

COMMISSIONERS JOURNAL NO. 59 - DELAWARE COUNTY  
MINUTES FROM REGULAR MEETING HELD APRIL 11, 2013

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

Present:  
Ken O'Brien, President  
Dennis Stapleton, Vice President  
Gary Merrell, Commissioner

RESOLUTION NO. 13-372

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD APRIL 8, 2013:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on April 8, 2013; and

WHEREAS, the Clerk of the Board has certified, pursuant to section 305.12 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. Merrell Aye Mr. Stapleton Aye Mr. O'Brien Aye

PUBLIC COMMENT

ELECTED OFFICIAL COMMENT

KARLA HERRON AND JOSH PEDALINE, BOARD OF ELECTIONS

PRESENTATION OF AWARD:  
SHANCIE JENKINS, DIRECTOR OF JOB AND FAMILY SERVICES,  
FOR THE DELAWARE FOR DEMOCRACY PROGRAM

DELAWARE FOR DEMOCRACY PROGRAM

RESOLUTION NO. 13-373

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0410:

It was moved by Mr. Stapleton, seconded by Mr. Merrell to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0410 and Purchase Orders as listed below:

PR Number	Vendor Name	Line Desc	Line Account	Line Amount	Line
<b>JOB AND FAMILY</b> R1303335	<b>SERVICES AND CHARGE</b> ACME ENTERPRISES INC	CLIENT TRANSPORTATION (TAXI)	22411601 - 5355	\$50,000.00	0001
<b>ENVIRONMENTAL SERVICES</b> R1303418	<b>SERVICES AND CHARGES</b> POSTMASTER	POSTAGE FOR MAY 2013 SEWER BILLING	66211901 - 5331	\$9,200.00	0001
R1303504	MCNAUGHTON MCKAY INC	PLC FIRMWARE UPGRADE	66211903 - 5320	\$4,110.00	0001
R1303504	MCNAUGHTON MCKAY INC	PLC FIRMWARE UPGRADE	66211904 - 5320	\$9,590.00	0002
<b>ENVIRONMENTAL SERVICES</b> R1303287	<b>CAPITAL</b> JWC ENVIRONMENTAL	QUAIL MEADOWS AND LEATHERLIPS	66611903 - 5450	\$90,966.00	0001
R1303459	AQUA-AEROBIC SYSTEMS INC	TARTAN FIELD	66611906 - 5450	\$10,202.29	0001
R1303460	AQUA-AEROBIC SYSTEMS INC	SCIOTO RESERVE	66611907 - 5450	\$10,317.96	0001

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R1303499	MCNAUGHTON MCKAY INC	REPLACEMENT DRIVES FOR RAW PUMPS AT OECC	66611903 - 5450	\$51,850.33	0001
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**ECONOMIC SERVICES AND  
DEVELOPMENT CHARGES**

R1303537	OHIO REGIONAL DEVELOPMENT	MOVING OHIO FORWARD ADMIN	22911716 - 5301	\$25,000.00	0001
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Vote on Motion Mr. Stapleton Aye Mr. Merrell Aye Mr. O'Brien Nay

**Died For Lack Of A Second: Commissioner's O'Brien Motion to amend payment to Mainstreet Delaware Inc. (10011102-5602) to state \$5,000.00 instead of \$10,000.00**  
*CMAPR0410 Accounts Payable Recap*

**RESOLUTION NO. 13-374**

**IN THE MATTER OF A LIQUOR PERMIT STOCK TRANSFER REQUEST FROM MJS FEED LLC AND FORWARDING TO THE OHIO DIVISION OF LIQUOR CONTROL WITH NO OBJECTIONS AND NO REQUEST FOR A HEARING:**

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

Whereas, the Ohio Division of Liquor Control has notified both the Delaware County Board of Commissioners and the Trenton Township Trustees that MJS Feed LLC has requested a stock transfer on the C1 permit located at 3866 N St Rt 3, Unit A, Sunbury, Ohio 43074 and

Whereas, the Delaware County Board of Commissioners has found no reason to file an objection,

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 Mr. O'Brien Aye Mr. Merrell Aye Mr. Stapleton Aye

**RESOLUTION NO. 13-375**

**IN THE MATTER OF APPROVING THE FIRST LEASE MODIFICATION AGREEMENT BETWEEN TULLER SQUARE NORTHPOINTE LLC.; THE DELAWARE COUNTY CLERK OF COURTS TITLE DIVISION AND THE DELAWARE COUNTY BOARD OF COMMISSIONER:**

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

Whereas, the Delaware County Clerk of Courts recommends the first lease modification agreement with Tuller Square Northpointe LLC.;

Therefore Be It Resolved, that the Board of Commissioners approve the first lease modification with Tuller Square Northpointe LLC.

**FIRST LEASE MODIFICATION AGREEMENT**

This First Lease Modification Agreement ("Agreement") is entered into as of April 11, 2013 (the "Effective Date"), by and between TULLER SQUARE NORTHPOINTE LLC, an Ohio limited liability company ("Landlord"), and the DELAWARE COUNTY COMMISSIONERS ("Tenant").

**Recitals**

- a. Landlord and Tenant have entered into a Lease Agreement, dated April 8, 2003, as amended by that certain letter agreement, dated April 16, 2008 (collectively, the "Lease"), for those certain premises consisting of approximately 2,500 square feet designated as Storeroom Number 01270 and having an address of 8647 Columbus Pike, Lewis Center, Ohio 43035 (the "Premises"), which Premises are situated within the NorthPointe Plaza Shopping Center ("Shopping Center") located in the unincorporated community of Lewis Center, County of Delaware and State of Ohio.
- b. The Term of the Lease is scheduled to expire on May 31, 2013 and Landlord and Tenant desire to extend the Term of the Lease for an additional period of five (5) Lease Years.
- c. Landlord and Tenant mutually intend and desire to modify the Lease on and subject to the terms and conditions hereinafter set forth.

Agreement

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In consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant agree as follows:

1. As of the Effective Date, the Lease is modified as follows:

- a. Extended Term. Notwithstanding any contrary provision of the Lease, the Term of the Lease is hereby extended for five (5) Lease Years commencing on June 1, 2013 and continuing through May 31, 2018 (such period, the "Extended Term"). Except as otherwise set forth herein, all the terms, covenants, provisions and conditions set forth in the Lease shall apply during the Extended Term. "Term" as defined in the Lease shall include the Extended Term.

Any contrary provision of the Lease notwithstanding, Annual Minimum Rent for the Extended Term shall be payable in accordance with the terms of the Lease in the amounts set forth below:

<u>Period</u>	<u>Annual Minimum Rent</u>	<u>Monthly Installment</u>	<u>Rate Per Square Foot Per Lease Year</u>
06/01/2013 - 05/31/2018	\$45,875.00	\$3,822.92	\$18.35

2. As a material inducement to Landlord entering into this Agreement, Tenant certifies to Landlord that as of the date hereof: (i) the Lease, as modified hereby, contains the entire agreement between the parties hereto relating to the Premises and that there are no other agreements between the parties relating to the Premises, the Lease or the Shopping Center which are not contained herein or in the Lease; (ii) Landlord is not in default in any respect in any of the terms, covenants and conditions of the Lease; and (iii) Tenant has no setoffs, counterclaims or defenses against Landlord under the Lease.

3. Tenant and its predecessors, successors, parent, subsidiaries, affiliates and any related entity or person, hereby release Landlord and its parent, subsidiaries, or affiliated entities, and their agents, partners, officers, directors, and employees, and the respective heirs, executors, administrators, successors and assigns of any of the foregoing, from any and all liability, claims, damages, causes of action or any other form of relief, legal or equitable, relating to the Lease, the Landlord's performance thereunder, or the Premises, from the Commencement Date of the Lease through the Effective Date of this Agreement.

4. Landlord and Tenant each warrant and represent to each other that there are no claims for brokerage commissions or finders fees in connection with consummating this Agreement, except with respect to State Street Capital Realty, LLC d/b/a "Casto" (an affiliate of Landlord) ("Broker") whose commission shall be paid by Landlord pursuant to a separate agreement.

5. Notwithstanding anything to the contrary contained in this Agreement or any other document attached hereto or executed and given to Landlord or Landlord's agent in conjunction or connection herewith or the leasing of the Premises, each signatory thereto, when purportedly executing this Agreement or such other document on behalf of a legal entity (i.e., a partnership, limited partnership, corporation, limited liability company, or joint venture) and whether domestic or foreign, warrants and represents to Landlord that, at the time of execution of this Agreement, or such other document, the: (1) named legal entity/political subdivision is in existence, validity created, in good standing and registered/organized in accordance with all applicable laws in the State of Ohio; (2) complete and correct legal name and entity/subdivision designation of the entity/subdivision appears as set forth in the first paragraph of this Agreement; (3) signatory is duly authorized to execute this Agreement on behalf of the entity/subdivision the signatory purports to represent in the capacity noted below the signature of such signatory; and (4) correct title of the signatory appears below the signature of such signatory.

6. This Agreement shall not be valid or binding on Landlord unless and until: (a) Tenant, by appropriate action or resolution taken and/or passed by the Delaware County Commissioners in regular or properly- noticed special session, has authorized and agreed to enter into and undertake Tenant's obligations set forth herein; (b) the President of Delaware County Commissioners, as authorized by duly-adopted Resolution of the Delaware County Commissioners, has signed this Agreement in the space provided below and such signature has been acknowledged by a Notary Public; (c) the Delaware County Prosecutor has affixed his or her signature to this Agreement in the space provided below; and (d) the Delaware County Auditor has affixed his or her signature to the Auditor's Certificate appearing below. Tenant agrees to comply with and complete any other requirements necessary to cause this Agreement to be a valid, binding and enforceable obligation of Tenant under applicable law. On or before Tenant's delivery of an executed copy or copies of this Agreement to Landlord for Landlord's execution, Tenant shall provide Landlord with reasonable evidence that the requirements set forth in Section 6 have been satisfied.

7. Capitalized terms used but not defined herein shall have the definitions given such terms in the Lease.

8. In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Lease, the terms of this Agreement shall be deemed operative and any conflicting or inconsistent terms contained in the Lease shall be deemed null and void. As modified and amended hereby, Landlord and Tenant each ratify and affirm the terms of the Lease.

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9. This Agreement may be executed in counterparts, all of which counterparts shall be deemed originals, all of which counterparts taken together shall constitute a single Agreement, and signature pages of which may be detached from the several counterparts and attached to a single copy of this Agreement to physically form a single document.

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

**RESOLUTION NO. 13-376**

**IN THE MATTER OF AUTHORIZING THE USE OF DELAWARE COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES FUNDS TO ASSIST IN FUNDING THE PURCHASE OF COFFEE, MEALS, REFRESHMENTS AND OTHER AMENITIES FOR FOSTER PARENT APPRECIATION BANQUET:**

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

WHEREAS, The Ohio Attorney General Opinion No. 82-006 addresses the issue Expenditure Of Public Funds For Proper "Public Purpose", and

WHEREAS, The October 20, 2003, State Auditor's ruling on payment of Expenditures Of Public Funds For Proper "Public Purpose" states that for persons who are employees or non-employees of the County, the Commissioners must pre-approve expenditures for the purchase of coffee, meals, refreshments and other amenities.

WHEREAS, May is recognized as Foster Parent Appreciation month; and

WHEREAS, Delaware County Department of Job and Family Services has planned a banquet to honor Foster Parents to be held on May 14th; and

WHEREAS, Delaware County Department of Job and Family Services plans to use Donated funds to pay for the event; and

WHEREAS, the Department requests approval to procure food for this event; and

NOW THEREFORE, PURSUANT TO THE FOREGOING, BE IT HEREBY RESOLVED, by the Board of Commissioners, County of Delaware, State of Ohio as follows:

Section 1. That the Delaware County Board of Commissioners hereby authorizes the use of Department of Job and Family Services funds in an amount not to exceed \$500.00 to assist in funding the purchase of refreshments and other amenities for Foster Parent Appreciation Month 2013.

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

**RESOLUTION NO. 13-377**

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

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

The County Administrator and the Assistant County Administrator/ Director of Administrative Services recommend Mike Schuiling to serve as the Interim Chief/Director of Emergency Medical Services; effective April 12, 2013 at 5:00PM;

Therefore Be it Resolved, the Board of Commissioners approve Mike Schuiling serving as the Interim Chief/Director of Emergency Medical Services; effective April 12, 2013 at 5:00PM.

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

**DISCUSSION LEASE AGREEMENTS**

**OHIO DEPARTMENT OF PUBLIC SAFETY FOR THE FRANK B. WILLIS BUILDING**

**COMMISSIONERS' COMMITTEES REPORTS**

**No Commissioners' Reports**

**Brian Galligher, Director Of Emergency Management, Gave An Update On Liberty Township And Powell Area Storms From Previous Evening; Minor Power Outages**

**RESOLUTION NO. 13-378**

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**IN THE MATTER OF ADJOURNING INTO EXECUTIVE FOR CONSIDERATION OF  
EMPLOYMENT OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL AND FOR PENDING OR  
IMMINENT LITIGATION:**

It was moved by Mr. Stapleton, seconded by Mr. Merrell to adjourn into Executive Session at 10:23AM.

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

**RESOLUTION NO. 13-379**

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

It was moved by Mr. Stapleton, seconded by Mr. O'Brien to adjourn out of Executive Session at 11:35AM.

Vote on Motion Mr. Merrell Absent\* Mr. O'Brien Aye Mr. Stapleton Aye

\*Due to a prior commitment Commissioner Merrell was absent for the adjourning of executive session.

There being no further business, the meeting adjourned.

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Gary Merrell

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Ken O'Brien

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Dennis Stapleton

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Jennifer Walraven, Clerk to the Commissioners