

**KENTON COUNTY PLANNING COMMISSION  
REGULAR MEETING**

**Minutes**

Ms. Weldon, Chair, called the meeting to order at 6:15 PM on Thursday, April 3, 2008, 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	2008											
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Mark Barnett	Taylor Mill	X	X	X	Xx								
Barbara Carlin	Kenton Co	X	X	X	Xx								
Barry Coates	Covington	X	X	X	Xx								
James Cook	Kenton Co	X	X		Xx								
Paul Darpel	Edgewood	X		X	Xx								
Chuck Eilerman	Covington	X	X	X	Xx								
Tom France	Ludlow	X	X	X	Xx								
David Hilgefurd	Villa Hills	X	X	X	x								
Lynn Hood	Crestview Hills	X	X	X	Xx								
Kent Marcum	Fort Wright	X			Xx								
Brandon Raybourne	Elsmere	X	X	X	Xx								
Mark Rogge	Crescent Springs	-	-	X	x								
Phil Ryan	Park Hills		X	X	X								
Maura Snyder	Indepen	X	X	X	X								
Paul Swanson, Treasurer	Erlanger	X		X	Xx								
Joe Tewes	Bromley	X	X	X	Xx								
John Wells, Vice Chair	Fort Mitchell	X	X		Xx								
Alex Weldon, Chair	Covington		X	X	Xx								
Bernie Wessels	Crescent Springs	X	-	-	-	-	-	-	-	-	-	-	-
Gil Whitacre	Lakeside Park	X	X		X								

“X” denotes attendance at the regular meeting and “x” denotes attendance at the continuation meeting.

“\*” denotes arrival after roll call was taken.

“-“ denotes not on the planning commission.

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

**AGENDA:**

Ms. Weldon noted a request to table had been received regarding issues 1909R and 1910R for a period of up to six (6) months. She further noted a request to table had been received with regard to issue 1911R and a request that it be placed on the agenda for May. Mr. Eilerman made the motion to table. Ms. Carlin seconded the motion. A roll call vote on the matter found Mr. Eilerman, Ms. Carlin, Mr. Barnett, Mr. Coates, Mr. Cook, Mr. Darpel, Mr. France, Ms. Hood, Mr. Marcum, Mr. Raybourne, Mr. Ryan, Ms. Snyder, Mr. Tewes, Mr. Whitacre, Mr. Swanson and Ms. Weldon in favor.

**APPROVAL OF THE MINUTES:**

Mr. Tewes made a motion to approve the minutes from March. Mr. France seconded the motion. A roll call vote on the matter found Mr. Tewes, Mr. France, Mr. Barnett, Ms. Carlin, Mr. Coates, Mr. Darpel, Mr. Eilerman, Ms. Hood, Mr. Raybourne, Mr. Ryan, Ms. Snyder, Mr. Swanson and Ms. Weldon in favor. Mr. Cook, Mr. Marcum and Mr. Whitacre abstained. The motion carried.

**FINANCIAL REPORT:**

There were no questions or comments with regard to the financial report. A motion was made by Mr. Swanson to accept. Ms. Snyder 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.

**PUBLIC HEARINGS:**

**1906R**

**APPLICANT:** Terrace Park Townhomes, Ltd. per Richard Myers on behalf of Kevin and Stephanie Short

**LOCATION:** an approximate 7-acre area located at the terminus of Rays Lane in Covington

**REQUEST:** a proposed map amendment to the Covington County Zoning Ordinance changing the described area from RS-7.5 (a suburban detached single-family residential zone) to RU-2 (an urban detached and attached single-family residential zone); this issue was tabled at the Commission’s March 6<sup>th</sup> meeting.

Staff presentation and Staff recommendations presented by Mr. Andy Videkovich.

**NKAPC STAFF RECOMMENDATION**

To disapprove the proposed map amendment from RS-7.5 to RU-2.

**Comprehensive Plan Documentation:**

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

## Supporting Information/Bases For NKAPC Staff Recommendation:

1. The proposed map amendment is not consistent with Recommended Land Use Map of the *Comprehensive Plan Update 2006-2026*, which identifies the northern portion of the site in question as being a part of a larger area extending to the north of the site in question for Residential Development at a density ranging from 7.1 to 14.0 dwelling units per net acre, and PRDA.

The proposed map amendment will allow residential development at a density of up to 21.8 dwelling units per net acre in an area identified for Residential Development at a density ranging from 7.1 to 14.0 dwelling units per net acre. The proposed maximum allowable density of 21.8 dwelling units per net acre could result in approximately 150 dwelling units to be constructed on the site in question. The Comprehensive Plan's recommended maximum density of 7.1 to 14.0 dwelling units per net acre could result in approximately 49 to 97 dwelling units to be constructed on the site in question. The proposed RU-2 Zone could permit a maximum density of approximately 54% greater than what is recommended in the Comprehensive Plan.

Furthermore, any development of areas designated PRDA should be a type of use that is compatible with the recommended land use of adjacent areas, unless sound basis can be shown for other land use types. The recommended land use of the adjacent area is Residential Development at a density ranging from 7.1 to 14.0. There is not a sound basis presented that supports increasing the density of the site in question.

2. The proposed map amendment is not consistent with the Goals and Objectives contained within the Comprehensive Plan regarding Resources and Environment:

*To ensure the most efficient and reasonable utilization of the area's physical resources while ensuring that any short-term uses of man's environment will be to the long-range benefit of all.*

Constant effort should be made to ensure wise utilization or conservation of the area's resources to maximize advantages, simultaneously minimizing any detrimental effects such utilization may cause. Such efforts would encompass a broad range of concerns such as: identifying all environmentally sensitive areas and areas of critical concern; planning and scheduling the use or non- use of such areas; and also determining the use of, and planning for the restoration of, any land areas which might be damaged due to some resource extraction or temporary use. It should also encompass an effort to preserve, conserve, and enhance unusual man-made projects or natural features, which have some unique historical, architectural, or natural value. Effort should also be made to identify and plan for the stabilization of those areas which might be best retained in their rural-like character promoting their value as agricultural resources and/or adequate land reserves for the future.

The site in question has been identified as an environmentally sensitive area with moderate to high subsurface sensitivity because of its steep slopes, soil composition, and geology. It is inappropriate to change the zoning to allow a higher density without

knowing how the development will address the subsurface conditions on the site in question

3. The *Comprehensive Plan Update 2006-2026* provides for three Quality of Life Components – Capacity Planning, Contemporary Places, and Green Infrastructure. The Development Concepts that are contained within the comprehensive plan were developed with these three Quality of Life Components in mind. The proposed map amendment is not consistent with the following Environmental Development Concept which helps to implement the Capacity Planning and Green Infrastructure Quality of Life components:

*Land which is highly susceptible to hillside slippage and/or erosion should be limited and strictly controlled. In extreme cases such areas should not be developed*

Such a limitation on development would prevent hazardous conditions and also result in maintaining the environmental quality of the area by preserving open space.

A majority of the site in question is characterized by subsurface conditions that are highly sensitive. While this condition does not prevent development, it is inappropriate and inadvisable to consider a proposed development without the availability of further geotechnical information regarding the proposed development.

4. The proposed map amendment is not consistent with the following Residential Development Concepts and Physically Restricted Development Area Concepts which helps to implement the three Quality of Life Components:

*The density of development for undeveloped land should be based on considerations such as: (a) the density of adjacent developed areas, of which the undeveloped land would be a logical extension; (b) access to major transportation facilities; (c) the nature of adjacent activities; (d) the unique characteristics of the development site; and (e) residential development in rural areas should be designed to maintain existing rural character of open space and the appearance of low density.*

Such a concept would result in development which is compatible with surrounding land uses and which would not result in generating high volumes of traffic through low density areas.

*Areas which are landslide prone (slopes of 20% or greater and/or areas which contain known soil and/or geologic formation problems) should be preserved, or very rigidly controlled.*

Such a concept would prevent unnecessary construction problems that might consequently result in hazardous or dangerous conditions, and encourage certain areas to be maintained in their natural open state as an integral part of the landscape.

The proposed map amendment will allow residential development at a density of up to 21.8 dwelling units per net acre in an area identified for Residential Development at a density ranging from 7.1 to 14.0 dwelling units per net acre. It could also permit attached single-family dwellings in an area that is dominated by detached single-family residential

dwellings.

Furthermore, the site in question is identified as PRDA. The site in question is characterized by steep slopes with a ravine extending from Rays Lane through the center of the site in question. Without sufficient information indicating how grading and hillside slippage will be addressed, rezoning the site in question is inappropriate and inadvisable.

5. While the City of Covington has adopted Hillside Protection Regulations, changing the zoning on the site in question to permit a density of up to 21.8 dwelling units per net acre without a development plan or other means to determine the development's impact on the adjacent hillsides and the areas uphill and downhill from the site in question is inappropriate and inadvisable.

Mr. Richard E. Meyer, Mr. Eric Ratliffe and Mr. Jim Potts registered to speak in favor of the issue. Ms. Linda Eugenberg, Mr. Joe Gray, Ms. Sheila Gray, Mr. Fritz Kuelman, Mr. Carl D. Fuchs, Mr. Clarence Wigglesworth, Mr. Dan Stewart and Mr. Ryan Crisler registered to speak against the issue. No one registered to speak as a neutral party on the issue.

Mr. Meyer addressed the Commission and stated the upper portion of the site is already zoned RU-2 and all they are asking for is a continuation of the zone. He noted they are proposing 40 units and there has never been a mention of 114 units. He further noted they followed Staff's recommendations to the letter. He further stated they could go in tomorrow and build 40 units on the site tomorrow and not need a zone change. He additionally stated the request is for an extension of the existing zone which is consistent with the Comprehensive Plan. Mr. Meyer stated the remaining acreage is proposed to be left as green space and dedicated to the city. He further noted there is no evidence of slippage on the properties on Rays Lane and stated the grade of the proposed development is the same as Rays Lane as it is now. He noted the area is very attractive. He additionally stated the units will be for sale and not for rent and will be in the \$150,000 range. Mr. Meyer noted they met with the mayor over a week ago and cleared up any issues with him. He further stated they met with no opposition from his office in regard to this issue.

Mr. Ratliffe addressed the Commission and explained the graphics presented as proposed for the development. He stated the model is consistent with what has been built in the area. He noted he feels it would help the neighborhood and help the tax base of the city. He additionally noted the units are very attractive and are very easy to sell. Ms. Carlin then asked what they plan to do with the water runoff. Mr. Meyers stated they plan to do what is being done now and that is to use an existing 40 foot culvert that runs the length of Rays Lane.

Ms. Eugenberg addressed the Commission in opposition and stated her grandparents bought her home in 1922 and she has seen her share of runoff and slippage. She stated the Sanitation District has been working the past four days to deal with the back up caused by the last big rain. She stated at last month's meeting there were a couple people that live at the bottom of Rays Lane that went home to sandbag the back of their home to keep the water out. She stated they are tired of dealing with the water runoff and stated any number of units would cause the existing runoff to increase.

Mr. Gray addressed the Commission and stated the City of Covington rewrote the zoning back in 2006 with no input from Rays Lane residents and no public hearings being held. He stated there is no guarantee of tree retention under RU-2 zoning as opposed to what is there currently. He stated overlay mapping has not been completed and he feels time needs to be allotted to do that. He further stated the proposed zoning changes the density by 3.8 which is not consistent with the surrounding area. He stated the citizens have to rely on the Commission to protect their homes and asks the Commission to please deny the application.

Ms. Gray addressed the Commission and stated this zone change would irrevocably change the nature of the area. She stated the proposed zone change violates the Comprehensive Plan. She noted this would bisect rather than improve the green space in the area. She then showed a series of photos depicting what currently exists in the neighborhood vs. what could potentially be the outcome of the land in question as far as tree removal, destruction of watershed, and destruction of the community.

Mr. Kuelman addressed the Commission and stated the site is economically not feasible to develop as a single family development and the only way to make any money is to develop it as a cluster development. He stated with garages on the bottom the valley would need to be cut into and the bottom filled in and concreted over which would create more water runoff. He stated since the back of the homes would be the retaining wall he's not sure it would be able to hold the hill back.

Mr. Fuchs addressed the Commission and stated every neighbor he spoke to is opposed to the development. He stated removal of trees and shrubs would create more slippage of the hill. He stated he was surprised to learn how many homes in the area have slippage concerns. He additionally noted some homes in the area have had to have retaining walls built at a cost of \$35,000 and others have had to have their entire two story back of their home rebuilt due to slippage issues. He further stated other homes are so damaged from water runoff they cannot be sold and are now rentals.

Mr. Wigglesworth addressed the Commission and stated he has a neighbor that had to spend \$50,000 to repair his home due to slippage. He stated the developer is going to bite off more than he can chew and he would have to build retaining walls. He then stated the developer is essentially proposing building a street on top of a creek.

Mr. Stewart addressed the Commission and stated he agrees with the statements made by Mr. Wigglesworth. He further noted the pictures do not do justice.

Mr. Crisler addressed the Commission and stated he was reading in the paper about a development in Newport that was creating water runoff issues for the property owners below. He stated the developer was contacted and they said they did everything they were supposed to do. He strongly urged that the rezoning not be allowed.

Ms. Weldon then noted she was marking as an exhibit a petition signed with 95 signatures in opposition. She read into the record additionally letters in opposition which then marked as exhibits and made a part of the record, as well as emails and a letter from the neighborhood collaborative development all in opposition to the development.

Mr. Meyer addressed the Commission in opposition and stated they could build up to 97 units under the existing zoning. He further noted they are proposing building 40 units and commit the remaining land as a city park. He stated they feel they have presented a prudent plan based on over 20 years of development experience. He stated they've done everything they have been asked to do and they are asking for approval.

Mr. Ratliffe noted in rebuttal that they know what they are doing and they would not develop it if it was not cost effective.

Mr. Potts stated in rebuttal that they are proposing an amendment as to zoning and will then get the experts and engineers as to design once this initial hurdle is done.

Mr. Ryan stated it is difficult not having a Stage I Development Plan to view in relation to the plan. Mr. Meyer stated it is not conducive to develop something that won't work.

Mr. Gray addressed the Commission in rebuttal and stated concerns are inconsistency with the Comprehensive Plan, the plan is inconsistent with the surrounding zoning, the plan has already been recommended against by Staff, the City of Covington has passed hillside development restrictions, the existing water runoff issues and the fact that Rays Lane had to be rebuilt about five years ago. He also noted the developer stated this is the only proposed plan for this development but a different one was sent to one of the residents.

Mr. Eilerman commented that he is a bit bewildered that it takes a higher density request to get a lesser density cluster development. Mr. France stated that there are physically restricted development areas for a reason and this is one of them. Mr. Darpel stated he is sympathetic to the developer but stated the Commission needs to decide if it is or is not in compliance with the Comprehensive Plan. He stated he hasn't see enough to say it is better than what is there currently. He noted the Commission does not have to change the zoning just to allow for development. Mr. France then made a motion to deny the zone change based on Staff's report and that the development is not conducive to the physically restrictive development site as well as the testimony heard. Ms. Hood seconded the motion. A roll call vote on the matter found Mr. France, Ms. Hood, Mr. Barnett, Ms. Carlin, Mr. Coates, Mr. Darpel, Mr. Eilerman, Mr. Marcum, Mr. Ryan, Ms. Snyder, Mr. Tewes and Mr. Swanson in favor. Mr. Cook, Mr. Raybourne, Mr. Whitacre, Mr. Wells and Ms. Weldon voted against. The motion carried with a vote of 12-5.

**\*At this time (8:40 p.m.) a ten minute break was taken.**

#### **1914R**

**APPLICANT:** City of Fort Wright per Larry Klein, City Administrator  
**LOCATION:** N.A.  
**REQUEST:** proposed text amendments to the Fort Wright Zoning Ordinance modifying the use specifications, building envelope standards and parking, loading and unloading regulations within the TCFD (Town Center Form District) Zone.

Staff presentation and Staff recommendations presented by Ms. Melissa Jort-Conway.

#### **NKAPC STAFF RECOMMENDATION**

To approve the proposed text amendments to the Fort Wright Zoning Ordinance modifying the use specifications, building envelope standards and parking, loading and unloading regulations within the TCFD (Town Center Form District) 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 modifying the use specifications, building envelope standards and parking, loading and unloading regulations within the TCFD (Town Center Form District) Zone (see Attachment A) are allowed to be included within the text of the zoning ordinance as authorized by Kentucky Revised Statutes (KRS) 100.203 (1).
2. The proposed text amendment amending the use specification standards to require buildings which front onto a public street to contain retail or office uses on the ground floor is appropriate and reasonable. Currently, the TCFD Zone states “where the primary use of a building is residential, the ground floor of the building shall contain retail or office uses” which would require a commercial use regardless of whether it has frontage onto a public street. The proposed text amendment will permit buildings to contain only residential uses when they are located internal to a site as part of an overall building site area.
3. The proposed text amendment increasing the minimum allowable building footprint for one building per development tract from 15,000 to 30,000 square feet and increasing the maximum size of each individual tenant/occupant in a single-use structure from 30,000 square feet to 60,000 square feet is necessary and reasonable to allow one larger single use building/tenant on each building site area. The proposed text amendment provides additional flexibility while also maintaining consistency with the intent and purpose of the TCFD Zone to have “buildings scaled and massed appropriately together and set closer to the street and to each other, inviting pedestrians to walk from place to place, with mixed uses that will serve a multitude of purposes for both the resident and visitor”.
4. The proposed text amendment modifying the setbacks from street frontages and to allow front parking on development sites which contain steep hillsides (i.e. slopes exceeding 20%), subject to certain conditions, is reasonable and appropriate to allow sites which are limited by steep slopes to develop under the TCFD regulations and maximize the amount of building site area. While the intent of the TCFD Zone is to require parking to be located in the side or rear portions of a site, the proposed text amendment provides some additional flexibility while addressing the portions of the area along Madison Pike which are limited for development due to topographic conditions. The proposed text amendment is also appropriate by specifying certain conditions which must be met in such cases. The condition that only two (2) rows of parking (no more than 20% of the total allowable parking for the site) be permitted only when it can be demonstrated that slope conditions make provisions for adequate parking economically unreasonable along with screening requirements provides flexibility and allows each site to be evaluated on a case by case basis.

Mr. Larry Klein registered to speak in favor of the issue. No one registered to speak against or neutral.

Mr. Klein addressed the Commission and stated when the city adopted the Town Center Form District they knew they would have to make changes. He stated the city does support these changes and they knew some modifications would need to be made. He stated they are asking for approval.

Mr. Barnett asked about the screening aspect. Mr. Klein stated it would not completely block the parking lot but would deflect the headlights and such. Mr. Barnett then made the motion to approve based on Staff's report and the testimony received. Mr. Whitacre seconded the motion. A roll call vote on the matter found Mr. Barnett, Mr. Whitacre, Ms. Carlin, Mr. Coates, Mr. Cook, Mr. Darpel, Mr. Eilerman Mr. France, Ms. Hood, Mr. Marcum, Mr. Raybourne, Mr. Ryan, Ms. Snyder, Mr. Tewes, Mr. Whitacre, Mr. Swanson, Mr. Wells and Ms. Weldon in favor. The motion carried unanimously.

A motion to recess until April 8, 2008 was made by Mr. Tewes and seconded by Ms. Snyder.

**CONTINUATION OF THE  
KENTON COUNTY PLANNING COMMISSION  
REGULAR MEETING**

**Minutes**

Ms. Weldon, Chair, called the meeting to order at 6:15 PM on Tuesday, April 8, 2008, 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	2008											
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Mark Barnett	Taylor Mill	X	X	X	Xx								
Barbara Carlin	Kenton Co	X	X	X	Xx								
Barry Coates	Covington	X	X	X	Xx								
James Cook	Kenton Co	X	X		Xx								
Paul Darpel	Edgewood	X		X	Xx								
Chuck Eilerman	Covington	X	X	X	Xx								
Tom France	Ludlow	X	X	X	Xx								
David Hilgefurd	Villa Hills	X	X	X	x								
Lynn Hood	Crestview Hills	X	X	X	Xx								
Kent Marcum	Fort Wright	X			Xx								
Brandon Raybourne	Elsmere	X	X	X	Xx								
Mark Rogge	Crescent Springs	-	-	X	x								
Phil Ryan	Park Hills		X	X	X								
Maura Snyder	Indepen	X	X	X	X								

Paul Swanson, Treasurer	Erlanger	X		X	Xx								
Joe Tewes	Bromley	X	X	X	Xx								
John Wells, Vice Chair	Fort Mitchell	X	X		Xx								
Alex Weldon, Chair	Covington		X	X	Xx								
Bernie Wessels	Crescent Springs	X	-	-	-	-	-	-	-	-	-	-	-
Gil Whitacre	Lakeside Park	X	X		X								

“X” denotes attendance at the regular meeting and “x” denotes attendance at the continuation meeting.

“\*” denotes arrival after roll call was taken.

“-“ denotes not on the planning commission.

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

### **1912R**

**APPLICANT:** City of Erlanger, per Mark Stewart, Codes Administrator  
**LOCATION:** an approximate 3.1-acre area located along the southeast side of Home Street, extending between Commonwealth Avenue and Bartlett Avenue, in Erlanger  
**REQUEST:** a proposed map amendment to the Erlanger Zoning Ordinance changing the described area from NC (RP) (a neighborhood commercial zone with a renaissance protection overlay zone) to R-1F (a single-family residential zone).

Staff presentation and Staff recommendations presented by Mr. Michael Schwartz.

### **NKAPC STAFF RECOMMENDATION**

To approve the proposed map amendment from NC (RP) to R-1F.

### **Comprehensive Plan Documentation:**

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

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

1. The existing NC (RP) Zone is inappropriate and the proposed R-1F Zone is appropriate. The site in question is currently occupied by two church facilities that are nonconforming since they were there prior to the implementation of zoning in the city. Additionally, these two churches are expected to continue throughout the planning period.

As a nonconforming use, they are not allowed to expand beyond their existing area and scope. Within the city’s zoning ordinance, churches are identified as conditional uses

within the city's residential zones. In order for these two churches to enlarge their buildings or expand their services to the community, they would have to be located within a residential zone.

No one registered to speak for, against or neutral on the issue. Mr. France then made a motion to approve based on Staff's report. Mr. Swanson seconded the motion. A roll call vote on the motion found Mr. France, Mr. Swanson, Mr. Barnett, Ms. Carlin, Mr. Coates, Mr. Cook, Mr. Darpel, Mr. Eilerman, Mr. Hilgeford, Ms. Hood, Mr. Marcum, Mr. Raybourne, Mr. Rogge, Mr. Tewes, Mr. Wells and Ms. Weldon in favor. The motion carried unanimously.

## **1916R**

**APPLICANT:** City of Independence, per Patricia H. Taney  
**REQUEST:** a proposed text amendment to the Independence Zoning Ordinance adding service stations, with certain restrictions, to the list of the conditional uses within the R-1D (a single-family residential) Zone

Staff presentation and Staff recommendations presented by Mr. Andy Videkovich.

## **NKAPC STAFF RECOMMENDATION**

Disapproval of the proposed text amendment.

### **Comprehensive Plan Documentation:**

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

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

1. The proposed text amendment adding service stations, with certain restrictions, to the list of the conditional uses within the R-1D (a single-family residential) Zone is not consistent with the definition of a conditional use, as interpreted by the NKAPC staff. Kentucky Revised Statute (KRS) 100.111 (6) defines 'Conditional Use' as follows:

“Conditional Use means 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, care centers, and recreational facilities. The addition of service stations to the list of conditional uses within the R-1D Zone would allow such uses to be located in areas identified for single-family residential development, and thus represents the provision of an incompatible land use. Additionally, service stations are not an essential use within the R-1D Zone and would not promote the public health, safety, and welfare.

2. The proposed text amendment adding service stations, with certain restrictions, to the list of the conditional uses within the R-1D (a single-family residential) Zone is an

unreasonable attempt to circumvent the map amendment process. If an area is appropriate for a commercial activity, such as a service station, the property owner should submit a map amendment application to rezone the property.

Mr. Jim Berling registered to speak in favor of the issue. No one registered to speak against or neutral on the issue.

Mr. Berling addressed the Commission and stated Staff did a great job of explaining the issue. He stated they worked with the city on the issue and have no problems with the conditions placed by Staff.

Mr. Darpel then made the motion to approve based on Staff's report and the additional comments listed. Mr. Wells seconded the motion. A roll call vote on the matter found Mr. Darpel, Mr. Wells, Mr. Barnett, Ms. Carlin, Mr. Coates, Mr. Cook, Mr. Eilerman, Mr. France, Mr. Hilgeford, Ms. Hood, Mr. Marcum, Mr. Raybourne, Mr. Rogge, Mr. Tewes, Mr. Swanson and Ms. Weldon in favor. The motion carried unanimously.

#### **1916R**

**APPLICANT:** City of Independence, per Patricia H. Taney  
**REQUEST:** a proposed text amendment to the Independence Zoning Ordinance adding service stations, with certain restrictions, to the list of the conditional uses within the R-1D (a single-family residential) Zone

Staff presentations and Staff recommendations by Mr. Michael Schwartz.

#### **NKAPC STAFF RECOMMENDATION**

Disapproval of the proposed text amendment.

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

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

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

1. The proposed text amendment adding service stations, with certain restrictions, to the list of the conditional uses within the R-1D (a single-family residential) Zone is not consistent with the definition of a conditional use, as interpreted by the NKAPC staff. Kentucky Revised Statute (KRS) 100.111 (6) defines 'Conditional Use' as follows:

“Conditional Use means 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, care centers, and recreational facilities. The addition of

service stations to the list of conditional uses within the R-1D Zone would allow such uses to be located in areas identified for single-family residential development, and thus represents the provision of an incompatible land use. Additionally, service stations are not an essential use within the R-1D Zone and would not promote the public health, safety, and welfare.

2. The proposed text amendment adding service stations, with certain restrictions, to the list of the conditional uses within the R-1D (a single-family residential) Zone is an unreasonable attempt to circumvent the map amendment process. If an area is appropriate for a commercial activity, such as a service station, the property owner should submit a map amendment application to rezone the property.

Mr. Mike Martinelly registered to speak in favor of the issue. Mr. Bob Morehead and Ms. Kathy Donahue registered to speak against the issue. No one registered as a neutral party.

Mr. Martinelly addressed the Commission and stated they operate the Sunoco at the corner of Turkeyfoot and Richardson Road. He stated with all the new businesses in the area along with the newly reconfigured road their business now looks bad. He noted they are not trying to circumvent any map amendment; they would just like to improve their property.

Mr. Morehead addressed the Commission and stated he lives a stone's throw away from this gas station. He stated he would like to speak out against putting gas stations in residential areas. He noted there are plenty of gas stations along the way and he doesn't feel there is a need to put gas stations every couple hundred feet.

Ms. Donahue addressed the Commission and stated she came to the meeting because of what she interpreted the amendment to mean. She stated a gas station could then go in a residential area without the property owner knowing if this is passed. Ms. Weldon then stated they would actually have to hold a public hearing. Ms. Donahue stated she didn't know that but felt it could be done another way to remodel the building.

Mr. Martinelly stated in rebuttal that he understands there will be restrictions with the text amendment. He stated they aren't looking to rebuild but they would just like to remodel and make their business look better for the community.

Ms. Carlin asked if there was a way for the property to remodel his building. Staff stated remodeling is allowed but adding on is not in this zone. Mr. Hilgeford then made a motion to disapprove based on Staff's report. Mr. Darpel seconded the motion. A roll call vote on the motion found Mr. Hilgeford, Mr. Darpel, Mr. Barnett, Ms. Carlin, Mr. Coates, Mr. Cook, Mr. Eilerman, Mr. France, Ms. Hood, Mr. Marcum, Mr. Raybourne, Mr. Rogge, Mr. Tewes, Mr. Swanson, Mr. Wells and Ms. Weldon in favor. The motion carried unanimously.

## **1917R**

**APPLICANT:** City of Covington, per Frank Warnock

**REQUEST:** proposed text amendments to the Covington Zoning Ordinance:

- (1) modifying the purpose statement;
- (2) prohibiting unenclosed off-street parking spaces from being located within required front, side, or rear yard setbacks, in residential zones;

- (3) modifying the notification requirements for conditional use permits;
- (4) modifying the basis for approving conditional use permits;
- (5) modifying the applicability, application, and review and decision making criteria of Certificates of Appropriateness;
- (6) adding coffee shops to the definition of neighborhood retail sales and service uses; and
- (7) provide for a 90-day moratorium on the issuance of any building permits, grading of land, construction of other structures, utilities, new buildings, additions to existing buildings, establishment of curb cuts and access thoroughfares and driveways, staying development plan review, and demolition of existing buildings (except the demolition of buildings that pose an immediate threat to public health and safety or those that have been condemned) within areas of the City of Covington that have hillside slopes of 20 percent or greater.

Staff presentation and Staff recommendations presented by Mr. Michael Schwartz.

### **NKAPC STAFF RECOMMENDATION**

RECOMMENDATION A: To disapprove the proposed text amendment modifying the purpose statement.

RECOMMENDATION B: To disapprove the proposed text amendment prohibiting unenclosed off-street parking spaces from being located within required front, side, or rear yard setbacks, in residential zones.

RECOMMENDATION C: To approve the proposed text amendment modifying the notification requirements for conditional use permits, but only subject to the condition that the distance be reduced to 200 feet.

RECOMMENDATION D: To approve the proposed text amendment modifying the basis for approving conditional use permits.

RECOMMENDATION E: to approve the proposed text amendment modifying the applicability, application, and review and decision making criteria of Certificates of Appropriateness.

RECOMMENDATION F: To approve the proposed text amendment adding coffee shops to the definition of neighborhood retail sales and service uses.

### **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 purpose statement is not necessary. The current regulation provides for the implementation of policies and goals contained within officially adopted plans. This statement automatically includes the city's Strategic Plan.
2. The proposed text amendment modifying the purpose statement is not appropriate. Once a list is created, everything that is not contained within that list is excluded. The proposed text amendment could result in other officially adopted plans not being part of this purpose statement.

#### RECOMMENDATION B:

1. the proposed text amendment prohibiting unenclosed off-street parking spaces from being located within required front, side, or rear yard setbacks, in residential zones is inappropriate and unreasonable. Every driveway serving a residential dwelling is located within a required front, side, or rear yard setback. It is inappropriate and unreasonable to prohibit parking on these driveways.

#### RECOMMENDATION C:

1. The proposed text amendment modifying the notification requirements for conditional use permits 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 notification requirements for conditional use permits, except as noted under condition, is reasonable and appropriate. The additional notification requirements will provide for a greater number of property owners and affected persons to be aware of an upcoming board of adjustment meeting. This additional notification could result in greater public participation at the board of adjustment meetings.
3. The current regulations require written notice to be given at least 14 days in advance of the public hearing to the owner of every parcel of property adjoining the property for which the conditional-use permit has been requested. The proposed text amendment would require written notice to be given at least 14 days in advance of the public hearing to the owner of every parcel of property within 100 yards (300 feet) of the property for which the conditional-use permit has been requested. This 300 foot distance requirement could result in eight (8) times as many property owners being notified. In the dense urban core of the city, this could result in over 100 notification letters being sent out. A more reasonable distance requirement is 200 feet. This would result in about five (5) times as many property owners being notified.

#### RECOMMENDATION D:

1. The proposed text amendment modifying the basis for approving conditional use permits 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 basis for approving conditional use permits is reasonable and appropriate. Since the Covington Board of Adjustment only has

jurisdiction for those issues within the city's legislative boundaries, it is reasonable and appropriate to have the board's scope of review limited to the neighborhood in which the proposed conditional use would be located.

#### RECOMMENDATION E:

1. The proposed text amendment modifying the applicability, application, and review and decision making criteria of Certificates of Appropriateness is allowed to be included within the text of the zoning ordinance as authorized by Kentucky Revised Statute (KRS) 100.203(1). 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 applicability, application, and review and decision making criteria of Certificates of Appropriateness is reasonable and appropriate in that it provides clarity in the administration of the regulations.

#### RECOMMENDATION F:

1. The proposed text amendment adding coffee shops to the definition of neighborhood retail sales and service uses is allowed to be included within the text of the zoning ordinance as authorized by Kentucky Revised Statute (KRS) 100.203(1). is allowed to be included within the text of the zoning ordinance as authorized by Kentucky Revised Statute (KRS) 100.203(1).
2. The proposed text amendment adding coffee shops to the definition of neighborhood retail sales and service uses is reasonable and appropriate in that a coffee shop is similar in nature, scope, and scale with other uses listed as part of this definition. Additionally, a coffee shop draws its clients from a local neighborhood market.

No one registered to speak for, against or neutral on the issue.

Mr. Eilerman made the motion to disapprove Part I of the application based on Staff's report. Mr. Tewes seconded the motion. A roll call vote on the matter found Mr. Eilerman, Mr. Tewes, Mr. Barnett, Ms. Carlin, Mr. Coates, Mr. Cook, Mr. Darpel, Mr. France, Mr. Hilgefurd, Ms. Hood, Mr. Marcum, Mr. Raybourne, Mr. Rogge, Mr. Swanson, Mr. Wells and Ms. Weldon in favor. The motion carried unanimously. Mr. Eilerman then made a motion to deny Part II based on Staff recommendations. Ms. Hood seconded the motion. Discussion was had as to the distance for notification as was conditioned by Staff. A roll call vote on the matter found Mr. Eilerman, Ms. Hood, Mr. Barnett, Ms. Carlin, Mr. Coates, Mr. Cook, Mr. Darpel, Mr. France, Mr. Hilgefurd, Mr. Marcum, Mr. Raybourne, Mr. Rogge, Mr. Swanson, Mr. Tewes, Mr. Wells and Ms. Weldon in favor. The motion carried unanimously. Mr. Eilerman then made a motion to approve Part III subject to the conditions by Staff and based on Staff's report. Mr. Barnett seconded the motion. A roll call vote on the matter found Mr. Eilerman, Mr. Barnett, Ms. Carlin, Mr. Coates, Mr. Cook, Mr. France, Mr. Hilgefurd, Ms. Hood, Mr. Marcum, Mr. Raybourne, Mr. Rogge, Mr. Swanson, Mr. Tewes, Mr. Wells and Ms. Weldon in favor. Mr. Darpel voted against. The motion carried with a vote of 15-1. Mr. Eilerman then made the motion to approve Part IV based on Staff's recommendations. Mr. France seconded the motion. A roll call vote on the motion found Mr. Eilerman, Mr. France, Mr. Barnett, Ms. Carlin, Mr. Coates, Mr. Cook, Mr.

Darpel, Ms. Hood, Mr. Marcum, Mr. Raybourne, Mr. Rogge, Mr. Swanson, Mr. Tewes, Mr. Wells and Ms. Weldon in favor. Mr. Hilgefurd voted against. The motion carried with a vote of 15-1. Much discussion was had regarding significant and contributing structures. Following the discussion Mr. Eilerman made the motion to approve Part V with the change in wording not to remove “significant” but to include the word “or” in the language. Mr. Barnett seconded the motion. A roll call vote on the matter found Mr. Eilerman, Mr. Barnett, Ms. Carlin, Mr. Coates, Mr. Cook, Mr. France, Mr. Hilgefurd, Ms. Hood, Mr. Marcum, Mr. Raybourne, Mr. Rogge, Mr. Swanson, Mr. Tewes and Mr. Wells in favor. Mr. Darpel and Ms. Weldon voted against. The motion carried with a vote of 14-2. Mr. Darpel made the motion to approve Part VI for the reasons stated by Staff. Mr. Cook seconded the motion. A roll call vote on the matter found Mr. Darpel, Mr. Cook, Mr. Barnett, Ms. Carlin, Mr. Coates, Mr. Eilerman, Mr. France, Mr. Hilgefurd, Ms. Hood, Mr. Marcum, Mr. Raybourne, Mr. Rogge, Mr. Tewes, Mr. Swanson, Mr. Wells and Ms. Weldon in favor. The motion carried unanimously. Mr. Schwartz stated as a result of the passing of the hillside regulations the city has withdrawn Part VII of the issue.

### **1918R**

**APPLICANT:** White Castle Kentucky, LLC, per Craig Eilers, on behalf of Independence Realty

**LOCATION:** an approximate 2-acre area located along the east side of new State Route 17, approximately 900 feet north of Harris Pike in Independence.

**REQUEST:** review of a proposed amended Stage I Development Plan for the described area which is zoned NC (a neighborhood commercial zone)

Staff presentation and Staff recommendations presented by Mr. Andy Videkovich.

### **NKAPC STAFF RECOMMENDATION**

To approve the amended Stage I Development Plan.

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

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

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

1. The proposed amended Stage I Development Plan meets the minimum requirements of the Independence Zoning Ordinance and the Kenton County Subdivision Regulations, except as noted under Additional Information items #2 and #3.

While compliance with these items is required for building and zoning permits to be issued, they will not significantly alter the design and layout of the amended Stage I Development Plan.

#### **Additional Information**

1. While the NKAPC staff is recommending approval of the amended Stage I Development Plan, there are conflicts between the existing zoning and the *Independence Community Small Area Study*, which identifies the site in question for Mixed Use. However, since the zoning on the site in question has already been approved, the NKAPC review of this

issue is based only on whether the amended Stage I Development Plan meets the regulations of the current zoning regulations.

2. The proposed amended Stage I Development Plan meets the minimum requirements of the Independence Zoning Ordinance, except for the following:
  - a. Section 9.7, Table 9.1, states that when any vehicular use area that abuts a public or private right-of-way, a perimeter landscaped screening easement along with five (5) percent interior landscape area is required. Insufficient information has been submitted to determine compliance with this regulation.
  - b. Section 10.14, D., 1., states that the minimum lot area within the NC Zone is 10,000 square feet. The submitted amended Stage I Development Plan indicates that a residual lot will be created on the south side of the site in question that will be 6,948 square feet. This does not meet the minimum lot size requirements of the NC Zone.
  - c. Section 10.14, E., 3., states that no lighting shall be permitted which would glare from this zone onto any street, or into any residential zone. Insufficient information has been submitted to determine compliance with this regulation.
  - d. Section 11.1, F., states that all new off-street parking areas shall be paved with asphalt concrete or Portland Cement concrete and shall be designed and constructed in accordance with applicable standards as identified in Appendix A. Insufficient information has been submitted to determine compliance with this regulation.
  - e. Insufficient information has been submitted to determine compliance with Article XIV, Sign Regulations.

The development plan will have to be amended to meet all of the requirements of the Independence Zoning Ordinance.

3. The Kenton County Subdivision Regulations require that sidewalks be provided as part of any new development. There is insufficient information provided to determine whether sidewalks will be provided along new KY 17, and also whether any internal sidewalks will connect to any proposed sidewalks along new KY 17. The development plan will have to be amended to meet the requirements of the Kenton County Subdivision Regulations.

Mr. Craig Eilers registered to speak in favor of the issue. No one registered to speak against or neutral.

Mr. Eilers addressed the Commission and stated the original proposal was to subdivide the parcel into three lots. He stated they will comply with Staff's regulations regarding the buffer of the property. He noted with regard to the residual lot, White Castle will work with the existing property owner to absorb that. He noted they will comply with lighting regulations and all off-street parking areas will be concrete. He stated they have not yet decided on signage. Ms. Weldon then noted the plan was marked as an exhibit and made a part of the record. Mr. Eilers

then noted Staff did an excellent job of presenting the application. He further noted White Castle is trying to get away from the white enamel of old. He noted they feel it is a good looking building. Mr. Hilgeford then made the motion to approve based on the recommendations of Staff and the additional comments of Staff. Mr. Barnett seconded the motion. A roll call vote on the motion found Mr. Hilgeford, Mr. Barnett, Ms. Carlin, Mr. Coates, Mr. Cook, Mr. Darpel, Mr. Eilerman, Mr. France, Ms. Hood, Mr. Marcum,, Mr. Raybourne, Mr. Rogge, Mr. Tewes, Mr. Swanson, Mr. Wells and Ms. Weldon in favor. The motion carried unanimously.

**Old and Unfinished Business:** None.

**Reports from Committees:**

*Subdivision Regulations Review* – No meeting held. It was noted they are working on a list of items to review.

*By-Laws* – Mr. Wells noted there will be a meeting next Thursday at 5:30 p.m.

*Model Zoning Ordinance* – Mr. Schwartz stated the three informational meetings were held regarding sign regulations. He stated there are no major comments that came out of the meetings. He noted good information was gathered and they are reviewing same. He stated Staff has evaluated the entire text and they will be reviewing those regulations and preparing a report.

*Executive*- No meeting held.

*Report from legal counsel* – Mr. Smith just comments on the additional information comments on issues. He stated they were going to be more of these coming up. Staff mentioned the multimedia case with regard to the signage issue and noted the courts essentially ruled in favor of the cities in that matter.

*Announcements from Staff* – No report.

*Correspondence* – None.

**New Business:** - None.

**Public Comments:** None.

There being nothing further to come before the Commission, Mr. France made a motion to adjourn. Ms. Hood seconded the motion. All in favor. None opposed. The meeting adjourned at 8:05 p.m.

APPROVED:

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Chair

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Date