

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

February 23, 2023

- I. **CALL TO ORDER** - The meeting was called to order at 1:30 p.m. in the Council Chamber, 2nd Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Larry Forester, Chair; Ivy Barksdale (arrived at 1:35 pm), Zach Davis, Anthony de Movellan, Janice Meyer, Robin Michler, Judy Worth, Bruce Nicol, and Headley Bell. Absent: Frank Penn and Graham Pohl.

Planning staff members present: Jim Duncan, Director; Traci Wade, Autumn Goderwis Tom Martin, Hal Baillie, Daniel Drum, Cheryl Gallt, and Bill Sheehy. Other staff members present were: Stephen Parker, Division of Traffic Engineering; Vaughan Adkins, Division of Engineering; Captain Greg Lengal, Division of Fire and Emergency Services; and Tracy Jones, Department of Law.

- II. **APPROVAL OF MINUTES** – There were no new minutes to approve.

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

1. **PLN-MAR-22-00016: REALTY UNLIMITED BLUE GRASS, LLC** – a petition for a zone map amendment from a Single-Family Residential (R-1C) zone to a Townhouse Residential (R-1T) zone, for 0.520 net (0.836 gross) acres, for property located at 940 Higbee Mill Road.

Staff Comment – Mr. Hal Baillie stated the applicant is seeking an indefinite postponement in order to deal with issues with the right-of-way.

Action – A motion was made by Mr. de Movellan and seconded by Mr. Bell and carried 8-0 (Barksdale, Penn and Pohl absent) to indefinitely postpone **PLN-MAR-22-00016: REALTY UNLIMITED BLUE GRASS, LLC**.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, February 2, 2023 at 8:30 a.m. The meeting was attended by Commission members Ivy Barksdale and Judy Worth. Committee members present were Vaughan Adkins, Division of Engineering; and Stephen Parker, Division of Traffic Engineering. Staff members in attendance were: Traci Wade, Autumn Goderwis, Tom Martin, Cheryl Gallt, Hal Baillie, Autumn Goderwis, Sam Castro, Paula Schumacher, Greg Lengal, Division of Fire and Emergency Services; Tracy Jones and Brittany Smith, Department of Law; and Doug Burton, Division of Engineering. The Committee made recommendations on plans as noted.

General Notes

The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission:

1. *All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.*
2. *All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.*

- A. **NO DISCUSSION ITEMS** – Following requests for postponement or withdrawal, items requiring no discussion will be considered.

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

- B. DISCUSSION ITEMS** – Following requests for postponement, withdrawal and no discussion items, the remaining items will be considered.

The procedure for these hearings is as follows:

- Staff Report(s), including subcommittee reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) proponents (10 minute maximum OR 3 minutes each)
 - (b) objectors (30 minute maximum OR 3 minutes each)
- Rebuttal & Closing Statements
 - (a) petitioner's comments (5 minute maximum)
 - (b) citizen objectors (5 minute maximum)
 - (c) staff comments (5 minute maximum)
- Commission discusses and/or votes on the plan.

1. Development Plans

- a. PLN-MJDP-22-000085: SOUTH END PARK, UNIT 2 (DAVIS PARK) (2/26/23)* - located at 525 & 530 DE ROODE STREET, LEXINGTON, KY

Council District: 11

Project Contact: Prime Engineering

Note: The purpose of this plan is to depict new multi-family development and a workforce development building.

The Subdivision Committee Recommended: **Postponement.** There are concerns regarding compliance with Article 28-4 of the Zoning Ordinance.

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Landscape Examiner's approval of landscaping and landscaping buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Greenspace planner's approval of the treatment of greenways and greenspace.
9. Division of Fire, Water control Office's approval of the locations of fire hydrants, fire department connections, and fire service features.
10. Division of Waste Management's approval of refuse collection locations.
11. Documentation of Division of Water Quality's approval of Capacity Assurance Program requirements, prior to plan certification.
12. Denote compliance with Article 15-7 for infill/redevelopment design requirements and Article 28-6 for building feature requirements.
13. Clarify proposed use of MU-2 building in site statistics.
14. Discuss compliance with MU-2 uses regarding the proposed workforce building.
15. Discuss compliance with zero-foot setback requirement per Article 28-4 of the Zoning Ordinance.

Staff Presentation – Mr. Tom Martin oriented the Planning Commission to the location of the subject property and noted that the property is being developed for affordable housing. Mr. Martin highlighted the surrounding area, and stated that the area has many mixed uses and that the reason for a previous postponement was to ensure compliance for development in a mixed-use zone. Mr. Martin indicated that the applicant had added a dwelling unit to the property and that the applicant is making a workforce training center for the government on the property.

Mr. Martin said that the mixed-use zoning has a zero setback for a portion of the building, and locates the building near the sidewalk. Mr. Martin stated that in addition to the workforce training facility the applicant is proposing an apartment complex, which will have 2 and 3 bedroom units for a total of 132 bedrooms in 3-story structures.

Mr. Martin concluded by stating that the Staff is recommending approval for this development plan.

Applicant Comment – Steve Garland, engineer for the applicant, stated they are in agreement with the conditions and Staff recommendations and could answer any questions from the Commission.

* - Denotes date by which Commission must either approve or disapprove request, unless agreed to a longer time by the applicant.

Commission Comment – Mr. Nicol wanted to commend the applicant for their efforts and providing affordable housing in Lexington.

Action – A motion was made by Ms. Worth and seconded by Mr. Nicol and carried 9-0 (Penn and Pohl absent) to approve PLN-MJDP-22-000085: SOUTH END PARK, UNIT 2 (DAVIS PARK) with the 12 revised conditions.

- V. **ZONING ITEMS** - The Zoning Committee met on February 2, 2023, at 1:30 p.m. to review zoning map amendments and Zoning Ordinance text amendments. The meeting was attended by Commission members Bruce Nicol, Zach Davis, Larry Forester, Graham Pohl, and Robin Michler. Staff members present were; Traci Wade, Autumn Goderwis, Hal Baillie, Tom Martin, Daniel Crum, Sam Castro, and Bill Sheehy; as well as Tracy Jones Department of Law.

A. **ABBREVIATED PUBLIC HEARINGS ON ZONING MAP AMENDMENTS**

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

1. **GOODWILL INDUSTRIES OF KENTUCKY, INC ZONING MAP AMENDMENT & BURKE, HOCKENSMITH & MAGGARD LOT 1 (AMD) ZONING DEVELOPMENT PLAN**

- a. **PLN-MAR-22-00029: GOODWILL INDUSTRIES OF KENTUCKY, INC** – a petition for a zone map amendment from a Highway Service Business (B-3) zone to a Light Industrial (I-1) zone, for 0.823 net (1.037 gross) acres, for property located at 1793 Atoma Drive.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2018 Comprehensive Plan, Imagine Lexington, seeks to provide flexible yet focused planning guidance to ensure equitable development of our community's resources and infrastructure that enhances our quality of life, and fosters regional planning and economic development. This will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World.

This petitioner is proposing the Light Industrial (I-1) zone in order to construct a donation and distribution center. As proposed, the development will include a single building where individuals will be able to donate goods, which will then be sorted and distributed to the various retail establishments in the area. No retail is proposed on site.

The Zoning Committee Recommended: **Approval with the addition of conditional zoning restrictions.**

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

1. A restricted Light Industrial (I-1) zone is in agreement with the 2018 Comprehensive Plan's Goals and Objectives, for the following reasons:
 - a. The proposed project will supply jobs, resources, and services to the most vulnerable of Lexington and will allow for the maximization of Goodwill's reach to geographically underserved areas (Theme A, Goal #4, Theme A, Goal #4.b).
 - b. The proposed facility will also provide jobs for residents, through the development of a warehousing and distribution center, which will also act as a convenient location for residents to donate unneeded items to support Goodwill's mission (Theme C, Goal #1.a; Theme C, Diversity Policy #2).
 - c. The proposed rezoning will allow for the development of community services, in the form of a donation drop-off location and distribution that will provide for the quality of life needs for Lexington's sometimes overlooked citizens (Theme D, Goal #2.c).
2. The justification and corollary development plan are in agreement with the policies and development criteria of the 2018 Comprehensive Plan.

- a. The proposed rezoning meets the criteria for Site Design, Building Form and Location, as the development will provide a industrial development that provides connectivity for pedestrian mobility, and promotes the preservation and maintenance of the environmental aspects of the site.
 - b. The proposed rezoning meets the criteria for Transportation and Pedestrian, as development will provide pedestrian access along the lot frontage.
 - c. The proposed rezoning meets the criteria for Greenspace and Environmental Health as it will increases tree canopy coverage, and protects the natural features on the site, including the Royal Springs Aquifer.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions are recommended via conditional zoning:
- a. Prohibited Uses:
 - i. Self-storage warehousing.
 - ii. Billboards.
 - iii. Outdoor storage
 - iv. All above ground and underground storage tanks.
 - v. On-site disposal of any hazardous waste materials.
 - vi. Mining of non-metallic minerals and/or radium extraction.

These restrictions are appropriate and necessary for the following reasons:

1. To protect the appearance of the Georgetown corridor as a gateway into Lexington, while promoting employment that is appropriate along Lexington's freight corridor.
 2. The Planning Commission has adopted a Wellhead Protection Plan for the Royal Spring Aquifer, which sets forth a plan to ensure a continual source of potable groundwater from Royal Spring for Georgetown and Scott County, and to preserve the integrity of surface waters. This plan has been adopted by both the Planning Commissions of Fayette and Scott Counties, and has most recently been approved by the Kentucky Division of Water on 8/28/03.
 3. The proposed restrictions within the Wellhead Protection Area will better protect the surface and groundwater in the area by prohibiting some uses and requiring "best management practices" for other uses that could potentially be harmful to the wellhead, thus ensuring greater compliance with the Royal Spring Wellhead Protection Plan.
 4. This recommendation is made subject to approval and certification of PLN-MJDP-22-00084: Burke, Hockensmith and Maggard, Lot 1 (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.
- b. **PLN-MJDP-22-00084: BURKE, HOCKENSMITH, & MAGGARD, LOT 1 (AMD)** (2/26/2023)* - located at 1793 ATOMA DRIVE, LEXINGTON, KY
Council District: 2
Project Contact: Vision Engineering

Note: The purpose of this amendment is to depict the size and location of the proposed stadium and training facility, in support of the requested zone change from Interchange Service Business (B-5P) zone to Highway Service Business (B-3) zone.

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

1. Provided the Urban County Council approves the zone change to I-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of street cross-sections and access.
4. Urban Forester's approval of tree preservation plan.
5. Department of Environmental Quality's approval if environmentally sensitive areas.
6. Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Division.
7. United States Postal Service Office's approval of kiosk locations or easement.
8. Revise typical parking space dimensions.
9. Dimension loading and compactor areas.
10. Denote canopy height.
11. Discuss access to Atoma Drive.
12. Discuss Placebuilder criteria.

* - Denotes date by which Commission must either approve or disapprove request, unless agreed to a longer time by the applicant.

Staff Presentation – Mr. Hal Baillie presented the staff report and recommendations for the zone change application. He displayed photographs of the subject property and the general area. He stated that the applicant was seeking a zone map amendment from a Highway Service Business (B-3) zone to a Light Industrial (I-1) zone, for 0.823 net (1.037 gross) acres, for property located at 1793 Atoma Drive. The applicant is proposing a donation and distribution center, which will sort and distribute donated goods to various retail establishments in the area. Mr. Baillie indicated that no retail was being proposed on the site.

Mr. Baillie concluded his presentation stating that Staff is recommending approval because the requested zone, justification and development plan are all in agreement with the Comprehensive Plan.

Staff Development Plan Presentation – Mr. Tom Martin oriented the Planning Commission to the location of the subject property, and reiterated Mr. Baillie's statement that this Goodwill would not have a retail element. Mr. Martin stated that the applicant addressed numerous conditions including adding pedestrian access to the front of the building and denoting canopy height in the front.

Mr. Martin concluded his presentation by stating that Staff is recommending approval of the development plan and could answer any questions.

Applicant Comment – Dick Murphy, attorney for the applicant, stated that they are in agreement with the revised conditions and are happy to answer any questions.

Action – A motion was made by Mr. Bell and seconded by Mr. de Movellan and carried 9-0 (Penn and Pohl absent) to approve PLN-MAR-22-00029: GOODWILL INDUSTRIES OF KENTUCKY, INC for reasons provided by Staff.

Action – A motion was made by Mr. Bell and seconded by Mr. Nicol and carried 9-0 (Penn and Pohl absent) to approve PLN-MJDP-22-00084: BURKE, HOCKENSMITH, & MAGGARD, LOT 1 (AMD) with the revised conditions presented by the conditions by the staff.

B. FULL PUBLIC HEARINGS ON ZONE MAP AMENDMENTS - Following abbreviated hearings, the remaining petitions will be considered.

The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) Proponents (10 minute maximum OR 3 minutes each)
 - (b) Objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
 - (a) Petitioner's comments (5 minute maximum)
 - (b) Citizen objectors (5 minute maximum)
 - (c) Staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s).

Note: Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

1. DUTCH BROS, LLC ZONING MAP AMENDMENT AND WILLARD DAVIS SUBDIVISION (DUTCH BROS – SOUTH LIMESTONE) ZONING DEVELOPMENT PLAN

- a. **PLN-MAR-22-00015: DUTCH BROS, LLC** (1/26/2023)* – a petition for a zone map amendment from a Planned Neighborhood (R-3) zone to a Neighborhood Business (B-1) zone, for 0.2916 net (0.3516 gross) acres, for property located at 507 S Limestone (a portion of).

COMPREHENSIVE PLAN AND PROPOSED USE

The 2018 Comprehensive Plan, Imagine Lexington, seeks to provide flexible yet focused planning guidance to ensure equitable development of our community's resources and infrastructure that enhances our quality of life, and fosters regional planning and economic development. This will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World.

* - Denotes date by which Commission must either approve or disapprove request, unless agreed to a longer time by the applicant.

The applicant is seeking to construct a two-lane drive-through facility to support a proposed coffee shop use at this location. As proposed, the coffee shop use will have two access points on Colfax Street, with the existing access point along South Limestone being closed. Speakers and order points for the drive-through facility will be provided near the middle of the site.

The coffee shop will be a single story, 950 square-foot building that will be oriented towards South Limestone, with a pick up window located to the rear. While the building will have a walk up window to serve pedestrians along the South Limestone frontage, dine-in service will not be provided.

The Zoning Committee Recommended: **No Recommendation.**

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

1. The requested rezoning to Neighborhood Business (B-1) is not in agreement with the 2018 Comprehensive Plan for the following reasons:
 - a. The requested rezoning is not in agreement with the Goals, Objectives, and Policies of the 2018 Comprehensive Plan.
 1. The proposed development does not seek to construct at a density or intensity that might be reflective of a major corridor in Lexington, and is out of context with the surrounding area (Theme A, Goal #2.b).
 2. The low density and single-user vehicle focus detract from the effectiveness of mass transit in this area (Theme D, Goal #1.c).
 3. The design of the site may reduce the effectiveness of the overall transportation system by introducing additional vehicular conflicts on Colfax Street and South Limestone (Theme D, Goal #1).
 4. The application encourages the use of single-occupancy vehicles and will increase greenhouse gas emissions at this location (Theme B, Goal #2.d).
 - b. The proposed development is not in agreement with 2021 Imagine Nicholasville Road plan.
 1. The proposal does not increase the intensity of land uses along the corridor (Goal #1).
 2. The scale of the proposed development does is not in accordance with the height design requirements for the Urban Center Typology.
 - c. The proposed development does not meet the intent of the Medium Density Non-Residential /Mixed Use Development Type as established on page 272 of the Comprehensive Plan.
 - d. The requested rezoning is not in agreement with the Development Criteria of the 2018 Comprehensive Plan. The following Development Criteria are not being meet with the proposed rezoning.
 1. A-DS4-2: New construction should be at an appropriate scale to respect the context of neighboring structures; however, along major corridors, it should set the future context in accordance with other Imagine Lexington corridor policies and Placebuilder priorities.
 2. A-DS7-3: Development should create context-sensitive transitions between intense corridor development and existing neighborhoods.
 3. C-L17-1: Developments should create mixed-use neighborhoods with safe access to community facilities, greenspace, employment, businesses, shopping, and entertainment.
 4. DPL7-1: Stakeholders should be consulted to discuss site opportunities and constraints prior to submitting an application.
 5. C-LI6-1: Developments should incorporate multi-family housing and walkable commercial uses into development along arterials/corridors.
 6. A-EQ3-2: Development on corridors should be transit-oriented (dense & intense, internally walkable, connected to adjacent neighborhoods, providing transit infrastructure & facilities)
 7. D-CO2-1: Safe facilities for all users and modes of transportation should be provided.
 8. D-CO2-2: Development should create and/or expand a safe, connected multi-modal transportation network that satisfies all users' needs, including those with disabilities.
 9. B-SU11-1: Green infrastructure should be implemented in new development.
2. There have been no major unanticipated changes of an economic, social or physical nature in the area of the subject property since the adoption of the 2018 Comprehensive Plan.
3. The applicant has not provided evidence as to why the current zoning is inappropriate and the proposed zoning is appropriate for this location.

- b. PLN-MJDP-22-00057: WILLARD DAVIS SUBDIVISION (DUTCH BROS – SOUTH LIMESTONE) (1/26/2023)***
- located at 127 COLFAX STREET and 507 SOUTH LIMESTONE
Council District: 3

* - Denotes date by which Commission must either approve or disapprove request, unless agreed to a longer time by the applicant.

Project Contact: CMW, INC.

Note: The purpose of this plan is to depict the size and location of the proposed restaurant with associated drive-through, parking, and circulation, in support of the requested zone change from Planned Neighborhood Residential (R-3) zone to Neighborhood Business (B-1) zone.

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

1. Provided the Urban County Council approves the zone change to B-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of street cross-sections and access.
4. Urban Forester's approval of tree preservation plan.
5. Addressing office's approval of addresses.
6. Greenspace planner's approval of the treatment of greenways and greenspace.
7. United States Postal Service Office's approval of kiosk locations or easement.
8. Depict property perimeter screening between B-1 and R-1E zones.
9. Correct zoning labels for adjacent properties.
10. Denote canopy along South Limestone as part of the structure (solid line).
11. Discuss Placebuilder criteria.

Staff Presentation – Mr. Daniel Crum presented the staff report and recommendations for the zone change application. He displayed photographs of the subject property and the general area. He stated that the applicant was seeking a zone map amendment from a Planned Neighborhood Residential (R-3) zone to a Neighborhood Business (B-1) zone, for 0.2916 net (0.3516 gross) acres, for a portion of a property located at 507 S Limestone. Mr. Crum stated that the applicant is proposing a drive-through facility for a coffee shop.

Mr. Crum indicated that the subject property was on the South Limestone corridor, a significant roadway into Lexington, and due to its placement, has a unique traffic pattern that is not conducive for the applicant's proposed use. Mr. Crum stated that the previous use was an Arby's restaurant with an accessory drive-through that was constructed in 1974 and closed in 2019.

Mr. Crum displayed the proposed development plan and noted that the applicant has stated that the subject property caters to the traveling public and highlighted the proposed drive-through facilities, as well as some pedestrian access on the other side of the property. Additionally, Mr. Crum stated that the applicant is removing an access point on South Limestone and that all of the vehicular access would be located on Colfax Street. Further, Mr. Crum explained that the double drive-through proposed by the applicant would bring in more traffic and noise near a residential area and the intersection does not meet access standards for an egress point relative to South Limestone. Mr. Crum also stated that the stacking of cars in the drive-through could lead to further congestion on the site itself, as well as on Colfax Street and South Limestone.

Mr. Crum reviewed the applicant's Development Type and Place Type and indicated that Corridor Place Type was appropriate, but the Medium-Density Non-Residential/ Mixed-Use Development Type selection did not hold any merit. To give more context, Mr. Crum depicted the types of businesses on the South Limestone corridor and indicated that this use would be the only single-story and vehicular focused in the area. Mr. Crum noted the Imagine Nicholasville Road Corridor study and stated that the goal of that study is to increase density in a meaningful way. The applicant's proposal for a low-density, one story, auto-centric site is not in agreement with that mission. Additionally, Mr. Crum indicated that this application did not meet a number of goals and objectives of the Comprehensive Plan.

Mr. Crum concluded his presentation by stating that Staff is recommending disapproval and could answer any questions from the Planning Commission.

Commission Questions – Mr. Nicol asked if residential units could be developed in the B-1 zone. Mr. Crum indicated that the applicant could provide dwelling units in addition to business on the site into the proposed zone. Mr. Nicol also stated that this was complicated because more density leads to more business, but in turn leads to more congestion and traffic issues and that this is basically a decision of what amount of density is practical.

Mr. de Movellan asked how the requested zone change differs from the current zone, as to what the impact would be on Nicholasville Road. Mr. Crum answered that a lot of the problems with the site come from the conditional use (extend to zone line 50 feet), and that the impact from just a B-1 zone would be different without the conditional use.

Staff Development Plan Presentation – Ms. Autumn Goderwis oriented the Planning Commission to the location of the subject property, and highlighted a number of points made by Mr. Crum. The development plan is a drive-through development with some pedestrian access, eight parking spots, and the applicant is removing an access point on South Limestone. Ms. Goderwis indicated that the Subdivision Committee recommended approval if the zone change were to be approved, subject to the traditional sign-offs on most development plans. Ms. Goderwis stated that the applicant would need to depict the required property perimeter screening at the back of the property and the applicant would need to correct some clean-up items.

Ms. Goderwis concluded stating that Staff is recommending approval and could answer any questions from the Commission.

Commission Questions – Mr. Michler asked about the size of the vehicular use area and how much of that was due to our own regulations. Ms. Goderwis stated that was an interesting question and this application was submitted before the new parking regulations. The previous regulations would have asked for five parking spaces, and the applicant is proposing eight parking spaces. Additionally, Ms. Goderwis stated that the applicant is showing significantly more stacking area than what the regulations require.

Applicant Presentation – Mr. Bruce Simpson, attorney for the applicant, started off with a few observations from his perspective. Mr. Simpson stated while he applauded the focus of the Comprehensive Plan, it was not intended to micromanage every property in the City of Lexington. Mr. Simpson asked the Planning Commission to look at this application in the context of the size and location of the property, its historic use, and if there will be any other commercial development on the subject property that would result in intensification of commercial uses.

Mr. Simpson stated that the Planning Commission would hear from Brad Boaz, design professional for the project, who would review a report that would show that the estimated traffic would be one-third less with the proposed coffee shop use than if the original restaurant use was restarted. Mr. Simpson stated that the applicant thinks that this use is more compatible with the neighborhood and residences than any restaurant.

Mr. Simpson indicated that Staff and himself were basically on the same page on their justification, except for the car-centric aspect of the development. Mr. Simpson stated that while it is a laudable goal to not be so car-centric, in the here and now, cars are the biggest mode of transportation and Lexington does not have the infrastructure like other high density areas.

Mr. Simpson said that from his perspective the applicant is not changing the context of the use, they are reducing the impact to the residential neighborhood, decreasing the conflict to pedestrians, and the proposed development is close by to existing University of Kentucky businesses. Mr. Simpson continued his presentation by showing a map of the nearby properties that are owned by the University of Kentucky, and stated that the subject property is unlikely to be redeveloped by the University. Mr. Simpson stated that if this zone change is not approved, the subject property is going to stay vacant and an eyesore for this neighborhood.

Mr. Simpson stated that he believes this is a worthy zone change for approval, and if the Planning Commission looks at the context, that the practical and reasonable application of the Comprehensive Plan is to approve this plan.

Commission Questions – Mr. Michler asked about the assertion that the traffic impact would be one-third less than the existing land use, and what the model that was used for that number. Mr. Brad Boaz, engineer for the applicant, indicated that the number has to do with the amount of square footage, either constructed or proposed. The Arby's drive-through had a larger square footage than the 1,000 square foot coffee shop and because of the lesser square footage, there would be one-third the amount of cars.

Mr. Michler asked Mr. Simpson about the justification for the Place-Type. To Mr. Michler, it seems like they are almost using a Campus Place-Type instead and he was not sure if a drive-through fits into that. Mr. Simpson stated that they were not and that the Comprehensive Plan is broader than just the Place-Type and to take into account his opening statement about the context.

Mr. Michler also asked if the applicant had made a case that a drive-through belongs in this Place-Type and Mr. Simpson stated that he had, because of its historic use.

Public Comment – Amy Clark, 628 Kastle Road, urged the Planning Commission to disapprove this application because it introduces conflict and hazard to the pedestrians in a pedestrian-friendly area.

Applicant Rebuttal – Mr. Simpson summarized their justification stating that they cited all the Goals and Objectives of the Comprehensive Plan and that this was a historic use for the site, but their use would have less traffic. Mr. Simpson stated that this project should be approved and he asked for the Planning Commission's support.

Commission Questions – Mr. Bell asked Mr. Boaz to clarify his comment about a nearby South Broadway coffee shop. Mr. Boaz stated he was referencing the Starbucks on South Broadway. Mr. Boaz stated it was comparable and nearby and that is why he mentioned it as an example.

Mr. Bell also asked Mr. Boaz if the double lane, proposed by the applicant is comparable to Chick-Fil-A and if that is a similar model. Mr. Boaz stated that the double lane was becoming a nationwide model and that multiple franchises are adapting that model.

Additionally, Mr. Bell asked how the franchise has adapted to the demand and how that could help on Colfax Street. Mr. Terry Owens, representative for Dutch Bros., stated that the drive-through has runners that are outside in the lane taking orders, you can order via the app and pick-up your order in the drive-through, as well as walk-up to the window. In regard to the question about Colfax Street, Mr. Owens stated that he did not have a good answer for that because he has never run into a situation quite like that before, because traffic is always flowing.

Ms. Worth asked Mr. Boaz what time of day the samples were taken, and Mr. Boaz indicated that it was sampled at different times all the way across the board.

Mr. Baillie stated that the applicant has not submitted a Traffic Impact Study to Staff and they have only shown that within their presentation today.

Mr. Davis asked if you could turn left off of Colfax Street. Mr. Crum indicated you could, but it was an uncontrolled median lane.

Public Rebuttal – Amy Clark, 628 Kastle Road, stated her concern about people looping around the neighborhood on Colfax Street, because it does not connect to another street.

Staff Rebuttal – Mr. Crum stated that the numbers that were presented by the applicant having to do with Traffic Impact were not provided until today during the public hearing. Mr. Crum indicated that the applicant could use the existing drive-through if they wanted to, but what they are asking for is a dramatic expansion of that drive-through facility. Additionally Mr. Crum stated that it was up to the applicant to prove that they are in compliance with the Comprehensive Plan, and as the staff report indicates, they have not done so. They have misapplied the Development Criteria, they has misapplied the Goals and Objectives of the Comprehensive Plan and he emphasized that this is not a Medium-Density development type.

Mr. Crum concluded his presentation by emphasizing that Staff is strongly against this zone change because it is wildly out of context.

Mr. David Filiatreau, Traffic Engineering, stated that it was not fair to compare the Arby's to the expected use and that assertion by the applicant was a generalization. Additionally, Mr. Filiatreau wanted to clarify that the Arby's was not open during the morning rush.

Commission Questions – Mr. de Movellan asked what the concerns the members on the Zoning Committee had during their committee meeting, since there was no recommendation.

Ms. Wade indicated that the Zoning Committee did not have a quorum that day and that was the reason for a lack of recommendation.

Ms. Meyer stated that she was not opposed to a coffee shop in this location, she is just concerned with the type of coffee shop and thinks there is some type of coffee shop that is not as car-centric as this one.

Mr. de Movellan stated that he appreciates Dutch Bros. and their proposal, but sees a lot of difficulty with this application and has a problem with the vastness of how it conflicts currently.

Action – A motion was made by Mr. Nicol (Penn and Pohl absent) to approve PLN-MAR-22-00015: DUTCH BROS, LLC. No second was made to the motion and the motion failed.

Action – A motion was made by Ms. Meyer and seconded by Ms. Worth and carried 8-1 (Penn and Pohl absent) to disapprove PLN-MAR-22-00015: DUTCH BROS, LLC for reasons provided by Staff.

Action – A motion was made by Ms. Meyer and seconded by Ms. Worth and carried 8-1 (Penn and Pohl absent) to indefinitely postpone PLN-MJDP-22-00057: WILLARD DAVIS SUBDIVISION (DUTCH BROS – SOUTH LIMESTONE).

2. EASTLAND LEGACY CENTER, INC ZONING MAP AMENDMENT & EASTLAND SHOPPING CENTER (AMD) ZONING DEVELOPMENT PLAN

- a. **PLN-MAR-22-00024: EASTLAND LEGACY CENTER, INC** – a petition for a zone map amendment from a Neighborhood Business (B-1) zone to a Light Industrial (I-1) zone, for 1.80 net (2.22 gross) acres, for property located at 1301 Winchester Road (a portion of).

COMPREHENSIVE PLAN AND PROPOSED USE

The 2018 Comprehensive Plan, Imagine Lexington, seeks to provide flexible yet focused planning guidance to ensure equitable development of our community's resources and infrastructure that enhances our quality of life, and fosters regional planning and economic development. This will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World.

This petitioner is proposing the Light Industrial (I-1) zone in order to construct flexible warehouse space for the operation of shops of specialty trade. The proposed development would be comprised of two buildings to include nine potential areas for special trade contractors to operate. The proposed development would be situated in a portion of the property that is currently being utilized for parking, as well as a small portion of the current shopping center.

The Zoning Committee Recommended: Approval with the addition of conditional zoning restrictions.

The Staff Recommends: Approval, for the following reasons:

1. A restricted Light Industrial (I-1) zone is in agreement with the 2018 Comprehensive Plan's Goals and Objectives, for the following reasons:
 - a. The proposed amendment will help to eliminate the vacant and underutilized employment space of the subject property by providing job opportunities to Lexington residents in general and particularly for residents who live near the subject property along the Winchester Road corridor (Theme A, Goal #2.a; Theme E, Goal #1.c).
 - b. The proposed building design and character will be in keeping with the context of the surrounding business structures (Theme A, Goal #2.b).
 - c. The proposed rezoning will strengthen efforts to develop a variety of job opportunities that can lead to upward prosperity and impact individuals from various economic and educational backgrounds (Theme C, Goal #1.a).
2. The justification and corollary development plan are in agreement with the policies and development criteria of the 2018 Comprehensive Plan.
 - a. The proposed rezoning meets the criteria for Site Design, Building Form and Location, as the development will create an industrial development that provides connectivity for bike and pedestrian mobility through the site, and infills an area of parking to provide a wider range of employment opportunities, which are compatible within the area.
 - b. The proposed rezoning meets the criteria for Transportation and Pedestrian, as development will provide pedestrian access throughout the site and better delineate the internal vehicular circulation for this portion of the site

- c. The proposed rezoning meets the criteria for Greenspace and Environmental Health as it will increase tree canopy coverage, and reduce impermeable surface.
 - 3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions are recommended via conditional zoning:
 - a. Prohibited Uses:
 - i. Self-storage warehousing.
 - ii. Outdoor Storage.
 - b. Fencing in the front yard along Industry Road shall be limited to four (4) feet and barbed wire or razor wire are prohibited.
- These restrictions are appropriate and necessary for the following reasons:
- 1. To maintain agreement with the 2018 Comprehensive Plan by limiting those uses which have low employment opportunities.
 - 2. To maintain the context of the Eastland Shopping Center.

- 4. This recommendation is made subject to approval and certification of PLN-MJDP-22-00076: Eastland Shopping Center (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.

- b. **PLN-MJDP-22-00076: EASTLAND SHOPPING CENTER (2/26/2023)*** - located at 1301 WINCHESTER ROAD, LEXINGTON, KY
Council District: 1
Project Contact: Barrett Partners Inc.

Note: The purpose of this plan is to depict redevelopment of the property and remove a conditional zoning restriction in the Neighborhood Business (B-1) zone.

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

- 1. Provided the Urban County Council approves the zone change to I-1; otherwise, any Commission action of approval is null and void.
- 2. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers, and floodplain information.
- 3. Urban County Traffic Engineer's approval of street cross-sections and access.
- 4. Urban Forester's approval of tree preservation plan.
- 5. Greenspace planner's approval of the treatment of greenways and greenspace.
- 6. Department of Environmental Quality's approval if environmentally sensitive areas.
- 7. Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Division.
- 8. Dimension access points onto property.
- 9. Denote location for construction access.
- 10. Denote height of buildings in feet.
- 11. Denote uses on property.
- 12. Addition of tree inventory map.
- 13. Addition of record plat information.
- 14. Discuss proposed one-story building at intersection of Eastland Drive and Industry Road.
- 15. Discuss Placebuilder criteria.

Staff Presentation – Mr. Baillie presented the staff report and recommendations for the zone change application. He displayed photographs of the subject property and the general area. He stated that the applicant was seeking a zone map amendment from a Neighborhood Business (B-1) zone to a Light Industrial (I-1) zone, for 1.80 net (2.22 gross) acres, for property located on a portion of 1301 Winchester Road. Mr. Baillie indicated that the applicant is seeking the Industrial and Production Place-Type and the Industry and Production Non-Residential Development Type to construct 2 buildings for shops of special trade. Mr. Baillie indicated that these would be an appropriate Place-Type and Development-Type. Mr. Baillie noted a portion of a building on the property that is being proposed to be demolished as a part of this application.

Mr. Baillie stated that the applicant is seeking to fill in a large portion of the parking lot on the subject property and that many of these types of shopping centers are seeing greater amounts of infill than before. Additionally, Mr. Baillie indicated that the applicant is seeking to add a different use on the property.

* - Denotes date by which Commission must either approve or disapprove request, unless agreed to a longer time by the applicant.

Mr. Baillie continued his presentation by highlighting recommended conditional zoning restrictions, which include prohibiting self-storage warehousing, outdoor storage, and limiting fencing limited to four feet in the front yard along Industry Road, with no barbed and razor wire. Mr. Baillie stated the importance of these restrictions because they help maintain agreement with the Comprehensive Plan and help maintain the context of the Eastland Shopping Center.

Mr. Baillie concluded his presentation by stating that Staff is recommending approval of the zone change, and the applicant has provided justification for the change, and the staff recommends the mentioned conditional zoning restrictions.

Commission Questions – Ms. Meyer asked about the previous case, Goodwill Industries, having conditional zoning restrictions that prohibited all above ground and underground storage tanks and on-site disposal of hazardous waste and if those same conditions were considered for this application. Mr. Baillie stated that the Goodwill Industries application was located in the Royal Springs Aquifer and those restrictions were recommended for every industrial property within that area. Additionally, Mr. Baillie indicated that Staff does not have same justification for this site.

Staff Development Plan Presentation – Ms. Cheryl Gallt oriented the Planning Commission to the location of the subject property, and highlighted the access points, trees, parking lot and buildings. Ms. Gallt stated that the Subdivision Committee had recommended approval. Additionally, Ms. Gallt stated that since this was a preliminary development plan there would be a few clean-up conditions that include dimensions on the access point, the location of construction access, the height of the building, and to denote uses of the property.

Ms. Galt indicated that Staff was recommending approval and she could answer any questions or concerns.

Applicant Presentation – Wes Harned, attorney for the applicant, stated that they were pleased with the Staff's recommendation, but do not agree with Staff's restrictions to the property. Mr. Harned presented pictures of the surrounding properties highlighting fences that are above 4 feet in height, and arguing 4 feet is too restrictive and that taller than 6 feet is in line with the area and other properties with outdoor storage.

Mr. Harned also indicated that they are in agreement with the no razor or barbed wire restriction, they just need more than 4 feet of fence and would like outdoor storage given it is in line with what other properties are doing in the immediate area.

Mr. Harned went over the regulations for conditional zoning and stated that restrictions should be used thoughtfully and sparingly, and that no restriction could deprive the applicant of a reasonable use. Mr. Harned asserted that the conditional restrictions do just that.

Mr. Harned reaffirmed his appreciation for the Staff and their recommendation, but asked the Planning Commission to not add the conditional zoning restrictions of a 4 foot height limits for a fence and prohibition outdoor storage on the subject property.

Commission Questions – Mr. de Movellan stated that he did not see a fence on the development plan. He asked the applicant why they don't show that on the plan and if the fencing would enclose the development. Mr. Harned indicated that there is an intent to put a fence on the property, and there is already fencing along Industry Road as of now. The fence would be for security. Mr. Barrett, project designer for the applicant, noted that they did not want to limit themselves to a use restriction on the site that may or may not come into play. Mr. Barrett stated that the lack of a fence on the development plan is to allow more flexibility to a potential tenant.

Mr. Michler noted that the context of the area was more towards building space and not outdoor space and changing that changes the whole image of the property and asked if the rear yard would be subjected to the 4 feet restriction. Mr. Barrett indicated that was the case, but the outdoor storage restriction would not be allowed in the back if it was a prohibited use.

Public Comment – Amy Clark, 628 Kastle Road, suggested that the Planning Commission consider compatibility for the subject property with adjoining uses and development.

Staff Rebuttal – Mr. Baillie clarified a few of Mr. Harned's points about the fencing he showed at the various properties. Mr. Baillie stated that the fences that Mr. Harned displayed were side-yard and rear-yard fences, which are allowed to have higher fences. Mr. Baillie reiterated that there needed to be adequate transitions from one land use to another, and that the restrictions that Staff has recommended are thoughtfully applied and sparingly used. Additionally, Mr. Baillie pointed out that while the development plan is preliminary, the Planning Commission is acting on a zone change with the corresponding development plan and the Planning Commission can disapprove the change if a final development plan is drastically different.

Commission Questions – Ms. Worth stated that Mr. Baillie addressed the fencing, but asked for Mr. Baillie to clarify the reasons for the restrictions on outdoor storage. Mr. Baillie indicated that the applicant has not stated where they want the outdoor storage, specifically in the front yard or the rear yard of the property. Mr. Baillie also stated that the applicant's development plan does not allow any space for outdoor storage, and if the outdoor storage was towards the rear, there would be an issue with transition from an industrial zone to a neighborhood business zone.

Mr. Nicol asked for Mr. Baillie to explain how the Planning Commission could strike the outdoor storage restriction from the prohibited uses and if they could make it a condition of the final development plan. Mr. Baillie indicated that the Planning Commission could make that a development plan note if they wished. Mr. Bell asked if this was one of the newer infill projects in this area and if this would set a precedent for attracting and upgrading in this area. Mr. Baillie indicated yes to both, and stated that the precedent question is why there was not a bevy of conditional zoning restrictions.

Mr. Bell asked the owner of the property to give a history of his business. Mr. Brian Wood, owner of the property, stated that he had owned the shopping since 9/11/2001. Mr. Wood listed all the types of businesses that were in the shopping center, as well as his cooperation with LFUCG.

Mr. Bell asked how they can be flexible and allow for outdoor storage. Mr. Baillie indicated that the Planning Commission could keep the Staff recommended language on the 4 foot fences, but could allow for outdoor storage in the back.

Mr. Davis asked Mr. Wood if that was acceptable to him or if they needed taller fencing in the front yard. After further explanation, Mr. Wood indicated he would agree the fencing height restriction.

Action – A motion was made by Mr. Nicol and seconded by Mr. de Movellan and carried 9-0 (Penn and Pohl absent) to approve PLN-MAR-22-00024: EASTLAND LEGACY CENTER, INC with the Staff's justifications, but deleting the restriction on outdoor storage.

Action – A motion was made by Mr. Nicol and seconded by Ms. Worth and carried 8-1 (Penn and Pohl absent) to approve PLN-MJDP-22-00076: EASTLAND SHOPPING CENTER with Staff's recommendation of 14 revised conditions, and the removal of condition #15.

C. PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMENDMENTS

- 1. PLN-ZOTA-22-00019: AMENDMENT TO ARTICLE 8-2(D): ATHLETIC FIELDS AND STRUCTURES** – a petition for a Zoning Ordinance text amendment to allow athletic fields with lighting and loud speakers in the Agricultural Buffer (A-B) zone as a conditional use and to increase the allowable structure size from 10,000 sq ft to two percent of the lot.

INITIATED BY: SAYRE SCHOOL

PROPOSED TEXT: Copies are available from the staff.

The Zoning Committee Recommended: **Approval of the staff alternative.**

The Staff Recommends: **Approval of the staff alternative,** for the following reasons.

- The proposed amendment is reflective of the intent of the Agricultural Buffer (A-B) zone and allows for greater conformity with the allowable conditional uses within the Agricultural Rural (A-R) zone. Conditional uses near Blue Sky would have less impact because of development in existence along the Interstate interchange.

2. This text amendment is very limited in scope, and will not threaten the agricultural economy in the Rural Services Area.
3. The proposed amendment promotes the retention of larger lots within the Agricultural Buffer (A-B) zone, which would allow for an easier transition back to a traditional agricultural land used should a conditional use no longer be active.

Staff Text Amendment Presentation – Mr. Hal Baillie presented and summarized the staff report and recommendations for this text amendment. Mr. Baillie indicated that the applicant wanted to amend three aspects of the A-B zone, including increase the allowable square footage for conditional uses in the A-B zone, allow commercial indoor and outdoor recreational facilities adjacent to the Blue Sky Rural Activity Center(RAC), and allow lighting, loudspeakers and limited concessions adjacent to the Blue Sky RAC.

Mr. Baillie gave more context about the A-B zone, stating that it was created in 1999 with the an intent to preserve the rural character of the agricultural service area by establishing land that can serve as buffer areas between urban and agricultural land. Mr. Baillie presented a map and showed the seven areas of potential A-B zoning in our community, as well as the 22 currently zoned A-B properties, and noted the various acreages of the buffer areas. Mr. Baillie continued giving examples of the various principle and conditional uses in the A-B zone.

Mr. Baillie reviewed the proposed language by the applicant and stated that Staff thought this was an adequate increase in a buffer area between urbanized zones and adjacent agricultural land. Additionally, Mr. Baillie indicated that for the allowable amount of square footage for certain conditional uses, in the A-B zone, Staff recommends slightly different language than the applicant's. Stating staff recommends that a total of 2% of the square footage of the property, or 10,000 square feet, whichever is greater, shall be the maximum allowable for all structures proposed in the A-B zone. This allows for properties less than 11 acres to meet the current regulations.

Mr. Baillie concluded by stating that Staff is recommending approval of the Staff alternative text and could answer any questions from the Planning Commission.

Commission Questions – Mr. de Movellan asked about the calculation for the allowable square footage and if the softball fields and tennis courts are considered part of the calculation or is it indoor facilities as well. Mr. Baillie indicated that the square footage has to do with structures, and outdoor fields are not considered structures and do not count into that 10,000 square feet.

Mr. Davis asked for a refresher on if the applicant was nonconforming on their property without this text amendment and how large the parcel was. Mr. Baillie stated that the applicant had gone through the process of getting a conditional use for the non-commercial recreational facility, and indicated that the applicant had built more than they were allowed to on site and that the total site was 50 acres.

Mr. Davis also asked about the third justification in the staff report about the land returning to a “traditional agricultural land use should a conditional use no longer be active. Mr. Baillie responded that conditional uses are reviewed annually and should a property's conditional use be taken away or cease operation, the property would return to the principal primary uses for the zone. By promoting and maintaining large lots, the property could be more easily returned to agricultural land uses.

Mr. Nicol asked if this change in language would allow for better usage of the smaller vacant sites that are in the A-B zone. Mr. Baillie stated that he did not think any of these areas would be considered vacant or underutilized land. He said that this language would only impact larger lots.

Mr. Bell asked how worried Mr. Baillie was about the precedent this sets. Mr. Baillie indicated that this change allows for a little more use of the A-B zone exclusively and does not change anything in the A-R zone.

Ms. Worth asked if there was conversation from staff on putting in restrictions on the amount of hours for the lighting and loudspeakers and if that is anything the Planning Commission could do. Mr. Baillie responded that the Commission could add some restrictions when it comes to specific properties if it comes to the Board of Adjustment and/or Planning Commission, but that a text amendment was not the place to do that.

Mr. Michler asked if currently lighting and loudspeakers are allowed in the A-B zone and Mr. Baillie stated that they were not.

Applicant Presentation – Nick Nicholson, attorney for the applicant, stated that this application was not for a specific site, instead this is to add a use to the A-B zone that is already allowed in what should be a more restrictive A-R zone. Mr. Nicholson explained that the applicant wants to build a training facility that allows Sayre School to have a facility. Mr. Nicholson noted the location of the proposed facility on the property and wanted to make sure the Planning Commission was comfortable with what they are proposing on this site.

Mr. Nicholson emphasized the collaboration between Staff, stakeholders, and others involved to get this right, and have heard the criticism that the A-R zone is under attack by a so called “death by 1,000 ZOTA’s,” but that is not what is happening here. Mr. Nicholson stated that Sayre took the hardest, and most protective way to protect an agricultural zone. Mr. Nicholson stated that there are only four areas in Fayette County that this text amendment would effect. Mr. Nicholson said that the applicant understands the sensitivity of this text amendment, but what you are not seeing is a lot of neighbors coming out to complain. In fact, the applicant has letters of support from the neighbors for this text amendment.

Mr. Nicholson concluded his presentation stating that he agrees with the Staff’s alternative text and could answer any questions.

Commission Questions – Ms. Worth inquired as to the meaning of the text on proposed use #21. Mr. Nicholson stated he wanted to make sure that text was specifically connected to the sports fields and used the established language from the A-R zone.

Mr. Davis asked what percentage of the Fayette County this would affect and Mr. Nicholson stated it was about 0.01%. Additionally, Mr. Davis stated he was having issues with this because 2% of 50 acres is a significant number to him. Mr. Nicholson noted that the Planning Commission or Board of Adjustment can evaluate each application and determine the allowable square footage..

Mr. Nicol stated that he thought it was not logical that the A-B zone is more restrictive than the A-R zone when the A-B zone is supposed to be a buffer.

Mr. Michler asked what the background was for conditional use permits and massive agricultural buildings here. Mr. Nicholson stated that once you have established a conditional use, the language applies to the area zone and it came 24 years ago when the A-B zone was created. This would allow for a new conditional use that would be reviewed.

Mr. de Movellan asked about the reference to retail shop in the proposed language and where that came from. Mr. Nicholson indicated that they listened to people who had complaints and concerns and did not want any “evildoers” to bring a Wal-Mart to the A-B zone. This would allow very limited sales for hot dogs at sporting events or other concession type food.

Mr. Davis asked why the applicant did not just divide the parcel into tracts and build what they want. Mr. Nicholson stated that they looked at that possibility, but with that you start drawing lot lines around already existing athletic fields and that did not make sense.

Mr. Davis also asked about the justification for the 2% figure and Mr. Nicholson reiterated that if the 2% number is too much, the Planning Commission or Board of Adjustment can determine the appropriate amount within that 2% during a public hearing.

Public Comment – Emily Coles, Sayre School Chairman of the Board of Trustees, no address given, stated that they are very proud of the Sayre Athletic complex or “SAC” and asked the Planning Commission to approve the text amendment.

Britany Rothemeier, Fayette Alliance Director, no address given, stated that she was sympathetic to Sayre’s issues, but that this text amendment opens the door to a dangerous precedent in the agricultural area.

Applicant Rebuttal – Mr. Nicholson started his rebuttal by stating that you could say that this is opening the door to a dangerous precedent, but thankfully the Planning Commission are the bouncers and could stop any bad actors. Additionally, Mr. Nicholson stated that the language relating to the Blue Sky Industrial Park would stop any increases in uses and that Sayre owns the land already, so that would not be a concern. Finally, Mr. Nicholson conveyed that the square footage takes into account all structures on the property that are subjected to conditional use permits.

Staff Rebuttal – Mr. Baillie stated that the Planning Commission can review a conditional use during a zone change application, but that does not need to happen should the applicant want to go to the Board of Adjustment. However, the Planning Commission could recommend conditional zoning restrictions on an application. Mr. Baillie also indicated that the barn on the subject property is not being used for an agricultural use, but it is storage tied to the conditional use. Additionally, Mr. Baillie stated that Staff is aware that this is adding a conditional use to the A-B zone, but that the proposed conditional use is currently allowable in the A-R zone and this same use is appropriate in the A-B zone.

Commission Questions – Mr. Michler asked if Staff thought that the current Ordinance would limit agricultural structures to 10,000 feet. Mr. Baillie indicated that it would not limit an agricultural structure that is not associated with a conditional use.

Ms. Meyer asked if indoor recreational facility is allowed in the A-R zone and Mr. Baillie indicated that it was not.

Mr. Davis asked when fields and lights became allowable in the A-R zone. Mr. Baillie stated that the ZOTA was proposed in 2005 by the current applicant.

Commission Comments – Ms. Meyer stated that she has concerns because the uses being proposed here are not allowable in the A-R zone and about the intensification of uses on this property.

Mr. de Movellan asked Staff if the ZOTA was to change the A-B zone and if the applicant wanted to do something on their land, they would need to ask the Planning Commission for a zone change. Mr. Baillie indicated that was correct, and that all A-B zoned land was subdivided into 10-11 acres in size currently.

Mr. Nicol wanted to voice his desire to intensify the A-B zone so it can be a true buffer zone.

Mr. Bell stated that he relies on Staff and then tries to apply logic to the process and he was satisfied that this was not precedent setting.

Mr. Davis stated that he was sympathetic to the applicant, but is hesitant to support something that has county-wide implications to accommodate what today seems like a perfectly logical use. Mr. Davis stated that he was concerned about what it would mean for the future, and that there is another way to accommodate the applicant's request.

Ms. Barksdale asked about the amount of square footage with the new facility and Mr. Nicholson indicated it would be around 22,000 square feet.

Ms. Worth stated that she was struggling with this, and thinks the applicant has done the right thing here, but is worried about unintended consequences.

Action – A motion was made by Mr. Davis and seconded by Ms. Meyer and failed 3-6 (Penn and Pohl absent) to disapprove PLN-ZOTA-22-00019: AMENDMENT TO ARTICLE 8-2(D): ATHLETIC FIELDS AND STRUCTURES

Action – A motion was made by Mr. Nicol and seconded by Mr. Bell and carried 6-3 (Penn and Pohl absent) to approve PLN-ZOTA-22-00019: AMENDMENT TO ARTICLE 8-2(D): ATHLETIC FIELDS AND STRUCTURES with Staff's alternative text.

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

- a. **PLN-CELL-23-00001: MUNICIPAL COMMUNICATIONS III, LLC AND DISH NETWORK, LLC** – an application for a 120-foot monopole cellular tower with a 5-foot lightning arrestor, proposed to be located at 2190 Ft. Harrods Drive.

Staff Presentation – Ms. Autumn Goderwis presented the staff findings for the application and displayed photographs of the subject property and the general area. Ms. Goderwis also noted the Telecommunications Act of 1996 and stated that Section 332 prohibits local governments from denying a telecommunications tower based on health or environmental effects. Ms. Goderwis continued her presentation by outlining all the places that a cellular tower may be permitted, and outline areas where they are discouraged including in a flood hazard area, or residential zone.

Additionally, Ms. Goderwis went over the design standards for towers, which related to lighting, signage, circulation, landscaping and fencing.

Ms. Goderwis stated that the subject cell tower would be located at 2190 Fort Harrods Drive and the applicant, Dish Network, is proposing an 120- foot monopole wireless communications tower with a five-foot lighting arrestor. Ms. Goderwis stated that the subject property was zoned A-U and noted the residential and agricultural zones within the area. Ms. Goderwis also noted that the tower would have the required safety fences and the maintenance area will be screened. Additionally, Ms. Goderwis displayed renderings of the proposed cell tower that were provided by the applicant.

Ms. Goderwis concluded her presentation by stating that the staff was recommending additional screening requirements for the property, but that the subject tower meets all the conditions for a cell tower and Staff is recommending approval.

Conditions for Approval:

1. The tower shall be located as shown on the site layout and constructed as noted in the elevation drawings.
2. The proposed tower shall meet all requirements of Article 25 other than 1,200-foot distance from a National Register District or Property.
3. In addition to the landscaping requirements of Article 25, the following shall be installed:
 - a. A 15' buffer provided along the eastern property line containing one tree per 40 feet of linear boundary, or fraction thereof from Group A or B only, plus a double row of six feet high hedge for a distance of 200' beginning in line with the front corner of the existing church pavilion and extending toward the southern property line.
 - b. A buffer provided parallel to the western property line, located between the overhead utility running along Man O War Boulevard and the proposed lease area containing one tree per 40 feet of linear boundary, or fraction thereof from Group A or B only, plus a double row of six feet high hedge for a distance of 200' beginning in line with the front corner of the existing church pavilion and extending toward the southern property line.
4. Any applicable permits (e.g., grading, building and/or occupancy) shall be obtained prior to construction from the appropriate Divisions of the Urban County Government.

Commission Questions – Ms. Worth asked if there was adequate service in this location or is there not adequate service. Ms. Goderwis indicated that was a better question for the applicant. Additionally, Ms. Worth asked if the applicant explored any other designs besides the one that they chose and once again, Ms. Goderwis indicated that was a better question for the applicant.

Applicant Presentation – David Pike, attorney for the applicant, started his presentation by introducing some representatives from Dish Network, and their legal team. He noted the late hour of the meeting and stated he would try to move expeditiously. Mr. Pike indicated that Dish Network is a new wireless service provider in Lexington that will provide new service options, and increase customer support and competition. Mr. Pike stated that Dish currently has 27 co-location sites in the Lexington/Fayette County and this site is the only one in Lexington proposed as a “rawland site.” Mr. Pike emphasized that Dish Network has done their due diligence to not have to build so many towers, and instead co-locate at other already built towers. Additionally, Mr. Pike indicated there would be no service from Dish in this area without this one tower.

Mr. Pike continued his presentation by highlighting federal telecommunications law and how it differs from zoning law. Mr. Pike indicated that one of the goals of the Telecommunications Act of 1996 was to accelerate the deployment of wireless communication facilities across the United States. Mr. Pike indicated that lay opinion, unsupported opinion, generalized concerns with aesthetics, and claims that a tower is ugly or unwanted are not substantial evidence to disapprove a tower. Additionally, any concerns on the environmental or health effects of radio frequency emissions also cannot be considered.

Mr. Pike went over the LFUCG Zoning Ordinance and mentioned how the cell tower would be in compliance with the Ordinance. Mr. Pike stated that the subject site complies with Section 25-9(c) of the Zoning Ordinance, no other site is within the search ring is reasonably available, the proposed tower is beneficial to the historic property, and is feasibly being concealed. Mr. Pike also indicated that this tower would be one of the shortest towers in Fayette County, it would have no adverse side-effects in the Bowman Mill Historic District, and it will not be lit. Additionally, Mr. Pike reiterated that the Planning Commission does not have the authority to prevent Dish Network from providing service and listed similarly intense structures, including skyscrapers, cranes, and water storage towers. Finally, Mr. Pike noted that the Historic Preservation Specialist stated that this tower would have no adverse effect to the district and the FAA issued a No Hazard to Air Navigation designation.

Mr. Pike stated he was in agreement with the Staff Report, with the exception of the additional screening requirement. Mr. Pike indicated that the screening requirement was overkill and would block the church on the property from the community. However, he stated that if Staff was deadest on the requirement, he would accept it. Mr. Pike concluded his presentation stating he had no other testimony and could answer any questions that the Planning Commission had.

Public Comment – Walt Gaffield, 2001 Bamboo Drive presented a Power Point about his reasons for his opposition to the cell tower which included the cell tower, would be too big for an urban environment and is not the right place for a tower. He recommended disapproval.

Joyce Arvin, 2108 Violet Road, was concerned about the geological conditions of the subject property and highlighted a sinkhole that was on the property.

Michael Walsh, 2153 Palomar Trace Drive, suggested camouflage for the cell tower, or more artistic designs that would be an asset.

Yanling Neuman, 1736 Benwood Drive, stated she has several friends and clients who live in this neighborhood, and is concerned about the loss in property value because of the cell tower.

Dean Pulsifer, 2129 Caroline Lane, is in support of this cell tower because the Beaumont neighborhood needs more cell phone coverage.

LaShawn Fugat, 2296 Valencia Drive, stated that the cell tower will detract from the inviting nature of this corridor road and that more effort should be made in covering the tower.

Joy Murphy, 4093 Peppertree Drive, stated that the Palomar Hills HOA voted against the cell tower and that she is opposed to it because it is out of character with the surrounding neighborhood.

Paula Johnson, 2264 Shannawood Drive, stated her opposition because it takes away from the appeal of the roadway and the view that the residents in the neighborhood have.

Michael Wolken, 3475 Lyon Drive, stated that Ms. Wade and Ms. Goderwis did an excellent job at the Beaumont neighborhood meeting explaining the application, but the applicant did not show up and that is not fair to his neighbors.

Emmanuel Tzauaneks, 3359 Ridgecane Drive, stated his objection to the cell tower because he believes these installations should be small and harmonious to the community.

Applicant Rebuttal – David Pike, attorney for the applicant, reiterated that lay opinion, unsupported material, and aesthetics are not substantial evidence and cannot be used in a disapproval. Regarding the issue of stealth that had been brought up before, Mr. Pike indicated that was an impossibility because any type of stealth facility would have a bigger imprint that what would be allowable on the property. Mr. Pike indicated that they just barely met the setbacks in the current iteration and adding the stealth facilities would put them over the limit. Additionally, Mr. Pike indicated that any type of stealth facility would come at the cost of co-location.

Commission Questions – Ms. Worth asked about the geology of the site and if that was a concern. Mr. Pike stated that the applicant has submitted a report that was done by an expert and had core sampling of the ground in the area and that the topography was not an issue and it was safe.

Ms. Meyer stated that she thought it was very unfortunate that the neighborhood didn't get this information until today and she thought it was important that the applicant explain to the public beforehand what they want.

Staff Rebuttal – Ms. Autumn Goderwis stated that there was no prohibition on cell towers in the A-U zone and that cell towers are allowed in all of our zones. Additionally, Ms. Goderwis indicated that the screening requirements proposed by staff are required for other utility facilities, and to be consistent with public facilities, the Staff recommends that same screening in this location. Finally, Ms. Goderwis indicated that the proximity to the historical district is a different circumstance than other cell towers and that is a justification for the requirement.

Public Comment – Peter Sang, Beaumont resident, is in opposition to the cell tower and implores the Planning Commission to listen to the people of the neighborhood and reject this application.

Commission Comment – Mr. Bell stated that his grandfather's farm was Beaumont, where all the people opposed to the cell tower now live. This type of change helps cities grow and that Mr. Pike is an expert in what he does. Mr. Bell

stated that he understood people's concerns and appreciated those who came to voice their opinion, but we learn to live with these towers.

Action – A motion was made by Mr. Nicol and seconded by Ms. Barksdale and carried 5-3 (Davis, Penn and Pohl absent) to approve PLN-CELL-23-00001: MUNICIPAL COMMUNICATIONS III, LLC AND DISH NETWORK, LLC for reasons provided by Staff and subject to the recommended conditions.

b. **PUBLIC HEARING: IMAGINE LEXINGTON 2045 - COMPREHENSIVE PLAN GOALS & OBJECTIVES**

The Planning Commission continued their public hearing on the Goals and Objectives of the Imagine Lexington 2045 Comprehensive Plan from February 16, 2023.

Staff Presentation – Mr. Chris Woodall started the hearing by thanking everyone who participated in the process at the previous Goals and Objectives hearing and noted the important feedback from that meeting. Mr. Woodall highlighted the emphasis from the public on housing, the environment and, equity and noted that he thought there was a lot of opportunity for those to be addressed in Policies and Implementation items.

Mr. Woodall turned the Commission's attention to the handout in front of them and discussed the various changes from the previous meeting. Those changes included changing the name of "affordable housing trust fund" to the proper title of "affordable housing fund" and addressing the concerns in Theme E that included the Urban Service Area.

Mr. Woodall ended his presentation stating that Staff was here to answer any questions that the Planning Commission might have.

Commission Questions – Ms. Meyer asked if the Commission could have a moment to look over some letters given to the Commission about this issue. Mr. James Duncan chimed in and indicated that those letters were part of the record and stated that they could read them.

Mr. Michler stated that he thought a lot about the public comments and it made him rethink the Goals and Objectives in a different way. Additionally, Mr. Michler stated that he was appreciative to Staff for coming to a compromise and he does support the language that they have come up with. Finally, Mr. Michler indicated that a lot of the comments from the public were concerned with a lack of quantifiable goals, but that these goals will come back to the Planning Commission when they set policies though he is not sure how we can see what effect those policies have.

Ms. Worth agreed with Mr. Michler and stated that the Goals and Objectives were more aspirational goals and that once the Commission gets to the Policies' and Implementation part would describe how those goals and objectives are met. Mr. Woodall indicated that that assumption was appropriate and that this portion is for direction setting.

Ms. Meyer stated that she hopes all the letters and comments will be taken into consideration.

Mr. Bell asked Mr. Woodall and Mr. Chris Taylor how the Commission goes about implementing these policies. Mr. Taylor responded that the goals and objectives are a reflection of where the community stands on these issues at this time. The items that have been substantially improved from the last comprehensive plan are indicative of a more engaged and organized community response on these issues.

Mr. Nicol indicated that he watched the 3 hour and 21 minute presentation and that he was excited to be involved in this process.

Action – A motion was made by Ms. Worth and seconded by Ms. Meyer and carried 8-0 (Davis, Penn and Pohl absent) to approve the resolution adopting the Goals and Objectives required in KRS 100.193 of the Imagine Lexington 2045 Comprehensive Plan as they were amended.

VII. STAFF ITEMS – The staff will report at the meeting.

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 rehearing, 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 2023

* - Denotes date by which Commission must either approve or disapprove request, unless agreed to a longer time by the applicant.

Subdivision Committee, Thursday, 8:30 a.m., in 3 rd Floor Conf Room, Phoenix Building	March 2, 2023
Zoning Committee, Thursday, 1:30 p.m., in 3 rd Floor Conf Room, Phoenix Building	March 2, 2023
Subdivision Items Public Hearing , Thursday, 1:30 p.m. in Council Chambers, 2 nd Floor, Gov't Center.....	March 9, 2023
Work Session, Thursday, 1:30 p.m., in 3 rd Floor Conf Room, Phoenix Building	March 16, 2023
Technical Committee, Wednesday, 8:30 a.m., in 3 rd Floor Conf Room, Phoenix Building	March 29, 2023
Zoning Items Public Hearing, Thursday, 1:30 p.m. in Council Chambers, 2nd Floor, Gov't Center	March 23, 2023
Work Session, Thursday, 1:30 p.m., in 3rd Floor Conf Room, Phoenix Building.....	March 30, 2023

X. ADJOURNMENT

Larry Forester, Chair

Janice Meyer, Secretary

TW/HB/RS