

**COMMISSIONERS JOURNAL NO. 74 - DELAWARE COUNTY
MINUTES FROM SPECIAL MEETING HELD FEBRUARY 3, 2021**

THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY MET IN SPECIAL SESSION ON THIS DATE WITH THE FOLLOWING MEMBERS PRESENT:

Present:

**Gary Merrell, President
Barb Lewis, Vice President
Jeff Benton, Commissioner**

RESOLUTION NO. 21-86

IN THE MATTER OF APPROVING A MEMORANDUM OF UNDERSTANDING WITH THE DELAWARE COUNTY FINANCE AUTHORITY FOR THE TRANSFER OF REAL PROPERTY LOCATED AT, AND IN THE VICINITY OF, 50 CHANNING STREET, DELAWARE, OHIO:

It was moved by Mrs. Lewis, seconded by Mr. Benton to approve the following:

WHEREAS, on November 30, 2020, the Delaware County Board of Commissioners (the "Board") adopted Resolution No. 20-1077, authorizing and directing the County Administrator to negotiate an agreement to facilitate the transfer and redevelopment of the real property located at, and in the vicinity of, 50 Channing Street, Delaware, Ohio; and

WHEREAS, the County Administrator recommends approving a memorandum of understanding with the Delaware County Finance Authority for the transfer of real property located at, and in the vicinity of, 50 Channing Street, Delaware, Ohio;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Delaware County, State of Ohio, that:

Section 1. The Board hereby approves the following Memorandum of Understanding and authorizes the County Administrator to approve and execute any documents necessary to close and consummate the transaction contemplated therein, including, without limitation, a quitclaim deed to transfer the subject property:

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU"), entered into this 3rd day of February, 2021, by and between the Board of Commissioners of Delaware County, Ohio [the "County"], and the Delaware County Finance Authority Board of Directors ["DCFA"]; and

WHEREAS, in accordance with sections 307.10 of the Ohio Revised Code, the County owns certain parcels of real property located at, and within the vicinity of, 50 Channing Street, Delaware, Ohio 43015, as more particularly depicted and described in Exhibit A attached hereto and by this reference incorporated herein ["Subject Property"]; and

WHEREAS, DCFA was created and organized under Chapter 4582 of the Ohio Revised Code for various purposes, including promoting economic development and housing in Delaware County; and

WHEREAS, pursuant to sections 307.10(B) and 4582.38 of the Ohio Revised Code, the County may transfer real property in fee simple belonging to the County and not needed for public use to DCFA for public purposes upon the terms and in the manner that it may determine to be in the best interests of the county, without advertising for bids; and

WHEREAS, the County and DCFA mutually desire to enter into the MOU to establish the terms and conditions by which the County will transfer the Subject Property to DCFA for the purpose of facilitating the sale and redevelopment of the Subject Property for mixed residential uses;

NOW, THEREFORE, in consideration of the foregoing and the further consideration of the promises, agreements and covenants hereinafter contained, the County and DCFA hereby enter into this MOU:

1. The County will transfer the Subject Property to DCFA by way of a quitclaim deed (the "Deed") that quitclaims all the rights, titles and interests of the County in and to the Subject Property. Said Deed will be delivered to DCFA at the time of consummation and closing of this MOU. The County's transfer of the Subject Property to DCFA shall be exclusively for the purpose of DCFA facilitating the sale and redevelopment of the Subject Property and shall be subject to the following conditions:

- (A) The DCFA shall enter into a real estate purchase and sale agreement with the Columbus Housing Partnership, d/b/a Homeport, on terms determined to be acceptable to both the County Administrator and the DCFA;
- (B) Occupancy and possession of the Subject Property by any subsequent purchaser shall not occur until such time as the County has vacated the Subject Property and removed all personal property, which is anticipated to be in March 2022, but in any case shall not be later than July 1, 2022;

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- (C) The County shall reimburse the DCFA for any legal, title insurance, surveying and related expenses that DCFA may incur as a result of the transactions contemplated herein;
- (D) Upon the consummation of the sale of the Subject Property and transfer from the DCFA to the subsequent purchaser, DCFA shall submit any sale proceeds back to the County, less any costs directly incurred by DCFA as itemized on the closing disclosure and not previously reimbursed by the County pursuant to Section 1(C) above and DCFA's administrative fee of two percent (2%) of the sale price.
2. DCFA may, subject to the conditions of this MOU, agree to sell or otherwise alienate the Subject Property, or any portion thereof, prior to the time that the Deed contemplated by this MOU has been delivered to DCFA.
3. The County shall pay, prior to the closing and consummation of this MOU and delivery of the Deed, any and all delinquent real estate taxes and assessments including penalties and interest, applicable to the Subject Property, whether then due and payable or to later become due and payable, for any year(s) prior to closing and a portion of the same for the year in which closing occurs, prorated through 11:59 p.m. on the day immediately prior to the date of closing. Undetermined taxes under this section shall be estimated and prorated based on a 365-day year and on the most recently available tax bill. The amounts so computed shall be final and shall not be adjusted after closing.
4. The consummation and closing of this MOU will occur at such time and place as the parties may agree, but not later than ten (10) days after the County notifies DCFA in writing that the County is prepared to consummate and close this MOU.
5. Except as may be otherwise agreed upon between the parties, DCFA will not take possession of the Subject Property, and the County's occupancy of the Subject Property shall continue, without payment of any rent to DCFA, until such time as the County vacates the Subject Property, which is anticipated to be March 2022, but in any case, shall not be later than July 1, 2022. The County shall remain responsible for the maintenance, repairs, insurance, and utility costs of and for the Subject Property until the closing of a sale of the Subject Property to a third party. The County shall also remain responsible for all regulatory compliance related to the underground storage tank(s) on the Subject Property and shall reimburse the DCFA for any and all costs the DCFA incurs with respect to the underground storage tank(s) on the Subject Property, including, without limitation, removal and remediation.
6. If the Subject Property, or a portion thereof, is damaged or destroyed by fire or other cause between the date on which this MOU is executed by the parties and the date on which title to the Subject Property is transferred to DCFA, the parties hereto may rescind this MOU, in which event the parties will be released from all duties, obligations and liabilities created by this MOU, or mutually agree to an amendment to this MOU to accomplish its stated purposes.
7. The County is conveying the Subject Property in an AS-IS, WHERE-IS condition, WITH ALL FAULTS, including all defects, known or unknown. Both parties are acting at arm's length to protect their own interests, and DCFA has and will use its own independent judgment concerning the sale and purchase of the Subject Property. The County does not make to DCFA, and the County expressly disclaims, any representations, warranties and/or guarantees, express or implied, oral or written, of any kind whatsoever as to the Subject Property, including but not limited to any warranties of title.
8. Any and all of the terms, conditions and provisions of this MOU shall be binding upon and shall inure to the benefit of the County and DCFA and their respective heirs, executors, administrators, successors and assigns.
9. This MOU will be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute but one and the same instrument. Signatures on this MOU may be transmitted electronically (by facsimile or by scan/email) and such signatures will be deemed to constitute original signatures and have the same effect as original signatures.
10. This instrument contains the entire agreement between the parties with respect to the subject matter contained herein, and it is expressly understood and agreed that no promises, provisions, terms, warranties, conditions or obligations whatsoever, express or implied with respect to the subject matter contained herein, other than herein set forth, shall be binding upon either party.
11. No amendment or modification of this MOU shall be valid or binding upon the Parties unless it is made in writing, cites this MOU and is signed by authorized representatives of the County and DCFA.

IN WITNESS WHEREOF, the parties hereto, namely the Board of Commissioners of Delaware County, Ohio and the Delaware County Finance Authority Board of Directors have executed this MOU on the date(s) indicated immediately below their respective signatures.

Section 2. This Resolution shall take effect immediately upon adoption.

Vote on Motion Mr. Merrell Aye Mrs. Lewis Aye Mr. Benton Aye

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RESOLUTION NO. 21-87

IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF EMPLOYMENT AND COMPENSATION OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL, FOR COLLECTIVE BARGAINING, AND FOR PURCHASE OF PROPERTY:

It was moved by Mrs. Lewis, seconded by Mr. Benton to approve the following:

WHEREAS, pursuant to section 121.22(G) of the Revised Code, a public body may hold an executive session only after a majority of a quorum of the public body determines, by a roll call vote, to hold an executive session and only at a regular or special meeting for the sole purpose of the consideration of any of the matters specified in section 121.22(G)(1)–(7) of the Revised Code; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Delaware County, State of Ohio:

Section 1. The Board hereby adjourns into executive session for Consideration of Employment and Compensation of a Public Employee or Public Official, for Collective Bargaining, and for Purchase of Property.

Vote on Motion Mr. Merrell Aye Mrs. Lewis Aye Mr. Benton Aye

RESOLUTION NO. 21-88

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

It was moved by Mrs. Lewis, seconded by Mr. Benton to adjourn out of Executive Session.

Vote on Motion Mrs. Lewis Aye Mr. Merrell Aye Mr. Benton Aye

RESOLUTION NO. 21-89

IN THE MATTER OF APPROVING A CONTRACT FOR PURCHASE AND SALE OF REAL PROPERTY WITH WONDERVICH, LLC, FOR REAL PROPERTY LOCATED AT 6305 FROST ROAD, WESTERVILLE, OHIO:

It was moved by Mr. Benton, seconded by Mr. Merrell to adopt the following resolution:

WHEREAS, the current lease for Delaware County Emergency Medical Services (“DCEMS”) Station 7 will terminate on April 1, 2021, and DCEMS has not exercised options to extend the lease; and

WHEREAS, the County Administrator and DCEMS Chief jointly recommend approving a Contract for Purchase and Sale of Real Property to acquire the real property located at 6305 Frost Road, Westerville, Ohio, as the new location for DCEMS Station 7;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, State of Ohio, hereby approves the following Contract for Purchase and Sale of Real Property with Wondervich, LLC:

**CONTRACT FOR PURCHASE AND SALE OF REAL PROPERTY
With Building(s)**

This Agreement is by and between the **Delaware County Board of Commissioners** (“Purchaser”) and **Wondervich, LLC** (“Seller”). Purchaser and Seller are referred to collectively in this Agreement as the “Parties.”

In consideration of the mutual promises, agreements and covenants herein contained, the Parties contract as follows:

- 1. Description of Property**
Seller owns certain real property consisting of 1.265 acres, more or less, improved with a ±9,200 ft² commercial building, located at 6305 Frost Road, Westerville, Ohio 43082, and bearing parcel number 317-313-03-024-000, which property is further described in Exhibit A attached hereto and, by this reference, incorporated herein (the “Property”).
- 2. Purchase and Sale; Contingencies**
The Purchaser agrees to purchase the Property from the Seller, and the Seller agrees to sell the Property to the Purchaser. Purchaser’s agreement to purchase is contingent, however, on the following occurring within forty-five (45) days of the date of this Agreement: (A) the Purchaser obtaining an owner’s policy of title insurance free of any encumbrances not accepted by Purchaser herein; and (B) the Delaware County Director of Facilities providing his opinion that the Property is suitable for the Purchaser’s intended uses after completion of the inspections permitted herein. The Purchaser may enter onto the Property to

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undertake any or all due diligence inspections of the Property it considers reasonably necessary, including without limitation geotechnical investigations and environmental evaluations to determine the existing condition of the Property. The Purchaser shall be required to restore the Property to its present condition in the event the contingencies stated herein are not met and Purchaser elects not to close this transaction.

3. Price and Consideration

The purchase price of the Property shall be Eight Hundred Fifty Thousand Dollars and Zero Cents (\$850,000.00), payable at closing in cash or cash equivalent (the "Purchase Price"). The Purchase Price shall constitute the entire amount of compensation due Seller for: (a) the Property to be conveyed, including the personal property hereinafter listed; (b) any and all damages to any residual lands of Seller; (c) Seller's covenants set forth herein; and (d) any and all supplemental instruments reasonably necessary to transfer the title of the Property.

Seller shall be exclusively responsible for all delinquent taxes and assessments, including penalties and interest, and for all other real estate taxes and assessments that are a lien on the Property as of the date on which this Agreement closes. The taxes and assessments for the current calendar year shall be prorated on an estimated basis to the date of acquisition of title or date of possession, whichever is earlier in time. Seller shall be responsible for any and all future installments of any special assessments levied and assessed against the Property, whether or not any such special assessment has been certified to the county auditor for collection, provided that such installments of special assessments shall be a lien on the Property as of the date of transfer of title. Purchaser may withhold in escrow a sufficient amount of the purchase money to satisfy the foregoing items to be paid by Seller; any balance remaining after such taxes, assessments, etc., are discharged shall be paid to Seller and any deficiency shall be the responsibility of Seller.

4. Estate Sold and Deed to Transfer; Personal Property

Seller, upon fulfillment of all the obligations and terms of this Agreement, shall sell and convey to Purchaser, its successors and assigns, the Property, together with all improvements now located thereon and all fixtures of every nature now attached to or used with said land and improvements including, but not limited to, driveways, signs, utility fixtures, shrubbery and trees. The sale and conveyance by Seller shall be by a good and sufficient general warranty deed. Seller agrees to execute any and all supplemental instruments or documents necessary to vest Purchaser with the rights, titles and interests described in Exhibit A, free and clear of any encumbrances not accepted by Purchaser herein.

The purchase under this Agreement shall also include the following personal property, with transfer of title to the Purchaser, if necessary: one vehicle lift and storage racks in warehouse/garage. The personal property is sold in "as-is" condition without any representation as to the condition or capability thereof.

5. Warranty of Title

Seller shall, and hereby does, warrant that the property described in Exhibit A is free and clear from all liens and encumbrances whatsoever, except: (a) easements, restrictions, conditions and covenants of record; (b) all legal highways; (c) zoning and building laws, ordinances, rules and regulations; and (d) any and all taxes and assessments not yet due and payable. Seller further warrants that it is vested with full title, free and clear from all liens and encumbrances, to any personal property to be transferred in accordance with this Agreement and that it has authority to dispose of the personal property.

6. Elimination of Others' Interests

Seller shall assist, in whatever manner reasonably possible under the circumstances, to procure and deliver to Purchaser releases and cancellations of any and all other rights, titles and interests in the Property described in Exhibit A, such as, but not limited to, those belonging to tenants, lessees, mortgagees or others now in possession or otherwise occupying the subject premises, and all assessment claims against said property.

Seller and Purchaser agree that if a mortgagee of Seller or of a predecessor in title fails to cooperate with the efforts to obtain a release of that mortgagee's mortgage lien secured by the Property described in Exhibit A, then in that event this Agreement shall become null and void and the Parties to this Agreement shall be discharged and released from any and all obligations created by this Agreement; for the purposes of this provision, the term "fails to cooperate" shall include a demand or request by any such mortgagee for a fee to process such a release of that mortgagee's mortgage lien that Purchaser, in its sole discretion, deems to be excessive.

7. No Change in Character of Property

Until possession is transferred to the Purchaser, the Seller shall continue to maintain the Property in good condition and repair and maintain any appliances and equipment in normal operating condition. Seller agrees that the Property will be in its present condition, normal wear and tear excepted. Seller shall pay all accrued utility bills through the date of delivery of possession.

Seller shall not change the existing character of the land or alter, remove, destroy or change any improvement located on the Property described in Exhibit A. If, prior to the date on which possession of the subject property is surrendered to Purchaser, the Property suffers any damage, change, alteration or destruction then, and without regard to the cause thereof, Seller shall restore the Property to the condition it was in at the time Seller executed this Agreement; in the alternative, Seller may agree to accept the Purchase Price less the

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costs associated with such restoration. If the Seller refuses to either restore the premises or accept the decreased consideration as aforementioned, then Purchaser, at its option after discovery or notification of such damage, change, alteration or destruction, may terminate and cancel this Agreement upon written notice to Seller.

8. Designation of Escrow Agent

Seller agrees that Purchaser may designate an escrow agent to act on behalf of the Parties in connection with the consummation and closing of this Agreement.

9. Closing Date

The consummation and closing of this Agreement shall occur at such time and place as the Parties may agree within five (5) days after Purchaser notifies Seller in writing that the contingencies stated herein have been met. The anticipated closing date is on or before March 15, 2021, but the time for closing may be extended by written agreement of the Parties.

10. Physical Possession of Structures Occupied by Seller; Indemnification

Seller shall surrender physical possession of the land and improvements to Purchaser not later than the date on which Purchaser tenders the Purchase Price to Seller.

Until such time as the Seller completely vacates the Property, the Seller agrees to indemnify, save and hold the Purchaser, and all of its officers, employees, agents, servants, representatives, and volunteers, free and harmless from any and all claims of liability, whatever the source or nature, related to the Seller's use and occupation of the Property and from any and all actions, claims, demands, judgments, damages, losses and expenses, including but not limited to attorney's fees, arising from any accident or occurrence related in any manner to the Seller's use or occupation of the Property. The Seller shall undertake to defend, at its own expense, any and all actions, claims, or demands brought against the Purchaser, or any of its officers, employees, agents, servants, representatives, and volunteers, by reason of the things above specified, and to pay, settle, compromise and procure the discharge of any and all judgments, damages, losses and expenses, including but not limited to attorney's fees.

11. Control of Property Occupied by Seller's Tenant(s)

Control of property occupied by Seller's tenant(s) shall be assumed by Purchaser on the date Purchaser tenders the purchase price to Seller. From that date forward, Purchaser shall be entitled to collect and retain as its own funds any and all rental payments thereafter made by such tenant(s). If any rents due under the lease(s) with Seller have been prepaid by Seller's tenant(s), then said prepaid rents shall be prorated to the date on which the Purchase Price is tendered by Purchaser, and said prepaid rents shall be paid to Seller and Purchaser in accordance with such proration.

12. Binding Agreement

Any and all of the terms, conditions and provisions of this Agreement shall be binding upon and shall inure to the benefit of Seller and Purchaser and their respective heirs, executors, administrators, successors and assigns.

13. Multiple Originals

This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute but one and the same instrument. Purchaser may elect to record this Agreement, in full or as a memorandum, and shall be responsible for the cost thereof, if any.

14. Entire Agreement

This instrument contains the entire agreement between the Parties, and it is expressly understood and agreed that no promises, provisions, terms, warranties, conditions or obligations whatsoever, either express or implied, other than herein set forth, shall be binding upon Seller or Purchaser.

15. Amendments and Modifications

No amendment or modification of this Agreement shall be valid or binding upon the Parties unless it is made in writing, cites this Agreement and is signed by Seller and Purchaser.

16. Agreement Considered Offer

This Agreement is being submitted to the Seller as an offer to purchase, contingent upon formal approval by the Purchaser by adopted resolution. Prior to such formal approval, the execution of this Agreement by the Seller shall constitute an offer to sell, which shall continue for a period of twenty (20) days from the date of such execution. Upon formal approval by the Purchaser within said period, it shall constitute a valid and binding contract of sale and purchase.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date(s) indicated immediately below their respective signatures.

(Signatures)

EXHIBIT A

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Situated in the State of Ohio, County of Delaware and in the Township of Genoa, and being further described as follows:

Being Lot Number One Thousand One Hundred Forty-Eight (1148) in Purdie Industrial Park, as the same is numbered and delineated upon the recorded plat thereof, of record in Plat Book 9, Page 13, Recorder's Office, Delaware County, Ohio.

Parcel Number: 317-313-03-024-000
Address: 6305 Frost Road, Westerville, Ohio 43082
Prior Instrument Reference: Book 1554, Page 1154

Vote on Motion Mrs. Lewis Nay Mr. Merrell Aye Mr. Benton Aye

There being no further business, the meeting adjourned.

Gary Merrell

Barb Lewis

Jeff Benton

Jennifer Walraven, Clerk to the Commissioners