

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.