

COMMISSIONERS JOURNAL NO. 43 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 17, 2002

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

Present: Donald Wuertz (Absent), Deborah Martin, James D. Ward

PUBLIC COMMENT

RESOLUTION NO. 02-1315

IN THE MATTER OF APPROVING RESOLUTIONS AND MINUTES FROM REGULAR MEETINGS HELD SEPTEMBER 3 AND 5, 2002:

It was moved by Mr. Ward, seconded by Mrs. Martin to dispense with the reading of the minutes and resolutions of the regular meetings held September 3 and 5, 2002 and to approve resolutions and minutes as submitted.

Vote on Motion Mrs. Martin Aye Mr. Wuertz Absent Mr. Ward Aye

RESOLUTION NO. 02-1316

IN THE MATTER OF APPROVING PURCHASE ORDERS, VOUCHERS AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR1014, AND CMAPR1016:

It was moved by Mr. Ward, seconded by Mrs. Martin to approve payment of warrants in Batch numbers CMAPR1014, and CMAPR1016 and Purchase Orders and Vouchers as listed below:

PO's

<u>Vendor</u>	<u>Description</u>	<u>Account Number</u>	<u>Amount</u>
Increases			
Terry Flahive	Legal Professional Services	22411601-530130107	\$ 2,000.00
Buckeye Ranch	Residential Treatment	22511607-534234215	\$ 8,000.00
Vouchers			
Buckeye Boys Ranch	Residential Treatment	22511607-534234215	\$ 10,500.00
Symbiont	Cluster/Rawlins	22511608-534234215	\$ 6,750.00
Symbiont	Cluster/Rawlins	22511608-534234215	\$ 6,975.00
Badger Excavating, Inc.	Village Ostrander/Drainage	23111709-536536515	\$ 37,648.80
Child Care Unlimited	Child Care	22411606-5348	\$ 5,934.00
Diebold Inc.	Safe for Treasurers Office	40411412-5410	\$ 8,245.00
Today's Learning Child	Child Care	22411606-5348	\$ 6,368.00
Boy's Village, Inc.	Residential Treatment	22511607-534234215	\$ 9,480.00

Vote on Motion Mr. Ward Aye Mr. Wuertz Absent Mrs. Martin Aye

RESOLUTION NO. 02-1317

IN THE MATTER OF APPROVING A LIQUOR LICENSE TRANSFER REQUEST FOR KAY & EM ENTERPRISES INC. DBA JANINAS GRILLE AND FORWARDING TO THE OHIO DIVISION OF LIQUOR CONTROL WITH NO OBJECTIONS AND NO REQUEST FOR A HEARING:

It was moved by Mr. Ward, seconded by Mrs. Martin to approve the following resolution.

Whereas, the Ohio Division of Liquor Control has notified both the Delaware County Board of Commissioners and the Liberty Township Trustees that Kay & EM Enterprises Inc. DBA Janinas Grille has requested A transfer of D5 and D6, permits located at 9721 Sawmill Road Liberty Township Powell, Ohio 43065 (Transfer from Alexandria Enterprises DBA Manhattans Café and Patio -same address) and,

Whereas, the Liberty Township Trustees have stated they have no objection, the Delaware County Sheriff has responded--no known reason for a hearing to be requested and the Delaware County Commissioners have received no objections.

Therefore Be it Resolved, The Clerk of the Board shall complete the necessary forms and notify the Ohio Division of Liquor Control that no objections are made and no hearing is requested by this Board of County Commissioners.

Vote on Motion Mrs. Martin Aye Mr. Wuertz Absent Mr. Ward Aye

RESOLUTION NO. 02 -1318

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

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It was moved by Mr. Ward, seconded by Mrs. Martin to approve the following:

The Department of Job and Family Services is requesting that Wendi Stephens attend a Homeless Prevention and Homeless Assistance Special Meeting in Berea City Hall October 17, 2002.

Vote on Motion Mr. Ward Aye Mr. Wuertz Absent Mrs. Martin Aye

RESOLUTION NO. 02-1319

IN THE MATTER OF APPROVING PERSONNEL ACTIONS:

It was moved by Mr. Ward, seconded by Mrs. Martin to approve the following:

Jonathon Peebles Custodial position with the Maintenance Department has been terminated; effective date October 17, 2002.

Vote on Motion Mrs. Martin Aye Mr. Wuertz Absent Mr. Ward Aye

RESOLUTION NO. 02-1320

IN THE MATTER OF APPROVING A LEASE AGREEMENT BETWEEN THE BOARD OF DELAWARE COUNTY COMMISSIONERS AND THE DELAWARE COUNTY REGIONAL PLANNING COMMISSION FOR 109 NORTH SANDUSKY:

It was moved by Mr. Ward, seconded by Mrs. Martin to approve the following Lease Agreement:

LEASE AGREEMENT

This lease agreement is made and entered into this 17th day of October, 2002, at Delaware, Ohio, by and between, the Board of Delaware County Commissioners, hereinafter called Lessor, and Delaware County Regional Planning Commission, hereinafter called Lessee.

ARTICLE I
DEMISE, DESCRIPTION, USE, TERM, AND RENT

1.01 Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, that certain property, hereinafter called the leased premises, situated in the City of Delaware, County of Delaware and State of Ohio, and described as 109 N. Sandusky Street; to be used only as an office building, and uses normally incident thereto and for no other purpose, for the term of ten (10) years commencing on the earlier of (A) the time when the improvements described in Article VI hereof have been completed and the leased premises are ready for occupancy, and (B) the time the Lessee takes possession of the leased premises and commences performing its operational functions from the leased premises, and terminating at the end of the last day of the tenth year thereafter, subject to the rights of renewal and provisions regarding termination set forth in Article IX hereof.

ARTICLE II
RENT

2.01 Lessee shall pay Lessor at 101 N. Sandusky Street, or at such other place as the Lessor shall designate from time to time in writing, as rent for the leased premises, the minimum annual sum of one dollar (\$1.00), payable without demand and without setoff or deduction, except as expressly provided herein. This payment is to occur each year on or before the date of commencement of the term of this lease, in the case of the first year, and on or before the same date of each consecutive year thereafter that the lease is in effect, and is payment for that next ensuing year.

2.02 Lessee agrees to pay as rent, without demand, setoff, or deduction, in addition to the minimum rental above specified, the following:

(A) All utilities for the leased premises for the term of this lease, including all telephone, electric, gas, sewer, water, garbage and such other utilities as are necessary and when they become due, as set forth in Article IV.

(B) Maintenance of all interior surfaces and systems, including electric, heat, air-conditioning, plumbing and such other systems and surfaces that are or will be present in the interior of the building as such maintenance is necessary.

2.03 If Lessee defaults in the payment of any installment of rent hereunder, and the same shall continue for ten (10) days after written notice, Lessee shall be in default hereunder, and until paid, Lessor shall have the right to terminate this Lease.

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**ARTICLE III
INSURANCE**

3.01 Lessor agrees prior to the commencement of the term of this lease to secure from a good and responsible company or companies doing insurance business in the State of Ohio, and maintain during the entire term of this lease the following coverage:

(A) Property and Casualty Insurance on the building in an amount no less than the replacement cost thereof.

3.02 Lessee agrees prior to commencement of the term of this lease to secure from a good and responsible company or companies doing insurance business in the State of Ohio, and maintain during the entire term of this lease, the following insurance coverage:

(A) Property and casualty insurance on Lessee's fixtures, goods, wares, merchandise and other contents of the building, with coverage in the amount of the replacement cost thereof, with no more than \$1,000 deductible.

(B) Public Liability Insurance in the amount of \$1,000,000 for loss from an accident resulting in bodily injury to or death of a person.

(C) Lessor shall be named as a coinsured on these policies.

3.03 The original policies may be retained by the insured. Annually each Party shall provide the other with a copy of the certificate of insurance evidencing the coverage listed in sections 3.01 and 3.02.

3.04 Proof must also be given by each party to the other, that each of the policies provided for in this article expressly provides that policy shall not be cancelled or altered without 30 days written notice to the other party.

3.05 If either party at any time during the term hereof should fail to secure or maintain the foregoing insurance, the other party shall be permitted to obtain such insurance in the defaulting party's name or as the agent of the defaulting party and shall be compensated by the defaulting party for the cost of the insurance premiums. The defaulting party shall pay the other party interest on paid insurance premiums at the rate of ten percent (10%) per annum computed from the date written notice is received that the premiums have been paid.

3.06 If the building or other improvements on the leased premises should be damaged or destroyed by fire, flood, or other casualty, Lessee shall give immediate written notice thereof to Lessor.

(A) If the building on the leased premises should be totally destroyed by fire, flood, or other casualty, or if it should be so damaged that rebuilding or repairs cannot reasonably be completed within ninety (90) working days from the date of written notification by Lessee to Lessor of the occurrence of the damage, this lease shall terminate effective as of the date of written notification.

(B) If the building or improvements on the leased premises should be damaged by fire, flood, or other casualty, but not to such an extent that rebuilding or repairs cannot reasonably be completed within ninety (90) working days from the date of written notification by Lessee to Lessor of the occurrence of the damage, this lease shall not terminate, but Lessor shall, at its sole cost and risk, proceed forthwith to rebuild or repair such building and other improvements to substantially the condition in which they existed prior to such damage, as soon as reasonably possible. In the event that Lessor shall fail to complete such rebuilding or repairs within ninety (90) working days from the date of written notification by Lessee to Lessor of the occurrence of the damage, Lessor may, at its option, terminate this lease by written notification at such time to Lessee, whereupon all rights and obligation hereunder shall cease.

(C) In any case described in (A) or (B) above, in which this lease is terminated, in accordance with the provisions of the bylaws of Lessee ("the Bylaws") agreed to and adopted by Lessor as Lessee's Bylaws, Article III, Section 1, the last sentence of which provides:

"The Board of County Commissioners [Lessor] shall also furnish as a contribution, office space and utilities for the Regional Planning Commission [Lessee]." [Bracketed information for clarity.]

Lessor shall forthwith provide Lessee office space with paid utilities of comparable size to permit it to carry on its normal activities.

**ARTICLE IV
UTILITIES**

4.01 Lessee shall during the term hereof pay all charges for telephone, gas, electricity, water, sewer, removal of rubbish and such other utilities as may be necessary, used in or on the leased premises before they shall become delinquent, and shall hold Lessor harmless from any liability therefore.

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**ARTICLE V
WASTE AND NUISANCE**

5.01 Lessee shall not commit, or allow to be committed, any waste on the leased premises, nor shall it maintain, commit, or permit the maintenance or commission of any nuisance on the leased premises or use the leased premises for any unlawful purpose.

**ARTICLE VI
REPAIRS AND RENOVATION**

6.01 Lessee agrees to keep the interior of the leased premises, and all mechanical systems in good order and repair, reasonable wear and tear excepted.

6.02 Lessor agrees to keep the structure and exterior improvements of the leased premises, including the roof, siding and structural elements of the building, and the sidewalks, and parking areas in good order and repair, reasonable wear and tear excepted, and maintain the landscaping, trees and grass areas, and remove snow as needed.

6.03 Use of the parking lot to the rear of the building is to be shared by the Lessee and Lessor.

6.04 The following renovations to the leased premises are to be undertaken by the Lessee, at its sole expense, prior to occupancy of the leased premises:

(A) Prepare architectural and mechanical plans for all bid items. Obtain approval of Lessor to plans and submit plans to Bovis Lend-Lease Inc. for bidding.

(B) Hire architect to coordinate construction of Lessee's renovation obligations with Bovis Lend-Lease, Inc., construction superintendent.

(C) Pay for their proportionate share to the County Commissioners, approximately \$225,000, of the interior renovation expense items attributable to "DRP" in the October 7, 2002 "Bovis Lend Lease Alterations to 109 N. Sandusky" estimate (Exhibit 1). Details are in the Bovis Lend Lease Project Manual, Alterations to 109 N. Sandusky Street, referenced by Bovis bid letter dated October 3, 2002 (Exhibit 2).

6.05 The following renovations to the leased premises are to be undertaken by the Lessor, at its sole expense, prior to occupancy of the leased premises:

(A) Utilize Bovis Lend-Lease, Inc. as consultant to provide general conditions, contract documents, bidding procedures for award of contract bids, and construction management.

(B.) Pay for their proportionate share, not to exceed \$250,000, of the interior and exterior renovation expenses attributable to "DCC" in the October 7, 2002 "Bovis Lend Lease Alterations to 109 N. Sandusky" estimate (Exhibit 1). Details are in the Bovis Lend Lease Project Manual, Alterations to 109 N. Sandusky Street, referenced in the Bovis bid letter dated October 3, 2002 (Exhibit 2).

**ARTICLE VII
ALTERATIONS, IMPROVEMENTS, AND FIXTURES**

7.01 Except as provided in Article VI, Lessee shall not alter or improve the leased premises without the prior written approval of Lessor to do so, which consent will not unreasonably be withheld. Any and all alterations, additions, improvements, and fixtures, other than moveable trade fixtures, made or placed in or on the leased premises shall, upon termination of this lease, belong to Lessor without compensation to Lessee; provided, however, that Lessor shall have the option, to be exercised on expiration or sooner termination of this lease, to require Lessee to remove any or all such additions, improvements or fixtures. Before installing any fixtures in or on the leased premises, Lessee shall submit plans and designs therefore to Lessor for its approval, and in the event that the plans and designs are disapproved by Lessor, such fixtures shall not be installed until changes required by Lessor are made.

**ARTICLE VIII
COVENANT OF QUIET POSSESSION**

8.01 Lessor shall, on the commencement date of the term of this lease, place Lessee in quiet possession of the leased premises and shall secure it in the quiet possession thereof against all persons lawfully claiming the same during the entire lease term and any extension thereof.

8.02 Lessor covenants that the leased premises are not subject to any lien, claim, or encumbrance, except as hereinafter set forth, and that it is not in default or arrears in the making of any payment or the performance of any obligation relating to the leased premises.

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ARTICLE IX
TERMINATION OR EXTENSION

9.01 Lessor and Lessee mutually agree that either Lessor or Lessee may terminate this lease at the end of the above-stated initial term, Article I, by giving the other party written notice thereof at least one (1) year prior to termination. In the absence of such notice, this lease shall continue on the terms and conditions contained in this lease and in force for successive terms of five (5) years with written notice of termination to be provided six (6) months prior to the termination of any five (5) year extension by either party.

9.02 If Lessee gives notice of its intention to terminate this lease at the end of any term created under this lease and to vacate the leased premises but fails or refuses to vacate the leased premises on the date designated for such removal by its notice, then Lessor may either disregard the Lessee’s notice, in which case all the terms and conditions of the lease shall continue in effect as if no notice had been given, or Lessor may at any time within thirty (30) days after expiration of the lease term involved, give Lessee notice of its intention to terminate this lease and Lessee expressly agrees to vacate the leased premises within the time specified in the notice, not to be less than ten (10) days.

ARTICLE X
ASSIGNMENT AND SUBLEASE

10.01 Lessee shall not assign this lease nor sublet all or any portion of the leased premises without the prior written consent of Lessor, but Lessor shall not arbitrarily or unreasonably withhold consent.

10.02 Lessor is expressly given the right to assign any or all of its interest under the terms of this lease.

ARTICLE XI
LEGAL OBLIGATIONS FULFILLMENT

11.01 So long as the term of this lease continues, Lessor and Lessee agree that the requirements of the DCRPC Bylaws, with regards to providing Lessee office space during the lease term will be met or waived by performance of the Parties under the terms of this lease agreement.

11.02 Except as provided in Section 11.01, nothing contained herein shall release or relieve either party from any obligation to the other under the DCRPC Bylaws or imposed by law.

ARTICLE XII
MISCELLANEOUS

12.01 All notices required to be given under this lease, shall be given by certified mail or registered mail, addressed to the proper party at the following address:

Lessor	Lessee
Delaware County Commissioners 101 N. Sandusky St. Delaware, OH 43015	Delaware County Regional Planning Commission 50 Channing Street Delaware, OH 43015

12.02 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns when permitted by this lease.

12.03 This Agreement shall be construed under and in accordance with the laws of the State of Ohio, and obligations of the parties created herein are performable in Delaware County, Ohio.

12.04 In case any one or more of the provisions of this lease shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this lease shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

12.05 This lease constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter.

12.06 No amendment, modification, or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof, and duly exercised by the parties.

12.07 The rights and remedies provided by this lease are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. The rights and remedies of this lease are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

12.08 In the event Lessor or Lessee breaches any of the terms of this Agreement whereby the party not in

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breach employs attorneys to protect or enforce its rights hereunder and prevails, then the breaching party agrees to pay the other party reasonable attorneys’ fees so incurred by such party.

ARTICLE XIII
HOLD HARMLESS

13.01 Lessee agrees to hold harmless and indemnify Lessor against any losses, damages, or injuries incurred as a result of the actions of Lessee, its employees, agents, or assigns, except to the extent any such losses, damages, or injuries are to be covered pursuant to the provisions of Article III hereof.

IN WITNESS WHEREOF, the undersigned Lessor and Lessee hereto execute this Agreement as of the day and year first noted above.

Vote on Motion Mr. Ward Aye Mr. Wuertz Absent Mrs. Martin Aye

RESOLUTION NO. 02-1321

IN THE MATTER OF AWARDING THE ARCHITECT CONTRACT FOR THE DELAWARE COUNTY SHERIFF’S ADMINISTRATIVE BUILDING AND JAIL RENOVATIONS TO MKC ASSOCIATES INC.:

It was moved by Mr. Ward, seconded by Mrs. Martin to award the Architect contract for The Delaware County Sheriff’s Administrative Building And Jail Renovations To MKC Associates Inc..

(A Copy Of The Contract Is Available In The Commissioners Office Until No Longer Of Administrative Value).

Vote on Motion Mrs. Martin Aye Mr. Wuertz Absent Mr. Ward Aye

RESOLUTION NO. 02-1322

IN THE MATTER OF AWARDING THE CONSTRUCTION MANAGER CONTRACT FOR THE DELAWARE COUNTY SHERIFF’S ADMINISTRATIVE BUILDING AND JAIL RENOVATIONS TO BOVIS LEND LEASE, INC:

It was moved by Mr. Ward, seconded by Mrs. Martin to award the Construction Manager contract for The Delaware County Sheriff’s Administrative Building And Jail Renovations To Bovis Lend Lease Inc..

(A Copy Of The Contract Is Available In The Commissioners Office Until No Longer Of Administrative Value).

Vote on Motion Mr. Ward Aye Mr. Wuertz Absent Mrs. Martin Aye

Security Discussion With Sheriff

There being no further business the meeting adjourned.

Deborah B. Martin

James D. Ward

Donald E. Wuertz

Letha George, Clerk to the Commissioners