

## MINUTES } CITY OF PIKEVILLE

### SPECIAL MEETING MINUTES - MAY 2, 1990

The City of Pikeville Board of Commissioners were called to meet in Special Session on Wednesday, May 2, 1990 at 11:30 a.m. at the City Hall Public Meeting Room for the following purpose:

1. Hear report from Legal Counsel concerning the Urban Renewal Agency and its lease agreement with James A. Hughes and Associates for the riverfill property and consider taking action based upon the recommendations made in the report concerning the Urban Renewal Agency and the James A. Hughes and Associates lease.

There being a quorum present, Mayor Walter E. May called the meeting to order at 11:45 a.m. Commission Members present upon call of the roll were as follows:

|               |                    |
|---------------|--------------------|
| MAYOR:        | WALTER E. MAY      |
| COMMISSIONER: | WALTER BLANKENSHIP |
|               | EUGENE DAVIS       |
|               | FRANK MORRIS       |
|               | JOHNNY MOUNTS      |

Mayor May announced that the matter concerns pending legal action. The Mayor called for a motion to adjourn to a closed executive session to allow the members of the Commission to hear the report as prepared by legal counsel.

Commissioner Davis made the motion to adjourn to closed executive session for the purpose of discussing a legal matter. Commissioner Mounts seconded the motion. Upon call of the roll, the motion carried by a unanimous vote.

The motion was made by Commissioner Morris and seconded by Commissioner Blankenship to reconvene the meeting to regular session. Upon call of the roll, the motion carried by a 5 -0 vote.

Mayor May informed the audience that the Commission heard a report from the lawfirm of Hirn, Reed, Harper & Eisinger of Louisville, Kentucky. The Mayor expressed the Commission's desire to return to closed, executive session with the Board Members of the Urban Renewal and Community Development Agency for the purpose of discussing the report prepared by legal counsel.

It was noted that the Urban Renewal and Community Development Agency had called a Special Meeting in conjunction with the City of Pikeville Board of Commissioners' Special Meeting. Board Members of the Urban Renewal and Community Development Agency present were: Chester Smith, Chairman; Ernest Rogers; and Loren Williams. Board Member William Zoellers was absent.

Commissioner Mounts made the motion to adjourn to closed executive session with the Board Members of the Urban Renewal and Community Development Agency for the purpose of discussing a report prepared by legal counsel. Commissioner Blankenship seconded the motion. Upon call of the roll, the motion carried unanimously.

Mayor May explained to those present that the ongoing meeting was not only a Special Meeting of the Board of Commissioners of the City of Pikeville but also a Special Meeting of the Board of Directors of the Urban Renewal and Community Development Agency. Mayor May asked the Board Members of the Urban Renewal and Community Development Agency if they wished to take any action prior to the City Commission reconvening to regular session. Urban Renewal Board Member, Ernest Rogers, made the motion to transfer whatever rights, title and interest in all assets and property that the Urban Renewal and Community Development Agency has to the City of Pikeville. Urban Renewal Board Member Loren Williams seconded the motion. The votes were as follows: Chairman Chester Smith - abstain; Board Member Rogers- yes; Board Member Williams - yes. Chairman Chester Smith declared the motion carried. Presented to the Urban Renewal and Community Development Agency Board Members for signature was a deed for the properties and a resolution transferring right, title and interest in all assets and property. (The deed and resolution are on file in the office of the City Clerk)

At 2:20 p.m., Commissioner Davis made the motion to reconvene to regular session. Commissioner Mounts seconded the motion. Upon call of the roll, the motion carried by a 5 - 0 vote.

Mayor May announced that the Urban Renewal and Community Development Agency met concurrently with the City of Pikeville Board of Commissioners. The Urban Renewal and Community Development Agency, through their Board of Directors, has transferred all rights and ownership of all of the Agency's assets to the City of Pikeville. The Board Members of the Urban Renewal and Community Development Agency have offered their resignations for their seats on the Board and those resignations have been accepted by the City of



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Pikeville. Mayor May thanked the Members of the Urban Renewal and Community Development Agency for the service they have given to the City of Pikeville. "These are public spirited minded citizens that serve without pay, doing what they believe to be best for this City, and I thank you, Gentlemen".

Mayor May, in an earlier disclosure, announced that the City of Pikeville had obtained outside legal counsel assistance from the lawfirm of Hirn, Reed, Harper & Eisinger of Louisville, Kentucky, to represent the City of Pikeville as special counsel concerning the Urban Renewal and Community Development Agency in its lease agreement with James A. Hughes and Associates for the riverfill property. The Mayor told those present that he would give a full disclosure of what the legal counsel's report was to the Board of Commissioners and the action recommended. Mayor May publicly read a letter addressed to the Commission with regard to the history of the lease arrangements between the Urban Renewal and Community Development Agency and James A. Hughes & Associates for the riverfill property. (Mayor May's letter is on file in the office of the City Clerk) Mayor May explained the reasoning for securing legal counsel outside of Pikeville. It was announced that due to the controversial nature of the issue, it was thought to be best if counsel did not have a preconceived notion of a course of action. The Mayor continued by saying that he had made sure that counsel had not done substantial business in the Pikeville area, nor did they represent any large banking clients, and they were not known for representing either Democratic or Republican factions in the State of Kentucky. With reference to Mayor May's letter to the City Commission, legal counsel has indicated that the conclusions they have arrived to are consistent with the factual conclusions set forth in the Mayor's letter. The lawfirm of Hirn, Reed, Harper & Eisinger made the following recommendations to the Pikeville City Commission:

1. The Pikeville City Commission should exercise its statutory authority to abolish the Urban Renewal Agency and should assume immediate control over all of its properties and bank accounts.

2. A Declaratory Judgment action should be commenced in Pike County Circuit Court seeking to invalidate the lease in its entirety, ab initio and remove all encumbrances placed on the property by James A. Hughes & Associates, Inc. ("Hughes, Inc.").

3. Simultaneously, with filing the petition for the Declaratory Judgment a demand for production of documents should be served upon Hughes, Inc. and First National Bank of Pikeville, seeking all relevant documents relating to the lease and development of the riverfill area.

4. A lis pendens notice should be filed with respect to all property which is identified in the lease and which is commonly referred to as the riverfill area. This lis pendens notice should, from a practical standpoint, prevent Hughes, Inc. from making any other dispositions of its lease owned interest or from further encumbering that interest. In the event that Hughes, Inc. nonetheless attempts to further hypothecate, pledge, or mortgage its leasehold interest, a temporary restraining order should be sought in the Pike County Circuit Court. Additionally, in the event that the City meets with any opposition from Urban Renewal over respect of its dissolution, it should under appropriate circumstances seek a temporary restraining order.

5. Simultaneously with the filing of the petition for Declaratory Judgment a motion should be filed to advance the case in the Court's docket pursuant to the applicant civil rules and declaratory judgment statute.

Mayor May reiterated that the Urban Renewal Board Members have cooperated. They have signed over the Agency's interest in all properties to the City of Pikeville and they have offered their resignations, which have been accepted by the City of Pikeville. City Attorney, Russell Davis, Jr., presented and read a resolution entitled:

### RESOLUTION DISSOLVING THE PIKEVILLE URBAN RENEWAL AND COMMUNITY DEVELOPMENT AGENCY

NO. R-90-013

WHEREAS, the City of Pikeville by Resolution dated September 20, 1968, created the Pikeville Urban Renewal and Community Development Agency pursuant to KRS Chapter 99; and

WHEREAS, the Pikeville Urban Renewal and Community Development Agency has conveyed to the City of Pikeville all of its right, title and interest in the River Fill Area and all other property of any type now held in its name, and

WHEREAS, each of the members of the Board of Directors of the Pikeville Urban Renewal and Community Development Agency has resigned, and



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WHEREAS, the exercise of the powers, functions and duties previously delegated to the Pikeville Urban Renewal and Community Development Agency, including the development of the parcel of land known as the Pikeville River Fill Area, by the City of Pikeville would be more efficient and in the public interest than the exercise of those powers, functions and duties by the Pikeville Urban Renewal and Community Development Agency.

BE IT RESOLVED by the Pikeville City Commission:

Section 1: That the resolution dated September 20, 1968, creating the Pikeville Urban Renewal and Community Development Agency is repealed, and the Pikeville Urban Renewal and Community Development Agency is hereby dissolved pursuant to KRS 99.350(2).

Section 2: That title to all rights, assets and property, both real and personal, including title to the River Fill Area, shall by operation of law revert to and become the rights, assets and property of the City of Pikeville.

Section 3: That all legal obligations, liabilities and other responsibilities of the Pikeville Urban Renewal and Community Development Agency, including those relating to the development of the Pikeville River Fill Area, shall become the legal obligations, liabilities and responsibilities of the City of Pikeville.

Section 4: That an audit of all accounts and affairs of the Urban Renewal and Community Development Agency shall be conducted and the Agency's members and employees shall assist in the orderly dissolution of the Agency.

Passed this 2nd day of May, 1990.

|                    | <u>Yes</u> | <u>No</u> |
|--------------------|------------|-----------|
| Walter Blankenship | X          |           |
| Frank Morris       | X          |           |
| Johnny Mounts      | X          |           |
| Gene Davis         | X          |           |
| Walter E. May      | X          |           |

The Mayor declared the within resolution adopted.

/s/ Walter E. May  
Mayor Walter E. May

Attest:

/s/ Karen Harris  
City Clerk

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Commissioner Morris made the motion to adopt Resolution R-90-013 as presented and read. Commissioner Blankenship seconded the motion. Upon call of the roll, the motion carried by a unanimous vote.

Mayor May reported that he has read Kentucky Statute as it applies to the dissolution of an Urban Renewal Agency. The Statute mandates that the dissolution must be made by a 3/5ths vote of the Commission. Mayor May called for a motion to dissolve the Urban Renewal Agency. Commissioner Morris made the motion, seconded by Commissioner Blankenship to dissolve the Pikeville Urban Renewal and Community Development Agency. Upon call of the roll, the motion carried by a 5 - 0 vote.

The City Attorney presented and read Resolution No. R-90-014 was entitled:

## RESOLUTION APPROVING THE COMMENCEMENT OF AN ACTION IN PIKE CIRCUIT COURT

NO. R-90-014

WHEREAS, on July 18, 1984, the Pikeville Urban Renewal and Community Development Agency ("Urban Renewal") approved by Resolution and executed a lease with James A. Hughes & Associates (which Lease was later assigned to James A. Hughes & Associates, Inc. ("Hughes, Inc.)) with respect to the parcel of land known as the Pikeville River Fill area (the "Lease").

WHEREAS, the Lease contains a provision granting Hughes & Associates the unrestricted right to pledge or mortgage the Lease, a provision which may have exceeded the statutory authority of Urban Renewal under KRS Chapter 99 and may have violated Section 179 of the Kentucky Constitution.

WHEREAS, the mortgage provision tainted the entire Lease from its



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inception and directly allowed the pledging of public property for private benefit, thereby impairing the diligent development of the River Fill Area, and rendering it impossible in any meaningful sense for Hughes, Inc. to carry out the purpose of the Lease.

WHEREAS, by resolution dated May 2, 1990, the Commissioners of the City of Pikeville dissolved the Urban Renewal pursuant to KRS 99.350(2).

WHEREAS, upon the dissolution of the Urban Renewal, title to the River Fill Area reverted to the City of Pikeville, and City of Pikeville has thereby assumed all legal obligations, liabilities and other responsibilities associated with the development of that property which had previously been delegated to Urban Renewal.

BE IT RESOLVED by the Pikeville City Commission that the Mayor of the City of Pikeville, on behalf of the City of Pikeville, is authorized to commence an action in Pike Circuit Court to resolve the issues relating to the validity of the Lease by and between the Urban Renewal and Hughes, Inc.

Passed this 2nd day of May, 1990

|                    | <u>Yes</u> | <u>No</u> |
|--------------------|------------|-----------|
| Walter Blankenship | X          |           |
| Frank Morris       | X          |           |
| Johnny Mounts      | X          |           |
| Gene Davis         | X          |           |
| Walter E. May      | X          |           |

The Mayor declared the within resolution adopted.

/s/ Walter E. May  
Mayor Walter E. May

Attest:

/s/ Karen Harris  
City Clerk

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Commissioner Blankenship made the motion to adopt Resolution R-90-014 as presented and read. Commissioner Morris seconded the motion. Upon call of the roll, the motion carried unanimously.

Mayor May clarified the First National Bank's involvement in the lawsuit. The Mayor reported that the bank is named due to the fact that they are a lienholder.

With regard to the special legal counsel's recommendation #3, Commissioner Mounts made the motion to cause a demand for the production of documents to be served on Hughes, Inc., and the First National Bank of Pikeville, seeking all relevant documents relating to the lease and development of the riverfill area. Commissioner Morris seconded the motion. Upon call of the roll, the motion carried by a unanimous vote.

Pursuant to special legal counsel recommendation #4, Commissioner Morris made the motion, seconded by Commissioner Blankenship to authorize the filing of a lis pendens notice with respect to all property which is identified in the lease, commonly referred to at the River Fill Area. Upon call of the roll, the motion carried unanimously.

Commissioner Morris made the motion to authorize the filing of a motion to advance the case in the Court's Docket. Commissioner Mounts seconded the motion. Upon call of the roll, the motion carried 5 - 0.

Commissioner Davis commented that the action taken by the City of Pikeville with regard to the dissolution of the Urban Renewal Agency is no reflection upon any Board Member of the Urban Renewal Board. He commended the Board Members for the job done over the years and commented that the Agency had done great things for the City of Pikeville.

Mayor May reported that the Board of Directors of the Urban Renewal Agency did not have to sign over their assets and the City Commission could not force them to do so, nor could they be forced to resign. The Board Members of the Urban Renewal Agency were commended for their agreement and cooperation with the action recommended by special legal counsel.

There being no further business to come before the Commission, Commissioner Davis made the motion, seconded by Commissioner Blankenship to adjourn the meeting. Upon call of the roll, the motion carried unanimously. Adjournment time: 2:58 P.M.



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APPROVED Walter E. May  
WALTER E. MAY, MAYOR

ATTEST:  
Karen Harris  
KAREN HARRIS, CITY CLERK

