

**KENTON COUNTY PLANNING COMMISSION  
REGULAR MEETING**

**Minutes**

Mr. Wells, Chair, called the meeting to order at 6:15 PM on Thursday, June 4, 2009, and opened the proceedings with the Pledge of Allegiance and an invocation by Mr. France. 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	2009											
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Mark Barnett	Taylor Mill	X	X	X	X	X	X						
Diane Brown	Erlanger	-	X	X	X		X						
Barbara Carlin	Kenton Co	X	X	X	X	X	X						
Barry Coates	Covington	X	X	X		X	X						
James Cook	Kenton Co	X	X		X	X	X						
Paul Darpel	Edgewood	X		X	X	X	X						
Chuck Eilerman	Covington	X	X	X	X	X							
Tom France, Vice-Chair	Ludlow	X	X	X	X	X	X						
David Hilgefurd	Villa Hills		X	X	X	X	X						
Lynn Hood	Crestview Hills	X	X	X	X	X	X						
Marc Hult	Covington	X	X	X	X	X	X						
Kent Marcum	Fort Wright	X	X	X		X	X						
Brandon Raybourne	Elsmere	X	X		X		X						
Mark Rogge	Crescent Springs	X	X	X		X	X						
Phil Ryan, Treasurer	Park Hills	X	X		X	X							
Maura Snyder	Indepen		X	X	X	X	X						
Paul Swanson	Erlanger	X	-	-	-	-	-	-	-	-	-	-	-
Joe Tewes	Bromley	X	X	X	X	X							
John Wells, Chair	Fort Mitchell	X	X	X	X	X	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 Mr. Mick Ionna, Associate Planner.

**AGENDA:**

There were no changes or modifications to the agenda for the month of June. All in favor. None Opposed.

**APPROVAL OF THE MINUTES:**

A motion was made by Mr. Rogge to approve the minutes from May. Ms. Snyder seconded the motion. A roll call vote on the motion found Mr. Rogge, Ms. Snyder, Mr. Barnett, Ms. Carlin, Mr. Coates, Mr. Cook, Mr. Darpel, Mr. France, Mr. Hilgefurd, Ms. Hood, Mr. Hult, Mr. Marcum and Mr. Wells in favor. Ms. Brown and Mr. Raybourne abstained. The motion carried.

**FINANCIAL REPORT:**

Mr. Hilgefurd made the motion to accept the report as submitted. Ms. Snyder seconded the motion. A roll call vote on the matter found Mr. Hilgefurd, Ms. Snyder, Mr. Barnett, Ms. Brown, Ms. Carlin, Mr. Coates, Mr. Cook, Mr. Darpel, Mr. France, Ms. Hood, Mr., Hult, Mr. Marcum, Mr. Raybourne, Mr. Rogge and Mr. Wells in favor. The motion carried.

**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.

**RECENT ACTIONS BY LEGISLATIVE BODIES:**

No action required.

**PUBLIC HEARINGS:**

**1968R**

**APPLICANT:** City of Erlanger, per Mark Stewart

**LOCATION:** An approximate 10.8-acre area located at the terminus of Viox Drive in Erlanger

**REQUEST:** a proposed map amendment to the Erlanger Zoning Ordinance changing the described area from HC-3 (a highway commercial three zone) to HC-2 (a highway commercial two zone)

Staff presentation and Staff recommendation by Mr. Mike Schwartz.

**NKAPC STAFF RECOMMENDATION**

To disapprove the proposed map amendment from HC-3 to HC-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 from HC-3 to HC-2 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 areas located to the north, southwest, and west of the site in question, as a Special Development Area.

The Special Development Area designation specifically refers to the *Erlanger, Kentucky – A Master Plan. The Erlanger Center “At the Heart of it All”*, which the City adopted on April 29, 2003. The Master Plan recommends the site in question as part of a larger area extending to the north, east and west of the site in question as an Entertainment District. One of the implementation strategies recommended by the Master Plan is to write text for the urban-suburban development districts and apply for a zone change with the master plan. This text will include the design guidelines for buildings and landscaping.

It is premature to rezone the site in question without specific land use regulations in place to implement the Master Plan.

2. The recommendation of disapproval of the proposed map amendment from HC-3 to HC-2 is consistent with a previous recommendation made by the NKAPC staff.

On August 14, 2008, B & Z Development, Inc., per James Berling, submitted an application for NKAPC and KCPC review and recommendation on a proposed map amendment to the Erlanger Zoning Ordinance, changing an approximate 16.2 acre area located along the north and south sides of Viox drive, approximately 1,000 feet southeast of Houston Road, from HC-2 and HC-3 to HC (Z-08-08-03/1933R). On August 29, 2008, the NKAPC staff recommended disapproval of the proposed map amendment. On September 4, 2008, following the public hearing, the KCPC recommended approval of the proposed map amendment. On December 2, 2008, Erlanger City Council took action to disapprove the proposed map amendment.

The following provides a comparison of the permitted uses within the proposed HC-2 Zone and previously applied for HC Zone:

HC-2	HC
Banks	Automotive Sales and Service
Restaurants	Banks
Hotels	Boat Sales and Service
Nursing Home	Bowling Alley
Offices	Convenient Store
Municipal Buildings	Restaurants
Theaters	Hotels and Motels
	Off-Street Parking Lots and Garages
	Offices

Package Liquor and Wine Store  
Police and Fire Stations  
Service Stations  
Theaters

All but two of the uses permitted in the proposed HC-2 Zone are also permitted within the previously applied for HC Zone. Since the staff recommended disapproval of the previous applied for HC Zone, and all but two of the uses within the proposed HC-2 Zone are permitted within the HC Zone, the staff recommendation of disapproval of this request is similar to the previous disapproval of the HC Zone.

3. While the existing HC-3 Zone is not appropriate for the site in question, the proposed HC-2 Zone is also not appropriate for the site in question. Based on the list of permitted uses within the HC-2 Zone, the proposed HC-2 Zone will not implement the recommendations of the *Erlanger, Kentucky – A Master Plan. The Erlanger Center “At the Heart of it All”*.
4. There have not been major changes of an economic, physical, or social nature within the area which were not anticipated in the preparation and adoption of the comprehensive plan, and which have substantially altered the basic character of the area.

**Additional Information:**

1. The NKAPC staff is aware that there is a Development Plan Agreement in effect for the site in question. This Agreement was established as part of the map amendment process that established the current HC-3 Zoning on the site in question. This Development Plan Agreement regulates certain aspects as to how the site in question is to be developed. If the proposed map amendment is approved, the requirements of the Agreement might be in conflict with the requirements of the proposed HC-2 Zone. To remove the potential conflicts, the Development Plan Agreement should be voided as part of the approval process of this application.

Mr. Stewart, Building and Zoning Administrator for the City of Erlanger, addressed the Commission and stated he was available to answer any questions. Mr. Darpel asked why the city would go through the application if the only difference from the HC-2 Zone is the allowance of used car sales. Mr. Stewart stated the city has overturned their recent ruling on allowing additional uses in the HC-3 Zone and have had first reading on the issue. He stated it will essentially allow for 42 additional uses in the HC-3 Zone.

Mr. Jim Berling addressed the Commission and stated they were present a year or so ago and had a contract with Carmax and through it was a done deal. He stated at the last minute the city voted against it. He stated they then requested an HC Zone and that was approved. He noted the city then turned that down. Mr. Berling stated they met with the city and stated they wanted something that had more than 4 or 5 uses. He stated the HC-2 Zone is now a mix of commercial and a shopping center zone. He stated the city still has the master plan to develop that area. He noted Erlanger would like to see it developed and they would like to see it developed so they are

working with the city on the issue. He stated the city has modified the HC-2 Zone and it gives them more of a variety to expand and develop. He further stated the city intends to do away with the HC-3 Zone. The city noted the new proposed uses are not even final yet. Mr. Darpel stated they want to work with the city and the property owner but he doesn't know how they can make a determination without knowing what the new uses will be. Mr. Marcum then asked for a clarification on the HC-3 Zone vs. the HC-2 Zone as the only difference is the use of the used car sales. Mr. Schwartz then showed on the overhead the exact uses allowed under both zones for clarification. He further noted these were the permitted uses as of today.

At this time the public hearing was recessed to allow for discussion on the matter. Mr. Wells stated maybe the cart is before the horse by about a month given the fact that the city is between readings on the new HC-2 Zone. Mr. France stated the current HC-2 Zone is more conducive to the master plan than the HC-3 Zone the way he sees it. Mr. Marcum asked if the HC-2 Zone complies with the master plan. Mr. Schwartz stated it does not. Ms. Brown asked if the issue could be postponed until next month until after the city has made their decision and had the second reading on the modified HC-2 Zone. Counsel then stated the Commission has the ability to table the issue. Mr. Darpel questioned what the benefit would be in doing that. Mr. Barnett stated as a planner he is having a hard time reconciling this with the master plan. He further noted the city is going to do what the city is going to do on the issue.

Mr. Stewart then stated approval could also be conditioned based on approval by the city on the text amendment. Counsel then stated the difficulty is the Commissioners do not have in front of them what the additional uses will be. Mr. Hilgefurd stated this could just be turned down and then it would go back to the City of Erlanger for them to work out, which is what would end up happening anyway should it be approved with conditions on it. The public hearing was then closed. Mr. Hilgefurd then made the motion to disapprove based on the testimony heard and Staff's recommendations on the issue. Mr. Barnett seconded the motion. A roll call vote on the matter found Mr. Hilgefurd, Mr. Barnett, Ms. Brown, Ms. Carlin, Mr. Cook, Mr. Darpel, Mr. Hult, Mr. Marcum, Mr. Rogge and Ms. Snyder in favor. Mr. Coates, Mr. France, Ms. Hood, Mr. Raybourne and Mr. Wells voted against. The motion carried with a vote of 10-5.

## **1969R**

**APPLICANT:** City of Independence per Patricia H. Taney

**REQUEST:** proposed text amendments to the Independence Zoning Ordinance: (1) adding "offices, medical, dental, clinic" to the list of permitted uses within the NSC (neighborhood shopping center) Zone; and (2) adding "community center" to the list of conditional uses within the NSC (neighborhood shopping center) Zone

Staff recommendations and Staff presentations by Mr. Mike Ionna.

### **NKAPC STAFF RECOMMENDATION:**

#### **RECOMMENDATION A:**

To approve the proposed text amendment adding "offices, medical, dental and clinics" to the list

of permitted uses within the NSC (neighborhood shopping center) Zone, but only subject to the condition that it be added as two separate use listings; “Clinics – medical or dental” and “Offices, including medical and dental.”

**RECOMMENDATION B:**

To approve the proposed text amendment adding “community centers” to the list of conditional uses within the NSC (neighborhood shopping center) Zone.

**Comprehensive Plan Documentation:**

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

**Supporting Information/Bases for NKAPC Staff Recommendations:**

**RECOMMENDATION A:**

1. The proposed text amendment adding “offices, medical, dental and clinics” to the list of permitted uses within the NSC (neighborhood shopping center) Zone, as conditioned, 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 “offices, medical, dental and clinics” to the list of permitted uses within the NSC (neighborhood shopping center) Zone, as conditioned, is reasonable and appropriate. The total impact that would be generated by the proposed uses is consistent with the intensities and densities of the existing uses permitted within the NSC (neighborhood shopping center) Zone.
3. The proposed uses will provide essential commercial retail/service uses to the surrounding residential areas which is consistent with the intent and purpose of the NSC (neighborhood shopping center) Zone.
4. Approval of the proposed text amendment adding “offices, medical, dental and clinics” to the list of permitted uses within the NSC (neighborhood shopping center) Zone, as conditioned, is consistent with a previous staff recommendation.

In April 2005 the City of Independence, per Patricia Taney, submitted an application for NKAPC and KCPC review and recommendation on a proposed text amendment adding medical offices to the list of permitted uses within NC (neighborhood commercial) Zone (Z-05-04-03/1735R). On April 29, 2005, the NKAPC staff recommended approval of the proposed text amendment on the condition that the proposed text amendment be modified to read as follows: offices, including medical and dental. On May 5, 2005, following the public hearing, the KCPC recommended approval of the text amendment subject to the condition recommended by NKAPC staff. Independence City Council adopted the text amendment as conditioned by NKAPC staff.

5. The condition of approval will promote consistency within the Zoning Ordinance.

Due to the difference between medical and dental clinics and medical and dental offices, the Zoning Ordinance addresses “offices, medical, dental, and clinics” as two separate use listings. They are as follows: “Offices, including medical and dental” and “Clinics – medical or dental.”

These use listings encompass the intended uses to be permitted within the NSC (neighborhood shopping center) Zone as requested by the applicant while preserving the clarity and continuity of the Zoning Ordinance.

## RECOMMENDATION B

1. The proposed text amendment adding Community Centers to the list of conditional uses within the NSC (neighborhood shopping center) Zone is allowed to be included within the text of the zoning ordinance as authorized by Kentucky Revised Statute (KRS) 100.203(1).
2. The proposed text amendment adding Community Centers to the list of conditional uses within the NSC (neighborhood shopping center) Zone, is consistent with the definition of a conditional use as interpreted by NKAPC staff and as defined by Kentucky Revised Statute (KRS) 100.111 (6) which states:  
  
“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.”
3. The proposed text amendment adding Community Centers to the list of Conditional Uses within the NSC (neighborhood shopping center) Zone is reasonable and appropriate. Community Centers enrich the surrounding areas by providing a venue for entertainment, recreation, and gatherings.
4. The proposed text amendment adding Community Centers to the list of Conditional Uses within the NSC (neighborhood shopping center) Zone requires applications for a Community Center to be reviewed by the Board of Adjustment, through a public hearing process, to ensure that the activities and events occurring on the premises are properly integrated into the surrounding community.

Mr. Deters address the Commission and stated he had nothing to add except he would like to see the recommendations in writing since he did not have it. Mr. Schwartz then showed him the recommendations and he added he had nothing to add.

The public hearing was recessed to allow for discussion amongst the Commissioners. Mr. Barnett then stated this is for clarification and it just makes it more clear. The public hearing was then closed. Mr. Cook then made the motion to approve both items based on Staff's

recommendations and to include the conditions of Staff. Ms. Hood seconded the motion. A roll call vote on the matter found Mr. Cook, Ms. Hood, Mr. Barnett, Ms. Brown, Ms. Carlin, Mr. Coates, Mr. Darpel, Mr. France, Mr. Hilgefurd, Mr. Hult, Mr. Marcum, Mr. Raybourne, Mr. Rogge, Ms. Snyder and Mr. Wells in favor. The motion carried unanimously.

**Unfinished Business:**

**Reports from Committees:**

*By-Laws* – Nothing to report.

*Executive*- Mr. Wells stated they did meet and a proposed FY10 budget was distributed. He stated no action would be taken but he wanted to discuss a few items. He then highlighted various points of the proposed budget. He stated they met with Dennis to start looking into what could be done about this. He further stated the executive committee would be meeting one more time this month to gather more information. He stated he doesn't have anything specific but just wanted the Commissioners to have this in their hands to discuss it at next month's meeting. He noted there are reserves but he is hesitant to tap into that. Mr. Wells then again asked that the Commissioners take the time to look over the proposed budget.

*Model Zoning Ordinance* – Nothing to report.

*Subdivision Regulations Review* – Nothing to report.

*Report from legal counsel* – Nothing to report. Counsel did add that the Commission was identified in a lawsuit but that has since been dismissed.

*Announcements from Staff* – Mike Schwartz gave a brief update on the Park Hills Small Area Study. He stated the third public meeting will probably be held at the end of July or early August. He noted last month the first informal KCPC training took place and it was a good presentation. A couple Commissioners who attended stated it was a great presentation and it was good to have. Mr. Schwartz noted the next one would be held July 7<sup>th</sup> from 5:30 - 7:30 p.m. Mr. Schwartz then asked for a show of hands to get an idea of who would be attending. He then noted an email reminder would be sent out.

Mr. Wells stated several family members of Commissioners were in need of prayers and asked to keep them in their thoughts.

*Correspondence* – Nothing to report.

*New Business:* Mr. Rogge stated Crescent Springs is doing a Small Area Study as well. He stated they are a bit behind Park Hills but are piggybacking on their study. He noted they have had one meeting and will have another at the end of June. Mr. Wells also stated one of the Commissioners attended a national architect convention and noted some of the meetings attended related to what is being done locally. Mr. Schwartz stated the Commission basically has to decide if it is allowable as a continuing education credit or not. Mr. Hilgefurd then made the



motion to accept it as continuing education hours. Ms. Snyder seconded the motion. A roll call vote on the matter found Mr. Hilgefurd, Ms. Hood, Mr. Barnett, Ms. Brown, Ms. Carlin, Mr. Coates, Mr. Cook, Mr. Darpel, Mr. France, Mr. Hult, Mr. Marcum, Mr. Raybourne, Mr. Rogge, Ms. Snyder and Mr. Wells in favor.

**Public Comments:** None.

Sanitation District I gave a presentation for the Commission regarding their watershed approach. An overhead presentation was given on the overflows of the three counties. Challenges SD1 faces were discussed including aging sewers, sewer lines in creek beds and infiltrations as well as wet weather capacity. It was noted there are approximately 97 sewer overflows with an estimated volume of 1.8 billions a year. It was further noted there are approximately 220 overflow stations in the area. SD1 stated their goal and one of their challenges is to improve the streams in the area. Another challenge noted is excessive infiltration and inflow caused by too much overflow. Specific problem areas and costs associated with those areas were discussed along with solutions for remedying those specific sites. It was further noted a consent decree was signed a couple years ago with regard to addressing the problems. As a result of this decree SD1 is developing watershed plans to be implemented over the next 20 years. It was noted the first watershed plan would be submitted by the end of June of this year.

Following the presentation Mr. Hilgefurd made the motion to recommend that the presentation by SD1 be credited for one hour of continuing education. Mr. France seconded the motion. A roll call vote on the matter found Mr. Hilgefurd, Mr. France, Mr. Barnett, Ms. Brown, Ms. Carlin, Mr. Coates, Mr. Cook, Mr. Darpel, Ms. Hood, Mr. Hult, Mr. Marcum, Mr. Raybourne, Mr. Rogge, Ms. Snyder and Mr. Wells in favor. The motion carried.

There being nothing further to come before the Commission, Ms. Snyder made the motion to adjourn. Ms. Hood seconded the motion. The meeting then adjourned at 8:28.

APPROVED:

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Chair

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Date