

A. PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMENDMENTS

Note: This item was continued from the Planning Commission's May 28, 2015, meeting.

1. **ZOTA 2014-4: RECREATION AND TOURISM LAND USES** – petition for a Zoning Ordinance text amendment to address recreation and tourism land uses in all zones, in order to implement the recommendations of the Recreation ZOTA Work Group.

INITIATED BY: Urban County Planning Commission

PROPOSED TEXT: *(Available upon request, and for viewing at:
<http://www.lexingtonky.gov/Modules/ShowDocument.aspx?documentid=28457>)*

The Zoning Committee made no recommendation on this request.

The Staff Recommends: Approval, for the following reasons:

1. The 2013 Comprehensive Plan recommends "strengthening regulations and policies that propel the agricultural economy; including, but not limited to, local food production and distribution, agritourism, and the equine industry that showcase Lexington-Fayette County as the Horse Capital of the World" (Theme C, Goal #1, Obj. B); "encouraging the development of appropriate attractions and supporting uses that promote and enhance tourism" (Theme C, Goal #1, Obj. E); and "providing entertainment and other quality of life opportunities that attract young professionals and a workforce of all ages and talents to Lexington" (Theme C, Goal #2, Obj. D). The proposed text amendment improves the opportunities for recreation and tourism-related land uses throughout Fayette County, to the benefit of all residents.
2. The *Rural Land Management Plan* (1999) acknowledged that "the best preservation tools for the rural service area are those that keep the agricultural economy viable and strong" (page I-4), and called for greenways, staging areas and trails, as well as public access to the community's unique resources. This all suggests some level of access for recreational enjoyment and possibly tourism.
3. The proposed changes and additions to the definitions in Article 1 of the Zoning Ordinance will provide guidance and clarification to the Board of Adjustment and the Planning Commission in reviewing development applications. This text amendment adds or modifies 38 definitions related to recreation and tourism-related uses.
4. The proposed changes and additions to land use regulations in Articles 8, 11, and 23 will implement the recommendations of the 2013 Comprehensive Plan related to tourism and improving the community's overall quality of life.

Commission Comment: Mr. Penn stated that he believes that the most recent modifications to the proposed text would serve to change the intent of the A-N zone. He said that, for that reason, he would make a motion to continue consideration of this item.

Motion: A motion was made by Mr. Penn and seconded by Ms. Plumlee to continue ZOTA 2014-4 to the September 24, 2015, Planning Commission meeting.

Discussion of Motion: Ms. Richardson stated that the Commission had spent at least six hours discussing the A-N zone; they spent the most recent work session, which lasted over three hours, coming to a compromise. She said that she did not believe that there was anything left to discuss, since each Commission member had come to their own conclusions about which uses were appropriate for that zone. It seemed that everyone left the work session last week believing that a compromise had been reached and the Commission would take action on this request today. Ms. Richardson stated that she would not vote in favor of Mr. Penn's motion to continue this item to the September meeting.

Mr. Berkley echoed Ms. Richardson's comments, noting that the Commission had met 16 times on this ZOTA in 2014, and five times in 2015. He said that he realized that there were differing opinions about principal and conditional uses in the A-N zone, but he believes that the Commission should vote on this ZOTA at this time.

Ms. Plumlee opined that the equine and agricultural industries in Lexington-Fayette County had survived floods, droughts, insect infestations, recessions, and casinos, but it would not survive "irresponsible zoning." She said that she does not believe that the current text lives up to the Planning Commission's responsibility; she believes that the Commission needs to take a step back and review the text further, rather than "burning the factory floor."

Mr. Brewer stated that, at the end of the recent work session, it appeared that the Commission was ready to move this text amendment forward. He said that discussion, however, left him with a great deal of disappointment in this process. After considering the text amendment for a week and discussing it with others, he opined that this text amendment is "broken," and the Commission needs to continue it in order to allow time for further discussion. Mr. Brewer opined that, after spending two years working on it, another two months should not make a difference, particularly if it results in a better text amendment being forwarded to the Urban County Council. He added that he also believes that the recent changes to the text have changed the intent of the A-N zone.

Mr. Cravens stated that this item had been continued many times, and several Commission members had suggested changes, but the proposed text had not changed a great deal. He said that he believed that this item should be heard today.

Mr. Penn stated that the one consistent theme through the three years of consideration of this text amendment has been maintaining the intent of the zones. He said that, after the last work session, he reviewed the proposed text again; and he now feels that it would change the intent of the A-N zone. Mr. Penn said that, if the Commission wants to change the intent of the zones, they should do so purposefully, rather than by selectively allowing principal uses.

Mr. Owens concurred with Mr. Brewer, opining that, throughout the last work session, he offered suggestions on how best to move the proposed text amendment forward. At the end of that meeting, he believed that the Commission had reached a general consensus to continue this item until the September hearing.

Mr. Owens said that he took exception to Mr. Cravens' assertion that the proposed text has not changed much. He said that the text had changed abruptly in March, based on Mr. Cravens' motion to add several principal uses to the A-N zone. Prior to the most recent work session, the staff was asked to survey the Commission members to determine their level of support for those proposed principal uses; the tally changed since last March, indicating that several members had reversed their opinions. Mr. Owens stated that he believed that the Commission should take a break from their consideration of the proposed text, then reconsider it in September.

Action: Mr. Penn's motion failed, 5-6 (Berkley, Cravens, Drake, Mundy, Richardson, and Smith opposed.)

Commission Discussion: Mr. Wilson asked, with regard to Mr. Penn's motion to continue this request, if additional information had been brought forward that had not already been discussed, which could have helped the Commission in their deliberation. Mr. Penn answered that, during the three-year process for this text amendment, the Commission held firm to their decision not to change the intent of any of the agricultural zones. He said that the Commission never discussed whether the most recent set of proposed changes would change the intent of the A-N zone, and he believed that the members should have that discussion in a work session.

Staff Comments: Ms. Wade stated that the staff had prepared a draft of the text resulting from the motion that Mr. Cravens made in March, as well as a draft of the A-N zone provisions discussed at the Commission's work session a week ago. She distributed those items to the Commission members.

Discussion (cont.): Mr. Brewer asked if the staff believed that the proposed changes would alter the intent of the A-N zone. Mr. King responded that the staff has been clear in their belief that all of the new uses discussed for the A-N zone should be conditional, and they have expressed that belief to the Commission members many times. He added that the staff also believes that there should be additional, limited conditional uses available in the A-R zone, which they have also made part of the record. Mr. King noted that, regardless of the Commission's vote at this hearing, that will continue to be the staff's position going forward.

Ms. Wade stated that the staff also had the minutes of the October 23, 2014, and March 26, 2015, public hearings on this text amendment, in case the Commission needed them for reference.

Mr. King placed the A-N zone text on the overhead for the Commission members, explaining that they would each have to determine how they felt based on one key sentence from the text: "Because these lands are environmentally sensitive, special care is needed to ensure that the uses that are permitted are compatible with the goal of conservation and preservation of these lands."

Mr. Brewer stated that he had recently reviewed the proposed text for the A-N zone, and he could not justify the new principal uses as being consistent with the intent of the zone. He opined that he could not, in good conscience, vote to move this text amendment forward at this point, since he believes that it would do harm to the intent of the A-N zone and create an injustice to the process.

Mr. Owens agreed with Mr. Brewer's comments, noting that, in his opinion, commercial hiking and biking trails; equine trails; tree canopy tours; canoeing; kayaking; and nature preserves are commercial uses, and they should not be located in environmentally sensitive areas. He said that those uses could be conditional in the A-N zone, which might provide an additional level of protection for sensitive areas.

Mr. Cravens stated that one single family residence has always been a principal use in the A-N zone. He said that residential construction in environmentally sensitive areas is regulated and vetted by the Engineering Manuals, permit requirements, and review by an environmental planner. That same level of review could apply to the uses proposed for the A-N zone. Mr. Cravens stated that the necessary zone changes to A-N, along with conditional zoning, would be sufficient to provide the necessary protection for the area.

Mr. Penn stated that there was a difference between allowing a residence, and bringing commercial uses to the A-N zone without the requirements of a conditional use permit. He said that any property in the A-R zone could apply for a zone change to A-N, and have the same "right of use," if the proposed uses are made principal.

Ms. Plumlee opined that there was no reason to add principal uses to the A-N zone, when they could be destructive and would require more oversight, not less. She said that she believes that the language as proposed "messes with the intent" of the zone, and goes against the staff's recommendations.

Mr. Owens said that the Planning Commission's charge was to consider recreational activities in the agricultural zones, not change the intent of any of those zones. He asked Ms. Jones if the proposed text had been changed to the degree that another public hearing would be necessary. Ms. Jones answered that she did not believe that another public hearing would be necessary, for two reasons: the Commission had already had one hearing, and only one is required; and, Mr. Cravens' motion to add principal uses to the A-N zone was also in an open public meeting. In addition, the Urban County Council will make the final determination on this text amendment, and the public could have an opportunity to request a public hearing before that body. Mr. Owens stated that he needed clarification, because the public comment portion of the hearing had been closed prior to Mr. Cravens' motion in March. Ms. Jones responded that the Commission could reopen the hearing, but she reiterated that, since the motion was made at a continuation of the public hearing, she did not believe that it was necessary. She added that the Commission frequently closes hearings for public comment, but then comments amongst themselves prior to voting on a matter.

Ms. Richardson stated, with regard to Ms. Wade's handouts listing possible alternatives to the proposed text, that #2 was the option she believed the Commission had decided upon at their work session one week ago. She agreed with Mr. Brewer that some of the items in alternative #1, which reflects Mr. Cravens' motion in March, should not be included in the A-N zone. Ms. Richardson said that she had read the intent of the A-N zone, and she agreed that that area needs special consideration. She said that she believes that the six uses proposed in alternative #2 would be developed in such a fashion that the profit for the businesses would be dependent upon the proper care provided for the land. If a business is based on characteristics of the land, and that land is destroyed, then the business cannot be successful. Ms. Richardson opined that it would be impossible to plan for every possible use that could be proposed in the A-N area.

Ms. Richardson stated that the A-N zone is provided for a wonderful area, and she believes that there are many uses that could locate there—properly and safely, with attention to the environment. She noted that she does not advocate the destruction of beautiful property, but she would like for people to be able to use, enjoy, and learn from it. Ms. Richardson did not believe that the proposed text is contrary to the intent of the A-N zone.

Mr. Brewer reiterated that he believes that the proposed language violates the intent of the A-N zone, and that the staff's actions indicate that they feel that the Commission is making a mistake. He asked what is to be gained by making so many uses principal, rather than conditional. Mr. Brewer believed that commercial entities have profit motives, and that allowing those uses by-right in the A-N zone would change its intent forever.

Mr. Cravens asked why the staff would recommend making the uses conditional, if they could be harmful to the A-N zone, rather than prohibiting all uses except single-family residences. Mr. Brewer responded that he did not believe the uses should be prohibited, but the Planning Commission or the Board of Adjustment would have additional oversight if they were conditional uses. Mr. Cravens stated that uses either meet the intent of the zone, or they do not.

Mr. Penn stated that he believes that it is the intensity of use and volume of customers that make the difference. He said that harm could come to environmentally sensitive areas not through use, but through over-use. Making uses principal, rather than conditional, would allow them to locate in the A-N zone by right once the property is zoned, and will remove the ability for oversight. Mr. Penn said that, throughout the ZOTA process, the staff proposed many different types of uses; however, the work group never allowed consideration of any use that would change the intent of the zone.

Mr. Owens said that the intent of residential zones is primarily for residences, but there are several conditional uses that are allowed in those zones as well. He opined that he is in favor of some of the activities proposed, but he believes there needs to be an opportunity to vet those proposals and place conditions on them.

Mr. Owens stated that, after Mr. Cravens' motion in March, he asked the staff to survey the Commission members with regard to their opinions about the proposed uses. The staff prepared a tally sheet that indicated that most of the Commission members would prefer that a large number of the uses remain conditional, with the exception of educational classes and commercial hiking and biking trails.

Mr. Brewer asked the staff to explain the difference between conditional and principal uses, and how the rules vary. Mr. King answered that conditional uses are a class of permitted uses; however, there may be special circumstances about the nature of the land or a particular location that would warrant a review as to whether that use is appropriate, or whether it could be made appropriate with special conditions that are not inherent in the zone. The conditional use process also requires notice to surrounding property owners, which allows others to weigh in on any given proposal.

Mr. Brewer reiterated that he thought the Commission would risk a great deal, but gain nothing, by making the list of uses principal, rather than conditional.

Mr. Berkley stated that the Commission had discussed the issue at length in work sessions. He opined that these concerns could be handled through the zoning process, rather than by making the uses conditional. Mr. Berkley said his objection to making uses conditional is that the only means of appeal is through the court system, rather than through a local government body. All of the Commission's other rulings have an appeals process through the local government.

Ms. Plumlee asked Mr. Berkley why he feared the conditional use process. He responded that there are no properties currently zoned A-N; any proposed A-N property would require a zone change. He said that he believes that the zone change will require a more intensive review process than would a conditional use. Mr. Penn stated that that level of review is lost after a property is rezoned to A-N. Mr. Berkley answered that the Commission could disapprove the rezoning request, or place limits on uses via conditional zoning restrictions.

Mr. Owens asked if it was possible to make conditional zoning restrictions too restrictive. Mr. King answered that he could not respond directly. He noted, however, that the zone change process requires a determination as to whether the proposed zone is appropriate for the land. If it is determined to be appropriate, it must be based on one of three reasons: 1) it is in agreement with the Comprehensive Plan; 2) there has been a change, unanticipated by the Plan, that makes it appropriate; 3) the existing zoning is inappropriate, and the proposed zoning is appropriate. Mr. King said that the second question, when faced with a zone change, is whether the Commission should use their conditional zoning power to restrict any of the uses that are allowed. Conditional zoning is described by KRS 100 as intended to be used sparingly, and in special circumstances, and it does not allow for the regulation of very specific operational details that often go along with conditional uses. Some concerns could be addressed on a required development plan, but that governs the physical arrangement of a property rather than specific operational details.

Mr. Cravens asked if a property owner proposed a zone change to A-N for a youth camp, which some Commission members believe should be a conditional use, could that request be filed along with the zone change. Mr. King answered that, in that scenario, the property owner arguably would not have to detail intended uses for the property, but rather note the physical arrangement of buildings and parking on a development plan. The assumption would be that any of the uses permitted in the zone would be allowed to occupy those facilities, unless the Planning Commission restricted those uses via conditional zoning. Mr. Cravens asked if a conditional use could be requested along with a zone change. Mr. King responded that the Planning Commission is allowed by local law to take on the role of the Board of Adjustment on a zone change application rather than requiring the filing of a separate application to the BOA.

Mr. Owens suggested that the Commission review each possible use individually as principal or conditional. The staff displayed the most recent "tally sheet," indicating the number of Commissioners in favor of each type of use.

Mr. Drake stated that he did not view the tally sheet as a list of principal or conditional uses, but rather tried to convey that he believed several of the uses could be examples of the types of uses that would be appropriate in the A-N zone.

Motion: A motion was made by Mr. Cravens and seconded by Mr. Berkley to amend the motion Mr. Cravens made on March 26, 2015, to use the example prepared by the staff, removing most of the uses enumerated at that time from principal and making them conditional.

Discussion of Motion: Mr. Penn asked if the motion would amend Mr. Cravens' earlier motion to reduce the list of principal uses to those six agreed upon at the last work session. Mr. King explained that the motion would amend the package of text amendments to make this specific change, prior to taking a final vote on the entire package.

Ms. Plumlee asked how this motion would affect the work done by the ad hoc environmental bond committee. Mr. Owens answered that the work of that committee would follow as a separate text amendment; it was never intended to be part of this text amendment.

Action: Mr. Cravens' motion carried, 8-3 (Brewer, Owens, and Wilson opposed).

Mr. Owens asked if the Commission would still need to take action on the amended draft text. Mr. King answered that the Commission would need to make a recommendation on the entire text amendment package.

Motion: A motion was made by Mr. Cravens and seconded by Ms. Mundy to approve ZOTA 2014-4, as amended in the previous motion.

Discussion of Motion: Mr. Penn stated that he was very concerned about moving forward with this text amendment as proposed, because he believed that it changes the intent of the A-N zone and adds commercial uses to it. He said that the unintended consequences of this text amendment would prevent him from voting to approve it, despite the three years he

had spent working on it. Mr. Penn said that he believed that this text amendment would change the A-N and A-R zones, and he urged the Commission members not to recommend approval.

Ms. Plumlee echoed Mr. Penn's comments, and asked the other Commission members to heed his advice.

Mr. Drake asked if there would be a "spillover effect" between the uses in the A-N and A-R zones. Mr. Penn stated that, since the Comprehensive Plan no longer includes a land use map, the A-N zone would be applicable anywhere in Lexington-Fayette County in order to operate one of the uses allowable in that zone. He said that he was concerned about by-right use in the A-N zone, which was never intended to be part of this text amendment. Mr. King stated that the staff believes that the Rural Land Management Plan (RLMP) land use maps would still be applicable in evaluating rural zone changes, and the staff would still consider them as part of their review of any application. He added that the RLMP should be reviewed, but he could not speak to the outcome of that process. Mr. Penn added that the RLMP does need to be reviewed, but he opined that it would not be changed to allow recreational uses by-right in the agricultural zones. He reiterated his opinion that this text amendment is "bad legislation," and the Commission should not send it forward to the Council with the expectation that they would fix it.

Mr. Brewer stated that he did not see the urgency of moving this text amendment forward today; he suggested that the Commission continue this item, and use the time to consider it thoughtfully.

Mr. Owens stated that he agreed with Mr. Penn. He said that, after three years of work, he wanted a recommendation to go forward, but he could not support this text amendment as proposed.

Mr. Cravens asked what would happen if the Commission did not approve the proposed text amendment. Mr. King answered that, if the Commission votes to recommend approval, this text amendment would go to the Council with their recommendation. If the motion on the floor fails, the Commission would be sending their own text amendment to the Council with a recommendation that it be disapproved. Mr. King noted that this text amendment would go to the Council either way, unless the Commission makes a motion to withdraw it.

Mr. Owens stated that this process had not been easy, and that he appreciated the Commission members and the staff for their hard work, and for sharing their concerns and viewpoints.

Action: Mr. Cravens' motion carried, 6-5 (Brewer, Owens, Penn, Plumlee, and Wilson opposed).

Staff Comments: Mr. King stated that the corollary Subdivision Regulations amendment would need a motion as well.

Ms. Wade stated that the proposed change to the Subdivision Regulations relates to one sentence in the definition of environmentally sensitive areas, and would read as follows: "Any area which, due to its natural or physical setting, may have environmental problems, with regard to development or use." She said that language would be consistent with the RLMP.

Action: A motion was made by Mr. Cravens, seconded by Ms. Mundy, and carried 7-4 (Brewer, Owens, Penn, and Plumlee opposed) to approve the Subdivision Regulations amendment as presented by staff.

