

Lexington-Fayette Urban County Government Special Council Meeting

Lexington, Kentucky October 8, 2013

The Council of the Lexington-Fayette Urban County Government, Kentucky convened in special session on October 8, 2013 at 5:00 P.M. Present were Council Member Chuck Ellinger in the chair presiding, in the absence of Mayor Gray and Vice-Mayor Gorton, and the following members of the Council: Council Members Scutchfield, Beard, Clarke, Farmer, Ford, Henson, Kay, Lawless, and Mossotti. Absent were Council Members Myers, Stinnett, Akers, and Lane.

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An Ordinance changing the zone from an Agricultural Urban (A-U) zone to a Planned Neighborhood Residential (R-3) zone, for 24.88 net (27.71 gross) acres, for property located at 4500 and 4524 Old Schoolhouse Ln. (Ball Homes, LLC; Council District 10).

Mr. Ellinger swore in the witnesses and reviewed the procedures for the hearing.

Mr. Bill Sallee, Div. of Planning, gave his presentation and filed the following exhibits: (1) Legal Notice of Hearing to be Held; (2) Affidavit of Notices Mailed; (3) MAR 2013-13 Recommendation of the Urban County Planning Commission; (4) Land Subdivision Regulations; (5) 1983 Zoning Ordinance with Amendments; (6) 2007 Comprehensive Plan; (7) Traffic Impact Study for Ball Homes, LLC - Old School House Lane; (8) Letters and Emails Received by the Div. of Planning; (9) MAR 2013-13: Map of Subject Area; (10) Aerial Photographs of the Subject Area; (11) 2007 Comprehensive Plan Land Use Map Section, Subject Area; (12) Map of Subject Area Showing Proposed Roads and Bikeways; and (13) ZDP 2013-58: Preliminary Development Plan Map.

Mr. Bill Lear, Attorney for the Applicant, gave his presentation and filed the following exhibits: (1) Witness List; (2) Affidavit of Sign Posted; (3) MAR 2013-13 Harvey Property Exhibit Book, containing the following: (a) Ky. Revised Statutes 100.213; (b) 1980 and 1988 Comprehensive Plan Land Use Maps; (c) Ball Homes' Zone Change Justification Letter; (d) Medium Density Residential Description - 2007 Comprehensive Plan; (e) LFUCG Div. of Planning's Traffic Impact Study Staff Review Report; (f) Traffic Impact Study conducted by Jacobs Engineering; (g) Traffic Impact Study Addendum conducted by Jacobs Engineering; (h) Selection of Planning

Commission Minutes July 25, 2013; (i) Ian K. Hoffman's Resume; (j) Tree Preservation Report by Ian K. Hoffman; (k) EA Partners; Existing Driveway Exhibit; (l) Cultural Resource Analysts, Inc. - Richard Herndon's Resume; (m) Archaeological Report conducted by Cultural Resource Analysts, Inc.; and (n) Jeff and Jenny Stringer's Letter to Urban County Council. Mr. Lear also showed a Powerpoint presentation.

Mr. Fred Wohlstein, Rhema Way, gave his presentation on behalf of the Opponents.

The following witnesses spoke on behalf of the Opponents: (1) Ms. Nancy Terhaar, Dogwood Trace Boulevard; (2) Mr. Bob Pattie, Sundale Court, (3) Ms. Jan Geddes, Harrods Pointe Trace, who filed the following exhibit: (a) Petition from 85 neighbors; (4) Mr. John Yozwiek, Bud Lane; (5) Ms. Lauren Larson, Rhema Way, who filed the following exhibit: (a) Photographs of the Subject Area; (6) Ms. Patricia Ruff, Dogwood Trace Boulevard; (7) Mr. Dave Leonard, Consulting Arborist, who filed the following exhibit: (a) Handout Regarding Preservation of Bur Oak on Harvey Property; (8) Mr. Roger Marion, Dogwood Trace Boulevard; (9) Dr. George Crothers, University of Ky. Dept. of Anthropology, who filed the following exhibits: (a) Letter to the Council, (b) L.DAR Image Showing Topographic Feature Corresponding to 15Fa3; (c) Map of Soil Anomaly Corresponding to 15Fa3; (d) Ky. Office of State Archaeology 1946 Map w/Notes by Wm. G. Haag; (e) Ky. Office of State Archaeology Site Location Map October 7, 2013; (10) Kate Guiliani, Waterside Drive, who filed the following exhibits: (a) Petition from Neighbors, (b) Capacity map at South Elkhorn; (11) Ms. Vicki Hohmburg, Waterside Drive, who filed the following exhibit: (a) Summary Sheet, South Elkhorn Creek Total Maximum Daily Load; and (12) Mr. Ron Begley, Firebrook Boulevard.

Mr. Sallee gave his rebuttal and filed the following exhibit: (14) Article: "To Connect or not to Connect?" by Dan Zack, Bettercities.net, 9/25/2013.

Mr. Lear gave his rebuttal.

The following citizens spoke in favor of the zone change: (1) Raymond Waits, Old Higbee Mill Road; (2) Mr. Ray York, Walnut Hill Road; (3) Mr. Tom Kimmerer; Jesselin Drive; and (4) Mr. Alan Hisel, Crestridge Trail, Jessamine County.

The following citizens spoke against the zone change: (1) Mr. Justin Williamson, Ladera Lane, President of Dogwood Trace Neighborhood Association; (2) Ms. Patti Yozwiek, Bud Lane; (3) Ms. Kim Crocetti, Rhema Way, who filed the following exhibits: (a) Map of Elkhorn Trailhead, and (b) Map of Dogwood Park Area; (4) Ms. Ruth Marion, Dogwood Trace Boulevard; (5) Ms. Shannon Buzard, Scenic View Road; (6) Mr. Terry Hall, Trace Court; (7) Ms. Vickie Hall, Trace Court; (8) Ms. Marie Anne Rehmel, Dogwood Trace Boulevard; (9) Ms. Kate Guiliani, Waterside Drive; (10) Ms. Christina Dudek, Water Knoll Court, who filed the following exhibit: (a) Photos of Local Developments; (11) Mr. Greg Woods, Matthew Court; (12) Mr. Tony Gillespie, Sungale Court; (13) Mr. Gary Conrad, Sungale Court; (14) Mr. Horacio Zaglul, Sungale Court; (15) Ms. Lauren Larson, Rhema Way, who filed the following exhibit: (a) Photographs of the Subject Area; and (16) Mr. Jason Sloan, Bluegrass Trust for Historic Preservation.

Mr. Daniel Danford, Scenic View Road, gave the closing summation on behalf of the opponent.

Mr. Lear gave the closing summation on behalf of the Applicant.

Mr. Clarke made a statement about the zone change request.

Ms. Mossotti stated her concerns about new development in the area.

Mr. Kay asked questions of Mr. Sallee regarding the Capacity Assurance Plan and its role in Planning decisions. He also asked questions about road connectivity, archaeological dig areas, and protecting the bur oak tree in the subject area.

Ms. Lawless spoke about issues with the zone change.

Ms. Henson stated her concerns about the zone change.

Mr. Clarke made additional comments.

Mr. Farmer complimented the neighborhood residents on their involvement in the hearing.

Mr. Ellinger asked questions of Mr. Sallee about the long-term plan for transportation improvement plan for the subject area, particularly on Twain Ridge. Mr. Lear also responded to questions. Mr. Ed Gardner, Dept. of Law, responded to questions about traffic on Agape Drive. Mr. Dan Danforth, Opponent witness, also responded to questions.

Ms. Mossotti asked questions of Mr. Lear regarding greenways and parks in the proposed development, and presented several pictures of neglected greenways. Ms. Rena Wiseman, Ball Homes, responded to questions regarding the creation of a Homeowners' Association for the development.

Ms. Lawless spoke about greenway maintenance and parking issues.

Mr. Farmer asked questions of Mr. Lear about whether the streets were public or private.

Ms. Henson asked questions of Mr. David Leonard, arborist, about the amount of buffer space he would recommend around the older bur oak tree.

Mr. Ellinger asked Mr. Sallee to review the Planning Commission hearing results, and the next steps for the Council to take. Mr. Sallee responded.

Mr. Ellinger closed the public hearing.

Mr. Clarke made a motion, seconded by Mr. Farmer, to adopt the following Findings of Fact in Support of Disapproval of the zone change request:

1. The requested Planned Neighborhood Residential (R-3) zone is not in agreement with the 2007 Comprehensive Plan's recommendations because the Medium Density Residential (MD) land use proposed is not compatible with the current collector street configuration adjoining the property which is inadequate to support the increased traffic from the proposed development.
2. No evidence was presented before the Council that the current A-U zoning on the property is inappropriate.
3. Insufficient evidence was presented before the Council that there have been major changes of an economic, physical or social nature within the area where the subject property is located which were not anticipated by the Comprehensive Plan.
4. The proposed Planned Neighborhood Residential (R-3) zoning will adversely affect the existing single family residential land uses in close proximity to the subject property due to increased density, inadequate street system, and inability to sufficiently buffer the high density use from the single family residential uses.

Mr. Ellinger asked Mr. Gardner to review the procedures for adoption of Findings of Fact for Approval or Disapproval. Mr. Gardner responded.

Mr. Kay spoke about the motion.

The motion **failed to pass** by the following vote:

Aye: Clarke, Farmer, Lawless, Mossotti-----4

Nay: Scutchfield, Beard, Ellinger, Ford, Henson,  
Kay-----6

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Mr. Kay made a motion, seconded by Mr. Beard, to adopt the following Findings of Fact for Approval from the Planning Commission with a condition of the addition of a 75-foot buffer around the historic bur oak tree:

1. The requested Planned Neighborhood Residential (R-3) zone is in agreement with the 2007 Comprehensive Plan, for the following reasons:
  - a. The Plan recommends Medium Density Residential (MD) future land use for the subject property, defined as 5-10 dwelling units per net acre. This would suggest a maximum of 248 dwelling units on the subject property.
  - b. The applicant proposes to develop 241 dwelling units on the subject property and about 6 ¼ acres to the south, for a residential density of 7.74 dwelling units per net acre.
  - c. The proposal provides for the collector street system to connect via the intersection of Twain Ridge Drive and Agape Drive on the subject property, as generally recommended by the Land Use Element of the 2007 Plan.
2. This recommendation is made subject to approval and certification of ZDP 2013-58: Harvey Property (E. Maurice Neal Property, W.E. Savage Property & Hampton Springs) prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following restrictions are recommended via conditional zoning:
  - a. A maximum of 248 residential dwelling units shall be permitted on the subject property.
  - b. A 20-foot wide landscape buffer shall be provided along the common property line of the subject property and 4420 Old Schoolhouse Lane ("Stringer Property"). Existing trees with a DBH greater than 3" within 20' of the Stringer Property line and extending as far as 150' from the northwest property corner to the east, and 10' thereafter, shall be preserved and maintained in this buffer, except that dead or diseased trees or trees that may present a hazard due to their formation, branching or other condition may be removed. Trees within a proposed right-of-way or easement may be removed. Bush honeysuckle and other invasive plant growth may be removed.
  - c. A solid fence or wall, a minimum of 7' in height, shall be installed within this required landscape buffer if the existing earthen berm is removed from this area.

These restrictions are appropriate and necessary in order to ensure compliance with the Comprehensive Plan land use recommendation; to protect the character of the South Elkhorn School House, an historic structure which is listed on the Kentucky state registry of historic places; to minimize the impact of future development on the structure and its surrounding property; and to maintain the existing tree stand at this location.

Mr. Ellinger asked questions of Mr. Gardner and Mr. Lear about whether the condition could be added to the motion. They responded.

Mr. Kay asked if Mr. Lear would be willing to agree to a 75-foot buffer around the bur oak tree. Mr. Lear stated they would consider it.

Mr. Kay stated he would withdraw the condition of the 75-foot buffer around the bur oak tree from his motion.

Ms. Mossotti asked questions of Mr. Gardner about the legality of the conditions. Mr. Gardner responded.

Ms. Henson made a motion, seconded by Ms. Scutchfield, to amend Mr. Kay's motion to adopt the following Findings of Fact for Approval from the Planning Commission, with the added condition of a 75-foot buffer around the historic bur oak tree.

Mr. Beard and Ms. Scutchfield spoke about the motion.

Ms. Lawless asked questions of Mr. Lear regarding buffers around the trees on the property, and about paving surfaces near the trees. Mr. Lear responded.

Mr. Ford asked questions of Mr. Sallee about procedures. Mr. Sallee responded.

Ms. Henson's motion to amend **passed** by a majority vote of 9-1 (Mr. Beard voted **no**).

Ms. Mossotti asked additional questions of Mr. Sallee regarding streets in the area. Mr. Sallee responded.

Mr. Beard asked questions of Mr. Sallee. Mr. Sallee responded.

Ms. Scutchfield made a motion, seconded by Ms. Henson, to add a condition preventing Agape Drive from being connected to the proposed development. Mr. Gardner stated this was not permitted under the Council's authority in the Zoning Ordinance. Ms. Scutchfield withdrew her motion, and Ms. Henson withdrew her second.

Mr. Kay's amended motion, seconded by Mr. Beard, to adopt the Findings of Fact for Approval from the Planning Commission with the added condition of a 75-foot buffer around the historic bur oak tree **failed to pass by operation of law**, pursuant to KRS 100.211, by the following vote:

Aye: Scutchfield, Ellinger, Farmer, Ford, Henson,  
Kay, Mossotti-----7

Nay: Beard, Clarke, Lawless-----3

Mr. Gardner stated the Findings of Fact for Approval or Disapproval would have required 8 votes from the Council in order to be adopted.

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Mr. Ellinger asked Mr. Gardner to review the procedure for adopting Findings of Fact. Mr. Gardner responded.

Ms. Mossotti asked additional questions.

Ms. Lawless called for a point of order, and stated there could still be another motion to adopt Findings of Fact for Approval.

Ms. Lawless made a motion to adopt the following Findings of Fact for Approval from the Planning Commission, with a condition of a 75-foot buffer around the historic bur oak tree or another alternative for a pervious surface street:

1. The requested Planned Neighborhood Residential (R-3) zone is in agreement with the 2007 Comprehensive Plan, for the following reasons:
  - a. The Plan recommends Medium Density Residential (MD) future land use for the subject property, defined as 5-10 dwelling units per net acre. This would suggest a maximum of 248 dwelling units on the subject property.
  - b. The applicant proposes to develop 241 dwelling units on the subject property and about 6 ¼ acres to the south, for a residential density of 7.74 dwelling units per net acre.
  - c. The proposal provides for the collector street system to connect via the intersection of Twain Ridge Drive and Agape Drive on the subject property, as generally recommended by the Land Use Element of the 2007 Plan.
2. This recommendation is made subject to approval and certification of ZDP 2013-58: Harvey Property (E. Maurice Neal Property, W.E. Savage Property & Hampton Springs) prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following restrictions are recommended via conditional zoning:
  - a. A maximum of 248 residential dwelling units shall be permitted on the subject property.
  - b. A 20-foot wide landscape buffer shall be provided along the common property line of the subject property and 4420 Old Schoolhouse Lane ("Stringer Property"). Existing trees with a DBH greater than 3" within 20' of the Stringer Property line and extending as far as 150' from the northwest property corner to the east, and 10' thereafter, shall be preserved and maintained in this buffer, except that dead or diseased trees or trees that may present a hazard due to their formation, branching or other condition may be removed. Trees within a proposed right-of-way or easement may be removed. Bush honeysuckle and other invasive plant growth may be removed.
  - c. A solid fence or wall, a minimum of 7' in height, shall be installed within this required landscape buffer if the existing earthen berm is removed from this area.

These restrictions are appropriate and necessary in order to ensure compliance with the Comprehensive Plan land use recommendation; to protect the character of the South Elkhorn School House, an historic structure which is listed on the Kentucky state registry of historic places; to minimize the impact of future development on the structure and its surrounding property; and to maintain the existing tree stand at this location.

Mr. Ellinger ruled that the motion must come from a member of the prevailing side in the previous motion and vote. Ms. Lawless withdrew her motion.

Ms. Mossotti made a motion, seconded by Ms. Lawless, to adopt the following Findings of Fact for Approval from the Planning Commission, with a condition of a 70-foot buffer around the historic bur oak tree:

1. The requested Planned Neighborhood Residential (R-3) zone is in agreement with the 2007 Comprehensive Plan, for the following reasons:
  - a. The Plan recommends Medium Density Residential (MD) future land use for the subject property, defined as 5-10 dwelling units per net acre. This would suggest a maximum of 248 dwelling units on the subject property.
  - b. The applicant proposes to develop 241 dwelling units on the subject property and about 6 ¼ acres to the south, for a residential density of 7.74 dwelling units per net acre.
  - c. The proposal provides for the collector street system to connect via the intersection of Twain Ridge Drive and Agape Drive on the subject property, as generally recommended by the Land Use Element of the 2007 Plan.
2. This recommendation is made subject to approval and certification of ZDP 2013-58: Harvey Property (E. Maurice Neal Property, W.E. Savage Property & Hampton Springs) prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following restrictions are recommended via conditional zoning:
  - a. A maximum of 248 residential dwelling units shall be permitted on the subject property.
  - b. A 20-foot wide landscape buffer shall be provided along the common property line of the subject property and 4420 Old Schoolhouse Lane ("Stringer Property"). Existing trees with a DBH greater than 3" within 20' of the Stringer Property line and extending as far as 150' from the northwest property corner to the east, and 10' thereafter, shall be preserved and maintained in this buffer, except that dead or diseased trees or trees that may present a hazard due to their formation, branching or other condition may be removed. Trees within a proposed right-of-way or easement may be removed. Bush honeysuckle and other invasive plant growth may be removed.
  - c. A solid fence or wall, a minimum of 7' in height, shall be installed within this required landscape buffer if the existing earthen berm is removed from this area.

These restrictions are appropriate and necessary in order to ensure compliance with the Comprehensive Plan land use recommendation; to protect the character of the South Elkhorn School House, an historic structure which is listed on the Kentucky state registry of historic places; to minimize the impact of future development on the structure and its surrounding property; and to maintain the existing tree stand at this location.

The motion was **approved** by the following vote:

Aye: Scutchfield, Ellinger, Farmer, Ford, Henson,  
Kay, Lawless, Mossotti-----8

Nay: Beard, Clarke-----2

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An Ordinance changing the zone from an Agricultural Urban (A-U) zone to a Planned Neighborhood Residential (R-3) zone, for 24.88 net (27.71 gross) acres, for property located at 4500 and 4524 Old Schoolhouse Ln. subject to use restrictions as conditions relating to maximum number of dwelling units, buffering, tree protection, and

screening (Ball Homes, LLC; Council District 10) was given new first reading as amended by the adopted Findings of Fact for Approval with added conditions.

Upon motion of Mr. Farmer, seconded by Ms. Henson, the rules were suspended by unanimous vote.

The ordinance was given second reading. Upon motion of Mr. Kay, seconded by Ms. Henson, the ordinance **failed to pass by operation of law**, pursuant to KRS 100.211, by the following vote:

Aye: Scutchfield, Beard, Ellinger, Ford, Henson,  
Kay, Mossotti-----7

Nay: Clarke, Farmer, Lawless-----3

Mr. Kay stated because of the lack of 8 votes from the Council, the original ordinance with the original Findings of Fact for Approval from the Planning Commission would prevail.

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An Ordinance changing the zone from an Agricultural Urban (A-U) zone to a Planned Neighborhood Residential (R-3) zone, for 24.88 net (27.71 gross) acres, for property located at 4500 and 4524 Old Schoolhouse Ln. (Ball Homes, LLC; Council District 10) **passed by operation of law** on December 8, 2013, pursuant to KRS 100.211.

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Upon motion of Mr. Ford, seconded by Mr. Beard, and approved by unanimous vote, the meeting adjourned at 9:40 p.m.

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Clerk of the Urban County Council