

**Minutes of the April 1, 2021
Daviness County Fiscal Court Meeting
Held at the Daviness County, Kentucky Courthouse**

**Present elected court officials included
Judge/Executive Al Mattingly and County Commissioners
Mike Koger, George Wathen and Charlie Castlen**

Today's meeting was limited to essential personnel, but made publically available via the Daviness Co. Fiscal Court's Facebook live page, where public questions/comments could be posted, or by contacting 270-929-1010 (voice/text).

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

The meeting opened in Prayer and the Pledge of Allegiance to the Flag.

Judge Mattingly Proclaimed April 2021 as Child Abuse and Neglect Prevention Month and April 2, 2021 as Arbor Day.

By a motion of Commissioner Koger, seconded by Commissioner Wathen, the court considered for approval; Minutes of the March 18, 2021 Court Meeting.

The vote was called and with all present members voting in favor, said motion passed.

By a motion of Commissioner Castlen, seconded by Commissioner Wathen, the court considered for approval; All Claims for All Departments.

The vote was called and with all present members voting in favor, said motion passed.

By a motion of Commissioner Koger, seconded by Commissioner Castlen, the court considered for approval; Kentucky Waste Tire Management 2021 Program Agreement.

David Smith: Every two or three years, we partner with the state for this program. This year, changes have been made to the agreement. Previously, KYTC hosted and staffed the event and it was held at the state garage. This year, if the court wishes to approve this agreement, the county shall provide staffing and a host site. This July 15 – 17 event will announce its location once one has been confirmed. The only tires, which shall not be accepted are off-road construction, solid, field, or track tires. During the event, there is no limit to the number of waste tires that may be received.

The vote was called and with all present members voting in favor, said motion passed.

By a motion of Commissioner Koger, seconded by Commissioner Wathen, the court considered for approval; MOA with the Daviess County Public Schools Special Law Enforcement Agency and the City of Owensboro for access to the City-County 911 Operations Talk Group.

This agreement allows the Daviess County Public Schools Special Law Enforcement Agency access and authorization to utilize the City-County 911 Operations Talk Group, which is a radio channel. That agency will pay 1% of the 911 system's operating costs.

The vote was called and with all present members voting in favor, said motion passed.

By a motion of Commissioner Wathen, seconded by Commissioner Castlen, the court considered for approval; Control and Quality Assurance and Construction Management Assistance Services (1 year) Agreement for the 16.6 acre Contained Landfill Expansion with Weaver Consultants Group.

Mr. Smith: This is for the 16.6 acre contained landfill expansion. Last year, the final expansion of the CD and D cell was completed. The prior expansion of 10 acres was completed four or five years ago. Although we have quite a bit of room to go on this, Robbie Hocker, the landfill manager plans on retiring, but wishes to complete this 16.6 acre expansion before he leaves. Mr. Hocker has managed all past cell expansions, and has saved the county approximately \$2 million by keeping work in-house as opposed to have it managed by an outside firm. When completed, this expansion will provide another 15 years of use. This is a one year contract for less than \$50,000. There will be a second contract for year two of this two year project, which is anticipated to cost around \$100,000.

Judge Mattingly: No county tax dollars will be used for this expansion. Payments come out the Enterprise Zone – Solid Waste Fund.

The vote was called and with all present members voting in favor, said motion passed.

By a motion of Commissioner Wathen, seconded by Commissioner Castlen, the court considered for approval; Contract with Axiom Architecture for Horse Fork Creek Park Restroom Design Services.

Assistant County Treasurer Jordan Johnson: This contract is for this firm to produce bid documents for the construction of the Horse Fork Creek Park restrooms. We only require the listed service items one through six at a total cost of \$8,435. Once we have those drawings, the construction project will be bid. Bid results should be known by the end of May.

Mr. Brasher confirmed that the sewer from the new restroom to the connection at RWRA was going to be sufficient.

The vote was called and with all present members voting in favor, said motion passed.

By a motion of Commissioner Castlen, seconded by Commissioner Koger, the court considered for approval; Contract with Gardner Engineering & Consulting PLLC for the Gun Club Equipment Shelter Design.

Mr. Johnson: Gardner shall provide engineering services and designs required to satisfy municipal building codes for the construction of the equipment shelter at the Daviess County Gun Club.

The vote was called and with all present members voting in favor, said motion passed.

By a motion of Commissioner Wathen, seconded by Commissioner Castlen, the court considered for approval; Declare as Surplus a 1991 Scarab Compost Turner from the Landfill.

The vote was called and with all present members voting in favor, said motion passed.

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

06-2021: Two (2) New Tandem Dump Trucks to Sternberg International for \$251,698.

Assistant County Treasurer Jordan Johnson: Daviess County Fiscal Court received six (6) bids for the provision of two (2) new tandem dump trucks for the Daviess County Road Department. Sternberg International is the lowest and best evaluated bid, having no exceptions to the bid specifications. It is our recommendation to award Bid No. 06-2021 to Sternberg International for the two (2) 2022 International HV507 SFA units in the total amount of \$251,698.

07-2021: SURPLUS - 1991 Scarab Compost Turner to Amoret Coal Company, Inc. for \$22,500.

Assistant County Treasurer Jordan Johnson: All surplus items sold by Daviess County Fiscal Court are sold under the terms, "AS IS, WHERE IS" without exception. Daviess County Fiscal Court received two (2) bids for the sale of a surplus 1991 Scarab Compost Turner via a competitive sealed bid process. Amoret Coal Company, Inc. is the highest and best evaluated bid, having no exceptions to the bid specifications and meeting the expected value of the unit. It is our recommendation to award Bid No. 07-2021 to Amoret Coal Company, Inc. in the amount of \$22,500.00. He noted that the new one has arrived allowing us to sell this older one.

The vote was called and with all present members voting in favor, said motion passed.

By a motion of Commissioner Koger, seconded by Commissioner Castlen, the court considered for approval; Transfer Terry Bartlett to Transfer Station Truck Driver eff. April 12, 2021.

The vote was called and with all present members voting in favor, said motion passed.

By a motion of Commissioner Wathen, seconded by Commissioner Koger, the court considered for approval; Hire Brett Baker as a seasonal worker at Yellow Creek Park eff. upon successful completion of pre-employment screening.

The vote was called and with all present members voting in favor, said motion passed.

By a motion of Commissioner Koger, seconded by Commissioner Castlen, the court considered for approval; Reappoint to the Greenwood Cemetery Advisory Committee Gary Adams (S6T) #4.1.2021 & Wesley Acton (S6T) #4.2.2021 - TERMS: 4/19/21 – 4/19/2024.

The vote was called and with all present members voting in favor, said motion passed.

By a motion of Commissioner Wathen, seconded by Commissioner Castlen, the court considered for approval; Reappoint to the Parks Board Charlie Mackey (S1T) #4.4.2021 & Bill Duncan (Ex-Officio) (S.5T) #4.5.2021- TERMS: 4/1/21 – 4/1/2025.

The vote was called and with all present members voting in favor, said motion passed.

No other business was considered.

No Public Comments were received.

Comments by Daviess County Fiscal Court:

Judge Mattingly: The DC Gun Club opened March 1. In just a month, we have done almost \$16,000, which is great news. The Horse Fork Playground should be opened soon, hopefully ready for the Memorial Day Holiday. At the May 6 court meeting, the Rural Secondary Road Program will be presented. The Daviess County Budget Work Session is set for April 27 and if needed, will continue the following day.

Judge Mattingly excused staff members that did not need to stay for the remainder of the meeting. He also announced that no public comments have been received.

Judge Mattingly presented the **First Reading of KOC 921.676 (2021) 03-2021** – An Ordinance Amending a Zoning Classification Set Forth in the County Zoning Ordinance of February 5, 2004.

A petition was filed in opposition to the OMPC Approval of the Zoning Map Amendment for 2116 Daniels Lane on February 11, 2021. This ordinance relates to that appeal.

Comments:

Judge Mattingly: There were some who attended the initial OMPC meeting and then some who filed appeals. Those individuals are listed below, and if their name is in ***bold**, they are also attending tonight's meeting:

***Melissa Evans, OMPC staff**

***Chase Kelly, applicant**

***Agnus Church, movant**

James Coomes, applicant

Clarence and Linda Wilkins, movants

Kyle Best, movant

Jeff Hamilton, movant

***Charlie Kamuf, attorney for the respondents**

***Eric and *Karen Carper, movants**

***John Burlew, assistant county attorney**

Jason Baker, Bryant Engineering

Kent Campbell, movant

James Grise, movant

Ed Ray, movant

Judge Mattingly: KRS 100 is the law which governs zoning issues. It tells the OMPC Board, local government, and circuit court what they can and cannot do. If someone does not agree with the decision this body would make, they may appeal that decision in circuit court. Our ordinance tonight is written in the affirmative, meaning, if approved, there must be at least a minimum of 3 to 1 vote. This body has a few options, we can uphold the decision of the OMPC Board, we can do nothing, in which case it receives automatic approval, or we can throw everything that the planning commission did out the window and we could hold our own evidentiary hearing, and finding of facts, and then make a decision. Tonight, we will take the evidence that was presented to the OMPC Board, which has been received and reviewed by this body, listen to your comments and base our decision on whether we think that, according to KRS 100, the OMPC Board failed in their duty. When you are asked to address this court, I will ask you:

- Where do you think the OMPC Board made a mistake?
- What do you think they did or didn't do?
- What do you think they should have done?
- Do you think there was an overreach on the board's part?

At this meeting, no new evidence may be entered into record or discussed. Only evidence presented at the OMPC Board meeting can be addressed. No vote will be taken on this ordinance tonight, but a vote is scheduled for the April 15 meeting.

OMPC staff Melissa Evans: The OMPC Board met on February 11, 2021, regarding the rezoning application of 9.101 acres at 2116 Daniel's Lane from A1C- Single Family Residential to 3MF - Multi-Family Residential. The applicant is Five Financial, LLC, Chase Kelly and James Coomes. The staff report recommendation was to approve this application subject to the following conditions and findings of facts, as adopted by the planning commission:

Conditions:

#1) Approval of a final development plan.

#2) Access to the subject property shall be in compliance with the access management manual.

#3) The development shall be oriented towards Hayden Road, Daniels Lane, and/or the interior of the development. No units shall be oriented towards the immediately adjoining residential properties to the north or west.

#4) All lighting associated with the development shall be directed towards the development and away from all adjoining residential properties.

#5) Should the development reach 140 units, a traffic impact study shall be required in which case the applicant shall obtain written approval from the Kentucky Transportation Cabinet as well as the City and County engineering offices accepting the traffic impact study and such approval shall be obtained prior to approval of a final development plan.

Findings of Fact

#1) The staff recommends approval because the proposal is in compliance with the community's adopted comprehensive plan

#2) The subject property is located in an urban residential plan area where urban mid-density residential uses are appropriate in limited locations.

#3) The proposed multi-family residential use conforms to the criteria for urban residential development

#4) Sanitary sewer systems are available to the subject property.

#5) Located along Daniels Lane and Hayden Road, the development will be major street oriented.

Judge Mattingly asked if the vote was unanimous.

Ms. Evans: The vote was 7 to 2 following an unfavorable motion to postpone the item until a traffic impact study could be completed.

Commissioner Wathen: When you say "oriented inwards", I guess that is toward the middle of the complex, correct?

Ms. Evans agreed and presented the court a map of the development. Ms Evans: The intent of that condition is for the proposed units to not face adjoining properties. The units could face Daniels Lane and/or Hayden Road, but not to other surrounding properties.

Commissioner Wathen: I did not think it was preferable to have units' back doors facing adjoining properties.

Ms. Evans repeated Condition #3 stating, "The development shall be oriented towards Hayden Road, Daniels Lane, and/or the interior of the development. No units shall be oriented towards the immediately adjoining residential properties to the north or west."

Judge Mattingly: I recall, as you face the property off of Hayden Road looking to the north, there is a single-family residence to the left and another one on the other side of Yellow Creek. This development cannot face either of these properties, but can front Hayden Road and/or Daniel's Lane.

Commissioner Castlen: Will there be screening requirements? I did not see any as there often are with commercial properties.

Ms. Evans: No screening elements or buffers are required between residential uses, such as this. However, screening with a three foot tall continuous element and a tree every 40 feet is required for this development's vehicular use areas.

Commissioner Wathen asked if that is something the court could require?

Ms. Evans: Yes, you can.

Judge Mattingly: Melissa, typically, that request would be required at the final development plan hearing.

Ms. Evans: Actually, no. That is done at the staff level. Any extended conditions above what the zoning ordinance would require need to be placed at this level. The development plan will reflect all adopted conditions.

Judge Mattingly: We know that the access manual says the trigger point is 140 apartments to require a traffic study. I don't think it says you must have one at 140 units...

County Engineer Mark Brasher: That is typically the threshold where we do require a traffic study.

Judge Mattingly: So, it is not at the discretion of the state or city/county engineer.

Mr. Brasher: Historically, that is what we use.

Judge Mattingly: That actually is a condition here.

Commissioner Castlen: When I watched the OMPC meeting, there was much discussion about postponing the vote, specifically speaking about wanting to require a traffic study. If such study were required, would or wouldn't that preclude this development from happening?

Ms. Evans: A traffic study would tell us if the roadways were substantial enough and the improvements were there to support this development. If they weren't there, it would give improvement recommendations for road upgrades that would support this type of development.

Judge Mattingly: It is kind of like if you think about when the hospital was out there. When they developed that site, a good portion of Daniel's Lane was upgraded and the hospital paid to upgrade it.

Mr. Brasher: Actually, 603 to the bridge was upgraded by the highway department as part of their project.

Commissioner Castlen: Will entry and exit points be on both Hayden Road and Daniel's Lane?

Ms. Evans: I believe they intend to have one entrance on each road. They have to meet the spacing standards for each road, which will push them to the farthest corners of each road.

Representing the applicant, Attorney Charlie Kamuf stated, "The main issue in this case is a traffic impact study of the threshold that was required for multi-family is 140 units before a traffic impact study would be required. The development that we have on Daniel's Lane, the question arises, is it below or above 140 (units). Our unit there is 128. This is a threshold. This is critical. This threshold was set by your local people the city, the county, and the state agencies. So, it's our position here that you don't, why would you discredit and change anything of the threshold and kind of put a slap in the face with the county or the city or one of the engineers? Now, this was specifically brought out by two of the (OMPC) members... The first one was Manual Ball. Now, Manual Ball, the critical point of Manual is, we got the property rezoned for him up on Daniels Lane about six or seven years ago. I am sure there are way over 100 houses there. So he's familiar with that area and here's what he said, he pointed out "It would be a bad precedent

to require a traffic impact study where the city, county, and state do not require in the threshold". Michael Edge, and these are long time (OMPC) members. These are just not new members of the board. Michael Edge sounded the same issue and he said, "What good would it do to define what goes beyond what the state, the county, and the city regulations abide by?" I put it this way, if you guys are going to build a parking lot across the street and all it takes is 20 loads of asphalt, why would you put 40 loads of asphalt on it? The same analogy, I think takes place if you're going to build a lake, you build a lake (where) one dam is required, you wouldn't put two dams. I mean this just makes sense, and here is what Brian Howard said, "As a staff, we are going to rely on the information we get from the county engineer and the state transportation cabinet engineer as far as whether we require a traffic impact study." So, I think in other words, it's been established. What takes place is this. We don't... We're not afraid of the traffic impact study because from our experience, and from Chase's experience, it won't change anything, but what we are afraid of is this. We are talking about for the county a \$15 million project you continue that for four or five weeks, excuse me, for three or four or five months, it requires us to pay at least \$15,000 for a traffic impact study. And I've had many of them. And the problem that you have with that is to get most of those guys that do that are from Tennessee or out of state. Wouldn't you rely more on your local people, the county engineer, the city engineer to tell you what to do about a threshold and whether things have safety? That would be my position on that, but in other words, we might prolong a \$15 million project and I don't think that we have ever done this for anybody - required any local person to do it. So, why would you require somebody from out of state to do something that you don't require local people to do? And you know the vote was 7 to 2. And those guys have been on there for a long time that made those motions. The question I have is, why there's... and the evidence that at the hearing centered around that traffic impact study, but nobody ever questioned it. Nobody ever said it was wrong. That really was basically the issue and one of the other developers just kind of mentioned it and it flew off a little bit. So, we are here to answer any question. Chase is here. He's a developer that we have there. We are fortunate to have somebody to come in Daviess County and put up \$15 million. All the action is taking place in that area. The report from the staff was very complex. It laid it all out why this was a good area to be developed. And in other words, think of this... You are talking about putting the planning staff in a difficult position. We have a threshold the planning staff abides by. Now we send it back over or whatever you do and say we are not going to abide by what the county engineer says. That's their policy. That's what they do. So, I think it would be a bad decision to change anything that we have based on the evidence... now, what was the expert testimony? In other words, the testimony was from Brian Howard..., from Jason Baker. He was supposed to be here. He had to go someplace. And also Chase. Those were the only expert witnesses that testified. The objectors had no testimony whatsoever from any expert witnesses that the traffic study would be necessary. We are here to answer any questions. You have any questions of me? Chase is probably the man you'd want to talk to, but I'm here to answer anything that you have.

Chase Kelly: I don't think there's really anything to add other than just to reiterate the fact that we are not concerned about the results of a traffic study. From my past experience, and from other developments, an apartment complex operates similar to a neighborhood. It's not going to be a massive influx through, you know. At one period of time, it's going to... the traffic is going to spread out throughout the day. So, we don't see much impact there. And then really what we are trying to avoid is just wasting time and money, you know. It's going to take two to three months to get the traffic study completed and cost \$15,000 and all we are going to get in return is the results that we already know that the project fits the area and no further action is needed."

Judge Mattingly: If this were a single family development it would actually have a lower trigger point. It would be fewer houses correct?

Mr. Brasher: Yes, I believe for single family residential the threshold is 90.

Judge Mattingly: So, there will be fewer trips generated by the apartment complex than there would be in a 90 single-family residential neighborhood.

Judge Mattingly: Mark, when they do a traffic impact study do they look at flooding, floodways, and all those kinds of things? A very small project that's done in the middle of the Ohio River floodplain has very little or negligible effect, but if you looked at the cumulative effect... When they do a traffic impact study, do they look at the accumulative effect of what's been going on and what might be projected? Or are they just looking at that projects in a compartment?

Mr. Brasher: They would take into account any and all development that they are aware of in the area. They would use that data along with the data based on this development.

Judge Mattingly: The last traffic impact study that I'm aware of was done... was that the Jagoe's development on Daniel's Lane?

Mr. Brasher: That is the Brookfield subdivision and was done in 2015. There have also been several along Fairview Drive and around the Gateway Commons area.

Judge Mattingly: Traffic studies around Gateway Commons were done due to it being a commercial development. Now, if a Starbucks was going to go in this place, I'm sure they would need to have a traffic impact study.

Commissioner Wathen asked if the proposed middle school had to do a traffic study?

Mr. Brasher: Yes, 2 years ago. Many of these studies have occurred over the past 12-24 months in this area.

Angus Church stated, "We are very concerned about the traffic. I know, not just myself, but some other people that spoke at the planning commission meeting. I've talked to several of my neighbors who are concerned, as well. I am aware you know that the 128 units doesn't meet the threshold. I understand that, but where it's at, it's on the corner of Daniels Lane and Hayden Road. I live directly across Hayden Road from it. So, I'm right across from where it's going to be. So, I drive this pretty much every day to go to work, etc. The other part of Hayden Road we were referencing that traffic studies have been done before where Gateway Commons is and all that. That, of course, is four lanes. The road was expanded where the middle school is going, it's four lanes. This is a much narrower stretch of Hayden Road. It's a two lane road at this part. So, I feel like the same traffic study that's applicable to the other area is not applicable to this particular corner, and it's the middle school like if you come out of where I am, I am in Fox Chase subdivision. If you come out and turn left, you're right there. Like I said, on that corner, it's really narrow. It gets a little bit wider as you go in front of Meadowlands and then of course you hit the four lane part or you can turn right and head toward the bypass. So, like I said, it's all wider there. So, like I said, it can support more traffic. It is extremely narrow. I don't know if you are familiar with that section of the road. That's our main concern. Because of Gateway Commons, and the middle school that's coming, and Meadowlands, as people come out of those apartments they are going to be driving on that narrow stretch. That's what our concern is. There's already a lot of traffic coming out in the mornings. There's a tremendous amount of traffic in the afternoons when school is getting out, and you

know with it being a narrow two-lane road, you are going to be stuck. I was coming home the other day right as Meadowlands was getting out and the car lane was backed up into the road, the car line I mean, backed up into the road where people were picking up kids and fortunately I was heading the other way because, like I said, I was going home, but somebody trying to get somewhere would have been stuck as it was. The apartments are only going to make it worse with that traffic.

Judge Mattingly: Mark, would you contact the school system and tell them that apparently they're causing a traffic impact? I recently had a conversation with the Daviess County Public Schools regarding another similar situation and they reworked the traffic flow. You shouldn't have to put up with that.

Ms. Church stated, "As far as the precedent, like I know, Mr. Kamuf was arguing about the 140 units, has been established, but it's my understanding that that's been established as where you're "required" to do a traffic study. It's my understanding, and I am definitely not an expert here, this is the first rezoning I've been through, but it's my understanding based on what some of the planning commissioners were saying that it can be optional at a lower level, and that they can require it if they see a need. So, the 140, like I said, is a threshold where it's required. It doesn't mean you cannot require it at a lower level if you see the need. And I feel like there is a need. Those are my thoughts."

Judge Mattingly: And you live there. I don't, but I am out and about. As a matter of fact, I traveled it again today for a meeting at the hospital. Did look up the crash history?

Ms. Church stated, "No, I did not.

Judge Mattingly: I would think that if there was a history of a lot of crashes there that we would be informed by the Sheriff's Department. I guarantee that Mr. Brasher would hear about it. I'm not aware of there being a lot of crashes there. Now, that doesn't mean that the absence of a crash history means that it's easy to travel. Just go out on Highway 54. I tried to get from the east side of Highway 54 to the west side and it took me 30 minutes, due to the time of day. I hear what you say about the precedent. The fact that 140 is the threshold saying that you have to have it, but that doesn't mean you can't have it below 140. I guess, to answer that, and this is just my way of thinking, we must have a rule somewhere, so that when a developer is going to develop a subdivision, he has got to know so he can plan it. Once those rules are in place or those thresholds are in place, they can always be changed and a group of citizens could come before the Transportation Advisory Committee, but the time to do that would be before you needed to change, not during. I always have this thing, and I have been in private business and as long as I'm going by the rules, don't change them in the middle. Change them at the beginning or after I am done, change them then. I need to know exactly what the cost is.

Judge Mattingly: Wasn't there a question about the schooling?

Ms. Evans: That was Jeff Hamilton.

Judge Mattingly: Where the children, living in those units, were going to go to school. You assume they would go there or they'll go to middle school but wherever these people are coming from, that is a question for Daviess County Public Schools. If that school gets overcrowded, they are going to re-work the district. The middle school, in my opinion, is a non-issue because people who were traveling that direction to get over on Highway 405 will now travel that direction to get up in the mess.

Eric and Karen Carper live on Daniel's Lane across from proposed project. Mr. Carper stated, "Our concern is the flood zone. We weren't in the flood zone in 1997, but we are now. And I would say 70% of this land in the flood zone. So, we're concerned with all the parking lots needed for 128 units in nine acres. That's our concern.

Judge Mattingly: What I hear you say is that the staff didn't take into account the floodway and the floodplain. You don't think they erred in looking at that...

Mr. Carper stated, "When we bought the house in 1997, we were not in a flood zone we are now. I have a substandard crawl space. I can't do anything about it. I can't build to a plan, when the plan wasn't there.

Judge Mattingly: I don't want to offend you, but in 1997, your location was in a flood zone. They have just redone the floodplain maps and they moved some properties in and others out. Within the next 18+ months, an updated map will be developed and they may again move some in and some out.

Ms. Carper said they also agree with the earlier comments of Ms. Church.

Judge Mattingly: So, you believe they failed to consider the flooding and regardless of the threshold, they should have required a traffic study. Asking Mr. Brasher, when you review that development plan, what do you look at?

Mr. Brasher: Primarily, it is drainage. We have floodplain retention requirements such as when impervious areas, like parking lots, are added, there must be a one-to-one mitigation. This means for every dump truck load of dirt added in the floodplain, to mitigate this, they must take out the same amount from the floodplain. Obviously, they will need permits from the Division of Water and potentially the Corps of Engineers. They too would review their plans.

Judge Mattingly: Mark, is construction permitted in the floodway?

Mr. Brasher: That is a question for the Corps of Engineers, but I understand that it is not allowed.

Judge Mattingly: Notwithstanding whatever their regulations are, our regulations do not allow building in the floodway. About a quarter of this property is located in the floodway.

Regarding the floodway and flood zone, Mr. Kelly stated, "We have obviously had the engineer look at that, and we are not building in the floodway. We will have to get permitting to basically access the floodway to build up the flood zone; get an elevation certificate, and that will allow us to be out of any flood issues."

Judge Mattingly: The neighbors are concerned about their homes to make sure that water does not harm their homes as a result of this project.

Mr. Kelly stated, "The way the development is designed is that it would be built on approximately seven acres and then the floodway would remain, but it would be all green grass essentially and functional from a playground standpoint or something like that. He added, "We will keep safety at the highest level."

Judge Mattingly asked about a start date, if approved.

Mr. Kelly replied, "We would start it immediately."

Commissioner Wathen: They cannot build in a floodway, correct?

Ms. Evans: Many governmental agencies would need to provide permits, and it would depend on what construction is being proposed. In cases where it is allowed, the floodway be raised one-foot above that floodway. A building project such as this, would likely not be allowed.

Judge Mattingly: The concern would be with impervious surfaces, which could cause the creek to rise and overflow onto other properties, but in this case there are retention basins planned to prevent such water displacement.

Mr. Carper asked about what he called a "commercial business", referring to the apartment complex, going inside of a residentially zoned area.

Judge Mattingly: "Residential" includes apartments, duplexes, and single family homes.

Mr. Kelly asked, "Aren't we getting off on a tangent?"

Judge Mattingly replied, "No, until you stepped up, we were about to shut this thing down."

Mr. Kelly stated, "I don't believe any of that was discussed at the planning commission meeting."


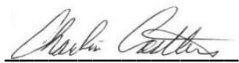
Judge Mattingly: The question Mr. Carper asked about multi-family or residential is a valid question.

Mr. Kelly added, "Well, I can say too, that you know, if we are going to come here and spend \$15 million, it is going to be a quality build. We want it to do well and I think there's a misconception sometimes with apartments. You know, 20 to 30 years ago, they may have been viewed a little bit differently, but in today's world, they're almost as nice as you know, country clubs. I just wanted to reiterate that."

Judge: This meeting has allow ample opportunity for respective parties to make heard their concerns. The second and final reading of this ordinance will be considered at the April 15, 2021 court meeting.

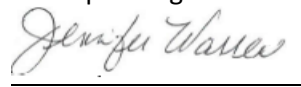
Without objection, Judge/Executive Mattingly adjourned the meeting.

SO ORDERED THAT COURT STAND ADJOURNED.

Judge-Executive Al Mattingly  Commissioner Charlie Castlen 

Commissioner Mike Koger  Commissioner George Wathen 

I, duly appointed Daviess County Fiscal Court Clerk Jennifer Warren, hereby certify that the above corresponding Order Book minutes were approved by the court on April 15, 2021.



Jennifer Warren, Daviess County Fiscal Court Clerk