

Opening

The City Council of the City of Independence, Kentucky met on Monday, April 6, 2009 at 7:00 pm in the Independence Municipal Center, 5409 Madison Pike, Independence, Kentucky with Mayor Christian J. Moriconi presiding. Mayor Moriconi called the meeting to order with the Pledge of Allegiance. An invocation was given by Council Member Jim Bushong. Roll was called and the following Council Members registered present: Mary Pat Behler, Jim Bushong, Margaret Cook, Carol Franzen, Michael Little and Donna Yeager. Also present was City Attorney Jed K. Deters.

Approval of the March 2, 2009 Regular Council Meeting Minutes

Mayor Moriconi called for a motion to approve the minutes of the regular meeting held on March 2, 2009. Council Member Behler so moved, with second by Council Member Franzen. No amendments were noted; roll was called and answered unanimously. Motion carried 6-0.

Privileges of the Floor

Mayor Moriconi announced that the people registered to speak regarding the zone change on Turkeyfoot Road would be allowed to address Council when the agenda item is discussed on the floor.

Sanitation District No. 1 Regarding Rate Increase – Jeff Eger, General Manager

Mayor Moriconi introduced Mr. Eger, General Manager of Sanitation District No.1. He stated that Mr. Eger has been addressing the cities in Northern Kentucky regarding the District's rate increase. Mr. Eger advised the District's rate increase was effective on April 1st. He reported that the District will be working on a plan to correct overflows and the deplorable conditions of the underground infrastructure. He stated they will be addressing the EPA's twenty year plan to correct the overflow situation and that they will deliver this program for one-third of the cost of the national average. He stated that he wanted to assure everyone that they are working hard to manage the rates, implement cost saving measures and acting in a progressive manner. Mr. Eger stated he welcomed email messages with any questions the City has regarding their rates and programs and would also be happy to meet with them and the residents. Mayor Moriconi thanked Mr. Eger

Independence Strategic Action Committee Report – Rodney Crise & Chris Reinersman

Mayor Moriconi directed Council's attention to the four reports submitted by ISAC in their council packets. He yielded the floor to ISAC Chairman Rodney Crise.

Mr. Crise stated that ISAC has existed over one year now and reported they meet monthly, as well as four sub-committees. He stated they have come up with some guidelines of the Downtown Study conducted a couple years ago by the City. Mr. Crise requested that the Council take some time in reviewing their recommendations as contained in the reports so they could discuss in more detail at a future meeting. He stated they will be requesting funding in the City budget so they can begin implementing some of the recommendations in the Downtown Study. Mr. Crise stated they have some short-term goals which include:

- Begin establishing "branding" with the downtown "Courthouse Square"
- Engage NKAPC in establishing zoning codes for the south gateway and central core areas of the Study

Mayor Moriconi commented that the research and work performed so far by ISAC is above and beyond his expectations. He stated they have put a lot of time and work in these reports.

ISAC member, Chris Reinersman advised that they have been in discussions with Kenton County Judge Executive Scott Kimmich to allow the Simon Kenton High School Farmer's Market to be held on the grounds of the Courthouse Square each Saturday from the end of April through the end of October. He stated it may not happen this year as they are still in discussions.

Mr. Crise advised the City could also apply for Renaissance grants to help fund the re-development of the downtown area. City Administrator, Dan Groth commented that the City would have to be designated as a Renaissance City in order to qualify for grant funds and due to the size of Independence we would be required to hire a Renaissance coordinator.

Mayor Moriconi thanked the gentlemen for their report and advised Council that he would consider a special meeting so they would have more time to review the reports and recommendation being submitted by ISAC.

Hickory Valley Subdivision – Potterhill Homes request for Waiver of Brick Wrap on Houses – Andrew Temmel, Representative of Potterhill Homes

Mr. Andrew Temmel of Potterhill Homes addressed Council with a request to waive a condition that was placed on the map amendment approval for the Hickory Valley Subdivision, specifically the condition that all houses were to have a first floor brick wrap. He stated that Potterhill Homes, previously Signature Homes, purchased the remaining 135 lots from Centerline. He stated they are requesting that the brick wrap condition be waived due to the unique architecture designs of the Potterhill homes which provides more character to the community.. He stated that a strong selling point of their houses is the feature of energy efficiency which they feel is necessary to be competitive. He stated this energy-star rating feature costs \$4,000 per house and that plus the cost of a brick wrap could have a negative impact on the marketing of the houses, making them unaffordable to some consumers.

A brief discussion ensued. Mr. Temmel was asked if he was aware of the brick wrap requirement when they purchased the lots from Centerline. He stated he was aware of the condition. Council Member Behler commented that some of the current residents in the subdivision are concerned that the Potterhill Homes will be smaller in size and lower values of the established houses in that community. Mr. Temmel responded that the prices of the houses are higher than the Ryan Homes and they will be equal in square footage. It was pointed out to Mr. Temmel that this is the third time a request has been presented to Council to waive this brick wrap condition. Council Member Cook commented that an additional \$4,000 for brick wrap should not be a deterrent to a serious buyer. Mr. Temmel responded that during the current economy the market is very competitive and a sale can be lost over \$1,000.

Mayor Moriconi ended the discussion by advising Mr. Temmel that there seems to be a consensus that the Council has no interest in waiving the brick-wrap building condition and wished him good luck.

Ratify Independence Village Stage II Development Plan - Buffalo Wild Wings Restaurant

Ashley Commercial Group (ACG) representative Bill Kreutzjans Jr. addressed Council regarding a Stage II Development Plan for the Independence Village for the construction of a Buffalo Wild Wings restaurant. He stated they reviewed the comments submitted by the NKAPC staff regarding the development plan and stated they have responded to those concerns.

(The NKAPC has advised that the submitted Stage II Development Plan for the Buffalo Wild Wings restaurant is consistent with the existing approved Stage I Development Plan and meets the minimum requirements of the City's Zoning Ordinance *except* for five (5) deficiencies, those being: (1) outdoor patio was not approved in the Stage I plan, (2) insufficient information on the enclosed dumpster area, (3) two ground signs exceed the 40 square feet limit previously

approved, and an off-site ground sign that was not approved in the Stage I plan, (4) submitted Stage II plan provides for three building facade signs, black and white facade markings on all four building elevations and an LED lighting band on all four building elevations which can be interpreted as signs, all of which were not approved in the Stage I plan, and (5) a full movement curb cut onto Madison Pike when a waiver had been previously granted by KCPC for a right-turn-in and right-turn-out movement only, ADA curb ramps at the intersections are not in accord with the required design and the curb, gutter and sidewalk along Madison Pike is referenced to be in accord with city standards rather than the Kenton County Subdivision Regulations.)

Mr. Kreutzjans stated the first issue the Planning Commission had was the outdoor patio which was not part of the Stage I Plan, but BWW feels that outdoor seating is an asset to this area. He advised that the front of the building would face Madison Pike and the patio would face the direction of Walgreen's on Centennial Blvd. He stated another concern for the Planning Commission was the monument signs. He stated they have actually proposed two of the signs to be less than the forty feet which is permitted in this development. He stated that Planning Commission also has interpreted the black and white LED band mounted on the outside of the building as signage. Mr. Kreutzjans stated that the black and white lighted banding is a component of the building and trademark of the Buffalo Wings and feels this issue should not be considered as signage. He stated the other issues were the ADA curb ramps, curb, gutter and sidewalk along Madison Pike which they have redesigned to come into compliance with subdivision regulations.

Council Member Little initiated a discussion regarding this PUD development and reminded Mr. Kreutzjans that when the City approved the revised development plan last year one of the conditions imposed was that ten-percent of the residential units had to be constructed within two years before any more commercial lots could be developed. Mr. Kreutzjans stated that currently Ashley Commercial Group (ACG) only owns the commercial lots. He stated they had a contract with a residential builder which has fallen through and while they have been actively searching for another condo developer they have not yet been successful in doing so. Council Member Little stated that he is concerned that they are only interested in commercial development and not pursuing the residential part of the development. He said the entire site has been graded with no developer for the residential area and now the Walnut Hall residents are looking at a mud hole. Mr. Darren Eyre of One-Eleven Engineering stated that the residential will be developed when they get a buyer. Council Member Little stated that ten-percent will not be completed in two years with only twelve months left in this time frame. He asked why the lake on the site was drained. Mr. Eyre advised the lake had to be drained to put in the storm sewer and grade the site properly.

Mayor Moriconi commented that the City wants to be sensitive to the residents on Walnut Hall Drive and ensure that the site stays residential and to provide a buffer from the commercial area. He stated that the clock is ticking. Council Member Little commented that the intent of the ordinance was to build the commercial and residential simultaneously and the City has an obligation to the citizens, particularly to those of Walnut Hall Drive. Council Member Yeager concurred.

Mr. Kreutzjans stated that this is two different issues and asked that they did not hold up the development of the Buffalo Wings restaurant because of the residential part of this site.

A lengthy discussion ensued. Council members were concerned that due to lack of residential development the developers were possibly circumventing the simultaneous development of this PUD zone by focusing on the commercial lots. Council Member Little expressed concern that the developer is overpromising and under-delivering.

City Attorney Mr. Deters advised that the City could opt to vote this development down over the residential unit concern, but that he feels the City would lose if challenged. He stated that the City has to wait until the two years' time frame has expired and not act ahead of that time limit.

Mr. Eric Deters, owner of Bulldog's Roadhouse restaurant approached the podium to comment on this issue. He stated that Ashley cannot possibly accomplish ten percent of a residential development over the next twelve months. He stated that he does not feel that the City can support three "Wings" restaurants and the solution to this is for Council to vote down this Stage II development plan and went on to assert that he would file a lawsuit to stop this process if approved by the Council. City Attorney Mr. Deters advised that Council has the option to vote this down but felt that decision would not be supported and able to stand up if challenged. He stated that Council should wait until the two year deadline runs out.

Council Member Yeager asked if Ashley Commercial Group purchased the entire site. Mr. Eyre stated they were originally going to buy all the lots but ended up purchasing the three commercial lots. Mr. Kreutzjans stated they originally had an agreement with Ameritech Homes, but that Ameritech pulled out. Mr. Eyre stated there were contingencies in the agreement.

Council Member Franzen commented that even if Council does not approve the Stage II plan that will not change the situation with the residential part of the development. She stated she is ready to vote on this, but admonished One-Eleven by stating they should not return to this Council requesting another commercial development until they have ten-percent of the residential completed.

City Attorney Mr. Deters expressed concern that One-Eleven and/or Ashley Commercial Group may not have actually had a valid contract/agreement with a residential builder as they stated a year ago.

Council Member Yeager asked why the ponds on the development site had been drained. Mr. Eyre advised they had to move the existing storm sewer and will relocate the pond as part of the grading process. She also asked if they could install the residential buffer now. Mr. Eyre stated that buffer is included with lot 11. City Attorney Mr. Deters stated the buffer should be installed before Buffalo Wild Wings gets a certificate of occupancy.

Council Member Franzen made a motion to override the staff recommendation of the NKAPC and approve the Stage II development plan for the construction of Buffalo Wild Wings restaurant, seconded by Council Member Behler. Roll was called and answered with three ayes from Council Members Franzen, Behler and Cook and three no votes cast by Council Members Bushong, Little and Yeager. Mayor Moriconi stated that since the developer still has twelve months to get ten-percent of the residential parcel completed that he would vote in favor of approving this Stage II plan. Motion carried 4-3.

A discussion ensued as to whether or not a Stage II development plan is considered a zoning issue. City Attorney Mr. Deters advised that the Mayor cannot break a tie on a zoning issue, but questioned if this qualifies as a zoning issue. Council Member Little asked the City Attorney if the Mayor's vote does not count then would the NKAPC recommendation to disapprove the Stage II Plan become operational by law. City Attorney Mr. Deters replied yes. A brief discussion ensued wherein several people gave their opinion on whether or not the Mayor could vote on this issue. City Attorney, Jed Deters advised he would officially find out tomorrow if the Mayor's vote was valid.

Proposed Ordinance – Regarding Map Amendment (KCPC 1957R) for 11-Acre Area at Turkeyfoot Road and Richardson Road (UDF) – 1st Reading

Mayor Moriconi announced that several people have registered to speak on this issue. Mr. Joseph Hayes was the applicant on behalf of Eastgate Village Ltd. and made the presentation to the Council. Mayor Moriconi asked how many properties would be acquired by the developer. Mr. Hayes stated that only two properties with houses would be purchased as the rest of the property was vacant land. He stated they have an agreement with the Wren family, but no agreement has been made with the McGee's yet. He stated this development is unique as they have a tenant (UDF) ready to go into the one building in the development plan. He stated the other buildings on the development plan are concept drawings. He stated the development site is for the north and south sides of the Turkeyfoot/Richardson Road intersection, but that they would not develop the north side until they get tenants. The south side would contain the UDF store.

Mayor Moriconi gave privileges of the floor to three residents who were present to speak on this issue.

Robert Morehead, 47 Richardson Road – voiced his opposition to approving the map amendment by stating that everything in this area is residential and they will no longer have any privacy at night. He stated that when the Eagle development on Turkeyfoot Road was approved, it was his understanding that UDF was going there. He stated he is also concerned that there isn't space on this development site to put in an adequate buffer zone between the residential and commercial areas. He is concerned about the commercial sprawl in this area of Turkeyfoot Road and doesn't see why another eleven acres needs to be zoned commercial when the Eagle development has thirty acres available. He stated that traffic congestion is already a problem. In closing, he commented that the Kenton County Planning Commission voted unanimously to disapprove this map amendment.

Steve Rickey, 4081 Richardson Road – stated he was not in favor of this development, feels it is a bad idea and will be able to see this development from his back yard.

Betty McGee, 4013 Turkeyfoot Road – Ms. McGee stated she is a twenty-year resident of Independence. She stated she met with Mr. Hayes and he advised they do not want to purchase her property. She asked the Council to review the taped meeting on the public hearing held by the Planning Commission. She stated that not one member of the Planning Commission was in favor of this development. She also reminded Council that the connector road from the Eagle development was eliminated. Council Member Franzen responded that the City eliminated that road at the urging of the citizens and not because the City did not want future commercial adjacent to the Eagle development site. Ms. McGee also cited that this proposal presents mobility and safety issues for the area and the school buses. She stated this plan is not consistent with the Comprehensive Plan and there will be a non-conforming island left in the road.

David Wren, 4011 Turkeyfoot Road – stated he was in favor of the development as his house doesn't fit in that area any longer since the commercial development is changing the area.

Mr. Hayes advised Council that Mr. Lanny Holbrook owns the south side property of this development and that they have not purchased the two additional parcels as that is contingent on the approval of the zone change.

Mayor Moriconi opened the floor to Council for questions. Attorney for Eastgate Ltd, Jerry Dusing responded to Council Member Franzen's question about developing the south side and not the north side. He stated there is a minimum size needed to apply for the NC

(neighborhood commercial) zone so they need both sides to be eligible for the zone. He stated the north side zone is R-3 which is the same as the adjacent apartment buildings and feels this zone change would prevent the apartments from expanding in the future. He stated the logical zone for this area would be NC. Mr. Dusing commented that the merits of the development, as outlined on page seven of the KCPC recommendation, were derailed from the get-go at the public hearing of the Planning Commission. He also said that the City had approved the amended Stage I development plan for the Eagle site that permitted the removal of the connector road.

Council Member Little asked if Lanny Holbrook, who currently owns the development site was in favor of this zone change. Mr. Hayes responded that they have a contract to purchase the property from Mr. Holbrook if and when the zone change is approved. Mr. Deters commented that it would be a package deal.

There being no further discussion, Mr. Deters advised Council they have ninety days to take some action on this. He stated they could take no action on this recommendation from the Planning Commission, in which case their recommendation to disapprove the zone change would be in effect by operation of law, or the Council could override their recommendation and approve the map amendment.

Council Member Yeager made a motion to override the disapproval recommendation of the Planning Commission and to approve the submitted map amendment (KCPC 1957R) changing an approximate 11-acre area located at the northeast and southeast corners of the intersection of Turkeyfoot Road with Richardson Road from R-1C and R-3 to NC, seconded by Council Member Bushong. Although a roll call vote is not usually taken on a first reading of an ordinance Mayor Moriconi requested a roll call or voice vote to see if there was a consensus of the Council to move forward with the motion to override the KCPC recommendation. No roll call; all ayes and the motion carried. Mr. Deters gave the proposed ordinance to approve the map amendment a first reading.

Proposed Ordinance – Closing a Portion of Richardson Road, Specifically the Bridge Thereon – 1st Reading

Mayor Moriconi presented for a first reading a proposed ordinance that would close a portion of Richardson Road, specifically the bridge area. He reported that the City has received \$175,000 from the State to be used for repairs or toward the replacement of the bridge. He stated the bridge would need to be closed during repairs or replacement. Mr. Groth commented that core drilling would be conducted to see if the area can handle a steel bridge. It may be possible that a second reading of this ordinance would not occur if the results of the core drilling indicate that the area will not support a steel bridge. Council Member Franzen asked if the residents have been notified of the closing. Mr. Groth advised that if and when the time comes to close the bridge for repairs/replacement the residents will be informed in advance. Mr. Deters gave the proposed ordinance a first reading.

Proposed Ordinance – Amendment to Ordinance No. 2003-O-04 – Relating to Curbside Trash Pickup & Providing for Property Lien for Non-Payment of Penalty for Non-Compliance – 1st Reading

Mayor Moriconi presented for a first reading a proposed ordinance that would amend Ordinance No. 2003-O-04 that regulates the times for garbage can placement at the curb, requiring garbage containers to have lids. He stated the amendment includes setting times for the removal of junk, trash and debris placed on the curb for pickup, provides for posting notice of violations and setting a monetary penalty for violations and also provides for a property lien for non-payment of the imposed penalties. Mayor Moriconi advised this proposed amendment is a direct result of taking the trash assessment off the property tax bills. He stated that the City has found this amendment necessary due to the many complaints called in regarding excessive

trash accumulating at the curb because residents have not paid Rumpke for their trash pickup. This amendment will provide the City staff some recourse when we have to go out and remove the trash. Mr. Deters gave the proposed ordinance a first reading.

Mayor Moriconi commented that he has received letters from residents regarding the recent newspaper article that reported Rumpke's rate for the City of Florence was quite a bit less than the rate being paid by Independence residents. He stated that the contract with Florence includes commercial pickup as well as the residential pickup so the businesses are basically subsidizing the residential cost. He stated that on the surface it may appear unequal, but Independence does not have the amount of commercial properties that would allow this lower rate here.

Proposed Ordinance– Approving Two Zoning Text Amendments (KCPC No. 1952R) Modifying the NSC Zone Relating to Bakery Goods Stores and Music & Amplifying Systems in Outdoor Dining Areas – New 1st Reading

Mayor Moriconi presented for a second reading an ordinance that would accept the recommendation of the Kenton County Planning Commission for a zoning text amendment that would modify the NSC (Neighborhood Shopping Center) zone that would allow bakery and bakery goods stores to sell their products elsewhere off the premises where they are baked and to override the recommendation to disapprove outdoor dining areas, as a conditional use, to have entertainment, music and sound amplifying systems. Mr. Deters gave the proposed ordinance a second reading.

Council Member Yeager moved to adopt the proposed ordinance, seconded by Council Member Little. Mayor Moriconi opened the floor for discussion before voting on the ordinance. Council Member Bushong expressed concern about allowing the amplifying systems close to residential property and suggested that a distance restriction be imposed in the ordinance. City Attorney, Mr. Jed Deters advised that because this will be a conditional use, a business would have to apply to go before the Board of Adjustment to get approval and the Board could impose distance restrictions. Zoning Administrator Annie Wuestefeld voiced her agreement with Mr. Deters. Mr. Deters advised that imposing distance restrictions can become problematic and in some zones it won't be possible. Council Member Bushong stated that he doesn't want to allow blaring music within a certain distance and would feel better if the city would impose a distance restriction in the ordinance.

Further discussion centered on deciding an appropriate distance restriction. City Administrator Dan Groth commented that he would recommend not imposing a distance restriction and if a business was permitted this conditional use by the Board of Adjustment and then the music sound level prompted complaints from the residents, the City would then just use the nuisance ordinance to resolve the complaint(s).

Mr. Eric Deters, who had requested this text amendment so that he could have outdoor music on the patio of his Bulldog's Roadhouse restaurant (formerly the Courthouse restaurant) commented that he planned to have acoustical, relaxing type of music and that he would only hire bands during the holiday weekends, such as the City's July 4th two-day celebration. Council Member Behler stated that she felt there would be less chance of the music becoming a nuisance from acoustical music. Council Member Cook stated that five hundred (500) feet would eliminate Bob's Family restaurant from outdoor music. Council Member Franzen stated she is not in favor of imposing stipulations on one restaurant and not another and that the ordinance will affect the entire City, not just Mr. Deters' restaurant.

City Attorney Mr. Deters, suggested adding the new language to include a distance restriction to the ordinance, but then they should do a new first reading of the ordinance. Eric Deters expressed concern that a new first reading would delay his application to the Board of

Adjustment for the conditional use by another month. City Attorney Mr. Deters commented that the Mayor could approve the outdoor music for the holiday special event.

Council Member Little expressed his concern that imposing a distance requirement could penalize some neighborhood commercial areas like the Cherokee and Beechgrove plazas. He stated that he believes the zone has an impact and that a five acre development would be more intrusive than a forty acre development. He asked how the nuisance ordinance would take effect. Mr. Groth responded by a reasonable person test wherein it only takes one person to be affected.

A discussion ensued about adding a 200 feet distance requirement language in the ordinance. Council Member Cook commented that she feels that a distance requirement will cause problems. Council consensus was to add the new language and have a new first reading of the ordinance. The City Attorney gave the ordinance a new first reading.

Approving Interlocal Agreement with Kenton County for the Collection of Municipal Occupational License Fees

Mayor Moriconi resubmitted to Council the Interlocal Agreement with Kenton County for the collection of occupational license fees and taxes. He stated approval of this Agreement was tabled at the March meeting. The City Administrator was able to speak to a representative at the County office who answered a few questions posed by the Council at the last meeting and the answers have been conveyed to the Council.

There being no discussion, a motion was made by Council Member Little and seconded by Council Member Yeager to authorize the Mayor to enter into the Agreement with the County for the collection of the city occupational license fees and taxes. Roll was called and answered with five ayes and one no vote cast by Council Member Franzen. Motion carried 5-1.

Resolution No. 2009-R-04 – Designating an Applicant Agent for FEMA Assistance

Mayor Moriconi presented to Council Resolution No. 2009-R-04 that would authorize him as the City's agent for FEMA for all matters pertaining to Federal disaster assistance. He reported that the City has applied for reimbursement for expenses incurred from the ice storm in February. He stated that the City is applying for a reimbursement of approximately \$45,000.

A motion was made by Council Member Yeager and seconded by Council Member Franzen to adopt Resolution No. 2009-R-04. Roll was called and answered unanimously. Motion carried 6-0.

Municipal Order No. 2009-MO-03 – Re-Appointments to the Board of Adjustment

Mayor Moriconi presented to the Council a Municipal Order that would re-appoint members to the Board of Adjustment. The members are Jim Brewer, Eric Dupps and Darrel Herald. Council Member Franzen moved to adopt Municipal Order No. 2009-MO-03, seconded by Council Member Little. Roll was called and answered with five ayes and one no vote cast by Council Member Cook. Motion carried 5-1.

City Administrator Report – Dan Groth

Mr. Groth submitted a written report to the Council. He commented that the new Senior Center director is doing a good job and the membership is up to 175 seniors.

Attorney's Report – Jed K. Deters

Mr. Deters stated he did not have anything to report.

Mayor's Report – Christian J. Moriconi

Mayor Moriconi reported that the City anticipates receiving approximately \$45,000 in reimbursement from FEMA for expenses from the ice storm in February. He said a check should be forthcoming.

Miscellaneous

Council Member Bushong announced that Independence resident, Mary Beth Hall who is a breast cancer survivor has written a new book "Lessons From a Bald Chick" which helps people understand what cancer patients go through and how to do it with a positive attitude.

Council Member Franzen congratulated the basketball teams at Summit View Middle School for winning the Conference championship games. She also acknowledge the winning teams at Twenhofel School too.

Council Member Cook acknowledged four girls from Summit View Middle School for being chosen for the Children's All-State Choir. She stated these four students were chosen from 212 children statewide.

Adjournment

There being no further business, Council Member Yeager Franzen moved to adjourn the meeting, seconded by Council Member Bushong. Motion carried with all ayes and the meeting ended at 9:54 p.m.

Christian J. Moriconi, Mayor

Attest:

Patricia H. Taney, City Clerk