

MAY 10, 2012

**3100, 3570, 3574, 3580 GIRL SCOUT RD;
2895, 3031, 3035, 3139, 3300, 3484, 3515
RUSSELL RD;
11300, 11440 US HIGHWAY 231**

ZONE CHANGE

From:	A-U Urban Agriculture A-R Rural Agriculture
To:	EX-1 Coal Mining
Proposed Use:	Mining
Acreage:	692.303 acres
Applicant:	Western Kentucky Minerals, Inc.; Ruby Jean Hitchcock Trust; Clara Thompson Estate c/o Tilford Thompson, Executor; Steve & Karen Diana Thompson; Horrell C. Jr. & Minga Trogdlen; Troy & Marcie Vanover; Regina Vanover; Glen Yeiser; Shirley G. & Chris Taylor; Western Kentucky Leasing; Charles & Donna Stewart; Lindley K. Taylor; Anna Faye Belcher; Mildred Taylor Johnson; and Horrell C. Sr. & Dorothy Trogdlen (1205.1840)
Surrounding Zoning Classifications:	
North:	A-R, A-U
South:	A-R, EX-1
East:	R-1A, A-U
West:	A-R

Proposed Zone & Land Use Plan

The applicant is seeking an EX-1 Coal Mining zone. The majority of the subject property is located in a Rural Maintenance Plan Area where coal mining uses are appropriate in general locations.

SPECIFIC LAND USE CRITERIA

(a) **Coal mining standards** - Coal mining should conform with the following standards:

- 1) Locational Guidelines:** Coal mining activities should be located in the Rural Service Area, outside of Rural Community plan areas, in Rural Preference or Rural Maintenance plan areas. Mining activities should not occur in the 100-year floodplain. The particular location, scope, and characteristics of mining operations should be subject to **Discretionary Limits on Coal Mining**.
- 2) Site, Operational, Reclamation Plans and Procedures:** Due to the potentially adverse environmental impact of coal mining, detailed site, operation and reclamation plan information is required by the state. **State mandated procedures** must be followed. Necessary permits must be obtained from federal, state and local agencies having jurisdiction over any phase of the operation prior to the beginning of said operation. The planning commission or respective authority may require the posting of sufficient surety for maintenance and repair of those public facilities which are not otherwise

bonded. The planning commission, at its discretion, may require pre-blast surveys be conducted for building on neighboring property, even beyond the requirements of state law. The planning commission may seek action to halt operations occurring in violation of state law or in violation of its discretionary requirements or limits.

- 3) Soil and Geology:** Evidence of the presence of coal should be supported by USGS Maps, core drills, etc. An investigation should be made to determining the agricultural potential of the land. **Prime agricultural land**, as defined by the U.S. Soil Conservation Service, must be protected from normal mining procedures, as required by state law.
- 4) Activity Buffers:** Coal mining should not be permitted within a minimum of **100 feet** of a public right-of-way nor within a minimum of **300 feet** of neighboring residential or nonresidential developed property, unless appropriate waivers are granted. These minimums may not be adequate in all cases and may be re-established dependent on circumstances of individual cases.
- 5) Transportation Plan and Access Design:** A transportation plan must be prepared, and must be approved by the state highway department and the county engineer, as appropriate, showing the route to be followed in hauling coal from the site to ultimate destination in Daviess County. Surety should be provided to assure maintenance and repair of public roads and bridges. Particular attention should be given to proper and safe design of vehicular access points to public roads and highways. Access points should be located to assure adequate sight distances along through roadways and at stop legs of intersections. Such points should be altered, if necessary, to satisfy property and safe design.

- (b) Discretionary limits on coal mining:** Generally, mining should be permitted wherever coal exists in rural areas. However, where the planning commission finds advisable, limits may be set on the mining process where deemed necessary. The establishment of limits may arise from consideration of such issues as the pattern, density and predominance of nearby, established development; the zoning of adjoining properties; the impact of past or existing mining in the vicinity; and proximity of the mining area to highways.

Planning Staff Review

GENERAL LAND USE CRITERIA

Environment

- It appears that a portion of the subject property may be located in a wetland area per the US Department of Agriculture Soil Conservation Service dated March 6, 1990.

- The subject property is not located in a special flood hazard area per FIRM Maps 21059CO410 and 430 D.
- A portion of the property is designated as prime agricultural farmland per the US Department of Agriculture Soil Conservation Service map dated March 1980.
- The developer is responsible for obtaining permits from the Division of Water, The Army Corp of Engineers, FEMA or other state and federal agencies as may be applicable.

Urban Services

Electricity, water and gas are available to the subject property.

Development Patterns

The subject property is located in an area of large-lot rural residences, woodlands, pasture and coal mining. The land is generally hilly and wooded.

Mining has been proposed for portions of the subject property in the past. In 1986, an application was submitted to the planning commission to rezone approximately 370 acres for mining purposes. Planning staff recommended approval of the application but the planning commission recommended denial of the application and Daviess County Fiscal Court upheld the recommendation for denial. In 1993, an application was submitted to the planning commission to consider a zoning change for 904 acres to EX-1 Coal Mining. At that time, planning staff recommended approval of the rezoning request but the planning commission voted 6-1 to deny the rezoning and Fiscal Court once again upheld the recommendation for denial. In 2012, a new application for approximately 685 acres was submitted that was amended to approximately 385 acres due to a question over parcel ownership. The planning commission hearing ended in a tie vote and the application was withdrawn by the applicant before any action was taken by Daviess County Fiscal Court.

SPECIFIC LAND USE CRITERIA

General and specific land use criteria applicable to coal mining proposals are: location, site and mining procedures; soils, geology, and fragile areas; activity buffers; and transportation plan and access design. These items are reviewed below.

LOCATION

The subject property is located in the 2800-3500 blocks of Russell Road, the 3100-3500 blocks of Girl Scout Road and the 11300-11400 blocks of US Highway 231. The subject property is in the Rural Service Area where a goal of the Comprehensive Plan is to “reserve the land . . . primarily for agricultural uses, other natural resources activities, and support uses that need to be near such activities.” (4.7.1) The first objective for this goal is to “accommodate rural residential uses throughout the RSA for people who wish to live in a rural setting, but only to

the extent that rural residential uses do not significantly impinge on the primary uses of the RSA noted above.” (4.7.1.1) In Section 430 Land Development Policies of the Comprehensive Plan, the need to monitor coal mining activity and a recommended policy was established as part of the 1991 plan. The policy that mining activity should be allowed to occur generally throughout the rural area outside of growth areas, but have the discretion to set limits on the mining process where necessary to reduce conflicts with neighboring land uses.

The majority of the subject property (approximately 90%) is located within a Rural Maintenance Plan Area; however, a portion is located within a Rural Community Plan Area. The portion within the Rural Community Plan Area consists of three tracts and is approximately 70 acres in size. The three large tracts, while located in the Rural Community, are not consistent with the small-lot rural lot development often found within a Rural Community. The three tracts within the Rural Community are significant to potential mining activity since the coal haul road is proposed to access US 231 through one of these tracts. Based on a review of sight distance for coal vehicles entering and exiting the site, the Kentucky Transportation Cabinet found that the proposed coal haul road met or exceeded sight distance requirements.

The subject property adjoins existing EX-1 Coal Mining zoning to the south and there is additional EX-1 zoning in the vicinity to the southwest and northeast. Based on existing zoning within the area according to the official GIS zoning map, there is over 300 acres of land zoned EX-1 Coal mining within a one mile radius of the subject property. Historically, coal mining activity has taken place in the general vicinity. The Comprehensive Plan points out that potential buyers should be aware that coal extraction is a generally recommended use in rural areas.

SITE & MINING PROCEDURES

The subject properties are a hilly and partially wooded and total 692.303 acres. Land uses in the area are generally large lot rural residences, wooded, or pasture land. It does not appear as though the land is conducive to intensive agriculture due to the lack of large-scale agricultural use in the area.

The applicant proposes to extract coal through surface mining techniques which is consistent with the objective of the Comprehensive Plan to “allow agricultural and other natural resource uses wider reign to apply traditional production techniques.” (4.1.3.2) Blasting is limited Monday through Saturday from sunrise to sunset unless a variance is granted from the state. The applicant indicated they have no intention of applying for a variance. Prior to initiation of mining activity, a pre-blast survey is offered to all owners of occupied dwellings within ½ mile of the mining site. A total of seven approvals/permits are

required prior to mining activity taking place. It is anticipated that proposed project will be a 6-10 year project. The mining permit from the state is for a five year period. If mining is not complete, the permit must be reissued and the mining operation is subject to any new regulations that may have been implemented during the first five year period.

SOILS, GEOLOGY & FRAGILE AREAS

A review of soils indicates that a minimal amount of good farmland may be present on site. Also, it appears that a minimal amount of the subject property is designated as prime agricultural land according to the "Important Farmlands" map created by the US Department of Agriculture Soil Conservation Service dated March 1980. The applicant should be aware that state law requires protection of prime agricultural lands from normal mining practices.

The Utica and Pleasant Ridge Quadrangle Maps of the U.S. Geological Survey indicate the presence of coal deposits on the site. Coal to be mined is from unnamed coal beds with average coal seam thickness between 12 and 40 inches. Coal depths range from 12 to 95 feet below the surface.

The subject property does not contain any known historical or archaeological sites. According to the applicant and information contained within the adopted Comprehensive Plan, the subject property does contain areas of steep slopes greater than 16 percent grade.

ACTIVITY BUFFERS

Mining activities should maintain a minimum 100 foot buffer from any road right-of-way and a 300 foot buffer from any residential or nonresidential developed property. Should any mining activity be required within these buffer areas, a waiver from the state and/or property owner and a variance from the Owensboro Metropolitan Board of Adjustments would be required.

TRANSPORTATION PLAN & ACCESS DESIGN

Coal mined on the subject property is proposed to be removed from the site via a coal haul road to US Highway 231. The applicant has submitted a transportation plan that has been reviewed by the Kentucky Transportation Cabinet and the Daviess County Engineer for all roads that will be used to haul coal from the subject property to the Yellow Banks River Terminal via US Highway 231 and US Highway 60. Coal will not be transported on Girl Scout Road or Russell Road. One at-grade crossing is proposed on Russell Road. The applicant may be required by the county engineer and/or state highway official to post bond or acquire excessive weight permits for the coal transportation activities to ensure that roads are properly maintained and not damaged during transport.

The applicant indicates that during peak mining activity, approximately 40 round-trips per day along the coal haul route to Yellow Banks River Terminal. Extended weight limits along the route will allow for truck weights to reach 120,000 pounds.

Planning Staff Recommendations

The planning staff recommends approval subject to the findings of fact that follow:

Findings of Fact:

1. Staff recommends approval because the proposal is in compliance with the community's adopted Comprehensive Plan;
2. The majority of the subject property is located in a Rural Maintenance Plan Area where coal mining uses are appropriate in general locations;
3. The majority of the subject property is located in the Rural Service Area outside of a Rural Community Plan Area;
4. The portion within the Rural Community Plan Area is small portion of the overall rezoning acreage consisting of three tracts and approximately 70 acres which is not consistent with the small lot size found typically within a Rural Community Plan Area;
5. The applicant's proposal complies with a goal in the Comprehensive Plan that states land within the Rural Service Area should be reserved primarily for agricultural and other natural resource uses;
6. The subject property adjoins existing areas of EX-1 Coal Mining zoning and activity to the south;
7. Within a one mile radius of the subject property, there is over 300 acres of land currently zoned EX-1 Coal Mining;
8. The Pleasant Ridge and Utica Quadrangle Maps indicate the presence of coal deposits on the site;
9. The applicant's proposed strip mining technique agrees with an objective of the Comprehensive Plan that agricultural and other natural resource uses should be given wider reign to apply traditional production techniques; and,
10. State and county roads proposed to be used for the transportation of coal have been reviewed by the appropriate officials.