

**BOONE COUNTY PLANNING COMMISSION
BOONE COUNTY ADMINISTRATION BUILDING
FIRST FLOOR FISCAL COURTROOM
BUSINESS MEETING
JULY 1, 2015
7:00 P.M.**

Chairman Rolfsen opened the Business Meeting at 7:00 p.m. and welcomed the audience to the Planning Commission's July 1, 2015 Business Meeting. Chairman Rolfsen then invited everyone to join him in reciting the Pledge of Allegiance.

COMMISSION MEMBERS PRESENT:

Mr. Randy Bessler
Mr. Greg Breetz
Mr. Kim Bunger, Secretary-Treasurer
Mr. Mike Ford, Vice Chairman
Mrs. Lori Heilman
Mr. Mark Hicks
Mr. Jim Longano
Mr. Don McMillian
Mr. Kim Patton
Mr. Charlie Reynolds
Mr. Charlie Rolfsen, Chairman
Mr. Bob Schwenke
Mr. Steve Turner, Temporary Presiding Officer

COMMISSION MEMBERS NOT PRESENT:

Mrs. Janet Kegley
Ms. Lisa Reeves

LEGAL COUNSEL PRESENT:

Mr. Dale Wilson

STAFF MEMBERS PRESENT:

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

Approval of the Minutes:

Chairman Rolfsen stated that the Commissioners received copies of the Minutes from the June 3, 2015 Business Meeting and the June 3, 2015 Public Hearing. He asked if there were any comments or corrections. There being no changes to the Minutes, **Mr. Ford moved that the Minutes be approved as written. Mr. Turner seconded the motion and it carried unanimously.**

BILLS:

Mr. Kevin P. Costello, AICP, Planning Commission Executive Director, advised the Commissioners of the **Bills to be Paid**, which included a list of **Expenses** and **Salaries and Benefits** for a time period between 6/4/15 through 7/1/15.

EXPENSES:

Accounting Fees	\$ 386.21
Attorney Fees	3,604.17
Auto Expense	-60.00
Filing Fees (CLURs)	320.00
GIS Operations	-8,459.99
Legal Ads/Recruitment	30.74
Miscellaneous Expense	303.36
Office & Board Mtg. Supplies	1,077.19
Office/Liability Insurance	11,251.50
Office Equipment / Expense	4.85
Postage Expense	1,761.50
Professional Development	95.00
Printing/Pub/Dues/Subscriptions	708.54
Refunds	<u>390.00</u>

TOTAL: \$ 11,413.07

SALARIES AND BENEFITS:

FICA-BCPC Portion	\$ 4,757.88
Health / Dental / Life / LTD	17,344.79
Retirement - BCPC Portion	12,295.52
Salaries - Staff Expense	69,562.00
Workers Comp Insurance	3,554.51
Salaries - BCPC	<u>950.00</u>

TOTAL: \$108,464.70

GRAND TOTAL: \$119,877.77

Mr. McMillian moved that the bills (expenses and salaries and benefits) be approved and paid as presented and indicated approval of those items, which have been paid. Mr. Reynolds seconded the motion and it carried unanimously.

ACTION ON PLAN REVIEWS:

CHANGE IN APPROVED CONCEPT DEVELOPMENT PLAN - Greg Breetz, Chairman, Mitch Light, Staff

1. Request of **Adam Miller Homes (applicant)** for **Golden Masonry Homes (owner)** for a Change in an Approved Concept Development Plan in a Rural Suburban (RS) zone for an approximate 3.4 acre site located on the southeast corner of the Bullittsville Road/Cornerstone Drive intersection, Boone County, Kentucky (Lots 1 through 7 of Cornerstone Estates Subdivision). The request is for a Change in an Approved Concept Development Plan to modify a previous condition of approval to allow seven homes to face Cornerstone Drive instead of Bullittsville Road.

Chairman Rolfsen announced that the applicant has withdrawn the request based upon an e-mail message received by Staff.

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

2. 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, read the Committee Report, which recommended denial (see Committee Report). Mr. Wall noted that the Committee voted unanimously to deny the request with Mr. Bessler, Mr. Breetz, Mr. Bunger and Mr. Longano voting in favor of the denial.

Chairman Rolfsen asked if there was anyone in the audience who wanted to speak in favor or against the request for a maximum time limit of 5 minutes?

Mr. Gerry Dusing, attorney for Hills Properties, stated that Jim Obert is Vice-President of Planning and Zoning for Development for Hills Properties. He is also Chairman of the Hamilton County Regional Planning Commission. He was surprised about the recommendation from the Zone Change Committee as he was unable to attend the Committee meeting. The sole purpose of the request is to get rid of a condition because it has caused the applicant to not get financing. It is flat illegal. The applicant presented a legal opinion of the owner occupied restriction at the Public Hearing in accordance with Rathkopf's, "The Law of Zoning and Planning, Volume 5, Section 81-04.07". That treatise is the bible on zoning law. Zoning restrictions or conditions that limit the use of land based upon the identity or status of the owner or occupant of the land generally are held invalid by the courts. Zoning Regulations that limit the use of land based on race, economic status, age, blood relationship or identity of the user or owner are held invalid either based on due process or equal protection grounds as an arbitrary restriction unrelated to any recognized legitimate public purpose. A number of court decisions have utilized this rationale to invalidate zoning provisions that treated condominiums differently than rental units. Restrictions on occupancy imposed as a permit condition has similarly been held invalid. For example, several States have established laws

similarly that hold the entire statutory scheme of the Zoning Enabling Act with regulating land and structure and not ownership. Basic to the decisions of other jurisdictions is the premise that zoning is the regulation by a municipality of the use of the land within that municipally and the buildings and structures thereon. It is not the regulation of the ownership of the land or structures. Usually, the cases are the other way where an apartment building wants to switch to a condominium. Usually, the renters object. The courts have uniformly ruled same building and same land use. It is not a legitimate function of zoning. There are no findings presented by the Committee which deals with it. Mr. Dusing stated that at the Public Hearing, Commissioners asked what benefit is the proposed change to the existing residents? It is an illegal provision. What harm is there to the community? There was no evidence at the Public Hearing. There is no detrimental effect with the form of ownership by the individual residents. The proposed finding has a discriminatory effect. It is dead wrong. It discriminates against renters that are based on economic status. The Staff Report states that the Staff has not identified any issues with the request. What changed?

Ms. Linda Mildon, 1173 Appomattox, stated that the definition of owner occupied is usually associated with a mortgage under Fannie Mae. The mortgager is obligated to move into the house within 60 days and live there for at least one year. Home ownership creates jobs such as electricians, plumbers, etc. The average sale generates \$60,000 to the local community. A hardship is determined by an HOA Board. A hardship clause gives the owner the opportunity to apply to the Board for a temporary wavier of any limitation from the numbers of units that can be leased at a given time. Their restrictions are important because of lending regulations that limit and prohibit financing on condos that have a high percentage of rentals. It will be difficult for the existing Preston condo owners to sell or refinance their condos. Loans will not be approved if there are too many rentals. On page 35 of the Preston HOA By-laws, it states that they can rent them but no one can rent them for less than 6 months and without permission from the HOA Board. The applicant is pursuing a commercial loan and owner occupied is something different. Home ownership has a lot of benefits. Homeowners tend to be more involved in their community and stay longer.

Ms. Morgan Tyke, Towne Properties, stated that she manages the community. She stated that she didn't understand why the wording of owner occupied was illegal? She also noted that a total of 204 condominiums are permitted on the entire site. The homeowners are now in charge of the Association. Hills Properties is no longer on the Board. How are they putting guidelines on the project without the Associations approval?

At this time, Chairman Rolfsen asked if any of the Board members wanted to make a motion or comment?

Mr. Bunger stated that the Committee Report clearly outlines the consideration that the Committee had and the information provided by the applicant prior to the Committee's decision. **Mr. Bunger moved to deny the request by Resolution to the City of Florence based upon the findings outlined in the Committee Report. Mr. Breetz seconded the motion.** Chairman Rolfsen asked if there were any other comments or questions? He asked Mr. Wilson to address the legality issue.

Mr. Dale Wilson replied that at the Public Hearing the issue of legality of the condition was questioned. The language is not a per se violation of the Fair Housing Act nor other Constitutional Law. He agreed with the previous opinion tonight. The original 1996 application involved over 300 acres. It had many sections and was predominantly a residential development. It had attached and detached single-family housing and multi-family apartments (192 units). The 1996 action to approve included

and did not preclude rental units. The current condition was not something that the Planning Commission imposed as part of a regulation that the Planning Commission enacted. It was to carry forward the actual application and presentation by the owner/applicant. The question of owner occupied was posed to the owner/applicant and would he honor or agree to the condition? The owner/applicant said yes. It is an agreed condition that is part of a Concept Development Plan. There are no discriminating effects given the circumstances. The purpose of the request as set forth in the original application was to have a diverse type of housing opportunity. This promotes legitimate land use regulation.

Seeing no further questions or comments from the Board, Chairman Rolfsen asked for a vote on the motion made by Mr. Bunger and seconded by Mr. Breetz to deny the request. The vote found Mr. Bessler, Mr. Breetz, Mr. Bunger, Mr. Hicks, Mr. Longano, Mr. McMillian, Mr. Reynolds, Chairman Rolfsen, Mr. Schwenke and Mr. Turner in favor of denying the request. Mr. Ford voted against the denial of the request. Mrs. Heilman and Mr. Patton abstained from voting and did not give a reason therefore passed their vote. Mr. Wilson announced that a passed vote is counted towards the majority vote. The motion to deny the request is approved by a vote of 12 - 1.

New Business:

ZONING MAP AMENDMENT - Kevin Wall, Staff

3. Request of **Newman Tractor (applicant)** for **Susan Newman and Old Lexington Pike LLC (owners)** for a Zoning Map Amendment from Agricultural Estate (A-2) and Commercial Services (C-3) to Agricultural Estate/Planned Development (A-2/PD) and Commercial Services/Planned Development (C-3/PD) for a 36.58 acre site located at 2841 Verona Mudlick Road, Boone County, Kentucky. The request is for a zone change to allow the sales, rental, auction, and storage of equipment related to farming, construction, and utilities.

Mr. Reynolds moved to schedule a Public Hearing for item # 3 listed above on August 5, 2015 at 7:30 p.m. Mr. Hicks seconded the motion and it passed unanimously.

EXECUTIVE DIRECTOR'S REPORT:

Mr. Kevin P. Costello, AICP, Executive Director, presented the Planning Commission's FY 2015-2016 Budget. He referenced the budget packet which Planning Commission members received in the mail. He also noted that the budget figures were displayed on the screen. The budget packet is full of historical information as well as items that the Staff has accomplished in the past year and what will be accomplished in the upcoming fiscal year. He referred to the 10 year bar graph which showed the changes in the Planning Commission's overall budget figure due to the changes in the economy. The FY 2015-2016 Budget is proposed to be \$1,743,000. In terms of revenue, there is a \$33,000 increase in Government Funding. Three of the four legislative units have given the Planning Commission increases. This includes the Boone County Fiscal Court and the Cities of Florence and Walton. Union chose not to honor the Planning Commission's requested amount.

A large portion of this increase (\$23,000 out of \$33,000) is going towards GIS primarily to obtain new aerial photographs in 2016. Revenue from review fees is expected to increase by \$30,000 next fiscal year due to the improved economy. This increase does not include any type of change in the fee schedule. The Planning Commission's fee schedule hasn't changed since 2008. In a meeting with the Judge Executive and the 3 Mayors, the Mayor of Union asked about charging more for services to offset increases requested from the legislative units. The fee schedule could change to reflect the real cost of providing the services. A cost and fee comparison study would have to be performed. In terms of Administration, the proposed changes include increases in GIS contributions due to the aerial photography project and a potential contract with the Boone County Library District to scan and digitize historical aerial photographs and maps. In terms of expenditures, there is one vacant Staff position that we are going to fill in the Zoning Services Division because of increased development activity (permitting, inspection and enforcement). The Board Member salaries category is expected to increase due to better attendance and more meetings. The Professional Services category will increase due to additional engineering/surveying costs as a result of more development activity and accounting costs - SPGE reporting requirements. In terms of Fringe Benefits, there is no expected increases including retirement and health insurance. There is an increase in the Other category. It is due to the 2016 aerial photography project and replacing two 2005 Staff vehicles. Our current aerial photography was flown in 2012. The 2016 project will be done in conjunction with the start of the 2017 Comprehensive Plan update. Our current Staff vehicles have 87,000 and 114,000 miles and need to be replaced. This will be accomplished through the State bid process. Overall, the FY 2015-2015 Budget is 6% higher than the current budget. This is primarily due to the aerial photography project and vehicles.

Chairman Rolfsen asked if any of the Board members had any questions or comments?

Mr. Hicks asked whether there are any plans to update the Union Town Plan and is it built into the budget? Mr. Costello replied that the City through its Economic Development Committee (EDC) decided there was not a need to update it. Mr. Costello did a presentation to the EDC to explain the Union Town Plan. It seems they wanted to spend more time implementing the Plan and recruiting developers. Any plan update would involve defining the scope of the update and determining costs. For example, the Mall Road District Study required some additional funds from the City of Florence to examine transportation and real estate market issues. It was an additional \$6,000. There is nothing in the current budget that covers this additional work.

Chairman Rolfsen inquired about the two types of aerial photography. Mr. Steve Gay, GIS Services Director, explained that one option is through the state-wide contract to produce digital orthos. Photo Science is the same company that produced the 2012 photography and 2013 Florence photography. The other option is Pictometry which includes straight down orthos and oblique photos. Oblique photos are taken at a 45 degree angle. A structure can be viewed at 4 different angles. This type of photography is in 57 counties in Kentucky. It is primarily used by PVA's in Kentucky. Mr. Costello stated that whichever option the Staff chooses, the Planning Commission will have to vote on the project to authorize its Executive Director to sign an agreement or contract. He mentioned that emergency service departments and the Building Department would also benefit from this type of photography. Both Kenton and Campbell counties have this type of photography. There is an economy of scale to the project since Kenton and Campbell counties have to be flown in 2016 and 2018. The photography involves multiple flights in the next 6 years.

In response to a question from Mr. Breetz, Mr. Gay responded that the tile grid system is just under one square mile with oblique photography and one square mile with digital photography.

Mr. Kim Patton stated that he understood about fees not increasing since 2008 and asked about salary levels during the same period. Mr. Costello replied that the Planning Commission does not have a cost of living increase anymore. It was eliminated about 10 years ago. All increases are merit based. There were years in the past where there were no increases due to the economy. Other years, the average salary increase was 1.0% and 1.5%. The average salary increase last year was about 2.7/2.8%. In the past, the Planning Commission had furlough days and laid 2 employees off. Currently, there is 1 vacant position in Planning Services, 2 vacant positions in Zoning Services and 1 vacant position in Administrative Services. The GIS Services Division has not suffered any staffing cuts to date. Mr. Costello mentioned there is a process for determining lay offs.

Mr. Longano asked if there were legislative units that didn't give contribution increases in the past? Mr. Costello responded that he would have to research it. It hasn't been much. The most recent is the City of Union. There were times that the Planning Commission received an increase but not to the same level requested by the Planning Commission. The budget process is simple. There is no across the board percentage request. It is based upon expected work, development activity and special projects. There has been times which the Planning Commission asked for funds for a special purpose like aerial photography and special studies.

Mr. Ford moved to adopt the FY 2015-2016 Budget as presented by Mr. Costello based upon the budget packet. Mr. Hicks seconded the motion and it passed unanimously.

Mr. Costello stated that the Planning Commission hired Brown Engineering, PLLC originally in March, 2014 and it is recommended that we extend the contract from July 1, 2015 to June 30, 2016 in accordance with the same rates and terms outlined in his memo. **Mr. Hicks moved to authorize the Executive Director to enter into a contract with Brown Engineering, PLLC based upon the same terms and rates for a period between July 1, 2015 and June 30, 2016. Mr. Patton seconded the motion and it passed unanimously.**

COMMITTEE REPORTS:

AIRPORT: Mr. Ford
No Report

ADMINISTRATIVE/PERSONNEL: Mr. Reynolds
No Report

ENFORCEMENT: Mr. Bunger
No Report

LONG RANGE PLANNING/COMPREHENSIVE PLAN: Mr. Schwenke
No Report

TECHNICAL/DESIGN REVIEW: Mr. Longano
No Report

EXECUTIVE: Mr. Rolfsen
No Report

CHAIRMAN'S REPORT:
No Report

OKI REPORT:
Mr. Breetz reported there will be no OKI Board meeting in July.

OTHER:

There being no further business to come before the Planning Commission, Mr. Reynolds moved to adjourn the meeting. Mr. Hicks seconded the motion. The meeting was adjourned by unanimous consent at 7:50 p.m.

APPROVED

Charlie Rolfsen
Chairman

Attest:

Kevin P. Costello, AICP
Executive Director