

**MINUTES OF REGULAR MEETING
OLDHAM COUNTY
PLANNING AND ZONING COMMISSION**

Tuesday, February 26, 2013

At 9:00 a.m., local time on the above date, this meeting of the Oldham County Planning and Zoning Commission, hereinafter called the Commission, was called to order in the Courtroom of the Oldham County Fiscal Court Building, LaGrange, Kentucky, by Chairman Kevin Jeffries.

Other Commission members present were:

Bob Arvin	Jan Horton
Kevin Mesker	Joyce Albertsen
Robert Zimlich	Tom Henrion
Bob Klingenfus	John Falvey
Mary Ann Smith	Denia Crosby
Vicky Grace	Greg King
Joe McWilliams	

Others present and sworn in were Planning and Development Services Director Jim Urban, Planning and Development Services Assistant Director Brian Davis and Secretary Amy Alvey. Attorney John Carter was present.

Approval of Minutes – January 22, 2013

Motion was made by Commissioner McWilliams and seconded by Commissioner Henrion to approve the minutes as submitted and corrected.

Motion carried by voice vote.

DOCKET PZ-12-016 - Application has been filed by Tuscany Partners, LLC for the approval of a Revised Development Plan to subdivide Lot 14 into two tracts. The applicant is also requesting a variance from Section 030-040, Minimum Road Frontage, for proposed Lot 30. The property is located at 5800 Mt. Pleasant Drive, Prospect. The zoning is CO-1 Conservation/Residential. (This item was tabled from the November 27, 2012 and January 22, 2013 Planning Commission meetings.)

Motion was made by Commissioner Albertsen and seconded by Commissioner Mesker to remove Docket PZ-12-016 from the table.

Motion carried by voice vote.

(1) Introduction of the application by staff and questions by the Commission:

Assistant Director Brian Davis presented the following:

- Summary of application.
- Site history.
- Notes and Issues.

Mr. Davis responded to questions from the Commission:

- Reserve Estates was approved prior to the section of Glen Oaks that includes Maddox Drive and uncertain why Maddox Drive is a stub road.

- The property lines were drawn to create two, one acre tracts and the developer is proposing an access easement to the rear lot.
- The right of way does extend to the property and the applicant would be required to get an encroachment permit through the County Engineer's office.

Mr. Urban responded to questions from the Commission:

- If the request was approved, Maddox Drive would still be a stub road with a private driveway at the end.

(2) Presentation by the applicant or representative and others in support of the application:

Paul Whitty, attorney for the applicant, 9301 Dayflower Street, Prospect presented the following:

- Dividing the lot does not interfere with goals and objectives of the Comprehensive Plan.
- New lots would be on sewers and are compatible in size and character with other lots in Reserve Estates.
- Road frontage variance request is not out of character and will not have an effect on health, safety or public welfare.
- No additional traffic.
- Agrees to meet with adjoining property owners to address buffering.

(3) Testimony and questions by those opposing the application:

Commissioner McWilliams informed the Commission that he has a personal relationship with Mr. Ballinger but has no business relationship or connection with him relating to this case.

Motion made by Commissioner Horton and seconded by Commissioner Henrion to allow Commissioner McWilliams to continue in the hearing. Motion carried by unanimous voice vote.

Jim Ballinger, 9720 Park Plaza Avenue, Suite 102 Louisville, stated the following:

- Attorney for Default Tax Services, Inc.
- Currently has a case before Judge Conrad because the property is in foreclosure and owes several years of back property taxes (Exhibit A).
- Objects to allowing the lot to be divided because it would impair the value and bidding of the property if it were to go up for sale.

Attorney Carter advised the Commission that Mr. Ballinger's concerns regarding delinquent taxes and impairment of land value is not relevant to the request by the applicant.

Josh Club, attorney for Matt Crane and C.B. Young, 18 Berry Street, New Castle, presented the following the following:

- Plat of The Reserves (Exhibit B packet), Note 1 states that the lots shall not be divided as creating a greater number of lots originally approved by the Planning Commission.
- Proposed lots will be the smallest lots in the subdivision.
- Pictures (Exhibit B packet) and location of Mr. Crane's property in relation to the proposed divided lots.
- Pictures (Exhibit B packet) and location of Mr. Elroy's property in relation to the proposed divided lots.
- In 2009 Oldham County Fiscal Court sued Thomas Borntreger, who was the developer of The Reserve Estates and the applicant today, in Oldham County Circuit Court Case No. 09-ci-00893 (Exhibit B packet) for failure to perform on performance bonds on requirements set forth by the Commission and Oldham County Planning and Development.
- Applicant's request would be a change in the development and lower the property values of surrounding homes and properties.
- Submitted letters from Megan A. Hill, L. Noelle Frazee and Terrence J. McElroy into the record.

Bob McAuliffe, 10607 Sleepy Hollow Road, Prospect, after being sworn, stated the following:

- Tree perseveration plan should be a condition of approval as well as requiring The Reserves to connect to sewers.

C.B. Young, 5805 Mt. Pleasant Drive, Prospect, after being sworn, stated the following:

- Concern with the decrease in home values and overall appearance of the subdivision by dividing the lots.

Bob Dye, 10502 Mountain Ash Lane, Prospect, after being sworn, stated the following:

- Concerned about decrease in property values for homes located on Maddox Drive.
- Divided lots will be out of character compared to the other lots in The Reserves.

Mr. Davis stated there was a variance attached to the original subdivision approval for Lot 14 regarding road frontages because it is on a cul-de-sac.

Mr. Urban stated that the filed copy does list Note 1 as "NO LOTS SHOWN HEREON MAY BE SUBDIVIDED OR RESUBDIVIDED RESULTING IN THE CREATION OF A GREATER NUMBER OF LOTS THAN ORIGINALLY APPROVED BY THE PLANNING COMMISSION." Note 1 is not listed as a binding element in minutes when The Reserves was approved by the Commission and uncertain how or who listed the note on the record plat.

Attorney Carter stated that Note 1 should be considering when making a decision today because it was listed on the filed record plat and has not been challenged.

(4) Questioning of the applicant and those opposing the application by the Commission:

Mr. Whitty responded to questions:

- Does not feel that there must be a compelling reason to override the Plat Note 1 to divide the lot because this is not a zoning change request and land use is not being changed.
- Lot 14 was specifically excluded from the deed restrictions of The Reserves and notes that it specifically has the right to be subdivided.
- Dividing the lot would allow the applicant to build a home on one lot and sell the other lot.
- Lots range in size from 1.3 acres to 4+ acres in The Reserves.
- Property is currently listed for sale as two separate one acre lots.
- The deed restrictions were filed before any lot was sold and would have been the responsibility of the purchaser to read.

Mr. Clubb responded to questions:

- The Plat was recorded on July 7, 2003 at 6:55 p.m. and the Deed Restrictions were filed on July 7, 2003 at 7:00 p.m.

Mr. Urban stated that after review of the minutes from the August 21, 2001 hearing there was no testimony stating the Lot 14 would or would not have the ability to be divided in the future.

(5) Rebuttal evidence and Cross Examination by the Applicant:

Mr. Whitty stated the following:

- Tax foreclosure has no bearing on this hearing.
- Plat Note 1 was not a condition of approval by the Planning commission.
- There will be no compatibility or character issues with the homes on the proposed lots and will comply with the subdivision regulations.
- All lots in The Reserves are not before the Commission today and should not be conditioned to connect to sewers.
- Applicant agrees to a tree preservation plan.
- By dividing lots there will not be a decrease in value of the homes or land in the surrounding subdivisions.

(6) Rebuttal evidence and Cross Examination by the Opposition:

Mr. Clubb stated the following:

- Official filed plat was signed by the Applicant, Mr. Borntrager for filing in the County Clerk's office.
- No direct answer of what the need or desire is by subdividing the Lot 14.
- The burden and nuisance of dividing Lot 14 will fall on all the other property owners in the subdivision and not the applicant because all the lots have been sold but Lot 14.
- Ask the Commission to deny both the Revised Record Plat and Variance request.

Mr. McAuliffe stated the following:

- Applicant today is the same person as the developer who agreed to sewer the subdivision when they became available and should consider that as a condition of approval.
- Stormwater regulations have been implemented since the development of this subdivision and should be consider with the revised plan.

Mr. Dye stated the following:

- Lots are not compatible with the surrounding area.
- Most homeowners don't know if they exist and have never seen their covenants, conditions and restrictions.

(7) Final statement of the Opposition:

Mr. Clubb asked the Commission to review Note 1 on the recorded plat, the date and time stamp of the filing of record plat and deed restrictions. The evidence presented in the proposal is not compatible with other lots in The Reserves and asked to deny both applications.

(8) Final statement of the Applicant:

Mr. Whitty stated the applicant has always had the right to ask the Commission to divide the lot and has never denied Note1 as recorded on the record plat. Lot 14 was disclosed in the deed restrictions to all buyers. Offers to meet with adjoining property owners to discuss buffering, home placement, lighting, etc. were never accepted. Thanked the Commission for their time and service.

END OF PUBLIC HEARING

**FINDINGS AND DECISIONS
PZ-12-016-Variance**

Motion made by Commissioner King and seconded by Commissioner Henrion to deny Docket PZ-12-016, a Variance Request of Section 030-040, Minimum Road Frontage, for proposed Lot 30. The property is located at 5800 Mt. Pleasant Drive, Prospect, based on the evidence and testimony presented because:

- It will alter the essential character of the general vicinity.
- It will cause a nuisance to the surrounding property owners.
- It will cause an unreasonable circumvention of the requirements of the zoning regulations because:
 - The request is a 2/3rd's reductions of the required 150 feet road frontage.

The vote was as follows:

YES: Commissioners Albertsen, Arvin, Falvey, Grace, Henrion, Horton, King, Klingenfus, Mesker, McWilliams, Smith, & Zimlich.

No: None.

ABSTAIN: Crosby.

ABSENT: Commissioner Bohne.

The motion passed on a vote of 12-0-1.

FINDINGS AND DECISIONS
PZ-12-016–Revised Preliminary Plan

Motion made by Commissioner King and seconded by Commissioner Horton to deny Docket PZ-12-016, a request for approval of a Revised Development Plan to subdivide Lot 14 into two tracts, for property located at 5800 Mt. Pleasant Drive, Prospect, based on the evidence and testimony presented because:

- The required variance was not approved and is not in compliance with the subdivision regulations.

The vote was as follows:

YES: Commissioners Albertsen, Arvin, Falvey, Grace, Henrion, Horton, King, Klingenfus, Mesker, McWilliams, Smith, & Zimlich.

No: None.

ABSTAIN: Crosby.

ABSENT: Commissioner Bohne.

The motion passed on a vote of 12-0-1.

DOCKET PZ-13-001 - Application has been filed by Denise Gillman for the approval of a Revised Development Plan for the Gillman Dance Academy. The property is located at 7205 Clore Lane, Crestwood. The zoning is C-1 Local Business.

Motion was made by Commissioner Henrion and seconded by Commissioner Albertsen to lay Docket PZ-13-001 on the table until the March meeting because the applicant is not present.

The vote was as follows:

YES: Commissioners Albertsen, Arvin, Falvey, Grace, Henrion, Horton, King, Klingenfus, McWilliams, Smith, & Zimlich.

No: Crosby & Mesker.

ABSTAIN: None.

ABSENT: Commissioner Bohne.

The motion passed on a vote of 11-2

A recess was called at 11:45 a.m. for lunch.

The meeting reconvened at 1:04 p.m.

DOCKET PZ-13-002 - Application has been filed by Dan Doty LTD LaGrange LLC for the approval of a Waiver of Section 300-070, Vehicular Use Area Perimeter Planting. The property is located at 202 S. First Street, LaGrange. The zoning is C-3 General Business.

(1) Introduction of the application by staff and questions by the Commission:

Assistant Director Brian Davis presented the following:

- Summary of application.
- Site history.
- Notes and Issues.

Mr. Davis responded to questions from the Commission:

- Provided location of access point from the alley on area map.

(2) Presentation by the applicant or representative and others in support of the application:

Nancy Doty, 611A West Jefferson Street, LaGrange, after being sworn, presented the following:

- Current owner of the property.

David Garber, Garber Chilton Engineers, 205 Parker Drive, LaGrange, after being sworn, presented the following:

- Location of additional landscape area and plantings on site map.
- Location of entrances and exits and proposed traffic flow.
- Letter from City of LaGrange Public Works Department supporting waiver request.
- Description of current and proposed water runoff plan.
- Survey of property showing parking lot encroaching onto City right-of-way and alley encroaching onto applicant's property.

(3) Testimony and questions by those opposing the application:

JD Sparks, 6515 Ashbrooke Drive, PeWee Valley, after being sworn, presented the following:

- Accident data from the City of LaGrange for the proposed liquor store area.
- Proposed landscape plan may cause sight obstructions and cause more accidents.
- Commercial traffic should not be using alley.
- Should not be allowed to use the City's right-of-way to bring the property into compliance.

(4) Questioning of the applicant and those opposing the application by the Commission:

Mr. Garber responded to questions:

- Provided location of existing trees on plan.
- A landscape plan is required and will be submitted to staff to review.
- Parking spaces along KY 53 were not addressed due to future planning issues with the state.
- Three parking spaces along KY 53 and two vehicle spaces in the drive-thru staging are included in the parking calculations.
- Provided location of entrance doors and handicapped parking of proposed building.
- Business would be package liquor sales.
- Waiver of Vehicular Use Area Perimeter Planting is only along Washington Street and located on plan presented.
- Existing concrete curb and parking area currently encroaches onto the City's right of way and would have to be removed to install the Vehicular Use Area Perimeter Planting of five feet.

Ms. Doty responded to questions:

- Parking spaces along KY 53 already existed and customers would have to back out onto KY 53 or perform a u-turn into empty parking space to pull out.
- Unaware of number of accidents from customers backing out of parking spaces onto KY 53.
- The three doors on the existing building are the entrances into the offices that are leased.

Mr. Urban responded to questions from the Commission:

- Parking spaces along KY 53 were discussed with staff. The applicant has organized the area with plantings and removing some concrete because there is space for four to five parking spaces.

- There is an existing curb cut on KY 53 and would be managed by the Kentucky Transportation Cabinet.
- Parking calculations are based on square footage of retail space.
- A development plan is not required.
- Applicant would be required to ask for a waiver for parking if spaces along KY 53 were removed.
- The site plan also requires a drive-thru bypass lane which is not on the plan submitted.

(5) **Rebuttal evidence and Cross Examination by the Applicant:** None.

Mr. Garber stated the following:

- Traffic accidents on map provided by opposition are for the intersection and not on Washington Street.
- Proposed landscaping will not create any new blind spots for drivers.
- Only request before the Commission today is for the Vehicular Use Area Perimeter Planting waiver and will meet the required landscaping as approved by staff.

(6) **Rebuttal evidence and Cross Examination by the Opposition:**

Mr. Sparks stated the following:

- Does not agree with allowing the cars in the drive-thru queue counted as a parking space.
- One third of parking is accessible by the alley and is not ideal.
- Current trees could create additional sight impairment for drivers entering and exiting and could increase accident count.

(7) **Final statement of the Opposition:**

Mr. Sparks stated that it is important the applicant should have to abide by all the rules and regulations as other have to do. Doesn't feel the applicant would have been granted liquor license if it was known that all the waivers and variance requests would be required. Other locations within the area are more suitable and have the required parking, landscaping and proper entrances.

Mr. Spark stated that applicant's property is inappropriately sized for the plan presented and just doesn't have the space for parking and drive-thru bypass lane as required. Landscaping may cause site issues for customers and plan is inappropriate for the area.

(8) **Final statement of the Applicant:**

Mr. Garber stated the plan was submitted to the state for approval of the liquor license. The plan was designed to fit the applicant's needs such as a drive-thru window. The property has multiple access points. Alleys are frequently used throughout the City of LaGrange by customers and even delivery trucks. Not creating something out of character by allowing access from the alley and building and business will be an added asset to the area.

Mr. Garber stated the only request before the Commission today is waiver request of Vehicular Use Area Perimeter Planting. If possible at today's hearing the applicant would like to request the Commission to review the request of a parking waiver to keep the process moving forward.

END OF PUBLIC HEARING

Mr. Urban addressed the question from Commissioner Horton if the queuing spaces for the drive-thru are allowed in the parking space calculations. Division 280 Off-Street Parking and Loading Regulation does not clearly state that the vehicles in queue are or are not allowed in the calculation. The applicant is also required under Section 280-170 to have a by-pass aisle and the plan submitted does not show one.

Attorney Carter advised the Commission they can only hear and decide on the landscape waiver at today's hearing as docketed. At the time the applicant applies for a building permit staff will review the plan and if parking does not meet the requirements the applicant can either change the plan or apply for a waiver for parking and come back before the Commission.

FINDINGS AND DECISIONS
PZ-12-016–Variance

Motion made by Commissioner King and seconded by Commissioner Horton to deny Docket PZ-13-002, a Waiver of Section 300-070, Vehicular Use Area Perimeter Planting for property located at 202 S. First Street, LaGrange, based on the evidence and testimony presented because:

- Strict compliance with the regulation will not create an undue hardship because:
 - There has not been evidence that the applicant will have an undue hardship.

The vote was as follows:

YES: Commissioners King & Horton.

No: Commissioners Albertsen, Arvin, Crosby, Falvey, Grace, Henrion, Klingenfus, Mesker, McWilliams, Smith, & Zimlich.

ABSTAIN: None.

ABSENT: Commissioner Bohne.

The motion failed on a vote of 2-11.

Motion made by Commissioner McWilliams and seconded by Commissioner Crosby to approve Docket PZ-13-002, a Waiver of Section 300-070, Vehicular Use Area Perimeter Planting for property located at 202 S. First Street, LaGrange, based on the evidence and testimony presented because:

- Strict compliance with the regulation would create an undue hardship because:
 - Removing a portion of the parking lot to bring the property into compliance would reduce the number of parking space available and available square footage to meet other requirements.

The vote was as follows:

YES: Commissioners Albertsen, Arvin, Crosby, Falvey, Grace, Henrion, King, Klingenfus, Mesker, McWilliams, Smith, & Zimlich.

No: Commissioner Horton.

ABSTAIN: None.

ABSENT: Commissioner Bohne.

The motion passed on a vote of 12-1.

DOCKET PZ-13-003 – Public hearing regarding the adoption of the updated Oldham County Comprehensive Plan.

Mr. Urban gave the history and process of updating the Comprehensive Plan.

Mr. Davis presented the updated Oldham County Comprehensive Plan.

Mr. Davis presented a Comprehensive Plan Meeting Schedule outlining the future meeting dates, times and locations.

Motion made by Commissioner Henrion and seconded by Commissioner Crosby to accept the meetings dates as presented. Motion carried by unanimous voice vote.

The following were present and gave the comments listed below regarding the Comprehensive Plan:

Louise Allen, 9532 Poplar Hill Drive, Oldham Ahead
Laurel Tarbis, 614 Kentucky Avenue, LaGrange

Pam Isaac, 3702 Waino Drive, Crestwood
Robert A. Jones, 3215 Hwy 1694, Crestwood

- Goals and Objectives should have been completed and approved prior to completion of the map.
- Opposed to the removal of the master plan process.
- Introduction should have more detail of accomplishments over the past ten years including the Major Thoroughfare Plan, Brownsboro Master Plan, sign regulation updates, access management regulations, transit route information, Planned Use District, Currys Fork Watershed Plan, Darby Creek Watershed Plan, Scenic Corridor Areas, and Adult Entertainment.
- More public notification of meetings to allow public involvement in review process.
- Better location on the website for public to locate the Comprehensive Plan.
- Future Land Use map seems to facilitate zoning changes.
- Notation on map of areas where the current zoning is different than the map zoning and explain why the changes were made.
- Map overlay of Greenways and Curry's Fork Watershed would be good.
- Conservation easements should be shown on map.
- Opposed to four lane connector roads from I-71 and KY 53 as noted in the plan.
- Accessory Dwelling Units need to be more specific.
- Comments from all meeting should be posted on the website.
- Stormwater regional detention basins should be considered.
- Cluster developments do not work out in Oldham County and should only be considered when it is economically feasible.
- Sidewalk regulations should be compatible with federal guidelines.

Mr. Urban requested that any comments be forwarded to staff as soon as possible but the deadline is March 26, 2013 for comments.

Other Business

Mr. Davis presented a training hours request from Chairman Jeffries and Commissioner Arvin for training recently provided by Oldham County Board of Education. The guest speaker was Ron Crouch. The request was for two hours of training. Approval was also requested for the training session performed on Saturday, February 9, 2013 for the Comprehensive Plan in the amount of three hours for any commissioner who attended.

Motion made by Commissioner McWilliams and seconded by Commissioner Zimlich to approve the training hours as requested.

Motion carried by unanimous voice vote.

There being no further business, the meeting adjourned at 4:05 p.m. The next regular meeting is scheduled for Tuesday, March 26, 2013 at 9:00 a.m. in the courtroom of the Oldham County Fiscal Court Building, LaGrange, Kentucky.

Respectfully Submitted:

Amy Alvey, Secretary

Approved:

Kevin Jeffries, Chairman