

ORDINANCE NO.

06-14

**AN ORDINANCE OF THE MADISON COUNTY FISCAL COURT, KENTUCKY APPROVING THE ZONE CHANGE OF SON, L.L.C., LOCATED ON 300 PROVIDER COURT, APPROXIMATELY 18 ACRES, AND AUTHORIZING THE CHANGE ON THE OFFICIAL ZONING MAP OF MADISON COUNTY, KENTUCKY.**

**WHEREAS**, the hereinafter described land is located in Madison County, Kentucky and

**WHEREAS**, the Madison County Fiscal Court denied the Planning Commission's recommendation of a zone change for the subject property from UC-1 Single Family Residential to UC-3 Neighborhood Commercial.

**WHEREAS**, Son, LLC pursued civil action in the Madison Circuit Court, Civil Action No. 04-C1-1063. The Madison Circuit Court rendered final decision to direct the re-zoning of the property to a classification of UC-3 Neighborhood Commercial no requirement for a county sewer system prior to commencing further construction because there no certainty as to when sewer would be available.

**NOW, THEREFORE BE IT ORDAINED AND ENACTED**, by Madison County Fiscal Court in compliance with order from the Madison Circuit Court, that the land use classification of the following described property be changed by this ordinance from UC-1 Residential to UC-3 Neighborhood Commercial, with no requirement for county sewer before further construction can begin:

#### SECTION I

A certain tract of land situated east of Frontage Road #1, Interstate 75, Simpson Lane, and being approximately 4,000 feet north of Kentucky Highway #627, in Madison County, Kentucky, bounded and described, by survey, as follows:

Beginning at a set iron pin, said iron pin being located in the R/W of Frontage Road #1, Simpson Lane, and being a common corner to Castle; thence said R/W N 02 43' 27"W, 192.38 feet to a concrete R/W marker; thence S 81 43' 53"E, 9.17 feet to a concrete R/W marker; thence N 02 25' 08"W, 153.08 feet to a concrete R. /W marker; thence S 89 06' 19" W 9.28 feet to a concrete R/W marker; N 02 01' 29" W 69.69 feet to a concrete R/W marker; thence N 01 47' 50" W 473.19 feet to a concrete R/W marker; thence N 02 01' 49" W, 265.02 feet to a set iron pin, said iron pin being located in the R/W of Frontage Road #1, Simpson Lane, and in the R/W of Walnut Grove Drive; thence with the R/W of Walnut Grove Drive N 77 10' 24" E 148.63 feet to an iron pin; thence N 78 15' 49" E, 138.73 feet to an iron pin; thence N 84 40' 08" E, 148.97 feet to an iron pin; thence N 83 17' 51" E, 132.87 feet to an iron pin, said iron

pin being located in the R/W of Walnut Grove Drive and being a corner to Lot #72 of Walnut Grove Subdivision; thence leaving said R/W and going with the line of Lot #72 S 17 53' 36" E, 468.02 feet to an iron pin, being a common corner to Lot #72, Lot #66, and Lot #65; thence S 17 48' 20" E, 142.30 feet to an iron pin, being a common corner to Lot #65 and Lot #64; thence S 15 47' 46" W, 350.90 feet to an iron pin, being a common corner to Lot #64 and Lot #63; thence with the property line of Lot #63 the following calls: S 06 14' 09" W, 159.38 feet to an iron pin; thence S 12 52' 37" E, 87.58 feet to an iron pin; thence S 40 18' 18" E, 105.29 feet to an iron pin, said pin being located in the Castle line and being a corner to Lot #63; thence with the fence line of Castle, N 89 43' 60" W, 183.18 feet to a set iron pin, thence S89 37' 14"W 164.73 feet to a set iron pin; thence N 89 42' 37" W, 151.11 feet to a set iron pin; thence N 89 42' 10" W, 181.59 feet to the point of beginning and containing 18.0 acres, more or less.

**SECTION II**

That the Director of Planning and Development make the appropriate changes to the Official Zoning Map of Madison County, Kentucky.

**SECTION III**

That the County Clerk cause this ordinance to be published in accordance with the appropriate Kentucky Revised Statutes.

DATE OF FIRST READING: 5-31-06

MOTION BY: Larry Combs

SECONDED BY: Billy Ray Hughes

VOTE:	YES	NO
JUDGE, KENT CLARK	✓	
MAGISTRATE LARRY COMBS	✓	
MAGISTRATE ROGER BARGER		✓
MAGISTRATE WILLIAM TUDOR	absent	
MAGISTRATE BILLY RAY HUGHES	✓	

DATE OF SECOND READING: 6-28-2006

MOTION BY: Billy Ray Hughes

SECONDED BY: William H. Tudor

VOTE: YES NO

JUDGE, KENT CLARK	✓	
MAGISTRATE LARRY COMBS	✓	
MAGISTRATE ROGER BARGER		✓
MAGISTRATE WILLIAM TUDOR	✓	
MAGISTRATE BILLY RAY HUGHES	✓	

  
MADISON COUNTY JUDGE EXECUTIVE

Attest:  
  
MADISON COUNTY CLERK

To: Members of the Fiscal Court

From: Marc Robbins


RE: Son, LLC v. Madison Co. Fiscal Court

Confidential Communication between attorney and client

Attached please find a copy of the Circuit Court's decision reversing the fiscal court's action and ordering the property to be zoned UC3 – neighborhood commercial and the map be amended accordingly. I received the Judgment April 24<sup>th</sup>.

Please review the Judgment. If you have any questions you can catch me after court, or if you would like we can go into executive session to discuss. If you want to go into executive session, make the appropriate motion citing pending litigation as the basis.

COMMONWEALTH OF KENTUCKY  
MADISON CIRCUIT COURT  
DIVISION II  
CIVIL ACTION NO. 04-CI-1063

**ENTERED**   
APR 20 2006  
TIME 10:35 A.M.  
MADISON CIRCUIT COURT  
LINDA SPURLOCK CATES, CLERK

SON, LLC	)	
	)	
PLAINTIFF	)	
	)	
VS.	)	JUDGMENT REVERSING THE
	)	DECISION OF THE MADISON
MADISON COUNTY FISCAL COURT, et al.	)	COUNTY FISCAL COURT
	)	
DEFENDANTS	)	

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This matter comes before the Court upon Plaintiff's Motion to Submit and the Court, having reviewed the record in its entirety as well as counsels' memoranda and having reviewed the applicable law and being otherwise sufficiently advised, finds for the Plaintiff.

There are three issues presented to the Court in this case. First is whether the action by the Madison County Fiscal Court in denying the Planning Commission's Recommendation of a zone change for the subject property from UC1-Residential to UC3-Neighborhood Commercial was arbitrary and unreasonable. Secondly, if the action was arbitrary and unreasonable, then what relief is warranted. The final issue is whether the condition imposed by the Planning Commission, that no construction can take place until county sanitary sewer is available, is a reasonable and legal condition.

Since it did not hold a trial-type due process hearing of its own, the Fiscal Court's actions must be supported by the record before the Planning Commission. City of Louisville v. McDonald, 470 S.W.173 (Ky., 1971). The record reveals that is not the case.

By virtue of the Minor Plat which was approved on March 4, 1998, the subject property was clearly designated for commercial use. There was no indication whatsoever that such designation was only for Lot. No. 1.; and it is apparent on its face that the commercial designation in the Plat was intended to apply to the entire eighteen acres. Furthermore, in reliance on this designation by the Planning Commission, there was commercial development on the subject property in the form of an office building which was approved by the Planning Commission in February of 1999. Therefore, and as was correctly determined by the Planning Commission, the designation of the property as UCI-Residential in August of 1999, when Madison County adopted its zoning ordinances, was inappropriate to begin with.

Also, the finding by the Planning Commission that there has been economic changes within the area is likewise supported by the record. Consequently, two of the possible three grounds contained in KRS 100.213 to justify a zone change have been established in this case.

The Court reviews zoning decisions for arbitrariness. A zoning decision will be found arbitrary when there has been a lack of procedural due process or where there is a lack of substantial evidence in support of the decision. American Beauty Homes Corp. v. Louisville and Jefferson County Planning and Zoning Commission, Ky., 379 S.W.2d 663 (1975). In this instance, there was both a lack of substantial evidence and procedural due process to support the Fiscal Court's actions; and further confirmation of this conclusion is provided by the fact that both the Judge Executive and County Attorney advised the Fiscal Court members that the basis stated for disapproving the Zoning

Commission's Recommendation was legally insufficient. Unfortunately, sometimes a client will not accept the advice of its counsel.

Furthermore, where a refusal to change a classification is arbitrary, as is the case here, the judgment must be reversed. Taylor v. Coblin, Ky., 461 S.W.2d 78 (1970).

The Court notes that the residents of Walnut Grove Subdivision, who were protesting the requested zone change, did not appear to be actually opposed to commercial development within the eighteen acres. They were most concerned about the possibility of commercial development accessed off of Walnut Grove Road. However, a condition of the Planning Commission's Recommendations was that commercial development would be accessed only from Provider Court. Therefore, this condition seems to eliminate the primary basis for the opposition to the zone change request.

Next for consideration is the question of whether to direct that the property be re-zoned to a classification of UC3-Neighborhood Commercial as recommended by the Planning Commission. There are two basic exceptions to the notion that a circuit court should not direct a legislative body to grant a specific map amendment. The first exception arises when there is no administrative or legislative discretion involved. City of Louisville v. Kavanaugh, 495 S.W.2d 502 (Ky., 1973). The other is when the circuit court finds there is a compelling need. Bryan v. Salmon Corp. 554 S.W.2d 912 (Ky.App., 1977). The Court finds that both exceptions exist in the case at hand.

There can be no question but that the Plaintiff is entitled to relief. Since the UC3-Neighborhood Commercial designation requested and recommended is the next most restrictive classification available, then it involves no discretion to direct a change to that classification.

Furthermore, inherent in the Zoning Commission's Recommendation, there is a compelling need for the relief sought. The property has been since 1998, and is currently, utilized in a commercial manner and as currently zoned the property does not appear to be configured for residential development.

Finally on this issue is the problem of whether the Plaintiff will be able to have a hearing before an unbiased decision-maker if the matter is remanded to the Fiscal Court for further action. It appears that there is at least the perception that the Plaintiff might be denied the basic requirements of due process before the Fiscal Court, particularly in light of the Court's failure to heed the legal advice of its counsel.

For all of these reasons, the Court feels compelled to direct the re-zoning of the property to a classification of UC3-Neighborhood Commercial.

Lastly is consideration of the issue concerning the condition imposed by the Planning Commission that no further construction can take place until a county sewer system is available. Since there is no certainty as to when, or even if, sanitary sewers will be made available to the property, this open-ended condition is obviously unreasonable and confiscatory. Further, sewage treatment, and the manner by which it is accomplished, is solely within the purview of the local health department as set forth in KRS Chapter 211. The County and State already have the power to compel connection to a sanitary sewer system when available so that the public interest sought to be protected by this condition can easily be safeguarded when such a system is available; and until such time, the local health department has both the power and authority to determine the appropriate method of sewage disposal.

NOW THEREFORE, it is hereby ORDERED AND ADJUDGED as follows:

1. That the subject property, consisting of eighteen acres, be and the same is hereby re-zoned to a classification of UC3-Neighborhood Commercial;
2. That the condition imposed that no construction can take place on the subject property until a county sewer system is available is declared an unreasonable and illegal condition;
3. That the zoning officers of the Madison County Fiscal Court and the Madison County Planning Commission make proper notations on the applicable zoning maps and zoning records to reflect the above-ordered change;
4. That the Plaintiff recover its costs expended in this action; and
5. That this is a final and appealable judgment, there being no just cause for delay of entry.

This 20<sup>th</sup> day of April, 2006.

  
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JUDGE, MADISON CIRCUIT COURT  
DIVISION II