

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

February 25, 2016

- I. **CALL TO ORDER** – The meeting was called to order at 1:30 p.m. in the Council Chamber, 2nd Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Will Berkley; Patrick Brewer; Mike Cravens; Karen Mundy; Mike Owens, Chair; Carolyn Plumlee; Joseph Smith; and William Wilson. Absent were David Drake, Frank Penn, and Carolyn Richardson.

Planning staff members present: Jim Duncan, Director; Bill Sallee; Jimmy Emmons; Barbara Rackers; Traci Wade; Tom Martin; Cheryl Gallt; Kelly Hunter; Harika Suklun; and Stephanie Cunningham. Other staff members present were: Tracy Jones, Department of Law; Casey Kaucher, Division of Traffic Engineering; and Captain Greg Lengal, Division of Fire and Emergency Services.

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 staff members and other persons in the audience.

- II. **APPROVAL OF MINUTES** – A motion was made by Mr. Brewer, seconded by Mr. Wilson, and carried 8-0 (Drake, Penn, and Richardson absent) to approve the minutes of the January 14, 2016, and January 28, 2016, Planning Commission meetings.

III. **POSTPONEMENTS AND WITHDRAWALS**

1. **LARRY LUTTRELL, JR., ZONING MAP AMENDMENT & LANE ALLEN PARK SUBDIVISION, LOT 4, ZONING DEVELOPMENT PLAN**

- a. MARC 2015-24: LARRY R. LUTTRELL, JR. (2/25/16)* – petition for a zone map amendment from a Single Family Residential (R-1A) zone to a Planned Neighborhood Residential (R-3) zone, for 2.6089 net and gross acres, for property located at 1911 Parkers Mill Road. A conditional use permit for a rehabilitation home is also requested.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The mission statement notes that this will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World. The 2013 Comprehensive Plan also provides several Goals, Objectives and policies for the growth and development of the community well into the 21st century.

The petitioner proposes rezoning the subject property to a Planned Neighborhood Residential (R-3) zone, and requesting a conditional use permit for a rehabilitation home for approximately 15 persons. The petitioner wishes to operate a rehabilitation home (aka: a sober-living home) within the existing single family residence.

The Zoning Committee Recommended: **Postponement.**

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

1. The requested Planned Neighborhood Residential (R-3) zone is in agreement with the 2013 Comprehensive Plan, for the following reasons:
 - a. Theme A, Goal #1.c. of the Plan calls for "safe, affordable, and accessible housing to meet the needs of...disadvantaged residents." The residents of Liberty House meet this classification.
 - b. Goal #2 under Theme D of the Plan is to "provide for accessible community facilities and services to meet the health, safety, and quality of life needs of Lexington-Fayette County's residents and visitors." Liberty House is such a facility.
 - c. Goal #2.b. of Theme D of the Comprehensive Plan calls for cooperation "with educational and healthcare entities to meet the needs of Lexington-Fayette County's residents and visitors." An expanded Liberty House will more fully meet the needs of recovering citizens that have experienced addiction to alcohol.
 - d. Goals #2.a and #2.b of Theme C of the Comprehensive Plan call for promoting sectors of the economy that will flourish in the County, and for improvement of small business opportunities. Although Liberty House is a specialized residence more than a traditional "business," an expanded version of it will augment Lexington-Fayette County's offering of healthcare services since it will provide a unique type of rehabilitation home, provided the corollary Conditional Use Permit is also approved.
 - e. Liberty House's location in a portion of the community generally devoid of similar facilities will ensure that a needed community service will be provided in a manner consistent with the Plan's direction to disperse necessary facilities throughout our community.

* - Denotes date by which Commission must either approve or disapprove request, unless agreed to a longer time by the applicant.

2. This recommendation is made subject to the approval and certification of ZDP 2015-104: Lane Allen Subdivision, Lot 4, prior to forwarding this recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following uses shall be prohibited on the subject property:
 - a. Multi-family dwellings.
 - b. Group Residential Projects.
 - c. Townhouses.
 - d. Kindergartens and nursery schools.
 - e. Mining of non-metallic materials.
 - f. Family child care and child care centers.
 - g. Community centers.

These use restrictions are appropriate and necessary for the subject property since they will provide greater protection for the adjacent residences and neighborhoods surrounding this location.

b. REQUESTED CONDITIONAL USE

A rehabilitation home in a Planned Neighborhood Residential (R-3) zone.

The Zoning Committee Recommended: **Postponement.**

The Staff Recommends: **Approval** of the requested conditional use, for the following reasons:

- a. Granting the requested conditional use should not adversely affect the subject or surrounding properties. The proposed use will retain the residential character of the property, which will be in character with the surrounding residential neighborhoods. The existing house and parking are adequate to serve up to 20 residents with one full-time employee on site at any given time.
- b. All necessary public services and facilities are available and adequate to the subject site; however, the septic system will need to be reviewed and approved for use by the Fayette County Health Department, or the property will need to be connected to the public sanitary sewer system, prior to commencing the proposed use.

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

1. Should the subject property be rezoned to R-3, it shall be developed according to the submitted Zoning Development Plan, or as further amended by the Planning Commission.
2. The proposed use shall be operated in accordance with the submitted application materials.
3. All necessary permits, including a Zoning Compliance Permit and Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection prior to occupancy of the rehabilitation home.
4. The Fayette County Health Department shall inspect and approve the existing septic system, or a connection to the public sanitary sewer system shall be completed prior to operation of the rehabilitation home.
5. The parking shall not be expanded beyond the existing six parking spaces, and the total number of beds shall be limited to 20, with one full-time employee on the maximum working shift.
6. There shall not be any meetings or counseling services provided for outside groups or individuals of the general public.
7. As volunteered by the applicant, residents participating in this program shall not be there as a condition of their parole.
8. This conditional use permit shall not be transferable to another applicant without application to, and approval from, the Board of Adjustment.

c. ZDP 2015-104: LANE ALLEN PARK SUBDIVISION, LOT 4 (2/25/16)*- located at 1911 Parkers Mill Road.
(Endris Engineering)

Note: The Planning Commission postponed this item at their November 19, 2015 meeting.

The Subdivision Committee Recommended: **Postponement.** There were some concerns about a need for further discussion regarding sewage disposal, due to new information received since the Technical Committee meeting.

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

1. Provided the Urban County Council rezones the property R-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of street cross-sections and access.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Addressing Office's approval of street names and addresses.
6. Urban Forester's approval of tree preservation plan.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.

* - Denotes date by which Commission must either approve or disapprove request, unless agreed to a longer time by the applicant.

8. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
9. Division of Waste Management's approval of refuse collection locations.
10. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
11. Delete purpose of amendment note from plan.
12. Clarify required parking generator (beds).
13. Denote all parking spaces on plan.
14. Denote building line.
15. Clarify whether or not there will be dedication of right-of-way.
16. Discuss timing of sidewalk construction along Parkers Mill Road on plan.
17. Discuss need for improvements to Parkers Mill Road.
18. Resolve adequacy of existing septic system to serve proposed use.

Petitioner Representation: Kevin Phillips, Endris Engineering, was present representing the petitioner. He requested a two-month postponement of this item.

Citizen Comment: No citizens spoke in opposition to this request.

Action: A motion was made by Mr. Cravens, seconded by Ms. Plumlee, and carried 8-0 (Drake, Penn, and Richardson absent) to postpone MARC 2015-24 to the April 28, 2016, Planning Commission meeting.

2. ANDERSON BRIDGEWATER, LLC, ZONING MAP AMENDMENT & ANDERSON 2 SUBDIVISION (AMD.) ZONING DEVELOPMENT PLAN

- a. MAR 2015-27: ANDERSON BRIDGEWATER, LLC (2/25/16)* - petition for a zone map amendment from an Expansion Area Residential-1 (EAR-1) zone to an Expansion Area Residential-3 (EAR-3) zone, for 12.32 net (12.51 gross) acres, for property located at 425 Chilesburg Road.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The mission statement notes that this will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World. The 2013 Comprehensive Plan also encourages growing successful neighborhoods (Theme A) by expanding housing choices (Goal #1), supporting infill and redevelopment as a strategic component of growth (Goal #2), and providing well-designed neighborhoods and communities (Goal #3). In addition, the Plan calls for maintenance of the boundaries of the Urban Service Area (Theme E, Goal #3).

The subject property is located within the Expansion Area, more specifically Subarea 2C. The Expansion Area Master Plan recommends Expansion Area Residential-1 future land use for the subject property, with a Special Design Area along Chilesburg Road. The Expansion Area Residential-1 land use would permit a maximum of three dwelling units per gross acre of land.

The petitioner proposes a high density residential development with townhouses and a clubhouse in the southern portion of the subject property near Chilesburg Road (17 dwelling units), and a combination of multi-family dwelling units and townhouses in the northern portion of the site (166 dwelling units), for a total of 183 dwelling units and a residential density of 14.63 units per gross acre.

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

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

1. The proposed rezoning to an Expansion Area Residential-3 (EAR-3) zone is not in agreement with the Expansion Area Master Plan (for Expansion Area 2C), which is an element of the adopted 2013 Comprehensive Plan. High-density residential development was not envisioned for land that adjoined the Urban Service Area boundary at that time (including the subject property), in order to respect the established residential neighborhoods, such as Andover Hills.
2. An adequate transition between land uses, specifically Andover Hills subdivision and the future Tucker Property development, has not been established to create a well-designed community as recommended by Theme A, Goal #3 of the 2013 Comprehensive Plan.
3. Chilesburg Road, an existing two-lane rural roadway, has been designated by the Expansion Area Master Plan and the Zoning Ordinance as a Rural Scenic Roadway, which is not to be improved. The existing roadway is inadequate to handle the proposed increase in residential density and traffic generation at this location.

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4. The proposed development does not meet the Complete Streets concept, which includes the design and use of the right-of-way for cars, bicycles and pedestrians, as recommended by Theme D, Goal #1a. of the 2013 Comprehensive Plan, nor does it meet the Community Design Element of the Expansion Area Master Plan.
5. The site is proposed to have only one way in and one way out, and no stub streets into the adjoining Tucker Property for 183 dwelling units, which does not adequately meet the public safety and access needs of Fayette County citizens.
6. There have been no unanticipated changes of a physical, social or economic nature within the immediate area since the Comprehensive Plan was adopted in 2013 that would support an EAR-3 zone for the subject property.

b. ZDP 2015-118: ANDERSON 2 SUBDIVISION (AMD) (2/25/16)* - located at 425 Chilesburg Road.
(Barrett Partners)

Note: The purpose of this amendment is to change single family development to multi-family residential.

The Subdivision Committee Recommended: Postponement. There were some questions regarding the street termination, compliance with the EAMP Stormwater Master Plan, and the proposed apartment buildings' orientation to the adjacent R-1D zone.

The Staff Recommended: Postponement. There are remaining questions regarding the lack of a compliant street termination, compliance with the EAMP Stormwater Master Plan, and the proposed access to the development.

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

1. Provided the Urban County Council rezones the property EAR-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Urban Forester's approval of tree inventory map.
5. Greenspace Planner's approval of the treatment of greenways and greenspace.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Denote lot coverage and floor area ratio in site statistics (per Article 21 requirements).
8. Provided the Planning Commission makes a finding that the Final Development Plan complies with the EAMP.
9. Discuss lack of street termination proposed (and need for waiver).
10. Denote the timing of compliance with Article 23A-2(o) of the Zoning Ordinance and note #13.
11. Discuss note #19 and compliance with the EAMP Stormwater Master Plan.
12. Discuss note #20 and potential access to Jacobson Park.
13. Discuss access proposed to the development.
14. Discuss proposed density relative to the transportation infrastructure of Chilesburg Road.

Petitioner Representation: Richard Murphy, attorney, was present representing the petitioner. He requested a one-month postponement of this item, in order to allow the petitioner to continue working with the staff and the neighboring residents.

Opposition Comments: Nathan Billings, attorney, was present representing the Still Meadows HOA and several other neighborhood residents. He asked that the petitioner consider a two-month postponement, since he and several other individuals would be out of town during the Fayette County Public Schools' spring break week, for the March 24th hearing.

Petitioner Comments: Mr. Murphy said that the petitioner would be agreeable to a two-month postponement.

Action: A motion was made by Ms. Plumlee, seconded by Mr. Berkley, and carried 8-0 (Drake, Penn, and Richardson absent) to postpone MAR 2015-27 to the April 28, 2016, Planning Commission meeting.

IV. LAND SUBDIVISION ITEMS - The Subdivision Committee met on Thursday, February 4, 2016, at 8:30 a.m. The meeting was attended by Commission members: Karen Mundy, Mike Owens, Carolyn Plumlee and Joseph Smith. Committee members in attendance were: Hillard Newman, Division of Engineering; and Casey Kaucher, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee; Tom Martin; Traci Wade; Cheryl Gallt; Denice Bullock; Kelly Hunter; Dave Jarman; Scott Thompson; Captain Greg Lengal and Lieutenant Joshua Thiel, Division of Fire & Emergency Services; Chris Schnelle, Division of Police; and Mike Sanner, Department of Law. The Committee made recommendations on plans as noted.

General Notes

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

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

A. DP 2016-8: PATCHEN PLACE SUBDIVISION, UNIT 1, LOT 4 (4/3/16)* - located at 2800 and 2890 Richmond Road.
(Council District 5) (Wheat & Ladenburger)

* - Denotes date by which Commission must either approve or disapprove request, unless agreed to a longer time by the applicant.

The Subdivision Committee Recommended: **Postponement**. There are some questions regarding the proposed access to Gribbin Drive and compliance with Richmond Road Ordinance requirements.

Note: The morning of February 9th, the applicant submitted a revised development plan that addressed several of the concerns considered by the Subdivision Committee at their meeting on February 4th. However, the applicant still has not addressed issues regarding the proposed access to Gribbin Drive, screening of the development from that street, or compliance with the Richmond Road Ordinance requirements. As a result, while the staff can offer a revised recommendation to the Planning Commission for their consideration of this final development plan, a postponement of this plan, given these outstanding issues, is still in order.

The Staff Recommends: **Postponement**. There are still some questions regarding the proposed access to Gribbin Drive, the timing of the required right-of-way closure, the timing of compliance with the Richmond Road Ordinance requirements, the proposed building orientation to Gribbin Drive and the size and extent of the proposed retaining wall.

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Department of Environmental Quality's approval of environmentally sensitive area (steep slope area).
8. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
9. Division of Waste Management's approval of refuse collection locations.
10. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
11. Discuss the need for reciprocal parking and access for the development.
12. Resolve the timing of compliance with Richmond Road Ordinance requirements.
13. Discuss proposed access to Gribbin Drive and timing of required right-of-way closure.
14. Discuss drive-through aisles, vehicle stacking and potential conflicts.
15. Discuss size, location and extent of proposed retaining walls.
16. Discuss rear orientation of proposed buildings to Gribbin Drive and architectural details and features to mitigate impact.

Staff Presentation: Mr. Hunter presented this final development plan, briefly orienting the Commission to the location of the subject property on Richmond Road, between Patchen Drive and Mt. Tabor Road.

Referring to the rendered plan, Mr. Hunter noted the location of Gribbin Drive, to the rear of the property. He explained that the purpose of this amended plan is to depict the four lots in the proposed development. Two of those lots are proposed for retail use, and include drive-through facilities, as well as underground detention. Access to the development is also proposed from Gribbin Drive.

Mr. Hunter said that the applicant originally filed as a preliminary subdivision plan; however, that plan was withdrawn by the applicant, and replaced by this final development plan. At their January 7th meeting, the Subdivision Committee recommended postponement, due to questions about the Richmond Road Ordinance and the proposed access to Gribbin Drive. The plan was postponed at the February 11th meeting. The petitioner has met with staff since that time, and has submitted this revised plan to address those concerns. The staff is now recommending approval of this plan, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Department of Environmental Quality's approval of environmentally sensitive area (steep slope area).
8. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
9. Division of Waste Management's approval of refuse collection locations.
10. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
- ~~11. Identify the location of the stormwater control features on the plan.~~
- ~~12. Resolve the timing of the proposed building conflict with the 12' utility easement identified.~~
- ~~13. Indicate timing of the removal of the existing access apron on Gribbin Drive.~~

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- ~~14. Discuss drive-through uses for parking calculations (i.e., restaurants).~~
- ~~11.15. Discuss Resolve the need for reciprocal parking and access for the development.~~
- ~~12.16. Discuss Resolve the timing of compliance with Richmond Road Ordinance requirements.~~
- ~~13.17. Discuss Resolve the proposed access to Gribbin Drive and timing of required right-of-way closure prior to plan certification.~~
- ~~14.18. Discuss Resolve the vehicular stacking for drive-through aisles, vehicle stacking and potential conflicts.~~
- ~~15. Denote height of proposed retaining walls on plan.~~
- ~~16. Discuss orientation of proposed buildings to Gribbin Drive and architectural details and features, including landscaping, to address rear building orientations.~~

With regard to the revised conditions for approval, Mr. Hunter noted that numbers 1 – 10 are standard “sign-off” conditions. Item #11 refers to the need for reciprocal parking on the site. When the original preliminary subdivision plan was filed, it depicted a public street ending in a cul-de-sac; with this revised plan, that street was removed. The site meets the parking requirements, but the staff is concerned that the three lots nearer to Richmond Road, which are not part of a development plan, could become disconnected from the two rear lots. The staff believes that requiring reciprocal parking will help to ensure that pedestrian and vehicular connections are provided between the lots. Condition #12 refers to the Richmond Road Ordinance requirements, and can be satisfied with the inclusion of a note to that effect on the plan. Condition #13 addresses the access to Gribbin Drive and the timing of the right-of-way closure. When the property was originally platted, Gribbin Drive was aligned differently from its current configuration; that right-of-way still remains, although the closure process has begun. The petitioner will be closing that right-of-way in order to provide the access to the subject property, and the staff would like that noted on this plan. Mr. Hunter said that condition #14 refers to the vehicular stacking for the proposed drive-through aisles, and potential conflicts. The plan includes a note that allows retail drive-throughs, but not fast food restaurants, which tend to create more traffic. The staff is concerned about the potential stacking, and they want to ensure that those issues are resolved prior to certification of this plan. Condition #15 refers to the proposed retaining walls on the plan, which are depicted at heights varying from 2’ to 18’. The staff would like to have the height of the wall denoted on the plan at each location. Condition #16 involves the orientation of the buildings, which are proposed to face away from the residences across Gribbin Drive. The staff would like to ensure that architectural features are provided along the rear faces of those buildings, since they will be very visible to the nearby residents.

Commission Questions: Mr. Wilson asked where the Chevrolet dealership was formerly located on the subject property. Mr. Hunter answered that the dealership office was located on the three front lots, while the parking area was in the location of the two rear lots.

Mr. Owens, asked with regard to condition #11, if the staff was seeking pedestrian access, or vehicular, or both. Mr. Hunter responded that the staff would like to see both types of access provided. Currently, the plan depicts vehicular access only to the two rear lots. Mr. Owens asked if the staff felt that access could be provided to the front lots. Mr. Hunter replied that the petitioner might want to address that question, but added that the staff believes that access can be provided to those lots.

Petitioner Representation: Bruce Simpson, attorney, was present representing the petitioner. He said that the petitioner met with the staff earlier in the week, and that he believed all of the staff’s concerns were addressed with this revised plan.

Commission Question: Mr. Owens asked if the notes were provided on the plan to address those items. Mr. Simpson answered affirmatively. Mr. Owens asked Mr. Martin for clarification. Mr. Martin stated that the staff did meet with the petitioner earlier in the week. He explained, with regard to the concerns about reciprocal parking and access, that the staff was comfortable with the addition of a note that would address the issue, with the understanding that topographical features of the site might preclude the ability to construct full vehicular access to the front lots. The staff would like to see pedestrian access provided between the properties, noting that retaining walls might be necessary. Mr. Martin explained that the staff is concerned that no development plans will be provided for the three front lots, so they want to ensure that parking and access are accommodated to every extent feasible for the property. The staff also believes that there are several ways to accommodate the staff’s concerns about the retaining walls and building orientation, and they have discussed those items with the petitioner. The petitioner could provide features such as changes in texture or paint colors along the rear of the buildings. Mr. Martin noted that the retaining walls could be extensive, but the staff suggested stepping them back and adding landscaping, which would soften the appearance and also provide screening for the nearby residents.

Mr. Owens asked if this plan was filed as a final development plan. Mr. Martin answered affirmatively, and that the Commission will not review it again unless it is amended.

Mr. Simpson stated that the petitioner had provided notes and cross-sections on the plan to denote the required information about the parking, access, and retaining walls. Mr. Owens asked how the petitioner intended to address the architectural details. Mr. Simpson answered that the petitioner is committed to providing those details, and would continue to work with the staff.

Mr. Owens asked Ms. Kaucher to address the concerns about access to the subject property. Ms. Kaucher stated that the Division of Traffic Engineering had reviewed the notes added to the plan. She said that the petitioner was aware that Traffic En-

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engineering's concerns were that access should be provided through the property to the front lots, rather than requiring drivers to access the service road. The petitioner has noted that their intent is to provide that access, if possible.

Action: A motion was made by Mr. Wilson, seconded by Mr. Berkley, and carried 8-0 to approve DP 2016-8, with the first 15 conditions listed in the revised staff recommendation; requiring conditions #11 and #16 to read "resolve."

- V. **ZONING ITEMS** - The Zoning Committee met on Thursday, February 4, 2016, at 1:30 p.m. to review zoning map amendments and Zoning Ordinance text amendments. The meeting was attended by Commission members Mike Cravens, David Drake, and Bill Wilson. The Committee members reviewed applications and made recommendations as noted.

A. **ABBREVIATED PUBLIC HEARINGS ON ZONING MAP AMENDMENTS**

The staff will call for objectors to determine which petitions are eligible for abbreviated hearings.

The procedure for these hearings is as follows:

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

B. **FULL PUBLIC HEARINGS ON ZONE MAP AMENDMENTS** – Following abbreviated hearings, the remaining petitions will be considered.

The procedure for these hearings is as follows:

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

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

1. **TURWELL, LLC, ZONING MAP AMENDMENT & WYNNDAL SUBDIVISION, LOTS 1 & 2, ZONING DEVELOPMENT PLAN**

- a. MAR 2016-1: TURWELL, LLC (2/25/16)* - petition for a zone map amendment from a Townhouse Residential (R-1T) zone to a Planned Neighborhood Residential (R-3) zone, for 6.98 net (9.06 gross) acres, for property located at 1580 Higbee Mill Road.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The mission statement notes that this will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World.

The Comprehensive Plan encourages expanding housing choices (Theme A, Goal #1); identifying opportunities for infill, redevelopment and adaptive reuse that respect the area's context and design features (Theme A, Goal #2a.); encourages the development of underutilized and vacant land in a compact, contiguous and/or a mixed-use sustainable manner within the Urban Service Area (Theme E, Goals #1a., #1b. and #3); and locating higher density development near greenways and public parks (policy statement).

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The petitioner proposes a Planned Neighborhood Residential (R-3) zone for the subject property in order to construct two multi-family residential buildings, with a total of 32 dwelling units (with 64 bedrooms). This equates to a proposed residential density of 4.58 dwelling units per net acre.

The Zoning Committee Recommended: **Postponement**.

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

1. A restricted Planned Neighborhood Residential (R-3) zone at this location would be in agreement with the 2013 Comprehensive Plan, for the following reasons:
 - a. The Goals and Objectives of the Plan encourage expanding housing choices (Theme A, Goal #1); identifying opportunities for infill, redevelopment and adaptive reuse that respect the area's context and design features (Theme A, Goal #2a.); and encouraging the development of underutilized and vacant land in a compact, contiguous and/or a mixed-use sustainable manner within the Urban Service Area (Theme E, Goals #1a., #1b. and #3). In addition, the Goals and Objectives of the Plan also encourage providing for well-designed neighborhoods (Theme A, Goal #3); minimizing disruption of natural features when building new communities (Theme A, Goal #3d.); identifying and protecting natural resources and landscapes before development occurs (Theme B, Goal #3a.); and preserving urban neighborhoods (Theme D, Goal #3c.).
 - b. Increasing the allowable density of the subject property, while keeping a compatible development next to the adjoining Waverly Estates neighborhood, is possible with a restricted R-3 zone.
 - c. Splitting the density between the two developable areas of the site will help to minimize disruption of the natural floodplain on the property. By bridging the South Elkhorn Creek and its floodplain, rather than modifying the FEMA floodplain, the natural features of the property can be protected in a more thorough and comprehensive manner.
2. This recommendation is made subject to the approval and certification of ZDP 2016-4: Wynndale Subdivision, Lots 1 & 2, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions are recommended via conditional zoning for the subject property:
 - a. Any development within 200 feet of the northern property boundary shall be limited to 20 dwelling units.
 - b. All lighting installed on the subject property shall be directed downward and shall be directed away from any single-family residential zone.
 - c. A 20-foot landscape buffer shall be established along the adjoining Waverly Estates subdivision. Within the landscape buffer, a 6-foot wall or fence may be constructed, and evergreen trees shall be planted along the rear of any residential lot under different ownership in two staggered rows so as to create a solid landscape screen.

These restrictions are appropriate in order to protect the adjacent residential properties to the north of the subject property from the possible noise and light pollution associated with the proposed development and its off-street parking area, and to more fully implement the 2013 Comprehensive Plan.

- b. ZDP 2016-3: WYNNDALE SUBDIVISION, LOTS 1 & 2 (2/25/16)*- located at 1580 Higbee Mill Road.
(Vision Engineering)

The Subdivision Committee Recommended: **Postponement**. There were some questions regarding the height of the proposed building and/or possible need for a variance, access to and the use of the open space, improvements to Higbee Mill Road and compliance with Article 16 of the Zoning Ordinance.

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

1. Provided the Urban County Council rezones the property R-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Urban Forester's approval of tree inventory map.
5. Greenspace Planner's approval of the treatment of greenways and greenspace.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Denote all environmentally sensitive areas on plan.
8. Denote that all floodplain construction shall meet the requirements of Article 19 of the Zoning Ordinance.
9. Denote location and size of all existing and proposed easements.
10. Revise plan to remove parking aisle in front yard per Article 16 of the Zoning Ordinance.
11. Discuss possible improvements to Higbee Mill Road.
12. Discuss proposed use of open area adjacent to Man o' War Boulevard.
13. Discuss landscaping adjacent to R-1C zone.
14. Discuss need for a variance or revise height of proposed wall in the front yard to meet the Zoning Ordinance limitations.

Zoning Presentation: Ms. Wade presented the staff report on the requested zone change, noting that the staff had received 162 emails in opposition to this request. She distributed copies of those emails to the Commission members for their review.

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Ms. Wade briefly oriented the Commission to the location of the subject property on Higbee Mill Road, which was a rural road until the construction of Man o' War Boulevard. The subject property, which was part of the Wynndale subdivision, was bisected by Man o' War Boulevard, with one 5.5-acre portion on the south side of that roadway, and a 7-acre parcel on the north side. The subject property is comprised of that 7-acre parcel, which is located between Higbee Mill Road and Man o' War Boulevard. Higbee Mill Road terminates at its intersection with Cornwall Drive, which is a collector street extending from the Stonewall subdivision to the north. The subject property has approximately 700' of frontage along Higbee Mill Road. Higbee Mill Road continues to the east across Clays Mill Road.

Ms. Wade stated that the immediate vicinity is characterized primarily by single-family residential development, on both the north and south sides of Man o' War Boulevard, with the possible exception of a development recently approved by the Planning Commission for 22 townhouses on King's Glen Park. There is a park on Higbee Mill Road, and the properties to the east and west remain zoned A-U. The small, triangular-shaped property to the west is part of the right-of-way of Man o' War Boulevard, while the parcel to the east contains a single-family residence.

Ms. Wade explained that the petitioner is proposing to rezone the subject property to R-3 in order to construct two apartment buildings, with a total of 32 dwelling units and 64 bedrooms. The proposal has been revised from its original layout in order to shift the two buildings to the south of a large, existing Columbia Gas high-pressure line easement, and to reduce the density from the original proposal. The residential density proposed is now 4.58 dwelling units per net acre, while the original filing was 6.88 dwelling units per acre. The subject property is heavily treed, and is approximately 2/3 covered with floodplain. Ms. Wade displayed the following photographs of the subject property and surrounding area: 1) a view of Higbee Mill Road from its intersection with Cornwall Drive, toward the east; 2) a view from the same point toward the north along Cornwall Drive, noting the existing subdivision; 3) a view of the Stonewall neighborhood entrance sign at that location.

Ms. Wade said that the petitioner contends that the proposed rezoning is in agreement with the 2013 Comprehensive Plan, citing several Goals & Objectives to support that contention. Those cited Goals & Objectives include Theme A, Goal 1: Encouraging the expansion of housing choices; Theme A, Goal 2a: Identifying opportunities for infill and redevelopment and adaptive reuse, and encouraging development of underutilized and vacant land in a compact and contiguous manner. The staff believes that the proposed rezoning also applies to Theme A, Goal 3: Providing for well-designed neighborhoods; Theme A, Goal 3c: Minimizing disruption of natural features when building new communities; and Theme B, Goal 3a: Identifying and protecting natural resources and landscapes before development occurs. The petitioner wishes to provide multi-family development in an area where none currently exists; while the staff agrees that the proposed development could encourage a mix of housing types, they are concerned about the location of apartment buildings so near an existing single-family residential neighborhood. The proposed development would also impact the FEMA floodplain on a site that includes a major drainage way, development of which is discouraged by the Comprehensive Plan. Ms. Wade stated that the staff also believes that any density increase on the subject property should be directed toward Man o' War Boulevard, rather than along the Higbee Mill Road frontage. She displayed an aerial photograph of the subject property, noting that approximately 2/3 of its area is covered by the 100-year floodplain. There are two developable areas on the site: one nearest the Stonewall neighborhood, directly adjoining four existing single-family residences; and the other, which borders Man o' War Boulevard. Both areas are developable and outside of the floodplain.

Ms. Wade explained that the staff is recommending a conditional zoning restriction to limit the density to 20 units within 200' of the northern property boundary, which would allow some density on the northern portion, while respecting the existing neighborhood. The staff is not recommending any restrictions on the southeast portion, so the additional density could then be located across the creek. The staff believes that, by creating a crossing for the creek, the development would be "pulled out" of the floodplain and limited to the developable areas. The staff contends that this approach would more fully meet the Comprehensive Plan's Goals & Objectives, specifically the policy statements about compatible development and respecting existing neighborhoods. The staff is recommending three conditional zoning restrictions for the property, as listed in the staff report and on the agenda. Ms. Wade stated that the staff is recommending approval, with the recommended conditional zoning restrictions. The staff believes that the proposed rezoning could increase the allowable density on the subject property, while still keeping the development compatible with the existing Stonewall neighborhood.

Commission Questions: Mr. Berkley asked if the development plan, as proposed, would meet the staff's recommended conditional zoning restriction to limit the density in the northern portion of the property. Ms. Wade answered that the petitioner is proposing to develop only the northwest corner of the property, where they propose to construct 32 dwelling units, and not use the southeast corner of the property at all. The staff is suggesting utilizing both sides of the subject property. Mr. Berkley asked Ms. Wade to provide more information about the basis for the staff's recommendation. Ms. Wade responded that the petitioner identified, in their justification, that they could construct 17 townhouse units on the subject property in the existing R-1T zone. The staff understands the petitioner's desire for additional units on the property; but they believe, given the proximity of the single-family residential neighborhood, that the development as proposed would not provide a good transition. The staff acknowledges that the Comprehensive Plan supports additional density; but the

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staff believes that it would be more appropriate to locate it along Man o' War Boulevard, rather than on the Higbee Mill Road side of the property.

Mr. Owens asked if the staff was recommending to limit the density on the entire property to 20 units. Ms. Wade responded that the limitation to 20 units would apply only to the northern portion of the property with no limit on the southern portion. Mr. Owens asked how the southern portion of the property would be accessed. Ms. Wade answered that the petitioner would need to bridge the floodplain, either on their property or via the use of an existing bridge on an adjacent property. To use that bridge, the petitioner would need to come to some agreement with the property owner. Referring to the aerial photograph, Mr. Owens asked about one of the existing driveways depicted. Ms. Wade explained that that area was actually considered "Clays Mill Extended," which currently serves as the driveway for the adjacent property. It does have an existing crossing of the floodplain. Mr. Sallee noted that the staff had requested information from the Council Clerk in an attempt to determine if that roadway was ever formally closed. The Clerk's office has not been able to locate any such information, so the staff is not sure of the status of that (former) right-of-way. He added that, if it was closed, it would have been deeded one-half to each property owner. If it has not been closed, it could remain a public street.

Mr. Owens asked if a substantial amount of work would be necessary to create a crossing for the floodplain. Ms. Wade answered that it would be more involved than the construction of a typical driveway.

Mr. Cravens asked if the petitioner had reduced the number of units originally proposed. Ms. Wade answered that the petitioner had originally proposed to construct 48 dwelling units; the current development plan depicts 32 units.

Mr. Brewer asked if the buildings could be reduced from three stories to two stories in height. Ms. Wade responded that the buildings are currently depicted as being two stories in height, although the original plan proposed three stories. She noted that the staff is not concerned so much with the height of the proposed buildings, since the existing and proposed zones both allow structures 35' in height; rather, the staff is concerned about the proposed density, given the proximity to the existing residential neighborhood.

Ms. Plumlee asked how the density of the existing R-1T zone compares to that of the proposed R-3 zone. Ms. Wade answered that the petitioner has indicated that they could fit 17 townhouse units on the property in the existing R-1T zone, which would be approximately ½ the density of the development currently proposed.

Development Plan Presentation: Mr. Martin presented the corollary preliminary development plan, explaining that the petitioner is proposing a two-way access to the subject property via Higbee Mill Road, with a gate. One-way circulation is proposed along the front portion of the development, with two-way circulation and parking in the rear of the buildings. Two apartment buildings are proposed, each two stories tall and 26' in height. Each building will include 16, two-bedroom units, for a total of 32 units. The required parking for the development is 58 spaces; the petitioner is proposing 60. Total square footage proposed for both buildings is 53,244.

Mr. Martin stated that there had been a great deal of discussion about how the proposed development could impact the existing floodplain area and easements on the property. Referring to the rendered plan, he noted the location of the existing 40' Columbia Gas easement, which was located via a field survey. There are also a number of sanitary sewer easements through the property, located primarily in the floodplain. The staff is requesting that the petitioner clearly delineate the dimensions of all of the easements, since one of the apartment buildings is depicted as being located just off of an easement. Mr. Martin also noted the location of the existing 100-year FEMA floodplain on the property, explaining that one of the conditions for approval of the plan would require that the development meet all of the requirements of Article 19 of the Zoning Ordinance. He said that the staff had drafted the following revised conditions for approval of this plan:

1. Provided the Urban County Council rezones the property R-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Urban Forester's approval of tree inventory map.
5. Greenspace Planner's approval of the treatment of greenways and greenspace.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
- ~~7. Denote all environmentally sensitive areas on plan.~~
- ~~7.8. Denote that all floodplain construction shall meet the requirements of Article 19 of the Zoning Ordinance.~~
- ~~8.9. Denote location and size width of all existing and proposed sanitary sewer easements on plan.~~
- ~~10. Revise plan to remove parking aisle in front yard per Article 16 of the Zoning Ordinance.~~
- ~~9.14. Discuss possible~~ Denote that details about improvements to Higbee Mill Road shall be resolved at the time of Final Development Plan.
- ~~10.12. Discuss proposed use of~~ Revise tree inventory map (previously submitted) to account for open area adjacent to Man o' War Boulevard prior to plan certification.
- ~~13. Discuss landscaping adjacent to R-1C zone.~~
- ~~11.14. Discuss need for a variance or revise height of proposed wall in the front yard to meet the Zoning Ordinance limitations.~~

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The petitioner will need to modify the location of the floodplain as part of the proposed development; and, in doing so, they will be required to meet all of the applicable state and local requirements. Mr. Martin said that the staff is recommending a condition to require a tree inventory map for the subject property, to clearly delineate the existing heavily treed areas. He added that the staff is recommending approval of this plan, subject to the 11 conditions as listed.

Petitioner Presentation: Jihad Hallany, Vision Engineering, distributed an exhibit packet to the Commission members. He stated that the proposed development originally included 48 apartment units, to be located 20' from the northern property line. After filing the original plan, the petitioner met with area neighbors, and learned that there was a great deal of objection to the proposal, particularly with regard to building heights, the distance of the buildings from the property line, and the parking proposed in the rear of the development, nearest the existing single-family residences in the Stonewall subdivision. Through multiple iterations of the plan, the petitioner has since reduced the proposed density to 32 units; eliminated the rear parking and balconies; reduced the building heights to 26'; and added a landscape buffer and berm with a 6' fence, all to address the neighbors' concerns. The buildings are now proposed to be located 57' feet from the property line; given the 30' of right-of-way along Higbee Mill Road, that results in a separation of 87' from the nearest single-family residence. There is also a grade difference of at least 5.5' between the nearest residence and the subject property.

Mr. Hallany stated that the petitioner is in agreement with much of the staff recommendation, with the exception of the recommended conditional zoning restriction to limit the density on the northern portion of the property to 20 dwelling units. The petitioner believes that the proposed plan would provide for the needed density increase on the property, without necessitating the costly investment of a bridge across South Elkhorn Creek. The petitioner also does not believe that the adjoining driveway could be available for their use, since it likely belongs to the owner of that property.

Mr. Hallany said that the petitioner contends that, due to the large number of easements on the subject property, only about 1.35 acres on the north side of the creek, and 1.6 acres on the south side, are actually developable. Under the current R-1T zoning, the petitioner could construct approximately 42 townhouses on the northern portion of the property. The proposed R-3 zone, with 32 apartment units, would have a larger rear yard and greater landscape buffer than would be required under the existing zoning, and would be less dense. The petitioner believes that the current version of the plan has addressed all of the neighbors' concerns.

Mr. Hallany read the following from Article 6-4 of the Zoning Ordinance:

"No restriction or condition may be imposed, which shall deprive the applicant of the reasonable use of the land, or create unnecessary hardship on the applicant."

Mr. Hallany said that the petitioner contends that the easements and floodplain on the property, along with the staff's recommendation to limit the density on the northern portion of the subject property to 20 units, would create an unnecessary hardship on the applicant. The petitioner contends that the proposed development meets the spirit of the Comprehensive Plan, and the current plan addresses the concerns of the neighbors.

Michael Martin, Realtor, stated that he had been asked to offer an unbiased opinion on whether the proposed apartment development would adversely impact property values in the nearby single-family residential neighborhood. He conducted a comparative market analysis for the three apartment developments closest to the subject property. Mr. Martin collected data on home sale values from the six months after construction of the apartment communities, and compared it to sales prior to the apartment construction. In each case, the home sale prices either increased in value, or remained steady.

Mr. Martin opined that, if the proposed development is constructed in a manner so as to be compatible with the existing neighborhood, home values in the Stonewall subdivision would not be negatively impacted.

Commission Questions: Mr. Cravens asked how much acreage is located on the southern side of the subject property. Mr. Hallany responded that the area across the floodplain is less than two acres in size. Mr. Cravens asked if the petitioner was aware of the ownership of the Clays Mill Road right-of-way located adjacent to the property. Mr. Hallany answered that, even if that right-of-way is a public street, it floods regularly. He said that, in order to bring it up to public standards, it would need to be elevated, and a bridge would be required, all at great expense to the petitioner.

Citizen Support: There were no citizens present in support of this request.

Citizen Opposition: Janet Cabaniss, Stonewall Community Association, stated that her organization would have one primary speaker, whose presentation would last approximately eight minutes, and eight additional speakers, who would speak for three minutes each. She said that she had spoken with Mr. Sallee the day prior to this meeting, and he indicated that that presentation format would be acceptable to the staff. Mr. Owens noted that he attempts to allocate speaking time fairly; since the staff's and the petitioner's presentations lasted approximately 20 minutes, he would ask the citizen opposition to adhere to the same time limit. He added that any additional speakers would each be allowed three minutes.

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Andrew Franklin, representing the residents of the Stonewall Community Association, stated that he and his neighbors do not believe the proposed development is in keeping with the Comprehensive Plan Goals & Objectives. He read the following excerpt from Chapter 7 of the Comprehensive Plan:

“Infill should be sensitive to the character of existing neighborhoods, and compatible with the built environment, including design, scale, proportion, and the context of the area of development.”

The character of the existing Stonewall neighborhood consists primarily of brick, one-story, ranch-style homes, on large lots. The residents do not believe that the proposed two-story apartment development would be appropriate in density, scale, proportion, or context. The Comprehensive Plan does encourage expanding housing choices, but it adds that it is important to consider the existing context and design features, as well as the preservation of existing neighborhoods.

Mr. Franklin read the Division of Planning’s mission statement: “To provide a vision and strategy that will allow Lexington to grow and prosper while preserving, protecting, and enhancing existing neighborhoods, downtown, and the rural Blue-grass cultural landscape.” He noted that he and his neighbors do not believe the proposed development would preserve or enhance the Stonewall neighborhood, and that the Comprehensive Plan also discourages disruption of natural features when planning new developments. Mr. Franklin said that the proposed development would require filling and altering of the floodplain of South Elkhorn Creek, in order to accommodate the density included on the development plan. The Stonewall residents nearest the subject property are particularly concerned about the impacts of the alteration of the floodplain, since several residences are located in a Special Flood Protection Area.

Mr. Franklin stated that area residents are also concerned that the proposed development does not meet the requirements of Article 9-6 of the Zoning Ordinance with regard to usable open space. He read the following, from the Zoning Ordinance: “Proper usable open spaces shall be devoted to the recreational needs of the project for active and passive use.” If total acreage of the property is used to calculate density, .34 acre would be required as usable open space; if just the area proposed for development is used, .45 acre would be required. Residents are concerned that neither amount appears on the current plan.

Mr. Franklin said that Stonewall residents are concerned about traffic and safety in the neighborhood, since there are a limited number of safe access points. They also believe that on-street parking will be a problem, since the petitioner is providing the minimum number of parking spaces for the proposed development.

With regard to concerns about the impact of the proposed development on property values, Mr. Franklin said that, when he purchased his home, he was aware that the vacant property behind it was developable for townhouses or single-family residences. He felt secure in his purchase, because he did not believe that comparable development would negatively impact the value of his home. However, he and his neighbors now believe that the value of their homes could be compromised due to the incompatible nature of the proposed apartment development. They believe that the current R-1T zone is in agreement with the recommendations of the Comprehensive Plan, so there is no need for a zone change.

Douglas Starnes, 720 Longwood Road, stated that the subject property is encumbered by a large number of utility easements, as well as the South Elkhorn Creek floodway and floodplain. The net acreage of the subject property is approximately 7 acres, but the petitioner indicated that the buildable area is only 1.33 acres. Area residents question why the petitioner is unwilling to consider developing the unencumbered southern portion of the property and does not factor that portion into their calculation of the developable area.

Mr. Starnes read the following excerpt from the Comprehensive Plan, regarding context-sensitive development: “A project should maintain connectivity to the scale, density, and exterior architectural features that reflect, relate to, or are in proportion to the surrounding neighborhood.” He and his neighbors contend that, because the petitioner proposes to develop all 32 of the proposed units on the property in the very small buildable area in the northern portion, the result would be an area of .04 acre per dwelling unit. That density, they believe, is not compatible with the adjacent Stonewall neighborhood, where properties average .30 acre per dwelling unit. Mr. Starnes opined that it is obvious why the subject property has remained undeveloped for 30 years.

Jim Holthaus, 3577 Cornwall Drive, stated that his home is located at the intersection of Higbee Mill Road and Cornwall Drive, so he is one of the homeowners who would be heavily impacted by the proposed development. He indicated that neighborhood residents had submitted a petition, with over 1,100 signatures, all of whom are opposed to the proposed development. Over 347 comments were submitted with the petition, many of which related to concerns about the impact of the proposed development on property values. Mr. Holthaus said that, in addition, approximately 143 emails were submitted to the Planning staff, and a large number of residents were present at this hearing. All of those residents believe the proposed development is not appropriate so near the existing single-family residential neighborhood.

Damon Snyder, 704 Cumberland Road, stated that infill needs to respect the scale, character, and design of the neighborhood; he and his neighbors do not believe that the proposed development will do so. Displaying photographs of the 22

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homes that would be most affected by the proposed development, he noted that they share similar ranch-style designs, large lots, and mature trees. The typical home in the neighborhood is 17' in height, and 62' wide. The proposed apartment buildings would be 27' in height, and 176' long. The size of the proposed apartment buildings could compare to a large ship or airplane, adding that two such buildings, only 20' apart, could compare to the length of the High Street frontage of Rupp Arena. Mr. Snyder opined that those buildings would be far too large and out of scale with the existing residences in Stonewall, and he asked that the Planning Commission disapprove this request.

Tracy Starnes, 720 Longwood Road, stated that the subject property could be developed for single-family residences in the existing R-1T zone, or it could be rezoned to one of the R-1 zones, in order to be more compatible with the existing Stonewall neighborhood.

Ms. Starnes said that, at a meeting with the petitioner in December, 2015, the residents were presented with a rendering of an upscale, three-story apartment development. She stated that, once the petitioner realized that the neighborhood was not in support of the proposed apartments, the residents were informed that the petitioner could "cram as many townhouses as possible" onto the subject property under the current R-1T zoning. Residents were shown an unattractive townhouse design rendering, in a manner that many of them viewed as a "threat" made in retaliation for their opposition to the current proposal. Since the time of the original proposal, residents have been shown plans for four different apartment developments, but the petitioner has not presented any plans for townhouses or single-family residences that would be compatible with the existing neighborhood. Ms. Starnes said that the neighborhood would support "appropriate residential living," which would maintain the single-family character of the area.

Hallie Karen Brinkerhoff, 3120 Roxburg Drive, stated that she and her neighbors do not agree with the petitioner's contention that there is a need for additional apartments in the vicinity of the subject property. She said that the residents' study indicates that, by the end of summer, 2016, there will be a glut of vacant apartments in the area. According to various real estate figures, there are currently between 1,300 and 1,500 vacant apartments in Lexington-Fayette County; approximately 500 of those are located in south Lexington. There are also several multi-family developments under construction, all within three miles of the subject property.

Ms. Brinkerhoff stated that the neighborhood residents contend that the area around the subject property is too congested, and that townhomes would be more appropriate there. She added that townhome developments seem to be popular in south Lexington, since several existing developments have recently constructed townhouses, and nearly all of the existing such units are occupied. Ms. Brinkerhoff asked that the Planning Commission consider limiting development on the subject property to lower density townhomes or single-family residences.

Chairman Owens declared a brief recess at 3:07 p.m. The meeting reconvened at 3:14 p.m.

Gareth Dehner, 3368 Grasmere Drive, stated that he does not believe this discussion is about the zoning of the subject property, but about the petitioner "trying to lay off a business risk onto taxpayers." The petitioner had to know that the profitability of the proposed development was dependent upon approval of the requested zone change, Mr. Dehner opined, and they are now asking the taxpayers to "bail them out" by changing the zoning. He added that he believed that approving this zone change would amount to allowing the petitioner to be the beneficiary of "corporate welfare," to the detriment of the neighborhood.

Kay Woods, Stonewall resident, stated that she would like to applaud the staff and the Planning Commission for creating a protective Comprehensive Plan, and for the consideration that the Zoning Ordinance gives to property holders. She opined that the proposed development could negatively impact property values for homeowners and business owners downstream of the subject property. She read the following excerpt from Article 19 of the Zoning Ordinance:

"It is the intent of this Article to control development which will, when acting alone or in combination with similar development, create an unjustified demand for investment in flood control works, by requiring that users vulnerable to floods pay the cost of rescue, relief, emergency preparedness measures or storm sewer systems."

Ms. Woods said that, when development creates an additional burden to the public for business interruptions, that results in the loss of wages, sales, and tax revenue. She stated that the area residents contend that the unjustified demand for public investment in the proposed development occurs in two ways: first, the existing residents near the floodplain will be subject to additional flooding risks, so they are likely to be required to assume costs including flood insurance. Second, businesses located downstream in the South Elkhorn Shopping Center could be significantly affected. Business owners have already pled with the Planning Commission to stop developments that modify the floodplain in the Harrodsburg Road area. They suffered flooding during heavy rain events in 2015, reporting losses in interruptions, loss of wages, and sales.

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Ms. Woods asked the Commission members to “honor their promises” to residents and disapprove this request, because the area residents believe that it is not in their best interest, or that of the business owners in the South Elkhorn Creek shopping center.

Yvette Childress, former resident of Longwood Road, stated, with regard to the existing Columbia Gas easement on the subject property, that she believes that the petitioner’s information might be incorrect. She said that Columbia Gas previously stated that the easement was 50’, rather than 40’ as shown in the petitioner’s exhibits.

Ms. Childress said that, according to Frank Prewitt, a Stonewall resident and civil engineer who served as the engineer of record for the recent Clays Mill Road improvement project, the upgrades to that roadway eliminated the existing dedicated left-turn lane for northbound traffic onto westbound Higbee Mill Road. Mr. Prewitt indicated that the reconfiguration of Clays Mill Road, including the elimination of left-turn lanes in this area, was carefully considered as part of the scoping study for the project. The decision to eliminate the northbound left-turn lane onto Higbee Mill Road was made specifically due to the low traffic volume of that turning movement. It was decided that that space could be better used to accommodate the high traffic volume left-turn lane from Clays Mill Road onto Man o’ War Boulevard.

Ms. Childress said that there has been no analysis of the impact of the additional traffic from the proposed development on the Clays Mill Road/Higbee Mill Road intersection. Vision Engineering submitted a report analyzing the projected traffic impacts, but it is not qualified by the Kentucky Transportation Cabinet to perform traffic engineering or transportation planning services.

Ms. Childress stated that the increase in density on the subject property was not part of the consideration of the Clays Mill Road widening project; therefore, she does not believe that the subject property should be rezoned in order to allow for high-density apartment development.

Matthew Beck, 3553 Cornwall Drive, stated that he is an engineering professor. He provided an illustration about density, noting that, if everyone present in the Council Chamber crowded into one corner, the density could not accurately be calculated based on the entire space of the chamber. Mr. Beck stated that the petitioner is providing the density calculation for the subject property by dividing 32 units by the seven acres of the entire property, rather than the small portion which is proposed for development; he opined that that would not be representative of the practical density of the proposed development.

Mr. Beck said that the petitioner’s development plan includes tree plantings that are predicted to be 24’ tall within six years. He said that the Comprehensive Plan references that new developments should be similar in context to existing communities, and he does not believe that a development that requires 24’ trees and a 6’ solid fence could be considered to be in context with the neighboring properties.

Doug Abrams, 716 Longwood Road, stated that he and neighbors are not in support of the proposed development, because they do not believe it represents the Stonewall community. He asked the Commission members to consider whether they would want a large apartment development constructed so near their back yards, and to vote accordingly.

Daniel Ell stated that he is an electrical engineering professor at the University of Kentucky, and a certified professional engineer. He stated that, in the information provided by the petitioner with regard to the impact of the proposed development on property values, no control group was used. From a scientific perspective, therefore, he believes that the petitioner’s information is flawed.

Simms Bartella, Stonewall resident and disabled veteran, stated that he returned to Lexington-Fayette County following his service in the Marine Corps. He said that he could have lived anywhere in the United States, but he chose Lexington because of its “small-town, Americana feeling.” Neighborhoods like Stonewall, Lansdowne, and Shadeland East are very characteristic of Lexington, and are the kinds of areas that are particularly suited for raising families. Mr. Bartella said that those neighborhoods are not old enough to be protected via historic preservation, but they do deserve protection. He opined that the Planning Commission should not be considering whether apartments could fit on the subject property, but whether or not they should be located there, because of the potential impact on Stonewall.

Alice Dehner, 3368 Grasmere Drive, asked what would be wrong with preserving greenspace on the subject property.

Julian Campbell, Lexington resident, said that he is an advocate for good ecological planning. He opined that the petitioner’s market survey was flawed, and should be studied more closely.

Mr. Campbell stated that the floodplain map is very confusing, and different versions have been presented. In some of the older maps, the 100-year floodplain appears to wrap around the northern portion of the property, which is very concerning, given the petitioner’s proposal to develop only that portion of the property.

Mr. Campbell said that he is primarily concerned about the protection of the greenspace on the subject property, and the impact of the proposed development on the environment. He believes that the property should be considered as part of a

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greenspace plan. With regard to the petitioner's tree inventory, Mr. Campbell found that most of the tree population on the subject property consists of pear varieties that are not good quality.

Janet Cabaniss stated, in closing, that the residents of the Stonewall neighborhood do not want an apartment development to be located on the subject property. The residents have met with the petitioner and the Planning staff; walked the subject property; held various meetings to discuss the proposal; and reviewed the petitioner's proposed alterations to the plan, but the result is the same.

Ms. Cabaniss opined that the size and scale of the proposed apartment development simply do not fit with the existing residences in Stonewall. The staff's conditional zoning restrictions seem to support that opinion, recommending that density be limited on the northern portion of the property nearest the neighborhood. The Comprehensive Plan included, in its recommendations for infilling higher-density dwellings near existing homes, a suggestion for townhomes rather than apartments. Ms. Cabaniss asked the Planning Commission to keep in mind that the subject property is already zoned for townhouses, and to disapprove this request, since there is no real need for a zone change.

Petitioner Rebuttal: Mr. Hallany stated, with regard to the comments about the floodplain on the subject property, that there are several layers of procedures, according to Article 19 of the Zoning Ordinance, that must be followed in order to develop in that area. The petitioner must first obtain certification from the Department of Fish & Wildlife that there are no endangered species on the property; then, drawings and calculations must be submitted to the Division of Engineering; once those requirements are satisfied, all information must be sent to FEMA for their review. All of those steps must be completed prior to any construction on the property; and, if at any point an approval is not obtained, the process cannot continue.

Mr. Hallany said, with regard to some of the other citizens' concerns, that the proposed development plan meets the open space requirements of the Zoning Ordinance. He noted that this zone change did not require a traffic study. The petitioner performed a traffic study anyway, conducting traffic counts along the Higbee Mill Road frontage of the property, including the Higbee Mill Road/Clays Mill Road intersection. Those counts indicated less than two seconds of delay at the intersection.

Mr. Hallany said that the subject property could be developed today under the existing R-1T zoning. He displayed two renderings of possible townhouse developments, noting the 30' of right-of-way separating the subject property from the nearest single family residence. He said that the petitioner could construct the roadway so that half of it is located within the right-of-way, and half on the subject property. The townhouses included in those sketches could be larger and taller than the proposed apartment buildings, and they could be constructed under the current zoning. The petitioner contends that the proposed development is at the edge of the Stonewall neighborhood, rather than within it, and that it respects the context of the existing residences.

With regard to the concerns about density, Mr. Hallany said that the petitioner calculated the density on the subject property according to the requirements of the Zoning Ordinance. The proposed density and heights of the buildings are less intense than what could be allowed under the existing R-1T zoning, and the petitioner is proposing additional landscaping and buffering. The petitioner also moved the buildings further back from the property line in response to citizens' concerns. Mr. Hallany stated that the petitioner addressed all of the citizens' concerns, and he requested approval.

Citizen Rebuttal: Mr. Franklin said that the building locations were shifted on this plan in order to accommodate easements, rather than to appease the neighbors. He conceded that there is green space proposed on the property, but noted that it is part of the floodplain, and should not be considered as usable open space. Mr. Franklin added that the proposed building heights were reduced from three stories to two in order to accommodate the staff's recommendations rather than to address neighborhood concerns.

Staff Rebuttal: Ms. Wade stated, with regard to the petitioner's contention that a conditional zoning restriction on the property would be unreasonable and would create a hardship, that the existing zoning does allow for a reasonable use of the land. The petitioner can currently construct a number of townhouses on the property, so there is no requirement for a zone change. Also, no zone change is guaranteed; any applicant assumes a certain amount of risk when applying for rezoning of a property. The petitioner can bring forward a development plan that constitutes a reasonable use of the petitioner's property, so the proposed conditional restriction would not deny the use of the property or create a hardship. Ms. Wade said that the existing character of the area was the reason for the staff's recommended conditional zoning restriction, in order to protect the adjoining neighborhood. If the petitioner does not agree with the recommended conditional zoning, the staff believes that the existing R-1T zoning is more than appropriate at this location. It would also permit a variety of housing choices in the area, which is supported by the Comprehensive Plan.

With regard to the comments about density, Ms. Wade agreed that the staff calculates density across the entire subject property. In this instance, approximately 2/3 of the property is occupied by floodplain, so a lower density number is re-

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flected. The petitioner's exhibit packet indicated a buildable area of 1.33 acres in the northern portion of the property; the density of just that area would be 24 dwelling units per acre.

Chairman Comment: Mr. Owens declared the hearing closed, and opened the floor for Commission questions or comments.

Commission Comments: Ms. Plumlee commended the neighbors on their good presentation, noting that it was well-organized and thought-provoking.

Zoning Motion: A motion was made by Ms. Plumlee and seconded by Mr. Wilson to disapprove MAR 2016-1, for the following reasons:

1. The proposed R-3 zone is not in agreement with the 2013 Comprehensive Plan for the following reasons:
 - a. Theme D., Goal 3, Objective c – the proposed zone does not preserve the existing neighborhood.
 - b. Theme A., Goal 3, Objective c – the proposed zone does not minimize disruption of natural features, including floodway and floodplain.
 - c. Theme A., Goal 2, Objective a – the proposed zone does not preserve the context of the larger lot size of the single-family neighborhood.
2. The existing R-1T zone is appropriate and compatible with the existing Stonewall neighborhood, based on the following reasons:
 - a. The existing R-1T zone allows for alternative housing choices.
 - b. The existing R-1T zone allows for context-sensitive and compatible development with the existing Stonewall neighborhood.
 - c. There has been no unanticipated change of a social, physical, or economic nature that has occurred since the adoption of the 2013 Comprehensive Plan.

Discussion: Mr. Wilson noted that those who favor disapproval of this zone change request should vote "yes" on this motion, as stated.

Mr. Cravens stated that he would support the motion for disapproval, but noted that the neighbors should understand that townhouses could be constructed at this location under the existing R-1T zoning.

Ms. Mundy reiterated Ms. Plumlee's comments, thanking the neighbors for their well-organized and thought out presentation. She added that she does not agree with the citizens' concerns about the negative impact of apartment development on home resale values, especially since there has been an upswing in new apartment developments in recent years.

Mr. Owens said that the residents needed to be aware that the subject property would develop at some point. He opined that the proposed density was too much for the existing neighborhood, although he noted that the subject property is constrained and he appreciated the petitioner's willingness to work with the neighbors.

Zoning Action: Ms. Plumlee's motion carried, 6-2 (Berkley and Smith opposed; Drake, Penn, and Richardson absent.)

Development Plan Action: A motion was made by Ms. Plumlee, seconded by Mr. Wilson, and carried 8-0 (Drake, Penn, and Richardson absent) to indefinitely postpone ZDP 2016-3.

2. JAKE RIORDAN ZONING MAP AMENDMENT & VALLANDALE SUBDIVISION (AMD.) ZONING DEVELOPMENT PLAN

- a. MAR 2016-2: JAKE RIORDAN (AMD.) (2/25/16)* - petition for an amended zone map amendment from a Mixed-Use 2: Neighborhood Corridor (MU-2) zone to a Neighborhood Business (B-1) zone, for 0.964 net (1.235 gross) acres, located at 1501, 1505, 1507, and 1509 Versailles Road.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The mission statement notes that this will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World.

The Cardinal Valley Small Area Plan (CVSAP), adopted by the Planning Commission in April 2015, encompasses the subject properties. The SAP outlined five recommendations: 1) neighborhood conservation, 2) Versailles Road corridor improvements, 3) recognition and development of the "Alexandria Drive International District," 4) Oxford Circle neighborhood center redevelopment, and 5) augmenting the open space network within the area.

The petitioner has amended their request, which originally was a rezoning to B-3 for five properties. The proposed rezoning is now for four properties to a B-1 zone for neighborhood-oriented retail establishments within a new 12,000 square-foot

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building. The associated off-street parking would be located behind the principal building on the lot, adjacent to an R-3 lot that was formerly a part of this zone change request.

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

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

1. A restricted Neighborhood Business (B-1) zone is in agreement with the 2013 Comprehensive Plan and the Cardinal Valley Small Area Plan (CVSAP), adopted by the Planning Commission in April 2015, for the following reasons:
 - a. Theme A of the Plan, Growing Successful Neighborhoods, emphasizes the infill, redevelopment and adaptive reuse of the urban area that respects the area's context and design features (Goal #2a.), and encourages striving for positive and safe social interactions in neighborhoods (Goal #3b.). In addition, the Goals and Objectives suggest that the community should "enable infill and redevelopment that creates jobs where people live" (Theme C, Goal #1d.); attract and retain high-paying jobs (Theme C, Goal #2c.); and to uphold the Urban Service Area concept by encouraging "compact, contiguous, and/or mixed-use sustainable development within the Urban Service Area, as guided by market demand, to accommodate future growth needs" (Theme E, Goal #1b.).
 - b. The Plan encourages the consideration of how proposals relate to existing development in the immediate vicinity, as well as protecting neighborhoods and residential areas from incompatible land uses. The proposed B-1 zone is compatible with the immediate vicinity, and a landscape buffer along the rear property line will help to provide an appropriate transition in land use.
 - c. The proposed B-1 zone along an entrance corridor to downtown Lexington that was recently studied by the Division of Planning and the Kentucky Transportation Cabinet (District 7 office) will provide an opportunity to provide some jobs closer to where people live.
 - d. The Cardinal Valley Small Area Plan encourages aesthetic and functional improvements that will make the Versailles Road corridor more accessible to pedestrians, which seems to speak to encouraging pedestrian-oriented development. The corollary development proposed for the site conforms to the B-1 zone setbacks, which encourages pedestrian interaction and development closer to the street. This is consistent with the CVSAP recommendations.
2. This recommendation is made subject to the approval and certification of ZDP 2016-4: VALLANDALE SUBDIVISION (AMD), prior to forwarding this recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions shall apply to the subject property:
 - a. Prohibited Uses:
 1. Drive-through facilities within 100' of Delmont Drive.
 2. The sale or provision of wine, beer or alcoholic beverages, other than by the drink.
 3. Live entertainment and/or dancing.
 4. Cocktail lounges, brew-pubs and nightclubs.
 5. Automobile service stations.
 6. Arcades, including pinball and electronic games.
 7. Sale of firearms other than by federally licensed manufacturers, importers or dealers.
 8. Car washing establishments.
 9. Pool tables, within an establishment, even as an accessory use.
 10. Automobile and vehicle refueling stations.
 - b. Other Use Restrictions:
 1. A landscape buffer of at least ten (10) feet in width shall be provided along the northern property boundary, with plantings as specified by Article 18-3(a)(1)2 of the Zoning Ordinance, including the retention or replacement of a 6-foot tall privacy fence.
 2. Outdoor lighting shall be shielded and directed away from any adjacent residential zone. Lighting attached to a pole or any structure shall be a maximum of twenty (20) feet in height.
 3. Any free-standing sign erected shall be a maximum of ten (10) feet in height.

These use and buffering restrictions are appropriate and necessary for these four lots to ensure greater compliance with the 2013 Comprehensive Plan and Cardinal Valley Small Area Plan, and to provide greater consistency with prior action by the Planning Commission and the Urban County Council involving business uses at this location.

- b. ZDP 2016-4: VALLANDALE SUBDIVISION (AMD) (2/25/16)* - located at 1501-1509 Versailles Road.
(Vision Engineering)

The Subdivision Committee Recommended: **Postponement**. There were some questions regarding the proposed access to the site from Delmont Drive.

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

1. Provided the Urban County Council rezones the property B-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Urban Forester's approval of tree inventory map.
5. Delete note #14.
6. Dimension sidewalks serving front building entrances.
7. Denote that fenestration and front architectural building features relative to the Versailles Road frontage shall be reviewed at the time of the Final Development Plan.
8. Discuss proposed dumpster location.
9. Discuss patio/sidewalk area.
10. Discuss the potential parking impact for restaurants and uses other than retail.

Zoning Presentation: Ms. Wade presented the staff report on this rezoning request, noting that the staff had received 16 emails in opposition to this request, along with a petition opposed to this rezoning with approximately 150 signatures. She distributed those items to the Commission for their review.

Ms. Wade briefly oriented the Commission to the location of the subject property at the intersection of Delmont Drive and Versailles Road, which is signalized. Delmont Drive is a local residential collector, which parallels a railroad line to the north. The petitioner is proposing to rezone the subject property to B-1 in order to align it with the existing B-1 zoning to the south and east of this location. This is an amended petition, as the petitioner previously proposed B-3 zoning. The staff recommended disapproval of that request, which prompted the petitioner to modify their application to request the B-1 zone. Along with the amendment to their application, the petitioner also removed the property at 105 Delmont Drive. This amended request now includes only the four parcels zoned MU-2 at the intersection of Versailles Road and Delmont Drive.

Ms. Wade explained that the petitioner is proposing to develop a 1,200 square-foot retail building and associated parking to the rear, with access from Delmont Drive. The general vicinity includes several commercial uses; a senior housing development to the west; vacant non-conforming residential structures across Delmont Drive; and the Days Motel, across Versailles Road, which is a non-conforming hotel in the B-1 zone. Ms. Wade displayed an aerial photograph of the subject property, noting that it is situated at the entrance to an existing single-family neighborhood. She also noted the location of two vacant, multi-family residential buildings located across Delmont Drive from the subject property.

Ms. Wade displayed several additional photographs of the subject property, noting that the residential structures originally constructed there have been maintained, although they have been modified. The residential character and setbacks, however, still exist. Ms. Wade also noted the rear yards of the subject properties, which have an existing fence along the Delmont Drive parcel. Those rear yard areas have primarily been used for parking and access for the four subject properties.

Ms. Wade said that the parcels at 1507 and 1509 Versailles Road were rezoned to P-1 in the 1970s, and they have most recently been used as a daycare center. In 1988, the corner property, 1501 Versailles Road, was rezoned to B-1 in order to allow a single use for the display and sale of art. In 1994, the 1505 Versailles Road parcel was also rezoned to B-1 in order to accommodate the expansion of the art gallery. In these recent cases, the properties were restricted via conditional zoning in order to protect the residential neighborhood to the north. When the art gallery closed, a proposal was brought forward to alter the conditional zoning restrictions at 1501 and 1505 Versailles Road in order to allow more uses, but those properties remained vacant for years. In 2005, the properties were rezoned to MU-2, with conditional zoning restrictions. No final development plan was ever filed following that zone change, however, so the properties have remained in either residential or commercial use.

Ms. Wade said that the petitioner contends that the proposed rezoning is in agreement with the 2013 Comprehensive Plan, citing Goals & Objectives relating to infill and redevelopment that reflect the area's context and design features; encouraging positive and safe interactions in neighborhoods; enabling infill and redevelopment that creates jobs where people live; attracting and retaining high-paying jobs; and upholding the Urban Service Area concept by encouraging compact and contiguous, and/or mixed-use development. Ms. Wade noted that the subject properties are part of the recent Cardinal Valley Small Area Plan (CVSAP). The CVSAP had five general recommendations; the staff felt that the most relevant of those related to Versailles Road corridor improvements. That Goal refers to improving the aesthetics and function of the corridor for vehicles, and making it more accessible to pedestrians and cyclists. When the petitioner initially filed their rezoning request for a B-3 zone with a gas station, the staff could not find that the proposed development was in line with the CVSAP. The staff believes that the new proposed development, with a B-1 zone, more fully coincides with the concepts proposed by the CVSAP. The building is proposed to be set back 20' from the road, with parking in the rear, which is more pedestrian-oriented. Ms. Wade stated that the staff is now in agreement with the petitioner that the proposed zone change to B-1 is in agreement with the 2013 Comprehensive Plan and the CVSAP. The staff and the Zoning Committee are recommending approval, for the reasons as listed in the staff report and on the agenda. The staff is recommending nine prohibited uses on the property, as well as a 10' landscape buffer at the rear property line; the retention of the exist-

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ing privacy fence (or replacement if necessary); that the direction of any outdoor lighting away from the residential area and a maximum height of 20' for that lighting; and the limitation of any freestanding signs to 10' in height.

Commission Question: Mr. Wilson asked, with regard to the proposed prohibited use, what the difference is between an automobile service station and a vehicle refueling station. Ms. Wade answered that automobile service stations have been in the Zoning Ordinance for decades, and include typical gas stations, tire centers, and other businesses that involve sales and/or servicing of vehicles. A vehicle refueling station refers specifically to compressed natural gas, which is a separate use with different regulations, due to the nature of natural gas and the inherent safety issues.

Development Plan Presentation: Mr. Martin presented the corollary preliminary development plan, noting the location of the proposed retail building and its orientation toward Versailles Road. The petitioner is proposing access to Delmont Drive, with associated parking to the rear of the building, and a pedestrian access to the entrance of the building. The retail structure is proposed to be 12,000 square feet in size, and one story in height.

With regard to the conditions for approval, Mr. Martin said that they refer mostly to typical "sign-off" type items, with a few exceptions. The staff is recommending a note referring to the front fenestration and architectural features of the building, which is always a concern in B-1 developments that adjoin residential neighborhoods. There are also three discussion items that are unresolved; the first involves the dumpster location on the property, which is typically not included on a preliminary development plan due to the effort involved in proper siting and the level of review required for approval of the site. The Division of Solid Waste requires 50' of clearance for backing of their collection vehicles; in addition, the subject property must include an internal turnaround for trucks, so that they will not be required to back out onto Delmont Drive. The dumpster location indicated on this plan will likely not work, since no turnaround is provided, and any addition of a turning area could result in the loss of parking spaces. The petitioner is proposing only seven additional parking spaces over the Zoning Ordinance requirement, so the staff is concerned that those issues be reviewed closely. Condition #9 relates to the patio/sidewalk area to the rear of the building, which is proposed to be 33' wide. The staff is concerned that the large patio area could include restaurant seating, which would also require additional parking spaces. Mr. Martin said that condition #10 refers to this concern, noting the potential impact of restaurant uses on the required parking. In any situation where a restaurant is located in a retail area, the staff reviews the parking very closely, since restaurants include a higher parking generator. The staff has not been able to fully resolve the issue with the petitioner, so they are recommending the resolution of these items at the time of a Final Development Plan for the property. Mr. Martin noted that the Subdivision Committee recommended postponement of this item at their meeting three weeks ago.

Petitioner Presentation: Jihad Hallany, Vision Engineering, was present representing the petitioner. He stated that the petitioner is in agreement with the staff's recommendations, including the proposed conditional zoning restrictions. Mr. Hallany asked that the discussion items for the development plan be deferred until the time of a Final Development Plan for the property.

Commission Question: Mr. Owens asked if the petitioner intended to use the rear patio area as a restaurant seating area. Mr. Hallany responded that the petitioner amended the application to request the B-1 zone in order to address the staff's concerns about the B-3 zone, which was originally proposed.

Citizen Support: No citizens were present in support of this request.

Citizen Opposition: Paula Singer, 100 Hamilton Park, stated that this zone change process has been fluid, and noted that it has been difficult at times for area residents to keep up. She said that she represented approximately 150 residents who signed a petition against the proposed development.

Ms. Singer stated that, as a member of the CVSAP Steering Committee, president of the Hamilton Park/Westgate Neighborhood Association, and founding member of Friends of Versailles Road, she has worked with neighborhood residents and the Planning staff to ensure the beautification and vitality of the corridor. Since 2012, LFUCG and the Kentucky Department of Transportation (KYDOT) have spent \$375,000 studying the Versailles Road corridor and the Cardinal Valley neighborhood. The CVSAP, adopted by the Planning Commission less than a year ago, provides guidelines for future design and growth in the area. One of the key features of the CVSAP was ensuring strong and stable residential neighborhoods, through neighborhood conservation. The CVSAP stresses the importance of providing an adequate supply of affordable housing to meet the needs of Cardinal Valley residents and assuring safe and well-maintained residential environments. It also recommends increasing the aesthetics of Versailles Road so it can function as a major gateway to the city.

Ms. Singer stated that area residents contend that the proposed development would "chip away" at the residential character of the neighborhood, which will not contribute to the achievement of the objectives laid out in the CVSAP. They believe that the residential section of Versailles Road from Delmont Drive west to Oxford Circle is the most attractive section of the corridor, and that a zone change that would allow retail development in that area would undermine the transition area between commercial uses toward downtown, and the residential uses to the west. Ms. Singer opined that the proposed

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zone change would be contrary to the Comprehensive Plan and CVSAP to uphold the Urban Service Area concept by "compact, contiguous, and/or mixed-use, sustainable development within the Urban Service Area."

Ms. Singer reiterated the zoning history of the subject properties, noting that, when the westernmost property was rezoned from residential to B-1, it was to allow only one use: the display and sale of art. Ms. Singer stated that the area residents believe that the CVSAP supports the current MU-2 zoning of the subject property, and she asked that the Planning Commission disapprove this request.

Lane Boldman, 114 Woodford Drive, stated that she is the current president of the Cardinal Valley Neighborhood Association. She noted that lack of attendance at today's hearing is not a representation of lack of interest in this request; rather, there are a number of low-income residents in the area who were not able to leave work to attend this hearing. The neighborhood association did discuss this issue, but did not take a formal vote, so Ms. Boldman noted that she was offering her personal comments, rather than those of the association members.

Ms. Boldman stated that she was pleased that the petitioner abandoned their original proposal for a gas station, which she believes would have been "entirely inappropriate for the area." In considering the amended proposal, she said that, while it is improved from the original, it is equally inappropriate for the neighborhood. Cardinal Valley has been outlined in the CVSAP as an area of special need; and needs time to revitalize. Ms. Boldman believes that the proposed zone change would "chip away" at the existing residential neighborhood.

With regard to the CVSAP, Ms. Boldman stated that it was developed as part of a year-long process involving neighborhood residents and other stakeholders. The CVSAP depicts the subject property as part of a "neighborhood conservation area," which is defined as an area that "should increase affordable housing stock and promote a proactive, sustainable community through program outreach." The CVSAP also states that the goal of the area is to "expand home ownership opportunities, promote engaged communities and citizen/neighborhood involvement; directly and positively impact the quality and appearance of the housing stock; ensure safe residential environments." The current proposal would remove four 1920s structures, which are original to the area and have been maintained to code, and would replace them with non-residential space on a block that is primarily residential in nature. Ms. Boldman opined that, for these reasons, the proposed zone change to B-1 would not satisfy these requirements. The area near the subject property contains close to 50 original residential structures, so the proposed zone change would remove approximately 10% of the residential nature of this portion of the Versailles Road corridor.

Ms. Boldman said that an overlay area has been identified for Versailles Road corridor improvements, which specifies "increasing safety and function of Versailles Road by improving vehicular, cyclist, and pedestrian accessibility." The recommendation report states that, "These recommendations aim at revitalizing, and ensuring housing diversity and providing economic development opportunities and services, while tying it all together with open space and transportation improvements." The CVSAP also recommends that the Oxford Circle area should become the commercial node for the community.

Ms. Boldman opined that the recommendations of the 2013 Comprehensive Plan and the CVSAP should take precedence over individual zone change requests, particularly since the SAP is in preparation for implementation. Area residents want to make the CVSAP successful, and they believe that the proposed development would undermine those efforts. Ms. Boldman asked that the Planning Commission disapprove this request, so that the existing residential structures, and the integrity of the block, can be maintained.

Amy Clark, 628 Kastle Road, stated that there had recently been a number of B-1 and B-3 zone changes along arterial roadways within the city, and she believes that, in light of those developments, it is important to uphold the recommendations of the Comprehensive Plan and small area plans.

Ms. Clark displayed a map from the CVSAP, noting the residential neighborhood conservation area, which extends from Delmont Drive to Oxford Circle. Then, displaying the Food Access map from the 2013 Comprehensive Plan, she said that there are areas within the Versailles Road corridor with a high population density and little access to personal transportation. Versailles Road is also one of the most popular mass transit routes in Lexington-Fayette County. There is a need for affordable housing in the area, as well as neighborhood stability.

Ms. Clark said that, although there has been a mix of uses in the four residential structures on the subject properties, the existing MU-2 zoning has never been implemented. She said that it could provide an opportunity to develop a commercial use on the first floor, with residential use above, as a good buffer between the commercial area to the east and the adjacent senior citizens housing facility.

Ms. Clark stated that the proposed development would be "out, not up;" it would be surrounded by paving, and would eliminate 35,000 square feet of mature tree canopy on the site. The petitioner has committed to providing a landscape buffer along the rear property line, but it will be many years before any new trees are mature in height.

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Ms. Clark urged the Planning Commission to consider the time and care that went into the Comprehensive Plan and CVSAP, and to disapprove this request.

Barbara Fyock, 1523 Versailles Road, stated that her home is located in the same block as the subject property. She purchased her home in 2010, and is currently in the process of restoring it. Ms. Fyock sees Versailles Road from Delmont Drive to the west as a residential community, where neighbors bike and walk the area regularly. She would like to keep the residential character of the area, including her 1920s home, which is worthy of preservation. Ms. Fyock stated that she believes that this portion of Versailles Road is "the greatest part of town to live in," and she is opposed to the proposed development. She would like to see the CVSAP implemented as it was proposed.

Gary Billett, 125 Londonderry Drive, stated that he agreed with the other opponents to this request, adding that he does not want to see the residential character of the neighborhood decline. He added that, at the meeting between the petitioner and the neighborhood association, he asked several questions; but he did not feel that they were adequately answered.

John Boone, 121 Hamilton Park, stated that his family has lived on Hamilton Park for 60 years, and he loves the area. He said that he believes that Hamilton Park is an asset to Lexington, and, as such, it should be preserved. Mr. Boone said that he is concerned that rezoning the subject property for business use could create a precedent for more development in the area, and undermine the quality of the neighborhood over time. He asked that the Planning Commission disapprove this request.

Petitioner Rebuttal: Mr. Hallany reiterated that the proposed rezoning is in agreement with both the Comprehensive Plan and the CVSAP.

Mr. Hallany stated that, at the meeting between the petitioner and neighborhood residents about a week prior to this hearing, there were citizens present in opposition, but there were also supporters of this request. He said that the subject property has been zoned MU-2 since 2005, and it has remained undeveloped, which indicates that the MU-2 zone is inappropriate for the area. Mr. Hallany opined that the proposed development would provide business uses to serve the neighborhood, not detract from it, and he requested approval.

Citizen Rebuttal: Ms. Singer said that Mr. Hallany might have misunderstood the residents' politeness as approval for the proposed development at the recent neighborhood meeting; there were no citizens present in support of this request.

Ms. Singer stated that the area residents have been given no specifics as to what types of business might locate on the subject property. There have been several successful businesses that have located in the area, but they have been small, with well-established customer bases. Those businesses include Mickler's Equine Apparel and South Hill Gallery, both of which are located in historic structures, with a commitment to maintain the buildings. Most of the successful businesses in the area do not involve retail sales. Ms. Singer said that the petitioner indicated, at the neighborhood meeting, that a barber shop or coffee shop could locate on the subject property. However, a barber shop recently went out of business in the Village Shopping Center, next to the public library; it was replaced by a T-Mobile cell phone store, which the neighborhood residents do not believe is a desirable business for the community. Ms. Singer said that the area residents maintain that a small, local business would be able to locate on the subject property in the existing MU-2 zone; a "strip mall" is not welcome on the subject property.

Staff Rebuttal: Ms. Wade stated that the staff had no rebuttal comments.

Commission Comments: Mr. Wilson stated, with regard to Ms. Boldman's comments, that the staff had provided a well-defined set of proposed conditional zoning restrictions for the subject property. He asked if the neighbors had the opportunity to review that recommendation. Ms. Boldman answered that the neighborhood association called a special meeting so that residents could discuss the proposal; the result of that meeting was a consensus among the neighbors that they did not want the proposed development located in the neighborhood. Residents believe that the proposed development would undermine the efforts to revitalize their neighborhood, and they want to maintain its residential character.

Chairman Comment: Mr. Owens stated that the hearing was closed at this time, and he opened the floor for Commission comments or a motion.

Commission Comments: Ms. Plumlee commended the citizens for their thoughtful arguments, particularly with regard to the CVSAP. She said that, should this proposed development go forward, the questions about parking could become a greater concern. Ms. Plumlee opined that the proposed development would have a negative effect on the neighborhood.

Zoning Motion: A motion was made by Ms. Plumlee to disapprove MAR 2016-2, because it does not preserve the existing urban neighborhood, and is in conflict with the Comprehensive Plan, Theme A., Goal 3, Objective C. Ms. Plumlee's motion failed for lack of a second.

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Zoning Action: A motion was made by Mr. Cravens, seconded by Ms. Mundy, and carried 7-1 (Plumlee opposed; Drake, Penn, and Richardson absent) to approve MAR 2016-2, for the reasons provided by staff.

Development Plan Action: A motion was made by Mr. Cravens, seconded by Ms. Mundy, and carried 7-1 (Plumlee opposed; Drake, Penn, and Richardson absent) to approve ZDP 2016-4, with the 10 conditions as listed on the agenda, changing #8 - #10 to read: "Resolve...at the time of the Final Development Plan."

6. SOLAR ECLIPSE L.L.C. ZONING MAP AMENDMENT & SCHROYER PROPERTY, DOZIER PROPERTY, UNIT 2 & PALOMAR TRACE SUBDIVISION, UNIT 3C ZONING DEVELOPMENT PLAN

- a. MARV 2016-4: SOLAR ECLIPSE L.L.C. (2/25/16)* - petition for a zone map amendment from a Professional Office (P-1) zone to a Neighborhood Business (B-1) zone, for 0.95 net (1.25 gross) acres; and from a Planned Neighborhood Residential (R-3) zone to a Professional Office (P-1) zone, for 0.25 net (0.29 gross) acre, for property located at 3600 Palomar Centre Drive and 2101 Palomar Trace Drive (a portion of). A dimensional variance is also requested.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The mission statement notes that this will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World.

The 2013 Plan's Goals and Objectives emphasize the importance of growing successful neighborhoods (Theme A), protecting the environment (Theme B), creating jobs and prosperity (Theme C), improving a desirable community (Theme D) and maintaining a balance between planning for urban uses and safeguarding rural land.

The petitioner proposes rezoning all of one property and a portion of another to create a lot for a fast food restaurant, and complete a service road (access easement) connection to Harrodsburg Road for commercial development.

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

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

1. Although the requested zone change is not in agreement with the 2013 Comprehensive Plan, there have been unanticipated changes of an economic nature within the area of the subject property, for these reasons:
 - a. The neighboring properties at 1009 & 1017 Wellington Way were rezoned from P-1 to B-1 in 2014, as is proposed with this application.
 - b. With the Board of Adjustment's approval of a child care center on the bulk of the 2101 Palomar Trace Drive property (a use which is now proposed for relocation to the southwest), the properties with frontage along Harrodsburg Road and Wellington Way are now approved to be significantly more commercial than residential in character, compared to three years ago when the Comprehensive Plan was initially adopted.
2. The combination of the requested Neighborhood Business (B-1) and the Professional Office (P-1) zone is appropriate for these 1.25 acres of the subject property, and the existing combination of R-3 and P-1 zoning is no longer appropriate, for the following reasons:
 - a. The proposed connection of Palomar Centre Drive, incumbent with this rezoning and redevelopment proposal, has the potential to partially relieve existing traffic congestion at the Wellington Way/Palomar Centre Drive intersection to the benefit of the general public and some of the nearby commercial uses.
 - b. The proposed B-1 zone would permit a restaurant to be developed in a manner consistent with other existing commercial uses in this general area.
 - c. The P-1 zone proposed would align with the access from Wellington Way (collector street) to Harrodsburg Road (arterial highway) via Palomar Centre Drive, which would serve other professional and business uses located in this general vicinity.
 - d. Retaining the existing single family home on 2101 Palomar Trace Drive will provide an excellent land use buffer between existing homes in the Harrods View and Palomar Trace subdivisions from the newly developing commercial uses in this vicinity.
3. This recommendation is made subject to approval and certification of ZDP 2016-6: Schroyer Property, Dozier Property, Unit 2, and Palomar Trace Subd., Unit 3C, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of any Planning Commission approval.
4. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions are recommended via conditional zoning for the subject properties:

PROHIBITED USES (Within the B-1 Zone only)

- a. Automobile service stations.
- b. Retail sale of plant, nursery or greenhouse products.
- c. Miniature golf or putting courses.

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- d. Carnivals and circuses.
- e. Arcades, including pinball and electronic games.
- f. Banquet facilities.
- g. Rental of equipment whose retail sale is permitted in the B-1 zone.
- h. Outdoor live entertainment, cocktail lounges, brew-pubs or nightclubs.
- i. Automobile and vehicle refueling stations.
- j. Retail sale of convenience products (i.e., convenience stores).

OTHER USE RESTRICTIONS

- a. Any free-standing sign shall be a maximum of ten (10) feet in height.
- b. Any outdoor lighting shall be shielded and directed away from any residential zone. Lighting attached to a pole or any structure shall be a maximum of twenty (20) feet in height.

These restrictions are appropriate and necessary in order to protect the adjacent residential properties to the north and west from the possible noise and light pollution associated with the proposed development, and to maintain the character of the immediate area.

b. REQUESTED VARIANCE

Increase the maximum allowable front yard in a Neighborhood Business (B-1) zone from 20 feet to 40 feet.

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

The Staff Recommends: **Approval of the requested variance**, for the following reasons:

- a. Granting the requested variance to allow a maximum front setback of 40 feet will not adversely affect the public health, safety or welfare. It will not negatively impact the essential character of the general vicinity because buildings on other nearby properties have been at a similar setback, in part due to this sanitary sewer easement, and are likely to remain so.
- b. The special circumstance associated with the subject property is the existing sanitary sewer easement, which makes compliance with the required setback practically impossible. Although this feature does apply to other properties along this easement, it does not generally apply to most B-1 zoned properties in this area.
- c. To build a structure at the maximum building line in this case would likely require a relocation of the sanitary sewer facility and a release of the easement. This would be a hardship on this property, especially considering that most commercial structures in this vicinity are built to a similar setback to that now proposed, because of the easement.
- d. The requested variance is not an unreasonable circumvention of the Zoning Ordinance, based on the unique circumstances of this property, and the relationship of other commercial structures to US 68 in the vicinity.
- e. This variance is not the result of prior actions taken by this applicant, as no new construction has yet occurred on the subject site.

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

- 1. Provided the Urban County Council rezones the property B-1; otherwise, any Commission action of approval of this variance is null and void.
- 2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, as amended by a future Development Plan approved by the Commission, or as a Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
- 3. A note shall be placed on the Zoning Development Plan, indicating the variances that the Planning Commission has approved for this property (under Article 6-4(c) of the Zoning Ordinance).

c. ZDP 2016-6: SCHROYER PROPERTY; DOZIER PROPERTY, UNIT 2; AND PALOMAR TRACE SUBD., UNIT 3C (2/25/16)* - located at 3581 Harrodsburg Road, 2101 Palomar Trace Drive and 3600 Palomar Centre Drive. (Eagle Engineering)

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

- 1. Provided the Urban County Council rezones the property P-1 & B-1; otherwise, any Commission action of approval is null and void.
- 2. Urban County Engineer's acceptance of drainage and storm and sanitary sewers.
- 3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
- 4. Urban Forester's approval of tree inventory map.
- 5. Addition of tree inventory information on plan, and clarify tree protection plan information.
- 6. Denote that access to Harrodsburg Road will be subject to the approval of the Kentucky Transportation Cabinet.
- 7. Denote: No building permit shall be issued unless and until a final development plan is approved by the Planning Commission.
- 8. Denote record plat designation on plan or in title block.
- 9. Addition of topography and cite source on plan.
- 10. Addition of sidewalks and crosswalks to right-of-way.

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11. Denote location and direction of street cross-section on plan.
12. Discuss proposed dumpster location next to residential zone.
13. Discuss zone-to-zone screening necessary along residential property boundaries.

Zoning Presentation: Mr. Sallee presented the staff report, explaining that this was a two-part rezoning application. The petitioner is requesting rezoning from P-1 to B-1 for just under one net acre of property, and from R-3 to P-1 for .25 net acre. Mr. Sallee distributed to the Commission members a copy of the MPO's staff report on the required Traffic Impact Study that was submitted as part of this request.

Referring to the rendered zoning map, Mr. Sallee stated that a small portion of the subject property at 2101 Palomar Trace Drive, which is currently zoned R-3, is proposed for the P-1 zone; a parcel just to the south was rezoned to P-1 a few years ago. The larger portion of the subject property, at 3600 Palomar Centre Drive, is proposed for the B-1 zone, which would match several properties to the west along Wellington Way and Palomar Centre Drive.

Mr. Sallee displayed several photographs of the subject property, noting that the northernmost parcel currently contains a single-family residence, which is proposed to remain in an R-3 zone. The other parcel includes a veterinary clinic. Mr. Sallee noted on the photographs the substantial grade change between the subject property and the Harrodsburg Road right-of-way, which is considerably lower, making access to the site difficult. Access is proposed to the property via two driveways on Harrodsburg Road, as well as along Wellington Way.

Mr. Sallee stated that the staff reviewed the 2013 Comprehensive Plan, and was not able to find that this request was in agreement with the Plan's recommendations. However, the staff did note that the other B-1 zoning in the area, at the corner of Wellington Way and Palomar Centre Drive, has been approved since the adoption of the 2013 Plan. The staff also noted that the property at 2101 Palomar Trace Drive, where the driveway is being requested for rezoning, has been approved by the Board of Adjustment for a childcare center use, which is now proposed for the parcel located between the two zone change properties. That approval indicates that there are more commercial uses in the area than residential since the time the Comprehensive Plan was adopted, which is significant. Mr. Sallee said that the staff agrees that the combination of B-1 and P-1 zoning proposed is appropriate, and the existing zoning inappropriate, for the reasons as listed in the staff report and on the agenda. The Zoning Committee also recommended approval of this request, for those reasons.

Mr. Sallee stated that the staff was recommending several prohibited uses via conditional zoning, which were listed in the staff report and on the agenda, along with restrictions on free-standing signage and outdoor lighting on this site.

Development Plan Presentation: Ms. Gallt presented the preliminary development plan, noting the locations of the proposed drive-through restaurant and childcare center, as well as the proposed access to Harrodsburg Road.

With regard to the conditions for approval, Ms. Gallt said that #12 refers to the dumpster location. The staff discussed this item briefly with the petitioner prior to this hearing, but the petitioner has not provided any additional information or a revised plan to address the issue. Condition #13 refers to the need for zone-to-zone screening along the residential property boundaries, which has also not been addressed.

Variance Presentation: Mr. Emmons presented the staff report on the requested variance, explaining that the petitioner is proposing to vary the maximum allowable front yard in the B-1 zone from 20' to 40'. The B-1 zone has a minimum setback of 10', and a maximum of 20'. In this instance, there is a 40' sanitary sewer easement that runs parallel to the frontage of the subject property along Harrodsburg Road, which creates a unique circumstance that provides a justification for approval of the variance.

Mr. Emmons said that, if the variance is approved at 40', it will create a setback that is similar to where the building has been located on the property, and to that of the structures on the adjoining properties. The staff is recommending approval of the requested variance, for the reasons as listed in the staff report and on the agenda, and subject to the three conditions as listed.

Petitioner Presentation: Richard Murphy, attorney, was present representing the petitioner. He noted that the staff had reviewed the required Traffic Impact Study, as they had found that it met the Zoning Ordinance requirements.

Mr. Murphy explained that this request primarily involves the property at 3600 Palomar Centre Drive, which is the current location of Dr. Schroyer's veterinary clinic. The clinic also includes a pet grooming facility, which operates at the rear of the building. The property faces Harrodsburg Road, but has its address on Palomar Centre Drive. To the rear of the subject property is a daycare center, which is located on a parcel that was rezoned to B-1 in 2015. Under the development plan that accompanied that zone change, the daycare center was proposed to be demolished; this has not yet occurred. A P-1 development, which includes a martial arts studio and a chiropractor's office, is also located to the rear of the subject property. To the north is a parcel with Harrodsburg Road frontage, which is also owned by the petitioner, but is not part of this rezoning request. That parcel is zoned P-1, and is currently approved for a three-story office building. The petitioner also owns the next property to the north along Harrodsburg Road, which is accessed from Palomar Trace Drive, and is zoned R-3. The peti-

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tioner is proposing to construct a commercial driveway to the subject property on a small sliver located between the second and third properties.

Mr. Murphy said that, approximately six weeks prior to this hearing, Dr. Schroyer purchased property at the corner of Lyon Drive and Wellington Way, which was the former location of a Lexington Clinic office. A deed restriction on the property prevented any other medical clinics from being located there, so Dr. Schroyer believed that it would be suitable to his medical use. The veterinary clinic will be relocated there at some point in the future, so the petitioner decided to seek an appropriate use for the subject property once the clinic has vacated it. The petitioner is proposing to construct a restaurant on the subject property, while leaving the adjoining P-1 property and most of the parcel on Palomar Trace Drive with their current zoning designations.

Referring to the rendered development plan, Mr. Murphy stated that the adjoining property has been approved for a daycare center, while the parcel to its other side was approved by the Board of Adjustment for a daycare center approximately a year ago. The petitioner is now proposing to leave the existing single-family residence on the R-3 parcel, and to construct the daycare center on the middle parcel. The net result is a reduction in commercial density on the subject properties, by retaining the existing residence and having one fewer commercial building on the properties. Mr. Murphy stated that, during the previous zone change and BOA case on the properties, the access point was encouraged by the Kentucky Department of Highways. That office encouraged the use of that access point, as well as merging it with the driveway access for the adjoining property.

Mr. Murphy explained that the petitioner has had a good relationship with the residents of the Palomar Trace neighborhood over the course of development of the subject properties. The petitioner also owns the rear portion of the middle property, which is currently being developed in an R-3 zone for single-family residences. Mr. Murphy noted that the staff had received a letter of support from Michael Walsh, president of the Palomar Trace Neighborhood Association.

With regard to the existing tenant in the veterinary clinic building, Mr. Murphy said that it is being operated as a pet grooming business. The business owner has a lease with Dr. Schroyer, and is in the process of negotiating a termination of that lease. If the petitioner cannot negotiate acceptable terms with the grooming facility owner, both parties will seek mediation. If an agreement can be reached, the lease will be terminated. If no agreement is reached, and the grooming facility remains on the property, the Final Development Plan for the property will show that the groomer will continue to operate in the existing structure.

Mr. Murphy explained that the petitioner is also currently in litigation over the BOA approval of the daycare center, with the Harrods View Neighborhood Association and several residents of Sallee Drive. Those residents believe that the existing deed restrictions for the property do not allow a daycare center, so they filed suit against the petitioner. Under the current proposal, the petitioner would allow the existing single-family residence to remain on the property, and would no longer plan to construct a daycare center there.

Mr. Murphy said that the petitioner contends that the proposed development is in agreement with the 2013 Comprehensive Plan, based on several of the Goals & Objectives. The subject property is surrounded by other business uses, and is located adjacent to a major arterial roadway. A new connection has been approved to Harrodsburg Road, and the petitioner believes that the proposed restaurant would be an appropriate use for the property. The petitioner is requesting a variance to the required front setback in the B-1 zone, as Mr. Emmons explained, because the property is constrained by an existing sanitary sewer easement.

With regard to the development plan conditions, Mr. Murphy said that the petitioner thought it had been agreed at the Subdivision Committee meeting that it would be acceptable to defer those items to the Final Development Plan for the property. Based on that assumption, the petitioner did not file a new development plan prior to this hearing. Mr. Murphy noted that one of the owners of Solar Eclipse LLC is constructing a house on the property immediately adjacent to the dumpster location, so there is added incentive to ensure that the issue is properly resolved. The petitioner is also committed to resolving the zone-to-zone screening.

Mr. Murphy said, with regard to the staff's proposed conditional zoning restrictions, that the petitioner had not had an opportunity to review those prior to this hearing. The petitioner is generally in agreement with those, but is concerned about the prohibition of banquet facilities. The petitioner would like to allow a banquet facility on the subject property, particularly given the proximity to Malone's restaurant. Mr. Murphy said that the petitioner would also like to eliminate the conditional zoning restriction against outdoor live entertainment, cocktail lounges, brew-pubs and nightclubs, since those are conditional uses in the B-1 zone. Each request for one of those uses would require the approval of the BOA to allow for outdoor entertainment, which includes a notification mailing to property owners within 500'. Approval of a conditional zoning restriction would prohibit a prospective user of the property from even trying to obtain BOA approval for an outdoor live entertainment use. Mr. Murphy asked that items "f" and "h" be removed from the proposed conditional zoning restrictions, and he requested approval.

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Opposition: Bruce Simpson, attorney, was present representing residents of the Harrods View Neighborhood Association. Displaying several photographs of the subject property, he said that he moved into Harrods View in 1988. He said that the neighborhood association was formed around that time, in response to a commercial zone change request that was filed in the area. Residents put a great deal of effort in defining the character of their neighborhood, in order to preserve it, particularly around its boundaries. Harrods View residents worked with developers, Planning staff, the Planning Commission, and the Urban County Council during the rezoning of Palomar Trace in 1990, placing particular importance on the creation of deed restrictions, which provided explicitly that the only uses permitted in the 12 acres adjoining the neighborhood were single-family residential uses. Those efforts preserved the character of the Harrods View neighborhood, and allowed for the development of Palomar Trace, where at least one resident supports this rezoning request.

Mr. Simpson said that, when the development of Harrods View began in 1988, the area included only a single-family residence; a small farm; and Dr. Schroyer's veterinary clinic. Despite the existing deed restrictions, Dr. Schroyer filed an application a little over a year ago, seeking a conditional use for the single-family lot to serve as a parking area for a proposed three-story office building. In August of 2014, that plan was revised to include a 10,000 square-foot daycare center; a 3,000 square-foot outdoor play center, and a parking lot. The petitioner filed suit in order to obtain a declaration from the court that the existing deed restrictions were enforceable. Mr. Simpson stated that, for a number of years, the Harrods View Neighborhood Association had allowed its charter to expire; however, it has since paid its fees, and the charter for the corporation is once again valid according to the Secretary of State's office. The members of the association hope that this zone change does not result in yet another court action, which could be costly and difficult for the neighborhood; but they believe that it is important to enforce the covenants that designate their area for single-family residential use only.

Mr. Simpson said that his clients do not believe that it is appropriate to rezone a portion of a residential property in order to provide a driveway for a daycare center and fast-food restaurant. The petitioner could have reduced the size of the daycare center, and would not have needed to expand to the residential property to create a driveway. The neighborhood residents are concerned that there is no condition that could be placed on the single-family lot to require that it remain single-family, since it is not a part of this rezoning request. Mr. Simpson's clients believe that the petitioner will continue to rezone properties for business use until all of the company's holdings in the area have been redeveloped.

Mr. Simpson stated that the edges of neighborhoods are typically the most vulnerable to change. He displayed photographs of the existing house on the single-family property, noting the area in the rear of the house that was proposed for parking and a detention basin as part of the previous BOA case.

Mr. Simpson read the following from his exhibit packet, previously distributed to the Commission members:

"Before any map amendment is granted, the Planning Commission, or the legislative body, or the fiscal court, must find that the map amendment is in agreement with the adopted Comprehensive Plan."

He said that, although they recommended approval of this request, the Planning staff does not believe that it is in agreement with the Comprehensive Plan. Their recommendation of approval is based on changes of a physical, social, or economic nature in the vicinity, which includes recent zone changes on Wellington Way and "makes everything in the neighborhood fair game." Mr. Simpson asked the Planning Commission to honor the residents' concerns, and recommend disapproval of this request.

Note: Mr. Berkley departed the meeting at this time.

Doug Martin, attorney, was present representing Petitude Grooming Salon, which is located immediately behind Dr. Schroyer's veterinary clinic. He said that it was a surprise to his client to see the proposed development plan for the subject property, which does not include their grooming facility, but instead depicts a fast-food restaurant at that location. "Substantial issues" still exist between the petitioner and Mr. Martin's client, but she has agreed to withhold objections to this request at this time, in hopes that a reasonable settlement can be reached to address the five-year lease she holds on the property.

Staff Comment: Mr. Sallee distributed an email from Michael Walsh to the Commission for their review, noting that Mr. Walsh is in support of this zone change.

Petitioner Rebuttal: Mr. Murphy stated that Mr. Simpson had performed a rerun of the BOA hearing that was held in April, 2015, for the daycare center at 2101 Palomar Trace Drive. He noted that the deed restrictions apply only to the single-family residential lot, not to the other lots included in this request. Mr. Murphy's clients contend that the deed restrictions no longer apply because of a change in circumstances to the property, but those issues are immaterial to this hearing, and will be decided through the ongoing court case. In April of 2015, the BOA approved the petitioner's request for a daycare center on the adjoining property, and the Planning Commission has likewise approved it on a development plan. The petitioner now wants to maintain the residential use on the property, rather than construct the daycare center; and the only reason for including that parcel in the rezoning request is to use the street that was previously approved as access to the remaining property.

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Mr. Murphy said that the petitioner is not proposing to construct a large parking lot as part of this request; rather, the rendering that was shown was one of the early renditions of the plan that was presented to the BOA. He noted that none of Mr. Simpson's exhibits accurately presented the uses that are currently proposed on the subject property.

With regard to the ongoing litigation pertaining to the deed restrictions with the Harrods View neighborhood, Mr. Murphy said that the petitioner believes that the court case could no longer be valid, since a single-family house will be maintained on the residential lot. He said that the petitioner has agreed to many restrictions and changes to the lots they are developing along Palomar Trace Drive, which are currently selling well and in high demand. The petitioner has met with the Palomar Trace residents, who are in support of this request, and is trying to create a relationship with the residents of Harrods View.

Citizen Rebuttal: Mr. Simpson stated, with regard to his exhibits for the daycare center and the parking lot, that they were included as part of applications filed by the petitioner with the BOA. He said that his clients believe that the petitioner should reduce the size of the proposed daycare center, which would negate the need for the road.

Mr. Simpson opined that Mr. Murphy's case is "illusory," in that the petitioner's plans keep changing. His clients do not believe that the petitioner will retain the single-family home, since they have not honored the existing single-family deed restrictions on the property.

Mr. Simpson agreed with Mr. Murphy that the Planning Commission does not have enforcement authority over deed restrictions, but noted that they do have the right to deny the petitioner's rezoning request in order to protect the residential character of the adjoining neighborhood.

Staff Rebuttal: Mr. Sallee stated, with regard to the proposed conditional zoning restrictions, that the staff included banquet facilities in the listing of prohibited uses due to the likelihood of late hours of operation and the proximity to the nearby residential uses. The staff was similarly concerned about outdoor live entertainment uses. Mr. Sallee noted that, some time ago, brew-pubs became a permitted use in the B-1 zone, so such a use would not require any further approval from the BOA, as Mr. Murphy contended.

With regard to the conditions for approval of the development plan, Mr. Sallee said that the staff would be agreeable to changing the discussion items to "Resolve...at the time of the Final Development Plan."

Commission Questions: Mr. Wilson asked if the staff would be agreeable to the petitioner's request to remove banquet facilities from the list of prohibited uses. Mr. Sallee said that the staff is respectful of their request, and wanted to share the rationale behind their recommendation to the Commission to still prohibit such uses.

Mr. Owens asked, with regard to the supplemental staff report, what types of revisions took place to the conditional zoning restrictions between January 7th and January 28th, which were the dates listed on the report. Mr. Sallee answered that the original staff report was dated January 7th; at the Zoning Committee meeting, the staff indicated a desire to look at recommending conditional zoning for the property. The January 28th date reflects the completion of the supplemental staff report, which included the recommended conditional zoning restrictions.

Legal Comments: Ms. Jones stated, with regard to the deed restrictions mentioned by Mr. Simpson, that the Planning Commission has no purview to enforce those issues; since it involves a private agreement. The related litigation is a private matter as well, of which the Planning Commission and LFUCG are not parties. The BOA case has been appealed to Circuit Court, and the BOA is a party to that action. Ms. Jones explained that the appeal is based on the premise that the findings that the BOA made were inappropriate, which does not relate to this rezoning issue. She said that she does not believe that either one of those existing issues could prohibit the Planning Commission from making a recommendation on this request.

Chairman Comments: Mr. Owens declared the hearing closed, and opened the floor for Commission comments or a motion.

Commission Comments: Ms. Plumlee said that this case represents the third time on today's agenda that the Planning Commission has been asked to address neighborhoods, and how the proposed zone changes could alter the character of existing residential areas. She said that she would oppose this request, because she empathizes with the neighbors of the subject property, and the staff agreed that the proposed zone change is not in agreement with the Comprehensive Plan.

Zoning Action: A motion was made by Mr. Cravens, seconded by Mr. Wilson, and carried 6-1 (Plumlee opposed; Berkley, Drake, Penn, and Richardson absent) to approve MARV 2016-4, eliminating items "f. banquet facilities" and "h. outdoor live entertainment, cocktail lounges, brew-pubs or nightclubs" from the list of proposed conditional zoning restrictions.

Variance Action: A motion was made by Mr. Cravens, seconded by Mr. Wilson, and carried 6-1 (Plumlee opposed; Berkley, Drake, Penn, and Richardson absent) to approve the requested variance, for the reasons provided by staff, subject to the conditions as listed.

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Development Plan Action: A motion was made by Mr. Cravens, seconded by Mr. Wilson, and carried 6-1 (Plumlee opposed; Berkley, Drake, Penn, and Richardson absent) to approve ZDP 2016-6, subject to the 13 conditions as listed, changing #12 and #13 to read: "Resolve...at the time of the Final Development Plan."

VI. COMMISSION ITEMS

- A. **CHANGE TO THE OFFICIAL 2016 MEETING & FILING SCHEDULE** – Mr. Duncan requested Commission consideration of a change to the 2016 Meeting & Filing Schedule in order to reschedule the March work session to March 17, 2016 at 1:30 p.m.

Action: A motion was made by Ms. Plumlee, seconded by Ms. Mundy, and carried 6-1 (Cravens opposed; Berkley, Drake, Penn, and Richardson absent) to reschedule the work session from March 31st to March 17th.

- B. **CLINTON ROAD NEIGHBORHOOD DESIGN CHARACTER OVERLAY (ND-1) ZONE CHANGE INITIATION REQUEST** – Ms. Wade stated that the residents of Clinton Road had submitted a request for Planning Commission initiation of a zone change for an ND-1 overlay zone. She distributed to the Commission members a map of the area to be included in the overlay, as well as a summary of the notice postcard responses. The staff mailed 55 postcards to the residents of Clinton Road to survey their level of support for the ND-1 overlay zone; 35 were returned, which represents a 63.6% return rate. Of the postcards returned, 91.4% were in support; 8.6% were opposed. A few of those in support commented that they did not agree with some of the proposed design standards, but they indicated that they were in support overall of an ND-1 overlay.

Ms. Wade said that a design study had been conducted by the residents for the 55 properties on Clinton Road. She noted that there was a much higher response rate during the study and public input period than for the Commission's survey postcard mailing. The staff does not provide a recommendation at this time on the particular restrictions proposed by the neighborhood. Ordinarily, a staff report would be presented at a later date, should the Commission choose to initiate this rezoning.

Neighborhood Presentation: Dr. Monica Kern, 505 Clinton Road, was present representing the Clinton Road neighborhood steering committee. She stated that three unifying features give Clinton Road its distinctive character: large lots, the average size of which is .43 acres; a large amount of greenspace; and deep, uniform building setbacks. These characteristics create a spacious, open impression along the street.

Dr. Kern said that the residents of Clinton Road fear for its future, given recent neighborhood trends to the west and south of their street, such as subdividing large corner lots in order to construct very large homes with little yard space or distance between the houses. Residents are also concerned about the homes that have been constructed as a result of tear-downs, which are disproportionately large for the lot size and overwhelm the neighboring homes. Dr. Kern displayed several photographs, noting several examples of this type of development around Clinton Road.

Dr. Kern stated that the Clinton Road residents began the ND-1 process due to an application by the property owner of 508 Clinton Road to reduce the front yard setback. During that process, residents became aware of the ND-1 overlay zone, and that it could provide protection for their neighborhood against future development that might be out of character. The steering committee met with Coleman Bush, a Meadowthorpe resident who was instrumental in that neighborhood's ND-1 process. The steering committee members met extensively with Ms. Rackers and Ms. Wade of the Planning staff, as well as Bettie Kerr of the Division of Historic Preservation. Once it was determined that Clinton Road was suitable for ND-1 protection, a letter was mailed to all residents, and an information meeting was scheduled. Following that meeting, it was clear that there was overwhelming support for the ND-1 overlay. The next step in the process included an architectural study of the residences, the format of which was based on the Meadowthorpe study. The study was performed in consultation with an architect who is a Clinton Road resident. Dr. Kern said that the neighborhood's architectural study revealed that, while the houses on Clinton Road all have slightly different architectural styles, there are several commonalities that create a distinctive visual identity. Their homes are comprised almost exclusively of brick or stone; and all but three lots include deep front and back yards, and ample greenspace.

Dr. Kern noted that the steering committee held focus group meetings and encouraged open dialog with residents about what standards should be addressed as part of the ND-1 overlay. They then began drafting standards, submitting them for resident input and vetting by the Planning staff, and changing them in response to feedback. Once the standards were prepared, a packet was mailed to each residence including a list of the standards; the rationale behind each standard; and a petition to be returned to indicate the resident's degree of support for the proposal in general, as well as each of the nine standards. That packet was mailed to all 55 residences; 42 petitions were returned, which equates to a 76% response rate. Of those 42, 90% voted in favor of the ND-1 overlay, with only two residents opposed. The individual standards were supported by between 86 and 95% of the respondents. Dr. Kern noted that all of the statistics, itemized by household, were included in the neighborhood's exhibit packet, which was distributed to the Commission members.

With regard to the proposed design standards, Dr. Kern said that they were written to accomplish the residents' four main preservation goals: to maintain the open, uniform and expansive appearance from the street; to avoid the further subdivision of corner lots; to preserve the building sizes and areas devoted to yards or greenspace; and to maintain the consistency and quality of the exterior building appearances. The proposed standards would regulate building setbacks and lot widths; floor ar-

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ea ratio; maximum building height; exterior finishes; front yard fences; rear yard setbacks; accessory structures; and a requirement that the front building plane must face Clinton Road.

Dr. Kern stated that that the ND-1 zone was created over a decade ago to provide a means for neighborhoods to preserve the distinctive character that makes Lexington-Fayette County unique. For 30 years, Clinton Road was adequately protected by the original deed restrictions; since the expiration of those restrictions, residents are concerned that the attractive, open feel of the street could be “irrevocably altered or destroyed.” Dr. Kern said that the residents believe strongly in the cause, and their petition results demonstrate how much they want the ND-1 overlay for their street.

Citizen Support: John Price, Clinton Road resident, stated that Clinton Road was originally the location of the barns for the Henry Clay estate, and an area for watering cattle. He said that Clinton Road is an area where parents bring their children to go sledding or watch the fireworks on the Shriners Hospital property, and he requested Planning Commission initiation of the ND-1 overlay zone.

Citizen Opposition: Chris Clendenen, attorney, was present representing the owners of 508 Clinton Road. He requested that the Planning Commission deny this initiation request, based on his clients’ contention that it is out of character with the intent of the Zoning Ordinance. The Planning Commission must decide how a “neighborhood” is defined, whether it is a single street, or a collection of streets. The other ND-1 areas in Lexington-Fayette County all include several streets each, with many lots.

Mr. Clendenen said that he believed that one of the main reasons for this ND-1 request was his clients’ desire to construct an extension on their garage, which was not in conformance with the original deed restrictions for the street. His clients believe that this request is an overreaction to that issue, and an inappropriate use of ND-1 zoning. Clinton Road is part of a neighborhood, but it does not comprise a neighborhood in and of itself. Mr. Clendenen opined that this might not be the best use of this Article of the Zoning Ordinance, and it could set a precedent for other single streets to request ND-1 zoning. For those reasons, he asked that the Planning Commission deny this request.

Jerry Calvert, 427 Clinton Road, stated that he moved into the neighborhood in 1986, which was the last year that the original deed restrictions were in effect. He said that he appeared before the Planning Commission in opposition to the garage expansion at 508 Clinton Road.

Mr. Calvert opined that an ND-1 overlay is not the best option for Clinton Road; he would rather reinstate the deed restrictions, which all the residents previously lived with for more than 60 years. Referring to the map exhibit prepared by the staff, outlining the postcard response rate, he said that there appeared to be numerous residents who did not respond.

Mr. Calvert stated that he opposes ND-1 zoning, and he will continue to oppose it, because he is concerned about the elderly residents on the street, who might not understand the ramifications of the proposed ND-1 overlay.

Jane Farmer, 509 Clinton Road, stated that she lived in her home for approximately 16 years. She said that she loved Clinton Road, and does not want to move, but she is concerned about the recent subdivision of lots and construction of huge homes. Ms. Farmer stated that she would like to keep the existing character of the Clinton Road area.

Rebuttal: Dr. Kern said, with regard to Mr. Clendenen’s comments, that the ND-1 ordinance states “an area, neighborhood, or place,” and does not specify the size or configuration of neighborhoods.

Action: A motion was made by Mr. Brewer, seconded by Ms. Plumlee, and carried 5-1 (Smith opposed; Berkley, Drake, Penn, Richardson, and Wilson absent) to initiate the requested zone change for the ND-1 overlay zone for Clinton Road.

VII. STAFF ITEMS – No such items were presented.

VIII. AUDIENCE ITEMS – No such items were presented.

IX. MEETING DATES FOR March, 2016

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	March 3, 2016
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	March 3, 2016
Subdivision and ND-1 Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	March 10, 2016
Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	March 17, 2016
Zoning Items Public Hearing, Thursday, 1:30 p.m., 2nd Floor Council Chambers	March 24, 2016
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	March 30, 2016

X. ADJOURNMENT – There being no further business, Chairman Owens declared the meeting adjourned at 6:43 p.m.

TLW/TM/CT/BJR/BS/src

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