

Lexington-Fayette Urban County Government Special Council Meeting

Lexington, Kentucky April 25, 2023

The Council of the Lexington-Fayette Urban County Government, Kentucky convened in special session on April 25, 2023 at 5:00 p.m. Present were At-large Councilmember J. Brown in the chair presiding, in the absence of Mayor Gorton, and the following members of the Council: Ellinger, Elliott Baxter, Fogle, Gray, LeGris, Lynch, Monarrez, Plomin, Seigny, Sheehan, and F. Brown. Absent were Council Members Reynolds, Worley and Vice Mayor Wu.

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At 5:04 p.m., Councilmember J. Brown opened the hearing.

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An Ordinance changing the zone from an Interchange Service Business (B-5P) zone to a Highway Service Business (B-3) zone for 30.24 net (37.36 gross) acres, for property located at 5380 Athens Boonesboro Rd. and 5354 Athens Boonesboro Rd. (a portion of). (IVCP Athens South LLC; Council District 12) received second reading.

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Councilmember J. Brown swore in the witnesses, and reviewed the procedures and order of proceedings for the meeting.

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Traci Wade, Div. of Planning, gave a presentation on the recommendation of the Planning Commission and filed the following exhibits: (1) Legal Notice of Public Hearing; (2) Affidavit of Notices Mailed; (3) Copy of Planning Commission Final Report and Recommendation; (4) Copy of the 2018 Comprehensive Plan – Imagine Lexington; (5) Rural Land Management Plan; (6) Copy of the Zoning Ordinance; (7) Land Subdivision Regulations; (8) Traffic Impact Study; (9) Parking Demand Mitigation Study; (10) Updated Development Snapshot; (11) Exhibits filed at the January 26, 2023 Planning Commission Public Hearing; (12) Copy of Staff Presentation; and (13) Emails received by Div. of Planning.

Mr. Hal Baillie, Div. of Planning, described the subject property and surrounding property, and the various uses that have been applied to it in the past. He displayed

photographs and maps of the subject property and described its physical characteristics. Mr. Baillie also discussed the proposed development and the reasons for the Planning Staff's and the Planning Commission's recommendations.

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Steve Ruschell appeared as counsel for the Petitioner and filed the following exhibits: (1) Affidavit of Posting Signs; (2) Witness List; (3) Copy of PowerPoint Presentation; and (4) Copy of Presentation with various exhibits.

Mr. Ruschell introduced various representatives for the Petitioners; he talked about the requested zone change, displayed photographs of the subject property, and discussed the location and proposed uses, as well as historical uses that have applied.

Joshua Lewis (Petitioner), Managing Director of iVisionary Capital Partners, spoke about the company, the proposed zone change, potential uses, and job creation.

Sam Stockley, Lexington Sporting Club (LSC) Head Coach and Sporting Director, spoke about the development of the sporting club, and the impact of having a training center on the subject property, in addition to the stadium.

Vince Gabbert, Lexington Sporting Club (LSC) President, spoke about the impact the zone change would have for the Club and its team.

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Tom Miller appeared as counsel for the Opposition (various objectors) and filed the following exhibit: (1) Powerpoint Presentation.

Don Todd appeared as counsel for the Opposition (the Old Richmond Road Neighborhood Association) and filed the following exhibit: (2) Development Plan for LSC Stadium Development Area for the City of Nicholasville, Kentucky.

Julie Goodman appeared as a member of Opposition and filed the following exhibit: (3) LSC Construction Issues (thumb drive).

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At 6:55 p.m., the meeting stood at recess.

At 7:07 p.m., the meeting reconvened with the same persons present.

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James Hodge appeared as counsel for the Opposition (the Old Richmond Road Neighborhood Association) and filed the following exhibits: (4) Proposed Substitution to the Findings of Fact and (5) Case Law Examples Presentation.

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Mr. J. Brown and Ms. Jones discussed time limits in conjunction with hearing procedures.

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Mr. Ruschell cross-examined Mr. Hodge.

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The following persons spoke in opposition: (1) Whit Whitaker, Council District 2; (2) Dennis Yulkut, Council District 12; (3) Zachary Skubiz, Council District 8; (4) Andrew Pearson, Council District 12; (5) Philip Goodman, Council District 12; (6) Lyle Hanna Council District 12; (7) Mary Diane Hanna, Council District 12; (8) John Tucker, Council District 12; (9) Edward Hastie, Council District 12; and, (10) Jan Meyer, Council District 3.

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Mr. Baillie offered rebuttal comments.

Mr. Ruschell made rebuttal comments on behalf of the Petitioner.

Mr. Todd made rebuttal comments on behalf of the Opposition and filed the following exhibits: (6) March 16, 2023 Letter from Nicholasville Planning & Zoning Commission; and (7) LSC Nicholasville TIF Public Hearing Notice.

Mr. Hodge made rebuttal on behalf of the Opposition.

Ms. Goodman made rebuttal comments as Opposition.

Mr. Baillie offered summation.

Mr. Ruschell offered summation for the Petitioner.

Mr. Hodge offered summation on behalf of the Opposition.

Mr. Todd offered summation on behalf of the Opposition.

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At 8:16 p.m., the meeting stood at recess.

At 8:23 p.m., the meeting reconvened with the same persons present.

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Councilmember J. Brown opened the floor for questions from the Council Members.

Ms. Gray inquired if the Petitioner intended to build a stadium on the subject property. Mr. Ruschell responded. She requested Mr. Todd to elaborate on a statement made in his opening argument. Mr. Todd responded. Ms. Gray asked Ms. Goodman about the video footage she presented. Ms. Goodman responded. She asked Mr. Stockley about community outreach. Mr. Stockley responded.

Ms. Fogle shared her concerns about transparency before asking if there was a fee for stadium entry. Mr. Gabbert responded. She spoke about prioritizing access to the stadium by way of public transportation.

Ms. Plomin requested for a breakdown of the subsequent actions to occur after the Council voted to approve or disapprove the zone change request. Mr. Baillie responded.

Mr. Sevigny inquired if the conditional use was already approved. Ms. Jones responded. He asked if Mr. Gabbert had made a statement that may have potentially indicated to someone that LSC may erect the stadium in a different location. Mr. Gabbert responded. Mr. Sevigny asked Mr. Shockey about terminology used during his introduction. Mr. Shockey responded.

Ms. Sheehan proffered questions about the development plan and updates to Athens Boonesboro Rd. Ms. Wade responded. She asked questions about the development plan and other businesses potentially building on the subject property. Mr. Lewis responded.

Ms. LeGris asked questions about conditional use permit conditions, and requested clarification on the specifics in consideration. Mr. Baillie responded. She inquired about definitions and reiterated next steps of the process after the request is approved or disapproved. Mr. Baillie responded.

Ms. Elliott Baxter queried if a rural activity center had ever been intensified previously and how recently a development plan was filed on the subject property. Mr. Baillie responded. She inquired about B-3 zones and mixed use zones in relation to the subject property and the criteria qualifications of a 'substantial change'. Mr. Baillie responded.

Ms. Lynch requested elaboration on the Petitioner's public engagement throughout the application process. Mr. Gabbert responded.

Mr. Ellinger noted the precarious balance of considering the requested zone change and proposed development plan. Mr. Baillie offered elaboration. He inquired Mr. Hodge's substitution to the Findings of Fact. Mr. Baillie responded. Ms. Jones responded.

Council Member J. Brown asked about the Planning Commissions' ability to disapprove applications, before asking about their process of reviewing development plans. Mr. Gabbert responded. He inquired about public transportation, an equity statement, and the timeframes and frequency of games during a season. Mr. Gabbert responded.

Ms. Fogle inquired about the presence of safety officers for directing game traffic. Mr. Gabbert responded. She asked about the filing of the conditional use request. Ms. Jones responded. Ms. Fogle spoke about the concerns stated by the opposition, before inquiring the KRS requirements listed on an item contained in Staff Exhibit (11). Ms. Wade responded.

Mr. Ellinger requested Mr. Hodge expound on his proposed Findings of Fact language substitution. Mr. Hodge responded. Ms. Jones responded.

Ms. LeGris posited if light and sound pollution and chemical runoff were addressed in conditional use permit restrictions. Mr. Baillie responded. She asked if the Council could add a prohibited use. Mr. Baillie responded.

Ms. Plomin asked the Petitioner if the stadium was not built, their thoughts on reverting the property back to current zone. Mr. Ruschell responded. She asked for the amount of different uses allowable in a B-3 Zone. Mr. Baillie responded. Ms. Plomin asked Mr. Hodge for his response after hearing concerns expressed by Ms. Jones about the proposed restrictions in Opposition Exhibit (4). Mr. Hodge responded.

Mr. Sevigny asked if an extensive property search in Lexington-Fayette County was conducted. Mr. Gabbert responded. He queried if the subject property was ideal to host all development projects and if it was the desire of the applicant to build all facets on a single property. Mr. Gabbert responded.

Mr. J. Brown asked if there were any specific uses allowed in the B-3 zone that stakeholders or neighborhoods found undesirable. Ms. Goodman responded. Mr. Hodge responded.

Ms. Jones stated that gaming establishments and casinos were not a permitted use in the B-3 zone. Mr. J. Brown responded.

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At 9:31 p.m., Councilmember J. Brown closed the hearing.

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Ms. Elliott Baxter spoke about the reasons behind her upcoming motion.

Upon motion by Ms. Elliott Baxter, seconded by Mr. F. Brown, the Council approved the Findings of Fact, as follows, by the following vote.

Aye: Ellinger, Elliott Baxter, Gray, LeGris, Lynch, -----10
Monarrez, Sevigny, Sheehan, F. Brown, J.
Brown

Nay: Fogle, Plomin -----2

1. A restricted Highway Service Business (B-3) zone is in agreement with the 2018 Comprehensive Plan's Goals, Objectives, and Policies, for the following reasons:
 - a. The proposed development will create jobs and prosperity by showcasing local assets, which will be specifically focused on the promotion and enhancement of sports tourism, entertainment and other quality of life opportunities that attract young, and culturally diverse professionals and a work force of all ages and talents (Theme C, Goal #1 and #2).
 - b. The proposed development will enhance Lexington's ability to host regional athletic tournaments through the inclusion of the soccer stadium and training facility (Theme C, Livability Policy #3 of the Comprehensive Plan).
2. The justification and corollary development plan are in agreement with the 2017 Rural Land Management Plan, for the following reasons:
 - a. The proposed rezoning will allow for greater utilization of property within the Blue Sky Rural Activity Center that support highway and interstate service commerce, while also allowing for greater flexibility for job production, which would target the production of employment at higher wages.
 - b. The proposed development is situated along the portion of the property that is most heavily impacted by light, air and sound impacts that are caused by Interstate 75 and is adequately buffered from the westernmost Agricultural Rural (A-R) zoning that abuts 5354 Athens Boonesboro Road.
 - c. The proposed development does not negatively impact the viewshed along Athens Boonesboro Road as the area is buffered by topographic variations and the established development along the roadway.

3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions are recommended via conditional zoning:
- a. The following uses shall be prohibited:
 - i. Establishments and lots for the display, rental, sale, service, and minor repair of farm equipment, contractor equipment, automobiles, motorcycles, trucks, boats, travel trailers, mobile homes, or supplies for such items.
 - ii. Minor or major automobile and truck repair.
 - iii. Pawnshops.
 - iv. Adult arcades, massage parlors, adult bookstores, adult video stores, adult cabarets, adult dancing establishments, adult entertainment establishments, and sexual entertainment centers.
 - v. Retail sale of automotive parts with storage and distribution of inventory to other local establishments under the same ownership.

The restrictions are necessary and appropriate in order to restrict those land uses that could have a negative impact on the surrounding agricultural zones and Athens Boonesboro Road, a major gateway into the Lexington Fayette Urban County. These restrictions will protect the aesthetic character of the Athens Boonesboro Road gateway, as recommended by the 2017 Rural Land Management Plan (RLMP).

4. This recommendation is made subject to approval and certification of PLN-MJDP-22-00073: Boonesboro Manor (Interstate Park Property){AMD}, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

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Mr. J. Brown spoke in support of the motion.

Ms. Plomin spoke in opposition of the motion.

Mr. Ellinger shared his concerns before stating his support of the motion.

Ms. Fogle spoke in opposition of the motion.

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Upon motion by Mr. Ellinger, and seconded by Ms. Elliott Baxter, the ordinance was approved by the following vote:

Aye: Ellinger, Elliott Baxter, Gray, LeGris, Lynch, -----10
Monarrez, Sevigny, Sheehan, F. Brown, J.
Brown

Nay: Fogle, Plomin -----2

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Mr. J. Brown thanked the participants for their involvement.

Upon motion by Ms. Fogle, seconded by Ms. Lynch, and approved by unanimous vote, the meeting adjourned 9:46 p.m.

Deputy Clerk of the Urban County Council

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