

**BOONE COUNTY PLANNING COMMISSION  
BOONE COUNTY ADMINISTRATION BUILDING  
FIRST FLOOR FISCAL COURTROOM**

**November 28, 2007  
6:00 P.M.**

**PUBLIC HEARING**

**Commission Members Present:** Mrs. Arnett – Secretary/Treasurer, Mr. Breetz, Mr. Bunger, Mr. Caddell – Chairman, Mr. Carmichael, Mrs. Herald, Mr. Knock – Temporary Presiding Officer, Mr. McMillian, Mr. Poe, Mr. Charlie Reynolds, Mr. Rolfsen, and Mr. Schwenke.

**Staff Members Present:** Mr. Kevin Costello, AICP, Executive Director; Ms. Jan Hancock, Secretary; Mr. John Harney, GIS Application Analyst; Mr. Mitch Light, Assistant Zoning Administrator/ZEO; and Mr. Kevin Wall, AICP, CDT – Director, Zoning Services.

**Legal Counsel Present:** Mr. Dale Wilson

Mr. Arnold Caddell, Chairman, called the meeting to order at 6:02 PM. Following an explanation of the Public Hearing process, the Chairman introduced the item on the Agenda:

**Applicant:** **Boone County Fiscal Court and the  
Cities of Florence, Union and Walton**

**Request:** **Zoning Text Amendment**

**The request of the Boone County Fiscal Court and the Cities of Florence, Union and Walton to hold a Public Hearing to hear a presentation and comments regarding proposed zoning text amendments to the Boone County Zoning Regulations to regulate Sexually Oriented Businesses (SOBs) in certain zoning districts and to create applicable standards, requirements, and definitions.**

Mr. Jeff Earlywine, Boone County Administrator, was present on behalf of Judge Moore, Boone County Fiscal Court, and the Mayors of the Cities of Union, Walton and Florence. He stated that in 2006, based on a strategy of being proactive, the Fiscal Court created a committee and retained legal counsel to create tools to regulate Sexually Oriented Businesses. The Committee included representatives of county government, the Planning Commission, the County

Attorney's Office, and representatives of the cities in Boone County. Their consultant advised them to follow a two-step process:

**Step 1 – Enact an Ordinance** to establish the business and licensing component of the regulations

**Step 2 – Establish regulations (zoning)** to determine where Sexually Oriented Businesses could be located

Mr. Earlywine stated that Sexually Oriented Businesses engage in conduct protected by the First Amendment (freedom of expression) and unilaterally prohibiting them is not an option. A Public Hearing was held on February 13, 2007 and an Ordinance (Step 1) was adopted by Fiscal Court on March 13, 2007 that included requirements in regard to the application, inspections, and all other licensing aspects (alcohol permit, hours of operations, lighting, etc.). The Ordinance was applicable in unincorporated Boone County and the Cities of Union and Walton. The City of Florence enacted similar legislation. Once that portion was completed (Step 1), the Committee focused on the zoning portion (Step 2). They want to develop the strongest requirements possible to regulate where Sexually Oriented Businesses can locate with legislation that is in full conformity with previous court decisions and case law. They believe that the proposed Text Amendment fulfills those requirements. He thanked the Planning Commission Staff, especially Kevin Costello and John Harney, for their assistance. He introduced their legal counsel, Mr. Scott Bergthold from Chattanooga, Tennessee who is an expert in this field.

Mr. Scott Bergthold noted two changes to the Proposed Zoning Text Amendments (see Exhibit A – attached to the Staff Report):

- **Page 31.37, Section 3198** (Standards Related to Sexually Oriented Business), Item 1, line 4, the comma (,) after the word “business” should be removed
- **Page 40.23, Definition 19** should read *Sexually Oriented Business is an adult bookstore or adult video store, an adult cabaret, an adult motion picture theater, a semi-nude model studio, or a sexual device shop.*

Reviewing a Power Point presentation (see Exhibit 1), Mr. Bergthold stated that local governments can regulate adult businesses due to the negative secondary effects associated with these types of uses. There are many cases demonstrating these negative effects. He reviewed the case of the City of Renton v. Playtime Theatres, which was decided in 1986 and laid the groundwork for future regulation of adult businesses. The court said that local government is not required to experience the negative secondary effects before enacting regulations, but can rely on the experiences of other local governments. Information on negative secondary effects comes from five major sources (1) Land Use Studies in large and small cities, (2) Crime Reports, (3) Judicial Opinions (such as Renton v. Playtime Theatres), (4) Investigator Affidavits (documented behaviors in and around adult businesses), and (5) Anecdotal Reports (the testimony of citizens in regard to the negative impacts of adult businesses). He reviewed the five types of documented secondary effects of adult businesses: (1) Diminished property

values, (2) crime, (3) lewdness/potential spread of disease, (4) illicit drug use/trafficking, and (5) litter/noise/blight. He explained that Sexually Oriented Businesses tend to attract a particular clientele and predatory criminals are attracted to that clientele. The clientele could be people open to vice overtures, people subject to con games, or people who carry cash because they want to maintain anonymity. He reviewed examples in other cities of secondary effects. He explained that in litigation, Sexually Oriented Businesses will compare their businesses to other businesses (such as a biker club) and say that the biker club had more assaults and more calls for police service – and, therefore, adult entertainment is not the source of the problem. The courts have rejected the idea that it has to be proven that the adult business is the worst place in town -- instead the courts found that harm associated with adult businesses can be documented and regulations enacted to prevent those harms. He reviewed relative case law as listed in his Power Point presentation and presented at the Fiscal Court Public Hearing. He stated that the studies and documentation support the Licensing Ordinance and the proposed Text Amendments. He stated that a summary of the negative secondary effects of adult businesses was submitted at that time and is available for review. The summary documents increasing crime, decreasing property values, and adverse impacts on the quality of life in the community. A study done in Phoenix documented a 506% higher rate of sexually related crimes around adult businesses. In Indianapolis, a survey of 100 real estate appraisers showed a significant negative impact on property values. Surveys in other cities documented crimes associated with adult businesses and adverse impacts on surrounding properties. There were problems with litter that could be picked up by children. Dr. Richard McCleary, an expert who has studied the effects of adult businesses around the country, found a number of bodies of evidence that document the increased crime associated with adult businesses. Mr. Bergthold stated that there is not currently an adult business seeking to locate in Boone County. He stated that the adult industry is funding their own studies to reach their own conclusions. He stated that Dr. McCleary and other experts have found that (1) the finding regarding secondary effects from Sexually Oriented Businesses is sound and has been confirmed, (2) Boone County has a substantial interest in regulating adult businesses to prevent negative secondary effects, and (3) the studies done by the Sexually Oriented Businesses are based on faulty data – an example being that a *Calls for Service Analysis* shows that the high crime location is the hospital – but that is because people call the police from the hospital after they were injured in another location. He stated that many crimes associated with adult businesses are “victimless crimes” (they involve willing participants in such activities as drugs and prostitution). He stated that a stripper will not call 911 in regard to illicit behavior on the premises, because she is likely involved. Mr. Bergthold reviewed relevant case law and offered to answer any questions.

In response to a comment by the Chairman, Mr. Earlywine introduced into the record the minutes of the Public Hearing conducted previously by Boone County Fiscal Court and all accompanying documentation. (Note: The minutes and all

documentation of the February 2007 Boone County Fiscal Court Public Hearing are attached as Exhibit 2).

Mr. Kevin Costello, AICP, Executive Director, stated that in 1999 – 2000 there was a series of Zoning Text Amendments that identified Sexually Oriented Businesses. At that time, the strategy was to identify to define the use and then determine in what zoning districts the use would be allowed. Referring to Attachment A, he stated that the old text is being stricken and the new text inserted. The changes are identical to the Licensing Ordinance approved by Fiscal Court. Mr. Costello presented the Staff Report which included a Power Point presentation and review of the attachments (see Staff Report).

Staff Member John Harney, GIS Application Analyst, presented and reviewed a Power Point slide showing how the 1,000-foot buffer (from the property line) requirement was applied in GIS to buffer churches, daycare centers, government buildings, hospitals, libraries, establishments with liquor licenses, parks (private and public), recreational facilities, residential areas, schools and senior centers located in the I-1, I-2, I-3, C-4, O-1 and/or O-2 zones. He submitted a map locating 34 potential Sexually Oriented Business sites on the map (see Exhibit 3). He explained that the sites are ever changing (Example - if an establishment with a liquor license went out of business, the 1,000-foot buffer requirement would no longer apply). In response to a question from Mr. Carmichael, he stated that the 1,000-foot measurement is property line to property line. He described the 34 potential sites in which a Sexually Oriented Business could be located:

<b>Site</b>	<b>Zone</b>	<b>Location</b>	<b>Size in Acres</b>
<i>Sites 1 – 6 are in Western Boone County</i>			
1	I-3	Next to Ohio River at end of Lawrenceburg Ferry Road, NE of Petersburg	16
2	I-3	Next to Ohio River, SW of Petersburg	38.48
3	I-3	(very small site)	0.1
4	I-3	Closer to Walton	119
5	I-3	Western Boone County	148
6	I-2	East Bend Power Plant	823
<i>Sites 7 – 11 are in the City of Walton</i>			
7	I-2	Near Boone/Kenton County line	5.16
8	I-1	Walton Industrial Park	3.43
9	I-1	Along I-75 west of Walton Towne Center	2.88
10	I-1	Walton-Verona Road south of Flying J	2.3
11	I-1	City of Walton	2.28
12	I-1	Near Boone/Kenton County line	1.91
13	I-2	Enterprise 5 Industrial Subdivision	8
14	I-1	Mt. Zion Road on Boone/Kenton County line	3
15	I-1	Turfway Business Park, Florence	14.53
16	I-1	North of Burlington Pike	31

17	I-1	East of Airport in Cox Machinery Subdivision	.42
18	I-1	Off Dolwick Drive at Boone/Kenton County line	3.36
19	I-1	Riverview Business Park near Point Pleasant	0.9
20	I-1	West of the east/west runway off North Bend Road	275
21	I-1	Next to north/south runway off Petersburg Road	41
22	I-1	Directly south of Site #21	9.17
23	I-1	Skyport Business Park	44
24	I-1	AirPark International Business Park	125
25	I-1	Park West International Business Park	207.39
26	I-1	SouthPark	14.13
27	I-1	Lakeland Business Park and Commerce Park West	24.45
28	I-1	Boone/Kenton County line, CirclePort 3	59.92
29	I-1/I-2	Richwood Industrial Park off Duro Way	87
30	I-1/I-2	Northern Kentucky Industrial Park off Industrial Road	506.85
31	I-1/I-2	1000 feet north of Richardson Road	0.96
32	C-4	Along Burlington Pike near Tractor Supply	3.87
33	O-2	Airport Exchange Subdivision	0.58
34	O-2	Off Houston Road behind Citicorp	6.42

Mr. Harney reviewed Attachment B (attached to the Staff Report).

At this time, the Chairman asked if there was anyone else present who wished to speak in favor of the request. There being no response, he asked if there was anyone present who wished to speak in opposition.

Ms. Sharon Lucki, 2772 Shamu Drive, Hebron, stated that the reference to “adult businesses” is inappropriate – she is an adult and that is not her business. The term Sexually Oriented Business is preferable. She questioned why there has to be a certain number of such businesses per county. She stated that a lot of recreational activities for children require a drive out of the area, so why should there be an emphasis on making Sexually Oriented Businesses available in the county? She asked if studies had been done to determine if there are more secondary negative effects when a Sexually Oriented Business is located in a business area versus an industrial area? She asked if the areas selected are those with the least potential negative impacts. She stated that the distance of 1,000 feet is not the true distance of chosen isolation. Many homeowners would not want to be 1,000 feet from Sexually Oriented Businesses and may prefer a distance of half a mile, two miles, three miles, or four miles. She asked if traffic routes were considered – what if the Sexually Oriented Business is on the only bus route? The only walking route? The only bike route? On a convenient route to a play

area for children? She stated that there should be concern about school buses or school children having to go through these areas.

Mr. Gary Rice, 4818 Cornell Drive, Burlington, stated that some of the proposed sites are near the airport and he is concerned about the type of individuals who may frequent Sexually Oriented Businesses and terrorist activity. He stated that years ago Newport, Kentucky had nude dancing and property values were down, but now they have come up somewhat. Sexually Oriented Businesses were allowed in Atlanta and Detroit and the crime rates went up. There are many examples of what Sexually Oriented Businesses have done throughout the country. He would be surprised if more than 10% of the residents in the county want this and there should be a vote by the people. He has not seen anything that tells him that the county would be better off with Sexually Oriented Businesses.

Mrs. Susan Archambault, 3218 Burlington Pike, stated that the intent of the Comprehensive Plan is to protect the health, safety and general welfare of the community. This is a family-oriented community that has the fastest growing school district in Kentucky. It is a growing community. She stated that in the Yellow Pages there are four pages of churches in the Boone County with 18 – 20 on each page. She stated that just because the government says we can have these businesses does not mean that we ought to have them.

Mr. Vic Belcher, 8496 East Bend Road, is an EMT and he would be concerned about sexually transmitted diseases when responding to an adult business. He questioned the 1,000-foot requirement – why not be 2,000 feet or half a mile? He asked if it is inevitable that Sexually Oriented Businesses will be located in the county. He is concerned that his daughter's car could break down in the area of a Sexually Oriented Business and she could be accosted by someone of questionable character. He questioned where the patrons of the Sexually Oriented Businesses will come from – are they neighbors? Are they from out of town? What roads will they travel? He stated that Boone County has been a great place to raise a family and he wants to keep it that way. He is against Sexually Oriented Businesses.

The Chairman asked Mr. Bergthold to explain what happens in communities when there are no regulations in place in regard to Sexually Oriented Businesses. Mr. Bergthold responded that if a community does not regulate proactively to prevent these businesses from going into inappropriate locations, they can go anywhere they want. Under KRS 100, if a business comes in and then the county says there is nothing in the zoning code that allows them or that they are not allowed because the use is not listed, then the Sexually Oriented Business will go to court and get an injunction (which only takes about 3 days) and they will be grandfathered in that location when the county subsequently regulates such businesses. The Kentucky Supreme Court has said that adult businesses cannot be entirely banned from a community. He stated that the proposed Text Amendments do not represent a choice to allow adult businesses in the county –

the Constitution as interpreted by the Supreme Court allows them. The license does not give them permission – they get permission from the Constitution. The license is to control them or shut them down if they violate the regulations.

The Chairman stated that it is the goal is to develop proactive regulations so that we are not be susceptible to Sexually Oriented Businesses coming in and having the ability to go wherever they want and then be grandfathered when we do regulate them. We want to have the appropriate regulations in place to deal with Sexually Oriented Businesses at such time as they may become an issue in Boone County.

Ms. Cerise McCombs, Union, questioned the distance of 1,000 feet. Her child could walk or ride a bicycle that distance very quickly. She does not think the secondary effects end at 1,000 feet. She asked that the distance be greater. She stated that one of the locations is in a national park in Hebron. She and her children go to the Gap Outlet, which is located in an industrial park, but they will stop going there if Sexually Oriented Businesses locate there. She stated that just because a Sexually Oriented Business is located in an industrial park, does not mean that it is not a blight on the community.

Ms. Mary Brady, 2947 Bullittsburg Church Road, Petersburg, is concerned about signage. She is concerned that children will see the signs for Sexually Oriented Businesses. She questioned why the 2,600 acres could not be reduced to 300 acres with additional regulations. She suggested locating all of the sites down by the river or the sewer plant. She feels that there should be more regulations.

Mr. Ferd Kipler, partner in a business located at 7540 Industrial Road, asked that the distance be more than 1,000 feet. He stated that there seems to be an attitude that it does not matter if Sexually Oriented Businesses locate in an industrial park, but there needs to be consideration of the amount of traffic that goes through there. He stated that locating Sexually Oriented Businesses in the industrial park would adversely affect his Skyline Chili business.

Mr. Vince Bessler, 3278 Kingsley Drive, Hebron, is not opposed to the application, but feels that what is proposed is too weak and there should be stronger regulations.

Mr. Chris Cusik, 743 Iron Links Drive, Union asked the Planning Commission to be as aggressive as possible to prevent any establishment from coming here. He asked if the Planning Commission will seek second opinions on what the text should be. He stated that an organization called Community Defense Counsel provides expertise in this area. He stated that a study was done by the FBI that the funds that come to support these establishments are tied to organized crime.

Mr. Rick Bosey, 6483 Westland Drive, asked if anything can be done to prevent a Sexually Oriented Business from locating on any of the sites described by Mr. Harney. He stated that some of the locations are three miles away from his house.

Ms. Brenda Gluck, 15058 Southfork Road, Verona, stated that she was in the military. She saw these kinds of businesses in the military and they are not good. She stated that adults are not the only ones involved in these businesses and children will get caught up in them. Sexually Oriented Businesses are like gambling places – people will go there and spend their money instead of buying groceries for their children. She stated that property taxes will probably be raised to pay for the police that will be needed.

Ms. Tracy Gooder, 6761 Parkland, Apt. #108, Florence, stated that she and her husband moved to Florence two years ago from Detroit to be safer. She works at the Creation Museum and she is concerned that the Sexually Oriented Businesses will clash with the Museum, which brings a lot of business to the area, and the people will book all the hotel rooms and eat in the restaurants.

The Chairman asked Mr. Bergthold to respond to the issues raised. Mr. Bergthold agreed that the term “adult business” is a misnomer. He stated that the Fiscal Court is realizing that under the current law, without regulation, Sexually Oriented Businesses can locate in the county and, if there is a challenge to the site they have chosen and they point out to the court that there is no provision in the zoning code, they could be grandfathered there forever. He stated that this is one piece of the regulation – it is the “location piece”. The other piece is a comprehensive 21-page licensing ordinance that includes many restrictions on the businesses. He stated that when adult businesses are looking for a location, they look for towns that have no regulations – but when they look at Boone County, they are not only going to find zoning restrictions, they are also going to find stringent regulations in the Ordinance. He stated that the Community Defense Counsel is dedicated to helping communities around the country fight the negative secondary effects of adult businesses. He was recently the President and General Counsel of the Community Defense Counsel and he gave them the same advice that he is giving Boone County – which is that putting regulations in the zoning code is not an invitation to adult businesses to come to the community, it is a statement that they will have to comply with a host of restrictions and – if they go somewhere else – they might make more money because they would not have to comply with all the restrictions. He stated that there is nothing magical about a distance of 1,000 feet – but that is the greatest distance for a buffer that has been upheld by the United States Supreme Court. He stated that the greater the distance of the buffer, the lesser amount of available sites. This is a very large county and the court will look at the percentage of land available for adult businesses compared to the land area of the county. Courts have invalidated ordinances of large counties when less than 1% of the land mass is available for adult uses. He stated that increasing the amount of buffer increases the risk that the court will say that the amount of sites is too low. The key to protecting the

community is to have an ordinance that will stand up in court when it is challenged. He feels that the 1,000-foot buffer strikes a proper balance. He stated that signage is not included in this part of the ordinance, but there is a sign code in the Boone County regulations. He stated that the content of signs cannot be regulated. He stated that the industrial zones are generally dedicated to uses involving manufacturing and related service uses and it is less likely that families will be going to an ice cream shop or a store in an industrial zone -- although there is the possibility of such uses being in the industrial zone. He stated that adult uses have to be allowed to locate in the community. He stated that First Amendment rights are not subject to a majority vote.

Chairman Caddell asked if there were any comments or questions from the Commissioners.

Mr. Charlie Reynolds asked if there has been regional action anywhere in the country where several counties have come together to have a greater impact against Sexually Oriented Businesses. Mr. Bergthold stated that Kenton County hired land use consultants to work on inter-local agreements between the cities and the county so that not every municipal jurisdiction in the county had to have its own Sexually Oriented Business zone, but he is not aware of multiple counties coming together.

Mr. Rolfsen asked if the percentage of land (1.6% of the entire county) is the smallest amount possible that would stand up in court if there was a challenge. Mr. Bergthold responded that adult businesses could challenge any percentage – there is nothing to stop people from filing lawsuits. He cannot give a specific percentage that would be the least amount allowable. He is not concerned about a court challenge to the ordinance and believes it would survive scrutiny. The courts look at the percentage of available land, the population of the county, the ratio of sites available to the total population, and supply and demand (how many adult sites are available versus the number of businesses seeking them). He believes there this is an appropriate balance.

Mr. Knock stated that the proposed text refers to semi-nude and he believes it should say *nude or semi-nude*. Mr. Bergthold responded that the licensing regulations prohibit nudity.

Mr. Schwenke asked if Mr. Bergthold will attend the Committee Meeting. Mr. Bergthold responded that he will try to be available by phone, but he is not planning to attend the Committee Meeting. Mr. Schwenke stated that the Committee will want the regulations to be as strict as possible without going too far. Mr. Bergthold responded that it is possible that more restrictive regulations would stand up to being challenged, but there is increased risk with stricter regulations.

Mr. Carmichael asked Mr. Harney to remove the four sites that are too small to be usable and redo the map and calculations (percentage of land use) prior to the Committee Meeting. He stated that if there was a court challenge, those sites would be thrown out as being unusable since the Zoning Code prohibits lots of that size. Mr. Bergthold agreed. Mr. Costello stated that the information is a snapshot at this point in time – the sites could go away or they could get larger over time when land uses change.

Mr. Breetz reviewed the calculations on Exhibit B. He asked if we are trying to have a certain percentage of land, a certain number of sites, and a certain number of zoning districts? Mr. Bergthold responded that it is not an explicit purpose, but it is a byproduct and a benefit. He stated that there have been challenges to zoning ordinances that only allow adult uses in industrial zones. Mr. Breetz stated that the potential for more of the county to become O-1 or C-4 creates other issues. He asked if semi-nude is defined in the statute. Mr. Bergthold responded “yes”. Mr. Bunger asked if the regulations adopted in Kenton County are compatible with the proposed regulations and questioned any impact the Kenton County regulations may have on these regulations. Mr. Bergthold responded that the regulations adopted in Kenton County were upheld by the Federal District Court and are on appeal to the Sixth Circuit Court of Appeals. The Kenton County regulations are similar, but the proposed regulations are more stringent.

Mr. McMillian asked if one of the sites was located on the river, could a Sexually Oriented Business have a boat there similar to the gambling boats in Indiana and then the county would not have any jurisdiction over them? Mr. Costello responded that zoning extends to the state line and includes the river so there would be jurisdiction.

There being no further comments, the Chairman stated that the Committee Meeting for this item will be on December 12, 2007 at 6:30 PM in this room. This item will be on the Agenda for the Business Meeting on December 19, 2007 at 7:00 PM. The Chairman closed this Public Hearing at 7:55 PM.

**APPROVED:**

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**Arnold Caddell, Chairman**

**Attest:**

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**Jan Hancock, Recording Secretary**

**Exhibits –**

- 1. Power Point presentation, submitted by Mr. Bergthold (CD and hard copy)**
- 2. Minutes and all documentation of February 2007 Boone County Fiscal Court Public Hearing, submitted by Mr. Earlywine**
- 3. Map of Boone County showing locations of 34 potential Sexually Oriented Business sites, submitted by Staff**