

**KENTON COUNTY PLANNING COMMISSION  
REGULAR MEETING**

**Minutes**

Mr. Wells, Vice Chair, called the meeting to order at 6:15 PM on Thursday, June 5, 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	X						
Barry Coates	Covington	X	X	X	Xx	X	X						
James Cook	Kenton Co	X	X		Xx	X							
Paul Darpel	Edgewood	X		X	Xx		X						
Chuck Eilerman	Covington	X	X	X	Xx	X	X						
Tom France	Ludlow	X	X	X	Xx	X	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	X						
Mark Rogge	Crescent Springs	-	-	X	x	X	X						
Phil Ryan	Park Hills		X	X	X	X	X						
Maura Snyder	Indepen	X	X	X	X	X	X						
Paul Swanson, Treasurer	Erlanger	X		X	Xx	X							
Joe Tewes	Bromley	X	X	X	Xx	X	X						
John Wells, Vice Chair	Fort Mitchell	X	X		Xx		X						
Alex Weldon, Chair	Covington		X	X	Xx	X							
Bernie Wessels	Crescent Springs	X	-	-	-	-	-	-	-	-	-	-	-
Gil Whitacre	Lakeside Park	X	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. David Schneider, Legal Counsel, and the following NKAPC staff: Michael Schwartz, AICP, Deputy Director for Current Planning and Mr. Andy Videkovich, Associate Planner.

**AGENDA:** There were no changes noted to the agenda for the evening. All in favor. None opposed.

**APPROVAL OF THE MINUTES:**

Mr. France made a motion to accept the minutes from May. Ms. Snyder seconded the motion. All in favor. None opposed. Mr. Darpel and Mr. Wells abstained.

**FINANCIAL REPORT:**

There were no questions or comments with regard to the financial report. A motion was made by Mr. Eilerman to accept. Mr. France 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:**

**1922R**

**APPLICANT:** Kenton County Planning Commission, per Alexandra K. Weldon

**REQUEST:** Proposed text amendments to the zoning ordinances of all Kenton County jurisdictions: (1) deleting all current definitions pertaining to signage; (2) deleting all current sign regulations; (3) adding new definitions pertaining to signage; and (4) adding new sign regulations

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

**NKAPC STAFF RECOMMENDATION**

To approve the proposed text amendments: (1) deleting all current definitions pertaining to signage; (2) deleting all current sign regulations; (3) adding new definitions pertaining to signage; and (4) adding new sign 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 amendments: (1) deleting all current definitions pertaining to signage; (2) deleting all current sign regulations; (3) adding new definitions pertaining to signage; and (4) adding new sign regulations are allowed to be included within the text of the zoning ordinance as authorized by Kentucky Revised Statute (KRS) 100.203(1).
2. The proposed text amendments: (1) deleting all current definitions pertaining to signage; (2) deleting all current sign regulations; (3) adding new definitions pertaining to signage;

and (4) adding new sign regulations will bring the regulations into conformity with current federal court rulings.

3. The proposed text amendments: (1) deleting all current definitions pertaining to signage; (2) deleting all current sign regulations; (3) adding new definitions pertaining to signage; and (4) adding new sign regulations are reasonable and appropriate in that they will provide Kenton County's jurisdictions with a set of regulations that:
  - a. follows the "content neutral" standard established through numerous federal court decisions; regulates a sign's size, height, and location, not what it says, in keeping with First Amendment guarantees for free speech
  - b. exempts certain signs that are not legible from public rights-of-way or adjacent properties
  - c. contains provisions for menu boards for drive-through facilities
  - d. continues to prohibit billboards and other off-site commercial signage
  - e. contains provisions for changeable copy and electronic message signs
  - f. provides for permanent neighborhood entrance signs
  - g. provides for signage for institutional uses, including the use of changeable copy
  - h. regulates the number and sizes of signs permitted on each occupied lot in single and two-family zones (e.g., yard sale signs, for sale signs, political signs)
  - i. provides for directory signs
  - j. permits electronic signs in office zones, highway commercial zones, limited highway service zones, limited service commercial zones, shopping center zones, and industrial zones
  - k. includes provisions to address signage in Covington's downtown and historic districts
  - l. requires master signage plans
  - m. includes illustrations to provide clarity and a better understanding of its regulatory provisions
4. The proposed text amendments: (1) deleting all current definitions pertaining to signage; (2) deleting all current sign regulations; (3) adding new definitions pertaining to signage; and (4) adding new sign regulations will provide for a single set of regulations that will result in the uniform administration, permitting, and enforcement of signage within the county.

**Additional Information:**

1. The proposed amendments are intended to be a Model set of Sign Regulations for use throughout the county. As such, it is understood that individual modifications will be necessary to incorporate the various zoning districts each legislative body has within their current zoning ordinance. These modifications will not constitute a major change from the submitted application as they will not alter the basic intent, principles, and purpose of the regulations. Therefore, these changes will not be required to come before the planning commission prior to adoption.

Mr. Schneider, legal counsel, stated his law firm is involved in three separate lawsuits concerning the signage issue so Mr. Nienaber would be representing the Commission on this

issue only. Mr. Schneider stated Mr. Nienaber has represented the Commission before on this issue.

A Dr. Eric Kelly addressed the Commission with regard to the text amendments. He stated he worked with Staff on the issue in coming up with appropriate language. He spoke briefly giving background information on himself and past experience working with these types of issues.

Mr. Meyer and Mr. Walter Blair registered to speak in favor of the issue. Mr. Theissen and Mr. Guy Taft registered to speak against.

Mr. Meyer addressed the Commission and stated he was the mayor of Crestview Hills. He stated one of his concerns was with the temporary signs and the setback for those. He stated he is very pleased Staff and the commission have put forth the effort on this issue and he looks forward to any input.

Mr. Theissen addressed the Commission and stated the regulations contain an absolute prohibition against any billboards in the community. He stated there is not a variance or anything as far as options for someone wanting to put up a new billboard. He further stated the regulations are extreme and unfair. Mr. Theissen noted interestingly enough, sexual oriented businesses are allowed in certain areas but billboards are prohibited. He further noted the whole procedure was flawed in how it came about. He stated the other portions of the text amendment are fine and the Commission can go forward on those issues and leave the billboard issue out for the moment. Mr. Theissen stated he feels the way this came about is problematic. He further noted there are places in the community where billboards are appropriate and stated they can be regulated and controlled. Mr. Theissen stated by doing an outright prohibition the Commission is sort of asking for legal action. He stated the amendment as to billboards has not been justified and is excessive. He noted the opportunity to make a case wasn't given and the industry is not so awful that the billboards have to be prohibited. He then asked the Commission to send the amendment back to Staff to reevaluate the issue as to billboards.

Mr. Taft addressed the Commission and stated what is presented is if you are a property owner along I-75 you can relay your message but if not, you're prohibited from displaying a message. He stated the Commission should reconsider and allow for some flexibility with the billboard issue. He further stated the city should be able to regulate the billboards and act accordingly, not prohibit them. He stated they feel this prohibition is against the First Amendment.

Mr. Blair addressed the Commission and asked about the number of signs in a residential yard at four seems excessive. He also asked for clarification on signs relating to opinion in residential yards and also the appeal procedures.

Mr. Schwartz responded and stated the appeal would just be denied because the signs are just not allowed under the regulations. He stated the number of signs is correct at four but they are limited in size and limited to content neutrality. He further noted in response to the comparison in allowing sexually oriented businesses and prohibiting billboards, the Supreme Court has stated areas must be set aside for sexually oriented businesses. Mr. Schwartz further noted he is not aware of any Supreme Court rulings claiming billboards need to be allowed. He additionally stated there were ample opportunities for Lamar to plead their case. Mr. Schwartz further noted they are proposing a continuation of what is in the current regulations just in a much stronger way.

Mr. Taft addressed the Commission in rebuttal and stated there was no intention of suggesting that a lawsuit would be filed against the individuals of the commission. He stated everyone is not fortunate enough to have businesses along the highways and need to have those billboards located in other places.

Mr. Ryan asked Mr. Nienaber about any Supreme Court cases involving billboards. Mr. Nienaber stated he knows of none that stated you cannot prohibit billboards. He further noted he does not see any problems with this moving forward as it is just a recommendation. Mr. Darpel stated he would rather see a prohibition by the legislative body. Mr. Schwartz stated it was drafted as a total prohibition because that is the way business owners asked at the meetings held. Mr. Schwartz additionally stated every city will have the opportunity to go over these regulations and change the aspects of the billboard issue but when taking out a portion of the regulation you take a risk. He further noted the current regulations are not defensible and the new ones are while keeping the same policy. Following much discussion on the issue Mr. France made the motion to pass the regulations as presented based on Staff's recommendations as the intent of the cities throughout the county. Mr. Eilerman seconded the motion. A roll call vote on the matter found Mr. France, Mr. Eilerman, Mr. Tewes and Mr. Wells in favor. Ms. Carlin, Mr. Coates, Mr. Darpel, Mr. Raybourne, Mr. Ryan, Ms. Snyder, Mr. Rogge and Mr. Whitacre voted against. The motion failed with a vote of 4-8. Mr. Schwartz then suggested making a motion to approve with an added condition to allow for those cities waiting for action to be able to move forward. Mr. Darpel then made the motion to deny on the reason that as it related to prohibition the regulation is unreasonable. Mr. Raybourne seconded the motion. Mr. Schwartz then stated that sending a recommendation denying sends a bad message to those cities wishing for approval so they can move forward. He then suggested recommending approval allowing the regulation but removing the portion as to billboards so the cities could make their decision. Mr. Darpel then changed his motion to approve the text amendment with the condition that all references to billboards be removed and section 14.4 be removed and Staff will work on a comprehensive text amendment as to billboards. Mr. Kelly then stated he felt to remove all signs under 14.4 in his opinion was an error because it would create a mess. Mr. Ryan then withdrew the motion to remove 14.4 from Mr. Darpel's motion. Mr. Gordon then addressed the Commission and suggested valid points were made by Mr. Ryan and that he also knows how much time has gone into getting the amendment to where it is. He then suggested while he knows how strongly some mayors feel on this issue in getting this through but also feels they would not want something rushed through. He then suggested the issue be tabled to allow Staff to get comments and input from the Commission as far as terminology with the text. Mr. Ryan then made the motion to table the issue not to exceed six months. Mr. Darpel seconded the motion. Mr. Eilerman then asked what would be gained by tabling and further noted his suggestion of simply removing 14.a1 from the text. Mr. Darpel then stated he felt by tabling it would give Staff an opportunity to come back with additional language the Commission is comfortable with. Mr. Gordon then requested that the Commission to work with Staff and to give input as to what they wish to do because the cities have worked with Staff and have made their intentions but the Commission has not. A roll call vote on the motion found Mr. Ryan, Mr. Darpel, Ms. Carlin, Mr. Coates, Ms. Snyder, Mr. Raybourne, Mr. Rogge and Mr. Whitacre in favor. Mr. Eilerman, Mr. France, Mr. Wells and Mr. Tewes against. The motion carried with a vote of 8-4.

\*At this time (8:31 p.m.) a five minute break was taken.

## **1920R**

**APPLICANT:** Hillside Development Corp. per Joe Michels

- LOCATION:** an approximate 21-acre area located on the west side of Madison Pike, approximately 1,200 feet south of Dudley Road, in Fort Wright
- REQUEST:** a proposed map amendment to the Fort Wright Zoning Ordinance changing the described area from IP (an industrial park zone) to NSC (a neighborhood shopping center zone) and HC (a highway commercial zone); this issue was tabled at the Commission's May 1<sup>st</sup> meeting.

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

### **NKAPC STAFF RECOMMENDATION**

To disapprove the proposed map amendment from IP to NSC and HC

#### **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 from IP to NSC and HC is not consistent with the Recommended Land Use Map of the *Comprehensive Plan Update 2006-2026*, which identifies the site in question as Small Area Study. This designation refers to the *Madison Pike Corridor Land Use and Economic Development Plan*.

The Recommended Land Use Element of the *Madison Pike Corridor Land Use and Economic Development Plan* identifies the site in question as Area 17 of the Special Development Area. This area has high potential for mixed retail, service, and office uses. Development can be fairly large in scale and should be designed in coordination with Areas 16 (to the north) and 18 (to the south).

The submitted development plan indicates a single, big box retail establishment. There are no provisions for multiple retail and service uses, and no office space proposed.

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. The submitted development plan indicates the grading of the site in question and the removal of steep and potentially unstable hillsides.

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.

The site in question is characterized by subsurface conditions that are moderately to 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 from IP to NSC and HC is not consistent with the Goals and Objectives contained within the *Madison Pike Corridor Land Use and Economic Development Plan*:

## **TRANSPORTATION**

**Goal:** *To provide transportation alternatives that will effectively move people and goods through and from place to place within the corridor in the most efficient manner.*

### **Objectives:**

- Provide frontage/access roads and eliminate curb cuts in order to improve traffic flow on KY 17 and the adjoining street system, where feasible
- If economically and physically feasible, effort should be made to maintain and improve access

The submitted development plan does not indicate any provisions to extend an access road to the area to the south of the site in question. Furthermore, the submitted development plan is indicating a full, unrestricted access point onto Madison Pike.

When Area 16 to the north of the site in question was approved for development, it indicated that Sperti Drive was not going to be extended to serve as an access point to the

site in question. The development in Area 16 is providing a shared access drive to the site in question; however this access drive is located along the eastern property line, adjacent to Madison Pike. The submitted development plan indicates the extension of Sperti Drive to provide access to site in question. This does not coordinate with what was approved in Area 16 to the north.

5. The proposed map amendment from IP to NSC and HC is not consistent with the Greenway component of the Recommended Land Use Element of the *Madison Pike Corridor Land Use and Economic Development Plan*, which identifies a portion of the site in question as a Hillside Development Area, containing slopes greater than fifteen percent. Areas identified as Hillside Protection Areas should limit the amount of disturbance caused by development.

The submitted development plan indicates the proposed grading of a hillside that has a slope of 15% or greater, and which also is known to contain a Kope Formation. There is insufficient information submitted to determine what affects the proposed grading will have on the hillside and how the development proposes to stabilize the hillside.

6. Access identified in the proposed development plan is not consistent with the recommendations within the *Madison Pike Corridor Land Use and Economic Development Plan*:
  - a. The proposed development plan does not identify extension of Sperti Road to the south; and
  - b. The proposed development plan identifies a full unrestricted access point onto Madison Pike.

As proposed, this access point has the potential to require signalization in the future, which is inconsistent with the previous study recommendations and would deteriorate the operations of the roadway system.

The intersection of Madison Pike (KY 17) and Dudley Pike is a major point of congestion of the corridor. In addition, the unsignalized intersection of Madison Pike at Old Madison Pike is shown to operate at a level of service F during the peak periods. The additional traffic generated by the proposed development has the potential to significantly deteriorate the operations of these adjacent major intersections and Madison Pike in the vicinity of the proposed access point.

Based upon the current and future traffic volumes projected along Madison Pike in the *Madison Pike (KY 17) Intersection Improvement Study*, coupled with the traffic generation estimates by ITE, it is inadvisable and inappropriate to rezone the site in question without a traffic impact study to determine how traffic will impact Madison Pike and the surrounding street system, and identifying appropriate ways to address access to the site in question.

7. The proposed map amendment from IP to NSC and HC is not consistent with the Implementation Element of the *Madison Pike Corridor Land Use and Economic Development Plan*, which identifies HC and OP as appropriate zoning designations to implement the recommendations of the other elements of the plan. The OP Zone, in



combination with the HC Zone, would provide for a mix of office and highway oriented uses within an architecturally unified development.

While a small portion of the site in question is proposed for HC, the submitted development plan does not meet the intent of the *Madison Pike Corridor Land Use and Economic Development Plan*, which identifies the site in question as having a high potential for mixed retail, service, and office uses.

8. The submitted development plan does not meet the minimum requirements of the Fort Wright Zoning Ordinance:
  - a. Section 9.17 sets forth regulations pertaining to landscaping and screening:
    - i. Section 9.17, Table 9-1, states that any development within a commercial zone must provide a minimum twenty foot planting strip adjacent to residential zone or use. The area to the west of the site in question is zoned R-1D. Insufficient information has been submitted to determine compliance with this regulation.
    - ii. Section 9.17, Table 9-1, states that a vehicular use area adjacent to a private or public street must provide a minimum ten foot perimeter screening easement as well as five percent interior landscaping. Insufficient information has been submitted to determine compliance with this regulation.
  - b. Section 10.19, C., 3., states that the maximum height within the NSC zone is forty feet. Insufficient information has been submitted to determine compliance with this regulation.
  - c. Section 10.19, D., 3., states that no lighting shall be permitted which would glare from this zone onto any street, or into any adjacent property. Insufficient information has been submitted to determine compliance with this regulation.
  - d. Section 11.1, E., states that any lighting used to illuminate off-street parking areas shall not glare upon any right-of-way or adjacent property. Insufficient information has been submitted to determine compliance with this regulation.
  - e. 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 Appendix A. Insufficient information has been submitted to determine compliance with this regulation.
  - f. Articles XIII and XIV set forth regulations pertaining to fences, walls, and obstructions to view, and signs. Insufficient information has been submitted to determine compliance with these regulations.
9. There is insufficient evidence to indicate that the proposed NSC and HC Zoning on the site in question is the appropriate zoning to further the goals and objectives of the comprehensive plan.

10. There have not been major changes of an economic, physical, or social nature within the area involved which were not anticipated in the adopted comprehensive plan and which have substantially altered the basic character of the area.

### **Additional Information**

1. When the City of Fort Wright approved the development of the area to the north of the site in question, it was done so with the condition that the existing access point to Madison Pike (KY 17) shall be modified to prohibit left turns onto Madison Pike (KY 17) from the subject properties upon the completion of an access from the adjoining Hillside Development Corporation (Michels property). If this map amendment is approved, the City of Fort Wright should take steps to limit the access point from the adjacent development to the north to Madison Pike (KY 17).

Mr. Rolfes, Mr. Marty Butler, Mr. Jim Berling, Mr. Jack Gehrum, Mr. Joe Michels and Ms. Kate Michels registered to speak in favor of the issue. No one registered to speak against or neutral on the issue.

Mr. Butler addressed the Commission and stated this body approved a zone change for adjacent property. He stated the development will allow for furniture, retail and restaurant development in Ft. Wright. He noted they believe the development will save valuable time in travel for area residents. He noted they believe the area is underserved and they feel the issues raised by Staff have been answered. Mr. Butler noted a lot of time and money was put into the study for development of this area. He estimated it would create 200-300 new jobs plus additional revenue in taxes for the city of Ft. Wright. He noted it is a logical extension of the commercial property in Edgewood and Ft. Wright. Mr. Butler further stated the Michel Center will be located less than a third of a mile from the I-275 interchange and will provide excellent north and southbound traffic site distance.

Mr. Gehrum addressed the Commission and stated they feel very confident that they've done everything they can do to maximize capacity and safety. He stated this is not generating new trips because it is traffic that is already in the area.

Mr. Butler stated they feel it provides access and provides for multiple road improvements. He noted the Michels family has had boring studies done on the property and they are very familiar with excavating and sewer and related issues. He noted due to the installation of retaining walls, approximately 125 feet of existing tree line will be saved. It was additionally noted that the grading shown on the plan can be accomplished in a stable manner.

Mr. Butler stated they will comply with all Ft. Wright regulations as to signage, landscaping, etc. It was additionally stated the rezoning is the natural and logical change for the area. He stated the owners have received four offers of purchase of the property and not one has been for office space. It was further stated that the existing zoning is inappropriate and they feel changes have been made to the area.

Mr. Rolfes addressed the Commission and stated when the City of Edgewood approved the Shoppes of Edgewood they did not want Sperti Drive to become a through drive. He noted the city was prepared to do whatever was necessary to prevent this from happening. Mr. Rolfes

stated one of the big current problems is with New Perceptions. He stated they are very concerned with people having to cross the street to get to bus stops. He then noted he is simply relaying to the Commission what the council had understood and implemented in allowing the Shoppes of Edgewood. He stated the city is trying to get grants to improve Dudley Drive because it is so dangerous in that area. He then stated they would be happy to work with the developer to find a solution because right now he feels there is a problem.

Mr. Wells then read a letter of support into the record from city administrator Larry Klein. It was then marked as an exhibit and made a part of the record.

Mr. Schneider then stated noted in response to comments regarding Sperti Drive that this is a zone change and an adjoining development cannot be a condition of this development. He stated it is mainly whether or not is in compliance with the comprehensive plan and whether or not they meet the requirements for the zone change. Mr. Darpel then made a motion to approve based on the fact that it is in consistent with the comprehensive plan with an additional condition that the applicant deal with the City of Ft. Wright and the City of Edgewood together to make sure there is proper access, especially with condition to the City of Edgewood's approve of the Shoppes of Edgewood. Mr. Eilerman seconded the motion. A roll call vote on the matter found Mr. Darpel, Mr. Eilerman, Ms. Carlin, Mr. Coates, Mr. France, Mr. Raybourne, Mr. Ryan, Ms. Snyder, Mr. Tewes, Mr. Rogge, Mr. Whitacre and Mr. Wells in favor. The motion carried unanimously.

### **1923R**

**APPLICANT:** Cindy Cahill

**LOCATION:** an approximate 0.5 acre area located along the east side of Taylor Mill Road, approximately 150 feet north of Ridgeway Avenue, Taylor Mill.

**REQUEST:** a proposed map amendment to the Taylor Mill Zoning Ordinance changing the described area from R-1C (a single-family residential zone with a maximum density of 3.5 dwelling units per net acre) to NC (a neighborhood commercial 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 proposed map amendment from R-1C to NC is not consistent with the Recommended Land Use Map of the *Comprehensive Plan Update 2006-2026* which identifies the site in question, as well as all surrounding areas, for Residential Development at a density ranging from 2.1 to 4.0 dwelling units per net acre. The proposed NC Zone would allow non-residential development to occur in an area recommended for residential uses.

2. The existing R-1C Zone is appropriate and the proposed NC Zone is inappropriate. The existing R-1C Zone is consistent with the Recommended Land Use Map of the *Comprehensive Plan Update 2006-2026*. The current R-1C Zone permits residential development at a maximum density of approximately 3.5 dwelling units per net acre. Additionally, the existing R-1C Zone provides a buffer between the existing commercial activity on the larger area of the property and the adjacent single-family residential dwellings.

The proposed NC Zone is not appropriate since it will allow commercial activity to encroach closer to the adjoining single-family residential properties. Additionally, the commercial activity on the larger area of the property can be accomplished without the need for further site activity. Based on the requirements of Section 11.1, T. of the Taylor Mill Zoning Ordinance, an office structure containing 3,000 square feet would be required to have a minimum of twelve (12) off-street parking spaces. There are currently thirteen (13) off-street parking spaces provided for the existing structure.

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. Section 17.0, C. of the Taylor Mill Zoning Ordinance states that the zoning map shall not be amended, changed, or modified in such manner as to create a free standing zone of less than five (5) acres, except where specific area restrictions are stipulated in this ordinance, or as outlined in the adopted comprehensive plan by the planning commission. As previously stated, there is nothing in the adopted comprehensive plan that addresses the size issue of this area of Taylor Mill. The existing NC Zone is approximately one (1) acre in size and the proposed map amendment would result in the NC being approximately 1.5 acres in size.

Mr. Bob Hackey, Mr. Craig Boyle and Ms. Cindy Cahill registered to speak in favor. No one registered to speak against or neutral on the issue.

Mr. Hackey addressed the Commission and stated a few years ago the applicant came to the city requesting a zone change to move her location. He stated the property in question was owned by the bank for many, many years. He stated the city felt it was a much better use to have as a real estate office and have additional parking for her than to have some other use in there. He then stated the city feels it is worthwhile to go this route.

Ms. Cahill addressed the Commission and stated this has been a bank for 46 years so she feels at one point in time there was an error. She stated she had the lot surveyed and the two zones were discovered. Ms. Cahill further noted she is a business owner and has had a business in the area for some time. She noted she is not excited to spend \$50,000 for a parking lot but it will make the property much safer and a better working environment for her employees and clients coming to the office. She noted she also feels the existing zoning is inappropriate. Ms. Cahill then stated that having a child that is in a wheelchair herself she feels it is important to make the building ADA compliant and offer a safer environment.

A motion was then made by Mr. Eilerman to approve based upon the fact that it makes sense and there have been changes to the area. Mr. France seconded the motion. A roll call vote on the

matter found Mr. Eilerman, Mr. France, Mr. Coates, Mr. Darpel, Mr. Raybourne, Mr. Ryan, Ms. Snyder, Mr. Tewes, Mr. Rogge, Mr. Whitacre and Mr. Wells in favor. Ms. Carlin voted against. The motion carried with a vote of 11-1.

\*Mr. Whitacre recused himself from the following issue due to a conflict of interest.

### **1924R**

**APPLICANT:** Anchor Properties, on behalf of the Kuchle Family

**LOCATION:** an approximate 1.8-acre area located on the southeast corner of Kyles Lane and Dixie Highway, in Fort Wright

**REQUEST:** a proposed map amendment to the Fort Wright Zoning Ordinance changing the described area from PO-1 (a professional office zone) and LHS (a limited highway service zone) to NC (a neighborhood commercial zone)

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

### **NKAPC STAFF RECOMMENDATION**

To disapprove the proposed map amendment from PO-1 and LHS to NC

#### **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 from PO-1 and LHS to NC is inconsistent with the Recommended Land Use Map of the *Comprehensive Plan Update 2006-2026*, which identifies the site in question as being part of a larger area extending to the northeast, across Kyles Lane, and southwest of the site in question identified for Commercial – Office. The proposed map amendment would permit a retail/service establishment in an area identified for Commercial – Office.
2. The existing zoning classification of PO-1 is appropriate and the proposed zoning of NC is inappropriate. While a portion of the site in question is zoned LHS, which is not in conformance with the Recommended Land Use Map (Commercial – Office), the NC Zone will not make the site in question more consistent with the Recommended Land Use Map than what currently exists on the site in question.
3. There have not been any major changes of an economic, physical, or social nature within the area involved which were not anticipated in the adopted comprehensive plan and which have substantially altered the basic character of the area.
4. The proposed map amendment from PO-1 and LHS to NC is inconsistent with the recommendations contained within the *Dixie Fix Study*.
  - a. The *Dixie Fix Study* recommends, as a long term improvement, the realignment of Kyles Lane to provide a 4-leg intersection at George Huser Drive. While the

submitted development plan does not preclude this improvement, it does not further implement the plan's recommendations.

- b. The *Dixie Fix Study* recommends providing left-hand turn lanes and signage improvements along Dixie Highway at Ashwood Circle. The submitted development plan indicates the construction of a right-hand turn lane to the site in question, and a left-hand turn lane to the site in question on the southbound Dixie Highway approach. However, there is no indication of an opposing left-hand turn lane for the northbound Dixie Highway approach.
  - c. The *Dixie Fix Study* recommends a single access point to the site in question from the existing signalized intersection at Ashwood Circle. The submitted development plan shows this access point, but also shows an additional right-in/right-out access point approximately 100 feet south of the existing Dixie Highway/Kyles Lane intersection.
  - d. The *Dixie Fix Study* recommends the termination of the access point to the retail establishment on the southern portion of the site in question when redevelopment occurs to the north. Access should then be provided from the north. The submitted development plan does not indicate the termination of this access point and does not provide any provisions for access from the north.
5. The submitted development plan does not meet the minimum requirements of the Fort Wright Zoning Ordinance:
- a. Section 9.17 sets forth landscaping and screening requirements:
    - i. Section 9.17, Table 9-1, sets forth landscaping and screening requirements for vehicular use areas (VUA). A 10 foot perimeter screening easement plus 5% interior landscaping is required for any VUA adjacent to a public right-of-way. The submitted development plan indicates a 5 foot setback along Dixie Highway and an 8 foot setback along I-71/75. This does not meet the minimum requirements of the zoning ordinance. Also, insufficient information has been submitted to determine if the proposed landscaping will meet the minimum requirements of the zoning ordinance. Notes on the development plan indicate that a variance will be sought from the Fort Wright Board of Adjustment to reduce the minimum perimeter screening easement from 10 feet to 0 feet. If the variance is disapproved, it could significantly alter the design and layout of the submitted Stage I Development Plan.
  - b. Section 10.18, D., sets forth the area and height requirements within the NC Zone:
    - i. Section 10.18, D., 3., states that the minimum front yard setback within the NC Zone is 50 feet. The submitted development plan indicates a front yard setback of 25 feet. This does not meet the minimum requirements of the zoning ordinance



- ii. Section 10.18, D., 4., states that when adjacent to a street, road, highway, or other right-of-way, the required side yard width shall be the same as required for a minimum front yard depth in this zone. The submitted development plan is indicating a 40 foot side yard to the north (along Kyles Lane). This setback does not meet the minimum requirements of the zoning ordinance.

Notes on the development plan indicate that a variance will be sought from the Fort Wright Board of Adjustment to reduce the minimum front yard setback from 50 feet to 25 feet, reduce the minimum side yard from 50 feet to 40 feet, and to reduce the minimum rear yard from 50 to 20 feet. If these variances are disapproved, they could significantly alter the design and layout of the submitted Stage I Development Plan.

- iii. Section 10.18, D., 6., states that the height of a building in the NC Zone shall not exceed 40 feet. Insufficient information has been submitted to determine compliance with this regulation.
- c. Section 10.18, 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 the regulation.
- d. Section 11.3, F., 1., a., states that unsignalized access points shall be spaced a minimum distance of six hundred (600) feet apart along arterial streets. Turning restrictions and/or reserved lanes may be required. The submitted development plan indicates a right-in/right-out access point onto Dixie Highway approximately 100 feet from Kyles Lane and approximately 300 feet from Ashwood Circle. This access point does not meet the minimum requirements of the zoning ordinance.

The proposed development would be provided signalized access to Dixie Highway (US 25) at Ashwood Circle, approximately 480 feet south of the intersection of Kyles Lane (KY 1072). The intersection of Dixie Highway and Kyles Lane is major point of congestion on the Dixie Highway Corridor. In addition, this intersection is identified as a high level accident intersection, having the highest number of crashes and the highest crash rate of all intersections evaluated in the Dixie Fix Project. The additional traffic generated by the development has the potential to impact the operations of the traffic signal installation at Ashwood Circle and subsequently the operations at the adjacent coordinated intersections at Kyles Lane and Sleepy Hollow Road.

- e. Article XIV sets forth regulations pertaining to signs:
  - i. Section 14.13, D., 6., b., states that the maximum sign area for freestanding signs within the NC Zone shall be no more than fifty (50) square feet of sign area for each lot or building site on which the primary permitted use is located. The submitted development plan indicates approximately 260 square feet of freestanding signs on the site in question. This exceeds the maximum allowable sign area for freestanding signs

within the NC Zone. The applicant is appealing the Zoning Administrator's decision to the Fort Wright Board of Adjustment.

- ii. Section 14.13, D., 6., c., states that the maximum height of freestanding signs within the NC Zone shall be 40 feet when adjacent to an interstate, and 20 feet when adjacent to an arterial street. The submitted development plan indicates two freestanding signs that are 25 feet in height. One is located along Kyles Lane and one is located along Dixie Highway. Both of these streets are identified as arterial streets in the Transportation Plan Element of the *Comprehensive Plan Update 2006-2026*. These signs exceed the maximum height of freestanding signs within the NC Zone. Notes on the development plan indicate that a variance will be sought from the Fort Wright Board of adjustment to increase the maximum height of the freestanding signs. If this variance is disapproved, it could significantly alter the design and layout of the submitted Stage I Development Plan.
- iii. Section 14.13, D., 6., e., (1), states that freestanding signs shall be neither flashing nor animated. The submitted development plan indicates LED displays on two freestanding signs. These are not permitted signs. The applicant is appealing the Zoning Administrator's decision to the Fort Wright Board of Adjustment.
- iv. Section 14.13, D., 6., e., (3), states that no part of any sign shall be located closer than five (5) feet from any property line. The submitted development plan indicates a freestanding sign approximately 2 feet from the property line along Kyles Lane. This does not meet the minimum requirements of the zoning ordinance. Notes on the development plan indicate that a variance will be sought from the Fort Wright Board of adjustment to reduce the minimum required setback for a freestanding sign. If this variance is disapproved, it could significantly alter the design and layout of the submitted Stage I Development Plan.

6. The submitted development plan does not meet the minimum requirements of the Kenton County Subdivision Regulations:

- a. Section 4.1, E., 2., of the Kenton County Subdivision Regulations require auxiliary turn lanes on all access points onto arterial roads. The submitted development plan indicates the construction of a right-hand turn lane to the site in question, and a left-hand turn lane to the site in question on the southbound Dixie Highway approach. However, there is no indication of an opposing left-hand turn lane for the northbound Dixie Highway approach. This does not meet the minimum requirements of the Kenton County Subdivision Regulations.

7. The submitted development plan indicates the provision for sidewalks along Dixie Highway. The submitted development plan does not indicate the provision for sidewalks along Kyles Lane. There are currently existing sidewalks along Kyles Lane adjacent to the site in question. The submitted development plan provides insufficient information to

determine whether those sidewalks will be maintained or eliminated as part of this proposed development.

Ms. Brown, Mr. Mooney, Mr. Jim Viox and Mr. Jerry Dusing registered to speak in favor. Mr. Joe Nienaber registered to speak as a neutral party. No one registered to speak against.

Mr. Viox addressed the Commission and stated they feel it would be an improvement to change to the zone they are requesting. He noted the uses in the current zone are traffic generators. Mr. Viox noted they are putting in a right turn lane in compliance with the Dixie Fix. He noted they feel their modification will satisfy the issues with the intersection on Dixie Highway. Mr. Viox stated he feels this is an appropriate use of the property. He further noted they do not feel obligated at this point to provide the left turn lane. Mr. Viox stated they will accommodate the installation of a sidewalk along Kyles Lane.

Mr. Pflum addressed the Commission and stated the traffic impact study was prepared for this project. He stated they met with the Transportation Cabinet to make sure everything with the road improvements meets with their guidelines.

Mr. Viox stated professional office is expanding, schools are expanding, as well as residential. He stated for the most part it is an older residential community. He noted office space is very important and that service will be provided for the community by this development.

Mr. Dusing addressed the Commission and stated the LHS zone is not appropriate for redevelopment at this site. He noted this is the center of the business district for Ft. Wright. He noted Ft. Wright has world class office buildings but noted the LHS zone does not comply with the comprehensive plan. He then noted the variances are necessary and to not have the variances makes the project moot.

Mr. Nienaber addressed the Commission and stated he is not so much concerned about the zone change but is concerned about the development. He stated he counts seven variances and has concerns with that. He additionally noted he has concerns about a ten foot wall on the Dixie Highway side. He noted he is not sure he sees a health clinic as an appropriate use for the neighborhood commercial zone.

Following a brief discussion Mr. Ryan made the motion to deny based on Staff's recommendations. Ms. Snyder seconded the motion. A roll call vote on the matter found Mr. Ryan, Ms. Snyder, Ms. Carlin, Mr. Coates, Mr. Darpel, Mr. Eilerman and Mr. Wells in favor. Mr. France, Mr. Raybourne and Mr. Tewes voted against. Mr. Whitacre recused himself from the issue and therefore did not vote. The motion carried with a vote of 8-3-1.

**Old and Unfinished Business:** None.

**Reports from Committees:**

*Subdivision Regulations Review* – No meeting held.

*By-Laws* – Mr. Wells asked that the commissioners please look at the issues and be ready to comment next month. He stated the submission time frame is suggested to change from 21 days to 28 days because a lot of submissions are incomplete and this will allow for Staff the additional time needed. Mr. Wells noted some items that were discussed at the meeting and noted there are

some budget issues to consider as well. He noted there is a budget in the packet for 2009 to review. He asked that the Commissions please review it and bring their thoughts to the next meeting.

***Model Zoning Ordinance*** – No meeting held.

***Executive-*** (see By-Laws comments).

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

***Announcements from Staff*** – Nothing to report just a reminder that the meeting for July will be held July 8<sup>th</sup> due to the holiday.

***Correspondence*** – Nothing to report.

**New Business:** - None.

**Public Comments:** None.

There being nothing further to come before the Commission, Ms. Snyder made a motion to adjourn seconded by Mr. France. All in favor. None opposed. The meeting adjourned at 12:10 a.m.

APPROVED:

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Chair

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Date