

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 22nd day of October 2015
Present were Judge/Executive Al Mattingly and
County Commissioners Mike Koger,
George Wathen and Charlie Castlen

DOCUMENTS RELATED TO TODAY'S DISCUSSION
ARE FILED IN OCTOBER 22, 2015 FISCAL COURT FILE

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

County Treasurer Jim Hendrix presented the Treasurer's Report for September 2015.

Minutes of the October 1, 2015 meeting were submitted to fiscal court members for review prior to today's meeting and on a motion of Commissioner Koger, seconded by Commissioner Wathen with all the Court concurring said Minutes were approved and signed.

By a motion of Commissioner Castlen, seconded by Commissioner Koger, the court considered approval of all Claims for all Departments.
Without further discussion, Judge/Executive Mattingly called for a vote on the motion.
All members of the court voted in favor; motion passed.

By a motion of Commissioner Castlen, seconded by Commissioner Wathen, the court considered for approval the Fund Transfers.
Without further discussion, Judge/Executive Mattingly called for a vote on the motion.
All members of the court voted in favor; motion passed.

By a motion of Commissioner Wathen, seconded by Commissioner Castlen, the court considered for approval a Joint City/County Resolution (*DCFC Resolution No. 22-2015*) Consenting to the Transfer of Control of Time Warner Cable Midwest LLC, from Time Warner Cable Inc. to Charter Communications, Inc.

Judge Mattingly asked if a representative(s) were present tonight? Without a response from the audience, he stated, "Telling this upfront, I will not vote in favor of the passage of this resolution tonight. We have been trying to resolve an issue we have with Time Warner and then with Charter for at least 6 months. We haven't even been given the courtesy of a return phone call. The issue we have is that the feed that took this meeting live over to City Hall and then distributed over the TV via a public access channel was cut. We no longer have that access. In the spirit of the original Time Warner agreement, they use air waves in return for what, in effect, is a monopoly. In return, they allow local governments usage of those air waves for the public

good at no cost. That has not happened. I was told that we could get our link back at a cost of around \$10,000 per year. That burns me a little bit. Attorney Porter, what could happen if we deny the approval of this resolution and what options might the court have in this situation?"

County Attorney Claud Porter stated, "First option is that you can do nothing. The second option is that you could approve the resolution. The third option is that you can deny the approval of the resolution. If you do option three, Time Warner Cable and Charter Communications can file suit in federal court arguing that the court's denial to approve the resolution has held up the merger and sue the county for any damages as a result of the merger delay. The real effect is that it probably doesn't have any effect on their merger, but they have to get FCC approval and FCC approval requires that they have approval from each of the franchising authorities. If you decide on option two, their merger would proceed. Another option is to delay or table the resolution and during that period of time, Time Warner and Charter's merger would still proceed and if no action is taken within a 90-day period, it is considered to be approved."

David Smith stated, "Fiscal court meetings have been on live TV for many years, so it was quite a surprise when we learned we went off the air in May of this year. The city, through OCTC, tried to conduct an investigation to find out the cause of what had happened. It appears that sometime in the 1990's or early 2000's, there was a fiber optic line that connected the courthouse to Adelphia Communications and one that connected the city to Adelphia Communications. It was an unused piece of fiber. It was said that, at that time, someone from our Information Technology department spliced together those two lines inside Adelphia's operations. I would be surprised that he was able to enter their server area without their knowledge. Apparently, according to him, at one point later on, management changed and they removed the splice and we were off the air. He tracked down the issue. He told them what they had done. They agreed that the splice connection was within the spirit of the franchise agreement. Unfortunately, in May, they moved their computer rack system and removed the splice. They now refuse to reinstall the splice. They claim it is an unmanaged fiber and they will not provide us an unmanaged fiber. They said they will provide us managed fiber at a cost. We have other options. We could look at OMU and others to provide a fiber connection. The Cable Advisory Committee (CAC) addressed this issue and the chair, without resolve, made contact with the person in charge. I have attempted to contact and discuss this issue with the person in charge and have not heard back. The next CAC meeting is in November and they will again discuss this issue."

Judge Mattingly asked, "What is the drop dead date on this resolution's approval/denial?"

Mr. Smith thinks it may be as early as October 31st. He stated, "It is 120 days from the time of their notification to us."

Judge Mattingly stated, "Certainly, if we had known that they were going to get rid of our link, when this was renegotiated a couple of years ago, we would have made certain that the splice was addressed then. As far as we knew at the time, everything was going well."

Mr. Smith stated, "As you know, the county does not have a cable person. We contract with OCTC to handle most of our needs. Their comment when all of this came out was that this issue was never brought up by anyone - that what we were doing was incorrect and would be removed. Everyone assumed that everything that existed under the old franchise agreement would be the same going forward."

Judge Mattingly stated, "Apparently, in Time Warner's and Charter's estimation is that the public good ends at the corporate limits of the City of Owensboro. It makes me mad that we cannot get them to sit down at the table, that no one is here today representing Time Warner or Charter, and that the law firm that is supposed to be looking out for all of us has no one here."

Commissioner Wathen asked, "If we vote no on this..."

Attorney Porter stated, "My information is that if the court denies this resolution, they could file suit against the court for damages due to a delay in the merger process. That very thing took place in Summerset, Kentucky. In the end, Summerset granted an approval."

Commissioner Castlen is inclined to support a no vote, he said. He stated, "If they wish to come after us, maybe we can get their ear at that point."

Attorney Porter stated, "I am not sure I would go that far. I recommend a delay."

Judge Mattingly stated, "The only thing I could support tonight would be a motion to table this item. If we tabled it, we have conveyed a point not to vote on it. That could give Mr. Porter some time to get a hold of somebody."

By a motion of Commissioner Castlen, seconded by Commissioner Koger, the court considered for approval to TABLE the prior motion considering the approval of a joint Resolution.

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 Koger, seconded by Commissioner Wathen, the court considered for approval **Resolution Nos. 23 & 24 - 2015** regarding the Audubon Area Community Services, Inc. Project Bond Series 2015 and to Authorize the Judge/Executive to sign any and all documents related to same.

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

By a motion of Commissioner Wathen, seconded by Commissioner Koger, the court considered for approval **Resolution No. 25-2015** amending and replacing **Resolution No. 08-2015** regarding Homeland Security funds project application.

Emergency Management Agency Director Andy Ball explained that this amendment only adds a paragraph detailing purchasing procedures. No other changes were made.

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

By a motion of Commissioner Wathen, seconded by Commissioner Koger, the court considered for approval an Agreement with the Kentucky Agricultural Development Board for a \$25,000 grant to assess possible flood risk management alternatives along Panther Creek.

Judge Mattingly stated, "In addition to this much appreciated grant, we are pleased to announce that an executed agreement with the Corps. of Engineers has been received for the Phase II Drainage Study. DCFC agreed to pay up to 50% of the \$220,000 estimated project cost, but with this \$25,000 grant, we will be able to shave off a percentage of that cost."

Commissioner Wathen stated, "That is nice to see that they have "joined the team". It shows that this is also important to the local agricultural community."

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 an Agreement with Saint Joseph's Peace Mission For Children.

Treasurer Hendrix stated, "With rising costs, SJPM requested a county increase from the current \$60 per child, per day to \$100. The court has agreed to \$80, with the understanding that they would consider raising it to \$100 for fiscal year 2016-2017. Last fiscal year, the court spent \$131,000. With the \$20 increase, the court will see an approximate \$3,500 per month increase."

Judge Mattingly stated, "The last increase was about three years ago, and I can understand their need for additional funds. We will review this rate during deliberations of the 2016-2017 fiscal year budget."

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 Koger, seconded by Commissioner Castlen, the court considered for approval an Agreement for Services with the Kentucky Transportation Cabinet regarding the Sergeant Michael C. Cable Memorial Highway designation.

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

By a motion of Commissioner Wathen, seconded by Commissioner Koger, the court considered for approval a Contract with Magnum Welding to Repair Transfer Station Trailer Floor for \$12,310.

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

By a motion of Commissioner Wathen, seconded by Commissioner Koger, the court considered for approval a Contract with Patrick Environmental Services, LLC to prepare Title V, NSPS, and NESHAP reports for the West Daviess County Landfill and authorize the Judge/Executive to sign any and all documents related to same.

David Smith noted that annually, the landfill is required to gather data regarding methane. Patrick Environmental Services, LLC will collect this data and produce methane reports for submittal, per Title V.

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

By a motion of Commissioner Wathen, seconded by Commissioner Castlen, the court considered for approval a Contract with Bryant Engineering, Inc. to provide CQA services for West Daviess County Landfill, Unit 6 (Residual Landfill) expansion and authorize the Judge/Executive to sign any and all documents related to same.

Per Mr. Smith, this contract will ensure that the CD&D at the landfill meets all permeability requirements.

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

By a motion of Commissioner Wathen, seconded by Commissioner Koger, the court considered for approval a Contract with Weaver Consultants Group to provide CQA services for West Daviess County Landfill Unit 5 (Contained Landfill) gas well dewatering system and new gas well construction and authorize the Judge/Executive to sign any and all documents related to same.

Per Mr. Smith, this contract will ensure that all specified requirements are met regarding the gas wells.

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 Koger, seconded by Commissioner Wathen, the court considered for approval to Award **Bid No. 47-2015:** One (1) New or Used 5th Wheel Road Tractor to Truck Center, Inc. for \$102,850, minus a \$7,000 trade-in for a net bid of \$95,850 for the Transfer Station.

Jordan Johnson noted that other bidders were lower, but their bid exceptions were unacceptable. He then recommended to award this bid to Truck Center, Inc. for a 2016 Western Star 4700 tractor in a net amount of \$94,600. Judge Mattingly suggested the court consider the 2017 model as it was only \$1,200 more than the 2016.

Court members agreed and voted to approve to purchase the 2017 model from Truck Center, Inc.

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

By a motion of Commissioner Wathen, seconded by Commissioner Castlen, the court considered for approval Award **Bid No. 48-2015:** One (1) New Robotic Total Station Positioning System (complete package) to Hayes Instrument Company for \$25,481 for the Landfill.

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

By a motion of Commissioner Castlen, seconded by Commissioner Wathen, the court considered for approval to Advertise for the following Bids:

- **Bid No. 50-2015:** Two (2) Chassis Mount Animal Transport Units; AC
- **Bid No. 51-2015:** County Clerk's Office Renovation – Furniture
- **Bid No. 52-2015:** County Clerk's Office Renovation – Electronic Queuing System

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

By a motion of Commissioner Wathen, seconded by Commissioner Castlen, the court considered for approval to Hire the following as Utility Laborers, subject to successful completion of pre-employment screenings: Ryan Mason, effective Oct. 26, 2015 & Danny Roberts effective Dec. 7, 2015.

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 Koger, the court considered for approval to Appoint Chuck Coffman (48-2015) to DC-SWEEP (Filling the unexpired term of Sarah Castlen who served a partial term) - TERM: 10/22/2015 – 5/01/2017.
Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All members of the court voted in favor; motion passed.

Mr. Hendrix, in summary, presented the **First Reading of 4-2015** - An Ordinance Amending Section 30.31(C) Membership Fees for Certified Volunteer Fire Departments and Permitting the Sheriff to Charge and Retain a Fee of 1.5% of the Membership Charges or Subscriber Fees Collected.

Comments:

Mr. Hendrix stated, "We need to have this ordinance approved and on file, which states the fees being collected."

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

By a motion of Commissioner Wathen, seconded by Commissioner Castlen, the court considered for approval the **Second Reading of 921.670 (2015)** - An Ordinance Amending the Zoning Classification of a 2.096 acre tract located at 11351 and 11397 US Highway 431 from A-U Urban Agriculture to B-4 General Business, application filed by Mark Melloy.

As all previous comments have been reviewed and considered, no comments were allowed.

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 move forward with a Property Maintenance Ordinance Revision.

Commissioner Castlen explained that since April, the Property Maintenance Ordinance Advisory Review Committee has worked hard to prepare and propose a revised ordinance. The committee believes the community will support their proposed changes. He stated, "During a number of our scheduled meetings, many people expressed their frustrations regarding the poor condition of adjoining properties. Someone asked the committee to refrain from stepping too far and to protect farming properties. As chair, I believe we have taken all comments seriously and tried to apply those within our proposed ordinance." Commissioner Castlen thanked each committee member for their time and commitment to the issues relative to this ordinance. He recommended the proposed ordinance be placed on the county web page and provide for public comment.

Judge Mattingly agreed with placing the proposal on the county's page. He stated, "We intended to ensure that harm would not befall agriculture, but we also realize that the county is becoming more and more urban and suburban in nature. What you do on an one hundred acre tract is one thing, but what you do on a half acre lot in a subdivision is another. We are willing to listen to community suggestions. This is not our ordinance. It is the citizens' ordinance. A final public meeting will be held regarding the revisions, and I hope to have a first reading sometime in January."

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 Koger, the court considered for approval to distribute a portion of the 2% Hotel/Motel tax fund as follows:

- Museum of Fine Art - \$68,849 for A/C Work and Humidifiers
- RiverPark Center - \$25,000 for a Lighting System
- Theatre Workshop of Owensboro - \$50,000 for Roof Repairs
- Owensboro Symphony Orchestra - \$23,691 for a Piano and Music Library System
- Owensboro Science and History Museum - \$36,000 for a Marquee and Exterior Painting

Judge Mattingly stated, "There is a provision in the KRS for a Hotel/Motel tax to be placed on rooms. The first 3% tax goes to the operation of a convention and visitors bureau. We have seen those receipts grow and grow. It is great to see the CVB have enough money to do the things that we need to. There is a 1% tax that can be placed on rooms that would go to offset the cost of operating a convention center. I do not know of any convention centers in the U.S. that make money. Without this 1% (between \$250,000 and \$300,000) those funds would be paid by local tax dollars. This 1% places the deficit on the backs of visitors and not local citizens. There is also a 2% tax that can be placed on rooms for capital projects for a group of arts agencies who are located in a downtown core. Back in 2011, there was a balance of about \$1,000,000 that was locked up and growing. We could not use it, unless it was used to pay off bonded indebtedness, which we did to help the RiverPark Center get out of debt. At that time, we began talking with our state delegation in an attempt to unlock those funds for other things outside bonded indebtedness. Through a lot of hard work, the state passed HB 202. That bill applies specifically to Daviess County. HB 202 makes some of that money available to fund capital projects for the arts organizations in the downtown area. I can think of no better way to use those funds than to support the organizations that bring tourists to our community." He further stated to the arts organizations who have applied for these dollars, "We will award you a grant, and if needed, a letter of credit, for a specific amount of money and for specific projects, and the court, once the project is completed, will reimburse the organization as agreed." In an effort to get the arts organization to work together and bust agency silos, the court set aside \$50,000 for assistance for a community arts initiative. Judge Mattingly noted, "These organizations came together and brought a fund proposal to the court called "Owensboroticket.com. We granted \$40,000 to this initiative. We still have \$10,000 remaining in that fund. I had another request for some of those funds by the RiverPark Center through the Owensboro Dance Theatre to purchase a replacement cyclorama for the RiverPark.

Judge Mattingly recommended that the court support a grant of \$5,000 out of the \$50,000 set aside to aid in the busting of silos within our arts organizations. This \$5,000 is to replace the old cyclorama at the RiverPark Center, as requested. He stated, "Secondly, the RiverPark Center has requested a lighting system upgrade. This is going to cost \$50,000 and we will match \$25,000."

Judge Mattingly noted that a reserve balance fund will remain in an account and made available for other things.

Commissioner Koger is glad that the court has the money to support these important projects.

Judge Mattingly reminded the citizens that this money is specified for specific tourist-based organizations and may only be spent on these type of capital projects.

Commissioner Wathen stated, "I just want to make sure that it is not implied that we will be doing this same type of thing on a continual basis."

Senator Joe Bowen said he was glad to help in getting HB 202 passed.

All agencies receiving money thanked the court and Daviess County state representatives for their effort in getting the state bill passed, which allowed this allocation. Jeff Danhauer noted that this effort and these dollars show this court's and the state's willingness to support Daviess County's arts. He noted the educational and economic development benefits the arts provide.

The court and community specifically thanked Senator Joe Bowen for working to get this bill signed.

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

Comments:

William Beane and James Thompson expressed their displeasure with the lack of progress by the Kentucky Department of Fish and Wildlife (KDFW) to complete work on Kingfisher Lake. Mr. Beane said that the KDFW came out and sprayed, but he believes their efforts have been in vain as vegetation and willows are not dying. Mr. Thompson said that he and another worked over the weekend to spray and remove vegetation along a portion of the lake. As a result of their weekend work, he believes the KDFW could complete their work in a timely fashion by dedicating a handful of workers over a short period of time to this project. He noted a number of times how terrible conditions are in an around the lake. Mr. Thompson made an impassioned plea to Senator Bowen asking him if he (Mr. Thompson) could purchase New and Old Kingfisher Lakes. Rep. Bowen was unable to answer that question, but said he would pass along his offer and get back with him. Rep. Bowen noted that he is also interested in the well-being of the lake and will be in contact with the KDFW to follow-up on their progress and report back to area residents and this court. Although Mr. Thompson said he does not desire filing a suit, but expressed his willingness to take the KDFW and the state to court if promises are not fulfilled.

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

Al Mattingly
Daviness County Judge/Executive