

2. **BAYER PROPERTIES, LLC, (AMD. #2) ZONING MAP AMENDMENT & FRITZ FARM, LLC (SUMMIT LEXINGTON – BAYER PROPERTY) ZONING DEVELOPMENT PLAN**

- a. **MARV 2013-7: BAYER PROPERTIES, LLC (AMD. #2) (6/27/13)*** - an amended petition for a zone map amendment from an Agricultural Urban (A-U) zone to a Mixed-Use Community (MU-3) zone, for 49.17 net (54.73 gross) acres; and from a Single Family Residential (R-1D) zone to a Mixed-Use Community (MU-3) zone, for 0.65 net (0.82 gross) acre, for property located at 4100 Nicholasville Road and 104, 108, and 112 East Tiverton Way. Dimensional variances are also requested with this zone change.

LAND USE PLAN AND PROPOSED USE

The *South Nicholasville Road Small Area Plan*, adopted in 2009 as an amendment to the 2007 Comprehensive Plan, recommends a mixed-use development (MU) of the subject property for both commercial and residential purposes. This Small Area Plan recommends that a storm water study also be conducted prior to any new development; that only residential structures be constructed to buffer existing residential uses within Subarea IV; and that non-residential structures be placed at the intersection of Nicholasville Road and Man o' War Boulevard and along Nicholasville Road to buffer noise. The applicant proposes an entertainment mixed-use development of slightly less than 800,000 square feet, with retail and residential uses within mixed-use buildings and a hotel on the site.

The Zoning Committee Recommended: Approval, for the reasons provided by staff, revising the staff's proposed conditional zoning restriction to delete the word "zone" and replace it with "use."

The Staff Recommends: Approval, for the following reasons:

1. The requested Mixed-Use Community (MU-3) zone is in agreement with the 2007 Comprehensive Plan, and as amended by the *South Nicholasville Road Small Area Plan*, which was adopted by the Planning Commission in 2009, for the following reasons:
 - a. The *South Nicholasville Road Small Area Plan* encourages mixed use in a village-style development, with an emphasis on pedestrian, bike, and transit-oriented design. The proposed development does so.
 - b. Subarea IV of the *South Nicholasville Road Small Area Plan* recommends:
 - i. Mixed Use (MU) future land use for a majority of the subject property, and High Density Residential (HD) for the three parcels along Tiverton Way.
 - ii. A storm water study for 4100 Nicholasville Road and surrounding properties should be conducted.
 - iii. Constructing residential only structures as a buffer to existing residential uses adjacent to the subject property.
 - iv. Placing non-residential structures at the intersection of Nicholasville Road and Man o' War Boulevard and along Nicholasville Road to buffer noise.
 - c. The requested MU-3 zone meets the locational criteria as established by Article 28 of the Zoning Ordinance for street frontage of at least 160 feet along Nicholasville Road and Man o' War Boulevard, being at least three acres in size and being located within an area recommended for Mixed Use by the Comprehensive Plan, or its adopted amendment.
 - d. This proposed development will implement the vision and direction of the Small Area Plan to create a mixed-use development that places commercial-only structures along the arterial roadways, a village-style mixed-use area in the center of the property, and "residential-only" structures nearest the established neighborhood.
2. This recommendation is made subject to approval and certification of **ZDP 2013-22: Fritz Farm, LLC (Summit Lexington, Bayer 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.
3. **Under the provisions of Article 6-7 of the Zoning Ordinance, the subject property shall be restricted as follows:**
 - a. Within 75 feet of any single family residential zone, no commercial or business use shall be permitted.

This restriction is appropriate and necessary for the subject property in order to ensure that the proposed development is compatible with the neighboring land uses, as recommended by the South Nicholasville Road Small Area Plan, an adopted amendment of the 2007 Comprehensive Plan.

b. **REQUESTED VARIANCES**

1. Elimination of MU-3 dimensional requirement for 0-foot setback for 15% of front building walls.
2. A variance from the MU-3 1:1 height-to-yard ratio to allow a maximum height of 30' with a 15' side yard for Building "D".
3. A variance from the MU-3 1:1 height-to-yard ratio to allow a maximum height of 58' with a 50' side yard for Buildings "FF" & "GG".

The Staff Recommended: Postponement of the height-to-yard variance for buildings "FF" & "GG" (#3), for the following reason:

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

2. **BAYER PROPERTIES, LLC, (AMD. #2) ZONING MAP AMENDMENT & FRITZ FARM, LLC (SUMMIT LEXINGTON – BAYER PROPERTY) ZONING DEVELOPMENT PLAN**

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LAND USE PLAN AND PROPOSED USE

The *South Nicholasville Road Small Area Plan*, adopted in 2009 as an amendment to the 2007 Comprehensive Plan, recommends a mixed-use development (MU) of the subject property for both commercial and residential purposes. This Small Area Plan recommends that a storm water study also be conducted prior to any new development; that only residential structures be constructed to buffer existing residential uses within Subarea IV; and that non-residential structures be placed at the intersection of Nicholasville Road and Man o' War Boulevard and along Nicholasville Road to buffer noise. The applicant proposes an entertainment mixed-use development of slightly less than 800,000 square feet, with retail and residential uses within mixed-use buildings and a hotel on the site.

The Zoning Committee Recommended: Approval, for the reasons provided by staff, revising the staff's proposed conditional zoning restriction to delete the word "zone" and replace it with "use."

The Staff Recommends: Approval, for the following reasons:

1. The requested Mixed-Use Community (MU-3) zone is in agreement with the 2007 Comprehensive Plan, and as amended by the *South Nicholasville Road Small Area Plan*, which was adopted by the Planning Commission in 2009, for the following reasons:
 - a. The *South Nicholasville Road Small Area Plan* encourages mixed use in a village-style development, with an emphasis on pedestrian, bike, and transit-oriented design. The proposed development does so.
 - b. Subarea IV of the *South Nicholasville Road Small Area Plan* recommends:
 - i. Mixed Use (MU) future land use for a majority of the subject property, and High Density Residential (HD) for the three parcels along Tiverton Way.
 - ii. A storm water study for 4100 Nicholasville Road and surrounding properties should be conducted.
 - iii. Constructing residential only structures as a buffer to existing residential uses adjacent to the subject property.
 - iv. Placing non-residential structures at the intersection of Nicholasville Road and Man o' War Boulevard and along Nicholasville Road to buffer noise.
 - c. The requested MU-3 zone meets the locational criteria as established by Article 28 of the Zoning Ordinance for street frontage of at least 160 feet along Nicholasville Road and Man o' War Boulevard, being at least three acres in size and being located within an area recommended for Mixed Use by the Comprehensive Plan, or its adopted amendment.
 - d. This proposed development will implement the vision and direction of the Small Area Plan to create a mixed-use development that places commercial-only structures along the arterial roadways, a village-style mixed-use area in the center of the property, and "residential-only" structures nearest the established neighborhood.
2. This recommendation is made subject to approval and certification of **ZDP 2013-22: Fritz Farm, LLC (Summit Lexington, Bayer 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.
3. **Under the provisions of Article 6-7 of the Zoning Ordinance, the subject property shall be restricted as follows:**
 - a. Within 75 feet of any single family residential zone, no commercial or business use shall be permitted.

This restriction is appropriate and necessary for the subject property in order to ensure that the proposed development is compatible with the neighboring land uses, as recommended by the South Nicholasville Road Small Area Plan, an adopted amendment of the 2007 Comprehensive Plan.

b. **REQUESTED VARIANCES**

1. Elimination of MU-3 dimensional requirement for 0-foot setback for 15% of front building walls.
2. A variance from the MU-3 1:1 height-to-yard ratio to allow a maximum height of 30' with a 15' side yard for Buildings "D".
3. A variance from the MU-3 1:1 height-to-yard ratio to allow a maximum height of 58' with a 50' side yard for Buildings "FF" & "GG".

The Staff Recommended: Postponement of the height-to-yard variance for buildings "FF" & "GG" (#3), for the following reason:

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- a. Additional time is needed to further analyze the impact, if any, of the requested variance on the nearby residential properties.

The Staff Recommended: Approval of the elimination of the 0-foot setback (#1) and height-to-yard variance for building "D" (#2), for the following reasons:

- a. Granting the requested variances will not adversely affect the public health, safety or welfare; will not alter the character of the general vicinity, and will not cause a hazard or nuisance to the public. The setback variances will be in keeping with pedestrian-friendly principles described in the Zoning Ordinance.
- b. Granting the requested variances will not result in an unreasonable circumvention of the Zoning Ordinance because the overall development of this mixed-use center will utilize a pedestrian-oriented "New Urban-style mixed-use entertainment project" oriented to an internal street system rather than to arterials on the periphery.
- c. The special circumstances that apply to this property that do not generally apply to land in other MU-3 zones or the general vicinity are that the property is bounded on two sides by major arterial roads, and it is trifurcated by a major overhead utility easement and existing storm water drainage courses.
- d. Strict application of the requirements of the Zoning Ordinance would deprive the applicant of a reasonable use of the property and would create an unnecessary hardship because a private internal road system is being proposed that will allow the development to achieve the design requirements of the MU-3 zone in place of the public roads on the perimeter of the development.
- e. The circumstances surrounding the requested variances are not the result of the actions of this applicant taken subsequent to the adoption of the Zoning Ordinance; but are, rather, a design response to the difficulties of preparing this constrained site for a major mixed-use development.

This recommendation of approval is made subject to the following conditions:

1. Provided the Urban County Council rezones the property MU-3; otherwise, any Commission action of approval of this variance is null and void.
 2. Should the property be rezoned, it shall be developed in accordance with a future Final Development Plan approved by the Commission, or as a later Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
 3. A note shall be placed on the Zoning Development Plan indicating the variances that the Planning Commission has approved for this property (under Article 6-4(c) of the Zoning Ordinance).
- c. ZDP 2013-22: FRITZ FARM, LLC (SUMMIT LEXINGTON, BAYER PROPERTY) (6/27/13)* - located at 4100 Nicholasville Road. (HDR)

The Subdivision Committee Recommended: Postponement. There were questions regarding the proposed access points, the proposed development in the southeast area of the property and compliance with Article 12 information.

The Staff Recommends: Postponement. There are questions regarding the proposed access points, the variances requested and the clarity of the site statistics.

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

1. Provided the Urban County Council rezones the property MU-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Remove extraneous general notes.
8. Denote proposed building heights in feet.
9. Denote that compliance with Article 28-6 (b) through (g) shall be determined at the time of the final development plan.
10. Clarify amount of parking proposed in parking structures.
11. Denote number of bedrooms per dwelling unit.
12. Clarify required off-street parking per dwelling unit or and overall.
13. Provided the Planning Commission makes a finding in compliance with Art. 28-5(h)(6) of the Zoning Ordinance.
14. Denote construction access location(s).
15. Clarify site statistics to demonstrate F.A.R., lot coverage and open space.
16. Discuss variances requested.
17. Correct note #5.
18. Delete MU-3 ordinance requirements from plan.
19. Clarify proposed retail and residential square footage.

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20. Correct tree canopy information.
21. Discuss building and parking lot orientation to arterial streets.
22. Discuss proposed access and potential road improvements.

Staff Presentation: Ms. Wade began the staff's presentation by entering into the record the South Nicholasville Road Small Area Plan, as well as 10 letters in opposition to this request, which she distributed to the Commission members for their review.

Ms. Wade briefly oriented the Commission members to the location of the subject property at the northeast corner of Nicholasville Road and Man o' War Boulevard, noting that the subject property also has frontage along Habersham Drive, which is approximately 2,200 feet to the west of that intersection, as well as along East Tiverton Way. She said that the property, which is commonly known as the Fritz Farm, has been zoned A-U for approximately 45 years. There have been several attempts to rezone the property, but all have proven unsuccessful, even after being litigated. There is an existing conditional use permit for a plant nursery and garden center, which was approved by the Board of Adjustment in 2001. Referring to an aerial photograph of the subject property, Ms. Wade noted that the bulk of the property is not being used in an urban, developed fashion; she also pointed out the location of the garden center and the existing residence on the property. She displayed the following street-level photographs: 1) a view of the East Tiverton Way frontage from the Fritz property, looking toward Nicholasville Road; 2) from the same vantage point, a view of Devondale Baptist Church to the east; 3) a view of an existing stub street from East Tiverton Way into the Fritz property; 4) a view of the Fritz property from Habersham Drive, noting the slight grade difference in that location; 5) a view of Man o' War Boulevard, looking in the direction of Harrodsburg Road; 6) a view of Nicholasville Road, in front of the entrance to the plant nursery, looking toward the intersection of Nicholasville Road and Man o' War Boulevard; 7) the existing garden center and plant nursery; and 8) the Fritz family farmhouse, which is set back some distance from Nicholasville Road.

Ms. Wade stated that the petitioner originally requested a rezoning to B-6P for the subject property. The map request was then amended to a mixture of zones, including: B-6P, R-5, B-3, and MU-3. There were concerns among the staff about that request, so the petitioner amended the request again, and is now requesting only an MU-3 zone. The development plan proposes a hotel use above retail uses; some mixed-use structures; and some structures solely for residential and commercial uses. Ms. Wade said that, for many years, the Comprehensive Plan has recommended a mixture of Medium Density and High Density Residential use for the property, which is also depicted on the 2007 Comprehensive Plan land use map. The Comprehensive Plan also recommended a study for a 1.5-mile corridor south to the Jessamine County line in order to assess the large amount of vacant property in this area of the county. The result of that study was the *South Nicholasville Road Small Area Plan*, which the staff evaluated in assessing this proposed zone change.

Ms. Wade stated that the *South Nicholasville Road Small Area Plan* (SAP) encourages mixed use in a village-style development, with emphasis on pedestrian, bike, and transit-oriented design for the subject property. The SAP also recommended mixed use for the Fritz Farm property, and High Density Residential use for the three small lots on East Tiverton Way that are included in this request. The SAP recommended the construction of residential-only units to act as a buffer to existing residences adjacent to the subject property; and the placement of non-residential structures at the intersection of Nicholasville Road and Man o' War Boulevard, and along the Nicholasville Road frontage, to buffer noise for the existing neighborhoods. Also included in the SAP recommendations was a stormwater study for the Fritz Farm and surrounding neighborhoods. Ms. Wade said that, as part of the SAP process, the staff prepared a concept plan, known as the Fritz Village Concept, which broke possible land uses down into residential-only for 16% of the development; non-residential structures, for 45% of the development; and a mixture of uses for about 38% of the development. The staff was pleased when the petitioner amended their application a second time in order to request the MU-3 zone, because they believe it can more fully implement the SAP recommendations.

Ms. Wade said that the petitioner is now proposing just over a million square feet of retail, residential, and hotel uses on the subject property, which is very much in line with the Fritz Village Concept with regard to the percentages for each type of use. The petitioner's development plan is now depicting non-residential uses along the two arterial frontages, for approximately 30% of the total floor area; residential uses adjacent to the Devondale subdivision, for approximately 25% of the floor area; and a mixed-use development, much like the Fritz Village, toward the center of the property, encompassing approximately 46% of the total floor area. Ms. Wade explained that the mixed-use area is proposed to flank the public open space, which could allow for entertainment opportunities such as live music, public gatherings, and special events. This element is of particular importance, since the petitioner is requesting the entertainment component of the mixed-use zone as well. Of the total square footage proposed for the site, slightly over half would be devoted to commercial purposes. Ms. Wade stated that the staff report mentions that Article 28 of the Zoning Ordinance, which regulates the mixed-use zones, outlines locational criteria for a mixed-use project. The petitioner's plan currently meets all of the locational criteria, which makes it eligible for the mixed-use zone. Ms. Wade noted that the staff was concerned that no residential uses were proposed along the Tangleway Way stub street, which was recommended for residential use by the SAP; but they have since learned that the petitioner is proposing to al-

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low that area to remain as open space. The staff believes that a landscaped open space is an equally appropriate buffer between the commercial use proposed along Man o' War Boulevard and the residential uses on Tangleway Way.

Ms. Wade stated that the staff is suggesting one conditional zoning restriction for the subject property, to prohibit commercial development within 75 feet of any single family residential use in the Devondale subdivision. The staff believes that that restriction will help to further the SAP recommendation of locating the commercial development further away from single family residential areas. The staff originally suggested that that distance be from a residential zone; the petitioner requested a change in the language from "zone" to "use," because the Devondale Baptist Church is located in a residential zone, but it is not a residential use. Ms. Wade said that the SAP recommended that a stormwater study be completed for the subject property prior to any development. The petitioner has completed that study, and is currently working with the Division of Water Quality to address the issues raised, not just for their site, but for the adjoining neighborhood. Ms. Wade stated that the staff and the Zoning Committee are recommending approval of this request, for the reasons as listed in the staff report and on the agenda.

Development Plan Presentation: Mr. Martin presented the corollary preliminary development plan, noting that revised conditions had been distributed to the Commission members prior to the start of the hearing. He noted that, since this plan is preliminary, the Commission will also review a final development plan for the property prior to any development, should the rezoning request be approved.

Referring to a rendered development plan, Mr. Martin oriented the Commission to the subject property, noting the Nicholasville Road, East Tiverton Way, Man o' War Boulevard, and Habersham Road frontages, as well as the Tangleway Way stub street. The petitioner is proposing to use that Tangleway Way stub a pedestrian-only an access; to construct full accesses on Nicholasville Road and East Tiverton Way; and to construct a right-in/right-out access to Man o' War Boulevard.

Mr. Martin explained that the petitioner is proposing to construct one-story buildings along the perimeter of the property. Some of the structures are proposed for residential use only, with some of the others having residential above commercial uses. The hotel building is proposed to be five stories in height, and it will also contain a mixture of uses. In order to provide parking for the development, the petitioner is proposing three parking structures, along with some surface parking spaces, for a total of 2,477 spaces. The proposed number of parking spaces exceeds the Zoning Ordinance requirement by just over 300 spaces. Mr. Martin stated that the total proposed square footage for the property is over one million square feet, with floor area ratio and lot coverage slightly less than what is allowed by the Zoning Ordinance. There are 400 proposed residential units, with 620 bedrooms in one-, two-, and three-bedroom units.

Mr. Martin stated that the petitioner is proposing to construct a large detention basin on the site. A stormwater study has been completed for the property, and has resulted in various recommendations, the primary recommendation being the construction of a detention basin on the site, which will help to alleviate the downstream stormwater issues.

Mr. Martin stated that the staff is recommending approval of this revised plan, subject to the following conditions:

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

1. Provided the Urban County Council rezones the property MU-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Remove extraneous general notes #10, 12, 14, 15, 17 & 18.
8. Denote proposed building heights in feet.
8. 9. Denote that compliance with Article 28-6 (b) through (g) shall be determined at the time of the final development plan.
9. 10. Clarify amount of parking proposed in parking structures Remove hotel square footage from the residential floor area and place in site statistics.
11. Denote number of bedrooms per dwelling unit.
12. Clarify required off-street parking per dwelling unit or and overall.
10. 13. Provided the Planning Commission makes a finding in compliance with Art. 28-5(h)(6) of the Zoning Ordinance.
14. Denote construction access location(s).
11. 15. Clarify Denote in the site statistics to demonstrate F.A.R., lot coverage and the proposed open space.
12. 16. Discuss Provided the Planning Commission approves the variances requested.
17. Correct note #5.
13. 18. Delete MU-3 ordinance requirements from plan.
19. Clarify proposed retail and residential square footage.
20. Correct tree canopy information.

14. 21. Discuss Denote that building and parking lot orientation to arterial streets will be determined at the time of Final Development Plan.
15. 22. Discuss Resolve proposed construction access and potential road improvements at the time of Final Development Plan.

With regard to condition #8, Mr. Martin said that the articles referenced, which are included in all of the mixed-use zones, regulate facades; building features; parking; pedestrian facilities; lighting; and other issues. These conditions are typically required to be met at the time of a Final Development Plan for the property, and they can be addressed at that time. Condition #11 would require that the petitioner denote the amount of open space on the plan. The staff believes that, given the size of the proposed development and the large detention basin, there might be some question about the ability to meet the required open space at the time of a Final Development Plan. The staff is recommending this condition to ensure that the issue is addressed at that time. With regard to condition #14, Mr. Martin stated that the staff believes that it is important to address the "face" that will be presented to the arterial roadways surrounding the proposed development, with an emphasis on placing front facades toward Nicholasville Road and Man o' War Boulevard. It appears that the petitioner is currently proposing to orient those structures internally, so the staff is recommending this condition to address the issue at the time of the Final Development Plan. Condition #15 refers to the proposed accesses and potential road improvements that might be necessary for the proposed development. Mr. Martin stated that there are spacing and design issues that should be addressed for the Man o' War Boulevard and Nicholasville Road accesses, as well as the proposed East Tiverton Way access point. He said that the staff recognizes the importance of those accesses and the level of improvements that might be necessary, but those issues can all be adequately addressed at the Final Development Plan stage.

Mr. Martin stated that the Zoning Ordinance requires that the Planning Commission make a finding for the proposed MU-3 zone, copies of which were distributed to the Commission members prior to the start of this hearing. The staff finds that, based on the subject property's location; its size, which is over 10 acres; and the fact that there are existing commercial and multi-family developments in the vicinity, the property does meet the locational criteria as required by the Ordinance.

Commission Questions: Mr. Wilson asked if the access point on Habersham Drive is proposed to be a full access, or right-in/right-out. Mr. Martin answered that it is proposed to be a full access point.

Ms. Blanton stated that the Zoning Committee heard concerns from some of the residents on Fox Harbour Drive at their meeting. She asked if the road improvements covered by condition #15 would include any relief for those residents in order for them to easily access Habersham Drive. Mr. Martin responded that those improvements should mitigate traffic concerns for the Fox Harbour residents as well. He noted that the staff has already had discussions with the Division of Traffic Engineering about appropriate traffic calming for the entire area.

Ms. Mundy asked, with regard to the proposed detention basin, if it would hold water only in wet weather. Mr. Martin answered that the basin will hold water during rainfall events, and would then release it slowly.

Mr. Owens asked if the blue outline around the detention basin indicated a proposed trail. Mr. Martin responded that that line on the rendering indicates the outline of the proposed basin. Mr. Owens asked how much total frontage the subject property has on Man o' War Boulevard. Mr. Martin answered that that frontage is just over 2,200 feet. Mr. Owens said that the SAP recommended that a stormwater study be done for the subject property, and he asked if that study had been completed. Mr. Martin answered that the study had been done, and submitted to the Division of Water Quality.

Ms. Plumlee asked if the petitioner is proposing to add bike racks throughout the development. Mr. Martin responded that bike racks are proposed. He added that bicycle and pedestrian requirements are inherent in the MU-3 zone, and the petitioner will have to be in compliance with those requirements at the time of a Final Development Plan for the property.

Variance Presentation: Mr. Emmons presented the staff's report on the three requested variances, noting that the staff had originally recommended postponement for one of those variances. The staff supplied a supplemental report to the Commission to address that requested variance; should the Commission agree with the staff, their findings should include both staff reports.

Mr. Emmons stated that the first requested variance is to a requirement of the MU-3 zone that 15% of the building wall frontage along the public street would have to be at a 0' setback. The petitioner has requested the elimination of this requirement, since it would result in the buildings on Nicholasville Road and Man o' War Boulevard being constructed right at the right-of-way line. The petitioner is proposing to construct an internal circulation system of private streets, and they would prefer to meet this requirement of the Zoning Ordinance along those streets, rather than the adjacent arterials. Mr. Emmons said that the staff believes that the petitioner's proposal meets the intent of the Ordinance to bring pedestrian activities closer to the streets. He added that construction of the buildings at the right-of-

way line at the intersection of two major arterials could prevent the widening of Nicholasville Road and/or Man o' War Boulevard in the future. The staff was aware, at the time the Zoning Ordinance was amended to allow mixed-use projects outside of New Circle Road, that proposals would need to be evaluated on a case-by-case basis in order to review the suitability of this requirement for each MU-3 zone change.

Mr. Emmons stated that there is a 100-foot overhead utility easement on the subject property, which, along with several natural drainage areas, constrain development on the property. This constraint is the basis for the two remaining requested variances. Variance #2 is proposed for the setback requirement for building "D," which adjoins a residential zone for the property that is the location of the Devondale Baptist Church, and a vacant lot owned by the church. The typical setback in an MU-3 zone is ten feet, unless adjacent to a residentially-zoned property, in which case a 1:1 height-to-yard ratio is required. Mr. Emmons said that the utility easement, setback requirement, and location of the access point to East Tiverton Way together create a triangularly-shaped property, which greatly limits the developable area. The petitioner is requesting a setback variance that would allow a building 25 feet in height to be located 15 feet from the property line. Mr. Emmons stated that the staff is recommending approval of requested variance #2, because of the restrictions that the overhead utility easement and East Tiverton Way access place on the property.

Mr. Emmons said that variance request #3 refers to buildings "FF" and "GG," which are proposed to be residential-only structures, four stories in height, located at the rear of the property and oriented toward the internal street system. The staff originally recommended postponement of this variance, which initially requested that a building 58 feet in height could be located as close as 50 feet to the property line. Mr. Emmons stated that, in reviewing the revised development plan, the staff discovered that building "FF" is located 75 feet from the adjacent residentially-zoned property, and it is proposed to be 56 feet in height; so it is unnecessary to grant a variance for that building. Building "GG" is depicted as being between 50 and 55 feet from the property line, and the height of the building is proposed to be 56 feet. Mr. Emmons said that the staff believes that this proposed variance would result in building "GG" being non-compliant in relation to two residential properties on East Tiverton Way. The staff could not find that a 56' or 58' building would have a negative impact on the subject property, but the staff also could not find an appropriate justification for this requested variance. Mr. Emmons stated that a slight revision to either the building architecture or the placement of the building would make building "GG" compliant as well. He noted that, if this zone change is granted, there might be some changes to the development plan that could justify this variance in the future. So, at this time, the staff is recommending disapproval of requested variance #3, for the reasons as listed in the staff report and on the agenda.

Traffic Impact Study Presentation: Max Conyers, Transportation Planning, presented the staff's report on the Traffic Impact Study that was performed by the petitioner. He stated that mixed-use developments typically have reduced trip numbers by their nature, since the mixture of uses on the site can reduce the number of times a driver has to leave the area.

Mr. Conyers stated that the full build-out of the development is anticipated to occur by 2015. The many access points proposed are a positive for the development from a trip-distribution standpoint, as they will help traffic filter out through several points, rather than converge on one or two single accesses. Nicholasville Road, as a segment of US 27, is recognized as one of the country's principal arterial highways. Man o' War Boulevard is considered a minor arterial roadway; it does not connect regionally, but serves an important function locally in connecting several major arterials. Mr. Conyers stated that the average daily trips (ADT) to the subject property (as calculated according to the Institute of Traffic Engineers Handbook) are predicted to be in excess of 20,000 per day. The PM peak hour is typically the most congested time of the day; 2,134 trips, or approximately 10% of the daily traffic, are predicted during that time. During the AM peak hour, 711 total trips are predicted.

Mr. Conyers said that, in evaluating a development such as the one proposed, it is important to consider the trip distribution data as well as average daily trips. The consultant's traffic study indicated that 36% of the trips will be from the north; 24% from the south; and 20% evenly divided between east and west. He said that not all of those trips are projected to be new to the area. The percentage of "pass-by" trips, or drivers who would normally be passing the development who decide to stop in, could be as high as 25%, as well.

With regard to the roadway capacity and intersection levels of service (LOS), Mr. Conyers said that construction of the proposed development is projected to slightly increase the traffic delay per vehicle at each intersection, and some of the "minor movements," such as right-hand turns, could be severely increased. The overall levels of service, however, are projected to remain the same, with the exception of the Man o' War Boulevard/Habersham Drive/Victoria Way intersection, which went from LOS "B" to "C."

Mr. Conyers stated that the vicinity of the subject property is very important in terms of overall regional transit, and it is expected to grow exponentially in the projections for 2020 and beyond. In order to help mitigate the effects of the proposed development, the petitioner is proposing to construct an additional northbound through lane from Toronto Drive, just south of Man o' War Boulevard, to East Tiverton Way. This additional lane could help to prevent the "bottleneck effect" at the East Tiverton/Nicholasville intersection, where a variable lane system was also installed within

the past two years. Mr. Conyers stated that the staff's conclusion is that the petitioner's traffic impact study meets the requirements of Article 6 of the Zoning Ordinance. In addition, the bicycle/pedestrian planners have evaluated the study and the proposed development, and they believe that it will provide good bike and pedestrian connectivity. Transportation Planning staff have also attended a recent meeting with the petitioner and representatives of LexTran. As part of an ongoing Transit Alternatives Analysis for US 27, Lexington-Fayette County could possibly be eligible for grant funds for a "bus rapid transit" program which could include the proposed development. In addition, Mr. Conyers said that the staff was pleased with the petitioner's commitment to designing a transit-oriented development.

Commission Question: Mr. Penn asked if the additional lane to which Mr. Conyers referred would be on Nicholasville Road; and, if so, how far north it would extend. Mr. Conyers answered that it would be on Nicholasville Road, and that it would merge into the existing lanes just past the new entrance to the proposed development.

Petitioner Presentation: Bill Lear, attorney, was present representing the petitioner. He said that this proposed zone change has evolved as the petitioner has worked on the details with various government agencies. The petitioner has worked with LFUCG stormwater engineers; state and local transportation officials; and the Planning staff, among others. The original request was for a B-6P zone; after further conferring with staff, the petitioner amended their request for multiple zones, with the intent of achieving a New Urbanist-style development; but it would have required many variances. The staff advised the petitioner that the MU-3 zone with an entertainment designation might be more appropriate for the uses desired, and the petitioner then amended their request to the MU-3 zone.

Mr. Lear stated that the architects who designed the proposed development have designed several outstanding "lifestyle centers" throughout the south, including the Birkdale development, outside Charlotte, North Carolina. That development has parking garages, taller buildings, and other New Urbanist design features, all of which have helped create an outstanding project.

Mr. Lear said that the proposed development will provide maximum ingress and egress, with an improved transportation system in the immediate vicinity. Access to the property, including a new signalized intersection on Nicholasville Road, has received conceptual approval from the Kentucky Transportation Cabinet (KYTC) officials. The proposed right-in/right-out access to Man o' War Boulevard should help to remove traffic from the local streets. Mr. Lear said that the petitioner believes that this development will also help to provide a solution to a longstanding stormwater problem, with the construction of a large detention basin on the property. Should this project not go forward, LFUCG would be required to address those stormwater issues at some point, and the cost to provide a solution could be significant.

David Silverstein, Bayer Properties, stated that the petitioners have been working on this request for over two years. He said that the site provides several challenges: it has been proposed for rezoning several times, all of which have been contentious; it has significant drainage issues; and traffic in the vicinity is problematic. The petitioners engaged several local professionals, along with LFUCG staff, to address the various engineering, traffic, and design challenges on the site and develop a workable plan for the property. Mr. Silverstein said that the proposed development plan has been closely scrutinized, and the petitioners believe that it is in agreement with the recommendations of the South Nicholasville Road Small Area Plan. In addition, the petitioners have met with the adjoining neighborhood association, and attempted to address as many of their questions as possible.

Mr. Silverstein stated that his company, which is headquartered in Birmingham, Alabama, has developed projects similar to the proposed development all over the United States. He believes that their projects have enhanced the quality of life in each of the communities where they have located. The company began developing their first "Summit" project in 1994, at a time when most Birmingham shoppers traveled to Atlanta due to a lack of large-scale shopping centers in Birmingham. Mr. Silverstein displayed several photographs of similar "Summit" projects around the country, noting that their focus is on providing quality retail services, attractive hardscape, and a clean and attractive shopping environment. He said that his company also focuses on working with arts and charitable organizations in the cities where their developments are located, including hosting various performances and fundraisers in the shopping centers.

Referring to a large-scale, three-dimensional model of the proposed development, Mr. Silverstein said that the petitioner is proposing to create a pleasing "face" along the Nicholasville Road and Man o' War Boulevard frontages of the subject property, and to provide a sense of place. Bike racks are proposed throughout the development, as an enticement for people to live, work, and shop there.

With regard to the aforementioned stormwater issues in the vicinity of the subject property, Mr. Silverstein stated that the petitioner is cognizant of those problems, and is committed to solving them. The proposed detention area on the property will not be designed to retain water all the time, just during rainfall events, and it should help to control flooding in the nearby neighborhood as well.

Mr. Silverstein said that the petitioner also understands the need for an adequate buffer between the proposed development and the adjacent established neighborhood. He noted that the Summit development in Birmingham is located near enough to an existing residential neighborhood that the shopping center is included as an amenity in real estate listings, but the neighborhood is completely buffered from the development.

Mr. Silverstein stated that he has been traveling to Lexington for over 30 years, because he has many friends in the area. He said that his local friends have repeatedly stressed the importance of developing the subject property appropriately, since it is a prominent site that has been proposed for development before. Mr. Silverstein concluded by noting that the petitioner has worked well with the owners of the subject property; they "have not cut any corners" on the proposed design; and they believe the proposed development should be allowed to go forward.

Bruce Simpson, attorney, opined that the petitioner "is bringing a truly iconic development to the gateway of Lexington." He said that the proposed development is in compliance with all of the recommendations of the Comprehensive Plan and the *South Nicholasville Road Small Area Plan* (SAP). Their traffic study, which was originally filed in August of 2012, has been fully vetted; and an amended study was filed on May 23, 2013. Mr. Simpson noted that the opponents' traffic study, which was submitted at this hearing, has not been reviewed by staff. He said that the petitioner is proposing to develop the subject property at ½ the density recommended by the SAP. The petitioner contends, therefore, that the proposed development will result in a lesser increase in traffic volumes than some of the other possible uses that could locate there.

With regard to Mr. Owens' question about the stormwater study, Mr. Simpson stated that two such studies have been done for the subject property. Completion of those studies was required prior to the filing of this application for rezoning. The petitioner contends that their work on the proposed development will help to mitigate stormwater problems that have increased as the nearby neighborhoods have developed over the years. The stormwater studies confirm that one 36" line and one 48" line flow under Man o' War Boulevard and discharge stormwater to the subject property, in addition to an 18" line that brings water from the Wal-Mart property across Nicholasville Road. Mr. Simpson stated that the stormwater studies recommend that LFUCG condemn a portion of the subject property in order to create a regional detention basin, at a cost to the taxpayers of Lexington-Fayette County of nearly \$2 million. The petitioner's detention basin, which will incur no costs to taxpayers, will provide immediate relief to the adjoining neighborhoods that have been adversely impacted by stormwater for years. Mr. Simpson added that the stormwater studies recommended the demolition of four to nine houses in the vicinity, which might or might not be necessary following the construction of the detention basin on the proposed development.

Ben Edelen, HDR Engineers, stated, with regard to the concerns about traffic, that the petitioner's proposal to add a lane from south of Man o' War Boulevard to East Tiverton Way will create three full inbound lanes on Nicholasville Road, without additional use of the existing reversible lane system. The right-in/right-out access to Man o' War Boulevard, which is proposed to be located about midway along the Man o' War Boulevard, between the Nicholasville Road intersection and Habersham Drive, and will be further than the required 1,200' spacing between intersections. Mr. Edelen noted that, while the petitioner is not proposing a second Man o' War Boulevard access point, a different development plan for the property could have included two such accesses. He said that the petitioner has worked for over a year with the Kentucky Transportation Cabinet, and they have obtained a conditional letter of approval for the proposed Nicholasville Road access point.

With regard to the stormwater issues, Mr. Edelen stated that the petitioner's detention basin is proposed to be more than two times necessary for the size of the property. He noted that the petitioner will also be incurring additional costs for the construction of the basin, a portion of which will be constructed underneath one of the proposed parking garages. The petitioner has also been working with the staff of the Division of Water Quality with regard to the sanitary sewer system, and they are committing to upsizing the infrastructure in order to prevent the system becoming overburdened following the construction of the proposed development.

Commission Question: Mr. Penn asked if the petitioner factored in the need for possible widening of Nicholasville Road and/or Man o' War Boulevard in the future. Mr. Edelen answered that the traffic study did not consider possible widening; its data was calculated based on the full build-out of the proposed development in 2015, for which widening is not predicted to be needed. He added that LFUCG staff indicated that they were working with LexTran to increase transit service to the subject property, which should help to decrease traffic in the area.

Petitioner Presentation (cont.): Mr. Lear stated that the SAP process took more than a year to complete, including 11 meetings; three public meetings; two focus groups; an opinion survey; and a public hearing. The Steering Committee included Council members, neighborhood association representatives, and property owners, all of whom worked together to bring forward the mixed-use recommendation for the subject property. The development plan example included in the SAP entailed more than 2.6 million square feet of development; the proposed development includes approximately 1,045,000 square feet. Mr. Lear said that this recommendation for more intense development is part of Lexington-Fayette County's focus on "developing up, not out." The mixed-use recommendation is designed to provide more density and diversity; increased safety and social interactions; a better pedestrian experience; and a

sense of place. The SAP recommendation does not include direct access to Man o' War Boulevard, but the petitioner believes that the proposed right-in/right-out is totally warranted, and not unprecedented.

Mr. Lear said that the proposed development would be an \$80-\$100 million project, which could have a huge economic impact in terms of construction, sales of goods and services, and additional employment. He said that the petitioner had chosen to forego the presentation of their economic impact study, but they contend that the proposed development will provide an "idyllic setting" where residents can live, work, and play.

Commission Question: Mr. Berkley asked if he could request some additional time for the petitioner to present their economic impact study. Mr. Owens replied affirmatively.

John Farris, Commonwealth Economics, stated that his firm conducted an economic and fiscal impact study on the proposed development. He said that the proposed development is projected to have various types of major impacts on the local economy. First, during the construction phase, the projected economic impact could reach \$153 million. The construction could provide as many as 1,360 jobs, with wages totaling \$40 million. Once construction is complete, the proposed development could have \$128 million impact through restaurant and retail operations alone; \$55 million in total wages created; and support for 2,900 jobs. With regard to the possible fiscal impact, Mr. Farris said that the proposed development could generate \$5.3 million in incremental tax revenues and estimated taxes. The subject property is currently generating approximately \$562 in tax revenue as an agricultural property. Mr. Farris added that the current tax base is low because the property is zoned for agriculture, which has a special tax rate.

Note: Chairman Owens declared a recess at 3:26 p.m. The meeting reconvened at 3:33 p.m., with the same members in attendance.

Citizen Support: Jeff Stidham, Stidham Commercial Partners, noted that he has a vested interest in the proposed development. If one of the potential tenants he has referred to the petitioner is selected to locate there, he will earn a fee.

Mr. Stidham said that he believes that the Summit will be a world-class development, and that the city of Lexington is "lucky to have a project of this quality and scope developed here." He added that providing opportunities for people to live, work, and shop in one area is a more efficient use of the land. Mr. Stidham also agreed with Mr. Silverstein's assertion that property values around the proposed development will increase, since the area will become an important destination.

Mr. Stidham stated that his company recently represented the law firm of Bingham McCutcheon, which chose to locate its new headquarters in Lexington, creating 250 new jobs. He said that the firm was considering 300 cities during their search, but they chose Lexington because of its beauty, quality of life, educational opportunities, educated workforce, and shopping and dining facilities.

Mr. Stidham said that the proposed development will bring additional traffic to the area, but he believes that traffic congestion "is an indicator of the economic vitality of a city." He stated that he believes that everyone has a vested interest in supporting a world-class development like the Summit.

Donald Brown, 2653 Our Native Lane, stated that he had leased property in Birmingham approximately two miles from the Summit development there. He said that he believes that Lexington-Fayette County would be very lucky to have a Summit development located here, since it has brought a lot of business to Birmingham and would likely do the same in Lexington. Mr. Brown asked that the Planning Commission vote in favor of this request.

John Bronaugh, 1212 Cape Cod Circle, stated that he is a commercial real estate broker and a longtime friend of John Fritz, whose family has owned the subject property for many years. He said that he and Mr. Fritz have discussed the property many times over the years, and he has observed the difficulties Mr. Fritz has had in attempting to rezone it. Mr. Bronaugh opined that he is happy that the petitioner has taken interest in the property and given Mr. Fritz an opportunity to make such a worthwhile contribution to the city.

Charles Hite, 929 Aurora Avenue, stated that he believes that the staff has worked hard on the issues involved with this request, and he is in favor of the proposed development. Mr. Hite opined that the subject property has remained vacant for too long, and he asked the Commission to vote in favor of this request.

Georgia Cruse, 1171 Kelsey Drive, stated that she is a commercial real estate inspector. She has inspected the Summit property in Louisville, and she believes that it is beautiful and impeccably maintained.

Hank Graddy, attorney, was present representing a group of nearby neighbors who object to this request. He said that his group has adopted the acronym "DONT" – for "Don't Overload Nicholasville Road with More Traffic." Mr. Graddy said that, while the petitioner might have been meeting for years with the staff, they did not meet with the

neighbors until March of 2013. There were 75 residents present at that meeting, where they shared their concerns about the proposed development.

Mr. Graddy stated that the Summit might be an urban development, but "to call it a village, and say it complies with the SAP that recommends village-style development would be butchering the English language." Mr. Graddy's clients contend that the proposed development will have severe impacts on the residents who use Tiverton Way, Habersham Drive, and Fox Harbour Drive to exit their neighborhoods. There has been an emphasis at this hearing on the importance of the economic potential of the proposed development, but Mr. Graddy's clients believe that their safety is important as well, and it should be given equal or greater weight. Mr. Graddy stated that his clients should be able to drive safely on public streets without increased risk of an auto accident. He said that Nicholasville Road is already the most dangerous street in Lexington-Fayette County, and the increased traffic from the proposed development will make it even more dangerous. Those neighbors believe that, if the Summit project is allowed to locate on the subject property, the density must be reduced, and the traffic aspects must be reconsidered; until those concessions are made, Mr. Graddy's clients request that the Planning Commission deny this application, or ask the petitioner to withdraw and modify the application to remove some parts of the development. He said that the following points could provide a basis on which the Commission could recommend disapproval of this request:

1. Mr. Graddy stated that his clients had hired a consultant to perform a traffic study, which they believe will demonstrate that the petitioner's Traffic Impact Study is incomplete and inadequate, in that it fails to address the "corridor impacts" of the proposed development. He asserted that the Traffic Impact Study addresses the issue of traffic "intersection by intersection in isolation," rather than holistically, and that it does not comply with the requirements of the Zoning Ordinance or the Kentucky Transportation Cabinet.
2. Mr. Graddy said that he believes that the Summit development, as proposed, could prevent the construction of a Single-Point Urban Interchange (SPUI) at the Man o' War Boulevard/Nicholasville Road interchange, which was one of the recommendations of the SAP.
3. Mr. Graddy stated that his clients believe that the density proposed on the subject property is too intense for this location. The property is very near Fayette Mall, which has 1.4 million square feet of building area on a nearly 100-acre property, or 14,000 square feet per acre. The proposed development, if constructed as depicted on the development plan, would be approximately 50,000 square feet of building per acre. Mr. Graddy said that would result in "the most intense development Fayette County has ever seen," on a property with severe constraints. While Fayette Mall has seven access points, none of which exit through residential neighborhoods, the subject property has frontage on several "severely limited roadways, including Tiverton Way and Habersham Drive." Mr. Graddy said that the subject property is much smaller than the Fayette Mall property, with exiting traffic which utilizes the public street system in the area, and yet it is being requested for a density far greater than that of Fayette Mall.
4. Mr. Graddy opined that the SAP contradicts itself; he said that one section refers to providing a transportation solution, but the concept plan ignores that solution. He added that his clients believe that the density numbers provided in the SAP concept plan were not intended to be a guide for the development of the subject property. They feel that the petitioner is misstating that Plan when he "hides behind" the 2.5 million square feet suggested, and "says it could be so much worse." Mr. Graddy said that he believes that "it cannot get much worse," than the density of the proposed development, since "every inch of the property will be paved." With regard to the storm-water plan to which the petitioner has referred, Mr. Graddy said that he and his clients have not yet seen that plan; but no evidence has been presented to indicate that the petitioner will develop the property with green infrastructure techniques, as recommended by the Comprehensive Plan.
5. Mr. Graddy stated that his clients have suggested changes to the development plan that could mitigate the impact of the development on their neighborhoods; make the development more compatible with the SAP; and make it a project that the neighbors could support. The neighbors are requesting that the petitioner not develop the two buildings next to Habersham Drive; move the buildings back from the Man o' War Boulevard/Nicholasville Road intersection, in order to allow room to build the SPUI; and remove the residential buildings "FF" and "GG" from the plan. Those changes would serve to reduce the density on the property and provide some relief for the traffic congestion in the area, while leaving the "core" of the proposed development intact.

Mr. Graddy stated that his clients believe that the proposed development would be too dense "even if Nicholasville Road were flowing freely." He said that Article 28 of the Zoning Ordinance requires that a Mixed-Use Entertainment project must be located on an adequate thoroughfare, and opined that this proposed development does not meet that requirement because Nicholasville Road does not function adequately. Mr. Graddy read into the record some of the public comments submitted as part of the SAP process:

"Fix traffic and roads first."

"If traffic worsens, no one will live here."

"Traffic needs to be addressed."

"One of the main concerns of the public was traffic."

Adam Kirk, engineer, was present to present the traffic study commissioned by the neighbors who oppose this request. He said that he reviewed the petitioner's Traffic Impact Study (TIS) and used the numbers on which that study was based.

Mr. Kirk said that he believes that, where the TIS was performed, it did an adequate job; however, it left a lot of unanswered questions about how traffic in the vicinity of the subject property will function in the future. He believes that issues like trip generation, total volume of traffic, room for future improvements, and how the proposed access points will affect the arterials should be addressed now, rather than at the Final Development Plan stage.

Mr. Kirk stated that his comments will refer to the Kentucky Transportation Cabinet (KYTC) requirements for a traffic study, the first of which deals with existing conditions. The KYTC requires that the existing conditions be calibrated to the roadway with regard to queues, travel speed, headway, and other factors; if the initial model is flawed, all of the resulting calculations will be erroneous as well. Mr. Kirk said that the petitioner's TIS provides no calibration or validation of existing conditions, which, he believes, invalidates their model. He displayed several photographs of Nicholasville Road near its intersection with Man o' War Boulevard, which were taken at approximately 3:00 p.m. on a Friday afternoon, noting the stacking in all lanes of traffic. The petitioner's TIS predicts that, during PM peak hours, there will be 60' of queue in the southbound lanes, which, Mr. Kirk believes, reveals an error in the synchronization of signals in the study model. After correcting the model data, he recalculated the queuing information and received an updated response of queues in excess of 700', with an 80-second delay, which would likely be a Level of Service "D" for that intersection. Mr. Kirk stated that he believes that the entire TIS underestimates the current conditions on Nicholasville Road, and that some sections could decrease to LOS "F" when the full build traffic from the proposed development is included.

Mr. Kirk said that he believes that the TIS also failed to address a future-year analysis for the proposed development. He explained that KYTC requires that analysis because road improvements involve a large public infrastructure investment, some of which is predicted for 20 to 30 years out. Allowing one private developer to "use up" many years' worth of roadway capacity would be poor management of that public investment. Mr. Kirk stated that it is wise to also consider capacity 10 years out, in order to ensure that public infrastructure funds will not be needed to correct problems caused by too much private development. He said that, when he ran the future-year data, he found much more significant traffic impacts, including further decreases in Levels of Service. As part of his travel speed analysis, Mr. Kirk noted 10-year projections of up to 15 minutes of travel time from Man o' War Boulevard to Wilson Downing Road.

Mr. Kirk stated that, in his opinion, the SAP recommendation of constructing a SPUI at the Nicholasville Road/Man o' War Boulevard intersection would provide a significant capacity improvement for the entire area. He said that the proposed right-in/right-out access to those two roadways can function with a SPUI, so the construction of those accesses would not necessarily preclude that improvement. However, Mr. Kirk does not believe that the density of the proposed development is appropriate for right-in/right-out intersections, in terms of intensity and trips generated. He said that it is crucial to be able to provide improvements to protect this area in the future.

Mr. Graddy asked the Planning Commission to find that the petitioner's TIS is incomplete and not in compliance with the Zoning Ordinance and the KYTC requirements, based upon the evidence presented by Mr. Kirk. He also asked that the Commission find this rezoning request to be contrary to the Comprehensive Plan, since it would "foreclose the opportunity for a Single Point Urban Interchange," adding that the proposed development is also contrary to the right-in/right-out recommendations of the SAP. Also with regard to the SPUI, Mr. Graddy asked the Planning Commission to require that the buildings proposed nearest the Man o' War Boulevard/Nicholasville Road intersection be moved in order to provide sufficient space for the construction of the SPUI.

Mr. Graddy read the following into the record from the SAP:

"To handle additional traffic volumes and flow, and to accommodate turn lanes, the Kentucky Transportation Cabinet has recommended that an additional 45' of right-of-way be added. KYTC also recommended keeping signalized intersections limited to the existing locations: East Tiverton Way, Man o' War Boulevard, and Southpoint Drive, as this spacing is designed to ease traffic congestion. A right-in/right-out access is recommended for Nicholasville Road across from the Wal-Mart."

Mr. Graddy said that his clients are requesting the following action from the Planning Commission: 1) remove the commercial buildings "W" and "V," designate that portion of the property as open space, and do not connect the sub-

ject property to Habersham Drive; 2) remove the commercial buildings "P" and "N" from the area near the Nicholasville Road/Man o' War Boulevard intersection, in order to designate that area as open space until such time as the SPUI can be constructed; 3) remove the residential buildings "FF," "GG," and "HH," in order to provide a buffer for the adjoining neighborhoods, and designate that area for open space or Professional Office uses; 4) withdraw the plan for the proposed signalized intersection across from Wal-Mart, which the opponents contend will make Nicholasville Road more unsafe; 5) reduce the density of the proposed development; and 6) support the efforts of LFCUG and the petitioner to widen East Tiverton Way, in order to improve the existing traffic situation in the area.

Darby Turner, attorney, was present representing the owners of Fayette Mall. He distributed to the Commission members copies of a traffic study performed by CDM Smith. They began that study approximately two years ago, before the petitioner's plans for the subject property became public, in effort to understand and prepare for future changes to the Nicholasville Road corridor.

Mr. Turner stated that his clients are not opposed to the proposed commercial development on the subject property, and they understand the concerns of the Fritz family, who are attempting to develop their agricultural property in a highly urbanized area. His clients' primary concerns are increased traffic and the proper functioning of Nicholasville Road. Mr. Turner said that Fayette Mall was developed in 1973; and, since that time, there has been a great deal of growth for the mall, and along the Nicholasville Road corridor. While passing traffic is desirable for commercial developments, Mr. Turner's clients are concerned about the capacity of Nicholasville Road, particularly since there are still two undeveloped parcels near the subject property. They believe that, unless the necessary road improvements are handled properly and in a timely manner, it could result in the deterioration of the commercial activity in the area.

Mr. Turner stated that his clients are particularly concerned about the proposed signalized intersection across from the Wal-Mart property, because it could prevent the construction of the SPUI at the Man o' War Boulevard/Nicholasville Road intersection, which is recommended by the SAP and the MPO Transportation Plan. His clients contend that sufficient traffic studies have not been completed to adequately address increased capacity and decreased congestion on Nicholasville Road to the Jessamine County line.

Mr. Turner said that, in his clients' opinion, the proposed development plan "is not ready to be approved." They contend that there are significant road improvements that should be planned, if not implemented, prior to the construction of the proposed development; or the proposed development should be "right-sized" to match the existing traffic capacity. Mr. Turner asked that the Planning Commission reconsider whether it would be appropriate to approve the proposed development plan at this time.

Mr. Graddy stated that included in his exhibit packet were copies of petitions submitted in opposition to this request.

Citizen Objection: Edward Prentice, 396 Fox Harbour Drive, stated that he believes that the proposed access point onto Habersham Drive will severely impact the residents of his street, who will not be able to exit their neighborhood.

Mr. Prentice said that the petitioner, the Fritz family, and the local government will all profit from the proposed development, at the expense of the adjacent neighborhoods. He opined that the model of the development is attractive, but the footprint is too large.

Mr. Prentice asked that the Planning Commission disapprove this request on behalf of the residents of the adjoining neighborhoods, as well as the thousands of travelers along Nicholasville Road, who will all be subject to additional traffic congestion. He said that he believes that this is "the wrong development on the wrong property."

Petitioner Rebuttal: Mr. Lear stated that he believes that most of the opposition to this request amounts to "an attempted indictment of the planning process." He said, with regard to the assertion that parts of this proposal do not meet the guidelines of the KYTC, that that same entity reviewed this proposal, and gave conceptual approval for the proposed right-in/right out access and new signalization. The petitioner believes that the new signal on Nicholasville Road will "provide the greatest amount of relief possible" for drivers on East Tiverton Way and Habersham Drive.

Mr. Lear said that the owners of Fayette Mall had never expressed concerns about traffic on Nicholasville Road before, including during their large expansion project several years ago.

Mr. Lear stated that several references were made to the SAP recommendation for the construction of a SPUI at the Nicholasville Road/Man o' War Boulevard intersection, but that alternative is mentioned only in a three-sentence paragraph. The recommendation was part of the state MTP, to be constructed in 2030 or thereafter.

Mr. Lear said that the main issue during this hearing is "whether the planning process makes sense." He said that the petitioner's TIS was developed over a period of time, not just one afternoon, and the entire traffic cycle was considered. The TIS report was heavily scrutinized by the staff and the KYTC, who are well aware of the issues in the Nicholasville Road area, and how best to address them.

Mr. Lear stated that the Fritz family has requested several zone changes for retail uses for their property, all of which have been disapproved, and many of which were then developed nearby. He said that the proposed zone change is in agreement with the Comprehensive Plan recommendation, and it is time for the Fritz Farm to be redeveloped.

Opposition Rebuttal: Mr. Turner stated that his clients contend that the development plan for the subject property is incomplete at this time, and that there are far "too many open questions" being pushed to the Final Development Plan stage.

Staff Rebuttal: The staff had no rebuttal comments.

Commission Questions: Ms. Plumlee stated that she believed that, when developers and neighbors work together, a development improves. She asked if there was any chance that the petitioner would consider removing buildings "P" and "N" at the corner of Man o' War Boulevard and Nicholasville Road. Mr. Silverstein responded that he understands the need to reach an accord with the neighborhood; but he believes that it is unreasonable to suggest that, after two years of planning the proposed development, the density should be reduced so severely. He said that he does not understand how the removal of those two buildings would address the neighbors' concerns. Mr. Silverstein stated that he would be willing to agree to certain conditions, such as keeping construction traffic out of the neighborhoods and conducting pre-construction blasting as carefully as possible, with notice to residents. However, he does not believe it is reasonable to request the removal of those buildings at this time.

Mr. Wilson asked, with regard to the stormwater basin, if additional properties would need to be secured in order to construct the basin. Mr. Edelen answered that the petitioner has been cooperating with an ongoing LFUCG plan, a part of which requires the construction of a detention basin on the property sufficient to control a set volume of stormwater. The petitioner does not intend to acquire any additional properties as part of that effort, but LFUCG could possibly be considering such a purchase.

Mr. Lear stated that, in several areas of Lexington, LFUCG has bought houses that were heavily impacted by flooding, rather than upsizing facilities downstream. He said that acquisition of one or more residences downstream for flood mitigation has long been part of the recommendations for the area surrounding the subject property. Mr. Lear added that it could be possible that, by increasing the size of the proposed detention basin, the purchase of homes could be avoided. Mr. Martin noted that the staff had a recent conversation with the Division of Water Quality, who indicated that property acquisition is a possibility, but it has not been deemed necessary at this time; nor would any homes be purchased from property owners who do not wish to sell.

In response to Mr. Lear's and Mr. Martin's comments regarding possible purchase of properties, Ms. Beatty stated that, on an earlier plan, it appeared that there were three privately owned residential structures included in a cove-like area near the subject property. Mr. Martin answered that the staff had discussed the various stormwater solutions for the area, and there were several properties that had been identified for potential purchase.

Mr. Penn stated that the subject property receives a lot of stormwater runoff, since 102" of pipes feed into it. He noted that this is a preliminary development plan, and the Commission should be reviewing it on its merits, not trying to "make a deal" or re-do the plan at this point.

Mr. Cravens asked, with regard to the proposed right-in/right-out access on Man o' War Boulevard, if traffic will flow smoothly, or be required to stop when entering the subject property. Mr. Martin answered that, at the Final Development Plan stage, circulation, stop bars, and other issues would need to be resolved. Mr. Cravens said that traffic movement at that access has been one of his major concerns throughout the Commission's review of this plan. Mr. Edelen noted that the petitioner's intent is to allow the free flow of traffic into the property at that access, so that cars will not back up onto Man o' War Boulevard.

Mr. Cravens said that there had been some discussion about a possible 2015 build-out for the subject property; he asked if the petitioner intended to complete the entire project by then, or construct it in phases. Mr. Silverstein responded that the goal is to open a significant portion of the development by the fall of 2015, but there could be some phasing as well. He added that all of the residential units above retail will be completed by that time, but the free-standing residential units will be constructed according to market demand.

Mr. Wilson asked if the Commission should make a motion to delete variance #3, as recommended by staff, although the petitioner did not mention it in their presentation. Mr. Lear said that the petitioner had discussed that issue, and they would like to withdraw the requested variance #3. He added that, if it is determined to be critical at some point in the future, the petitioner could request it at that time from the Board of Adjustment.

Chairman Comment: Mr. Owens stated that the hearing was now closed, and he would hear Commission comments.

Commission Discussion: Ms. Beatty stated that she believed that the proposed rezoning is in compliance with the recommendations of the Comprehensive Plan and the South Nicholasville Road Small Area Plan. She said that it was nice to see results from the effort put into the SAP so soon after its publication, since those plans are sometimes "shelved" for many years before any of the recommended changes are made. Ms. Beatty said that she understood the residents' concerns about traffic, but she believed that the staff has the expertise to analyze the best resolution for those traffic issues that will be created. She added that there would be the opportunity for the petitioner to continue to work with the neighborhood through the Final Development Plan stage, and that she did not believe that those concerns should prevent the Commission from making a decision on this request at this time.

Mr. Wilson said that he agreed with Ms. Beatty's assertion that the proposed development would be a good use for the subject property. He stated that he, too, understood the residents' concerns about the possible traffic impact, but planning policy in Lexington-Fayette County has been to push for Infill & Redevelopment, and this project would fit into that category. Mr. Wilson stated that he had been to the Summit development in Louisville, and he was impressed with the high-quality development and the ambiance. He added that he believed that the proposed rezoning is in compliance with the Comprehensive Plan, and that he would support this request.

Ms. Mundy said that she would like to echo her colleagues' comments with regard to the appropriateness of the proposed mixed-use development. She added that, although there will be traffic impacts, one of the benefits of Lexington's street system is the interconnectedness and the ability to find an alternate route to nearly every destination, including the Nicholasville Road corridor. Ms. Mundy stated that there are professionals whose job it is to analyze those traffic concerns; the Planning Commission's responsibility is to consider the Comprehensive Plan recommendation and base their decision on the appropriateness of the rezoning. She added that she would like to commend the petitioner and the staff for all of their hard work on this project.

Mr. Penn stated that he does not like to see farmers sell their land, but the subject property ceased to be useful as agricultural land long ago, and it is developable. He opined that the mixed-use zone is the best means to develop the property, although the Final Development Plan could be significantly different from the plan before the Commission today. Mr. Penn said that he believed that the time has come to develop the Fritz Property, and he was ready to make a motion for approval.

Mr. Owens said that he believed that traffic will always be an issue on Nicholasville Road, as it has been for many years. He agreed with Ms. Mundy that the Commission should leave it up to the staff and the Division of Traffic Engineering to do their jobs in addressing those traffic concerns. Mr. Owens stated that, although he appreciated the residents' concerns, he believed that "it would be foolish to think that this corner would never be developed."

Zoning Action: A motion was made by Mr. Penn, seconded by Mr. Wilson, and carried 9-0 (Brewer and Roche-Phillips absent) to approve MARV 2013-7, for the reasons provided by staff.

Variance Action: A motion was made by Mr. Penn, seconded by Mr. Wilson, and carried 9-0 (Brewer and Roche-Phillips absent) to approve the requested variances #1 and #2, withdrawing #3, for the reasons provided by staff.

Article 28 Compliance Action: A motion was made by Mr. Penn, seconded by Ms. Beatty, and carried 9-0 (Brewer and Roche-Phillips absent) to find that the proposed plan complies with the Zoning Ordinance Article 28.

Development Plan Action: A motion was made by Mr. Penn, seconded by Mr. Cravens, and carried 9-0 (Brewer and Roche-Phillips absent) to approve ZDP 2013-22, with the 15 revised conditions, removing the word "construction" from condition #15.