

Background

A provision in the Kentucky Revised Statutes exists that allows an alternative regulation for zoning map amendments. This method does not require the legislative body to act upon the Planning Commission recommendation unless they choose to do so, or unless an aggrieved party requests the legislative body to act upon the zoning change. The zoning change would become effective automatically if the Planning Commission recommended approval 21 days after the recommendation is made. A copy of the text of the statute is attached.

In researching **KRS 100.2111 Alternative Regulation for zoning map amendment**, the planning staff has located one jurisdiction that uses this method. According to Chris Hunzinger, Planning Director in Hardin County, the alternative method has worked well there and has been in place since 1995. The process they use is as follows:

- When an application for a zoning change is received, the property is advertised and posted in accordance with KRS requirements, which is the same for either method.
- The applicant and adjoining property owners are notified of the public hearing date, time, and place where the application will be heard and acted upon by the planning commission. The applicant's letter contains information telling them that they can apply within 21 days after the recommendation of the planning commission to have the legislative body decide the application if they choose to do so.
- The planning commission makes a recommendation on the application after the public hearing.
- An announcement is made at the public hearing that any aggrieved person can apply to have the legislative body decide the application within 21 days of the planning commission recommendation. There is an application form available in the planning commission office to accomplish this.
- A letter is forwarded to the legislative body from the planning commission indicating the recommendation of the planning commission and stating that the legislative body can choose to decide the application by filing notice with the planning commission. According to Chris Hunzinger, there have been a few times that the fiscal court chose to decide the application and they have actually held another public hearing.
- If no application is made to request the legislative body to decide the application and the legislative body chooses not to decide the application, the

planning commission recommendation is final 21 days after the recommendation was made. If the recommendation was for approval, the property is automatically rezoned 21 days after the recommendation. No additional advertisement or notification takes place.

It seems that this alternative would serve to reduce the amount of time required for a zoning change to become effective, while still maintaining and retaining the authority of the legislative bodies to make the final decision if they choose to do so. It would also maintain the rights of an applicant or neighbors to have the legislative body decide the application if they disagree with the planning commission recommendation.

In addition to the amendments to Article 6 as proposed that are needed to begin use of this method, several steps in the zoning process need to be altered in order for this alternative method to work well. Currently, the OMPC staff does not forward a recommendation to the legislative body until the transcript of the minutes has been received. At that time, a written recommendation is made. Typically the recommendation would not be forwarded within 21 days following the planning commission action, as OMPC does not generally receive the transcript within that time frame. A written notification will need to be immediately forwarded to the legislative body the first business day following the OMPC recommendation for this alternative to work. The OMPC staff would forward the recommendation without the minutes of the meeting. The written recommendation would include the findings of fact and any conditions approved by the OMPC. It should also include how many commissioners voted in favor of the request and how many opposed the request. The legislative body would want to know how the public responded to the request as well, and in the absence of the written transcript, we would need to record in the written recommendation if there were persons opposing and/or supporting the request other than the applicant/owner of the property.

Attached to this staff report are proposed forms for the process if the revisions to Article 6 are approved allowing the alternative regulation to be implemented. An amended OMPC Zoning Map Amendment Recommendation form has been prepared that would include information regarding the public participation in opposition or support of a proposed zoning change. It would also include notice that the map amendment, if recommended for approval would become final by a certain date unless the appropriate legislative body or an aggrieved person files a request for the legislative body to decide the application. Also included with this staff report is a new form that is

titled “Request for the Legislative Body to Decide the Zoning Map Amendment”. This would be included in the recommendation that is forwarded to the legislative body for their use if requesting to decide the application. We could also make these forms available to the public at the public hearing. An adjoining property owner letter is included that proposes new added language to make the adjoining property owners aware that the OMPC recommendation will become final unless the request is made to have the legislative body decide the application.

Numerous concerns have been voiced over the years regarding the length of time required to effect a zoning change on a piece of property. This alternative regulation provides an option that can make the zoning process more efficient, while retaining the rights of citizens and the authority of the legislative bodies.

The statute and proposed text amendments needed to adopt this procedure have been reviewed by the OMPC attorneys.

Finding

The staff recommends approval of revision to Article 6 of the Owensboro Metropolitan Zoning Ordinance that will provide for the alternative regulation for zoning map amendment as allowed by KRS 100.2111. Findings of fact are as follows:

1. Concerns have been raised regarding the amount of time that is required for a zoning change to become effective;
2. KRS 100.2111 allows an alternative method for Zoning Map Amendment that can reduce the amount of time for a zoning change to occur to 21 days following the OMPC recommendation;
3. The legislative bodies retain the authority to decide zoning map amendments and may do so by filing to decide the application within 21 days of the OMPC recommendation; and,
4. An aggrieved person retains the right to have the legislative body decide the zoning request by requesting in writing that the legislative body hears the application within 21 days to the OMPC recommendation.