

REGULAR SESSION
of the Daviess County Fiscal Court
held at the Daviess County Cooperative Extension Service,
4800A New Hartford Road,
County of Daviess, Commonwealth of Kentucky
on this 1st day of May 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 MAY 1, 2014 FISCAL COURT FILE

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

Judge Mattingly proclaimed the following:

- Daviess County Cooperative Extension Service, May 2014
- Police Week, May 11-17, 2014
- Letter Carriers' Food Drive Day, May 10, 2014
- National Children's Mental Health Awareness Day, May 8, 2014

Minutes of the April 17, 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 court members concurring said Minutes were approved and signed.

By a motion of Commissioner Lambert, 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 court members voted in favor; motion passed.

By a motion of Commissioner Castlen, seconded by Commissioner Wathen, the court considered for approval the Memorandum of Agreement between Owensboro Community and Technical College and Veterinary Technology Program and Daviess County Animal Control.

Judge Mattingly said that is a mutual aid agreement.

Commissioner Lambert noted that they would not do any experimental surgeries or treatment on the animals.

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 Lambert, the court considered for approval to Advertise for Bid No. 04-2014 - Purchase One (1) New or Used CAT 430F or Equivalent.

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 Award Bid No. 07-2014 for Kelly Cemetery Road Bridge Replacement to Scott and Murphy, Inc. for \$117,800.

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 Purchase four new, foam-filled 23.5-25 loader tires for the Transfer Station from Raben Tire for \$18,442.00.

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 Hire Dwayne C. Hite as a part-time, seasonal park attendant at Yellow Creek Park commencing successful completion of pre-employment testing.

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 the position of a Solid Waste Project Manager and approve said job description.

Jeff Dame is soon to retire from his current position as Assistant Solid Waste Manager, and this position of a Solid Waste Project Manager will replace Mr. Dame's current position. In making this change, the court studied job responsibilities and has restructured and added to the position's job duties and job qualifications.

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 Lambert, the court considered for approval to Appoint Sarah Castlen (13-2014) to the DC-SWEEP (Cindy Bornander served 2 term) - TERM: 5/1/2014 – 5/1/2017.

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

By a motion of Commissioner Wathen, seconded by Commissioner Lambert, the court considered for approval the **Second 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:

No comments received.

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 the **Second 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:

Karen Marksberry stated, "I just want to start by thanking Judge/Executive Al Mattingly and Commissioners Castlen and Wathen for taking the time to ask many questions at the April 17th fiscal court meeting. I did want to say that Mr. Kamuf, at the April 17th fiscal court meeting, stated that the Graystone Estates Homeowners Association, represented by Bobby Kennedy, was not opposed to the rezoning. I have a petition here with 50 signatures of the Graystone Estates homeowners, in fact, they do oppose the rezoning, and I have those, which I can present to you. I would like to end by saying when Erb Equipment Company's CEO spoke at the April 17 fiscal court meeting she said we have been looking for a site in Daviess County for a long time and we feel that this is a perfect fit for us. You know, the Graystone Estate homeowners feel like this is the perfect place for them – a peaceful place away from the noise of the city, yet close enough to partake in the facilities and enjoyment of both city and county settings. We feel that our neighborhood is the perfect fit for us. We are not naive and do not expect this farmland to stay farmland forever. We assumed it might become residential, professional, or a small business. So please consider our great appreciation for this area when you all make your decision."

Mr. Kamuf said he was here if the court had questions he could answer on behalf of Erb Equipment Company.

Judge Mattingly asked County Attorney Porter to review the finding of fact that the planning commission used.

Attorney Porter stated, "1) The subject property is located in a business plan area where light industrial uses are appropriate in limited locations; 2) Currently in the area is a very large industrial type OMU line and substation. Also, in very close proximity to this development, the US Post Office, which would be light industrial in this area if it were required to be zoned. Other operations in close proximity are the Time Warner Company, which has numerous trucks, large trucks going in and out daily. Sterett is in that area. It serves the Riverport which is heavy industrial that passes by there continuously during the day; 3) This development will not overburden Highway 60 as much as perhaps a similar or another use in there that is currently allowed there such as a convenience store, fast food operation; and 4) This commission has prior approval of similar development on US Highway 431 in the past."

Commissioner Lambert noted that he has been out for some time while recovering from having a knee replacment. However, he has been very vigilant in staying abreast of county business in particular, this rezoning issue. He stated, "I am here tonight well versed and prepared to vote on this matter."

Judge Mattingly asked Brian Howard of OMPC, "The planning commission, they are limited in the restrictions they can put on a development of a property when it is zoned – they pretty-much have to follow KRS 100?"

Mr. Howard said, "That is correct. They follow KRS 100."

Judge Mattingly stated, "So there is not a lot that they can do."

Mr. Howard replied, "They can make certain conditions as long as the applicants are agreeable to those."

Judge Mattingly asked, "Claud, can we do that?"

Attorney Porter replied, "Same thing, Judge, in this situation."

Judge Mattingly invited Mr. Kamuf to the podium and asked him if his client would be agreeable to the following conditions and not appeal them:

- Install gray or beige slats on the 6' chain link fence.
- Extend southern access point 100' from the edge of the Worthington Road pavement to the access gate.
- Add a 3' high berm to the southwest corner of the property extending a minimum of 150' along the southern property line as measured from the southwest corner and a minimum of 195' along the western line as measured from the southwestern corner.
- Applicant may change the angle of the berm to allow placing the retention basin south of the berm.
- Construct a 6' high solid fence on the berm.
- Group the required trees along the berm outside of the fence.
- Construct the required retention basin in the southwestern corner to create a vegetative buffer on the property.
- Said berm be constructed in such a manner (slope and angle) that it can be maintained and mowed.

Judge Mattingly asked Mr. Kamuf if he accepted those conditions and his response was yes.

Judge Mattingly stated, "Claud, they cannot make an appeal - those particular conditions, correct?"

Attorney Porter agreed.

By a motion of Judge/Executive Al Mattingly, seconded by Commissioner Lambert, the court considered for approval to Amend **Second 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 to include the aforementioned conditions.**

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

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

County Attorney Claud Porter read, in summary, the **First Reading of KOC 621.15 (2014)** - An Ordinance Relating to the Road, Bridge, and Street System.

Comments:

County Engineer Mark Brasher noted that this is a periodic update of county roads.

Judge Mattingly noted that the county cannot work on any road not listed in this ordinance.

Attorney Porter stated, "What we are doing is repealing actually the old ordinance and accepting the new one. So, this is a complete index, not just the amendment."

Other business to be brought before the Daviess County Fiscal Court:

By a motion of Commissioner Wathen, seconded by Commissioner Lambert, the court considered for approval to Advertise for an Animal Control Officer in the Dept. of Animal Control.

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 Hire James M. Addington as a Fleet Management Mechanic in the Dept. of Public Works commencing and contingent upon successful completion of pre-employment testing.

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 Purchase Tracks for the Landfill's Excavator from Impco, Inc. for \$10,844.02.

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

Comments:

Larry Condor stated, "The issue I would like to bring up before this court is a section of the Owensboro Metropolitan Planning and Zoning Ordinance. I have had a couple of brief discussions with the Judge, the Commissioners, and with Manual Ball about this ordinance – section 4. It is a 2.5 page document that relates to the non-conforming uses of structures and permits. That ordinance itself has probably caused a dramatic amount of the issues that we have seen, especially in the last 2-3 years with structures that are "currently built" in our county. This ordinance, what it does, is that it looks at use of facilities that we have and what you are wanting to do with them – whether that be for mercantile, retail, living quarters, or restaurant, whatever the case may be is what it does. When that section is evaluated, it can trigger and does trigger many other ordinances, which are state and federally enforced to go into effect. So what does that mean? What that can mean is that for any of our businesses, such as downtown businesses, but it is much more far-reaching than that. I have found that this ordinance actually has dealt with other buildings – other structures that have come into issues of use and economic use in order to grow our business in our county. But this section itself needs not only to be researched to see if it is legal as far as our state is concerned, which I believe our planning and zoning staff is going to be looking into this issue. What can we do? What can fiscal court and the City of Owensboro do to either enhance or change this ordinance to improve our businesses and our economic welcoming of dollars into our community because we are spending a tremendous amount of money (public dollars) in order to do this? Is this ordinance a hindrance to make that happen? I believe it is. I know it will take time to evaluate this ordinance, but it needs to be researched and looked at and really changed to benefit our community better than the way it is done now."

Judge Mattingly stated, "You and I had a discussion regarding this and you know that I am familiar with the department of housing, building, and construction. I have served on that board. I have probably helped write several of the trades' codes that are being used in the state. Brian, if I am not mistaken, this section is part of KRS 100, which comes down to us, and we utilize it in this community. As I relayed to you, it is not just a problem in Owensboro-Daviess County. It is a problem across the state. In working with the department of housing, building, and construction regarding sprinklers and multi-family residential I reached out to all 119 Judge/Executives, and that particular issue was brought to my attention, and they said if I could do anything, please help us because we are all trying to revitalize our downtowns. The second comment I would make is that planning and zoning is a three-part issue – City of Owensboro, City of Whitesville, and the Daviess County Fiscal Court. What goes on in the City of Owensboro is generally mirrored by what goes on in Daviess County and in Whitesville, but does not necessarily have to be. And there are some minor differences. We will take what you said to heart and see if we cannot get a group together. I have been trying to get that changed for 12

years, since being elected as city commissioner. And just to be clear, this is a Commonwealth of Kentucky issue, not an Owensboro-Daviess County issue.”

Commissioner Wathen stated, “I would like to ask planning and zoning that when there is an ordinance like this, that is being appealed, I think that they are being told that one person is enough to make an appeal, and I understand that is true. However, the problem is when that happens only that one person will get their “day in court” at our hearing, so to speak. So, if others were allowed to appeal, they too would be allowed to speak at the hearing in fiscal court. That is something I would like to be considered. The other thing I would like to see considered is if there is a zoning change in a neighborhood and any of the homes are adjacent to the re-zoning then we need to see what we need to do to where the HOA is notified. For example, tonight, we had 50 names come to us that theoretically might have come to the planning and zoning meeting had they known. I think that is important. I do not know what we need to do, but I would like to see what we could do about that.”

Judge Mattingly suggested possibly a text amendment.

County attorney Porter stated, “I think so, Judge. The notice requirements are statutory, but to change that we would have to make the notice more restrictive or broader than the statute. I will check on that for you.”

Commissioner Castlen supports Commissioner Wathen’s suggestion.

Judge Mattingly announced the Daviess County Fiscal Court May 2014 Employee Anniversaries:

- Aaron Nash, Fire Department Firefighter/EMT – 5 years
- Sam Henderson, Fire Department Firefighter/EMT – 5 years
- Dennis Fischer, Landfill Scale Operator – 25 years

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

Al Mattingly
Daviess County Judge/Executive