

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO PLANNING COMMISSION
August 1, 2016**

A meeting of the Louisville Metro Planning Commission was held on August 1, 2016 at 6:00 p.m. at the Old Jail Building, located at 514 W. Liberty Street, Louisville, Kentucky.

Commission members present:

Donnie Blake, Chair
Vince Jarboe, Vice Chair
Jeff Brown
Robert Kirchdorfer
Lula Howard
Rob Peterson
David Tomes
Clifford Turner
Marilyn Lewis
Emma Smith

Staff Members present:

Deborah Bilitski, Director of Develop Louisville
Emily Liu, Director, Planning and Design Services
Joseph Reverman, Assistant Director, Planning and Design Services
Joe Haberman, Planning Manager
Brian Davis, Planning Manager
Brian Mabry, Planning Supervisor
Will Ford, Communications Specialist
Jon Baker, Legal Counsel
Pamela M. Brashear, Management Assistant

Others Present:

Theresa Zawacki, Economic Growth Innovations

The following matters were considered:

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PUBLIC HEARING

CASE NO. 16AMEND1007

Request: Amend the Land Development Code Related to Anaerobic Biodigesters
Project Name: Anaerobic Biodigesters
Applicant: Louisville Metro Government
Representative: Louisville Metro Government
Jurisdiction: Louisville Metro
Case Manager: Brian Mabry, AICP, Planning Supervisor

Notice of this public hearing appeared in **The Courier Journal**.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

00:17:41 Mr. Mabry discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

Jackie Mayfield, 4237 Bayberry Drive, Louisville, Ky. 40216
Brian Zoeller, 101 South 5th Street, Louisville, Ky. 40202
John O'Malley, 8103 Glen Falls Court, Louisville, Ky. 40291
Grandmaster Khalid Raheem, 3333 Greenwood Avenue, Louisville, Ky. 40211
Ray A. Barker, Sr., 730 Cecil Avenue, Louisville, Ky. 40211

Summary of testimony of those in favor:

01:09:09 Ms. Mayfield stated that the man bringing the bio-digesters here is doing a lot of good things in the community. "They're not being given the chance to show what they're capable of doing."

01:12:49 Mr. Zoeller is a partner at Bingham, Greenbaum and Doll, and has been involved with bio-digesters for over 2 years. "I'm concerned about the process we're going through, renewable energy in Louisville – the good it can do and also the chilling affect this process may have on potential future projects that may be innovative or outside the box."

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Mr. Zoeller discussed, in more detail, the operation of a bio-digester. The 2 major concerns are odor and safety.

01:41:25 Mr. O'Malley works on and helps build bio-digesters. "I believe in green technology and think it's great for our city. We're destroying our environment, hurting our water shed and air quality and we don't have to. As a community we have technology that can help us relieve that stress on our environment."

Mr. O'Malley gave examples of places that use the bio-digesters and said they are very safe.

01:52:11 Grandmaster Reheem said he has loved ones in Louisville and wouldn't want anything to happen to them. "As I did my research, I found out this is only about waste, not chemicals to blow up the city. There's a process for everything and we have to get out of our feelings, emotions and desires and learn about the process." Education is the key.

01:57:42 Mr. Barker was in opposition, but after careful study, is now in support. Also, he said he agrees with the regulation stating that a bio-digester has to be ¼ of a mile distance from residents, schools, churches, etc.

The following spoke in opposition to this request:

Councilwoman Mary C. Woolridge, 601 West Jefferson Street, Louisville, Ky. 40202
Gracie Lewis, 1711 South 36th Street, Louisville, Ky. 40211
Keith Baker, 3519 West Broadway, Louisville, Ky. 40211
Cleopatra Buckner, 413 East Muhammad Ali Boulevard, Louisville, Ky. 40202
Gladys Buckner, 3513 Regatta Way, Louisville, Ky. 40211
Eboni Cochran, 4304 Winnrose Way, Louisville, Ky. 40211
Rose M. Robinson, 5203 Yew Lane, Louisville, Ky. 40213
Curtis Wickerson, 5901 Fairington Drive, Louisville, Ky. 40218
Wes Grooms, 2100 Murray Avenue #5, Louisville, Ky. 40205
Clarinda Carothers, 5618 Reflection Drive, Louisville, Ky. 40218
John Owen, 620 North Oak Street, Louisville, Ky. 40212
Nancy Demartia, P.O. Box 482, 1922 Magazine Street, Louisville, Ky. 40201
Martina Kunnecke, 1527 Highlands Avenue, Louisville, Ky. 40204
James Marshall, 101 North 7th Street, Louisville, Ky. 40202
DeNita Wright, 3606 West Broadway, Louisville, Ky. 40211
Sandra J. Davis, 2625 Allston Avenue, Louisville, Ky. 40210
Carl Sitgraves, 4412 Sunflower, Louisville, Ky. 40216

Summary of testimony of those in opposition:

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02:42:49 Councilwoman Woolridge read her letter to the commissioners. The main issues are as follows: location of the bio-digesters, odors, delivery trucks, potential for explosions; distance from residents (1/2 mile should be the minimum); zoning classification areas; safety; also, consider banning the methane plants within the Land Development Code.

02:49:53 Ms. Lewis has visited an anaerobic bio-digester facility and seen the process first hand; however it was located in an agriculture area.

Ms. Lewis gave examples of some facilities exploding and no safety measures in place to handle the situation.

Ms. Lewis also asked why these types of facilities have to be placed in the west end. A better setting would be an agricultural area.

02:56:16 Mr. Baker said his main complaint is putting a bio-digester in a heavily populated area.

02:58:04 Ms. Cleopatra Buckner said she's worried about the odors and what effect it has on ones' health (in the west end). The bio-digester being odorless is a major concern because it could potentially be a 'silent killer'. "It's not safe to have the plant in our neighborhood."

03:02:28 Ms. Gladys Buckner remarked, "It seems to me that everything that is nasty and nobody wants it in their neighborhood they bring it to the west end."

03:05:01 Ms. Cochran stated, "When considering regulations for potentially harmful facilities, it is imperative to always consider the worst case scenario.

Ms. Cochran's concerns are as follows: no scientific basis for the 1320 foot buffer; if there's an explosion, what type of damage would there be to the surrounding structures; quality of life; odors and APCD.

03:18:33 Ms. Robinson, President of the Newburg Community Area Council, Inc., said she lives in Newburg and they don't want the bio-digesters either. "Methane is the primary constituent of natural gas and the second biggest driver of climate change after carbon dioxide."

Ms. Robinson remarked, "We ask that you look for an alternative site".

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03:23:56 Mr. Wickerson is against any proposal for a bio-digester to be located on 17th St.

03:27:06 Mr. Grooms remarked, "I want to register my opposition to any regulation or zoning that does not adhere to the wishes of the people that live in west Louisville. We all know this would not get built in Cherokee Triangle. I believe in the technology and think there can be some benefit. I beg you not to put profit before people."

03:28:28 Ms. Carothers asks the commissioners, "Will your family be affected by the methane?"

03:31:52 Mr. Owen stated, "When developing a law for the council and recommendations from this commission, it is unethical for the attorney of an organization that will be applying to the Board of Zoning Adjustment and this Planning Commission to enter testimony. That is a conflict of interest." The Planning Commission's first interest should be to the citizens.

03:38:48 Ms. Demartia remarked, "I am very concerned because what I see happening in this city is guidelines being made that target African Americans and poor whites while the east end rich are allowed to be in another category. I think that's wrong."

Ms. Demartia said she doesn't oppose technology.

03:43:36 Ms. Kunnecke is here on behalf of Neighborhood Planning and Preservation. The people who spoke in favor have something to gain (mostly financial), but the people who spoke in opposition have nothing to gain, except peace of mind.

Ms. Kunnecke recommends the following: providing a need assessment; maximize the benefits for the community; and proper planning so the community can set the standard for the country.

03:48:24 Mr. Marshall said there needs to be a comprehensive permitting process.

Mr. Marshall handed out a justification for the minimal ½ mile distance from residents. The information was gathered from the Department of Transportation's Emergency Response Guide book.

03:52:24 Ms. Wright stated that the decisions made today will be historical. "Waste has become a great money making commodity and humanity is out the window when it comes to money."

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03:57:32 Ms. Davis remarked, "I stand before you today asking you to just think that all lives matter and I would like you to take that into consideration when you make this decision."

03:58:26 Mr. Sitgraves stated that he worked in a chemical plant for 30 years and the plant had its own fire department. The bio-plants are supposed to be self-contained but are not realistically because at some point they will have to be cleaned, maintained and repaired. The chemicals to be used in the facilities are not safe for the community. "When you mix ammonia nitrate, hydrogen peroxide and ammonia, this thing can take a 5 mile square radius and leave it like an atomic bomb hit it."

The following spoke neither for nor against the request:

Tom Fitzgerald, 1600 Dundee Way, Louisville, Ky. 40205
Osidiyoso, 3739 Powell Avenue, Louisville, Ky. 40215

Summary of testimony of those neither for nor against:

02:01:47 Mr. Fitzgerald submitted comments into the record on behalf of the Kentucky Resources Council, Inc. Some of the concerns are as follows: definitions; Section 4.2.42 of the LDC as a "potentially hazardous or nuisance use"; restriction on bio-digesters to M-3 zones should be retained; the proposed setback of 1,320 feet should not be a fixed distance; additionally, KRC proposes these conditions be added:

1. In order to assure that the proposed facility receives rigorous review, the LDC should be modified to provide that any proposal for a bio-digester be reviewed by an independent consultant retained by the BOZA, and that the cost of that review should be passed to the applicant through a permitting fee.
2. All biogas condensate shall be discharged into a sealed drainage system or recirculated back into the digester. Liquids may be discharged into a sewer only as approved by MSD, or may be taken off-site in a closed tanker.
3. All bulking, transfer, and pre-treatment of waste shall be carried out in an enclosed building maintaining negative air pressure, with all waste storage and processing occurring on an impermeable surface with a sealed drainage system. Wastes shall be stored in enclosed containers or reactor vessels. The building shall be equipped with bio-filtration sufficient to prevent ambient release of odor, bio-aerosols, and microorganisms.
4. All storage and process tanks shall be bermed and shall have capacity at least 110% of the largest vessel or 25% of the total tankage volume.

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5. All waste received shall be processed and introduced into the digester unit within 24 hours of receipt.
6. The exclusion of bio-digesters as an agricultural land use should be limited to bio-digesters located on the site of an agricultural operation and utilizing only feedstocks generated by the farming operation. Otherwise, the facility falls outside of the Chapter 100 exclusion and becomes a commercial facility that is subject to regulation under Chapter 100.

04:05:20 Osidiyoso said he's new to this and doesn't know if he's for or against it.

Agency Testimony:

Keith Talley, Director of Air Pollution Control District, 701 West Ormsby Avenue.

04:22:15 Commissioner Howard asked Mr. Talley if APCD has reviewed any proposals for bio-digesters in Louisville. Mr. Talley said no, not any full proposals.

Mr. Talley's office handles complaints and usually the problem is odors.

04:24:54 Commissioner Tomes asked, "Are you aware of any problems with odor at other bio-digesters in town?" Mr. Talley said he would have to check, but is not aware of any.

04:25:46 Mr. Talley stated, "What we would like to see, is a company to provide us with a plan which indicates how they're going to control the odors they might create. We would take a look at that plan, relate it to the type of business they have to make sure they've done all the things we are aware of that would help mitigate that odor. We are talking about an Odor Mitigation Plan and not an Odor Elimination Plan. Just because we review it and approve their mitigation plan does not mean they will not have odors in the future. The other thing I want to make clear is that, in terms of it being ongoing, because they give us an Odor Mitigation Plan and because we approve it up front, does not mean we don't have the ability to go back and revise it, have them do another one if it doesn't address their situation at all and to continually address that up to enforcement."

Deliberation

04:34:30 Commissioner Kirchdorfer agrees with Mr. Fitzgerald's suggestions.

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Commissioner Brown said he would like to see the M-3 zoning with CUP and graduate to other zoning classifications after we see that it's working.

Commissioner Lewis stated, "We do need to be focused on sustainable and renewable energy and to look for solutions." Also, the maps have been very helpful.

Commissioner Jarboe thinks M-2 and M-3 would be good areas for the bio-digesters. If they work safely in these zoning areas, then maybe in the future they can be placed in other areas. Also, they should be ½ mile from homes, schools and churches. "I don't know anything about the blast area."

Commissioner Howard prefers M2 and M-3 zoning classifications with CUP only. Also, she likes Fitzgerald's non-fixed distance with a default setback distance of 2640 feet and no less than 1320 feet.

Commissioner Tomes likes M-3 zoning with ½ mile distance; also fencing and containment berms (Fitzgerald's handout). He also likes idea of hiring an independent expert as a consultant.

Commissioner Peterson likes M-3 and possibly M-2 zoning with ½ to ¼ mile. The agricultural industry could benefit as well. "We have to be responsible about the waste we produce. We can't just send it to Trimble County."

Commissioner Smith agrees with needing an expert. She thinks ½ mile may not be far enough – flexible buffer zone will depend on materials being digested.

Chairman Blake agrees with M-3 zoning with CUP, so if EZ-1 is compatible, then change the zoning.

04:57:08 Commissioner Brown proposed the following: page 2 of staff report, change 4.2.63 on zones for bio-digester – list M-3 only; under A – Bio-digester shall be a minimum of ½ mile from nearest existing residential uses... Add sentence – BOZA may waive the buffer requirement to be no less than ¼ mile based on scale and capacity.; Under G – incorporate the recommendations from the letter from APCD – having the opportunity to review and approve that plan and working with the applicant as they go through the process; under H – add for review and approval by the fire department, EMA and Metro Safe; under J – add haul routes for the raw and processed materials through the county; also add, as part of the ordinance, the first 5 of the 6 points on the last page of Mr. Fitzgerald's handout; and a solid fence around the operational area of the facility.

Commissioner Lewis suggests using ACCEPT, rather than APPROVED.

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An audio/visual recording of the Planning Commission hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

On a motion by Commissioner Brown, seconded by Commissioner Tomes, the following resolution was adopted.

RESOLVED, that the Louisville Metro Planning Commission does hereby **CONTINUE** Case No. 16AMEND1007 to the August 4, 2016 Planning Commission meeting, Business Session to address the revisions discussed during Business Session in this meeting.

The vote was as follows:

YES: Commissioners Blake, Brown, Howard, Jarboe, Kirchdorfer, Lewis, Peterson, Smith, Tomes and Turner

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STANDING COMMITTEE REPORTS

Land Development and Transportation Committee

No report given.

Site Inspection Committee

No report given.

Planning Committee

No report given.

Development Review Committee

No report given.

Policy and Procedures Committee

No report given.

CHAIRPERSON/DIRECTOR'S REPORT

No report given.

ADJOURNMENT

The meeting adjourned at approximately 11:09 p.m.

Chair

Planning Director