

COMMONWEALTH OF KENTUCKY
MASON FISCAL COURT
ORDINANCE NO. 18-03

AN ORDINANCE ADOPTING THE FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS OF THE MAYSVILLE-MASON COUNTY JOINT PLANNING COMMISSION PERTAINING TO THE APPLICATION OF KELLY B. BRADFORD (ON BEHALF OF SHAMBRE BRADFORD) TO REZONE FROM AGRICULTURAL A-2 TO GENERAL BUSINESS B-1 THAT CERTAIN 21.37 ACRE PARCEL LOCATED JUST SOUTH OF THE INTERSECTION OF KY 11 AND THE AA HIGHWAY IN MASON COUNTY, KENTUCKY; AND GRANTING THE APPLICATION FOR A MAP AMENDMENT.

WHEREAS, the Mason Fiscal Court adopted a Land Use Ordinance, by virtue of its Ordinance No. 02-07 (hereinafter referred to as “the Ordinance”), such Ordinance, as amended, establishing zoning districts which prescribe permitted uses for property within Mason County, Kentucky; and

WHEREAS, Kelly Bradford, on behalf of his daughter and record owner Shambre Bradford, made application to the Maysville-Mason County Joint Planning Commission (hereinafter “the Planning Commission”) to reclassify 21.37 acres of real estate located on KY 11, south of the intersection with KY 9, from Agricultural A-2 to General Business B-1; and

WHEREAS, the Planning Commission held a duly noticed Public Hearing on April 4, 2018, to consider the proposed map amendment and reclassification of the subject property, and entered Findings of Fact, Conclusions of Law, and Recommendations, recommending that the proposed Map Amendment be approved and the property reclassified as General Business B-1 (SEE Exhibit A hereto); and

WHEREAS, Kelly Bradford proposed the amendment so that the property could be utilized as an automobile impound lot; and

WHEREAS, the Planning Commission determined that the proposed use was consistent

with the Comprehensive Plan, considering the classification and use of other properties in the area; and

WHEREAS, the Planning Commission also considered the testimony of adjoining property owner Kelly Moss, and concerns expressed about contamination from runoff if the property was reclassified; and

WHEREAS, the Planning Commission also considered the statements of the administrative official, George Larger, as to potential conditions that could be placed on the use of the property by means of a conditional use permit; and

WHEREAS, the matter has been brought before the Mason Fiscal Court in accordance with the provisions of KRS 100.211(1) as to the proposed map amendments, and such Fiscal Court having limited its consideration of the proposed map amendments to the official record of the Public Hearing held before the Joint Planning Commission to make the legislative determination of the appropriateness of the Map Amendment to reclassify the subject property from A-2 to B-1, and having adopted Findings of Fact recommending such amendment.

NOW THEREFORE, THE FISCAL COURT OF MASON COUNTY, KENTUCKY, does hereby **ENTER THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDAINS** as follows:

FINDINGS OF FACT

1. That upon motion duly made and unanimously passed, the Mason Fiscal Court declined to hold a separate evidentiary hearing, and instead determined that the matter would be considered based upon the record of the Mason County Joint Planning Commission, including a transcript of the April 4, 2018, evidentiary hearing, all of which is filed with the Mason County Clerk in open meeting and to be included within the minutes of the regular Fiscal Court meeting.

SEE City of Louisville v. McDonald, 470 S.W.2d 173 (Ky. 1971). The Fiscal Court did not conduct further hearing or permit further testimony or evidence, but any limited statements permitted are given the weight of argument rather than evidence;

2. That the Planning Commission found that the property is presently zoned Agricultural A-2, but there are a number of the properties in the immediate vicinity, particularly towards or at the intersection of KY 9 and KY 11 which are classified and/or used for industrial purposes;

3. That the Planning Commission also heard testimony from adjoining property owner Kelly Moss objecting to the reclassification from A-2 to B-1 based on concerns over potential negative environmental impact;

4. That the Fiscal Court recognizes that the property is located along an urban corridor with properties in the vicinity which are classified and used for industrial purposes, as well as properties which are residential or agricultural in nature;

5. That the Fiscal Court recognizes that the possible use of the entire property as an impound lot could negatively impact the value of the residential or agricultural properties in the immediate vicinity. However, the Fiscal Court anticipates that the recent text amendments regarding impound lots, salvage yards, auto mechanical repair and auto body repair contain sufficient safeguards to eliminate such impacts, particularly insofar as those revisions make impound lots a conditional use in General Business B-1 zones subject to approval by the Board of Adjustments.

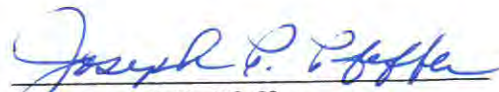
6. That the Planning Commission's Findings of Fact, Conclusions of Law and Recommendations which recommend that the proposed map amendment to reclassify the subject property should be adopted.

CONCLUSIONS OF LAW

1. That the Conclusions of Law of the Planning Commission are hereby adopted; and
2. That the Mason Fiscal Court agrees with the recommendations of the Planning Commission that the property be reclassified from Agricultural A-2 to General Business B-1, and concludes that the adoption of such recommendations is appropriate under KRS 100.213.

WHEREFORE, the Fiscal Court of Mason County, Kentucky, does hereby ORDAIN that the Findings of Fact, Conclusions of Law and Recommendation of the Planning Commission be ADOPTED as concerning the application of Kelly Bradford, on behalf of his daughter and record owner Shambre Bradford, to reclassify 21.37 acres of real estate located on KY 11, south of the intersection with KY 9, from Agricultural A-2 to General Business B-1; and further ordains that the entirety of the Findings of Fact, Conclusions of Law and Recommendation of the Planning Commission are adopted herein, and incorporated herein by reference as set forth in full, same being attached hereto as an exhibit. These amendments shall be incorporated in a republished Ordinance No. 02-07, which should include all amendments thereto

Given first reading this 10th day of April, 2018.



Hon. Joseph P. Pfeffer
Judge/Executive

ATTESTED BY:



Stephanie Schumacher
Mason County Clerk

**MASON COUNTY JOINT PLANNING COMMISSION
PUBLIC HEARING
April 4, 2018
5:30 P.M.**

IN RE: Zoning Map Amendment Application from Kelly Bradford to rezone a 21.369 parcel located at 6156 KY 11 from “A-2” (Agricultural) to “B-1” (General Business)

**FINDINGS OF FACT, CONCLUSIONS OF LAW, and
RECOMMENDATION**

In accordance with the Maysville Code of Ordinances and KRS 100, the Mason County Joint Planning Commission (hereinafter “Commission”) conducted a public hearing at Maysville Municipal Building, 216 Bridge Street, Maysville, Mason County, Kentucky, on April 4, 2018, at 5:30 P.M. regarding the Application for Zoning Map Amendment filed by Kelly Bradford with regard to 6156 KY 11. Applicant, Kelly Bradford, seeks the zoning map amendment in order to continue the impound lot he runs on the site.

The purpose of the hearing was to receive comments from the public and address any questions the public may have regarding the proposed amendment.

All Commission members were present, as follows: Jean Everett, Tommy Stanfield, Bob Biddle, Tim Teegarden, Tom Coe, Joe Brannen, David Reed, and Xandy Stewart. At the conclusion of the public hearing, upon a majority vote of the members present, the Commission adopted the following Findings of Fact, Conclusions of Law, and Recommendation:

FINDINGS OF FACT

1. That the notice requirements of KRS Chapters 100 and 424 were complied with, written notice of the public hearing having been provided to the public in general by publication in

the *Maysville Ledger-Independent* as well as the posting of a sign on the property and by certified mail sent to the surrounding property owners, as evidenced by the documents submitted for the record by the staff.

2. That administrative officer, Mr. George Larger, explained that the Applicant, Kelly Bradford, had previously made a similar application to rezone the property from “A-2” (Agricultural) to “I-1A” (Light Industrial). This Commission approved said application and recommended the Mason County Fiscal Court adopt the amendment. However, the Mason County Fiscal Court denied the application pending text amendments regarding impound lots, salvage yards, auto mechanical repair and auto body repair, including *inter alia*, limiting impound lots to a conditional use in “B-1” (Business) and “I-1A” (Light Industrial) zones. Since denial of the previous application, the Planning Commission has recommended, and both the City and County have adopted, such text amendments regarding impound lots, making that land use a conditional use subject to much more stringent regulation.
3. That attorney Andrew Wood, representing the Applicant, Kelly Bradford, presented an overview of the proposed zoning map amendment. The Applicant proposes that the property be rezoned from “A-2” (Agricultural) to “B-1” (General Business). The Applicant maintains that this re-zoning is in compliance with the Comprehensive Plan, because the site is located along KY 11, an urban corridor on the Comprehensive Plan Map, and several surrounding sites are similarly zoned “B-2” (Highway Business), “I-2A” (Heavy Industrial), and “I-2B” (Heavy Industrial). The Applicant explained that he has run an impound lot on the site for the last seven years and has consistently worked with various zoning and land use regulators to ensure the site would not be contaminated as the result of impound activities. The Applicant later noted that during the many years of operation, his impound lot has never

resulted in any environmental contamination and that it enjoys an “A+” rating. The Applicant further cited the vital service his impound lot provides, a service greatly needed by both the City and the County.

4. That those property owners or interested parties who appeared at the hearing and addressed the Commission regarding the Application for Zoning Map Amendment at issue are listed, with a summary of their comments/opinions, as follows:
 - a. Kelly Moss – owns an adjacent property containing a large pond; has concerns about what he sees as an inevitable environmental impact on surrounding properties, particularly with regard to water tables and his pond; worries about liability imposed on him as a property owner even though the source of contamination could come from the property at issue, particularly under the Clean Water Act; would like to see surety bond and indemnification conditions put into place;
 - b. Tommy Henderson – owns salvage yard and car crusher; claims the Applicant’s current use of the property at issue is improper and that the Applicant should not be allowed to locate an impound lot at the site; thinks impound lots should only be allowed in downtown Maysville;
 - c. Eric Keeth – has no concerns with a change in zoning, as such, but has concerns about the environmental impact of the proposed land use; would like to see conditions in place to prevent and/or mitigate negative environmental impact;
 - d. Bonnie Bradford – takes exception to the claims of Tommy Henderson, whose motivation she thinks arises solely from a desire to eliminate a business competitor;
 - e. Boyd Sexton – owns towing service and salvage yard; feels he has been unfairly treated by the various zoning authorities in his business; claims he has fully cooperated with

zoning authorities but has always been met with opposition; Mr. Larger countered that unlike the Applicant, who has consistently worked in good faith with the various zoning authorities, Mr. Sexton began his operation without going through the official channels and without waiting for proper approval;

- f. Dave Loney – reiterates that the Applicant has been operating an impound lot on the site for several years;
- g. Cathy Walston – runs an impound lot located in Bracken County; claims that the company the Applicant uses to crush his vehicles is the number one recycler of vehicles in the state and has an excellent reputation for environmental safety.

CONCLUSIONS OF LAW

1. That the Mason County Joint Planning Commission is empowered by KRS Chapter 100 to hear and decide this Application for Zoning Map Amendment.
2. That the Commission discussed the issues regarding the potential environmental impact created by the particular proposed land use, and a motion was then made by David Reed, seconded by Joe Brannen, to approve the Application for Zoning Map Amendment. Upon vote of the majority of the members present, the motion to approve the Application for Zoning Map Amendment passed by a vote of 5 to 1, with 1 abstention (Jean Everett).

RECOMMENDATION TO THE MASON COUNTY FISCAL COURT

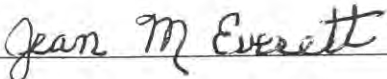
WHEREFORE, the Mason County Joint Planning Commission respectfully recommends to the Mason County Fiscal Court that the Application for Zoning Map Amendment filed by Kelly Bradford with regard to the 21.369 parcel located at 6156 KY 11 be granted.

This is a final decision by the Planning Commission and this recommendation shall be immediately forwarded to the Mason County Fiscal Court, in accordance with the provisions of KRS Chapter 100.

MASON COUNTY JOINT PLANNING COMMISSION


Tim Teegarden
Chairman

Attest:


Secretary