

**MINUTES
URBAN COUNTY PLANNING COMMISSION
ZONING ITEMS PUBLIC HEARING**

November 19, 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 (arrived at 1:38 p.m.); Mike Owens; Derek Paulsen; Frank Penn, Chair; Carolyn Richardson; Lynn Roche-Phillips; and William Wilson. Absent was Joan Whitman.

Planning staff members present: Chris King, Director; Bill Sallee; Barbara Rackers; Jimmy Emmons; Traci Wade; Tom Martin; Chris Taylor; Rob Hammons; and Stephanie Cunningham. Other staff members present were: Rochelle Boland, Department of Law; Amelia Armstrong, Division of Historic Preservation; Steve Parker, Division of Engineering; Bob Carpenter, Division of Building Inspection; and Captain Charles Bowen, Division of Fire and Emergency Services.

- II. **APPROVAL OF MINUTES** – None at this time.

III. **POSTPONEMENTS AND WITHDRAWALS**

1. **RAS LAND, INC., ZONING MAP AMENDMENT & RAS PROPERTY ZONING DEVELOPMENT PLAN**

- a. MAR 2009-14: RAS LAND, INC. (1/7/10)* - petition for a zone map amendment from a Two-Family Residential (R-2) zone to a Mixed-Use: Neighborhood Node (MU-1) zone, for 0.25 net (0.33 gross) acre, for property located at 333 South Upper Street.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 1) recommends Downtown Master Plan future land use for the subject property. The petitioner proposes reuse of the historic structure for professional office and residential uses. The petitioner proposes removing a small addition to the rear of the building, construction of one residential unit in the same location, and locating four dwelling units and office space in the existing structure. The proposed mixture of uses is 57% residential and 43% professional office.

The Zoning Committee Recommended: **Disapproval**, for the reasons provided by staff.

The Staff Recommends: **Disapproval**, for the following reasons:

1. The requested rezoning to a Mixed-Use: Neighborhood Node (MU-1) zone cannot be found to be in agreement with the 2007 Comprehensive Plan and the *Downtown Lexington Masterplan*, which recommend neighborhood residential land use for the subject property. The petitioner proposes residential and office uses on the subject property.
 2. The existing Two Family Residential (R-2) zone is appropriate and the proposed MU-1 zone is inappropriate for the following reasons:
 - a. An existing non-conforming use exists on the subject property that would allow 8-10 dwelling units, for a density of up to 40.0 dwelling units per net acre, to continue. This residential density supports the urban nature of the Historic South Hill Neighborhood and is in agreement with the 2007 Comprehensive Plan and the *Downtown Lexington Masterplan's* recommendation.
 - b. Macks Alley creates a more appropriate land use buffer and zoning boundary between the historic neighborhood and the more intense church and residential uses to the northeast.
 - c. The historic neighborhood should maintain its urban residential core without constant pressure of more intense uses, such as the ones available in the mixed use zones, as recommended by the *Downtown Lexington Masterplan* in designating the immediate area along South Upper Street as a "residential neighborhood" area that requires selective infill and redevelopment.
 - d. Businesses already provide neighborhood level retail and office uses so that additional commercial land uses are not currently necessary at this location.
- b. ZDP 2009-76: RAS PROPERTY (1/7/10)* - located at 333 South Upper Street.

(Barrett Partners)

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Provided the Urban County Council rezones the property MU-1; otherWise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
3. Urban County Traffic Engineer's approval of street cross-sections and access.
4. Building Inspection's approval of landscaping and required street tree information.
5. Addressing Office's approval of street names and addresses.
6. Urban Forester's approval of tree preservation plan.
7. Denote Historic Overlay (H-1) zone in site statistics.
8. Denote developer's information.
9. Denote storm drainage locations.

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10. Denote: Board of Architectural Review approval will be required at the time of a final development plan.
11. Correct tree canopy information.
12. Correct plan title to reflect status as a preliminary development plan.
13. Denote landscape buffer adjacent to the R-2 zone.
14. Denote: This property shall be developed in accordance with the approved final development plan.

Petitioner Representation: Tony Barrett, Barrett Partners, was present representing the petitioner. He requested a one-month postponement of this item.

Action: A motion was made by Mr. Owens, seconded by Mr. Brewer, and carried 10-0 (Whitman absent) to postpone MAR 2009-14 to the December 17, 2009, Planning Commission meeting.

- IV. LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, November 5, 2009, at 8:30 a.m. The meeting was attended by Commission members: Derek Paulsen, Mike Owens, Mike Cravens and Carolyn Richardson. Committee members in attendance were: Hillard Newman, Division of Engineering; and Jeff Neal, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Chris Taylor, Tom Martin, Denice Bullock, Barbara Rackers, Cheryl Gallt, Jimmy Emmons, Traci Wade and Kenzie Gleason, as well as Captain Charles Bowen and Firefighter Allen Case, Division of Fire & Emergency Services; Paul Hockensmith, Addressing Office; Tim Queary, Division of Streets, Roads and Forestry; 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.*

A. Development Plan

1. DP 2009-81: LEDERER PROPERTY (GCL PROPERTIES) (1/26/09)* - located at 312 N. Limestone and 135 – 139 E. Third Street. (Council District 1) **(Wheat and Ladenburger)**

The Subdivision Committee Recommended: Postponement. There were questions whether the use complies with the minimum off-street parking requirements.

Should this plan be approved, the following requirements should be considered:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Approval of street names by e911 staff.
5. Urban Forester's approval of tree preservation plan.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Waste Management's approval of refuse collection.
8. Addition of metes and bounds information for No. 135 and 139.
9. Document off-site parking agreement.
10. Denote BOAR approval.
11. Denote H-1 zoning in site statistics.
12. Resolve tree preservation for 50" basswood tree.
13. Approval by Technical Committee prior to plan certification.

Staff Presentation: Mr. Martin presented the amended final development plan, briefly orienting the Commission to the location of the subject property at the intersection of North Limestone and East Third Streets. He noted that the building on the property is the former Whitehall Funeral Home. In the immediate vicinity of the property are located Transylvania University; Lexington Traditional Magnet School; and single- and multi-family residential units.

Mr. Martin said that the purpose of this amended plan is to construct an addition to the existing two-story, 8,600 square-foot Carrick House banquet facility. The applicant proposes to nearly double the size of the facility with an addition of just over 8,300 square feet in size, varying from one to two stories in height. The applicant also proposes to modify the parking layout; remove an access point to East Third Street; and construct a new entrance from Lake Alley. The existing loop drive configuration is proposed to remain in place, as are most of the existing large trees on the property. The applicant proposes stormwater management via a new rain garden, as well as pavers for the parking area. The parking requirement for the property is 110 spaces. The applicant is proposing 56 on-site spaces, with the remainder of spaces located offsite.

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Mr. Martin noted that the original recommendation for this plan was for "postponement," due to concerns about the off-site parking agreement, for which the applicant did not originally submit any documentation. The applicant has now submitted a parking proposal, which has been reviewed by the Planning staff as well as the staff of the Division of Building Inspection, who determined that it is more appropriate.

Should this plan be approved, the staff recommended 14 conditions, several of which were standard sign-offs. Mr. Martin highlighted condition #10, which refers to the location of the property within an H-1 Overlay zone, and the required approval of the Board of Architectural Review. The applicant's building proposal has been reviewed by the BOAR, and it was recommended for approval. Should this plan be approved, the applicant will return to the BOAR for approval of additional site work proposed on the property.

Mr. Martin displayed a rendering of the property depicting all of the significant trees. He noted that several of the trees on the rendering were highlighted; those trees are proposed to be removed, under the prior BOAR approval. Condition #12 refers to a significant 50" basswood tree, about which the staff has particular concerns. Using the rendering of the property, Mr. Martin indicated the area of the critical root zone of the basswood tree, noting that the tree is already constrained due to the street and the urban development surrounding it. Mr. Martin displayed the plan that was initially submitted, which indicated a proposed drive lane immediately adjacent to the trunk of the basswood tree. The staff was concerned about the potential damage to the tree with that layout; subsequently, the applicant revised the plan to remove the parking that was adjacent to the tree. Members of the Tree Board expressed concern about that plan, and participated with staff and the applicant's landscape architect in an on-site meeting to inspect the tree. The staff now believes that the applicant has made a considerable effort to protect the critical root zone with this revised plan.

Mr. Martin stated that condition #13 requires approval by the Technical Committee, because this plan had not yet been reviewed by that body.

Commission Questions: Ms. Roche-Phillips asked if the staff recommendation for this plan is still postponement. Mr. Martin answered that the staff is now recommending approval of this plan.

Mr. Owens asked if the temporary building on the property is proposed to be removed. Mr. Martin answered that it is proposed for removal. Mr. Owens asked if the rain garden is proposed to be located inside the stone wall. Mr. Martin responded that the rain garden is proposed to be located just inside the original stone wall, which is along Third Street. Mr. Owens asked Mr. Martin to denote the location of the existing asphalt on the property. Mr. Martin used an aerial photograph and the overhead projector to indicate the location of the asphalt in relation to the basswood tree.

Petitioner Representation: Rena Wiseman, attorney, was present representing the petitioner. She stated that the petitioner is in agreement with the staff's recommendations, and requested approval of this plan.

Citizen Support: John Morgan, 343 North Limestone Street, stated that he and his wife also own 122 East Third Street, 126 East Third Street, and 146 East Third Street. They have made a considerable investment in the Third and Limestone Street corridors in the past 26 years, and they were very interested in the redevelopment of the subject property. After several conversations with the applicant throughout the BOAR approval process, they are now fully in support of the proposed addition to the Carrick House, particularly since it will result in the removal of the temporary structure.

Mr. Morgan said that he is concerned, however, about the drainage from the subject property. He noted that the property slopes toward the existing entrance onto Third Street, and that is currently the location of most of the drainage from the property. It will be important for the applicant to ensure that, as the property is developed, stormwater drainage to surrounding properties is not affected. It will also be important for the applicant to ensure that the proposed rain garden does not impact the root zone of the basswood tree or the integrity of the stone wall. Mr. Morgan believes that one of the conditions for the approval of this plan should be a comprehensive review of the proposed rain garden, and its impacts on the surrounding area.

Karen Angelucci, Chair of the Tree Board, stated that the critical root zone for the basswood tree on the subject property is 81 feet, and that all development should take place outside of that zone. It is considered a "heritage tree" by the Tree Board, which means that it is more than 100 years old.

Ms. Angelucci said, with regard to the location of the asphalt near the basswood tree, that it is currently located about 20 feet away from the tree on two sides. She displayed several photographs of an ash tree that is not identified on the development plan, and noted that the Tree Board is concerned about the possible fate of that tree as well.

Ms. Angelucci noted that the basswood tree and the ash tree are both very healthy, and the Tree Board would like to see them preserved if at all possible.

Petitioner Rebuttal: Ms. Wiseman stated that this site plan, other than the changes now proposed to the circulation pattern, is what was reviewed and approved by the Board of Architectural Review.

Commission Questions: Mr. Penn asked Ms. Wiseman if she was familiar with the ash tree that Ms. Angelucci mentioned. Ms. Wiseman answered that she was not familiar with that tree, but she assumed that it was not depicted on the site plan that was approved by the Board of Architectural Review.

Mr. Holmes asked if the applicant had been involved in any discussion about the proposed rain garden and its potential to negatively impact the historic stone wall. Ms. Wiseman responded that that issue will be addressed in the construction drawings for the proposed addition, but noted that Planning Commission approval of the development plan is necessary to get to that point. When the plan is approved, the concerns about the rain garden should be addressed under condition #1.

Commission Comments: Ms. Copeland displayed several photographs of the subject property on the overhead projector, noting that, while she was pleased that the temporary structure on the property would be removed, the applicant must take care to ensure that no harm is done to the property during the process.

Ms. Copeland stated that the basswood tree on the property is not just a significant tree, it is at the appropriate scale for the size of the property. If it should die, replacement of it with new trees would not enhance the property in the same manner. There are two other significant trees on the property that are proposed to be removed, which makes the protection of the basswood tree even more important.

With regard to the proposed rain garden, Ms. Copeland said that, due to the grade change from the property to the street, the historic stone wall acts as a retaining wall for dirt fill. It is a significant historic wall, and drainage from the rain garden could damage it by causing changes to the fill area. Stone walls such as this are constructed with a "toe" which holds the wall in place; if the rain garden is constructed as proposed, it will hold water in that critical area near the toe of the wall. Ms. Copeland displayed a diagram depicting the manner in which the stone wall was constructed, and noted the toe area on that diagram. She said that it is critical, in order to maintain the integrity of the wall, that drainage is directed away from the fill area and the toe of the stone wall.

Ms. Copeland suggested that a structural engineer should review the proposed development plan, with particular attention to the stone wall, in order to determine if freezing of the groundwater could cause it to crack. Should that happen, the wall could fall and become a hazard to pedestrians on the sidewalk. She said that, before the plan progresses further, it should be reconfigured to take stormwater underground or into a sunken garden, rather than the proposed rain garden.

Mr. Owens asked, with regard to the off-site parking agreement, where that parking is proposed to be located. Ms. Wiseman answered that the applicant has entered into an agreement with Fayette County Public Schools to allow parking at Lexington Traditional Magnet School, as well as with the owner of the office building on the opposite side of Lake Alley. Those agreements were signed for two years, and will automatically renew thereafter. Mr. Owens asked where the parking would be located at the school. Ms. Wiseman responded that parking would be provided at the front of the school, and patrons of the Carrick House would walk down the sidewalk on Lime-stone Street to the subject property.

Ms. Copeland stated that she would like for the applicant's business to succeed, but she is concerned about the issues she raised earlier. She asked if it would be easier for the applicant if the Planning Commission voted to postpone this plan, in order to allow time to regroup and make the necessary changes. Ms. Wiseman answered that the applicant is anxiously awaiting the approval of this plan, in order to begin construction on the proposed addition. She noted that the applicant cannot proceed with any stormwater management until the Division of Engineering has signed off on the plan, including the proposed rain garden and any drainage system. If the applicant's consultant and the Division of Engineering staff determine that the location of the rain garden might endanger the stone wall, the rain garden will not be constructed there. The applicant has been very protective of the wall, and would not be willing to proceed with any construction that might be detrimental to it. Ms. Copeland asked if the applicant could make use of grass pavers in order to help mitigate some of the runoff. Ms. Wiseman responded that that option can be considered as part of the construction plans. She noted that nearly the entire site is covered with buildings or paving, so the amount of impervious surface will not be significantly increased.

Ms. Copeland asked if the staff from the Division of Engineering could advise the Commission whether an additional condition is necessary to properly manage the runoff on the property. Steve Parker, Division of Engineering, stated that Ms. Copeland's concerns about the integrity of the wall are valid. He said that there are numer-

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ous possibilities available to the applicant to manage the runoff. The Division of Engineering would closely review the applicant's plans for stormwater management, and make a determination at that time.

Ms. Copeland asked how the conditions to the plan could be amended to include a "built-in checklist" to manage the stormwater concerns. Ms. Boland suggested that, since the plan is already subject to the Urban County Engineer's acceptance of drainage, storm, and sanitary sewers, that language could be added to the first condition to read: "with particular attention to drainage toward East Third Street and the design of the rain garden as it impacts the existing rock wall." Ms. Boland noted that it is premature to require the applicant to have full-fledged plans at this stage, but that language will provide the Division of Engineering staff with additional notice to review the conditions of the plan in order to address the concerns of the Planning Commission.

Mr. Brewer asked if similar language should be added to condition #5 in order to assure that the basswood tree is not negatively impacted. Ms. Boland responded that language could be added to read: "conferring with the Urban Forester as to impacts on existing trees."

Motion: A motion was made by Ms. Copeland and seconded by Mr. Owens to approve DP 2009-81, subject to the 13 conditions as listed on the agenda, changing conditions #1 and 5 to read:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, with particular attention to drainage toward East Third Street and the design of the rain garden as it impacts the existing rock wall.
5. Urban Forester's approval of the tree preservation plan, conferring with the Urban Forester as to impacts on existing trees.

Discussion of Motion: Ms. Roche-Phillips asked if the motion also includes deletion of condition #12. Ms. Copeland answered that that was not the intent of her motion.

Action: Ms. Copeland's motion carried, 10-0 (Whitman absent).

- V. **ZONING ITEMS** - The Zoning Committee met on Thursday, November 5, 2009, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Patrick Brewer, Lynn Roche-Phillips, and William Wilson. 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.

1. URBAN COUNTY PLANNING COMMISSION ZONING MAP AMENDMENT

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- 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." 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.

Staff Presentation: Ms. Wade began the staff's presentation by distributing a revised staff recommendation; a letter from the neighborhood association; and a packet of correspondence concerning this request to the Commission members. The correspondence received by the staff included: one letter requesting postponement; one letter requesting withdrawal of the 38-acre parcel in the neighborhood; one letter of support for this request; and six letters in opposition. Ms. Wade entered all of those documents into the record of the hearing.

Ms. Wade stated that the Planning Commission initiated this ND-1 zoning request in July of 2009 for the Westmorland neighborhood and a 38-acre tract to the west of the subdivision. The Westmorland neighborhood is located about one mile east of the Fayette/Woodford County line on Versailles Road. The neighborhood is comprised of 146 properties, totaling approximately 230 acres. The subdivision is zoned A-R, so its lots are non-conforming. Such a subdivision

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could not be created today, based on the existing regulations for the A-R zone. Westmorland was originally developed by Harry Wyse beginning in 1962, and development continued through 1978. Ms. Wade said that the 2007 Comprehensive Plan recommends Existing Rural Residential land use for the bulk of the Westmorland subdivision, and Core Agricultural and Rural Land for the large 38-acre tract. During the development of the neighborhood, Mr. Wyse maintained control of the deed restrictions, often allowing variances to the restrictions. Since Mr. Wyse's passing, those requests for variances are managed by the neighborhood association, which has become a concern for the neighborhood. They are seeking the ND-1 overlay in order to help protect the subdivision from incompatible development, and to ensure that the open, park-like setting of the neighborhood will be maintained in the future.

Ms. Wade stated that the purpose of the ND-1 zone, as defined by the Zoning Ordinance, is to establish a design framework, and to identify the key features as defined by the neighborhood, and preserve them. The Westmorland Neighborhood Association used the existing ND-1 overlay zoning in the Greenbrier and Chevy Chase neighborhoods as examples, and developed a final total of six design standards for consideration by the Planning Commission. The design standards for an ND-1 zone are administered in the same way as conditional zoning restrictions: they are reviewed by the Division of Building Inspection at the time of application for a building permit; and amendments are possible through a more "streamlined" process than that required for a change to conditional zoning restrictions.

Ms. Wade said that Article 29 of the Zoning Ordinance establishes seven criteria for the implementation of ND-1 zoning, at least one of which must be met by the neighborhood association in order to qualify for ND-1 zoning. The Westmorland subdivision expressed a desire to maintain the overall character of the neighborhood as it was originally established, and they documented a need to protect the visual characteristics that give the neighborhood its distinct quality. The neighborhood identified three goals in developing the design standard analysis study: to preserve and protect the character of the neighborhood; to regulate the exterior materials of the structures in the neighborhood; and to maintain the open space and ambience of the subdivision. The neighborhood originally requested that the Planning Commission initiate six design standards, as listed in the staff report and on the agenda. With regard to the proposed standard regulating exterior building materials, the neighborhood's study indicated that over 80% of the homes in the neighborhood currently adhere to that restriction. Since the initiation of this request by the Planning Commission, the neighborhood has indicated that they would like to withdraw standard #2 on the list of proposed restrictions, which refers to building height. The third proposed standard would require a minimum rear yard setback of 25 feet or one-third of the lot, which the neighborhood believes will help to maintain the park-like setting in the neighborhood. A portion of the fourth proposed restriction, which deals with garages, their placement, and exterior materials, is now being requested for deletion. The neighborhood has requested to delete the second sentence of the standard, which would require front-facing garages. The fifth and sixth proposed standards relate to fencing in the neighborhood, and they would help to maintain the open feeling of the neighborhood by restricting fencing to pool fences only, and limiting the total area of pool fences.

Ms. Wade stated that Goal 15, Objective I, of the 2007 Comprehensive Plan speaks to the protection of existing neighborhoods: "To preserve, protect and maintain existing neighborhoods in a manner that ensures stability and a high quality of life for its residents." An ND-1 overlay zone could help to do that for the Westmorland neighborhood.

At the Zoning Committee meeting in September, the staff proposed some changes to the design standards. Ms. Wade said, based on additional input from the neighborhood association, the staff has now drafted the following additional changes:

2. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions are proposed for the subject property via conditional zoning:

1. Exterior building materials for the principal structure, or expansion of the existing principal structure, must be 100% 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 and in the same proportions. Exceptions are allowable for eaves, dormers or porches are not subject to this restriction.
2. ~~Principal structure may not exceed two stories in height.~~
2. ~~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.
3. ~~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 shall not face the primary street.~~
4. ~~5.~~ No fences shall be erected on any lot except as required necessary for swimming pools and tennis courts.
6. ~~a.~~ Pool fences shall enclose an area surrounding the pool and pool deck. Total area fenced (including pool) may not exceed 400% of the pool surface area dimension of the pool only.
6. ~~b.~~ Tennis court fences shall enclose the court and the customary area on the side and back for game play. Total area fenced may not exceed 300% of the area dimension of the tennis court, whether intended for singles or doubles play.

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These restrictions are appropriate, given the extensive study undertaken to identify the existing neighborhood character by the Westmorland neighborhood, and are necessary to maintain that existing character in the future.

Ms. Wade said that the proposed changes to item #1 were intended to assist the Division of Building Inspection with interpretation and enforcement of the design standards. With regard to proposed standard #4, the staff proposed adding tennis court fences as an allowable fencing type, and had developed a size allowance for those fences. The staff is also recommending that 3860 Carleton Drive be withdrawn from this request, as it is much larger than the other properties in the neighborhood; it was not platted as part of the subdivision; and it is still an agricultural use (despite being on a non-conforming lot).

In instances when the Planning Commission initiates a rezoning request, the staff typically performs an analysis of non-conforming uses that would be created in the area of rezoning. Ms. Wade stated that three of the Westmorland neighborhood's proposed restrictions have the potential to create non-conformities: rear-yard setbacks, detached garages, and fences. With regard to the proposed setback restriction of 25 feet, there are currently five properties that do not meet the 25-foot setback. There are six properties that currently have detached garages, and 33 properties that currently have a fence which is not related to a tennis court or pool. Ms. Wade noted that some of those fences are small, two- or three-plank wooden fences, while some are large chain-link fences that surround the majority of the property. In total, 37 properties would have new non-conformities created, should the Planning Commission choose to approve the proposed design standards.

Ms. Wade said that it is important to note that the application of ND-1 design standards could possibly lengthen the review time for the Division of Building Inspection to approve building permits. In addition, since ND-1 design standards are applied like conditional zoning restrictions, it is not possible to obtain a variance to those restrictions. However, there is an established procedure to alter those standards that is much like a variance request.

Ms. Wade stated that the staff is recommending approval of the requested ND-1 zoning, for the following reasons, as listed in the staff's revised recommendation:

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." 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.

Neighborhood Presentation: Bill Allen, 3825 Margo Court, stated that he currently serves as president of the Westmorland Neighborhood Association. He said that he believes that the beauty of the Westmorland neighborhood comes from several of the unique characteristics that define it, including the park-like atmosphere; the large lot sizes; and the absence of perimeter fences. The neighborhood representatives believe that the ND-1 zoning category is ideally suited to preserve those characteristics; so, two years ago, they began the process necessary to obtain ND-1 zoning.

Mr. Allen stated that this hearing was originally scheduled for September. However, he and several other neighborhood representatives became concerned that there was a great deal of misunderstanding and confusion among the residents about the ND-1 zone. They requested a postponement of the hearing in order to allow time for the residents to meet and discuss the issue. The neighborhood has conducted several meetings since that time, and has been able to reach a consensus on several of the issues, and there is now considered to be "overwhelming support" of ND-1 zoning among the neighborhood residents. During those meetings, the residents determined that some changes needed to be made to the proposed design guidelines, which have been addressed with the revised guidelines presented by the staff. The major concern of most of the residents about the proposed guidelines is fences, since many of those residents would like to have the opportunity to fence their yards in some form. The neighborhood association understands those concerns, but maintains that the absence of fencing is important to maintaining the character of the neighborhood.

Mr. Allen said that all of the past presidents of the Westmorland Neighborhood Association are in support of this request, and he asked the Commission for their approval of this request.

Commission Questions: Mr. Brewer asked what would happen to the 33 homes that currently have fences, which will become non-conforming if this request is approved as proposed. Mr. Allen answered that the existing fences will be grandfathered in. He noted, however, that the map presented by the staff may be a bit misleading, since some of the fencing consists of small fences around gardens, etc. The neighborhood association's main concern is perimeter fences, of which there are actually very few in the Westmorland neighborhood. Some of the existing fences are made of chain link and encompass a large area of those particular lots, but the neighborhood association does not know if Mr. Wyse ever approved those fences. The residents are concerned that the proliferation of fences may result in "incremental erosion" of the character of the neighborhood. Under the existing deed restrictions, the approval of fences is up to the homeowners' association. Each homeowner was aware, at the time of purchase, about the prohibition of fences; and yet, fences are being built in violation of the deed restrictions. The neighborhood association regards the proposed ND-1 zoning as "extra protection" against the erosion of the neighborhood's character.

Mr. Cravens asked how the existing deed restrictions are different from the proposed ND-1 design guidelines. Mr. Allen responded that fences and building materials are addressed in the deed restrictions, but the restrictions do not require that brick or stone be used for any additions. Since the majority of the homes in the neighborhood are made of brick or stone, that proposed guideline would serve to maintain the consistent appearance of the neighborhood. Mr. Cravens stated that, if the proposed ND-1 zoning is approved, a resident seeking to build an addition would have to go through a rezoning hearing in order to reduce the amount of brick used, even by as little as one percent. With regard to fencing, Mr. Cravens noted that a homeowner could possibly receive a discount on insurance if a pool is "double-fenced." Mr. Allen responded that the intent of the proposed restriction on fencing is to prevent homeowners from evading the "no fencing" requirement by constructing a pool, then adding a perimeter fence around it. He noted that it might be acceptable for a homeowner to "double-fence" a pool, provided the proposed 400% total area requirement is met.

Ms. Copeland asked if homeowners could have fences built to keep a pet in the yard up to this point. Mr. Allen answered that, initially, a homeowner could have constructed such a fence with the approval of Mr. Wyse, but now that decision would be handled by the neighborhood association. Ms. Copeland asked if the fencing along Versailles Road serves to protect the Westmorland residents from stray dogs and other animals. Mr. Allen responded that that plank fence is more decorative than functional. Ms. Copeland asked if there is a problem with coyotes near the neighborhood. Mr. Allen answered that he was not aware of a coyote problem, and he was unsure how the neighborhood could address such a problem. Ms. Copeland said that she was concerned that the residents might need the ability to fence animals out of their yards. Mr. Allen responded that there are very few existing perimeter fences in the neighborhood, and most of them have been in place for a long time. He noted that some of the smaller fences may have been constructed in an attempt to keep varmints out of gardens.

Mr. Holmes asked if the neighborhood is proposing any "hardship provisions" with regard to the guideline for attached garages; for instance, in the event of a fire. Mr. Allen answered that any existing non-conformity would be allowed to continue in the future. Ms. Wade added that Article 4 of the Zoning Ordinance allows for non-conformities to be replaced if they are destroyed.

Mr. Owens asked how the neighborhood association had determined that the proposed ND-1 zoning has "overwhelming support" among the Westmorland residents, and whether or not a recent survey had been performed. Mr. Allen answered that a recent survey had not been conducted, but that he had a sense of the support of the residents. Some of the residents are very much in favor of ND-1 zoning; some are very much opposed to it; and others are "in the middle." At the time of the initial application, the rate of support was about 75%. Mr. Allen said that, after speaking with his neighbors many times about this issue over the past six months, he believes that the rate of support is still about 75%. Mr. Owens said that the Commission had earlier reviewed several letters of opposition that indicated that the residents had originally been in support of ND-1 zoning, but had changed their minds over the course of the process. Mr. Allen responded that the neighborhood had not done any type of recent formal survey that would allow him to provide Mr. Owens with hard data. Mr. Owens asked if any staff members had participated in the neighborhood meetings. Ms. Wade answered that the first neighborhood meeting took place shortly after the September Planning Commission meeting, with no staff members were in attendance, but Mr. Sallee did attend the neighborhood meeting in October, which lasted approximately 90 minutes.

Citizen Comments: Michael McCann, past president of the Westmorland Neighborhood Association, spoke in support of ND-1 zoning. He stated that he had lived in the neighborhood for 20 years, and he helped the association throughout its incorporation process. He noted that the original list of proposed design guidelines had been rather long, and had been pared down considerably to the guidelines proposed today, which he believes fairly represent the existing deed restrictions. Mr. McCann stated that he is in favor of the proposed ND-1 zoning, in order to help maintain the character of the neighborhood.

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Adrian Mendiondo, attorney, stated that he was present representing Lloyd and Carmela Rebsamen, 2610 Westmorland Drive. He noted that Mr. Allen did not represent all of the residents of the Westmorland neighborhood, since his clients are in opposition to this request. His clients do not believe that there is overwhelming support for ND-1 zoning in the neighborhood.

It was Mr. Mendiondo's contention that this public hearing was not valid, as adequate notice of the hearing was not provided. Notification letters were sent out 21 days prior to the hearing, but KRS 100 requires additional notice in some cases. Mr. Penn stated that notice was sent previously to property owners for this hearing, prior to it being postponed in September, in addition to the notice that was sent 21 days prior to this hearing. He noted that Mr. Mendiondo was welcome to submit his information for the record of the hearing, but the Planning Commission did not view his arguments as a valid concern. Mr. Mendiondo stated that he had spoken with the Department of Law earlier on the day of this hearing, and Ms. Boland had agreed with Mr. Penn's position. However, he maintained that public notice is not a courtesy, but a requirement, and strict compliance must be followed.

Mr. Mendiondo said that a survey was conducted by the Planning Commission that resulted in 66 votes in favor of this request, out of 145 residents of the neighborhood. His clients contend that many of the residents are "afraid to speak out." He noted that a lengthy letter had been submitted to the Commission by Mary Reed, a resident of the neighborhood; he read the following excerpt from that letter into the record of the meeting:

"We have lived here for 31 years and this is the very first time I have ever attended a meeting where tempers flared, major disagreements occurred and people left feeling thoroughly disgusted...I know there are many neighbors who agree with us but I am not sure if they will attend the hearing and feel comfortable speaking up."

Mr. Mendiondo stated that he had spoken with several residents who had indicated that they were not in favor of the proposed ND-1 zoning, but asked that their names not be given at this hearing. He said that there is a great deal of pressure being placed on the residents who are opposed to ND-1 zoning.

Mr. Mendiondo's clients contend that the proposed ND-1 zoning is not intended to preserve the character of the neighborhood; rather, it is intended to change the character of the neighborhood to the way some of its residents would like for it to look.

Mr. Mendiondo stated that the neighborhood association does not wish to enforce the existing deed restrictions, so they are attempting to "push the problem" onto the government. The proper resolution for problems such as those the neighborhood is experiencing is to pursue legal action against homeowners who violate the deed restrictions, but the neighborhood association does not wish to get involved in lawsuits. His clients have an existing chain-link fence on their property, which was approved by Mr. Wyse, and they are concerned that they will not be able to replace or upgrade it if the proposed ND-1 zoning is approved. The purpose of ND-1 zoning is not to enforce deed restrictions, as it would require homeowners, who may be intimidated by the Planning Commission's process, to file a zone change request to alter the restrictions.

Mr. Mendiondo reiterated that his clients do not believe that there is overwhelming neighborhood support for this request, and asked that the Planning Commission give equal consideration to the opinions of those residents who are in opposition.

Ben Harper, 2686 Sussex Drive, stated that he is the immediate past president of the neighborhood association. He noted that members of the Planning staff have participated in several of the neighborhood meetings where ND-1 zoning was discussed.

Mr. Harper said that the neighborhood sought ND-1 zoning because many of the residents do not honor the deed restrictions. The neighborhood has no means of enforcement of the restrictions, other than filing a lawsuit. However, the cost of filing suit is prohibitive, and the neighborhood association would prefer not to have to raise the dues in order to cover the cost of lawsuits. After conducting some research on deed restrictions, Mr. Harper said that he learned that some states allow cities to enforce the restrictions; but that is not the case in Kentucky, so the neighborhood is left with few options or recourse.

Chip Crawford, board member of the Lexington Homebuilders Association, stated that he is not technically opposed to the proposed ND-1 zoning. However, he is concerned about government regulation of deed restrictions. He participated in the Chevy Chase ND-1 rezoning process, and he understood their need for ND-1 zoning, since their deed restrictions had expired. There was clear evidence in that case that the character of the neighborhood was deteriorating, and that some measures must be taken to preserve it. Mr. Crawford said that, in this case, there are still deed restrictions in place to protect the character of the neighborhood. He believes that, if this rezoning is approved, it may set a precedent that will encourage other neighborhoods to seek ND-1 zoning so that their deed restrictions could be enforced by the city government.

Mr. Crawford is also concerned about the ND-1 "appeal" process, which he does not believe has been adequately explained. He is concerned that, at some point in the future, the Planning Commission could change the procedure to make it

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more difficult for residents to amend their ND-1 standards. Mr. Crawford stated that he did not believe that it would be appropriate to allow Lexington to become "littered" with neighborhoods with ND-1 zoning, all of which would require enforcement by the Division of Building Inspection. He believes that enforcement of the Westmorland deed restrictions should be left up to the neighborhood.

Lillian Press, 3760 Gloucester Drive, stated that she was president of the Westmorland Neighborhood Association before, during, and after the association's incorporation, and she helped to determine that incorporation was necessary. She said that the incorporation process was just as difficult as the ND-1 process has been, and that she had often felt "assaulted" at past neighborhood meetings. The rancor during that process was caused by fear, but incorporation of the association brought many good changes to the neighborhood. Ms. Press stated that she believes that the proposed design guidelines will help to enforce the deed restrictions; and, that many of the people who are currently opposed to ND-1 zoning will come to understand its benefits over time.

Ted Levering, 3825 Karen Court, stated that he loves the Westmorland neighborhood as much as any of the other residents and wants to protect its character, but he believes that using ND-1 zoning to enforce the deed restrictions could "trample" the rights of the majority of the residents. He said that the majority of the residents have abided by their deed restrictions, and do not deserve to be "punished."

Mr. Levering stated that ND-1 zoning in general has some benefits, but he believes that the specifics are problematic. Some beautiful home styles would no longer be allowed under ND-1 zoning, and many residents now need larger garages due to having teenage drivers at home. In addition, the residents whose properties back up to Versailles Road would not be able to construct noise mitigation fencing, which could reduce their property values.

Mr. Levering said that he believes that the best way to protect the neighborhood is through its current review process, and that each proposed change to a property needs to be considered on a case-by-case basis. He suggested that one solution might be to require that a homeowner obtain the COPA committee's approval of their design prior to the issuance of a building permit.

Robert Riggs, 3784 Gloucester Drive, stated that he is in favor of the proposed ND-1 zoning, only because the local government does not enforce deed restrictions. He is concerned that all other easements, restrictions, etc., may be "valueless" since there is no existing means of enforcement. He added that, if many other neighborhoods pursue ND-1 zoning in order to enforce deed restrictions, the size of the Planning Commission and staff would probably need to be increased in order to deal with all of the additional work. Mr. Riggs stated that the best solution might be to re-evaluate the concept of deed restrictions, in order to create a more effective means of enforcement.

Harold Stills, 3828 Carlton Drive, stated that he had originally supported the proposed ND-1 zoning, but he is now opposed to it. He is concerned that, if the ND-1 zoning is approved, all fences, trellises, noise barriers, etc., will be prohibited. Of additional concern is the lack of an appeals process, and the restrictions on building materials. Mr. Stills believes that that restriction on building materials may limit residents' ability to construct greenhouses or screened-in porches. He said that he believes that ND-1 zoning is inappropriate for the Westmorland neighborhood, and he is strongly opposed to it.

Ann Bolton stated that she has lived in Westmorland for 21 years. She noted that the residents felt the need to take on responsibility for the maintenance of the neighborhood following Mr. Wyse's death; the association alone was not able to enforce the deed restrictions, so the COPA committee was formed to review building plans. Ms. Bolton said that it is not that the neighborhood association did not want to enforce the deed restrictions; they have had limited success, however, as there is no means of punishment available. She believes that ND-1 zoning, overall, is a good concept, and she is in support of this request.

Sid Webb, 2622 Westmorland Road, stated that he was a past president of the neighborhood association and a former member of the COPA committee. He said that serving on the COPA committee was not easy; several property owners willfully went against the deed restrictions at the risk of a lawsuit. Mr. Webb stated that part of the problem is that Mr. Wyse made so many exceptions from the deed restrictions that it is now difficult to argue with property owners in light of all the existing non-conformities. He added that the neighborhood association does not have the funds to pursue legal action against all the property owners who have defied the deed restrictions.

Valerie Stills, 3828 Carlton Drive, stated that she had originally been in favor of ND-1 zoning, but she is now strongly opposed to it.

Jan Rail, 3738 Salisbury Drive, stated that she had remodeled her home within limitations of the deed restrictions. She was originally in favor of ND-1 zoning; but, after having spoken with Planning staff members at neighborhood meetings, she is now opposed to it. Ms. Rail said that she would like for the neighborhood to have the opportunity to vote on the issue again.

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Len Press, 3670 Gloucester Drive, stated that he believes that the proposed design guidelines are as simple and basic as they could be, and that they are necessary to protect the neighborhood. He acknowledged that each homeowner is free to do what they wish with their property, but may not want others to be able to do exactly what they wish. Mr. Press believes that, if ND-1 zoning is not approved, the neighborhood will need to create a legal fund to deal with the issue of exceptions to the deed restrictions, since there are currently no funds available to do so.

Donna Rardin, 3836 Carlton Drive, stated that she has been a resident of the neighborhood since 1973. She stated that Mr. Wyse used to drive through the neighborhood each evening "to see what was going on." She said, during that time, none of the residents argued with Mr. Wyse's decisions, so she does not understand how the neighborhood association is unable to enforce the deed restrictions.

Ms. Rardin said that she would like to have a small area fenced so that her dog could run outdoors, but she does not wish to install a pool just to be able to have a fence. She was originally in favor of ND-1 zoning, but is now opposed. She believes that some situations call for exceptions to the deed restrictions, and it would be much easier to appeal to the neighborhood association than to the Planning Commission.

David Clardy, 3893 Gloucester Drive, said that there are at least 13 existing deed restrictions in the Westmorland neighborhood. He noted that the board does not wish to absolve itself of responsibility for enforcing the deed restrictions; it would just like some assistance. The neighborhood association does not want to disrupt the neighborhood by requesting donations for a legal fund, and suing their neighbors.

Ms. Webb stated that all of the residents in Westmorland were presented with the deed restrictions when they purchased their homes, but not everyone abides by them. The neighborhood association wants to enforce the restrictions, but has no means by which to stop people who circumvent them. Ms. Webb asked that the Planning Commission help the neighborhood to enforce those restrictions.

Staff Comment: Bob Carpenter, Division of Building Inspection, stated that his division has struggled with enforcement of ND-1 design standards in other neighborhoods. He said that, if the proposed ND-1 zoning is approved, a resident would present a plan to Building Inspection that had first been reviewed and approved by the COPA committee; or, the resident could present a statement from a design professional that the plan met the ND-1 design guidelines.

Commission Question: Mr. Cravens asked if Building Inspection's directions are ever violated by citizens. Mr. Carpenter answered that citizens do violate the zoning regulations, and Building Inspection pursues those violations through the courts if necessary. He noted that such issues are often complaint-driven.

Staff Rebuttal: Ms. Wade stated, with regard to Mr. Mendiondo's contention that sufficient notice had not been provided for this hearing, that all property owners were originally mailed notice on August 24, 2009, which met the 30-day KRS requirement when a Planning Commission is acting as an applicant. The required notice to property owners within the 400-foot notification area was mailed on August 28th. As a courtesy, the subject property owners were notified again in late October as a reminder that the Planning Commission had postponed the request in September. Following a review with the Department of law, it was determined that adequate notice was provided for the September hearing, and that a subsequent postponement is not required to meet that 30-day notice requirement. It should also be noted that Mr. Mendiondo's clients were aware of today's hearing, since they sent legal representation to the hearing.

Ms. Wade said, with regard to the appeal process for modifying ND-1 restrictions, that the Planning Commission initiated a text amendment in late 2007 to rectify that situation. Article 6-7(c) now addresses changes to ND-1 restrictions, and requirements are in place to make such a modification for one's property, similar to the Board of Adjustment variance process.

Commission Questions: Mr. Brewer stated that he had serious concerns about the proposed ND-1 zoning, particularly the non-conformities that would be created and the restriction on building materials. He noted that he would like to see more definitive survey numbers, and asked if the staff could provide a more expeditious way to determine the number of residents in support and opposition.

Mr. Brewer added that he does not believe that the Planning Commission should set a precedent in enforcing deed restrictions.

Mr. Owens asked Mr. Sallee what happened at the Westmorland neighborhood meeting which he attended. Mr. Sallee answered that he made a 20- or 30-minute presentation to the residents, then participated in approximately one hour's worth of questions and answers about the ND-1 process, the proposed restrictions, the Planning Commission's status as the applicant, etc. He estimated that approximately 25% of the neighborhood's homeowners were present at that meeting, and about 50 persons attended. Mr. Owens asked if Mr. Sallee had any insight as to the numbers of residents in support of and opposition to this request. Mr. Sallee responded that not everyone at the meeting spoke, but of those who did speak, there seemed to be about as many residents in opposition as there were in favor.

Mr. Owens asked if the staff had completed a survey of the Westmorland residents. Ms. Wade answered that a recent by-laws change that required, with any overlay or downzoning request, that the Commission mail postcards ahead of their initiation of the request. That would provide residents with the ability to express their opinion to the Commission via the postcards. The staff mailed out 146 postcards, with a letter identifying the proposed restrictions that the neighborhood planned to request for initiation by the Planning Commission. The staff received 90 postcards back; 66 responses voted in favor of ND-1 zoning, and 24 voted in opposition. Based in part on that survey, the Commission agreed to initiate this rezoning request.

Mr. Owens asked, with regard to the proposed restriction on building materials, if there are currently any properties that do not have buildings on them. Ms. Wade answered that there are two lots that are currently vacant, but one of them is not buildable. Mr. Owens asked if the houses that are currently non-conforming with regard to building materials would still be non-conforming if ND-1 zoning is approved. Ms. Wade responded that there are no current non-conformities with regard to building materials; if a new house is built, it would need to be of stone or brick. However, for building additions, the building materials must match the existing materials, or be of brick or stone. Mr. Owens asked what would be required if a house was replaced. Ms. Wade answered that it could be built with the materials that were used in the initial construction, under these ND-1 restrictions.

Division of Building Inspection Comment: Mr. Carpenter stated, for clarification, that the Division of Building Inspection would encourage, not require, that the neighborhood use their COPA board to send a recommendation to their staff as to whether or not the design standards had been met for individual construction projects.

Commission Comments: Mr. Wilson stated that this is a very challenging request for the Planning Commission, because it is difficult to see good neighborhoods such as Westmorland not be able to resolve their differences among themselves.

Motion: A motion was made by Mr. Wilson and seconded by Ms. Copeland to approve MAR 2009-11, with the alternative design standards as proposed by staff.

Discussion of Motion: Ms. Roche-Phillips asked if this request would be forwarded to the Council for their action regardless of the Planning Commission's vote to approve it. Ms. Wade answered that that was correct.

Mr. Holmes stated that he was concerned about the deed restrictions, and the Planning Commission's enforcement of them. He said that it would be difficult for him to vote for approval of this request.

Mr. Cravens stated that he is also concerned about this request, and that he believes that the deed restrictions should be sufficient to protect the neighborhood without the Planning Commission enforcing them. He said that the neighborhoods which have ND-1 zoning in place needed additional protection because their deed restrictions had expired, but he does not believe that the Westmorland neighborhood needs that additional protection. Mr. Cravens added that he believes that the appeal process could be very difficult for the average citizen, and that he would not vote in favor of this request.

Ms. Roche-Phillips stated that she appreciates the neighborhood's desire to protect and maintain its character, but she has a problem with the government taking on the enforcement of an agreement between private property owners. She said that all of the homeowners in the neighborhood should be aware of the deed restrictions.

Ms. Roche-Phillips said that she had expressed concern at the Greenbrier ND-1 rezoning hearing, because the neighborhood requested ND-1 zoning after they became aware that they would not have 100% support for the renewal of their deed restrictions. She added that she would not support this motion for approval.

Mr. Brewer stated that it appeared that the survey results only indicated a 36% support rate for ND-1 zoning by property owners, and that he cannot support a request that has that much opposition.

Action: Mr. Wilson's motion failed, 8-2 (Brewer, Cravens, Holmes, Owens, Paulsen, Penn, Richardson, and Roche-Phillips opposed; Whitman absent.)

Department of Law Comment: Ms. Boland stated that, since this is the Planning Commission's application, they have two other alternatives available to them: they could vote to withdraw the application; or recommend disapproval of the application, which would allow it to go forward to the Council for their consideration. If the application is withdrawn, the only alternative for the proponents would be to ask the Council to initiate a new zone change. Ms. Wade noted that an additional option would be to approve a different set of restrictions, if the Commission did not feel that the proposed restrictions are appropriate.

Commission Discussion: Ms. Roche-Phillips asked if a decision by the Planning Commission to withdraw this application would preclude the neighborhood from submitting a new application in the near future. Ms. Boland answered that the Plan-

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ning Commission would not be able to initiate a new application for one year, but that would not restrict the Council from initiating a zone change if the neighborhood approached them. She noted that she would need to study the Planning Commission's by-laws more closely to make a final determination, and how a substantial change to the proposed restrictions might affect a new ND-1 application.

Mr. Penn asked, for clarification, if the Commission needed to make a motion either for withdrawal of the application, or to forward it to Council with a recommendation of disapproval. Ms. Boland responded that that was correct.

Motion: A motion was made by Mr. Cravens and seconded by Mr. Holmes to withdraw MAR 2009-11.

Discussion of Motion: Mr. Cravens stated that he made a motion to withdraw in order to end this process for the neighborhood, and allow them the opportunity to work out their issues.

Ms. Roche-Phillips stated that her motives for suggesting withdrawal of this application were different from those of Mr. Cravens. She said that she would like for the neighborhood to have an opportunity to come back at a later time with a different set of recommendations or an application by the Council.

Director Comments: Mr. King stated that, when the Commission recommends disapproval of a request, the one-year rule goes into effect. Withdrawal of this application would not preclude the neighborhood from attempting to request the initiation of a new zone change, but it would stop the existing application at the Planning Commission, and prevent it from being sent on to the Council.

Ms. Roche-Phillips asked if the one-year rule intended to preclude only applications with an identical set of design standards, but an amended application could be filed sooner. Mr. King answered that the Commission usually has the discretion on granting a hearing for an early rehearing request. In situations where the Planning Commission is the applicant, however, the by-laws indicate that, if an application is withdrawn, the Commission may stipulate a six-month waiting period.

Mr. Penn asked Mr. Cravens to clarify the intent of his motion. Mr. Cravens answered that his intent was to end this application today, and allow the neighborhood to pursue other avenues, such as the Council. Ms. Boland noted that the neighborhood could pursue a new application from the Council, and, if the Commission does not stipulate a hiatus time, the neighborhood could approach the Commission at any time with a revised set of guidelines that may be more acceptable.

Action: Mr. Cravens' motion passed, 10-0 (Whitman absent).

2. LEXINGTON TROTS BREEDERS ASSOCIATION, LLC, ZONING MAP AMENDMENT & RED MILE MIXED-USE DEVELOPMENT ZONING DEVELOPMENT PLAN

- a. MAR 2009-12: LEXINGTON TROTS BREEDERS ASSOCIATION, LLC (1/7/10)* - petition for a zone map amendment from an Agricultural Urban (A-U) zone to a Mixed-Use Community (MU-3) zone, for 60.511 net (64.411 gross) acres; from a Single Family Residential (R-1C) zone to a Mixed-Use Community (MU-3) zone, for 0.539 net (1.249 gross) acre; and from a Wholesale & Warehouse Business (B-4) zone to a Mixed-Use Community (MU-3) zone, for 0.967 net (1.042 gross) acre, for property located at 780 Red Mile Road, 790 Red Mile Road, and a portion of 1200 Red Mile Road.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 5) recommends a Semi-Public Facilities (SP) land use for the subject property. However, the 2007 Plan also states that "this property should be reviewed through a Small Area Plan, with strong consideration for high-density residential and mixed-use." The Red Mile Development Plan, formulated over the spring and summer of 2009, and recently accepted by the Planning Commission, was consciously substituted for a Small Area Plan for this property. The petitioner proposes MU-3 zoning in order to allow a 60-acre mixed-use development for the southwestern half of the existing Red Mile property, to include new residential, retail, office, parking, hotel and entertainment uses in addition to the retention of the bulk of the existing harness track and its ancillary facilities.

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

The Staff Recommended: **Approval**, for the following reasons:

1. The requested Mixed-Use Community (MU-3) zone is in agreement with the 2007 Comprehensive Plan, and is appropriate at the 62-acre location requested, for the following reasons:
 - a. The proposed MU-3 zone has been cited as the best mechanism to permit about half of the Red Mile property to develop for a residential and mixed-use land use, as anticipated by the 2007 Comprehensive Plan, and detailed by the more recent Red Mile Development Plan, which was accepted by the Planning Commission in final form in August 2009.
 - b. This proposal will implement the vision and direction of the Red Mile Development Plan, developed in lieu of a formal Small Area Plan with the concurrence of the property owner and oversight by the Planning Commission, to "create a model for mixed-use development in Lexington and the region and explore innovative zoning regulations

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supporting mixed-use.” That Plan had extensive review and citizen involvement over a five-month period of time earlier this year.

- c. This rezoning would be consistent with industrial mixed uses and residential redevelopments approved along Angliana Avenue since the adoption of the 2007 Comprehensive Plan. It will also respect existing residential neighborhoods, apartments and commercial land uses established along, and in the vicinity of, Red Mile Road over past decades.
 - d. The 2007 Comprehensive Plan Goals and Objectives encourage growth management strategies (Goal #7), support appropriate Infill and Redevelopment (Goal #8), and support a full range of housing opportunities to meet all citizens’ needs (Goal #13). The proposed MU-3 zone and redevelopment of the subject property supports these goals of the Comprehensive Plan by:
 - 1. Establishing residential land uses, not necessarily oriented to UK students as has been the case for other area developments, adjacent to existing high-density residential uses and in a mixed-use setting along a proposed town green on the subject property.
 - 2. Supplying underutilized land for commercial and residential mixed uses, inside the community’s adopted Infill & Redevelopment Area, that will “consider the recommendations of the previous comprehensive plans and plan amendments for these sites, as well as other relevant current information when making a land use and zoning recommendation for each site,” as called for in the 2007 Plan.
 - 3. Maintaining the existing Semi-Public land use for the Red Mile harness track, its grandstand, its ancillary facilities, and the historic Stable of Memories that is an iconic structure defining this corridor.
 - e. A mixture of land uses has been recommended in this general area since the 1990 South Broadway Small Area Plan, which has also been anticipated by the text and Land Use Elements of both the 2001 and 2007 Comprehensive Plans.
 - f. As proposed, this development will achieve the Red Mile Development 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.” It will also meet the vision set forth by that unique Planning effort.
- b. ZDP 2009-78: RED MILE MIXED-USE DEVELOPMENT (1/7/10)* - located at 780, 790 and a portion of 1200 Red Mile Road.
(Vision Engineering)

The Subdivision Committee Recommended: Approval, subject to the following requirements:

1. Provided the Urban County Council rezones the property MU-3; otherWise, any Commission action of approval is null and void.
2. Urban County Engineer’s acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer’s approval of parking, circulation, access, and street cross-sections.
4. Building Inspection’s approval of landscaping and landscape buffers.
5. Urban Forester’s approval of tree inventory map.
6. Denote proposed detention area(s).
7. Remove utility pole information.
8. Denote access point dimensions (where different from cross-sections).
9. Denote reciprocal parking and access for this development (or parts thereof).
10. Clarify parking statistics.
11. Clarify open space for 2nd and 3rd floor residential use (buildings 28 & 34).
12. Addition of cul-de-sac radius.
13. Resolve outlot building façade orientation to Red Mile Road.
14. Resolve access spacing for buildings 23 and 24.
15. Resolve pedestrian access from building 7 to buildings 8, 9, and 10.
16. Resolve northernmost access point offset.
17. Resolve access across from Unity Drive.
18. Resolve access to Nelms Alley and adjoining properties.
19. Resolve pedestrian connections to Red Mile Road from outlots.
20. Resolve proposed greenway/trail location.
21. Bike and Pedestrian Planner’s approval of bike trails and pedestrian facilities.
22. Greenspace Planner’s approval of the treatment of greenways and greenspace.

Zoning Presentation: Mr. Sallee presented the staff report, noting that the staff had received one letter of support for this request, from the Fayette Alliance. He entered that letter into the record of the meeting and circulated it to the Commission members.

Mr. Sallee stated that the subject property is located on the east side of Red Mile Road, midway between the signalized intersections of Red Mile Road with South Broadway and Versailles Road. The subject property encompasses 62 acres of the over 130-acre Red Mile property, and is bounded by Red Mile Road; residential uses to the north along Bennett and Embury Avenues; an Urban County Government facility in a B-4 zone; multi-family apartment development along Nancy Hanks Road; other apartment developments across Red Mile Road to the west; several commercial uses which are zoned

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B-3 along South Broadway and Red Mile Place; office uses to the south; and single-family residential zoning in the Gibson Park neighborhood. Most of the requested zone change is from A-U to MU-3, with the exception of two small areas along the frontage of Red Mile Road, one of which is zoned R-1C, and the other B-4. The balance of the Red Mile property, including the trotting track, will remain in an A-U zone. Floral Hall is not a part of this zone change, as it is located on a separate tract.

Mr. Sallee said that the 2007 Comprehensive Plan recommends Semi-Public Facilities land use for most of the subject property. These uses are defined by the Plan as uses that benefit the public, but are not owned by the public. The Comprehensive Plan states further that existing Semi-Public Facilities, when denoted as such on the land use map, "indicate their desire for continued existence and contribution to the community." The Plan also notes that, should redevelopment be proposed for these properties, the Commission should consider the recommendations of previous Comprehensive Plans and amendments, as well as other current information. The Comprehensive Plan text states that the Red Mile property should be reviewed through a small area plan with strong consideration for High Density Residential and Mixed Uses. The 2007 Plan was not the first time that the Red Mile property has been considered in this manner; Mr. Sallee referred to the 1990 South Broadway Corridor Plan, which had been distributed to the Commission members as a staff exhibit prior to the start of the hearing. That Plan first recommended that the Red Mile property be designated as a Semi-Public land use, and that, should it redevelop, that it be considered for Light Industrial, Office/Warehouse, and Medium Density Residential land uses. The 2001 Comprehensive Plan contained a similar statement, recommending that the subject property be used for Mixed Use and Residential uses.

Mr. Sallee stated that the Red Mile Development Plan, which had been formulated during 2009, was consciously used as a substitute for a small area plan. That Plan had oversight by the Planning Commission, and it involved input by the Red Mile property owners, the Planning staff, and many area property owners. That development plan set out a vision for the subject property, which calls for a very high standard for mixed-use development at this location, including future residential and commercial uses on the property. The Red Mile Development Plan also notes that the racetrack is a Semi-Public use that needs to be encouraged to remain, and to continue to contribute to the community. The Plan also pointed out that there is a need for mixed-use zoning on the subject property, and the existing MU-3 zoning category is the most similar to that "needed to complete the development vision" of this particular Plan.

Mr. Sallee said that the land uses that are proposed on the corollary zoning development plan are consistent with those recommended by the Red Mile Development Plan, and the staff finds that the subject property does meet the locational criteria for the MU-3 zone. Therefore, the staff has concluded that the proposed MU-3 zoning is in agreement with the 2007 Comprehensive Plan, including some of its Goals and Objectives. The mixed-use proposal is consistent with the 1990 South Broadway Corridor Plan, the 2001 Comprehensive Plan, as well as the 2007 Comprehensive Plan. The Red Mile Development Plan has further augmented those recommendations. The staff has recommended approval of this zone change, for the reasons as listed in the staff report and on the agenda, which Mr. Sallee summarized. The Zoning Committee also recommended approval of this request at their meeting two weeks ago.

Development Plan Presentation: Mr. Martin presented the corollary preliminary development plan, briefly orienting the Commission to the location of the subject property. He said that the petitioner proposes a mixed-use development that includes residential units, including some "vertical housing" and some multi-family units; the residential area on the property is proposed to be 295,000 square feet in size, with a total of 204 residential units. The plan also proposes several outlots along the Red Mile Road frontage, as well as other areas of commercial uses, for a total commercial area of 380,000 square feet. The racetrack grandstand is generally proposed to remain as it currently exists. There are over 2,000 parking spaces required for the proposed development, and the petitioner has indicated that 2,047 will be provided, according to the development plan. Four access points to Red Mile Road are proposed, with an internal circulation pattern through the site and a central feature will be provided at the main entrance.

Mr. Martin stated that the Subdivision Committee recommended approval of this plan, subject to the 22 conditions listed on the agenda. He noted that the Bike/Ped and Greenspace Planners have been included as sign-offs on this plan, in order to ensure that good pedestrian connectivity and appropriate greenspace areas are provided. There was a great deal of discussion at the Technical and Subdivision Committee meetings about the eight "resolve" conditions on the plan. As a preliminary development plan for a large piece of property, the plan is complicated, and the staff and committee members expressed concerns about how the overall area will function once it is developed.

Commission Questions: Mr. Owens asked how the minimum required number of parking spaces was calculated. Mr. Martin answered that that calculation was a compilation based on the proposed uses of the property. Mr. Owens asked if parking for the racetrack grandstand was considered in that calculation. Mr. Martin responded that the grandstand parking was included in the total required number of spaces, based on its seating capacity.

Mr. Penn asked if the round barn would be part of the proposed development, and if it would be included in the shared parking. Mr. Martin answered that that structure is not subject to the proposed zone change, but it is identified on the development plan and new parking will be provided for it nearby.

Development Plan Presentation (cont.) - Mr. Emmons discussed the “resolve” conditions on the proposed development plan, and distributed a supplemental staff recommendation to the Commission members. He stated that it was important to remember that this preliminary development plan is conceptual, and that large, complicated plans often have notes indicating that concerns could be resolved at the final development plan stage. Particularly with regard to large development plans that are filed in phases, “resolve” conditions provide the staff with a means of documenting their concerns for resolution at a later date.

Mr. Emmons said that the “resolve” issues identified for this preliminary development plan are all technical in nature, and the staff believes that they would be best addressed at the time of the final development plan. The staff is recommending that those eight conditions be consolidated into one note that should be placed on the plan. This recommendation does not require any changes to the existing conditions listed for the development plan. Mr. Emmons concluded by stating that the staff is still recommending approval of this plan, subject to the 22 conditions as listed on the agenda.

Commission Question: Mr. Penn asked if the language in the supplemental staff report should be substituted for the conditions on the agenda. Mr. Emmons answered that it was up to the Commission, but, in the staff’s opinion, this plan could be approved with the 22 conditions as listed on the agenda.

Traffic Impact Study Presentation: Rob Hammons, Senior Transportation Planner, presented the staff report for the Traffic Impact Study that was required by the Zoning Ordinance as part of the proposed zone change of the subject property. He distributed copies of a summary of the Traffic Impact Study to the Commission members, noting that the study itself met all of the appropriate Zoning Ordinance requirements.

Mr. Hammons stated that, as part of the preparation of the Traffic Impact Study, the consultant reviewed the proposed land uses; existing traffic facilities; accessibility to the site; and levels of service for the existing intersections. He displayed several aerial photographs of the subject property and the surrounding roadways.

Mr. Hammons said that Red Mile Road, on which the subject property has frontage, is classified as an urban minor arterial. South Broadway averages 45,200 daily trips near its intersection with Red Mile Road, while Red Mile Road averages 20,300 daily trips. The proposed development is projected to add 10,000 daily trips to the area when completed, with the heaviest traffic to and from the site during the afternoon peak period. The existing levels of service on Red Mile Road are mostly “B” and “C;” following the development of the subject property, those levels are projected to remain mostly consistent, with a change to level “D” for the Red Mile Road/Horsemen’s Lane intersection. The 2025 scenario projected by the consultant indicates that some levels of service “F” may be present at that time.

Mr. Hammons noted that some roadwork can be done to mitigate those future traffic impacts, including the addition of turn lanes; more bicycle and pedestrian facilities; and more transit routes. He displayed a graphic rendering indicating the various proposed improvements to the roadway system.

Commission Questions: Ms. Copeland asked who the consultant was for the Traffic Impact Study. Mr. Hammons answered that the TIS was prepared by Jihad Hallany, of Vision Engineering. Ms. Copeland asked if any thought had been given to constructing the entrance to the proposed development as a roundabout. Mr. Hammons responded that that situation was not covered in the consultant’s report. He noted that it could be difficult to construct a roundabout that could accommodate large trucks with horse trailers which could be traveling to the harness track. Ms. Copeland asked how the horse trailers will be able to access the subject property. Mr. Hammons answered that those trailers would most likely use the existing wide truck entrances.

Mr. Holmes asked if the Traffic Impact Study considered the possible impacts of the redevelopment of Angliana Avenue and the extension of Newtown Pike. Mr. Hammons responded that those projects were not considered as part of this study, and he noted that the Zoning Ordinance requires that the study consider traffic impacts only to the nearest arterial or collector. Mr. Holmes said that there will be a traffic impact over a broader area than just the proposed development, and he felt that it is important to consider that as part of this project. Mr. Hammons stated that the transportation planning staff believes that an increase of multi-modalism, as well as proposed road improvements, will help to mitigate the projected traffic increase. Mr. Holmes asked how public transit is factored in as part of the Traffic Impact Study. Mr. Hammons answered that he had consulted with representatives from LexTran, who indicated that public transit should be factored as about 20% of the overall traffic study.

Petitioner Representation: Rodes Brown, attorney, stated that he was present representing the petitioner, and noted that they agreed with the staff’s recommendations, and that he had no other comments at this time.

Citizen Comment: There were no citizens present who wished to discuss this item.

Commission Questions: Mr. Owens asked if the proposed development will be able to accommodate the influx of traffic and need for additional parking during Red Mile racing meets, sales, etc., and whether designated parking will be provided for

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horse owners and/or racing patrons. Mr. Brown deferred the question to Stan Harvey from Urban Collage. Mr. Harvey noted that the project is proposed to be constructed in phases, with development beginning with the portion of the subject property closer to Red Mile Road. In the short term, therefore, the petitioner will have the flexibility to continue to allow parking in the remaining undeveloped areas. Mr. Harvey noted that a structured parking deck is also proposed as part of the phasing of the project. Mr. Owens asked if that parking deck will be part of the first phase of construction, to which Mr. Harvey responded that construction is proposed to begin at the perimeter of the property and move inward, with the proposed parking deck being constructed on the interior of the property in a later phase. He noted that, since an expansion of the Red Mile grandstand is also proposed in the future, it would probably be appropriate to provide dedicated parking for that use in the parking deck. Mr. Owens noted that he is concerned about the provision of adequate parking for horse owners and racing patrons.

Ms. Roche-Phillips asked if the off-site infrastructure improvements needed to accommodate additional traffic will be provided by the petitioner, or by the state. Mr. Harvey answered that the petitioner has expressed some interest in exploring the possibility of creating a TIF district for the proposed development, which could offer the opportunity for the petitioner to partner with LFUCG and KYDOT to accelerate the necessary road improvements. He noted, however, that that TIF proposal has not been filed at this point. Mr. Hammons replied that the off-site improvements would be completed by KYDOT, but noted that they are also part of the planning process of the MPO. The South Broadway improvements are currently listed as 33rd on the MPO's unscheduled project list. However, the MPO is preparing to address the unscheduled project list again, at which time the proposed development can be factored into any reconsideration of the necessary planning for those improvements. He felt that KYDOT is aware that improvements will be needed in the area, but some of them are not scheduled to occur for at least 10 to 15 years.

Zoning Action: A motion was made by Mr. Owens, seconded by Ms. Richardson, and carried 10-0 (Whitman absent) to approve MAR 2009-12, for the reasons provided by staff.

Development Plan Action: A motion was made by Mr. Owens, seconded by Mr. Paulsen, and carried 10-0 (Whitman absent) to approve ZDP 2009-78, subject to the 22 conditions as listed on the agenda.

Note: Chairman Penn declared a brief recess at 3:02 p.m. The meeting reconvened at 3:08 p.m.

3. OSEETAH, LLC, ZONING MAP AMENDMENT & BIG BROTHERS / BIG SISTERS PROPERTY ZONING DEVELOPMENT PLAN

- a. MAR 2009-13: OSEETAH, LLC (1/7/10)* - petition for a zone map amendment from a Planned Neighborhood Residential (R-3) zone to a Professional Office (P-1) zone, for 2.22 net (2.26 gross) acres, for property located at 1122 Oak Hill Drive.

LAND USE PLAN AND PROPOSED USE

The Central Sector Small Area Plan, an adopted element of the 2007 Comprehensive Plan (Sector 2), recommends Semi-Public Facilities (SP) land use for the subject property. The petitioner proposes Professional Office (P-1) zoning to allow for reuse of the existing structure as an office and research laboratory, and associated off-street parking.

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

The Staff Recommends: **Approval**, for the following reasons:

1. The proposed rezoning to a Professional Office (P-1) zone can help implement the Central Sector Small Area Plan, an adopted element of the 2007 Comprehensive Plan, which encourages a neighborhood economic development approach that utilizes existing assets. The subject property has been an asset in the neighborhood for a long time, and now there is an opportunity for reuse that can spur investment in the surrounding neighborhood.
2. The proposed P-1 zone is appropriate and the existing Planned Neighborhood Residential (R-3) zone is inappropriate for the following reasons:
 - a. The property is unique in that it is situated so that it is surrounded by single-family residences, yet its size, configuration and limited access make it unsuitable for single family development.
 - b. The R-3 zone can be developed with multi-family residential, which would be incompatible with the existing single-family neighborhood.
 - c. The P-1 zone permits the majority of Semi-Public land uses, such as churches; community centers; schools; and nursing homes, which are an integral part of our community, as well as some limited support uses that can support the Central Sector Small Area Plan's goals for increased economic development.
3. This recommendation is made subject to approval and certification of ZDP 2009-77: Big Brothers/Big Sisters Property, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
4. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions are proposed for the subject property via conditional zoning:

PROHIBITED USES:

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

- a. Banks, credit agencies, security and commodity brokers and exchanges, credit institutions, savings and loan companies, holding and investment companies.
- b. Funeral parlors.
- c. Medical and dental offices, and clinics.
- d. Telephone exchanges, radio and television stations; and cable television system signal distribution centers and studios.
- e. Hospitals.
- f. Computer and data processing centers.
- g. Ticket and travel agencies.
- h. Business colleges, technical or trade schools or institutions.
- i. Beauty shops.
- j. Rehabilitation homes.
- k. Drive-through facilities.
- l. Offices of veterinarians, or animal hospitals.
- m. Any research or testing that involves animals larger than a laboratory mouse or rat.

OTHER USE RESTRICTIONS:

- a. No more than eleven (11) dwelling units shall be permitted at this location.
- b. Building height shall be limited to thirty-five (35) feet.
- c. Outdoor lighting shall be directed away from all adjacent residential properties.

These use restrictions are appropriate and necessary to protect the established residential neighborhood from the most intrusive and intense land uses otherWyse possible in a P-1 zone, and to successfully implement the Comprehensive Plan.

- b. ZDP 2009-77: BIG BROTHERS/BIG SISTERS PROPERTY (1/7/10)* - located at 1122 Oak Hill Drive.
(Barrett Partners)

The Subdivision Committee Recommended: Approval, subject to the following requirements:

- 1. Provided the Urban County Council rezones the property P-1; otherWyse, any Commission action of approval is null and void.
- 2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
- 3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
- 4. Building Inspection's approval of landscaping and landscape buffers.
- 5. Urban Forester's approval of tree inventory map.
- 6. Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.
- 7. Denote all adjoining property owner information.
- 8. Denote landscape buffer areas.
- 9. Denote existing and proposed easements.
- 10. Denote name and address of developer.
- 11. Denote access drive width.
- 12. Resolve landscape buffer.
- 13. Resolve lighting.

Zoning Presentation: Ms. Wade presented the staff report, briefly orienting the Commission to the location of the subject property. She stated that the subject property is accessible only from Oak Hill Drive, but only has approximately 50 feet of frontage on that roadway. The subject property is surrounded on all sides by single-family residences, which are located on Carneal Drive, Locust Drive, Oak Hill Drive, and Highland Park. The subject property is zoned R-3, although all of the other properties in the immediate vicinity are zoned R-1C.

The petitioner proposes to rezone the subject property to P-1 in order to use it as an office and a laboratory. Ms. Wade stated that the property was rezoned to R-3 in 1986 in order to accommodate its former use as the Big Brothers/Big Sisters community center and offices. That organization recently sold the property to the petitioner, after having been located there for approximately 20 years.

Ms. Wade said that the 2007 Comprehensive Plan recommends Semi-Public Facilities land use for the subject property, with Medium Density land use recommended along Oak Hill Drive, and Low Density Residential use to the east and south of the property. The subject property has been recommended for Semi-Public land use since the 2001 Comprehensive Plan; prior to the 2001 Plan, the two previous Comprehensive Plans had recommended Low Density Residential use for the property. When a property with a recommendation for Semi-Public land use is proposed for redevelopment, the Comprehensive Plan recommends that the Planning Commission consider the other existing conditions on the property and other relevant information, as well as previous Plan recommendations, when drafting their recommendation.

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Ms. Wade noted that the subject property also lies within the area covered by the Central Sector Small Area Plan, which does not recommend any specific land use changes for the subject property or its immediate vicinity. The Central Sector Plan does identify some guiding principles for the area, including: enhancing the urban fabric; promoting and preparing redevelopment and investment in the area; and neighborhood economic development, particularly when existing assets can be used. The staff found that the subject property has been an asset in the neighborhood for a number of years, and reuse of the property could provide an opportunity for economic development for the Central Sector area.

Ms. Wade stated that the P-1 zoning requested by the petitioner is one of several zones that could implement a Semi-Public Facilities land use recommendation. The staff considered what types of uses could be allowed under the existing zoning on the property, and determined that multi-family residential use would be allowed by right. The staff was concerned about the potential for redevelopment of the subject property with several apartment buildings, which could be more incompatible with the existing neighborhood. The staff believes that the P-1 zone could implement the recommendations of the Small Area Plan, and be limited by conditional zoning restrictions to make it appropriate at this location. The staff is recommending approval of this request, for the reasons as listed in the staff report and on the agenda.

Ms. Wade stated that the staff has recommended conditional zoning restrictions for the subject property. At the Zoning Committee meeting two weeks ago, the petitioner objected to two of the proposed restrictions. The Zoning Committee recommended approval of this request, and asked that the staff work with the petitioner to narrow the issues on those two objections. Since that time, the staff has worked with the petitioner to draft the following revised list of conditional zoning restrictions, which was distributed to the Commission members prior to the start of the hearing:

4. *Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions are proposed for the subject property via conditional zoning:*

PROHIBITED USES:

- a. Banks, credit agencies, security and commodity brokers and exchanges, credit institutions, savings and loan companies, holding and investment companies.
- b. Funeral parlors.
- c. Medical and dental offices, and clinics over 4,000 square feet in size.
- d. Telephone exchanges, radio and television stations; and cable television system signal distribution centers and studios.
- e. Hospitals.
- f. Computer and data processing centers.
- g. Ticket and travel agencies.
- h. Business colleges, technical or trade schools or institutions.
- i. Beauty shops.
- j. Rehabilitation homes.
- k. Drive-through facilities.
- l. Offices of veterinarians, or animal hospitals.
- m. Any research or testing that involves the use of large research animals on the property such as dogs, cats, non-human primates and farm animals. ~~animals larger than a laboratory mouse or rat.~~

OTHER USE RESTRICTIONS:

- a. No more than eleven (11) dwelling units shall be permitted at this location.
- b. Building height shall be limited to thirty-five (35) feet.
- c. Outdoor lighting shall be directed away from all adjacent residential properties.

These use restrictions are appropriate and necessary to protect the established residential neighborhood from the most intrusive and intense land uses otherwise possible in a P-1 zone, and to successfully implement the Comprehensive Plan

Ms. Wade said that the petitioner's two concerns dealt with items "c" and "m" in the list of proposed prohibited uses. With regard to item "c," the petitioner was agreeable to add text to prohibit medical offices of over 4,000 square feet in size. The petitioner was concerned about the wording of item "m," so they proposed the addition of language to restrict the use of large research animals on the subject property. The staff was agreeable to that proposed change, and is recommending approval of this rezoning request.

Commission Questions: Mr. Owens asked why the property is proposed to be restricted to fewer than 11 dwelling units. Ms. Wade answered that, in keeping with the previous recommendations of the Comprehensive Plan for Low Density Residential use, the staff calculated how many units would be within the range of 0 – 5 dwelling units per acre at this location. That restriction is proposed to keep the property compatible with the surrounding area. Mr. Owens asked why that restriction should be in place if the property is rezoned to P-1 (a business zone). Ms. Wade responded that the P-1 zone would allow residential use on the second floor of any building.

Mr. Holmes stated that he agreed that density should be restricted on the subject property, since access to it is so limited.

Development Plan Presentation: Mr. Martin presented the rendered preliminary development plan of the property, noting its single access; the proposed addition to the parking area; and the existing building, which is just over 13,000 square feet in size. He said that the structure was originally a residence; it was then used as a conditional use for a nursing home. When the Big Brothers/Big Sisters organization purchased the property, a gymnasium was added. At that time, no stormwater detention was required on the property. Since the petitioner proposes to increase the parking on the property, they are also proposing to add a detention area. Mr. Martin noted that 57 parking spaces are required for the office/laboratory use, and the petitioner is proposing 57 spaces.

Mr. Martin said that this plan was reviewed by the Subdivision Committee, and was recommended for approval, subject to the 13 conditions as listed on the agenda. The conditions for approval were standard, with the exception of two items to be resolved. With regard to condition #12, Mr. Martin stated that the situation on the subject property is unique, in that the proposed P-1 use would be completely surrounded by single-family homes. The staff was concerned that the standard landscaping requirement may not be sufficient to protect and buffer the rear yards of those homes from the more intense office/laboratory use. The staff was also concerned about lighting, even though one of the proposed conditional zoning restrictions would require that any outdoor lighting be directed away from adjoining residences. A delicate balance needs to be attained, between providing a safe and secure parking lot for the subject property, and not negatively impacting the surrounding homes. The required zone-to-zone screening along the property boundary would necessitate the planting of a tree every 40 feet on center, as well as a six-foot double hedge. Of additional concern to the staff was the possibility that the zone-to-zone screening could possibly be limited due to the proximity of utility lines. The staff's concerns are reflected in conditions #12 and 13. Mr. Martin noted that these are typically final development plan issues, and they can be resolved at that time. He added that, should the Commission grant this zone change and adopt the conditional zoning restrictions, a new condition #14 will need to be added, to read: "Denote conditional zoning restrictions."

Petitioner Representation: Tony Barrett, Barrett Partners, was present representing the petitioner. He stated that the 1986 rezoning on the subject property identified the concerns of the neighbors about the use of the property. At that time, adjoining residents expressed concern about the potential use of the site for offices, as well as the possibility of multi-family residential development on the property. He submitted into the record excerpts from several portions of the Central Sector Small Area Plan which speak to the need for economic development in the area, as well as the encouragement of businesses to be incorporated into the fabric of the neighborhood.

Mr. Barrett said that the petitioner is in agreement with the staff's recommendations, including the revised conditional zoning restrictions and the conditions for approval of the development plan. The existing landscape buffer around the property is substantial, but the petitioner is also agreeable to enhancing that buffer if necessary at the time of the final development plan. With regard to the staff's concerns about lighting on the property, the petitioner has indicated that they plan to provide only the amount of lighting that is necessary for security in their parking lot, and that all lighting will be directed away from the adjoining properties. Mr. Barrett stated that the petitioner appreciates the staff's willingness to address their concerns with regard to the conditional zoning restrictions, and he requested approval.

Commission Questions: Ms. Copeland asked if dogs would be used for research on the subject property; and, if so, whether they would be stored outdoors in kennels. Mr. Barrett answered that the proposed conditional zoning restrictions would limit the use of research animals on the property to small animals only, so research on dogs would not be permitted. He added that all of the holding of animals will be contained inside the building, so there should be no concerns about noise or odors.

Zoning Action: A motion was made by Mr. Brewer, seconded by Mr. Cravens, and carried 10-0 (Whitman absent) to approve MAR 2009-13, for the reasons provided by staff, and adding the conditional zoning restrictions as proposed by staff in their revised recommendation.

Development Plan Action: A motion was made by Mr. Brewer, seconded by Mr. Cravens, and carried 10-0 (Whitman absent) to approve ZDP 2009-77, subject to the 13 conditions as listed on the agenda, and adding condition #14 to read: "Denote conditional zoning restrictions."

Note: Mr. Paulsen left the meeting at this time.

C. PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMENDMENT REQUESTS

1. **ZOTA 2009-8: AMENDMENT TO ARTICLE 17-6 FOR TEMPORARY SIGNS** (12/5/09)* – petition for a Zoning Ordinance text amendment to Article 17-6 to allow temporary signs related to events sponsored by neighborhood associations or owners' associations, to be placed in the rights-of-way of that particular neighborhood, with some limitation to the number, size, and duration of stay.

INITIATED BY: Urban County Council

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

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

ARTICLE 17: SIGN REGULATIONS

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

* * * * *

(j) Temporary signs related to events that are sponsored by neighborhood associations or owners' associations that are located within the public or private street right-of-way of that neighborhood, and that do not otherwise interfere with sight in violation of Section 17-4(j). There shall not be more than ten (10) signs for any such event, and each such sign shall not exceed six (6) square feet in area and six (6) feet in height, shall not be displayed more than seven (7) days prior to the event, and must be removed within two (2) business days of the completion of the event.

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

The Staff Recommends: **Approval** for the following reasons:

1. The proposed text amendment to Article 17-6 of the Zoning Ordinance for temporary signs would give neighborhood associations and owners' organizations the ability to announce events for their neighborhood, but only within the boundaries of their specific neighborhood, in a flexible and cost-effective way. Additionally, the time limits established by the text amendment provide a reasonable allowance for announcing events (up to 7 days prior), while requiring their removal within a short timeframe (2 business days).
2. The proposed amendment will most likely not lead to the propagation of more temporary signage. Neighborhood organizations have some incentive for removing temporary signs before code enforcement officers do so in order to re-use the signs.
3. The proposed text amendment will support the activities of established neighborhood organizations. The 2007 Comprehensive Plan recognizes that neighborhoods are the building blocks of community, and stable neighborhoods are vital to the quality of life in Lexington-Fayette County. Neighborhood activities promote a sense of community, encourage community interaction, and can strengthen a neighborhood's cohesiveness, all for the betterment of the larger community.

Staff Presentation: Ms. Wade presented the staff report, noting that this proposed text amendment was initiated by the Urban County Council. This text amendment would limit such neighborhood signs to a total of 10 signs per event. Each sign would be allowed to be no larger than six square feet by six feet in height, and signs would also be limited in their display to a maximum of seven days prior to the event and up to two business days after the event. The proposed text also explicitly states that, although such signs would be allowed to be placed in the right-of-way, they would not be permitted to block a sight triangle, and they would be limited to the neighborhood in which the event is planned to occur.

Ms. Wade stated that temporary signs are already defined in the Zoning Ordinance, and are strictly regulated by Article 17-6. Over time, the use of temporary signs has become more popular, since they are inexpensive and easy to install and remove. Such signs can be an excellent way for neighborhood associations to announce their meetings and events. Many neighborhood groups already utilize this type of sign, although there have been some instances wherein the Divisions of Code Enforcement or Building Inspection have removed temporary neighborhood signs which were located in the right-of-way. This text amendment was proposed by the Urban County Council in an attempt to alleviate that issue.

Ms. Wade said that this proposed addition to the Ordinance would provide neighborhoods with a flexible, cost-effective means of announcing meetings and events to their residents, but only within their neighborhoods. The Council Planning Committee recently expressed some concern about the proliferation of temporary signs, particularly since the Divisions of Code Enforcement and Building Inspection spend a great deal of time removing signs that have been placed in violation of the current Ordinances. The staff believes, however, that the proposed text is written in such a way that will not result in the proliferation of temporary signage, due to the limitations that are proposed. The Planning Committee also expressed some concerns that allowing neighborhoods to use this type of sign in the right-of-way would encourage businesses to place their signs in the right-of-way, and that there may some difficulties with the regulation of content of the signs. Ms. Wade noted that the staff of the Department of Law drafted the proposed text amendment, and they reassured the Planning staff that the proposed changes to the sign regulations are both content-neutral and viewpoint-neutral, which are protected as free speech.

In researching the proposed text amendment, the staff did not find any other communities that regulate temporary signs in this manner. Ms. Wade said, however, that the 2007 Comprehensive Plan speaks to the promotion of neighborhoods and their activities. The staff agrees with the Comprehensive Plan's assessment of neighborhoods as the building blocks of our community, and believes that interaction between residents at neighborhood events can strengthen the fabric of Lexington-Fayette County. The staff and the Zoning Committee recommended approval of the proposed text amendment, for the reasons as listed in the staff report and on the agenda.

Citizen Comment: No citizens were present to comment on this item.

Commission Questions: Mr. Owens asked why the signs could be placed seven days prior to the event, but must be removed two **business** days after an event. Ms. Wade responded the text originally allowed for the placement of a sign 10 days prior to an event, but the Planning Committee changed that recommendation to seven days prior. Mr. Owens stated that he would like for both time

frames to be expressed consistently, i.e., either as business days or just days. Mr. Owens noted that the staff report refers to the use of temporary signs as an economical means of advertisement for businesses, and asked for clarification that the proposed text amendment would not allow such use by businesses. Ms. Wade answered that the staff's intent was to point out that temporary signs are an economical means for neighborhood associations to advertise as well. Mr. Owens asked if the Division of Code Enforcement provides the only enforcement of temporary signs. Ms. Wade responded that the Division of Building Inspection had historically provided that enforcement; but, approximately three years ago, the Zoning Ordinance was amended to provide that ability to Code Enforcement since they regularly patrol the community for other violations. Mr. Owens asked if a neighborhood association could be fined for failing to remove a temporary sign. Ms. Wade answered that many of the commercial temporary signs list out-of-town businesses that have proven difficult to contact; however, in the case of a neighborhood association, it is much easier to contact a responsible party locally and notify them that a sign needs to be removed. She added that neighborhood associations could be issued a notice of violation like any other party that violates the Ordinance.

Mr. Holmes asked if this text amendment proposes any limitations with regard to types of signs, using illuminated signs as an example. Ms. Wade answered that temporary signs are defined in the Zoning Ordinance as "any sign or advertising display constructed of cloth, canvas, light fabric, cardboard, wallboard, plyboard or other light materials with or without frames; and/or intended to be displayed for a limited period of time." She noted that the definition does not specifically prohibit illumination, but it is generally assumed that such signs will not be illuminated since they are only to be in place for a short period of time.

Bob Carpenter, Division of Building Inspection, stated that the main problem with citing an individual for the placement of a temporary sign is that someone must have witnessed the individual placing the sign.

Action: A motion was made by Mr. Owens, seconded by Ms. Roche-Phillips, and carried 9-0 (Paulsen and Whitman absent), to approve ZOTA 2009-8, for the reasons provided by staff, and changing the recommended text to read, "seven **calendar** days prior to the event: and "two (2) **calendar** days after the event."

2. **ZOTA 2009-9: CEMETERY PROTECTION** – petition for a Zoning Ordinance text amendment to Articles 3, 18 and 21 to provide general regulations, landscape and land use buffer requirements, development plan and subdivision plan information and format requirements for the protection of private family cemeteries.

INITIATED BY: Urban County Planning Commission

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

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

The Staff Recommends: **Approval**, for the following reasons:

1. These text changes are in agreement with Goal 5 of the 2007 Comprehensive Plan, which states that the community should "protect and preserve Fayette County's significant historic and cultural heritage," and more specifically "encourage the retention, protection, compatible adaptive re-use of historic resources, sites, and structures" (Objective E) and "encourage inter-governmental cooperation among the various units of the Urban County Government in dealing with the protection and maintenance of both private and public sites and structures" (Objective H).
2. The existing private family cemeteries are currently being threatened by local development, and are not being protected via local zoning and subdivision regulations. This text amendment will outline appropriate measures for protection and preservation of these important community resources.

Staff Presentation: Ms. Wade presented the staff report, stating that this text amendment, along with a correlating amendment to the Subdivision Regulations (SRA 2009-3), was proposed in order to protect private family cemeteries in Fayette County. Both of the amendments were initiated by the Planning Commission on July 23, 2009.

Ms. Wade said that private family cemeteries in Fayette County are considered to be threatened by possible redevelopment or relocation. This text amendment was proposed by the Fayette County Cemetery Trust to the Planning Commission in order to help keep those private cemeteries intact, and to assist family members in the use of those cemeteries for genealogical research. The Trust was first formed when the members initially identified several private cemeteries that had either been moved, or treated inappropriately. Ms. Wade circulated several photographs to the Commission members that depict a private cemetery that has technically been protected, but is crowded and surrounded by a new residential neighborhood in Fayette County.

In 2005, the Cemetery Trust addressed the Planning Commission as part of the Comprehensive Plan update process, and asked the Commission to institute some sort of protection for family cemeteries in the county, and to require that, should a cemetery be relocated, that all of the graves would remain in Fayette County. The Trust's request was accepted by the Planning Commission, and it became a part of the 2007 Comprehensive Plan's implementation section. Ms. Wade said that Goal 5 of the Plan states that, "The community should protect and preserve Fayette County's significant historic and cultural heritage." There are also several Objectives that refer specifically to the protection of these sites.

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

Ms. Wade stated that the staff had worked with the Cemetery Trust to study the existing state statutes, as well as ordinances in place in other communities in Kentucky. The Kentucky Office of Vital Statistics has regulations in place for the movement of a cemetery, but there are no local or state regulations for how to protect a cemetery in place. The Zoning Ordinance and Land Subdivision Regulations, therefore, need to be amended in order to provide for that protection.

Ms. Wade distributed to the Commission members copies of the proposed revisions to Article 3 of the Zoning Ordinance. The staff's proposed text would require that private family cemeteries remain in Fayette County, unless the heirs desire otherwise; that any cemetery that is to be protected in place be surrounded by a 50' buffer area; that an archeologist should be retained in order to identify the boundary of the cemetery using historic records and gravesite locations; that a fence should be established around any cemetery, or any existing fence should be repaired; that maintenance and permanent ownership be established for each cemetery; and that a 10' easement should be established for any cemetery that is protected in place. Following the Zoning Committee meeting two weeks ago, the Division of Building Inspection staff expressed some concerns that residences located adjacent to existing cemeteries would not be negatively impacted by the requirements of the proposed text amendment. The staff proposed the addition of language to read: "Upon the filing of a development plan or subdivision plan," which would help to define the situation that would necessitate protection of a cemetery. Before a property is proposed for development, therefore, there would be no requirements for protection of a cemetery. Once a subdivision or development plan is filed, it would "trigger" the protection requirements.

Ms. Wade stated that Article 18 of the Zoning Ordinance regulates the proposed landscaping and buffer requirements, which would be in addition to any requirements for the perimeter of the property. When a private cemetery is located on a property, a 50' buffer would be required to be established adjacent to the cemetery. Along the edge of the cemetery, one tree will be required to be planted every 40 linear feet for large species, or 30 linear feet for medium species, with a six-foot-high planting or hedge and a fence of at least three feet in height. The staff is also proposing additional language for Article 21 of the Zoning Ordinance, which would require the identification of private cemeteries on a development plan; and to the Subdivision Regulations, to require that the lotting scheme and 50-foot buffer area be designated on any subdivision plan.

Ms. Wade said that the staff and the Zoning Committee have recommended approval of the proposed text amendment, for the reasons listed in the staff report and on the agenda.

Commission Questions: Mr. Brewer asked why the staff is proposing a 50-foot buffer, when the most onerous requirement in Kentucky only requires a 30-foot buffer. Ms. Wade stated that the Cemetery Trust requested a 50-foot buffer, because they believed that that distance would be sufficient to compensate for grade changes, erosion, and grading near cemetery sites.

Mr. Owens asked, with regard to abandoned graves, who would be responsible for moving them. Ms. Wade answered that the developer of the property would be responsible for the cost of removing any abandoned graves. She said that a cemetery could only be relocated if it has been determined to be abandoned, and noted that the Cemetery Trust actually maintains several cemeteries in order to prevent them from being declared abandoned.

Mr. Penn asked if anyone knows how many cemeteries are located outside the Urban Service Area boundary. Ms. Wade displayed a map depicting private cemeteries, using information provided by the Kentucky Heritage Council. Mr. Penn said that he is not trying to determine an actual number; rather, he would like to ensure that someone is keeping track of all of these cemeteries. Ms. Wade said that the staff has mapping points for all of the cemeteries of which they have been made aware, but there could possibly be others. Mr. Penn stated that he believes that it is important that all cemeteries be depicted on any development plan that is filed for a property.

Citizen Comment: There were no citizens present who wished to discuss this matter.

Action: A motion was made by Ms. Richardson, seconded by Ms. Roche-Phillips, and carried 9-0 (Paulsen and Whitman absent) to approve ZOTA 2009-9, for the reasons provided by staff, including the revised text as proposed by staff.

V. **COMMISSION ITEMS** – No such items were presented.

VI. **STAFF ITEMS** – No such items were presented.

VII. **AUDIENCE ITEMS** – No such items were presented.

VIII. **MEETING DATES FOR DECEMBER, 2009**

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	December 3, 2009
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	December 3, 2009
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	December 10, 2009
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	December 16, 2009
Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	December 17, 2009
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	December 17, 2009

IX. **ADJOURNMENT**

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TLW/TM/BJR/BS/src

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