

**MINUTES OF REGULAR MEETING  
OLDHAM COUNTY  
PLANNING AND ZONING COMMISSION  
Tuesday, May 23, 2023**

At 9:00a.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 Greg King.

Other Commission members present were:

Iva Davis  
William Douglas  
Thomas Elder  
John Falvey

Sam Finney  
Ed Hafling  
Berry Hampton  
Sue Ann Jones

Bob Klingenfus  
Tom Marsh  
Katie Nasser  
Ben Winters

Commissioners Joe Ender and Suzy Walser were absent.

Others present and sworn in were Planning and Development Services Director Jim Urban, Assistant Director Brian Fogle, Senior Planner Ryan Fischer, and Oldham County Engineer Jim Silliman. Attorney Berry Baxter was present for the meeting and Administrative Assistant Christy Edgar was the Secretary for the meeting.

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**Approval of Minutes**

Motion was made by Commissioner Hafling and seconded by Commissioner Douglas to approve April 25, 2023 minutes as submitted with the following corrections. Motion carried by unanimous voice vote.

**Corrections**

- Page 10: Second set of bullet points, 3<sup>rd</sup> bullet point, Remove "a" from right of way.
  - Page 16: Change the meeting date from June 27 to May 23.
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**Secretary Christy Edgar called and read Docket:**

**DOCKET PZ-23-012** – An application has been filed by Kentucky Lodging & Development Company, Inc. for the approval of a Zoning Map Amendment and Development Plan on approximately 1.410 acres. The property is located at 2219 N. Hwy. 53, LaGrange. The proposed change is from CO-1 Conservation / Residential District to C-1 Commercial Local Business District.

**1. Introduction of the new information by staff and questions by the Commission:**

Senior Planner, Ryan Fischer, presented the following:

- Summary of the application.
- Case History (see Exhibit A, Staff Report dated, May 23, 2023).
- Site history.
- Aerial Photos of the site.
- Photos of property.

Oldham County Engineer, Jim Silliman, presented the following:

- Permitting requirements include Oldham County Stormwater Quality Management and Erosion Control Permit, KY Division of Water, and KYTC encroachment permit.
- Blue line stream on the adjacent property to the south identified on USGS The National Map.
- Recommend basin outlet pipe be at least 15' from the property line.
- Applicant to provide the status of the Letter of Map Amendment (LOMA).
- The TA indicates neither a left turn nor a right turn lane is warranted along KY Hwy 53.
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Commissioner Douglas asked, will there be sidewalks?

Mr. Silliman answered, you will need to ask the applicant.

Commissioner Falvey asked, any development plans for the commercial property adjacent to this development?

Director Urban replied, not at this time.

**2. Presentation by the applicant or representative and others in support of the application:**

Michael Swansburg, Swansburg & Smith, PLLC, 117 Main Street, LaGrange, was present and representing the applicant.

- Re-zoning of 1.410 acres of property from CO-1 to C-1 to build a Dollar General Store.
- The property sits adjacent to a parcel already zoned as C-3 and is located less than 1,000 feet north of parcels already zoned C-1 along US Hwy 53.
- It would bring job opportunities and increase tax revenues.

Will Stevens, Vantage Engineering, 2038 Danville Road, Harrodsburg, was present and sworn in prior to presenting.

- Have applied for a Letter of Map Amendment (LOMA) with FEMA to remove the project site from the floodplain.
- The site will have a detention basin for stormwater runoff.

- The parking lot stormwater will be directed into the detention basin via storm sewer inlets and culverts.

### 3. Questioning of the applicant or representative and others in support of the application by the Commission:

Commissioner Douglas asked, would you be willing to put a contingent upon LOMA approval in the binding elements?

Mr. Stevens replied, I expect for the LOMA to be approved. But if LOMA is declined then I would like to have the option to submit a floodplain field permit to the Division of Water and this would be how I would prove my analysis that this project would not impact anyone.

Commissioner Douglas asked, would there be additional runoff and how would you insure there will be no runoff onto Hwy 53?

Mr. Stevens replied, in a 100-year storm there is already a small amount of water topping Hwy 53 and crossing over and we would not change that. The only way to fix this is for the highway department to raise the elevation of the highway.

Commissioner Douglas asked, would you have to increase the ditch line in the right of way on your property?

Mr. Stevens replied, we are not impacting the existing ditch line. In front of the parking area, there will be a retaining wall because there is a 8" main water line there and we did not want to fill over the water line which would have made it inaccessible for the water company.

Commissioner Douglas asked, the basin outlet pipe appears to be going uphill. Would the developer be willing to move it to where it would be appropriate?

Mr. Stevens replied, I will try my best. Our problem is we have a small parcel and we maximized it. The pond is at the lowest possible point on the site. So, the outlet point must be where it is shown. Changing the angle of the pipe within the pond could work and I will take another look.

Commissioner Marsh asked, why does this development not have sidewalks to keep pedestrians safe?

Attorney Swansburg replied, in order to have sidewalks built we would have to get approval from the City of LaGrange, Oldham County, and the property owners.

Commissioner Marsh replied, I am concerned with the safety, and I would request that you investigate this further.

Andy Ottney, Kentucky Lodging and Development Company, Inc., 1738 Cumberland Falls Hwy, Corbin, was present and sworn in prior to replying. We are only allowed to build a sidewalk in front of our building, and at this point, the sidewalk would lead to nowhere. If the city would require or would install sidewalks leading up to our parcel, then we would absolutely put in sidewalks.

Director Urban explained, all the sidewalks would be in the State right of way and the State is not requiring sidewalks. The concern I would have is do we really want to encourage people to walk to this location when they have to cross a highway where the traffic could be going 55mph? There are no crosswalks and no intersections. This is a difficult situation and I believe it should be determined by the City of LaGrange.

Commissioner Marsh asked, is the speed limit 55mph through there?

Attorney Swansburg answered, yes, it is.

Commissioner Nasser asked, what were the factors in determining this was the right location?

Mr. Ottney replied, I do not know how Dollar General Store determines their store locations, however, I do know that they have a team of professionals that studies the locations.

Commissioner Falvey asked, were there any opposition letters?

Senior Planner Fischer replied, we did not receive any for this hearing.

Director Urban replied, there were people at the neighborhood meeting and the TRC meeting and they stated their concerns at those meetings.

Commissioner Falvey asked, the future use of land is conservation, is that because it's in floodplain?

Director Urban replied when the county adopted planning and zoning every parcel was given a classification. The CO zonings were typically along the creek and streams and steep slopes so that is where this came from.

Commissioner Falvey asked, are we deciding before this project gets approval if it's in a floodplain?

Director Urban replied, Mr. Stevens testified that he would have an answer between 30-60 days, and it has been three weeks. Before it gets to the City of LaGrange, if this board approves the zoning map change, I believe he will have his answer.

Commissioner Falvey asked, once this goes to construction plans, will you fill it?

Mr. Stevens replied, construction plans show that there will be some fill. The question is, is the fill in a floodplain (as determined by the LOMA application). If that is the case then I will apply for a fill permit through the Kentucky Division of Water.

Commissioner Falvey asked, I would be ok with having this contingent upon receiving a LOMA or a DOW fill permit. If we do approve this today and the applicant decides not to proceed with building, then would this parcel be zoned commercial?

Chairman King replied, if this board approves the zoning change, then it is only a recommendation of the zoning change to the City of LaGrange.

Director Urban explained, we do not put binding elements on a zoning map amendment, we put binding elements on the development plan. Here is what I have written for another binding element; development is contingent on either a LOMA or DOW fill permit before construction. This must happen anyways but if you feel more comfortable with making this a binding element then we can do that.

Attorney Swansburg replied, I believe this is what the requirements are, and we are comfortable with this.

Commissioner Douglas asked, I would like for this to be put as a binding element.

Commissioner Davis asked, so today is this board voting on the zoning change?

Director Urban replied, this board will be voting on the zoning and the development plan.

Commissioner Jones asked, is this Dollar General Store replacing the one that is already established in LaGrange?

Mr. Ottney answered, this is going to be a second Dollar General Store in LaGrange.

4. Testimony and questions by those opposing the application: None.
5. Questioning of the applicant and those opposed to the application by the Commission: None
6. Rebuttal evidence and Cross Examination by the Applicant: None
7. Rebuttal evidence and Cross Examination by the Opposition: None
8. Final statement of the Opposition: None
9. Final statement of the Applicant:

Attorney Swansburg final statement.

We have identified multiple provisions within the Comprehensive Plan that are met by this proposal, and we believe our facts are supported with evidence that this proposal is appropriate and can be made as a recommendation to the City of LaGrange.

## **END OF PUBLIC HEARING**

Director Urban summarized the first motion for the application.

### **FINDINGS AND DECISIONS**

**Docket PZ-23-23-012**

**Zoning Map Amendment**

**2219 N. Hwy 53, LaGrange**

Motion was made by Commissioner Nasser and seconded by Commissioner Davis to recommend approval to the City of LaGrange for a Zoning Map Amendment at 2219 N. Hwy 53, LaGrange, based on testimony and evidence today to change from CO-1 to C-1 because the land use is compatible to the adjacent commercial parcels under the objective LU-3-1. It also is a small footprint compared to the area and the environment and other factors have been taken into consideration for the surrounding area.

**The vote was as follows:**

**YES:** Commissioners Davis, Douglas, Elder, Falvey, Finney, Hafling, Hampton, Jones, Klingenfus, Marsh, Nasser, and Winters.

**NO:** None.

**ABSTAIN:** None

**ABSENT:** Commissioners Ender and Walser.

**Motion passed on a vote of 12-0**

Director Urban summarized the second motion for the application.

## **FINDINGS AND DECISIONS**

**Docket PZ-23-012**

**Development Plan**

**2219 N. Hwy 53, LaGrange**

Motion was made by Commissioner Douglas and seconded by Commissioner Finney to approve the Preliminary Development Plan for 2219 N. Hwy 53, LaGrange, because it complies with LU-3-1 also B-1-1 because it develops a long-term strategy to attract specific types of environmentally friendly businesses and industries in Oldham County. Also, based on testimony and evidence presented today, the applicant is abiding by the Oldham County Zoning Ordinances and Regulations; the plan meets the fire hydrant requirements; the drainage proposal for stormwater runoff; and the traffic assessment, is all within the guidelines of the zoning ordinance including the following Binding Elements.

### **Binding Elements:**

1. The approval applies only to the plan presented at the May 23, 2023, Oldham County Planning Commission public hearing.
2. There shall be no changes to the plan without review by the Oldham County Planning Commission and Engineer's Office.
3. The plan must comply with all established federal, state, and county ordinances and requirements and comply with all necessary easement restrictions at the time of construction plan approval.
4. Development is contingent on either a LOMA or DOW fill permit before construction.
5. Applicant shall look at the feasibility of adding sidewalks in KYTC right of way.

### **The vote was as follows:**

**YES:** Commissioners Davis, Douglas, Elder, Falvey, Finney, Hafling, Hampton, Jones, Klingenfus, Marsh, Nasser, and Winters.

**NO:** None.

**ABSTAIN:** None

**ABSENT:** Commissioners Ender and Walser.

**Motion passed on a vote of 12-0**

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Chairman King called for a 10-minute recess at 10:25 am.  
Chairman King called the meeting back into session at 10:35 am.

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**Other Business**

Commissioner Jones has indicated that she may have a conflict with hearing this case and recused herself from this docket.

**Secretary Christy Edgar called and read Docket:**

**PZ-22-021** (Old Sligo Farm Estates) – Consideration of Circuit Court’s instructions on remand of Appeal.

Attorney Baxter explained, this Docket PZ-22-021 was filed in the Oldham County Circuit Court by the applicant and Judge Crosby ruled that July’s motion is vacated and the Oldham County Planning and Zoning Commission needs to make a motion with specific findings of facts.

Chairman King read the following and provided a hard copy into the record:

**Relevant Comprehensive Plan Elements, Zoning Ordinance and Subdivision Regulations**

***OLDHAM COUNTY COMPREHENSIVE PLAN***

**Goal LU-1**

To provide for planned and orderly growth in order to protect land from premature and unsuitable development.

**Goal CF-2**

To plan, establish guidelines, and coordinate efforts for appropriate levels of sewage disposal, potable water, schools, fire protection and solid waste collection and disposal services to urban and rural areas within Oldham County in conjunction with the agencies that have jurisdiction of these services.

***OLDHAM COUNTY COMPREHENSIVE ZONING ORDINANCE***

**Division 010 General Provisions Sec. 010-010 General Provisions: Intent**

The intent of these regulations is to promote the public health, safety and general welfare; to prevent overcrowding of land and provide for planned and orderly growth; to protect land from premature or unsuitable development; to avoid undue concentration of the population; to

protect and guide development of rural areas; to insure adequate provision for the transportation, water supply, sewage disposal, schools, parks, open space, natural areas and other public requirements; to encourage the most appropriate use of land and structures throughout the county and its cities; to guide and accomplish a coordinated, adjusted, and harmonious development of all areas of the county and its cities; and to aid in the implementation of the Comprehensive Plan.

## **OLDHAM COUNTY SUBDIVISION REGULATIONS**

### **Section 1.2 Purpose and Intent**

- I. To ensure that public facilities are available and will have sufficient capacity to serve proposed subdivision upon its completion.

### **Section 7.3 Fire Protection Standards**

#### **F. Fire Flow**

The water supply for residential developments must be capable of delivering a minimum **sustained** (emphasis added) fire flow as follows:

Residential Developments	Fire Flow Requirements
Single-family detached residential developments of 1-acre lot or larger with a minimum building (including accessory buildings) setback of 30 feet from any property line	500 GPM with a residual pressure of no less than 20 PSI
All other residential developments	750 GPM with a residual pressure of no less than 20 PSI

### **Section 7.3 Fire Protection Standards**

#### **G. Mitigation**

Buildings on lots that do not meet the above fire protection standards will be subject to approval by the fire chief in the affected jurisdiction. Examples of mitigation may include but not be limited to: use of sprinklers, cisterns, dry hydrants or other alternative water sources that meet the minimum fire flow requirements.

### **Section 7.7 Other Infrastructure Facility Standards**

- A. Water Supply – Every subdivision shall be provided with a complete water distribution system adequate to serve the area being developed with pipe lines, valves, **fire hydrants** (emphasis added) and other water facilities.

## FIRE HYDRANTS

Henry County Water District - has testified;

- that its supply capacity will **not** meet minimum fire flow requirements set forth in Section 7.3.
- Henry County Water represented that its authoritative mandate renders it unable to permit installation of hydrants on its system. Hydrants, as a fire protection resource, are not available.
- that its water main would be the source of replenishment for the proposed alternative (cisterns)
- that replenishment would rely on “the water pressure that is on site” with the caveat that replenishment capacity will be expected to vary subject to overall system demand.

Testimony and evidence demonstrate, in terms undisputed from any party, that the water source will not consistently comply with Section 7.3F under conventional hydrant-based applications, hence the proposed mitigation. The multiple requirements of 7.3 F are indivisible and inseparable from the requirement to uphold the standard on a sustained basis. That baseline remains intact.

### Fire Hydrant - Water Supply Conclusion

The record lacks testimony or evidence attesting to cistern replenishment rates and fails to provide assurance of sustained flow as required under Subdivision Regulations Section 7.3F which states that the water supply system for residential developments must be capable of delivering a minimum sustained (emphasis added) fire flow of 500 GPM with residual pressure of no less than 20 PSI and provides for mitigation.

## MITIGATION

We understand the proposal cannot meet the requirements of Section 7.3 in customary terms and alternatives can be considered as mitigation to achieve compliance.

LaGrange Fire and Rescue Department - has testified;

- they will be prepared to utilize those resources in potential firefighting events at the site.
- While they’ve steadfastly committed to use of the proposed alternative resources for firefighting needs at the site, they have also stated unambiguously their preference for a conventional hydrant-based system with adequate flow.
- LaGrange Fire’s testimony includes qualifying commentary that carries weight worthy of consideration. The record reflects content providing that “you do the best you can” and that the department will “make do” with the resources it can expect to have at its disposal.

- LaGrange Fire provides testimony that they will plan to make use of the proposed alternate resources, while also expressing a preference for deployment of conventional and compliant resources.

### **Fire Protection Conclusion**

Testimony lacks content providing assurance of system replenishment/sustainability and in fact, provides reason to be concerned leaving our decision to rely on an unproven resource that is described as vulnerable to variables beyond anyone's control (replenishment of cisterns, maintenance of sprinklers, and even the LFRD to make do).

The testimony that LaGrange Fire and Rescue will "make do" challenges the Commission to draw no other conclusion except that the proposed alternative fails to inspire confidence among those who would utilize it. The Commission then must consider Comp Plan Goal LU-1 and CF-2, Zoning Ordinance Section 010-010 Intent: Sub Regs Section 1.2 Purpose and Intent and the other regulations.

## **FINDINGS AND DECISIONS**

Docket PZ-22-021

Preliminary Subdivision Plan

Old Sligo Farm Estates

### **MOTION TO DENY**

Applicant has proposed reliance upon cisterns and sprinkler systems as mitigating alternatives with respect to Section 7.3 G. Mitigation.

Standards appear in Section 7.3F and state that the water supply system for residential developments must be capable of delivering a minimum sustained fire flow. In this instance, the applicable standard is a sustained 500 GPM with residual pressure of not less than 20 PSI.

Mitigation described under 7.3G permits reliance upon alternatives but does not vacate the minimum fire flow requirement which is to be sustained. In whatever manner the alternative resource is provided, the minimum standard remains intact on a sustained basis and without qualification under the regulation.

### **THEREFORE:**

Testimony and evidence contained in the record fails to demonstrate compliance with the Fire Protection Standards of the Oldham County Subdivision Regulations. The single replenishment source available (the Henry County Water District) broadly acknowledged inadequate sustainable flow required for conventional fire hydrants and applicant failed to demonstrate adequacy to reliably provide sustained flow as a mitigated alternative and therefore fails to meet the required standards.

Therefore, I move to reaffirm the Commission's previous decision to deny the Preliminary Subdivision Plan (Docket PZ-22-021). I find the application and specifically proposed mitigation for fire flow resources to be in conflict with the Commission's mandate to protect public health, safety and welfare:

- Subdivision Regulations Sections:
  - 7.3 Fire Protection Standards (subsections F and G)
  - 7.7 Other Infrastructure Facility Standards
  - 1.2 Purpose and Intent (subsection I)
- Comprehensive Plan Goals
  - LU-1 Orderly growth and protection from premature development
  - CF-2 Coordination of efforts to ensure appropriate levels of service to urban and rural areas within Oldham County in conjunction with the agencies that have jurisdiction of these services.

**Discussion by the board members:**

Commissioner Falvey asked, is the motion justifying July's results?

Chairman King replied, the intent is to reaffirm the decisions that was made.

Commissioner Falvey asked, is the vote on your recommendation?

Chairman King replied, it is to reaffirm the same decision.

Commissioner Falvey asked, does this mean that we are reaffirming it as well?

Attorney Baxter explained that July's decision was vacated by Judge Crosby, so this is a new motion which is a motion to deny which has been seconded.

Commissioner Falvey asked, so our vote today is based on the testimony that was given in July?

Attorney Baxter replied, yes that was the hearing, and this is a motion based on that.

Commissioner Klingenfus asked, is this simply a revote?

Attorney Baxter answered, no because that decision was vacated by Judge Crosby with the Circuit Court, and when Circuit Court vacated the decision then the hearing and the record stands and a new motion has been made to deny and the ground for the motion is stated by Chairman King.

Commissioner Klingenfus asked, what about those that might support the development?

Attorney Baxter answered, then you vote against the motion.

Director Urban explained, a yes vote is a denial of the subdivision plan, and a no vote means you do not agree with the motion to deny.

**The vote was as follows:**

**YES:** Commissioners Davis, Douglas, Elder, Finney, Hafling, Marsh, Nasser and Winters.

**NO:** Commissioners Falvey, Hampton and Klingenfus.

**ABSTAIN:** None

**ABSENT:** Commissioners Ender, Jones and Walser.

**Motion passed on a vote of 8-3**

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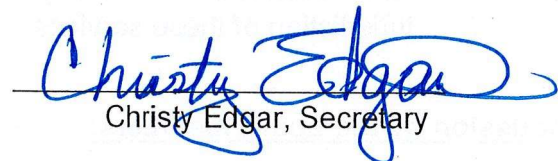
There being no further business, the Planning Commission meeting adjourned at 10:55 am.

The next regular meeting will be Tuesday, June 27, 2023, at 9:00 a.m. and will be held in the Oldham County Fiscal Court courtroom at 100 W Jefferson Street, La Grange, 40031.

Approved:

Respectfully Submitted:

  
Greg King, Chairman

  
Christy Edgar, Secretary