

COMMONWEALTH OF KENTUCKY
MASON FISCAL COURT
ORDINANCE NO. 18-04

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 DEBORAH HOWES TO REZONE FROM AGRICULTURAL A-2 TO RURAL COMMUNITY C THAT CERTAIN 9.998 ACRE PARCEL LOCATED AT THE CONVERGENCE OF THE AA HIGHWAY AND WATER TOWER ROAD

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, Deborah Howes made application to the Maysville-Mason County Joint Planning Commission (hereinafter “the Planning Commission”) to reclassify 9.998 acres of real estate located at 7002 Water Tower road, at the convergence of the AA Highway and Water Tower Road, from Agricultural A-2 to Rural Community C; 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, Deborah Howes proposed the amendment so that the property could be utilized to run a party supply store; and

WHEREAS, the Planning Commission determined that the proposed use was inconsistent 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 owners Lucian Anderson, Missy May, Peggy Frame, Christopher May, and Frank Ring, and concerns expressed about changes in the rural character of the neighborhood, the inability of the narrow Water Tower Road to accommodate an increase in traffic generated by the proposed rezoning, as well as concerns over noise and light pollution to the surrounding subdivision; 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, and that the property is located in a rural residential area, being in close proximity to a subdivisions;

3. That the Planning Commission also heard testimony from adjoining property owners Lucian Anderson, Missy May, Peggy Frame, Christopher May, and Frank Ring, and concerns expressed about changes in the rural character of the neighborhood, the inability of the narrow Water Tower Road to accommodate an increase in traffic generated by the proposed rezoning, as well as concerns over noise and light pollution to the surrounding subdivision

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 business purposes, as well as properties which are residential or agricultural in nature;

5. That the Planning Commission's Findings of Fact, Conclusions of Law and Recommendations which do not recommend that the proposed map amendment to reclassify the subject property should be adopted.

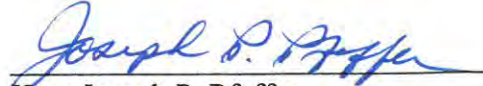
CONCLUSIONS OF LAW

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 should not be reclassified from Agricultural A-2 to Rural Community C 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 Deborah Howes to reclassify 9.998

acres of real estate located at 7002 Water Tower road, at the convergence of the AA Highway and Water Tower Road, from Agricultural A-2 to Rural Community C, and that such application be denied.

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 Deborah Howes to rezone a 9.998 acre parcel at the convergence of AA Highway and Water Tower Road from “A-2” (Agricultural) to “C” (Rural Community)

**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 Deborah Howes with regard to 7002 Water Tower Road. Applicant, Deborah Howes, seeks the zoning map amendment in order to run a party supplies store 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.

At the commencement of the meeting the following Commission members were present, constituting a quorum: Jean Everett, Bob Biddle, Tim Teegarden, Tom Coe, Joe Brannen, David Reed, and Xandy Stewart. Tommy Stanfield arrived shortly after beginning the meeting. 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, Deborah Howes, seeks to rezone the property from "A-2" (Agricultural) to "C" (Rural Community). Mr. Larger explained that in his opinion, the proposed rezoning is consistent with the Comprehensive Plan due to the location of the property along the AA Highway.
3. That attorney Andrew Wood, representing the Applicant, Deborah Howes, presented an overview of the proposed zoning map amendment. The Applicant proposes that the property be rezoned from "A-2" (Agricultural) to "C" (Rural Community). The property is located at 7002 Water Tower Road, across the AA Highway from other community zones existing in Rectorville. The Applicant maintains that this rezoning is in compliance with the Comprehensive Plan, because the site is located along the AA Highway, an urban corridor on the Comprehensive Plan Map. The Applicant further maintains that the proposed rezoning and intended commercial use of the property would not negatively impact the surrounding neighborhoods. The Applicant introduced a Department of Highways plan sheet with an accompanying letter from Vickie Griggs, Traffic and Permits Supervisor for the Commonwealth of Kentucky Transportation Cabinet, showing a private entrance to the property located outside the access control limits of the AA highway. This entrance leads directly from Water Tower Road, a county road. The Applicant explained that Water Tower Road is approximately seventeen feet wide along the boundary of her property and should be wide enough to accommodate any traffic generated by commercial use of the property. The Applicant argued that the specific proposed use of a party supply store is a benefit to the

community, because it would carry a great variety of party- and holiday-themed merchandise typically available only in larger cities.

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. Lucian Anderson – lives along Water Tower Road and opposes rezoning because of the area's nature as a rural subdivision, which is precisely why he and others moved there; has concerns about the width of Water Tower Road, which he thinks is very narrow and increased traffic would be dangerous, given that one must use the shoulder of the roadway or private driveways to accommodate oncoming traffic; also has concerns of noise pollution, since the property has been cleared of trees and shielding vegetation; presented a petition signed by many residents in the area who are opposed to the rezoning; later re-took the floor to remind the Commission that the Applicant has changed the specific proposed use since her original application and to express his concern with potential sale of alcohol on the premises;
- b. Missy May – lives along Water Tower Road and, like Mr. Anderson, appealed to the rural nature of the property, saying that is why she and her family moved there; shares concerns that Water Tower Road is too narrow to accommodate traffic generated by commercial use in the area, and stated that drivers already have to use her driveway to avoid oncoming traffic; is concerned that further traffic will only exacerbate this problem;
- c. Peggy Frame – lives about ½ mile from the property; opposes rezoning, because she shares the same concerns regarding the narrowness of Water Tower Road; also is

concerned that the hilly geography of the area would limit visibility and make an exit there dangerous; also questions the usefulness of the specific proposed use, claiming that there is no need for such a store;

- d. Christopher May – lives along Water Tower Road, and is husband of prior speaker, Missy May; shares the same concerns regarding the narrowness of Water Tower Road and also the possibility of automobile lights shining into his home from the property; also is concerned about the possibility of changing business use in the future and opening the door to unwise development that would destroy the rural nature of the neighborhood;
 - e. Frank King – lives along Water Tower Road, and claims there is too much business in the vicinity as it is and states that he does not want more; advises the Applicant that because she is not from that area, she does not appreciate its rural residential nature.
5. That attorney Andrew Wood, representing the Applicant, Deborah Howes, re-took the floor to reiterate that the proposed rezoning is consistent with the Comprehensive Plan, because the site is located along an urban corridor and because such development is fully provided for in the Comprehensive Plan for locations such as the property at issue. The Applicant reiterated what she sees as a need for the specific proposed use and again stated that it is her opinion that the width of the road along the boundary of her property is sufficient to accommodate any increase in traffic generated by the rezoning.

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 Xandy Stewart,

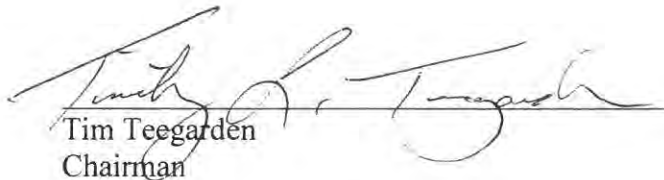
seconded by bob Biddle, to deny the Application for Zoning Map Amendment. Upon vote of the majority of the members present, the motion to deny the Application for Zoning Map Amendment passed by a vote of 5 to 2.

RECOMMENDATION TO THE MASON COUNTY FISCAL COURT

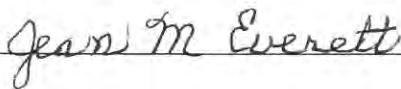
WHEREFORE, the Mason County Joint Planning Commission respectfully recommends to the Mason County Fiscal Court that the Application for Zoning Map Amendment filed by Deborah Howes with regard to the 9.998 acre parcel at the convergence of AA Highway and Water Tower Road be denied.

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