MINUTES
URBAN COUNTY PLANNING COMMISSION
ZONING ITEMS PUBLIC HEARING

September 24, 2009

I. CALL TO ORDER – The meeting was called to order at 1:32 p.m. in the Council Chamber, 2nd Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Patrick Brewer; Marie Copeland; Mike Cravens; Ed Holmes; Mike Owens; Derek Paulsen; Frank Penn, Chair; Carolyn Richardson; Lynn Roche-Phillips; Joan Whitman; and William Wilson.

Planning staff members present: Bill Sallee; Traci Wade; and Stephanie Cunningham. Other staff members present were Rochelle Boland, Department of Law; Alan Case and Captain Charles Bowen, Division of Fire and Emergency Services; Bob Carpenter, Division of Building Inspection; and Tim Queary, Urban Forester.

II. APPROVAL OF MINUTES – A motion was made by Mr. Owens, seconded by Mr. Cravens, and carried 11-0 to approve the minutes of the August 13, 2009, and August 27, 2009, Planning Commission meetings.

III. POSTPONEMENTS AND WITHDRAWALS

1. URBAN COUNTY PLANNING COMMISSION ZONING MAP AMENDMENT

a. MAR 2009-11: URBAN COUNTY PLANNING COMMISSION - petition for a zone map amendment to add a Neighborhood Design Character Overlay (ND-1) zone for 239.0± net (253.3± gross) acres, to preserve existing neighborhood character for properties located at 3828-3860 Carleton Drive; 2571-2595 Edgehill Drive; 3713-3737 Gloucester Court; 3533-3901 Gloucester Drive; 3800-3825 Karen Court; 3800-3825 Margo Court; 3524-3784 Salisbury Drive; 2658-2686 Sussex Drive; 2538-2551 Westmorland Court; 2586-2766 Westmorland Road; and 3800-3880 Wyse Square.

Proposed Design Standards:

1. Exterior building materials for the principal structure, or expansion of the existing principal structure, must be brick or stone. If the original primary structure was not constructed with brick or stone, any remodel, expansion or addition must be made with the same material as the existing home. Exceptions are eaves, dormers or porches.
2. Principal structure may not exceed two stories in height.
3. Minimum rear yard setback shall be 25' or one-third the lot depth, whichever is greater. Corner lots may meet the setback requirement by using one side yard, if necessary.
4. Garages must be attached to the principal structure using the same exterior finish materials as the principal structure. The garage door opening must not be constructed to face the primary street.
5. No fences shall be erected on any lot except as required for swimming pools.
6. Pool fences shall enclose an area surrounding the pool. Total area fenced (including pool) may not exceed 400% of the pool area dimension.

LAND USE PLAN AND PROPOSED USE
The 2007 Comprehensive Plan recommends Existing Rural Residential (ERR) land use for the Westmorland subdivision area, and Core Agricultural and Rural Land (CARL) for one parcel within the subject area just to the west of the subdivision. The Planning Commission has initiated a zone change request to add a Neighborhood Design Character Overlay (ND-1) zone in order to regulate exterior building materials, building height, rear yard setbacks, garage door orientation, and provide fence restrictions. The underlying Agricultural Rural (A-R) zoning is not proposed to be changed.

The Zoning Committee Recommended: **Withdrawal of 3860 Carleton Drive from this request, and Approval of the ND-1 overlay zone for the remaining properties with the Staff Alternative Design Standards**, for the reasons provided by staff.

The Staff Recommends: **Withdrawal of 3860 Carleton Drive from this request**, for the following reasons:

1. This proposed ND-1 overlay zone is not appropriate for the property located at 3860 Carleton Drive since it is a 38-acre agricultural property. Although one single-family residence does exist on the property, the property is not materially similar to the 1-7 acre lots in the Westmorland subdivision.
2. The 2007 Comprehensive Plan recommends Core Agricultural and Rural Land (CARL) land use for this property and not Existing Rural Residential (ERR) land use as for the remainder of the subject area.
3. The property at 3860 Carleton Drive is located outside of the platted bounds of the Westmorland subdivision.

The Staff Recommends: **Approval of the ND-1 overlay zone for the remaining properties with the Staff Alternative Design Standards**, for the following reason:

1. The requested Neighborhood Design Character (ND-1) overlay zone is in agreement with the 2007 Comprehensive Plan for the following reasons:
   a. The Goals & Objectives of the Plan identify eight themes, one of which is "preserving, protecting, and maintaining existing residential neighborhoods in a manner that ensures stability and the highest quality of life for all residents."

* - Denotes date by which Commission must either approve or disapprove request.

Further, Goal 15, Objective I states that neighborhood protection overlay zoning provisions should be implemented for establishing stability and protection in existing and, especially, older neighborhoods.

b. The implementation of a Neighborhood Design Character (ND-1) overlay zone is in agreement with the Comprehensive Plan's Goals & Objectives by providing specific standards that will maintain the existing character of the neighborhood, independent of the underlying zoning.
c. The Westmorland neighborhood has completed a design character study, defined the existing character of the neighborhood, developed preservation goals, and proposed appropriate neighborhood design standards (in need of only slight modification), thus meeting the requirements of the ND-1 zone.
d. One of the eight overriding themes of the 2007 Comprehensive Plan is for "preserving, protecting, and maintaining existing residential neighborhoods in a manner that ensures stability and the highest quality of life for all residents." This will be enhanced with this rezoning for Westmorland.

<u>Neighborhood Representation</u>: Bill Allen, 3825 Margo Court, was present representing the Westmorland Neighborhood Association. He said that, since the mailed notice of this hearing was sent, it has generated a considerable amount of discussion and some confusion in the neighborhood. In an attempt to address those concerns, their neighborhood association recently held a meeting for the Westmorland residents. After that meeting, the neighborhood association concluded that this rezoning hearing should be postponed, to allow the residents to further discuss the issue at their annual meeting. Mr. Allen said that many of the residents had indicated that they would be in support of the proposed ND-1 zoning without understanding what that really entailed. The neighborhood association, therefore, is requesting postponement of this hearing, in order to allow the residents to discuss the issue at their annual meeting in October. The residents would be agreeable to a one-month postponement, but they understand that the Planning Commission public hearing originally scheduled for October 22nd may be cancelled, so they will be prepared to have this item heard at the Commission's November meeting.

<u>Staff Comment</u>: Mr. Sallee stated that the Commission has an addendum item on their agenda today, with the staff's recommendation that they cancel their scheduled October 22nd public hearing. If the Commission does choose to cancel that meeting, the remaining dates on which this item could be heard would be either November 12th, which is ordinarily reserved for subdivision and development plans; or November 19th, which is typically devoted to rezoning items. The staff would not oppose postponement of this item to either of those meetings.

<u>Action</u>: A motion was made by Mr. Holmes, seconded by Ms. Richardson, and carried 11-0 to postpone MAR 2009-11 to the November 19, 2009, Planning Commission meeting.

2. **<u>ZOTA 2009-1: AMEND ARTICLE 9: GROUP RESIDENTIAL PROJECTS</u>** – petition for a Zoning Ordinance text amendment to Article 9 to simplify existing regulations regarding open space and yard setbacks, and to provide for pedestrian accommodation and bicycle parking.

INITIATED BY: Urban County Planning Commission

PROPOSED TEXT: (Copies of the latest draft for this text are available upon request)

<u>The Zoning Committee Recommended: **Postponement**</u>.

<u>The Staff Recommends: **Approval**</u>, for the following reasons:

1. The proposed text amendment to Article 9 of the Zoning Ordinance, which regulates Group Residential Projects, will allow for more appropriately scaled and designed Group Residential Projects by reducing the required Project perimeter yards, allowing indoor recreational facilities to meet open space requirements, requiring adequate pedestrian connections, limiting over-building of surface parking and requiring bicycle parking spaces.
2. These changes will allow for slightly more dense development of our urban land without compromising open space and recreation amenities that benefit the residents of such Projects.
3. The proposed amendments to Article 9 will simplify Group Residential Project regulations for those designing townhouse and apartment development plans, as well as for the Planning Commission and the LFUCG staff who administer the Zoning Ordinance.

<u>Staff Comment</u>: Mr. Sallee stated that this item has been postponed several times this year, and the staff would now like to request indefinite postponement. Once the staff revises the text again, they will most likely present it to the Commission at a work session, and then consider redocketing it at some point after that.

<u>Action</u>: A motion was made by Mr. Cravens, seconded by Ms. Richardson, and carried 11-0 to indefinitely postpone ZOTA 2009-1.

IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, September 3, 2009, at 8:30 a.m. The meeting was attended by Commission members: Mike Cravens, Mike Owens, Marie Copeland, Derek Paulsen and Carolyn Richardson. Committee members in attendance were: Hillard Newman, Division of Engineering; and Jim Gallimore, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Chris Taylor, Tom Martin, Denice Bullock and Cheryl Gallt, as well as Rochelle Boland, Department of Law; Captain Charles Bowen, Division of Fire & Emergency Services; Paul Hockensmith, Street Addressing Office; and Bob Carpenter, Division of Building Inspection. The Committee made recommendations on plans as noted.

General Notes

The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.

1. *All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.*
2. *All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.*

V. **ZONING ITEMS** - The Zoning Committee met on Thursday, September 3, 2009, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Patrick Brewer, Ed Holmes, Frank Penn, Lynn Roche-Phillips, and Joan Whitman. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. **ABBREVIATED PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS**
The staff will call for objectors to determine which petitions are eligible for abbreviated hearings.

Abbreviated public hearings will be held on petitions meeting the following criteria:

- The staff has recommended approval of the zone change petition and related plan(s)
- The petitioner concurs with the staff recommendations
- Petitioner waives oral presentation, but may submit written evidence for the record
- There are no objections to the petition

B. **FULL PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS** – Following abbreviated hearings, the remaining petitions will be considered.
The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
  - (a) proponents (10 minute maximum OR 3 minutes each)
  - (b) objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
  - (a) petitioner's comments (5 minute maximum)
  - (b) citizen objectors (5 minute maximum)
  - (c) staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s)

Note: Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

C. **PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMENDMENT REQUESTS**

1. **ZOTA 2009-6: MODIFY THE MIXED-USE COMMUNITY (MU-3) ZONE REQUIREMENTS** – petition for a Zoning Ordinance text amendment to Articles 17 and 28, to modify the Mixed-Use Community (MU-3) zone to allow additional uses; alter lot, height, and yard requirements; modify the special provisions; and increase the allowable signage in the MU-3 zone.

REQUESTED BY: Lexington Trots Breeders Association, LLC

PROPOSED TEXT: (Copies of the latest draft for this text are available upon request)

The Zoning Committee Recommended: **Approval of the staff alternative text**, for the reasons provided by staff.

The Staff Recommended: **Approval of the Staff Alternative text,** for the following reasons:

1. This is a significant and timely text amendment to the MU-3 portion of the Zoning Ordinance, given the energy and citizen involvement that went into the formulation of the Red Mile Development Plan, culminating in its recent acceptance by the Planning Commission.

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2. This proposal will implement the vision and direction of that Plan to "create a model for mixed-use development in Lexington and the region and explore innovative zoning regulations supporting mixed-use." That Plan has had extensive review and citizen involvement over a five-month period of time earlier this year.
3. If implemented as proposed, this text amendment will help achieve the Plan's goal to "lay the groundwork for additional development that would support and enhance the existing racetrack and ancillary operations at the Red Mile."
4. Expanding the provisions of the MU-3 zone to include new regulations for "Entertainment Mixed Use Projects" will provide a tool to ensure proper design for such large, 10-acre developments in other portions of Lexington-Fayette County in the future.

Staff Presentation: Mr. Sallee presented the staff report, stating that this text amendment had been requested by the Lexington Trots Breeders Association, LLC, and it proposes changes to Articles 28 and 17 of the Zoning Ordinance. He noted that the staff had received one letter in support of the proposed text amendment, from the Fayette Alliance, and he circulated that letter to the Commission for their review.

Mr. Sallee said that the staff has spent a large portion of 2009 discussing property on Red Mile Road, which included the existing Red Mile harness track. In August, a plan was presented as the result of a citizen input process that included representatives of the track, the Division of Planning, and interested citizens in and around that property. The series of public meetings began in April, and concluded in August. Much of the discussion at those meetings centered on future land use for portions of the Red Mile Property. The Red Mile Development Plan, which was authorized by the Planning Commission, set a vision and direction for future land use for the Red Mile property. This proposed text amendment is the next logical extension of that work.

Mr. Sallee stated that the Red Mile Development Plan proposed different future uses for a portion of the Red Mile property. It set three overarching goals: to lay the groundwork for additional development on the existing racetrack property; to become a model for future mixed-use development in the community; and to improve connectivity and access to the Red Mile from the surrounding community. Beyond those three goals, there were seven principles outlined in the Plan: that the existing operation of the racetrack be continued; that an additional mixture of uses should be encouraged, including office and residential uses; that it should be a destination in the future; and that it should include short-term development along Red Mile Road, as well as more long-term mixed-use development as outlined in the Plan.

Mr. Sallee said that the Red Mile Development Plan estimated that residential, commercial, and office space should all be available for parts of the Red Mile property, in the area between the existing grandstand and Red Mile Road. It should also include a hotel and some square footage for additional entertainment-type uses. The specifics of the new land uses anticipated by the Plan should include condominiums; mixed-use residential and office structures; retail uses; and a hotel and entertainment center.

This proposed text amendment was filed because, currently, there is no zone that would allow this particular combination of mixed uses in one zoning category. The last page of the Red Mile Development Plan refers to the proposed text amendment, noting that "the last step in implementing this Plan will be the filing of a text amendment." Mr. Sallee said that appropriate notice of the text amendment has been sent to all of the registered neighborhood associations, and the Zoning Committee reviewed this application at their meeting three weeks ago. At that time, the staff discussed whether or not the implementation of the Red Mile Development Plan should include the creation of a new zone, or modifications to one of our existing zones. There are currently no MU-3 zones in the community that are larger than 10 acres in size, so except to the applicant, there is no difference in either approach, in the staff's opinion.

Mr. Sallee stated that, in reviewing the possibility of creating a new zone or amending the existing MU-3 zone, the staff followed the model that has been provided for decades in the Professional Office (P-1) zone. That zone was originally created for lots as small as 7,500 square feet, with street frontages in the range of 60 to 75 feet. The P-1 zone does permit a Professional Office Project for areas of 10 acres or larger that are currently zoned P-1. The staff applied that concept to their review of the applicant's original submission for the proposed text amendment, and presented an alternative text amendment to the Zoning Committee based on that concept.

The "mirror" to the Professional Office Project concept that the staff proposes is the "Entertainment Mixed-Use Project," which would be regulated via a special provision of the MU-3 zone for areas larger than 10 acres in size. Mr. Sallee stated that, by doing this, there would be some additional uses allowed for these projects, as well as some relaxed requirements. Some of the new uses allowed by this Entertainment Mixed-Use Project concept would be restaurants; entertainment uses, such as nightclubs; restaurants with live entertainment; bowling alleys; drive-in restaurants; movie theaters; hotels, motels, and extended-stay hotels; and grandstands for horse racetracks, specifically in order to accommodate the existing Red Mile track. There would also be some additional accessory uses permitted under the staff's proposed text amendment draft, including banquet facilities and conference centers when in conjunction with a hotel or motel principal use. The staff also proposed some additional conditional uses for these projects, including self-service car washes and fuel pumps not manned by an attendant.

Mr. Sallee stated that, in addition to the proposed new uses, the staff is also proposing a relaxation to the maximum height of buildings in the MU-3 zone. Currently, there is a 70' height limit, except at the intersection of major roadways. Under the staff's proposed alternative draft, all buildings in an Entertainment Mixed-Use Project would be allowed to be 80 feet in height. That would be controlled by the Planning Commission's review of a development plan, which would follow, should this text amendment be approved. The staff has also proposed that there no longer be a requirement that every building in an Entertainment Mixed-Use Project be constructed at 0' setback, as is currently the requirement for most MU-3 buildings. Because these are much larger developments, this text amendment would only require 15% of buildings in an Entertainment Mixed-Use Project to be built at the right-of-way line, and all of the other buildings would be allowed to set back further.

Mr. Sallee noted that not everything in the staff's proposed draft is a relaxation of current requirements; there are some additional restrictions proposed for the uses as well. The major restriction proposed is a requirement that an MU-3 zone be at least 10 acres in size before an Entertainment Mixed-Use Project could be considered for a site. This provision currently has no practical implications, since there are no areas in the community which contain 10 contiguous acres of MU-3 zoning. Every use that would like to take advantage of these provisions in the future will be required to seek a rezoning and have a public hearing before the Planning Commission. In addition to the 10-acre minimum requirement for this special provision use, there would also be a requirement that at least one quarter of the floor area in the buildings be above the first floor of the structures. That requirement would be implemented and reviewed through the development plan process as well.

Mr. Sallee displayed for the Commission a map of locations in Fayette County which might possibly qualify for an Entertainment Mixed-Use Project. The staff proposed in their alternative text that these projects only be allowed in areas that are at least 10 acres in size; recommended for either mixed-use or a non-residential use by the Comprehensive Plan; and located on the roadway listing that is already a part of the MU-3 zone, which comprises the major corridors in Lexington. The map indicates that the existing commercial and industrial corridors are likely where these uses would be able to request development in the future. The staff has proposed two additional restrictions: that some of the uses that are new to the MU-3 zone would be required to provide their own off-street parking; and that not all of the buildings be required to be truly mixed-use in the early phases of development. The applicant requested that, during approximately the first 40% of development, some of the buildings could be allowed to develop without mixed uses, which would allow a large development to be phased. The overall plan for the development would be required to demonstrate compliance with the mixed-use provisions. The staff is in agreement with that provision.

Mr. Sallee stated that part of the proposed text amendment also addresses Article 17, which regulates signage. The text amendment proposes that some additional signage be permitted in MU-3 zones. The staff is agreeable that additional signage is necessary for movie theater uses, and they believe that freestanding and project identification signs should be permitted in an MU-3 Entertainment Mixed-Use Project. These are the types of signs that are typically seen in areas such as the entrance to the University of Kentucky, Coldstream Research Park, and several subdivisions and professional office parks around the community. Those freestanding signs would provide a sense of approaching a district or a destination, which mirrors some of the Red Mile Development Plan recommendations. The staff's alternative text deviates from the applicant's proposal, in that they are more comfortable with retaining most of the freestanding signage provisions of the current MU-3 zone.

The staff's text amendment alternative also proposes several miscellaneous revisions to the Zoning Ordinance. Mr. Sallee said that the staff is recommending that parking structures be allowed in the MU-3 zone, in accordance with the Red Mile Development Plan. That would be a global change for the MU-3 zone, rather than just for the future Entertainment Mixed-Use Projects.

Mr. Sallee stated that the staff has proposed three changes to their alternative text that the Zoning Committee reviewed at the meeting three weeks ago. The first proposes to add a phrase to the locational criteria for 10-acre Entertainment Mixed-Use Projects that would require that, when the Commission considers a development plan for one of the projects, a finding must be made that both the location is appropriate for the use, and it is compatible with neighboring land uses. The second change would correct a typographical error in the staff's original alternative text. The last proposed change was the result of a discussion between the staff and representatives of the Division of Building Inspection immediately following the Zoning Committee meeting. At that meeting, there was discussion about the seating requirement for restaurants with live entertainment, cocktail lounges, and nightclubs, which was a concern for the Division of Building Inspection. The staff felt that those uses did require additional parking over the amount currently allowed in the MU-3 zone; however, they have removed the requirement that parking be based on the number of seats, and instead recommended that it be based at twice the rate (square feet) that other retail uses would be required to provide. That proposed language is, in effect, a compromise between the Divisions of Planning and Building Inspection that is consistent with the staff's recommendation, but does not restrict the Division of Building Inspection on future changes of use that may be proposed as part of a large mixed-use project.

In conclusion, Mr. Sallee said that the staff reviewed this text amendment very closely, in light of the policy directions provided by the Red Mile Development Plan. The staff believes that this text amendment, to an existing zone rather than a brand new zone, as proposed by the applicant and refined by the staff, is consistent with the Red Mile Development Plan. The staff recommends approval of the staff alternative text, for the four reasons as listed in the staff report and on the agenda. The Zoning Committee reviewed the staff report, and also recommended approval of the staff alternative text.

Commission Questions: Ms. Roche-Phillips asked if the definition of "entertainment district" was guided by the allowable uses. Mr. Sallee responded that that definition was part of the staff's first draft, and was defined by a combination of the acreage, the Comprehensive Plan land use designations, and the fact that such a property is to be zoned MU-3. That combination of circumstances, in addition to a development plan that would declare the proposal to be a mixed-use project, was designed to follow the model of professional office parks in the P-1 zone.

Mr. Owens asked if entertainment uses would be allowed on property that is less than 10 acres in size. Mr. Sallee answered that they would not, and noted that they would only be allowed in an area 10 acres or larger with the Planning Commission's approval of a development plan.

Mr. Cravens asked if other Entertainment Mixed-Use Projects would be required to be developed in the same manner as the proposed Red Mile development. Mr. Sallee responded that that was not the intent, but the Red Mile Development Plan could serve as a model for that type of development in the community. He noted that the staff expects that each plan for this type of development will have its own set of unique circumstances.

Mr. Penn asked how the Commission will determine when 40% of the development has been accomplished, and the mixed-use provisions will be required to "kick in." Mr. Sallee answered that, since there are no existing areas of 10 acres in size with MU-3 zoning, the staff expects that the Commission will see not only final development plans for those portions, but an overall preliminary development plan with a zone change. At that time, the staff will begin work with the developer to determine how the project will be phased. The answers will vary by developer and location; in some instances, the mixed-use portion may occur in the early phases, but in others it may happen later. The staff will be required to track the final development plans to discover whether the 40% has or has not been reached, and that any further restrictions to that timing placed by the Commission are followed. The staff may make recommendations on individual plans as well, based on their review. That process will most likely become a routine part of the staff's review of these future mixed-use development plans.

Mr. Holmes stated that the staff will have to monitor the development of those mixed-use projects very closely, as the market may change during development, which could affect the proposed uses of a property. Mr. Sallee agreed with Mr. Holmes' assessment, and noted that the staff questioned the proposed 40% figure when they first reviewed the applicant's proposed text, but they were unable to offer a better restriction.

Petitioner Presentation: Bob Duncan, attorney, was present representing the petitioner. He stated that he did not have any prepared remarks, but would be happy to answer any questions from the Commission members. There were none.

Citizen Comment: There were no citizens present to comment on this request.

Motion: A motion was made by Ms. Richardson and seconded by Mr. Cravens to approve the staff alternative text, for the reasons provided by staff.

Discussion of Motion: Mr. Penn stated that he believes that the process behind the Red Mile Development Plan and the proposed text amendment has been sound, but he is concerned about the issue of shared parking. He said that, particularly during the Red Mile's racing schedule and sales, it would be necessary to be aware of the need for additional parking.

Ms. Copeland asked how the 40% of completion would be calculated. Mr. Sallee answered that, under the staff alternative text, it would be 40% of the floor area.

Action: Ms. Richardson's motion passed, 11-0.

2. **ZOTA 2009-7: AMENDMENT TO ARTICLE 17 FOR COMMERCIAL REAL ESTATE SIGNS** – petition for a Zoning Ordinance text amendment to Article 17-3, 17-4, and 17-6 to modify the provisions for commercial real estate signs.

REQUESTED BY: Commercial Property Association of Lexington, Inc.

PROPOSED TEXT: (Note: Text underlined indicates an addition to the current Zoning Ordinance.)

ARTICLE 17: SIGN REGULATIONS

17-3 DEFINITIONS

17-3(b) BASIC SIGN TYPES BY FUNCTION - The following categories of signs are hereby defined based upon the nature of the information they are intended to provide:

(18) REAL ESTATE SIGN - A temporary sign indicating only sale, lease or rental of property or buildings on which the sign is erected.

17-4 GENERAL PROVISIONS

17-4(d) REMOVAL OF REAL ESTATE SIGNS - All real estate and tract signs shall be removed within ten (10) days after completion of the sales~~s~~, rental, or lease activities in connection with the property or tract to which they pertain.

17-6 PERMITTED SIGNS IN ALL ZONES - The following signs shall be permitted within all zones, subject to the restrictions specified:

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(c) Real estate signs, limited to one (1) sign per street frontage, and further regulated as follows: ~~; non-illuminated;~~
- (1) When associated with single- and two- family residential or agricultural use of the property, such sign area shall not exceeding six (6) square feet in area and six (6) feet in height~~; and removed within ten (10) days after completion of the sale or lease of the property to which they pertain.~~ Such sign shall be non-illuminated.
- (2) When associated with business or commercial, industrial, mixed-use, or multi-family residential use of the property, such sign area shall not exceed thirty-two (32) square feet in area and ten (10) feet in height. Such sign shall be non-illuminated or indirectly illuminated.
- (3) When associated with vacant property where no structures exist other than for an agricultural use or in an agricultural zone, such sign area shall not exceed sixteen (16) square feet in area and six (6) feet in height. Such sign shall be non-illuminated.

The Zoning Committee Recommended: **Referral to the full Commission**.

The Staff Recommends: **Approval of the Staff Alternative Text** for the following reasons:
1. The proposed text amendment will allow for larger and taller real estate signage for vacant property; commercial, business, or industrial land use; mixed-use development; or a Group Residential Project. A larger sign is appropriate in these circumstances, and allowed in comparable communities to Lexington-Fayette County, due to the size and scale of development expected of such land uses.
2. The existing regulations of Article 17 remain appropriate for residential (other than a Group Residential Project) and agricultural properties.

Staff Presentation: Ms. Wade presented the staff report, noting that this request for a Zoning Ordinance text amendment was requested by the Commercial Property Association of Lexington (CPAL) to increase the allowable size, height, and duration that a real estate sign can be permitted on a commercial, industrial, or multi-family residential property.

Ms. Wade said that, recently, the Division of Building Inspection became aware that some commercial real estate signs had exceeded the limits permitted by the Zoning Ordinance; and Building Inspection staff began to notify some of the real estate professionals that their signs were not in compliance with the Ordinance. Those notifications led CPAL to request a text amendment, in order to increase the size of the signage that is currently allowed for commercial, industrial, and multi-family development. The existing regulations do not distinguish between commercial and residential developments; they allow six square feet for a real estate sign, with a maximum height of six feet, and duration of ten days for the sign to remain after the sale or lease of the property. The petitioner determined that the signage allowed by the Zoning Ordinance was not practical for commercial real estate. As part of their application for a text amendment, CPAL proposed new language that they believed would accommodate commercial, industrial, and multi-family uses in Lexington. The petitioner is proposing to differentiate between commercial and residential real estate signs by way of a definition. They believe that the existing restrictions are adequate for residential real estate signage. For commercial real estate, however, the petitioner proposes to be allowed signage of up to 64 square feet in size; up to a height of 12 feet; and for the signage to be allowed to remain on the property up to 30 days following the completion of the sale or lease of the property. The petitioner included some other proposed changes, including the calculation of the area of a sign, and allowing for other temporary signs on a property.

Ms. Wade said that the staff was in agreement that commercial signs locally need to be larger than six square feet; but they believed that a tenfold increase in size, a doubling of the height allowance, and a tripling of the time they are allowed on a property seemed excessive. Ms. Wade referred to a series of exhibits that the staff considered in evaluating this application. The staff first evaluated the existing regulations for freestanding signs for business and mixed use zones. Of the 11 categories from P-1 to ED, six allow 40 or 50 square feet in size. The other five categories allow up to 75 square feet for a freestanding sign. The 64 square feet proposed by the petitioner would be larger than what would be allowed as a permanent sign for some properties in Fayette County. The staff next evaluated the regulations for signage allowed in all zones in Fayette County. The petitioner noted that they considered how construction signs were regulated as a model for what should be allowed for real estate signs. For agricultural, single-family and two-family residential zones, a construction sign is allowed to be up to 32 square feet in size. For a multi-family, office, business, or industrial zone, construction signage is allowed to be up to 64 square feet in size, with no height restrictions. Ms. Wade noted that the major difference between a construction sign and a real estate sign is that a real estate sign can be placed any time there is a vacancy on the property, or the property is for sale. Therefore, the number of times a real estate sign could be placed on the property is indefinite, whereas a construction sign has a shorter "life span," as it is allowed to remain on a property only throughout construction. The Zoning Ordinance determines that the construction process is complete once an occupancy permit has been issued for the building, so any construction sign would be required to be removed at that time. Given the length and frequency that real estate signs could be posted, the staff believed that using construction sign regulations as a gauge is not appropriate in this situation. With regard to the allowable length of time that a real estate sign could be posted, the staff believes that 10 days after the sale of the property should be adequate.

Ms. Wade stated that, in considering the proposed text amendment, the staff reviewed the signage regulations of several other communities of similar size to Lexington. Almost all of the cities that the staff used for comparison had similar residential real estate signage allowances, but they differed from the existing Zoning Ordinance with regard to commercial real estate signage. The tallest commercial real estate sign allowed by any of those communities was 10 feet in height; and the largest in size was 32 square feet. The staff used those dimensions as "guideposts" in evaluating the petitioner's request for 64 square feet in size and 12 feet in height. None of the comparison communities allowed commercial signage to be that large.

Ms. Wade displayed for the Commission a graphic depicting signs of 64 square feet in size and 12 feet in height, compared to a nearly six-foot-tall person. She then displayed a graphic depicting a six square-foot sign (the size that is currently allowed) and a 32 square-foot size as proposed by the staff alternative. The staff noted that a 32 square-foot sign would be easy to construct, as that is the size of one sheet of plywood.

With regard to the other minor changes proposed by the petitioner, Ms. Wade noted that there is already language in Article 17 that refers to the calculation of a double-faced sign. The petitioner's other minor change referred to temporary signs such as banners; the staff believed that those would be allowed on a property whether a real estate sign was present or not, so that proposed language was not necessary. The staff believed that there were some omissions in the petitioner's proposed text. Agricultural and vacant property were not addressed, and the staff was concerned about the regulations for multi-family residential uses.

Ms. Wade stated, with regard to the regulations for agricultural property, that it should be regulated as a residential property. If a property is vacant, however, it would be appropriate to allow for larger signage. The staff's proposal is to allow a 16 square-foot sign for vacant property. With regard to multi-family uses, Ms. Wade noted that there are two types of multi-family uses: a group residential development, which consists of multiple buildings on one lot; and a single building on one lot, such as a four-plex. The staff believed that, for single-building multi-family uses, the signage should be regulated as for a single-family use, with signage allowed to be six square feet in size. For group residential developments, however, the staff believed that a 32 square-foot sign would be appropriate.

Ms. Wade referred the Commission to an exhibit packet containing the petitioner's proposed language, the staff alternative text presented at the Zoning Committee meeting, and the staff alternative prepared following the Zoning Committee meeting. At their meeting three weeks ago, the Zoning Committee discussed regulating real estate signage not by use, but by zoning category. They also discussed the possible permanent nature that real estate signs can have, as well as the principle that real estate signage remains the most effective way to advertise for a property that is for sale or lease. It was also noted at the Zoning Committee meeting that the Kentucky Real Estate Commission regulates the length of time that a sign can be permitted on a property after the sale. Ms. Whitman informed the Committee that the Real Estate Commission requires that signage be removed upon completion of the sale of the property, regardless of the requirements of the Zoning Ordinance. The Zoning Committee alternative text proposes to regulate signage by zoning category, rather than by use. Ms. Wade noted that, if signage is regulated by zoning, there may be some issues with regulation of such signage in the R-3 and R-4 zones. Those zones allow single-family, two-family, and multi-family development; and the staff would be opposed to single-family uses being allowed the same 32 square-foot sign as an apartment complex.

Ms. Wade stated that the staff is recommending approval of the staff alternative text, with one correction, or the reasons as listed in the staff report and on the agenda. In Article 17-6(c)(1), the word "exceeding" should read "exceed." The Zoning Committee recommended referral to the full Commission. Ms. Wade concluded the staff's presentation by displaying photographs of several local examples of signage for the Commission on the overhead projector.

<u>Commission Questions</u>: Ms. Whitman asked how the staff proposed to regulate signage in instances where more than one real estate broker is marketing property in the same building. Ms. Wade answered that one sign would be allowed per frontage, and suggested that the brokers may reach some type of agreement for sharing that one sign. Mr. Sallee noted that a combination of two signs could be placed at the corner of the property under the staff's alternative text.

Mr. Owens said that, based on the staff alternative language which would require removal of any real estate signs within 10 days ,and the Kentucky Real Estate Commission regulations that require removal immediately after completion of the sale, it appears that no sign should ever remain on a property longer than 10 days. Ms. Wade agreed with that assessment.

<u>Petitioner Representation</u>: Tandy Patrick, attorney, was present representing the petitioner. She urged the Planning Commission to approve the original language as proposed by the petitioner, which would allow real estate signs up to 64 square feet in size and 12 feet in height. She said that commercial real estate signage is tailored to the scope and size of a project, so not all signs will necessarily reach the maximum size allowed. If the Commission does adopt the petitioner's proposed language, it will not change

the status quo, as most real estate brokers are currently placing signage up to those sizes. Ms. Patrick noted that signage is the single most important tool that real estate brokers have, and it would be excessively burdensome to require them to replace signs that are currently in place that do not meet the Zoning Ordinance requirements.

Citizen Support: Crystal Blackburn, Government Affairs Director for LBAR, stated that real estate is important to Fayette County, and signs are important to real estate. She said that real estate sales are a driving force in Fayette County's economy, and noted that those act as a "multiplier" since they result in sales of appliances, flooring, and landscaping as well. Since Lexington is dependent on tax revenue, LBAR encourages the Planning Commission to not hinder that important branch of commerce via the restriction of signage. Research from the National Association of Realtors noted that 42% of all homebuyers used signage to locate the home they purchased, and 17% found the property they purchased using only signs. Local data indicates that over 50% of homebuyers in the Lexington area drive around and look for signs as part of a home search. Ms. Blackburn stated that the importance of signage of real estate sales cannot be overstated, and noted that LBAR supports CPAL's text amendment request for that reason.

Billy Smith, Gibson Company, 250 Monarch Street, stated that signage is a real estate agent's most important means of communication. Small signs, such as what is currently allowed by the Zoning Ordinance, would not attract sufficient attention on a 100,000 square-foot building. Mr. Smith said that, whether the use of large signs is right or wrong, it has been a standard practice in the community for the past 25 to 30 years. It is critical that signage be large enough to accommodate the types of graphics, such as a rendering or photo of the building or a floor plan diagram, that attract the most attention for buyers.

Mr. Smith said that real estate brokers in the community "have not been obnoxious" with the use of large signage over the years, and it is important that they be allowed to continue to inform customers and market their properties. He asked that the Planning Commission approve the petitioner's proposed text, and allow the use of large-sized signs to continue.

Commission Questions: Mr. Brewer asked why graphics cannot also fit on a 32 square-foot sign. Mr. Smith answered that graphics would fit on a sign of that size, but they would not be large enough to accommodate the necessary amount of information.

Mr. Penn asked what would prevent signage from becoming permanent, when space is being advertised for sale or lease in a large building. Mr. Smith responded that those multi-tenant office buildings could have several different owners; if each of the units is for sale, signage could be needed to advertise for every unit.

Ms. Roche-Phillips asked if real estate brokers use double-faced signs. Mr. Smith answered that brokers do use such signs, but the use of them is predicated on the location of the sign. If it is located on a corner, it may be effective to use both sides; but sometimes the back side is not sufficiently visible.

Mr. Holmes asked who oversees placement of real estate signs. Ms. Wade responded that real estate signs do not require a permit, so the brokers and/or sign companies are responsible for the placement of the signs. There are no specific restrictions about the placement of real estate signs, but the Division of Building Inspection or Code Enforcement could respond and possibly issue a citation if a sign is placed within a sight triangle. There is a general prohibition against placing these signs within a sight triangle or a right-of-way.

Ms. Whitman asked if most of the larger signs would be placed on a building where there was not adequate space to locate a sign on the sidewalk or ground area. Mr. Smith answered that the largest signs will only be used for very large buildings, such as those 75,000 to 100,000 square feet in size. He noted that such signs could also be used to advertise large parcels of vacant land being sold for development, but the cost of a large sign is too prohibitive for them to be used often, or on small buildings.

Ms. Roche-Phillips asked if there is a provision in the Ordinance to allow the Board of Adjustment to permit a variance for the size of a sign. Ms. Wade responded that the Board of Adjustment cannot vary the number of signs; but they can, through an administrative appeal, in effect vary the size of a sign. In such cases, unused signage could be transferred from one sing to another. Those cases have for the most part involved permanent signs, however, rather than real estate signs. Mr. Sallee added that he could recall only a couple of instances where temporary or banner signs were granted the ability to transfer unused signage by the Board.

Mr. Cravens asked if tract signs are currently allowed up to 64 square feet in size. Ms. Wade answered that tract signs, which are temporary, are allowed to be up to 64 square feet in size. Mr. Cravens asked why signs of that size should not be allowed for commercial tracts. Ms. Wade responded that, in many cases, a permanent sign for that zone would not be allowed to be that large, so it seemed inappropriate to allow a temporary sign to be that large. The staff also found that most of the other communities they studied regulated commercial real estate signs to 32 square feet, so they did not see why Lexington-Fayette County should allow double that size. Mr. Cravens said that he would consider "raw subdivision land," which can have a large tract sign, to be commercial. Once a subdivision tract is purchased, a 64 square-foot tract sign can be placed, so it does not make sense to not allow a real estate sign of that size at the same location. Ms. Wade replied that the purpose of a tract sign is to sell the subdivision lots, then have the sign removed, similar to a construction sign. She added that the staff is proposing to allow signs for vacant land to be up to 16 square feet in size. Mr. Cravens stated that it "does not add up" to restrict the size of a sign for vacant land to be smaller than the size of sign allowed for an existing large building. Ms. Wade answered that the staff's thinking behind that restriction was that, on a vacant piece of land, the sign would have no other structures with which to compete for attention.

Mr. Owens asked if, should the Commission approve the staff alternative text, the existing signs in excess of the allowable size would be required to be removed. Ms. Wade answered that the Division of Building Inspection has already notified approximately 25 brokers or firms that their signs are out of compliance with the Zoning Ordinance. Most of those brokers have requested an extension from the Division of Building Inspection in order to allow this text amendment time to be considered.

Ms. Roche-Phillips asked if this text amendment would be required to be heard by Council as well. Ms. Wade responded that it would.

Ms. Copeland stated that she is in agreement with the staff's recommendation, because it can effectively limit the amount of sign clutter on the streets, as well as recognizing the use of the Internet for research during a real estate purchase.

Ms. Whitman said that Ms. Copeland's assessment is not accurate, based on research that has been conducted. Real estate buyers do drive around to look for signs noting properties for sale, rather than limiting their searches to the Internet. Ms. Whitman stated that it is important to remember that the largest signs will not be used on every property; in fact, they would probably be installed on very few properties, due to the prohibitive cost of the sign. She said that the marketing of property is essential in the community, and she would support the petitioner's proposal of signs up to 12 feet in height and 64 square feet in size.

Mr. Penn asked how, if real estate signs are not required to go through a permitting process, the Commission can be assured that large signs will not be installed without permission. Ms. Wade answered that the Divisions of Building Inspection and Code Enforcement operate on a complaint basis, and generally, do not monitor signage on their own. She said that real estate brokers are, therefore, required to self-regulate; it is obvious, however, that they have been violating the Ordinance up to this point, so it is unclear whether they will stay within the requirements of the Ordinance in the future.

Commission Comments: Mr. Brewer stated that the regulation of signage requires a delicate balance, and he is concerned about the permanency of real estate signs. He said that, since the other cities studied by the staff do not allow larger signs, he does not believe that Lexington needs to allow that increase in size either. Mr. Brewer noted that he does not believe that "we have been doing this forever" is an appropriate justification to change the current policy. He said that he believes that the proposed staff alternative text is a good compromise, in that it would provide the real estate brokers with the ability to use larger signage than is currently permitted under the Ordinance, and he would be willing to support it.

Mr. Owens stated that he agreed with Mr. Brewer's sentiments. He believes that requiring all of the real estate signage to conform to a uniform size would provide all of the brokers an equal opportunity, rather than allowing an advantage for those who are willing to otherwise circumvent the regulations of the Ordinance.

Action: A motion was made by Mr. Owens, seconded by Mr. Brewer, and carried 9-2 (Cravens and Whitman opposed) to approve the staff alternative text for ZOTA 2009-7, for the reasons provided by staff.

V. COMMISSION ITEMS

A. CANCELLATION OF TWO UPCOMING MEETINGS – Mr. Sallee stated that, since there are no new zoning items for the month of October, the staff would request at this time that the Commission amend their official Meeting & Filing Schedule to cancel the Zoning Committee meeting, scheduled for October 1, and the Zoning Public Hearing, scheduled for October 22.

Action: A motion was made by Mr. Holmes, seconded by Ms. Whitman, and carried 11-0 to amend the Meeting & Filing Schedule to cancel the Zoning Committee meeting of October 1, 2009, and the Zoning Public Hearing of October 22, 2009.

Staff Comment: Mr. Sallee noted that, since there are two work sessions scheduled for the month of October, the staff may recommend the cancellation of one of those meetings as well at a later date.

B. JOINT PLANNING COMMISSION / COUNCIL PLANNING COMMITTEE MEETING – Mr. Penn noted that the Planning Commission was scheduled to meet with the Council Planning Committee on Tuesday, September 29, at 9:00 am at the Central Public Library.

VI. STAFF ITEMS – No such items were presented.

VII. AUDIENCE ITEMS – No such items were presented.

* - Denotes date by which Commission must either approve or disapprove request.

VIII. <u>MEETING DATES FOR OCTOBER, 2009</u>

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street)………………	October 1, 2009
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street)…………………….	CANCELLED
Subdivision Items Public Meeting, Thursday, 1:30 p.m., 2nd Floor Council Chambers………………………	**October 8, 2009**
Work Session, Thursday, 1:30 p.m., 2nd Floor Council Chambers…………………………………………………	**October 15, 2009**
Zoning Items Public Hearing, Thursday, 1:30 p.m., 2nd Floor Council Chambers……………………………..	**CANCELLED**
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street)………………	October 28, 2009
Work Session, Thursday, 1:30 p.m., 2nd Floor Council Chambers…………………………………………………	October 29, 2009

IX. <u>ADJOURNMENT</u> - There being no further business, Chairman Penn declared the meeting adjourned at 2:57 p.m.

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Frank Penn, Chair

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Mike Owens, Secretary

TLW/TM/BJR/BS/src