

**Minutes of the April 24, 2019  
Joint City/County SPECIAL CALLED Meeting  
Held at the Daviess County, Kentucky Courthouse**

**Present elected Owensboro City Commission and Daviess County Fiscal Court  
Officials included Mayor Tom Watson, and City Commissioners Larry Conder,  
Pamela Smith-Wright, and Jeff Sanford  
County Judge/Executive Al Mattingly and County Commissioners Mike Koger,  
George Wathen, and Charlie Castlen**

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**DOCUMENTS RELATED TO TODAY'S DISCUSSIONS  
ARE FILED IN THE CORRESPONDING FISCAL COURT FILE**

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The meeting opened with a prayer and the Pledge of Allegiance to the Flag.

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Judge Mattingly presented the **First Reading KOC 921.674 (2019) 08-2019** – An Ordinance Amending Text in Articles 3 *General Zone & District Regulations*, 8 *Schedule of Zones*, 14 *Definitions*, 20 *Cellular Antenna Tower Regulations*, and 22 *Arena Overlay District* of the Owensboro Metropolitan Zoning Ordinance.

OMPC Executive Director Brian Howard summarized the above text amendments as follows:

**Conditionally Permitted Agriculture, Horticulture or Silviculture Industries**

Conditionally Permitted in the A-R and A-U zoning classifications for properties located outside of the Urban Service area. The goal is to allow, in limited scope, agriculture, horticulture and silviculture operations and their related industrial activities to locate on large agriculturally zoned parcels outside of the Urban Service Area.

Properties and operations must meet the following:

- The property shall be at least 25 acres in size but not exceed 50 acres in size.
- Any structure associated with the use shall not exceed 10,000 square feet in size.
- The operation must not employ more than 5 persons.
- The operation shall be limited to agriculture, horticulture or silviculture activities and their related accessory uses.
- This type of use shall not be considered as altering the agricultural or residential character of its particular area and shall not be justification for zoning map amendments.

**Near Downtown Parking Overlay District**

The purpose of creating the Near Downtown Parking Overlay District is to encourage the densification of residential uses located near the downtown area when off-street parking may not be available as a result of the conversion of single family residential structures to multi-family residential structures or construction of new multi-family residential structures on vacant lots within the City of Owensboro and Daviess County. On street parking would be Conditionally Permitted in the R-4DT zoning classification for properties located outside of the Downtown Overlay Districts but near the downtown area, bound by Orchard Street, Parrish Avenue, and Center Street. The applicant must provide a parking analysis along with the CUP application showing adequate on street parking is available within the area to meet their needs. On street parking shall only be permitted on local streets as determined by the functional classifications.

**Article 3 - Fence Height Requirements**

The proposed revisions to Articles 3 increase the maximum fence height to 6 feet in a street side and rear yard where corner residential lots are back to back and oriented so that rear and side yards abut. This increase is a frequent variance request to the Board of Adjustment, which is typically approved.

#### **Conditionally Permitted Storage of Distilled Spirits**

- In the A-R Rural Agriculture zoning classifications
- On tracts at least 100 acres in size.
- The construction type shall be limited to rack supported structures or pallet storage building constructed in accordance with the requirements for the current edition of the Kentucky Building Code; size, height and separation of any single structure shall be in accordance with the requirements of the current edition of the Kentucky Building Code;
- The structures shall be used for the storage of distilled spirits only, any change in the product/material stored shall deem the CUP null and void;
- All structures shall be set back at least 200 feet from the property line;
- All structures shall be located at least 750 feet from any principal structure on an adjoining property; this may be waived if the applicant provides a sworn affidavit from the owner of said structure that he/she is agreeable to the waiver;
- At least 25 percent of the property shall be dedicated to agricultural uses as defined in KRS 100 and/or left as open/natural space;
- The perimeter of the subject property shall be screened with a single row of pine trees planted 20 feet on center unless a waiver is requested by the applicant and granted by the OMBA.
- As part of the application process, the property owner shall agree that if the use ever exceeds the conditions of an approved permit, the property owner must take the necessary steps to come into compliance, cease operations, and/or relocate to an appropriately zoned location.

#### **Home Occupations:**

##### **Home Occupation – Accessory Use: traditional definition of home occupation**

- The use is clearly incidental and secondary to the use for dwelling purposes
- no nonresident employees
- no customers
- all activities take place in the principal structure

##### **Home Occupation – Conditionally Permitted Use:**

- The use is clearly incidental and secondary to the use for dwelling purposes
- Up to one nonresident employee may be allowed
- Customers shall be allowed but may be limited by the OMBA
- Activities may take place in accessory structures as long as the floor area utilized for the business operation does not exceed 400 square feet.

#### **Indoor Individual Storage**

Indoor individual storage uses may be conditionally permitted in the B-3 and B-4 zones. Indoor individual storage uses are principally permitted in B-5, I-1 and I-2 zones.

In the B-3 and B-4 zones, conditionally permitted indoor individual storage uses also shall be subject to the following restrictions:

- Indoor individual storage shall be limited to the adaptive reuse of an existing retail storefront of not less than 10,000 square feet in size.
- Structures to be used as indoor individual storage units shall be fully conditioned and enclosed.
- Screening and landscaping shall be required as per Article 17 of this Zoning Ordinance.
- Outdoor storage shall be prohibited on the same property as the indoor individual storage structure(s). This shall include vehicles, boats, personal items, etc.
- All uses other than indoor individual storage shall be prohibited within structures while those structures are being used for individual storage, except for those accessory uses that are clearly incidental to and would also be permitted in a B-4 zone.
- The Owner of the indoor individual storage structure(s) shall be responsible for policing the material and/or items being stored. The Owner shall notify the Zoning Administrator upon discovering any storage not meeting the requirements set forth herein, providing the name, address and phone number of the renter whose storage is in question

#### **Small Cellular Antenna Systems and Towers**

The purpose of these regulations are to provide for the safest and most efficient integration of small cellular systems and towers for cellular telecommunications services or personal communications services within the community.

- Applications are reviewed at the staff level unless a waiver of the requirements of the proposed ordinance is requested. If a waiver is requested the application will be considered by the full Planning Commission.
- Required for new small cell systems and towers
- Exempt from zoning approval if co-locating on an existing utility pole, co-location is encouraged.
- Towers may not exceed 50' in height
- May be located in Public-Right-of-Way or private property.
- New towers shall be located 500' from any existing towers.

### **Solar Energy Systems**

#### **Level 1 – permitted in all zones**

- Roof mounted on a code compliant structure or ground mounted on an area up to 50% of the footprint of the primary structure but not more than 1 acre in size or building integrated systems.

#### **Level 2 Systems – permitted in Ag zones, CUP in all other zones.**

- Ground mounted systems
  - greater than ½ acre in size for Ag and Residential zones
  - greater than 10 acres in size for Commercial and Business zones any size in Industrial zones

#### **Level 3 Systems - permitted in Ag zones, CUP in all other zones**

- 50' building setback for all SES equipment from the perimeter property lines of the project.
- No interior property line setbacks if the project spans multiple properties.
- 100' setback from any residential structure
- The project shall be screened with an 8' tall fence and a double row of staggered pines planted 15' on center from any public right-of-way or adjacent residential use. The pine trees shall be located outside of the fence. The use of barbed wire or sharp pointed fences shall be prohibited in or along any boundary adjoining residential or MHP zones.
- There shall be no signs permitted except those displaying emergency information, owner contact information, warning or safety instructions or signs that are required by a federal, state or local agency. Such signs shall not exceed 5 square feet in area.
- Lighting shall be prohibited except that required by federal or state regulations.

### **Decommissioning of Level 3 Systems**

- The developer shall post a Surety Bond for the abandonment of the site and in the event the Commission must remove the facility
  - Abandonment shall be when the SES ceases to transfer energy on a continuous basis for 12 months
  - The surety bond shall be 0.5% of the total cost of the installed SES.
- The decommissioning plan shall be submitted at the time of application by the party responsible for decommissioning and the land owner and must include the following
  - Defined conditions upon which the decommissioning will be initiated. i.e. there has been no power production for 12 months, the land lease has ended, or succession of use of abandoned facility, etc.
  - Removal of all non-utility owned equipment, conduit, structures, fencing, roads, and foundations.
  - Restoration of property to condition prior to development of the SES.
  - The timeframe for completion of decommissioning activities.
  - Description of any agreement with landowner regarding decommissioning.
  - The party currently responsible for decommissioning.
  - Plans for updating the decommissioning plan.

### **Comments:**

A number of these text amendments include the addition of conditional use permits. Judge Mattingly stated, "This not only opens the door to additional property use flexibility, but it affords neighboring property owners sufficient notice that a conditional use application has been submitted by a neighbor and offers them a chance to object, if they wish."

Judge Mattingly supports the Article #8 text amendment because it will allow current local distillers and prospective distilleries the opportunity to grow their businesses in Daviess County. The current amendment details specific requirements for setbacks and screening, which will be monitored and modified if necessary. He agrees that a conditional use permit is necessary for two reasons. One, it

again enables neighboring property owners sufficient notice that such application has been submitted and provides them the opportunity to voice any objections they may have. Two, when that operation ceases, that conditional use permit ceases as well.

Commissioner Wathen asked Mr. Howard if anything could be done for properties just shy of 100 acres wanted to apply for a conditional use permit as it relates to Article #8?

Mr. Howard stated, "No, this amendment states a minimum requirement of 100 acres. Now, if in the future, if you wanted to reduce or even increase that requirement, you may certainly do so with a new text amendment."

Commissioner Castlen thinks the screening (trees) requirement may need to be adjusted in the future as crops may surround the buildings and be used for sufficient screening. He understands that a waiver may also be used in these situations as well.

Mr. Howard answered the Mayor's question relating to prevailing winds. He stated, "Yes, prevailing winds were taken into consideration when developing this text amendment. This is also a situation where a waiver may be obtained."

Regarding home occupation uses, Commissioner Castlen asked, "For those already operating at-home businesses such as an at-home piano teacher, will they be grandfathered-in or made to obtain a conditional use permit?"

Mr. Howard politely explained, "If they are operating illegally now, there could not be a grandfather clause. They now can obtain a conditional use permit and legalize their business."

Commissioner Castlen questioned the need for someone like an at-home piano teacher to need a permit.

Mr. Howard replied, "She always needed something or what she was doing was illegal anyway."

Commissioner Wathen asked about the price for a conditional use permit.

Mr. Howard stated, "It depends on what zone the subject property is in. Somewhere around \$200 is an estimate".

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Judge Mattinlgy presented the **First Reading KOC 860.8 (2019) 09-2019** – An Ordinance Approving an Emergency Medical Service and Ambulance Agreement by and between the City of Owensboro, Daviess County and Mercy Ambulance of Evansville, Inc. d/b/a American Medical Resources (AMR) Ambulance, the Exclusive County-wide Provider of Emergency Ambulance Services for the 9-1-1 Dispatch Systems for ten, one-year terms (contract term is dictated by state law).

In January of this year, the Daviess County Fiscal Court and City of Owensboro's current ambulance provider Procarent, d/b/a Yellow Ambulance (YA), sent notice that they intended to discontinue its emergency ambulance service in Daviess County, effective July 1, 2019.

Judge Mattingly stated, "Unless action is taken to contract with a new ambulance provider, effective at midnight on June 30, 2019, this county will not have ambulance service." He noted, over the past several months, many meetings and heated debates have taken place to reach a consensus on this issue. Today, we are hearing the first reading ordinance to contract with Mercy Ambulance of Evansville, Inc. d/b/a AMR Ambulance to be the exclusive county-wide ambulance provider.

City Fire Chief stated, "While looking for a new provider we looked for the following provider attributes:

- Ability to fulfill agreement and performance factors
- Lowest possible subsidy
- Ability to provide customer care program for those unable to pay entire cost of service
- Ability to begin operation July 1, 2019 at 12:01 AM
- Willingness to provide job opportunities to current EMS employees
- Professional On-boarding process for new employees
- Willing to participate in Community Health Education and Public Outreach

There were 8 options considered as explained by Chief Mitchell which included:

- Hospital Based Ambulance Service
- Combination Public-Hospital
- Fire Based Ambulance Service
- Non-Profit Ambulance Service
- Four Private Services
  - Physicians Ambulance
  - Medic One
  - Priority Ambulance
  - AMR

Chief Mitchell explained, AMR is the largest ambulance provider in North America with over 270 dispatch 9-1-1 contracts and is being recommended here today as the best overall option. If approved, AMR will take over local ambulance service on July 1, 2019.

County Fire Chief Dwane Smeathers agreed and supports the recommendation of AMR.

Chief Mitchell noted, "AMR, with locations in Louisville and Lexington, is looking to buy many YA assets and that local service will be operated out of the company's South-East Region in northern Alabama. Dispatch services may temporarily run in Owensboro, he said, but could move to a regional center in Evansville."

Chief Mitchell gladly reported AMR's willingness to consider re-hiring current paramedics and emergency medical technicians. He noted, "It is not the name on the side of the ambulance that determines the quality of service, but the level of commitment to quality by the people operating those units. As long as the employees demonstrate that level of commitment, and as long as the company takes care of those employees, I believe we can have a high-quality ambulance service."

County Attorney Claud Porter stated, "The main differences between the current YA contract and AMR are to whom we are contracting and the subsidy. The current YA subsidy is \$60,000 per year and AMR will be \$150,00 per year for the first two years with a reconciliation at year three".

Judge Mattingly asked Owensboro Health CEO Greg Strahan if the hospital would agree to pay a portion or all of the \$150,000 annual subsidy detailed in the proposed agreement with AMR.

Mr. Strahan refused to commit. He stated, because the city and county governments own one of two regional emergency ambulance Certificates of Need (CON), the hospital could not be a part of negotiations with a prospective ambulance provider. He further noted that the agreement with a new ambulance provider must first be finalized and executed before the hospital could discuss any type of financial commitment relative to a subsidy agreement. He invited both governments to meet with the hospital to discuss the region's health care issues as a whole including this subsidy need for an ambulance provider.

Without success, Judge Mattingly repeated an indefatigable request to obtain a commitment from the hospital to pay the subsidy for which local residents already pay, especially since the hospital receives the vast majority of all ambulance transported patients.

Mr. Strahan did not back down stating, "Once the contract and subsidies are signed, sealed, and delivered, we would be happy to sit down and discuss financial collaborations such as the ambulance service subsidy, as long the dialogue includes other health-related topics."

Judge Mattingly stated, "In order to have the hospital participate, it's a quid pro quo situation where, if you give us what we require, you're wanting something in return from us? Here we are saying what we would like for you to do and you're saying, 'Well, we might consider it, but here's what we want you to do. I really thought that's why we sent the board out. Don't we send you board members to look out for what's best for the hospital and what's best for the citizens of this community?" Although Judge Mattingly agreed to meet with the hospital, he expressed heightened frustrations as he believes this vitally important and singular issue should not be connected or contingent upon others things.

Mr. Strahan jointly displayed feelings of frustration and conveyed disappointment with the fact that, as he stated, "this body is unwilling to talk about one thing if we don't talk about the other thing and I'm happy to do both. I'm also happy to tell you that we are more than happy to help whatever we can do with this ambulance service to make it the best ambulance service it can be. And, by the way, all the patients at that hospital, no matter how they got there, we're going to take care of them, because that is a responsibility of ours".

City Commissioner Jeff Sanford said, "A hospital-based or hospital-public partnership ambulance service just makes the most sense to me".

Mr. Strahan said it would be too costly and that for-profit contractors provide a better service than what most hospitals do.

City Commissioner Larry Conder said the hospital has no ground from which to make a financial plea regarding a \$150,000 subsidy because its finances have improved. The hospital's bond rating recently changed from a double B+ to triple B, which is two increases. He stated, "So, this issue is not financial?"

As noted, there are two county CON. One is owned jointly by local governments and the other by current ambulance provider, YA. Yellow Ambulance could choose to sell it, which could present a threat to any future ambulance contractor in the area, including AMR. However, County Attorney Claud Porter

said the two governments could choose to object, contest, or even try to purchase that CON if such an effort was made.

Judge Mattingly added, "We still need to get together; the court, the hospital and the city to discuss a back-up agreement".

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Following an item singularly discussed by members of the Owensboro City Commission, but which was not listed on the Daviess County Fiscal Court's Joint Special Session Agenda, and without objection, Judge/Executive Mattingly adjourned the meeting. **SO ORDERED THAT COURT STAND ADJOURNED.**

Judge/Executive:  Commissioner: 

Commissioner:  Commissioner: 

I, duly appointed Clerk of the Daviess County Fiscal Court, do hereby certify that the above Minutes for the corresponding Order Book were approved by the members of the Daviess County Fiscal Court at the regular session of said Court on this 2<sup>nd</sup> day of May 2019.

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Jennifer Warren, Daviess County Fiscal Court Clerk