

AN ORDINANCE CHANGING THE ZONE FROM AN AGRICULTURAL RURAL (A-R) ZONE TO AN AGRICULTURAL NATURAL AREAS (A-N) ZONE, FOR 41.74 NET (43.44 GROSS) ACRES, FOR PROPERTY LOCATED AT 8291 & 8385 OLD RICHMOND ROAD, AND 8385 DURBIN LANE, WITH CONDITIONAL ZONING RESTRICTIONS, AS AMENDED. (BOONE CREEK PROPERTIES, LLC; COUNCIL DISTRICT 12.)

WHEREAS, at a Public Hearing held on October 27, 2016, a petition for a zoning ordinance map amendment for property located at 8291 & 8385 Old Richmond Road, and 8385 Durbin Lane from an Agricultural Rural (A-R) zone to an Agricultural Natural Areas (A-N) zone, for 41.74 net (43.44 gross) acres, was presented to the Urban County Planning Commission; said Commission recommending approval of the zone change by a vote of 10-0; and

WHEREAS, this Council agrees with the recommendation of the Planning Commission and added conditional zoning restrictions to said approval; and

WHEREAS, the recommendation form of the Planning Commission is attached hereto and incorporated herein by reference.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - That the Zoning Ordinance of the Lexington-Fayette Urban County Government be amended to show a change in zone for property located at 8291 & 8385 Old Richmond Road, 8385 Durbin Lane from an Agricultural Rural (A-R) zone to an Agricultural Natural Areas (A-N) zone, for 41.74 net (43.44 gross) acres; being more fully described in Exhibit "A" which is attached hereto and incorporated herein by reference.

Section 2 - That the granting of this zone change is made subject to the following use restrictions as conditions of granting the zone change:

Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions are proposed for the subject property via conditional zoning:

Prohibited Uses:

- a. Cemeteries, crematories, columbariums, and mausoleums.
- b. Non-service facilities of public utilities and common carriers by rail, including office, garage and warehouse space.
- c. Outdoor rifle and other firearm ranges and outdoor rodeos.

- d. Mining and/or quarrying of non-metallic minerals.
- e. Radio, telephone, and/or television transmitting or relay facilities.

Section 3 - That the Lexington-Fayette Urban County Planning Commission is directed to show the amendment on the official zone map atlas and to make reference to the number of this Ordinance.

Section 4 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: January 19, 2017

MAYOR



ATTEST



CLERK OF URBAN COUNTY COUNCIL

Published: February 14, 2017-1t

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Rec'd by _____

Date: _____


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

IN RE: PLN-MAR-16-00013: BOONE CREEK PROPERTIES, LLC – petition for a zone map amendment from an Agricultural Rural (A-R) zone to an Agricultural Natural Areas (A-N) zone, for 41.74 net (43.44 gross) acres of property, located 8291 & 8385 Old Richmond Road, and 8385 Durbin Lane. (Council District 12)

Having considered the above matter on **October 27, 2016**, at a Public Hearing, and having voted **10-0** that this Recommendation be submitted to the Lexington-Fayette Urban County Council, the Urban County Planning Commission does hereby recommend **APPROVAL** of this matter for the following reasons:

1. The requested Agricultural Natural (A-N) zoning for the subject properties is in agreement with the Rural Land Management Plan's recommendations for Natural Areas (NAT) land use at this location.
2. The 2013 Goals and Objectives also encourage the development of appropriate attractions and supporting uses that promote and enhance tourism (Theme C, Goal 1, Objective e), support the agricultural economy, horse farms, general agricultural farms, and the rural character of the Rural Service Area (Theme E, Goal 2), and protect the environment (Theme B).
3. This recommendation is made subject to approval and certification of PLN-MJDP-16-00029: Boone Creek Properties and H.G. Early-Snyder Family Farm, LLC Property prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

ATTEST: This 14th day of November, 2016.


Secretary, Jim Duncan

WILLIAM WILSON
CHAIR

Note: The corollary development plan, PLN-MJDP-16-00029 BOONE CREEK PROPERTIES & H. G. EARLY-SNYDER FAMILY FARM, LLC PROPERTY was approved by the Planning Commission on October 27, 2016 and certified on November 10, 2016.

Note: A conditional use permit was approved for this property by the Planning Commission at this hearing. K.R.S. 100.211(7) requires that the Council take action on this request by January 25, 2017.

At the Public Hearing before the Urban County Planning Commission, this petitioner was represented by **Dick Murphy, attorney.**

OBJECTORS

- Mr. Don Todd, Todd & Todd, PLLC, was present on behalf of the residents of the Old Richmond Road Neighborhood Association
- Mary Diane Hanna, 6398 Old Richmond Road, President of the Old Richmond Road Neighborhood Association
- Melissa Brown, 823 McCalls Mill Road, President of the Boone Creek Neighborhood Association
- Dr. Lisa Gannoe, 7525 Old Richmond Road
- Jim Griggs, 600 McCalls Mill Road
- Alsten Kerr, 5660 Old Richmond Road
- Alex Martin, 7041 Grimes Mill Road
- Cabby Boone, 1451 Walnut Hill Road
- Chaz Martin, 7416 Grimes Mill Road
- Walter Gaffield, 2001 Bamboo Drive, President of the Fayette County Neighborhood Council
- Amy Clark, 628 Kastle Road

OBJECTIONS

- Represented the neighborhood.
- Development Plan is incorrect.
- Past violations of Boone Creek Properties, LLC.
- Activities were built prior to development being approved and permits obtained.
- Illegality of having multiple principle uses on a single property.
- Concerned about applicant exceeding maximum square footage permitted for structures in the A-N zone.
- Potential violations on the zoning compliance and conditional uses.
- Lack of agri-cultural use on the property.
- Adverse effects of the conditional use on adjoining landowners' property.
- Zone change should not be approved based on the Rural Land Management Plan
- Proposed zone change conflicts with the recommendations of the Rural Land Management Plan.

VOTES WERE AS FOLLOWS:

AYES: (10) Berkley, Cravens, Drake, Mundy, Owens, Penn, Plumlee, Richardson, Smith, and Wilson

NAYS: (0)

ABSENT: (1) Brewer

ABSTAINED: (0)

DISQUALIFIED: (0)

Motion for **CONDITIONAL APPROVAL** of **PLN-MAR 16-00013** carried.

Enclosures: Application
Plat
Staff Report
Applicable excerpts of minutes of above meeting

MAP AMENDMENT REQUEST (MAR) APPLICATION

1. CONTACT INFORMATION (Name, Address, City/State/Zip & Phone No.)

Applicant: BOONE CREEK PROPERTIES LLC, d/b/a BOONE CREEK OUTDOORS, 1040 ELIZABETH ST, NICHOLASVILLE, KY 40356
Owner(s): BOONE CREEK PROPERTIES LLC 1040 ELIZABETH ST NICHOLASVILLE KY 40356 BOONE CREEK PROPERTIES LLC 1040 ELIZABETH ST NICHOLASVILLE KY 40356 H G EARLY SNYDER FAMILY FARM LLC 8385 DURBIN LN LEXINGTON KY 40515
Attorney: Richard Murphy, 250 West Main Street, Suite 2510, Lexington, KY 40507

2. ADDRESS OF APPLICANT'S PROPERTY

8291 OLD RICHMOND RD LEXINGTON KY 8385 DURBIN LN LEXINGTON KY 8385 OLD RICHMOND RD LEXINGTON KY

3. ZONING, USE & ACREAGE OF APPLICANT'S PROPERTY

Zoning	Existing		Zoning	Requested		Acreage	
		Use			Use	Net	Gross
A-R		Private Club	A-N	Ecotourism and		41.74	43.44
A-R		Agriculture	A-N	Agritourism activities			
A-R		Agriculture	A-N	Ecotourism and Agritourism activities Ecotourism and Agritourism activities			

4. EXISTING CONDITIONS

a. Are there any existing dwelling units on this property that will be removed if this application is approved?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
b. Have any such dwelling units been present on the subject property in the past 12 months?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
c. Are these units currently occupied by households earning under 40% of the median income? If yes, how many units? If yes, please provide a written statement outlining any efforts to be undertaken to assist those residents in obtaining alternative housing.	<input type="checkbox"/> YES <input type="checkbox"/> NO



JUSTIFICATION FOR REQUESTED CHANGE

The Applicant, Boone Creek Properties, LLC, is requesting your approval of a zone change from the agricultural rural (A-R) to the agricultural natural area (A-N) zone for 41.74 acres of land located at 8291 and 8385 Old Richmond Road and 8385 Durbin Lane. We are also requesting your approval of a conditional use permit for ecotourism and agritourism activities in the A-N zone.

The proposed A-N zoning is in agreement with the Comprehensive Plan. This property has been anticipated to be placed in the A-N zone at least since the 1999 Rural Land Management Plan. That plan pointed out that along the tributaries to the Kentucky River, land is not suitable for traditional farming activities. As the plan stated, "Compared to other areas of the Rural Service Area, the land generally contains steeper slopes, forested areas, poor/thinner soils and similar characteristics. Portions of the area are recognized as historic/scenic areas, and are known as habitat for rare and unusual flora and fauna. Approximately 90% of the land has a high degree of environmental sensitivity, including flood plain/riparian areas, steep slopes and woodlands." (RLMP Page III-7). That description applies to this property. There is a small flat area along Old Richmond Road, but the property slopes steeply to Boone Creek. The plan advocates that these areas be considered for greater public recreation. (Page IV-42).

After the adoption of the Rural Land Management Plan, the 2007 Comprehensive Plan map placed this property in the "natural" area.

This proposal also agrees with the 2013 Comprehensive Plan. The Goals & Objectives call for increasing small business development (Objective C-2a) and providing the quality of life that will attract young professionals to the community (Objective C-2d). The Goals & Objectives also call for updating and affirming the Rural Land Management Plan (Objective E-2a). The 2013 plan itself states: "Lexington is well-situated to capitalize on opportunities for ecotourism, agritourism and cultural tourism, which are the fastest growing segments of the tourism marketplace." Also, "tourism in Fayette County is significant and can become an even stronger component of economic development." (Chapter 5, Pages 63-64.)

This proposal, which includes ecotourism and agritourism, will allow a limited use of the property for recreation, educational and instructional purposes. It is fully in keeping with the Comprehensive Plan and all plans which this community has adopted in the last 15 years.

CONDITIONAL USE APPLICATION

We are also requesting your approval of a conditional use permit for ecotourism and agritourism activities. (Please note also that the existing conditional use for the Anglers Club will continue on the property).

Ecotourism and agritourism activities will include a tree canopy tour, guided hiking trails, equine trails, canoeing and kayaking launch sites with recreational outfitters, environmental and agricultural education classes, historic and active farm tours, and a farm gift shop (limited to 500 square feet). The canopy tour will be an entirely tree-based canopy tour featuring zip lines, sky bridges, a floating staircase, a rappel station, ladders and platforms located in the trees. The course was built using state of the art equipment systems located entirely in the trees using no permanent structures. The equipment is designed to allow for the uninhibited continuing growth of the trees as well as encouraging proactive forestry management. The course begins in a blue ash tree and traverses to a chinquapin oak, red oak, white oak, red cedar, white ash, tulip poplar and white ash and red oak again. In addition, buckeye, walnut, basswood, shagbark hickory, black oak, chestnut oak, elm, sycamore, coffee, paw-paw and many other native species of trees will be encountered on the tour. Tour guests will also be educated about invasive species currently threatening the survival and regeneration of these hardwoods in the Palisades such as emerald ash borer, wintercreeper, bush honeysuckle and burning bush. The tour will educate about these threats as well as showing the results of mitigation efforts on the property.

Participants will arrive at the welcome center, which is a repurposed use of the former Jolly Roger Restaurant and Truck Stop. Parking will be on the paved area once used in conjunction with the service station. All guests will receive safety orientation before proceeding to "ground school", where they will be trained on necessary protocol for continuing on the course. At least two guides will accompany every group with radios for communication with each other and the "ground monitor" located at the welcome center. The canopy tour will be operated in conformance with the safety guidelines of the Association for Challenge Course Technology (ACCT). In addition, the Kentucky General Assembly has recently adopted safety statutes for aerial recreational facilities and inspection standards. Please note also that an affiliated entity of the applicant is currently operating the canopy tour at Pine Mountain State Park in Kentucky.

Other aspects will include a guided hiking trail which will be highlighted by the old wagon road which leads to the 1787 mill on the property. There will be tours of the operating and historic farm, equine trails, environmental and agricultural education classes, as well as a canoe and kayak launch site with outfitters. There will be a small gift shop limited to 500 square feet.

This will be a sustainable design which will emphasize recreation and education to preserve and sustain the Palisades ecosystem. For further information, please see accompanying materials submitted with this application.

This property has direct access to US Route 25 (Old Richmond Road) and is located at Exit 99 on Interstate 75. An existing septic system will be utilized.

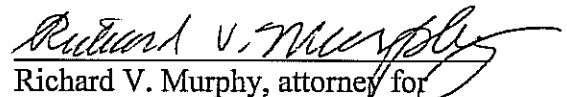
Thus, we are requesting your approval of the conditional use permit for the following reasons:

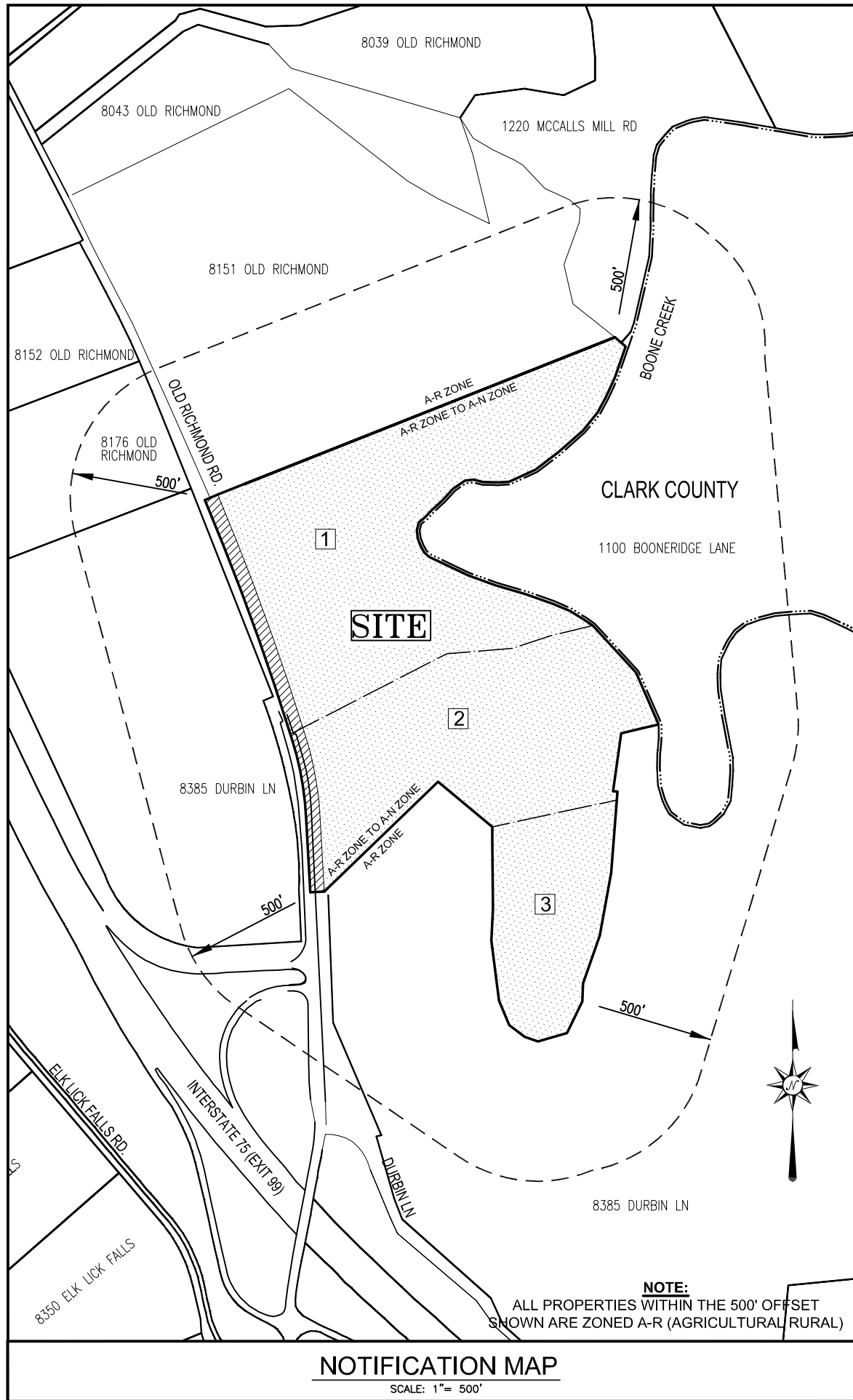
1. Ecotourism and agritourism activities are allowed as conditional uses in the A-N zone.

2. Ecotourism and agritourism activities will not harm the public health, safety or welfare, and will not impair the integrity and character of this zone or adjoining zones because the number of visitors and intensity of use will be carefully limited to preserve the character of the area. The majority of the property will remain open, without buildings, and the topography of the land will be preserved along with the plants and wildlife of the area. The Comprehensive Plan recognizes that the A-N zoned areas are appropriate for ecotourism and agritourism and similar activities.

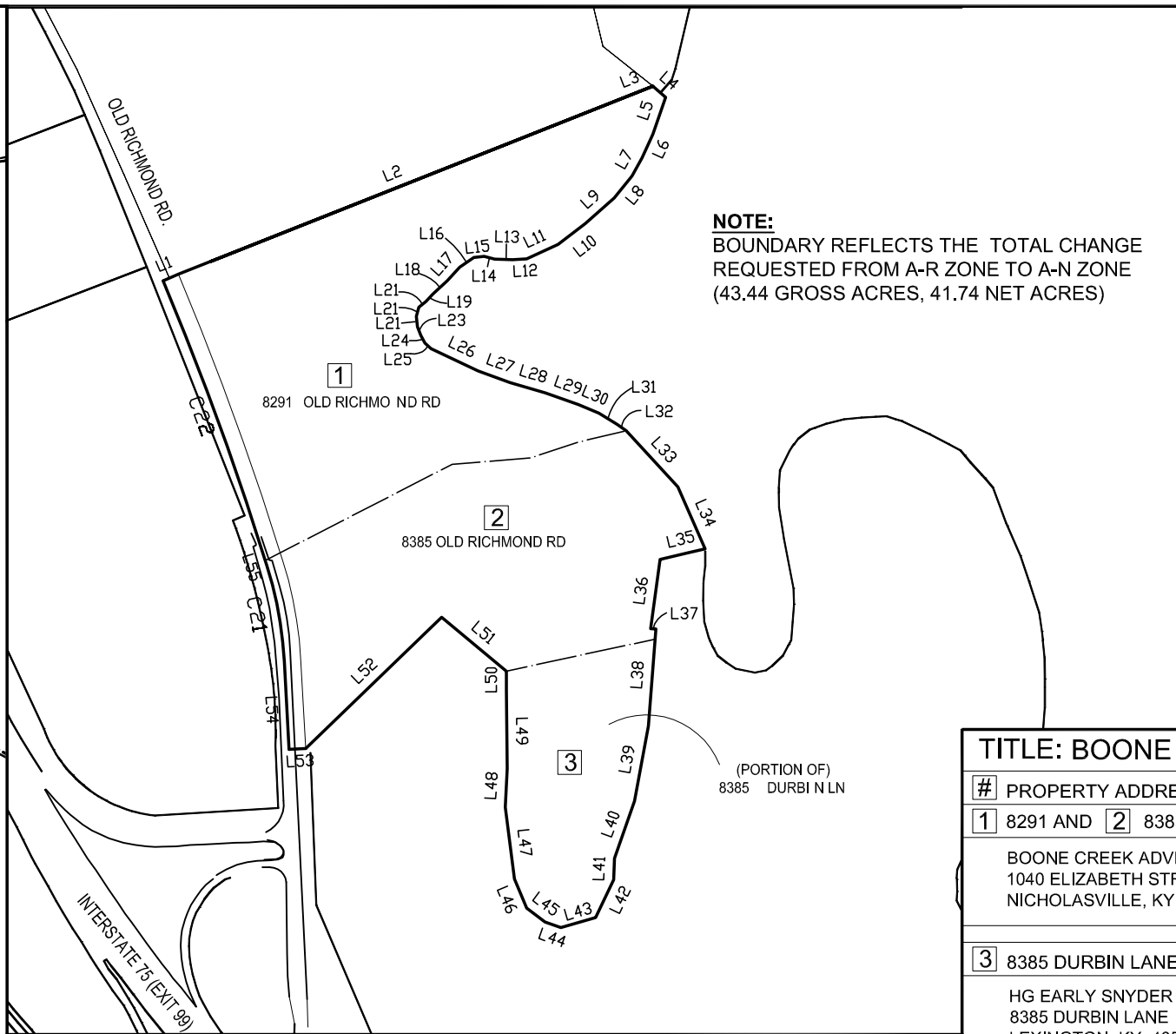
3. All public facilities which are needed are available and adequate to the site. This property has direct access to Old Richmond Road, and close access to Interstate 75. Septic facilities are available and adequate to the site. All needed public utilities are available and already present at the site. Police and fire protection are excellent in this portion of Fayette County.

Thank you for your consideration of this zone change and conditional use permit application.


Richard V. Murphy, attorney for
applicant



NOTIFICATION MAP
SCALE: 1" = 500'



PROPERTY MAP
SCALE: 1" = 500'

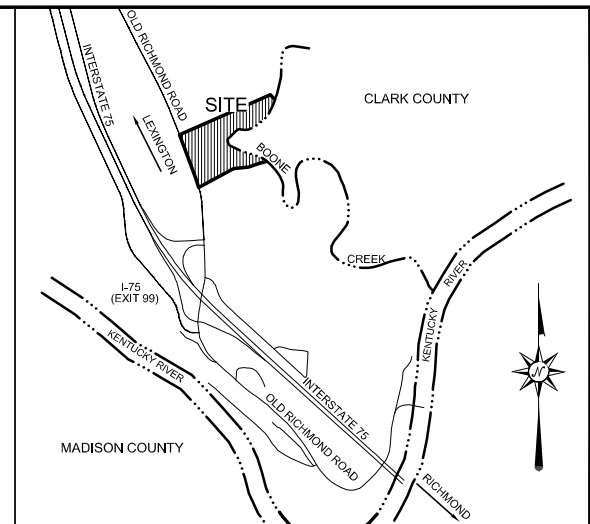
LINE TABLE LEGEND:

LINE	BEARING	DISTANCE
L1	N 67°08'05" E	50.00'
L2	N 68°24'07" E	1412.93'
L3	N 68°26'05" E	116.70'
L4	S 49°19'04" E	50.48'
L5	S 19°01'34" W	117.15'
L6	S 24°30'29" W	77.74'
L7	S 28°36'38" W	62.13'
L8	S 39°01'48" W	84.84'
L9	S 48°32'08" W	115.74'
L10	S 52°46'20" W	102.83'
L11	S 65°20'26" W	103.66'
L12	S 86°29'39" W	42.25'
L13	N 88°32'47" W	53.38'
L14	N 75°09'11" W	33.21'
L15	S 83°32'08" W	31.27'
L16	S 55°54'14" W	50.97'
L17	S 42°14'33" W	55.27'
L18	S 47°27'57" W	58.89'
L19	S 41°49'24" W	29.77'
L20	S 52°01'57" W	28.28'
L21	S 15°09'13" W	28.37'

LINE	BEARING	DISTANCE
L22	S 06°56'12" E	31.05'
L23	S 20°37'12" E	27.95'
L24	S 27°49'25" E	26.51'
L25	S 48°48'18" E	24.75'
L26	S 64°32'38" E	155.27'
L27	S 70°11'30" E	102.67'
L28	S 73°39'53" E	109.96'
L29	S 70°37'50" E	105.03'
L30	S 67°14'49" E	67.20'
L31	S 57°51'23" E	63.16'
L32	S 55°38'07" E	34.15'
L33	S 42°37'01" E	228.67'
L34	S 23°38'27" E	202.22'
L35	S 76°29'38" W	138.20'
L36	S 07°51'43" W	208.96'
L37	S 85°37'25" E	15.77'
L38	S 04°23'07" W	291.38'

LINE	BEARING	DISTANCE
L39	S 10°27'18" W	228.97'
L40	S 19°16'42" W	181.80'
L41	S 02°15'56" W	64.32'
L42	S 25°55'05" W	125.48'
L43	S 73°37'43" W	108.30'
L44	N 69°59'01" W	50.28'
L45	N 53°20'44" W	69.11'
L46	N 22°47'52" W	94.74'
L47	N 07°15'22" W	217.04'
L48	N 03°12'32" E	114.97'
L49	N 00°37'40" W	235.95'
L50	N 00°07'10" E	57.01'
L51	N 50°15'04" W	252.54'
L52	S 46°03'20" W	566.20'
L53	S 86°49'54" W	50.00'
L54	N 03°10'06" W	264.99'
L55	N 17°34'25" W	24.84'

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C21	1145.93'	291.13'	290.35'	N 10°17'27" W	14°33'22"
C22	9127.34'	884.37'	884.03'	N 20°05'22" W	05°33'06"



VICINITY MAP
SCALE: 1" = 3000'

APPLICANT NAME / ADDRESS:
 BOONE CREEK ADVENTURES, LLC
 1040 ELIZABETH STREET
 NICHOLASVILLE, KY 40356
 PREPARED BY: VISION ENGINEERING, LLC
 DATE FILED OR AMENDED: SEPTEMBER 2, 2016

TITLE: BOONE CREEK OUTDOORS

#	PROPERTY ADDRESS KEY:	FROM	TO	GROSS	NET
1	8291 AND 2 8385 OLD RICHMOND RD	A-R	A-N	43.44	41.74
BOONE CREEK ADVENTURES, LLC 1040 ELIZABETH STREET NICHOLASVILLE, KY 40356					
3	8385 DURBIN LANE (A PORTION OF)				
HG EARLY SNYDER FAMILY FARM LLC 8385 DURBIN LANE LEXINGTON, KY 40515					
TOTAL CHANGE REQUESTED:		A-R	A-N	43.44	41.74



STAFF REPORT ON PETITION FOR ZONE MAP AMENDMENT

PLN-MAR-16-00013: BOONE CREEK PROPERTIES, LLC, DBA BOONE CREEK OUTDOORS

DESCRIPTION

Zone Change: From an Agricultural Rural (A-R) zone
To an Agricultural Natural (A-N) zone

Acreeage: 41.74 net (43.44 gross) acres

Location: 8291 & 8385 Old Richmond Road, and 8385 Durbin Lane

EXISTING ZONING & LAND USE

<u>Properties</u>	<u>Zoning</u>	<u>Existing Land Use</u>
Subject Properties	A-R	Outdoor Recreation (Fishing) and Private Club, Agriculture
To North	A-R	Agriculture
To East	Clark County	Boone Creek and Agriculture
To South	A-R	Agriculture
To West	A-R	Agriculture

URBAN SERVICES REPORT

Roads – The subject properties are located in the southeastern portion of Fayette County, along Boone Creek and the Clark-Fayette County boundary. The subject properties front along Old Richmond Road (US 25 & 421) and Durbin Lane, just to the east of Interstate 75, and a short distance north of Exit 99. Roadway improvements may be required by the Kentucky Transportation Cabinet for Old Richmond at the entrances to the proposed agritourism and ecotourism uses.

Curb/Gutter/Sidewalks – These urban improvements are not present, nor are they planned along Old Richmond Road or Durbin Lane within the Rural Service Area.

Storm Sewers – The subject properties are located within the Boone Creek watershed. Boone Creek, a tributary of the Kentucky River, forms the border of the site along the east, which is also the boundary between Fayette and Clark Counties. The property has steep slopes across a majority of the property, and falls off toward Boone Creek to form the palisades area of the Kentucky River. A portion of the property along the Creek is located within a FEMA Special Flood Hazard Area (100-year floodplain), according to the D-FIRM, with a 1% chance of flooding in any year. Stormwater detention and water quality are issues that must be addressed in urban areas in accordance with the LFUCG Stormwater Manuals. They may also need to be reviewed prior to commencing any new development of the subject properties.

Sanitary Sewers – The subject property is located within the Rural Service Area; therefore, no sanitary sewers exist in this area. However, the petitioner has stated that the existing septic system on the property is will utilized for the proposed ecotourism and agritourism uses. Further documentation from the Fayette County Health Department will be necessary if the requested conditional use is approved by the Planning Commission.

Refuse – The Urban County Government does not provide refuse collection to the Rural Service Area. Private refuse collection would be necessary for any commercial use of the properties.

Police – The closest police station to the subject properties is the East Sector Roll Call Center, located off Centre Parkway in the Gainesway area, about 12 miles to the northwest of the site.

Fire/Ambulance – Fire Station #18 is the nearest station to the subject site. It is located at the corner of South Cleveland Road and Old Richmond Road, approximately two miles to the northwest.

Utilities – All utilities, including electric, gas, water, telephone, and cable service are available to serve the property.

COMPREHENSIVE PLAN AND PROPOSED USE

The subject properties are located within the Rural Service Area, which encompasses 200 square miles and about 70% of Lexington-Fayette County. The 1999 Rural Land Management Plan was developed to guide resource management and planning for this portion of the County, and the Plan recommends the subject properties be utilized for Natural Area (NAT) land use.

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The mission statement notes that 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. The 2013 Comprehensive Plan recommends updating, affirming and readopting the Rural Land Management Plan.

The petitioner proposes to rezone the properties to an Agricultural Natural (A-N) zone, and is also requesting a conditional use to operate agritourism and ecotourism activities, including a tree canopy tour, guided hiking trails, equine trails, canoeing and kayaking launch sites with recreational outfitters, environmental and agricultural education classes, historic and active farm tours, and a farm gift shop (limited to 500 square feet in size). The petitioner plans to maintain the existing conditional use permit for an outdoor recreational facility – the Boone Creek Angler's Club – which was approved as a private club by the Board of Adjustment in 2000.

CASE REVIEW

The petitioner has requested a zone change from an Agricultural Rural (A-R) zone to an Agricultural Natural (A-N) zone for approximately 41.5 acres of property located along Old Richmond Road.

The subject properties are located a short distance north of the Old Richmond Road/Interstate 75 interchange (Exit 99). The property is bounded on three sides by A-R zoning (north, south and west), and to the east by Boone Creek itself and Clark County. An outdoor recreational facility was established on the subject property following Board of Adjustment approval for fishing and a private club, which is an allowable conditional use in the A-R zone. The site was formerly the location of the "Jolly Roger" restaurant and truck stop many years prior. That building, which remains on the site near the roadway, has been used as a single family residence for a caretaker of the site over the past few years; and has undergone some renovations to support the requested activities.

The petitioner is proposing agritourism, and ecotourism activities, including: a tree canopy tour, guided hiking trails, equine trails, canoeing and kayaking launch sites with recreational outfitters, environmental and agricultural education classes, historic and active farm tours, and a farm gift shop (limited to 500 square feet in size). The heart of the proposed activities is a tree canopy tour, which includes ziplines; sky bridges; a floating staircase; a rappel station; ladders; and platforms located in the trees.

The petitioner plans to re-use the former Jolly Roger Restaurant and Truck Stop for a welcome center. On site, the petitioner plans to have historical and educational programs, some specifically highlighting the 1787 mill on the site. The request for a conditional use will be addressed by a separate staff report.

A portion of the subject site (about half) was proposed for re-zoning more than two years ago by the petitioner. The requested zone change was recommended for approval by the Planning Commission in September, 2014; but after a lengthy public hearing, the associated conditional use was neither approved nor disapproved due to a tie vote. Although the petitioner could have proceeded with the zone change, they elected to withdrawal the request in order to allow the local government to address some of the concerns brought forward during the hearing through a text amendment to the Zoning Ordinance for recreational and tourism land uses (ZOTA 2014-4). The text amendment was adopted in June 2016 to define and regulate agritourism and ecotourism land uses. Another text amendment to address environmentally sensitive areas in Fayette County is also relevant to the requested conditional use requested (ZOTA 2016-1).

Based upon the 1999 Rural Land Management Plan, the subject properties are all recommended for a Natural Areas (NAT) land use. The Natural Areas (NAT) land use category, as described in that Plan (page III-7), is designed to encompass certain areas of Fayette County that are physically unique and important for preservation, but not primarily for their association with traditional agriculture. Lands in this land use category exhibit a combination of characteristics including an association with the Kentucky River and its tributaries, steep slopes, forested areas and woodlands, poorer/thinner soils, and floodplain/riparian areas. The Rural Land Management Plan states that "although agriculture can and does occur in portions of this area, it is not the predominant character of the area as a whole." The policy emphasis for land in this land use category, including the subject properties, should be for preservation and enhancement of the land in a natural state with minimum intrusions. The Agricultural Natural (A-N) zone was written in 2004 based upon the content of the Rural Land Management Plan and the more specific recommendations listed on page III-9.

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

This request for A-N zoning is now the second such ever requested since the zoning category was created in 2004. The first request was for a portion of the subject properties, but withdrawn by the applicant prior to the Urban County Council taking action on the request. The recent revisions approved to the A-N zoning category removed a number of conditional uses that were not necessarily desired in this portion of the county or that were not compatible with the intent of the zone to conserve and preserve these lands. The A-N zone has many fewer conditional uses available compared to the existing A-R zone (11 compared to 31), and requires more information in seeking a conditional use permit. The Board of Adjustment, and the Planning Commission when serving in such capacity, shall require the submission of an environmental assessment prepared by a qualified professional, consider mitigation of environmental impacts over time, consider the operational plan of any proposed agritourism or ecotourism activities, and consider requiring certification for any proposed ecotourism activities. These requirements and safeguards will help to ensure the least negative impact on the land in this environmentally sensitive area of Fayette County.

The requested A-N zone is in agreement with the Rural Land Management Plan and the 2013 Comprehensive Plan, based upon the historic land use designation and the Goals and Objectives as set forth by the Comprehensive Plan when adopted in November 2013.

The Staff Recommends: Approval for the following reasons:

1. The requested Agricultural Natural (A-N) zoning for the subject properties is in agreement with the Rural Land Management Plan's recommendations for Natural Areas (NAT) land use at this location.
2. The 2013 Goals and Objectives also encourage the development of appropriate attractions and supporting uses that promote and enhance tourism (Theme C, Goal 1, Objective e), support the agricultural economy, horse farms, general agricultural farms, and the rural character of the Rural Service Area (Theme E, Goal 2), and protect the environment (Theme B).
3. This recommendation is made subject to approval and certification of PLN-MJDP-16-00029: Boone Creek Properties and H.G. Early-Snyder Family Farm, LLC Property prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

TLW/JM/WLS

10/4/2016

Planning Services/Staff Reports/MAR/2016/PLN-MAR-16-00013.doc

6. **BOONE CREEK PROPERTIES, LLC ZONING MAP AMENDMENT, BOONE CREEK PROPERTIES & H.G. EARLY SNYDER FAMILY FARM, LLC PROPERTY & CONDITIONAL USE**

- a. PLN-MAR-16-00013: BOONE CREEK PROPERTIES, LLC - a zone change from an Agricultural Rural (A-R) zone to an Agricultural Natural Areas (A-N) zone, for 41.74 net (43.44 gross) acres of property, located 8291 & 8385 Old Richmond Road, and 8385 Durbin Lane.

COMPREHENSIVE PLAN AND PROPOSED USE

The subject properties are located within the Rural Service Area, which encompasses 200 square miles and about 70% of Lexington-Fayette County. The 1999 Rural Land Management Plan was developed to guide resource management and planning for this portion of the County, and the Plan recommends the subject properties be utilized for Natural Area (NAT) land use.

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The mission statement notes that 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. The 2013 Comprehensive Plan recommends updating, affirming and readopting the Rural Land Management Plan.

The petitioner proposes to rezone the properties to an Agricultural Natural (A-N) zone, and is also requesting a conditional use to operate agritourism and ecotourism activities, including a tree canopy tour, guided hiking trails, equine trails, canoeing and kayaking launch sites with recreational outfitters, environmental and agricultural education classes, historic and active farm tours, and a farm gift shop (limited to 500 square feet in size). The petitioner plans to maintain the existing conditional use permit for an outdoor recreational facility – the Boone Creek Angler's Club – which was approved as a private club by the Board of Adjustment in 2000.

The Zoning Committee Recommended: Approval.

The Staff Recommends: Approval for the following reasons:

1. The requested Agricultural Natural (A-N) zoning for the subject properties is in agreement with the Rural Land Management Plan's recommendations for Natural Areas (NAT) land use at this location.
2. The 2013 Goals and Objectives also encourage the development of appropriate attractions and supporting uses that promote and enhance tourism (Theme C, Goal 1, Objective e), support the agricultural economy, horse farms, general agricultural farms, and the rural character of the Rural Service Area (Theme E, Goal 2), and protect the environment (Theme B).
3. This recommendation is made subject to approval and certification of PLN-MJDP-16-00029: Boone Creek Properties and H.G. Early-Snyder Family Farm, LLC Property prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

b. **REQUESTED CONDITIONAL USE**

Ecotourism and Agritourism activities – including a tree canopy tour, guided hiking trails, equine trails, canoeing and kayaking launch sites with recreational outfitters, educational classes, farm tours and a farm gift shop.

The Zoning Committee Recommended: Approval.

The Staff Recommends: Postponement, for the following reasons:

1. There is an unresolved legal issue associated with the current request for Planning Commission consideration of a Conditional Use Permit at this location. The staff would like to hold a discussion of this issue with the Department of Law prior to the Planning Commission's public hearing for this application.
2. A postponement would allow time for the applicant to complete some site plan details about certain aspects of the proposed conditional use.

c. **PLN-MJDP-16-00029 BOONE CREEK PROPERTIES & H. G. EARLY-SNYDER FAMILY FARM, LLC PROPERTY (9/29/16)* - 8291 & 8385 Old Richmond Road and a portion of 8385 Durbin Lane. (Barrett Partners)**

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

1. Provided the Urban County Council rezones the property **A-N**; 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. Urban Forester's approval of tree inventory map.

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5. Greenspace Planner's approval of the treatment of greenways and greenspace.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
8. Expand note #9 to include tree diameter approximations.
9. Revise note #15 to indicate timing and type of paving and landscaping to be provided.
10. Discuss proposed caretakers apartment compliance with Article 8-3(c)8 of the Zoning Ordinance.
11. Discuss required setback (300' vs. 50') for the welcome center and other site improvements.

Staff Zoning Presentation – Mr. Sallee stated that the staff has received several letters of correspondence related to this zone change; 3 in favor and 2 in opposition.

Mr. Sallee presented the staff report and recommendations on this zone change. He said that most of the activities proposed require conditional use permits.

Mr. Sallee said that in 2014 this area was considered for a zone change, and since then there has been a Zoning Ordinance Text Amendment (ZOTA), which has revised many of the recreation land uses that are permitted in the Zoning Ordinance as conditional uses in the Agricultural, Residential and Commercial zones.

Mr. Sallee said that the staff's recommendation is made subject to approval and certification of the development plan that has been filed in conjunction with this request.

Commission Comments – There were questions in regard to the owners of the three different addresses listed and if any of these properties will be considered a split zoning. Mr. Sallee replied that two of the three properties have the same owners, listed as Boone Creek Properties, LLC, which are located at 8291(20.15 net acres) and 8385 Old Richmond Road (14.85 net acres). The owner of 8385 Durbin Lane is listed as H.G. Early Snyder Farm (6.84 net acres). He said that only a small portion of 8385 Durbin Lane is proposed for rezoning. There was also a question regarding approving conditional uses across property lines. Mr. Sallee replied that it isn't common, but it isn't prohibited by the Zoning Ordinance.

Development Plan Presentation - Mr. Martin presented the revised conditions (yellow handout) of the development plan.

The Staff Recommends: Approval, subject to the following conditions:

1. Provided the Urban County Council rezones the property A-N; 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. Urban Forester's approval of tree inventory map.
5. Greenspace Planner's approval of the treatment of greenways and greenspace.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
8. Discuss Denote that the proposed caretakers apartment shall comply compliance with Article 8-3(c)8 of the Zoning Ordinance.
9. Discuss required setback (300' vs. 50') Denote non-conforming status for the welcome center structure and other site improvements in front of the 300' building line.
10. Denote any approved activities specific to areas of this plan.
11. Clearly denote canopy tour route on plan, prior to certification.

Mr. Martin said that the plan needs to show specific areas of activities on the Final Development Plan.

Commission Comments – There was a question of how many activities are being planned and what they are going to be. Mr. Martin said that will be outlined in the conditional land use report. There will be canopy tours, historic and active farm tours, educational programs and training, and natural recreational areas among other activities. There was a question regarding the number of uses being identified after the subdivision meeting. Mr. Martin stated that this a preliminary development plan and that the applicant can further answer that.

Conditional Use – Ms. Wade presented the staff report and the staff's recommendations for the conditional uses requested for this development. She said that these uses were added to the Zoning Ordinance through the recreation and tourism text amendment that was for eco-tourism and agri-tourism activities. The uses that the applicant is requesting are components of the overall use.

Ms. Wade distributed exhibits to the Planning Commission. The first staff exhibit is the existing (new) text from Article 7-6 of the Zoning Ordinance related to the Board of Adjustment's specific powers when they consider a conditional use; powers that also apply to the Planning Commission. The second staff exhibit is KRS 247.238, which is related to the "aerial recreational facilities," now definitely by state law.. The third staff exhibit is an email addressed to Ms. Wade from Dewey

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Crowe, Director of Building Inspection, which states that they have reviewed the Kentucky Building Code in reference to zip lines, the associated tree platforms, and the children's rope walks, and that no changes have occurred since their initial review. In that review, it was determined that the platforms attached to the tree are not considered structures and they do not require a building permit.

Ms. Wade said that in terms of the conditional use, the eco-tourism and agri-tourism activities will be tree canopy tours, which include zip lines; sky bridges; floating staircase; a repel station; ladders; and platforms located in numerous trees on the property; ropes challenge course; outdoor recreation/education area; guided hiking and equine trails; historic and active farm tours (which will utilize the old wagon road); canoe and kayak launch sites; environmental and agricultural educational classes; and a farm gift shop. The locations of some of the uses are known, while other areas have not yet been determined and will need to be identified on the Final Development Plan, or do not have specific locations, such as educational classes.

Ms. Wade showed photographs of the subject property, showing some of the platforms and what remains of the old sulfur well structure. She said that one of the zip line cables does cross the county boundary and that the applicant has permission from the adjacent property owner to do so.

Ms. Wade said that the applicant will be expecting 50-90 visitors a day for the nine months of operation. They will have operating hours beginning at 10:00 am until dusk, with the last tour beginning 2 hours prior to dusk. The training and educational classes will be limited based on the availability of the on-site parking. Stables will not be on the site and private horses will not be permitted; the applicant will be bringing equine in from another farm.

Ms. Wade said the staff is now recommending approval based upon 21 conditions and she summarized those conditions, the main condition of the approval is provided the subject properties are rezoned A-N by the Urban County Council otherwise any Planning Commission action of approval is null and void.

Commission Comments – There was a comment regarding the conditional uses that the Board of Adjustment or whomever is hearing the case "shall consider." There was a comment of the number of uses listed on the Development Plan, but there are only 3-4 primary uses and those areas are marked on the plan. There was also a comment of the agricultural tours and farming operations and that this land was not farmable in the past and that one of the conditions was to not permit retail sales in a farm gift shop. Ms. Wade clarified that the farm gift shop is an accessory retail facility, limited to a maximum of 500 square feet in size that offers for sale farm products grown or raised on the premises, and/or memorabilia representative of the farm products grown or raised on the premises, such as hats, shirts and souvenirs.

Petitioner Presentation – Dick Murphy, Murphy & Clendenen, PLLC, was present representing the petitioner and said that he believes the applicant is in agreement with the staff's recommendations with some clarifications on a few of the conditions. He said that the state of Kentucky has passed a law setting the safety standards for ziplines. This statute requires the use of the Association for Challenge Course Technology (ACCT) or the American Society for Testing Standards (ASTM). The ACCT approval is the more difficult one to obtain and the one that has been selected by the petitioners. He said that this is active, not passive, tourism and it's the kind of tourism that is encouraged in the Comprehensive Plan.

Mr. Murphy distributed a handout of the applicant's exhibits. He said that the Durbin property will be in the same ownership, if this is approved. Mr. Carey has an option to purchase those six acres as Boone Creek Properties. He showed a presentation of photos of the site and also a video. He said that the trees are not harmed when the platforms are attached and gives the trees room to grow. Dave Leonard, Dave Leonard Arborist, inspects the trees annually.

Mr. Murphy said he has some requested revisions to the conditions proposed by the staff. The public driveways and parking lots will be the only areas that will be paved (#5). School groups will have a different scheduling of tours than the general public (#11). The use of all-terrain vehicles will only be used for emergencies. The petitioner would like to add that security and maintenance be permitted to use all-terrain vehicles (#13). The sale of food and services; they are required to sell water and snacks for medical uses (#19). The caretakers are remodeling the house and will comply with the staff.

Mr. Carey submitted a notebook of exhibits to the record.

Sarah Smith, Smith Management Group, consultant to analyze the environmental aspects of the property and the project, presented her findings and recommendations.

Burgess Carey, owner of Boone Creek Properties; Tony Barrett, Barrett and Partners were also present, and discussed the aspects of the proposal.

Commission Comments – There are concerns about safety and concern about quitting the tour early. Mr. Burgess Carey replied that the staff is trained to evacuate the trail within 4 minutes for weather purposes. He said that there is a weight limit

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of 70 lbs. so the zip liners don't get stuck halfway through a tour. Part of the educational experience will occur on on the platforms. The braking is taught in the ground school before the tour. There are also back-up brake systems on every platforms that the guides are trained to use. If one guest wants off the tour, there will be a guide on the ground to assist with their exit and the rest of the group can proceed with their tour.

Opposition Comments – Mr. Don Todd, attorney, was present representing the citizens that are in opposition and said that he believes that there are some serious issues with the conditional uses proposed.

Mary Diane Hanna, 6398 Old Richmond Road, President of the Old Richmond Road Neighborhood Association, distributed a handout and displayed several photos and maps. She said that the development plan is incorrect and that some of the tree canopy business is built on neighboring land at 8151 Old Richmond Road.

Melissa Brown, 823 McCalls Mill Road, President of the Boone Creek Neighborhood Association, distributed a handout. She described past violations of the Boone Creek Property owners.

Dr. Lisa Gannoe, 7525 Old Richmond Road, distributed a handout. She said what is requested under the Zoning Ordinance is already built and it was built before the development was approved and before the required permits were obtained.

Jim Griggs, 600 McCalls Mill Road, distributed a handout. He questioned of the legality of having multiple principle structures on a single property.

Alsten Kerr, 5660 Old Richmond Road, distributed a handout. She commented on the maximum square feet permitted for structures proposed for such uses and questioned the ones proposed for this use.

Alex Martin, 7041 Grimes Mill Road, distributed a handout. He commented on the violations of the compliance and the conditional uses.

Cabby Boone, 1451 Walnut Hill Road, distributed a handout. She commented about agri-tourism, stated and that Boone Creek Properties is recreational, not agricultural.

Chaz Martin, 7416 Grimes Mill Road, distributed a handout. He commented on the adverse effects of the proposed and that the platforms are bolted to the trees.

Mr. Todd summarized the comments that the constituents had made. He also asked the Planning Commission to verify that the zip lines are not on the adjacent property, which has a PDR easement. He also stated the zoning text is different for these types of structures.

The following citizens were present, and spoke in favor of this case:

Jane Snyder, 8385 Durbin Lane, owns the property that is under contract with Mr. Carey. She is in support of this project, and has given permission to rezone a portion of her land.

Sarah Brown, 8152 Old Richmond Road, represents the Clays Ferry Neighborhood Association. She is in support this project.

Jacob Roan, employee of Pine Mountain State Park in Pineville, KY, stated that he was involved with a tree canopy tour in the state park and worked with Mr. Carey there.

Ben Hoskins, Pineville, employee of Mr. Carey at Pine Mountain Canopy Tour, said that he is happy to assist with any questions regarding the constructions, attachments of the platforms, and safety. He said that the bolts for the platforms are only about 2 inches into the tree, which does not damage the trees

Duane Hoskins, Pineville, employee of Mr. Carey at Pine Mountain Canopy Tour, offered his support and to answer questions.

Ashley Payne, Pineville, employee of Mr. Carey at Pine Mountain Canopy Tour, offered to answer questions regarding safety of the canopy tours.

Zach Tabor, Pineville, Certified Horticulture Designer, Soil Consultant, and arborist, offered to answer questions regarding the ecology of the area.

The following citizens were present, and spoke in opposition of this case:

Walter Gaffield, 2001 Bamboo Drive, President of the Fayette County Neighborhood Council, stated that he is concerned with the zone change being based on the Rural Land Management Plan. He believes that the agricultural natural zone

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recommends that it be a PDR project with no commercial business on it. He said that he is also concerned with safety issues.

Amy Clark, 628 Kastle Road, said that the proposed land uses conflict with the recommendations of the Rural Land Management Plan. She says that Boone Creek Properties is an active recreation not a passive recreation.

Petitioner Rebuttal – Mr. Murphy said this is a brand new application for a conditional use permit under a brand new ordinance that was recently passed. He said that this application conforms with the new ordinance. He said that a professional survey was done and all the associated improvements are on Mr. Carey's property. He agreed to imposition of a condition that all improvements must be located on the subject property. He also commented that the issue of the multiple structures on a single property is not valid.

Opposition Rebuttal – Mr. Todd said that the photographs prove that the structures are located on Mr. Parks' property. He said that the aerial photos don't match the plans. He also said that the stable is on Mr. Parks' property and that he suggested a fence be installed between the PDR property and the commercial use property. He said that agri-tourism is not applicable here.

Staff Rebuttal – Ms. Wade said that agricultural use in the state of Kentucky is broadly defined. KRS 100 states that it must be at least 5 acres with a long list of products that can be grown or raised on the land. There is no limit on the number of livestock other requirement for it to constitute as an agricultural use. She said the platforms attached to the trees are not structures per the Zoning Ordinance or the Building Code. The Zoning Ordinance also doesn't restrict the number of conditional uses per parcel. She also stated that the Snyder's have given permission to Mr. Carey to prepare an application that uses their property, and such documentation has been submitted to the staff.

Tom Martin summarized the definition of a preliminary development plan and a final development plan clarifying that precise information is not required at this stage in the plan's process.

Commission Comments – There were questions if the final development plan is more detailed should the conditions be done at that time instead of at the preliminary development plan. Mr. Saltee said that the conditions associated with the requested conditional use permit can only be addressed by the Planning Commission at the hearing today. Ms. Jones said that the Planning Commission is standing in the shoes of the Board of Adjustment because the zone change and conditional use were filed together, which is permitted by KRS 100 and by the Ordinance. The petitioner will need to obtain their certificate of occupancy and zoning compliance permit prior to opening the facility after the approval of the Final Development Plan.

Discussion - Mr. Todd asked how the conditions could be approved without specific identification of structure locations. Ms. Jones replied that the structures have been identified. Mr. Todd said they are identified from only a conceptual point of view. There was discussion of the PDR program. Ms. Jones clarified that the Planning Commission does not have authority over the adjacent parcel in a PDR easement.

There was a question regarding the development plan that a new development plan will supersede any prior development plan. Mr. Martin replied that it does and the prior plan is no longer valid. There was a question regarding the changes to the conditional uses. Mr. Murphy clarified that the typical tour will be made by reservation only for 10 people; for school groups the facility will be closed to the public and the tours will be scheduled more continuously, with more guides.

There was a question regarding the equine animals and stable. Mr. Carey said that he resides on the other (north) side of Mr. Parks' property and keeps the animals there and the Snyder's have given permission to Mr. Carey to use their barn. He said that if he is unable to walk the animals down the road or across Mr. Parks' land, he will remove that proposal from the request. It was clarified that Mr. Carey will delete "equine trails" from the conditional use.

There was a question regarding the canoeing/kayaking; the take in and out point will naturally be near the lodge. Mr. Carey replied that the take out area will be at the Angler's Club and the put in spot is located at the Christian Camp or the Hunt Club, which is on state right-of-way. He stated that he is not currently having canoe rentals, but would like to in the future.

There was a comment regarding the proposed farm store; and there, the public would like to purchase memorabilia of their tour.

There was a question regarding the prior conditional uses that have been granted by the Board of Adjustment will remain in enforcement. Mr. Murphy said the conditional use for the Angler's Club is not related to this zone change.

There was a question regarding the setbacks from the neighboring properties. Ms. Wade said that the required building setback is 25' from all neighbors, including the Clark County line.

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There was a question regarding the septic system and health department requirements not being on the development plan. Ms. Wade said that it is not a requirement on the development plan. Mr. Sallee said that issue should be noted as a conditional use restriction and merely not a development plan note.

There was a question regarding the paving of the driveway and the parking lot. Ms. Wade clarified that the parking lot at the visitor/welcome center will need to be paved. It was asked if the parking lot can hold the amount of visitors that are expected per day. Ms. Wade replied that the parking is based on the use and not the amount of people per day. She also said that with the tours being spaced out every thirty minutes the staff believes that the lot will be sufficient.

Chairman's Comments – Chairman Wilson stated that the hearing was now “closed,” and he opened the floor for discussion. Commission member discussed their thoughts at this time.

Zoning Action – A motion was made by Mr. Berkley, seconded by Mr. Cravens, and carried 10-0 (Brewer absent) to approve PLN-MAR-16-00013: BOONE CREEK PROPERTIES, LLC, for the reasons provided by the staff

Development Plan Action – A motion was made by Mr. Berkley, seconded by Ms. Richardson, carried 10-0 (Brewer absent) PLN-MJDP-16-00029 BOONE CREEK PROPERTIES & H. G. EARLY-SNYDER FAMILY FARM, LLC PROPERTY, for the reasons provided by the staff with the addition of:

12. The Emergency Response plan shall be provided to the Planning Commission prior to approval of the Final Development Plan.

Conditional Use Action – A motion was made by Mr. Berkley, seconded by Ms. Richardson, carried 10-0 (Brewer absent) to approve the conditional uses, for the reasons provided by the staff, and to amend some of the conditions as follows:

5. The public parking lots and driveways shall be paved, with spaces delineated, and landscaped/screened along Old Richmond Road.
11. Each canopy tour shall include no more than ten (10) guests, with tours spaced at least thirty minutes apart throughout the day and no more than three tours underway at any given time. Any use of the tree canopy tour facility by members of the private anglers club (approved by the Board of Adjustment on August 25, 2000: ACV-2000-128) is subject to this limitation. Special provisions will be given for school or other group tours.
12. The last canopy tour on any given day shall begin at least two hours prior to dusk. All other conditional uses shall cease at sunset.
13. Any use of All Terrain Vehicles (ATV's) is strictly prohibited, except for the following uses: emergency response, direct transport of private club members to the angler's club lodge, security or maintenance of the property/facilities.
19. Outdoor lighting (other than for security purposes), loud speakers, ~~and~~ or ~~restaurants or food service~~ are not permitted. Food service will be permitted only through vending facilities.