

Lexington-Fayette Urban County Government Special Council Meeting

Lexington, Kentucky September 17, 2013

The Council of the Lexington-Fayette Urban County Government, Kentucky convened in special session on September 17, 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 Lawless, Mossotti, Myers, Scutchfield, Stinnett, Beard, Clarke, Farmer, Ford and Henson. Absent were Council Members Akers, Kay and Lane.

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An Ordinance changing the zone from an Agricultural Urban (A-U) zone to a Mixed-Use Community (MU-3) zone, for 49.17 net (54.73 gross) acres; and from a Single Family Residential (R-1D) zone to a Mixed-Use Community (MU-3) zone, for 0.65 net (0.82 gross) acres; for property located at 4100 Nicholasville Rd. and 104, 108 and 112 E. Tiverton Way, including dimensional variances (Bayer Properties, LLC; Council District 9) was given second reading.

Mr. Ellinger explained the procedures for the hearing, and swore in the witnesses.

Mr. Ellinger reviewed the order of proceedings for the hearing.

Mr. Hank Graddy, Attorney for the Opposition, stated he believed that the Applicant had failed to post the appropriate signage required for a public hearing. He requested that the application be withdrawn, and that the public hearing be held at a later date. Mr. Ellinger asked Mr. Bill Sallee, Div. of Planning, and Ms. Tracy Jones, Dept. of Law, to comment on the issue. Mr. Sallee stated that the onus of sign posting was on the Applicant. Mr. Bill Lear, Attorney for the Applicant, stated he was aware that the sign had not been posted, and argued in favor of continuation of the hearing.

Ms. Jones reviewed the policies and procedures for adoption of the Planning Commission's recommendation, and stated she felt it would be wise to continue with the hearing since there would not be enough time statutorily to schedule another hearing.

The Council asked questions of Ms. Jones and Mr. Sallee regarding precedent on sign-posting and public hearings.

Mr. Farmer stated his concern with potentially cancelling the public hearing.

Mr. Stinnett asked questions of Mr. Graddy regarding the Opposition's desire for a public hearing. Mr. Graddy stated the Opposition did wish to go forward with a public hearing.

Upon motion, the Council **voted unanimously** to continue with the public hearing.

Mr. Bill Sallee, Div. of Planning, gave his presentation, and filed the following exhibits: (1) Legal Notice; (2) Affidavit of Notices Mailed; (3) MARV 2013-7: Recommendation and Planning Commission Minutes; (4) 1983 Zoning Ordinance with Amendments; (5) Land Subdivision Regulations; (6) 2007 Comprehensive Plan; (7) South Nicholasville Road Small Area Plan; (8) Traffic Impact Study Staff Review Report; (9) Emails and Petitions sent to the Div. of Planning both For and Against the Zone Change; (10) Map of Subject Area MAR 2013-7; (11) Aerial Photos of the Subject Area; (12) Subject Property Section from 2007 Comprehensive Plan Map; (13) Section from South Nicholasville Road Small Area Plan; (14) Small Area Plan Subarea IV Map and Conceptual Plan; and (15) Preliminary Development Plan Map.

Mr. Lear stated the Applicant had submitted a motion to allow the Council to view a model of the proposed development. Mr. Graddy asked if the model had been altered prior to the hearing. Mr. Lear responded it had not.

Mr. Myers asked questions of Mr. Sallee regarding whether the developers would be required to adhere to the development plan shown in the model. Mr. Sallee responded, as did Ms. Jones.

Upon motion of Mr. Stinnett, seconded by Mr. Clarke, and approved by unanimous vote, the model was allowed to be viewed by the Council and the public.

Mr. Bill Lear, Attorney for the Applicant, gave his presentation and filed the following exhibits: (1) Witness List; (2) Bayer Properties Powerpoint Presentation; (3) Bayer Development The Summit: Lexington MARV 2013-7 Exhibit Book, including the following: (a) Kentucky Revised Statutes 100.213; (b) Bayer Development's Zone Change Justification Letter; (c) The Summit: Lexington Development Site Statistics; (d) South Nicholasville Rd. Small Area Plan Fritz Village Map; (e) South Nicholasville Road Small Area Plan Excerpts; (f) Ky. Transportation Cabinet Letter of Conceptual Approval;

(g) HDR Engineering Nicholasville Road Intersection Spacing Exhibit; and (h) HDR Storm Water Quantity Management Exhibit.

Mr. Lear introduced Mr. David Silverstein, Owner, Bayer Properties, LLC, who gave testimony on behalf of the Applicant.

Mr. Lear continued his presentation, and referred to slides in the Powerpoint presentation.

Mr. Bruce Simpson, Stoll Keenon Ogden, spoke about traffic issues and stormwater runoff issues in the area.

Mr. Lear continued his presentation, and referred to the Powerpoint presentation. Mr. Lear filed the following exhibit: (4) Affidavit of signs posted by the Opposition.

Mr. Hank Graddy, Attorney for the Opposition, gave his presentation, and filed the following exhibits: (1) Powerpoint Presentation Entitled 'Don't Overload Nicholasville Road with more Traffic'; (2) Binder with Exhibits: (a) Letter to Mayor Gray and Council; (b) Memo regarding Summit Development Traffic Impact Study Review; (c) Petition in Opposition of Summit Development; (d) Proposed Findings of Fact and Denial of Zone Change Application.

Mr. Graddy called Mr. Adam Kirk, Transportation Planner, to testify regarding traffic in the subject area. Mr. Kirk referred to the Opposition's exhibit binder.

Mr. Graddy continued his presentation, and also referred to the model of the proposed development presented by the Applicant.

Mr. Lear declined to cross-examine Mr. Graddy.

Mr. Darby Turner, Attorney for Owners of Fayette Mall, stated his clients' concerns with the proposed development.

Mr. Lear declined to cross-examine Mr. Turner.

Mr. Graddy made additional comments.

Mr. Sallee gave his rebuttal on behalf of the Staff.

Mr. Ellinger asked that those people represented by Mr. Graddy please stand so that Council could see them.

The following citizen spoke in favor of the zone change: (1) Mr. Josef Von Sternberg, Lexington Road.

The following citizens spoke against the zone change: (1) Ms. Leigh Buckley, Fox Harbour Drive, who filed the following exhibit: (a) Photographs of her home and the surrounding area; (2) Mr. Ron Winfield, Toronto Road; and (3) Mr. Edward Prentice, Fox Harbour Drive.

Mr. Graddy gave his closing summation on behalf of the Opposition.

Mr. Lear gave his closing summation and rebuttal on behalf of the Applicant.

Mr. Myers asked questions of Mr. Sallee regarding previous testimony and the outcome of the Planning Commission Public Hearing on the application.

Ms. Lawless asked questions of Mr. Lear regarding the proposed design for traffic ingress and egress at the development.

Mr. Clarke stated his concerns with the traffic issues surrounding the proposed development, and asked questions of Mr. Silverstein.

Mr. Stinnett asked questions of Mr. Lear, and Mr. Ben Edelen, HDR Engineering, regarding road improvements. Mr. Stinnett also asked questions of Ms. Jones regarding the Council's authority.

Mr. Ford asked questions of Mr. Sallee regarding traffic in the area. He stated his concern with the traffic issues. He asked questions of Mr. Edelen.

Ms. Mossotti asked questions of Mr. Sallee regarding traffic. Mr. Lear also responded. Mr. Charlie Martin, Director of the Div. of Water Quality, was sworn in and responded to questions regarding stormwater capacity.

The Council continued to ask questions of Mr. Lear, Mr. Edelen, Ms. Jones, Mr. Sallee, and Mr. Silverstein.

There being no more questions from Council, Mr. Ellinger closed the public hearing.

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Mr. Beard made a motion, seconded by Mr. Myers, to adopt the following Findings of Fact for Conditional Approval from the Planning Commission:

1. The requested Mixed-Use Community (MU-3) zone is in agreement with the 2007 Comprehensive Plan, and as amended by the *South Nicholasville Road Small Area Plan*, which was adopted by the Planning Commission in 2009, for the following reasons:
  - a. The *South Nicholasville Road Small Area Plan* encourages mixed use in a village-style development, with an emphasis on pedestrian, bike, and transit-oriented design. The proposed development does so.
  - b. Subarea IV of the *South Nicholasville Road Small Area Plan* recommends:

- i. Mixed Use (MU) future land use for a majority of the subject property, and High Density Residential (HD) for the three parcels along Tiverton Way.
  - ii. A storm water study for 4100 Nicholasville Road and surrounding properties should be conducted.
  - iii. Constructing residential only structures as a buffer to existing residential uses adjacent to the subject property.
  - iv. Placing non-residential structures at the intersection of Nicholasville Road and Man O' War Boulevard and along Nicholasville Road to buffer noise.
- c. The requested MU-3 zone meets the locational criteria as established by Article 28 of the Zoning Ordinance for street frontage of at least 160 feet along Nicholasville Road and Man O' War Boulevard, being at least three acres in size and being located within an area recommended for Mixed Use by the Comprehensive Plan, or its adopted amendment.
- d. This proposed development will implement the vision and direction of the Small Area Plan to create a mixed-use development that places commercial-only structures along the arterial roadways, a village-style mixed-use area in the center of the property, and "residential-only" structures nearest the established neighborhood.
2. This recommendation is made subject to approval and certification of ZDP 2013-22: Fritz Farm, LLC (Summit Lexington, Bayer Property) 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 subject property shall be restricted as follows:
- a. Within 75 feet of any single family residential use, no commercial or business use shall be permitted. This restriction is appropriate and necessary for the subject property in order to ensure that the proposed development is compatible with the neighboring land uses, as recommended by the *South Nicholasville Road Small Area Plan*, an adopted amendment of the 2007 Comprehensive Plan.
- Note: Variances to setbacks and height-to-yard ratio were approved by the Planning Commission for this property, subject to the rezoning being granted.

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

Aye: Lawless, Mossotti, Myers, Scutchfield, Stinnett,  
 Beard, Clarke, Ellinger, Farmer, Ford,  
 Henson-----11

Nay: -----0

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Upon motion of Mr. Stinnett, and seconded by Ms. Mossotti, an Ordinance changing the zone from an Agricultural Urban (A-U) zone to a Mixed-Use Community (MU-3) zone, for 49.17 net (54.73 gross) acres; and from a Single Family Residential (R-1D) zone to a Mixed-Use Community (MU-3) zone, for 0.65 net (0.82 gross) acres; for property located at 4100 Nicholasville Rd. and 104, 108 and 112 E. Tiverton Way, including dimensional variances (Bayer Properties, LLC; Council District 9) was approved by the following vote:

Aye: Lawless, Mossotti, Myers, Scutchfield, Stinnett,  
Beard, Clarke, Ellinger, Farmer, Ford,  
Henson-----11

Nay: -----0

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Upon motion, the meeting adjourned at 8:30 p.m.

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Clerk of the Urban County Council