

**KENTON COUNTY PLANNING COMMISSION  
REGULAR MEETING**

**Minutes**

Ms. Weldon, Chairperson, called the meeting to order at 6:15 PM on Thursday, March 2, 2006, and opened the proceedings with the Pledge of Allegiance and an invocation by Mr. Eilerman. The meeting was held in the Commission Chambers of the NKAPC Building in Fort Mitchell. Attendance of members (for this meeting as well as those during the year to date) was as follows.

Member	Jurisdiction	2006											
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Mark Barnett	Taylor Mill	x	x	x									
Barbara Carlin	Kenton Co	x	x	x									
Barry Coates	Covington	x	x	x									
James Cook	Kenton Co	x	x	x									
Paul Darpel	Edgewood	x	x	x									
Chuck Eilerman	Covington	x	x	x									
Tom France	Ludlow	x	x	x									
Al Hadley	Elsmere	x	x	x									
David Hilgefurd	Villa Hills	x	x	x									
Phil Ryan	Park Hills	x	x	x									
Maura Snyder	Independence	x	x	x									
Paul Swanson, Treas	Erlanger	x		x									
Joe Tewes	Bromley	x	x	x									
John Wells, V Chair	Fort Mitchell		x	x									
Bernie Wessels	Crescent Spgs	x	x	x									
Gil Whitacre	Lakeside Park	x	x	x									
Alex Weldon, Chair	Covington	x	x	x									
Lynn Hood	Crstvw Hills		x	x									
Rick Wolnitzek	Fort Wright			x									

Also present were David Schneider, Legal Counsel, and the following NKAPC staff: Michael Schwartz, AICP, Deputy Director for Current Planning; Melissa Jort-Conway, AICP, Senior Planner; and Andy Videkovich, Associate Planner.

**AGENDA:**

Ms. Weldon made a request to move issue 1801R to the front of the agenda. A motion was made by Mr. Wessels and seconded by Mr. Hilgefurd. All in favor. None opposed. An additional request was also made by the City of Independence to table issue 1798R for a period not to exceed six (6) months. A motion was made by Mr. Wessels and seconded by Ms. Snyder. All in favor. None opposed.

**APPROVAL OF THE MINUTES:**

The minutes for February were distributed in the Commissioner's packets. Ms. Snyder noted on page thirteen (13) that conditions 3, 4, 5 and 7 were to remain that "t" same should read "the" same. A motion was made by Mr. Hadley to approve the minutes as amended. Mr. Whitaker seconded the motion. A roll call vote on the matter found Mr. Hadley, Mr. Whitacre, Mr. Barnett, Ms. Carlin, Mr. Coates, Mr. Darpel, Mr. Eilerman, Mr. France, Mr. Hilgeford, Ms. Hood, Ms. Snyder, Mr. Tewes, Mr. Wessels, Mr. Wolnitzek, Mr. Wells and Ms. Weldon in favor. Mr. Ryan and Mr. Swanson abstained. The motion carried.

### **FINANCIAL REPORT:**

Ms. Carlin questioned why the "miscellaneous" column changed from last month. Mr. Gordon explained and stated Staff makes a diligent effort when creating the budget to estimate the expenses but sometimes there are overruns or shortages. There were no further questions or comments with regard to the report. A motion was made by Mr. Hadley and seconded by Mr. Eilerman to accept the report as submitted. All in favor; none opposed.

### **ACTIONS SINCE LAST MEETING:**

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

\*Mr. Cook arrived at the start of issue 1802R.

### **PUBLIC HEARINGS:**

#### **1802R**

**APPLICANT:** Kenton County Planning Commission, per Alexandra K. Weldon  
**REQUEST:** Proposed text amendments to the zoning ordinances of all Kenton County political jurisdictions: (1) deleting all existing definitions and zoning provisions related to sexually oriented businesses and/or adult businesses; and (2) adding new definitions and regulations related to sexually oriented businesses and/or adult businesses

Staff presentation and recommendations by Mr. Michael Schwartz.

### **NKAPC STAFF RECOMMENDATION**

To approve the proposed text amendments: (1) deleting all existing definitions and zoning provisions related to sexually oriented businesses or adult businesses; and (2) adding new definitions and regulations related to sexually oriented businesses or adult businesses.

### **Comprehensive Plan Documentation:**

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

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

1. The proposed text amendments: (1) deleting all existing definitions and zoning provisions related to sexually oriented businesses or adult businesses; and (2) adding new definitions and regulations related to sexually oriented businesses or adult businesses 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: (1) deleting all existing definitions and zoning provisions related to sexually oriented businesses or adult businesses; and (2) adding new definitions and regulations related to sexually oriented businesses or adult businesses will bring the regulations into conformity with current federal court rulings.
3. The following findings are also relevant:
  - a. The Fiscal Court of Kenton County, after consultation with mayors and staff of the municipalities within the County, found that a substantial need exists to revise significantly the ordinances regarding sexually oriented businesses within Kenton County.
  - b. The Fiscal Court, in association with the Northern Kentucky Area Planning Commission and the Fiscal Court of adjacent Campbell County and several cities in Northern Kentucky, retained Duncan Associates to conduct a study of existing sexually oriented uses and related businesses in Kenton and Campbell Counties, which is generally considered part of a single, larger community.
  - c. Duncan Associates assigned two nationally-known planners, Eric Damian Kelly, FAICP and Connie B. Cooper, FAICP, to conduct that study.
  - d. Kelly and Cooper have completed that study, including the following elements:
    - (1) Field study, involving visits to all identified existing sexually oriented businesses in Kenton and Campbell Counties.
    - (2) Meetings with stakeholder groups involved in these businesses;
    - (3) Consultation with the Kenton County Attorney, the Campbell County Attorney, and the city attorneys for certain cities in Northern Kentucky Area Planning Commission on this issue.
    - (4) Consultation with the professional staff of the Northern Kentucky Area Planning Commission on this issue.
    - (5) Review of studies and litigation concerning sexually oriented businesses in other communities.
    - (6) Investigation of regulatory approaches to massage therapy.
    - (7) Review of existing ordinances in Kenton and Campbell Counties.
    - (8) Review of similar ordinances in a number of communities outside the State of Kentucky.
    - (9) Review of Kentucky statutes related to regulating sexually oriented businesses.
  - e. Duncan Associates has summarized this work and presented recommendations to the Northern Kentucky Area Planning Commission and Kenton and Campbell

Counties in an August 2003 report entitled “Site Visit Analysis: Sexually Oriented and Related Businesses in Kenton and Campbell Counties” (hereinafter called simply the “Kelly and Cooper Study”).

- f. That study has also been made available to the Governing Bodies of Kenton and Campbell Counties for their consideration and use.
- g. That study has been accepted and used by the Fiscal Court of Kenton County in adopting the countywide licensing ordinance, Kenton County Ordinance No. 451.9, establishing licensing requirements for sexually oriented businesses and service oriented escort bureaus in 2004.
- h. The United States Supreme Court in *City of Renton v. Playtime Theater, Inc.*, 475 U.S. 41 (1986), held that local governments may rely upon the experiences of other cities as well as on its own studies in enacting local legislation to regulate sexually oriented businesses.
- i. The United States Supreme Court in *Renton* and other cases has held that a local government may regulate such uses through content-neutral, time, place, and manner restrictions, so long as said regulations are designed to serve the government interest and do not unreasonably omit avenues of communication, and are aimed not at the content of protected speech within said establishments but rather at the secondary effects of said establishments on the surrounding communities.
- j. The study by Kelly and Cooper found extensive physical interaction between patrons and dancers at many of the establishments in both Kenton and Campbell Counties.
- k. Covington, the only municipality in Kenton County that has had sexually oriented businesses within its border, from January 1, 2002, to February 11, 2004, the police made a total of 469 calls to sexually oriented businesses in the city. The crimes committed at these establishments during this time period included robbery, assault, fraud, malicious mischief, public intoxication, and possession of illegal drugs. In addition, on June 13, 2003, Covington police arrested three individuals for prostitution-related charges at Liberty's Show Lounge, a sexually oriented cabaret in the city.
- l. As the Sixth Circuit Court of Appeals noted in a decision addressing issues related to the Adult Entertainment ordinance in the City of Newport (Campbell County), there is a long history underlying efforts to regulate sex businesses in Northern Kentucky:

Defendant City of Newport ("City" or "Newport") long ago gained a reputation as home to a veritable smorgasbord of vice, attracting patrons from across the nation. For decades, the small city was considered the Midwest's answer to Las Vegas, and leaders of organized crime were said to operate its gambling casinos and nightclubs.

In the 1960's, public pressure began to demand that Newport be cleaned up. This pressure has continued until the present, with varying degrees of success.

A 1986 report generated by the Newport Alcoholic Beverage Control Administrator indicated that of 28 adult bars opened since 1978 (including successive bars at the same site), 21 had had at least one prostitution-related conviction, and 18 had had multiple convictions. Def. Ex. K, p. 2. The report explained that "all of the prostitution in businesses with adult entertainment involved an alcoholic beverage as the median [sic] of exchange and the solicitation of such drinks by 'mixers.'" Id. In all, 98% of prostitution arrests in Newport occurred in the vicinity of these bars. Id. Adult entertainment establishments, which constituted 12% of all businesses serving alcohol, accounted for 17% of all police runs. Def. Ex. K, p. 21.

A later review, conducted in 1990 by the Newport License Inspector, documented the continued prostitution arrests occurring at several adult dancing establishments. Def. Ex. G. Moreover, the City determined that over \$ 70,000 was expended in 1990 to target, patrol and prosecute the illicit behavior occurring in and around the bars. Def. Ex. H.

Several of Newport's citizens, merchants and church groups also opposed the presence of the semi-nude dancing clubs. These groups generally believed that the adult entertainment clubs were "clouds over [the] neighborhood that keep [it] from growing in the [right] direction." See Def. Ex. I (letter to Mayor from Taylors Landing Business District). Complaints commonly expressed were that the seamy establishments deterred other merchants from locating in Newport's business district, deterred shoppers, served a poor example for the City's youth, and generally tarnished the City's image. Id.

*Bright Lights, Inc., v. City of Newport*, 830 F. Supp. 378, 380-81 (E. D. Ky. 1993).

Based on those findings, the court went on to hold in relevant part:

Having considered the matter carefully, the court concludes that some leeway must be afforded the reform efforts of the City Council of Newport. This body has been elected by the citizens to attempt to "clean up the image" of the City.

To do this, it must overcome the sleazy impression of Newport and Northern Kentucky that survives from "the heyday" when things ran wide open; reform candidates were literally drugged and framed for morals offenses by public officials and police officers; the members of reform citizens groups were vilified and harassed; and a "liberal" in local parlance was a person favoring the continued open and notorious violation of the gambling and morals laws.

To illustrate that the Council's perception of a need to clean up the image of the City is not paranoid, the court notes the following statements in a national magazine's satirical Chapter on Newport's big sister, the city of Cincinnati.

"The city's streets fairly shine; the odd litter draws a scornful stare. Wide avenues, bosky side streets, the most inviting of thoroughfares. And clean. So clean. No X-rated movie theaters, no adult-book stores, no bare-breasted night joints soil these streets, all of them long ago jettisoned over to the Kentucky side of the river."

Peter Richmond, "Town Without Pity," *Gentlemen's Quarterly*, July 1993, at 102, 104.

This court holds that the City of Newport has the right to secede as Cincinnati's combat zone.

The court holds that the City has "an important and substantial governmental interest" in advancing these reform goals, which interest is furthered by the ordinances in question. Barnes, 111 S. Ct. at 2461. The court further finds and holds that in the case of the City of Newport, given its unique history, the ordinances' "incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest." Id. (quoting O'Brien, 391 U.S. at 376-77, 88 S. Ct. at 1678-79).

Newport's image affects that of all of Northern Kentucky, a community of nearly 300,000 people. That City and its community have the right to project a progressive and decent image. The nudity ordinances contribute to the enhancement of this interest and will be upheld. 830 F.Supp. at 384.

- m. The Supreme Court had earlier noted in upholding another regulation in Newport, "it is plain that, as in *Bellanca*, the interest in maintaining order outweighs the interest in free expression by dancing nude." *Newport v. Iacobucci*, 479 U.S. 92, 97, 93 L. Ed. 2d 334, 340, 107 S. Ct. 383, 386 (1986). Although the significance of the opinion itself is now questionable (see *J&B Social Club # 1 v. City of Mobile*, 966 F. Supp. 1131, 1135 (S.D. Ala. 1996)), the quoted part of the opinion stands unchallenged.
- n. The cities of Covington and Newport continue their efforts to improve their image. Since 1985, Covington has redeveloped its riverfront, creating several new office towers, high-end condominiums, hotels, and a convention center. In Newport, in conjunction with private development and Southbank Partners, Inc., the City has built a major entertainment center along the river. This initiative has promoted improved pedestrian and transit connections in Northern Kentucky's river cities to and from the stadiums and other attractions along the Cincinnati riverfront.
- o. Despite these efforts, the areas of downtown Covington and Newport away from the riverfront continue to suffer in many ways. The study by Kelly and Cooper found in the area near to existing sexually oriented uses a number of building vacancies and building maintenance falling far short of that found in the revitalized areas near the river.

- p. The legislative bodies within Kenton County respects the Constitutional rights of its citizens, including the right to present certain types of entertainment that may not appeal to the entire population. Through this ordinance, it is the desire of the legislative bodies within Kenton County to balance the Constitutional rights of businesses that present sexually oriented entertainment with the legislative bodies within Kenton County interests in ensuring that this community not suffer from the same sorts of adverse effects that Covington and Newport have long suffered.
- q. From long experience in Covington and Newport, as well as from the following studies and others not listed, the legislative bodies within Kenton County also finds that such businesses may have primary and secondary effects involving crimes related to the activities in the establishments, of which prostitution and crimes of violence are those of greatest concern. See for example
- (1) “Final Report to the City of Garden Grove: The Relationship between Crime and Adult Business Operations on Garden Grove Boulevard,” Richard W. McCleary, Ph.D., James W. Meeker, J.D., Ph.D., October 23, 1991.
  - (2) “Survey of Appraisers: Fort Worth and Dallas – Effects of Land Uses on Surrounding Property Values,” Duncan Associates, Eric Damian Kelly, FAICP, and Connie B. Cooper, FAICP, September 2004.
  - (3) “Adult Entertainment Businesses in Indianapolis, An Analysis,” 1984.
  - (4) “Adult Business Study,” by City of Phoenix Planning Department, May 25, 1979.
  - (5) “Effects on Surrounding Area of Adult Entertainment Businesses in Saint Paul,” June 1978, City of Saint Paul Division of Planning, Department of Planning and Management; and Community Crime Prevention Project, Minnesota Crime Control Planning Board.
  - (6) “Staff Report, Whittier City Planning Commission; Subject: Adult Business Regulations,” July 11, 1994.
  - (7) “Adult Entertainment Study,” Department of City Planning, City of New York, Second Printing, November 1994.
  - (8) “Adult Use Study,” Newport News Department of Planning and Development, March 1996.
  - (9) “A Report on the Secondary Impact of Adult Use Businesses in the City of Denver,” prepared by multiple city departments for Denver City Council, January 1998.
  - (10) “Survey of Appraisers in Monroe County, New York,” Summer 2000. For detailed results of the survey, see Kelly and Cooper, *Everything You Always Wanted to Know about Regulating Sex Businesses*, Planning Advisory Service Report No. 495-96. Chicago: American Planning Association, 2000; pages 51-57.
  - (11) The Tucson “study” consisting of two memos: one from the Citizens Advisory Planning Committee, addressed to the Mayor and City Council, and dated May 14, 1990; and the other from an Assistant Chief of Police to the City Prosecutor, regarding “Adult Entertainment Ordinance,” dated May 1, 1990.

- r. The legislative bodies within Kenton County recognizes that some of the cited studies included bars without sexually oriented entertainment among the businesses studied; the legislative bodies within Kenton County finds, nevertheless, that addressing the establishments that have live, sexually oriented entertainment is a more critical local issue than that of bars without such entertainment, for three reasons:
- (1) Bars in Kentucky are already regulated by the Commonwealth, and those state regulations directly address many of the concerns that arise with the service of alcohol.
  - (2) The local history of prostitution and sex-related crimes has largely been related to businesses with live, sexually oriented entertainment, and not with other establishments that serve alcohol.
  - (3) The interaction between dancers who are paid to work with very limited clothing and the customers who pay to see them work in the establishments with live entertainment creates a sexually charged environment and the opportunity to negotiate for the provision of additional services that do not involve dancing or other protected expression and that are simply unacceptable under the standards of the County and its citizens.
- s. As noted earlier in these findings, there is a long local history of prostitution and sex-related crimes at or incident to the operation of establishments with live, sexually oriented entertainment. Further, the studies shown herein provide further evidence of the potential crime-related secondary effects from such businesses. Although the methodologies and quality of these studies vary somewhat, local experience has demonstrated to the legislative bodies within Kenton County that the relationship between crime and such establishments is a fact in Northern Kentucky and not just a theory published in a study.
- t. The legislative bodies within Kenton County have reviewed evidence and testimony presented at public meetings before the County, and information based on the past experiences of the Kenton and Campbell Counties and the cities of Covington and Newport, the experiences of the County Attorneys' offices prosecuting numerous and varied offenses that have occurred in and around the sexually oriented entertainment establishments, and based upon the documented experiences of other governmental units within Kentucky and elsewhere in dealing with the impact of sexually oriented entertainment, that such businesses can, if not properly regulated, be deleterious to said community.
- u. The legislative bodies within Kenton County finds that the countywide licensing ordinance related to sexually oriented businesses and service oriented escort bureaus adopted by the Fiscal Court of Kenton County is an effective tool for addressing the many operational issues that can arise with such businesses.
- v. The legislative bodies within Kenton County finds that amendments to the City's Zoning Ordinance regarding the location and design of such businesses are important variables in the nature and extent of adverse secondary effects of

sexually oriented businesses on the community, and further finds that location and design are among the types of issues that are typically addressed through zoning.

- w. Based on the recommendations of Kelly and Cooper, which are based on their experience in other communities and their review of the studies cited above and other local efforts to address such secondary effects, the legislative bodies within Kenton County finds that the following principles are essential to effective zoning controls of sexually oriented businesses:
- (1) Sexually oriented businesses should, to the maximum extent practicable, be separated from one another by a distance that is greater than a convenient walking distance, because experience elsewhere has shown that the location of such businesses near one another may increase the adverse secondary effects, particularly those related to crime, by a greater than arithmetic factor.
  - (2) Although there are currently several such businesses located near one another in Covington's downtown area, the Covington City Commission has determined that the City will not attempt to require these existing businesses be relocated.
  - (3) Sexually oriented businesses have the greatest adverse effect on residential neighbourhoods and should thus be separated to the maximum extent practicable from residential neighbourhoods.
  - (4) Sexually oriented businesses are likely to attract criminal elements that prey on "soft targets," including children, and it is thus important to separate sexually oriented businesses from schools, parks, recreation centers, and religious institutions, all of which are places where children are likely to congregate, often without parental protection.
  - (5) Also because of the tendency of sexually oriented businesses to attract criminal elements that prey on soft targets, it is important to seek locations for such businesses that are not located along pedestrian routes, where young people, old people and others who are vulnerable, are likely to walk in going about their day-to-day business. Thus, locations to which the primary access is by automobile minimize the risk of persons going about their daily business encountering persons who are visiting or even loitering around the sexually oriented business.
  - (6) Experiences in other communities show that private booths, back rooms, "VIP" rooms and other small and private spaces in sexually oriented businesses create the opportunity for casual sexual activity and create logistical difficulties and risks of physical endangerment for police officers responsible for dealing with such activities. For that reason, it is essential that movies, performances and other activities at sexually oriented businesses should be permitted only in large rooms that are open and visible to management, other patrons and code and police officers who may visit the establishment during operating hours.

A second portion of the presentation was made by Mr. Eric Damian Kelly of Duncan Associates. Mr. Kelly submitted a powerpoint presentation which was marked as an exhibit and made a part of the record on the matter.

No one registered to speak in favor of the issue. Ms. Neva Collins registered to speak against.

Ms. Collins addressed the Commission and stated she is a citizen of Elsmere and also a member of city council but she was not representing the city on the issue. She stated they would like to pick their own sites for the sexually oriented businesses in the City of Elsmere. Ms. Weldon then read the letter received from the city with regard to the issue at hand. The letter was then marked as an exhibit and made a part of the record on the matter. Ms. Weldon then reiterated the Commission is merely making a recommendation and the cities can change the text any way they want but it is a county-wide recommendation to all the cities in Kenton County. Mr. Hilgefurd then made the motion to approve the application based on testimony given and Staff's recommendations and that it is visible under K.R.S 100. Mr. Darpel seconded the motion. A roll call vote on the matter found Mr. Hilgefurd, Mr. Darpel, Mr. Barnett, Ms. Carlin, Mr. Coates, Mr. Cook, Mr. France, Mr. Ryan, Ms. Snyder, Mr. Tewes, Mr. Wessels, Mr. Whitacre, Mr. Wolnitzek, Mr. Swanson, Mr. Wells and Ms. Weldon in favor. Mr. Eilerman and Ms. Hood voted against. Mr. Hadley abstained. The motion carried with a vote of 16-2-1.

\*At this time (7:40 p.m.) a five minute break was taken.

**1797R**

APPLICANT: City of Fort Wright, per Larry Klein.

LOCATION: N.A.

REQUEST: Proposed text amendment to the Fort Wright Zoning Ordinance amending the list of permitted uses within the OP (Office Park) Zone, adding funeral homes as either a permitted use or conditional use.

Staff presentation and recommendations by Mr. Andy Videkovich.

**NKAPC STAFF RECOMMENDATION**

To approve the proposed text amendment adding funeral homes to the list of permitted uses within the OP (Office Park) Zone.

**Comprehensive Plan Documentation:**

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

**Supporting Information/Bases For NKAPC Staff Recommendation:**

1. The proposed text amendment adding funeral homes to the list of permitted uses within the OP (Office Park) Zone, 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 is consistent with the state purpose of the OP (Office Park) Zone:

“...to allow professional, research, and similar uses within a planned and architecturally unified development; allow development in a low intensity/low rise setting; and

supplement or serve adjacent areas without having an adverse impact on adjacent areas; but always with the intention of furthering the public health, safety, and general welfare.”

3. The proposed text amendment is consistent with the character and intensity of the current permitted uses within the OP Zone, which include: clinics - medical or dental; day care centers; offices; printing and publishing facilities; research and development facilities; and training, educational, and conference facilities.
4. The proposed text amendment adding funeral homes as a conditional use is not consistent with the definition of a conditional use, as defined by KRS 100.111:

“A use which is essential to or would promote the public health, safety, or welfare in one (1) 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 in the zoning regulation.”

The NKAPC staff has interpreted this definition to include public and semi-public uses, such as schools, hospitals, day care centers, and recreational facilities. Funeral homes are commercial in nature and would generally be compatible with the other permitted uses within the OP Zone.

Mr. Larry Klein was present to speak but had to leave the meeting. Ms. Weldon then read a letter from Mr. Klein representing the city and stating the city’s position in favor of the matter. No one registered to speak against or neutral. A motion was made by Mr. France to approve. Mr. Ryan seconded the motion. A roll call vote on the matter found Mr. France, Mr. Ryan, Mr. Barnett, Ms. Carlin, Mr. Coates, Mr. Cook, Mr. Darpel, Mr. Eilerman, Mr. Hadley, Mr. Hilgeford, Ms. Hood, Ms. Snyder, Mr. Tewes, Mr. Wessels, Mr. Whitacre, Mr. Wolnitzek, Mr. Swanson, Mr. Wells and Ms. Weldon in favor. The motion carried unanimously.

**1799R**

**APPLICANT:** City of Edgewood, per Roger W. Rolfes, City Administrator.  
**LOCATION:** N.A.

**REQUEST:** Proposed text amendments to the Edgewood Zoning Ordinance: 1) adding taverns to the list of permitted uses within the NC (Neighborhood Commercial) Zone, subject to certain restrictions; and 2) modifying the development controls for outdoor business activities within the NC (Neighborhood Commercial) Zone.

Staff presentation and Staff recommendations by Mr. Andy Videkovich.

**NKAPC STAFF RECOMMENDATION**

To approve the proposed text amendments adding taverns to the list of permitted uses within the NC Zone, subject to certain restrictions, and modifying the development controls for outdoor business activities within the NC Zone.

**Comprehensive Plan Documentation:**

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

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

1. The proposed text amendments adding taverns to the list of permitted uses within the NC Zone, subject to certain restrictions, and modifying the development controls for outdoor business activities within the NC Zone, 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 amendment modifying the development controls to include outdoor seating within the NC Zone, subject to certain restrictions, is consistent with other uses within the NC Zone. The dining activity itself should not be detrimental to other activities and uses typically found within the NC Zone. Furthermore, development controls for the NC Zone provide controls for situations where such uses may be incompatible with adjoining land uses in other zones.
3. The proposed text amendments are consistent with the purpose of the NC Zone, which is to primarily provide for individual retail, service, and other uses that are oriented towards serving the daily needs of area residents.
4. The proposed text amendments are consistent with previous NKAPC staff recommendations pertaining to adding outdoor dining areas within the NC Zone:

On May 2, 1997, the City of Fort Mitchell, per Mr. William H. Goetz, submitted an application for NKAPC and KCPC review and recommendation on a proposed text amendment to the Fort Mitchell Zoning Ordinance, changing the conditional uses of the NC Zone to include outdoor dining in connection with a restaurant, subject to certain restrictions (Z-97-05-01/1307R). On May 30, 1997, the NKAPC staff recommended approval of the proposed text amendment subject to the condition that outdoor dining be added to the ordinance as a permitted use. On June 9, 1997, following a public hearing, the KCPC recommended approval of the proposed text amendment as a conditional use.

On July 8, 2003, the City of Independence, per Mr. Chris Moriconi, submitted an application for NKAPC and KCPC review and recommendation on a proposed text amendment to the Independence Zoning Ordinance adding outdoor dining in connection with a restaurant, subject to certain restrictions (Z-03-07-02/1634R). On August 1, 2003, the NKAPC staff recommended approval of the proposed text amendment subject to the condition that that outdoor dining be added to the ordinance as a permitted use.

Mr. Roger Rolfes registered to speak in favor of the issue. No one registered to speak against.

Mr. Rolfes addressed the Commission and stated the City of Edgewood is requesting a favorable recommendation from the Commission with regard to the issue. He stated they feel this will allow businesses to be compatible but not be intrusive to the neighborhood.

A motion was then made by Mr. Darpel to approve based on the testimony given and Staff's report. Mr. Hadley seconded the motion. A roll call vote on the matter found Mr. Darpel, Mr.

Hadley, Mr. Barnett, Ms. Carlin, Mr. Coates, Mr. Cook, Mr. Eilerman, Mr. France, Mr. Hilgeford, Ms. Hood, Mr. Ryan, Ms. Snyder, Mr. Tewes, Mr. Wessels, Mr. Wolnitzek, Mr. Swanson, Mr. Wells and Ms. Weldon in favor. Mr. Whitacre voted against. The motion carried with a vote of 18-1.

**1800R**

APPLICANT: City of Taylor Mill, per Jill Bailey, City Administrator.

LOCATION: N.A.

REQUEST: A proposed text amendment to the Taylor Mill Zoning Ordinance adding a new article that establishes a moratorium on the subdivision of land, grading of land, and the construction of streets, utilities, new buildings and additions to existing buildings in an area of approximately 175 acres located along the west side of Old Taylor Mill Road, north of Taylor Creek Drive; the moratorium is proposed to extend through August 31, 2006, and is for the purposed of conducting a study of potential development.

Staff presentation and Staff recommendations by Mr. Andy Videkovich.

**NKAPC STAFF RECOMMENDATION**

To approve the proposed text amendment.

**Comprehensive Plan Documentation:**

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

**Supporting Information/Bases For NKAPC Staff Recommendation:**

1. The proposed text amendment 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 provides for a clearly articulated purpose which is to prohibit any subdivision of land, grading of land, and the construction of streets, utilities, new buildings and additions to existing buildings within the moratorium area until such time recommendations from a land use study are available and implemented.
3. The proposed text amendment narrowly defines the scope of the moratorium and is limited to those activities that are intended to be addressed by the study.

The proposed text amendment will provide for a moratorium on the subdivision of land, grading of land, and the construction of streets, utilities, new buildings and additions to existing buildings within the moratorium area.

4. The proposed text amendment provides a realistic and reasonable time frame for accomplishing the purpose of the moratorium.

The study being conducted by Woolpert Inc. is scheduled for completion on June 28, 2006. Any amendment of the Taylor Mill zoning ordinance that will be necessary to implement the plan that is developed will take approximately two months. Therefore, the six (6) month time frame for the moratorium is appropriate.

No one registered to speak for or against the issue.

Mr. Hilgefurd asked if since this is a text amendment and not a map amendment were any property owners contacted. Mr. Videkovich stated they had not and pursuant to statute it is not required. Mr. Wessels then made the motion to deny based on discussions amongst the Commissioners and legal counsel. Mr. Ryan seconded the motion. Ms. Weldon then noted that maybe since no one was present to answer any questions it may be better to table the matter. Mr. Wessels stated it was only a recommendation anyway to the city and felt the motion should just go forward. A roll call vote on the matter found Mr. Wessels, Mr. Ryan, Ms. Carlin, Mr. Coates, Mr. Cook, Mr. Darpel, Mr. Hadley, Mr. Hilgefurd, Ms. Hood, Mr. Snyder, Mr. Tewes, Mr. Whitacre, Mr. Wolnitzek, Mr. Swanson, Mr. Wells and Ms. Weldon in favor. Mr. Barnett, Mr. Eilerman and Mr. France voted against. The motion carried by a vote of 16-3.

### **1801R**

**APPLICANT:** Kenton County Planning Commission, per Alexandra K. Weldon  
**REQUEST:** Proposed text amendments to the zoning ordinances of the political jurisdictions within Kenton County modifying the sign regulations

Staff presentations and Staff recommendations by Mr. Michael Schwartz.

### **NKAPC STAFF RECOMMENDATION**

To approve the proposed text amendments modifying the sign regulations.

#### **Comprehensive Plan Documentation:**

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

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

1. The proposed text amendments modifying the sign regulations 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 modifying the sign regulations are reasonable and appropriate. The proposed modifications will ensure that commercial speech is not favored over non-commercial speech on private property or on public property owned and/or controlled by public entities other than the legislative body, and over which the legislative body has land use regulatory authority.

3. The proposed text amendments modifying the sign regulations will bring the regulations into conformity with current federal court rulings.

Additional Information:

1. The proposed text is intended to serve as a model regulation for all jurisdictions within Kenton County. Due to the unique differences found in each zoning ordinance, the exact numbering sequence and text placement will have to be administratively evaluated and implemented upon adoption by the individual legislative body.

Mr. Schneider spoke briefly with regard to the issue and the urgency surrounding the matter should steps not be taken to amend the text.

No one registered to speak for or against the issue. Mayor Michael Hellmann registered to speak as a neutral party.

Mayor Hellmann addressed the Commission and asked on page ten of the amendment with regard to section "A" and "C" what the setback is designated from. He stated the text does not designate from what. He also noted on page thirteen (13) under section "G," number one (1) that if no contact information is given then how can someone be contacted with regard to the application. Mr. Schneider then stated that hopefully an applicant would have a name and address on a check submitted with the application but the language could be amended.

A motion was then made by Mr. Wessels to approve based on the recommendations of Staff and to include the corrections stated on page 13, section "H." Mr. Hadley seconded the motion. A roll call vote on the matter found Mr. Wessels, Mr. Hadley, Mr. Barnett, Ms. Carlin, Mr. Coates, Mr. Cook, Mr. Darpel, Mr. Eilerman, Mr. France, Mr. Hilgefurd, Ms. Hood, Mr. Ryan, Ms. Snyder, Mr. Tewes, Mr. Whitacre, Mr. Wolnitzek, Mr. Swanson, Mr. Wells and Ms. Weldon in favor. The motion carried unanimously.

### **Old and Unfinished Business:**

Mr. Schwartz stated the Joint Comprehensive Plan Task Force Committee met and stated the first thing to be done was to review and adopt the Goals and Objectives Element. Mr. Schwartz stated he was requesting the Commission to authorize the Chair to make that application. Mr. Wessels made the motion to place the application on the April agenda. Mr. France seconded the motion. All in favor. None opposed. Ms. Weldon noted the report was sent out from the meeting.

### **Reports from Committees:**

***Subdivision Regulations Review*** –Mr. Wessels did note that Mr. Scott Hiles is in contact with the other Commissioners with regard to the combining of the subdivision regulations. He further noted he will let everyone know when the meeting will be.

***By-Laws*** – Nothing to report.

***Model Zoning Ordinance*** – Nothing to report.

***Executive***- Nothing to report.

**Report from legal counsel** – Nothing to report.

**Announcements from Staff** – Nothing to report.

**Correspondence -**

Ms. Weldon stated the Commission received a letter from Mr. Goetz with regard to the \$10,000 allotment by the Commission as it related to the renovation of the building. She then noted Mr. Wolnitzek had met with Mr. Gordon with regard to the expenditures and receipts on the remodeling of the building. He then gave a brief presentation on the findings and expenditures of the remodeling that took place. Much discussion was had amongst the Commissioners as to the reasoning behind the submittal of the breakdown of figures as well as the submittal of the letter from Mr. Goetz.

**New Business:** *None.*

Ms. Weldon distributed a listing of Commission members on all standing Committees of the Commission.

There being nothing further to come before the Commission, a motion was then made by Mr. Swanson to adjourn. The motion was seconded by Mr. France. All in favor. None opposed. The meeting then adjourned at 8:50 p.m.

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Chair

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Date