

# MINUTES } CITY OF PIKEVILLE

SPECIAL MEETING - MARCH 6, 1992

The City of Pikeville Board of Commissioners met in Special Session on Friday, March 6, 1992. The meeting was held in the City Hall Public Meeting Room at 260 Hambley Boulevard.

The meeting was called for the following purpose:

TO CONSIDER A REPORT FROM COUNSEL CONCERNING A LAWSUIT, THE CITY OF PIKEVILLE VS. JAMES A. HUGHES & ASSOCIATES, AND TO TAKE ANY NECESSARY ACTION WHICH MAY BE RECOMMENDED BY COUNSEL.

Mayor Walter E. May called the meeting to order at 10:15 a.m. Commission Members present and forming a quorum were as follows:

MAYOR:	WALTER E. MAY
COMMISSIONER:	FRANK MORRIS
	JOHNNY MOUNTS

Commissioners Walter Blankenship and Eugene Davis were absent.

Mayor May recognized visiting City Officials from Mustang, Yukon, and El Reno, Oklahoma.

James R. Cox representing Hirn Reed Harper & Eisinger, special counsel employed by the City of Pikeville for the lawsuit, City of Pikeville, Kentucky v. James A. Hughes & Associates, Inc., et al, gave a brief history of the matters surrounding the aforementioned lawsuit. Mr. Cox advised those present that the city commenced the action on May 2, 1990 against James A. Hughes & Associates, Inc., and the First National Bank of Pikeville and later added Bank One, Lexington, NA, and Matewan National Bank. Mortgages had been executed by Hughes, Inc., whereby its leasehold interest in the River Fill Area had been pledged to the financial institutions. Hughes, Inc. was unable to retain counsel to defend it in this litigation. On the City's motion, the Court entered a Default Judgment against Hughes, Inc. on August 5, 1991. For the purpose of filing an appeal, Hughes Inc. moved to set aside the Default Judgment before the 30 day expiration period. While the motion was pending, the Court ordered that the parties and their counsel appear in Pikeville for a settlement hearing. Eventhough Hughes Inc. had agreed to the order, they refused to attend the conference. The Court subsequently entered into an order denying the motion to set aside the Default Judgment on January 7, 1992. No appeal from the initial Default Judgment or the order entered January 7, 1992 had been taken within the time period allowed by the Kentucky Rules of Civil Procedure, and it is therefore a final, nonappealable matter. Mr. Cox further explained that it had been a recognized fact that should the Court rule in favor of the City, the City would nevertheless likely be responsible for payment of the value of any improvements to the River Fill Area. Special counsel, on behalf of the city, communicated to Hughes, Inc. and the banks the willingness of the City to settle the case by purchasing for a reasonable price the office building constructed by Hughes, Inc. The proposed fee is \$435,000.00, with the proceeds to be divided among the Banks to discharge their mortgage and judgment liens on the property. Hughes, Inc. nor James A. Hughes personally will receive any funds. It was reported by Mr. Cox that Hughes, Inc. and the Banks have each signed the settlement documents prepared by him on behalf of the City which, if approved by the City Commission, would terminate the lease with Hughes, Inc. and settle the lawsuit without any possibility of an appeal by any party, including Hughes, Inc. The City would thereby be provided with clear title to the Pikeville River Fill Area and any improvements thereon. Mr. Cox advised the Commission this to be a fair settlement proposal and a favorable resolution to the lawsuit and recommended the Commission to approve the settlement.

City Attorney, Russell Davis, Jr., reported that he had reviewed the settlement proposal. He advised it was his opinion the proposal should be approved as recommended by special counsel as this was the most advantageous and expeditious manner to settle the lawsuit.

Commissioner Morris made the motion, seconded by Commissioner Mounts, to authorize the Mayor to disburse the \$435,000.00 to the banks as proposed in the settlement agreement. Upon call of the roll the motion carried 3 - 0.

The City Attorney presented the following resolution:

RESOLUTION AUTHORIZING SETTLEMENT WITH JAMES A HUGHES & ASSOCIATES, INC.,  
FIRST NATIONAL BANK OF PIKEVILLE, BANK ONE, LEXINGTON, NA, AND MATEWAN  
NATIONAL BANK

R-92-005

WHEREAS, the City of Pikeville, Kentucky (the "City") commenced an action against James A. Hughes & Associates, Inc. ("Hughes, Inc."), First National Bank of Pikeville ("FNBP"), Bank One, Lexington, NA ("Bank One"), and Matewan National Bank ("Matewan"), styled City of Pikeville, Kentucky v. James A. Hughes & Associates, Inc., et al., Pike Circuit Court, Division I, No. 90-CI-599 (the "Action").



WHEREAS, the Action is for a declaration of rights concerning the validity of a lease agreement (the "Lease"), dated July 18, 1984, for the Pikeville River Fill Area by and between the Pikeville Urban Renewal and Community Development Agency and Hughes and Associates. The Lease is recorded in the office of the Pike County clerk in Book 587, Page 75, and in Book 602, Page 673.

WHEREAS, on January 17, 1987, Hughes & Associates assigned its interest in the Lease to Hughes, Inc. Thereafter, Hughes, Inc., executed mortgages in favor of FNBK, Bank One, and Matewan, pledging its leasehold interest in the River Fill Area.

WHEREAS, by resolution dated May 2, 1990, the Pikeville Urban Renewal and Community Development Agency transferred to the City all right, title and interest in all property held in its name, including title to the Pikeville River Fill Area. By resolution dated May 2, 1990, the City accepted the transfer of the property and all legal obligations, liabilities, and responsibilities of the Pikeville Urban Renewal and Community Development Agency.

WHEREAS, the City, Hughes, Inc., FNBK, Bank One, and Matewan desire to settle their dispute and dismiss the action.

WHEREAS, Hughes, Inc., FNBK, Bank One, and Matewan have agreed to execute a Release and Settlement Agreement whereby Hughes, Inc., FNBK, Bank One and Matewan will release, sell, assign, transfer and convey to the City all of their right, title and interest in the Pikeville River Fill area, including all improvements constructed thereon, upon (a) the Execution of the Release and Settlement Agreement by the City, James A. Hughes, Hughes, Inc., FNBK, Bank One and Matewan; and (b) the City's payment and receipt by FNBK, Bank One and Matewan of their agreed upon share of the sum Four Hundred Thirty Five Thousand Dollars (\$435,000).

BE IT RESOLVED by the Pikeville City Commission:

Upon the execution of the Release and Settlement Agreement by James A. Hughes, Hughes, Inc., FNBK, Bank One and Matewan, the Mayor of the City shall execute the Release and Settlement Agreement and direct payment to the banks of the sum of Four Hundred Thirty Five Thousand Dollars (\$435,000), the disbursement of which shall be in the manner directed by the written instructions of FNBK, Bank One, and Matewan.

Passed this 6th day of March, 1992.

Commissioner Mounts made the motion, seconded by Commissioner Morris to adopt Resolution R-92-005. Upon call of the roll, the motion carried 3 - 0.

In comments from the floor, T.T. Colley expressed his gratitude to Mayor May for his perseverance in seeing Pikeville regain title to the River Fill Area and voiced his opinion on the positive impact the River Fill Area will have on the local economy.

Marty Backus of the *Appalachian News-Express* asked if anyone had expressed interest for developing the River Fill Area. Mayor May responded that there has been no interest expressed recently.

Terry Spears questioned if there had been any uses discussed for the building. The Mayor reported this matter had not been discussed fully, however the City is in need of a police station and a larger City Hall. He added that before any improvements are made to the property, a committee will be formed and given the charge of deciding the best uses. One use the Mayor mentioned was a multi-use facility which could consist of city offices, police station, and a civic center.

Geri Kinder asked if any facilities for parking had been planned. It was reported no plans had been made at this time.

Commissioners Morris and Mounts expressed their satisfaction with the Court's ruling.

There being no further business to come before the Commission, Commissioner Mounts made the motion, seconded by Commissioner Morris to adjourn the meeting. Upon call of the roll, the motion carried 3 - 0. (Adjournment Time: 10:40 am)

APPROVED

*Walter E. May*  
WALTER E. MAY, MAYOR

ATTEST:

*Karen Harris*  
KAREN HARRIS, CITY CLERK