

COMMISSIONERS JOURNAL NO. 64 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD MARCH 28, 2016

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

Present:
Barb Lewis, President
Jeff Benton, Vice President
Gary Merrell, Commissioner

1
RESOLUTION NO. 16-289

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD MARCH 24, 2016:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on March 24, 2016; 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. Merrell Aye Mrs. Lewis Aye Mr. Benton Aye

2
RESOLUTION NO. 16-290

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM WORK SESSION HELD MARCH 23, 2016:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in work session on March 23rd, 2016; 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 work session.

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

3
PUBLIC COMMENT

4
ELECTED OFFICIAL COMMENT

5
RESOLUTION NO. 16-291

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0325:

It was moved by Mr. Benton, seconded by Mr. Merrell to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0325 and Purchase Orders as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
PO' Increase			
ACME	Job and Family Client Services	22411601-5355	\$ 15,000.00
Vaughn Industries	OECC MCC Project CO #1	66711906-5410	\$ 44,761.90

<u>PR Number</u>	<u>Vendor Name</u>	<u>Line Description</u>	<u>Account</u>	<u>Amount</u>	<u>Line</u>
R1602826	RIGHTER COMPANY	GALENA TRAIL	10011102	\$330,200.00	0001

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	INC,THE		- 5365		
R1602836	LEND LEASE (US)	GMP - PHASE II	40411414	\$11,366,730.00	0001
	CONSTRUCTION INC		- 5410		
R1602858	DELHI LANDSCAPE	REPLACE PLANT SIGN -	66211903	\$7,709.00	0001
	INC	WITH LIGHTING AND	- 5328		
		LANDSCAPING			

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

**6
RESOLUTION NO. 16-292**

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

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

The Chief of Emergency Medical Services is requesting that Dana Phillips attend a Hazmat Tech training at Berlin Township from March 28-30, 2016 at the cost of \$50.00 (fund number 10011303).

The Child Support Enforcement Agency is requesting that Mindy Kunce attend a Medical Enforcement Training in Columbus, Ohio May 17, 2016; at no cost.

The Child Support Enforcement Agency is requesting that Andrea Del Col and Maren Alkey attend a Review and Adjustment Training in Columbus, Ohio June 28-29, 2016; at no cost.

The Economic Development Department is requesting that Jenna Jackson and Megan Edwards attend a CDBG PY 16 Training in Columbus, Ohio April 8, 2016; at the cost of \$27.28 (fund number 21011113).

The Economic Development Department is requesting that Jenna Jackson attend the IEDC Annual Conference in Cleveland, Ohio September 25-28, 2016; at the cost of \$1,882.40 (fund number 21011113).

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

**7
RESOLUTION NO. 16-293**

ADOPTING RESOLUTION OF CONGRATULATIONS TO JOHN WAYNE CATHELL II UPON EARNING HIS EAGLE SCOUT AWARD:

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

WHEREAS, John Wayne Cathell II has been a member of Boy Scout Troop #94; and

WHEREAS, John Wayne Cathell II has met all the requirements and been approved by the National Council of Boy Scouts to receive the Eagle Scout Award, and

WHEREAS, The Board of Commissioners of Delaware County wishes to express congratulations to John Wayne Cathell II on earning the Eagle Scout Award.

NOW THEREFORE BE IT RESOLVED: That the Board of County Commissioners of Delaware County hereby officially congratulates John Wayne Cathell II on attaining Scouting's highest rank - the Eagle Scout Award. Your diligence and hard work have earned you the distinction of being an Eagle Scout. You join company with a select group of individuals who are recognized as outstanding in all that Scouting represents.

BE IT FURTHER RESOLVED: That the Clerk of the Board of Commissioners shall cause this Resolution to be spread upon the Board's Official Journal.

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

**8
RESOLUTION NO. 16-294**

IN THE MATTER OF APPROVING A CONTRACT OF SALE AND PURCHASE BETWEEN CHRISTY LYNN VIERS AND THE BOARD OF DELAWARE COUNTY COMMISSIONERS FOR DEL-CR13-4.04:

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

Whereas, the County Engineer recommends approval of the contract of sale and purchase with Christy Lynn Viers for the project known as DEL-CR13-4.04

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Now Therefore Be It Resolved that:

Section 1. The Delaware County Board of Commissioners approve the contract of sale and purchase with Christy Lynn Viers for the project known as DEL-CR13-4.04 as follows:

**CONTRACT OF SALE AND PURCHASE
VACANT LAND/IMPROVEMENTS**

WITNESSETH: On this 28th day of March, 2016, Christy Lynn Viers, married, whose address is 6638 Big Walnut Road, Galena, Ohio 43021, hereinafter, the SELLER, in consideration of the mutual promises, agreements, and covenants herein do hereby grant, remise, and sell to the Board of County Commissioners of Delaware County, Ohio, whose address is 101 North Sandusky Street, Delaware, Ohio 43015, hereinafter the PURCHASER, the following described premises, hereinafter the PROPERTY, to wit:

See Attached Exhibit A (Property Description)
36-SH, T
DEL-CR13-4.04

By this reference, Exhibit A is incorporated herein and made a part hereof as if fully rewritten herein.

TERMS OF PURCHASE:

1. PURCHASER promises and agrees to pay to the SELLER the total sum of **Twenty-Five Thousand Dollars (\$25,000.00)** which total sum to be paid the SELLER pursuant to this CONTRACT shall be in exchange and constitute the entire compensation for all of the following:
 - (A) All title, rights, and interest in and to the PROPERTY; and,
 - (B) For damages to any residual lands of the SELLER; and,
 - (C) For SELLER's covenants herein; and,
 - (D) For expenses related to the relocation of the SELLER, their family, and business; and,
 - (E) For any supplemental instruments necessary for transfer of title.

It is understood and agreed that the SELLER is responsible for all delinquent taxes and assessments on the PROPERTY, including, but not limited to, penalties and interest and all other real estate taxes and assessments which are a lien on the PROPERTY on the date of closing. The current calendar year's taxes are to be prorated on an estimated basis to the date of acquisition of title or date of possession, whichever date is earlier. SELLER is also responsible for all future installments of special assessments levied and assessed against the PROPERTY, whether these special assessments have or have not been certified to the county auditor for collection, provided those installments are a lien on the PROPERTY at the date of transfer. The PURCHASER may hold in escrow a sufficient amount of the purchase money to satisfy the above items. Any balance remaining after taxes, assessments, etc. are discharged, shall be refunded to the SELLER and any deficiency shall be the responsibility of the SELLER.

2. Closing shall occur at a time and place agreed upon between the parties, but no later than 30 days after notification of the SELLER by the PURCHASER that PURCHASER is ready to close. All title and interest in the PROPERTY shall transfer from the SELLER to the PURCHASER and closing shall occur within ninety (90) days. This date by which transfer and closing must occur may be modified via a signed writing mutually agreed upon by all parties to this CONTRACT.
3. SELLER agrees to transfer, sell, and convey, upon the fulfillment of all the obligations and terms of this CONTRACT, by a good and sufficient deed of general warranty of title, with full release of dower, to said PURCHASER, its successors and assigns, the PROPERTY in fee simple, together with all the appurtenances and hereditaments thereunto belonging and improvements now located thereon and all fixtures of every nature now attached or used with said land and improvements.
4. SELLER further agrees to release to the PURCHASER, its heirs, successors and assigns, any and all abutters rights or easements, including access rights to and from the PROPERTY, what ever the nature of such access rights, including but not limited to, across, in, over, upon, and above, appurtenant to any remaining lands of the SELLER not sold, transferred, or conveyed to the PURCHASER pursuant to this CONTRACT of which the PROPERTY now forms a part. (This paragraph applies to limited access parcels only.)
5. SELLER further agrees to execute supplemental instruments necessary for the construction and maintenance over, across, and upon the PROPERTY, necessary for the road, street, and/or highway project for which the PROPERTY was acquired.
6. SELLER further agrees to transfer, sell, and convey the PROPERTY with release of dower and warranting the same free and clear from all liens and encumbrances whatsoever, excepting zoning restrictions and public utility easements of record.

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7. SELLER further agrees to assist wherever possible to procure, record, and deliver to the PURCHASER releases and cancellations of all interest in such title, including, but not limited to tenants, lessees or others now in possession, or in any manner occupying or having an interest in the PROPERTY, and all assessment claims against the PROPERTY.
8. Prior to acceptance by the PURCHASER, the execution of this CONTRACT 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 acceptance of this CONTRACT by the PURCHASER within said period, it shall constitute a valid and binding CONTRACT of Sale and Purchase.
9. SELLER agrees that the PURCHASER may designate an escrow agent who shall act on behalf of both parties in connection with the consummation and closing of this CONTRACT.
10. SELLER also agrees that he will not destroy, change, alter, or damage the existing character of the PROPERTY. The SELLER understands and hereby assumes the risk of and any and all damage, change, or alteration that may occur to the PROPERTY between execution of this CONTRACT and the date the PURCHASER takes possession of the PROPERTY and hereby agrees to indemnify the PURCHASER for any and all such damage, change, or alteration that occurs.

In the event that any damage, change, alteration or destruction occurs to the PROPERTY resulting from any cause whatsoever, prior to the date possession is surrendered to the PURCHASER, the SELLER agrees to restore the PROPERTY to the condition it was in at the time of the execution of this CONTRACT by the SELLER, or to accept the purchase price consideration, hereinabove stated, less the cost of restoration. In the event the SELLER refuses to restore the PROPERTY to the condition it was in at the time of the execution of this CONTRACT by the SELLER or to accept the money consideration less the cost of such restoration as hereinabove stated, the PURCHASER may, at its option after discovery or notification of such destruction, change, alteration, damage, removal, or injury, terminate this CONTRACT by signed written notice to said SELLER. In addition to termination of the CONTRACT, PURCHASER hereby preserves and may exercise any and all legal options, actions, causes, or remedies that are or may be available to the PURCHASER. Nothing in this provision or this CONTRACT shall be interpreted to limit the PURCHASER from exercising any such available legal options, actions, causes, or remedies.

11. 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.
12. The SELLER hereby acknowledges that the compensation or consideration specified in this CONTRACT represents and is the full and total amount of compensation and consideration that the SELLER will and is entitled to receive from the PURCHASER in exchange for, in relation to, and in connection with the transfer of the PROPERTY. The SELLER and the SELLER's heirs, executors, administrators, successors, and assigns hereby forever release the PURCHASER from any and all claims for any damages, injuries, or any additional compensation or consideration than is expressly provided for in this CONTRACT. The SELLER hereby further forever releases the PURCHASER from any and all claims the SELLER, and the SELLER's heirs, administrators, executors, successors, and assigns may make as related to the transfer of the PROPERTY, costs associated with the transfer of the PROPERTY, for any damage to any residue property as a result of the transfer, for any damage or injury suffered to the SELLER or the SELLER's business as a result of relocating from the PROPERTY, for expenses related to the relocation of the SELLER, their family, and business, or any other cost, damage, or injury, whatever the source or nature, associated with or the result of the transfer of the PROPERTY.
13. This CONTRACT shall be binding upon the SELLER and the SELLER's heirs, executors, administrators, successors and assigns, and shall inure to the benefit of the PURCHASER, its heirs, successors and assigns.
14. If any item, condition, portion, or section of this CONTRACT 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 CONTRACT and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.

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- 15. This CONTRACT shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this CONTRACT shall be filed in and heard before the courts of Delaware County, Ohio.
- 16. This CONTRACT and its Attachments shall constitute the entire understanding and agreement between the SELLER and the PURCHASER, 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.
- 17. This CONTRACT shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.

Section 2. The Board approves a Purchase Order and Voucher for the above contract.

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

**9
RESOLUTION NO. 16-295**

IN THE MATTER OF APPROVING RIGHT-OF-WAY WORK PERMIT SUMMARY SHEET:

It was moved by Mr. Merrell, seconded by Mr. Benton to approve the following work permits:

Whereas the below requests to perform work within the right-of-way have been reviewed and approved by the Delaware County Engineer;

Now Therefore Be It Resolved, that the following permits are hereby approved by The Board of Delaware County Commissioners:

Permit #	Applicant	Location	Type of Work
U16-039	Frontier	North Galena Road	Place cable in ROW
U16-040	Columbia Gas	Home Road	Tie into gas main
U16-041	Time Warner Cable	Chambers Road	Place cable in ROW
U16-042	Time Warner Cable	Lott Road	Place cable in ROW
U16-043	Time Warner Cable	North County Line Road	Place cable in ROW
U16-044	Consolidated Electric	Big Walnut Road	Install aerial cable
U16-045	AT&T	Enterprise Drive	Road bore

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

**10
RESOLUTION NO. 16-296**

IN THE MATTER OF AUTHORIZING THE SUBMITTING OF AN APPLICATION TO THE OHIO DEPARTMENT OF PUBLIC SAFETY, DIVISION OF EMERGENCY MEDICAL SERVICES GRANT FOR THE TRAINING OF PERSONNEL AND THE PURCHASE OF EQUIPMENT USED FOR TRAINING AND EDUCATION:

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

WHEREAS, the Ohio Department of Public Safety (“ODPS”) offers grants in support of emergency medical services; and

WHEREAS, the Chief of Delaware County Emergency Medical Services (“DCEMS”) recommends approval of this Resolution to authorize submitting an application for an ODPS reimbursement grant that would provide monetary resources to assist DCEMS in training, equipping, and improving availability, accessibility and quality of service, specifically to augment DCEMS training program with books and study materials and to facilitate the DCEMS Training Outreach to aid in county wide medical and trauma emergencies;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, State of Ohio, hereby authorizes the submitting of an application for an ODPS grant for emergency medical services purposes as set forth herein.

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

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RESOLUTION NO. 16-297

IN THE MATTER OF APPROVING THE AMENDMENT TO THE CONTRACT FOR TRANSPORTATION SERVICES BETWEEN THE DELAWARE COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES; THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND ACME ENTERPRISES, INC.:

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

Whereas, the Director of Job & Family Services recommends approval of the following amendment;

Now Therefore Be It Resolved, the Delaware County Board of Commissioners approve the following contract amendment for Transportation Services with ACME Enterprises, Inc.:

**Second Amendment to Contract
Transportation Services**

This Second Amendment of the Contract For Transportation Services is entered into this 28th day of March, 2016 by and between the Delaware County Board of County Commissioners (hereinafter "Board") located at 101 North Sandusky Street, Delaware County, Ohio 43015, Delaware County Department of Job and Family Services (hereinafter "DCJFS") located at 140 North Sandusky Street, Delaware, Ohio 43015, and ACME Enterprises, Inc. (hereinafter referred to as the "Contractor"), whose principal place of business is located at 1399 Windrush Circle, Blacklick, Ohio 43004 (hereinafter singly "Party" and collectively "Parties.")

WHEREAS, the Parties entered into the Contract for Transportation Services (hereinafter "Contract") dated April 8, 2013; and,

WHEREAS, the Parties agree to the addition of certain provisions to the Contract (collectively "Provisions").

NOW THEREFORE, the Parties agree as follows:

1. The Parties agree to amend the Contract to add the following Provisions:
 - A. The contract term shall be extended through May 31, 2016.
2. Signatures
Any person executing this Second Amendment in a representative capacity hereby warrants that he/she has authority to sign this Second Amendment or has been duly authorized by his/her principal to execute this Second Amendment on such principal's behalf.
3. Conflicts
In the event of a conflict between the terms of the Contract, the First Amendment, and this Second Amendment, the terms of the Second Amendment shall prevail.
4. Terms of Agreement Unchanged
All terms and conditions of the Contract and First Amendment not changed by this Second Amendment remain the same, unchanged, and in full force and effect.

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

12

RESOLUTION NO. 16-298

IN THE MATTER OF APPROVING THE VACATION OF SANITARY SEWER EASEMENTS AS SHOWN ON THE SUBDIVISION PLAT FOR POWELL GRAND:

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

WHEREAS, certain Sanitary Easements were dedicated to the County by the subdivision plat entitled "Seldom Seen Acres" of record in Plat Cabinet 2, Slide 245; and

WHEREAS, a portion of the easement was never used by the County; and

WHEREAS, Powell Communities, LLC is seeking to complete a development on the property where the previously recorded easement was not used; and

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WHEREAS, the County Sewer District staff has reviewed the proposed development and determined that a portion of the previously recorded easement (more particularly described on the subdivision plat for Powell Grand) conflicts with and is not necessary for the proposed new development on the property; and

WHEREAS, the Developer requests that the aforementioned portion of the previously recorded easement be vacated to allow for the proposed new development.

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners hereby vacates, terminates, cancels and releases the portion of the permanent easement recorded in Plat Cabinet 2, Slide 245 shown on the subdivision plat for Powell Grand, and the obligations and burdens contained therein.

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

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

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RESOLUTION NO. 16-299

IN THE MATTER OF ADOPTING RULES FOR THE ADMINISTRATION OF THE EXCISE TAX ON THE LODGING OF TRANSIENT GUESTS FOR THE BENEFIT OF THE DELAWARE COUNTY FAIRGROUNDS:

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

WHEREAS, on November 19, 2015, the Delaware County Board of Commissioners (the "Board") adopted Resolution No. 15-1386, proceeding with the submission of the question of levying an excise tax on the lodging of transient guests for the benefit of the Delaware County Fairgrounds; and

WHEREAS, the question was submitted to the electors of Delaware County at the election held on March 15, 2016, whereupon according to the unofficial results thereof, a majority of electors voting thereon voting in the affirmative for the tax; and

WHEREAS, in anticipation of the Board of Elections' certification, the Board desires to adopt rules for the administration of the excise tax, pursuant to section 5739.09(L) of the Revised Code;

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

Section 1. The Board hereby adopts the following Rules for the Administration of the Excise Tax on the Lodging of Transient Guests for the Benefit of the Delaware County Fairgrounds:

ARTICLE I – TITLE

These rules shall be known as the "Delaware County Rules for the Administration of the Excise Tax on the Lodging of Transient Guests for the Benefit of the Delaware County Fairgrounds" and shall be cited herein as the "Rules."

ARTICLE II – EFFECTIVE DATE; GRACE PERIOD

The tax shall be effective on the date the Delaware County Board of Commissioners receives notification from the Delaware County Board of Elections of an affirmative vote in favor of the tax. Notwithstanding the foregoing, all hotels subject to the tax shall not be required to collect the tax and shall not be liable to remit the same until May 6, 2016. This grace period is for the sole purpose of providing all hotels subject to the tax sufficient time to update software and other internal procedures necessary as a result of the imposition of the tax.

ARTICLE III – TERRITORY

The territory in which the tax shall be imposed shall be all of Delaware County, Ohio, regardless of municipal boundaries or the existence of other excise taxes on the lodging of transient guests.

ARTICLE IV – DEFINITIONS

As used in the Rules:

- A. "County" means the County of Delaware, State of Ohio.
- B. "County Administrator" means the Delaware County Administrator, appointed pursuant to section 305.29 of the Revised Code.

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- C. “Board” means the Delaware County Board of Commissioners.
- D. “Person” means individuals, partnerships, corporations, receivers, assignees, trustees in bankruptcy, estates, firms, associations, joint ventures, clubs, societies, and combinations of the foregoing in any form.
- E. “Hotel” means every establishment kept, used, maintained, advertised, or held out to the public to be a place where sleeping accommodations are offered to guests, in which five (5) or more rooms are used for the accommodation of such guests, whether such rooms are in one or several structures.
- F. “Transient guest” means person(s) occupying a room or rooms for sleeping accommodations for less than thirty (30) consecutive days.
- G. “Lodging” means one (1) or two (2) or more connecting rooms in which sleeping accommodations are provided for a transient guest.
- H. “Vendor” means a person who is required to have an Ohio Retail Sales Tax Vendor License and to operate a business pursuant to section 5739.17 of the Revised Code, and who operates a hotel which furnishes lodging to transient guests and includes the agents and employees of such person who perform the functions of the vendor on his behalf. “Vendor” also includes the owner, lessee, mortgagor in possession, of the real estate upon whose premises the vendor operates or has operated a hotel, when the vendor is or becomes a non-resident of Ohio or conceals his whereabouts or his property.
- I. “Premises” means a parcel or contiguous parcels of real property upon which a hotel is operated.
- J. “Consumer” means the person, whether or not a guest, who pays or is obligated to pay the rent for the lodging of transient guest(s) in a hotel.
- K. “Rent” means the aggregate value in money or anything paid or delivered, or promises to be paid or delivered for hotel lodging, without any deduction for the cost of labor, service, property used, interest discount paid or allowed after the price is paid or agreed to be paid, or any other expense. “Rent” does not include: (1) amounts refunded for lodging not used when the full rent and tax are refunded by cash or credit; nor (2) cash discounts allowed at the time the lodging is furnished or contracted to be furnished.
- L. “Notice” means communication submitted in writing and personally delivered or forwarded by mail to the last known address of anyone affected by the provisions of the Rules.
- M. “Tax” means, unless otherwise specified, the tax levied and imposed hereby.

ARTICLE V – LEVY OF TAX; WHEN COLLECTABLE; EXEMPTIONS; PRESUMPTION

- A. An excise tax is hereby levied and imposed upon each transaction in Delaware County by which lodging is or is to be furnished by a hotel to a transient guest(s), at a rate of three per cent (3%) of the rent for each such transaction, on and after the effective date stated herein.
- B. The tax applies and is collectable when the lodging is furnished, regardless of the time when the rent is paid or delivered.
- C. For the purpose of the proper administration, and to prevent evasion of the tax, it is presumed that all rents for hotel rooms in the County are subject to the tax until the contrary is established.
- D. The tax is not a part of the rent and shall be separately stated as such on every rent invoice, bill, statement, or other written charge therefor.
- E. The tax does not apply to transactions for lodging furnished to representatives of the United States federal government which are paid directly by the federal government. Such transactions will qualify as exempt by filing a certificate of exemptions together with the bill, statement, or invoice and copies of any checks received in payment.

ARTICLE VI – LIABILITIES OF VENDOR AND CONSUMER; CERTIFICATE OF EXEMPTION

- A. The tax is imposed upon and shall be paid by the consumer to the vendor as trustee solely for the benefit of Delaware County, and each vendor as such trustee shall collect from the consumer the full and exact amount of the tax payable on each taxable transaction in the manner and at the times provided as follows:

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1. if the price is, at or prior to the transaction, paid in cash, check, draft, or money order by the consumer to the vendor, the vendor shall collect the tax with and at the same time as the price;
 2. if the price is otherwise paid or to be paid, the vendor shall, at or prior to the furnishing of lodgings, charge the tax to the account of the consumer, which amount shall be collected by the vendor from the consumer in addition to the price.
- B. Each such transaction shall be reported on, and the amount of the tax applicable thereto shall be remitted with, the return for the period in which the transaction occurs, and the amount of the tax shall become a legal charge in favor of the vendor and against the consumer.
- C. To the extent the vendor fails to collect the tax from the consumer upon each taxable transaction or, having collected the tax, fails to return and remit the same when due, the tax is hereby imposed and levied upon the vendor. This paragraph does not affect any duty of a vendor or the liability of any consumer to pay the tax, both as imposed upon each hereunder, but any payment of tax by the vendor or the consumer reduces the liability of the other to the County to the extent of the payment.
- D. Within thirty (30) days after enacting these Rules, or within thirty (30) days after commencing business, whichever is later, each hotel providing lodging to transient guests shall register said hotel with the County Administrator or the County Administrator's designee and obtain from the County Administrator a "Transient Occupancy Registration Certificate" to be at all times posted in a conspicuous place on the premises. Said certificate shall, among other things, state the following:
1. The name of operator;
 2. The address of the hotel;
 3. The date upon which the certificate was issued; and
 4. A statements that reads "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Rules for the Administration of the Excise Tax on Lodging of Transient Guests for the Benefit of the Delaware County Fairgrounds by registering with the Delaware County Administrator for the purpose of collecting said tax from transient guests and remitting said tax to the County Administrator or his designee. This certificate does not constitute a permit."

ARTICLE VII – RETURNS; WHEN DUE; REMISSION OF PENALTIES; PROCEDURE THEREON; FAILURE TO FILE; FORM

- A. Each vendor shall, on or before the 23rd day of every month, make and file a full and complete return with the County Administrator or his designee for the preceding month on the form prescribed, showing all the information required thereon, including the amount of tax required to be collected from the consumer and the amount of tax due from the vendor to the County.
- B. Upon application of the vendor in writing, and for good cause shown, the County Administrator or his designee may extend the time for making and filing returns and may remit any part of the penalties which may be due hereunder.
- C. Such returns shall be submitted to the County Administrator or his designee, together with the payment of the amount of tax shown to be due thereon plus any penalty and interest.
- D. Upon receiving the same, the County Administrator or his designee shall promptly stamp or otherwise mark on the forms the date received and the amount of payment received.
- E. Any vendor who fails to file a complete return as required herein, shall forfeit and pay into the County Treasury a ten per cent (10%) penalty of the amount of the tax and such may be collected by assessment in the manner provided herein.
- F. The form of the return shall be prescribed by the County Administrator or his designee.

ARTICLE VIII – ASSESSMENTS; LIABILITIES OF VENDOR AND CONSUMER

- A. If any vendor collects the tax and fails to remit the same to the County as provided herein, the vendor shall be personally liable for any amount collected which the vendor failed to remit; or if any vendor fails to collect the tax or any consumer fails to pay the tax on any transaction subject thereto, such vendor or consumer shall be personally liable for the same, and the County Administrator or his designee may make an assessment against the vendor in the first case, or the vendor or consumer in the second case, as the facts may require, based upon any information in his possession.
- B. An assessment against a vendor shall not discharge the consumer's liability to reimburse the vendor for the tax if the latter has not paid the tax.

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- C. An assessment issued against either the vendor or the consumer shall neither be considered an election of remedies nor a bar to an assessment against the other for the tax due on a particular transaction if the tax has been paid by another.

ARTICLE IX – MAINTENANCE AND INSPECTION OF RECORDS; ASSESSMENTS

- A. The burden of proof rests upon each vendor to show what part, if any, of the vendor's gross receipts from hotel room rents are not taxable, and for such purpose each vendor shall maintain and keep complete and accurate records of rents, together with a record of the tax collected thereon, which shall include:
1. Primary records such as all guest or rent registers, rent invoices, statements or bills, rent payments and/or refunds thereon, room rate sheets or cards of prices per day of each room as required by section 3731.16 of the Revised Code, receipts of taxes collected, copies of the appropriate schedule of Federal income tax returns, Ohio sales tax returns, and tax returns to local subdivisions having a hotel lodging excise tax identical or substantially similar to the tax imposed hereby, as filed by the vendor, exemption certificates, tax payment receipts, cash register tapes, and all other pertinent documents; and
 2. Secondary records such as bank deposit receipts and day books, journals, or any other records in which accumulated data by the vendor, which must be supported by complete detailed records from which such data was accumulated.
- B. Guest or rent invoices, statements or bills, and cash register tapes for taxable rents must have the total taxable rent and the tax charged and/or collected separately stated thereon, which amounts are to be accumulated and recorded in a secondary record.
- C. Rent invoices, statements, or bills must all clearly show the length of stay, in terms of consecutive days, for each guest.
- D. All such records and documents shall be open during regular business hours to inspection of the County Administrator or his designee who shall review, investigate, examine, and audit any of such records of any vendor from time to time to determine if the proper tax has been returned and remitted. In connection with such investigation, the County Administrator, or designee, may interview the vendor, and the vendor's agents and employees, and take written statements therefrom under oath. If the investigation of such complete records reveals that any tax or additional tax should properly have been returned and remitted by the vendor, the County Administrator shall make an assessment of such tax or additional tax in the manner provided. If the County Administrator or his designee is satisfied that the failure to return said tax or additional tax when due was caused by unintentional or immaterial error, mistake, or omission, he shall not impose the penalty.
- E. If any vendor fails to maintain complete primary sales records, accurately reflecting the total rents subject to the tax and of the tax due thereon, or which may be utilized in verifying the accuracy of the figures reflected in secondary records and/or reported on tax returns filed hereunder, the County Administrator or his designee will use one of the following methods for such verification:
1. determine the total amount of all rents, less rental refunds, when the full tax has also been refunded either in cash or by credit, as the facts may require, based upon any information in his possession; or
 2. determine taxable and non-taxable rents, or the ratio of taxable rents to total rents, or both, as the facts may require, based upon any information in his possession.
- F. The above described determinations may be based upon a sampling or test checks of the vendor's business activity for a representative period, or other information relating to the rental of rooms made by such vendor.
- G. If any vendor:
1. fails to maintain complete records, as required hereby;
 2. fails or refuses to permit the County Administrator or his designee to inspect any records;
 3. refuses to permit the County Administrator or his designee to sample or test check his business activity;
 4. having filed a return or returns, misrepresents or fails to disclose, any material fact of figure thereon;
 5. having collected the tax, fails to remit the same when due;
 6. fails to remit the correct amount of tax or interest thereon when due; or
 7. fails to file a full and complete return when due,

the County Administrator or his designee shall determine the proper amount of tax by any of the

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means set forth herein above; the tax as so determined will be deemed to be the tax collected by such vendor during the entire period of time under review; and the County Administrator or his designee shall make an assessment of such amount of tax based upon such determination, less the tax paid during such period, if any, (a) plus interest thereon at the per annum rate as set in accordance with section 5703.47 of the Revised Code, computed from the time the amounts of tax assessed should have been paid; (b) plus a penalty of ten per cent (10%) of the amount of the assessment of tax.

- H. No assessment, however, shall be made or issued against a vendor or consumer for any tax more than four (4) years after the return day for the period in which the taxable transaction giving rise to the assessment of the tax occurred, or after the return for said period was filed, whichever is later.
- I. All returns, documents, and payments submitted by each vendor, all records and other documents examined, and all information or knowledge of any vendor's business obtained by the County Administrator or his designee shall be treated as confidential by the County Administrator or his designee and shall not be released by them except upon order of a court of competent jurisdiction or to a duly authorized officer or agent of the Federal government, the State of Ohio, or any municipal corporation or township in the County which levies a tax pursuant to sections 5739.08 or .09 of the Revised Code.

ARTICLE X – PROCEDURE FOLLOWING ASSESSMENT; APPEALS

- A. Each assessment shall be in writing stating clearly the reasons and basis therefor, upon forms adopted by the County Administrator or his designee.
- B. In each case of an assessment, the County Administrator or his designee shall give to the assessee written notice thereof to be served personally or by certified mail, return receipt requested, along with a copy of the written assessment.
- C. Unless the assessee, within thirty (30) days after service thereof, files with the County Administrator or his designee a petition for reassessment in writing addressed to the Board and verified under oath by the assessee or his duly authorized agent having knowledge of the facts, and setting forth with particularity the items of assessment objected to, together with the reasons for such objection, the assessment shall become final and the amount thereof shall be deemed a debt due and payable to the County, whereupon the County Administrator or his designee shall cause to be filed a judgment lien in the amount of the assessment, including penalties and interest added thereto under the provisions hereof.
- D. When a petition for reassessment is timely filed, the Clerk of the Board shall assign a time and place for hearing the same and shall notify the petitioner thereof by certified mail. Notice of the decision of the Board upon the petition after hearing shall be served upon the petitioner by certified mail and deposited in the United States mail on the date of the entry of the decision in its journal.
- E. If aggrieved by the decision of the Board, the petitioner may appeal to the Court of Common Pleas pursuant to section 307.56 of the Revised Code.
- F. When the merits of the assessment or any part thereof is finally adjudicated, the County Administrator or his designee shall proceed to collect the tax.
- G. All monies collected upon assessments, including penalties and interest thereon shall, when received by the County, be considered as revenue arising from the tax.

ARTICLE XI – LIABILITY OF OFFICERS AND AGENTS

If any person, other than an individual, required to file returns and to remit the tax, fails for any reason to make such filing or payment, its officers, partners or managing agents, or employees having control or supervision of, or charged with the responsibility of, filing returns and making payments of tax, shall be personally liable for such failure. The dissolution of such entity shall not discharge its liability for a failure to file returns or remit tax due prior to such dissolution. Such liability may be collected by assessment in the manner provided in these Rules.

ARTICLE XII – SALE OF ENTIRE BUSINESS; SUCCESSOR LIABLE FOR TAXES AND PENALTIES DUE

If a vendor liable for the tax sells the vendor's business or quits the business, the taxes, interest, and penalties imposed hereby on taxable rents made prior to that time shall become due and payable immediately, and such person shall make a final return within fifteen (15) days after the date of selling or quitting the business. The vendor's successor shall withhold sufficient amount of the purchase money to cover the amount of such taxes, interest, and penalties due and unpaid until the former vendor produces a receipt from the County Administrator or his designee showing that the taxes, interest, and penalties have been paid, or a certificate indicating that no taxes are due. If the purchaser or successor of the business fails to withhold purchase money, said purchaser or successor shall be personally liable for the payment of the taxes, interest, and penalties accrued and unpaid during

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the operation of the business by the former owner.

ARTICLE XIII – REFUND OF TAXES ILLEGALLY OR ERRONEOUSLY PAID

- A. A written claim for refund of taxes illegally or erroneously paid may be filed in writing with the County Administrator or his designee by a vendor within ninety (90) days from the date claimant ascertains that the payment was illegal or erroneous, but not later than four (4) years from the date of such payment.
- B. Such claim must show that the tax was remitted to the County and that, if it was collected from a consumer, the claimant has either reimbursed the consumer or will hold such refund in trust for the benefit of the consumer.
- C. The County Administrator or his designee shall promptly determine the amount of the refund due and whether an unpaid liability for tax against the claimant for the payment of tax currently exists, in which case, such refund, if allowed, or to the extent allowed, shall be applied against such current liability to the full extent of the latter. The County Administrator or his designee shall certify the excess amount of refund allowed or the full amount, as the case may be, to the County Auditor, who shall draw his warrant for such certified amount on the appropriate fund in favor of the claimant.
- D. If, however, the County Administrator or his designee's decision on a claim for refund is to award less than the full amount claimed, his decision shall be treated in the same manner as an assessment and the aggrieved claimant and the County shall have all the rights, remedies, and duties as set forth upon an assessment; but the County Administrator or his designee shall withhold his certification until the merits of the claim have been finally adjudicated.

ARTICLE XIV – SETTLEMENT OF TAX FUND

- A. All receipts collected from the tax shall be deposited in a fund or funds in accordance with section 5739.09(L) of the Revised Code.
- B. All revenue arising from the tax shall be spent solely for the purposes specified in section 5739.09(L) of the Revised Code and Resolution No. 15-1386.

ARTICLE XV – RESPONSIBILITIES OF AGRICULTURAL SOCIETY AND COUNTY

The Delaware County Agricultural Society, by and through its board and officers, shall present quarterly financial and performance reports as well as an annual operations report each showing its use of the funds hereby appropriated, to the Board and County Administrator, who shall be charged with the duty of inquiry into and examination of the expenditure of the revenue from the tax in order to ensure the furtherance of the purposes specified in section 5739.09(L) of the Revised Code and Resolution No. 15-1386.

Section 2. The Board hereby directs the Clerk of the Board to promptly certify a copy of this Resolution, via certified mail and under cover of a letter from the County Administrator, to the Delaware County Agricultural Society and to all hotels subject to the excise tax.

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

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RESOLUTION NO. 16-300

IN THE MATTER OF APPOINTING A COUNTY SANITARY ENGINEER:

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

WHEREAS, pursuant to section 6117.01(C) of the Revised Code, the Delaware County Board of Commissioners (the "Board") may employ a registered professional engineer to be the county sanitary engineer for the time and on the terms it considers best; and

WHEREAS, on February 22, 2016, the Board adopted Resolution No. 16-176, hiring Michael Frommer to the newly created position of Director of Sanitary Engineering and Development; and

WHEREAS, the job description for the position of Director of Sanitary Engineering and Development states that the incumbent may serve as the county sanitary engineer;

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

Section 1. The Board hereby appoints Michael Frommer as Sanitary Engineer for Delaware County, serving concurrently with his position as Director of Sanitary Engineering and Development.

Section 2. The term of appointment approved herein shall be for a continuous period at the will of the Board.

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Section 3. This Resolution shall supersede any previous appointment to the position of Sanitary Engineer for Delaware County and shall take immediate effect upon adoption.

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

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ADMINISTRATOR REPORTS

Seiji Kille, Acting County Administrator/Director of Fiscal Services

-No reports

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COMMISSIONERS' COMMITTEES REPORTS

Commissioner Merrell

- Participating in Meals on Wheels on Friday in the kitchen area
- Will have Bob Lamb attend the Regional Planning meeting on his behalf on Thursday
- Happy belated Easter to everyone

Commissioner Benton

- Participated in Meals on Wheels Friday, delivering food. It is an amazing event
- Attended the Investment Committee meeting this morning
- Will be speaking at the ribbon cutting at the Gemini Parkway extension tomorrow

Commissioner Lewis

- Attended the Investment Committee meeting this morning. Treasurer Peterson stated they collected in the area of \$225 million in tax receipts. Was able to check the schools and other entities shares out in sixteen days
- Participated in Meals on Wheels. That organization can always use extra hands to help them out
- Happy belated Easter to everyone

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RESOLUTION NO. 16-301

IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF EMPLOYMENT; COMPENSATION OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL; TO CONSIDER THE PURCHASE OF PROPERTY AT COMPETITIVE BIDDING:

It was moved by Mr. Merrell, seconded by Mr. Benton to adjourn into Executive Session at 9:50 AM.

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

RESOLUTION NO. 16-302

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

It was moved by Mr. Benton, seconded by Mr. Merrell to adjourn out of Executive Session at 11:21 AM.

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

There being no further business, the meeting adjourned.

Gary Merrell

Barb Lewis

Jeff Benton

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Jennifer Walraven, Clerk to the Commissioners