

**CITY OF PIKEVILLE
BOARD OF COMMISSIONERS
REGULAR MEETING MINUTES
August 25, 2014 AT 6:00 P.M.**

The Board of Commissioners for the City of Pikeville met in a regular called session on Monday, August 25, 2014. The meeting was held in the City Hall Conference Meeting Room located at 243 Main Street, Pikeville, Kentucky.

There being a quorum present, Mayor Frank Justice called the meeting to order at 6:00 p.m. Commission Members present at roll call were as follows:

COMMISSIONER: **JIMMY CARTER
JERRY KEITH COLEMAN
BARRY CHANEY
EUGENE DAVIS**

MAYOR: **FRANKLIN D. JUSTICE, II**

MINUTES

The minutes for the previous special meeting held on August 15, 2014 were in each Commission Member's agenda package. There being no additions or corrections, Commissioner Chaney made the motion to approve the minutes as prepared. Commissioner Davis seconded the motion. Mayor Justice called for discussion, there being none, the motion carried unanimously. 5-0.

BUSINESS FROM THE FLOOR

Mayor Justice called for any business from the floor to come forward.

Commissioner Carter: Paul, did you get that worked out on the tanks? Paul

Maynard: Yes, they are actually going to hold up for about a week. They have to relocate the line. Commissioner Carter; OK, just let me know on that.

Mayor Justice: During that last rain I received some people calling me to come up Cedar Creek wanting me to look at some projects and I texted the two that lived at Cedar Creek, so I had Sean Cochran run up and talk to Darko? Sean; yes, David Darko at 159 Honeysuckle Drive. Commissioner Coleman; they got flooded pretty good. Sean; they had quite a bit of water come down behind them. Mayor Justice; Are they in the center of two hollers? Sean; they are and there is an AML project at Honeysuckle. Mayor Justice; is this in the Cul-de-sac; Sean; yeah. The house right at the end of the Cul-de-sac and then Mr. Draco's house is the last on the left just before you get there, I think the Bevin's at the very end then the Draco's. That was

the two flooded the most. I don't think either of them had any damage to their houses, but water got in their yards. Mayor Justice; I guess what I am looking at is that whole area up there is on an old auger job with loose material over the hill and nothing stable above and we have sent AML to do several observations. Is Rusty here? We have to get something accomplished; I don't know what we are going to do, if sediment ponds at the bottom of these areas or to catch the sediment before it gets to our people and our neighbors. Up there where Jerry Keith lives there is a road and a bike trail I guess it catches that water and brings it down the hill and dumps it where there is no storm drains or no coverage. If we could dip the sediment ponds when they get full and keep off the neighborhoods, if we can sell that to AML? Phillip Elswick; AML to my understanding says that it is not there problem. Mayor Justice; I guess than I refer to Rusty, if they say it is not there problem than what do we do? Rusty, if AML says it is not there problem then it goes back to the developer or the surface owner. The surface owner can't unreasonably rid his property of water, so to cast it onto his neighbor so if you or you allow someone else or a coal company to use your property to divert water from its natural water shed and it damages someone's property you can be liable for that and I defend those type of suits for coal companies all the time. Elsewhere they get flooded they sue the coal companies. Mayor Justice; they can sue coal companies that has been out of there for 40 or 50 years? Rusty; yeah you still can, you can sue the property owner to; there is really no limitation on it. But after 40 years it would be a waste of time. Mayor Justice; I'm looking at you all to come up with me a solution, I don't know, that's why I brought it up. Commissioner Coleman; my neighbor down the street there had been dealing with AML for a longtime and told the same thing along with the lady, what's her name Barry? Barry; Karen Murphy. Commissioner Coleman; I don't think there is going to be a move from AML to fix anything up in there. Rusty; AML has the right to determine what they think is appropriate. Commissioner Carter; is there no appeal process? Rusty; there is once the citizens can do, but no court process, one the property owner contests it you are pretty much done. No one is entitled to the AML funds; it was set up to help people. Mayor Justice; so the City can't come in and ask for relief? Rusty; it is my understanding that the City doesn't even have a standing to ask for AML unless we were a property owner; we can't ask for damaged property owners, they have to do it themselves. Phillip Elswick; that is what happened when we sent the request, they didn't acknowledge the City at all, and when they issued their report they only sent it to Karen Murphy. Commissioner Coleman; well, what I know from over the weekend we have a lot of people that suffered damages and I'm down the middle on if you build a house in East Kentucky and it's 10 feet from a hillside you are going to get some of that with living in this area, but at the same time as City government can we address and fix any of it. I don't know when it comes to someone's personal property where does that start and where does it end? A lot of people are looking for us to help and my house is one of them. I am going to have to bring an excavator home and work and work and work for the third or fourth time. I would just like to get a good feel for what we can do to rectify it or what can we tell a land owner, if it is an Act of God, mud is going to flow, we can't help. That's what I'm trying to get

a handle on. I have not seen down pours like this in my life time and I'm not sure this was the fault of any government, so anyway by not maintaining any particular is it our problem to fix. Mayor Justice; we have one of the niceness neighborhoods in the City of Pikeville and it is getting washed off once or twice a year. Rusty; Let's look at how we start a sub division, it's starts with a developer and their plans, which they are responsible for when they sell these lots, they are responsible for the design, lay of the lots and providing drains for the lots they sell don't flood and they are to look at the water sheds behind them. Part of the problem is developers should plan for a 10 year storm event and it seems like Cedar has had more than an 10 year storm event and over 10 hours the standard; and when you get it in one hours that amount of water wrecks the whole design system and the government would say that is an Act of God. Either the sub divider did not consider the appropriate divider or it is an storm event and that is what property owners accept weather it is storm, fire, hail, tornado and there are all types associated with buying property, I don't see it has municipalities problem since we don't design the drains. Now if you want to take that on and you have the funding to do it, you cannot pick and choose and you must do a public project. Mayor Justice; It doesn't matter what you do as far as ditches, drains as long as you have that material coming off the hill sides that dirt is going to overflow anything that is down there. I don't know what we can do with AML and I can't see how they can chose when the same strip job developed it all. City Manager; to the Mayor point Rusty over the years we have fought this numerous times and people have gone in and put drains in and that is what caused part of the problems and it is what is causing to get stopped up with the material off the hills and the drains might be under sized and causes their neighbors to get flooded. People are looking to us, but we don't supersede state authority we have at this Commission's request is that we are asking for that same service. City Attorneys point Mayor is we can't dictate what AML does and it's been something that has been a problem for many many years and I don't see into it. Commissioner Carter; if it's the problem of drains being put in could it be Division of Water could come in and take them out? City Manager; I think they are grandfathered in, correct me Rusty if I am wrong but the property owner of putting the drains in accept the liability for any damages thereafter. Mayor Justice; that's the way I understood it from AML. Rusty; that's basically the way it is and we can't go on to their property to even remove them. City Manager; we tried that a few years ago through legal advice. Mayor: we didn't tell them they could put them in there? City Manager; No. Rusty I think this is not the backup, but the problem was the intense water that came down so fast. City Manager: it's both. City Manager; you have buildings on some of them. Most of these structures have been built without our knowledge and we don't have authority to remove it and the property owner takes responsibility. When you have the rain that washes the material and it settles, then you get rain it clogs the drains and it's a combination of the developers, property owners and you get the 10 year storm that causes that. Mayor: So basically there's nothing we can do? City Manager; we don't have any legal standing to go on private property to remedy damages. Mayor: So AML projects aren't done on public property? City Manager; A. We don't have the standing to

have AML to do a project. B. We don't have authority to go on private property without AML to create a project. Mayor; I brought it up to see if you could come up with a resolution and we are still right back at the same place. City Manager; We can do a request to have a AML representative come to a work session to discuss the area and maybe some of the questions answered, not sure if they will come, but we can try. Mayor Justice; well let's do something, get them in here and let's talk with them. Commissioner Carter and the Mayor; we need to have a public meeting to let the property owners know.

GRANT PRESENTATION

The City of Pikeville Mayor and Commission presented the annual grant check in the amount of \$30,000.00 for the Pikeville Senior Citizens Center for the 2015-2016 fiscal year. Mrs. Carolyn Tackett was present to accept the check for the Pikeville Senior Citizens Center.

PAYMENT OF CITY BILLS

Consider a request to approve and authorize payment of the City Bill list, as submitted, for \$894,480.11. Commissioner Davis asked City Manager if we had the money. City Manager replied yes. Commissioner Davis made the motion to approve. Commissioner Coleman seconded the motion. Mayor Justice called for comments, there being none motion passed unanimously. 5-0.

Consider a request to authorize and approve payment of invoice #001 to MPSC Inc. for \$2,972.00 for the Pikeville Radio Coverage Assessment Project. Commissioner Chaney made the motion to approve. Commissioner Carter seconded the motion. Mayor Justice called for questions or comments, there being none motion passed unanimously. 5-0.

CITY ENGINEER'S REPORT

Consider a request to authorize and approve payment of invoice #71614 for \$17,021.93 & invoice #71863 for \$1,063.87 for Summit Engineering for the Thompson Road Lift Station Relocation Phase 1 project. Commissioner Carter made the motion to approve. Commissioner Coleman seconded the motion. Mayor Justice called for comments, there being none motion passed unanimously. 5-0.

Consider a request to authorize and approve payment of invoice #71864 for \$6,250.00 & invoice #71706 for \$5,625.00 for Summit Engineering for the Marion Branch Industrial Development project. Commissioner Chaney made the motion to

approve. Commissioner Davis seconded the motion. Mayor Justice called for comments, there being none motion passed unanimously. 5-0.

Consider a request to authorize and approve payment of invoice #71861 for \$499.81 for Summit Engineering for the Peach Orchard Acquisition Demolition Project. Commissioner Carter made the motion to approve. Commissioner Coleman seconded the motion. Mayor Justice called for comments, there being none motion passed unanimously. 5-0.

Consider a request to authorize and approve a change order #2 for the Riverfill Seating project an increase in the amount \$4,500.00 as submitted and authorize the mayor the authority to sign and execute said change order on behalf of the City of Pikeville. Commissioner Chaney made the motion to approve. Commissioner Davis seconded the motion. Commissioner Davis; I have a question, is that a change order to what? City Manager; that is a change order Gene in order to break up the asphalt that was up there and remove it. Mayor Justice called for additional questions or comments there being none motion passed unanimously. 5-0.

Consider a request to approve payment of pay request #3 for Rising Sun Development, Inc. for \$84,197.54 for the Riverfill Seating project and to authorize the mayor to sign and execute said pay request on behalf of the City of Pikeville. Commissioner Chaney made the motion to approve. Commissioner Davis seconded the motion. Mayor Justice called for questions or comments, there being none motion passed unanimously. 5-0.

Consider a request to add an item to the agenda for the award of a bid to replace the water line project at the Chloe Walters Road Project Name: Multi-Site Water Main Replacement in the amount of \$372,500.00 to Tom Wright Construction which was the only bidder and to authorize the mayor to award the bid and to authorize the notice to proceed. Commissioner Chaney made the motion to approve. Commissioner Coleman seconded the motion. Mayor called for questions or comments, there being none motion passed unanimously. 5-0.

CITY MANAGER REPORT

City Manager Donovan Blackburn presented the commission with the following items for approval:

City Manager Donovan Blackburn requested to table the request to consider a request to authorize and approve a Service Agreement between Aramark Uniform Services and City of Pikeville, as submitted, and authorize the mayor the authority

to sign and execute said contract on behalf of the City of Pikeville. The item was tabled.

Consider a request to authorize and adopt a resolution #R-2014-010 approving a memorandum of agreement between the Kentucky Transportation Cabinet and the City of Pikeville regarding FD39 Contingency funds for the purpose of asphaltting various public streets within the City of Pikeville's boundaries and to authorize the mayor to sign and execute said resolution on behalf of the City of Pikeville. Commissioner Chaney made the motion to approve. Commissioner Carter seconded the motion to adopt the resolution. Mayor Justice called for comments, there being none resolution was adopted in record unanimously. 5-0.

City Manager Donovan Blackburn read the Consent Items into record as noted:

The Bureau of Justice Assistance announcement on grant award for Bulletproof Vest for 2014 to the Pikeville Police Department.

August 27th through August 29, 2014: Governor's Local Issue Conference will be held in Louisville KY at the Galt House.

October 7th through October 10, 2014: Kentucky League of Cities Annual Conference will be held at the Galt House in Louisville.

Pursuant to KRS 61.810, consider request for closed session for the purpose of discussion economic development, legal and personnel issues. Commissioner Davis made the motion to adjourn. Commissioner Coleman seconded the motion. Mayor Justice called for questions or comments, there being none motion passed unanimously. 5-0.

Commissioner Carter made the motion to re convene. Commissioner Coleman seconded the motion. Mayor Justice called the session back into order.

There being no further business to come before the Commission, Commissioner Davis has made the motion to adjourn the meeting. Commissioner Coleman seconded the motion. Mayor Justice called for discussion, there being none, and the meeting was adjourned. 5-0.

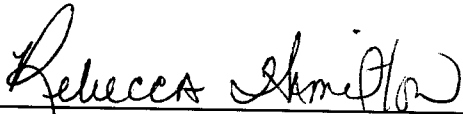
The next scheduled regular meeting of the City of Pikeville Board of Commissioners is September 8, 2014 at 6:00 p.m.

APPROVED:



FRANKLIN D. JUSTICE, II, MAYOR

ATTESTED:



REBECCA HAMILTON, CITY CLERK