

**Minutes of the September 15, 2022, Daviess County Fiscal Court Meeting
Held at the Daviess County, Kentucky Courthouse
Present elected court officials: Judge/Executive Al Mattingly and County Commissioners
George Wathen, Charlie Castlen, and Mike Koger.**

DOCENTS 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 Sept. 17-23, 2022 as Constitution Week and Oct. 4, 2022 as TEN-4 Awareness Day.

County Treasurer Jim Hendrix presented the Treasurer’s Report for August 2022.

By a motion of Commissioner Koger, seconded by Commissioner Castlen, the court considered for approval; Minutes of the September 1, 2022 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 Wathen, seconded by Commissioner Castlen, the court considered for approval; DC Sheriff’s 2021 Tax Settlements and Quietus.

Treasurer Hendrix: This appears odd when looking at it, but that is because Sheriff Cain was required to do a closure when he left office, so there has already been a quietus for that period of time, which split the tax year. This quietus only reflects a partial tax collection year. I compared it to our records. It appears to be in order. I find nothing out of line. I’ve been made aware of no issues from any of the taxing districts. I recommend approval.

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; DC Detention Center’s Policies and Procedures Manual Annual Update.

Jailer Maglinger: This annual update has a few, minor changes.

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; **Resolution 18-2022** and Kentucky Public Employees’ Deferred Compensation Plans Joinder Agreement.

Treasurer Hendrix: The Kentucky Deferred Compensation Authority is the administrator for the employee 401k and the 457 plans. The IRS rules require there to be a current agreement between us on file. This allows for the exchange and storage of information. I have reviewed it. It’s in order with the last one having a few minor changes. I recommend approval.

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; MOA and Deed with the City of Owensboro regarding a Transfer of a portion of property located in Potter’s Field Cemetery.

Judge Mattingly: This is hopefully the end of a long process. The city has transferred to us a six by six plot in their Potter’s Field. It’s our intent to relocate the statue that set atop the pedestal here on 3rd Street for public view. I want to say thank you to the city for transferring it. County Attorney Porter has reviewed these documents and the Road Department will transport the statue.

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; Western Kentucky Minerals, Inc. Surety Bond Release for Free Silver Road.

County Engineer Mark Brasher: This is the final step in a 2012 Western Kentucky Minerals (coal mining) Agreement. The Engineering Department has reviewed the reconstruction of Free Silver Road and I recommend approval.

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 as recommended:

Assistant County Treasurer Jordan Johnson:

Bid No. 2223-21: Pavement Sealing & Striping (Operations Center)

This is the re-bid of Bid No. 2223-14 that was rejected at the last court meeting. This bid includes only the seal coating and crack sealing of all asphalt driveways and parking lots, and striping of all parking lots at the Daviess County Operations Center and Animal Shelter. As discussed in the prior meeting, the Road Department will be performing the base repairs that were included in the prior bid. We received two bids, ranging from \$17,420.21 to \$23,477, and recommend award to the lowest and best evaluated bid, without exceptions, submitted by Superior Asphalt for \$17,420.21.

Judge Mattingly: The original bid came in around \$81,000. With our crews doing some work before hand, we will save over \$64,000.

RFQ 2223-22: One (1) New 72" Zero-Turn Mower (Parks)

This quote is for the provision of one (1) new 72" zero-turn mower for the Daviess County Parks & Recreation Department. Last week, a 2008 Scag Wildcat mower from Panther Creek went down. Repair estimate was \$3,000 with a replacement motor listed with a 6-9 estimated delivery. Public Works management recommended purchasing an additional unit, ahead of schedule, in light of the other's failure, in order to finish the mowing season. We are utilizing the same quotes used to purchase the unit from the August 16, 2022 meeting, since all vendors confirmed pricing and availability were the same. The quotes range from \$13,239 to \$14,066, and we recommend pursuing the lowest and best evaluated quote, without exceptions, submitted by Hagan's Outdoor Equipment for the Scag Cheetah SCII72V37BVEFI unit for \$13,239. Although there are 2 equal low quotes, the Parks Department recommends Hagan's due to satisfactory historical parts availability and service.

Judge Mattingly: Originally, we were considering purchasing three mowers, but decided to buy one and try to make do with a new one and two older mowers. Since then, those older mowers have broken down. Attempts are underway in efforts to repaired them. Today's approval will provide them with a second new mower.

Commissioner Wathen: If the mowers cannot be repaired, how long can we use this quoted price?

Treasurer Hendrix: This is a second purchase under this quote. The first purchase was four weeks ago, and they are honoring the quote again today. The two units being repaired need parts that are no longer available as the manufacturer went bankrupt. We're trying to get them repaired, but if they're not repaired, it is likely that the next fiscal court will have to buy a third mower.

County Attorney Porter: A quote may be used for as long as a vendor will honor it.

Judge Mattingly: The issue is twofold. One, we will stop mowing soon and won't need another mower. Two, by the next mowing season, we will be into another budget year and prices may have increased. They also just happened to have this second one in stock and that's why they honored their original quote.

RFQ 2223-23: Six (6) Sets of Turnout Gear (Fire Rescue)

This quote is for the provision of six (6) sets of turnout gear for the Daviess County Fire Department. We received three quotes, ranging from \$18,971.04 to \$26,538, and recommend pursuing the lowest and best

evaluated quote, without exceptions, submitted by Atlantic Emergency Solutions for \$18,971.04. These budgeted replacements meet national standards.

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 Travis Ricker as Landfill Manager Eff. 9/29/22.

David Smith: The current Landfill Manager Robbie Hocker plans to retire this June and due to the complexity of this position's responsibilities and the importance of the Landfill operations, it was desired to have this position filled before Mr. Hocker retired. Between now and June 2023, Mr. Hocker and Mr. Ricker will work together to successfully complete the current landfill construction project. Mr. Ricker was selected following a nationwide search.

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; Promote Jared Mattingly to Transfer Station Floor Supervisor Eff. 9/19/2022.

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

No other business was brought before the Daviess County Fiscal Court.

No public comments were received.

Comments by Daviess County Fiscal Court:

Commissioner Wathen: On October 1st from 8:00 a.m. to noon, at the Daviess County Operations Center, the county is hosting a free Tox-Away day. A list of acceptable, disposal items is listed on the county website.

Judge Mattingly: A Pioneer Christmas will be held at Yellow Creek Park's Jim Lambert Pioneer Village on December 3rd from 8:00 a.m. to 6:30 p.m. There will be live music, food, Pioneer Christmas activities, and Santa and Mrs. Claus will be there. Everyone is invited to this free event.

The court took a short recess and then returned.

Judge Mattingly asked Mr. Johnson to provide a brief update on the current broadband project. Mr. Johnson: Conexon has provided us with a narrative update in light of recent events including what they have accomplished to date. You'll recall that Conexon and Kenergy were involved in a PSC petition regarding the use of Kenergy's infrastructure for the provision of broadband throughout Kenergy's service territory. They expected this ruling to be finalized much earlier this year. However, the PSC issued its ruling on the petition on July 1, 2022, finding that Kenergy is permitted, by statute, to build a broadband network. This event delayed starting the project by two to three months. During that time, and to-date, Conexon and Kenergy conducted and awarded RFPs for the make ready engineering, make ready construction, mainline fiber construction, and materials for the project. The fiber network has been fully designed for Daviess County and Conexon has selected a provider for dedicated internet access for the first phase agreements for which have been signed and finalized. Conexon has stated that since the project has been delayed multiple times by regulatory uncertainty, now that they have the green light proceed, they will double the pace of construction. They plan to make up for lost time by bringing in additional crews for the installation. Their aim is still to connect some customers by the end of this year, but if that target is missed, they anticipate it will only be missed by a matter of weeks not months. The project completion date is October 2023. Nothing indicates that that goal will not be met.

Judge Mattingly: Within the next 18 to 24 months, anyone in Daviess County that wants broadband fiber will be able to have it, and Kenergy will operate that system.

As tonight's courtroom attendance was high, before the following first readings, Judge Mattingly asked that all cellphones be silenced and all be respectful of their neighbors. He stated, "This court will not accept outburst."

Enter into record includes the August 11, 2022, Owensboro Metropolitan Planning Commission (OMPC) meeting video, transcript, and report. Judge Mattingly noted that all court members have viewed the video of that meeting and visited the neighborhood. He also noted that OMPC Executive Director Brian Howard, applicant Gary Boswell, and Mr. Boswell's attorney, Charlie Kamuf were in attendance. Questions may be asked of these individuals and of the appellants in attendance tonight who also attended and spoke at the August 11, 2022, OMPC meeting to help clarify only items relative to the said meeting's discussions and materials within. The court's decision shall be determined based solely on facts presented at that August 11, 2022, OMPC meeting. Once the court is satisfied that they understand those facts, and those facts only, a decision may then be determined. At the October 6, 2022, 5:00 p.m. meeting, the court will hear second readings of the ordinances and at that meeting, the court will allow each side five minutes to make their argument stating why they believe OMPC interpreted the facts correctly or incorrectly. Again, no new facts shall be permissible. It was recommended that the appellants choose a spokesperson as their representative for their five minute argument. Mr. Kamuf will represent Mr. Boswell. A vote on the second readings is anticipated at the October 6, 2022 meeting.

Judge Mattingly asked the Co. Attorney if he covered everything and Attorney Porter said he did.

Judge Mattingly: To those who filed an appeal and are here tonight wondering why you will not be allowed to talk, it's because you did not attend and speak at the OMPC meeting. Again, this court can only consider

the record as was detailed at the August 11, 2022, OMPC meeting. We are controlled by KRS 100, which prevents us from considering any new information when making our decision on a rezoning appeal.

All three ordinances are the same, but with different parcels. County Attorney Claud Porter presented all three together: **First Reading of KOC 921.678 (2022) 09-2022** Regarding 5008-5120 Cambridge Drive for a 3.336 acre tract; **First Reading of KOC 921.679 (2022) 10-2022** Regarding 5007-5123 Cambridge Drive and 5030-5114 Sturbridge Place for a 5.068 acre tract; **First Reading of KOC 921.680 (2022) 11-2022** Regarding 1859, 1863, 1903 and 1907 Sturbridge Place for a 1.125 acre tract. Each An Ordinance Amending a Zoning Classification Set Forth in the County Zoning Ordinance of February 5, 2004 – Applicant Gary and Margaret Boswell for a zoning classification amendment from a Single Family Residential (R-1A) to Multi-Family Residential (R-3MF); and *Whereas*, after hearing the evidence presented, the OMPC made findings of facts and conclusions and recommended approval of the zoning classification amendments to R-3MF Multi-Family Residential. *Whereas*, within the time allowed by law either 35 or 36 aggrieved parties, filed a request with the planning office for the Fiscal Court to hear the rezoning. The official transcripts of those proceedings at that meeting, including the evidence, the findings of fact, the conclusions, and recommendations of the OMPC have been filed and considered by Fiscal Court for each of those three applications. Be it ordained by the Fiscal Court of the County of Daviess, Commonwealth of Kentucky, that the proceedings before the August 11, 2022 meeting of the OMPC relating to a zoning change of the property described and attached to each of the ordinances including the findings of fact and the recommendations of the planning commission are confirmed and approved in the zoning classification of the property which is described and attached and incorporated is amended and changed so the property would be zoned an R-3MF Multi-Family Residential subject to the following findings of fact and condition:

- 1- The property is located in an urban residential planning area where urban mid-density uses are appropriate in limited locations;
- 2- The proposal is not a logical expansion of existing R-3MF zoning but the proposed use is residential in nature and will integrate well in the area;
- 3- Since the property has not been developed and since it was platted in the mid 1960's, the proposed in-fill development would offer a variety of housing types encouraged by the comprehensive plan;
- 4- The property has sanitary service available; and
- 5- The proposed use as duplexes conforms to the criteria of an urban residential development

Those ordinances would become effective upon passage and publication.

Judge Mattingly introduced Mr. Howard who gave a brief history of OMPC in Owensboro, Daviess County, and Whitesville. He asked Mr. Howard what his office looks at when reviewing a rezoning application and he said they look at the comprehensive plan and the land use map.

Referring to the planning staff's A-E recommendations, Commissioner Wathen noted, recommendations A and C are in direct conflict, but both are given as reasons to turn the rezoning down.

Mr. Howard: Within the comprehensive plan there are a variety of zonings that could be appropriate in any plan area. There are criteria and in this instance there are four of them. 1- Building and live patterns should conform to the criteria for urban residential development. It meets that criteria. 2- Existing, expanded, or new sanitary sewer is available to the property. It meets that criteria. 3- Logical expansion where existing areas of urban, mid-density, residential uses may be expanded onto contiguous land. This is where we, as staff, when we were reviewing this application, had an issue because there's not any R-3MF zoning in the vicinity.

Commissioner Wathen: You want it adjacent to each other.

Mr. Howard: The idea of it being contiguous - a logical expansion would mean that zoning is either adjacent to or in very close proximity. Again, we didn't, as staff, find that there was any R-3MF zoning in the immediate vicinity. 4- If it's a new location of R-3MF zoning, that it'd be located on a major street. We could not find or make a finding that this application is major street oriented because it's within a residential neighborhood with local roads. There are no major collectors or arterial roadways. It met the criteria for 2 of the 4, but not the other 2.

Judge Mattingly: Actually, it did not meet the criteria for 2 of the 5 because the first one is that it's not in compliance.

Commissioner Wathen: If rezoned to R-3MF, can four-plexes and eight-plexes be built on these lots?

Mr. Howard: Yes, there could. Once the property is rezoned R-3MF it would allow for duplexes. In theory, you could have some type of an apartment building.

Commissioner Wathen: Am I correct that 36 people have filed appeals?

County Attorney Porter: Two of the rezonings, 35 people filed appeals and the other one, 36 people filed appeals.

Commissioner Koger: Let's say 30 duplexes go in as opposed to single family residences. Will the current sewer be large enough to accommodate for that capacity or would RWRA need to improve it?

Judge: Commissioner, I think you're asking him a question outside of his expertise. I'm going to answer that for you. That would be a question that would have to go to RWRA or the engineer to confirm. What I think you were asking was does the planning staff have a way of looking at that infrastructure to see if it has the capacity for more housing?

Mr. Howard: We don't govern or oversee water, sewer, or any of those. We would rely on those entities to ensure that satisfactory infrastructure is in place to support those needs. I don't want to speak for other agencies.

Commissioner Koger: I know you'd have to look at the agency, but I thought the comprehensive plan could tell you if this was a possibility or not.

Mr. Howard: In theory, the comprehensive plan has sewer information in there, but it doesn't go down to the level of individual parcels or even neighborhoods as far as sewer capacity.

Judge Mattingly: When you have a rezoning or a plat where you're going to do building construction, don't you have the respective city or county engineer sign off on that plat? Did that happen here?

Mr. Howard: It did not. If you have a site plan or development plan, those are reviewed by the city or county engineer and the project engineer would coordinate with utilities to make sure that they have had an opportunity to review and sign off, if needed. In this instance, although the road wasn't completed,

these are existing lots within a neighborhood. We, as staff, to this point, have not had a mechanism to require any type of additional plan submission.

Commissioner Wathen: That's done when you have a site plan. When the site plan is approved. Is that what you're saying?

Mr. Howard: When the site plan is reviewed, the engineer would certainly look at the plan and then, at that point, the various utilities could potentially look at it as well.

Judge Mattingly: What option is there for the side that may disagree with the decision this court will ultimately have to make?

Mr. Howard: They can appeal the court's decision in Circuit Court.

Mr. Howard: Adding to the previous discussion, we operate under this alternative zoning process for and within Owensboro-Daviess County. We've been doing that since 2007. It allows for an appeal of a zoning change. Prior to that, every single rezoning came to the respective legislative body. This alternative process still follows the same mechanisms. An application is submitted. State law still requires that we put signs on the property. We notify the adjoining property owners. We publish a public hearing notice in the newspaper. We still follow all that stuff and none of that changes. It just says that once the rezoning is heard by the planning commission, if no one appeals it, it becomes final 21 days after. Before, the typical zoning process would take 88-89 days to get through. Now, most zoning changes get through in about 42 days. Rezoning cases that lack opposition allows people and developers to begin their projects quicker, but the process still allows for people to file appeals, just as what's happening here. The legislative body still has the final say on the zoning change.

Judge Mattingly: That's one of the good things about having zoning in your community. Without zoning, you wouldn't have a venue or a forum to be heard. Mr. Howard, talk about those notices.

Mr. Howard: Administratively, KRS 100 requires that certain actions and notices be conducted within a specific time period including mailing certified return receipt requested letters to all adjoining property owners of the rezoning.

Judge Mattingly: Did you get all those notes back?

Mr. Howard: We have the vast majority of them back. Almost with any rezoning, if you have any quantity of notices, they'll always be one or two that bounce back. We notified all of the adjoining property owners and that includes those across the public right-of-way, across a railroad right-of-way, an alley, whatever that are adjoining property owners be notified so we do that. KRS 100 also requires that a public hearing notice be advertised in the local newspaper and signs be posted on the property.

Judge Mattingly: What happens if those posted notices get blown down or if some takes them down?

Mr. Howard: If we are notified that a sign is down, we will go out and re-post the sign. We do our best, with limited staff, to ensure that the public is sufficiently notified.

Judge Mattingly: If it doesn't comply with the comprehensive plan, to me, that seems like it would be a fatal error and there are lots of things that don't comply with the comprehensive plan. Is there an alternative? Is it flexible enough to do a workaround?

Mr. Howard: Yes, there are three ways OMPC can make findings a fact for a rezoning. First, that it is in compliance with a comprehensive plan. Second, that there have been major changes of a social or economic nature within the vicinity that were not anticipated within the comprehensive plan. Third, that findings are made that the proposed zoning is more appropriate than the existing zoning. An example could be, within the city, you'll find the railroad track that runs through town and a lot of the properties adjacent to it, back in the day, were zoned industrial. I think they thought, at the time, that if that area were to re-develop, it would be industrial in nature, due to the proximity to the railroad tracks. However, there have been houses on the lots since 1902 or so, and if they want to do something with their industrial zoned property, they can request a zoning change. Even though it's zoned industrial, and it may still be in an industrial planned area, the proposed zoning is more appropriate than the existing zoning, and the fact that there's been a residence on that property for over 100 years.

Judge Mattingly: That might explain why you have a grocery store on Graham Lane, which is non-conforming, but it's always been there, before zoning ever existed. You're not going to toss them out because they're non-conforming. If the wind blew it down and it changed hands, that person may not be able to build another grocery store there.

Mr. Howard: They could if they rebuilt within the same footprint and same type use within 18 months.

Judge Mattingly: In the hearing, there were some statements made about a multi-family existing in that neighborhood. It was pointed out, I think Mr. Smeathers, there's a garage that was behind his house. I'm not sure what they were implying there.

Charlie Kamuf: I use the term vicinity because that's the word that the planning staff used.

Judge Mattingly: Those were three examples given as existing within that neighborhood and then you talked about the vicinity. Mr. Boswell implied that there was existing multi-family behind Mr. Smeathers's house. I have evidence that that was submitted.

Gary Boswell: You are correct. There was indications by at least one neighbor that there was multi-family use going on in that particular residence, but that was incorrect.

Judge Mattingly: You didn't observe it yourself, but you talked about it. You gave us evidence.

Mr. Boswell: I will say that there were indications by the property owner, based on his statements, that implied to me that there was someone living in that residence, which turned out to be incorrect. I think the statements that primarily were used regarding duplexes were the ones that were in the vicinity. I would just like to clarify one thing. I'm willing to go on record and state that there will never be anything built on these properties greater than duplexes.

Judge Mattingly: Mr. Kamuf, let's go now to the ones that you talked about that are in the vicinity.

Mr. Kamuf: On East Graham Lane, there are 5 duplexes. It's in the vicinity and I use that word because the planning staff uses it to describe whether there's any multi-family in the area. There are many non-conforming uses (in the vicinity).

Judge Mattingly: Is vicinity defined in KRS 100? The term is somewhat vague. What is the distance between those duplexes and the subject neighborhood?

Mr. Kamuf: They are at the corner of Graham East and Reid Road.

Judge Mattingly: I think your engineer (Jason Baker of Bryant Engineering), when I and Commissioner Castlen reviewed it, led us to believe, as a matter of fact, anybody that looks at it, that our County Engineer and County Fire Chief had reviewed the plans and they were okay with it. We're talking about multi-family rezoning. Did you take a multi-family rezoning plan and ask the County Engineer about it or the Fire Chief?

Jason Baker: The context that the question was in was relative to design plans, drainage, streets, and utilities. Those conversations were had with County Engineering. There was never any discussion about multi-family.

Judge Mattingly: You did talk to him when the proposal was to build single family homes.

Mr. Baker: Well, just to be clear, I represented my colleague who had the conversation with the County Engineer.

Judge Mattingly: I know what you said, but you didn't say my colleague said this.

Mr. Baker: I did.

Judge Mattingly: I don't recall it. For the record, County Engineer Brasher, did you ever review anything regarding multi-family?

Mr. Brasher: I did not.

Judge Mattingly: And in a conversation with the Fire Chief, he never reviewed anything regarding multi-family. Mr. Howard and I had a conversation prior to this rezoning about the fact that it was going to be grandfathered in because it had been platted and due to that, no requirements would be necessary to bring it up to current subdivision specifications, correct?

Mr. Howard agreed.

Mr. Baker: It was never my intent to misrepresent any of that.

Judge Mattingly: That doesn't matter. What matters is what happened, but we now have it clarified.

Judge Mattingly: However, we've changed to multi-family. Mr. Boswell's original intent was to build single family, correct?

Mr. Boswell: Yes. It just depends. I'd only had that property about a week and the Messenger and Inquirer called me asking me what I was going to do with the property. I told them that the lots were

plotted and recorded in 1961 and there were several things I could do, but, at that particular time, I was considering constructing single family homes.

Judge Mattingly: All conversations with OMPC and our engineering indicated single family residential until, as Mr. Brasher noted, the day following the August 11th OMPC rezoning. And that's fine. I am just trying to get it clear in my mind.

Mr. Boswell: When I purchased that property it was my understanding, because the lots were plotted and rezoned and recorded in 1961, I assumed I would be able to do whatever was allowed in 1961. For example, there are multiple duplexes that were built all over town prior to the comprehensive plan, prior to planning and zoning.

Judge Mattingly: If I went across the street and rehabbed a building that was built in 1900. I would still have to meet and bring it up to current codes. However, I'm okay with their decision, but then this changed to multi-family, so we've changed what this thing has been since 1963. I can't speak for these folks, but what I heard the folks in opposition say is that when we moved in, we didn't have the opportunity to decide as it was only all single family.

Judge Mattingly: I need to ask about the streets and traffic.

Mr. Boswell: One thing I voluntarily did was put in a hydrant and replace a large section of waterline. It wasn't required.

Judge Mattingly: So you're going to go out in the neighborhood and replace it.

Mr. Boswell: No. There's already an existing waterline in the undeveloped road section.

Judge Mattingly: There are no roads or streets in there.

Mr. Boswell: There's a section that's undeveloped. There's already a four inch waterline in place, but we voluntarily agreed to replace that with a six inch line and to add a hydrant.

Judge Mattingly: If we take out a four inch line and replace it with a six inch line, but it is only fed by a four inch line, does that provide sufficient flow for fire protection? Did you check that out with the Fire Chief?

Mr. Baker: We went to the various utilities and presented what's there. What was arrived at was we need to put a hydrant in and tie into the existing sewers and the roads can be built to plans that were from a previous review process.

Judge Mattingly: No curbs, no gutters, narrow streets, no storm water drainage?

Mr. Baker: Again, we solicited that from the parties.

Judge Mattingly: When did you give them that? Was that prior to deciding to go multi-family?

Mr. Baker: It was.

Judge Mattingly: At that time, they thought it was 36 single family homes. Then you (Mr. Boswell) made that change or decided to go to multi-family.

Judge Mattingly: I understand, the development will be similar to that of Mallard Point. In the meeting, what you were doing was showing Mallard Point as an example of the types of very nice looking duplexes that may be constructed here.

Mr. Baker: As I indicated in the record, there's a distinction between the two. Here we are talking about single family lots, where Mallard Point is one big planned development without individual lots. With Mallard Point, their street is effectively a linear private parking lot, not a public street (or public parking).

Judge Mattingly: As an engineer, in your professional opinion, how easy would it be for a fire truck or an ambulance to get up and down those streets?

Mr. Baker: What's being proposed has driveways and garages. By ordinance, the intent is that you would have two spaces, per unit. There shouldn't be a need for street parking, but I don't know how you would guarantee that.

Mr. Boswell: I agree that parking could be a situational problem for any development. One thing that I intend to do, and I think I would be allowed to this, is to not allow any long-term parking on the streets of my development.

Judge Mattingly: I don't think you could do it, but as a condition, we could do that.

Mr. Boswell: And I would be okay with that.

Judge Mattingly recognized tonight's attendees who also attended and spoke at the OMPC meeting, Gail Baldwin of 5125 Sturbridge Pl., Daniel Beard of 5017 Sturbridge Pl., and Brian Newton of 922 Cedar St.

Judge Mattingly: Ms. Baldwin, are you aware of any multi-family currently in the neighborhood?

Ms. Baldwin: No.

Judge Mattingly: How far down the road would you say those four or five apartments and duplexes are from your neighborhood?

After some discussion, the distance was estimated to be .5 to .6 miles away.

Judge Mattingly: I think you talked about the residential character of the neighborhood and that it was going to be changed. Aren't today's neighborhoods supposed to be mixed uses?

Ms. Baldwin: I did not buy into a mixed use neighborhood. We bought an acre and put a modular home there. I have one question. Did anyone do a traffic study?

Judge Mattingly: No. A traffic study is not required for anything under 140 units. At the next meeting, on Oct. 6, at 5:00 p.m., you can ask questions. Each side will be allowed 5 minutes. We understand these issues can be emotional. I would not like it, but we cannot make decisions based on emotions. We must use the facts given to use from the OMPC meeting.

Judge Mattingly: Mr. Beard, are you aware of any multi-family use up the road?

Mr. Beard: Yes, if you mean on Graham Lane East.

Judge Mattingly: At the meeting, I think you spoke about supporting infrastructure.

Mr. Beard: If you are asking if two cars are parked on the road, can a fire truck can get by? It can.

Judge Mattingly: Mr. Newton, at the meeting, you talked about the woods and traffic concerns.

Mr. Newton, representing his mother Ruby Newton of 1855 Sturbridge Place: Supposedly, there were hobos, homeless people, and drug dealers in the woods. That is a gross misrepresentation of the area because there has never been a homeless encampment there. A lot of kids have played in those woods and built clubhouses there. Regarding streets, there are only two ways into the neighborhood. The map shown at the OMPC meeting only pictured one half of the neighborhood.

Judge Mattingly: He didn't have to show it because the other half is on the other end.

Mr. Newton: He didn't have to notify anybody else?

Judge Mattingly: No, he did not, but wait. We are asking the questions. Just to confirm, again, notices went to contiguous or adjacent property owners. We did run into a snafu and for the first time we were unable to obtain some phone numbers or addresses to contact people who filed appeals, but with the help of the County Attorney's office, we were successful in finding most all of them.

Judge Mattingly reiterated to the appellants to get together and appoint a spokesperson to represent them at the October 6, 2022 meeting, which will be held in the same location, for the second readings and votes of these ordinances. Before the votes, each side will be afforded five minutes to which they may explain why they believe OMPC interpreted the facts correctly or incorrectly. Again, no new facts shall be allowed.

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 October 6, 2022.



Jennifer Warren,
Daviess County Fiscal Court Clerk