

Sponsors:	Commissioner Powell
	Commissioner Stewart
Second Reading:	August 23, 2021
Publication Date:	August 26, 2021

ORDINANCE NO. 2021-018

**AN ORDINANCE REZONING APPROXIMATELY 10 ACRES
LOCATED ON 31-W NORTH FROM AG (AGRICULTURE) TO B-4 (HIGHWAY
BUSINESS) BY SOUTH STREET, LLC**

WHEREAS, South Street, LLC, a Kentucky limited liability company, filed a petition to rezone approximately 10 acres located on 31-W North, in Franklin, Simpson County, Kentucky currently zoned AG (Agriculture) to B-4 (Highway Business); and

WHEREAS, South Street, LLC desires to rezone the aforementioned property to make the property more productive for the community, and this change is appropriate and consistent with the use of this property and surrounding properties; and

WHEREAS, a public hearing was held on July 20, 2021, after due public notice, in the manner provided by law; and

WHEREAS, the Planning & Zoning Commission recommended the granting of said zone change as it is in agreement with the community's comprehensive plan;

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the City of Franklin, Kentucky as follows:

The approximately 10 acres located on 31-W North in Franklin, Simpson County, Kentucky, as more particularly described in Exhibit A attached hereto is granted a zone change from its AG (Agriculture) to B-4 (Highway Business).

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holdings shall not affect the validity of the remaining portions of Ordinance.

All ordinances or parts of ordinances in conflict herewith, are, to the extent of such conflict, hereby repealed.

August 9, 2021

FIRST READING

August 23, 2021

SECOND READING

At a meeting of the City Commission of the City of Franklin, Kentucky, held on August 23, 2021, on motion made by Commissioner Stewart and seconded by Commissioner Powell, the foregoing ordinance was adopted, after full discussion, by the following vote:

- Yes LARRY DIXON, MAYOR
- Yes JAMIE POWELL
- Yes BROWNIE BENNETT
- Yes WENDELL STEWART
- Yes HERBERT WILLIAMS

APPROVED BY:

Larry Dixon Mayor
Larry Dixon, Mayor

ATTEST:

Cathy Dillard
Cathy Dillard, City Clerk

EXHIBIT A

PROPERTY DESCRIPTION APPENDIX

A certain tract of land lying in Simpson County, Kentucky, being located near the City of Franklin and fronting on US Hwy 31 W (Bowling Green Road); the point of beginning being located approximately 49' south of the centerline of Aisan Drive as measured along the west right of way of said US Hwy 31 W; being a portion of the property previously recorded in Deed Book 145, Page 297, and being more particularly described as follows:

The basis of bearings for this legal description is grid north as established by Kentucky State Plane Coordinates, South Zone 1602. All iron pins set are ½" x 18" iron pins with 1" yellow plastic cap stamped "B. Hester PLS 4147."

Beginning at 5/ 8" iron pin found in the west right of way of the aforementioned US Hwy 31 W (Bowling Green Road) (right of way varies per KYTC Project No. 107-5-5 Dated 1950), said pin being a common corner to Donny & Wendy Gant (Deed Book 187, Page 4) and being the northeastern most corner of the parent tract; thence leaving the line of Gant and with the right of way of US Hwy 31 W, S 12° 02' 07" W 393.96 feet to an iron pin set; thence leaving the right of way of US Hwy 31 W and bisecting the lands of the parent tract the following three (3) calls: (1) N 77° 57' 31" W 606.86 feet to an iron pin set; thence (2) N 71° 48' 21" W 411.47 feet to an iron pin set; thence (3) N 18° 11' 39" E 456.73 feet to point (not set) within an existing tree and in the line of the aforementioned Gant, said point being witnessed by a ½" iron pin with a 1" plastic cap stamped "Witness PLS 4147" set as S 71° 48' 21" E 5.00 feet; thence with the line of Gant, S 71° 48' 21" E 972.56 feet to the point beginning, **containing 435,600 +/-square feet (10.00 acres)** as surveyed by Arnold Consulting Engineering Services, Inc., Charles B. Hester, PLS 4147, completed on March 25, 2020.

THE ABOVE-DESCRIBED PROPERTY IS BENEFITTED BY, AND SHALL BE THE DOMINANT TENEMENT OF, A CERTAIN 60' NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AS DEPICTED ON THE PLAT OF RECORD IN PLAT CABINET 6, PAGE 10, SIMPSON COUNTY CLERK'S OFFICE, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT:

Note: The following legal description is exclusively for the purpose of depicting the portion of the property listed below to be dedicated as a 60' Ingress/Egress Easement. The boundary for the legal description below is based on a boundary survey completed by ACES, Charles B. Hester, PLS 4147, completed on March 25, 2020. No monuments have been set for the easement corners, thus the description below is not certified to meet the minimum standards for Boundary Survey Descriptions as set forth by the Commonwealth of Kentucky Standards of Practice for Professional Land Surveyors in 201 KAR 19: 150 and as such, said description is to be used for the purpose of dedicating the aforementioned easement only and not for the purpose of transferring title.

A certain tract of land lying in Simpson County, Kentucky, being located near the City of Franklin; the Point of Beginning being located approximately 970' north of the intersection of the centerline of US Hwy 31 W (Bowling Green Road) with the centerline of Quail Ridge Road; being a portion of the property previously recorded in Deed Book 145, Page 297, and being more particularly described as follows:

The basis of the bearings for this legal description is grid north as established by Kentucky State Plane Coordinates, South Zone 1602. All iron pins set are ½"x 18" iron pins with 1" yellow plastic cap stamped "B. Hester PLS 4147."

Beginning at an iron pin set in the west right of way of US Hwy 31 W (Bowling Green Road) (r /w varies per KYTC Project No. 107-5-5 Dated 1950), said pin being located S 12° 02' 07" W 393.96 feet from a 5/8" iron pin found at the northeastern most corner of the parent tract; thence with the right of way of US Hwy 31W, S 12° 02'07" W 60.00 feet to an iron pin set; thence leaving the right of way of US Hwy 31 W and bisecting the lands of the parent tract the following three (3) calls: (1) N 77° 57' 31" W 606.86 feet to a point (not set), passing through an iron pin set on line at a distance of 546.86 feet; thence (2) N 12° 02' 07" E 60.00 feet to an iron pin set; thence (3) S 77° 57' 31" E 606.86 feet to the point of beginning, **containing 36,412 +/- square feet (0.84 acre)** as surveyed by Arnold Consulting Engineering Services, Inc., Charles B. Hester, PLS 4147, completed on March 25, 2020.

SAID EASEMENT SHALL BE FOR THE REASONABLE, NON-EXCLUSIVE INGRESS AND EGRESS TO AND FROM U. S. HIGHWAY 31-W TO THE IMMEDIATELY ADJOINING LAND AS HEREIN CONVEYED AS THE DOMINANT TENEMENT THEREOF. MOREOVER, THE SUBJECT DOMINANT TENEMENT HOLDER OR ITS SUCCESSORS IN INTEREST, SHALL HAVE THE RIGHT TO CONSTRUCT, DEVELOP, AND MAINTAIN SAID EASEMENT FOR SUITABLE PASSAGEWAYS AS SAID DOMINANT TENEMENT HOLDER OR ITS SUCCESSORS IN INTEREST MAY DETERMINE FOR USES INCLUDING, BUT NOT LIMITED TO, PUBLIC STREETS OR COMMERCIAL ROADWAYS. SUCH CONSTRUCTION, DEVELOPMENT, AND MAINTENANCE, MAY BE IN CONCERT WITH THE SERVIENT TENEMENT HOLDER, DOMINANT TENEMENT HOLDER OR THEIR SUCCESSORS IN INTEREST, OR SOLELY PURSUED BY ANY SUCH INTEREST HOLDER, WITH SUCH EXPENSES APPORTIONED BY SUBSEQUENT AGREEMENT, OR AT THE SOLE EXPENSE OF ANY OF SAID INTEREST HOLDERS, WITH IT BEING HEREBY EXPRESSLY CONTEMPLATED HOWEVER THAT SUCH SUBSEQUENT CONSTRUCTION, DEVELOPMENT, AND MAINTENANCE, WILL LIKELY TRANSPIRE.

THE ABOVE-DESCRIBED PROPERTY IS SUBJECT TO THE FOLLOWING RESTRICTIVE AND PROTECTIVE COVENANTS, TO-WIT:

THE ABOVE-DESCRIBED PROPERTY IS SUBJECT TO THE FOLLOWING RESTRICTIVE AND PROTECTIVE COVENANTS, TO-WIT:

1. These land use restrictions shall apply to all real properties situated on the west side of U.S. Highway 31-W, north of the town square of Franklin, Simpson County, Kentucky, the title to which is presently held by Lewis Memorial, Inc., a Kentucky non-profit corporation, by Deed Book 145, Page 297, Deed Book 344, Page 99, Simpson County Clerk's Office, or otherwise.
2. No lot shall be used for: a trucking terminal; pre-owned vehicle sales facility of any kind; bar, lounge or similar establishment for any sale or consumption of alcoholic beverages by the drink, except in a sufficiently licensed restaurant; adult entertainment facility of any kind; adult theater; any facility for the display, rental, purchase, viewing, or other use of pornography, adult books, adult videos, or other such presently existing or subsequently devised adult entertainment media; pawn shop; pool hall or billiard lounge; shooting gallery or fire arms range; substance abuse rehabilitation facility; substance abuse counseling facility; half-way house; massage parlor, or spa otherwise lacking a sufficient license or certification and fully staffed by licensed massage therapists permitted by the Kentucky Board of Licensure for Massage Therapy; vape store; vaping, smoking, or hooka lounge, marijuana store or lounge, as well as all other such facilities for the use or consumption of similar, or derivative, behavior altering substances and their delivering devices or media, presently existing or subsequently devised; bingo parlor; gambling house of any kind; tattoo parlor; body-piercing parlor; or facilities for the sale or storage of manufactured, mobile, and trailered homes; and manufactured, mobile, or trailered home parks; and camping facility of any type or for any purpose.
3. No lot shall be used for a stone quarry; mining operation of any type, including stock piling and transfer facilities; commercial air transport park; pet food processing or manufacturing plant; poultry, beef, pork, or other such meats, meat by-products, or fish or game processing plant; fish farm; "pay lake," or other aquaculture facility; no land use involving the use of explosives; no landfarming or similar waste disposal facility; no chemical or acid processing plants; no salvage yard, junkyard, recycling facility, waste material stock piling, or related transfer facility; rendering plants; boiler works; smelting plant; coke oven facility; dairy facility; paving material manufacturer; concrete manufacturing or mixing plant; slaughterhouse; stockyard; veterinary clinic or hospital with exterior facilities; forge plant foundry; or any other use which would emit or produce nuisances, detrimental effects,

noxious or toxic fumes or smoke, odors, gases, excessive noises, excessive vibrations, or otherwise constituting a dangerous, hazardous, offensive, or unhealthy activity all as reasonably determined by Lewis Memorial, Inc., or its successors in interest.

4. All industrial use structures to be situated on any lot otherwise permitted by these land use restrictions shall include edifices, the faces of which will shall be at least sixty percent (60%) brick, stone, pre-cast concrete, fiber cement board, or slightly architectural metal panels, as reasonably approved by Lewis Memorial, Inc., or its successors in interest.
5. All exterior lighting shall be focused inward and downward onto the subject lot, and away from then- existing residential uses and all adjoining facilities owned or used by Lewis Memorial, Inc., or its successors in interest.
6. All residential and commercial developments on the subject property is within the purview of the Franklin- Simpson Planning & Zoning Commission and shall be undertaken only upon its documented approval.
7. All industrial uses of the subject property shall be subject to the written approval of Lewis Memorial, Inc., or its successors in interest, in addition to the Franklin- Simpson Planning & Zoning Commission as noted in paragraph 6, hereof.
8. These land use restrictive and protective covenants shall run with the land and shall be enforceable by injunctive relief or other available legal remedy through any court, administrative body, or governmental authority having jurisdiction thereover, by Lewis Memorial, Inc., and its successors and assigns, and by any person or entity claiming or possessing an ownership interest in the subject property through Lewis Memorial, Inc. In the event that any violation or other breach of these land use restrictive and protective covenants should be enforced by and through an administrative proceeding or judicial action, the party adjudged to have breached or otherwise violated these land use restrictive and protective covenants shall reimburse the complaining party or parties for any and all reasonably incurred court costs, enforcement expenses, and attorney's fees in amounts to be adjudged by the subject administrative body or court of law.
9. Invalidation of any of these land use restrictive and protective covenants by judgment or other court order shall in no way affect any of the other restrictive or protective covenants

herein, all of which shall otherwise remain in full force and binding effect.

10. These land use restrictive and protective covenants shall be binding upon, and inure to the benefit of, the heirs, devisees, personal representatives, successors, and assigns of Lewis Memorial, Inc., as well as any and all persons or entities claiming a beneficial interest or estate in and to any portion of the subject real property by and through Lewis Memorial, Inc. These land use restrictive and protective covenants in like manner shall be binding upon, and inure to the benefit of, any such person or entity as though these land use restrictive and protective covenants were set out and fully recited at length in each and every deed of conveyance or other instrument establishing an estate or interest in and to any portion of the subject real property, notwithstanding any failure to set forth and fully recite these land use restrictive and protective covenants in any subsequent deed of conveyance or other similar instrument publicly recorded in the Simpson County Clerk's Office.