

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 30th day of July 2013
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 JULY 30, 2013 FISCAL COURT FILE

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

Minutes of the July 16, 2013 meeting were submitted to fiscal court members for review prior to today's meeting and on a motion of Commissioner Wathen, seconded by Commissioner Castlen with all the present Court members concurring said Minutes were approved and signed.

By a motion of Commissioner Castlen, seconded by Commissioner Wathen, the court considered for approval to Award the Engineering Contract to American Engineers, Inc. to evaluate Kelly Cemetery Road Bridge.

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 **Resolution No. 10-2013** – Homeland Security Grant for replacement of eight existing mechanical sirens within Daviess County and two small parks sirens at Yellow Creek and Panther Creek Parks, and authorization for the Judge/Executive to sign and submit said grant.

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

Commissioner Lambert left the courtroom.

By a motion of Commissioner Wathen, seconded by Commissioner Castlen, the court considered for approval the **Second Reading of KOC 921.667** - An Ordinance amending the zoning classification of a 1.870-acre tract located at 3830 Hwy 54 from A-U Urban Agriculture to B-4 General Business, application filed by Steve Lambert; John & Nancy Grimes.

Comments:

Judge Mattingly stated, "Now, this ordinance is written to approve or disapprove? In other words, I don't understand your motion. You need to either make a motion to uphold the planning commission's decision or you are making a motion to overturn their decision."

Commissioner Wathen stated, "The way Jenni Warren stated was that the motion was to amend the zoning classification from A-U to B-4, so my motion was that we overturn the zoning commission's finding."

County Attorney Porter stated, "Just so I am clear, is the motion to overturn the planning commission's recommendation, which were presented to us because the planning commission's recommendations were to deny the application for the zoning amendment?"

Commissioner Wathen stated, "That is correct."

Commissioner Castlen stated, "My understanding was that we would overturn. By making my second that we were overturning the planning commission's denial."

Commissioner Wathen stated, "The way I understand it is if we vote yes we will overturn."

Attorney Porter stated, "When you do that, we will need to make additional specific findings, and are you all prepared to make those today?"

Commissioner Castlen stated, "I am prepared."

Commissioner Castlen stated, "In the information Mr. Stevenson was not present but I believe Mr. Brancato presented a written document where he stated his position. Somewhere in there he made reference to from Ralph Ave. to Thruston Dermont, with exception of the planned commercial across from Franey's. That it is all residential or agricultural. I ask Mr. Noffsinger, is there, in fact, any to the east of Ralph Ave.? Is there any property that is zoned commercial before you get to the Woodlands?"

Mr. Noffsinger replied, "Property located at 3621 Highway 54, the Cheetah Clean carwash, that property is zoned B-4 general business. That would be property that would be located at the intersection of Ralph Ave. and Highway 54."

Commissioner Castlen stated, "I just wanted the record to reflect that because in the written document that Mr. Stevenson submitted I wasn't sure that was clear."

Commissioner Castlen stated, "Another thing is that I believe it was Mr. Kamuf. He made reference to this zoning classification that we are talking about that it could be in this area, but under "very, very" limited situations. In our written documents for planning and zoning, do they say very, very, or do they say just very limited, or do they just say limited?"

Mr. Noffsinger said the language is very limited.

Commissioner Castlen stated, "I just want the record to be accurate."

Commissioner Castlen stated, "I believe also that Mr. Kamuf made the position that by jumping Highway 54 that we have opened the flood-gates to allowing this type of development to be on the south side of 54. The fact that the carwash is already to the east of Ralph Ave. it is conceivable that that property could be used to move commercial towards the Woodlands at some future point."

Mr. Noffsinger stated, "That would be conceivable, and that same argument has been used in the past for other zoning changes to B-4 general business. However, the proposed use, as the staff stated, being appropriate in very limited locations has specific criteria established for it to make it appropriate in very limited locations. One of the criteria we use in the comprehensive plan would be the expansions across an intervening street. It sets out a minimum of 1.5 acres to be considered a logical expansion. In viewing the application, we did not have to use the carwash property being B-4 because we already had property directly across Highway 54 zoned B-4, and it met the criteria for a logical expansion. That does not mean you have to accept that this is a logical expansion, but that is one of the criteria that the staff would look at in addressing a plan's compliance or non-compliance with the adopted comprehensive plan."

Judge Mattingly stated, "The B-4 across Highway 54, does it abut or is it contiguous or adjacent to residential property?"

Mr. Noffsinger said, "Yes, to the north – Strike The Gold Court would adjoin the residential property, as well as property on the west side of Bold Forbs Way, which is zoned commercial. That would have residential to the rear of it as well."

Judge Mattingly asked, "As you go further west, commercial property backs up to what subdivision?"

Mr. Noffsinger replied, "The Downs."

Mr. Stevenson stated, "In my document that was presented at the first reading, it does not state about the carwash. However, if you read the transcript from planning and zoning, I mention the carwash. And I said from the carwash at Ralph Ave. to the planned commercial development at Thurston Dermont Road there is no..."

Commissioner Castlen replied, "And that is true. In the transcripts you did, but I wanted to address the document that was submitted on your behalf at our first meeting."

Judge Mattingly stated, "During the May hearing, there was considerable concern about the length and width of the property – where the development is going to be on the property, and I don't want to get into that right now, but that there was going to access property at the rear and what that might be developed as in the future. You did not have a particularly good answer. I can understand where the residents out there would be concerned that you talk in terms of a development such as you have across the street right now, which is four offices – maybe 100 to 125- foot long. You build the one and then you come in and build another one on the backside. How would you answer a question like that?"

Mr. Lambert stated, "Personally, I would take into consideration Mr. Taylor, which the record reflects that we have been in discussions, and I am sensitive to his situation. I've doubled the buffering back there; plus, there are 40-foot trees all through there. On the development part of it, I don't have plans for now, but from a property-rights stand point, I feel that my hands should not be tied. As a developer, I really don't see a commercial use for that property back there."

Judge Mattingly asked, "What is the depth of the property, which will be left to be developed back there – when you take away the 10-foot plus the additional 10 that you said you would give from the edge of your conceptual development and that 20-foot buffer?"

Mr. Lambert replied, "I would guess somewhere maybe 100 to 150-feet."

Judge Mattingly asked Mr. Noffsinger, "If this were zoned commercial, and I think I know the answer, a less intensive use can go on, let's say I had an I-2, but wanted to do B-4. Could I put B-4 there?"

Mr. Noffsinger answered no.

Judge Mattingly asked, "If I add a B-4, could I put multi-family residential?"

Mr. Noffsinger answered no.

Judge Mattingly stated, "If it is zoned B-4, I could go B-4, B-3, B-2, B-1?"

Mr. Noffsinger said, "No, that is pyramidal zoning, and we had that in this community in the 1970's, and we moved away from that. The B-4 zone allows any use that would be allowed in the zoning ordinance under the zone and use table. Now, you may have some accessory residential use in a B-4 zone that is above or to the rear of a business, but you would not have multi-family in the B-4 zone."

Judge Mattingly stated, "So what you are saying is that if I had a B-4 zoning and I wanted to build an apartment to live in on top or that I wanted to rent out as an apartment, I could do that?"

Mr. Noffsinger replied, "That could be done, and you are limited in the number of units that you could have. It states, dwelling units not more than two provided that the dwelling unit shall be part of the principle building and located above or to the rear of the principally permitted use."

Judge Mattingly stated, "My concern is that you cannot do a lot with that property other than B-4 and you have a 100 - 150-foot piece of property sitting back there, and we zone it thinking of one building, but you go back and put two buildings. That is a concern."

Judge Mattingly stated, "I think you were going to situate the business building running perpendicular to 54, so long ways would be north and south. You were going to have parking to the west, in the back for employees, I guess. So, that means that in order to put anything there as far as residential, it would have to go on that east side of your building. It would not be able to go on the long side - the way I understand you is the only place it could go is the south side of his development. Is that correct?"

Mr. Noffsinger stated, "That is correct. And that would be the rear of the building."

Mr. Lambert stated, "And that would be continuous with the multi-family that is right next to this property that is already zoned multi-family."

Judge Mattingly stated, "No, you are rezoning the entire property."

Mr. Lambert stated, "Correct."

Judge Mattingly stated, "It is going to be B-4. That is my understanding. Now, you are saying it would be contiguous to the multi-family, but the question is the rezoning would not allow you then to build multi-family on that property. It would only be commercial."

Attorney Kent Overstreet stated, "He understands that. I think what he was getting at is what Mr. Noffsinger was saying, in the event that there were one or two apartments put there, the neighboring property is zoned multi-family."

Judge Mattingly stated, "Yes, but that doesn't really enter into this."

Commissioner Castlen, "Gary, if he were to come to you guys and get approval to build something and fast forward, as the Judge suggested maybe 5-years, he wants to put something else. He has to come before you again, right? He just cannot go out there and build something, because he would be altering his site development plan, right?"

Mr. Noffsinger replied, "He would have to come back to the planning office. He would not necessarily have to go back to the planning commission. It depends on how your conditions are worded. As director, I am authorized to sign development plans in-house. Very few of them go to the planning commission for consideration."

Judge Mattingly asked, "Gary, do you know what the setback requirements are from the Highway?"

Mr. Noffsinger stated, "It would be 75-feet from the centerline of the street right-of-way or 25-feet from the property line, whichever is greater."

Judge Mattingly stated, "If there was an easement granted from the property line back, would that setback then be from that easement or from the property line?"

Mr. Noffsinger stated, "We are speaking of the front property?"

Judge Mattingly stated, "Yes."

Mr. Noffsinger stated, "No, that setback is prescribed by ordinance. It is measured from the property line, not an easement line."

Judge Mattingly asked County Engineer Mark Brasher, "If you have an access easement, what is the minimum that you could get by with to allow for two-way traffic?"

Mr. Noffsinger stated, "Judge, I would state that we require a 24-foot wide drive for two-way movement of traffic. That is the minimum."

Judge Mattingly stated, "As you enter your property along 54, and you gradually go up an incline until you hit a hill, in the development of the property, are you taking that hill down?"

Mr. Lambert stated, "Yes. I would have to build a building and to accommodate for parking. Also, I am taking into consideration the angle of the property with the road."

Judge Mattingly asked, "How much of the hill will you take down?"

Mr. Lambert stated, "I don't anticipate taking it all down. The back part will probably be cleared, but I would want to leave as much of the woods back there for a buffer."

Judge Mattingly stated, "But my concern is the property to the rear of your property and how far you take the hill down until you have nothing but a – you understand what I am talking about?"

Mr. Lambert stated, "I don't want to do a shear-face because I don't want to have to spend the money to do a retaining wall. I would want to do something which would be easy to maintain."

Judge Mattingly stated, "Is this going to stay in the county or will you annex into the city?"

Mr. Lambert stated, "I like the county. Regardless of what happens today, I still really like the county."

Judge Mattingly asked Mr. Brasher, "A development like this, will it require a retention basin?"

Mr. Brasher answered, "It very well might. We will take a look at it when he submits his site plan or development plan."

Judge Mattingly stated, "One other question. I know this depends on the height of the building, but as you go back and take the hill out, you in effect are lowering the elevation of whatever you put on there. I think the correct term is defilade, where you sit on a hill and as you come into the hill all of the sudden you cannot see what is being built. You understand what I am saying? Here is the top of the hill, here is something lower as you come toward the hill, you get to the point where line-of-site – there is no line-of-site. How far back into the hill have you anticipated this building being?"

Mr. Lambert stated, "Well, we need to have parking in front – double parking. Then I anticipate the building being 100-foot deep, and then we want to do the same thing in the back. So, we will have a parking lot with parking on both sides, and then I kind of figured that is where the access point to the properties would be, on the back of the property, through that parking. As far as the elevation - the property directly to the back of Mr. Taylor's..."

Judge Mattingly stated, "I guess the simplest question is how deep into the hill will your building be?"

Mr. Lambert stated, "The development of it I am thinking maybe about 200-feet from the front to the back and then there would be a slope that would be able to be mowed and then that would level off then. Regarding the line-of-site, and I know the neighbors have been concerned

about this, but I don't think they are going to have a very clear view of the building. And then take into consideration the property directly to the east of us is multi-family, so when they develop that, that is what you are going to see. They are not going to see my property."

Judge Mattingly stated, "That is an assumption that it will stay multi-family. Quite frankly, when I was out there I could see everything up and down 54 from the top of the hill – you are going to see it. The question is, does it become intrusive in your daily living?"

Judge Mattingly stated, "Commissioners, you made a motion and a second to overturn the planning commission's decision. That means we will need our own finding of fact."

Attorney Porter stated, "Correct, if you wish to overturn you would need to make findings from the record that would support your decision."

Judge Mattingly stated, "This is one of the things that I think is wrong with the way we do these things. Unfortunately, we don't get to decide it. This is an issue that is determined by the Kentucky Revised Statutes. They give us the procedure and we have to follow what they do. If I had my druthers, I would say, "Hey, guys this is something that should have never come to court, and we need to send it back to the planning commission and let them hash it out over there with the neighbors and the developer." But unfortunately we have what we have so we are going to go down that road."

Commissioner Castlen stated, "We have reviewed the record, and I find the facts of the record which are supporting amending the zoning and these are the facts in the record that I believe that support the requested zoning change from A-U to B-4. One, the proposed zoning classification amendment from A-U to B-4 complies with the community's adopted comprehensive plan. Two, the subject property is located in an urban residential plan area where general business uses are appropriate in very limited locations. Three, the proposed amendment to B-4 is a logical expansion of existing B-4 zoning to the north and across Highway 54. Four, at 1.87 acres the proposed amendment does not significantly increase the extent of general business zoning in the vicinity. Five, testimony from adjoining neighbors and applicants indicated that the amendment would not over burden the capacity of roadways and other necessary urban services available in the affected area with the condition that applicant install a right turn lane on Highway 54, if warranted by traffic conditions and required by the Kentucky Department of Transportation."

Judge Mattingly stated, "Basically, those are the findings that the planning staff came up with, with a few changes."

County Attorney Porter stated, "I think you have made findings that are in the record and that would support a finding that is different from the one that the planning commission recommended, which is what you are required to do."

Judge Mattingly stated, "As you recall, one of the attorneys in asking us to support the finding of the planning commission talked about this passed the planning commission 10-0. I think that we need to be right in our findings and we need to be right if we place any conditions, because it is sending a signal that they did not do their job. In that case, since we have a motion and a second and we have put together findings of fact, I have a list of conditions that I would like to attach to make part of the zoning. Condition number one, a development plan be submitted to the planning commission and be approved by the planning commission. As an adjunct to that condition, that notice be given to all parties involved here today by certified mail. When I say here today, I am talking about that notice be given to everyone of those who were concerned and you were required to give notice to, as well as notice be given to the homeowners association by the applicant. Number two, that at the time the development plan is submitted that a traffic study by a qualified traffic engineer be submitted. And that traffic study meets the requirements of KYTC, and it addresses all access points, decel lanes, all things that would be required by KYTC. I think Mr. Hays said, "I believe there has already been a permit approved." I don't believe that is the case, is it? Do you have a permit for an access point?"

Mr. Lambert indicated that he did not.

Judge Mattingly stated, "Number three would be to provide easement access to the adjacent property for future development. Now, I would tell you that, that is kind of tough because if adjacent property to the east were to develop as multi-family residential, I don't believe planning and zoning nor would the highway department want that ingressing or egressing from a commercial development. Is that correct, Gary?"

Mr. Noffsinger stated, "Yes, that is correct. If the property to the east, which would be the Thompson/Hayden property were developed with a residential use, access should be limited to Wood Trace. If it is non-residential in nature then we would look to limit access to the subject property we are speaking about today, through easements."

Judge Mattingly asked, "If the property to the west were developed as commercial properties, surely we are not saying that that 45-acres ought to go out this access point? Don't you think that property would have its own access point?"

Mr. Noffsinger stated, "Certainly, but not as its sole access point. We believe the access should be across from Bold Forbs Way."

Judge Mattingly stated, "Now, it would make sense to interconnect two commercial pieces of property just as we should have done with the mall years ago when it was developed."

Mr. Noffsinger stated, "We do have a smaller lot there at 3743 Highway 54, and that property does not have its own individual access to Highway 54. It has access via the larger parcel, which accesses across Bold Forbs Way. So, if this is approved, we want to make sure that we have a shared access easement that would serve access to that adjoining property."

Judge Mattingly asked, "To that smaller parcel?"

Mr. Noffsinger stated, "Yes, and we would not want to limit how that property develops because it does not have its own access point now."

Judge Mattingly stated, "So, what we really want to do is provide easement access to the adjacent properties, if need be. In other words, when he develops this, he is going to have to take these easements into consideration."

Mr. Noffsinger stated, "What we would like to see from a planning perspective is that easements be provided to the two adjoining properties to the east and west. Now, the property to the east, the Hayden/Thompson property, we would only want that connection to be made if that property develops in a non-residential manner. The property to the west, we would not necessarily want to place that same restriction at this time because it does not have its own separate access to Highway 54, and we would not want another access onto Highway 54 that is not in alignment with Bold Forbs Way. So, it is also the access point to the subject property will be closer – on the same side as that property to the west, so it can be designed in such a way that you have access that doesn't go through this center. It just goes through the front and then turns."

Judge Mattingly stated, "Commissioner Castlen has helped me out here. So, condition number four should read as the proposed access to Highway 54 shall be designed to provide shared access with 3741 Highway 54 to the west, and an ingress/egress easement shall be provided to 3910 Highway 54 to the east. The ingress/egress easement connection to the east shall only be made if the property develops in a non-residential manner."

Commissioner Wathen asked Mr. Noffsinger, "The property that is to the east – explain to me why they need an easement through this property when they front on another street."

Mr. Noffsinger stated, "Well, right now that property is zoned for multi-family use. We believe if that property is used for residential activities then access should be restricted to the Wood

Trace. They do not have enough road frontage on Highway 54 to have their own separate access point. The access management manual would not allow them to have a separate access point. However, if they were to rezone that property for a non-residential activity to occur on the property, we believe the access should be direct to Highway 54, and should be through a compatible commercial development, not through Wood Trace, a residential street."

Judge Mattingly asked, "When a development plan is submitted, I know there are all sorts of requirements regarding screening - I would like to place a condition regarding screening. It is not to replace, but to augment your all's requirements."

Mr. Noffsinger stated, "I would recommend you do that if you believe screening should be placed on this property that exceeds the minimum requirements of the zoning ordinance because when we get to the development plan stage, the planning commission can only require the minimum requirements."

Judge Mattingly stated, "As a condition and as requested, I think we need at least an eight-foot high decorative fence. I mean, I don't want a chain link fence. Regarding the planting of trees, in reviewing properties around there, I have seen some pines staggered that did a very good job. I believe the requirement of the fence would provide some security to the neighbors."

Mr. Noffsinger stated, "Typically, pine trees in a staggered fashion provide good screening. If you want to set specific requirements, you need to be very specific as to what you want when you say a decorative, as that can mean a lot of things to a lot of people."

Judge Mattingly stated, "In my opinion, we need to put screening in there that we know is going to be there all year round. Pines will do that, especially when they are staggered. Decorative fence, we could say we want some type of stone back there."

There was much discussion regarding what type of fencing to require, but at this point in the meeting, the court did not come up with a definitive requirement.

Judge Mattingly stated, "Let's leave the fence alone for just a second. Let's go back to the trees."

Commissioner Castlen stated, "On the south side there are already trees."

Judge Mattingly said as the property is developed, some of those trees will have to come out. He also noted that some of those trees will lose their leaves and if pines are required, then the neighbors have screening all year long.

Commissioner Castlen stated, "My only concern with us saying yes to have the trees there is, and we asked him the question about the space that is in the south part that is going to be undeveloped, if he wants to develop that at some point - Gary, doesn't this tie your all's hand if we say that you have to have the trees there - that he would never be able to develop that?"

Mr. Noffsinger stated, "I think you may want to take a look at a distance. Right now the ordinance requires a 10-foot buffer. Maybe you look at a 20-foot buffer and state that the land in that 20-foot section not be disturbed, that existing trees remain, and then if you wish for additional trees to be planted in that section. That way we have a definite boundary and in the future we say look, we don't cross that 20-foot line, unless you go back through the zoning change process to amend..."

Commissioner Castlen said, "And I don't want us to be there."

Judge Mattingly stated, "Good point."

Mr. Noffsinger stated, "You also need to consider the boundaries such as the multi-family."

Judge Mattingly stated, "How do you screen commercial from that?"

Mr. Noffsinger stated, "Right now, if he develops today and the development plan comes in, he will be required to show a 10-foot buffer with a 6-foot high continuous element and one tree for 40-feet. If the Hayden/Thompson property were to be rezoned to B-4, there would be no screening requirement there. Any screening would be on the Wood Trace side."

Judge Mattingly stated, "As it is, the first to develop gets hit with all of the requirements. We don't know what might happen there."

Matt Hayden stated, "The depth of that property, based upon the development plan that is in the record, and again I do not have a scale in front of me nor do I know if that exhibit is to scale, someone said that there would be about 100-feet left behind his building. I think it is going to be more in the excess of 250-feet or even more that will remain from the back of his parking. I am trying to put a depth perception into the picture here. Regarding the screening, if you look at the grades that are on that same development plan the total slope is approximately 463-feet tapering down to Highway 54 at 434-feet..."

Judge Mattingly asked if he submitted a development plan and was told that it was a conceptual plan.

Mr. Hayden continued, "So you are talking about 29-feet of elevation change. The comment was made, are you going to build a wall. The answer was no. So, if that is the case, the elevation that has to be taken off of that hill so that you can flow into this parking lot is going to be a drastic change in the elevation. In order to change elevations, based upon that answer, the trees will have to come down and what trees remain will die because of the root structure."

Judge Mattingly stated, "Forget the natural screening that exists, it is what additional screening are we going to put in place?"

Mr. Hayden stated, "Some of the information that is being presented, as well as some of the answers that have been given lend warrant to the screening conversation of, I don't think you can assume that a lot of these trees that you see out there today are going to stay, because when the grading plan takes effect, it is going to change and change drastically. So, that is why whether it is a screening wall or fence, whether it is vinyl or decorative wall, and whether you go into these pines - I think it is critical because the condition of that site is going to drastically change."

Judge Mattingly said, "We are going to pass on the screening right now."

Judge Mattingly asked Mr. Noffsinger, "What are the restrictions regarding building height right now?"

Mr. Noffsinger stated, "According to the zoning ordinance, there would be no height restriction for the B-4 zone."

Judge Mattingly stated, "I don't recall seeing a site development plan that would give me elevations. What is the elevation from Highway 54 to Judge Taylor's house? Any idea?"

Mr. Lambert stated, "Yes, approximately 35-feet."

Judge Mattingly recommended and the court took a 15-minute recess.

Sherry O'Bryan stated, "This development will be in our subdivision, and I will have a clear line of site. I would like to see a decorative wall in keeping with the neighborhood." She also supports both a wall and trees.

Judge Mattingly stated, "Gary, the requirement of a screen as a buffer between residential and commercial - let's say we zone a piece of property commercial but we only develop half of it. Is

that screening required for that entire piece of commercial at that time or only for the part that is developed?"

Mr. Noffsinger replied, "It is required for the entire property."

Judge Mattingly stated, "As a condition, I would still like to see an 8-foot fence – either vinyl or wood stockade fencing. I would also like to see a screening of pine trees at the back and adjacent to your parking, which brings everything up closer to the building. Also, I want trees planted at the rear of the property where the deciduous trees are. We don't know what will happen to those trees. The fence should come down the side it adjoins or abuts the multi-family zoning as well as to the west. I think there is a small parcel of land that you have to screen that is also zoned agricultural, so that is required and we are going to require an eight-foot fence to keep it where it looks good."

Mr. Noffsinger stated, "Typically with pine trees what we have found is that if you stagger those and you plant them 20-foot on center you get a pretty good screen."

Judge Mattingly stated, "And that is what I am recommending as a condition. Now, understand that it is two buffers. One at the back of the property and one at the edge of your parking and then down the residential sides."

Commissioner Castlen asked, "Gary, how close to the highway will the screening be required to go because I know we have to protect our site triangle?"

Mr. Noffsinger replied, "We need to respect the site triangle. They would not go past the property line and certainly they could..."

Commissioner Castlen asked, "Would it go to the easement if there is no road – if the easement is to the front, would it go all of the way through the easement or only up to the easement?"

Mr. Noffsinger stated, "Until the property develops, it would go all of the way through the easement."

Judge Mattingly stated, "I don't know Commissioners that I want to address the building height. I think that will take care of itself. As far as a sign, I would require a sign not to exceed 12-foot and not to exceed 144 square feet."

Judge Mattingly stated, "The last thing I heard and it was brought up a lot of times, was screening of the dumpster and dumpster location. I think the location can be wherever you want, but the dumpster should be screened 100 percent."

Judge Mattingly stated, "Those are the end to my conditions. A question came up regarding a decel lane. I don't believe a traffic study is going to warrant a decel lane. It could be, and if it does, then he will have to comply with that."

Commissioner Castlen stated, "If I understand you, the dumpster has to be 100 percent screened – now that would imply on all four sides. I am not in favor of placing that additional condition on him."

Judge Mattingly stated, "So you are saying you would like to see a condition of the dumpsters being screened on at least three sides, correct?"

After some discussion, Commissioner Castlen yielded to Judge Mattingly's recommendation.

Commissioner Castlen stated, "Mr. Hayden said he is not sure this is to scale, but this conceptual drawing – but there is a lot of land on the backside there and I am wondering when you say screening, in my mind, ought not to be in the back part of the undisturbed land..."

Judge Mattingly interrupted, "In two places - the back part of the undisturbed land as well as at the edge of this parking lot. Because at some point if he should develop - if he can get that development plan then that screening would come out and it would move further back."

Commissioner Wathen stated, "He is also going to screen down the east side of the property, correct?"

Judge Mattingly agreed.

Commissioner Castlen stated, "And we are clear that that is two rows of pine trees - staggered."

Judge Mattingly stated, "A row of pine trees staggered every 20 feet."

Mr. Noffsinger stated, "And what you end up with is one every ten-feet. Judge, I do need a clarification on the decel lane. In the findings of fact I heard mention of the decel lane and we would not significantly impact the - exceed the capacity of urban services in the area, especially on roadway capacity. I want to make sure if we are making a finding that we do have a condition that addresses the decel lane."

Judge Mattingly stated, "I think what we said, again it is the way I understood it, that we are leaving that up to KYTC."

Mr. Noffsinger stated, "We just need to make sure that our finding, the way it is stated, doesn't conflict..."

Commissioner Castlen stated, "I've got the language. Regarding the decel, it says, testimony from the adjoining neighbors; the applicant indicated that the amendment would not overburden the capacity of roadways and other necessary urban services available to the affected area with the condition that the applicant install a right turn lane on Highway 54 if warranted by traffic conditions as required by Kentucky Department of Transportation. When I read that, I meant for that to be like right now and not the way the staff had it worded originally, which was forevermore. I assume that when that permit is granted for the access, that if it is warranted they will require it at that point."

Judge Mattingly stated, "Or they will address some future point."

Mr. Brasher stated, "Judge, I don't know how they will address the future aspect of it as far as do they have the mechanism in place to require it to be checked every so often. I just don't know how they..."

Judge Mattingly interrupted, "The simple fact is this, it is KYTC's road and however they grant access to that road, we should not be overriding their decision. They are the ones responsible for the safety there."

Mr. Noffsinger stated, "What you are saying in your finding is that you believe the roadway capacity will not be overburdened by this development, correct? Providing KYTC doesn't come in and charge him with a..."

Judge Mattingly stated, "We believe that to be true, but absent a traffic study, absent any concrete facts, we are requiring a traffic study to show that, and KYTC will then use that to determine whether or not a decel lane would be required or any other things that would be required by the applicant."

Judge Mattingly asked, "Commissioners do I have a motion to amend the ordinance with the conditions as stated?"

Attorney Porter stated, "I have written some of those down, and I will go through them. Commissioner Castlen had proposed and made the findings, and I think those are clear and in the record. So, it is only the conditions that you all have discussed in the last hour. One, the

applicant would submit for approval to planning and zoning a site development plan and applicant, as condition of the site development plan, would..."

Judge Mattingly stated, "There is a difference between a site development plan and a development plan. We want the final development plan approved by the planning commission."

Attorney Porter stated, "I wrote it as applicant will submit for approval to planning and zoning a final development plan. But you want that to be voted on..."

Judge Mattingly stated, "It has to be because Gary has the ability without any hearing or public input to approve that plan, and we want it to be public."

Attorney Porter stated, "By the planning and zoning commission. Then applicant would notify, by certified mail, all of those who were neighbors and anyone who..."

Judge Mattingly interjected, "The neighborhood association as well as contiguous property owners."

Attorney Porter stated, "And then the applicant would submit a traffic plan to planning and zoning showing access and then the access would be those required by the Kentucky Transportation Department. The applicant would provide on the plan the ingress and egress easements to properties on the east and west. And on the east they would only be required for use of that easement if there was a non-residential use, but then it would be required on the west."

Judge Mattingly asked Mr. Brasher and Mr. Noffsinger if they agreed with this condition and they said they did.

Commissioner Castlen added, "But the west would only be if some development occurred on there or that impacted the property on the west current access to Highway 54."

Judge Mattingly stated, "I think what it says is he will provide the easement if something would develop other than that need, at some future point, then it is not required, but right now, since we don't know how that is going to develop then I think good planning practice would be to make provision for it."

Attorney Porter stated, "The next one would be to provide continuous eight-foot fencing on the south and east sides or continuous element of fencing either by wood stockade, or vinyl fencing. And that would adjoin the residential, but the remainder of any fencing would be as required by the ordinance."

Judge Mattingly stated, "We decided to make it eight-foot all the way around."

Attorney Porter stated, "So it would just be an eight-foot continuous element."

Judge Mattingly stated, "The access point should be provided as required by planning and zoning. That said access point line up with the drive..."

Attorney Porter stated, "Limit the access to the subject property to Highway 54 to a single access point aligned with the commercial drive across Highway 54."

Judge Mattingly said, "Yes."

Attorney Porter stated, "Also, the sign would not exceed twelve-feet and the total area of the sign would not exceed 144 square feet. Then there would be a complete surround screening of any dumpster(s). Then the applicant will limit access to the property to Highway 54 to a single access point aligned with the commercial drive across from Highway 54."

Judge Mattingly said, "Yes."

Mr. Brasher stated, "The access point on this property should be encompassed in a shared access easement. Is that what was meant?"

Judge Mattingly stated, "Since it is going to be accessed by potentially multiple properties, yes."

Mr. Brasher stated, "Not just easements off of, but all the way to Highway 54."

Judge Mattingly stated, "We have to give them an easement off of Highway 54 on to the other easement onto their property."

Mr. Noffsinger stated, "Judge, the location of the pine trees and the fence - I would think you would want the pine trees to be located outside of the fence and not in the interior."

Judge Mattingly stated, "I am sorry. I don't know if we even got to that. Claud, did you have that in there where we are going to have a row of pine trees at the rear of the property, one every 20-feet, staggered - double row?"

Attorney Porter stated, "Dual row pine trees, 20-foot apart, staggered at the rear of the property and at the edge of the development of parking."

Commissioner Wathen asked, "Now are you saying tree and fence? Is that what you are saying?"

Judge Mattingly said yes.

There was discussion regarding the height of the pine trees, but no height requirement was made as a condition.

Commissioner Wathen stated, "Going back to the screening around the parking lot. So, we are saying fence and trees around the parking lot and fence and trees around the lot?"

Mr. Noffsinger stated, "The perimeter of the lot will require screening - fence and trees."

Judge Mattingly stated, "What we said was we were then going to come in interior of that perimeter to the edge of the parking and require a fence and trees right there. It is a double screening. Eventually, if he develops, he would have to remove them and move them back further. What this does is it addresses some concerns that Mr. O'Bryan would have from the standpoint that she might be able to see over that first, but then you are going to have 20 or 30 foot trees right at that parking, and I would dare say that she would have a very hard time seeing directly over that."

Mr. Hayden stated, "I would like for you to consider two things. One, back to the fence, if you recall in the record, wood fencing, assuming they are installed correctly, it is hard for them to maintain and keep a good look for the neighborhood that does exist. So, that is why we ask for a decorative wall or a brick fence. Again, I stress how important aesthetically this could help with the transition of the change that looks like is occurring. The other thing, on the back of this building, it shows all siding. We had requested approving some type of additional building materials - brick, stone, or decorative block. Now, one more thing, assuming that you take those under advisement, all of these restrictions that are being implemented - what assurances do we have that this is going to be done? Is this going to be a bond that is going to be put up when the landscaping bond is put in place? Keep in mind, he still has not put the fence up on his other development, and he is collecting rent checks and has tenants. So, when will we get these things and assure that they are installed and maintained properly?"

Mr. Noffsinger stated, "We would require a landscaping bond for all the screening requirements that are a condition to this rezoning at the time they make application for a building permit. However, typically we sit on those bonds until the applicant requests release of those bonds."

Sometime it can take a while. Sometimes, as Mr. Hayden has alluded to, it can seem like they never happen. We do not have a time limit on the enforcement of that bond."

Judge Mattingly stated, "How long do you hold the bond?"

Mr. Noffsinger stated, "Indefinitely."

Judge Mattingly asked, "Let's say that 5-years from now he has not done any of these things – he has his building up and is operating. What initiates the action - a complaint from neighbors?"

Mr. Noffsinger agreed and stated, "Every now and then we will go through the list of bonds, but we do not have a time limit. You can certainly set a limit, and it would be recommended by staff that you do that to ensure that once this property is up and running that the screening materials are in place."

Judge Mattingly stated, "As a condition of a certificate of occupancy?"

Mr. Noffsinger replied, "That would be an excellent recommendation."

Judge Mattingly asked, "Commissioners, do you understand the concern of Mr. Hayden?"

Commissioner Castlen said he understands.

Judge Mattingly stated, "Number one, let me tell you this, I believe that everybody deserves the benefit of the doubt, and I am sure Mr. Lambert will do it. However, things happen though and sometimes you cannot. So, are you willing to make that as a condition that in order to receive a certificate of occupancy all the screen items must be in place?"

Commissioner Castlen stated, "Gary, we don't do that as the norm, right? If not, why don't we?"

Mr. Noffsinger stated, "Typically, that is something that we look at, but we issue those certificates as long as we are holding a bond. We don't do that because the way the ordinance is written, we don't have the ability to."

Commissioner Wathen asked, "Is the bond typically an estimated cost of what it would be to do it?"

Mr. Noffsinger stated, "It is an estimated cost plus 50% or they can use our cost estimator which is that estimate plus 50%."

Commissioner Wathen asked, "When they complete it, they get their money back. So, it would seem like it would be to their benefit to complete it."

Mr. Noffsinger stated, "It is; however, a developer may post surety in the form of a letter of credit. It may be through a CD. It could be through an insurance company. They may not see the need to have that surety released in a quick turnaround. Sometimes the CD – they will just sit on it."

Commissioner Wathen stated, "The problem I have with requiring it up front, what if the weather is such that he cannot make it happen?"

Mr. Noffsinger stated, "If you place a restriction that it has to be in prior to a certificate of occupancy, we are not issuing that certificate."

Judge Mattingly stated, "The way to handle that would be to say within 6-months of occupancy."

Commissioner Wathen said he has no problem with that condition.

Commissioner Castlen stated, "I am inclined not to give a certificate of occupancy."

Judge Mattingly stated, "Here is what I would say. The fencing must be in place to receive that certificate, because that could be done at any time. The pine trees must be planted within 6-months. Does that seem to be a fair compromise?"

Mr. Noffsinger said, "Yes, six-months gets you through a planting season."

Commissioner Castlen stated, "I would go along with what you just said, as a compromise."

Mr. Hayden stated, "Another clarification is on the access easement and/or improvements. Will those improvements be a part of the bond that has to be placed in order to pull some type of permit? (Referring to a photo) And then, keep in mind, the reason why we keep stressing the fence and the fence maintenance and these issues is that this is not just some random building. This is his building that was built five years ago, and I don't want to be sitting here spending more time and energy trying to get this stuff resolved."

Judge Mattingly stated, "To answer the second question first is that you know, yes it is his fence, but you know it would not matter if it were vinyl, brick, block, or stone, if it fell down and he did not maintain it – he did not maintain it. So, the likelihood that that would happen is less I am sure. The access point is only to an easement, which gives you the ability to access your property in the future if you need, and to access the other property in the future if need be. It doesn't tell him that he has to complete it. I know that as a condition that was requested earlier that he do all of that. In this case, that is not a part of the condition."

Mr. Hayden stated, "Generally, when this happens, this is a city/county access point and usually it is constructed through the boundary of that property so that if it is warranted or needed it is there to connect. How will you ever go into his property..."

Judge Mattingly stated, "Typically, that is done on fairly large developments. I know that the planning commission has gotten into the habit of wanting connectivity between developments. This is an unusual situation in that it is a very small development, and we don't really know what is going to happen on either side. You heard that if it developed multi-family to the east they don't want that exiting through this development. In my way of thinking, it would be an unnecessary expense to place on the applicant to construct a road that would go to nowhere."

Mr. Noffsinger stated, "Judge, staff would recommend that a plat be prepared and recorded to establish the shared access easements. However, the construction would not include a bond, because we are talking about likely connections via parking lots and not streets that would be public ways. A recorded plat should be a condition."

Judge Mattingly said, "Okay."

It was recommended that Attorney Porter review all the conditions.

Attorney Porter stated, "Applicant will submit for approval by the planning commission a final development plan and plat, and the plat shall be recorded which will also show the access ingress and egress easements to the properties on the east and west. Again, that condition would only be required on the east if it becomes a non-residential use. Applicant will notify all of the neighbors and adjoining property owners via letter that is return receipt requested at the time he submits the final development plan. He will also submit a traffic study to the planning commission, which shows all access points as required by the Kentucky Transportation Cabinet. Eight-foot perimeter fencing/continuous element fencing either wood, stockade, or vinyl adjoining all the properties then there would be a dual-row of pine trees on the outside of the interior fencing which is at the edge of the property. And those are 5-foot pines or whatever is required by the zoning ordinance on 20-foot stagger - so 2 rows of those. The fencing must be completed before a certificate of occupancy is issued and the trees or the remaining screening must be completed within 6-months of occupancy. Applicant will limit access to the property at

Highway 54 to a single access point aligned with the commercial drive across Highway 54. There will be surround dumpster screening. A sign shall not exceed 12-feet in height and not exceed 144 square feet total."

Judge Mattingly stated, "Do I have a motion to amend the ordinance?"

Commissioner Castlen stated, "I moved to amend the ordinance to add the conditions that Claud just read."

Commissioner Wathen seconded his motion.

Mr. Lambert asked, "On the 8-foot fence wood stockade, or vinyl. Is that on the property lines or the perimeter of the parking lot?"

Judge Mattingly stated, "That would be the property line and then when you come and do the interior that is across the parking lot. In other words, you are going to develop part of it, I want the fence at the end of the parking and development and trees. Then you are going to go back and you still have the fence all of the way around."

Mr. Lambert stated, "So the fence is actually going to run up into the woods next to Judge Taylor's home?"

Commissioner Castlen asked, "Or would it be set back that 20-feet?"

Judge Mattingly stated, "That is a good point."

Mr. Lambert stated, "The reason asked is obviously because it is going to result in..."

Mr. Noffsinger stated, "You want to make the trees on the outside of the fence. So you are going to have the trees and then you are going to have a fence with a 20-foot setback. So the fence is going to be 20-feet off and then it is going to be up through the woods. Typically, you zone the boundary of the property from the incompatible use. So, yes this would be typical. If you were requesting only a portion of the property be rezoned then you would bring that screening requirement..."

Judge Mattingly stated, "Only to that portion rezoned."

Mr. Lambert asked, "As I understand it, on the south and east side – two rows of pine trees staggered every 20-feet and then along the west side is there a requirement of one every 40-feet?"

Judge Mattingly stated, "It is whatever the normal is, which is one every 40-foot. But you still have the eight-foot fence instead of the six-foot. What we are trying to do with the staggered on the south side is to give some buffer between the neighbors – a double buffer."

Mr. Lambert asked, "In regards to that area on the west side, abutting the agricultural, I understand the front from the highway going back west, I mean on the west side going back to Mr. Taylor's home there is a large section there that is considered agricultural, and I don't think that normally would require fencing."

Judge Mattingly stated, "I think what we said was that as long as it was required – whatever zoning regulations require."

Mr. Lambert stated, "Regarding notification, how am I to know who to send the notifications to?"

Judge Mattingly stated, "It would be to the homeowners association, all adjoining property owners, the people that you would normally have – and I think if you went to planning and zoning you all would tell him who you have to send it to. And it should be sent out return

receipt requested so that we don't have what happened to some of the people who did not get notification. We need to make sure that is noted, Claud."

Mr. Noffsinger stated, "They should follow the same notification process they followed with this zoning change and include the homeowners association."

Judge Mattingly asked Mr. Lambert if he agrees to the conditions and he replied yes.

Judge Mattingly stated, "Commissioners, there is a motion to amend on the floor. We have a motion and a second. Any other discussion?"

Commissioner Castlen stated, "Claud, do we need to withdraw that motion and second and re-do it with the changes or the clarifications."

Attorney Porter stated, "Whatever is the clearest for you. You have a motion on the floor to overturn, with the finding of fact that you have submitted. You have amended that motion..."

Judge Mattingly stated, "What we are doing right now is we are going to amend and I think..."

Commissioner Castlen stated, "But my question was should we..."

Attorney Porter stated, "Withdraw and make it one motion?"

Commissioner Castlen stated, "No, well should essentially if I – we have either clarified or amended the conditions. Do we need to withdraw that motion to amend so that we can re-do it with the clarifications?"

Attorney Porter stated, "It might be helpful."

Judge Mattingly stated, "Would you withdraw your motion?"

Commissioner Castlen said yes, I withdraw my motion and Commissioner Wathen withdrew his second.

Judge Mattingly stated, "And I hear you making the motion to amend the ordinance with the conditions as clarified."

Commissioner Castlen stated, "Yes, I make that motion."

Commissioner Wathen seconded the motion.

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

Judge Mattingly stated, "So, now we have a motion on the floor to overturn the finding of the planning commission and grant the zoning request."

Attorney Porter added, "With the findings of fact that Commissioner Castlen mentioned, which supports the commission's findings."

Judge Mattingly stated, "And the conditions as stated and accepted by the applicant." Said conditions are as follows:

- The proposed zoning classification amendment from A-U to B-4 complies with the community's adopted comprehensive plan.
- The subject property is located in an urban residential plan area where general business uses are appropriate in very limited locations.
- The proposed amendment to B-4 is a logical expansion of existing B-4 zoning to the north and across Highway 54.

- At 1.87 acres the proposed amendment does not significantly increase the extent of general business zoning in the vicinity.
- Testimony from adjoining neighbors and applicants indicated that the amendment would not over burden the capacity of roadways and other necessary urban services available in the affected area with the condition that applicant install a right turn lane on Highway 54, if warranted by traffic conditions and required by the Kentucky Department of Transportation.
- Applicant will submit for approval by the planning commission a final development plan and plat, and the plat shall be recorded, which will also show the access ingress and egress easements to the properties on the east and west. Again, that condition would only be required on the east if it becomes a non-residential use.
- Applicant will notify all of the neighbors and adjoining property owners via letter that is return receipt requested at the time he submits the final development plan.
- Applicant will submit a traffic study to the planning commission, which shows all access points as required by the Kentucky Transportation Cabinet.
- Applicant will install an eight-foot perimeter fencing/continuous element fencing either wood, stockade, or vinyl adjoining all the properties then there would be a dual-row of pine trees on the outside of the interior fencing, which is at the edge of the property. (And those are 5-foot pines or whatever is required by the zoning ordinance on 20-foot stagger) - so two rows of those.
- The fencing must be completed before a certificate of occupancy is issued and the trees or the remaining screening must be completed within 6-months of occupancy.
- Applicant will limit access to the property at Highway 54 to a single access point aligned with the commercial drive across Highway 54.
- There will be surround dumpster screening.
- A sign shall not exceed 12-feet in height and not exceed 144 square feet total.

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

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

By a motion of Commissioner Castlen, seconded by Commissioner Wathen, the court considered for approval to Declare as surplus the Dodge Ram 1500 (3B7HC132Z0VG809432) currently located at Yellow Creek Park.

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

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

Al Mattingly
Daviess County Judge/Executive