

**KENTON COUNTY PLANNING COMMISSION  
REGULAR MEETING**

**Minutes**

Mr. Wells, Vice Chairperson, called the meeting to order at 6:15 PM on Thursday, August 2, 2007, 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	2007											
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Mark Barnett	Taylor Mill	x	x	x	x		X	X	X				
Barbara Carlin	Kenton Co	x	x	x	x	x	X	X	X				
Barry Coates	Covington	x	x	x	x	x	X	X	X				
James Cook	Kenton Co	x	x	x	x	x	X	X					
Paul Darpel	Edgewood	x	x	x		x	X		X				
Chuck Eilerman	Covington	x	x	x	x	x	X	X	X				
Tom France	Ludlow	x	x	x	x	x	X	X	X				
Al Hadley	Elsmere	x	x	x	x	x	X	X	X				
David Hilgeford	Villa Hills	x	x	x		x	X*		X				
Phil Ryan	Park Hills	x	x	x		x	X						
Maura Snyder	Independence	x	x	x	x	x*	X*		X				
Paul Swanson, Treasurer	Erlanger	x		x	x	x	X		X				
Joe Tewes	Bromley	x	x	x	x	x	X	X	X				
John Wells, Vice Chair	Fort Mitchell		x	x	x		X	X	X				
Bernie Wessels	Crescent Spgs	x	x	x		x	X	X	X				
Gil Whitacre	Lakeside Park	x	x	x		x	X	X	X				
Alex Weldon, Chair	Covington	x	x	x	x	x	X	X					
Lynn Hood	Crestview Hills		x	x	x	x	X	X	X				
Kent Marcum	Fort Wright	x	x	x	x*			X	X				

\*arrived after roll was taken.

Also present were Matt Smith, Legal Counsel, and the following NKAPC staff: Michael Schwartz, AICP, Deputy Director for Current Planning and Andy Videkovich, Principal Planner.

**AGENDA:**

There were no changes noted on the agenda. All in favor. None opposed.

### **APPROVAL OF THE MINUTES:**

The minutes for July were distributed in the Commissioner's packets. A motion was made by Mr. Swanson to accept the minutes from July. Mr. Eilerman seconded the motion. A roll call vote on the matter found Mr. Swanson, Mr. Eilerman, Mr. Barnett, Ms. Carlin, Mr. Coates, Mr. France, Mr. Hadley, Ms. Hood, Ms. Snyder, Mr. Tewes, Mr. Wessels, Mr. Whitacre, Mr. Marcum and Mr. Wells in favor. Mr. Darpel abstained. The motion carried.

### **FINANCIAL REPORT:**

Mr. Hadley asked about the use of 83% of the budget. Mr. Swanson clarified the figure that it represented the fiscal year amount. Mr. Swanson then made the motion to accept the report as submitted. Mr. Wessels seconded the motion. 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.

Staff spoke briefly regarding the small area study. The Commissioners were asked if they would like their copy in CD form or hard copy. It was noted to produce a hard copy in black and white it would cost \$224 for an abbreviated copy and a color copy would cost \$465 per copy. By a show of hands, 10 commissioners requested a black and white copy and the others would print the copy themselves.

### **PUBLIC HEARINGS:**

#### **1883R**

#### **APPLICANT:**

City of Covington, per Frank Warnock

#### **REQUEST:**

proposed text amendments to the Covington Zoning Ordinance: (1) modifying the off-street parking requirements for hospitals; (2) modifying the definition of hospitals to include outpatient care; and (3) provide for a six month moratorium on the subdivision of land, grading of land, the construction of streets, utilities, new buildings, additions to existing buildings, establishment of curb cuts and access thoroughfares and driveways, staying development plan review, and demolition of existing structures (except the demolition of buildings that pose an immediate threat to public health and safety or those that have been condemned), in an area of approximately 88 acres located along the east and west sides of Madison Pike, extending between Eleventh Street and James Avenue.

Staff presentation and recommendations by Mr. Andy Videkovich.

### **NKAPC STAFF RECOMMENDATION**

Recommendation A: Approval of the proposed amendment modifying the off-street parking requirements for hospitals.

Recommendation B: Approval of the proposed amendment modifying the definition of hospitals to include outpatient care.

Recommendation C: Approval of the proposed amendment providing for a six month moratorium on the subdivision of land, grading of land, the construction of streets, utilities, new buildings, additions to existing buildings, establishment of curb cuts and access thoroughfares and driveways, staying development plan review, and demolition of existing structures (except the demolition of buildings that pose an immediate threat to public health and safety or those that have been condemned), in an area of approximately 88 acres located along the east and west sides of Madison Pike, extending between Eleventh Street and James Avenue.

**Comprehensive Plan Documentation:**

- Date of Adoption by the Kenton County Planning Commission: December 13, 2006

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

Recommendation A:

1. The proposed text amendment modifying the off-street parking requirements for hospitals 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 modifying the off-street parking requirements for hospitals is reasonable and appropriate. The diverse functions of a modern hospital do not allow for a single criteria for determining the required number of off-street parking spaces. The provision of a special parking study will allow for these various functions to be evaluated on a case-by-case basis.

Recommendation B:

1. The proposed text amendment modifying the definition of hospitals to include outpatient care 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 modifying the definition of hospitals to include outpatient care is reasonable and appropriate. With outpatient care on the rise, the definition of hospital should provide for such treatment.

Recommendation C:

1. The proposed text amendment providing for a moratorium 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 the subdivision of land, grading of land, the construction of streets, utilities, new buildings, additions to existing buildings, establishment of curb cuts and access thoroughfares and driveways, staying development plan review, and demolition of

existing structures (except the demolition of buildings that pose an immediate threat to public health and safety or those that have been condemned) 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.
4. The proposed text amendment provides a realistic and reasonable time frame for accomplishing the purpose of the moratorium.

The City of Covington, along with the Northern Kentucky Area Planning Commission (NKAPC), is conducting a study for the development of recommendations for permanent land use regulations, including zoning and other development controls, for future land use in an approximate 88 acre area located along the east and west sides of Madison Pike, extending between Eleventh Street and James Avenue. The six (6) month time frame, with the one time six (6) month extension, for the moratorium is appropriate.

Much discussion was had by Mr. Wessels regarding that fact that a moratorium is being requested after the area had been studied for two years already.

Ms. Beth Robinson registered to speak for the issue. Mr. David Brownfield and Mr. Philip Smith registered to speak against. Mr. Erschell Mirick registered to speak as a neutral party.

Ms. Robinson addressed the Commission and stated the first two items are basically cut and dry in that they are trying to secure land for the St. Elizabeth Healthpoint Center. With regard to the third issue, she noted they are asking for the moratorium to ensure everything goes as planned for the area. She stated a committee is being developed to discuss the issue. She noted the city is responding to development pressures for that area. She further stated the city is very serious about improving that area.

Mr. Brownfield addressed the Commission and stated he has been dealing with the city for 6-8 months with regard to putting on an office addition to his business. He stated he feels this will affect his business plan if the moratorium is put into effect. He stated he feels it could be a big deal if it is granted for a year.

Mr. Mirick addressed the Commission and stated they purchased the property at 19<sup>th</sup> and Madison for the purpose of constructing a new Kingdom Hall for Jehovah Witnesses. He stated they contacted the city about their plans. He stated they went ahead and put together a development plan for their new building. He noted his question is with the moratorium he asked what the intent of the city is and noted they have put together a very nice plan for their facility. Ms. Robinson responded and stated if the moratorium goes through this would not be allowed. He then noted they obviously not be happy to have to wait a year to decide what they do with their plan for development and construction of a new facility.

Mr. Smith asked about the city's plans for the area. He stated he has contacted the city a couple times and got no response back regarding what they intended to do. He noted he felt things were done secretly. He further noted he would like to develop and improve his business further and would not be able to do so under the moratorium.

Following a brief discussion on the matter Mr. Eilerman made a motion as to the first two issues to make a cleaner motion. He then made the motion to approve for the first of two of the three items based on Staff's findings and testimony presented. Ms. Hood seconded the motion. A roll call vote on the matter found Mr. Eilerman, Ms. Hood, Mr. Barnett, Ms. Carlin, Mr. Coates, Mr. Darpel, Mr. France, Mr. Hadley, Mr. Hilgefurd, Ms. Snyder, Mr. Tewes, Mr. Wessels, Mr. Whitacre, Mr. Marcum, Mr. Swanson and Mr. Wells in favor. The motion carried. Mr. Eilerman then asked if it would be possible to limit the moratorium to 6 months. Mr. Schwartz stated that could be done but that the city would have the final say. Mr. Eilerman then made the motion to approve as requested based on Staff's recommendations and discussions but to delete the language as to extending the moratorium an additional 6 months. Ms. Hood seconded the motion. Mr. Darpel noted he felt the language was too stringent in that a property owner could not even come to the city with a plan or anything with their property for at least six months based on the moratorium. A roll call vote on the matter found Mr. Eilerman, Ms. Hood, Mr. Barnett, Mr. Coates, Mr. France, Mr. Tewes, Mr. Marcum, Mr. Swanson and Mr. Wells in favor. Mr. Darpel, Mr. Hadley, Mr. Hilgefurd, Ms. Snyder, Mr. Wessels and Mr. Whitacre voted against.

\*At this time Mr. Wells noted a request to table had been received with regard to W-677-2. He then read the letter into the record with regard to the issue being tabled for six months. All in favor. None opposed.

#### **1884R**

**APPLICANT:** Kenton County Planning Commission, per Alexandra K. Weldon  
**REQUEST:** A proposed text amendment to the zoning ordinances of all Kenton County political jurisdictions deleting all current floodplain regulations and adding new floodplain regulations

Staff presentation and Staff recommendations by Mr. Mike Schwartz.  
Mr. Schwartz noted the regulations were found to have changes and therefore a request was made to delete the existing regulations and to add new floodplain regulations in keeping with US FEMA requirements.

#### **NKAPC STAFF RECOMMENDATION**

To approve the proposed text amendment deleting all current floodplain regulations and adding new floodplain regulations.

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

- Date of Adoption by the Kenton County Planning Commission: December 13, 2006

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

1. The proposed text amendment deleting all current floodplain regulations and adding new floodplain regulations 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 deleting all current floodplain regulations and adding new floodplain regulations is reasonable and appropriate in that it is consistent with the

Federal Emergency Management Agency (FEMA) Recommended Model Flood Damage Prevention Ordinance.

3. The proposed text amendment deleting all current floodplain regulations and adding new floodplain regulations will allow communities to be eligible for participation/continued participation in the National Flood Insurance Program (NFIP).
4. The proposed text amendment deleting all current floodplain regulations and adding new floodplain regulations will provide a first step in allowing communities to gain a higher Community Service Rating (CSR) which will allow property owners to get flood insurance at a lower rate.

No one registered to speak for or against the issue. A motion was made by Mr. Hadley to approve based on Staff's recommendations. Mr. Barnett seconded the motion. A roll call vote on the matter found Mr. Hadley, Mr. Barnett, Ms. Carlin, Mr. Coates, Mr. Darpel, Mr. Eilerman, Mr. France, Mr. Hilgefurd, Ms. Hood, Ms. Snyder, Mr. Tewes, Mr. Wessels, Mr. Whitacre, Mr. Marcum, Mr. Swanson and Mr. Wells in favor. The motion carried.

\*Mr. Smith, legal counsel, recused himself from representation due to a potential conflict of interest.

#### **1885R**

**APPLICANT:**

Kenton County Planning Commission, per Alexandra K. Weldon

**REQUEST:**

A proposed text amendment to the zoning ordinances of all Kenton County political jurisdictions providing for a moratorium, to extend through December 31, 2007, so that no building permit, electrical permit, or other permit or approval shall be issued to allow the installation of any new message board, changeable copy sign, electronic message board, tri-vision sign, nor to allow the installation of a portion of a sign that is a message board, changeable copy sign, electronic message board, or tri-vision sign, nor to allow the conversion of any existing sign, in whole or in part, to include a message board, changeable copy sign, electronic message board, or tri-vision sign.

Staff presentations and Staff recommendations by Mr. Mike Schwartz.

#### **NKAPC STAFF RECOMMENDATION**

To approve the proposed text amendment providing for a moratorium, to extend through December 31, 2007, so that no building permit, electrical permit, or other permit or approval shall be issued to allow the installation of any new message board, changeable copy sign, electronic message board, tri-vision sign, nor to allow the installation of a portion of a sign that is a message board, changeable copy sign, electronic message board, or tri-vision sign, nor to allow the conversion of any existing sign, in whole or in part, to include a message board, changeable copy sign, electronic message board, or tri-vision sign.

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

- Date of Adoption by the Kenton County Planning Commission: December 13, 2006

## **Supporting Information/Bases For 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 building permit, electrical permit, or other permit or approval to allow the installation of any new message board, changeable copy sign, electronic message board, tri-vision sign, nor to allow the installation of a portion of a sign that is a message board, changeable copy sign, electronic message board, or tri-vision sign, nor to allow the conversion of any existing sign, in whole or in part, to include a message board, changeable copy sign, electronic message board, or tri-vision sign.
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 so that no building permit, electrical permit, or other permit or approval shall be issued to allow the installation of any new message board, changeable copy sign, electronic message board, tri-vision sign, nor to allow the installation of a portion of a sign that is a message board, changeable copy sign, electronic message board, or tri-vision sign, nor to allow the conversion of any existing sign, in whole or in part, to include a message board, changeable copy sign, electronic message board, or tri-vision sign.

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

The study being conducted by Duncan Associates, through Eric Damian Kelly, Ph.D., FAICP is scheduled for completion prior to November 1, 2007. Any amendment of the zoning ordinances within Kenton County that will be necessary to implement the recommendations that are developed will take approximately two months. Therefore, the five (5) month time frame for the moratorium is appropriate.

5. The following findings are also relevant:
  - a. The Northern Kentucky Area Planning Commission (NKAPC) provides for its member and subscriber local governments model ordinances addressing zoning and other issues involved in the use and development of land.
  - b. In 2006, the NKAPC staff completed and the Commission approved "COMPREHENSIVE PLAN UPDATE 2006-2026: An Area-Wide Vision for Kenton County.
  - c. To assist its member local governments in implementing the plan, the NKAPC staff is updating its model ordinances.
  - d. As one part of that task, the NKAPC staff intends to update the model provisions for regulating advertising and other signs.
  - e. Both traffic safety and aesthetic factors are important considerations to NKAPC and its member and subscribing local governments in regulating signs.



- f. Among the elements of the “Comprehensive Plan Update” that address aesthetic issues are these:
- (1) A portion of Goal 3 under “Housing – Residential Development”  
*To achieve the goals of this element without unduly disrupting the goals of other elements.*  
 Effort should be made to ensure that areas which are proposed to be developed for purely residential purposes are protected from the intrusion of incompatible land uses....
  - (2) A portion of Goal 2 under “Goods and Services”  
 In all cases, design of new or redeveloped facilities, providing goods and services, should contain adequate off-street parking facilities, reasonable control of ingress and egress, landscaping, reasonable separation of vehicular and pedestrian traffic, etc. Such centers should be located and designed so as to minimize any adverse environmental effects.
  - (3) Goal 2 under “Resources and Environment”  
*To preserve a pleasant environment for the population.*  
 Constant effort should be made to ensure that all areas are provided with adequate light and air and pleasing surroundings. This will require adequate control and monitoring of all potential contributors to all forms of pollution (air, water, visual, noise, etc.). Provision of sufficient open space in conjunction with all types of new development and redevelopment will also be necessary if this objective is to be achieved.
- g. To assist it in updating the model sign ordinance provisions, the NKAPC has, through Duncan Associates, retained Eric Damian Kelly, Ph.D., FAICP, a nationally known expert on sign regulation, who has worked with NKAPC and its member local governments on other issues.
- h. In May 2007, Dr. Kelly delivered to NKAPC a report containing an analysis of the existing sign regulations in effect in NKAPC member communities, along with a number of recommendations for updating the model.
- i. In late June 2007, NKAPC hosted two public work sessions to discuss Dr. Kelly’s recommendations and other issues.
- j. Discussion at the public forums reinforced Dr. Kelly’s finding that the lack of provisions in the current ordinances addressing the use of modern technology in signs – particularly including all forms of electronic message boards – is a critical defect in the current ordinances.
- k. From discussion with elected officials and planning commission members at the public forum, it appears to NKAPC staff at this time that the result of the ordinance updating process is likely to result in a proposal that will allow the use of such modern technology, subject to limits on the location of signs using such technology, on the brightness of electronic signs, on the frequency of messages changes on such signs, and, possibly, on the size of the elements which use electronic technology.
- l. It appears that development of specific recommendations to deal with those issues will require additional research, analysis and public discussion.



- m. There have already been instances in Kenton County where signs using electronic technology have been installed.
- n. Through NKAPC, Dr. Kelly has made the legislative aware that research on the link between traffic safety and billboards is mixed, with some studies finding a clear relationship between billboards and traffic accidents and other studies finding no direct relationship.
- o. Although the evidence regarding traffic safety is mixed, legislative body members are well aware that the intent of billboard advertisers is to attract the attention of drivers, thus distracting them from their driving task and creating an increased risk of accidents.
- p. The legislative body finds that there is a relationship between traffic safety and the regulation of signs and a particular relationship between traffic safety and large signs such as billboards.
- q. Based on available research and on the personal experience of individual members, the legislative body finds that very bright signs and moving signs can be particularly distracting to drivers.
- r. Based on the personal experience of individual members, the legislative body finds that very bright signs and signs that move or appear to move are particularly intrusive in the visual environment.
- s. It is the desire of the legislative body to preserve the status quo by preventing the erection or installation of electronic signs until such time as NKAPC has provided specific recommendations for regulating such signs.
- t. The legislative body recognizes that the same technology is used in some relatively small portions of signs that provide current time, temperature, public service messages, or information on current sales and events.
- u. The legislative body recognizes that such smaller units of electronic technology are frequently used by small businesses and nonprofit organizations that have no other effective way to communicate their messages.
- v. The legislative body has thus concluded that its prohibition on the installation of new signs and sign elements with electronic technology should include a de minimis exception for certain small signs.
- w. The legislative body, based on reports from NKAPC and personal participation of staff and/or body members in the public workshops, finds that the NKAPC and its consultant are diligently pursuing the task of developing new model sign regulations.
- x. The legislative body reasonably believes that specific recommendations regarding the regulation of electronic message centers and similar signs will be available to it before January 2008, allowing it to consider adoption of such recommendations over the following weeks.
- y. The legislative body has therefore determined that a moratorium on approvals for certain new signs, new sign elements, or sign conversions, is essential to the full implementation of its traffic safety, aesthetic and other goals, and that implementing such moratorium for a period ending on December 31, 2007, is the minimum period that will reasonably provide it with the opportunity to receive, review, adopt and implement specific regulations for electronic signs.

Mr. Schwartz noted Staff has been working on the model zoning ordinance for Kenton County and this issue would fall under that criteria. He stated they consulted a nationally recognized firm to advise them on how to proceed. He then noted they were advised that a moratorium should be

implemented in order to study the matter further to ensure there were no more non-conforming issues brought up.

No one registered to speak for the issue. Mr. Tim Theissen, Mr. Guy Taft, Mr. Tom Fahey, Mr. Bob Sanders, Mr. Nick Neiswander and Mr. David Heidrich registered to speak against the issue. Mr. Theissen addressed the Commission and stated he was representing LaMar Advertising. He then gave some background information on free speech and stated signs are a form of free speech and by law are protected. He stated non-commercial speech has the highest level of protection of free speech by the government. He noted the text amendment restricts both commercial and non-commercial speech. He further noted the regulation has to be narrowly drawn to protect free speech. He stated the law does not prohibit a moratorium but it really does not favor it either. He stated there was not one piece of evidence submitted indicated a traffic issue existed with regard to these signs, nor any evidence of the aesthetics of a sign. He then referred to a handout of exhibits and cited certain portions relevant to the issue. Mr. Theissen requested that the handout be marked as an exhibit and made a part of the record. Mr. Wells then marked the document. Mr. Theissen noted the moratorium covers every possible kind of sign and this is too broad. He recommended the Commission deny the request until the Commissioners could have legal counsel present to advise them on the issue. He stated this would take away LaMar's right to due business if the moratorium is implemented.

Mr. Taft addressed the Commission and stated he has had a chance to study electronic changing signs in the area for a while now. He stated the Planning Commission has been placed in a difficult position in that they are asking the Commission to place a ban on free speech which would have ramifications. He stated the law in Kentucky is there has to be evidence submitted to place a ban on free speech. He then stated no evidence has been submitted to provide for that. He stated they do not want to be in a position where they are fighting the Commission on this issue and recommended that the Commission be fully advised prior to making a decision on the matter. He then asked that the Commission not put a moratorium on these signs without having evidence to do so.

Mr. Sanders addressed the Commission and stated he agrees with everything stated by the previous speakers and he endorses it. He then showed the Commission a reprinted newspaper article from the '80's showing various signs owned by his clients. He stated the change from a traditional board sign to an LED sign would increase the profitability by 500%. He stated they are ready to proceed and do not want to wait until December to do so. He then asked that the request be denied.

Mr. Neiswander addressed the Commission and stated he is asking for a delay and vote no until more information is received to make a better decision.

Mr. Swanson asked what the Staff is doing at the present on this issue. Mr. Schwartz stated their study is being done as they speak and a meeting will be held on the matter. Mr. Eilerman asked if the Commission was the final say or if it was merely a recommendation. Mr. Schwartz stated it is a recommendation as are all text amendments and it will be up to the individual city to determine how they want to handle the issue. Mr. Marcum stated it is not that speech is being restricted but that the size of the sign is being restricted. Mr. Schwartz went on to say that signs will still be allowed, just not changeable signs. Mr. Wessels asked how the Staff gets around the Kentucky Supreme Court ruling on changeable signs and restricting free speech. Mr. Schwartz stated he had not read the case law and therefore was not going to comment on it. Mr. Hilgeford

noted in the past on issues where legal counsel was not present to advise the Commission, no discussion on pending issues would be discussed until legal counsel could advise the Commission. He suggested the matter be put off until next month to have other legal counsel available to advise the Commission. Mr. Hilgeford then made the motion to postpone further discussion until legal counsel could be present to advise the Commission about legal issues raised at the public hearing. Mr. Wessels seconded the motion. A roll call vote on the matter found Mr. Hilgeford, Mr. Wessels, Mr. Barnett, Ms. Carlin, Mr. Coates, Mr. Darpel, Mr. Eilerman, Mr. France, Mr. Hadley, Ms. Hood, Ms. Snyder, Mr. Tewes, Mr. Whitacre, Mr. Marcum, Mr. Swanson and Mr. Wells in favor. The motion carried.

\*At this time (8:30 p.m.) a ten minute break was taken.

### **1886R**

**APPLICANT:** James H. Huff  
**LOCATION:** An approximate 1.1 acre area located along the east side of Beechwood Road, at its intersection with Royal Drive, Fort Mitchell.  
**REQUEST:** A proposed map amendment to the Fort Mitchell Zoning Ordinance, changing the described area from R-1C (a detached single-family residential zone) to PO (a professional office zone).

Staff presentation and Staff recommendations by Mr. Andy Videkovich.

\*Mr. Matt Smith, legal counsel, recused himself from legal representation on the matter due to a possible conflict of interest. Mr. Wessels stated his feeling was that the public hearing should continue in light of the fact that no legal counsel would be present on the issue.

### **NKAPC STAFF RECOMMENDATION**

To approve the proposed map amendment from R-1C to PO, but only subject to compliance with the following conditions:

1. That signage on the south building facade be prohibited.
2. That free standing signage, within the front yard, be prohibited.

### **Comprehensive Plan Documentation:**

- Date of Adoption by the Kenton County Planning Commission: December 13, 2006

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

1. While the Land Use Plan Element of the *Comprehensive Plan Update 2006-2026* identifies the site in question for Residential Development at a density ranging from 2.1 to 4.0 dwelling units per net acre, the proposed map amendment from R-1C to PO is generally consistent with the text of the *Comprehensive Plan Update 2006-2026*, as it relates to Land Use - Office Development.

Chapter 3.3 - Land Use Plan Element, of the *Comprehensive Plan Update 2006-2026*, reads as follows as it pertains to office development: Land so classified reflects existing

or recommended office concentrations and related uses. These areas are designated on the basis of location (i.e. they are easily accessible from the major corridors of transportation) and which can take advantage of proximity to other related uses (e.g., major public office buildings, hospitals, etc.). It should be recognized that office-type development is little affected by noise associated with major thoroughfares, has the potential for interesting architectural treatment, and can serve as a transitional use between more intense and less intense land use activities, such as between commercial and residential uses.

The site in question is located immediately adjacent to Interstate 71/75 and has access to the Buttermilk Pike/I-71/75 interchange via Royal Drive and Grandview Drive, which are collector roadways. Furthermore, office uses at this location will be less affected by noise associated with I-71/75 than residential uses at this location. Office uses also have the potential to be more architecturally compatible with residential areas than other commercial uses.

The site in question can serve as a transitional use between the more intense land use activities to the north and west of the site in question, and the less intense residential areas to the south and east of the site in question. The area located to the west of the site in question, across Beechwood Road, is currently zoned R-3a and LHS which permits multi-family residential dwellings, at a maximum density of 15.0 dwelling units per net acre, and a variety of retail and service type uses.

2. The current R-1C Zoning on the site in question is inappropriate and the proposed PO Zoning is appropriate.

During the early 1990's, Interstate 71/75 was widened bringing the pavement of this roadway approximately twelve (12) feet closer to the north property line of the site in question. The site in question is also close to being at-grade with the interstate highway.

The applicant has submitted a noise study, conducted by RNK Environmental, Inc. The study indicates that the noise levels of the adjacent interstate highway system exceed Federal Highway Administration Criteria for residential areas and that the noise levels are unhealthy as they are similar to a factory setting. If similar noise levels were experienced in a factory setting, OSHA would require hearing safety equipment to be worn.

3. The recommendation of approval is consistent with the bases of previous recommendations made by the NKAPC staff for office uses on the site in question.

The NKAPC staff recommended that the Comprehensive Plan designation for the site in question be changed from Residential Development at a density ranging from 2.1 to 4.0 dwelling units per net acre to Commercial – Office on the following dates: November 8, 1991 (P-91-10-01/1020R); May 1, 1992 (P-92-03-01/1035R); and October 29, 1993 (P-93-10-01/1109R).

The NKAPC staff also recommended approval of proposed map amendments changing the site in question from R-1C to PO on the following dates: January 2, 1987 (Z-86-12-04/753R); October 29, 1993 (Z-93-10-02/1110R); May 28, 1999 (Z-99-05-02/1404R); November 24, 1999 (Z-99-11-02/1445R); and November 23, 2005 (Z-05-11-05/1786R).

4. The Fort Mitchell Zoning Ordinance does not prohibit building signage from facing residential property. However, in an effort to not disrupt the residential character of the area located to the south of the site in question, it is recommended that signage on the south building facade be prohibited.
5. The Fort Mitchell Zoning Ordinance permits free standing signs to be placed in the front yard within PO Zones. The proposed front yard of the site in question is visible by adjacent residential properties. In an effort to protect the residential character of adjacent properties, it is recommended that free standing signage, within the proposed front yard, be prohibited.

Mr. Webber registered to speak in favor of the issue. Mr. Dorsey, Ms. West, Ms. Holocher, Ms. Bevill, Mr. Bevill, Ms. Bessie, Mr. Bessie, Mr. Huelsman and Mr. Benez registered to speak against the issue.

Mr. Webber addressed the Commission and stated he was representing Mr. Jim Huff on the matter. He stated he believes the proposed zone is the property zone given the conditions of the site. He stated the expressway conditions expose the site because of elevation to the traffic noise in the area. He stated these will be two-story office condos with access at the basic roadway curb cut. He further noted there would be a landscape buffer. It was additionally noted they tried to keep the development as far away from the residential as possible. It was noted the building design was intended to blend in with the residential areas. He noted the reason for the map amendment is the location of the property on the comprehensive plan and the elevation of the site. He stated there are lot of factors that separate this site from the adjacent sites in terms of sound. He noted they are asking for the map amendment and further noted it is generally consistent with the comprehensive plan as it relates to the land use and development. It was additionally noted this can act as a buffer between the interstate and the current residential properties.

Mr. Dorsey addressed the Commission and stated the homes in the area were put in when the expressway was there. He stated there are new homes being built that are the same distance as the Huff building from the interstate. He stated a factor is the elevation of the homes and the sound radiating out. He further noted he does not think noise is a major factor in the consideration of the development because there are homes in the area that have been there quite some time. He additionally noted there have been no major changes to the area and it would be violating state law if approved. He then noted by lowering the elevation to the Beechwood Road level he feels the noise would be greatly reduced.

Ms. West addressed the Commission and stated she can't understand why this episode keeps coming back. She stated the lives about 8 houses up from the proposed development and there are no problems with the noise. She stated they love their city and want to keep it residential. She noted it does not conform to the comprehensive plan they are counting on the Commission to keep it residential.

Ms. Holocher addressed the Commission and asked the that the application be denied and the area remain residential as it has always been. She stated the city council has always identified the buffer of trees and the interstate as the definitive boundary between the residential area and the commercial development at that location. She stated this proposed rezoning would be a serious

encroachment into a long established residential community. She further noted it is totally inappropriate to locate an office building in that area and it would in fact invite more commercial development into that area. She stated once started where and how would you stop it? She stated the rezoning would dramatically alter the area and have a domino effect. She further noted she believes the noise study submitted has flaws. She stated since the study three homes have been built nearly across the street from the site near the expressway. She noted the noise levels are that they are and it doesn't keep people from building homes there. She then asked how the current residential zone can be so inappropriate when all of the residential development is going on in the area.

She further noted no one is preventing Mr. Huff from developing it as a residential property.

Ms. Bevill addressed the Commission and asked that the Commission not accept this recommendation and keep it residential. She stated the sound decibel level is not as important as the safety of their children. She then noted the traffic has increased despite the studies done. Mr. Bevill addressed the Commission and stated many of the people who have spoken echo his opinion and he is adamantly opposed to the development for several reasons. He stated one of the reasons is the traffic on Pleasant Ridge. He noted with the addition of these parking spaces it could only get worse.

Ms. Bessie addressed the Commission and stated she agrees with everything stated against the issue. She stated she wanted everyone to understand that the Beechwood school district is a waling school district. She stated there is no bus service so the increased traffic does put their school children at an increased risk. She stated another concern is the business creep and the light pollution from Home Depot and Ashley Furniture. She asked that the Commission not pass the issue and further stated it is not good for the community or for the people. She then submitted a letter which was marked as an exhibit.

Mr. Bessie passed and noted he agrees with the statements.

Mr. Huelsman addressed the Commission and stated they all love Ft. Mitchell. He stated they were present a year and a half ago when the issue came up then. He stated he thought I-75 was the buffer between commercial and residential. He noted if it is allowed it will create a domino effect and pretty soon there will be commercial development all the way up Beechwood. He stated in his opinion the property could be sold and flag lots could be put in. He noted nothing has changed in the last year. He stated years before there was a joint task force created and it was noted no changes were made to the area. He stated noise is noise. HE further noted the current zoning has been appropriate since 1982 and the Staff report does not say why it is inappropriate. Mr. Talbert passed.

Ms. Hehman addressed the Commission and asked if the property was altered, wouldn't the problem with sound be eliminated. She stated her point was of you're looking at the liability of the noise issue, it can be corrected pretty easily with construction and altering the property. Mr. Carusi addressed the Commission and stated he believes the time for Mr. Huff to buy a piece of commercial property was 24 years ago. He stated when he bought the property he bought a piece of residential property. He noted he agrees that a person should be able to do what they want with their property but this is residential and not commercial. He noted further that Mr. Huff knew he bought a piece of residential property at the time. He further noted the sound study is flawed because it was done when construction was being done to widen the road. He



additionally stated he feels the road cannot support the additional traffic the new development will bring.

Mr. Webber noted in rebuttal that Mr. Huff has six grandchildren who attend Beechwood School and he is not in favor of making conditions unsafe for children at Beechwood. He stated he would believe it to be in violation of the zoning ordinance to put up a fence along the interstate as proposed due to the height it would have to be. He stated after Mr. Huff has acquired the property it did change to an office use. He stated the interstate has been moved, the ramp has been moved closer to the property over time so change has occurred. He stated he respectfully requests approval for the zone change. He further noted they would be willing to do a no left turn out of the site.

Mr. Wells then paraphrased additional letter received in opposition to the zone change. He noted concerns with safety, traffic and concerns with the safety of children walking along the road. Mr. Hilgefurd noted they've heard this issue 7 or 8 times and really nothing has changed. He noted there are several areas there homes are built right near the expressway. He stated he feels the neighbors have a legitimate concern with the development. He stated he thinks the noise issue is a red herring on this issue because so many homes that are right on top of the expressway. He stated the comprehensive plan has been voted on and the city has reinforced the plan. He further stated he feels the property should remain residential. He then noted the just doesn't think this is good planning. He additionally noted he feels the expressway has always been the commercial line. Mr. Hadley then made the motion to deny based on the testimony heard. Mr. France seconded the motion. A roll call vote on the matter found Mr. Hadley, Mr. France, Mr. Barnett, Ms. Carlin, Mr. Darpel, Mr. Eilerman, Mr. Hilgefurd, Mr. Marcum, Mr. Swanson and Mr. Wells in favor. Ms. Hood, Ms. Snyder, Mr. Tewes, Mr. Wessels and Mr. Whitacre voted again. Mr. Coates withdrew due to a conflict. The motion carried with a vote of 10-5 with one withdrawal.

Mr. Smith noted his firm did not know there was a conflict with the issue until the day before and then they contacted Ms. Weldon to advise her of that fact and discovered she was not going to be present. He stated they tried to get someone else to cover the meeting but were unable to do so. He then apologized for any inconvenience this may have caused.

Mr. Wells then noted that due to the late hour, the meeting would be adjourned until the following Tuesday at 6:15 p.m.

**August 7, 2007 Continuation of KCPC Meeting**  
**Minutes**

Ms. Weldon, Chairperson, called the meeting to order at 6:15 PM on Tuesday, August 7, 2007, 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.

		2007											
Member	Jurisdiction	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Mark Barnett	Taylor Mill	x	x	x	x		X	X	X				



Barbara Carlin	Kenton Co	x	x	x	x	x	X	X	X				
Barry Coates	Covington	x	x	x	x	x	X	X	Xx				
James Cook	Kenton Co	x	x	x	x	x	X	X					
Paul Darpel	Edgewood	x	x	x		x	X		Xx				
Chuck Eilerman	Covington	x	x	x	x	x	X	X	Xx				
Tom France	Ludlow	x	x	x	x	x	X	X	Xx				
Al Hadley	Elsmere	x	x	x	x	x	X	X	Xx				
David Hilgefurd	Villa Hills	x	x	x		x	X*		X				
Phil Ryan	Park Hills	x	x	x		x	X						
Maura Snyder	Independence	x	x	x	x	x*	X*		X				
Paul Swanson, Treasurer	Erlanger	x		x	x	x	X		Xx				
Joe Tewes	Bromley	x	x	x	x	x	X	X	Xx				
John Wells, Vice Chair	Fort Mitchell		x	x	x		X	X	Xx				
Bernie Wessels	Crescent Spgs	x	x	x		x	X	X	X				
Gil Whitacre	Lakeside Park	x	x	x		x	X	X	X				
Alex Weldon, Chair	Covington	x	x	x	x	x	X	X	x				
Lynn Hood	Crestview Hills		x	x	x	x	X	X	Xx				
Kent Marcum	Fort Wright	x	x	x	x*			X	X				

\*arrived after roll was taken.

\*\*Aug. "Xx" denotes attendance at both the regular meeting and the continuation meeting. Also present were Matt Smith, Legal Counsel, and the following NKAPC staff: Michael Schwartz, AICP, Deputy Director for Current Planning and Andy Videkovich, Principal Planner.

### **AGENDA:**

There were no changes noted on the agenda. Motion to accept by Mr. France, second by Ms. Hood. All in favor. None opposed

### **Continuation of Public Hearings from 8/2/07:**

#### **1885R**

#### **APPLICANT:**

Kenton County Planning Commission, per Alexandra K. Weldon

#### **REQUEST:**

A proposed text amendment to the zoning ordinances of all Kenton County political jurisdictions providing for a moratorium, to extend through December 31, 2007, so that no building permit, electrical permit, or other permit or approval shall be issued to allow the installation of any new message board, changeable copy sign, electronic message board, tri-vision sign, nor to allow the installation of a portion of a sign that is a message board, changeable copy sign, electronic message board, or tri-vision sign, nor to allow the conversion of any existing sign, in whole or in

part, to include a message board, changeable copy sign, electronic message board, or tri-vision sign.

\*Matt Smith, legal counsel, recused himself from legal representation due to a potential conflict of interest. Tom Nienaber was present as legal counsel in the interim.

\*\*Mr. Wells continued as Vice Chair on this issue as a result of having chaired the meeting previously and hearing the issue.

Mr. Eilerman stated one of the issues that came up was that the Commission could be held liable if approved. Mr. Nienaber addressed the question and stated they are only making a recommendation on the issue and do not have the final say. He then stated the Superior Court states that moratoriums are totally allowable and further noted the length of the proposed moratorium being five months is not unreasonable. He stated he feels the Commission is practicing a substantial act of safety to the Commission and does not feel the likelihood of the Commission being held personally responsible is unlikely. Mr. Swanson asked what the consultant would be working on during the moratorium period. He noted they are working on the sign regulations to formulate those regulations for Staff to eventually bring those regulations before the Commission. Mr. Wells asked if the proposed text amendment affected free speech in any way. Mr. Nienaber stated he did not feel it would due to the fact that this moratorium does not limit those signs currently in use from being used as they are , nor from what they choose to put on them. Mr. Swanson then made the motion to approve the moratorium thru December 31, 2007 for the consultant to finish their study of the matter, and based on Staff's recommendations. Ms. Hood seconded the motion. A roll call vote on the matter found Mr. Swanson, Ms. Hood, Mr. Eilerman and Mr. France in favor. Mr. Coates, Mr. Darpel, Mr. Hadley, Mr. Tewes and Mr. Wells voted against. Ms. Weldon abstained. The motion failed by a 4-5-1 vote. Mr. Darpel then made the motion to deny based on discussion and presentation of evidence at the meetings. Mr. Tewes seconded the motion. A roll call vote on the motion found Mr. Darpel, Mr. Tewes, Mr. Coates, Mr. Hadley, Mr. Swanson and Mr. Wells in favor. Mr. Eilerman, Mr. France and Ms. Hood voted against. Ms. Weldon abstained. The motion carried with a 6-3-1 vote.

### **1887R**

#### **APPLICANT:**

City of Independence per Patricia H. Taney

#### **REQUEST:**

proposed text amendments to the Independence Zoning Ordinance: 1) adding a definition for "Bed and Breakfast Establishment"; 2) adding "Bed and Breakfast Establishments" to the list of conditional uses within the A-2 (Agricultural) Zone, and all of the residential zones; and 3) adding development controls to each of the above mentioned zones pertaining to Bed and Breakfast Establishments

Staff presentations and Staff recommendations by Mr. Andy Videkovich.

### **NKAPC RECOMMENDATION**

To approve the proposed text amendments 1) adding a definition for "Bed and Breakfast Establishment"; 2) adding "Bed and Breakfast Establishments" to the list of conditional uses within the A-2 (Agricultural) Zone, and all of the residential zones; and 3) adding development controls to each of the above mentioned zones pertaining to Bed and Breakfast Establishments

## **Comprehensive Plan Documentation:**

- Date of Adoption by the Kenton County Planning Commission: December 13, 2006

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

1. The proposed text amendments 1) adding a definition for “Bed and Breakfast Establishment”; 2) adding “Bed and Breakfast Establishments” to the list of conditional uses within the A-2 (Agricultural) Zone, and all of the residential zones; and 3) adding development controls to each of the above mentioned zones pertaining to Bed and Breakfast Establishments 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 adding a definition for “Bed and Breakfast Establishments” is appropriate. Defining specific uses within the zoning ordinance provides for greater clarity and consistency in the application of the regulations pertaining to bed and breakfast establishments.
3. The proposed text amendment adding “Bed and Breakfast Establishment” to the list of conditional uses within the A-2 Zone and all the residential zones is appropriate. Requiring a public hearing and approval from the board of adjustment will ensure that the proposed use will be properly integrated into the surrounding neighborhood.
4. The proposed text amendment adding development controls to the A-2 Zone and to all the residential zones for bed and breakfast establishments is reasonable. Controlling the ownership, exterior and interior alterations, screening, and parking will minimize the impacts the proposed use will have on adjacent properties.

Ms. Doris Wickland registered to speak in favor. No one registered to speak against or neutral.

Ms. Wickland addressed the Commission and stated she understands the restrictions that she not before. She stated she considers it an upbeat thing for Independence. She stated her home is not visible from the road and is an agricultural setting. She stated there are 18 acres behind her. She noted she feels the purpose of the bed and breakfasts is to get away to a country setting and home feel. She noted the area is beautiful with the trees, the birds, etc. and she noted she just wants to share that with others.

A motion was made by Mr. Hadley to approve based on Staff’s recommendation. Mr. Darpel seconded the motion. A roll call vote on the matter found Mr. Hadley, Mr. Darpel, Mr. Coates, Mr. Eilerman, Mr. France, Ms. Hood, Mr. Tewes, Mr. Swanson, Mr. Wells and Ms. Weldon in favor. The motion carried.

### **W-681**

**LOCATION:** an approximate 2.3-acre area approved for seven new multi-family units and one existing single-family residence located on the north side of Highway Avenue, approximately 100 feet east of Swain Court in Covington.

**REQUEST FOR ACTION:** to grant a waiver to Section 5.2 of the Kenton County Subdivision Regulations; granting the request would waive the minimum

quantity of water that is required to flow from a fire hydrant to provide fire protection to the development.

Staff presentation and Staff recommendations by Mr. Scott Hiles.

### **NKAPC RECOMMENDATION**

To deny the requested Waiver to Section 5.2 and require that the fire hydrant provided on-site be capable of a minimum quantity of 500 gallons of water per minute.

Mr. Hiles stated it is difficult to grant the waiver when a solution exists on the property. He stated there is a letter from the Covington Fire Department referencing two hydrants near the property in question that flow over 500 gpm. Mr. Hiles then paraphrased the letter for the Commission with regard to the waiver. Ms. Weldon then marked the letter as an exhibit to be made a part of the record on the matter.

Mr. Jerry Keith registered to speak in favor of the issue. No one registered to speak against or neutral.

Mr. Keith addressed the Commission and stated they don't feel they are asking for a waiver but that they already meet the requirements. He then distributed a handout referencing the matter. He stated they are proposing to place a fire hydrant on site. He noted that hydrant along with another hydrant (hydrant B) meets the requirements for fire flow. He then stated they have had many discussions with the city of Covington Fire Department and are comfortable and aware of what is available for this site. In addition to the new hydrants being installed, each individual unit will have a sprinkler system. He stated the Fire Department prefers hooking into the new hydrant vs. the 20 inch line. Mr. Smith clarified that the issue before the Commission is to deny or approve the waiver and not to take into consideration the subdivision regulations. Mr. Wells stated there is a cost to everything as well as a cost of safety. Mr. Darpel then made the motion to deny as stated by Staff. Ms. Hood seconded the motion. A roll call vote on the matter found Mr. Darpel, Ms. Hood, Mr. Coates, Mr. Eilerman, Mr. Hadley, Mr. Swanson and Mr. Wells in favor. Mr. France, Mr. Tewes and Ms. Weldon voted against. The motion carried with a vote of 7-3.

### **Reports from Committees:**

***Subdivision Regulations Review*** –Nothing to report.

***By-Laws*** – Mr. Wells distributed minutes for the By Laws Committee with regard to fees. He stated a meeting was held to discuss the fee increase. IT was further noted the HBA had no problem with it but that they did not want it to get out of hand. It was then noted the Committee felt the fees were in line and felt they should carry forward. Mr. Wells then recommended the FY08 fees to be accepted and approved. Mr. Swanson seconded the motion. A roll vote on the matter found Mr. Wells, Mr. Swanson, Mr. Coates, Mr. Darpel, Mr. Eilerman, Mr. France, Mr. Hadley, Ms. Hood, Mr. Tewes and Ms. Weldon in favor.

***Model Zoning Ordinance*** – No meeting held the sign ordinance is being worked on.

***Executive***-No meeting held.

*Subdivision Regulations Review* – No meeting held.

*Report from legal counsel* – Nothing to report.

*Announcements from Staff* – Mike Schwartz asked if anyone did not get their small area study on CD. He then asked who wanted a b/w copy and distributed those. He then noted there were three more informational meetings to be held. Ms. Weldon asked the Commissioners to make sure they attended.

*Correspondence* –None.

**New Business:**

There being nothing further to come before the Commission, a motion was then made by Mr. Swanson and seconded by Mr. Hadley to adjourn. All in favor. None opposed. The meeting then adjourned at 7:32 p.m.