

## 2. TRUST EQUITY, LLC ZONING MAP AMENDMENT & JAMES RB MACCOUM, TRACT 2 & PORTION OF TRACT 1 ZONING DEVELOPMENT PLAN

- a. PLN-MAR-19-00002: TRUST EQUITY, LLC (6/4/19)\* - a petition for a zone map amendment from an Agricultural Urban (A-U) zone to an Expansion Area Residential (EAR-2) zone, for 8.48 net (8.94 gross) acres, for property located at 2020 Russell Cave Road.

### COMPREHENSIVE PLAN AND PROPOSED USE

The Expansion Area Master Plan (EAMP), an adopted element of the 2013 Comprehensive Plan (Expansion Area 3), recommends Expansion Area Residential (EAR-2) land use for the subject property, defined as 3 to 6 dwelling units per gross acre. The petitioner proposes 23 attached single-family units and 30 detached single-family units or townhouses (a residential density of 5.92 units per gross acre) for the subject property, which is within the density range recommended by the EAMP.

The Zoning Committee Recommended: **Approval** to the full Commission.

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

1. The requested EAR-2 zoning is in agreement with the 2013 Comprehensive Plan, the adopted Goals and Objectives of the 2018 Comprehensive Plan, and the 1996 Expansion Area Master Plan, for the following reasons:
  - a. The Plan recommends Expansion Area Residential-2 (EAR-2) future land use for the subject property, which is proposed by the petitioner.
  - b. The future EAR-2 land use recommendation of the Plan would suggest a density of between 26 and 53 dwelling units for the subject property. The proposed EAR-2 zone, for 53 single-family dwelling units, is in agreement with this recommendation of the Plan.
  - c. The site will accommodate the demand for housing in Lexington responsibly, prioritizing a mixture of housing types (Theme A, Goal #1) and supports infill and redevelopment throughout the Urban Service Area (Theme A, Goal #1.b. and #2). The proposed development will include single family and townhouse dwelling units.
  - d. The proposed development will expand options for mixed-type housing, while also provide a neighborhood which is connected for pedestrians and will utilize various modes of transportation (Theme A, Goals #3.a & 3.b.). The proposed development allows for connectivity to existing neighborhoods, as well as stub streets to the adjoining parcels for future connectivity.
  - e. This proposal maximizes development on vacant land within the Urban Service Area and promote use of underutilized land in a way that enhances the existing urban form (Theme E, Goal #1.a, 1.b, and 1.d).
2. The existing Agricultural Urban (A-U) zone is inappropriate, and the proposed Expansion Area Residential-2 (EAR-2) zone is appropriate at this location for the following reason:
  - a. The intent for the Agricultural Urban (A-U) zone is to manage the growth of the community so to avoid premature or improper development until public facilities and services are adequate to serve urban uses. The availability of these services at this time in this area indicate the inappropriateness of the current zoning.
3. This recommendation is made subject to approval and certification of the applicable portion of PLN-MJDP-19-00005: James RB Maccoum, Tract 2 and a Portion of Tract 1, prior to being forwarded to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
4. Under the provisions of Article 6-7 of the Zoning Ordinance, the property shall be subject to the following use and buffering restrictions via conditional zoning:
  - a. No principal or accessory structures shall be located within fifty (50) feet of any property platted as any unit of the Shandon Park or Foxborough Manor subdivisions, and the property located at 2060 Russell Cave Road.
  - b. Within three hundred (300) feet of any property platted as any unit of the Shandon Park or Foxborough Manor subdivisions, and the property located at 2060 Russell Cave Road, the subject property shall be limited to single-family detached or attached (townhouse) residential uses.
  - c. A twenty-five foot (25') buffer yard shall be provided immediately adjacent to any property platted as any unit of the Shandon Park or Foxborough Manor subdivisions and the property located at 2060 Russell Cave Road. Existing trees with a three inch (3") DBH shall remain within the buffer, unless dead, dying or diseased. Existing trees should be supplemented to meet the following standards: The landscape buffer shall contain one tree every forty (40) feet of linear boundary from group A, B, or C of the Plant List as referenced by Article 18 of the Zoning Ordinance, and shall contain a fence, hedge, wall or earth mound (or combination thereof) a minimum of six (6) feet in height. Existing trees that are dead, dying or diseased may only be removed with written consent of the Urban Forester.

These conditional zoning restrictions are appropriate and necessary to minimizing the impacts of new development on the existing residential units within Shandon Park and Foxborough Manor subdivisions, and the existing residence at 2060 Russell Cave Road.

- b. PLN-MJDP-19-00005: JAMES RB MACCOUM, TRACT 2 & PORTION OF TRACT 1 (6/4/19)\* - located at 2020 RUSSELL CAVE ROAD  
Project Contact: Thoroughbred Engineering

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Note: The applicant submitted a revised development plan on March 1st addressing several of the conditions identified by the Technical Committee on February 27th. However, the staff has concerns with the preservation of the significant tree stand per the Expansion Area Master Plan, which was not addressed.

The Subdivision Committee Recommended: Postponement due to concerns with protecting the significant tree stand on the property.

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

1. Provided the Urban County Council rezones the property EAR-2; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. 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. Denote height of townhouse in feet on plan.
8. Denote 25' setback adjacent to A-U or A-R zones per Article 15-3 of the Zoning Ordinance.
9. Discuss preservation of significant tree stand per the Expansion Area Master Plan and Article 23A-2(v) of the Zoning Ordinance.
10. Discuss driveway access to Lots 24, 41, 49 and 51.

Staff Zoning Presentation – Mr. Baillie presented the staff report and recommendations for the zone change. He said that the staff has received an exhibit in opposition to this zone change, which he distributed to the Planning Commission. He said that the staff has received 19 letters of opposition and one petition, which he also distributed. He displayed photographs of the subject properties and aerial photographs of the general area. He said the petitioner proposes 23 attached single family units, or townhouses, and 30 detached single family units, for a density of 5.92 dwelling units per gross acre. The Scott Property (Shandon Farm), located to the north, continues to be used for agricultural purposes. Northwest of the subject property is a three-acre residential property located at 2060 Russell Cave Road. The Foxborough Manor and Shandon Park subdivisions bound the property to the south and east, respectively. The future Kingston Hall development, zoned for Economic Development (ED), borders the property to the west across Russell Cave Road. The Urban Service Area boundary line follows Faulkner Avenue to the north near this location. He added that the subject property has been used for residential and agricultural-related purposes, most recently as a plant nursery and landscaping business approved by the Board of Adjustment as a conditional use. He said that the applicant was required to complete a tree inventory map to identify the tree stands on this site. Primary access to the proposed residential development will be through the adjacent Joyland neighborhood. A local street, Eden Court, is proposed to extend into the subject property from the south to serve the proposed development. The proposed local streets will stub into the Shandon Farm to allow future connections and development.

Mr. Baillie said the subject property is located within Expansion Area 3, as designated by the 1996 EAMP, which brought the subject property into the Urban Service Area. The subject property is recommended for the Expansion Area Residential-2 (EAR-2) future land use, which allows a residential density of 3 to 6 dwelling units per gross acre, or up to 9 dwelling units per gross acre with density transfer rights (DTR). At this level of density, the Comprehensive Plan recommends between 26 and 53 dwelling units for the subject property. Based on the proposed 53 single-family residential units, the applicant is not proposing any type of density transfer in this instance. He said that there are not any requirements on the subject property pertaining to Scenic Resource Area restrictions.

The property has been the subject of a zone change request four times since it was included in the Expansion Area in 1996, all proposing EAR-2 zoning for the parcel. The Planning Commission initiated and recommended approval of a zone change for the entire 5,400 acres of the Expansion Area in 1996. At that time, the Urban County Council denied the zone change because of community concerns. Following the Council decision, two zone change applications were filed in 2005 and 2006. These applications sought to rezone approximately 140 acres located at 2200 and 2020 Russell Cave Road. In 2005, the Planning Commission recommended approval of the request; however, the application was withdrawn prior to consideration by the Urban County Council. In 2006, the Planning Commission received a similar zone change request (filed in conjunction with a text amendment application to revise the Scenic Resource Area restrictions). The Planning Commission recommended disapproval of the 2006 request based on evidence presented at the public hearing regarding flooding, sinkholes, and potential density, given the opportunity for density transfers to the properties.

The most recent application was filed in 2007, and was only the subject property (2020 Russell Cave Road). The Planning Commission deemed the rezoning inappropriate at the time due to the applicant's inadequate treatment of concerns related to environmentally sensitive areas, stormwater runoff, water quality impacts, and traffic. Additionally, the Planning Commission found the Agricultural Urban (A-U) zone to be appropriate to prevent premature development from occurring while not precluding future development in agreement with the Expansion Area Master Plan (EAMP).

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Mr. Baillie said that with this history of zone changes in the area, the staff must ask what has changed since the previous zone changes that would make this property viable for development, in accordance with the Expansion Area Master Plan and the Comprehensive Plan. Over the last decade, LFUCG has conducted multiple projects focused on flooding and stormwater impacts in this area. He said that with any future development, it is important to note that stormwater control shall be designed and constructed to reduce post development peak flows to pre-development levels. A sanitary sewer trunk line and pump station have also been constructed along Russell Cave Road, which should be completed this year. He said that there is still concern regarding environmentally sensitive areas that are within and around this area. The EAMP generally identifies four areas including the floodplain, water course/sinkholes, geological hazards, and treestand/woodlands. The EAMP's natural resource map series identified a treestand/woodland area on the subject property. Article 23A-2(v) of the Zoning Ordinance requires that development be designed to protect and preserve all mature trees to the maximum extent possible. The staff has recommended tree preservation via conditional zoning restrictions along the property boundaries with established neighborhoods since 1996. He displayed aerial photographs of the areas with significant treestand. He said that the petitioner submitted a map that identifies two clusters of areas of significant trees, which the staff recommends their preservation. He said that since the submission of this map, that the LFUCG Arborist and Environmental Services staff has visited this site and has identified several inconsistencies with the submitted map.

Mr. Baillie said that staff believes that with the continued rectification of issues in the area by the LFUCG, this site is now ready for development. Staff is recommending approval of this zone change. EAR-2 zoning is in agreement with the 2013 Comprehensive Plan, the adopted Goals & Objectives of the 2018 Comprehensive Plan and the 1996 Expansion Area Master Plan for the following reasons: the site will accommodate the demand for housing in Lexington responsibly, prioritizing higher-density and a mixture of housing types throughout the Urban Service Area, expand options for mixed-type housing, while also providing a neighborhood which is connected for pedestrians and will utilize various modes of transportation, maximizes development on vacant land within the Urban Service Area and promotes use of underutilized land in a way that enhances the existing urban form. He said that this recommendation is also subject to conditional zoning restrictions in order to minimize the impacts of new development on the existing residential units within the Shandon Park and Foxborough Manor subdivisions, as well as the existing residence at 2060 Russell Cave Road. The buffering setback and land use restrictions generally remain appropriate for the subject property at this time. To accommodate the variety of residential land use proposed by the applicant and the layout of the development, some changes are proposed. These restrictions are as follows:

- a. No principal or accessory structures shall be located within fifty (50) feet of any property platted as any unit of the Shandon Park or Foxborough Manor subdivisions, and the property located at 2060 Russell Cave Road.
- b. Within three hundred (300) feet of any property platted as any unit of the Shandon Park or Foxborough Manor subdivisions, and the property located at 2060 Russell Cave Road, the subject property shall be limited to single-family detached or attached (townhouse) residential uses.
- c. A twenty-five foot (25') buffer yard shall be provided immediately adjacent to any property platted as any unit of the Shandon Park or Foxborough Manor subdivisions and the property located at 2060 Russell Cave Road. Existing trees with a three inch (3") DBH shall remain within the buffer, unless dead, dying or diseased. Existing trees should be supplemented to meet the following standards: The landscape buffer shall contain one tree every forty (40) feet of linear boundary from group A, B, or C of the Plant List as referenced by Article 18 of the Zoning Ordinance, and shall contain a fence, hedge, wall or earth mound (or combination thereof) a minimum of six (6) feet in height. Existing trees that are dead, dying or diseased may only be removed with written consent of the Urban Forester.

Mr. Baillie said that the Zoning Committee also recommended approval of this zone change, May 2, 2019.

Commission Question – Mr. Owens asked for verification of the treestand preservation. Mr. Baillie said that they are presenting a plan that depicts some areas of preservation; however, the Urban Forester has also indicated some areas that should be added to that plan. Mr. Owens said that most of the stormwater and sanitary sewer lines that are being installed to this area will not be available until the end of the 2019. Mr. Owens also asked if there are any traffic concerns in this area. Mr. Baillie said that in reviewing the traffic near this site, the staff has seen many different access roads to and from this site and doesn't believe that it will impact the overall network.

Mr. Berkley asked the staff why the conditional zoning restrictions are necessary. Mr. Baillie said that they were originally proposed on the 1996 zone change to alleviate some of the impacts on the established neighborhood that were going to be impacted by the entire 5,400 acres of the Expansion Area rezoning. He said that for this site specifically, many of the neighboring residents have the same, if not greater, distance between the rear of the principal structure and the rear of the property line. He added the EAMP recommended to try preserving buffers, many significant trees, and treestands along the rears of properties.

Mr. Bell asked if there was 500 acres placed in to the Urban Service Area boundary at one time. Mr. Baillie said that there were 5,400 acres brought in and 504 acres brought in with the Expansion Area 3 in 1996. Mr. Bell also asked about the sanitary sewer lines. Mr. Baillie said that the sanitary sewer lines had been added more recently as part of the Capacity Assurance Program and the EPA consent decree.

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Mr. Nicol asked what the difference is between EAR-1 and EAR-2. Mr. Baillie said that EAR-1 is low density and the EAR-2 is medium density. Ms. Wade added that there are differences between Expansion Areas and Expansion Area Residential zones. There are different zoning categories within the Expansion Areas, similar to the different levels of residential zoning.

Development Plan Presentation – Mr. Martin presented a revised rendering of the preliminary development plan associated with this zone change. He indicated that revised conditions were distributed to the Planning Commission, as follows:

1. Provided the Urban County Council rezones the property EAR-2; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. 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. Denote height of townhouse in feet on plan.~~
- ~~8. Denote 25' setback adjacent to A-U or A-R zones per Article 15-3 of the Zoning Ordinance.~~
7. 9. Discuss Denote preservation of significant tree stand(s) per the Expansion Area Master Plan and Article 23A-2(v) of the Zoning Ordinance shall be resolved at time of Final Development Plan/Preliminary Subdivision Plan.
- ~~10. Discuss driveway access to Lots 24, 41, 49 and 51.~~

Mr. Martin said that originally the Division of Fire and Emergency Services had serious concerns with the original layout and how the streets functioned within the development. The Planning staff, the Division of Traffic Engineering and the Division of Fire and Emergency Services have met with the applicant regarding the trees, access, and the layout of the buildings. The applicant made numerous changes on the revised plan. He said that this revised plan has single family next to single family (detached) with a required 25-foot setback adjacent to agriculturally zoned land. He depicted on the map the area of the treestands and their location to the townhouses. He said that the EAMP identified the importance and location of the treestands, and Article 26 of the Zoning Ordinance defines significant trees, which are governed by size and species, and encourages protection of them. He said that the Division of Environmental Services has visited this site and identified a grove of oaks that were misidentified on the map. He added that the staff will work with the applicant to ensure the greatest protection of these trees.

Mr. Martin said that the applicant is proposing stub streets to the north for future development. He said that Parkside Road will be connected. He said that the staff discussed with the applicant the possibility to build off-site, possibly a temporary access easement for Emergency Services. He said that public sewer will be available in this development at the time the developer is ready. Stormwater will need to be stored, and released in a timed manner, so that it doesn't impact the downstream properties, which is required. He added that the surrounding Joyland neighborhood was developed prior to floodplain regulations. He depicted on the map the location of the known sinkholes located north of the subject property. He added that access to Russell Cave Road is not allowed because of a site distance issue. He said that the applicant will submit a final development plan and a preliminary subdivision plan, if the zone change is approved.

Mr. Martin said that the revised conditions are mostly division sign-offs with the exception of condition #7, which is the preservation of the significant treestands per the Expansion Area Master Plan and Article 23A-2(v) of the Zoning Ordinance, which shall be resolved at the time of a Final Development Plan and Preliminary Subdivision Plan. He added that they need to update their tree inventory plan. He said that the Subdivision Committee recommended postponement of this plan due to the issues, and that with this revised plan the staff is now recommending approval of this development plan.

Commission Comments - Mr. Owens clarified of the reason for the postponement. He said that it was due to the treestands and the proposed density of this development without the connectivity.

Applicant Presentation – Mr. Zach Cato, attorney representing the petitioner, gave a brief history of the property of the subject property and displayed photographs. He said that they are proposing medium density residential, which is consistent with the neighborhood. He said that the access onto Russell Cave Road is very overgrown and not appropriate for access for a future development. He said that the EAR-2 zoning has been recommended for this property since 1996, which is the zone they are proposing and what has been intended for this site. He said that the prior zone change proposals were met with a lot of resistance from the community. One of those reasons were the size of the developments being proposed. This proposal is for only 53 units, which is within the recommended density of the EAR-2 zone. He also reiterated what the staff had said, that this property is now ready for development because the appropriate infrastructure will be available.

Mr. Cato depicted on the map the areas of concerns on the development plan. He said that they have met with the Division of Traffic Engineering and the Division of Fire and Emergency Services to address the concerns of vehicular circulation within the development. He said that there are four connection points to try to fulfill the goal of improving connectivity. He added that when the parcels to the north of the subject property are developed, that would only increase the connectivity in the area. He said that they are flexible with the size of the lots. He said that this proposal is in agreement with the adopted

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2018 Goals & Objectives and the 2018 Comprehensive Plan because it was written to encourage these types of developments. He also said that the existing zoning classification is no longer appropriate. He distributed an analysis of the two Comprehensive Plans to the Planning Commission. He said that the development is consistent with the Expansion Area Master Plan. It also accommodates the demand for a mixture of housing types, supports infill and development within the Urban Service Area, maximizes development on vacant land, and promotes the use of underutilized land.

Mr. Nathan Billings, also present representing the applicant, said that the initial meeting with the property owner was to determine the highest invested use. The Comprehensive Plan's discussion is mostly related to maximizing density within the Urban Service Area. He said that the plan is dealing with the existing accessibility issues, while maintaining the existing single family neighborhood and keeping with the characteristics of that neighborhood. He said that the EAR-2 zone is the best fit, just as it was twenty-two years ago. He added that this site has many complex issues.

Mr. Billings said that they had been asked if they had attempted to meet with the neighbors and he said that they sent notification letters to the neighbors and the surrounding neighborhood associations on February 8, 2019. They didn't receive any responses and then sent out another set of letters on February 25, 2019. He scheduled a public meeting on March 4, 2019 during the afternoon and another March 11, 2019 during the evening. He said that those both had low attendance and was asked by the neighborhood association to schedule a meeting in the evening, which they did for March 26, 2019. The neighborhood association replied that they were not prepared to meet on that date. He said that they had proposed to the neighborhood a Memorandum of Understanding (MOU) that would require some of the units to join the Joyland Neighborhood Association and to pay dues. He reiterated that they had tried to engage the neighborhood.

Mr. Billings displayed a presentation and said that on the revised development plan they tried to address some of the concerns, which were flooding, traffic connectivity, maintaining the neighborhood uniformity, and aesthetics and buffering. He said that in regards to the flooding, there are two specific area that still need stormwater retention to be completed, and they are required to abide by the city requirements, which will be addressed at the time of the final development plan. The traffic will not be significantly impacted. He said that they reviewed the Average Daily Traffic (ADT) counts and Trips Manual applied the information to this site in several areas along the corridor and this development may generate less than a 2% increase in traffic. He said that the neighbors have asked for connectivity to be made to Russell Cave Road. He said that staff agreed that there should not be connectivity there because of safety. He said that they will create multiple connectivity points on the north side of the subject property so that they will be there for that future development. He said that the proposed development was uniform with the neighborhood: the adjacent neighborhood is single family, detached, primarily one-story, with the occasional two-story in the area. He added that in regards to the sizes of the lots, the existing single family homes are going to be located adjacent to new single family homes. He said that staff had concerns with the location of the townhomes, which they relocated so that they wouldn't be adjacent to the existing single family homes. He said that the acreage of the lot sizes will be designed close to the existing lots. He said that regarding the aesthetics and buffering, any improvement will be an improvement for this site. He added that the nearby property owners have said that there is criminal activity happening on the site. He said that this is not a safe property because it is not secured and is inviting for criminals because it is so overgrown. He said that they are agreeable to creating preservation buffers all along the exterior edges of the subject property.

Mr. Billings said that in regards to Mr. Owens concern of the treestands, this is a preliminary development plan and the issue has not been fully resolved at this time. He said that he would like to work on the entire plan at once because he doesn't a final development plan approved until he satisfies all of the departments concerns and requirements. He believes that the proposed preliminary development plan is acceptable and should be adopted by the Planning Commission. He said that the staff is asking for a conditional zoning restriction that states that no principal structure shall be located within fifty feet of the back yards. He said that many of the adjacent properties have shed in their back yards. He asked to change that setback to thirty-five feet to accommodate for parking at the units.

Mr. Billings said that they are in agreement with the staff's recommendation, with the exception of the conditional zoning restrictions. He also distributed a draft motion to the Planning Commission.

Commission Questions – Mr. Berkley asked for verification of the setback restriction in the Zoning Ordinance. Mr. Billings said that on the northern property line, along the A-U zone, the setback is 25 feet. Mr. Berkley also asked what is required along the residential boundary. Mr. Martin said that in the EAR-2 zone the setbacks can be set individually, however the more restrictive zone would apply. Mr. Billings said that at the final development plan stage all of the restrictions will need to be proposed. Mr. Baillie said that a buffer is not required between the two residential zones. He also said that regarding the parking, the Zoning Ordinance states that within the EAR-2 zone the garage needs to be setback a minimum of 25 feet from the street.

Mr. Owens asked the applicant if the majority of the vehicular traffic will be exiting the development and traveling north. Mr. Billings said that once the traffic exits onto Eden Court there will be alternate roadways to travel into the city of Lexington. He said that he reviewed the ADT counts from the closest areas that traffic studies had been completed.

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Ms. Plumlee asked how the townhouses fit in, compared to the existing lot sizes. Mr. Billings said that the single family residential will be matching the existing single family residential and that does not include the townhouses.

Mr. Penn made a note for the record that the Planning Commission will allow the citizens 3-5 minutes for their comments. He reminded the audience that their duty is not to design the development plan, but to approve or disapprove the zone change. Mr. Penn said that if the citizens do not duplicate each other, he would not time their comments. He reminded them that they will have another chance to state their comments at the time of the final development plan.

Citizen Comments – Jessica Winters, attorney representing Katherine and James Broadus, owners of 2060 Russell Cave Road, said that she had received several other citizen's time, to allow her to speak longer today. She submitted a letter to the Planning Commission. She stated for the record that the attendance should be multiplied by three because bodies in the room count, because of the change in the location many had to leave the hearing. She said that the newspaper legal advertisement was published with the incorrect hearing date on it. She said that the neighborhood has a signed petition and they believe that this zone change is not appropriate.

Ms. Winters displayed a presentation and said her client will be significantly impacted by this proposed development. She displayed photographs of their property and aerial photographs of the general area. She depicted the tree buffer that the proposed access road. She said that the proposed homes will have direct view of their home. She also depicted on the map the area of the trees that should be preserved and said that there is sinkhole in another location on the map. She said that there hasn't been a hydrologic study submitted with this application and that there are also topographic concerns on this property. She said that her clients' property is being depicted with a public roadway along two sides, which they believe that condition is unreasonable in the A-U zone. She said that the preliminary development plan doesn't include a buffer zone or boundary wall, fence or mound, and that multiple homes lining the newly created street will have a direct view of their home, which will be subject to constant noise and light pollution. She said that her client relied upon the fact that the neighboring properties are also A-U zoned. She said that there is also an easement on the property, which guarantees her clients right to maintain their privacy of their property, as well as the right to an evergreen view of the subject property. She said that the preliminary development plan violates its terms by not providing for the evergreen buffering zone between the development and the Broadus homestead and includes structures in excess of 25 feet in height. She said that Ms. Broadus provided the applicant with a copy of the easement in February, and demanded that the applicant abide by its terms, which the applicant hasn't responded to. She added that if necessary, a legal proceeding will be instituted to enforce the easement.

Ms. Winters said that the proposed zone change violates several goals and objectives of the Comprehensive Plan and the LFUCG Zoning Ordinance. She quoted "specifically and prior to any development there must be a determination of public facilities and services are or will be adequate to serve urban uses." She said that they are not adequate and that the Broadus homestead remains on a septic system and doesn't have access to city garbage disposal. She added that is difficult to obtain internet and cellular services in the area. She said that the neighborhood believed that the sanitary sewer system was to be completed by the end of last year. She said that the EAMP also recognizes Russell Cave Road as a scenic roadway and contains significant restrictions regarding setbacks of new construction from that roadway. She also said that the EAMP states that sink holes should be preserved. She said that this is only nine acres of the 503 acres that not allowing this development to go forward will not substantially frustrate the goals for Expansion Area 3.

Ms. Winters said that this development plan is attempting to squeeze a dense development into previously agricultural space, bordered on all sides by either rural land or large lots single family residences. She said that the proposed development is also not compatible with the surround neighborhoods. She said that the EAR-2 zone is defined as allowing 3-6 dwelling units per gross acre and this development is 5.92 units per gross acre. She would like to request a development plan that promotes less density. She said that this development doesn't work with the existing landscape to the greatest extent possible. They should minimize significant contrast, in size, masking and design. It also doesn't comply with design policy number 4, which provides development that is sensitive to the surrounding context. She also that protection policy number 9 requires developers to evaluate a sites geographic and topographic characteristics, which include steep slopes and sink holes as part of the developing planning process

Ms. Winters said that Article 26-4(b) of the Zoning Ordinance requires a tree inventory map to be filed as a part of any application for approval of a preliminary development plan. If it isn't included at the time of filing, in full and complete form, the plan application has not been properly filed and can be rejected. This map is supposed to include treestands and clusters and locations of sink holes and all easements. This Article also requires a preliminary development plan to include a tree preservation plan and Article 26-6 states that trees cannot be removed from sink holes without the approval of the urban forester. She believes that the tree inventory map submitted by the applicant is not sufficient under the law. She added there hasn't been a geologic survey conducted by the applicant to identify the slopes, basin, streams, and/or sink-holes. She said that the Subdivision Committee recommended postponement with regard to the preliminary development plan for many of the same reasons, which they agree.

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Ms. Winters said of the prior attempts to rezone this property, the 1996 request, there was a report submitted by Dr. Ralph Ewers, Ewers Water Consultant, which was attached to the packet distributed earlier. She said that in this report he reviewed the development that was submitted with that zone change. He concluded that any development on any of the subject properties would increase the likelihood of flooding. He said that because of the karst geology in the area, that land is not able to absorb stormwater runoff. He also said that there are many caves and sink holes.

Ms. Winters said if the proposed zone change is approved, it is accompanied by binding conditions pursuant per Article 6-7 of the Zoning Ordinance, including the staff's recommendations, adding the following:

- a. The proposed new street should be relocated and designed to have a minimum impact on the property at 2060 Russell Cave Road.
- b. No principal or accessory structures shall be located within fifty feet of any property platted as any unit of the Shandon Park or Foxborough Manor subdivision, and the property located at 2060 Russell Cave Road.
- c. Any decision regarding rezoning should, at a minimum, acknowledge the existence of the scenic easement held by Mr. and Mrs. Broadus.
- d. Within three hundred feet of any property platted as any unit of the Shandon Park or Foxborough Manor subdivisions, and the property located at 2060 Russell Cave Road, the subject property shall be limited to single family detached residential uses.
- e. A twenty-five (25) foot buffer yard shall be provided immediately adjacent to any property platted as any unit of the Shandon Park or Foxborough Manor subdivisions and the property located at 2060 Russell Cave Road. Existing trees with a three-inch DBH shall remain within the buffer, unless dead, dying or diseased. Existing trees should be supplemented to meet the following standards; the landscape buffer shall contain one tree every forty feet of linear boundary from group A, B, or C of the Plant List as referenced by Article 18 of the zoning Ordinance, and shall contain a fence, hedge, wall, or earth mound (or combination thereof) a minimum of six feet in height. Existing trees that are dead, dying or diseased may only be removed with a written consent of the Urban Forester.

Commission Questions – Ms. Mundy said that the deed of easement states “the Grantor shall plant and maintain evergreens which shall attain a height of not less than ten feet within four years of planting.” Ms. Mundy said that the picture provided doesn't have any evergreen trees on it. She then asked if this deed was ever enacted. Ms. Winters said that it was filed on record in the Clerk's Office and obviously has not been enforced. She said that Mr. Burch presented the scenic easement to the Planning Commission in 2007 and at that time, he had filed some litigation seeking to enforce these terms. She added that her clients only became aware of this after reviewing the land records. Ms. Mundy clarified that all they are requesting is an evergreen buffer. Ms. Winters agreed and added that it be a sufficient landscape buffer.

Mr. Nicol asked Ms. Winters to identify the Broadus' driveway on the map. She depicted in on the aerial map and added that the existing roadway has been used as a dumping ground, which may include some hazardous materials.

Citizens in Opposition – Patty Draus, 608 Allen Court, said having only one access point at Eden Court, will be problematic because at this time it is not appropriate to develop that property for this amount of density. She said that Eden Court is a narrow road for increased traffic. She said that there are cars parked on both sides of the street which makes it a one lane road. She added that children also play on the street and is concerned for their safety. She would like a traffic study to be completed. She is concerned with the intersection of Eden Court and North Broadway; peak hour traffic is already high and adding more traffic would be a problem. She is concerned of the location being adjacent to the interstate and believes that a noise study should also be conducted. She would like this proposal be amended to an EAR-1 for less density.

*Note: Mr. Nicol left the meeting at 7:20 p.m.*

Katherine Perkins, 258 Swigert Avenue, representing the Joyland Neighborhood Association and several homeowners that had to leave the hearing. She distributed a packet to the Planning Commission and said that one of the residents on Pierson Drive was concerned with increased traffic and flooding. She said that three others on Eden Court are also concerned about the increased traffic. She added that this community has many seniors that do not use the internet and communication is limited. They didn't receive notifications from Mr. Billings. She said that they were sent a Memorandum of Understanding (MOU), which they couldn't sign. They don't have a lawyer on staff and were unaware of the repercussions of that document. She informed Mr. Billings that they couldn't sign that document and that he offered the neighborhood money (\$5.00 for each dwelling unit) in exchange. Ms. Perkins said that this association is non-mandatory and couldn't accept that exchange. She referred to the packet and stated that the 2007 proposal was for 43 single family detached units which was disapproved. She asked what has changed since those zone changes because it was deemed environmentally sensitive. She said that the tree inventory map is incomplete and that there is alluvial soil and has a great potential for flooding. She believes that the EAR-2 is inappropriate and would rather have an EAR-1. She said that access will be limited for residents, as well as emergency vehicles. She said that there is significant gradient sloping and the maps depict a 20 degree slope. She would like more conditional zoning restrictions added to this property. She said that this proposal also doesn't comply with the 2018 Comprehensive Plan in many areas. She believes that a traffic study should be required, as there is traffic

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on the nearby roadways. She said that fencing should also be required along the adjacent agricultural properties. She said that trees shouldn't be removed for fencing, density should be limited, and a noise study should be conducted.

Robert Cole, 747 Eden Court, said that crime on the subject property is false. He said that the tree report was deceptive, that only the front area of the property was checked. He would like a true tree survey completed. He believes that the Planning Commission should preserve this area and develop agricultural area on the other side.

Commission Questions – Mr. Owens asked when the latest revision of the development plan submitted. Mr. Martin said that it was received on May 23, 2019, which made the deadline to allow the staff time to review it.

Petitioner Rebuttal – Mr. Billings said that the tree preservation study doesn't preserve every tree on the property. It will identify certain species and certain types that need to be protected according to the Zoning Ordinance. He discussed the Broadus' concern regarding the easement and chain of title on the property, and if there was a dispute or a prior lawsuit filed, it was dismissed without any resolution at all. He said that he understands the neighbors' concerns and comments and is trying to address them all. He is trying to keep the development comparable to the existing neighborhood.

Citizen Rebuttal – Mr. Winters said that the 25-foot buffer zone from the Broadus property would be in the middle of the roadway. She asked if the road could be in the buffer zone or would it need to be relocated.

Mr. Billings said that the buffer is from residential to residential, not along public right-of-ways.

Staff Rebuttal – Ms. Wade apologized for the incorrect date on the public notice. She believes that adequate notice was provided because the applicant is present, as well the adjoining property owners and neighbors. She added that the notice signs were posted at the property twice with the correct date.

Ms. Wade said that the main concern to the staff is the tree inventory map, which the applicant submitted Monday. She said that the Division of Environmental Services was asked to visit the site, and they replied that the map submitted was not accurate. She added that if the Planning Commission approves this application, one of the conditions is that the Urban Forester needs to sign-off on the tree inventory map, which is standard process for a development plan.

Ms. Wade said that Article 26 of the Zoning Ordinance requires that all trees over 4 inches be identified, regardless of species, which will be at the time of the final development plan. She said that the staff believes that it important to preserve the tree stands that were identified as part of the Expansion Area Master Plan.

Ms. Wade said that there is not an identified floodplain on this site. She said that the applicant will need to address any flooding issues with stormwater management. She said that the applicant will need to contact Environmental Services regarding any sinkhole found and have a geotechnical study completed.

Ms. Wade said that regarding the requested setback, the easement is a private issue, and the setback from the zone has to do with structures, which a side yard setback is required. She said that the staff is proposing a landscape buffer.

Commission Questions – Mr. Berkley if the buffer applies to the entire boundary. Ms. Wade said that adjacent to Foxborough Manor and 2060 Russell Cave Road. She said that the road does not comply with the setback and will need to be relocated 25 feet from the property.

Ms. Wade added that the staff believes the infrastructure will be available at the time of the final development plan. She said that the preliminary development plan is valid for two years. Mr. Martin stated that at the time of the final development, the Planning Commission could impose timing restrictions.

Mr. Berkley said that the buffer will be along the south side of the proposed property, along 2060 Russell Cave Road and the agricultural buffer will be in place; he asked what would the buffer along the Broadus' property. Mr. Baillie said that the conditional zoning restrictions are protecting that.

Mr. Billings said that the buffer yard is for residential lots abutting other residential lots and does not apply for the right-of-way adjacent to the 2060 Russell Cave Road property.

Commission Comments – Mr. Owens said that he believes that the density is too high for this property at this time especially with one access. He is not opposed to the zone change and said that the infill is needed. He said in reference to Mr. Billings' statement regarding the stormwater, that dependent on what occurs it may interfere with the single family houses and few lots may not be buildable. He said that there is a burr oak tree buffer in the location that the townhouses are being proposed and may lessen the number of townhouses able to construct. He said in regards to the applicant's request to reduce the setback requirement to 35 feet. He believes that there is too much being proposed on this lot and they have to

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ask for relief. He said that the infrastructure may be there at time that this development is completed. He then asked how this development will be connected to the infrastructure and are the easements available for it.

Ms. Plumlee believes that the townhouses are also too much density for this site.

Ms. Mundy said that she also agrees on the density, but added that the Goals and Objectives of the 2018 Comprehensive Plan state to increase density. She said that she believes that this a good project.

Mr. Penn said that this property will be tough to develop until the adjoining property is developed. He believes that the applicant has successfully tried to make that work but also agrees that the townhomes are too much.

Mr. Owens said that he agrees with Ms. Mundy regarding the Comprehensive Plan.

Zoning Action – A motion was made by Mr. Owens, seconded by Ms. Plumlee, to approve PLN-MAR-19-00002: TRUST EQUITY, LLC, for the reasons below:

1. The requested EAR-2 zoning is in agreement with the 2013 Comprehensive Plan, the adopted Goals and Objectives of the 2018 Comprehensive Plan, and the 1996 Expansion Area Master Plan, for the following reasons:
  - a. The Plan recommends Expansion Area Residential-2 (EAR-2) future land use for the subject property, which is proposed by the petitioner.
  - b. The future EAR-2 land use recommendation of the Plan would suggest a density of between 26 and 53 dwelling units for the subject property. The proposed EAR-2 zone, for 53 single-family dwelling units, is in agreement with this recommendation of the Plan.
  - c. The site will ~~accommodate the demand for housing in Lexington responsibly, prioritizing a mixture of housing types (Theme A, Goal #1) and supports infill and redevelopment throughout the Urban Service Area (Theme A, Goal #1.b. and #2). The proposed development will include single family and townhouse dwelling units.~~
  - d. The proposed development will expand options for mixed-type housing, while also provide a neighborhood which is connected for pedestrians and will utilize various modes of transportation (Theme A, Goals #3.a & 3.b.). The proposed development allows for connectivity to existing neighborhoods, as well as stub streets to the adjoining parcels for future connectivity.
  - e. This proposal maximizes development on vacant land within the Urban Service Area and promote use of underutilized land in a way that enhances the existing urban form (Theme E, Goal #1.a, 1.b, and 1.d).
2. The existing Agricultural Urban (A-U) zone is inappropriate, and the proposed Expansion Area Residential-2 (EAR-2) zone is appropriate at this location for the following reason:
  - a. The intent for the Agricultural Urban (A-U) zone is to manage the growth of the community so to avoid premature or improper development until public facilities and services are adequate to serve urban uses. The availability of these services at this time in this area indicate the inappropriateness of the current zoning.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the property shall be subject to the following use and buffering restrictions via conditional zoning:
  - a. No principal ~~or accessory~~ structures shall be located within ~~fifty (50)~~ thirty-five (35) feet of any property platted as any unit of the Shandon Park or Foxborough Manor subdivisions, and the property located at 2060 Russell Cave Road.
  - b. Within three hundred (300) feet of any property platted as any unit of the Shandon Park or Foxborough Manor subdivisions, and the property located at 2060 Russell Cave Road, the subject property shall be limited to single-family detached ~~or attached (townhouse)~~ residential uses units only.
  - c. A twenty-five foot (25') buffer yard shall be provided immediately adjacent to any property platted as any unit of the Shandon Park or Foxborough Manor subdivisions and the property located at 2060 Russell Cave Road. Existing trees with a three inch (3") DBH shall remain within the buffer, unless dead, dying or diseased. Existing trees should be supplemented to meet the following standards: The landscape buffer shall contain one tree every forty (40) feet of linear boundary from group A, B, or C of the Plant List as referenced by Article 18 of the Zoning Ordinance, and shall contain a fence, hedge, wall or earth mound (or combination thereof) a minimum of six (6) feet in height. Existing trees that are dead, dying or diseased may only be removed with written consent of the Urban Forester.

These conditional zoning restrictions are appropriate and necessary to minimizing the impacts of new development on the existing residential units within Shandon Park and Foxborough Manor subdivisions, and the existing residence at 2060 Russell Cave Road.

Commission Discussion – Mr. Berkley said that he agrees with the zone change but doesn't agree with limiting the development to single family. He said that the intent of the Expansion Area Master Plan is to introduce and encourage different types of housing. He said that he also disagrees with the 25-foot buffer requiring to relocate the street.

Ms. Mundy agrees with Mr. Berkley regarding the relocation of the street.

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Motion – Motion carried 4-2 (Berkley and Mundy opposed; Brewer, Forester, Nicol, Pohl, and Wilson absent).

Development Plan Action – A motion was made by Mr. Owens, seconded by Ms. Plumlee, and carried 7-0 (Brewer, Forester, Pohl, and Wilson absent) to postpone indefinitely PLN-MJDP-19-00005: JAMES RB MACCOUM, TRACT 2 & PORTION OF TRACT 1, as presented by the staff.