

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

March 27, 2008

- I. **CALL TO ORDER** – The meeting was called to order at 1:32 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; Frank Penn; Carolyn Richardson; Lynn Roche-Phillips; Randall Vaughn, Chair; and Joan Whitman. Absent were Linda Godfrey, Ed Holmes, and Jim Mahan.

Planning Staff members present: Chris King, Director; Barbara Rackers; Jimmy Emmons; Traci Wade; Tom Martin; Cheryl Gallt; Chris Taylor; and Stephanie Cunningham. Other staff members present were: Ed Gardner, Department of Law; Bob Carpenter, Division of Building Inspection; Hillard Newman, Barry Brock and Donna Byrum, Division of Engineering; Captain Charles Bowen, Division of Fire and Emergency Services; and Jeff Neal, Division of Traffic Engineering.

- II. **APPROVAL OF MINUTES** – None at this time.

III. **POSTPONEMENTS AND WITHDRAWALS**

1. **TATES CREEK HEIGHTS, LLC, ZONING MAP AMENDMENT & PINNACLE, LOT 1 (AMD.) ZONING DEVELOPMENT PLAN**

- a. MAR 2007-9: TATES CREEK HEIGHTS, LLC (3/27/08)* – petition for a zone map amendment from a Neighborhood Business (B-1) zone with conditional zoning restrictions to a Neighborhood Business (B-1) zone with modified conditional zoning restrictions, for 4.19 net (5.83 gross) acres, for property located at 1093, 1097 & 1099 Duval Street.

LAND USE PLAN AND PROPOSED USE

The Land Use Element of the 2007 Comprehensive Plan (Sector 10) recommends Retail, Trade and Personal Services land use for the subject property. The petitioner proposes the addition of a coffee shop to the site, which is already approved for a "sit-down" restaurant, offices and a florist shop on the subject property, as well as revisions to the signage and landscaping restrictions previously imposed.

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

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

1. Conditions originally put upon the subject property were not done in anticipation of a professional office use across Duval Street from the subject property. This would constitute a change in the physical and economic nature of the area since 1996, which makes this site eligible for a revision to the very limited conditional zoning restrictions originally placed thereon.
2. The expanded uses currently requested are still consistent with the Retail, Trade and Personal Services land use recommendations of the 2007 Comprehensive Plan and the prior 2001 Comprehensive Plan.
3. This recommendation is made subject to the approval and certification of ZDP 2007-50: Pinnacle, Unit 1 (Amd.) prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of any Planning Commission approval.
4. Under the provisions of Article 6-7 of the Zoning Ordinance, the subject property shall now be subject to the following use restrictions, (with all edits shown below in italicized text from the previous conditions):
 - a. The B-1 site shall contain a maximum of four buildings and be used only as ~~either~~ a sit-down restaurants without drive-through facilities or the service of "fast food," a florist shop, and/or a use permitted in the P-1 zone other than a bank, a credit institution, a television studio or a hospital; *however, notwithstanding any provision to the contrary, a single drive-through shall be permitted solely for the use of a coffee shop (the "permitted drive-through").*
 - b. *In the event the permitted drive-through should cease to be used solely in connection with a coffee shop, or should a coffee shop cease to operate as a coffee shop (excluding any reasonable number of days necessary for repair, remodeling, or reconstruction as a result of or required by a lawful order or decree of a governmental or regulatory authority, a casualty loss, other than such a loss caused by the owner of the property), then the permitted drive-through shall be removed, no future drive-through shall be allowed on the property, and the use of the coffee shop building shall be restricted to the uses permitted herein.*
 - c. *The portion of the property used for the coffee shop shall be permitted to display on the east-facing portion of the building only a single logo, and the words may be displayed a single time on the east-facing façade, the letters of which shall not exceed 18 inches in height, and the logo shall not exceed 36 inches in height, and in no event shall the words or the logo be backlit or internally lit. Signs on the other sides of the building and on the property shall be regulated under the Zoning Ordinance.*
 - d. The existing ("**original**") structure shall be preserved except to the extent it must be modified to permit the construction of additions and/or renovations as described below.
 - e. *An additions* to the existing ("**original**") structure shall be allowed, but shall only be in accordance with a final development plan submitted to and approved by the Planning Commission; and such additions in total shall not

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- exceed 3,000 square feet and shall be governed by all of the restrictions and limitations that apply to the new building as described below.
- f. Parking will be in accordance with a final development plan submitted to and approved by the Planning Commission; *provided, however, that a visual buffer of hedges and trees shall be placed on the east-facing side of the property.*
 - g. The property owner shall preserve the existing mature trees on site except as necessary for the construction of ~~one new~~ the office building, the additions to the existing structure, the aforementioned coffee shop and accessory parking, all as approved by the Planning Commission on the final development plan for the site and subject to all restrictions and limitations contained herein, and such trees, if removed, shall be replaced in equal number to preserve the buffer between the site and Bates Creek Road;
 - ~~f. Signage shall be limited to the signage shown on and approved by the Planning Commission on the final development plan for the site and in accordance with the limitations contained herein;~~
 - h. Existing trees which provide a visual buffer from surrounding properties shall be preserved, and damaged or diseased trees may be removed if also replaced. ~~in equal number and kind on the site; and Deciduous trees shall be planted in the exterior parking lot.~~
 - i. In addition to the above-referenced coffee shop building, the construction of ~~one~~ a single additional new building shall be permitted (the "office building"); however, such building shall not exceed 36,000 square feet, shall not exceed 36 feet in height at its highest point as measured from the existing grade level as of September 20, 2005, including all fixtures, equipment and any other materials (except that any equipment located on the roof shall be completely screened from view by parapet walls which are permitted to rise an additional 6 feet solely for that purpose), shall primarily utilize only a brick siding or masonry façade which must cover no less than 55% of the exterior surface of the building excluding the roof, windows and doors, and the roof shall vary in height with no less than three (3) articulating roof heights. ~~In addition Furthermore, the easternmost edge of the office such building shall be no closer at any point than 30 feet from the right-of-way bordering Bates Creek Road at least 100 feet from the easement line on the east side of the property.~~
- b. [ZDP 2007-50: PINNACLE, LOT 1 \(AMD.\)](#) (3/27/08)* – located at 1093, 1097 and 1099 Duval Street.
(EA Partners)

Note: The purpose of this amendment is to add a coffee shop with a drive-through, delete sign information, and to relocate buildings and parking.

The Subdivision Committee Recommended: Referral. There were questions regarding compliance with the off-street parking requirements of the Neighborhood Business (B-1) zone and compliance with the applicant's proposed conditional zoning restrictions.

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

1. Provided the Urban County Council revises the conditional B-1 zoning of the property; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping, including arterial screening.
5. Urban Forester's approval of tree inventory map.
6. Greenspace Planner's approval of the treatment of greenways/bike trails and pedestrian movement.
7. Revise conditional zoning restrictions.
8. Denote: There shall be no development of the property until the Planning Commission approves a final development plan.
9. Dimension drive aisles and new buildings.
10. Addition of record plat information for this development.
11. Clarify easement information.
12. Clarify required off-street parking (restaurant and coffee shop use) based on the number of seats.
13. Clarify note number 13.
14. Correct the spelling in site statistics.

Petitioner Representation: Dick Murphy, attorney, was present representing the petitioner. He stated that the petitioner is continuing to meet with the adjoining neighborhood association, and requested a two-month postponement of this item.

Action: A motion was made by Mr. Penn, seconded by Ms. Whitman, and carried 8-0 (Godfrey, Holmes, and Mahan absent) to postpone MAR 2007-9 to the May 22, 2008, Planning Commission meeting.

2. [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

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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: Dick Murphy, attorney, was present and stated that he and Rena Wiseman were representing the petitioner on this matter. He apologized that the petitioner's expert witness had been unable to attend the Planning Commission's last work session, and noted that, since the agenda for the April work session was full, he had arranged with the staff for the expert witness to make his presentation at the Commission's May work session. Therefore, the petitioner would like to request postponement of this text amendment to the June meeting.

Action: A motion was made by Ms. Whitman, seconded by Mr. Day, and carried 8-0 (Godfrey, Holmes, and Mahan absent) to postpone ZOTA 2007-8 to the June 26, 2008, Planning Commission meeting.

3. CMW, INC., ZONING MAP AMENDMENT & MARK ACRE PROPERTIES, LLC, ZONING DEVELOPMENT PLAN

- a. MARV 2008-7: CMW, INC. (5/15/08)* - petition for a zone map amendment from a Mixed Use 2 – Neighborhood Corridor (MU-2) zone to a Downtown Frame Business (B-2A) zone, for 1.028 net (1.66 gross) acres, for property located at 502-526 South Broadway; 320 Pine Street; and 319 Cedar Street. A dimensional variance to the front setback is also being requested at this location.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 5) recommends Downtown Master Plan future land use for the subject property. The petitioner proposes a mixed-use development for approximately one acre, incorporating retail business, service-oriented business, 80 residential condominium units and associated off-street parking. The condominium units proposed are to be part of a boutique hotel use of the property.

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

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

1. The requested Downtown Frame Business (B-2A) zone is in agreement with the 2007 Comprehensive Plan, and with the *Downtown Lexington Masterplan*, an element of the Comprehensive Plan, for the following reasons:
 - a. The 2007 Plan recommends Commercial Residential Mixed Use (formerly Retail/Office Mixture) for the subject property, and for other sites to the south and west. The proposed mixture of residential condominiums, a "boutique ho-

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- tel," restaurants and retail stores, along with the necessary off-street parking for those uses, meets this specific land use recommendation.
- b. The *Masterplan* recommends an "increase in residential development," and to maximize residential density "while keeping new structures compatible in form and character with the existing neighborhood." The proposed development of the subject site will provide a compatible mixed-use development between South Hill and the approved Shelbourne Plaza mixed-use project, at a density of 77.82 dwelling units per net acre.
 - c. The *Masterplan* recommends almost 270,000 square feet of additional multi-family residential use in the entire South Hill area, for an additional 244 dwelling units. This proposed development would supply approximately one-third of that recommended amount.
2. This recommendation is made subject to approval and certification of ZDP 2008-34: Mark Acre Properties, LLC (Amd.), 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 Article 6-7 of the Zoning Ordinance, the following uses are to be prohibited on the subject property via conditional zoning:
 - a. Hospitals.
 - b. Drug stores.
 - c. Indoor theatres.
 - d. Bowling alleys.
 - e. Establishments for the display, rental, or sale of automobiles, motorcycles, trucks and boats.
 - f. Passenger transportation terminals.
 - g. Wholesale establishments.
 - h. Major or minor automobile or truck repair.
 - i. Establishments primarily engaged in the sale of supplies and parts for vehicles and farm equipment.
 - j. Adult arcades, massage parlors, adult bookstores, adult video stores, adult cabarets, adult dancing establishments, adult entertainment establishments, and sexual entertainment centers.
 - k. Storage yards for delivery vehicles of a permitted use.
 - l. Mining of non-metallic minerals.
 - m. Gasoline pumps of any kind.

These restrictions are appropriate and necessary to ensure that uses on the subject property will not require large areas for off-street parking, and to ensure a compatible transition from the Historic South Hill Neighborhood to the east and the Shelbourne Plaza development planned to the immediate west of this location.

b. REQUESTED VARIANCE

1. Reduce the required (front yard) setback along South Broadway, Plunkett Street and Cedar Street from 10' to 0'.

The Staff Recommends: Approval of the variance from 10' to 0', for the following reasons:

- a. This variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity, due to the wide sidewalks surrounding the building and the central courtyard feature of the proposed mixed-use development.
- b. This variance will not result in an unreasonable circumvention of the Zoning Ordinance, as the design of the proposed building will include architectural features to vary the appearance of the building along the streetscape.
- c. The special circumstances that contribute to justifying this variance are the relatively narrow width of the subject property, the fact that this property has four street frontages, and the wide sidewalk that will extend around the perimeter of the property.
- d. Strict application of the Zoning Ordinance requirement would likely result in a significantly smaller courtyard, which is one of the defining features of the proposed development.
- e. This variance is not the result of any prior actions of this applicant or the current owner, nor is it a result of a willful violation of the Zoning Ordinance.

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

1. Provided the Urban County Council rezones the property B-2A; otherwise, any Commission action of approval of this variance is null and void.
 2. Should the property be rezoned, it shall be developed in accordance with the approved Preliminary Development Plan, or as approved by the Planning Commission via a certified Final Development Plan.
 3. A note shall be placed on the Preliminary Development Plan indicating the dimensional variance that the Planning Commission has approved for this property under Article 6-4(c) of the Zoning Ordinance.
 4. All necessary permits shall be obtained from Building Inspection prior to construction, after certification of a Final Development Plan, should this property be rezoned.
- c. ZDP 2008-34: MARK ACRE PROPERTIES, LLC (AMD.) (5/15/08)* - located on South Broadway, Pine Street and Cedar Street.
(CMW, Inc.)

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

1. Provided the Urban County Council rezones the property B-2A; 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 inventory map.
6. Denote: There shall be no development of the property until the Planning Commission approves a final development plan.
7. Clarify street tree details.

Petitioner Representation: Brian Hill, CMW, Inc., stated that he was present representing the petitioner. He said that there are some issues that need to be resolved with the neighborhood association, and requested a one-month postponement of this item.

Action: A motion was made by Mr. Day, seconded by Mr. Aten, and carried 8-0 (Godfrey, Holmes, and Mahan absent, to postpone MARV 2008-7 to the April 24, 2008, Planning Commission meeting.

IV. LAND SUBDIVISION ITEMS - The Subdivision Committee met on Thursday, March 6, 2008, at 8:30 a.m. The meeting was attended by Commission members Neill Day, Lyle Aten, James Mahan, Randall Vaughn, 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: Chris Taylor, Cheryl Galt, and Tom Martin; as well as Ed Gardner, Department of Law; Captain(s) Bill Woodward and Charles Bowen, Division of Fire & Emergency Services; 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.*

1. DP 2008-19: INGLESIDE APARTMENTS (4/17/08)* - located at 1201 Devonshire Avenue.
(Council District 11) **(Vision Engineering)**

Note: This final development plan was approved by the Planning Commission on February 14, 2008 with 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 landscape buffers.
4. Urban Forester's approval of tree preservation area.
5. Bike & Pedestrian Planner's approval of refuse collection.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Waste Management's approval of refuse collection.
8. Approval of street names and addresses per 911 staff.
9. Delete note numbers 2 and 5.
10. Correct zoning designation on property boundary.
11. Addition of conditional zoning restrictions.
12. Document compliance with open space requirements.
13. Resolve tree protection measures.

This plan has recently been presented to the Planning Services Staff for certification. However, the proposed access point to Devonshire Avenue is slightly different than originally reviewed and discussed by the Commission's Subdivision Committee. Prior to the certification of this plan, the staff wanted to present this alteration to the Commission.

Staff Presentation: Mr. King explained that, since he had mentioned this item to the Commission at their prior work session, he would provide the presentation today. He noted that this is a final development plan for the former Ingleside Mobile Home Park apartment project, which was recently the subject of a zone change, preliminary development plan, and final development plan.

Displaying the final development plan for the Commission, Mr. King said that, as the process for certification of this final development plan was proceeding, a situation regarding this plan came to the staff's attention, which led him to take an action that

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was a bit out of the ordinary. He oriented the Commission to the location of the subject property, noting that the Ingleside Mobile Home Park has been under demolition and relocation in recent weeks. There was a zone change filed to convert the mobile home park to a multi-family residential housing project, with three- and four-story buildings.

There was a great deal of conversation about the proposed development at the time of the rezoning. At that time, the petitioner made an attempt, which had not been finalized, to gain access for the property to Red Mile Road through an adjoining Professional Office property. The subject property had never had access to Red Mile Road before, but that access was seen as desirable. The adjoining neighborhood supported the zone change, predicated largely on whether or not that access could occur, and the provision that access to the neighborhood would be restricted for emergency uses only. Following the Planning Commission's approval of the zone change request, but prior to being heard by the Urban County Council, the petitioner was able to finalize obtaining the Red Mile Road access. The Urban County Council decided not to have a public hearing on the request, but went ahead and approved it based upon the Commission's recommendation.

The final development plan was later received, with the primary access shown to Red Mile Road, and a restricted, fire-gate type access proposed to Devonshire Avenue. Mr. King stated that, when the plan went through the review process, there were comments from the Divisions of Fire & Emergency Services and Traffic Engineering, as well as the Planning staff, stating a preference for having the Devonshire Avenue access open, rather than restricted. The developer then filed a revised plan, depicting the Devonshire Avenue access as open and unrestricted. However, because that filing was a development plan, there was no notice required to the adjoining properties, and no objections had been made to the restricted access at the zone change hearing. When neighbors and Council members who had been involved in the prior discussion found out that that access had changed, there was much concern expressed. With that in mind, concern about transparency in the Planning processes, and concern that people feel that, when decisions are made they are respected, Mr. King requested a meeting between the Planning staff and the Divisions of Traffic Engineering and Fire & Emergency Services. After discussing the issue of the Devonshire Avenue access, those parties decided that, although there was a preference for an open access at that location, there was no objection from anyone to restricting the access, as understood by the neighborhood and the Council.

Mr. King stated that, in the interest of transparency of the process and since the plan that was before the Commission the day they acted had had that restricted note taken off of it, and the Subdivision Committee members had seen it without the restriction, he requested that this plan be placed back on the docket to explain the situation to the Commission members before he certified it. He said that, if the restricted access is acceptable to the Commission, it will be a development that is in agreement with the understanding of the neighborhood and Council members.

Petitioner Representation: Steve Ruschell, attorney, was present representing the petitioner. He stated that Mr. King's rendition of events was totally accurate. The petitioner is pleased with how the process has worked, and would like to congratulate Mr. King and his staff on their diligence. Mr. Ruschell said that the petitioner was in agreement with the conditions for approval previously placed on the plan, and requested approval.

Commission Comments: Mr. Penn said that he had been under the assumption that the plan that was approved along with the zone change request, which included the restricted access, was the plan that would be followed. He was surprised when the final development plan appeared before the Commission without that access, and said that he would like to commend Mr. King and the staff for bringing it back to them. Mr. Penn said that, if the Planning Commission approves a plan along with a rezoning request, then that should be the plan that is followed, unless there is some significant reason why that cannot happen.

Mr. Vaughn asked Mr. King what action should be taken on the plan. Mr. King answered that, for clarification's sake, the action should re-affirm the 13 original conditions approved by the Planning Commission on the final development plan in February, with the addition of a #14, indicating the access to Devonshire Avenue to be a restricted access with gates, to the approval of the Division of Fire and Emergency Services.

Action: A motion was made by Mr. Penn, seconded by Ms. Whitman, and carried 8-0 (Godfrey, Holmes, and Mahan absent) to re-affirm the previous approval of DP 2008-19, with the original 13 conditions, adding a new condition #14 to read as follows: "The access to Devonshire Avenue shall be a restricted access with gates, to the approval of the Division of Fire & Emergency Services."

- V. **ZONING ITEMS** - The Zoning Committee met on Thursday, March 6, 2008, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Ed Holmes, Frank Penn, Lynn Roche-Phillips, 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. WOODALL REALTY COMPANY, LLC, ZONING MAP AMENDMENT & MAGNA ENTERTAINMENT CORP. (AMD.) ZONING DEVELOPMENT PLAN

- a. MAR 2008-2: WOODALL REALTY COMPANY, LLC (3/27/08)* - petition for a zone map amendment from a Planned Neighborhood Residential (R-3) zone to a Light Industrial (I-1) zone, for 13.63 net and gross acres, for property located at 2040 Sandersville Road (a portion of).

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan recommends Medium Density Residential for the subject property which, at this location, consists of 13 acres of undeveloped property. The petitioner proposes I-1 zoning in order to allow a vehicular storage facility in conjunction with the adjacent asphalt transfer station.

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

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

- The originally proposed athletic facilities at this location allowed a significant and necessary land use buffer between the adjacent industrial uses and the residential uses (which have been constructed) and the church. This land use buffer was the main justification for the approval of the residential subdivision and church on the property when this area was part of a larger overall zone change in the area. Industrial zoning is now proposed closer to those residential uses, without a land use buffer. Such a buffer is necessary, rather than a landscape buffer.
 - The effects of the proposed zoning and uses on the now existing residential uses and the adjacent church need to be further evaluated. The operational use of the lot, dealing with environmental, noise, and light pollution, still needs to be identified.
 - The existing property is heavily restricted through conditional zoning, but no conditional zoning restrictions are now proposed as a part of this request.
- b. ZDP 2008-05: MAGNA ENTERTAINMENT CORPORATION (AMD.) (3/27/08)* - located at 2040 Sandersville Road.
(Sherman/Carter/Barnhart)

Note: The purpose of this amendment is to delete the proposed athletic facility layout and create one industrial lot.

The Subdivision Committee Recommended: **Referral**. There were questions regarding the landscape buffer and relationship to the adjacent residential and recreational uses.

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

1. Provided the Urban County Council rezones the property I-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Environmental Planner's approval of environmentally sensitive areas.
8. Denote: There shall be no development of the property until the Planning Commission approves a final development plan.
9. Correct Planning Commission certification note.
10. Place site statistics in a box.
11. Correct required tree canopy percentage number.
12. Delete note number 9.
13. Denote that the parking lot will be paved.
14. Discuss lighting and fence security requirements.

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15. Discuss landscape buffer and relationship to adjoining single family and recreational uses.
16. Discuss detention basin relative to quality of water runoff.

Zoning Presentation: Mr. Emmons presented the revised staff report, briefly orienting the Commission to the location of the subject property. He distributed to the Commission members a packet of staff exhibits. In orienting the Commission members to the location of the property, Mr. Emmons noted that, although the property has a Sandersville Road address, it has no frontage on that road, but rather has access to Jaggie Fox Way. That roadway is planned to connect to Georgetown Road, through the subject property, as a collector street at some time in the future.

Mr. Emmons referred to the 2007 Comprehensive Plan, explaining that the subject property is recommended for Medium Density residential use, or 5-10 dwelling units per acre. The petitioner proposes to rezone the subject property in order to use it as a vehicle storage yard, which would be a conditional use and would require the approval of the Board of Adjustment; and to construct some storage buildings, which would be considered accessory uses to the adjacent asphalt transfer station. Mr. Emmons noted that, should this rezoning be approved, the status of the vehicular storage yard use may need further review at the time of a final development plan.

The staff drafted their revised report based upon the submission of a revised development plan, which attempted to address some of their concerns, on which the original recommendation of postponement was based. However, the staff reviewed the revised development plan, and is now recommending disapproval of this request.

Mr. Emmons stated that there was a lengthy zoning history on the subject property. The 13 acres that are before the Commission today were originally considered for rezoning as part of a 60-acre parcel, including the existing residential subdivision, the Imani Baptist Church property, and a homeowners' association lot. The entire property was requested for an R-3 zone, to be used for a residential development. The Planning Commission disapproved that request. Another developer then submitted an early rehearing request, in an attempt to rezone the property to R-3 before the usual one-year waiting period had elapsed. That proposal included approximately 70 dwelling units in the Konner Woods subdivision area; the Imani Baptist Church property; and an outdoor recreational facility that was proposed in the area of the subject property. Mr. Emmons entered into the record as an exhibit the staff report and the minutes for EFR 2003-2: Greenview Development Company, LLC.

Mr. Emmons said that the proposed outdoor recreational facility was one of the major reasons for the Planning Commission's granting of that early filing request. He read the following from the reasons for approval from the final report for MAR 2003-36: Greenview Development Company, LLC, which was sent to the Urban County Council following the Planning Commission's recommendation of conditional approval of that rezoning request:

- "b. The athletic facilities proposed provide a beneficial land use buffer from adjoining industrial uses for both the church and the residential properties planned for the remainder of the subject property."

There were several conditional zoning restrictions that were placed on the overall 60-acre property at the time, including spacing requirement, denoting that residential uses had to remain a certain distance away from the existing industrial uses.

Referring to the staff exhibit packet, Mr. Emmons said that he had included a page from the Zoning Ordinance that had been marked up to depict the uses that would be allowed on the subject property, if it were not to be used as an outdoor athletic facility.

Mr. Emmons stated that, when reviewing a zone change request, the staff must first consider whether or not that request is in agreement with the Comprehensive Plan. Since the 2007 Comprehensive Plan changed the recommended use for the subject property to Medium Density Residential, essentially acknowledging the 2003 rezoning, the requested I-1 zoning cannot be said to be in agreement with the Comprehensive Plan.

State law allows the Planning Commission to recommend approval of a zone change request if the existing zoning is inappropriate and the proposed zoning is more appropriate, so the staff reviewed the petitioner's request for appropriateness of the requested I-1 zoning at this location. The staff found that the existing R-3 zone can be found to be appropriate for the subject property, as there are several uses, in addition to the outdoor recreational facility, that could be built on the property. Any one of those uses would be more appropriate than the requested I-1 use, while still providing an important land use buffer between the heavy industrial uses and the Konner Woods subdivision. The staff also found that the requested I-1 zoning is inappropriate, since they believe that construction of industrial uses on the subject property would bring them too close to the existing residential area.

Mr. Emmons said that the Planning Commission also had the ability to grant a rezoning request if there had been an unanticipated change of an economic, physical, or social nature that had changed the basic character of the area. Although the staff recognizes that the recreational facility that was originally proposed will not be built, and that could be construed as a social or economic unanticipated change since the 2007 Comprehensive Plan, there has been no physical change on the subject property.

Mr. Emmons displayed a rendered copy of the revised development plan depicting the subject property, including the landscape buffer proposed by the petitioner. The revised plan did include an increased landscape and land use buffer, but the staff still believes that it would not provide adequate buffering for the residential properties. The existing HOA lot varies in size from 130' feet at its narrowest point, to just over 300' at its widest point; the average width of that lot is 215'. The petitioner's proposed buffer is approximately 100' feet wide along the boundary with the residential properties on Polk Circle, along the church property and the A-U zoned land, the buffer is proposed to be approximately 90' wide. With regard to the landscaping proposed for the buffer, the petitioner has depicted a berm with trees, with a passive recreational trail extending throughout the buffer area. Mr. Emmons denoted on the graphic rendering a red line, which indicated the nearest point at which residential uses could be constructed in relation to the industrial uses, as required by the conditional zoning restrictions which were approved for the property in 2003. He explained that, when the subject property was proposed for an outdoor recreational facility, the entire area would have served as a land use buffer between the industrial and residential uses.

Mr. Emmons stated that the staff had been unable to find a reason on which to base an approval recommendation for this rezoning request. Therefore, the staff is recommending disapproval, for the following reasons:

1. The proposed Light Industrial zoning is not in agreement with the 2007 Comprehensive Plan, which recommends Medium Density Residential for the subject property, defined as residential development of 5-10 dwelling units per net acre.
2. The existing Planned Neighborhood Residential (R-3) zone is appropriate, and the proposed Light Industrial (I-1) zone is inappropriate for the subject property, for the following reasons:
 - a) The originally proposed athletic facilities at this location allowed a significant and necessary land use buffer between the adjacent industrial uses and the already constructed residential uses, as well as the church. This land use buffer was the main factor in the approval of the residential subdivision to the north of the subject property when this area was part of a larger overall zone change.
 - b) The proposed Light Industrial (I-1) zone would authorize incompatible uses too near the adjacent existing residential subdivision. The applicant's proposed buffer between the proposed industrial and residential is insufficient and thus is inappropriate.
3. Even though the anticipated recreational facility is no longer proposed in the existing R-3 zone, and could be cited as an unanticipated economic or social change since the adoption of the 2007 Comprehensive Plan, it is not a change that has "substantially altered the basic character of [the] area." There has been no physical change in the property since the adoption of the 2007 Comprehensive Plan that would justify the proposed rezoning to I-1. Regardless, it does not mean the proposed Light Industrial zoning has become an appropriate zone for the subject property. There are many other uses that could be located in an R-3 zone that would be more appropriately sited next to residential uses than what is proposed and that would provide a suitable land use buffer from the industrial uses to the west/southwest.

Mr. Emmons concluded by displaying several aerial photographs of the subject property and surrounding residential and industrial areas.

Commission Questions: Mr. Aten asked if the petitioner had provided any information with regard to the intensity of the proposed industrial uses on the subject property. Mr. Emmons answered that, on the revised development plan, the petitioner had included several buildings and parking areas. He added that Mr. Martin could provide further information when he presented the corollary development plan.

Mr. Cravens asked why there could only be 100 units constructed in the Konner Woods subdivision. Mr. Emmons responded that there is an existing conditional zoning restriction, which applies to the entire 60-acre parcel that was originally rezoned, that limits residential development to 100 units for the entire property. All 100 of those lots have been created at this time, and most of the houses have been constructed. Mr. Cravens asked why no additional units could be built on the subject property. Mr. Emmons answered that, in their original report, the staff had indicated that there were four residential units still unplatted on the 60-acre property. During their research for their revised report, the staff discovered that all of the 100 lots that are allowed under the conditional zoning restrictions have been platted; therefore, no further residential units can be added to the site. However, there are a number of other uses, such as the originally proposed recreational facility, that could locate on the subject property within the existing R-3 zone.

Development Plan Presentation: Mr. Martin presented the corollary preliminary development plan, further orienting the Commission to the location of the subject property. This revised plan depicts a 50,000 square-foot warehouse; storage bays; a steam building to clean trucks; and a paved vehicle parking area, as well as two proposed accesses to Jaggie Fox Way. The new proposed access would line up with the existing access to the asphalt transfer facility across Jaggie Fox Way.

Mr. Martin noted that the petitioner's original plan included only one large vehicle storage area, with no buildings. In addition to the proposed new buildings, the revised development plan also includes a larger landscape buffer area, with a passive recreational trail. That trail is proposed to connect to an existing trail system through the Konner Woods subdivision.

Mr. Martin stated that the Subdivision Committee recommended referral of this plan to the full Commission, subject to 16 conditions as listed on the agenda. With regard to the conditions, Mr. Martin said that #14 could be changed to read: "Resolve lighting and fence security requirements at the time of the final development plan," based on the revisions made to this plan. Condition #16 represents a concern that the staff had about stormwater detention, as no provision was made for it on the subject property on the original plan. That plan proposed that runoff be directed towards the existing Konner Woods subdivision detention basin, and the staff was concerned about runoff from industrial uses being channeled into a residential basin. The revised plan now depicts a detention basin solely for the subject property, and the petitioner would be required to meet all the appropriate standards with regard to water quality. Condition #16 could therefore be deleted. Mr. Martin said that condition #15 pertains to the proposed landscape buffer, and the staff's concerns about the possible inadequacy of that buffer for the adjoining residential area.

Commission Questions: Mr. Aten asked what the criteria were for an "adequate" landscape buffer. Mr. Martin answered that the staff is concerned that the proposed landscape buffer may not be large enough to protect the adjoining residential area if an industrial use were located in such close proximity. The landscape area depicted on the revised plan is an improvement, but the staff still does not believe that it is adequate. Mr. Martin noted that condition #16 has remained as a discussion item; however, should the Commission choose to approve this request, then that condition should resolve itself. Mr. Aten asked if the staff had developed any criteria for sound screening. Mr. Martin responded that they had not, but added that, at one point during the discussions with the petitioner, a fence was proposed as part of the buffer area. He said that sound screening was one of the staff's concerns about the buffer area. Mr. Aten said that he would like to see data with regard to the proposed impact of sound waves from the subject property on the adjoining properties with regard to different sizes and types of buffering materials. He said that vegetation does not screen sound.

Mr. Aten asked if the vehicle storage area proposed for the subject property would have the same landscaping requirements as any other parking area. Mr. Martin answered that it is not technically considered a parking lot, but will have vehicular use area requirements for screening and lighting. The proposed landscape buffer would exceed those requirements. Mr. Aten asked if interior landscaping would be required for the parking area as well. Mr. King answered that the proposed vehicle storage area is considered an industrial storage yard, and the ordinances that govern interior tree and planting requirements do not apply in this situation.

Mr. Cravens asked Mr. Martin to provide the acreage of the adjoining Konner Woods subdivision. Mr. Martin answered that the residential area is approximately 20 acres, or one-third of the entire 60-acre original parcel. Mr. Cravens said that it seemed extreme to require that the entire subject property be used as a buffer area, when it is nearly the same size as the area it would be buffering. Mr. Martin replied that the staff is concerned about the close proximity of industrial uses to the residential area.

Petitioner Presentation: Jon Woodall, attorney, was present representing the petitioner. He said that his father and brother are partners with him in Woodall Realty, which is the petitioner in this request; their construction company did the site work on the subject property for the former owners. The petitioner was therefore familiar with the circumstances of the property, and became aware that the proposed outdoor recreational facility was not going to be built. The company that owns the asphalt transfer station is a client of Mr. Woodall's, and had inquired about the fate of the subject property. At that point, the petitioner began to work with the owners of the subject property and American Founders Bank, in an attempt to pursue development of the property. This rezoning request was filed in order to further that attempt to develop the property.

Mr. Woodall stated that the original development plan depicted the entire property being developed with very little buffering. He said that he believes that the entire rezoning process, including the Technical, Subdivision, and Zoning Committee meetings, is designed to provide both the petitioner and the public with information they may not already have. It was at the time of the Zoning and Subdivision Committee meetings that the petitioner learned that there were concerns about the proposed development from the Imani Baptist Church. The petitioner discovered then that the church had been involved with the former developer, and had had some input on the proposed development of the property. The church had not been aware that the subject property was proposed to be rezoned, so they felt "blindsided" when they received their notification of the petitioner's intent. The petitioner then began a series of meetings with representatives of the church, as well as the Planning staff, in an attempt to make this request more "palatable."

With regard to Mr. Cravens' questions about the number of residential units on the property, Mr. Woodall stated that the residential section of the original 60-acre parcel is built out; there were 100 lots allowed under the conditional zoning restrictions, and they have all been platted, with most of the homes constructed. Following discussions with the staff about their concerns with regard to the buffering of the industrial uses, the petitioner worked with the asphalt transfer station to lay out a conceptual development plan, without spending a great deal of money at this time, that would give the staff a good idea of the uses that may eventually locate on the property. Mr. Woodall said that none of those uses are absolutely necessary, and may be changed to address the staff's concerns. The owners of the asphalt transfer station did, however,

indicate that they would need to be able to use at least eight acres of the subject property. The landscape buffer as depicted on the revised development plan comprises approximately five acres of the property, which the petitioner believes is a significant improvement over the original plan.

Mr. Woodall noted that the petitioner has not received, at any point during this process, any comments or objections against the proposed uses from the residents of the Konner Woods subdivision, perhaps because they would prefer those uses over athletic fields, which were originally proposed for the property. The proposed use would affect the nearby residents mostly on weekdays, and would have little impact at all during the winter, when little activity occurs in the asphalt industry. Athletic facilities, however, would be intensely used during the evenings and on weekends, particularly during the summer months.

The petitioner disagrees that the requested I-1 zoning is inappropriate for the subject property; rather, they would argue that I-1 zoning is very appropriate, particularly given the use proposed for the property. The petitioner believes that the failure of the proposed athletic facility to locate there does constitute a significant economic change in the area. Although the staff suggested several other possible uses for the property under the current residential zoning, the petitioner does not believe that community centers, nursery schools, kindergartens, or any of the other uses allowed would be feasible for the subject property due to the size of the property and its proximity to the asphalt transfer station.

The main basis of the disagreement between the petitioner and the staff is the size of the landscape buffer: the staff requested a 200' buffer, but the petitioner believes that requiring a buffer equal to one-half the size of the property would not make sense. Mr. Woodall stated that the petitioner is willing to work with the staff to address the conditions on the development plan, including the size of the landscape buffer. He concluded by saying that the petitioner believes that the proposed use is appropriate for the subject property, and will benefit the community.

Citizen Opposition: Reverend Willis Polk, pastor of Imani Baptist Church, stated that the church leadership became aware of the petitioner's intent to rezone the subject property in January of 2008. He said that, although the church has had some meetings with the petitioner, they are still "in the dark" about the details of the proposed use of the subject property.

Reverend Polk explained that, by the time their facility is completed, Imani Baptist Church will have made an investment of approximately \$16 million in their property and the surrounding area. They are concerned, therefore, about the use of the subject property, since it is located so close to the church. The church worked with the previous owner of the subject property to allow sufficient space for the formerly proposed athletic facility. They were pleased with that proposed use, because it meshed so well with their own facility and many of the sports programs that they offer for children and youth.

Reverend Polk stated that he has met with the church executive committee, and they are concerned enough about the proposed industrial use so near their property that they would not feel comfortable supporting this project.

Commission Questions: Mr. Penn asked if the church members were resistant to the requested I-1 zoning of the property, or the proposed industrial use. Reverend Polk answered that the term "storage facility" is of concern to the church, since they do not know what that use may entail. They were working in partnership with the former owner to make that portion of the property an asset to their facility, and are now disappointed that that partnership has broken down. Mr. Penn asked if adequate buffering would be a concern no matter what type of use located on the subject property, to which Reverend Polk responded that it would.

Mr. Aten asked if the impacts described for the proposed use of the subject property would be adverse to the operations of the church. Reverend Polk responded that the proposed athletic facility was being designed so as to be a complement to the church, so it is now difficult for the church to envision an industrial use located so close to their soccer and t-ball fields and tennis courts. Mr. Aten asked if the church would be in favor of the industrial use if it could be designed so that they could neither hear it nor see it from their property. Reverend Polk answered that he was not sure, since he did not know how high or large the landscape buffer would have to be in order to screen the subject property from the church completely. He noted that it was not the appearance or noise that were of major concern to the church members, so much as the presence of an industrial use so close to the church and its outdoor athletic areas.

Cynthia Bryant, 2009 Polk Lane, stated that, although she is a resident of the Konner Woods subdivision, she did not receive notification of this rezoning request. She said that she is also a member of Imani Baptist Church, and, as such, was attracted to the neighborhood by its proximity to the church property. She said that there are many families with young children in the Konner Woods subdivision, and she does not believe that the proposed industrial uses would be compatible with the surrounding community.

Jim Fisher, 5458 Dedman Lane, stated that he is a member of Imani Baptist Church. He said that he had spoken to several residents of the Konner Woods subdivision who informed him that they did not receive notice of this rezoning request. He believes that any industrial uses on the subject property that would support the existing asphalt transfer station would be unattractive, and he does not believe that a landscape buffer would help mitigate the noise and fumes. Mr. Fisher stated

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

that the church had worked with the former owner of the subject property to the extent that all of the roofing on the subject property would match the church's roofing materials. He believes that an industrial use on the subject property would be the worst possible option for the church and the surrounding neighborhood.

Commission Questions: Ms. Roche-Phillips asked if the petitioner proposes an expansion of the existing asphalt transfer station. Mr. Woodall answered that the petitioner does not propose an expansion of the existing asphalt transfer station use; rather, the subject property would be used only to store equipment and materials that are currently stored at the transfer station. He stated that the petitioner is willing to discuss conditional zoning restrictions in order to limit the I-1 uses that could locate on the subject property. The petitioner would also be willing to work with the church with regard to architectural details and building materials on the subject property. The proposed use would not be active on Sundays, so it should have little impact on the church.

Ms. Roche-Phillips asked if the expansion of the asphalt facility will create any additional jobs. Mr. Woodall replied that he was sure that construction jobs would be created by the expansion of the facility, but was not sure if the facility itself would be hiring any additional staff.

Mr. Cravens asked about the height of the equipment and trucks that are proposed to be stored on the subject property. Mr. Woodall answered that they are approximately 10 to 12 feet in height. Mr. Cravens asked if the proposed berm will be taller than the equipment, to which Mr. Woodall responded that it would. Mr. Cravens stated that, if the materials to construct the entire five-acre berm must be brought in to the property, that could prove to be a significant expense for the petitioner. Mr. Woodall noted that the entire five acres will not be used for the berm, as space has also been allotted for a passive recreational trail.

Ms. Roche-Phillips asked, since there is no interior landscape requirement for the vehicle storage area, if the petitioner would be required to comply with the landscape requirements for buffering. Mr. King answered that the petitioner would be required to provide the perimeter requirements of the zone, as well as vehicular use area screening. He said that the petitioner's proposed buffering appears to exceed those requirements expressed in the Ordinance, with the berm and the extra plantings.

Staff Rebuttal: Mr. Emmons stated that he did not have any rebuttal comments. He noted, however, with regard to Ms. Bryant's comments, that her address fell outside the required 400' notification area for this rezoning request. All of the notices within that boundary were sent, with additional notification letters going to the three nearest neighborhood associations: Highlands, Highland Park, and Oakwood. There is no neighborhood association on record currently for the Konner Woods subdivision itself.

Petitioner Rebuttal: Mr. Woodall said that he had no rebuttal comments.

Citizen Rebuttal: Reverend Polk said, with regard to Mr. Woodall's comment about church activities occurring mostly on Sundays, that a church facility the size of the one currently being constructed typically hosts some type of activity every day of the week. He noted that the church will have two regulation-size soccer fields; two outdoor basketball courts; tennis courts; three baseball fields; a planned summer camp program, which is expected to enroll 250 to 300 children this summer; and a child care facility. The church plans to make good use of their new facility seven days a week.

Commission Questions: Mr. Day stated that he would have preferred for the president of the asphalt transfer station to be present at this meeting. At the public hearing on the 2003 rezoning of the property, Mr. Day recalled, that individual spoke in opposition to the rezoning of the property to R-3, stating that the asphalt facility would be a bad neighbor to any residential uses adjacent to its property. That statement was one of the main reasons that the Planning Commission recommended a land use buffer between the subject property and the Imani Baptist Church and Konner Woods subdivision properties. Mr. Woodall said that he would agree that asphalt emulsion and petroleum by-product storage, both of which are I-2 uses, would be inappropriate on the subject property. However, the subject property is proposed for equipment and light storage, not for typical I-2 uses.

Mr. Penn asked what other uses may be allowed on the subject property if it were to remain zoned R-3. He said that he did not believe that residential uses would be appropriate for the subject property. Mr. Emmons stated that most of the allowable uses have a "temporary" quality in common, meaning that they are not facilities that would be continuously in use. Some of those uses include: outdoor recreational facilities; cemeteries; churches; schools for academic instruction; kindergartens; community garages; community centers, etc. The temporary nature of those uses would be more compatible with the adjoining residential area. The conditional zoning restrictions that were approved with the original development plan were designed both to provide a land use buffer for the residential area, and promote uses that would be in keeping with the character of the neighborhood and Imani Baptist Church. Mr. Penn said that the subject property is bordered on two sides by industrial zoning, and he does not believe that kindergartens, nursery schools, or community centers would want to locate there.

Mr. Cravens asked whether, if the property were to remain zoned R-3 and one of those other allowable uses located there, if any buffering or landscaping would be required. Mr. Emmons responded that all of the remaining allowable R-3 uses for the subject property would be considered conditional uses, and would be subject to approval by the Board of Adjustment. Although there are no Zoning Ordinance requirements for screening or landscaping between two properties with the same zoning designation, the BOA could require landscaping if they so chose.

Mr. Aten asked if the staff's main concern in this case is the transition between the two different uses. He said that it was important to analyze the potential level of activity for each possible use, and then focus on mitigating any adverse circumstances, such as excessive noise. Mr. Emmons said that the staff had considered those issues, and they believe that the existing R-3 zoning would allow uses that could act as a transition between the residential and industrial uses. Mr. Aten said that sometimes it is more important to consider the relationships between the land uses than the actual zoning designations. He added that he believes that this proposal could be viable, if it was designed properly.

Mr. Vaughn stated that it seems as though the mitigating situation in this case would be the proposed screening, and what may be visible or audible to the adjoining properties from the subject property. He noted that, should the Commission choose to approve this request, they would need appropriate findings of fact for approval.

Zoning Motion: A motion was made by Mr. Cravens, seconded by Ms. Whitman, and carried 5-3 (Day, Richardson, and Vaughn opposed; Godfrey, Holmes, and Mahan absent) to approve MAR 2008-2, for the following reasons:

1. A major justification for previously rezoning the property from I-1 to R-3 was the land use buffer from the athletic facilities which were going to be constructed on the subject property.
2. The beneficial land use buffer that would have been provided by the previously proposed athletic facilities is no longer going to be provided.
3. The subject property is bounded on three sides by parcels already being used for industrial purposes so that I-1 zoning is consistent with the uses in close proximity.

Legal Comment: Mr. Gardner stated that, should the Commission choose to limit the allowable uses on the subject property via conditional zoning, one of the members who voted in favor of the motion would need to amend the motion to include those conditional zoning restrictions. Based on the evidence provided, the Commission could consider landscape buffering to require a minimum amount and/or certain types of landscaping; and any uses that they would like to prohibit. As previously passed, the motion would permit any I-1 use on the subject property.

Chairman Vaughn stated that the Commission would like to take a recess in order to allow time for Mr. Gardner and the staff to discuss possible conditional zoning restrictions.

Note: Chairman Vaughn declared a recess at 3:08 p.m. The meeting reconvened at 3:22 p.m.

Chairman Vaughn asked that the staff assist the Commission in determining the appropriate conditional zoning restrictions for the subject property.

Mr. Emmons stated, with regard to the landscape buffer, that the staff suggested the following language for an appropriate restriction for the buffer area:

Under the provisions of Article 6-7 of the Zoning Ordinance, the property shall be subject to the following use and buffering restrictions:

- a) A minimum 100' buffer and landscape area adjacent to the existing R-3 zone, containing a 10' tall earthen berm and passive recreational use, shall be provided.

Mr. Emmons said that the staff is not recommending that the Commission address the specific planting material for the buffer through conditional zoning, as that question could be handled as a development plan issue. He suggested adding a condition to the development plan to read: "Resolve the landscaping and vegetative material at the time of the final development plan."

With regard to the prohibited uses, Mr. Emmons read through and explained, when necessary, all the uses allowed in the B-4 (the zone in which industrial-type uses are first permitted) and I-1 zones, and the Commission indicated that they would like to prohibit the following through conditional zoning:

- b) Prohibited Uses:
 1. Major automobile and truck repair, except as accessory to storage of vehicles on the property
 2. Tire re-treading and re-capping
 3. Machine shop

4. Kennels, animal hospitals, or clinics
5. Truck terminals and freight yards
6. Circuses and carnivals
7. Railway
8. Crematory

These restrictions are appropriate and necessary to protect the existing residential neighborhood and church from the proposed industrial use, and to maintain an adequate land use buffer in the immediate area.

Commission Questions: Ms. Whitman asked for the Zoning Ordinance definition of a truck terminal. Ms. Wade displayed the following definition from Article 1-11 for the Commission:

“TRUCK TERMINAL – Land and buildings used as a relay station for the transfer of freight from one truck to another, or for the parking or storage of semi-trailers for longer than 24 hours, including tractor and/or trailer units. The terminal cannot be used for permanent or long-term accessory storage for principal land uses at other locations. A truck terminal may include areas for the washing or repair of trucks associated with the terminal, but does not include an establishment solely for the display, rental, sale and minor repair of trucks.”

Mr. King noted, as an example of a truck terminal, the large facility located on Blue Sky Parkway. He said that those uses are very intensely paved, with some storage, are intensely lit, and typically have nonstop activity.

Mr. King suggested that the Commission would not need to consider any of the I-1 conditional uses, since the Board of Adjustment would have the discretion to decide on any of those.

Motion to Amend the Original Motion: A motion was made by Ms. Roche-Phillips, seconded by Ms. Whitman, and carried 8-0 (Godfrey, Holmes, and Mahan absent) to amend the original recommendation to include the conditional zoning restrictions as listed above.

Development Plan Action: A motion was made by Mr. Cravens, seconded by Ms. Roche-Phillips, and carried 8-0 (Godfrey, Holmes, and Mahan absent) to approve ZDP 2008-05, subject to the original 13 conditions; changing #14 to read: “Resolve lighting and fence security requirements;” changing #15 to read: “Landscaping and vegetative material in the approved buffer to be determined at the time of the final development plan;” and adding a new #16 to read: “Addition of conditional zoning restrictions.”

VI. COMMISSION ITEMS

- A. PFR 2008-1** – Public Facility Review requested by the U. S. Postal Service for disposal of surplus property at 1088 Nandino Boulevard (Council District 2).

Staff Presentation: Ms. Rackers presented the staff report, briefly orienting the Commission to the location of the subject property. She said that the Real Estate Specialist for the Eastern Facilities Division of the U. S. Postal Service submitted a letter to the Division of Planning on February 19th, which requires that this item be considered by the Planning Commission prior to April 19th, since Kentucky state law requires that public facility reviews be conducted within 60 days. The subject property is currently leased from the Post Office to Thornton Oil, which has constructed a building and some parking that encroach over the property line.

With regard to the Comprehensive Plan recommendation, Ms. Rackers stated that it recommends Other Public Uses for the subject property. Those are defined as uses that benefit the public, contribute to the general welfare of the community, or are service-oriented. Since the subject property is surplus land, unused by the Post Office and leased by Thornton Oil, the subject property can no longer be considered to be in compliance with the Comprehensive Plan recommendation. There are no Goals and Objectives that are either in support of this request or in opposition to it. The following four Goals, however, do generally relate to the disposal of the property and its purchase by Thornton Oil:

Goal #2, Objective G: Pursue greater planning, cooperation and coordination with entities of state and federal government to ensure that governmental land uses not subject to local zoning control to not unduly burden Urban County Government infrastructure or adversely impact land uses in the general vicinity.

Goal #17, Objective B: Protect and enhance the overall quality of the stream and river corridors and aquifer recharge areas in both urban and rural areas.

Goal #17, Objective E: Ensure that there is a continual source of potable groundwater from the Royal Spring water system for Scott and Fayette County residents.

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

Goal #19, Objective E: Comply with the Clean Air Act of 1990.

Ms. Rackers stated that there are two issues of concern with this request: first, that there are easements on the property upon which the building encroaches. There is a 25-foot gas, planting, and utility easement in one location on the property, and another easement through which runs a sanitary sewer line, in another location. There is no LFUCG equipment located in that sanitary sewer easement at this time, but LFUCG has the right to use the easement should the need arise. The Division of Water and Air Quality has asked that the sanitary sewer easement remain as it is today, and that no buildings be constructed over it. The other easement will require encroachment agreements from the utility companies and LFUCG before the sale of the property can be closed.

Ms. Rackers said that the staff is recommending approval of this request, because the subject property is surplus land that is no longer being used by the Post Office, and because there are no Comprehensive Plan Goals and Objectives that are in opposition to it. That recommendation of approval is subject to the appropriate encroachment agreements being obtained, and a consolidation plat, which has been drafted but not submitted.

Commission Question: Mr. Vaughn asked if there was any non-conformity with this lot. Ms. Rackers answered that there was not.

Action: A motion was made by Ms. Roche-Phillips, seconded by Mr. Penn, and carried 8-0 (Godfrey, Holmes, and Mahan absent) to approve PFR 2008-1, for the reasons provided by staff.

- B. INITIATION REQUEST: ARTICLE 19 FLOODPLAIN CONSERVATION & PROTECTION** – the staff is requesting that the Planning Commission initiate a text amendment to change the effective date of the Flood Insurance Rate Maps, due to the acceptance of the new maps by FEMA. This text amendment would be similar to a text amendment reviewed by the Commission a couple of years ago.

Director Comments: Mr. King stated that the staff has received new flood insurance rate maps. The Planning Commission approved the initiation of this text amendment once before, but the federal government delayed the implementation of the maps, so the staff had to undo what was recommended before. Now, under the requirements of the program, the Planning Commission needs to initiate another text amendment, which will entail the changing of a few dates and some words in the Ordinance, in order to put the new maps into effect.

Mr. Emmons said that the only other possible change to Article 19 at this time may be the addition of detention basins. He said that, if that item becomes too controversial, it could be removed from the proposed text amendment.

Commission Question: Mr. Vaughn asked when the Commission will see this text amendment, should they choose to initiate it. Mr. Emmons answered that it should be on the agenda in April.

Action: A motion was made by Mr. Penn, seconded by Ms. Whitman, and carried 8-0 (Godfrey, Holmes, and Mahan absent) to initiate the requested text amendment to Article 19 of the Zoning Ordinance.

- C. INITIATION OF TEXT AMENDMENTS TO ALLOW THE DIVISION OF ENGINEERING TO ISSUE GRADING PERMITS** – The staff will request, on behalf of the Division of Engineering, that the Planning Commission initiate a text amendment to Articles 5 and 20 of the Zoning Ordinance and Article 4 of the Land Subdivision Regulations to transfer authority for the issuance of grading permits from the Division of Building Inspection to the Division of Engineering. The amendment would also require approval of Erosion Control Plans for single and two-family dwellings, and issuance of a grading permit prior to issuance of a demolition or wrecking permit by the Division of Building Inspection.

Director Comments: Mr. King stated that these text amendments would allow the Division of Engineering to issue grading permits. There has been some conversation about this request, which would basically transfer the issuance of grading permits (currently done by the Division of Building Inspection upon the recommendation of the Division of Engineering) to the Division of Engineering itself. Mr. King noted that any action of the Commission today would simply initiate the request, and the text amendments themselves would come back before the Planning Commission in a public hearing at a later date.

Ms. Wade stated that the staff originally discussed this issue with the Planning Commission at their November work session, and there was a great deal of discussion. The Division of Engineering has since met with the Home Builders Association, and they worked out an agreement to strike a small portion of the text that was discussed with the Commission at that work session. Under building permits for single family and two-family dwellings, the Division of Engineering had a sign-off requirement with the Division of Building Inspection for those lots, under which they would approve grading permits and erosion control permits. The language requiring the Division of Engineering to approve a grading permit for single family and two-family lots has been proposed to be removed, but approval of an erosion control plan would still be required.

Action: A motion was made by Mr. Cravens, seconded by Mr. Penn, and carried 8-0 (Godfrey, Holmes, and Mahan absent) to

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initiate the requested text amendments to Articles 5 and 20 of the Zoning Ordinance and Article 4 of the Land Subdivision Regulations.

VII. STAFF ITEMS – Staff items, if any, will be considered at this time.

- A. AMENDMENT TO ARTICLE 8-5 OF THE COMMISSION'S BY-LAWS FOR TIME LIMITATIONS** – The staff has prepared a draft amendment to Article 8-5 of the Commission's By-Laws to establish time limits for presentations concerning proposed zoning changes, Comprehensive Plan amendments, development and/or subdivision plans. If adopted, the staff will reprint the By-Laws and revise this information on the Commission's future agendas.

Mr. King stated that this by-law change is proposed to develop a consent agenda procedure for subdivision and development plan items, and to put in place enforceable time limits for zoning matters and presentations on staff, the petitioner, and objectors. Provisions would be made for anyone who felt that the time allowed would not be sufficient to petition the Chair to allow additional time for their presentation. Mr. King distributed to the Commission members a draft of the proposed changes to the by-laws, and noted that it represents the changes that the Commission suggested after their conversation at the work session. Staff recommends that the Commission adopt this amendment to their by-laws.

Commission Question: Mr. Vaughn asked, with regard to the consent agenda, when that procedure would be adopted. Mr. King answered that it would hopefully be implemented as soon as possible, perhaps as early as the April 10th meeting. The staff will attempt to develop a procedure that they are comfortable with, and will inform the applicants during the Committee process next week. If the staff is not able to implement the procedure by April 10th, it will surely be ready by the May meeting. It may take a month or two, however, to smooth out any difficulties that arise as a result of the new procedure.

Mr. Vaughn stated that he would like to thank the Commission members for their patience with these issues, and noted that the question of time limits was being considered long before he assumed the position of Chair of the Commission.

Action: A motion was made by Mr. Day, seconded by Ms. Whitman, and carried 8-0 (Godfrey, Holmes, and Mahan absent) to approve the revisions to the by-laws as provided by Mr. King.

VIII. AUDIENCE ITEMS – Citizens may bring a planning related matter before the Commission at this time for general discussion or future action. Items that will NOT be heard are those requiring the Commission's formal action, such as zoning items for early re-hearing, map or text amendments; subdivision or development plans, etc. These last mentioned items must be filed in advance of this meeting in conformance with the adopted filing schedule.

IX. MEETING DATES FOR MARCH, 2008

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	April 3, 2008
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	April 3, 2008
Subdivision Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	April 10, 2008
Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	April 17, 2008
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	April 23, 2008
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	April 24, 2008

X. ADJOURNMENT

TM/JWE/BJR/BS/src

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