

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

**October 23, 2008**

- I. **CALL TO ORDER** – The meeting was called to order at 1:35 p.m. in the Council Chamber, 2<sup>nd</sup> Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Mike Cravens; Marie Copeland; Ed Holmes; Mike Owens; Frank Penn; Carolyn Richardson; Lynn Roche-Phillips; Randall Vaughn, Chair; and Joan Whitman. Absent were Patrick Brewer and Neill Day.

Planning staff members present: Chris King, Director; Bill Sallee; Barbara Rackers; Traci Wade; Tom Martin; Cheryl Gallt; Chris Taylor; and Stephanie Cunningham. Other staff members present were: Rochelle Boland, Department of Law; Bob Carpenter, Division of Building Inspection; Hillard Newman, Division of Engineering; and Tim Queary, Urban Forester.

- II. **APPROVAL OF MINUTES** – A motion was made by Mr. Penn, seconded by Ms. Whitman, and carried 9-0 (Brewer and Day absent) to approve the minutes of the August 14, 2008; August 28, 2008; September 11, 2008; and September 25, 2008, Planning Commission meetings.

III. **POSTPONEMENTS AND WITHDRAWALS**

1. **THOMAS & CORBETT, LLC, ZONING MAP AMENDMENT & THE RESERVE AT TATES CREEK (AMD.) ZONING DEVELOPMENT PLAN**

- a. MAR 2008-23: THOMAS & CORBETT, LLC (10/23/08)\* - petition for a zone map amendment from a Single Family Residential (R-1C) zone to a Planned Neighborhood Residential (R-3) zone, for 7.19 net (9.60 gross) acres, for property located at 1060-1097 Bridlewood Lane, 5200-5205 Tykes Pass, 5121 Middleton Place and 5397 Tate's Creek Road.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 11) recommends Low Density Residential future land use for the subject property. The petitioner proposes 38 townhouse and single family (detached) residential units in an R-3 zone.

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

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

1. The existing Single Family Residential (R-1C) zoning, with conditional zoning restrictions, is in agreement with the 2007 Comprehensive Plan.
  2. The existing R-1C zone is more appropriate than an R-3 zone for the subject property, for the following reasons:
    - a. The existing pattern of residential development in the immediately surrounding neighborhoods is well below 4.0 dwelling units per gross acre.
    - b. The predominant zoning designation in this portion of the Tate's Creek Road corridor is R-1C.
    - c. R-1C zoning is much more common along the edge of the Urban Service Area than R-3, as there has been a consistent and historical precedent for lower density residential development along this boundary for decades.
  3. There have been no unanticipated changes of a physical, social or economic nature within the immediate area since the Comprehensive Plan was adopted in early 2007 that would support an argument for R-3 zoning for the subject property.
- b. ZDP 2008-109: THE RESERVE AT TATES CREEK (AMD.) (10/23/08)\* - located at 1060-1097 Bridlewood Lane, 5200-5205 Tykes Pass, 5121 Middleton Place and 5397 Tate's Creek Road. **(EA Partners)**

Note: The purpose of this amendment is to depict a 38-unit townhouse and single family residential development.

The Subdivision Committee Recommended: Referral to the full Commission. There were questions regarding the location of the sanitary sewer line relative to the location of the proposed townhouses, and compliance with Floor Area Ratio restrictions.

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

1. Provided the Urban County Council rezones the property R-3; 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 buffer.
5. Urban Forester's approval of tree inventory map.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Depict the tree canopy information on plan.
8. Denote the square footage in the site statistics information and dimension units (including number of stories).
9. Denote compliance with floor area ratio requirements (townhouse portion).
10. Resolve existing conflict with the proposed townhouses and platted easements.

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

Petitioner Representation: Rory Kahly, EA Partners, was present representing the petitioner and requested a three-month postponement of this item.

Chair Question: Mr. Vaughn asked staff what the date would be for that meeting. Mr. Sallee responded that the date, as listed on the draft Meeting and Filing Schedule, was January 29, 2009.

Action: A motion was made by Mr. Owens, seconded by Mr. Cravens, and carried 9-0 (Brewer and Day absent) to postpone MAR 2008-23 and ZDP 2008-109 until the January 29, 2009, Planning Commission meeting.

**2. MULTICON DEVELOPMENT COMPANY ZONING MAP AMENDMENT & ANGLIANA SUBDIVISION (A PORTION OF) / CNO & TP RAILROAD ZONING DEVELOPMENT PLAN**

- a. MARV 2008-25: MULTICON DEVELOPMENT COMPANY (10/9/08)\* - petition for a zone map amendment from a Heavy Industrial (I-2) zone to a High Density Apartment (R-4) zone, for 18.27 net (23.61 gross) acres; and from a Wholesale & Warehouse Business (B-4) zone to a High Density Apartment (R-4) zone, for 1.01 net (1.17 gross) acres, for property located at 474, 475, and 497 Angliana Avenue and 701 South Broadway (a portion of). Dimensional variances are also being requested at this location.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 5) recommends Office/Warehouse (OW) and Downtown Master Plan (DTMP) future land uses. The petitioner proposes a rezoning to a High Density Apartment (R-4) zone in order to permit a group residential apartment complex with 321 dwelling units.

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

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

1. The existing High Density Apartment (R-4) zone approved immediately to the north of the subject property is an unanticipated change since the adoption of the 2007 Comprehensive Plan that has altered the economic character of the area that includes the subject property. That decision will allow future residential uses in areas previously zoned for warehousing, wholesale business and heavy industrial land uses.
  2. The proposed R-4 zone is appropriate at this location for the following reasons:
    - a. R-4 zoning already exists to the north and south of this location.
    - b. A Lexington Transit Authority bus route currently exists to allow the safe transportation of residents to and from the University of Kentucky campus for a modest fee while the university is in session.
    - c. The proposed redevelopment of the subject property will permit a residential land use near the UK campus to provide additional housing opportunities for university students, for which there is a need.
    - d. The proposed High Density Apartment (R-4) zone will allow for a less intensive land use than that recommended by the 2007 Comprehensive Plan's Land Use Element, but will still allow for a mixture of land uses in the Angliana Avenue corridor.
  3. This recommendation is made subject to the approval and certification of ZDP 2008-111: Angliana Subdivision (a portion of)/CNO & TP Railroad, 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. REQUESTED VARIANCES
1. Reduce the required Group Residential Project frontage yard from 70 feet to 40 feet.
  2. Reduce the Group Residential Project exterior yard requirement from the height of the building (40 feet) to 5 feet.
  3. Reduce the required front yard setback in the R-4 zone along Angliana Avenue and Curry Avenue from 20 feet to 5 feet.

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

- a. If the properties are re-zoned to R-4, as requested, granting these variances should not adversely affect the public health, safety or welfare, nor will it alter the character of the general vicinity. The redevelopment of these properties will be consistent with the change in character along South Broadway and Foreman Avenue, across South Broadway from the subject properties.
- b. Granting the variances will not allow a circumvention of the Zoning Ordinance, as some building setbacks will still be maintained. If approved, it will help to implement the Downtown Master Plan recommendations for the area.
- c. Special circumstances relating to the subject properties that help to justify the variances are their size and configuration, as well as the incorporation of the larger tract alongside the Norfolk-Southern Railroad line into the proposed development, all of which provide development constraints for the property.
- d. Strict application of the Zoning Ordinance would severely restrict the applicant's ability to redevelop the properties in an efficient manner and that would help to alleviate the need for student housing in this part of the community.
- e. The requested variances are not the result of any prior actions of the applicant that could be construed as a willful violation of the Zoning Ordinance.

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This recommendation of approval is subject to the following conditions:

1. Provided the Urban County Council rezones the property R-4; otherwise, any Commission action for approval of these variances is null and void.
  2. Should the property be rezoned, it shall be developed in accordance with the approved Preliminary Development Plan, or as amended by the Planning Commission.
  3. A note shall be placed on the Development Plan, indicating the dimensional variances granted by the Planning Commission under Article 6-4(c) of the Zoning Ordinance.
  4. All necessary permits shall be obtained from the Division of Building Inspection prior to demolition of any structures (if applicable), grading and construction; and after certification of a Final Development Plan for the properties.
  5. Any additional variances determined to be needed for the proposed development shall be subject to approval of the Board of Adjustment.
- c. ZDP 2008-111: ANGLIANA SUBDIVISION (A PORTION OF) / CNO & TP RAILROAD (10/23/08)\* - located at 474, 475, and 497 Angliana Avenue and 701 South Broadway (a portion of). **(Strand Associates)**

The Subdivision Committee Recommended: Referral to the full Commission. There were questions regarding the orientation of the buildings to Angliana Avenue, pedestrian connections, variances requested and the industrial access road.

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

1. Provided the Urban County Council rezones the property R-4; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscape buffer.
5. Urban Forester's approval of tree inventory map.
6. Greenspace Planner's approval of the treatment of greenways.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Department of Environmental Quality's approval of environmentally sensitive areas.
9. Denote: There shall be no development of the property until the Planning Commission approves a final development plan.
10. Delete note number 11.
11. Correct note number 4.
12. Clarify cross-section information.
13. Correct site statistics to provide lot coverage and floor area ratio (FAR) information.
14. Delete note number 9.
15. Denote: Compliance with Article 15-7 of the Zoning Ordinance shall be determined at the time of the final development plan.
16. Denote: The location and design of a LexTran bus stop will be determined at the time of the final development plan.
17. Discuss the parking that is provided versus the minimum required.
18. Discuss the industrial access road proposed to rail spur.
19. Discuss the pedestrian bridges' accessibility to the public.

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

Action: A motion was made by Mr. Holmes, seconded by Ms. Whitman, and carried 9-0 (Brewer and Day absent), to postpone MARV 2008-25 and ZDP 2008-111 to the November 20, 2008, Planning Commission meeting.

### **3. MULTICON DEVELOPMENT COMPANY ZONING MAP AMENDMENT & SCOTT STREET MULTI-USE PROJECT ZONING DEVELOPMENT PLAN**

- a. MARV 2008-26: MULTICON DEVELOPMENT COMPANY (10/23/08)\* - petition for a zone map amendment from a Wholesale & Warehouse Business (B-4) zone to a Mixed-Use 2: Neighborhood Corridor (MU-2) zone, for 2.07 net (3.42 gross) acres, for property located at 300, 307, 313, 315, 317, 319, 321, 322, 324, 325 & 328 Scott Street and 701 South Broadway (a portion of). Dimensional variances are also being requested at this location.

#### LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 5) recommends High Density Residential (HD) for properties on the east side of Scott Street and Industrial Mixed Use (IMU) for properties on the west side of Scott Street. The petitioner proposes MU-2 zoning for a combination residential and commercial development. They propose 60 dwelling units and 10,165 square feet of commercial space.

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

The Staff Recommends: Approval, for the following reasons:

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1. The requested Mixed Use 2: Neighborhood Corridor (MU-2) zone is appropriate and the existing Wholesale and Warehouse Business (B-4) zone is inappropriate, for the following reasons:
  - a. The Plan recommends a mixture of High Density Residential (HD) and Industrial Mixed Use (IMU) future land use. The existing B-4 zoning does not allow either residential or industrial mixed use, as currently written.
  - b. The applicant is proposing a Mixed Use 2: Neighborhood Corridor zone, and a mixture of business and residential land use, as suggested by the Newtown Pike Extension Corridor Plan. The Newtown Pike Extension Corridor Plan recommends redevelopment strategies that promote mixed use projects and "critical mass" developments because these types of projects provide good transitions to residential developments or neighborhoods, and provide a variety of uses, which helps revive areas and extend the hours of activity in certain areas.
  - c. The proposed zone and corollary development plan are appropriate at this location in that the development will be pedestrian-oriented; provide student housing close to campus; be compatible with the immediate area; and complement the proposed University of Kentucky Law School building, as well as the "Reynolds Project," just north and east of this location, which is anticipated for a mixture of uses by the University of Kentucky.
  - d. Several of the properties have legal, but non-conforming uses that will be eliminated through this re-zoning.
2. The proposed location of the MU-2 zoning is appropriate because it is located in a commercial area of Scott Street that is recommended for a mixed use, including a residential future land use. Scott Street is planned to become an extension of Newtown Pike, which is specifically included in the current locational criteria for the MU-2 zone.
3. This recommendation is made subject to approval and certification of ZDP 2008-112: Scott Street Multi-Use Project, 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. REQUESTED VARIANCES

1. Reduce the required open space from 10% to 5%.
2. Reduce the required front yard setback from 15' to 0' for the 3<sup>rd</sup> and 4<sup>th</sup> building stories.
3. Reduce the required side yard from 10' to 2'.
4. Increase the required setback for 40% of the front building walls from 0' to 15'.
5. Reduce the required rear yard setback (adjacent to the railroad) from 10' to 5'.
6. Reduce the required landscape buffer width (adjacent to the KU substation) from 5' to 2'.

The Staff Recommends: **Approval of (1) a rear yard reduction from 10' to 5', (2) a side yard reduction from 10' to 3', and (3) elimination of the requirement that the third and fourth stories of the proposed buildings have a front yard setback of at least 15',** for the following reasons:

- a. Granting these variances should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. Surrounding properties, which include a railroad line, parking lots, a utility substation and a warehouse building, are not anticipated to be adversely impacted. The overall character of the neighborhood is likely to improve as a result of the proposed mixed-use development.
- b. The irregular shape of the westerly portion of the subject property, and the small size and location of the easterly portion of the subject property relative to Scott Street and the balance of the subject property, are special circumstances that contribute to justifying these variances.
- c. Strict application of the Zoning Ordinance requirements would likely compromise the overall design of the development, resulting in a less efficient use of available land and forcing certain features (such as access locations) that are less desirable from the standpoint of public health and safety.

The Staff Recommends: **Disapproval of the requested open space reduction, from 10% to 5%,** for the following reasons:

- a. A 5% reduction in the required open space does not appear to be needed for this proposed mixed-use development. The most recently submitted Preliminary Development Plan indicates that nearly 9,000 square feet of open space will be provided, with a pedestrian plaza of 550 square feet to be connected to a 6' wide walkway along Scott Street.
- b. Insufficient justification of the requested variance has been offered by the applicant. Although the proposed open space areas are small and somewhat disconnected, they do provide valuable space for at least some passive outdoor activities and should be retained.

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

1. Provided the Urban County Council rezones the property MU-2; otherwise, any Commission action of approval of these variances is null and void.
2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, or as amended by the Planning Commission.
3. A note shall be placed on the Development Plan indicating the dimensional variances 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.

5. A side yard of at least 5' shall be provided where the subject property adjoins the Kentucky Utilities substation, at 301 through 303 Scott Street, with a 5' wide landscape buffer to be provided there according to the provisions of Article 18-3(a)(1)6 of the Zoning Ordinance.
- c. ZDP 2008-112: SCOTT STREET MULTI-USE PROJECT (10/23/08)\* - located at 300, 307, 313, 315, 317, 319, 321, 322, 324, 325 and 328 Scott Street and 701 South Broadway (a portion of). **(Strand Associates)**

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

1. Provided the Urban County Council rezones the property MU-2; 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 buffer.
5. Urban Forester's approval of tree inventory map.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Department of Environmental Quality'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. Label topographic contours.
10. Denote: Access to Scott Street shall be determined at the time of a final development plan for compliance with the Newtown Pike access standards.
11. Clarify open space site statistic for each parcel.
12. Depict vehicular use area and property perimeter landscaping and buffer.
13. Provided the Planning Commission approves the requested variances, or revise the development plan accordingly.
14. Denote: Resolve the Scott Street cross-section proposed at the time of the final development plan.
15. Resolve building features at the time of the final development plan.

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

Action: A motion was made by Mr. Penn, seconded by Ms. Whitman, and carried 9-0 (Brewer and Day absent) to postpone MARV 2008-26 and ZDP 2008-112 to the November 20, 2008, Planning Commission meeting.

- IV. LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, October 2, 2008, at 8:30 a.m. The meeting was attended by Commission members: Neill Day, Mike Cravens, Marie Copeland, Mike Owens and Carolyn Richardson. Committee members in attendance were: Hillard Newman, Division of Engineering; and Jeff Neal, Division of Traffic Engineering. Staff members in attendance were: Chris King, Director; Bill Sallee, Denise Bullock, Chris Taylor, Cheryl Gallt, Tom Martin, Kenzie Gleason, Frank Boateng, Barb Rackers, and Jimmy Emmons; as well as Rochelle Boland, Department of Law; Captain 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.

- V. ZONING ITEMS** - The Zoning Committee met on Thursday, October 2, 2008, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Patrick Brewer, Frank Penn, Lynn Roche-Phillips, Randall Vaughn, and Joan Whitman. The Committee reviewed applications, and made recommendations on zoning items as noted.

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

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

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

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

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

The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)

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- 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. LEXINGTON LOFTS, LLC, ZONING MAP AMENDMENT & LEXINGTON LOFTS, LLC, PROPERTY (AMD.) ZONING DEVELOPMENT PLAN**

- a. MAR 2008-30: LEXINGTON LOFTS, LLC (12/8/08)\* - petition for a zone map amendment from a High Density Apartment (R-4) zone to a Wholesale & Warehouse Business (B-4) zone, for 6.73 net (9.59 gross) acres, for property located at 201 Price Road (a portion of).

**LAND USE PLAN AND PROPOSED USE**

The 2007 Comprehensive Plan (Sector 2) recommends High Density Residential future land use for the subject property. The petitioner proposes a mixed-use redevelopment of a former tobacco warehouse/processing plant to allow for residential uses, professional office and warehouse and wholesale business uses on the property.

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

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

1. The proposed Wholesale and Warehouse Business (B-4) zoning is more appropriate than the existing High Density Apartment (R-4) zoning on this portion of the subject property, for the following reasons:
    - a. A portion of the existing R-4 zoning and the existing P-1 zoning will be retained such that the property can still be developed for a mixture of land uses, including residential condominiums.
    - b. The mixture of zoning proposed will allow for the possible reuse of the existing vacant warehouse structures.
    - c. The proposed zoning, in combination with the existing R-4 and P-1 zoning, would allow more options for innovative reuse of the existing structure than the existing zoning at this location.
    - d. The existing warehouse that is the majority of the building's floor area is appropriate for a B-4 zone, and warehouse uses.
  2. Although not in agreement with the 2007 Comprehensive Plan, the requested rezoning will further these Goals and Objectives contained within the Plan:
    - a. Goal 5 of the adopted Comprehensive Plan encourages the renovation and compatible adaptive reuse of historic commercial structures. While not in a local historic district nor designated as a local historic landmark, the opportunity to convert a former tobacco processing facility to other uses is precisely what Goal 5 contemplates.
    - b. Goal 8 encourages "the rehabilitation and adaptive reuse of all existing underutilized structures to the greatest extent possible." The subject property contains such an underutilized building sited between the nearby mobile home park and the Melrose subdivision to the south.
  3. This recommendation is made subject to approval and certification of ZDP 2008-132: Lexington Lofts, LLC, Property (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. ZDP 2008-132: LEXINGTON LOFTS, LLC PROPERTY (AMD.) (12/8/08)\* - located at 201 Price Road.  
**(Carman and Associates)**

Note: The purpose of this amendment is to change the zone and depict the associated off-street parking.

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

1. Provided the Urban County Council rezones the property B-4; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of 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.

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7. Place site statistics in box.
8. Correct note number 12.
9. Clarify tree canopy statistics.
10. Remove floor area ratio (FAR) statistic for B-4 area, and denote height of building instead.
11. Correct Planning Commission certification.
12. Display interior parking arrangement on plan face.
13. Identify all proposed and existing easements.
14. Denote interior landscaping requirements.
15. Addition of Main Street cross-section.
16. Denote: No building permit shall be issued unless and until a final development plan is approved by the Planning Commission.

Zoning Presentation: Ms. Wade presented the staff report, stating that this request is for rezoning from the High Density Apartment (R-4) zone to a Wholesale and Warehouse Business (B-4) zone. The subject property is located on Price Road, near its intersection with West Main Street. The property is comprised of two portions: the smaller, which is a fraction of an acre in size, is located nearest the intersection of Price Road and West Main Street; the larger portion, which is six acres in size, is located approximately 350 feet to the north of that intersection. Most of the properties in the vicinity are zoned Light Industrial (I-1), on the north, east, and west sides. There is a parcel zoned for High Density Apartment (R-4), between the two portions of the subject property being requested for rezoning today. There is also a small tract of P-1 zoning adjoining the subject property. The Lexington Cemetery, which is located across Price Road from the subject property, is zoned Agricultural Urban (A-U). The Melrose-Oak Park neighborhood is located to the south of the subject property, on the other side of Main Street; a mobile home park and the St. Martin's Village neighborhood are located to the north, along Price Road; and the Meadowthorpe neighborhood is located to the west of the subject property.

Ms. Wade stated that the subject property has been rezoned twice in recent history. The first rezoning, in 2002, requested a zone change from I-1 to a combination of R-4, P-1, and B-4 zoning. At that time, the boiler room in the building, which is located near the front of the property, was proposed for an office use. The portion of the property between the two subject tracts was proposed for residential use, and the larger portion of the subject property was requested for a warehouse use. In 2005, the applicant filed another rezoning request, to change a small portion of the property from R-4 to P-1, and to rezone the rest of the tract to R-4. Both of those rezoning requests were approved by the Urban County Council. Today, the majority of the property is zoned R-4, with a small P-1 area.

The petitioner is now proposing to rezone the boiler room portion of the subject property to a B-4 zone, and to return the warehousing portion of the property back to a B-4 zone. Ms. Wade said that rezoning those portions to B-4 would allow more of a mixture of uses on the property, which was contemplated at the time of the rezoning in 2002. If a pending text amendment is approved by the Urban County Council, the B-4 zone would allow for adaptive reuse of a vacant industrial structure in a B-4, I-1, or I-2 zone; the subject property would be a potential candidate for such an adaptive reuse.

Ms. Wade stated that the 2007 Comprehensive Plan recommends High Density Residential land use, so the petitioner's request for rezoning to B-4 could not be said to be in agreement with the recommendation of the Plan. The petitioner contends that rezoning the property to B-4 would allow a return to the mixed-use concept originally envisioned for the property. The staff agreed that rezoning to a B-4 zone would create a less intensive use than the previous I-1 zone, while still allowing for an adaptive reuse of the property. The staff therefore determined that the proposed B-4 zone is more appropriate for the property than the existing R-4 zone. If the related text amendment is not approved by the Urban County Council, the proposed B-4 area could then be used for warehouse uses. The staff believed that rezoning the subject property to B-4 will also further Goals 5 and 8 of the Comprehensive Plan, both of which refer to adaptive reuse. The staff and the Zoning Committee are recommending approval of this request, for the reasons as listed in the staff report and on the agenda.

Development Plan Presentation: Mr. Taylor presented the corollary preliminary development plan, further orienting the Commission to the location of the subject property. He said that the petitioner is not proposing any additional structures on the property with this development plan. The petitioner does propose to increase the number of parking spaces on the property, due to the increased number of spaces required for the B-4 zone. The development plan proposes 296 parking spaces to serve just over 220,000 square feet of building area. The Subdivision Committee recommended approval of the plan, subject to the 16 conditions as listed on the agenda.

Petitioner Representation: Rena Wiseman, attorney, was present representing the petitioner. She stated that the petitioner is in agreement with the staff's recommendations, including the conditions for approval of the development plan.

Ms. Wiseman said that, just prior to today's hearing, the petitioner met with George Logan, a resident of a neighborhood near the subject property, as well as Ken Fister, who owns the adjoining mobile home park. Those neighbors prefer the proposed B-4 zone over the current R-4 zoning, but they are concerned about the possibility of the storage of hazardous

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materials on the property. The petitioner has therefore agreed to add the following conditional zoning restriction, which she submitted in writing:

1. There shall be no storage of hazardous, combustible, explosive, or similar materials.

This condition is appropriate to provide protection to residences in the area.

Ms. Wiseman said that the petitioner deserves a certain amount of credit for developing the subject property as an adaptive reuse of a historic warehouse facility. Whether or not the new adaptive reuse text amendment is approved by Council, the Lexington Lofts project can be considered an adaptive reuse. The petitioner has been working for the past few years to determine the best mix of uses for the building, and is committed to the quality of the project. Ms. Wiseman stated that this type of project fits perfectly with the city's Infill and Redevelopment goals, and requested approval.

Commission Questions: Mr. Penn asked how many residential units there are on the subject property. Ms. Wiseman answered that there are 42 residential units in the two-story building on the property. Mr. Penn asked if there was 220,000 square feet of space in the building, besides those dwelling units. Ms. Wiseman responded that there is 135,000 square feet of warehouse space.

Mr. Holmes asked if "hazardous material" is defined in the Zoning Ordinance. Ms. Wiseman responded that she was unsure if the term is defined in the Ordinance, but she has relied on Federal law in the past as to what constitutes hazardous materials. Mr. Sallee believed that "hazardous material" is not defined in the Zoning Ordinance, but stated that the Division of Fire and Emergency Services is the local government agency that inspects storage facilities for those uses.

Petitioner Comments: Rob McGoodwin, petitioner, stated that he appreciated the opportunity to renovate a historically significant building in Lexington. He said that he has been working on finding the right mix of uses for the property, and believes this rezoning will create that appropriate mix.

Citizen Comments: George Logan, 944 Waverly Drive, stated that hazardous materials are not specifically mentioned in the B-4 zone, but he would like to ensure that hazardous materials of all types cannot be stored on the subject property. He is concerned about the possibility of a situation such as the Jefferson Street area fire earlier in 2008, which may have been caused by the storage of combustible materials. Mr. Logan said that specifically prohibiting the storage of hazardous materials would help to prevent anything from "slipping in" around the regulations.

Commission Question: Mr. Vaughn asked if the staff was in agreement with the petitioner's proposed conditional zoning restrictions. Mr. King responded that the staff is in agreement with that proposed restriction, although the staff would note that it is somewhat redundant. There are inherent restrictions with regard to the storage of hazardous materials within the B-4 zone, but it is acceptable to reinforce that with the conditional zoning restriction proposed.

Staff Comment: Mr. Sallee stated that he needed to correct his earlier comment, as Mr. Carpenter had just pointed out that "hazardous materials" are defined in the Zoning Ordinance. Mr. Sallee displayed that text from Article 1-11 the Zoning Ordinance on the overhead projector for the Commission's review.

Zoning Action: A motion was made by Mr. Penn, seconded by Mr. Cravens, and carried 9-0 (Brewer and Day absent) to approve MAR 2008-30, for the reasons provided by staff, adding the conditional zoning restriction as proposed by the petitioner.

Development Plan Action: A motion was made by Mr. Penn, seconded by Mr. Cravens, and carried 9-0 (Brewer and Day absent) to approve ZDP 2008-132, with the 16 conditions as listed on the agenda, and adding a condition #17 to read: "Addition of conditional zoning restriction."

## **2. SOUTHERN INDUSTRIAL, LLC, ZONING MAP AMENDMENT & MEADOWTHORPE COMMUNITY BUSINESS CENTER, UNIT 1 (HALIFAX LAND CO.), ZONING DEVELOPMENT PLAN**

- a. MAR 2008-24: SOUTHERN INDUSTRIAL, LLC (10/23/08)\* - petition for a zone map amendment from a Neighborhood Business (B-1) zone to a Wholesale & Warehouse Business (B-4) zone, for 1.8650 net (3.4609 gross) acres, for property located at 1447 Antique Drive.

### LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 5) recommends Retail Trade and Personal Services land use for the subject property. The petitioner proposes a restricted wholesale business/warehouse development on the subject property, to be restricted by conditional zoning.

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

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

The Staff Recommends: Postponement, for the following reasons:

1. The question of whether the proposed B-4 zoning (in total) is more appropriate than the existing B-1 zoning for the subject property is directly dependent upon the following issues:
  - a. The existing B-1 zoning of the subject property directly abuts existing residential uses zoned B-1 and R-1C. However, no landscaping, and no restrictions regarding loudspeakers, building openings or lighting have been offered to buffer the proposed shop of special trade from these adjacent residential uses.
  - b. Since the subject property currently has no impervious surface area, the proposed development means that some type of storm water detention or system improvements will likely be required, so as not to allow any increase in the rate of storm water runoff onto surrounding residential and commercial properties. However, the subject property is not currently proposed for any such improvements, and is technically undevelopable at the present time, as it is entirely designated as a temporary drainage easement. Until such time as a *concept* for storm water improvements is proposed, this rezoning application is premature.
- b. ZDP 2008-108: MEADOWTHORPE COMMUNITY BUSINESS CENTER, UNIT 1 (HALIFAX LAND COMPANY) (10/23/08)\* - located at 1447 Antique Drive.  
(Foster - Roland)

The Subdivision Committee Recommended: Postponement. There were questions regarding the building location relative to the residential structures.

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

1. Provided the Urban County Council rezones the property B-4; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscape buffer.
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. Correctly label and depict the 80' easement.
8. Denote proposed detention areas.
9. Addition of topographic information per Article 21-6(a) of the Zoning Ordinance.
10. Addition of site statistics information per Article 21-6(a) of the Zoning Ordinance.
11. Addition of the tree inventory information as defined in Article 26 and as per Article 21-6(a) of the Zoning Ordinance.
12. Denote the dimensions and location of the access and parking areas per Article 21-6(a) of the Zoning Ordinance.
13. Addition of adjacent property zoning information.
14. Denote the conditional zoning restrictions.
15. Resolve the building location relative to the residential structures at the time of the final development plan.
16. Resolve the potential impact of lights and noise on the adjoining properties at the time of the final development plan.
17. Discuss the apparent drainage feature at the center of the property.
18. Discuss the proposed uses for the property.

Zoning Presentation: Mr. Sallee presented the staff report, noting that this request is for rezoning from a B-1 zone to a B-4 zone. According to the application, the zone change involves slightly less than two net acres of property located at 1447 Antique Drive. Using the zoning map, Mr. Sallee oriented the Commission to the location of the subject property just north of the intersection of Forbes Road and Leestown Road.

Mr. Sallee stated that the subject property is triangular-shaped, with two "wings" on either side that provide a small amount of frontage on both Burke Road and Forbes Road. The subject property is currently zoned B-1, as is all of the property surrounding it, including the commercial uses along Leestown Road; office uses immediately to the east; and residential uses immediately to the north. Further to the north in the Meadowthorpe subdivision, the properties are zoned R-1C for residential use. Mr. Sallee displayed several photographs of the subject property, including aerial views from the north, south, east and west, and one photo identified the drainage area in the center of the property.

Mr. Sallee stated that the 2007 Comprehensive Plan recommends Retail Trade & Personal Services uses for most of the subject property, although the "wing" on Forbes Road is recommended for Professional Service land use, as it is considered to be part of the existing office area. The requested zone change to B-4 is therefore not in agreement with the land use recommendation of the Comprehensive Plan.

Mr. Sallee said that the agenda for this meeting includes the staff's recommendation of postponement for this request, which is a recommendation that dates back to the Commission's August Zoning Committee meeting. However, the Planning Commission does not have the ability today, without the petitioner's consent, to postpone this request further. In their report, the staff identified several issues about this proposed zone change that resulted in their recommendation of postponement. One of the staff's concerns is landscaping on the subject property, since no tree preservation measures were proposed with this applica-

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tion. The staff also cited, in their original report, a concern with stormwater issues on the subject property. The property is technically undevelopable at the present time, as it is designated as a temporary drainage easement. The staff noted in their report that, although there have been no major changes in this area to warrant the zone change, a restricted B-4 zone may be more appropriate for the property than the unrestricted B-1 zone that exists on the property today.

Mr. Sallee noted that a supplemental staff report had been circulated to the Commission at the start of this meeting. Mr. Sallee referred to a staff exhibit that lists all of the currently permitted uses in the B-1 zone, noting that the subject property and all of the surrounding properties are currently zoned B-1 with no restrictions. The staff did not also include the allowable uses in the P-1 zone in that list, because those uses are not generally considered to be objectionable in a residential area. The staff has reviewed the petitioner's proposal for conditional zoning restrictions, which was distributed to the Commission members prior to the start of the hearing. This proposed list of restrictions has been revised since it was originally reviewed by the Zoning Committee at their meeting in August. Using the petitioner's proposed conditional zoning restrictions, the staff reviewed that list of remaining B-4 uses, and concluded that a restricted B-4 zone is more appropriate for the subject property than the existing B-1 zone. The staff is therefore recommending approval of this request, for the following reasons:

1. The restricted Wholesale and Warehouse Business (B-4) zone requested by the applicant is more appropriate than the existing, and unrestricted Neighborhood Business (B-1) zone, which is no longer appropriate at this location, for the following reasons:
  - a. The subject property, adjacent to a number of residential uses, is to be greatly restricted in its future uses, including a number of allowable office uses, rather than the unrestricted business use currently allowable at that location.
  - b. Very little traffic impact is anticipated for the proposed machine shop and shops of special trade.
  - c. The lack of visibility, the odd shape and the circuitous access for this property account for the fact that it has not developed over the past 30 years, although zoned B-1.
2. This recommendation is made subject to approval and certification of ZDP 2008-108: Meadowthorpe Community Business Center, Unit 1 (Halifax Land Company), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following uses are to be prohibited at this location via conditional zoning:

PROHIBITED USES:

- a. Ice Plant.
- b. Tire re-treading and re-capping.
- c. Sales of feed and grain or other agricultural supplies *(except for offices for such sales)*.
- d. Establishments and lots for display, rental, *repair* or sale of farm equipment, automobiles, trucks, mobile homes, recreational vehicles, motorcycles or boats.
- e. Truck terminals and freight yards.
- f. Automobile service station.
- g. Establishments for the display and sale of pre-cut, pre-fabricated, or shell homes.
- h. Circuses and carnivals.
- i. Pawn shops.
- j. Mining.
- k. Kennels and animal hospitals.
- l. Major and minor automobile and truck repair, except for vehicles used accessory to the business.
- m. Parking lots and structures as principal uses.

BUFFERING RESTRICTIONS:

- a. A four-foot landscape easement shall be provided along the north and east property lines.
- b. There shall be no outside loudspeakers.
- c. There shall be no building openings, except for stationary windows, facing the north property line, unless required by the Fire Department or Code for emergency egress.
- d. Exterior lighting shall be designed to prevent light shining directly from the source to adjoining properties to the north.

These restrictions are appropriate for the subject property, in that they have been offered by the applicant for the subject property, and they will help ensure that the proposed development will be more compatible with nearby residential and commercial land uses.

Mr. Sallee stated that there are some slight differences between the staff's recommended conditional zoning restrictions, and those proposed by the petitioner. The highlighted language in items "c" and "d" reflect those slight differences. The staff believed, in light of their original concerns about landscaping on the subject property, that it was appropriate to include these buffering requirements as conditional zoning restrictions. The petitioner had proposed those same restrictions, but as development plan restrictions rather than via conditional zoning.

Commission Questions: Mr. Owens asked if the proposed conditional zoning restriction item "c" would exclude offices for sales of feed or agricultural supplies. Mr. Sallee answered that, under this language, item "c" would have an exception that would allow those uses to remain as permitted at this location. The staff understood the need for the restriction on sales of feed and agricultural supplies, but did not feel that offices for such uses should be prohibited here.

Mr. Vaughn asked, with regard to the proposed buffering restrictions, for Mr. Sallee to note on the development plan the location of the properties to the north to which the restrictions refer. Mr. Sallee used the rendered copy of the proposed development plan to demonstrate that the petitioner proposes to construct two buildings on the subject property: one along the north property line, and one along the east property line. The restriction refers to the openings adjacent to the perimeter of the property on those two sides. Mr. Vaughn asked if the adjoining property along the east property line is residential. Mr. Sallee answered that it is not; the nearest residential use along that property line is across Forbes Road. The property immediately adjacent to the east is an office use, but does include an existing day care center. The outdoor play area for that facility actually straddles the common property line with the subject property. The staff felt that, given the proximity of that day care center, the proposed buffering restriction for that property line is particularly appropriate.

Development Plan Presentation: Mr. Martin presented the corollary preliminary development plan, further orienting the Commission to the location of the subject property. He said that the petitioner proposes to construct two buildings, each 11,000 square feet in size and 23 feet in height. The proposed B-4 zoning would require 37 parking spaces on the subject property, and the petitioner proposes 41 spaces. Using the rendered development plan, Mr. Martin noted the areas proposed for landscape buffering, as well as an existing 15-foot easement along the property line and the proposed detention area.

Mr. Martin stated that this plan was reviewed by the Subdivision Committee, which recommended postponement due to concerns about the proposed location of the buildings relative to the nearby residential uses. The Committee recommended that, should the development plan be approved, the 18 conditions listed on the agenda should be considered. In fact, conditions #15 – 18 reflected the Committee's concerns about the property.

Mr. Martin displayed an aerial photograph depicting the existing drainage facility on the subject property, noting that the inlet for that system is located between the third and fourth houses on Meadowthorpe Avenue. Stormwater that collects on Meadowthorpe Avenue enters the subject property via that inlet, and then disperses through the drainage ditch. Mr. Martin displayed an additional photograph, facing toward the rear of the residential properties and depicting the pipe and drainage ditch. He noted that the staff is always concerned about stormwater drainage, but has particular concerns about the subject property. In 1953, when the Meadowthorpe area was platted, the subject property was identified as a drainage easement. Subsequently, an easement was placed on the property that states that it "shall be released, null and void, at such time as an easement minor plat is filed and the Urban County Engineer signs off on its release." The staff is concerned that the property's designation has potential ramifications on its use and design, so they added condition #17 to address that concern. Mr. Martin noted that the drainage system is not part of the public stormwater system, nor is it an easement that has been dedicated to the Urban County Government.

Commission Questions: Mr. Penn asked if it was appropriate to change condition #17 to read "resolve." Mr. Martin stated that it would be appropriate, should this plan be approved, to change condition #17 to read: "Resolve the apparent drainage feature at the center of the property at the Final Development Plan."

Mr. Owens asked Mr. Martin to clarify on the development plan the location of the drainage inlet relative to the homes on Meadowthorpe Avenue. Mr. Martin used the rendered development plan to clarify the location of the inlet between the homes on Meadowthorpe Avenue. Mr. Owens asked for clarification with regard to the 25-foot easement to which Mr. Martin had referred in his presentation. Mr. Martin explained that the four-foot landscape buffer proposed via conditional zoning restrictions would be located along the property line. There is an existing 15-foot utility easement along that property line, so the proposed four-foot buffer would fall within that easement. Mr. Martin noted that there is an additional 10-foot easement on the other side of the property line, which lies to the rear of the adjoining residences.

Ms. Roche-Phillips asked if the residential structures encroach on that easement. Mr. Martin answered that those structures back up to the easement, but are not proposed to encroach on it.

Petitioner Presentation: Richard Murphy, attorney, was present representing the petitioner. He noted that the subject property is actually 2.865 acres in size, as opposed to 1.8650 acres, which was listed on the agenda.

Mr. Murphy said that the proposed rezoning has the full support of the Meadowthorpe Neighborhood Association, and distributed a letter of support to the Commission for their review. The petitioner began a seven-month collaborative process with the neighborhood association in March of 2008, prior to filing this rezoning application in July.

Mr. Murphy stated that the petitioner's business, which installs machinery in factories, is family-owned. The machinery is shipped directly from the manufacturer to the facility in which it will be installed, so there is no product shipment to the pe-

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petitioner's facility. The petitioner's current location is rented, and they would prefer to own their building, which was the impetus behind the proposed rezoning of the subject property. The majority of the petitioner's business is conducted off-site; as workers typically arrive at the facility in the morning, load trucks with tools, and leave the facility to work at a factory site all day. In the evening, the workers return and unload the trucks. The petitioner proposes to store all the necessary materials for the business, including vehicles, inside the proposed building. Mr. Murphy stated that he believed that the petitioner's proposed use would fit in the existing B-1 zone on the property, but he was informed by the Division of Building Inspection that the business is considered a "shop of special trade," which is not a permitted use in the B-1 zone. The petitioner's business is similar to that of a heating and air conditioning company, in that some welding or bending of metals may be conducted on site, but the bulk of the work is performed at the client's facility. During the daytime hours, the petitioner estimates that an average of two or three people will work on the subject property, and no customers will come to the site. Mr. Murphy stated that the petitioner's operation would have little impact on the surrounding neighborhood, as it generates little noise or traffic.

The subject property has been owned by Halifax Land Company for approximately 40 years. The owner of that company, Ted Osborne, was a major land developer in Lexington in the past. As such, he still owns remnant properties in several locations throughout Lexington. The subject property is one of those remnants, which the petitioner is currently under contract to Mr. Osborne to purchase.

Mr. Murphy stated that the existing unrestricted B-1 zone would allow all the uses that currently exist in the Meadowthorpe Shopping Center, including service stations, convenience stores, restaurants, liquor stores, etc. If a B-1 use intended to locate on the subject property, the Planning Commission's review would not be required; the user could simply obtain a building permit from the Division of Building Inspection. Mr. Murphy noted that the residences along Meadowthorpe Avenue that back up to the subject property are technically non-conforming, as those properties are zoned B-1. Therefore, if a B-1 use were to locate on the subject property, no landscape buffers or zone-to-zone screening would have to be provided for the residential properties, since they are zoned the same.

Mr. Murphy said that the potential for using the subject property for a B-1 use is limited, however, by the property's lack of visibility. There is an opening in the shopping center through which the subject property is visible, but it does not provide much visibility. There is also no direct access to Leestown Road for the subject property. Mr. Murphy displayed the following photographs of the subject property and surrounding area: 1) a view toward the rear of the property, taken from Antique Drive; 2) the existing treeline along the rear of the property, which separates it from the adjoining residential uses; 3) a break in the treeline along the rear of the property, where the adjoining residences are more visible and the petitioner would agree to provide more screening; 4) a view toward the business uses along North Forbes Road, including a metal outbuilding; 5) another view of the rear of the business along North Forbes Road; 6) the entrance to the property from the east, toward North Forbes Road, showing the rear of the buildings in the Meadowthorpe Shopping Center; 7) another view of the rear of the shopping center; 8) the "gap" in the shopping center buildings in front of the subject property, through which Leestown Road is visible; 9) a view of the existing drainage swale on the property, toward Burke Road; 10) a view of the drainage swale toward North Forbes Road; 11) another view of the rear of the shopping center; and 12) another view of the rear of the shopping center. Mr. Murphy said that the location of the subject property at the rear of the Meadowthorpe Shopping Center also limits its viability for B-1 use. When the main access to a property is the service road for the rear of a shopping center, it will impact the use of that property.

Mr. Murphy stated that the 2007 Comprehensive Plan recommends Retail Trade & Personal Services uses for the subject property, and that the proposed rezoning to B-4 is not in agreement with that recommendation. However, the petitioner has worked with the Meadowthorpe Neighborhood Association to create a set of conditional zoning restrictions that, if implemented, could make the proposed restricted B-4 zone more appropriate than the existing unrestricted B-1 zone. The petitioner began a series of meetings with the neighborhood association in March, and the proposed list of prohibited uses came from those discussions. It is not possible to prohibit all of the allowable uses in the B-4 zone other than the proposed use, because there must be a range of uses available. The petitioner did attempt to identify the B-4 uses that would be the most objectionable to the residents of the adjoining properties, as well as the business uses along North Forbes Road. Mr. Murphy displayed a rendering of the proposed building, noting that the Meadowthorpe Neighborhood Association had seen the rendering and approved of the design.

With regard to the proposed conditional zoning restrictions, Mr. Murphy stated that the petitioner is in agreement with the staff's proposed modifications to the list. The petitioner proposed a four-foot landscape easement along the north and east property lines, rather than a larger landscape buffer, because the neighborhood residents were concerned about the possibility of transients living on the property. There have been problems in the past with transients living on the subject property, and the residents believed that, if the proposed landscape buffer was too large, it would create an area in which those individuals could effectively hide. The petitioner proposes to retain all of the existing vegetation in the buffer area, and add a hedge to the portions of the property line where the existing vegetation is insufficient. Mr. Murphy noted that no outdoor loudspeakers are proposed for the property, which should help eliminate neighborhood concerns about noise from the subject property. Additionally, the proposed restrictions would limit openings on the north side of the building to stationary windows only, which would also help to reduce noise from the property. The petitioner discussed outdoor light-

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ing options for the subject property with the Meadowthorpe residents, and they indicated that they would prefer that some lighting be installed on the rear of the property, so that they could see into the area and verify that it was free from trespassers. They did indicate, however, that they would prefer that the light not shine directly onto their properties, to which the petitioner agreed.

Mr. Murphy submitted into the record of the meeting a letter of support from the Meadowthorpe Neighborhood Association, and distributed copies of the letter to the Commission members. The neighborhood association discussed the proposed rezoning at a meeting a week prior to today's hearing, and voted 14-3 in favor of it. The petitioner agreed, upon request by the neighborhood association, to provide them with notice of the filing of a final development plan on the subject property. Mr. Murphy displayed on the overhead projector the document circulated by the Meadowthorpe Development Review Committee, which summarizes the neighborhood association's meetings with the petitioner, and their effort to inform all Meadowthorpe residents about the proposed rezoning. Information about the meetings with the petitioner was published in the neighborhood newsletter, and the owner of each property that adjoins the subject property was personally invited to attend a July meeting to review the proposal. Two of those property owners attended the July meeting, and both voted to support the rezoning request.

Mr. Murphy noted that there are some objectors to this request, one of whom made his objections known at the last neighborhood meeting a week prior to this hearing. He said that it is difficult when an objector surfaces at the end of a negotiating period. The petitioner has spent seven months working to create a set of conditional zoning restrictions that would increase the comfort level of the neighborhood residents, while still allowing the petitioner to obtain financing and operate their business. The primary objector to the rezoning asked that the petitioner agree to a condition that no noise from the subject property would be audible to the property owners along Meadowthorpe Avenue. Mr. Murphy said that it is just not possible to agree to such a condition, for a residential use or a business use. The petitioner's goal is to eliminate noise to that extent, but they cannot guarantee that. The neighborhood objector also requested that the petitioner agree to limit the hours of operation on the subject property to 7:30 a.m. to 5:00 p.m. The petitioner generally does not conduct business outside those hours, but did not feel comfortable agreeing to that condition, as workers do occasionally do office work in the evenings. The petitioner was also concerned that a machine client may require an emergency repair, and that would require some evening work on the subject property. The petitioner believes that restricting openings at the rear of the building and outdoor loudspeakers should satisfy those concerns about noise. Mr. Murphy said that, in the existing B-1 zone, a restaurant could locate on the subject property, serve alcoholic beverages there, and remain open until 1:00 a.m. or later. Such a B-1 use could possibly have a back door, a dumpster, and other areas in the rear of the building where noise may be generated. The petitioner believes that the proposed use would generate significantly less noise than many of the uses allowable in the existing B-1 zone.

Mr. Murphy said, with regard to the existing drainage easement on the subject property, that a plat was recorded in 2001, when the Antique Drive right-of-way was dedicated to LFUCG. There is a note on the plat that reads as follows:

"This property is hereby designated as a temporary drainage easement. This easement shall be considered as fully terminated, or have no force in effect, upon written approval of the Urban County Engineer and the recording of an Easement Minor Amendment plat, noting this release and creating any permanent easements that may be required by the Urban County Engineer."

Regardless of how the subject property is zoned, nothing can be constructed there until the petitioner has presented, and obtained approval for, a storm water plan from the Urban County Engineer. At that time, the remainder of the property can be released for construction. A detailed water study will be completed prior to the filing of the final development plan, which will be presented to the Planning Commission.

Mr. Murphy stated that the petitioner contends that the requested B-4 zoning, with conditional zoning restrictions, would be more appropriate for the subject property than the existing unrestricted B-1 zone. The petitioner agrees with the Comprehensive Plan Goals and Objectives, which call for appropriate infill and redevelopment of vacant lots within the Urban Service Area, and believes that the proposed rezoning would support those Goals and Objectives. Mr. Murphy noted that the residential units that back up to the subject property along Meadowthorpe Avenue lie on very deep lots, with most of the houses located at least 120 feet from the common property line. Those houses cannot be expanded, since they are non-conforming uses, so the depth of the lots will help to buffer those residences from the proposed B-4 use on the subject property.

Mr. Murphy said, in conclusion, that the petitioner has worked very closely with the Meadowthorpe Neighborhood Association to reach an agreement about the specifics of the proposed use on the subject property. The petitioner believes that the proposed use, in a restricted B-4 zone, would have less impact on the surrounding neighborhood than the current B-1 zoning without restrictions. The vacant property has been a problem in the neighborhood, and the petitioner believes that rezoning the property to B-4 will provide an opportunity to clear up those problems, and allow a more compatible use of the property. For those reasons, Mr. Murphy requested approval of this rezoning to B-4.

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Commission Questions: Mr. Penn asked if the petitioner intends to occupy the phase two building on the subject property, or rent it. Mr. Murphy answered that the petitioner may choose to occupy that building, or may lease it out to a compatible business use.

Citizen Opposition: Bob Layton, 1480 Meadowthorpe Avenue, stated that he has spoken to many Meadowthorpe residents who oppose the proposed rezoning to B-4. He entered into the record of the meeting a petition in opposition with 116 signatures from neighborhood residents, and asked that his email to the Division of Planning staff, dated October 20, 2008, also be entered into the record.

Mr. Layton and his neighbors oppose this rezoning request because they believe it lacks sufficient noise protection for their homes, and will deny them the use of their residences for basic activities such as sleeping. He said that Mr. Murphy's statement that the neighbors had requested that the petitioner agree to create absolutely no noise on the property is false. Mr. Layton contended that that was the petitioner's promise, which was made to the residents many times during their discussions over the past several months. The petitioner also promised that the property would only be used between 7:00 a.m. and 5:00 p.m. Mr. Layton and his neighbors are upset that the petitioner will now not agree in writing to eliminate noise on the property, and limit the hours of operation, after agreeing orally to those terms.

Mr. Layton stated that he and his neighbors are also concerned that construction on the subject property will result in "pointing" stormwater runoff toward the Meadowthorpe Shopping Center. He contends that the berm at the edge of the property will not be sufficient to contain stormwater as it runs down from the approximately 30-foot rise at the rear of the property. The petitioner noted at a neighborhood meeting on October 14<sup>th</sup> that they were unaware of any specific stormwater improvements that would need to be made on the subject property.

Mr. Layton said that he does not agree with the petitioner's contention that the Meadowthorpe neighborhood is in agreement with this rezoning request. He said that he was present at the meeting on October 14<sup>th</sup>, when 14 Meadowthorpe residents voted in favor of this request. None of those residents voiced a "personal approval;" they simply noted that they had met with the petitioner, and felt that they had no choice in the matter, since there was no alternative to the current B-1 zoning. The petitioner informed the residents that, if they did not approve this request, then "something worse" would happen on the subject property. Mr. Layton agrees that the residents approved the conditional zoning restrictions presented to them, but would argue that those restrictions do not address the ability of the immediately adjacent properties to continue to function as residences. Only 14 residents voted to approve this request, while Mr. Layton gathered signatures from 116 residents who oppose it.

Mr. Layton stated that he had learned, through his research, that the Planning Commission has more authority than was represented to the neighborhood residents by the petitioner. He noted that the Zoning Ordinance states that, even if the Planning Commission decides to approve this rezoning request, they have the specific authority to protect the residents and businesses in Meadowthorpe via conditional zoning restrictions. He read the following, from Article 6-7(a) of the Zoning Ordinance:

"A restriction or condition may be imposed whenever one or more of the specifications of the Ordinance would, if exercised, impair the integrity and character of the area in which the subject property is located, or adjoining areas. Such restrictions may include, but shall not be limited to, time limitations, requirements that one or more things be done or restrictions or conditions of a continuing nature, so long as the same are matters set forth in Section 6-7."

Mr. Layton said that the character and integrity of the Meadowthorpe neighborhood would be impaired by the proposed use of the subject property. The residents of Meadowthorpe work hard to ensure that their neighborhood is a good place in which to live, and have for the past 60 years; they deserve the protection that the Planning Commission can provide via conditional zoning for the subject property. Mr. Layton stated that Article 6-7 specifically allows time limitations as a conditional zoning restriction, and noted that it would be appropriate to protect the character and integrity of the neighborhood by restricting work on the subject property to the hours between 7:00 a.m. and 5:00 p.m. Mr. Layton said that Mr. Saltee noted that, while such time restrictions are uncommon, they are not unheard of.

Mr. Layton stated that he also believes that the Planning Commission has not been presented with sufficient proof on which to base a recommendation of approval for this rezoning request. He noted that, in order to be approved, a zone change must be in agreement with the Comprehensive Plan; or, in the absence of such a finding, that the existing zoning classification of the property be shown to be inappropriate and the proposed zoning classification more appropriate; or, that there have been changes of an economic, physical, or social nature on which to base the rezoning. Mr. Layton said that the Zoning Ordinance does not state that the proposed zoning should be "less inappropriate" than the existing zoning, which is the petitioner's contention for the subject property. He read the following into the record from the staff report:

"The applicant states that the subject property has been zoned B-1, but has not been developed for more than three decades, and that a B-4 zone would be more appropriate at this location. That may be true, but only if the new activity can be appropriately buffered from the adjacent residential uses to the

north and west of this location. There are no tree preservation measures, nor are any development plan restrictions proposed (such as outdoor lighting, loudspeakers or landscape screening) as part of the current application to instill a sense of confidence that a future shop of special trade will respect the long-standing residential uses immediately adjacent to the subject property."

In conclusion, Mr. Layton asked that the Planning Commission consider the opposition of 116 Meadowthorpe residents to this rezoning request, and recommend disapproval, as the rezoning to B-4 is unquestionably inappropriate for the subject property. He requested that, should the Commission instead choose to recommend approval of this request, that they require specifically authorized time restrictions on noise as allowed by Article 6-7(a) of the Zoning Ordinance. Mr. Layton asked that he also receive copies of any findings related to this request, and notification of any final development plan filed for the property.

Petitioner Rebuttal: Mr. Newton, petitioner, stated that, in order to relocate his business to the subject property, it must be rezoned to B-4. He has worked closely with the neighborhood association, including allowing them to provide input on the materials for the proposed building. Mr. Newton contended that Mr. Layton did not make his concerns known early in the process, but attended only the last meeting with neighborhood residents to voice his concerns. He said that his business last worked overtime hours more than five years ago, and he does not believe that the operation of that business will be disruptive to nearby residents. It is not possible to operate a business, however, and allow the area residents to dictate its opening and closing hours. Mr. Newton said that all of his equipment is electronic, and makes very little noise, even directly outside the facility. He believes that, should the Commission choose to rezone the subject property in order to allow him to locate his business there, that it will be "the best neighbor in Meadowthorpe." Mr. Newton said that Mr. Layton is opposed to any development of the subject property, and would prefer that it remain as an open field.

Mr. Murphy stated that Mr. Layton attended only the last meeting with the petitioner and the Meadowthorpe Neighborhood Association, rather than making his concerns known early in that seven-month negotiation process. He said that the petitioner worked closely with the Meadowthorpe Design Review Committee in order to avoid issues such as those presented by Mr. Layton, and thought that the neighborhood as a whole was satisfied with the process and the results.

Mr. Murphy said that the petitioner contends that there is nothing to be gained for the Meadowthorpe residents by leaving the subject property zoned B-1 without conditional zoning restrictions. The only option for better access to the property would be to buy one of the residences along Meadowthorpe Avenue, remove the structure, and construct an access to the subject property, which would be worse for the community than the proposed B-4 use. The petitioner believes that a B-4 zone, with appropriate conditional zoning restrictions, would be much better for the neighborhood than the existing unrestricted B-1 zone.

Opposition Rebuttal: Mr. Layton stated that he has been involved in this process with the Meadowthorpe Design Review Committee for at least two months, and he would disagree with the petitioner's assertion that he just made his concerns known in the last week. He agrees that there was a collaborative process between the petitioner and the Meadowthorpe Neighborhood Association, but contends that the basis of that collaboration was the petitioner's promise that the proposed use would only make noise between the hours of 7:00 a.m. and 5:00 p.m. After making that agreement, however, the petitioner is now showing no willingness to apply a conditional zoning restriction to make that promise "legal." Mr. Layton said that he never indicated that he wished for the subject property to remain as an open field, even though he grows a garden that will no longer receive adequate sunlight once a building is constructed four feet off his rear property line.

Staff Rebuttal: Mr. Sallee stated that the staff had received Mr. Layton's email, and he entered it into the record of the meeting and distributed it to the Commission members for their review. He noted that it is the staff's standard practice to inform objectors to rezonings when the final report is forwarded from the Planning Commission to the Urban County Council, so that would take place regardless of the Commission's decision today.

Mr. Sallee said that the building proposed is 15 feet off the property line; of that 15 feet, four feet is proposed for landscaping. With regard to the acreage difference Mr. Murphy mentioned, the survey plat that was submitted with the rezoning application shows the property at 2.86 acres; and there appears to be a typographical error on the first page of the application. Mr. Sallee stated that he had been concerned about the survey information, as it is the most technical aspect of the rezoning application. He apologized for the staff not noticing the typographical error earlier.

Mr. Martin noted that, should the Commission choose to approve this request and the corollary development plan, condition #18 had been satisfied, and could be deleted.

Commission Question: Ms. Copeland asked, with regard to the stormwater inlet pipe that drains to the subject property, where the source of that water is located, and if that is the stream that has been mentioned on the property. Mr. Martin answered that the inlet is located on Meadowthorpe Avenue, and the stormwater flows from the street onto the subject

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

property. He said that he is unsure whether the swale on the property serves to help contain that water, but noted that the flow on the subject property is not considered a stream, but instead, just a drainage ditch.

Zoning Motion: A motion was made by Ms. Whitman and seconded by Mr. Cravens to approve MAR 2008-24, for the reasons provided by staff in the supplemental staff report, and including the revised conditional zoning restrictions as recommended by staff.

Discussion of Motion: Mr. Penn stated that he would support Ms. Whitman's motion, because he believes that a B-1 use would be more intensive should the property develop as such. He said that he believes that the proposed B-4 zone, with these conditional zoning restrictions, will be less intrusive and better for the Meadowthorpe neighborhood.

Action: Ms. Whitman's motion for approval carried, 9-0 (Brewer and Day absent.)

Development Plan Action: A motion was made by Ms. Whitman, seconded by Mr. Cravens, and carried 9-0 (Brewer and Day absent) to approve ZDP 2008-108, subject to the first 16 conditions as listed on the agenda; and changing condition #17 to read: "Resolve the apparent drainage feature at the center of the subject property at the time of the final development plan."

**VI. COMMISSION ITEMS** – No such items were presented.

**VII. STAFF ITEMS** – Mr. King stated that, on the current Meeting & Filing Schedule, a work session is scheduled for Thursday, October 30<sup>th</sup>. He said that, after reviewing the items that the Commission will need to discuss before the end of the year, the staff felt comfortable advising that the Commission could choose to cancel that work session. If necessary, the staff could bring items before the Commission in a work session at the end of the regularly-scheduled November or December meetings.

Action: A motion was made by Mr. Owens, seconded by Mr. Penn, and carried 9-0 (Brewer and Day absent) to cancel the work session for Thursday, October 30.

**VIII. AUDIENCE ITEMS** – No such items were presented.

**IX. MEETING DATES FOR NOVEMBER, 2008**

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|------------------------------------------------------------------------------------------------------------|--------------------------|
| Work Session, Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers.....                             | October 30, 2008         |
| Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....           | November 6, 2008         |
| Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....                | November 6, 2008         |
| <b>Subdivision Items Public Hearing</b> , Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers..... | <b>November 13, 2008</b> |
| <b>Zoning Items Public Hearing</b> , Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers.....      | <b>November 20, 2008</b> |
| Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....            | November 26, 2008        |

**X. ADJOURNMENT**

TLW/TM/JWE/BJR/BS/src