

**CITY OF FORT WRIGHT, KENTUCKY REGULAR MEETING MINUTES**  
**5/22/02**

Mayor Weaver opened the Council Meeting with the Pledge of Allegiance and a moment of silence. The following members answered roll call, Mr. Adam Feinauer, Mr. Dave Hatter, Mr. Paul Hiltz, Mr. Don Martin, Mr. Jeff Wolnitzek and Mr. Jim Robke. Also present were City Administrator Larry Klein, City Attorney Pete Summe, Police Chief Dan Kreinest, Fire/EMS Chief Steve Schewe, Public Works Director Tim Maloney and City Clerk Joyce Woods.

Mayor Weaver advised the people in attendance that if they wished to speak they would have to do so at this time during citizen comments.

Those who spoke concerning Wal-Mart were:

Donna Sheehy	45 West Crittenden Avenue
Michael Sheehy	45 West Crittenden Avenue
Attorney Rick Meyer	For Attorney Patrick Hughes
	Don & Sandy Moore 1813 Mount Vernon Drive
	Paul & Laverne Hoppenjans 1805 Mount Vernon Dr.
	Steve & Ruth Averdick 1862 Beacon Hill
	Tom & Allesanne Meihaus 1 Augusta Avenue
	Barbara Devlin 1812 Mount Vernon Drive
	Kevin & James Talbert 16 West Crittenden Avenue
	Anthony Deye 24 West Crittenden Avenue
	Stephanie Redmon 1859 Beacon Hill
Carl Allison	10 West Crittenden Avenue
Clarence Lassetter	2003 Pieck Drive
Tom Litzler	505 Beaumont Court
Cameren Ryan	555 Beaumont Court
Theresa Walton	107 Fayette Circle
Steve Averdick	1862 Beacon Hill
Jim Berling	B&Z Development
Attorney Gerry Dusing	For B&Z Development
Attorney Joseph Trauth	For Regency Centers
Anthony Deye	24 West Crittenden Avenue
Roger Schroder	Owner Foreign Auto at 1980 Highland Avenue
Kevin Talbert	16 West Crittenden Avenue

Mayor Weaver advised that the City and Council have received e-mails, letters etc. regarding the Wal-Mart Development and because of pending litigation no personal

response was given. Mayor Weaver advised that Council has taken into consideration all letters and correspondence and is very well informed on this issue.

Motion by Mr. Martin, second by Mr. Hatter to approve the minutes of the 05/08/02 Council Meeting. Roll call vote taken, Feinauer, Hiltz, Wolnitzek and Robke voting in favor, no one opposed. Motion passed.

Mark Brueggemann addressed Council regarding the bids received for the 2003 Street Program with full-concrete replacement. The low bid received was from JPS Construction, Inc for \$315,865.50 and Mr. Brueggemann recommends this bid be accepted. This bid is higher than the original voluntary bid because the thickness of the concrete was increased. Motion by Mr. Hatter, second by Mr. Martin to approve this bid. Roll call vote taken, Feinauer, Hiltz, Wolnitzek and Robke voting in favor, no one opposed. Motion passed.

Mr. Brueggemann advised the contractor is anxious to start this project as soon as possible.

Motion by Mr. Martin, second by Mr. Feinauer to reject the bids previously received and reviewed on 03/29/02. Roll call vote taken, Hatter, Hiltz, Wolnitzek and Robke voting in favor, no one opposed. Motion passed.

First Reading Ordinance 7-0 An Appropriations Ordinance Amending The City Of Fort Wright, Kentucky Annual Budget For The Fiscal Year July 1, 2001 Through June 30, 2002. Mr. Summe read this Ordinance in summary.

Motion by Mr. Feinauer, second by Mr. Hiltz to approve. Roll call vote taken, Hatter, Martin, Wolnitzek and Robke voting in favor, no one opposed. Motion passed.

First Reading Ordinance 8-02 An Appropriations Ordinance Amending The City Of Fort Wright, Kentucky Annual Budget For The Fiscal Year July 1, 2002 Through June 30, 2003. Mr. Summe read this Ordinance in summary.

Motion by Mr. Feinauer, second by Mr. Hatter to approve. Roll call vote taken, Hiltz, Wolnitzek, Martin and Robke voting in favor, no one opposed. Motion passed.

Mr. Wolnitzek recommended a fund transfer of \$200,00.00 from the General Fund to Capital Fund. All members agreeing to this recommendation.

**B&Z Development, Inc vs. City of Fort Wright**

City Attorney Pete Summe addressed all in attendance and advised this matter ended up in circuit court and Judge Stephens ordered a settlement conference that was attended by all members of Council. Mr. Klein advised much discussion took place on this matter and the following are the proposed settlement conditions:

**May 10, 2002 Settlement Conference in Judge Stephens' Chambers**

## **PROPOSED SETTLEMENT CONDITIONS**

### **TRAFFIC**

- 1) ALL road improvements, curb cuts, and signal warrants must be approved and documented as a condition of City's approval.
- 2) Timetable for ALL road improvements.

ALL road improvements by state and developer that have been proposed will be done BEFORE Wal-Mart opens. Out lots may develop prior to completion of ALL road improvements.

- 3) Proposed additional KY 17 southbound lane from Highland Pike to eastbound I-275 Dudley Road should be extended to Dudley Road OR construct a dedicated right-turn lane AFTER eastbound lane to I-275 on to Dudley Road.

Jim Berling said state approved extension to e/b entrance to I-275. --

### **NEEDS FOLLOWUP BY JIM BERLING**

- 4) Additional southbound lane on west side of KY 17 from Highland Pike to a point 1200 feet northeast of Highland Pike.
- 5) 6 lanes on Highland Pike near KY 17.
- 6) Five lanes on Orphanage Road near KY 17.
- 7) All curb cuts (3) on Highland Pike, except Valley Plaza, are right-in/right-out only.
- 8) Valley Plaza has four lanes at each end up to each entrance to Wal-Mart, then three lanes (center turn lane)
- 9) Regency will check with engineers on ADA requirements on sidewalk directly from Valley Plaza to front of Wal-Mart store. Does not want cross "T" on lot either.

### **NEEDS FOLLOUP BY DAVID BIRDSALL**

- 10) Sidewalks should be 5' wide in commercial areas along Highland Pike, Orphanage Road, and KY 17 with 4' tree lawn. Jim Berling said state's requirements are same except for 2' tree lawn. He will check with them to see if 4' tree lawn possible. County subdivision regulations require 5' wide sidewalk and 4' tree lawn.

**NEEDS FOLLOWUP BY JIM BERLING**

- 11) Burger King access to KY 17 not shown on plan. According to NKAPC, it is temporary. In an identity plat created in 1993 for the Burger King, conditions were attached that stated that both curb cuts were temporary and were to be removed once alternative access was provided. In addition, when the zone was changed to CC (Community Commercial) in late 1993, there was included a provision for a frontage road that would run parallel to KY 17 and interconnect all lots between Highland Pike and Orphanage Road. According to Mike Schwartz at NKAPC, this provision is still valid. A drawing from NKAPC is attached.

Jim Berling said he is providing access to Burger King via Valley Plaza. Jim Berling will get answer from KYTC on this curb cut onto KY 17.

Regency will provide access to Rizzo, Burger King, and Frisch's via Valley Plaza. Optimally, a single right-in/right-out curb cut on KY 17 in the area of Burger King, to provide access to Burger King, Rizzo, and Frisch's. Perhaps this could be added as a condition that the 55' strip that B & Z owns that extends from Valley Plaza to KY 17 be utilized for the right-in/right-out curb cut to the frontage road paralleling KY 17. In addition, all three should access Valley Plaza at a single point too, but at a minimum, not three separate access points. Jim Berling and David Birdsall will look at this.

**NEEDS FOLLOWUP BY JIM BERLING AND DAVID BIRDSALL**

- 12) Regency will commit \$100,000 to escrow fund to City for traffic improvements on Kyles Lane from City building to I-75.
- 13) Wal-Mart agrees to prohibit its trucks and trucks it controls from using Kyles Lane and Highland Pike. They will be instructed to use I-275.
- 14) B & Z will work with City in persuading state to prohibit all tractor-trailer traffic on KY 1072 in Fort Wright.
- 15) Sidewalk on Orphanage Road in front of Golden Corral will be constructed as part of tapered lane on Orphanage Road from Valley Plaza to Decker property.

- 16) Deceleration lane on Highland Pike is designed according to KDOT guidelines, Jim Berling does not know if it is designed to AASHTO guidelines. Consult with Mark Brueggemann on this.

**NEEDS FOLLOWUP BY JIM BERLING AND MARK BRUEGGEMANN**

- 17) Design of all right-in/right-out curb cuts to be approved by City engineer.
- 18) Garden center square footage is not included in parking space calculation. Neither Jim Berling nor David Birdsall knew exact square footage of Garden center.

**NEEDS FOLLOWUP BY JIM BERLING OR DAVID BIRDSALL**

- 19) Size of parking space. Regency says spaces close to Wal-Mart will be 9.5 x 19. Our regulations require a minimum of 9 x 18. I asked them to see if could make the space wider.

**NEEDS FOLLOWUP BY JIM BERLING OR DAVID BIRDSALL**

**LAND USES**

- 20) There will be no gasoline sales on any site in the area bounded by Highland Pike, KY 17, and Orphanage Road, including any lots not included in the proposed development plan.
- 21) There will be no new or used car sales on any site in the area bounded by Highland Pike, KY 17, and Orphanage Road, including any lots not included in the proposed development plan.
- 22) The following restaurants are specifically excluded from the out lots on Highland Pike:

McDonald's  
Arby's  
White Castle  
Wendy's  
Rally's  
Hardee's  
Taco Bell  
Waffle House

23) Additional excluded uses on Highland Pike are:

- Billiard halls
- Laundromats
- Auto Body Repair
- Car Wash
- Dollar General
- Family Dollar
- Night Clubs
- Video Arcades
- Sexually-Oriented Businesses
- Automobile, truck, boat, marine, mobile home, motorcycle, sales used or new
- Miniature Golf or Skating

24) Excluded Uses on Upper Highland Pike lots (above Valley Plaza):

- Hotels
- Motels
- Extended Stay Facilities
- No 24-Hour Operations

25) Large lot between Highland Pike and adjacent to Wal-Mart will not be a single-tenant user.

### **OTHER**

26) All lots currently owned by B & Z Development, Inc in the area bounded by Highland Pike, KY 17 and Orphanage Road and not included in the proposed development plan will comply in architectural theme with the development on the proposed plan.

27) Regency and Wal-Mart fully understand the City's zoning ordinance as it relates to the outside storage of products, supplies, and materials, and agree to comply.

28) Property owner's association duties charged to one tenant other than Wal-Mart for maintenance of private and public areas.

**NEEDS FOLLOWUP BY DAVID BIRDSALL**

- 29) All out lots will have monument signs. Main entrances to Valley Plaza may have pylon signs. No pole signs anywhere.
- 30) All Street Signage shall conform to City's design specifications.
- 31) Developer agrees to a project team to meet weekly with City throughout course of development to resolve problems.
- 32) Wal-Mart store shown on drawing is of brick material and is representative of proposed building.
- 33) Wal-Mart exterior will be uniformly and completely finished on front and two sides of building.
- 34) Landscaping proposed meets current City zoning ordinance requirements.

### **ADDITIONAL ISSUES**

#### **Lighting**

What is height of pole and how will development meet City zoning requirements not to cast light upon adjoining lots?

#### **Sound**

Will the development have an exterior public address system? How will it not produce an objectionable level of noise or otherwise be a nuisance?

#### **Landscaping Sprinkler System**

There will be a sprinkler system for all proposed landscaping and lawn areas to ensure its proper maintenance.

**KCMPZC August 3, 2000 Stage I**

**Recommendations:**

1. That all off-street parking areas be set back a minimum of fifteen (15) feet from any adjoining residential zoning district.
2. That a plan, indicating all fences, walls, signs, lighting, and landscaping be prepared and submitted, covering the entire development, as part of the first State II Development Plan submittal.
3. That the separate right-turn in driveways serving Lot 3 and Lot 5, respectively, be combined to form a single right-turn in only driveway.
4. That access be provided from Lot 9 and from Valley Plaza Parkway, respectively, to the parcel containing Burger King, the remaining B & Z property, and the Rizzo property.
5. That joint access be provided from Valley Plaza Parkway to the Frisch's and Rizzo properties.
6. That dual left turn lanes be provided on the eastbound Orphanage Road approach to Madison Pike
7. That dual left turn lanes be provided for the northbound Madison Pike to receive the recommended dual left turn lanes from Madison Pike.
8. That an additional westbound lane be constructed along Highland Pike to receive the recommended dual left turn lanes from Madison Pike.
9. That traffic impact analyses be prepared and submitted with each subsequent Stage II Development Plan.
10. That sidewalks be provided to all proposed facilities (i.e., from the public/private street system to the interior of all proposed lots.)
11. That pedestrian crossings (Valley Plaza Parkway) be identified on subsequent Stage II Development Plans.
12. That the deceleration lane on Highland Pike to the curb cut serving lot #1 be extended pursuant to AASHTO guidelines.
13. That the proposed curb cut serving lot #7 be a right turn in only curb cut.



14. That traffic signals be installed at the intersections of Valley Plaza Parkway with Orphanage Road and Valley Plaza Parkway with Highland Pike.
15. That all curb cuts meet the City engineer's design specifications.
16. That the tapered acceleration lane along Orphanage Road be extended southwest to the previously approved curb cut serving the last lot owned by B & Z Development.
17. That bus pull in location(s) be provided along Valley Plaza Parkway.
18. That four (4) foot sidewalks with four (4) foot grass areas be provided along Highland Pike, Madison Pike, and Orphanage Road.

**KCMPZC August 3, 2000 Preliminary Plat Recommendations:**

1. That a Stage I Plan be approved by the city of Fort Wright.
2. That the separate right-turn-in driveways serving Lot 3 and Lot 5, respectively, be combined to form a single right-turn in only driveway (Section 6.1)'
3. That a second left-turn lane on Orphanage Road at the Madison Pike (S.R. 17) intersection approach be provided;
4. That traffic impact analyses be prepared and submitted with each subsequent Phase of Improvement Drawings and Specifications.
5. That Encroachment Permit(s) be issued by the Kentucky Transportation Cabinet prior to approval of Improvement Drawings and Specifications (Section 6.1);
6. That access be provided from Lot 9, and from "Valley Plaza Parkway", respectively, to the parcel containing Burger King;
7. That access be provided from Valley Plaza Parkway to the Frisch's and Rizzo properties;
8. That dual left turn lanes be provided for the northbound Madison Pike approach to westbound Highland Pike.
9. That an additional westbound lane be constructed along Highland Pike to receive the recommended dual left turn lanes from Madison Pike.

10. That Needed Fire Flow be within a range of 6,000 – 6,250 gpm at 20 psi residual pressure based upon the size of the largest building (i.e., approximately 205,000 square feet) with ordinary constructions materials (Section 7.2 – ISO Fire Suppression Rating Schedule); and
11. That sidewalks be provided to all proposed facilities (i.e., from the public/private street system to the interior of all proposed lots) (Section 7.3).

**NKAPC Staff Recommendation in Letter of July 28, 2000**

1. That all off-street parking areas be set back a minimum of fifteen (15) feet from any adjoining residential zoning district.
2. That a plan, indicating all fences, walls, signs, lighting, and landscaping be prepared and submitted, covering the entire development, as part of the first Stage II Development Plan submittal.
3. That the separate right-turn in driveways serving Lot 3 and Lot 5, respectively, be combined to form a single right-turn in only driveway.
4. That access be provided from Lot 9 and from Valley Plaza Parkway, respectively, to the parcel containing Burger King.
5. That access be provided from Valley Plaza Parkway to the Frisch's and Rizzo properties.
6. That dual left turn lanes be provided on the eastbound Orphanage Road approach to Madison Pike.
7. That dual left turn lanes be provided for the northbound Madison Pike approach to westbound Highland Pike.
8. That an additional westbound lane be constructed along Highland Pike to receive the recommended dual left turn lanes from Madison Pike.
9. That traffic impact analyses be prepared and submitted with each subsequent Stage II Development Plan.
10. That sidewalks be provided to all proposed facilities (i.e., from the public/private street system to the interior of all proposed lots).

11. That pedestrian crossings (Valley Plaza Parkway) be identified on subsequent Stage II Development Plans.
12. That the construction of new traffic lanes along Highland Pike, Madison Pike, and Orphanage Road, include the construction of bicycle lanes which meet minimum state and/or federal design standards.
13. That provisions be made to allow cellular telecommunications facilities to be attached to, or located on, any structure (building, sign, etc.), within the proposed development.

Mr. Dusing stated that if there is an agreement to the proposal of conditions presented and an agreement is reached to settle the lawsuit then the development would continue. This would be subject to approval of City ordinances, conditions, and zoning Stage II development application.

Mr. Klein and Mr. Trauth went through the list of conditions proposed and answered all questions any member of Council had at this time. Mr. Klein read a letter received from Wilbur Smith Associates who performed a traffic study for the City. City Engineer Mark Brueggemann addressed Council regarding the revised plans for this development and advised there are many advantages to the road improvements as they are presented from the original plan. Discussion followed.

Mayor Weaver asked Council if there was a need for executive session at this time to speak with Mr. Summe. Mayor Weaver stated we are here this evening to either continue to discuss and resolve the matter with B&Z and Regency Development or say no and that this is no longer a consideration and pursue the matter through the court system and let the litigation take its natural course.

Motion by Mr. Wolnitzek to move forward and continue to try and resolve the matter with the conditions that have been reviewed. Second by Mr. Martin. Roll call vote taken, Feinauer, Hatter and Hiltz voting to approve. Mr. Robke stated he would be voting no because after speaking with the State he still has concerns with Kyles Lane traffic and no solution in the near future. Discussion followed.

Mr. Summe advised the next step is to have the settlement agreement as part of the court record and pass a City ordinance codifying what has been voted on tonight. The ordinance will take two readings to pass.

Mr. Hiltz advised he did not understand the motion made by Mr. Wolnitzek. Mr. Summe suggested the motion and second be withdrawn by Mr. Wolnitzek and Mr. Martin and restate the motion.

Motion by Mr. Wolnitzek and second by Mr. Martin was withdrawn.

Mr. Wolnitzek made a motion that we need to fine tune and settle this agreement, proceed with this process and make a decision and do what's best for the City and resolve the litigation and bring it to a conclusion. Second by Mr. Martin to approve. Roll call vote taken, Feinauer and Hatter voting in favor, Mr. Hiltz and Mr. Robke voting no. Motion passed 4-2 to continue to resolve litigation. Mr. Summe and the affected parties will work on the language and if everything is agreeable it will be put in ordinance form for action at a future date, which would require two readings.

#### Administrator Report

##### July 4<sup>th</sup> Neighborhood Parade Request

A request was made from a resident of Mount Vernon Drive, Ms. Jeanne Lenhof, to organize a parade on July 3<sup>rd</sup> at 6:45PM. She has asked permission to use the City grounds for the beginning and end of the parade and to serve refreshments after the parade. Fire/EMS Chief Schewe has volunteered to be present to oversee the event.

##### Nature Center Day Camp

This will be held on June 22, 2002 from 9AM-3PM with Kathy Nienaber conducting this program. Children must be accompanied by an adult. The City will provide drinks at the City Building for the lunch break. The grant application made to Summertime Kids 2002 was not funded but the program will continue.

##### KLC Safety Grant 2002 Award

City Safety and Law Enforcement grants through Kentucky League of Cities have been funded in the amount of \$1263.60. Also a grant was received for \$500.00 for an in-car video system for our eleventh cruiser.

#### Council Committee Reports

##### Legal

Mayor Weaver suggested since we have heard nothing from Ms. Classic Car Wash we need to move forward to get this matter settled.

##### Computer Technology

Mr. Hatter advised the amount of \$10,000.00 budgeted for computer needs for the City in the coming year is more than sufficient to cover any problems or additional equipment.

##### Veteran's Memorial

Honorable Ray Lape will be the speaker for the Memorial Day Service to be held at the City Building at 10AM on May 27, 2002.

#### Department Reports

Public Works Director Tim Maloney advised all updated bricks are in around the Memorial in front of the building.

JPS Construction would like to start on the three streets in the 2002 Street Program within the next week. Notices will be sent to all residents affected before the work starts. Six weeks at the most for completion.

Restoration completed on the sidewalks on Highland Pike.

The South Hills Civic Club will be used for voting on May 28.

Mr. Klein advised the bid for Phase II of the Amsterdam Road project has been awarded by Kenton County Fiscal Court to Spartan Construction Company for \$328,000.00. This will proceed shortly.

Fire/EMS Chief Schewe reported that banners are out around the City for countywide recruiting for the fire departments.

The response vehicle has been in service for about a month and the response time is down for emergency runs. This is being used for major medical emergency.

We were notified recently of a grant received to pay toward the purchase of a defibrillator.

Police Chief Dan Kreinest reported a \$100.00 donation was received for the Senior Watch Program from CEO Resources. Thanks for this generous donation.

There will be a kickoff event for "Circle Cincinnati" traffic enforcement program at the Fort Wright Police Department on Thursday May 23.

There was a bank robbery in the City recently and a composite drawing was released and the City is working with the FBI on this case.

There were a couple of drug arrests. Firearms and cash were seized in these arrests.

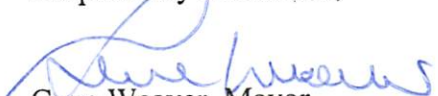
Officer Martin and Vonderhaar was involved in these arrests.

Officer Marc Schworer, Sergeant Randy Newsom and Sergeant Dean Russell have been in school recently. A final update on the Police Department Accreditation will be distributed before the next Council meeting.


Mayor Weaver thanked everyone who attended tonight's meeting and complimented Council on the time and thought given to very difficult process that they have been discussing over the past two years.

Motion by Mr. Hatter, second by Mr. Wolnitzek to adjourn the meeting. All members voting in favor, no one opposed. Motion passed. Meeting adjourned at 9:58PM.

Respectfully Submitted,

  
Gene Weaver, Mayor

Attest:

  
Joyce Woods, City Clerk