

Lexington-Fayette Urban County Government Special Council Meeting

Lexington, Kentucky February 19, 2008

The Council of the Lexington-Fayette Urban County Government, Kentucky convened in special session on February 19, 2008 at 6:00 P.M. Present were Vice-Mayor Jim Gray in the chair presiding in the absence of Mayor Newberry, and the following members of the Council: Council Members Lane, McChord, Myers, Stinnett, Beard, Blues, Crosbie, Ellinger, Gorton, Henson and James. Absent were Council Members Stevens, Blevins and DeCamp.

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An Ordinance changing the zone from an Agricultural Urban (A-U) zone to an Expansion Area Residential-2 (EAR-2) zone for 8.63 net (8.96 gross) acres of property located at 2020 Russell Cave Road (Richardson Todds Road, LLC) was given second reading with a public hearing being held.

The Vice Mayor explained the procedures of the public hearing and swore in the witnesses.

Mr. Bill Sallee, Div. of Planning, gave his presentation and filed the following exhibits: (1) Legal Notice, (2) Affidavit of notices mailed, (3) MAR 2007-19, Final Report and minutes of the Planning Commission, (4) 2007 Comprehensive Plan, (5) Expansion Area Master Plan, (6) 1983 Zoning Ordinance with amendments, (7) Land Subdivision Regulations, (8) Zoning Map, Sectors 6 and 11, (9) Aerial photographs of the subject property, (10) 2007 Comprehensive Plan Map – North Section and (11) Preliminary Development Plan.

Mr. Jon Woodall, attorney for the petitioner, made an objection that there was no development plan before the Council for consideration and that the Council was only to consider whether the property was to be rezoned. Mr. Woodall stated that the proposed development plan introduced by Mr. Sallee had been indefinitely postponed by the Planning Commission.

The Vice Mayor asked Ms. Rochelle Boland, Dept. of Law, to speak to objection.

Ms. Boland stated that the Council would not approve the development plan because that was a function of the Planning Commission; however, the

development plan could be used as an exhibit during the hearing not for purposes of approval but for purposes of considering whether the proposed zone change was appropriate to the property.

The Vice Mayor overruled the objection, and allowed the evidence to be entered.

Mr. Sallee continued with his presentation.

Mr. Jon Woodall, attorney for the petitioner, gave the reasons for the requested zone change and filed the following exhibits: (1) Affidavit of sign posted and (2) Handout, which included the following: (a) Curriculum Vitae of William L. Berkley, Jr., Berkley Appraisal Service, (b) Federal Emergency Management Association Flood Plain Location Map, (c) Aerial Photograph – 2020 Russell Cave Road and surrounding properties with zoning designations, (d) 2007 Zoning Status Sheet – Disposition of Zone Change Requests by Planning Commission and Urban County Council, (e) Applicant's proposed Findings of Fact, (f) Letter from The Fayette Alliance dated November 29, 2007 and (g) Highest and Best Use Analysis – William L. Berkley, Jr.

The following witness spoke in favor of the requested zone change: (1) Mr. William L. Berkley, Jr., Berkley Appraisal Service.

The following citizens spoke against the requested zone change: (1) Ms. Knox Van Nagell, The Fayette Alliance; (2) Mr. David Atcher, Swigert Avenue, who filed the following exhibit: (a) Handout - The Flooding impact of the proposed development of 2020 Russell Cave Road on the current unsolved flooding problems of Thoroughbred Acres, Shandon Park, Joyland, Shandon Farm and Kingston Farm; (3) Ms. Josie Gurgeirch Jones, Kingston Road, President of the Joyland Neighborhood Association; (4) Ms. Naomi Hume, Swigert Avenue; (5) Mr. Edgar Hume, Swigert Avenue; (6) Mr. Turner Lyman, Pierson Drive; (7) Mr. Jack Burch, Russell Cave Road, who filed the following exhibit: (a) Handout, which included the following: (a) a Letter to the Planning Commission from Mr. Burch, (b) Scenic Easement on 2020 Russell Cave Road and (c) Photographs taken from 2060 Russell Cave Road towards 2020 Russell Cave Road (Johnson Property); (8) Ms. Vicki Reed, Palmyra Avenue, President of the Elkhorn Park

Neighborhood Association; (9) Ms. Catherine Perkins, Swigert Avenue; (10) Mr. William Woodward, Swigert Avenue; (11) Mr. Christian Haagen, Swigert Avenue; (12) Ms. Julia Martin, Radcliffe Road, President of Marlboro-Radcliffe Neighborhood Association and (13) Mr. Dan Brock, Swigert Avenue.

Mr. Sallee gave his rebuttal and summation.

The following additional citizen spoke against the requested zone change: (14) Mr. Gary Criswell, Duntreath Drive, member of The Fayette Alliance.

Mr. Woodall made his summation.

Ms. Van Nagell made her summation.

The following additional witness spoke in favor of the requested zone change: (2) Mr. Joe Hacker, developer.

The Council asked questions of Mr. Sallee, Mr. Woodall, Ms. Boland, Ms. Reed, Mr. Burch, Ms. Van Nagell, Mr. Hacker and Mr. Atcher.

Mr. Blues made a motion, seconded by Ms. Gorton, to disapprove the petitioner's application for a zone map amendment and to accept the following Planning Commission's Findings of Fact of November 29, 2007 for Disapproval:

1. The applicant has failed to show a compelling need to grant this rezoning.
2. The proposed rezoning is inappropriate at this time due to the applicant's inadequate treatment of concerns related to environmentally sensitive areas, storm water runoff, water quality and traffic.
3. The existing A-U zoning is appropriate.
 - a. The applicant has not submitted sufficient evidence to show that the property is unsuited for the uses permitted in the existing zone.
 - b. Retaining the existing zoning will maintain the status quo and prevent inappropriate or premature development from occurring while not precluding future development in agreement with the Expansion Area Master Plan.
4. Although the rezoning application falls within the minimum and maximum density requirements for EAR-2 uses, nonetheless it does not adhere to a number of other EAMP recommendations for development in the Expansion Area and therefore is in disagreement with the EAMP. For example, the application fails to provide adequate buffering and fails to depict an innovative design for new development.
5. The proposed zoning proposal fails to meet Goals 3, 15 and 16 of the 2007 Comprehensive Plan, as the development would not be sensitive to the environmentally sensitive areas, particularly the floodplain located on the property, and does not enhance the character and quality of existing neighborhoods in the vicinity, including the Shandon Park and Foxborough Manor subdivisions.

There was further discussion among the Council concerning the motion.

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

Aye: Stinnett, Blues, Gorton, Gray, Henson, James ----- 6

Nay: Lane, McChord, Myers, Beard, Crosbie, Ellinger ----- 6

Ms. Gorton made a motion to disapprove the ordinance.

There was discussion concerning the motion to disapprove the ordinance.

Mr. Lane made a motion to table the issue.

There was discussion concerning the motion to table.

Mr. Lane withdrew his motion.

There was further discussion concerning the language and vote for the motion to disapprove the ordinance.

Upon motion of Ms. Gorton, seconded by Mr. Blues, the ordinance **failed to pass** by the following vote:

Aye: Lane, McChord, Myers, Beard, Crosbie, Ellinger ----- 6

Nay: Stinnett, Blues, Gorton, Gray, Henson, James ----- 6

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Upon motion, the Council adjourned at 9:21 p.m.

Clerk of the Urban County Council