

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 24th day of October 2013
Present were Judge/Executive Al Mattingly and
County Commissioners Jim Lambert and George Wathen

DOCUMENTS RELATED TO TODAY'S DISCUSSION
ARE FILED IN OCTOBER 24, 2013 FISCAL COURT FILE

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

Commissioner Castlen was absent.

By a motion of Commissioner Lambert, seconded by Commissioner Wathen, the court considered for approval to Amend the agenda to accept for presentation an update regarding Juvenile Drug Court.

County Attorney Claud Porter presented information regarding Juvenile Drug Court. Presentation follows:

Juvenile Drug Court: Judge Lisa Jones, Daviess District Court
Claud Porter, Daviess County Attorney
Kyle Smith, Juvenile Drug Court Director

History: Date created (2006)
Participants (2013)
Assessed – 28
Accepted – 14
Participating – 11

Drug Court Team Members:

- Judge Lisa Jones
- Claud Porter, County Attorney
- Matt Meier, Rachel Pate & Dave Farley, DPA office
- Lura McElhearn, DCPS
- Summer Bell, OPS
- Lonnie Lyles, Sunrise Children's Services
- Jeff Harris & Ken Caselden, Lighthouse Counseling Services
- Keith Wells, Owensboro Day Treatment
- Misty Jones, EAGALA

Collaboration

Ten or more community partners
volunteer 4-6 hours weekly

- attend staffing and Drug Court sessions
- Worked with JDC since 2006
- JDC works with participant and family
- Provide their needs from central (JDC) source

Staff Meetings

- Monthly staff meetings to discuss program and evaluate process
- Weekly staffing before court to assess each juvenile and their family
- Juvenile and Parent/Guardian appear before the judge each week to report progress or problems

Drug Court Referral Process

Eligibility (offenses)

- Types of offenses
 - drug offenses
 - other public offenses
 - non-violent, non sexual
 - other public offenses
 - with a substance abuse component

Eligibility Criteria

- Charged with eligible offense
- Ages 12 to 16 years old
- Substance abuse/dependent
- Cooperation of participant and guardian
- Referred by Court, CDW, schools or any community resource
- Accepted by Juvenile Drug Court staff/coordinator

Drug Court Process

All phases include

- random drug testing
- supervision by coordinator/court
- curfew
- mandatory school attendance
- treatment groups

Phase 1 (minimum of 8 weeks)

- random drug testing 3 times per week
- weekly court appearances
- group with coordinator before each court session
- 3 hours of treatment groups per week
- 6 p.m. curfew

Phase 2 (16 to 26 weeks)

- random drug testing 2 times per week
- bi-weekly court appearances
- group with coordinator before each court session
- 3 hours of treatment groups per week
- 9 p.m. curfew on one weekend night

Phase 3 (minimum of 8 weeks)

- random drug testing 1 time per week
- monthly court appearances
- 1.5 hours of treatment groups per week
- 10 p.m. curfew on weekend nights

Aftercare (minimum to 12 weeks)

- monthly drug testing
- court appearances as requested by family or coordinator
- treatment groups as needed per treatment therapist
- 11 p.m. curfew on weekends

Graduation

- Public ceremony with participants
- family, friends, supporters
- community partners
- government officials
- guest speaker
- refreshments

Point System

- Drug Court uses a phase system
- Progress monitored by point system
- specific expectations and guidelines to maintain abstinence
- monitor behaviors
- provide incentives and rewards for desired behaviors.
- points earned weekly based on progress
- monitored and maintained by Juvenile Drug Court Coordinator
- reported weekly to staffing and Court.

Point System Layout

- Orientation: 400 points
- Phase I: 1200 points graduate to Phase II.
- Phase II: 2400 points graduate to Phase III.

- Phase III: 3600 points graduate to Phase III.
 - Phase IV: 4800 points graduate Juvenile Drug Court Program.
 - Points deductions shall occur for the following behaviors:
 - violations to Drug Court contract
 - misbehaviors at home/school
 - Status occurrences, not charges (curfew violations, truancy): Minus 10-50 points
 - Criminal occurrences, not charges (theft, assault, etc.): minus 50-100 points
- *Bonus points may be acquired at the discretion of the Drug Court team*

Family Component

- Participation by Parent/Guardian
 - Parent/Guardian agrees to Drug Court requirements
 - Includes transportation agreement to all sessions/court/testing/special events
 - Parent/Guardian subject to drug testing by court
- Participation by Parent/guardian (cont.)
 - Court may require/order Parent/guardian to drug treatment/counseling
 - Requires court appearances with juvenile participant
 - Encouraged to communicate freely with JDC
 - Monitor and enforce home rules and JDC participation compliance Monitor and enforce home rules and JDC participation compliance
- Sanctions for parents/guardians
 - Contempt
 - Community Service
 - Jail
 - Court Admonition
 - Writing assignment
 - Removal of child/children from home
 - Involvement of CHFS
 - Payment of Child Support

Budget through Sept. 30, 2013

	Budget	Actual
Salary/benefits (Director)	\$ 64,270	\$41,793
Contract Services:	\$112,230	
Drug Testing		\$6,899
Counseling services		\$5,950
Housing		<u>\$1,050</u>
Total		\$55,692
In Kind		
Equipment (County Attorney)		\$5,928
Office Space(County Attorney)		\$7,268
Professional time donated (Est)		<u>\$102,816</u>
Total In Kind		\$116,012

The court thanked the drug court team for all of their work.

County Treasurer Jim Hendrix presented the Treasurer’s Report for the Month ended September 2013.

Minutes of the October 1, 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 Lambert with all present court members concurring said Minutes were approved and signed.

By a motion of Commissioner Lambert, 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 present members of the court voted in favor; motion passed.

By a motion of Commissioner Lambert, seconded by Commissioner Wathen, the court considered for approval the Woodland Ridge Subdivision, Unit 2, surety bond reduction for streets and sidewalks.

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

By a motion of Commissioner Wathen, seconded by Commissioner Lambert, the court considered for approval of the Fund Transfers from the Solid Waste Operating Fund and General Fund to the Solid Waste Debt Service Fund – 2017, Solid Waste Debt Service Fund – 2014, Solid Waste Construction/Capital Replacement, Bond Fund – Downtown Renovation, Jail Fund, LGEA and Road Fund.

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

By a motion of Commissioner Lambert, seconded by Commissioner Wathen, the court considered for approval to Allocate \$21,000 to Paradise Park Regional Industrial Development Authority to assist in building a construction pad at Paradise Regional Business Park.

David Smith stated, "A little over 10 years ago, the court entered into an interlocal agreement with Ohio, McLean, Muhlenberg, and Hopkins Counties to create one of these regional industrial parks. Daviess County is in a partnership in two of them - this one and Bluegrass Crossings in Ohio County. This is a request from Muhlenberg County, the host county, to get a construction pad put in place in order to make the site more attractive. They are asking each county to pay their share."

The court is excited about this initiative as it relates to this community's economic development possibilities.

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

By a motion of Commissioner Lambert, seconded by Commissioner Wathen, the court considered for approval the 2014 County Request and Agreement for anti-litter control program grant funding.

This grant is used for Daviess County's "Trash for Cash" program.

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

By a motion of Commissioner Wathen, seconded by Commissioner Lambert, the court considered for approval to Contract with Cornerstone Environmental Group for evaluation of current Landfill Gas Collection and Control System.

David Smith stated, "We are having trouble getting our gas collection system to work properly. We need to evaluate the system and ask that you approve this contract with Cornerstone."

Judge Mattingly stated, "We hope to get the water out of the gas wells and get the gas flowing at a rate that we can use for co-generation."

Commissioner Wathen stated, "This is also to keep us in compliance."

Commissioner Lambert stated, "Currently we are burning this gas as we cannot release it into the air, and we want to get into a position not to have to burn it but to sell it."

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

By a motion of Commissioner Wathen, seconded by Commissioner Lambert, the court considered for approval to Contract with Green River District Health Department for services at East Daviess County Community and Health Fair.

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

By a motion of Commissioner Lambert, seconded by Commissioner Wathen, the court considered for approval to Contract with American Engineers Inc. to Provide Bridge Design and Bid Documentation to Replace a Bridge on Kelley Cemetery Road.

County Engineer Mark Brasher stated, "We have previously signed a contract with American Engineers to analyze this reach of creek crossing to see if we need to replace it with a bridge or if we can go back with something a little bit cheaper. Due to the flood plain and this is in a residential area they determined that we need to come back with something similar – a bridge type structure. They have several ideas we have been discussing but the contract in front of you is to hire American Engineers to proceed with the design to do the permits, to look at the deeds, as far as right-of-way and easements, and to get this ready for bidding. This is a bridge that has been dropped to a three-ton, which is the lowest, and the Highway Department has asked us to inspect it weekly. It is in great need to be replaced. This contract is for \$10,000 plus time and materials."

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

By a motion of Commissioner Lambert, seconded by Commissioner Wathen, the court considered for approval of a Lease with West Kentucky Raptor Center regarding the Raptor Center 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.

By a motion of Commissioner Wathen, seconded by Commissioner Lambert, the court considered for approval to Award **Bid No. 06-2013:** Transfer Station Reconstruction Project to Hartz Construction for \$323,159.00.

Staff Accountant Jordan Johnson stated, "The bid of Hartz Contracting for the Transfer Station Reconstruction in the amount of \$323,159.00 is the lowest and best evaluated base bid submitted, meeting all specifications without exception. It is our recommendation that we award the bid to Hartz Contracting for the base bid."

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

By a motion of Commissioner Lambert, seconded by Commissioner Wathen, the court considered for approval to Award **Bid No. 28-2013:** Pavement Maintenance for Panther Creek Park to Precision Asphalt for \$31,000.

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

By a motion of Commissioner Lambert, seconded by Commissioner Wathen, the court considered for approval to Advertise for a Truck Driver in the Department of Solid Waste, if not filled internally.

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

By a motion of Commissioner Lambert, seconded by Commissioner Wathen, the court considered for approval to Promote Mark Kelly Thomas to Heavy Equipment Operator in the Department of Public Works effective 10/28/2013.

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

By a motion of Commissioner Wathen, seconded by Commissioner Lambert, the court considered for approval the **Second Reading of KOC 1010.6 (2013)** - An Ordinance Establishing an Animal Control and Protection Policy.

Comments:

Judge Mattingly stated, "I know in the paper it was reported that this would be effective January 1, 2014. That is not quite true. The only part that is delayed in going into effect is those people who rehab wild animals."

Commissioner Lambert reminded the public that nothing has changed since the first reading of this ordinance.

Commissioner Wathen mentioned that the restriction on livestock is for less than 2 acres. Also, if the property is less than 2 acres and you have livestock, it must be 100 feet from the nearest residence.

Judge Mattingly thanked all who have participated in this ordinance.

Dave Royal of KY 142 asked how the number of hens was derived.

County Attorney Porter said that number was arbitrary.

David Smith said, "That number was arrived at because that is the number of hens it takes to create eggs to feed a family of four – the amount of protein they need for a week. This was not arbitrary. It was set because it was a standard. This goes back to even the depression era of where they were encouraging people to have a certain number of hens for the purpose of getting protein for their family."

Judge Mattingly stated, "The number 6 was really settled on because we reviewed several, up to four different ordinances from all over the state of Kentucky. And that was pretty much the maximum number, and nowhere in those ordinances did they allow roosters."

Mr. Royal stated, "In the fall of the year your production falls off. Most of the time 6 hens will not lay enough eggs for the two of us, my wife and me. We do not sell anything. We give some eggs to family members and neighbors. Six hens seems low to me. I would think ten or a dozen would be better."

Judge Mattingly said that after reviewing all other ordinances, six was on the high end. He stated, "I would say if you give them to the neighbors why don't you give them the chickens and let them mess with the mess and raise their own eggs – that is how you would get around it. If they are interested in having homegrown eggs, let them do it. The other issue is that when you get into larger numbers than that, and in your case your neighbors may love you, but you get some neighbors in there and they do not want hear it, see it, smell it and they have a right in my opinion to enjoy their property just as you have that right. That is where that number came from."

Sheila Ray of Philpot stated, "I call myself "As the Rooster Crows" rescue and sanctuary for roosters. I have lived on my property for seven years. Across the street is a hay field. Two houses down from me is a cornfield. I want to know why we have to exclude roosters. If it is just about noise, I want to know why we accept combines, tractor, chainsaws, and guns. I think this is absurd to say that a CAFO is exempt but a backyard sanctuary is outlawed. I moved to the county in order to do this and now you are telling me I cannot unless I am I rich enough to own a farm. I am a single mom with an autistic child. We do not have a lot of money to rent farms. My landlord is very happy. I have never had any complaints. In fact, he is a little upset by this because he may be losing a good renter. He thinks it is over stepping the bounds, as do I. I am assuming the only reason roosters are outlawed is that they crow. If you are going to outlaw something that makes noise, we should be outlawing guns. I have to listen to that all of the time. Considering that I have not had any complaints, I think I should be grandfathered in." She also noted that it is difficult to find a rental unit to accommodate this ordinance's spacial requirements for her roosters. She further stated, "I do this because it is a good thing. I am not fighting them. I am not a game farm. I do not understand why we get this kind of oppression. I know you guys like to eat them, but that does not mean they deserve abuse."

Judge Mattingly stated, "I am not sure whether it is a rooster or a hen I eat when it is fried. First of all, the CAFO is not under this ordinance. It is covered under the state ordinance. Secondly, the three months did not apply to people other than those who have licenses by the state or federal government. That does not go into effect until December 31. This ordinance goes into effect, if passed, tonight. Roosters are not outlawed everywhere in the county. You could have a lot that is surrounded by farms, you are not near another resident – you could have those roosters. The simple fact is that there are people that do not want roosters. I do not have a good answer for you as to what you will do. We did not make any provision to grandfather people in. We cannot. You asked about guns. There are many organizations out there that want to restrict the right to own and bear arms, and if you want to join one of those organizations and petition this court, we certainly will be happy to hear your petition. There are many regulations and restrictions on what we do."

Ms. Ray stated, "My point is not that we need to outlaw guns. My point is what is a rooster crow as compared to that? We are outlawing rooster crowing on anything less than 2 acres, why? Because we want to be far away from the neighbors, correct?"

Judge Mattingly stated, "Claud, I certainly believe that we outlaw the discharge of a weapon by her neighbors in a residential neighborhood or on property that would endanger the life of a citizen."

Attorney Porter stated, "Not only is it an ordinance, it is a criminal offense."

Judge Mattingly stated, "There are regulations that outlaw those types of things – and you are talking about roosters crowing. Neighbors do not like to be woken up by roosters crowing. It is as simple as that. It is not just this community."

Attorney Porter stated, "It is two acres or less. If it is less than two acres, if you are more than 100 feet from the next residence it is not prohibited. However, like the weapons or automobiles or anything else that makes a noise, persistent excessive noise at times that disturb or what we look to, that's behaviors not a strict liability offense again, it's one that we restrict the behavior and that behavior is the noise."

Judge Mattingly said, you have never had a complaint for the many years you have been there. He asked, what is going to change now? He stated, "Unless the animal control officer receives a complaint on you, she is not going to look for you."

Kristin Allen of Strike the Gold Court was unaware that this would be effective, if passed, this evening. She asked about the procedures, which would take place if her neighbors complained on her tomorrow for having animals on her property?

Attorney Porter stated, "Our normal procedure is to issue a notice, sometimes it is in writing, sometimes it is orally, but usually there is a notice of violation. There will be a certain time period to correct the violation and we will check that time period to see if that violation has been corrected and if it has, that is as far as we will go. If the violation has not been corrected, then the next step is to issue a citation for the failure to correct the violation. That can either be one that we send you to court or that we give you a certain amount of time and we can impose a fine for that."

John Austin of Saint Ann Street stated, "I am a Daviess County resident. I am a local business owner. I am the president of SPARKY's Animal Rescue. I am speaking on behalf of all three capacities here today. I am deeply offended by this ordinance. I think it is a mistake. I think it is an example of government overreaching when it is not necessary. I think the problem from a rescue standpoint or the concern from an animal rescue standpoint in this kennel license is that it is unnecessary. The only concern that I can see that you are addressing with it would be perhaps is revenue. From an animal protection standpoint, it is not doing anything that you do not already have the ability to do in terms of things that Ashley can go out and investigate or potentially site someone into court over. Actions that Claud's office can take. None of that is furthered as a result of this ordinance. What it does do is it is going to require any animal rescue that uses foster homes to in essence register or provide animal control with the information concerning the identities and addresses of every one of the foster homes. That is not going to foster an environment in which people are going to want to volunteer. People do not like to have the government reach into their homes for any purpose no matter how benign it is intended to be. The concern would be is if we lose foster homes, we are going to put more animals to sleep out at the shelter. People that adopt from local rescues are going to go to a local veterinarian. They are going to go to a local pet food retailer for their pet food and supplies. They are going to support local businesses. They are going to put money back into the community, and they are going to save animals and save lives. I am very concerned that this ordinance, whether it was intended to do this or not, will have a negative impact on the number of lives that are saved."

Judge Mattingly stated, "First of all, it was not our intent to offend anyone. I thought we had quite a discussion regarding kennel owners and one of the things that we did do is that we exempted any not for profit rescues from paying a fee. The vast majority of animals who are saved, I think, are shipped out of this community to other areas. One of the things that we have to do though – this ordinance is not strictly about animals, it is also about people and it is also about the interface between animals and people. So, we have to try and balance that. I think it does a pretty decent job. One of the ways we do that is that when people call in sometimes we will get a call about someone who is harboring many animals, and we originally said that we will limit a rescue to two animals at one address. One of the things we had to take into consideration is that we do not limit the number of pets that you have. So we took the number out and said, look rescues do worthy work, we want them to continue. I guess the answer to your statement is that the proof will be in the pudding."

Tom Morton of Sturbridge asked why if one person complains do you have to change the rules for everyone? He thinks this is overreaching of government.

Judge Mattingly stated, "It is not just one person complaining. I cannot tell you the number of times that phone rings from all over the county who are talking about smells and noises and you are right, we have ordinances, but they do not go far enough. Right now, if you are being bothered by a rooster – what do we do? Do we tell them to stop it? The old ordinance did not give us the authority to do much of anything. I am with you. I do not want any more government than we have to. We would not have to have half as much government as we do if neighbors got along and each of them looked out for the other person. I do not disagree."

Mr. Morton stated, "I do not want government to get any larger than it already is."

Commissioner Lambert said although he may not agree totally with everything in this ordinance, he does believe it is a fair and balanced ordinance. He will be voting in favor of this ordinance today.

Commissioner Wathen also believes this is a balanced ordinance and will be voting in its favor.

Judge Mattingly believes this is an ordinance of compromises. He thinks it is a balanced and fair ordinance.

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

County Engineer Mark Brasher read in summary the **First Reading of KOC 630.1 (2013)** - An Ordinance Establishing Water Quality and Quantity Policies relating to Stormwater runoff.

Comments:

County Attorney Porter noted that the greatest detail within this ordinance has to do with enforcement capabilities.

County Engineer Mark Brasher stated, "In 2005, they required a Phase II permit. This ordinance is addressing illicit discharge and construction site stormwater runoff countywide. The post-construction stormwater management, that gets into design, applications, and developers requirements – those are more extensive requirements. And we are limiting that to the Phase II area. In general, the Phase II area is the By-pass on in. That will most likely change with the new permit, which will be in two-years. This ordinance is required by the federal government, through the Division of Water and the EPA." He also stated, "People cannot go out and dump oil in their ditches, in their curb and gutters. This ordinance sets out the enforcement procedures for us. It defines our steps so the public knows – they know what we expect." He further stated, "The most significant change for us is the post construction."

Tom Morton stated, "I read it in the paper where the residents were going to have to pay for the rain water running off their houses and all of that stuff and I had several people ask me about it. So I decided I would come down here and get it face-to-face."

Judge Mattingly stated, "That is not a requirement in the county. I do not know where you are reading that. That is not part of this ordinance."

By a motion of Commissioner Lambert, seconded by Commissioner Wathen, the court considered for Discussion a Petition from residents of Wexford Crossing requesting that the privately maintained portion of the roadway be considered for inclusion into the Daviess County Road and Street Index and an order requesting OMPC to review the inclusion in light of the comprehensive plan.

Mr. Brasher stated, "I have received a petition from the residents of Wexford Crossing as required by our ordinance. We are at the point where I have reviewed that street and the ordinance dictates that I report to fiscal court whether that street can qualify to be a county maintained roadway. As you have in your packet, I have written you a letter stating that it can be qualified as a county maintained road with two conditions that I saw. Those conditions are that there are sidewalk lacking on the Westside of the street and there is some erosion issues next to a headwall for stormwater. I request that if this taken over by the county that those two issues be resolved prior to taking them over."

Judge Mattingly asked, "Would you explain No. six?"

Mr. Brasher, "This subdivision, or at least this street was planned to have 50-foot right-of-way, which does meet our current public improvement specifications. They just had to provide off-street parking, which this street does have."

Judge Mattingly stated, "I do not see how you are going to put a sidewalk on the Westside."

Mr. Brasher stated, "I believe there is room for a four-foot sidewalk directly at the back of the curb."

Commissioner Lambert asked, "Is there a standard distance between the street and sidewalk?"

Mr. Brasher stated, "No, there is no standard. Typically there would be what is called a utility strip, but it is not necessary."

Judge Mattingly stated, "It was my understanding that all property owners adjacent to this street would have to sign the petition. Has that been done?"

Mr. Brasher stated, "I brought that up to the County Attorney and I will ask that he address that."

Attorney Porter stated, "With access. There is a private right-of-way, which is part of Pleasant Heights Lane that is a private road that goes at least a portion of the way back and it shows that it enters into the street now or this public road at a point just beyond the cul-de-sac. That road currently does not go all the way to the end of that property. So at that point I think our ordinance or the statute requires that those who have access to the property would be required to petition."

Judge Mattingly asked, "But what if we take it in and they want...?"

Attorney Porter stated, "They would be able to open up into that street. Once the street becomes a county road access would have to be granted if they requested it."

Judge Mattingly stated, "But there would be no requirement that we maintain the private road, correct?"

Attorney Porter said, "No."

Commissioner Lambert stated, "The residents that live on the private road, do they have any say-so as to whether or not this street becomes a public street and can they connect a private street to the county road?"

Attorney Porter stated, "Yes."

Commissioner Lambert asked, "Do people who live on this street are accepting of potential residents who live on the private road now enter and exit?"

Attorney Porter stated, "Yes they are."

Commissioner Lambert stated, "Are the people on the private road willing to permit traffic from people in the subdivision in and out their private drive?"

Attorney Porter stated, "Well, now that is not a private drive. Technically, it is a public road, not a county road, not a city street, but a public road because there are a number of residents along that. It is not maintained as a private road."

Bill Parrish of Wexford Crossing stated that all residents of his street would have no objection if the other street wished to connect.

Judge Mattingly stated, "What is the process now?"

Mr. Brasher stated, "We submit this request to planning and zoning. They will review it in light of the comprehensive plan. We will be asking them for a recommendation."

Judge Mattingly stated, "We are not voting on this tonight, but I assume it is the consensus of the court to have the county engineer take the next step."

Commissioners Lambert and Wathen agreed.

Judge Mattingly directed County Engineer Brasher to submit the petition to planning and zoning and stated, "If they okay everything then you would bring that back to us in the form of an ordinance. Is that correct?"

Attorney Porter stated, "That is correct, Judge. We would just have to have those conditions met."

Commissioner Lambert stated, "I assume the Homeowners Association would be gathering funds to pay for the improvements that are being requested."

Mr. Parrish stated, "That is correct except it is not the Homeowners Association, it is the seven homeowners who jointly own that private street."

Judge Mattingly asked Attorney Porter if the court needs to do anything further. He said they did not.

Judge Mattingly stated, "County Engineer you are so instructed to take the next step."

By a motion of Commissioner Wathen, seconded by Commissioner Lambert, the court considered for Discussion Wyndcrest Drive Flooding.

Judge Mattingly stated, "As you will recall, a few weeks ago we had 5-7 inches of rain in Daviess County. We were made aware of some severe flooding down on Wyndcrest Drive. The county engineer and I made a visit out there, and we spoke to a number of area residents about that issue. When we left, I asked the engineer to research what happened with what was apparently a grant application that was turned down and report to us. I also asked him to look into the question that was raised about installing a flapper valve in a ditch at the west end of the street. I think he has done that. I also asked EMA to check in to FEMA – these homes are in a flood plain. I know many of the residents bought their homes prior to them being re-classified in a flood plain. That was done back in 2007-2008. On several occasions and the one I remember is back in the 1997 flood in Moseleyville there were some homes purchased by FEMA because they were in a flood plain – they continue to flood. So I asked to see what the possibility would be that there would be funds available to buy the resident's homes. Lastly, I asked the county engineer, as many of you know, we are doing a countywide drainage study to look at flooding issues – to look at creeks. We have a drainage advisory board. They have identified some major tributaries that the county will include or has included in the study. I have asked him to go to URS, which is the engineering firm that does this on a routine basis, and ask them what the cost

of doing a study would be specifically regarding Wyndcrest Drive and Worthington Road. The engineer has done most of the things that we have asked him to do. Mr. Engineer, won't you tell us in no particular order what the results are. First, tell us about the study. You know, I have heard some allegations that we applied for a grant, we got the funds, and we spent them on something else. Is that true?"

Mr. Brasher stated, "As far as I know, that is not true. What I have found in the grant, it seems that in April of 2011, the county was notified that this grant was denied."

Judge Mattingly stated, "We actually filed for two grants at the same time. One was to raise Crooked Creek Road, which was approved, and the second was related to flooding on Wyndcrest/Worthington, which was denied."

Regarding the flapper valve, Mr. Brasher stated, "When you do things like that, you are basically taking the water that went into the subdivision and you are keeping it out. It has to go somewhere. Without having any good idea of its effect downstream as you know, there are several subdivisions and residences downstream so, without all the information, I would not recommend it not knowing the outcome. There is always the unintended consequence."

Judge Mattingly stated, "Quite frankly you are not talking about a lot of money. It is not a money issue. I have some experience in backwater valves, flapper valves and they are not very reliable. The reason they are not is that they foul, in particularly in an agricultural area where you have cornstalk and other things. If you get a cornstalk and the valve – it is still open. You are going to get backflow. In this case, I would assume that since the water was extremely high anyway, it would not have helped in this situation."

Mr. Brasher stated, "I do not believe so without an additional flood wall."

Judge Mattingly stated, "We looked at FEMA. I saw some people out there shaking their heads – no they did not want to be bought out. One of the issues is that when you continue to have flooding in a neighborhood, and you have to balance and look at what it would cost to prevent that flooding versus the cost it would be to move the residents out. If it were three million dollars, we could not ever guarantee that it would not flood because those residences are in a flood plain. We cannot even guarantee that residences that are not in a flood plain will not flood particularly with headwater. The issue that you had the other day was not backwater, which typically is what goes back into a flood plain. This is headwater and there were homes that flooded and we had calls from people with water in their crawl space, water pushing through their basement walls who live on top of a hill that are not in a flood plain at all. Certainly, the issue with FEMA buying out the residences would be an option, but when EMA looked at it what they found out was that there were very few claims made against flood insurance over a period of time. They went back and of the twelve properties on Worthington Road and Wyndcrest Drive, only five had flood insurance. I would dare to say that those five are people who have moved in there since FEMA re-drew the flood plain maps or bought a house there because Commissioner, you know more than I do, but if you buy a house in a flood plain and you have a mortgage, you have to have flood insurance. I can tell you though, the best I understood, EMA said that right now they have no funds to do that. So, that is not an option. Lastly, the application that was made for grant funds previously I do not want to comment as I was not on the court at that time. I did not have any dealings with that engineer. What I am going to say may sound bad. In my opinion, we asked for a grant not knowing whether or not those funds and what was applied for would cure the problem to begin with, and my contention is - flood plain you are not going to cure the flooding problem. Now, you may go in and be able to dike around the area and you may put in pumps but they are not 100% effective, just ask New Orleans."

Mr. Brasher stated, "What I have done is I have got a scope of work presented to me by URS, which is doing the countywide stormwater master plan."

Judge Mattingly asked about the cost of the master plan.

Mr. Brasher stated, "I believe the contract is \$85,000. This plan is a very broad view of "can we do anything". This right here, I explained to them about what we had. They are familiar with Rhoads Creek North. That is one of the creeks that they are looking at with the master plan. We want from them to come back and tell us if there is a solution and what some of those options are. To do that it gets very detailed. I have reviewed their scope and believe they are spot on."

Commissioner Wathen stated, "The master plan that we are doing right now is just Phase I. It is an overview. It does not get down into the details. It does not survey. There will not be anybody surveying ditches, culverts, and all of those things. All they are doing is taking the existing satellite information and other things that are available without us putting people on the ground. So, what he is talking about now for Rhodes Creek it would actually take people to get down there and get the details. So, there is a whole lot of difference between what we are doing now for the county as an overview as opposed to what he is describing as detailed measurements, surveys, and looking at every culvert and everything that is there. So, there is a lot of difference between the two."

Judge Mattingly stated, "In the overall view of the county drainage plan, 3,000-feet is insignificant. But in a view for that watershed and that neighborhood, it becomes very significant and it becomes very critical that we are not within ten-foot that we are within inches of knowing which way it goes. I think what we are doing too is we are creating a model so that we can play various scenarios into that model to see what effect it would have, and I assume that that is what they would do here as well. They would just take this and apply it to the model except on a more refined level."

Mr. Brasher stated, "That is correct."

Judge Mattingly asked, "Are you aware of any grants available out there that help counties through either the state or the federal government that would allow us to go into a neighborhood and do this kind of thing?"

Mr. Brasher stated, "I am not. I know there have been some in the past, but they have dried up. However, I can definitely look into that."

Judge Mattingly stated, "Part of a broad overview of the issue is that private ditch."

Mr. Brasher stated, "It is all a private ditch. It is a long ditch and very flat."

Judge Mattingly asked the County Attorney, "Claud, what happens in the use of public funds."

Attorney Porter asked, "You cannot do that, Judge."

Debra Baker of Wyndcrest Drive stated, "I purchased my home in 1989 and there has been nothing done since I bought it. The ditch behind me hasn't even been cleaned out. You all have allowed subdivisions – it should have never even been there in the first place. The street is lower than the yards. We are serving as a retention basin. Then you new we flooded yet you allowed more and more subdivisions to be built all around us. I was told that a gentleman on Worthington Road purchased a permit to build a pole barn and that barn caused one house to get water in its garage. Where did you all get that money at – the thousands of dollars that you spent to take care of that one house and I was told that..."

Judge Mattingly interrupted, "Who told you that?"

Ms. Baker continued, "The neighbors around there. The gentleman that built the barn he said one time you came down there and told him how to go by code to build it. He made the remark that he was going to do it to suit himself afterwards. And I was told that you all never went back down there and inspected it to see if he did it by code and that is why you spent all that money to help one person's house from getting water in his house – when I've got buildings that the floors is rotten in." She asked if a retention basin would help their flooding problem.

Mr. Brasher stated, "Rhoads Creed is hydraulically connected to the other tributaries so what water may have been held up it would have just allowed more water to back up from the main channel."

Ms. Baker stated, "That one house on Worthington Road that you all spent all that money on to keep water out of their garage, you sent more water down on us when you done that. You never did answer my question. Where did you get the money at to fix that one house?"

Judge Mattingly stated, "Again, I am not aware of that. I can look at that, but I cannot answer that question immediately because I was not here when that went on."

Ms. Baker stated, "Everyone passes the buck, don't they?"

Judge Mattingly stated, "No, I am not passing the buck. I think I have explained very clearly what we are going to try to do here."

George Bellows of Worthington Road stated, "I am one of the lucky ones who had flood insurance, but I still have a \$5,000 deductible. With regard to FEMA, when they look at it in the long-run if every time there is a flood and they have to pay out \$10,000 - \$20,000 it would be a lot cheaper to buy the house, but that is the way our government works."

Judge Mattingly stated, "No, actually that is not the way it works. They don't look at the cost of it. If they have continued flooding then they will go in and look at buying those residences out. While we want to think that government is unfeeling and unconcerned at least locally we are concerned."

Mr. Bellows stated, "I cannot blame you guys for it because Judge Haire and Sinnan made all the promises and there wasn't one kept. His (Judge Haire's) comment always was the squeaky wheel gets the grease. And you know what, we just rusted up."

Judge Mattingly stated, "I understand. Sometimes if you don't have any grease, you cannot grease the squeak. That is what it comes down to. Can we effectively do something that will really give you a guarantee that you can continue to live there and you will never have issues. You know one of the things that we tend to forget I think is that we had 5-7 inches of rain over a 16 hour period."

Mr. Bellows asked, "But why did it take 72 hours for it to drain?"

Judge Mattingly stated, "That rain did not just occur on your neighborhood. It occurred everywhere."

Mr. Bellows stated, "There needs to be somewhere down the line if the city or the county knows that that area floods when a person goes to buy it something needs to be said."

Theresa Rybicki of Worthington Road stated, "The difference in the flood and other floods is that it took so long for this water to go down. We have not had any more water on this flood than what we had on previous floods. This water was different from water of previous floods. This water was dark, muddy, filthy, and it stunk. Previous water was clear. You all have been out there and you all have seen the ditches that run through Kuegel farm. They are 100% blocked. Nobody has been out there to clean it out. The last time we flooded – when we were put into the flood plain because when I bought the house seven years ago it was a flood zone. I checked with my insurance company and I asked the neighborhood, it was in a flood zone. I was not required to have flood insurance. I have flood insurance but did not file a claim because I am weighing my cost on what my damages are. It is cheaper for me to fix them myself than it would be to go through insurance. If I file a claim, my insurance premiums would then go through the roof. I talked to Mr. Wathen the other day, which said yes those ditches are 100% blocked. You said yourself you are a plumber. You get a slight clog in your drain, and your water slows down, and your water backs up. We need someone out there to clean out those

ditches – I don't care if it is Kuegel's farm that you are saying is responsible for it. You say you cannot use private funds unless it is for public use. We are public use. We need those ditches cleaned out. You get those ditches cleaned out and that water will flow and you will keep it off my house. I know you cannot guarantee a 100% fix to flooding but if you can keep the water in my backyard and in my front yard and off my house and out from underneath my house then I am happy with the resolution. You are not doing anything. I was a freaking houseboat. Not one inch around my house was I able to step outside and not be in water. You are not doing anything to help us." She further stated, "I did call Mr. Kuegel about the ditch and he said he is willing to clean out the ditches. He has not done it yet, but he has advised me that he is willing to do anything it takes to help if you all need to come out there on his farms and dig those ditches wider and deeper, you are more than welcome to."

Judge Mattingly stated, "While Mr. Kuegel may be willing to grant us access to his private property, I am sure there are a lot of people who would give us access to their property so that we could pave their driveway. We still cannot pave their driveway can we, Claud?"

Attorney Porter stated, "No we cannot."

Judge Mattingly stated, "Commissioners, we will talk and discuss where we want to go with this URS, because personally before we can do anything and make a good informed decision we are going to have to know, and I wish we had done, I wish the previous court had done this prior to applying for the grant, but we have to know specifically what can be done and what will be required to do if we are going to give you any relief at all. This commission will talk among themselves and decide what the next step will be."

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

Al Mattingly
Daviness County Judge/Executive