REGULAR SESSION
of the Daviess County Fiscal Court
held at the Courthouse in the City of Owensboro,
County of Daviess, Commonwealth of Kentucky
on this 17th day of July 2014
Present were Judge/Executive Al Mattingly and
County Commissioners Jim Lambert,
George Wathen and Charlie Castlen

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DOCUMENTS RELATED TO TODAY'S DISCUSSION
ARE FILED IN JULY 17, 2014 FISCAL COURT FILE

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Commissioner Lambert opened the meeting in prayer and led the court in the Pledge of Allegiance to the flag.

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By a motion of Commissioner Lambert, seconded by Commissioner Castlen, the court considered approval to amend today's agenda and move the discussion of the **First Reading of KOC 921.669 (2014) -** An ordinance Amending the Zoning Classification of a 3.811 acre tract located at 4342, 4370, 4442 Springhill Drive from R-3MF Multi-Family Residential to B-4 General Business, application filed by Owensboro Master Builder, Inc.; M&P Properties, Inc., to the end of today's meeting.
Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All members of the court voted in favor; motion passed.

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Minutes of the July 2, 2014 meeting were submitted to fiscal court members for review prior to today's meeting and on a motion of Commissioner Lambert, seconded by Commissioner Castlen with all the Court concurring said Minutes were approved and signed.

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By a motion of Commissioner Wathen, seconded by Commissioner Castlen, the court considered approval of all Claims for all Departments.
Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All members of the court voted in favor; motion passed.

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By a motion of Commissioner Lambert, seconded by Commissioner Castlen, the court considered for approval the Order of Allowance to the Board of Assessment Appeals.
Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All members of the court voted in favor; motion passed.

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By a motion of Commissioner Wathen, seconded by Commissioner Castlen, the court considered for approval to Appoint Mary Mattingly (28-2014) as Chairperson for the Board of Assessment Appeals for the July 14, 2014 Assessment Appeals board meeting.
Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All members of the court voted in favor; motion passed.

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By a motion of Commissioner Wathen, seconded by Commissioner Castlen, the court considered for approval the U.S. Government Lease for Real Property.

David Smith stated, "A couple of months ago, the U.S. Coast Guard talked to the county about doing a lease on 400 square feet of the riverbank behind the detention center. This is so they can install a deadman."

Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All members of the court voted in favor; motion passed.

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By a motion of Commissioner Wathen, seconded by Commissioner Lambert, the court considered for approval the Agreement between "Ready by 21" agency, the O-DC Alcohol Substance Abuse Program (ASAP) board, and the O-DC Drug Alliance detailing a conference program and payment requirements. (Daviess County Fiscal Court serves only as fiscal agent.)

County Treasurer Jim Hendrix noted that this agreement relates to a conference that the ASAP and Drug Alliance groups are hosting. He stated, "The court really has no responsibility. You are just approving this contract as the fiscal agent."

Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All members of the court voted in favor; motion passed.

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By a motion of Commissioner Wathen, seconded by Commissioner Lambert, the court considered for approval to Apply for a Kentucky Department of Agriculture Spay/Neuter Grant.
Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All members of the court voted in favor; motion passed.

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By a motion of Commissioner Lambert, seconded by Commissioner Wathen, the court considered for approval of **Resolution No. 10-2014** establishing a Subdivision Street Lighting District in the Bridgewood Subdivision.
Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All members of the court voted in favor; motion passed.

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By a motion of Commissioner Wathen, seconded by Commissioner Lambert, the court considered for approval to Accept the City of Owensboro's Bid Renewal of Bid #2784: Sodium Chloride (Rock Salt).
Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All members of the court voted in favor; motion passed.

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By a motion of Commissioner Wathen, seconded by Commissioner Castlen, the court considered for approval to Hire Jerry Martin, Jerrad Paris, and Mark Simpson as Solid Waste Laborers at the Landfill commencing on or after July 21, 2014, subject to successful completion of pre-employment screenings.
Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All members of the court voted in favor; motion passed.

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By a motion of Commissioner Lambert, seconded by Commissioner Castlen, the court considered for approval the Retirement resignation of David Coomes, Senior Heavy Equipment Operator in the Department of Public Works, effective July 31, 2014. (22 years of service).
Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All members of the court voted in favor; motion passed.

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By a motion of Commissioner Lambert, seconded by Commissioner Castlen, the court considered for approval the **Second Reading of KOC 220.26 (2014) -** An ordinance authorizing and establishing a development area for economic and infrastructure development to be known as the Daviess County, KY Development Area No. 1; Establishing the percentage of increment that the county will authorize each year; Approving and authorizing the amount of increments to be authorized; and to take such other actions as are necessary or required with respect to the establishment area No. 1 including the authority to impose assessment fees on newly created jobs within the development area.

Comments:
No comments received.

Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All members of the court voted in favor; motion passed.

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By a motion of Commissioner Wathen, seconded by Commissioner Castlen, the court considered for approval the **Second Reading of KOC 220.27 (2014) –** An ordinance authorizing and directing the rebate of the 1.00% Occupational license fees due and payable to Daviess County KY, by ordinance, from the salaries, wages and other compensation to be paid to the new employees of Sazerac North America, Inc., provided said corporation meets the criteria set forth in its application for the incentives under the Kentucky Economic Development Finance Authority, Kentucky Business Investment Program.

Comments:
No comments received.

Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All members of the court voted in favor; motion passed.

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By a motion of Commissioner Castlen, seconded by Commissioner Lambert, the court considered for approval the **Second Reading of KOC 220.28 (2014) –** An ordinance authorizing and directing the retention of 0.35% of all Occupational license fees due and payable to Daviess County KY, by ordinance, from the salaries, wages and other compensation to be paid to the new employees of EPC-Columbia, INC., provided said corporation meets the criteria set forth in its application for the incentives under the Kentucky Economic Development Finance Authority, Kentucky Business Investment Program.

Comments:
No comments received.

Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All members of the court voted in favor; motion passed.

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Other business to be brought before the Daviess County Fiscal Court:

By a motion of Commissioner Castlen, seconded by Commissioner Wathen, the court considered for approval **Resolution 11-2014** – Authorizing the Judge/Executive to sign and submit a CDBG application for the Masonville Sewer Extension project.
Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All members of the court voted in favor; motion passed.

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Comments:
Due to a possible conflict of interest regarding the next item for discussion, Commissioner Lambert left the courtroom and did not return.

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The court discussed the **First Reading of KOC 921.669 (2014) -** An ordinance Amending the Zoning Classification of a 3.811 acre tract located at 4342, 4370, 4442 Springhill Drive from R-3MF Multi-Family Residential to B-4 General Business, application filed by Owensboro Master Builder, Inc.; M&P Properties, Inc.

Comments:

Judge Mattingly stated, "Those who spoke at the May 8, 2014 OMPC meeting will be allowed to speak this evening. He went through a roll call for those listed in attendance and spoke at the May 8th OMPC meeting. The only attendants here today relating to this issue are Mr. and Ms. Willcox and Bill Jones.

County Attorney Claud Porter read said ordinance in summary.

Amy Willcox read the following statement into record:

Hello, I appreciate being able to speak again. I know you have read the minutes from the May 8 meeting so you already know many of my concerns. I have reviewed the findings of fact (FOF) and Comprehensive Plan (CP) in depth and have found several specific areas that I would like to argue. I have found that the wording of the CP is purposefully left flexible and just because one interpretation suggests this change COULD happen, doesn't mean it SHOULD.

Findings of Fact:

1. The proposal is in compliance with the community's adopted Comprehensive Plan.
    a. the CP Overview states that the Plan Purpose is to "discourage the arbitrary application of land use regulations. It encourages a local community to devise a vision of its future, and to apply land use regulations as tools to implement that vision" and "It can serve as a focal point for true community cooperation to achieve common goals. Good plans are developed by a concerted effort that includes all areas of the community's desires, needs and goals."
        i. First, I feel this IS an arbitrary rezoning based on the whim of the developers and is not at all in keeping with the vision many of us have for living in Lake Forest, especially since I bought my house under the pretense that that land was to be developed for multi-family. We would NOT have if that land was zoned for general business. The developers have made promises too many of us and to change after we've invested is morally inappropriate.
        ii. Secondly, I feel more cooperation could occur between the developers and the residents. For instance, now they're claiming to plan for daycare, bank and doctor's office or the like. I propose that land be rezoned to P1 in order to keep the developers to their current promises and remove the unknown assoc with B4 zoning. Article 15 of the zoning ordinances specifically states, "The P1 zone generally should be used to buffer business zones from residential neighborhoods and also to provide for a greater distribution of offices, personal and professional services, within residential areas where business zoning would be undesirable." I'm not personally against progress and development, but this is exactly what P1 is meant for.

2. The subject property is located in an Urban Residential Plan Area where general business uses are appropriate in very limited locations. (according to pg 70 of CP, must meet all of FOF *3-5* regarding general business uses)

3. The proposed general business use is consistent with the criteria for non-residential development.

a. According to "Expansions of nonresidential uses and areas" (D7 of Development Pattern criteria) "it is not advisable to expand existing nonresidential uses into block-fronts in small increments, or into the middle of such block-fronts, or between residences that face a block-front on a parallel Street behind the expanded nonresidential use." and "where the specific criteria cited by this plan would allow nonresidential land uses to be located or expanded in a built-up neighborhood, due consideration should be given to the concerns of neighboring residents with respect to the established lot patterns in their neighborhoods"
    i. The land in question is surrounded on three sides by other blocks (all residential) and I don't feel this is respecting the established lot patterns for when we (and the families along Springhurst bought/built our homes)

b. Land Use Goal 4.1 .3 - Group activities so that uses of greater intensity (industrial or commercial) do not harm weaker types (residential and agricultural).
    i. According to pg 46 of the CP, Gen business is on the other end of the spectrum from residential -- how can that be an appropriate grouping? Putting a Steak N Shake or strip club behind my house would harm my quality of living and property value. A fence and row of trees along our property lines is also the weakest buffer listed while an arterial street (like *54)* is considered one of the stronger buffers. How can you consider an arterial Street a stronger buffer than the trees you propose yet also allow it to extend the zone in question?

c. 4.4.4 - Maintain and improve the quality of existing urban neighborhoods 1. putting B4 immediately adjacent to so many residential properties would NOT be maintaining let alone improving the existing neighborhood

d. 4.7.1 - Surround established residential areas with compatible residential activity or properly buffered nonresidential uses.
    i. properly buffered residential would be to put P1 zoning there

e. 4.7.2 Situate nonresidential uses within residential neighborhoods in a manner that enhances convenience, safety, and neighborhood character.
    i. B4 does not accomplish any of this. Would have a better chance with P1.

f. 4.7.3 Assure that nonresidential uses in the neighborhood - professional, business, industrial - have adequate space for future expansion and are designed so that their traffic, parking, noise, odors, etc. do not conflict with residential uses.
    i. again, obvious disagreement, better chance with P1

4. The proposal is a logical expansion of existing B4 General Business zoning to the north, across Springhill Dr
    a. maybe could have been considered a logical expansion before all the housing went up on Springhurst, but the land use must be flexible with developments of the time
    b. According to Comprehensive Plan on Land Use Clusters on pg 47, "Orienting different uses so that a transition in intensity occurs gradually from one adjoining use or cluster of uses to the next can further preclude elaborate buffers." —P1 is considered exactly halfway between B4 and R residential

5. At 3.811 acres, the proposal does not significantly increase the extent of general business zoning in the vicinity and should not overburden the capacity of roadways and other necessary urban services that are available in the affected area.
    a. Significant increase
        i. Based on the CP buffer list, I am again considering 54 and arterial Street and therefore a strong buffer from zoning to the north and Thruston Dermont appropriate buffers from zoning to the east. Taking into consideration only the property between LF and TD and 54 and Springhill, this rezoning then proposes a 47% increase in B4 general business which I consider significant (still *35%* if everything south of *54)*. Simply touching another like-zoned land and being at least 1.5 acres is sufficient to allow viral expansion of general business zoning. This only serves to threaten the UA and residential environment east of town.
    b. Roadways
        i. According to CP Section 4, Capacity and Availability of Urban Services - Highways, Streets and Roads - "The capacity and availability of roadways constrain appropriate locations for future urban development and the quality of the urban environment. Land use policies and plans must be devised that use our highways, streets and roads efficiently." Springhill is a two-lane road coming out of a subdivision, how can it possibly accommodate the traffic created by two sides of B4 zoning with the safety and quality of residence of Lake Forest in mind? We were told that a traffic study suggested the increase in traffic wouldn't be problematic to the residents of Lake Forest but how can you really know since nothing is there yet? Even if the road is physically graded for such traffic, there is another aspect to consider.
        ii. According to CP on Land Use vs Street Functional Classification -"The lower the functional classification of a street, the less that land use intensity should vary along the Street." - Springhill isn't even major enough to classify according to Commissions form T2 on Street classifications, going from R to B4 then back to RMF varies intensity from one extreme to the other and back and this is contrary to the section of CP I just mentioned
        iii. According to CP on USA Land Use and Traffic Compatibility -- "Land uses that are not compatible in character and intensity should not be indiscriminately mixed, but rather should be clustered within their own compatible areas..." and "The intensity and configuration of land uses should be commensurate with the functional characteristics of adjoining streets, and should avoid heavy through-traffic in residential areas." Again, much better fit to a P1 zoning.

Bill Jones stated, "I agree with the findings of the OMPC board and would be glad to answer any questions."

Judge Mattingly stated, "In the conditions that were placed on the re-zoning, the last one says that the Developer is required to submit a final development plan for approval by the planning commission with adjoining property owners notified in the same way as the zoning change. It was my impression that Mr. Jones did not agree to that condition. Is that correct, Mr. Jones?"

Mr. Jones stated, "I am not sure what the intent of that was."

Judge Mattingly stated, "I recall you being asked, after they read off those 4 conditions, and they asked, are you okay with those conditions and you said, yes, I am on the first 3, but not the last one."

Mr. Jones stated, "On the last one, what I understood they were asking for was a development plan on each individual lot as it was developed…"

Judge Mattingly interrupted and stated, "As you would develop it, you would turn in a development plan for approval by the planning commission, and that the adjoining property owners would be notified. Their concern is that a Steak-n-Shake or a strip club could be there and they would have no input, because it could be approved in-house. So, my understanding was that you had said that you were not okay with that condition."

Mr. Jones stated, "I think what I said was that it was really kind of re-doing over and over the same issue. I might point out that that property was originally zoned B-4."

Judge Mattingly stated, "You said, not the latter one, everything is required under that zoning. Then you said it is like beating a dead horse. So I am assuming that you said no to the 4th condition."

Mr. Jones stated, "That is correct, I did not agree to that one."

Judge Mattingly stated, "Claud, if that is the case, then Mr. Appleby, who was the person that made the motion, was asked, do you wish that the motion would stay as you made it and he said yes. Then they voted on the motion. My understanding is that unless the applicant agrees, a condition cannot be placed on him. So, would that be a valid motion?"

Mr. Porter stated, "Yes, I think it is. I think the basis for the change, and I think what Mr. Noffsinger said was that any condition that would exceed or be a different requirement than was one in the zoning or planning ordinance that the applicant would have to agree to. The development plan is a requirement of the zoning ordinance. The only difference is, is that the applicant was required to notify the landowners when they submitted a final development plan. Since that condition is already required, the final development plan, the additional condition of a notice is not something that I do not think is over and above the plan, at least for the use of the property. I could not find anything directly on-point one way or the other, but just from reading that and going through it, I think that that still would comply that the only conditions to which the landowner must agree would be those that effect his use of the property."

Judge Mattingly stated, "The people out here, in my opinion, the notification was the critical part. The fact that he would have to submit a development plan is already there. They are putting an additional condition…"

Mr. Porter stated, "Not a use of the property condition."

Judge Mattingly stated, "Right, but still it is a condition that he has not agreed to."

Commissioner Wathen stated, "If you look on page 53, there is a description of that requirement."

Judge Mattingly stated, "Brian, typically how does the planning commission and the staff handle conditions? There are certain things that KRS 100 requires you to do, and if you re-zone then you cannot restrict the use of the land or you cannot restrict the uses that are permitted within that zone except with the approval of the owner/developer. In the past, I know that you have always requested a statement of yes, I accept those conditions for the record. Is that how you guys handle it and what is your interpretation of whether or not you can or cannot do that?"

Brian Howard of OMPC stated, "I guess the latter first. My interpretation is that yes the planning commission has the ability to add conditions, if the applicant is agreeable. We prepared a staff report a week ahead of the meeting, and we always mail a copy of that to the applicant. So, they are well aware of that going into the meeting - what conditions we may have proposed on the re-zoning change. They are aware of that heading into the meeting. So, it has happened for years, and that has been a very consistent thing that has taken place."

Judge Mattingly stated, "But in this case, these conditions, they were not aware of these. These were conditions that were placed on them by planning commission board member, Mr. Appleby. Therefore, the question was do you accept these conditions. The statement was, the first 3 yes, the latter no. "

Mr. Howard stated, "I am no attorney. To be honest, I cannot recall an incident where this has happened at a meeting. Without a legal background, I would certainly defer to Claud and our attorney on that."

Mr. Porter stated, "Again, what I would say is that that is a requirement of the application and that is a condition of the requirement of the application, not a condition applied to the use of the land."

Judge Mattingly stated, "Okay. Second question, in order to do what was done – expansion across the intervening street and central residential, urban residential, future urban and professional service plan areas, expansion of an existing general business zone across an intervening street should be at least 1.5 acres in size, but should not occur if this would significantly increase the extent of the zoning of the vicinity. I am really not worried about the latter part, but it is the 1.5 acres. As I look, we have 3 lots, 3 individual pieces of property. They add up to more than 1.5 acres, but in and of themselves, they are not 1.5 acres. They could be developed individually. I believe they are not all 3 owned by the same person."

Mr. Howard stated, "That is correct."

Judge Mattingly stated, "How would you respond if someone questioned that?"

Mr. Howard stated, "My response would be that we have 3.8 acres as part of this application. Even though they are under different ownerships and separate parcels, we have always accepted applications with multiple properties to go to a specific zoning classification. We could not take it if they were proposing B-4 on a portion and it did not total that."

Judge Mattingly stated, "As a follow up to one of Ms. Willcox's questions – this development originally was a large mixed use development. This property was originally zoned B-4. It was then changed to Multi-Family Residential. Now we are wanting to go back to B-4. When it was originally proposed, that development, what was the proposed buffer? I know what it was, but do you recall the proposed buffer that was used to separate the residential and the B-4 in the past?"

Mr. Howard stated, "On the longest side that adjoins Lake Forest subdivision there is a common area. That has always been a common area of some width that would separate what was the commercial portion at that point and the single-family residential part of Lake Forest. This is part of a development called Millers Mill Plaza. So, it was a commercial development initially. That was the buffer along that side – along the Willcox's property the buffer would have been what was required in the zoning ordinance, which is a 6-foot tall element and a tree every 40 feet. That would be the buffer along that side and was at that time, when it was originally zoned to B-4 with that larger buffer along the backside where it joins Lake Forest."

Judge Mattinlgy asked, "How large is that common area? When I visited that site and went down Springhurst Lane, there is apparently a… Commissioner Wathen and I walked back to what I assumed to be a right-of-way to get back to the common area. It looked like there was some drainage in there. How big was the common area buffer behind those homes? Do you recall, Brian?"

Mr. Howard stated, "I do not have the dimension off the top of my head. It has changed a couple of times over the years, and I would say that it has varied between 20 and 30 feet."

Judge Mattingly stated, "It looks like it is half the width of the Springhill Drive right-of-way."

Commissioner Wathen stated, "So what is the final answer? Is it a legitimate motion?"

Mr. Porter stated, "I think it was, yes."

Commissioner Castlen stated, "When I watched the May 8th meeting, Mr. Noffsinger made comment that the applicants actually went – somebody expressed frustration that more people in the neighborhood were not notified. Mr. Noffsinger made the point that they went above and beyond what was required. My understanding he was referencing the common area that actually all you have to do is the adjacent property owners, and that those on Springhurst Lane technically are not adjacent property owners. Who actually owns the common area?"

Mr. Howard stated, "The common area is owned by Lake Forest Community LLC."

Judge Mattingly stated, "Typically those things are not turned over to the neighborhood associations until the development is complete."

Mr. Porter stated, "Or usually after the developer owns less than 50% of the remaining lots."

Mr. Jones stated, "The area that you are speaking of is right behind all of the houses on Springhurst Lane. It is around 20-feet, and I think that has been transferred to the Lake Forest Homeowners Association. The other buffer is coming in from Lake Forest Drive on Springhill Drive, on the right. Now, it is a fairly large area. I would say it is maybe a quarter of an acre, just to the right, which has trees and things. That also is owned by the Lake Forest Homeowners Association."

Judge Mattingly asked, "That would be just before the Willcox's home?"

Mr. Jones replied, "Well, as you come off of Lake Forest Drive and turn left, it would be between that street and their residence."

Commissioner Castlen stated, "So the point that I was getting to, Brian, if what Mr. Jones just told us is so, was notice given to the Lake Forest Homeowners Association as an adjacent property owner?"

Mr. Howard stated, "A certified letter was sent to the Lake Forest Community LLC. It was signed for by Lisa Millay. They were notified and your summation was correct as to what Mr. Noffsinger said. I never addressed that a minute ago, but technically all that would have had to be notified was this entity, but they did go beyond and notify those additional people."

Commissioner Castlen stated, "But that entity, is that the legal name for the homeowners association?"

Mr. Howard stated, "That was the name and address that was provided to us. So that is where the letter was sent."

Commissioner Castlen asked, "And you obtained that from the PVA?"

Mr. Howard stated, "The applicant is responsible for submitting that information. Typically the applicant's engineer will put that information together, and they acquire that from PVA."

Commissioner Wathen stated, "On the buffer on those trees, you (Mr. Jones) said that you all were going to put them every 10-feet, and that you would start them out at 6-feet tall. How long does it take for those to get…"

Mr. Jones stated, "If you are coming up Highway 54, those trees have been there about 18-years and they are huge. They grow rapidly and I think the ordinance says to plant one every 40-foot. We suggested that we would put one every 10-foot, plus a fence."

Commissioner Wathen stated, "Will the fence or the trees be on the side of the homes?"

Mr. Jones stated, "I think the way it is right now, the trees are behind the fence."

Commissioner Wathen asked, "If someone on Springhurst Lane is looking out of their backdoor, will they see a fence or a row of trees?

Mr. Jones replied, "Trees."

Ms. Willcox stated, "My primary argument is that I do not think B-4 is appropriate. I think P-1 is more appropriate. Speaking of the trees, you said these same buffer requirements were placed on it when it was initially made B-4, and there are still no trees or fence along there. How long might we have to wait until something is put in, and then we will have to deal with all the light and noise for 10-years before they grow up?"

Judge Mattingly stated, "Typically what is the requirement on buffers?"

Mr. Howard stated, "The buffer would be installed when some type of development action takes place on that property. It would not be required until they have submitted a development plan."

Judge Mattingly stated, "Is there a reason why they do that?"

Mr. Howard stated, "In theory, you could have a property re-zoned, and it could sit vacant for 10-years before any development takes place. I think the argument would be that if you do not have an entity on the property at all, the maintenance could be lacking."

Judge Mattingly stated, "It think the other argument could be made that so you get a tenant in there, the neighbors come in and they request additional buffering or different buffering, and now you have to get rid of that buffering and put something else up that the neighborhood would agree to."

Mr. Jones stated, "We normally would do it on the far end of it, but the trees and the fence are already there up to about where this property starts. We were going through there and you really cannot move the trees again until the fall. Our intent was actually to bring it on through the trees this fall.

Judge Mattingly stated, "So, the trees that were planted down on that far end, there are trees already that look like you had started a row of trees down through there."

Mr. Jones stated, "Right, behind the condos."

Judge Mattingly stated, "Are you telling me that you guys are going to do that this fall?"

Mr. Jones stated, "Our plans were to go ahead and do it now, because where the trees will be they are far enough back that whatever goes in there will probably not be effected, and that lets the trees grow and who knows, by the time something is built there they could be quite a good size."

Judge Mattingly stated, "That was the argument that Mr. Willcox was making. If they went in initially that they would already be there and serving as a buffer."

Mr. Jones stated, "Number one, as Brian pointed out, they were not required to do it. Not being there to maintain it is more of a risk of something happening to them than there will be now."

Judge Mattingly stated, "Would those trees be planted in the commons area or on the property to be re-zoned?"

Mr. Jones stated, "It is right at the top of the common area."

Judge Mattingly stated, "Who would be responsible for maintaining the trees?"

Mr. Jones stated, "The homeowners association, and I think one of the requirements that was in that motion is that whoever that property is deeded to will be responsible for the fence and maintaining that buffer – that it would go as a covenant with the…"

Judge Mattingly stated, "So they would maintain the common area and the trees."

Mr. Jones stated, "That is part of it."

Commissioner Castlen stated, "Brian, on condition number 2 – Lighting shall be restricted to ensure that it does not impact the neighborhood. I went out to the proposed property and looked at the glow from the Dollar General Store. I have to admit those lights were quite bright, almost blinding to look at. I just was curious, how would you enforce condition number 2?"

Mr. Howard stated, "The zoning ordinance addresses lighting and basically states what Mr. Appleby made in his motion. There is not a local ordinance that addresses foot candles though."

Commissioner Castlen stated, "It might be prudent for us to put in a more objective measuring tool."

Mr. Howard stated, "You certainly could add that."

Commissioner Castlen stated, "Ms. Willcox specifically made reference to the fact that she believes P-1 would be a better fit for this property. Is that something that the commission had the opportunity to look at or when an applicant comes before the commission can they change what the request is in the middle of the process?"

Mr. Howard stated, "It was not really mentioned at the meeting that that would be an option. I think what the commission would have to do is, if it was brought up and they believed it had merit then I think they would have the opportunity to postpone the re-zoning at that meeting and based on KRS requirements, re-notice the adjoining property owners, re-post, and re-advertise for the alternative zoning classification. The commission would have to take action on the re-zoning as it was legally advertised in the newspaper, and we advertised for B-4 zoning. If that were to be changed the prudent measure would be to go back and re-advertise as a P-1 zone."

Mr. Porter stated, "I would agree with that."

Judge Mattingly stated, "P-1 uses in an B-4 zone, are they permitted?"

Mr. Howard stated, "Yes."

Judge Mattingly stated, "So if I have a "higher on the totem pole" zone then I could come in and put a P-1 use, correct?"

Mr. Howard stated, "Generally, yes. You could not, for example, put a restaurant in an I-2 Heavy Industrial zone."

Judge Mattingly stated, "As I look at this table, pretty much everything that is allowed in P-1 is allowed in B-4."

Mr. Howard stated, "You are correct."

Ms. Willcox stated, "I did not know the process the first time around, and I thought basically that we were supposed to fight saying no, I do not want this at all, and then when it came to compromises then I would be able to bring up the issue of P-1. I really did not have that chance. Maybe it was because I did not raise my hand or what have you. However, that was on my docket, but it did not get brought up."

Mr. Porter stated, "Judge, I would note that part of the reason for, I do not know that Mr. Appleby intended that exactly, but part of what the process could be is when the applicant makes the development plan at least those land owners have the opportunity to make statements about what those development plans are."

Judge Mattingly stated, "That was my understanding of why he put that condition there, and it was very important that the land owners or the adjacent property owners be notified so that they can come and make their argument. Unless the development plan is approved, you do not go forward."

Commissioner Wathen stated, "But, since he did not agree to it that it is not a requirement."

Mr. Porter stated, "Well, I would argue now that it is for two reasons. One, there was an appeal of that particular finding. Two, I think Mr. Jones has said today that he has asked us to approve what the planning commission recommended. Based on those two facts, I would say yes, I think it probably is."

Judge Mattingly stated, "And if it was not, if we were to consider approving it, I would make that a condition."

James Willcox stated, "I believe Mr. Noffsinger, during the zoning meeting, stated that if a development plan was submitted that met all the ordinances then they would be legally obligated to approve it regardless of any public comment at that point."

Judge Mattingly stated, "No, what he said was that they had the authority to approve it without public comment. In other words, without this condition the development plan could be approved in-house, without public comment."

Mr. Howard stated, "The typical process for a development plan is that it is submitted to our office on a Thursday. It is then reviewed by the city or county engineer, and once they approve it then we will sign off."

Mr. Willcox stated, "I understand the requirement to bring it before the zoning commission again. However, my understanding is that they would still be required to approve it if it met the ordinances."

Commissioner Wathen, stated, "That is what he said."

Mr. Willcox stated, "What I am saying is that we could not really say anything to prevent the development plan from being approved, as long as it met the ordinances."

Mr. Porter stated, "That same statement is true for application for an amendment to the zoning ordinance. If it meets all of the criteria, they should approve that and are required to approve it. However, the whole reason for the notice to the owners and the adjoining property owners is to receive any input concerning either reasons it should not be granted or why there should be conditions or changes made in the plan. That does not mean that they absolutely have to approve it. What they are going to do is hear those, and say okay we understand the difference

between a 40-foot and a 10-foot placement of the trees or the difference in a buffer. Those are the kind of things that I think could come up when they have the requirement for that."

Judge Mattingly stated, "On many development plans, when the commission heard comments from the public they were able to elicit changes or additional conditions."

Mr. Howard stated, "Sure, it is another opportunity for negotiation."

Commissioner Castlen stated, "One of the things, when I drove out there, and I know that this was originally B-4 and then it was changed to R-3MF, and I have heard it said multiple times that it was already zoned B-4 as though that is almost why wouldn't it be – if it was before, then why can't it not be again. I would argue that it looks like, and I am not trying to argue either point per say, but one of the things that has changed is half of that original B-4 has the multi-family on it. They're already built, right? And so does that not change it significantly as to whether or not it should be allowed to go back to the B-4?"

Mr. Howard stated, "That is a good question, but I think, from the staff perspective, when we look at the re-zoning application we looked at it as a new application for B-4 zoning, and apply the applicable criteria. We did not just say or just provide a finding that it use to be B-4 so it should be re-zoned back. We looked at the criteria. It is across an intervening street at this point, because there is R-3MF to the side. As Ms. Willcox pointed out there is a hierarchy of land uses, and R-3MF is an appropriate buffer between single-family residential and business and that type of a thing. So, we look from the perspective that along that street, there is multi-family, there could be B-4 general business you know, that could be considered as a buffer the multi-family, but we apply the criteria as it sits today. Ms. Willcox is correct. The comprehensive plan is very flexible. It allows an application for many different zones in many different plan areas. As staff did and always does, we applied the criteria and that is what we outlined. Based on our professional review it met those criteria to re-zone to B-4 now."

Commissioner Wathen stated, "Will there be a buffer between the condos and this property?"

Mr. Howard stated, "Yes. The buffer would be required between the commercial and any residential zone."

Commissioner Castlen stated, "What allows us to jump the Springhill Drive to… I fully understand the B-4 that fronts Highway 54, because that is typically where the commercial folks want to be. These three lots are going to be hidden by whatever goes in there. I am curious. Why would anybody would want to be there if it is B-4? We are jumping the street and so a lot of times if there is residential there we do not go into a residential block, I guess, with commercial. Do you follow what I am asking?"

Mr. Howard stated, "The logical expansion, under "c" - expansion across an intervening street, and it says a general business zone across an intervening street should be at least 1.5 acres in size. So, that is what we looked at. It certainly exceeded that minimum requirement."

Judge Mattingly asked Ms. Willcox, "In your argument, I heard you, and it is obvious that you feel this should be P-1 as opposed to B-4. I think the reason in your argument you stated if it is going to be Steak-n-Shake or a strip club, there are obviously some things in B-4 that give you heartburn. I understand when you go through the re-zoning process and all of these things are listed as permitted in that process you cannot very well restrict – if you zone it B-4 then whatever is permissible in B-4 is permissible in B-4. As you go down that list of B-4, and I assume you have done your homework, are there things under that B-4 class that you do not have a problem with? Are there several uses that bother you, and others that do not bother you?"

Ms. Willcox stated, "The ones that do not bother me so much are the same as what is available in P-1. The other one, I mean when you have restaurants or you have anything that is open later, you will have the light, noise, and traffic. Professional services are usually Monday through Friday with limited hours, limited light, noise etc."

Judge Mattingly stated, "So hours of operation and days of operation are a concern?"

Ms. Willcox stated, "Yes."

Commissioner Castlen stated, "Brian, I thought as I went through the transcripts and watched the DVD that someone made this statement, and I think it was Mr. Jones. Under current zoning it could go up three to four stories, multi-family building. Is that so?"

Mr. Howard stated, "R-3MF is the highest intensity multi-family zone that we have. Without doing the calculations, I do not know how many – they could get any number of units, based on… We have a multi-family calculator worksheet. Say now that they could have 200 units on that property, it would be up to them to determine how many buildings that was in. It certainly could, look at Ralph Ave."

Judge Mattingly stated, "Is there a restriction on the height?"

Mr. Howard stated, "There is a 36-foot height minimum. However, there have been variances granted on two multi-family projects on the Highway 54 corridor. You could certainly argue at the Board of Adjustments that precedence has been set to increase that height. 36-foot would get you a three-story building.

Mr. Jones stated, "I think the last point that the use that you could put in a multi-family zone is probably what concerns us as developers the most. As a property owner and resident of Lake Forest, that would concern me more than most other things, because multi-family would represent 24-hours a day. When you get it up to three to four stories, you are going to have 500 apartments – 320, pretty quick that are priced from $600-$700 to $900. To be competitive, if somebody decided to use the multi-family zoning in this area, it would probably have to be a little smaller and a little less cost, which creates more problems for the residents in Lake Forest."

Ms. Willcox stated, "With all due respect, not all residents in Lake Forest are created equal with regard to this re-zoning. I would rather have a three-story apartment building that has to be so far away from my property line with buffers than have what could possibly be on B-4. In living back more in Lake Forest, not being quite as immediately affected, your (Mr. Jones') opinion could be a little different."

Judge Mattingly stated, "The second reading of this ordinance is set for July 31st at 5:00 p.m."

Without objection, Judge/Executive Mattingly adjourned the meeting.
SO ORDERED THAT COURT STAND ADJOURNED.

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Al Mattingly
Daviess County Judge/Executive