

**PUBLIC HEARING and 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 19<sup>th</sup> day of April 2012  
Present were Judge/Executive Al Mattingly and  
County Commissioners Jim Lambert,  
George Wathen and Charlie Castlen**

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**DOCUMENTS RELATED TO TODAY'S DISCUSSION  
ARE FILED IN APRIL 19, 2012 FISCAL COURT FILE**

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

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**Public Hearing:**

A Public Hearing was held where the report of Viewers and Affidavit of Publication of County Engineer regarding the Discontinuance of Boone Road, Ed Foster Spur (Wellness Place), French Island Spur, Jarboe Lane, portion of Keene Road, Old Deserter Creek Road, Paul Edge Road, Reeder Road and Short Station Spur was presented to the public.

County Engineer Mark Brasher stated, "The Report of Viewers reads,

**COMMONWEALTH OF KENTUCKY  
DAVISS COUNTY FISCAL COURT**

IN RE THE MATTER OF: )	DISCONTINUANCE OF BOONE ROAD ED FOSTER SPUR (WELLNESS PLACE) FRENCH ISLAND SPUR JARBOE LANE Portion of KEENE ROAD OLD DESERTER CREEK ROAD PAUL EDGE ROAD REEDER ROAD SHORT STATION SPUR
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**REPORT OF VIEWERS**

Comes now Mark Brasher, P.E., Daviess County Engineer, David Millay and Walter "Buck" Isbill, Viewers appointed by the Fiscal Court on April 5, 2012, and state that on April 13, 2012, they visited the areas of Boone Road, Ed Foster Spur (Wellness Place), French Island Spur, Jarboe Lane, portion of Keene Road, Old Deserter Creek Road, Paul Edge Road, Reeder Road and Short Station Spur proposed to be discontinued and that in their opinion no inconvenience would result to the public from the discontinuance of the listed roads.

WHEREFORE, the County Engineer and Viewers recommend to the Court that the discontinuance of Boone Road, Ed Foster Spur (Wellness Place), French Island Spur, Jarboe Lane, portion of Keene Road, Old Deserter Creek Road, Paul Edge Road, Reeder Road and Short Station Spur as described in the Petition be approved.

This the 17<sup>th</sup> day of April, 2012.

Mr. Brasher stated, "I am recommending that these roads be removed from the road index and discontinue them from county maintenance because I do not believe they serve a public transportation need."

County Attorney Porter stated, "The law allows the county to discontinue maintenance in three separate ways. One way, the road will remain open after the county discontinues its maintenance. Those roads, which would remain open as public roads after – if the county adopts the ordinance that was proposed by the viewers and the county engineer – those roads which would remain open as public roads, but would not require or obligate the county to maintain them would be Ed Foster Spur (Wellness Place), Old Deserter Creek Road, and Paul Edge Road.

So those three roads would continue as public roads – that is everyone who uses the road now would continue to use the road, would be able to use the road, anyone person would not be able to close the road or keep a person from operating on the road. For example, they could not put a gate across the road or stop the public from using it. However, the county would not be obligated to maintain, to resurface, to fix, to repair, to maintain the ditches, to mow, or any of the things that we normally expect the county to do on those three roads. On Boone Road, French Island Spur, Jarboe Lane, Reeder Road, and Short Station Spur – and again those portions of the road that are defined – the roadbeds or the roads on those listed, once the county discontinues, at least under the statute of which we have proposed, those roads or roadbeds would revert to the original owners, according to law. Basically, the person(s) adjoining them would have the opportunity to use them. The statute just says it reverts to the original owners. It does not refer to whether that is the current owner(s), but would revert to the owners. They would not be public roads. They would not be private roads, or easements either, depending on what the surrounding owners decided to do. The portion of Keene Road, does provide access for private persons, and as a result of this ordinance, this road would remain open for private use for the adjoining owners, but would not be a public road. That is, they could close that road. They could put up a gate and only allow those persons who have access to the property to use the road. It would not be maintained by the county any longer, and it would not be a public road, but would remain open for private use.”

Judge Mattingly asked, “If the property owners along those roads that would remain open for public use, but will no longer be maintained – if all of the adjoining property owners requested that they be treated in the same way that you are suggesting that Keene Road be treated, could that then be...?”

Mr. Porter replies, “Yes, there is a procedure to allow them to do that.”

Commissioner Lambert asked, “Claud, if the court takes the recommended action, is this document a part of the written court records because that is a part of the problem? Things that have happened in the past were sometimes verbal and possibly occurred outside of the courtroom. There is no written record, so everything you just said about the status of the roads, if the action passes, would be spelled out in detail in this document, correct?”

Mr. Porter stated, “I don’t think we have put it on the docket to take any action today. However, there will be written minutes of this public hearing. If the county adopts, as I understood the recommendations were from the county engineer and viewers, this is the ordinance which I propose, and it sets out what will happen to each road. If the court adopts that, as I have listed, yes that would be an ordinance and would be part of the public record and those roads that I listed are specifically outlined and specifically marked in separate sections, and each one is defined in there as to what happens to those roads.”

Commissioner Castlen asked, “What road did you ask specifically if we wanted to could be treated like Keene Road?”

Judge Mattingly stated, “It was Ed Foster Road, Old Deserter Creek Road, and Paul Edge Road, which will remain open to the public, but will no longer be county maintained.”

**Public Comments:**

James Edge stated, “Regarding Paul Edge Road, every time there comes a big rain, a big log comes down and catches on that tile, and the county has been coming down there and cleaning that out about once a year. I was wondering if they will keep that up?”

Mr. Brasher stated, “Judge, we are currently working on a new maintenance policy for storm water drainage in Daviess County. We are looking at when we do act and when we do not act. That policy is not final but Deserter Creek Road is mentioned in this proposed policy in regard to maintaining it at a certain point.”

Judge Mattingly stated, “Let’s say that the policy is never adopted, and we had a rain take place where the culvert became blocked. What would we do?”

Mr. Brasher stated, "If it is never adopted, I would fall back on state law that allows us to maintain those creeks if it effects a public roadway."

Judge Mattingly stated, "If the new policy is adopted, there is a mechanism in there that would allow us to take care of the blockage, correct?"

Mr. Brasher agreed.

Linda Faye Burch stated, "Regarding Old Deserter Creek Road, I own a 75-acre farm out there on the other side of the creek. In early 2000, the bridge was turned over to the landowners. From the bridge out to the new road, New Deserter Creek Road, we would like for it to stay in the county's hand. Because in 1976, when the new road was built - Jim Lambert gave me this paper during the time when we were discussing the bridge at the Oklahoma Store - you (Commissioner Lambert) came down there talking about turning it over to the landowners. Well, this paper, in three different places, says that the court agreed to continue maintenance of a section of the old road up to the bridge that crosses Deserter Creek. And, as a compromise for one resident along the old road, the county agrees to raise the level of the gravel surface about a foot for about one-tenth of a mile to help relieve flooding along it. You recall that?"

Commissioner Lambert replied, "I recall the meeting. It was not a matter, I think, Ms. Burch, of the county turning over to the citizens the bridge and some of the road. It was identifying where the county line was and according to state law, we cannot maintain roads that are in another county."

Ms. Burch replied, "That was in Daviess County. You all had been maintaining that road and the bridge forever."

Commissioner Lambert stated, "I am not denying that, Ms. Burch. I am just saying that the meeting that you speak of was identifying, and I think the county engineer will speak to the boundary, and I know that is very confusing because there was a creek and the creek has been re-dredged at a different place than the creek used to be. Deserter Creek Road has been moved from where it used to be, and there is and has always been much controversy about where the county line is. You might want to give a copy of that paper to..."

Judge Mattingly stated, "Could you let us make a copy of that because I have my..."

Ms. Burch stated, "Yes, but I want to read this..."

Judge Mattingly stated, "First, before you go any further, we will, since you brought up, and I believe Mr. Ivo Burch is your husband?"

Ms. Burch stated, "No, I am married to Pat Burch."

Judge Mattingly stated, "Because Mr. Ivo Burch was in my office talking to me on several occasions and brought into question the location of the county line, and when it became the actual county line. Once you go ahead and make your statement, we will have the county engineer speak on that issue."

Ms. Burch stated, "It says, one group representing generally the owners of land on the east side of the bridge, crossing Deserter Creek, fear they would be hurt by the abandonment of that portion of the road. County Commissioners have said they would continue to maintain it up to the bridge. However, so they will not lose access to their land, which we are not worried about losing access, but it says that the present road surface would be continued to be maintained by the county from the point where the new portion would begin, to a bridge where a private road crosses Deserter Creek."

Commissioner Lambert asked Ms. Burch what date the document had on it.

Ms. Burch stated, "You have written on here 1976 is when the road was changed, built up higher."

Commissioner Lambert stated, "Right, 1976 was when the new road was built. And that is a newspaper article, correct?"

Ms. Burch stated, "This looks like it has come from a newspaper – several different articles on it."

(The court made a copy of said articles for today's record.)

Judge Mattingly asked, "First question, county engineer, you know the bridge and road she is talking about. Tell me where the bridge is located."

Mr. Brasher stated, "To the best of my knowledge and through research, I believe the bridge is located in Ohio County."

Judge Mattingly asked, "What kind of research have you done?"

Mr. Brasher stated, "I have been mostly dealing with PVA with the help of the Geographic Information Systems Manager Chris Flener."

Mr. Flener stated, "Today, we looked at a United States Geological Survey topographical map from 1907. This map shows the route of the old creek, and I overlaid this map with the current boundaries of the Burch farm, and we have a slide that shows where that boundary is."

Judge Mattingly stated, "Chris, you are with the PVA office here in Daviess County, and we have worked closely with the Ohio County PVA's office on this issue. Is there any discrepancy – and I am not saying within a foot, because we are not talking about feet here, we are talking about hundreds of feet."

Mr. Flener stated, "I have a copy of their map, and there may be a slight difference in the property line, but as far as the boundaries, it appears that both counties are using the same line."

Judge Mattingly stated, "Where Old Deserter Creek Road leaves the current Deserter Creek Road, how far, right now, is that Daviess County? We are talking about a certain number of feet. How many feet was it? The answer, Mr. Engineer, is if you come 200-feet from the creek that is the county line."

Mr. Brasher stated, "It is approximately 235-feet."

Judge Mattingly stated, "The overall length of that Old Deserter Creek Spur is how long?"

Mr. Brasher stated, "I believe it is 985-feet."

Judge Mattingly stated, "Of that 985-feet from Deserter Creek Road as it exists today to the bridge is 985-feet and 700-feet of that road, give or take, is in Daviess County, and the bridge and the other 200-feet is in Ohio County."

Mr. Brasher agreed.

Judge Mattingly stated, "We tried, and Commissioner, I am going to suggest here in a minute that you go through this presentation, but we tried to go back and look, and I don't doubt that in the past that Daviess County probably did maintain the entire road. I do not doubt that they may have done work on the bridge itself, but that was in the past, and what we are looking at today is what state law allows us to do with public money. We certainly cannot use public money from Daviess County to maintain bridges that are in Ohio County. I know what was done in the past, and certainly, Mr. Ivo Burch has expressed a great concern to me that the county line has been moved back and forth. However, as far as your research can tell, as far as the PVA's

research can tell, and as far as the description, actually part of that was not in Daviess County it was deeded over or ceded from Ohio County to Daviess County. As far as your research will tell, that is where the county line has been forever – since 1830.”

Commissioner Lambert stated, “Everything that Ms. Burch read was from 1976 and some of that is reported in the court records. What she read are not comments that I made or some of the current Commissioners made. These stories were all about what occurred in 1976 when the – (pointing to a map) Deserter Creek use to run down here, the road use to run down here, and they have moved it to this location and that is what happened in 1976. That is all in reference to the information Ms. Burch read from these articles to the court.”

Mr. Brasher presented a slideshow whereby using a laser light pen he depicted and discussed various points on maps relative to the locations of Paul Edge Road, Old Deserter Creek Road, New Deserter Creek Road, Deserter Creek Bridge, Ohio/Daviess County line, as well as the old and new locations of the creek. (Please see file folder 4/19/12 for said presentation.)

Gary Trogden stated, “You can see that yellow line going right through there – that is the old creek. We have heard a lot of comments about 1976, and when the road was pulled north to get property owners in and out of their property, and that did help them greatly. There was another measure that took place in the 1950’s, that old creek, not the property line, but where the creek is there – it actually used to be on the south side. The whole creek, the whole road ran all the way up to Hwy 764. There were really two changes – one in 1976, which took care of the eastern one-mile of Deserter Creek and got it out of the water and then there was a change in the early 1950’s where the western part of Deserter Creek, about two-miles got those people out of the water. With that move right there, I would really like to refer to so the Commission can have a clear understanding so a clear decision can be made. In essence, what happened there was that the road used to be on the south side of the creek so they moved half of it to the north side in the 1950’s and that helped those people in the western part of Deserter Creek out. Then they went in 1976, and took care of the eastern one-mile and helped those people out again. In the 1950’s when it was moved off of the south side of the creek, in essence it just flip-flopped. When that road was moved over to the north side of Deserter Creek and it was already dredged then, then the people were promised, and Paul Edge was one of them, that they would always keep him a lane into his farm there, now it doesn’t go all of the way to his farm, it would just give him a lane to get to the creek and across the creek. In other words, they would keep him a lane all the way in and cross the creek with it. Now that still does not get him to his property. He is still another eighth of a mile to his property. Now he was going to take care of that. I just want every member of the commission be fully aware of that and yes it was a verbal agreement. No it is not in writing, but Judge himself said last week, that is just what they did back then. I feel like that should still be honored today. The big thing is not necessarily to put gravel on the road. The big thing is to keep that creek crossable. That is where the big job is going to be. I felt you all needed to be aware of this agreement, and I am sure you will do the just thing. That is all we are asking, that the road be brought in and it keeps, you know, keeps us across the creek.”

Judge Mattingly stated, “I don’t discount that a verbal agreement happened, but the problem is that here we are 60-years later, and have no written agreement or language telling us what was agreed to.”

Judge Mattingly stated, “First let me address a couple of issues. This really has nothing to do with the amount of income that that property would produce or would not produce. That does not enter into this decision. We are not sitting here trying to balance whether or not a piece of property contributes to the county tax base. To the county engineer or attorney, what is the definition we use not only in state statues, but in the Daviess County ordinances regarding public purpose?”

Mr. Porter stated, “A county road would be considered a part of a county road system, and included in the county road index if it currently serves three or more residential units. Another requirement is that the road must be free of obstacles that could become hazardous to persons using the road. A third is that the road cannot be subject to any water ponding or any

prolonged period of long period of time during dry weather. Additionally, once those qualifications have been met, the road has to have 60-feet of right-of-way, a minimum of 18-feet of road pavement, and 2-feet of gravel shoulders, and then it has to meet minimum requirements for the public improvement specifications, which include pavement, road grading, thickness, vertical and horizontal and site distance, and intersection configurations. Additionally, it has to meet drainage requirements, ditching, and utilities, if necessary, need to be relocated."

Judge Mattingly questioned the inception of the road index.

Commissioner Lambert said the road index began in 1988. He stated, "Counties were required to list an index with every county road, and they were asked to list the roads starting and ending points, distance, width, and type of road surface." He noted that funding was limited to the roads listed in this index. However, no language was in place, which defined a "county road". So, nearly all roads could be included in the index.

Judge Mattingly asked, "Have we removed roads from the index?"

County engineer Brasher stated, "Yes, I anticipate additional removals, as well as additions in the future."

Commissioner Wathen asked, "Claud, on the definition you gave, that was for a road for us to be able to add it to our index, correct?"

Mr. Porter said, "Correct."

Commissioner Wathen stated, "We have roads out there that do not meet that criteria."

Mr. Porter stated, "When we adopted the road and index systems one of the things we did is that if there was, because a lot of roads did not meet the requirements, if they were able to show that there was a constructed right-of-way, or a dedicated right-of-way, or a proven vehicular right-of-way before 1977, that road was usually included in the index. That was what the ones were in 1988 – all of those that were proven at that point, we thought that those roads were there, they did not meet those requirements but they were roads that had been used, they had been maintained, and there was a proven vehicular right-of-way, or there was already a constructed or dedicated right-of-way."

Judge Mattingly stated, "Some of those roads were improved during that time from being gravel roads, unimproved roads, to chip and seal roads, and then paved roads. Some of those roads served a public transportation purpose of connecting one road with another road or, out of professional courtesy, I know we have roads in McLean, Ohio, and Hancock Counties where we maintain a portion of a road that ties into their road that goes and serves 3 or more homes."

Commissioner Wathen asked, "It does not have to meet that criteria to stay on our list?"

Mr. Porter stated, "If it already has those other criteria, and if it meets the other public purpose criteria – the public transportation needs criteria – as Mr. Brasher has explained, it would be one that would stay on the list. We would not move to discontinue it. If it does not meet that requirement, even though there may have been a vehicular right-of-way at some point, it is one that is eligible to discontinue."

Mr. Brasher stated, "A lot of these, if not all of these roads, at one point or another may have served a public need. Just after 50-60 years, they are cut off and no longer used, they end up serving one to five properties – no residences – it does not interconnect, and there is no redundancy for a transportation network. They just fall off pretty much. Fifty years ago, they could have been used a great deal. They very much could have served a public need."

Regarding Deserter Creek Road Terry Howard stated, "I have lived there since 1960, and I am kind of partial to the area. I had a neighbor born in 1881. He told me that in 1918 neighbors got together with teams, discs, and plows, and cut the new Deserter Creek. They wanted to

improve drainage. When the old creek finally dried up, it was in August and too late to plant. That is the way they dug the new Deserter Creek. I cannot image the old creek and the new creek ever crossing or ever being close to each other. See what I am saying?"

Judge Mattingly stated, "If you look at it, what they have done, and what has been recommended for Panther Creek – as that creek meanders it creates oxbows and things like that. You cut a straight line to get the water to flow quicker, and a lot of people think that you will move a whole lot more water, and you do get the water out a lot quicker – I would dare say – and what you are explaining is exactly what used to happen. People did not wait around to get permits. They did not wait around to get all of the regulatory agencies to sign off. If they had have done that, they probably would have never gotten the creek done. Who did it, I think we would all say we appreciate their actions. According to the maps that we have, which predate that time, it shows that creek which was a boundary line meandering just exactly the way he showed it up there."

Mr. Howard stated, "The disadvantage is when they cut the new creek, they cut corners off of everybody's farms all of the way down. Back then, it was not a big deal. If you had farmland on the other side of the creek, you just took your mules and whipped them across the creek. Now you cannot do that with modern machinery – you have to have bridges."

Regarding Paul Edge Road, Mr. Trogden stated, "It has been mentioned kind of in 1988, when the new ordinance came up that you would have to have three houses to maintain a road. I know I was talking to Mark here a while back about the county possibly taking over the road. He asked how many houses were on the road, and I said there was one. That is one of the criteria I understand is that you have to have three houses at least. What we are talking about there is that was 1988, and it just seems like roads like this should be grandfathered in. If that road was still going down the south side of Deserter Creek the old way, the way it use to be, then it would be a very busy road. Just because those people worked together and tried to help neighbors out and stuff then it just doesn't seem like the others should be penalized for it."

Joseph Martin stated, "Most of these roads, are they going to be closed due to less traffic on the roads, and plus, if the roads had not closed, is it to a main road where you have to get to a main road?"

Judge Mattingly explained that these roads will not be closed. He stated, "The people who have a road going back to their farm, that roadway will still be there it will just not be maintained by the county."

Regarding Deserter Creek Road, Tonya Williams stated, "There have been a couple of times where fields have been flooded, and washed-up debris covered the road. Without the road department coming out and clearing the road off, we would not have been able to get in and out of our property. The same goes for Paul Edge Road. When it floods, it is major."

Steve Burch said there is a residence on Old Deserter Creek Road with a young child who will be attending school in a few years. He stated, "Without the county bush hogging and maintaining the road, she will have to wait for the school bus in weeds and that is all copperhead-country down in there. I think you all should take her into consideration."

With no further comments, said hearing closed.

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**Regular Session Agenda:**

Judge Mattingly stated, "Do you agree with the viewer's and county engineer's recommendation to Discontinue maintenance on Ed Foster Spur (Wellness Place)?"

**By a motion of Commissioner Castlen, seconded by Commissioner Wathen,** the court considered to approve to direct the county attorney to prepare an ordinance reflecting the court's desire to discontinue Ed Foster Spur (Wellness Place), but leaving it open as a public road.

Commissioner Wathen asked, "What would be the difference between closing that road, as we just discussed, and Keene Road?"

Mr. Porter stated, "The difference is that they have asked for it, and under the statute the provision is where it provides, because we are closing it under a different provision of the statute – Keene Road provides a – when you close a road under the provision of the statute there are three criteria - if it provides an access for a private person, that person can request, and ask that the road remain open as a private access road. That road, Keene Road, will remain open – open in the since that there will continue to be a road there, but it is a driveway. It will not be maintained. The difference there is that it remains open as a public road. A public road is one, which may be used by the public, and the owner would not be able to close it or deny the public access to it. Keene Road, the way it is set up, that person can close it saying that no other person may enter that road, if they so choose to do that."

Commissioner Wathen asked, "So why would we not want to do Ed Foster Spur the same way?"

Mr. Porter stated, "One, it is dedicated by plat to public use and two, it is not a private road. Because it is public, it would have to remain open to the public. We either close it completely and it is off and gone and they can say it is private, but it is dedicated as a public use. Keene Road is not dedicated by plat."

Commissioner Wathen asked, "If we vote on this motion, does that mean that Ed Foster Spur is closed?"

Mr. Porter stated, "If you vote on the motion as Commissioner Castlen has moved it, it would remain open as a public road."

Commissioner Wathen asked, "Are we actually making that decision tonight?"

Mr. Porter stated, "No."

Judge Mattingly stated, "What we are making a decision on tonight is that we want the county attorney to prepare an ordinance which would include the three different..."

Mr. Porter stated, "Today, this is not a vote on an ordinance, as there is no ordinance. This is directing me on how you want me to prepare said ordinances for the roads listed."

Commissioner Castlen asked, "I just want to be clear, so the fact that this is dedicated by plat for public purpose makes it unique really from these others?"

Mr. Porter stated, "Yes, the difference in the others is that one is dedicated and the others are not dedicated, but they have been used as a public road. They were public roads, and they were county roads. Old Deserter Creek, what they did was change the road and took that portion of the road off, so there was a piece of road which actually was a public road, county road, and maintained by the county, and then because of flooding they moved that portion of the road and that road no longer serves a public purpose. It can remain open as a public road - someone can run up and down it."

Commissioner Castlen, "This one here, again, just to be clear, we have no liability here whatsoever, correct?"

Mr. Porter stated, "Correct."

Joseph Martin asked, "If the county is not liable for public roads, who is?"



Mr. Porter stated, "The owners surrounding the road, as they are the owners of the road."

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 to approve to direct the county attorney to prepare an ordinance reflecting the court's desire to remove Old Deserter Creek Road from the road index. The county would stop maintenance, and said road will remain open for public use.

Commissioner Wathen stated, "I would I like make sure that when we draft the ordinance that we have Old Deserter Creek Road separate, and then have Paul Edge Road separate so we can vote on each one of those individually.

Judge Mattingly stated, "We can do that. We will instruct the county engineer, as we go through these, those three in particular; we would have three separate ordinances."

Commissioner Castlen, "When you read the portion of the rule of what the county road has to meet before it can be in the index, is that state law or is that..."

Mr. Porter replied, "No, that is county ordinance."

Commissioner Castlen asked, "Is there a state law that addresses that issue?"

Mr. Porter said, "It just has to be that the county adopts it into the county road index, and that it serves a public need."

Commissioner Castlen asked, "The bridge that crosses in Ohio County, if I understood correctly, the lady that spoke earlier, that the bridge is maintained by a private citizen or did I misunderstand?"

Commissioner Lambert stated, "Back when the bridge partially collapsed, and was unusable, the property owners did repair the bridge. The most recent repair was done by property owners. I am not sure how many property owners."

Ms. Burch stated, "My family repaired and put the bridge in."

Judge Mattingly stated, "Was there a reason why the county did not come out and take care of the bridge?"

Ms. Burch said that the county had already turned the property over to the property owners.

Commissioner Lambert stated, "We really didn't turn it over. We determined, based on the maps, that that was in Ohio County, and we could not repair a bridge in another county."

Judge Mattingly stated, "Mr. Engineer, in the County Road Index, give me a description of Old Deserter Creek Road. Does it say it is 900+ feet?"

Mr. Brasher stated, "Old Deserter Creek Road – 985-feet long."

Judge Mattingly asked, "That is in the County Road Index. We have a problem in that in our index we have a road that a portion of it is in Ohio County. By law, I do not know how we can spend Daviess County taxpayer dollars to maintain that road. The portion of the road that crosses the creek it used to turn and go at an angle, and that portion of the road was in Ohio County."

**Commissioner Castlen made a motion** to remove the portion that is in Ohio County on this map from our road index.

Commissioner Lambert stated, "It is not currently on our index."

Mr. Brasher stated, "As per the Daviess County Engineer, County Road Index, Old Deserter Creek Road is defined as 0.187 miles from the beginning of the road and ending at a dead-end. The 0.187 miles is 985-feet which takes you to the bridge."

Judge Mattingly stated, "That portion of the road has been in our index but that portion is in Ohio County. There lies the problem. In the past, without good records, we have gone by *"well, we have always done it, we did it, and we agreed to do it"*. Unfortunately, state law – the defining fact in all of this Claud, is simply that we cannot use public money for a private purpose and it is Daviess County taxpayer money, and it cannot be used to maintain an Ohio County Road. That is the problem."

Terry Howard stated, "Daviess County Road Department has kept that road up forever."

Judge Mattingly stated, "And they made a mistake. They should not have done it, but that is done and now in the past. I am not going to go back and find the people who did it improperly. They thought they were doing the right thing. Today, we know that that part of the road is in Ohio County. When Mr. Porter puts me on the stand, and when they are trying to remove me from office, and says, *"Judge, what did you know and when did you know it?"* I am going to say, *"I know it is in Ohio County. I knew that we used to maintain it, but I know it is improper for us to maintain it today."* The Judge will say, *"Guilty"* and will remove me and the sitting Commissioners from office. It is Daviess County taxpayer money for public, Daviess County, purpose. The simple fact is that the last 230-feet of road is in Ohio County."

**By a motion of Commissioner Castlen, seconded by Commissioner Wathen**, the court considered to approve to remove from the road index the portion of Old Deserter Creek Road, for whatever distance, from the Ohio County line to the dead-end.

Judge Mattingly stated, "So we have a motion that upon hearing public testimony, and considering all of the facts, we will remove the portion of Old Deserter Creek Road that is in Ohio County and leave, in our road index, the portion that starts at Old Deserter Creek Road and ends at the Ohio County line."

**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 to approve to direct the county attorney to prepare an ordinance reflecting the court's desire to discontinue from county maintenance the portion of Old Deserter Creek Road from the point the road leaves Old Deserter Creek Road to the Ohio County Line, and leave said road open to public use.

**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 to approve to direct the county attorney to prepare an ordinance reflecting the court's desire to remove Paul Edge Road from the road index, and leave said road open to public use.

Mr. Trogden asked, "I am just a little confused. Are you not voting on this today?"

Judge Mattingly stated, "No, we are just voting on whether or not to have the county attorney prepare an ordinance, which would be read at the first meeting in May, and we would vote on it during the second meeting in May."

**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 to approve to direct the county attorney to prepare an ordinance reflecting the court's desire to discontinue and remove the following roads from the county road index, Boone Road, French Island Spur, Jarboe Lane, Reeder Road, and Short Station Spur. Said roads will revert to property owners.

Phil Lambert asked, "If you close Boone Road, and it reverts back to the landowners, the landowners have the right to close that road to public access by gate, correct?"

Mr. Porter agreed.

**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 to approve to direct the county attorney to prepare an ordinance reflecting the court's desire to remove Keene Road from the road index, and leave said road open for private use.

Commissioner Wathen stated, "I still don't understand. I thought the farmers along this road wanted to close Keene Road and gate it. So, what is the difference between that and the group we just had?"

Mr. Porter stated, "The ones before, the roadbed reverts, and they own those roads, and they don't have to have a roadbed at all, they don't have to gain..."

Commissioner Wathen stated, "So this does not revert to the owners. Is that what you are saying?"

Mr. Porter stated, "Yes. It remains open for private use."

**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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Minutes of the April 5, 2012 meeting were submitted to fiscal court members for review prior to today's meeting and on a motion of Commissioner Castlen, seconded by Commissioner Lambert 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 Lambert, the court considered approval of the Order to Pay Viewers of the aforementioned roads \$112.50 each. 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 Quarterly Fund Transfers. 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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County Treasurer Jim Hendrix presented the Treasurer's Report for the month Ended March 2012.

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By a motion of Commissioner Castlen, seconded by Commissioner Wathen, the court considered approval to Contract with First Impressions for the ADA sidewalk/ramp at the Daviess County Courthouse for \$19,450.

Mr. Brasher stated, "To be ADA compliant, we are moving the two sidewalks, and we will be coming up the middle then separating them once we get closer to the courthouse to get the appropriate length so we can rise to the appropriate amount." He believes that this should bring the courthouse into complete compliance as per the consent decree with the Justice Department.

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 Wathen, the court considered approval to Award **Bid No. 07-2012** for Daniels Lane Roadway improvements to Yager Materials for \$746,264.

Mr. Brasher stated, "This is in regard to widening Daniels Lane from where the hospital ends their improvement work to Hayden Road. We have completed the design, opened the bids, and the lowest bidder was Yager Materials for \$746,264. It is my recommendation that we award this bid to Yager Materials."

Judge Mattingly stated, "This price includes the replacement of the Yellow Creek structure/culverts, which we are using \$160,000 from the state for replacement. Of the \$746,264, \$160,000 is being provided by the state."

Commissioner Castlen asked, "On the culvert replacement, are we putting in a box or round culvert?"

Mr. Brasher replied, "It is a prefabricated concrete arch. The culvert's dimensions are 32-foot wide, 12-foot tall. I anticipate closing Daniels Lane for one-month to replace this culvert."

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 to Advertise for the following Bids:

- **Bid No. 08-2012** Electrical, Plumbing, A/C, & Parking Lot Maintenance Services
- **Bid No. 09-2012** Concrete, Ready-mix
- **Bid No. 10-2012** Bulk Delivered Fuels
- **Bid No. 11-2012** Crushed Limestone, Sand, and River Gravel
- **Bid No. 12-2012** Culvert Pipe
- **Bid No. 13-2012** Equipment Rental
- **Bid No. 14-2012** Pavement Striping

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 Declare the following as surplus, junk lawn equipment, and misc furniture items from the Detention Center:

- 4 heated carts Bad condition
- Washer serial number- 2070600500968 Scrap
- Dryer serial number- 0tck0004009914 Scrap
- Dryer serial number- 0509019684 Scrap
- John Deere zero turn serial- 0757b010782 Scrap
- Scag zero turn serial number- 711783 Scrap
- Dixie zero turn serial number- 2912700951 Scrap
- 50 misc. chairs Mostly broken
- Set of six lockers Broken
- Stair stepper exercise equipment Broken
- Exercise Bike Mostly broken
- Electric power wash machine Broken
- Snow blower Unknown condition
- 10 Misc. desk Not worth keeping
- 100 Old serving trays
- Ping-Pong table Broken
- 2 Vending Machines Unknown Condition
- Foosball table Missing parts
- 11 Folding lunch tables Poor condition
- Dorm fridge Broken
- 1 old medical gurney Bad shape
- 15 old filing cabinets Bad shape
- 4 15" P.A. speakers Unknown condition
- 3 dozen small lunch coolers
- 2 Garbage disposals Broken/scrap
- Dual Bunn tea machine Broken
- 15 Old c.r.t. monitors Broken
- 3 Plastic medical carts Broken
- 3 Basketball backboards
- 40 Red plastic chairs Good condition
- 6 Folding Tables Broken
- 12' Extension ladder Broken
- Mobile computer station
- Elliptical machine Broken
- 2 Door metal storage cabinet Poor condition
- 9 broken flat screen T.V.'s
- Sewer machine Broken
- Electric paint sprayer Unknown condition
- 4 Old metal doors Rusted

- Misc. scrap metal
- Misc. scrap wood
- Engine hoist Bad condition
- Stainless steel heated steam table All sections broken
- 20 old outdated computers Scrap

**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 to Hire Timothy Beebe and Christopher Hall as part-time, seasonal Park Attendants at Panther Creek Park.**

**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 reappoint Bryan Reynolds (09-2012) to the DC-SWEEP. TERM 5/1/2012 – 5/1/2015.**

**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 to appoint Rethel Gayle (Jessi) Lowe (08-2012) to the DC-SWEEP. TERM 5/1/2012 – 5/1/2015.**

**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 stated, "Several of us attended a volunteer appreciation luncheon today for CASA – Court Appointed Special Advocates." He encouraged the public to find out more information about this worthwhile program.

Commissioner Lambert stated, "Several of us attended a training session in Louisville last week, and I would like to mention that the state did pass legislation against synthetic marijuana. We had talked about the possibility of doing a local ordinance, and we told you back some time ago that we believed the state would be passing legislation, and they have done that so I think that is good news for our community."

Judge Mattingly stated, "A community video has been released regarding the dangers of synthetic marijuana." A link on the Daviess County Fiscal Court's website will be established connecting visitors to that video.

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

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Al Mattingly  
Daviess County Judge/Executive