

Special Council Meeting Minutes

Removal Hearing of Al Huber

October 15, 2103

The special meeting of the City Council of the City of Audubon Park to remove Councilman Al Huber was held on Tuesday, October 15, 2013 at Audubon Traditional Elementary School, 1051 Hess Lane, Louisville, KY 40217 with the following present: Council Members Joanne Bader, Vince Osbourn, Mark Stevens, Nancy Zinner and Cary Campbell. Council Member Al Huber and Mayor Mike Scalise were absent as were City Clerk Janette Mercer and Acting Chief of Police Jim Curtis.

Call to Order: Councilman Cary Campbell called the meeting to order at 7:38 P.M. followed by the Pledge of Allegiance. Cary Campbell noted that tonight's meeting was a special meeting to hold a removal hearing for Councilman Al Huber and he advised that there was no public comment session. A copy of the agenda is attached to these minutes.

As the first order of business, Cary Campbell read a resolution appointing Janet Shumate, a resident of Audubon Park, to take minutes of the meeting as required under state statute. Ms. Shumate was selected because Mayor Mike Scalise specifically told the City Clerk (and the Acting Chief of Police Jim Curtis) that they were not allowed to participate in the meeting. Joanne Bader made a motion to approve Janet Shumate to take the minutes of the meeting, Mark Stevens seconded and the motion passed unanimously.

A resolution was then proposed by Cary Campbell that a vote be held on whether the Council would approve appointment of Carrie Ritsert as city attorney for Audubon Park. Mark Stevens made a motion which was seconded by Joanne Bader. A vote was held and the motion was unanimously voted against.

A resolution was then proposed by Cary Campbell appointing attorney, Stephen Emery (of Howell & Emery PLLC) as hearing officer for the removal hearing. Joanne Bader made the motion, seconded by Nancy Zinner and the motion passed unanimously.

Next a resolution appointing Lawrence and Lawrence PLLC (represented by Michael Lawrence and M. Jason Lawrence) to be attorneys presenting the removal evidence at tonight's hearing was made by Cary Campbell. Mark Stevens made the motion, seconded by Vince Osbourn, and was passed unanimously.

Steve Emery then explained how the proceedings would move forward and noted that the authority for the removal hearing is found in KRS 83A.040. While there are no real rules governing the removal procedure, he looked at general Kentucky rules to provide a guideline and to ensure that due process was provided to Mr. Huber. The procedure to be followed will be for Lawrence and Lawrence to make an opening statement, followed by rebuttal by Mr. Huber, and then witnesses will be sworn in by Mr. Emery. Both sides will be allowed to present

their cases, followed by closing arguments by both sides before a vote by the Council on each charge.

Mike Lawrence then presented the four charges being leveled against Council Member Al Huber (see agenda). Cary Campbell was sworn in as a witness by Steve Emery and questioned first about the charge that Huber engaged in misconduct by threatening to have Councilman Campbell disbarred. Explanation was given about the incident at a council meeting relating to a discrepancy in the permit process for a yard sale vs. an estate sale. Mr. Campbell noted that he asked the Kentucky League of Cities (KLC) to review his interpretation of the ordinance governing this event held by the Davis family and they concurred with him that the city was violating the law by charging them a fee for an estate sale, despite a fee being levied on a permit for the event, when the purported fee wasn't supported by documentation in the city ordinance. Mr. Huber had been angry with Mr. Campbell's actions and accused him of acting as council attorney with the KLC and threatened to have him disbarred for his actions. Mr. Campbell said that he felt threatened by these actions from Mr. Huber.

There was also testimony about the City's audit reports for the last three years. Mike Lawrence then submitted three exhibits to the testimony. Exhibit 1 was the Audit Report for City of Audubon Park for 2010, Exhibit 2 was for 2011, and Exhibit 3 was for 2012. These were reviewed and pronounced accurate by Mr. Campbell. In 2010, under the amount paid for sanitation, it was determined the cost of the contract was \$183,000/year yet amounts collected for sanitation per the audit reports was approximately \$332,000 in 2010, \$346,00 in 2012, and \$343,000 in 2012. It was noted that KRS 91A.520 limits collecting more than reasonable cost for city services via user fees as was done for sanitation. Mr. Campbell noted that Al Huber was on a special budget committee since 2004 and was asked if the overpayment issue had come up before and he noted that Mr. Huber was questioned at least twice by residents on this topic at previous council meetings.

Mr. Lawrence then asked whether Cary Campbell was present at the August 2013 council meeting when Mr. Huber was accused of using an inappropriate gesture, leaving the meeting while in progress and calling a resident an obscene name. Cary Campbell replied affirmatively to all three incidents and noted he thought leaving the meeting mid-session constituted dereliction of duty since a vote could have been held in Mr. Huber's absence.

Mr. Emery asked for the full name of Councilman Huber (Albert Huber) and asked a series of questions of the witness. Mr. Campbell, in responding to his knowledge of the questions, noted:

- He (Mr. Campbell) knew of at least 2 occasions when sanitation questions were brought up, and thought they were in 2010 and 2011 but not sure of exact years. He said he was not present at those meetings but had seen minutes relating to them.
- He had only been a member of the special budget committee in 2013. Budget committee meetings were not open meetings or recorded since no quorum was reached. Members on the budget committee were appointed by Mayor Scalise.
- He did not recall whether sanitation fees were discussed.

- The alleged obscene comment made was “You’re a Horse’s Ass”. The meeting was recorded by audio by the city clerk and also by the media.
- He did not witness the alleged obscene gesture.
- He was at the meeting when Mr. Huber left during the middle of the meeting.
- Quorum was still in place despite Mr. Huber’s absence during the August meeting.

Mr. Emery then asked three times if Mr. Huber was present at the meeting, receiving no response. He then asked if legal counsel for Mr. Huber was present. With no response to either question, Mr. Emery then noted, in their absence, no cross examination would occur.

Mike Lawrence asked whether Cary Campbell was present at the council meeting on May 16, 2011 to which Mr. Campbell replied “no”. Mr. Lawrence then submitted as Exhibit 4, the minutes from that council meeting which noted a question by Mr. Ben Cawthon on p. 2, paragraph 4, asking about the discrepancy in sanitation costs and fees levied. At that point, Mr. Lawrence asked whether Ben Cawthon was present (he was not). Mayor Scalise is noted as responding that the excess fees were used to clean up streets. Mr. Emery said he would allow the testimony but not allow it into the record because the minutes in the exhibit had not be signed and attested to by the city clerk. (Note: Exhibit “4” as referenced above is no longer an official exhibit).

Mr. Michael Gardner (926 Audubon Parkway) was then sworn in as a witness by Mr. Emery. He noted he was a 56 year resident of Audubon Park, was on the City Council in the past and at the same time as Mr. Huber. He noted he fulfilled a partial term in 2006 for a council member who died during his term. When asked about the August 2013 council meeting, he noted there had been a lengthy public comment period. The Mayor had acknowledged problems with the sanitation overcharge and said the city would handle it better in the future. Mr. Gardner said he knew the Mayor and Al Huber were aware of the overcharge for several years. He recounted a story about a resident named Sally whom he contended was treated badly by Mr. Huber in 2008 when she went to him about problems with the sanitation charges. He noted that Mr. Huber was upset by his (Mr. Gardner’s) comments and exposure to the incident and Al Huber then “gave him the finger” which shocked Mr. Gardner who felt this gesture was inappropriate from a council member. He noted that most of the TV cameras were on him, not on Mr. Huber at the time of the gesture, but that the audience saw it and jeered. Mr. Huber then left the meeting. Mr. Lawrence then asked whether a council member had ever left in the middle of a meeting before to which he responded no. Mr. Gardner then testified that when Al Huber returned, the mayor surprisingly did nothing other than hand the microphone to Mr. Huber and asked if Mr. Huber had any comment. Mr. Huber responded by saying something like “Mike Gardner, you are a horse’s ass and I apologize”. Mr. Gardner further noted that the mayor never once stopped the meeting or said anything to rebuke Mr. Huber about his behavior (nor has said anything in three subsequent meetings) and that he facilitated the vulgarity by giving Mr. Huber the microphone without comment. Mr. Emery had no additional questions for Mr. Gardner. After asking three separate times for comment from Mr. Huber or his counsel, Mr. Emery noted there would be no cross examination.

Laura Kelty (3242 Cross Bill Road) was sworn in next as a witness. Mike Lawrence asked her a series of questions. In response, she noted affirmatively to the following: that she regularly attends council meetings, had heard questions asked about sanitation fees, was at the May 16, 2011 council meeting and recalled the questions asked about sanitation, had conducted independent investigation of sanitation charges, had provided information about sanitation overcharges to the KY state auditor and had gotten copies of bills for Huber Carpet during her investigations. Mr. Lawrence then introduced Exhibit 4 which was an invoice from 4/8/10 and Exhibit 5, an invoice from 1/5/2011 that described carpeting for City Hall's meeting room, stairs and Carl Reesor's office. Laura Kelty said that there was not any discussion of goods and services provided by Al Huber's Linoleum and Carpet company in the minutes. Under KRS 61.252, there is a prohibition of city officers providing goods and services. He then noted that according to public records certified by the KY Secretary of State, Huber Linoleum and Carpet is headed by Albert C. Huber. Ms. Kelty said that Mr. Huber did disclose he had an interest in the company when asked at the August 2013 council meeting about the carpet contract, but he also noted that he had lost \$100 on the job. These topics were not brought up in 2010 or 2011 in the minutes per Ms. Kelty.

Mike Lawrence then asked Ms. Kelty what she found in the city records regarding overpayment of salaries and pensions. She noted that she became concerned when she found out that Chief Reesor's retirement payment was \$600,000 and thought that looked incorrect, so she filed Open Record Requests (ORR) to determine the facts per the minutes. Ms. Kelty said she found that in July, 2003, the city of Audubon Park reported a lump sum retirement payment plan, with employees receiving \$1000/year of employment. Reportedly, a city employee retired without warning, catching the city off guard with a large payout. She did not see any vote in the minutes during 2003 indicating any change in the retirement plan nor any other change to the system prior to March 2007 in tapes, minutes or votes recorded. Mr. Lawrence asked Ms. Kelty when Chief Reesor was hired and whether she was aware of his salary; she responded no. When asked whether she attended the August 2013 council meeting and saw the confrontation between Al Huber and Mike Gardner, she responded affirmatively. However, she said that she was watching Mike Gardner so did not see the alleged gesture, but she did see Mr. Huber "storm" out of the meeting and heard him call Mr. Gardner a name. Following this testimony, Mr. Emery asked three separate times whether Mr. Huber was present to respond to the testimony and again there was no response.

Steve Emery recalled Cary Campbell and reminded him that he was still under oath. Mr. Emery expressed concern that Al Huber was not present at the meeting and asked how notice of the meeting to Mr. Huber was handled. Mr. Campbell said Mr. Huber was contacted by fax to his workplace, telephone, an email on 10/14/13, received notice while Mr. Huber was at the last council meeting in September 2013, and that Mr. Huber was sent in advance a list of all charges to be discussed at tonight's meeting. Mr. Huber spoke with Cary Campbell on Oct. 14th by phone and indicated he did not plan to attend the hearing. Mr. Emery then asked if Mayor Scalise was present, with no reply. Mr. Campbell said that the mayor was also hand delivered written notice of the meeting in advance as well as emailed. Mr. Emery asked if the city clerk was given notice of the meeting to which he received an affirmative response, however Mr. Campbell noted that she was directed by the mayor not to attend the removal hearing.

Mr. Emery asked Cary Campbell if he knew who was on the Ethics Panel in Audubon Park to which he replied no. Mr. Emery then asked whether there was an alleged violation of the Ethics ordinance against Mr. Huber and was told no again. Mr. Emery further asked whether the council was only alleging a violation of the statutes and Cary Campbell responded yes, that the alleged violations against Mr. Huber were for misconduct and willful neglect, not ethics violations. Cary Campbell was then excused. Once again, Mr. Emery called three separate times for a response from Mr. Huber and received none. At this point, the attorneys for the Council rested their case and Mr. Emery called for Al Huber to present his case. Hearing no response, he then instructed Mr. Lawrence to present his closing statement.

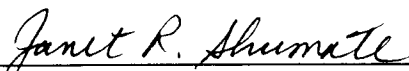
In his closing statement, Mike Lawrence, representing the case for the council against Mr. Huber, first noted that he was the City Attorney for Fincastle in explaining his familiarity with city governance. He noted that the charges were based on the statutes and were focused on misconduct and willful neglect of duties. Under misconduct, he referenced inappropriate behavior on the part of Mr. Huber, noting a sitting council member should not “flip off” residents he represented, and that walking out of meetings constitutes willful abandonment of his position as a council member. He further alleged that Mr. Huber had a duty to represent the people of the city when providing services and collecting money for them, and that Mr. Huber abrogated his responsibility when residents were charged double for services (and he was aware of this fact) – in essence raising their taxes without their right to be informed which is what happened when the money overcharged for sanitation was used for other city costs, instead of going out to the residents to show the need to raise taxes to meet budget shortfalls. This represents misconduct and willful neglect. There was no allegation that Mr. Huber benefited personally from this action. Mr. Lawrence also noted that open meeting law statutes require minutes and votes be recorded for city actions and if not shown therein, that defines misconduct. Therefore, Mr. Lawrence argued that there is sufficient evidence to support the charges against Mr. Huber and to find him guilty.

Instructions were given to the council members that each charge would be broken out into its separate parts, read, then a vote called. Mr. Emery noted that a response of “yes” would count as a vote for removal, while a response of “no” would count as a vote against removal. For a charge to carry there must be a unanimous vote from the council members. Following were the individual charges and their responses:

1. Misconduct alleged by Mr. Huber for threatening to have Councilman Campbell disbarred – 5 votes yes.
2. Misconduct alleged by Mr. Huber for making an obscene gesture to a resident during a council meeting in view of the media and residents. (Note: Mr. Emery said that the use of the word “obscene” in the charge under federal and KY law is governed by the Miller Test which would change the context.) The instruction was made to change the term “obscene” in the charge to “rude” gesture – 5 votes yes.
3. Misconduct alleged in calling a resident a “rude” name (also changed from original charge) in front of media and residents – 5 votes yes.

4. Misconduct alleged in Mr. Huber walking out of an active council meeting prior to adjournment (It was questioned whether this was a violation of law) – 4 votes yes, 1 vote no. (Mr. Campbell asked to change his vote, a revote was held and final vote on charge) -5 votes yes.
5. Willful neglect alleged in Mr. Huber walking out of an active council meeting prior to adjournment – 5 votes yes.
6. Misconduct alleged by Mr. Huber for contracting with the city for services without disclosing a possible financial transaction as required by law. (In discussion, Mark Stevens said he felt that proof of profit from the transaction would have to be shown and Nancy Zinner said in taking the oath of office, all council members swear to not partake in monetary transactions with the city) – 4 votes yes, 1 abstention (by Joanne Bader because she didn't feel there was definitive proof of lack of mention in the minutes). With the abstention, the vote was considered to be a unanimous "yes".
7. Willful neglect alleged by Mr. Huber by his failure to acknowledge and respond to knowledge of sanitation overcharge – 5 votes yes.
8. Willful neglect alleged by Mr. Huber for his failure to respond to knowledge of misappropriation of road funds – 4 votes yes, 1 vote no (Bader because no testimony given about violations of road funds). This vote did not carry because it was not unanimous. A new voice vote was held – 3 no (Campbell, Bader, Stevens), 2 yes (Zinner and Osbourn) Motion does not carry.
9. Willful neglect alleged by Mr. Huber for failure to take action in the overpayment of salaries and pensions – 5 votes yes.

With no further allegations, Mr. Emery asked for a motion to close the meeting. Mark Stevens made a motion to adjourn the meeting, Nancy Zinner seconded, and the motion passed unanimously to adjourn at 8:47 pm.



ATTESTED



APPROVED

City Clerk

October 16, 2013

Mr. Al Huber
1133 Cardinal Drive
Louisville, KY 40213

Dear Mr. Huber:

On behalf of the City Council of the City of Audubon Park, this letter is to serve as official notice of your removal from office.

Yesterday evening, a hearing for your removal from office was conducted in accordance with Kentucky Revised Statute 83A.040. Witnesses and evidence were offered on nine separate charges of misconduct and willful neglect. The Council voted unanimously to remove you on eight of the nine counts.

Your removal was effective as of the vote taken last night. You have thirty days in which to appeal the removal result to the Circuit Court. Should you desire to stay in office during the pendency of your appeal, you would need to petition the Circuit Court for an emergency injunction prior to the next scheduled Council meeting.

If you have any questions on this matter, you are welcome to contact the Kentucky League of Cities ("KLC"). I am sure the KLC would be happy to still offer you legal assistance under the circumstances.

Sincerely,

Joanne B. Bader

Joanne B. Bader
Audubon Park City Council Member

cc: Audubon Park City Council
Mayor Michael Scalise

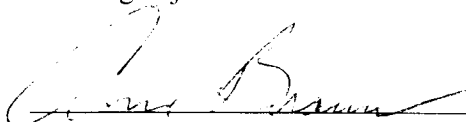
Audubon Park Ethics Committee Meeting

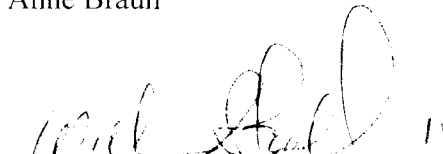
On October 2, 2013 the Ethics committee consisting of the following members, John Wientjes, Wm. Gary Fields and Ann Braun met at 6PM at Ann Braun's residence. The meeting was called under the direction of the Mayor Michael Scalise to conduct a preliminary inquiry concerning the allegations from Al Huber against Cary Campbell, Vince Osbourne, Joane Bader, Nancy Zinner and Mark Stevens.

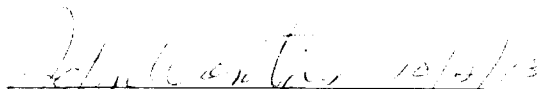
It was determined by the committee members that this complaint did not meet the requirements to investigate under our jurisdictional authority. We determined that under the City of Audubon Park, Kentucky Ordinance Number Four that no Ethics violations or conflicts of interest had occurred by any of these council persons named in Mr. Huber's written complaint.

A vote was taken and no action will be taken by this committee.

Meeting adjourned at 6:15PM.


Anne Braun 10/2/13


Wm. Gary Fields 10-2-13


John Wientjes, Chairman 10/2/13

City Of Audubon Park, KY

MEMO

TO: Audubon Park Board of Ethics: John Wientjes,
Anne Braun & Gary Fields
FROM: Michael Scalise, Mayor
RE: Ethical Compliant Field by Councilman Al Huber
DATE: October 1, 2013

Enclosed please find a complaint filed by Councilman Al Huber with me to forward to you and a copy of Audubon Park's Ethics Ordinance.

Michael Scalise

To: Audubon Park Ethics Committee
From: Al Huber
Date: September 30, 2013
Re: Audubon Park City Council hearing on October 15, 2013, to remove me from office

During the June, 2013, City Council meeting I commented that Councilman Cary Campbell, an attorney, could be disbarred for an action that he (Campbell) suggested in regard to the Davis affair. At the August, 2013, City Council meeting I made an inappropriate hand gesture to Mike Gardner. At the September 16, 2013, City Council meeting the Council passed a resolution to hold a public hearing to remove me from office citing the hand gesture and the comment referring to disbarment as official misconduct and the reason for my being dismissed from the Council. That public hearing is scheduled by the Council to take place on October 15, 2013.

Misconduct charges are handed down when the accused knew he had a duty to act but failed to do so or acted for personal gain monetarily or otherwise. An inappropriate hand gesture and commenting on a proposed action by a councilman do not come under this definition.

The hand gesture and comment referring to disbarment would be considered a lapse in good judgment which is **NOT** considered official misconduct. The accused can be censured but not removed from office.

On Tuesday, September 24, 2013, in a conversation with Councilman Cary Campbell, Mr. Campbell told me that the only reason that they were going to remove me from the council was so that they could get to the mayor. If it was not for that (getting to the mayor) they would not be doing this to me.

Over the course of the months that the present Council has been in office I also received phone calls from Mr. Campbell, Vince Osbourne and Mark Stevens threatening me with serious personal repercussions if I did not vote with them to oust the Mayor.

Therefore, I am filing an official ethics complaint against the City Council of Audubon Park (Cary Campbell, Vince Osbourne, Joanne Bader, Nancy Zinner, Mark Stevens).

My reasons are as follows:

- 1) The charge of official misconduct does not fit the offenses, and the revelation by Mr. Campbell of the Council's motivation is improper as are the threatening phone calls by Councilmen Campbell, Osbourne and Stevens. Originally, Councilman Vince Osbourne also stated at the September 16 City Council meeting that he wanted to hold the hearing one week later on September 23, 2013.
- 2) The Council did not follow proper protocol by first filing a complaint against me with the Ethics Board, and they are attempting to bypass the Ethics Board by conducting a public hearing on their own.
 - a) Section 21A of the Ethics Ordinance states that "all complaints shall be in writing, signed by the complainant, and shall meet any other requirements established by the Board of Ethics. The Board shall forward within ten (10) working days to each Officer or Employee of the City or City Agency who is the subject of the complaint a copy of the complaint and a general statement of the applicable provisions of this ordinance."
 - b) Section 21B states that "within thirty (30) days of the receipt of a proper complaint, the Board of Ethics shall conduct a preliminary inquiry concerning

the allegations contained in the complaint.”

- c) Section 21C states that “all proceedings and records relating to a preliminary inquiry being conducted by the Board of Ethics shall be confidential until a final determination is made by the Board.”
 - d) Section 21D states that “if the Board of Ethics concludes, based upon its preliminary inquiry, that the complaint is within its jurisdiction and contains allegations sufficient to establish a minimal factual basis to constitute a violation, the Board shall notify the Officer or Employee who is the subject of the complaint and may:
 - 1) Due to mitigating circumstances, issue a written confidential reprimand to the Officer or Employee concerning the alleged violation and provide a copy of the confidential reprimand to the Mayor and City Council or governing body of the City Agency.
 - 2) Initiate a hearing to determine whether there has been a violation.”
 - e) Section 22 states that “if the Board of Ethics determines that a hearing regarding allegations contained in the complaint is necessary, the Board shall issue an order setting the matter for a hearing. The order setting the matter for hearing, along with a copy of any pertinent regulations of the Board relating to the hearing shall be sent to the alleged violator.”
 - f) Section 23E states that “after the conclusion of the hearing, the Board of Ethics shall, as soon as practicable, begin deliberations in executive session for the purpose of reviewing the evidence before it and making a determination whether a violation of this ordinance has been proven. The Board shall issue a written report of its findings and conclusions.”
 - g) Section 23G states that “if the Board concludes in its report that in consideration of the evidence produced at the hearing there is clear and convincing proof of a violation of this ordinance, the Board may take any action it deems necessary including, but not limited to, issuing a cease and desist order, issuing a written public reprimand, recommending a specific discipline, including dismissal, or removal from office”
- 3) Not only has the City Council charged me with official misconduct, they are also the self-appointed judge and jury for the October 15 hearing.
- 4) Behavior such as this is beneath the dignity of the Council and should not be tolerated.

Paul [unclear]
10/15/2013