

Lexington-Fayette Urban County Government Special Council Meeting

Lexington, Kentucky November 27, 2012

The Council of the Lexington-Fayette Urban County Government, Kentucky convened in special session on November 27, 2012 at 6:00 P.M. Present were Mayor Jim Gray in the chair presiding, and the following members of the Council: Council Members Ellinger, Farmer, Ford, Gorton, Henson, Kay, Lane, Lawless, Martin, McChord, Myers, Stinnett, Beard and Blues. Absent was Council Member Crosbie.

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An Ordinance changing the zone from a Neighborhood Business (B-1) zone to a Highway Service Business (B-3) zone, for 2.589 net (3.030 gross) acres, for property located at 1949 Nicholasville Rd. and 145 Collins Ln. (Greer Nick Rd. LLC and Greer Nick Rd. II, LLC; Council District 3) was given second reading with a public hearing being held.

Ms. Lawless stated that Ms. Crosbie had notified the Council when the hearing was set that she would be unable to attend.

The Mayor explained the procedures for the public hearing and swore in the witnesses. He confirmed with Mr. Bruce Simpson, attorney for the petitioner, that the petitioner's presentation could be completed in 45 minutes.

Mr. Bill Sallee, Div. of Planning, gave his presentation and filed the following exhibits: (1) Legal Notice; (2) Affidavit of notices mailed; (3) MAR 2012-13: Final Report and Minutes of the Planning Commission; (4) 2007 Comprehensive Plan; (5) 2012 Comprehensive Plan Goals and Objectives; (6) Land Subdivision Regulations; (7) 1983 Zoning Ordinance as amended; (8) Letters of Opposition; (9) Zoning Map; (10) Aerial Photographs of Subject Property; (11) Photographs of Subject Property and Vicinity; (12) 2007 Comprehensive Plan Map; and (13) Preliminary Development Plan.

The Council asked questions of Mr. Sallee regarding his presentation and exhibits.

Mr. Bruce Simpson, attorney for the petitioner, gave the reasons for the requested zone change and filed the following exhibits: (A) Exhibit Book, which included the following: (1) August 30, 2012 Invitation Letter; (2) September 14, 2012 Invitation Letter; (3) Excerpt of Section 8-16 of the Zoning Ordinance; (4) Excerpt of Section 8-15 of the Zoning Ordinance; (5) Photographs of Subject Property in Relation to Houses on

Goodrich Avenue; (6) Photographs of Views from and of Existing Buildings on the Subject Property and from 100, 104, 106, and 108 Goodrich Avenue; (7) Photographs of Storm Drainage System in Vicinity; (8) Photographs of Subject Property and 4-Story Hotel View; (9) Mays Real Estate Advisors Consulting Report; (10) Trip Generation and Site Circulation Review from Mr. Bradford C. Johnson, CDM Smith Inc.; (11) Rezoning to B-3 Next to Single Family Homes 2001-2008; (12) Hampton Inn Distance to Adjacent Residential Single Family Areas; (13) Existing Hotel Distance to Adjoining Residential Structure; (14) Aerial Photograph of Single Family Houses 104 Feet Away from Hotel in Hamburg; (15) Aerial Photograph 4-Story Residence Inn 75 Feet Away from Single Family Home; (16) Aerial Photograph of Parkway Drive Hotel in Residential Area; (17) Aerial View of of Proposed 4-Story Extended Stay Hotel Behind Trader Joe's; (18) Letters of Support and (19) Proposed Findings of Fact for Approval; and (B) Witness list.

Mr. Simpson asked that citizens in support of the requested zone change be allowed to speak at that time.

Vice-Mayor Gorton, in the chair presiding in the absence of Mayor Gray, asked questions of Mr. Ed Gardner, Dept. of Law, regarding the preferred procedure for the order of testimony. Mr. Gardner responded.

The following citizen spoke in support of the requested zone change: (1) Ms. Julie Butcher, 1918-1922 Nicholasville Rd Property Owner.

Dr. Joseph Miller, spokesperson for opponents of the zone change, asked questions of the Mayor regarding procedure for the hearing. The Mayor asked Mr. Gardner to clarify the order of proceedings. Mr. Gardner conferred with Ms. Tracy Jones, Dept. of Law, who responded.

The Mayor discussed the best order of proceeding with the hearing with the representatives of the Dept. of Law. Mr. Ellinger asked additional questions regarding the witness lists for each side. Mr. Simpson responded regarding his witness list.

Discussion regarding the order of proceeding continued.

The Mayor ruled that the representative of the opponents could give his presentation, and then public testimony would be heard.

Dr. Joseph Miller, Goodrich Avenue, representing a Coalition of Citizens and Neighbors Opposed to a Zone Change for 1949 Nicholasville Road & 145 Collins Lane from B-1 to Conditional B-3, gave his presentation against the requested zone change and filed the following exhibits: (1) Presentation Booklet containing Powerpoint Presentation entitled "Opposition to MAR2012-13"; (2) Witness List and (3) Petitions of Citizens of Lexington Opposed to Zoning Change Request.

There was discussion about the next step in the order of proceedings. Mr. Simpson stated what he believed to be next. The Mayor asked questions of Ms. Jones, who responded that public comment would be next, and then additional comments from Mr. Sallee, Mr. Simpson, and Dr. Miller.

The Mayor called for a recess at 8:05 p.m.

At 8:16 p.m., the Council returned with the same members present.

The following additional citizens spoke in support of the requested zone change: (2) Mr. Billy Sherrow, Southland Drive, property owner; (3) Mr. Brad Pickerell, Glendover Road, who filed the following exhibit and also read it aloud (i) Letter of support from Mr. James Kreiner, Pensacola Drive; (4) Mr. Danny Collins, co-owner of Southland Bowling Lanes and member of Southland Association; (5) Mr. Robbie Collins, co-owner of Southland Bowling Lanes; (6) Mr. Clark Hale, Goodrich Avenue; (7) Ms. Amanda Hale, Goodrich Avenue; (8) Ms. Shirley Tipton, Goodrich Avenue, who filed the following exhibit and also read it aloud (i) Letter of support from Ms. Amy Carrington, Goodrich Avenue; (9) Ms. Pam Littleton, Southland Drive, property owner, Your Frame of Mind Gallery; (10) Mr. Ted Mims, Rosemont Garden, Southland Drive property owner; (11) Ms. Stacy Kirn-Barker, Jesselin Drive; (12) Mr. Dustin Harrison, Mallard Point, small business owner who works for Greer developments; (13) Ms. Laura Boison, representing property at 2020 Nicholasville Road; and (14) Mr. Don Hurt, Southland Drive, Old Ky. Chocolates owner.

Mr. Simpson filed the following additional exhibits: (C) Affidavit of Posting Sign on Subject Property; (D) Petition to Support Proposed Hampton Inn Hotel; and (E) Letter from Robert E. Milward, Jr., Milward Funeral Directors.

The following citizens spoke against the requested zone change: (1) Mr. Bill Fountain, Wabash Drive; (2) Ms. Tenlee Tarrier, Goodrich Avenue, who filed the

following exhibit: (a) Photographs of flooding on Goodrich Avenue; (3) Ms. Kathy Franklin, Elizabeth Street; (4) Ms. Megan Horne, Goodrich Avenue; (5) Ms. Clarissa Spawn, Irvine Road; (6) Ms. Alicia Cox, Goodrich Avenue; (7) Ms. Amy Clark, Kastle Road; (8) Ms. Candice Wallace, Goodrich Avenue; (9) Ms. Sue Beard, Bellefonte Drive and realtor; (10) Ms. Allison Connell, Goodrich Avenue; and (11) Ms. Susan Daole, Goodrich Avenue.

Mr. Sallee gave his rebuttal concerning certain exhibits Mr. Simpson had previously filed.

Mr. Simpson stated he would wait to give his rebuttal with his closing statement.

Dr. Miller asked for clarification on amount of time allowed for a closing statement. The Mayor responded. Dr. Miller gave his rebuttal and made a closing statement.

Mr. Simpson gave his rebuttal and made a closing statement.

The Mayor recognized the Council to ask questions about the requested zone change.

Mr. Ellinger asked questions of Mr. Simpson regarding the applicant's offer to attempt to reduce the size of the hotel by one story. Mr. Simpson responded.

Mr. Miller asked for clarification from Mr. Simpson about the name of the hotel. Mr. Simpson clarified that Hilton is the parent company

Ms. Lawless made a motion, seconded by Mr. Blues, to approve the following Findings of Fact for Disapproval:

1. Insufficient evidence was presented upon which the Council could make a finding that the proposed zone change requested is in agreement with the Comprehensive Plan.
2. No evidence was presented before the Council that the current B-1 zoning on the subject property is inappropriate.
3. No evidence was presented before the Council that there have been major changes of an economic, physical or social nature within the area where the subject property is located which were not anticipated by the Comprehensive Plan.
4. The proposed Highway Commercial land use is not appropriate at the subject location because it will adversely affect the existing Low Density Residential land uses in close proximity due to excessive structure height and the inability to sufficiently buffer said use from the residential areas.
5. The proposed hotel building on the subject property is located far closer to the nearest Low Density Residential land uses on Goodrich Avenue than other hotels developed in the past ten years.

The Council discussed the testimony and the motion, and asked questions of Mr. Sallee, Mr. Simpson, Dr. Miller, and Ms. Jones.

Mr. Ellinger made a motion, seconded by Mr. Myers, to call the question.

Mr. Kay asked that Mr. Stinnett, who had not spoken yet, be allowed to speak on the previous motion before voting on the motion to call the question. The Mayor consented.

Mr. Stinnett spoke to the motion and asked questions of Mr. Simpson regarding the number of jobs the hotel would create. Mr. Bill Kirk, Northstar Management Company, the company that would potentially manage the hotel, responded to the question.

Mr. Ellinger's motion **passed** by unanimous vote.

The Mayor asked that Ms. Jones review for the Council and the audience the implications of a yes or no vote on Ms. Lawless's motion to approve Findings of Fact for Disapproval. Ms. Jones discussed the vote options, and what would be needed if the motion failed.

The motion by Ms. Lawless, seconded by Mr. Blues, to approve Findings of Fact for Disapproval **failed to pass** by the following vote:

Aye: Gorton, Henson, Kay, Lawless, Blues -----5

Nay: Ellinger, Farmer, Ford, Lane, Martin,
McChord, Myers, Stinnett, Beard, -----9

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The Mayor asked Ms. Jones to review the next step in the procedure. Ms. Jones responded.

Mr. Farmer asked a question of Ms. Jones regarding procedure required to approve amended Findings of Fact for Approval. Ms. Jones responded that it would be best to read the amended list aloud, and then the staff would clarify what items had been amended by the staff.

Mr. Martin made a motion, seconded by Mr. Beard, to approve the following Findings of Fact for Approval:

1. The Lexington-Fayette Urban County Council finds that the Applicant's request for a restricted B-3 zoning for the subject property is in substantial conformity with the 2007 Comprehensive Plan, which recommends commercial zoning.
2. The existing zoning of the property is commercial, B-1.
3. The Applicant proposes a severely restricted B-3 use which besides the existing B-1 uses will only allow for a hotel use in the B-3 zone.
4. The proposed hotel use will generate less traffic than most of the permitted uses in the existing B-1 zone, thereby reducing traffic conflicts with the residential neighborhood.

5. This area has a history of stormwater problems, and the Applicant's proposed stormwater plan will be of significant benefit to the neighborhood and businesses on Southland Drive. The Applicant has committed to reducing the amount of impervious surface on the subject property, and also has committed to reducing the rate of stormwater run-off from the subject property by 50%, substantially in excess of the minimum requirements should the property be developed under its existing B-1 commercial zoning.
6. The hotel use will be more compatible with the neighborhood to the north because it will be a more residential-type use as compared to many of the other commercial uses allowed in the existing B-1 zone.
7. The proposed development will provide a much-needed economic stimulus for Southland Drive and will provide an important gateway to the Southland Drive commercial corridor.
8. The location of the hotel in close proximity to Central Baptist Hospital, St. Joseph Hospital and the University of Kentucky Medical Center will provide a nearby housing alternative for visiting families of patients at these hospitals.
9. The Applicant has submitted extensive landscaping, screening and buffering provisions which will make the subject property more compatible with the neighborhood and provide an attractive gateway for Southland Drive.

Ms. Jones stated the list of Findings of Fact for Approval had been submitted by Mr. Simpson in his exhibit book, and then explained the adjustment that had been made to Finding #6.

Mr. Myers asked that the vote be delayed for a moment to allow for the return of one Council Member who had gone out of the room. The Mayor consented.

The motion by Mr. Martin, seconded by Mr. Beard, to approve the Findings of Fact for Approval was approved by the following vote:

Aye: Ellinger, Farmer, Ford, Lane, Martin,
McChord, Myers, Stinnett, Beard-----9

Nay: Gorton, Henson, Kay, Lawless, Blues-----5

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Mr. Martin made a motion, seconded by Mr. Lane, to approve the following zoning conditions:

The Council finds that the following conditional zoning provisions are reasonable and necessary to protect the health, safety and welfare of adjoining property owners, and are reasonable and necessary to further the purpose of the Zoning Ordinance and therefore makes approval of this zone change subject to the following conditions:

1. The subject property shall be rezoned to B-3 except that the following B-3 uses shall be prohibited:
 - a. 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.
 - b. Automobile service stations, subject to the conditions of Article 16.
 - c. Car washing establishments, provided that surface water from such use shall not drain onto adjacent property or over a public sidewalk, and that adequate on-site storage lanes and parking facilities shall be provided so that no public way shall be used for such purposes.
 - d. Indoor amusements, such as billiard or pool halls; dancing halls; skating rinks; theaters, or bowling alleys.

- e. Self-service laundry, or laundry pick-up station, or clothes cleaning establishments of not more than forty (40) pounds capacity and using a closed-system process.
 - f. Garden centers.
 - g. Kennels, animal hospitals or clinics, including offices of veterinarians, provided that such structures or uses, not including accessory parking areas, shall be at least one hundred (100) feet from any residential zone.
 - h. Minor automobile and truck repair.
 - i. Carnivals on a temporary basis, and upon issuance of a permit by the Div. of Building Inspection, which may restrict the permit in terms of time, parking access or in other ways to protect public health, safety or welfare; or deny such if public health, safety or welfare are adversely affected. A carnival may not displace more than twenty-five percent (25%) of the minimum required parking for the site it occupies.
 - j. Taxidermy establishments.
 - k. Pawnshops which: (1) were in operation prior to August 31, 1990 and in compliance with the provisions of KRS 226.010 et seq. and Code of Ordinances, Sections 13-52 and 13-53; or (2) had on file with the Lexington-Fayette Urban County Government, prior to August 31, 1990, an application for a business license or certificate of occupancy.
 - l. Adult arcades, massage parlors, adult bookstores, adult video stores, adult cabarets, adult dancing establishments, adult entertainment establishments, and sexual entertainment centers, provided that none shall be located within a 50-foot radius of any agricultural or residential zone, any elementary or secondary school, any park attended by persons under 18 years of age, or within a 1,000-foot radius of any other similarly regulated adult business.
2. The property shall be developed in substantial conformity with the renderings of a Hampton Inn tendered to the Planning Commission. This is a voluntary condition to which the Applicant has publicly agreed to be bound for itself and any future owners to the same extent as if said condition was set forth separately in an agreement with LFUCG.
 3. The Applicant shall reduce the rate of stormwater run-off from the subject property by 50% as determined by the LFUCG's Division of Engineering. This provision is also a voluntary condition offered by the Applicant during the hearing of this matter and to which the Applicant agrees that the subject property shall be bound as a condition of rezoning for itself and any future owners to the same extent as if said condition was set forth separately in an agreement with LFUCG.
 4. The Applicant shall install an 8-foot-tall solid wood fence with brick columns spaced every 32 feet between the subject property and the homes on Goodrich Avenue and to the west of the Applicant's property between its property and the car wash. Additionally, the Applicant shall install 12-foot evergreen trees every 10 feet on its property and on the Applicant's side of the wooden fence.
 5. The maximum height of the hotel shall be 4 stories, as voluntarily agreed by the Applicant for itself and any future owners to the same extent as if said height requirement was set forth separately in an agreement with LFUCG.
 6. The Applicant has voluntarily agreed to place the conditional zoning provisions referenced in paragraphs 2 through 6 herein as Notes on the Final Development Plan to be approved by the Planning Commission.
 7. Should the Applicant or subject property owner not build a hotel, then the conditional zoning provisions set out in paragraphs 2 through 7 herein shall not apply. In such a case, the Applicant or subject property owner shall be permitted to develop the property solely pursuant to the provisions of the B-1 zoning ordinance but shall not be obligated to comply with the conditions set out in paragraphs 2 through 7 herein.

Ms. Jones stated the changes and additions to the conditional zoning provisions submitted by Mr. Simpson, and were stated in Mr. Martin's motion.

Mr. Martin asked questions of Mr. Simpson regarding the use of name of the hotel in the conditional zoning provision #2, and whether it would restrict the developers from contracting with another hotel in the event that the Hampton Inn could not be built. Mr. Simpson responded.

Mr. Martin made a motion, seconded by Mr. Ellinger, and **approved** by unanimous vote, to amend his motion to substitute the word 'hotel' for 'Hampton Inn' in conditional zoning provision #2.

Ms. Gorton asked a question of Mr. Simpson about the use of bars in the B-3 zone. Mr. Simpson responded. Ms. Gorton also directed the question to Mr. Gardner. Mr. Ed Gardner suggested using the language 'Hampton Inn style or type' in the conditional zoning provision.

Mr. Martin asked questions of Mr. Gardner about the appropriate language to use in the motion for conditional zoning provision #2. Mr. Simpson and Mr. Gardner responded.

Mr. Martin made a motion, seconded by Ms. Gorton, and **approved** by unanimous vote, to further amend the motion to substitute the phrase 'Hampton Inn style hotel' in place of 'hotel' in conditional zoning provision #2.

Mr. Martin's motion, seconded by Mr. Lane, to approve the amended conditional zoning provisions was approved by the following vote:

Aye: Ellinger, Farmer, Ford, Gorton, Henson,
Kay, Lane, Lawless, Martin, McChord,
Myers, Stinnett, Beard, Blues-----14

Nay: -----0

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Mr. Martin made a motion, seconded by Mr. Myers, to amend the Ordinance to add conditional zoning restrictions related to prohibited uses, required form of development, reduction of stormwater runoff, installation of fencing and trees, maximum height of development, requiring the conditional zoning provisions to be included on the final development plan; and providing that if a hotel is not constructed conditional zoning provisions would not apply except that the applicant may develop solely pursuant to B-1 zoning restrictions, and that this was a material change and would require a new first reading.

Mr. Kay asked questions of Ms. Jones regarding the purpose of the motion. Ms. Jones responded.

Ms. Gorton asked additional questions of Mr. Gardner about the purpose of the motion. Mr. Gardner responded.

Mr. Kay asked additional questions about procedure of Mr. Gardner, who explained what the motion would do.

The motion was approved by the following vote:

Aye: Ellinger, Farmer, Ford, Gorton, Henson,
Kay, Lane, Lawless, Martin, McChord,
Myers, Stinnett, Beard, Blues-----14

Nay: -----0

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An Ordinance changing the zone from a Neighborhood Business (B-1) zone to a Highway Service Business (B-3) zone, for 2.589 net (3.030 gross) acres, for property located at 1949 Nicholasville Road and 145 Collins Lane (Greer Nick Rd. LLC & Greer Nick Rd. II, LLC; Council District 3); imposing conditions upon approval that certain B-3 uses will be prohibited; the property shall be developed as a hotel in conformity with artist's renderings presented to the Planning Commission; the Applicant shall reduce stormwater runoff from the property by 50%; an 8-foot solid wood fence with brick columns and evergreen trees shall be installed as screening and the maximum height of the hotel to be constructed shall be four (4) stories and the Applicant will place the conditional zoning provisions on the final development plan; and providing that should a hotel not be constructed, the conditional zoning provisions shall not apply but Applicant may develop the property solely pursuant to the restrictions of the B-1 zone was given new first reading as amended.

Upon motion of Mr. Lane, seconded by Mr. Ellinger, the rules were suspended by unanimous vote.

The ordinance was given second reading. Upon motion of Mr. Ellinger, and seconded by Mr. Myers, the ordinance was approved by the following vote:

Aye: Ellinger, Farmer, Ford, Henson, Lane,
Lawless, Martin, McChord, Myers, Stinnett,
Beard -----11

Nay: Gorton, Kay, Blues-----3

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Upon motion of Mr. Ellinger, seconded by Mr. Myers, and approved by unanimous vote, the meeting adjourned at 11:50 p.m.

Clerk of the Urban County Council