



## **Planning and Public Safety Committee Meeting**

November 2, 2021

### **Summary and Motions**

---

Chair J. Brown called the meeting to order at 1:02 p.m. Committee Members Ellinger, McCurn, Lamb, Kloiber, Worley, Baxter, Bledsoe, Reynolds, and Plomin were in attendance. VM Kay and Council Members Sheehan and F. Brown were present as non-voting members.

#### **I. Approval of September 21, 2021 Committee Summary**

Motion by Baxter to approve the September 21, 2021 Committee Summary. Seconded by Plomin. Motion passed without dissent.

#### **II. Amendment to Revise Standards for Street Patterns and Continuity**

James Duncan, Director of Division of Planning, provided a brief background of two implementation projects that came out of the 2018 Comprehensive Plan. He explained that both were created with significant stakeholder input and public outreach. He emphasized that neither of these were opposed at their respective Planning Commission public hearings and both were unanimously recommended for approval by the Planning Commission. Chris Evilia, Transportation Planning Manager, provided an overview of the amendment to revise standards for street patterns and continuity. He explained that the intent behind this is for a better network of local streets with better internal connection within developments and better connections to neighboring developments. He said the Metropolitan Planning Organization (MPO) is concerned with arterial and collector networks in the region which carries 40% of regional miles of travel. He spoke about the importance of street patterns and continuity for regional mobility and said a connected network of local streets provides alternatives for shorter trips and reduces traffic volumes on arterial and collector roads and this also provides a more direct path for transit, bicycle, and pedestrian trips. Stuart Kearns, Senior Planner, reviewed a few of the proposed changes to the Subdivision Regulation Amendment which would only apply to new development or significant redevelopment and he emphasized that existing developments would not be required to adapt to the new standards. He reviewed the amendments which include a change in the definition of a “block” and revising block length requirements; revising street continuity requirements; revising cul-de-sac requirements; and updating public facility frontage requirements.

At this time, Chair Brown opened the floor for public comment and four citizens spoke on the issue.

Reynolds asked if there was a representative from Fire who could speak to the impact from the change in block lengths. There was no one present from the Fire Department; however, Duncan stated that the Planning staff met with Police and Fire and both were supportive of the change as it would improve response times.

Plomin asked who determines whether it would be an unreasonable hardship when considering a waiver. Duncan said the Planning staff reviews the request for the waiver and makes a recommendation to the Planning Commission who ultimately makes the decision. Plomin asked if we have quarter-mile intervals currently and Duncan stated that in some instances there would be, but it depends on our ability to respond to existing conditions or the applicant’s willingness to provide the connection and it is often

negotiated between the applicant and staff. Plomin asked about the proposed addition to section 6-8 (d) (1) [as requested by Richard Murphy during public comment] which appears to be a good addition for those who have submitted a development plan. Duncan stated that they discussed a longer lead time before it goes into effect and exempting approved development plans; however, they do not feel this is the best practice. Once a development plan is approved, the developer is allowed five years for it to be built and the Planning Commission will take into account if the developer had begun work before the plan expired. He added that if a developer came forward with an expired plan and they had not started the build process, they would likely be required to redo their development plan and comply with this and any other new regulations. For clarification, Plomin asked if a developer would be exempt from these regulations if they had begun moving dirt and building structures. Duncan explained that if the development plan was going to expire, the developer could approach the Planning Commission to say they have started the process for development based on what was approved five years ago. They would then ask to continue with their plan and the Planning Commission will likely agree to that; however, if they have done no work on the development, the Planning Commission will direct them to update their plan to comply with this regulation and any other new regulations.

Lamb mentioned a garbage truck in her area with an arm that is unable to fully extend because of the size of the court and she asked if Waste Management was included in this discussion. Kearns explained that they did not work with Waste Management directly because this amendment does not alter street width which is what would impact whether the arm extends or not, this will only alter the length. Lamb asked what harm there is with moving the cul-de-sac length back to 1,000 FT and Duncan said what is being recommended are national best practice standards and we are trying to ensure that our regulations meet those standards.

McCurn spoke about the 76% of cul-de-sacs that are under 800 FT and asked what age these neighborhoods are and how many are newer neighborhoods. Kearns stated that these were not separated based on the age of the development, but it will generally be slightly longer as you get to the newer development. He added that there will still be a high percentage of those developments that will be closer to what we want. McCurn asked if this will add more stop signs in neighborhoods and Kearns clarified that even with stop-controlled intersections, there would be ways to get through.

Kloiber mentioned the timing of this in relation to the Planning Commission's public hearing on potential planning and growth and asked if this item could wait until public input is received. Duncan explained that this applies to all land in the Urban Service Area and will apply to future land. He spoke about several thousand acres of greenfield land in the Urban Service Area and we want those developments to come in. Because they could come in at any time, we are hoping to move this forward so these new standards could apply to those developments. Kloiber asked if land in the expansion area was referenced as the potential to exclude and Duncan explained that some of it is, but not all of it.

Worley asked if the quarter-mile standard for connectivity was based on national best practice and Duncan said the quarter-mile came from looking at what was recommended for safety and connectivity in other communities. Worley feels we have adequate input from the Division of Fire about connectivity without dictating every quarter-mile which he feels to be onerous. If the Planning staff's original idea was to have a 1,000 FT block length, Worley asked what the potential is for going back to that. Duncan explained that the Planning staff's recommendation was presented as well as the general standard, but the Planning Commission preferred and approved 800 FT. Worley stated that there seems to be subjectivity for the Planning Commission to determine if enough work has been done by the developer in

deciding whether they continue using old standards or use the new ones. Duncan stated that the applicant and the Planning staff would argue that substantial or significant progress has been made which is something that can easily be observed. Planning Commission would still have subjectivity, but they also have a powerful reason to allow the developer to continue the plan when they have already started building. Worley expressed concerned that there is nothing specific in this to address a development that has been approved and whether it should continue using old standards or new standards.

F. Brown and Duncan discussed changes the Planning staff made that were not in the Planning Commission's recommendation such as staff's recommendation of 1,000 FT length for streets which Planning Commission recommended at 800 FT. F. Brown asked about the 250-600 FT for best practices and Duncan explained it is the national standard for best practice, but the Planning Commission recommended 800 FT for this regulation. F. Brown asked if anything recommended by Planning Commission was changed. Duncan stated that they cannot change the Planning Commission's recommendation; however, we are recommending to Council that greenways and trails be removed from this because the intent was not to have streets on both sides of our trails. F. Brown expressed concern that the cost for this goes to the property owner and Duncan said they would like to see more houses in those developments with smaller lots and more housing options to spread out the cost. F. Brown asked why the proposed changes (from Richard Murphy) could not be added as a compromise and Duncan stated that our subdivision regulations are not different in the expansion area versus the urban service area so there is no reason to exempt the expansion area. F. Brown asked if there was any consideration given to the fact that we are different from many communities as far as planning and developing. Developers are not allowed to do a whole lot, but they are still confined to some extent so he would like to see a compromise with the development community.

J. Brown spoke about potentially "grandfathering" approved development plans and asked how postponing the implementation of the entire ZOTA until 2023 would impact the development plans already in progress. Duncan said it would certainly give a developer additional time to start making substantial progress and be prepared to approach the Planning Commission if their plan expires. J. Brown spoke about making this effective in 2022 and asked what the impact would be for starting the five-year clock over for all approved development plans once this is implemented. Duncan said it would be very complicated to sort through hundreds of development plans in various stages of progress and ensure they are fair to everyone. He added that there may be some legal ramifications in doing this as well.

Kay and Wade discussed the reason for a five-year window for subdivision plans and development plans. Wade explained that they go to the Planning Commission for approval and they have a year to be certified, then all of those plans have five years for the developer to pull permits, build infrastructure, or build any of the proposed development in the plan. The five-year limit is in place because as our community plans, grows, and changes, many important regulations are updated for health, safety, and welfare in the community. If the development is not complete in five years, they could seek re-approval. But if they have done nothing in five years, the expectation would be that they come back with a new development plan that complies with any updated regulations. Kay and Wade confirmed there is nothing in our zoning regulations that would exempt a developer from the five-year timeline.

Worley asked about the reasoning for not having a cul-de-sac off of another cul-de-sac and Duncan explained that placing a dead end street off of another dead end street is a standard that would not be best practice for safety and access purposes. Worley and Duncan confirmed that on cul-de-sacs where an additional fire hydrant is required, the developer is responsible for that cost. Worley emphasized the

need for a date certain so people know which regulations they are operating under. He added that while this is helpful and best practice, he does not want to take too much design opportunity away from the developer (quarter-mile, block length, etc.).

Motion by Worley to amend block length requirements from the proposed “800 FT maximum block length” to “1,000 FT maximum block length”. Seconded by Ellinger. Motion passed without dissent.

Motion by Worley to amend the proposed cul-de-sac requirements so that “the maximum length of a cul-de-sac should be no further than the length of the block (1,000 FT)”. Seconded by McCurn. Motion passed 9-1 [Yes - J. Brown, Ellinger, McCurn, Kloiber, Worley, Baxter, Bledsoe, Plomin, and Reynolds; No - Lamb].

Motion by Worley to amend the language in Section 6-8(b) striking the “every quarter-mile” provision, but have the remaining text stay the same. Seconded by Ellinger. Motion passed 9-1 [Yes - J. Brown, Ellinger, McCurn, Kloiber, Worley, Baxter, Bledsoe, Plomin, and Reynolds; No - Lamb].

Motion by Worley to amend the language in Section 6-8(d) striking the “open space” and “greenway” terms from the provision, but the remaining language stay the same (as amended). Seconded by Ellinger. Motion passed without dissent.

Motion by Bledsoe to amend the previous motion to include a change in the language from “other publicly accessible facility” to “other public facility”. Seconded by Worley. Motion passed without dissent.

Motion by Worley to amend Article 6 for Street Patterns and Continuity so that the proposed amendments would not apply to any development plan that was approved prior to their enactment. Seconded by Ellinger. Motion passed 7-3 [Yes - Ellinger, McCurn, Worley, Baxter, Bledsoe, Plomin, and Reynolds; No – J. Brown, Kloiber, Lamb].

Lamb expressed concern that this would be a complicated process and creates an opportunity for mistakes to be made. Duncan explained that this would be unprecedented and he believes it would be complicated, but they have never had to do something like this.

Reynolds asked if we could say that this is for development plans submitted in the last five years and J. Brown clarified that the motion applies to approved plans and how long they are good for going forward.

Kay stated that there is no compelling reason for making an exception in this particular zoning text amendment. This has never been done and he has a difficult time seeing the need to make an exception that is general practice for all development plans.

Worley clarified that, unless the Planning Commission determines work is being done on the development in the five-year timeframe, the applicant would have an expired development plan and would need to use the new regulations. When there are existing regulations that someone relied upon when submitting a development plan, they should be entitled to use those with that development whether it changes or amends. He said generally laws have a date certain and they apply moving forward. In this situation, we would be saying that a new law now applies to something that has been going on for five years. He said it is not a good situation to have a developer who has moved forward with a development plan and is now going to have to amend the development plan to adhere to new regulations; it is not fair or transparent.

Kay and Wade confirmed that the current practice for the five-year timeframe is that for all land use regulations, if a developer has not started work within five years, they are subject to any regulation that has been passed in the interim five years. Kay questioned if the proposal on the floor would make this one part of the zone text an exception to that general rule and Wade confirmed. Kay said this is not about making a new rule, but it is about whether we exempt one particular zone text amendment from the general rule that says a plan was put in place and if you have not started work in five years, you are now subject to all of the new regulations that have been passed in the intervening five years. This amendment would ask us to make an exception for this one particular zone text and he cannot support this.

Lamb spoke about mitigating circumstances such as the pandemic that would halt work being done during the five-year timeframe and said she doesn't see why the Planning Commission wouldn't allow an exception for situations like this and allow them to continue with their original development plan. She does not agree with micro-managing the process and said we should allow the Planning Commission to make decisions based on situations at hand. She said if someone has not developed their property after five years and there are no mitigating circumstances, they should follow to the new rules.

Worley explained that it is not just the five-year expiration of a development plan is concerning. He said this could also pertain to an applicant coming forward who has a major amendment to their development plan. It is still subjective as to whether the Planning Commission believes these folks are entitled to the regulations they were operating under or adhere to the new regulations. He feels that if the development expires, then it would be okay for them to submit a new development plan and operate under the new regulations. He emphasized that we can't focus on the five-year issue, but we have to focus on amendments also and it is not transparent to give entire subjectivity to an appointed board

J. Brown believes there should be a date certain so those who have development plans will know, but at the same time – as plans change and as regulations change – folks should adhere to those changes in a reasonable amount of time. He feels there is an opportunity to get to what that looks like in regard to this ZOTA and in regard to those who have development plans and are concerned about this. He said this does not have to be removed from committee today and we can take some time to have conversations and entertain language about what “grandfathering” looks like.

Motion by Bledsoe to approve and move forward to the full council, Article 6, Section 6-8 for Street Patterns and Continuity [including amendments made today]. Seconded by Plomin. Motion passed without dissent.

### **III. Expanded Hearing Notification ZOTA**

Samantha Castro, with Long Range Planning, reviewed the proposed revisions to Articles 6 and 7 of the Zoning Ordinance which calls for expanded notification of zone changes and Board of Adjustment public hearings. Census data shows that 46% of Fayette County's housing units were renter occupied and are not currently being notified of land use changes in their neighborhood and expanded notification also impacts local businesses as well. The proposed changes would ensure that all interested members of the community, including renters, business owners, and employees, have the ability to be involved in the

development process – not just those who own property. She said the Comprehensive Plan specifically calls for increased engagement between applicants and the residents of Lexington-Fayette County in the planning process. As part of the 2020 Public Engagement Toolkit (PET), the Division of Planning not only focused on providing tools for how developers could meaningfully engage the community, but also how they could improve the process for greater inclusion and transparency. The PET advisory panel was comprised of 19 members which includes a mix of the neighborhood and development community. She spoke about the notification letter which provides a basic level of knowledge about a specific application and contains contact information of the property owner, applicant, and staff as well as the record ID number which can be used to access additional information about the application. By providing the information contained within the letter, a member of the community can lend their voice to the planning process either in person or through written correspondence. Currently, we provide notice to owners of all property within 500 FT of a zone change or conditional use and 200 FT of a variance. The revision would provide notice to owners (and the property addresses, if the property is not the owner's primary mailing address) of all property addresses within a certain radius of the subject property. She reviewed the minimal cost of about \$25-50 associated with expanding notification. Castro concluded the presentation by emphasizing the importance of all members of the community having a voice which provides differing perspectives to inform better policy.

At this time, Chair Brown opened the floor for public comment and three citizens spoke on the issue.

Lamb asked if it is correct that notices do not have a specific name, but they go to the owner of property or renter of property. Wade explained that KRS 100 requires notification to the property owner per PVA records, but it is not repeated in our Zoning Ordinance. Lamb asked if any other notice would fall under the state statute and be held to the same standard. Wade explained that the additional notice is in addition to state requirements, but the way we notify is to use the PVA address and there is additional information through E-911 for the specific number of units on a particular property. For instance, an apartment complex with 100 units would be brought to the applicant so all 100 residences could be notified.

Worley said, as an attorney, he has prepared several applications. Typically, a developer provides the list with the property address, the property owner's name, and the property owner's address (if different than the property address) in a stamped and addressed envelope for the Planning staff to send out. He said it is a lot of additional work for developers and additional cost when you think about attorney fees for preparing these documents. He used Red Mile Rd. as an example, suggesting that rather than notifying a thousand students, perhaps it would be better to notify the management company. He mentioned the KRS requirement for posting a sign on the property so others can see that there is a zone change taking place. He agrees that more public input is good and tenants deserve to have these rights, but this may not be the best approach.

J. Brown suggested that questions and concerns on this item could be addressed at the next meeting.

#### **IV. Items Referred to Committee**

No comment or action was taken on this item.

Motion by Bledsoe to adjourn at 2:58 p.m. Seconded by Baxter. Motion passed without dissent.