



## **KC&MP&ZC MINUTES**

---

### **KENTON COUNTY & MUNICIPAL PLANNING & ZONING COMMISSION**

#### **REGULAR MEETING**

**July 7, 2005**

**6:15 P.M.**

**NKAPC Meeting Room**

**2332 Royal Drive**

**Fort Mitchell, Kentucky**

## **MINUTES**

### **COMMISSION MEMBERS PRESENT:**

Ms. Barbara Carlin – Kenton County

Mr. James Cook - Kenton County

Mr. Paul Darpel – Edgewood

Mr. Chuck Eilerman - Covington

Mr. Tom France - Ludlow

Mr. Al Hadley – Elsmere

Mr. Robert Logsdon – Taylor Mill

Mr. Phil Ryan – Park Hills Mr.

Greg Scheper – Crescent Springs

Mr. Bernie Wessels – Ft. Wright

Mr. Joseph Price, Vice Chairman - Crestview Hills

**COMMISSION MEMBERS NOT PRESENT :**

Mr. Barry Coates – Covington

Mr. Mike Denham – Bromley

Mr. David Hilgefurd - Villa Hills

Mr. Mark Hushebeck – Lakeside Park

Ms. Maura Snyder – Independence

Mr. John Wells – Ft. Mitchell

Mr. Paul Swanson, Secretary/Treasurer – Erlanger

Ms. Alex Weldon, Chairperson - Covington

**LEGAL COUNSEL PRESENT:**

Mr. David Schneider, Esq.

Mr. Price, Vice Chair, called the meeting to order at 6:15 p.m. The meeting was opened with the Pledge of Allegiance and an invocation by Mr. Eilerman.

**AGENDA:**

There were no changes noted to the agenda.

## **APPROVAL OF THE MINUTES:**

A motion was made by Mr. Hadley to approve the minutes from June. Ms. Carlin seconded the motion. A roll call vote on the matter found Mr. Hadley, Ms. Carlin, Mr. Darpel, Mr. Eilerman, Mr. France, Mr. Ryan, Mr. Scheper, Mr. Wessels and Mr. Price in favor. Mr. Cook and Mr. Logsdon abstained. The motion carried.

## **FINANCIAL REPORT:**

Mr. Wessels questioned the amount of monies being spent on insurance premiums. Mr. Price noted he would find out the reason for the discrepancy and relay the information to the Commissioners.

## **ACTIONS SINCE LAST MEETING:**

The memorandum regarding the actions taken by Staff over the past month was distributed. There were no questions or comments.

Mr. Hiles introduced the members of the engineering Staff, both new and current, and gave a brief background on each as to their individual duties with the NKAPC.

## **PUBLIC HEARINGS:**

**1739R**

**APPLICANT:** City of Independence, per Patricia H. Taney.

**LOCATION:** N. A.

**REQUEST:** Proposed text amendments to the Independence Zoning Ordinance: (1) modifying the minimum yard requirements within the NSC (Neighborhood Shopping Center) Zone and (2) adding regulations for landscape screening within NSC zones.

Staff presentation and Staff recommendations by Mrs. Melissa Jort-Conway.

## **NKAPC STAFF RECOMMENDATION**

To disapprove the proposed text amendment.

## **Comprehensive Plan Documentation:**

- Date of Adoption by the Kenton County and Municipal Planning and Zoning Commission: December

18, 2001.

### **Supporting Information/Bases For Recommendations:**

1. The proposed text amendment increasing the minimum planting strip for developments within the NSC (Neighborhood Shopping Center) Zone, is not consistent with the purpose of zoning regulations within the Independence Zoning Ordinance. Section 2.1 of the Independence Zoning Ordinance states that “zoning regulations and districts, as herein set forth, have been prepared in accordance with the adopted comprehensive plan to promote the public health, safety, morals, and general welfare of the city, to facilitate orderly and harmonious development and the visual or historical character of the city.” The proposed text amendment does not advance the purpose of promoting general public welfare and facilitating orderly and harmonious development. The existing yard and landscape screening requirements are sufficient to protect adjacent land uses from the encroachment of adjoining land uses.
2. The proposed text amendment increasing the minimum planting strip for developments within the NSC (Neighborhood Shopping Center) Zone, is unreasonable to require additional landscape screening for areas zoned for commercial uses which abut residential zones on three sides. The existing Landscape Regulations are appropriate as they are intended to be applied uniformly throughout the city. The proposed text amendment is inappropriate in that, it would apply to one parcel and it could not be applied uniformly throughout the city.

Mr. Ken Lancaster registered to speak in favor of the issue. No one registered to speak against.

Mr. Lancaster addressed the Commission and distributed a handout along with some photos concerning the issue. He stated they believe the text amendment is fair and the city voted for it in June. He also stated they believe the text amendment is consistent and promotes safety and welfare of the city. Mr. Lancaster stated the Cherokee Acres citizens stated this lot is unsuitable for commercial development. He additionally noted they are trying to be fair and reasonable in their request. He stated they feel it would be difficult to find another area where there are three homes surrounding this particular piece of property. It was additionally noted the property is only about 2+ acres and not the five (5) acres that is required. He also noted the property has sat vacant for fifty years. Mr. Lancaster further noted the NSC zone has forty-five (45) uses and only three (3) conditional uses and none of them are viable for this lot. He stated the latest request is for a parking lot. He noted the owner would like to install a car wash and retail on the site as well as the parking. He further noted if the property owner had anything to say he would have shown up and spoken on his behalf. Mr. Lancaster stated the Commission has to consider the family home as well as the peace and tranquility of the area and then asked the Commission for approval. He additionally stated all they are trying to do is protect their property and be able to enjoy their homes. He noted they feel it is a reasonable request to ask for the fifty (50) feet to allow them to enjoy their yards and not have cars twenty (20) feet from their back yards.

Mr. Wessels stated he feels the Commission might be setting a precedent by changing the text for one property owner and that by changing it twenty, thirty or to fifty feet will not change the problem. He

further stated he felt maybe something should be looked at as a whole and not just one lot be considered. Mr. Darpel explained that while he agrees with the particular situation involving the NSC Zone and three residential properties on three sides, he doesn't feel changing the text for one property owner is the right way to go. He then stated fifty (50) feet is a big buffer and if this is changed, someone who owns ten (10) acres that abuts a residential property has to provide a fifty (50) foot buffer. Ms. Carlin stated if this is passed it would be like spot zoning. She questioned whether the property owners could get together and purchase some of the land to create their own buffer. Mr. Wessels then noted the property owners would have to do that on their own. After further discussion, Mr. Eilerman recommended denying the request based on Staff's recommendations and report. Mr. Cook seconded the motion. A roll call vote on the matter found Mr. Eilerman, Mr. Cook, Ms. Carlin, Mr. Darpel, Mr. Hadley, Mr. Logsdon, Mr. Ryan, Mr. Scheper, Mr. Wessels and Mr. Price in favor. Mr. France voted against. The motion carried by a vote of 10-1.

## **1740R**

Staff presentation and Staff recommendations by Mrs. Melissa Jort-Conway.

### **NKAPC STAFF RECOMMENDATION**

#### Recommendation A:

To disapprove the proposed text amendments deleting two-family residential dwellings from the list of permitted uses within the R-1FF (a single and two-family residential) and R-1GG (a single and two-family residential) Zones, and adding two-family residential dwellings to the list of conditional uses within the R-1FF and R-1GG Zones .

#### Recommendation B:

To disapprove the proposed text amendments deleting funeral homes from the list of conditional uses in the R-1FF and R-1GG Residential Zones.

#### Recommendation C:

To approve the proposed text amendments modify the list of permitted uses within the IP-1 (Industrial Park One) Zone, but only subject to compliance with the following conditions:

1. That the wording of the proposed uses be changed to read as follows: offices; self storage facilities; freight terminals; contractor's offices and trades.

#### Recommendation D:

To approve the proposed text amendments amending various sections of Article XIII, Fences, Walls and

Obstruction to View Regulations, but only subject to compliance with the following conditions:

1. That the proposed wording of Class 2 fences be revised to read as follows: “ornamental iron, wood or other materials (eighty (80) percent open)”.
2. That Class 7 and 8 fences remain.
3. That section 13.2 be renamed “Conservation Zones” and the existing regulations for Class 8 fences remain.
4. That Figure 1: “Type, Class, and Heights of Fences and Walls Permitted in this Ordinance” be amended to allow Type C fences in the rear yard of double frontage lots and that provisions be added for lots which abut a public street on three sides.

### **Comprehensive Plan Documentation:**

- Date of Adoption by the Kenton County and Municipal Planning and Zoning Commission: December 18, 2001.

### **Supporting Information/Bases For Recommendations:**

#### Recommendation A:

1. The proposed text amendment deleting two-family residential dwellings from the list of permitted uses within the R-1FF (a single and two-family residential) and R-1GG (a single and two-family residential) Zones, and adding two-family residential dwellings to the list of conditional uses within the R-1FF and R-1GG Zone is unreasonable. The proposed text amendment would create an undue hardship on the owners of two-family residential dwellings, which would become nonconforming upon adoption of the proposed text amendment
2. The proposed text amendments adding two-family residential dwellings to the list of conditional uses within the R-1FF and R-1GG Zone is not consistent with the definition of a conditional use. The Elsmere Zoning Ordinance defines a conditional use as follows: “A use which is essential to or would promote the public health, safety, or welfare in one or more zones, but which would impair the integrity and character of the zone in which it is located, or in adjoining zones, unless restrictions on location, size, extent, and character of performance are imposed in addition to those imposed within this ordinance.” Two family residential dwellings do not impair the integrity and character of the R-1FF and R-1GG zones.

#### Recommendation B:

1. The proposed text amendment deleting funeral homes as a conditional use in the R-1FF and R-1GG Zones, is unnecessary and inappropriate. As a conditional use, the location of funeral homes must be reviewed and approved by the Elsmere Board of Adjustment following a public hearing. Given this additional review and permit process for conditional uses, it is appropriate to leave funeral homes as a conditional use in the R-1FF and R-1GG zones.

#### Recommendation C:

- The proposed text amendment modifying the list of permitted uses within the IP-1 Zone, except where noted under condition, is allowed to be included within the text of the Zoning Ordinance, as authorized by KRS 100.203(1).

2. The proposed text amendment modifying the list of permitted uses within the IP-1 Zone, except where noted under condition, is appropriate to permit uses which are similar in intensity to those currently permitted uses in the IP-1 Zone. The condition that the proposed uses be reworded to include offices; self storage facilities; freight terminals; contractor's offices and trades is appropriate to minimize duplication of uses as well as remove excessive language in the text of the zoning ordinance.

#### Recommendation D:

1. The proposed text amendments amending various sections of Article XIII, Fences, Walls and Obstruction to View Regulations, except where noted under condition, are allowed to be included within the text of the Zoning Ordinance, as authorized by KRS 100.203(1).

2. The proposed text amendments amending various sections of Article XIII, Fences, Walls and Obstruction to View Regulations, except where noted under condition, are appropriate to clarify the types of fences and/or walls which are permitted in various zones in the Elsmere Zoning Ordinance. The condition that the proposed wording of Class 2 fences be revised to read as follows: "ornamental iron, wood or other materials (eighty (80) percent open)" is appropriate to allow for other materials to be used. The use of Polyvinyl chloride (PVC) materials is inappropriate and uncommonly used for fencing purposes.

3. The condition that Class 7 and 8 fences remain within the text of the Elsmere Zoning Ordinance is appropriate as there are specific regulations pertaining to Class 7 fences within the proposed text of Section 13.5 of the zoning ordinance pertaining to the Height of any Barbed Wire or Sharp Pointed Fences. It is further recommended that the existing regulations for Class 8 fences remain to allow the city to require fences which assist in flood control as per the requirements of the city engineer or the Corps of Engineers. Deleting Class 8 fences may limit an individual or business from adequately protecting their property or a neighbor's property from flood damage. The condition that section 13.2 "Conservation and Agricultural Zones" be renamed "Conservation Zones" is appropriate as there are no agricultural zones within the Elsmere Zoning Ordinance.

4. The condition that that Figure 1: “Type, Class, and Heights of Fences and Walls Permitted in this Ordinance” be amended to allow Type C fences in the rear yard of double frontage lots and that provisions be added for lots which abut a public street on three sides is reasonable to protect and provide an adequate visual screen between adjacent residential properties and the street, and to promote the general health, safety, and welfare of the community.

Mr. Ray Erpenbeck registered to speak in favor of the issue. No one registered to speak against.

Mr. Erpenbeck addressed the Commission and stated the city is updating their ordinances. He stated the reason they are requesting that two-family be deleted is because the city is getting a lot of infill on lots that have sat vacant for years. He stated duplexes are popping up in residential single-family development and the city was looking for a way to avoid that. He noted the city was not looking to delete them entirely but to have them as a conditional use. He then went on to explain the reasoning behind all requests. Mr. Wessels stated by changing the text it would be creating a non-conforming use for twenty-nine (29) properties. He noted this would create problems for those property owners if they would want to remodel or refinance stating the banks would not touch them if they were non-conforming. He asked legal counsel if a condition could be placed on the amendment to allow those affected parties to be grandfathered in. Mr. Wessels then made a motion to approve based on the conditions and recommendations and basis submitted by Staff. He then motioned to approve Recommendation A along with a condition that the city apply for and obtain all necessary conditional use permits for all existing properties that lie within that zone. Mr. Schwartz suggested the following language for the condition: that the permitted use of a two-family be revised to say two-family dwellings or existing two-family dwellings and then under the conditional use side it would be two-family dwellings built after the date of adoption of whatever ordinance identifying it. Mr. Wessels then made a motion to approve Recommendation B based on the evidence submitted. He further made a motion to approve Recommendation C along with the recommendations by Staff and conditions by Staff and Recommendation D would also be to approve along with the recommendations and conditions as stated by Staff. Mr. Hadley seconded the motion. Mr. Ryan then suggested amending the condition on fencing height to read a height of four (4) feet based on the city’s request. Mr. Wessels then accepted the amendment to the condition. A roll call vote on the motion found Mr. Wessels, Mr. Hadley, Ms. Carlin, Mr. Cook, Mr. Darpel, Mr. Eilerman, Mr. France, Mr. Logsdon, Mr. Ryan, Mr. Scheper and Mr. Price in favor. The motion carried.

**1742R**

**APPLICANT:** City of Fort Wright per Larry Klein, City Administrator

**LOCATION:** N. A.

**REQUEST:** Proposed text amendments to the Fort Wright Zoning Ordinance, Modifying the list of permitted uses within the NSC (Neighborhood Shopping Center) and HOC (Highway Oriented Commercial) Zones, pertaining to banks, financial institutions, savings and loans, finance companies,

and credit unions; AND

Staff presentation and Staff recommendations by Mr. Andy Videckovich.

## **NKAPC STAFF RECOMMENDATION**

To approve the proposed text amendment, modifying the list of permitted uses within the NSC (Neighborhood Shopping Center) and HOC (Highway Oriented Commercial) Zones.

### **Comprehensive Plan Documentation:**

- Date of Adoption by the Kenton County and Municipal Planning and Zoning Commission: December 18, 2001.

### **Supporting Information/Bases For Recommendations:**

1. The proposed text amendment modifying the list of permitted uses within the NSC (Neighborhood Shopping Center) and HOC (Highway Oriented Commercial) Zones, is allowed to be included within the text of the zoning ordinance as authorized by Kentucky Revised Statute (KRS) 100.203 (1).
2. When the permitted use “Banks and other financial institutions, including savings, loan, and finance companies” was incorporated into the zoning ordinances within Kenton County prior to 1985, it was the intent of this listing to identify traditional financial institutions which allowed deposits and were regulated at both the state and federal level. Since 1985, non-traditional financial institutions have become more mainstream. The proposed text amendment is reasonable, in that it clarifies the city’s intent to permit only traditional financial institutions which allow deposits and serve the immediate financial needs of area businesses, a work population, and the residents of adjacent neighborhoods.
3. The proposed text amendment is consistent with a previous recommendation made by staff, pertaining to the regulation of banks, savings and loans and credit unions.

On September 8, 2004, the City of Fort Wright, per Larry Klein, submitted an application for NKAPC and the KCPC review and recommendation on a proposed text amendment to the Fort Wright Zoning Ordinance deleting saving and loan facilities, finance companies, and other financial institutions from the list of permitted uses within the CC (Community Commercial) Zone (Z-04-09-01/1696R). On October 10, 2004, the Staff recommended approval of the proposed text amendment but only subject to compliance with one condition: That “banks, savings and loans, and credit unions” be allowed as permitted uses within the CC Zone . On October 11, 2004, following the public hearing, the KCPC recommended approval of the proposed text amendment with one (1) condition. On October 27, 2004, the Fort Wright City Council adopted Ordinance Number 10-04, amending the text of the Fort Wright Zoning Ordinance.

No one registered to speak on the issue. Mr. France asked if this request was specifically to take out cash advance type facilities in this zone. Mr. Wessels stated he spoke with Larry Klein and he indicated those types of facilities were permitted in other zones. Mr. Wessels then made the motion to approve based on Staff's report. Mr. Darpel seconded the motion. A roll call vote on the matter found Mr. Wessels, Mr. Darpel, Ms. Carlin, Mr. Cook, Mr. Eilerman, Mr. France, Mr. Hadley, Mr. Logsdon, Mr. Ryan, Mr. Scheper and Mr. Price in favor. The motion carried unanimously.

Mr. Schneider then noted as this was the third text amendment on the agenda and more were to come he noted the Commission by statute does not have to hear text amendments. He stated the Commission might want to look into having the model zoning committee hear text amendments and if there was one request in particular the Commission wanted to pull out and have the Commission hear, that would be fine. Mr. Price then stated he would bring this up before the Executive Committee to see what could be done regarding Mr. Schneider's recommendation and that he felt it was doing a disservice to the Commission by hearing so many text amendments.

## **1743R**

**APPLICANT:** City of Fort Mitchell, per Mr. William Goetz, City Administrator.

**LOCATION:** An approximate 1.1-acre area located along the east side of Dixie Highway, between Interstate 71/75 and East Orchard Road, approximately 600 feet northeast of Interstate 71/75, and being across from West Maple Avenue, Fort Mitchell.

**REQUEST:** A proposed map amendment to the Fort Mitchell Zoning Ordinance, changing the area described herein, from PO (a professional office building zone) to R-1F (a single-family residential zone with a maximum density of approximately 7.3 dwelling units per net acre).

Staff presentation and Staff recommendations by Mr. Michael Schwartz.

## **NKAPC STAFF RECOMMENDATION**

To disapprove the proposed map amendment from PO to R-1F.

## **Comprehensive Plan Documentation:**

- Date of Adoption by the Kenton County and Municipal Planning and Zoning Commission: December 18, 2001.

## **Supporting Information/Bases For Recommendations:**

1. The proposed map amendment from PO to R-1F is not consistent with the Land Use Plan Map of the 2001 Area-Wide Comprehensive Plan Update which identifies the site in question for Commercial –

Office uses. The proposed R-1F Zone would allow residential development to occur in an area recommended for office uses.

2. The existing PO Zone is appropriate and the proposed R-1F Zone is inappropriate. The site in question is bound on two sides by Interstate 71/75 and on the other two sides by a restaurant, a dentist office, and a hotel. Given these conditions, single-family residential development, as allowed in the proposed R-1F Zone, would not be consistent. Office uses, as permitted in the existing PO Zone would allow for consistent development with the surrounding land uses.

3. There have not been any major changes of an economic, physical, or social nature, within the vicinity of the site in question, since the adoption of the 2001 Area-Wide Comprehensive Plan Update to warrant a reversal of the original map amendments in 1998 and 1999.

Development of the site in question is controlled by an existing Stage I Development Plan. As such, any zoning/building permit submitted within the site in question must be evaluated based upon the existing approved Stage I Development Plan and may be denied for noncompliance with the development plan. Additionally, provisions exist within the Fort Mitchell Zoning Ordinance allowing city council to approve major changes to the existing Stage I Development Plan, via a public hearing process.

Mr. Goetz and Mr. Deitmaring registered to speak in favor of the issue. Mr. Gene Webber, Mr. Bill Krueztzjans, Mr. Lanny Holbrook and Mr. Jerry Dusing registered to speak against.

Mr. Goetz addressed the Commission and distributed two handouts to the Commission. He stated the city has long been concerned with this area for over ten (10) years. He noted as soon as the city realized Dixie Highway was going to be re-done, they knew there were going to be changes. He stated the city did not want to have piece meal zoning. He then noted in 1998/1999 a Stage I Development Plan was submitted regarding the properties in question. He stated the city became concerned when the plan was never completed and the buildings were never constructed. However, he noted offices were being placed in what was once residential homes. He stated Mr. Holbrook has stated the market is not there to construct the office buildings presently. Mr. Goetz then stated per regulations the city has the ability to request the zone be returned to what it was originally if a development plan has not moved forward sufficiently after twelve (12) months. He stated the city somehow needs to bring the issue to a head because the residential homes are being used for businesses. He then stated he feels the zoning would not have been changed had it not been for the submitted plans of Mr. Holbrook. He stated the city feels they have stuck with Mr. Holbrook for six or seven years and it is just time for some action to be taken. He further noted the city would actually like to see some office building go into the area that is a true office building and not residences converted to office. Mr. Scheper then noted that reverting back to a residential zone seems to be in contrast to what the city would like to see done with the area. He stated further it seems to be a frustration with Mr. Holbrook in a delay of development. He also stated it seems like it is forced development when the market might not be able to support it. Mr. Goetz then stated there were developments in other areas that were submitted after this Stage I Plan and they have been completed. Mr. Goetz stated essentially what they were trying to do was force the issue and as long as

Mr. Holbrook has rent coming in he is not likely to act on the development.

Mr. Deitmaring addressed the Commission and stated he was present as an observer and is also a member of the Board of Adjustment. He stated reverting back to the residential nature of the area would be a benefit because at least the residents of the area would know what is going on with the area. He then stated he supports the city's position on the matter.

Mr. Dusing addressed the Commission and stated he is representing Mr. Holbrook as the property owner. He then introduced those who were to speak with regard to the issue and saved his comments for later.

Mr. Holbrook addressed the Commission and stated he owned the previous property that the Highway Department took when the expressway was redesigned and taken. He stated he was then left with the remnant of the property and zone. He stated he spent a lot of money developing the site and his intent was not to keep the existing residential buildings with offices inside. He stated he wants to build the buildings and he is a thirty (30) year resident of the city. He stated as such he is familiar with the real estate and understands what needs to be done in order to have a bank look at a development. He then read a letter into the record from Mr. Huff that spoke to the viability of commercial office space. The letter was then marked as an exhibit and made a part of the record. He noted it is his intent to build the building and he asked the city to give him an opportunity to do so.

Mr. Kreutzjans addressed the Commission and stated they do not see the market there to construct the building. He stated he is a former zoning administrator and can't imagine reverting the zone back to residential. He noted the market at Thomas More is a doctor's market and an owner occupied area, but there is not a big market for special buildings right now.

Mr. Webber addressed the Commission and stated he was hired by Mr. Holbrook to work on the development. He noted they are working with Ashley Development in both the development and marketing of the plan.

Mr. Dusing then submitted the plans as an exhibit so the Commission could review the current plans for the site. He noted the city, in their request, is not accomplishing what they want to accomplish and is trying to force the issue. He then stated the zone change does not fit any of the criteria necessary for a zone change.

Mr. Goetz stated in rebuttal that in reference to the expiration ordinance the city has, there is also Kentucky statute that exists regarding the matter. He stated council feels the area deserves something better and they would like to see something done.

Mr. Darpel then made the motion to deny the application for the reasons stated by the Commission and by Staff. Mr. Hadley seconded the motion. A roll call vote on the matter found Mr. Darpel, Mr. Hadley, Ms. Carlin, Mr. Cook, Mr. Eilerman, Mr. France, Mr. Logsdon, Mr. Ryan, Mr. Scheper, Mr. Wessels

and Mr. Price in favor. The motion carried unanimously.

## **1744R**

**APPLICANT:** City of Fort Mitchell, per Mr. William Goetz, City Administrator.

**LOCATION:** N/A.

**REQUEST:** Proposed text amendments: (1) Modifying regulations pertaining to the creation and development of flag lots, and (2) revising the regulations pertaining to penalties for multiple citations for the same violation

Staff presentation and Staff recommendations by Mr. Michael Schwartz.

### **NKAPC STAFF RECOMMENDATION**

#### RECOMMENDATION A

To disapprove the text amendment modifying the regulations pertaining to the creation and development of flag lots.

#### RECOMMENDATION B

To approve the text amendment revising the regulations pertaining to penalties for multiple citations for the same violation.

### **Comprehensive Plan Documentation:**

- Date of Adoption by the Kenton County and Municipal Planning and Zoning Commission: December 18, 2001.

### **Supporting Information/Bases For Recommendations:**

#### RECOMMENDATION A

1. The proposed text amendment prohibiting the erection of a principle structure on an existing or newly created flag lot is unreasonable. Flag lots, in certain cases, provide opportunities to utilize land that has limited access to a public right-of-way, or where it could be impractical to extend a public street, but is developable land that can meet all other regulations and standards.
2. The proposed text amendment is unnecessary. The proposed regulations for flag lots would restrict the

reasonable division of land. There are sufficient criteria within the subdivision regulations to determine when and where flag lots are appropriate.

3. The proposed text amendment requiring access from that portion of the lot which abuts the public right-of-way is unreasonable. This regulation would prohibit the use of common access drives that, in certain cases, could prevent traffic congestion and additional curb cuts. This regulation could also prevent a property from using its most convenient and efficient access.

## RECOMMENDATION B

1. The proposed text amendment adding regulations pertaining to multiple citations for the same violation are allowed to be included within the text of the Zoning Ordinance, as authorized by KRS 100.203 (1).

2. The proposed text amendment adding regulations pertaining to multiple citations for the same violation is consistent with the intent and purpose of the Local Government Code Enforcement Board Act, KRS 65.8801 through 65.8839.

a. KRS 65.8801 Purpose of KRS 65.8801 to 65.8839.

It is the intent of KRS 65.8801 to 65.8839 to protect, promote, and improve the health, safety, and welfare of the citizens residing within the local governments of this state by authorizing the creation of administrative boards with the authority to issue remedial orders and impose civil fines in order to provide an equitable, expeditious, effective, and inexpensive method of ensuring compliance with the ordinances in force in local governments. KRS 65.8801 to 65.8839 is intended and shall be construed to provide an additional or supplemental means of obtaining compliance with local government ordinances, and nothing contained in KRS 65.8801 to 65.8839 shall prohibit the enforcement of local government ordinances by any other means authorized by law.

3. Requiring additional separate citations for the same violation after the fifteenth (15 th) citation would add additional cost and time to the enforcement of the Zoning Ordinance.

4. The recommendation of approval is consistent with a previous action made by the NKAPC staff and the KCPC.

In December 1999, the City of Fort Mitchell submitted an application for NKAPC and KCPC review and recommendation a proposed text amendment to the Fort Mitchell Zoning Ordinance adding provisions for violators of the Zoning Ordinance to be subject to the City's Code Enforcement Board and identifying that violations of the Zoning Ordinance are subject to civil penalties (Z-99-12-03/1450R). Both the NKAPC staff and KCPC recommended approval of the proposed text amendment. The bases for this recommendation was: (1) The proposed text amendment adding provisions for violators of the Zoning Ordinance to be subject to the City's Code Enforcement Board and identifying

that violations of the Zoning Ordinance are subject to civil penalties are consistent with the Local Government Enforcement Board Act, Kentucky Revised Statutes 65.8801 through 65.8839; and (2) The proposed text amendment adding provisions for violators of the Zoning Ordinance to be subject to the City's Code Enforcement Board and identifying that violations of the Zoning Ordinance are subject to civil penalties is appropriate in that it provides an equitable, expeditious, effective, and inexpensive method of ensuring compliance with the adopted Zoning Ordinance.

The proposed text amendment currently under review is an extension of that previous action and is reasonable to ensure the equitable, expeditious, effective, and inexpensive method of ensuring compliance with the Zoning Ordinance in the City of Fort Mitchell, as contemplated by the Local Government Code Enforcement Board Act.

Mayor Tom Holocher, Ms. Laurie Coleman, Mr. Kurt Summe, Mr. Don Stegman, Mr. Phil Drees, Ms. Renee Oka, Mr. Jerry Stegman, Mr. Chris Smith, Mr. Michael Ruh, Mr. Scott Syfert and Mr. Bill Goetz registered to speak on the issue.

Mayor Holocher addressed the Commission and stated there has been new development over the past 20-25 years that have flag lots. He stated they seem to work well in those particular locations. He stated most of the city is older and some have pretty large lots that would be conducive to putting a house in the back. He stated the problem is that many of these property owners bought their homes knowing no one could put a home behind you. He then stated they are finding many people who want to sell a portion of their property in the back. He stated a certain amount of privacy is lost when you now have someone's front yard in your back yard. He stated there are a number of areas like this and the city would like the Commission's support.

Ms. Coleman addressed the Commission and stated she knows there is a conflict but stated it's not fair to property owners who have bought five (5) acres intending to divide it. She stated she doesn't feel it's right to say we're not going to allow any more flag lots.

Mr. Summe addressed the Commission and stated he is present representing his father. He stated he understands the mayor's concern but noted the idea is half baked. He stated he believes there are other regulations in place to take care of these concerns. He stated he is in favor of denial.

Mr. Stegman addressed the Commission and stated he moved back to Ft. Mitchell a couple years ago. He stated he saw an opportunity to put in flag lots and is in the process of doing so if this does not go through. He stated he is also a licensed surveyor so he's aware of the process. He additionally stated flag lots are just a tool to utilize land that you wouldn't probably put a street to. He stated flag lots give an opportunity to create a new section. He further noted many old subdivisions have new developments in the means of flag lots. He then stated he agrees wholeheartedly with Staff's recommendations and is requesting a denial. He then noted there could be other ways to go about achieving what the city wants to do.

Mr. Drees addressed the Commission and stated he is a former resident of Ft. Mitchell. He stated flag lots are pretty popular; he lives on one and his parents live on one. He stated to ban them would be ludicrous.

Ms. Oka addressed the Commission and stated she and her husband bought four and half acres at the end of a cul de sac with the intention of building a home on their lot and pass lots on to their children. She stated they wouldn't be building in anyone's back yard and that it would be their back yard.

Mr. Stegman addressed the Commission and stated he agrees with Staff's recommendations.

Mr. Smith addressed the Commission and stated he has a spare lot beside him and bought two acres behind him to have the potential to put homes there. He stated for the city to come in and say that you cannot build or use a piece of property is not right. He noted further that he has a problem with the city making rules as they go along. He stated if the city wants privacy and wants green land they can buy it but leave him alone to do what he wants.

Mr. Ruh addressed the Commission and stated he represents Mr. Stegman. He stated there are a number of problems with the ordinance. He stated the purpose is vague and unclear. He stated he supports staff in the entirety of their report.

Mr. Syfert addressed the Commission and stated in his opinion this should not be approved. He stated it does not make sense and is not just.

Mr. Goetz addressed the Commission and stated his concern is if the city is going to do this they should also make a provision for those already impacted by the flag lots.

Mr. Hollaker stated in rebuttal that they are talking about lots that are fifty (50) to sixty (60) feet wide and another house or two goes in behind someone. He stated he is asking for approval.

Mr. Eilerman stated he understands the arguments being made. Mr. Wessels stated he has a problem creating regulations that make someone's property unusable. He further stated there might be another way to do it. He also noted the way it is presented doesn't make sense. Mr. France then made a motion to disapprove based on Staff's report as it relates to item 1 and to approve item 2 for penalties for multiple violations. Mr. Ryan seconded the motion. A roll call vote on the matter found Mr. France, Mr. Ryan, Ms. Carlin, Mr. Cook, Mr. Darpel, Mr. Eilerman, Mr. Hadley, Mr. Logsdon, Mr. Scheper, Mr. Wessels and Mr. Price in favor. The motion carried unanimously.

**1745R**

**APPLICANT:** City of Fort Mitchell, per Mr. William Goetz, City Administrator.

**APPLICANT:** Mr. John Schwartz.

**LOCATION:** An approximate 1.3-acre area located on the west side of Old Kentucky S.R. 17 and on the east side of new KY 17 Madison Pike, approximately 100 feet north of Worthington Drive, Erlanger.

Staff presentation and Staff recommendations by Mrs. Melissa Jort-Conway.

## **NKAPC STAFF RECOMMENDATION**

To approve the proposed map amendment from R-1G to NC, but only subject to compliance with the condition that the necessary permits and approvals be obtained prior to site clearing and development.

### **Comprehensive Plan Documentation:**

- Date of Adoption by the Kenton County and Municipal Planning and Zoning Commission: December 18, 2001.

### **Supporting Information/Bases For Recommendations:**

2. The proposed map amendment from R-1G to NC represents a logical extension of the existing NC Zone to the south. It is the understanding of staff that the site in question is to be developed as an additional off-street parking area for the property to the south. It is reasonable and logical that there be consistent zoning with the property to the south of the site in question and that access to the site be provided through the site immediately to the south.

3. The location of the site in question, situated within the floodway and the floodplain of the Banklick Creek, presents a number of challenges for development to proceed. The condition that the appropriate permits and approvals be obtained prior to development is reasonable to ensure the utmost protection of the Banklick Creek, both for water quality protection and to mitigate the potential for additional stormwater runoff entering into the Creek. Approval agencies that should be contacted include Sanitation District No.1, the Kentucky Division of Water, and the Corps of Engineers.

### **Additional Information:**

It is recommended that there be strict adherence to the requirements for development within a floodway and floodplain and that there be strict erosion control and stormwater management facilities in place at the time of development. It is also recommended that the following representatives of the Kentucky Division of Water and the Corps of Engineers be contacted to obtain necessary permits and approvals:

- Sanitation District No.1 – Sean Blake – (859) 578-7468
- KDOW 401 Water Quality Certification – Danny Peake – (502) 564-3410
- KDOW Water Resource Branch (Floodplain) – Mohammad Razavi – (502) 564-3410 x. 140
- Corps of Engineers 404 Permit – Patti Grace-Jarrett – (502) 315-6687

Mr. John Schwartz and Mr. Lackman registered to speak on the issue. Ms. Sherry Carran registered to speak against.

Mr. Schwartz addressed the Commission and stated all permits have already been received. He stated the site was lost off the deed books but originally part of the Pleasure Pool site. He stated the building they are constructing is going to need more parking so that is the reason for the request. He further stated they have been in touch with surrounding property owners. He noted they have been doing everything by the books to ensure that everything is done right. He noted they need a little more room and this was the logical extension.

Mr. Lackman addressed the Commission and stated he has owned property adjacent to the site for forty (40) years. He stated he worked at Pleasure Isle as a child and has never seen it flood. He further stated the land is totally cut off so this is a good benefit to the area. He then stated he recommends approval.

Ms. Sherry Carran addressed the Commission and stated they have been working with Kenton County because of the water quality of the area. She stated this site along with others to the north were sites that could be preserved as areas to aid in the flooding and protection of the water shed. She stated the Division of Water stated it is not their job to mandate what is appropriate to the area, they just allow permits. She then stated it is up to the Commission to decide what is appropriate for the area. She then read a letter from Michael More of the Corps of Engineers. She stated she spoke to the Division of Water and does not feel all the permits have been obtained. She also stated the people in Pioneer Park will be affected if the area is paved. She further noted the Division of Water gives permits based on site specification, not the area as a whole. She stated because this does not need a zone change to happen, to deny it would give more time to do more studies. Mr. Wessels stated he knows what she is saying but essentially it is denying someone the right to do what they want with their land. She then stated the people living downstream also have property rights because they will be impacted by this development. She stated it will have a negative impact to the area. Ms. Carran then stated the three county area has no one to follow up on permits, only that a permit needs to be obtained.

Following the discussion Mr. Darpel then made a motion to approve based on Staff's recommendations. Mr. Cook seconded the motion. A roll call vote on the matter found Mr. Darpel, Mr. Cook, Ms. Carlin, Mr. Eilerman, Mr. Hadley, Mr. Logsdon, Mr. Scheper and Mr. Wessels in favor. Mr. France, Mr. Ryan and Mr. Price voted against. The motion passed by a vote of 8-3.

**1748R**

**APPLICANT:** Vincent V. Smith Family Limited Partnership.

**LOCATION:** An approximate 24-acre area located along the north side of Horsebranch Road, between Orphanage Road and Rhine Valley Drive, approximately 800 feet south of Orphanage Road, Crestview Hills.

**REQUEST:** Review of an amended Stage I Development Plan, for the site in question, which is currently zoned RP-1 (a research park one zone).

Staff presentation and Staff recommendations by Mrs. Melissa Jort-Conway.

### **NKAPC STAFF RECOMMENDATION**

To approve the proposed amended Stage I Development Plan, but only subject to compliance with the following conditions:

1. That 831 parking spaces be provided.
2. That internal and external pedestrian walkways be provided.
3. That the proposed emergency ingress/egress to Napa Valley Lane be eliminated.
4. That the proposed future road off of Horsebranch Road be eliminated.
5. That the proposed extension of Centerview Boulevard into the proposed development, up to the first future road connection, be constructed as a public street in accordance with the Kenton County Subdivision Regulations.
6. That the private access drives serving the proposed off-street parking area be constructed to public street standards in accordance with the Kenton County Subdivision Regulations.

### **Comprehensive Plan Documentation:**

- Date of Adoption by the Kenton County and Municipal Planning and Zoning Commission: December 18, 2001.

### **Supporting Information/Bases For Recommendation:**

1. The proposed amended Stage I Development Plan creates a more logical means of ingress and egress to the proposed facility than the previously approved Stage I Development Plan. The extension of Centerview Boulevard, a local street, can provide for a more direct means of ingress and egress to the site in question. The proposed amended Stage I Development Plan also provides for a more logical connection to the area to the north and west of the site, which is currently zoned RP-1.
2. The proposed amended Stage I Development Plan meets the minimum requirements of the Crestview Hills Zoning Ordinance, except for the following:

Mr. Lawson Walker, Mr. Ruh, Mr. Hargis and Mr. Dan Groth registered to speak in favor. Mr. Marvin Price registered as a neutral party. No one registered to speak against.

Mr. Walker addressed the Commission and stated he represented the Smith family. He stated they agree with all conditions except for one. He stated they will agree to abide by the Crestview Hills zoning as to parking but they agree in principal with Crestview Hills zoning as to the number of parking spaces. He stated if they ever need to go down the back hill they will do a geotech study.

Mr. Hargis addressed the Commission and stated they own the adjacent properties. He stated they are going to develop this as a medical campus type facility. He stated if an emergency access was ever done off of Horsebranch strict engineering guidelines would have to be adhered to.

Mr. Ruh addressed the Commission and stated they intend to complete the geotech study they've already started. He stated Horsebranch has a 2-3% possibility of being used as access. He stated they would certainly comply with any regulations. He also encouraged some flexibility as to parking because they don't know the size yet.

Mr. Groth addressed the Commission and stated the city likes the amended Stage I Development Plan much better than the other one. He then stated they like the plan with the recommendations Staff has made.

Mr. Price addressed the Commission and stated a concern is the elimination of Napa Valley. He stated fire trucks have enough trouble anyway and stated Staff's recommendation is to eliminate it. He cited another concern is that Rhine Valley is a race track. He stated it is a problem and the traffic study might just be what's needed. He stated he just wanted to bring it to the Commission's attention.

Following the discussion Mr. Wessels made the motion to approve with the conditions and recommendations of Staff. He then amended Staff's conditions as follows: if a proposed future road is constructed that it be constructed according to subdivision regulations and be supported by a traffic study and also that parking be provided according to Crestview Hills zoning ordinances. Mr. Darpel then seconded the motion. A roll call vote on the matter found Mr. Wessels, Mr. Darpel, Ms. Carlin, Mr. Cook, Mr. Eilerman, Mr. France, Mr. Hadley, Mr. Logsdon, Mr. Ryan, Mr. Scheper and Mr. Price in favor. The motion carried unanimously.

## **1749R**

**APPLICANT:** James W. Berling, on behalf of Daniel and Evelyn Hance and George and Sara Dean Anderson.

**LOCATION:** An approximate 138-acre area located along the south side of Walton Nicholson Pike, at the Kenton/Boone County border, Walton.

**REQUEST:** A proposed map amendment to the Walton Zoning Ordinance, changing the area described herein, from A-1\* (an agricultural one zone) to R-1F (a single-family residential zone).

Staff presentation and Staff recommendations by Mr. Michael Schwartz.

## **NKAPC STAFF RECOMMENDATION**

To disapprove the proposed map amendment from A-1\* to R-1F.

### **Comprehensive Plan Documentation:**

- Date of Adoption by the Kenton County and Municipal Planning and Zoning Commission: December 18, 2001.

### **Supporting Information/Bases For Recommendations:**

1. The proposed map amendment from A-1\* to R-1F is not consistent with the Land Use Plan Map of the 2001 Area-Wide Comprehensive Plan Update which identifies the site in question for Industrial uses. The proposed R-1F Zone would allow residential development to occur in an area recommended for industrial uses.
2. While the existing A-1\* Zone is not appropriate, the proposed R-1F Zone is also not appropriate.

The Goals and Objectives Element of the 2001 Area-Wide Comprehensive Plan Update reads as follows:

Land that can be most advantageously used for industrial purposes should be identified and reserved for industrial use and encouraged to be exclusively used for such purposes.

Land which is most advantageous for industrial development in the Northern Kentucky Area is at a premium. Thus, identification and reservation of such land is necessary. Increased industrial development in these well-located areas would increase employment opportunities. It would also result in an increased tax base for the provision of public services, and ensure better use of transportation systems, thus utilizing less energy and causing less pollution to the environment.

The site in question was identified for industrial activity as part of the 2001 Area-Wide Comprehensive Plan Update process. The site in question should be reserved and preserved for industrial uses.

The proposed R-1F Zone is also inappropriate due to its inconsistency with the 2005 Boone County Comprehensive Plan which identifies the area located to the west of the site in question for a Business Park. The uses allowed in the proposed R-1F Zone would be inconsistent with the recommended

development of this adjacent area for a Business Park.

3. There have not been any major changes of an economic, physical, or social nature, within the vicinity of the site in question, since the adoption of the 2001 Area-Wide Comprehensive Plan Update to warrant the proposed map amendment.

Mr. Berling, Mr. Steve Berling, Mr. Crist, Mr. Dusing and Mr. Drees registered to speak in favor. Mr. Brown, Mr. Patticord, Ms. Karan registered to speak against. Ms. Cain registered as a neutral party.

Mr. Dusing addressed the Commission and stated their purpose and basis for the zone change is that the existing zone is inappropriate and the zone requested is appropriate.

Mr. Berling addressed the Commission and stated they are interested in the development as residential. He stated he does not feel it is appropriate as industrial. He then distributed a handout with regard to the request. He stated he thinks it is more appropriate as residential. He noted the only way to get to the interstate is through Walton Nicholson Pike and into the city of Walton. He stated you have to negotiate hair pin turns to get to the interstate. He distributed a map which was marked as an exhibit in addition to his previous handout to be made a part of the record. He stated if a road was built from Walton and develop a new area for industrial and leave the residential area alone. He stated you have to have reasonable access to get to the industrial area and Walton Nicholson is not the best choice. He stated the property became available very quickly and they have to act on it. He stated they came up with a development plan with the available property. He then stated the plan is surely subject to change but it is a reasonable project. He stated the development would have multiple sized lots with good site distance.

Mr. Dusing addressed the Commission and stated the industrial zone is very broad and it is not appropriate from an industrial standpoint. He stated the existing uses are not appropriate for the area and that is the basis for the zone change.

Mr. Drees addressed the Commission and stated they have a piece of ground under contract adjoining the property in question. He stated they support Mr. Berling's application. He further stated they would like to add a provision to provide access and all utilities so the land is not land locked. He then stated it makes common sense to make a connection at a ridge top.

Mr. Brown addressed the Commission and stated he wanted to point out that Percival is a one lane road. He further noted that this is not a road that needs access to a subdivision. He stated he is against the project. He noted he has lived there all his life and has farmed it. He stated it is a dangerous road. He then stated there are all kinds of wrecks along the road. Mr. Brown stated he felt it should remain industrial. He additionally stated they haul hay, drive tractors, spread manure, etc. and when there is a tractor on the road you can't get by. He also stated schools are at capacity now.

Mr. Patticord addressed the Commission and stated he owns adjoining property. He stated his biggest concern is the entrance is less than a half mile from the Industrial park. He stated the speed limit is 55

mph. He also stated he has problems getting out his driveway to go to work and the development would make it worse. He noted that Walton Nicholson has approximately 60 homes and he cannot comprehend adding another 500+ homes. He also stated they have septic tanks and was wondering how they intend to support so many additional homes.

Ms. Karan addressed the Commission and stated she was involved with the Kenton County planning when they were looking for industrial areas. She stated farm land is not considered very highly. She further stated the farm land brings in revenue, not as much as industrial, but it is bringing in a lot of revenue. He noted it should remain as it is. She then noted that residential costs more and has a high negative impact on farmland. She stated it should remain agricultural but if its going to be changed it should be industrial because that will have the least impact.

Ms. Cain addressed the Commission and stated their property runs right along Nicholson. She then stated they built their home six months ago and never heard anything but rumors until the evening of the meeting.

Mr. Dusing stated in rebuttal that this development will not touch Percival Road. He suggested that what is proposed is far more desirable than what is permitted currently.

Mr. Wessels stated that residential is going to be more desirable than industrial for this area. Mr. Schwartz noted the recommendation that comes from the Commission will go to the City of Walton. Mr. Darpel said he would rather send the message to Walton as a residential area over industrial. Mr. France stated the intensity of the density is the concern. Mr. Darpel then made the motion to approve. Mr. Scheper seconded the motion. A roll call vote on the matter found Mr. Darpel, Mr. Scheper, Mr. Cook, Mr. Wessels and Mr. Price in favor. Ms. Carlin, Mr. Eilerman, Mr. France, Mr. Hadley, Mr. Logsdon and Mr. Ryan against. The motion failed by a vote of 5-6. A motion was then made by Mr. France to deny the application based on the fact that the R-1 zone is appropriate. Ms. Carlin seconded the motion. A roll call vote on the matter found Mr. France, Ms. Carlin, Mr. Eilerman, Mr. Hadley, Mr. Logsdon and Mr. Ryan in favor. Mr. Cook, Mr. Darpel, Mr. Scheper, Mr. Wessels and Mr. Price voted against. The motion passed by a vote of 6-5.

## **OLD AND UNFINISHED BUSINESS:**

### **Reports from Committees:**

### **By-Laws**

Nothing to report.

### **Subdivision Regulations**

Mr. Wessels apologized for not getting his written report together. He stated they had thirty-five items

that were reviewed at the meeting. He then noted that eighteen were ready to submit for action. He then asked for a motion regarding those items. Mr. France made the motion with Mr. Scheper giving the second. All in favor. None opposed. Mr. Wessels then stated they will be meeting this month. He stated he asked to schedule a meeting with city administrators and mayors. He noted he will keep everyone informed. He then also noted Appendix A, paragraph five, of the contract for services with NKAPC and asked the Commissioners to take a look at that. He stated he wants to discuss it at next month's meeting due to the late hour of the meeting. He stated the budget might need to be amended at some point.

### **Model Zoning**

Nothing to report.

### **Report from Legal Counsel:**

Nothing to report.

### **Reports/Announcements from Staff:**

There was nothing to report from Staff.

### **Correspondence:**

None.

New Business: None.

There being no further business to come before the Commission, the meeting was declared adjourned by Mr. Price at 12:25 a.m.

APPROVED:

---

Ms. Alex Weldon, Chairperson

Date\_\_\_\_\_