PIKE COUNTY PROJECT DEVELOPMENT BOARD
MEETING MINUTES

Pike County Courthouse
Pikeville, Kentucky

May 5, 2009, at 5:00 p.m.

PRESIDING OFFICER: Judge/Executive Wayne T. Rutherford

MEMBERS OF THE BOARD PRESENT:

Magistrate Jeff Anderson
City Manager/AOC Representative Donovan Blackburn
Circuit Judge Eddy Coleman
David Deskins, Circuit Court Clerk
Citizen at Large Hon. Charles E. Lowe, Jr.
District Judge Darrell Mullins
AOC Project Manager Jeff Lilly

OTHERS PRESENT:

Debbie Bailey, Grace Fellowship
R. Roland Case, Assistant Pike County Attorney
Pikeville City Attorney Rusty Davis
Rose Farley, Recorder
John Doug Hays, Deputy Judge of Pike County
Rhonda James, Finance Commissioner of Fiscal Court
David Sumner, Codell Construction
Ryan Barrow, Ross, Sinclaire & Associates

MEMBER OF THE BOARD ABSENT:

State Bar Association Representative Neal Smith

Pike County Judge/Executive Wayne T. Rutherford, Chair of the Pike County Project Development Board, called to order a regularly scheduled meeting of the Board on May 5, 2009, in the Conference Room of Judge Rutherford in the Pike County Fiscal Courtroom, Pike County Courthouse, 146 Main Street, Pikeville, Kentucky. **Upon motion by Donovan Blackburn and second by Judge Darrell Mullins, board minutes for April 2, 2009, were unanimously APPROVED.**

Rusty Davis, City Attorney for Pikeville, reported on the seven cases beginning with the first T.J. Realty case, which is the Weddington Theater tract stating that he will attend a hearing wherein an interlocutory judgment will be granted tomorrow since the Ramseys and Cassadys did not contest the taking of the property. He said the other T.J. Realty case was more heavily contended but after a hearing in Prestonsburg, the interlocutory judgment was entered on May 4.

In the Robert Pinson case, an interlocutory judgment has been entered on April 7 and Attorney Davis has filed a motion to set this case for trial since price is the main issue. On the Larry Keene case, the owners did not oppose the taking but only the price. The motion for interlocutory judgment will be heard on May 8, 2009. On the Lonny Johnson property, interlocutory judgment was entered February 18, 2009. On the Hattie Thompson case, the Larry Webster parking lot, the taking is not opposed by the family with Interlocutory Judgment entered May 4, 2009. On the Alcie Combs case, interlocutory judgment was entered May 4, 2009.

He said there are three cases where the taking might be contested: the two involving Larry Webster and the Alcie Combs case. He said he did not know how quickly these would move. Assistant Pike County Attorney R. Roland Case said there is a reasonable chance to expedite the cases since construction costs might increase. The Condemnation Report submitted by Attorney Davis is attached to the text of these minutes, made a part hereof as if fully written herein, and entitled, "Attachment A."

Attorney Case said an offer to purchase one of the pieces of property could either be discussed in open meeting or Executive Session and those present chose open meeting. He said in the interest of full disclosure, Frank Ramsey is one of his very good friends as well as one of the defendants, along with Mr. Ramsey's brother Billy and his sister Susan. They own one third of the Weddington Theater property and they do desire to sell for the Board's appraisal at $300,500. The commissioners' award was $206,000. He recommended that the Board settle for $300,500 because he felt trying the case would be difficult. He said also Dr. O.W. Thompson called him this afternoon and those heirs want to settle, enabling two thirds of the Weddington Theater Property to be sold for two thirds of the $300,500 figure.

Attorney Case said no one has directly informed him of this but if that is done, the other third of property owners, when faced with paying their own attorney fees and obtaining their own appraisal witnesses, could also settle. He stated he firmly recommends if the Board settles for the $300,500 that the others not be rewarded for "holding out" and the Board should not settle for any more than one third of the $300,500.

Attorney Davis said his opinion was the same and if an appraiser were hired to put a value on it, the $300,500 has already been offered and a trial would only be better if another realtor would be willing to testify that it is less than the first realtor causing the other side to use the first realtor against the Board. He said based on the total, he felt the Board has been satisfied with the evaluations. Attorney Case again stated that he and Mr. Frank Ramsey are good friends and he wanted no misunderstanding of that fact.

Jeff Lilly, AOC Project Manager, asked if there would be a chance of the price being any less if the County went to court and Attorney Davis responded the $300,500 is the "floor" and Attorney Case said the other side would just call the County's witness. **Upon motion by David Deskins and second by Donovan Blackburn, the Board unanimously AUTHORIZED the recommendation offered by Assistant Pike County Attorney R. Roland Case that the Board settle for $300,500 for purchase of two thirds of the Weddington Theater Property to be awarded to the Thompson and Ramsey owners.**

Attorney Case stated when Dr. Thompson called this afternoon, he understood from him that he would like to settle for the Webster Law Office Partial and the Parking Lot Partial. He said again, the Board would be buying a partial interest and the issue is whether Mr. Webster is entitled to anything under this. He said he did not have a firm figure on the offer but Joe Ramsey also wants to sell. Judge Rutherford pointed out Mr. Webster is not an owner but a renter. Attorney Case said it was his understanding that the fee owners (landowners) have sent Mr. Webster a letter stating his lease has ended.

Attorney Davis spoke today with Mr. Combs, who represents them, and he said on the law office they believe under the agreement that with the filing of the condemnation suits, they can terminate his agreement. He said on the parking lot tract, there is a holdover law which expires on August 15 of this year. Attorney Davis said the Board could pick up and defend Mr. Webster's Sherrod claim but yet still have to go to court as the fee and Mr. Webster as the renter. He said this makes it difficult to settle even though the Board is impartial and may not want to pay the appraised fee. When Attorney Case said this weakens Mr. Webster's case, Attorney Davis said this gives Mr. Webster three years. Mr. Webster declared he is paying $1,500 per month and that is below market so he may be entitled to some money for three years but all that would be left to a jury. He stated also the landowners might force Mr. Webster to leave.

Judge Eddy Coleman asked what the commissioners' and appraiser's reports were on that and Attorney Case answered the commissioners were a little higher. Attorney Davis said if the Board did not settle, it will come out of the owner's pocket. If the Board does settle, it would be a matter of agreeing to get the best deal. He said the property owners' idea is to just get out. Attorney Davis reported he asked Mr. Webster if he was bothered about getting money to move from one office to the other and Attorney Davis offered to talk to the landowners about this. Judge Rutherford interjected that several tenants in this area have come in and asked for moving expenses and no discrimination can be observed. Attorney Case said he agreed with Judge Rutherford from an equity standpoint but the people are either holdover tenants with no lease or their lease holds a clause that in the event of condemnation, they do not get anything. Mr. Webster's lease does not specifically state that. Judge Rutherford said he concurred but the perception from the public does not need to be stirred up. Attorney Case said from a legal standpoint, Mr. Webster has a legal argument, whether or not he prevails. Attorney Davis said if an appeal would cost the County $5-$7,000, then an economic settlement might be more attractive.

Attorney Case announced the appraisal was done with treating the law office and parking lot together for $297,000 even though they are separate tracts. The commissioners' award on the building part is $312,000 and the parking lot $43,000 so $355,000 totals the commissioner's award as opposed to $297,000 appraisal figure. He said two thirds of that one might be able to be settled. He stated the Pinson Hotel property will have to be tried as well the Raccoon Auto Sales because they want much more than the commissioners' award. Judge Coleman stated that Mr. Webster's appeal time of thirty days runs by the next meeting.

Attorney Case said the next question is that if the Board becomes landlord of the Weddington Theater, he would be in favor of permitting the Grace Fellowship Church to hold over until construction is actually ready to start but the church must be on notice that construction is a fact, not an idea.

David Sumner of Codell Construction said there probably would have to be some environmental surveys carried out in those buildings and to do that, some dismantling would have to begin to determine asbestos findings. Attorney Case said the Board would have the right of possession very soon because the Board would have two thirds and pay the other third in court so that would permit the right of entry. He said the church would either have to move or make allowances for the surveys to be done. Attorney Davis said the Board would know on June 4 whether there would be an appeal or not. Mr. Blackburn asked how far before demolition would the environmental surveys have to be done and Mr. Sumner said about six weeks.

Mr. Lilly said Steve Sherman of Sherman, Carter and Barnhart, Architects, obtained approval from Summit Engineering, Inc., for the Phase One Survey. He said Phases One, Two and Three are not environmental. Judge Coleman asked if this would include the core drilling and Mr. Lilly answered no, that is the price for Summit Engineering to come in and do the actual survey. Judge Rutherford asked if a price had been negotiated with Summit, and Mr. Sumner said this was to identify the existing properties. Mr. Lilly said there are three phases: Phase One is $10,400 for public hearings only. Phase Two is acquisition area of the building at $11,800. Phase Three is acquisition area after the demolition at $5,500 for a total to Summit of $27,700. He said what Mr. Sherman wanted to present to the Board at this meeting is that Phase One can be done including public streets. Judge Rutherford asked Mr. Blackburn if this were in line with normal costs and he answered yes. **Upon motion by Donovan Blackburn and second by David Deskins, the Board AUTHORIZED the sum of $10,400 to be paid to Summit Engineering, Inc., for survey work in Phase One of the Judicial Center Project.**

Attorney Case said on the jail addition, a disagreement arose as to whose responsibility it was to locate telephone lines, water lines and utility areas on the map. He stated the engineering firm and the contractor both said it would have been handled differently if either had known the extent of responsibility and he urged specificity as to whose responsibility is what. Mr. Lilly said the documentation states definitely that the utilities will be determined on record drawings, utility company flagging and surface evidence such as valves and hydrants. He said the survey would not cover any marking of utilities or plot of telephone lines. Mr. Blackburn said Summit Engineering has that data on file as part of the city's Renaissance Program. Attorney Davis said this would have to come from existing records. Mr. Lilly noted Mr. Sherman inquired of him whether it was permissible to use Summit Engineering and he told him yes because Summit is already part of the city projects with maps and information.

Mr. Lilly presented a bill for $18,331.20 from Codell Construction for Phase B. Judge Rutherford asked Mr. Lilly if he had reviewed this and was told yes. **Upon motion by Judge Darrell Mullins and second by David Deskins, the Board unanimously AUTHORIZED payment to Codell Construction for Phase B of the Judicial Center Project in the sum of $18,331.20.**

Judge Coleman asked what about the property for which money is requested and Mr. Lilly said that is allotted in escrow and is a matter of paperwork to be filed with Mr. Deskins. Attorney Davis stated a letter from him is needed and as soon as he receives the checks from AOC he can file a motion to reimburse the commissioner. Mr. Lilly said to make sure the letter states the official name, case number, amount and address and he would escrow the amount into the David Deskins account.

With no further business to come before the Board at this time, Judge Rutherford announced that the next meeting would be June 4, 2009, and the meeting was ADJOURNED.

Respectfully submitted,

Rose Farley, Clerk