

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

February 25, 2010

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

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

Planning staff members present: Chris King, Director; Bill Sallee; Barbara Rackers; Jimmy Emmons; Traci Wade; Tom Martin; Cheryl Gallt; Max Conyers; and Stephanie Cunningham. Other staff members present were: Rochelle Boland, Department of Law; Bob Carpenter, Division of Building Inspection; Captain Charles Bowen and Firefighter Allen Case, Division of Fire and Emergency Services; and Hillard Newman, Division of Engineering.

Director comments: Mr. King stated that the staff was saddened to learn that morning of the passing of Jerry VanderWier, who appeared before the Planning Commission as a developer and engineer for many decades. He noted that Mr. VanderWier brought a great deal of humor to his work with the staff and the Planning Commission, in addition to his professionalism. Mr. King said that the staff would like to ask the Commission to join them in a moment of silence.

- II. **APPROVAL OF MINUTES** – A motion was made by Mr. Brewer, seconded by Ms. Richardson, and carried 11-0 to approve the minutes of the January 28, 2010, Planning Commission meeting.
- III. **POSTPONEMENTS AND WITHDRAWALS** – No such items were presented.
- IV. **ZONING ITEMS** - The Zoning Committee met on Thursday, February 4, 2010, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Patrick Brewer, Ed Holmes, Lynn Roche-Phillips, Joan Whitman, 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. **WWM, LLC; AUSBROOK POLO, LLC & POLO I, LLC ZONING MAP AMENDMENT & HAMBURG EAST (PLANNED EAR-3 & CC ZONES) ZONING DEVELOPMENT PLAN**

- a. MAR 2009-17: WWM, LLC; AUSBROOK POLO, LLC & POLO I, LLC (AMD.) (4/29/10)* – amended petition for a zone map amendment from an Agricultural Rural (A-R) zone to a Community Center (CC) zone, for 37.5 net (52.63 gross) acres; from an Agricultural Rural (A-R) zone to an Expansion Area Residential-3 (EAR-3) zone, for 90.37 net (92.05 gross) acres; and from an Agricultural Rural (A-R) zone to an Expansion Area Residential-3 (EAR-3) zone with a Transition Area (TA) Overlay zone, for 14.82 net (16.49 gross) acres, for property located at 2950 Winchester Road (a portion of).

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LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Expansion Area 2a) recommends a mixture of Community Center (CC), Transition Area (TA), and Expansion Area Residential-3 (EAR-3), defined as 6-18 dwelling units per gross acre (without the use of transferable development rights), and 24 dwelling units per gross acre (with transferable development rights) future land uses for the subject property. The petitioner proposes a future residential development on the eastern side of Polo Club Boulevard; and a large community center development, which requires a residential component, and a residential area with a Transition Area overlay zone on the western side of Polo Club Boulevard.

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

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

1. The requested Community Center (CC) zone, Expansion Area Residential-3 (EAR-3) zone, and Expansion Area Residential-3 with a Transition Area (TA) overlay zone are not in agreement with the land use recommendation of the 2007 Comprehensive Plan, or of the more detailed Expansion Area Master Plan, which preceded it, because the locations of the proposed land uses are not in keeping with the vision of the Plans, or the intent of the Expansion Area concept. Of most concern is that the location of the proposed CC zone is significantly further from the residential uses in Expansion Area 2a, thus providing additional barriers to the function of this center as proposed.
 2. There have been no major unanticipated changes of an economic, social or physical nature in the area of the subject property since the adoption of the 2007 Comprehensive Plan.
 3. The existing Agricultural Rural (A-R) zone is not inappropriate at this location, insofar as it is the most common current zoning designation for the land added to the Urban Service Area in 1996.
 4. The proposed zoning categories in the configuration requested by the petitioner are inappropriate for the following reasons:
 - a. Sufficient retail land is developed or planned within close proximity to Interstate 75 in the immediate area – all of which would offer a variety of services to the traveling public.
 - b. Higher density residential uses are often recommended along major thoroughfares.
- b. ZDP 2009-87: HAMBURG EAST (EAR-3 & CC AREA) (4/29/10)* - located at 2950 Winchester Road.
(HDR Engineers)

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

1. Provided the Urban County Council rezones the property EAR-3 and CC; 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 buffer information.
5. Urban Forester's approval of tree inventory map.
6. Greenspace Planner's approval of the treatment of greenways and greenspace.
7. Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.
8. Revise note number 11.
9. Correct metes and bounds, bearings and distances to match corrected ZOMAR information along Man O' War Boulevard.
10. Denote: At the time of the Final Development Plan, arrangements for the completion of the sanitary sewer and the regional detention facility shall be identified.

Zoning Presentation: Ms. Wade presented the staff report, noting that this is an amended request for rezoning. She briefly oriented the Commission to the location of the subject property, using a rendered zoning map to display the areas proposed for rezoning from an existing A-R zone to the EAR-3, EAR-3 with a Transition Area (TA) overlay, and CC zones. The subject property is comprised of 142 acres, which the recent construction of Polo Club Boulevard divided into two sections, one on the east side of the boulevard and one on the west side. The petitioner proposes to rezone the 90 acres on the northeast side of Polo Club Boulevard at Man O' War Boulevard, to EAR-3, which has an allowable density of 6 – 18 dwelling units per net acre. The EAR-3 zone also allows the transfer of dwelling units for up to 24 units per net acre. The other two areas proposed for rezoning are a 14.8-acre area of EAR-3 zoning with a TA overlay, and a 37.5-acre area of Community Center (CC) zoning. Other uses in the vicinity of the subject property are: the Gleneagles subdivision to the south; the Blackford property to the east; the Central Baptist Hospital property to the northwest; and the rest of the Hamburg Farm and the Hamburg Pavilion shopping area to the west.

Ms. Wade stated that the petitioner is proposing density in line with that recommended by the 2007 Comprehensive Plan, but there were no specifics included on the types of dwelling units proposed on the corollary development plan, as it does not depict any buildings. However, the petitioner has agreed to stay within the allowable density and uses of the proposed zones.

Ms. Wade said that there were some questions at the Zoning Committee meeting three weeks earlier about the allowable uses in the CC zone compared to those allowed in the B-6P zone, which is located across Interstate 75 in the Hamburg Pavilion shopping center. She distributed copies of the staff's (exhibit) comparison to the Commission members. Generally, the B-6P and CC zones are very similar with regard to allowable uses; the differences are mostly in the restrictions inherent in each zone. The B-6P zone is intended to be a shopping center zone, so it allows a diverse range of shopping and restaurant uses and permits, up to a large re-

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gional shopping center. The CC zone is intended to be a mixture of uses to serve more of an immediate community rather than a large regional area. Ms. Wade reported that the restrictions inherent in the CC zone were designed to keep the CC uses compatible with that concept.

Ms. Wade displayed several aerial photographs of the subject property on the overhead projector, noting the boundary of the area proposed for rezoning; the Gleneagles development to the south; the existing Hamburg Pavilion development to the west; single-family and apartment uses along the interstate; a greenway/floodplain area; and some development in the CC zone located across Man O' War Boulevard in the Gleneagles area (Sikura-Justice property).

Ms. Wade stated that the 2007 Comprehensive Plan recommends the three land use categories proposed for the subject property, but the petitioner is proposing them in a different configuration. The petitioner did not originally propose a Transition Area overlay, but the amended application and development plan do now request that zoning category. The 2007 Comprehensive Plan recommends the EAR-3 zone between the interstate and Polo Club Boulevard, with a CC zone; an EAR-3 zone with Transition Area; and more EAR-3 zoning on the east side of Polo Club Boulevard. The petitioner has proposed to change this configuration, by locating the CC zone closer to the interstate, rather than centrally located within Expansion Area 2a.

Staff Exhibits Presentation: Mr. Emmons distributed an exhibit packet to the Planning Commission members containing information about the Expansion Area Master Plan and its history. He stated that the purpose of the Expansion Area Master Plan was to present a detailed, comprehensive plan for just the Expansion Area. The Planning Commission formed an Expansion Area Study Committee, which worked for 11 months to formulate the EAMP, including holding numerous public meetings. A record of the entire process is on file in the Division of Planning Office. The staff included portions of the minutes of those meetings in their exhibit packet, and referred to them to summarize the background and processes that went into the creation of the EAMP. Mr. Emmons read into the record a related quote from Charlie Siemon, who facilitated the Expansion Area Study Committee: "The CC area was placed adjacent to the boulevard where it would be accessible to the residents internally; adjacent to the greenway, where there will be bikeways. In theory, it would be available both on foot and by bicycle to the residents."

Mr. Emmons said that the EAMP is separated into four categories: land use, community design elements, infrastructure, and implementation. The study committee also defined 41 guiding principles for the EAMP, including: providing for alternative modes of transportation; the use of unique landscape features along arterials; the location of commercial uses in community centers; confinement of CC areas to particular street nodes; requiring that residential units not back up to arterial roadways; keeping a scenic vista along major arterials; and the centering of development on CC areas. Another one of the guiding principles of the EAMP was the provision of greenways in central locations throughout the Expansion Area. The greenway areas were intended to serve as the backbone for the stormwater management system, as well as to provide active and passive recreation areas. The EAMP recommended the location of the greenway area within easy walking distance of all of the residents of the development.

With regard to the proposed location of the CC area, Mr. Emmons stated that the EAMP recommended a "new urbanist" design approach be used in the CC areas. He noted that the staff exhibit packet includes several documents from the Congress of new urbanism, which depict the differences between traditional suburban development and new urbanist design. The common features of traditional neighborhood centers include: similar proximity to large interstate intersections as recommended in the EAMP; thoughtful placement of parking areas; the use of aesthetically pleasing architecture; and the use of the community center area as the heart of the neighborhood. The Sasaki Report, which was prepared in conjunction with the EAMP, lists as the key features of the CC area the connections to the greenways, with a "main street retail" feel, including integrated church and residential uses.

Mr. Emmons said that the petitioner contends that the recommended location of the EAR-3 portion of the subject property near the interstate is inappropriate, due to highway noise. The staff believes, however, that the EAR-3 zone has more design flexibility than any other zoning categories, which provides the petitioner with ample opportunities to mitigate the effects of the interstate on the proposed development.

Mr. Emmons stated that the staff is recommending disapproval of this rezoning request, for the reasons as listed in the staff report and on the agenda.

Development Plan presentation: Mr. Martin presented the corollary development plan, noting that it was similar to the conceptual development plan filed for the Central Baptist Hospital property to the northwest of the subject property, which was formerly part of Hamburg Farm. The development plan depicts Polo Club Boulevard, which has 140 feet of right-of-way and three previously approved access points to serve the proposed development. The plan also includes the proposed greenway and stormwater management areas.

Mr. Martin said that the Subdivision Committee recommended approval of this plan, subject to the 10 conditions as listed on the agenda. He noted that the plan does not include a great deal of detail, but the conditions are standard for a preliminary development plan. Condition #10 refers to the completion of the sanitary sewer and regional detention facilities, which are part of the EAMP. It is necessary that they be completed prior to any development in the area. Mr. Martin said that plans for the stormwater facilities, which are proposed to be located on either side of Polo Club Boulevard, are in the design phase. The pump station facility is planned to be part of a group of projects which will be put up for bid this spring.

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Traffic Impact Report presentation: Mr. Sallee presented the MPO's report on the Traffic Impact Study, noting that copies of the memorandum had been distributed to the Commission members prior to the start of today's meeting. The staff's memorandum indicates that the weekday average daily traffic is expected to be slightly fewer than 12,000 "average daily trips," 10% of which would be expected during the PM peak hours.

With regard to levels of service calculations for the developed subject property, Mr. Sallee said that the 2015 data estimate anticipates no degradation in the level of service, but slight delays would be expected over current levels. Following the full build-out of the proposed development in 2020, some degradation to the levels of service and additional delay is expected.

Petitioner Representation: Rena Wiseman, attorney, was present representing the petitioner. She stated that the petitioner is in agreement with the staff's recommendation on the development plan, including the conditions as listed on the agenda. The conceptual nature of the development plan is not unusual for a property in the Expansion Area, and a more detailed version will be presented as a Final Development Plan.

Ms. Wiseman said that the legal justification for this request is that it is in substantial compliance with the Comprehensive Plan, including the EAMP. The EAMP for Expansion Area 2a calls for EAR-3 zoning for the subject property along Polo Club Boulevard, a greenway system, and a CC area on Polo Club Boulevard. The petitioner is proposing the land uses and acreages that are recommended by the EAMP, with the only difference being the proposed relocation of the CC area near the interstate, and the location of the EAR-3 area to the east of Polo Club Boulevard. Ms. Wiseman stated that there is no legal requirement for a zone change to meet every recommendation of the Comprehensive Plan in order to be in compliance with the zoning regulations. The Comprehensive Plan is intended to be a guide for development, rather than a zoning map for specific properties. The Commission has, on many occasions, found that proposed rezonings were in substantial compliance with the Comprehensive Plan even if an adjustment was proposed to the land uses. The petitioner does not believe that the proposed adjustment would violate either the intent or the spirit of the Comprehensive Plan or EAMP. Since the property is largely undeveloped and owned by one entity, the petitioner believes that it would be more appropriate to move the proposed residential area away from the interstate.

Bill Lear, attorney, stated that he, Ms. Wiseman, and the petitioners were all involved in the creation of the Expansion Area Master Plan. He believes that the process was good, but not perfect, and that some mistakes were made in the EAMP. After 15 years of development in the Expansion Area, it is clear that there have been some important deviations from the recommendations of the EAMP. During the EAMP process, the community had the opportunity to rezone the entire Expansion Area at one time; but the Council disapproved that request, which left the Planning Commission to consider each proposal on its own merits. The petitioner contends that the evidence presented in the staff exhibit does not speak to the location of the design elements, rather just the design of areas, which can be decided later in the development plan process. The petitioner does not believe that the location of the CC area in another portion of the property, but in the same general vicinity, would make a significant difference in the proposed development.

Ms. Wiseman stated that it is important to consider the location of the EAR-3 zoning on the subject property, not just the CC area. The petitioner contends that the west side of Polo Club Boulevard, near the interstate, is not the most appropriate location for residential units on the property. Homes located in that area, as is recommended by the EAMP for EAR-3 zoning, would be subjected to high levels of noise from the interstate, on which traffic has increased by approximately 11,000 vehicles per day since the EAMP was implemented. In addition, that residential area would be located near the interstate on-ramp, where cars and heavy trucks accelerate in order to merge onto the interstate. The petitioner contends that it would not be possible to mitigate that level of noise through the use of design features. Residential units constructed on the eastern side of Polo Club Boulevard, however, would back up to the proposed greenway area, a stream, and a proposed park. While pedestrians in that area would be required to cross Polo Club Boulevard in order to reach the CC area, they would not have to cross the boulevard to walk to the park. The petitioner believes that most homeowners would prefer to live further away from the interstate, and nearer to the greenway and park area. There are existing residences in Lexington that adjoin the interstate because there were no other options for those areas; but, in this case, the Planning Commission has the opportunity to allow all of the uses in the proposed development to be located in the most appropriate places from the start of the project.

Ms. Wiseman stated that there have been some deviations from the Comprehensive Plan land use map in the Expansion Area. In Expansion Area 2c, a small portion of CC zoning was recommended for the Hays Boulevard area. In 1999, however, when the application was filed to rezone the Gess Property, the petitioner proposed to realign Hays Boulevard and move the location of the CC and transition areas to the east side of the boulevard. She read the following into the record of the meeting from the minutes of the Planning Commission: "She stated, however, that the proposed zoning would be compatible with the concept in the Expansion Area Master Plan." At that time, the staff recommended approval of the zone change, because it was in substantial agreement with the EAMP. The petitioner contends that this request includes a similar adjustment to the plan, in order to provide a better location for the proposed land uses, particularly the EAR-3 area.

Mr. Lear stated that, when this application for rezoning was initially filed, the acreage of the proposed CC area was much larger. The petitioner has resolved several of the staff's original issues, including providing a Transition Area; the only remaining question is whether the CC area should be located to the west or the east of Polo Club Boulevard. The petitioner does not agree with the staff's

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contention that the CC area will be more oriented to interstate travelers than residents of the proposed development if it is located to the west of Polo Club Boulevard.

With regard to the staff exhibit comparing B-6P uses to CC uses, Mr. Lear said that the same types of products are sold in both zones, but that the two zones are not very similar. The major differences between the two zones are the design components and the restrictions of each zone. The CC zone requires 25% open space, and that 40% of the floor area be devoted to residential, church, or school uses, while the B-6P zone has no such requirements. The maximum building size in the CC zone is 15,000 square feet, unless it is part of a mixed-use building that includes residential and non-residential uses; is used for a church; or is used for a grocery store, which would have a maximum size of 50,000 square feet. Because uses in a CC zone are intended to serve a community area, parking must be minimized between the buildings and adjoining streets, and signage is much more restricted than in the B-6P zone. There is also a 48' height restriction in the CC zone, while the B-6P zone has no height restrictions.

Mr. Lear said that, although the products that are allowed to be sold in the CC and B-6P zones are similar, there are many retailers that would not be appropriate for the CC zone. The petitioner contends that moving the CC area to the other side of Polo Club Boulevard will not, therefore, "change the nature of the CC zone." The petitioner plans to seek high-end, personal-service type retailers, with small, upscale shops, for the CC portion of the subject property. The tenants with whom the petitioner has met, however, would prefer to be located nearer the interstate. The petitioner does not believe, however, that those businesses will be attractive to interstate travelers. Drivers who are traveling on the interstate tend to seek out fast-food restaurants, gas stations, and hotels clustered near off-ramps. Since the CC zone will not accommodate a hotel use, and will only allow one gas station, the proposed shopping area should not become a destination for interstate travelers, particularly given the large number of interstate-oriented businesses in the existing Hamburg Pavilion shopping center. The location of the proposed CC area also will not be easily accessible to drivers leaving the interstate, because they will have to cross several lanes of traffic in order to do so.

Mr. Lear noted that the portion of the property near the interstate is very noisy, and would not be appropriate for residential use. The petitioner believes that the east side of Polo Club Boulevard would provide a much more suitable location for the proposed residential area.

Ms. Wiseman summarized the petitioner's presentation by stating that the petitioner contends that this proposed zone change is in substantial compliance with the requirements of the Comprehensive Plan, and that it would accomplish the goals of the Expansion Area Master Plan. She distributed possible findings of approval to the Commission members, should they choose to approve this request.

Commission Questions: Ms. Roche-Phillips stated that one of the petitioner's main concerns seems to be traffic noise, yet the proposed Central Baptist Hospital location nearby would also be located very near the interstate, and it would be a noise-sensitive use. She asked if the petitioner could provide any empirical data with regard to the distance required from the interstate in order to provide noise mitigation for the proposed single-family residences. Ms. Wiseman answered that the petitioner does not have any data to support their argument, but noted that there is a substantial grade change toward the eastern side of the subject property, which could provide more appropriate noise attenuation than any type of barrier system. Ms. Roche-Phillips stated that she would like to see some research to support the petitioner's claim that the grade change would provide measurable noise mitigation. Ms. Wiseman responded that she did not believe that research is necessary to prove that moving the proposed residences 1,500 feet to the east would mitigate the noise from the interstate. Mr. Lear added that he visited the subject property recently, and the noise was significantly reduced on the lower (eastern) portion of the property.

Mr. Owens asked if the interstate is at a lower elevation than the subject property. Mr. Lear answered that that was correct.

Mr. Cravens asked if the retailers in the proposed CC area would fare better financially if the CC area was located nearer to the interstate, rather than being "tucked inside" the residential area. Mr. Lear responded that most of the retailers with whom the petitioner has met would prefer to be located nearer to the interstate.

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

Staff Rebuttal: Mr. Emmons presented a map exhibit in response to the petitioner's statements about the location of the CC area on the Gess Property, that that area was relocated along with the Hays Boulevard right-of-way, due to topographic conditions on the property. Following that relocation, the CC area was much more centrally located, and closer to the greenway system in Expansion Area 2c. In addition, that CC area is 6.5 acres in size, while the one now proposed is 37 acres.

With regard to the petitioner's contention that the proposed zone change is 85% in compliance with the recommendations of the Comprehensive Plan, Mr. Emmons replied that the staff believes that that number is closer to 20% in compliance. He said that Mr. Lear contended that many of the uses allowed in the B-6P zone would not be permitted in the CC zone, but Mr. Emmons noted that the CC zone is different by design. He said that the CC zone was intended to promote new urbanist-type of "main street retail" development. Mr. Emmons noted that there are several examples of successful community-center type developments with large, national retailers, but they have office or residential uses located above the retail uses.

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Mr. Emmons stated that, with regard to the petitioner's argument that residential uses would not be appropriate adjacent to the interstate, the CC zone has a mandatory residential and/or church component as well. If the CC area was relocated to the western side of Polo Club Boulevard near the interstate, the residential uses there would be affected by noise in much the same way as the residential uses would be an EAR-3 development of the property.

With regard to the petitioner's statements that the Comprehensive Plan is simply a guide, Mr. Emmons said that it is true that the Comprehensive Plan is "more than a land use map." However, the staff does not believe that the proposed zone change is in agreement with the entirety of the 2007 Comprehensive Plan and the Expansion Area Master Plan, rather than just the land use portions. The staff contends that design, details, and process are important in the consideration of zone changes, and that is even more important for development in the Expansion Area.

Commission Questions: Ms. Roche-Phillips asked if the staff had any empirical data on noise levels and the decline in noise levels over a distance. Mr. Emmons responded that the staff had done some research regarding noise levels and mitigation in preparation for their report on the Ramsey-Sullivan Property. They learned that noise can be muffled somewhat by distance; but mitigation using a buffer, such as trees, would be more effective. Hard buffers, such as walls, can also be effective.

Mr. Holmes asked Mr. Emmons to note the location of the greenway. Mr. Emmons used a map from the EAMP on the overhead projector, and noted the recommended location of the greenway, as well as the area recommended for a park.

Petitioner Rebuttal: Mr. Lear displayed several photographs of the greenway area to "show the nature of the greenway." He said that the petitioner does not believe that residents would cross the greenway to access the CC area, because it does not lend itself to an easy walk.

Ms. Copeland asked how many proposed residential lots would be affected by the interstate noise. Mr. Martin answered that the staff believes that the unit range that could be affected could be anywhere from 323 to 968 units, which is the entire density range for the property. Ms. Copeland asked how many units could potentially be located on the "downside of the ridge." Mr. Martin responded that it would be difficult to give an exact number, since units are not likely to be distributed equally on the property. Ms. Copeland asked if it would be safe to say that 100 units might be affected, to which Mr. Martin responded that it was possible. Ms. Copeland said that the Planning Commission is being asked to make this decision based in part on the effects on 100 residential units, versus the location of the proposed CC area.

Staff Rebuttal: Mr. Emmons stated, with regard to the photographs displayed by Mr. Lear, that the greenway area includes more land than just what was depicted in the photos.

Commission Comments: Mr. Holmes said that he would like to see the incorporation of design principles into the proposed development. He added that he does not believe that noise can be mitigated to the point where it has no effect at all on the residences, but he believes that buyers "know what they are getting into" when they purchase a home near the interstate.

Mr. Owens said that he believed that interstate noise will be a concern for the subject property, no matter whether CC or EAR-3 zoning is located nearer the interstate. He read the following into the record of the meeting from the EAMP: "The focal point of a true community center is the place of social, cultural, and economic interaction. The community commons, where neighbors and friends meet and mix, is what is often referred to as 'community of place.'" Mr. Owens stated that he is concerned that the community center may be "isolated" if it is located at the intersection of Man O' War Boulevard and the interstate.

Mr. Brewer stated that he believes that the Comprehensive Plan is a guide. He noted that the noise level near the interstate may affect the appeal of the houses, and that concern should take precedence over any uses in the CC area. Mr. Brewer added that the greenway at the rear of property is important, and it should be maximized. He appreciates the staff's concerns, but he believes that locating the CC area on the opposite side of Polo Club Boulevard is not an important issue. The traffic on Polo Club Boulevard is expected to be heavy, and will be an impediment to pedestrians no matter which direction they are walking.

Mr. Cravens stated that he agreed with Mr. Brewer, that the residential area should be placed as far away from the interstate as possible. He said that he lives on Polo Club Boulevard approximately two miles away and 1,000 feet away from the interstate, and he can still hear the noise. He believes that the CC area would be more appropriate on the west side of the boulevard, and the residential uses on the east side.

Ms. Copeland referred to the staff exhibit packet, particularly the portion relating to the Sasaki Report. That report recommended that the CC area be located at the "heart" of the proposed development, and not near Man O' War Boulevard as proposed. Ms. Copeland stated that the configuration of the proposed CC area appears to be similar to Lexington Mall, which has not proven to be a popular location for a shopping center. She added that she believes that locating the CC area at the corner of the interstate and Man O' War Boulevard would make it an "appendage" to the Hamburg Pavilion shopping center.

Zoning Motion: A motion was made by Mr. Owens and seconded by Ms. Roche-Phillips to disapprove MAR 2009-17, for the reasons provided by staff. The motion failed, 7-4 (Brewer, Cravens, Holmes, Paulsen, Richardson, Whitman, and Wilson opposed.)

Zoning Action: A motion was made by Mr. Cravens, seconded by Ms. Richardson, and carried 8-3 (Copeland, Owens, and Roche-Phillips opposed) to approve MAR 2009-17, for the following reasons as presented by the applicant:

1. The proposed rezoning is in substantial agreement with the 2007 Comprehensive Plan (the "Plan"), which includes the Expansion Area Master Plan ("EAMP"), for the following reasons:
 - a. The subject property is located in Expansion Area 2A and contains approximately 142 net acres, including 90 acres and 52 acres located on the east and west side, respectively, of Polo Club Boulevard. Polo Club Boulevard was recently constructed by the owners to extend from Man O' War Boulevard to Winchester Road consistent with the Infrastructure Element of the EAMP. The Plan recommends that the property be developed EAR-3, CC, and TA/EAR-3 and the application is to rezone the property to these categories. The CC area is 37.59 net acres, the same size recommended by the Plan, while the EAR-3 area has increased by about 9 acres and the TA decreased by approximately 5 acres.
 - b. The land uses are shown in the same general locations along Polo Club Boulevard as recommended by the Plan with the exception that the EAR-3 area recommended on the west side of Polo Club Boulevard has been moved directly across the street. The west side is now proposed for the CC and EAR-3/TA uses that the Plan shows on the east side of Polo Club Boulevard.
 - c. The area east of Polo Club Boulevard is more appropriate for residential development than the area adjacent to I-75. The area adjoins future residential uses, adjoins the proposed greenway system, and will be closer to the future park planned to the north along Polo Club Boulevard. In contrast, the west side of the property backs up to I-75, which carries nearly 68,000 vehicles, every day.
 - d. The relocation of the CC area across Polo Club Boulevard neither increases the size nor alters the nature of the Community Center as envisioned by the Plan. The CC area has only shifted a few hundred feet to the west, is still located at the intersection of Polo Club and Man O' War Boulevard, and will still be convenient for area residents. Furthermore, the restrictions of the CC zone provide for a mix of retail and office uses that are designed to serve the surrounding local community and also require a residential component.
2. The existing Agricultural Rural (A-R) zone is inappropriate and improper and the proposed EAR-3, Community Center, and Transition Area/EAR-3 zones are appropriate based on the following:
 - a. The property has been bisected by the recent construction of Polo Club Boulevard which will carry traffic between Winchester Road and Todds Road, and fronts on Man O' War Boulevard. In conjunction with the construction of Polo Club Boulevard, the applicant has constructed the sanitary sewer trunk lines specified by the EAMP for this portion of Expansion Area 2A. Furthermore, the property to the north is zoned Economic Development (ED), has been acquired by Baptist Hospital, Inc. and is proposed to be developed as a regional medical center. These factors, particularly the road construction, make it difficult to use the property for agricultural activities. On the other hand, the construction of the infrastructure and the growth trends in the area render the property appropriate for urban development.
 - b. The portion of the property on the east side of Polo Club Boulevard is a more appropriate location for the planned EAR-3 development than the west side. The property is adjoined by the proposed greenway system, future residential areas and is also on the same side of the Boulevard as the proposed park recommended to the north. In addition, the rolling topography of the property is more suitable for residential development which can be designed to fit in with the topography with less grading and filling than would be required by a retail/office development.

Development Plan Action: A motion was made by Mr. Cravens, seconded by Ms. Richardson, and carried 11-0 to approve ZDP 2009-87, subject to the 10 conditions as listed on the agenda.

Note: Chairman Penn declared a brief recess at 3:15 p.m. The meeting reconvened at 3:23 p.m. Ms. Roche-Phillips left at this time.

2. DENNIS ANDERSON ZONING MAP AMENDMENT & ANDERSON 2 SUBDIVISION ZONING DEVELOPMENT PLAN

- a. **MAR 2010-1: DENNIS ANDERSON (4/4/10)*** - petition for a zone map amendment from an Agricultural Rural (A-R) zone to an Expansion Area Residential-1 (EAR-1) zone, for 12.45 net (12.54 gross) acres, for property located at 425 Chilesburg Road.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Expansion Area 2c) recommends Expansion Area Residential-1 (EAR-1) future land use for the subject property. The Comprehensive Plan designates a small portion of the subject property as a Special Design Area (SDA) immediately adjacent to Chilesburg Road. The petitioner proposes development of 38 single-family residential dwelling units.

The Zoning Committee Recommended: **Approval.**

The Staff Recommended: **Postponement**, for the following reason:

1. The proposed rezoning to Expansion Area Residential-1 is not in agreement with the Expansion Area Master Plan (for Expansion Area 2c), which is an element of the adopted 2007 Comprehensive Plan, nor the density limitations of the requested EAR-1 zone. A reduction in the density of the current proposal is necessary to comply with the limitations of Article 23A-5(f) of the Zoning Ordinance.

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

- b. ZDP 2010-3: ANDERSON 2 SUBDIVISION (4/4/10)* - located at 425 Chilesburg Road.

(Barrett Partners)

The Subdivision Committee Recommended: Postponement. The density of this subdivision exceeds the maximum allowable in the EAR-1 zone requested.

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

1. Provided the Urban County Council rezones the property EAR-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, floodplain information, and the treatment of steep slopes.
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, per Article 26-4(b) of the Zoning Ordinance.
6. Greenspace Planner's approval of the treatment of greenways and greenspace.
7. Division of Environmental Quality's approval of environmentally sensitive areas.
8. Document compliance with fencing requirements along the agricultural area, per Article 6-3(b) of the Land Subdivision Regulations.
9. Remove Lot 1 conflict with 200' building line and proposed open space area.
10. Resolve the conflicts between the existing tree inventory area and the proposed utility easements at the time of the Preliminary Subdivision Plan.

Zoning Presentation: Ms. Wade presented the staff report on this zone change, briefly orienting the Commission to the location of the subject property. She noted that Chilesburg Road was one of the rural roads designated by the EAMP. When residential construction began in the vicinity of the subject property, Hays Boulevard was constructed to serve as the collector street through the area, replacing Chilesburg Road as the main thoroughfare. There are properties, however, that abut Chilesburg Road which have been developed, including Lochmere Estates to the west, Still Meadows to the northeast, and the Andover Hills subdivision to the north. Also in the vicinity is the Gess Property, for which Hays Boulevard provides vehicular access, and Jacobson Park to the west. There are still several properties along Chilesburg Road that are zoned for agricultural use, including four properties in the first bend of Chilesburg Road, and one property to the west of the subject property. The subject property is located in one of the 90-degree bends in Chilesburg Road.

Ms. Wade stated that the petitioner is proposing to rezone the subject property to an EAR-1 zone, which allows 0-3 dwelling units per net acre. The petitioner proposes to construct 38 units on the subject property. Ms. Wade displayed several aerial photographs of the subject property on the overhead projector.

Ms. Wade reported that the 2007 Comprehensive Plan recommends EAR-1 zoning for the subject property, which is in agreement with the petitioner's proposal. The Comprehensive Plan also recommends a collector street to connect Blazer Parkway, well north of the subject property, to Chilesburg Road. That connection is proposed to connect at the 90-degree bend in Chilesburg Road, which is where the petitioner's plan depicts a new local street intersection. In addition, the frontage of the subject property along Chilesburg Road is recommended for a Scenic Design Area, which has some additional restrictions under the Zoning Ordinance. It would allow the same overall density on the subject property, but would require a 200' setback from Chilesburg Road, as well as a clustering of development, with at least 60% of the Special Design Area designated as common open space for all of the new subdivision's residents.

Ms. Wade stated that, when the staff originally reviewed this application, they recommended postponement to the Zoning Committee because the density proposed was slightly higher than what was recommended by the Comprehensive Plan and allowed by the Zoning Ordinance. The Zoning Committee recommended approval of this request, and asked that the staff work with the petitioner to find a means by which to accommodate the proposed density. The subject property is 12.54 gross acres in size, according to the ZOMAR survey and the application. However, when the staff discussed the issue with the petitioner, they discovered that, when the Gess Property across Chilesburg Road was rezoned in 1999, more of the Chilesburg Road right-of-way was rezoned than what would normally be proposed. Ms. Wade displayed a graphic depicting the portion of the right-of-way past the centerline that was included as part of the Gess Property application for rezoning. In this case, since part of the existing right-of-way has been rezoned EAR-1 (as part of the Gess Property), the staff believes that it would be acceptable to allow the petitioner to claim the portion of the right-of-way that would normally have been theirs to rezone, which would permit them to increase their gross acreage by .13 acres. That would allow the petitioner to keep the proposed 38 units on the subject property, for a density of 3.00 units per gross acre, which would meet both the requirements of the Zoning Ordinance and the density recommendation of the Comprehensive Plan. The staff is now recommending approval of this request. Ms. Wade directed the Planning Commission members to a revised recommendation that the staff distributed prior to the start of the public hearing.

The Staff Recommends: Approval, for the following reason:

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1. The proposed rezoning to Expansion Area Residential-1 (EAR-1) is in agreement with the Expansion Area Master Plan (for Expansion Area 2c), which is an element of the adopted 2007 Comprehensive Plan, for the following reasons:
 - a. The EAMP recommends that the subject property be used for EAR-1, low density residential future land use, defined as 0-3 dwelling units per acre.
 - b. The petitioner has requested an EAR-1 zone, and a development of 38 units on 12.67 gross acres (as defined in Article 23-3), resulting in a residential density of 3.00 dwelling units per acre.
 - c. The petitioner is proposing a Special Design Area along Chilesburg Road and a 200-foot setback from Chilesburg Road. Chilesburg Road was designated as a Rural Scenic Road by the EAMP; therefore, no new structures, other than transparent or dry stone fences, are to be located within the 200-foot buffer. These accommodations will help to minimize the visual impact of the development on the adjoining rural road.
2. This recommendation is made subject to approval and certification of ZDP 2010-3: Anderson 2 Subdivision, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

Ms. Wade noted that the petitioner's plan did not include the proposed connection for the collector street recommended by the Comprehensive Plan, but that could be resolved at the time a Final Development Plan is proposed for the subject property.

Commission Questions: Mr. Penn asked if the collector street would still be a possibility. Ms. Wade answered that it was still recommended by the Comprehensive Plan, and that the staff is concerned about the local street proposed by the petitioner on this plan, as it is depicted as intersecting with Chilesburg Road at the same location as the recommended location for the collector street. She said that having both streets intersect with Chilesburg Road in close proximity would create an inappropriate street connection.

Development Plan Presentation: Ms. Gallt presented the corollary development plan, further orienting the Commission to the location of the subject property. She stated that the petitioner proposes 38 single-family residential lots on the subject property.

At their meeting three weeks ago, the Subdivision Committee recommended postponement of this plan because the proposed density did not meet the requirements of the Zoning Ordinance. Following that meeting, the petitioner met with the staff, and submitted a revised plan which included the additional right-of-way, for gross acreage. She said that the petitioner filed another revised version of the plan on the morning of this meeting, which satisfied some of the staff's concerns about a significant tree located on the property line between the subject property and Jacobson Park. The new version of the plan proposes a revised lotting pattern, which could provide more space in the tree protection area for that significant tree.

Ms. Gallt said that the staff is now recommending approval of this plan, subject to the following requirements:

1. Provided the Urban County Council rezones the property EAR-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, floodplain information, and the treatment of steep slopes.
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, per Article 26-4(b) of the Zoning Ordinance.
6. Greenspace Planner's approval of the treatment of greenways and greenspace.
7. Division of Environmental Quality's approval of environmentally sensitive areas.
8. Document compliance with fencing requirements along the agricultural area, per Article 6-3(b) of the Land Subdivision Regulations at the time of the Final Development Plan.
9. ~~Remove~~ Denote: Lot 1 conflict with 200' building line and proposed open space area will be evaluated at the time of the Final Development Plan.
10. Resolve conflicts between the existing tree inventory area and the proposed utility easements at the time of the Final Development Plan.
11. Resolve extent of protection necessary for the significant tree (on lots 16 & 17) at time of the Final Development Plan.
12. Provide adequate right-of-way on the proposed cul-de-sac to accommodate construction of the collector street as shown on the Comprehensive Plan.
13. Extend the limits of this development plan to include all right-of-way necessary to support gross acreage calculations.

Ms. Gallt noted that, following the submission of the most recently revised plan, the wording of condition #12 should be changed to read: "Resolve the width of the right-of-way on the proposed cul-de-sac to accommodate construction of the collector street at the time of the Final Development Plan."

Mr. Martin presented the stormwater and greenway management component of the EAMP, as it relates to the subject property. He said that the lower elevation of the subject property is the planned location of a large greenway and stormwater management feature. Since the property is located at the lower end of the Jacobson Park reservoir watershed, there is an area recommended for wetland features on the subject property. The four wetland features located in the vicinity on the Gess Property are considered as

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"created wetlands" in the EAMP. Similar facilities will be required on the subject property as it develops, which will be contingent upon the Commission's approval of the Final Development Plan.

Petitioner Representation: Richard Murphy, attorney, was present representing the petitioner, who has owned the subject property since 1990, when it was purchased after a subdivision of the Tucker family property. The petitioner proposes to construct a residential development on the subject property that will be similar in nature to the Still Meadows neighborhood, which was also developed by the petitioner.

Mr. Murphy noted, with regard to the four undeveloped lots adjacent to the property with frontage on Chilesburg Road, that two of the properties are designated on the Comprehensive Plan to be acquired by LFUCG. He added that the collector street on the Comprehensive Plan should be for use as a rear entrance to Jacobson Park.

Mr. Murphy said that, following the addition of the Chilesburg Road right-of-way, the proposed density on the subject property is in agreement with the recommendations of the Comprehensive Plan. The EAMP and the Comprehensive Plan also recommend a Special Design Area on the subject property, including a 200' setback from Chilesburg Road. The petitioner still needs to resolve the location of one lot within the Special Design Area, which will not have any buildings on it. Mr. Murphy noted that Special Design Areas do not typically get dedicated to the government, but the proposed greenway will be dedicated to LFUCG as recommended by the Comprehensive Plan. There is also a floodplain area on the subject property that may or may not intersect with the proposed greenway area.

Mr. Murphy stated that the petitioner is in agreement with the staff's condition regarding the resolution of the collector street at the Final Development Plan stage of development. He said that the proposed collector street was not part of the EAMP, the 1996 Comprehensive Plan, or the 2001 Comprehensive Plan. The proposed street "appeared" on the 2007 Comprehensive Plan, and it is intended to connect Blazer Parkway with Chilesburg Road. In order to do so, the road will have to cross several undeveloped properties, Lakeside Golf Course, and the reservoir. Mr. Murphy noted that a bridge is not permitted to cross a blue line stream, but a bridge over the reservoir would be required in order to complete the collector street. In addition, the road would be open 24 hours a day through Jacobson Park, even though the park now officially closes at dark. The petitioner believes that there are several issues involved with the collector street, all of which will need to be resolved by the appropriate parties prior to construction of the streets. However, the petitioner has agreed to resolve those issues at the time of the Final Development Plan.

With regard to the protection of the significant burr oak tree on the subject property, Mr. Murphy said that the Urban Forester had conducted a site visit and inspected the tree, and recommends that it be protected. The petitioner has revised their lotting pattern in order to accommodate a tree protection area for that tree.

Mr. Murphy said, with regard to the fencing that was mentioned by Mr. John Tucker at the Subdivision Committee meeting, that the petitioner had not removed any fencing along the eastern side of the Tucker property. The petitioner will agree, however, to replace any fencing that was damaged or removed along the common property line with the Tucker property. Mr. Murphy noted that the proposed zone change is in agreement with the recommendations of the Comprehensive Plan, and the petitioner will work with the staff to resolve the outstanding issues as necessary, should the Planning Commission choose to approve this request.

Citizen Opposition: John Tucker, 5751 Athens-Walnut Hill Road, stated that he did not consider himself to be an objector to the proposed zoned change, but that he does have several concerns about the development issues on the subject property. Those concerns include: the two streets that are proposed to stub into Mr. Tucker's property; drainage patterns on the front (lower) portion of the subject property that might result in additional runoff on Mr. Tucker's property; the collector street that is proposed to cross Jacobson Park, including the impact on the reservoir; and environmental concerns due to the remains of an old house, septic tank, and cistern that are located on the subject property, including the potential for asbestos to be located there.

Mr. Tucker stated that he and the owners of the nearby vacant properties to the north of his location have been "held hostage" by the development in the area, since no money has been paid out to property owners via collected exaction fees. There are three other families who are affected by this issue, and they are concerned that their properties will be condemned to allow for the construction of the collector street.

Mr. Tucker read the following into the record of the meeting from a letter dated February 7, 2010, with regard to a court ruling on environmental issues in the vicinity of the subject property: "United States argues that, upon appeal, the civil penalties provided in the present proposed specifically with the goal of restoring and maintaining the chemical, physical, and biological integrity of the nation's waterways." He asked that the Planning Commission give special attention to those types of issues in their consideration of this rezoning request.

Jackie Mitchell, 1835 Timber Creek Drive, stated that she and her husband own the property at 295 Chilesburg Road, and she believes that consideration of this request should be postponed in order to allow time to resolve all of these development issues with the subject property. Ms. Mitchell said that she was concerned about several aspects of the proposed redevelopment, including the additional traffic on Chilesburg Road, which is still a rural roadway, and that her property is being "held hostage" by all of the residential development surrounding it. Ms. Mitchell noted that her parents "lost their inheritance" because of the designation of a Con-

servation Area on their property (by the Comprehensive Plan). She did not believe that any additional development should be allowed in the Chilesburg Road area, including the proposed development, until this entire area is re-examined.

Petitioner Rebuttal: Mr. Murphy stated that the petitioner understands the neighbors' concerns, but he was not part of the development that resulted in streets abutting Mr. Tucker's property.

With regard to concerns about stormwater, Mr. Murphy stated that there is a regional stormwater detention plan for the entire area as required by the EAMP. The nearest detention facility is located on the Gess Property, which is upstream from the subject property. All of the water in the area is intended to drain directly into the reservoir, but will have water quality controls. The stormwater plan outlined in the EAMP calls for the subject property not to have its own detention facility, in order to allow water to drain off the upstream properties quickly during a rain event. That will allow time for the water to drain more slowly from the regional detention facility upstream on the Gess Property. The petitioner has agreed to comply with the requirements for the constructed wetlands on the subject property, and he believes that the stormwater management for the subject property was well planned, and that it is functioning as it should.

Mr. Murphy said, with regard to the four vacant lots along Chilesburg Road near the subject property, that he represents one of those property owners in discussions with LFUCG about purchase of the property for inclusion in the Jacobson Park property. There are several issues that need to be resolved, and all parties are working to do so. While the citizens may believe that they are being "held hostage" by development, that is not the case, as the issues are separate. Holding up development on the subject property will not help resolve those issues. The subject property is recognized for future residential development by the EAMP, and the proposed rezoning is in agreement with the Comprehensive Plan.

Staff Rebuttal: Mr. Sallee reassured Ms. Mitchell that the connection of Blazer Parkway is not recommended by the 2007 Comprehensive Plan for 295 Chilesburg Road, but as planned, it may affect the properties at 375 and 391 Chilesburg Road in the future.

Director Comments: Mr. King stated that there was a great deal of discussion in the community about Kentucky-American Water Company, its possible acquisition by the government, and the future use of the water company property for something other than a park when the Comprehensive Plan was last in the process of an update. The depiction of roadways in the EAMP was linked to potential future land uses. Mr. King stated that there is no movement going on currently to construct a road through the middle of Lakeside Golf Course or Jacobson Park.

Mr. King said that the Planning Commission has no role in the public acquisition of any property, the condemnation of a property, or the negotiations for acquisition of land by the Urban County Government. Any citizens with concerns about those issues should address them to the appropriate officials of the Urban County Government. As Mr. Murphy noted, those discussions are ongoing for at least one of the properties proposed for a Conservation Area land use on Chilesburg Road.

Commission Questions: Mr. Owens asked why the proposed collector street was not mentioned at the Subdivision Committee meeting. Mr. Sallee answered that the collector street was not discussed at the Subdivision Committee meeting (earlier this month) because the development plan depicted a cul-de-sac and a compliant local street. However, the collector street was discussed that day by the Zoning Committee in the context of the Comprehensive Plan's recommendations. Mr. Owens asked if there would be a conflict between the proposed cul-de-sac and the collector street. Mr. Sallee responded that there could be a conflict, potentially.

Mr. Brewer stated that he appreciates the citizens' concerns, but the Planning Commission is not the body to which those concerns should be addressed. He asked that Mr. King tell the citizens who the responsible party would be for those issues. Mr. King responded that there are a number of ways that the situation could be approached. A request could be put forward to the Mayor's office or a number of Commissioners; or, for exaction or dedication information, the Commissioner of General Services would be the appropriate contact. Mr. Brewer encouraged the citizens to take up their concerns with the appropriate local officials.

Mr. Owens stated that there seemed to be a number of issues "hanging on" for resolution at the time of a Final Development Plan. He asked when the fencing will be required on the subject property. Mr. Martin responded that the installation of the fencing would be relative to the development of the property. The property would need to be graded and the infrastructure would need to be installed prior to the construction of the fencing, so that the fence did not interfere with those activities. After that point, the fencing requirement could be tied to the issuance of building permits so that it can be assured that the fence will be installed prior to construction of any homes on the property. Mr. Owens asked if multiple lot owners would then be required to agree to install fencing. Mr. Martin answered that, typically, that would be the developer's responsibility. Mr. Owens asked if grading would be permitted on the property prior to approval of the Final Development Plan. Mr. Martin responded that no grading would be allowed prior to the approval of the Final Development Plan.

Mr. Penn asked if there is a requirement for removal of the cellar and cistern on the subject property. Mr. Martin responded that that would ordinarily be considered as part of the construction and grading permitting process, and that that would be part of the Division of Engineering's approval of future grading plans. He said that Mr. Newman could probably supply additional information, if necessary.

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Mr. Owens stated that he still has concerns about the adjoining properties, but that those concerns should not affect this rezoning request.

Zoning Action: A motion was made by Mr. Owens, seconded by Mr. Cravens, and carried 10-0 (Roche-Phillips absent) to approve MAR 2010-1, for the reasons provided by staff.

Development Plan Action: A motion was made by Mr. Owens, seconded by Mr. Cravens, and carried 10-0 (Roche-Phillips absent) to approve ZDP 2010-3, subject to the 13 revised conditions, changing #12 to read as previously specified by the staff.

V. COMMISSION ITEMS

- A. CANCELLATION OF UPCOMING MEETING** – Mr. Sallee stated that, by completing both of the Commission's public hearing items today, there are no remaining items for consideration at the Zoning Committee meeting on March 4th. At this time, the Commission could consider canceling that meeting.

Action: A motion was made by Ms. Richardson, seconded by Ms. Whitman, and carried 10-0 (Roche-Phillips absent) to cancel the Zoning Committee meeting originally scheduled for Thursday, March 4th, at 1:30 p.m.

- B. BGADD REGIONAL PLANNING COUNCIL APPOINTMENT** – Mr. King stated that one of the areas in which the Planning Commission participates is the Bluegrass Area Development District Regional Planning Council. For many years, the Commission has been represented by a staff member. The Regional Planning Council has asked that every Planning Commission within its jurisdiction reaffirm their appointments and demonstrate, by action, that they have assigned someone to represent them on that board. If it is the Commission's wish, the staff would be glad for the Commission to designate either Mr. King, or his duly appointed surrogate, to serve on that board.

Action: A motion was made by Mr. Holmes, seconded by Ms. Richardson, and carried 10-0 (Roche-Phillips absent) to appoint Mr. King or his designee to serve on the BGADD Regional Planning Council.

VI. STAFF ITEMS – No such items were presented.

VII. AUDIENCE ITEMS – No such items were presented.

VIII. MEETING DATES FOR MARCH, 2010

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	March 4, 2010
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	CANCELLED
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	March 11, 2010
Work Session , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	March 18, 2010
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	March 24, 2010
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	March 25, 2010

- IX. ADJOURNMENT** – There being no further business, Chairman Penn declared the meeting adjourned at 4:23 p.m.

TLW/TM/BJR/BS/src

Frank Penn, Chair

Mike Owens, Secretary