

**MINUTES  
URBAN COUNTY PLANNING COMMISSION  
SUBDIVISION ITEMS**

**June 9, 2016**

- I. **CALL TO ORDER** - The meeting was called to order at 1:30 p.m. in the Council Chambers, Urban County Government Building, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present – Mike Owens, Chair; Will Berkley; Mike Cravens; David Drake; Carolyn Plumlee; Carolyn Richardson; Frank Penn; Bill Wilson; Joe Smith; Karen Mundy and Patrick Brewer.

Planning Staff members present – Director James Duncan; Bill Sallee; Tom Martin; Kelly Hunter; Dave Jarman; Barbara Rackers and Denise Bullock. Other staff members in attendance were: Hillard Newman, Division of Engineering; Casey Kaucher, Division of Traffic Engineering; Captain Greg Lengal and Lieutenant Joshua Thiel, Division of Fire and Emergency Services; and Tracy Jones, Department of Law.

- II. **APPROVAL OF MINUTES** – There were no minutes to consider at this time.

- III. **POSTPONEMENTS OR WITHDRAWALS** – Requests for postponement and withdrawal will be considered at this time.

- a. PLAN 2016-47P: HILLENMEYER & SFH PROPERTIES (AMD) (7/31/16)\* - located at 2373 and 2405 Sandersville Road. (Council District 2) **(EA Partners)**

Note: The purpose of this amendment is to combine and correct three previously adjacent preliminary subdivision plans and to revise the street alignment and lots.

The Subdivision Committee Recommended: **Approval**, 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.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan and required street tree information.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Greenspace Planner's approval of the treatment of greenways and greenspace.
9. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
10. Clarify cross-sections for cul-de-sac streets (Corsage, Calista, Cravat, etc.)
11. Addition of required landscape buffers adjacent to railroad and A-U zones.
12. Clarify note #13.
13. Addition of tree protection area along north property line (detention basin).
14. Resolve Sandersville Road improvements.
15. Resolve access to Lot 387 (1.04 ac. detention lot), and side yard setbacks on adjacent lots (66 & 67).
16. Resolve tree protection areas along property boundaries.
17. Resolve sinkhole note from PLAN 2006-250P.
18. Resolve note #17 from PLAN 2012-99P.

Representation – Rory Kahly, EA Partners, was present representing the applicant, and requested postponement of PLAN 2016-47P: HILLENMEYER & SFH PROPERTIES (AMD) to the July 14, 2016, Planning Commission meeting.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for postponement. There was no response.

Action - A motion was made by Ms. Plumlee, seconded by Mr. Wilson and carried 11-0 to postpone PLAN 2016-47P: HILLENMEYER & SFH PROPERTIES (AMD) to the July 14, 2016, Planning Commission meeting.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, June 2, 2016, at 8:30 a.m. The meeting was attended by Commission members: Frank Penn, Karen Mundy, Mike Owens and Joe 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; Cheryl Gallt; Denise Bullock; Kelly Hunter; Dave Jarman; Captain Greg Lengal and Lieutenant Joshua Thiel, Division of Fire & Emergency Services; and Andrea Brown, 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.

---

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

**A. CONSENT AGENDA** – Following requests for postponement or withdrawal, items requiring no discussion will be considered.

- Criteria:**
- (1) the Subdivision Committee recommendation is for approval, as listed on this agenda; and
  - (2) the Petitioner is in agreement with the Subdivision Committee recommendation and the conditions listed on the agenda; and
  - (3) no discussion of the item is desired by the Commission; and
  - (4) no person present at this meeting objects to the Commission acting on the matter without discussion; and
  - (5) the matter does not involve a waiver of the Land Subdivision Regulations.

**Requests can be made to remove items from the Consent Agenda:** (1) due to prior postponements and withdrawals,  
(2) from the Planning Commission,  
(3) from the audience, and  
(4) from Petitioners and their representatives.

At the request of the Chair, Mr. Sallee identified the following items appearing on the Consent Agenda, and oriented the Commission to the location of these items on the regular Meeting Agenda. He noted that the Subdivision Committee had recommended conditional approval for some the items listed and reapproval of the remaining items. (A copy of the Consent Agenda is attached as an appendix to these minutes).

1. **PLAN 2003-209P: MASTERSON HILLS & MASTERSON STATION, UNIT 10** (8/22/16)\* - located at 2900-2918 and 3000 Spurr Road. (Council District 2) **(EA Partners)**

Note: The Planning Commission originally approved this plan on October 9, 2003 and it was certified on January 16, 2004. The Commission's approval expired and the applicant requested, and was granted, a reapproval on August 9, 2012, 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.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan and required street tree information.
6. Greenspace Planner's approval of the treatment of greenways and greenspace.
7. Denote source of contours.
8. Addition of proposed utilities and utility provider information.
9. Addition of average lot size in site statistics.
10. Denote 50' "No Disturbance" area around the cemetery (per Article 3-7(b)(1)).
11. Submittal of cemetery map per Article 3-7(b)(4) of the Zoning Ordinance prior to plan certification, and revise lotting, as necessary.
12. Denote Article 3-7(b)(2), Article 3-7(b)(5) and Article 3-7(b)(6) requirements (for screening, landscaping, fencing and maintenance) on plan.
13. Denote that excessively deep lotting proposed will be reviewed with any Final Record Plat.

This plan was certified on September 28, 2012, and the Commission's approval has again since expired. The applicant has now requested another reapproval of this plan.

The Subdivision Committee Recommended: **Reapproval**, subject to the conditions originally approved by the Commission and one additional condition:

14. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.

2. **PLAN 2012-113P: TUSCANY, UNIT 9** (8/22/16)\* - located at 1970 Winchester Road (a portion of). **(EA Partners)**  
(Council District 6)

Note: The Planning Commission originally approved this plan on August 9, 2012, 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.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan and required street tree information.
6. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Resolve timing of street connectivity to Battery Street.

Note: This plan was certified on March 8, 2013, and the Commission's approval has now expired. The applicant has requested a reapproval of the plan.

The Subdivision Committee Recommended: **Reapproval**, subject to the conditions originally approved by the Commission and one additional condition:

---

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

8. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
3. PLAN 2016-33F: WYNNDALE SUBDIVISION, LOT 1 (AMD) (7/3/16)\* - located at 3757 Kings Glen Park.  
(Council District 9) **(EA Partners)**

Note: The Planning Commission postponed this item at their May 12, 2016, meeting. The purpose of this amendment is to create 22 townhouse lots and a non-buildable lot.

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

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
  2. Urban County Traffic Engineer's approval of street cross-sections and access.
  3. Building Inspection's approval of landscaping.
  4. Addressing Office's approval of street names and addresses.
  5. Urban Forester's approval of tree protection area(s) and required street tree information.
  6. Department of Environmental Quality's approval of environmentally sensitive areas.
  7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
  8. Greenspace Planner's approval of the treatment of greenways and greenspace.
  9. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
  10. Denote: This property shall be developed in accordance with the approved final development plan.
  11. Addition of arterial screening along Man o' War Boulevard as required by Article 6-8 of the Land Subdivision Regulations.
  12. Addition of 10' building lines on all lots.
  13. Denote floodplain protection note on Lots 4-9.
  14. Denote Lot 23 as "non-buildable."
4. PLAN 2013-127F: TUSCANY, UNIT 3-A (8/23/16)\* - located on Old Rosebud Road.  
(Council District 6) **(EA Partners)**

The Planning Commission originally approved this plan on December 12, 2013, 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.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
8. Denote that there will be only one single family unit per lot.

Note: This plan was granted a one-year extension by the Commission on December 11, 2004. However, the Commission's approval has since expired. The applicant now requests reapproval of this plan.

The Subdivision Committee Recommended: **Reapproval**, subject to the conditions originally approved by the Commission.

5. DP 2016-29: TUSCANY, UNIT 1, LOT 169 (YMCA PROPERTY) (AMD) (6/9/16)\* - located at 2681 Old Rosebud Road.  
(Council District 6) **(Brandstetter Carroll)**

Note: The Planning Commission postponed this item at their April 14, 2016 and May 12, 2016, meetings. The purpose of this amendment is to alter the location of one entrance to Old Rosebud Road.

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

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
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. Greenspace Planner's approval of the treatment of greenways and greenspace.
7. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
8. Division of Waste Management's approval of refuse collection locations.
9. Denote name and address of developer on plan.
10. Depict information for adjacent Lot 168 on plan, per approved BOA site plan.
11. Correct Commission's certification, per Article 21-6(a)(16) requirements.

---

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

12. Addition of bike and pedestrian easement on plan.
  13. Correct note #9 to reference stormwater management.
  14. Resolve need for drainage easement from Pascoli Place.
6. DP 2016-55: BRIGHTON PLACE SHOPPES, PHASE II (GILLIS PROPERTY) (7/31/16)\* - located at 3080 Old Todds Road.  
(Council District 7) **(Midwest Engineering)**

Note: The purpose of this amendment is to depict the proposed parking lot for the adjacent commercial properties.

The Subdivision Committee Recommended: **Approval**, 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 sidewalks and pedestrian facilities.
  7. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
  8. Denote written scale on plan.
  9. Correct Old Todds Road cross-section on plan, to include curb and sidewalk.
  10. Remove "Purpose of Plan" note.
  11. Denote drive aisle width on plan.
  12. Correct owner's certification title.
  13. Correct Planning Commission's certification.
  14. Remove note #12.
  15. Provide sidewalk connection to proposed building.
  16. Resolve continuity of pedestrian access into existing commercial lots and along Todds Road.
  17. Resolve the need for signage directing two-way/one-way traffic flow.
  18. Resolve lack of tree preservation (in site statistics) along residentially zoned property.
7. DP 2009-75: NDC PROPERTY, UNIT 5D, PH II (WELLINGTON) (8/23/16)\* - located at 501 West Reynolds Road and Vincent Way. (Council District 9) **(Sherman/Carter/Barnhart)**

Note: The Planning Commission originally approved this plan on May 12, 2011, 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 protection plan.
6. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.
9. Correct note #5 to reference the Code of Ordinances.
10. Denote utility easement along western boundary of property (per Plat L-918).
11. Document compliance with private open space requirements per R-1T zone.
12. Clarify "private access easement responsibilities" note.
13. Extend sidewalk on Vincent Way to Unit #10.
14. Addition of landscape buffer details along western property line (including tree information).
15. Revise location of Units #3 & #4 to indicate 6' from access easement.
16. Revise location of Unit #15 to indicate 10' from access easement.

Note: This plan was approved on May 12, 2011, and later certified, but the Commission's approval has expired. The applicant has recently requested a reapproval of the Commission's prior approval.

The Subdivision Committee Recommended: **Reapproval**, subject to the conditions originally approved by the Commission and two additional conditions:

17. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
18. Addition of an additional Planning Commission certification.

In conclusion, Mr. Sallee said that the items identified on the Consent Agenda could be considered for conditional approval at this time by the Commission, unless there was a request for an item to be removed from consideration by a member of the Commission, or the audience, in order to permit further discussion.

Consent Agenda Discussion – The Chair asked if anyone in the audience or on the Commission desired further discussion of the items listed on the Consent Agenda. There was no response.

---

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

Action - A motion was made by Mr. Brewer, seconded by Ms. Richardson and carried 11-0 to approve the items listed on the Consent Agenda, as recommended by the Subdivision Committee.

- B. PERFORMANCE BONDS AND LETTERS OF CREDIT** –A motion was made by Mr. Cravens, seconded by Ms. Mundy, and carried 11-0 to approve the release and call of bonds as detailed in the memorandum dated June 9, 2016, from Barry Brock, Division of Engineering.

- V. ZONING ITEMS** - The Zoning Committee met on Thursday, May 5, 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, Carolyn Richardson, and Bill Wilson. The Committee members reviewed applications and made recommendations as noted.

**A. PUBLIC HEARING ON ZONE MAP AMENDMENT**

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. WHAYNE SUPPLY COMPANY ZONING MAP AMENDMENT & WHAYNE SUPPLY ZONING DEVELOPMENT PLAN**

- a. MAR 2016-15: WHAYNE SUPPLY COMPANY (7/3/16)\*– petition for a zone map amendment from an Agricultural Urban (A-U) zone to a Light Industrial (I-1) zone, for 1.47 net (2.03 gross) acres, for property located at 2201 Georgetown 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 identifies the need to protect and provide readily available economic development land to meet the need for jobs (Theme C: Creating Jobs and Prosperity), as well as encouraging development in a compact and contiguous manner (Theme E: Maintaining a Balance Between Planning for Urban Uses and Safeguarding Rural Land).

The petitioner proposes a Light Industrial (I-1) zone in order to develop a 1½-acre lot into a light industrial use, with associated off-street parking.

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

The Subdivision Committee Recommended: **Approval**, for the following reasons:

1. The requested Light Industrial (I-1) zone is appropriate and the existing Agricultural Urban (A-U) zone is no longer appropriate for the subject property, for the following reasons:
  - a. The 2013 Plan's Theme C: "Creating Jobs and Prosperity" identifies the need to protect and provide readily available economic development land to meet the need for jobs. This A-U zone is not appropriate for job creation.
  - b. The proposed I-1 zone is better able to fulfill the goal of increasing opportunities for employment locations within the Urban County.
  - c. The west side of the Georgetown Road corridor is primarily industrial in nature, and a significant portion of the land between Georgetown Road and the Norfolk-Southern railroad line, between New Circle Road and Spurr Road, is prime "jobs land" that is either developed or is in the process of being developed; thus, demand does exist for light industrial zoning and land use in the immediate area.
  - d. The proposed Light Industrial (I-1) zone is appropriate and is compatible with the adjoining zoning and land uses.
  - e. The subject property has been recommended for Light Industrial land use for the past four decades.
2. This recommendation is made subject to the approval and certification of ZDP 2016-51: Wayne Supply, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

---

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

3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restriction(s) should be put into effect for the subject property:
  - a. No lighting may be directed toward any adjacent property located in either an Agricultural or Residential zone.

This restriction is necessary to prevent any intrusion of light from this industrial site to non-industrial locations along US 25.

- b. ZDP 2016- 51: WHAYNE SUPPLY (7/3/16)\* - located at 2201 Georgetown Road. (Arnold Consultants)

Note: This plan was postponed by the Commission at its May 28, 2016, meeting.

The Subdivision Committee Recommended: **Postponement**. There are questions regarding the proposed access to the subject site, and the possible incorporation of this development with the adjoining property.

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

1. Provided the Urban County Council rezones the property I-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. Department of Environmental Quality's approval of environmentally sensitive areas.
6. Denote: No building permit shall be issued unless and until a final development plan is approved by the Planning Commission.
7. Addition of building coverage and floor area site statistics, as required by Article 21-6(b)(13) of the Zoning Ordinance.
8. Addition of tree inventory and species information, as required by Article 26 of the Zoning Ordinance.
9. Addition of adjoining property owner's information on plan.
10. Denote existing and proposed (requested) zoning in site statistics.
11. Denote that protection measures for the Royal Spring Aquifer shall be determined at the time of the Final Development Plan.
12. Discuss expanding the plan to include the proposed and the approved adjoining development.
13. Discuss access to adjoining development per notes #11 and #12.

Zoning Presentation - Mr. Sallee presented the staff report for this zoning map amendment filed by Whayne Supply Company, and explained that this is a petition for a zone map amendment from an Agricultural Urban (A-U) zone to a Light Industrial (I-1) zone, for 1.47 net (2.03 gross) acres, for property located at 2201 Georgetown Road.

Mr. Sallee directed the Commission's attention to a rendering of the zoning map of the area in order to orient them to the location of the subject property and the nearby street system. He indicated that the subject property is located on the west side of Georgetown Road, south of Citation Boulevard. He indicated that, with the exception of the subject property, the area is characterized by Light Industrial (I-1) zoning. He said that the subject property is located caddy corner to the Rood & Riddle Equine Hospital, which is also zoned A-U, and that this site is directly across from a 20-acre vacant parcel that is zoned B-3.

Mr. Sallee said that the applicant is requesting the zone change from A-U to I-1 in order for the single parcel to match the zoning on its three sides. He explained that the applicant, not only owns the subject property, but also owns the three parcels adjacent to the subject property, as well as property to the west that fronts on Jaggie Fox Way. He noted that Jaggie Fox Way is an industrial collector street that will tie into Citation Boulevard; it will connect to Innovation Drive and Sandersville Road.

Mr. Sallee said that the 2013 Comprehensive Plan no longer has a detailed land use element, but in the applicant application, they had stated that this zone change asserts that this proposal is in furtherance of the 2013 Comprehensive Plan. The staff concurs with that and Mr. Sallee explained that from 1976-2007 the previous Comprehensive Plan had recommends light industrial land use for this area on the west side of Georgetown Road. He said that the applicant's justification stated that the existing A-U zone is no longer appropriate and the requested I-1 zone is appropriate at this location. The staff agrees with the applicant's justification for the requested zone change. He said that the subject property is surrounded on three sides by I-1 zoning and should the Commission approve this request, the zoning in this area would match, exactly. Also the size of the property being about 1½ acre makes it infeasible for a viable agricultural use, unlike the equine hospital that is directly across Georgetown Road.

Mr. Sallee said that the Zoning Committee and the staff are recommending approval of this zone change, for the following reasons:

1. The requested Light Industrial (I-1) zone is appropriate and the existing Agricultural Urban (A-U) zone is no longer appropriate for the subject property, for the following reasons:
  - a. The 2013 Plan's Theme C: "Creating Jobs and Prosperity" identifies the need to protect and provide readily available economic development land to meet the need for jobs. This A-U zone is not appropriate for job creation.

---

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

- b. The proposed I-1 zone is better able to fulfill the goal of increasing opportunities for employment locations within the Urban County.
- c. The west side of Georgetown Road corridor is primarily industrial in nature, and a significant portion of the land between Georgetown Road and the Norfolk-Southern railroad line, between New Circle Road and Spurr Road, is prime "jobs land" that is either developed or is in the process of being developed; thus, demand does exist for light industrial zoning and land use in the immediate area.
- d. The proposed Light Industrial (I-1) zone is appropriate and is compatible with the adjoining zoning and land uses.
- e. The subject property has been recommended for Light Industrial land use for the past four decades.
- 2. This recommendation is made subject to the approval and certification of ZDP 2016-51: Whayne Supply, 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 restriction(s) should be put into effect for the subject property:
  - a. No lighting may be directed toward any adjacent property located in either an Agricultural or Residential zone.

Mr. Sallee said that this recommendation is made subject to the Commission's approval and certification of the preliminary development plan that was submitted for the site. He noted that the staff is also recommending one conditional zoning restriction, which would prevent any intrusion of light from this industrial site to non-industrial locations along US 25.

Development Plan Presentation - Mr. Martin presented the preliminary development plan for property located at 2201 Georgetown Road. He oriented the Commission to a rendering of the plan the subject property, and explained the layout of the site includes a single building with the associated parking. He said that the subject property is 1.47 acres in size and the applicant is proposing a 9,000 sq. ft. building. He then said that there is an existing driveway access into this site off Georgetown Road.

Mr. Martin said that the request itself is fairly simple, but there is a larger issue with that has been impacting this plan from the beginning and that is access off Georgetown Road. He explained that the Division(s) of Planning and Traffic Engineering were concerned with the access off Georgetown Road. He said that the staff wanted to incorporate the site access into what had already been approved to see how access for the overall area would work. He then said that the key to this is transportation and an appropriate street or easement system to serve this area. Mr. Martin said that the applicant submitted a revised version of this zoning development plan, and it shows easements running through the subject site from Georgetown Road to the back of the property, which would serve the subject site and the adjacent property. He noted that, with the exception of having access off an approved street intersection, there are plat restrictions preventing access off Georgetown Road, Citation Boulevard. He said that the staff wants access to be appropriately spaced and lined up on Georgetown Road. He added that the proposed access into the site does line up.

Mr. Martin stated that with the applicant addressing the access concerns, the staff can now offer the Planning Commission a revised recommendation for consideration with this Zoning Development Plan. He then said that the staff is recommending approval, subject to the following conditions:

- 1. Provided the Urban County Council rezones the property I-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. Department of Environmental Quality's approval of environmentally sensitive areas.
- 6. Denote: No building permit shall be issued unless and until a final development plan is approved by the Planning Commission.
- 7. Addition of building coverage and floor area site statistics, as required by Article 21-6(b)(13) of the Zoning Ordinance.
- 8. Addition of tree inventory and species information, as required by Article 26 of the Zoning Ordinance.
- 9. Addition of adjoining property owner's information on plan.
- 10. Denote existing and proposed (requested) zoning in site statistics.
- 11. Denote: ~~that~~ Protection measures for the Royal Spring Aquifer shall be determined at the time of the Final Development Plan.
- 12. ~~Discuss~~ Denote: ~~Expanding the plan to include the proposed and the approved adjoining development may be required at the time of the Final Development Plan.~~
- 13. ~~Discuss access to adjoining development per~~ Revise notes #11 and #12 to state that access to 2201 Georgetown Road shall be determined at the time of Final Development Plan.

Mr. Martin briefly explained that conditions #1-5 are typical sign-off requirements from the different Divisions of the LFUCG; and the remaining conditions are "cleanup" items that will be addressed prior to the final record plat being certified. He then said that he would try to answer any questions regarding the zone change request listed on today's agenda.

Commission Questions – Ms. Mundy asked if the applicant would be consolidating this property. Mr. Martin indicated that the applicant may consolidate the property, but they also may be creating lots for additional users. He said that this is why seeing how the street or easement system functions is important.

Representation – Steve Ruschell, attorney, was present representing the applicant. He said that the applicant wants to have a comprehensive plan for the development of this property. He then said that they want to provide safe travels down Georgetown Road, as well as provide the most efficient movement of trucks, for his clients. He added that for those who have visited this site the construction of this area is well under way. This request will give this property a uniform zoning in order to move its development forward.

Mr. Ruschell said that his client does intend to subdivide those lots along Georgetown Road. He said that those lots may be for sale or used for ancillary purposes. The important thing is that this property would be developed to be safe and efficient to Georgetown Road.

Mr. Ruschell said that they are in agreement with the conditions as recommended by the staff, and requested approval of the MAR 2016-15 and ZDP 2016-51.

Commission Questions – Mr. Penn asked if the applicant intends to have access off Jaggie Fox Way. Mr. Ruschell replied affirmatively. Mr. Penn then asked if the internal street system would end up serving the outlots that would be created. Mr. Ruschell said that there may be a connection to the existing primary lot where the building is being constructed. He said that one of the lots may be used as an ancillary service for the sales department, so they need that connectivity through the development. He noted that they want the flexibility to open or close the access when needed.

Mr. Penn said that he wanted to know if the street system would be used throughout the development and what type of uses will be on the site. He then said that before the applicant submits their final development plan, he would like some understanding as to what will develop on that property. Mr. Ruschell indicated that that can be done, and explained that the building now under construction would be oriented toward Jaggie Fox Way, as would the primary entrance into that site.

Ms. Mundy said that the Commission would be hearing a text amendment concerning the environmentally sensitive areas and asked if that text amendment would impact this request. Mr. Saltee indicated that the staff did not believe the text amendment would impact the proposed zone change or the preliminary development plan now under consideration. He said that the text amendment concerns conditional uses and what the applicant is depicting on the development plan is not a conditional use. He then said that should the applicant propose a conditional use for any of the area's I-1 land, it is possible that those text amendment provisions would come into play. He added that it would be of interest to the Planning Commission at such time a Final Development Plan was submitted, but more importantly, it would be an issue for the Board of Adjustment as to whether or not that proposed use would be approved here.

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

Action - A motion was made by Mr. Berkley, seconded by Mr. Smith, and carried 11-0 to approve MAR 2016-15: WHAYNE SUPPLY COMPANY, for the reasons provided by staff, subject to the conditional zoning restrictions as recommended by staff.

Action - A motion was made by Mr. Berkley, seconded by Ms. Mundy, and carried 11-0 to approve ZDP 2016- 51: WHAYNE SUPPLY, as recommended by the staff.

## **V. FULL PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMENDMENT**

1. ZOTA 2016-1: AMENDMENTS TO ARTICLES 7, 23, AND 26 FOR ENVIRONMENTALLY SENSITIVE AREAS – petition for a Zoning Ordinance text amendment to Articles 7, 23, and 26 to strengthen oversight by the Urban County Board of Adjustment for the protection of environmentally sensitive areas (ESAs) within the community.

INITIATED BY: Urban County Planning Commission

PROPOSED TEXT: *COPIES OF TEXT ARE AVAILABLE UPON REQUEST*

The Zoning Committee Recommended: Referral to the full Commission.

The Subdivision Committee Recommended: Approval, for the following reasons:

1. The proposed text amendment will help to guide the Board of Adjustment in their review of conditional use permit applications, specifically for properties that may be environmentally sensitive and could be impacted by a future land use, and will strengthen the Board's oversight of our environmentally sensitive land in Fayette County.
2. The 2013 Comprehensive Plan's Goals and Objectives related to protection of environmentally sensitive land are advanced by implementing the proposed text amendments. If approved, the Board of Adjustment will be able to assist in

promoting the protection of natural features and landscapes prior to development (Theme A, Goal #3c. and Theme B, Goal #3a.); reducing the community's carbon footprint (Theme B, Goal #1); encouraging environmentally sustainable uses of natural resources (Theme B, Goal #1b.); and protecting and enhancing the natural, cultural, historic, and environmental resources of the Rural Service Area and rural farmland (Theme E, Goal #2b.).

3. The proposed text amendment will correct outdated references to the Land Subdivision Regulations as it relates to environmentally sensitive areas and geologic hazard areas.

Staff Presentation – Ms. Wade directed the Commission's attention to a PowerPoint presentation for the proposed text amendment for environmentally sensitive areas. She said that the proposed amendment involves Articles 7, 23 and 26 of the Zoning Ordinance. She then said that the Planning Commission recently initiated a text amendment to these three sections of the Zoning Ordinance to strengthen oversight by the Urban County Board of Adjustment, specifically to protect environmentally sensitive areas in the community. She added that the proposed text amendment would relate to Article 7-6(a), which outlines the Board of Adjustment's responsibility and authority in dealing with conditional use permit applications; Article 23A-2(c), which references the Expansion Area Zoning Categories; and Article 26, which deals with the tree protection standards.

Ms. Wade said that, during the course of the Planning Commission's consideration of another text amendment for recreation and tourism, an idea was brought forward to consider that an environmental surety or bond be placed on property that could have an impact on the environmentally sensitive areas. In consideration of that proposal, an Ad Hoc Committee was established with members from the Planning Commission and the Board of Adjustment, as well as stakeholders. She said that during the course of their meetings from December 2014 to February 2015, the Ad Hoc Committee studied the idea of the environmental surety or bond and determined that that placing a surety or bond as a condition was not a viable solution. She then said that the Ad Hoc Committee had proposed the following three recommendations:

1. **Revise the Zoning Ordinance to require applications that impact an environmentally sensitive area (ESA) include a site plan for Board of Adjustment (BOA) consideration of a conditional use permit.** When deemed necessary to ensure the proper addressing of environmentally sensitive areas, the site plan shall be prepared by a registered engineer, or other professional qualified to assess and make recommendations for protection of the specific ESA in question. The proposed regulations should be drafted to ensure that small scale applications with minimal potential for environmental disruption are not automatically required to provide excessive levels of site plan detail or professional expertise.
2. **Revise the Zoning Ordinance to include language indicating that in conjunction with a conditional use permit involving an ESA, the BOA may impose a condition establishing "gateway" or "checkpoint" certifications for proceeding with exercising the conditional use permit during pre-construction, active construction and/or post construction phases of the development.** This requirement should be drafted to permit verification by either a public enforcement agency or qualified private contractor as deemed appropriate by the BOA on a case-by-case basis.
3. **Revise the Zoning Ordinance to indicate that within ESAs in the Rural Area, the BOA may consider a requirement that non-habitable structures and facilities, natural feature modifications and paving installed in conjunction with a conditional use permit may be required to be removed and/or restored if the conditional use ceases operation.** In such cases, the BOA should provide specific conditions as to what event(s) would constitute the cessation of the conditional use permit; specific listing of the structures or facilities subject to the condition; and the responsible party for such removal action(s).

Ms. Wade said that all three changes included the Board of Adjustment reviewing conditional use permits. In reviewing the proposed recommendations, the staff was charged with creating the text amendment to the Zoning Ordinance. She then said that those three recommendations from the Ad Hoc Committee were presented to the full Commission in May 2015.

Ms. Wade said that the three proposed revisions would amend Article 7-6(a)(4) and would make a reference change to Articles 23 and 26 of the Zoning Ordinance. She then said that, as a group, the Planning Commission and staff had decided to focus on the Ad Hoc Committee recommendations; therefore, the Land Subdivision Regulations would not be amended at this time. However, should there be a need to change the Land Subdivision Regulations, other divisions of the LFUCG would be included in the review.

Ms. Wade then said that Article 6-11 of the Land Subdivision Regulations does reference environmentally sensitive areas, as well as geologic hazard areas. She noted that generally when there is a geologic hazard area, then there is also an environmentally sensitive area. She explained that an environmentally sensitive area is an area that is limited in its development due to floodplains, sinkholes and so forth; whereas, a geologic hazard area would be an area that is severely limited in its development, due to for example, an identified cave system or a cluster of sinkholes. She said that some of the environmentally sensitive areas have been mapped for Lexington, but not every type is part of the LFUCG GIS system. She then said that a map was generated and it showed at least one third of Fayette County was located in an environmentally sensitive area. This is partially due to the aquifer recharge area for the Georgetown water supply, as well as the number of areas that are impacted by floodplains and steep slopes. Ms. Wade said that these land subdivision regulations definitions are not being proposed to change and the Zoning Ordinance does refer to these terms. The following text is being proposed to address the Committee recommendations (inserted in Article 4-6(a)(4)):

When reviewing a conditional use application, the Board shall thoroughly address potential impacts to any identified environmentally sensitive area (ESA), geologic hazard area (GHA), as further regulated under the Subdivision Regulations, and/or Rural Service Area (RSA) prime soils as well as any other resources of special concern located on the property. The Board may require a more detailed site plan and more comprehensive associated information in order

---

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

to assess and consider the future protection of such area and resources. Such a site plan shall be prepared by a qualified professional well suited to addressing a particular issue or concern of interest, including landscape architects, hydrologists, geologists, environmental engineers, naturalists, arborists, etc. The site plan shall show or describe protection measures, mitigation and enhancement of the ESAs and/or GHAs and their associated buffer areas when they are, or could be, impacted by an alteration, use or activity within the ESAs and/or GHAs and their buffer areas pre-construction, during construction and post-construction.

For any conditional use permit granted for a site containing any ESAs and/or GHAs the Board may impose intermediate certification and verification reviews during the pre-construction, active construction and/or post-construction phases of development in order to ensure protection of environmentally sensitive areas and environmental hazard areas during all phases of a project. Such certification or verification reviews may be conducted by either a public enforcement agency or a qualified private contractor, as deemed appropriate by the Board.

In addition, when the proposed conditional use is located within the Rural Service Area (RSA), the Board may consider a requirement that alterations to the ESA(s) and/or GHA(s), such as non-habitable structures, non-habitable facilities, natural feature modification and paving installation associated with the conditional use permit be removed, and/or restored if the conditional use were to cease operations.

Ms. Wade said that during the staff's review, it was discovered that Articles 23A-2(c) and 23A-d of the Zoning Ordinance still referenced Articles 6-7 and 6-10 of the Land Subdivision Regulations. She explained that in the early 2000s, changes were made to the Land Subdivision Regulations that reordered and moved the environmentally sensitive information under Article 6-11 of the Land Subdivision Regulations. This proposed text amendment would update references to that section.

Ms. Wade then said that Article 26 of the Zoning Ordinance regulates tree protection standards. She noted that there are a few generic references to environmentally sensitive lands, and the staff felt it would be necessary to place the terms "environmentally sensitive areas" and "geologic hazard area" from the Land Subdivision Regulations into Article 26. The staff recommends adding the following in Article 26 of the Zoning Ordinance:

- Article 26-2: Update "Tree Protection Plan (TPP)" definition to include geologic hazard area;
- Article 26-3: Update the reference to Article 6-11 of the Land Subdivision Regulations; and
- Article 26-4(b): Update Preliminary Development Plan requirements to include geologic hazard area;

Ms. Wade said that, however, text amendments are not legally required to make a finding that they be consistent with the Comprehensive Plan; the Zoning Ordinance is the primary mechanism by which the Planning Commission and the Council implement the Plan through the Goals and Objectives. Due to the importance of protecting the environmentally sensitive lands, the staff made their recommendation with findings using a number of Goals and Objectives which directly relate, including the following:

- (1) promoting the protection of natural features and landscapes prior to development (Theme A, Goal #3c. and Theme B, Goal #3a.);
- (2) reducing the community's carbon footprint (Theme B, Goal #1);
- (3) encouraging environmentally sustainable uses of natural resources (Theme B, Goal #1b.); and
- (4) protecting and enhancing the natural, cultural, historic, and environmental resources of the Rural Service Area and rural farmland (Theme E, Goal #2b.).

Ms. Wade said that in reviewing the proposed text amendment, the staff is recommending approval, for the following reasons:

1. The proposed text amendment will help to guide the Board of Adjustment in their review of conditional use permit applications, specifically for properties that may be environmentally sensitive and could be impacted by a future land use, and strengthen the Board's oversight of our environmentally sensitive land in Fayette County.
2. The 2013 Comprehensive Plan's Goals and Objectives related to protection of environmentally sensitive land are advanced by implementing the proposed text amendments. If approved, the Board of Adjustment will be able to assist in promoting the protection of natural features and landscapes prior to development (Theme A, Goal #3c. and Theme B, Goal #3a.); reducing the community's carbon footprint (Theme B, Goal #1); encouraging environmentally sustainable uses of natural resources (Theme B, Goal #1b.); and protecting and enhancing the natural, cultural, historic, and environmental resources of the Rural Service Area and rural farmland (Theme E, Goal #2b.).
3. The proposed text amendment will correct outdated references to the Land Subdivision Regulations as it relates to environmentally sensitive areas and geologic hazard areas.

Ms. Wade said that before the Planning Commission makes a decision on a plan, that plan has been fully vetted by their Technical Committee, which consists of up to 25 people who have expertise in their field. The Board of Adjustment does not have this advantage. The proposed text amendment would help the Board in their review of conditional use applications, and should an application need additional review, the staff would present that application to the Technical Committee. She indicated that there is no requirement for a BOA application to be presented to the Technical Committee; it is only when the staff deems it necessary.

Ms. Wade said that the 2013 Comprehensive Plan will be furthered by the implementation of this text amendment, and the proposed text amendment would correct the outdated references in the Zoning Ordinance. She then said that she would try to answer any questions regarding the proposed text amendment listed on today's agenda.

Commission Questions – Mr. Penn said that he appreciated that the Technical Committee reviews the applications before Planning Commission, and asked if the proposed text amendment would require a better development plan to be submitted that identifies the environmentally sensitive areas. Ms. Wade replied affirmatively, and said that the staff may need to help an applicant identify whether or not the land has environmentally sensitive areas before they apply for the conditional use permit. She explained that once an application is submitted, the Board of Adjustment's deadline is much shorter than the Planning Commission's deadline. She said that the applicant does have the option to postpone the request, but it would be the staff's responsibility to help them identify those areas before they apply for the permit. This would also help the applicant find the appropriate professional to assist. Mr. Penn said that he hopes that is the reason because some of the things that this community has gotten are the direct result of the development plan not showing or identifying correct information.

Mr. Drake said that there is no doubt that the intent of this text amendment is very noble; but he indicated that he was not sure of its "mechanics." He asked if a floodplain was an environmentally sensitive area. Ms. Wade replied affirmatively. Mr. Drake then asked if that floodplain was altered and fill used, if this text amendment would allow the Board of Adjustment to require that fill to be removed if that business were to fail. Ms. Wade said that that could be an option for the Board; but since fill in a floodplain is required to be engineered and approved by FEMA, the Division of Water and the local regulations, that fill would not necessarily be removed. Mr. Drake noted that that troubled him.

Ms. Mundy indicated that her property has steep slopes where the water flows over the palisades to the river. She said that under Article 6-11 of the Land Subdivision Regulations, it lists aquifer recharge areas, and asked about the area where the water flows to the river. Ms. Wade said that the steep slope area, as well as the floodplain language would cover palisades. Ms. Mundy said that the palisades are above the floodplain. Ms. Wade said that palisades would be part of the floodplain. She then said that generally every piece of land in Fayette County flows toward a river, but not all of that land is located in an environmentally sensitive area. Ms. Mundy said that most of the area behind her house has over 15 percent slope. Ms. Wade said that if a slope is over 15 percent, it would fall under environmentally sensitive area; but if that percentage is under 15 percent, it would not. Ms. Mundy said that in her mind this is a river recharge, not an aquifer recharge. Ms. Wade said that, in terms of the Engineering Manuals, there are other ways to control the runoff on a site that regulate water quality and water quantity runoff. Ms. Mundy said that the Engineering Manuals would protect those areas with a runoff over 15 percent.

Mr. Berkley indicted his support of the Committee's recommendations of not having a surety or bond. He said that the staff had stated that the Board of Adjustment could require the fill to be removed, and asked how they would require that to be done. Ms. Wade indicated that there are still logistical issues in having fill removed from a site; but during their meetings, the staff had spoken with Commissioner Paulsen, who is involved with Code Enforcement, about the possible enforcement issue that is associated with the Board of Adjustment. Should they make a ruling saying that a conditional use ceases to exist and now you, as the property owner, must return the land back to its pre-development condition. She then said that there would be some cost to that action. When an applicant applies to the Board for a conditional use permit and a condition is put in place, they are agreeing to those terms. She added that there is a contract between the applicant, the Board of Adjustment and the Lexington-Fayette Urban County Government to ensure that conditions are met, if it were to occur. The City would not require the applicant to set money aside in the beginning; but afterwards, the City would have the authority to follow up on that conditional use; and if needed, ask the applicant to begin the process of returning the land back to its pre-development conditions. Otherwise, the City could fine the applicant for not complying with conditions imposed by the Board of Adjustment's action.

Mr. Berkley asked if Code Enforcement would be handling these types of cases. Ms. Wade said that Zoning Enforcement would handle any follow-ups, as well as any required annual reviews for the Board of Adjustment.

Mr. Drake asked how the conditional use requests within an environmentally sensitive areas were handled prior to this proposed text amendment; and if there has been a great deal of abuse. Mr. Sallee said that, with the exception of two more recent cases, there have not been a great number of these cases in the past. He explained that one of the cases was off Georgetown Road, and that the operation that was approved to remove the top soil was in part of the aquifer recharge area. He said that during the excavation of the site, the workers had removed much more than the top soil. This in turn, became an issue with State regulations, in addition to the conditional use permit. He then said that, since this was in an aquifer recharge area, it was located within environmentally sensitive area. He then said that a number of property owners, as well as local organizations that became interested in this location. Mr. Sallee added that the more recent case was the property down by the Kentucky River at the opposite end of Fayette County, and said that parts of that property have steep slopes and a floodplain area.

Mr. Sallee said that there have been a few conditional uses that have been located in the floodplain; and, in those circumstances, the section of the Zoning Ordinance that references floodplains (in existence since the 1980s) has also been applicable in the Board of Adjustment's review. He said that those cases, in his mind, do not stand out as anything out of the ordinary. They only involved an additional section of the Zoning Ordinance that is not typically reviewed with the

---

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

average conditional use permit, such as a home occupation permit, or a school or church in a residential zone, which are more typical types of development.

Mr. Sallee said that the actual review of the text amendment and the issue studied by the Sub-Committee is probably more of a result of two of the Board's more recent cases. He then said that, from his experience being on the staff, these types of contentious cases often lead to the need or the desire for text amendments either by the Planning Commission or, in some cases, as recommended by the Board of Adjustment.

Mr. Cravens said that he was alright with the Committee's recommendations; but in reviewing the details of the text amendment, he is not in support of it. He said that the text amendment states that such a site plan shall be prepared and asked if a site plan would need to be submitted with each application. Ms. Wade said that in every conditional use case a site plan is prepared; it's not required by law, but administratively it is required. Mr. Cravens said that it was the staff's testimony that the site plan shall be prepared by a qualified professional, such as a landscape architect, hydrologist, geologist, environmental engineer, naturalist, arborist, etc. The Chair said that it is not mandated; but if the Board of Adjustment deems it necessary to have a site plan submitted, they have the ability to request the applicant to have one prepared by one of the qualified professions listed in the staff report. Mr. Cravens replied that the language indicated "shall" be prepared. The Chair said that the site plan shall be prepared by that individual. Ms. Wade said that, in looking at the entire paragraph, the section that is bolded reads: "The Board may require a more detailed site plan." Mr. Cravens asked if this can be done with the proposed Ordinance change. Ms. Wade responded that it would not be without delay, and explained that when the applicant files their application, the Board would not see the application until their first meeting, which is a month later. She said that, at that time, the Board could request a more detailed plan to be submitted, delaying the applicant 30 days. Mr. Cravens said that the Commission delays/postpones applications until the plan is fixed. Ms. Wade said that the Board has 60 days to review applications, whereas, the Commission has 90 days.

Mr. Cravens asked if a house being built in an environmentally sensitive area is covered under this text amendment. Ms. Wade said that if you are asking to build a house in the floodplain, then it might. Mr. Cravens then asked what if someone wanted to build a California style house on a steep slope looking out over the river. Ms. Wade said that the Board could ask for a site plan and the applicant would need to hire the appropriate professional. Mr. Cravens asked if a house would need to be reviewed by the Board of Adjustment. Ms. Wade responded only if a variance is needed, but a house is not a conditional use, it is a principal uses in most zones.

Mr. Cravens said that when a house is built the different divisions come on site to review the construction, and asked who would be reviewing the different phases of construction. Ms. Wade said that there are no site visits with a Board of Adjustment case, and this is a difference between regular activity for a subdivision development and conditional use applications in the environmentally sensitive areas, typically in a rural area. Mr. Cravens said that if a site plan is filed with the staff, then that would trigger the Division of Engineering to perform a site visit even without the text amendment. Mr. Sallee said that the Division of Engineering's review would be associated with a land disturbance permit, and some conditional uses obviously on a larger scale would require a land disturbance permit. He then said that the staff is not sure if a review would happen if it wasn't required; for example, a conditional use for a church in a rural area or even an urban area. He added that if it was not within an environmentally sensitive area, the staff is not sure if that would trigger anything more than the building permit type of review by the Division of Engineering.

Mr. Cravens said that it seems that the text amendment is "doubling down" on the same restrictions. Ms. Wade said that the text amendment would ensure that the Board of Adjustment cases receive the same review as the Planning Commission cases. Mr. Cravens commented that he is not satisfied nor is he hearing answers that he likes. Ms. Wade responded that the staff is doing their best.

Mr. Cravens asked if an applicant poured a nice driveway, and the use goes away, if this text amendment would force the driveway to be removed. Ms. Wade said that the Board of Adjustment would make that determination.

Discussion - The Chair said that in each one of the staff's recommendations it states that the Board "may" require something; it does not say they have to mandate it. He then said that the intent of the zone says we shall protect environmentally sensitive areas. These recommendations are making things proactive rather than reactive. He said that 10 years ago Adventure Tourism was not even heard of in this area. This type of tourism includes such items as rock climbing. He said that new things are happening more and more; and even though there has only been one Agricultural Natural Areas (A-N) zone change request, he believes that the Commission will see these more in the future. He then said that there should be ways to allow this type of tourism; this is a proactive approach to allow more uses to occur in the environmentally sensitive areas, while at the same time protecting these areas.

Mr. Wilson said that he appreciated this discussion. He said that every time there is a discussion he learns a little bit more, and the Chair had described the intent of the text amendment. He said that the text amendment would strengthen, but not overburden the Board of Adjustment's review; and among the Ad Hoc Committee members was the Chairman of the Board of Adjustment and several attorneys, who appreciated being on that Committee. Mr. Wilson indicated that he felt good about the proposed text amendment.

Ms. Richardson said that, with regard to agri-tourism, she believes this is an expensive overkill. It is her belief that this is incredibly restrictive and expensive, and she is concerned that this text amendment would keep the developers or people

who want these activities from coming to Lexington. She added that most of these activities have an educational arm, but this proposal would prohibit them from coming and would force them to move to another county or another state. Ms. Richardson said that this text amendment is overly restrictive and she cannot support it.

Mr. Penn said that the problem needs to be identified before facilities are built and not try to prohibit them afterwards. He then said that historically the Board of Adjustment has not seen a good enough development plan to really know what environmental problems are, then suddenly the project is found to be not up to standard. He said that changing something on a piece of paper is a lot cheaper than getting into an afterthought situation, because the Board does not have a Technical Committee Review like the Commission does for development plans.

Mr. Penn asked if the reason for not using the surety or bonds was due to the expense. Mr. Wilson said that the Committee looked at whether or not a surety or bond could be legally imposed, as well as the cost of that surety or bond. Ms. Wade said that the Committee had an individual from a bond company in the group, and he indicated that the only way a bond company would support something like this was if it was one-for-one up front. She then said that their concern was how the Committee would enumerate that and how much it would cost to put something back to its natural state.

Ms. Plumlee thanked the staff and the Ad Hoc Committee for putting the text amendment together. She said that she would like to see more strength by using the word "shall" in the text amendment, particularly for the Rural Service Area. She then said that a surety or bond should be used in the rural areas because if the surety is too expensive to post, then perhaps the land shouldn't be developed in the first place - especially if it cannot be returned to its original use.

Mr. Cravens asked if the surety or bonds would be required if the project was not completed. Mr. Sallee said that the Board, theoretically, has that power; but it is not practical to require a bond for reclamation for conditional uses. Mr. Cravens asked what happens to the bonds that the Commission attaches to a development plan if the project goes unfinished. Mr. Sallee said that the bonds that the Commission considers are not reclamation. Ms. Wade said that the bonds that the Commission considers are infrastructure bonds and those are used for the right-of-way construction, which is City property. She then said that there is a known dollar amount that can be used for projects that have not been completed. Mr. Cravens asked if that is on City property, to which Ms. Wade replied affirmatively.

Mr. Brewer said that the recommendations made by the Ad Hoc Committee strike a good medium point between too much regulation or too much expense and with the right amount of investment in protecting the environmentally sensitive areas. He then said that this is a good compromise for both sides, and this text amendment should move forward.

Ms. Richardson indicated that in serving on many Committees; there has been a lot of discussion concerning the Bylaws and the Zoning Ordinance. She said that any time a body is given authority to do something, that body does it. She added that they begin to feel like it's their responsibility, and this is one of the reasons she believes this text amendment is overkill and too restrictive in the language that is being proposed. She said that she has been involved in too many things where people love the word "may" and they feel that they are empowered to do that and proceed forward. She then said that she doesn't want the word "shall" either; and in this situation, she doesn't believe it will make much difference. She believes that they will consider it a part of their authority and will most likely do it.

Mr. Penn said that he understood Ms. Richardson's concern, and he is not a big government person either. However, when the vegetation, the grass and the weeds are removed from a steep slope, replacing it is very hard due to soil erosion. A body can review the development plan very carefully, but not the business plan. He said that there is no way for the Board of Adjustment or the Commission to predict whether or not a business can make it. They are not in the business to determine which business is viable. Mr. Penn said that what they can do is say if nature's protection against erosion is removed, that business does not grow then it needs to put the land back to its original state. He then said that you can't just walk away from the situation and let the soil wash into the body of water. There needs to be a balance between those two points and that is what he is trying to consider today. He said that he does not want to make it where everyone just gets a permit for everything, but neither does he want the vegetation removed that has been there for hundreds of years for something that may or may not work. If the business doesn't work, that area becomes a rut and a mess. It's a two-way street.

The Chair said that the Committee, which included attorneys and Board and Commission members, put a lot of work into this text amendment. He then said that the Commission discussed this issue at many of their work sessions, and the consensus was to allow the staff to draft the text amendment. He then said that the Commission has seen this draft before, and there is still discussion on this topic. At this point, he said that he would call for a vote and asked for a motion.

Mr. Wilson said that he appreciated the discussion on this topic. He also appreciated the staff's input during this process, because the Committee was driving everyone crazy with questions about definitions, rules and regulations, and was requesting maps. He then said that he would also like to publicly thank all the people who served on that Committee, as well as the people who participated.

Action - A motion was made by Mr. Wilson, seconded by Ms. Plumlee and carried 8-3 (Cravens, Richardson and Drake opposed) to approve ZOTA 2016-1: AMENDMENTS TO ARTICLES 7, 23, AND 26 FOR ENVIRONMENTALLY SENSITIVE AREAS, as presented for the reasons presented by staff.

VI. **COMMISSION ITEMS** – The Chair will announce that any item a Commission member would like to present will be heard at this time.

A. **ANNOUNCEMENT FROM THE CHAIR** - The Chair announced that Mr. Kelly Hunter would be leaving the Division of Planning for a promotion in the Division of Engineering. He said that the Commission and the staff want to wish him well and hopes that he would come back to visit everyone in the future.

B. **AMENDING THE 2016 MEETING & FILING SCHEDULE** – Mr. Duncan requested the Commission take action to formally amend the 2016 Meeting & Filing Schedule in order to have a public hearing on June 30, 2016, to consider the Winburn Small Area Plan. He explained that the hearing would be open to the public and once that portion was concluded, the hearing would be closed; at which time, the regular work session would begin.

Action - A motion was made by Ms. Plumlee, seconded by Mr. Berkley, and carried 11-0 to formally amend the 2016 Meeting & Filing Schedule, as presented by the Director.

C. **NOMINATING COMMITTEE FOR COMMISSION OFFICERS**

The Chair said that according to the Commission's By-Laws, at the first regular and official meeting in June, the Commission will elect three members to a nominating committee. This committee will present a slate of officers for consideration by the Planning Commission. The slate is to be presented at their work session in June.

The Chair asked if there were any Commission members who wished to volunteer to serve on the nominating committee. Joe Smith, Mike Cravens and Carolyn Plumlee then each volunteered to serve on the nominating committee. The Chair thanked them for doing so.

Action - A motion was made by Mr. Penn, seconded by Ms. Mundy, and carried 11-0 to appoint the nominating committee, as presented.

D. **ANNOUNCEMENT FROM THE COMMISSION** – Mr. Penn announced that Mike Owens was getting married and some are making the trip with him to celebrate. The Chair thanked everyone, adding that everyone would agree she is the better half.

VII. **STAFF ITEMS** – Mr. Duncan announced that the staff would be presenting the recreation ZOTA to the Council Planning and Public Safety Committee on June 14<sup>th</sup> (Tuesday) at 1:00 p.m. in the Council Chambers. This meeting would be televised.

VIII. **AUDIENCE ITEMS** – There were none.

IX. **NEXT MEETING DATES**

|                                                                                                            |                      |
|------------------------------------------------------------------------------------------------------------|----------------------|
| <b>Zoning Items Public Hearing</b> , Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers .....     | <b>June 23, 2016</b> |
| Annual Planning Law Review – APA Conference, Wednesday, 4:00 p.m., Planning Division Office (Phoenix Bld). | June 29, 2016        |
| Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (Phoenix Building) .....               | June 29, 2016        |
| Work Session, Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers .....                            | June 30, 2016        |
| Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (Phoenix Building) .....              | July 7, 2016         |
| Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (Phoenix Building).....                    | July 7, 2016         |
| <b>Subdivision Items Public Meeting</b> , Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers..... | <b>July 14, 2016</b> |

X. **ADJOURNMENT** - There being no further business, the Chair adjourned the meeting at 2:42 PM.

---

Mike Owens, Chair

---

Will Berkley, Secretary