



LEXINGTON-FAYETTE URBAN COUNTY COUNCIL

COUNCIL WORKSHOP – ZOTA 2016-4

DECEMBER 1, 2016

4:00-6:00PM

2nd Floor Council Chamber

AGENDA

- I. ZOTA 2016-4: Amendments to Articles 23A-10 to the
Economic Development (ED) Zone – Duncan p. 1-34

ZOTA 2016-4

AMENDMENT TO ARTICLE 23A-10

NEW USES IN THE ED ZONE

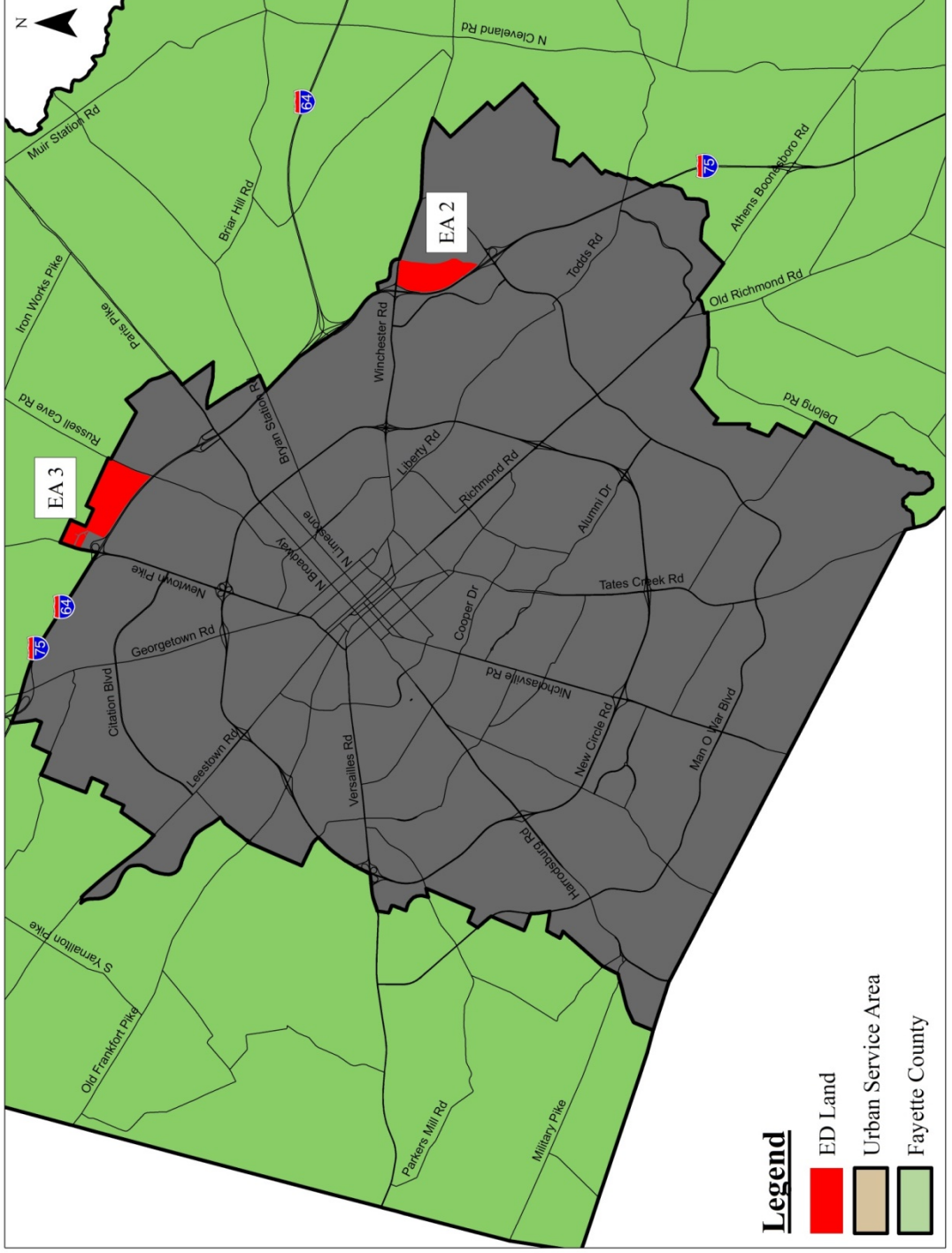
Council Committee of the Whole

December 1, 2016



LEXINGTON

ED Land in Expansion Areas 2 & 3



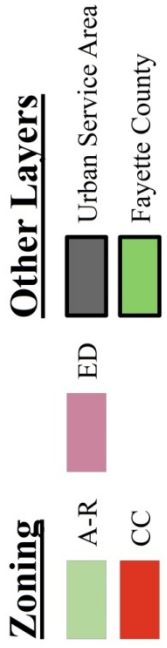
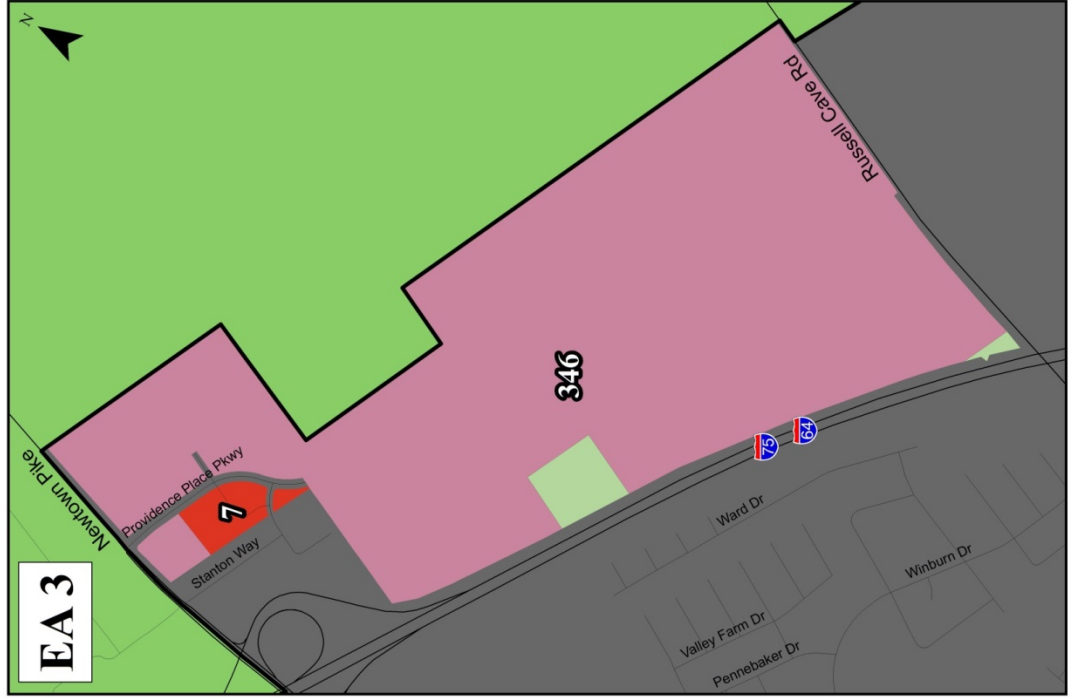
2013 Comprehensive Plan

- Evaluate barriers & opportunities in order to promote development within Economic Development land in the Expansion Area

Article 23A-10(a) – LFUCG Zoning Ordinance

- The purpose of the Economic Development zone is to provide land within the Expansion Area for employment opportunities compatible with the overall character of development as provided in the Expansion Area Master Plan.

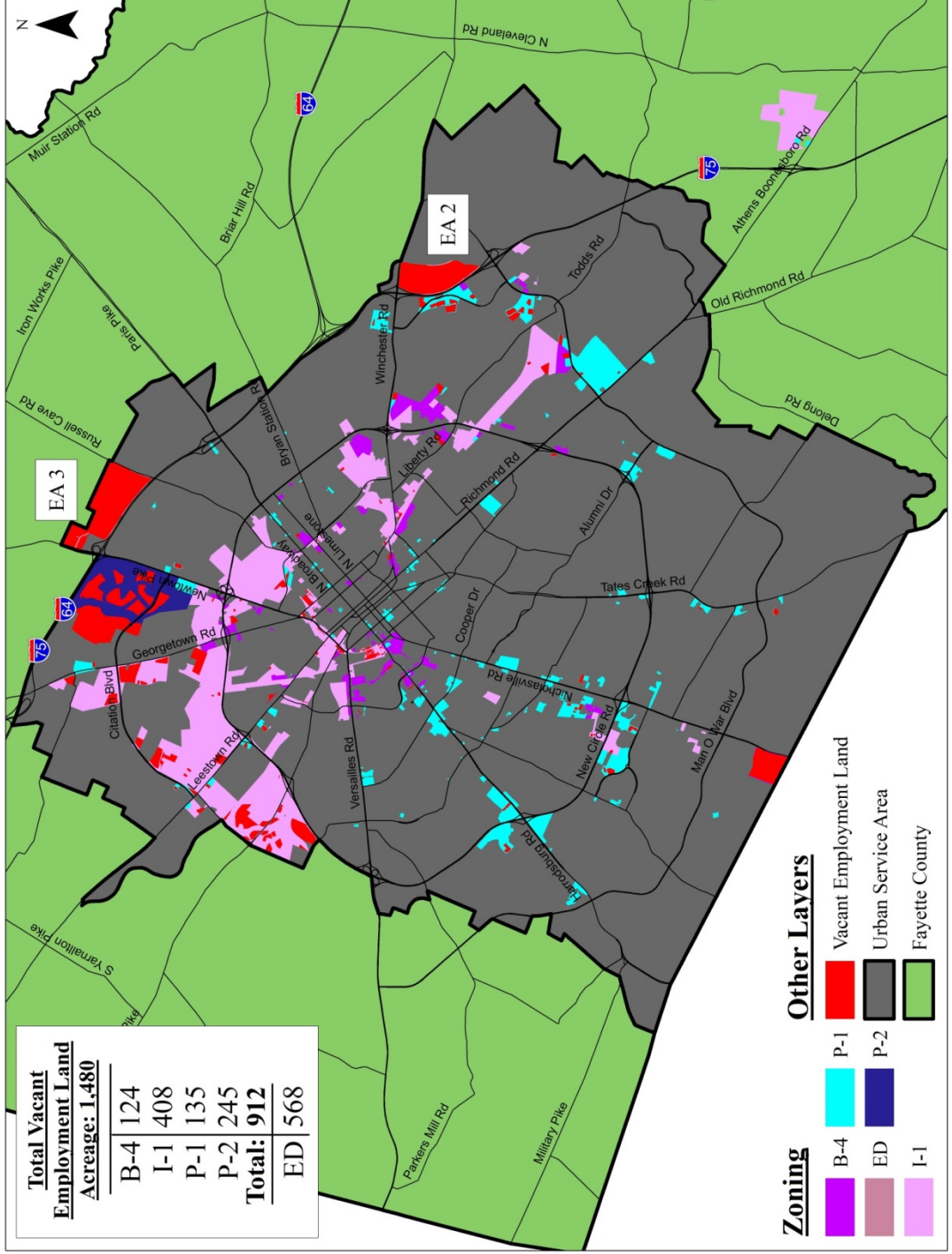
Map of ED Land in Expansion Areas 2 & 3



ED Work Group

- 16 Members
- 9 Meetings from December 2014 to May 2015
- 7 Major Issues, including:
 - Why has the ED zone developed at a slow rate compared to other zones in the Expansion Area?
 - What changes are most likely to lead to increased use of the ED zone?

Employment Land



Recommendations from Work Group

- Increase the Number of Permitted Uses
 - Allow Supportive Uses to accompany other ED uses
 - Increase Res. Density
 - Increase FAR
 - Increase Height
 - Decrease Open Space
- To be resolved by the
Planning Commission
- Unresolved issue: Ratio of principal to supportive uses

Planning Commission Review

- 5 Work Session discussions
 - Unresolved dimensional issues
 - Supportive Uses
 - Ratio of Supportive Uses (Consented to 15%)
- Public Hearing August 25, 2016
 - Comments focused on ratio of Supportive Uses
 - ED property owners asked for 30% as well as increased housing
- Planning Commission recommended 20% Supportive Uses and no change to housing ratio

Recommended ED Principal Uses

- Breweries, wineries and distilleries
- Nursing homes and assisted living facilities
- Flex Space Projects
- Office/Warehouse Mixed-Use Projects
- Agricultural research & experimentation facilities
- Supportive Uses - which may only be provided concurrently or after other uses

Recommended ED Supportive Uses

Limited to a maximum of 20% of FAR

- Food Service & Restaurants (with or without drive-thrus)
- Libraries & Museums
- Beauty Shops & Barber Shops
- Hotels & Motels
- Ticket & Travel Agencies
- Holding & Investment Company offices
- Pharmacies (with or without drive-thrus)
- Retail sale of medical supplies

Recommended ED Supportive Uses (cont.)

- Banks & Credit Agencies (with or without drive-thrus)
- Nursery Schools, Child Care Centers & Adult Day Care Centers
- Service Stations & Convenience Stores
- Vehicle Refueling Stations
- Cable TV, Broadcast TV & Radio Studios
- Animal Hospitals & Clinics
- Community Centers & Private Clubs
- Fine Art Studios

Recommended ED Supportive Residential Uses

Limited to 15% of the 20% of all Supportive Use FAR

- Multi-family residential uses (3 or more dwelling units)
- Dwelling units above the first floor of a building
- Townhouses (attached single-family dwellings)

Other Changes

- Maximum Floor Area Ratio (FAR) –
increase from 0.75 to 1.0
- Maximum Building Height –
increase from 90' to 120'
- Minimum Required Open Space –
no change from 25%, but clustering allowed

What is NOT Recommended:

- Single-family houses
- Big Box retail

Following the Planning Commission Hearing

- Questions about the inclusion of Flex Space Projects and Office/Warehouse Mixed-Use Projects as Principal Uses
 - Both uses were included during the Work Group process, with little discussion
 - The Planning Commission did not change the Work Group recommendation on these issues
- Questions about timing of Supportive Uses: How much Supportive Use can be constructed and when?

First Reading by Council on September 29

Other pending ZOTAs

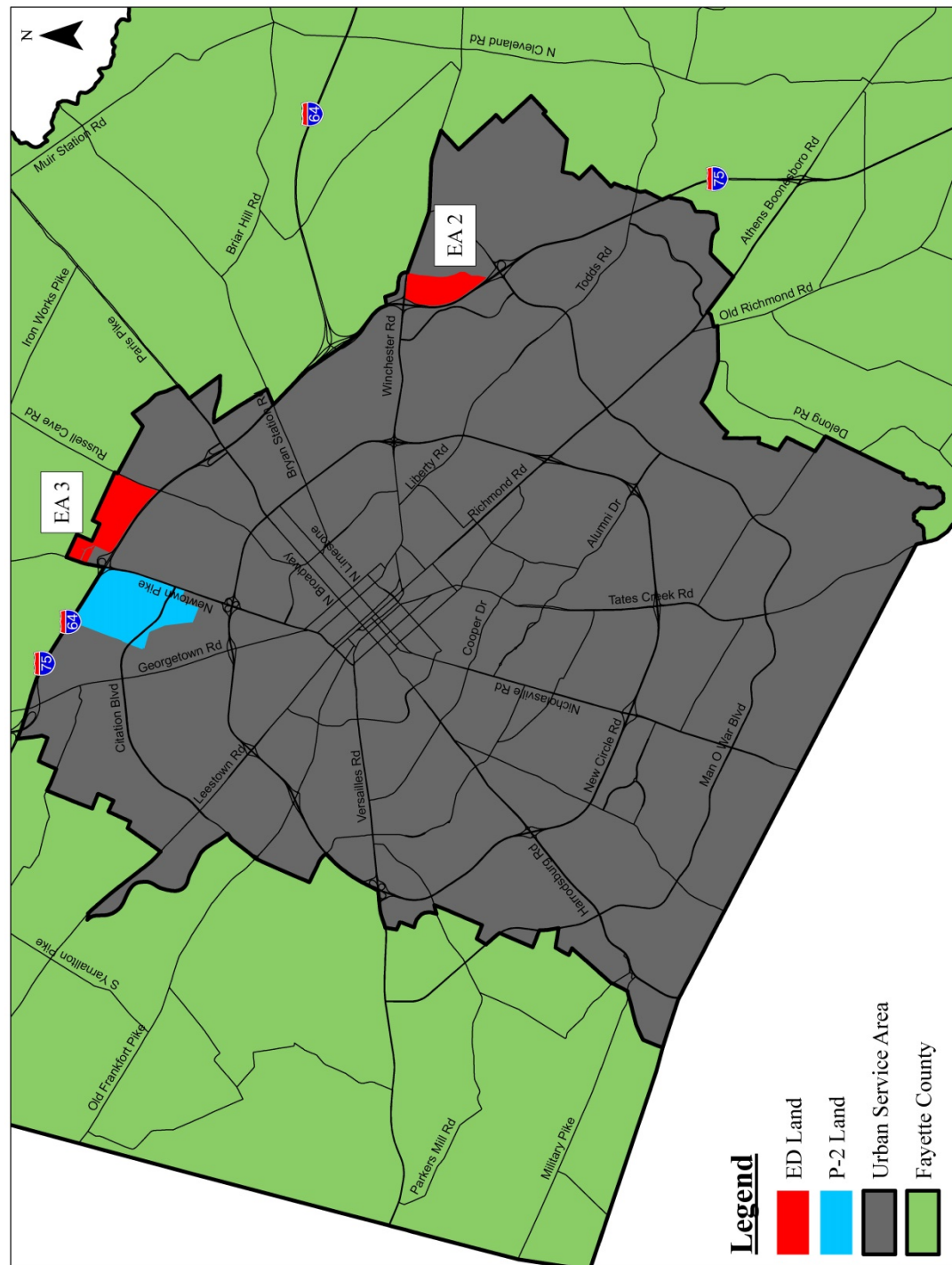
UK has asked for changes to P-2

- P-2 is the Office, Industry, Research Park zone
- Coldstream Research Campus is the only P-2 zone
- Scheduled for Planning Commission 12-15-16

Property owner has asked for additional changes to ED

- For ED tracts under 10 acres
- Scheduled for Planning Commission 1-26-17

P-2 and ED Land Use



Next Steps

Schedule the ED ZOTA, as-is or with modest changes, for Second Reading or Public Hearing by the Urban County Council

Consider the ED ZOTA through the Council committee process should there be significant changes

Questions?



Recd by _____

Date: _____

RECOMMENDATION OF THE
URBAN COUNTY PLANNING COMMISSION
OF LEXINGTON AND FAYETTE COUNTY, KENTUCKY

IN RE: ZOTA 2016-4: AMENDMENTS TO ARTICLES 23A-10 TO THE ECONOMIC DEVELOPMENT (ED) ZONE – petition for a Zoning Ordinance text amendment to Article 23A-10 of the Zoning Ordinance to allow for a number of new land uses within the Expansion Area.

Having considered the above matter on **August 25, 2016**, at a Public Hearing and having voted **7-3** that this Recommendation be submitted to the Lexington-Fayette Urban County Council, the Urban County Planning Commission does hereby recommend **APPROVAL** of this matter for the following reasons:

1. The proposed text amendment to Article 23A-10 has been discussed and considered by a committee of government and real estate professionals, land owners, and others, who agreed that additional uses and greater design flexibility were needed in the ED zone.
2. The relaxation of building height and floor area limitations in the ED zone will provide more flexibility for future ED developments, while maintaining the intent of this zone to foster future job creation.
3. New principal and “supportive” uses will mean that future ED projects can meet the intent of this zone, while allowing the necessary mixture of uses that can contribute to successful developments in the future for these EAMP lands.

ATTEST: This 21st day of September, 2016.



 Secretary, Jim Duncan

WILLIAM WILSON
 CHAIR

At the Public Hearing before the Urban County Planning Commission, this petition was represented by **Bill Sallee, Planning Services Manager, Division of Planning.**

OBJECTIONS _____

- None

OBJECTORS _____

- None

VOTES WERE AS FOLLOWS:

AYES:	(7)	Berkley, Brewer, Cravens, Owens, Plumlee, Smith, Wilson
NAYS:	(3)	Mundy, Penn, Richardson
ABSENT:	(1)	Drake
ABSTAINED:	(0)	
DISQUALIFIED:	(0)	

Motion for **Approval** of **ZOTA 2016-4** carried.

Enclosures: Staff Report w/Text
 Applicable excerpts of minutes of above meeting.
 Minutes for the initiation of this text amendment.

Urban County Planning Commission
200 East Main Street, Lexington, KY

Planning Services Section
Zoning Text Amendments

STAFF REPORT ON PETITION FOR ZONING ORDINANCE TEXT AMENDMENT

ZOTA 2016-4: AMENDMENT TO ARTICLE 23A-10: NEW USES IN THE ECONOMIC DEVELOPMENT (ED) ZONE

INITIATED BY: Urban County Planning Commission

PROPOSED TEXT: Available from the staff
(Text underlined indicates an addition to the existing Zoning Ordinance;
text ~~dashed through~~ indicates a deletion.)

STAFF REVIEW:

The Planning Commission, following several months of review, has initiated a text amendment to modify the allowable uses in the Economic Development (ED) zone. The current proposal would provide a number of new uses, some of which are to be principal permitted uses of property, within the major "job creation" zone. The ED zone was established as an outcome of the "Expansion Area" approved 20 years ago by the Commission, which constitutes the last major expansion of our Urban Services Area.

The current Commissioner of the Department of Planning, Preservation and Development led a review of this issue in 2014 and 2015. The Commissioner led an ad-hoc committee of about 20 local citizens with the intent to provide a thorough review the limitations of Article 23A-10 of the Zoning Ordinance. It was purposed to review and consider reasons why the designated ED land planned for over the past 20 years has not yet developed, and focus on regulatory changes to enhance its development potential in the short term.

The Committee was comprised of a Councilmember, a Planning Commission member, and property owners of land zoned ED or recommended by the 1996 Expansion Area Master Plan (EAMP) for Economic Development land uses. In addition, real estate professionals, the University of Kentucky, and members of Commerce Lexington were also invited to attend the meetings. The group met nine times over nearly a one year period, and made several recommendations to the Planning Commission for a text amendment to this Article. The Planning Staff also attended these meetings and provided support, as requested, for the Commissioner's Committee members.

The Commissioner's Report from the Committee was delivered to the Planning Commission last year, and reviewed by the Commission at three work sessions since. The report supported the idea that additional uses should be permitted in the ED zone, especially after comparing the principal permitted uses in that zone with those allowable in B-4, I-1, I-2 and P-2 zones. Another set of uses, termed "supportive uses," were also recommended for inclusion in ED zones, so long as they were limited to a small portion of the land area recommended for ED future land uses. The maximum percentage of land recommended for these supportive uses varied from 15% to 20% in most of the latter meetings of the group. Another major recommendation of the Committee was to request a relaxation of the floor area and building height limitations in the ED zone.

Upon receiving and reviewing the Report from the Commissioner's Committee, the Planning Commission asked the staff to begin drafting specific text amendment language to implement the Committee's recommendations. The Commission asked for a few changes to the Committee's recommendations, but for the most part, left the bulk of their recommendations intact. With the assistance of the Planning Staff, the Commission agreed to the Commissioner's Committee recommendation for the ED zone to allow greater building heights and greater floor-to-area ratios. The staff completed the task of drafting this text amendment, and the Commission gave a final approval of the staff's draft in late June of this year.

The amendment will allow a number of new principal permitted uses in the ED zone. Specifically, breweries, wineries and distilleries will be permitted in the zone, along with nursing homes, and assisted living facilities. Flex Space Projects and Office/Warehouse Mixed-Use Projects will also be permitted ED uses, as they are in some of our existing industrial zones. Research development and testing laboratories will also be available in ED zones, under the current proposal.

Another, and perhaps the most significant, part of this text amendment proposal is to create a new class of uses in the ED zone, called "Supportive Uses." These would be principal permitted uses, but only for a maximum of 15% of the allowable floor area in the ED zone. The changes proposed to the maximum Floor Area Ratio is set to increase by 25%, to a ratio of 1.0. Up to 15% of the floor area proposed on a Final Development Plan for an ED property, if this amendment is ultimately adopted by the Council, would be allowed to consist of these new supportive uses.

The listing of supportive uses includes about 20 new ones, some of which are currently allowed as either accessory or conditional uses in the ED zone. Those existing ED accessory and conditional uses include food service and restaurants, libraries, museums, pharmacies, child care centers (all proposed to be subject to the 15% limitation above). The remainder of the supportive uses are new to the ED zone altogether. These include adult day care centers, service stations, fast food restaurants, cable TV and TV studios, animal hospitals and kennels, fine art studios, travel agencies, community centers, private clubs, banks and convenience stores.

Multi-family residential uses are also proposed to be permitted as a (limited) supportive use in this amendment. Another new supportive use is listed as "dwelling units, provided the units are not located on the first floor of a structure" (meaning they are to be in a mixed-use building). These new uses have a second restriction proposed, as part of a new "Special Provision" in the ED zone. Residential uses that are to be allowed as a new supportive use may only comprise of a maximum of 15% of the floor area for all supportive uses. This restriction will ensure that no ED zone becomes a residential development, in and of itself, but rather, can be a component of a service area designed for the "job creation" land planned for ED zones by the EAMP.

All supportive uses will also be required to be developed "concurrently with or post-construction and occupancy" of a (non-supportive) principal use in the ED zone. This ensures that there should be little pressure for truly "job creation" land to slowly transform into some other type of land use in the future.

The staff agrees that this text amendment is needed. Hopefully, it will have the effect of allowing additional uses and design options for "job creating" developments in the two ED areas planned for near our Interstate highways. This would meet the objectives of the work already done by a Committee and the Commission in this effort.

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

1. The proposed text amendment to Article 23A-10 has been discussed and considered by a committee of government and real estate professionals, land owners, and others, who agreed that additional uses and greater design flexibility were needed in the ED zone.
2. The relaxation of building height and floor area limitations in the ED zone will provide more flexibility for future ED developments, while maintaining the intent of this zone to foster future job creation.
3. New principal and "supportive" uses will mean that future ED projects can meet the intent of this zone, while allowing the necessary mixture of uses that can contribute to successful developments in the future for these EAMP lands.

ARTICLE 23

EXPANSION AREAS ZONING CATEGORIES AND RESTRICTIONS

ARTICLE 23A-10 ECONOMIC DEVELOPMENT (ED) ZONE

23A-10(a) INTENT - The purpose of the Economic Development zone is to provide land within the Expansion Area for employment opportunities compatible with the overall character of development as provided in the Expansion Area Master Plan.

23A-10(b) PRINCIPAL USES

1. Offices for business, professional, governmental, civic, social, fraternal, political, religious and charitable organizations.
2. Computer and data processing centers.
3. Medical and dental offices, clinics and laboratories, and hospices.
4. Research development and testing laboratories or centers, including agricultural research and experimentation facilities.
5. Mail order businesses.
6. The manufacturing, compounding, assembling, processing, packaging, or similar treatment of articles of merchandise from the following previously prepared materials: asbestos, bone, canvas, cellophane, cellulose, cloth, cork, feather, felt, fiber, fur, glass, hair, horn, leather, paper, plastics, precious and semi-precious metals, precious and semi-precious stones, rubber, sheet metal (excluding large stampings), shell, textiles, tobacco, wax, wire, wood (excluding sawmills, planing mills), and yarn.
7. The manufacturing, compounding, assembling, processing, packaging, or similar treatment of such products as: bakery goods; billboards; candy; ceramics; cosmetics; drafting instruments; electrical parts; appliances; electric or neon signs; electronic instruments; food products; meat packaging; ice cream; medical and dental instruments; musical instruments; pharmaceuticals; pottery, china, or figurines; radios; record players; rubber and metal stamps; rubber products; scientific instruments and equipment; shoes; television receivers; toiletries, soaps and detergents; toys; and watches and clocks.
8. Other industrial and manufacturing uses such as auto parts rebuilding; battery manufacturing; beverage manufacturing; dairy and non-dairy and food and non-food product bottling plants; box and crate assembly; building materials sales; rental storage yard; bag, carpet and rug cleaning and dyeing; cabinet shop; cannery; caterers; cooperage;

crematory; dextrine and starch manufacturing; enameling, lacquering, and japanning; felt manufacturing; electric foundry; furniture manufacturing; heating equipment manufacturing; inflammable underground liquid storage; iron works (ornamental) and wire drawing; parcel delivery stations; phonograph record manufacturing; public utility service yard; radium extraction; stone monument works; tool manufacturing, welding, and other metal working shops.

9. Regional medical campus consisting of an integrated complex of medical service providers and related support facilities on a campus of not less than fifty (50) gross acres governed by a single development plan. The development plan must demonstrate that the regional medical campus will contain hospitals and similar in-patient treatment facilities, which may include accessory cafeterias, pharmacies and gift shops. In addition, the following uses shall be considered part of a regional medical campus: outpatient clinics and treatment facilities, surgery centers, nursing homes, medically-supervised assisted living facilities, and extended-stay hotels.
10. Colleges, universities, business colleges, technical or trade schools, and other schools and institutions for academic instruction.
11. Offices of purchasers, processors, and handlers of agricultural products, limited to administrative uses only.

12. Breweries, wineries and distilleries.
13. Flex Space Projects, as further regulated in 8-21(o)(5).
14. Nursing homes and assisted living facilities.
15. Office/warehouse mixed-use projects, as further regulated by 8-21(o)(3).
16. Supportive uses, as further regulated by Article 23A-10(i):
 - a. Adult day care centers.
 - b. Automobile service stations, and automobile and vehicle refueling stations, including the accessory retail sale of convenience type merchandise.
 - c. Banks, credit agencies, security and commodities brokers and exchanges, credit institutions, savings and loan companies, holding and investment companies.
 - d. Beauty shops and barber shops.

- e. Cable television system signal distribution centers and studios.
- f. Community centers and private clubs.
- g. Dwelling units, provided the units are not located on the first floor of a structure.
- h. Hotels and motels.
- i. Kennels, animal hospitals or clinics.
- j. Kindergartens, nursery schools and child care centers for four (4) or more children. A fenced and screened play area shall be provided, which shall contain not less than twenty-five (25) square feet per child.
- k. Libraries, museums, art galleries, and reading rooms.
- l. Multi-family dwellings and townhouses, three (3) or more units.
- m. Pharmacy and retail sale of medical equipment and supplies.
- n. Restaurants, with or without drive-through facilities.
- o. Studios for work or teaching of fine arts.
- p. Telephone exchanges, radio and television studios, including line of sight relay facilities.
- q. Television system signal distribution centers and studios, including line of sight relay facilities.
- r. Ticket and travel agencies.

23A-10(c) ACCESSORY USES

- 1. Off-street parking areas and structures, and loading facilities.
- 2. A dwelling unit for watchmen or caretakers, provided that such facilities shall be located on the same premises as the permitted use.
- 3. Facilities for serving food only for employees and visitors, having no direct access to the exterior and having no signs visible from the exterior of the building.
- 4. Offices.
- 5. Recreational facilities.
- 6. Sale of finished products related or incidental to the principal use, provided that the area set aside for sales of these related or incidental items does not constitute more than five percent (5%) of the total floor and storage area.
- 7. Storage and warehousing.
- 8. Libraries, museums and reading rooms.
- 9. Meeting and conference centers.
- 10. Establishments limited to the filling of prescriptions and retail sale of pharmaceutical and medical supplies with a drive-through window, provided it meets the following conditions:
 - a) Establishments limited to the filling of prescriptions shall be located in a building, the primary use of which is for medical uses; including, but not limited to, hospitals; in-patient treatment facilities; hospices; outpatient

- facilities; surgery centers; medical and dental offices, clinics or laboratories.
- b) Establishments principally used for the retail sale of pharmaceutical and medical supplies shall be internally oriented to the site (e.g., not located on adjoining arterial streets).
- c) It shall have no more than one public entrance and one service entrance directly to the outside of the building.
- d) Signage for such establishments may be directly, indirectly or internally illuminated; there shall be no more than one (1) wall-mounted business sign per such establishment, not to exceed thirty-two (32) square feet in area; and no more than one (1) free standing monument type business sign, eight (8) feet in height, with a maximum size of thirty-two (32) square feet.
- 8. 11. Satellite dish antennas, as further regulated by Article 15-8. When located within 200 feet of the Urban Service Area boundary, satellite dish antennas shall be limited to:
 - a) A maximum height of four (4) feet above the highest point of the principal building on the lot.
 - b) If located on the ground, satellite dish antennas shall not be visible from the road, and shall be screened with landscape material.
- 12. Restaurants, provided they meet the following conditions:
 - a) It shall be located in an office building or extended stay hotel 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 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 or extended stay hotel, 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.
- 9. 13. For premises not permitted under 23A-10(b)(16)23-A(1)(e)(12) above, facilities for serving food only for employees and visitors; having no direct access to the exterior, and having no signs visible from the exterior of the building. Mobile food unit vendors may also serve this purpose, and be parked outside of a building to serve employees and visitors, provided that the requirements of Section 15-11 of the Code of Ordinances are met.

10. ~~Drive-through facilities for the provision of services otherwise permitted herein.~~

23A-10(d) CONDITIONAL USES

1. ~~Kindergartens, nursery schools and child care centers, where enrollment of children is sponsored and licensed by established churches and non profit community based groups; and/or where enrollment may be limited to children of employees and staff of an office, business or commercial establishment that is located within the contiguous ED zone as the proposed child care facility. A fenced and screened play area shall be provided in an area located a minimum of ten (10) feet from a collector or arterial street, and shall contain not less than twenty five (25) square feet per child.~~
2. ~~Helistops and heliports, provided such facilities conform to the requirements of all appropriate federal, state and local regulations.~~
2. ~~3. Mining of non-metallic minerals, but only when the proposal complies with the requirements of the Mining/Quarrying Ordinance (Code of Ordinances #252-91) and the conditions and requirements as set forth therein. The Board of Adjustment shall specifically consider and be able to find:~~
 - a) That the proposed use will not constitute a public nuisance by creating excessive noise, odor, traffic, dust, or damage to the environment or surrounding properties;
 - b) That a reasonable degree of reclamation and proper drainage control is feasible; and
 - c) That the owner and/or applicant has not had a permit revoked or bond or other security forfeited for failure to comply with any Federal, State or local laws, regulations or conditions, including land reclamation, pertaining to the proposed use.
3. ~~4. Temporary structures designed for use or occupancy for 61 to 180 days per 12-month period on a single property, calculating said period by cumulative consideration of the use of any and all such structures on a single property.~~
4. ~~Dormitories.~~

23A-10(e) PROHIBITED USES

1. All uses listed as permitted or prohibited within the B-4, I-1 and I-2 zones, except as expressly permitted herein.
2. Radio, telephone or television transmitting ~~or relay facilities, including line of sight relays and towers.~~
3. ~~Dormitories.~~

LOT, YARD, HEIGHT AND DENSITY REQUIREMENTS

23A-10(f) MAXIMUM HEIGHT OF BUILDING - 90 feet, exclusive of mechanical equipment; or a 1:2 height to yard ratio, whichever is less, as measured from the contiguous ED zone boundary, provided that the average height of all buildings within the contiguous ED zone shall not exceed 48 feet ~~120 feet.~~

23A-10(g) FLOOR AREA RATIO - A maximum of 1.0 0.75.

23A-10(h) MINIMUM FRONT YARD - 5 feet.

23A-10(i) OFF-STREET PARKING REQUIREMENTS - Parking shall be as provided elsewhere in the Zoning Ordinance within the zone where the use is first permitted.

Hospices - One (1) space for every two (2) beds; plus one (1) space for each employee on the maximum working shift, with a minimum of five (5) spaces.

23A-10(j) SPECIAL PROVISIONS

1. At least 25% of the net developable acreage of any development within an ED zone shall be open space. Such open space may be clustered across multiple lots or tracts to facilitate the common use of the land.
2. No structures other than sidewalks, transparent fences, or stone fences shall be located within 5' of any public street right-of-way.
3. No more than half of the required off-street parking area shall be located between a building and any collector street.
4. Each parcel in an ED zone shall have direct access to a pedestrian accessway.
5. The development shall be screened from adjoining zones and arterial highways as for an industrial zone under Article 18-3(a)(1).
6. All principal uses, other than supportive uses, shall be conducted in a completely enclosed building, except for outdoor storage uses, which shall be enclosed on all sides by a solid wall or fence not less than six feet (6') in height.
7. All buildings and structures shall be at least one hundred (100) feet from any residential zone, unless the portion within that distance has no openings except stationary windows and doors that are designed and intended solely for pedestrian access.
8. No buildings or structures in the ED zone, other than driveways, transparent fences and stone fences, shall be located in a Scenic Resource Area; however, the Scenic Resource Area may be used to calculate the required floor area ratio.
9. No outdoor loud speakers shall be permitted.
10. No portion of a regional medical campus shall be located within 1,000 feet of the boundary of the Urban Service Area.

11. There shall be no more than one extended-stay hotel for a regional medical campus that contains 100 acres or less; a second extended-stay hotel is permitted for a regional medical campus that contains more than 100 acres, provided that there shall be no more than two (2) extended-stay hotels in a regional medical campus. The extended-stay hotel shall be: a) a part of a building that also contains medical facilities permitted on the campus; or b) physically connected by interior access ways to facilities containing medical services permitted on the campus. Extended-stay hotels shall be internally oriented to the site (e.g., not located on adjoining arterial streets).

12. Supportive uses shall be principal permitted uses, regulated subject to the following requirements:
- a. Supportive uses shall only be developed and constructed either concurrently with or post-construction and occupancy of at least one other principal permitted use listed in 23A-10(b).
 - b. Supportive uses shall not exceed a maximum of twenty percent (20%) of the otherwise permitted floor area within a development as identified on the associated final development plan.
 - c. Residential land uses shall not exceed a maximum of fifteen percent (15%) of the otherwise permitted supportive use floor area by 23A-10(j)(12)(b) above.

2. ZOTA 2016-4: AMENDMENTS TO ARTICLES 23A-10 TO THE ECONOMIC DEVELOPMENT (ED) ZONE– petition for a Zoning Ordinance text amendment to Articles 23A-10 to allow for a number of new land uses within the Expansion Area.

INITIATED BY: Urban County Planning Commission

PROPOSED TEXT: Available from the staff

(Note: Text underlined is an addition, and text ~~stricken through~~ is a deletion to the current Zoning Ordinance.)

The Zoning Committee Recommended: Referral to the Full Planning Commission.

The Staff Recommends: Approval, for the following reasons:

1. The proposed text amendment to Article 23A-10 has been discussed and considered by a committee of government and real estate professionals, land owners, and others, who agreed that additional uses and greater design flexibility were needed in the ED zone.
2. The relaxation of building height and floor area limitations in the ED zone will provide more flexibility for future ED developments, while maintaining the intent of this zone to foster future job creation.
3. New principal and "supportive" uses will mean that future ED projects can meet the intent of this zone, while allowing the necessary mixture of uses that can contribute to successful developments in the future for these EAMP lands.

Staff Zoning Presentation – Mr. Sallee presented the staff report on this proposed amendment to Article 23A-10 of the Zoning Ordinance regarding new uses in the Economic Development (ED) zone. He said that the staff has received one communication regarding this text amendment, from Walt Gaffield, the President of the Fayette County Neighborhood Council. Mr. Gaffield expressed concern regarding this proposed ZOTA, and Mr. Sallee circulated his letter to the Planning Commission.

Mr. Sallee said the Economic Development land is a land use recommendation for two general areas under the Expansion Area Master Plan, which is part of the Comprehensive Plan. He displayed a map of the two primary locations for economic development land. One of the locations is in Expansion Area 3, which is bounded by the Urban Service boundary, by Newtown Pike, Interstates I-75 and I-64, and by Russell Cave Road. The other area is in the Expansion Area 2, which is bounded by Interstate I-75, Winchester Road, and Polo Club Blvd.

Mr. Sallee said that because these are part of the 2013 Comprehensive Plan there is a specific goal to evaluate barriers and opportunities in order to promote economic development within these lands in the Expansion Area. The intent of the ED zone is shown in the Zoning Ordinance in the section that is proposed for amendment. The purpose of the zone is to provide land within the Expansion Area for employment opportunities, compatible with the overall character of the Expansion Area.

Mr. Sallee said that in these two Expansion Areas about 90 percent of the area is zoned, which in the staff's estimation is approximately 500 acres. He said that 350 acres in Expansion Area 3 is recommended for Economic Development land use and approximately 200 acres in Expansion Area 2 with 60-70 percent of that has already been rezoned.

Mr. Sallee said that the Commissioner of the Department of Planning, Preservation, and Development had established a workgroup to evaluate the current restrictions in the ED zone. Several major issues were discussed, but only two that were relevant to the Planning Commission's consideration of the ZOTA. The first is why has this particular zone developed at a slow rate compared to other developments in the Expansion Area. The second is what changes are most likely to lead to increased use of this zone. Mr. Sallee said that the land in the Expansion Area comprises about 50 percent of our available and vacant employment land in the community.

Mr. Sallee said that the workgroup reached several conclusions; to increase the number of permitted uses in the zone; to allow supportive uses to accompany other ED zone uses; to allow the residential uses; to increase the Floor Area Ratio; and the height and to decrease the open space requirements. He said that there was one unresolved issue, which was how much of this land should be considered for supportive uses. He said that there were also several new permitted uses recommended, such as breweries, wineries and distilleries; nursing homes, assisted living facilities; flex space projects; office/warehouse; agricultural research and experimental facilities.

Mr. Sallee said that supportive uses are considered principle permitted uses under the text amendment, but they are limited. They may only be provided either concurrently or after other principle economic development zone uses are provided in a development. He said that supportive uses are the bulk of the change that is proposed in this text amendment. He said that all supportive uses are limited under this text amendment to a maximum of 15 percent of the Floor Area Ratio allowed for development in ED zones. Some of the new uses allowed as supportive uses in the ED zone under this text amendment include restaurants, libraries, barber shops, hotels, travel agencies, pharmacies, medical supply stores, banks, nurseries, service stations, animal hospitals, and private clubs. He said that residential uses are also permitted under this text amendment and will have restrictions such as a limit of 15 percent of the allowable Floor Area Ratio for all supportive uses. These new uses would include multi-family residential, dwelling units above the first floor, and townhouses.

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Mr. Sallee said that this text amendment also addresses Floor Area Ratio, building height, and open space. Under this text amendment, the Floor Area Ratio would increase from 0.75 to 1.0. The amendment also proposes a major increase to the allowable building height. The current ED zone is limited to a maximum of 90' for a single building. This text amendment will increase that to 120' in height. There is no change from the current 25% minimum requirement for open space in the zone. However, the text is being modified to allow that open space to be clustered on a number of lots and reviewed on a development plan basis rather than being required on each and every lot in an ED development area. He said that this will be a much more flexible approach to providing open space in an ED zone without allowing a wholesale change to the concept that originally led to the creation of this zone, which was to require that some open space be provided in these developments.

Mr. Sallee said that the staff is recommending approval of this text amendment for the reasons listed in the staff report. He said that the Zoning Committee recommended referral of this text amendment, to the full Planning Commission.

Commission Comments – Ms. Mundy said that there was to be a Community Center (CC) zone area near the Winchester, Polo Club, and Costco area. She asked with this change, will that CC zone be eliminated. Mr. Sallee replied that the CC zone in this area of Polo Club and Man 'o War Blvd. has moved to be more oriented to the interstate interchange, whereas the Expansion Area Master Plan had shown that land use on the opposite side of Polo Club Blvd., away from the interstate. He said that the two acreages are very close and the zone that was eliminated was the Transition Area (TA) zone. Ms. Mundy asked for clarification of the previously recommended CC zone location. Mr. Sallee pointed it out on the displayed map; it is adjacent to Man o' War Blvd. on the east side of Polo Club Blvd.

Petitioner Presentation – Jacob Walbourn, attorney, was present representing the petitioner. He said that the ED zone is very controversial and considered as a failed zone. There has been zero development in the ED zone since the Expansion Area Master Plan was adopted and the workgroup was established to correct this. He said that the workgroup centered on two key points. One of them is the cost; this is expensive land that is subject to very high exaction fees and very expensive to develop. The other point is diversity of uses in the ED zone; what is it about this zone that hasn't worked out. He said that the workgroup was divided into three groups; a group of interested parties, a group of land owners, and a group of people that were interested in preserving "the jobs land." The entirety of the ED land is owned by three developers; Anderson Community, the Cowgill family, and Baptist Health. Baptist Health is in the healthcare business, which is already permitted in the ED zone; the other two individual parcel owners have a substantial stake in this text amendment. He said that the property owners had proposed basically what is being proposed with the exception of 15% supportive uses, they had asked for 30%; and instead of 15% of 15% (2 1/2% of total square footage) for residential, they had asked for 50% of 30% of residential (15% of total square footage). He said that the developers believe that successful development can happen on the ED land at 30% supportive uses, of which half could be residential.

Mr. Walbourn said the intent of this zone was to create jobs and that hasn't been accomplished and that there is a movement to protect the zone that we currently have. He believes that these changes are not substantial enough to spur the kind of growth and change that we all want to see in this area. He said that this is some of the vacant land in the Urban Service Area and the land is filling up; we're running out of land and this is a prime location where we could start contributing to the tax base. He said that he believes that the proposed change is not all that radical; the difference between 15 and 30% would leave 60 acres available for economic, non-supportive uses and that is still a substantial amount of land to provide employment. He believes that 30% of supportive use is the bare minimum that can be requested that will enable the petitioner to do this kind of development and contribute positively to the community.

Citizen Comment – Christie Harris, resident of 2550 Winchester Road, said that her family has owned this property since 1999. She said that her family has a strong desire to develop this property and hasn't had any opportunities to since they had purchased it. She said that her family would like the opportunity to develop the corner of I-75, Winchester Road, and Polo Club Blvd.; they have had many ideas but can never move forward on their ideas. She said that the committee seemed to be conservative with their recommendation of 15% for supportive uses.

Commission Comments – Mr. Cravens said that the property owner would like to change the supportive uses to 30%, what part of that would be residential. Mr. Walbourn replied that they had requested up to 15% of the overall, which will be half of the 30%, 15% overall.

Citizen Comment – Mr. Murphy, attorney for Dennis. Anderson, confirmed that Mr. Walbourn set up the facts and the lack of success of the ED zone over the past 20 years. He said that he participated in the Expansion Area committee during the 1996 Comprehensive Plan update, and said that the plans had shown the southern half of the 346 acres as residential and the northern section as more commercial or ED zone. He said that on the eve of the vote, a new plan was on display by the landscape architecture firm, showing the entire thing as ED land use, and the consultant stated that if the current owner didn't approve that he would take the entire thing out the Urban Service Area boundary. He said that the developers have dealt with this land for 20 years and that the Planning Commission chair at the time said that the zone could be changed. The zone hasn't been changed and the lack of inertia has carried forward. He said that Mr. Anderson agrees with Mr. Walbourn's comment of the developer's plans for this land. He said that after 20 years, it's time to give more flexibility because people are building communities now.

Mr. Murphy said that he is also representing a potential fourth owner of ED zone land in this community, residents of the lot across Winchester Road from to the Cowgill property. He said that he had filed a zone change two years ago for 2 1/3 acres for a lot that is in between two land uses that were not anticipated; one is a sewage pump station and the other is a KU substation. These facilities have greatly impacted the marketability of this property for residential use, which was proposed for this lot. This lot had applied for a zone change to the Community Center (CC) zone, which has been indefinitely postponed, pending the results of the ED workgroup. He said that the work group didn't address smaller tracts that were not attached to one of the three larger tracts; this lot is a smaller tracts. He said that two of the larger tracts have development plans for them and there will be one for the third; he believes the future for this 2 1/3 acre lot will serve the ED zone, since the small size of this property makes it impossible for it to be used as a factory or a medical facility, which is the largest use in ED zone. He said that with the 15% rule on this property of only 2 1/3 acres would only be 0.3 acre that would be eligible for commercial type uses.

Mr. Murphy handed out to the Planning Commission two potential solutions, which would modify the proposed text of Zoning Ordinance Article 23A-10(j)(12)(d). He said that the principal use for the smaller tracts of less than 10 acres, under separate ownership, adjacent to an ED parcel, the supportive uses would be principal uses without the 15% limitation on it. He said as an alternative to that is the conditional use making all of the supportive uses conditional uses on the small tracts of 10 acres or less. He said that this would allow it to be a conditional use if there is a restaurant coming in. He believes that this would be appropriate for the smaller tracts of land and asked the Planning Commission to adopt one of the alternatives as an amendment to this proposal.

Lee Simms, spouse of the executor of the Miller Estate on Winchester Road, said that his family has owned this property for 60 years and has seen the KU substation and sewage pump station appear on either side of them more recently. He said that the family would like something purposeful to take place on this land. He said that he had met with the staff for 2 years to try to change the zone to CC and was advised to wait for the ED zone. He said that the ED zone is not a fit for a small land owner, they need more flexibility; and would also like the opportunity to provide jobs and help with the tax base. He said that some businesses and hotels have contacted him for sale but the owners are limited by what can be built there. He said that he is requesting some assistance, from the Planning Commission, for the smaller land owners, for them to have the opportunity to also grow.

Rob Gabert, consultant for the landowner, said that he was assigned to find some commercial viability for the front 2.38 acres inside of the USA boundary. He said that hotels and B-3 type users have been approaching the land owners for sale. He said that it will be very difficult to get a viable project on this land with the plan retention in the rear of the property and also with the plans to continue Polo Club along with the 15% restriction and the greenspace allotment.

Dennis. Anderson, landowner of the Kingston Hall property, said the difficulties of developing this property is the limited amount of uses and that people don't understand exactions, they seem confusing and will tend to lean people towards refusal of them. He said that this land has been undeveloped for 20 years now and he believes that the uses need to be expanded. He said that he had buyers that were interested in distribution and a farm implement dealer on this property; he said that neither is correct for this property. He said that he wanted to build a mixed-use development that would be fun to work and live, an up-scale office/business park, with walking trails and townhouses on this property. He believes that land uses should be sprinkled in areas and that every use on this property is worth at least three times as much as residential land. He said that he would like a community on Newtown Pike that will contribute to the overall Lexington community. He said that he wants a place where after 5 o'clock in the evening that people don't go home; there will be employment, restaurants, bars and housing (townhouses). He believes that there isn't adequate housing in this area and in order to stimulate the growth in this area he needs to have these support services.

Mr. Anderson said that he agrees with the Cowgill family relative to the request for 30% supportive uses, of which 15% have the option to use as residential as they see needed.

Commission Comments – Mr. Cravens asked Mr. Anderson to clarify how the 30% supportive uses would work, that it could only work if it were built at the time of the use it is supporting. Mr. Anderson replied that timing markets is impossible; he wants to bring to the market what it needs when it needs it.

Mr. Penn commented that Townley Center was not ED zoned land. He said that he doesn't want to take ED zone land and turn it into a Townley Center. If the principal uses are not done first and the supportive uses are done first, the principal uses may never come forward. He said that he has to support timing the construction of the supportive uses being after the principal uses, otherwise a zone change should have been presented. Mr. Anderson replied that the Townley property was originally zoned I-1 and was changed to mixed-use. He said that he had an economic study completed of this property that states that the amount of taxes and jobs from when he began this project to today has changed phenomenally. Mr. Penn asked if the land is too expensive to compete with other industrial lands. He opined that we should not address it by putting in other uses other than an ED zone and call them supportive uses. Mr. Anderson said that the problem isn't the price; the problem is that the amount of uses available is too narrow. He said that this is to expand the uses in the ED zone, 85% of the land will still remain in economic development uses.

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Mr. Cravens asked Mr. Anderson if he agrees to the uses that have been expanded with the exception of 30% instead of 15%. Mr. Anderson agreed and said that he glad that hotels and restaurants were included. He said that the older generation lived to work and that the young people today work to live and they don't just want to go to work, they want to go to lunch and to go out after work and that is what he wants to provide.

Mr. Wilson asked the staff about their concerns to the proposal that was made. Mr. Saltee said that the ratio of principal to supportive uses was also a concern with the workgroup and they were unable to reconcile the difference of the percentage. He summarized that the staff's recommendation is that the supportive uses would comprise 15% of the Floor Area Ratio and of that allowance, 15% of that would be allowed for residential use. He said that the Cowgill family had asked for 30% of Floor Area Ratio and 15% allowable for residential use. He also believed that Mr. Anderson had also asked for 30% Floor Area Ratio and 15% of that for residential use.

Mr. Saltee said that if the Floor Area Ratio is increased as it has been proposed with this text amendment, there could be approximately 24 million square feet of buildable area in these ED areas. He said that these percentage changes would have huge ramifications; under that staff provision, 15% would be 3,700,000 square feet would be available for supportive uses, which about three times the size of the Fayette Mall and of that approximately 500,000 square feet would be available for residential use, which would be about 1 dwelling unit per acre. He said that at the 30% supportive and 50% residential would be approximately 7,500,000 square feet of supportive uses and 3,725,000 square feet of residential use, which would be about 6 ½ dwelling units per acre. He suggested that the Commission compare those calculations to what the staff sees in a typical multi-family development plan. A typical multi-family development plan proposes a density of about approximately 18 units per acre. He said that the staff's result, according to their recommendation, will still allow pockets of that type of development in these ED zones.

Mr. Saltee said that Commissioner Paulsen was very clear to all the attendees of the workgroup that this task should be done in a way that didn't compromise the basic intent of the ED zone, which is to provide jobs in the area. He said that the staff asks the Planning Commission to be very cautious about the percentages.

Mr. Cravens asked if the percentages were of the actual size of the building not the acreage. Mr. Saltee said that with a Floor Area Ratio of 1.0 that makes it easy for this type of calculation. Mr. Cravens said that it would be difficult to build on the entire site unless other sites were available. Mr. Saltee replied that won't be possible to cover the entire site because of the 25% open space requirement. The only way to achieve a Floor Area Ratio of 1.0 is to build a taller building because parking still needs to be provided, as well. Mr. Cravens asked if these calculations were only on the 15% of the other uses based on the square footage of the buildings built to support the actual use not the supportive use; not the gross acreage but on the buildings that are built. Mr. Saltee replied that those were possible building square footages based on the total land area, not land square footages.

Mr. Brewer said if the non-development in this ED area was created with a great intent, but didn't work. He asked if this small change is going to make an appreciable difference in what is left to create jobs in the area or should we be looking at this as changing the zone. He said that we should try something different and will this create a fertile ground for job creation in the remaining 70% of this space. Mr. Saltee said that the workgroup was very mindful of this and was trying to balance the restrictions and that the zoning limits were one contributing factor as to why the land had not developed.

Mr. Duncan added that there may be some regulatory problems with seeking a different zone than what the Expansion Area Plan recommends if we aren't able to do a swap like we did with the other CC land because this is what was designated so then to do a zone change for something different or something outside of the Expansion Area zone could be a problem from regulatory standpoint. If that hurdle could be met, and we could work to do that; what we have heard now for the last two Comprehensive Plans is the need for hundreds of acres of contiguous jobs land and if we were to take this out of that entirely then we would need to identify some other land to take its place and we don't really have that option in the Urban Service Area boundary. We would have to expand the Urban Service Area boundary to come up with 300-400 acres of land that is designated for jobs that would be in close proximity to itself. He said that these issues will be difficult to overcome without addressing the regulatory issues of zoning or without addressing the policy issues of having jobs-related land and the workgroup felt that anything more than the 15% would begin to take away the purpose of this land and as supportive uses it is still supposed to be an attractor to other jobs land not the driving force, necessarily. It was supposed to help entice other jobs land to come here, but not take the place of this for jobs uses.

Mr. Cravens said that rezoning this property was mentioned earlier, but it is located within the Expansion Area so that it could only be rezoned into Expansion Area zones. Mr. Duncan replied that we could swap this land with something else, like what was done with the CC area; it would have to be reviewed very carefully to see if we could do anything else other than an ED zone. Mr. Cravens said that these land owners can't do anything with this land but an ED zone. All of the land owners are present and they are requesting that they need more flexibility because they are unable to rezone it. Mr. Duncan stated the Planning Commission recognized this in the 2013 Comprehensive Plan and had requested this study to evaluate what else could be done with this ED zone land to encourage it to be developed for its intended purpose.

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Mr. Berkley said that he served on that workgroup and attended most of the meetings. He said that the modern developments that we're seeing of this type have the supportive uses. We've got three property owners that are largely represented here today and two of them have had a concept plan completed and presented to the Planning Commission and they don't believe that 15% will work and if we are not going to be willing to listen to that solution then we are just setting ourselves up to fail. He said that at the workgroup meetings there was never any evidence that 30% or even 20% wasn't appropriate. He said that there wasn't a consensus and that the workgroup came up with an odd number. He said that the Planning Commission should review that further and consider what has been presented here today before a decision is made that may not serve anybody.

Mr. Wilson asked what the staff felt about Mr. Murphy's smaller tracts of land proposal. Mr. Sallee said that this issue was at the Zoning Committee earlier this month and the staff didn't feel that it was needed to provide a staff alternative or a Zoning Committee alternative to address that, where Mr. Murphy has. He said that the difficulty in making the principle use amendment is that it could entice owners of ED land to first create lots and subdivide their property to allow these other uses. The conditional use route avoids that, but still isn't consistent with the general concept of the supportive uses. He said that it is awkward in the Zoning Ordinances to have one set of uses considered as principal and another conditional under different circumstance, such as lot size.

Mr. Duncan added that the 16 member committee that reviewed this was asked about the possibility of some kind of transfer so that a property who may not participate in the supportive uses (Baptist Health) could transfer their 15% to an adjacent property and that idea was rejected by the workgroup.

Mr. Walbourn said that the three landowners were out voted by the 16 member committee. He said that he doesn't believe that the landowners would object to a transfer of the supportive uses. He said that the landowners wanted 30% of the supportive uses then and now. He said that the property owners would also be open to transferring the supportive uses if the Planning Commission wanted to entertain that. He said that that the property owners believe that this is what is needed to make this succeed and to help build a better city.

Mr. Anderson clarified what he had said earlier that he was asking for 30% of the property for supportive uses, of which 50% of that could be used for residential. He said that according to building square footage, these properties would never develop at the density or intensity that they could. He asked does that mean if they can use the square footage of the maximum allowable or the square footage that actually gets developed. The staff clarified it drafted based on actual built square footage.

Mr. Murphy said that on the behalf of the smaller property owners, if it is made a conditional use, either the Planning Commission or the Board of Adjustment will have total control of what will be developed on this land, but it will give the landowners an opportunity.

Chairman's Comments – Chairman Wilson stated that the hearing was now "closed," and he opened the floor for discussion.

Discussion - Mr. Brewer said that Mr. Sallee mentioned two parties that were not able to agree on percentage of the supportive uses during the workgroup meetings. He asked who was on the workgroup and was supporting the lower percentage. Mr. Sallee said that the workgroup was comprised of representatives from the University of Kentucky, Commerce Lexington, Council members, and the property owners were represented. He said that the property owners were asking for the higher supportive usages because of their concern and interest in preserving the jobs land and in a general sense, the comments reflected those concerns and that was why there was not able to be a consensus reached for what the percentage ought to be.

Mr. Duncan listed the committee members: Dr. Paulsen (Commissioner), Skip Alexander, Dennis Anderson (Property owner), Buddy Cowgill (Property owner), Christie Harris, Eric McMundy (UK Finance), Melody Flowers (UK Administration), Jenna Greathouse (Commerce Lexington), Kim Rossetti (Commerce Lexington), Price Bell, Herb Miller, Will Berkley, Kevin Stennitt (Council), Kevin Adkins (Mayor's office), and Jonathan Hollinger (Dept. of Planning), Planning Staff had attended all of the meetings, as well.

Mr. Brewer asked what the rationale was for the transfer idea that it was not being seen as a viable option. Mr. Duncan replied that the discussion of the committee centered around Baptist Health having the zone and the uses that they want and then perhaps not needing the supportive uses. He then said Baptist Health stated that they don't want to give up their option on this either. Then it came down to no one being willing to transfer the uses so the workgroup decided not to pursue that as an option. Mr. Brewer asked what other options the Planning Commission has; he doesn't believe that there will be a consensus here either, nor a plan that makes sense to all the parties involved.

Ms. Plumlee said that she had reviewed the work of the task force, attended the Planning Commission work sessions, and reviewed the reports that have been provided by the staff with their recommendation. She said that she believes that the staff has made the correct recommendation based on their work and time.

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Mr. Wilson said that the Planning Commission's options are to have a continuance, postponement, approve or disapprove. Mr. Sallee said that the staff asked the Planning Commission to not postpone at this point. Mr. Duncan stated that the text could also be amended.

Mr. Penn said he understands the options, but not the best uses of those options. He wants this land to be where it can be used and agrees that postponement is not the correct direction at this time, but is there a middle ground. He said that he doesn't believe that there are enough members on the board that are ready for a vote, can we see how many are ready for a vote.

Ms. Jones asked the Planning Commission to consider the time, there is only one more work session this year, at the end of September and that agenda is fairly full already. She said that if more time is needed and needs to be continued, then a work session could be another potential option.

Mr. Owens said that having taken part in the committees and the time that was involved; this land is supposed to be kept as job creation type land. He said that he sees two options; to pass it or continue it; he doesn't believe that the Commission is ready to make any changes yet.

Mr. Berkley said that our CC zone has a mixed-use element to it, what are the percentages of residential and commercial in the CC zone. Mr. Sallee said that zone requires 40% of the Floor Area Ratio to be devoted to non-commercial/residential use.

Mr. Cravens said that he believes that he could support the 30% or analyze the acreage and review how that would affect the total area.

Mr. Wilson said that he would like a continuance only if it provides a productive outcome. He said that there may need to be some compromise in order to get this done. He asked the Planning Commission if they are ready to consider a continuance with the understanding that there will be some information and productivity to end this conflict.

Ms. Richardson said that the city and schools use money to bring in experts to complete studies, we have the landowners that have been trying to develop this land for 20 years and have been unable to do so, and they are the experts of this land. She asked why the Planning Commission isn't taking in more strongly what the landowners are asking for.

Mr. Smith said that he agrees with his colleagues and said that the landowners are stifled and their opportunities are limited.

Zoning Action – A motion was made by Mr. Cravens, seconded by Mr. Berkley, and failed 5-5 (Brewer, Cravens, Owens, Plumlee, and Wilson opposed; Drake absent) to amend ZOTA 2016-4: AMENDMENTS TO ARTICLES 23A-10 TO THE ECONOMIC DEVELOPMENT (ED) ZONE, to modify supportive uses to 30% and residential uses to 50%.

Mr. Owens said that he couldn't agree to the 30% figure, as he believed that there is compromise possible if this would be continued.

Mr. Penn said that he can't support the 30% option either, and is concerned about the principle use being built before the supportive use. He said that he also concerned about the other people that were on the workgroup that are not represented here today.

Mr. Cravens said that the only people that have a stake in this today are the landowners and that have asked for that and with most of the discussion here today, the landowners are unable to do anything else with this land but keep it ED zone land and they are at our mercy to give them the percentages that they are asking for.

Mr. Brewer said that the people that were previously involved in this are represented in the conclusion of the report. He said that he believes the property owners have an immediate effect on the Planning Commission decisions and votes; the others that were on the workgroup believed that they're represented in the conclusion of the report. He also said that he can't support the 30% at this time.

Ms. Plumlee said that she can't support the 30% either, because if the ED zone land is turned into something else, which will happen if this motion carries; the developers will be wanting more ED land in the future and want to expand the USA boundary.

Ms. Richardson said that the Zoning Committee turned this over to the Planning Commission because they were unable to make a decision. She said that the Planning Commission just needs to consider the work that they had done and to expand upon that. She said that the Planning Commission has the right to move on this without their thoughts and concerns; the workgroup work has been done.

Mr. Berkley said that he believes the need for having more ED zone land will be a positive idea, to expand our boundaries for that reason would be good thing. That would mean that the work that was done today, potentially worked. He said that the Committee could never come to a consensus about the percentage of the supportive uses. He said that the landowners have

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had their consultants review the studies and they have made recommendations. He feels that the Planning Commission is just throwing that aside. He said that he is supportive of the 30% supportive uses.

Ms. Mundy said that she is also in support of the 30% option because she feels that the Planning Commission is inhibiting the landowners. She said that the Planning Commission has the opportunity here to move this forward and we may have to expand the boundary in order to get more jobs into the area.

Mr. Wilson called for the voting of the motion, which failed. He then asked to entertain another motion related to a continuance and revisiting this at the work session on September 29th. Mr. Duncan said that there are still other options for this; the Commission could vote on it as presented by the staff, offer another percentage. Mr. Wilson asked if the staff could work on agreeing to a percentage and then returning the Commission with a recommendation. Mr. Wilson then said to take the motion as presented.

Zoning Action – A motion was made by Mr. Owens, seconded by Ms. Plumlee, to amend ZOTA 2016-4: AMENDMENTS TO ARTICLES 23A-10 TO THE ECONOMIC DEVELOPMENT (ED) ZONE, to 18% supportive uses and 18% of that to be residential.

Mr. Owens said that the Zoning Committee referred this to the Planning Commission to resolve this and that he feels that 30% is too much and his motion is a compromise.

Mr. Berkley commented on the need of more ED zone land, questioned why the Commission is reluctant to add to the Urban Service Area boundary. Mr. Penn said that more ED zone land is not needed if the Commission can't decide on how the land we have now should be used. Mr. Penn asked if this text amendment broad enough to do what the Commission is trying to do with the supportive uses and whether the principal use is going to be built before the supportive use because if it isn't then it doesn't matter what percentage is agreed upon because then the developer would return stating they were unable to do the principal so we're just going to the supportive.

Mr. Berkley said that it would be concurrent or after, what is the clarification of this text. Mr. Duncan said that the supportive uses could not be built before the other principal uses, they could be built at the same time or after. He said that the jobs creating use would have to be demonstrated first or at the same time of the supportive use. He also said to give a percentage a try for a while and if it doesn't work the possibility of changing it will always be there. Mr. Berkley said that isn't goal of the ED zone land to develop it. The uses have to be in place to attract businesses.

Mr. Cravens asked if a waiver or another text amendment would be necessary to change the percentage of the supportive uses in the future. Mr. Duncan said that it would have to be another text amendment.

Mr. Brewer said that he believes that something needs to change with this land since the developers have not been able to develop anything on it for the past 20 years and that a decision needs to be made today. He said that if had a recommendation from the staff to possibly move this to 20%, that would be a fair compromise. Mr. Duncan replied that 20% is cleaner than 18% as well as gets us a little closer to what the property owners are requesting.

Mr. Wilson then asked Mr. Owens if he would consent to the revision of 18% to 20% supportive uses. Mr. Owens said that if give 30% of this away that's 30% less ED zone land. He said that we need some of this to get the economic development in here and he feels that is too much.

Zoning Action – The previous motion was amended by Mr. Owens, seconded by Ms. Plumlee, to amend ZOTA 2016-4: AMENDMENTS TO ARTICLES 23A-10 TO THE ECONOMIC DEVELOPMENT (ED) ZONE, to 20% supportive uses and 15% of that to be residential. Mr. Owens withdrew his motion.

Zoning Action – A motion was made by Mr. Cravens, seconded by Mr. Berkley, and carried 7-3 (Mundy, Penn, and Richardson opposed; Drake absent) to approve ZOTA 2016-4: AMENDMENTS TO ARTICLES 23A-10 TO THE ECONOMIC DEVELOPMENT (ED) ZONE, changing to 20% supportive uses and 15% of that be residential.

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