

Henderson City-County  
Planning Commission  
September 6, 2022

The Henderson City-County Planning Commission held a meeting September 6, 2022 at 6:00 p.m., at the Henderson Municipal Center, 222 First Street, Third Floor Assembly Room, Henderson, Kentucky. Members present: Chairman David Dixon, Vice-Chairman Kevin Richard, Bobbie Jarrett, Mac Arnold, Stacy Denton, Gray Hodge, Kevin Herron, Dickie Johnson, Gary Gibson, X.R. Royster, Frank Boyett and Tommy Joe Fridy. Doug Bell was present via ZOOM. Staff present: Director Brian Bishop, Jennifer Marks, Theresa Curtis, Heather Lauderdale and Chris Raymer.

***MEETING BEGAN AT 6:00 PM***

Chairman Dixon: I would like to call this September 6, 2022 meeting of the Henderson City-County Planning Commission to order. Welcome to everybody and thank you for coming.

Madame Secretary, can you call the roll?

Chairman Dixon: Very good, thank you. Do we have a quorum?

Heather Lauderdale: We do.

Chairman Dixon: Excellent.

We've got some Public Hearing items this evening so, I need a motion to go into Public Hearing.

***MOTION WAS MADE BY MAC ARNOLD, SECONDED BY KEVIN RICHARD TO GO INTO PUBLIC HEARING.***

Chairman Dixon: We have a motion and a second, any discussion?

All in favor say aye.

***AYE: ALL***

Chairman Dixon: Any opposed?

Brian Bishop: Theresa, can you see if Doug is on ZOOM?

Theresa Curtis: There he is.

Chairman Dixon: Ok, Commissioner Bell has joined us.

**Doug Bell entered the meeting via ZOOM.**

The first item is **the approval of the minutes from the August 2 and August 3, 2022 Planning Commission meetings**. I need a motion to approve.

***MOTION WAS MADE BY BOBBIE JARRETT, SECONDED BY X.R. ROYSTER TO APPROVE THE MINUTES FROM AUGUST 2 AND AUGUST 3, 2022 PLANNING COMMISSION MEETINGS AS DISTRIBUTED.***

Chairman Dixon: We have a motion and a second, any discussion?

All in favor say aye.

***AYE: ALL***

Chairman Dixon: Any opposed?

The minutes are approved.

Chairman Dixon: The next item is a **Rezoning #1130 with a Development Plan**. Mr. Bishop, are you going to help us with that?

Brian Bishop: Yes sir.

Submitted by Mulzer Crushed Stone, Inc. (Ken Mulzer) for the property located in the City of Henderson at 645 (PID #1-3-4-6), 649 (PID #1-3-4-8), and 651 (PID #1-3-4-7) West Main Street, containing approximately 28,600 sq. ft. Applicants request a zoning change/map amendment from Henderson Innovative Planning District (HIP) to Light

Industrial District (M-1) with a graphic development plan, to consolidate the lots for a proposed 8,000 sq. ft. building.

As I said, the applicant is proposing an 8,000 sq. ft. building that will be used to store landscaping and mowing equipment.

The property is currently owned by Mulzer Crushed Stone and it is proposed to be purchased by Mr. Scott McCord, who is in the audience with us. If the property is rezoned it will be subject to a consolidation plat and then a small technical site plan that will be brought back to the Planning Commission staff and in conjunction with the technical advisors, we will approve the site plan and then the rezoning will be complete.

Staff has prepared a proposed motion and findings of fact.

If you have any questions, I'll do my best to answer.

Chairman Dixon: Commission, do you have any questions for staff?

What is the Henderson...the HIP District? What is that?

Brian Bishop: The HIP District was created roughly in 2016 or 2017. It was basically a zone that was created to be a little more innovative as the name applies, to create more flexibility in zoning.

Especially in that part of town, we wanted to kind of be a little more creative with the zoning there. Honestly, it's not taken off as we would have expected and a property like this may not have been the best choice for the HIP District especially considering the historic use of Mulzer Crushed Stone and the adjacent property owners.

Chairman Dixon: Okay, any other questions for staff?

Mr. Bishop, could you share this proposed motion please?

Brian Bishop: Yes sir.

**REZONING #1130 WITH A GRAPHIC DEVELOPMENT PLAN-**

Submitted by Mulzer Crushed Stone, Inc. (Ken Mulzer) for the property located in the City of Henderson at 645 (PID #1-3-4-6), 649 (PID #1-3-4-8), and 651 (PID #1-3-4-7) West Main Street, containing approximately 28,600 sq. ft. Applicants request a zoning change/map amendment from Henderson Innovative Planning District (HIP) to Light Industrial District (M-1) with a graphic development plan, to consolidate the lots for a proposed 8,000 sq. ft. building.

*I move that the Planning Commission recommend that the Henderson Board of Commissioners (the “City”) APPROVE Rezoning Application #1130 changing the zoning classification from Henderson Innovative Planning District (HIP) to City Light Industrial (M-1), with a Graphic Development Plan, which is incorporated herein by reference, for the subject property, I leave the motion open for other members of the Planning Commission to add findings of fact in support of this motion, because;*

The proposed rezoning is not in agreement with the future land use map of the comprehensive plan.

The existing HIP zoning classification is inappropriate and the proposed M-1 zoning classification is appropriate, because:

The property has historically been used in an industrial nature.

Surrounding parcels are zoned for similar uses.

The property was inaccurately lumped into a larger rezoning when the HIP District was created.

Developing the property in this nature creates positive infill in a currently vacant area.

The three parcels will be consolidated for the purpose of building a landscape equipment storage facility.

Chairman Dixon: Very good. Would you like these findings of facts to be entered into the record as your findings of fact?

Brian Bishop: I would, sir.

Tommy Joe Fridy: As your testimony?

Chairman Dixon: Excuse me?

Tommy Joe Fridy: As your testimony?

Brian Bishop: Yes sir.

Chairman Dixon: Would anyone here like to speak in favor of this project?

Thank you sir, I need your name.

Chris Hopgood: Chris Hopgood.

Chairman Dixon: Address?

Chris Hopgood: 318 Second Street, Henderson.

Chairman Dixon: Do you promise to tell the truth, the whole truth and nothing but the truth?

Chris Hopgood: I do.

Chairman Dixon: Very good, thank you.

Chris Hopgood: I'm here for the applicant and the applicant has agreed to sell the property to Mr. McCord providing the rezoning goes through.

This is one of those properties that sort of tucked into a zone that really doesn't fit with what it's been used for.

You've got Chase Pump and Supply and then Scott McCord's business which used to be A-1 Septic, County Water has some storage behind it and if you didn't have this before you, you may not even know where West Main Street was but it's a little street that runs in behind the County Water building.

Approving this zoning would allow Mr. McCord to build a building adjacent to his current property and allow him to expand his business and we think it fits very well within the nature of the rezone and the property would then have a nice, new building that will generate more revenue for the City and the County.

Chairman Dixon: Like he said, I didn't realize we had two (2) Main Streets in Henderson.

Chris Hopgood: I think it goes way, way back looking at the old City Plat I think it goes pretty far back.

Chairman Dixon: Any questions for Mr. Hopgood?

Thank you, sir.

Is there anyone here who would like to speak against this proposal?

Does the Commission have any further comments or questions for anyone involved?

The motion that was presented, are there subject-to's that needed to be added on to that?

Brian Bishop: We would request that it be subject-to a consolidation plat.

Chairman Dixon: If there are no further comments or questions, I'll entertain a motion in regard to Rezoning #1130 with a Development Plan.

***MOTION WAS MADE BY BOBBIE JARRETT, SECONDED BY MAC ARNOLD TO MAKE A MOTION TO RECOMMEND THAT THE HENDERSON BOARD OF COMMISSIONERS APPROVE REZONING #1130 CHANGING THE ZONING CLASSIFICATION FROM HENDERSON INNOVATIVE PLANNING DISTRICT (HIP) TO LIGHT INDUSTRIAL DISTRICT (M-1) WITH A GRAPHIC DEVELOPMENT PLAN AND THE FINDINGS OF FACTS READ***

***IN TO THE RECORD AS TESTIMONY. SUBJECT TO A CONSOLIDATION PLAT.***

Chairman Dixon: We have a motion and second, any further discussion?

Please call the roll.

***AYE: ALL***

Chairman Dixon: Very good, the motion passes.

The next item is a review of the **Zoning Ordinance and changes to certain sections** by the request of the Henderson City Commission.

**GRAY HODGE RECUSED HIMSELF FROM THIS HEARING**

Dawn Kelsey: Good evening. Steve and I are going to do a little duet this evening for your entertainment.

Chairman Dixon: Who wants to go first?

Dawn Kelsey: I'll start.

Chairman Dixon: Name?

Dawn Kelsey: Dawn Kelsey.

Chairman Dixon: Address?

Dawn Kelsey: 222 First Street.

Chairman Dixon: Do you promise to tell the truth, the whole truth and nothing but the truth?

Dawn Kelsey: I do.

Chairman Dixon: Good. And you, sir?

Steve Davis: Steve Davis.

Chairman Dixon: Your address?

Steve Davis: 1990 Barret Court, Suite B.

Chairman Dixon: And you promise to tell the truth, the whole truth and nothing but the truth?

Steve Davis: Yes sir.

Chairman Dixon: Very good, thank you all.

Dawn Kelsey: The City Commission listened to a recommendation made by staff about a month and a half ago so, we're here to bring the presentation to you all tonight.

The goal....so, it's for a Residential Subdivided Manufactured Home District and the goal is...in 1969, the City annexed property off of Old Corydon Road which included a subdivision which was platted and designed for manufactured homes. In fact, it was fully developed in 1969.

When it came into the City, it was zoned R-2 and the property was fully developed so the limitations of R-2 really didn't matter but it was most likely an inappropriate zoning classification. I was one (1) years old so I couldn't come and tell you all that but I've come to you today to talk to you about it.

So, particularly it was Green Acres that we're coming to talk to you about but this zoning district will be able to be used for other zoning districts. This is the plat for Green Acres here.

You can see that was a fully developed mobile home district where each property owner owned their property. So, unlike the manufactured home district which anticipates one (1) class with different lots on it and in Green Acres you have many different lots that are individually owned. So, really no one thought about this for quite some time.

R-2, manufactured homes aren't allowed in R-2 districts. So, if a home fell in disrepair and was gone for over a year it would lose its non-conforming and you couldn't replace it with a manufactured home.

The minimum lot width was 60'. Most of these lots were 60' but some of them are not 60'. Then front yard and back yard setbacks are 20'. Most of the front yards can meet the 20' but as it was platted, some of them were platted with 15' back yard setbacks. So, there's no way for these properties to come into compliance in our current zoning; there's just no way to do it.

It wasn't a problem until the last few years. In the last few years, the neighborhood has really, just pure age has really started to go down and in fact we've had to write up many Code Violations and the City has taken down trailers out there because of the state and some of those trailers that we took down, they've lost their non-conforming use. So they can't, currently under R-2, they can't replace it with a trailer.

Now many of the lots have now been purchased by some new developers that are looking to add money into the neighborhood and honestly we are hurting for low income or medium income housing in Henderson. I think it would be great if we could have more where we currently need them and this would be a wonderful neighborhood to do that but currently, with the limitations we have there is no way to do that.

So, what we've come to talk to you about is a new Residential Subdivided Manufactured Home District and in it, Class A and B manufactured homes can be placed as well as single family and then you can have accessory uses as well; yard barns or carports.

Frank Boyett: So this Class A and Class B...Class A are new ones?

Dawn Kelsey: Yes.

Frank Boyett: Class B are ones that have been built since what, 1976?

Dawn Kelsey: That's his call.

Steve Davis: Class A meet our standardizations that we have in the ordinances which are not just manufactured past 1976 but also have a

masonry skirt, a pitched roof that meets similar to what you would see in a residential neighborhood of stick-built homes and really, by all standards looking at it, it would be hard to tell it is a manufactured home. The door has to face the front of the road, it can't...a lot of the manufactured houses you see the door coming out the side of a lot. So, that's Class A.

Our Class B, it could be a new manufactured house, HUD certified home, it could be a used one. Class B is more of like one that doesn't meet our standards from Class A but would still be considered a legal homes district per HUD regulations for the zone.

Chairman Dixon: What's Class C and D? What's the difference between C and D?

Steve Davis: With manufactured homes there are several standardizations like you can get what's called a B Seal which is okay for this area, it's not a new home necessarily but it is livable and it does meet the zoning regulations as far as wind load, snow load, truss uplifts and things like that that would be considered standards for the area.

I honestly don't know what D is.

Frank Boyett: It's not acceptable, not livable?

Dawn Kelsey: Class C and D are not allowable in any of our districts. So, in our other Manufactured Home Districts we don't allow Class C or D.

Chairman Dixon: In the neighborhood you've used as an example, there are Class C and D homes?

Steve Davis: I can't verify that because I've not really been in the homes.

Typically you go inside the house and the house would have a certification. A lot of times there would be what's called a data tag or

plate underneath the kitchen sink, some of those are still there, and some have been removed years ago.

So, I cannot, there is absolutely no way I can verify it.

Chairman Dixon: There are some lots you said that have been effected by this already and they can't be replaced?

Steve Davis: Yes sir. Those houses have been condemned and removed.

Dawn Kelsey: Right.

So, recognize that right now it's an R-2 zone. So, the only way you would be able to put a manufactured home back is if you get it done within a year or it becomes, as Mac knows from BOZA, it would be a non-conforming use. Right now those are non-conforming use. Actually all of those mobile homes out there right now are non-conforming use. So if you can get it back into the same footprint within a year, if not you can't.

Steve Davis: That's the one (1) exception, let me say that.

In R-2 you're not allowed to have a manufactured home, period.

You couldn't get a Conditional Use, you couldn't get any kind of...it is just not allowed.

Dawn Kelsey: So, you've got developers out here who want to bring in manufactured homes and they can't.

Steve Davis: They can't go in an R-2.

Dawn Kelsey: They can't go.

Chairman Dixon: Each of these lots would be potentially considered for rezoning separately?

Dawn Kelsey: They would be but it would be...yes. But there is not really a new zone they can go in because you would really have to do an R-3 or an Audubon Residential.

Chairman Dixon: If this new zone was established?

Dawn Kelsey: Oh, with this new zone, yes.

Chairman Dixon: Each of those on an individual basis, each of those lots would be...

Dawn Kelsey: What we would do is ask for a map amendment.

If you all approve this, what we will do is as for a map amendment and so the entire subdivision all at once would be amended into this district.

I think you were on the Commission when we did Audubon Residential and it would be the same thing. We would just do one (1), big map amendment and it would benefit everyone because right now they are all kind of stuck.

Mac Arnold: This only applies to this subdivision and what you said earlier that the mobile units that are there are there also own the property underneath.

Steve Davis: Yes.

Dawn Kelsey: Yes.

Steve Davis: That's correct. It's the only place in all of Henderson like this, where you can have a mobile home on your property. Every other one is a mobile home park or say like a residential ARD (Audubon Residential District) where you can have a mobile home on an individual lot.

This is a neighborhood that was specifically created for individual ownership of manufactured homes.

Dawn Kelsey: When it was created and developed, it was in the County. So, that's how that all worked and then it came into the City in 1969. We don't know, Marie the City Clerk pulled all the documents, we're not quite sure of why it came or what the impetus was to annex it in but it was annexed in and she was able to pull the documentation from where it was annexed in.

Gary Gibson: You can't use the grandfather clause being there since 1969 in case they want to re-do their trailer they can't even re-do their trailer?

Dawn Kelsey: If they do it within one (1) year and it has to be in the current footprint.

Steve Davis: The exact, same footprint.

Gary Gibson: In other words they couldn't put a 70' where a 50' was?

Steve Davis: No sir.

Dawn Kelsey: Not currently, no.

We'll get to what the setbacks are but right now they are handcuffed.

Gary Gibson: Nothing is legal.

Frank Boyett: This is the only area of town where each lot is individually owned?

Dawn Kelsey: Yes.

Frank Boyett: But are there other areas where this would be a good zone?

Dawn Kelsey: So, one of the things we talked about, sorry Steve...one of the things we talked about where that there are some older mobile home parks currently that we could overlay this district on them. So, they could go from their current state to being where they could come to

you all to get rezoned and they could sell those lots off and re-create a new neighborhood.

The other thing is as we annex in more property and housing prices continue to rise, this maybe a very good alternative for affordable housing in our community.

But right now, what happened, the reason we looked at it is new developers came in....well, one (1) it was a Codes...I mean Steve and Dobby are out there all the time doing Codes problems and then when the new developers went in to do something, Steve was like...

Steve Davis: It's an R-2, you can't put a mobile home in there. It is not allowed by ordinance.

Dawn Kelsey: Are you ready for me to go on?

The first thing you can see is the neighborhood has some issues. We have been tearing down mobile homes out there. What we would do is put a Conditional Use in; home occupations, churches, schools, parks, family childcare and as you all know the law changed this past year and so any residential zone you have to be able to do childcare as a Conditional Use at least and then residential care facilities.

The building site, we would ask that 6,000 square feet be the minimum for the building site but you see "Unless otherwise set forth on a recorded plat approved prior to the adoption of this zoning designation."

So that would grandfather your people in who might get stuck. Most of these people are going to hit 6,000 but there's a few of those lots that are in corners....there are a few of those lots, and Steve and Theresa Richey really got on GIS and there are a few lots that just can't meet it, just by the way it was platted; mainly in some of the corners of this road here.

So, that's why we put in that exception but no one else would ever be able to do that. But for any other permitted use other than your manufactured home dwelling or single family dwelling we require

15,000 square feet. So if you had a church or you had a school that would be allowable.

Setback requirements are the same that we currently have in R-2 except we put the exception “Unless otherwise set forth on a recorded plat approved prior to the adoption of this zoning designation” so, those few lots that don’t have that 20’ in the back yard, mainly back yard issues, will still be able to put in a new mobile home there. Then these requirements are what we require from all mobile homes with the skirt, the underpinning and you have to have two (2) off-street parking places.

So, did I miss anything on those?

Steve Davis: No, I think you covered most everything.

Dawn Kelsey: It was the recommendation of the Commission that we bring this to you all so that we can have more flexibility and allow more affordable homes in our community.

Chairman Dixon: What I’m taking that, in the overview, this is less restrictive on members of the public and not more restrictive.

Is that correct? Does everybody agree on that?

Dawn Kelsey: Yes.

Chairman Dixon: Does everybody agree on that?

Steve Davis: It is the only way we can think of to allow people to put manufactured homes, which this is designed for in an area that it was designed to be. So I would think, yeah.

Right now, R-2 is very restrictive in that area.

Chairman Dixon: And I’m also thinking about future locations, as Commissioner Boyett mentioned, it could be applicable in the future...and encourage this type of housing.

Mac Arnold: Are there any other mobile home parks in the City?

Dawn Kelsey: Yes.

Mac Arnold: How are they handled?

Dawn Kelsey: They are a mobile home park. They are one lot, one parcel and then they have their own little sections in it but they're not separate parcels. That's the difference.

Steve Davis: That's what makes this unique, everyone owns their own lot.

Chairman Dixon: So as far as Codes Enforcement in those other mobile home parks...

Mac Arnold: When these were originally put in back in the 60's and that was in the County, was there septic systems with them? What was their....

Steve Davis: I do know the electrical systems were wired like you would see in a mobile home park and there are some problems with that right now because these are individually owned so it's kind of become a puzzle for a lot of different people.

There are a lot of hurdles in this neighborhood, a lot of head scratching going on here.

Tommy Joe Fridy: There was no zoning in the County.

Dawn Kelsey: Well, there you go. There was no zoning in the County so it was allowed in...well, this happened prior to 1969 because it came into the City in 1969. So Mac, there's your answer.

Mac Arnold: I just was curious. I mean, I know some places have individual sewer system for that subdivision or whatever, there's a couple out in the county that was that way.

Dawn Kelsey: There was one by Finley Addition that the City just brought in and put them on sewer lines.

Mac Arnold: I just kind of wondered, you know, when we were talking about all this, you know how were they....were they all piped over to the creek? I don't know.

Chairman Dixon: Any other questions from the Commission?

Any other questions for staff in this regard?

Thank you very much.

Gary Gibson: You can make that more (inaudible), the people that live there can go ahead and stay there without any complications.

Dawn Kelsey: Yes, this will allow it.

Gary Gibson: You know, that's their home.

Steve Davis: And we want them to keep their homes.

Dawn Kelsey: We do. This will allow it, what we will have to do if you all approve it, it'll come to City Commission, we'll put it in as an ordinance, have two (2) reads and then we will have to go back and do a map amendment. So you all will see Green Acres again when we ask for that map amendment. This will now allow those people to replace... they can currently live in their mobile homes but they can't replace their mobile homes unless they are on the same footprint.

Steve Davis: There's a real challenge when it comes to manufactured houses, actually getting one is the challenge right now but getting one the same size you have is very difficult.

Gary Gibson: Well, back in those days everything was about 50' long and 10' wide and now they have 14' by 75'.

Steve Davis: Yes, it's really a challenge and this is what we think after wrapping our minds around the situation is a good scenario for that.

Chairman Dixon: Any other questions or comments?

Frank Boyett: I think this is innovative. I think this is good work!

Dawn Kelsey: Thank you.

We have another one, do you want to vote on this one first or do you want to hear the other one?

Chairman Dixon: No, we're going to vote on this one separately.

Dawn Kelsey: Okay.

Chairman Dixon: Thank you very much...

Kevin Richard: So to clarify, the required action is to approve this proposed new zoning classification or recommend approval?

Tommy Joe Fridy: We recommend. We hold a public hearing and recommend the City Commission can only amend the zoning ordinance. We, the Planning Commission, can adopt Subdivision Regulations.

Chairman Dixon: Very good, just to make sure we get this on the record, is there anyone here to speak in opposition to this change or addition to the regulations?

I hear none. If there are no other comments or questions I'll entertain a motion in this regard.

Tommy Joe Fridy: Mr. Chairman, may I make a point of order?

Chairman Dixon: Of course.

Tommy Joe Fridy: Would you consider adding to your motion that the testimony be adopted as part of your motion as the reasons for recommending this to the City Commission?

You're supposed to give...not findings of facts but we're supposed to give a reason and that was a wonderful reason.

***MOTION WAS MADE BY KEVIN RICHARD, SECONDED BY MAC ARNOLD TO RECOMMEND TO THE CITY COMMISSION TO APPROVE THE NEW ZONING CLASSIFICATION R-SMH, RESIDENTIAL SUBDIVIDED MANUFACTURED HOME AS THE***

***CURRENT ZONING OF R-2 DOES NOT SEEM TO BE APPROPRIATE FOR THIS AREA AND INHIBITS THE DEVELOPMENT OF THIS AREA AND A NEW ZONING CLASSIFICATION SUCH AS THIS WOULD RECTIFY THIS ISSUE.***

Chairman Dixon: We have a motion and a second, any further discussion?

Madame Secretary, please call the roll.

***AYE: ALL***

***GRAY HODGE RECUSED HIMSELF FROM THIS VOTE.***

Chairman Dixon: Very good, the motion passes.

We're going to move on to the next public hearing item, Text Amendments to the Subdivision Regulations Article 1.14, Ms. Marks?

Jennifer Marks: Mr. Chairman, we actually have one (1) more if you look above there; Text Amendments to Article IV, General Provisions, Section 4.24 Accessory buildings.

Chairman Dixon: I'm sorry, my mistake.

Dawn Kelsey: Do you want to do this one or do you want me to take it?

Steve Davis: You can do this one.

Dawn Kelsey: Well, thank you.

So, we've had as we've been looking at changes and issues that our current zoning ordinance has, one of the issues that have come up are accessory buildings.

Currently, there are in our zoning ordinance accessory buildings can only be in the side or the rear and recognize that a side yard starts at the corner of the building. So, your building defines your side yard. Anything in front of that is front yard.

Well, as you know we're getting larger lots. They're getting bigger houses, larger lots and now we're seeing in other communities things that are called executive lots that are an acre or more.

So, we were looking at this and on those lots, they are big enough that you can put an accessory building in front of the building but not really obstruct the building itself. We looked and we thought in R-1 and R-4 or an Agricultural zone in lots that are at least 25,000 square feet that it would allow more flexibility for property owners to be able to build some accessory buildings in front of their homes but it not be an issue of blocking the neighborhood or looking odd in the neighborhood.

I grew up in Highlander Acres so I'm going to use Highlander Acres. If you put an accessory building on a lot in Highlander Acres in the front it just wouldn't work, it would block the view and wouldn't be commensurable with the neighborhood. In these bigger and bigger lots now, there are more designs that are going into them.

So, we put this to the City Commission and our recommendation would be is that accessory building could be placed in an R-1 and R-4 or an Agricultural zone in lots with 25,000 square feet as a Conditional Use. So, it wouldn't just be automatic it would be a Conditional Use so Mac would get to hear any of those.

Mac Arnold: I was curious, that would take care of some of the problems we've had in the past that are on corner lots because they have two (1) front yards.

Steve Davis: Exactly.

Dawn Kelsey: That has been issues that you all have had. We've had an issue I know in the last three (3) years with someone wanting to put a carport which was a front yard but it was really a side yard but it was a front yard. Under this we would be able to bring it if the yard were large enough and then it would be up to BOZA to determine whether that would work with that.

So, that is something that we took to the City Commission and they sent it to you all for the public hearing. We think it would give property owners more flexibility in these larger lots.

Chairman Dixon: What is the R-4 zone?

Dawn Kelsey: Riverfront-4.

I didn't bring my book with me, do you have what RF-4...?

Jennifer Marks: It's the residential district of riverfront.

Dawn Kelsey: Yes.

Mac Arnold: So this is not going to be permitted in an R-2 zone?

Dawn Kelsey: No because most R-2 zones are so small and you have smaller areas.

Chairman Dixon: Any questions from the Commission? Comments?

Do we have anyone else here who would like to speak in favor of this change or against it, or in any other fashion?

I hear none. I'll entertain a motion in regard to Text Amendment to Article IV, General Provisions, Section 4.24 accessory buildings.

***MOTION WAS MADE BY BOBBIE JARRETT, SECONDED BY X.R. ROYSTER TO RECOMMEND TO THE CITY OF HENDERSON'S BOARD OF COMMISSIONERS TO APPROVE TEXT AMENDMENTS TO ARTICLE IX, GENERAL PROVISIONS, SECTION 4.24 ACCESSORY BUILDING AND I ADOPT THE TESTIMONY PRESENTED AS FINDINGS OF FACTS.***

Chairman Dixon: I have a motion and second, any further discussion?

Madame Secretary, please call the roll.

***AYE: ALL***

***GRAY HODGE RECUSED HIMSELF FROM THIS VOTE.***

Chairman Dixon: Very good, thank you.

Now I think we can move on to Item C and Commissioner Hodge can rejoin us.

Jennifer Marks: Do you want me to wait for him to get back or do you want me to go ahead?

Chairman Dixon: Wait until he comes back, please.

Tommy Joe Fridy: Mr. Chairman?

Chairman Dixon: Yes sir?

Tommy Joe Fridy: It would not need to be part of the motion but it would be good for the minutes to reflect that both of these amendments were originated by the City, that's a magic term in the statute.

An amendment to the zoning ordinance can either be originated by the Planning Commission or by the government body, in this case the City and the County in the case of the County and in Corydon as in case of Corydon.

It's just good for the record to show it was originated by the City.

Chairman Dixon: Very good, thank you.

I think we're ready for Item C.

Jennifer Marks: As Tommy Joe just mentioned, we are now talking about text amendments to our Subdivision Regulations so a completely different document there.

As you all are aware, Ag Divisions for the last, at least two (2) years have come to you all for approval. Those are lots that are typically five (5) or more acres that are being divided to maintain their agricultural use.

So, not to build home specifically and things like that but to meet one of the agricultural uses that are discussed in KRS, I believe 100 or 111.

It was recently brought to our attention that there was a court case in Kentucky, Nash v. Campbell County and you can look it up if you want but more or less the thing we're discussing today it was found that Planning Commissions really should have no ruling, no say when it comes to an agricultural division because of the agricultural supremacy clause.

We are just making updates to our subdivision regulations so that we are in compliance with the way that it should be done. For the most part the discussion there is that as long as an agricultural division is five (5) or more acres, meets one of the required uses discussed in KRS and does not create a new street then that would be considered an agricultural use division exemption that we have discussed previously that used to come to you all.

These would no longer come to the Planning Commission, they would be able to be recorded as long as they meet that three-prong test as discussed. In conjunction with Mr. Fridy as well as some surveyors and the City we were able to come up with some language.

So you will see in the first text amendment we are discussing, we are just updating how exactly it would meet an agricultural use. So, for the definition of a subdivision we have included that language there for unless it's an agricultural use it does not fall under the subdivision regulations at that point.

The part that is most important...

Chairman Dixon: Excuse me...

Jennifer Marks: I'm sorry, go ahead.

Chairman Dixon: You're referencing Article I, Section 1.14 Definition of Subdivision?

Jennifer Marks: Correct.

Chairman Dixon: We inserted something and deleted something.

Tommy Joe Fridy: That is also referencing 2.3

Chairman Dixon: Now we're moving on to Section 2.3?

Tommy Joe Fridy: Section 7, actually 7. She's discussing 7 right now.

Chairman Dixon: These are the pages that are entirely in blue which I assume they are complete additions....

Jennifer Marks: Correct, the blue is complete additions.

So, for 1.14, that's the definition of a subdivision that we had when you first open up for General Provisions so that just needed to be edited a bit because we are no longer...it needs to be better defined, I guess. It says an agricultural use and not involving a new street, we want to make sure that we are actually including the KRS and also connecting it to the changes we are making on 2.3.

The next page there is kind of where we get into the weeds I guess of how this is going to change. So, this is how we would do our content and format for a minor subdivision which agricultural exempt divisions would be considered that and so we define and Mr. Fridy please correct me if I'm wrong here because we discussed this a lot about we wanted an exemption to be put on the plats or a certification showing that these are agriculturally exempt lots.

I can read all of this for you all or if you have questions we can do it that way but more or less it is going to, for A, it has to be maintained as an agricultural use of those uses that are defined through KRS. Those are specific to KRS and not something we come up with.

We do list those in our subdivision regulations basically they are certifying they are only using this for an agricultural use moving forward. They are not going to advertise it for sale as a residential lot to be able to build on. No new streets are going to be built and they will maintain that five (5) acres or larger for both the division itself as well as the remainder lot.

Chairman Dixon: Excuse me?

Jennifer Marks: Yes?

Chairman Dixon: They can build a residence as long as it is not for sale to the public?

Jennifer Marks: Correct. As long as they are actively involved in the agricultural use that is taking place on the property for which they have fallen into that agricultural use category then they can build a residence on the property.

Chairman Dixon: If they're farming the property.

Jennifer Marks: If they are actively involved, yes.

Tommy Joe Fridy: It can be a lot more than farming, yes.

Brian Bishop: It's defined by the KRS Statute that's in the text.

Chairman Dixon: Okay. For example, I hate to complicate this what's already complicated but a family wants to subdivide part of their ground so their son or daughter can build a home there but that son or daughter is not involved in farming, they work elsewhere.

Jennifer Marks: At that point, the property would need to be...we discussed this down here too so but the way Tommy Joe...we will bring it back to the Planning Commission and it will need to come into compliance with subdivision regulations. So that parcel would no longer be an agricultural exempt parcel, it would be a typical, everyday subdivision.

Chairman Dixon: I understand that this proposes that these subdivisions not come before the Planning Commission, do they go to the Planning Commission staff for approval?

Jennifer Marks: An agricultural division cannot. Legally, and this is Tommy Joe's thing but they are not supposed to come to us as long as

they meet that three-pronged test that was discussed in the Nash v. Campbell County case.

Chairman Dixon: Who determines if they've met the three-pronged test?

Brian Bishop: T.J., can I jump in or do you want to handle this?

Chairman Dixon: I'm just curious.

Tommy Joe Fridy: Let's both do it, allow me to say something.

Part of that three-pronged test is that it also has to be restricted to only agricultural uses.

Who approves it? If the landowner adds the restriction and certifies that it's only used for an agricultural use as defined in the statute, not as defined in our zoning regulations.

I would like to discuss that later but I would suggest there is no reason to get confused about the zoning ordinance right now. But, if someone asserts that they are exempt from subdivision regulations and they are going to divide without Planning Commission approval using this exception that is set out in the statute and is enumerated in the case, then they are allowed to take their plat to the clerk. The clerk has the right and said she is going to refer it back to the Planning Commission to see if it meets this test. It's not an application, there is no fee and there is no requirement on the clerk to refer it back to the Planning Commission otherwise the clerk has to make a decision; is this exempt or not, that's not something clerk's want to do and the Planning Commission stands ready to do that.

Dickie Johnson: Let me ask a question. I hear Jennifer saying that staff...

Tommy Joe Fridy: Do you want to add something?

Brian Bishop: The only I would add to that is the clerk can request assistance from the Planning Commission or the County Attorney via the statute, if I remember correctly.

Tommy Joe Fridy: Or a private attorney; or her attorney, or his attorney.

Brian Bishop: But in reality, most likely they are going to come to the Planning Commission staff. Most likely Jennifer or myself will be the ones answering that question.

Tommy Joe Fridy: But even then it won't get approved.

Brian Bishop: Correct.

Tommy Joe Fridy: Go ahead.

Dickie Johnson: I was just referring back to Jennifer saying that they, the Planning Commission staff shouldn't even take this up.

Jennifer Marks: Unless we are asked by the outside entity that would be recording it, per say.

Dickie Johnson: Alright, well, that clears it up.

Tommy Joe Fridy: Or the applicant can come to the Planning Commission first and say, would you look at this and see if you think it complies and take it to the clerk, it will come back for a day or something.

Jennifer Marks: There is no certification. You know how we have the little box that Brian signs? That would not even be on there, we would just review it as a courtesy to that person or the clerk.

Dickie Johnson: To say it either meets it or don't meet it.

Brian Bishop: We are giving our opinion.

Dickie Johnson: Yes.

Kevin Richard: One question in Section 7, F, note 2; how do the floodplains come into this?

Tommy Joe Fridy: It's not exempt so you would have to comply with the subdivision regulations.

Kevin Richard: So that little note there would make it revert back to our normal process we've been using up to this point?

Tommy Joe Fridy: Correct. Wherever it is.

It's something that a property owner should be very reluctant to do. If you're in the Ohio River bottoms, fine. But if you're just trying to save time or save \$50 or whatever it costs to file an application, you are severely limiting the use of your property. There are cases where it's a good thing but it's not up to us to decide whether it's good or bad, this is state law.

We're only recommending to bring the subdivision regulations into compliance with state law.

Mac Arnold: Clarification on this too; if an individual comes to us and asks whether their property meets these specifications to do it and we say no, are they able to come back and appeal that?

Brian Bishop: In that case, we would not say no. We are not going to ...saying no, in my opinion implies an approval or denial. We're not going to do that. We're only going to say, in our opinion we don't think this meets the recommendation, have a nice day. At that point, they can go to the clerk's office and then present the agricultural division to the clerk and then the clerk ultimately has the approval authority or the denial authority.

Then, if they ask us, we will again give our opinion and then have a nice day.

Tommy Joe Fridy: Giving your opinion whether you think it's recordable and saying it is recordable, you're saying that it meets the test of the agricultural exemption set out in state law.

Chairman Dixon: But the clerk will ultimately decide whether it's recordable or not, one way or the other?

Tommy Joe Fridy: Yes.

Chairman Dixon: Our recommendation or somebody else's recommendation or their own personal expertise or whatever.

Tommy Joe Fridy: State law prohibits us from approving or denying an agricultural exempt division.

Chairman Dixon: But the state law allows the clerk to approve or deny or record?

Tommy Joe Fridy: In a roundabout way by saying the clerk can record an agricultural exempt division without approval from the subdivision regulations. Yes.

Let's go back to your example a while ago.

Parents own a farm. Twenty (20) acres or a thousand (1,000) acres and a child wants to build a house on a lot, no matter how many acres. If that child is not involved in the farming, or the agricultural use, we all want to use farming but it's much broader than that, the agricultural use on that tract as defined by state law then they don't qualify for the ag exemption, they have to go through the normal subdivision, probably a minor subdivision but they have to go through the minor subdivision requirements application process.

Chairman Dixon: Which would be the process we've been using all this time.

Tommy Joe Fridy: We use it all the time. This is going to be a very, rare thing.

Chairman Dixon: In the overview of it, it's making things less restrictive.

Tommy Joe Fridy: In this very limited capacity, yes.

Chairman Dixon: That this exemption even exists now, that would be less restrictive.

Kevin Richard: I would say it's probably more just to make it up to legal, not so much anything else that's really, to me the bottom line. We're just bringing this up to state law.

Tommy Joe Fridy: Exactly.

Brian Bishop: Commissioner Richards, as Jennifer quoted there is a specific legal case, Nash vs. Campbell County that originated this. Is that correct?

Jennifer Marks: Yes. That's why we wanted to make sure we kind of got ahead, not ahead because the case did come out a few years ago but we want to make sure that we are in compliance and going forward when we review somebody's agricultural division like we have been doing, they don't come back on us in some form or fashion since we shouldn't have been reviewing them based on state statute.

Chairman Dixon: I would think it would be wise to be in compliance with the state.

Jennifer Marks: Just so I can also get it in the record, the third amendment that we were discussing there in 6.2, which is definitions. You'll notice there the least amount is five (5) contiguous acreages, that is in the state statute so we went ahead and just matched that. Unless there is a specific use down here below and you see an "A" where it would require to be ten (10) contiguous at that point.

We did just remove some of the things that no longer require that don't meet as well as bringing it into the Planning Commission for approval, we're removing that as well.

It looks like on the next page, it's just updating the subdivision definition to match what we did in that first section there in General Provisions.

Chairman Dixon: For those that are interested, this 6.2 is the definition of what is an agricultural use.

Tommy Joe Fridy: Yes.

Chairman Dixon: Including but not limited to meaning the definition could go well beyond that, right?

Any other questions from the Commission or staff? Anybody want to speak in favor or in opposition to this amendment?

I hear none, can we take up all three (3) of these items here at one time in the motion counselor?

Tommy Joe Fridy: Whoever makes a motion, would you add that we are doing this is we are bringing our subdivision regulations in compliance with state law.

Chairman Dixon: We can make all three amendments, Article I, II and VI all at one time?

Tommy Joe Fridy: Yes.

Chairman Dixon: Any other questions or comments?

I'll entertain a motion in regard to these text amendments to the subdivision regulations.

Kevin Richard: Just to confirm, this is an approval or a recommendation?

Tommy Joe Fridy: Approval.

Chairman Dixon: This was originated by Planning Commission staff?

Brian Bishop: Correct.

***MOTION WAS MADE BY KEVIN RICHARD, SECONDED BY X.R. ROYSTER TO APPROVE THESE TEXT AMENDMENTS THAT WERE ORIGINATED BY THE PLANNING STAFF TO BRING OUR SUBDIVISION REGULATIONS INTO COMPLIANCE WITH***

**STATE LAW AND ALL THE NOTES READ THAT WERE JUST READ IN AS EVIDENCE AS TESTIMONY. THE AMENDMENTS ARE TO ARTICLE I, SECTION 1.14 DEFINITION OF SUBDIVISION, ARTICLE II, SECTION 2.3 CONTENT AND FORMAT OF MINOR SUBDIVISION PLAT MATERIAL, (7) AGRICULTURAL DIVISION; AND ARTICLE VI DEFINITIONS, SECTION 6.2 WORDS AND TERMS DEFINED; (1) AGRICULTURAL USE.**

Chairman Dixon: Thank you. We have a motion and a second, any further discussion?

**AYE: ALL**

Chairman Dixon: Very good, the motion passes.

That's everything on the agenda for the Public Hearing. I'll entertain a motion for leaving Public Hearing.

**MOTION WAS MADE BY BOBBIE JARRETT SECONDED BY GARY GIBSON TO GO OUT OF PUBLIC HEARING.**

Chairman Dixon: We have a motion and a second, any discussion?

All in favor say aye.

**AYE: ALL**

Chairman Dixon: Any opposed?

We are out of public hearing.

The next item is the **August Financial Report**.

Tommy Joe Fridy: Might I make a brief comment before we leave this subject?

Chairman Dixon: By all means, please.

Tommy Joe Fridy: The Agricultural use exemption that we just passed, in the Subdivision Regulations are not the same thing as an Agricultural

use in the zoning ordinance. That is extremely confusing. It's a shame that the legislature didn't pick different terms. The Planning Commission with the final say in the City, County or Corydon can say what uses are in an agricultural zone; what are permitted and what are conditional uses. These are defined by statute. So, you can't do everything in an Ag exempt subdivision on an Ag exempt subdivision that you could do in an Agricultural use zone if your property was zoned Agricultural. It's confusing but it's an extremely important distinction. That's all I have unless somebody has a question.

Chairman Dixon: Well I'll agree with the confusing part.

Tommy Joe Fridy: It is but by using the same terms to mean different things, you'd have to say as defined in the definitions and statute or as defined in our zoning ordinance.

Chairman Dixon: Very good, thank you.

The **August Finance Report**, Mrs. Curtis?

Theresa Curtis: The Finance Report for August, we're at 25% of budget for the first two (2) months of the new budget and I'm here if you have any questions.

Chairman Dixon: Any questions?

No questions? I'll entertain a motion in regard to the August Finance Report.

***MOTION WAS MADE BY BOBBIE JARRETT, SECONDED BY KEVIN RICHARD TO ACCEPT THE AUGUST FINANCE REPORT AS SUBMITTED.***

Chairman Dixon: We have a motion and a second, any discussion?

All in favor say aye.

***AYE: ALL***

Chairman Dixon: Any opposed?

The August Finance Report is approved.

Now we have the **Bond Report**, Ms. Marks?

Jennifer Marks: We have two (2) bonds up for review this month.

The first one is the Ollie Wash Car Wash. I would like to note that I did put the original bond date as being 2022, that is 2021. The original amounts are \$53,000 in streets, \$2,200 in screening and \$10,100 in erosion control. The recommendation is to extend all of those bonds for a year granting an erosion control will remain the same. However, the street bond will need to increase to \$66,950 due to the increase in construction cost.

The second project we have is Canoe Creek II, Section II. We still have a remaining bond on that for the sidewalks for \$15,250. The recommendation is that we release that bond and send the sidewalks to the City for acceptance.

If you guys have any questions, let me know.

Chairman Dixon: Questions?

Recommending and increase in this one bond. I'll entertain a motion in regard to the Bond Report.

***MOTION WAS MADE BY MAC ARNOLD, SECONDED BY X.R. ROYSTER TO ACCEPT THE BOND REPORT AS SUBMITTED.***

Chairman Dixon: We've got a motion and a second, any discussion?

All in favor say aye.

***AYE: ALL***

Chairman Dixon: Any opposed?

The Bond Report is approved, thank you.

**Administrative Business**, Mr. Bishop?

Brian Bishop: The Planning Commission staff has received two (2) requests for a Special Called Meeting.

One would be for a rezoning, and the other would be for site plan approval.

The Planning Commission staff has no issue with this request but as you may remember that is at the discretion of the Chairman.

So, with that being said I believe Chairman Dixon wanted to request the Planning Commission's opinion on that matter.

Chairman Dixon: We've got a couple of projects, we have been told, are feeling some time constraints or pressure. I think we could put them in the commercial categories.

Brian Bishop: They would both be commercial, yes.

Chairman Dixon: This Commission has been very accommodating when people come forward in this kind of situation and ask for a special called meeting.

I know everybody is busy and your time is precious and we're asking everybody to go above and beyond here and it seems like it happens often.

Dickie Johnson: Is it two, separate entities? They're wanting it on the same date?

Brian Bishop: Correct.

One would be a rezoning, which requires a two week public notice.

Dickie Johnson: Yeah.

Brian Bishop: And the other is a site plan which is not as restrictive, we could turn that one around a lot faster but we don't want to have two (2), separate special called meetings.

Dickie Johnson: Yeah, that's why I was asking. We just do them both on one (1) night?

Brian Bishop: Assuming the Planning Commission is agreeable to it and the schedules work out.

Dickie Johnson: So what is the date you've considered?

Brian Bishop: At this point, the earliest we could get notification would be tomorrow.

So, at best I believe, Theresa correct my math if I'm wrong please, the earliest we could have the meeting would be September 21.

Chairman Dixon: You need two (2) weeks?

Brian Bishop: Correct.

Chairman Dixon: You can't get the notification in tomorrow?

Theresa Curtis: No, we would have to send a Public Notice in first for them to approve it and that wouldn't be in the paper until Tuesday.

Brian Bishop: That's what I'm saying, the very earliest, I mean the best case scenario would be tomorrow.

Jennifer Marks: I will say the rezoning has not reached back out to us today and he was supposed to bring his....he has submitted a mostly put together application but we have not received the payment for that rezoning or the adjacent property owners. So, in regards to notification technically, from our standpoint we wouldn't even be ready to do that so I don't know how we feel about having a site plan approval sooner and just maintaining the October date for the rezoning.

Kevin Richard: We're rapidly approaching our standard meeting.

Jennifer Marks: Our standard deadline, right.

Brian Bishop: If the Planning Commission is not agreeable to it, we were not even going to broach this with the applicant so we're putting our toe in the water with this.

Kevin Richard: Based on what Jennifer just said, it sounds like the applicant hasn't even put you in a position where we could meet earlier than the next meeting.

Brian Bishop: Correct but my guess is he's going to do it pretty rapidly.

Jennifer Marks: But even if it's done this week though then it pushes us just to one week before the other meeting and it will not meet the deadlines for what he needs from what we know about it.

Chairman Dixon: That's one of the cases, the other one you think will be...

Jennifer Marks: The site plan can be done.

Brian Bishop: It's not a public hearing requirement so we could....Theresa is it two (2) day public notice on that?

Theresa Curtis: The site plan will just be LDC, being put on an LDC like we talked about.

Jennifer Marks: We're going to do an LDC on that one.

Theresa Curtis: So that's easy.

Brian Bishop: So, two (2) days for the Planning Commission meeting notification?

Theresa Curtis: Yes, 48 hours.

Tommy Joe Fridy: Or you could continue this meeting.

Brian Bishop: It wasn't on the agenda though.

Tommy Joe Fridy: We can amend the agenda.

Brian Bishop: Correct. I think, Mr. Fridy is exactly right but from a staff's standpoint I think it's cleaner to have a new meeting, a new agenda and do it that way.

Chairman Dixon: My concern is whether we can gather enough people together to do the public's business or do we think the applicant's need to abide by our regular meeting schedule. What is the consensus of the Commission? Like I said, we have been very accommodating in the past, in the recent past I know of.

Can I get a sense that everyone would like to help these folks if we can and we'll get as many people together as we need to do to business?

Frank Boyett: Well, we want to be business friendly.

Chairman Dixon: Frank used the term.

Dickie Johnson: We've got the ability to use the ZOOM so that, you know if there happens to be a conflict maybe somebody can ZOOM in to give us enough for a quorum.

Jennifer Marks: If you guys are agreeable then, I will reach out to the potential applicant for the rezoning tomorrow morning and if he can get everything to us tomorrow I mean we could still move it up a little bit. I think that would help with some of the dates that he has set but, you know I want to be as accommodating as possible but we can only do so much when a rezoning requires a notification process and stuff like that.

Chairman Dixon: I would propose that we try to have a Special Called meeting on either the 20<sup>th</sup>, 21<sup>st</sup> or 22<sup>nd</sup>. That's a Tuesday, Wednesday, Thursday option.

Sir?

Tommy Joe Fridy: You don't have to have me but I will not be here the 20<sup>th</sup>, I cannot be.

Chairman Dixon: Ok.

Dickie Johnson: I won't be either, I don't think.

Chairman Dixon: Let's look at the 21<sup>st</sup> or the 22<sup>nd</sup>.

Dickie Johnson: Both of those are open.

Chairman Dixon: If everybody can get their ducks in a row by then we'll have a Special Called meeting.

Brian Bishop: Correct. We will find out what the applicant has come up with and then let you know as soon as possible.

Chairman Dixon: Does that sound reasonable to you folks? We need to be notified, I would like to be notified before this week is out whether this Special Called meeting is going to take place.

Brian Bishop: Not an issue, sir.

Chairman Dixon: Good. Anything else under Administrative Business?

Brian Bishop: No sir.

Chairman Dixon: Any other business? Does anybody have anything else to bring forward?

Thank you all for your patience tonight, we kind of waded into the weeds a little bit.

I'll entertain a motion to adjourn.

***MOTION WAS MADE BY MAC ARNOLD, SECONDED BY KEVIN RICHARD TO ADJOURN.***

Chairman Dixon: We have a motion and a second, any discussion?

All in favor?

***AYE: ALL***

Chairman Dixon: Any opposed?

Thank you all, very much.

***MEETING ADJOURNED AT 7:11 P.M.***

**I, HEATHER LAUDERDALE, hereby certify that the foregoing is a true and accurate transcription of the Henderson City-County Planning Commission Meeting of, September 6, 2022 to the best of my ability.**

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**Heather Lauderdale, HCCPC Clerk**

**X**

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