

**CAMPBELL COUNTY FISCAL COURT  
MINUTES  
JUNE 2, 2004**

A regular meeting of the Campbell County Fiscal Court was held on Wednesday, June 2, 2004, at 7:00 p.m. at the Alexandria Courthouse, 8352 E. Main Street, Alexandria, Kentucky.

In attendance at the meeting were:

COUNTY JUDGE/EXECUTIVE  
STEVE PENDERY

COUNTY COMMISSIONERS:  
DAVID OTTO  
KENNETH RECHTIN  
WILLIAM VERST

|                  |                                          |
|------------------|------------------------------------------|
| Robert Horine    | County Administrator                     |
| Jim Seibert      | Fiscal Director                          |
| Justin Verst     | County Attorney                          |
| David Sandfoss   | Chief, Campbell County Police Department |
| Peter Klear      | Director of Planning & Zoning            |
| Darlana Brown    | Director of Housing                      |
| Melissa Williams | Director of Administration               |
| Sandra Mulligan  | Fiscal Court Clerk                       |

The meeting was called to order at 7:08 p.m. by Judge Pendery. A moment of silence was called for by Judge Pendery, followed by the Pledge of Allegiance. Following roll call, a quorum was declared present. The meeting was covered by *Government Access*.

Judge Pendery presented the minutes from the regular Fiscal Court meeting of May 19, 2004 and the special Fiscal Court meeting of May 21, 2004. It was moved by Commissioner Otto and seconded by Commissioner Rechtin that the minutes of the regular Fiscal Court meeting of May 19, 2004 and the special Fiscal Court meeting of May 21, 2004 be approved. All voted "AYE" and the motion passed unanimously.

Judge Pendery then asked if there were any citizens or public officials present who wished to address the Court. Tony Brinker, an attorney representing Jeff and Maria Baynum, requested to address the Court regarding the proposed mining overlay text amendment. Judge Pendery advised Mr. Brinker, and others who were present with an interest in this matter, that when there is a matter that is properly the jurisdiction of the Planning & Zoning Commission and a public hearing has been held on the subject matter, the Court does not take additional evidence or testimony other than the information from the Planning & Zoning Commission that is transmitted to the Court for consideration. He encouraged everyone to understand that and noted that their presence at this meeting makes a statement regarding the matter, even though the Court would not be able to accept written or oral communications on that subject.

Mr. Brinker then stated that there were some recommendations made by the planning staff at the Planning & Zoning Commission meeting that he thinks were inaccurate. He stated that he sent e-mails to all the respective members of the Court that afternoon, detailing items that he believes to be misinformation from the planning staff.

Judge Pendery suggested to Mr. Brinker and others present that if they feel they have information that is relevant and/or persuasive on this matter, they should get that information to the County Attorney, Justin Verst, to be screened by him. If their information rose to a level that Mr. Verst felt the Court should be aware of, there would be steps the Court could take to review the information. Judge Pendery stated that he appreciated everyone being present and further explained the matter at issue. He stated that this matter consists of two issues. There is a person who is interested in building a gas station at the southeastern corner of Ivor Road and AA Highway and in order to accomplish that, there is a two-stage process that would involve two hearings and two sets of action by the Planning & Zoning Commission and the Fiscal Court. The first process, which is in the form of Ordinance O-13-04 being presented to the Fiscal Court for first reading at this meeting, is an amendment to the text of the Zoning Ordinance. For more than 20 years, there has been a mining overlay in the area, and the mineral rights for a lot of the property in that area have been purchased. Zoning is in place for there to be a mine. The current agricultural zone reads that that is the only zone that allows for a mining overlay, which means that anyone who wants to use any property in that vicinity for something other than agricultural purposes that needs a zone change, will have a problem getting that zone change because the mining interests would be affected. Those persons' acquiescence would be required for any such change. The vote at the Planning & Zoning level simply says that there should be zone changes allowed in this area of some variety and there needs to be a text amendment to allow for a mining overlay in the highway commercial zone. Otherwise, it is likely that there would never be a zone change that the mining interests could agree to. This is the first step in the process. A public hearing has taken place, and the information has been collected and presented to the Fiscal Court for first reading. The party who may be looking to put in a gas station would still have to obtain a zone change to Highway Commercial and there would be another public hearing before the Planning & Zoning Commission. Mr. Verst verified Judge Pendery's explanation, and also explained that the Ordinance would be read for the first time at this meeting, and consists only of changing the text to allow for the mining overlay in a highway commercial zone. Assuming that is passed, there would have to be a second public hearing for a zone change to allow a gas station in the area, the public would have to be notified, and the Planning & Zoning Commission would then make a recommendation to the Court on whether to change the zone from agricultural to highway commercial. He stated that any time the Fiscal Court is presented with an ordinance for consideration, as in the case of Ordinance O-13-04, it is just a first reading of the Ordinance and not a vote by the Court whether to approve or disapprove the Ordinance. The vote by the Court would come at the second reading of the Ordinance at the next regular meeting of the Court.

Judge Pendery stated that a discussion was held prior to the start of this meeting to better inform him as to whether or not the mine owners' acquiescence would need to be sought even if there is a text change, since they are property owners of the mineral rights on the property. He noted that the agreement of the mine owners may be necessary.

A citizen then asked if the Court would take input on this Ordinance at the second reading. Judge Pendery stated that the Court would not take input, and explained that the public hearing, which has already been held on this Ordinance, is designed to elicit both sides' testimony on the issue before the Planning & Zoning Commission. If the Court were to accept other information

outside the scheduled public hearing from one side, it would not be fair to the other side if they were not present to present their rebuttal. The citizen then asked if the Fiscal Court would take public input on zoning issue in the future. Mr. Verst responded that under State law, the Planning Commission has always conducted the public hearings in order to hear both sides to an issue. It would not make sense to have two public hearings, one before the Planning & Zoning Commission and another public hearing before the Fiscal Court. The Fiscal Court bases their decision upon the public record that occurred at the public hearing before the Planning & Zoning Commission, along with all the information submitted to the Court as a result of the public hearing. The Court's decision is based upon the established record, not based upon any new record, information or hearing.

Another citizen then asked if they were not allowed to give input at this meeting, would there be another Planning & Zoning meeting where they could give public input. Judge Pendery reiterated that there was the original public hearing held on this issue, which was everyone's opportunity to make their feelings known and present evidence. He stated that in this particular case, if there is a text change, there is likely to be another public hearing if the property owner who wants to establish a gas station in the area requests a zone change. The text change that is being read for the first time at this meeting is not a zone change.

Another citizen how widely distributed notification would be if there were another public hearing. Judge Pendery asked Peter Klear, Director of Planning & Zoning, to respond to this inquiry. Mr. Klear stated that if a request is received from a property owner for a zone map amendment to change the zoning on their property, Planning & Zoning is required by State law to post a sign on the site, to notify the adjacent property owners in writing about the hearing, and also advertise in the Campbell County Recorder.

Another citizen asked if the property owner does not apply for a zone change to establish a gas station on the property, would any of this continue. Judge Pendery stated that at that point you would have to assume there was a text change and highway commercial zoning is possible, for there to be a mining overlay. Mr. Klear stated that the issue before the Court at this meeting is not site specific, but rather for the Fiscal Court's rules and the rules which govern industrial mining overlay.

Mr. Brinker then stated that he disagreed with Mr. Klear's statement that the Ordinance to be considered was not site specific. Mr. Brinker stated that the underlying reasons the Planning Commission staff gave were for the economic development in the southeastern part of the county, specifically the AA Highway. He then stated that if you look at the industrial overlay map, there are three very small sections in the southeastern part of the county that now apply. He does not believe there is any viable commercial economic feasibility in the first two sections, so the only section left, if you believe the Planning Commission's recommendation, is the Ivor Road/AA interchange. Mr. Verst advised that these statements were getting out of bounds and stated that the Ordinance is not site specific, in that it does not deal with any one location, but rather an industrial mining overlay zone in the County's highway commercial zone wherever that may be. Mr. Brinker stated that the Planning Commission's recommendation for approval was based upon the AA Highway and the development of same, according to the minutes. He believes this item is erroneous. Mr. Verst stated that in any text amendment, it may be that approval would affect only a few parcels, but in these text amendments, specific sites are not dealt with.

Another citizen then asked to have clarified that the text amendment being considered would basically open up the entire area in question that is governed by the industrial mining overlay zone to highway commercial development by definition of the text. Judge Pendery stated that was incorrect, and that the text amendment would allow someone who owns property to submit an application for highway commercial zoning. Another public hearing would have to be held by the Planning & Zoning Commission to determine whether to approve the zone change. It does not mean that the entire area that has a mining overlay is highway commercial. That would only happen on a parcel by parcel basis. The citizen then asked if the text amendment were approved, would the potential be there for the highway commercial development to take place on any particular parcel that wants to apply for such zone change. Judge Pendery stated that technically, that may be correct, but it does not mean that the area would be highway commercial all the way through there. Some property owner may have a different zoning classification in mind than highway commercial, and they would need a text amendment in order to get a different zone changed to something other than agricultural. With the mining overlay, someone has a right that they have paid for, and anyone who wants to change the zone is going to affect that property right, unless there is a text amendment. The citizen then asked if a text amendment is not made and the area is left all agricultural, can the mine still operate and function as originally designed by the zoning. Judge Pendery stated that that was correct.

Another citizen asked if anyone knew who owns the underground mining rights in this area. Mr. Klear stated that Black River owned them. The citizen stated that he did not think that was correct and he believed that Hilltop Concrete owned them. Brandon Voelker, an attorney who represents some of the interested parties in this matter, stated that Hilltop still owns the mining rights.

Judge Pendery then asked if there was anyone else who wished to address the Fiscal Court on any other subject. There were none.

Judge Pendery next requested items of Old Business be brought before the Court. Ms. Williams stated that there was one item under Old Business. She presented for second reading and passage consideration Ordinance O-10-04, which she read by title and provided a summary. This Ordinance amends Ordinance O-04-04 and updates the Official List of County Roads to add Makena Lake (located off Washington Trace) and Coot Court (located in the Ponde Creek Subdivision), and adds length to Goldeneye Drive (located in the Ponde Creek Subdivision). She stated that Peter Klear, Planning & Zoning Director, was present to answer any questions. There being no further discussion, Commissioner Verst made a motion and Commissioner Rechten seconded, to approve Ordinance O-10-04. All voted "AYE" and the motion passed unanimously.

Judge Pendery then requested items of New Business be brought before the Court. Ms. Williams presented for first reading Ordinance O-13-04, which she read by title and provided a summary. She explained that this Ordinance amends the text of the Zoning Ordinance, Article X, Section 10.25, to allow the Industrial Mining Overlay Zone in the Highway Commercial Zone. The Ordinance has been recommended for approval by the Campbell County & Municipal Planning & Zoning Commission. She stated that Peter Klear, Director of Planning & Zoning, was present to answer any questions. Ms. Williams stated that no action was necessary on the Ordinance at this meeting and that it would be acted upon at the next Fiscal Court meeting on its second reading.

Ms. Williams next presented Resolution R-53-04, which she read by title and provided a summary to the Court for its consideration. She stated that this Resolution authorizes the Judge/Executive to execute a grant application to the Grants Management Center, Housing Choice Voucher Family Self-Sufficiency Program (FSS) for the funding of the salary and benefits for the position of Coordinator for the FSS Program. Darlena Brown, Director of Housing, was present to answer any questions. There being no further discussion, Commissioner Otto made a motion and Commissioner Rehtin seconded, to approve Resolution R-53-04. All voted "AYE" and the motion passed unanimously.

Ms. Williams next presented Resolution R-54-04, which she read by title and provided a summary to the Court for its consideration. She stated that this Resolution authorizes the Judge/Executive to execute a contract with Joni Mallery, d/b/a Royal Guard Company, to provide cleaning services for the Campbell County Senior Center for fiscal year 2005. The Resolution is the recommendation of Pat Dressman, Director of Human Services. There being no further discussion, Commissioner Rehtin made a motion and Commissioner Verst seconded, to approve Resolution R-54-04. All voted "AYE" and the motion passed unanimously.

Ms. Williams then presented Resolution R-55-04, which she read by title and provided a summary to the Court for its consideration. She stated that this Resolution authorizes the Judge/Executive to execute an agreement with Campbell County Water Rescue, Inc. in the amount of \$23,500 for fiscal year 2005. She noted that Robert Horine, County Administrator, was present to answer any questions. There being no further discussion, Commissioner Otto made a motion and Commissioner Rehtin seconded, to approve Resolution R-55-04. All voted "AYE" and the motion passed unanimously.

Ms. Williams next presented Resolution R-59-04, which she read by title and provided a summary to the Court for its consideration. She stated that this Resolution authorizes the Judge/Executive to execute an agreement with Kentucky Association of Counties to renew its Workers' Compensation insurance coverage for County employees for fiscal year 2005 in the amount of \$167,949. She noted that this amount is an increase from the previous year, but the majority of the increase results from a higher payroll. There being no further discussion, Judge Pendery made a motion and Commissioner Otto seconded, to approve Resolution R-59-04. All voted "AYE" and the motion passed unanimously.

Ms. Williams then requested a motion to appoint Meggy Rawe to the seasonal position of Camping/Concession Worker, effective June 7, 2004 through the 2004 Park Season, at a rate of \$8.81/hr. There being no further discussion, Judge Pendery made a motion and Commissioner Rehtin seconded, to approve the motion. All voted "AYE" and the motion passed unanimously.

Ms. Williams next requested a motion to reappoint Elizabeth Herald and Fred Hockney to the Campbell County District Extension Board for four-year terms, effective July 1, 2004 through June 30, 2008. There being no further discussion, Judge Pendery made a motion and Commissioner Rehtin seconded to approve the motion. All voted "AYE" and the motion passed unanimously.

Judge Pendery next requested reports from Staff. Mr. Horine, County Administrator, stated that while the Agenda indicates a possible resolution to be presented regarding a recommendation for construction of the Restricted Custody Center at the jail, he is not prepared to make that recommendation at this time. Bids have been received, but additional review needs to be made

before the recommendation is given. He requested that Resolution R-56-04 be tabled until such time as the review of the bids is complete.

Mr. Horine then recommended that, prior to the conclusion of this meeting, the Court consent to enter into Executive Session to discuss collective bargaining negotiations.

Judge Pendery then requested a report from the County Attorney. Mr. Verst stated that things were running smoothly at the County Attorney's office, and he had nothing further to report.

Judge Pendery next requested reports from the Commissioners. Commissioner Rehtin reminded everyone that Italianfest will be held June 10 through June 13 on the riverfront in Newport and invited everyone to attend.

Commissioner Otto stated that when the recommendation is made after review of the bids for the Restricted Custody Center, the Resolution should not read that the recommendation was the lowest and best bid, since the recommended bid may not always be the lowest. County Attorney Verst stated that both criteria would need to be met.

Commissioner Verst thanked all the communities that took time to sponsor Memorial Day Parades and remembrances of our service men and women. This year hit a little closer to home for him since his son-in-law, Cpl. Eric Schabell, is currently in training in Indiana for a peacekeeping mission in Kosovo. He asked everyone to remember the sacrifices that people in the services make. He also reminded everyone that most schools are out for the year and asked all drivers to be attentive to all the children playing in neighborhoods. He then thanked everyone for their congratulations on the birth of his first grandchild, Carter William Schabell, born May 26 at 7:44 p.m., weighing 7 lbs. 9 ozs.

Judge Pendery then stated that, due to scheduling conflicts, he would request a motion to move the date of the July 7, 2004 Fiscal Court meeting to June 30, 2004 at 7:00 p.m. at the Alexandria Courthouse. There being no further discussion, Commissioner Otto made a motion, and Judge Pendery seconded, to approve the motion. All voted "AYE" and the motion passed unanimously.

Judge Pendery next announced that a public hearing will be held on June 16, 2004 at 5:30 p.m. in conjunction with the next Fiscal Court meeting, to hear the reports of the "viewers" that were appointed to make recommendations on the petition to close a portion of Woeste Road that is located in the Parkside Subdivision.

Judge Pendery then requested a report from the Fiscal Director. Mr. Seibert presented Resolution R-57-04, which he read by title and provided a summary to the Court for its consideration. He stated that this Resolution authorizes the Judge/Executive to execute the annual renewal agreement with the Kentucky Association of Counties All Lines Fund for Property and Liability Insurance coverage for fiscal year 2005 in the amount of \$281,197. There being no further discussion, Commissioner Rehtin made a motion and Commissioner Verst seconded, to approve Resolution R-57-04. All voted "AYE" and the motion passed unanimously.

Mr. Seibert next presented Resolution R-58-04, which he read by title and provided a summary to the Court for its consideration. He stated that this Resolution authorizes the Fiscal Court to

open an account at Bank One for the purpose of administering the Campbell County Employee Fund for Section 125 plans, and authorizing Judge Pendery and County Treasurer Diane Bertke to be the signatories on said account. There being no further discussion, Commissioner Otto made a motion and Commissioner Verst seconded, to approve Resolution R-58-04. All voted "AYE" and the motion passed unanimously.

Mr. Seibert next requested a motion to adopt a Standing Order to pre-approve certain recurring expenses related to payroll, employee health benefits and utility payments. The Standing Order is required by K.R.S. 68.275(3). There being no further discussion, Commissioner Rechtin made a motion and Commissioner Verst seconded to approve the motion. All voted "AYE" and the motion passed unanimously.

Mr. Seibert then requested a motion to authorize the purchase of a 2004 Econoline Heavy Duty cargo Van off of the State Contract for the Maintenance Department, in the amount of \$18,003. The van will be ordered, but not delivered, until after July 1, 2004. Funds for this purchase have been included in the fiscal year 2005 budget. There being no further discussion, Commissioner Rechtin made a motion and Commissioner Otto seconded to approve the motion. All voted "AYE" and the motion passed unanimously.

Mr. Siebert next requested approval of the Budget Transfers being presented at this meeting. Transfers need to be made from accounts that have a surplus into accounts where funds are needed. There being no further discussion, Commissioner Rechtin made a motion, and Commissioner Verst seconded, to approve the motion. All voted "AYE" and the motion passed unanimously.

Mr. Seibert then requested approval of the Claims being presented at this meeting. County Attorney Verst advised that he had reviewed the Claims and that they appeared to be appropriate. There being no further discussion, Commissioner Otto made a motion that the Claims be approved and paid. Commissioner Rechtin seconded the motion. All voted "AYE" and the motion passed unanimously.

Judge Pendery then requested a motion for the Court to move into Executive Session pursuant to K.R.S. 61.810(1)(e) to discuss collective bargaining negotiations. There being no further discussion, Commissioner Rechtin made a motion, and Commissioner Verst seconded, to approve the Court to move into Executive Session. All voted "AYE" and the motion passed unanimously.

After a brief executive session, Commissioner Verst made a motion to resume the regular meeting session, and Commissioner Rechtin seconded. All voted "AYE" and the meeting resumed.

There being no further business to come before the meeting, it was moved by Commissioner Verst, seconded by Commissioner Rechtin, that the meeting be adjourned. All voted "AYE" and the meeting was adjourned at 8:05 p.m.

**Attachments:**

Ordinance O-10-04: Update of Official List of County Roads

Ordinance O-13-04: Amendment to Text of Zoning Ordinance

Resolution R-53-04: Grant Application for Housing Choice Voucher FSS Program

Resolution R-54-04: Contract for Cleaning Services at Senior Center  
Resolution R-55-04: Agreement with Campbell County Water Rescue, Inc.  
Resolution R-57-04: Renewal Agreement for KALF Property and Liability Insurance  
Resolution R-58-04: Account with Bank One for Section 125 Plan  
Resolution R-59-04: Contract for Workers' Compensation Insurance  
Transfers: June 2, 2004  
Claims: June 2, 2004  
June 2, 2004 (Election Claims)

Approved:

/s/ Steve Pendery  
STEVE PENDERY  
Campbell County Judge/Executive

Attest:

/s/ Sandra L. Mulligan  
Sandra L. Mulligan  
Fiscal Court Clerk