

1. **GREER LAND CO. – SMYRNA #2, LLC, ZONING MAP AMENDMENT & JAMES W. ATKINS, JR., PROPERTY ZONING DEVELOPMENT PLAN**

- a. MAR 2012-12: GREER LAND CO. – SMYRNA #2, LLC (2/2/14)* - petition for a zone map amendment from an Agricultural Urban (A-U) zone to a Neighborhood Business (B-1) zone, for 2.79 net (5.05 gross) acres, for property located at 3939 Tate Creek Road.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 10) recommends Medium Density Residential future land use for the subject property, defined as 5–10 dwelling units per net acre. The petitioner proposes a Neighborhood Business (B-1) zone to develop a branch bank and a coffee shop, both with a drive-through and associated off-street parking.

The Zoning Committee Recommended: Referral to the full Commission.

The Staff Recommends: Disapproval, for the following reasons:

1. The existing Agricultural-Urban (A-U) zoning for the subject property is appropriate for the subject property, given that 100% of the property is currently located within a Special Flood Hazard Area (either floodway or floodplain); and it is compatible with the existing residential zoning of the surrounding neighborhood, as well as the agricultural zoning of the utility sub-station to the west of the subject property. The proposed B-1 zone is inappropriate at this location because it will require significant physical alteration of the property through construction of a retaining wall, as well as re-grading the property by adding eight feet of fill in order to make it developable for commercial use that includes drive-through facilities.
2. There have been no unanticipated changes in the immediate area of an economic, social or physical nature since the Comprehensive Plan was adopted in 2007.
3. There is no compelling need for the commercial development proposed in this area, given that extensive development in environmentally sensitive areas is being proposed without approval by Local or State agencies, and that the Tate Creek Shopping Center exists immediately to the south and has numerous vacancies.
4. The request to rezone property that is wholly in the FEMA Special Flood Hazard Area (100-year floodplain) is directly contrary to the recently adopted 2013 Comprehensive Plan Goals and Objectives, Theme B. Protecting the Environment. The subject property is an environmentally sensitive area, adjacent to an EPA-designated impaired stream, West Hickman Creek. Development and grading within the floodplain are not permitted by the Zoning Ordinance, unless there is a special circumstance, and none has been identified in this location.

- b. ZDP 2012-63: JAMES W. ATKINS, JR. PROPERTY (12/13/12)* - located at 3939 Tate Creek Road.
(Vision Engineering)

The Subdivision Committee Recommended: Postponement. There were some questions regarding the proposed access and circulation, the CLOMR-F (floodplain), tree protection and street improvements. In addition, the Zoning Ordinance may not permit the extent of fill proposed on this site, unless a special use permit or floodplain variance is approved.

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

1. Provided the Urban County Council rezones the property B-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.
8. Discuss the need for improvements to Wilson-Downing Road.
9. Discuss internal circulation proposed.
10. Discuss proposed dumpster location.
11. Discuss CLOMR-F and timing of watershed study.

Zoning Presentation: Ms. Wade presented the staff's zoning report, noting that this application was originally filed last year, and was indefinitely postponed by the Commission in December, 2012. She oriented the Commission to the location of the subject property at the intersection of Tate Creek Road and Wilson Downing Road. The property comprises the northwest corner of that intersection, which is signalized. In the vicinity of the subject property are a Windstream facility, to the northwest, which is also zoned A-U; the Roman Soldier subdivision, to the north, which is in a Two Family Residential (R-2) zone; two apartment complexes across Tate Creek Road, which are zoned High

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Density Apartment (R-4); and the Tates Creek Shopping Center to the southwest, which is zoned Professional Office (P-1), nearest the subject property, and Planned Shopping Center (B-6P) further to the south.

Ms. Wade displayed an aerial photograph of the subject property, noting that it is completely naturalized, and covered with trees and shrubs. She said that the 2007 Comprehensive Plan recommends Medium Density Residential land use for the subject property, and a density of 5-10 dwelling units per net acre. Since the applicant is proposing a B-1 zone for the property, the staff cannot find their request to be in agreement with the recommendation of the Comprehensive Plan. The staff is also not aware of any changes of an economic, physical, or social nature in the immediate vicinity of the property since the Comprehensive Plan was adopted in 2007. Ms. Wade said that, given those circumstances, the Planning Commission must consider the appropriateness of the requested B-1 zone.

Ms. Wade displayed the following photographs of the subject property: 1) a view from the corner of Tates Creek and Wilson Downing Roads, noting that the site is heavily treed; 2) a view to the north, along Tates Creek Road, noting the significant grade change from the roadway to the subject property; 3) a view down Wilson Downing Road, which also has a significant grade change to the property; and 4) a view of West Hickman Creek, which crosses the subject property.

Ms. Wade stated that the petitioner is proposing to construct a retaining wall on the subject property, immediately adjacent to the designated floodway. She explained that the floodway is the portion of the property that would be expected to have moving water during a flood event. The wall is proposed to be constructed within the floodplain, in order to create a buildable site by filling behind the wall. The petitioner is proposing to construct a branch bank and coffee shop on the site, each with a drive-through facility. Access to the property is proposed to be located on Wilson Downing Road, across from the existing access to Tates Creek Shopping Center. An emergency access is proposed on Wilson Downing Road closer to the intersection with Tates Creek Road. The emergency access is proposed due to the location of the primary access point in the floodplain.

Ms. Wade said that the staff has multiple concerns about the appropriateness of this rezoning application. Of primary concern is the location of the whole property within the current, regulatory floodplain. The applicant is proposing to modify the floodplain in order to create an "island" of developable area, with both proposed access points (permanent and emergency) remaining in the floodplain. Ms. Wade stated that the staff is also concerned that the proposed development does not recognize the FEMA best management practices for floodplains and stormwater management; it would not protect the existing green infrastructure; and it could result in environmental degradation in the vicinity of the subject property.

Ms. Wade said that the subject property is designated as part of a Special Flood Hazard Area, or 100-year floodplain, according to the FEMA digital maps that were approved in 2008. West Hickman Creek, a portion of which is located on the subject property, is considered an "impaired stream" by the United States Environmental Protection Agency (EPA). A Conditional Letter of Map Revision (CLOMR), based on fill, has been obtained from FEMA, indicating that the applicant's engineer has used hydrologic modeling to prove that a portion of the property can be removed from the floodplain, using fill on the site, without increasing the base flood elevation. With the issuance of the CLOMR, FEMA has indicated that there will be no adverse impact to the property; however, the staff contends that that assessment does not take into account the social and economic benefits that the floodplain provides to the community. Ms. Wade stated that the staff would also like to note that floodplains change over time. The 1992 FEMA maps depicted a portion of the subject property as being located outside of the floodplain, but the 2008 maps indicate that the property is located wholly within the floodplain. The property located directly across Wilson Downing Road was developed with the thought that channelizing the stream would result in the office building on the property being located outside of the floodplain; however, the building does remain within the regulatory floodplain on the 2008 maps. Ms. Wade added that, although there is a science used in the engineering that the applicant is proposing on the site, the staff contends that it is based on assumptions about what water will do in any given flood situation.

With regard to best management practices for floodplains, Ms. Wade said that the primary goal is to reduce flood risks in terms of costs and personal safety. In order to do so, the preferred practice is to maintain the existing riparian, vegetative area around the creek, free of development; and to create a sustainable green infrastructure around the creeks in the community. FEMA recommends, as a land use best management practice, to have no use within the floodway; only agricultural and recreational uses within the floodplain; residential, commercial, and utility uses in the 500-year floodplain or beyond; and critical uses located on high ground, away from any potential for flooding. Ms. Wade noted that protection of floodplains is recognized nationally as an important element of land use planning by the National League of Cities; the American Planning Association; and the EPA, as well as other organizations. With regard to green infrastructure, she explained that, since the subject property is located wholly within the floodplain, it can be considered to be part of the community's existing green infrastructure. The primary principle of green infrastructure planning is to remove a portion of the typical "gray" stormwater management system (i.e., pipes) and allow vegetative and soil areas to soak up rainwater, providing flood mitigation and air quality management opportunities as well. In addition to created natural areas such as rain gardens and green rooftops, preserving undeveloped forests, floodplains, and wetlands helps to maintain the quality of floodplain areas. Green infrastructure investments

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boost the economy; enhance the community's health and safety; and provide recreational, wildlife, and other benefits.

Ms. Wade stated that the 2007 and 2013 Comprehensive Plans identify Goals and Objectives that are related to green infrastructure and providing for the protection of natural resources. The Comprehensive Plans specifically mention protecting natural drainage ways and creeks from severe intrusion, alteration, and destruction during urban development. Goal 4 of the 2007 Comprehensive Plan has several Objectives related to greenspace and managing environmentally sensitive areas for the benefit of the community. The 2013 Comprehensive Plan has a Theme and specific Goal related to the green infrastructure program. Objective (a) specifically states that natural areas should be protected prior to development; the staff believes that, as a natural area within the floodplain, the subject property should be protected.

Ms. Wade stated that the subject property is different from other properties considered by the Planning Commission for development in that the proposed development would only be possible with extensive grading and filling within the floodplain, which is specifically prohibited by Article 19 of the Zoning Ordinance, unless a Special Use Permit is issued or a variance is granted. At this time, the petitioner has not received a Special Use Permit, and additional state and federal requirements would need to be met prior to development on the property. Ms. Wade added that, although FEMA had issued a CLOMR for the site, their letter did not grant the petitioner permission under local regulations to develop the property as proposed. She said that, since the subject property is wholly located within the floodplain, the proposed development is also directly contrary to the Zoning Ordinance, and is inconsistent with the recommendations of the Comprehensive Plan.

Ms. Wade said that the extent of fill proposed for the subject property would require over 300 dump trucks of soil. The staff believes that that much fill is not appropriate for the subject site, and is a bad idea for the community as a whole. The staff contends that the existing A-U zone remains appropriate for the subject property, and the proposed B-1 zone is inappropriate. There is no compelling need for the B-1 zoning in the vicinity, since the Tates Creek Shopping Center exists immediately to the south to serve the area.

Ms. Wade stated that the petitioner indicated at the Zoning Committee meeting that they viewed the proposed development as an opportunity to provide a branch bank and coffee shop to the residents of the area. The staff would urge the Planning Commission to consider the opportunity to protect the community's green infrastructure; respect the floodplain; prioritize water quality; and to prevent costly future claims at this location. Ms. Wade concluded by noting that, in 2001, LFUCG changed the regulations and made a commitment to floodplain management; the staff believes that approving this proposed zone change would equate to a move backward toward the costly mistakes of the past. She said that the staff is recommending disapproval of this request, for the reasons as listed in the staff report and on the agenda.

Commission Questions: Mr. Wilson asked if a property could be located in a floodplain for one period of time, then out of the floodplain at some point. Ms. Wade answered that floodplains change based on new modeling or study information. She said that, in 1992, the regulatory floodplain map for the subject property depicted a small corner at the front of the property that was out of the floodplain. In 2008, when new digital floodplain maps were adopted, one-foot contours were used, and it was determined that the property was completely within the floodplain. Mr. Wilson asked if those changes occurred naturally. Ms. Wade responded that those changes are typically based on new, better topographic information, or due to documented alterations within the watershed.

Ms. Blanton asked, with regard to the Comprehensive Plan recommendation of Medium Density Residential use for the subject property, if it would really be more appropriate to develop the property for residential use. She said that it seemed that concerns about traffic and access to the property would be mitigated somewhat by locating commercial uses there, rather than residential uses. Ms. Wade answered that there are ways to floodproof buildings by raising them, which is much more common with residential structures than commercial structures. She said that, typically, such residences are constructed on piers or basements, which provide a way for water to circulate under the livable space. She added that, although there are existing buildings on piers in the community, it would be difficult to construct a business with a drive-through in such a fashion. Ms. Wade reiterated that one of the staff's primary concerns is the construction of the entire proposed development on fill, rather than just a portion of it.

Ms. Mundy asked how the residences on the other side of the creek would be affected, if a retaining wall is constructed on one side of the creek on the subject property. Ms. Wade answered that the staff shares that concern, and that the petitioner's engineer would have to address the question, using data from their modeling of the property.

Mr. Owens asked Ms. Wade to provide additional history on the office building constructed in the floodplain across the street from the subject property. Ms. Wade responded that, when the building was planned and built in the late 1980s and early 1990s, floodplain regulations were not as strict. The building was constructed at the top of the bank, and remains in the floodplain and at risk of flooding.

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Ms. Beatty asked what percent of Tates Creek Shopping Center is located in the floodplain. Ms. Wade answered that the shopping center itself is not located in the floodplain; but the office building and some adjacent parking areas are located in the floodplain. She noted that the location of a park directly behind the commercial area allows the water to spread out, which mitigates the flood risk. Ms. Beatty asked Ms. Wade to reiterate the staff's concern about the amount of fill material proposed for the subject property. Ms. Wade stated that the general concern is the stability of the fill behind the proposed retaining wall during rain events, when the wall is pressured by rainwater in the unbalanced fill. She said that, when those situations are engineered correctly, they can be buildable. However, the subject property currently absorbs a lot of stormwater, and the staff is concerned about where that amount of water will go when the property is covered with new impervious surfaces.

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 is proposing to provide access to the property on Wilson Downing Road directly across from the existing access to Tates Creek Shopping Center, with an emergency access located closer to the Wilson Downing/Tates Creek Road intersection. The petitioner is proposing to construct two buildings on the property: a branch bank, which is proposed to be just over 3,000 square feet in size; and a coffee shop, at just over 1,700 square feet in size. The petitioner is also proposing a total of 70 parking spaces for both uses, with a retaining wall along the floodway of West Hickman Creek. Referring to a rendered copy of the development plan, Mr. Martin noted the location of the proposed wall; the floodway; and the post-development floodplain that would result from the placement of fill material on the site. The emergency access, which is a requirement of the Special Permit process outlined in Article 19 of the Zoning Ordinance, would be constructed so as to discourage use except in the event of a flood emergency that isolates the property.

Mr. Martin stated that staff had several concerns about the proposed development plan, one of which was improvements to Wilson Downing Road. He said that condition #8 could be deleted, since the petitioner has agreed to provide standard improvements, including a turn lane into the site and sidewalks along Wilson Downing and Tates Creek Roads. There was also concern about internal vehicular circulation on the property, which the petitioner has addressed to a certain extent with the submission of this revised version of the development plan. Mr. Martin said that the staff understood that the Division of Fire and Emergency Services still had some concerns about their ability to maneuver their vehicles on the site. In addition, there were some concerns about the proposed location of the dumpster on the property, since that portion of the property could be particularly prone to flooding during rain events. The relocation of the dumpster could impact the revision of the internal circulation pattern, so the staff is still concerned that all of those issues need to be more fully addressed. Mr. Martin stated that the staff's major concern was the CLOMR, which was issued by FEMA for the site, in light of the fact that Wilson Downing Road has been known to flood during 100-year storm events. He noted that, when the homes in the Roman Soldier subdivision adjoining the subject property were constructed, they were located out of the floodplain. Since that time, the floodplain maps have been revised, and one of those structures is now located almost wholly within the floodplain, while another is partially so.

Mr. Martin explained, with regard to the CLOMR, that it is the first step of many in the Special Permit process that the petitioner will be required to complete in order to develop the subject property. He said that there are existing CLOMRs and buildings constructed on fill in the community, but those areas are only partially filled. The staff is concerned about the construction of the entire development on fill. The staff is also concerned about tree protection, since there is an existing bur oak tree on the site (although it is small and somewhat unhealthy), as well as the existing riparian areas along the creek.

Mr. Martin stated, with regard to condition #11, that a watershed study is currently underway in the vicinity of the subject property, and it is being performed by the petitioner's engineer. He explained that FEMA has funded many such studies across the country, two of which have been performed in Fayette County. The West Hickman Creek Watershed is the second of those studies, and the staff is concerned about how the proposed work on the subject property could be incorporated into the overall study.

Commission Question: Mr. Owens asked if the CLOMR had been filed and approved. Mr. Martin answered that it had been accepted by FEMA as a conditional letter, which was also signed off by the Division of Engineering. Mr. Owens asked if increased stormwater from the proposed development could exacerbate the existing flooding on Wilson Downing Road. Mr. Martin answered that there is typically increased runoff from a developed site, but the calculation used in obtaining the CLOMR addressed that issue, resulting in a declaration that there would be no net impact from it.

Petitioner Presentation: Bruce Simpson, attorney, was present representing the petitioner. He stated that he believes that the staff has essentially declared the subject property to be undevelopable, with the exception of a residential structure on piers, although it has been recommended for residential land use since it was added to the Urban Service Area in 1980. The property owners took that land use recommendation to mean that the property was suitable for development, provided that the site could be properly engineered in order to receive a Special Use Permit.

Mr. Simpson said that this rezoning request was postponed for a year because, when it was first filed, the staff and Technical Committee shared all of their concerns about the property and the floodplain. He noted that the petitioner then chose to begin the CLOMR process in order to develop the property, despite the fact that many other properties in the community have been developed that required changes to the floodplain to a much greater extent than what is proposed with this request.

Mr. Simpson explained that the CLOMR process is heavily scrutinized, particularly since the imposition of the EPA Consent Decree. He said that the first step in the process was a review of the proposed modeling by the Division of Engineering. After a three- to four-month review, the Division of Engineering declared that the proposal was acceptable. Following that review, the application was submitted to FEMA, which issued the CLOMR in October of 2013. If this rezoning request is approved by the Urban County Council, the petitioner will then be able to begin the Special Use Permit process, which is also an exhaustive process that could take several months. Mr. Simpson said that the petitioner recently participated in a conference call with Greg Lubeck of the Division of Engineering, to determine if there would be any issues with the Special Use Permit, once the property is rezoned. He stated that Mr. Lubeck indicated during that conversation that he did not believe there would be any concerns about their pursuit of a Special Use Permit for the property.

Mr. Simpson stated that the petitioner has developed several other high-quality projects near the subject property, including the new Bank of Lexington building, a portion of which was built on 14 feet of fill. He said that, in the past, there was more property available for development within the Urban Service Area (USA), so difficult parcels such as the subject property remained undeveloped. However, since the community made a decision not to expand the USA, there will be more developments proposed to be constructed on fill, as the more "difficult" properties are developed. Mr. Simpson said that the development costs of such properties are so high that it would be nearly impossible to create a marketable residential development. He estimated that, if the petitioner chose to develop an apartment building on the subject property, rents would need to be at least twice as high as they are in the immediate vicinity, in order to justify the necessary development costs.

Mr. Simpson displayed the following images: 1) an aerial view of the property; 2) an aerial view of the property, with an overlay of the existing regulatory floodplain; 3) an aerial view of the property, noting how the floodplain would change should the CLOMR be accepted by FEMA; 4) a rendering of the property, noting that only 40% of it is proposed to be developed; 5) an aerial view, noting that the closest residence to the property is approximately 200 yards away; 6) Bates Creek Shopping Center, which was constructed on as much as 21 feet of fill; and 7) the Bank of Lexington building, which was constructed on 14 feet of fill.

Mr. Simpson stated that he had learned, while chairing the Floodplain Management Task Force, that floodplains are designated, not through review by federal employees, but as a result of engineering studies performed by local engineers. One such study currently underway in Lexington-Fayette County is being performed by Jihad Hallany, of Vision Engineering, who is also the petitioner's engineer. Mr. Simpson said that Mr. Hallany is considered "the man people go to at the federal, state, and local level, for guidance in appropriately developing in and around floodplains."

Referring to the exhibit booklet he distributed to the Commission members prior to the start of this hearing, Mr. Simpson said that, when considering a rezoning request, the Commission must determine whether the requested zone is in agreement with the Comprehensive Plan; whether the existing zone is inappropriate and the requested zone is more appropriate; or whether there have been changes of a physical, social, or economic nature in the vicinity of the subject property since the most recent Comprehensive Plan. The petitioner in this case contends that the existing A-U zoning is inappropriate for the subject property, which is in a heavily developed urban area. The petitioner estimates that it will cost over \$750,000 just to engineer the floodplain on the property; development of the property as an agricultural use or fruit stand would therefore not be economically feasible. Mr. Simpson stated that the 2013 Comprehensive Plan encourages creative solutions to development issues, which means considering new engineering standards for difficult parcels such as the subject property. He said that, in addition to the CLOMR and Special Use Permit, FEMA would review the property after the floodplain was engineered, to ensure that the work was properly completed and that the public would be protected. He noted that, if FEMA does not give their approval, no construction can take place on the property. The petitioner has already completed a 34-page application process to receive the CLOMR, and completed an application to the U.S. Department of the Interior, indicating that plant and aquatic life in West Hickman Creek will not be negatively impacted by the proposed construction of the subject property. The exhibit booklet contains evidence indicating that the staff of the Division of Fire and Emergency Services is agreeable to the proposed development, including the proposed emergency access and interior circulation pattern. Mr. Simpson said that his exhibit also contains findings of fact for approval for this rezoning request.

Mr. Simpson stated that the petitioner contends that the subject property is not suitable for residential use, due to the amount of money necessary to provide the necessary basic infrastructure. He said that, unless "the government wants to write a check to the owner for the fair-market value of the property," the property should be considered suitable for development. The petitioner contends that the proposed development will complement the uses in the nearby Bates Creek Shopping Center, and it will be more suitable for the subject property than a residential use. Mr.

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Simpson stated that the petitioner has spent a great deal more money for engineering studies than a developer would typically be willing to commit at this stage, since the property has not yet been rezoned, because they believe that the proposed development will be a benefit to the community.

Commission Questions: Mr. Wilson asked if the petitioner had received final approval from FEMA. Mr. Simpson answered that the petitioner cannot get final approval until the fill has actually been installed on the property, and the final construction documents are submitted to FEMA. Mr. Wilson asked if the petitioner had gotten all of the other necessary sign-offs on the proposed development. Mr. Simpson responded that the petitioner had obtained all of the approvals that they could get at this point in the process. He added that the petitioner cannot seek the Special Use Permit until the zoning is in place.

Mr. Penn asked if the development plan would be likely to change once the property is rezoned to B-1. Mr. Simpson answered that the petitioner wants to develop the property with a bank and a coffee shop. Mr. Penn stated that he was concerned that the Planning Commission could grant the zone change, and then the petitioner could completely change their development plan. Mr. Simpson responded that, if that was the case, the Commission would have the opportunity to address those changes during their review of the final development plan for the property. He added that the petitioner has a track record of doing "the right thing."

Ms. Beatty asked if the petitioner's engineer could address the issue of whether or not eight feet of fill could be considered excessive. Mr. Simpson responded that the Carmax dealership, at the corner of Richmond Road and Man O' War Boulevard, was constructed on 30 - 40 feet of fill. Jihad Hallany, Vision Engineering, stated that he was confident that the retaining wall and eight feet of fill would be adequate for the proposed development, and that there would be no adverse impacts on surrounding areas. He said that the Bank of Lexington building, which was constructed on 14 feet of fill, is three stories tall. The retaining wall for that building is backed by a three-story underground detention basin; Mr. Hallany said that underground detention would not be necessary near the retaining wall on the subject property, and he was confident that the site engineering would work.

Mr. Owens asked why the petitioner was proposing to create an island, rather than fill the entire property. Mr. Hallany answered that this configuration was proposed because the petitioner's property line goes right up to the right-of-way, much of which would remain in the floodplain, and that the access point required a certain location on the property.

Mr. Owens asked how the emergency access would work on the property, and whether or not it would be blocked off. Mr. Simpson answered that the emergency access was proposed as a result of a discussion at the Subdivision Committee meeting. He said that the Division of Fire and Emergency Services indicated that an emergency access was necessary to allow them to access the property in the event of a 100-year flood event that might block the primary access point, but that access was not proposed to be blocked. Mr. Simpson added that the Division of Traffic Engineering was agreeable to the proposed access configuration. Mr. Owens said that it appeared that, if the emergency access point was not blocked, it would function as a regular, full access. Mr. Simpson answered that the emergency access was not proposed to be open; it would be kept gated, except during flood events.

Citizen Comment: There were no citizens present to comment on this request.

Staff Rebuttal: Ms. Wade stated that the staff remains concerned about the precedent that could be set by filling and constructing in the floodplain to the extent proposed. She said that the property is 2.79 acres in size, with 60% of the property being undevelopable due to its location in the floodway. The staff contends that the petitioner is being disingenuous in stating that they intend to protect 60% of the property, when there is currently no way that that area could be utilized for any type of development.

Ms. Wade said that the staff believes that a bank and coffee shop could be located within existing business zoning in the vicinity of the subject property, and that the B-1 zone is not necessary on the subject property. She added that a vacant land inventory was done as part of the 2013 Comprehensive Plan. In that inventory, the subject property was not identified as vacant and available for development, due to its environmental constraints. Ms. Wade noted that the staff would not agree with the petitioner's assertion that the Divisions of Engineering and Traffic Engineering are wholly in support of the proposed development.

Commission Question: Mr. Owens asked if the Comprehensive Plan's recommendation of residential land use on the subject property was due to its proximity to other residential uses. Ms. Wade answered that, when the subject property was designated for residential land use, it was part of the Atkins family farm. There was a residence located on the subject parcel, and the rest of the farm was proposed for development in 1986. Ms. Wade stated that there are often pieces of larger tracts that are not developable, but those parcels are not typically "saved" for development at a later date.

Mr. Berkley asked how the proposed development compares to the construction of the Southland Christian Church property on Richmond Road, particularly since the former Perkins restaurant site on that property is currently being

filled. Ms. Wade answered that the Perkins site is currently identified as a "holding" location on the development plan for the property, and that the current grade is likely not final. Mr. Berkley asked if the outlot parcels were completely constructed on fill. Ms. Wade responded that there were two outlots proposed on the property, for which the developers also sought and received a CLOMR-F from FEMA for fill. She stated that the staff was not in support of that development proposal. To date, there has been no construction on those outlots, and no permits have been pulled.

With regard to the CLOMR, Mr. Berkley asked if the Planning Commission has ever decided against FEMA's assessment that a development would produce minimal impact. He said that he was particularly struggling with the appropriateness of this request, since FEMA indicated that the proposed development would have no impact on the floodplain. Ms. Wade answered that "no impact" indicates that the floodplain can change by up to one inch. Mr. Hallany stated that any change under one inch is considered to have no impact.

Petitioner Rebuttal: Mr. Simpson stated that Mr. Hallany's expertise stands on its own. With regard to Ms. Wade's comment that the Divisions of Engineering and Traffic Engineering still had concerns about the proposed development, he said that they did not indicate such when they approved the petitioner's request for a CLOMR. He added that the petitioner has received no indication that the Division of Engineering would refuse to grant the petitioner's request for a Special Use Permit.

Mr. Simpson stated that, although the subject property might have been part of a larger farm at some point, it was not in 2001, 2007, or 2013, when it was recommended for residential use by three successive Comprehensive Plans. He said that the petitioner believes that the existing zoning is inappropriate, and he requested that the Planning Commission approve this request.

Commission Comments: Ms. Plumlee stated that she found it difficult to support a rezoning request wherein the proposed dumpster location is questioned "because the dumpster might float away." She said that she would support the staff's recommendation of disapproval on this request, because she agreed with their assessment that approving it would be a move backward for the community in terms of floodplain management.

Mr. Penn said that he would welcome more discussion among the Commission members, as he was having difficulty reaching a conclusion on this request.

Mr. Cravens stated that he believed that the petitioner could develop the subject property according to the development plan, since there was not enough room on the site to change things much. He said that houses are often constructed on fill, which is just part of typical construction work. Mr. Cravens opined that the Planning Commission would likely see more such projects, as most of the "easy" land within the USA has already been developed. He said that the petitioner will still have to obtain a Special Use Permit and submit a final development plan for the property.

Ms. Blanton said that she has struggled with this request since it was presented at the Zoning Committee meeting. She stated that she respects the staff's work and believes that the Commission should rely on their judgment; but she does not think the Commission is in the position to disapprove this request, since the petitioner has met every condition that has been set before them by LFUCG, FEMA, and the U.S. Department of Fish and Wildlife.

Ms. Beatty opined that the land within the USA is at a premium, and that the Commission will need to be creative and flexible in order to allow that land to be developed. She said that the standards are in place to hold all parties accountable to do the right thing, and she believes that that is the petitioner's intent. Ms. Beatty stated that she was leaning heavily toward approving this request, because she believes that the Commission must provide developers with a means for developing the vacant land that remains in the USA.

Mr. Penn stated that he would like for Mr. Newman to go on the record and indicate that he has reviewed this plan, and believes that the proposed development will have no impact on the floodplain. Mr. Newman stated that the Division of Engineering went through an extensive review of the modeling provided by Mr. Hallany. The modeling indicated minimal impact to the 100-year flood profile as a result of the placement of fill on the property. Mr. Newman noted that there is a distinction between the floodplain and the floodway; the floodway is considered to be reserved for the continued passage of floodwater discharge from 100-year storms. He said that the proposed development had to meet the criteria that, if the subject property was filled up to the floodway on both sides of the creek, it must result in a rise no greater than one foot. Mr. Penn asked if it would be fair to say that the major impact of the proposed development would be that the flooding on Wilson Downing Road would be a foot higher. Mr. Newman answered that the flood fringe would need to be filled along the entire length of the stream for that to happen, whereas the subject property is just a small component of the overall floodplain in this area.

Mr. Wilson stated that he was conflicted; on the one hand, this property was never counted as part of the Comprehensive Plan's vacant land survey. He said that he was "convinced that the developers have done everything right, but not convinced that they have done the right thing." Mr. Wilson stated that, when he experiences such conflicts, he is inclined to support the recommendations of the staff.

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

Mr. Berkley stated that FEMA has signed off on the proposed development, and he could not envision another possible use for the property, given the costs of developing it. He said that he would vote for approval of this request.

Mr. Penn stated that he agreed with Mr. Wilson's comments. He said that, if the Planning Commission approves this request, they will do so under the assumption that all of the land in Fayette County is developable, given enough engineering. Mr. Penn said that he supports progressive, aggressive infill, but he is concerned about the precedent that could be set by approving the proposed development.

Ms. Mundy stated that she grew up in West Virginia, where "there are a lot of engineering wonders in the mountains." She said that the Commission has been put in a position where they are required to support infill, and she believes the petitioner is trying to do the right thing. Ms. Mundy stated that she is always concerned when a floodplain is disturbed, but it appears that the petitioner has done their homework, and the Commission will be watching the development plan to ensure that they continue to do the right thing.

Mr. Owens stated that he views the subject property as a remnant parcel, with two possible uses: the existing use, or commercial uses. He said that, if the property is developed for commercial use, it must be done right. Mr. Owens opined that the petitioner is making every effort to do so, and that the property can be developed.

Motion: A motion was made by Ms. Plumlee and seconded by Mr. Wilson to disapprove MAR 2012-12, for the reasons provided by staff. The motion failed, 3-6 (Brewer and Drake absent; Beatty, Berkley, Blanton, Cravens, Mundy and Owens opposed.)

Zoning Action: A motion was made by Mr. Cravens, seconded by Ms. Mundy, and carried 6-3 (Brewer and Drake absent; Penn, Plumlee, and Wilson opposed) to approve MAR 2012-12, for the following reasons:

1. The existing A-U zoning is inappropriate, and the proposed B-1 zoning is more appropriate, because the cost of multifamily development at this location is prohibitive, and maintaining the agricultural use at this location in an urbanized area is impractical. The proposed B-1 zoning is more practical.
2. A CLOMR-F has been obtained by the applicant, and there will be no adverse impact on aquatic life or surrounding neighborhood, and a Special Use Permit will have to be obtained from the Urban County Government.
3. The proposed development is compatible with existing business uses across Wilson Downing Road.

Development Plan Action: A motion was made by Mr. Cravens, seconded by Ms. Mundy, and carried 9-0 (Brewer and Drake absent; Penn abstained) to approve ZDP 2012-63, with the 11 conditions as listed on the agenda, changing the word "discuss" on conditions #8, 9, 10, and 11 to "resolve."