

**CITY OF FORT MITCHELL, KENTUCKY
CITY COUNCIL MEETING
COUNCIL CHAMBER
2355 DIXIE HIGHWAY, FORT MITCHELL, KY 41017
June 21, 2021, 6:30 p.m.**

CALL TO ORDER / ROLL CALL

Mayor Jude Hehman, called the regular council meeting to order at 6:30 p.m.

MAYOR AND COUNCIL MEMBERS PRESENT

Present: Mayor Jude Hehman, Mary Burns, Vicki Boerger, Kim Nachazel, Greg Pohlgeers, Alyson Roeding and Michael Stoeckle. Absent: Jerry Deatherage

OTHERS PRESENT

City Administrator, Edwin King; City Clerk/Treasurer, Amy Guenther; Police Chief, Andrew Schierberg; Public Works Director, Matt Stegman; Fire Chief, Adam Fuller and Programs Coordinator, Joe Christofield; and Attorney, Mary Ann Stewart

APPROVAL OF THE AGENDA

Mayor Jude Hehman asked if there were any changes to the agenda. No changes were noted. Mr. Pohlgeers made a motion to approve the agenda. Ms. Roeding seconded the motion. After asking for any discussion and hearing none, Mayor Jude Hehman called for a voice vote. The motion carried with all ayes.

APPROVAL OF THE MINUTES

Mayor Jude Hehman asked if there were any changes to the June 7, 2021 minutes. No changes were noted. Mr. Stoeckle made a motion to approve the minutes of the June 7, 2021 council meeting. Ms. Boerger seconded the motion. After asking for discussion and hearing none, Mayor Jude Hehman called for a voice vote. The motion carried with all ayes.

CITIZENS AND GUESTS

Mayor Hehman asked if there were any citizens or guests that wished to speak. No one requested to speak.

PARAMEDIC RECOGNITION AWARD

St. Elizabeth Healthcare representative, Betty McGee, stated that the American Heart Association and the American Stroke Association started a Target Stroke Initiative to identify stroke signs, communicate and deliver to the hospital quickly. Sean Callero and Heather Ladanyi were thanked and awarded a Certificate for the fastest door to needle delivery in February of a stroke victim. Chief Fuller stated that excellent service is a result of moving from a volunteer department to a paid full-time Fire and EMS department.

PUBLIC HEARING: MUNICIPAL ROAD AID

Mayor Hehman opened the Municipal Road Aid public hearing. Mr. Stegman stated that the Municipal Road Aid received from the state budgeted expenses include equipment rental, materials, road salt and contractor fees to maintain roads. Monies were budgeted for the Beechwood Road safety project, Beechwood sidewalk construction from Grandview to Fort Mitchell Place and the Bromley-Crescent Springs Road project in conjunction with Kenton County, the State and surrounding cities. The Mayor asked if there were any questions or comments. Hearing none, **Ms. Boerger made a motion** to close the Municipal Road Aid public hearing and Ms. Burns seconded the motion. Mayor Hehman called for a voice vote and the motion passed with all ayes.

ARGUMENT-TYPE HEARING ON PC2104-0002 MAP

Ms. Roeding made a motion to go into an Argumentative Hearing regarding 260 Grandview Drive. Mr. Stoeckle seconded the motion. The Mayor called for a voice vote and the motion passed with all ayes.

See transcript for detailed discussion.

Ms. Boerger made a motion to override Kenton County Planning Commission's favorable recommendation for the proposed map amendment to the Fort Mitchell Zoning ordinance from RC1, (single family residential zone) and PO (professional office building) to R2 (multifamily residential zone) at 260 Grandview Drive, an area of approximately 12.19 acres located on the east side of Grandview Drive, east of Beechwood Road in Fort Mitchell. Ms. Boerger's request for denial was based upon Kenton County Planning Commission administrative records for open hearing which was dated May 6th, 2021. Ms. Boerger's findings in support overriding the Kenton County Planning Commission recommendation were stated as follows:

1. Kenton County Planning Commission held an open house in a formal public hearing in 2018 allowing for input on Direction 2030 and changes or recommendations were made to City of Fort Mitchell identified as commercial use for the land.
2. The City of Fort Mitchell is in the process of finalizing Z21 zoning modernization, which included study and deliberation of this site and current plans do not zone this site as multifamily residential.
3. Although the proposed development purports to be senior housing, there is no zoning mechanism available to ensure that the development will remain senior housing to the needs identified in Direction 2030.
4. Although the once in a century COVID global pandemic has temporarily impacted office space needs, it has not ended the need for office space. It has merely reduced it by 15% and the demand for office space is anticipated to return to pre-pandemic levels by the year 2025.
5. The most important point is that PDS staff recommended denial to change. This change from the Commission went against staff recommendation.

Ms. Roeding seconded the motion. Mayor Hehman called for a roll call vote.

Mr. Pohlgeers	Yes	Ms. Roeding	Yes
Mr. Stoeckle	Yes	Ms. Nachazel	Yes
Ms. Burns	Yes	Mr. Deatherage	Absent

Ms. Boerger Yes

The motion passed unanimously.

Ms. Boerger made a motion to come out of the hearing and Ms. Burns seconded the motion. Mayor Hehman called for a voice vote and the motion passed with all ayes.

CITY ATTORNEY'S REPORT

Ms. Stewart provided a second reading of **Ordinance 2021-02: Amending the Annual Budget of the City for Fiscal Year July 1, 2020 through June 30, 2021 and Directing the Ordinance to be Published in Summary**. Ms. Guenther stated that Medicare EMS Run revenue increased and a related APA tax increased the fire departments budget by \$4,500. Legal ads increased \$1,300. Mayor Hehman asked if there were any questions. Hearing none, Mr. Pohlgeers made a motion to approve Ordinance 2021-02. Mr. Stoeckle seconded the motion. Mayor Hehman call for a roll call vote.

Mr. Pohlgeers	Yes	Ms. Roeding	Yes
Mr. Stoeckle	Yes	Ms. Nachazel	Yes
Ms. Burns	Yes	Mr. Deatherage	Absent
Ms. Boerger	Yes		

Ms. Stewart provided a second reading of **Ordinance 2021-03: Adopting the Annual Budget of the City for Fiscal Year July 1, 2021 through June 30, 2022 and Directing the Ordinance to be Published in Summary**. Ms. Guenther stated that miscellaneous expense was increased by \$12,000 for the APA tax and the related EMS revenue was also increased. Mayor Hehman asked if there were any questions. Hearing none, Ms. Roeding made a motion to approve Ordinance 2021-03. Ms. Boerger seconded the motion. Mayor Hehman call for a roll call vote.

Mr. Pohlgeers	Yes	Ms. Roeding	Yes
Mr. Stoeckle	Yes	Ms. Nachazel	Yes
Ms. Burns	Yes	Mr. Deatherage	Absent
Ms. Boerger	Yes		

Ms. Stewart performed a first reading of **Ordinance 2021-04: Amending Ordinance 2020-02: Salary Scales** to be published in summary. Mr. Pohlgeers stated that we have catch up payrates to the surrounding market and include inflation increases.

Ms. Stewart performed a first reading of **Ordinance 2021-05: Creating a New Chapter to Prohibit Certain Discriminatory Practices Within the City**. Ms. Stewart stated that this takes protections that are codified in federal and state law like race, gender, religion and extends it to other classifications such as sexual orientation, family status and gender identity. These are not suspect classification for federal court but have been recognized by many lower courts. This provides mainly housing protections and other protections that fall within the Kentucky Human Rights Commission. Other governments within the area have adopted this fairness ordinance. Ms. Nachazel and Ms. Burns stated that residents have reached out about this ordinance and support this ordinance.

MAYOR'S REPORT

- General Ormsby Park is closed for renovation. Some Ash trees were removed.

- Park Equipment was surplus for \$11,000 and removed by the buyer.
- Plans for the Drawbridge area are being finalized.

CITY ADMINISTRATOR'S REPORT

- The City will not be receiving grant funds from AARP for the park renovation due to the high volume of applicants.
- The City applied for the OKI grant for Beechwood Road. The City has confirmed with OKI that there will be no penalty if the City withdraws from the grant process. The safety committee will be seeking feedback from the residents on June 23rd. Chief Schierberg hand delivered flyers to the Beechwood Rd. residents from Dixie Highway to Page to notify them of the meeting.

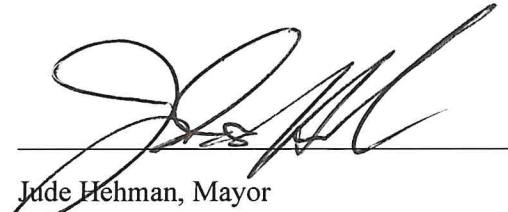
CITY COUNCIL COMMENTS

- Mr. Christofield stated that he will be emailing City Council to decorate the float.
- Ms. Burns stated that birds are dying so it is being recommended to take down bird feeders.

DEPARTMENT HEADS REPORTS-None


ADJOURNMENT

Mr. Pohlgeers made a motion to adjourn the City Council Meeting and Mr. Stoeckle seconded the motion. Mayor Hehman asked if there was any discussion or questions and hearing none, Mayor Jude Hehman called for a voice vote. The motion carried unanimously.



Jude Hehman, Mayor

Prepared By:



Amy Guenther, City Clerk/Treasurer

CITY OF FORT MITCHELL, KENTUCKY
CITY COUNCIL MEETING
2355 DIXIE HIGHWAY, FORT MITCHELL, KY 41017
COUNCIL CHAMBERS
JUNE 21, 2021

Argument-Type Hearing on PC2104-0002 Map Amendment

Appearances:

Mayor Jude Hehman
Amy Guenther - City Clerk/Treasurer
Edwin King - City Administrator
Mike Stoeckle - Council Member
Greg Pohlgeers - Council Member
Kim Nachazel - Council Member
Mary Burns - Council Member
Alyson Roeding - Council Member
Vicki Boerger - Council Member
Mary Ann Stewart, Esq.

1 PROCEEDINGS

2 ***

3 MAYOR HEHMAN: The next will be an
4 argumentative hearing regarding 260 Grandview Drive.
5 Council, I need a motion to go into such hearing.

6 MS. ROEDING: Motion.

7 MAYOR HEHMAN: Ms. Boerger, or was
8 that Roeding?

9 MS. ROEDING: Me.

10 MAYOR HEHMAN: I'm sorry.
11 Ms. Roeding.

12 MR. STOECKLE: Second it.

13 MAYOR HEHMAN: Second, Mr. Stoeckle.
14 All in favor?

15 ALL COUNCIL: Aye.

16 MAYOR HEHMAN: Anyone opposed?
17 Call this meeting to order for the
18 hearing regarding 260 Grandview Drive.

19 Ms. Stewart, Mary Ann Stewart is
20 here. I should have introduced her earlier as our
21 city attorney. Mary Ann, will you advise what
22 exactly this means tonight?

23 MS. STEWART: Sure, Mayor.

24 First of all, my name is Mary Ann
25 Stewart. I am not Claire Parsons, despite the fact

1 that it says Claire Parsons. Ms. Parsons is the
2 city attorney for Fort Mitchell but is out of town
3 this week so I'm covering for Ms. Parsons.

4 This is scheduled as an
5 argument-style hearing under the standards set by
6 the Kentucky Supreme Court under the City of
7 Louisville v. McDonald case, per that -- that
8 holding, the City can hold an argument-style hearing
9 based upon the evidentiary record that was already
10 compiled at the evidentiary hearing by the Kenton
11 County Planning Commission. Council's review is
12 limited to the administrative record only and the
13 evidence that was adduced at that evidentiary
14 hearing.

15 The applicant and anyone else is
16 entitled to address the Council through
17 argument-style -- through arguments, however, those
18 arguments must be based upon the evidence that was
19 adduced at the evidentiary hearing, or that is found
20 in the administrative record that has been forwarded
21 to the City Council. City Council has received the
22 administrative record from the Planning Commission
23 and has reviewed that administrative record in full.

24 At this point, it would be
25 appropriate -- I think we do have members for the

1 applicant who are ready to address the Council and
2 Mr. Mayor.

3 MAYOR HEHMAN: Council then will ask
4 the applicant or the developer, and then we'll open
5 it up for any questions. And then anyone that would
6 be arguing against there, that we would open that up
7 for the general public in doing that.

8 So at this point, is there someone
9 that represents --

10 MR. ASHBURNER: Yes.

11 MAYOR HEHMAN: And if you'd just come
12 up and state your name and who you are and who you
13 represent.

14 MR. ASHBURNER: Thank you, Mr. Mayor,
15 members of the Council. My name is Cliff Ashburner,
16 I'm a lawyer with Dinsmore & Shohl out of our
17 Louisville office, it's 101 S. 5th Street, 40202.

18 MS. STEWART: And also, we have a
19 court reporter here to transcribe the hearing so if
20 you could spell --

21 MR. ASHBURNER: Do you want me to
22 turn this on or just speak up?

23 MS. STEWART: Is it on?

24 MAYOR HEHMAN: It's probably on but
25 it doesn't really -- it's not a speaker.

1 MR. ASHBURNER: I think you might be
2 able to hear me.

3 COURT REPORTER: If you'll just keep
4 your voice up for me. Thanks.

5 MR. ASHBURNER: It's Cliff Ashburner,
6 it's A-S-H-B-U-R-N-E-R, and I'm here tonight on
7 behalf of Wota Group, that's the parent company for
8 the applicant. I also have Tammy Stansberry with
9 me, with Wota, and Mike Kegley, who's the property
10 owner. If it's appropriate, to the extent that you
11 have questions dealing with Mr. Kegley's ownership
12 or the property, or Wota's operations and experience
13 in other locations, I think they'd be happy to
14 answer those questions. There was testimony about
15 that in the record.

16 MS. STEWART: Well, we can't put in
17 additional testimony, other than what was presented
18 at the Planning Commission. So if you want to
19 proceed with your argument, then if Council has
20 questions, either you can answer those questions, or
21 if you want to have your client answer the
22 questions, that would be fine.

23 MR. ASHBURNER: That's fine. Thank
24 you.

25 Well, again, I appreciate the

1 opportunity to address you all tonight regarding the
2 property on Grandview. This is -- well, this is a
3 portion of the property that was previously rezoned
4 for professional office. Obviously, the application
5 we're talking about tonight is to rezone from PO to
6 R2, which would allow for multifamily.

7 The proposal -- or the previously
8 approved development had multiple buildings,
9 multiple office condominium buildings. One of those
10 buildings was built. And that building was built
11 more than 10 years ago. Since that time, there have
12 been continuous efforts to market that property as
13 office. Those efforts have not been successful.

14 Now we have a new different proposal
15 to use the rear of the property as senior housing.
16 So this senior housing would be 88 units. It would
17 be restricted to senior citizens. That restriction,
18 as was stated in the Planning Commission record
19 recommendation, would last at least 30 years. That
20 was one of the bases for the recommendation. The
21 proposal would have, as I said, 88 units in a
22 midrise building that would be located behind the
23 existing office condominium building that's located
24 on the subject property.

25 Just to remind the Council, we had a

1 favorable recommendation from the Planning
2 Commission. There were several conditions that were
3 attached to that recommendation. And on behalf of
4 my client, we are agreeable to all of those
5 conditions as they are written. So we recognize
6 that certain things will have to be dealt with with
7 the site, lighting, things like that. Things that
8 you would consider sort of development details after
9 the zone change decision is made, and we are more
10 than happy to agree to those conditions tonight.

11 Unless there are questions, I think
12 I'm going to rely primarily on the record that was
13 created before the Planning Commission, and the
14 recommendation that was forwarded to you from the
15 Planning Commission.

16 One thing to note, there was only one
17 party other than our team who spoke during the
18 hearing, it was Mr. King, who spoke as a neutral
19 party about some other economic development efforts
20 that are in the area. Ultimately, the Planning
21 Commission determined that senior housing was
22 appropriate for this site, and that's the basis for
23 its recommendation.

24 So I'm happy to take any questions if
25 you have them. I think there are a lot of positives

1 to the proposal. There is certainly a demand in
2 this area and in lots and lots of parts of our
3 Commonwealth for senior housing, especially the kind
4 that Wota provides.

5 With that, I'm happy to take any
6 questions.

7 MAYOR HEHMAN: Are there questions
8 from Council pertaining to this?

9 All right. Thank you.

10 MR. ASHBURNER: Thank you very much.

11 MAYOR HEHMAN: I'd open the floor up
12 for anyone that would also like to address Council
13 arguing against or for.

14 All right. Hearing none.

15 Any other comments from Council?
16 We'll close the hearing in a minute here, but is
17 there any comments or discussion?

18 MS. NACHAZEL: I have a question.
19 Are we allowed to hear Edwin's neutral argument, or
20 I guess that wouldn't be an argument, but what was
21 discussed from your perspective that night?

22 MR. KING: Yeah. My comments that
23 evening were primarily about the Z21 process. So
24 we've been working diligently, obviously even before
25 I got here, the committee was working diligently on

1 the Z21 modernization.

2 As part of that modernization, one of
3 the things that I noted in the hearing was that we
4 did not have that recommended as residential in the
5 Z21 process, and that was primarily the bulk of my
6 comments.

7 I did make mention of some of the --
8 you know, as part of the overall planning, you know,
9 we're trying to attract, you know, businesses in the
10 city. Council recently passed the tax incentive
11 that hopefully will yield to new business here in
12 the city. So I made mention of that briefly. But
13 my primary comment was about the Z21 process that
14 we're going through now.

15 MS. NACHAZEL: Okay. Thank you.

16 MAYOR HEHMAN: Mary Ann, what are our
17 options then tonight? Because I think we can
18 approve or go along with PDS, right?

19 MS. STEWART: Right.

20 MAYOR HEHMAN: And we can wait it
21 out. I mean, if we don't do anything, it goes
22 towards what their recommendation is?

23 MS. STEWART: Right.

24 MAYOR HEHMAN: Or we can oppose it if
25 that's --

1 MS. STEWART: Right. So basically
2 the process for the City, once the Planning
3 Commission sends their recommendation to the City
4 Council, it's a recommendation. If the City Council
5 takes no action in -- 90 days from when they receive
6 the recommendation, if you take no action
7 whatsoever, the zone change becomes operative as a
8 matter of law. Or, if you're taking action tonight
9 by having a hearing, the options are as follows:
10 You can make a motion to uphold the Planning
11 Commission's recommendation and to adopt their
12 findings as your own.

13 You can make a motion to uphold the
14 recommendation of the Planning Commission and make
15 separate findings based upon the administrative
16 record.

17 Or you can make a motion to override
18 the recommendation of the Planning Commission, but
19 if you do that, you must state separate findings of
20 fact that are found in the administrative record
21 that you've already received. And then, of course,
22 the argument that you've heard tonight. Those are
23 the options before the Council.

24 MAYOR HEHMAN: Mary Ann, do we do
25 that now or do we come outside of the hearing?

1 MS. STEWART: At this point, it would
2 be appropriate for a motion within the hearing.
3 Whatever the Council -- now, the other caution that
4 I would raise is that the mayor has no vote in this
5 process. The mayor has no input into the process.
6 The mayor merely presides over the hearing itself,
7 the argument-style hearing, but does not have any
8 say in the zone change because it's a decision by
9 the legislative body only.

10 And if the vote is to override, the
11 vote must be by a majority of the body, of the
12 legislative body. If there's a tie vote, you have
13 not overridden and, therefore, the recommendation of
14 the Planning Commission would become operative.

15 Any other questions on the process?

16 MS. BOERGER: I would like to make a
17 motion. The motion is to override Kenton Planning
18 Commission's favorable recommendation for a proposed
19 map amendment to the Fort Mitchell zoning ordinance
20 from RC1, which is single-family residential zone,
21 and PO, professional office building zone, to R2,
22 which is multifamily residential zone at 260
23 Grandview Drive, an area of approximately
24 12.19 acres located at the east side of Grandview
25 Drive, east of Beechwood Road in Fort Mitchell.

1 My request for denial is based upon
2 Kenton County Planning Commission's administrative
3 record from their open hearing, which was dated
4 May 6, 2021.

5 My findings in support of overriding
6 the Kenton County Planning Commission's
7 recommendations are as follows:

8 No. 1, The Kenton County Planning
9 Commission held an open house and a formal public
10 hearing in 2018 allowing for input on Direction 2030
11 and changes or recommendations were made to the City
12 of Fort Mitchell identified as commercial use for
13 the land.

14 No. 2, the City of Fort Mitchell is
15 in the process of finalizing it's Z21 zoning
16 modernization, which has included study and
17 deliberation of this site, and current plans do not
18 zone this site as multifamily residential.

19 The third point is although the
20 proposed development purports to be one for senior
21 housing, there is no zoning mechanism available to
22 ensure that the development will remain senior
23 housing to meet the needs as identified in Direction
24 2030.

25 No. 4, although the once in a century

1 Covid global pandemic has temporarily impacted
 2 office space needs, it has not ended the need for
 3 office space. It has merely reduced it by
 4 15 percent, and the demand for office space is
 5 anticipated to return to pre-pandemic levels by the
 6 year 2025.

7 And my fifth and most important is
 8 that PDS staff recommended denial to change -- you
 9 know, for this change, and the Commission went
 10 against staff recommendation and approved the change
 11 request. So that is my motion on the table.

12 MAYOR HEHMAN: Ms. Boerger, has a
 13 motion to deny the request.

14 Is there a second?

15 MS. ROEDING: I second.

16 MAYOR HEHMAN: Ms. Roeding.

17 We have a first and we have a second.
 18 Is there any comments, questions?

19 Amy, would you do roll?

20 MS. GUENTHER: Ms. Boerger?

21 MS. BOERGER: Yes.

22 MS. GUENTHER: Ms. Roeding?

23 MS. ROEDING: Yes.

24 MS. GUENTHER: Ms. Burns?

25 MS. BURNS: Yes.

1 MS. GUENTHER: Mr. Polhgeers?
2 MR. POHLGEERS: Yes.
3 MS. GUENTHER: Mr. Stoeckle?
4 MR. STOECKLE: Yes.
5 MS. GUENTHER: Ms. Nachazel?
6 MS. NACHAZEL: Yes.
7 MAYOR HEHMAN: Motion carries.
8 We'll need to go out of the hearing,
9 correct?
10 MS. STEWART: Yes. You need a motion
11 to come out of the hearing.
12 MAYOR HEHMAN: Motion to come out of
13 such hearing?
14 MS. BOERGER: Motion.
15 MAYOR HEHMAN: Ms. Boerger.
16 MS. BURNS: Second.
17 MAYOR HEHMAN: Second, Ms. Burns.
18 All in favor?
19 ALL COUNCIL: Aye.
20 MAYOR HEHMAN: The hearing is
21 adjourned at this point.
22 Mr. Kegley, being the landowner,
23 obviously, Council made their stance tonight. But,
24 you know, I would like to offer a hand to you, as
25 through the process, the Z21 process, that we are

1 very active on, you know, to what the best use for
2 your land and have you involved with this, because I
3 really think that's important to this Council, and
4 it's certainly important to me.

5 MR. KEGLEY: Thank you.

6 MR. POHLGEERS: I would second that.
7 I think anything we can do to assist you in
8 developing this property, whether it be tax
9 incentives or whatnot in regards to however the Z21,
10 once that's approved in regards to commercial
11 property, I think we'd be open to that as well.

12 MR. KEGLEY: All right. Thank you.

13 MAYOR HEHMAN: Thank you.

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17 (PROCEEDINGS CONCLUDED AT 6:55 P.M.)

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2 STATE OF KENTUCKY)

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6 I, Kelly A. Steidle, the undersigned
7 Notary Public-Court Reporter for the Commonwealth of
8 Kentucky, do hereby certify that at the time and
9 place stated herein, I recorded into stenotype and
10 thereafter transcribed into typewriting the within
11 15 pages and the foregoing is a true, complete and
12 accurate report of my said stenotype notes.

13

14 IN WITNESS WHEREOF I have subscribed my
15 name and affixed my seal this 24th day of June,
16 2021.

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Kelly Steidle Brabender
Notary Public #KYNP12186
My Commission expires: 9/28/2024