

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

December 16, 2011

- I. **ATTENDANCE** - The Chairman called the meeting to order at 1:02 p.m. in the Council Chambers, 200 East Main Street, on December 16, 2011. Members present were Chairman Louis Stout, Barry Stumbo, Janice Meyer, Noel White, James Griggs, Kathryn Moore and Thomas Glover. Others present were Jim Hume, Division of Building Inspection; Chuck Saylor, Division of Engineering; Jim Gallimore, Division of Traffic Engineering; and Rochelle Boland, Department of Law. Staff members in attendance were Jim Marx, Jimmy Emmons and Wanda Howard.
- II. **APPROVAL OF MINUTES** - The Chairman announced that there were no minutes available for consideration at this time.

At this point, Chairman Stout asked all those persons present who would be speaking or offering testimony to stand, raise their right hand and be sworn.

III. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chairman sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.
1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chairman announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.
- a. **C-2011-70: BOONE CREEK ADVENTURES, LLC** - appeals for a conditional use permit to construct and operate an agricultural market and outdoor recreational facility with accessory camping facilities in the Agricultural Rural (A-R) zone, on property located at 8291 & 8385 Old Richmond Road and 8385 Durbin Lane. (Council District 12)

The Staff Recommends: Postponement of the agricultural market portion of the conditional use, for the following reason:

1. An indefinite postponement has been requested by the appellant, which will allow them time to more fully consider the relationship between the agricultural market and outdoor recreational facility, and related issues such as management and timing of construction. The staff is in agreement with this request.

The Staff Recommends: Approval of a conditional use permit for the outdoor recreational facility, for the following reasons:

- a. An outdoor recreational facility of the type proposed should not adversely affect the subject or surrounding properties. All of the activities will be very passive in nature, with very little noise generated and minimal disturbance taking place to the existing topography and ground cover. No significant increase in traffic is anticipated, and most of the improvements and activities will not be visible from Old Richmond Road.
- b. The portion of the subject property close to Old Richmond Road is accessible for emergency response purposes, with a fire station located approximately 2 miles away. Emergency response provisions will be made by the appellant for the less accessible portions of the property, pursuant to an emergency response action plan to be reviewed and approved by the LFUCG Fire Prevention Office. Garbage pick-up and sewage disposal will be handled privately, subject to approval by the Fayette County Health Department.
- c. The subject property is well suited for use as an outdoor recreational facility, given the outstanding scenic values, unique geology, and significant natural and cultural resources of the Boone Creek gorge.

This recommendation of approval is made subject to the following conditions:

1. The recreational facility shall be established in accordance with the submitted application and

revised site plan of November 1, 2011, limited to the portion of the subject property located only on the east side of Old Richmond Road.

2. All necessary permits, including a Certificate of Occupancy, shall be obtained from the Division of Building Inspection prior to opening the facility.
3. A parking area with at least 15 but not more than 30 off-street parking spaces shall be provided at the welcome center, designed in accordance with the requirements of the Division of Traffic Engineering, and landscaped as specified by Article 18 of the Zoning Ordinance.
4. An Emergency Response Action Plan shall be implemented as part of the day-to-day operation of the recreational facility. This plan shall be approved by the LFUCG Fire Prevention Office prior to obtaining an occupancy permit. The plan shall include, at the minimum, provisions for handling emergencies in areas of the property not accessible by emergency response vehicles.
5. Each of the 13 lodging shelters shall not exceed 225 square feet in size.
6. Provisions for handling garbage and sewage shall at all times comply with the requirements of the Fayette County Health Department.
7. Suspension bridges over Boone Creek to Clark County shall not be constructed, nor any related activities undertaken in Clark County, until such time that all necessary conditional use permits and other needed approvals are obtained from the Winchester/Clark County Board of Zoning Adjustments or other applicable arm of that local government.

Representation – Mr. Bruce Simpson, attorney, was present on the appellant's behalf. He made reference to a letter that was submitted previously requesting a withdrawal of the application for an agricultural market center. Mr. Simpson reiterated that request for the record.

Chairman Stout responded that the withdrawal would be noted at the onset of the hearing on this case.

- b. **A-2011-71: BALL and WRIGHT CAPITAL HOLDINGS** - appeals for an administrative review to allow a third wall sign on a bank building in a Professional Office (P-1) zone, on property located at 998 Governors Lane. (Council District 10)

The Staff Recommends: Disapproval, for the following reasons:

1. Article 17-7(e)1 of the Zoning Ordinance states that one wall sign per street frontage is permitted in the Professional Office (P-1) zone, with a maximum of two wall signs per building.
2. There are no provisions in Article 17-7(e) for canopy signs in the P-1 zone.
3. Permitting a third wall sign for this building would be contrary to a condition previously imposed by the Board (case # A-2010-27).
4. The Board is not authorized to increase the number of permitted signs, pursuant to Article 17-8(a) of the Zoning Ordinance.

Representation – Mr. Richard Murphy, attorney, was present to request a postponement of this appeal to the April 27 meeting. He said they already had filed a text amendment with the Planning Commission; and if the text amendment is approved, it would render this appeal moot. He noted that it probably would take about two months to get through the process.

When asked by the Chairman, neither the staff nor the Board had any objection to the requested postponement.

Action – A motion was made by Mr. Stumbo, seconded by Ms. Meyer, and carried unanimously to postpone **A-2011-71: BALL and WRIGHT CAPITAL HOLDINGS** until the April 27 meeting.

- c. **V-2011-82: HALLMARK STUDENT DEVELOPMENT CO., LLC** - appeals for a variance to reduce the required front yard from 20 feet to 5 feet in order to accommodate drive aisles and parking in a Wholesale and Warehouse Business (B-4) and an Agricultural Urban (A-U) zone, proposed for rezoning to a High Rise Apartment (R-5) zone, on a portion of 1200 Red Mile Road and a portion of 843 South Broadway. (Council District 11)

The Staff Recommends: Postponement, for the following reasons:

1. The subject property has not yet been rezoned to a High Rise Apartment (R-5) zone.
2. Taking action on the requested variance prior to the property being zoned R-5 would create a number of unnecessary complications that can easily be avoided with a modest delay.

3. The Board's next hearing is scheduled for January 27, 2012, which is just one day after the Urban County Council is anticipated to consider action on the zone change request. As such, a postponement of the variance request at this time will not result in any significant delay in the overall project.

Representation – Mr. Bruce Simpson, attorney, was present on the appellant's behalf to request a one-month postponement of this appeal, in concurrence with the staff's recommendation.

Action – A motion was made by Ms. White, seconded by Mr. Stumbo, and carried unanimously to postpone **V-2011-82: HALLMARK STUDENT DEVELOPMENT CO., LLC** until the January 27 meeting.

2. No Discussion Items - The Chairman asked if there are any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.
 - a. **C-2011-79: BETHSAIDA BAPTIST CHURCH** - appeals for a conditional use permit to expand an existing church (13,500 square-foot addition) in a Two-Family Residential (R-2) and a Planned Neighborhood Residential (R-3) zone, on property located at 3700 Bates Creek Road. (Council District 8)

The Staff Recommends: Approval, for the following reasons:

1. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The new building is to be centrally located on the lot, which should minimize the potential for noise or other types of disturbances. The combination of existing privacy fencing, new tree plantings and hedges will create an adequate buffer along the southern property boundary where new parking areas are proposed. The new access will be designed in accordance with the requirements of the Division of Traffic Engineering, and more than the minimum number of off-street parking spaces will be provided.
2. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The church expansion shall take place in accordance with the submitted application and revised site plan dated December 8, 2011, which indicates a new access width of 12', a fenced child play area of 20' by 40' to the front of the church (west of the courtyard) for the child care facility, and a 6' tall hedge to be provided along the side and rear of the adjoining property at the southwest corner of the site.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The new parking areas shall be paved, with spaces delineated, and landscaped/screened in accordance with Articles 16 and 18 of the Zoning Ordinance.
4. The design of the new parking lot and access shall be subject to review and approval by the Division of Traffic Engineering.
5. Any pole lighting for the new parking areas shall be of a shoebox (or similar) design, with light shielded and directed downward to avoid disturbing the surrounding residential properties.
6. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
7. Open space areas between the southern property line and the edge of the new parking lot shall be augmented with a landscape buffer, with deciduous trees to be planted every 25' along the full length of the southern property line. In the area where that buffer widens, south of the new access and east of the right angle jog in the property line, additional tree plantings shall include a mix of evergreens, with a minimum of two evergreens south of the new access and a minimum of six evergreens in the eastern portion of the buffer.

Chairman Stout asked whether or not there were objectors to the subject appeal present. There was no response.

Representation – Mr. Tom Lambdin, with Midwest Engineering, was present representing the appellant. He responded, when asked by the Chairman, that they had read, understood and would abide by the conditions for approval.

Mr. Griggs noted that during his site visit, he observed that some of the headstones were located outside the fenced-in area of the cemetery. Mr. Lambdin assured Mr. Griggs that there would be no disturbance due to construction on that side of the cemetery and every precaution would be taken.

Action – A motion was made by Mr. Stumbo, seconded by Ms. Moore, and carried unanimously to approve **C-2011-79: BETHSAIDA BAPTIST CHURCH** (a conditional use permit to expand an existing church [13,500 square-foot addition] in a Two-Family Residential [R-2] and a Planned Neighborhood Residential [R-3] zone on property located at 3700 Tates Creek Road) for the reasons and conditions as set forth by the staff.

- B. **Transcript or Witnesses** - The Chairman announced that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

None Remaining

D. **Conditional Use Appeals**

1. **C-2011-70: BOONE CREEK ADVENTURES, LLC** - appeals for a conditional use permit to construct and operate an agricultural market and outdoor recreational facility with accessory camping facilities in the Agricultural Rural (A-R) zone, on property located at 8291 & 8385 Old Richmond Road and 8385 Durbin Lane (Council District 12).

The Staff Recommends: Postponement of the agricultural market portion of the conditional use, for the following reason:

- a. An indefinite postponement has been requested by the appellant, which will allow them time to more fully consider the relationship between the agricultural market and outdoor recreational facility, and related issues such as management and timing of construction. The staff is in agreement with this request.

The Staff Recommends: Approval of a conditional use permit for the outdoor recreational facility, for the following reasons:

- a. An outdoor recreational facility of the type proposed should not adversely affect the subject or surrounding properties. All of the activities will be very passive in nature, with very little noise generated and minimal disturbance taking place to the existing topography and ground cover. No significant increase in traffic is anticipated, and most of the improvements and activities will not be visible from Old Richmond Road.

- b. The portion of the subject property close to Old Richmond Road is accessible for emergency response purposes, with a fire station located approximately 2 miles away. Emergency response provisions will be made by the appellant for the less accessible portions of the property, pursuant to an emergency response action plan to be reviewed and approved by the LFUCG Fire Prevention Office. Garbage pick-up and sewage disposal will be handled privately, subject to approval by the Fayette County Health Department.
- c. The subject property is well suited for use as an outdoor recreational facility, given the outstanding scenic values, unique geology, and significant natural and cultural resources of the Boone Creek gorge.

This recommendation of approval is made subject to the following conditions:

1. The recreational facility shall be established in accordance with the submitted application and revised site plan of November 1, 2011, limited to the portion of the subject property located only on the east side of Old Richmond Road.
2. All necessary permits, including a Certificate of Occupancy, shall be obtained from the Division of Building Inspection prior to opening the facility.
3. A parking area with at least 15 but not more than 30 off-street parking spaces shall be provided at the welcome center, designed in accordance with the requirements of the Division of Traffic Engineering, and landscaped as specified by Article 18 of the Zoning Ordinance.
4. An Emergency Response Action Plan shall be implemented as part of the day-to-day operation of the recreational facility. This plan shall be approved by the LFUCG Fire Prevention Office prior to obtaining an occupancy permit. The plan shall include, at the minimum, provisions for handling emergencies in areas of the property not accessible by emergency response vehicles.
5. Each of the 13 lodging shelters shall not exceed 225 square feet in size.
6. Provisions for handling garbage and sewage shall at all times comply with the requirements of the Fayette County Health Department.
7. Suspension bridges over Boone Creek to Clark County shall not be constructed, nor any related activities undertaken in Clark County, until such time that all necessary conditional use permits and other needed approvals are obtained from the Winchester/Clark County Board of Zoning Adjustments or other applicable arm of that local government.

At this time, Mr. Marx submitted a number of letters both in support of and in opposition to the subject appeal.

Chairman Stout asked for any comments from the staff with respect to this case. Mr. Marx reiterated about the withdrawal of the agricultural market portion of this appeal and noted the latest revised site plan submittal, dated December 9, 2011. He also distributed a copy of the amended conditions for the Board's review, noting that conditions #3, #5, #7 and #9 were added based, in part, on the revisions to the site plan and other issues that had come up.

Chairman Stout called for a brief recess to allow the Board an opportunity to review the numerous letters that were received regarding this case.

(The meeting was recessed at 1:33 p.m., and reconvened at 1:41 p.m.)

At this point, Chairman Stout respectfully asked those persons who would be offering testimony either in support or opposition to refrain from repeating comments made by any of previous speakers.

Mr. Todd requested an opportunity to identify the neighbors present in opposition from the Boone Creek and Old Richmond Road Neighborhood Associations. A number of objectors (approximately 20) then stood up.

Appellant's Presentation – Mr. Bruce Simpson, attorney, was present representing Mr. Burgess Carey, principal owner of Boone Creek Adventures. He initially stated that, as an attorney, he wasn't sure of the legal value of the number of people that showed up at a given hearing; and he hoped the Board was not persuaded by that, but rather the merits of the case. However, he asked those present in support of this appeal to stand as well.

Mr. Simpson spoke about what is customarily done in cases involving land use disputes and people who are not readily convinced that a proposal should be favorably endorsed, including the BOA, which is to

meet with the neighbors and neighborhood associations to find some common ground and address the issues of concern. In point, he said that Mr. Carey had met with the Old Richmond Road Neighborhood Association and a number of other individuals to see what he could do to address their concerns. Mr. Simpson said after he was retained, there had been one full neighborhood meeting; and that letters were sent to everyone in the notification area informing them of the meeting at the Jean Farris winery several months ago. He said they entertained questions following the presentation; and that the application to be considered by the Board was subsequently postponed. He said they continued to meet with the neighbors to discuss the issues of concern and tried to address them. About one month ago, he said they met for about 4 hours with the representatives of the neighborhood association, including Mr. Todd, Mr. Graddy and others, to find out what their specific concerns were regarding the proposal in order to eliminate any opposition they might have. He said they had reached out to folks as best they could to try to come up with a proposal that would minimize controversy; and that they have operated in good faith and tried to make compromises. As a result, the agricultural market aspect of the appeal was withdrawn at this time, even though they believed it was a worthy project.

Mr. Simpson said one of the issues of concern was that the site plan wasn't specific enough; and as a result of the meetings and consultation, they endeavored to come up with a site plan that is as specific as it can be at this point in time, without having the Board's approval to warrant paying a substantial amount of money for engineers to do test sight lines for the canopy tour, suspension bridges, walking and bike trails, tree houses, etc. He said this plan is a governing document; and if the Board approves their application, they are obligated to operate in conformance with that site plan. He said in addition to the staff's conditions, they were proposing additional conditions to be imposed. There also is a management plan for the operation of the site, in terms of protecting the environmental and ecological aspects.

Mr. Simpson told the Board that the site plan was scaled back as a result of the meetings they had with interested neighbors; and due to the concern that the proposed tree houses were lodging facilities, any kind of shelter has been eliminated. However, there will be a basic platform on which a tent or some other temporary structure can be erected, a primitive concept consistent with the staff's recommendation. He stated that there will be no new construction proposed within the required 300-foot setback. He said they had tried to be sensitive to the concerns the neighbors had expressed and put conditions upon themselves that can be enforced. Further, a management plan was put together that takes care of this beautiful property. On another note, he briefly spoke about the tours of the facility that were offered as well as the participants, including members of the Board, attorneys representing the objectors, representation from the Fayette Alliance, etc.

Mr. Simpson reviewed the contents of the exhibits book that was distributed to the Board. He referred to Tab #1 of the exhibits book, which contained the staff report and the staff's recommendation of approval for the proposed recreational facility. Under Tab #2 were photos to illustrate the scenic beauty of the site. Under Tab #3, a map showing the Boone Creek Rural Historic District in Fayette County, within which the subject property is located (shown on the overhead). He said they were mindful of the importance of this district which is why the KY Heritage Council and the Historic Preservation Commission of Lexington were contacted as well. Under Tab #4, a map showing the immediately adjoining property owners in support of the proposed recreational facility (shaded in blue). Under Tab #5, numerous letters of endorsement, including the Chair of the Lexington Environmental Commission, Paul Swoveland; President of the Lexington Convention and Visitors Bureau, Jim Browder; Kentucky River Authority/Riverkeeper Board member Pat Banks; American Whitewater Executive Director, Mark Singleton; Center for Appalachian Studies Director at Eastern KY University, Alan Banks; and Professor of UK Music Department, Everett McCorvey. Mr. Simpson said the letters he noted and numerous others make repeated references to the positive experience and the excellent caretaking by Mr. Carey for 11 years on a portion of this property that has been operated as an Anglers Club.

Mr. Simpson stated that Mr. Carey came to the Board in August 2000 seeking permission to operate a private fishing club, which was approved with conditions. However, he acknowledged that, at some point in time, the facility was advertised on the internet for people to rent out and experience the site as an enticement to become members. He noted that there had been no complaints reported to Building Inspection, as correspondence from Director Dewey Crowe indicated (under Tab #6). He stated that they wanted to make the Board fully aware of what had taken place and the testimony they may hear regarding this. He went on to say that this probably could have been done more carefully, with respect to the advertisement seeking potential new members, although it hasn't created any problems or issues.

Referring to Tabs #7, #8 and #9, Mr. Simpson spoke about the preliminary site assessments that were conducted by S.T.E.P.S., Inc., a company operated by Mr. David Brassfield, a highly regarded canopy tour developer and builder in the U.S. It was noted that Mr. Brassfield (who was present) has been in contact with LFUCG staff about the design of the proposed canopy tour. Under Tab #10 was the extensive resume of the Smith Management Group, which Mr. Simpson said is widely regarded in the community and very involved in the clean-up efforts at McConnell Springs over the years, as well as assisting a number of other property owners with environmental concerns. This company was retained to do a baseline study and a management plan to guide the developers of the project. Under Tab #11, was the section of the Zoning Ordinance pertinent to the A-R zone (Article 8-1). Referring to Tab #12, he said it has been suggested that what they are proposing should not be considered by this Board because it is considered an amusement park, a prohibited use in the A-R zone. However, he said the staff didn't believe that it was; and that the zip lines (rides that people can hook onto) are only one component of the 160+ acre development that is regulated by the KY Department of Agriculture under a statute entitled amusement rides, which does not transform this application for a recreational use into an amusement park. He stated that these are two entirely different uses, for which there was a legal memo citing the case law relevant to their position. He reiterated that staff did not believe this was an amusement park, which would be prohibited in the A-R zone; but rather, it is a (an outdoor) recreational facility and the canopy tour is one of the components. Referring to Tab #13, Mr. Simpson directed the Board's attention to the proposed additional conditions they were willing to comply with.

Appellant's Presentation (Cont'd) – Mr. Burgess Carey, appellant, was present. He thanked all those present in support (of this project) and in opposition as well. He stated that he discovered the scenic quality and beauty of the Boone Creek gorge while on a fishing trip with a friend about 15 years ago; and although he had grown up here and spent his entire life pursuing and enjoying outdoor activities, he didn't know it existed. He said, since then, his involvement with this property has changed his view, and others as well, of central KY, the resources here and what it has to offer.

Mr. Carey narrated a slide presentation for the Board. He said after 10 years of promoting the relatively unknown diversity of the Boone Creek gorge, they now wanted to promote the rich history, unique geology, wildlife and vegetation of central KY, and expand the facility in a way that embraces the responsibility of stewardship of this priceless landscape. He said for the first 10 years, the Boone Creek Anglers Club has promoted and enjoyed the world class fishery in the Boone Creek gorge, primarily fly fishing for trout using the "catch and release" principle. And now, the Boone Creek Anglers Club plans to expand (acquire or lease) the lower end of the gorge on both sides of the creek down to the river. The first step of the project will be to adaptively re-use the former Jolly Roger restaurant and truck stop building, which will become the Boone Creek welcome center -- a guest reception area, guide meeting room, office and guest amenity area. Parking will be located adjacent to this facility. The largest component of the project is the canopy tour, consisting of zip lines (one element used to transport participants through the canopy), fixed cables, platforms, spiral staircases, and suspension bridges to allow participants to move through the forest canopy above the gorge for viewing the spectacular scenery, including wildflowers, fall colors, winter snow and dense summer canopy. In addition to the canopy tour, Boone Creek Outdoors will offer seasonal educational programs that will re-enforce the historical heritage, unique geology and early pioneer history of this site. Of note was the ongoing program for the eradication of invasive species and mitigation of erosion caused by cattle, as well as the potential for archaeological and environmental field studies as part of the educational programming.

As a result of the canopy tour and additional acreage, Mr. Carey said they will be able to provide recreational opportunities to visitors that will include hiking, mountain biking, a challenge course, a climbing wall, additional fly fishing, a children's activity area and unique camping platforms. The hiking and mountain biking trails will be constructed by hand utilizing leading best practice techniques that will minimize environmental impact. Guests will be subject to in-bounds and out-of-bounds rules (similar to a ski resort), with penalties for going out of bounds or for inappropriate behavior. The trail system will have from one to three pedestrian and mountain bike accessible bridges spanning the Boone Creek gorge. This will connect to a contiguous rail system on the Clark County side, allowing the outer perimeter of the trail system to approach 6 miles in length. The mountain bike project has the endorsement of the Bluegrass Chapter of the KY Mountain Bike Association. Fly fishing programming will be expanded to include daily rates for guided and non-guided fishing access (catch and release only), utilizing a one-mile section of the creek. The children's area will be located in the immediate vicinity of the climbing wall and the challenge course. It will include a classroom, indoor play area, children's climbing area and children's zip line. These activities will accommodate those guests who are too small to enjoy the other activities

found at this site. In addition, Boone Creek Outdoors will partner with the E. Seventh Street Center and Big Brothers Big Sisters to ensure that underprivileged urban youth have access to the outdoors. The climbing wall and tower will be used for basic instruction for rock climbing and repelling skills, as well as the challenge course, which will employ ropes, support structures and cables in a limited area. Canoeing and kayaking is offered seasonally; and a small livery will be operated at the mouth of Boone Creek for access to the lower reaches of the creek and KY River palisades. The camping platforms will offer a limited number of unique experiences for guests interested in the rare opportunity to spend the night in the gorge. Inaccessible by vehicle, guests will be required to pack in and pack out all they need for their overnight stay.

Mr. Carey said Boone Creek Outdoors has the potential to bring new visitors into Fayette County to experience something that was previously inaccessible; and it has the potential to grow into a national class attraction with respect to the perception of Lexington and the Bluegrass region. He said the location and scope of this project will call attention to the diversity of outdoor recreational activities here.

Using a property map, Mr. Carey pointed out the location of the facility in relation to the Interstate highway (I-75) and briefly spoke about the noise issue associated with it. He noted that the property was the former location of a gas station and truck stop; and that the underground tanks were removed when he bought the property in the mid-1990s. He said he understood the concerns and fears of the property owners further up Boone Creek, particularly with respect to the anticipated number of guests at the facility; and keeping that in mind, the facility was designed to try to maximize the natural features that exist and minimize any potential impact. There will be a required check-in for guests at the welcome center, whether self-guided or on the canopy tour. Participants on the canopy tour will meet their guide at the welcome center, get their equipment and receive their safety training. They will be clipped into a line from start to finish and travel the mapped route that was shown on overhead. The tour starts with a short zip line for participants to get comfortable with the concept of being clipped into a harness. Three beginning lines (running parallel to the existing driveway) will end up on a platform in a large oak tree below the grade of the road. The tour will cross the gorge in several locations, and the elevation will be constantly changing. Mr. Carey said the guidelines that Mr. Brassfield (S.T.E.P.S., Inc.) worked with will highlight the natural and historic features along the gorge (e.g., Rogers' Mill, one of the first industrial structures built west of the Appalachian Mountains, spectacular palisades, etc.). The canopy tours will be between 2½ and 3 hours long.

Mr. Carey noted the valid concerns of the upstream neighbors on Boone Creek with respect to trespassing and/or unattended guests getting off the property and causing problems upstream, which he said will be controlled by the tour itself. He stated that guests are clipped into the zip lines from the moment they leave the welcome center and start the tour until the moment they get back; and that the entire tour takes place off of Boone Creek and below the level of the road (150-foot band of elevation within which the entire tour will take place). Using the map shown on the overhead for illustration, he said the existing Anglers Club (shaded in blue) will be off limits to any of the guests of the tour and any amenities to be provided further downstream; and it will serve as a natural buffer between any potential problems from the activities downstream and the northern terminus of the property. Signs to limit access will be posted in several different locations. Canopy tour guests will get to see this area, but they will be clipped in until the tour concludes at the welcome center. Also, the natural "choke points" on this property that will help to control the crowd were shown, where signage will be utilized to alert people and prevent their going out of bounds (along the creek or hiking off the trail). There also will be signs along the driveway (at the curve) to prevent any further public access into the gorge. It was noted that this driveway, which is very steep, is the only vehicle access between the Grimes Mill bridge and the Kentucky River; and although it is passable, it is not meant for public use.

Mr. Carey reiterated that the Anglers Club serves as a natural barrier to all the activities that Boone Creek Outdoors will be conducting further south. Not only will guests of the canopy tour be clipped in and have guides, but the guides will have radio contact and will be monitoring the buffer zone from overhead, allowing anyone going up the creek or going off the property to be seen. When guests check in at the welcome center to go hiking, mountain biking or participating in activities that are not included as part of the canopy tour, they will be given a GPS clip to be kept on their person at all times; and they will be tracked at the welcome center for staying in bounds and for safety. Mr. Carey acknowledged that, historically, there has been a problem with trespassing; and there was an incident involving a kayaker several years ago. He said it was his intention to have a presence on the creek when the Anglers Club was opened 11 years ago; and that, by virtue of it being there, they have mitigated the problem -- although

that didn't mean that things don't happen. He said this project will do the same thing.

Mr. Carey stated that part of the challenge with the Boone Creek Anglers Club has been the relatively small 25-acre site; and that his mission to share this incredible and unique resource with others who may not know it exists was the reason for acquiring additional acreages of land, which would allow them to expand their programming and lower the price point to make the activities to be provided affordable. He said there will be 12 to 15 employees on site every day for the canopy tour, as well as a full-time staff member at the welcome center and down to the mouth of the creek. In closing, he reiterated that the natural topography of the area would help to control and manage this property; and that it was important to share the natural, cultural and historic resources that exist there.

At this time, Mr. Simpson asked Mr. David Brassfield to speak.

Mr. David Brassfield, president of S.T.E.P.S., Inc., was present. He stated that his company has been building canopy tours in the US since 2005; and that they probably built the first true canopy tour at the Alaska Rain Forest Sanctuary in Ketchikan. He said there are very few real canopy tour facilities here, but many zip ride facilities, some of which call themselves canopy tours. He explained about the facilities that contain a series of zip lines supported on trees or by poles, such as "Scream Time" or "Wahoo" in western North Carolina; and a growing number of proponents that are primarily focused on creating an "arboretum in the sky". He said the purpose of the canopy tours they build, and what Mr. Carey is looking to feature on his property, is really about conservation, preservation and education, as well as providing a hands-on exploratory experience; and that it is an experience that they try to make as interactive as possible. Referring to Tabs #7 and #8 in the exhibits book, he spoke about the information that was provided to explain how they minimize the impact of any structures put into the forest or onto the land when a canopy tour is built. He said there are a number of techniques used for attaching the cables for a zip line, which are designed to allow trees to continue growing. He spoke about the transfer platforms that are put at every point when it's time to go to another zip line or enter a bridge, noting that they are specially designed with yearly maintenance to grow with the trees -- unlike permanent deer stands, for instance. He said the techniques they use are designed to allow, with a minimal amount of adjustment, the platforms to stay in place and to grow with the tree, and actually strengthen it in some ways. There are guy lines involved, and the forces are carefully engineered. He said normally, they find that canopy tours help to conserve and preserve a forest rather than damaging or threatening its health.

With regard to the use of guy wires, Mr. Griggs asked how they would ensure that the trees don't tip over with the added pull. Mr. Brassfield responded that they work with a local forester and a consulting arborist to assess the strength of the root base and the sturdiness of the trees (i.e., relative hardness of common local species). He stated that the trees themselves don't have a lot of stresses from side to side, because they basically guy them so that they are simply upright supports, just like the mast on a ship; and the forces will be taken by the cables rather than by the actual tree structure. He said if there is any doubt about the ability to anchor into the ground with the guy wires, they work with a soil engineer to solve those questions in order to be certain that no trees will be pulled down and people won't topple over when they are up in the top of the canopy.

Mr. Griggs then asked how the guy wires are attached to the ground. Mr. Brassfield replied that they more often will attach the guy wire to another tree in the forest.

Ms. Sara Smith, president of the Smith Management Group, was present. A notebook was distributed to the Board followed by a power point presentation. She stated that they are an environmental consulting firm that has been around for 22 years in Lexington; and that they were asked to review the environmental aspects of the property in order to identify obvious or likely sensitive areas or features. The concept was that they would: 1) develop a management plan to maintain this property and allow the facility to move forward in a sustainable way; 2) identify the need for additional assessment after their work was finished; 3) recommend management measures that would protect the sensitive environmental features while allowing the project to go forward; 4) develop a preliminary assessment report; and 5) develop an initial best practices management plan. She explained the importance of identifying why the assessment report is called preliminary and the management plan is called initial. She said the type of assessment they are able to do on a large 150-acre piece of property is a broad review, because an in-depth look would be prohibitive; however, to look at the particular areas that are going to be constructed (impacted) is not prohibitive and is planned. When there will be soil disturbance in building trails or construction of any type, those particular areas that will be impacted need a more thorough assessment because, for example,

there are likely endangered species of plants on this property; and any negative impact due to construction must be avoided. She said the initial best practices management plan is an ongoing process; and at this point, they have identified the basic principles of the management plan and outlined how to move forward into construction. More plans will be developed as the project is constructed and moves into operation; and those plans will be improved as all the activities are located on the ground.

A map was shown on the overhead to illustrate where there are resources for enjoying this area, such as Raven Run, Floracliff, lower Howard's Creek Nature Preserve and Fort Boonesboro. She said the proposed project will offer a different kind of access to the topography and environmental features found in this general area. An aerial view of the property was shown (including Boones Creek) and geologic features were noted. The geology was reviewed, and the following geologic assets were identified: palisades, caves, springs, sinkholes, the Kentucky River fault system and cut-off meanders of Boone Creek. She said the geologic features are highly visible, allowing for educational opportunities. A geology map was shown to illustrate where the Kentucky River fault system runs through the property, as well as the location of sinkholes and water features/resources. She spoke about the negative impact from various sources (e.g., Blue Sky sewage treatment plant, agricultural land use/operations, etc.) on the water quality of Boone Creek and the Kentucky River, and the need for protection and/or restoration. She spoke about the assessment by the Kentucky Department of Water (KDOW) that identified the assets of Boone Creek, such as: whitewater rafting/recreational boating; botanical resources, fish resources and scenic features. She also spoke about the threatened and endangered species that were identified in data from Kentucky Fish and Wildlife and by the Kentucky Nature Preserves Commission, and the possibility of several threatened and endangered species or habitat on site, such as the Indiana bat, Running Buffalo clover, etc. She said these assets, as well as others that were identified, will be looked for in the area where construction may have a potential impact; and that this will require additional assessment to permit protection of sensitive habitat. The sensitive land forms identified were: wetlands, sinkholes, caves, springs and erosion. A photo to illustrate significant land erosion caused by cattle was shown, as well as an open-throat sinkhole. She spoke about historic assets on the property, which is part of the Boone Creek Rural Historic District, such as the Rogers Mill Archaeological site.

Ms. Smith reviewed the findings and recommendations regarding the assets that were identified on site. She said this project offers an opportunity to provide exceptional exposure to these assets in a protective manner, but the management plan must protect those assets with respect to construction and operations. The planned project activities will limit potential construction to a very small portion of the property. Additional evaluation must be conducted of areas that will be impacted by construction. Sinkholes and caves should be protected from visitor intrusion, and wetlands as well, but this can provide some educational opportunities. Cattle should be removed and eroded areas repaired. Historic areas must be protected from intrusion but can provide educational opportunities. All waste must be properly managed and removed from the property. Access to Boone Creek is controlled primarily by topography, but the strategic placement of staff can eliminate uncontrolled trespassing. This facility can provide tremendous outdoor educational opportunities.

Ms. Smith said the management plan addresses the design, construction and operational phases of this facility; this will be continually updated to reflect improvements (i.e., new portions of this plan will be developed with respect to safety, training and risk assessment plans); and it is based on the principle of sustainability (i.e., meets the needs of the present without compromising the future; capacity to endure; long term use of resources so that the resource is not depleted; must include economic, environmental and social dimensions). Ms. Smith reviewed the basic requirements of the plan, which included: local sourcing of materials and labor; construction activities must comply with best practices and all applicable regulations, as well as using the least impactful methods possible; activities will highlight the natural and historic assets; activities will be designed to be safe, respectful of neighbors, will educate and will provide challenges appropriate to the visitors' abilities. Regarding design and construction, she said requirements have been placed in the plan with respect to the qualifications of the design team and consultation team (for canopy tour, trails, suspension bridges, etc.); the location of improvements (taking assets into consideration and including additional assessment); use of local sustainable materials; and the protection of soil, vegetation, water, species, habitat and historic resources. With respect to operations, she spoke about the importance of the development of a sustainable level of use, which included a limitation on the number of visitors and the areas open to visitors (i.e., wetlands, sinkholes and caves, and access to historic resources). She said the check-in, GPS and staff locations will be used to ensure safety, keep visitors "in bounds" (those found out-of-bounds will be removed) and limit trespassing; and there will be required training and safety procedures, as well as daily inspections (of the activity systems, such as the

trails, for safety issues, hazards and waste management). A map illustrating the location of trespass control points on the site (off the road/at the driveway and creek area), other than at the fish camp, was shown. Signage indicating "beyond this point is out of bounds" will be placed there. With respect to plan review and updating, it was noted that activity systems and facilities will be inspected daily to control waste management and identify hazards or areas where overuse is identified. The facility will respond to any identified issue by fixing, cleaning, repairing or reducing use, as appropriate. The operations plan will be reviewed frequently and updated as needed. Ms. Smith said the plan will be a living document for as long as the facility is operating.

Mr. Simpson spoke about the invitation that was extended to any interested parties to tour the facility, noting that LFUCG Urban Forester Tim Queary and Environmental Planner Jim Rebmann were participants. He asked Mr. Queary to share his observations and conclusions, noting that Mr. Rebmann was unable to attend today's meeting due to a prior commitment.

Mr. Tim Queary, Urban Forester, Division of Environmental Policy, was present. He stated that he had the opportunity to visit the property in November; and that from his experience as the Urban Forester with the City for over 11 years, it was probably safe to say that any development on property is going to create disturbance. However, he said after reviewing the development plan and the material that Mr. Brassfield presented, he was unable to find any evidence that would suggest that this proposal would negatively impact the trees on this property. Regarding the tree selection, he said he visited those areas and looked at the trees they are going to select. He pointed out that the root system in most deciduous hardwood trees is in the top 18 inches of the soil; and in this area, the soils are about 3 feet. He said the biggest problem in that sense probably would be the slope of the land, gravity pulling the cables and the catwalk. However, he reiterated that as long as the bracing, cables, platforms and hardware are properly maintained, it should not have any negative effect on the health and condition of the overall tree canopy.

Mr. Paul Swoveland, Chairman of the LFUCG Environmental Commission, was present and stated that they are a commission that is appointed by the Mayor's office and approved by the Council for 4-year terms. He said that, among other things, they initiate and participate in environmental education; awareness and stewardship programs, including presenting annual awards to individuals, organizations and companies for environmental stewardship; and that they are specifically tasked to advise and work with the Planning Commission, Board of Adjustment, Building Inspection and Code Enforcement. He said the letter of support for this proposal was written upon reviewing its merits; and that the educational aspects of it are outstanding, and this is something that is really needed in the Fayette County area.

Chairman Stout asked whether there was any discussion about potential safety problems associated with this project. Mr. Swoveland responded that the Commission did review the proposal, but they didn't go into any detailed evaluation. He said he knew there were incidents of people having accidents and getting hurt on private property; however, he personally felt that there would be increased safety with respect to the outdoor recreational activities at the facility because of the training/instruction that would be provided to the staff and visitors as well.

Chairman Stout then asked about the number of employees at the facility. Mr. Carey responded that the employment is somewhat seasonal; but it will range from 8 to 20 employees.

Mr. John Park, proponent and adjoining property owner, was present. He said he currently serves as the Chairman of the LFUCG Greenspace Commission and President of the Board of Directors of the Mary Wharton Nature Sanctuary at Floracliff; however, he was not speaking on behalf of those organizations, but rather as a neighbor and citizen of Fayette County. As a resident at 8151 Old Richmond Road for 18 years, he spoke about his enjoyment of the outdoors and how fortunate he was to be able to "play in the forest" on this site, which he called a truly spectacular asset to this area. He stated that when he first moved there, the property where the Boone Creek Anglers Club is located was abandoned, in foreclosure and had underground tanks; and that the lodge at the bottom of the hill was unoccupied, which attracted vandals and trespassers; and there were fires and problems with trash. He said Mr. Carey's acquisition and development of the Anglers Club has been a positive for the neighborhood and the gorge with respect to cleaning it up and reducing trespassing. He concurred with Mr. Carey about being very proud of where he lived, how beautiful it is and that he wanted people to know about it.

Mr. Park spoke about how this project would affect him as an adjoining property owner and the community as well. He said his first concern was trespassing and the possibility of some spillover of guests/visitors

onto his property. However, he felt that the measures Mr. Carey underlined to control access through monitoring and natural choke points would address that issue. With respect to the traffic impact, he opined that it would be negligible, in terms of adding to traffic problems on Old Richmond Road. He explained how he arrived at the conclusion that an additional 50 cars per day traveling Old Richmond Road (generated by the canopy tour activity) was an increase in traffic of approximately 1.5%. He said the majority of visitors probably will be coming to the facility via the Interstate; and the canopy tour visitors will be coming and going in the opposite direction of commuter traffic in the a.m. and p.m. He stated that noise in relation to the facility was a non-issue, given the noise from the Interstate; that there would be no lights; and that this project would not impact his viewscape. He told the Board that his property is known as the Cleveland Rogers Historic Property and is on the National Historic Register; and that he didn't think this project would have any impact on the historic character or significance of his property. Further, the educational components of this project will enhance the appreciation of the historic and cultural significance of the Boone Creek area. He noted that the conditional use permit that was obtained in order to have a Bed and Breakfast on his property would benefit from the tourist attraction next door.

Mr. Park then spoke to the positive impact this project would have on the community. He stated that this outdoor recreational facility will be locally owned and controlled; it will add to the quality of life for our residents by increasing the opportunity for recreation and leisure; it will educate the public about our unique cultural and natural heritages; it will allow visitors to be more exposed to the natural world; it will attract tourists and promote this area as the destination for eco-tourism, adventure tourism and cultural tourism; it will create jobs; it will improve water quality by getting cattle out of the creek; and it will have no impact on prime soils. He said that any structures will be installed in an environmentally safe manner; and that the incredibly scenic beauty of this gorge is what will attract visitors and gives Mr. Carey a self interest to preserve, enhance and protect it. He felt it would be a great benefit if this project enables a revenue stream that allows for management/control of the biggest threat to the gorge -- invasive species, such as bush honeysuckle and winter creeper.

Mr. Park addressed the concern of setting a precedent with the approval of this project, noting that this is such a unique property that he did not have that concern. He said if this was going to be a precedent, there would have to be an applicant with a similar project on a similarly situated property; and that he didn't think there was a similarly situated property next to the Interstate in the entire county. In closing, he thought this project would be a tremendous addition (and benefit) to the community, the region and the Commonwealth; and it would have no adverse impact on surrounding properties. For these reasons, he encouraged the Board to approve this application.

Mr. Bill Meade, an adjoining property owner, was present to express his support. He spoke about his skepticism regarding this project when he initially heard about it, noting that he didn't like trespassers, and he did like his privacy. Having owned his property since 1979 and having built a house on it in 1989, he talked about some of the real problems that were being experienced in the area, which then Councilmember Gloria Martin helped to eradicate. He noted that his property borders on the Kentucky River in front and is close to the mouth of Boone Creek behind. He said after discussing his concerns with Mr. Carey subsequent to attending the neighborhood association meeting, discussing the project with a naturalist for the lower Howard's Creek Preserve and doing some on-line research of the people Mr. Carey would be working with, he took advantage of the tour that was offered. He opined that there was no place more beautiful; and that this was a wonderful project that he would highly recommend.

Ms. Jane (Snyder) Harrod was present. She stated that they own the last section of Boone Creek to the river on the Fayette County side to the river; and that the parcel where Mr. Parks lives was formerly part of their farm. She said they had owned this land since 1801; and that they still farm and have cattle on the creek that they would like to fence off. She briefly spoke about the impact of living in proximity to I-75 (i.e., high volume of traffic, noise, fumes, lights, etc.) and Old Richmond Road as well; and the effect of the I-75 roadway construction on the sustainability of the farm. She noted her experience as a professional landscape restorationist, a native plant grower and farmer. Ms. Harrod said she would not support this project if it was going to impact Boone Creek or change the hydrology; and that she also wanted the invasive species removed, but the resources have not been available. She said she thought this was a great project; and it would provide a small revenue stream allowing her to continue the Farmers Market garden on a few acres of tillable land, as well as to renovate some old historic buildings on the property. Ms. Harrod asked the Board for its favorable consideration of this proposal.

Mr. Simpson said this concluded their presentation, although 12 more witnesses were available to speak,

if necessary.

(The meeting was recessed at 3:26 p.m., and reconvened at 3:34 p.m.)

Opposition – Attorneys Don Todd and Hank Graddy were present representing the Boone Creek Historic Neighborhood and Old Richmond Road Neighborhood Associations, as well a number of concerned area residents. He said he thought the Board was wise enough and experienced enough to see that those (neighbors) who spoke in support stand to gain profit at some point from this project.

Mr. Todd noted the information that was distributed to the Board for review, including KRS 247.232, which defines amusement ride or attractions; Article 8-1(e)6 of the Zoning Ordinance, which prohibits amusement parks in the A-R zone; and two other documents related to this particular issue. He emphasized that the proposed use is an amusement park, which is clearly defined in the statutes and regulated by the Department of Agriculture. He acknowledged that this is truly a spectacular area with unique geological features, flora, fauna, etc.; however, an issue of concern was the anticipated 12,000 to 20,000 visitors per year. Further, this is a profit venture since each visitor will be charged \$85.00, generating between \$1.7 million to \$2.5 million yearly in revenue. After noting that this proposal includes zip lines that are 2,500 feet in length, tree platforms, suspension bridges, and 10 elevated primitive lodging structures, he reiterated that this is an amusement park that the applicant wants to locate in an area that is of great natural significance and is designated as such in the Comprehensive Plan. He submitted that this proposal does not adhere to the Comprehensive Plan's Goals and Objectives, the Rural Land Management Plan or the Boone Creek Corridor conservation studies that designate this area as being federally protected and included on the National Register of Historic Places.

Mr. Todd said another issue of concern that came to light with respect to the applicant's presentation was the lack of discussion about public facilities, safety, transportation, access by fire and rescue, and sanitary (waste) disposal. He also noted the lack of details regarding the three proposed bridges extending into Clark County; the location of the zip lines (only a general concept proposed); and the overnight shelters to accommodate visitors. He said the absence of details regarding this proposal were startling and of great concern, which was one reason for the Board to deny it. Mr. Todd opined that there should be studies and analyses done to determine the feasibility of a text amendment, in order to put in certain protections and restrictions because the proposed use was not anticipated by the Zoning Ordinance. He further stated that he wasn't sure whether the Board was in a position to legislate on this proposal.

Mr. Todd spoke about how this project is being marketed as eco-tourism. He described eco-tourism as low impact tourism to a fragile pristine area, usually protected areas intended to provide funds for ecological conservation for the resources. He opined that what is being proposed is not low impact, given the 12,000 to 20,000 anticipated visitors/guests; it does not protect the environmentally sensitive areas or unique qualities; and it does not provide any funds for preservation of the resource, but rather adds pressure to the existing resources and compounds that by raising questions of sanitary disposal, safety and wildlife environment. He emphasized that this is not an eco-friendly proposal, but a modern-day amusement ride as defined in the statute regulated by the Department of Agriculture and which is prohibited in the rural area. He said there were a number of property owners/neighbors present who do not have a pecuniary or monetary interest in this proposal that wanted to tell the Board about the significance of this proposal if it were adopted and how it would affect the other portions of the rural county. It was Mr. Todd's opinion that approval of this project would set a dangerous precedent and would allow this kind of activity to extend into other areas where it would not be compatible as well.

Ms. Knox van Nagell was present on behalf of the Fayette Alliance. She stated that the Fayette Alliance is dedicated to planning a world-class city and preserving a world-class landscape in Fayette County, as well as the belief that this sustainable growth strategy will create a quality of life crucial to Lexington's economic and environmental success today and in the future. Therefore, she respectfully requested that Boone Creek Adventures withdraw its conditional use application until a fundamental legal issue is resolved. After reviewing the KY statutes and case law, they felt it was apparent that the proposed canopy tour is an amusement park, which is expressly prohibited in the A-R zone under Section 8-1(e) of the Zoning Ordinance. She said the Zoning Ordinance does not define amusement parks or outdoor recreational facilities; however, State law does, which governs this case. She further stated that the proposed canopy tour facility, including cat walks; suspension bridges; zip lines; tree platforms; ropes courses and other elevated structures through which people may move for amusement, pleasure, thrills or excitement, is deemed an amusement ride under KRS 247.232 and KAR 16:091. It was noted that a

memo from the general counsel for the KY Department of Agriculture also confirms this conclusion; and that the canopy tour industry itself promotes the experience for public pleasure, excitement and adventure, affirming its definition as an amusement ride for purposes of KY law. It also was noted that the canopy tour is not just an amusement ride within an outdoor recreational facility, but rather constitutes an amusement park under KY case law, as its public facilities are permanent in nature, cover a large tract of land and its users must pay a fee. Therefore, to grant a conditional use permit for the proposed amusement park would allow an otherwise prohibited use in the A-R zone, and the Board of Adjustment does not have the legal authority to take such legislative action under KRS 100.247 or Article 7 of the Zoning Ordinance.

Ms. Van Nagell reiterated that the applicant should withdraw his application until this fundamental matter is resolved, noting that if the canopy tour is allowed without amending the local laws, it will set a dangerous county-wide precedent by violating several key provisions of the Zoning Ordinance, Rural Land Management Plan and Comp Plan. She said the canopy tour is, in theory, a good idea because it creates public appreciation for the Bluegrass and its remarkable natural resources; however, the development is currently premature in light of the current land use requirements and the Board of Adjustment's jurisdiction. Therefore, more time and thought is needed on how to establish this facility on a county-wide level, without jeopardizing signature farmland, sensitive environmental areas and watersheds. She said, as demonstrated in the last several months, the Fayette Alliance remains committed to work in good faith with leaders in the agriculture community, Mr. Carey and staff to have this discussion. She said they appreciated Mr. Carey's efforts and understand that eco-tourism could be a great thing for Lexington and the Bluegrass, but it must be done carefully and in concert with the land use traditions and planning requirements that have served the community so well for so long. She thanked Mr. Carey for his proposal, saying they looked forward to working with him in the future.

Mr. Todd Clark was present to speak on behalf of the Fayette County Farm Bureau. He said they concurred with the Fayette Alliance, in that they are opposed to the Boone Creek Adventures proposal solely based on their belief of its inability to meet current law.

Ms. Linda Carroll, president of the Bluegrass Trust for Historic Preservation, was present. She spoke about the process by which acreages of land in rural areas (including buildings, structures and sites), such as Boone Creek are extensively researched, assessed and approved for placement on the National Register subsequent to approval at the local level (Historic Preservation Commission), the state level (KY State Historic Preservation Officer) and the national level (Department of the Interior, National Parks Service, Keeper of the Register). She said the Boone Creek Rural Historic District was approved for placement on the National Register in August 1994. She then spoke about having contacted the National Trust, the KY Heritage Council, Preservation Kentucky and a number of local preservation organizations with respect to this project. She related their concern that the Board was risking establishing a precedent, noting that they could not find any evidence where an amusement park of this type had been established in a rural historic preservation district like this. She said they do exist around the country, but not in a rural agricultural zone. She cautioned the Board about their decision and to consider whether this rural, beautiful pristine area could actually survive 20,000 visitors per year. She said the Trust formally asked that the Board reject this conditional use request.

Ms. Joan Mayer, 3300 Jones Nursery Rd. (Clark County), was present. She spoke about the proposal to build three bridges that would extend from Fayette County into Clark County, and the applicant's lack of communication with the Planning Commission and directly affected neighbors there. She noted that she has lived within a half-mile of the Boone Creek watershed for 50+ years. She said the proposed plans for this recreational development include Clark County, as a statement in the applicant's proposal indicated (i.e., future expansion of 400-500 acres in the southwest section of Clark County will be in addition to the initial use of 150 acres in Fayette County); however, this plan has been made without (formal) notification to Clark County. A map was shown on the overhead to illustrate the location of the Boone Creek watershed (that separates Fayette and Clark Counties). She made further comment about the proposed locations of the bridges in question, as well as the hiking and biking trails that would extend from one county to the other. She then spoke about serving and working on the Clark County Comprehensive Plan for the past two years and the changes they considered during that period; however, it was unanimously agreed that southwest Clark County should not be changed because it is the only existing totally rural area remaining there. To that end, she said their Comprehensive Plan's mandate is to protect that area from encroachment by any kind of tourist business venture, and to preserve this last bit of pristine natural and environmentally sensitive land. Other issues of concern raised were the inadequacy of the one-lane road

(Grimes Mill) to handle the traffic generated by the proposed use, as well as the lack of fire hydrants, fire stations or EMT units within 15 miles of the Boone Creek watershed.

Referring to the Comprehensive Plan for Fayette County, Ms. Mayer read the goal (2b) pertinent to the preservation of the agricultural core, the natural resources and the cultural landscape of the Bluegrass region, and encouraging inter-government regional planning. A map was shown to illustrate the phasing of Boone Creek Rural Historic Districts in Fayette and Clark Counties as it relates to the efforts to preserve this area since the 1960s. This has included working with the KY Division of Water in cooperation with the rivers, trails and conservation assistance programs of the National Parks Service to survey Boone Creek and this area of the Kentucky River. She said the property owners in the Boone Creek watershed in both Clark and Fayette Counties (from Athens-Boonesboro Road to Sulphur Well Road) have, with the Land and Nature Trust, formed the middle reaches of the Boone Creek National Register Rural Historic District, which was federally designated in 1996. She went on to say that they assisted in the research and funding for state designation for scenic byway status for Grimes Mill, Athens-Boonesboro and McCalls Mill Roads, all of which are in the Boone Creek watershed. She said Clark County and Fayette County are jointly part of the Bluegrass driving tour, which promotes cultural and geological landscape features of the Bluegrass; and together, the two counties are part of the Greenway Master Plan for the designated bike routes. Finally, she read the following quote from a 1995 study by the US Department of Agriculture: "the landscape of the southernmost part of Boone Creek watershed is characterized by highly dissected long and narrow ridge tops and shoulder slopes, and moderately steep to steep hillsides. 35% of the watershed is comprised of prime farmland. This farmland and other important farmland soils make the watershed suited for beef cattle, horses, tobacco, corn, soy beans and vegetables." She also noted the 1992 KY Division of Water's assessment report of the rivers in Kentucky, in which it cites Boone Creek as one of the highest valued streams in the state for not only its ecological resources, but for its corridor character, fish resources, scenic features, water quality and white water boating.

In closing, Ms. Mayer reiterated that the Boone Creek Rural Historic District, which contains 4,000 ± acres, was listed on the National Register in 1994. She said the main community is Athens, where Daniel Boone had a trading post and his brother was buried in what has become a park, just outside Athens. She spoke about the resurgence of wildcat sightings in the area, in addition to wild turkey, deer and cattle. For the reasons presented, she said the residents of the Boone Creek watershed opposed a plan to turn the watershed into a tourist camp.

Ms. Gloria Martin, 7416 Grimes Mill Road, was present. She stated that her property adjoins the applicant's; and that she first became aware of this project when notice from the Planning staff was sent out in October. She said that she, along with representatives from the Farm Bureau, Fayette Alliance and other organizations, met with the applicant and his attorney; and although she liked Mr. Carey's idea, she concurred that the (conditional use) application should be withdrawn and a text amendment initiated to address this issue. She said this request is in conflict with numerous adopted plans, including the Zoning Ordinance; and that approval would be precedent-setting because the proposed use/activity is prohibited in the A-R zone. Following distribution of the exhibits notebooks to the Board for review, she spoke about the research that was done, at the conclusion of which it was clearly shown that:

- The Zoning Ordinance prohibits amusement parks in the A-R zone
- The amusement ride industry defines zip lines as amusement rides
- The companies building and designing these canopy tour/zip line facilities define them as adventure parks
- The term adventure park is used interchangeably with amusement park and theme park within the industry when advertising these identical facilities
- The consultant designing this facility is listed as a private company categorized under amusement rides
- Other facilities around the US and elsewhere with the same facilities are termed as amusement parks
- The State of KY defines and licenses these rides under KRS 247.232 to 247.236 as amusement rides

Ms. Martin reviewed the conditional use request (orange tab) -- to develop a world-class canopy tour over and through the spectacular but previously inaccessible gorge, featuring a combination of catwalks, suspension bridges, zip lines, tree platforms and elevated structures. In addition, the tour will include a ropes challenge course, rappelling and climbing wall; and a ropes challenge course and climbing wall in the children's activity area as shown on the site plan. She noted that, at a December 1st meeting with the applicant in his attorney's office, it was stated that the children's activity area probably would have a small

zip line. She felt it was important (for the Board) to know that there are numerous, different elements to this request. Referring to the staff report, she said it was indicated that this project would have an "eco-adventure" theme with a variety of activities, the centerpiece of which would be a "canopy tour" using catwalks and short sections of zip lines. However, she emphasized the importance of the fact that there are multiple elements listed for this commercial facility, as stated by the applicant and the staff and shown on the site plan; and that this is not just a canopy tour, given the multiple separate elements within it (i.e., climbing walls, rope courses, suspension bridges into the next county, etc.). She asked the Board to keep in mind that this is a large tract of land with a variety of activities and permanent structures.

Ms. Martin made reference to the section of the Zoning Ordinance pertinent to the permitted uses in the A-R zone (blue tab), such as zoological gardens; sportsmen's farms; native animal game preserves; riding stables; campgrounds; fishing lakes; and private clubs for these uses only. She noted the restriction that as of January 26, 1995, a total of 10,000 square feet was the maximum allowance for all structures proposed for such uses. The prohibited uses in the A-R zone also were reviewed, which includes commercial recreational facilities such as amusement parks. She said the Zoning Ordinance is clear that commercial recreational facilities are prohibited uses in the A-R zone. Referring to Article 1-5 of the Zoning Ordinance, she explained how a conflict in the regulations regarding the proposed use (commercial recreational facility appears in two different places in the ordinance) is addressed, saying the more restrictive ordinance, regulation or law (local, State and Federal) governs. Referring to Article 7-6(b)(2) of the Zoning Ordinance, she read: "The Board shall not possess the power to grant a variance to permit a use of any land, building or structure which is not permitted by this Zoning ordinance in the zone in question." She pointed out that the Zoning Ordinance does not define an amusement park; however, the State KRS does, in two categories (green tab). Accordingly, KRS 247.232 to 247.236 defines an amusement ride or attraction as: "Any mechanized device or combination of devices which carry passengers along, around or over a fixed or restricted course for the purpose of giving its passengers amusement, pleasure, thrills or excitement; or any building or structure around, over or through which people may walk, climb, slide, jump or move that provides amusement, pleasure, thrills or excitement." Ms. Martin stated that this statute also allows the Commissioner, "by administrative regulation, to designate other rides and attractions that are not included within the definition of amusement ride or attraction." She further stated that American Society for Testing and Materials (ASTM) standards are to be met for all amusement rides and attractions; and that ASTM standards are the latest standards and specifications set forth for testing and materials. The scope of the ASTM entails guides for amusement rides and devices, performance specifications, definitions, maintenance, standard development for the global amusement sector, etc. She said the ASTM clearly lists zip lines, ropes courses and challenge courses as amusement rides; and they have established new criteria, new practices and new special requirements for zip lines, ropes courses and challenge courses "when specifically intended for concession, commercial recreation or amusement purposes."

Ms. Martin stated that she had been in contact with the attorney for the KY Department of Agriculture, Nicole Liberto, who confirmed (in correspondence dated November 10, 2011) that these structures come under the jurisdiction of KY Department of Agriculture per the KRS statute for inspection and permitting as amusement rides; and that inspection fees are assessed per device and are detailed in 302 KAR 16:020 Section 3 (i.e., climbing walls \$75; any amusement or attraction ride not listed, such as zip lines, ropes challenge courses, etc., \$150). She said any entity wishing to commercially install a single amusement structure or multiple amusement structures grouped into a single facility within the State of Kentucky is regulated under the aforementioned KAR (Inspection and operation of amusement rides or amusement attractions); and that the administrative regulation establishes safety guidelines for the operation and inspection of these amusement rides. The owner/operator of an amusement ride must submit an application to the KDA Division of Regulation and Inspection/Amusement Rides and Attractions Inspection Section listing each ride or attraction being offered. In addition, the owner/operator must provide proof of insurance for the minimum amount of \$500,000.

Ms. Martin reviewed similar amusement park ride facilities in Kentucky that have age/height requirements and fees, which included Red River Gorge Zipline (canopy tour); Mammoth Cave Adventures (canopy zip line tour/sky bridge); Black Mountain Thunder Zip Line (canopy tour); Louisville Zoo (zip lines, ropes courses and climbing wall); Megazips Underground Zip Line (underground mine); Eastern KY University Challenge Course (ropes elements); and the Life Adventure Center (challenge course). She noted that according to KDA Inspector Bob Henderson's response to her written inquiry, these facilities are inspected as amusement rides under KRS 247.232; and that each element of the canopy tour (i.e., zip lines, sky bridges, challenge ropes courses, climbing wall, etc.) requires a separate permit as a separate ride, but

can be covered under one liability insurance policy. She said where these facilities are permitted is strictly by individual county zoning; and that the State is not concerned about zoning, but rather with safety.

Ms. Martin stated that the Zoning Ordinance does not define a commercial recreational facility, eco-adventure, adventure park or amusement park; however, it does give a definition for structure, which is important and was read as follows: "Anything constructed, the use of which requires permanent or continuous location on the ground, or attached to something having permanent location on the ground." She said the numerous elements described as part of the proposed canopy tour are structures that will be permanently attached to the ground. She noted that the adventure park industry defines a canopy tour as a specific kind of adventure park, photos of which were provided for illustration in the notebook. Reference was made to the S.T.E.P.S., Inc. website and the 62 on-line photos illustrating canopy tour and adventure park elements designed and built by David Brassfield.

With respect to the proposed canopy tour elements, Ms. Martin briefly spoke about other states' and Canada's legal definitions (i.e., amusement rides; permanent amusement rides; zipline; amusement device; amusement park; amusement attraction, etc.) that are similar to Kentucky's (purple tab). She said Kentucky is not alone in amusement park/ride legislation, citing information from the California Research Bureau that 45 out of 50 states do have some type of related legislation including Ohio, West Virginia, Virginia, Indiana, Missouri, North Carolina, Pennsylvania and Minnesota.

Ms. Martin then spoke about the description of the Boone Creek canopy tours provided by the applicant as it relates to similar canopy tour industry definitions and the KRS definition for amusement rides. In point, she said that Navitat, near Asheville, North Carolina, lists itself as a true canopy tour and is similar to what the applicant wants to build; and that the other Navitat facility in California is listed as an amusement park. Both facility locations are listed as "tree based adventures." She reiterated about S.T.E.P.S., Inc., a private company categorized under amusement ride, and the designer of the project under discussion. Of note was its business category – amusement/recreation services. Dollywood, which has a multiple station zip line tour and a challenge ropes course (Adventure Mountain), was given as an example to illustrate that it meets the KRS definition of amusement ride or attraction. She referenced a Wikipedia article by David Brassfield (S.T.E.P.S., Inc.) wherein challenge ropes courses are defined and meet the KRS definition as an amusement ride. Photos of challenge ropes courses at Dollywood were provided in the notebook.

Ms. Martin pointed out that there has been no square footage, elevation, dimension or definite site furnished with respect to each of the individual structures that make up this local amusement adventure eco theme park. She spoke about the impact of the proposed large-scale commercial recreational facility on the area (including Clark County), noting that Dollywood is 125 acres and Kings Island is 300 acres in comparison. She said, given the kind and size of this commercial recreational facility, it meets the definition of an amusement park. In closing, she reviewed the findings of fact, as follows: 1) the Zoning Ordinance prohibits amusement parks in the A-R zone; 2) the proposed facility, as defined by the industry, other states and Canada, is categorized as an amusement park; 3) the KY Department of Agriculture considers the permanent structures within a canopy tour as amusement rides; and 4) the consultant, designer and builder is listed under amusement parks. She reiterated that the proposed canopy tour facility is clearly an amusement park, which is prohibited in the A-R zone; and that the Board does not have the legislative authority to approve a prohibited use. She urged the Board not to approve this proposal because it would open the door for every prohibited use in every zone.

Chairman Stout commented that it is very clear that they are talking about an amusement ride; however, he was not convinced that they were dealing with an amusement park. For clarification, he asked counsel whether they were dealing with an adventure park or an amusement park along with this ride. In response, Ms. Boland said that is what the Board had to decide. She said all of the State statutes and regulations that were quoted to the Board were definitions for the purpose of safety regulations; and that she had not seen anything in the cited statutes or regulations that in any way reflected that these definitions were intended to be used for zoning purposes; nor had she seen anything that has appeared in KRS Chapter 100 defining an amusement park for zoning purposes. Ms. Boland further stated that she was unable to tell whether the list of other states that had definitions of amusement parks or amusement rides actually came from zoning regulations or safety regulations. She said another thing that struck her is that it defines amusement ride; but for zoning purposes, one amusement ride does not make (this) an amusement park. Therefore, the Board would have to consider what the proposed use, with its individual characteristics, most resembles. Further, she didn't think the acreage had anything to do with whether this

is an amusement park; but rather what is being done there and what the Board feels this use most resembles.

Referring to the Zoning Ordinance, Ms. Boland pointed out that, under the conditional uses, it talks about commercial or non-commercial outdoor recreational facilities; however, the word "outdoor" does not appear under the prohibited uses. She opined that an amusement park is probably more "outdoor" than a bowling alley, for example, or other indoor uses that are listed; and it appears that a distinction was considered between outdoor and indoor uses. She felt the Board would need to look at the outdoor recreational uses that can be conditional uses, as well as the prohibited uses, in order to determine the category the proposed use falls under or most resembles, in terms of impact and purpose.

Chairman Stout then asked counsel whether, in this particular situation, a text amendment would be required. Ms. Boland responded that she didn't think it requires a text amendment; and that the proposed findings by staff make the distinction by describing the characteristics so it can be distinguished from a prohibited amusement park. She said if there are more of these kinds of applications and they become more complex, a text amendment may some day be needed to determine when a use crosses the line to being more like an amusement park or more like an outdoor recreational facility. However, she said, for the purpose of this hearing, the Board could determine that they have enough information to make the decision on this use, as to which it most closely resembles.

Ms. Anne Graff, who lives in the Old Richmond Road Corridor, was present to express her opposition to the proposed commercial recreational development. She spoke about her experience on the Navitat Canopy Tour in Asheville, NC in 2010, noting that it was more of an amusement park type of ride rather than an educational nature tour. (A photo was shown for illustration.) She noted the zip lines, tree platforms and suspension sky bridges as part of the tour, which lasted 3½ hours. She said based on her personal experience at Navitat, it was more of an outdoor adventure with amusement rides in a natural setting; and that she couldn't say, in good conscience, that it is ecotourism or good for the environment. She felt this type of commercial recreational activity would not be good for the Boone Creek Gorge and encouraged the Board to vote against bringing this type of business to their neighborhood.

Mr. Jim Lurton was present and thanked the Board for the opportunity to speak today. He said he lives on Turner Station Road, about two miles north of the proposed facility; and that he would like to put this text into the record. He said the Zoning Regulations Article 7-6(a)(2) states that: "in approving a conditional use permit, the Board shall find that the public facilities and services that will be needed are, or will soon be, adequate to serve the proposed use. The Board shall give consideration to the road system, sewage disposal facilities, utilities, fire and police protection and other services and facilities as are related to the proposed use." He said the 2007 Comprehensive Plan states that: "Service area standards for (fire) engine companies are 1.5 road miles from the station . . . Water availability is based on the distance to the closest fire hydrant, with 1,000 feet being the minimum standard for rural applications."

Mr. Lurton stated that the nearest fire station is approximately 2 miles away and has no EMS unit. The nearest EMS unit is at Richmond Road (near the KY American Water plant) or on Maple Leaf (off Man 'o War Blvd.), both of which are approximately 10 miles away, yielding response times of 15-20 minutes driving time at best. The nearest fire hydrant is approximately one mile away, near the intersection of McCalls Mill and Old Richmond Roads. All the hydrants in the area are coded Red, meaning they flow less than 500 gpm, which is considered inadequate by national standards and local personnel. Based on those facts, he had a discussion with the Cleveland Road fire station personnel who concur that red hydrants are inadequate to fight a fire. That became obvious last year, when a house on Turner Station burned to the ground because the fire department had to run a tanker brigade from the hydrant at the station. Neither fire engines nor ambulances can access the Boone Creek Gorge where this facility is proposed, because they are not off-road capable vehicles. Firemen would need to hand carry a maximum of 1,000 feet of hose into the gorge from an engine located on Old Richmond Road or Durbin Lane as appropriate; and 1,000 feet of hose does not appear to cover the entire area proposed on the site plan.

Accident or illness victims would need treatment by EMS personnel who walk or are transported by unspecified means into the gorge. There is no specified means to transport a victim out of the gorge. Presumably that would be an on-site, real time plan since no plan is evident either from the applicant or the fire department. Sufficient clearance to land a helicopter is not obvious and the presence of zip line cables represents an additional hazard. The fire department does own an emergency rescue vehicle and has a trained rescue team; however, this is located at Southland and certainly would not be adequate for a

critical medical rescue due to the distance and time involved. In addition, the firemen at Cleveland Road commented on upcoming fire staffing and overtime reduction planning, with the understanding that there will be a rotation of units off line to accommodate staff vacations with minimum overtime impact. The vacation planning coincides with what will be the peak use of the proposed facility; and it was indicated that the Cleveland Road fire station could be off line as much as one out of every four days.

There appears from the two public information meetings held by the applicant and from the BOA staff report that no specific, acceptable sewage plan exists for the site, only a promise from the applicant to work with the Health Department. It was noted that Boone Creek discharges into the Kentucky River about one-half mile upstream from Kentucky American's water intake. The applicant estimates 20,000+ visitors per year, which would result in high sewage volumes at certain times. No magic small-volume solution to handling sewage exists that will adequately solve this problem; and there are no standards for so-called composting toilets. The physical collection of waste from numerous sites is messy, smelly and difficult, especially on a site that will have no roads. The applicant has cited cruise ship sewage handling as an example; however, cruise ships are the center of a major controversy for ocean pollution. The following quote was taken from the website Oceana.org: "Currently, lax state and federal laws allow cruise ships to dump untreated sewage from toilets once the ships are three miles from shore. Within three miles, cruise ships can dump sewage from toilets that has been treated by marine sanitation devices, which have been shown to be inadequate."

In closing, Mr. Lurton said this proposal does not meet any common sense standard for the presence of public fire, medical or sewage facilities. As a result, the Board cannot find that adequate public facilities exist or are projected to exist in the future.

Ms. Alston Kerr, 5660 Old Richmond Road, was present to express her concern about the proposed large-scale recreational development. She stated that the private Anglers Club conditional use is now being incorporated as part of the proposed commercial recreational facility, noting that the 23-acre tract at 2391 Old Richmond Road was the site requested by Boone Creek Properties, LLC for a private anglers club in 2000. A map of the original site was shown for illustration. In point, she said the applicant states, in the current application, that there would be more lodging options made available to guests other than the existing lodge; and the staff report indicates that this recreational facility is intended to operate in association with the Boone Creek Anglers Club. She reiterated about the numerous elements of the canopy tour project, including zip lines, children's area, hiking trails, multi-use pedestrian bridge, welcome center and raised tented platforms. Referring to the map, she pointed out that half of the property in the 2000 request for the anglers club is being taken up by the current request for a conditional use. Further, there seemed to be no way to calculate the exact number of square feet proposed, and none is shown on the development plan for any of the elements on the canopy tour. She said according to the ordinance for the A-R zone, the square footage for all structures on the 23-acre tract has to be calculated as part of the recreational facility, staying within the 10,000 square-foot maximum, which she questioned. She said an assessment of that limitation as it applies to this recreational facility is complicated by the fact that there are three separate parcels involved; however, it is clearly stated in the Zoning Ordinance that, for any conditional uses established after January 26, 1995, a total of 10,000 square feet shall be the maximum for all structures proposed for such uses. Referring to the Zoning Ordinance's definition of "structure", she opined that this would include all the structures in the original request as well as those proposed for this use (i.e., raised platforms, catwalks, suspension bridges, climbing walls, zip lines, etc.). She expressed concern about the staff's assessment in the staff report that collectively the total for all structures will exceed 10,000 square feet, but that limit will not be exceeded for any of the three individual parcels. It was her feeling that the development plan was lacking necessary details and did not adhere to the limitation for all structures in the A-R zone. Being familiar with eco-tourism, adventure tourism and agri-tourism, she said this project is a good one, but it is a little premature and not well defined.

At this time, Chairman Stout briefly consulted with the attorneys.

Dr. Andy Roberts, 6921 Old Richmond Road, was present and stated that he has a horse farm on that 75-acre parcel. He spoke about the vested interest in agri-tourism and wanting to see it flourish in that area of Fayette County; however, he didn't think the applicant's proposal falls under that category, which basically involves the production of food, fiber or flowers. He briefly commented about other uses/activities that are similarly inappropriate in the A-R zone.

Mr. William Brown, 823 McCalls Mill Road, was present speaking on behalf of the president of the Boone

Creek Neighborhood Association. He stated that Boone Creek Adventures has not adhered to any of the adopted Plans for the area, which includes the 2007 Comprehensive Plan (proposal fails to meet 5 of 11 major goals); the Greenspace Plan (no intention for public access to Boone Creek); the Greenway Master Plan; the Parks and Recreation Master Plan (no new parks recommended for the Boone Creek area); and the Rural Land Management Plan (Boone Creek designated as a priority site; land should remain in natural state with minimum of intrusions). He also said Boone Creek Adventures cannot prove that this request will not have an adverse impact on both the subject property and the surrounding area. For the reasons provided, he said the neighborhood association asked the Board to deny this request.

Mr. Charles Martin, 7416 Grimes Mill Road, was present. He said he first discovered the Boone Creek Gorge in 1975, which determined his plans to move here with his family. He said they have lived on the creek since 1980 and subsequently have established a conservation easement on the property, which the document shown on the overhead illustrated, for approximately 530 acres of what is basically a nature sanctuary. He said they have adhered to the Comprehensive Plan and tried to do their conservation accordingly, as have other property owners in the area; and that more than 1,000 acres is now protected in a way that the Comprehensive Plan has recommended: to preserve, protect and enhance the natural areas, particularly environmentally sensitive areas including the Cleveland Branch of Boone Creek. A publication called "The Sierra Club" was shown to illustrate an article written about Boone Creek Adventures and Kentucky's waterways. Also shown was a map of the properties in Fayette County that are protected under the PDR program, including areas near the proposed project site that border Clark County.

Mr. Martin briefly spoke about liability issues and incidents that have occurred on neighboring properties, including an accidental drowning, a rappelling accident, camping and fire building by trespassers, an illegal plant growing operation, etc. He said these are all reasons for concern because of the unique and environmentally sensitive area there; and that it should not be commercialized and go against years of carefully adopted plans. He noted that there is not another non-agricultural commercial business in the gorge from the river to Winchester Road, except the applicant's; and that this current request does not protect the gorge, but rather is a money-making commercial venture. He reiterated that this is not a good idea for the Boone Creek watershed. A short video was shown for illustration. In closing, Mr. Martin urged the Board to disapprove this conditional use request.

At the conclusion of the opposition's comments, Chairman Stout announced that three Board members would have to leave the meeting; and in fairness to both parties involved, and rather than making a decision without the full complement of Board members, the decision was made, after conferring with both attorneys, for a continuance of this case until the January 27 meeting. The staff was asked to account for all those witnesses who had spoken today, in order to allow those that did not have an opportunity to do so at next month's meeting. Chairman Stout thanked all those present for their participation.

Action – A motion was made by Mr. Stumbo, seconded by Mr. Glover, and carried unanimously for a continuance of **C-2011-70: BOONE CREEK ADVENTURES, LLC** until the January 27 meeting.

(Following disposition of the aforementioned case, the Board (with four remaining members) proceeded to hear A-2011-81: GREG KUJAWSKI.)

E. Administrative Review

(Due to the anticipated length of the hearing on C-2011-70: BOONE CREEK ADVENTURES, the following appeal was taken out of its regular order on the agenda.)

1. **A-2011-80: CRESTWOOD CHRISTIAN CHURCH** - appeals for an administrative review to allow four directional signs to be placed on the church property, in a Single-Family Residential (R-1C) zone, on property located at 1882 Bellefonte Drive. (Council District 4)

The Staff Recommends: Disapproval, and that the decision of the Division of Building Inspection be upheld, for the following reasons:

- a. Under Article 17 of the Zoning Ordinance, directional signs are not a permitted type of sign in the R-1C zone, for any type of use.
- b. The Board is not authorized to increase the number of permitted signs on a particular property, nor

permit a design type that is not specifically permitted by Article 17 of the Zoning Ordinance for the zone where the sign is to be located.

- c. The inability to erect directional signage is not considered to be a significant hardship for the church, and many other options are available that might assist them in their efforts to clarify access to and navigation around the church property. Further, they could apply for an amendment to the sign ordinance.

Representation – Rev. Kory Wilcoxson, senior church pastor, was present.

Chairman Stout asked to hear the objector's comments first, followed by the appellant's presentation.

Opposition – Ms. Clarissa Spawn, 1909 Bellefonte Drive (across the street from the church), was present and spoke in support of the recommendation made by the Planning staff regarding the request for directional signage, noting that the reasons provided were important to the preservation of the residential character of this neighborhood and others throughout Lexington as well. She said she initially didn't think the request was a big deal; but after reviewing the ordinance and looking at other large churches and schools operating within residential areas, she realized that they did not have directional signs and seemed to function well (without them). She felt that this ordinance is considered by the city of Lexington to be important in maintaining the character of our neighborhoods; and that allowing this exemption for the church would set a negative precedent.

Chairman Stout asked if Ms. Spawn had spoken with any other neighbors that live across the street from the church regarding this request. Ms. Spawn replied only one. Chairman Stout then asked whether the church had reached out to the neighbors to explain what they wanted to do. Ms. Spawn responded affirmatively.

Pastor Wilcoxson stated that there are approximately 800 members of the church; and that the campus is comprised of a child-care center, children's wing, sanctuary, administration wing, chalice hall (gathering area) and mission center (gymnasium surrounded by classrooms). He said several outside groups, including AA, the MS Society, Parkinsons support group, Council on Aging and the local food summit, are allowed to use the church facilities on a weekly, monthly or yearly basis, free of charge, as a community service; and that hundreds of people move through the buildings each week, the majority of which are not church members and are not familiar with the layout of the campus or the buildings on it. He said the church campus has four entrances, one off Glendover Road and the other three off Bellefonte Drive.

Pastor Wilcoxson explained the reason for the request -- i.e., to provide simple unobtrusive signage directing people other than church members to different parts of the campus (which has separate activity areas) and helping them to get where they are going with minimal inconvenience and difficulty, as well as helping to facilitate the church's mission to the community. He noted letters of support from leaders of some of the groups that utilize the building(s) on the church campus, expressing their support for the additional signage to facilitate the group participants. He said he understood that the request did not fall within the parameters of the current Zoning Ordinance; but the Board was asked to help them consider ways to accomplish this goal. He said, in the end, their goal doesn't serve the church; but rather the community and the people from Lexington and beyond that come to use the facility. Pastor Wilcoxson said he also had read the staff report and understood the recommendation for disapproval; but he noted having questions regarding the staff's alternative recommendation.

Chairman Stout asked whether the staff had explained the sign regulations to Pastor Wilcoxson, to which he responded no. Chairman Stout then asked if Pastor Wilcoxson had contacted the LFUCG for information regarding the proposed signs. Pastor Wilcoxson explained that they had met with someone affiliated with Planning who came to the site after the original proposal was submitted, at which time he was informed that the proposed directional signs are not allowed. However, it was recommended that an administrative appeal could be brought to the Board for consideration.

Pastor Wilcoxson asked for clarification of the staff's alternative recommendation regarding small and strategically located signs that are internal to the property and not visible from the public streets. Mr. Marx responded that this type of signage is not visible from the public streets and is exempt; and the question of how large or small is relative, depending on where the signs are located. He said there is a presumption that the signage has to be fairly small in order not to be seen from the public streets. Chairman Stout questioned having signs so small that people can't see them before they get on the property.

Pastor Wilcoxson inquired whether incidental signs, which was an alternative suggested in the staff report, could be freestanding or had to be attached to the building. Mr. Marx replied that they can be freestanding. Further, the signage would have to meet the two square-foot limit and be located where it would not interfere with sight distance, in relation to ingress/egress.

Chairman Stout asked whether it would be beneficial to continue this case for one month in order to (further) clarify the type of signage that would meet the church's needs. Pastor Wilcoxson responded that since he had gotten clarification regarding incidental signs, as well as the requirements that are to be met, he felt this may satisfy what they needed to know from the Board in order to proceed. Therefore, he said he wasn't sure if this matter would need to come back to the Board or not.

A brief discussion between the Chairman and counsel (as to the Board's action) followed. Ms. Boland opined that the Board had the staff report and the regulation before them; and it was the staff's recommendation that the Board did not have the authority to grant what the appellant was requesting. She said if the appellant followed the staff's (alternative) recommendation, it sounded as if no Board action would then be required. She further stated that the Board could either make a decision now, or do whatever they chose to do with the appeal.

Chairman Stout asked for comment from the Board. Mr. Glover responded that he liked the idea of a postponement, noting that the questions he had were along the same lines as those Rev. Wilcoxson asked the staff earlier. He said he hoped the signage issue could be worked out informally with the staff in the meantime.

Mr. Stumbo asked for clarification from counsel, as to whether this would be a postponement or a continuance. Ms. Boland responded that evidence had been presented as well as testimony in opposition that would need to remain part of the record; and that the technical term is a continuance. Mr. Stumbo concurred with Mr. Glover's suggestion to have Pastor Wilcoxson meet with the staff to try to resolve this issue, since the Board was not authorized to increase the number of permitted signs on the property or approve the request for directional signage, which is not permitted in the R-1C zone. Therefore, he was in favor of a continuance.

In response to the Chairman, Pastor Wilcoxson indicated that he was in agreement with having the case continued for one month. Chairman Stout reiterated the need to meet with the staff during the interim.

Action – A motion was made by Mr. Glover, seconded by Ms. Meyer, and carried unanimously for a continuance of **A-2011-80: CRESTWOOD CHRISTIAN CHURCH** for one month.

2. **A-2011-81: GREG KUJAWSKI** - appeals for an administrative review to determine that dispatch and vehicle use associated with a taxi business is permitted in a Professional Office (P-1) zone, on property located at 1084 Wellington Way. (Council District 10)

The Staff Recommends: Approval, for the following reasons:

- a. Taxis are not stored on site at this location, but rather use the parking lot for accessory purposes only, which is the intent of allowing accessory parking for office uses in a P-1 zone. Recent observation of taxi parking on the subject property indicate a maximum of six vehicles on site at any one time, which is consistent with limitations required by the Board in a similar instance in 1988.
- b. Taxis are not leased on site at this particular location, as the actual leasing activity (retaining the services of the taxi) takes place where the customer and the taxi meet, contrary to on-site leasing that takes place at a car rental business, which is clearly prohibited in a P-1 zone.
- c. The dispatching of taxis is done from this business office via a computerized system that directs information to taxis that are not stored on site but are distributed throughout Lexington-Fayette County.

Representation – Mr. Greg Kujawski, an attorney and co-owner of Mr. Taxi, was present. He briefly explained the reason for filing an application for an administrative appeal, citing Building Inspection's determination that the operation of a taxi business is akin to storage and leasing of vehicles, which is not permitted in the P-1 zone.

In view of the staff's recommendation of approval, Chairman Stout asked to hear comments from the

opposition first.

Mr. Don Todd, attorney, was present representing the opposition in this case. He stated that he indicated to his clients that since the Boone Creek issue would take several hours to be heard, it would not be necessary for them to arrive until around 2:00 p.m. He said he anticipated that this case would be at the end of the meeting, as the agenda indicated, rather than at this point.

Chairman Stout announced that he would grant the requested delay and hear this case subsequent to the disposition of the Boone Creek conditional use appeal, because he wanted to give everyone an opportunity to voice their concerns.

(Following disposition of C-2011-70: BOONE CREEK ADVENTURES, LLC, the Board, with four remaining members, returned to this case.)

Opposition - Mr. Todd said he represented the Wellington Place Council of (business) owners, who are opposed to Mr. Kujawski's operation of a taxi business on the subject property. He stated that this is a P-1 zone, where the applicant has opened not only a law office, which is appropriate there, but three or four taxi companies. Mr. Todd said the applicant indicated that he only wants to use this site for a dispatch center; however, evidence and testimony would show that it was being used as a storage lot for the taxis, which photos taken over a six-week time period clearly illustrate. Further, it appeared that several of the taxi cab operators were leaving their personal vehicles parked on the premises while they were on duty. He said the staff recommended approval based on the applicant's statement that it was his intent to utilize the site for a very short time in order for the cab drivers to drop off paperwork, etc.; but the evidence provided would show otherwise. He also stated that, in the staff's assessment, this use/activity is very much akin to a real estate office; however, Mr. Todd argued that this is a transportation or fleet service business, which doesn't belong in a P-1 zone, but rather a B-1 or B-2 zone. In addition, he said it was the position of the council of co-owners that not only has this use violated the intent of the P-1 zone; but it has created an unfair competition advantage for Mr. Taxi and the three other cab companies operated by the applicant. Mr. Todd asked that, at the conclusion of this case, the Board determines that the P-1 zone is not appropriate for the operation of a taxi cab business.

Chairman Stout asked for comment from Building Inspection. Mr. Hume stated that they received a complaint from the Wellington Place Council regarding the taxi cab operation, which brought this issue to the Board. He said they have had a history of considering these type businesses as vehicle storage, citing the reference in the staff report to a similar 1988 case involving Bell South, who wanted to keep their service vehicles in this type of setting. However, it was determined by Building Inspection that this also was an inappropriate vehicle storage use. He said it was the fleet of cars they are concerned with, as well as storage, which they look at as a B-3 use; and they have held historically to that opinion.

Ms. Mary Reed, owner of the unit at 1074 Wellington Place and secretary of the Council of Co-Owners for Wellington Place, was present. After an exhibits notebook was distributed to the Board, she read, for the record, a letter addressing the serious misrepresentations made by the applicant. She said there had been between 6 and 10 cabs on the premises since the business opened in mid-October; and that several vehicles are left in the parking lot for several days at a time. She indicated that time-dated photos were taken from October 17 through December 12; and the photos clearly prove that Mr. Kujawski's claim that the cabs are only in the lot for 10 minutes or less, one day a week is not true. She said, with respect to Mr. Kujawski's cab operation in two P-1 zones previously, that he obviously disregarded the P-1 zoning restrictions; and his contention that he had no complaints from the business owners at those two previous locations was less than accurate, and was not in compliance with the P-1 zoning. She further stated that Mr. Kujawski's reference to the building's orientation toward other commercial business uses (i.e., Shell gas station, Valvoline Instant Oil Change, Fazoli's and McDonalds) was inaccurate, since it faces Wellington Way; and the (B-1) business uses noted are part of Palomar Centre, with an address on Palomar Centre Drive. She said a residential neighborhood called Palomar Trace faces the office complex where they are located, a photo of which was shown on the front of the exhibits notebook. She said the only relevance these businesses have to this appeal is to point out that they are all properly located in commercial zones; and according to the Building Inspector, Mr. Taxi is not properly located in a P-1 zone.

Ms. Reed disputed that Mr. Kujawski had gotten approval from the Association President prior to locating the taxi business at Wellington Place, citing an affidavit from Bruce Stith, attorney and Association

President, stating the contrary. She referenced a petition signed by condo owners at Wellington Place in opposition to the cab business monopolizing the parking lot and noted numerous customer complaints to her about the parking situation. She stated that the consensus of the owners was that this is not a business that falls within the P-1 zoning or the deed restrictions and covenants; and that the complex currently includes professional businesses, such as insurance agencies, a CPA firm, a realtor, licensed clinical social workers, psychiatrists, financial planning firms and law offices, all of which have clients and need available parking. She noted concern about the potential loss of tenants due to this situation, as well as the wear and tear on the parking lot by the additional vehicles and maintaining the professional appearance of the office complex. In closing, she said if this appeal is approved, it will open the door for other cab companies to locate in P-1 zones. She asked the Board to support Building Inspection's determination and deny this appeal.

Mr. Todd submitted proposed findings of fact, a copy of the administrative appeal application and the refusal issued by Building Inspection.

Mr. Paul Fister, condo owner at Wellington Place and homeowner in the Harrods View neighborhood, was present. He referenced and read a letter (included in the notebook) from Mr. Craig Mackin, one of the owners of the Yellow Cab service, in which he voiced concern about the unfair competitive advantage for them in having Mr. Taxi or any competitor located in a P-1 zone. It was noted that his cab company is appropriately located in the I-1 zone, which is more suited to the intensity of this use.

Mr. Fister also referenced a 26-page document containing the deed and consideration certificate, along with a title opinion and relevant restrictions for the property he owns at 1062 Wellington Way. He said when he bought this unit in 1964, he promised to abide by all of the restrictions, as did every other owner buying into this office complex; and that he was assured by his attorney when he acquired the property that compliance with these restrictions by every owner was mandatory in order to protect the property values and the integrity of the complex as a Professional (P-1) space. Mr. Fister referred to the covenants and restrictions applicable to 1062-1088 Wellington Way, with respect to the section pertinent to the use of the office units only as allowed in the Professional Office (P-1) zone and in accordance the Ordinances of the Lexington-Fayette Urban County Government. He said the taxi business clearly is in violation of this zoning, as well as the restrictions they bought into when the subject property was acquired. He further stated that the entire business model of a taxi cab fleet service business is well outside the P-1 zoning; and that 12 out of 14 owners in the complex have agreed the cab business is not in accordance with the covenants and restrictions they must abide by. He opined that the cab business model is not conducive for the P-1 space; and documentation has confirmed that this is a highly intensive, very dangerous high-traffic use/activity. In closing, he read a letter from his tenant (included in the notebook) that expressed concern regarding the parking situation as the result of the taxi business operation. Mr. Fister urged the Board to uphold Building Inspection's decision and disapprove this appeal.

Mr. Tom Biederman, real estate broker, 1065 Wellington Way, was present to voice his objection to the Mr. Taxi cab operation, in concurrence with the previous speakers' comments. He also noted the impact of this use on the property values of the homes directly across the street.

Mr. Douglas Ruth, 1082 Wellington Way, was present. He spoke about the criteria he used in finding this location for his psychiatric practice (i.e., quiet setting, low traffic volume, ample parking, etc.), as well as the need for convenient parking close to his office for patients being treated for back and orthopedic problems. Two aerial photos of the subject property were shown to illustrate the impact of the parked taxi cabs prior to and after the Mr. Taxi business started operating there. Two other photos were shown of the residential properties across the street from the Mr. Taxi location in relation to the tree buffered area between the subject property and the business uses referenced in Mr. Kujawski's application.

Ms. Jill Riccardo, 1078 Wellington Way, was present. She referred to a letter from her tenant who is a licensed psychological practitioner, as well as her own letter (included in the notebook) commenting about the parking situation since Mr. Taxi has been on the premises. She spoke about the number of taxi cabs parked overnight on the premises.

Mr. Todd referred to the aerial photo of the property showing the office complex parking area with 81 spaces. He said the applicant is using the parking lot as a storage facility for the cabs, which is not appropriate in the P-1 zone; and they were asking the Board to deny the usage of the parking lot for storage purposes. In response to Mr. Griggs' inquiry, he explained about the cab drivers' personal

vehicles being left in the parking lot while the cabs are dispatched to a pick-up destination; and that some of those cars are parked in the same spot and never move. He submitted that the drivers of the taxi cabs are using the parking area as a storage lot for their vehicles while they are on the job. He noted that there are four companies operated by the applicant (e.g., Mr. Taxi, Airport Taxi, Campus Cabs, etc.) from this location. There was a brief discussion regarding how to address the problem of identifying the cab drivers' personal vehicles, since the cabs were distinguishable.

Mr. Fister made further comment about the intensity of the taxi business use, which is not conducive to a P-1 zone.

Appellant's Presentation – Mr. Greg Kujawski initially explained the operation of the communication center for Mr. Taxi. He said there is no radio equipment there; and that everything is done by the dispatcher who answers the phone and does a data entry (customer's information) into a computer. He said there are no drivers that stay at the office looking to pick up a fare; instead, they are out in Fayette County and keep their vehicles 24 hours, 7 days a week. He said he was unaware of any driver that leaves a vehicle in the lot. With regard to the photos that were taken by the opposition, he acknowledged that the cab drivers do come to the office once a week for a short period of time to drop off paperwork, etc.; and that he does park his personal vehicle, which has the Mr. Taxi logo on it, in front of his office.

Chairman Stout commented about the number of (date/time-stamped) photos that were taken by the opposition to illustrate the fleet of Mr. Taxi cabs in the parking lot of the office complex. He said there seems to be an issue that needs to be addressed. Mr. Kujawski responded that those photos were taken when the cab business initially relocated there in early October, which some tenants were made aware of. He said the daily staff at Mr. Taxi consists of four people, including himself, with four vehicles. Mr. Kujawski noted having an off-site storage facility where the cabs are kept. In response to the letter of concern from the owner of the Yellow Cab company, he explained the difference between the two taxi operations. He said Yellow Cab does all the repairs to their vehicles on site, but Mr. Taxi does not; and that wrecked or junk vehicles can be seen on the Yellow Cab site, but not at the Mr. Taxi office site. He also reiterated about how their communication center works, in response to a customer's call; and that their cab drivers are independent contractors who are located all over Fayette County, and the dispatcher would contact the driver closest to the fare.

Ms. Michelle Sjogren, co-owner of Mr. Taxi, was present. She responded to the Chairman's inquiry as to why there were a large number of cabs on site at one time. She said the drivers come in to bring their paperwork and make payment drops on Mondays and Tuesdays; and if the photos under discussion were taken on those days, there would be a large number of cars present. She said she and her husband spoke with the president of the association, who at the time was Mr. Krogel (which the opposition denied), to seek permission to park the cabs on the exterior of the parking lot; and that they were under the impression that Mr. Krogel had the authority to grant their request. She said, at the time they had the discussion with Mr. Krogel with respect to getting permission and prior to moving to the premises, he was made aware of the fact that the cab drivers would be coming into the office for two days for a short duration (10 to 15 minutes) to conduct their business-related activities. She emphasized that the cabs are not there on an every day, long-term basis.

Chairman Stout asked if they were telling the Board that the testimony from the business and medical professionals in the complex regarding the large number of cabs interfering with the on-site parking was incorrect. Ms. Sjogren responded that she could not answer to what they were saying; but the cab drivers specifically have been told not to park in the spaces that are directly in front of any other owners' businesses, but as far to the exterior of the parking lot as possible. However, she acknowledged that there may have been one or two exceptions where someone did not get the word.

Chairman Stout then asked if there were any cabs parked there right now. Ms. Sjogren said she believed there was only one vehicle parked there now. Mr. Kujawski concurred.

Continuing, Ms. Sjogren reiterated that they have off-site storage for the cars, including those that are not operational; and they do keep an extra cab on site in the event that there is a problem with the driver's regularly used vehicle. However, she said the spare vehicle could be removed from the premises if the Board desired. She responded to the statement that their vehicles are being rotated in/around the parking lot, saying these are not the same cars and they are not there all the time. Mr. Kujawski referenced the staff report in which it was indicated that a maximum of six vehicles were observed on site at any one time,

but they were not there for an extended period of time.

Ms. Meyer asked what the hours are for taking payments from the drivers. Mr. Kujawski responded that payments are taken from 9:00 a.m. to 4:00 p.m. on Monday and Tuesday.

In view of the staff's recommendation of approval, Chairman Stout asked for comment about the concern that was expressed regarding Mr. Taxi vehicles being parked in front of other businesses in the complex. Mr. Marx responded that the staff made an effort to verify the information provided on the application regarding the number of vehicles that would be on site. He said they visited the site several times, not knowing what they would find. He provided the following information: on December 1st, they visited the site at 5:15 p.m. and there were 3 taxis parked in the northeast corner (farthest removed portion) of the parking lot and one vehicle parked in front of the Mr. Taxi suite; on December 2nd, they visited the site at 3:45 p.m. and there were a total of 6 taxis, but 3 left about 15 minutes later; on December 5th, they visited the site at 7:30 p.m. and there were 2 taxis in the northeast corner of the parking lot; and on December 8th, there were 3 taxis observed in the northeast corner of the parking lot.

Mr. Stumbo asked Mr. Hume about the complaints Building Inspection received regarding this situation. Mr. Hume responded that most of the complaints had come from Ms. Reed, the contact person for the business/medical professionals in the office complex. He said their objection is not for the taxis to be dispatched from the office; and that no one would know that this business was being operated there if the taxis were not coming to the building. He stated that, based on other historical decisions by Building Inspection in similar cases, this is considered illegal storage of vehicles and leasing of vehicles, which is best suited in a B-3 zone. He said the storage of vehicles starts in the I-1 zone, which is where the applicant's competitor is located. He reiterated that the issue is not the business practice itself, but rather the vehicles coming onto the lot.

Mr. Stumbo commented about the numerous vehicles that were observed and the association's strong objection to having the taxis on the premises. He said there are several taxis on the lot, and it wasn't just on Monday and Tuesday. He hoped there could be a resolution to this problem.

Mr. Kujawski briefly commented about their effort to get in contact with Ms. Reed after finding out that she was upset about the taxis being parked on the premises; and that they did inform who they thought was the association president about the large number of vehicles that initially would be on the premises when the taxi business started.

Ms. Sjogren made further comment about trying to work things out with Ms. Reed regarding the issue at hand. She stated that if the Board says they cannot store cars there, it would not be problem because they really didn't store cars there anyway; however, they did want to be allowed to have the drivers come and make payments at the office there.

Mr. Hume noted another instance where AAA wanted to store their wreckers in a P-1 zone; and that Building Inspection made the same determination as in this case – the storage of vehicles is not conducive to the P-1 zone. He reiterated that Building Inspection has had a history of making this decision.

Ms. Boland stated that, in looking at a few other cases where this (issue) came up, there have been a variety of decisions by the Board. She said there have been times when the Board held that having some vehicles on a lot is a reasonable business use, rather than storage. She said she wanted to make sure that the Board was basing its decision on a case-by-case basis. Further, she concurred that Building Inspection has been consistent in its decision with regard to sending these cases to the Board; however, she didn't want the Board to get the impression that there are precedents that would keep them from making an individual decision.

There was a discussion between Ms. Meyer and Ms. Sjogren regarding the photos showing a number of Mr. Taxi vehicles at various times of the day instead of 9:00 a.m. to 4:00 p.m. on Monday and Tuesday, when the drivers dropped off their payments. Mr. Kujawski made further comment regarding the days and times that the photos in question were taken.

Mr. Kujawski commented that there was no way to know if the camera was right when the photo was time/date stamped. He acknowledged that photos were being taken by the opposition on the day the drivers were dropping off their payments and/or paperwork.

Chairman Stout related his feeling that there had not been strong communication between the involved parties regarding this situation.

Mr. Griggs asked how long Mr. Kujawski had owned the taxi business, to which he responded three years. Mr. Griggs then asked about the zoning where the business was located previously. Mr. Kujawski replied that the previous location on Monarch Street was zoned P-1, as well as the Harrodsburg Road location. He said they operated at these two locations for 1½ years and a little over a year, respectively, with no complaints. Ms. Sjogren explained the reason(s) for relocating, citing the need for a larger office space for their operation. Mr. Kujawski subsequently noted that Discount Cab, also located on Wellington Way, is in the P-1 zone.

Ms. Reed spoke in order to clarify that she had not met nor spoken with Ms. Sjogren until today; and that Jerry Krogel, to her knowledge, had never been president of the association, but rather the treasurer at one time. She said one owner/member of the association did not have the ultimate authority to give this. Further, she wanted to point out, with regard to the photos in the notebook, that the vehicles were parked on the premises all day long and even into the next day.

Rebuttal - Mr. Todd stated that the applicant has 50 or 60 cabs in his fleet; and it was indicated that they have a storage facility off site, in which case they wouldn't need to store vehicles on the premises. He said a "cease and desist" order was issued by Building Inspection, subsequent to which they continued to park cars in the lot. He also said there were problems related to the two previous locations where Mr. Taxi had operated. He opined that this use/activity would be an on-going problem; and that they would continue to have an unfair advantage over their competitors (because they have access to the airport, residential areas and a cheaper location). He noted the strong opposition from the other condo owners/tenants in the complex.

Mr. Kujawski argued that there would be one to three vehicles on the premises at any one time, which photos, if taken more recently than the opposition's, would illustrate. He said the cabs are repaired at either Powers Transmission or S & S Tire, both of which have storage facilities on the premises where their damaged or non-operational vehicles and those not in use are kept. He said the statement about the P-1 zone being cheaper than the I-1, where his competitor is located, is incorrect.

In response to Mr. Griggs' inquiry about the photo showing more than three vehicles, Mr. Kujawski clarified that it does not include the vehicles that are only there for 10 to 15 minutes or coming and going. Mr. Griggs felt that this situation was not working, regardless of the minimal number of vehicles; and that there would have to be some changes.

For clarification, Ms. Sjogren commented further about the photo Mr. Griggs referenced. She said they were willing to do what the Board asked and wanted to be a good neighbor. However, she noted that they did want to be allowed to have the drivers come into the office to conduct business.

Chairman Stout commented that he thought this issue of concern could probably have been addressed when the taxi business first moved to this office location, with the proper communication.

Action – A motion was made by Mr. Griggs, seconded by Mr. Stumbo, and carried unanimously (Glover, White, Moore absent) to approve **A-2011-81: GREG KUJAWSKI** (an administrative review to determine that dispatch and vehicle use associated with a taxi business is permitted in a Professional Office [P-1] zone on property located at 1084 Wellington Way) for the following reasons:

FINDINGS OF FACT

1. Any storage of cabs is prohibited in the Professional Office (P-1) zone.
2. The dispatch and accounting functions of this office are appropriate for the P-1 zone, but storing any of the fleet of taxis on this site is in violation of the Zoning Ordinance.
3. In accordance with Mr. Taxi's submitted documentation, no more than three taxis shall be parked on the property at any one time, each for no more than one hour. Any more intense use by taxis shall be considered too intense for this location in a P-1 zone, showing more characteristic of storage.
4. Mr. Taxi shall identify any vehicle in use by employees working in the office to Building Inspection

and those shall not be counted toward the maximum of three vehicles.

5. Building Inspection shall report back to the Board of Adjustment in June (6 months).

Mr. Griggs added that the Board would want a report to show if there are any complaints and whether these conditions are not being met.

A brief discussion followed.

- IV. **BOARD ITEMS** - The Chairman announced that any items a Board member wishes to present will be heard at this time.
- V. **STAFF ITEMS** - The Chairman announced that any items a Staff member wishes to present will be heard at this time.
 - A. House Bill 55 Training Opportunity - There will be an APA audio conference on Wednesday, January 18, 2012, lasting from 4:00 till 5:30 p.m., in the Division of Planning conference room, 7th floor of the LFUCG Phoenix Building. The title of this conference is "Resilient Planning Agencies" and will count toward 1.5 hours of House Bill 55 training credit for Board of Adjustment/Planning Commission members and Staff.
 - B. The Staff wished the Board members and their families a happy and safe Christmas and New Year holiday.
- VI. **NEXT MEETING DATE** - The Chairman announced that the next meeting date will be January 27, 2012.
- VII. **ADJOURNMENT** – Since there was no further business, the Chairman declared the meeting adjourned at 7:10 p.m.

Louis Stout, Chair

James G. Griggs, Jr., Secretary