



## KC&MP&ZC MINUTES

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### KENTON COUNTY & MUNICIPAL PLANNING & ZONING COMMISSION REGULAR MEETING

October 7, 1999  
6:15 P.M.

NKAPC Meeting Room  
2332 Royal Drive  
Fort Mitchell, Kentucky

### MINUTES

#### COMMISSION MEMBERS PRESENT:

Mr. Timothy Theissen, Chairman - Fort Wright  
Mrs. Alex Weldon, Vice Chair - Covington  
Mr. Paul Swanson, Secretary/Treasurer - Erlanger  
Mr. Jay Bayer - Park Hills  
Mr. James Bertram - Taylor Mill  
Mr. James Cook - Kenton County  
Mr. William J. Deupree III - Bromley  
Mr. William Erpenbeck - Edgewood  
Mr. Eugene Meyer - Covington  
Ms. Patti Sheehan - Ludlow  
Mr. Frank Smith - Lakeside Park  
Ms. Jill Smith - Kenton County  
Mr. James Sucher - Crescent Springs

#### COMMISSION MEMBERS NOT PRESENT:

Mr. Barry Coates - Covington  
Mr. John Dorsey - Fort Mitchell  
Mr. Russell England - Independence  
Mr. David Hilgeford - Villa Hills  
Mr. Michael Hoppenjans - Elsmere  
Mr. Joseph Price - Crestview Hills

LEGAL COUNSEL PRESENT:

David A. Schneider, Esq.

Mr. Theissen, Chairman, called the meeting to order at 6:15 P.M. Mr. Theissen opened the meeting with the Pledge of Allegiance and a prayer by Mr. Cook.

APPROVAL OF THE MINUTES:

Mr. Theissen stated that each Commission member received a copy of the Minutes from the meetings held on September 2, 1999. Mr. Theissen asked if there were any comments or corrections.

There were no comments or corrections.

Mr. Erpenbeck made a motion to approve both sets of Minutes as mailed. Ms. Jill Smith seconded the motion. A roll call vote on the motion found Mr. Erpenbeck, Ms. Jill Smith, Mr. Cook, Mr. Deupree, Mr. Meyer, Mr. Frank Smith, Mrs. Weldon and Mr. Theissen in favor. Mr. Bayer, Mr. Bertram and Mr. Swanson abstained. The motion carried.

FINANCIAL REPORT:

Mr. Theissen stated that each Commission member received a copy of the financial statement. Mr. Theissen asked if there were any comments or corrections.

There were no comments or corrections.

Mr. Theissen read a letter submitted by Afton Development, LLC requesting that applications 1439R and 1440R be tabled. Mr. Schwartz expressed a concern with the word "indefinite" contained in the letter. Mr. Schwartz suggested that the Planning Commission place a time limitation on the tabling. Mr. Swanson made a motion to accept the request to table applications 1439R and 1440R for a period not longer than six months.

Mr. Bayer, due to a conflict of interest, withdrew from voting on this item. Mr. Bayer stated the firm where he is employed has provided services to at least one member of Afton Development, LLC.

Mrs. Weldon seconded the motion and it carried unanimously.

Mr. Theissen marked the letter submitted by Afton Development, LLC requesting the tabling as Exhibit One. The original letter will be attached to the original minutes held by the Planning and Zoning Commission.

Ms. Sheehan arrived at the meeting.

#### SUBDIVISION ITEMS:

- a. PRESENTATION OF PRELIMINARY PLATS AND OTHER PLATS AND ISSUES REQUIRING COMMISSION ACTION AT A REGULAR MEETING. None.
- b. PRESENTATION OF ACTIONS TAKEN ON GRADING PLANS, IMPROVEMENT DRAWINGS AND SPECIFICATIONS, (STAGE II PLANS), FINAL PLATS, AND IDENTIFICATION PLATS BY THE COMMISSION'S DULY AUTHORIZED REPRESENTATIVE SINCE THE COMMISSION'S LAST REGULAR MEETING.
- c. PRESENTATIONS OF THE REPORT OF ACTIONS TAKEN BY THE SUBDIVISION/PUBLIC FACILITY REVIEW COMMITTEE AT A MEETING PRIOR TO, BUT ON THE SAME DAY, AS THE REGULAR MEETING. None.
- d. CONSTRUCTION REVIEW PROGRAM - See listing of subdivision for construction inspections in progress on separate handout.

PUBLIC FACILITIES: None.

Mr. Swanson made a motion that Staff's actions since the Commission's last meeting be approved. Mr. Frank Smith seconded the motion. A roll call vote on the motion found Mr. Swanson, Mr. Frank Smith, Mr. Bertram, Mr. Cook, Mr. Deupree, Mr. Erpenbeck, Mr. Meyer, Ms. Sheehan, Ms. Jill Smith, Mrs. Weldon and Mr. Theissen in favor. Mr. Bayer abstained. The motion carried.

Construction Review Program - No action taken.

Mr. Hiles stated Briarwood Development submitted a letter asking for a 12-month extension for Briarwood Subdivision. Mr. Hiles stated that Staff sees no reason not to grant that extension. Mr. Meyer made a motion that the 12-month extension be granted.

Mr. Bayer, due to a conflict of interest, withdrew from voting on this item. Mr. Bayer stated the firm for which he is employed was involved in that project.

Mrs. Weldon seconded the motion and it carried unanimously.

Mr. Sucher arrived at the meeting.

## PUBLIC HEARING

1432R

APPLICANT: City of Crescent Springs, per Mayor Claire Moriconi.

GENERAL LOCATION: An approximate 80 acre area located along Linden Hill Court, Linden Hill Road, Rosewood Drive, Squire Hill Court and Squire Hill Drive, Crescent Springs.

REQUEST TO BE REVIEWED: A proposed map amendment to the Crescent Springs Zoning Ordinance, changing the area described herein, from R-1BB (a single-family and two-family residential zone at a maximum density of approximately 2.7 dwelling units per net acre) to R-1B (a single-family residential zone at a maximum density of 2.0 dwelling units per net acre).

Staff presentation and Staff recommendation by Mr. Michael Schwartz.

### NKAPC STAFF RECOMMENDATION - CRESCENT SPRINGS ZONING ORDINANCE:

To approve the proposed map amendment from R-1BB to R-1B.

### SUPPORTING INFORMATION/BASES FOR NKAPC STAFF RECOMMENDATION:

1. The proposed map amendment from R-1BB to R-1B is consistent with the Land Use Plan Element of the 1996 Area-Wide Comprehensive Plan Update which identifies the site in question for Residential Development at a density of 2.0 dwelling units per net acre and Under and Physically Restrictive Development Areas (PRDA).

The proposed R-1B Zone permits detached single-family residential dwellings on a minimum lot area of 1/2 acre (2.0 dwelling units per net acre.) The site in question is currently developed with detached single-family residential dwellings at a density of approximately 1.6 dwelling units per net acre.

No one registered to speak regarding this application.

Mr. Schneider addressed the Commission. Mr. Schneider stated he is the City Attorney for the City of Crescent Springs. Mr. Schneider explained the situation regarding this area.

Following a discussion among the Commissioners, Mr. Deupree made a motion to approve application 1432R based on the Staff recommendation. Mrs. Weldon seconded the motion and it carried unanimously.

1433R

APPLICATION: Mr. John Noll.

GENERAL LOCATION: An approximate .3-acre area located at the northeast corner of the intersection of Decoursey Pike with Daniels Street, Covington.

REQUEST TO BE REVIEWED: A proposed map amendment to the Covington Zoning Ordinance, changing the area described herein, from R-1G (a single-family residential zone) to GC (a general commercial zone).

Staff presentation and Staff recommendation by Mr. Michael Schwartz.

NKAPC STAFF RECOMMENDATION - COVINGTON ZONING ORDINANCE:

To approve the proposed map amendment from R-1G to GC.

COMPREHENSIVE PLAN DOCUMENTATION/SUPPORTING INFORMATION/BASES FOR NKAPC STAFF RECOMMENDATION --

COMPREHENSIVE PLAN DOCUMENTATION:

Date of Adoption by the Kenton County and Municipal Planning and Zoning Commission: December 11, 1996.

SUPPORTING INFORMATION/BASES FOR NKAPC STAFF RECOMMENDATION:

1. The proposed map amendment from R-1G to GC is generally consistent with the Land Use Plan Element of the 1996 Area-Wide Comprehensive Plan Update. Although the site in question is identified for Residential Development at a density ranging from 7.1 to 14.0 dwelling units per net acre and Other - Railroad, areas located to the south and west of the site in question are identified for Commercial - Retail/Service uses and Other - Railroad. Since the preparation and adoption of the 1996 Area-Wide Comprehensive Plan Update, the railroad tracks have been removed. The proposed GC Zone permits a variety of retail and service uses, office uses, hotels and motels, restaurants, and trade businesses.

The Land Use Plan Element is not intended to identify precise boundaries between land uses. Rather, it is designed to provide land use recommendations to a general area. The fringes of the land use designations are intended to have flexibility to expand or contract, based on closer evaluation of existing and proposed land use relationships.

2. The existing R-1G Zone is inappropriate and the proposed GC Zone is appropriate.

The site in question is currently occupied by a Dairy Queen restaurant, an accessory garage structure, and associate off-street parking facilities. The area located to the south of the site in question, across Daniels Street, is currently zoned GC and is occupied by a furniture restoration business. The area

located to the west of the site in question, across Decoursey Pike, is currently zoned R-3, identified on the comprehensive plan for retail/service uses, and is occupied by a used car sales facility, a beauty parlor, a retail sales facility, a vacant commercial structure, a multi-family residential structure, and single-family residential structures. The City of Covington is in the process of acquiring the area located to the east of the site in question and is anticipated to be developed with a fire station. It is, therefore, unlikely that the site in question will be redeveloped with single-family residential dwellings pursuant to the existing R-1G Zone. The proposed GC Zone would allow the existing Dairy Queen restaurant to expand as a permitted use.

3. The submitted Stage I Development Plan meets the minimum requirements of the Covington Zoning Ordinance.

Mr. John Noll registered to speak in favor of the application. No one registered to speak opposing the application.

Mr. John Noll waived his right to speak.

Following a discussion among the Commissioners, Mrs. Weldon made a motion to approve the proposed map amendment from R-1G to GC on the basis that it is generally consistent with the Land Use Plan Element of the Comprehensive Plan. Mr. Erpenbeck seconded the motion and it carried unanimously.

The following two items were heard at one Public Hearing.

1434R

APPLICANT: City of Covington, per Ms. Ella Frye.

GENERAL LOCATION: N.A.

REQUEST TO BE REVIEWED: Proposed text amendments to the Covington Zoning Ordinance: (1) deleting existing definitions as they pertain to adult entertainment and sexually oriented businesses and adding new definitions as they pertain to adult entertainment and sexually oriented businesses; and (2) adding an LE (Limited Entertainment) Overlay Zone, along with the necessary cross references in other sections of the zoning ordinance.

1435R

APPLICANT: City of Covington, per Ms. Ella Frye.

GENERAL LOCATION: An approximate 100-acre area located at the terminus of Lake Park Drive, Covington.

REQUEST TO BE REVIEWED: A proposed map amendment to the Covington Zoning Ordinance, changing the area described herein, from IP (an industrial park zone) to IP (LE) (an industrial park zone with a limited entertainment overlay zone).

Staff presentation and Staff recommendation by Mr. Michael Schwartz.

## NKAPC STAFF RECOMMENDATION - COVINGTON ZONING ORDINANCE:

**RECOMMENDATION A:** To approve the proposed text amendment deleting existing definitions as they pertain to adult entertainment and sexually oriented businesses and adding new definitions as they pertain to adult entertainment and sexually oriented businesses.

**RECOMMENDATION B:** To disapprove the proposed text amendment adding a LE (Limited Entertainment) Overlay Zone, along with the necessary cross references in other sections of the zoning ordinance.

## COMPREHENSIVE PLAN DOCUMENTATION/SUPPORTING INFORMATION/BASES FOR NKAPC STAFF RECOMMENDATION --

### COMPREHENSIVE PLAN DOCUMENTATION:

Date of Adoption by the Kenton County and Municipal Planning and Zoning Commission: December 11, 1996.

### SUPPORTING INFORMATION/BASES FOR NKAPC STAFF RECOMMENDATION:

#### RECOMMENDATION A:

1. The proposed text amendment deleting existing definitions as they pertain to adult entertainment and sexually oriented businesses and adding new definitions as they pertain to adult entertainment and sexually oriented businesses (see Attachment A) 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 definitions provide for reasonable definitions of the terms.
3. The recommendation of approval is consistent with previous NKAPC staff recommendations.

On October 15, 1998, the City of Erlanger submitted a similar request (Z-98-10-02/1377R). On October 30, 1998, the NKAPC staff recommended approval of the proposed definitions. On November 5, 1998, following the public hearing, the KC&MP&ZC recommended approval of the proposed definitions.

On June 8, 1999, the City of Taylor Mill submitted a similar request (Z-99-06-02/1408R). On June 25, 1999, the NKAPC staff recommended approval of the proposed definitions. On July 1, 1999, following the public hearing, the KC&MP&ZC recommended approval of the proposed definitions.

On July 14, 1999, the City of Crescent Springs submitted a similar request (Z-99-07-06/1420R). On July 30, 1999, the NKAPC staff recommended approval of the proposed definitions. On August 5, 1999,

following the public hearing, the KC&MP&ZC recommended approval of the proposed definitions.

## RECOMMENDATION B:

1. Subsection B of the proposed text states that the proposed LE Overlay Zone may only be superimposed over any IP Zone.

The proposed text amendment adding a LE (Limited Entertainment) Overlay Zone, along with the necessary cross references in other sections of the zoning ordinance (see Attachments B and C) is not consistent with the intent of the IP Zone, as interpreted from the list of permitted uses.

Given the list of permitted uses, it is the intent of the IP Zone to provide for a zoning classification wherein traditional industrial uses (i.e., manufacturing, warehousing, and processing) may be developed. Sexually oriented businesses are not considered traditional industrial uses.

2. The recommendation of disapproval is consistent with previous NKAPC staff recommendations.

On October 15, 1998, the City of Erlanger submitted a request to add sexually oriented businesses as a conditional use within the I-1 Zone (Z-98-10-02/1377R). On October 30, 1998, the NKAPC staff recommended disapproval of the request. On November 5, 1998, following the public hearing, the KC&MP&ZC recommended disapproval of the request.

On June 8, 1999, the City of Taylor Mill submitted a request to add sexually oriented businesses as a conditional use within the I-4 Zone (Z-99-06-02/1408R). On June 25, 1999, the NKAPC staff recommended disapproval of the request. On July 1, 1999, following the public hearing, the KC&MP&ZC recommended disapproval of the request.

On July 14, 1999, the City of Crescent Springs submitted a request to add sexually oriented businesses as a conditional use within the IP-2 Zone (Z-99-07-06/1420R). On July 30, 1999, the NKAPC staff recommended disapproval of the request. On August 5, 1999, following the public hearing, the KC&MP&ZC recommended disapproval of the request.

3. Subsection B of the proposed text states that the proposed LE Overlay Zone may only be superimposed over any IP Zone.

The proposed text amendment adding a LE (Limited Entertainment) Overlay Zone, along with the necessary cross references in other sections of the zoning ordinance (see Attachments B and C) is not consistent with the intent and recommendations of the 1996 Area-Wide Comprehensive Plan Update. The 1996 Area-Wide Comprehensive Plan Update identifies the necessity to reserve land for future industrial development so as to assure industrial land is available to accommodate future employment needs. Permitting non industrial uses, such as those proposed, within areas zoned and/or identified for industrial land uses is, therefore, inconsistent with recommendations of the Plan Update.



## NKAPC STAFF RECOMMENDATION - COVINGTON ZONING ORDINANCE:

To disapprove the proposed map amendment from IP to IP (LE).

## COMPREHENSIVE PLAN DOCUMENTATION/SUPPORTING INFORMATION/BASES FOR NKAPC STAFF RECOMMENDATION --

### COMPREHENSIVE PLAN DOCUMENTATION:

Date of Adoption by the Kenton County and Municipal Planning and Zoning Commission: December 11, 1996.

### SUPPORTING INFORMATION/BASES FOR NKAPC STAFF RECOMMENDATION:

1. The proposed map amendment from IP to IP (LE) is not consistent with the Land Use Plan Element of the 1996 Area-Wide Comprehensive Plan Update which identifies the majority of the site in question for Industrial uses and Physically Restrictive Development Area (PRDA). Although the proposed LE Overlay Zone permits all of the permitted uses in the underlying IP Zone, it appears that the only purpose of the proposed LE Overlay Zone is to identify an area wherein sexually oriented businesses would be permitted. The proposed map amendment, therefore, would allow commercial (retail/service) businesses to be developed within an area identified for industrial activity.
2. The proposed map amendment from IP to IP (LE) is not consistent with the intent and recommendations of the 1996 Area-Wide Comprehensive Plan Update. The 1996 Area-Wide Comprehensive Plan Update identifies the necessity to reserve land for future industrial development so as to assure industrial land is available to accommodate future employment needs. Permitting non industrial uses, such as those proposed, within areas zoned and/or identified for industrial land uses is, therefore, inconsistent with recommendations of the Plan Update.
3. The existing IP Zone is appropriate due to its conformity with the Land Use Plan Element of the 1996 Area-Wide Comprehensive Plan Update. The existing IP Zone permits a variety of manufacturing, compounding, processing, warehousing, and packaging uses.

The proposed IP (LE) Zone would not be appropriate due to its nonconformity with the 1996 Area-Wide Comprehensive Plan Update as stated above.

4. It is the opinion of the NKAPC staff that there have not been any major changes of an economic, physical, or social nature within the vicinity of the site in question which were not anticipated during the preparation and adoption of the comprehensive plan, to warrant the proposed map amendment.
5. The NKAPC staff has recommended disapproval of a proposed text amendment adding the LE

Overlay Zone, along with the necessary cross references within other sections of the zoning ordinance (Z-99-09-01/1434R).

#### ADDITIONAL INFORMATION:

As noted in Item 5., above, the NKAPC staff has recommended disapproval of a proposed text amendment adding the LE Overlay Zone, along with the necessary cross references within other sections of the zoning ordinance (Z-99-09-01/1434R).

If the KC&MP&ZC wishes to recommend approval of this proposed map amendment, they must: (1) recommend approval of the proposed text amendment adding the LE Overlay Zone, along with the necessary cross references within other sections of the zoning ordinance (Z-99-09-01/1434R); and (2) recommend approval of this proposed map amendment subject to the condition that the City of Covington first adopt the proposed text amendment adding the LE Overlay Zone, along with the necessary cross references within other sections of the zoning ordinance.

If the City of Covington wishes to approve this proposed map amendment, they must first adopt the proposed text amendment adding the LE Overlay Zone, along with the necessary cross references within other sections of the zoning ordinance.

Mr. Joe Condit registered to speak in favor of the applications. Mr. Frank Bassler, Mr. John Nester, Mr. Steve Staggs, Mr. Rick Armstrong and Mr. Tony Fritz registered to speak opposing the application.

Mr. Joe Condit, representing the City of Covington, addressed the Commission in favor of the application. Mr. Condit stated this proposed change is specifically a legal decision based on the fact that the Courts have required that sexually oriented businesses be a permitted use in some zone in the City of Covington. Mr. Condit stated it was determined by the City of Covington that this site is the least offensive to residents.

Mr. Frank Bassler, representing Hobart Corporation, doing business as PMI Food Equipment Group, addressed the Commission opposing the application. Mr. Bassler stated when Hobart was encouraged by the Tri-County Economic Development Corporation, which represented Kenton County, to located its distribution center in Covington and not Clermont County, Hobart considered the zoning of Covington and the Pioneer Valley Industrial Park. The zoning of the area in and around Pioneer Valley Industrial Park did not provide for sexually oriented businesses. Had that area included or provided for those businesses Hobart's decision would have probably been altered.

Mr. Bassler stated a modification of the zoning ordinance to permit SO Businesses in the Zone alters the basis on which the original selection of the property was made. Allowing this change may depress the value of the surrounding property. Mr. Bassler stated studies indicate that there is an increase in crime rates and a decline in the quality of life in areas where SO businesses exist. Industrial and other commercial businesses in the Zone and the surrounding areas have employees, both male and female,

who must travel in close proximity to any SO businesses in the area, thus subjecting them to activities that may offend them and even to crime and rape. SO businesses observed in other communities have gaudy and offensive signage, which depreciates the quality of life and the value of properties.

Mr. Bassler submitted a letter opposing the application.

Mr. John Nester, ESCO Corporation, addressed the Commission opposing the application. Mr. Nester stated ESCO is opposed to the proposed change due to the increased traffic and security issues associated with these types of businesses. ESCO is a family-owned business, with frequent open houses where family members and children are encouraged to attend. Mr. Nester stated allowing this change would negatively affect the way ESCO currently does business.

Mr. Steve Staggs, representing White Castle Distributing, addressed the Commission opposing the application. Mr. Staggs stated he wants to go on record as opposing the changes and would endorse Staff's recommendations.

Mr. Rick Armstrong, representing PMI Food Equipment Group, addressed the Commission opposing the application. Mr. Armstrong stated concerns regarding increased crime if businesses of this type are permitted in this area. Mr. Armstrong stated his facility houses sixty million dollars worth of product.

Mr. Tony Fritz addressed the Commission opposing the application. Mr. Fritz stated concerns regarding safety for female workers. Mr. Fritz stated he agrees with the recommendation of Staff.

Mr. Theissen stated he received a letter dated October 7, 1999 from Fidelity Investments stating opposition to the applications. Mr. Theissen marked the letter as Exhibit One.

Mr. Theissen also received a letter from Rebel Valley Real Estate Investment Company stating opposition to the applications. Mr. Theissen marked the letter as Exhibit Two.

Mr. Theissen marked the letter submitted by Mr. Bassler as Exhibit Three. Exhibits One, Two and Three are attached to the original Minutes held by the Planning and Zoning Commission.

Mr. Deupree, due to a conflict of interest, withdrew from voting on these applications. Mr. Deupree stated Rebel Valley Real Estate Investment Company is a client of his law firm.

Mr. Condit addressed the Commission in rebuttal. Mr. Condit stated property owners can refuse to sell to sexually oriented businesses, however, as a city the courts have said cities cannot prohibit sexually oriented businesses. Cities have to allow sexually oriented businesses as a permitted zone somewhere in the city.

Mr. Theissen marked the Declaration of Protective Covenants for Pioneer Valley Industrial Park as Exhibit Four. Exhibit Four is attached to the original Minutes held by the Planning and Zoning

Commission.

Following a discussion among the Commissioners, Mr. Bertram made a motion to adopt both of Staff's recommendations on 1434R and 1435R for the reasons outlined by Staff in the Staff reports. Ms. Sheehan seconded the motion. A roll call vote on the motion found Mr. Bertram, Ms. Sheehan, Mr. Bayer, Mr. Cook, Mr. Meyer, Mr. Frank Smith, Ms. Jill Smith, Mr. Sucher, Mr. Swanson and Mr. Theissen in favor. Mr. Erpenbeck and Mrs. Weldon were opposed. The motion carried by a vote of 10 to 2.

1436R

APPLICANT: City of Taylor Mill, per Ms. Jill Cain, City Administrator.

GENERAL LOCATION: N.A.

REQUEST TO BE REVIEWED: Proposed text amendment to the Taylor Mill Zoning Ordinance to prohibit flag lots.

Staff presentation and Staff recommendation by Mr. Michael Schwartz.

NKAPC STAFF RECOMMENDATION - TAYLOR MILL ZONING ORDINANCE:

RECOMMENDATION: To disapprove the proposed amendments adding provisions to prohibit flag lots (See Attachment A).

COMPREHENSIVE PLAN DOCUMENTATION/SUPPORTING INFORMATION/BASES FOR NKAPC STAFF RECOMMENDATION --

COMPREHENSIVE PLAN DOCUMENTATION:

Date of Adoption by the Kenton County and Municipal Planning and Zoning Commission: December 11, 1996.

SUPPORTING INFORMATION/BASES FOR NKAPC STAFF RECOMMENDATION:

1. The proposed text amendment, adding provisions to prohibit flag lots, would eliminate the use of flag lots in the subdivision of land. This type of lot, in some cases, provides for the opportunity to utilize land which has limited frontage on a public right-of-way, or where it could be impractical to extend a public street, but is developable land which can meet all the other area regulations as provided in the zoning ordinance.

2. Prohibiting flag lots would restrict the reasonable division of land. The Kenton County Subdivision Regulations provide for flag lots with a "pole" or "stem" having a minimum width of twenty (20) feet. It is our opinion that there is sufficient criteria within the subdivision regulations to determine when and where flag lots are appropriate and when and where they are inappropriate. Pursuant to Kentucky

Revised Statutes (KRS) Chapter 100, the creation of lots, through the subdivision of land, is the sole responsibility of the planning commission, through the administration of its subdivision regulations. Adding subdivision regulations within the zoning ordinance is inappropriate.

No one registered to speak regarding this issue.

Mr. Erpenbeck made a motion to disapprove 1436R for the reasons outlined by Staff. Mrs. Weldon seconded the motion. A roll call vote on the motion found Mr. Erpenbeck, Mrs. Weldon, Mr. Bayer, Mr. Bertram, Mr. Cook, Mr. Deupree, Mr. Meyer, Ms. Sheehan, Mr. Frank Smith, Ms. Jill Smith, Mr. Sucher and Mr. Theissen in favor. Mr. Swanson was opposed. The motion carried by a vote of 12 to 1.

At this time a short break was taken.

Ms. Sheehan left the meeting.

1437R

APPLICANT: Kenton County & Municipal Planning & Zoning Commission, per Timothy B. Theissen, Chairman.

GENERAL LOCATION: Incorporated and Unincorporated areas within Kenton County.

REQUEST TO BE ADOPTED: Proposed Amendments to Kenton County Subdivision Regulations, including the following: (A) Handicap Accessible Curb Ramps - Construction Details; (B) Asphalt Concrete Surface Course - Construction Application; and (C) Water System - Design Standards - Fire Flows - Requirements- Fire Hydrants.

Staff presentation and Staff recommendation by Mr. Scott Hiles.

NKAPC STAFF RECOMMENDATION - KENTON COUNTY SUBDIVISION REGULATIONS FOR INCORPORATED AND UNINCORPORATED KENTON COUNTY: To adopt the proposed text amendments to the Subdivision Regulations (Referenced as Attachment A) but only subject to the following condition;

CONDITION

Water System - Design Standards - Fire Flow Requirements - Fire Hydrants. That regulations as proposed (i.e., minimum fire flow of 500 gpm as tested) for new developments within the urban service area be further based upon Insurance Services Office Guidelines (i.e., higher flows may be required via water main upsizing replacement, interconnection of existing or other systems). Such improvements, if required, must be based upon economic feasibility in direct proportion to development, subject to approval by the planning commission.

COMPREHENSIVE PLAN DOCUMENTATION/SUPPORTING INFORMATION/BASES FOR NKAPC STAFF RECOMMENDATION --

## COMPREHENSIVE PLAN DOCUMENTATION:

Date of Adoption by the Kenton County and Municipal Planning and Zoning Commission: December 11, 1996.

## SUPPORTING INFORMATION/BASES FOR NKAPC STAFF RECOMMENDATION:

The proposed amendments to the regulations are reasonable additions which are allowed to be included within the subdivision regulations per KRS 100.201 and 100.281 and which will help to better implement the subdivision regulations.

Proposed Amendments to Regulations (Attachment A) have been summarized to accomplish the following:

1. Handicap Accessible Curb Ramps - Construction Details. The U.S Department of Justice's regulation of the Americans with Disabilities Act of 1990 now requires installation of curb ramps at all existing pedestrian walkways to be installed by the year 2005. This regulation, as proposed, requires handicapped ramps to be constructed between all curbed street intersections and sidewalks for the handicapped within all new subdivision developments. Construction details and specifications will be included within Appendix "C" following adoption to be inspected by planning commission's duly authorized representative, the NKAPC Staff.
2. Asphalt Concrete Surface Courses-Construction Application. Flexible street pavements are constructed in layers. Due to time variations in building development, the base courses should experience at least one (1) freeze-thaw cycle and be repaired prior to application of a finished surface course. This delay provides assurance to further minimize damage in order to maintain normal life cycles of such street pavements when initially completed. Should sufficient reasons or special cases be demonstrated for completion of a surface course sooner or later than the time periods specified, such requests maybe considered and approved by the planning commission's duly authorized representative, the NKAPC staff.
3. Water System - Design Standards - Fire Flows - Requirements - Fire Hydrants. This issue was tabled indefinitely at a public hearing held in September 1987. The Insurance Services Office (ISO) is responsible for grading Public Protection Fire Classifications for municipalities based upon quantities of water supply up to 3500 gallons per minute (gpm). ISO Standards have historically been used as a guideline in estimating fire flow requirements for municipal fire protection. The size and type of new development including exposure (separation) distances for residential buildings have a direct impact upon Needed Fire Flows for fire protection within incorporated and unincorporated areas of Kenton County.

The Northern Kentucky Water Service District became the major water supplier in Northern Kentucky

on January 1, 1997.

Statutes (KRS 74) and regulations (807 KAR 5:066) of the water service district enable the installation of fire hydrants for fire protection only if their system can provide a minimum fire flow of 250 gallons per minute for a period of not less than two (2) hours plus consumption at the maximum daily rate.

Consultants for the water service district have analyzed their system based upon state regulations. Mapping has been furnished depicting areas of their existing system where fire flows of less than 500 gpm are available. Concern has been noted and presented that large portions of their system provide less than 1000 gpm and even larger portions less than 1500 gpm. These fire flow rate levels (i.e., 500 gpm, 1000 gpm, and 1500 gpm) have been established as a short method for groupings of single-family and two-family dwellings not more than two stories high based upon well defined exposure distances.

The ISO Fire Suppression Rating Schedule provides further guidance for estimating fire flow requirements for specific structures for insurance rating purposes. For more intense land uses including multi-family, commercial and community facilities, estimates of fire flow within higher ranges (i.e., 1500 gpm - 3500 gpm) are often needed.

An important dilemma continues to be debated between engineering professionals, water service district and fire protection officials regarding whether or not various levels of needed fire flows recommended by the Insurance Service Office (ISO) for developments is an issue of life safety and/or consumer property protection. Historical records and previous discussions with fire fighting personnel indicate that manpower and equipment combined with water supply available are all critical factors that must be used to adequately protect the public when fire emergencies occur.

Four (4) other water agencies (i.e., cities and special districts) within Kenton County are responsible for operations and management of water services including the city of Bromley, Ludlow, Taylor Mill and the Winston Park Water Department.

In summary, the new regulation as proposed mandates a minimum fire flow of 500 gpm at 20 psi (pounds per inch) residual pressure at a source of flow testing. Such minimum flows shall be required for all areas of development within the county's urban service area as designated within the Comprehensive Plan. However, additional requirements including: (1) upsizing or replacement of existing facilities; (2) interconnection with another system; or (3) other alternative supply sources may be required based upon case law and economic feasibility in direct proportion to the development. (vs. Nolan vs. Dolan).

Therefore, based upon advice from legal counsel, the planning commission or its duly authorized representative with input from the developer, design engineer, water service district or agency, legislative body, fire department and/or fire protection district using ISO Guidelines will be used (where economically feasible) to afford adequate water supply for fire protection for all new development within urban areas of Kenton County.

Mr. Richard Harrison, Mr. Paul LaFontaine and Mr. Vince Michels registered to speak regarding this application.

Mr. Richard Harrison, Director of Engineering and Distribution for the Northern Kentucky Water Service District, addressed the Commission regarding this application. Mr. Harrison stated the Water District would fall in the neutral category on the proposed regulations. Mr. Harrison stated the primary dilemma that the Water District has is the Water District's system is primarily designed for meeting domestic pressure under peak-day demand conditions. Mr. Harrison stated the district has made great strides to improve fire flow in the service area. Mr. Harrison stated as a Public Water Utility the customers have to be treated substantially the same. Fire flow could not be improved for only one area.

Mr. Paul LaFontaine, Chairman for the Kenton County Fire Chiefs Association, addressed the Commission regarding this application. Mr. LaFontaine stated the Fire Chiefs want to go on record as saying the Water Service District has made tremendous strides in improvement to the water system, however, there are developments that are going on that pose problems with the water flows and the minimum requirements. Mr. LaFontaine stated with the amount of development going on, a 500 GPM requirement would soon fall short to unsafe and dangerous fire flows. The public deserves the ISO fire flows for property safety and insurance ratings. Mr. LaFontaine stated the Kenton County Fire Chiefs would urge this Commission to adopt the ISO Guidelines for Fire Suppression Rating.

Mr. Vince Michels, representing Land Development Council of the Homebuilder's Association, addressed the Commission regarding this application. Mr. Michels submitted a memo with suggested amendments that differ from the proposed draft. Mr. Michels stated the language contained in the draft regarding the terms "practical or economically feasible" is putting the Planning Commission and the developer at risk. Mr. Michels stated the LDC would ask for proposed language that will allow for checks and significant improvements to the current system of water flow without entering into the realm of fire flow.

Following a discussion among the Commissioners, Mr. Erpenbeck made a motion to approve 1437R as submitted, with the exception of page two, (b) Additional Requirements, 1 - 3, until the Commission can come up with an amount for 'economically feasible.' Mr. Bayer seconded the motion. Mr. Erpenbeck stated he would like to see a definition for economically feasible. A roll call vote on the motion found Mr. Erpenbeck, Mr. Bayer, Mr. Cook and Mr. Sucher in favor. Mr. Bertram, Mr. Deupree, Mr. Meyer, Mr. Frank Smith, Ms. Jill Smith, Mr. Swanson, Mrs. Weldon and Mr. Theissen were opposed. The motion failed by a vote of 4 to 8.

Mr. Swanson made a motion to adopt the regulation as proposed. The motion does not include the Condition listed in the Staff report. Mr. Deupree seconded the motion. A roll call vote on the motion found Mr. Swanson, Mr. Deupree, Mr. Meyer, Mr. Frank Smith, Ms. Jill Smith, Mrs. Weldon and Mr. Theissen in favor. Mr. Bayer, Mr. Bertram, Mr. Cook, Mr. Erpenbeck and Mr. Sucher were opposed. The motion carried by a vote of 7 to 5.



1441R / 1442R

APPLICANT: Keeney Development, per Mr. Ray Keeney.

GENERAL LOCATION: AREA A (Unincorporated Kenton County): An approximate 36-acre area located along the north side of Marshall Road opposite the intersection of Steep Creek Road, approximately .7 mile east of Taylor Mill Road; and AREA B (Independence): An approximate 53 acre area located along the north side of Marshall Road, approximately 1 mile east of Taylor Mill Road.

REQUEST TO BE REVIEWED: (1) A proposed map amendment to the Kenton County Zoning Ordinance, change AREA A, as described herein, from R-1B (a detached single-family residential zone) to R-1C(PUD) (a detached single-family residential zone with a planned unit development overlay zone); and, (2) A proposed map amendment to the Independence Zoning Ordinance, changing AREA B, as described herein, from R-1B (a detached single-family residential zone) to R-1C (PUD) (a detached single-family residential zone with a planned unit development overlay zone).

Mr. Bayer, due to a conflict of interest, withdrew from consideration and voting on this application. Mr. Bayer stated his employer is involved in this project.

Staff presentation and Staff recommendation by Mr. Keith Logsdon.

#### NKAPC STAFF RECOMMENDATION - KENTON COUNTY ZONING ORDINANCE:

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

1. That the City of Independence approve the proposed map amendment for AREA B;
2. That the Stage I Development Plan be revised to meet all the requirements of Kenton County Zoning Ordinance;
3. That all requirements of the Kenton County Subdivision Regulations be complied with in regards to subdivision of the site in question;
4. That eastbound left-turn storage lanes be provided on Marshall Road, at the proposed intersection with Steep Creek Road; and,
5. That access be provided from the site in question to adjoining property to the west along Marshall Road and to the two parcels bounded by the site in question and Marshall Road.

#### NKAPC STAFF RECOMMENDATION - INDEPENDENCE ZONING ORDINANCE:

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

1. That the Kenton County Fiscal Court approve the proposed map amendment for AREA A.
2. That the Stage I Development Plan be revised to meet all the requirements of Independence Zoning Ordinance;
3. That all requirements of the Kenton County Subdivision Regulations be complied with in regards to subdivision of the site in question;
4. That left-turn storage lanes be provided on Marshall Road, at the proposed intersection; and,
5. That access be provided from the site in question to the two parcels bounded by the site in question and Marshall Road.

## COMPREHENSIVE PLAN DOCUMENTATION/SUPPORTING INFORMATION/BASES FOR NKAPC STAFF RECOMMENDATION

### COMPREHENSIVE PLAN DOCUMENTATION:

Date of Adoption by the Kenton County and Municipal Planning and Zoning Commission: December 11, 1996.

### SUPPORTING INFORMATION/BASES FOR NKAPC STAFF RECOMMENDATION:

1. The submitted request, as indicated in the Stage I Development Plan, is generally consistent with the Land Use Plan Element of the 1996 Area-Wide Comprehensive Plan Update which identified the site in question, as well as areas located to the north, south, east, and west, for Residential Development at 2.0 and under dwelling units per net acre and Physically Restrictive Development Area (PRDA).

While the proposed R-1C (PUD) Zone would allow single-family residential development at a maximum density of approximately 3.5 dwelling units per net acre along with other uses per the submitted development plan, the applicant has submitted a Stage I Development Plan indicating development of single-family residential dwellings only at a density of approximately 2.3 dwelling units per net acre.

2. The proposed map amendment is consistent with the following Residential Development Concepts, as contained within the text of the 1996 Area-Wide Comprehensive Plan Update:

Density is the major determinant of residential development.

Residential densities provide the major bases for "utilities" and "Community facilities systems" planning.

The type of development that should occur within an area should be based in part, upon the unique

characteristics of the development site and the character of adjacent development.

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

As previously indicated, the applicant has submitted a Stage I development Plan indicating development of single-family residential dwellings at a density of approximately 2.3 dwelling units per net acre. This density is compatible with existing development in the vicinity.

The site in question is characterized by gently rolling topography divided by several streams. The proposed R-1C(PUD) zone allows for a variety of housing types and lot sizes, and requires a minimum of 20 percent open space. The submitted Stage I development Plan, provides approximately 25 percent open space, which includes significant setbacks from Marshall Road and preservation of the stream valleys through the site in question.

3. The proposed amendments are generally consistent with the stated purpose of the PUD Overlay Zone, which reads as follows:

"The purposes of the Planned Unit Development (PUD) Overlay Zone are to: promote flexibility in design and permit planned diversification in the relationships between location of and types of uses and structures; promote the advantages of modern large scale site planning for community development through the efficient use of land, facilitating a more economic arrangement of buildings, circulation systems, land uses, and utilities; preserve, to the greatest extent possible, the existing landscape features and amenities, and to utilize such features in an harmonious fashion; provide for more usable and suitably located recreating facilities, other common facilities, than would otherwise be provided under conventional land development procedures, but always with the intention of furthering the public health, safety and general welfare."

The Land Use Plan Element of the 1996 Area-Wide Comprehensive Plan update identifies portions of the site in question as PRDA, due to steep hillsides. Use of the PUD Overlay Zone allows design of single-family residential development while maintaining the hillside areas in their natural state.

4. The submitted Stage I development Plan generally meets the minimum requirements of the Kenton County and Independence Zoning Ordinances.

Mr. Ray Keeney, Mr. Jerry Dusing, Mr. Gil Whitacer, Mr. Brian Huehls and Mr. Curt Keeney registered to speak in favor of the application.

Mr. Jim Carnard, Mr. Jeff Jarboe, Ms. Melanie Sebastian, Ms. Linda Schoburg, Ms. Tina Warren, Mr. Wayne Dornacher, Mr. Allen Sebastian and Mr. Bernie Fields registered to speak opposing the application.

Mr. Jerry Dusing, representing the Keeney family addressed the Commission in favor of the application.

Mr. Dusing stated Mr. and Mrs. Keeney have lived on the site for 38 years and will continue to live on the site. Mr. Dusing introduced Mr. Brian Huehls, Architect.

Mr. Theissen marked the brochure submitted by Mr. Dusing entitled Manor Hill as Exhibit One. The original brochure is attached to the original Minutes held by the Planning and Zoning Commission.

Mr. Brian Huehls addressed the Commission in favor of the application. Mr. Huehls stated this development will introduce people into an existing unique place. Mr. Huehls stated the character of the site was taken into consideration with the placement of the different lot types. This will be a family community, as well as a custom home community. Mr. Huehls stated the development will have a community park. Mr. Huehls stated this development will have variety, uniqueness and sense of place.

Mr. Gil Whitacer, Bayer Becker Engineers, addressed the Commission in favor of the application. Mr. Whitacer stated the sanitary sewer is provided on-site already, the site will be served by an eight-inch water main, which runs along the north side of Marshall Road. Mr. Whitacer stated he was instructed by Mr. Keeney to not only design the project to meet the subdivision requirements regarding drainage, but to exceed those requirements.

Mr. Jerry Dusing addressed the Commission. Mr. Dusing stated this development complies generally with the Comprehensive Plan. Mr. Dusing stated two lots in this development are sold; one to Ray and Janice Keeney, and the other lot is to Curt Keeney. This will be the anchor of the Homeowner's Association. Mr. Dusing stated the presentation by Staff was excellent.

Mr. Ray Keeney addressed the Commission. Mr. Keeney stated he would like to share with all his neighbors and friends that they are trying to do the right thing with this development. Mr. Keeney stated this is a personal issue because his family will be living there.

Mr. Curt Keeney addressed the Commission. Mr. Curt Keeney stated he would just like to respectfully ask for the Commission's permission to go forward with this project.

Mr. Jim Carnard addressed the Commission opposing the application. Mr. Carnard expressed concern with flooding in this area. Mr. Carnard stated the proposed development is beautiful, just provide enough land to build it, do not put three or four homes where two are supposed to go.

Mr. Jarboe addressed the Commission opposing the application. Mr. Jarboe stated the existing roads are not adequate to handle additional traffic. Mr. Jarboe stated there is a blind curve approaching the entrances to Mills and Marshall Roads and there are already accidents there. This development will add 704 cars per day. Mr. Jarboe stated the schools are already at capacity. Mr. Jarboe stated Decoursey Creek has begun record flooding since the development of Mills Park and the corner of Marshall and Taylor Mill. Mr. Jarboe stated this area already is experiencing problems with flooding, adding more lots will only increase this existing problem for the residents.

Ms. Melanie Sebastian addressed the Commission opposing the application. Ms. Sebastian expressed concerns regarding traffic.

Ms. Linda Schoburg addressed the Commission opposing the application. Ms. Schoburg stated of the 176 lots that are proposed, 128 of those lots are proposed in Area A. Ms. Schoburg stated this area does not have adequate water supply. Ms. Schoburg expressed concerns regarding the safety of walking trails.

Ms. Tina Warren addressed the Commission opposing the application. Ms. Warren expressed concerns with the ability to sell these lots. Ms. Warren stated there are subdivisions started in this area in all price ranges with lots available.

Mr. Wayne Dornacher addressed the Commission opposing the application. Mr. Dornacher expressed concerns regarding existing problems with flooding in this area. Mr. Dornacher stated Marshall Road was not made for this development.

Mr. Allen Sebastian addressed the Commission opposing the application. Mr. Sebastian stated the pictures presented by the Keeneys are misleading. Mr. Sebastian stated these surrounding roads are very dangerous. Mr. Sebastian stated this development should have one house per acre.

Mr. Bernie Fields waived his right to speak.

Mr. Dusing addressed the Commission in rebuttal. Mr. Dusing stated the density is virtually the same, there is no more traffic, no more kids, no more involvement of growth than what the Comprehensive Plan indicates, two per acre, 2.24 per acre. The present zoning is two per acre.

Mr. Dusing stated storm water management for this development exceeds the requirements of this Commission by 25%. Mr. Dusing stated this will be an eight to ten year build out. This development will be a quality product. The development meets the requirements of the Comprehensive Plan.

Ms. Linda Schoburg addressed the Commission regarding the access road. Ms. Schoburg stated her family owns the property where the connection would be. Ms. Schoburg stated at this time, her family would not be interested in providing property for an adjoining road.

Following a discussion among the Commissioners, Mr. Erpenbeck made a motion to approve applications 1441R and 1442R as submitted for the reasons stated by Staff, including the Conditions outlined by Staff in the report. Mr. Cook seconded the motion. A roll call vote on the motion found Mr. Erpenbeck, Mr. Cook, Mr. Meyer, Mr. Frank Smith, Ms. Jill Smith, Mr. Sucher, Mr. Swanson and Mrs. Weldon in favor. Mr. Bertram, Mr. Deupree and Mr. Theissen were opposed. The motion carried by a vote of 8 to 3.

**OLD BUSINESS:**

There was no old business.

**CORRESPONDENCE:**

There was no correspondence.

**PLANNING, STAFF AND LEGAL COUNSEL ITEMS:**

There were no planning, staff or legal counsel items.

**COMMISSION ITEMS:**

Mr. Theissen stated Mr. Huff is asking the Commission to rehear the application regarding the area located on Grandview, due to the fact that Mr. Huff now has additional information to submit to the Commission.

Mr. Sucher made a motion to allow a rehearing regarding Mr. Huff's application. Ms. Jill Smith seconded the motion. A roll call vote on the motion found Mr. Sucher, Ms. Jill Smith, Mr. Bayer, Mr. Bertram, Mr. Cook, Mr. Deupree, Mr. Erpenbeck, Mr. Meyer, Mr. Frank Smith, Mrs. Weldon and Mr. Theissen in favor. Mr. Swanson abstained. The motion carried.

**COMMENTS/REQUESTS TO THE COMMISSION:**

There were no comments or requests to the Commission.

There being no further business to come before the Commission, the meeting adjourned at 11:30 p.m.