

**COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION II
CIVIL ACTION NO. 18-CI-942**

Electronically Filed

**THE ELECTRIC AND WATER PLANT BOARD
OF THE CITY OF FRANKFORT, KENTUCKY, ET AL.**

PLAINTIFFS

v.

**FRANKFORT-FRANKLIN COUNTY
PLANNING COMMISSION, ET AL.**

DEFENDANTS

FRANKFORT PLANT BOARD MOTION FOR SUMMARY JUDGMENT ON COUNT II

The Frankfort Plant Board (“FPB”)¹ is entitled to judgment setting aside the Frankfort-Franklin County Planning Commission’s (“Planning Commission”) action in this case as arbitrary and capricious. The Planning Commission has acted in excess of its statutory powers by making its approval under KRS 100.324(4) – which provides only for non-binding advisory review of a project – a mandatory requirement for proceeding with FPB’s proposed reservoir project, and by applying incorrect legal standards. The Planning Commission’s proceedings failed to comport to minimal standards of procedural fairness, insofar as FPB was given no notice that the advisory review process contemplated under KRS 100.324(4) would later be treated as an adjudicatory process. The Planning Commission’s actions are also not supported by substantial evidence. In particular, there is no design or engineering analysis – or even any staff recommendation – in the record to support the Planning Commission’s requirement that the project be redesigned to construct two 4.6-million-gallon tanks, rather than the current 7-million-gallon tank proposal.

The Planning Commission is not a utility regulator. It does not have the institutional competence or knowledge to evaluate competing proposals for the design of water distribution

¹ Plaintiffs Electric and Water Plant Board of the City of Frankfort, KY, and Anna Marie Pavlik Rosen are referenced herein collectively as the Frankfort Plant Board or “FPB.”

infrastructure. It is impermissible for the Planning Commission to engage in this kind of micro-management under the guise of land use planning. The Court should grant FPB summary judgment on Count II, instructing the Planning Commission to permit the Project to move forward.

FACTUAL BACKGROUND

The Project

This litigation arises from FPB’s proposal to replace two 4.6-million-gallon water reservoir tanks with a new, 7-million-gallon tank, which is to be located within the footprint of the existing tanks at the FPB’s campus near Tanglewood Drive in Frankfort, Kentucky (the “Project”). The reservoir tanks are the core of FPB’s water distribution system. The existing tanks are 133 years old and have been actively leaking for some time. Failure of the tanks would pose an immediate and significant threat to Frankfort’s water supply and to public health and safety.²

FPB is a municipal utility that provides cable, broadband, telephone, security, electric, and water services for the City of Frankfort (“City”) and surrounding areas. The City established FPB in 1943 to operate and manage the City’s utility systems “apart, insofar as possible, from the other administrative operations of the City,” and accordingly gave FPB “absolute and exclusive control of the general supervision, operation and maintenance of the waterworks, electric light and power system in every respect....”³ FPB is organized pursuant to KRS 96.176, which likewise entrusts FPB with “the exclusive supervision, management and control of the operation, maintenance and extension of the [City’s] electric and water plant.” KRS 96.176(1).

FPB has focused on replacing the tanks for more than a decade. Initially, FPB sought to repair the existing tanks. But a 2008 analysis by the engineering and design firm, Strand

² Administrative Record (“AR”): Energy & Env’t Cabinet, Environmental Review, at Frankfort 000000017, attached as **APX A**. Citations to the “AR” shall refer to materials included in the certified administrative record filed by the Planning Commission. Because the AR, as filed, is not paginated or indexed in a way that permits ready identification of particular documents, relevant AR materials are attached hereto for the Court’s convenience.

³ Ordinance, pp. 1, 3, Ex. C to City Reply in Supp. of Mot. to Dismiss (filed 11/12/2018).

Associates, Inc. (“Strand”), determined that repair of the existing reservoir tanks would not be cost effective. The cost of repair would equal or exceed the cost of replacing the existing tanks. And repaired tanks would have a much shorter operational lifespan than new reservoir tanks.

With Strand’s assistance, FPB staff undertook an extensive analysis of alternative siting and tank design options, concluding that replacement of the current tanks with one new 7-million-gallon tank in the same location as the existing tanks is the most cost-effective option.

Long-range planning determined that construction of a single 7-million-gallon tank would meet foreseeable water demand through at least 2060, while leaving room for a second 7-million-gallon tank to be constructed within the existing reservoir footprint in the future if needed.

Construction of a single 7-million-gallon tank was also determined to be more cost effective than installation of two new 4.6-million-gallon tanks. Depending on roof design, the cost of installing two new 4.6-million-gallon tanks was determined to be between \$6.3 million and \$9.9 million, compared to an estimated cost of \$3.8 million for one 7-million-gallon tank.⁴

FPB submitted the Project for environmental assessment to the Kentucky Department for Environmental Protection, Division of Water (“DOW”). DOW’s environmental assessment included a review of alternatives to the Project, assessment of the need for the Project, impacts on the natural environment, and any impacts on historic properties. DOW issued a positive “Finding of No Significant Impact” and gave the Project a “green light” to move forward.⁵

Opposition from Tanglewood Neighborhood Association and Proposed Alternative

Notwithstanding the Project’s benefits, some residents of the Tanglewood Neighborhood Association (“TNAi”) have opposed it. TNAi’s central concern is that because the new tank would

⁴ 04/16/2018 Special Board Meeting Presentation (“04/16/2018 Presentation”), at Frankfort 000000120, attached as Exh. 18 to FPB Mot. to Supp. Admin. Record (filed 08/08/2019).

⁵ AR: Energy & Env’t Cabinet, Environmental Review, APX A.

be taller than the existing tanks, it would have an adverse visual impact on the neighborhood.⁶

TNAi's position has evolved over time. Initially, TNAi asserted that the Project should be deemed an industrial use that could not be located at the proposed site, notwithstanding the fact that there is already a reservoir located there. Later, TNAi revised its stance, stating it was willing to accept construction at the site, but only if the Project did not alter the "visual impact" of the reservoir on the neighborhood.⁷ In an effort to address TNAi's concerns, FPB worked on multiple design options over time, presenting them to the community at more than 20 public meetings.⁸

In light of community opposition to the Project, the City Board of Commissioners sent a letter on June 27, 2018 to both FPB and TNAi, noting that "the debate over the design plans for the FPB reservoir project has had a detrimental effect on the community," and requesting that "both FPB and TNAi ... take the necessary steps to achieve a compromise that meets the needs of both our reservoir structure and the neighborhood that houses it."⁹

On July 19, 2018, TNAi for the first time proposed an alternative design for the Project, which would involve the construction of two new 4.6-million-gallon tanks with "half-domed" roofs, instead of the proposed 7-million-gallon tank.¹⁰ No design work or engineering analysis was provided with TNAi's proposed alternative, and thus none exists in the record.¹¹ Nor has TNAi developed any information about how its proposed alternative would compare in terms of operational performance, water pressure, resilience to seismic events, or water turnover rates.

Despite the lack of any support for TNAi's alternative, on August 6, 2018, the Board of

⁶ 08/16/2018 Special Meeting Tr. at 53, 61, attached as **APX B**. A CD audio recording of the 08/16/2019 special meeting is included in the administrative record filed by the Planning Commission. FPB is attaching a court reporter prepared transcription of that meeting for the Court's convenience.

⁷ 08/16/2018 Tanglewood Neighborhood Association, Inc. Presentation ("08/16/2018 TNAi Presentation"), at Frankfort 000000099, attached as Exh. 17 to FPB Mot. to Supp. Admin. Record.

⁸ At the meeting where the design for the 7-million-gallon tank at issue was discussed specifically, TNAi's president offered no comment and the design passed by a unanimous vote.

⁹ 06/27/2018 Bd. of Comm'rs Letter, attached as Exh. 19 to FPB Mot. to Supp. Admin. Record.

¹⁰ 08/16/2018 TNAi Presentation at Frankfort 000000099; 07/19/2018 G. True Letter, Frankfort 000000052-54, attached as Exh. 20 to FPB Mot. to Supp. Admin. Record.

¹¹ 07/19/2018 G. True Letter, at Frankfort 000000053, attached as Exh. 20 to FPB Mot. to Supp. Admin. Record.

Commissioners passed a resolution declaring that “the Board of Commissioners believes TNAi has submitted an alternative proposal for the reservoir project that takes into consideration multiple factors, including reasonable cost, visual impact on the neighborhood, and facility footprint while still meeting future capacity needs as a water utility”¹² and that “[t]he Board of Commissioners supports the alternative proposal for the reservoir project submitted by TNAi on July 19, 2018.”¹³

Referral for Planning Commission Review

In an April 26, 2018 letter, the Board of Commissioners directed that the Project be submitted for review to the Planning Commission under KRS 100.324(4).¹⁴ Pursuant to KRS 100.361(2), public entities like FPB are generally exempt from zoning and land use regulations.¹⁵ However, KRS 100.324(4) provides for proposals for public facilities to be submitted to local planning commissions for non-binding advisory review to assess “its agreement with the comprehensive plan,” and to “make suggestions” about any changes that might “better accomplish the objectives of the comprehensive plan.”¹⁶ Reading KRS 100.361 together with KRS 100.324, Kentucky courts have held that compliance with the planning commission’s “suggestions” is “voluntary,” and the submitting entity “may disregard the opinion of the planning commission.”¹⁷

KRS 100.324(4) provides for review only for agreement with the “comprehensive plan.” A “comprehensive plan” is part of the statutorily-mandated planning process under KRS Chapter 100, which necessarily precedes a municipality’s adoption of property-specific zoning regulations,¹⁸ and serves as a broad “guide” for future development.¹⁹

¹² AR: Resolution No. 9, 2018 Series (08/06/2018), p. 1, attached as **APX C**.

¹³ *Id.*

¹⁴ 04/26/2018 Letter, attached as Ex. 13 to FPB Mot. to Supp. Admin. Record (filed 08/08/2019).

¹⁵ *E.g.*, *City of Louisville Bd. of Zoning Adj. v. Gailor*, 920 S.W.2d 887 (Ky. App. 1996); *Hopkinsville-Christian Cty. Planning Comm’n v. Christian Cty. Bd. of Educ.*, 903 S.W.2d 531 (Ky. App. 1995).

¹⁶ KRS 100.324(4).

¹⁷ *Hopkinsville-Christian Cty. Planning Comm’n*, 903 S.W.2d at 532.

¹⁸ *City of Lakeside Park v. Quinn*, 672 S.W.2d 666 (Ky. 1984); *Hardin Cty. v. Jost*, 897 S.W.2d 592 (Ky. App. 1995).

¹⁹ *Wolf Pen Pres. Ass’n v. Louisville & Jefferson Cty. Planning Comm’n*, 942 S.W.2d 310, 312 (Ky. App. 1997).

The April 26 letter from the City attorney confirmed this analysis, acknowledging that “KRS 100.324(4), which appears to govern the reservoir plan, requires Planning Commission review, but not official approval.”²⁰ The City proposed the Project be sent “through a *courtesy or advisory* version of the regular development plan approval process, which would include a public meeting and recommendations from the Planning Commission.”²¹

Relying on the City attorney’s representations, FPB voluntarily submitted the Project for non-binding review to the Planning Commission.

Planning Commission Staff Report

FPB’s application was reviewed by Eric Cockley, Director of the Planning and Community Development Department, who then prepared a “Staff Report” for the Planning Commission.²² Mr. Cockley acknowledged that the review process was “unlike other development plan review we may typically do where we’re looking through sets of zoning regulations and what have you for compliance and very specific regulations and requirements. In this case, we’re simply trying to make some judgments about its conformance with the comp[rehensive] plan.”²³

The Staff Report makes a generalized assessment of the Project according to the broad, aspirational goals and policy objectives in the Frankfort/Franklin County Comprehensive Plan (the “Comprehensive Plan”).²⁴ The Staff Report issued “positive” findings for a number of the goals set forth in the Comprehensive Plan, including but not limited to the following: “[p]lan[ning] for public services and facilities that adequately serve current needs as well as demand generated by ... additional growth”; “[d]irec[ting] development into areas within or in close proximity to the existing infrastructure service areas”; ensuring that “where infill development occurs, the density

²⁰ 04/26/2018 Letter, attached as Exh. 13 to FPB Mot. to Supp. Admin. Record (filed 08/08/2019).

²¹ *Id.* (emphasis added).

²² 08/16/2018 Special Meeting Tr. at 7-8, APX B.

²³ *Id.* at 12, APX B.

²⁴ <https://frankfort.ky.gov/DocumentCenter/View/115/2016-Comprehensive-Plan-Update-PDF>.

and character of the development should reflect the existing uses that surround the proposed site”; and the Plan’s “recommend[ation] that opportunities for consolidation of water service providers be examined and pursued as practicably possible.”²⁵

However, the Staff Report made negative findings concerning other goals in the Comprehensive Plan. The Staff Report found that “the addition of equipment and a taller, more visible water tank is not the most effective way to ‘Promote the stability, preservation and vitality of existing residential neighborhoods’” (Goal Six in the Comprehensive Plan).²⁶ The Staff Report stated that because the new tank would be “more intrusive into the residential neighborhoods,” it did “not directly contribute to enhancing community quality and character” (Goal Seven). The Staff Report offered that the “negative visual impact” of the new tank warranted a negative finding on the land use element providing that “[e]xpansion of existing public/semi-public uses should be allowed where there will be minimal impact on surrounding residential uses.”²⁷ The Staff Report thus concluded “that the project does not *entirely* conform to *all* of the Comprehensive Plan.”²⁸

Planning Commission Special Meeting

The Planning Commission held a special meeting to consider the Project and the Staff Report on August 16, 2018 – ten days *after* the Frankfort Board of Commissioners had already adopted its resolution expressly approving TNAi’s alternative proposal for two 4.6-million-gallon tanks (which, again, had not been subject to any engineering or design analysis).

At the meeting, Mr. Cockley discussed the preparation and findings of the Staff Report.²⁹ David Billings, chief water engineer for FPB, also appeared and answered Commissioners’

²⁵ AR: 08/01/2018 Cockley Report and Recommendation (“Staff Report”), pp. 7, 11, 13, attached as **APX D**.

²⁶ *Id.* at 9.

²⁷ *Id.* at 11.

²⁸ *Id.* at 14 (emphasis added).

²⁹ 08/16/2018 Special Meeting Tr. at 7-23, APX B.

questions.³⁰ Mr. Billings addressed various design questions about the Project, emphasizing that due to engineering considerations “our design constraints are really narrow,” and reiterated that “what the board has approved is by far the least cost alternative to give us the seven million gallons capacity that we need and also provide a space for another tank in the future....”³¹

Other attendees then offered comments, including the president of TNAi, who gave an extensive presentation on TNAi’s objections to the Project and its alternative proposal to build two new tanks. The presentation suggested that TNAi’s proposal was based on a “recommendation” from Strand.³² However, that claim was based on a PowerPoint slide from an outdated **2008** presentation by Strand to FPB, which evaluated the cost effectiveness of repairing the existing tanks versus replacing them.³³ The slide merely shows a cost estimate for the raw cost of purchasing the material components of the two new tanks eleven years ago, not overall project cost, and did not reflect any engineering analysis or comparison of a current one- versus two-tank solution. The actual total estimated cost for TNAi’s alternative is 79% higher than FPB’s proposal.³⁴ TNAi offered architectural renderings of the visual appearance of their proposal, but did not present any engineering assessment, design specifications, or other technical details.³⁵

At the conclusion of the meeting, immediately following the attendees’ presentations, the Planning Commission voted to make a finding that the Project was not in agreement with the Comprehensive Plan, to adopt the Staff Report’s negative findings on Goals Six and Seven of the Comprehensive Plan, and to make the specific recommendation that “the tank size in the proposal

³⁰ Mr. Billings also offered to talk through the presentation he had given to the Board of Commissioners about the Project, but counsel for the Planning Commission, Mr. Logan, objected that the meeting was on a “limited scope” and any testimony “needs to address the issues of the comprehensive plan and not something else.” The Commission agreed to receive a copy of the presentation but did not permit Mr. Billings to go through it. *Id.* at 25.

³¹ *Id.* at 32, 25. *See also id.* at 46-47.

³² *Id.* at 55; 08/16/2018 TNAi Presentation, at Frankfort 000000091, Exh.17 to FPB Mot. to Supp. Admin. Record.

³³ 2008 Strand Presentation, at Frankfort 00000126-141, attached as Exh. 21 to FPB Mot. to Supp. Admin. Record.

³⁴ 04/16/2018 Presentation, at Frankfort 000000120, attached as Exh. 18 to FPB Mot. to Supp. Admin. Record.

³⁵ 08/16/2018 Special Meeting Tr. at 48-55, APX B.

should be reduced to 4.6 million gallons, or less.”³⁶ This ignored that the two 4.6-million-gallon tank alternative (a combined 9.2 million gallons of unnecessary and costly infrastructure) would actually increase project size and reduce green space. The Planning Commission issued written conclusions and recommendations conforming to its vote.³⁷

Based on the understanding that compliance with any Planning Commission recommendations was voluntary, on August 30, 2018, FPB requested that any permits required under KRS 100.324(4) be issued.³⁸ On August 31, 2018, Mr. Cockley responded by letter, stating “[b]ased on the Planning Commission’s negative findings and the lack of an attempt to address any of the findings in the form of an amended development plan or other supplemental materials I am not in a position to issue a building permit for the Plant Board Reservoir Project.”³⁹ There was no legal basis for his denial of the permit.

Subsequently, on April 18, 2019, Mr. Cockley wrote again to reiterate the unfounded position that the Project could not proceed without compliance with the Planning Commission’s directives. Mr. Cockley stated that his “understanding from [this Court’s] order and at the advice of Planning Commission Counsel is as follows: ... In order for the Planning Commission to consider reviewing this particular project a complete application and a project submittal that *is different from the original submittal* in some way must be submitted.”⁴⁰

ARGUMENT

The Planning Commission’s actions are arbitrary and capricious, and therefore must be set aside. Summary judgment is appropriate where there are no genuine questions of fact, and the

³⁶ *Id.* at 80, 86.

³⁷ AR: Frankfort/Franklin County Planning Commission, Conclusions & Recommendations, Aug. 16, 2018 (“08/16/2018 Conclusions & Recommendations”), attached as **APX E**.

³⁸ 08/30/2018 Rosen Letter, attached as Exh. 15 to FPB Mot. to Supp. Admin. Record.

³⁹ 08/31/2018 Cockley Letter, attached as Exh. 14 to FPB Mot. to Supp. Admin. Record.

⁴⁰ 04/18/2019 Cockley Letter (emphasis in original), attached as Exh. 16 to FPB Mot. to Supp. Admin. Record.

moving party is entitled to judgment as a matter of law. CR 56. The question of whether an administrative action is “arbitrary,” is fundamentally a legal question appropriate for summary judgment. *American Beauty Homes Corp. v. Louisville & Jefferson Cty. Planning & Zoning Comm’n*, 379 S.W.2d 450, 456 (Ky. 1964).⁴¹

An administrative action will be set aside as “arbitrary” if: (1) the agency acts contrary to, or in excess of, its statutory powers or mandates; (2) the proceedings violated due process notions of fairness, notice, and opportunity to be heard; or (3) the agency’s decision was not based on “substantial evidence.” *E.g., Am. Beauty Homes*, 379 S.W.2d at 456; *Allen v. Woodford Cty. Bd. of Adjs.*, 228 S.W.3d 573 (Ky. App. 2007). The Planning Commission’s decision and proceedings violate all three of these standards.

I. The Planning Commission acted in excess of its statutory powers by making approval under KRS 100.324(4) mandatory, rather than advisory.

“Planning and Zoning administrative bodies are bound by the general rule applicable to all administrative bodies that their authority is derived solely from the enabling statute and cannot act beyond that power conferred by the legislature.” *Allen*, 228 S.W.3d at 576 (citing *Am. Beauty Homes*, 379 S.W.2d at 456).

Here, the Planning Commission exceeded its statutory powers by making its approval of the Project, and FPB’s compliance with the Planning Commission’s recommendations, mandatory. It is black-letter Kentucky law that planning commission review of public projects under KRS 100.324(4) is purely advisory, compliance with the planning commission’s “suggestions” is

⁴¹ KRS 13B.140-.150 provides for judicial review for arbitrariness of all final orders of an agency. KRS 100.347 also provides for appeals of City or Planning Commission actions related to planning determination and approvals or denials. Moreover, “even in the absence of statutory authorization of an appeal, [t]here is an inherent right of appeal from orders of administrative agencies” to determine if the agency has exercised “arbitrary power” in violation of Section 2 of the Kentucky Constitution. *Am. Beauty Homes*, 379 S.W.2d at 456. FPB is entitled to summary judgment declaring that the Planning Commission’s actions are arbitrary both as a matter of statutory appellate review and on the grounds that the Planning Commission has acted arbitrarily in violation of Section 2.

“voluntary,” and the submitting entity “may disregard the opinion of the planning commission.” *Hopkinsville-Christian Cty. Planning Comm’n*, 903 S.W.2d at 532.⁴²

Under the Kentucky statutory zoning and planning scheme, projects constructed by or for public entities are statutorily exempt from compliance with local zoning and planning regulations. KRS 100.361(2); *City of Worthington Hills v. Worthington Fire Prot. Dist.*, 140 S.W.3d 584, 589 (Ky. App. 2004); *City of Louisville Bd. of Zoning Adj. v. Gailor*, 920 S.W.2d 887 (Ky. App. 1996). This rule makes good sense. Zoning and planning generally regulates use of private property. When a project is necessary to serve an important public purpose, it should not be held hostage to cumbersome and potentially politicized land use planning processes.

KRS 100.324(4) provides that proposals for changes to public facilities should be referred to the planning commission to “review” and “advise the referring body whether the project is in accordance with the comprehensive plan,” and “make suggestions for changes” to “better accomplish the objectives of the comprehensive plan.” KRS 100.324(4). The plain meaning of this language is that the planning commission’s review and suggestions are advisory only.

Here, however, the Planning Commission has made compliance with its “suggestions” a mandatory prerequisite to proceeding with the Project. The August 30, 2018 and April 18, 2019 correspondence from Mr. Cockley, the author of the Planning Commission Staff Report, states that FPB will not be allowed to move forward with the Project unless and until it complies with the Planning Commission’s suggestions, and obtains its approval.⁴³ Mr. Cockley’s letters expressly rely on KRS 100.324(4) as the sole authority for this position. Because the Planning Commission has made compliance with its suggestions a mandatory prerequisite for moving forward with the Project, it has exceeded its statutory authority under KRS 100.324(4).

⁴² See Resp. to Mot. to Dismiss (filed 10/31/2018) at 16-19 and Mot. for Clarification (filed 06/03/2019) at 4-7.

⁴³ 04/18/2019 Cockley Letter; 08/31/2018 Cockley Letter, Exhs. 16 & 14 to FPB Mot. to Supp. Admin. Record.

II. The Planning Commission applied incorrect legal standards in reviewing the Project, which are contrary to the terms of KRS 100.324(4).

The Planning Commission also exceeded its statutory powers by applying standards and conditions for approval of the Project that are unsupported by the plain text of KRS 100.324(4) or Kentucky statutes prescribing the nature and function of the “comprehensive plan.” The Planning Commission denied approval based on the Staff Report’s finding that the Project does not “*entirely* conform to *all* of the Comprehensive Plan,”⁴⁴ essentially determining that if any aspect of the Project could be deemed to not advance any one of the sundry collection of broad policy goals and objectives in the Comprehensive Plan, it should fail review. That position treats the Comprehensive Plan as a set of mandatory standards akin to zoning regulations, which is inconsistent with Kentucky’s statutory framework.

A “comprehensive plan” is part of a statutorily-mandated planning process under KRS Chapter 100, which is a prerequisite to adoption of zoning regulations. *See generally City of Lakeside Park v. Quinn*, 672 S.W.2d 666 (Ky. 1984); *Daviess Cty. v. Snyder*, 556 S.W.2d 688 (Ky. 1977). A comprehensive plan does not include property-specific land use regulations; it is instead a “guide” for the formulation of such regulations once the planning process is completed. *Wolf Pen Preservation Ass’n v. Louisville & Jefferson Cty. Planning Comm’n*, 942 S.W.2d 310, 312 (Ky. App. 1997). It “must have general application throughout the community, so that the facts to be considered do not relate as such to a particular individual or the status of his property.” *Warren Cty. Citizens for Managed Growth*, 207 S.W.3d at 15; *Huxol v. Daviess County Fiscal Court*, 507 S.W.3d 574 (Ky. App. 2016); *Fritz v. LFUCG*, 986 S.W.2d 456, 459 (Ky. App. 1998).

When a statute calls for review to determine “agreement” with the comprehensive plan, it does not authorize scrutiny of building design details or property-specific siting considerations. It

⁴⁴ AR: Staff Report at 14 (emphasis added), APX D.

instead calls for a more high-level review of how the project fits into the development plan for the city as a whole. For example, in *City of Louisville v. Board of Education of Louisville*, 343 S.W.2d 394 (Ky. 1961), the City of Louisville refused a building permit for a new high school because the City’s master plan⁴⁵ provided for a high school to be placed in a different location. The Court held that the purpose of the master plan was not to make such property- and site-specific decisions (which are properly the ambit of zoning regulation), but instead to only prescribe “the general public character of the buildings and the general location of those buildings.” Accordingly, the Court held the permit could not be denied based on the master plan:

The Master Plan authority deals with the *general character* and location of buildings and not with specific uses to which a building may be put. Under the act the plan can properly designate the general location of public schools but cannot narrow the use as it proposes to do. Though the Master Plan does specify a high school here and a junior high school there, it is the Court’s conclusion that the **statute does not authorize such specificity and that the Board of Education is not bound by the limitation of use.**

Id. at 395 (italics in original, bolded emphasis added).

The Planning Commission’s review of the Project departed from these principles. The Planning Commission did not review the general character and location of the proposed reservoir, or whether a new reservoir was consistent as a general matter with the overall development plan for the City. Instead, it went beyond its mandate under KRS 100.324(4) to review for general “agreement” with the “comprehensive plan” by scrutinizing the Project’s building design detail and imposing untested location- and building-specific requirements.

The Planning Commission’s decision constitutes a kind of “conditional use permit” – *i.e.*, an order permitting a particular use of the property only if certain property- and building-specific

⁴⁵ Under the statutory framework then in effect, the “master plan” was designated by KRS 100.046 as a component of the “comprehensive plan” to be prepared as part of the planning process preceding zoning. While the specific statutory language has changed, the *City of Louisville* case nonetheless demonstrates the established legislative understanding of the role and function of the comprehensive plan in the scheme of land use regulation.

conditions are met. KRS 100.111(6); *Jost*, 897 S.W.2d at 596. But conditional use permits are statutorily authorized to be issued only as part of a property-specific zoning review by the Board of Zoning Adjustments, KRS 100.237; *Jost*, 897 S.W.2d at 596, not pursuant to review for “agreement” with a comprehensive plan by the Planning Commission under KRS 100.324(4).

Furthermore, the Planning Commission seemingly construed KRS 100.324(4)’s mandate to review for “agreement” with the Comprehensive Plan to require that the Project advance *every one* of the sundry policy goals and objectives in the Comprehensive Plan. The Staff Report found the Project positively advanced some of the policies, had no effect on some, and had a negative effect on others. The Staff Report did not weigh the positive and negative observations, but merely concluded that because some negative ones were offered “the project does not *entirely* conform to *all* of the Comprehensive Plan.”⁴⁶ The Planning Commission’s Conclusion and Recommendations likewise made no effort to evaluate or weigh positive findings.⁴⁷

Review of a proposed project for agreement with a comprehensive plan’s various broad policy goals does *not* mean the project must comport in every respect with every goal in the comprehensive plan. See *Huxol*, 507 S.W.3d at 579 (“[I]n determining whether a zone map amendment *agrees with the comprehensive plan*, zoning agencies are *not* required to follow *every land use detail set forth in the comprehensive plan*.”) (emphasis added); *Accord Bellemeade Co. v. Priddle*, 503 S.W.2d 734, 738 (Ky. 1973) (plan is “a guide rather than a straitjacket”).

The review and conditions imposed by the Planning Commission go beyond KRS 100.324(4), and its decision should therefore be set aside as arbitrary and contrary to law.

III. The Planning Commission proceedings did not comport with procedural due process.

The Planning Commission decision should also be set aside as arbitrary for failure to

⁴⁶ AR: Staff Report at 14, APX D.

⁴⁷ AR: 08/16/2018 Conclusions & Recommendations, APX E.

comport with minimal standards of fairness and procedural due process. “In the interest of fairness, a party to be affected by an administrative order is entitled to procedural due process.” *Am. Beauty Homes*, 379 S.W.3d at 456. Failure to adhere to minimal standards of procedural fairness requires the agency action to be set aside as arbitrary. *Id.* The touchstone of due process in such cases is “the opportunity to be heard at a meaningful time and in a meaningful manner.” *Huxol*, 507 S.W.2d at 580 (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). The Planning Commission proceedings failed these minimal standards in several respects.

First, FPB was not given adequate notice of the nature of the Planning Commission proceedings. The Planning Commission never communicated that it intended to conduct a formal adjudicatory proceeding that would determine the fate of the Project. Indeed, the correspondence initiating the Planning Commission process, sent by the City’s attorney, expressly acknowledges “Planning Commission review, but *not* official approval,” and therefore requested the Project be submitted for only a “*courtesy or advisory* version of the regular development plan process.”⁴⁸ The Planning Commission’s own staff witness acknowledged that he understood the review process to be “unlike other development plan review,” which entails adjudicating “compliance” with “very specific regulations and requirements. In this case we’re simply trying to make some judgments about its conformance with the comp plan.”⁴⁹

Contrary to these representations, the Planning Commission did not conduct its proceedings as a “courtesy or advisory” process, but instead purported to issue a final decision about the fate of the Project and is now taking the position that the special meeting should be treated as a final and conclusive adjudication. This was a clear shift in process, for which FPB received no notice. Indeed, at the special meeting, the staff witness responded to questions about

⁴⁸ 04/26/2018 Ross Letter, attached as Exh. 13 to FPB Mot. to Supp. Admin. Record (filed 08/08/2019).

⁴⁹ 08/16/2018 Special Meeting Tr. at 12, APX B.

why Planning Commission staff had not more closely reviewed earlier phases of the Project: “I think at the time – this is viewed as a public project that generally are exempt from planning processes other than basic permitting and those sorts of things,” and that therefore it was likely “staff viewed it as we view many exempt government projects,” confirming that the Planning Commission’s process was inconsistent with its own prior consideration of the very same Project.⁵⁰ This kind of administrative misdirection about the nature of the proceedings to which FPB was asked to submit is inconsistent with procedural fairness and minimal standards of due process.

Second, the Planning Commission also violated standards of procedural fairness by artificially narrowing the scope of issues to be considered, thereby precluding parties from presenting relevant facts. *See 21st Century Dev. Co., LLC v. Watts*, 958 S.W.2d 25, 27 (Ky. App. 1997). In *Watts*, the Frankfort-Franklin County Planning Commission evaluated a proposed amendment to a zoning ordinance. Staff cited concerns about increases in vehicular traffic that were likely to accompany the change, but the commission chair ruled those factors could not be considered because “the commission was limited to considering solely whether or not the proposal was in conformance with the comprehensive plan....” *Id.* at 26. The court held that the “planning commission erred in excluding relevant evidence from its consideration” *Id.* at 27.

The Planning Commission undertook a similar maneuver here. Following the presentation of the Planning Commission’s staff witness, counsel for the Planning Commission initially objected to *any* presentation by FPB representative David Billings – an objection he curiously purported to make “on behalf of the property owners that have signed up.”⁵¹ Mr. Billings stated he was in attendance to answer any questions, and offered to talk the Planning Commission through the presentation that FPB had recently given to the City Commission, which Mr. Billings explained

⁵⁰ 08/16/2018 Special Meeting Tr. at 17, APX B.

⁵¹ *Id.*, at 23.

contained “a lot of information with regard to some of the questions you’ve had tonight.”⁵² But Planning Commission counsel again objected, stating: “I would submit that whatever the applicant has needs to address the issues of the comprehensive plan, and not something else. We’re here on a limited scope.”⁵³ Based on this objection, the Planning Commission did not allow Mr. Billings to deliver the presentation, thereby circumscribing FPB’s efforts to articulate the considerations that drove the Project design.⁵⁴

Planning Commission counsel did not offer any explanation concerning the proper scope of issues to be considered under the Comprehensive Plan. During the proceedings, similar objections citing the narrow scope of the inquiry were raised to comments and questions about cost to ratepayers, and to testimony about compromises reached with TNAi about landscaping and similar issues, even though these would seem to address some of the same questions about neighborhood impact and utility planning that were expressly considered in the Staff Report, and questions about these very topics were posed to Mr. Billings and the staff witness by the Planning Commission.⁵⁵ Consideration of these factors would also have been relevant to the Planning Commission’s decision to specifically require the Project to be “downsized” to two 4.6-million-gallon tanks (even though two tanks constituted a larger project than the one tank) – a fundamental Project design decision that could not responsibly be made without consideration of precisely the kind of engineering, cost, and design considerations that Planning Commission counsel asserted were outside the scope of the Planning Commission’s proceedings.

⁵² *Id.*

⁵³ 08/16/2018 Special Meeting Tr. at 25, APX B.

⁵⁴ *Id.* It is unclear from the record whether the ruling excluded only Mr. Billings’ oral presentation, or whether it also denied Mr. Billings’ offer to submit a copy of the power point slides used in the presentation. Mr. Billings brought a copy of the power point slides to the special meeting and offered them to the Commission. The City produced a copy of the PowerPoint presentation that was kept in the files of Mr. Cockley, who prepared the Staff Report, so at a minimum, the presentation is included in the record as part of the materials considered by staff. *See* FPB Mot. to Supp. Admin. Record (filed 08/08/2019). Nonetheless, the Planning Commission’s decision to preclude Mr. Billings from delivering the oral presentation accompanying the power point was sufficiently prejudicial to warrant relief.

⁵⁵ 08/16/2018 Special Meeting Tr. at 20, 35-36, APX B.

Third, the fairness of these proceedings was compromised by the fact that the Board of Commissioners – a body to whom the Planning Commission ultimately answers – had already formally prejudged the Project. As noted above, on August 6, 2018, ten days before the Planning Commission’s special meeting, the Board of Commissioners formally endorsed TN Ai’s alternative proposal for two 4.6-million-gallon tanks.⁵⁶ This “resolution” did not seem to be acting on any matter formally before the Board of Commissioners, and did not cite any statutory provision that called for it to make such a determination. Whatever the intent of the resolution, it is clear it had the effect of driving the Planning Commission’s decision, insofar as the Planning Commission formally adopted conclusions and recommendations calling for FPB to adopt TN Ai’s “two-tank” design, even though the Staff Report had not even addressed this issue and KRS 100.324(4) does not call for Planning Commission consideration of alternative designs.

Because the Board of Commissioners issued a clear directive in advance of the Planning Commission’s special meeting endorsing an outcome, FPB cannot be said to have received a “meaningful” opportunity to be heard. *Huxol*, 507 S.W.2d at 580.

IV. The Planning Commission’s conclusions and suggestions were not supported by substantial evidence in the record.

The Planning Commission’s actions should also be set aside because they are not supported by substantial evidence. “Unless action taken by an administrative agency is supported by substantial evidence it is arbitrary.” *Am. Beauty Homes Corp.*, 379 S.W.2d at 456. “[S]ubstantial evidence is defined as that which, when taken alone or in light of all the evidence, has sufficient probative value to induce conviction in the mind of a reasonable person.” *Bd. of Comm'rs of City of Danville v. Davis*, 238 S.W.3d 132, 135 (Ky. App. 2007). Here, there is no evidence – much less “substantial” evidence – to support the Planning Commission’s conclusions, particularly its

⁵⁶ AR: Resolution No. 9, 2018 Series (08/06/2018), APX C.

requirement that the Project must be changed to two 4.6-million-gallon tanks.

The two-tank alternative was never properly before the Planning Commission. There is no evidence in the record regarding any engineering assessment or technical evaluation in support of the two-tank alternative. No designs for this proposal were ever submitted to the Planning Commission. The Staff Report does not reference TNAi's alternative proposal, much less make any assessment or recommendations about it. The only information offered by TNAi at the special meeting were purported renderings of the outward visual appearance of the two-tank option, and a slide from Strand's 2008 presentation to FPB – eleven years old, before any engineering, design or construction analysis of any alternatives had occurred – recounting just a raw equipment quote received at that time for two 4.5 million gallon tanks.⁵⁷

While the Planning Commission made much of the fact that FPB's projections do not show customer demand exceeding 9.2 million gallons before 2060, the Planning Commission did not consider the comparative cost of meeting any demand over this level that might occur after 2060. Thus, there was no evaluation of how its endorsed two-tank alternative compared in terms of "operational flexibility" to FPB's proposal, which reserved space for construction of a second tank within the existing reservoir footprint in the future. These kind of long-range planning evaluations are necessary prerequisites to a utility's capital investment in a project of the scope involved here. But the Planning Commission did not conduct these evaluations, did not have the facts or expertise necessary to conduct them, and did not have the statutory authority to conduct them.

The Planning Commission's findings are unsupported by "substantial evidence" in other respects as well. For example, the Conclusion and Recommendations state the Project will cause the reservoir to "be located closer to the Tanglewood and Capitol Heights neighborhoods than the

⁵⁷ 08/16/2018 TNAi Presentation at Frankfort 000000091, Exh. 17 to FPB Mot. to Supp. Admin. Record.

existing reservoir structure,” and cite concerns about providing “green space within neighborhoods and link[ing] neighborhoods and other appropriate sites together...”⁵⁸ However, the designs submitted by FPB clearly show the new proposed tank will be entirely within the structural footprint of the existing reservoir. The Planning Commission’s finding mistakes the structural footprint of the current reservoir with the outline of the portion of the reservoir’s roof that is not buried or covered by berm. The finding also ignores the fact that the reservoir sits behind another existing FPB structure, so the Project would not move the overall FPB facility any closer to the neighborhood. Moreover, concerns about “green space” and neighborhood linkage are totally inapposite, since the reservoir – under either proposal – would not be accessible to the public for use as green space or to link parts of the neighborhood. And in fact, the one 7-million-gallon tank option proposed by FPB would convert more than 50% of the site to visual green space, while the 9.2-million-gallon option (two 4.6-million-gallon tanks) would not add any visual green space.

Thus, even on the narrow set of considerations under the Comprehensive Plan – those pertaining to aesthetics and neighborhood integrity – that form the central basis for the Planning Commission’s rejection of the Project, the Planning Commission’s findings reflect a misapprehension of the Project’s design and are unsupported by any substantial evidence in the administrative record. The Planning Commission’s Conclusion and Recommendations, and its refusal to permit the Project to go forward, is arbitrary and should be set aside.

CONCLUSION

For all the foregoing reasons, FPB should be GRANTED summary judgment as to Count II of the Complaint. The Court should set aside the Planning Commission’s decision as arbitrary and capricious and instruct it to permit the Project to move forward.

⁵⁸ AR: 08/16/2018 Conclusions & Recommendations at 2, APX E.

Respectfully submitted,

FROST BROWN TODD LLC

/s/ Cory J. Skolnick

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Counsel for Plaintiffs,

*The Electric and Water Plant Board of the City of
Frankfort, Kentucky and Anna Marie Pavlik Rosen, in her
official capacity*

CERTIFICATE OF SERVICE

I hereby certify that, on this 8th day of August, 2019, I electronically filed the foregoing document with the clerk of the court by using the Kentucky Court of Justice eFiling System. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by email or First Class Mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing.

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/s/ Cory J. Skolnick
*Counsel for Plaintiffs,
The Electric and Water Plant Board of the City of
Frankfort, Kentucky and Anna Marie Pavlik Rosen,
in her official capacity*

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APPENDIX A
to
Franklin Plant Board's
Motion for Summary Judgment on Count II

MATTHEW G. BEVIN
GOVERNOR



CHARLES G. SNAVELY
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

ANTHONY R. HATTON
COMMISSIONER

300 SOWER BOULEVARD
FRANKFORT, KENTUCKY 40601

August 16, 2018

Mr. David Denton, Interim General Manager
Frankfort Water Treatment Plant
PO Box 308
Frankfort, KY 40601

RE: Finding No Significant Impact
Water Storage Improvement Project
Frankfort Water Treatment Plant
Franklin County, Kentucky
AI ID: 1390; PLN20180001

Dear Mr. Billings:

The Department for Environmental Protection, Division of Water (DOW) has reviewed the environmental document entitled *Frankfort Plant Board Water Storage Improvement Project*, dated March 19, 2018. This document has been determined to meet the requirements of the Kentucky State Environmental Review Process.

Approval of the environmental information is hereby given based on the attached Finding No Significant Impact (FONSI) and Environmental Assessment (EA) issued by this Department on July 6, 2018, which has undergone review by the Kentucky State Clearinghouse (SAI# KY201708311054). This approval is subject to any conditions and mitigative measures presented in Section F of the EA or in the State Clearinghouse review comments.

Any questions may be directed to our office at (502) 782-7026 or by e-mail to russell.neal@ky.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Russell Neal".

Russell Neal, Supervisor
Wastewater Municipal Planning
Water Infrastructure Branch

RN/ld
Attachments

Cc: Mr. David Billings, FPB
Mr. Adam Weber, Strand Associates, Inc

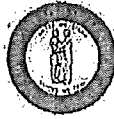


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MATTHEW G. BEVIN
GOVERNOR

DEPARTMENT FOR LOCAL GOVERNMENT
OFFICE OF THE GOVERNOR
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SANDRA K. DUNAHOO
COMMISSIONER

September 25, 2017

Mr. David Billings
Frankfort Electric & Water Plant Board
P.O. Box 308
Frankfort, KY 40602

RE: Frankfort Plant Board Water Storage Improvement Project
WX21073012
SAI# KY201708311054

Dear Mr. Billings:

The Kentucky State e-Clearinghouse is the official designated Single Point of Contact (SPOC) for the Commonwealth pursuant to Presidential Executive Order 12372, and supported by Kentucky Statutes KRS 45.03. The primary function of the SPOC is to streamline the review aforementioned process for the applicant and the funding agency. This process helps in vocalizing the statutory and regulatory requirements. Information in the form of comments, if any, will be attached to this correspondence.

This proposal has been reviewed by the appropriate state agencies in the e-Clearinghouse for conflicts with state or local plans, goals and objectives. After receiving this letter, you should make it available to the funding agency and continue with the funding agencies application process. This e-clearinghouse SPOC letter signifies only that the project has followed the state reviewing requirements, and is neither a commitment of funds from this agency or any other state or federal agency. Please remember if any federal reviews are required the applicant must follow through with those federal agencies.

The results of this review are valid for one year from the date of this letter. If the project is not submitted to the funding agency or not approved within one year after the completion of this review, the applicant can request an extension by email to Lee.Nalley@ky.gov. If the project changes in any way after the review, the applicant must reapply through the eclearinghouse for a new review. There are no exceptions.

If you have any questions regarding this letter or the review process please contact the e-Clearinghouse office at 502-573-2382, ext. 274.

Sincerely,

Lee Nalley, SPOC
Kentucky State Clearinghouse

Attachment

receive a written approval from the DOW prior to the beginning of the construction. Abbas Pourghasemi, Water Infrastructure Branch, (502) 782-7041, Abbas.Pourghasemi@ky.gov.

No comments/concerns. Jennifer Taimi, Water Infrastructure Branch, (502) 782-7087, Jennifer.Taimi@ky.gov.

Best management practices should be utilized to reduce runoff from project construction activities into nearby waters. Andrea Fredenburg, Water Quality Branch, (502) 782-6950, Andrea.Fredenburg@ky.gov.

The branch endorses this project. Sarah Gaddis, Compliance and Technical Assistance Branch, (502) 782-6953, Sarah.Gaddis@ky.gov.

The Division of Enforcement does not object to the project proposed by the applicant. Tim Harrod, Division of Enforcement, (502) 782-6858, Timothy.Harrod@ky.gov.

The proposed work is endorsed by the Groundwater Section of the Watershed Management Branch. However, the proposed work is located in an area with a high potential for karst development where groundwater is susceptible to direct contamination from surface activities. It is our recommendation that proposed work be made aware of the requirements of 401 KAR 5:037 and the need to develop a Groundwater Protection Plan (GPP) for the protection of groundwater resources within that area. Wei Ji, Watershed Management Branch, (502) 782-6934, Wei.Ji@ky.gov.

If the construction area disturbed is equal to or greater than 1 acre, the applicant will need to apply for a Kentucky Pollutant Discharge Elimination System (KPDES) storm water discharge permit.

Utility line projects that cross a stream will require a Section 404 permit from the US Army Corps of Engineers and a 401 Water Quality Certification from DOW.

The Kentucky Division of Water supports the goals of EPA's Sustainable Infrastructure Initiative. This Initiative seeks to promote sustainable practices that will help to reduce the potential gap between funding needs and spending at the local and national level. The Sustainable Infrastructure Initiative will guide our efforts in changing how Kentucky views, values, manages, and invests in its water infrastructure. This website, www.epa.gov/waterinfrastructure/, contains information that will help you ensure your facility and operations are consistent with and can benefit from the aims of the Sustainable Infrastructure Initiative.

Division of Enforcement
Tim Harrod

The Division of Enforcement does not object to the project proposed by the applicant.
Tim Harrod, Enforcement Specialist, Division of Enforcement, Timothy.Harrod@ky.gov

Division of Water
Andrea Fredenburg

Best management practices should be utilized to reduce runoff from project construction activities into nearby waters.

Division of Water
Julia Harrod

A "Floodplain Permit" is not required for this project. Okay water withdrawal permitting. Okay water management planning.

KIA
Jocelyn Gross

This project was reviewed in the WRIS Portal by KIA staff.

KY Heritage Council
Yvonne Sherrick

To receive a review from the KY Heritage Council/State Historical Preservation Office (SHPO) you must follow the instructions located on their website at <http://www.heritage.ky.gov/siteprotect/>. There you will find the required documents for the Section 106 Review and Compliance for 36 CFR Part 800. This Section 106 submission process to SHPO will assist applicants and agencies in providing the appropriate level of information to receive comments from SHPO.

If you have any questions please contact Yvonne Sherrick, Administrative Specialist III, (502) 564-7005, Ext. 113, yvonne.sherrick@ky.gov

MATTHEW G. BEVIN
GOVERNOR



CHARLES G. SNAVELY
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

ANTHONY R. HATTON
COMMISSIONER

300 SOWER BOULEVARD
FRANKFORT, KENTUCKY 40601

FINDING OF NO SIGNIFICANT IMPACT (FONSI)
Water Storage Improvement
Frankfort Plant Board
Franklin County, Kentucky
AI ID: 1390; PLN20180001

The Department for Environmental Protection, Division of Water (DOW) has conducted a review of the above listed proposed project in accordance with the procedures contained in the State Revolving Fund Operating Agreement between the Environmental Protection Agency Region IV and the Commonwealth of Kentucky. Based on a review of the *Frankfort Plant Board Water Storage Improvement Project* submitted by the applicant and other supporting documents, the DOW has determined the above referenced proposed project will not have a significant impact on the environment and is issuing a Finding of No Significant Impact (FONSI).

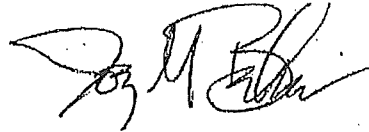
The *Frankfort Plant Board Water Storage Improvement Project* proposes to replace the aged water storage reservoir located on Tanglewood Drive in Frankfort, KY. Based on the evaluation of alternatives, the selected alternative is to replace the existing 9.2 million gallon (MG) ground storage tank with a 7.0 MG partial ground storage tank. Projects will include a new 7.0 MG ground storage tank, new mixing system, SCADA, and associated piping. The selected alternative projected to cost approximately \$4,000,000.

Attached is an Environmental Assessment containing detailed information supporting this proposed action. It includes the following sections: A) Summary, B) Existing Environment, C) Existing Facilities, D) Need for Project, E) Alternatives Analysis, F) Environmental Consequences, Mitigative Measures, G) Public Participation and User Rates, and H) Sources Consulted.

This FONSI and environmental assessment will be available for review and comment for thirty-(30) calendar days. Interested persons are encouraged to submit comments within thirty days of the issue date. The DOW will take no action on this project until after the review and public comment period has ended, and will evaluate all comments before a decision is made before proceeding with approval of the project or awarding of SRF funds for this project.

Written comments supporting or disagreeing with the proposed action should be sent to Russell Neal, Supervisor, Wastewater Planning Section, Water Infrastructure Branch, Division of Water, 300 Sower Boulevard, Frankfort, Kentucky, 40601, or by e-mail to russell.neal@ky.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter T. Goodman", written over a horizontal line.

For
Peter T. Goodman, Director
Division of Water

RN/lid

ENVIRONMENTAL ASSESSMENT
Frankfort Plant Board Water Storage Improvement
Frankfort Electric & Water Plant Board
Franklin County, Kentucky
AI#1390, PLN20180001

A. Summary

Project Summary

The Frankfort Electric & Water Plant Board (Plant Board) has applied for a Drinking Water State Revolving Fund (DWSRF) loan to fund a project to replace the antiquated water storage tank. The major components of the project include:

- Replacement of the approximately 130 year old 9.2 million gallon (MG) ground water reservoir with one 7 MG in ground storage tank placed in the south basin of the reservoir.

Included in this report is a map delineating the project area (Attachment 1) and location of the major components of the project (Attachment 2 & 3).

Funding Status

The total estimated funding amount for the proposed project is \$4,000,000 and funded wholly by the DWSRF (F18-016).

B. Existing Environment

Topography and Geology

The proposed project is located in Frankfort, central Franklin County, Kentucky in the Inner and Outer Bluegrass Physiographic region. The Inner Bluegrass is characterized by rolling limestone uplands except along the Kentucky River in the south east area of the county where the topography changes to a steep, narrow river valley with cliffs as high as 400 ft. above the river which is also characteristic of the High Bridge Group formation. This formation also forms broad flat valleys with sinkholes. The Kentucky River bisects the county from north to south. Other notable streams in the county include Elkhorn Creek of the Kentucky River, which also runs north to south and is located east of the Kentucky River and Benson Creek, which runs from its confluence with the Kentucky River westward towards Shelby County. The Kentucky River valley has the distinct characteristic of narrow, steep, meandering river valleys. The Kentucky River is located near the project area. Another distinct feature of the Kentucky River valley includes former stream valley loops, areas where the stream has moved away from the meanders.

The elevation ranges from 455 ft. at Lock and Dam #4 on the Kentucky River near Frankfort and the highest is 930 ft. on Union Ridge located in the eastern edge of the County. Frankfort is the county seat with an elevation of approximately 510 ft. and the average elevation around the City

on the uplands is 800ft. Other noted elevations within the County are Farmdale at 820 ft., Peaks Mill at 525 ft., and Switzer at 734 ft.

The geology of the county consists of rocks from the Ordovician age; alluvial areas are typically unconsolidated sediments of the Quaternary age. In the late Ordovician age, seas became shallow which is indicated by the large amounts of shale and mud in the sediments. Quaternary sediments along the floodplain are underlain by the High Bridge Group limestone formation. Characteristic of the High Bridge Group limestone formation forms cliffs and steep slopes along the Kentucky River. Features of the High Bridge Group include the Tyrone limestone, Oregon Formation, and the Camp Nelson Limestone and these form the outcrops along the river valley. The Oregon and Camp Nelson outcrops are located in the cliffs along the Kentucky River and the Tyrone outcrop makes up the upper walls of the Kentucky River Gorge and tributaries and forms broad, flat valleys with sinkholes and underground drainage, which is typical for karst terrain.

Soils

The proposed project is located near Tanglewood Drive in Frankfort, Franklin County. The main soil group in this area is the *Maury-Bluegrass Silt Loam*. These soils are deep, well-drained soils that occur in the uplands on side-slopes or ridges with a slope of 6 to 12%. They have a moderate runoff class and have a high water storage capacity. This complex derived from thin fine-silty non-calcareous loess over clayey residuum weathered from phosphatic limestone. These soils are classified as statewide important farmlands and they have a moderate to high productivity potential. The complex is comprised of 55% *Maury*, 30% *Bluegrass*, and 15% minor components. The minor soils included are *Lowell*, *McAfee*, and *Faywood*.

Surface Waters

The project area is located within the Clear Creek – Kentucky River Watershed (Hydrologic Unit Code (HUC) 10# 0510020507), in the Kentucky River Basin Management Unit. The Kentucky River between river miles (RM) 53.2-84.25 is listed as impaired for fish consumption (FC) as partial supporting (PS) its designated use caused by mercury in fish tissue due to unknown sources, per the “2016 Integrated Report to Congress on the Condition of Water Resources in Kentucky”. There are no streams designated as Special Use, i.e. Exceptional Waters, Reference Reach Waters, or Outstanding National or State Resource Waters. There is one Source Water Area Protection Plan (SWAPP) zone in the project area for Kentucky American Water Company. No TMDLs developed for Clear Creek – Kentucky River Watershed. The Kentucky River between RM 67.0 to 84.25 is listed as fully supporting its designated use as a Drinking Water Source. The intake pump station for the water treatment plant is located on the Kentucky River near Pool #4 (RM 71.5) which is within the impaired stream segment. No adverse impacts expected to water quality because of this proposed project.

Groundwater

According to the 2010 Census, per the KY State Data Center, Franklin County has a population of approximately 49,000 residents and public water is provided to most of the residents because

the Plant Board service population is approximately 59,000. The proposed project will replace the aged in-ground water storage tank located on Tanglewood Drive in Frankfort, Franklin County.

Most wells used for water supply are relatively shallow, less than 150 ft., and are located in fractured bedrock or unconsolidated materials. Most drilled wells along drainage ways will produce enough water during wet seasons. Water storage occurs in the aquifers made up of primarily limestone; making the water supply very hard by containing salt or hydrogen sulfide. Water movement occurs in the fractures, joints, or faults and the storage capacity in these areas can provide sufficient amount to serve a city. The project area has a high groundwater sensitivity rating because of the high rate of recharge, flow, and dispersion potential characteristic of a karst prone zone. No direct impacts to the groundwater have been identified will result from this proposed project.

C. Existing Facilities

Drinking Water

The Plant Board owns and operates an 18.0 million gallon per day (MGD) water treatment plant (WTP) with a distribution system. The distribution system includes approximately 345 miles of transmission lines, and six (6) water storage tanks with five (5) booster pump stations to serve approximately 52,000 serviceable population in the City of Frankfort and Franklin County as well as customers in Anderson and Woodford Counties. The WTP located at the south end of town off of Coffee Tree Road uses two trains of coagulation and sedimentation with two dual-media filters with disinfection by chlorination and has a design capacity of 18.0 MGD with an average daily treated (ADT) of 8.3 MGD with a peak capacity of 16.2 MGD. The plant is operating at approximately 50% capacity. The intake is located at RM 71.5 on the Kentucky River near Pool #4. Currently, the Plant Board sells water to Elkhorn Water District, Farmdale Water District, Georgetown Municipal Water & Sewer System, North Shelby Water Company, Northeast Woodford County Water District, Peaks Mill Water District, South Anderson County Water District, and US 60 Water District at wholesale who serves approximately 28,000 customers.

The proposed project includes replacement of the south basin of a 9.2 MG ground storage tank with a 7 MG ground storage tank with improved mixing capabilities. The improved mixing will increase water turnover thus reducing the formation of DBPs and improving water pressure and flow.

Wastewater

The City of Frankfort owns and operates a 9.9 MGD wastewater treatment plant (WWTP) and collection system. The WWTP (KPDES permit #KY0022861) utilizes extended aeration treatment with ozone disinfection and Peracetic acid (PAA) as backup disinfection discharges to Kentucky River (RM 66.45). Frankfort Sewer District is under a Consent Judgement (07-CI-

1243) to eliminate combined sewer overflows (CSOs) and sanitary sewer overflows (SSOs) due to Infiltration/Inflow. The System has an approved Facility Plan from 2014 that meets 401 KAR 5:006.

D. Need for Project

The project proposes to improve water service, quality, and reliability to those served by the Frankfort Plant Board and the wholesale customers in the surrounding counties. The storage reservoir consists of an "earthen embankment with a concrete roof" and is at the end of its useful life and in need of repairs because of leaks and seepage around the earthen berm. The reservoir has the possibility of failing and that is not an option because it is imperative for having an adequate water supply for the Plant Board customers and surrounding counties. The project proposed is to replace the south basin of the storage reservoir with a 7.0 MG ground storage tank. The current reservoir does not have an adequate mixing system so the new storage tank will have a new mixer to increase the water turnover rate to decrease the DBPs. The new tank also designed in a way where the tank will not fail if there are seismic activity events, such as fault shifts.

E. Alternative Analysis

To determine the most cost-effective method to improve the water service to the customers of the Plant Board, listed below is the alternatives considered.

- ***No Action***

The current condition of the water storage reservoir has driven the need for the proposed project. The reservoir is beyond its useful life and experiencing seepage through the roof and earthen berm around the side. The reservoir was constructed without any restrictions to fault movement or seismic activity and failure of the tank is a possibility. Because of the public health and safety concerns, no further consideration of this alternative was discussed.

- ***Rehabilitation of Existing Reservoir***

This alternative includes replacing the deteriorated roof and lining the tank to prevent leaks. The replacement of aged structures within the reservoir would only add approximately 15 – 20 years to the life of the reservoir. This alternative was not chosen because in 20 years these issues would have to be addressed so this was not cost effective.

- ***Replacement of South Basin of Existing Reservoir***

This alternative will occur in two (2) phases; phase I will include replacing the current 9.2 MG ground storage tank with a 7.0 MG partially buried storage tank located within the south basin footprint. Also included in this phase is the installation of a new mixing system within the tank and SCADA. Once the construction for the south basin is complete, phase 2 of the construction project will begin. Phase 2 includes landscaping around the tank to blend the tank in with the natural surroundings and to hide the view from the adjacent neighborhood. Phase 2 was added after receiving comments from the Tanglewood Neighborhood Association, Inc. (TNAi) requesting the landscaping. No new water lines are proposed with

this project except for the new line to connect the new tank to the existing water main. The estimated total project cost is \$4,000, 000.

- ***Replacement of reservoir in new location***

Several locations throughout the city were considered for the construction of a new ground storage tank and associated piping, but this would have been too costly. The proposed locations reviewed were Berry Hill Golf Course located across US 60 from the current reservoir location, behind Franklin Square shopping center in undisturbed grassland, and next to the AT&T tower off of Sower Boulevard. Based on the cost analysis, this alternative was not considered further.

Selected Alternative

The selected alternative, Water Storage Reservoir Replacement, includes replacing the 9.2 MG reservoir with a 7 MG partially in ground storage tank constructed in the south basin. The reservoir is made of two 4.6 MG basins, the north, and south basins. Future plans, include the construction of a second 7 MG storage tank in the north basin, if the need arises. This alternative was chosen based on the lowest project cost \$4,000,000 plus the location is already disturbed. This alternative will provide a more sustainable system by providing the customers with higher-pressure flow. The tank with the mixing capability will increase the water turnover rate to prevent the formation of DBPs to protect public health. This alternative addresses existing and future system demand and provides the most cost-effective and responsible option for the customers of the Plant Board.

F. Environmental Consequences; Mitigative Measures

The applicant solicited government agency review through the Kentucky State Clearinghouse (SAI#KY201708311054) and from applicable federal agencies. Best management practices will be employed in all areas of construction. Indirect impacts of the project will be limited and do not outweigh the benefits to the citizens of Franklin County.

Historic Properties and Archaeological Sites

The Kentucky Heritage Council (KHC) was solicited for comments through the Clearinghouse process regarding potential impacts to historic artifacts and cultural resources. KHC responded through the Clearinghouse response dated September 25, 2017 requesting a **Section 106 Review and Compliance for 36 CFR Part 800**. The project proponent submitted the results from the **Section 106 Review and Compliance**, KHC responded by correspondence dated October 11, 2017 stating, "Based on your submission, as a new water tank of an unknown height is being proposed, and as there are buildings 50 years of age or older which appear to be in the viewshed, including the Tanglewood neighborhood and perhaps others, we are requesting a cultural historic (aboveground) survey of the project area and its viewshed."

A survey was conducted in January of 2018, titled "CULTURAL HISTORIC RESOURCE SURVEY FOR THE PROPOSED WATER STORAGE RESERVOIR REPLACEMENT IN FRANKFORT, FRANKLIN COUNTY, KENTUCKY" prepared by Cultural Resource Analysts, Inc. The survey included the Area of Potential Effect (APE) as defined by KHC as

“the properties immediately adjacent to the property comprising Site 1. In addition, the entirety of the Tanglewood Neighborhood, which lies to the east and south of the area of potential effects, was documented and evaluated as a potential historic district. Lastly, nearby historic properties located outside the area of potential effects were examined to determine if they were situated within the proposed project’s viewshed.”

The findings of the report included 13 unrecorded cultural historic sites (FRF 547 – FRF 559) within the “area of potential effect” (APE) of the project area. These sites do not meet the Criterion A, B, or C for listing in the National Register of Historic Places (NRHP). The report “recommends a finding of No Historic Properties Affected for this proposed project.”

KHC responded by correspondence dated, March 16, 2018 agreeing with the report’s findings. KHC stated, “Site 7 (FRF 553) has sufficient integrity and significance to be individually eligible for listing on the NRHP under Criterion C. It appears the new construction should be minimally visible from FRF-553 and, it is recommended eligible under Criterion C, should not negatively impact its integrity. Our office concurs that, based on the information provided, it does not appear that the Tanglewood Neighborhood is eligible for listing on the NRHP as a district as no significant associated events, trends, or people were identified and due to modern intrusions and alterations to individual houses.” Therefore, KHC stated, “As such, our office recommends a No Adverse Effect finding for this project.”

Endangered Species and Critical Habitats

The applicant submitted the proposed project to the United States Fish and Wildlife Service (USFWS) for review regarding potential impacts to threatened or endangered species. The USFWS replied by correspondence stamped September 1, 2017 stating, “Significant impacts to federally-listed species are not likely to result from this project as currently proposed. Project re-coordination is needed if the project changes or if new species or critical habitats are listed that could be impacted by the project”.

Kentucky Department of Fish & Wildlife Resources (KDFWR) commented through the Clearinghouse process in correspondence dated September 25, 2017 and had “no comments”.

Wetlands and Streams

The applicant proponent contacted the USACE by phone inquiring about the 404 permitting process and by correspondence dated August 30, 2017. The U.S. Army Corps of Engineers (USACE) had not responded by the time this assessment was written. Per the environmental information, the applicant stated, “There are no impacts to “waters of the U.S.” within project limits”. The project area is located on a hill with no streams nearby.

The Water Quality Branch commented through the Clearinghouse process that “Best Management Practices (BMPs) shall be utilized to reduce runoff from the project into adjacent surface waters.”

Kentucky Department of Fish & Wildlife Resources (KDFWR) commented through the Clearinghouse process in correspondence dated September 25, 2017 and had "no comments".

Prime Farmland or Farmland of Statewide Importance

The USDA Natural Resources Conservation Service (NRCS) responded by correspondence dated September 14, 2017, regarding potential impact to prime or important farmland within the proposed project area. NRCS stated "According to the information in your request all work is to be performed to existing facilities, on previously disturbed land, within the City of Frankfort, KY, and on property already owned by the Utility. These areas are already considered as non-agricultural and not affecting new or additional prime farmlands or statewide important farmlands. This office does not have any additional concerns at this time."

Floodplains

The Kentucky Division of Water (DOW) Watershed Management Branch ascertained, in Clearinghouse comments dated September 25, 2017, a floodplain construction permit application is **not required** because the project is not located within the floodplain.

Groundwater

The Watershed Management Branch (WMB) was solicited for comments through the Clearinghouse process and commented in the Clearinghouse response dated September 25, 2017. The WMB commented that the Groundwater Section endorses the project but the project "is located in an area with a high potential for karst development where groundwater is susceptible to direct contamination from surface activities. It is our recommendation that proposed work be made aware of the requirements of 401 KAR 5:037 and the need to develop a Groundwater Protection Plan (GPP) for the protection of groundwater resources within that area."

Air Quality

No negative comments were received during the Clearinghouse interagency review process regarding air quality. Contractors should use best management practices to limit ambient air quality issues during construction.

Miscellaneous

No major civil rights impacts are anticipated because of the implementation of the proposed project.

With the exception of noise generated during construction, new noise is not anticipated as a direct result of the proposed project. Construction noise will be temporary in nature and kept to regulated levels.

No sole source aquifers are known to be within or down gradient of the project area.

There will be no adverse effects to the National Wild and Scenic River System as identified by the National Rivers Inventory.

G. Public Participation and User Rates

The Frankfort Plant Board conducted a public meeting on June 5, 2018 at 5:30 pm at the Frankfort Plant Board Club House located on Tanglewood Drive in Frankfort, KY. The meeting notice was published in *The State Journal* on May 27, 2018. The purpose of the meeting was to discuss the environmental impacts and mitigation requirements concerning the "Frankfort Plant Board Water Storage Improvement Project". No comments received during the June 5, 2018 meeting however; public comments were received during and after of the December 15, 2016 meeting held at the clubhouse located on Tanglewood Drive from the TNAi. Concerns included aesthetics of how the tank will be blended in with the natural surroundings and if property values will diminish because of this project. The Plant Board responded to all concerns to say they will keep the neighborhood informed and consult with them throughout the planning process. Attachment 4 includes all public comments and Plant Board responses.

The monthly customer rate per 4,000 gallons is \$29.30 for customers located within Frankfort. The basic rate per 4,000 gallons for customers who live outside the City limits is \$34.26 gallons. The total serviceable population is approximately 141,000. A rate adjustment will occur in the next 3 years to pay for the loan associated with this project. In 2019, the user rate per 4,000 gallons for City residents is \$31.20 and outside the City limits is \$34.96. For the year 2020, the City rates will be \$33.10 and outside the City limits is \$35.66. The last rate increase will occur in 2021, for customers within the City they will pay \$34.92/4,000 gallons, and outside the City, they will pay \$36.36/4,000 gallons.

FPB sells finished water at wholesale to eight (8) different water districts serving Anderson, Franklin, Scott, Shelby, and Woodford Counties as shown in Table 1.

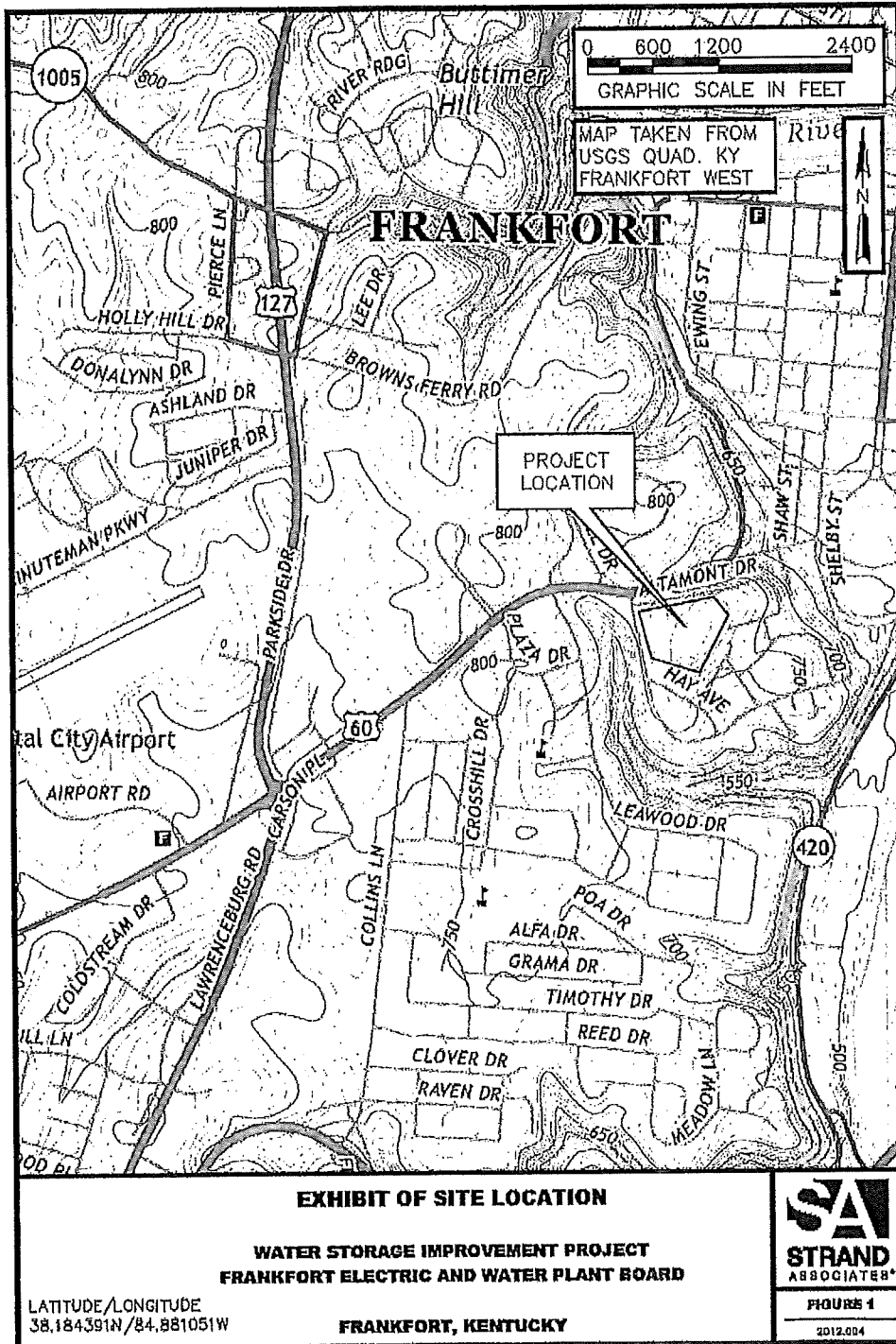
Table 1: Wholesale Rates

<i>Water System</i>	<i>Wholesale Rates</i>
Elkhorn Water District	\$2.55
Farmdale Water District	\$2.55
Georgetown Municipal Water & Sewer System	\$3.77
North Shelby Water Company	\$2.55
Northeast Woodford County Water District	\$2.55
Peaks Mill Water District	\$2.55
South Anderson Water District	\$2.55
US 60 Water District	\$2.55

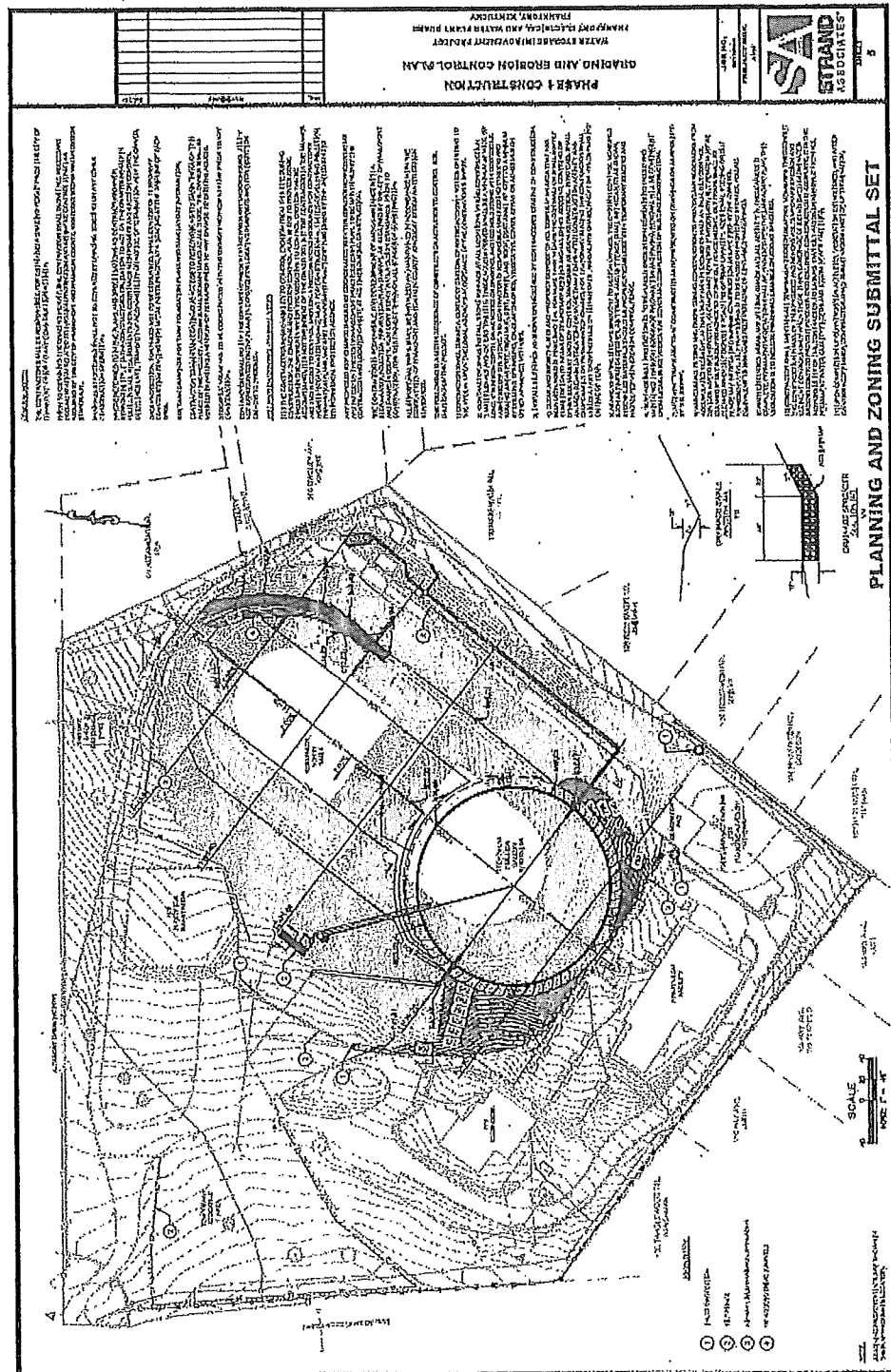
H. Sources Consulted

Frankfort Plant Board
Kentucky Department of Fish & Wildlife Resources
Kentucky Division for Air Quality
Kentucky Division of Water
Kentucky Heritage Council
Kentucky Infrastructure Authority (Water Resource Information System)
Kentucky Geological Survey
Kentucky State Clearinghouse
Natural Resources Conservation Service
U.S. Fish & Wildlife Service
USDA Soil Conservation Service
U.S. Army Corps of Engineer
U.S. Geological Survey

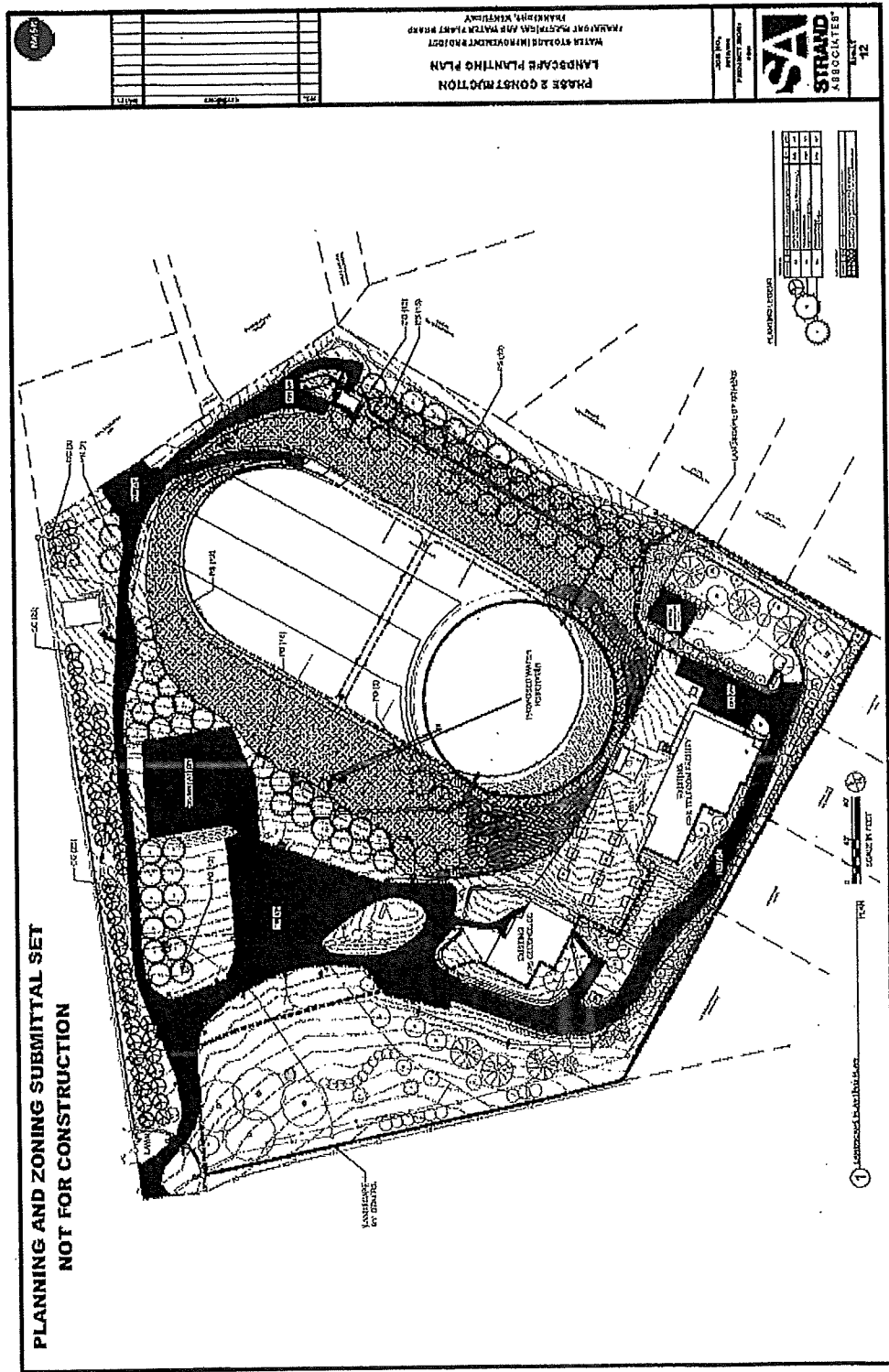
Attachment 1: Project Location Map



Attachment 2: Phase 1 Construction Layout



Attachment 3: Phase 2 Landscaping Layout



Attachment 4: Public comments with Plant Board responses

RESERVOIR REPLACEMENT PUBLIC COMMENTS AND RESPONSES

TNAI comments on the proposed reservoir

February 1, 2017

E-mail From: Suzanne Gray

After much consideration, the Tanglewood Neighborhood Association, Inc. (TNAI) will not oppose placement of the new reservoir in our neighborhood provided the FPB takes the following steps to ensure the character of the neighborhood is maintained as much as possible and the property values are not diminished.

- 1) *The North tank should be replaced first as it is less visible to homeowners.*
- 2) *The existing earthen berm should remain in place. Extensive professional landscaping, which could include terracing, should be used to disguise the industrial look of the reservoir.*
- 3) *The TNAI prefers a flat roofed tank like the one currently on the reservoir. If that is not possible, the tank should be reduced in size so that it fits inside the existing berm as much as possible.*
- 4) *Any visible part of the tank should be painted by a professional artist so that it blends into the neighborhood as much as possible. This includes the roof as it is visible from other elevations in the city.*
- 5) *Every home adjacent to the city property or those potentially impacted by vibrations due to construction should be inspected prior to construction of the new reservoir.*
- 6) *The FPB agrees to go through Planning and Zoning Commission (as required by the City Commission) on this project at the reservoir and on any future projects at the reservoir exceeding \$200,000.*
- 7) *The TNAI requests further meetings with the FPB to discuss specifics of landscaping, painting, etc. It is the TNAI's understanding that the property at Tanglewood is not suitable for a third tank and should the city require a third tank in the future, that tank will be placed at another location.*

We appreciate the opportunity to provide input on this project and look forward to working with you on details moving forward.

Suzanne Gray

Tanglewood Neighborhood Association, Inc.

Response: Thank you for your comments. Following are responses to your requests regarding replacement of the existing reservoir.

- 1) FPB water staff has performed an evaluation and their consultant has reviewed the evaluation to assess which side of the reservoir should be replaced first based solely from an engineering perspective. Based on this evaluation, replacement of the south basin first offers more advantages such as reduced cost, better use of the site to centralize the new tanks, simplified construction and construction staging, and enhanced public safety (the south basin has experienced more degradation than the north basin). The Board's decision on which tank to replace first will take into consideration the public comments, the FPB water staff and consultant recommendations, and the rate payers best interests.
- 2) FPB water staff intends to keep as much of the earthen berm as possible to partially bury the proposed tank and reduce the overall visual impact. However, the top of berm elevation will likely vary depending on the final tank placement and site grading constraints. FPB water staff intends to flatten the berm slopes to allow for improved maintenance and landscaping elements will be incorporated into the design.

- 3) A flat-roof system for a tank of this size significantly increases construction cost by as much as 50 percent when compared to a domed-roof system. FPB water staff has evaluated tank sizing based on a variety of factors including distribution system requirements and system demands. The sizing as proposed is optimum in supporting the current and future needs of our system.
- 4) The Board is open to suggestions regarding the appearance of the tank and will consider all reasonable alternatives. Typically, these types of tanks are painted a single color to provide a uniform appearance.
- 5) No blasting will be permitted on the project site and all rock removal will be performed by mechanical means only. Therefore, ground vibrations that could impact nearby buildings should be minimized. A preconstruction survey will be performed by a third party to document existing conditions of adjacent properties.
- 6) FPB water staff will follow the directives of its Board.
- 7) FPB staff is open to participation in additional meetings and discussions regarding items such as landscaping and painting at the discretion of the Board.

Reservoir comments

February 1, 2017

E-mail From: Eric Whisman

As the FPB plans are developed to rebuild the historic Frankfort water reservoir complex, I am concerned of a number of issues. Affordable, clean and accessible water is an absolute must for Frankfort and I am in full agreement that this service is imperative to the lives of our citizens. However, I am concerned the current plans do not adequately review the needs of our community.

Frankfort's public water system began in 1804 prior to the famous Chicago or Louisville waterworks and was in fact one of the first in the country. Throughout our history, Frankfort has been forward thinking. We build solid reliable systems that last for generations. The same is to be said with the current reservoir. Built in the 1880s the reservoir has served this community for nearly 140 years. Obviously it is a well built system and a testament to the original engineers and their abilities. As such I require the historic reservoir structure be preserved. I do not believe enough consideration has been given options to retrofit the current reservoir complex to continue service to our community.

The proposed replacement tank(s) while modern, provide 22% less capacity than the current system. Additionally, the process of removing and replacing one half of the reservoir may undermine the second pool, jeopardizing our entire communities water supply. This is not a risk we should take. I am concerned already that development on the site with a new "Head-In" building has undermined the reservoir structure. The current plans in no way consider preserving this historic structure in our community. The claim that the reservoir has reached the end of its useful life is false. The same claim has been made before when decisions were made to reline the pools provided another 50 years of usefulness in the 1960's. As my research has discovered a number of new structures around the US that resemble our historic reservoir in many forms. Therefore I believe a custom lining or tank can be made to retrofit our system and ensure its viability for many years to come. While a new custom tank lining might not be the most economical option, it is imperative to respect our existing system and plan for the future. As an advocate for preservation I respectfully request this option be developed and exercised that preserves the existing structure while providing the needs of our community.

Rebuilding at the current location is not acceptable. Already the available space is limited and a new tank must further encroach upon the neighborhood who have been negatively affected by FPB actions in the recent past. I request that any new tank be located at a new site in the form of a single tank that might be built in with an architectural façade to blend with the historic nature of our community. One such location with a higher elevation and available acres is the a very short distance, the site of the old Holiday Inn hotel not ¼ mile from the existing site.

As the Plant Board to consider the future needs of this community. Current capacity of our water systems meet the needs of the community as is. While future development and expansion of business and residential grown of our community may indeed require a larger system. Rather than diminish our current capacity, I hope the FPB will develop a system to meet a future increased capacity.

I hope you will consider the current and future needs of our community as you develop this project and respect the historic system that we have enjoyed for so many years.

*Thank you,
Eric Whisman*

Response: Thank you for your comments. FPB water staff and their consultant originally evaluated repairing and lining the existing reservoir. However, the results of that evaluation showed that the necessary roof structure repairs and lining system exceeded the cost to replace the reservoir with new tanks. The necessary repairs to preserve the existing reservoir also have a limited useful service life and additional repair work would likely be required within 20 to 25 years whereas a new tank would have a service life of 50 years or more with minimal maintenance costs. The existing reservoir can also be considered a functionally obsolete and structurally deficient structure, which are normally terms used to describe highway bridges, but are applicable here as well. Functionally obsolete essentially means the design is no longer functionally adequate for its task. In terms of the reservoir, it is functionally obsolete in its construction because of the earthen embankments, which result in an inefficient cross section. In other words, the existing reservoir requires a very large footprint to contain a relatively small volume of water when compared to vertical wall tanks. The existing structure can further be classified as structurally deficient because the existing roof system does not meet current seismic design requirements.

FPB water staff monitors water usage on a daily basis to support operations and planning for future facilities improvements. Based on evaluation of water usage over the past 20 years, staff believes that replacement of the reservoir with a single 7 MG tank is anticipated to support current and future demand requirements for at least the next 20-year planning horizon. The programmed option to add a second 7 MG tank in the future provides added flexibility to proactively address unforeseen changes that may occur with future water demand. In this manner, the FPB water staff is thinking about the future and planning for potential growth.

The FPB water staff and their consultant have evaluated several potential tank siting alternatives, however moving the tank to a different location significantly increases project costs based on several variables. Any additional capital required to relocate the reservoir would require additional borrowing and would most likely require a larger rate increase to all rate payers. The final decision on the tank location is at the discretion of the Board and a decision will be forthcoming.

Submission of Reservoir Comments
January 31, 2017
E-mail From: Jim Pierce

I very much appreciate the FPB now seeing the importance of taking public comments regarding your construction projects into consideration, allowing the community, your customers, and your neighbors to ask questions, express concerns and share other perspectives. No one was surprised to hear that your recent contacts with City Parks and the State led to learning that neither want the reservoir built in or near their location. Understandably, no one wants it. I believe it will happen here, but my wife and I certainly don't want it here as I'm sure is true for the large majority (if not all) of my neighbors. That said, though, I fully acknowledge that at the time we purchased our home in Tanglewood, we were clearly aware of the reservoir being located in our neighborhood, along with the ugly chain link fencing with barbed-wire strands representing the border between public utility and neighborhood. Because the reservoir preceded all of us up here, I thought it was reasonable that reservoir update would be located on the same property due to the existing infrastructure. I just want it to be something that I and my neighbors can live with. But, I have a few questions: (1) Will this re-build be done in such a way that respects the neighbors and the Tanglewood neighborhood? (2) Will reasonable and appropriate mitigation be done to eliminate or severely minimize loss of property values and/or a diminution of quality of life? (3) Will reasonable and appropriate measures be taken to assess, prior to the reservoir project construction begins, the existing soundness of neighborhood homes/foundations as well as post-construction assessments made of any possible property damages due to the project, if needed? (4) Will any and all damages resulting from the reservoir project be fully remedied by FPB? (5) The larger question, perhaps, is... Has anyone taken a studied, long-range view of where the best location for the new reservoir would be... away from existing neighborhoods, replacing much of the very old waterline infrastructure? (6) What solution would be best for the community of Frankfort in 50 years... 100 years? (7) If it happens here, then: Will the mitigation recommendations of the TNAI, especially those neighbors directly impacted, be honored? (8) Will the property be adequately maintained... landscaping cared for appropriately and grass mowed/maintained on the side slopes? I, also, very much appreciated the reservoir project presentation of 12/15/16 by David Billings, taking the time to answer or have answered our questions and to lead us on the physical tour of the reservoir perimeter. When that tour ended at the south end of the south tank and it was time to turn back, I and two to three other Tanglewood neighbors (accompanied by 2 FPB staff) walked 40-50 feet farther south to look at the headend construction from above. What I saw shocked me; it felt like a kick in the gut. The monstrous headend building and its large concrete parking structure were crammed right up against the homes on Hay Ave, dwarfing them in the process. The large array of satellite dishes further south only made matters worse. I knew what happened to those neighbors and to our neighborhood was really bad, but I did not know how absolutely horrible it was until that moment. Any community member who ever had a doubt about the total inconsideration, the unbelievable lack of professionalism, displayed by those who had a hand in that decision and its execution should take a short hike to get that perspective. The land in Tanglewood on which FPB exists has been forever changed. It is not the park-like environment that it was a mere 15 years ago; it will never be again. The nature of the area has been altered. One of the main entry-ways into Frankfort, our capital city, has been forever diminished, replaced now by a major industrial complex. As a Tanglewood home owner and resident, I fear that Tanglewood, the neighborhood, its neighbors and its property owners will always have to bear the full burden, financially and personally, of the significant changes implemented by FPB in a matter of just a few short years as well as those going forward. (9) Is that fair? Should there be restitution or at least an acknowledgement by FPB of what they have done, and potentially will do in the future, to its near-by neighbors? I do believe that the way the reservoir project will be handled is night-and-day different from the abhorrent way

in which FPB proceeded with its headend project. I hope, and trust, that this means FPB administrators and board members fully understand their responsibility as a public utility to its ratepayers as well as to the community at large, with appropriate consideration for its near-by neighbors.

Sincerely, Jim Pierce

Response: Thank you for your comments. Your questions have been numbered and responses are as follows:

- 1) As you mentioned in your e-mail, FPB water staff are approaching the reservoir replacement project in a different manner than previous work done on the site. The goal of this approach is to develop the project in a manner that best accommodates the needs of FPB, the surrounding neighborhood and FPB rate payers. FPB is open to all reasonable suggestions regarding the look and feel of the reservoir site.
- 2) FPB water staff are open to reasonable suggestions regarding the tank finish and landscaping to help the proposed tanks blend in with the surrounding neighborhood.
- 3) A preconstruction survey will be performed by a third party to document existing conditions of adjacent properties. Possible property damages reported will be handled on a case-by-case basis.
- 4) The contractor will be responsible for any damages to existing buildings near the reservoir project as a result of the contractor's work.
- 5) FPB water staff and their consultant have evaluated other potential tank site locations. If any of these alternative locations were selected, they would significantly increase the overall project cost, resulting in a direct impact to all rate payers. FPB water staff has conducted a detailed review of future water demands based on historic water usage and projected trends moving forward. Based on this data, replacement of the existing reservoir with a new 7 MG tank satisfies current and future projected demands for at least 25 years. The current reservoir site also allows for the addition of a future 7 MG tank that would increase the overall capacity to 14 MG. This option provides added flexibility with the system to address the potential variability in future water demands and growth patterns.
- 6) Predicting water usage needs 50 or 100 years into the future is very difficult because of a large list of unknown variables such as population growth and uncertainties with the potential for large industrial water users moving to the area. FPB water staff believes that replacement of the existing reservoir with an initial 7 MG tank and planning for a future 7 MG tank addition will responsibly address demand trends well into the foreseeable future.
- 7) TNAI's mitigation recommendations are a result of a separate project from the reservoir replacement project and FPB water staff and their consultant cannot comment. Any questions regarding other projects should be directed to the Board.
- 8) It is FPB's plan to implement maintainable landscaping.
- 9) This question is beyond the limits of the reservoir replacement project. Any questions regarding other projects should be directed to the Board.

Comments

January 30, 2017

E-mail From: Clyde P. Baldwin, P.E.

I just watched a very professional and well delivered presentation on correcting the aging main reservoir. It was very informative and clearly presented the problems, alternative solutions and the recommended solution. This program needs to be run periodically to the public and on cable 10.

Clyde P Baldwin PE

Response: FPB has made the presentation available through its website and it has been run periodically on Cable 10.

Comments

January 27, 2017

E-mail From: Glenn Goldstein

You have only mentioned cost as a factor for determining which site FPB prefers for the new tanks. While certainly important, is that the only factor you can give for your decision? It seems that even your most expensive site option is not too much to spend to get a 100-year decision right. What about site capacity for three or more tanks for the next 100+ years? You have said Tanglewood cannot accommodate more than two tanks, so can you also say that Frankfort will not need more than two tanks over the next century? Do you have any studies to support that? What kind of residential/industry growth would generate the need for more than two tanks? Would that be beyond the realm of possibility?

*Thank you,
Glenn Goldstein*

Response: FPB water staff and their consultant agree there are other factors to consider when determining a tank location, but cost is normally one of most significant factors to consider because it effects all the rate payers. Other factors obviously include impacts to the surrounding area, elevation requirements to work with the current water distribution system, and other infrastructure needs to accommodate the new tank site. The existing reservoir site has served Frankfort well for over 130 years and there is no reason to believe that will change in the next 100 years. The existing reservoir site will not support a third tank and if additional storage is needed in the future, then another tank would need to be sited at a different location to meet that need. FPB water staff and their consultant cannot predict if more storage will be required over the next century and to our knowledge there are no reliable tools available to predict storage needs that far into the future. It is unlikely that typical residential growth alone would exceed the two tank capacity within the next 50 or more years; however, industrial growth can bring with it the potential for highly varied water supply needs if Frankfort agrees to provide service to such customers in the future.

Tanglewood Reservoir Project
January 25, 2017
E-mail From: Natalie Wilkerson

Thank you for agreeing to speak to our neighborhood association this week about the upcoming reservoir replacement project. I will not be able to attend that meeting, but coincidentally, I spent this past Sunday in Louisville and visited their city reservoir off Frankfort Avenue. It is not only a architectural and engineering jewel, it is truly a "public" project. The path around the 100+ million gallon reservoir is 3/4 of a mile and there were many families and individuals there exercising and enjoying themselves.

Considering the tainted past and present of the Head End project, I would ask that FEWPB consider making the design an attraction for our community, or at least attractive. And please continue to involve and notify the public as the design progresses.

*Thank you,
Natalie Wilkerson*

Response: Thank you for your comments. FPB is open to all reasonable suggestions regarding the look and feel of the reservoir site. Continued public involvement is anticipated as the project develops.

Rendering presentation of the conceptual reservoir proposal
January 24, 2017
E-mail From: Gary Muller

David – I appreciate you sharing this with us. Last night the Commission directed that they want to hear and discuss any proposals – including platting and/or conveying property – before any administrative decision/approval is made by staff. I anticipate that Rob's/Tim's memo to the Commission will be discussed at the February 6th Commission Work session. (I haven't seen it yet)

In regards to the rendering - I don't recall if this was considered by you all, but I think if you were to install the first new tank at the other end (line south end instead, which had the leak) it would provide a better setback and lessen the impact upon Tanglewood, as well as the new headend building – since you are considering/proposing to build within 15 feet of the new building.

Response: FPB water staff has performed an evaluation and their consultant has reviewed the evaluation to assess which side of the reservoir should be replaced first based solely from an engineering perspective. Based on this evaluation and review, replacement of the south basin first offers more advantages such as reduced cost, better use of the site to centralize the ultimate tank configuration, simplified construction and construction staging, and enhanced public safety (the south basin has experienced more degradation than the north basin). The Board's decision on which tank to replace first will take into consideration the public comments, the FPB staff and consultant recommendations, and the rate payers best interests. Please note that based on the renderings presented, the proposed southerly tank will be more than 60 feet from the new headend building if it is selected for the initial installation as recommended.

Tanglewood reservoir
January 23, 2017
E-mail From: Reba Pierce

I think it's reasonable to keep the reservoir in Tanglewood. It was here when I purchased my home 22 years ago. What wasn't here was the headend building and mess. I'm fortunate that my home isn't severely impacted by the headend mess, but for those who are, it seems only right, though minimally helpful, to ensure the reservoir construction project has the best outcome. Hopefully their homes won't experience further damage and with proper landscaping and decorative painting, the reservoir itself won't be an eyesore.
Reba Pierce

Response: Thank you for your comments. FPB is open to all reasonable suggestions regarding landscaping and decorative painting.

Request
January 16, 2017
E-mail From: Paula Moore

Hi, Mr. Billings, I found your name at the end of the reservoir presentation on FPB's website and am wondering if I can get a more legible copy of one of the pages of the presentation? While watching the cable coverage of the meeting and then looking at the website, I'm most interested in what I think is page 16 of the presentation (page 31 of the report) which shows a map of the proposed relocation of the reservoir to Berry Hill. The map appears to show this actually at Juniper Hill Park, not Berry Hill? And between the existing tennis courts and US 60 behind the physicians' offices on Leawood?

Was wondering, if the above is correct, why it's called Berry Hill and Golf Course?

I'm a resident of the Villas at Berry Hill, as well as a ratepayer, so am concerned about a change in location from the present one. As a ratepayer, it will obviously necessitate a rate increase, regardless of whether it is moved closer to me. It appears that FPB staff has obviously taken all this into consideration, which I appreciate.

I didn't hear any discussion about what would happen to the existing reservoir and property if it is moved. Was this discussed, and if so, what has been proposed?

Thanks so much for your help with this. Please let me know if you need anything else from me.

Paula Moore

Response from David Billings, 1/16/2017:

Excellent questions. There were actually two locations identified on the north side of US60 that potentially could be utilized. One location is in front of Berry Hill and the other is near the tennis courts at Juniper Hills (see attached maps). In the presentation, I just referred to them both as the Berry Hill / Golf Course area for convenience because they are so close together and have very similar relocation costs when comparatively discussing other potential areas.

You are also correct that any additional capital required to relocate the Reservoir would come from additional borrowing, would most likely require a larger rate increase. This has been discussed and is part of Staff's reasoning in the recommendation to rebuild in place. Staff is also under the impression that the existing Reservoir needs to come down regardless of whether it is rebuilt in-place or another location.

Thank you for your email and please do not hesitate to ask if you have any additional questions.

David Billings

Follow-up Email from Paula Moore, 1/17/2017:

Thank you very much! The Berry Hill location doesn't appear on the "large" map at all, but the smaller one does show it and helps explain staff's name. Still begs the question about what would happen to the current location, of course, but perhaps you can't answer that.

As a user of both Berry Hill and Juniper Hill for walking both myself and my dogs, I would hate to see those areas losing both acreage and the visuals now there, especially when the current location is sufficient and would also help keep costs down. The city also just applied for and received a grant to create paved walking at Juniper Hill, and a significant portion of that would be lost, too.

I do appreciate FPB taking public comment on this and also understand Tanglewood's concern given recent events. I wish the local paper did a better job of putting this information out, too.

Paula Moore

Response: The final decision on the tank location is at the discretion of the Board and a decision will be forthcoming.

Reservoir Replacement
January 16, 2017
E-mail From: Glenn Goldstein

Please re-consider the location for the replacement reservoir. This is a 50+ year decision at a minimum and more likely a 100+ year decision for Frankfort. The city decision makers who located the current reservoir in 1885 had the wisdom to locate it in what was then farmland away from the city and not surrounded by homes and other city development. Now the city has developed around and well beyond that location. The additional \$1.6 million to move the reservoir to Juniper Hill next to the tennis courts where it wouldn't intrude upon a residential area is not too much to ask you to spend for a facility which will serve the city into the 22nd century. Please employ the same wisdom used 130 years ago by now relocating to a more isolated area while you have the chance.

In your public meeting you showed nine photos of the type of tank you want to construct, and I don't recall any of them having adjacent residences. This is not the kind of facility you would willingly locate in a residential neighborhood, especially when you have the chance to move it to a less intrusive location. If, however, you decide to keep the new reservoir in the Tanglewood neighborhood, please consider the following to disguise the tank(s):

- 1. Paint the tank to blend in with the sky (sky blue/white/gray).*
- 2. Earthen berm along the sides to minimize the size of the tank and help it blend in with the surroundings.*
- 3. Hedges along the top of the berm to further disguise the tank.*

Thank you for your consideration,
Glenn Goldstein

Response: Please refer to previous responses in regard to the tank location. The final decision on the tank location is at the discretion of the Board and a decision will be forthcoming. Please keep in mind that the Juniper Hill location would not necessarily be considered an isolated area because of the adjacent golf course, Aquatic Center, tennis courts, Berry Hill Apartments, and the Berry Hill Mansion. While this location does not necessarily intrude upon a residential area, it does intrude on a highly valued public space. The Juniper Hill site location has been unanimously denied by the City of Frankfort Parks, Recreation, and Historic Sites Department in a letter dated January 12, 2017.

The Board will take all reasonable painting and landscaping recommendations/requests into consideration regarding the final appearance of the tank and site.

January 31, 2017
Letter From: Orman Wright

Dear Mr. Billings:

I am in receipt of your letter of December 1, 2016. And although I was unable to attend the presentation FPB staff made to the neighborhood on December 15, 2016, I appreciated receiving the personal notification. I have had the opportunity to watch both the site tour and the replay of that meeting on Cable 10.

I am probably the oldest resident of the neighborhood, but having built my house in 1987-88, I'm still a relative newcomer to the neighborhood. When I hear some of the neighbors discuss their antics or those of their children some 50 or 60 years ago, I am moved. It is hard to imagine in a world so mobile and interconnected that lives could be so stable and firmly rooted in one place. Yet, as I believe you pointed out in a recent presentation, the experts in these matters are predicting that Frankfort will only grow .2% over the next 20 years. If I understood the presentation correctly, the FPB planning for this project reflects that projection by specifying the installation of a new, single tank which will lower the capacity of the system by almost 2 million gallons. The life expectancy for the new tank is 50 years. Thanks to the expectation of low growth and improvements in water conserving technologies, the new tank will provide ample water for the next 20 years, barring some unforeseen water intensive use like a new industrial client or distillery.

One of the advantages of being in the ninth decade of my life is that it provides me with a perspective that most people do not have. For example, every time I travel to Lexington I am struck by how much it has changed since my undergraduate days in the 1940s. In fact, if you look at the changes from decade to decade since, you see a city that has morphed into something entirely new. The growth in this past 'low growth' decade is astounding in both rate and volume. But Lexington is not alone. Louisville is also growing. Thanks to the recent Toyota expansion, Georgetown continues to grow. For the past several years, Anderson County has been among the fastest growing counties in the state. If the projections turn out to be accurate about Frankfort's low growth rate, that doesn't address the ripple effect Frankfort will continue to experience by growth in these surrounding areas.

Neither Frankfort nor Kentucky exists in a vacuum. When you look at the nation as a whole, water is always a topic of conversation. Large portions of Kentucky's sister states to the south (North Carolina, Tennessee, Georgia, Alabama and Mississippi) are abnormally dry to drought stricken. To the west, the states of Missouri and Oklahoma fall entirely into the 'water-stressed' categories. To the north, most of New England is affected especially the populations centers along the coast starting in Maine and extending through the Mid-Atlantic states into the now 'abnormally dry' Maryland, DC and northern Virginia. Public policy research and recommendations once reserved for the naturally dry western states are now commonplace in a variety of locations east of the Mississippi River.

To say that a safe and plentiful water supply is important is an understatement. It is vital to all life, human and otherwise. As I have been mulling over this matter, it has occurred to me that population growth and climate considerations are not the only pressures affecting water supply going forward. We are now using water in new ways. A good example of this is hydraulic fracturing or "fracking." Oil and/or gas exploration companies now mix a proprietary cocktail of chemicals with water and then force that mixture into fissures in the earth. This process extracts oil and natural gas trapped in layers of rock. The technique was conceived in the late 1940s but became commercially viable around the turn of the 21st century. While the technique does not require the kind of water we drink, it does permanently remove the water used from the world's fresh water supply.

More relevant to Kentucky's agricultural heritage, I have included for your review an article from the January 9, 2017 issue of "The New Yorker." The subject of the article is a salad greens growing operation in an abandoned industrial building in Newark, New Jersey. It is about a new technology called "vertical growing." The process is highly technical with no sun needed, no soil needed and very little water required. The greens are grown "aeroponically" which requires 70% less water than a typical hydroponic setup. As a point of reference, hydroponic operations require approximately 70% less water than traditional in-ground grown salad greens. As I was reading, it occurred to me that these aeroponic growers were not pumping untreated water out of the Passaic River or Newark Bay. They were either using water from the municipal system or were treating the water as part of their process. Either way, this is a new way to use water. Even if the water is from Newark's excess capacity, it is safe to assume that this new way to use water was not planned by the officials in charge of estimating local needs and calculating water storage to accommodate those needs. Similarly, I believe that the future needs of the Frankfort water system are far from being certain.

How do you plan for unforeseen problems/opportunities? I would propose that the City needs to give itself some 'wiggle room,' both physically and conceptually, by leaving enough options open to accommodate unanticipated technologies and breakthroughs. It goes without saying that physical space for additional capacity at the current location is in very short supply. The best option would be to acquire space currently occupied by neighborhood housing stock.

So, while the FPB sees the need for a single tank with diminished capacity, I see the need for additional capacity at a location which would not restrict the City's ability to add even more capacity in the future. This is not the time or the circumstance to cut costs. That would be 'penny-wise and pound foolish' to use a very old cliché. I believe that Frankfort's municipal water supply and its attendant water storage capacity will be an even more important resource going forward.

As an adjoining property owner, I am strongly in favor of a complete upgrade to the City's water storage system and believe it should be moved to a location which can easily accommodate future

growth. Please record my response as opposed to the proposal to install either a single or double tank on the current reservoir campus.

I appreciate the opportunity to comment on the reservoir proposal.

Sincerely,
Orman R. Wright
310 Owsley Avenue

Attachment B
Questions submitted by Orman Wright, 310 Owsley re: FPB reservoir replacement project

- I. **Improved perspectives needed on new and existing renderings.**
 - A. **The new tank will be 18 feet taller than the roof of the current reservoir.**
 1. Please provide dimensions of existing tower on drawing indicating, relative to that tower, the height of the current and the highest point of the proposed structure.
 2. In an effort to further clarify the perspective and actual mass of the tank, please provide a scaled drawing of a vehicle, preferably the same make and model of the FPB cargo vans currently parked on the reservoir site. In one presentation, FPB staff stated that a flat area, suitable for use as a driveway, would encircle both tanks at the top of the berm to improve access for maintenance. Please position the properly scaled drawings of the cargo vans on this perimeter driveway. This addition should be made to all current perspectives drawings and the additional drawings requested in further questions.
 - B. **Additional perspectives needed.**
 1. Currently there are pine trees planted on the western edge of my property at 310 Owsley Avenue where it adjoins the reservoir campus. These pine trees and the existing tower mentioned above are clearly visible from Daniel Boone's grave and a host of other grave sites located on the western bluff of the Frankfort Cemetery. Please provide a rendering of the proposed tank(s), both single and double, from the perspective of Daniel Boone's grave.
 2. All of the attention given to the appearance of the proposed project is from the western side (roughly facing Tanglewood Drive) and the southern aspect (facing Hay Avenue and Reservoir Road.) No perspective drawings or renderings have been offered for the eastern or northern exposures. At minimum, please provide a rendering of the proposed project from the corner of Owsley Avenue and the alley which connects it to Commonwealth Boulevard. Preferably there will be three renderings: first of the tank replacing the south basin as proposed, complete with driveway and vehicle; second, of double tanks, including perimeter drive and vehicle; and, third, a rendering of a north basin only replacement tank currently under consideration by some of the adjoining neighbors. The third drawing should include the height of the tank, location of the perimeter drive and the properly scaled vehicle to assist neighbors in assessing the mass of the installation.
- II. **Need and outline of the property assessment and ensuing construction process.**
 - A. Will the installation of the temporary liner in the north basin be the first step? If not, what will be the first step?

- B. Which houses will be assessed for condition issues prior to the beginning of the construction process? Will the homes which adjoin the south basin be assessed? Those which adjoin the entire reservoir campus? Properties which adjoin the adjoining properties? The entire neighborhood?
- C. When will the properties be surveyed to assess their condition?
1. Will the property owners be provided with photos and documentation?
 2. Will FPB take out insurance to protect itself from potential liabilities relative to potential damage to surrounding properties? If so, will bids be taken on this insurance? If not, will the FPB attempt to self-insure? If so, how much money will be set aside to cover any potential damage? What is the cost of any necessary insurance(s)?
 3. Who will do the surveys? FPB staff? City staff? Private contractors? What is the estimated cost of the process?
 4. What features of each property will the survey assess? Foundations? Basements? Crawl spaces? Slab constructions? Driveways? Sidewalks? Patios? Water gardens? Retaining walls? Exterior masonry? Fireplaces? Interior surfaces? Plumbing? Ductwork? Any other rigid construction feature? Built-ins (i.e. cabinetry in kitchens and baths, bookcases, etc.)? Furnishings and accoutrements like dishes and glassware inhabiting closets, cabinetry and furnishings? Finally any potential damage to art hanging on interior walls?
- D. When will the new drain be installed? What is the cost of the drain?
- E. Will the site be leveled first?
- F. Will the site be excavated and backfilled?
- G. When will the drive(s) around the top(s) of the tank(s) be constructed?
- H. Will the drive be paved? If so, what materials will be used and what is the cost? If not, what materials will be used? How will it be maintained?
- I. If the project goes forward as planned, will the north basin be drained when the new tank is completed and filled? If so, will the existing basin remain? If it does, will the roof remain intact? Will water remain in the basin? If not, will that portion of the site be leveled? Will it be graded? Planted? If so, what plants be used? If not will it remain a green space? Will it be used as parking?
- J. In the event that the project moves forward on this site, but with the current north basin as the location of the tank, please answer the questions posed in sections II. E. thru I above from the perspective of a north basin replacement tank.
- III. Need a timeline for the construction
- A. Prior to the decision, please provide a projected timeline for the project
- IV. Breakdown of costs associated with construction on current reservoir campus
- A. I have noted that in the presentation much effort was expended outlining the costs associated with moving the water storage to another location. However, relatively little was said about the costs associated with the construction on the current campus. Please provide a detailed listing of those costs, including the following items:
1. Cost of the temporary liner for the north basin
 2. Cost of re-routing the drain line from current location to proposed location crossing Tanglewood Drive, down past the pumping station and into the ravine?
 3. Cost of environmental assessment to determine the feasibility and cost of draining 9 million gallons of water behind the homes on Tanglewood Drive and Leawood Drive in Thistleton, under old Lawrenceburg Road and finally into the Kentucky River

4. Cost of surveying Tanglewood properties prior to beginning construction
 5. Cost of insuring Tanglewood properties against construction related damage
 6. Cost of necessary excavation
 7. Cost of hauling fill off-site
 8. Cost of actual construction of the tank
 9. Cost of grading berm to surround tank
 10. Cost of paving
 11. Cost of landscaping
 12. Cost of all security measures required during construction
 13. Cost of security measures (i.e. fences, cameras, monitoring, etc.) after the completion of the project
 14. Any other costs not previously noted associated with construction and future operation of the new facility at the current location.
- B. Please provide a breakdown of the costs to the other stakeholders immediately involved in this project
1. Costs to the City of Frankfort when the tax base of existing Tanglewood properties is reduced by 40% (based on a conservative estimate of the change in values to these homes)
 2. Costs to the county when the tax base of existing Tanglewood properties is reduced by 40%
 3. Costs to the Frankfort Independent School District when the tax base of existing Tanglewood properties is reduced by 40%
 4. Costs to the Paul Sawyer Public Library when the tax base of the existing Tanglewood properties is reduced by 40%
 5. Costs to remaining civic institutions which are funded by property taxes
- V. Concerns and questions specific to the property 310 Owsley Avenue
- A. The reservoir is almost due west of my home. There are mature pine trees on my side of the property line which serve as a buffer, obscuring the view of the current reservoir for me and my neighbors. Currently the afternoon light is able to filter through these trees. However, the reservoir itself is very close to the property line. Increasing the height of the tank will block the afternoon light, effectively shortening the number of hours of daylight on my property year around. Please provide the times the shadow cast by the current reservoir crossed the property line on the summer and winter solstice and the vernal and autumnal equinox in 2016. Then please provide the same information for the same dates based upon the increased height of the reservoir.
- B. As noted previously, please provide a rendering which is accurately scaled of the view of the north basin tank, as proposed from the corner of Owsley Avenue and the alley which connects Owsley with Commonwealth Boulevard.
- C. The original presentation contained a rendering of a birds eye view of the proposed single tank replacing the south basin. However, that rendering did not include sufficient reference data to determine its proximity to neighboring property owners. The drawing also lacked any indication of the driveway which is planned for the top of the berm encircling the tank. Please provide a scaled drawing with the proposed north and south tanks in position. The drawings should include sufficient information about surrounding properties so that the property owners can readily identify their homes in proximity to the proposed water storage tanks. The drawings should also include the proposed drive and any out buildings and appurtenances existing or proposed on this site. Finally, please include the dimensions of the tanks, the drive and the distances of same to the shared boundaries of property

owners. These measurements are something everyone can understand. They will aid the adjacent property owners and the neighborhood as a whole in assessing the impact of the proposed reservoir replacement project. For it is clear to the entire neighborhood that the FPB proposal will clearly change the value of everyone's property, the appearance of our neighborhood and the lifestyle we enjoyed before the intrusions of upgraded FPB facilities which would be more appropriately located in an industrial area.

Response: Thank you for the letter and comments. According to your letter, you are opposed to locating the proposed tank, or tanks, on the existing reservoir site. FPB water staff performed an evaluation of three site alternatives for potential relocation of the existing reservoir facility. This also included an assessment of capacity requirements and type of tank necessary to meet the capacity and existing water system requirements. FPB's consultant reviewed the water staff's evaluation, as requested, from a purely engineering perspective. Based on this evaluation, FPB water staff recommended (and its consultant concurred) that the existing reservoir be replaced with a single 7 MG ground storage tank on the existing site with the south basin of the reservoir being replaced first. This recommendation is based on several factors, such as current and future water demands, operational flexibility and future capacity expansion gained by allowing space for an additional future 7 MG ground storage tank, seamless integration and implementation into the existing water system, and reduced initial capital investments by eliminating the need for additional infrastructure necessary to accommodate an alternate location, to name a few. The final decision on the tank size, configuration, and location is at the discretion of the Board and a decision will be forthcoming.

FPB water staff will follow the directives of its Board in regard to additional renderings of the proposed reservoir. The initial rendering locations were chosen because they offer a relatively unobstructed view of the existing reservoir from public areas.

A preconstruction survey will be performed by a third party to document existing conditions of properties adjacent to the reservoir site, assuming it is decided the reservoir will be replaced on the existing site. Project specifics and construction sequencing have yet to be determined because the final decision regarding the reservoir replacement is pending.

Detailed project cost opinion information is not available at this time. FPB water staff can provide this information upon request following final design.

APPENDIX B
to
Franklin Plant Board's
Motion for Summary Judgment on Count II

IN RE: Frankfort Plant Board Reservoir Project

*** **

TRANSCRIPT OF PROCEEDINGS

AUGUST 16, 2018

Heard before the Frankfort Board of Commissioners

Frankfort, Franklin County, Kentucky

August 16, 2018

*** **

REPORTER: KIMBERLEY ANN KEENE
Registered Professional Reporter

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1 MR. CHAIRMAN: Thank you for being here
2 tonight and talk about this subject as we seek a
3 resolution to it, and also inform you that the --
4 tonight's meeting is a special-called meeting and only
5 the advertised item of the Frankfort Plant Board
6 Reservoir Project will be considered.

7 At this point in time, I'm going to ask the
8 secretary to call the roll.

9 THE CLERK: Maria Bradshaw.

10 MS. BRADSHAW: Here.

11 THE CLERK: Patty [inaudible]

12 PATTY: Here.

13 THE CLERK: Cheron Jackson.

14 MR. JACKSON: Here.

15 THE CLERK: Pete Glean.

16 Jim Nichols.

17 MR. NICHOLS: Here.

18 THE CLERK: Robert Roach.

19 MR. ROACH: Here.

20 THE CLERK: Joe Sanderson.

21 Charles Stewart.

22 Jim Terrell.

23 MR. TERRELL: Here.

24 THE CLERK: David Boggs.

25 MR. BOGGS: Here.

1 THE CLERK: We do have a quorum.

2 MR. CHAIRMAN: Would you introduce the item,
3 please?

4 THE CLERK: In accordance with KRS 100.324,
5 Anna Marie Pavlik Rosen, Chair -- Board Chair of the
6 Frankfort Electric Plant Board is requesting a project
7 review of the water tank reservoir replacement for the
8 property located at 98 Tangelwood Drive in Frankfort,
9 Kentucky. The property is more particularly described
10 as PVA map number 062-20-19-001-00.

11 MR. CHAIRMAN: Thank you very much.

12 Before we continue with the meeting, I would
13 like to ask anyone that's planning on speaking tonight
14 during the meeting if you would publicly come up and
15 sign up so we would have your name as a point of
16 reference.

17 Thank you. Now here's the paper.

18 Anyone else? If you don't sign up, you will
19 not be able to speak later on. That's kind of the way
20 this works. That way we have record of it.

21 Thank you, everyone.

22 Okay. At this point in time, I'm going to
23 ask our legal counselor to instruct the commission and
24 audience on what the commission will be considering
25 tonight.

1 MR. LOGAN: Thank you.

2 This matter is brought under KRS 100.324,
3 specifically section 4, and it -- this has been
4 referred to us to look at and determine whether or not
5 the proposed project is in conformance with the
6 contents of the claim.

7 We are to make -- if we disapprove what's
8 happening for any reason, we're supposed to make
9 written findings, and we are also to make written
10 recommendations or changes that we think would better
11 accomplish the objectives of the plan.

12 So those are the parameters we're working
13 with. They're on page 2 of your pamphlet with regard
14 to what the statute says. I've merely paraphrased it
15 (inaudible.)

16 MR. CHAIRMAN: Okay. Thank you, sir.

17 Any questions from the commission?

18 MR. JACKSON: Mr. Chairman, if I might.

19 I would like to request of staff as to
20 whether or not the commission can receive a copy of
21 the resolution that the city commission passed at its
22 last meeting as well as the report upon which that
23 resolution is based.

24 MR. CHAIRMAN: Okay. Thank you.

25 MR. JACKSON: And while that's happening, if

1 I might, Mr. Chairman.

2 Mr. Logan, for those of us on the commission,
3 and maybe I shouldn't include anyone else and just do
4 it for my purpose, among the information that is
5 contained in the staff report, there are references to
6 "review and advise." There are references to
7 "consideration."

8 And in the reference with regard to the city
9 commission's directive, there is the word "approval."
10 However the statute include "review and advise."

11 How should we consider all of those words in
12 terms of context of what we are doing tonight?

13 MR. LOGAN: The words which are thrust upon
14 us are those of the statute. The staff report is
15 prepared for your consideration and is the opinion of
16 staff after their review and determination of the
17 process. You may accept, reject, or modify whenever a
18 version of the staff report or anything else that's
19 submitted to you. You are the decision-makers.

20 When we say "consider," that means you do not
21 have to accept, you do not have to reject, but you
22 have to at least review and at least consider the fact
23 that something was submitted. That's the general term
24 of consideration. I can't give you any better
25 direction than that.

1 Mr. Chairman.

2 MR. CHAIRMAN: Thank you, sir.

3 Any other --

4 MR. JACKSON: I can go from there.

5 MR. CHAIRMAN: Any other questions for
6 Mr. Logan before we proceed, from the commission?

7 Thank you very much.

8 At this point in time, I would ask the staff
9 to present the item, please.

10 EXAMINATION

11 BY MR. LOGAN:

12 Q. Eric, would you state your name for the
13 record, please?

14 A. Eric Cocklin.

15 Q. And what is your position with the City of
16 Frankfort?

17 A. Director of the Planning & Community
18 Development Department.

19 Q. As the director, did you review an
20 application from the chair of the Frankfort Electric
21 and Water Plant board with the city?

22 A. I did.

23 Q. When you considered that, would you indicate
24 briefly your training and your education and your
25 experience in your area of planning?

1 A. A little over a decade of experience in the
2 planning committee.

3 Q. And tell me about your education level.

4 A. And a master's degree as well.

5 Q. Okay. With regard to this, did you prepare a
6 written staff report that's (inaudible)?

7 A. I did.

8 Q. And is that staff report as a result of the
9 application and your review thereof?

10 A. Uh-huh.

11 Q. Are there any additions or deletions to that
12 staff report as it -- as it has been --

13 A. Not to the staff report itself other than I
14 have one item that was passed along to me today from
15 the applicant to pass along to the commission. I
16 believe Dawn has copies to hand.

17 Q. All right. And will you be submitting that
18 to the commission?

19 A. Dawn will be passing those out right now, I
20 believe.

21 Q. What is that document?

22 A. This is from the energy and environment
23 cabinet. It's the documentation associated with their
24 review and finding of no significant impact for this
25 project.

1 Q. Is that reduced to a writing dated August 16,
2 2018?

3 A. I believe so.

4 Q. Mr. Russell Neal?

5 A. I'm looking for a date.

6 Yes, August 16.

7 Q. Thank you.

8 With regard to that, were there any other
9 changes noted?

10 A. No, sir.

11 Q. And once again, you prepared this report as
12 the director of planning for the City of Frankfort?

13 A. Yes, sir.

14 MR. LOGAN: Mr. Chairman, I move the staff
15 report be filed into the record, and apparently there
16 is an August 16th letter that the staff received that
17 is included (inaudible).

18 MR. CHAIRMAN: Thank you, sir.

19 THE WITNESS: I can give you a moment to go
20 through that if you wish. I would -- I would --

21 THE CHAIRMAN: We're not speed readers, but
22 we'll look at it.

23 When you folks are finished, please let me
24 know so I can proceed, please.

25 I realize there's a lot to read. You're

1 good. Everything -- everybody good?

2 Okay. Mr. Eric, please proceed.

3 MR. COCKLIN: Thank you, sir.

4 As referenced, this -- the review of this
5 development plan is subject to KRS 100.324, and I
6 won't go back through that. I think he explained that
7 effectively in terms of the scope of what we're doing
8 this evening.

9 Just to go over briefly the project. Here we
10 have a shot of the existing conditions of the existing
11 reservoir as it stands today.

12 This is a shot of the site plan. Didn't come
13 out all that clearly, but you can see in the rendering
14 there of the proposed replacement reservoir as well as
15 the profile. You'll make note in the profile, the
16 green line references the height of the current
17 reservoir, and then the red is the proposed dome roof
18 of the proposed replacement reservoir.

19 Shot of the landscape plan showing the
20 plantings around the replacement tower and the
21 compound there. And then just making a note of the
22 fencing, much of which has already begun to be placed
23 around that southern and southeastern border of the
24 Tangelwood neighborhood subject to the mediation that
25 occurred in regards to the associated head-in

1 project.

2 And then just some shots of -- this came from
3 a rendering the plant board had submitted that it
4 shows the potential for what this project might look
5 like from a few different vantage points; the
6 entrance, Reservoir Road, and then Tangelwood Drive
7 there across the head-in unit to the -- to the tank in
8 the back. That actually may be Hay Avenue, I think.

9 So that's just a little background of what
10 we're talking about. You have my staff report. I'm
11 happy to answer any questions you may have.

12 MS. CROSS: That view from Tangelwood Drive,
13 is that the way it will continue to look, or is there
14 a fence going in there that hasn't been --

15 MR. COCKLIN: That -- I believe that
16 rendering -- the photo that rendering was started on
17 was prior to the fencing going in. So it will look
18 different in terms of fencing and I believe additional
19 landscaping that may have been a result of that
20 mediation.

21 MR. CHAIRMAN: Any other questions from the
22 commission?

23 MR. JACKSON: It would be helpful,
24 Mr. Chairman, if staff would explain in a little bit
25 more detail the staff report, the information in the

1 staff report.

2 MR. CHAIRMAN: Sure.

3 MR. JACKSON: So that we are all getting the
4 same understanding of the information contained
5 therein.

6 MR. COCKLIN: So what staff attempted to do,
7 this is, as you all know, a bit -- a bit unlike other
8 development plan review we may typically do where
9 we're looking through sets of zoning regulations and
10 what have you for compliance and very specific
11 regulations and requirements. In this case, we're
12 simply trying to make some judgments about its
13 conformance with the comp plan.

14 So in the text of the staff report --

15 MR. CHAIRMAN: Excuse me, sir. Would you
16 please reference page numbers as you go through there
17 so we --

18 MR. COCKLIN: Sure, sure.

19 MR. CHAIRMAN: -- we can keep up with you?

20 MR. COCKLIN: Sure.

21 I've gone through and tried to choose some
22 applicable portions of the comp plan and then
23 reference whether the development plan, in my opinion,
24 complies with those or does not.

25 That analysis begins on page 6 as I reference

1 goal 1, which references growth in Franklin County
2 being responsibly designed and planned for the future.
3 I won't read the entire goal or policies to you, which
4 had some positive findings on that in regards to
5 policies number 2 and 12.

6 Separately, goal number 3: Use
7 infrastructure as a planning tool that references
8 utilizing infrastructure and supporting, it includes
9 some growth. Also looked at that in terms of review
10 for compliance and found positive findings for policy
11 number 2 and 5.

12 Then I moved to goal number 6 with references
13 preserving existing neighborhoods in regards to
14 promoting a stability reservation -- preservation and
15 vitality of existing residential neighborhoods. Staff
16 had a negative finding on this in regards to the
17 project conformance with the comp plan in regards to
18 this goal.

19 In addition to that, goal 7, still on page 9:
20 Enhance community quality and character, promote
21 quality development and strengthen this community
22 character and pride, this was also a negative finding
23 as defined in my staff report.

24 Then I moved to section 4 of the land use
25 plan and to the specific land use designation of this

1 property, which is special public use, and to the land
2 use guidelines contained within that description, and
3 had a series of different findings, the first being a
4 negative finding in regards to the general development
5 guideline that the expansion of existing public and
6 semipublic usage should be allowed where there will be
7 minimal impact on surrounding residential uses.

8 The second one, in regards to in-fill
9 development, matching the density and character of the
10 existing uses, I found that that was not applicable
11 because while we are replacing this tank in an
12 existing plant board facility, it didn't seem to me to
13 apply in terms of an entire redevelopment of a piece
14 of property that would be an infill utility or public
15 use where there was not one before.

16 Number 3: Larger sites with extra
17 landscaping and bumper strips should be used in areas
18 adjacent to residential uses to provide a transitional
19 area, I had a positive staff finding here and just
20 referenced the mediation in regards to the head-in
21 unit that required a great deal of landscaping along
22 that border with Tangelwood.

23 The fourth one was also nonapplicable. It
24 referenced interconnectivity to adjoining
25 neighborhoods and developments.

1 I believe the last section, section 6 of the
2 community facilities plan, references our water supply
3 system and generally supplying water for our current
4 and future use. And staff found a positive finding
5 there in terms of the proposed projects' purpose,
6 which is to continue supplying water to Frankfort and
7 continue to do that into the future.

8 So based on the mixed bag of positive and
9 negative findings, as we often do in other cases that
10 come before the commission, my final recommendation
11 was that the proposal did not entirely meet and
12 conform with the comprehensive plan.

13 MR. CHAIRMAN: Thank you.

14 Other questions?

15 MR. JACKSON: Well, Mr. Chairman, if I might.

16 I want to begin by I guess requesting
17 information, and staff may not have this information,
18 so please pardon me if I ask a question you can't
19 answer.

20 Do you know, did you have information that
21 would help you to tell us, since KRS 100.324 has kind
22 of existed for quite some time, why only the portion
23 of the development that relates to looking at the comp
24 plan is showing up before us when the fencing, the
25 parking, and several other of those items were

1 completed and those items did not come to the planning
2 commission, why this and not all of the others,
3 particularly since some of those things were completed
4 in 2018 and this conversation has been going on for
5 quite some time?

6 And you may not have information that allows
7 you to answer that question, but it's one that...

8 MR. COCKLIN: As I was not here at the time
9 that that happened, I hesitate to attempt an answer
10 because I would -- I would hate to answer based on an
11 assumption of what happened during the time and then
12 give you that information.

13 So I -- I'm going to --

14 MR. CHAIRMAN: You're going to take a pass on
15 that one?

16 MR. COCKLIN: I'm going to take a pass on
17 commenting why it's now and not then and what the
18 justification was either by staff or counsel or the
19 city commission.

20 MR. JACKSON: Would you invite your
21 colleagues to chime in?

22 MR. COCKLIN: If they have something helpful,
23 I'm -- I more than welcome them. I'm not sure that
24 they do. I mean, I think --

25 MR. CHAIRMAN: I don't think they're willing

1 to --

2 MR. COCKLIN: Based on my knowledge, I think
3 at the time -- this is viewed as a public project that
4 generally are exempt from planning processes other
5 than basic permitting and those sorts of things. So I
6 can only imagine, not having been here, that at the
7 time, staff viewed it as we view many exempt
8 government projects, as this is a public utility and
9 then did not bring it before the planning commission
10 or have a design review in that way that we would
11 normally review a development plan for a commercial or
12 private development.

13 MR. CHAIRMAN: Okay. Sort of a follow-up,
14 Cheron, do you mind?

15 MR. JACKSON: Go ahead.

16 MR. CHAIRMAN: So do I assume, then, that
17 we're at this point because the city commission got
18 involved and kicked it back to us?

19 Is that a fair assessment?

20 MR. COCKLIN: I believe that's a fair
21 assessment.

22 MR. CHAIRMAN: Okay.

23 MR. JACKSON: If I might continue?

24 MR. CHAIRMAN: Go ahead, sir.

25 MR. JACKSON: Now, are we to presume from

1 your report that any goal not identified in your
2 report is not applicable to the request or that the
3 request does not conform to those goals and,
4 therefore, they're not included? What's our basis for
5 them?

6 MR. COCKLIN: The nonapplicable findings
7 would be that this particular project didn't seem to
8 have a portion of it which would apply to that
9 particular policy. So that is not a negative finding,
10 no.

11 MR. JACKSON: May I continue, sir?

12 In the photograph that we see there on the
13 wall, I'm looking at the height of the mound that
14 shows the tank.

15 And that's the existing tank; is that not
16 correct? Or is that --

17 MR. COCKLIN: The mound --

18 MR. JACKSON: Or is that the rendering of the
19 future?

20 MR. COCKLIN: I believe that is a rendering
21 of the future tank.

22 MR. JACKSON: Okay. Do you know whether or
23 not there is -- well, is there information that tells
24 you whether or not there is sufficient depth
25 underneath there that that mound can be reduced by an

1 additional 15 or 20 feet by putting the tank further
2 under the ground, or into the ground?

3 MR. COCKLIN: I do not have any information
4 that's been provided to me from an engineering
5 standpoint that would suggest whether there is a
6 specific reason that tank couldn't be lowered in
7 elevation rather than placed at the elevation they
8 started at. Perhaps the plant board's engineer could
9 expand on that as an option.

10 MR. JACKSON: Do you have any information
11 available to you that would tell us why, for example,
12 the berm is nonexistent in the proposed renovation of
13 the site?

14 MR. COCKLIN: My understanding from the
15 proposed development plan is that there is still some
16 level of berm that they would have there, but the tank
17 is taller, so the berm would not go all the way up.

18 MR. JACKSON: It would not cover?

19 MR. COCKLIN: Correct.

20 MR. JACKSON: Has all of the landscaping been
21 installed?

22 MR. COCKLIN: The last time I visited the
23 site last week, it did not appear as though the
24 fencing and landscaping was installed.

25 MR. JACKSON: Is there an opportunity for the

1 planning commission to request that that process be
2 held in abeyance until the resolution of this item is
3 complete?

4 MR. COCKLIN: I would imagine the commission
5 could request that. I would defer to counsel about --

6 MR. LOGAN: Not at tonight's hearing. We are
7 here specifically on it. That's why I limited the
8 proposal. We are here on what the statute says, not
9 on dealing with landscaping or otherwise. That may be
10 a recommendation after we make findings of fact.

11 MR. JACKSON: Okay. But we can make that
12 recommendation? I'm --

13 MR. LOGAN: You are like the 800 pound
14 gorilla.

15 MR. CHAIRMAN: I think he may be thinking
16 that.

17 MR. LOGAN: Has to be based on findings.

18 MR. CHAIRMAN: Okay.

19 MR. JACKSON: I have a few more, but I don't
20 think they're appropriate for staff.

21 MR. CHAIRMAN: So you're finished with
22 Mr. Eric?

23 MR. JACKSON: I'm done with Eric. If there's
24 someone else.

25 MR. CHAIRMAN: Would any other --

1 MS. CROSS: I have --

2 MR. CHAIRMAN: Go ahead.

3 MS. CROSS: On page 2 of the staff report,
4 when it talks about the new tank will be 188 feet wide
5 and the dome approximately 43 feet tall, can you go
6 over that and help me understand the difference
7 between what will be visible of the new tank versus
8 what is visible of the old tank?

9 MR. COCKLIN: So the difference -- and I'll
10 explain this over here as I do this.

11 The difference from the top of the wall of
12 the proposed new tank to the top of the existing tank,
13 which I think is --

14 MS. CROSS: Is the wall of the new tank a
15 wall around the tank, or is it part of the tank?

16 MR. COCKLIN: Well it's a wall and then that
17 half dome roof, roofs.

18 MS. CROSS: Okay. Got you.

19 MR. COCKLIN: The difference between those
20 two elevations is just under three feet, 2.8 feet,
21 from that previous height to the top of the wall. And
22 then another 28 feet from the top of the wall to the
23 top of dome.

24 MS. CROSS: So it's essentially the dome part
25 of the new tank that will be visible, that --

1 MR. COCKLIN: And about three feet of wall.

2 MS. CROSS: Yeah. Okay.

3 MR. CHAIRMAN: No, that's not correct.

4 MR. JACKSON: Be more wall than that showing.

5 MR. COCKLIN: Oh, the difference -- I'm
6 sorry. There will be more wall than that visible.
7 The 2.8 feet is the difference between the current
8 top --

9 MS. CROSS: Okay.

10 MR. COCKLIN: -- which isn't necessarily
11 going to be the same level as the berm on the
12 proposed. So, yeah, I misspoke. There will be more
13 visible than that.

14 MS. CROSS: Is this the source of your
15 assessment that it does not -- this project does not
16 contribute to neighborhood -- preservation of existing
17 neighborhoods?

18 MR. COCKLIN: Based upon the --

19 MS. CROSS: The height.

20 MR. COCKLIN: -- increased height --

21 MS. CROSS: Yeah.

22 MR. COCKLIN: -- and view? Certainly.

23 MR. CHAIRMAN: I think that's in goal 6,
24 correct?

25 MR. COCKLIN: I believe so.

1 MR. CHAIRMAN: Preserving existing
2 neighborhoods, goal number 6?

3 MS. CROSS: It is number 6.

4 MR. CHAIRMAN: Page 8 and 9.

5 MS. CROSS: Yeah.

6 MR. CHAIRMAN: Did that answer your question?

7 MS. CROSS: It did.

8 MR. CHAIRMAN: Okay. Thank you.

9 Any other questions from Eric at this point
10 in time?

11 All right. Thank you.

12 Okay. At this point in time, we would like
13 to ask the applicant to present their case.

14 MR. LOGAN: Mr. Chairman, I think we've -- on
15 behalf of the property owners that have signed up, we
16 would object. I mean, they haven't signed up to
17 defend their plan. I thought that was your
18 instruction outset. So we object to that.

19 MR. CHAIRMAN: They'll have the opportunity,
20 sir.

21 MR. BILLINGS: Good afternoon. I'm David
22 Billings. I'm the chief water engineer. I'm not the
23 applicant, but I guess tonight I got the short straw
24 and I'm representing the applicant.

25 I have with me Allen Smith. Raise your hand,

1 Allen. He's at the back of the room. He's the water
2 distribution superintendent. He's the person that is
3 responsible for not only all of the water tanks in our
4 distribution area, but also all of the pipes and all
5 of the pump stations.

6 I also have with me from Strand Mr. Webber.
7 Can you raise your hand? He is the engineer of record
8 for this project, doing all of the intrinsic design.

9 I came tonight to answer questions, if you
10 had any. I'll do my best to answer them. I wanted to
11 make sure that you received the finding of no
12 significant impact that was given to the plant board
13 today from department of energy or environment, and I
14 also brought with me the presentation that we gave to
15 the city commission, which all of the information that
16 we give to the city commission is pertinent.

17 There's a lot of information with regard to
18 some of the questions that you've had tonight, and
19 I'll be willing to go through that presentation if
20 it's so desired by this board.

21 MR. CHAIRMAN: Would you-all choose see
22 that -- to see that presentation tonight?

23 MR. JACKSON: Well, Mr. Chairman, I would
24 suggest to you that we receive whatever information
25 the plant board wishes us to have, and on the basis of

1 that question and answer, we debate and deliberate and
2 come up with a --

3 MR. LOGAN: I would submit that whatever the
4 applicant has needs to address the issues of the
5 comprehensive plan and not something else. We're here
6 on a limited scope.

7 MR. CHAIRMAN: Yes.

8 MR. BILLINGS: I'm not a expert in the
9 comprehensive plan, so...

10 MR. LOGAN: Do you have anyone to testify
11 with regard to the issues of the comprehensive plan?

12 MR. BILLINGS: No.

13 MR. JACKSON: Then I would say let's go with
14 what we got.

15 MR. CHAIRMAN: We'll go with what we have,
16 then.

17 MR. BILLINGS: Okay.

18 MR. CHAIRMAN: All right.

19 MR. JACKSON: I think we get to ask somebody
20 some questions, don't we?

21 MR. CHAIRMAN: Uh-huh.

22 MR. JACKSON: Who do we get to ask questions
23 to?

24 MR. CHAIRMAN: Okay. Is there anyone here
25 representing the comprehensive plan that would like

1 to --

2 MS. CROSS: You mean the plant board?

3 MR. CHAIRMAN: Plant board.

4 MR. JACKSON: Mr. Chairman, I think the
5 representative of the Frankfort Plant Board, the
6 engineer, or the guy that's supposed to be the expert
7 on water tanks should be available to answer questions
8 with regard to the plant board's submission. If they
9 can't answer the question, then we take whatever
10 information we have and move forward.

11 MR. CHAIRMAN: Mr. Billings?

12 MR. JACKSON: Now, you know, legal counsel
13 may say that I'm incorrect.

14 MR. LOGAN: About what, sir?

15 MR. JACKSON: What I just said, sir.

16 You tuning me out, Mr. Logan?

17 MR. LOGAN: I don't understand. Would you
18 please tell me what you -- you're referring to, and
19 I'll be happy to give --

20 MR. JACKSON: All I said to Mr. Chairman is
21 that Mr. Dillon [sic] brought the guy back there
22 that's the expert on water tanks, or the engineer,
23 should be able to answer any question that the
24 commission has, and the representative of the
25 opposition. And if they don't -- can't answer the

1 question, we take what we have and deliberate and move
2 on.

3 MR. LOGAN: I think that's a fair
4 statement.

5 MR. BILLINGS: Mr. Jackson, I am the chief
6 water engineer at the Frankfort Plant Board, and I'm
7 the project manager for this project, so...

8 MR. JACKSON: Okay.

9 MR. CHAIRMAN: Do you have a question for
10 him?

11 MR. JACKSON: Yes, sir, I have a question for
12 either of the three of them.

13 I read in the report that the plant board is
14 proposing to install a nine million gallon tank in
15 place of the existing tank.

16 MS. CROSS: Seven, not nine.

17 MR. BILLINGS: No, sir.

18 MR. JACKSON: So the nine -- the nine million
19 is the existing?

20 MR. BILLINGS: 9.2 --

21 MR. JACKSON: Okay.

22 MR. BILLINGS: -- is what is existing.

23 MR. JACKSON: Well I round a lot, so --

24 MR. BILLINGS: Okay. I'll round with you.

25 MR. JACKSON: The nine million, or the 9.2

1 million, is the existing.

2 MR. BILLINGS: We have two cells. Each cell
3 up there is 4.6.

4 MR. JACKSON: Okay.

5 MR. BILLINGS: So our -- what our proposal
6 was is to eventually demolish both of those cells and
7 replace one of those existing cells with a new seven
8 million gallon tank. That's all we need.

9 And for the foreseeable future, I don't think
10 any of us will be alive when that second seven million
11 gallon tank is needed.

12 MR. JACKSON: Okay.

13 MR. BILLINGS: Hopefully, okay? We really
14 think it's the year 2060 or beyond --

15 MR. JACKSON: Okay.

16 MR. BILLINGS: -- based on our projections.

17 So the plan occupies one of those basins with
18 a seven million gallon tank, and it saves space for
19 another seven million gallon sister tank right next to
20 it. Now both of those tanks have a significantly
21 smaller footprint than what's existing today.

22 They're a little bit taller at the sidewall,
23 and new tanks have a dome. We looked at -- through
24 the process of all of this, we looked at three
25 different roof options: A flat roof, which added

1 \$1.75 million to each tank; a full dome roof, which is
2 what has been proposed. It's one-tenth of the
3 diameter. So what that means is the diameter is
4 185 feet, so the height of that dome at the apex would
5 be 18 and a half feet.

6 There's also another option that was called a
7 half dome. It was -- it's 1/16th of the diameter.
8 And I don't have the math in front of me, but it's --
9 would add approximately nine feet at the center of the
10 apex of the roof. That was an additional half million
11 dollars, flat roof was an additional \$1.75 million
12 dollar, and there's no additional for the one-tenth
13 dome, which is what has been proposed.

14 MR. JACKSON: So the proposed tank, in terms
15 of how far down in the ground it's now going, can it
16 go further?

17 MR. BILLINGS: No, sir. That would not be --
18 that would -- I would recommend against that.

19 MR. JACKSON: Why?

20 MR. BILLINGS: The reason being, we have a
21 pump station across the route -- road from Tangelwood
22 Drive. It is the pump station that pumps to the west
23 side of town. It already today has low pressure
24 problems, okay, because of its proximity to the pump
25 station.

1 If we to -- were to lower the tank, we run
2 into problems in two different areas: We're reducing
3 the pressure at that pump station where we're already
4 having problems and habitation issues, and there is a
5 division of water ruling that says you cannot
6 completely bury a potable water tank.

7 So the dimensions about what we're talking
8 about, if you were to put it in the ground that far,
9 you would have no pressure at the pump station, or
10 even less than what you have today. You have lower
11 pressures, and all of our system is designed to pump
12 to an elevation.

13 A elevation exists at the -- at the location
14 that it is now, so changing the elevation of the tank
15 very much one way or the other from where it is now
16 could have a drastic effect of all the pump stations
17 that pump to that, being the water treatment plant,
18 and all of the pump stations that pump from that tank,
19 and those are the ones that go east and west, okay?

20 MR. JACKSON: Okay. Now --

21 MR. BILLINGS: And this is all explained in
22 the presentation that we gave to the city commission,
23 so if you have more detail, I would like to refer back
24 to that.

25 MR. JACKSON: Okay. Well you can refer back

1 to that, but let me ask my next question.

2 MR. BILLINGS: Okay.

3 MR. JACKSON: Why can't technology assist
4 with the issue regarding pressure? You got all kinds
5 of pumps out there that would help with that. And
6 your comment, if I recall correctly, was that you
7 cannot completely bury the tank, which says to me that
8 there is an opportunity, an option, to bury it further
9 than what it is proposed so that, in accordance with
10 the comprehensive plan, you get to remain a good
11 neighbor to the neighborhoods that you were adjacent
12 to.

13 So I'm -- I am really trying to discover,
14 with your help, whether or not there is an opportunity
15 to go further down -- didn't say completely bury it,
16 but mitigate that with technology, which we know is
17 available that will help with the -- with regard to
18 the pressure needed in order to be able to service the
19 Franklin County community and its -- and your
20 customers.

21 MR. BILLINGS: To change the hydraulics, the
22 overflow or the elevation of that tank significantly,
23 you would have to redesign the water treatment plant,
24 the pump stations at the water treatment plant.

25 MR. JACKSON: Okay.

1 MR. BILLINGS: I have no idea what that would
2 cost, but those pump stations aren't cheap.

3 The pump stations that pump to the east and
4 to the west use the reservoir as the overflow, the
5 back pressure to those pump stations. I would guess
6 those pump stations are probably a million dollars
7 apiece. So there's a good chance, depending on how
8 much it has moved up or down, that you would have to
9 build new pump stations.

10 So, I mean, we're really confined to an
11 overflow elevation, and that's the water service in
12 the tank, for what we currently have, okay?

13 MR. JACKSON: Well let me --

14 MR. BILLINGS: Really -- our design
15 constraints are really narrow. And from what I
16 understand, the objection is based on the roof, okay,
17 the dome height. There's no water up in there. That
18 doesn't serve any purpose to store water. That's
19 just -- so a -- perhaps a different roof profile --

20 MR. JACKSON: Well are you -- are you --

21 MR. BILLINGS: -- is what you're suggesting.

22 MR. JACKSON: Are you suggesting that the
23 dome roof not be placed on the tank and a flat roof of
24 some kind be there?

25 MR. BILLINGS: Our board decided -- we looked

1 at all three options, and our board decided on the
2 one-tenth dome. Perhaps that might be a suggestion
3 that this body would like to take up. I can't speak
4 for our board, only to tell you that that decision has
5 been made at a previous board meeting.

6 MR. JACKSON: Well politically you can't
7 answer the question that I would raise based on what
8 you just said, but if our recommendations can't be
9 implemented, why are you here?

10 MR. BILLINGS: This is the first time, to my
11 knowledge, I've ever been here or -- I can't answer
12 your question.

13 MR. JACKSON: Didn't think so.

14 So as the -- as the representative of the
15 applicant, we know that the primary objection is to
16 having a unsightly and humongous facility setting
17 adjacent to the homes that are closest to the site.
18 And while I haven't heard anyone object to the
19 renovations and the placement of the water tank but,
20 rather, the unsightliness that has been -- that is
21 being created as a result of the proposal of what to
22 replace it with.

23 You don't have any suggestions as to how that
24 can be accomplished?

25 MR. BILLINGS: I thought that's what we were

1 doing with the landscaping and the fencing that our
2 board has said that they would comply with.

3 MR. JACKSON: But that doesn't change, in any
4 way, what -- what's being placed there. It's an
5 attempt to hide what has been placed there. Not what
6 has been placed there, but what is proposed to be
7 placed there. And what we're, I presume, looking for
8 is a solution that mitigates that to some extent such
9 that it's not an overbearing -- that's my word and no
10 one else's -- an overbearing facility to those homes
11 that are adjacent to that site.

12 But let me ask a different question. I'll
13 ask the question a different way. And, Mr. Chairman,
14 you can stop me whenever you feel that I've gone too
15 far.

16 MR. CHAIRMAN: I will.

17 MR. JACKSON: Of the proposed tank that's in
18 your plan, how much of the capacity in that tank is
19 required to service the citizens of Franklin County as
20 opposed to capacity that would be used for persons
21 external to Franklin County.

22 MR. BILLINGS: Be hard to segregate that, but
23 I can tell you that we consider all of our customers,
24 and --

25 MR. JACKSON: I understand that.

1 MR. BILLINGS: We do. And we look at each
2 customer based on the cost of service study
3 principles. And I can tell you that our ratepayers,
4 our city ratepayers and our county ratepayers, are
5 very fortunate that we sell water outside this
6 community because we help keep everybody's rates
7 lower.

8 And back to your capacity question: We do
9 need seven million gallons of storage, okay?

10 MR. JACKSON: But does that seven million
11 gallons of storage need to come in a single tank, or
12 could it be a four million plus a three million, which
13 significantly lowers the dome?

14 MR. BILLINGS: That capacity could come in
15 seven one million gallon tanks, but that's not the
16 least cost solution.

17 What the -- what staff has proposed and what
18 the board has approved is by far the most least cost
19 alternative to give us the seven million gallons
20 capacity that we need and also provide a space for
21 another tank in the future where it's the cheapest
22 place in Frankfort by a far margin, we're talking
23 \$10 million or more margin, to put that capacity
24 somewhere else.

25 MR. LOGAN: Mr. Chairman, the point of order,

1 at the risk of stopping this debate: We are here for
2 whether or not this applicant is going to address the
3 comprehensive plan issues and not the cost
4 effectiveness of a gallon of water, wherever it may be
5 placed.

6 MR. CHAIRMAN: Mr. Billings, proceed.

7 MR. JACKSON: Mr. Chairman?

8 MR. CHAIRMAN: With that in mind, please.

9 MR. BILLINGS: Yes, sir.

10 MR. JACKSON: Yes, sir. No, no, no. I
11 don't -- I don't -- I'm not arguing with my legal
12 counsel.

13 MR. CHAIRMAN: Talking about the cost of a
14 tank.

15 MR. JACKSON: That's the person that --

16 MR. CHAIRMAN: Yes.

17 MR. JACKSON: -- keeps me out of trouble.

18 MR. BILLINGS: I am not a comprehensive plan
19 expert. I've never read the comprehensive plan as --
20 it has never been an issue up to this point.

21 MR. CHAIRMAN: Okay. Thank you.

22 UNIDENTIFIED SPEAKER: Okay. Mr. Chairman.

23 MR. CHAIRMAN: Yes, sir.

24 UNIDENTIFIED SPEAKER: I think I'm on point,
25 but you can disagree with your former teacher and I

1 won't give you any wrath or argument. But I guess I
2 have two or three things to say.

3 I think I would -- and I hate to jump on our
4 new planner, but I think I would have been happier if
5 you-all had been more decisive in your findings of
6 fact than straddle the line. But one of the things
7 that really disturbs me about this plan, and I
8 understand all that you've said earlier and the needs
9 and the cost and everything else.

10 But -- and this may be too strong, but we're
11 destroying the neighborhood, one that has been a
12 premier neighborhood in this town as long as I can
13 remember. And that part disturbs me greatly.

14 THE CHAIRMAN: Yes, and you're referencing
15 goal 6?

16 UNIDENTIFIED SPEAKER: Yes.

17 MR. CHAIRMAN: Thank you for sticking with
18 it, the issue at hand. Thank you very much. I
19 appreciate that and respect my elder down there.

20 Did you have a third point? You had -- I
21 thought you had three.

22 UNIDENTIFIED SPEAKER: Oh, I think I -- I --
23 I'm going --

24 MR. CHAIRMAN: You better go. You're going
25 to stop right there?

1 MR. JACKSON: That's goal 6.

2 UNIDENTIFIED SPEAKER: No, I didn't.

3 Mr. Logan would get after me on that one. But I'm
4 going to -- I'm going to quit while I'm ahead.

5 MR. CHAIRMAN: Okay. Thank you very much.

6 MR. BILLINGS: I would be remiss if I did not
7 pass on the fact. I wanted to remind this board, I
8 reminded our other board, of the effort that staff has
9 gone through to make this new tank look as much as
10 reasonably possible as the old tanks.

11 We don't need -- the plant board does not
12 need the embankment up against the tank. The plant
13 board does not need anything other than the elevation
14 and the structure and the location of where it's at.

15 The old tanks were partially buried, the new
16 tanks were partially buried, as much as reasonably
17 possible. The height of the existing roof matches
18 with less than three feet of the height of the
19 existing roof.

20 We've gone, in my opinion, as far as we can
21 reasonably go trying to make it look like what exists
22 up there today.

23 MR. CHAIRMAN: All right. Thank you for your
24 comments, and --

25 UNIDENTIFIED SPEAKER: Mr. Chairman, one

1 short question.

2 MR. CHAIRMAN: Uh-huh.

3 UNIDENTIFIED SPEAKER: Because I haven't
4 followed this maybe like I should because I didn't
5 think we would ever be dealing with it.

6 MR. CHAIRMAN: We thought somebody else was
7 taking care of it, didn't we?

8 UNIDENTIFIED SPEAKER: What was the vote at
9 the water plant, by the water plant board members, on
10 this proposal?

11 MR. BILLINGS: To my knowledge, every vote --
12 and there has probably been three or four different
13 ones -- I believe every one of them have been
14 unanimous.

15 MR. CHAIRMAN: Okay. Thank you.

16 MR. LOGAN: Could we have an opportunity to
17 ask him some questions?

18 MR. CHAIRMAN: Yes, that's what I was getting
19 ready for. Please. Thank you.

20 Okay. So we're going to have the opportunity
21 for questions from the audience. That's next on our
22 agenda. And those questions can be directed to either
23 you or to our city planner as deemed necessary.

24 Who signed up there, please? Who's first?

25 THE CLERK: Nathan Vansickle.

1 MR. VANSICKLE: I'm going to defer to
2 Mr. True for that at this particular time, if that's
3 okay with the commission.

4 THE CLERK: Guthrie True was the second.

5 MR. CHAIRMAN: Okay. Mr. True?

6 MR. TRUE: Thank you, and I'm an attorney. I
7 represent the property owners. I've just got just a
8 very few questions.

9 UNIDENTIFIED SPEAKER: Have him come up to
10 the mic.

11 MR. CHAIRMAN: Would you -- yeah, we record
12 this, so would you mind coming up, please?

13 MR. TRUE: Sure.

14 MR. CHAIRMAN: Thank you.

15 MR. TRUE: My questions are for Mr. Billings,
16 so...

17 MR. CHAIRMAN: Mr. Billings, don't leave,
18 please.

19 MR. TRUE: So he -- he's going to be recorded
20 also?

21 MR. CHAIRMAN: Yes, he's going to be
22 recorded. He's coming back.

23 MR. BILLINGS: I'll do my answers -- I'll try
24 my best to answer.

25 MR. TRUE: Mr. Billings, you received, or the

1 plant board received, a copy of the staff report and
2 recommendation on this proposal; is that right?

3 MR. BILLINGS: Yes.

4 MR. TRUE: And you saw in there where the
5 staff's final recommendation was that the project did
6 not fully comply with the comprehensive plan; is that
7 right.

8 MR. BILLINGS: I have read the report.

9 MR. TRUE: And that's what it said, right?
10 That it did not fully comply with the comprehensive
11 plan?

12 MR. BILLINGS: I believe that's what it
13 said.

14 MR. TRUE: Did you come here today with any
15 authority to make any change in the plant board's
16 proposal to cause the proposal to fully comply with
17 the comprehensive plan?

18 MR. BILLINGS: No, sir. I came here tonight
19 to represent as best I could and to take any written
20 correspondence from this board back to consideration
21 to our board in accordance with the statute.

22 MR. TRUE: Okay. And I'm going to keep my
23 questions strictly to the comprehensive plan.

24 MR. CHAIRMAN: Thank you.

25 MR. TRUE: But these next questions do

1 relate --

2 MR. CHAIRMAN: Okay.

3 MR. TRUE: -- to the comprehensive plan.

4 You've made mention in your comments to the
5 commission that there is a plan eventually for two
6 tanks on this site; is that right?

7 MR. BILLINGS: That is correct.

8 MR. TRUE: Each of them will be seven million
9 gallons; is that right?

10 MR. BILLINGS: That's the plan.

11 MR. TRUE: The current capacity up there in
12 two tanks, or two units, is 9.2 million gallons, or
13 two 4.6 million gallon tanks; is that right?

14 MR. BILLINGS: That is correct.

15 MR. TRUE: You're aware that the property
16 owners have conceded and proposed replacing those with
17 two 4.5 million gallon tanks; is that right?

18 MR. BILLINGS: I thought it was 4.6.

19 MR. TRUE: Or I'm thinking 4 --

20 UNIDENTIFIED SPEAKER: 4.6.

21 MR. TRUE: 4.6. I stand corrected.

22 You would agree with me that if the one,
23 seven million gallon tank meets the city and county's
24 present needs, certainly two 4.5 million gallon tanks,
25 nine million gallons of water, would meet the city and

1 the county's present and future needs; is that
2 right?

3 MR. BILLINGS: State your question again.

4 MR. TRUE: Yeah. You've already told us that
5 seven million gallons is what you need to meet the
6 needs of the city and the county, right?

7 MR. BILLINGS: Correct.

8 MR. TRUE: That's what you currently
9 proposed.

10 MR. BILLINGS: Correct.

11 MR. TRUE: So certainly two 4.6 million
12 tanks, 9.2 million gallons, would meet those needs,
13 right?

14 MR. BILLINGS: It would over exceed, yeah.

15 MR. TRUE: It would be plenty for your needs;
16 is that right?

17 MR. BILLINGS: It's more than enough that we
18 need currently.

19 MR. TRUE: Now you mentioned that the second
20 tank, you didn't foresee it being that the plant board
21 needing it until 2060; is that -- that was your
22 testimony --

23 MR. BILLINGS: Yes.

24 MR. TRUE: -- is that right?

25 MR. BILLINGS: Well we're not testifying, are

1 we?

2 MR. TRUE: Yeah, I think you are.

3 MR. BILLINGS: Are we testifying?

4 MR. TRUE: No, I think you are.

5 THE CLERK: It is a public --

6 MR. BILLINGS: This is all new to me.

7 MR. TRUE: Well that -- now you know.

8 MR. CHAIRMAN: Excuse me. Mr. Billings,
9 whether you realize it or not, everything you're
10 saying is becoming a matter of record tonight.

11 MR. BILLINGS: That's fine.

12 MR. CHAIRMAN: Thank you.

13 MR. TRUE: So you mentioned that -- speak for
14 yourself, but none of us plan to be here in 2060.
15 Mr. Roach and I plan to still --

16 MR. ROACH: Yeah, right.

17 MR. TRUE: -- be here, but that neighborhood
18 is still going to be here hopefully in 2060; is that
19 right?

20 Right?

21 MR. BILLINGS: I would assume so.

22 MR. TRUE: Yeah. So we're not just talking
23 about us; we're talking about the future.

24 That neighborhood is still going to be there,
25 right?

1 MR. BILLINGS: It's just 40 years.

2 MR. TRUE: Now I'll take that as a yes.

3 Now let me ask you this: When you talk
4 about -- and this goes to the comprehensive plan --
5 when you talk about need, what do you mean by "need"?

6 The plant board is now not just using its
7 present water capacity to meet the needs of the
8 Franklin -- Frankfort and Franklin County, or at least
9 that portion of the county served by the Frankfort
10 plant board; isn't that right?

11 A lot of that water capacity is sold outside
12 the county to other municipalities and cities and
13 counties; is that right?

14 MR. BILLINGS: Absolutely.

15 MR. TRUE: All right. So when you talk about
16 need, you are not talking about just the need of
17 Frankfort and Franklin County; you're talking about
18 the need of the entire customer base of the Frankfort
19 plant board; is that right?

20 MR. BILLINGS: Yes, because we can't
21 segregate our customer base.

22 MR. TRUE: So if the Frankfort plant board
23 continues its current business plan to create a larger
24 customer base, that may, in fact, create a need, from
25 your-all's perspective of that second tank, earlier

1 than 2060; isn't that true?

2 MR. BILLINGS: Everything is true.

3 MR. TRUE: Thank you.

4 MR. CHAIRMAN: Thank you, Mr. True.

5 MR. BILLINGS: That's -- may I say something?

6 MR. CHAIRMAN: Sure. Go ahead.

7 MR. BILLINGS: I can stand up here and tell
8 you that our projections are out to 2060. We don't
9 know what our water -- what our water demands are
10 going to do. We react to them.

11 When our water treatment plant was built, it
12 was built with a capacity of 18 million gallons a day
13 with the foresight that one of these days that we
14 would use that capacity, okay?

15 I can tell you the need for water storage
16 today is seven million gallons. I can't tell you in
17 the future whether that's going up or going down. I
18 can project it based on growth that it is going up
19 slightly.

20 Our plan, the plan that staff recommended and
21 the plan that our board has approved, meets those
22 needs today and saves space for additional tank in the
23 future if we don't need it, but importantly, if our
24 demands were to go down and we need less, we haven't
25 overbuilt, okay?

1 MR. CHAIRMAN: Okay.

2 MR. BILLINGS: So the seven now, seven later
3 gives us the most operational flexibility to meet our
4 customer needs today and in the future, so...

5 MR. CHAIRMAN: Thank you.

6 Okay. Just hang tight there.

7 We have a third person that's signed up
8 there?

9 THE CLERK: Lee Waterfield.

10 MR. CHAIRMAN: No questions? All right.

11 Thank you. You may -- you may be seated,
12 then.

13 MR. BILLINGS: Thank you.

14 MR. CHAIRMAN: Thank you very much for your
15 comments.

16 Mr. True, thank you, sir.

17 MR. TRUE: Thank you.

18 MR. CHAIRMAN: Just by chance, is there
19 anyone else in the audience that wishes to speak? If
20 so, we'll get you to sign in.

21 Sir, coming back to you?

22 MR. VANSICKLE: May I take my opportunity?

23 MR. CHAIRMAN: Yeah, we'll give you that
24 opportunity, since you signed up.

25 MR. VANSICKLE: Thank you very much.

1 MR. CHAIRMAN: Thank you for being here.

2 Be sure and state your name for the record,
3 please.

4 MR. VANSICKLE: Yes, sir.

5 MR. CHAIRMAN: Yes. Yes, he's signed. Yes,
6 yes.

7 MR. VANSICKLE: I've got a presentation for
8 the commission.

9 My name is Nathan Vansickle. I am the
10 president of the Tangelwood Neighborhood Association,
11 and I've got a presentation that I'm going to go
12 through, and then I believe Mr. True will kind of
13 finalize our presentation to the commission this
14 evening.

15 I would like to start by saying thank you
16 very much for the opportunity to speak in front of
17 you. The neighborhood greatly appreciates that. But
18 as we're getting this pulled up, a little background
19 on this.

20 The neighborhood has been dealing with this
21 project since November of 2016 when the plant board
22 first started getting rolling with it, and we've --
23 many of my neighbors, you know, we've spent countless
24 hours at meetings, and whether it be the plant board
25 meetings, the city commission meetings, on this.

1 This is extremely important to us. We've
2 stayed extremely involved, and we have done everything
3 we can to try to meet a resolution on this outside of
4 seven million gallon tanks going in our neighborhood.

5 I would like to start off tonight and make
6 sure the commission is aware that this proposal that
7 we're looking at, although the plans that were
8 provided to you is a two-tank proposal from the plant
9 board. Right here are two slides that were presented
10 to the board of directors on April 16th of 2018, four
11 months ago.

12 And the one on the left is obviously a design
13 print, and you can see to the far left, that is the
14 tank that has been represented in the set of plans
15 that you have. And then on the right, you can see
16 future. That is the second tank. You also know the
17 3D rendering. That, again, was in the staff report
18 that you have probably seen. You can see the second
19 tank being shown on this 3D rendering.

20 When we start talking about a two tank
21 proposal, then, of course, the cost for those
22 increase. So when we're talking of those two tanks,
23 now we're talking about somewhere in the replacement
24 cost between eight and \$8.5 million in replacement
25 cost. Not only does the cost increase, but the

1 negative findings that were found by the staff, those
2 double because now we have two of them up there.

3 TNA concerns with the current proposal. The
4 south tank is closer to Hay Avenue, and we're going
5 to -- we're going to go through and look at exactly
6 where Hay Avenue is. The problem is when we move it
7 to -- closer to Hay Avenue, it moves that tank closer
8 to an existing antenna tower, head-in building, and
9 satellite dishes that are already there. And when
10 they do that, we are not able to get our earthen berm
11 that covers up the sidewall on that tank.

12 The second one is a tank with roof design is
13 significantly higher, and that word, "significantly,"
14 is extremely important because we just heard that it's
15 just a little bit taller. And we heard in the paper
16 yesterday, it's just a little bit taller. And I'm
17 going to show you how significantly taller this plan
18 is.

19 Here's the current -- here's the current
20 reservoir. I would like to start -- does this have
21 a -- does this have a red?

22 UNIDENTIFIED SPEAKER: Yes.

23 MR. VANSICKLE: So this is a 3D map of our
24 neighborhood. This right here, this is Louisville
25 Road. This is the primary entrance into the

1 Tangelwood neighborhood. This right here is
2 Tangelwood Drive. This right here is Hay Avenue. So
3 when we talk about the tank moving closer, this south
4 tank is going to move closer, down here closer to the
5 head-in building and these satellite dishes, to Hay
6 Avenue.

7 This right here is Reservoir Road, this road
8 here on the back is Owsley Avenue, and this is
9 Altamont Drive right here.

10 This is a picture of the current reservoir.
11 The reason why I put this in here is it's important to
12 note that right now, current reservoir, you can see
13 very limited amount of sidewall. And of course, it
14 has a flat roof, so you don't see the dome at all.

15 The other thing that's important to note is
16 that as you look around this, is the sidewall that we
17 see is fairly consistent all the way around the
18 existing reservoir.

19 So 188 feet in diameter. And I don't know if
20 you can recognize this from the sky, but this right
21 here is the building that we're sitting in right now
22 today. Right now. This is the old Frankfort Plant
23 Board administrative building, this is your firehouse,
24 this is the city hall, got a planning and zoning
25 building.

1 If you measure all of those buildings
2 together from front corner to front corner, it comes
3 out right at 190 feet, two feet more than the tank.
4 This is a two-story building. Now I didn't scale the
5 wall to tell you exactly how tall it is, but in
6 general, they will measure stories on buildings at ten
7 feet.

8 Again I am not suggesting that this is
9 exactly 20 feet, but it gives you a ballpark of where
10 we're at. So if you look at this circle right here,
11 this is what this tank, one tank, is going to
12 represent, basically the entire width of this half
13 block, and it goes all the way back into the back
14 parking lot.

15 This right here is sheet 8 from the FPB water
16 storage improvement project. Right here is -- to
17 note, is right now is what we see in sidewall is about
18 seven feet, okay? Again you see this is the outline
19 of the new tank.

20 This right here, this is the top of the
21 existing reservoir, and this right here is the -- is
22 the bottom, the bottom of the existing reservoir. So
23 you can tell right there, based off of -- based off of
24 these numbers, about seven feet is what we see all the
25 way around it.

1 Again this is sheet 8. We're just going to
2 pay a little attention to something else here.

3 So in order to protect the instructional
4 integrity -- constructual integrity, I'm sorry, of the
5 north basin while they build this tank, they're having
6 to move this new tank 15 foot closer to Hay Avenue.

7 When they do that, then you can tell right
8 here we lose 19 feet of earthen berm on the Hay Avenue
9 side. So moving 15 foot is going to lose us 19 feet
10 on the Hay Avenue side.

11 So we talk about just a little bit higher,
12 okay? Again this is sheet 8. You see down here this
13 black line right here? It's actually dark gray. This
14 is resembling about where the earthen berm, the grass,
15 will come up to -- the dirt will come up to. This is
16 on the Hay Avenue side.

17 This is on the back side, which would be
18 Owsley, Altamont. This is going to be back side, and
19 it's going to be about 11 foot, I believe, of just to
20 the top of the actual tank itself.

21 But when you include the dome on the back
22 side, all right, the best possible visual impact that
23 we're going to have of this thing, we're looking at 29
24 and a half feet. As this tapers down to the lowest
25 part on Hay Avenue, right here in the middle we're

1 going to be somewhere around 37 and a half feet. And
2 on the Hay Avenue side, we're at 46 and a half feet.

3 That's what we're looking at. So when we
4 take this building, when we go back and look and think
5 about this half block right here, not only diameter
6 wise, width wise, are we going to have the full block,
7 but our neighbors on the Hay Avenue side, they're
8 going to have buildings stacked on top of each other.

9 This is a -- this is just a comparison. The
10 current view obviously is what we see right now.

11 Again you can see that's about seven foot all the way
12 around. The proposed views, those are based off of
13 the streets, Tangelwood Drive, Hay Avenue, Reservoir
14 Road, Owsley Avenue, Altamont Drive, Louisville Road.

15 Louisville Road is important because not only
16 is at the -- pretty much the -- you know, the main
17 entrance to our neighborhood, but it's also, on this
18 side of town, the best way of getting downtown. It's
19 what everybody's going to pass to get downtown and to
20 our state capital. When they drive by, they're going
21 to see 20 -- 22 and a half to 30 and a half feet of
22 concrete.

23 This right here, this is a presentation that
24 was given by Strand Associates. I believe this was
25 given at the plant board in 2010. This study was

1 basically done to try to figure out how to move
2 forward with the reservoir. Could it be replaced?
3 You know, could it be repaired? Did it need to be
4 replaced?

5 And I'm not going to -- I don't feel the need
6 to go through all of it. I wanted to show it to you.
7 The two slides that are most important are at the end,
8 they talk about the options, and one of the options
9 that Strand Associates gives to the plant board is to
10 replace with two 4.5 million gallon tanks. And on the
11 recommendations, that was their recommendation, to
12 replace with those two tanks.

13 So the study that was done that the plant
14 board used to move forward with a new reservoir
15 suggested two 4.5 tanks. And now, at the end of the
16 day, we're going to get two sevens.

17 This chart right here talks a little bit
18 about the demand. Again this is from a presentation
19 to the board of directors on April 16, 2018. And this
20 demand talks about -- this uses the last 20 years,
21 from 1996 to 2016, for data. And this is important
22 because when we talk about demand and peak or trend,
23 that's what we're using in order to get -- that's what
24 they're using in order to talk about, you know, how
25 much water they'll need in the future, is -- are these

1 kind of demand trends.

2 But the thing to point out here is when you
3 lose 20 years of it, in 1996, the average demand was
4 6.4 million gallons. In 2006, it was 7.7. That's an
5 average increase of 1.267 million gallons of water.
6 But when you look at it from 2006 to 2016, that demand
7 goes from 7 -- 7.7 to 7.8. It's only 172,000
8 difference.

9 So why is that important? That's important
10 because if you just looked at the last ten years,
11 instead of the last 20 years -- my apology, it
12 flattens this demand trend out significantly. This
13 right here, we requested the data that it used to --
14 the plant board used to get those projections, and
15 this is a chart. And the only thing that we're doing
16 right here is -- again it's the exact same data. You
17 know, we don't have all of the blue right here, but
18 it's the same data.

19 And what we're doing here is projecting out
20 how long if we kept the existing capacity, okay, so
21 the 9.2 that we have up there, if we kept that
22 existing capacity, how long that would take before
23 the -- you know, Frankfort would have to worry about
24 additional water. And you cannot see this up here on
25 the thing, but that is 2125 right there, is that

1 number, over a hundred years.

2 So FPB water storage. As we saw in that last
3 plan, in other locations around the city, as well as
4 maybe the county, they have 6.6 million gallons of
5 water storage. In plant -- in Tangelwood right now,
6 they have 9.2. That's a total of 15.8, which means
7 60 percent of the water storage that the plant board
8 has is housed in our neighborhood.

9 Now under the future gallons and the
10 proposal, you still have the 6.6 in other locations,
11 but now in Tangelwood you have 14 million gallons of
12 water. And Tangelwood would basically house
13 70 percent of the FPB water storage for the plant
14 board.

15 The question is: How much is enough? How
16 much should one neighborhood have to bear. We have
17 the head-in building that was constructed, that is
18 basically the whole operation for their telecoms.
19 We've got all the satellite dishes. We've got the
20 clubhouse and everything else that's going on up
21 there. How much should one neighborhood have to bear
22 for a public utility?

23 FPB water rates, there has been a lot of talk
24 about rates. So this right here is pulled directly
25 from the FPB website. Right now the water rates for

1 somebody who lives inside the corporate city limits of
2 Frankfort is \$5.55 per thousand gallons. Outside the
3 corporate city limits of Frankfort, Franklin County,
4 \$6.49.

5 Yeah, this is water rates continue.

6 Somewhere around 40 percent of the water
7 distribution is out of Franklin County. So about 40
8 percent of their total water distribution is outside
9 of Franklin County. Again this is, again, from the
10 FPB website. Talks about Woodford, Anderson, Shelby,
11 Scott, Henry, and Spencer.

12 As of November 1, 2017, FPB wholesales this
13 water at \$2.55 per 1,000 gallons per the -- that's per
14 the public service commission.

15 This right here is --

16 MR. ROACH: Excuse me.

17 And then you're saying we're paying \$5 and
18 something, and we're sending it to other counties
19 for --

20 MR. VANSICKLE: \$2.55

21 MR. ROACH: Okay.

22 MR. VANSICKLE: Yes, sir.

23 This right here --

24 MR. JACKSON: That's in the report.

25 MR. VANSICKLE: -- this is from the

1 Georgetown Municipal Water and Sewer Service's
2 website. They are the -- one of the -- at least one
3 of the customers in Scott County that the FPB sells
4 water to. So they buy water from the FPB, and I'm
5 sure that it's not all the water that they distribute,
6 but they do buy water from FPB, at least partial of
7 it, for \$2.55, and they sell it -- I'm sorry, this is
8 not showing up very well -- they sell it to their
9 customers for \$4.80.

10 So our hometown utility company is charging
11 us \$5.55 while it's selling to Scott County at \$2.55,
12 and they're, in turn, turning around and selling it to
13 their customers for \$4.80.

14 I mean, my question is: Maybe we should have
15 Scott County pump that back to us and sell it to us
16 for \$4.80. Good. Good.

17 The landscaping right here, this is sheet 12
18 from the water storage improvement, the plan set that
19 you have right now for this project. This is
20 sheet 12.

21 This dotted line right here, and you can't
22 see that very well, this is representing as
23 landscaping that was done in the phase 1 of the
24 project, okay? This is important because this sheet
25 right here, this is L101, and this is the FPB

1 telecommunications head-in facility site and demo.

2 So this is the first set of plans that you
3 reviewed by planning and zoning. I do not believe it
4 came to the -- to the commission board, but it was
5 reviewed by the planning director at that time. So
6 in this set of plans right here, and you can see this
7 dotted line right here around it, that was the phase 1
8 landscaping.

9 And when -- during the initial mediation of
10 this, the city requested Inside Out, you know, a local
11 company here, design a landscaping plan for this site.
12 And when they did that, it included the landscaping
13 all the way down Tangelwood Avenue to the entrance.

14 Now when the plant board came back, when we
15 actually started working on this between the plant
16 board and the neighborhood, they said, you know: Hey,
17 we've got to make a change to this. We've got to cut
18 out this portion right here, because we're getting
19 ready to do this reservoir project, and we need to be
20 able to move dirt to that location.

21 So they removed that piece from the phase 1
22 landscape. However they don't have it included in
23 their phase 2 landscaping. So neither phase 1, which
24 is this, phase 2 represents this great big piece of
25 landscaping which goes all the way -- this is all the

1 way down Tangelwood Drive right here to the front
2 entrance.

3 Good. TNA's stance. When we first started
4 on this, you know, TNA felt like this was really --
5 this was an industrial use situation. You know, water
6 tanks didn't need to go in our neighborhood. We
7 revised that.

8 After we started meeting with the plant
9 board, the options, you know, Mr. Billings talked
10 about the elevation, because of that elevation,
11 there's limited options inside Frankfort.

12 And based on that, we revised our stance, and
13 we came up with a stance that says: In the results of
14 an independent review, find that the current location
15 is in the best interest of the entire community. The
16 TNA has agreed to not oppose a new reservoir in the
17 current location as long as the new reservoir does not
18 alter the current visual impact. And I hope that
19 there's one take-away from my presentation, that 46
20 and a half feet certainly alters our visual impact.

21 Now on July 19, 2018, the city of -- or the
22 city commission, I believe that letter was actually
23 dated June 27th, they sent a letter to both the
24 neighborhood as well as the plant board asking for
25 resolution, asking for us to come to a compromise

1 before this went any further. And as part of that
2 directive, they requested that the neighborhood submit
3 an alternate proposal.

4 So based on the city commission's wishes, we
5 did come up with a new alternate proposal. We changed
6 our stance -- excuse me, we changed our stance again
7 to a new reservoir that consists of the immediate
8 construction of two 4.6 million gallon tanks -- that's
9 what we have up there now -- and with semi dome roof
10 options, okay?

11 That is drastically cheaper than a flat roof,
12 a flat roof option, not only to construct, but it's
13 also cheaper moving on because the maintenance on the
14 flat roof apparently is -- can be extremely costly on
15 a -- on a yearly basis.

16 So again this is in response to the -- sorry,
17 June 27, 2018 letter. I would like to make a note
18 that we did that on July 19, 2018, and we still have
19 not heard a response to that proposal from the plant
20 board.

21 The last thing that I have to talk to you
22 about or show you, actually, are some renderings. We
23 had an architectural firm out of Louisville put
24 together some renderings for us, and if it's okay with
25 you, I would like to show those.

1 So the first one is what one of these seven
2 million gallon tanks is going to look like, and this
3 right here is Tangelwood, and this is Tangelwood
4 Drive. So this is getting very close to where
5 Tangelwood would intersect with Hay Avenue.

6 The second one is from the corner of
7 Commonwealth and Reservoir, Reservoir Road. And this
8 one right here, this is an actual picture taken of
9 what it looks like right now. This is what we -- this
10 is what we have right now. This is exactly what it
11 looks like.

12 This is for the -- the next one is the same
13 location with the one seven million gallon tank.

14 The next one is, again, for the same location
15 with the two seven million gallon tanks.

16 And the last one, again, the same location
17 and what it would look like with two of the 4.6 tanks.

18 Now those two 4.6 tanks right there, they do
19 have a flat roof. They do. This picture does
20 represent a flat roof. And again, you know, our
21 alternate proposal, you know, so we can live with a
22 half dome. But at the time this was done, this is the
23 flat roof on those two 4.6s.

24 That is all I have this evening. Any
25 questions that you may have for me? I'm not a lawyer,

1 and I'm not an engineer, so please take that into
2 account, but I would be happy to answer any questions
3 that I can. This --

4 UNIDENTIFIED SPEAKER: He's hitting a home
5 run.

6 MR. CHAIRMAN: I was going to say it didn't
7 matter. You're recorded anyway.

8 So would you please make sure that a copy of
9 your presentation becomes a part of our record tonight
10 for future reference if needed?

11 MR. VANSICKLE: I have -- I was -- that was
12 the last thing I was going to say. I have a copy of
13 the presentation as well as all of the supporting
14 document -- documentation that I used during the
15 presentation.

16 MR. CHAIRMAN: Thank you.

17 You can submit that electronically to us,
18 too, please.

19 Mr. True, did you have additional comments?

20 MR. TRUE: I'll try to be brief and quick,
21 but I wanted to touch on specifically the staff report
22 in the comprehensive plan portion of our presentation.
23 I would like -- just picking up on one point that Nate
24 made and then Mr. Billings spoke to, this issue about
25 rates.

1 And we've heard this comment, really over and
2 over and over again, that the sale outside the county
3 are a necessary and important ingredient, according to
4 the FPB, to keeping rates down for the citizens of
5 Frankfort and Franklin County.

6 I think when you see what we're paying in the
7 city and the county versus what it's being sold for
8 and then what other communities are then selling to
9 their customers, you see that the reality of the
10 situation is that the citizens of Frankfort -- and I
11 hope the State Journal's reporter, if they're here,
12 will sharpen their pencil on this point -- the reality
13 of it is, is that the people of Frankfort and Franklin
14 County are paying for an oversized system so that we
15 can sell to other communities. That's the reality of
16 the situation.

17 So I just want to put an explanation point on
18 that.

19 To address the comprehensive plan directly,
20 been a lot of discussion here, to be quite honest with
21 you, Mr. Chairman and members of the commission. I
22 think the first question that I -- or series of
23 questions I asked Mr. Billings really ends the
24 discussion.

25 The staff has found that this project is not

1 in compliance with the comprehensive plan, and the
2 Frankfort Plant Board has come here tonight offering
3 nothing that would modify the project in any way to
4 make it comply with the comprehensive plan. Since the
5 first rule of land use planning is, question number
6 one: Does it comply with the comprehensive plan?

7 The answer to that is: No. And following
8 your mandate under KRS 100.324(4), I would
9 respectfully submit that the commission should make a
10 finding that this project is not in compliance with
11 the comprehensive plan and there has been no proposal
12 made to change or alter or mitigate the project in any
13 way so it can be brought into compliance with the
14 comprehensive plan, that that should be a primary
15 finding of the commission as a result of this evening.

16 I want to make one point as a matter for the
17 record. And I don't mean this as criticism of anyone,
18 but I want to be sure we're not viewed as waiving any
19 argument because we don't know where this is going.

20 We would -- I would make the point that
21 KRS 100.324(4), it seems to me it is implied in that
22 statute that it would be the property owner that's
23 asking for the evaluation and recommendation of the
24 planning commission. The property owner in this case
25 is the municipality, the City of Frankfort.

1 The city commission, in reality, has not put
2 any proposal before this commission. They've not --
3 they've not asked this commission for a
4 recommendation, and they've not offered a development
5 plan. This is coming from the Frankfort Plant Board,
6 and they are not the owners of the property.

7 I was going to point out on page 2 of the
8 staff report, that there's reference, and it's really
9 referenced throughout the staff report, to a single
10 seven million gallon water tank. I won't belabor the
11 point because it has been made over and over again.

12 In reality, this is a project for two seven
13 million gallon water tanks, and I think for the
14 planning commission, with all due respect, since you
15 are a planning commission not just about today but
16 about the future, it's of utmost concern to you
17 that -- should be, I would suggest, and respectfully
18 suggest, that it's really about a two tank proposal.

19 Now moving to page 6 of the report, which
20 gets into the goals, there are two goals of the
21 comprehensive plan that I think are not addressed at
22 all in the report. One is goal number 2, which deals
23 with distinguishing town and country identity. The
24 goal is to preserve and reinforce the distinction
25 between urban and rural areas of Franklin County.

1 I would submit that in the spirit of that
2 goal and the policies underlying it is that there
3 should be a separation between the urban and the
4 industrial as well. And what we have created up there
5 already, very regrettably, as Commissioner Jackson has
6 alluded to already, is an industrial site with the
7 head-in building and those dishes from outer space
8 that are already up there.

9 And this is going to be a further aggravation
10 and offense to goal number 2, so I would respectfully
11 submit that goal number 2 is not -- also not met in
12 this project.

13 The other goal that's not mentioned in the
14 staff report is goal 5, to protect environmental
15 health. That goal states: To protect the integrity
16 of the natural environment, including water, air,
17 land, and land quality by ordinance and by overlaying
18 plan.

19 Again it may not be an expressed policy
20 within that goal, but that goal also lends itself to
21 the issue, I think, of natural environment and green
22 space, even though since 1885 there have been two --
23 there have been a reservoir of some type up there.

24 You know, I grew up in this community, as
25 many of you did. That has always been a lovely and

1 desirable green space until the erection of the
2 head-in building and those dishes. It has always been
3 an attractive gateway to our community, and it has
4 already been disrupted and destroyed enough with that
5 development. This tank is a further offense to that.

6 You know, one of the things I want to point
7 out before I forget about it that we've heard, it has
8 kind of been an underlying theme by the plant board to
9 advance this project is, well there has been a
10 reservoir up there since 1885, so why could you
11 complain about this?

12 Well let me offer an analogy. It's a --
13 that's a little bit like saying: Well you live next
14 door to the local hardware store all of these years.
15 Why would you be concerned about them tearing it down
16 and putting up a Walmart? It -- it's just two
17 completely different things and two completely
18 different scales.

19 Now picking up on page 6 of the report, I
20 wanted to touch on just a few things about the goals
21 that are addressed.

22 Goal number 1, grow by design, I wanted to
23 note that the two policies listed on page 7, policy
24 11, encourage developments to provide green space
25 within neighborhoods and linking neighborhoods and

1 other appropriate sites. I would submit that this
2 project does offense to that policy. It does nothing
3 to develop green space. In fact, it is demolishing a
4 very -- previously a very desirable green space.

5 Policy 12 on that same page, plan for public
6 services and facilities that adequately serve current
7 needs as well as demand generated by the additional
8 growth, as detailed above, and also the staff, in its
9 finding, at the top of the next page, addresses that
10 same issue where it talks about the project appears to
11 be meant to serve current water needs as well as
12 future water needs associated with growth.

13 I think the presentation that you've already
14 heard by Mr. Vansickle points out very -- very well,
15 as well as the testimony by Mr. Billings, that this is
16 not about the water needs of Frankfort and Franklin
17 County. It is not about that. It's about creating
18 capacity for sales outside the county.

19 Matter of fact, your comprehensive plan
20 projects very little growth, unfortunately, in
21 Franklin County. Projects very little growth. The
22 water capacity that's up there, as the presentation
23 pointed out, meets the needs, the 9.2 million gallons
24 up there meets the needs for the next 100 years.

25 There is no need to erect such an edifice as

1 this in order to meet either current or future needs.

2 Goal number 3 is addressed on page 8 of the
3 report. There are two policies that I would suggest
4 are not satisfied by this project. One is number 3:
5 To encourage the extension of public utilities and
6 public facilities capable of supporting rural
7 densities outside of the planned urban growth area.

8 Again this is a project that is not needed to
9 meet the needs outside the planned urban growth area.
10 What is shocking is one of the maps -- I think it is
11 attached to the report. It's on page 14 of the
12 report. There's a clearer copy in your comprehensive
13 plan, to see how little of Franklin County's water
14 needs are satisfied by the Frankfort Plant Board.

15 It's shockingly -- shocking how little of the
16 water needs of rural Franklin County are met by the
17 Frankfort Plant Board. They're served by other -- by
18 other water providers.

19 And policy number 5, I wanted to point out it
20 says: Encourage development to occur in a manner
21 respective of emergency response and in compliance
22 with emergency preparedness plans. I realize we have
23 a reservoir up there, and I realize the community, the
24 neighborhood, is agreeing to putting a reservoir of a
25 certain type back up there. In a strict reading of

1 this policy, you would never put a water supply up
2 there.

3 Under no circumstances could any kind of an
4 emergency plan or emergency preparedness would --
5 preparedness plan would you propose putting seven
6 million, nine million, 14 million gallons of water
7 adjacent to a neighborhood like that above your
8 capitol and your government buildings. Under no
9 circumstances would you plan with that kind of a
10 concept in mind.

11 Goal number 6 deals with preserving existing
12 neighborhoods, and this is the goal: To promote
13 stability, preservation, vitality of existing
14 residents or neighborhoods. This goal is really
15 eviscerated by this project.

16 Particularly policy number 5, preserve
17 historic buildings and neighborhoods to maintain
18 community character, there -- this is a -- this is
19 a -- an intact neighborhood in our community as
20 Commissioner Roach noted. I consider it -- because it
21 has been there as long as I can remember, I consider
22 it in many respects a historic neighborhood. Many of
23 the homes up there have a tremendous historic
24 appearance and quality to them.

25 This project is totally inconsistent with

1 that goal. Goal number 6 is: Encourage new
2 development to fit the character of existing
3 neighborhoods. In no way does this meet the character
4 of an existing neighborhood. That is the Tangelwood
5 and Capital Heights neighborhoods.

6 As a matter of fact, I would respectfully
7 submit that this -- in any other type of review, this
8 commission would be looking at this project as a
9 nonconforming use, and it would be -- looking at this
10 project as a proposed expansion of a nonconforming
11 use.

12 And with that kind of criteria in mind, I
13 don't think there's any way that this project would be
14 approved. But I would commend the staff finding on
15 this particular goal number 6 because the staff does
16 find that this project in no way satisfies goal
17 number 6.

18 And then finally, goal number 7 deals with
19 enhancing community quality and character to promote
20 quality development that strengthens community
21 character and pride.

22 I would submit that policy number 4 is
23 violated. There is a rural character to this area of
24 the City of Frankfort and in this community. This
25 project is inconsistent with that goal -- that policy.

1 Number 5, encourage the conversion of
2 overhead utilities to underground. Let me make a
3 point here.

4 Your staff report notes that with regard to
5 the head-in building, one of the things the city
6 commission requested of the FPB was to bury utility
7 lines along the property boundary there so that
8 landscaping and screening could be provided more
9 effectively. That has been ignored. Those utilities
10 have not been buried.

11 And policy number 8 I think is also
12 implicated here: Identify and preserve unique park,
13 recreational, and historic opportunities, including
14 those along the Kentucky River and its tributaries.

15 As I mentioned before, that area has
16 historically been recognized as very much a park area
17 for Frankfort and Franklin countians to enjoy. It has
18 already been disrupted significantly. This project is
19 further inconsistent with that -- with that -- with
20 that policy.

21 Again your staff finding, the only criticism
22 I would make of the staff finding is it does not note,
23 again, that really this is a two tank project, and I
24 would take issue with the finding -- the aspect of the
25 finding where they discuss improving the delivery of

1 FPV -- FPB services to the community.

2 Again, as we've noted at some length here,
3 this is not a project that is intended to meet the
4 need of Frankfort and Franklin countians.

5 Finally on the land use guidelines, I just
6 want to point out one thing quickly, on page 12.
7 Findings 1 and 3.

8 Both findings 1 and 3 make reference to the
9 fencing and the landscaping, and I want to point out
10 that we're doing an apples and oranges comparison when
11 you talk about this project with regard to the
12 mediation and agreement that was reached between the
13 Tangelwood community and the Frankfort Plant Board.

14 The mediation that dealt with landscaping and
15 screening was related to the head-in building. That's
16 what that was about. And so the landscaping and
17 screening that's been -- that's been done up there, to
18 the extent it has been done, was in an effort to
19 mitigate the disruption by the head-in building and
20 the dishes and the parking garage, which has now been
21 demolished and is a pile of rubble in the backyard of
22 some of these people.

23 So that is the landscaping we're talking
24 about. We in no way would agree that what is on the
25 FPB's proposal with regard to this tank is in any way

1 going to mitigate this project. Matter of fact, it
2 would be our position that it is not possible to
3 screen or landscape this seven million gallon water
4 tank that's going to increase -- I think your staff
5 report says it's going -- it's going to increase the
6 wall 21 feet higher than the visible wall is
7 presently.

8 That's not possible to screen and landscape
9 that. That -- I think probably no need to say
10 anything more along those -- along those lines.

11 So, again, to -- I'll conclude where I
12 started. I think the staff finding that this is not
13 consistent with the comprehensive plan is a correct
14 finding. We would urge you to adopt that finding.
15 The Frankfort Plant Board has offered nothing in the
16 way of an alternative plan or any mitigation that
17 brings the project into compliance.

18 We would respectfully submit one reason they
19 haven't done it is because you can't do it. You can't
20 bring this proposal into compliance with the
21 comprehensive plan. And we would ask for a finding
22 and a recommendation by this commission back to the
23 city commission that is not in compliance and cannot
24 be brought into compliance with the comprehensive
25 plan.

1 Glad to answer any questions, and I
2 appreciate your time. I apologize for being lengthy,
3 but this is an important issue to the -- to the
4 residents, and we want to be sure that we've got a
5 very complete record here.

6 MR. CHAIRMAN: Thank you.

7 MR. TRUE: Thank you.

8 MR. CHAIRMAN: Thank you, Mr. True and
9 Mr. Vansickle. And, Mr. Billings, thank you for
10 coming tonight and presenting for us as well.

11 Kind of wandered off there on the landscaping
12 again. Just to remind you that we're only talking
13 about comprehensive plan here tonight for this portion
14 of this, but thank you very much for your excellent
15 job of recapping everything for us.

16 Okay. So everyone has spoken, so at this
17 time I'm going to ask the commission for a motion
18 on --

19 MR. ROACH: If I might? Did you sign up,
20 Ms. Waterfield?

21 MS. WATERFIELD: I don't think I need --

22 MR. CHAIRMAN: Okay. All right. Thank you.

23 Okay. So I'm going to ask the commission for
24 a motion on whether the proposal is or is not in
25 conformance with the comprehensive plan.

1 MR. JACKSON: Mr. Chairman?

2 MR. CHAIRMAN: Yes, sir.

3 MR. JACKSON: I feel like I'm about to get
4 the target put right dead in the middle of my chest.
5 However --

6 MR. CHAIRMAN: You just make the motion.

7 MR. JACKSON: It's easy for you to say.

8 But I would offer the motion, based upon the
9 staff report and the subsequent presentations that
10 have been offered, that the proposal, as submitted,
11 does not comply with the comprehensive plan, and that
12 would be in accordance with policies contained within
13 goal number 1, goal 6, goal 7. And I think staff had
14 another one in there that I wasn't too familiar with,
15 but I want to identify at least those.

16 MR. CHAIRMAN: Okay. Thank you.

17 Is that your second? Okay.

18 I would like to ask for a roll call vote,
19 please.

20 THE CLERK: Ms. Cross?

21 MS. CROSS: Yes.

22 THE CLERK: Mr. Jackson?

23 MR. JACKSON: Yes.

24 THE CLERK: Mr. Nichol?

25 MR. NICHOL: Yes.

1 THE CLERK: Mr. Roach?

2 MR. ROACH: Yes.

3 THE CLERK: Mr. Terrell?

4 MR. TERRELL: Yes.

5 THE CLERK: And Mr. Boggs?

6 MR. BOGGS: Yes.

7 THE CLERK: Motion carried.

8 MR. CHAIRMAN: Okay. Now with that motion, I
9 would like to ask for a -- ask for recommendations on
10 operations that would make the plan more compatible.

11 MR. JACKSON: Okay. Are we ready?

12 MR. CHAIRMAN: Yes, sir, if you're going to
13 make the motion.

14 MR. JACKSON: Well I'm going to --

15 MR. CHAIRMAN: You seem to be the motion man
16 here.

17 MR. JACKSON: Well I'm going to offer you
18 some findings, and I hope others who were paying
19 attention to this presentation will offer findings as
20 well.

21 To support that motion, I would offer the
22 following finding/recommendation.

23 Is that sufficient?

24 MR. LOGAN: It's appropriate.

25 MR. JACKSON: Okay. In accordance with the

1 comprehensive plan goal number 1, policy number 7,
2 that proposes that growth be based in projected
3 population growth, current housing stop, and
4 demographics, the plan presents that the tank size
5 should be -- we -- I'm recommending that the tank size
6 should be reduced to 4.6 million gallons times two,
7 meaning two tanks whenever the second tank is needed,
8 or less, which the plant board staff have agreed would
9 meet the water need for Franklin County up until year
10 2060, 2060.

11 MR. CHAIRMAN: Okay. That's recommendation
12 number 1.

13 MR. JACKSON: That's number one.

14 I think we ought to vote on that one before
15 we go further. I don't want it to get lost in the
16 shuffle.

17 MR. CHAIRMAN: Would you like for him to read
18 the motion again, please?

19 UNIDENTIFIED SPEAKER: Please.

20 MR. JACKSON: The motion is -- the
21 recommendation is that the tank size in the proposal
22 should be reduced to 4.6 million gallons, or less,
23 times two, which the plant board staff has agreed
24 would meet the water need for Franklin County until
25 year 2060.

1 MR. CHAIRMAN: Thank you.

2 Do we have a second for that motion?

3 UNIDENTIFIED SPEAKER: Second.

4 MR. CHAIRMAN: Thank you, sir.

5 Would you call a vote, please?

6 THE CLERK: Ms. Cross?

7 MS. CROSS: Yes.

8 THE CLERK: Mr. Jackson?

9 MR. JACKSON: Yes.

10 THE CLERK: Mr. Nichol?

11 MR. NICHOL: Yes.

12 THE CLERK: Mr. Roach?

13 MR. ROACH: Yes.

14 THE CLERK: Mr. Terrell?

15 MR. TERRELL: Yes.

16 THE CLERK: Mr. Boggs?

17 MR. BOGGS: Yes.

18 THE CLERK: Motion carried.

19 MR. CHAIRMAN: Okay. And another motion in
20 the form of a recommendation?

21 MR. JACKSON: I would offer a second
22 recommendation as follows: In accordance with the
23 comprehensive plan goal number 1, policy 11, that
24 encourages developments to provide green space within
25 the neighborhoods and link neighborhoods and other

1 appropriate sites together, my recommendation is that
2 the tank size should be reduced to allow the approach
3 to the Tangelwood neighborhood to retain its natural
4 environment and historic neighborhood character.

5 MR. CHAIRMAN: Do I have --

6 MS. CROSS: Second.

7 MR. JACKSON: I'm saying to you that the big
8 hill modifies, changes the approach to the
9 neighborhood.

10 MS. CROSS: I'll second it.

11 MR. CHAIRMAN: Okay. We have a second?
12 Okay. Call for a vote, please.

13 THE CLERK: Ms. Cross?

14 MS. CROSS: Yes.

15 THE CLERK: Mr. Jackson?

16 MR. JACKSON: Yes.

17 THE CLERK: Mr. Nichol?

18 MR. NICHOL: Yes.

19 THE CLERK: Mr. Roach?

20 MR. ROACH: Yes.

21 THE CLERK: Mr. Terrell?

22 MR. TERRELL: Yes.

23 THE CLERK: Mr. Boggs?

24 MR. BOGGS: Yes.

25 THE CLERK: Motion carried.

1 MR. CHAIRMAN: Do you have another
2 recommendation motion?

3 MR. JACKSON: I do have a third one.

4 MR. CHAIRMAN: Okay.

5 MR. JACKSON: And then I've run out.

6 MR. CHAIRMAN: Okay.

7 MR. JACKSON: The third one is in accordance
8 with the comprehensive plan goal number 6, policies 5
9 and 6, which directs us to preserve historic buildings
10 and neighborhoods, to maintain community character,
11 and to fit the character of existing neighborhoods.

12 And the recommendation is, or the finding is,
13 that the dimension and height of the proposed tanks
14 overshadow and depletes the green space available to
15 the Leewood -- not the Leewood -- to the -- to the
16 Tangelwood neighborhood and does not provide for
17 sufficient setback on the proposed development site.

18 MS. CROSS: Second.

19 MR. CHAIRMAN: Second by Ms. Cross.

20 Call the roll, please.

21 THE CLERK: Ms. Cross?

22 MS. CROSS: Yes.

23 THE CLERK: Mr. Jackson?

24 MR. JACKSON: Yes.

25 THE CLERK: Mr. Nichol?

1 MR. NICHOL: Yes.

2 THE CLERK: Mr. Roach?

3 MR. ROACH: Yes.

4 THE CLERK: Mr. Terrell?

5 MR. TERRELL: Yes.

6 THE CLERK: Mr. Boggs?

7 MR. BOGGS: Yes.

8 THE CLERK: Motion carried.

9 MR. CHAIRMAN: Do any other commission
10 members have another recommendation in the form of a
11 motion?

12 Hearing none, then --

13 MR. JACKSON: If not, I didn't get --

14 MR. CHAIRMAN: You got another one?

15 MR. JACKSON: Well I didn't get a chance to
16 write this down, but I would encourage us to adopt the
17 staff finding --

18 MR. CHAIRMAN: Okay.

19 MR. JACKSON: -- under goal 6 --

20 MS. CROSS: Uh-huh. Yes.

21 MR. JACKSON: -- that is listed on page 9.

22 MR. CHAIRMAN: Page 9.

23 MR. JACKSON: Staff did not tell us what we
24 needed to do in order to rectify that.

25 MS. CROSS: I actually think that your

1 recommendations on the others pretty much cover --

2 MR. JACKSON: Pick that one up as well?

3 MR. CHAIRMAN: Yes.

4 MR. JACKSON: Okay.

5 MS. CROSS: And perhaps number -- goal 7's
6 staff recommendation.

7 MR. CHAIRMAN: Ms. Cross, are you willing to
8 make a recommendation for goal number 7?

9 MS. CROSS: No, but I'm sure Mr. Jackson
10 does.

11 MR. CHAIRMAN: Mr. Jackson, do you have
12 another motion in you tonight, or are you satisfied so
13 we can move on?

14 MR. JACKSON: Well I think we need to vote on
15 whether or not we accept the staff finding on goal 6.

16 MR. CHAIRMAN: Are you going to do a
17 recommendation or just accept --

18 MR. ROACH: You're talking about the two
19 staff findings on pages 9 and 10, correct?

20 MR. CHAIRMAN: Just accept --

21 MS. CROSS: Just on nine right now.

22 MR. CHAIRMAN: Just accept the staff finding
23 for goal number 6 and goal number 7?

24 Yes?

25 MR. JACKSON: Did we get a second?

1 MR. CHAIRMAN: No. Is that what you're --

2 MR. JACKSON: I will second it.

3 MR. CHAIRMAN: You're going to make a motion?

4 The motion hasn't been made yet.

5 MR. JACKSON: I thought --

6 MR. CHAIRMAN: It hasn't officially been
7 made, had it?

8 MR. JACKSON: I thought Mr. Roach made the
9 motion that we do staff finding on page 9 and 10 on
10 the goal 6 and goal 7.

11 MR. CHAIRMAN: Is that -- Mr. Roach --

12 MR. JACKSON: I will second that if that was
13 your motion, sir.

14 MR. ROACH: That's correct.

15 MR. CHAIRMAN: All right. I just wanted to
16 be clear that somebody else made a motion and it's
17 seconded.

18 MR. JACKSON: Okay. I'll second.

19 MR. CHAIRMAN: Call the roll, please.

20 THE CLERK: Ms. Cross?

21 MS. CROSS: Yes.

22 THE CLERK: Mr. Jackson?

23 MR. JACKSON: Yes.

24 THE CLERK: Mr. Nichol?

25 MR. NICHOL: Yes.

1 THE CLERK: Mr. Roach?

2 MR. ROACH: Yes.

3 THE CLERK: Mr. Terrell?

4 MR. TERRELL: Yes.

5 THE CLERK: And Mr. Boggs?

6 MR. BOGGS: Yes.

7 THE CLERK: Motion carried.

8 If there be no further motions, then I would
9 like to have a motion to adjourn the special-called
10 meeting.

11 MR. JACKSON: Do we need one more? Can I --
12 can I --

13 MR. CHAIRMAN: You want one more?

14 MR. JACKSON: May I ask a question of our
15 legal counsel?

16 MR. CHAIRMAN: Sure.

17 MR. JACKSON: The finding of noncompliance
18 and the supported findings of fact, is that sufficient
19 to remand this back to the city commission? Does
20 that --

21 MR. LOGAN: I will -- I will --

22 MR. JACKSON: Does that --

23 MR. LOGAN: I will -- wait a minute. I will
24 reiterate: You must make a determination of whether
25 it's in compliance. You've done that. Then you're

1 supposed to make a suggestion for the way it -- for
2 the -- these things happening. If you are satisfied
3 that your suggestions are full at this point, yes.
4 Then it has to be in writing provided to the body that
5 has referred to us for a decision.

6 Does that answer your question?

7 MR. JACKSON: Yes, sir. Thank you.

8 MR. CHAIRMAN: Then I will accept your motion
9 to adjourn.

10 MR. JACKSON: Absolutely.

11 MR. CHAIRMAN: Thank you, sir.

12 All adjourned.

13 (Proceedings adjourned.)
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APPENDIX C
to
Franklin Plant Board's
Motion for Summary Judgment on Count II

RESOLUTION NO. 9, 2018 SERIES

**A RESOLUTION IN SUPPORT OF A COMPROMISE AGREEMENT BETWEEN THE
FRANKFORT PLANT BOARD AND TANGLEWOOD NEIGHBORHOOD
ASSOCIATION REGARDING THE PROPOSED RESERVOIR REPLACEMENT
PROJECT**

WHEREAS, it is necessary for the Frankfort Plant Board (FPB) to construct a new reservoir to adequately protect the water supply of the City of Frankfort and those it serves; and

WHEREAS, the current reservoir development plans have raised serious concerns for the Tanglewood Neighborhood Association (TNAi) regarding the detrimental effect the proposed plans will have on the neighborhood; and

WHEREAS, the reservoir project has been the subject of extensive debate in the Frankfort community for several years; and

WHEREAS, the Board of Commissioners of the City of Frankfort is the City governing body and the parent entity and appointing authority of the FPB; and

WHEREAS, the Board of Commissioners has a responsibility to the citizens of Frankfort to ensure the City's municipal utilities are governed in a manner that promotes optimal operation and improvement of our system while simultaneously achieving a responsive and cooperative community partnership; and

WHEREAS, the Board of Commissioners by letter dated June 27, 2018, explicitly requested both the FPB and TNAi to take the necessary steps to reach a compromise that meets the needs of both the reservoir structure and the neighborhood that houses it, including prompt presentation of an alternative proposal by TNAi and serious consideration of said proposal by the FPB; and

WHEREAS, the FPB, by letter from its Chair dated July 5, 2018, agreed to consider any written proposal submitted by TNAi; and

WHEREAS, TNAi, by letter from its legal counsel dated July 19, 2018, submitted said written proposal to the FPB; and

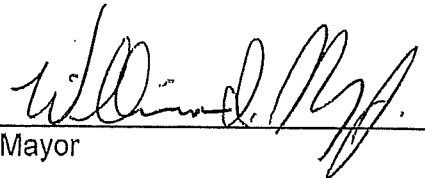
WHEREAS, the Board of Commissioners believes TNAi has submitted an alternative proposal for the reservoir project that takes into consideration multiple factors, including reasonable cost, visual impact to the neighborhood, and facility footprint while still meeting future capacity needs as a water utility; and

WHEREAS, the Board of Commissioners expects its appointees to the FPB to demonstrate a sincere commitment to considering *all* factors that impact the utilities it manages and the community it serves;

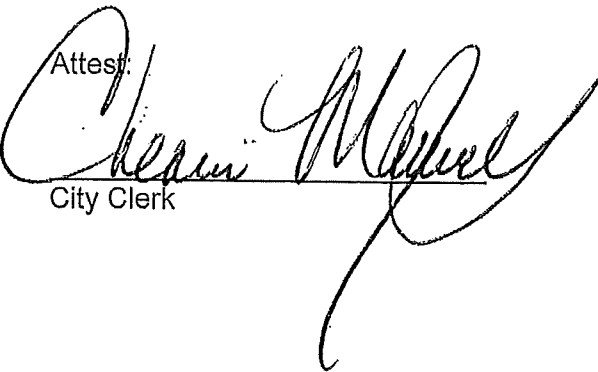
NOW, THEREFORE, BE IT HEREBY RESOLVED by the Board of Commissioners of the City of Frankfort, that:

- 1) The Frankfort Plant Board and Tanglewood Neighborhood Association are commended for their efforts at compromise;
- 2) The Board of Commissioners supports the alternative proposal for the reservoir project submitted by TNAi on July 19, 2018; and
- 3) The Board of Commissioners requests that every effort be made by members of the Frankfort Plant Board to approve plans for the reservoir project that mitigate the concerns of TNAi, to the extent feasible for timely and effective replacement of the reservoir.

Adopted this 6 day of August, 2018.



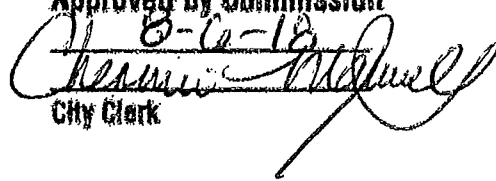
Mayor

Attest:


City Clerk

During the City Commission Special Meeting of August 6, 2018, the Commission adopted a Resolution in support of a compromise agreement between the Frankfort Plant Board and Tanglewood Neighborhood Association (TNAi) regarding the proposed reservoir replacement project. (Resolution No. 9, 2018 Series)

CC: FPB
TNAi

Approved by Commission
8-6-18

City Clerk

APPENDIX D
to
Franklin Plant Board's
Motion for Summary Judgment on Count II

REPORT AND RECOMMENDATION

TO: FRANKFORT-FRANKLIN COUNTY
PLANNING COMMISSION



FROM: Eric Cockley, Director, Planning & Community Development

SUBJECT: In accordance with KRS 100.324 (4) Anna Marie Pavlik Rosen, Board Chair of the Frankfort Electric and Water Plant Board, is requesting Project Review of the Water Tank (Reservoir) replacement for property located at 98 Tanglewood Drive in Frankfort, KY. The property is more particularly described as PVA Map# 062-20-19-001.00.

DATE: August 1, 2018

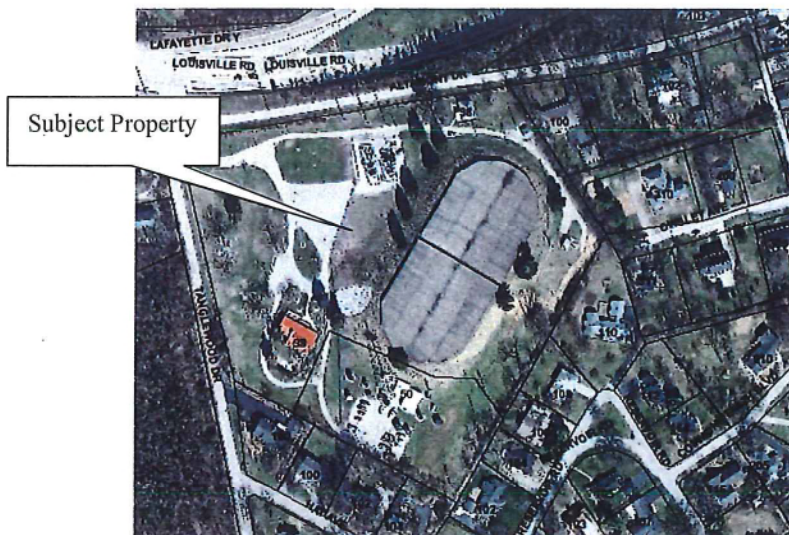
MEETING DATE: August 16, 2018

GENERAL INFORMATION

Applicant: Anna Marie Pavlik Rosen
Board Chair
Frankfort Electric & Water Plant Board
151 Flynn Avenue
Frankfort, KY 40601

Request: In accordance with KRS 100.324 (4) Anna Marie Pavlik Rosen, Board Chair of the Frankfort Electric and Water Plant Board, is requesting Project Review of the Water Tank (Reservoir) replacement for property located at 98 Tanglewood Drive in Frankfort, KY. The property is more particularly described as PVA Map# 062-20-19-001.00.

Location: 98 Tanglewood Drive



Existing Zoning: Special Government (SG)

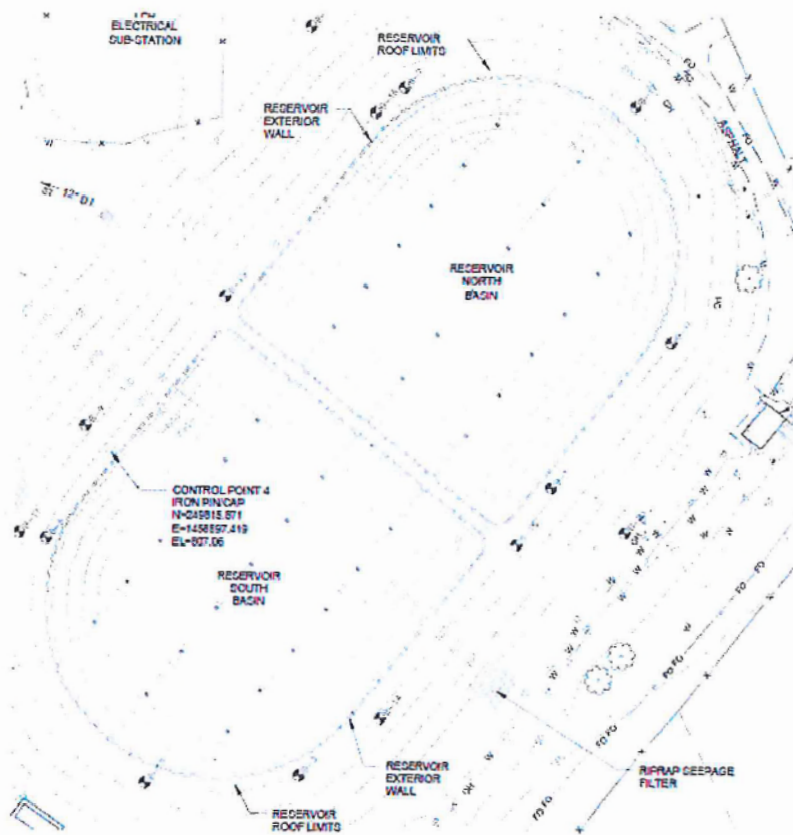
Applicable Regulations: KRS 100.324 (4) – Any proposal for acquisition or disposition of land for public facilities, or changes in the character, location, or extent of structures or land for public facilities, excluding state and federal highways and public utilities and common carriers by rail mentioned in this section, shall be referred to the commission to be reviewed in light of its agreement with the comprehensive plan, and the commission shall, within sixty (60) days from the date of its receipt, review the project and advise the referring body whether the project is in accordance with the comprehensive plan. If it disapproves of the project, it shall state the reasons for disapproval in writing and make suggestions for changes which will, in its opinion, better accomplish the objectives of the comprehensive plan. No permit required for construction or occupancy of such public facilities shall be issued until the expiration of the sixty (60) day period or until the planning commission issues its report, whichever occurs first.

Proposal: The Frankfort Electric & Water Plant Board has submitted a Project proposal for consideration and recommendation by the Planning Commission to remove the existing reservoir at 98 Tanglewood Drive and to replace it with a single 7 million gallon water tank.

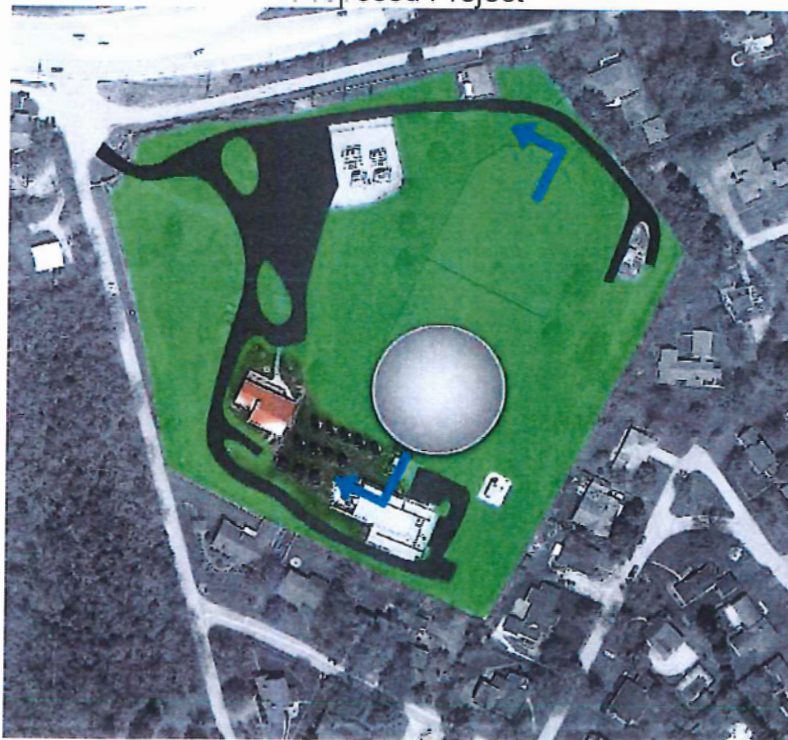
The new tank will be 188' wide and the top of the dome will be approximately 46' tall, with height from adjacent grade to top of wall of 28'. The difference in height from the new top of dome to the old tank top will be 21.3', although the difference between the top of wall of the new reservoir vs the old tank top will be 2.8'. It should be noted that the new tank will not be surrounded by an earthen berm as the existing reservoir is.

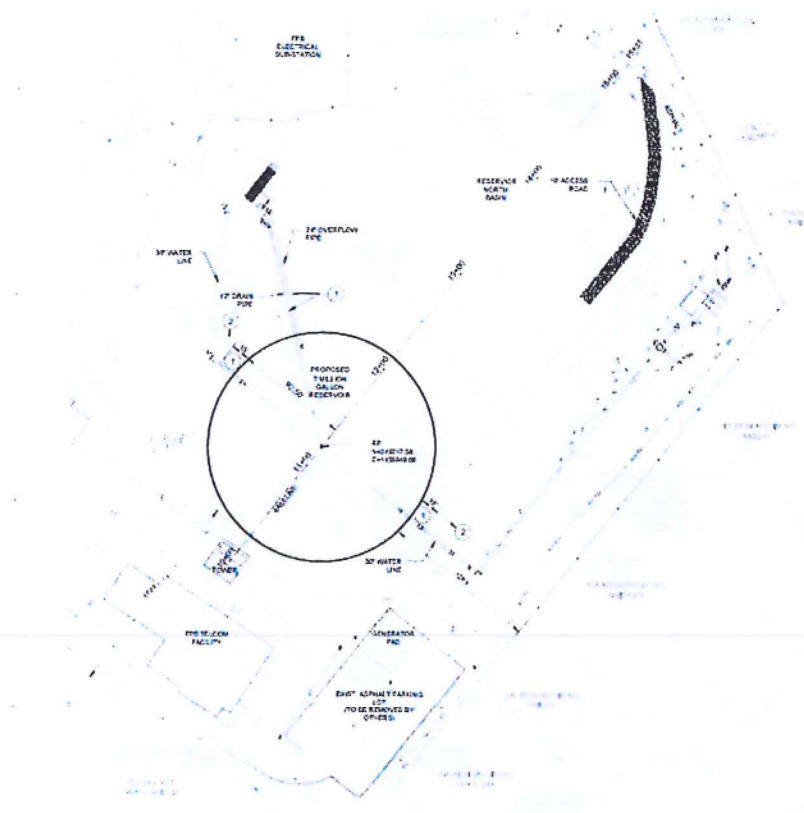
Existing Conditions



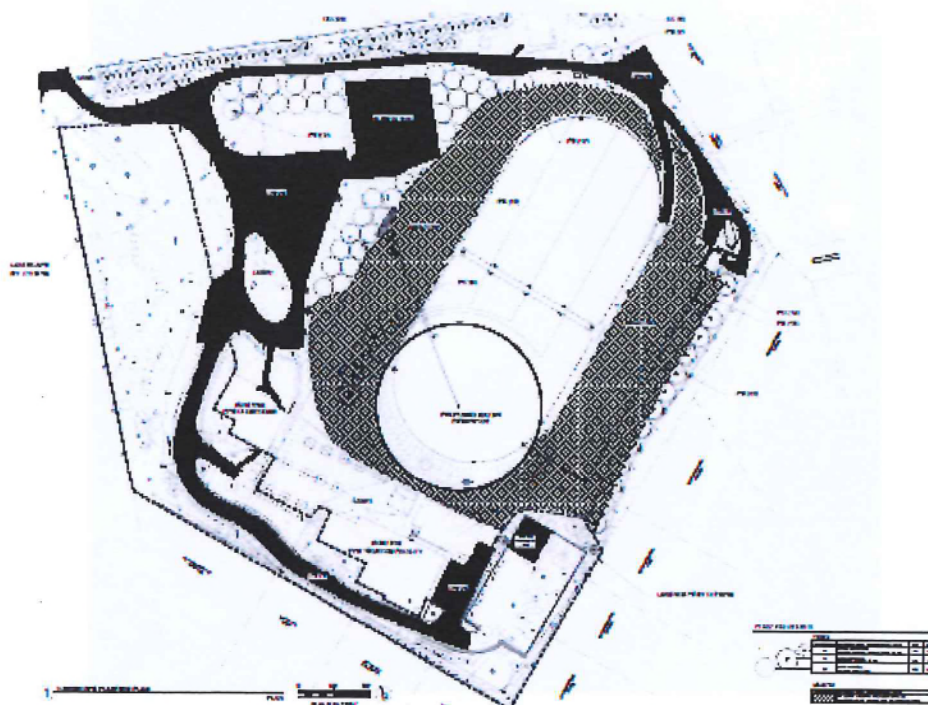


Proposed Project





Proposed Site Plan with Landscaping



Background Information:

The following is a chronological listing of activities regarding the Frankfort Plant Board's actions to date, along with City Commission actions:

March 19, 2015 – Frankfort Plant Board transferred the parcel for the headend building and parking garage to the Frankfort Plant Board Municipal Projects Corporation.

April 16, 2015 – Planning & Building Codes office issued a building permit to construct the Head-End Building and Parking structure.

August 23, 2016 – Frankfort City Commission held a special meeting regarding the Plant Board and required the following:

- Remove parking structure but keep the generator
- No bucket trucks or large commercial vehicles, except for emergencies or construction
- Landscape and fence the area per Inside Out Design, including the removed parking area where practical
- If the Frankfort Plant Board continues to develop on any city property in the future, the FPB must gain approval of the Planning & Zoning Commission
- Explore the possibility of burying the power line adjacent to the fence so that the landscaping can be enhanced

May 11, 2018 – Building Permit for Demolition of parking garage and new fence and landscaping issued by the Planning & Community Development office.

June 21, 2018 – Project Review application filed by the Frankfort Plant Board.

Project Review Analysis And Summary:

The Planning Commission's role as defined in statute is to review the project for compliance with the Comprehensive Plan and advise to the referring body (City Commission) whether the project is in accordance with the Comprehensive Plan. In the event that the project is found to not be in compliance with the Comprehensive Plan the Planning Commission shall give the reasons for this in writing including suggestions for changes which will better accomplish the objectives of the Comprehensive Plan.

Comprehensive Plan

Goals & Policies

Goal 1: Grow by Design

Growth in Frankfort/Franklin County will be responsibly designed, planned and managed to create a sustainable community that provides for a quality lifestyle for all residents of Frankfort and Franklin County. Future growth will be based on a long-term vision for our community, public service availability, the suitability of land for development and a thorough understanding of the cultural and ecological features of the area. Among other things, decisions on future growth should be considered with awareness for energy conservation, the public need for greenspace and walkability and the need for ties to historic resources, tourism opportunities, and the Kentucky River, including its tributaries.

Policies:

1. Recognize that growth is healthy and necessary, but that growth should be managed pursuant to the community's Comprehensive Plan.
2. Approve new development only when the public facilities and public services needed to serve the development will be available.
3. Develop standards that require the developer to provide for the increased costs in providing public services for the new development as appropriate. The public services may include, but not be limited to, water, sewer, schools, transportation, emergency services, and parks as appropriate.
4. Provide a level of public service in rural areas that complements the rural settings.
5. Continue the enforcement of stormwater regulations to minimize runoff from new developments.
6. Provide overlays within the city and county that identify aspects of the landscape that are of cultural, ecological and historical significance (for example, mature woodlands, old railroad tracks, stone walls, historic buildings, wetlands, steep slopes, etc.).

7. Develop an urban growth plan with designated growth areas that can accommodate new moderate- and high- density housing units. The size and location of the growth areas should be based on projected population growth, current housing stock and demographics.
8. Encourage developments that provide a mix of uses such as different housing types, affordable housing, commercial establishments, restaurants, recreational areas and open space that will encourage the development of a sense of place.
9. Encourage the redevelopment of brownfield and grayfield properties and the reuse of vacant/underutilized existing industrial or commercial buildings.
10. Recognize the need for energy conservation in modes of transportation.
11. Encourage developments to provide greenspace within neighborhoods and linking neighborhoods and other appropriate sites together.
12. Plan for public services and facilities that adequately serve current needs as well as demand generated by the additional growth as detailed above.

Staff Finding: Positive: Policies #2 and #12 appear to support this request. Based on comments from the TRT facilities appear to be available to support the request, and the project appears to be meant to serve current water needs as well as future water needs associated with growth.

Goal 3: Use Infrastructure as a Planning Tool

Utilize the provision of infrastructure in supporting and influencing growth into areas most suitable for development.

Policies:

1. Develop a Capital Improvements Plan as a means of coordinating public services/utilities, infrastructure improvements, and development, including pedestrian ways, bikeways, public transit, etc.
2. Direct development into areas within or in close proximity to the existing infrastructure service areas.

3. Encourage the extension of public utilities and public facilities capable of supporting rural densities outside of the planned urban growth area.
4. Plan and build a safe and efficient transportation system, through access management, required roadway interconnections, traffic systems management, development impact analysis, transit, sidewalks and bicycle facilities.
5. Encourage development to occur in a manner respective of emergency response and in compliance with emergency preparedness plans.
6. Encourage the development of a county-wide bicycle and pedestrian master plan.

Staff Finding: Positive. Policy #2 and #5 appear to support this request. This reservoir project will be located in the same location as the existing reservoir within the developed urban area of Frankfort.

Goal 6: Preserving Existing Neighborhoods

Promote the stability, preservation and vitality of existing residential neighborhoods.

Policies:

1. In existing neighborhoods, encourage the retention of product and service providers.
2. Establish programs to stabilize, improve, and revitalize existing neighborhoods.
3. Promote maintenance of existing structures and provide incentives for the rehabilitation of deteriorating structures.
4. Encourage appropriate infill housing as a tool to preserve neighborhoods.
5. Preserve historic buildings and neighborhoods to maintain community character.
6. Encourage new development to fit the character of existing neighborhoods.
7. Encourage appropriate mixed use development in existing neighborhoods to promote energy conservation and more walkable neighborhoods.
8. Encourage the preservation of the existing rural villages in Franklin County.

Staff Finding: **Negative.** *Policy #1 would appear to support the request. However, the top of the dome of the proposed new Water Tank will be just over 21' higher than the existing reservoir and will be located closer to the Tanglewood and Capital Heights neighborhoods than the existing reservoir structure. It should be noted that the existing reservoir was placed on this site in approximately 1885 with an original capacity of 6.5 million gallons, and subsequently renovated/added on in 1962 to its current configuration 9.2 million gallons (according to FPB staff). In short, while the enlargement of a large structure like a water tank would generally not be the ideal neighbor for a residential neighborhood, the existing reservoir and surrounding compound have been neighbors of this neighborhood for a very long time. In staff's opinion regardless of how long the current structure has been coinciding with the neighborhood, the addition of equipment and a taller, more visible water tank is not the most effective way to "Promote the stability, preservation and vitality of existing residential neighborhoods."*

Goal 7: Enhance Community Quality And Character

Promote quality development that strengthens community character and pride.

Policies:

1. Identify all quadrants of the I-64 interchanges as Regional Retail Center.
2. Support and enhance the rural gateways into the community by preserving their natural scenic beauty.
3. Improve standards for site design – including trees and other landscaping, access management, signage, and other design components.
4. Preserve rural character, where appropriate.
5. Encourage the conversion of overhead utilities to underground.
6. Encourage small area overlay plans for high priority areas, including for Holmes Street, Second Street, East Main Street, Versailles Road, Benson Valley, Bridgeport, Bellpoint, Peaks Mill, Louisville Road, and US 127 North and South Corridors.
7. Develop flexible tools for alternative rural development, such as cluster development, that preserves rural character.

8. Identify and preserve unique park, recreational, and historic opportunities including those along the Kentucky River and its tributaries.

9. Continue to provide adequate and improved community services such as schools, police and fire protection, and parks and recreational opportunities that serve existing and planned growth.

10. Promote public art and encourage community art activities.

Staff Finding: *Negative. The project will provide extensive landscaping associated with the construction per the results of mediation, which will help community character. However, the new location of the water tank will be more intrusive into the residential neighborhoods surrounding the site. It should be noted that the City Commission asked the Plant Board to consider installing underground utilities along the residential property line but the current design does not include the overhead lines being relocated underground. Much like the previous goal, it does not appear that while the project may serve to attempt to improve the delivery of FPB services to the community it does not directly contribute to enhancing community quality and character.*

Section 4 Land Use Plan

The purpose of a Land Use Plan is to provide guidance for decision making regarding new development as well as redevelopment. It has been common practice in the past to assign each property in the community with a very specific land use (i.e. single-family detached residential, professional office, light industrial, etc.). While this type of plan provides a very clear definition of how each property should be used, it does not provide a lot of flexibility where special circumstances exist nor does it provide guidance about the character and style of development. This plan recognizes that zoning is the more appropriate tool suited for property-specific regulations and that the land use plan, as part of a total comprehensive plan, provides a realistic, yet flexible, interpretation of the goals and objectives as applied to growth in the community.

The following section of the Land Use Plan summarizes several "land use concepts" as applied to Frankfort and Franklin County in the Land Use Plan Map. This map was created based on community input, guidance from the goals and policies, planned public improvements, existing land uses, development constraints, and previous development trends. For each of the land use concepts, there are a series of development guidelines that can serve as a checklist when a development or redevelopment project is being considered. The updated 2020 Future Land Use Map can be found in Exhibit 6, in the List of Exhibits in Section 8 of this document, followed by an enlarged map of the Urbanized area in Exhibit 7.

The Land Use Plan Map from the 2001 version of this document channeled growth in some ways, while providing an adequate amount of land to accommodate anticipated growth. That map provided approximately 2,300 acres of new suburban residential uses, nearly 6 times the anticipated demand for residential growth of 400 acres. In terms of non-residential uses there were approximately 950 acres of commercial, office, and industrial uses which accounted for nearly 4 times the projected demand of 275 acres of growth. The scope of the 2010 update did not include a complete market analysis of land demand and

supply, but those factors were taken into consideration when the 2001 map was revised for this update.

Land Use Plan Map Future Land Use Designation of the Subject Property:

Special Public Use

These uses include public schools, fire stations, libraries, government agencies, etc. that are located throughout the community. These uses provide amenities to local residents that are service oriented. Where possible the County/City should plan for future community facilities, including schools and locate them in areas where they are easily accessed by residents through sidewalks and clear signage. If reuse of these lands becomes an issue, the Planning Commission should consider the land use of the surrounding area as well as the future land use designation of the surrounding area in their decision making process. (KSU, airport, Nat. Guard, Frankfort Cemetery, Greenhill Cemetery would be some examples of uses in this category.)

Land Use Guidelines:

The primary land use in these areas should be public uses including, but not limited to schools, government buildings, etc. This includes properties that are being held for the future expansion of these public uses.

Residential uses and nonresidential uses should be discouraged in these special public use areas.

General Development Guidelines

1. Expansion of existing public/semi-public uses should be allowed where there will be minimal impact on surrounding residential uses.

Staff Finding: Negative. The replacement water tank will have a negative visual impact on the surrounding residential uses. However mediation has resulted in the proposed placement of much more visually pleasing fencing and landscaping.

2. Where infill development occurs, the density and character of the development should reflect the existing uses that surround the proposed site.

Staff Finding: N/A. While the project involves the redeveloping of a portion of the site with a new reservoir this is not an example of a completely new infill development of a new or different land use than what was already on site.

3. Larger sites with extra landscaping and buffer strips should be used in areas adjacent to residential uses to provide a transitional area.

Staff Finding: *Positive. The adjacent neighborhood and the applicant have engaged in mediation in regard to the landscaping and fencing and have reached an agreement.*

4. Interconnectivity to adjoining neighborhoods and developments should be a priority for any uses within this land use category.

Staff Finding: *N/A*

Section 6: Community Facilities Plan

Everyone in the community would agree that growth impacts every aspect of the community. To ask the average resident the pros and cons of development would result most likely in a long list of negatives including overcrowded schools, costly public utilities, the lack of parks and numerous other ill effects. However, when the impact on various community facilities is addressed as part of a comprehensive plan, it is much easier to address the problem and plan solutions in advance of the growth. Fortunately for both the City and the County, many of the community facilities have well-established records of planning for the future and have set up their own institutional planning efforts.

The following sections provide a summary assessment of various community facilities, including in some instances, policy recommendations intended to help ensure that the goals and policies of this plan are met. Some of the information and verbiage is taken, where appropriate, from the 2001 Frankfort/Franklin County Comprehensive Plan.

Water Supply and System

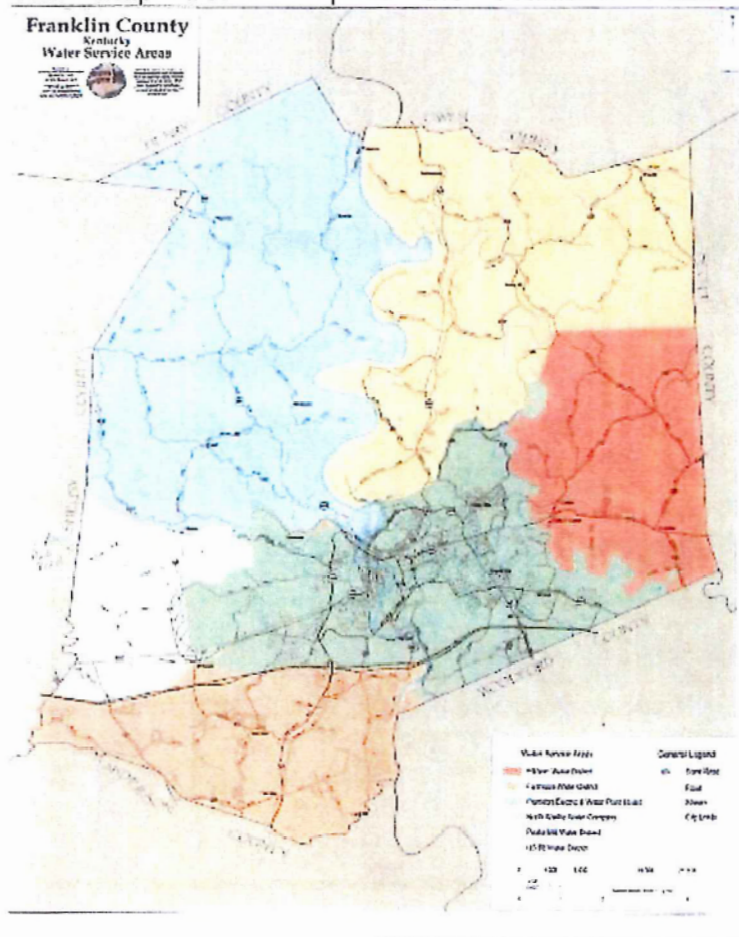
Much of Franklin County is served with public water service, although some of the more rural or rugged areas of the county are not yet completely served. Currently only the extreme northwestern and northeastern areas of the county are without public water service. A 42-inch water transmission line from Pool #3 of the Kentucky River that will supply up to 20 million gallons of potable water per day to Fayette County/Kentucky American Water's current service area has been constructed in northeastern Franklin County by Kentucky American Water. (See map, exhibit 18). Currently, only emergency service in the form of fire hydrants provides water to Franklin County from the pipeline. The option of obtaining water from Louisville has been discussed by local officials.

The primary source of treated water for distribution in Frankfort and Franklin County is the Frankfort Plant Board (FPB). The current water treatment plant has the capacity to treat 18 million gallons of water per day. Peak demand for treated water is currently 14 million gallons per day with average demand well below that number. The FPB continually

monitors the demand and capacity of the existing system in order to assess what improvements will be required over the next five years.

While the FPB provides water service to the central portion of the county including the City of Frankfort, five rural water providers including the Elkhorn, Farmdale, North Shelby Water Company, Peaks Mill, and U.S. 60 Water Providers provide water to outlying portions of Franklin County, as illustrated on Exhibit 19, Franklin County Water Service Areas Map. As growth continues, the rural providers, with limited financial and technical resources, will be pressed to provide water service at the level currently provided. This plan recommends that opportunities for consolidation of water service providers be examined and pursued as practicably possible. Provision of water service, by capacity, should be examined as a planning tool. Water service should be made available to all residents of Franklin County. However, lines should be sized to accommodate or encourage only that land use type and intensity recommended by this plan.

The map below depicts the Frankfort Plant Board Service (in green) area.



Staff Finding: *Positive. The replacement water tank and additional capacity serves to continue providing Frankfort residents with water service which would appear to be in line with the language of this section.*

Based on the information provided and Staff's analysis of the project in regards to its conformance to the Comprehensive Plan Staff is recommending to the Planning Commission that the project does not entirely conform to all of the Comprehensive Plan.

Rendering of the View from Louisville Road/Tanglewood Drive Entrance



Rendering of the View from Tanglewood Drive



Rendering of the View From Reservoir Road



APPENDIX E
to
Franklin Plant Board's
Motion for Summary Judgment on Count II

FRANKFORT/FRANKLIN COUNTY PLANNING COMMISSION

Conclusion & Recommendations

August 16, 2018

Background:

On June 21, 2018, Anna Marie Pavlik Rosen, Board Chair of the Frankfort Electric and Water Plant Board filed a request for Project Review of the Water Tank (Reservoir) replacement for property located at 98 Tanglewood Drive, Frankfort, Kentucky.

This request was filed pursuant to KRS 100.324 (4) and based upon a directive adopted by the Frankfort Board of Commissioners on August 23, 2016, which stated, in part:

"If the Frankfort Plant Board continues to develop on any city property in the future, the FPB must gain approval of the Planning & Zoning Commission."

On August 16, 2018, the Frankfort/Franklin County Planning Commission held a meeting to consider the request filed by the Frankfort Electric and Water Plant Board on replacing the existing water reservoir with one 7 million gallon tank.

At the August 16, 2018 meeting, the City Planning & Community Development staff presented a staff report of their review of the request and the staff recommendation on whether the request was in agreement with the Comprehensive Plan. In addition to Planning & Community Development staff, Mr. David Billings, Chief Water Engineer for the Frankfort Electric and Water Plant Board provided testimony in regard to the matter.

Tanglewood residents were represented by Hon. Guthrie True, who provided testimony to the Planning Commission, as well as the Tanglewood Neighborhood Association president, Nate Van Sickel.

Applicable Regulation:

KRS 100.324 (4) states:

"Any proposal for acquisition or disposition of land for public facilities, or changes in the character, location, or extent of structures or land for public facilities, excluding state and federal highways and public utilities and common carriers by rail mentioned in this section, shall be referred to the commission to be reviewed in light of its agreement with the comprehensive plan, and the commission shall, within sixty (60) days from the date of its receipt, review the project and advise the referring body whether the project is in accordance with the comprehensive plan. If it disapproves of the project, it shall state the reasons for disapproval in writing and make suggestions for changes which will, in its opinion, better

accomplish the objectives of the comprehensive plan. No permit required for construction or occupancy of such public facilities shall be issued until the expiration of the sixty (60) day period or until the planning commission issues its report, whichever occurs first.

Planning Commission Finding:

After hearing all testimony, the Frankfort/Franklin County Planning unanimously found that the request filed by the Frankfort Electric and Water Plant Board to replace the existing water reservoir with a seven million gallon tank at the height and scale being proposed and the possible future second seven million gallon tank at the location proposed were not in agreement with the Comprehensive Plan.

Planning Commission Recommendation:

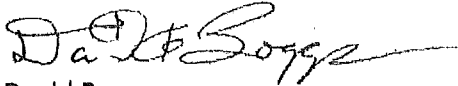
1. In accordance with the Comprehensive Plan, Goal #1, Policy #7 that proposes that Growth be based in projected population growth, current housing stock and demographics, the proposed tank size should be reduced to two 4.6 million gallon tanks, which the Frankfort Electric & Water Plant Board staff agreed during testimony would meet water needs for Franklin County until the Year 2060.
2. In accordance with the Comprehensive Plan, Goal #1, Policy #11 that encourages development to provide green space within neighborhoods and link neighborhoods and other appropriate sites together, the proposed tank size should be reduced to allow the approach to the Tanglewood Neighborhood to retain its natural environment.
3. In accordance with the Comprehensive Plan, Goal #6, Policies #s 5 & 6, that encourages the preservation of historic buildings and neighborhoods in order to maintain community character or fit the character of existing neighborhoods, the dimensions of width and height of the proposed tank will overshadow the existing neighborhood.
4. Adopt Staff Report findings on Goal #6 and Goal #7, pages 9 and 10 of the staff report listed below:

Staff Finding: Negative. Policy #1 would appear to support the request. However, the top of the dome of the proposed new Water Tank will be just over 21' higher than the existing reservoir and will be located closer to the Tanglewood and Capital Heights neighborhoods than the existing reservoir structure. It should be noted that the existing reservoir was placed on this site in approximately 1885 with an original capacity of 6.5 million gallons, and subsequently renovated/added on in 1962 to its current configuration 9.2 million gallons (according to FPB staff). In short, while the enlargement of a large structure like a water tank would generally not be the ideal neighbor for a residential neighborhood the existing reservoir and surrounding compound have been neighbors of this neighborhood for a very long time. In staff's opinion; Regardless of

how long the current structure has been coinciding with the neighborhood the addition of equipment and a taller more visible water tank is not the most effective way to "Promote the stability, preservation and vitality of existing residential neighborhoods."

Staff Finding: Negative. The project will provide extensive landscaping associated with the construction per the results of mediation, which will help community character; however, the new location of the water tank will be more intrusive into the residential neighborhoods surrounding the site. It should be noted that the City Commission asked the Plant Board to consider installing underground utilities along the residential property line but the current design does not include the overhead lines being relocated underground. Much like the previous goal it does not appear that while the project may serve to attempt to improve the delivery of FPB services to the community it does not directly contribute to enhancing community quality and character.

Respectfully Submitted,



David Boggs

Vice-Chair

Frankfort/Franklin County Planning Commission