

**KENTON COUNTY PLANNING COMMISSION  
REGULAR MEETING**

**Minutes**

Ms. Weldon, Chair, called the meeting to order at 6:15 PM on Thursday, May 1, 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	X							
Barbara Carlin	Kenton Co	X	X	X	Xx	X							
Barry Coates	Covington	X	X	X	Xx	X							
James Cook	Kenton Co	X	X		Xx	X							
Paul Darpel	Edgewood	X		X	Xx								
Chuck Eilerman	Covington	X	X	X	Xx	X							
Tom France	Ludlow	X	X	X	Xx	X							
David Hilgefurd	Villa Hills	X	X	X	x	X							
Lynn Hood	Crestview Hills	X	X	X	Xx	X							
Kent Marcum	Fort Wright	X			Xx	X							
Brandon Raybourne	Elsmere	X	X	X	Xx	X							
Mark Rogge	Crescent Springs	-	-	X	x	X							
Phil Ryan	Park Hills		X	X	X	X							
Maura Snyder	Indepen	X	X	X	X	X							
Paul Swanson, Treasurer	Erlanger	X		X	Xx	X							
Joe Tewes	Bromley	X	X	X	Xx	X							
John Wells, Vice Chair	Fort Mitchell	X	X		Xx								
Alex Weldon, Chair	Covington		X	X	Xx	X							
Bernie Wessels	Crescent Springs	X	-	-	-	-	-	-	-	-	-	-	-
Gil Whitacre	Lakeside Park	X	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 Scott Hiles, Deputy Director for Infrastructure Planning.

**AGENDA:** Ms. Weldon noted a letter had been received regarding issue 1911R requesting a withdrawal of the issue from the agenda. She also noted a letter was received regarding issue 1920R requesting a tabling of the issue until the next month's meeting. A motion was made by Mr. Hilgefurd to table the issue. Mr. Ryan seconded the motion. A roll call vote on the matter found all in favor.

**APPROVAL OF THE MINUTES:**

Mr. Hilgefurd made a motion to accept the minutes from April 3, 2008. Mr. Swanson seconded the motion. A roll call vote on the matter found Mr. Hilgefurd, Mr. Swanson, Mr. Barnett, Ms. Carlin, Mr. Coates, Mr. Cook, Mr. Eilerman, Mr. France, Ms. Hood, Mr. Marcum, Mr. Raybourne, Mr. Ryan, Ms. Snyder, Mr. Whitacre, Mr. Swanson and Ms. Weldon in favor. Mr. Rogge abstained. The motion carried. A motion was made by Mr. Hilgefurd to accept the minutes from April 8, 2008. Mr. Swanson seconded the motion. A roll call vote on the matter found Mr. Hilgefurd, Mr. Swanson, Mr. Barnett, Ms. Carlin, Mr. Coates, Mr. Cook, Mr. Eilerman, Mr. France, Mr. Raybourne, Ms. Hood, Mr. Tewes, Mr. Rogge, Mr. Marcum, Mr. Whitacre and Ms. Weldon in favor. Mr. Ryan and Ms. Snyder 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. Mr. Eilerman 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:**

**1919R**

**APPLICANT:** One Eleven Engineering and Surveying, PLLC, per James J. Bertram, on behalf of Neyer Properties, Inc.  
**LOCATION:** an approximate 24.4-acre area located along the south side of McCullum Pike, at its intersection with new KY 17, in Independence  
**REQUEST:** a proposed map amendment to the Independence Zoning Ordinance changing the described area from R-1C (a single family residential zone) to NSC (a neighborhood shopping center zone)

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

**NKAPC STAFF RECOMMENDATION**

To disapprove the proposed map amendments from R-1C to NSC.

**Comprehensive Plan Documentation:**

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

## Supporting Information/Bases For NKAPC Staff Recommendation:

1. The Recommended Land Use Map of the *Comprehensive Plan Update 2006-2026* identifies the site in question, and the surrounding area as Small Area Study. This designation refers to the *Independence Community Small Area Study* which has been adopted in its entirety as part of the Comprehensive Plan and therefore part of the basis upon which future development decisions are based. The proposed map amendment is not consistent with the Recommended Land Use Map as identified within the *Independence Community Small Area Study* as the “McCullum Pike/New 17 Area Concept”. This area is recommended to act as a gateway and connection to “historic downtown” of Independence. The area of the site in question is recommended for the following uses:
  1. Mixed Use: This is a recommended land use category for transition of commercial category to residential uses. The orientation and layout of mixed use development should present a balanced proportion of commercial, office, and residential activity. Mixed use development will offer opportunities to create live/work nodes within the city. Horizontal mixed uses are recommended in most of the study area. A horizontal mixed use occupies larger land area and various uses are incorporated in low rise buildings, maybe not more than 2-3 stories. While retail/commercial uses occupy the first floor, the upper floor/s are occupied by either residential units and/or professional office spaces. Parking spaces for this type of uses are clustered together in a surface parking lot.
  2. High Density Residential (Multi-Family): High density residential land uses are located adjacent to or with convenient access to arterial roads that can accommodate the higher traffic generated and avoid the need for this traffic to pass through areas of lower density residential land uses. Residential density within these areas should be within the range of 7.1 to 30.0 dwelling units per net acre. Development within this range requires design sensitive to adjoining land uses (i.e. buffering, connectivity, etc.)
  3. Conservation Development (Single Family-High Density): Areas identified within this land use category are located near nodes planned for mixed uses and/or commercial land use and arterial roads. The purpose of higher density within these areas is to help create the synergy of population needed to be supportive of nearby commercial land uses. Because of these factors, residential densities within these areas can be increased up to 30 percent above the density of the underlying residential zone. This type of single family development is recommended inside the Madison Pike (KY 17) and “new” KY 17 to cater to the increased growth as reflected by the market study. Preservation of natural resources is recommended with clustering techniques.

The use of Conservation-type development was recommended in the plan as one method to enable property owners to develop land and provide additional housing while simultaneously ensuring the integrity of the rural/natural landscape within the study area.

The proposed map amendment does not meet the intent of the “McCullum Pike/New 17 Area” concept which is identified as a mixed use gateway into downtown Independence. This area is recommended to serve as a transition area from the current medium and low density residential land use to mixed use and higher density residential uses. Rather than functioning as a gateway into and out of the city with transitional residential and mixed uses, the proposed map amendment would serve to draw people away from the commercial downtown Independence and the city center. In addition, the amount of traffic generated by this development that would concentrate at this location has the potential to adversely affect the capacity of the surrounding roadway system, including a significant reduction of the additional capacity provided by the recently completed new KY 17.

Secondly, the submitted development identifies commercial uses along the south side of McCullum Pike within an area recommended for high density residential (multi-family) development. The proposed development, with over 150,000 square feet of retail space, will significantly alter the residential character of the area immediately south of the site in question by disrupting views, noise and lighting levels and greatly increasing the amount of traffic on existing roadways and new KY 17.

2. The proposed map amendment is not consistent with the recommendations contained within the market analysis section of the *Independence Community Small Area Study*. The market analysis recommended the following:

The city must focus on facilitating reuse and redevelopment of functionally obsolete retail, and other space in the city while urban growth is in progress. Otherwise, new retail venues will emerge on the landscape in the city, or in close proximity to the city, thus serving the retail demand of the population and households in Independence. Existing locations could languish in the marketplace because these new retail locations, inside and outside the city, adequately serve the retail market and eliminate the need to use rejuvenated and/or redeveloped space in the city.

A projection of 172,482 square feet of new retail space would likely reduce the trading area’s competitive market share by approximately one half of its relative contribution to retail expenditure potential in the future. This may be a “safe cap” on retail growth for the long term, but there will be a great deal of pressure in the short run to exceed this limit to meet current consumer demand within the context of current, competitive venues on the landscape.

The proposed map amendment proposes to add 172,482 square feet of retail space. This would comprise the entire projected amount of new retail recommended for the city. Staff performed a GIS analysis of the current supply of vacant commercial land in the area of the city known as the “South Gateway Area Concept” within the *Independence Community Small Area Study*. The results found that there is currently a supply of approximately 49 acres of land available for commercial development. A general design recommendation for this area suggests that the South Gateway Area should be utilized to full potential before large-scale commercial establishments explore other areas for location within the study area.

3. There have not been any major changes of an economic, physical, or social nature within the vicinity of the area that were not anticipated in the adopted comprehensive plan to warrant the proposed map amendment.
4. Due to the scale of the submitted development plan, an accurate review against the requirements of the Independence Zoning Ordinance could not be done. However, enough information was submitted to determine the following deficiencies:
  - a. Section 9.17, E. requires a minimum ten (10) foot wide planting strip to be provided between any commercial use and any property located in a residential zone. The submitted development plan indicates a five (5) foot wide planting strip along a portion of the south property line of the site in question.
  - b. Section 9.17, E. requires a minimum of ten (10) percent of the yard be landscaped where any commercial use adjoins a public right-of-way. It does not appear that there is sufficient landscaping in front of the proposed larger retail building to meet this requirement.
  - c. Section 10.15, C., 2. identifies service stations as a conditional use within the NSC Zone. The submitted development plan indicates the provision for a fueling center. Insufficient information has been submitted to determine if the Independence Board of Adjustment has issued a conditional use permit for this activity on the site in question.
  - d. Section 11.3, F., 2., b. requires a minimum access point spacing of 600 feet when access is to be provided onto a multi-lane collector street. The submitted development plan indicates that there will be an approximate 250 foot spacing between curb cuts onto McCullum Pike.

Compliance with these requirements could have a significant effect on the design of the site in question.

5. The Kenton County Subdivision Regulations require sidewalks to be installed along all streets. The submitted development plan does not indicate the provision of sidewalks along McCullum Pike.

Mr. Tim Theissen, Mr. Jim Bertram and Mr. Pete Mallow registered to speak in favor of the issue. Mr. Don Nienaber, Ms. Kathy Donahue, Mr. Steve Moser. Ms. Lorna Harold, Mr. Lancaster, Mr. Bill, Ms. Baum, Ms. Watts, Ms. Watson, Ms. Miller, Mr. Penman, Ms. Kabel, Mr. Hartwein, and Ms. Hoffstedder. Ms. Franzen registered to speak as a neutral party.

Mr. Theissen addressed the Commission and submitted a handout as well as a traffic study on the matter. Ms. Weldon then marked the document as an exhibit on the issue. He stated Neyer has been around for many years and has an extensive number of projects in Cincinnati. He noted they are very respected in the area. He additionally stated they have been working on this project and obtaining the properties for years and a lot of work has gone into it. He stated this site previously came in as a 100% commercial development but noted the city had more of a mixed use plan, including residential development. He stated there are issues with the north side of the development due to an existing cemetery and problems arriving in dealing with that. He stated

they have decided to go ahead with the development of the south side rather than wait for the north side issues to be resolved. Mr. Theissen noted there are no sites at the Independence Towne Centre big enough for this development. He further noted there is no site currently in Independence that can handle a Target type development. He stated there is an incredible need for this kind of development in Independence. Mr. Theissen noted the market study done by the city shows Independence is significantly underserved in retail and personal services. He stated the study shows a robust increase in the population. He additionally noted the site plan shows what type of buffering they intend to do and will do whatever is necessary. He stated it will be a top quality development unlike others commonly seen in the area. He noted the types of uses would be Kohls, Target, Bed, Bath and Beyond, Dick's, etc., but he noted that there are no commitments by these particular retailers at this time. He stated this is an opportunity for the community to have a development of this size and stated it is a much needed development for the city as well as the type of development the city needs.

Mr. Mallow addressed the Commission and stated this is the opportunity now to move forward with the development and have the property owners they have been working with over the years to give them some idea of when this development will happen. Ms. Weldon asked what guarantee they have to ensure that the residential side will match up with the small area study. She further noted there is nothing in front of the Commission that says exactly what will go on down the road with that portion. Mr. Hilgefjord asked if there has been any input by the city. Mr. Theissen stated that the developer has been working with the city and has been in communications with them. Ms. Hood asked what kind of feedback they are getting from the community in regard to the issue. She additionally noted people move to Independence to get away from big box type development. Mr. Theissen then noted people move there because it's a desirable place and then they realize how far they have to drive to get to retail development. Mr. Bertram noted he was available to answer any questions.

Mr. Nienaber addressed the Commission and stated he agrees with the Staff in that it is not in compliance with the comprehensive plan. He stated he disagrees with Staff when they refer to McCullum road being improved. He noted it is not very wide, has many potholes and needs to be widened. He then asked how a study could be done on a road that isn't even open. He further noted if this development goes through he will not be able to get out of his driveway. He additionally stated the bottom of McCullum floods during heavy rains.

Ms. Donahue addressed the Commission and stated her perception is that the small area study was done and Neyer is still trying to make this fit. She noted she feels there are enough shopping centers and doesn't mind driving to get to retail. She further stated a development such as this is a regional draw and Independence roads can't support it.

Mr. Mosure addressed the Commission and stated he is very concerned with water run off. He stated he knows that development will go in there but they don't want big box development.

Mr. Harold addressed the Commission and stated she didn't see anything on the proposed development plan that shows a true link with Independence. She noted it would be nice to see a mixed use plan in the first phase. She additionally stated Sanitation District No. 1 has been very concerned with storm water in this area. She noted there is not much of any demand for big box development in the area. She further noted based on the small area study it was intended to be walkable and not a strip mall type development.

Mr. Lancaster addressed the Commission and stated until a plan is in place that meets with the comprehensive plan, this shouldn't be approved as it is.

Mr. Kabel addressed the Commission and stated the taxpayers paid for the small area study and if this gets approved that would be like a slap in the face. He additionally stated if it is approved the citizens should get their money back.

Ms. Baum addressed the Commission and stated she thinks the brakes need to be applied on all the development going on in the area. She stated the city should take a step back and see what is available and what is needed before more is done.

Mr. Watts addressed the Commission and stated the citizens would rather travel out than have this type of development.

Ms. Watts addressed the Commission and stated she doesn't mind the drive. She noted the travel patterns at Walgreens and Kroger's is terrible. She further noted in the beginning she did not want to spend the money for the small area study but is now glad she did. She stated it shows the city does not want big box structures.

Ms. Miller addressed the Commission and stated she agrees with all statements against the issue. Mr. Penman addressed the Commission and stated he is totally against the issue. He stated it was a challenge moving from Covington to Independence and it gave him such a grateful feeling sitting on his front porch having people wave to him. He stated he lives on McCullum and there is a hole in the front of his house that's been repeatedly repaired. He stated a lot of water comes down McCullum. He further stated they don't need all this development.

Ms. Kobel addressed the Commission and stated the application is absolutely contrary to the small area study and she agrees that if this goes through the citizens are entitled to their money back. She stated she has been told by about 50 people that Kroger's will be moving to this development. She stated she was also told the main objective of the new KY 17 is to be a limited access highway, without gridlock and congestion, to allow you to get right through. She additionally noted the contrary to Mr. Theissen's statements the demand is not there for more commercial development which is evident by all the vacant property in the area. She asked that the Commission again say no because the people have said no and the Staff has said no.

Mr. Hartwein addressed the Commission and stated this is not good for anybody. He stated behind Kroger's you see broken carts, milk crates and bright lights.

Ms. Franzen addressed the Commission and stated the developer has been very forthcoming with information on the issue. She noted she is concerned about the amount of traffic that will occur whether this development goes through or not.

Ms. Hoffstедder addressed the Commission and stated she is not for the project but is for the development. She stated the development would help the people save gas and time. She stated she would like the Kroger's to go into the development. She noted her biggest concern is if the developer does not get to do the development on both sides of the property, one side might not get developed as nice as the other side.

Mr. Theissen stated in rebuttal that the comment that was read in regard to the small area study being against big box development is not mentioned anywhere in the study. He stated there is not a firm agreement with Kroger to go into the development. He noted that there are others more suitable for the development. He additionally stated the kind of development they are proposing will help derive revenues to the city that may help some of the problems with McCullum. He noted Neyer has every intention of developing the area and is committed to developing the area.

Following a brief discussion on the issue Ms. Hood made a motion to disapprove based on Staff's report, the small area study and the testimony heard, and also that it is not in compliance with the comprehensive plan. Mr. Tewes seconded the motion. A roll call vote on the matter found Ms. Hood, Mr. Tewes, Mr. Barnett, Ms. Carlin, Mr. Eilerman, Mr. France, Mr. Hilgefard, Mr. Marcum, Mr. Raybourne, Mr. Rogge, Mr. Ryan, Mr. Swanson and Ms. Weldon in favor. Mr. Coates, Mr. Cook, Ms. Snyder and Mr. Whitacre voted against. The motion carried with a vote of 13-4.

**\*At this time (8:45 p.m.) a ten minute break was taken.**

#### **W-686-2**

**APPLICANT:** One Eleven Engineers & Surveyors, PLLC

**LOCATION:** an approximate 7.3 acre area located along the south side of Hudson Avenue, approximately 250 feet west of Dixie Highway in Lakeside Park

**REQUEST FOR ACTION:** to waive requirements of Section 5.3 of the Kenton County Subdivision Regulations; granting the request would allow the applicant to construct sidewalk along one side of a newly-constructed subdivision street for Five Mile Village instead of along both sides as required (*Note: a similar request was heard during the December 6, 2007 meeting but died due to a tie vote by the Commission.*)

Staff presentation and Staff recommendations presented by Mr. Scott Hiles.

#### **NKAPC STAFF RECOMMENDATION**

To deny the requested Waiver to Section 5.3 and require sidewalk along both sides of Cahill Court.

#### **Bases:**

1. Subdivision Regulations Section 5.3 requires sidewalk along both sides of new streets.
2. The modifications, as requested, do not include the findings necessary to grant waivers to the regulations as set forth within Section 6.5 A, or B, or C, or D.
3. Requiring that sidewalk be constructed along both sides of new streets is consistent with the 2006 Comprehensive Plan for Kenton County. As stated in Chapter 3, "Development plans and subdivision plats should be evaluated to ensure all modes of transportation can be accommodated. (e.g. bus pullouts and/or stops within or connected by pedestrian access; bicycle parking provided; pedestrian access from all roads to buildings with safe routes across parking areas)". Allowing sidewalk along one side of a new street does not develop a balanced pedestrian circulation system.

Mr. Theissen and Mr. Bertram registered to speak in favor of the issue. No one registered to speak against or neutral on the issue.

Mr. Theissen addressed the Commission and stated this is not a zoning questions, it is a subdivision question. He stated the city is in support of the issue as they will be the entity responsible once it falls into the right of way. He noted they are in favor because they would rather take care of landscaping than a sidewalk and a retaining wall. He additionally stated the property owner this most affects is not present for the second time on the issue. He additionally stated this is unusual because there is a four foot drop to the street that will require a retaining wall in order to do the sidewalk. He noted it is unusual because they cannot touch one piece of sand from the other property and would have to build the retaining wall completely from one side. He further noted since there are only four houses using the sidewalk so it makes sense to not have to have sidewalks on both sides. He stated it is innovative enough in light of the situation and on a street that is 150 feet long to not require the sidewalks.

Mr. Bertram addressed the Commission and stated they have been working very closely with the city and would very much like to start selling lots and move forward. He stated he fought long and hard for one little development and would really like approval. Mr. Eilerman asked about the language on the bonding issue was about. Mr. Bertram stated the city does not have the funds to do the improvements on Hudson until 2010 and asked them to bond it until that time and put aside the money to do those improvements. He stated the city is in favor of and has given permission to plant the trees in the right of way.

Mr. Barnett made a motion to grant the waiver allowing construction on one side of the development based on unusual topographical issues along with safety issues, and that the sidewalk will continue around the "T" area with the condition that the city require the landscaping and that the landscaping be done. Ms. Hood seconded the motion. A roll call vote on the matter found Mr. Barnett, Ms. Hood, Ms. Carlin, Mr. Coates, Mr. Cook, Mr. Eilerman, Mr. France, Mr. Raybourne, Mr. Hilgeford, Mr. Marcum, Mr. Ryan, Ms. Snyder, Mr. Tewes, Mr. Rogge, Mr. Whitacre, Mr. Swanson and Ms. Weldon in favor. The motion carried unanimously.

**Old and Unfinished Business:** None.

**Reports from Committees:**

*Subdivision Regulations Review* – No meeting held.

*By-Laws* – No report.

*Model Zoning Ordinance* – No meeting held. Mike noted they are ready for the final sign regulations and asked the Commission for a motion to place it on the agenda for the next month's meeting. Ms. Weldon noted counsel has a conflict of interested and we will need to appoint another attorney. Mr. Smith stated Mr. Nienaber had represented the Commission in the past on this issue and is available to attend the meeting for the issue.

*Executive*- No meeting held.

*Report from legal counsel* – Nothing to report.

*Announcements from Staff* – Nothing to report.

*Correspondence* – Ms. Weldon noted there was going to be an update on the comprehensive plan for Campbell County on May 13 at 6:00 p.m. for those who might be interested in attending.

**New Business:** - None.

**Public Comments:** None.

There being nothing further to come before the Commission, Mr. Hilgefurd made a motion to adjourn. Ms. Snyder seconded the motion. All in favor. None opposed. The meeting adjourned at 9:35 p.m.

APPROVED:

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Chair

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Date