

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

December 12, 2014

- I. **ATTENDANCE** – The Chair called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, December 12, 2014. Members present were Chairman, Barry Stumbo; Kathryn Moore; James Griggs; Janice Meyer Joan Whitman; Larry Forester and Thomas Glover. Others present were: Casey Kaucher, Division of Traffic Engineering; Chuck Saylor, Division of Engineering; Jim Marx, Zoning Enforcement; and Tracy Jones Department of Law. Staff members in attendance were: Bill Sallee, Jimmy Emmons, and Tammye McMullen.

- II. **APPROVAL OF MINUTES** - The Chair announced that the minutes of the November 21, 2014 meeting would be considered at this time.

Action – A motion was made by Ms. Whitman, seconded by Ms. Meyer, and carried unanimously to **approve** the minutes of the November 21, 2014 meeting.

III. **PUBLIC HEARING ON ZONING APPEALS**

Swearing of Witnesses – Prior to sounding the agenda, the Chair asked all those persons present who would be speaking or offering testimony to stand, raise their right hand and be sworn. The oath was administered at this time to several in the audience.

- A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chair sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chair announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

- a. **V-2014-76: NSENGA TSHIUNZA** - appeals for a variance to reduce the required side yard from 3 feet to 0 feet in order to install a fence in a Planned Neighborhood Residential (R-3) zone, at 766 Maple Avenue (Council District 1).

*Note: During the detailed review of case number **V-2014-76: NSENGA TSHIUNZA**, it was found that this application did not need a variance. A Zoning Compliance Permit has been issued, and the case was withdrawn by the applicant on December 5th via email.*

- b. **C-2014-73: CLUB FACILITIES DBA THE SIGNATURE CLUB** was withdrawn by the applicant on 11/25/14, via email, prior to the legal advertisement being published, and was not added to the agenda.

- c. **C-2014-75: REMNANT COMMUNITY CHURCH** - appeals for a conditional use permit to establish a church in a Wholesale and Warehouse Business (B-4) zone, at 1125 Commercial Drive (Council District 5).

The Staff Recommends: Postponement, for the following reasons:

1. Additional time is needed for the applicant to address concerns related to the availability of off-street parking for the requested conditional use.
2. Verification is needed about the anticipated number of seats that will be in the main sanctuary, the proposed use of the entire floor area of the building, and details concerning the applicant's off-site parking agreements.
3. The applicant should meet with Traffic Engineering to address concerns about the design of the parking spaces proposed on the subject property.
4. The applicant should either amend the site plan to provide the required landscaping or seek a variance to the landscaping requirements.

Representative – Mr. Josh Brown, representing Remnant Community Church, said that they would like to postpone this application until the Board's January 30, 2015 meeting.

Action – A motion was made by Mr. Griggs, seconded by Ms. Whitman and carried unanimously to **postpone C-2014-75: REMNANT COMMUNITY CHURCH** until the January 30, 2015 meeting.

2. **No Discussion Items** - The Chair asked if there were 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.

- B. **Transcript or Witnesses** - The Chair 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.

There were none.

- D. **Conditional Use Appeals**
(Sounded Items)

1. **C-2014-72: BLUE GRASS CHRISTIAN CAMP** – appeals for a conditional use permit to extend existing zip line/ropes from Clark County to Fayette County in the Agricultural Rural (A-R) zone, at 7463 Athens- Boonesboro Road (Council District 12).

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

- a. Granting the requested conditional use for a minor expansion of the existing campground by adding an accessory zip line and ropes course should not adversely affect the subject or surrounding properties, as this campground has occupied this property for approximately 65 years. The new facility will be placed in an area that is predominantly surrounded by trees and the nearest residential use will be well protected from the proposed expansion by distance, topography and heavy vegetation.
- b. All necessary public facilities and services are available and adequate for the camp and will not need to be expanded to accommodate the requested use.

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

1. The property shall be developed in accordance with the approved site plan and application.
2. All applicable permits, including a Zoning Compliance Permit and Certificate of Occupancy, shall be obtained by the applicant from the Divisions of Planning and Building Inspection, prior to construction of the zip line or ropes course.
3. The appellant shall provide documentation of a) an inspection of the expanded zip line trail following its construction, and b) the training provided to its staff (on an on-going and annual basis) to the Zoning Enforcement section of the LFUCG Division of Planning.
4. The recreational facilities, including zip lines, shall be only for the use of sponsored church camp activities and will not be offered to the general public as a recreational amusement.

Representation – Mr. Michael Fann, Director of Bluegrass Christian Camp, was present. He indicated that he had reviewed the recommended conditions and agreed to abide by them.

Staff Comment – Mr. Emmons stated that the staff had received one letter of support, and he distributed that item to the Board.

Citizen Comments – There were no citizens present to comment on this request.

Board Questions – Ms. Meyer said that she would like an explanation as to what the applicant planned to do, and why they wanted to expand this activity across the creek. Mr. Fann responded that they had been operating as a camp since 1949; and in 1999 (before he was involved in the camp), they added the high adventure course, where they do team training and leadership training; mainly with children, but also for high school students, and a few adult groups; and it has been successful. He said there was just a need to add a few more facilities, and all the rest of their equipment is on the Clark County side. The most natural place to put it is on the Fayette County side. Ms. Meyer then

asked if there was any way to expand it on the Clark County side without coming into Fayette County. Mr. Fann replied not in how they would like to operate it.

Mr. Griggs asked Mr. Fann if he lived at the camp. Mr. Fann responded affirmatively. Mr. Griggs then asked if there are other people who live at the camp year round. Mr. Fann said that they have three staff people that live there year round. Mr. Griggs asked if any of them live on the Fayette County side. Mr. Fann replied that two of the families do. Mr. Griggs asked if Mr. Fann lived on the Fayette County side. Mr. Fann said he does. Mr. Griggs asked if Mr. Fann lived in one of the dormitory buildings. Mr. Fann stated that he lives in a house right next to the dorms.

Mr. Griggs asked if the Bluegrass Christian Camp is a church, and who owns it. Mr. Fann responded that it is not a church; it is a non-profit organization, and it is owned by a few Board members of the Bluegrass Christian Camp. Mr. Griggs then asked if it was a non-profit, Kentucky cooperation. Mr. Fann responded affirmatively.

Mr. Griggs then asked Mr. Fann to describe what goes on at the Bluegrass Christian Camp during an ordinary year; the number of special events; number of participants; and the hours of operation (season by season). Mr. Fann replied that the busiest part of their year is primarily the summer - they are primarily a summer camp. They operate primarily for about 8 weeks in the summer, and will have anywhere from 100-200 people in attendance (sometimes it is children, and sometimes it is special needs adults/teenagers), and that is the majority of their work in the summer. During the school year, they have school groups that come out from Fayette County schools and other schools who do team building and hold different types of retreats. They also host weekend retreats (mostly in the spring and fall, and a few in the winter) at either the Fayette County dorms or the Clark County retreat center.

Mr. Griggs stated that there has been quite a bit of expansion of the camp into Clark County, and asked if they had a large recreational building there. Mr. Fann replied that they have two large buildings. Mr. Griggs asked if one contained a basketball court. Mr. Fann responded affirmatively.

Mr. Griggs asked if Mr. Fann had a drawing of the zipline structure and the platform, and any rope course that is going to be on the Fayette County side. Mr. Fann then said that they had submitted a map of this plan. Mr. Glover then stated that he did not get a chance to go out to the subject site to see what was actually going on with this case, and asked if the map could be presented on the overhead, which it was.

Mr. Griggs stated that when he went to the site (on the Clark County side) and met, with Mr. Fann, Mr. Fann identified where the recreational facility for the rope course was, and then pointed out another building that was a motel. Mr. Griggs asked Mr. Fann to tell him more about the motel. Mr. Fann replied that the motel is probably not the best word for that use. He said that the building is a 13- room (they call it a) retreat center, each room having two beds and a bathroom, and they use it mainly for adult retreats. Mr. Griggs said that he looked into each window, and each room had two bunk beds that sleep four, and the other rooms had two queen beds. Mr. Fann confirmed that this was so, and said that each room sleeps four.

Mr. Griggs then stated that there appears to be a lot of emphasis on growth, noting that they are putting up some buildings and hoping to grow and that the zipline was hoping to attract more people because it is the "hot thing". Mr. Fann said that one could say that, but the two buildings were built in the 1990s, so it is not a recent expansion; and they have had a zipline on their property since 1999. Mr. Griggs asked if the zipline that is currently on the property would connect to the one that they are proposing. Mr. Fann replied that the zipline that they currently have is part of a high adventure course; the advantage of having the new one in Fayette County is that one would not need to climb up a telephone pole and be harnessed in; but instead, could just walk out onto a small platform, allowing more people to be able to do it. He said that they were only trying to expand what they already offer to the people who are already participating in their camp.

Mr. Griggs asked, regarding safety, if the ziplines would be constructed under some standard defined by the State, if the inspectors will be certified by the State, and how they plan to keep it safe. Mr. Fann responded that the course is inspected annually by an outside inspector; it is dictated by ACCT standards (the strictest standards in the nation).

Ms. Meyer then questioned whether this was a one-season camp, held essentially in the summer. Mr. Fann said that the primary season is summer, but they do host retreat groups on the weekends during the school year; and they also have a small number of school groups who come out during the school day. Ms. Meyer asked if that meant they operate in spring and fall also. Mr. Fann responded affirmatively.

Mr. Griggs then asked about the summer event that is held that has "teaser" signs along Athens-Boonesboro Road. He said that he has been on this road when this event is going on, and it is a huge event with traffic backing up almost across the creek. He asked what that was about. Mr. Fann replied that that is their summer camp (7/11 Camp), and he apologized for the traffic backups.

Chairman Stumbo mentioned that there have been several zipline requests before the Board in the past, but that this one is for an entirely different use; it is an accessory part of what they are already doing, and then asked for confirmation. Mr. Fann confirmed that this is correct. He said that they had intended to build it three years ago; but with what all was going on during that time, they chose to wait to submit their application for this request.

Mr. Glover stated that since he did not get a chance to go to the site, he would like to ask someone (staff or applicant) to identify where the county line was. Mr. Fann pointed out on the map that the county line is actually along the creek.

Mr. Griggs stated that with the subject property being zoned A-R; the principal permitted uses are agricultural and residential. The staff report said that the primary use of the property is for a church-sponsored youth camp, and the recreational uses are accessory to it. He asked if the camp was currently operating under a conditional use permit; or if it is a legal nonconforming use; and if it is a legal nonconforming use, if it can be expanded. Mr. Emmons replied that he could not find in any of his research that this camp had ever been before the Board; and it appeared that in the long history of this camp, which originated in 1949, all the original structures, and the use of the property were there prior to zoning. This appears to be the first time that they have actually asked for an expansion on the Fayette County portion of the property since this use became a conditional use. Mr. Emmons said, with regard to the second half of the question, as to whether it was a legal nonconforming use -conditional uses that are allowed are not considered nonconforming uses, under Article 4 of the Zoning Ordinance, but do require BOA action to expand.

Mr. Griggs asked if the zipline would need a variance because of its proximity to the front and side yard setback requirements. Mr. Emmons responded that staff did not address that in the staff report. The staff determined that the platform is a structure, by definition, in the Zoning Ordinance; but because it is not a building, it does not have to comply with either the A-R front yard or the side yard setbacks. As a structure, according to the Zoning Ordinance definition of a structure, it is subject to the height limitations of the A-R zone (the A-R zone has a 35-foot height maximum requirement), and the applicant had presented information that the structure would be only about 3 feet off the ground. Mr. Griggs asked whether the height of the pole structure would be the measurement that would be of interest. Mr. Emmons replied that it would be measured from the ground up to the top of the pole, but he did not believe that the pole that is holding the wire would be above 35 feet.

Mr. Griggs then asked if this platform needed to meet the front yard requirements. He stated that if someone wanted to put a fence in their front yard, that is not a structure, but they cannot put it in a front yard. Mr. Sallee replied that a fence is a structure under the Zoning Ordinance definition, but there are different regulations for fences than there are for buildings.

Mr. Griggs asked if staff and the Board were comfortable with the fact that the cable that is coming off the structure will be far above 35 feet as it travels across the Fayette County portion of the camp. He asked if it would be above 35 feet in the side yard where it goes into Clark County, not looking at the cable height. Mr. Sallee confirmed that was correct. Mr. Griggs then asked for an explanation of the square footage maximum requirements for buildings on a 10- acre site; and if there is a 10,000 square-foot limit or a 10,000 square-foot plus 10,000 more allowed. Mr. Sallee responded that the Board has generally interpreted this provision of the Ordinance; for many conditional uses in the A-R zone, there is a limitation of 10,000 additional square feet allowable for all structures associated with those uses. This is a provision that came in the ordinance in the mid 1990s; and how the Board has consistently interpreted this section, is that any use that was in existence as of that time is allowed up to an additional 10,000 square feet of building floor area for that use, when a conditional use. Mr. Griggs then asked if that puts a 20,000 square-foot upper limit on it, or could they have the 40,000 square feet they have now and still build another 10,000 on it. Mr. Sallee said that the Board has interpreted this as whatever square footage they had as of the mid 1990's, they would be permitted to at least request up to an additional 10,000 square feet over that amount. Mr. Griggs then asked if the minuscule platform should be ignored. Mr. Sallee responded that it should not necessarily be ignored, but clearly it wouldn't approach the 10,000 square- footage ceiling that the use would presumably have.

Mr. Griggs said that he was questioning the intensity of the use in describing some of the facilities they've added on the Clark County side, and of course the Fayette County side is "filled". He said in residential and rural areas, conditions are usually added to soften intense uses by limiting hours of operation, number of events, number of participants, etc.; and he was wondering if adding the zipline is like advertising for more people. He asked if the Board would need to think about limiting their future growth. He then said, with regard to safety, that condition #3 is pretty "loose". He was wondering if a standard should be set, that is defined by state statutes, that inspectors be certified by the state or some nationally recognized body; or if the Board should require evidence of liability insurance in case someone gets hurt on the Fayette County side. Mr. Sallee said that the intent of the 3rd recommended condition was along the line of having ACCT inspections on an annual basis, and the inspection reports being made available for review by the Zoning Enforcement staff. He said the Board has the ability to change that recommendation and to impose limits on the camp's hours of operation. The staff did not envision this part of the camp being used other than during the daylight hours.

Mr. Griggs mentioned the fire station that was nearby, and that it would respond if there was an accident on the Fayette County side. He then said if there were an accident on the Clark County side of the zipline, it would be hard to determine whose fault it is; but there may not be a way to get a Clark County ambulance there in a hurry. This would be something to think about. Mr. Saltee replied that the Board has recently learned in other cases that, along the county boundaries, especially with cell phones, the emergency calls are routed between the two counties.

Mr. Griggs said that, while speaking of conditions that might be placed on this property, if the property is sold, the conditional use should end. Mr. Saltee said that he believed that the only aspect of the camp before the Board is the platform and the zipline, and wasn't sure that a such condition on the operation of the rest of the camp is subject to a conditional like that being added by the Board. Mr. Griggs clarified that his suggestion wasn't that they eliminate their condition use, but that the zipline wouldn't be passed along to another property buyer.

Mr. Griggs then discussed a dumpster that was relocated after flooding a couple of years ago, and suggested that the dumpster location be moved out of the floodplain. Mr. Fann responded that they looked into moving it; there is a concrete platform that exists there, and they have been thinking of submitting a request to turn that into a greenspace. He agreed that that was a good idea.

Mr. Griggs then said that his other thought was in regard to the recreational ZOTA, which is in draft form; however, it is recommending that ziplines be prohibited in the A-R zone. He said that it seems like a strong recommendation that should be taken into consideration. Mr. Griggs said that in the Boone Creek Adventures application that was turned down a couple of years prior, one of the findings by the Board of Adjustment (along with many others), was that the zipline was not mentioned as an allowable use in the Zoning Ordinance, and that the activity of a zipline resembles most closely an amusement ride, which is prohibited in the A-R zone. He said that this was still a good argument and a precedent as well.

Chairman Stumbo then asked if Mr. Marx would like to comment on the question of adding a condition regarding the inspections mentioned by Mr. Griggs. Mr. Marx said that he thought things were fine the way the conditions were worded.

Chairman Stumbo stated that he was not in favor of adding a number of conditions to this application; however, his biggest question was to know how this zipline request was different from the prior application for a zipline by Boone Creek. Mr. Saltee responded that the two major differences are the scale and the use. The scale of the Boone Creek application involved about 15 or more platforms, whereas the application at this hearing only involved one in Fayette County and one in Clark County. The scale of this is probably less than 10%, maybe even less than 5% of that for Boone Creek. In terms of the use, the staff believed the number of persons using this facility would be limited to those basically using the camp ground; and so staff did not see a huge impact to the neighborhood from additional people coming to the subject site. Mr. Saltee said, in speaking with the applicant, most of the users of this zipline would be people already coming to the camp, whether this facility ends up being built up or not. He said, in addition, the primary use for this property has been for a camp ground, and this would still be the dominant use of this property.

Ms. Meyer asked if another difference would be that this is a non-commercial enterprise. Mr. Saltee replied that since there would not be patron coming and paying a fee to get on the facility; - this is true, but the camp ground itself probably does have a commercial aspect to it.

Ms. Moore asked for clarification as to whether or not the applicant has ever received a conditional use permit for this property. Mr. Saltee responded that the staff believed that the camp ground was established before the county ever had zoning regulations. Ms. Moore then stated that since it was used for a camp, it is not a non-conforming use; it is a conditional use without a conditional use permit because of its timing. Mr. Saltee responded affirmatively. Ms. Moore then asked if they were asking for expansion of the conditional use permit for a camp that they would have had they applied for it. Mr. Saltee said that since it had never been approved under the county's zoning; he believed that was correct.

Ms. Moore then asked if the last condition makes it clear that the only people who can use the zipline are the people who are attending the camp. Mr. Saltee replied affirmatively. Ms. Moore stated that the staff report said "sponsored church camp activity," and asked if that meant they don't have to be attending the camp. Mr. Forester then asked for clarification if this was a church. Mr. Fann said that it was not.

Ms. Meyer then asked what exactly "sponsored church activity" meant. Mr. Fann stated that it was written that way because if it was written as a "sponsored camp activity", it would include their retreats that also come; to the site, day trips that come from Fayette County Public schools, or their church camp, which would qualify the summer camp experience.

Action – A motion was made by Mr. Forester, seconded by Ms. Whitman and carried 5-2 (Meyer and Griggs opposed)

to **approve C-2014-72: BLUE GRASS CHRISTIAN CAMP** – an appeal for a conditional use permit to extend an existing zip line/ropes from Clark County to Fayette County in the Agricultural Rural (A-R) zone, at 7463 Athens-Boonesboro Road, based on the recommendation of approval from staff and the four conditions for this use as recommended by staff.

2. **C-2014-74: ASSIA TOUNOVA-STOENCHEV** – appeals for a conditional use permit to establish a family child care facility for up to 12 children in a Planned Neighborhood Residential (R-3) zone, at 921 Fiddler Way (Council District 8).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The outdoor play area to be provided will exceed the minimum size required by the Zoning Ordinance, and two off-street parking spaces will be available in a driveway dedicated for use by the child care. Increased activity at this location is not expected to be disruptive, since care will be confined to the basement of the home that opens to the rear yard where there is a useable spatial buffer.
- b. All necessary public facilities and services are available and adequate for the proposed increase to the existing family child care use.

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

1. Child care for up to 12 children may be provided in accordance with the submitted application and site plan, with care to be provided only during weekdays between the hours of 7:00 AM and 6:00 PM.
2. A Zoning Compliance Permit and Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection, respectively, prior to expanding the family child care use at this location.
3. A fenced outdoor play area of at least 600 square feet shall be provided in accordance with the requirements of the Division of Building Inspection, after issuance of a fence permit, with the understanding that all or a portion of the designated play area may have to be relocated away from the area under the porch/deck, depending upon the applicable Kentucky Building Code requirements.
4. During the hours that child care is to be provided, the driveway between the garage and the public street shall be reserved for use by parents bringing children to and from this residence.
5. This conditional use shall become null and void, should the applicant no longer reside at this location.

Staff Comments – Mr. Emmons noted that the staff had a quite bit of paper work to be distributed to the Board prior to hearing case number C-2014-74.

Mr. Sallee stated that the staff had circulated about 40 letters and emails to the Board- approximately 30 in support, and 10 in opposition; and two other letters that were presented to staff today-just prior to this public hearing. He said that the staff had also distributed a staff exhibit (on the legal size sheet) that was requested by a principal in the law firm representing the opposition.

Chair Comment – Chairman Stumbo stated that due to the volume of supporters and opposers, he asked that there be a speaker on behalf of both parties (either legal representation or the applicant); however, the Board does not want to deny anyone wanting to speak on this matter. He said he will ask anyone to stand down if there is any repetition of comments.

Representation – Ms. Assia Tounova-Stoenchev, appellant, was present. She indicated that she had reviewed the recommended conditions and agreed to abide by them.

The Chair then said that He said stated that he would like to ask what makes this application different from four years ago. Ms. Stoenchev replied that at the prior hearing, Mr. John Graft, the homeowner's association President at the time, stated to the Board that there was a large amount of opposition in regard to this case; giving the impression that the entire neighborhood was in opposition. She said that it was her first time in front of the Board and she was very inexperienced; she did not know that she needed to have her support lined up. However, it turned out that she had a very large amount of support from the neighborhood, and none of her neighbors complained or organized opposition to the Board back in 2008. Ms. Stoenchev said that it turned out that there were only 3 people who were in opposition. She said that when the recent neighborhood association meeting was held and had discussion on this application, she requested to see the minutes from this meeting. She never received them. Ms. Stoenchev gave a brief discussion in regard to not been provided with any proof of the neighborhood votes, via minutes, etc.

Ms. Stoenchev then said that one of the reasons the Board rejected her application before was because of the traffic issues. She said that a few months ago, a 4-way stop sign was installed at the corner of Fiddler Creek Way and ClearWater Way, which has made a huge difference with traffic. Also, she has made a lot changes in the way she is operating the child care as far as pick-ups and drop-offs; she now has assigned drop-off and pick-up times for her clients. She also has assigned hours to every family, and her operating hours are from 7 a.m. until 4 p.m. Ms.

Stoenchev then presented and gave a brief discussion about her current Certificate of Occupancy. She noted that there were no conditions or restrictions with the Certificate of Occupancy in regard to hours of operation; however, if her Conditional Use permit is granted, there would be restrictions that she would only be able to operate Monday through Friday from 7:00 a.m. – 6:00 p.m.

Opposition – Mr. John Billings, with Billings Law firm was present, representative for the Homeowner's Association for the Pinnacle subdivision. Mr. Billings started out in regard to the deed restrictions and the restrictive covenants of the subdivision. Chairman Stumbo advised Mr. Billings that the deed restrictions were not abdicable to this application. Mr. Billings said that he understood, and that the packet he submitted prior to this hearing was just information supporting the active restrictive covenants.

Mr. Billings then discussed their main concern, which was the crosswalks and the stop sign system, which indicates how serious the traffic situation could become. Mr. Billings then gave a brief description of the packet that he distributed to the Board in regard to the neighborhood association's concerns about the subject application and the impact it would have on the traffic concerns in the neighborhood.

Ms. Meyer said that, in looking at the traffic study from 2007, one of the recommendations for traffic calming was to put up signs to ask people to slow down. She said that when she went out there, she didn't notice any such signage, and was wondering if the neighborhood was concerned about the speed, with or without the daycare there, and why there weren't any signs. Mr. Billings responded that the neighborhood is concerned; and, in fact, sought to have speed bumps put on Fiddler Creek. Ms. Meyer then said that the traffic study said that with speed bumps/humps, school buses would not be able to travel down streets, and the streets would become ineligible for street sweeping, snowing plowing, or salting operations by LFUCG. Mr. Billings replied that he wasn't sure why there were no signs, but that some of the Board members were present, and maybe they could answer that. He said that he suspected that the Board members were involved in getting the 3-way stop and crosswalk installed at the Fiddler Creek and ClearWater intersection. Ms. Meyer then asked was it possible to get a 3-way stop at Fiddler Creek and Marbella. Ms. Kaucher replied that Traffic Engineering would study whether to install a 3-way stop at those locations. Traffic Engineering looks at traffic speeds and volumes, and does not use stop signs for as traffic calming. There was some a discussion in regard to the stop signs in the subject property area.

Board Questions – Mr. Griggs said that he was looking for the reports of the accidents described that have been mentioned. Mr. Billings responded that he didn't ask for those accidents reports. Mr. Griggs said that he felt it would have been in Mr. Billings' favor to know that there had been a lot of accidents in this area, and thought there may not have been any. Mr. Emmons responded that the Planning staff has not looked at any accident report data on Fiddler Creek Way, and wasn't sure if Traffic Engineering had or not. Ms. Kaucher said that Traffic Engineering did not look at current traffic accident reports, but did look at when the previous report was done, which only showed 2 accidents in a 3-year period. This was not at the Fiddler Creek/Marbella intersection, but within the whole stretch of roadway.

Mr. Glover then said in light of the deed restrictions for the neighborhood, if this application was granted, he wondered if the Board would be creating a conflict between the conditional use and the deed restrictions that would create an issue for the courts. Ms. Jones said that the staff does not get involved in the deed restrictions and; it would have to be handled privately. She said that she didn't think it would cause a conflict because deed restrictions do not prohibit what is allowed by the Zoning Ordinance. Mr. Glover then asked if the Board were to approve the application in the face of the deed restrictions, if the approval of the request for a conditional use would "win out" over the deed restrictions. Ms. Jones said that she couldn't really say that either; it would be a legal action between a private homeowner and the neighborhood association, or whoever the enforcing body is as to that private agreement. There was continued discussion on questions in regard to the deed restrictions of the subject property. Mr. Billings then asked Mr. Glover if he was asking if the Board's actions would preclude Circuit Court from enforcing the restrictions in an injunction action. Mr. Glover replied that he was just trying to figure out who would win such a case. Mr. Billings gave an explanation as to how the procedure would work in Circuit Court.

Opposition – Mr. Mark Streeter, President of the Pinnacle Homeowner's Association, said he been a neighborhood resident since 2007. Mr. Streeter said that he moved into the Pinnacle subdivision because of their deed restrictions, and was supportive of the Board's decision back in 2008 that denied this request. He said that this area was not developed as much from a traffic standpoint; there were not as many homes and businesses in the area; and traffic was still a problem back then. Mr. Streeter said that he felt this daycare would set a precedent for others to want to do the same or even something different, that could also cause more traffic issues. He then read his letter of opposition, which was presented to the Board prior to this hearing. Mr. Streeter then said that a daycare in the neighborhood would be disruptive. He then spoke in reference to an email that he received from Mr. Scott McKinney from 2006 & 2012. Mr. Streeter then presented several photos on the overhead projector for the site, as he gave a brief description of the traffic jams that occur in this area.

Board Questions – Ms. Meyer again asked about the signage that was suggested in the 2000 traffic study. She asked if there was any discussion with the neighborhood and the home owner's association to put in some signage. Mr. Streeter said that he didn't get onto the Board until 2010; and he moved in, in 2007, so he was not around during this process. He said that that was a valid point; but if they suggested signs for only Fiddler Creek, they would then get other home owners who would probably request the same use, and it would create a huge expense for the home owner's association.

Mr. Griggs asked Mr. Streeter if he realized how funny it sounded that they would think putting up a sign to slow people down would not be worth the expense, but they have hired an attorney to prepare for them a half-inch pack of information. Mr. Streeter replied that he understood that, and has been asked that from others, including their neighborhood, but that they have to be prudent with their association dues. Mr. Griggs then agreed that Ms. Meyer had a good point in pointing out that there is no apparent effort on the neighborhood association's part to get "children at play" signs installed in the neighborhood. Mr. Griggs then said that he thought that it isn't the neighborhood's concern of signage, but that it is just the fact of having a daycare in the neighborhood. He read from the homeowner's association deed of restrictions that it allows a home occupation in the neighborhood. Mr. Streeter replied that he felt that the daycare and traffic coming and going would be a disruption to the neighborhood. Mr. Streeter stated that he did work with Councilmember George Meyers and Julian Beard very thoroughly on trying to get stop signs installed to address the concerns about the children's safety. Mr. Griggs said that stop signs and "slow down" signs are totally different. Ms. Meyer said that the "slow down" signs are only \$25 each.

Mr. Glover asked Mr. Streeter if it was correct that he is the president of the homeowner's association. Mr. Streeter replied affirmatively. Mr. Glover then asked if the concept of family child care is consistent with the residential character of the neighborhood. Mr. Streeter said that there are a lot of families, and it is a family oriented neighborhood.

Staff Comment – Ms. Kaucher noted that it has been stated that it was the "cut-through" traffic that had the high volumes and the speeds. From a Traffic Engineering standpoint, 12 additional cars (to this site) aren't going to affect those numbers.

Opposition (cont.) – Ms. Alexandria Stewart, who lives at 833 Vermillion Peak Pass, said she has lived in the Pinnacle subdivision since June 2002. She said that the neighborhood has grown to 1250 families, and part of the reason why she chose the Pinnacle subdivision was precisely because of the deed restrictions. Ms. Stewart said that she would like to see the quality of the neighborhood maintained and felt that having a daycare in the neighborhood would set a precedent for others. Ms. Stewart said she had a child and had recently looked for daycare, and opined that this business is not meeting a valid need, but that the applicant is in need of making more money. Ms. Stewart asked if the applicant moved into the property just to run a business out of it.

Board Discussion and Questions – Chairman Stumbo noted, for clarification, that the Board does not write the Zoning Ordinances.

Mr. Glover asked Ms. Stewart when she moved into the neighborhood. Ms. Stewart replied that she moved there in June 2002. He then asked her if the Zoning Ordinance was in place at that time. He said that he was assuming that it was, and the Zoning Ordinance states that for a conditional use, family child care allows up to 12 children in each home. Mr. Emmons said, for clarification that, according to the Zoning Ordinance, family child care, which is defined as providing childcare in the home, has to be primarily the residence (for the one who would live there). Keeping up to six children is an allowable accessory use, meaning that the Division of Planning staff can look at and sign a Zoning Compliance Permit for up to six children for any family childcare. He said that between 7 and 12 children is an allowable conditional use. Mr. Emmons said anything beyond 12 would be considered a childcare center, which would be considered a business and not primarily part of a residence. Mr. Saltee noted that these were the basic regulations of the Zoning Ordinance since the early 1990s. Ms. Stewart then asked why the applicant needs to change the ordinance and double her children. Mr. Glover stated that the Zoning Ordinance permits this request.

Opposition (cont.) – Mr. Bill Johnson, who lives at 4545 Windstar Way; said he was a member of the Home owner Association's Board. He said that he has lived in the Pinnacle subdivision since 2006. Mr. Johnson said that they moved into the neighborhood primarily to be able to bring their grandchildren, hoping they would be safe. He said that he and his wife operated a daycare out of their homes in Texas and Alabama; and they started out with 3 children and ended with 14. Mr. Johnson said that as many as 14 children create problems, no matter how many assistants one has. He stated that with more children, the needs are more demanding: more dietary needs; more play area, more noise control, etc. Mr. Johnson said that the applicant does not have a fence in her back yard (where there is also a creek) where the children play, and he opined that this was a safety hazard.

Discussion – Mr. Johnson stated that the applicant has been running her business illegally since she was denied in 2008. Ms. Meyer asked Mr. Johnson if he was saying that the applicant had more than 6 children in her home. Mr. Johnson said that they did not know; as she has never proved that to them. He then said that the applicant came to the Board in 2008 and asked for a conditional use permit, which was denied, and she has continued to operate since. He asked if she had a state license; and if she had the proper state liability insurance. Ms. Meyer responded that in all

fairness, the applicant has an allowable use to have up to 6 children in her home, and she has proven to the Board that she does have that permit from Lexington - Fayette Urban County Government. Ms. Meyer noted that what the applicant is asking for at this hearing is to increase the number up to from 7 to 12 children. Mr. Johnson replied that he understood that; and he is opposed to this because of his experience in running a daycare and because it would disrupt the traffic flow and the neighborhood.

Ms. Kimberly Alexandria, who has lived in the Pinnacle subdivision since 2009, is a member of the Homeowner's Association Board. Ms. Alexandria asked, if this request is allowed, if another business (even a different type. i.e., engine repair shop) could ask to be permitted in this area, if would the Board would grant that. Mr. Saltee replied that it sounds like that would be defined as a home occupation; and; yes, they would also be required to come before the Board. Ms. Alexandria said that is their concern that this would open up a "Pandora's box". She said that she just wanted to protect her home value. Mr. Griggs stated that he believed there was a misunderstanding about Ms. Alexandria's earlier question. Mr. Saltee said that he thought she said a craft shop, rather than a repair shop, and that a "craft shop" is more of a home occupation, whereas an engine "repair shop" is not. That use is generally done in a garage and that it is where it exceeds the limits of an allowable home occupation. Mr. Saltee apologized for the misunderstanding. Chairman Stumbo clarified that such retail and commercial businesses are not permitted for a home occupation use.

Ms. Whitman stated that she had been a realtor for 40 years and she had never had a client tell her that they did not want to purchase a home where there is a daycare in a neighborhood. Therefore, she could not support the opposition to this request.

Applicant Rebuttal – Ms. Stoenchev said that she moved to Fiddler Creek Way in 2002; at the time she was the third house on the street, and there were no other homes there. She later then moved ten houses down the street, and she did not move into the home to start a daycare, but to enjoy the greenspace behind it.

Ms. Stoenchev said that in the few things that were mentioned in opposition, one was that the children were in danger in the back yard due to no fence; however, she has a covered and screened-in deck, which is the play area for the children. It is completely enclosed to where the children cannot get out in any way.

She has been providing daycare since 1996, and then presented a letter on the overhead projector in proof that she has been reapproved for state re-licensing. Ms. Stoenchev stated that this is not a money making thing for her; this is her passion.

Ms. Stoenchev said that it was discussed a lot about the amount of daycares available to the neighborhood. She said there are different types of daycares that hold 12 or more children: some that can hold 200 or more children; and then there are the ones that are in-home daycare. She then presented her search of daycares in the 40515 zip code area, and she found only one daycare facility available.

Board Questions – Chairman Stumbo asked what type of certification she has to go through; and what type of insurance she carries. Ms. Stoenchev stated that when one is certified, they have to apply with the state of Kentucky after the permit is received, and then one has to have liability insurance. She said that one has to only be licensed if they watch six children at a time. They can watch up to three children at a time; and, for that, a license is not required. Chairman Stumbo asked her how much liability insurance she currently has. Ms. Stoenchev replied that she does not know how much she has to have, or even how much the requirement is since, at this time, she only has three children and there is no such requirement for this amount of children. She said that she did plan to obtain it, if approved. At this time, there was a brief discussion about the certifications and liability requirements for this use.

Chairman Stumbo stated that his other concern is one that the neighborhood association had as well - that of 12 automobiles coming at one time for pick-up or drop-off of children. Ms. Stoenchev replied that having up to 12 children didn't mean that there would be 12 automobiles; 12 children also meant that there could be multiple children from one family. Ms. Stoenchev said that she has tried to be a good neighbor to everyone (and remain practically invisible). She also said that the opposition spoke of the drop-offs and pick-ups as being an issue, and she said that she had very strict rules and hours of drop-off and pick-up times for her clients. Ms. Stoenchev then read and presented a copy of her rules and regulations of such on the overhead projector.

Ms. Meyer said that she had a clarification question: in the first condition, it stated that the hours of operation were from 7:00am – 6:00pm. Mr. Emmons said that he was getting around to addressing that, and that was a typographical error, and should read as "until 4:30 pm" and he apologized for the mistake. Ms. Stoenchev said that she also wanted to add that her program would also be providing transportation for families that are interested.

Applicant Rebuttal (cont.) – Ms. Stoenchev said that she wanted to point out that a Ms. Mary Ann Mock, who lives in the neighborhood, had stated that she has 11 children of her own and that at some point, they all lived together; therefore,

she didn't think that her 12 children would create much of a difference than any other family would. She said that she also wanted to note that her increase in children would not have any more of an impact on the traffic than any other family in the neighborhood who would be driving down the street on a regular basis, whether they live in the neighborhood or go to the school in the neighborhood.

Ms. Stoenchev then spoke about the concerns of the signage and speed bumps in the neighborhood. She said that they were very inexpensive and that this has never been looked at or considered as an option. Ms. Stoenchev then presented a copy of the report in regard to the speed bumps (dated July 6, 2009). It said that a minimum of 65% of the residents must be in favor; and they only had 28 neighbors in favor, 10 in opposition, and the rest just had no response. There was not enough support for these improvements.

Ms. Stoenchev displayed a notification map on the overhead projector, highlighted with the areas of letters of support and opposition to her request. Mr. Emmons said that staff also had a similar exhibit and had highlighted two more areas that were in support that were received just prior to today's hearing and that he distributed just before the hearing.

Ms. Stoenchev then presented information in regard to the Board members of the Homeowner's Association, and highlighted that only 3 of the 7 Board members had sent in letters of opposition, none of which live in the Pinnacle neighborhood. She said that she had sent an email to Mr. Stringer, Board member of the Homeowner's Association, the day prior to this hearing, requesting a copy of their minutes from the previous meeting in regard to her case; but she had not received anything from him. At this time, Ms. Stoenchev had some additional discussion in response to the opposition prior to her rebuttal.

Support Comments – Mr. Jeff Healing, who lives approximately 8 houses from the applicant; has lived there since 2009. He said that they have 3 children (ages: 12, 9, & 7). He said that it is tough to find a good daycare. When they first looked, they had to go outside of the neighborhood. He said that they eventually found an in-house daycare and they received excellent care there. Mr. Healing said that he got involved due to a "fairness issue". The Homeowner's Association never gave them an opportunity to speak at their meeting; they had a closed executive board meeting the night before, and refused to allow Mr. Healing to present his questions and concerns. Mr. Healing then said that the growth of the neighborhood is going toward the west, and that the stop sign made a major difference in the neighborhood.

Ms. Susie Niley said that she is not a resident of the neighborhood, but she had two grandchildren in the care of the applicant. One is still under her care, and she said that Ms. Stoenchev runs an excellent service.

Ms. Connie Selin, lives at 961 Fiddler Creek Way, and has lived there since 2004. She said that she walks past the applicant's home at least once a day as she walks her dog. She said that nobody ever shows up at the applicant's home all at once. Ms. Selin said that she was once on the Pinnacle Board for 3 years; and one of those years, she was President. She did not recall any social media or anyone requesting Ms. Stoenchev to prove of anything in regard to her childcare.

Ms. Selin said that she did not believe that traffic was an issue in regard to Ms. Stoenchev's childcare. She said that the majority of the opposition present at this hearing does not even live in the vicinity of the proposed use, and they tend to be the ones that are the source of the "cut through" traffic issues.

Mr. Gustavo Cavalcanti, who lives at 4174 Clearwater; said he has lived there for 2 years. He said that he believed a daycare in the neighborhood would actually increase the property values in the neighborhood, versus a decrease. Mr. Cavalcanti said that he did not believe that traffic was the actual issue that neighbors are concerned about, but that it is the only argument that can actually discuss at this hearing. He believed the real issue is the deed restrictions.

He said that he does not live within the radius of the childcare, but he is guilty of cutting through on the street. Mr. Cavalcanti says as he cuts through, he has never seen any traffic issues. He said that he never even knew that there was a family daycare in the neighborhood.

Action – A motion was made by Ms. Moore, seconded by Mr. Glover and carried unanimously to **approve C-2014-74: ASSIA TOUNOVA-STOENCHEV** - an appeal for a conditional use permit to establish a family child care facility for up to 12 children in a Planned Neighborhood Residential (R-3) zone, at 921 Fiddler Creek Way, for the reasons recommended by the staff and subject to the five conditions recommended by the staff.

F. Administrative Review

There were none

- IV. **BOARD ITEMS** - The Chair announced that any items a Board member wished to present would be heard at this time.

There were none

- V. **STAFF ITEMS** - The Chair announced that any items a Staff member wished to present would be heard at this time.

There were none

- VI. **NEXT MEETING DATE** - The Chair announced that the next Board's meeting date would be January 30, 2015.

- VII. **ADJOURNMENT** - Since there was no further business, the Chair declared the meeting adjourned at 4:18 p.m.

Barry Stumbo, Chair

James Griggs, Secretary