

**Special Meeting
March 6, 2018**

Mayor Irvin T. "Butch" Callery called the March 6, 2018 City of Villa Hills special meeting to order at 6:30 p.m. at the River Ridge Elementary School Cafeteria located at 2772 Amsterdam Road, Villa Hills, Kentucky. Mr. Kilburn gave the prayer, Mayor Callery lead the Pledge of Allegiance. Mr. Bohman took the roll. Those in attendance:

Mayor Butch Callery
G. Bruns
G. Kilburn
M. Koenig
S. Ringo
J. Vaden
G. Waugaman

Craig T. Bohman, City Administrator/Clerk
Mary Ann Stewart, City Attorney
Bryan Allen, Chief of Police
Buck Yelton, Public Works Director

A quorum was present.

Approximately 200 people were in the audience.

Mr. Bohman read the special meeting notice into the record and noted the reception of the waiver of notice by all council members present.

The next item on the agenda was a **motion and consideration of the Kenton County Planning Commission recommendations** regarding the Sanctuary Development.

Motion Made by Mr. Kilburn, seconded by Mr. Waugaman to accept the Kenton County Planning Commission's recommendations and Findings of Fact as found in the administrative record of the Kenton County Planning Commission's Public Hearing of January 16, 2018.

Mr. Ringo asked the City Attorney to review the parameters that Council can consider to make their decision on the motion. Ms. Stewart stated that under Kentucky law, since the Planning Commission held the public hearing and sent its recommendations to the Council, it would take a majority of the full number of council members to override the Planning Commission decision. If Council wishes to override the decision that it must state independent findings of facts based on substantial evidence found in the administrative record from the January 16th public hearing. She stated that Council could rely on comments from the Feb 21st meeting of Council as a part of the administrative record. Ms. Stewart noted that if Council deviates from any way from the Planning Commission findings, those finding must be based on substantial evidence as found in the administrative record. Mr. Ringo clarified that the 70 people who spoke against the development at the Public hearing are in the administrative record. Ms. Stewart confirmed they were a part of the record. Mr. Ringo inquired about the petition presented at the February 21st meeting of Council. Ms. Stewart replied those

were not a part of the record because they were not presented at the public hearing on January 16, 2018. Mr. Ringo asked if that meant the court would reject a finding based on the petition. Ms. Stewart replied that a court would review the administrative record from the Planning Commission's public hearing to determine if there was substantial evidence to support other findings of facts adopted by Council. Further she pointed out a case on point from Campbell County where the Fiscal Court based findings of fact on a petition received after the public hearing to reject a zone change and the court overturned the Fiscal Court and ordered the zone changed approved. Mr. Ringo followed up by asking at what point outside the public hearing was Council to hear about how the public felt about the development. Ms. Stewart stated that the purpose of the meeting was to receive public comment and under statute the Planning Commission is the city's agent to take public comment. Mr. Ringo stated that the majority of the evidence received was against the project and stated his frustration that Council has seen strong opposition from the public in two meetings in three weeks and received 2,000+ signatures against the project in a city with 4,000 voters and that cannot be considered. He said he spoke with DefendVH leaders and they informed him that 90% of the homes they visited were opposed to the apartment building. Mr. Ringo stated that even though the majority of the evidence received by the Planning Commission was negative, they approved it anyway and now he believes that he is being told he can only vote to approve the development. Ms. Stewart replied that the Council could make its own findings of fact based on the extensive administrative record provided by both the opponents and proponents of the development. Mr. Bohman stated that the city received the action letter from the Planning Commission that contained 14 pages of testimony from both sides and that the opposition voice is a part of the administrative record. Mr. Ringo restated he believes that he is not allowed to consider the voice of the public who elected him. Ms. Stewart replied that they must read the administrative record differently. She noted that opposition to the apartment building is stated in the record.

Discussion about voting procedure followed. A roll call vote was taken with the results as follows:

- Mr. Bruns voted no and explained his vote. Mr. Bruns stated that everyone in the room would try to sell an 80+ acre asset for the most money and he understands the sisters are trying to do that. He stated that he has issues with the process because he does not feel that process brings justice to Villa Hills. He noted that no one did anything underhanded, illegal or behind closed door. Mr. Bruns pointed out the terms "neighborhood scale" and "Traditional Neighborhood Design" and stated he does not believe those apply to a 4-story apartment building in Villa Hills. He noted that only Covington has such buildings that go taller with smaller foot prints. Mr. Bruns stated he wished the sisters and the developer would remove the apartment building since he does not want to see a building this size in the city. He noted that apartment buildings in neighboring cities look great when the open but they don't stay that way and worries about what the apartment building will be like in 30 years. Mr. Bruns stated his support for the Benedictine Sisters, but he has a problem with this building in the city.

- Mr. Kilburn voted yes and explained his vote. Mr. Kilburn stated that when Council was elected, they took an oath to follow the laws of the Commonwealth. Mr. Kilburn noted that one of the requirements to approve a map amendment was that it needed to be in agreement with the comprehensive plan and by a vote of 17 in favor, 1 against, and with 1 abstention the Planning Commission found that the proposed map amendment was in agreement with the comprehensive plan. He noted that the 2nd finding was that the current zoning was inappropriate and a 3rd finding that the proposed zoning was appropriate. Mr. Kilburn stated that even though the public may not like it, he does not have the luxury of ignoring state statutes and is required under the law to assess the proposal against those findings of facts. Mr. Kilburn noted that this is the end of 3 year process. He reminded the public that 2 well publicized and well attended meetings were held and over 1,000 comments were received. He pointed out that the Benedictine Sister could have just sold the land without engaging the public to an institution like the new facility off of I-75 since the land has been zoned institutional for many years. Mr. Kilburn noted that such a buyer did offer to purchase the land and the Benedictine sisters said they wanted to work with the city. He thanked the Benedictine Sisters for the opportunity to engage with them in this process and apologized for the abuse that has been heaped on them by some in the community.

Someone in the crowd yelled that the city was stealing from the community. Mayor Callery called on the audience to be civil. Mr. Kilburn addressed that comment by stating if anyone believed that the Mayor and Council had acted illegally in this or any issues, they should contact the Kenton County Commonwealth Attorney's office for an investigation.

Mr. Kilburn concluded his remarks by stating his support of the proposal based on the administrative record and to safeguard the legal standing of the city, and urged his colleagues to do likewise.

- Ms. Koenig voted yes without comment.
- Mr. Ringo voted no and explained his vote. He thanked the Benedictine Sisters for participating in a collaborative effort and for seeking to change the zoning from Institutional due to the serious impact that would have on the city. Mr. Ringo stated he wants 95% of what the developer has proposed, but he cannot support the proposed apartment building. He said that he believes the apartment building is a violation of the intent and language of the small area study. He stated that he understands his colleagues' reluctance to invite a long legal battle and financial liability if a majority votes no, but the enormous outpouring of sentiment against the apartment building leaves him no option. Mr. Ringo agreed that the current zoning is inappropriate and the proposed zoning is appropriate, but that the apartment building is not to scale with any other residential structure in Villa Hills. He reiterated that the proposed apartment building is out of scale and had its possibility been disclosed earlier in the small area process the outcry would have been the same then as it is now.
- Ms. Vaden voted yes without comment.
- Mr. Waugaman voted yes and explained his vote. He stated he has been involved in this project from the beginning, attended every meeting, and asked a lot of questions. He corrected inaccurate statements regarding lack of city or

utility capacity, denied that the city planned to use eminent domain, and questioned if those making these misstatements took the time to research the issues to see if they were unfounded. Mr. Waugaman stated that he read every email sent to him and was disappointed by the threats contained within some of them. He said he did not meet with groups to avoid being mischaracterized and upon the advice of the city attorney. Mr. Waugaman reminded the public that during the small area study, public comment and the taskforce's focus was on commercial activity and that was addressed in detail. He noted that no discussion or restrictions were devised for apartments. He surmised that was a result of receiving only 8 comments out of nearly 1,000 opposing apartments. Mr. Waugaman stated that the property owner did not have to engage the city in their process. He reviewed the timeline for the development and approval of the small area study and its incorporation into the comprehensive plan, noting its unanimous passage by both Council and the Planning Commission. Further, he pointed out that the recommendation from the planning Commission passed 17-1 with 1 abstention. Mr. Waugaman cautioned the public that the property is zoned institutional and a facility like the structure on Dolwick could be there. He also stated that there are legal issues involved with serious ramifications if the development is rejected. Mr. Waugaman then restated his comments from the February 21st meeting outlining Council's authority in the review of zoning matters. He noted that state statues require the adoption of a comprehensive land use plan and zoning. Mr. Waugaman pointed out that statute requires that development on any site adhere to the comprehensive plan and the zoning of the site; and if a development wishes to change the zoning, it must show that the existing zoning is inappropriate and that the proposed zoning is appropriate. He noted that court rulings state that factual determinations must be made to support the change and that evidence can only be received at evidentiary public hearings. In regards to the proposed development, Mr. Waugaman noted an evidentiary hearing was held on January 16, 2018 and the planning commission determined from the evidence that proposed map amendment was in agreement with the adopted comprehensive plan and that the existing Institutional zoning was inappropriate. He noted that Council decided to limit its review to the administrative record. He pointed out the issue was if there was substantial evidence in the administrative record to overturn the Planning Commission's findings. Mr. Waugaman stated that there is not substantial evidence to overturn the Planning Commission's recommendations and any decision to do so would not withstand judicial review.

Mr. Bruns	N	Mr. Ringo	N
Mr. Kilburn	Y	Ms. Vaden	Y
Ms. Koenig	Y	Mr. Waugaman	Y

Motion carried 4-2

During Council's comments and following the vote, Council was heckled and some audience members displayed obscene hand gestures. One person threw wadded paper at councilmembers as a large portion of the audience dispersed.

Legislation:

- **2nd Reading and Approval of Draft Ordinance 2018-A** An ordinance of the City of Villa Hills, in Kenton County, Kentucky amending section 10.10 titled PUD (Planning Unit Development) Overlay Zone of the Villa Hills Zoning Code.

Ms. Stewart gave a second reading to draft Ordinance 2018-A. A motion was made by Mr. Kilburn, seconded by Mr. Waugaman. A roll call vote was taken as follows:

Mr. Bruns	N	Mr. Ringo	N
Mr. Kilburn	Y	Ms. Vaden	Y
Ms. Koenig	Y	Mr. Waugaman	Y

Motion carried 4-2. This will become Ordinance 2018-1

- **2nd Reading and Approval of Draft Ordinance 2018-B:** An ordinance of the City of Villa Hills in Kenton County, Kentucky, amending the official City Zoning Ordinance to re-zone an approximate 86 acres located on the north side of Amsterdam Road from INST (Institutional) to R-1EE (PUD)(Single-family residential zone with a planned unit development overlay).

Ms. Stewart gave a second reading to draft Ordinance 2018-B. A motion was made by Mr. Kilburn, seconded by Mr. Waugaman. A roll call vote was taken as follows:

Mr. Bruns	N	Mr. Ringo	N
Mr. Kilburn	Y	Ms. Vaden	Y
Ms. Koenig	Y	Mr. Waugaman	Y

Motion carried 4-2. This will become Ordinance 2018-2

- **Discussion and consideration of draft Municipal Order 2018-B**
A Municipal Order of the City of Villa Hills, in Kenton County, Kentucky approving a development agreement with Ashely Commercial Group and authorizing the Mayor to sign said agreement.

Ms. Stewart noted that the development agreement holds the developer responsible for meeting the requirements laid out in the Stage 1 development plan and maintaining greenspace and other promises that the developer made for the record. She apologized for not getting the draft out to the Council until the day of the meeting due to the developer's attorney being out of town. Ms. Vaden asked if the agreement before them is the final version and Ms. Stewart replied that it was.

Mr. Kilburn made a motion to approve, seconded by Mr. Waugaman.

Mr. Ringo asked Mr. Bohman to explain Exhibit B in the draft development agreement. Mr. Bohman responded that the exhibit shows the penalties that the developer will pay if the agreed upon \$50 million dollars in taxable property was not achieved by the date set in the agreement. He noted that the \$50 million assessment number generated enough tax money with just the city's general ad valorem property tax to equal the expected costs of the road improvements over

a ten year period along with land set aside by the developer for future road improvements. Mr. Bohman noted that the road improvements would be covered by the taxpayers of the development and not current residents. Mr. Ringo asked what the total anticipated taxable value of the build out will be. Mr. Bohman stated that both the fiscal analysis for the small area study and the updated version following the development plan's release show approximately \$150 Million dollars of taxable property. Mr. Ringo asked for clarification if the City would bring in only \$330,000 per year from the completed development. Mr. Bohman replied that figure would be just the general ad valorem property tax, it would not include other taxes such as insurance premium tax, road tax, occupational payroll taxes and business licenses.

Mr. Steve Schlekter of DefendVH asked for council to postpone consideration since they had just received the document in order to give the public time to review the document.

Mr. Ringo stated that even though he did not support the zone change he is inclined to support the development agreement because it protected the city and paid for the needed improvements not out of the current city budget but out of revenue that would be received from the new development.

Mr. Bruns made the motion to postpone consideration until the next Regular Council meeting on March 21st, seconded by Mr. Ringo. A roll call vote was taken as follows:

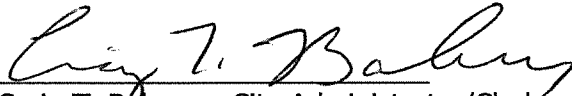
Mr. Bruns	Y	Mr. Ringo	Y
Mr. Kilburn	Y	Ms. Vaden	Y
Ms. Koenig	Y	Mr. Waugaman	Y


Motion carried 6-0.

With there being no further business, Mr. Kilburn made a motion to adjourn, seconded by Mr. Waugaman. Motion carried by voice vote, all in favor.

Time of adjournment was 7:20 p.m.

Respectfully submitted,


Craig T. Bohman, City Administrator/Clerk


Irvin T. "Butch" Callery, Mayor