

Lexington-Fayette Urban County Government Special Council Meeting

Lexington, Kentucky July 2, 2019

The Council of the Lexington-Fayette Urban County Government, Kentucky convened in special session on July 2, 2019 at 6:05 p.m. Present were Vice Mayor Kay in the chair presiding, in the absence of Mayor Gorton, and the following members of the Council: Gibbs, Lamb, McCurn, Moloney, Mossotti, Plomin, Reynolds, J. Brown, Ellinger, Evans, and Farmer. Absent were Council Members Worley, Bledsoe, and F. Brown.

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At 6:07 p.m., Vice Mayor Kay opened the hearing.

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An Ordinance changing the zone from an Agricultural Urban (A-U) zone to an Expansion Area Residential (EAR-2) zone, for 8.48 net (8.94 gross) acres, for property located at 2020 Russell Cave Rd. (Trust Equity, LLC; Council District 1), received second reading.

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Vice Mayor Kay swore in the witnesses, and reviewed the procedures and order of proceeding for the meeting.

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Mr. Worley joined the meeting.

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Ms. Traci Wade, Div. of Planning, gave a presentation on the recommendation of the Planning Staff and the Planning Commission, and filed the following exhibits: (1) Copy of Docket; (2) Affidavit of Traci Wade; (3) Copy of Planning Packet; (4) Expansion Area Master Plan; (5) 2013 Comprehensive Plan; (6) 2018 Comprehensive Plan Goals and Objectives; (7) Zoning Ordinance; (8) Land Subdivision Regulations; (9) Copies of miscellaneous documents; (10) printed email to Traci Wade from Lucy Ayers; and, (11) Printed PowerPoint presentation.

Ms. Wade described the subject property and surrounding property, and the various uses that have been applied to it in the past. She displayed photographs and maps of the subject property and described its physical characteristics. Ms. Wade also

discussed the proposed development and the reasons for the Planning Staff's and the Planning Commission's recommendations.

Ms. Katherine Perkins, Swigert Ave., Joyland Neighborhood Association, appeared on behalf of the opposition and cross-examined Ms. Wade.

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Mr. Zach Cato appeared as counsel for the Petitioner and filed the following exhibits: (1) Affidavit of Posting Signs; and, (2) Portable data drive.

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

Mr. Nathan Billings, counsel for the Petitioner, introduced exhibits: (3) Written discussion of 2013 Comprehensive Plan; and, (4) Written discussion of 2018 Comprehensive Plan.

Mr. Billings argued in support of the zone change; he displayed photographs of the subject property, discussed the location and proposed uses, and historical uses that have applied.

Ms. Perkins cross-examined Mr. Billings.

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Ms. Perkins appeared for the Opposition and filed the following exhibits: (1) Petition re: PLN-MAR-19-00002; and, (2) Plastic envelope containing various documents.

Ms. Perkins argued against the zone change; she discussed buffering, density, and alternative zones that might apply to the subject property.

The following additional persons argued against the zone change: (1) Ms. Josephine Giurgevich, Kingston Rd.; and, (2) Ms. Patricia Draus, Allen Ct.

On its own motion and there being no objection, the Chair allowed additional speaking time to the opposition.

Ms. Katie Broadus, Russell Cave Rd., spoke in opposition to the zone change and filed the following exhibits: (3) Letter to Council; and, (4) Letter to the Planning Commission from the Winters Law Group.

Ms. Draus was allowed to speak again.

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Ms. Wade offered rebuttal comments for the Div. of Planning.

Mr. Billings offered rebuttal comments for the Petitioners.

Ms. Perkins offered rebuttal comments for the Opposition.

Mr. Billings cross-examined Ms. Perkins.

Ms. Draus offered rebuttal comments for the Opposition.

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Vice Mayor Kay opened the floor for public comment.

Ms. Amy Clark, Kastle Rd., spoke in opposition to the zone change.

Upon motion by Ms. Lamb, seconded by Mr. Moloney and approved by unanimous vote, Ms. Clark was granted additional speaking time.

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8:01 p.m. The meeting stood at recess.

8:11 p.m. The meeting reconvened with the same persons present.

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Vice Mayor Kay opened the floor for questions from the Council Members.

Ms. Reynolds asked why the Planning Commission struck townhomes as a permitted use. Ms. Wade responded.

Mr. Ellinger asked how the Planning staff determined the “significant trips” that may occur as a result of the proposed development. Ms. Wade responded.

Mr. Gibbs asked about the property north of the subject property, access to the subject property, the environmental sensitivity of the subject property, and any significant trees. Ms. Wade responded.

Ms. Evans asked about a traffic study and any school in the subject neighborhood. Ms. Wade responded.

Ms. Lamb asked for an estimate of the number of units proposed for the development, and asked about the buffer at the edge of the proposed development. Ms. Wade responded.

Ms. Lamb asked about the orientation of the structure and the size of the lot at 2060 Russell Cave Rd. Ms. Broadus responded.

Ms. Lamb asked for an estimate of the price of the units and the distribution of units on the property to be developed. Mr. Billings responded.

Mr. Brown thanked everyone in the neighborhood for their participation.

Mr. Brown asked about attempts to communicate with the Broaduses. Mr. Billings responded.

Mr. Brown asked about the buffer, the proposed access road, and density restrictions. Ms. Wade responded.

Mr. Gibbs asked about the asking price of the proposed units and the proposed square footage of each unit. Mr. Billings responded.

Ms. Lamb conducted an informal survey of the hearing attendees. She thanked the attendees for participating.

Mr. Brown asked about the development plan process and whether it allows for input from the public, and asked about the vote of the Planning Commission. Ms. Wade responded.

Mr. Brown asked about what may be addressed during the development plan process. Ms. Wade responded.

Vice Mayor Kay surrendered the Chair, which was assumed by Mr. Moloney.

Vice Mayor Kay asked about the staff recommendation, the 35-foot buffer and the buffer's effect on the roadway. Ms. Wade and Mr. Billings responded.

Vice Mayor Kay reclaimed the Chair.

Ms. Mossotti asked about deed restrictions, or existing or planned Homeowners' Associations. Mr. Billings responded.

8:52 p.m. Vice Mayor Kay declared the public hearing closed.

Vice Mayor Kay opened the floor to discussion by Council members.

Mr. Gibbs expressed concern about removing townhomes from the allowed uses for the property.

Mr. Gibbs moved to restore townhomes as permitted uses on the subject property.

Vice Mayor Kay asked for a legal opinion. Ms. Tracy Jones, Dept. of Law, responded.

Mr. Worley offered his opinion on the options available to the Council. Ms. Jones responded.

Ms. Lamb requested a recess to draft new findings of fact.

Vice Mayor Kay ruled Mr. Gibbs's motion out of order.

Mr. Moloney requested a recess to draft new findings of fact. Ms. Lamb agreed and discussed changes she would suggest to the findings of fact.

Ms. Evans asked that any discussions of proposed findings of fact be had in an open forum.

Ms. Evans expressed support for the findings of fact promulgated by the Planning Commission.

Mr. Brown agreed the discussion should be had in an open forum. He talked about the importance of affordable housing and expressed his opinion that townhomes should not be added back into the development plan.

Vice Mayor Kay surrendered the Chair, which was assumed by Mr. Moloney.

Vice Mayor Kay expressed his support for restoring townhomes as a permitted use.

Vice Mayor Kay reclaimed the Chair.

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9:10 p.m. The meeting stood at recess.

9:19 p.m. The meeting reconvened with the same persons present.

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Vice Mayor Kay discussed procedural issues.

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Mr. Brown moved to adopt the findings of fact as promulgated by the Planning Commission. The motion was seconded by Mr. Gibbs.

The Council discussed the motion and its effect.

The Council approved the findings of fact, as follows, by the following vote:

Aye: Gibbs, Kay, Mossotti, Plomin, Reynolds, -----10
Worley, Brown, Ellinger, Evans, Farmer

Nay: Lamb, McCurn, Moloney, Mossotti -----4

1. The requested EAR-2 zoning is in agreement with the 2013 Comprehensive Plan, the adopted Goals and Objectives of the 2018 Comprehensive Plan, and the 1996 Expansion Area Master Plan, for the following reasons:
 - a. The Plan recommends Expansion Area Residential-2 (EAR-2 future land use for the subject property, which is proposed by the petitioner.
 - b. The future EAR-2 land use recommendation of the Plan would suggest a density of between 26 and 53 dwelling units for the subject property. The proposed EAR-2 zone,

- for 53 single-family dwelling units, is in agreement with this recommendation of the Plan.
- c. The site will support infill and redevelopment throughout the Urban Service Area (Theme A, Goal #1.b. and #2).
 - d. The proposed development will expand options for mixed-type housing, while also provide a neighborhood which is connected for pedestrians and will utilize various modes of transportation (Theme A, Goals #3.a & 3.b.). The proposed development allows for connectivity to existing neighborhoods, as well as stub streets to the adjoining parcels for future connectivity.
 - e. This proposal maximizes development on vacant land within the Urban Service Area and promote use of underutilized land in a way that enhances the existing urban form (Theme E, Goal #1.a, 1.b, and 1.d).
2. The existing Agricultural Urban (A-U) zone is inappropriate, and the proposed Expansion Area Residential-2 (EAR-2) zone is appropriate at this location for the following reason:
 - a. The intent for the Agricultural Urban (A-U) zone is to manage the growth of the community so to avoid premature or improper development until public facilities and services are adequate to serve urban uses. The availability of these services at this time in this area indicate the inappropriateness of the current zoning.
 3. Under the provisions of Article 6-7 of the Zoning Ordinance, the property shall be subject to the following use and buffering restrictions via conditional zoning:
 - a. No principal or accessory structures shall be located within thirty-five (35) feet of any property platted as any unit of the Shandon Park or Foxborough Manor subdivisions, and the property located at 2060 Russell Cave Road.
 - b. Within three hundred (300) feet of any property platted as any unit of the Shandon Park or Foxborough Manor subdivisions, and the property located at 2060 Russell Cave Road, the subject property shall be limited to singlefamily detached residential units only.
 - c. A twenty-five foot (25') buffer yard shall be provided immediately adjacent to any property platted as any unit of the Shandon Park or Foxborough Manor subdivisions and the property located at 2060 Russell Cave Road. Existing trees with a three inch (3") DBH shall remain within the buffer, unless dead, dying or diseased. Existing trees should be supplemented to meet the following standards: The landscape buffer shall contain one tree every forty (40) feet of linear boundary from group A, B, or C of the Plant List as referenced by Article 18 of the Zoning Ordinance, and shall contain a fence, hedge, wall or earth mound (or combination thereof) a minimum of six (6) feet in height. Existing trees that are dead, dying or diseased may only be removed with written consent of the Urban Forester.

These conditional zoning restrictions are appropriate and necessary to minimizing the impacts of new development on the existing residential units within Shandon Park and Foxborough Manor subdivisions, and the existing residence at 2060 Russell Cave Road.

Vice Mayor Kay discussed procedural matters with Mr. Keith Horn, Dept. of Law.

Mr. Gibbs moved to amend the findings of fact at Section 3.b. to read: "Within three hundred (300) feet of any property platted as any unit of the Shandon Park or Foxborough

Manor subdivisions, and the property located at 2060 Russell Cave Road, the subject property shall be limited to single family detached or attached (townhouse) residential uses.” The motion was seconded by Mr. Farmer.

The Council members discussed the motion.

The motion failed by the following vote:

Aye: Gibbs, Kay, McCurn, Mossotti, Plomin, Farmer -----6
Nay: Lamb, Moloney, Reynolds, Worley, Brown, Ellinger, Evans -----7

Ms. Lamb moved to amend the findings of fact at Section 3.c to read: “A twenty-five foot (25’) buffer yard shall be provided immediately adjacent to any property platted as any unit of the Shandon Park or Foxborough Manor subdivisions and the property located at 2060 Russell Cave Road. Existing trees with a three inch (3”) DBH shall remain within the buffer, unless dead, dying or diseased. Existing trees should be supplemented to meet the following standards: The landscape buffer shall contain one tree every forty (40) feet of linear boundary from group A, B, or C of the Plant List as referenced by Article 18 of the Zoning Ordinance, and shall contain a fence of no less than eight (8) feet in height. Existing trees that are dead, dying or diseased may only be removed with written consent of the Urban Forester.” The motion was seconded by Mr. Ellinger.

The Council members discussed the motion.

The motion failed by the following vote:

Aye: Lamb, Moloney, Brown, Ellinger, Evans, Farmer -----6
Nay: Gibbs, Kay, McCurn, Mossotti, Plomin, Reynolds, Worley -----7

Mr. Horn discussed a legal matter with the Council.

Upon motion by Mr. Brown, and seconded by Mr. McCurn, the ordinance passed by the following vote:

Aye: Gibbs, Kay, McCurn, Plomin, Reynolds, Worley, Brown, Ellinger -----8
Nay: Lamb, Moloney, Mossotti, Evans, Farmer -----5

Vice Mayor Kay thanked the participants for their involvement.

With unanimous consent, the meeting adjourned at 9:50 p.m.

Deputy Clerk of the Urban County Council