

**CITY OF FORT MITCHELL, KY
CITY COUNCIL MEETING
September 21, 2009**

CALL TO ORDER / PLEDGE OF ALLEGIANCE / ROLL CALL

Mayor Holocher called the meeting to order at 7:02 p.m. and led the Pledge of Allegiance.

PRESENT: Vicki Boerger, Mary Burns, Bill Reis, David Schrand, David Stoeckle*, Christopher Wiest and Dennis Zahler (arrived at 7:05) **ABSENT:** Will Terwort (arrived at 7:17)** **Others Present:** Mayor Thomas Holocher, Police Chief/CAO Steve Hensley, City Attorney Robert Ziegler, Public Works Director Robert Zerhusen, Fire Chief Scott McVey, Assistant Chief David Jansing, Captain James Bussman and City Clerk Amy Able.

APPROVAL OF AGENDA AND MINUTES

Ms. Burns asked to add to the agenda **Resolution 2009-13** honoring Beechwood School. **Mr. Reis made a motion to approve the revised agenda, Mr. Schrand offered a second to the motion. Motion carried by voice vote.**

Revised drafts of minutes of the last three meetings were provided for council.

Mr. Schrand made a motion to approve the minutes of the August 17, 2009 meeting; Mr. Reis offered a second to the motion. Mayor Holocher called for a voice vote and the motion carried.

Mr. Reis made a motion to approve the minutes of the August 18, 2009 special meeting; Mr. Zahler offered a second to the motion. Mayor Holocher called for a voice vote and the motion carried.

Mr. Wiest made a motion to approve the minutes of the September 16, 2009 special meeting; Mr. Schrand offered a second to the motion. Mayor Holocher called for a voice vote and the motion carried.

CITIZENS NOT ON THE AGENDA

There was no one present responding to Mayor Holocher's invitation to address Council for matters not on the agenda.

MAYOR'S REPORT

The Mayor called for a discussion of the storm water agreement. Chief Hensley noted copies of questions and answers have been sent to Council via email. The Mayor stated that at the Mayor's Group meeting it was noted there has been a modification that SD1 will pay 50% for repairs to culverts (such as Beechwood and Cherrywood.) Mr. Zahler asked about the dry creek bed behind Longmeadow that comes under Highland. Mayor Holocher responded unless we own a creek it cannot be turned over. Mr. Zerhusen noted there are two separate systems there. One was installed by Finke development and there is an easement; then when the City improved the street, catch basins were added that tie in to that system under the roadway. Since there is public water going into that system, SD1 will maintain it. He stated the City obtained easements for all we installed. Ms. Burns asked about a dry creek near the railroad track and Mr. Zerhusen advised it is an open creek area not in Fort Mitchell (it is in Crescent Springs or Kenton County). Mr. Wiest asked about retention ponds and Mr. Zerhusen responded there are none maintained by the City; there are two in the city at the Kruempelman Development and Maple Avenue. It was noted the following cities have moved forward with the transfer: Crestview, Woodlawn, Independence, Edgewood and Crescent Springs. In October Elsmere, Silver Grove, Villa Hills and Ludlow are expected proceed with the transfer. Mr. Reis asked if any changes to the agreement would apply to those who already signed and this was confirmed. Mr. Wiest stated he still has concerns. He stated SD1 has agreed to review the language with respect to the Drawbridge issue.

** (Mr. Terwort arrived at 7:17.)

Mr. Wiest noted the following concerns. The modified contract indicates every time there is a collapsed storm water pipe, there will be questions if it was due to maintenance or design, and there will be arbitration. Mr. Ziegler stated this applies if there is loss such as a flood or personal injury. If it is a design

flaw they will fix it unless it results in a flood or injury. If it is a design or construction defect, they will fix it. Mayor Holocher stated if the lines are 40 years old it would be hard to site design flaws. He added 90% of Kenton County lines may be under engineered because the developers only had to look at pipes being sufficient for that individual development. Mr. Wiest said the fix for this would be to “sunset” it as at some point it becomes an operation and maintenance issue but SD1 would not make that change. Mr. Wiest said his second concern is the catch basin issue. Mayor Holocher said SD1 was not to take anything associated with the street and his understanding has been they would take the catch basin itself. Mr. Wiest stated that is not clear in the contract. Mr. Wiest stated his third concern is a provision for lines discovered in the future. Mr. Wiest said his fourth area of concern is SD1 not making changes to the indemnity provision. He said the potential for Clean Water Act violations which are not covered by insurance is scary as we will be co-permittees. Mr. Ziegler was asked to respond and said if the indemnity doesn’t go through our position (as a co-permittee), with SD1 owning the system would be the better position to be in. Mr. Wiest said the EPA would pursue both. Mr. Ziegler noted it is currently a mutual indemnity. Mr. Wiest said the liability is more likely to come from any mistakes they make. He added he has concerns for the future even though we have a good relationship with that organization now. He stated there it is likely a way out of the 2003 agreement and he would like to have his concerns addressed. Mayor Holocher asked what the alternative would be as we currently have 100% liability. Mr. Wiest stated EPA violations could be addressed through a claim of indemnity and if a court deems the 2003 agreement unenforceable, fees could be reclaimed. Mayor Holocher stated the agreement is a work in progress and has been worked on for over five years, through numerous meetings and discussions of public and private pipes and what is fair. He stated SD1 has changed some of their positions. The Mayor said our cost would be far greater than what is being paid to SD1. He said local cities are in this together and there must be some leap of faith. Mr. Zahler stated he has some concerns and has asked previously about fees paid versus what was paid out. Mr. Zahler said he had questions about storm water fees being used for sewer line replacement under the auspices that storm water was seeping into the sewer lines. Mayor Holocher noted each time the City does street reconstruction, we smoke and dye test and make repairs wherever leaks are found. Mr. Zahler reiterated his concern that storm water fees may be used for sanitary line repairs. Mr. Zerhusen said road projects that involve storm sewers have not involved sanitary line items. Mr. Zahler asked if they replaced sanitary lines. Mr. Zerhusen responded with the example that on Edgewood Road, SD1 went in first and replaced the sanitary lines completely, but our agreement was for work on the storm lines only. Mayor Holocher stated when we bid the project it is for storm pipes and SD1 reimburses 50% of the cost. Mr. Zahler stated his concern is whether SD1 uses storm fees for sanitary repairs. Mayor Holocher said SD1 has an auditor and an obligation to do what is right with storm water funds. Mr. Zahler said he would prefer to hold off on signing the agreement until we see what Newport and Covington do because those two big cities will impact the small cities and if they decide not to sign perhaps we should not. Mr. Wiest said SD1 agreed to work on language due to the Drawbridge issue and this is not yet complete. He would like additional clarity on the below grade catch basins. He added his preference is to wait and see the outcome of the Cold Spring litigation. Mr. Reis noted that while waiting we would have full liability for any potential EPA fines. **Mr. Stoeckle made a motion to authorize the City to enter the transfer agreement with SD1, Mr. Reis offered a second to the motion.** Mayor Holocher called for any questions. Mr. Wiest said it would not hurt to wait two weeks. Ms. Burns said that would allow time for Mr. Zahler’s questions to be answered. Hearing that there were no further questions, Mayor Holocher requested a roll call vote.

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| Mr. Stoeckle: | Yes | Mr. Schrand: | Yes |
| Mr. Reis: | Yes | Mr. Terwort: | No |
| Mrs. Boerger: | Yes | Mr. Wiest: | No |
| Ms. Burns: | No | Mr. Zahler: | Yes |

Yes: 5 No: 3 Motion carried.

The Mayor stated that outstanding issues with the **redevelopment of the Kroger** store are coming closer to being finalized. There will be a meeting tomorrow.

We continue reviewing the **sidewalk area between Idaho and Highland**. The City did not receive a grant for this sidewalk.

New lights have been installed at the End-of-the-Line area.

Information about a **discount card for prescription medications** is available on the City website. All residents of Kentucky are eligible to receive the discounts through many local pharmacies. The program is being promoted by the Kentucky League of Cities.

*(Mr. Stoeckle left the meeting at 7:46.)

Commonwealth Attorney Rob Sanders addressed Council and presented the police department with a speech translation device pre-programmed to translate phrases which are regularly used in police work into 17 languages. The unit was purchased with funds from a drug seizure. Having such equipment helps the police department achieve and comply with various certification and ADA requirements as well as eligibility for federal grants. Chief Hensley acknowledged the excellent working relationship with the Commonwealth Attorney's office which resulted in a successful drug forfeiture following an incident at a local hotel. Mrs. Boerger commented on the usefulness of the translator noting that on a recent ride-along with the Life Squad the patient spoke only German. Ms. Burns asked about new clip-on cameras being used by police officers in the area. Mr. Sanders replied that Covington and Erlanger are using these and they were instrumental in at least one case so far when drugs were in plain view during a traffic stop. Chief Hensley noted our department is purchasing two of these units which cost less than \$100 each compared to the \$4,000 cost of in-car cameras.

CITY ATTORNEY'S REPORT

Mr. Ziegler offered an update on the opinion of the Attorney General regarding the executive session at the May 18, 2009 meeting. He noted that statements from Council members regarding the violation of the Open Meetings Act are available for review in the City Clerk's office through November 1, 2009.

Mr. Ziegler gave **first reading by title and summary to Ordinance 2009-07 regarding open burning**. The current ordinance does not address open burning such as fire pits and grills. Chief Hensley noted there were a few complaints from residents regarding nuisances as the result of open burning. In reviewing the ordinance it became apparent an update was needed as there were not even provisions for grilling. Chief McVey, Assistant Chief Jansing, Mr. Wiest, Capt. Bussman, Chief Hensley and Mr. Ziegler have been working on this update to meet all the requirements.

CITY ADMINISTRATOR'S REPORT

Chief Hensley noted that the trees in front of the Duke power station have been removed.

There was a safety concern on Beechwood Road and the bushes have been cut behind the guardrail.

The **drug free workplace policy** adopted a few years ago has been reviewed and updated to meet current criteria. Having this policy in place results in a five percent discount to our workers' compensation premium.

The Police Department has received a **\$15,000 highway safety grant**. Of that amount, \$3,000 will be used to purchase new hand-held laser radar units, the rest will be for personnel costs for enforcement.

Chief Hensley stated that Mr. Terwort has asked the status of putting contracts on the website. Discussion followed. Chief Hensley said his understanding was we were going to wait and evaluate the process and possibly revisit it after we had posted the quarterly financial statements, general ledger and the audit. As discussed previously, any number of things can be considered a contract from each purchase order to purchasing agreements with the county. The state mandates sealed bids for projects over \$20,000, a summary of contracts over that amount may be used. Information about how much the financial information currently posted is being accessed will be provided at the next meeting.

A revised copy of the **interlocal agreement for county wide collection of business license fees** was received late last week and is under review.

Captain Bussman reported there have been a number of **vehicle break-ins** throughout the City. In most cases the cars are unlocked. Residents are reminded to keep their vehicles locked and remove valuables even if parked in your own driveway. An arrest was made as the result of a resident reporting a suspicious vehicle seen at 5 a.m. Please contact the police immediately if you observe suspicious behavior.

Chief McVey reported there were 55 fire incidents and 119 life squad calls during August. The year-to-date totals are 463 fire runs and 877 EMS. October is fire prevention month. A fund raiser for Shriner's Hospital will be held October 3 at Columbia Sussex in Crestview Hills. The new schedule in the fire department is working well and has relieved the burden to volunteers.

Mr. Zerhusen reported the meters are being installed for the new lights on Dixie Highway and will be set on timers. He has met with business owners to discuss placement of benches, trash receptacles and planters. Work on Huckleberry and Lawrence is complete. Work on Harvard is 70% complete, Chelsea is 50% complete. Seville will be milled on Thursday and paved next week. Oxford Road reconstruction starts next Wednesday working toward Sunnymede Drive and will take seven weeks to complete. The Public Works Department took care of a pavement failure on Longmeadow and we will be getting bids for the blacktop work. Mr. Schrand asked about the lines at Grandview and Beechwood. Mr. Zerhusen stated these are on the schedule as are stop bars on Highland.

COMMENTS FROM COUNCIL

Mayor Holocher stated the Police Department was recognized at the KLC Convention for recent certification.

Fort Mitchell Baptist Church is celebrating their 85th Anniversary this week. A proclamation will be given on Sunday to mark the milestone.

Ms. Burns read Resolution 2009-13 acknowledging Beechwood's recent high scores on the ACT examination. Mr. Reis made a motion to adopt Resolution 2009-13, Mr. Zahler offered a second to the motion. Mayor Holocher called for a voice vote and the motion carried.

Mr. Reis stated that while young deer in the area may seem very tame, they are wild animals and should not be approached. Mothers are often nearby and will protect their young if threatened.

Mr. Schrand commented on the upcoming World Equestrian Games to be held in Lexington in September and October of 2010. With many horses being flown in at CVG and needing to be quarantined for 30 days, our area will see an overflow of visitors connected with the event.

ADJOURNMENT

There being no further business on the agenda, **Mr. Zahler made a motion to adjourn, and Mr. Schrand offered a second to the motion.** Motion carried by voice vote, **the meeting adjourned at 8:37 p.m.**

Signed _____, 2009

Respectfully submitted by:

Amy B. Able, City Clerk

Thomas E. Holocher, Mayor