

AN ORDINANCE CHANGING THE ZONE FROM AN AGRICULTURAL URBAN (A-U) ZONE TO A SINGLE FAMILY RESIDENTIAL (R-1A) ZONE, FOR 1.135 NET (1.246 GROSS) ACRES, FOR PROPERTY LOCATED AT 2200 OLD HIGBEE MILL ROAD (A PORTION OF). (RAYMOND ALLEN WAITS; COUNCIL DISTRICT 10).

WHEREAS, at a Public Hearing held on February 28, 2019, a petition for a zoning ordinance map amendment for property located at 2200 Old Higbee Mill Road (a portion of) from an Agricultural Urban (A-U) zone to a Single family Residential (R-1A) zone for 1.135 net (1.246 gross) acres, was presented to the Urban County Planning Commission; said Commission recommending approval of the zone change by a vote of 11-0; and

WHEREAS, this Council agrees with the recommendation of the Planning Commission; and

WHEREAS, the recommendation form of the Planning Commission is attached hereto and incorporated herein by reference.

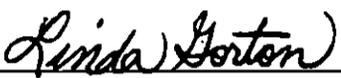
NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - That the Zoning Ordinance of the Lexington-Fayette Urban County Government be amended to show a change in zone for property located at 2200 Old Higbee Mill Road (a portion of) from an Agricultural Urban (A-U) zone to a Single family Residential (R-1A) zone for 1.135 net (1.246 gross) acres, being more fully described in Exhibit "A" which is attached hereto and incorporated herein by reference.

Section 2 - That the Lexington-Fayette Urban County Planning Commission is directed to show the amendment on the official zone map atlas and to make reference to the number of this Ordinance.

Section 3 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: April 25, 2019



MAYOR

ATTEST:



CLERK OF URBAN COUNTY COUNCIL
PUBLISHED: May 2, 2019-1t

The following description is intended for zoning purposes only. The description represents information depicted on documents of record found in the Fayette County Clerk's office. This description does not represent a boundary survey and should not be used for real estate conveyance or transfer.

**Zone Change from A-U to R-1A
For
2200 Old Higbee Mill Road
Lexington, Fayette County, KY**

Beginning at a point in the centerline of Old Higbee Mill Road, the northeast corner of 2220 Old Higbee Mill Road as conveyed to James L. and Pauline Moore in Deed Book 765, Page 239; thence severing the existing A-U Zone for five calls:

1. South 57° 43' 32" East 161.50 feet with the centerline of said Old Higbee Mill Road to a corner of 2200 Old Higbee Mill Road as conveyed to Raymond Waits, Brenda Joan Barbieri and Melinda Gail. McLaughlin (The Plantation Lot) in Deed Book 237, Page 541;
2. South 29° 39' 01" West 371.00 feet with the line of said Plantation Lot to a corner 2100 Old Higbee Mill Road as conveyed to Waits, Moore Limited Partnership in Deed Book 2055, Page 69;
3. North 59° 45' 18" West 152.68 feet with the line of said Waits, Moore Limited Partnership to a corner of 2240 Old Higbee Mill Road as conveyed to Waits, Moore Limited Partnership in Deed Book 1954, Page 687;
4. North 55° 15' 29" East 51.70 feet with the line of said Waits, Moore Limited Partnership (D.B. 1954, PG. 687) to a corner of said James L. and Pauline Moore;
5. North 24° 17' 12" East 331.64 feet to the Point of Beginning containing 1.246 Acres Gross and 1.135 Acres Net.

Rec'd by TW

Date: 3/27/19

RECOMMENDATION OF THE
URBAN COUNTY PLANNING COMMISSION
OF LEXINGTON AND FAYETTE COUNTY, KENTUCKY

IN RE: **PLN-MAR-17-00029: RAYMOND ALLEN WAITS** - petition for a zone map amendment from an Agricultural Urban (A-U) zone to a Single Family Residential (R-1A) zone, for 1.135 net (1.246 gross) acres, for property located at 2200 Old Higbee Mill Road (a portion of). (Council District 10)

Having considered the above matter on **February 28, 2019**, at a Public Hearing, and having voted **11-0** that this Recommendation be submitted to the Lexington-Fayette Urban County Council, the Urban County Planning Commission does hereby recommend **APPROVAL** of this matter for the following reasons:

1. The existing Agricultural Urban (A-U) zone is inappropriate, and the proposed Single Family Residential (R-1A) zone is appropriate at this location for the following reasons:
 - a. The intent for the Agricultural Urban (A-U) zone is to manage the growth of the community so to avoid premature or improper development until public facilities and services are adequate to serve urban uses. The availability of these services in this area indicate the inappropriateness of the current zoning.
 - b. The subject property already functions as a single family residential property and has not been utilizing the land for agricultural uses, indicating the appropriateness of the proposed zoning.
2. This recommendation is made subject to the approval and certification of **PLN-MJDP-17-00081: Waits / Moore LTD Partnership 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.

ATTEST: This 27th day of March, 2019.


Secretary, Jim Duncan

WILLIAM WILSON
CHAIR

Note: The corollary development plan, **PLN-MJDP-17-00081: WAITS/MOORE LTD PARTNERSHIP PROPERTY** was approved by the Planning Commission on February 28, 2019 and certified on March 14, 2019.

K.R.S. 100.211(7) requires that the Council take action on this request by May 29, 2019.

At the Public Hearing before the Urban County Planning Commission, this petitioner was represented by **Steven Vicroy, attorney.**

OBJECTORS

- Mr. Nathan Billings, attorney present on behalf of Pauline Moore; Brian and Melinda McLaughlin; Brenda Barbieri; and the Waits/Moore Ltd. Partnership

OBJECTIONS

- Stated that they are in agreement with the applicant, but would like to be notified of future development plan phases; requested that required access easement on the driveway be shown on the plan; requested to consolidate remnant tract in accordance with previously recorded plat; and requested applicant remove the structure that the proposed boundary line runs through.

VOTES WERE AS FOLLOWS:

- AYES: (11) Bell, Berkley, Brewer, Forester, Mundy, Nicol, Owens, Penn, Plumlee, Pohl, and Wilson
- NAYS: (0)
- ABSENT: (0)
- ABSTAINED: (0)
- DISQUALIFIED: (0)

Motion for **APPROVAL** of **PLN-MAR-17-00029** carried.

Enclosures: Application
Plat
Staff Report
Applicable excerpts of minutes of above meeting

MAP AMENDMENT REQUEST (MAR) APPLICATION

1. CONTACT INFORMATION (Name, Address, City/State/Zip & Phone No.)

Applicant: RAYMOND ALLEN WAITS, 2200 OLD HIGBEE MILL ROAD, LEXINGTON, KY 40514
Owner(s): PAULINE F MOORE, MELINDA G. & BRIAN T. MCLAUGHLIN, AND BRENDA BARBIERI, 2180 OLD HIGHBEE MILL ROAD, LEXINGTON, KY 40514 WAITS MOORE LTD. PARTNERSHIP, 2180 OLD HIGHBEE MILL ROAD, LEXINGTON, KY 40514
Attorney: STEVEN F. VICROY, MURPHY & VICROY, PLLC, 2120 LEXINGTON FINANCIAL CENTER, 250 W. MAIN STREET, LEXINGTON, KY 40507 PH: 859-255-3371

2. ADDRESS OF APPLICANT'S PROPERTY

2200 OLD HIGBEE MILL RD, LEXINGTON, KY 40514
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3. ZONING, USE & ACREAGE OF APPLICANT'S PROPERTY

Zoning	Existing		Zoning	Requested		Acreage	
	Use	Use		Use	Use	Net	Gross
A-U	Single Family Residence	Single Family Residence	R-1A	Single Family Residence	1.135	1.246	

4. EXISTING CONDITIONS

a. Are there any existing dwelling units on this property that will be removed if this application is approved?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
b. Have any such dwelling units been present on the subject property in the past 12 months?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
c. Are these units currently occupied by households earning under 40% of the median income? If yes, how many units? If yes, please provide a written statement outlining any efforts to be undertaken to assist those residents in obtaining alternative housing.	<input type="checkbox"/> YES <input type="checkbox"/> NO

5. URBAN SERVICES STATUS (Indicate whether existing, or how to be provided)

Roads:	LFUCG
Storm Sewers:	LFUCG
Sanity Sewers:	LFUCG
Refuse Collection:	LFUCG
Utilities:	<input checked="" type="checkbox"/> Electric <input checked="" type="checkbox"/> Gas <input checked="" type="checkbox"/> Water <input checked="" type="checkbox"/> Phone <input checked="" type="checkbox"/> Cable



July 3, 2017

Lexington-Fayette Urban County Planning Commission
200 East Main Street
Lexington KY 40507

RE: Application for Zone Change from A-U Zone to R-1A Zone

Dear Planning Commission Members:

On behalf of Raymond Allen Waits (Property Owners), Vision Engineering has filed a zone change application for a portion of property located at 2200 Old Higbee Mill Road. We request a zone change from Agricultural Urban (A-U) Zone to Single Family Residential (R-1A) Zone. The property is part of a larger tract that the applicant wishes to subdivide to create a smaller lot for an existing residence located at 2200 Old Higbee Mill Road. It is the intent of the applicant to consolidate the remaining A-U Zoned portion of the property with an adjoining piece of property zoned A-U located at 2100 Old Higbee Mill Road.

The property fronts on Old Higbee Mill Road. The proposed lot will total 1.246 Gross and Net Acres. The property has an existing 1,863 sf single family residence on it with an attached garage. The residence was constructed in 1959 and has been occupied ever since. There is also a detached 1,200 sf garage on the property that was constructed in 1980. The property is served by sanitary sewer available from LFUCG and participating Utility Companies found in this area.

This request is in agreement with the Comprehensive Plan. The 2007 Comprehensive plan identifies this property as future residential. It recommends this property for medium density, however, the proposed lot is compatible in size with the adjoining properties to the east and west. The 2013 Comprehensive plan list goals and objectives to meet instead of the old colored map of the 2007 Comprehensive Plan. This proposal meets several of the Goals and Objectives of the 2013 Comprehensive Plan.

Theme A: Growing Successful Neighborhoods

Goal 2: Support infill and redevelopment throughout the Urban Service Area as a strategic component of growth.

Objectives:

- a. Identify areas of opportunity for infill, redevelopment and adaptive reuse that respect the area's on text and design features whenever possible.

This proposal is making use of existing developed land. It will not be changing the land use and will utilize existing structures which match the buildings in the immediate area in size and architecture.

Theme B: Protecting the Environment

Goal 1: Continue to implement the Consent Decree, including the capacity assurance program, as directed by the Environmental Protection Agency.

This proposal will maintain the current sewer connections to LFUCG Sanitary sewer system located to the rear of this property. The current residence will stay as is so no new capacity will be added to the system.

Theme E: Maintaining a Balance between Planning for Urban Uses and Safeguarding Rural Land

Goal 1: Uphold the Urban Services Area concept.

Objectives:

- a. Continue to monitor the absorption of vacant and underutilized land within the Urban Service Area.
- b. Encourage compact, contiguous, and/or mixed-use sustainable development within the Urban Service Area, as guided by market demand, to accommodate future growth needs.

This proposal falls within the urban service boundary. From an appearance and use standpoint there will be no change to the property. It will remain single family residence similar in size and area to the adjoining properties.

We request your consideration for zone change and look forward to meeting with you in August.

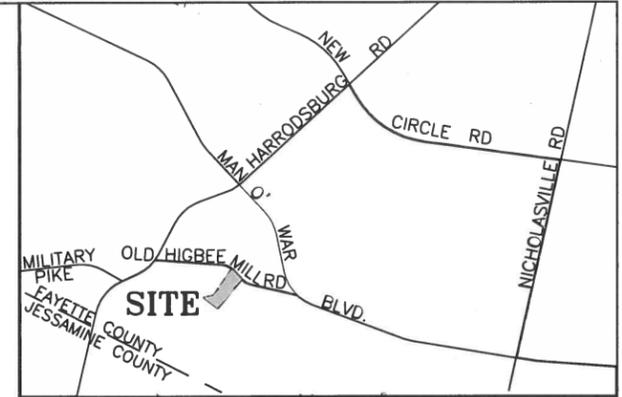
Sincerely,



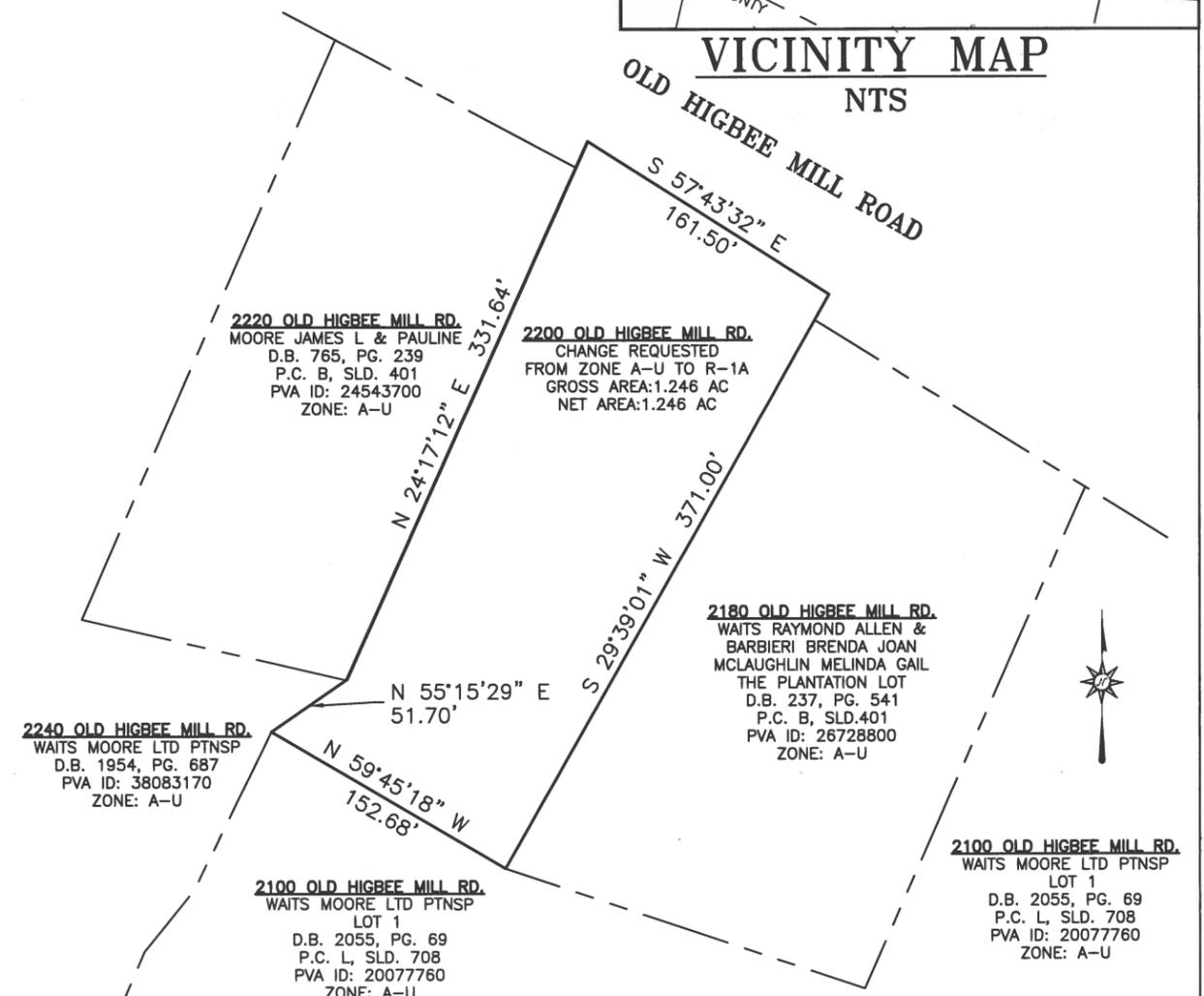
Matt Carter
Vision Engineering.



NOTIFICATION MAP
SCALE: 1"=300'



VICINITY MAP
NTS



PROPERTY INFORMATION MAP
SCALE: 1"=100'

2220 OLD HIGBEE MILL RD.
MOORE JAMES L & PAULINE
D.B. 765, PG. 239
P.C. B, SLD. 401
PVA ID: 24543700
ZONE: A-U

2200 OLD HIGBEE MILL RD.
CHANGE REQUESTED
FROM ZONE A-U TO R-1A
GROSS AREA: 1.246 AC
NET AREA: 1.246 AC

2240 OLD HIGBEE MILL RD.
WAITS MOORE LTD PTNSP
D.B. 1954, PG. 687
PVA ID: 38083170
ZONE: A-U

2180 OLD HIGBEE MILL RD.
WAITS RAYMOND ALLEN &
BARBIERI BRENDA JOAN
MCLAUGHLIN MELINDA GAIL
THE PLANTATION LOT
D.B. 237, PG. 541
P.C. B, SLD. 401
PVA ID: 26728800
ZONE: A-U

2100 OLD HIGBEE MILL RD.
WAITS MOORE LTD PTNSP
LOT 1
D.B. 2055, PG. 69
P.C. L, SLD. 708
PVA ID: 20077760
ZONE: A-U

2100 OLD HIGBEE MILL RD.
WAITS MOORE LTD PTNSP
LOT 1
D.B. 2055, PG. 69
P.C. L, SLD. 708
PVA ID: 20077760
ZONE: A-U



ZOMAR:	TITLE: WAITS/MOORE LTD. PARTNERSHIP PROPERTY			
PROPERTY ADDRESS:	FROM	TO	GROSS	NET
2200 OLD HIGBEE MILL ROAD	A-U	R-1A	1.246	1.135
OWNER - APPLICANT NAME / ADDRESS:				
RAYMOND ALLEN WAITS				
2200 OLD HIGBEE MILL RD.				
LEXINGTON, KY 40514				
PREPARED BY: VISION ENGINEERING, LLC				
DATE FILED OR AMENDED: JANUARY 31, 2019	TOTAL		1.246	1.135

STAFF REPORT ON PETITION FOR ZONE MAP AMENDMENT

PLN-MAR-17-00029: RAYMOND ALLEN WAITS

DESCRIPTION

Zone Change: From an Agricultural Urban (A-U) zone
To a Single Family Residential (R-1A) zone

Acreage: 1.135 net (1.246 gross) acres

Location: 2200 Old Higbee Mill Road (a portion of)

EXISTING ZONING & LAND USE

Properties

Subject Property
To North
To East
To South
To West

Zoning

A-U
A-U & R-3
A-U
R-1E
R-3 & A-U

Existing Land Use

Single Family Residential
Church & Residential
Agricultural & Single Family Residential
Single Family Residential
Greenway & Single Family Residential

URBAN SERVICES REPORT

Roads – The subject property is located along the south side of Old Higbee Mill Road, a collector street. During the improvements constructed to Harrodsburg Road by Kentucky Transportation Cabinet (KYTC), the portion of Old Higbee Mill Road directly north of the subject property and extending northwest to Harrodsburg Road was redirect from its original orientation and widened to current standards to create a safer intersection with Harrodsburg Road. The remaining portion of the Old Higbee Mill Road extending to the east and intersecting with Man O' War Boulevard has been widened and improved intermittently, as development has occurred in the area.

Curb/Gutter/Sidewalks – Old Higbee Road does not have curb, gutter or sidewalks along the frontage of the subject property. Curb, gutter, and sidewalks have been constructed along Old Higbee Mill Road as parcels have developed.

Storm Sewers – The subject property is located within the South Elkhorn watershed. There are no public stormwater facilities on the site. FEMA Digital Flood Insurance Rate Maps (D-FIRMs) indicate that a Special Flood Hazard Area (floodplain) exists on the subject property associated with South Elkhorn Creek and the Drive-In Tributary. The portion of the property that is not proposed for rezoning is within the Special Flood Hazard Area, and comprises approximately 30% of the overall property. The confluence of the two streams occurs one property west of the subject property (2130 Tracery Oaks Drive). Known flooding occurs along the South Elkhorn Creek and its tributaries in the immediate area. Development on the subject property will not be allowed to exacerbate any known flooding problems on the site or nearby.

Sanitary Sewers – This property is located in the South Elkhorn sewershed and is served by the West Hickman Wastewater Treatment Facility, in northern Jessamine County. The applicant has indicated that the subject property is served by septic sewer with the leach field located along the southern portion of the rezoning. The current distance of the residence to the closest manhole is approximately 400 feet. The property owner will need to comply with the LFUCG Engineering Manuals, which may result in the modification or extension of existing sewer facilities.

Refuse – This area is served by the Urban County Government with refuse collection on Mondays.

Police – The nearest police station is the West Sector Roll Call Center, located approximately 6 miles to the north of the subject property on Old Frankfort Pike, near New Circle Road.

Fire/Ambulance – The nearest fire station (#20) is located on Arrowhead Drive at Harrodsburg Road, approximately 2 miles northeast of the subject property.

Utilities – All utilities are available to serve the site, including natural gas; electric; streetlights; telephone; water; and cable television service.

LAND USE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The Plan's mission statement notes that this will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that

has made Lexington-Fayette County the Horse Capital of the World. In addition, the Plan encourages a mix of uses, housing types and/or residential densities; development in a compatible, compact and contiguous manner; and provision of land for a diverse workforce.

The petitioner proposes rezoning the subject property to a Single Family Residential (R-1A) zone in an effort to modify the property boundaries and allow for the consolidation of the remaining southern portion of the lot (approximately 2.75 acres) to 2100 Old Higbee Mill Road. In the existing Agricultural Urban Zone, a minimum lot of 10 acres is required for single family homes.

CASE REVIEW

The petitioner has requested a zone change from an Agricultural Urban (A-U) zone to a Single Family Residential (R-1A) zone for approximately 1.25 acres of property. The requested zone change will cover the northern portion of the subject property, approximately 40% of the total property area.

The subject property is located along the south side of Old Higbee Mill Road, a collector street that connects Harrodsburg Road and Man O' War Boulevard. During the improvements made to Harrodsburg Road by the Kentucky Transportation Cabinet (KYTC), the portion of Old Higbee Mill Road directly north of the subject property, extending northwest to Harrodsburg Road was redirect from its original orientation and widened in an effort the roadway to modern standards and create a safer intersection with Harrodsburg Road. The remaining portion of the Old Higbee Mill Road extending to the east and intersecting with Man O' War Boulevard has been widened and improved as new subdivision have occurred.

The subject property is bounded by a mix of residential and agricultural zoning. The northern portion of the property is bordered by a residential development zoned Planned Neighborhood Residential (R-3), and the First Alliance Church zoned Agricultural Urban (A-U). The entirety of the eastern boundary of the subject property is currently used for agricultural purposes and is zoned Agricultural Urban (A-U). The properties along the southern boundary of the subject property were subdivided and rezoned to a Single Family Residential (R-1D) zone in 2002. West of the subject property is a blend of agricultural zoning and residential zoning, however the majority of the land is being utilized as a greenway due to the presence of a Special Flood Hazard Area (floodplain) associated with the confluence of the South Elkhorn Creek and the Drive-In Tributary. The property at 2220 Old Higbee Mill Road just west of the subject property and north of the Special Flood Hazard Area is being utilized as a single family residence and is zoned Agricultural Urban (A-U).

While the applicant has indicated that the proposed rezoning is in compliance with the 2013 Comprehensive Plan, the minimal changes in the use at the site indicates that the shift does not constitute compliance or connection to the 2013 Comprehensive Plan or the adopted Goals and Objectives of the 2018 Comprehensive Plan. However, the intent of the Agricultural Urban (A-U) zone is to manage the growth of the community so to avoid premature or improper development until public facilities and services are adequate to serve urban uses. In this case, the infrastructure available to this property results in the Agricultural Urban (A-U) zoning being inappropriate and the rezoning of the property to a Single Family Residential (R-1A) zone appropriate. Additionally, the subject property already functions as a residential property and has not been utilizing the land for agricultural uses.

The Staff Recommends: Approval, for the following reasons:

1. The existing Agricultural Urban (A-U) zone is inappropriate, and the proposed Single Family Residential (R-1A) zone is appropriate at this location for the following reasons:
 - a. The intent for the Agricultural Urban (A-U) zone is to manage the growth of the community so to avoid premature or improper development until public facilities and services are adequate to serve urban uses. The availability of these services in this area indicate the inappropriateness of the current zoning.
 - b. The subject property already functions as a single family residential property and has not been utilizing the land for agricultural uses, indicating the appropriateness of the proposed zoning.
2. This recommendation is made subject to the approval and certification of PLN-MJDP-17-00081: Waits / Moore LTD Partnership 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

1. **RAYMOND ALLEN WAITS ZONING MAP AMENDMENT & WAITS/MOORE LTD PARTNERSHIP PROPERTY ZONING DEVELOPMENT PLAN**

- a. **PLN-MAR-17-00029: RAYMOND ALLEN WAITS (4/7/19)***- a petition for a zone map amendment from an Agricultural Urban (A-U) zone to a Single Family Residential (R-1A) zone, for 1.135 net (1.246 gross) acres, for property located at 2200 Old Higbee Mill Road (a portion of).

COMPREHENSIVE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The Plan's mission statement notes that this will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World. In addition, the Plan encourages a mix of uses, housing types and/or residential densities; development in a compatible, compact and contiguous manner; and provision of land for a diverse workforce.

The petitioner proposes to rezone the subject property from an Agricultural Urban (A-U) zone to a Single Family Residential (R-1A) zone in an effort to modify the property boundaries and allow for the consolidation of the remaining southern portion of the lot (approximately 1.75 acres) to 2100 Old Higbee Mill Road. In the existing Agricultural Urban (A-U) zone, a minimum lot size of 10 acres is required.

The Zoning Committee Recommended: Approval to the full Commission.

The Staff Recommends: Approval, for the following reason:

1. The existing Agricultural Urban (A-U) zone is inappropriate, and the proposed Single Family Residential (R-1A) zone is appropriate at this location for the following reasons:
 - a. The intent for the Agricultural Urban (A-U) zone is to manage the growth of the community so to avoid premature or improper development until public facilities and services are adequate to serve urban uses. The availability of these services in this area indicate the inappropriateness of the current zoning.
 - b. The subject property already functions as a single family residential property and has not been utilizing the land for agricultural uses, indicating the appropriateness of the proposed zoning.
 2. This recommendation is made subject to the approval and certification of **PLN-MJDP-17-00081: Waits / Moore LTD Partnership Property**, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
- b. **PLN- MJDP-17-00081: WAITS/MOORE LTD PARTNERSHIP PROPERTY (4/7/19)*** - located at 2200 Old Higbee Mill Road.

The Subdivision Committee Recommended: Postponement. There are questions regarding the availability of public sanitary sewer to the property.

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

1. Provided the Urban County Council rezones the property **R-1A**; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Urban Forester's approval of tree inventory map.
5. Department of Environmental Quality's approval of environmentally sensitive areas.
6. Delete note #6.
7. Denote: Old Higbee Mill Road improvements shall be determined at the time of Final Development Plan/Preliminary Subdivision Plan or Final Record Plat.
8. Discuss status of sanitary sewer system and service to proposed lots.
9. Discuss discontinuation of non-conforming business use.

Staff Zoning Presentation – Mr. Baillie presented the staff report and recommendations for the zone change. He displayed photographs of the subject property and aerial photographs of the general area. He said that the zone change will cover the northern portion of the subject property, which will allow the property boundaries to be modified and allow for a consolidation of the remaining southern portion to the neighboring 2100 Old Higbee Mill Road, at a later date. He said that there is a structure near the proposed zone line, which is not an issue since the applicant is not subdividing the property.

Mr. Baillie said that the applicant states that this proposed rezoning is in compliance with the 2013 Comprehensive Plan, but minimal changes in the use at the site indicates that the shift does not constitute compliance or connection to the 2013 Comprehensive Plan or the adopted Goals and Objectives of the 2018 Comprehensive Plan. However, the intent of the Agricultural Urban (A-U) zone is to manage the growth of the community so to avoid premature or improper development until public

* - Denotes date by which Commission must either approve or disapprove request, unless agreed to a longer time by the applicant.

facilities and services are adequate to serve urban uses. In this case, the infrastructure available to this property results in the Agricultural Urban (A-U) zoning being inappropriate and the rezoning of the property to a Single Family Residential (R-1A) zone to be appropriate at this time. Additionally, the subject property already functions as a residential property and has not been utilizing the land for agricultural uses.

Mr. Baillie said that with this rezoning, the non-conforming use on the property should eventually discontinue. He said that the applicant has agreed to add a note be added to the plan that states that the owner, Raymond Allen Waits, agrees that the current non-conforming use on the property will discontinue upon his retirement or death. He said that the staff and the Zoning Committee are recommending approval of this zone change.

Development Plan Presentation – Ms. Gallt presented a rendering of the preliminary development plan associated with this zone change. She indicated the area of the zone change on the plan. She said that there are the typical conditions and sign-offs by the different governmental agencies. She said that regarding condition #7, staff recommended that the applicant make improvements to the frontage at the time of the final record plat. She said that conditions #8 and #9 could be changed from "Discuss" to "Resolve."

Applicant Presentation – Mr. Steven Vicroy, attorney representing the petitioner, said that the applicant is in agreement with the staff's recommendations. He said that they have worked with the staff to add the note to the development plan in regard to the non-conforming use, stating that it would be discontinued upon Mr. Waits' retirement or his untimely death. He said that the sanitary sewer is available to the property so that there is not a need to obtain an easement from any adjacent property owners. He added that this will remain a single family home.

Citizen Comments - Mr. Billings, attorney representing Pauline Moore; Brian and Melinda McLaughlin; Brenda Barbieri; and the Waits/Moore Ltd. Partnership. He said that they are in favor of this zone change. He said that they have two notes to submit to Planning Commission that he would like to have added to the development plan, as follows:

Proposed Additional Notes for Preliminary Subdivision Plan/Preliminary Development Plan

1. The consenting property owners (Pauline Moore, Brian McLaughlin, Melinda McLaughlin, Brenda Barbieri, and Waits/Moore Ltd. Partnership) shall be notified before filing of a final or amended subdivision or development plan or subdivision plat.
2. Upon filing of a final or amended subdivision or development plan or subdivision plat, Applicant shall:
 - a. Show required access easement on the driveway to (i) 2220 Old Higbee Mill Road and (ii) the remnant 1.8 acre tract;
 - b. Consolidate the remnant 1.8 acre tract with the parcel located at 2100 Old Higbee Mill Road in accordance with Consolidation Minor Subdivision Plat dated June 2002 of record in Plat Cabinet L, Slide 708; and;
 - c. Remove the structure through which the proposed boundary line runs.

Mr. Billings said that the first note is to ensure that all property owners be notified of any future plans that are submitted. He added that the staff didn't object to this note being placed on the development plan. He said this zone change is being requested as a result of a pending lawsuit regarding title of the property, which revolves around a subdivision plat being filed so that Mr. Waits could obtain deeds to the property. He said that he has three conditional notes that he would also like the development to adopt at this time, so that they would be addressed when the applicant submits the subdivision plat. He said that one of those concerns is the driveway access easement. Another of their concerns is the 1.8 acre remnant tract that will be left as a result of a subdivision. There is a development plan from 2002 that requires that it be consolidated with the parcel located at 2100 Old Higbee Mill Road. He said that the last concern is that the structure that is located on the proposed zoning line be removed.

Mr. Wilson deferred to the staff if they agree with the addition of the proposed notes. Mr. Baillie said the first note is not outside of the realm of possibility and the second request would go through with any type of subdivision plat or final record plat and that the staff agrees to add them to the development plan at this time. He added that the group of notes about the content of a future plan don't have the same kind of legal emphasis that they would have if they were being added to a plat.

Mr. Billings said that this is a record of conditions that need to be accomplished in the event that staff, attorneys, or Planning Commission members change in the future. He said that there is currently a non-conforming use on property and they oppose the ongoing use of it. He said that they would like that use to cease as soon as possible because it could affect their ability to market and sell the partnership property. He said that if the Planning Commission is not willing to stop the non-conforming use, that the proposed notes protect adjacent property owners.

Ms. Wade said that the Planning Commission cannot force a property owner to stop non-conforming use. She said that applicant is offering to end the non-conforming use and to not continue beyond his retirement or his death.

Mr. Wilson said that the staff agrees with the proposed conditions a. and b., but not condition c.

* - Denotes date by which Commission must either approve or disapprove request, unless agreed to a longer time by the applicant.

Mr. Penn asked if these are conditions or notes to be placed on the development plan.

Ms. Wade said that these are notes to be placed on the development plan as reminders of the interests of the parties involved with this zone change.

Mr. Vicroy clarified that the structure located on the zone change boundary line is not a permanent improvement, it is a mobile home and doesn't have a foundation.

Mr. Billings said that he wasn't aware that it is a temporary structure and doesn't see why it couldn't be moved today. He believes that this note will be appropriate that once the subdivision plat is submitted there shouldn't be a property boundary running through a structure, which is not permissible in the zoning code. He said that at the time of the final record plat or final subdivision plat, the Planning Commission should require that structure to be moved off of the property line.

Commission questions – Mr. Owens asked for clarification of the applicant's intention of this temporary structure. Mr. Vicroy said that the structure is located on the southern property line and could be moved now. He said that Mr. Waits is also 1/6 owner of both properties and the issue of relocating that structure is not a concern of today's hearing.

Ms. Wade said that in regards to Mr. Owens comment that it may be appropriate at the time of the final record plat, for the Planning Commission to decide that the structure must be relocated prior to recording of a plat with the County Clerk's office.

Zoning Action – A motion was made by Mr. Penn, seconded by Mr. Brewer, and carried 11-0 to approve PLN-MAR-17-00029: RAYMOND ALLEN WAITS, for the reasons provided by the staff.

Development Plan Action – A motion was made by Mr. Penn, seconded by Mr. Brewer, and carried 11-0 to approve PLN-MJDP-17-00081: WAITS/MOORE LTD PARTNERSHIP PROPERTY, as presented by staff, with the proposed additional notes presented by Mr. Billings, as follows:

1. Provided the Urban County Council rezones the property R-1A; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Urban Forester's approval of tree inventory map.
5. Department of Environmental Quality's approval of environmentally sensitive areas.
6. Delete note #6.
7. Denote: Old Higbee Mill Road improvements shall be determined at the time of Final Development Plan/Preliminary Subdivision Plan or Final Record Plat.
8. ~~Resolve Discuss~~ status of sanitary sewer system and service to proposed lots.
9. ~~Resolve Discuss~~ discontinuation of non-conforming business use.
10. Denote: The consenting property owners (Pauline Moore, Brian McLaughlin, Melinda McLaughlin, Brenda Barbieri, and Waits/Moore Ltd. Partnership) shall be notified before filing of a final or amended subdivision or development plan or subdivision plat.
11. Denote: Upon filing of a final or amended subdivision or development plan or subdivision plat, Applicant shall:
 - a. Show required access easement on the driveway to (i) 2220 Old Higbee Mill Road and (ii) the remnant 1.8 acre tract;
 - b. Consolidate the remnant 1.8 acre tract with the parcel located at 2100 Old Higbee Mill Road in accordance with Consolidation Minor Subdivision Plat dated June 2002 of record in Plat Cabinet L, Slide 708; and
 - c. Remove the structure through which the proposed boundary line runs.