

**COMMISSIONERS JOURNAL NO. 58 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD NOVEMBER 19, 2012**

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

**Present:**  
**Dennis Stapleton, President**  
**Ken O'Brien, Vice President**  
**Tommy Thompson, Commissioner**

**RESOLUTION NO. 12-1169**

**IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD NOVEMBER 15, 2012:**

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on November 15, 2012; 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**

**ELECTED OFFICIAL COMMENT**

**RESOLUTION NO. 12-1170**

**IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR1116, MEMO TRANSFERS IN BATCH NUMBERS MTAPR1116 AND PROCUREMENT CARD PAYMENTS IN BATCH NUMBER PCAPR1116:**

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR1116, memo transfers in batch numbers MTAPR1116, Procurement Card Payments in batch number PCAPR1116.

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

**RESOLUTION NO. 12-1171**

**IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:**

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

The EMS Department is requesting that Michael Schuiling attend a CSI Forensics Conference for EMS at Ohio State University November 30 thru December 1, 2012; at the cost of \$85.00 (Fund Number 10011303).

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

**RESOLUTION NO. 12-1172**

**IN THE MATTER OF SETTING DATE, TIME AND PLACE FOR THE PUBLIC HEARING TO CONSIDER THE REQUEST OF MR. WALT BENSON'S DEVELOPMENT PLAN CHANGE AND ZONING AMENDMENT APPLICATION REQUESTING APPROVAL FOR A DEVELOPMENT PLAN AMENDMENT TO AN EXISTING PLANNED COMMERCIAL AND OFFICE DISTRICT (PC) ZONING CLASSIFICATION AND TO REZONE 0.354 ACRES FROM THE CURRENT FARM RESIDENTIAL DISTRICT (FR-1) TO PLANNED COMMERCIAL AND OFFICE DISTRICT (PC), FOR THE PURPOSE OF OPERATING A FIRE/ARSON INSURANCE INVESTIGATION SERVICE ON A 2.101 ACRE TRACT IDENTIFIED AS 8350 US 23 NORTH, MARLBORO TOWNSHIP, DELAWARE COUNTY:**

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

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The Board of Commissioners of Delaware County, Ohio, will hold a public hearing on the application of Mr. Walt Benson’s Development Plan Change And Zoning Amendment Requesting Approval For A Development Plan Amendment To An Existing Planned Commercial And Office District (PC) Zoning Classification And To Rezone 0.354 Acres From The Current Farm Residential District (FR-1) To Planned Commercial And Office District (PC), For The Purpose Of Operating A Fire/Arson Insurance Investigation Service On A 2.101 Acre Tract Identified As 8350 US 23 North, Marlboro Township, Delaware County; owned by Bensen Fire & Safety Consulting, Ltd.

The hearing will be held on **Thursday, December 6, 2012, at 10:15AM**, in the Hearing Room of the County Commissioners, 101 North Sandusky Street, Delaware, Ohio 43015. A copy of the application is available for review at the Office of the Zoning Inspector – 50 Channing Street, Delaware, Ohio and in the Commissioners’ Office during normal business hours. Interested persons may appear and voice opinion in respect to this proposed zoning district change.

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

**RESOLUTION NO. 12-1173**

**IN THE MATTER OF ACCEPTING THE TREASURER’S REPORT FOR THE MONTH OF OCTOBER 2012:**

It was moved by Mr. Thompson, seconded by Mr. Stapleton to accept the Treasurer’s Report for the month of October 2012.

(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. 12-1174**

**IN THE MATTER OF SCHEDULING A SPECIAL COMMISSIONERS’ SESSION ON FRIDAY NOVEMBER 30, 2012 AT 10:00AM FOR THE PURPOSE OF AN EXECUTIVE SESSION TO CONSIDER THE EMPLOYMENT, APPOINTMENT OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL AND FOR THE APPOINTMENT OF MEMBERS TO THE DEVELOPMENTAL DISABILITIES BOARD:**

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve scheduling a Special Commissioners’ Session on Friday November 30, 2012 at 10:00am for the purpose of an executive session to consider the employment, appointment of a public employee or public official and for the Appointment Of Members To The DD Board.

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

**RESOLUTION NO. 12-1175**

**IN THE MATTER OF SCHEDULING A SPECIAL COMMISSIONERS’ SESSION ON FRIDAY NOVEMBER 30, 2012 AT 10:30AM FOR 2013 BUDGET DISCUSSIONS:**

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve scheduling a Special Commissioners’ Session on Friday November 30, 2012 at 10:30am for 2013 Budget Discussions.

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

**RESOLUTION NO. 12-1176**

**IN THE MATTER OF APPROVING A DITCH MAINTENANCE PETITION AND THE DITCH MAINTENANCE ASSESSMENTS FOR SORRENTO AT HIGHLAND LAKES:**

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

WHEREAS, on November 19, 2012, a Ditch Maintenance Petition for Sorrento at Highland Lakes was filed with the Board of Commissioners of Delaware County (the “Board”), and

WHEREAS the Petition sets forth the drainage improvements that have been or will be constructed within Sorrento at Highland Lakes located off of Worthington Road and Highland Lakes Avenue in Genoa Township; and

WHEREAS, the Petitioners have requested that the drainage improvements be accepted into the Delaware County Drainage Maintenance Program and that an annual maintenance assessment be collected with the Real Estate Taxes for the improvements in the subject lot to cover the cost of current and future maintenance of the

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improvements; and

WHEREAS, the Petitioners represent 100% of the property owners to be assessed for maintenance related to this drainage improvement and have waived their rights to a public viewing and hearing; and

WHEREAS, based on a review of the Petition and all accompanying documents, the Board has determined that the improvements satisfy all statutory criteria pursuant to Chapters 6131 and 6137 of the Revised Code and all criteria for acceptance into the Delaware County Drainage Maintenance Program.

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

Section 1. The Board hereby grants the Petition, the Board having found and determined that the improvements satisfy all statutory criteria pursuant to Chapters 6131 and 6137 of the Revised Code and all criteria for acceptance into the Delaware County Drainage Maintenance Program.

Section 2. The Board hereby approves the maintenance assessments, in accordance with the Petition, as follows:

The cost of the drainage improvements is \$156,264.23. The drainage improvements are being constructed for the benefit of the condominium units being created in this development. The developed condominium area of 42 units will receive benefits (cost) of the project on a per acre basis. The basis for calculating the assessment for each lot is therefore \$3,720.88 per unit. An annual maintenance fee equal to 2% of this basis (\$74.41) will be collected for each developed condominium unit. We (I) understand that the basis for calculating the maintenance assessment will be reviewed and possibly revised every 6 years. The first year's assessment for all of the lots in the amount of \$3,125.28 has been paid to Delaware County.

Section 3: This Board finds and determines that all formal actions taken by this Board concerning and relating to the adoption of this Resolution were taken in an open meeting of this Board and that all deliberations of this Board that resulted in said formal actions were in meetings open to the public, in compliance with the laws of the State of Ohio.

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

**RESOLUTION NO. 12-1177**

**IN THE MATTER OF APPROVING A PROFESSIONAL SERVICES CONTRACT WITH MS CONSULTANTS, INC. FOR THE PROJECT KNOWN AS DEL-CR123(US23) HYATTS ROAD/SHANAHAN ROAD/US 23 INTERSECTION:**

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

WHEREAS, section 305.15 of the Revised Code provides that a Board of Commissioners may enter into contracts with any person, firm, partnership, association, or corporation qualified to perform engineering services in the state; and

WHEREAS, the County Engineer has received proposals from engineering firms interested in providing services for the project known as DEL-CR123(US23) HYATTS ROAD/SHANAHAN ROAD/US 23 INTERSECTION; and

WHEREAS, the County Engineer has selected the consulting firm of ms consultants, inc. through a Qualifications-Based Selection Process and has negotiated a fee and agreement to provide the required services for engineering and design of the improvements, and requests that the Board enter into Contract with said firm;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Delaware County, State of Ohio, that the following Professional Services Contract is hereby approved:

**PROFESSIONAL SERVICES CONTRACT  
DEL-CR123 (US23) Hyatts Road/Shanahan Road/US 23 Intersection  
Prime Agreement (Part 1)**

**Section 1 – Parties to the Agreement**

Agreement made and entered into this 19<sup>th</sup> day of November, 2012 by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 101 North Sandusky Street, Delaware, Ohio 43015 (“County”), and the firm of ms consultants, inc. 2221 Schrock Road, Columbus, Ohio 43229 (“Consultant”).

**Section 2 – Contract Administrator**

The Delaware County Board of Commissioners hereby designates the Delaware County Engineer as Administrator and agent of the Board for Work performed in accordance with this Agreement. The Administrator shall have general supervision of the Work and authority to order commencement or suspension thereof.

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**Section 3 – Scope of Services (Work)**

Consultant agrees to furnish, unto the County, professional services in accordance with the Scope of Services dated July 27, 2012, and Price Proposal dated October 18, 2012, by this reference hereby made part of this Agreement. Consultant further agrees to perform the Work promptly and in a skillful and competent manner under the direction of the Administrator and in accordance with accepted professional standards.

**Section 4 – Compensation**

Compensation for Work performed under this Agreement shall be in accordance with the aforesaid Scope of Services and Price Proposal and shall be based on a lump sum base fee not to exceed Twenty Four Thousand Forty Five Dollars (\$24,045), as listed in the Consultant's aforementioned Price Proposal. Compensation shall constitute full payment for all labor, equipment and materials required to complete the required Work.

**Section 5 – Payment**

Compensation shall be paid periodically, but no more than once per month, and shall be based on the calculated percentage of work performed to date in accordance with the Consultant's Price Proposal. Invoices shall be submitted to the Administrator by the Consultant on company letterhead clearly listing the word "Invoice" with a sequential invoice number provided. The County may request additional documentation to substantiate said invoices and the Consultant shall promptly submit documentation as needed to substantiate said invoices. The County shall pay invoices within thirty (30) days of receipt.

**Section 6 – Authorization to Proceed, Completion of Work, Delays and Extensions**

The Consultant shall commence Work upon written authorization of the Administrator and shall complete the work no later than June 1, 2013. Consultant shall not proceed with Work on "If Authorized" tasks without written authorization from the Administrator. In the event that unforeseen and unavoidable delays prevent the timely completion of this Agreement, the Consultant may make a written request for time extension, and the Administrator may grant such an extension provided that all other terms of the Agreement are adhered to.

**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.
- 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 **Professional Liability Insurance:** Consultant hereby agrees to maintain, and require its subconsultants to maintain, professional liability insurance for the duration of the services hereunder and for three (3) years following completion of the Preliminary Engineering services hereunder plus three (3) years following any additional services provided for Final Engineering, services during construction, or other professional services, providing such insurance is readily available at reasonable prices. Such insurance for negligent acts, errors, and omissions shall be provided through a company licensed to do business in the State of Ohio for coverage of One Million Dollars (\$1,000,000) per claim and in the aggregate.
- 7.5 **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 Subsections 7.1 and 7.2. Consultant shall require all of its subcontractors to provide like endorsements.
- 7.6 **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. 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 proportionate extent caused 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 – Suspension or Termination of Agreement**

The County may suspend or 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 suspend or terminate Work, as ordered by the County. In the case of Termination, the Consultant shall submit a final

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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.

**Section 11 – Ownership of Engineering Documents**

Upon completion or termination of the Agreement, the Consultant shall provide copies, if requested, to the County of all documents or electronic files produced under this Agreement. The County shall have ownership of said documents, which are considered, but not limited to, any completed or partially completed surveys, calculations, reports, schematics, drawings and any other tangible written or electronic work produced in accordance with the Agreement. This section does not require unauthorized duplication of copyrighted materials.

**Section 12 – Change of Key Consultant Staff**

The Consultant shall immediately notify the County, in writing, of any change to key Consultant staff or 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 thereafter 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 Agreement, 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. 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 **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

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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.

13.9 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.

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

**RESOLUTION NO. 12-1178**

**IN THE MATTER OF APPROVING TRANSFER OF APPROPRIATIONS FOR THE RECORDS CENTER:**

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

**Transfer of Appropriation**

<b>From</b>	<b>To</b>	
10011103-5001 Records Center/Compensation	10011103-5320 Records Center/Software	1,200.00
10011103-5001 Records Center/Compensation	10011103-5325 Records Center/Maintenance Contract	300.00

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

**RESOLUTION NO. 12-1179**

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

It was moved by Mr. Thompson, seconded by Mr. Stapleton to approve the following:

The Board of Commissioners recommends hiring Jerry Heston as the Board of Revision/Hearing Board Officer for the Commissioners’ Office; effective November 19, 2012.

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

**COMMISSIONERS’ COMMITTEES REPORTS**

- Commissioner O’Brien**  
-Attended And Participated In A Family Children’s First Council Meeting; Issues With The Ohio Department Of Health Are Still A Concern.
- Commissioner Thompson**  
-Ceremony On People Becoming U.S. Citizens  
-Strand Theater; Grand Opening For The ADA Restrooms (Part Of The Large Scale Renovation Project)
- Commissioner Stapleton**  
-No Additional Comments

**RESOLUTION NO. 12-1180**

**IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR APPOINTMENT OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL; TO CONSIDER THE PURCHASE OF PROPERTY FOR PUBLIC PURPOSES AND FOR PENDING OR IMMINENT LITIGATION:**

It was moved by Mr. Thompson, seconded by Mr. Stapleton to adjourn into Executive Session at 9:53AM.

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

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**RESOLUTION NO. 12-1181**

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

It was moved by Mr. Thompson, seconded by Mr. Stapleton to adjourn out of Executive Session at 10:47AM.

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

There being no further business, the meeting adjourned.

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Ken O'Brien

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Dennis Stapleton

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Tommy Thompson

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Jennifer Walraven, Clerk to the Commissioners