

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 20th day of March 2014
Present were Judge/Executive Al Mattingly and
County Commissioners Jim Lambert,
George Wathen and Charlie Castlen

DOCUMENTS RELATED TO TODAY'S DISCUSSION
ARE FILED IN MARCH 20, 2014 FISCAL COURT FILE

Judge/Executive Al Mattingly opened the meeting in prayer and led the court in the Pledge of Allegiance to the Flag.

Judge Mattingly proclaimed March 2014 as Women's History Month.

The Kentucky Transportation Cabinet presented the Rural Secondary Road Funding, as follows, including their Flex Fund recommendation.

2014-15 DAVIESS COUNTY RURAL SECONDARY PROGRAM

DISTRICT RECOMMENDATIONS

ROUTE	TYPE OF WORK	LIMITS OF WORK	LENGTH
KY 1554	ASPH. RESUR.	M.P. 2.247 to M.P. 5.769	3.522
		KY 960 to US 60	
KY 2127	ASPH. RESUR.	M.P. 3.773 to M.P. 6.757	2.984
		KY 554 to KY 2121	
KY 661	ASPH. RESUR.	M.P. 0.000 to M.P. 1.440	1.440
		KY 662 to Culvert B00106	
KY 1207	ASPH. RESUR.	M.P. 2.951 to M.P. 5.474	2.523
		Jackson Rd North to KY 140	
KY 657	ASPH. RESUR.	M.P. 0.000 to M.P. 0.741	0.741
		KY 1389 to Hancock Co Line	
FLEX FUNDS			
KY 279	ASPH. RESUR.	M.P. 1.705 to M.P. 5.062	3.357
		Hayden Bridge Rd to Stephens Rd	

Jordon Camp noted that work on KY 661 to mile point 1.44 does not complete the road. However, it is the KTC's desire to see that that project is completed and plans are to place the final portion of roadway in the next year's recommendations unless they are able to complete it with remaining 2014/2015 funds. Judge Mattingly asked Mr. Camp to notify Mr. Brasher in the event that that road is unable to be completed and the court may be able to work something out where that road sees completion in this fiscal year.

Mr. Camp also noted that the court may elect to use flex funds on county or state roads. The KCT recommends the flex funds be used as listed above. After being asked, Mr. Camp stated, the state maintained roads total \$853,586 and the flex fund amounts to \$264,453.

Mr. Camp requested the court consider for approval the 2014/2015 district recommendations, with or without the flex fund recommendation.

Commissioner Wathen asked, "So you are going to do the other 4 roads first and then finish with KY 661?"

Mr. Camp replied, "That is the intent, to get all the estimates submitted to Frankfort for the proposal on the other four and then see... I want to do all of 661. I do not want to stop there at that culvert. To get that entire length of that road it would be 1.998 miles so you are looking at right at another .5 mile."

Jason Ward, also with KTC, stated, "I feel confident we can get that .5 mile. We will make it work one way or another."

Mr. Ward stated that the court does not need to approve, in open court session, the use or allocation of flex funds. He also noted that once flex fund dollars have been allocated by the state, those dollars "can only be used by that county" and those dollars will "rollover from year to year".

By a motion of Commissioner Lambert, seconded by Commissioner Wathen, the court considered for approval the 2014/2015 Daviess County Rural Secondary Program District recommendations, absent the flex fund recommendation.

Commissioner Wathen stated, "I would like for you to take a hard look at Highway 815. The asphalt itself is in good shape, but there are very small shoulders on that road. It is really a dangerous road because of that and because of all the activity that is on that road because that is where our landfill is. We have our trucks and many other people who are hauling trash on that road and so it becomes narrow in many spots. The shoulder is the problem because there is nowhere to go. If you get in trouble and you go off that road, you have troubles. It is a tough road. So, please take a hard look at that road."

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

County Treasurer Jim Hendrix presented the Treasurer's Report for the Month Ended February 2014.

The Daviess County Public Library's Fee/Fine Schedule was presented to the court.

Minutes of the March 6, 2014 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.

By a motion of Commissioner Wathen, seconded by Commissioner Castlen, 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.

By a motion of Commissioner Wathen, seconded by Commissioner Castlen, the court considered for approval the Daviess County Detention Center's Policy and Procedure's Manual, Employee Handbook, and Inmate Handbook.

Major Bill Billings stated, "The only significant change was the addition of a new section pertaining to the prison rape elimination act."

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

By a motion of Commissioner Lambert, seconded by Commissioner Castlen, the court considered for approval the Lease Agreement with the Diocese of Owensboro regarding the use of the Knottsville Playground.

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

By a motion of Commissioner Lambert, seconded by Commissioner Wathen, the court considered for approval the Lease Agreement between Pleasant Grove Baptist Church, Daviess County Fiscal Court, and West Louisville Playground Association Board to utilize property at 5664 Hwy 56, Owensboro, Kentucky, for a summer recreation program.

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

By a motion of Commissioner Castlen, seconded by Commissioner Lambert, the court considered for approval the Woodland Ridge, Unit No. 1, release of surety for Asphalt Surface and Maintenance Bond.

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

By a motion of Commissioner Wathen, seconded by Commissioner Castlen, the court considered for approval to Award **Bid No. 06-2014** for the PVA Office Ceiling Replacement to Danco Construction Inc. for \$21,000.

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

By a motion of Commissioner Lambert, seconded by Commissioner Wathen, the court considered for approval to Advertise for **Bid No. 07-2014** for the Kelly Cemetery Road Bridge Replacement.

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

By a motion of Commissioner Wathen, seconded by Commissioner Castlen, the court considered for approval to Advertise for a Mechanic in the Department of Public Works in the event the position is not filled internally.

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

By a motion of Commissioner Castlen, seconded by Commissioner Wathen, the court considered for approval to Appoint Angela Woosley (08-2014) to the Daviess County Public Library Board - TERM: 3/20/2014 – 9/13/2015.

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

By a motion of Commissioner Lambert, seconded by Commissioner Castlen, the court considered for approval to Appoint Mark Whitehouse (10-2014) to the Ohio County Water District Board - TERM: 4/2/2014 – 4/2/2018.

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

By a motion of Commissioner Lambert, seconded by Commissioner Castlen, the court considered for approval to Appoint Lewis Jean (09-2014) to the Daviess County Parks Board - TERM: 4/7/2014 – 4/7/2018.

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

Comments:

Judge Mattingly stated, "Commissioners, as you know, an appeal has been filed on a zoning regarding a piece of property on Worthington Road and Highway 60 West. The appeal comes before the local legislative body that has jurisdiction. I have asked Claud to talk to us a little bit about the appeal, the appeal process, how we go about it, what we can and cannot do, and once we do that, I will set the dates for that appeal to be heard."

County Attorney Porter stated, "We have 90 days in which we may act. The court has three options. We may accept the planning commission's recommendations and not have any kind of hearing. We may review and approve planning commission's recommendations with an argument type hearing, and if the court decided that it needed to overturn the planning commission's recommendations and take a vote of three of the members it would have to find additional facts within the record which differed from the planning commission's, and support whatever finding that was different than the planning commissions. As a general rule, we have only permitted those who were at the planning commission meeting, and spoke either on behalf of or against the applicant's request for a map amendment to speak before the court. In this instance, there were no persons that spoke against the map amendment. The person who filed the request for the court to make the final hearing was a non-contiguous landowner who filed under the statute, which just says that an aggrieved party may file a request with the court to... I could find no definition in the statute or otherwise of who an aggrieved party is. That would be a question of whether a person who is not directly affected by the planning commission's recommendation or was not entitled to the original notice is an aggrieved person. The applicant was required by statute to notify all contiguous landowners – any person whose land touched or was across the street/roadway the proposed land amendment, they were required to notify them. They were also required to give a public notice as well and place a notice on the property itself. At the planning commission hearing, there were no members of the public who opposed or spoke to oppose the applicant's request for a zoning change. As a result, the planning commission after hearing that, made a decision to approve the applicants request for a zoning change."

Judge Mattingly stated, "My concern with this one is the person that filed, the aggrieved person, in our past experiences we have not allowed testimony, how do we give due process?"

Mr. Porter stated, "That will be a question as to what the court wants to do. If we do what we have done in the past, there would not be any evidence presented at the court meeting or hearing on the aggrieved party's request for the court to decide the map amendment. We could ask that anyone may make arguments for or against the planning commission's decision and a reason to maintain the planning commission's decision or to reverse their decision."

Judge Mattingly asked, "When you say make arguments, when you cannot present evidence to the contrary to rebut their evidence..."

Mr. Porter stated, "All that person would be able to do, whether the applicant or the aggrieved person, is to look at the planning commission's record and all of the evidence presented to the planning commission and to say they made a decision that was not appropriate by the finding that the planning commission made. That court would have to make findings from those same sets of facts that were presented to the planning commission – have to find sufficient facts that were in the record that would allow the court to make findings that were different."

Commissioner Wathen stated, "In the past, we only allowed people that had actually spoken at the planning and zoning meeting to speak here."

Mr. Porter stated, "That is correct. And that is the court's decision at this point to decide. The only persons who spoke at the planning commission who are not planning staff were persons who spoke on behalf of the applicant."

Commissioner Wathen asked, "So, could we allow the person that has filed..."

Mr. Porter stated, "I think that is an option that the court may chose to use, is to allow the person who claimed that they are aggrieved by the planning commission's findings to at least speak and say that this is why I believe that the planning commission's recommendation is..."

Judge Mattingly stated, "I think that would be the fair thing to do. In addition, I think the first reading of this ordinance will be April 17th and the second reading will be May 1st."

By a motion of Commissioner Lambert, seconded by Commissioner Castlen, the court considered for approval to enter into a Closed Session per 61.810 (1) (b) Deliberations on the future acquisition or sale of real property by a public agency, but only when publicity would be likely to affect the value of a specific piece of property to be acquired for public use or sold by a public agency. No action was taken.

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

Al Mattingly
Davies County Judge/Executive