

SPECIAL SESSION
of the Daviess County Fiscal Court
held at the Courthouse in the City of Owensboro,
County of Daviess, Commonwealth of Kentucky
on this 22nd 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 JUNE 22, 2014 FISCAL COURT FILE

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

County Attorney Claud Porter read the **First Reading of KOC 921.669 (2014)** – An Ordinance Amending portions of Article 8 and Article 13 of the Zoning Ordinance Pertaining to Large Farm and Agricultural Equipment Dealers and Required Buffers.

County Attorney Claud Porter stated, "This is to change the A-U and A-R zoning to conditionally permit agricultural and large equipment dealers to locate in those by conditional use rather than requiring a zoning map amendment."

Judge Mattingly stated, "I want to make this clear. This text amendment to the ordinance is not the result of any one particular incident that has occurred regarding this type of business. It is really a reflection of, I think, over the last 3-4 years that we have been on this court and years prior to that, it is a reflection of issues that would come up when we had large farm equipment and/or construction equipment and machinery having to have a particular piece of property re-zoned to light industrial. So the best way for us to deal with this, if it becomes a repeated problem or repeats as a concern is to go in and look at how we can address that issue so that we provide some balance, not only to that business and trying to be business-friendly, but also to those residents who live in the surrounding community where a new business would be located. Again, this is not a result of any one particular business – I know somebody thought it was because of the Erb Equipment issue. It was not as a result of Erb. We were talking about this long before that happened. A couple of the issues that we have when we deal with this type of equipment – as I said, the property where they locate has to be zoned B-5, I think, I-1 or I-2. Well, there are lots of things other than construction and ag equipment that can go into those zones and KRS 100 does not allow planning and zoning to specifically address those other issues. Once it is zoned, whatever is permitted within that zone can go there. If we conditionally permit that use in an A-U or/and A-R zone we pretty much give those people in the surrounding community certainty that, that is the only thing that would ever be allowed on that piece of property. They may be okay, a lot of citizens may be okay with agricultural equipment, or they may be okay with the construction equipment being located there, but they certainly would not want to see a quick-pick market or a some high traffic business located there. I think that is one of the concerns that I have always had about having to re-zone something B-5, I-1, or I-2. It is the uncertainty that people would have, and it always comes up, I think from the citizens when they come up and object. It is the uncertainty of what is going to be there when these folks are gone. We are just trying to be proactive and perhaps help in the future. The other issue that comes up is the requirement to have that display equipment sit on concrete pads. These are large pieces of equipment - big tractors, big grain harvesters and those kind of things. They are not conducive to sitting on concrete or asphalt pads. This text amendment does not do anything regarding the requirements regarding the aprons – the entrances and the exits out of those places. I have had people talk about, well if you allow them to sit on gravel or rock pads it

creates dust. Well, when the machine is sitting there, there is no dust created. It is just sitting there for display. Where dust is created is when you bring equipment into or out of that piece of property. Lots of times you can drag rock or mud or things like that out on the highway and people do not like that. We are not addressing that issue. We are talking in regard to the pads they sit on."

Brian Howard of the planning staff stated, "This is an issue that has popped up over the years and we received your letter to take a look at it and we have evaluated the potential of conditionally permitting both large agricultural equipment and contractor equipment to be located in agricultural zones with a conditional use permit. Through our evaluation, we felt it was a good thing. It allows the board of adjustments to have control in regards to what can be located on that site, very specifically, they can take into account things like hours of operation, the size of the operation, things like that, that the planning commission cannot condition on a zoning change. One of the points that you made, Judge, that I will echo is that the conditional use permit process is specific to this one item in an agricultural zone. There is language that we incorporated into the zoning ordinance that basically says that the fact that a conditional use permit is approved for this type of use does not open the door for a zoning change to light industrial or professional service or commercial. It is specific to this one use. It is not the gateway to expanding, sprawling if you will, into the rural agricultural community, which is where these types of uses, we feel, will work well. That is one of the key things that we want to incorporate. You do not want to open the door then for these things potential things to happen and as you said Judge, one of the things that we heard through public testimony on various things over the years, not only this type of use but many others, once you zone something industrial or B-4 general business, even if someone is proposing a bank to go in that B-4 lot that does not mean it is going to stay a bank forever. It could be many uses. It could be anything that B-4 allows in the zoning ordinance. That is a key thing. This is a very specific – one use, one lot, that is it. The other thing that you mentioned is that it does alter the paving regulations somewhat. Large agricultural equipment has always enjoyed an exemption on full paving requirements. However, those contractor equipment dealers have not. And those are the uses that we have had issues within the past. At various public meetings we have heard testimony regarding "we have the big trucks, the equipment with big steel tracks on it that will bust up the concrete and/or asphalt", "we cannot have that type of surface", "we need gravel". We have listened to that over the years and feel that it is a problem. The exemption does keep all driveways, parking, and any area that serves the customers will have to be paved, but the yard, where they will have the equipment, could be gravel."

Judge Mattingly asked, "This text amendment would not in any way affect the rights of the neighbors who would be adjacent to this particular use, correct? The notification requirements are still there. Their right to stand before a board and testify is still there."

Mr. Howard replied, "That is correct. There really is not a major change between this and a re-zoning except this provides more specific direction as far as to how that business can operate."

Commissioner Wathen stated, "I think it would be better if more items could be brought to the board of adjustments for a conditional use permit. I am surprised as I delve into this that there are so many situations when somebody cannot go and ask for a conditional use permit. That is why we have the board. That is another conversation, for another day, but I would like to see more opportunities of items that can be brought to the board of adjustments. I like this."

Comments:

Tom Morton said, "If they are not going to let somebody re-zone their property for heavy industrial then they just need to give them a permit to run a business and leave all of the rest of the stuff alone. Some of the (planning and zoning) laws just carry it a little bit too far. Just like the deal you all are working on now. Heavy equipment is going to tear up blacktop and breakup concrete because some of it is so heavy. Why not just be nice to the people who are starting up a business, give them a permit, and let them run their business the way they see fit?"

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

Al Mattingly
Davies County Judge/Executive