



KC&MP&ZC MINUTES

KENTON COUNTY & MUNICIPAL PLANNING & ZONING COMMISSION REGULAR MEETING

August 2, 2001
9:00 A.M.

NKAPC Meeting Room
2332 Royal Drive
Fort Mitchell, Kentucky

MINUTES

COMMISSION MEMBERS PRESENT:

Mr. Tim Theissen - Chairman - Edgewood
Ms. Barbara Carlin - Kenton County
Mr. Russell England - Independence
Mr. Al Hadley - Elsmere
Mr. Eugene Meyer - Covington
Mr. Joseph Price - Crestview Hills
Mr. Bernie Wessels - Fort Wright
Mr. Paul Swanson, Secretary/Treasurer - Erlanger
Mrs. Alex Weldon, Vice Chair - Covington

COMMISSION MEMBERS NOT PRESENT:

Mr. Jay Bayer - Park Hills
Mr. James Bertram - Taylor Mill
Mr. Barry Coates - Covington
Mr. James Cook - Kenton County
Mr. John Dorsey - Fort Mitchell
Mr. Jeff Gaiser - Ludlow
Mr. David Hilgeford - Villa Hills
Mr. Frank Smith - Lakeside Park
Mr. William Snyder - Bromley
Mr. James Sucher - Crescent Springs

LEGAL COUNSEL PRESENT:

David A. Schneider, Esq.

Mr. Theissen, Chairman, called the meeting to order at 9:00 a.m. Mr. Theissen opened the meeting with the Pledge of Allegiance and a prayer by Mr. Price.

APPROVAL OF THE MINUTES:

Mr. Theissen stated the minutes were distributed to the Commissioners and asked for any questions or comments. There being none, Mr. Price made a motion to approve the minutes from July. Mr. Hadley seconded. A roll call vote on the motion found Mr. Price, Mr. Hadley, Ms. Carlin, Mr. England, Mr. Meyer, Mr. Wessels, Mr. Swanson, Ms. Weldon and Mr. Theissen in favor. The motion carried.

SUBDIVISION ITEMS:

**a. PRESENTATION OF PRELIMINARY PLATS, OTHER PLATS, AND OTHER ISSUES
REQUIRING COMMISSION ACTION AT A REGULAR MEETING FOR REVIEW:**

PP-597 SYCAMORE CREEK @ FOWLER CREEK

APPLICANT: Raymond Erpenbeck Consulting Engineers, in behalf of Grand Communities, Ltd/
Dorothy Schneider Trust.

GENERAL LOCATION: An approximate 77-acre area interconnected with the existing subdivision Shadybrook Trails, and contiguous on the west with Fowler Creek Road (S.R. 1486), Independence.

REQUEST FOR ACTION: To approve a Preliminary Plat for SYCAMORE CREEK @ FOWLER CREEK SUBDIVISION, consisting of 146 residential building lots, including public improvements such as streets, storm drainage, sanitary sewers, and water systems. Note: Submitted plan includes request for waiver of sidewalks along Fowler Creek Road.

Staff presentation and Staff recommendation by Mr. Scott Hiles.

NKAPC STAFF RECOMMENDATION: To approve a Preliminary Plat for SYCAMORE CREEK AT FOWLER CREEK, but only subject to compliance with the following CONDITIONS:

CONDITIONS:

1. That the map amendment, Z-01-04-03/1520R, be approved by the city of Independence;
2. That Sight Distances (Right and Left) for vehicles exiting the proposed intersection with Fowler Creek Road (S.R. 1486) be in accord with minimum Subdivision Regulation standards. Sight Distance measurements shall be clearly indicated on subsequent Improvement Drawings and Specifications (Section 6.0 E);
3. That full intersection improvements (left turn storage lane and right turn deceleration lane), with design approval by the Highway Department, be provided along Fowler Creek Road (S.R. 1486) at the entrance intersection and constructed as part of the first phase of development (Section 6.1);
4. That a minimum fire flow of 500 gpm at 20 psi be provided/ensured by certified flow test and fire hydrant spacing be a maximum of 450 feet (Section 7.2);
5. That a public water system be provided along Fowler Creek Road (S.R. 1486) for the portion fronting the proposed development (Section 6.2);
6. That Street "B", with potential to serve more than 99 lots, be constructed 28 feet wide (Section 7.3);
7. That a temporary turnaround at the terminus of Street "B" be provided (Section 7.3H);
8. That sidewalks be constructed along both sides of all streets as well as along Fowler Creek Road (S.R. 1486) for the portion fronting the proposed development (Section 7.3);
9. That the existing regional detention basin be reevaluated for adequacy, and calculations submitted with subsequent Improvement Drawings and Specifications (Section 7.0);
10. That all lots, including the existing residence on Lot 1, be accessed internally and not from Fowler Creek Road (S.R. 1486);
11. That the referenced Home Owners Association (H.O.A.) document(s) be submitted for review by the commission's legal counsel prior to approval of a Final Plat; and
12. That legal access to areas designated as "Open Space" be provided.

BASES:

The proposed subdivision SYCAMORE CREEK AT FOWLER CREEK is consistent with the recommendations of the 1996 Area-Wide Comprehensive Plan Update, the Kenton County Subdivision Regulations, and the Kenton County Zoning Ordinance, except as noted under the above Conditions.

Mr. Theissen noted a letter had been received from the Hillside Trust on the issue and it would be marked as an Exhibit to the minutes.

Mr. Jim Gorman, Mr. Ray Erpenbeck and Ms. Elizabeth Horowitz registered to speak in favor of the issue. Mr. Richard Harrison and Mr. Mark Wendling also registered to speak on the issue.

Mr. Gorman addressed the Commission and contents of the Staff report. He stated they take exception to condition #5 and with respect to condition #8 they ask that the money be escrowed into an account to be held for improvements/sidewalks on Fowler Creek. He stated that speed traffic studies were done and the speed is 40 mph. He further stated they believe they can meet the site distance requirements as specified by Staff.

Mr. Erpenbeck addressed the Commission in favor of the application. He stated that Staff pretty well covered the issue. He stated in regard to the Hillside Trust letter that they would meet all grading requirements. He further stated with regard to the detention pond that they decided to have one pond handle all three developments in the area. He stated as part of their review they would go back and review the current detention facility to verify it can serve the area.

Ms. Horowitz addressed the Commission in favor of the application. She stated with regard to the speed limit issue that they though if the speed limit is determined to be less than what is posted or required then that is what would be submitted. Ms. Carlin asked if there is any way to the get the state involved in order to get the speed reduced. Mr. Theissen stated the Commission has never gone against the state's posting. Ms. Horowitz further stated as to the water line issue that requesting a water line on Fowler Creek Road is beyond the authorization of the regulations. She further stated that the water line does not serve any of the subdivision. Mr. Theissen asked what fire flows the subdivision would have. Mr. Erpenbeck stated it would have no effect on the fire flow because it is a dead end line. Mr. Erpenbeck further stated the construction of a water line on Fowler Creek Road is basically to provide a connection for the Water Company. He stated it is basically requiring the developer to construct a water line that will sit there until the Water Company puts in the water line on Fowler Creek Road. He also stated that regardless of whether or not the water line is put in, it would have no impact on the subdivision and fire flow.

Mr. Richard Harrison addressed the Commission and stated he is the Director of Engineering for the Water District and was present to provide comments on the issue. He stated the Water Company is not in a position at this time to provide service to this area but is currently working with the city to provide service between now and 2005 or 2006. He stated a connection on Fowler Creek would certainly provide greater fire flow to that area. He stated that normally residents are required to pay for construction of the line based on the frontage. He further stated that typically the water district does not provide for the

construction of an eight-inch water main and that cost is the burden of the residents. Mr. Harrison also stated the water district does provide grants in order to help fund the project. He did state that he does not know when service would be extended to that area. Mr. Hadley noted that if the line would be constructed then potentially no one would have to bear the expense. Mr. Harrison then stated if no line were tapped into then no one would be required to pay.

Mr. Mark Wendling, City Administrator for the City of Independence, addressed the Commission on the issue. He stated the city has approved the development. He stated the city's preference would be that the sidewalks would go in with the development versus escrowing the funds to do so. Mr. Hiles stated there are no provisions as to who would hold the escrowed funds for the sidewalk improvements. He further stated it is not easily implemented to escrow funds. Mr. Hiles then read into the record Section 7.2 and stated that based on those sections it is warranted to have them provide the sidewalks at this time based on that language. Mr. Wessels stated it makes no sense to construct a water line that will not provide service to property owners within that subdivision. Mr. England asked if the water lines would be 8-inch lines. Mr. Hiles stated the minimum requirement would be an 8-inch line. Mr. Gorman stated that typically the water lines in the subdivisions are 8-inch. Mr. Swanson asked if there was something that could be done to improve site distances. He further questioned Staff if the speed limit is determined to be 45 mph then what would the site distance requirement be. Mr. Hiles stated they would be 575-625 feet requirements. Mr. Gorman then stated that they are not trying to dodge the issue of putting in sidewalks but feel that escrowing the money in order to do so ensures that the funds will be used for that purpose. Mr. Theissen noted he feels for the developer on the sidewalk issue but stated that is no plan in place to escrow the funds as proposed. Mr. Hadley stated he feels condition #5 should be waived but added that the pipe should come down so it can be tapped into at a later date. Mr. Theissen stated it is an on-site developer versus an off-site developer. He stated it would benefit those in the subdivision to have the extension. Mr. Theissen further stated that it is a timing issue and since this is no small subdivision and it is a subdivision of 146 lots, it will be better to divide the cost among those 146 homeowners. Mr. Wessels countered as to why the residents would have to be the ones to bear the cost.

Following the discussion amongst the Commissioners, Mr. Meyer made a motion to approve PP-597 based on the conditions and recommendations set by Staff. Mr. Price seconded the motion. A roll call vote on the matter found Mr. Meyer, Mr. Price, Ms. Carlin, Mr. England, Mr. Hadley, Mr. Swanson and Mr. Theissen in favor. Mr. Wessels voted against. The motion carried.

b. CONSIDERATION OF ACTIONS TAKEN ON PLATS BY COMMISSION'S DULY AUTHORIZED REPRESENTATIVE, SINCE THE COMMISSION'S LAST REGULAR MEETING (e. g., GRADING PLANS, IMPROVEMENT DRAWINGS, FINAL DEVELOPMENT/STAGE II PLANS, FINAL PLATS, IDENTIFICATION PLATS, etc.) - See listing of plans and plats recommended for approval on separate handout.

Mr. Theissen asked for any conflicts regarding plats and plans over the past month. Mr. Hiles noted there were no conflicts. Mr. Theissen then asked for a motion to ratify and approve. Mr. Swanson made the motion with Mr. Price giving the second to the motion. A roll call vote on the motion found Mr. Swanson, Mr. Price, Ms. Carlin, Mr. England, Mr. Hadley, Mr. Meyer, Mr. Price, Mr. Wessels, Mr.

Swanson and Mr. Theissen in favor. The motion carried unanimously.

c. CONSTRUCTION REVIEW PROGRAM - See listing of subdivisions for construction inspections in progress on separate handout.

PUBLIC HEARINGS ON SCHEDULED PUBLIC FACILITIES: None.

OTHER COMMITTEE BUSINESS: None.

There being nothing further to come before the Commission, the meeting was recessed at 10:35 a.m. until 6:15 p.m.

KENTON COUNTY & MUNICIPAL PLANNING & ZONING COMMISSION
REGULAR MEETING

August 2, 2001
6:15 P.M.

NKAPC Meeting Room
2332 Royal Drive
Fort Mitchell, Kentucky

MINUTES

COMMISSION MEMBERS PRESENT:

Mr. Tim Theissen - Chairman - Edgewood
Mr. Jay Bayer - Park Hills
Mr. James Bertram - Taylor Mill
Ms. Barbara Carlin - Kenton County
Mr. Barry Coates - Covington
Mr. James Cook - Kenton County
Mr. John Dorsey - Fort Mitchell
Mr. Russell England - Independence
Mr. Al Hadley - Elsmere
Mr. Eugene Meyer - Covington
Mr. Joseph Price - Crestview Hills
Mr. Frank Smith - Lakeside Park
Mr. William Snyder - Bromley

Mr. James Sucher - Crescent Springs
Mr. Bernie Wessels - Fort Wright
Mr. Paul Swanson, Secretary/Treasurer - Erlanger

COMMISSION MEMBERS NOT PRESENT:

Mr. Jeff Gaiser - Ludlow
Mr. David Hilgeford - Villa Hills
Mrs. Alex Weldon, Vice Chair - Covington

LEGAL COUNSEL PRESENT:

David A. Schneider, Esq.

Mr. Theissen, Chairman, called the meeting to order at 6:15 p.m. Mr. Theissen opened the meeting with the Pledge of Allegiance and a prayer by Mr. Price.

APPROVAL OF THE MINUTES:

Mr. Theissen stated the minutes were distributed to the Commissioners and asked for any questions or comments. He noted that a document entitled "Attachment A" was distributed to the Commissioners with regard to the minutes on the model zoning ordinance text change from July. He noted it was a complicated issue and the pages were re-worked to make them more self-explanatory. He further noted that on page four of the July 5, 2001 minutes, middle of the page it is proposed that the existing text be deleted and replaced with the Attachment "A." Mr. Wessels noted on page nine that he withdrew from the issue related to Tom Gill Chevrolet from July and the minutes did not reflect this. There being no further comments or questions, Mr. Price made a motion to approve as corrected. Mr. Hadley seconded the motion. A roll call vote on the matter found Mr. Price, Mr. Hadley, Mr. Bayer, Ms. Carlin, Mr. Coates, Mr. Cook, Mr. Dorsey, Mr. England, Mr. Meyer, Mr. Smith, Mr. Snyder, Mr. Sucher, Mr. Wessels, Mr. Swanson and Mr. Theissen in favor. Mr. Bertram abstained. The motion carried.

FINANCIAL REPORT:

Mr. Theissen noted the financial report was distributed to the Commissioners. There were no questions or comments.

SUBDIVISION ITEMS:

a. CONSIDERATION OF PRELIMINARY PLATS AND OTHER PLATS AND ISSUES REQUIRING COMMISSION ACTION AT A REGULAR MEETING.

b. CONSIDERATION OF ACTIONS TAKEN ON GRADING PLANS, IMPROVEMENT

DRAWINGS AND SPECIFICATIONS, (STAGE II PLANS), FINAL PLATS, AND IDENTIFICATION PLATS BY THE COMMISSION'S DULY AUTHORIZED REPRESENTATIVE SINCE THE COMMISSION'S LAST REGULAR MEETING.

c. CONSIDERATION OF THE REPORT OF ACTIONS TAKEN BY THE SUBDIVISION/PUBLIC FACILITY REVIEW COMMITTEE AT A MEETING PRIOR TO, BUT ON THE SAME DAY, AS THE REGULAR MEETING.

Mr. Theissen read the report of the subdivision review committee meeting held in the morning. He then asked for a motion to ratify and approve the actions taken. Mr. Hadley motioned to ratify and approve. Mr. England seconded the motion. A roll call vote on the matter found Mr. Hadley, Mr. England, Mr. Bayer, Mr. Bertram, Ms. Carlin, Mr. Coates, Mr. Cook, Mr. Dorsey, Mr. Meyer, Mr. Price, Mr. Smith, Mr. Snyder, Mr. Sucher, Mr. Wessels, Mr. Swanson and Mr. Theissen in favor. Mr. Bayer abstained from voting and consideration regarding items FP-571, FP-572 and FP-596. The motion carried.

d. CONSIDERATION OF CONSTRUCTION REVIEW PROGRAM. See listing of subdivisions for construction inspections in progress on separate handout.

PUBLIC FACILITIES: Refer to 9:00 AM agenda.

PUBLIC HEARINGS ON SCHEDULED ITEMS:

Mr. Theissen noted a request to table had been received regarding item 1515R. He stated he had received letters from city officials to table the issue. Mr. Bayer made a motion to table the matter with Mr. Dorsey giving the second. All in favor responded with "aye." There were none opposed.

*The following two items (1512R and 1514R were combined for purposes of the meeting).

1512R

APPLICANT: City of Covington, per Mr. Dennis R. Uchtman, Zoning Specialist.

GENERAL LOCATION: N.A.

REQUEST FOR ACTION: Proposed text amendments to the Covington Zoning Ordinance: (1) deleting certain definitions that pertain to sexually oriented businesses and adding a new definition for "Sexually Oriented Business"; (2) deleting sexually oriented businesses from the list of permitted uses within the GC (General Commercial) Zone; (3) deleting sexually oriented businesses from the list of conditional uses within the CBD (Central Business District) Zone; (4) adding a new zoning district, the AE (Adult Entertainment Overlay) Zone, along with the necessary cross references in other sections of the zoning ordinance; (5) providing for specific off-street parking requirements for sexually oriented businesses; (6) adding regulations pertaining to the zoning permit process for sexually oriented businesses; (7) adding regulations pertaining to the appeals process for sexually oriented businesses; and (8) authorizing the board of adjustment to hear an appeal of the zoning administrator's decision pertaining to a sexually oriented business, less than thirty (3) days of the decision.

Staff presentation and Staff recommendations by Mr. Michael Schwartz.

NKAPC STAFF POSITION:

NKAPC STAFF RECOMMENDATION - COVINGTON ZONING ORDINANCE:

RECOMMENDATION A: To approve the proposed text amendments: (1) deleting certain definitions that pertain to sexually oriented businesses and adding a new definition for "Sexually Oriented Business" (see Attachment A); (2) deleting sexually oriented businesses from the list of permitted uses within the GC (General Commercial) Zone (see Attachment C); (3) deleting sexually oriented businesses from the list of conditional uses within the CBD (Central Business District) Zone (see Attachment D); and (4) providing for specific off-street parking requirements for sexually oriented businesses (see Attachment G).

RECOMMENDATION B: To approve the proposed text amendments adding a new zoning district, the AE (Adult Entertainment Overlay) Zone, along with the necessary cross references in other sections of the zoning ordinance (see Attachments B, E, F, and H), but only subject to compliance with the following conditions:

1. That Section 158.112 (B) (2) (a) (2) be revised to read as follows: 'Any Dwelling unit, as defined herein, or as similarly defined in the Zoning Ordinance of any adjacent political subdivision, in or adjacent to the City.'

2. That Section 158.112 (B) (2) (a) (4) be eliminated.

3. That Section 158.112 (B) (2) (a) be revised to include reasonable distance requirements between sexually oriented businesses and that these distance requirements be reasonably defined.

4. That Section 158.112 be revised to provide for a new subsection to read as follows: 'GENERAL: An Adult Entertainment (AE) Overlay Zone may only be permitted to be superimposed over any of the Commercial Zones, provided that all conditions or provisions of this section of the ordinance, are met.'

RECOMMENDATION C: To disapprove the proposed text amendments: (1) adding regulations pertaining to the zoning permit process for sexually oriented businesses (see Attachment I); (2) adding regulations pertaining to the appeals process for sexually oriented businesses (see Attachment J, K, and L); and (3) authorizing the board of adjustment to hear an appeal of the zoning administrator's decision, pertaining to a sexually oriented business, less than thirty (30) days of the decision (see Attachment M).

COMPREHENSIVE PLAN DOCUMENTATION / SUPPORTING INFORMATION / BASES FOR
NKAPC STAFF RECOMMENDATION --

COMPREHENSIVE PLAN DOCUMENTATION:

o Date of Adoption by the Kenton County and Municipal Planning and Zoning Commission: December 11, 1996.

SUPPORTING INFORMATION/BASES FOR NKAPC STAFF RECOMMENDATION:

RECOMMENDATION A:

1. The proposed text amendments: (1) deleting certain definitions that pertain to sexually oriented businesses and adding a new definition for "Sexually Oriented Business" (see Attachment A); (2) deleting sexually oriented businesses from the list of permitted uses within the GC (General Commercial) Zone (see Attachment C); (3) deleting sexually oriented businesses from the list of conditional uses within the CBD (Central Business District) Zone (see Attachment D); and (4) providing for specific off-street parking requirements for sexually oriented businesses (see Attachment G) are allowed to be included within the text of the zoning ordinance, as authorized by Kentucky Revised Statute (KRS) 100.203 (1).
2. Although the proposed definition of "Sexually Oriented Business" is referencing Subsection 111.601 of the City's Code of Ordinances, the definition found within the reference provides for a reasonable definition of the term (see Attachment A).
3. With the inclusion of an AE Overlay Zone providing for sexually oriented businesses, it is appropriate that sexually oriented businesses be deleted from the GC and CBD Zones (see Attachments C and D)
4. The Covington Zoning Ordinance currently does not provide for off-street parking requirements for sexually oriented businesses. The proposed text amendment will provide references to similar existing uses (i.e., adult motel references motel) (see Attachment G).

RECOMMENDATION B:

1. The proposed text amendments adding a new zoning district, the AE (Adult Entertainment Overlay) Zone, along with the necessary cross references in other sections of the zoning ordinance (see Attachments B, E, F, and H), except as noted under conditions, are allowed to be included within the text of the zoning ordinance, as authorized by Kentucky Revised Statute (KRS) 100.203 (1).
2. The proposed text amendments adding a new zoning district, the AE (Adult Entertainment Overlay) Zone, along with the necessary cross references in other sections of the zoning ordinance (see Attachments B, E, F, and H), except as noted under conditions, provide for the placement of sexually oriented businesses while providing sufficient and reasonable controls.
3. The proposed AE Overlay Zone states that sexually oriented businesses cannot be located adjacent to a dwelling. The Covington Zoning Ordinance defines a dwelling as a building used completely for

residential purposes. This definition does not include buildings with retail storefronts and residential units on the upper floors. It seems reasonable to protect all residential uses from sexually oriented businesses. Therefore, it is recommended that Section 158.112 (B) (2) (a) (2) be revised to read as follows: 'Any Dwelling Unit, as defined herein, or as similarly defined in the Zoning Ordinance of any adjacent political subdivision, in or adjacent to the City.'

4. The proposed AE Overlay Zone states that sexually oriented businesses cannot be located adjacent to a hotel or motel. This provision seems to be arbitrary since such a use is more commercial in nature rather than residential. Therefore, it is recommended that Section 158.112 (B) (2) (a) (4) be eliminated.

5. The proposed AE Overlay Zone would allow the clustering or concentration of sexually oriented businesses (i.e., they are allowed to be located adjacent to one another). To better eliminate the potential concentration of such uses, and to better disperse such uses, it is recommended that Section 158.112 (B) (2) (a) be revised to include reasonable distance requirements between sexually oriented businesses and that these distance requirements be reasonably defined.

6. The proposed AE Overlay Zone can be overlaid onto any zoning district in the city. Since the proposed AE Overlay Zone is commercial in nature, and to reduce the potential overuse of the AE Overlay Zone, it is recommended that Section 158.112 be revised to provide for a new subsection to read as follows: 'GENERAL: An Adult Entertainment (AE) Overlay Zone may only be permitted to be superimposed over any of the Commercial Zones, provided that all conditions or provisions of this section of the ordinance, are met.'

RECOMMENDATION C:

1. The proposed text amendment allowing an expedited permit process (see Attachment I) is arbitrary.

The proposed text amendment allows an applicant for a sexually oriented business to utilize a fast track (expedited applicant) permit process. Such a process is only proposed for sexually oriented businesses and does not apply to any other permitted use within the zoning ordinance. There does not appear to be any connection between the proposed expedited process and the public interest being served to single out this one use. Therefore, the proposed text amendment is arbitrary.

2. The proposed text amendments allowing an expedited appeal process (see Attachments J, K, L, and M) are arbitrary.

The proposed text amendment allows an applicant for a sexually oriented business to appeal the Zoning Administrator's decision utilizing a fast track (expedited appeal) appeal process. Such a process is only proposed for appeals pertaining to sexually oriented businesses and does not apply to any other appeal of the Zoning Administrator's decision. There does not appear to be any connection between the proposed expedited process and the public interest being served to single out this one appeal. Therefore, the proposed text amendments are arbitrary.

3. The proposed text amendment allowing an expedited appeal process (see Attachment J) is not consistent with the Covington Board of Adjustment By-Laws.

The proposed text amendment requires that the Board of Adjustment hold a public hearing on the appeal within fourteen (14) consecutive days of the filing of the Notice of Expedited Appeal. The Covington Board of Adjustment By-Laws, however, state that formal applications to the Board must be received twenty-one (21) days prior to the regularly scheduled meeting of the Board.

The proposed text amendment has the effect of the legislative body dictating the operation and conduct of the Board of Adjustment.

4. The proposed text amendment requiring an applicant to appeal the Board of Adjustment's decision to the circuit court within thirty (30) days (see Attachment K) is unnecessary and repetitive.

The requirements and regulations are currently within the zoning ordinance and within KRS Chapter 100. Therefore, they do not need to be repeated specifically for sexually oriented businesses.

5. The proposed text amendment requiring a temporary zoning permit for sexually oriented businesses while an appeal is in the circuit court process (see Attachments K and L) is arbitrary.

The proposed text amendment states that if an appeal is filed with the circuit court, all proceedings and permits shall be stayed until such time as the circuit court renders its decision, except for permits pertaining to sexually oriented businesses. Pertaining to sexually oriented businesses, the Zoning Administrator must issue a temporary zoning permit to allow the sexually oriented business to operate until such time as the circuit court renders its decision.

This temporary zoning permit process only applies to sexually oriented businesses and does not apply to any other permitted use within the zoning ordinance. There does not appear to be any connection between the proposed temporary permit process and the public interest being served to single out this one use. Therefore, the proposed text amendment is arbitrary.

ADDITIONAL INFORMATION:

The NKAPC staff has recommended that Section 158.112 (B) (2) (a) be revised to include reasonable distance requirements between sexually oriented businesses and that these distance requirements be reasonably defined. A survey of other cities in the country, conducted by the American Planning Association, indicates that distances between adult uses vary from 300 feet to 1,000 feet. Additionally, how this distance is measured varies from the front door to the front door or lot line to lot line.

1514R

APPLICANT: City of Covington, per Mr. Dennis Uchtman, Zoning Specialist.

GENERAL LOCATION: N.A.

REQUEST FOR ACTION: Proposed map amendments to the Covington Zoning Ordinance: (1) changing AREA 1, an approximate 1.2 acre area located at the northeast corner of the intersection of Fourth Street with Scott Street, from GC (a general commercial zone) to GC (AE) (a general commercial zone with an adult entertainment overlay zone); (2) changing AREA 2, an approximate 3.5 acre area located at the northeast and northwest corners of the intersection of Fifth Street with Madison Avenue, from GC (HP) (a general commercial zone with an historic preservation overlay zone) to GC (AE) (HP) (a general commercial zone with an adult entertainment overlay zone and an historic preservation overlay zone); and (3) changing AREA 3, an approximate 1.2 acre area located at the southwest corner of the intersection of Fifth Street with Madison Avenue, from CBD (HP) (a central business district zone with an historic preservation overlay zone) to CBD (AE) (HP) (a central business district zone with an adult entertainment overlay zone and an historic preservation overlay zone).

Staff presentation and Staff recommendation by Mr. Michael Schwartz.

NKAPC STAFF POSITION:

NKAPC STAFF RECOMMENDATION - COVINGTON ZONING ORDINANCE:

To approve the proposed map amendments, but only subject to compliance with the condition that Covington City Commission adopt the proposed text amendments adding the AE Overlay Zone, along with the various cross references (see Z-01-06-03/1512R), as recommended by the NKAPC staff, prior to or simultaneous with the adoption of these proposed map amendments.

COMPREHENSIVE PLAN DOCUMENTATION / SUPPORTING INFORMATION / BASES FOR NKAPC STAFF RECOMMENDATION --

COMPREHENSIVE PLAN DOCUMENTATION:

o Date of Adoption by the Kenton County and Municipal Planning and Zoning Commission: December 11, 1996.

SUPPORTING INFORMATION/BASES FOR NKAPC STAFF RECOMMENDATION:

1. The proposed map amendments are consistent with the Land Use Plan Element of the 1996 Area-Wide Comprehensive Plan Update which identifies the sites in question for Commercial - Office uses and Commercial - Retail/Service uses. The proposed AE Overlay Zone would allow the development of these types of uses.

2. Currently, the Covington Zoning Ordinance does not contain an AE Overlay Zone. The City of Covington has submitted an application for NKAPC and KC&MP&ZC review and recommendation on proposed text amendments adding the AE Overlay Zone, along with various cross references (see Z-01-06-03/1512R). Before Covington City Commission can take action on the proposed map amendments,

they must first take action to adopt the proposed text amendments adding the AE Overlay Zone, along with various cross references.

It is important to note that the NKAPC staff has recommended approval of the proposed AE Overlay Zone, subject to certain conditions. It is the opinion of the NKAPC staff that these conditions are necessary and must be incorporated into the proposed text as a condition to the adoption of the proposed map amendments.

*Mr. David Schneider, legal counsel, gave a brief background of adult entertainment law as it pertains to this issue.

Mr. Dennis Uchtman, Mr. David Langdon and Mr. Jay Fossett addressed the Commission in favor of the issue. Mr. Bob Diltz, Mr. Paul Jackson, Mr. George Jaeger, Ms. Suzanne Lewis, Mr. George Staggs, Mr. Frank Horton, Mr. Jerry Hatfield, Mr. Fred Macke, Ms. Debra Hinges, Mr. Sterling Staggs, Mr. Michael Martin and Ms. Kay Peacock registered to speak against the issue.

Mr. Jay Fossett addressed the Commissioners regarding in favor of the application. He stated the city is concerned and they are trying to be proactive on the issue. He stated they are really trying to close the door on these types of businesses. He stated they are trying to keep this type of entertainment in one area versus having sexually oriented businesses all over the area. He further stated the city would be happy to meet with individuals to discuss the matter further.

Mr. David Langdon addressed the Commissioners in favor of the application. He stated Mr. Schneider did a wonderful job in addressing the constitutional issues regarding this type of adult entertainment. He stated the city has licensing regulations and locations regarding sexually oriented businesses. He stated there needs to be an allowable number of sites in the city. He stated there are currently nine adult licensed businesses in the city. He further stated the city has done a wonderful job of enforcing that licensing. He also stated that right now, with a good lawyer, any sexually oriented business could locate anywhere in the city. Mr. Langdon stated that in excess of 200 hours were spent in deciding where to place sexually oriented businesses within the city. He stated it was felt the preferred location was not a possibility and stated the area chosen is where the existing adult entertainment businesses are located. He further stated this would then limit the number of sexually oriented businesses to one area versus two areas of the city. He stated the best place to put sexually oriented businesses is in the industrial areas of the city to keep them away from residential zones. He further stated the desire of the city was to put this type of entertainment in the industrial zones where they would have the least impact. He additionally stated that based on previous history with the Commission they knew that would not be possible. He then stated that based on that fact the current site was chosen. Mr. Langdon further stated studies on sexually oriented businesses have shown that they do have negative effects such as increased sexual crime, decreased property values, etc. He further stated with distance requirements and so many churches and residences and schools in the city, they could not come up with an appropriate distance that meets constitutional requirements. He stated there is one advantage to having a clustering of these types of businesses and that is they can be better monitored.

Mr. Theissen noted that attachments "E" and "H"(J) distributed by Mr. Langdon would be marked as exhibits. Mr. Langdon addressed the issue regarding expedited appeals process in reference to his handout. He stated the constitutional law had to take precedence over Kentucky law as to the expedited process in regard to appeals of the Board of Adjustment. Mr. Wessels asked about the expedited appeals process. He questioned why another group would not be entitled to an expedited appeal. Mr. Langdon stated it is because the sexually oriented business involves the First Amendment. Mr. Wessels asked if the current sexually oriented businesses are all in the same area. Mr. Langdon replied that they are not. Mr. Wessels then questioned as to why an application was never made to have sexually oriented businesses in the industrial zone. Mr. Langdon stated the reason was because that same application was presented and turned down within the last few years and they did not want to waste time in making an application that has come before the Commission already.

Mr. Theissen marked a letter received from Mr. Vincent Alig as Exhibit 3 to the minutes. Also marked as an exhibit was a letter received from Mr. William Butler as Exhibit 4.

*At this time Mr. Bayer left the meeting.

Mr. Uchtman had nothing further to add.

Mr. Bob Diltz, on behalf of First Christian Church, addressed the Commission against the application. He stated the person that drafted the text amendment stated himself that the first choice for sexually oriented businesses is in the industrial zone. He stated there has been an overhaul of the downtown area and he does not feel this is where they should go. He stated the church is obviously against the issue.

Mr. Paul Jackson addressed the Commission against the application. He stated he is the trustee of the First Christian Church. He stated the church has been there over 100 years. He stated they have experienced increased numbers and dwindling numbers. He stated that unfortunately they are now experiencing dwindling numbers yet again. He further stated that they are developing ways to increase their congregation and cannot believe this type of business would be allowed in the area.

Mr. George Jaeger addressed the Commission against the application. He stated it has come to his attention that the city of Covington was trying to do away with these types of businesses. He stated he can't understand why the city would put an adult entertainment zone in the same area as the church. He stated they have problems now with the existing adult entertainment locations in the area. He stated it bothers him that the city would encourage the placement of sexually oriented businesses in this area. He encouraged a vote of no on the issue.

Ms. Suzanne Lewis addressed the Commission against the application. She stated she works at Huntington Bank and has been asked to speak against the issue. She stated they have seen growth in the downtown area and asked that another location be found. She stated there is a school in the area and they have residents in the areas proposed.

Mr. George Staggs, Pastor of the First Baptist Church, addressed the Commission against the application. He asked that the city listen to the people. He stated the northern boundary of the proposed zone is directly across from the front door of the church.

Mr. Frank Horton addressed the Commission against the application. He stated he is the pastor of the First Methodist Church. He stated they are trying to make a new Covington and build up a new generation. He stated he is appealing to the Commission to vote down the zone change. He further stated it's hard to argue against the law but it's a question of conscience. He stated it would be better to put it in the industrial zone. He additionally stated another burden does not need to be placed on the city's back.

Mr. Jerry Hatfield addressed the Commission against the application. He stated he is a property owner of a building in Covington. He stated he helped form a group called Covington Clean Sweep about ten years ago. Mr. Hatfield stated the sexually oriented businesses have absolutely no redeeming qualities and stated the place for them is in the industrial zone. He stated he purchased his building in 1987 and has a million dollars invested in the rehabbing of the building. He further stated they have a lot to lose in regards to the zone change. He additionally stated he does not feel they should be placed in the first line of defense against the sexually oriented businesses coming into the area. He stated since the land is there he feels it very logical to apply it to the industrial area on the 3L Highway but not in downtown Covington. He further stated from a moral standpoint and from an economical standpoint it belongs in the industrial area.

Mr. Fred Macke addressed the Commission against the issue. He stated he is in the same position as the Alig brothers. He stated he has spent a lot of time and a lot of money trying to attract good quality tenants. He stated it will be depressing and disappointing if the zone overlay goes through.

Mr. Sterling Staggs, Trustee at First Christian Church, addressed the Commission against the issue. He stated they believe in the mission that the church has and is committed to the area. He stated the Panorama Apartments are in the area as well as the public library and doesn't feel it's an appropriate area for this type of zone.

Mr. Michael Martin addressed the Commission against the application. He stated he chose downtown Covington because the city was going to rejuvenate and develop the park district. He stated he was shocked when he saw that the zoning was going to be proposed in the park area and across from the new police memorial. He stated downtown is not an area where this belongs but it does belong in the industrial area.

Mr. Theissen stated in Covington there is a lack of industrial land. He stated the reason it was turned down in the past was because it was not industrial. He stated the industrial area shouldn't be a scapegoat. He stated he would suggest there could be other areas other than industrial for this issue. Mr. Sucher asked how much land is needed and questioned whether or not further down the 3L Highway away from the interstate would be greater area or not. Mr. Dorsey asked if there were anyway to shrink down the site to include the area containing the seven present adult entertainment businesses and still be

constitutionally within bounds. Following further discussion on the issue, Mr. Bertram made a motion as to 1512R, to approve Recommendation A (Attachments A, C, D, and G), to approve Recommendation B (Attachments B, E, F, and H), however eliminating all four staff conditions and accepting applicant's Attachment E, and to approve Recommendation C which is to disapprove the proposed text amendments found on Attachments I, J, K, L, and M. Mr. Bertram stated his basis for the motion as to Recommendation A was based on the recommendations of Staff, as to Recommendation B the basis were the constitutional points brought up by the city and as to Recommendation C, his basis was based on Staff's recommendations. Mr. Price seconded the motion. A roll call vote on the matter found Mr. Bertram, Mr. Price, Ms. Carlin, Mr. Coates, Mr. Cook, Mr. Dorsey, Mr. England, Mr. Hadley, Mr. Smith, Mr. Snyder, Mr. Sucher, Mr. Wessels, Mr. Swanson and Mr. Theissen in favor. Mr. Meyer voted against. The motion carried by a vote of 14-1.

Mr. Wessels stated he finds it hard to believe that the gates coming into the city from Cincinnati and Newport would have adult entertainment zones. Ms. Carlin asked how much acreage is required to meet the constitutional requirements. Mr. Theissen stated he did not know the answer but stated the area proposed is approximately six (6) acres. Mr. Wessels stated from a planning standpoint it does not make sense to change the zone. Mr. Theissen stated his concern is that the proposed area is in an area of the city where there is much revitalization going on and much being done to improve the area. Mr. Swanson then made a motion regarding 1514R to disapprove on the bases that: (1) The sites in question represent a gateway to the city and to the downtown core. The proposed map amendments would allow the development and siting of sexually oriented businesses within this gateway area. As such, the proposed map amendments for the sites in question are inappropriate; and (2) As previously stated, the proposed map amendments would allow the development and siting of sexually oriented businesses. The sites in question have gone and are continuing to undergo redevelopment and revitalization. The proposed map amendments will have a negative impact on the redevelopment efforts within the sites in question and upon adjacent areas. Mr. Bertram seconded the motion. A roll call vote on the matter found Mr. Swanson, Mr. Bertram, Ms. Carlin, Mr. Coates, Mr. Cook, Mr. Dorsey, Mr. England, Mr. Hadley, Mr. Meyer, Mr. Price, Mr. Smith, Mr. Snyder, Mr. Sucher, Mr. Wessels and Mr. Theissen in favor. The motion carried unanimously.

1516R

APPLICANT: City of Elsmere, per Mayor Bill Bradford.

GENERAL LOCATION: N.A.

REQUEST TO BE REVIEWED: A proposed text amendment to the Elsmere Zoning Ordinance adding "automobile laundry" to the list of permitted uses within the NC (Neighborhood Commercial) Zone.

Staff presentation and Staff recommendations by Mr. Michael Schwartz.

NKAPC STAFF POSITION

NKAPC STAFF RECOMMENDATION - ELSMERE ZONING ORDINANCE:

To approve the proposed text amendment adding "automobile laundry" to the list of permitted uses

within the NC (Neighborhood Commercial) Zone (see Attachment A).

COMPREHENSIVE PLAN DOCUMENTATION / SUPPORTING INFORMATION / BASES FOR NKAPC STAFF RECOMMENDATION --

COMPREHENSIVE PLAN DOCUMENTATION:

o Date of Adoption by the Kenton County and Municipal Planning and Zoning Commission: December 11, 1996.

SUPPORTING INFORMATION/BASES FOR NKAPC STAFF RECOMMENDATION:

1. The proposed text amendment adding "automobile laundry" to the list of permitted uses within the NC (Neighborhood Commercial) Zone (see Attachment A) is allowed to be included within the text of the zoning ordinance, as authorized by Kentucky Revised Statute (KRS) 100.203 (1).
2. The proposed text amendment adding "automobile laundry" to the list of permitted uses within the NC (Neighborhood Commercial) Zone (see Attachment A) is consistent with the purpose of the NC Zone.

The NC Zone is intended to provide retail business or service establishments supplying commodities and performing services primarily oriented to serving the needs of residents of the surrounding neighborhood. The addition of the proposed use will provide a service for local residents and such use is common in other commercial zones.

3. The recommendation of approval is consistent with previous recommendations made by the NKAPC staff and the KC&MP&ZC.

The NKAPC staff and the KC&MP&ZC have reviewed and recommended approval of similar requests within the cities of Independence (Z-87-06-03/788R) and Covington (Z-89-05-07/900R).

On March 15, 1990, the City of Erlanger submitted an application for NKAPC and KC&MP&ZC review and recommendation on a proposed text amendment to the Erlanger Zoning Ordinance deleting "auto laundry" from the list of permitted uses within the NC Zone. On April 2, 1990, the NKAPC staff recommended disapproval of the submitted request. On April 5, 1990, following the public hearing, the KC&MP&ZC recommended disapproval of the proposed text amendment on the basis that an auto laundry is an appropriate use within the NC Zone.

No one registered to speak for or against the issue.

Mr. Hadley asked what type of car wash this would be. Mr. David Hume was identified in the audience and stated it would be a computer automated system. Mr. Hadley asked if an attendant would be on duty. Mr. Hume noted that at times there would be an attendant present. Mr. Hadley then stated that an unattended car wash facility will encourage loitering, loud music and it will generate debris. Mr. Hume

noted this would be a touchless car wash and the cleaning would be done with pressure versus brushes.

Following a brief discussion on the matter, Mr. Price then made a motion to approve based on Staff's Recommendation. Mr. Smith seconded the motion. A roll call vote on the issue found Mr. Price, Mr. Wessels, Mr. Bertram, Ms. Carlin, Mr. Coates, Mr. Cook, Mr. Dorsey, Mr. England, Mr. Meyer, Mr. Snyder, Mr. Sucher, Mr. Wessels, Mr. Swanson and Mr. Theissen in favor. Mr. Hadley voted against. The motion carried 14-1.

OLD BUSINESS:

Mr. Theissen noted that today was the deadline for an extension granted for a cell tower applicant (TF-2001-21) that was first brought before the Commission in January. Mr. Schwartz noted that the issue had previously been tabled on February 28th, March 1st, and again on May 3rd. Mr. Schwartz further noted that a request to table had again been received on behalf of AT&T to table the matter until the October 4th meeting. A motion was then made by Mr. Price to table the matter on the condition that by September 4th the amended application will be complete and brought in otherwise the Commission will proceed with a public hearing on the original application unless it is withdrawn. Mr. Wessels seconded the motion. All in favor indicated a vote of "aye." No one was opposed. The motion carried.

CORRESPONDENCE: None.

PLANNING, STAFF AND LEGAL COUNSEL ITEMS:

COMMISSION ITEMS:

Standing Committee Reports: The committee reports were deferred until the next month's meeting due to the lateness of the hour. No one objected.

COMMENTS/REQUESTS TO THE COMMISSION:

There being no further matters to come before the Commission, Mr. Theissen then adjourned the meeting at 10:00 p.m.