



Floyds Fork Environmental Association
Since 1991

⊗ Received
@ PH
7/7/22

Docket# 1-ZONE-0095

Dear Planning Commissioners and Planning Coordinator Joel Dock,

Floyds Fork Environmental Association (FFEA) began in 1991. We are a 501 c 3 nonprofit that has worked with county government beginning with A District Commissioner Chris Gorman and with so many wonderful volunteers over these years pre-covid to remove around 250 TONS of waste from Floyds Fork Creek. We have received various recognitions and awards during this time for our leadership and education we have provided to many.

Because of the threats to the FF Watershed, we were able to stop the rape and pillage of a 52 acre island in the creek where the soil was being sold.

I was the person who wrote the letter to Planning & Zoning to the attention of Mr. Dave Hulefeld, Chief Planner asking for the protective overlay for Floyds Fork Creek.

Thus the saga of the public meetings followed thanks to the then very powerful **Jefferson County Judge/Executive David L. Armstrong**. We never have forgotten his words, **"Floyds Fork is a natural treasure.... It is one of our last remaining natural streams, and e will never be able to recreate its ecology if we lose it now."** This quote remains on our flyers over these decades as well as our **Mission: Protect, conserve and preserve Floyds Fork Creek and its Watershed.**

It is of utmost importance to honor the past work of 600 public attendees in 2 public meetings and a 60 person task force spanning 1 ½ years – lead by government planners to create the FF Development Review Overlay. Next, the FF DRO was passed by the Planning Commission; passed by 14 small cities; and then passed by Fiscal Court – composed of A,B,C District Commissioners of Steve Henry, Irv Maze, and Darryl Owens, respectively; plus the very powerful County/Judge Executive David L. Armstrong to be in place in 1993.

The FF DRO listed many scenic roads and major tributaries as well as other tributaries to have 50 foot setbacks as well as 100 foot set back from Floyds Fork Creek. We down-zoned our properties from R-4 to R-R, Rural Residential, for one

house on 5 acres instead of 4.84 houses per acre and we ask that you honor that change that has been in place for decades now.

We have performed many feats over the years working with the federal and state governments over the 151 acre Superfund site of Red Penn Landfill at the Oldham/Jefferson County line with groundwater discharging into Floyds Fork Creek to get it capped and monitored. A huge fish kill of 70,803 dead fish below Valhalla and lawsuits when necessary to remove ailing package plants – to mention a few works.

Thus, today, we ask all Planning Commissioners honor the intent of the FF DRO by retaining the R-R, Rural Residential zoning at 2612 S. English Station Road for 2nds in Building Materials which would be a massive commercial intrusion and not in keeping with the FF DRO.

More and more, it will be critical for this watershed to be protected because droughts are becoming more plentiful. If land surfaces cannot get the rainfall, the groundwater aquifers will not be able to funnel this cleaner water on to Floyds Fork Creek which goes into the Salt River and on to the Ohio River where many withdraw water for drinking, crops, cattle, horses, etc. The Ohio flows into the Mississippi River. Water is essential to grow crops for food.

Over the decades, we sometimes launched canoes and kayaks for the creek sweep cleanups at this S. English Station Road access which is across the road from 2612 S English Station Road. It is a remote area, peaceful and quiet. The only change in the area is the Parklands. No expansion into the FF DRO should occur.

There is no easy access to the site because of the railroad tracks that are in constant use daily and could back up traffic for miles on Taylorsville Road – especially large rigs and diesel trucks which emit fumes. Parking on the site would have vehicle drippings of oil and grease. Note: One quart of oil can contaminate one MILLION GALLONS of water. One PINT of oil can produce a slick of about an acre of water! Once the company in this area was capturing gasoline from fumes and a spigot got left open so that the discharge went under the railroad tracks and Taylorsville Road, past the stream on the B home where frogs were floating belly up and dead plus the smell alerted the family. MSD had to float materials on top of the stream to try to collect some of the pollution which ended up past the Future Fund land into Floyds Fork Creek. There can be consequences.

I was one of 15 who served on the South Floyds Fork Vision Plan – asked by Mayor Fischer. This development request does not work with this plan.

And Commissioners can always use Hougham vs. Lex. Fayette with your decision-making to reject this proposal and waivers.

FFEA requests you vote NO.

Sincerely,
Teena Halbig

Planning Chair
Floyds Fork Environmental Association, founded 1991, Co-Founder
6505 Echo Trail
Louisville, KY 40299
502 267-6883
TeenaHal@aol.com

maintain rural character of the area
prior work on site
noise - beep, beep
unloading & loading

Please
Deny

Detailed District Dev Plan
in FF DRO
needs stormceptors
&
first flush basin
no sewers

From: fharper@bullittky.com,
To: teenahal@aol.com,
Cc: Molly.Clark@louisvilleky.gov, rwatkins@bullittky.com,
Subject: RE: can Jefferson County subdivision connect to Bullitt? Fwd: 22-RSUB-0002 & RSUB-0001
Date: Thu, Jul 7, 2022 10:54 am

Teena,

Thank you for reaching out regarding this development at the county line. I would highly suggest that all property owners be notified regarding the public hearing on this proposed subdivision regardless of what county they are located in. This should be done by mail per KRS. How were they notified?

I would also suggest review and approval from the County Road department if they plan on tying into the stub road

The staff report was not attached to the original email.

Felicia Harper

Director

Bullitt County Planning and Development

149 N Walnut St

Shepherdsville, KY 40165

502.543.6832

FHarper@BullittKY.com

From: Teena Halbig <teenahal@aol.com>
Sent: Wednesday, July 6, 2022 4:10 PM
To: Felicia Harper <fharper@bullittky.com>
Subject: can Jefferson County subdivision connect to Bullitt? Fwd: 22-RSUB-0002 & RSUB-0001

Hello Ms. Felicia Harper,

Attached are the staff reports by Jefferson County Planner, Molly.Clark@louisvilleky.gov (phone 574-8656).

Both cases (22-RSUB-0002 Oakland Hills Subdivision & RSUB-0001 The Courtyards at Waterford Subdivision) are being **combined** for **1pm** Planning Commission PUBLIC HEARING **tomorrow, 7-7-22**.

The **question** is whether Bullitt County and/or Jefferson County must notify the existing Bullitt county homeowners because Bullitt has a stub road which Red Bud Hills (and Oakland Hills perhaps) where traffic from both could use this Bullitt exit to access Bardstown Road?

Tentatively, it would be **116** buildable lots by owner Red Bud Hill Dev., Inc. plus access for Oakland Hills Residents (eventually for 894 houses as I recall) to go into Bullitt stub road to access Bardstown Road, etc. - unless there could be a dead-end blockage so that Oakland Hills traffic could not go thru Red Bud Hill road and past their homes and on to Waterford Ridge Court Road to Waterford Road on to Bardstown Road..

I spoke with Molly Clark who apparently tried to contact some Bullitt residents.

All this is clarified if you look at case

RSUB-0001 MAP on **page 4 of 7** to see the stub road at the county line will connect into Bullitt onto Waterford Ridge Court then to Waterford Road.

Then if you look at **page 5 of 7**, you see your stub road and the homeowners.

Sincerely,

Teena Halbig

Floyds Fork Environmental Association, Co-Founder, 1991

6505 Echo Trail

Louisville, KY 40299

502 777-5192 cell/text

TeenaHal@aol.com

Hougham vs. Lexington Fayette County

Protecting The Community & Re-zoning Information

Finally, a way to help communities in re-zoning cases!!! Elected and/or appointed officials (planning commissioners) can deny re-zonings when it has an "impact on the community" because of the Kentucky Supreme Court ruling in 2000. The case was Hougham vs. Lexington Fayette County. Additionally, "A planning commission does not have to re-zone solely because a request is in accordance with a comprehensive plan or its recommended land use element." Even if the "zone change request complies with the comprehensive plan or meets the criteria... does not mean the zone change must be granted." Why? "The Fiscal court still has discretion in reviewing and determining each zone change application. The governing body is given authority to decide each application on its own merits and its impact on the community." ... and "it can make its decision to grant or deny the zone change request. Making these decisions is the function of the appointed and/or elected officials. Their responsibilities include looking at the "big picture" and making the "tough decisions". "The governing body is given authority to decide each application on its own merits and its IMPACT ON THE COMMUNITY." So a Fiscal court can deny requested zone change - even though the zone change is in compliance with the comprehensive plan and even if the Planning Commission recommends approval and even if conditional binding elements address concerns impacting adjacent properties and even if economic growth is stressed. This legal case decided by our own Kentucky Supreme Court justices now affords a way to be effective and have a powerful voice.

Teena Halbig

Louisville 40299, 6505 Echo Trail, 267-6883, cell 777-5192

Form: All Guided Search Forms > States Legal
Terms: **hougham** (Edit Search)

☑ Select for FOCUS™ or Delivery

*29 S.W.3d 370, *; 1999 Ky. App. LEXIS 169, ***

ROGER F. **HOUGHAM** AND VIRGINIA M. **HOUGHAM** APPELLANTS v. LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT; LEXINGTON-FAYETTE URBAN COUNTY COUNCIL TERESA ANN ISAAC, MEMBER OF LEXINGTON-FAYETTE URBAN COUNTY COUNCIL CHARLES E. ELLINGER, D.D.S., MEMBER OF LEXINGTON-FAYETTE URBAN COUNTY COUNCIL; DAVID B. STEVENS, M.D., MEMBER OF LEXINGTON-FAYETTE URBAN COUNTY COUNCIL; GEORGE A. BROWN, JR., MEMBER OF LEXINGTON-FAYETTE URBAN COUNTY COUNCIL; ROBERT R. JEFFERSON, MEMBER OF LEXINGTON-FAYETTE URBAN COUNTY COUNCIL; DICK DECAMP, MEMBER OF LEXINGTON-FAYETTE URBAN COUNTY COUNCIL; ISABEL YATES, MEMBER OF LEXINGTON-FAYETTE URBAN COUNTY COUNCIL; BILL FARMER, MEMBER OF LEXINGTON-FAYETTE URBAN COUNTY COUNCIL; ALBERT S. MITCHELL, MEMBER OF LEXINGTON-FAYETTE URBAN COUNTY COUNCIL; WILLY FOGLE, MEMBER OF LEXINGTON-FAYETTE URBAN COUNTY COUNCIL; FRED V. BROWN, MEMBER OF LEXINGTON-FAYETTE URBAN COUNTY COUNCIL; JENNIFER MOSSOTTI, MEMBER OF LEXINGTON-FAYETTE URBAN COUNTY COUNCIL; SANDY SHAFER, MEMBER OF LEXINGTON-FAYETTE URBAN COUNTY COUNCIL; RICHARD P. MOLONEY, MEMBER OF LEXINGTON-FAYETTE URBAN COUNTY COUNCIL; GLORIA MARTIN, MEMBER OF LEXINGTON-FAYETTE URBAN COUNTY COUNCIL; PAM MILLER, MAYOR OF LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT; WALTER W. MAY, CHAIRMAN, LEXINGTON-FAYETTE URBAN COUNTY PLANNING COMMISSION; EUGENE BALLENTINE, MEMBER OF LEXINGTON-FAYETTE URBAN COUNTY PLANNING COMMISSION; DR. THOMAS M. COOPER, MEMBER OF LEXINGTON-FAYETTE URBAN COUNTY PLANNING COMMISSION; SARAH GREGG, MEMBER OF LEXINGTON-FAYETTE URBAN COUNTY PLANNING COMMISSION; DALLAM B. HARPER, JR., MEMBER OF LEXINGTON-FAYETTE URBAN COUNTY PLANNING COMMISSION; ROBERT D. KELLY, MEMBER OF LEXINGTON-FAYETTE URBAN COUNTY PLANNING COMMISSION; GEORGE L. LOGAN, MEMBER OF LEXINGTON-FAYETTE URBAN COUNTY PLANNING COMMISSION; ROSE M. LUCAS, MEMBER OF LEXINGTON-FAYETTE URBAN COUNTY PLANNING COMMISSION; DWIGHT PRICE, MEMBER OF LEXINGTON-FAYETTE URBAN COUNTY PLANNING COMMISSION; DON ROBINSON, MEMBER OF LEXINGTON-FAYETTE URBAN COUNTY PLANNING COMMISSION; LESLIE PATTERSON VOSE, MEMBER OF LEXINGTON-FAYETTE URBAN COUNTY PLANNING COMMISSION; AND LEXINGTON-FAYETTE URBAN COUNTY PLANNING COMMISSION, APPELLEES

2000-SC-000076-D, NO. 1998-CA-002213-MR

COURT OF APPEALS OF KENTUCKY

29 S.W.3d 370; 1999 Ky. App. LEXIS 169

December 23, 1999, Rendered

SUBSEQUENT HISTORY: **[**1]** As Modified January 14, 2000. Discretionary Review Denied by the Supreme Court of Kentucky, October 19, 2000. Opinion of the Court of Appeals Ordered to be Published. Released for Publication November 1, 2000.

PRIOR HISTORY: APPEAL FROM FAYETTE CIRCUIT COURT. HONORABLE REBECCA OVERSTREET, JUDGE. ACTION NO. 97-CI-01236.

DISPOSITION: AFFIRMED.

CASE SUMMARY

PROCEDURAL POSTURE: Appellants challenged an opinion and order entered by the Fayette Circuit Court (Kentucky) which sustained the decision of appellee county council to deny appellants' requested zone change.

OVERVIEW: Appellants wanted to rezone their 40 acres of agricultural urban land to light industrial. The requested zone change was in agreement with the adopted comprehensive plan. However, just because the zone change request complied with the comprehensive plan or met the criteria set forth in Ky. Rev. Stat. Ann. § 100.213(1)(a) or (b), did not mean the zone request had to be granted. The decision of appellee county council was not arbitrary and all three of the considerations the court was required to make in determining arbitrariness were fully complied with. The findings of fact rendered by appellee county council set forth seven specific reasons for denying the zone change. A review of the findings clearly showed that appellee county council's decision was based upon substantial evidence.

OUTCOME: Judgment affirmed. The court found that even though appellants' proposed zoning change complied with the comprehensive plan, appellee county council was given discretion to review the change based on its merits and its impact on the community, and was not required to approve the change.

CORE TERMS: zone change, planning commission, comprehensive plan, ex parte, legislative body, map, recommended, substantial evidence, tainted, elected, zoning classification, constituents, rezoned, zoning, fiscal, voted, farm, zone, ex parte contact, public interest, arbitrariness, neighborhood, notice, unfair, updates, staff, findings of fact, decision to deny, land use element, planning

LexisNexis (TM) HEADNOTES - Core Concepts - ♦ Hide Concepts

Real & Personal Property Law > Zoning & Land Use > Zoning Generally 
 HN1 ♦ See Ky. Rev. Stat. Ann. § 100.213(1).

Real & Personal Property Law > Zoning & Land Use > Zoning Generally 
 HN2 ♦ Just because a zone change request complies with the comprehensive plan or meets the criteria set forth in Ky. Rev. Stat. Ann. § 100.213(1)(a) or (b), does not mean the zone request must be granted. The fiscal court still has discretion in reviewing and determining each zone change application. The governing body is given authority to decide each application on its own merits and its impact on the community. There is no specific, magic formula which is applied to the determination of each zone change request. The administrative body must comply with all statutory requirements set forth in Ky. Rev. Stat. Ann. ch. 100 as to notice, hearing, findings of fact, etc. If it has followed all the statutory requirements, it can make its decision to grant or deny the zone change request. Making these decisions is the function of appointed and/or elected officials. Their responsibilities include looking at the "big picture" and making the "tough decisions." [More Like This Headnote](#)

Administrative Law > Judicial Review > Standards of Review > Standards Generally 
 HN3 ♦ Judicial review of an administrative action is concerned with the question of arbitrariness. There are three areas to consider in determining arbitrariness: (1) did the administrative agency act within its statutory powers; (2) was due process afforded; and (3) was the decision reached supported by substantial evidence. [More Like This Headnote](#)

Administrative Law > Judicial Review > Standards of Review > Standards Generally 

447 Ky. Rev. Stat. Ann. § 100.213 provides that before a zone change request is granted (map amendment), the planning commission or respective legislative body must find either that the proposal is in agreement with the comprehensive plan or that the existing classification is inappropriate and that the proposed zoning classification is appropriate; or that there have been major changes of an economic, physical, or social nature in the area which are not anticipated in their current comprehensive plan and which substantially alter the character of the area. Ky. Rev. Stat. Ann. § 100.197 requires continuing review and updates of the comprehensive plan. In the scheme of planning and zoning, society is constantly changing, which requires the continuing review and updates to comprehensive plans. A planning commission does not have to rezone solely because a request is in accordance with a comprehensive plan or its recommended land use element. [More Like This Headnote](#)

Governments > Local Governments > Employees & Officials 

445 Members of a county council do not live in a vacuum nor are they required to. They are elected officials who represent the community and will be subjected from time to time to contact from constituents concerning issues, upon which they must ultimately decide. The mere fact that they are exposed to various information from competing groups does not make it impossible for them to serve and vote. Mere contact with neighborhood groups, letters from constituents, information gathered from staff, etc. does not, by itself, constitute "improper ex parte contact." If this were the case, seldom could an elected official make an informed decision without being accused of improper ex parte conduct. [More Like This Headnote](#)

COUNSEL: BRIEF AND ORAL ARGUMENT FOR APPELLANTS: Foster Ockerman, Lexington, KY.

BRIEF AND ORAL ARGUMENT FOR APPELLEES: Christine N. Westover, Lexington, KY.

JUDGES: BEFORE: COMBS, EMBERTON AND GUIDUGLI, JUDGES. EMBERTON, JUDGE, CONCURS. COMBS, JUDGE, CONCURS BY SEPARATE OPINION.

OPINIONBY: GUIDUGLI

OPINION: [*371] OPINION

AFFIRMING

GUIDUGLI, JUDGE. Appellants, Roger F. **Hougham** and Virginia M. **Hougham (the Houghams)**, appeal an opinion and order entered by the Fayette Circuit Court which sustained the decision of the Lexington-Fayette Urban County Council (LFUCC) to deny the appellants' requested zone change. LFUCC denied the request despite the fact that the requested zone change was in compliance with the comprehensive plan and recommended for approval by the Urban County Planning Commission (the Planning Commission). Appellants contend that the Council's action was both arbitrary and **[**2]** a denial of due process. Having thoroughly reviewed the facts, the record, the applicable statutory and case law, and the arguments of the parties, we affirm.

Appellants filed a zone change application in hopes of rezoning their approximately forty (40) acre farm located in Fayette County from the existing agricultural urban (AU) zone to a light industrial (I-1) zone. The property is located on Viley Road across from Calumet Farm and across New Circle Road from established and developing single family residential subdivisions. The farm also adjoins the Enterprise Individual Park which had been rezoned to

I-1 in 1985, and the "Little" property which was rezoned as I-1 in 1991. The Enterprise Industrial Park is still being developed but the "Little" property remains undeveloped and is still being used for agricultural purposes.

[*372] The first hearing on the zone change application occurred on October 24, 1996, before the Planning Commission. This hearing was continued until December 12, 1996, when the Commission voted 7-3 to recommend approval of the zone change request to LFUCC. The Planning Commission found the I-1 use requested to be in agreement with the land use element of the comprehensive **[**3]** plan. The Planning Commission also recommended several conditional zoning restrictions to address concerns relating to the impact the zoning change might have on surrounding properties. Specifically, the Planning Commission was concerned with traffic flow and run-off water problems.

At the LFUCC hearing on March 6, 1997, appellants called no witnesses nor did they cross-examine any of the opponents who testified. Instead, they relied upon the fact that the Planning Commission had recommended the zone change, that the zone change conformed to the comprehensive plan, that other land adjacent to the property had been rezoned I-1, that there is a need for more manufacturing jobs in Fayette County, and that economic growth would be beneficial to the County. Opponents to the zone change then presented their evidence and testimony. They argued that the land was still valuable for agricultural use, that there was already an excess of I-1 property, traffic concerns, water run-off problems, and that adjacent horse farms would be adversely affected. After testimony and arguments were presented by parties for and against the zone change, the Council voted 9-5 to override the Planning Commission's **[**4]** recommendation and deny the zone change request. The LFUCC denial was based upon findings of fact which the Council adopted.

Appellants appealed LFUCC's denial to the Fayette Circuit Court. There appellants argued the decision to deny the zone change was arbitrary in that it lacked substantive competent evidence and that it violated due process requirements based on alleged ex-parte communications by at least two (2) of the council members who voted against the change. The trial court upheld the Council's decision, and this appeal followed.

Kentucky Revised Statutes (KRS) Chapter 100 addresses issues of planning and zoning. ^{#51} Specifically, KRS 100.213(1) establishes what findings are necessary before a proposed map amendment may be reconsidered:

Before any map amendment is granted, the planning commission or the legislative body or fiscal court must find that the map amendment is in agreement with the adopted comprehensive plan, or, in the absence of such a finding, that one (1) or more of the following apply and such finding shall be recorded in the minutes and records of the planning commission or the legislative body or fiscal court.

(a) That the existing zoning classification **[**5]** given to the property is inappropriate and that the proposed zoning classification is appropriate;

(b) That there have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in the adopted comprehensive plan and which have substantially altered the basic character of such area.

In the case before us, all parties agree that the requested zone change is in agreement with the adopted comprehensive plan. This was one of the main factors relied on by the Planning Commission in recommending the change.

^{#52} However, just because the zone change request complies with the comprehensive plan or meets the criteria set forth in KRS 100.213(1)(a) or (b), does not mean the zone request must be granted. The fiscal court still has discretion in reviewing and determining each zone

change application. The governing body is given authority to decide each application on its own merits and its impact on the community. There **[*373]** is no specific, magic formula which is applied to the determination of each zone change request. The administrative body must comply with all statutory requirements set forth in KRS Chapter 100 as to notice, hearing, **[**6]** findings of fact, etc. If it has followed all the statutory requirements, it can make its decision to grant or deny the zone change request. Making these decisions is the function of appointed and/or elected officials. Their responsibilities include looking at the "big picture" and making the "tough decisions."

On appeal, the decision is not subject to de novo review. ^{HN3} ✗ Rather, judicial review of an administrative action is concerned with the question of arbitrariness. *American Beauty Homes Corp. v. Louisville, etc., Ky.*, 379 S.W.2d 450 (1964), sets forth three (3) areas to consider in determining arbitrariness: (1) did the administrative agency act within its statutory powers; (2) was due process afforded; and (3) was the decision reached supported by substantial evidence. A close review of the record in this case clearly shows that the decision of the LFUCC was not arbitrary and that all three of the above-mentioned considerations were fully complied with. First, LFUCC is the statutory agency to make this decision, and no one contends it exceeded its statutory powers. Second, due process was afforded appellants at every level. Appellants do not argue that they **[**7]** were denied notice, a hearing, sufficient opportunity to present their case, cross-examine the opponents, and opportunity to rebut the opponents' arguments and findings of fact. Third, the decision was based upon substantial evidence.

Appellants' main contention is that LFUCC must approve the zone change since it comports to the comprehensive plan. However, this Court in *21 st Century Development Co., LLC v. Watts, Ky. App.*, 958 S.W.2d 25 (1997), specifically dealt with this issue when it stated:

^{HN4} ✗ KRS 100.213 provides that before a zone change request is granted (map amendment), the planning commission or respective legislative body must find either that the proposal is in agreement with the comprehensive plan or that the existing classification is inappropriate and that the proposed zoning classification is appropriate; or that there have been major changes of an economic, physical, or social nature in the area which were not anticipated in their current comprehensive plan and which substantially alter the character of the area. KRS 100.197 requires continuing review and updates of the comprehensive plan. In the scheme of planning and zoning, our society is constantly **[**8]** changing, which requires the continuing review and updates to our comprehensive plans. We agree with the circuit court that a planning commission does not have to rezone solely because a request is in accordance with a comprehensive plan or its recommended land use element.

Id. at 27 (emphasis added). In addition, the findings of fact rendered by LFUCC set forth seven (7) specific reasons for denying the zone change. A review of these findings clearly shows that the Council's decision was based upon substantial evidence.

Appellants also contend that two (2) council members engaged in ex parte conduct and therefore, they should not have participated in the hearing and/or voting process. Appellants claim these contacts "tainted" the entire proceedings and mandate that the two council members disqualify themselves. Basically, the conduct alleged involved council members attending neighborhood meetings at which the proposed zone change was discussed, requesting information from city staff concerning the site in question, and receiving letters from opponents of the zone change. The trial court found that there were no Kentucky cases dealing specifically with **[**9]** the issue of ex parte contacts by a legislative body acting in an adjudicatory capacity. Nor have appellants cited the Court to any such Kentucky case. The case argued **[*374]** by appellants talks in terms of "improper" ex parte contact where the decision reached is "so tainted as to make it unfair either to the innocent party or to the public interest" *Louisville Gas & Electric v. Commonwealth, Ky. App.*, 862 S.W.2d 897, 901 (1993). In addressing this issue, the trial court stated:

the members of the Council are elected officials and cannot isolate themselves from the people they represent. There is no evidence in the record that any Council members made improper statements or promises in their dealings with constituents. There is no indication that the contacts at issue tainted the decision making process so as to make it unfair to the parties or contrary to the public interest. The facts of this case clearly do not reach the level of ex parte contacts which would require the Council's decision be voided."

The court further found despite the alleged improper conduct, the appellants had been afforded all due process protections. ^{H&S} We agree with the **[**10]** trial court that members of council do not live in a vacuum nor are they required to. They are elected officials who represent the community and will be subjected from time to time to contact from constituents concerning issues, upon which they must ultimately decide. The mere fact that they are exposed to various information from competing groups does not make it impossible for them to serve and vote. Mere contact with neighborhood groups, letters from constituents, information gathered from staff, etc. does not, by itself, constitute "improper ex parte contact." If this were the case, seldom could an elected official make an informed decision without being accused of improper ex parte conduct.

For the foregoing reasons, we affirm the opinion and order of the Fayette Circuit Court which sustained LFUCC's decision to deny the requested zone change.

EMBERTON, JUDGE, CONCURS.

COMBS, JUDGE, CONCURS BY SEPARATE OPINION.

CONCURBY: COMBS

CONCUR: COMBS, JUDGE, CONCURRING: The fact that the LFUCG wholly disregarded the recommendation of the Planning Commission, coupled with the allegations of improper ex parte contacts with LFUCG council members, creates in my mind a perception of **[**11]** impropriety sufficient to question whether the due process requirement of American Beauty, supra, was met. Since Kentucky law is silent on what ex parte contacts are permissible as to a legislative body acting in a quasi-judicial capacity, we have no standard by which to evaluate the conduct alleged to have been improper in this case. Substantial evidence appears to have supported the final vote of the council. However, a question is forever raised and misgivings inevitably linger as to the propriety of the process in this case.

Form: All Guided Search Forms > **States Legal**

Terms: **hougham** (Edit Search)

View: Full

Date/Time: Tuesday, January 6, 2004 - 1:12 PM EST

* Signal Legend:

-  - Warning: Negative treatment is indicated
 - Caution: Possible negative treatment
 -  - Positive treatment is indicated
 -  - Citing Refs. With Analysis Available
 -  - Citation information available
- * Click on any Shepard's signal to Shepardize® that case.

Dock, Joel

From: Frances Aprile <frances@littledovefarm.com>
Sent: Tuesday, July 5, 2022 11:49 PM
To: Dock, Joel
Cc: Steve Porter; michael farmer; Harrell Hurst; Carol Hurst; Jeff Frank; Bert Stocker; Pat Stocker; Sheila Mead; David Kaelin; Rachel Brunner
Subject: Case # 21-ZONE-0095 OPPOSITION

CAUTION: This email came from outside of Louisville Metro. Do not click links or open attachments unless you recognize the sender and know the content is safe

Mr Dock:

Applicant's proposal in case # 21-ZONE-0095 violates Metro Louisville's planning goals & objectives at every level.

It violates Plan 2040 & the LDC, which distinguish the Floyds Fork area as a Special District to be protected for its unique natural resources -- it's home to Louisville's last living stream, abundant wildlife, dark night skies, & significant tree canopy that mitigates the urban heat island effect & helps clean the city's air.

It violates the Floyds Fork DRO, a thin ribbon of land along the creek's mainstem that was set aside decades ago for low-density, restricted RR use, & made part of the LDC, in recognition of the value of preserving Floyds Fork.

It violates the South Floyds Fork Vision plan, which reaffirmed the enduring value of preserving Floyds Fork, & recommended retaining the protective RR zoning of properties, like the one in this case, in the Floyds Fork DRO.

In changing the zoning from RR to C-2, this proposal would replace a low-intensity agricultural operation with a high-intensity big-box store, drastically increasing traffic, pollution, & impervious surface, & directly threatening the fragile life of Floyds Fork.

This proposal flies in the face of 50 years' efforts on the part of individuals, private groups, public organizations, & dedicated public servants to secure an invaluable treasure for this city &, indeed, this region. The Planning Commission needs to honor this work & uphold the law. The Commission needs to reject this proposal.

Thank you.

Frances Aprile
15404 Taylorsville Rd
Fisherville KY 40023

Dock, Joel

From: Nick Pregliasco <nrp@bardlaw.net>
Sent: Wednesday, June 8, 2022 2:37 PM
To: Dock, Joel
Cc: sleroy@2nds.biz; 'Paul Baggett'; 'Kelli Jones'; Anna Martinez Tomes; Nanci Dively; Christian Miller
Subject: FW: 2612 S. English Station
Attachments: 21-ZONE-0095_Plan_022522.pdf

Follow Up Flag: Follow up
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Joel: Per our conversation just now, here is the email from the Parklands' counsel. Nick

From: Jennifer M. Barbour <jbarbour@MiddletonLaw.com>
Sent: Thursday, March 17, 2022 2:04 PM
To: Nick Pregliasco <nrp@bardlaw.net>
Cc: Kelli Jones <kelli.jones@swlinc.com>
Subject: 2612 S. English Station

Hi Nick and Kelli,

Parklands has asked that I reach out concerning a revised site plan Beth Stuber with Metro provided. The plan is attached for your reference. This revised plan addresses the Parklands' concern of having a single entrance aligned with Echo Trail and removes the existing curb cut. Based on this formal resubmitted plan, Parklands has asked that I communicate it does not oppose this use of the property as submitted on the plan. While the Parklands will not go on public record in support of the plan, Parklands will not voice any opposition to it with the single entrance aligned with Echo Trail and the removal of the existing curb cut.

If you have any questions or concerns, please feel free to contact me.

Thanks,



Jennifer M. Barbour
Attorney
Direct: 502.625.2787 Fax: 502.588.1917
401 South Fourth Street, Suite 2600, Louisville, KY 40202
jbarbour@middletonlaw.com

V-CARD

BIO

ABOUT MIDDLETON REUTLINGER

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Dock, Joel

From: Sheila Mead <naturesm6@gmail.com>
Sent: Tuesday, June 7, 2022 4:21 PM
To: Dock, Joel
Subject: Home Emporium

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Joel,

I am in opposition to a change in zoning.

I do not understand how property is purchased and then an attempt is made to rezone. Shouldn't this be reversed?

The road is not equipped to handle semi traffic let alone other vehicle traffic, plus there are walkers and bicyclists close to the road. This situation is unsafe.

It near to the Parklands.

The proposed rezoning is not in alignment with the Floyds Fork Area Vision Plan already approved by the Metro Council.

Floyds Fork needs to be protected, a business should not be close to the Fork.

I am a member of Fisherville Area Neighborhood Association and agree with their opposition.

Please post on LD&T's website and share with committee members.

Thank you.

Sheila Mead



Floyds Fork Environmental Association – founded 1991

6-8-22

Hello LDT Commissioners and Planning Commissioners and Planner Joel Dock,

Re: Docket #21-ZONE-0095 Request: Change in zoning from RR to C-2 with detailed district development plan in Floyds Fork Review Overlay and variance and waivers Project Name: 2nds in Building Materials Location: 2612 S. English Station Road Owner: 2nds in Building Materials Applicant: 2nds in Building Materials Representative: Bardenwerper, Talbott, & Roberts, PLLC Jurisdiction: Louisville Metro Council District: 20 - Stuart Benson Case Manager: Joel Dock, AICP, Planning Coordinator

Floyds Fork Environmental Association (FFEA) was founded in 1991 to Protect, Conserve and Preserve Floyds Fork Creek and its Watershed.

FFEA has spent countless hours since 1991 in taskforces, comprehensive land use plans, zoning cases, legal cases, etc. and in more recent years, service on the Floyds Fork Vision Plan, some might not be aware of the history of the FF DRO.

Early in 1991, FFEA was involved to initiate the process for the FF DRO and we attended all meetings allowed. We were part of the 60 member task force lead by Planning Staff and this took one and a half years of many meetings with development interests. Next, two public hearings were held in Eastwood Fire Dept. with standing room only and then at Highland Park First Baptist Church on Billtown Road was packed; over 600 attended these public hearings.

Not only the Planning & Zoning and Planning Commissioners passed the FF DRO but 17 small cities passed the plan as well as A,B,C District Commissioners and Judge/Executive - thus no small feat to finally pass the FF DRO in 1993. It was a lengthy process of about 2 years.

It was Jefferson County Judge/Executive **David L. Armstrong** who said *"Floyds Fork is a natural treasure....it is one of our last remaining natural streams, and we will never be able to recreate its ecology if we lose it now."*

FFEA worked with volunteers and County Commissioners (later on, with Metro Council Districts annually the first Saturday in June – especially District 20; adding 22 and 19 later on) to remove some **250 TONS** of trash and debris in canoes, kayaks and on foot from Floyds Fork Creek and its banks. It was no small feat but COVID stopped this work as well as not being able to use the John Floyd Fields Community Building (rented by Parklands to a canoe livery) 3-4 years ago.

Certainly, each of you have read the 2-page letter from the Parkland's law firm sent some time ago in opposition to this change. Please see the attachment.

FFEA opposes the change in zoning from the FF DRO R-R (Rural Residential of 1 house per 5 acres) to C-2 for this Home Goods Store to sell seconds.

FFEA requests a PUBLIC HEARING be held by the Planning Commission.

A more appropriate location might be in an **Industrial Park** but certainly not near the Parklands and Floyds Fork Creek. Many vehicles will have pollutants that can reach the main stem of Floyds Fork Creek to result in potential loss of fish, wildlife, and aquatic lifeforms either by perking underground or over-ground to reach Floyds Fork Creek which flows under Echo Trail at English Station Road. This happened some years ago when a **gasoline recovery company** had a valve left open to come across the Railroad Tracks underground and in the small stream of the family who were outside to swing their children only to smell fumes and had to close their windows. Dead frogs were floating belly up! By morning, MSD had to be called to the site where absorbent materials were put atop Floyds Fork Creek to soak up some of the spill.

C-2 zoning is inappropriate in this location. The change to C-2 doesn't conform with the 2040 Comprehensive Land Use Plan and development policies.

The major change in this area has been for **land conservation and recreation to help residents become healthier** in a less polluted environment – away from a lot of Volatile Organic Compounds, Particulates, Pollutants, etc. and to breathe cleaner air.

Conservation of land using **\$39 million federal funds from U.S. Senator McConnell involves federal land purchased for this purpose** and within in the Parklands. C-2 does not conform with the major conservation effort by JCET, Future Fund, KY Heritage Land Conservation Fund, and that of land owners giving their land for conservation and preservation – even LWC and MSD properties.

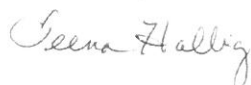
This is a nonconforming use in a Neighborhood Form District. There is no main road or expressway here. The scale of this proposal is huge and nonconforming to the area or current land use.

Please ask for and look at a karst mapping by USGS or KGS because karst does not have to be above ground. Changes could have occurred on this site so that limestone out-croppings (could have been removed by bulldozers), or other possible features might not be so visible today. Again, FFEA concerns for underground water in aquifers which flow into Floyds Fork Creek which is down slope from this site. Just one quart of oil can contaminate up to a quarter MILLION gallons of drinking water or cause an oil slick almost 2 acres in size. In fact, the oil from just one oil change can pollute up to a million gallons of water. Used motor oil is the largest single source of oil pollution in lakes, streams and rivers and can kill fish, wildlife and plants.

Services of sewers and water are not on the site; extension is not already in planning for these agencies. Letting development decide the extension of services is not good planning; agencies like MSD have plans to go by and should not show favoritism or to cause other areas/residents to not get infrastructure needs that were already decided and in ink. Especially, since all agencies are reviewing DEI (Diversity, Equity and Inclusion), the focus should be followed to not harm minorities.

Thank you for your consideration of these remarks and requests.

Sincerely,



Teena Halbig
Co-Founder, Clean Water Chair
Floyds Fork Environmental Association
6505 Echo Trail, Louisville, KY 40299
502 267-6883, TeenaHal@aol.com

Cc: Sheron Lear, FFEA President
Ray Ehlers, FFEA Vice President
Ed Halbig, FFEA Member



June 7, 2022

Land Development & Transportation Committee Members
Louisville Metro Planning Commission
444 South 5th Street, Suite 300
Louisville, Kentucky 40202

Joel Dock
Louisville Metro Planning & Design Services
444 South 5th Street, Suite 300
Louisville, Kentucky 40202

**Re: Opposition to Applications for Zone Map Amendment,
Variance, Two Waivers, and DDDP approval
Case No. 21ZONE0095
2612 S. English Station Road
Project Name: 2nds in Building Materials**

Dear Louisville Metro Planning Commission and Planning Staff:

This firm represents Jeff Frank and Friends of Floyds Fork LLC (collectively "Friends"). Friends have advocated at the Planning Commission over the past 20 years to protect the Floyds Fork watershed. These applications are no different. Friends are strongly opposed to the proposed 2nds in Building Materials project, including the requests for a zone map amendment, variance, two waivers, and a detailed district development plan approval.

These applications are not ready to be heard by the full Planning Commission. The proposed development is in the protected Development Review Overlay District for the Floyds Fork Watershed, where the LDC delineates strict guidelines for development. The Applicant proposes a zone change from R-R to C-2 completely within the DRO. This is unprecedented and is not in compliance with the Cornerstone 2040 Plan, the LDC, and especially the Floyds Fork DRO. The LDC and the DRO regulations requires the Planning Commission to:

review proposed regulated activities to determine impact on environmental characteristics, including but not limited to impacts on water quality, the floodplain, wetlands, natural drainage ways, steep slopes, soils, forestation and scenic vistas. The Commission will consult with the Director of Works and the Metropolitan Sewer District in the course of this review process. **The applicant will provide adequate information to allow the Commission to determine impacts of the proposal and compliance with the guidelines established in paragraph 7 below.**

LDC 3.1-2. No such review is possible because the applicant has failed to provide the

relevant information to allow such a review. This is even more prescient because the developer is requesting waivers and variances that are meant to protect the watershed from further harm with buffer and setback requirements. Without the necessary environmental information, the public, Planning Commission, and the Metro Council will not have the necessary information to make an informed decision on whether this project complies with the Floyds Fork DRO regulations. These applications are not ready for review by the full Planning Commission until the necessary information for which the Floyds Fork DRO regulations requires are provided by the Applicant.

The Floyds Fork watershed is collapsing. Water quality is almost beyond repair. The U.S. EPA Region IV and the Kentucky Division of Water are working to mitigate the harm to the watershed from multiple sources, but it the job of the Planning Commission and Metro Council to do so from the local level. This Planning Commission and its committees have an obligation to conduct a detailed and adequate environmental review and protect water quality and the conservation value of this community under the Cornerstone 2040 Plan, the LDC, and the Floyds Fork DRO regulations. Until the Applicant provides the requisite information to conduct the review, the Planning Commission cannot complete its obligation.

A zone map amendment can be granted if the proposed map amendment complies with the Cornerstone 2040 Plan. KRS 100.213. The proposed amendment clearly is not. If the proposed zone map amendment is not in agreement with the Cornerstone 2040 Plan, then (1) the existing zoning classification given to the property must be inappropriate and the proposed zoning classification is appropriate or (2) there must have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in the adopted Cornerstone 2040 plan and which have substantially altered the basic character of such area. KRS 100.213.

A zone map amendment from R-R to C-2 would be difficult in any part of Jefferson County, let alone in the Floyds Fork DRO. This property is in the DRO, and it is currently zoned RR. It is located adjacent to one of the premier natural areas and parks in the country. These applications will only exacerbate the water quality and environmental issues in the Floyds Fork DRO, not mitigate or improve them. It is the applicant's obligation to provide substantial evidence to satisfy the provisions of KRS 100.213. They have failed to do so or to even provide the information needed for the Planning Commission to decide these issues. Until the applicant demonstrates otherwise, these applications should not be heard by the full Planning Commission.

The Metro Council is also considering the adoption of a resolution that requiring the following:

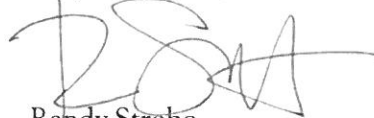
Planning Commission and its staff shall undertake a review of the Floyds Fork Special District in Chapter 3, Part 1 of the LDC, with such review to include

a review of the recommendations contained in the Vision Plan as well as to consider whether a development review overlay committee, consisting of environmental experts and community members, should be established to work in concert with the Planning Commission and Staff in order to better review environmental issues relating to development within the Floyds Fork DRO, and develop recommendations thereto to the Council.

See Louisville Metro Government File NO. R-073-22.¹ Any decisions related to development in the Floyds Fork DRO should be delayed until the Metro Council considers the above resolution.

If this case advances to the full Planning Commission, we will submit more detailed and extensive comments. We hope staff and Commission members will review them carefully.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Randy Strobo', with a stylized flourish extending to the right.

Randy Strobo
Clay Barkley

¹ Available at
<https://louisville.legistar.com/View.ashx?M=F&ID=10926350&GUID=E36423C4-2CEE-4954-A435-D62AB3FA2353>.

Dock, Joel

From: Andrew Hartmans <andrew.hartmans@gmail.com>
Sent: Tuesday, June 7, 2022 9:21 AM
To: Dock, Joel
Subject: Fwd: Home Emporium, LDT meeting June 9

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Home Emporium LTD - Meeting June 9, 2022

For the record:

I am opposed to the change in zoning from RR (rural residential) to C-2 commercial as this site is in the Floyds Fork District Review Overlay (FFDRO) directly adjacent to Floyds Fork. This location is just so wrong for the current neighborhood and natural setting. The parklands is such a beautiful addition to our community, and this business would sit right at the front entrance of the park. Additionally, so many pedestrians and bikers travel through this intersection. What a tragedy if someone were hurt needlessly by the additional traffic, including delivery trucks, that will most certainly be coming and going from this commercial enterprise. Is there not a better place to put such a business in all of Louisville? It just seems to me like the last place where one would place such a retail operation. This is not just bad for our neighborhood. It will likely also be bad for the business owner. I see a closed, boarded up, useless building in 5 years. How can they hope to make a profit in such an out-of-the-way place?

Andrew Hartmans
15905 Taylorsville Road, Fisherville, KY 40023

Dock, Joel

From: Harrell Hurst <harrell.hurst@gmail.com>
Sent: Monday, June 6, 2022 4:50 PM
To: Dock, Joel
Subject: Case #21-ZONE-0095

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Joel Dock
Case Manager

Dear Mr. Dock,

I am writing in opposition to the proposed rezoning of the property at 2612 S. English Station Road, Case #21-ZONE-0095.

If approved, such a drastic change from RR rural residential to C-2 commercial will violate the intent of the Floyds Fork District Overlay approved by Metro Council 30 years ago to protect Floyds Fork. The site is adjacent to the Parklands of Floyds Fork, with over three million visits each year. In fact, walkers, runners, and riders on the Louisville Loop will have to cross the entrance to this business. A large retail commercial business at this site is incompatible with the South Floyds Fork Vision Plan, which was developed over two years with Metro and community involvement, and then approved by Metro Council as a part of Plan 2040.

More specifically, The Fisherville Area Neighborhood Association objects to this rezoning proposal because:

- It doesn't adhere to principles of the Metro Comprehensive Plan 2040.
- It doesn't follow guidance in the South Floyds Fork Area Vision Plan approved by Metro Council and included in Plan 2040.
- It is inconsistent with provisions of the Floyds Fork District Review Overlay in the Land Development Code to protect Floyds Fork.
- It is incompatible with surrounding residential land and the adjoining Parklands of Floyds Fork.
- The Louisville Loop passes through the site. Tractor trailer truck deliveries and commercial traffic would present a hazard to runners, walkers, and bikers using the Loop.

With growth in this part of Jefferson County, it is essential that land use development follows guidance of Metro and community planning. Such a proposed change from the least intensive RR to commercial C-2 zoning is entirely inappropriate at this site, which is less than 300 feet from the waters of Floyds Fork.

I strongly urge you to deny this rezoning application.

Sincerely,

Harrell Hurst, Chair
Fisherville Area Neighborhood Association
16200 Taylorsville Road
Fisherville, KY 40023

Dock, Joel

From: stpinlou@aol.com
Sent: Monday, June 6, 2022 12:40 AM
To: Dock, Joel
Subject: Case No. 21-ZONE-0095

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Joel,

I represent the Fisherville Area Neighborhood Association, which is strongly opposed to the proposed rezoning of the property at 2612 S. English Station Road. That property was zoned RR for a reason. To allow a retail commercial outlet on that site would be a major violation of many principles found in the Comp Plan 2040 as well as violative of the Floyds Fork DRO, the South Floyds Fork Vision Plan and the sanctity of the adjacent Parklands. The proximity to Floyds Fork would create just one more detriment to the health of that stream, our last pure, living stream in Jefferson County. In addition, the requested waivers in the application show that neither the existing or proposed buildings are suitable at this location.

I will attend the LD&T meeting Thursday to express the FANA opposition. It is our opinion that because of the above violations, waivers and dangers to Floyds Fork, the application should not even get a public hearing.

Steve Porter

Stephen T. Porter
Attorney at Law
2406 Tucker Station Road
Louisville, KY 40299
502-905-9991
stpinlou@aol.com

Dock, Joel

From: Dock, Joel
Sent: Tuesday, May 24, 2022 9:29 AM
To: 'jbarbour@middletonlaw.com'
Subject: 21-ZONE-0095 2612 S. English Station Rd
Attachments: 21-ZONE-0095_LDT Notice_060922.pdf

Attached is a public meeting notice for 21-zone-0095 at 2612 S. English Station Road.

Joel P. Dock, AICP
Planning Coordinator
Planning & Design Services
Department of Develop Louisville
LOUISVILLE FORWARD
444 South Fifth Street, Suite 300
Louisville, KY 40202
502-574-5860
<https://louisvilleky.gov/government/planning-design>



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Dock, Joel

From: Carla C. Dixon <carladixon00@gmail.com>
Sent: Sunday, May 29, 2022 12:22 AM
To: Dock, Joel
Subject: 2612 S. English Station Road

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Joel, I was made aware that this property that is zoned as Residential is possibly being changed to Commercial. As a resident of this area, I don't think this is the right thing to do. The property is rural and connects to our beautiful Floyd's Fork Parklands.

Using this property for an expansive commercial development is wrong for many reasons. It is out of place, not near other commercial properties and on a two lane country road.

Please vote against this zoning change. Generations after ours will wonder what was Jefferson County thinking to be so irresponsible with the few precious natural resources.

Kind regards, Carla Dixon

Sent from [Mail](#) for Windows

Dock, Joel

From: Harrington, Scott
Sent: Tuesday, May 31, 2022 4:27 PM
To: diane.harcourt@gmail.com
Cc: Dock, Joel
Subject: FW: Contact Councilman Kevin Kramer [#2019]
Attachments: 21-ZONE-0095_LDT_Notice_060922.pdf

Ms. Harcourt,

The proposed development at 2612 S. English Station Road is a re-zoning case that will go before Metro Council for final action. Since councilmembers vote on zoning changes, they can't participate in off record conversations. They can only base their decisions on testimony entered into the public record. To do so otherwise, may face a court challenge.

Your comments can be part of the official record that Councilman Kramer will be reviewing by either participating in the public hearings or sending your comments to the case manager, Joel Dock, who I've included on this email. His email address is joel.dock@louisvilleky.gov and his phone number is 574-5860.

Zoning decisions are based on testimony provided and what is allowed under the Land Development Code. The Planning Commissioners will hear from the applicant and residents and then send their recommendation to the Metro Council. Once it comes before the Council, members review the case to ensure the process was followed, not rather a member likes a development or not. Commissioners and the Council must use the code to justify their vote on facts or evidence presented in the hearings.

This case will go before the LD&T (Land, Development & Transportation) Committee on June 9th. Attached is the notice.

Residents and HOAs can organize and even hire a legal representative to participate in the zoning process on their behalf.

I do encourage you to participate in the zoning process by attending and speaking at the June 9th LD&T meeting to share your concerns with commissioners.

Please let me know if you have any questions regarding the zoning process. If you have questions about the proposed development, it's best to ask the case manager.

Thank you!

Scott



Scott W. Harrington | Legislative Assistant
Office of Councilman Kevin J. Kramer
Louisville Metro Council | District 11

phone: 502.574.3456

email: scott.harrington@louisvilleky.gov



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City Hall

601 West Jefferson Street
Louisville, Kentucky 40202

Thank you for the opportunity to serve!

From: Kramer, Kevin <Kevin.Kramer@louisvilleky.gov>
Sent: Tuesday, May 31, 2022 3:56 PM
To: Harrington, Scott <Scott.Harrington@louisvilleky.gov>
Subject: FW: Contact Councilman Kevin Kramer [#2019]

From: Councilman Kevin Kramer <no-reply@wufoo.com>
Sent: Monday, May 30, 2022 7:43 AM
To: Kramer, Kevin <Kevin.Kramer@louisvilleky.gov>; Harrington, Scott <Scott.Harrington@louisvilleky.gov>
Subject: Contact Councilman Kevin Kramer [#2019]

Name * Diane Harcourt

Address ☐

* 1836 Dressage Circle
Louisville, KY 40245
United States

Phone (502) 744-2112

Number

*

Email * diane.harcourt@gmail.com

Comments *

This is express my opposition to the rezoning at 2612 South English Station Road. This is currently an equine center and would be replaced by retail with the accompanying traffic, noise, and pollution, further diminishing green space. This will extend damage to Floyd's Fork which is so vital to our area. I am reminded of the old song lyrics, "They paved

paradise and put up a parking lot." There is ample retail available in Middletown and large home stores within minutes at Westport Road, Taylorsville Road, and at Blankenbaker. We simply do not need more! Once the green space is gone, it's gone forever!

Thank you for your time.

▪

Dock, Joel

From: Marti Foster <martifoster1010@gmail.com>
Sent: Thursday, May 26, 2022 10:24 AM
To: Dock, Joel
Subject: Case# 21-ZONE-0095 2612 S. English Station Road

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Currently, the Zoning & Planning Commission has given approval or in process of approving zoning changes for over approximately 3,500 apartment buildings built, under construction or in process of rezoning in our 5-8 mile radius area around South English Station Road. (My figures are estimates but very close).

I have just received the notice from Kevin Kramer about this property and the use of such property. I am writing to voice my concerns about having a 25,000 square foot Home Goods Store built on appx 7 acres at 2612 So. English Station Road. Case# 21-ZONE-0095 This area is rural residential and should not be rezoned to commercial.

- * our area has been inundated with over building of apartments, condos, single family homes
- * we are very concerned about the additional traffic that a store of this magnitude would create
- * we are very concerned about the private/public safety in our area
- * we are very concerned about the loss of green space/tree canopy.....the encroachment on Floyds Fork. The encroachment on scenic areas (Variances/Waivers)
- * we are very concerned about our lovely Parklands and how a store of this size with traffic issues/safety issues etc. would affect the Parklands

We do NOT need a large store on South English Station Road. Middletown just cannot handle the additional traffic now, much less if this store were to be built. Again, this area has been inundated with OVER BUILDING! Our area cannot handle anymore.

Do any members of the Planning and Zoning Commission actually visit the sites they are currently approving rezoning for?

Is there going to be a Traffic Study?

Is there going to be a Neighborhood Meeting on this issue/this Case?

Does it do any good at all for our neighborhoods to voice their concerns about rezoning property?

Thank you for reading my concerns.

Marti Foster
900 Ridge Point Drive
Louisville KY 40299

martifoster1010@gmail.com



MIDDLETON
REUTLINGER

401 South Fourth Street
Suite 2600
Louisville, KY 40202
www.middletonlaw.com

Jennifer M. Barbour
Main: 502.584.1135
Direct: 502.625.2787
jbarbour@middletonlaw.com

September 23, 2021

Kelli Jones, RLA
Sabak, Wilson & Lingo, Inc.
608 S. Third Street
Louisville, Kentucky 40202

RE: 2612 S. English Station Road Zone Change

Dear Kelli:

We have been retained to represent 21st Century Parks, Inc. d/b/a The Parklands of Floyds Fork ("21st Century Parks") regarding the above-referenced matter. Initially, thank you for your September 15, 2021 correspondence to 21st Century Parks, as well as taking the time to meet with them regarding the above-referenced zoning change. After reviewing the development plans, the proposed zoning changes, and your letter concerning entrances to the site, I unfortunately write to inform you that 21st Century Parks has strong objections and intends to oppose the zoning change and the planned development.

As an initial matter, the proposed changes and development plan do not keep with the rural nature of the current state of the property and surrounding area. Initially, the most recent detailed development plan indicates an additional 25,000 sq. ft. of building space will be added to the property site. In addition, an additional 95,720 sq. ft. of concrete and/or asphalt impervious area is planned to be added to the site. That more than doubles the existing impervious area on the site, and will remove significant portions of the rolling fields which currently characterize the property. The plans indicate the additional impervious area will largely accommodate a significant increase in parking for the proposed retail space and the creation of a "loading area" for semi-trucks to make deliveries to the proposed development.

This additional impervious area poses two concerns. Initially, due to the proximity of this property to Floyds Fork, any significant increase of impervious areas like those contained within the development plan, as well as runoff of rainwater from additional roofing area, such as the additional 25,000 sq. ft. building, pose a concern for the Floyds Fork. The proposed plan will create additional rainwater runoff from the property, which in turn may cause flooding or water pooling that are not currently created by the property's use.

The second area of concern caused by the plan's increase in impervious areas relates to the volume and nature of traffic the retail business is expected to bring to the area by your own letter's admission. At present, there is minimal semi-truck traffic on this segment of S. English Station Road because the commercial developments on S.

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SEP 28 2021

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21 - ZONE 7 - 0095

English Station Road are located further south on the road. Indeed, the commercial and non-rural section of S. English Station Road exists further south on the roadway, prior to the bend in the roadway where the area becomes definitely more rural in nature. Your letter and the plans substantiate that the proposed development will introduce a significant increase in commercial vehicle traffic onto this section of S. English Station Road. That increase will be not only in the nature of additional passenger vehicles with patrons of the retail business, but also larger commercial vehicles for deliveries of stock and/or purchased items.

This brings me to an additional basis for objecting to the proposed development plan and rezoning. In its current use, the property has minimal traffic and parking. Your plans indicate the site is likely to experience a significant increase in both passenger vehicle and commercial vehicle traffic. The recent plan indicates 100 parking spaces will be available on the property, which is more than a 200% increase in parking on the site.

In addition, the recent development plan includes creation of a second entrance on the property directly across from the intersection of Echo Trail with S. English Station Road. Both of these changes in the property create a major traffic and safety concern for pedestrians, cyclists, and passenger traffic that utilize S. English Station Road and Echo Trail. Pedestrians, cyclists and traffic will now have an additional entrance onto S. English Station Road to monitor for turning vehicles, and will also experience an increase in overall volume of traffic to be aware of while traversing the road or trail.

In addition, the proposed second entrance is likely to cause traffic congestion and create the potential for accidents with the introduction of another source of traffic at this intersection. It is proposed to be located directly across from the intersection of Echo Trail with S. English Station Road. The new entrance will introduce an additional point of entering and turning traffic at this intersection. Further, for vehicles heading north west on S. English Station Road, they will be rounding the bend and immediately encountering vehicles that are now stopped to yield in executing their left turn into the new proposed entrance. This will require drivers to quickly slow and/or stop depending on the length of time necessary for the turning vehicle to safely perform the turn.

Finally, 21st Century Parks enjoys the benefit of certain easement rights, which are reflected upon the recent development plans. The proposed development plans will impact those easement rights significantly. For instance, 21st Century Park maintains the easement area and trail corridor granted within the Grant of Easement Agreement. The development plan indicates a significant increase in heavy equipment and traffic will occur across the easement, including across the trail corridor of 21st Century Park. That increase in traffic (both in volume and weight) is likely to cause damage and/or increase wear and tear on the trail corridor and pedestrian/bike trail constructed within

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21 - ZONE - 0025

the easement. Recognizing this potential, the Grant of Easement Agreement required the erection of a fence to discourage members of the general public from gaining access to the Property. Additionally, to minimize the traffic across the easement, a gate was to be installed at the sole point of access to the Property to minimize and restrict access to the property across the easement. It is 21st Century Parks' belief that the proposed development also will unreasonably interfere with the utilization of the Trail Corridor by the general public in accordance with the Easement Agreement due to the significant increase in traffic the proposed development will bring to the area.

In summary, 21st Century Parks intends to vehemently oppose the proposed rezoning and development plans. Additionally, due to the impact the proposed development has on 21st Century Parks' easement rights, we intend to take all necessary steps to protect those rights.

Sincerely,



Jennifer M. Barbour

Enclosures: Kelli Jones' Letter; Site Plan

cc: Jeff O'Brien
Beth Stuber
Jeff Brown
Nicholas R. Preliasco
Councilman Anthony Piagentini
Councilman Stuart Benson

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SABAK, WILSON & LINGO, INC.
ENGINEERS, LANDSCAPE ARCHITECTS & PLANNERS
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PHONE : (502) 584-6271 • FAX : (502) 584-6292

September 15, 2021

21st Century Parks, Inc.
471 W. Main St., Ste. 202
Louisville, KY 40202

Re: 2612 S. English Station Road Zone Change

Dear David:

Once again, thank you for taking the time to meet with us. We understand and share your concerns for the safety of the users of the Louisville Loop and The Parklands. We want to assure you that we are committed to developing a solution that is safe for all users, including visitors to the subject site.

As you can see on the most recent version of the plan (pasted below), we added an entrance to the site that aligns with Echo Trail for the passenger car parking area. This entrance would be the primary ingress and egress for the site.



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The ability for tractor-trailer traffic at this new entrance is a little more complicated. As discussed on the call, we would need to make significant modifications to the front parking lot to allow a truck to make 3-90 degree turns back-to-back. (See red lines on the above image) This would make the front of the site far more industrial looking, which goes against the owner's desire to maintain the rural character of the property. To further complicate things, due to the topography of the existing site at the intersection of Echo Trail and S. English Station Road, we will have a fairly steep slope coming down from the street to the parking lot which further complicates truck maneuvering. (An 8% grade should be no issue for a passenger car or pickup truck.)

We also looked at constructing a new truck entrance further south on S. English Station Road, toward the other industrial users. However, sight distance in this location is poor. You can't see traffic coming around the curve and the existing topography in that area further complicates matters. This scenario would also require us to rezone more of the property than currently shown because you can't have commercial access through a residential zoning district, and the additional impervious surface required would go against the Floyds Fork Development Review Guidelines.

What we are proposing is to keep the existing entrance for the prior horse riding business as a truck only entrance that will remain gated when not in use. After the initial stocking of the facility, it is anticipated that there will only be 3 trucks a week (or less) in and out of the site. This will be significantly less than the number of horse trailers that previously used that entrance. The applicant's trucks are likely to arrive in the evening and leave in the morning (which we will address below in the proposed draft binding elements). Because the trucks will be coming from the warehouse in Tennessee they will know when the trucks are scheduled to arrive so they can be prepared to implement any agreed upon safety measures prior to their arrival. Disruptions to the path will be minimal and only for a few minutes at a time as the truck enters, and then again as the truck leaves. In addition, the existing entrance location is in the best spot on the property as far as sight distance is concerned.

In order to address what is set forth above and to mitigate the concerns, we propose the following binding element on the development plan that will run with the land and be enforceable by the City of Louisville. Below is our suggested language:

"The truck entrance shall be gated. After initial stocking of the store inventory, semi-trucks ("trucks") will be limited to a maximum of 3 trucks per week. Trucks will enter the gated entrance after 6:00 AM and depart the subject site before 9:00 AM. The gates will remain closed except during Truck access. The applicant agrees to the following additional safety measures with regard to the Louisville Loop:

- 1. The applicant will install permanent crosswalk striping on the entry pavement where the Louisville Loop crosses the existing access.***
- 2. The applicant will install "Truck Entrance" signs on the Louisville Loop, 10' before it crosses the Truck entrance.***
- 3. The applicant will install "Pedestrian Crossing" signs 10' before the Louisville Loop crosses the Truck entrance.***

I want to reiterate that if this were a new development and the site could be designed with a blank slate, it would be much easier to bring all the traffic in at Echo Trail. However, because we are trying to adaptively reuse the existing building and limit site impacts to preserve the rural nature of the area, we have unusual constraints.


Kelli Jones, RLA

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