

**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 7th day of June 2012
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 JUNE 7, 2012 FISCAL COURT FILE**

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

PUBLIC HEARING

A public hearing was held to discuss the Temporary Alteration of Free Silver Road by Closing and Relocating a Section of Free Silver Road.

Mark Brasher stated, "We have been asked by Western Kentucky Minerals to allow them to mine through a section of Free Silver Road – located at Pence Road, 3,100 feet to the south of Pence Road. They are proposing to build a detour around the section through which they will mine. They will mine through the road and once they are finished they will re-build the road in a better condition than it is today."

Susan Edwards asked, "How long is temporary?"

Mr. Brasher stated, "I believe they are looking at closing the road in March and completing the job within 1 year. It could be extended."

Ms. Edwards asked what they are going to do to improve the current road.

Mr. Brasher said, "This 18-foot wide road will become a 22-foot wide road with 11-foot lanes. They will also take out some hills."

Ms. Edwards asked, "On this temporary road, what kind of road will it be?"

Mr. Brasher stated that it will have a hard surface. It will have a base of asphalt at a minimum.

Ms. Edwards asked, "Can the semis carry their load out of that? To my understanding, I did not think a semi could be on a county road, which there have been. So on this little turn-off road will they be able to travel that, too?"

Mr. Brasher asked, "I don't believe they are proposing to have their coal trucks..."

Ms. Edwards interrupted saying, "Well they already are. Three-tenths of a mile, from the top of our hill. And I did not think they were supposed to be on our road."

Mr. Brasher stated, "As long as they do not exceed the weight limit of 18 tons, they can travel the county road."

Ms. Edwards asked, "How do you know they are not exceeding it?"

Mr. Brasher stated, "They are supposed to get a permit if they are going to exceed that limit. Law enforcement would be the ones to address their weight limit."

Judge Mattingly said that the Department of Transportation enforces vehicles and weight limits."

Ms. Edwards asked what the county benefits from the coalmine.

Commissioner Lambert said that the county gets no money from the coalmine. He said a legal mining operation must be granted a route to get their product to market. That means they have to follow all of the federal, state, and local rules and regulations regarding their mining operation.

Ms. Edwards asked what route the trucks are allowed to take.

Tony Lanham stated, "We will need to run up and down the temporary road for compaction. That is an issue we have on the road – to make sure that it meets the compaction. Again, it will be wider and safer."

Judge Mattingly asked if there will be a weight limit on the temporary road.

Mr. Brasher said, "It will be built to county standards so it will have a standard county road weight limit. They will have to bond the road if they see that they will be carrying extended weight loads."

Judge Mattingly asked, "What route are your operators traveling?"

Mr. Lanham said, "Highway 144, Highway 951, and a connector road, that we built, that comes off of Free Silver Road."

Judge Mattingly asked, "If Ms. Edwards wanted to check that route, who would she check that with?"

Mr. Lanham replied, "We could get her the numbers to call the state and she could check on our transportation plan."

Judge Mattingly said Mr. Lanham will get with her and provide her all of that information.

Ms. Edwards asked, "Does Mr. Lanham have a permit for pulling out onto Free Silver Road and going to their connector road?"

Mr. Lanham replied, "As far as us hauling on the short distance that we are now, we don't have any scales out there. We are doing a back-haul from there over to the wash plant. That is where we re-load the coal and take it back into Owensboro. To say what our weight is – we are not scaling it. How would she know the weight? I don't know."

Commissioner Wathen asked, "For right now, you are driving on Free Silver Road for a short distance, correct? And that is permitted?"

Mr. Lanham said they are traveling on Free Silver Road and that short of a distance has not been approved, but I mean if we are within the weight limit... To say it has been approved for an extended weight, no."

Commissioner Wathen asked, "I thought you had to have your county-roads route approved."

Mr. Lanham stated, "Yes, we do if we are going over the weight limit."

Commissioner Wathen asked, "You are going to go out there and make a temporary road so that you can tear out the current road. When you make that temporary road, are you going to

drive on that temporary road with your trucks more than you are currently driving on the current road?"

Mr. Lanham stated, "I'd say it is going to be about the same amount of traffic."

Commissioner Castlen stated, "To transport your coal, you have to submit a transportation plan to the state, and they have to approve that route, correct?"

Mr. Lanham replied, "That is correct."

Commissioner Castlen asked, "Why are you on Free Silver Road? I thought you said your trucks cross over Free Silver Road, not travel on Free Silver Road?"

Mr. Lanham stated, "We do have a crossing on Free Silver Road. Recently the state overhauled our ground control plan to where we have done some safety berms so we are coming out of there temporarily until we get everything back in alignment."

Commissioner Castlen stated, "I guess the question is when you talk of your transportation plan and you are on Free Silver temporarily now, has that been approved by the state?"

Mr. Lanham answered, "No, not the state. That would be county."

Commissioner Castlen asked, "The state does not have to approve that part, correct?"

Mr. Lanham said that is correct.

Freddy Millay asked, "What is the weight limit on the six-tenths of a mile that they have been traveling?"

Mr. Brasher answered, "The weight limit on county roads is 18 tons."

John Williams supports the coal-mining project.

Without further comment, said hearing closed.

REGULAR SESSION

Presented into the record were the Special District Budgets of the Daviess County Conservation District, the Green River Area Development District, and the Audubon Area Community Services.

Minutes of the May 17, 2012 meeting were submitted to fiscal court members for review prior to today's meeting and on a motion of Commissioner Lambert, seconded by Commissioner Castlen with all the Court concurring said Minutes were approved and signed.

By a motion of Commissioner 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.

By a motion of Commissioner Castlen, seconded by Commissioner Lambert, the court considered for approval Budget Transfers for the month ended May 30, 2012.

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

By a motion of Commissioner Lambert, seconded by Commissioner Castlen, the court considered for approval the Order of Allowance to the Board of Assessment Appeals.

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

By a motion of Commissioner Wathen, seconded by Commissioner Castlen, the court considered for approval the Daviess County Fiscal Court Salary Schedule.

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 Report of Viewers regarding the Temporary Alteration of Free Silver Road by Closing and Relocating a Section of Free Silver Road.

Said report was read into the record:

**COMMONWEALTH OF KENTUCKY
DAVISS COUNTY FISCAL COURT**

**IN RE THE MATTER OF: KOC 620.44 (2012)-
AN ORDINANCE RELATING TO THE TEMPORARY ALTERATION
OF FREE SILVER ROAD BY CLOSING AND RELOCATING A SECTION OF FREE SILVER ROAD**

REPORT OF VIEWERS

Mark Brasher, P.E., Daviess County Engineer, Jerome Hamilton and Clem Cecil, Viewers appointed by the Daviess County Fiscal Court on May 17, 2012, and state that on May 23, 2012, they visited the area of Free Silver Road which Petitioner, Western Kentucky Minerals Inc., proposes to temporarily alter, close and relocate.

The proposed alteration, closing and relocation would not require taking any burial ground, garden, yard, or orchard nor injure or destroy any building. Based upon the agreement with Petitioner, Western Kentucky Minerals Inc., the Daviess County Fiscal Court would incur no expense to temporarily close, alter and relocate the road.

We considered the proposed routes to alter, close and relocate temporarily Free Silver Road and the accommodations to the general traveling public. In our opinion, the alteration, closing and relocation would further the interests of the general public. The advantages to the public include the rebuilding of Free Silver Road in a condition better than the current roadbed and allowing the landowners to recover minerals. The advantages to the general public will outweigh any inconvenience to the traveling public as a result of the temporary alteration and relocation.

THEREFORE, the County Engineer and Viewers recommend the Daviess County Fiscal Court grant the petition by Western Kentucky Minerals Inc. to alter, close and relocate temporarily Free Silver Road beginning at Pence Road and extending south for a distance of approximately 0.60 miles (3,100) and being approximately 18 feet in width, as set out in Exhibit "A" attached.

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

By a motion of Commissioner Lambert, seconded by Commissioner Wathen, the court considered for approval the Order to Pay Free Silver Road Viewers Clem Cecil and Jerome Hamilton.

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

Claud Porter presented the **First Reading of 620.44 (2012)** – An Ordinance Relating to the Temporary Alteration of Free Silver Road by Closing and Relocating a Section of Free Silver Road.

Comments:

Susan Edwards is not in support of the Temporary Alteration of Free Silver Road by Closing and Relocating a Section of Free Silver Road. She is concerned about the safety of those using the road.

Mr. Lanham stated, "This is one of the hillier spots on the road. It is a hidden area where it drops over. The visibility will be so much better. We are going to drop it down some 15-foot. We are going to smooth the alignment."

James Lacy-Kamuf stated, "I think this is another example of where we get kind of misled by this industry. We talk about the EPA putting the coal companies out of business in Kentucky but what it is, is that there is a lot of coal that is not easily accessible any longer. That is where the reserves are left. We are going to face this more and more about "not-in-my-backyard". Many of the people who are against coal are against it because it is in their backyard. I would like to point out that we are going to see more and more instances of this."

Jerome Hamilton supports the work of the Western Kentucky Minerals coal haulers. He believes the drivers are careful and courteous.

Freddy Millay said the trucks that are hauling coal are well over the legal weight limit.

Mr. Porter stated, "That is an issue for Motor Vehicle Enforcement."

Commissioner Castlen asked, "First, there was a comment made about the EPA trying to put the coal companies out of business. With that in mind, if things were to change, certainly since Mr. Lanham's company wants to do this, this is something that apparently, from a cost standpoint, makes sense to his company. Do we have sufficient or have we requested sufficient bonding to ensure that if something catastrophic happens to their company that we would be able to put the road back ourselves, and not at our expense?"

Mr. Porter stated, "We have an agreement that we are negotiating, and part of that agreement would require a bond that we feel sufficient to pay the cost of reconstructing that portion of Free Silver Road, which they will relocate."

Judge Mattingly stated, "I don't believe the current bond is sufficient and will ask Mr. Lanham to increase the bond. Now, that contract has not been finished. We are still working on it. I don't think that Mr. Lanham has seen the contract and certainly it is something we will negotiate back and forth but, your comments are well founded, and that was part of the comment with the engineer that I had today."

Commissioner Castlen asked, "When Mr. Lanham made the observation that we are going to put the road back, and it should be better – a safer and wider road. In the days where they did unregulated strip-mining, they left large valleys. Will there be valleys as a result of this mining?"

Mr. Lanham said there will not be.

Judge Mattingly stated, "The realignment of the road, the construction of the road, all of that will have to be approved by our engineer. Their engineering firm will design and do all that detail work. It will be submitted to our engineer, as will the compaction records - how we allow

them to fill in the pit, and how long we will allow that road to sit and settle. Commissioner Lambert, that is addressing some of the questions you have regarding Aull Road. Some of those things were not done to this road and some shortcuts were taken. It was not by Mr. Lanham's company. Over a period of time, it has caused considerable hardships on the people that live along Aull Road. That happened, but we are determined, through our engineer, that that will not happen with Free Silver Road."

Commissioner Castlen asked, "Once the road is reconstructed, is there any plan or speculation that your trucks would be on that section of road?"

Mr. Lanham stated, "Once we get that road back in its alignment and get it paved we will not use that section of the road. We will be closer to the state road."

Commissioner Wathen asked, "How much longer is the temporary road than what we have now?"

Mr. Lanham stated, "It could be as much as 25% to 30% more."

Commissioner Lambert stated, "I am wanting the public to have an assurance that we are promising, in the second "Whereas", that we believe there will be no public inconvenience as a result of the temporary closure and relocation of that portion of Free Silver Road. We are promising the public a better road than they have now. How can you ensure that to happen?"

Mr. Brasher stated, "In comparison to the Aull Road project, according to the files – there are no files. I cannot speak to how that road was put back. Driving it and looking at it, it speaks enough for itself. However, what I have required of Western Kentucky Minerals is, and they have at this point fulfilled, to have an engineering firm design the detour route. I have required them to design the final Free Silver Road, and we are attempting, in good faith, to address the settlement that we saw on Aull Road. We are requiring some testing of the compaction as they fill the pit. We are requiring them to give us an "as-built" at the end of the project to make sure it was put in per-plan. My intention is to have my road inspector out there, as they fill the pit for the roadbed. We are going to do everything we can to keep from having another issue like we have on Aull Road. Obviously, soil and geotech is an art, not so much a science. So that is why we have discussed and I have discussed with Western Kentucky Minerals, we get to the roadbed and me and their engineering firm will have some discussion in regards to do we feel satisfied that the roadbed is solid and not settled anymore. At that point, we will make the decision as to are we going to wait another several months to let it settle on its own before we put our pavement down so we do not end up with an issue like we have on Aull Road. We are doing the best we can, in good faith, to end up with a better road than what we have today."

Judge Mattingly asked, "Mark, we are not requiring any less of Western Kentucky Minerals and their engineering firm than we would require of an engineering firm for any other road redesign project. Is that correct?"

Mr. Brasher stated, "Yes, sir."

By a motion of Commissioner Lambert, seconded by Commissioner Castlen, the court considered for approval the Lease Agreement between West Louisville Preservation Hall, LLC and Daviess County for a summer recreation program commencing February 1, 2012 through August 31, 2013.

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 Resolution No. 10-2012 – Daviess County Bridge Replacement.

Mr. Brasher stated, "This is the Department of Highways asking permission to acquire right-of-way for the construction of a bridge on Ray Road over Blackford Creek.

Commissioner Lambert stated, "This is one of three old iron bridges left in Daviess County, and I would like for the court to consider to request from the state to give the county the bridge so it could possibly be used at one of our parks."

Mr. Porter said a letter, without court approval, may be sent to the Department of Highways requesting the iron bridge.

Judge Mattingly stated, "Mr. Brasher, would you send a letter to the Department of Highways requesting the iron bridge?"

Mr. Brasher said he would.

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

By a motion of Commissioner Wathen, seconded by Commissioner Castlen, the court considered for approval the 2012/2013 Contract with the Daviess County Board of Education for the Transportation on Parochial School Students.

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

By a motion of Commissioner Castlen, seconded by Commissioner Lambert, the court considered for approval the KY Cattleman's Association Grant for \$5,000 and Authorization for the Judge/Executive to sign any and all documents related to same.

Mr. Pagan stated, "This grant may be used for anything related to the welfare of animals. There is no match associated with this grant."

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

By a motion of Commissioner Wathen, seconded by Commissioner Castlen, the court considered for approval the Contract Extension relating to the Crooked Creek Road Hazardous Mitigation Grant Program (grant approved July 21, 2011).

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

By a motion of Commissioner Castlen, seconded by Commissioner Lambert, the court considered for approval the Bond Release for Millers Mill Plaza, Unit No. 1.

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 Promote David Vanover from Service Technician to Mechanic effective May 28, 2012.

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 Glenn Hite as a seasonal Grounds Maintenance employee in the Department of Parks and Recreation commencing May 30, 2012.

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

By a motion of Commissioner Castlen, seconded by Commissioner Wathen, the court considered for approval to Advertise for a Service Technician in the Department of Public Works.

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 presented **Second Reading of A.82(2012)** - Daviess County Fiscal Court Budget.

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 presented **Second Reading of KOC 150.12(2012)** - An Ordinance relating to a Special Transient Room Tax for the Sole Purpose of Meeting the Operating Expenses of a Convention Center.

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.

Claud Porter presented the **First Reading of KOC 620.39 (2012)** – An Ordinance Relating to the Discontinuance of Certain County Roads and removing such roads from the Daviess County Road, Bridge, and Street System.

- **Boone Road** – beginning at Hwy 1554 and ending at a dead end for a distance of 1.010 miles
- **French Island Spur** – beginning at Hwy 1554 and ending at a dead end for a distance of .117 miles
- **Jarboe Lane** – beginning at Burton Road and ending at a dead end for a distance of .163 miles

- **Reeder Road** – beginning at Burton Road and ending at the McLean County line for a distance of .187 miles
- **Short Station Spur** – beginning at Short Station Road and ending at a dead end for a distance of .054 miles

Comments:

No comments received.

Claud Porter presented the **First Reading of KOC 620.40 (2012)** – An Ordinance Relating to the Discontinuance of a Portion of Keene Road – beginning 800-feet North of Hwy 60 and ending at Laketown Road for a distance of 1.301 miles and removing said road from the Daviess County Road, Bridge, and Street System.

Comments:

No comments received.

Claud Porter presented the **First Reading of KOC 620.41 (2012)** – An Ordinance Relating to the Discontinuance of Ed Foster Spur (Wellness Place) – beginning at Ed Foster Road and ending at a dead end for a distance of .228 miles and removing said road from the Daviess County Road, Bridge, and Street System.

Comments:

No comments received.

Claud Porter presented the **First Reading of KOC 620.42 (2012)** – An Ordinance Relating to the Discontinuance of Old Deserter Creek Road – beginning at Deserter Creek Road and ending at a ~~dead end~~ the Daviess County line for a distance of .122 miles and removing said road from the Daviess County Road, Bridge, and Street System.

Comments:

Commissioner Lambert stated, "There has been much talk over the years about Old Deserter Creek Road - the road was rebuilt, the creek was re-dug, controversy about where the county line is, who built it, and who maintains the bridge that is in Ohio County. I believe the people in that area have been led to believe that this road was not going to be done away with or changed. I think they donated land to build the new road, so I am going to be in opposition to changing the status of Old Deserter Creek Road."

Commissioner Castlen stated, "When I reviewed these ordinances the one thing I recall is that we had gone through a series when we had a whole lot of public feed-back on a couple of these. This was one of them. We made a series of motions essentially to direct the County Attorney to prepare these for tonight and I know one of them that I specifically made and I separated it from – and I did not see it when I reviewed it. I do not know if Claud wants to speak to that or..."

Judge Mattingly stated, "That was the motion regarding discontinuing any maintenance to that part of the road that lay inside of Ohio County."

Mr. Porter stated, "I was reluctant to refer to Ohio County at all."

Judge Mattingly stated, "We should take the "dead end" out and it "ends at the county line". Because I think that was 900-feet overall to the bridge and this is .122 miles, which is 634-feet. So instead of ending at a dead end, as the ordinance reads. Do we need to make that amendment or..."

Mr. Porter stated, "I will change it before the second reading, and I can show that it ends at the county line."

Commissioner Castlen stated, "The reason I made that motion the way I did in the previous meeting was to make that clear."

Mr. Porter stated, "I would prefer to have it in the ordinance. I want to do that and I think that would be clear – the intent. Our authority ends at the Daviess County line."

Commissioner Lambert stated, "Regardless of what the result of this motion might be at the next reading, we ought to have a clear sign or a bigger, better, and larger sign indicating where the county line is."

Claud Porter presented the **First Reading of KOC 620.43 (2012)** – An Ordinance Relating to the Discontinuance of Paul Edge Road – beginning at Deserter Creek Road and ending at a dead end for a distance of .271 miles and removing said road from the Daviess County Road, Bridge, and Street System.

Comments:

No comments received.

Comments:

Karen Miller of the Owensboro-Daviess County Convention and Visitors Bureau announced current and upcoming community events.

Gabrielle Gray of the Bluegrass Music Museum expressed her appreciation towards the court for their assistance with this year's ROMP Festival.

Commissioner Castlen thanked the Rotary Club for funding the WWII Veterans trip to Washington on the anniversary of D-Day. He also thanked the Sheriff's Office for sending two deputies to oversee the trip and ensure that those attending were safe and had a nice time.

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

Al Mattingly
Daviess County Judge/Executive