

COUNCIL MEETING

Minutes of May 4, 2009

City of Independence, Ky.

Opening

The City Council of the City of Independence, Kentucky met on Monday, May 4, 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 April 6, 2009 Regular Council Meeting Minutes

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

Presentation by Commonwealth Attorney Rob Sanders

Mayor Moriconi introduced Rob Sanders, Commonwealth Attorney who presented a SpeechGuard multilingual speech-to-speech translator to the City. He stated the Commonwealth Attorney's office is providing these devices to a few of the cities in Northern Kentucky for use in the police departments and that these devices retail for \$1,000. Mr. Sanders advised that these devices assist police officers when engaging with non-English speakers. He stated that the translator device can instantly translate words or phrases in a number of different languages. He stated the Miranda warning can also be given with this device to non-English speakers. Mayor Moriconi thanked Mr. Sanders for this device.

Privileges of the Floor

Brandon Perry addressed Council with a request to support a zoning text amendment application that would allow a youth center as a conditional use in an NSC zone. He stated that his family purchased the old Kenton County Library building on Taylor Mill Road about a year ago and they would like to convert the building into a teen/youth recreation center. He said they would cater to 13-18 year olds and have recreational activities such as Wii, Wi-Fi access, ping pong, air hockey, pool tables and indoor cornhole. A brief discussion ensued. Council Members asked how the center would be funded, if supervision would be provided, what organization the center would be affiliated with and what their business plan would be to sustain the center.

Mr. Perry stated that they would be interested in obtaining grants to fund the center, but at this time they are considering charging a monthly membership fee to operate the facility. He stated they are not affiliated with any organization. He stated that he plans to work with the youth but that he would look to engage some mentors for the teens not just hire workers. He also hopes to get volunteers to man the center as well. Some Council Members commented that if the details can be worked out that it would be great to have a youth center in the City.

Resolution No. 2009-R-06 – Authorizing Application for Zoning Text Amendment

Council Member Bushong moved to adopt Resolution No. 2009-R-06 supporting a zoning text amendment that would modify Section 10.15(c) of the Zoning Ordinance to add as a conditional use Community Centers, seconded by Council Member Behler. Roll was called and answered unanimously. Motion carried 6-0.

Jeremy Deters 1926 Appeals Court, Independence – addressed Council with a request to support a zoning text amendment to add, offices, medical, dental and clinics as permitted uses in the Neighborhood Shopping Center zone. He stated that the Towne Center has Oxford Physical Therapy Center as a prospective tenant but that medical/clinic is not currently a permitted use in the neighborhood shopping center zone.

Resolution No. 2009-R-07 – Authorizing Application for Zoning Text Amendment

Council Member Little moved to adopt Resolution No. 2009-R-07 supporting a zoning text amendment that would modify Section 10.15 of the Zoning Ordinance that would allow offices, medical dental and clinics as permitted uses in the NSC zone. Council Member Franzen seconded the motion. Roll was called and answered unanimously. Motion carried 6-0.

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

Mayor Moriconi reminded Council that at the last meeting he broke the tie vote to approve the Stage II development plan for the Independence Village for the construction of a Buffalo Wild Wings restaurant. He advised that after the meeting he was informed that a Stage II plan is considered an extension of zoning and as such, and in accordance with state law, the mayor is not eligible to vote on a zoning issue. He asked Council how they wanted to proceed, i.e. take a new vote or let the tie vote stand.

Council Member Franzen moved to override the disapproval recommendation of the Planning Commission and approve the Stage II development Plan for the construction of a Buffalo Wild Wings restaurant, seconded by Council Member Behler. A discussion ensued.

Council Member Little called for a point of order. He stated that according to Kentucky state law the Council has already acted on this issue and it reverts back to the Planning Commission's recommendation which was to disapprove the Stage II plan. He stated he consulted with the Kentucky League of Cities legal department and quoted an Attorney General opinion.

Jerry Dusing, legal counsel for Ashley Development commented that Council should have the opportunity to vote on this matter again in light of the knowledge that the mayor cannot vote. He went on to say that his law firm does work for the League of Cities and that depending on how a question is phrased can have an effect on the answer that is provided. Mr. Dusing advised that the Planning Commission gave the revised development plan a second review on April 23rd after the last Council meeting held on April 6th, and their response to the deficiencies noted in the first review is what is before the Council tonight for a vote. City Attorney Mr. Deters commented that the most recent recommendation from the Planning Commission still has two unresolved issues with the development plan. Mr. Dusing stated that the two unresolved issues are the outdoor patio, which they did not approve as it was not on the Stage I plan. He stated it was not on the Stage I plan as it was unknown at that time that a future restaurant would want to have an outdoor dining area. He stated the second unresolved issue is the LED façade lighting on the Buffalo Wings building, and again at the time of the Stage I plan a specific building was not identified. Mr. Dusing commented that he feels these are minor changes that were not anticipated and not known at the time the Stage I plan was submitted for a zone change.

Council Member Yeager stated she did not have a problem with this commercial building or the desired outdoor dining patio. She stated her main concern is that the residential development is not moving forward and she cannot ignore that fact. Council Member Little concurred. He stated he feels that the developer has misrepresented this to the City. He stated he has reviewed the recordings of the meeting last year wherein the City Council expressed concerns about the residential side of the development being stalled. He stated he feels that the Planning Commission disapproves of an outdoor patio because this is a PUD zone and the restaurant

would be too close to residential to permit such an area. He read direct quotes from the meetings last year wherein the developer asserted that all lots on the north side of the development were sold. He stated that one of the conditions the City imposed last year on this development was that 10% of the residential development had to be started within two years, which the City Attorney advised against as he felt this condition would be difficult to enforce.

Council Member Behler commented that she is not happy that the development of the residential section has not been started, but she hears comments from residents all the time that they want more family restaurants. And with the current economy, it may be some time before a developer is able to start on the residential units.

Council Member Cook stated that she feels the City needs to be realistic about the current economy and focus on the commercial revenue base. She stated she feels if the City makes it difficult for businesses to get established here then they may look elsewhere.

Council Member Franzen expressed concern that if this development plan is voted down then the City will be left with a mud hole which will serve no purpose.

There being no further discussion, Mayor Moriconi called for a vote. Roll was called and answered with four ayes and two no votes cast by Council Members Little and Yeager. Motion carried 4-2 in favor.

Ordinance No. 2009-O-04 – Amendment to Ordinance No. 2003-O-04 – Relating to Curbside Trash Pickup & Providing for Property Lien for Non-Payment of Penalty for Non-Compliance – 2nd Reading

Mayor Moriconi presented for a second reading Ordinance No. 2009-O-04 that would amend Ordinance No. 2003-O-04 regulating garbage pickup/containers by adding times for the removal of junk, trash, and debris placed on the curb for pick-up and providing for the posting of a notice of violations, setting a monetary penalty for the violation and providing for a property lien for non-payment of the penalty. Mr. Deters read Ordinance No. 2009-O-04.

Council Member Little moved to adopt Ordinance No. 2009-O-04, seconded by Council Member Behler. Roll was called and answered unanimously. Motion carried 6-0.

Ordinance No. 2009-O-05 – Override and Approve a Zoning Map Amendment (KCPC 1957R) for 11-Acre Area at Turkeyfoot Road and Richardson Road (UDF) – 2nd Reading

Mayor Moriconi presented for a second reading Ordinance No. 2009-O-05 that would override the disapproval recommendation from the Planning Commission and give approval to a map amendment for an 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 (neighborhood commercial). Mayor Moriconi advised that several people signed in to address Council about this proposal. He advised everyone that the City could not hear or take into consideration any new information that was not presented at the Kenton County Planning Commission's public hearing. City attorney Mr. Deters explained to Council the three options they have regarding their consideration of a proposed map amendment one being that if they wanted to hear new information that the City could hold its own public hearing which would require prior public notice in accordance with state law.

Lynn Morehead, 4070 Richardson Road, Independence – addressed Council to voice her opposition to the zone change for the 11-acre area at the intersection of Turkeyfoot Road and Richardson Road. She stated that the Planning Commission staff had issues with every aspect of the proposed development on this site and it was unanimously voted down at the public meeting of the Kenton County Planning Commission. She stated her property will have direct

view of the gas pumps and canopy of the UDF building. She expressed concern that the thirty-acre Independence Gateway development by Eagle just one block north of this development site does not have one tenant yet, so there is already plenty of commercial land in this area. She stated she would like to hear why the City would be in favor of this development.

Mayor Moriconi stated that Betty McGee and Robert Morehead signed in to speak again this month. He yielded the floor to Ms. McGee and asked that she keep her comments to three minutes.

Betty McGee, 4013 Turkeyfoot Road – Ms. McGee stated that she feels the focus is on the development of the south side – UDF- and not on the north side of the development or the Lily Drive remnant that will remain. She stated that the developer is not interested in buying her out and feels the City should require them to acquire all of Lilly Drive. She stated that three businesses will have to access the Lily Drive cul-de-sac to get to the development.

City Attorney Mr. Deters advised that the Council that when making their decision whether or not to approve this zone change should only consider the recommendation of the Planning Commission.

A discussion ensued with the developers' representative Joe Hayes (5500 Cody Road, Independence) regarding the Lily Drive cul-de-sac. Mr. Hayes advised that if they could come to terms with Ms. McGee regarding the purchase of her property they would be able to eliminate Lily Drive. Further discussion centered on room left for school busses to turn around on a Lily Drive cul-de-sac and/or possible egress/ingress off of Richardson Road if Lily Drive could be eliminated and approval for a curb cut could be obtained from the Transportation Department. But all properties on Lily Drive would have to be purchased by the developer to eliminate the street.

Council Member Little asked the time frame for erecting the UDF building. UDF representative John Johnson advised that it would take the developer 3-4 months to get the site pad-ready and then five months for their contractor to construct the building. It would be the end of 2009 or early 2010 before the store would be open for business. He stated that the weather also effects the timetable for the construction. There was a brief discussion about imposing a timetable condition on the approval of the zone change. City Attorney Mr. Deters advised against this stating that the City could impose conditions but not contingencies.

There being no further discussion, Mayor Moriconi directed Mr. Deters to give Ordinance No. 2009-O-05 a second reading. Mr. Deters read the ordinance to override the recommendation of the Kenton County Planning Commission and approve the map amendment based on the erroneous assumption that the City did not want Lily Drive to be a through street to the adjoining Eagle development.

Council Member Yeager moved to adopt Ordinance No. 2009-O-05, seconded by Council Member Behler. A discussion ensued regarding imposing conditions on the approval of the map amendment and the following conditions were agreed upon by all parties involved:

- 1) The buffer zone between Amhurst and the south section of the subject property and the buffer zone along Old Richardson Road be placed prior to the issuance of any Certificate of Occupancy for the first structure erected in this development.
- 2) The remainder of the south section be graded, seeded, strawed, and grass maintained until additional development occurs.
- 3) The buffer zone, on the north section of the subject property, be completed, pursuant to regulations, prior to any Certificate of Occupancy being issued on the first structure constructed.

- 4) The remainder of the north section be graded, seeded, strawed, and grass maintained until additional development occurs.

Council Member Franzen also asked Mr. Hayes to work with Ms. McGee to come to an agreement to purchase her property so she would not be the only residential property left on Lily Drive.

Discussion ended and roll was called and answered with five ayes and one no vote cast by Council Member Franzen. Motion carried 5-1 to approve the map amendment.

Defeated on Second Reading - Ordinance No. 2009-O-06 – Approving Zoning Text Amendments (KCPC No. 1952R) Modifying the NSC Zone Relating to Bakery Goods Stores and Music & Amplifying Systems in Outdoor Dining Areas – 2nd Reading

Mayor Moriconi presented for a second reading Ordinance No. 2009-O-06 that would approve a zoning text amendment modifying the neighborhood shopping center (NSC) zone that would 1) allow bakery and bakery goods stores to sell their products elsewhere than from the premises where they are baked, and 2) override the recommendation of the Planning Commission and approve an amendment that would allow outdoor dining areas to have entertainment, music and sound amplifying systems. Mr. Deters gave Ordinance No. 2009-O-06 a second reading.

Council Member Bushong moved to adopt Ordinance No. 2009-O-06, seconded by Council Member Little. There was no discussion; roll was called resulting in a tie vote of 3-3. Ayes were cast by Council Members Bushong, Little and Yeager. Nays were cast by Council Members Behler, Cook and Franzen. City Attorney Mr. Deters advised that the Mayor could not vote to break the tie, so the motion fails.

Proposed Ordinance – Adopting the 2009 Supplement to the Code of Ordinances – 1st Reading

Mayor Moriconi presented for a first reading a proposed ordinance that will adopt a supplement to the Code of Ordinances. Mr. Deters gave the ordinance a first reading.

Proposed Ordinance – Final Annexation of Right of Way Areas along the New SR17 – 1st Reading

Mayor Moriconi presented for a first reading a proposed ordinance that would finalize the annexation of the right of way areas along the new section of State Route 17. Mr. Deters gave the ordinance a first reading.

Resolution No. 2009-R-05 – In Support of Residential Substance Abuse Facility in Northern Kentucky

Mayor Moriconi presented to Council Resolution No. 2009-R-05 that would support an adolescent residential substance abuse facility to serve the youth of Northern Kentucky. Mr. Groth stated this resolution would be presented to state legislators and other city officials in Northern Kentucky to gain support for building a treatment center to support the eight counties in Northern Kentucky. Council Member Yeager asked why the center would be built in Grant County. Council Member Behler responded that land has been donated and that the Grant County/Williamstown area is actually the most central location of the eight counties.

Council Member Yeager moved to adopt Resolution No. 2009-R-05, seconded by Council Member Franzen. Roll was called and answered unanimously. Motion carried 6-0.

City Administrator Report – Dan Groth

Mr. Groth submitted a written report. He also asked Council if they would like him to speak on behalf of the City at the Kenton County Planning Commission regarding the proposed zone change at the corner of Taylor Mill Road and Senour Road. He stated that the land is actually in the city limits of Covington, but borders Independence. He stated a developer is seeking an Industrial zone for the property. Council agreed that he should voice the City’s opposition to the requested zone change at the KCPC public hearing, on behalf of Independence.

Attorney’s Report – Jed K. Deters

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

Mayor’s Report – Christian J. Moriconi

Municipal Order No. 2009-MO-04 – Approving Mayoral Appointment to ISAC

Mayor Moriconi presented Municipal Order No. 2009-MO-04 that would support his appointments to the Independence Strategic Action Committee (ISAC). He would like to appoint Scott Wells and Brian Davis to the Committee.

Council Member Franzen moved to adopt Municipal Order No. 2009-MO-04, seconded by Council Member Bushong. Roll was called and answered with five ayes and one no vote cast by Council Member Cook. Motion carried 5-1.

Mayor Moriconi reported that the City of Independence tied with the City of Union for the Green City Award presented by Sanitation District No. 1 for having the most rainwater barrel purchased by the city residents. He stated he received a letter of recognition from the Sanitation District.

Mayor Moriconi recognized Assistant Police Chief Dave Nichols’ son who has accepted a full scholarship to Stanford University.

Mayor Moriconi announced that a ceremony for the National Day of Prayer would be held on Thursday at 6:30 p.m. at the Memorial Park Amphitheater.

Mayor Moriconi announced that the intersection of Bristow Road and Independence Road is now a 3-way stop.

Council Member Behler encouraged everyone to visit the Farmers Market being held at the Courthouse Square every Saturday from 8:30 a.m. – 2:00 p.m. now through October.

Adjournment

There being no further business, Council Member Franzen moved to adjourn the meeting, seconded by Council Member Yeager. Motion carried with all ayes and the meeting ended at 8:53 p.m.

Christian J. Moriconi, Mayor

Attest:

Patricia H. Taney, City Clerk