

COMMISSIONERS JOURNAL NO. 54 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD DECEMBER 6, 2010

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

Present: Ken O'Brien, Dennis Stapleton, Tommy Thompson

**RESOLUTION NO. 10-1580**

**IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD DECEMBER 2, 2010:**

It was moved by Mr. O'Brien, seconded by Mr. Stapleton to approve the following:

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on December 2, 2010; and

WHEREAS, the Clerk of the Board has certified, pursuant to section 305.11 of the Ohio Revised Code, that the entire record of the proceedings at that meeting is completely and accurately captured in the electronic record of those proceedings;

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the electronic record of proceedings at the previous meeting.

Vote on Motion Mr. Thompson Aye Mr. Stapleton Aye Mr. O'Brien Aye

**PUBLIC COMMENT**

**RESOLUTION NO. 10-1581**

**IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR123, MEMO TRANSFERS IN BATCH NUMBERS MTAPR123:**

It was moved by Mr. O'Brien, seconded by Mr. Stapleton to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR123, memo transfers in batch numbers MTAPR123 and Purchase Orders as listed below:

PR Number	Vendor Name	Line Desc	Line Account	Line Amount	Line Number
R1007050	OFFICE CITY EXPRESS INC	SPECIALTY BLINDS	41411435 - 5450	\$11,900.12	0001
R1007062	MARION COUNTY	DKMM WEB PAGE DEVELOPMENT	22311611 - 5301	\$10,000.00	0001
R1007092	BOB BARKER CO	1 LOBBY LOCKS	41411434 - 5250	\$586.00	0001
R1007092	BOB BARKER CO	MAGNA SCANNER	41411434 - 5410	\$9,002.80	0002
R1007098	MOTOROLA INC	PORTABLE RADIOS AND ACCESSORIES	21411306 - 5260	\$14,986.80	0001

Vote on Motion Mr. Stapleton Aye Mr. Thompson Aye Mr. O'Brien Aye

**RESOLUTION NO. 10-1582**

**IN THE MATTER OF ACCEPTING THE TREASURER'S REPORT FOR THE MONTH OF OCTOBER 2010:**

It was moved by Mr. O'Brien, seconded by Mr. Stapleton to accept the Treasurer's Report for the month of October 2010.

(Copy available for review at the Commissioners' Office until no longer of administrative value.)

Vote On Motion Mr. Stapleton Aye Mr. O'Brien Aye Mr. Thompson Aye

**RESOLUTION NO. 10-1583**

**IN THE MATTER OF APPROVING PLAT FOR GLEN OAK SECTION 7 PHASE A:**

It was moved by Mr. O'Brien, seconded by Mr. Stapleton to approve the following:

Whereas, the plat for the following development have been approved by the County Engineer, and

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Whereas, the County Engineer recommends that the Commissioners approve the following plat;

Now Therefore Be It Resolved, that the Delaware County Board of Commissioners approve the following plat.

**Glen Oak Section 7 Phase A**

Situated In The State Of Ohio, County Of Delaware, Township Of Orange, Lying In Farm Lot 22, Quarter Township 2, Township 3 North, Range 18 West, United States Military District, Containing 5.978 Acres, More Or Less, Including 1.197 Acres Of Right Of Way Area, With 0.052 Acres Of Said 5.978 Acre Tract Being Out Of The 24.070 Acre Tract Conveyed To Dominion Homes, Inc. And Ohio Corporation, By Deed Of Record In Official Record 454, Page 461, And 5.926 Acres Of Said 5.978 Acre Tract Being Out Of The 33.463 Acre Tract Conveyed To Dominion Homes, Inc. An Ohio Corporation, By Deed Of Record In Official Record 540, Page 1702, All Records Of The Recorder's Office, Delaware County, Ohio. Cost \$48.00.

Vote On Motion            Mr. O'Brien            Aye            Mr. Thompson            Aye            Mr. Stapleton            Aye

**RESOLUTION NO. 10-1584**

**IN THE MATTER OF APPROVING MODIFICATION #1 TO THE CONTRACT WITH SHELLY & SANDS, INC. FOR THE 2010 ROAD IMPROVEMENT PROGRAM:**

It was moved by Mr. O'Brien, seconded by Mr. Stapleton to approve the following:

**Contract Modification #1  
2010 Road Improvement Program**

Due to a plan omission in the above referenced project, it was necessary to increase pay quantities to complete two road segments with mileage that was not properly calculated. This extends the contract unit prices for additional quantities of chip sealing and microsurfacing that would have been included in the plans anyway had the error not occurred.

The original contract with Shelly & Sands, Inc. for the referenced project was \$2,390,850.64. With the addition of the above noted work, this contract amount needs to be increased to \$2,605,393.41. We have available two copies of Contract Modification #1 for your approval to allow for this increase. Respectfully submitted, Chris E. Bauserman, P.E., P.S. Delaware County Engineer

**CONTRACT MODIFICATION #1  
  
MODIFYING THE CONTRACT  
FOR THE  
2010 ROAD IMPROVEMENT PROGRAM**

Whereas, Resolution 10-630 approved a contract between the Board and Shelly & Sands, Inc. for the 2010 Road Improvement Program, including total compensation not to exceed \$2,390,850.64, and;

Whereas, the County Engineer recommends that the contract be modified to increase the maximum compensation to \$2,605,393.41 for additional work required to complete the Program;

NOW THEREFORE BE IT RESOLVED THAT:

Article 2 of the said contract for the 2010 Road Improvement Program is modified as follows:

The Owner will pay the Contractor for the total quantities of work performed at the unit prices stipulated in the Bid for the respective items of work completed for the sum not to exceed \$2,605,393.41 (Two million Six Hundred Five Thousand Three Hundred Ninety Three Dollars and Forty One Cents), subject to additions and deductions as provided in the Contract Documents.

Further Be It Resolved, that the Board of Commissioner approves the Modification.

Vote on Motion    Mr. Thompson    Aye            Mr. Stapleton    Aye            Mr. O'Brien            Aye

**RESOLUTION NO. 10-1585**

**IN THE MATTER OF APPROVING TRANSFER OF APPROPRIATIONS FOR ENVIRONMENTAL SERVICES:**

It was moved by Mr. O'Brien, seconded by Mr. Stapleton to approve the following:

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**Transfer of Appropriation**

<b>From</b>	<b>To</b>		
10011301-5001 Code Compliance/Compensation	10011301-5260 Code Compliance/Inventoried Tools	\$	3,500.00
10011301-5001 Code Compliance/Compensation	10011301-5301 Code Compliance/Professional Services	\$	4,500.00
10011301-5001 Code Compliance/Compensation	10011301-5361 Code Compliance/Attorney Fees	\$	8,000.00

**Transfer of Funds**

66611903-5801 URF OECC/Transfers	66311901-4601 Utility Reserve Fund/Interfund Revenue	\$	262,765.80
66611904-5801 URF ACWRF/Transfers	66311901-4601 Bond Service Fund/Interfund Revenue	\$	351,830.14

Vote on Motion Mr. O'Brien Aye Mr. Thompson Aye Mr. Stapleton Aye

**RESOLUTION NO. 10-1586**

**IN THE MATTER OF APPROVING A CONSULTING SERVICES AGREEMENT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND ACCU PRO INC. TO INSPECT AND EVALUATE DELAWARE CREATIVE HOUSING PROPERTIES:**

It was moved by Mr. O'Brien, seconded by Mr. Stapleton to approve the following:

**CONSULTING SERVICES AGREEMENT**

DELAWARE CREATIVE HOUSING INSPECTION OF PROPERTIES

Section 1 – Parties to the Agreement:

Agreement made and entered into this 6<sup>th</sup> day of December, 2010, by and between the Delaware County Board of Commissioners, Delaware County, Ohio (“County”), and the firm of Accu Pro Inc. (“Consultant”).

Section 2 – Contract Administrator:

The County hereby designates the Delaware County Director of Economic Development as Administrator and agent of the County in performance of Work performed under this Agreement. The Administrator shall have general supervision of the Work and authority to order commencement or suspension of Work.

Section 3 – Scope of Services (Work):

The Consultant shall perform the Work as set forth in Attachment 1 (“Delaware County Scope of Work”), which is attached hereto and, by this reference, fully incorporated herein. Consultant further agrees to perform the Work promptly and in a skillfully competent manner under the direction of the Administrator and in accordance with generally accepted professional standards.

Section 4 – Compensation:

The County shall pay Consultant a fee of Four Hundred Ninety Dollars and No Cents (\$490.00) per inspection for a contract total not to exceed Twenty-Five Thousand Dollars and No Cents (\$25,000.00).

Section 5 – Payment:

Compensation shall be paid based upon monthly invoices submitted to the Administrator by the Consultant on company letterhead clearly identified as an invoice with a sequential number provided. The County may request additional documentation substantiating said invoices, and the Consultant shall promptly submit documentation as needed to substantiate said invoices. The County shall pay approved invoices within 30 days of receipt.

Section 6 – Completion of Work, Delays and Extensions:

All Work associated with this Agreement shall be completed by the Consultant no later than ninety (90) days after the County’s approval of this Agreement. In the event that unforeseen and unavoidable delays prevent the timely completion of the Work provided under this Agreement, the Consultant may make a written request for a time extension, and the County may grant such an extension provided adherence to all other terms of the Agreement.

Section 7 – Insurance:

7.1 General Liability Coverage: Consultant shall maintain commercial general liability insurance of \$1,000,000 each occurrence with an annual aggregate of \$2,000,000. Identical coverage shall be required to be provided by all subcontractors, if any.

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- 7.2 Automobile Liability Coverage: Consultant shall maintain automobile liability insurance of \$1,000,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles. Identical coverage shall be required to be provided by all subcontractors, if any.
- 7.3 Workers' Compensation Coverage: Consultant shall maintain workers' compensation coverage as required by the laws of the State of Ohio. Identical coverage shall be required to be provided by all subcontractors, if any.
- 7.4 Additional Insureds: The County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Agreement in the policies required by Subsection 7.1. Consultant shall require all of its subcontractors, if any, to provide like endorsements.
- 7.5 Proof of Insurance: Prior to the commencement of any work under this Agreement, Consultant, and all of its subcontractors, shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement and properly executed endorsements required by Subsection 7.1. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Consultant will replace certificates for any insurance expiring prior to completion of work under this Agreement.

Section 8 – Indemnification:

The Consultant shall indemnify and hold free and harmless the County and its employees from any and all damages, injury, costs, expenses, judgments or decrees, or any other liabilities that they may incur as a result of bodily injury, sickness, disease or death or injury to or destruction of tangible property including the loss of use resulting therefrom, to the extent caused in whole or part by any negligent acts, errors or omissions of the Consultant, its employees, agents, subcontractors, and their employees and agents' subcontractors and their employees or any other person for whose acts any of them may be liable.

Section 9 – Termination of Agreement:

The County may terminate this Agreement at any time for the convenience of the County, at which time the County shall provide written notice to the Consultant ordering termination of Work. The Consultant shall immediately terminate Work and submit a final invoice within sixty (60) days of receiving Notice of Termination for Work completed up to the date of termination. The County is not liable for payment for work performed after the date of termination.

Section 10 – Change in Scope of Work:

In the event that significant changes to the Scope of Services as defined in Section 3 are required during performance of the Work, the first party shall notify the second party in writing with a detailed explanation of the circumstances believed to have changed beyond those originally contemplated by this Agreement. Any subsequent modifications to this Agreement shall be approved by both parties in writing.

Section 11 – Ownership of Documents:

Upon completion or termination of the Agreement, the Consultant shall provide copies to the County of all documents created specifically for the purposes of Work under this Agreement. The County shall have ownership of said documents, which are considered, but not limited to, any tangible written or electronic work, whether complete or incomplete, produced in accordance with the Agreement. This section does not require unauthorized duplication of copyrighted materials.

Section 12 – Change of Consultant Staff Assigned to the Work:

The Consultant shall notify the County, within seven (7) days and in writing, of any change to Consultant's staff members or any subconsultants assigned to the Work as contemplated at the time of executing this Agreement.

Section 13 – Miscellaneous Terms & Conditions:

- 13.1 Prohibited Interests: Consultant agrees that no agent, officer, or employee of the County during his/her tenure or for one year there after shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Consultant further agrees that it will not employ in any manner a current County employee for a minimum period of one (1) year from the completion date of this project, without the prior express written consent of County.
- 13.2 Entire Agreement: This Agreement, and those documents incorporated by reference herein, shall constitute the entire understanding and agreement between the County and the Consultant, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the parties.
- 13.3 Governing Law: This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.
- 13.4 Headings: The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

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This Agreement shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.

- 13.5 Waivers: No waiver of breach of any provision of this Agreement shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Agreement or any other provision hereof. No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.
- 13.6 Severability: If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.
- 13.7 Findings for Recovery: Consultant certifies that it has no outstanding findings for recovery pending or issued against it by the State of Ohio.
- 13.8 Homeland Security: Consultant certifies that it does not provide material assistance to any organization on the United States Department of State Terrorist Exclusion list. Pursuant to R.C. § 2909.33, Consultant agrees to make such certification by completing the declaration of material assistance/nonassistance described in R.C. § 2909.33(A) and understands that this Agreement is contingent upon full completion of such certificate and “No” being the response to all questions in the Declaration portion of the certificate. Such certification is attached to this Agreement and by this reference made a part of this Agreement.
- 13.9 Non-Discrimination/Equal Opportunity: Consultant hereby certifies that, in the hiring of employees for the performance of work under this Agreement or any subcontract, that neither it nor any subcontractor, by reason of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which the Agreement relates.

Consultant further certifies that neither it nor any subcontractor, or person acting on behalf of it or any subcontractor, in any manner, shall discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Agreement on account of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry.

Consultant certifies that it has a written affirmative action program for employment and effectively utilizes economically disadvantaged persons, as referred to in division (E)(1) of section 122.71 of the Revised Code.

Consultant certifies that it complies with all applicable laws regarding Non-Discrimination / Equal Opportunity and will not discriminate.

- 13.10 Campaign Finance – Compliance with R.C. 3517.13: Ohio Revised Code Section 3517.13 I(3) and J(3) requires that no political subdivision shall award any contract for the purchase of goods with a cost aggregating more than ten thousand dollars in a calendar year or services with a cost aggregating more than ten thousand dollars in a calendar year to a corporation, business trust, individual, partnership or other unincorporated business, association, including, without limitation, a professional association organized under Chapter 1785 of the Revised Code, estate, or trust unless the political subdivision has received for that calendar year, or the contract includes, a certification that the individuals named in Revised Code Sections 3517.13(I)(1) and (J)(1) are in compliance with the aforementioned provisions. The Contractor/Provider, therefore, is required to complete the attached certificate/affidavit entitled “Certification/Affidavit in Compliance With O.R.C. Section 3517.13.” Failure to complete and submit the required aforementioned certificate/affidavit with the Contract will prohibit the County from entering, proceeding, and/or performing the Contract. Such certification is attached to this Contract and by this reference made a part thereof.
- 13.11 Independent Contractor: Consultant agrees that no agency, employment, joint venture, or partnership has been or will be created between the parties hereto pursuant to the terms and conditions of this Agreement. Consultant also agrees that, as an independent contractor, it assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums which may accrue as a result of compensation received for services or deliverables rendered hereunder.

Vote On Motion                      Mr. Thompson    Aye            Mr. O'Brien            Aye            Mr. Stapleton            Aye

**RESOLUTION NO. 10-1587**

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**IN THE MATTER OF APPROVING TRANSFER OF APPROPRIATIONS FOR JOB AND FAMILY SERVICES:**

It was moved by Mr. O'Brien, seconded by Mr. Stapleton to approve the following:

**Transfer of Appropriation**

<b>From</b>	<b>To</b>	
22311611-5348	22311611-5201	
Workforce Investment Act/Client Services	Workforce Investment Act/General Supplies	\$ 50,000.00

Vote on Motion Mr. O'Brien Aye Mr. Thompson Aye Mr. Stapleton Aye

**RESOLUTION NO. 10-1588**

**IN THE MATTER OF APPROVING PERSONNEL ACTIONS:**

It was moved by Mr. O'Brien, seconded by Mr. Stapleton to approve the following:

The Director of Emergency Medical Services recommends promoting Steve Alexander to a Full-Time Paramedic with the EMS Department; effective date December 12, 2010.

Therefore Be It Resolved, that the Commissioners approve promoting Steve Alexander to a Full-Time Paramedic with the EMS Department; effective date December 12, 2010.

Vote On Motion Mr. Stapleton Aye Mr. O'Brien Aye Mr. Thompson Aye

**RESOLUTION NO. 10-1589**

**IN THE MATTER OF ACKNOWLEDGING RECEIPT OF APPLICATIONS FOR DOMESTIC VIOLENCE FUNDS FOR 2011 ESTIMATING AMOUNT OF FUNDS ANTICIPATED AND ALLOCATING SAME TO QUALIFIED APPLICATIONS. THIS ACTION PURSUANT TO CHAPTER 3113 OHIO REVISED CODE:**

It was moved by Mr. O'Brien, seconded by Mr. Stapleton to acknowledge receipt of qualified applications for 2011 domestic violence funds from "Turning Point" Shelter, Marion, Ohio and "Choices" Shelter, Columbus, Ohio and to estimate the total sum to be collected in said fund in 2011 at \$31,000.00. Further that said funds to be allocated as follows:

- 90% of funds actually received to Turning Point, Marion, Ohio
- 10% of funds actually received to Choices, Columbus, Ohio

Said allocation based on percentage of services provided to Delaware County residents by the respective shelters in 2010.

Vote On Motion Mr. O'Brien Aye Mr. Thompson Aye Mr. Stapleton Aye

**RESOLUTION NO. 10-1590**

**IN THE MATTER OF ESTABLISHING A NEW ORGANIZATIONAL KEY AND APPROVING SUPPLEMENTAL APPROPRIATIONS FOR DITCH PROJECT FUNDS:**

It was moved by Mr. O'Brien, seconded by Mr. Stapleton to approve the following:

**Establish Org Key**

40311437 Gorsuch Road Ditch

**Supplemental Appropriations**

40311436-5301	Roof # 397 Ditch/Professional Services	830.00
40311433-5301	Midway Gardens Ditch/Professional Services	1,081.00
40311435-5301	Hardin # 267 Ditch/Professional Services	636.00
40311432-5301	Chadwick # 135 Ditch/Professional Services	1,596.00
40311424-5301	Rhoades Ditch/Professional Services	2,100.00
40311437-5301	Gorsuch Road Ditch Professional Services	688.00

Vote on Motion Mr. Thompson Aye Mr. Stapleton Aye Mr. O'Brien Aye

**COMMISSIONERS' COMMITTEES REPORTS**

**Commissioner Stapleton**

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**-Today Attended The Start Of The CCAO Winter Conference; Will Report On Thursday After Conference Is Complete**

**Commissioner O'Brien**

**-Attended And Participated In The Delaware County Office Of Homeland Security And Emergency Management (EMA) Meeting; Scioto Township Mitigation Flood Plane Issue And Emergency Operations Plans**

**Commissioner Thompson**

**-Will Be Attending A DKMM Meeting On Tuesday; Hearing About DKMM Moving To Knox County**

**RESOLUTION NO. 10-1591**

**IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF APPOINTMENT, EMPLOYMENT, DISMISSAL, DISCIPLINE, PROMOTION, DEMOTION OR COMPENSATION OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL AND FOR PENDING OR IMMINENT LITIGATION:**

It was moved by Mr. O'Brien, seconded by Mr. Stapleton to adjourn into Executive Session at 7:22PM.

Vote on Motion Mr. Stapleton Aye Mr. Thompson Aye Mr. O'Brien Aye

**RESOLUTION NO. 10-1592**

**IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:**

It was moved by Mr. O'Brien, seconded by Mr. Stapleton to adjourn out of Executive Session at 8:23PM.

Vote on Motion Mr. O'Brien Aye Mr. Thompson Aye Mr. Stapleton Aye

**RESOLUTION NO. 10-1593**

**IN THE MATTER OF ADJOURNING THE MEETING:**

It was moved by Mr. O'Brien, seconded by Mr. Stapleton to adjourn the meeting.

Vote On Motion Mr. Thompson Aye Mr. O'Brien Aye Mr. Stapleton Aye

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Ken O'Brien

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Dennis Stapleton

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Tommy Thompson