

REGULAR SESSION  
of the Daviess County Fiscal Court  
held at the Courthouse in the City of Owensboro,  
County of Daviess, Commonwealth of Kentucky  
on this 7<sup>th</sup> day of February 2012  
Present were Judge/Executive Al Mattingly,  
County Commissioners Jim Lambert,  
George Wathen and Charlie Castlen

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DOCUMENTS RELATED TO TODAY'S DISCUSSION  
ARE FILED IN FEBRUARY 7, 2012 FISCAL COURT FILE

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Judge Mattingly opened the meeting in prayer and led the court in the Pledge of Allegiance to the flag.

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Judge Mattingly recognized the outstanding service provided to this community by reporter Keith Lawrence with a proclamation which reads,

WHEREAS, for over forty-years, the citizens of Owensboro-Daviess County have had the pleasure of reading Messenger-Inquirer articles written by journalist Keith Lawrence; and  
WHEREAS, since 1972, Mr. Lawrence has written serious and thought provoking articles, as well as funny and engaging articles; and  
WHEREAS, whether serious or funny, Mr. Lawrence has always performed his journalistic duties with respect and professionalism; and  
WHEREAS, Mr. Lawrence makes Owensboro-Daviess County a better place by sharing his life's calling with us; and  
WHEREAS, it is with sincerity that the Daviess County Fiscal Court wishes Mr. Keith Lawrence another 40-years of prosperous service as a journalist and friend to all; and  
NOW THEREFORE, I, Al Mattingly, Daviess County Judge/Executive do hereby proclaim Sunday, February 12, 2012 as **KEITH LAWRENCE DAY** in Daviess County, Kentucky.

Mr. Lawrence was very appreciative for this recognition.

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Treasurer Jim Hendrix presented the Treasurer's Report for the month ended December 2011.

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Minutes of the January 19, 2012 meeting were submitted to fiscal court members for review prior to today's meeting and on a motion of Commissioner Lambert, seconded by Commissioner Castlen with all the Court concurring said Minutes were approved and signed.

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**By a motion of Commissioner Castlen, seconded by Commissioner Wathen, the court considered approval of all Claims for all Departments.  
Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All members of the court voted in favor; motion passed.**

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**By a motion of Commissioner Castlen, seconded by Commissioner Wathen, the court considered approval to Apply for a Law Enforcement Protection Program grant and Approval of Resolution No. 01-2012 related to same.**

Sergeant Kent Taul of the Daviess County Sheriff's Office explained that these funds for \$12,700 will go towards purchasing 16 pistols and ammunition.

**Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All members of the court voted in favor; motion passed.**

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**By a motion of Commissioner Castlen, seconded by Commissioner Lambert, the court considered approval of Resolution 02-2012 - Authorizing the Judge/Executive to enter into an Agreement with the Department for Local Government (DLG) for the project of Economic Development Incentives in the amount of \$85,240, and to Execute any documents which are deemed necessary by DLG to facilitate said project, and to act as the Authorized Correspondent for same.**

Mr. Hendrix stated, "As you know, the coal severance money goes into several different pots - one being the LGED fund. Recently, I was notified that pursuant to House Bill 1 we have \$85,240 appropriated for our use, and it expires at the end of June 2012. The prior court had allocated \$500,000 for the center for business and research lab. We tapped LGED money previously, and it paid about \$402,000. I would propose to you that this \$85,240 go to pay off that balance that we owe them. It will get us within \$5,000. Before, we thought we might be looking at \$150,000 out of the general fund, but now we are only looking at \$5,000 because the coal money has grown since that money was allocated."

**Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All members of the court voted in favor; motion passed.**

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**By a motion of Commissioner Lambert, seconded by Commissioner Castlen, the court considered approval of a Lease Agreement between Daviess County Board of Education and Daviess County Fiscal Court to use Board Properties for its Summer Recreation Program.**

Ross Leigh stated, "There is a change in this agreement as opposed to last year's agreement. There are two properties that the school board is looking to rid themselves of and those are the old Utica and old West Louisville elementary schools. There are provisions in the contract which allow us to continue to use those playgrounds for one further year at Utica and two further years at West Louisville if those properties were to sell.

**Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All members of the court voted in favor; motion passed.**

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**By a motion of Commissioner Lambert, seconded by Commissioner Castlen, the court considered approval of Concession Contracts with East Daviess County Little League and Owensboro-Daviess County Babe Ruth League to use concession buildings at Yellow Creek and Panther Creek Parks.**

**Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All members of the court voted in favor; motion passed.**

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**By a motion of Commissioner Castlen, seconded by Commissioner Wathen**, the court considered approval to Contract for Professional Services with GRADD to prepare 2012 Storm Water Phase II Report.

Mark Brasher stated, "This is an annual contract with GRADD between the City of Owensboro and this court. It stipulates that GRADD will prepare the Phase II annual report and will facilitate all that accompanies that report. Phase II refers to the Clean Water Act and Phase II, I believe in 2006, they activated Phase II. Prior to that, it was the major cities in the U.S. such as Lexington and Louisville. Phase II just means it is the next step in the process. It deals mainly with storm water, contamination, construction..." He also said that the Daviess County Drainage Commission will play a role in developing this report as it relates to public education and in maintaining facilities for storm water.

**Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All members of the court voted in favor; motion passed.**

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**By a motion of Commissioner Wathen, seconded by Commissioner Castlen**, the court considered approval to Advertise for **Bid No. 06-2012** - Construction of gas collection system at the contained landfill, Unit 5.

Landfill Manager Robbie Hocker stated, "This is the continuation of our gas flare for title 5."

**Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All members of the court voted in favor; motion passed.**

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**By a motion of Commissioner Castlen, seconded by Commissioner Wathen**, the court considered approval of the **Second Reading of KOC 611.11 (2012)** – An Ordinance of the Daviess County Fiscal Court Authorizing the Establishment of Assessment Warrants for the North Kentucky Highway 81 Area.

**Comments:**

David Hawes of RWRA stated, "This was an extension of a sewer across from the Government Operations Center on Highway 81 northward and it ended at a location near Phill's Custom Cabinets on that side of the road. This is a breakdown of the cost and also allows for the prorated share of that to be assessed to various properties."

**Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All members of the court voted in favor; motion passed.**

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**Comments:**

Commissioner Castlen mentioned the retirement of Volunteer Fire Chief Mark Lockett from the Masonville Fire Station. Mr. Lockett served with the station since the 1960's. The court recognized his leadership and thanked him for his years of faithful service.

Judge Mattingly noted a letter he recently received from Time Warner Cable. The letter reads, "... effective with the next customer billing cycle, the fee for late payment will change from \$7.00 to \$7.50."

Judge Mattingly also mentioned receiving a letter from Time Warner, which accompanied a check for \$15,000. These funds will go towards upgrading the court's current broadcasting system.

Judge Mattingly stated, "I received a copy of the letter or tribute that was read into the Congressional record to Specialist Brandon Mullens by Senator Mitch McConnell."

Judge Mattingly stated, "Commissioners, all of us have received calls from the Pleasant Ridge community regarding the re-zoning that is going to take place this Thursday, February 9<sup>th</sup>. Unfortunately, various members of this court will be out of town on February 9 and will not be able to attend the OMPC hearing on this issue. I suspect, regardless of the outcome, an appeal will come to this body."

Claud Porter stated, "The Planning Commission and the Board of Adjustments will make a ruling and 30-days after a ruling is made, a party who is aggrieved by that decision may file a request for the legislative body to review it. The next thing the legislative body would do, is to either decide whether to accept the Planning Commission's recommendation and in doing that, we may have an argument type of hearing where persons may present their arguments concerning the Planning Commission's ruling. The other thing this commission can do is to just review the Planning Commission's record itself and from that record, the adjudicated facts, which are ones that people presented concerning the property itself and ones that would differ from the Planning Commission's finding that would support an alternative finding – one that supports the person that applied for the appeal. Another thing the legislative body can do is to hold our own kind of trial hearing where we would hear all of the evidence and then make findings from those different from those that the Planning Commission made and that would have to support a different finding than the Planning Commission. Once an appeal has been filed, we have 90-days to make a decision. If there is no decision within those 90-days, the Planning Commission's decision will stay."

Judge Mattingly stated, "I have had several e-mails and calls, and let me first of all assure each and everyone that no one has made up their mind – one way or the other – because we will not be able to do that until we receive the findings of fact and the decision of Planning and Zoning. All those interested in the outcome, I encourage you to attend the Planning and Zoning hearing at City Hall this Thursday. That is where you make your argument, tell your story, and that is where you would try to influence that body in one way or the other. Once they make their decision and an appeal to this body is made, we will be looking at the finding of fact and whether it was applied to KRS 100, which is the zoning law."

Commissioner Castlen stated, "Claud, what is the, if I heard you right, that we have an opportunity to do our own findings of fact. If we choose to do that, what circumstances would present themselves where we would do that?"

Mr. Porter stated, "That is up to the court to decide which method to use to decide. If Fiscal Court said that we would like to hear all of the facts and someone to present them then you can make that decision to do that. That is just one of the methods to take - that is to hear everyone's presentation, then you have to make findings of fact. You have to say from everyone we have heard, this is the findings that we make and then the findings of fact that you make have to be different from the ones that the Planning Commission made and have to support a ruling that is different from the Planning Commission."

Commissioner Lambert stated, "Are there reasons why members of this court should not attend Thursday's meeting?"

Mr. Porter stated, "I would recommend that they not attend those meetings because if there is an appeal, you are going to have to serve as a trier of fact at some point, to make a decision and listen to those. I don't think it is illegal to attend, but you would make a separate and new finding based upon whatever hearing or whether you just decided to review the Planning Commission's finding."

Commissioner Lambert stated, "Commissioner Wathen and I are going to be in Frankfort that night, and I did not want the public to think that we were not there because we were not interested."

Mr. Porter stated, "I think you should make a decision after hearing the presentation from the persons who make the appeal, and the persons who are aggrieved, and by the persons who were supported by the Planning Commission's ruling before making any decision. It would be best to hear those and to review the Planning Commission's decision before you made any kind of ruling here."

Judge Mattingly stated, "That would not preclude us from listening to county citizens who call us and talk about their particular situation, correct?"

Mr. Porter stated, "Those are not facts that you have because they are not presented here or in the body at the time of the hearing. You may want to use some of those at some point, but the only facts that you can find would be the one's from the hearing - if there is an appeal that is made here or by looking back at the Planning Commission's record."

Commissioner Castlen asked Mr. Porter to discuss the K2 issue. He stated, "I know there is support here to pass an ordinance. My understanding is that you have reservations about it."

Mr. Porter stated, "I have two concerns. One is we have a state statute that prohibits certain materials that fit into that category and they have defined them in a way that these are materials or chemical compounds which you may not sell or have in your possession. If we start making those, the question is going to be how are we going to define them and under what basis are we going to make the ones different from the state statute? We have charged one retailer who has sold material whose content, after it was purchased by police department officers and then sent to the lab for verification and analysis, fit into one of those categories. I know there are a number of counties and cities who are interested and have tried to do that. I have not heard of anyone using their ordinance to prosecute and what sort of problems, if any, they have had. My concern would be whether our ordinance appropriately fits into the statute and whether the chemical compounds that we list are ones that we can list - where we got a list of the products. If we just say we are going to prohibit you from selling any of these products and they turn out to be legal products then we have a question of constitutional rights about prohibiting the sale of certain products that are not proscribed or prohibited by either federal or state law."

Commissioner Castlen stated, "I know of at least one community that passed an ordinance, and a judge has put an injunction against it."

Mr. Porter stated, "I know the Warren and McCracken Counties have ordinances, and I have copies of those and, I will find out if they have prosecuted, what the status is, and whether they have had any problems."

Commissioner Lambert stated, "At our meeting last week in Lexington, State Attorney General Jack Conway encouraged all counties to hold off on passing a county ordinance because he believes the state legislature would pass a law during this session that would be more comprehensive. I think it would be wise to wait and see what the state does."

**Without objection, Judge Mattingly adjourned the meeting.  
SO ORDERED THAT COURT STAND ADJOURNED.**

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Al Mattingly  
Daviess County Judge/Executive