

**BOONE COUNTY PLANNING COMMISSION
BOONE COUNTY ADMINISTRATION BUILDING
BOONE COUNTY FISCAL COURTROOM
PUBLIC HEARING
AUGUST 5, 2015
7:30 P.M.**

COMMISSION MEMBERS PRESENT:

Mr. Randy Bessler
Mr. Mike Ford, Vice Chairman
Mr. Mark Hicks
Mr. Jim Longano
Mr. Don McMillian
Ms. Lisa Reeves
Mr. Charlie Reynolds
Mr. Charlie Rolfsen, Chairman

COMMISSION MEMBERS NOT PRESENT:

Mr. Greg Breetz
Mr. Kim Bungler, Secretary/Treasurer
Ms. Lori Heilman
Mrs. Janet Kegley
Mr. Kim Patton
Mr. Bob Schwenke
Mr. Steve Turner, Temporary Presiding Officer

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

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

ZONING MAP AMENDMENT - Kevin Wall, Staff

1. 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.

Staff Member, Kevin Wall, presented the Staff Report, which included a PowerPoint presentation (see Staff Report). The request involves a Zone Change to add the PD overlay zone to the existing zoning districts. About a half of the site is zoned Commercial Services (C-3) and the other half is zoned Agricultural Estate (A-2). The applicant wants to expand their heavy equipment operation with a larger storage area. The use would also allow auctions. The Future Land Use Map from the Boone County Comprehensive Plan designates Commercial for about 77% of the site. The remaining 23% is designated Developmentally Sensitive (DS). The expansion area is about 30 acres in size. This portion was approved for grading purposes about 3 years ago. Mr. Wall showed photographs of the site and surrounding properties. A cell tower exists on the site. Currently, heavy equipment related uses are considered an industrial use and not commercial. This change was made in the 2001-2002 Zoning Update. The heavy equipment category was created and placed in the Industrial Two (I-2) zoning district. Previously, this type of use was identified as general equipment, truck and car sales categories in a commercial zone versus heavy equipment and vehicles. The Verona interchange area is described in the Land Use and Business Activity Elements. Mr. Wall noted that the site has a history and it is identified in the Staff Report. In 1999, there was a Zone Change request submitted for the site but it was subsequently withdrawn.

Relative to Staff comments, Mr. Wall referred to the PD criteria and the basis for the Zone Change request. He identified several items that the applicant needed to address in greater detail. Examples of this is lighting and paved surfaces in the expanded storage lot. Are there any changes intended for the existing facility? Are there any test drive areas? Would a Public Address (PA) system be used for the auctions or day to day business? How many auctions would be held? Will there be any food or beverage service offered during the auctions? What is the amount of traffic expected? The applicant is proposing a 60 foot wide Buffer Yard C around the bulk of the perimeter of the site with the exceptions along the street frontages and the shared property line with the Shell gas station. The minimum requirement between an I-2 zone and a C-3 zone is a Buffer Yard B, or a 20 foot wide landscaped area. Between an I-2 zone and an A-2 zone, a Buffer Yard D is required - either 80 feet wide or 40 feet wide that includes a berm wall or fence. Mr. Wall suggested taking a closer look at requiring a better buffer along the private road with the home sites. He recommended substituting the required shrubs with hard wood and evergreen trees. He also suggested additional trees possibly, from Buffer Yard A, along the street frontages (I-71 and Verona Mudlick Road). Mr. Wall noted the presence of an adjoining property that is land locked. The Planning Commission should evaluate whether a connection should be required. The Kentucky Transportation Cabinet did not have any comments regarding access. There are no comments from the Boone County Public Works Department or the Verona Fire Department. Mr. Wall concluded that the Planning Commission should evaluate request in relation to Articles 3 and 15 of the Boone County Zoning Regulations and the Boone County Comprehensive Plan. If approved, the Future Land Use Map of the

Comprehensive Plan would need to be amended. Mr. Wall stated that with the Planned Development zone, uses that are not normally permitted can be allowed.

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

Mr. Mike Duncan, Ziegler and Schneider PSC, stated that he was representing Rick and Suzie Newman and Old Lexington Pike LLC. Mr. Duncan introduced Mr. Rick Newman. Mr. Newman gave a history of Newman Tractor. His family have lived in Union for over 100 years. He started farming or bush hogging for Hop Ewing when he was a teenager. Newman Tractor was formed in 1976. He sold farm equipment locally and in other states. He operated at the Reeves Auto Body site for 4 years or until 1981/1982. He later drove a truck for 5 years and then bought a cattle barn in Gallatin County. In 1991, he opened the Verona site. In 2005, he built an office addition. His company buys, sells and rents construction and farm equipment. When the economy dropped, about 70-80% of his business was overseas due to the dollar exchange. He also opened up an operation in Florida in the phosphate mine area. Florida gives his company a 12 month market versus 6-8 in Kentucky. Newman Tractor employs 35 people. It is a family owned and operated business. The company never laid anyone off. The majority of their business is done over the phone with help from the internet, which is over 80-90% of sales now. Auctions used to be a wholesale activity with Newman Tractor attending them. Now it is a retail activity. Contractors now want to visit auction sites and see vehicles. The proposed use is a low impact use.

Mr. Bill Viox, Viox & Viox, PSC distributed a handout describing the request (see Exhibit A). He explained that the site can't be seen from I-71 as the area is heavily wooded and has a ridge. Southbound from I-75, Verona Mudlick Road sits on top of the ridge. The Verona interchange is not fully developed. The exit is served by the Bullock Pen Water District and a 6 inch main exists in front of the site. There is no sanitary sewer in the area. Because of this, it limits what can be done at the Verona exit. It is more of a rural exit. There is no development pressure at the exit for a large development. Mr. Viox reviewed the history of the C-3 zoning of the site. The proposed use is retail and not industrial. In most jurisdictions like Lexington and Clermont County, the use is allowed in a commercial zoning district since it is retail versus wholesale which is allowed normally in an Industrial One (I-1) area. In rural areas, the proposed use is often allowed in agricultural zoning districts. The current agricultural zones allow sale of equipment but not the kind with wheels on it. The opening paragraph to a C-3 zoning district allows "large outdoor single purpose storage interstate related uses." The applicant is requesting a PD to allow them to continue what it wants to do and expand their business. The proposed use is in total agreement with the Future Land Use Plan of Commercial. The entire application is located within the red or Commercial area. In terms of traffic, the existing business generates 10 people per week. In terms of the auction activity, they expect 200 people. This is a small figure compared to the school athletic fields across the street. People who show up for the auction could represent multiple buyers. After purchasing the equipment, it is not a mad dash to the exit. It is up to the buyer to make arrangements to move the equipment to its destination. Movement of the vehicles will occur over time and during the week. The auctions will occur a maximum of once a month. There is no lighting planned for the site. Security includes cameras. A port-a-let will be installed during the auctions. Auctions will occur on the weekends from 9:00 a.m. - 3:00 p.m. Mr. Viox showed photographs of the existing vegetation or buffer. He stated that he is willing to meet with Staff to visit the site and fill any holes with new landscaping. The lot is a storage lot, which requires a gravel surface and not hard pavement.

Mr. Duncan stated that the request allows a thriving Boone County business to get better and expand. The customers want auctions and Newman Tractor is trying to meet the new demand. The operations of the business will be hidden from view. The proposal requires no added infrastructure. The interchange has been stagnant and what the Comprehensive Plan has called for has not happened yet. The proposed use is consistent with the Comprehensive Plan, which recommends commercial uses for the site and preserves existing vegetation. Mr. Duncan referred to an email from the Kentucky Transportation Cabinet which states the project would have no impact on the traffic. It is a mild type of development. He stated they don't plan to subdivide the property and therefore provide access to adjoining properties. The applicant doesn't not plan to construct a road through the property. Mr. Duncan indicated that he felt his client met the Kentucky law requirements to approve the Zone Change.

At this time, Chairman Rolfsen asked if there was anyone in the audience who wanted to speak in favor or against the request?

Mr. Paul Darpel, attorney for Tom and Paula Armstrong, stated that his client owns 129 acres located to the west of the site. The site was divided by the Commonwealth of Kentucky when I-71 was built. Currently, there is about 95 acres on the same side of I-71 as the Newman tract. It is a land locked parcel. The parcel was originally owned by Mrs. Armstrong and her parents. The property has been owned by the Armstrongs for over 60 years. Once I-71 was constructed, the Armstrongs have been unable to get access to their 95 acres. They can't walk to it. Mr. Darpel stated that his client doesn't object to the use and they want to be good neighbors. His client is asking the applicant to plan for a connection to the Armstrong property. The site can't be developed without a planned connection or infrastructure. Mr. Darpel asked the Board for the applicant to comply with the Planned Development (PD) requirements. The Comprehensive Plan requires in section D on page 6 of the Staff Report that "Boone County must recognize the potential impacts on adjoining properties and transportation systems." The submitted Plan doesn't call for it. It is a simple entrance. The Comprehensive Plan under its access arrangement provisions state that Boone County should work to plan improvements to accommodate new development and traffic. It plans for access to adjoining properties. All these have to be complied with for the Planning Commission to determine whether the applicant is in compliance with the Comprehensive Plan. If they don't plan for the connection, then they are not in compliance. On page 7, the Goals and Objectives of the Comprehensive Plan says proper design principles and future growth must be accompanied by adequate infrastructure. His client is only requesting access and not to build a road. It would be too expensive and too much of a burden. Boone County businesses should be appropriate to location and have adequate buffer spaces. Commercial uses must consider existing and future population and businesses. This language is directly from the Comprehensive Plan. It can't be in compliance with the Comprehensive Plan if it doesn't make a plan for it. A planned development requires transportation connections. It shall be provided in all planned developments unless physically unfeasible or unsafe. His client is not interested in planning the applicant's development but rather simply asking for a connection. Mr. Darpel submitted a drawing showing a potential access to the applicant's site (see Exhibit B). The potential access connects to an existing private road or drive. It provides access to a cell tower. It could be extended another 50-100 feet to the Armstrong property through a right-of-way. It would be improved by the developer of his client's property. It would not be a cost to the Newman. There could be other options or locations on the property. The intent of Planned Development (PD) under Article 15 suggests that it is a "special overlay zoning district, which allows various types of land uses and densities in return for appropriate flexible and creative high quality designs consistent with the standards

and criteria of the Article including the Comprehensive Plan. The applicant wants to extend the use as part of the Planned Development (PD) process in return for creative and flexible designs. In Section 1514, the Planning Commission can impose special conditions on a Planned Development (PD) such as infrastructure provisions including any physical design such as connectivity. To be in compliance with the Comprehensive Plan and the Planned Development requirements, connectivity should be provided.

Mr. Tom Armstrong introduced his wife, Paula Armstrong and father Chester Armstrong. He stated that he has inherited this mess. It was created over 40 years ago when the interstate was built. He holds the Commonwealth of Kentucky responsible for being land locked. The Commonwealth of Kentucky will not help him. He has waited for another opportunity. He raises beef cattle and horses. He attended Walton-Verona High School and worked at the airport. He can only farm a third of the property even though he pays taxes on the entire tract for the past 40 years. The only way to access the property is to do it illegally by crossing over I-71 or trespassing. He can't log or bale hay on the property. It may be several years before the area really develops but until then, he stated that he would be appreciative to use his land. The Planning Commission should uphold their regulations.

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

Mr. Mike Ford inquired about security fencing. Mr. Newman replied that a gate exists along with security cameras. When the auction takes place, they have 24 hour security 2 weeks before and after the event. He stated that he wasn't planning on adding fencing but is open to it. They really haven't had any incidents. There is no fence to keep people in or out. Mr. Ford asked whether there would be structures on the expanded site? Mr. Newman responded no. It is just gravel. There are no permanent facilities planned for the site. There may be a temporary office trailer but not a permanent one.

Mr. Hicks asked if the Planning Commission ever required access management to a gravel parking lot? Mr. Wall replied no. Hard surface is not required with the storage of heavy equipment. He stated that the requirements for a connection is identified in the Staff Report. He referred to the opening paragraph in the PD section of the zoning regulations. Concept Development Plan proposals shall be evaluated based upon the criteria and shall fulfill the criteria unless a portion of the criteria do not apply or relate in whole or part to a specific proposal. Mr. Hicks stated that he can't believe the State landlocked the adjoining property owner without any compensation? Mr. Darpel responded that it was 40 years ago. Supposedly, there was an underground crossover not even on their property that allowed his client to go to both properties. They couldn't find it. The property owners didn't understand at the time that the land was landlocked. In the past, the Planning Commission has required rights-of-ways to be extended. Mr. Hicks noted that the adjoining property owner wants the Planning Commission to "take" the Newman's property for their benefit. Mr. Darpel stated that the criteria to require a connection is applicable in the PD zoning district since the applicant is requesting it. Mr. Hicks explained that the proposal is simply a large gravel parking lot.

Chairman Rolfsen asked if the applicant was willing to provide access to the adjoining property owner? Mr. Viox replied no especially with the fact that the access is located so close to the interchange. In effect, over 150 acres of development would use the existing access point. It should be located further away from the interchange. The existing curb cut adequately serves

the existing equipment business. Chairman Rolfsen asked if anyone like JJ Kane would hold an auction on the site? Mr. Newman replied yes. Equipment traffic would occur 3-4 weeks before and after the event.

Mr. McMillian asked if it was true that the Planning Commission was landlocking the property? Mr. Wilson responded that the land is already landlocked. The Planning Commission and subject application is not landlocking the Armstrong parcel. Mr. Wilson explained that the Planning Commission can't tell a legislative unit that they must accept a dedicated right-of-way as a public street. It is not permitted by State law. It is an issue for the legislative units.

Mr. Kevin P. Costello asked Mr. Darpel if his client had approached any other adjoining property owner? Mr. Armstrong responded that the way the property lays, it is inconceivable to go through someone else's property. The subject site would be the most direct and shortest route. Mr. Costello asked if Mr. Armstrong was interested in simply access to farm his property or to develop the property? Mr. Armstrong replied that the purpose of the Public Hearing was to look into the future. He is looking into the future and wants access for general purposes. It is a great opportunity and could be a good source of revenue. Mr. Armstrong requested a right-of-way so that a future public street could be built.

Mr. Ford asked what the Zone Change Committee will be reviewing? Mr. Costello replied Mr. Newman's application only. Mr. Wilson also responded that the Zone Change Committee will be making decision on what is important to the request.

There being no further questions or comments, Chairman Rolfsen announced that the Committee Meeting for this item will be on August 19, 2015 at 5:00 P.M. in this room. This item will be on the Agenda for the Business Meeting on September 2, 2015 at 7:00 P.M. Chairman Rolfsen closed the Public Hearing at 8:44 P.M.

APPROVED:

Charlie Rolfsen
Chairman

Attest:

Kevin P. Costello, AICP
Executive Director

Exhibit A - Viox & Viox, PSC / Newman Tractor handout
Exhibit B - Access drawing submitted by Paul Darpel