

# MINUTES } CITY OF PIKEVILLE

## CITY OF PIKEVILLE BOARD OF COMMISSIONERS REGULAR MEETING MINUTES JUNE 23, 1997

The Board of Commissioners of the City of Pikeville conducted their regular monthly meeting on Monday, June 23, 1997. The meeting was held in the City Hall Public Meeting Room at 260 Hambley Boulevard.

There being a quorum present, Mayor Steven D. Combs called the meeting to order at 6:00 p.m. Commission Members present at roll call were:

MAYOR: STEVEN D. COMBS  
COMMISSIONER: KENNY BLACKBURN  
EUGENE DAVIS  
JOHNNY MOUNTS  
SHARON CLARK

### AGENDA ITEM II. MINUTES

The minutes from the previous special meeting held on May 29, 1997 were included in each Commission Member's agenda package. There being no additions or corrections, Commissioner Davis made the motion, seconded by Commissioner Blackburn to approve the minutes as submitted. The motion carried unanimously.

### AGENDA ITEM III. BUSINESS FROM THE FLOOR

A. SUMMERFEST: There was no representation from either the Chamber of Commerce, the Tourism Office, or the Main Street Program to discuss the Summerfest Celebration.

B. PIKE COUNTY EXTENSION OFFICE: Glen Brown, Chairman of the Pike County Cooperative Extension District Board, reiterated his agency's prior offer to purchase River Fill Lots 5, 6 and 7 for \$130,000.00. Mayor Combs asked the status of resolving the flood plain issue for property located in the river fill. City Engineer, Jack Sykes, advised that amended Flood Plain Maps show the aforementioned tracts in the flood way. Correspondence has been sent to FEMA objecting to the designated flood way and requesting an amendment to redefine the flood way to the drainage ditch. Mr. Sykes opined that FEMA will grant a favorable decision but estimated the amendment's approval at between 4 and 6 months. Mr. Sykes told the Commission that because the tracts are currently designated within the flood way, building is not restricted, however it may make development cost-prohibitive, as there are certain rules which regulate construction within the flood way. Mayor Combs reported that a number of other parties have expressed interest in acquiring the river fill property. The Commission advised they would review the offer as well as the appraisal in executive session.

C. INTRODUCTION: Leon Huffman introduced his granddaughter, Elisha Reynolds, to the Commission. Ms. Reynolds was recently crowned "Miss Kentucky Teen All American" and will represent Kentucky in the Miss USA Teen Pageant.

Leon Huffman, Darrell Maynard and Charles Pennington were present to discuss a proposed acquisition of the City's property located at the end of Main Street/Scott Avenue.

At 6:20 p.m., Mayor Combs made the motion to adjourn to an executive session for the purpose of discussing the proposals for sale of the river fill and Main Street/Scott Avenue surplus property and two pending legal matters. Commissioner Davis seconded the motion. The motion carried unanimously.

At 6:50 p.m., Mayor Combs made the motion, seconded by Commissioner Mounts to reconvene the meeting to regular session. The motion carried unanimously.

Mayor Combs reported that the Commission reviewed the appraisal for the property located at the end of the river fill and discussed other issues regarding the property. Due to the number of inquiries received with regard to disposal of the property, the Commission resolved that it was only fair to offer the property for sale by public auction. The Mayor disclosed the fact that the tract does not extend to the end of the river fill, as a 40 ft. easement has been excluded to provide for a park and access to the pond.

With regard to the property located at the end of Main Street/Scott Avenue, Mayor Combs announced this tract would be offered for sale by public auction, after an appraisal is made, due to the fact that more than two offers have been received.

Darrell Maynard expressed his opinion that the City should consider the proposals and the economic impact that each proposed development would involve. Commissioner Mounts opined that previous tracts had been disposed of through public auction and to dispose of this tract by any other method would be unfair. The Mayor stated that all the proposals received were valid, competing offers and thought it best to auction the property.

Mayor Combs made the motion to authorize the City Manager to offer for sale by public auction the surplus property in the river fill (Lots 5, 6 & 7) and the tract at the end of Main Street/Scott Avenue. Commissioner Blackburn seconded the motion. During discussion, the City Manager estimated the property could be auctioned either the third or the fourth week of July. The motion carried unanimously.

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The Mayor reported that the Commission discussed two items of pending litigation while in executive session.

## AGENDA ITEM IV.

### PAYMENT OF BILLS

A. CITY BILLS: A list of City Bills totaling \$377,524.21 was presented to the Commission for approval of payment. Mayor Combs made the motion, seconded by Commissioner Davis to approve payment of the City Bills as requested. The motion carried unanimously.

B. ACADEMY BUILDING: Presented for approval of payment was a bill from Commonwealth Building & Construction in the amount of \$38,250.00 and from architect, Richardson & Associates in the amount of \$3,090.71. The invoices represent construction activities completed through the end of June and inspection services for the Academy Stabilization Project. Historic Preservation Chair, Jack Sykes, reported that the Historic Preservation Board has approved both bills for payment. Commissioner Davis made the motion, seconded by Commissioner Mounts to authorize payment of the two bills as recommended by Mr. Sykes. The motion carried 5 - 0. The construction contract deadline is August 2, 1997.

C. PATRIOT CONSTRUCTION: City Engineer Sykes advised that a \$3,174.59 retainage has been withheld from Patriot Construction's contract on Fire Station #3, pending the completion of a punch list. Mr. Sykes asked the Commission to authorize payment of the retainage, subject to his and the City Manager's final approval. Commissioner Blackburn advised that some of the asphalt is breaking and asked the possibility of replacing it with concrete. Fire Chief Hall explained that elevation will be a problem in the winter. Asphalt can be salted whereas concrete can't. The City Engineer was directed to oversee the asphalt replacement as well as to make sure that the asphalt has been installed to specification. Commissioner Mounts made the motion, seconded by Commissioner Blackburn to authorize payment of the retainage in the amount of \$3,174.59, subject to final approval by the City Engineer and the City Manager. The motion carried unanimously.

D. NORTH MAYO SEWER EXTENSION: Mr. Sykes reported that Alpha Reclamation has a small amount of gradework remaining on the Highway Department easement to complete their contract. He recommended the Commission authorize approval of Alpha Reclamation's retainage in the amount of \$8,114.32 contingent upon completion of the gradework. Commissioner Blackburn made the motion to authorize payment of the retainage under the terms recommended by the City Engineer. Commissioner Davis seconded the motion. The motion carried 4 - 0 - 1 with Mayor Combs abstaining from the vote.

E. LIBRARY: During a previous meeting, the Commission voted to withhold a \$5,000 retainage from Commonwealth Building & Construction's contract for Phase I of the Library facility with payment to be made upon the architect's certification that all work has been completed satisfactorily. Architect Bill Richardson was present and advised the Commission that Phase I has been satisfactorily completed. Since payment had been approved previously, the Commission asked that a letter verifying satisfactory completion be sent by the architect to the City Manager prior to release of funds.

## AGENDA ITEM V.

### OLD BUSINESS

A. CITY ENGINEER'S REPORTS: Jack Sykes, representing Summit Engineering, City Engineers, presented a report of ongoing projects:

1. Thompson Road Water Line: Mr. Sykes advised that Division of Water approval has been received to proceed with the bidding process for the construction of a water line on Thompson Road.

2. Raw Water Intake: The City Engineer reported that while seeking a funding source for the Raw Water Intake improvements, he and PSG staff have looked at the potential of adding about \$1 million to the project. An additional 1 million gallon water tank to be placed in the vicinity of the new Wal-Mart development is proposed as well as repairs to both the water and wastewater plants. The Commission scheduled a work session for Thursday, June 26, 1997 at 6 p.m. to review the proposed additions as well as the funding alternatives.

B. CITY ATTORNEY'S REPORTS: Russell H. Davis, Jr., City Attorney, presented the following items for the Commission's consideration:

1. Budget Ordinance: Presented and given second reading was an Ordinance adopting the 1997-98 City of Pikeville operating budget. The Ordinance was read entitled:

AN ORDINANCE ADOPTING THE CITY OF PIKEVILLE, KENTUCKY ANNUAL BUDGET FOR THE FISCAL YEAR JULY 1, 1997 THROUGH JUNE 30, 1998, BY ESTIMATING REVENUES AND RESOURCES AND APPROPRIATING FUNDS FOR THE OPERATION OF CITY GOVERNMENT

Commissioner Blackburn made the motion to adopt the Ordinance as read. Commissioner Clark seconded the motion. The motion carried by the following votes:

MAYOR:	STEVEN D. COMBS	YES
COMMISSIONER:	KENNY BLACKBURN	YES
	EUGENE DAVIS	NOT PRESENT AT TIME OF VOTE
	JOHNNY MOUNTS	YES
	SHARON CLARK	YES

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2. Street Name: Presented and given second reading was an Ordinance naming a street in the Habitat for Humanity Project. The Ordinance was read entitled:

## ORDINANCE NAMING STREET ASCENDING CLINE BRANCH OF CHLOE CREEK IN THE CITY OF PIKEVILLE "BRUCE ELLIOTT DRIVE" IN HONOR OF BRUCE ELLIOTT

Mayor Combs made the motion to adopt the Ordinance. Commissioner Mounts seconded the motion. The motion carried by the following votes:

MAYOR:	STEVEN D. COMBS	YES
COMMISSIONER:	KENNY BLACKBURN	YES
	EUGENE DAVIS	YES
	JOHNNY MOUNTS	YES
	SHARON CLARK	YES

3. Retirement Benefits/Glen Snodgrass/James Tucker: Attorney, Larry Webster, appeared before the Commission on behalf of Glen Snodgrass, a former City of Pikeville employee who is requesting retirement benefits. As directed at the previous meeting, Mr. Webster prepared a fact sheet detailing Mr. Snodgrass' service time (26 years) and arguments supporting his claim. According to Mr. Webster, the City established a policy in 1975 to provide retirement benefits to its employees with 25 or more years of service. City Attorney Davis explained to the Commission that the 1975 policy was an ordinance which provided retirement benefits to fire fighters and police officers. He gave his opinion that the City no longer has the legal right to offer retirement benefits to employees due to a change in the law in 1984 which required the City to provide a retirement plan for its police officers and fire fighters through KERS or CERS. At that time, the possibility of providing retirement benefits to all of the City's employees was investigated. Due to the financial hardship, the City did not become a part of either plan. The City finally joined CERS in July, 1989, which, at such time, the employees of the Public Works Department were terminated by the City of Pikeville, and hired by Professional Services Group, Inc., (PSG), the firm with whom the City contracted to operate its public works. Mr. Davis told the Commission there are now federal laws which govern pension benefits which provide for benefits to be applied non-discriminatory to all employees.

Mr. Webster disagreed with the City Attorney's opinion that providing benefits would be an illegal act. He cited a 1989 case whereby Tennis Hamilton, Chester Coleman, Elmer Ray, Cecil Ray, and Lundy Goff sued the City Commission for retirement benefits. The Circuit Court issued an order which provided that the City could legally pay retirement benefits to these individuals if it chose to. He added that the City Commission approved the payment of benefits to those applicants and have continued to approve benefit payments on a case-by-case review.

Mayor Combs stated that the employees referenced by Mr. Webster did not choose to work for PSG. The remainder of the employees were terminated by the City at the time the contract with PSG was signed, which in his opinion, released the City from any obligation to provide retirement benefits. The Mayor explained that while in negotiation with PSG, the retirement issue was discussed. He reported that PSG offers a retirement plan to its employees. Mr. Webster told the Commission that Mr. Snodgrass worked for PSG until he became disabled. Mr. Snodgrass receives only \$100.00 per month in retirement benefits from PSG. Mr. Webster said he would be agreeable to the City making up the difference between what Mr. Snodgrass receives and the customary \$500.00 per month the City has paid in benefits to other employees. Commissioner Mounts expressed his opinion that the City can't, financially, continue to pay benefits and stated that he thought it unjust to use taxpayers' money to fund the payments. City Attorney Davis told the Commission that it was his opinion that the Circuit Court stipulated that only the five employees who sued for benefits in 1989 were eligible for payments. He stated that after the time the City became a member of CERS, it could no longer offer any other retirement plan.

After considerable discussion between the attorneys, each disagreeing with the other's opinion, the Commission decided to obtain an opinion, from Attorney Richard Elswick, determining whether the City can: (a) legally grant pension benefits; (b) because of previous allotments to other employees, must the City grant pension benefits; and (c) to define the group of people who would be eligible for said benefits. Mr. Webster agreed with the decision to ask Mr. Elswick for an opinion and told the Commission that he would prepare a letter to Mr. Elswick asking these questions. The letter will be forwarded to the City Attorney and Mayor for their review and forwarding to Mr. Elswick. The Mayor advised that the City will not be obligated to accept Mr. Elswick's advice.

Mike Lucas, attorney representing the family of James Tucker, was not present to discuss his clients' request for pension benefits. The City Attorney advised that a suit had been filed against the City on behalf of Mr. Tucker's family. The lawsuit is still in Discovery Phase.

4. Methodist Hospital of Kentucky UDAG Funds: Project Coordinator, Sue Smallwood, advised the Commission that HUD has requested a clarification from the City Commission as to what manner the UDAG funds will be disbursed to the hospital. During a previous meeting, the Commission agreed to give the UDAG funds to the hospital and forgive repayment, subject to the hospital not being sold and no default of the bonds. HUD officials have determined that the City must decide whether the funds are to be given as a grant or a loan. With the stipulations placed by the Commission, it appears that the funds are to be loaned. Ms. Smallwood pointed out that the deed for the hospital property provides that the hospital can't be sold. The Mayor explained that the Commission's decision was to give the money to the hospital, but if a for-profit organization purchased the hospital or if the hospital defaulted on its bonds, the City would require repayment of the UDAG funds. The Commission thought the intent clear and authorized the City Attorney, upon motion by Mayor Combs and seconded by Commissioner Clark, to clarify the City's position with HUD so the City can proceed with the execution of a UDAG agreement with the Methodist Hospital of Kentucky, Inc. The motion carried unanimously.

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C. CITY MANAGER'S REPORTS: John B. Johnson, City Manager, presented the following items before the Commission:

1. Tennis Court Bids: City Manager Johnson advised that one bid was received for the resurfacing and resealing of the tennis courts located at Bob Amos Park and at the Hambley Athletic Complex. The bid amount was \$32,429.00. Mr. Johnson told the Commission that sufficient funds are in the budget for the project. Mr. Johnson explained that one of the tennis courts in the Bob Amos Park is so badly broken, that it will be resurfaced and restriped for use as a basketball court. The City will then have 4 tennis courts and 4 basketball courts. Mayor Combs made the motion to award the bid to K & L Sealers in the amount of \$32,429.00. Commissioner Blackburn seconded the motion. The motion carried unanimously.

2. Gas Well Bids: Three bids were received in answer to an advertisement for the sale of the City's leasehold of the natural gas well, known as the A. F. Childers Well. The bids were received from:

Leonard Hall.....1/64 royalty plus will plug and seal the well.

Interstate.....\$23,150.00 plus will plug and seal the well.

KLC.....Will exchange the leasehold for the gas well in Poor Farm Hollow. KLC contends that the Poor Farm gas well can not be raised, and by virtue of the City's approval to allow the hospital to waste fill material in Poor Farm Hollow, the well is rendered useless.

Commission Members discussed whether the leasehold should be offered for sale by public auction. City Manager Johnson told the Commission that all local natural gas vendors were given notice of the bid proposal. He reminded the Commission that the bids from Leonard Hall and Interstate include the plugging and sealing of the existing well which is valued at \$19,800.00, as well as the fact that the City only owns the leasehold and not the property. Mayor Combs stated that the City should be able to retain at least a 1/16 or a 1/32 royalty.

The bids were referred to the City Manager for further review.

3. Ambulance Rates: Fire Chief Hall presented the Commission with a rate comparison for ambulance base rate charges. Accu-Care, DHP Ambulance, Prestonsburg Fire Department and Paintsville Fire Department were surveyed. The charges for basic service varies from \$200.00 to \$525.00 with extra charges for mileage and miscellaneous equipment. The City of Pikeville charges a \$150.00 base rate. The Commission agreed that the base rate should be increased as the City incurred a \$200,000 loss. Fire Chief Hall recommended increasing the rate to at least \$300.00 and to concentrate efforts on collections. The Commission thought increasing the base rate to \$400.00 would be more prudent. Action to increase the rate was delayed until the next regular meeting to allow the City Manager sufficient opportunity to make sure the increase would not violate any "Usual and Customary Rate" agreements with various insurance providers.

4. Parking Violation Fees: Police Chief Edmonds presented the Commission with a survey of parking violation fees charged by various cities. The fees average were cited as follows:

Handicapped Parking	\$46.00
Overtime Parking	\$ 6.00
Yellow Line	\$13.00
Fire Lane	\$18.00
Fire Hydrant	\$16.00
All other	\$ 7.50

Commissioners expressed their interest in adopting an ordinance to increase the parking violation fees, mainly to encourage those employed in downtown Pikeville to park in the river fill or on the boulevard. The Commission designated the fees to be established as follows:

Handicapped Parking	\$50.00
Overtime Parking	\$ 5.00
Yellow Line	\$10.00
Fire Lane	\$20.00
Fire Hydrant	\$20.00
All other	\$ 5.00

Also discussed was the possibility of prohibiting parking on Main Street and Second Street before 9 a.m. Commissioner Davis volunteered to survey the downtown businesses to determine if they would be in favor of prohibiting parking on streets within the Central Business District, with the exception of Division Street, before 9 a.m. Action with regard to the parking violation fees was delayed, pending a report from Commissioner Davis.

Commissioner Mounts advised that a police cruiser had been stored at Island Creek. He asked if there were any objections to spending about \$1,500.00 to install a new motor and to perform some transmission work on the vehicle so it could be used by the Fire Department. There were no objections.

## AGENDA ITEM VI.

## NEW BUSINESS

### A. BOARD APPOINTMENTS

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1. Historic Preservation Board: The Commission was advised of two vacancies on the Historic Preservation Board due to the resignations of Betsy Venters and Suzie McGhee. The Historic Preservation Board recommended that Judy Walters and David Deskins be appointed to complete the unexpired terms. Questioned was whether David Deskins could serve on the Board since he does not reside within the City Limits. Sue Smallwood, Project Coordinator, advised the Commission that the Historic Preservation Board's guidelines do not provide that a member must reside within the City Limits. Mayor Combs advised that the Board's Chairman, Jack Sykes, had indicated that Mrs. Venters had requested that she be reappointed to the Board. Commissioner Blackburn stated that he would rather that someone who lives within the City Limits serve as a board member. Mayor Combs made the motion, seconded by Commissioner Clark to appoint Judy Walters and Betsy Venters to serve as members of the Historic Preservation Board. The motion carried 4 - 0 - 1 with Commissioner Mounts abstaining from the vote.

2. Swim Team Board: Presented to the Commission for approval were the Swim Team Board's recommendations for new members. Those recommended were as follows: Theresa Dawahare, John Michael Johnson, Cindy Sargent, and Terry Mulliken. Mayor Combs made the motion, seconded by Commissioner Mounts to approve the appointment of members to serve on the Swim Team Board as recommended. The motion carried unanimously.

3. Park Board: City Manager Johnson advised the Commission that Dave Thomas had resigned as a member of the Parks Board. Mayor Combs made the motion to appoint Ralph Feltner to complete the unexpired term. Commissioner Blackburn seconded the motion. The motion carried unanimously.

Douglas Stargill appeared before the Commission and advised that he recently purchased a tract of land on Ellis Morrell Lane of Chloe Creek, and has received Board of Zoning Adjustment approval to place a single wide trailer. He explained his problem lies in that the roadway is bordered by two fences erected by adjacent property owners, who will not allow the removal of the fence to allow for delivery of the trailer. Mr. Stargill told the Commission that a 1994 lawsuit designated an 8 ft. right-of-way. There currently are two other houses on this roadway. Fire Chief Hall advised that he can not access the road with the fire truck. City Manager Johnson told the Commission that Ellis Morrell Lane is a public way but is not a dedicated roadway accepted into the maintenance system. He told the Commission that it would be necessary to negotiate with the adjoining property owners for the purchase of property in order to widen the roadway. Mr. Stargill asked the Commission for to define the procedures he needs to follow so he can get his trailer placed. The Commission directed that City Attorney Davis look into the matter.

There being no further business to come before the Commission, Commissioner Blackburn made the motion, seconded by Commissioner Davis to adjourn the meeting. The motion carried unanimously. (Adjournment Time: 9:17 p.m.)

APPROVED:

STEVEN D. COMBS, MAYOR

ATTEST:

KAREN HARRIS, CITY CLERK