

2. **PLN-ZOTA-25-00001: MINISTERIAL REVIEW OF DEVELOPMENT PLANS** – an amendment to Articles 1, 6, 9, 11, 12, 15, 16, 18, 21, 23, and 28 to update the Development Plan review process, and create objective standards for plan review.

INITIATED BY: URBAN COUNTY PLANNING COMMISSION
PROPOSED TEXT: Copies are available from the staff.

The Zoning Committee Recommended: Postponement.

The Staff Recommends: Approval of the Staff Alternative Text, for the following reasons:

1. The proposed text amendment makes the necessary change to existing Zoning Ordinance provisions to allow them to be administered ministerially, in line with the requirements of House Bill 443.
2. The proposed language provides for pathways for review and consideration by the Planning Commission in instances where a development plan cannot meet the objective criteria, or if the proposal would result in a threat to the public health, safety, or welfare.

Staff Presentation – Mr. Daniel Crum presented the staff report and revised recommendation for the proposed text amendment. Mr. Crum indicated that House Bill 443 in the Kentucky Legislature created a new section of KRS that required ordinances dealing with subdivision plats and development plans to set out objective standards and be applied ministerially. Mr. Crum noted under a ministerial process, that there is no longer an avenue for discretion, except with waivers. Mr. Crum stated that the updates to the Zoning Ordinance would be in compliance with HB 443 and would set out objective standards and rework how the Zoning Ordinance functions. Mr. Crum emphasized that no matter what happens with this process, HB 443 will go into effect on July 1 of this year and to ensure there are no gaps in Planning Staff's ability to plan out our community, these updates are essential.

Mr. Crum explained the meaning of the concepts of objective standards and ministerial processes, stating that objective standards must be measurable, specific, unbiased, and equitable, while applied ministerially is an administrative act carried out in a prescribed manner not allowing personal discretion. Mr. Crum indicated that the Planning Commission still had the ability to apply their discretion when evaluating waivers. Additionally, Mr. Crum indicated the three necessary changes that would need to be adopted. The need to updated the process to reflect ministerial review, reviewing current criteria for subjectivity, replacing the them with objective criteria, and creating standards in the Zoning Ordinance for items that were traditionally part of the other Division's sign-off processes.

Mr. Crum stated that these changes would not change the process for preliminary development plans, but the final development plan portion would be ministerial, only needing the Planning Commission's input if there was a waiver or deviation of the standards, or if a requirement would pose a specific threat to public health safety, and welfare. Mr. Crum indicated that one of the biggest changes relative to the current process is the removal of the public comment in the final development plan process, but noted that there are other avenues for public comment to be heard. Those include the plan-making stage, text amendment stage, during the preliminary development plan stage, waiver review, or during the review of a project forwarded due to a health, safety, or welfare threat.

Mr. Crum gave an overview of changes through each appropriate article of the Zoning Ordinance. Those changes included updating definitions for clarity, clarifying the Council process for reviewing Conditional Zoning restrictions, eliminating required Planning Commission hearings, updating the review process, removing discretionary review of open space, and removing minimum lot coverage in the B-5P zone. Additionally, Mr. Crum stated that the new regulations will codify Big Box Design guidelines, remove discretionary location standards, and would incorporate drive through standards, commercial access management standards, and solid waste standards in Article 16. Mr. Crum distributed a packet of all the changes to the Ordinance to the Planning Commission.

Mr. Crum concluded by stating that he could answer any questions from the Planning Commission with the printed text in front of them.

Commission Comments and Questions – Ms. Molly Davis asked what the tree preservation plan that the Planning Commission was adopting and would this get rid of Planning Commission's ability to ask for a tree protection plan. Ms. Wade stated that Article 26 is already in place and it may need some amendments, but

* - Denotes date by which Commission must either approve or disapprove request, unless agreed to a longer time by the applicant.

the Division of Environmental Service is already working on a text amendment to deal with more concrete criteria for what Ms. Davis was asking.

Ms. Davis also asked for clarity of when there will or will not be public comment and how the public would know when it was their time to discuss potential new development plans. Mr. Crum stated that public comment is not going away, it just will be earlier in the process and not be able to be heard at the time of the final development plan. Mr. Crum also emphasized that he thought this was speaking to the crucial efforts from Long Range Planning and Strategic Planning, and other initiatives moving forward to make sure that the Division of Planning is engaging with the community and hearing their input at the appropriate time. Mr. Duncan stated that the plan making process still remains and that the public will still have a voice in these matters, even if it will be earlier on. Mr. Duncan stated that he thought this was what the legislature wanted and to speed up the process and that is what the Planning Commission and Staff are complying with.

Mr. Michler cited a recent development plan where the public questioned a shadow that would be on 11 homes 24 hours a day during the winter, a concern that was not on the Staff report. Mr. Michler stated that he had concerns about citizens and Staff citing a public health, safety, or welfare concern if it is not on the Staff report. Mr. Crum stated he thought it was a good point, but that Staff had the ability to bring up those issues during the process and that Staff gets calls everyday stating their concerns about a project. Additionally, the members of the Planning Commission can bring up an issue at any time.

Ms. Tracy Jones stated that the law says that it can be elevated to the Planning Commission to consider based on substantial evidence that approving a plan ministerially would pose a specific threat to health, safety, and welfare. She said the Planning Commission will have to take things as they come through and consider the law and what substantial evidence means.

Mr. Bruce Nicol stated that he understood that this text amendment was to update the ordinance to comply with HB 443 and that we are in a tight spot to hit the July 1st deadline. However, Mr. Nicol asked how the Planning Commission was going to deal with any unintended consequences that could arise and would that be through new text amendments. Mr. Crum stated that he thought that the waiver process would be the safety release valve to help address these concerns, but he did not rule out using a text amendment to alleviate any issues that might come up.

Mr. Nicol also stated that this had been a monumental task to address and he thanked Staff for their work.

Mr. Michler asked for clarity on the waiver process and the list of items that Planning had determined to be variable or waivable and what if one of the intended consequences was not on the list mentioned. Mr. Crum stated that the waiver process is meant for things that are not dimensional and do not have another appeal process outlined elsewhere.

Mr. Penn stated that he thought that a lot of the new bills coming out of Frankfort were the legislature telling a city what they can and cannot do and that he thought doing that was a slippery slope. Additionally, Mr. Penn stated that the current text amendment was a living breathing document and it will be changed as we go.

Public Comment – Walt Gaffield, 2001 Bamboo Drive, gave a letter to the Commission and stated that he thought that the Planning Commission should look at adding more factors than just health and safety into the waiver process.

Branden Gross, attorney, stated that he thought this was five text amendments wrapped into one and that this was done too quickly. He took issue with the proposed 100 foot minimum access separation from railroad crossings, and updating existing parking lots.

Dick Murphy, attorney, stated that he had concerns with the new drive-through standards and the new commercial entrance standards. He thought those issues specifically should go through a more strenuous process.

Brittany Rothmeyer, Fayette Alliance, stated that she appreciated Staff's work in compiling a response to HB 443 and listening to robust feedback from the community on this. She stated that they would encourage people with concerns with public comment and participation to talk with their legislature about the matter.

Amy Clark, 628 Kastle Road, stated her concern about how this text amendment would affect the public comment portion of the development plan process and suggested adding testimony to a specific public health or safety issue during the consent agenda process.

Nick Nicholson, attorney, stated that this text amendment covered a lot of territory and stated that he thought there was a way to get in compliance with HB 443 while looking at the finer details at a different time. He had concerns with how this would affect planning but not zoning.

Patty Draus, 608 Allen Court, stated that she had concerns about this text amendment and she did not think that ministerially meant to block public comment.

Rolanda Woolfork, stated her opposition and assertion that she spoke with the legislator that co-sponsored HB 443 and he stated that he did not understand why public comment was taken out of the final development stage. Ms. Woolfork stated that she thought neighborhood's voices were being silenced.

Staff Comment – Mr. Jim Duncan stated that if this was approved today it would go to the Urban County Council in about a month and then they would have to make a decision if they wanted more information from Staff and the Planning Commission. Mr. Duncan stated that it is Staff's recommendation that the Planning Commission give the Urban County Council the opportunity to decide if they want to receive more information on this and move from there with a public hearing or not. Mr. Duncan noted that Staff thought it was imperative that this go through so that there was continuity in what Planning Staff has been doing for years.

Public Rebuttal – Amy Clark, stated her opposition and pleaded with the Planning Commission to fix the issues with the text amendment before they sent it to the Urban County Council.

Commission Comments and Questions – Mr. Zach Davis stated that he appreciated all the public comment and that he agreed with many of the comments stating that he thought taking more time on this text amendment would be for the best.

Ms. Molly Davis stated that she agreed with Mr. Zach Davis's assessment and that she agreed with a lot of the public comments. She wondered if it was possible to do a specific public meeting to hammer out all the issues that the public has discussed.

Mr. Bill Wilson stated he also agreed with Mr. Davis and wondered if there was a timeline specific issue so that he could digest the text and comments and suggested a continuance might be for the best. Mr. Wilson stated that he agreed with Mr. Nicholson's assessment that the Planning Commission could make a text amendment to ensure they are in compliance with HB 443 and then go from there and fix the finer details.

Mr. Owens stated he thought that a continuance was the best course of action at this time and that public comment was a fundamental part of this process and should not be taken away.

Mr. Forester asked about the possibility of continuing this item and if there was a busy schedule over the next month or so. Mr. Duncan indicated that any delay cuts the Urban County Council's time to look at the item, but if the continuance was what the Planning Commission wanted, they could do so. Mr. Duncan stated that there was a project on the April 10th meeting that Staff did not know if it was going to go and that there was a big zone change on the April 24th meeting. Additionally, on the April 24th meeting, Council also meets and a long meeting would mean moving from Council Chambers to the Phoenix Building.

Mr. Penn asked if we would rather Council get into the weeds on this, or Planning Staff and the Commission that have vast knowledge on this subject. Mr. Penn indicated he would rather the Planning Commission and Staff work on it and then send it to Council.

Action – A motion was made by Mr. Wilson and seconded by Mr. J. Davis and carried 11-0 to continue PLN-ZOTA-25-00001: MINISTERIAL REVIEW OF DEVELOPMENT PLANS to the April 10th public hearing.

