

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

February 28, 2008

- I. **CALL TO ORDER** – The meeting was called to order at 1:33 p.m. in the Council Chamber, 2nd Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Lyle Aten; Mike Cravens; Neill Day; Linda Godfrey, Chair; Ed Holmes; James Mahan; Frank Penn; Lynn Roche-Phillips; and Joan Whitman. Absent were Carolyn Richardson and Randall Vaughn.

Planning staff members present: Chris King, Director; Bill Sallee; Barbara Rackers; Jimmy Emmons; Tom Martin; Cheryl Gallt; Chris Taylor; and Stephanie Cunningham. Other staff members present were Ed Gardner, Department of Law; Hillard Newman, Division of Engineering; Jeff Neal, Division of Traffic Engineering; and Captain Charles Bowen, Division of Fire and Emergency Services.

- II. **APPROVAL OF MINUTES** – A motion was made by Mr. Penn, seconded by Mr. Aten, and carried 9-0 (Richardson and Vaughn absent) to approve the minutes of the January 31, 2008, Planning Commission meeting.

III. **POSTPONEMENTS AND WITHDRAWALS**

1. **ZOTA 2007-8: AMENDMENT TO ARTICLE 17-7(g) TO ALLOW ADVERTISING SIGNS TO USE DIGITAL TECHNOLOGY (4/12/08)*** - petition for a Zoning Ordinance text amendment to allow advertising signs (billboards) to use digital technology.

REQUESTED BY: The Lamar Companies

PROPOSED TEXT: (Note: Text underlined indicates an addition to the current Zoning Ordinance.)

ARTICLE 17 – SIGN REGULATIONS

17-7(g) HIGHWAY SERVICE BUSINESS, WAREHOUSE/WHOLESALE, AND INDUSTRIAL ZONES (B-3, B-4, I-1, I-2) - Permitted signs may be free standing or wall mounted as specified; signs may be non-illuminated, indirectly illuminated, internally illuminated or directly illuminated unless specified otherwise; no free standing business sign shall exceed twenty-five (25) feet in height; no free standing advertising sign shall exceed forty (40) feet in height.

(8) Advertising signs may utilize an Electronic Message Display System provided that only Light Emitting Diodes (LEDs) or Liquid Crystal Diodes (LCDs) or similar digital technology may be used and provided that the minimum time between message changes shall be eight seconds and that such signs shall contain no scrolling, moving, or animated display. Existing advertising signs are permitted to convert to this technology upon the issuance of a building permit. No permit shall be required for the change of message on an advertising sign using an Electronic Message Display System.

The Zoning Committee Recommended: **Postponement**.

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

1. This amendment to the Zoning Ordinance is legally inadvisable, given the fact that off-premise electronic message display signage is specifically prohibited by state law. The existing state law prohibits flashing, moving or intermittent off-premise advertising signs and restricts each sign to no more than two messages per face. The LFUCG does not have authority to allow a type of sign that is prohibited by state and/or federal law.
2. Electronic and/or digital signage was contemplated when the signage regulations were significantly revised for Lexington-Fayette County in the early 1980s, and this type of sign was purposefully limited for on-premise signage and completely prohibited for off-premise signage.
3. Electronic message display systems should continue to be regulated in a manner consistent with the stated intent of Article 17 of the Zoning Ordinance, namely to maintain the overall aesthetics of the community; to improve public safety by minimizing undue distraction to the traveling public; to reduce intrusions and protect property values; and for the protection and enhancement of the tourist industry by promoting a more harmonious and pleasing community image.

Petitioner Representation: Rena Wiseman, attorney, was present representing the petitioner and requested a one-month postponement of this item.

Action: A motion was made by Mr. Day, seconded by Ms. Whitman, and carried 9-0 (Richardson and Vaughn absent) to postpone ZOTA 2007-8 to the March 27, 2008, Planning Commission meeting.

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

2. **FORTUNE OFFICES, LLC, ZONING MAP AMENDMENT & EASTWOOD, UNIT 6, SECTION 1, LOT 6 ZONING DEVELOPMENT PLAN**

- a. MAR 2007-20: FORTUNE OFFICES, LLC (2/28/08)* - petition for a zone map amendment from a Professional Office (P-1) zone to a Wholesale & Warehouse Business (B-4) zone, for 5.555 net (5.635 gross) acres, for property located at 2472 Fortune Drive.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 8) recommends Professional Services (PS) future land use for the subject property. The petitioner proposes constructing 57,000 square feet of warehouse and accessory office space, as well as off-street parking and loading areas.

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

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

1. The existing Professional Office (P-1) zoning is inappropriate, and the proposed Wholesale and Warehouse Business (B-4) zoning is appropriate at this location for the following reasons:
 - a. The B-4 zone requested would be compatible with adjacent commercial development and will not adversely affect the surrounding area or other 2007 Comprehensive Plan land use recommendations for this area.
 - b. The subject property would function well as a part of the existing business park development along Fortune Drive, and the requested zone change will allow it to function in this manner.
 - c. The subject property is separated from the adjacent P-1 zoned property to the south by an existing tree stand and from the residentially zoned property to the northeast by a large detention basin. The tree stand and detention basin are more appropriate and recognizable land use buffers between the office and residential uses and the proposed wholesale/warehouse use in this instance.
2. This recommendation is made subject to approval and certification of ZDP 2007-113: Eastwood, Unit 6, Sec. 1, Lot 6, 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 shall apply to the property via conditional zoning:

PROHIBITED USES

1. Machine shop.
2. Major or minor automobile or truck repair.
3. Tire re-treading and recapping.
4. Truck terminals and freight yards.
5. Circuses and carnivals, even on a temporary basis.
6. Any wholesale or trucking use operating between the hours of 11 p.m. and 7 a.m.

These use restrictions are appropriate and necessary at this location to ensure that the proposed development adequately protects the nearby neighborhood and assisted living facility.

- b. ZDP 2007-113: EASTWOOD, UNIT 6, SECTION 1, LOT 6 (2/28/08)* - located at 2472 Fortune Drive.
(Strand Associates)

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

1. Provided the Urban County Council rezones the property B-4; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping.
5. Urban Forester's approval of tree inventory map.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Denote: There shall be no development of the property until the Planning Commission approves a final development plan.
8. Revise owner's certification and Planning Commission's certification.
9. Correct plan title.
10. Addition of written scale information.
11. Label building lines.
12. Verify the recordation of drainage easements.
13. Resolve building and drainage easement conflict.

Petitioner Representation: Richard Murphy, attorney, was present representing the petitioner and requested a two-month postponement of this item. He stated that the petitioner has been in contact with the neighbors, one of whom had a conflict with a one-month postponement, which is the reason for this request.

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

Action: A motion was made by Mr. Penn, seconded by Mr. Aten, and carried 9-0 (Richardson and Vaughn absent) to postpone MAR 2007-20 to the April 24, 2008, Planning Commission meeting.

- IV. LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, February 7, 2008, at 8:30 a.m. The meeting was attended by Commission Members: Carolyn Richardson, Neill Day, Lyle Aten, Linda Godfrey, James Mahan, and Mike Cravens. Committee members in attendance were: Hillard Newman, Division of Engineering; and Jeff Neal, Division of Traffic Engineering. Staff members in attendance were: Cheryl Gallt, Denise Bullock, Bill Sallee, and Tom Martin; as well as Ed Gardner, Department of Law; Captain(s) Bill Woodward and Charles Bowen, Division of Fire & Emergency Services; Tim Queary, Division of Streets, Roads and Forestry; and Bob Carpenter, Division of Building Inspection. 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. DEVELOPMENT PLANS

1. DP 2006-137: PROVIDENCE PLACE & INTERSTATE SERVICE CENTER, UNIT 6 (4/29/08)* - located at 2200 Newtown Pike and 1931 Stanton Way. (Council District 12) **(EA Partners)**

Note: This plan requires the posting of a sign and an affidavit of such. This plan was approved by the Planning Commission at its December 14, 2006, meeting, and again on June 14, 2007, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
3. Building Inspection's approval of landscaping.
4. Urban Forester's approval of tree preservation plan.
5. Greenspace Planner's approval of the treatment of greenways/bike trails and pedestrian movement.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Solid Waste's approval of refuse collection.
8. Approval of street names and addresses per e911 staff.
9. Approval of exaction information for the entire project by the Division of Planning.

In their approval, the Commission added the following four conditions recommended from the staff's EAMP Compliance Report, and adopting the staff's findings from the EAMP Compliance Report:

- a. That the rear of the residential structures that back to the B-5P area and that will back up to the proposed barn be buffered through landscaping equivalent to commercial/residential zone-to-zone screening.
- b. That the applicant provide additional pedestrian connections within the development to create complete pedestrian loops, to the approval of the Bike/Pedestrian Planner.
- c. That the applicant provide a more detailed plan for the common use of the central open space, prior to certification.
- d. That the applicant provide development standards for minimum architectural standards that would reflect at least some common architecture among the buildings.

Note: The applicant now requests a continued discussion to add a single family residential unit to the property.

The Subdivision Committee Recommended: Approval, subject to the previous conditions.

The Staff Recommended: Approval, subject to the previous 13 conditions, adding an additional condition:

10. Resolve conflict between dwelling location and existing construction easement prior to certification.

Staff Presentation: Mr. Martin presented the development plan to the Commission, noting that it has been brought back before the Commission as a continued discussion item. He oriented the Commission to the location of the subject property.

Mr. Martin stated that this item had been submitted for a continued discussion in order to allow the placement of one additional residential unit on the subject property. He used the rendered development plan to demonstrate for the Commission the location of the proposed commercial and residential areas, including the residence that had been added; the existing residence; and an existing barn on the subject property.

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

Mr. Martin said that the Subdivision Committee recommended approval of this development plan, subject to the nine conditions as listed on the agenda. As the subject property is located within the Expansion Area, the staff prepared an EAMP Compliance Report, the findings of which are listed on the agenda as well. The staff recommends approval of this plan, subject to all the listed conditions, and adding an additional condition to read as follows: "Resolve conflict between dwelling unit and existing construction easement prior to certification." A temporary construction easement was designated on the subject property to allow the construction of Providence Parkway, which has been completed and should soon be dedicated. Mr. Martin noted that the location of the proposed new residence is in conflict with that easement.

Commission Questions: Mr. Aten asked if an additional driveway would be created to serve the proposed residence. Mr. Martin replied that no new driveways are proposed to be added. The new residence will use the existing driveway for access.

Mr. Holmes asked for clarification on the location of the access for the proposed residence, which Mr. Martin provided. He noted that the new structure is proposed to be a single family residential unit, to be occupied by the property owner's mother.

Petitioner Representation: Rory Kahly, EA Partners, was present representing the petitioner. He submitted the appropriate affidavit for the sign posting.

Mr. Kahly stated that this plan has been brought back for a continued discussion due to a misunderstanding. The petitioner believed that the proposed residence had been included on the plan all along, and had performed all the necessary exaction calculations to include that structure. However, Mr. Kahly discovered just prior to the signing of the plan that the proposed residence was not approved.

With regard to the additional condition proposed by staff, Mr. Kahly stated that the proposed location of the new residence lies within a temporary construction easement. He said that the associated final record plat for the subject property, which includes Providence Parkway, cannot move forward until this development plan is certified. Mr. Kahly said that he and the staff discussed the possibility of adding a note to the plan with regard to the resolution of the conflict between the dwelling unit and the construction easement, and the petitioner is in agreement with that suggestion.

Commission Questions: Mr. Penn asked if there is an existing 200-foot scenic easement on the subject property. Mr. Kahly answered that there is not, to the best of his knowledge. There is a Scenic Resource Area line on the property that was established as part of a rezoning of the property in 2002. All of the new development proposed is behind that line, although the existing residence is nearer to the right-of-way.

Ms. Roche-Phillips asked to what the line on the development plan behind the existing house refers. Mr. Kahly replied that that line indicates the boundary of the Scenic Resource Area, which was included as part of the Expansion Area Master Plan to protect viewsheds in the Expansion Area. The EAMP sets forth specific conditions for development with regard to Scenic Resource Areas. The new development on the subject property was designed so that the view from Newtown Pike consists mostly of the existing manor house, and the rest of the commercial development fronts along Providence Parkway, in order to protect the viewshed.

Action: A motion was made by Ms. Whitman, seconded by Mr. Aten, and carried 9-0 (Richardson and Vaughn absent) to approve DP 2006-137, with the nine conditions as listed on the agenda; adding a tenth condition to read as follows: "Resolve conflict between dwelling unit and existing construction easement prior to certification;" and including the four conditions included as part of the EAMP Compliance Report.

2. DP 2007-134: SAND LAKE & ESTES PROPERTY (AMD.) (2/28/08)* - located at Richmond Road and South Eagle Creek Drive. (Council District 7) **(EA Partners)**

Note: The Planning Commission postponed this plan at its November 8, 2007, December 13, 2007, and January 17, 2008, meetings. The purpose of this amendment is to revise the development and the layout of buildings, reduce the number of lots, and reduce the public streets and rights-of-way.

The Subdivision Committee Recommended: Approval.

The Technical Committee and Staff Recommended: Disapproval, for the following reason:

1. Per Article 21-7(e) of the Zoning Ordinance, the amended plan, as submitted, alters the essential character of the development as originally approved; specifically:
 - a. This amendment alters the approved internal circulation pattern by reducing the length of Sand Lake Drive by 550 linear feet and prevents its northern connection to the access road parallel to Richmond Road;

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

- b. This plan proposes to remove the perimeter circulation previously approved along the west and southwest property boundaries;
- c. This plan proposes to alter the approved access to adjoining public streets, and the parking layout and allocation;
- d. This plan seeks to reduce the building square footage from 112,450 to 56,514.
- e. In addition, the proposed use has changed from a retail shopping center to a large automobile dealership with a much smaller amount of retail shops.

Staff Presentation: Mr. Martin presented the amended development plan, and gave a brief description of the adjacent roadways and surrounding land uses.

Mr. Martin explained that this plan is an amendment to that which had previously been approved by the Planning Commission. The new plan has retained the previous configuration of the outlot parcels; however, the big-box retail development previously proposed for the rear of the property has been changed to include a three-story hotel with 78 units and associated parking, as well as an automobile sales lot and car storage area. The proposed street configuration has also been changed, with Sand Lake Drive now proposed to terminate at the entrance to the car lot, rather than connect through the rest of the property. The applicant proposes to continue Sand Lake Drive as a private street through the interior of the car lot. The existing service road and Beale Street are both proposed to include right-in/right-out accesses from Richmond Road.

Mr. Emmons presented to the Commission a series of maps and photographs detailing the visual history of the street patterns on the Sand Lake property. He stated that, in January of 2004, the first street to be approved on the property was the extension of Lake Wales Drive to the service road along Richmond Road. The next public street that was approved, in June of 2005, was proposed as an extension of South Eagle Creek Drive and would connect through the subject property. When the property was requested for commercial zoning in October of 2005, the petitioner proposed to construct a cul-de-sac at the end of Lake Wales Drive, but retained the proposed public street system through the remainder of the property. The next major change in the proposed street system was brought about as the result of the adoption by the Urban County Council of the Richmond Road Traffic and Safety Ordinance, in June of 2006. That Ordinance resulted in major changes to the proposed street system on the subject property. No entity within the government, including the Planning Commission, could therefore approve any changes to the streets on the Sand Lake property that would be in contradiction to that Ordinance. Those changes included the removal of portions of the service road and re-alignment of other portions of the service road. Mr. Emmons stated that the Planning Commission approved a plan for the subject property in September of 2006 that included a public street system, which also appears on the currently approved plan for the property. That street system is in compliance with the Richmond Road Traffic and Safety Ordinance, and includes a cul-de-sac terminus for Lake Wales Drive. The petitioner now proposes to maintain the existing cul-de-sac on Lake Wales Drive, and remove the public street connection through the proposed car lot.

Mr. Martin stated that the Subdivision Committee recommended approval of this request. The Technical Committee and staff recommended disapproval, for the reasons listed on the agenda. The staff has concerns about the proposed changes to the street circulation system, which is one of the reasons for their recommendation of disapproval. Mr. Martin displayed a rendered graphic depicting the proposed street circulation pattern, and noting the areas of the staff's concern. There are no left turns permitted onto the Sand Lake Property for northbound traffic, except at the traffic light at the Richmond Road/Eagle Creek Drive intersection. The staff is concerned that the proposed hotel and car lot uses will attract the traveling public, who may have difficulty upon entering the property and encountering a dead end, since the public street is proposed to terminate at the entrance to the car lot. The staff believes that the continuation of the public street, as included on the previously approved development plan, would provide clearer, more well-defined traffic movements.

Mr. Martin noted that, should the Planning Commission choose to disapprove this request based on the staff's reasons for disapproval, reasons "b," "c," and "d" could be deleted, and reason "a" could be used as the basis for a disapproval motion.

Petitioner Representation: Rena Wiseman, attorney, was present representing the petitioner. She explained that this amended development plan was submitted in order to allow the Carmax automobile dealership company to locate a new facility on the subject property. Carmax, which is a national company, focuses on sales of used cars that are one to six years old, with less than 60,000 miles. The company's entire inventory is listed on their web site, so that prospective buyers have the ability to research and locate cars on the web site, and then view the car of their choice at the Carmax facility. The facilities are attractive and well-kept, with none of the outdoor loudspeakers, balloons, streamers, or flags traditionally associated with used car dealerships.

Ms. Wiseman stated that the subject property is ideally suited for the Carmax facility, since it is appropriately zoned and of ample size, and it has good visibility. The only drawback to the site, in the petitioner's opinion, is the poor access situation, which may be the reason why the subject property has not developed over the years. The auto dealership, however, would be a "destination business" not requiring many trips in and out of the subject property, as would a drive-through restaurant or bank. This use, therefore, would be better suited to the subject property and its access situation than the types of uses proposed on the approved development plan.

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

Ms. Wiseman stated that, if the subject property were developed for retail uses only, it would greatly increase the traffic density in the area. If the property were developed with retail and commercial uses according to the approved development plan, it would yield approximately 60,000 square feet of retail space. Using ITE traffic generation figures, the petitioner calculated that that amount of retail space would generate approximately 2,576 average daily trips. The proposed 14,000 square-foot Carmax facility alone was calculated to generate 580 daily trips. The amended development plan includes a hotel, smaller retail shops, and the auto dealerships, and was calculated to generate 2,888 daily trips.

Ms. Wiseman said that the petitioner had several meetings with Jeff Neal, Division of Traffic Engineering, who has indicated his agreement with this amended development plan and the revised traffic circulation pattern. She entered into the record of the meeting a letter from Rory Kahly, EA Partners, which was received and accepted by Mr. Neal, detailing the results of the traffic calculations based on the approved development plan and this new amended development plan.

Commission Question: Ms. Whitman asked if the property that fronts onto Richmond Road is being considered as part of this request. Ms. Wiseman answered that that property is not owned by the petitioner, and is not being considered as part of this rezoning request.

With regard to the traffic circulation pattern demonstrated on the amended development plan, Ms. Wiseman said that the staff exhibit depicting the circulation did not fairly represent the situation. She displayed a rendered map depicting the petitioner's view of the traffic circulation pattern. The petitioner believes that the most important street connection on the subject property is the extension of South Eagle Creek Drive, which is included on the proposed development plan. The major difference between the approved plan and the proposed plan is the treatment of Sand Lake Drive. On the approved plan, Sand Lake Drive connects through the subject property to the service road; on the amended plan, the public street portion of Sand Lake Drive is proposed to end at the entrance to the Carmax facility, as that use would not need the street connection. An outdoor secure car storage area is proposed adjacent to the Carmax building, and the petitioner does not want to have public street traffic driving through their storage facility. The petitioner proposes to construct Sand Lake Drive as a public street to the entrance to the Carmax facility; at that point, the street would transition to a private access easement, while maintaining the standards of a public street. Ms. Wiseman stated that a concrete texture is proposed to delineate the transition from the public portion of Sand Lake Drive to the private access easement portion. The petitioner has requested a waiver to the requirement that a public street terminate in either a cul-de-sac or another public street. A cul-de-sac in this location would use up much of the Carmax parking area, and may make navigation more difficult for drivers. Mr. Neal has reviewed this proposal, and believes that it will function adequately to serve the proposed development.

Ms. Wiseman stated that, when Mr. Emmons discussed the zoning history of the subject property, he did not mention that, when the property was rezoned in 2006, the staff and the Planning Commission had several concerns about the street connection that the petitioner is now proposing to remove. The concern was that drivers entering and exiting the service road would create a dangerous conflict with the access to Richmond Road. Ms. Wiseman read the following excerpt from the minutes of the September 28, 2006, meeting into the record:

"The Division of Traffic Engineering has requested that the public road nearest the Man O' War Boulevard and Richmond Road intersection be designated as a one-way street, with traffic traveling from east to west. They believe that the proximity of the service road to such a busy intersection could create traffic problems if allowed to be two-way traffic."

Ms. Wiseman noted that the minutes of that meeting also specify that the access easements included on the plan be designated as public streets, and that, "the east-west service road shall be designated for one-way traffic from Richmond Road." When the Commission re-approved the plan in July of 2007, that condition remained on the plan. The petitioner does not need that proposed one-way access into the property, and believes that drivers will have adequate access to the property via Beale Street, which has been approved by the Council and found to be in accordance with the Richmond Road Traffic and Safety Ordinance.

Ms. Wiseman stated that, sometime between that re-approval in 2007 and the certification of the currently approved development plan, the access to Richmond Road was designated for two-way traffic, despite the Commission's concern that a two-way access would create a traffic bottleneck at that location. The petitioner proposes to eliminate that access altogether, which would preclude any potential traffic bottlenecks.

With regard to the staff's reason "a" for disapproval of this plan, Ms. Wiseman said that the staff's assertion is true; however, the petitioner has a reason for altering the circulation pattern. The proposed alteration of the circulation pattern is the impetus behind the petitioner's request for a waiver of the Land Subdivision Regulations to allow the termination of the public street at the entrance to the Carmax facility. Ms. Wiseman noted that she had distributed appropriate findings to the Commission members for approval of the waiver request, should they choose to do so. The transition to the private access easement at that location is proposed to be delineated with a textured concrete band, and is proposed to have pavement width, curb, gutter, and sidewalks comparable to the public section of Sand Lake Drive. The petitioner believes that designation of this portion of Sand Lake Drive as a private access easement will still allow for internal traffic circulation through-

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

out the development, while allowing the auto dealership to maintain a secure area for vehicle display. The termination of Sand Lake Drive in a cul-de-sac, as required by the Subdivision Regulations, would result in a loss of parking area for the auto dealership, as well as encroaching into the secure display area.

Ms. Wiseman commented that the petitioner's traffic data does not support the staff's assertion that hotels and car dealerships are high traffic generators, since those uses presented lower traffic counts than those projected for the proposed retail development. The staff has expressed concern about the alteration of the internal circulation pattern, due to the termination of Sand Lake Drive in a private access easement, but the petitioner does not believe that the circulation pattern as included on the approved development plan is the best solution for this development. Traffic entering the development from Richmond Road would be much better served by utilizing the Beale Street intersection.

Ms. Wiseman stated that the petitioner was aware that Bruce Simpson, attorney, would be speaking at this hearing on behalf of the owners of the two adjoining properties that front onto Richmond Road. She said that the petitioner's second waiver request directly relates to the ability of those two properties to become part of the proposed development in the future. The right-of-way of Beale Street is contiguous to the property lines of those properties. In order to construct Beale Street so that it aligns with the grade of Richmond Road and the adjoining intersections, the petitioner will be required to construct it at a significantly higher grade than the adjoining properties, using a retaining wall. The petitioner submitted a letter to the owner of the property which adjoins the public portion of Beale Street, explaining the situation and demonstrating the need for constructing the street in such a manner. It will still be possible, with appropriate grading, for that property to tie into the public portion of Beale Street should the owner choose to do so. With regard to the private access easement portion of Beale Street, Ms. Wiseman said that the petitioner proposes to add a note to the final record plat for this property, allowing those properties to tie into that private access easement at such time as the properties develop.

Commission Question: Ms. Godfrey asked, with regard to the retaining wall on Beale Street, if the wall had already been constructed. Ms. Wiseman answered that the petitioner's grading plans were approved by the Division of Engineering in September of 2007, and the wall has been constructed based on those plans. Ms. Godfrey stated that she was seeking clarification as to the need for the waiver for the retaining wall. Ms. Wiseman deferred the explanation of that issue to Al Gross, engineer.

Ms. Wiseman stated that she had never seen a development plan recommended for disapproval because it altered the basic character of a previously approved plan. She said that the staff has not offered any evidence that the proposed plan violates the Zoning Ordinance or the Subdivision Regulations, aside from the issues for which the petitioner has requested waivers. There is no evidence that any flooding problems would be created, or hazards or nuisance to the public. The plan does propose to alter the character of the development, but by constructing uses that are less intense than those on the approved development plan. Ms. Wiseman noted that, under the current Zoning Ordinance and Land Subdivision Regulations, amendments to plans are permitted. She read the following excerpt from Article 21-7(e) of the Zoning Ordinance into the record:

"In addition to the standards listed in Article 21-4(c), the Commission may also disapprove or modify the requested amendment if it finds that such amendments will adversely affect the public health, safety, and welfare or alter the essential character of the development as originally approved."

Ms. Wiseman explained that, in this instance, the Zoning Ordinance refers to a "development," rather than a "development plan." The subject property is currently vacant, and thus has no existing development or character that may be altered; the uses that locate there in the future will establish the character of the development. When the petitioner brought this property before the Planning Commission for rezoning in 2006, one of the arguments for the rezoning was that the Estes Property had been rezoned to B-3, which constituted an unanticipated change that altered the character of the area. At that hearing, the staff rejected that argument, on the basis that there was no development on the property, and therefore no character that could be altered. Ms. Wiseman stated that she believes that the Zoning Ordinance in this case is referring to developments that are already partially completed, which could be adversely affected by changes in the late stages of development. The petitioner contends that that argument is a weak basis on which to recommend disapproval of this plan.

Al Gross, EA Partners, displayed a graphic of the street cross-section, and explained that the petitioner has requested a waiver of Article 6-8(a) in order to reduce the street cross-section of Beale Street. The petitioner has constructed a retaining wall adjacent to the Gentry/Marcum Property, which was necessary in order to prevent the spillage of fill and/or roadway construction materials onto the property. The petitioner felt that the wall was also necessary due to the existing grade of Richmond Road and South Eagle Creek Drive, and the proposed grade of the subject property. The grade on much of the subject property is equal to that of Richmond Road, but the Gentry/Marcum property falls away from Richmond Road approximately 12 feet toward the rear of the property, near the creek. Mr. Gross noted that it is not an optimum situation for a commercial development to lie below the grade of the nearest arterial roadway, which in this case is Richmond Road, so the petitioner proposed to construct the new development at the same grade as Richmond Road. The waiver to the street cross-section is required because, during the construction of the retaining wall, the petitioner shifted the retaining wall into

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

the right-of-way and constructed a typical 31-foot street cross-section, including curb and gutter. In order to compensate for that shift, the utility strip has been eliminated on the northern side of the street, with an integral curb and sidewalk against the retaining wall; that sidewalk has also been widened to five feet. On the southern side of the street, the petitioner gave up the standard utility strip in favor of a 7½-foot utility and sidewalk easement, in order to construct the required public street improvements.

Commission Question: Ms. Godfrey asked, to ensure that she understood the waiver request, if this waiver was required due to the reduction in the width of the cross-section, which was caused by having to construct the retaining wall in order to maintain a grade on the subject property level with that of Richmond Road. Mr. Gross confirmed that Ms. Godfrey's assessment of the waiver request was correct.

In summary, Ms. Wiseman stated that she was prepared to offer findings of approval for this request, should the Commission choose to do so. She reiterated that this is simply an amended development plan, which was submitted in order to allow for a change in the traffic circulation pattern that will allow it to function more efficiently. All the uses proposed with this plan are allowed by the Zoning Ordinance, and are better suited to the surrounding area in terms of intensity of use. Ms. Wiseman requested approval of the amended development plan, and the two requested waivers to the Land Subdivision Regulations.

Opposition Presentation: Bruce Simpson, attorney, was present representing Mr. Marcum and Mr. Gentry, who own the Marcum/Gentry property that adjoins the subject property along Richmond Road. He distributed to the Commission members a booklet of exhibits, and noted that he would be referencing those exhibits throughout his presentation.

Mr. Simpson stated that the purpose of the Planning Commission is to serve the community to make appropriate land use decisions, including consideration of the possible impacts on neighboring properties. He said that, although the petitioner contends that this request is simply a change to a development plan, it is actually a significant change that could negatively impact his clients. It is important that the Planning Commission consider all the property owners in the area, and not make a decision based on the needs of one user.

With regard to the history of rezoning requests on the subject property, Mr. Simpson said that access to the subject property and the adjoining Estes and Gentry/Marcum properties has always been a major issue. The access issues began when the Planning Commission approved a rezoning request for the subject property that was not in compliance with the recommendations of the Comprehensive Plan, and have continued through to this current amended development plan.

Mr. Simpson directed the Commission's attention to his exhibit depicting a timeline of the zoning and development plan changes to the subject and adjoining properties. In 2004, the owners of the Estes property came before the Planning Commission to request a zone change to B-3. The staff recommended disapproval of that request, but the Planning Commission recommended approval. At that time, Mr. Simpson's clients were concerned that, should the Estes property develop, they would be provided with the service road access that had been planned for this area for years. After the improvements were made to Richmond Road several years ago, any ability to make a left-hand turn from the Gentry/Marcum property or the existing veterinary clinic was eliminated, so all access to those properties became right-in/right-out. Mr. Simpson's clients wanted to ensure that their properties would have appropriate access via the Estes property to a turn signal, so that drivers leaving their property would have the ability to make left turns onto Richmond Road. Those concerns were recognized by the staff and the Planning Commission, and the access issue was addressed through the development plan associated with that rezoning request.

In 2005, Dennis Anderson became involved with the Sand Lake property, which was then brought before the Planning Commission for rezoning to B-3. Mr. Simpson's clients again monitored that request, to ensure that development of that property would not negatively impact their property.

Mr. Simpson said that, in September of 2006, the Planning Commission approved a development plan for the Sand Lake property, subject to a condition that allowed the termination of Lake Wales Drive in a cul-de-sac, and that a public street rather than an access easement run along the rear and to the side of the Gentry/Marcum property. Mr. Simpson's clients were satisfied with that development plan, and with the proposed public street access to their property. In July of 2007, that development plan was brought back before the Planning Commission as a continued discussion item, in order for the Planning Commission to consider the creek mitigation issues on the Sand Lake property. After a lengthy discussion, the Planning Commission approved the plan, subject to the original conditions. The amended preliminary subdivision plan/final development plan was then certified by Mr. King on September 6, 2007. On September 21, 2007, the petitioner obtained a grading permit and began to make improvements to the property that conflicted with that approved and certified plan.

Mr. Simpson then read the following excerpts from the minutes of various meetings into the record:

From the minutes of the June 9, 2005, Planning Commission meeting:

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

"Mr. Murphy, attorney, was present representing Dennis Anderson. He stated that the purpose behind this preliminary subdivision plan is to add a street connection to Eagle Creek Drive. Mr. Murphy explained that he had brought a zone change before the Planning Commission recently for the Estes Property, which borders the subject property. He said that the applicant in that zone change had chosen at the time to dedicate space for a connecting street, and that Mr. Anderson had agreed to pay for and construct the street. Mr. Murphy added that this connection would provide a major traffic improvement in the area."

From the minutes of the October 27, 2005, Planning Commission meeting:

"Mr. Murphy acknowledged that he had stated in 2004 that the creek acted as a physical boundary. He said that that zone change left the Planning Commission with a unanimous recommendation of approval, but the owners of the current adjoining B-1 property objected because they felt it would adversely affect their property if the Estes parcel was rezoned to B-3 and they did not have an approved access. Mr. Murphy stated that the resolution was that Mr. Anderson would provide the right-of-way to construct the road over the creek, so that the property would not be left with a bad access situation."

"Mr. Harper asked if there would be a retaining wall necessary to enclose the parking area for the proposed development; and, if so, how high it would be. Mr. Murphy deferred to Al Gross, EA Partners, who indicated that no retaining wall would be necessary."

Mr. Simpson submitted into the record of the meeting a letter, dated April 20, 2006, from Richard Murphy, acting as attorney for the petitioner, to Jay Whitehead, who was then Commissioner of Public Works, requesting an amendment to the Richmond Road Traffic and Safety Ordinance to allow an additional right-in/right-out access to Richmond Road. That request was ultimately approved by the Urban County Council, which resulted in the connection of the approved public street, which is now known as Beale Street, to Richmond Road. Mr. Simpson read the following excerpt from Mr. Murphy's letter:

"Mr. Anderson's companies have worked diligently to assemble this parcel from different owners. In the past, lack of cooperation between owners has prevented a comprehensive traffic solution to the issues in this quadrant. The property is zoned B-3 (Highway Commercial) and we are in the process of submitting development plans to the Planning Commission to develop the property."

The Sand Lake property next came before the Planning Commission in September of 2006. Mr. Simpson read the following from the minutes of the September 28, 2006, Planning Commission meeting:

"Mr. Emmons stated that the petitioner proposes to put the creek in a culvert from Man O' War Boulevard to South Eagle Creek Drive. He said that the staff would usually not be in favor of such a proposal; however, the staff feels that, because the proposed public streets would be a great improvement to the area, the creek should be routed through a culvert in order to accommodate the construction of the streets."

Mr. Simpson noted that it was unusual for the staff to recommend routing a creek through a culvert, but the staff clearly recognized the advantages of having a public street through the proposed development, and the Planning Commission approved that request based on the staff's recommendation.

Following the certification of the Sand Lake development plan in September of 2007, Mr. Marcum began contacting the Division of Engineering in an attempt to view the construction plans for the site. He was informed on several occasions that the plans had not been received, and he eventually requested that someone contact him when the plans were received. Mr. Marcum happened to be in the Division of Planning office near the end of September, and he discovered inadvertently that the construction plans had not only been filed with the Division of Engineering, but they had also been approved. Those plans depicted a retaining wall, 16 feet in height at its tallest point, made of concrete.

Mr. Simpson stated that, once Mr. Marcum discovered the construction of the retaining wall that was taking place on the Sand Lake property, he contacted his attorney, David Enlow. On October 1, 2007, Mr. Enlow filed a motion on behalf of The Paddington Trust (Mr. Marcum's interest) and Michael Gentry, for a hearing on the construction of the wall, since the need for it had never been discussed or shown on any previously approved development plan. Mr. Enlow attended the Technical Committee meeting on October 24, 2007, in order to discuss the wall and the concerns of Mr. Marcum and Mr. Gentry. At that meeting, Andrea Weddle, former legal counsel for LFUCG, informed the petitioner's engineers that they were "building the retaining wall at their own peril," if it was found that the wall should not be constructed. Mr. Simpson's clients believe that the petitioner should have been required to denote on their certified development plan that he intended to

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

construct a large wall that would "block off" the Gentry/Marcum and Snyder properties from the rest of the proposed development. They contend that the petitioner intended all along to construct the wall, as evidenced by the filing of the construction plans, depicting the retaining wall, only eight days after the development plan was certified.

Mr. Simpson stated that, now that the wall is fully constructed, the petitioner contends that requiring the removal of it would constitute an undue hardship. He said that the amended development plan that includes the retaining wall was not filed until construction of the wall was approximately 60% complete. He read the following excerpt from Article 21-4 of the Zoning Ordinance:

"Although development plans are not subdivision plans, quite often the development plan does indicate a need or an intent to subdivide property. For any such development plan, the design and improvement standards contained within the Subdivision Regulations shall be applied."

Mr. Simpson reiterated that the plan for the Sand Lake property that was certified by Mr. King in September of 2007 was a combined plan. The following provision from the Zoning Ordinance is therefore applicable in this instance:

"Development plans and preliminary subdivision plans may be combined. It is recognized that for certain development situations it can be advantageous to both the developer and the Commission to combine the functions and requirements for development plans and preliminary subdivision plans in order to streamline the development and approval process, while not reducing the quality of the review. The following provisions shall be applicable to any such combined plan:

- (2) The plan shall show all information required for a development plan (preliminary or final, as appropriate) and all information required for preliminary subdivision plans as set forth in Article 5-2 of the Land Subdivision Regulations."

Mr. Simpson then read the following excerpt from Article 5-2 of the Land Subdivision Regulations:

"The following information and requirements shall be applicable to any submission for Commission consideration of a preliminary subdivision plan:

- 5-2(d)(11) OTHER CONDITIONS – Such as ponds, marshes, or other significant natural or man-made features; owners or subdivision name of adjacent land, including record plat reference; and other information related to the adjoining land as necessary to ensure property continuity of storm drainage, sanitary sewers, street grades and other facilities."

Mr. Simpson stated that it was noteworthy that the petitioner did not include the retaining wall on the development plan that was certified in September of 2007. However, the wall is depicted on the amended development plan that is currently before the Commission. Mr. Simpson's clients contend that the petitioner has not complied with the law; that they have built the retaining wall in violation of the law; and that they are now requesting that the Planning Commission excuse their construction of the wall, and not require that they remove it. He noted that the only mention that was made of a retaining wall prior to the filing of the construction plans was the statement made by Al Gross, and excerpted by Mr. Simpson, that no retaining wall would be necessary on the subject property. Mr. Simpson's clients, as citizens, should be able to rely upon the testimony offered at the public hearings on this property, and on the previously approved development plan, all of which indicated that no retaining wall would be built.

Mr. Simpson then displayed for the Commission members several photographs of the constructed retaining wall, the creek, and the Gentry/Marcum property.

Mr. Simpson stated that he was informed that the reason the petitioner constructed the wall was because his clients would not give the petitioner the right to place fill dirt on their property in order to construct the public street. His clients maintain that they never indicated to the petitioner that they would not allow fill dirt on their property. Mr. Enlow, one of Mr. Marcum's attorneys, informed the petitioner at the October 2007 Technical Committee meeting that, although they had not been asked about it, his clients would much prefer the placement of fill dirt over the construction of a retaining wall.

Stan Marcum, 101 South Hanover Avenue, stated that he was one of the owners of the Gentry/Marcum property. He said, in response to a series of questions from Mr. Simpson, that he was never asked if he would give permission for fill dirt to be placed on the property, and that he never refused to allow the dirt to be placed there. He and Mr. Enlow met with the petitioner with regard to the possibility of the petitioner leasing the Gentry/Marcum property. At that meeting, the petitioner asked Mr. Marcum if he planned to use any fill on his property; to which Mr. Marcum replied that, at that time, he had no such plans, since he did not have a tenant for the property. He noted that he would not have objected to appropriately used and compacted fill on his property in order to allow the petitioner to construct Beale Street.

Commission Comment: Ms. Godfrey stated that it was not appropriate for Mr. Simpson to ask Mr. Marcum questions; rather, the Planning Commission would ask questions if they felt it was necessary.

With regard to the construction of the retaining wall, Mr. Marcum said that he had been closely monitoring the development process on the Sand Lake property for some time. He and Mr. Gentry were satisfied with the certified development plan, and they kept in contact with the staff of the Division of Engineering so that they could see the petitioner's construction plans after they were filed. Mr. Marcum never received word of the filing of the construction plans; rather, he found out about the plans inadvertently during a visit to the Division of Planning office in October. He wrote a letter to the Division of Engineering, officially requesting a copy of the construction plans. He then reviewed the plans, noting the presence of the retaining wall, which had not been previously discussed.

David Enlow, 2382 Walnut Grove Lane, stated that he was present as an attorney for Mr. Marcum. He said that Mr. Marcum came to his office on September 24, 2007, immediately after viewing the petitioner's construction plans. Mr. Enlow and Mr. Marcum reviewed the Zoning Ordinance and Land Subdivision Regulations with regard to the regulation of development plans, and filed a motion seeking a hearing with regard to the retaining wall.

On October 22, 2007, Mr. Enlow contacted Ms. Wiseman to clarify that his clients had no objection to the placement of fill dirt on their property in order to allow the construction of Beale Street. He told Ms. Wiseman that, if the petitioner was proceeding with construction of the wall under the assumption that Mr. Marcum and Mr. Gentry would not allow fill on their property, that that assumption was incorrect. Ms. Wiseman indicated that she would communicate that message to the petitioner.

Mr. Enlow stated that, on October 24, 2007, he attended the Technical Committee meeting. He made a statement at that meeting, indicating that his clients had no objection to the placement of fill on their property, and that reason could not therefore be used as a basis for the construction of the retaining wall. Andrea Weddle, former legal counsel for LFUCG, noted at the time that, should the petitioner choose to continue to construct the wall, he did so "at his own peril."

On December 5, 2007, Mr. Enlow wrote a letter to Ms. Wiseman in order to officially clarify that his clients had no objection to the placement of fill on their property. Mr. Enlow stated that, shortly after that, his clients retained Mr. Simpson to represent them in this matter, as he is a land use attorney and Mr. Enlow is not.

Mr. Simpson concluded his presentation by stating that his clients believe that the retaining wall should have been depicted on the development plan that was certified in September. The wall has an adverse impact on both the Gentry/Marcum property and, particularly, Mr. Snyder's property. Mr. Snyder will have no alternative for access to the proposed development other than via a private access easement, owned and controlled by the petitioner. Should the Commission choose to approve this plan using Ms. Wiseman's findings, Mr. Simpson's clients would be required to notify the petitioner in advance of any filing of a record plat on their property.

Commission Question: Ms. Godfrey asked for clarification from Mr. Simpson with regard to the wall location, stating that it did not appear that the wall would affect Mr. Snyder's property, as it is located on the other side of the Gentry/Marcum property. Mr. Simpson responded that the wall, as depicted on the development plan, completely encloses the Gentry/Marcum and Snyder properties.

Director Comments: Mr. King stated that the Planning Commission knows that anything he signs or approves is done so under his delegated power as the secretary of this body. He said that he wanted to ensure that Mr. Simpson and the Commission members were clear on that issue, as it was raised so many times during Mr. Simpson's presentation.

Mr. King noted that he did sign and certify the development plan as the secretary for the Planning Commission, and asked if Mr. Simpson was suggesting in any way that that approval and certification was in any way out of keeping with the actions of that body. Mr. Simpson answered that he was not; Mr. King approved and certified the plan based on what the Planning Commission reviewed and heard testimony on, and he had no question about Mr. King's actions whatsoever. Mr. King asked if Mr. Simpson felt likewise about any other employee of the Division of Planning, in terms of any subsequent actions. Mr. Simpson responded that he had no complaints with any member of the staff of the Division of Planning. Mr. King stated that he had requested that clarification because Mr. Simpson's presentation referenced the plan that Mr. King had signed, and then brought up the actions of other divisions. Mr. Simpson said that he is aware that Mr. King has no jurisdiction over the Division of Engineering.

Citizen Support: Jennifer Dobbs, 290 Lake Wales Drive, stated, with regard to the proposed hotel and car lot uses for the subject property, that she and her neighbors do not object to those uses. She said that she has purchased cars from the Carmax company and believes that it is a good dealership that would be a positive addition to the community.

With regard to the proposed cul-de-sac on Lake Wales Drive, Ms. Dobbs stated that she and her neighbors would prefer that the street remain as it exists today, which is a stub street. The residents are concerned that teenagers or others will use the proposed large cul-de-sac to park, since they would not be easily seen. The street has existed as a dead end for many years, and all of the residents are able to back out of their driveways with no problems. Fire, emergency, and solid waste vehicles have also been down Lake Wales Drive many times, and did not seem to have trouble turning around to exit the area. Ms. Dobbs stated that there is a court off Lake Wales Drive, past which there are only two houses, and most drivers use that court for a turnaround if necessary. She noted that, since Lake Wales Drive is not a through street, there is very little traffic.

Ms. Dobbs stated that the creek located on the Sand Lake property does not really function as a stream; no wildlife lives there, and it primarily contains the runoff from the nearby Walmart parking lot.

With regard to the proposed changes to the street system on the Sand Lake property that are depicted on this development plan, Ms. Dobbs said that LFUCG fought for years to close the service roads along Richmond Road for safety reasons. She believes that allowing additional connections, such as those proposed on the Sand Lake property, would simply undo the effort to make the road safer. It would create too many accesses, located too near the Richmond Road/Man O' War Boulevard intersection, which would cause an additional traffic hazard as drivers attempted to negotiate through the area. Ms. Dobbs stated that she believes that the petitioner will create a significant entrance to the development, which will help drivers locate the hotel and Carmax facilities while still limiting the accesses to Richmond Road in order to reduce the incidence of accidents in the area.

Petitioner Rebuttal: Ms. Wiseman stated, with regard to Mr. Simpson's statements about a lack of access to the Snyder property, that Mr. Snyder currently has no right to access to Sand Lake Drive; rather, his property has access via the existing service road. The petitioner does not believe that any of the proposed changes would harm the existing access situation on the property, and the petitioner is under no obligation to improve the access for other property owners.

Ms. Wiseman said that the retaining wall was not shown on the original development plan because such items are not typically shown on development plans; rather, they are generally depicted on construction plans. It is not typical to submit a grading plan for a property at the same time as a preliminary development or subdivision plan, since it is not known at that point if the preliminary plan will be approved. Developers would prefer not to incur the expense of preparing grading and construction plans for a property until they know that a subdivision or development plan has been approved. When the grading plan was prepared for the Sand Lake property, the petitioner became aware that a retaining wall would be necessary in order to maintain an equal grade between the subject property and the Richmond Road right-of-way.

Ms. Wiseman stated that Mr. Marcum had informed the petitioner at their meeting to discuss a possible lease of his property that he would prefer not to add fill at that time, since he did not have a tenant. She said that the question of fill on the Gentry/Marcum property was not the reason for construction of the retaining wall. It was required due to the grade change on the property, although the petitioner would have preferred not to have to construct it due to the expense. By the time Mr. Enlow contacted Ms. Wiseman with regard to the retaining wall, it was already under construction, so it was too late to attempt to find another solution.

Ms. Wiseman said that the Division of Engineering has done nothing wrong in this process; the petitioner submitted appropriate plans, and the Engineering staff approved them. If those plans had not been sufficient, the Engineering staff would not have allowed the petitioner to proceed with construction of the retaining wall. If Mr. Simpson and his clients had been serious about stopping construction on the retaining wall, they could have filed a complaint in Fayette Circuit Court and sought an injunction or restraining order. It is not the responsibility of either the Planning Commission or the Division of Engineering to stop construction on a project that was previously approved.

With regard to the retaining wall itself, Ms. Wiseman stated that the suggestions that the Gentry/Marcum and Snyder properties will be horribly affected by the wall are incorrect. She said that the Gentry/Marcum property is currently zoned B-3, and any use that locates there will probably require a parking lot. In order to develop the property, it will need to be graded and filled, which will "bury" the retaining wall. The main issue in this case is timing: the petitioner was ready to develop his property, but the adjoining property owners were not. That does not imply that those properties will be negatively impacted by that development, and there is nothing improper about developing one piece of property while an adjoining site is left undeveloped.

Ms. Wiseman referred to the proposed findings for disapproval of this request that Mr. Simpson included in his exhibit booklet. She read the following, from finding #2:

- "2. The plan would create drainage, access, and traffic problems:
 - a. The retaining wall will not allow proper drainage of the Marcum/Gentry/Snyder properties when they develop."

The petitioner contends that this is untrue; he would not be permitted to design and construct a retaining wall that could cause a drainage problem on an adjoining property. Ms. Wiseman continued reading from Mr. Simpson's proposed findings:

- "b. The retaining wall will unnecessarily and unreasonably create access problems for these properties, as well as unfairly add to the expense for them to fill and grade their properties to get in and out of those lots when they develop."

Ms. Wiseman said that the construction of the retaining wall does not change the existing access situation for either property. When those property owners choose to develop, they will be required to grade and fill their properties to meet the necessary requirements for the B-3 zone. That requirement is not unfair; it is simply the burden of the developer to meet the necessary requirements to construct on their property. The petitioner has incurred extra expenses in order to build the wall, but considers that a part of the development process.

- "c. The access easement shown on the plan will be the primary access for the Snyder property and would be inadequate to serve this property. Not only is there no certainty that the easement would be properly maintained and kept free from obstructions, it would diminish the value and marketability of the Snyder property when it redevelops in the future."

Ms. Wiseman reiterated that the Snyder property currently has access to the service road, as it has for many years. With regard to the maintenance of the access easement, she noted that it will be maintained by an owners' association, similar to the Townley Center development that is also owned by the petitioner. No testimony has been presented to indicate that the Snyder property will suffer a loss of value or marketability caused by the retaining wall.

- "d. The plan fails to address or consider in any respect the development plan approved for the adjoining Gentry/Marcum property, despite the access, drainage and other issues that affect it as well as other properties in the general area."

There has been no evidence presented that indicates that those properties cannot be developed according to that previously approved development plan.

- "3. The plan conflicts with the Richmond Road Traffic Safety and Movement Ordinance, No. 83-80:
 - a. The amendment to the Richmond Road Traffic Safety and Movement Ordinance enacted by the Urban County Council on June 8, 2006, incorporates a sketch that depicts the sidewalk within the public right-of-way, not within an easement on the adjoining property."

With regard to the sketch to which Mr. Simpson's findings refer, Ms. Wiseman stated that there is no sidewalk shown anywhere. She also noted that she had entered into the record a letter from EA Partners to the Division of Engineering detailing why the street right-of-way was shifted, and why a portion of it was in an access easement. Hillard Newman accepted that letter, and that issue is no longer one of the bases for the staff's recommendation of disapproval.

- "b. Ordinance No. 83-80, Section 4, provides that, as part of overall traffic safety and to improve access to adjacent development, all depicted access roads shall be constructed and dedicated to the public. The access road shown on this plan is not a public street but rather an access easement. Although this particular access road is not shown on the attachment to Ordinance No. 83-80, nonetheless the intent, spirit and purpose of the Ordinance is violated if this plan is approved."

Referring the Commission to the proposed amended development plan, Ms. Wiseman said that the proposed Beale Street/Sand Lake Drive intersection is shown on the plan, and it conforms to the requirements of the Richmond Road Traffic and Safety Ordinance.

In closing, Ms. Wiseman stated that the petitioner contends that he has complied with the Ordinances; he has appropriately requested the necessary variances; and he has met most of the staff's concerns. The staff's major concern, the lack of connection of Sand Lake Drive through the property, has been proven to be a workable solution for the property. Jeff Neal, Division of Traffic Engineering, stated at the Subdivision Committee meeting three weeks ago that, in his opinion, that street connection was not necessary. The staff's only remaining concern was the construction of the retaining wall, which the petitioner believes has not been effectively proven to be a basis for disapproval of this amended development plan. Ms. Wiseman requested approval of the plan, along with the granting of the two waivers of the Land Subdivision Regulations.

Opposition Rebuttal: Mr. Simpson stated that he had not intended to cast any aspersions on the Division of Engineering, but he believes that there is a substantial flaw in the construction plan procedure. It should not be possible for a develop-

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

ment plan to be considered by the staff of the various divisions of the government, approved by the Planning Commission, and then have a construction plan submitted for the property which includes a substantial change from that approved plan. He noted that Ms. Wiseman did not rebut his citations of any of the regulations that require the inclusion of significant structures such as retaining walls on development plans, although the petitioner did not include the retaining wall on the previously approved plan. Mr. Simpson added that he believes that there should be a public review or comment element to the review and approval of construction plans.

With regard to Ms. Wiseman's assertion that Mr. Simpson's clients should have filed an injunction to halt construction on the wall, Mr. Simpson opined that that should not be necessary. A property owner should have the ability to challenge the right of an adjoining property owner to make decisions that would negatively impact their land.

Mr. Simpson stated that, should the Commission choose not to use the findings of fact for disapproval that he submitted, they could use the findings of their own staff.

Mr. Simpson said that the most appropriate solution for the Sand Lake property would be to move the proposed Carmax facility more to the rear of the property, which would eliminate the poor access situation and the need for a private access easement. That would then allow a public street connection for the Gentry/Marcum and Snyder properties. He asked that the Commission require that the property be developed according to the previously approved development plan, and requested that they disapprove this amended plan.

Staff Rebuttal: With regard to amendments to development plans, Mr. Martin stated that Article 21-6(b) of the Zoning Ordinance requires that the contents of a final development plan be of an exact nature, rather than conceptual. The staff therefore believes their citation of Article 21-7(e) as a finding for disapproval is appropriate, as this amended plan alters the basic character of the development as approved. A public street system, which is proposed to be altered on the subject property, is considered part of the essential character of a development. Mr. Martin stated that the staff's concern about the alteration of the public street system is for public safety. The staff contends that any "mistakes" that may be made in attempting to access the subject property would be exacerbated by the altered traffic pattern, and contends that the approved system, even with a one-way access, is better than the proposed system with no access in that area at all.

Commission Comment: Ms. Godfrey stated that, since there had been a number of references to the Richmond Traffic and Safety Ordinance, she would like for Mr. Neal to address that ordinance with relation to the traffic issues on the subject property.

Jeff Neal, Division of Traffic Engineering, stated that Ms. Wiseman's recollection of his statements was correct. The existing service roads in the Richmond Road corridor have been a problem for many years, in that they require drivers to turn off Richmond Road and immediately determine whether to turn left or right. Mr. Neal believes that the best solution would be for all the property owners to work together and provide a backage road for the development that would allow much better traffic movement for high-traffic uses. The original development plan included a one-way circulation pattern, and depicted two outlots at the corner of Richmond Road and Man O' War Boulevard. It was brought to Mr. Neal's attention that, if the circulation pattern was one-way away from Richmond Road, a driver within the development would not be able to get back to the corner lot without leaving the property and getting back onto Richmond Road. The circulation pattern was then changed to two-way, through the plan sign-off process.

Commission Questions: Mr. Holmes asked for clarification as to the location of the one-way and two-way accesses. Mr. Neal referred to the development plan, and explained those access patterns.

Ms. Whitman asked if the connecting segment of Sand Lake Drive, as shown on the previously approved development plan, was still needed. Mr. Neal answered that the traffic volumes generated by the new uses proposed for the property are about half of what they could be within a B-3 zone. Based on those traffic figures, Mr. Neal ran his own traffic simulation and found that the four-way stop at the Beale Street/Sand Lake Drive intersection will handle the projected volumes at a Level of Service "C," which is acceptable. That street connection would therefore no longer be necessary, although appropriate signage will be required to direct traffic to avoid the driver confusion about which the staff is concerned.

Note: Ms. Godfrey declared a brief recess at 4:24 p.m. The meeting reconvened at 4:35 p.m.

Commission Comments: Ms. Godfrey declared the public portion of the hearing closed, and noted that the floor was open for comments from the Commission members.

Mr. Holmes asked for clarification with regard to the differing opinions of the Planning staff and Mr. Neal. He asked if Mr. Neal had had the opportunity to review the plan. Mr. Sallee answered that the Technical Committee reviewed this plan in October of 2007. He does not believe that they have spent a great deal of time reviewing the revisions to the plan that have been submitted since that time. Mr. Holmes asked if the amended plan before the Commission today was reviewed by the Technical Committee. Mr. Sallee replied that he believed that it had been.

Mr. Mahan stated that the Subdivision Committee reviewed the amended development plan, and liked it, due to the removal of the vacant lot in the rear of the property. The removal of that lot generated the question of whether or not the street connection was still necessary. Mr. Neal agreed that that change to the plan eliminated the need for the street connection, at which point the Subdivision Committee unanimously recommended approval of this amended plan.

Ms. Roche-Phillips stated that she was concerned about the revised plan with respect to stormwater detention, considering the recent consent decree between LFUCG and the EPA. She said she has not seen any evidence that speaks to that issue, and she believes that it should be addressed once the access issues are decided.

Ms. Godfrey asked if Mr. King believed the proposed changes to the previously approved development plan were significant enough to affect stormwater detention. Mr. King answered that the amendment does not address stormwater or drainage, and deferred to the Division of Engineering to answer that question. Mr. Newman stated that the purpose of the amendment was to change the traffic circulation pattern in the development, and the amount of impervious area and stormwater management solution that were depicted on the previously approved plan had not been affected.

Mr. Holmes asked if the amendment to this plan would have any impact on the consent decree. Mr. Newman answered that he did not believe so, although he had not yet reviewed the entire document. With regard to stormwater issues, the consent decree principally addressed best management practices for construction sites, as well as illicit discharges. The main impact on this plan would be the requirement of sediment and erosion control during construction, and the existing water quality requirements.

Mr. Mahan asked if it was fair to say that it is more of a drainage ditch that flows through the subject property, rather than an actual creek. Mr. Newman replied that that was accurate, although it does appear as an intermittent stream on the USGS topographic maps. The stream was categorized during the Corps of Engineers mitigation permit process as "severely degraded." The developer paid approximately \$100,000 to provide the necessary stream mitigation.

Mr. Penn stated that he was disturbed that the Division of Engineering did not consider the construction of a large retaining wall to be a material change to the previously approved development plan. Mr. Newman responded that the retaining wall was necessary to be able to construct Beale Street as close as possible to the property line. It resulted in a pavement shift of 11 feet into the right-of-way; the Richmond Road Traffic and Safety Ordinance allows a shift of up to 30 feet in the location of the street if it can be justified by the Division of Engineering. The engineering justification in this case is related to the constructability of the road relative to the property line. Mr. Penn asked if the Division of Engineering staff and the Technical Committee members had envisioned the need for a retaining wall prior to the approval of the final development plan. Mr. Newman answered that he did not recognize it at the time, but the Technical Committee had not seen the final grades of the property then. The final development plan provides just a footprint of the property, and includes no representation of grades on the property. Mr. Penn asked if the plan should have been required to come back before the Planning Commission for approval, to which Mr. Newman responded that he did not know if the Commission should have reviewed the plan again. He said that, to his knowledge, it is not a requirement to show retaining walls on a final development plan. Mr. Penn stated that he simply did not understand how the plan could have gone through the approval process without some knowledge of the need for a retaining wall.

Ms. Godfrey stated that, since the retaining wall was necessary due to the grading issues on the property, it could have been built based on either the previously approved plan, or the current amended plan. The wall is not contingent upon the approval of the plan, but the approval of the waiver to the Subdivision Regulations. Ms. Godfrey said that, should the Planning Commission require the petitioner to remove the retaining wall, there would be no way for them to require him to address the grading issues on the property. She asked that the more appropriate question may be what action the Planning Commission could take in the future to address this type of issue prior to the time of the final development plan, since some construction and grading issues cannot be determined in advance. She asked if the issue of the retaining wall could have been identified and brought to the attention of the Planning Commission earlier in the process. Mr. Gross answered that, when the Planning Commission approves a development plan, there is a "lag," sometimes of six or seven months, between their approval and the certification of the plan. During that time, the petitioner typically has several sign-offs that must be approved; while they are in the process of obtaining those approvals, they begin on the site improvement plans. It is during that process that the engineer discovers whether there may be problems with cooperation between property owners or whether there are other issues, such as grading difficulties, on the property. It is at that time that a retaining wall would be incorporated into the construction plan, if it is determined to be necessary. The Division of Engineering will not accept a construction plan prior to the certification of a final development plan, so it is not unusual, due to the lag period, for a development plan to be certified one day, and a construction plan (prepared in the interim), submitted three or four days later. Mr. Gross stated that developers never want to have to construct retaining walls, but it is often the only solution that will enable the development of a property.

Mr. Penn asked if the typical process was breached at any point, to the best of Mr. Gross's knowledge. Mr. Gross responded that it was not.

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

Action: A motion was made by Ms. Whitman, seconded by Mr. Mahan, and carried 5-4 (Aten, Day, Penn, and Roche-Phillips opposed; Richardson and Vaughn absent) to approve DP 2007-134, and granting the requested waivers, for the following reasons:

1. The modified cross-section is the result of the site's topography and the requirement that the street be constructed totally within the required 50' right-of-way. The fact that the new street must be constructed at acceptable grades and must tie into the planned intersection with Sand Lake Drive results in a significant grade difference between the finished grade of the street and the adjacent undeveloped property. Therefore, a retaining wall was required which had to be constructed 11'-12' away from the adjacent property to ensure that the wall's footer, forms, and bracing were totally within the right-of-way. As a result, the road itself also had to shift 11'-12'.
2. The modified cross-section is substantially the same as shown at Exhibit 6-3 because 31' of pavement will be provided. Additionally, curbs, gutters, and a 6' sidewalk will be provided on the northwest side. On the southeast side will be a 4' sidewalk and a 5.5' utility strip, a portion of which will be in an easement on adjoining property owned by Developer.
3. Denial of the waiver would be an undue hardship on the Developer in that the wall was constructed, at substantial cost to Developer, based on grading plans submitted to and accepted by the Division of Engineering. Furthermore, without the wall it is physically impossible to construct the street within the established 50' right-of-way.

And adding the following proposed note #15 to the plan:

15. The properties at 3292 and 3270 Richmond Road shall be permitted to have vehicular and pedestrian access to the private access easement which immediately adjoins those properties. This shall be denoted on the final record plat of the property. The owners of said lots shall provide notice to Developer 21 days prior to the public hearing for a preliminary or final development plan, including amendments, and/or for a preliminary or final subdivision plat for said lots.

V. **ZONING ITEMS** - The Zoning Committee met on Thursday, February 7, 2008, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Ed Holmes, Lynn Roche-Phillips, Randall Vaughn, and Joan Whitman. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. **ABBREVIATED PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS**

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

~~Abbreviated public hearings will be held on petitions meeting the following criteria:~~

- The staff has recommended approval of the zone change petition and related plan(s)
- The petitioner concurs with the staff recommendations
- Petitioner waives oral presentation, but may submit written evidence for the record
- There are no objections to the petition

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

~~The procedure for these hearings is as follows:~~

- Staff Reports
- Petitioner's report(s)
- Citizen Comments - (a) in support of request, and (b) in opposition to the request
- Rebuttal - (a) petitioner's comments; (b) citizen comments; (c) staff comments
- Hearing closed and Commission votes on zone change petition and related plan(s)

1. **HANDS ON ORIGINALS, INC., ZONING MAP AMENDMENT**

- a. MAR 2008-5: HANDS ON ORIGINALS, INC. (4/17/08)* - petition for a zone map amendment from a Highway Service Business (B-3) zone to a Light Industrial (I-1) zone, for 0.78 net (1.12 gross) acres, for property located at 990-992 West New Circle Road.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan recommends Light Industrial land use for the subject property. The petitioner proposes I-1 zoning in order to allow a greater use of the property by the applicant other than for office and retail purposes.

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

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

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

- a. The requested Light Industrial (I-1) zone is in complete agreement with the 2007 Comprehensive Plan. The Plan recommends future Light Industrial use for the subject property, and for all property surrounding the location of the subject property.
- b. The change of zoning proposed for the subject property will make it consistent with those zoned to the north, east and south of this location.

Zoning Presentation: Mr. Sallee presented the staff report, orienting the Commission to the location of the subject property and displaying several photographs of the property. He noted that no corollary development plan was required by the Zoning Ordinance to be filed with this request, as it is a proposed rezoning from B-3 to I-1. Mr. Sallee stated that this zone change request is proposed because the petitioner desires to use the property more for distribution and screen printing, as well as for shipping and receiving. The existing B-3 zone allows retail and commercial use of the property.

The 2007 Comprehensive Plan recommends Light Industrial use for the subject property, as well as several surrounding properties. The staff finds that this request is in agreement with the Comprehensive Plan. The Zoning Committee and staff recommend approval of this request, for the reasons as listed in the staff report and on the agenda, which Mr. Sallee briefly reviewed with the Commission.

Petitioner Representation: Richard Murphy, attorney, was present representing the petitioner, and stated that the petitioner is in agreement with the staff's recommendation. Hands On Originals, which was begun as a local company, used to be located on South Broadway, but now conducts business worldwide. The petitioner would like to add some additional printing capability at this facility, and was informed by the Division of Building Inspection that the I-1 zone may be more appropriate to accommodate those changes. The I-1 zone will still allow retail sales of their products, up to 30% of the floor area.

Zoning Action: A motion was made by Mr. Mahan, seconded by Mr. Aten, and carried 9-0 (Richardson and Vaughn absent) to approve MAR 2008-5, for the reasons provided by staff.

Note: Mr. Holmes recused himself from the following item, and left the meeting at 4:16 p.m.

3. DEREK THOMAS ZONING MAP AMENDMENT & ANDERSON SUBDIVISION PRELIMINARY SUBDIVISION PLAN

- a. MAR 2008-6: DEREK THOMAS (4/17/08)* - petition for a zone map amendment from a Single Family Residential (R-1D) zone to a Single Family Residential (R-1E) zone, for 0.27 net (0.37 gross) acre, for property located at 317 Robertson Street.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan recommends Low Density Residential land use for the subject property, which currently consists of one lot with one dwelling unit. The petitioner proposes R-1E zoning in order to allow the subdivision and redevelopment of the lot for the construction of two single family houses.

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

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

1. The requested R-1E zoning is appropriate for the subject property for the following reasons:
 - a. The provision of two single-family dwelling units on the subject property will be compatible with the surrounding single-family residential neighborhood. The proposed lot size of 5,851 square feet for each lot is comparable to lot sizes in the Speigle Heights neighborhood.
 - b. The property lies within the Infill & Redevelopment boundary. The proposed development of one additional single family residential dwelling unit (which is compatible with the neighborhood) meets several Objectives of Goal 8 of the 2007 Comprehensive Plan pertaining to LFUCG's infill & redevelopment strategy.
 - c. The applicant proposes to build affordable housing, thereby meeting several Objectives of Goal 13 of the 2007 Comprehensive Plan, which is to provide housing to meet the needs of all citizens.
 2. The existing R-1D zoning is inappropriate for the subject property because 73% of the existing neighborhood does not meet the minimum requirements of the R-1D zone with regard to lot size. This particular property is the fourth largest lot in the neighborhood, and the only one in its size range that cannot be subdivided under the existing R-1D zone.
 3. This recommendation is made subject to the approval and certification of 2008-7P: Anderson Subdivision, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
- b. PLAN 2008-7P: ANDERSON SUBDIVISION (4/17/08)* - located at 317 Robertson Street.
(2020 Land Surveying)

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

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

1. Provided the Urban County Council rezones the property R-1E; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscape buffers.
5. Urban Forester's approval of tree protection plan.
6. Addition of adjacent property information.
7. Correct plan title.
8. Delete development plan notes and add preliminary subdivision notes per the Land Subdivision Regulations.
9. Provided the Planning Commission grants a waiver of Article 6-8 of the Land Subdivision Regulations regarding street geometrics.

Zoning Presentation: Mr. Emmons presented the staff report, briefly orienting the Commission to the location of the subject property and displaying several photographs of the property and surrounding area. He noted that the applicant, Derek Thomas, submitted this request on behalf of the Fayette County Local Development Corporation, which is a non-profit entity that works to provide affordable housing for families.

Mr. Emmons stated that the subject property currently contains one small house, on the lot which is just under 12,000 square feet in size. The applicant proposes to demolish the existing structure and construct two houses on the property, which is the reason for this rezoning request. The R-1E zone would allow the subdivision of the property into two lots.

Mr. Emmons stated that the 2007 Comprehensive Plan recommends Low Density Residential land use for the subject property. The proposed rezoning, subdivision of the property into two lots, and construction of two houses would result in a residential density of 7.4 dwelling units per net acre, which is above the Plan's recommendation of 0-5 dwelling units per acre in this neighborhood. However, the staff found that the two lots would still be in keeping with the character of the existing neighborhood, the average density of which is approximately eight units per acre. Mr. Emmons stated that very few of the existing lots in Speigle Heights would meet R-1D zone lot size requirements, or a Low Density Residential definition. He stated that the staff and the Zoning Committee are recommending approval of this request, for the reasons listed in the staff report and on the agenda.

Subdivision Plan Presentation: Mr. Martin presented the proposed preliminary subdivision plan, noting that it is a typical "lot split." The Subdivision Committee recommended approval of this plan, subject to the eight conditions as listed on the agenda.

Mr. Martin noted that condition #9 referred to a waiver of the Land Subdivision Regulations requested by the applicant regarding required street geometrics. The streets in the area are developed and improved, but are too narrow to meet current public street standards. Requiring the applicant to bring those streets up to full public street standards would create an awkward configuration of the sidewalk on the subject property, as well as placing an undue hardship on the applicant, who is attempting to provide affordable housing. The staff, therefore, is recommending approval of this waiver request, for the following reason:

1. Requiring Robertson Street and/or Anderson Street to be improved to full public street standards, in compliance with Article 6-8, would constitute a hardship for the applicant under Article 1-5(b) of the Subdivision Regulations, since the subdivision is only for two lots, and is for affordable housing.

Petitioner Presentation: The petitioner was not present, nor were any other citizens.

Zoning Action: A motion was made by Ms. Whitman, seconded by Mr. Penn, and carried 8-0 (Richardson and Vaughn absent, Holmes recused) to approve MAR 2008-6, for the reasons provided by staff.

Development Plan Action: A motion was made by Ms. Whitman, seconded by Mr. Penn, and carried 8-0 (Richardson and Vaughn absent, Holmes recused) to approve ZDP 2008-7, subject to the first eight conditions as listed on the agenda, changing #9 to read, "Granting the waiver of Article 6-8 of the Land Subdivision Regulations regarding street geometrics."

Note: Mr. Holmes returned to the meeting at this time.

C. PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMENDMENT REQUESTS

1. ZOTA 2008-1: AMENDMENT TO ARTICLE 8-15 TO ALLOW EXTENDED-STAY HOTELS IN THE P-1 ZONE - petition for a Zoning Ordinance text amendment to permit extended-stay hotels in the Professional Office (P-1) zone.

REQUESTED BY: Urban County Planning Commission

PROPOSED TEXT: (Note: Text underlined indicates an addition to the current Zoning Ordinance.)

ARTICLE 8-15: PROFESSIONAL OFFICE (P-1) ZONE

8-15(d) Conditional Uses (Permitted only with Board of Adjustment approval.)

6. Extended-stay Hotels, except as permitted in a Professional Office Project.

8-15(n) Off-Street Parking

Extended-stay Hotels – One (1) space for every dwelling unit, plus one (1) space for each employee on the maximum shift.

8-15(o) Special Provisions

A Professional Office Project may be permitted by the Planning Commission for a tract of land with a minimum of ten (10) acres, upon the approval of a preliminary development plan and a final development plan as provided in Article 21, and subject to the P-1 zone regulations.

Subdivision of land in a Professional Office Project is permitted, subject to the following regulations:

1. There shall be no minimum lot size, lot frontage, yard or open space, nor maximum lot coverage or height requirements for each subdivided lot; however, all said requirements for the approved final development plan shall be applicable to the subdivision.
2. Each subdivided lot shall have access to adjacent streets or joint parking areas, as provided by appropriate easements shown on the final development plan and the final record plan.

In addition to the uses otherwise permitted in the Professional Office zone, the following uses shall be permitted in the Professional Office Project:

As a principal permitted use:

1. Extended-stay Hotels.

As accessory uses:

1. Receiving, shipping, and storage of new fixtures, equipment and other non-perishable materials for distribution to corporate or affiliated units subsidiary to the tenant(s) of a principal structure. Such activity, including loading and unloading, shall be conducted entirely within the walls of the principal structure and shall be limited to a maximum of twenty percent (20%) of the total floor area of said principal structure.

As a conditional use:

1. Helistops and heliports, provided such facilities conform to the requirements of all appropriate Federal, State and local regulations.

In addition to the uses otherwise permitted in the Professional Office zone, the following accessory use shall be permitted in a P-1 area of at least twenty (20) contiguous acres:

Restaurants, with or without a cocktail lounge, entertainment, dancing, and sale of alcoholic beverages, provided ~~it meets~~ the following conditions are met:

- a. It shall be located in an office building containing a minimum of 40,000 square feet of floor area.
- b. It shall occupy not more than twenty-five percent (25%) of the building in which it is located.
- c. It shall have no more than one public entrance and one service entrance directly to the outside of the building, and that this use shall be at least one hundred fifty (150) feet from any residential zone.
- d. It shall have no drive-in or drive-through food service.
- e. There shall be no more than two restaurants within an office building, provided that the 25% limitation is not exceeded.
- f. Signs permitted per office building may be used to identify the restaurant and/or the office use.

The Zoning Committee Recommended: Referral to the full Commission. There were questions related to the current definition of an Extended-stay Hotel.

The Staff Recommended: Approval, for the following reasons:

1. This Zoning Ordinance text amendment to Article 8-15 is a timely update to the Ordinance, as several locations have required rezoning to accommodate this use in the recent past.

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

2. Extended-stay hotels cater to the professional business traveler. Locating extended-stay hotels in a Professional Office Project is a natural progression in land use, given the residential character of this specialized use.
3. Outside of a Professional Office Project, the Board of Adjustment should review individual requests for extended-stay hotels on a case-by-case basis.

Staff Presentation: Mr. Emmons presented the staff report, stating that this proposed amendment to the Zoning Ordinance would allow extended-stay hotels to locate in the P-1 zone. In most of our P-1 zoned areas, those hotels would be a conditional use, and would require the approval of the Board of Adjustment. If an extended-stay hotel wished to locate in a Professional Office Project, however, it could do so as a principal permitted use, which would require the approval of the Planning Commission rather than the BOA. The staff felt that that distinction was important due to the existence of P-1 zoned properties that do not have development plan requirements, versus those required to receive an extra level of review by the Planning Commission.

Mr. Emmons stated that the Zoning Committee recommended referral of this request, mostly due to concerns about the Zoning Ordinance's current definition of "Extended-stay Hotel." Extended-stay hotels are differentiated from other hotels by the typical length of stay. The Ordinance requires that 75% of the rentals in extended-stay hotels be for one week or longer, with 25% of the rentals allowed to be by the night. That restriction was included in the definition of extended-stay hotel in order to protect residential properties surrounding R-5 zones, where extended-stay hotels are allowed as a conditional use. Mr. Emmons stated that some members of the Zoning Committee expressed concern that the 25% limitation was too restrictive for these uses. In doing research on how other communities have regulated extended-stay hotels, Mr. Emmons discovered that very few communities regulate those hotels in a similar manner, because most cities do not allow them in residential zones. He said that the staff would not be concerned if the Planning Commission wished to increase the allowable number of per-night stays for extended-stay hotels, and provided appropriate language is added to this text amendment, should the Commission choose to do so. Mr. Emmons did note that the staff would be concerned with increasing the number of per-night rentals to a number greater than 50%, because that could blur the line between extended-stay and more traditional hotels.

Mr. Emmons stated that the staff is recommending approval of this request, for the reasons listed in the staff report and on the agenda, and that those findings would also be applicable if a change to the definition of this use is also recommended.

Commission Questions: Mr. Day asked if the staff could recommend an appropriate percentage to which the Commission could increase the allowable number of per-night stays. Mr. Emmons stated that the staff had provided draft text to allow an increase from 25% to 33% or 50%. He believed that the 33% may be awkward, but the staff would also be comfortable with an increase up to 50%. He noted that the only drawback of such an increase would be the blurring of the line between an extended-stay hotel and a traditional hotel.

Ms. Whitman stated that she believed that extended-stay hotels located in the P-1 zone would attract more "true" extended-stay customers, rather than overnight travelers. She noted, however that she would be in favor of an increase to 50% in overnight stays.

Mr. Penn stated that he believed that the percentage should be maintained at 25%, since he has concerns about extended-stay hotels in the R-5 zone and their proximity to residential uses. He added that there is no shortage of hotels in our area.

Staff Comments: Mr. Emmons noted that extended-stay hotels have been allowed in all the zones that allow traditional hotels as a principal permitted use. Mr. Sallee added that the definition change would affect the extended-stay hotels currently located in an R-5 zone. According to the Division of Building Inspection, there have been no enforcement actions to date related to those establishments in the R-5 zone.

Commission Questions: Ms. Godfrey asked how many extended-stay hotels are currently located in an R-5 zone. Mr. Sallee answered that there are probably four or five such extended-stay hotels in existence.

Mr. Aten asked if other communities have similar regulations with regard to extended-stay hotels. Mr. Emmons responded that most of the communities he researched define an extended-stay hotel according to whether or not it provides kitchen facilities, not length of stay. None of those communities, however, allow extended-stay hotels in their residential zones.

Action: A motion was made by Ms. Whitman, seconded by Mr. Mahan, and carried 9-0 (Richardson and Vaughn absent) to approve ZOTA 2008-1, for the reasons provided by staff, and changing the definition of extended-stay hotels to read as follows: "Multiple family dwelling(s) with rental or lease of less than one week, provided such

rentals or leases of less than one week shall comprise less than ~~25%~~ **50%** of the total dwelling units within the structure(s)."

3. ZOTA 2008-2: AMENDMENT TO ARTICLE 22A-2 TO REDUCE THE LOCATION AND SIZE CRITERIA FOR THE PUD-1 ZONE – petition for a Zoning Ordinance text amendment to reduce the location and size criteria for the PUD-1 zone.

INITIATED BY: Urban County Planning Commission (at the request of the staff)

PROPOSED TEXT: (**Note:** Text double underlined indicates an addition; ~~text dashed through~~ indicates a deletion to the current Zoning Ordinance.)

APPENDIX 22A

GROWTH AREA RESIDENTIAL PLANNED UNIT DEVELOPMENT (PUD-1) ZONE

22A-1 INTENT - The intent of the Growth Area Residential Planned Unit Development (PUD-1) zone is to encourage a unified design for large tracts of land in the new growth areas of Lexington-Fayette County which will be consistent with the residential land use recommendations of the adopted Comprehensive Plan.

22A-2 MINIMUM SITE LOCATION AND SIZE CRITERIA - Application for a map amendment request to a PUD-1 zone shall be made only on property which meets the following criteria:

22A-2(a) LOCATION - The property must be entirely or substantially located within ~~the Growth Functional Planning Area as defined in the Comprehensive Plan, and within~~ an area recommended for residential (low, medium or high density) use in the adopted Comprehensive Plan.

22A-2(b) MINIMUM SIZE - No site may be zoned to a PUD-1 classification unless it is at least ~~10~~ three (3) acres in size. Enlargement of the PUD-1 zone may be permitted, regardless of the size, only if it is found that the enlargement is in accord with the requirements of the PUD-1 zone and that the enlargement would be a harmonious extension of the original design of the PUD-1 zone.

22A-6(b) MINIMUM LOT SIZE - Except for the minimum total area requirement of ~~ten (10)~~ three (3) acres under Section 22A-2, there shall be no minimum or maximum lot size dictated within this Article for the PUD-1 zone. However, the required development plans shall indicate lot sizes, and through the review and approval process, restrictions for minimum, and where appropriate, maximum lot sizes for the entire planned unit development, or defined areas within it, shall be established.

The Zoning Committee Recommended: Referral to the full Commission.

The Staff Recommended: Approval, for the following reasons:

1. The "Growth Functional Planning Area" is no longer defined in the Comprehensive Plan. As such, the PUD-1 zone has inadvertently become off-limits to those interested in using this innovative tool, since no new developments can now meet this threshold requirement.
2. The proposed change to the title of this zone will aid the understanding of out-of-town professionals analyzing our zoning regulations, since residential uses are the predominate ones allowed in PUD-1 zones.
3. The reduction from ten acres to the proposed new minimum size of a PUD-1 project will help promote greater use of the most flexible zoning alternative available to the portions of the Urban Service Area approved outside of the approved Expansion Area of 1996.

Staff Presentation: Mr. Saltee presented the staff report. He stated that one of the changes proposed to the text would alter the name of the PUD-1 zone from the "Growth Area" Planned Unit Development zone to the "Residential" Planned Unit Development zone. This change is recommended because the Growth Area is no longer included as a functional planning area in the Comprehensive Plan. In the 1980 Comprehensive Plan, the Growth Area was considered the portion of the Urban Service Area that was undeveloped. When that zone was later created, it was intended for new growth areas within the Urban Service Area. Mr. Saltee stated that, beginning with the 1996 Comprehensive Plan, the Growth Area map and the definition no longer appeared in the Comprehensive Plan. From that time until the last six months, there has been little to no interest expressed to the staff for the use of this zone, even though the PUD-1 zone is very flexible and allows an applicant to determine their own setback and lot coverage requirements, floor area ratios, building height, etc. The PUD-1 zone does, however, require a developer to file considerably more information with their rezoning request than that required for the other residential zones.

Mr. Sallee stated that another change proposed to the Zoning Ordinance text would drop the reference to the section of the Comprehensive Plan that is no longer in place. Unless that change is made, technically a developer could not seek permission to rezone a property to the PUD-1 zone, because it could not meet this requirement.

The final change proposed to the text involves a suggestion that it may be appropriate to revise down the size requirement for a PUD-1 zone. Mr. Sallee displayed a rendered map of the Urban Service Area that identifies the vacant, underutilized properties of 10 or more acres, five to ten acres, or three to five acres in size. The properties included on the map are all recommended for specific uses in the Comprehensive Plan, and may become eligible for use as a PUD, should a developer choose to pursue that zoning. Approximately 23 or 24 locations within the Urban Service Area would be eligible for PUD-1 zoning if the size requirement were reduced to three acres.

Mr. Sallee stated that the staff is recommending approval of this request, for the three reasons as listed in the staff report and on the agenda. The Zoning Committee recommended referral of this request to the full Commission.

Commission Questions: Mr. Aten asked if these proposed changes were based on increased interest from developers in the PUD-1 zone. Mr. Sallee answered that there has been some interest in recent months from developers wanting to use a PUD zone. Also, the staff reviewed a development proposal that prompted suggestions that the PUD-1 zone may have been an alternative to the R-3 zone in that instance. It was during that review that the staff learned that the outdated reference to the Comprehensive Plan precludes the use of PUD-1 in that instance. Mr. Aten stated that he was involved in writing ordinance for the current the PUD zone, and would hate to see it disappear from use.

Ms. Roche-Phillips asked if the proposed text amendment would allow a mixed-use, or New Urbanist development outside of the defined Infill and Redevelopment area. Mr. Sallee answered that there are no changes proposed to the PUD text that regulate commercial use. Generally, the PUD zones are geared more toward more suburban development forms. It may allow for some vertical integration in a commercial area, but the size of the commercial area would be greatly restricted in a PUD zone. Mr. Sallee noted that the staff is currently working on a draft for a mixed-use PUD zone that could be added to the Zoning Ordinance, but it is probably still several months away from Planning Commission consideration.

Mr. Penn asked what types of densities are allowed within a PUD zone. Mr. Sallee responded that the PUD zones do not regulate density; rather, the staff would evaluate the recommended density through a zone change request and an evaluation of the Comprehensive Plan. The Commission would have the ability through conditional zoning and the development plan approval process to control the density on the site.

Director Comment: Mr. King stated that, even though the PUD zone is not a mixed-use zone, it would facilitate New Urbanist-type of designs in a residential context, because it does not have the inherent Euclidean zoning requirements. The PUD zone would necessitate a negotiated process between the staff, the Commission, the neighborhood, and the developer to produce an appropriate development.

Ms. Roche-Phillips asked if it would be appropriate to add language to this text amendment to allow for mixed uses in the PUD-1 zone. Ms. Godfrey stated that she believed that the purpose of this amendment is to update the Ordinance to allow the PUD-1 zone to be utilized now. Mr. Sallee replied that, when the draft mixed-use PUD zone text is completed and presented to the Commission, that would be the logical time to also consider the commercial components of the PUD-1 zone.

Director Comment: Mr. King stated that he would be very cautious in making that "quantum leap" at this point without further discussion. With the I/R Steering Committee recommendations, however, the Planning Commission may find the staff making that kind of recommendation in six months or a year, after having studied the issue thoroughly.

Action: A motion was made by Ms. Whitman, seconded by Mr. Penn, and carried 9-0 (Richardson and Vaughn absent) to approve ZOTA 2008-2, accepting the recommendation provided by staff, for the reasons provide by staff.

VI. COMMISSION ITEMS – No such items were presented.

VII. STAFF ITEMS – No such items were presented.

VIII. AUDIENCE ITEMS – No such items were presented.

IX. MEETING DATES FOR MARCH, 2008

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	March 6, 2008
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	March 6, 2008
Subdivision Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	March 13, 2008
Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	March 20, 2008
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	March 26, 2008
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	March 27, 2008

X. **ADJOURNMENT** – There being no further business, Chairman Vaughn declared the meeting adjourned at 5:42 p.m.

TM/JWE/BJR/BS/src

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