

MINUTES OF THE HOUSTON COUNTY COMMISSION
FEBRUARY 25, 2013

PRESENT: Chairman Mark Culver, Commissioner Curtis Harvey, Commissioner Doug Siquefield, Commissioner Jackie Battles, Commissioner Melinda S. McClendon, Gary Sherrer, County Attorney, Barkley Kirkland, Acting County Engineer, and William J. Dempsey, Chief Administrative Officer

ABSENT: None

Chairman Mark Culver called the 10:00 A.M. meeting to order, declared a quorum present, and welcomed everyone. Commissioner Jackie Battles gave the invocation. Commissioner Curtis Harvey led in the Pledge of Allegiance.

Commissioner Harvey made a motion to approve the minutes of the last meeting. Commissioner McClendon seconded; and the motion carried unanimously.

Announcements and Public Comments from Chairman and Commissioners

Chairman Culver called on Mr. Clark Matthews, EMA Director, for an update on the weather.

Mr. Matthews reported it looked as though the county would receive more rain all day but the biggest concern would be the possibility of tornadoes. He pointed out the weather would become more severe during the night. Mr. Matthews stated they were getting flood reports from areas they have never received before. Chairman Culver asked if the EOC was activated? Mr. Matthews reported at that time they were at Level 4, which is staff activated. Chairman Culver encouraged everyone to run all the information through the EOC if it becomes activated. Mr. Matthews requested people who had any questions, to call them at 615-HELP. The EMA Director reported they did not have the manpower to fill any more sandbags when the supply is depleted. He pointed out they had been filling them for two weeks and had worn out those who have been helping to fill them. Mr. Matthews thanked Community Corrections for supplying the manpower in order for them to open up earlier in the day. Chairman Culver asked citizens not to call requesting sandbags unless it is an absolute emergency, and he reported many times emergency responders are already involved. Chairman Culver thanked Mr. Matthews for the update and excused him to go back to the EMA office.

Chairman Culver reported he attended the Houston County Pageants that were held over the weekend. He stated because the current Ms. Houston County became Ms. National Peanut Festival, Houston County did not have a queen, and he was asked to crown the new winner. The chairman then congratulated the new queens: Future Little Miss, Maddie Claire, who attends Kelly Springs Elementary, Little Miss, Suzanne Snell, who attends Rehobeth Elementary. He pointed out she will be in the Little Ms. National Peanut Festival competition. Chairman Culver reported Lydia Jules Douglas, Young Junior Miss who attends Highlands Elementary, Junior Miss, Annelise Rudd, who attends Houston Academy, Teen Miss, Catherine Carothers, who attends Providence Christian, and the new Ms. Houston County, Bailey Halcomb, who attends Rehobeth High School. The chairman pointed out Ms. Halcomb was Little Ms. Houston County several years ago, and did a great job. Chairman Culver reported both the Little Ms. and Ms. Houston County were in Commissioner Battles' district. Chairman Culver stated the commission wanted to congratulate them, and that they will be attending one of the commission meetings in the future. He thanked Ms. Whitney Devane for serving the last year.

Chairman Culver reported that the March 21st and Aril 4th Admin meetings would be cancelled due to some of the commissioners receiving mandatory and graduate training through the ACCA. He reported they would be operating under the variation in rules at both of the commission meetings on the following Mondays.

Regular Agenda

1. Appointment and re-appointment to the Dothan-Houston County Library System – Mrs. Gloria Jeffcoat and Mr. James Etheredge

Commissioner Siquefield made a motion to approve the request to appoint Mrs. Gloria Jeffcoat and re-appoint Mr. James Etheredge to the Dothan-Houston County Library System. Commissioner McClendon

seconded the motion. The chairman recognized Ms. Bettye Forbus, Director of the Library. He reported he appreciated these two individuals agreeing to serve and he felt they would do a great job. Chairman Culver called for the question; and the motion carried unanimously.

2. Request to re-appoint Mr. Shon Holton to the Houston County Water Authority.

Commissioner Harvey made a motion to re-appoint Mr. Shon Holton to the Houston County Water Authority. Commissioner Battles seconded the motion; and it carried unanimously.

3. Request to adopt Resolution authorizing Structuring, Preparation and Initiation of '04 Bond Refinancing and Issuance of General Obligation Warrants, Series 2013.

Commissioner Battles made a motion to approve the request to adopt the Resolution authorizing Structuring, Preparation, and Initiation of '04 Bond Refinancing and issuance of General Obligation Warrants, Series, 2013. Commissioner Harvey seconded the motion. Chairman Culver reported this motion just authorizes the commission to get the information in place. He stated the commission did not know what the bonds are going to total to cover the county's cost on the ATRIP projects. He pointed out there is one more round of ATRIP funding and if the commission is able to pay it they will. The chairman reported if they can't pay it they will look into financing which would be 15% of the cost on the number of miles of roads the county will be doing. He pointed out it could be between \$15 and \$20 million in roads, and it would certainly be worth the investment. The chairman reported the county has the ESCO project ongoing and they will do an issue, and then there is ongoing discussion about the E-911 Call Facility, and the commission does not know what their cost will be. Chairman Culver stated the commission does not know the amount of the new issue but they want to go ahead and get the process moving because it is a good time to refinance before the rates go up. Chairman Culver called for the question; and the motion carried unanimously. (Please see in Resolution Book)

4. Request from DDRA for a proposed partnership to purchase the Saints Apartments.

Commissioner Harvey made a motion to approve the request from DDRA for a proposed partnership to purchase the Saints Apartments. Commissioner Battles seconded the motion. Chairman Culver stated he had asked the staff at Road and Bridge for a drawing showing things that could be done with the property. He reported parking would definitely be something, a green area, and what will be done from there will be up to the commission. Chairman Culver reported the building located on Crawford Street could be moved and re-located to house some of the county's office staff in order to create some additional space for other departments. He stated if the county agreed to do that, then the lot on Crawford Street could be sold. Chairman Culver reported the DDRA, the Credit Union next to the Admin Building, and the county are partnering on the project. He commended the DDRA for wanting to improve the entrances into Downtown. The chairman reported the county has two huge improvement projects going on around them with the Library across the street and the Credit Union renovations next door. He stated the county commission is a large stakeholder downtown and this is an opportunity for the commission to do its part with the partnership. The county's cost will be less than the county's appraised value. Chairman Culver stated he felt overall it would be a beneficial project for all entities.

Mr. Jansen Tidmore, Executive Director, DDRA, reported he felt this partnership was a big step for the community. He stated he appreciated the opportunity to present the proposal. Commissioner Sinquefield asked about the total appraisal amount? Mr. Tidmore reported they did not have to go through a full appraisal because the outlay would be cash. He stated he thought the county's was approximately \$145,000- \$150,000. He pointed out it is both the white building and the red buildings. Commissioner Sinquefield stated he thought there was a possibility that the county would be seeing some additional revenue in the coming months without having to get into the fund balances. Chairman Culver stated that was right. He pointed out the plan is for it not to come directly from the county's fund balance with the check being cut from the normal processes. The chairman reported they are anticipating some unbudgeted revenue that would cover it. He stated since this is such a great opportunity he felt that the unbudgeted revenue could be used. Chairman Culver stated pending approval of the request, he asked Mr. Dempsey to get with Mr. Tidmore after the meeting to discuss the timeframe for preparing the check. He thanked Mr. Tidmore for his efforts on the project. The

chairman then called for the question; and the motion carried unanimously. (Please see attached in Minute Book)

5. Request to set Levies for Alcoholic Beverages.

Commissioner Siquefield made a motion to approve the request to set the Levies for Alcoholic Beverages. Commissioner Harvey seconded the motion. Chairman Culver reported this is similar to the Revenue Commissioner's request to set the millage rate at the first meeting in February. He pointed out the county has no control over the millage rate, and it has no control over these alcoholic levies, but the commission is required to set these levies annually. The chairman pointed out the commission has no authority to change anything because it would have to be done through legislation or the appropriate channels. He reported this request is standard and mandatory each year to vote to set the levies based on the current law. Chairman Culver called for the question; and the motion carried unanimously. (Please see attached in Minute Book)

6. Request to enter into a 35 month lease agreement with Regions Equipment Finance for the purchase of one low boy trailer and two garbage trucks.

Commissioner Harvey made a motion to approve the request to enter into a 35 month lease agreement with Regions Equipment Finance for the purchase of one low boy trailer and two garbage trucks. Commissioner McClendon seconded the motion. Chairman Culver called for the question; and the motion carried unanimously.

7. Request to adopt Resolution to change functional classification for the extension of Taylor Road from Campbellton Highway to Highway 231 South.

Commissioner Siquefield made a motion to adopt the Resolution to change the functional classification for the extension of Taylor Road from Campbellton Highway to Highway 231 South. Commissioner Battles seconded the motion. Chairman Culver reported this is the first preliminary step for this project, and he did not expect it to get out and discussed in the media as it was. He reported he received a call over the weekend from every property owner. He reported this is a joint city/county project that they have been looking at for quite some time. He stated the reasons for the project are the city is going to build a new park that will create quite a bit more traffic. Chairman Culver reported what started the process was trying to do something to alleviate the problems at the intersection at Dobb's Bar-B-Que. He stated that intersection is a nightmare. Chairman Culver reported they have had some discussions with the property owners about the right-of-way, and the plan would be to make the intersection a roundabout and run the road straight across to Highway #231 and line it up with FieldCrest Apartments. He stated they plan to have a service road that would come back down to Dobbs and Hunts and that area, and create opportunities for additional businesses to locate on it. The chairman reported the reason this project has come up is because they want to try to submit it as one of the county's ATRIP projects. He stated if the county can do that then the main road would receive 80% funding by the state. He stated the county appreciates the partnership with the city and he hopes the state will help make it happen with the ATRIP funding. He pointed out the next round is sometime around the end of the summer, and if the announcement was made then the project would not probably get started until the fall or winter. He stated if it is not approved as an ATRIP project, then it will be longer than that before the city and county start on it. He stated the city and county staffs are working hard on the plans. He called for the question; and the motion carried unanimously. (Please see in Resolution Book)

8. Request to reconsider Lounge Retail Liquor License Class II (Package) for Pansey Grocery BP Bait and Tackle, LLC d/b/a Pansey Package Store, 13076 U.S. Highway #84 East, Ashford, AL 36312.

Commissioner Siquefield made a motion to reconsider the Lounge Retail Liquor License Class II (Package) for Pansey Grocery BP Bait and Tackle, LLC d/b/a/ Pansey Package Store, 13076 U.S. Highway #84 East, Ashford, AL 36312. Commissioner Battles seconded the motion. Chairman Culver reported this motion is just to reconsider; not to approve or deny. Chairman Culver reported this request has been considered in the past and has been sent back to the commission by the Court Judge. He stated he was going to ask for testimony and comments from anyone who wanted to testify on either side of the issue in favor or against it. He reported at the appropriate time when Attorney Sherrer tells them then

the commission would entertain a motion to either approve or deny the request. Chairman Culver reported this is a little bit unusual. Chairman Culver asked Mr. Sherrer if he would like to make comments before he asked for other comments? Mr. Sherrer reported the court heard additional evidence with regards to the application. He stated because the request for application appeared to be denied solely on the basis of a letter from the Sheriff, the Judge has sent it back to the commission to reconsider and have more evidence provided, and have a better record with regard to whatever decision the commission chooses to make.

Chairman Culver asked those who wished to make comments to raise their hands and come to the podium and state their name and their position. He asked everyone to please keep their comments to 5 minutes.

Mr. Thu Van Bui, and his Attorney, Derek Yarbrough, came forward and Mr. Yarbrough addressed the commission. He stated he nor Mr. Bui were present when it first came before the commission. He stated it appeared that the Sheriff had sent a letter to the commission stating that Mr. Bui had been convicted of selling pseudophedrine in Circuit Court when in fact what had happened was that Mr. Bui was granted Pre-Trial Diversion, and the case has been subsequently dismissed. Mr. Yarbrough reported that Mr. Bui has had Pansey Grocery Store for 14 years, and he currently has a beer license. He pointed out Mr. Bui's plan is to put the liquor store next door to the store he has in place. Mr. Yarbrough reported he has had the one problem with the pseudophedrine, and that case was dismissed. Mr. Yarbrough stated Mr. Bui would ask that the commission reconsider this matter in that he has had one violation in the sale of alcohol to a minor after the request came before the commission. He stated for the most part he has not had any problems. Mr. Yarbrough reported if he is granted this the only liquor store that is close is 5 miles to Ashford and 10 miles to Dothan. He pointed out he would be the only one in this area that would be able to sell liquor, and he would ask the commission to reconsider the application. Mr. Yarbrough thanked the commission.

Sheriff Andy Hughes came forward to address the commission. He asked that the commission deny the liquor license based on his previous recommendation. He stated in the previous letter it was stated he had plead guilty to a Class B Felony. He reported what was found out was that he actually plead guilty during the Pre-Trial Diversion Program. He stated attorneys may argue that is not a plea of guilt but as part of the Pre-Trial Diversion Program for your case to be dismissed the person must accept responsibility and actually plead guilty to their case. The Sheriff stated he would say it is still a plea of guilt.

Mr. Sherrer then asked Sheriff Hughes some questions for the purpose of establishing some record. Attorney Sherrer asked Sheriff Hughes to look at Exhibit #1, and to identify it for the Commission? Sheriff Hughes stated it was a standard case file on Mr. Bui's case from the Houston County Sheriff's Office Narcotics Division. Mr. Sherrer asked Sheriff Hughes if it was a true and correct copy and complete copy of the investigative file with regard to Mr. Bui as maintained in the ordinary course of his operations of the Sherriff and the Sheriff's Department of Houston County? The Sheriff replied yes. Mr. Sherrer asked him if it is maintained on a day to day basis? Sheriff Hughes replied yes. Attorney Sherrer asks does that reflect that there was actually an undercover purchase of pre-cursor elements or pre-cursor chemicals with regards to methamphetamine? Sheriff Hughes stated that was correct? Mr. Sherrer asked if it is indicated in that file that both Mr. and Mrs. Bui had been given notice of the law that was passed that people were making methamphetamine based on using the pre-cursor chemical, pseudophedrine? The Sheriff stated when this new law came into effect back in 2002, prior to his becoming Sheriff, Narcotics Investigators went out to several different businesses in the county that sold pseudophedrine, and they made them aware that this was a crime, if they knowingly sold pseudophedrine if they knew it was going to be used to make methamphetamine. The Sheriff reported during the undercover purchases the undercover agents actually told the individuals at his business, Mr. Bui and his wife that the substances were going to be used in the manufacture of methamphetamine. Mr. Sherrer stated he would offer that as an exhibit, and he had already given a packet of information to the county commission. Mr. Sherrer then showed Sheriff Hughes what had been marked as Sheriff's Exhibit #2, and asked him to identify it for the record. Sheriff Hughes stated it was a Pre-Trial Diversion Agreement obtained from the Houston County District Attorney's Office. Attorney Sherrer asked the Sheriff if he obtained the Pre-Trial Diversion Agreement from the original in the Houston County

Sheriff's Office? Sheriff Hughes stated he did. Mr. Sherrer asked if it related to Thu Van Bui, the applicant in this situation? Sheriff Hughes stated yes, it did. He asked if Mr. Bui is requesting to sell liquor at the same location where the crime was committed that was the basis of which this Pre-Trial Diversion Agreement was entered into? Sheriff Hughes stated yes. Mr. Sherrer stated the crime was committed where Pansey Grocery is. Sheriff Hughes stated that was correct. Mr. Sherrer asked Sheriff Hughes to read #1? That the defendant voluntarily admits that he/she is guilty of the crime(s) as charged. Mr. Sherrer asked at the bottom if it indicated what the charge is? Sheriff Hughes reported it states Poss/sell Precursor. Mr. Sherrer stated the commission has that information but he wanted to lay the basis and give some information with regard to that exhibit. He stated it is the same Pre-Trial Diversion Agreement that was referenced by Mr. Yarbrough when he was talking to the commission.

Attorney Sherrer stated that he was going to give the Sheriff an original of a certified transcript of the hearing for Judge Anderson on March 27, 2012. Mr. Sherrer stated he thought the Sheriff had already covered the information he was going to reference the commission on Pages 47, 51, 58, and 59 of that testimony with regard to the information that he wanted to be sure and point out otherwise. Mr. Sherrer offers the certified transcript to the commission as additional evidence. Mr. Sherrer asked for the original back from the Sheriff in order to give it to the Commission.

Mr. Sherrer stated he wanted to show the Sheriff for purposes of addressing it, a copy of Judge Anderson's Order that he entered with regard to the hearing of this back in March of 2012. The attorney stated he thought the commissioners already had it and it showed the electronically filed information from the Circuit Clerk's office. Mr. Sherrer pointed out on Page 2 that the Judge found that Mr. Bui testified that he had been arrested, and he admitted to his guilt, had a business there for some 14 years, and has a license to sell beer but he did admit to the crime in the Pre-Trial Diversion document, and court went on to find that before the court there was sufficient legal evidence for the denial of the liquor license based on evidence that was introduced at the Houston County Commission meeting on October 24, 2011, and this court's Evidentiary Hearing of March 27, 2012. Mr. Sherrer reported the Sheriff has a copy of that. He reported that was all he had for Sheriff Hughes, and thanked him.

Mr. Sherrer asked Heath Carpenter, ABC Board, to come forward. He asked Mr. Carpenter if there had been any difficulty with Pansey Grocery in the selling of beer to minors? Mr. Carpenter reported not a great difficulty but on October 25, 2011, the ABC Board conducted an undercover minor detail operation in which an Asian female, Loan Nguyen, sold a 6-pack of Natural Light Beer to an ABC approved minor, and she charged him \$4.99. Mr. Sherrer asked Mr. Carpenter the result of that citation? Mr. Carpenter stated Mr. Bui pled guilty and paid a \$750.00 fine. Mr. Sherrer stated he wanted to show Mr. Carpenter what had been marked as Sheriff's Exhibit #5, and he asked him if he could identify it for the commission? Mr. Carpenter reported it was an Administrative Citation from the Alcoholic Control Board against the license of Pansey Grocery for selling alcohol to a minor. Mr. Sherrer asked if he could identify the second page of the document? Mr. Carpenter stated the second page shows Mr. Bui's signature where he pleads guilty, and agrees to pay the \$750.00 fine. Mr. Sherrer asked Mr. Carpenter if they were true and correct copies of records that are maintained by the ABC Board and by him in the ordinary course of his law enforcement activities? Mr. Carpenter stated yes. Mr. Sherrer stated that was all he had. Mr. Sherrer stated he did not have Sheriff's Exhibit #5 ahead of time, it was brought with the ABC officer to the meeting. Mr. Sherrer presented to and offered Sheriff's Exhibit #5 to the Commission as additional evidence.

Chairman Culver asked if there was anyone else to address the commission relative to this matter?

Mr. Derek Yarbrough, Attorney for Mr. Bui, stated he wanted to briefly respond as far as the October 25, 2011 sell to a minor. He reported the sale was made to the minor by an employee not Mr. Bui. He stated as far as the sale of the pseudophedrine for methamphetamines that came about with the fairly new law at that time. He pointed out Mr. Bui has some language barrier issues. Mr. Yarbrough reported Mr. Bui told him he did not necessarily understand because he has problems with the English language. He stated he did not think it was a malicious or intentional violation of the law but he did admit in a Pre-Trial Diversion Agreement and that case was dismissed. Chairman Culver thanked Mr. Yarbrough.

Chairman Culver asked for comments from commissioners or motions? He stated if any commissioner desired to make a motion to be sure that it is stated in the motion that it is based on the evidence presented to the commission. Chairman Culver asked if anyone had any comments or if there was a motion to approve or deny this request? Mr. Sherrer stated the commission does need to make a motion based on the evidence to approve or deny the request for a liquor license. Chairman Culver stated he guessed if they choose they can take no action but he did not feel it would be the best thing to do. Chairman Culver asked again for comments, and hearing none, he stated the commission would take no action at that point. Mr. Sherrer stated with regard to Judge Anderson's order the commission has to take some action. He stated this is a de novo hearing that has come before them so that they are hearing it in order that they may either grant or deny the liquor license request. Chairman Culver asked if Mr. Sherrer's comments induced a motion from the commission? Commissioner Sinquefield stated on behalf of the evidence presented he would like to make a motion to deny the Lounge Retail Liquor License Class II (Package) for Pansey Grocery BP Bait and Tackle, LLC d/b/a Pansey Package Store, 13076 U.S. Highway #84 East, Ashford, AL 36312. Commissioner Harvey seconded the motion. The Chairman called for the question; and it carried unanimously.

Chairman Culver apologized to the parties involved because this is not something that the commission normally does and they were doing as the court had requested.

Staff Reports:

Chief Administrative Officer – there was no report

Acting County Engineer

Mr. Kirkland reported when he left to come to the meeting there were 14 roads closed, and they were sending people out to check the roads. He asked that the public do not go around a barricade when they are placed across a road because they cannot see the danger. Chairman Culver reported it was also illegal to go around a barricade.

Chairman Culver reported the Courthouse Parking lot is open. He pointed out due to all of the rain, the county crews anticipate beginning on the project on March 11th.

County Attorney – there was no report

Adjourn

Commissioner Harvey made a motion to adjourn. Commissioner Sinquefield seconded; and the motion carried unanimously.