

Lexington-Fayette Urban County Government Special Council Meeting

Lexington, Kentucky January 19, 2017

The Council of the Lexington-Fayette Urban County Government, Kentucky convened in special session on January 19, 2017 at 7:01 p.m. Present were Vice-Mayor Kay in the chair presiding, in the absence of Mayor Gray, and the following members of the Council: Stinnett, Bledsoe, F. Brown, J. Brown, Evans, Farmer, Gibbs, Higgins, Lamb, Moloney, Mossotti, and Plomin. Absent were Council Members Henson and Scutchfield.

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Vice Mayor Kay welcomed everyone and immediately allowed a short recess so that the attorneys for the Petitioner and opposition could attempt to resolve the matter.

At 7:01 p.m. the meeting stood at recess.

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At 7:22 p.m. the meeting reconvened with the same members present.

Vice Mayor Kay opened the meeting and immediately went back into recess while waiting to hear from parties' attorneys.

At 7:23 p.m. the meeting stood at recess.

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At 7:38 p.m. the meeting reconvened with the same members present.

An Ordinance changing the zone from an Agricultural Rural (A-R) zone to an Agricultural Natural Areas (A-N) zone, for 41.74 net (43.44 gross) acres, for property located at 8291 & 8385 Old Richmond Rd., with conditional zoning restrictions. (Boone Creek Properties, LLC; Council District 12) received second reading.

Vice Mayor Kay opened the hearing, swore in the witnesses, and reviewed the procedures and order of proceeding for the meeting.

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Ms. Traci Wade, Div. of Planning, gave a presentation and filed the following exhibits: (1) Legal Notice of hearing to be held; (2) Affidavit of William Sallee of Notices Mailed; (3) Recommendation of the Urban County Planning Commission – MAR 16-00013; (4) Copies of emails to Council Members; (5) 2013 Comprehensive Plan with Goals and Objectives; (6) 1999 Map and Rural Service Area Land Management Plan;

(7) 1983 LFUCG Zoning Ordinance as Amended; and (8) 1983 LFUCG Land Subdivision Regulations as Amended.

Ms. Wade described the subject property and surrounding property and the various uses that have been applied to it in the past. She displayed photographs of the subject property and described its physical characteristics.

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Mr. Richard Murphy appeared on behalf of Boone Creek Properties, LLC and filed the following exhibits: (1) Affidavit of Joe Svec; (2) Applicants Exhibits; and (3) Witness List.

Mr. Murphy gave his presentation on behalf of the applicant. He described the property and its access to Boone's Creek. He displayed maps and photographs intended to depict the property and the proposed use for the property.

Ms. Sara Smith, Smith Management Group, described her investigation and analysis in preparing an environmental assessment.

Mr. Murphy played a video which gave an aerial tour of the property.

He submitted Petitioner's Exhibit (4), Petitions, and gave further presentation.

The following persons spoke in support of the zone change: (1) Mr. Van Meter Pettit, East Bell Ct.; (2) Ms. Sarah Brown, Old Richmond Rd.; and (3) Mr. Brian Clark, Echo Valley Dr.

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At 8:50 p.m. the meeting stood at recess.

At 9:02 p.m. the meeting reconvened with the same members present.

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Mr. Don Todd appeared on behalf of the Old Richmond Road Neighborhood Association and the Boone Creek Neighborhood Association. He noted that the Associations do not oppose the zone change itself, but do oppose the development plan. Mr. Todd submitted Opposition Exhibit (1) Findings of Fact & Conclusions. Mr. Todd gave his presentation and spoke about restricted uses.

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Vice Mayor Kay and Mr. Stinnett discussed a matter of law with Ms. Tracy Jones, Dept. of Law.

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Ms. Deborah Garrison, Athens-Boonesboro Rd., Winchester, Ky., spoke in opposition and filed Opposition Exhibit (2) Photocopies of emails and partial copy of KRS100.212; and (3) Map.

Ms. Melissa Brown, McCalls Mill Rd., Winchester, Ky., President of the Boone Creek Neighborhood Association, spoke in opposition and filed Opposition Exhibits (4) LFUCG Greenway Master Plan Watersheds; (5) Boone Creek Conservation Greenway Corridor; and (6) Map.

Ms. Joan Mayer, Jones Nursery Rd., Winchester, Ky., filed Opposition Exhibit (8) Article 13. She stated she was not opposed to the zone change but the possibility of increased traffic on her property.

Mr. Jim Lurton, Turner Station Rd, spoke in opposition and filed Opposition Exhibits (9) Map; and (10) Partial Copy of Stormwater Manual. He stated he was not opposed to the zone change.

Ms. Evans asked the speakers to limit their comments to special conditions that might be applied to the zoning.

Mr. Lurton spoke in opposition and about the nature of the property.

Mr. Todd discussed the tone of Mr. Lurton's comments with Vice Mayor Kay.

Dr. Lisa Gannoe, Old Richmond Rd., Old Richmond Road Homeowners' Association, spoke in opposition and filed Opposition Exhibits (11) Annotated Planning Packet; (12) Categories of Historic Properties; and (13) Letter from Carroll to Stout.

Mr. Charles Martin, Grimes Mill Road, spoke in opposition and filed Opposition Exhibits (14) Partial copy of KRS 100.203; (15) Map; (16) Packet containing maps and documents; (17) Packet containing copies of Floracliff web page and other documents; (18) Speaking notes; and (19) Document titled "First A-N Zone Change".

Upon motion by Mr. Stinnett, and seconded by Ms. Mossotti, Mr. Martin was granted five additional minutes to speak.

Mr. Todd filed opposition Exhibits (20) Copy of KRS 100 and (21) copy of Code of Ordinances.

Mr. Walter Gaffield, Fayette County Neighborhood Council, spoke in opposition.

Ms. Amy Clark, Kastle Rd., spoke in opposition and filed Clark Exhibits (1) Speaking notes; and (2) Handwritten notes on Docket.

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Ms. Wade offered closing remarks on behalf of the Div. of Planning.

Mr. Murphy gave his rebuttal and summation for the Applicants.

Mr. Todd made his summation for the Opponents.

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Ms. Plomin discussed a point of law with Ms. Jones. She asked Ms. Wade about buffers. Ms. Wade responded.

Ms. Evans discussed a point of law with Ms. Jones.

Ms. Lamb asked questions about the waterfall and the planned hiking trails. Mr. Burgess Carey and Mr. Murphy responded.

Ms. Mossotti spoke about the conditions on the property, the fence, and the inability of the owners to control where visitors walk.

Mr. Moloney asked about the requested fence and how attraction visitors will be restricted from accessing the neighbor's property. Mr. Carey, Mr. Todd, Ms. Jones, Ms. Wade, Mr. Martin, Mr. Murphy, and Ms. Sarah Carey responded.

Mr. F. Brown asked Mr. Martin about fencing. Mr. Martin responded.

Ms. Plomin moved to adopt the Findings of Fact proposed by the opposition with the conditional zone change preserved. The motion was seconded by Ms. Mossotti.

The Council discussed the motion.

Ms. Lamb asked for clarification on which conditional uses are included in the motion. Ms. Plomin stated the conditional uses would be the fifty foot buffer in the A-N zone between the A-N zone and the Purchase of Development Rights (PDR) properties, anything from the canopy tree or any commercial development for the A-N zone shall not be permitted in the adjacent PDR area, and the fence would be near the waterfall and would be a standard fence size.

Vice Mayor Kay discussed a matter of law with Ms. Jones and discussed Ms. Plomin's motion.

Ms. Jones asked Ms. Plomin about what information she was proposing for the Findings of Fact. Ms. Plomin responded.

Vice Mayor Kay asked Ms. Plomin if she was moving to adopt the Findings of Fact as submitted by the Opposition in its entirety. Ms. Plomin responded that she was.

The Findings of Fact are as follows:

PLN—MAR-16-00013: BOONE CREEK PROPERTIES, LLC — Petition for a Zone Map Amendment from an Agricultural Rural (A-R) zone to an Agricultural Natural Areas (A-N) zone, for 41.74 net (43.44 gross) acres of property, located at 8291 and 8385 Old Richmond Road and 8385 Durbin Lane. (Council District 12)

FINDINGS OF FACT & CONCLUSIONS

The above matter having come before the Lexington-Fayette Urban County Council on January 19, 2017, and the Council having considered all of the evidence presented to it and being fully advised, makes the following Findings of Fact & Conclusions:

1. The subject properties are located in the southeastern portion of Fayette County, along Boone Creek and the Clark-Fayette County boundary. The subject properties front along Old Richmond Road (US 25 & 421) and Durbin Lane, just east of Interstate 75 and a short distance north of Exit 99.
2. The subject properties are located within the Rural Service Area of Lexington-Fayette County. The 1999 Rural Land Management Plan was developed to guide resource management in planning for this portion of the county, and the Plan recommends the subject properties be utilized for natural area (NAT) land use.
3. The petitioner has requested a zone change from an Agricultural Rural (A-R) zone to an Agricultural Natural (A-N) zone for approximately 41.5 acres of property.
4. The Petitioner has estimated that between 15,000 and 25,000 visitors per year will use the subject properties.
5. The area in which the subject properties and adjacent properties are located is characterized by steep slopes, forested areas, and thinner/poor soils and is known as a habitat for rare and unusual flora and fauna.
6. The subject properties are bordered on the east by Boone Creek, a tributary to the Kentucky River Pool 9.
7. Because these lands are environmentally sensitive, special care is needed to insure that the uses that are permitted are compatible with the goals of conservation and preservation of these lands.
8. Two properties that are immediately adjacent to the north and northeast of the subject properties have granted conservation easements to the Lexington-Fayette Urban County Government PDR Program (the "PDR Properties").
9. KRS 100.203(8) and Article 6-7 of the Zoning Ordinance authorize the Council to impose conditions on the granting of a zone map amendment if one or more of the uses permitted in the A-N zone would impair the integrity and character of the area, including (i) restricting the use of the subject properties to a particular use or a particular class of use; and (ii) imposing screening and buffering restrictions upon the subject properties.

Based upon the foregoing, the Lexington-Fayette Urban County Council:

1. Approves the requested Agricultural Natural (A-N) zoning for the subject properties for the following reasons:
 - A. The requested Agricultural Natural (A-N) zoning for the subject properties is in agreement with the Rural Land Management Plan's recommendations for Natural Areas (NAT) land use at this location.
 - B. The 2013 Goals and Objectives encourage the development of appropriate attractions as supporting uses that promote and enhance tourism (Theme C Goal 1 Objective e) and the rural character of the Rural Service Area (Theme E Goal 2), and protect the environment (Theme B).
- 2) Concludes that allowing the subject properties to be used for the following uses and other uses permitted in the A-N zone would (i) require grading and the construction of improvements on the land, (ii) result in the deforestation of the land and the destruction of rare and unusual flora and fauna and wildlife habitat, and (iii) cause erosion and the depositing of silt and sedimentation in Boone Creek, a tributary to the Kentucky River Pool 9, and would, therefore, impair the integrity and character of the area in which the subject properties and the adjacent properties are located:
 - A. Cemeteries, crematories, columbariums, and mausoleums;

- B. Churches, Sunday Schools, and parish houses;
 - C. Non-service facilities of public utilities and common carriers by rail, including office, garage, and warehouse space;
 - D. Outdoor rifle and other firearm ranges and outdoor rodeos;
 - E. Mining and/or quarrying of non-metallic minerals;
 - F. Radio, telephone, and/or television transmitting or relay facilities; and
 - G. Youth camps.
- 3) Pursuant to KRS 100.203(8) and Article 6-7 of the Zoning Ordinance, imposes the following conditions upon the granting of the zone map amendment:
- A. The use of the subject properties are restricted to only the following Conditional Uses:
 - (i) Commercial and non-commercial outdoor recreational facilities (without outdoor lighting, loud speakers, retail sales of merchandise, restaurants or food service, and the like), including fishing lakes, including private clubs for only these uses; but excluding zoological gardens; Sportsman's farms (including outdoor rifle and other firearm ranges); native animal game preserves; outdoor rodeos; hunting and trapping; and primitive campgrounds.
 - (ii) Agritourism activities, including farm gift shops (limited to 500 square feet), and educational classes relating to agricultural products and skills; but excluding corn mazes, horse shows, and seasonal activities.
 - (iii) Ecotourism activities, including hiking and bicycling trails, tree canopy tours; canoeing and kayaking launch sites; botanical gardens; nature preserves; but excluding equine trails and recreational outfitters.
 - B. The Applicant shall construct and maintain a diamond wire mesh boundary line fence between the subject properties and the adjacent PDR Properties to prevent the customers using the subject properties from encroaching or trespassing on the adjacent PDR Properties.
 - C. The Applicant shall preserve a 50 foot buffer area adjacent to Boone Creek and the PDR Properties in which no trees or other vegetation, except for invasive species, shall be removed or eradicated.

Mr. Murphy asked for a recess to discuss a matter with his client.

Vice Mayor Kay denied the request for a recess and closed the hearing.

Ms. Jones requested clarification from Vice Mayor Kay.

Council discussed motions and procedures.

Mr. Stinnett discussed a matter of law with Ms. Jones. Mr. Stinnett moved to amend the motion on the floor to remove uses 3A(i) and 3A(ii) from the proposed Findings of Fact. Mr. Farmer seconded the motion.

Vice Mayor Kay asked about the effect of adding restrictions on the property. Ms. Jones responded.

The Council discussed the motions and discussed legal matters with Ms. Jones.

Mr. Stinnett's motion to amend was approved by majority vote (Ms. Lamb, Ms. Mossotti, and Ms. Plomin voted No; Ms. Higgins and Vice Mayor Kay did not record their votes).

Mr. Gibbs asked for clarification on the issue of the proposed conditions under Sections 3B and 3C of the proposed Findings of Fact. Ms. Jones responded.

Mr. Gibbs moved to amend Ms. Plomin's motion to remove uses included in Sections 3B and 3C of the proposed Findings of Fact. Ms. Evans seconded the motion.

The Council discussed the motion to amend.

Mr. Gibb's motion to amend Ms. Plomin's motion was approved by majority vote (Ms. Lamb, Ms. Mossotti and Ms. Plomin voted No; Ms. Higgins did not record her vote).

Ms. Lamb asked for clarification of the effect of Ms. Plomin's motion following the two amendments. Ms. Wade responded.

Mr. Gibbs also asked about the proposed amended Findings of Fact as compared to what was presented by the Planning Commission. Ms. Jones responded.

Ms. Evans proposed voting down the proposed amended Findings of Fact and starting with the Findings of Fact presented by the Planning Commission.

Ms. Plomin's motion to adopt the amended Findings of Fact as presented by the Opposition, failed by the following vote:

Aye:		-----0
Nay:	Stinnett, Bledsoe, F. Brown, J. Brown, Evans, Farmer, Gibbs, Higgins, Kay, Lamb, Moloney, Mossotti, Plomin	-----13

Mr. Stinnett moved to adopt the Findings of Fact approved by the Planning Commission. Mr. F. Brown seconded the motion.

Ms. Evans moved to amend the motion to include Prohibited Uses 2A through 2G from the Findings of Fact presented by the Opposition and they are as follows:

- A. Cemeteries, crematories, columbariums, and mausoleums;
- B. Churches, Sunday Schools, and parish houses;
- C. Non-service facilities of public utilities and common carriers by rail, including office, garage, and warehouse space;
- D. Outdoor rifle and other firearm ranges and outdoor rodeos;
- E. Mining and/or quarrying of non-metallic minerals;
- F. Radio, telephone, and/or television transmitting or relay facilities; and
- G. Youth camps.

The motion was seconded by Ms. Mossotti and passed by majority vote (Mr. Stinnett, Ms. Bledsoe, Mr. F. Brown, and Mr. Farmer voted No; Mr. J. Brown did not record his vote).

Mr. Stinnett's motion to adopt the Findings of Fact approved by the Planning Commission, as amended, passed by the following vote:

Aye: J. Brown, Evans, Gibbs, Kay, Lamb, -----8
Moloney, Mossotti, Plomin

Nay: Stinnett, Bledsoe, F. Brown, Farmer -----5
Higgins

The Findings of Fact, as amended, are as follows:

1. The requested Agricultural Natural (A-N) zoning for the subject properties is in agreement with the Rural Land Management Plan's recommendations for Natural Areas (NAT) land use at this location.

2. The 2013 Goals and Objectives also encourage the development of appropriate attractions and supporting uses that promote and enhance tourism (Theme C, Goal 1, Objective e), support the agricultural economy, horse farms, general agricultural farms, and the rural character of the Rural Service Area (Theme E, Goal 2), and protect the environment (Theme B).

3. This recommendation is made subject to approval and certification of PLN-MJDP-16-00029: Boone Creek Properties and H.G. Early-Snyder Family Farm, LLC Property prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

4. Prohibited uses:

- A. Cemeteries, crematories, columbariums, and mausoleums;
- B. Churches, Sunday Schools, and parish houses;
- C. Non-service facilities of public utilities and common carriers by rail, including office, garage and warehouse space;
- D. Outdoor rifle and other firearm ranges and outdoor rodeos;
- E. Mining and/or quarrying of non-metallic minerals;
- F. Radio, telephone, and/or television transmitting or relay facilities;
- and,
- G. Youth camps.

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Ms. Lamb moved to amend the ordinance to reflect the addition of conditional zoning restrictions of the following:

- A. Cemeteries, crematories, columbariums, and mausoleums;
- B. Churches, Sunday Schools, and parish houses;
- C. Non-service facilities of public utilities and common carriers by rail, including office, garage, and warehouse space;
- D. Outdoor rifle and other firearm ranges and outdoor rodeos;
- E. Mining and/or quarrying of non-metallic minerals;
- F. Radio, telephone, and/or television transmitting or relay facilities; and
- G. Youth camps.

The motion was seconded by Ms. Evans and passed by majority vote (Mr. Stinnett, Mr. F. Brown, Ms. Bledsoe, Mr. Farmer, and Ms. Higgins voted No).

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An Ordinance changing the zone from an Agricultural Rural (A-R) zone to an Agricultural Natural Areas (A-N) zone, for 41.74 net (43.44 gross) acres, for property located at 8291 & 8385 Old Richmond Rd with conditional zoning restrictions, (Boone Creek Properties, LLC; Council District 12) as amended, received first reading.

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Ms. Lamb moved to suspend the rules and give second reading to the ordinance. The motion was seconded by Ms. Plomin and failed to get the required ten votes needed to suspend the rules (Mr. Stinnett, Ms. Bledsoe, Mr. F. Brown, Mr. Farmer and Ms. Higgins voted No).

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Mr. Farmer moved to adjourn. The motion was seconded by Mr. F. Brown.

Vice Mayor Kay spoke about the procedural implications of adjourning and stated he had not recognized the mover and the seconder.

Ms. Lamb moved to schedule a special Council meeting at 3:00 p.m. on January 24, 2017 for the purpose of having a second reading of the ordinance. The motion was seconded by Ms. Bledsoe.

Ms. Lamb's motion for a special meeting passed by majority vote (Mr. Stinnett, Ms. Bledsoe, Mr. F. Brown, Mr. Farmer and Ms. Higgins voted No).

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Upon motion by Mr. Farmer, seconded by Mr. F. Brown, and approved by unanimous vote, the meeting adjourned at 11:46 p.m.

Deputy Clerk of the Urban County Council