

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 17th day of April 2014
Present were Judge/Executive Al Mattingly and
County Commissioners George Wathen and Charlie Castlen

DOCUMENTS RELATED TO TODAY'S DISCUSSION
ARE FILED IN APRIL 17, 2014 FISCAL COURT FILE

Commissioner Jim Lambert was absent.

Commissioner Wathen opened the meeting in prayer and led the court in the Pledge of Allegiance to the flag.

Judge Mattingly proclaimed April 2014 as National Child Abuse Prevention Month.

The Southeast and West Daviess County Water District Schedule of Rate Change was presented.

Daviess County Jailer David Osborne presented the following Daviess County Detention Center 2014 first quarter report.

1. New washer and dryer purchase in the amount of \$16,972.
2. Hooks for toilets / sewer lines appear to be effective
3. Mattress project moving forward
 - a. Have made 300 mattresses
 - b. Other Jailers have reviewed the process
4. Updated P & P to be in conformance with PREA
5. We taught a PREA investigators class for other jails at the request of DOC
6. Defective plumbing issue being repaired
7. Swanson kiosk
8. Food service contractor continues to be effective in providing with good service as well as saving money
9. Dentist on site/equipment
10. Enhancing mental health services to inmates
11. State inmate population back to normal
12. Daily average 650 inmates, 250 of which are county
13. McLean County inmate population holding steady
14. SAP continues with 55 inmates / 83 graduated April 2013 – April 2014
15. KYNECT / GRADD & Audubon Area CS to provide personnel in lobby to assist released inmates
16. VA is meeting with inmates with PTSD/mental health issues to secure housing after release

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

Minutes of the April 3, 2014 meeting were submitted to fiscal court members for review prior to today's meeting and on a motion of Commissioner Castlen, seconded by Commissioner Wathen with all the present Court members 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 present members of the court voted in favor; motion passed.

By a motion of Commissioner Wathen, seconded by Commissioner Castlen, the court considered for approval **Resolution 03-2014** - Utilizing County Funds for the Transportation of Non-Public School Students.

County Treasurer Jim Hendrix stated, "This is an annual resolution. The court has for many years participated in a program where in we provide transportation for non-public school students. As part of that program, the state will reimburse us a certain amount of expenses that are incurred in this program."

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

By a motion of Commissioner Castlen, seconded by Commissioner Wathen, the court considered for approval the Local Jurisdiction HVAC Program Agreement Renewal with the City of Owensboro and the Department of Housing, Buildings, and Construction.

Judge Mattingly stated, "This is a renewal of an agreement that the court and the City of Owensboro made with the Department of Housing, Buildings, and Construction to operate a HVAC inspection and enforcement program in 2011. I do not believe there have been any changes to the agreement. I would recommend that the county continue this agreement."

Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All present 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 Agreement with the State Highway Department regarding Guardrail Repair Work.

County Engineer Mark Brasher stated, "We have found two more bridge structures that have had damage done to the guardrails. I am asking for approval to utilize the state maintenance agreement to repair these two areas."

Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All present 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 Memorandum of Agreement (MOA) with TerrePURE Kentucky Distillers, Inc.

Madison Silvert, President/CEO of the Economic Development Corporation expressed his support for this MOA and for this project. He stated, "This is a good use of these funds and should TerrePURE decide to locate here, they will provide the community with approximately 50 quality jobs."

Judge Mattingly added, "The incentive that we are providing is \$200,000 for an investment of \$20,000,000 and 50 jobs. If they do not perform, they do not get the cash. I know several of the people on the Economic Advisory Board have said that this is exactly the kind of company and exactly the kind of investment that we are looking for in this community, and I agree."

Commissioner Wathen stated, "I agree. This is why we set this fund up. This meets the criteria. Hopefully they will take it."

Steve Moreland staunchly stated his opposition to the approval of this agreement.

Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All present 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 Hire Terry Bartlett as a Truck Driver at the Transfer Station effective April 21, 2014.

Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All present 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 Hire Dennis Boehmann as a seasonal Grounds Maintenance employee at Yellow Creek Park effective April 21, 2014.

Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All present 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 Hire Kayla Westerfield as a seasonal Grounds Maintenance employee at Yellow Creek Park effective upon successful completion of pre-employment testing

Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All present 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 Appoint Terri Thompson (11-2014) to the **Daviess County Parks Board as an *Ex-officio* member - TERM – 4/7/2014 – 4/7/2018.**

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

County Attorney Claud Porter read the **First Reading of KOC 121.1 (2014)** - An Ordinance Regarding Attendance and Confidentiality Requirements for all County Board, Commission, Authority and Committee Members and the Officer Requirements of County Created Boards, Commissions, Authorities and Committees.

Comments:

County Attorney Claud Porter stated, "The ordinance will require that any person who is appointed to a commission or board would be required to attend 75% of those meetings. That

each of the boards and commissions would be required to have meetings and that they would be required to have officers, take attendance, and report to the fiscal court. If a member did not comply with those terms, the court could ask if it was the entity itself - then they could disband the entity. If the member did not attend the required times they could ask them or take them off of the board or commission."

Judge Mattingly stated, "This is not a problem that occurs too often, but sometimes it does and then you are kind of in an awkward position as to how do you replace a board member. I think it is a good ordinance."

Commissioner Wathen agreed.

County Attorney Claud Porter read the **First Reading of KOC 921.668 (2014)** - An Ordinance Amending the Zoning Classification of a 7.00 acre tract located at 315 Worthington Road from A-U Urban Agriculture to I-1 Light Industrial, application filed by Sara Jane McNulty.

Comments:

Attorney Porter stated, "This will be a hearing in the sense that we will allow persons to speak to the court, but there will be no new evidence taken. The only evidence will be that evidence that was presented to the planning commission on February 13, 2014. Every person who speaks will do as we normally do. They will need to let us know their name, their address, and the nature of their remarks. The court may decide to limit those remarks if they want to and can limit anyone's testimony if they begin to get repetitive. I think after that, the court may request information from the members of the planning staff regarding what happened during the hearing on February 13, 2014. Furthermore, to overturn a decision of the planning commission there has to be three votes by the legislative body. A two-two tie would mean the planning commission's decision would remain."

Charlie Kamuf, Attorney for Erb Equipment presented information supporting the re-zoning of the property. Mr. Kamuf supported the notion that the re-zoning would be a logical expansion of I-1 Light Industrial. He had many charts, which he referred to support his position. He noted that the planning commission unanimously voted in favor of this re-zoning. He also noted that notices were provided to all contiguous property owners of said proposed re-zoning. However, no one showed up at the February 13, 2014 to contest the re-zoning. County school officials were met with, as the Audubon Elementary School is located near the proposed site. The officials are satisfied with the proposal and had no problem with the re-zoning. He stated, "The staff presented their report and on page 22 of that transcript, the staff pointed out that even though they did not agree with the re-zoning they noted that the planning commission or the legislative body may make alternative findings that the existing zoning classification given to the property is inappropriate and that the proposed re-zoning is appropriate. This is exactly what the board did. They said that an industrial re-zoning is appropriate.

Mr. Kamuf further discussed how the post office was 500' from the subject property, and it is an industrial use. However, it is not zoned industrial. He stated, "If it was zoned I-1, which is the use that it has, then we could make an argument that it would be a logical expansion and therefore it would be in compliance with the comprehensive plan.

Judge Mattingly asked, "Why is it an I-1 zoning? What is it like that it is under the I-1 zone?"

Mr. Kamuf replied, "The reason I think it is because public buildings did not have to be approved in an I-1 zone, but it is an industrial use."

Mr. Kamuf encouraged the court not to get so caught up in technicalities and referred to the Ward versus Knippingberg case, which is a landmark case that says planning and zoning laws should be used as guides, not a straight jacket. "Use some common sense."

Judge Mattingly stated that he believed the word contiguous meant adjacent to or touching.

Mr. Kamuf noted that during the February meeting, a motion was made by Freddy Reeves and seconded by John K. to approve the rezoning and the finding of facts pretty close to the ones that I presented to them. Here is what Mr. Reeves said, "Mr. Chairman, I make a motion for the approval of the application based on the following facts. One, the subject property is located in a business-plan area where light industrial uses are appropriate in limited locations. However, here is the gist of the matter. For you all to find that we should not win, you pretty well have to find that this is not true. Here are the facts. Currently, this is his motion, in the area in a very large industrial-type is an OMU line substation. That is number one, the OMU power line. Also, it is very close proximity to this development US post office, which would be light industrial if this area would be required to be zoned. That is what I talked about a moment ago. That is number two." He further stated, "Three, other operations in close proximity are the Time Warner Company, which has numerous trucks and Sterett Construction Company. It also serves the Riverport, which is heavily industrial. This commission has previously approved a similar project on US Highway 431 in the past. That was his motion. Your job is to decide if there were adequate findings presented to OMPC to justify this. I might say, since then, not only did we meet with all of the neighbors; we met with every person that was to receive notice on the application. Then we also met with the homeowners association last Saturday. And the HOA agrees to the re-zoning. Mr. Kennedy is here if you have any questions. We have a conceptual plat that we will put in the record that shows the berm, the elevation, the..."

Judge Mattingly said that the court cannot take that, as that was not in the evidence.

Mr. Kamuf showed a map depicting the overall Highway 60 West area and area zoning variations. Mr. Kamuf feels that his map expresses that the subject property is a logical expansion of an I-1 zoning classification. He also talked about an un-zoned area which is a junkyard located at Sterett Construction Company. Mr. Kamuf further discussed the business-plan area. He noted various possibly undesirable businesses, which can operate in a business-plan area. He believes the Erb Equipment operation would interfere less with the neighbor's peace and tranquility than many of the businesses, which could operate in a business-plan area.

Karen Marksberry of 4506 Barrington Place stated, "I am the person who filed the opposition to the re-zoning of the land at 315 Worthington Road from Urban Agricultural to light industrial. On February 21st, I saw surveyors, so I contacted OMPC and was told of the re-zoning proposal. I made a few calls and found that Kathy Roberts is a contiguous property owner and she did receive a letter of notification. After speaking to Kathy, I went to the OMPC and filed the opposition. I asked if anyone else should file opposition and was told no. I relayed this information to Kathy. Kathy had been at the OMPC a week earlier to get information about the letter she had received, but now made a second trip to inquire about filing another opposition since she was a contiguous property owner. She was also told that only one opposition was needed and it was already filed, per their policy. Legally, only the contiguous property owners are required to be notified about re-zoning proposals. In this case, there were just two contiguous property owners. Because of the potential for property devaluation of the homes in the surrounding area, many homeowners felt that the notification of only two homeowners, the small sign on the road, and the small notification in the newspaper fell short of being proper notification. It was almost as if someone was trying to slip it through before anyone noticed."

Judge Mattingly interrupted stating that the contiguous property owners did receive letters of notification and there were more than two. Gary Noffsinger displayed the "return receipt" requested notices from the US postal service. Judge Mattingly stated, "We were not trying to slip it by. The KRS is very strict and very clear."

Ms. Marksberry continued, "Kathy Roberts attempted to attend the original OMPC meeting to oppose the re-zoning but did not make it. At this meeting, the OMPC staff recommended denial of the re-zoning. My opposition that was filed after the proposal went to fiscal court then prompted Judge/Executive Al Mattingly to send a message to the OMPC staff asking them to research and consider a change in the text in chapters 8 and 13 of the current conditional usage permit. This request, if approved, would allow large agricultural and heavy contracting equipment dealers like Erb Equipment Company to now obtain a conditional usage permit or

rather the owner of the property could get the permit and allow the company to go in on this property. It really does seem like our local governing body is saying, "if we cannot get the Erb Equipment Company in on this land by re-zoning it, we will just change the original conditional use permit".

Judge Mattingly stated, "Let me stop you. I would tell you that long before this re-zoning took place, we had been discussing this issue, not because of Erb Equipment, but because this had occurred in several other places. The fact that we wanted it to occur on A-U or A-R was really for the benefit of those people in those neighborhoods. With using a conditional use permit, it gave you predictability as to what could/would that land be used for. When it is zoned light industrial, anything that fits that zone can go there. By having a conditional use permit, all the steps that were taken through the re-zoning would be taken to get the conditional use permit. Actually, a conditional use permit can have more stringent restrictions placed on the property than the planning commission could do during a re-zoning. I do take a little offense at the implication that this court would try to do something that went around the planning commission or the law. I know that you do not mean it that way, but that is the way it is coming out. Any text amendment done absolutely would not apply to this case. This case stands on its own merits."

Ms. Marksberry stated, "Linda Perry, another Graystone Estates homeowner, and I measured the width of Worthington Road in several places near the proposed site. One spot measured 25' and another 21.5'. This brings up the question of is this road wide enough to support the large 75' trucks that will be hauling the heavy agricultural and contracting equipment? The proposed two entrances on the Erb Equipment site plan are directly across from each of the current entrances to Audubon Elementary School. Many parents drop off and pick up their children and occasionally the lines are so long that the parents will line up on Worthington Road to wait their turn to pull into the parking lot. They will then pull back out onto Worthington Road very quickly after dropping off their children. I have an awful picture in my head of heavy equipment rolling off onto one of the cars that waits in line on the road. I also foresee an impatient driver that is blocked by a big Erb Equipment truck speeding through the school parking lot in order to by-pass the roadblock. This end of Worthington Road is highly traveled. It is the closest way out to Highway 60 for the homeowners in this area. We also have many walkers, runners, and bike riders. Because Worthington Road is a state maintained road, any business planning to build an entrance or exit must first obtain a permit from the state. The state will look at the road to see if it does or does not meet certain requirements. If the state rules that it meets the requirements, the company must then post bond so that the state can monitor them as they build the entrance and exit. For the record, we appreciate the impartial and unbiased hard work by the OMPC staff and the planning commissioners' in depth discussions concerning this issue. For that we are grateful. The outdoor storage and junk area of this industry, if allowed, will be an eyesore every day, not to mention to the noise, dust, and gravel it will generate. I would not have built my home in 2002 had I known it would soon be sitting next to an industrial park. I really doubt if any of our local governing officials would openly welcome this sort of business to be planted on their front door step. Please consider the outcome and do not let the land at 315 Worthington Road be offered to the Erb Equipment Company through re-zoning to light industrial or by the issuance of a conditional use permit. I believe a more suitable site can be found for this company – a site that is not near an established subdivision full of proud homeowners, elementary school or on a narrow state maintained road."

Mr. Kamuf stated, "I would not be here if the school board had not approved it. They had no opposition to it."

Judge Mattingly asked, "Are their (Erb's) trucks any larger than farm grain trucks that run that road daily?"

Dick Crist of Erb Equipment stated, "We run low-boys primarily. As far as equipment falling off, we meet all of the DOT regulations. We have the big heavy chains, and we chain them just as the law requires. We haven't lost any yet. And we have made provisions for an entrance that is going to be 100' long, where he can get completely off the road and not have to worry about unlocking the gate or anything."

Judge Mattingly replied, "That was a long yes or no."

Ms. Marksberry stated, "I just recently learned that occasionally at 2:00 a.m. they leave and go to their other locations. So, I think that might be an issue as far as the sound and all. But I just wanted to make a final comment. I know that times are changing and the need to adapt to change is crucial. The Erb Equipment Company who bought out K&W has about 8 locations in 4 states. They say they have been looking for 2-years for a place to build and enlarge so they are aware of other available spots. These sites may be unfavorable to them because of the location – near a similar business, maybe not enough traffic exposure, maybe in a flood plain. My answer to these reasons are as follows: locating near an already established industrial park just makes since. If it is a similar business, I am all for healthy competition. If visibility of product is an issue, the internet is a valuable tool to view what the company has to offer. If a farmer or contractor needs your product, they will find you. As far as the additional cost for building in flood plain area, remember this is a big outfit with locations in 4 states. Their goal is to expand and grow their business. They stated that 5-6 jobs would be created by the move. I am in favor of creating new jobs. Let's hope these jobs will be filled by local people and not people from out of state. There may be jobs created, but there will also be the loss of many acres of farmland. And I foresee Erb Equipment requesting more land for expansion down the road as their other locations are quite large. I still believe a more suitable site can be found."

Judge Mattingly asked OMPC staff member Brian Howard, "In the staff's finding of fact, they talked about the subject property is located in a business-plan area where light industrial uses are appropriate in limited locations. When you talk about a business-plan area, how big is a business-plan area? What defines a business-plan area?"

Mr. Howard stated, "A business-plan area could vary in size greatly depending on location in the county."

Judge Mattingly asked, "What would define this one? In other words, when you said, "is located in a business-plan area", what defines that business-plan area that you reference?"

Mr. Howard stated, "In this vicinity the business-plan area is in proximity to the intersection of the by-pass and US 60 over to Worthington Road."

Judge Mattingly stated, "And it says that light industrial is appropriate in limited locations. Are there any other light industrial zones located in that area?"

Mr. Howard replied, "There is no light industrial zoning, no."

Commissioner Wathen asked, "One of the statements that I read said that Erb Equipment originally had thought about going into the AirPark. However, correct me if I am wrong, they were told they were retail and could not locate in the Park. And now we are talking about them locating here, they are being told that have to be light industrial. I am kind of confused about what our master plan says."

Judge Mattingly stated, "The AirPark has restrictions on what type of business can and cannot go in there, and I think it is limited to manufacturing and distribution. Erb is not a manufacturer nor are they a distributor."

Mr. Howard stated, "We did not make the determination that they could not locate in the AirPark. That is an Industrial AirPark rule, not an OMPC rule."

Commissioner Wathen asked if we could increase the area in which the county is required to contact property owners regarding re-zonings.

County Attorney Porter said he would have to check to see if that is possible. He state, "The KRS zoning rules and regulations are generally specifically enforced."

Commissioner Castlen stated, "The last comment made prior to the motion by the planning commission reads "If there would be any zoning to the south, the staff can always require a development plan to show exactly what, you know, what type of, that type of thing to take care of any issues with the neighbors." The implication of that statement is that we do not have to worry about this being zoned industrial because the planning and zoning laws – you all have enough authority to make sure that nothing comes in there that they are going to be even more upset with than this property."

Mr. Howard stated, "Yes, that statement was made, and my answer would be that with this property being zoned industrial, they could submit a development plan with the re-zoning request that would show what their proposed use is. However, the planning commission cannot make an approval on a zoning change for one specific use. They do not have that authority. The other thing I would note is that even if a development plan was approved with the zoning change there is nothing that would require them to keep that development plan "as is". It could change, the use could change, and the scope of the operation could change. One could certainly be submitted, but it is not tied down specifically."

Commissioner Castlen stated, "So if I understand your answer correctly, you are not able to protect the residents as much as his implication would be?"

Mr. Howard stated, "Yes, I would agree with that. I think that is where the Judge was going earlier with the conditional use permit process, which has been looked at. The conditional use permit allows the board of adjustments to approve a specific use on a specific site."

Commissioner Castlen asked about the variance, which was applied for and referenced in the transcript. However, Mr. Howard said that the board of adjustments has not acted upon that.

Commissioner Wathen asked specifically what the variance is.

David Weaver of Bryant Engineering stated, "We have filed a variance application, which is currently being held until the result of this re-zoning. We did, at the planning commission level, discuss what the variance application was and how that pertained to the property." Mr. Weaver showed a design of the screening elements. (See design below, also known as Exhibit H) He stated, "Because the lot will be gravel with the exception of the parking area, the applicant is proposing the use of a fence that is solid in areas and chain link in areas. The solid portion of the fence, which runs from this access point here across from the neighborhood around and back up 150' is what we proposed on the application. The remainder would be a chain link fence without slats. The ordinance requires a solid fence, but there is wording, just like there is wording on the conditional use, and Brian can speak to this better than I can, about changing that ordinance as well. In lieu of putting the solid fence around the perimeter, they are proposing to put in a 3' high continuous element, which essentially would be a shrub row along the street front of Worthington Road and US 60."

Commissioner Wathen asked, "Towards the northern entrance, how much higher is the road than the lot? Do you know?"

Mr. Weaver replied, "Would it be possible for me to show you another exhibit? Since the planning meeting, Erb Equipment as well as Mr. Kamuf have met with the Homeowners Association and have discussed their concerns about that issue and I would like to show you..."

Judge Mattingly said, "I think we would get into that at the next meeting. Only what was presented in testimony at that meeting. So, whatever you have to show there, I do not think we need to bring that in there."

Commissioner Wathen stated, "So, the variance part would be from the southern entrance all the way around to – all the way to the northern end of Worthington Road and then all the way over across 60 then all the way back to the southeast corner? That is what you are asking for variance?"

Mr. Weaver noted that they are requesting a variance to eliminate the solid fence along the eastern side and along the US 60 and Worthington road frontage. Along US 60 and Worthington Road, the applicant is proposing a 3' shrub row. Essentially, they are requesting a 3' variance along Worthington Road and US 60.

Commissioner Castlen stated, "The fence that you show from the entrance closest to you on that picture, and then breaking away going away from Worthington Road, you say that would be a solid element. What are we talking?"

Mr. Weaver replied, "It would be chain link with slats."

Judge Mattingly asked him to point out where their display area for equipment would be.

Mr. Weaver said that the entire lot with the exception of the parking lot and the building

Judge Mattingly asked, "No, where are you going to display equipment for sale?"

Mainly on 60, Mr. Crist said.

Judge Mattingly stated, "So, the primary display area is on the north side paralleling 60." He further asked, "Show me the service part of the building."

Mr. Crist stated, "The service part of the building should be, it is not finalized, but it is going to be in the back and the parking is in the front."

Judge Mattingly stated, "Both of those entrances look the same width. Show me the big entrance. Did I hear you say it was 100'?"

Mr. Crist replied, "It is on the revised plan that you do not want to see right now."

Judge Mattingly stated, "Okay, but just show me which one."

Mr. Crist pointed to the map where the big entrance will be and Judge Mattingly summarized his comments by saying that from the gate to the edge of Worthington Road will be 100' and that will all be concrete.

Commissioner Castlen asked, "Regarding the number of customers and staff you have and propose to have, what do you anticipate your volume to go up to, assuming this is your new location?"

Mr. Crist stated, "We estimated that a little bit high with 6 at a time. That is not normal. If we have 3 customers in there, that is quite a few customers."

Commissioner Castlen stated, "I wanted to put the neighbors at ease that you were not going to double your volume of drive-ins."

Judge Mattingly asked Mr. Weaver if the building would have to be raised?

Mr. Weaver stated, "No, but there will be a berm added to the corner of the lot."

Judge Mattingly asked, "Are you going to have to raise any of the 7-acres?"

Mr. Weaver stated, "I do not know the answer to that as we have not done the design. However, we do not anticipate bringing in a large volume of fill. It could be that the building pad itself would raise up so it could be seen. But the lot, we do not anticipate raising the entire lot."

Judge Mattingly said, "Stay at grade. The property on the west side of the road, is it pretty much at the same elevation? In other words, the road is higher than that property. Is the property on the other side... School property, neighborhood property."

Mr. Weaver stated, "They are a little lower."

Commissioner Castlen asked, "Mr. Kamuf made reference to E-X mining. I do not know if that was zoning. Would he have been replying to zoning or is that a company name?"

Judge Mattingly stated, "No, that is a zoning area. That is Bon Harbor Hills mining area."

Commissioner Castlen stated, "I just want to be clear. That is a zoning classification in and of itself, separate from industrial, right?"

Mr. Howard agreed.

Commissioner Castlen stated, "Because he (Mr. Kamuf) made reference to "well you cannot get any more industrial than that," and I know the sales pitch that he is making, but I just want the record to reflect of this meeting at least that that is not in an industrial classification. It is a classification of its own."

Judge Mattingly stated, "I think, Brian, in the hierarchy of zoning classifications, which is the heaviest use? Typically it would be EX-1, I-2, I-1, B-5."

Mr. Howard replied, "I would say any industrial zone. They are all potentially up there. It is hard to say which would be the worst."

Commissioner Castlen stated, "The other thing he (Mr. Kamuf) made reference to is, and I ask you only because of your position with the planning and zoning. I thought he referenced the post office when he was pointing to the red on his map. The post office is "right here" and right next to it you have the Time Warner Cable. There are businesses – isn't there a hotel, a gas station or something between those two? They are not literally side-by-side, right?"

Mr. Howard said that they are in close proximity.

Commissioner Castlen stated, "At some point in Mr. Kamuf's presentation, he made a statement about the staff report being incorrect. Mr. Kamuf recalled this, and he read this portion of the testimony into record.

Mr. Kamuf stated, "The present zoning classification is inappropriate and I-1 zoning classification is appropriate. One, the land use map classifying a subject property in a business-plan area is incorrect."

Commissioner Castlen stated, "Alright, it is on page 29. It says here that we say the staff's decision to classify the subject property in a business-plan area was incorrect, not saying they

are wrong, we are just saying they are incorrect. We say they should have classified the subject property in a business/industrial area. We say they did not look at the whole picture. They did not look at the surrounding area. We say if the staff had looked at the surrounding area, they would have classified it as an industrial plan area. And I would like Brian to respond to that if you would. And I assume, Mr. Kamuf, that that is why you had the big picture that is up against the wall right now, to drive home that point."

Mr. Howard stated, "The property is in a business-plan area, but as you all know, any zoning change is based on the comprehensive plan land use map. Just because it is in business-plan area does not mean that it is zoned business. It does not mean that you can necessarily even re-zone it to business. It was placed in that area as I mentioned earlier because of the proximity to the by-pass and US 60. As far as zoning use – zoning in the vicinity goes there really is not a... there is a B-4 cattycornered across the street down the road. There is industrial down the road. However, surrounding this subject property, as you read in our staff report, they did not feel that this was a logical expansion, even though it is in a business-plan area. It does not meet the criteria of the comprehensive plan and that is what is reflected in our staff report."

Judge Mattingly asked, "What is the criteria? What part of the comprehensive plan does it go against?"

Mr. Howard stated, "The criteria would be a logical expansion."

Judge Mattingly stated, "Okay, it is located in a business-plan area where light industrial uses are appropriate in limited locations. To me, that does not mean that there has to be one there to expand that zoning. In a business-plan area, as we talked about earlier, that you cannot have industrial properties in a limited way."

Mr. Howard stated, "The comprehensive plan, the way it is written, it is very flexible. It allows many different uses within the plan areas, if you meet the specific criteria. What you read is the first. It is appropriate in limited locations. However, "B" is logical expansion, which that made the case that it did not meet the criteria."

Judge Mattingly asked, "But does it have to meet all of those or can it meet just one?"

Mr. Howard replied, "It would need to meet more than just that it is appropriate in limited locations. You have to meet some of the specific criteria. One is that it is a logical expansion outside of industrial parks. The second would be that it was a new location in a business highway center, which it is not, and third would be a new industrial park, which would be acreage of 100. So, that is what we base our findings on when we do a staff report for a re-zoning."

Judge Mattingly stated, "Mr. Kamuf says that the post office is light industrial, do you agree with that?"

Mr. Howard, "If it were zoned, he is correct in that KRS... any type of public entity is exempt from zoning, but it is a distribution center more than it is a retail center. That would probably fall under a light industrial zoning classification."

Judge Mattingly stated, "The only other thing would be that Mr. Kamuf stated the OMU transmission line was light industrial. Does that mean that all that transmission line is industrial, and we could cite any industrial operation along that transmission line?"

Mr. Kamuf replied, "What I am saying is, if you have a power line 150' wide and it transmits all the power to western Owensboro from the OMU facility and it runs down the Ohio River bottoms and it cuts across, it is in essence a heavy industrial type of use. By the way, you all own the ground under it. To answer your question just a second ago, on a business-plan area this property is zoned A-U, but in a business-plan area the staff would make a recommendation to approve a re-zoning of a B-4 in that area. You understand what I am saying? And they are going to recommend that because that is a logical expansion. Did I clarify..."

Judge Mattingly stated, "No, you did not answer my question about the power lines."

Mr. Kamuf stated, "You can find different places, but I do not think I would want to build a house next to one."

Judge Mattingly stated, "I agree."

Gary Noffsinger, Executive Director of OMPC, stated, "I do want to address a few of the questions that have been raised here tonight. The planning staff does take issue with the statement that Mr. Kamuf made about the business-plan area being incorrect. We believe that that is an appropriate business-plan area for that location. If it is not and we looked at another business-plan area for that location, it would certainly be a residential or professional. It would not be an industrial plan area. We have a location of a school and a residential neighborhood there, so we would not even consider that to be an industrial plan area. So, if it is incorrect, certainly it would not be correct to place that in an industrial plan area. The second thing is, the planning staff would not recommend a zoning change to B-4 unless that property was directly across from or adjacent to an existing B-4 zone. Now, that is not to say that there are not other business zones that could be considered there, but to my knowledge, it is not directly across from a B-4 zone so we would have to be looking at a larger B zone, not B-4 but something that could be developed as a neighborhood-type business. The industrial power line that has been discussed runs through the Bon Harbor Hills subdivision, which is a residential area. We have that in many areas in this community. With that, I just wanted to set the record straight that we do not believe that it is incorrect and the comprehensive plan is a guideline. It is not a straightjacket. It is something to be viewed based upon the land use color, as well as the criteria.

Judge Mattingly stated, "It is flexible in how you interpret it."

Commissioner Wathen stated, "But the decision to classify it as a business-plan area is when the master plan is developed."

Mr. Kamuf stated, "When Gary said that would not be a logical expansion, let's go out to Highway 54. That was strong evidence that day. You said right across from the property would be a logical expansion on the Highway 54. This property – the Dollar General store there – that is zoned B-4. So, if I came in with a project and I said on the McNulty property, I would like it zoned B-4. Unless I am wrong, they would come in and say that is a logical expansion. That is pretty close to your deal out there on 54, Mr. Castlen."

Commissioner Castlen stated, "I understand."

Commissioner Wathen stated, "Just for the record, on 54, it was directly across. It was absolutely directly across."

Mr. Kamuf stated, "No question." Mr. Kamuf referenced the Ward verses Knippingberg case again. He stated, "Here is what it is, the planning and zoning board deals with reason and like Gary said, that case is a landmark case. Do not let it be a straightjacket. You do something that is flexible and common sense. Let me read you the last paragraph. It is in no sense a final plan. It is continually subject to modification in light of the actual land use development. And my whole concept is this is an industrial corridor. It has been that way since 1950. This is a mixed area. It is different. The corridor in eastern Daviess County is Highway 60 East. The corridor in western Daviess County is Highway 60 West. Look at the big map. The big map explains it. It is there. You might put your head in it, and you might say wait a minute. This is a technicality. One other thing, if the planning and zoning board did not have any discretion, why wouldn't you just do this, just hire a zoning administrator and let him/her go down and say "you are in compliance or you are not." You are being paid to exercise common sense. The board exercised common sense when they made that decision, and you all put a lot of trust in that board because you all appointed them and why second guess them when the evidence is overwhelming, and there was no evidence contrary by any objector at that meeting."

Judge Mattingly stated, "I think the reason why we have that planning commission is that we try as much as possible to take the politics out of it. I would hate to think that the Judge or the Mayor could go out and say yes we will re-zone this, but we will not re-zone that one. That is what gives me confidence in the planning staff and board."

Judge Mattingly stated, "I think I am going to state this right. Gary, you have no ability to place conditions and changes upon a zone unless the applicant is agreeable, correct?"

Mr. Noffsinger agreed.

CEO of Erb Equipment Carrie Roider said that they have looked hard to find a good location in Daviess County. She stated, "This property fits our needs as we need the frontage property for display, and we need a lot of property. We take pride in who we are and what we are. We keep our locations and vehicles clean and well kept. This expansion means a lot to our employees. We currently do about \$13 million in sales per year here, but we have the potential to be so much better. It is not just sales-related. We have the potential to be so much better for each one of these employees out here today because our current facility puts them at risk. We are no longer willing to put them at risk. So, we need to either relocate this facility, or we will find another place to relocate. It is no longer a question. It is a must do for us."

Judge Mattingly said that the second reading will be held on May 1st at the Daviess County Cooperative Extension Service, 4800A New Hartford Road.

Judge Mattingly announced that the May 1st fiscal court meeting will be held at the Daviess County Cooperative Extension Service, 4800A New Hartford Road. He also noted that the USPS Letter Carriers' Food Drive Day is Saturday, May 10th and reminded all to set non-perishable food items out beside their mailboxes prior to mail pickup.

Judge Mattingly stated, "I want to send out a word of thanks to Commissioner Thompson, Senator Joe Bowen, Commissioner Glenn and Commissioner Miles for their great work on the road plan for Daviess County. In the next two years, there will be \$24.6 million worth of work done in this community. And in the out years, in 2017/2018, there is another \$76 million dollars additional work. So those legislators did a really great job. I particularly want to thank Senator Bowen for taking the Senate floor on the last day and speaking on behalf of Western Kentucky.

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

Al Mattingly
Daviess County Judge/Executive