

**BOONE COUNTY PLANNING COMMISSION
BOONE COUNTY ADMINISTRATION BUILDING
BOONE COUNTY FISCAL COURTROOM
PUBLIC HEARING
JUNE 3, 2015
7:30 P.M.**

COMMISSION MEMBERS PRESENT:

Mr. Kim Bunger, Secretary/Treasurer
Mr. Mike Ford, Vice Chairman
Ms. Lori Heilman
Mr. Mark Hicks
Mr. Don McMillian
Mr. Kim Patton
Ms. Lisa Reeves
Mr. Charlie Reynolds
Mr. Bob Schwenke
Mr. Steve Turner, Temporary Presiding Officer

COMMISSION MEMBERS NOT PRESENT:

Mr. Randy Bessler
Mr. Greg Breetz
Mrs. Janet Kegley
Mr. Jim Longano
Mr. Charlie Rolfsen, Chairman

LEGAL COUNSEL PRESENT:

Mr. Dale T. Wilson

STAFF MEMBERS PRESENT:

Mr. Kevin P. Costello, AICP, Executive Director
Mr. Kevin T. Wall, AICP, Director, Zoning Services

Vice Chairman Ford called the Public Hearing to order at 7:30 P.M. and introduced the first item on the Agenda:

CHANGE IN APPROVED CONCEPT DEVELOPMENT PLAN - Greg Breetz, Chairman, Kevin Wall, Staff

1. Request of **Hills Developers Inc. (applicant)** for **Anabasis LLC (owner)** for a Change in an Approved Concept Development Plan in a Residential Planned Development (RPD) zone for a 11.586 acre site located at the terminus of Pointe Preston Drive, Florence, Kentucky (Preston at Plantation Pointe, Phase Two). The request is for a Change in an Approved Concept Development Plan to eliminate a previous condition of approval which requires single family attached dwelling units to be owner occupied.

Staff Member, Kevin Wall, presented the Staff Report, which included a PowerPoint presentation (see Staff Report). The project involves Preston, a condominium phase in Plantation Pointe Subdivision west of Wetherington Boulevard. Phase 1 of Preston has already been developed. It involved the first two buildings of the project. Both buildings were approved for construction in 2005. In 2013, a plan was approved for Phase 2 of the development. It involves five more buildings. Mr. Wall stated that the Comprehensive Plan's Land Use Map recommends Urban Density. Mr. Wall showed photos of the site and adjoining properties. The request involves eliminating a condition of approval. The site originally involved a Zone Change for the entire Plantation Pointe development in 1996. There was a condition that read, "all residential uses designated as single family attached in the Concept Development Plan shall be owner occupied." The applicant is asking for the condition to be eliminated. The 1996 Concept Development Plan approved single family attached condominiums for the site. It was approved for 252 dwelling units. Under the 2013 approval, there are 140 units. Now there is a total of 212 units planned for the site. Staff has not identified any issues with the proposal other than the condition established 20 years ago.

Vice Chairman Ford asked if the applicant was ready to proceed with his presentation?

Mr. Jim Obert, Hills Developers, stated that it was their intention to have the site under construction now. The lender for the project had a concern about the wording "owner occupied." Should something happen, the lender wants some flexibility to dispose of the property by sale or by lease. They want to remove the words "owner occupied." There are no site plan modifications proposed. It is 100% based on the 2013 approval. They even applied for an extension of the 2013 approval in November. They intend to start construction in 2015.

Ms. Michelle James, Adams, Stepner, Woltermann & Dusing, PLLC, submitted an opinion (see Exhibit A) regarding the enforceability of the phrase "owner occupied" within the zoning condition. In general terms, the true goal of zoning is to regulate the development and the use of property. It is not intended to regulate the user of the property. It is not to determine if it is owned or rented. The courts generally feel that when you attempt to regulate the user of the property, it is unenforceable based upon due process or equal protection issues. There are Fair Housing laws. The phrase is unenforceable in a court of law.

At this time, Vice Chairman Ford asked if there was anyone in the audience who wanted to speak in favor or against the request? Mr. Ford stressed that the Planning Commission is only reviewing the matter of "owner occupied." There are no other issues since the applicant has made it clear there are no changes to the original plan.

Mr. Tim Dugan, 9306 Hardwicke Lane, asked if the legal opinion is that the wording is unenforceable, then why is the bank concerned on whether the units are owner occupied or not? The people care because they have seen from experience that rental communities care less about their neighborhood. Rental property is harder to keep up if you don't live in it. If the original idea was to build condos, then it should be condos. He stated that he is against the proposal.

Ms. Linda Mildon, 1173 Appomattox Drive, stated that she is a local real estate agent. If there are too many rental properties in a condo development, lenders will not make loans. There are certain guidelines that lenders follow, such as a certain percentage of renters or rentals. It makes a difference on whether you are getting a loan to buy a house to live in or purchase a unit as rental property. The banks look at it differently. It is much more favorable for owner occupied than it is for rental property. The lending rules have changed so much. They don't allow landlords to have more than four mortgages. She is against the change.

Ms. Susan Cobb, 1219 Napa Ridge Court, stated that she is President of the Master Plantation Pointe Homeowners Association. What are the requirements for notification of this Public Hearing? Mr. Wall replied that a legal notice is placed in the newspaper, all the adjoining property owners are notified via certified letter and a sign is posted on the property. Mr. Wall noted that someone took the sign down a few days ago but it was posted as depicted in the photographs. Mr. Wilson explained that Kentucky law has a reason for using three methods for notification. If there is a breakdown in one of the methods, then there are two back-up methods to keep people informed. Mr. Wilson noted that people are present at tonight's Public Hearing. Ms. Cobb stated that the reason people are here is because someone saw the sign and posted a photo of it on Plantation Pointe's Facebook page. She sent out a mailing through the Plantation Pointe web site. Mr. Wall stated that the sign was posted legally on the subject property or legal real estate. If the sign was located off Wetherington Boulevard, it would be an illegal posting. Mr. Wall explained that the names and addresses of adjoining property owners were provided by the applicant as required based upon PVA records.

Ms. Mary Rotatori, 9680 Manassas Drive, stated that she is not looking forward to the proposed change. By changing the verbiage, it will decrease the value of her property. She is against the request. It is very sketchy since the sign was posted on private property. Within the last two nights, the sign was removed. Mr. Costello stated that the request was published in the Boone County Recorder, letters to the adjoining property owners were mailed and a sign was posted on the subject property all in accordance with State law - KRS 100.

Mr. Dave Stadtmiller, 10500 Braxton Drive, stated that he owns 300 feet that runs along the edge of the phase in question. The words "owner occupied" strikes fear into his heart. Along with making the bank happy. He noted that he lives next to the Columns section of Plantation Pointe Subdivision. It is a rental community. People urinate in the backyard all of the time. There are problems with garbage and parking. There isn't a sufficient amount of parking for the community. It is located on the Florence/Union line. They don't get along. There are authoritarian issues. There is a wash out on his property for the past five years ever since they cut the trees down. It has never been addressed. Staff has seen it. Renters don't care about the property. They see no obligation to take care of things around them. People who live in the Columns for a few months. If he has to abide by the 1996 zoning rules, so should everybody else.

Ms. Marcia Reusch, 9550 Harper's Ferry Drive, stated that she lives in Antebellum. Prior to where she resides now, she noted that she lived next to Dave Stadtmiller. She experienced the same type of activities previously described. From 2000 - 2003, people would move in and out at 2:00 or 3:00 in the morning. Her house was within 40 feet of the property line near a porch. They said they would be a berm but it wasn't high enough. Subsequently, she moved and stated she is against the request.

Ms. Pat Goetz, 1155 Fairman Way, purchased her condo in 2007. She stated that she purchased the condo in good faith that it would be owner occupied. She abides by the rules of the Homeowner's Association. Once you put a rental unit anywhere, it will decrease property values. Everyone took a hit at the recession. They have not recovered yet. We should be taken care of as citizens.

Ms. Esther Mack, 9060 Georgian Court, stated that she learned about the Public Hearing about four hours ago. She works for Fischer Homes and is a condominium lifestyle counselor. After 10 years, Fischer is in their final phase at Tara. They have delivered their promises to the homeowner. In their by-laws, there is a 10% rental potential figure for their community. Is there a similar by-law with Hills? After they turn over the development to the HOA, they have a right to negate it. The posted sign is at least 60-100 yards from the main road so how would they know about the project?

At this time, Vice Chairman Ford asked if any of the Planning Commission Members had any questions or comments?

Ms. Lori Heilman stated that at the time the development was originally approved in 1996, there was an issue about condo projects becoming rentals in the community and that is why the developer at that time agreed to the condition. That is why the words "owner occupied" was inserted. The development was sold as "owner occupied." What other assurances is the applicant willing to give the existing condominium owners so that the units don't become the same type of units like the Columns?

Mr. Jim Ober responded that Hills will develop them as condo units. They can't speak to the ownership issue. Hills didn't realize the words "owner occupied" were associated with the previous approval. He questioned whether the existing residents know the restriction is still with their unit. With the Tara development, the 10% stipulation still violates the zoning condition since they have the same conditions. Hills wants to complete the project. They have not made a decision whether the proposed project is rental or for sale. They want to get the construction started and see what the interest is over time. Condominium business today is no where near what it was in 2004-2006. It is interesting to note that Hills met with Preston residents last week. Most of the people who attended that meeting are not present tonight. These people have a very good understanding of the project. Hills builds condominiums and apartments as well as single-family homes. Hills doesn't have a negative impact on any community. The fact that the site is still an empty field is not good for anyone. The site needs to be put into production. New roofs brings excitement. Empty nesters have made decisions not to own real estate. There are a lot of life decisions to be made and it affects real estate. That is why the wording needs to be removed. Sometimes, it takes longer to sell a condominium and it can be an economic hardship. There has to be some flexibility. Property owners have a legal right to dispose of property. The owner occupied statement prohibits this from occurring.

Mr. Wilson asked the applicant if it was his company's intention to let the market decide whether the new units are owner occupied or leased? Mr. Obert responded yes.

Ms. Heilman stated that this discovery is inconsistent with what the applicant presented in its letter. It seems like it is a business decision and not just based on banking requirements. Mr. Obert explained that there are two issues. The bank does not like the language "owner occupied." In addition, there is the issue of developing them as condos or rental units. Ms. James further stated that the lender's counsel will look at anything that will harm their security interest. Fair Housing laws have developed since 1996. There are countless cases. Regulation of the user of the property is just adverse to everything in American law.

Mr. Hicks asked if there would be appropriate language to address both sides? Mr. Costello replied maybe the language at the time should have been "for sale" units. The intent was to have the transaction of the property or unit to be a sale and not rental. Originally, the project was presented as a condominium development and now it is different. Generally, we don't have both types of products - owner occupied and rental in the same development. It is all one type so everyone is aware. Plantation Pointe is a large mixed use development with apartments, condominiums, single-family units, commercial space and a school. Hills has completed other projects in Boone County, which have always been condominiums. There are at least two other projects developed by Hills that were "for sale" units. This was never an issue. The intent was that units be sold first and the homeowner could decide in future to sell it again or rent it in the future.

Mr. Obert replied that regardless of either form of ownership, Hills is building the units as condos. They will be deeded out as condos.

Mr. Bunger stated that at the time the residents purchased the units expecting individual owners and not "block" owners. They were not intended to be rental units. Those who live there anticipated single-family occupied homeowners. Mr. Bunger asked how the proposed change benefits the community or current owners other than Hills and the bank? There is a great concern about the impact of the change. What is the current ownership in the existing development? Mr. Obert responded that Towne Properties manages the property. He stated that there are 64 existing units. Approximately 17 (25%) of the 64 units are rented in Preston by other individuals. Hills still owns one unit. The 17 units are not owner occupied. A significant number of units in the Tara development are also rented. In theory, every unit rented is in violation of the condition. Hills missed the condition along with the other individual property owners.

Mr. Schwenke expressed a concern about a company purchasing a block of units versus individual homeowners. Mr. Obert responded that it is no different than the Drees Company buying five lots side by side, building five houses and renting the houses. There is no prohibition against it. It is the same situation. The only difference is the fact that the units are attached. Mr. Schwenke asked legal counsel to address the owner occupied issue.

Mr. Wilson responded that local governments have to be concerned that whatever they impose as a restriction doesn't have an adverse effect contrary to Federal laws. Based on what is there today, it not per se in violation of the Fair Housing Act. If someone did challenge it, one side would argue that it has an adverse effect. Then, the burden would shift to local government to

demonstrate a legitimate government interest. Is it affecting one private development or the entire planning unit's?

Ms. Heilman asked the applicant if there was compromise language that could be worked out with their lender? First, the units are offered for sale and then there is a restriction on the number of possible units per building rented at one time. This would address the possible changing economic climate and if someone moves, they are able to rent their unit. Mr. Obert replied that if you are the person who loses their job and you are beyond the percentage allowed to be rented, then the person is penalized.

Vice-Chairman Ford reminded the applicant to bring answers to the questions posed at tonight's Public Hearing at the Committee Meeting. There is no action on this request by the Planning Commission tonight.

Mr. Bungler stated that the Public Hearing is when the public expresses their concerns and poses questions about the project. The Committee reviews the official record from the Public Hearing. It is one of the benefits of having a Planning Commission. The community can support and oppose a project.

Vice-Chairman Ford explained to the audience that Mr. Wall, the Staff person assigned to the project, will be available to answer any questions after the Public Hearing. Vice-Chairman Ford noted that the Committee Meeting is open to the public and the public will have a brief opportunity to speak at the Business Meeting when the full Planning Commission takes a final vote.

Mr. Patton mentioned that the Committee will vote on the request at the Committee Meeting. The vote will be in the form of a recommendation to the full Planning Commission.

There being no further questions or comments, Vice Chairman Ford announced that the Committee Meeting for this item will be on June 17, 2015 at 5:00 P.M. in this room. This item will be on the Agenda for the Business Meeting on July 1, 2015 at 7:00 P.M. Vice Chairman Ford closed the Public Hearing at 8:56 P.M.

APPROVED:

Mike Ford
Vice-Chairman

Attest:

Kevin P. Costello, AICP
Executive Director