

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 21<sup>st</sup> day of June 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 JUNE 21, 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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Judge Mattingly presented the Amateur Radio Week proclamation.

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Robert Brown of KACo presented the KACo Workers Compensation Dividend check for \$26,313.

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Jim Hendrix presented the Treasurer's Report for the Month Ended May 2012.

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Minutes of the June 7, 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.

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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 Wathen, the court considered for approval the Budget Transfers for the Fiscal Year Ended June 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.**

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**By a motion of Commissioner Castlen, seconded by Commissioner Lambert, the court considered for approval the Affidavit of Publication regarding the Temporary Closure and Relocation of a Portion of Free Silver 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 Lambert,** the court considered for approval the Order relating to the Discontinuance and Closing of a twelve foot platted Alley in Stanley, East of Church Street and South of the L&N Railroad.

**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 for approval **Resolution 11-2012** Application for and Administration of a Kentucky Office of Homeland Security Project – Daviess County Fire Department Mobile Data Computer Grant.

Nate Pagan stated, "This \$20,000 grant would allow the fire department to purchase two mobile data computers for their rescue trucks. No county match is required."

**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 for approval an Agreement with the City of Owensboro regarding the administration and collection of the Occupational License Fee.

County Treasurer Jim Hendrix stated, "We hired the city to administer the Occupational License Fee, so we don't have to hire the additional personnel and buy the computer program. Annually, we look at this agreement. They have asked to raise it from \$90,743 to \$93,465. That increase is for the cost of living adjustment."

**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 for approval the Special Event Rental Agreement with the International Bluegrass Music Museum regarding ROMP.

**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 for approval to Contract with Inspection Testing and Maintenance, Inc. for Daviess County Fire Hydrant Flow Testing.

**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 for approval to Purchase a video production system from AVI for \$14,926.

Nate Pagan stated, "In the cable franchise agreement which the court approved in November of last year, the county was given \$15,000 for improvements to the audio-visual system to allow

the court meetings to be broadcast over cable. We are asking to spend that \$15,000 for a new CG and mixer for the back. This will allow the A/V technician to do graphics and various things on the screen, and allow them to switch better from one camera to another.”

**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 for approval to Advertise for Bid No. 15-2012 - a new waste handling arrangement dozer for the Daviess County Landfill.**

David Smith stated, “This is to replace the oldest dozer the landfill has, which is approximately 14 years old. The cost of this new dozer is estimated to be \$630,000.”

**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 for approval to Award the following Bids:**

- **Bid No. 08-2012** Electrical, Plumbing, A/C, & Parking Lot Maintenance Services to all bidders and award specific jobs per category, based on lowest bid and availability of said vendor.
- **Bid No. 09-2012** Concrete, Ready-mix to all bidders and use discretion in selecting appropriate vendors for each application.
- **Bid No. 10-2012** Bulk Delivered Fuels to Valor Oil.
- **Bid No. 11-2012** Crushed Limestone, Sand, and River Gravel to Yager Materials.
- **Bid No. 12-2012** Culvert Pipe to Hagan and Stone for tar coated culvert pipe and Owensboro Winnelson for polyethylene pipe.
- **Bid No. 13-2012** Equipment Rental to all bidders and award specific jobs based on lowest bid, availability, and operator experience, if applicable.
- **Bid No. 14-2012** Pavement Striping to Reynolds Sealing and 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 for approval the Resignation of Neal Pagan, Animal Control Officer, effective close of day June 15, 2012.**

**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 for approval to Appoint Mike Edge (13-2012) to the Economic Development Advisory Committee. This is his second term. TERM: 6/19/2012 – 6/19/2016**

**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 for approval to Appoint **Larry Kirk** (14-2012) to the **O-DC-CVB as the Restaurant Association Representative**. This is his first term replacing Chris Blyth who served 1 term.

TERM: 6/30/2012 – 6/30/2015

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 Wathen, the court considered for approval to Appoint **Ruth Ann Dearness** (15-2012) to the **O-DC-CVB as the Hotel/Motel Representative**. This is her first term replacing Brian Smith who served 2 terms.

TERM: 6/30/2012 – 6/30/2015

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 Wathen, the court considered for approval the **Second 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 Hwy 258 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

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 for approval the **Second 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.

Commissioner Castlen asked, "Are we going to mark it in any way, or are we going to take down the existing signs?"

County Attorney Porter stated, "We will not be marking the road, and if there are existing signs, we will be removing them. And because it is a private access, they will be able to gate it or prohibit other public access."

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 for approval the **Second 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.

Commissioner Castlen asked, "I know, from time to time, there have been picketers that have shown up at different events. Since this is going to remain a public road, would those picketers have a right to picket on this road?"

Mr. Porter stated, "The facility itself is private. The road is a public road. The question would be whether they have the right to stand on the road, and they would not be able to deny access to the public on the road. I would be reluctant to say that picketers would be able to use the road itself. Normally, what happens is that, depending on the picketers and situation, if it is company and it is a union they have to get permission and usually the company would apply to the circuit court, and they are limited as to place, location, and numbers. If it is a person who just wishes to stand out there, they are not going to be able to use the road itself, and since the right-of-way and the parts off of it are private property, the private owners may be able to prohibit them from using the shoulders or other portions near it."

**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 for approval the **Second 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 for a distance of .122 miles and removing said road from the Daviess County Road, Bridge, and Street System.**

Commissioner Lambert stated, "I am going to vote against this. I have been dealing with that situation now for 13 years. We have a resident on this road, and a second resident who is on Deserter Creek Road who has a driveway into their home – they have two driveways, one on Deserter Creek Road and a second onto this road. I believe that legally we have no responsibility to do that but I believe, based on testimony of a number of people in that area, that verbally those people were promised that that road would not be closed because they donated land for the building of the New Deserter Creek Road. The standard that we use to accept roads into the road directory, and in my opinion, this is completely different from removing a road from the county directory. I believe we have an obligation to keep a commitment made by a prior court."

Judge Mattingly stated, "I think you are right there. Probably there was no specific standard to be brought into the road index was there, Claud? It just had to of been used by the public at the time the road index came into existence."

Mr. Porter stated, "At the initial one in 1988, after the statute passed, it was just if the roads have been maintained, and the tradition had been that they were maintained as county roads, those were listed on the initial road index."

Commissioner Wathen stated, "I am going to vote no to this also."

**Without further discussion, Judge/Executive Mattingly called for a vote on the motion. Judge/Executive Mattingly voted in favor, Commissioners Wathen, Castlen, and Lambert voted in opposition; motion FAILED.**

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

Commissioner Lambert stated, "I believe there are five property owners across the creek. I do not know if all of those properties are in Ohio County or not. In the case of Paul Edge Road, Daviess County extends 200-300 feet across the creek, and the bridge and culverts are in Daviess County."

Nadine Trogden stated, "I just want to add my appeal. There were eleven kids in our family and about half of us were born down there on that farm, and 100 or more people would like to continue getting into that farm easily. Three hundred feet after you cross the creek is still in Daviess County. One-quarter mile west, Daviess County line extends one third mile past the creek. There are five properties in Daviess County beyond the creek. We estimate that at least 60 people use that road on a regular basis. There is cropland on the south side of the creek. It is just a longtime existing road – over 50-years. In the 1950's, the county court promised my father that they would maintain that road into the creek and maintain the bridge. We still need that bridge to get in there."

Commissioner Lambert asked, "Are there any oil wells on those properties?"

Jim Edge stated, "I own that property now. They pump one oil well. It is all the way in the back, next to the graveyard."

Commissioner Lambert asked, "How many other ways are there to get to those properties across the bridge?"

Mr. Edge stated, "You would have to walk."

Shawn Aud stated, "My mother is the current owner of the property that is on the west side of Paul Edge Road. We boarder down the entire west side of the road. There are approximately 18-acres there, and 3-acres are on the opposite side of the creek. I would hope that the road does not close just so the Edge's and everyone else has the right to get to the other side easily. If the road was closed, and the county no longer maintained the road, would the stop sign at Deserter Creek remain? If not, and there was an accident, who would be responsible?"

Judge Mattingly stated, "The road is not going to be closed. The county would simply stop maintaining the road. It would be like any other farm service road. You would not be able to gate the road. You would not be able to close it down because it remains a public road."

Mark Brasher said that if this ordinance passed, the road sign and stop sign would be removed.

Mr. Porter said, "If you under took the duty, as a private land owner, to put up a stop sign, and the stop sign was down or covered, then you would have the potential for some liability. Everyone who uses the road has the obligation, as a driver, to watch out for other vehicles, and upon entering another road they would have an obligation to ensure that before they pulled out onto the road they had a proper clearance."

Gary Trogden stated, "There are property owners on the right and left hand side of Paul Edge Road. They extend across the creek. I just wanted to make it clear to all of the members of the court that there are five Daviess County properties across that creek. I looked up the word "public" and the dictionary said "for the people". There are probably 60 people out of those 5 farms that use the road regularly."

Michael Knott stated, "I have 70 acres and 12 acres are across the creek."

Judge Mattingly stated, "Whether we maintain that road or not, and that culvert does not necessarily jeopardize the access of any landowner anymore than we jeopardize the access of other farmers in the community who have farm lanes that go back to various pieces of property. Certainly, what happens is in the minds of each and every landowner there is the expense of

replacing that culvert and that is what gives some people heartburn. That is going to be an expensive replacement if that culvert should ever have to be replaced. We have many roads in Daviess County right now that are in the road index that we do not maintain. When all of the roads were taken into the road index that was pretty much done wholesale, and in a fast manner. Commissioner Lambert, I think you were the one that told us about it because the state came in and said if you were going to spend any county money on any road, it had to be in the road index. Just because those roads were taken into the road index that does not mean we cannot change that road index. We have to have the flexibility as a court and a keeper of the public trust to be able to make decisions as to when those roads no longer serve a public purpose." Judge Mattingly further stated, "Does it serve a public transportation purpose – that is what we are doing – maintaining a transportation system. In the case of all county roads, the question in my mind is what public transportation purpose does that provide?"

Commissioner Lambert stated, "I believe we have a responsibility to provide existing roads that serve people who have properties along those roads. If this were a private road today, I would not be voting to include it in the road index, but this road has been in the county road system for years, and people have property there. I think we need to continue to provide them a route to get to their property."

**Without further discussion, Judge/Executive Mattingly called for a vote on the motion. Judge/Executive Mattingly voted in favor, Commissioners Wathen, Castlen, and Lambert voted in opposition; motion FAILED.**

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**By a motion of Commissioner Castlen, seconded by Commissioner Wathen, the court considered for approval the **Second Reading 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.**

Judge Mattingly stated, "Claud, we do not have an agreement in principle regarding the closing of the road, mining through the road, and putting the road back."

Mr. Porter stated, "In principle, we do have an agreement. But we do not have the final agreement."

Judge Mattingly asked how long it would take to finalize an agreement.

Mr. Porter said, "That depends on if there are any conditions that the court intends to require other than the ones we have talked about. I think if we get all of those requirements together then the agreement could be finalized in a matter of days."

Commissioner Castlen asked, "If we go ahead and pass this tonight, will we need to bring the finalized agreement to court for approval?"

Mr. Porter stated, "It does not have to be as it is subject to the agreement."

Commissioner Wathen stated, "I do not understand what the difference is going to be between what we have now and what we will have while we are in a temporary situation. My biggest question is the traffic patterns – how will they change?"

Judge Mattingly stated, "This section supposedly has no traffic or coal trucks on it now. Although we have heard from some testimony that there were some trucks on there. I think, under our investigation, we went out and found that some trucks had used a portion of Free Silver Road previously. Once you mine through it, you are going to put a temporary road around it to replace it so that people will still have access to travel Free Silver Road. Are you going to use that road for your coal trucks? Is that going to be proposed in your transportation route? Not during the time that you are running trucks on it to help with the compaction, but once the temporary road is built, will your coal trucks be utilizing that road?"

Tony Lanham stated, "We will use a short portion of that road, approximately 600 feet. We are going to be using the straightest part of the road. This temporary road will divide our permit in half. So, we are going to have to be able to have an access point, maybe two access points to be able to get from point A to point B."

Judge Mattingly asked, "Will this be a crossing or will this be an access point to the road?"

Mr. Lanham stated, "It will be both. We are going to have to get back across the road now."

Judge Mattingly asked, "You will be mining both sides, so you will be taking equipment across the road plus when you access the road, what will you be doing?"

Mr. Lanham replied, "We will be going up to the top of the hill across Free Silver and back down over to Hwy 951."

Commissioner Wathen asked, "Right now you are just supposed to be crossing Free Silver, correct?"

Mr. Lanham stated, "That is right. We have a crossing on Free Silver Road."

Commissioner Wathen stated, "And then you are asking now, before you do the temporary road, that you can drive for a small portion of that road. Is that correct?"

Mr. Lanham stated, "That is correct. Once we get the road closed and take it out then we will be traveling the new road to pack it down. The public will still be able use the re-routed road."

Commissioner Wathen stated, "So you are saying that the re-routed or the temporary road – you are going to be driving on that with your trucks at the same time the neighborhood traffic will be?"

Mr. Lanham stated, "A short portion of it – to get to the top of the hill to cross Free Silver to get over to Hwy 951."

Commissioner Wathen and Mr. Lanham paused to review the map.

Commissioner Castlen stated, "Once you re-build the new Free Silver Road, you won't be driving on it at all except to pack it down, correct?"

Mr. Lanham stated, "That is correct. Once we get the pavement on the new road, we will be done with it totally."

Judge Mattingly asked, "Where will you tie back in to Free Silver Road in relationship to Ms. Edward's house at the bottom of the road?"

Mr. Lanham stated, "It will be coming out next to it. Approximately 150 foot away from it. There is a wooded area there, and we will be coming through that wooded area."

Judge Mattingly asked, "When it comes out, it will come out at the curve, correct?"

Mr. Lanham stated, "Yes, there will be a slight turn there."

Judge Mattingly stated, "It seems to me that once before when this was brought up that a temporary road was proposed over along the creek. What changed that location?"

Mr. Lanham stated, "We met out there and because of the flood plain and waterway – water has gotten up there and could cause a potential traffic problem because we will be flirting with more of the creek-bed coming around that way."



Judge Mattingly stated, "Do you own that property or have it optioned?"

Mr. Lanham stated, "We own a small portion of it. The rest of it is owned by Joe Elliot."

Judge Mattingly stated, "Mark, along that creek, did it get into the flood plain?"

Mr. Brasher stated, "I am not sure as we never got further than the discussion that he was looking at both options on either side."

Commissioner Wathen asked, "There are no homes along that section that is going to be removed is there?"

Mr. Lanham stated, "There is one house, but we own it."

Commissioner Wathen asked, "Is this truck route that you just described to – is that the agreement we are talking about is how you are going to travel that road? Is that what we are talking about?"

Judge Mattingly stated, "That is part of the agreement."

Commissioner Wathen asked, "And the traffic has to be approved too, right?"

Mr. Porter stated, "The traffic plan is not a specific part of the agreement at this point. If that is something we need to include, we can do that. However, there is not a specific requirement or notice of a traffic plan in the agreement as it exists."

Commissioner Wathen stated, "But he has to get a traffic plan approved, right?"

Mr. Porter said, "The traffic plan has to be approved for permitting from the Office of Surface Mining and the Department of Reclamation. That is not a portion of what we would do. That could be made a part of the agreement, but not something we have authority..."

Judge Mattingly stated, "That plan has already been approved has it not, Mark?"

Mr. Brasher stated, "I believe they have one approved, but this access to this detour I am not sure that that was a part of the original plan. Obviously if it is approved by me as far as an overweight permit, they would have to send back to the highway department and to surface mining I believe to have that plan changed."

Judge Mattingly stated, "Do you have a plan that has been approved to do this yet?"

Mr. Lanham stated, "No we have not. This is not a part of the original plan. Mark is correct. This is something we will present to them."

Susan Edwards asked, "The temporary road will be 18 foot wide is that correct?"

Mr. Brasher stated, "Yes, the detour route is 18 foot."

Ms. Edwards, "Like on the state routes and stuff, is that what you are taking tractor-trailers and coal trucks and all of that, is that the legal width?"

Judge Mattingly stated, "This is not a state route. It is a county road."

Ms. Edwards stated, "We were told by the mining company that he would not take coal trucks on this road because it was too narrow, too many hills, too many curves, and community-wide."

Judge Mattingly stated, "What road are you talking about?"

Ms. Edwards stated, "The road we have now is 18 foot, and I understand that the temporary road is going to be 18 foot, which is not any different than what we have now. You are still going to have the curves, traffic, hills, school buses, and now you are going to have trucks loaded with coal on a temporary road that isn't as sturdy as the one we are on."

Judge Mattingly stated, "I think it will have to be."

Mr. Brasher stated, "You can always make roads wider, but 18 feet is not an abnormal width for a county road. There are state routes that are 18 foot wide."

Judge Mattingly stated, "The question would be, do we want to take a temporary road that is going to last for a year or two and expend that money there or is it better to take that extra money and rebuild Free Silver Road, the new Free Silver Road, and make it wider, which is a part of that recommendation?"

Ms. Edwards stated, "How long does the bond last?"

Judge Mattingly stated, "The bond would last until the road was completed to the satisfaction of our county engineer."

Freddy Millay stated, "When you put my road back, use common sense."

Mr. Porter stated, "This is to address Commissioner Wathen's prior question. A part of the agreement does include the requirement that they attach or have as a part of their permit for this area, including the road. That permit does require their transportation plans. In that sense, the transportation plan is included in the agreement, but not specifically other than the requirement that they give up their permit for that portion of the road."

Commissioner Lambert stated, "This is already re-zoned and mining is in process. This has nothing to do with the Pleasant Ridge issue. Mr. Lanham, in the area of the temporary haul road, the loop that comes out by Ms. Edward's house, how many acres do you have on that side, and how long will you be mining there? In addition, how many total acres are in this project?"

Mr. Lanham stated, "We have approximately 350 acres."

Commissioner Lambert asked, "How many acres are in that block of the temporary loop?"

Mr. Lanham replied, "About 75 acres. We will be mining for about a year before the road is completed."

Commissioner Castlen asked, "If the road is currently 18 feet, and we are going to take it to 22 feet - and that is this stretch of road - how do you taper that in?"

Mr. Brasher stated, "There are standard requirements for tapering a road down to a different width."

Judge Mattingly stated, "Why, Mark, why 22 feet in between 2 long sections of 18 feet?"

Mr. Brasher stated, "That is what was turned in."

Mr. Lanham stated, "One of our objectives was to make the road better and safer than it currently is. If you all want it 18, we will make it 18. It will be cheaper for us."

Judge Mattingly stated, "So what we will have is an 18 foot wide road with 2 feet of shoulders on each side, correct?"

Mr. Lanham, "Yes, and we will taper it in to where we will meet back in with where it is."

Judge Mattingly stated, "Regarding the bond requirements, we currently have in the agreement \$25,000 for maintenance of the temporary road, and we would like to have a \$100,000 bond. Do you have any problem with that?"

Mr. Lanham said he does not have a problem with the increase in bonding.

Judge Mattingly stated, "Second issue is the bonding to put Free Silver Road back. The proposed was originally \$1,000,000, and I have talked in terms of going to \$2,000,000. What is the difference in cost?"

Mr. Lanham stated, "Naturally it would be twice as much money, but I don't know what it would be. We are bonded by the Kentucky bond pool. The way I am looking at it is that the only thing the county would be out for would be the surface part of it. We are bonded to put the pit back."

Judge Mattingly stated, "Yes, but you don't have to put the pit back to road standards, you have to put the pit back to reclamation standards. So there is a difference as we have found out with Aull Road – when you put a pit back and then build a road over it without putting it back properly. That is when we end up with road problems."

Mr. Lanham stated, "Yes, but we are going to go the extra mile with the compaction to put our heavy equipment on it to pack it down."

Judge Mattingly stated, "If we reduce that bond back to \$1,000,000 but require that you core it to make sure that the road was compacted properly..."

Mr. Lanham stated, "Well I was hoping for \$500,000, and do the drilling, and guarantee the compaction."

Commissioner Castlen stated, "I just know that was an issue that I brought up last time, and it is something that I want to make absolutely sure that we are protected, and the taxpayers are protected. With no disrespect to you, Mr. Lanham, but if something catastrophic were to happen to your company, I don't want this to be on the backs of the taxpayers. I want to be very clear on that."

Mr. Lanham stated, "I understand. This will be the fourth county road that I have been involved."

Judge Mattingly stated, "The other concern again with that has to do with the pit. The bond is not with Daviess County. We are not the recipient of that bond. We are not the named agent in that bond. I assume that the Office of Surface Mining would be. If something happened to your company, we cannot execute the bond. In that bond, the bond is to put it back to reclamation standards, not to put it back for a road. That is my concern. They control the issue."

Western Kentucky Minerals Engineer Jeff Arnold stated, "The relocation of the permanent road back is actually in your post mining land use map. It will be bonded, and they will have to put that road back by reclamation standards before you will get your bond back. That permanent road going back is in fact bonded by surface mining. It is part of this post mining land use plan. Mr. Lanham does not have a choice about that. Even if his company went out of business, the bond pool, when they come in and take it over, they have to go back to the post-mining land use plan that was approved for that permit. So the road would be built back. It would not be surfaced, and it would not have stone put on it. In my opinion that is really what the county is..."

Judge Mattingly stated, "Our concern is two-fold. It is the road surface, certainly, but it doesn't do us any good to put a surface on a right-of-way that would not support the road."

Mr. Arnold stated, "When we do projects like this usually the developer, in this case the mining company, would normally have to warrantee the road for a period of time. Typically that is one-year. Any settlement, pavement failure, any sub-grade issue would have to be repaired by the developer or the mining company. That would take a lot of exposure away from you guys."

Judge Mattingly stated, "Other than we have had some experiences with roads that failed over a period greater than one year."

Mr. Lanham stated, "Talking about the bond – the county would not be able to come in and take over the bond. This is a reclamation project through the state, and we have 6-months to move forward or that bond is called. Then someone will be hired to come in and put the road back under the agreement that we have with the Department of Surface Mining."

Judge Mattingly stated, "I am having a hard time separating the reclamation issue and the road issue. This is a combination. It is not such an easy thing to say we are going to dig a pit, and within 180-days of us moving all of the coal, we are going to reclaim it or they are going to take our reclamation bond. Not only do you have to reclaim it, now you have to build a road on there. You have to build the road to our specifications, not to the Department of Surface Mining. That is where I am having a problem. Without intended disrespect, we have citizens of Daviess County that would come around and say yes, but we have had the same issues before, and we drive on a washboard road now. That is what we are sitting here talking about and Claud, I do not know – again the bond to reclaim is different than the bond to rebuild. The bond to reclaim is going to fill the pit, but it is not going to fill the pit in necessarily making to suitable for a road."

Mr. Lanham stated, "I do not think no one would go out there and fill a pit in with mud knowing it has to be a county road. There will be some intertwining communications. What I am planning on doing with this road too is to do some drainage work."

Commissioner Wathen asked, "When will you start this temporary road?"

Mr. Lanham stated, "This coming March, and have it back in the following late fall."

Judge Mattingly stated, "When are you going to start your mining through the road?"

Mr. Lanham stated, "This coming March."

Judge Mattingly stated, "So, we have a little bit of time."

Commissioner Castlen said, "I am inclined to wait until we have an agreement that we can see and be comfortable with, rather than speculating what that agreement is going to have prior to us approving this ordinance."

Commissioner Lambert asked who would design the new/temporary road.

Mr. Brasher said, "Western Kentucky Minerals had their engineer design the road. We already have plans for the detour, as well as the plans for the final Free Silver Road, but it sounds like the court would like to make some changes to the plan. At this point, we may need a re-submittal of plans and changes to be reviewed again and looked at for approval."

**By a motion of Commissioner Castlen, seconded by Commissioner Wathen, the court considered for approval postponing, no later than August 2, 2012, the vote on **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.**

**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:**

Judge Mattingly mentioned that the court would soon be hearing the appeal regarding the rezoning of land at Pleasant Ridge.

The World Changer organization is in Owensboro, and the court welcomed the group.

If the drought persists, Judge Mattingly anticipates executing a no-burn ban. However, there is no ban as of today.

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

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Al Mattingly  
Davies County Judge/Executive