

**MINUTES**  
**SMITHS GROVE CITY COMMISSION REGULAR MEETING**  
**SMITHS GROVE MUNICIPAL BUILDING**  
**MONDAY JANUARY 27, 2014 7:00 P.M.**

All Members Present

Absent: City Attorney Wes Milliken

Mayor Higginbotham called the meeting to order at 7:02 pm.  
All present recited the Pledge of Allegiance

Mayor Higginbotham recognized all special guests.

**READING AND APPROVAL OF MINUTES**

Minutes of Regular Meeting (December 9, 2013)

The meeting minutes were approved by acclimation.

**REPORTS**

Treasurer Report (December, 2013)

Report was approved by acclimation

**Public Works Report**

Commissioner Lawrence Stiffey stated that several of the new street signs have been replaced and or repaired. Other than that he has nothing to report.

**Police, Public Safety, Health and Welfare Report**

Commissioner Varner was running late so Mayor Higginbotham read the Police Report for the month of December.

Chief Suoy was asked if he had anything to add to the report at this time to which he replied "No, not at this time."

**Cemetery Report**

Commissioner Pierce stated that at this time he has nothing to report.

**Code Enforcement Report**

Commissioner David Stiffey stated that the only thing he had to report regarded the dumpster at ServPro being overfilled, which he is handling.

## **COMMITTEE REPORT**

### **Sidewalk Ordinance Committee**

Commissioner David Stiffey, Chairman of the Committee, reported that the committee met on Tuesday December 10, 2013 at 7:00 pm. the members present were Jerry Bratcher, Connie Laws, Judge Coker, Diana Stiffey, Commissioner Varner, and Commissioner David Stiffey.

Commissioner read a summary of what the committee decided should be incorporated into an Ordinance. The following are their suggestions:

- The city comes up with an amount of money annually for sidewalk repairs. Proposed 10% of Municipal Road Aid as a basis for amount to be set aside.

The following guidelines and priorities can be placed into effect: Many situations will require a case by case solution;

- Safety – If a sidewalk poses definite trip or fall hazards (not able to use wheelchair or other mobilization device safely).
- Homeowner’s Request – Needed repair and agrees to a cost share (homeowner and city agree on contractor and work performed.)
- General Repairs – Made by city to routine damage such as other nature.

These repairs would be made from funds set aside by the city. Also, if there is a needed repair where the property owner could not fund the repairs the city would pay for the repair out of this fund.

- Responsible Party Damage – These damages would be the total responsibility of whoever caused the damage, such as a construction company, garbage collection company, school bus, etc... Contact needs to be made to City Hall or Police Department for follow-up to fix said damages.

The city would have a person in charge of assisting property owners and the city in meeting these guidelines and in “keeping our sidewalks in good conditions.”

Mayor Higginbotham stated that this matter was on the Agenda as New Business and asked the Commission if they wanted to go ahead and discuss at this time. All members were in agreement to do so.

### **Sidewalk Maintenance Ordinance Discussion – NEW BUSINESS**

Mayor Higginbotham started off by stating that he was opposed to the suggestion that the city repair sidewalks as sidewalks are personal property. He said that is not the function of city government.

The Mayor stated the suggested guidelines and priorities that are suggested to be placed into effect on a case by case basis in instances where the property owner cannot afford to pay for sidewalk repairs creates all sorts of problems as every specific exception would invite legal action if the city paid for one repair and refused to pay for another. What criteria would the city use for financial benchmarks on which property owner gets help or not?

The Mayor went through his list of problems with the suggest action as follows:

Safety. The purpose of the original Ordinance was to establish an inspection program by the Public Works Commissioner to limit the city's liability on sidewalks, but this action has ended up being a question of who pays for sidewalk maintenance in Smiths Grove.

It is suggested that a Homeowner requests needed repair and agrees to a cost share wherein the home-owner and city agree on contractor and work performed. The Mayor wanted to know what this means? What is cost share? Again the Mayor suggested that he can't get past why the city would have any responsibility in maintaining a home owner's private property? He wanted to know just how does the city decide which homeowner gets help and how much? Does the city help the poor and force others to forgo help from the city?

It was suggested that General Repairs be made by the city to routine damage such as storms and acts of God from funds set aside for needed repair where property owner cannot afford it. The Mayor stated that again damage by acts of God to a home owner's private property is covered by home owners insurance (minus deductible). He asked why must the city be obligated to spend public funds for damage to sidewalks from storms or other acts of God?

The committee suggested that Responsible Party Damage would be total responsibility of incident causing damage (such as damage caused by a construction company or trash service, etc.). It was suggested that in such instance contact needs to be made to City Hall or Police Department, for follow-up to fix said damages. The Mayor stated that damage caused by neglect of an individual is the responsibility of the negligent person and the harmed party; however, outside of a police report City Hall should not be involved in any way as it is not the city's responsibility to mediate or litigate such damage repair.

The committee suggested that the city will have a person in charge of assisting property owners/city in meeting these guidelines in keeping our sidewalks in good conditions. The Mayor stated that the Public Works Commissioner would be responsible for advising a property owner if their sidewalk was unsafe, but that the city's responsibility ended there.

The Mayor pointed out that in the previous meeting the Commission had been told that Bowling Green repaired sidewalks. Investigation proved that Bowling Green did not repair sidewalks and the reference was to a special project in 2007 to actually complete a project initiated with "grant" money to try and connect different parts of the city's sidewalk network. The Bowling Green code for sidewalk maintenance is the total responsibility of the property owner, just like in Smiths Grove. The Mayor then read the Bowling Green code on Sidewalk maintenance.

In closing his remarks the Mayor stated that the committee has recommended that 10% of Smiths Grove Road Aid Funds be set aside to fund sidewalk maintenance. The Mayor advised that a four year average for municipal Road Aid Fund for Smiths Grove was \$17,369.53 and stated that amount is not adequate street maintenance. To use the recommended 10% for sidewalk maintenance would really harm road work.

The Mayor informed all present that he and the clerk had conducted extensive research on how other towns in Kentucky maintained sidewalks. The clerk, through the Kentucky Municipal Clerks Association, had contacted several other cities and only one replied that they had a plan where the city would help with sidewalk maintenance. The cities of Bowling Green, Louisville, Prospect, Brownsville, Winchester and Belleview all replied that they do not cost share and that it is part of the property owners responsibility to maintain their property. The city of Flemingsburg was the only city that replied stating they had a cost share program.

Diana Stiffey stated that she knew of people who have had their property surveyed and the sidewalk was not listed on the survey. Therefore, the property was not theirs. If it was theirs they could do whatever they wanted to do with it. Mayor Higginbotham once again stated that he does not write the laws and it is in the Kentucky laws that the property owner is responsible for repairs to sidewalks.

Anthony Stidham stated that no one was asked if they wanted the sidewalks or not, and if it is his property he is going to put a no trespassing sign on each end of the sidewalk. Mayor Higginbotham informed him that by English Common Law this is considered an easement and he cannot legally do this.

Commissioner Pierce stated that he was in appreciation of the Committee and the time they had spent on this matter. He also stated that he would not expect anyone on Laurel, where the sidewalk is actually part of the road, to have to pay for those repairs. Also, the sidewalks were installed for the Community to use as well as the property owners. The city can't keep fixing private property especially since this has been the case for years. He grew up in this city and the property owners have always been responsible for the sidewalks abutting their property.

Anthony Stidham stated that he thought that the city should add one dollar (\$1.00) to the property tax bill of everyone who lives in the city to go towards paying for the repairs to any sidewalks. He feels that if they are public sidewalks then everyone should have to pay for it not just the property owners with sidewalks on their property. Mayor Higginbotham replied that this is not possible. The state has locked up how any city can raise revenue and the city has to abide by it.

Once again, Mayor Higginbotham stated that the Ordinance was not changing any laws. The only reason this came up was because we were informed by the Kentucky League of Cities that we should do this Ordinance to minimize the cities liability and to keep the property owners informed.

Commissioner Pierce stated that "Ignorance of the law" does not keep anyone from having to abide by the law. There are all kinds of laws out there that he does not know about but he will still be held liable if he is to break them.

At this time Mayor Higginbotham made a motion to table this item and the motion was second by Commissioner Varner. Roll was called; Commissioner Varner – Yes, Commissioner

Lawrence Stiffey – Yes, Commissioner Pierce – No, Commissioner David Stiffey – Yes, Mayor Higginbotham – Yes. With a vote of 4 to 1 the matter was tabled at this time.

**OLD BUSINESS**

**350 W. Third Street**

Since attorney Milliken was not present there was no discussion on the matter and it will be carried over to the next meeting.

**Cemetery Contract**

Brian Gaul has given the city notice that, when the contract is up, he will need more money to continue mowing at the cemetery. He is asking for an increase of seventy five dollars (\$75.00) per mowing. This would bring the price to six hundred dollars (\$600) per mowing. Mayor Higginbotham felt the increase was not high enough for the city to have to re-bid the contract. Mayor Higginbotham asked the Commission if they wanted to agree to Brian’s price or if they wanted to re-bid the contract.

Commissioner David Stiffey stated that he believes Mr. Gaul is doing a good job and that his work is worth the money. However, he does believe it was over mown in the fall but that was not Brian’s fault. Commissioner Pierce reminded everyone that Brian Gaul was doing the mowing at the price of five hundred twenty five dollars (\$525.00) because Doug Riddle had started the contract but never completed the first mowing so Brian was willing to take over the contract at the same price.

Commissioner Varner stated that Mr. Gaul had pulled the City out of a bad situation by stepping up and taking over the contract. He understands that, due to things such as the cost of gasoline, Mr. Gaul needs the increase.

At this time Mayor Higginbotham made the motion to amend the price on the contract effective April 1, 2014. The motion was second by Commissioner David Stiffey- Aye all members so the motion passed 5 to 0.

**NEW BUSINESS**

**Department Assignments**

Mayor Higginbotham made a motion to keep all departments as they are at this time. The motion was second by Commissioner Varner. No discussion. Aye all members present so the motion passed with a 5 to 0 vote.

With there being no further business to conduct, Mayor Higginbotham adjourned the meeting at 8:36 pm.

APPROVED \_\_\_\_\_  
BERT E. HIGGINBOTHAM, MAYOR

ATTEST \_\_\_\_\_  
DEBORAH K. BREWER, CITY CLERK

DATE \_\_\_\_\_  
Minutes were prepared by Deborah K. Brewer, City Clerk