER** or **OWNER'S** Attorney must conduct themselves with professionalism, courtesy and civility at all times. A witness shall allow a question to be fully stated before answering and likewise the person conducting the cross examination shall allow the witness to answer without interruption or talking at the same time. Disrespectful, discourteous, badgering or talking at the same time will not be tolerated by our **BOARD**. Failure to comply with this rule may result in the violator of the rule being prohibited from continuing to participate in the hearing.

4) **PROPOSERS** or **OPPOSERS** shall limit their testimony to five minutes. Our

BOARD may allow more time if a COUNTY COMMISSIONER deems more time is justified. Responses to questions asked to a Witness by A COUNTY COMMISSIONER or in response to cross-examination by the OWNER or OWNER'S Attorney shall NOT count against a Witness' allotted time.

- 5) Witnesses not called to testify at the request of the OWNER shall be limited to speaking only once.
- 6) Witnesses shall NOT direct any comments or questions to the audience.
- 7) Witnesses shall direct all testimony to our BOARD – no Witness shall direct his or her comments to the OWNER or OWNER'S Attorney unless in response to cross examination. Additionally, it is not the purpose of the Administrative Hearing for witnesses to ask questions about interpretation or meaning of the Access Management Regulations. If a Witness has a question, then ask it to the BOARD and our BOARD may answer it or ask the COUNTY ENGINEER or other County Staff to answer the question for the BOARD.
- 8) A COUNTY COMMISSIONER may ask questions to the OWNER, a PROPONENT or an OPPONENT at any time during the Administrative Hearing.
- 9) To be considered, documentary evidence must be accepted and admitted into evidence by our BOARD during this Administrative Hearing. The BOARD will NOT accept documentary evidence unless the OWNER, PROPONENT or OPPONENT submits a complete copy of the documents to be made part of the Record.
- 10) Letters, emails, petitions or other documents shall NOT be admitted into evidence or considered by our BOARD as such items are not subject to cross-examination. Nor shall our BOARD discuss with any person via telephone or in person any matters relating to this REQUEST FOR VARIANCE AND APPEAL OF CONDITIONS. The BOARD'S decision to grant or deny this REQUEST FOR VARIANCE AND APPEAL OF CONDITIONS will be based only upon the original filings, documentary evidence and testimony presented during the Administrative Hearing, which will be the whole Record.

Commissioner South administered the oath to Neil Tunison, County Engineer, and Kurt Weber, Chief Deputy County Engineer. She then requested the following information for the record:

- a. The location of the subject property
- b. What public roadway is the Owner seeking access to
- c. The date the County Engineer denied the Owner an Access Permit
- d. The justification for the County Engineer denying the Owner's Application for an Access Permit
- e. The applicable section or sections of the Access Management Regulations upon which the Owner is requesting a Variance and Appeal of Conditions required for an Access Permit.

Mr. Weber explained that the subdivision seeking access to Bethany Road is located within the City of Mason but the roadway is in Deerfield Township. He stated that the access permit was denied on September 17, 2014 due to not meeting Section 401.8.2-c requiring 750' of spacing between intersections. He then informed the Board that he has reviewed the Traffic Impact Study (TIS) and the Engineer's Office is now in support of the location of the intersection of Sentinel Oaks with Bethany Road, as required by the City of Mason in the conditions of approval.

Commissioner South administered the oath to David Brooks, CT Devco, Inc., owner of record, along with Kathy Dillenberger and Bob Garlock, Bayer Becker Engineers.

Mr. Brooks reviewed the proposed subdivision and request to connect to the Bethany Road. He stated that he purchased the house at the end of the cul-de-sac where the new roadway is proposed to be constructed approximately eight (8) years ago. He then stated he purchased the golf course eighteen (18) years ago. He reviewed that after many years of trying to make a profit with the golf course, he eventually had to close.

Mr. Brooks stated that the proposed subdivision is 60% housing and 40% open space. He stated that due to the cemetery located adjacent to the closed intersection, there is no other alternative location to locate the 2nd access to the subdivision.

Mr. Brooks stated that it is for the health, safety and welfare of the residents of the subdivision that the access appeal be granted and also stated the County Engineer's Office stated their recommendation to approve the appeal.

Commissioner South read into the record the following reasons a variance may be granted:

- (i) the variance would not be contrary to the public interest from the terms of the Access Management Regulations; and,
- (ii) owing to special conditions a literal enforcement of the regulations will result in unnecessary hardship; and,
- (iii) the spirit of the regulations will be observed; and,
- (iv) substantial justice is done if granted.

Commissioners South then stated the following:

In determining whether or not to grant a variance this Board will consider the following factors:

- (i) Whether or not granting a variance would deny all reasonable access.

- (ii) Whether granting a variance would endanger the public safety.
- (iii) Whether the hardship was self-created by the applicant or his agent.
- (iv) Whether granting the variance would hinder traffic movement or the proper operation of the public road.
- (v) Whether granting the variance would be consistent with the purpose of Access Management Regulations.
- (vi) Whether all feasible access options except granting a variance have been considered.

Kathy Dillenberger, Bayer Becker, stated that they have submitted the TIS and supporting documentation and have also reviewed with the Board the supporting documentation along with the extenuating circumstances relative to the cemetery making it impossible to meet the Access Management Regulations. She then stated that it is necessary to connect to Bethany Road for the health, safety and welfare of the residents of the area.

Bob Garlock reviewed the aerial map showing the existing access and stated that is no other safe option to provide a second access. He then stated that the access does not significantly impact Bethany Road or Hickory Point Drive according to the TIS.

Commissioner South opened the floor to anyone desiring to provide additional testimony in favor of or in opposition to the request for variance.

There was no one present desiring to speak.

Mr. Garlock described on the Record every document he desired the Board to rely upon to make its decision and stated a copy of the document has been made a part of the record.

Mr. Brooks then answered negatively to the following questions as asked by Commissioner South:

- (i) our BOARD has denied you the opportunity to present your position, arguments and contentions; or,
- (ii) our BOARD has denied you the right to offer and examine witnesses and present evidence in support into the record,
- (iii) our BOARD has denied you the right to cross-examine witnesses in opposition;
- (iv) our BOARD has denied you the opportunity to offer evidence to refute evidence or testimony offered in opposition;

(v) And, that our BOARD refused or failed to compel any witnesses' appearance or evidence at your request;

Upon further discussion, the public hearing was closed.

Commissioner Young stated he does not like the idea of higher density housing vs. a golf course but he does not own the property and he is not willing to purchase it. He then stated that the City of Mason approved the subdivision and this Board only has jurisdiction of the access appeal.

After applying the applicable law to the testimony and evidence presented during this hearing, the Board resolved (Resolution #14-1798) to approve the variance and appeal of conditions required for an access permit on Bethany Road in Deerfield Township for CT Devco, Inc.

Chris Brausch, Sanitary Engineer, was present for a work session to discuss the following matters:

- 1) Reimbursement request for a sewer backup at 5329 Harveysburg Road—Mr. Brausch informed the Board that tree roots from a neighboring property caused a sewer backup and the Stenson's property is lower than the closest manhole, causing the sewage to backup into their home. The sewer department now has the line on a frequent inspection schedule in an attempt to prevent any future backups; however, this was the third backup into their home.

Patty Solinski, Business Manager, explained the reimbursement policy stating they will reimburse a maximum of \$2500 towards expenses relative to a sanitary sewer backup.

Monty and Kathy Stenson, property owners, stated that the insurance only paid \$5000 towards the replacement of all duct work, carpet, tile, new bathroom vanities and new baseboards throughout the house. He requested the Board consider increasing their maximum reimbursement due to the extenuating circumstances.

Upon discussion, the Board resolved (Resolution #14-1799) to reimburse the difference from what the insurance paid vs. the actual cost of materials and also reimburse for cost to purchase and install a backflow preventer to help ensure this situation does not occur again.

The Board also discussed the concern relative to allowing homes to be constructed in situations where the homes are lower than the manhole and requested Mr. Brausch to consider that situation when reviewing plans for future subdivision approvals.

- 2) Ratify and Confirm Tentative Assessments for the Irwin Simpson Sewer Improvement Project—Mr. Brausch reviewed the events of the public hearing held at the Deerfield Township Administration Building and presented the legislation for consideration to proceed

with the project. Upon discussion, the Board resolved (Resolution #14-1800) to ratify and confirm tentative assessment and determine to proceed with the design and construction of a sanitary sewer extension in the Irwin-Simpson Road Sewer Improvement Area in the Warren County Sewer District.

- 3) Doug Atkins, Middletown City Manager, was present to discuss the City's current Gateway Enhancement Plan that includes a lot of landscaping and improvements being installed along the entrance into the City of Middletown inside Warren County. He explained that as part of the project, a 2" irrigation line has been installed that is part of the Warren County Water System and requested consideration in a fee waiver or reduction from the \$60,000 tap in fee.

Mr. Brausch stated he has no problem with the fee waiver but is concerned relative to the 2" line which he feels could be more appropriately served by a 1" line.

There was discussion relative to the approximately \$60,000 tap in fee for the 2" tap vs. the approximately \$17,000 tap in fee for the 1" line.

Upon discussion, the Board resolved (Resolution #14-1801) to reduce the amount of an Irrigation Meter Tap In Fee for the City of Middletown to the cost of a 1" line.

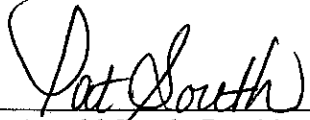
- 4) Brisben Reimbursement—Bruce McGary, Assistant Prosecutor, was present and gave background information relative to the request of WO Brisben for the Board to consider additional consideration relative to the reimbursement of cost for the construction of the pump station construction in association with the Village on the Green Subdivision which was oversized to serve a portion of the drainage basin within the Warren County Sewer Improvement Area.

There was discussion relative to the various options available to the Board and the desire for this administrative "nightmare" to end.

The Board stated their desire for staff to calculate what the amount should have been if the Water and Sewer Department would have calculated the reimbursement as required in the original establishing resolution vs. the per lot fee that was used and discuss those numbers at a later date.

The Board entered into a work session with Tiffany Zindel, Deputy County Administrator, to discuss the 2015 budget.

Upon motion the meeting was adjourned.




Pat Arnold South, President



David G. Young

Tom Ariss

I hereby certify that the foregoing is a true and correct copy of the minutes of the meeting of the Board of County Commissioners held on November 18, 2014, in compliance with Section 121.22 O.R.C.



Tina Osborne, Clerk
Board of County Commissioners
Warren County, Ohio