

1. **BOONE CREEK PROPERTIES, LLC, DBA BOONE CREEK OUTDOORS ZONING MAP AMENDMENT & BOONE CREEK OUTDOORS ZONING DEVELOPMENT PLAN**

- a. MARC 2014-1: BOONE CREEK PROPERTIES, LLC, DBA BOONE CREEK OUTDOORS (12/3/14)* - petition for a zone map amendment from an Agricultural Rural (A-R) zone to an Agricultural Natural (A-N) zone, for 20.15 net (20.76 gross) acres, for property located at 8291 Old Richmond Road. A conditional use is also requested with this zone change.

COMPREHENSIVE PLAN AND PROPOSED USE

The subject property is located within the Rural Service Area, which encompasses 200 square miles and about 70% of Lexington-Fayette County. The 1999 Rural Land Management Plan was developed to guide resource management and planning for this portion of the County, and the Plan recommends the subject property be utilized for Natural Area (NAT) land use. The 2013 Comprehensive Plan recommends updating, affirming and readopting the Rural Land Management Plan. The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The mission statement notes that this will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World.

The petitioner proposes to rezone the property to an Agricultural Natural (A-N) zone, and is requesting a conditional use to operate a commercial outdoor recreational facility that includes a tree canopy tour (ecotourism), welcome center, seasonal educational programs, and training for guides and builders of other zip line facilities. The petitioner also plans to maintain the existing conditional use permit for an outdoor recreational facility – the Boone Creek Angler's Club – which was approved as a private club by the Board of Adjustment in 2000.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

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

1. The requested Agricultural Natural (A-N) zoning for the subject property is in agreement with the Rural Land Management Plan's recommendations for Natural Areas (NAT) land use at this location.
2. The 2013 Goals and Objectives also encourage the development of appropriate attractions and supporting uses that promote and enhance tourism (Theme C, Goal 1, Objective e); support the agricultural economy, horse farms, general agricultural farms, and the rural character of the Rural Service Area (Theme E, Goal 2); and protect the environment (Theme B).
3. This recommendation is made subject to approval and certification of ZDP 2014-3: Boone Creek Outdoors prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

- b. **REQUESTED CONDITIONAL USE**
Commercial outdoor recreational facility

The Zoning Committee Recommended: **Postponement**, for the reason provided by staff.

The Staff Recommends: **Postponement (or Withdrawal) of this request by the applicant**, for the following reason:

1. There is a pending Zoning Ordinance Text Amendment designed to provide greater clarity in the regulation of zipline tours and other outdoor recreational activities. The staff strongly prefers that the current application for a Conditional Use Permit postpone until the ZOTA has been fully considered by the Commission, and ultimately, by the Council.

Should this request not be postponed or voluntarily withdrawn by the applicant, the Staff will report at the hearing, and present alternate courses of action for the Commission's consideration.

- c. ZDP 2014-3: BOONE CREEK OUTDOORS (12/3/14)* - located at 8291 Old Richmond Road.

(Barrett Partners)

The Subdivision Committee Recommended: **Postponement**.

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

1. Provided the Urban County Council rezones the property A-N; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.

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

5. Urban Forester's approval of tree inventory map.
6. Greenspace Planner's approval of the treatment of greenways and greenspace.
7. Department of Environmental Quality's approval of environmentally sensitive areas.
8. Discuss proposed development in front of 300' building line and need for variances.
9. Discuss proposed caretaker's apartment (per Art. 8-3(c)(8) of the Zoning Ordinance).
10. Addition of proposed square footage for observation deck(s) and welcome center deck to site statistics.
11. Clarify employee parking information.
12. Denote that the parking lot shall be screened and paved in accordance with the requirements of the Zoning Ordinance.
13. Denote that the proposed access and any required road improvements shall be determined at the time of the final development plan.
14. Revise flex note to clarify that it applies to the canopy tour only.
15. Discuss the Board of Adjustment's approved 2000 Conditional Use development plan relative to the proposed plan.

Legal Comments: Ms. Jones stated that this rezoning request had been before the Planning Commission a few months ago, at which time the Commission voted that it was not appropriate to be heard. The applicant appealed that decision to Fayette Circuit Court. The judge issued an opinion that, under the relevant Statutes, case law, and the Zoning Ordinance, the Planning Commission needed to hear the request.

Ms. Jones asked that the Commission members pay close attention to the staff's presentations, because, although this request was presented to the Zoning and Subdivision Committees in February, it had not appeared on the Committee agendas following the Circuit Court ruling. She said that some of the recommendations and documentation provided by the staff might be a bit confusing, but it would be explained by the staff throughout the hearing.

Ms. Jones stated that the Planning Commission would need to have a full hearing today, in order to comply with the judge's order. She added that the case had been reviewed with Chairman Owens prior to the hearing, and he indicated a willingness to listen and proceed with the hearing.

Chairman Comments: Mr. Owens stated that an Urban County Council meeting would be held in the Council Chambers at six o'clock; a decision as to how to proceed would be made prior to that time if this hearing was still ongoing. He said that the staff, petitioner, and opposition would each have one hour in which to make their presentations, including any expert witnesses. Each citizen would be allowed three minutes in which to speak, with no deferral of time from one party to another. Mr. Owens asked each participant to be respectful and professional, knowing that there is a great deal of interest in this request and passion on the part of those involved.

Zoning Presentation: Ms. Wade stated that the staff had distributed several items to the Commission members prior to the start of the hearing, including: two staff exhibit packets, one prepared in February and one dated today; correspondence received about this request, beginning in January and continuing through a couple of hours prior to this hearing; and the petitioner's operational management plan, rescue procedures plan, and environmental assessment, all of which were submitted as part of the application for this request. Ms. Wade noted that the Commission members had had an opportunity to review those items, since they were included as part of the application.

Note: Mr. Wilson arrived at this time.

Ms. Wade briefly oriented the Commission to the location of the subject property, which is approximately 20 acres in size, and is located a short distance from the Old Richmond Road/Interstate 75 interchange. The property is located on the east side of Old Richmond Road, and is bordered on three sides by A-R zoning. The fourth side is bordered by Boone Creek itself, across which is property located in Clark County.

Ms. Wade stated that the subject property currently contains an outdoor recreational facility that was established following a Board of Adjustment approval of a conditional use permit for fishing and an associated private club. An existing structure, formerly the location of the Jolly Roger restaurant and truck stop, is located along the Old Richmond Road frontage of the property. The private fishing club lodge is more interior on the property, along the creek. The former restaurant building has been used more recently as a single family residence, and it was recently renovated to accommodate the proposed conditional use.

Ms. Wade said that the petitioner is proposing to construct a tree canopy tour as a new commercial outdoor recreational use for the property, including ziplines; sky bridges; floating staircases; a rappelling area; ladders; tree platforms; a viewing platform; and a ground school or training area for use by participants in the canopy tour. The petitioner's application indicates that they also propose to re-use the former Jolly Roger restaurant building for a welcome center, with a caretaker's dwelling unit included to allow someone to remain on site at all times. The petitioner proposes to offer historical and educational programs; a rescue school for guides and wilderness rescue education; guide training; and canopy tour builders' classes.

Ms. Wade displayed the following photographs of the subject property, taken recently and in January around the time of

the originally scheduled hearing: 1) the existing building at the property frontage; 2) same as previous; 3) the front of the existing building, looking toward the interstate interchange; 4) a graveled parking area to the north of the building at the property frontage; 5) a rear view of the proposed welcome center, looking toward the area proposed for the start of the canopy tour and ground training; 6) one side of the ground training area, very near the start of the canopy tour; 7) the other side of the training area; 8) tree platform #1, with a view of Boone Creek; 9) trees with corresponding number labels; 10) view from platform #1 toward platform #2; 11) a close-up of the cabling method used to secure the tree platforms; 12) a view toward Boone Creek from platform #1, noting the location of the driveway that leads to the fishing club; 13) another view of the driveway, noting one of the tree platforms in the background; 14) the location of a gate proposed by the petitioner to limit access to the existing driveway; 15) an existing sulphur well structure that could possibly be re-used; 16) a view from the driveway toward Boone Creek, noting the proposed location of the last platform in the tree canopy tour; 17) the driveway, looking toward the fishing club lodge; 18) a view across the creek; 19) Boone Creek, looking toward the Kentucky River palisades; 20) same as previous; 21) a view up the creek toward the anglers' club; 22) the creek, looking toward Clark County; 23) the Cleveland branch waterfall at the edge of the subject property; 24) the required sign posting for today's hearing.

Ms. Wade displayed an exhibit from the Rural Land Management Plan (RLMP), noting that the staff considered it and other exhibits from the RLMP as they reviewed this application and its conformity with the Comprehensive Plan. The RLMP was adopted in 1999; at that time, it recommended Natural Areas land use for the subject property. The Natural Areas category was described as:

"A category that is designed to encompass certain areas of Fayette County that are physically unique, in that they are important for preservation, but not primarily for their association with traditional agriculture. Lands in this land use category exhibit a combination of characteristics, including: an association with the Kentucky River and its tributaries; steep slopes; forested areas; woodlands; poor or thin soils; and floodplain and riparian areas."

Ms. Wade said that the RLMP has an adopted land use map, which she displayed, noting that all of the land designated for Natural Area land use is located along the Kentucky River, encompassing the steep slopes and environmentally sensitive areas. The RLMP also notes that, although agriculture can and does occur in those areas, it is not the predominant character of the area as a whole. There is policy emphasis for land in this category on preservation and enhancement of the land in a natural state, with minimal intrusions. Ms. Wade noted that the text of the requested A-N zone was written based on the information in the RLMP.

Ms. Wade stated that staff believes that three Goals & Objectives of the 2013 Comprehensive Plan were particularly applicable to this request, including Theme B, which refers to protection of the environment. Theme C, Goal 1, Objective E, states that one of the community's goals is to "encourage the development of appropriate attractions and supporting uses that support and enhance tourism." Theme E, which refers to maintaining a balance between urban and rural uses, Goal 2 speaks to the proposed zone change and conditional use in terms of "supporting the agricultural economy; horse farms; general agriculture and the character of the Rural Service Area."

Ms. Wade said that the proposed A-N zone is the first ever requested since the zone was created in 2004. The staff believes that, in the past, few incentives have existed for property owners to rezone to A-N, since it is more restrictive than the A-R zone. The A-N zone has 12 possible conditional uses, while the A-R zone has 28, and it requires more information about proposed conditional uses in order to ensure that a project has the least negative impact on the land. In addition, environmental assessment documents prepared by a professional could be necessary. Ms. Wade stated that, in this case, the staff believes that the requested A-N zone is in agreement with both the 2013 Comprehensive Plan and the RLMP. The staff is recommending approval of this request, for the reasons as listed in the staff report and on the agenda. The Zoning Committee recommended approval at their meeting in January, for the same reasons.

Commission Question: Mr. Berkley asked how far back the A-N zone recommendation goes for the subject property. Ms. Wade responded that the 2001 Comprehensive Plan recommended the A-N zone for the subject property, which was based on the 1999 RLMP.

Development Plan Presentation: Mr. Martin presented the corollary zoning development plan, further orienting the Commission to the location of the subject property on Old Richmond Road. He stated that the property has over 800' of frontage along that roadway, with a parking area adjacent to it, and three existing access points. The nearest access point to an intersection is over 200' away from the driveway of a single-family residence on an adjoining property. The internal circulation pattern for the site is one-way, with a separate entrance provided for members of the anglers' club. The road that serves the anglers' club is gated for security purposes, and it winds down to the gorge area, where the existing lodge building is located.

Mr. Martin noted on the rendered development plan the location of the existing building, which is proposed for use as a welcome center and one-bedroom caretaker's apartment. The petitioner is proposing to expand the existing

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parking area located along the Old Richmond Road frontage, for a total of 55 parking spaces. A minimum of five spaces is required by the Zoning Ordinance, with one additional space required for each employee on the property. An observation deck is proposed at the location of a former sulfur water bottling facility. Mr. Martin stated that the petitioner provided some information about the proposed canopy tour on the development plan, by noting the locations of the platforms with circles. The petitioner also noted the locations of the proposed training area; ropes challenge course; and natural recreational activity area.

Mr. Martin stated that the Subdivision Committee recommended postponement of this plan at their meeting in February. Subsequently, the petitioner submitted this revised plan, and drafted a revised recommendation. The staff is now recommending approval of this plan, subject to the following conditions:

1. Provided the Urban County Council rezones the property A-N; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Greenspace Planner's approval of the treatment of greenways and greenspace.
7. Department of Environmental Quality's approval of environmentally sensitive areas.
8. ~~Discuss proposed development in front of 300' building line and need for variances.~~
9. ~~Discuss proposed caretaker's apartment (per Art. 8-3(c)(8) of the Zoning Ordinance).~~
10. ~~Addition of proposed square footage for observation deck(s) and welcome center deck to site statistics.~~
11. ~~Clarify employee parking information.~~
12. ~~Denote that the parking lot shall be screened and paved in accordance with the requirements of the Zoning Ordinance.~~
13. ~~Denote that the proposed access and any required road improvements shall be determined at the time of the final development plan.~~
8. 14. Revise flex note to clarify that it applies to the canopy tour only.
9. 15. ~~Discuss the Board of Adjustment's approved 2000 Conditional Use development plan relative to the proposed plan Denote that no single family will be constructed on this property.~~
10. Denote that the existing caretaker's apartment/welcome center is a non-conforming use and structure and shall not be expanded without Board of Adjustment's approval.
11. Revise parking to indicate a minimum of 13 parking spaces for the fishing lodge per the 2000 conditional use permit.
12. Delete note about incidental retail sales of items.
13. Clearly denote location of all proposed recreational site improvements on the property.

Mr. Martin said that condition #5 refers to the Zoning Ordinance requirement for a tree inventory map of the subject property. He noted that, at the time of a Final Development Plan for the property, a Tree Protection Area will need to be designated as well. Condition #8 concerns a note on the plan wherein the petitioner attempted to explain their need for flexibility in determining platform sites for the canopy tour on the property, since changes might need to be made in the future due to tree health or other issues. The staff understands the need for that flexibility, but they would like for the petitioner to clarify that would not include flexibility in other aspects of the site design. The staff is also requesting, via condition #9, that no single family dwelling will be constructed on the property, since the 2000 conditional use request proposed the addition of a residential unit. Condition #10 refers to the staff's recommendation that the status of the welcome center/caretaker's apartment as a non-conforming use should be documented, and that it cannot be expanded without Board of Adjustment approval. Condition #11 is a clarification of the parking numbers for the property, since it is currently off by one space; the staff needs accurate documentation of how many parking spaces are proposed, and for which use. Mr. Martin stated, with regard to condition #12, that incidental retail sales are not allowed on the property, so that note should be removed. Condition #13 was recommended based on concerns expressed by the Subdivision Committee and staff that the petitioner should clearly specify the recreational activities and improvements that are intended on the property.

Commission Question: Ms. Plumlee asked if the platforms on the subject property were existing or proposed. Mr. Martin answered that the petitioner would have to answer that question, although Ms. Wade's photos indicated that some platforms do appear to exist. He added that the symbols on the plan refer to the areas on the property where the zipline will be located.

Conditional Use Presentation: Mr. Sallee presented the staff report on the requested conditional use permit, noting that the Zoning Committee had recommended postponement of this portion of the request at its meeting in January. He said, with regard to Mr. Martin's comments about the development plan that conditions #11 and #12 refer to the requested conditional use. They involve revising parking to indicate that a minimum of 13 spaces must be provided in proximity to the fishing lodge, and deleting a note about the retail sale of items on the property.

Referring to the staff's exhibit packets, Mr. Sallee directed the Commission's attention to the site plan that was approved by the Board of Adjustment (BOA) in 2000 for the Boone Creek Angler's Club. The club is located very near the creek, while the conditional use request being considered today involves primarily the improvements near

Old Richmond Road, on the western portion of the property, in addition to the tree canopy platforms and ziplines. The staff requested the addition of those two conditions in order to address two issues on the plan: parking and the former restaurant building. The site plan, as approved in 2000, indicated that the petitioner would provide 13 spaces near the lodge, with a notation that the structure at the front of the property would be removed. The application currently before the Commission involves retaining that structure near Old Richmond Road, to be used as a visitor's center. The staff believes that those are significant differences between the existing conditional use permit that was approved in 2000, and the additional recreational facility the Commission is being asked to consider today.

Mr. Sallee explained that, at the 2000 conditional use permit hearing, the BOA considered an administrative appeal to change one non-conforming use to another; a dimensional variance regarding building setbacks from Old Richmond Road; and a conditional use permit to allow the private anglers' club. The staff recommended approval of portions of that request, including the conditional use permit and the dimensional variance; but they did not recommend approval of the pro shop and change of non-conforming use that involved the Jolly Roger restaurant on the front part of the property. As part of a complex action, the BOA took action to approve a conditional use permit for the private anglers' club, excluding the construction of two cabins that were associated with that proposal. They allowed the anglers' club to accommodate overnight stays for members of the club and their guests; but they disapproved the administrative appeal to change the non-conforming uses associated with the Jolly Roger restaurant and the pro shop that was proposed as part of the lodge. Mr. Sallee displayed on the overhead the list of conditions placed on that approval by the BOA (Exhibit 4A), noting that it provides a synopsis of the restrictions that were placed on the existing conditional use on the property.

Mr. Sallee stated that, in the staff's initial report on the conditional use request, the staff outlined the proposed use of the property. The current request involves less property than was originally requested in 2011 for a similar use, but it includes permission to use seven ziplines; three sky bridges; one floating staircase; one rappel; two ladders; 15 tree platforms; and one viewing platform and observation deck. The proposals also included a ropes challenge course; a natural and recreational activity area; and ground school training areas at the front of the site. The petitioner is also proposing to use the existing structure at the front of the property as a welcome center and caretaker's apartment. The petitioner anticipates between 15,000 and 25,000 visitors annually, keeping the facility open approximately 280 days per year, from 10 am until dusk. Canopy tours are anticipated to last two hours each, with one or two guides and eight to ten participants per tour, which equals approximately 50 to 90 visitors to the site each day.

With regard to the off-street parking for the site, Mr. Sallee said that the submitted zoning development plan proposed 55 parking spaces for the anglers' club and the new conditional use. The 2000 site plan required 13 spaces, to be situated near the club. The current development plan does not specify which areas will be gravel and which will be pavement; the existing parking areas are a combination of the two surfaces. The petitioner submitted several operational plans to the staff, which were also forwarded to the Planning Commission members for their review a few days prior to this hearing. Those plans included an operational management plan for the recreation facility, and a rescue procedures manual. Mr. Sallee noted that the staff understands that the rescue procedures manual had been shared with the LFUCG Division of Fire and Emergency Services plan review staff, as well as the nearest fire station located at Cleveland and Old Richmond Roads. He explained that one unusual aspect of this request is that many of the proposed facilities have already been installed, including the platforms and ziplines.

Directing the Commission's attention to the January staff report and the supplemental staff report, Mr. Sallee stated that, when the staff first reviewed this application, they had a number of questions for the applicant about the proposed conditional use. They posed those questions to the petitioner, and received a response via a revised development plan and a Preliminary Assessment of Environmental Features and Sensitivities report. In early January of this year, the staff recommended postponement of the conditional use request; in February, the staff prepared a supplemental staff report on that request. Mr. Sallee also referred the Commission to a memorandum from Tracy Jones in the Law Department, which answered many of the staff's questions about the legal issues they had initially raised with this application. That information, along with another revised development plan for the property, helped the staff draft a supplemental staff report, which was prepared the day before the Commission's scheduled hearing in February.

Mr. Sallee said that it became clear to the staff that the petitioner did not wish to have the original conditional use permit be a part of this current application; the Law Department also advised that that application and this one could be considered independently of each other. The staff asked questions about the total square footage of structures proposed for the site; they determined that approximately 7,500 – 7,600 square feet was proposed, which falls under the 10,000 square-foot limitation for conditional uses in both the A-R and A-N zones. With regard to the concerns about the required 300' building line, Mr. Sallee stated that the existing structure near the front of the property is non-conforming, but it is part of the new conditional use request that is before the Commission. The staff had also questioned whether or not the ziplines could encroach upon the airspace of Clark County, across Boone Creek. The staff received a response from the Planning Director in Clark County, indicating that their authorities would not need to approve any aspect of this conditional use, provided there were no structures touching the ground in their county.

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Mr. Sallee said that the staff spent a great deal of time researching the required parking for the property, with regard to both the minimum requirements of the Zoning Ordinance and the practical aspect of providing enough parking for the anticipated need. The staff estimated that approximately 29 spaces are required by the Ordinance, given the number of employees and visitors proposed for the new conditional use. The staff requested that 13 of the 55 spaces depicted on the development plan be provided in close proximity to the anglers' club. Since 55 spaces are proposed, the staff believes that parking will be adequate for both the anglers' club and the new outdoor recreational use. The staff anticipates that, if one space is used for each two visitors, assuming three tours in operation concurrently and one group preparing on the ground, that approximately 25 spaces would accommodate the rotation. That estimation is predicated on each car providing transport for two participants, so a lower vehicle-to-occupancy ratio could affect the parking demand.

Mr. Sallee stated that, in the conclusion of both staff reports, the staff expressed its recommendation that the petitioner voluntarily agree to postpone or withdraw the conditional use portion of their request, until the ZOTA regarding outdoor recreational facilities has been fully considered by the Commission and the Urban County Council. In making that recommendation, the staff indicated that they would be prepared to provide additional information to the Commission, should the petitioner choose not to postpone or withdraw their request. Referring the Commission to the staff exhibit packet, Mr. Sallee stated that the staff had proposed two alternate actions that the Commission could pursue, should the petitioner choose not to postpone or withdraw this portion of their request. The staff prepared four findings of approval, as well as a list of up to 16 conditions the Commission could choose to apply to the conditional use permit. The Commission could choose to apply conditions requiring that the conditional use be established according to the development plan, along with the Smith Management Group report, emergency response plan, and operational details report submitted by the petitioner. The staff believes that it would be prudent to have the existing septic system approved as necessary by the Health Department, and that parking spaces be delineated, and landscaping and screening installed along Old Richmond Road. If approved, the staff is recommending a condition that the canopy tour and zipline be certified by the Association for Challenge Course Technology (ACCT), or by an accredited vendor. Each tour should contain no more than ten guests, with tours spaced at least 30 minutes apart and no more than three tours underway at any given time, in order to ensure that the proposed parking is adequate; and the last tour of the day should begin at least two hours prior to dusk. Mr. Sallee said that, if approved, the staff also recommends that any use of ATVs be strictly prohibited as part of this conditional use, and that overnight accommodations shall not be permitted as part of the outdoor recreation use. The exception to that condition would be the welcome center, which could include a one-bedroom apartment for a caretaker. The staff is also recommending that recreational uses and improvements shall be limited to those noted and described on the preliminary development plan, as approved by the Planning Commission. Mr. Sallee stated that the final condition recommended by the staff would prohibit outdoor lighting; loudspeakers; retail sale of merchandise; and restaurants or food service. Concessions not involving on-site preparation, however, could be provided in a manner approved by the Health Department.

Mr. Sallee stated that the Commission, at the conclusion of this hearing, could also choose to deny the petitioner's request for a conditional use permit. In order to support that possibility, the staff included in their exhibits a set of findings which could be utilized for disapproval. Mr. Sallee noted that the staff had recommended approval of conditional uses on the subject property in 2000 and 2012.

Commission Questions: Ms. Richardson stated that the Commission has always had a number of reasons they could use as a basis for postponement of an application. She asked for clarification on whether or not the Commission could legally postpone an application based upon the changing of the Zoning Ordinance at some undetermined time in the future. She said that the recreation ZOTA was nowhere near being finalized, and she predicted that it likely would not be completed until 2015. Ms. Jones answered that the Planning Commission could not postpone this request based on the possibility of the recreation ZOTA being approved in the future. She said that the staff brought it to the Commission's attention because the ZOTA is pending, and the issues are a cause for concern, but the Commission could not legally use it as a basis for postponement. Ms. Jones explained that there is no moratorium on pending applications while the text amendment is being processed, and the ZOTA has not yet been declared law. The Commission is required to act based on the law that is in place at the time of the filing of an application.

Mr. Penn stated that he understood that the Commission had to hear this request today, and asked if Ms. Jones was concerned about the ongoing litigation concerning the subject property. He asked if there was any chance that the Planning Commission could rule one way, while the court rules another. Ms. Jones responded that she could not predict what the court or the property owner might do in this situation; she noted, however, that the Commission was under a court order to hear this request today, so they should make their decisions based on what they hear. Mr. Penn asked if that decision could include postponement, which Ms. Jones answered in the negative.

Mr. Berkley asked if the staff would consider changing their recommendation, since it had been determined that this request could not be postponed. Mr. Sallee answered that the staff's recommendation was that the applicant consider postponing or withdrawing this request, which was within their ability. He said that the staff did not expect the Commission to vote to postpone, which was why the staff provided the best possible findings for their use later during the hearing. Ms. Jones added that the staff had worked hard to prepare for every contingency that might

come up during this hearing. She said that some of the findings might need to be altered, but the staff had provided them for the Commission's use in considering this request.

Mr. Wilson asked for clarification on the staff's recommendation. Mr. Sallee answered that the staff was recommending that the applicant consider postponing or withdrawing the conditional use portion of this request, so that the recreation ZOTA could be completed. Mr. Wilson stated that it appeared that postponement had been removed from consideration. Mr. Sallee responded that the Commission could not postpone this item, but the applicant still had the ability to do so.

Mr. Owens asked if the staff intended to prohibit the sale of incidental items on the subject property, since it seemed like the staff's information was conflicting. Mr. Sallee answered that the key in that one possible condition was the word "provided." He said that items could not be sold the way the condition was drafted, but they could be offered to participants in training classes, subject to the approval of the Health Department.

Ms. Mundy asked if it would be possible for a food truck to locate on the subject property. Mr. Sallee answered that it might be a possibility, but he was not sure if food trucks are permitted in the A-N zone.

Petitioner Representation: Dick Murphy, attorney, was present representing the petitioner. He acknowledged that there was a history on the subject property, and that the canopy tour was constructed and operated without a permit; the petitioner has accepted responsibility, and has obeyed the injunction placed on the operation by the Circuit Court of Appeals. Mr. Murphy said that the petitioner views the requested zone change as a fresh start for the business, which they would like to begin operating as soon as possible. He noted that this request is substantially different from the past conditional use permit requests, as the property will now be zoned A-N, rather than A-R. The petitioner also understands and acknowledges that the requested conditional use permit would not grant them any ability to expand the anglers' club. Mr. Murphy stated that the petitioner is a passionate visionary who sees the proposed canopy tour as an opportunity to provide recreational opportunities to the people of the area, while educating them about the value of natural areas in Fayette County.

Mr. Murphy said that the subject property is part of the Clays Ferry Neighborhood Association, and he noted that the Commission had received copies of a letter from that association, recommending approval of this request. He displayed a map of the subject property and surrounding area, rendered to indicate the properties of owners who had been contacted by the petitioner, and who indicated their support for this proposal. With the exception of one, all of the owners whose properties adjoin the subject property had indicated their support as well. Mr. Murphy noted, with regard to the photos Ms. Wade had displayed, that no participant in the canopy tour would be permitted to access the gorge or waterfall areas of the property, since that part of the tour would be viewed via zipline only.

Mr. Murphy displayed an 1830 map of the area around the subject property, noting that the property contained a tollhouse, distillery, and mill. The tollhouse, wherein tolls were collected for ferry transport across the Kentucky River, was located in the area currently occupied by the Jolly Roger restaurant building. The gorge was created by a large meander of Boone Creek, which was cut off, forming the waterfall area. In 1974, the Jolly Roger property was sold at auction; an advertisement for that auction notes that the property was "only 200 yards from Interstate 75." At the time, the property contained a popular restaurant and service station. The auction ad noted that the property included living quarters in the restaurant, as well as building sites overlooking Boone Creek, and it was zoned for overnight campers. The restaurant was also the southernmost business in Fayette County with a liquor license. Mr. Murphy noted that, after the petitioner purchased the subject property in 1994, he immediately had the old fuel tanks from the former service station removed.

Mr. Murphy said that there are a number of agritourism-related businesses in the vicinity of the subject property, including: J & D Market at the intersection of Jacks Creek Pike and Old Richmond Road; Champagne Run Equestrian Center; Kelley Farm Corn Maze; Botanica Garden Center; Jean Farris Winery; and Grimes Mill Winery. He noted that the Kelly Farm Corn Maze offers special rates for large groups and the opportunity for food trucks for events. The Botanica Garden Center has a corn maze, petting zoo, pumpkin patch, craft fair weekends, and retail sale of seasonal items. Both of the nearby wineries offer tastings, food, and space for events such as weddings. Also located nearby are the Vulcan Materials plant (mining); a wholesale greenhouse; a mechanic's garage; and a dog rescue facility. Closer to the Kentucky River are the China Grove Garden, which offers facilities for weddings and receptions; and Pier 99 restaurant (formerly Riptides restaurant). Mr. Murphy noted that the China Grove facility was approved by the Board of Adjustment about six months ago. During that meeting, there was some discussion about the pending recreation ZOTA, but the BOA determined that they should go forward even though the text amendment had not yet been enacted. Mr. Murphy said that the petitioner supports all of the tourist activities in the area, because he believes that they are good for the community, and he hopes to add the proposed canopy tour as a possibility for active recreation in that portion of Lexington-Fayette County. The Comprehensive Plan references the goal of attracting "knowledge-based professionals" to Lexington-Fayette County, and the petitioner contends that there is no better way to attract those individuals than by providing active recreational uses.

Mr. Murphy stated that, since the petitioner purchased the property, he has been searching for a way to support his family while being good stewards of the land and sharing the land with others. One aspect of maintaining the land is the removal of invasive species such as wintercreeper, burning bush, bush honeysuckle, and the Emerald Ash Borer. It takes a great deal of money and upkeep to remove invasive species, in order to prevent them from choking out young trees. The petitioner has made a great deal of progress in removing those species (both plant and insect) from the property, while educating visitors about the importance of that removal in the maintenance of a natural habitat.

Mr. Murphy said that the petitioner is requesting the A-N zone because some professionals in the equine industry indicated that they were concerned about the possibility of allowing the type of use proposed in the A-R zone, which covers 70% of Lexington-Fayette County. The A-N zone is designed for areas where topography, steep slopes, and heavy tree canopy make properties unsuitable for conventional agriculture. Some property owners attempted to raise cattle on a property adjoining the subject property, and the result was severely compacted soil; the petitioner contends that the proposed use would maintain the property in a more natural way.

With regard to the proposed canopy tour, Mr. Murphy stated that it utilizes a number of different modes to travel through the tree canopy, including ziplines; floating staircases; suspended bridges and ladders; and rappelling, all of which provide a different perspective from which to view the natural area. The tour is also designed to be educational, and many participants have indicated that completion of it gave them a sense of accomplishment. Tours consist of eight to ten participants, with groups beginning the tour every 20 or 30 minutes. Mr. Murphy noted that reservations are required to participate in a tour, which helps to manage traffic in the area by spreading out arrival and departure times. The zipline cables are a half-inch wide, made of threaded steel, and are extremely strong and durable. The cables do not touch the trees themselves; rather they are attached to wood blocks that are designed to spread the force along the trees so that the growth is not damaged. Dave Leonard, arborist, has inspected the trees and provided a letter of recommendation, which is included in the petitioner's exhibit packet, along with a letter from another arborist. Mr. Murphy stated that Mr. Leonard's letter indicates that, as a designated inspector for the canopy tour accrediting agency, he has examined such facilities in neighboring states, and none compare to the Boone Creek Outdoors facility. Mr. Leonard noted in his letter that he was initially skeptical about the petitioner's ability to keep the trees healthy, but he now believes that "these trees are better cared for than most of the trees in the city." Beverly James, manager of the Floracliff Sanctuary, also submitted a letter of support, writing that "management of profit and non-profit reservations comes at a significant cost for private and public landowners. Bluegrass Outdoors has developed an innovative plan to address the invasive species on the property." Ms. James also indicated that she had observed the interactions of several rare bird species, while participating in the canopy tour.

Mr. Murphy displayed several photographs of the canopy tour, noting that the staff had some questions about a separate recreational area that was depicted on the development plan. He said that area is proposed to provide activities for children who are under the 70-pound weight limit for the canopy tour, so that they can remain engaged while other family members participate in the tour. The petitioner proposes to include smaller-scale but similar activities to those on the tour, so that children can actively participate, while under supervision of an adult.

Mr. Murphy stated, with regard to the concerns about the safety of the canopy tour, that each guide is required to complete 80 hours of training prior to leading a tour. Each participant is strapped into a trolley, which is propelled by the force of gravity. The petitioner provided to the staff and Commission members copies of their operational safety standards, which are enforced by the Association for Challenge Course Technology. The ACCT authorizes third-party, independent inspectors, who inspect canopy tours and ziplines for compliance with those standards. The Boone Creek Outdoors facility was inspected by a third-party inspector, Bonsai Designs, and passed the inspection. The petitioner is required to maintain insurance for the canopy tour, which also requires inspection of the facility to ensure that it qualifies. Referring to excerpts from a study conducted by a canopy tour facility that has been in existence for approximately 40 years, Mr. Murphy said that the industry, as a whole, reported only five injuries per million hours of participation. Backpacking had 192 injuries per one million hours of participation, and basketball had a rate of injury 500 times as great as ziplines. He noted that there have been zipline accidents, but the majority of those occurred on unregulated, backyard ziplines, which were not professionally run or inspected.

Mr. Murphy said that the proposed outdoor recreation facility is located 300 yards from an interstate interchange; while Raven Run, a popular nearby outdoor recreation area, is located several miles down a narrow, two-lane country road. He stated that traffic tends to travel to Raven Run in large numbers, particularly during the summer and on weekends with nice weather, while the Boone Creek Outdoors facility regulates traffic by using a reservation-only system. Both facilities are covered by the Cleveland Road station of the Division of Fire and Emergency Services; the response time to the subject property is four minutes, while the response time to Raven Run is approximately 16 minutes. Emergency medical technicians at that location respond to every call, so assistance will always be nearby in the event of accident on the subject property. In 2013, 34,500 people visited Raven Run, while the petitioner anticipates a maximum of 25,000 participants per year. Mr. Murphy said that the petitioner contends that the proposed canopy tour, when compared with Raven Run, would create less of an impact on the area and have a much lower rate of injuries, with a faster response time in the event of any injury or accident. The proposed number of visitors will be smaller those visiting Raven Run, and they will be able to use the existing septic system on

the property. In addition, all visitors to the subject property will be supervised at all times, as opposed to roaming freely on the property.

Mr. Murphy stated that the Kentucky Department of Agriculture has determined that ziplines are not an amusement ride, an issue which was raised during the petitioner's hearing before the Board of Adjustment in 2011. After that hearing, state regulations were changed to clarify that canopy tours and ziplines are not considered amusement enterprises.

Mr. Murphy presented an electronic petition, with approximately 590 signatures, in support of the proposed outdoor recreational facility. He added that the petitioner had received letters of support from notable residents, including Jim Host and Dr. Everett McCorvey; as well as groups including Scout troops, and many out-of-state visitors.

Mr. Murphy stated, with regard to questions about why the former restaurant building had not been removed from the property as proposed, that the petitioner had originally proposed to construct two houses on that portion of the property; but the request was disapproved by the BOA. The petitioner would now like to have the ability to sell canopy tour photographs and t-shirts as souvenirs, but the Planning Commission would have to decide whether or not to allow such retail sales on the property.

Mr. Murphy asked that, if the Commission members were in doubt about the proposed conditional use, they might consider recommending approval, with a one-year review as a condition of that approval. After a year, the Commission would be able to see if the canopy tour had a negative impact on the community. Mr. Murphy stated that "accessibility is preservation." He said that the historic preservation movement has proven that if people know what needs to be preserved, it builds support for that preservation. The petitioner contends that, if people can see and interact with the natural areas of Lexington-Fayette County, they will be much more likely to support preservation of those areas. Two years ago, Lexington-Fayette County was named the most sedentary community in the United States; the petitioner contends that allowing the proposed canopy tour would provide an opportunity to help change that.

Sarah Smith, Smith Management Company, stated that her company had conducted a preliminary environmental assessment of the subject property, and began creating a "best management practices" plan to maintain the property in its pristine condition. She said that the canopy tour is "the lightest touch on the land," since participants use ziplines rather than hiking, and paths or steps are provide only in very limited areas. The property is beautiful and pristine, and the canopy tour would make it accessible to people who currently do not have the ability to enjoy it.

Ms. Smith stated, with regard to Mr. Murphy's comments about invasive species, that they can also contribute to a monoculture since they have no natural enemies. The changing of a flora environment to a monoculture can also impact the fauna, which can create a domino effect. There are many ash trees on the property, including some on the canopy tour, which are being heavily treated in order to keep them healthy and alive.

Ms. Smith said that a septic system can work very well for a use such as the one proposed, noting that Raven Run has a septic system as well. She stated that state regulations for the size of septic systems require that a visitors center with a maximum occupancy of 90 people must account for five gallons of flow per person, or roughly the equivalent of usage of a three-bedroom house. There is also sufficient space on the subject property in case the existing system needs to be expanded or rebuilt, which would be determined by the Health Department.

Ms. Smith stated that, although agriculture is one of the most important land uses in the state and in Lexington-Fayette County, it is not necessarily environmentally friendly. The Environmental Protection Agency has recently begun issuing warnings about nutrients in water systems, which come from fertilizers and animal waste. Too many nutrients in a water source can result in a system that is out of balance. In addition, use of a property for agricultural purposes results in differences in the soils. Ms. Smith said that the compaction of the land by animals and farming equipment is obvious along the petitioner's fenceline that adjoins a formerly active agricultural property, where the soil is heavily compacted. On the subject property, where the soil has been left in its natural state and is much less compacted, the trees are healthier.

Dr. Ryan Sharp, Assistant Professor in the Department of Recreation and Park Management at Eastern Kentucky University (EKU), stated that he served on the recreation ZOTA committee and as an outdoor recreational planner for the National Park Service. He said that "ecotourism" is a term that is used frequently, but it is hard to define. Most literature indicates that it "promotes environmentally positive behavior" in order to properly and responsibly manage environmentally sensitive areas, as well as for economic reasons. Dr. Sharp said that it is in the petitioner's best interest to properly preserve the area that is essential to his business, since that is the primary reason for customers to visit his property.

Dr. Sharp said that the proposed canopy tour will have a significantly reduced impact on the subject property, compared to other types of outdoor recreational uses. The main impact on the property—the installation of the

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

canopy tour—has already occurred, and the ACCT indicated that the petitioner had made every effort to follow best management practices and ensure that the trees stay healthy. In contrast, many public recreational areas suffer from erosion, compaction, and trampling on their trails. Compaction and erosion result in the flow of rainwater to streams, creeks, and rivers, which are sensitive areas.

With regard to the debate about commercial vs. non-commercial recreational uses, Dr. Sharp stated that an argument could be made that commercial recreation could have more of a negative impact. He said there is no inherent difference in the two types of entities; however, the deciding factor is how the area is managed. There are many public lands that have been nearly destroyed because of overuse, while responsibly-managed commercial areas thrive. One of the positive aspects of commercial recreation uses is that, unlike public uses, they have sufficient resources and staffing to manage the land, because they are better funded. Dr. Sharp said that, in addition, restricted access to the property could reduce negative impacts, since they are not constantly open to use by the public.

Dr. Sharp stated that Boone Creek Outdoors could be a great resource for his students at ECU, since it could provide "a model for how an environmentally-friendly, well-done tourism operation can be run." He said that people cannot connect to areas to which they do not have access, and they typically do not care about things to which they have no connections. Preservation and conservation are not likely to occur if people are not allowed to visit natural areas. Dr. Sharp opined that the proposed canopy tour could provide a fantastic opportunity for people to connect with the land and develop pro-environmental behaviors. He read the following quote, from Wendell Berry: "We have the world to live in, on the condition that we will take good care of it. To take good care of it, we have to know it. And to know it, and to be willing to take care of it, we have to love it."

David Brassfield, owner of S.T.E.P.S., the leading constructor of canopy tours in the United States, stated that his company was the principal sub-contractor during the construction of the canopy tour on the subject property. He said that the petitioner hired his company in 2011 to view the subject property and determine if he was "the sort of owner we would want to work with." Mr. Brassfield's company specializes in outdoor education, including active recreation; canopy tours provide a means of guided exploration of a natural setting, with very little impact on the land. Mr. Brassfield compared a canopy tour to an arboretum, but "from a bird's-eye perspective."

Mr. Brassfield stated that, before his company commits to work on a project, he wants to know about the property owner's values, experience, and reasons for wanting to construct a canopy tour. He said that he spoke with Mr. Carey at great length, and explored the property thoroughly, in order to determine if he had a true commitment to outdoor education; conservation; environmentalism; good customer service; ongoing guide training; regular reviews; sustainable environmental practices; ongoing course inspection; first-rate safety practices; and operation according to best management practices for course maintenance. He determined that the petitioner was the right sort of person, and the subject property was the ideal setting, on which to construct a canopy tour. Mr. Brassfield opined that the subject property was the most beautiful place where his company had constructed a tour.

Mr. Brassfield stated that, after his company agreed to work with the petitioner, they surveyed the land and figured out how to lay out the land and tell a story by starting participants out "low and slow." The course was designed with aerial walkways that allow participants to pause and look around at particularly scenic areas, including a guide-operated rappel from one platform to another. The ziplines were threaded with minimal intrusion or pruning to the trees.

With regard to concern about canopy tour safety, Mr. Brassfield stated that he had recently spoken at length with Robert Monahan, the principal program creator for insurance policies that cover canopy tour courses; adventure challenge courses; and professional course builders' liability coverage. Mr. Monahan indicated that there had been some information in the media about accidents on commercial ziplines, some of which were severe. However, on the whole, the number of incidents is very small compared to other types of recreation, and many of the places where accidents occurred did not use professional builders or follow best practices. Mr. Brassfield asked if Mr. Monahan had processed a claim in the past nine years on any of the 25 courses he insures, which process 200,000 participants a year; and Mr. Monahan indicated that "not one single incident had ever been reported."

Note: Chairman Owens declared a brief recess at 3:47 pm. The meeting reconvened at 3:54 p.m.

Citizen Opposition: Don Todd, attorney, was present representing the Boone Creek and Old Richmond Road Neighborhood Associations, whose members oppose this request. He said that his clients contend that the proposed use of the subject property is not ecotourism, which is defined by the travel industry as "a form of low-impact tourism, to fragile, pristine, and usually protected areas, intended to provide funds for ecological conservation in that resource, and the local inhabitants." The opponents believe that the proposed use of the property will not protect the environmentally sensitive areas on the property, but will be used as a means to generate funds for the investors in the project. In their opinion, the additional activity on the subject property would increase the impact on the existing septic system, as well as overburden local emergency services and negatively impact the nearest neighbors. Mr.

Todd said that his clients do not believe that the proposed use of the subject property can be compared to Raven Run, which is much larger, remains in a pristine state, and is used for passive recreation only.

Mr. Todd opined that the proposed use of the property is not a canopy tour, but rather just a zipline, and that there is a distinction between the two uses. Canopy tours typically involve participants traveling through the canopy in a gondola, observing the flora and fauna. He said his clients contend that the use proposed is a high-speed amusement ride, and it is the major point of contention that the nearby residents have with the proposed project. If the petitioner had proposed a ropes challenge or walking course, or some other type of passive activities, there would have been no opposition from the neighbors. Mr. Todd said that, according to the participant numbers anticipated by the petitioner, the zipline could make as much as \$1.6 million a year, which is for the out-of-state investors "who brought it here to generate profit." The neighbors believe that the proposed zipline is the equivalent of a "modern-day rollercoaster," and that it is actually an amusement ride.

Mr. Todd stated that there were three cases in litigation concerning the subject property. He said that the Supreme Court had recently issued an opinion backing the injunction issued by LFUCG against the petitioner. The BOA has considered the conditional use on three separate occasions, and, each time, has determined that "the community is not ready for this." Mr. Todd said that there is no ordinance in place by which to govern the proposed canopy tour use and determine the appropriate parameters and restrictions for it. He opined that "this case is bigger than this case," and that it involves the entire planning process. Many area residents have been involved in the rural land planning process for many years, and they are deeply invested in seeing that any development in those areas is handled appropriately.

Mr. Todd said that, although the petitioner's request for a conditional use permit was denied, he constructed the canopy tour anyway. When he was cited, the petitioner indicated that he felt he had the right to continue the activity on the property, which was not halted until a court order was issued.

Mr. Todd stated that the petitioner's 2000 conditional use permit was issued for a piece of property that was purchased in 1997. At that hearing, the petitioner requested a conditional use permit for an anglers' club, and he agreed to remove the Jolly Roger restaurant building. The petitioner also agreed at that time to limit club usage to 60 members; but, in the years since, the subject property has been used for corporate events, weddings, and overnight guests, and the restaurant building was never removed. Mr. Todd said that his clients have lost their trust in the petitioner; and, given his history, they do not believe that this request should be approved, at least until the recreation ZOTA is approved to regulate the use. He noted that, while the current Zoning Ordinance has no provision to allow ziplines in the A-R or A-N zones, the text as proposed in the recreation ZOTA would work in the petitioner's favor.

Mr. Todd said that the petitioner acquired the subject property, which the deed indicated was one tract of land containing 23 acres, in April of 1997. In 2000, the petitioner requested a conditional use permit for the anglers' club, which was approved. The petitioner is now requesting a second conditional use for the same tract, although, Mr. Todd contends, only one principal building is allowed per tract of land, regardless of how many conditional use permits are approved for that property. He opined that no additional conditional use permits can be approved for the property, since it is only one tract of land with one deed source. In addition, Mr. Todd's clients believe that the Jolly Roger restaurant building should be removed, and that it cannot be used for any purpose, because it has been abandoned and unused since the petitioner's purchase of the property in 1997. Mr. Todd included in his exhibits a case law example from *Holloway v. Munford*, which indicates that, where it can be proven that a property was abandoned for more than 10 years, there should be a presumption that it was abandoned. The neighbors believe that, since the petitioner agreed to remove the building at the time of the 2000 conditional use permit hearing as a way to garner their support, he has reneged on the deal and is not entitled to use the building for a new conditional use. Mr. Todd read the following from the staff report on the requested conditional use:

"It was noted that there used to be a restaurant and truck stop/gas station on the property, which was the subject of the change of non-conforming use request. However, it was determined that the non-conforming use had been abandoned, and that portion of the request was disapproved."

Mr. Todd stated that this request is about community; protecting our heritage; integrity; and honoring one's word, not about "making an end-run around the Board of Adjustment." He said that the zone change to A-N is irrelevant, and his clients are not concerned about it; but the zipline is the main issue. Mr. Todd added that there were several citizens who wished to speak in opposition as well.

Chairman Comment: Mr. Owens asked that Mr. Todd present any expert witnesses at this time, and noted that there would be an opportunity for citizens to speak later in the hearing. Mr. Todd stated that he had time left in his presentation, and he would prioritize the citizens' comments.

Citizen Opposition: Cabby Boone, 1451 Walnut Hill Road, stated that she believes that the petitioner's request is confusing. She said there is not one document that lists all of the requests filed by the petitioner for the subject property, so it is difficult to determine what the petitioner wants to do. In addition, many of the activities listed in the petitioner's materials are ground-based, such as fishing and hiking, not limited to canopy tour activities as per the petitioner's assertions.

Ms. Boone said that many of the activities that have been offered on the subject property since the approval of the 2000 conditional use permit have been unapproved, and, in some cases, prohibited by law. She stated that she liked ziplining, but she does not believe that it is actually active recreation. Ms. Boone stated that she believes that the petitioner will be adding many activities on the property, not just ziplining, and she asked that the Commission consider the entirety of the request prior to making a decision.

Marquette Gardner Piersawl, 1816 Gerald Drive, stated that her 11-year-old daughter was severely injured when she fell from a portable zipline at the Crawfish Festival at the Red Mile racetrack. She said that the accident had changed both of their lives.

Ms. Piersawl said that, since her daughter's accident, she has learned that portable ziplines are not regulated by the Commonwealth of Kentucky, or LFUCG, which allows such attractions to operate anywhere within Lexington-Fayette County. She asked, on behalf of her daughter, that the Commission not allow any permits for ziplines, canopy tours, or portable ziplines, until significant regulations are in place to ensure the safety of the general public.

Ms. Piersawl stated that she had obtained approximately 500 signatures on a petition to encourage state and local governments to enact laws governing commercial ziplines, canopy tours, and portable ziplines. She asked that the Commission not allow another family to go through what she and her daughter had been through since her accident.

Dr. Mike Hanley, 1400 Munch's Corner, stated that he is a physician at Samaritan Hospital in Lexington. He said that, if Ms. Piersawl's daughter had been injured at the Boone Creek Outdoors facility, it would have been difficult for emergency services to reach her, and it might have taken a long time. Dr. Hanley said that he had witnessed two accidents in remote areas; and, in both cases, it took a helicopter to reach the injured individual. He noted that it would not be possible to land a helicopter on the subject property, because the tree canopy is too heavy.

Dr. Hanley said that he believes that the canopy tour equipment is difficult to maintain. He opined that, given the petitioner's track record, he does not trust him to maintain it properly.

Sandy Shafer, 206 Vista Street, stated that she was a Councilmember from 1994 to 2006. She said she participated in the Parks master plan; helped create the Parks Board; completed four playgrounds; helped start the Kentucky Rails-to-Trails Council and Town Branch Trail; and helped preserve the rural settlements. She noted that she had not represented the rural areas during her time on the Urban County Council, but she understood the importance of rural activities in the community. Ms. Shafer added that she participated in the Kentucky Parks & Recreation Society; was the Kentucky representative to the National Recreation & Parks Society; and was the Kentucky delegate on the National Parks & Recreation Board of Trustees.

Ms. Shafer said that she was opposed to the conditional use permit, and in support of the reservation of environmentally sensitive areas for non-commercial, passive types of recreation uses such as hiking, fishing, and wildlife observation. She said that there are thousands of acres of non-commercial open space and park land open to the general public in the Rural Service Area, and that the southeastern portion of Lexington-Fayette County is not underserved for those types of uses. Boone Station, which is a Kentucky state park, is located nearby, and there are many other public uses in the vicinity. The Boone Creek focus area is designated in all adopted LFUCG plans for conservation and preservation, due to its environmentally-sensitive nature. Ms. Shafer said that Raven Run, also located nearby, is 732 acres dedicated to preserving the natural beauty of the Kentucky River palisades. Hisle Park, located to the northeast of the subject property, also offers equestrian trails, and there are several areas of rural Lexington-Fayette County that include Share the Road campaign bike lanes. She noted that the Iroquois Hunt Club, located on Grimes Mill Road, also provides the opportunity for active recreation.

Ms. Shafer stated that "good intentions do not always mean good rules for the rural area." She said that a great deal of thought and preparation went into the Rural Land Management Plan, which calls for well-thought ways of allowing residents to enjoy the rural area, while providing security for agricultural operations and avoiding environmentally sensitive areas.

Tom Lowery, 823 Munch's Corner, stated that his home is located about one mile upstream from the subject property. He said he does not agree with the petitioner's assertion that there will be "no feet on the ground" for the proposed canopy tour, since the Boone Creek Outdoors website indicates that hiking trails will be available.

Mr. Lowery said that, as an engineer, he believes that ziplines are frightening. He opined that the Commission should want to choose which entities regulate and inspect the ziplines, rather than allowing the petitioner to choose.

Mr. Lowery stated that he was aware that there was a low probability of an accident occurring; but, when something does happen, it could be catastrophic, given the height of the ziplines.

Jim Lurton, 7098 Turner Station Road, stated that his home is approximately two miles north of the subject property. He said that zoning regulations require that any conditional uses in a zone be specifically enumerated in the regulations, or substantially similar. Mr. Lurton opined that a zipline use is not substantially similar to any of the permitted uses in the A-N zone, so it does not seem to him that the Planning Commission could approve the zipline.

Helen Powell, 629 Sayre Avenue, stated that she believed that the proposed zone change and conditional use would adversely impact the historic and ecological significance of the Boone Creek Rural Historic District, which was listed on the National Register of Historic Places in 1994. She noted that she was well-acquainted with the Boone Creek area, since she wrote the National Register nomination.

Ms. Powell said that she has owned a consulting firm focusing on historic preservation for over 30 years. She said that she was also the co-author of the LFUCG Greenspace Plan, which was written in 1994. The Greenspace Plan is one of the foundation documents of the 2013 Comprehensive Plan, which leaves no doubt about the community's emphasis on preservation of cultural and natural resources. The Comprehensive Plan also notes that Boone Creek was one of the focal areas of the Greenspace Plan, including valuable resources, such as streams and natural areas.

Ms. Powell stated that the historic agricultural pattern in Boone Creek is different from other areas of Lexington-Fayette County. The palisades, steep slopes, and shallow soils were left undisturbed there, with agricultural production limited to the uplands and mills and distilleries established along the stream. In 1994, the National Park Service recognized the historic significance of the Boone Creek Rural Historic District, by listing it on the National Register. This recognition indicates that the area is of national historic significance, and needs to be protected.

Ms. Powell stated that the subject property is located within the boundary of the National Register district, but opined that the petitioner does not think that designation is important, since that commendation is not mentioned on the Boone Creek Outdoors website or in the rezoning application. She said that the Comprehensive Plan states:

"Lands in southeastern Fayette County contain Kentucky River tributaries which feature cliffs and gorges that support diversity of native plants and wildlife. West of Boone Creek in Fayette County are Elk Lick Creek, also known as Floracliff, and Raven Run. To the east in Clark County is Lower Howard's Creek. Floracliff and Lower Howard's Creek have been designated Kentucky State Nature Preserves. Six hundred species of plants and 200 species of birds have been identified in the Raven Run Nature Sanctuary. In these three nature sanctuaries, activities which have the potential to harm the native trees, whose root systems and canopies protect ecologically rich steep slopes, are strictly prohibited. Recreation is passive to limit harm to the natural resources."

Ms. Powell said that Boone Creek has the same geology, wild diversity of plants, and wildlife habitats as Floracliff, Raven Run, and Howard's Creek; so the petitioner should not be pursuing activities on the subject property that would never be allowed in those nature sanctuaries. She opined that the petitioner's plans will "distort and disfigure" the trees, ultimately leading to reduction of the tree canopy that protects the creek's steep slopes and diverse plants. Ms. Powell stated that the 2013 Comprehensive Plan notes that "Lexington's citizens view the Bluegrass landscape as the defining feature that makes Lexington unique." She said that, according to the Lexington Visitors Center, their most requested publication is the walking and driving tour map, which includes Grimes Mill and Athens-Boonesboro Roads, as well as the Boone Creek Historic District.

Ms. Powell stated that the Bluegrass cultural landscape is "the equivalent of California's redwoods." She said that the front cover of the 2013 Comprehensive Plan features a photograph of a tree-lined rural road, passing through the rolling Bluegrass landscape, further emphasizing the Plan's assertion that Lexington's rural areas are an important part of the quality of life. Ms. Powell stated that the Planning Commission members are charged with upholding the vision and values of the Comprehensive Plan, and, as such, they must vote to disapprove the requested zone change and conditional use.

Joan Meyer, a resident of Clark County along Boone Creek, stated that no one had notified or mentioned Clark County residents as part of this rezoning request. She said that the farmers of the Southwest Clark County Neighborhood Association have also removed invasive species from the area, but they have not received recognition for it.

Ms. Meyer said that, at one time, the petitioner had a plan that proposed the construction of three bridges across the Kentucky River into Clark County, but no one had consulted the Clark County residents to see if they agreed with the proposal. She stated that farmers know that tourists in rural areas do not stay on designated paths; and, on her farm,

she has had animals killed by tourists. Ms. Meyer does not believe that participants in the canopy tour will stay on the petitioner's property.

Alston Kerr, 5660 Old Richmond Road, stated that the Zoning Ordinance limits the size of a commercial outdoor recreational facility to 10,000 square feet. She believes, however, that the petitioner's development plan did not calculate the square footage on the property correctly, because it did not include all the buildings and structures that are proposed for the property. Structures are defined in the Ordinance as "anything constructed or made, the use of which requires permanent location in or on the ground, or attached to something having a permanent location in or on the ground." By that definition, Ms. Kerr believes that the permanent decks and platforms attached to the trees on the canopy tour qualify as structures, and should be figured into the total square footage on the property, for which a building permit should have been obtained. When the decks and platforms are figured in, the total square footage on the property would exceed 10,000 square feet. Ms. Kerr said that the petitioner's application and development plan are very vague with regard to what structures exist or will be constructed on the property, but it is easy to determine the square footage of the buildings that already exist; calculation of that square footage will prove that the square footage limit has been exceeded.

Charles Martin, 7416 Grimes Mill Road, stated that he has been active in preserving the natural resources of Boone Creek since 1978, including participation in the natural area designation as a state nature preserve; the implementation of the Boone Creek Watershed Study; and the National Register of Rural Historic Districts study. He said that his property currently has designations for the removal of bush honeysuckle, as well as contracts with Tourism Arts & Heritage and the Department of Fish and Wildlife, under which he installed 4,000 feet of fencing to keep cattle out of the creek and ponds.

Mr. Martin's entire farm has conservation easements, which protect the fragile calcified waterfall along Boone Creek. Referring to a map of PDR easements, he noted that he shares a boundary with the subject property, near the waterfall. Mr. Martin said that he was surprised when photographs of the waterfall began appearing in local and national publications, including one article in which the petitioner indicated that the highlight of the canopy tour would be a "canyoneering portion, wherein participants will climb the waterfall with support rope and careful guidance." He contends that the zipline is just a small portion of the activities proposed on the subject property, displaying several photographs of evidence to support that contention, and noting that many of those activities take place at ground level. Mr. Martin also contends that the waterfall is located 117' from the petitioner's property, on property that is protected by PDR easements. He explained that, under the Lexington-Fayette County PDR program, outdoor recreation activities are encouraged. However, commercial recreational activities—specifically, hunting, fishing, and hiking—are prohibited. In an effort to ensure that his property boundary information was correct, Mr. Martin had his property re-surveyed, including going to the point of connection between his property, Mr. Park's property, and the subject property. Standing at that point, the waterfall is visible, but slightly around a corner.

Mr. Martin opined that the proposed canopy tour cannot be incorporated into the rural area without significant negative impacts on the subject property, as well as the surrounding properties. He said that there are hiking trails across his property, and several survey stakes have been placed there as well. Mr. Martin does not believe that the proposed use of the subject property will contribute to the National Historic District or the PDR easements, nor will they enhance water quality. He asked the Planning Commission to disapprove this "gross, poorly-defined activity in Fayette County's most fragile and special environmental area."

Betty Webb, 145 Chenault Road, stated that she had been on a zipline canopy tour; and, although she loved it, it was "frightening, terrifying, dangerous, and unregulated." She said that she believed that the pristine Boone Creek area should be preserved as it is, and that the proposed zipline and canopy tour might be best located somewhere in the eastern part of the state, where ecotourism is a more important and necessary option.

Ms. Webb said that there are regulations and rules for a reason, and activities such as the proposed canopy tour should not be approved without those regulations in place.

Citizen Support: Sarah Brown, Old Richmond Road, stated that she has been a direct neighbor to the subject property for 17 years, and she has seen no impact in traffic or noise from the subject property. She said that she has participated in the canopy tour several times, and she encourages residents and visitors to try it, in order to view a portion of Lexington-Fayette County that is typically hidden from most residents. Two of Ms. Brown's children, as well as her father, have all participated in the canopy tour as well, and they all thoroughly enjoyed it.

Ms. Brown does not agree with the opposition's contention that the zipline is not actually active recreation. She said that the two-hour canopy tour is very active, involving a great deal of climbing and balancing. She acknowledged that there was a possibility of injury, but noted that many day-to-day activities carry a risk of injury, as well.

Ms. Brown stated that she believes that the canopy tour, as well as other activities in the Old Richmond Road area, such as corn mazes and wineries, should be encouraged to work together to attract tourists to Lexington-Fayette

County. She said that Lexington residents drive to Indianapolis to participate in a zipline, and to the Red River Gorge to go hiking; but those activities could exist on the subject property, promoting the Lexington area.

Jane Harrod, 8385 Durbin Lane, stated that her farm, where her family has farmed for five generations, adjoins the subject property. She said the vicinity of the subject property is considered pristine only to "those who do not know what would be there." When the Clays Ferry Bridge was constructed, in 1948, bush honeysuckle was used for erosion control. It has since spread up Boone Creek, and taken over all of the properties in the area, including wiping out many wildflowers and native plants.

Ms. Harrod said that there are many restrictions placed on farmers who want to work their land, not as a tax break, but as a means to make a living. She stated that farming can be destructive to the land, creating erosion and compaction. When the interstate was constructed, Ms. Harrod's family lost much of the tillable land on their property, and were "left with the interchange at their front door."

Ms. Harrod stated that there are historic structures on her property, but they do not pay taxes. She said that she is a huge supporter of Boone Creek Outdoors, and that the petitioner has been an excellent neighbor. She added that they care deeply about the area.

John Park, 8151 Old Richmond Road, stated that he has previously served as the petitioner's legal counsel, but was now speaking as a neighbor. He said that there is no other property owner who lives closer to the canopy tour project than he does. He added that it was very difficult to listen to individuals attacking his friend and maligning his motives and integrity, and that he believes that "our community is better than that."

Mr. Park stated that, while the canopy tour was operating in 2013, it had no impact on his property with regard to noise or traffic. He said that there was no sound impact on the horses boarded on his property, likely due to the muffling of sound by the forest canopy and nearby interstate noise.

Mr. Park said that the subject property is not located within the Old Richmond Road Neighborhood Association area, but rather the Clays Ferry Neighborhood Association. He said that there are many good people associated with the Old Richmond Road NA, many of whom have been instrumental over the last 30 years in creating the land use policies that have preserved the rural landscape. He opined, however, "that does not give them veto authority" over everything that happens in the rural area. Mr. Park stated that those individuals do not represent him, his neighbors, or his neighborhood, which is dominated by Interstate 75 and the Kentucky River. The Clays Ferry neighborhood has unique problems, challenges, and opportunities, and he believes that the most important of those opportunities is low-impact, outdoor, nature-based recreation. Those uses would have much less of an impact on the environment than residences or agriculture.

Mr. Park stated that his property, which is known as the Cleveland Rogers property, is listed on the National Register of Historic Places. He said that the canopy tour project has served to increase people's awareness of the history of the area, and the importance of the Kentucky River and the palisades, which are used as a water source and means of transportation. Mr. Park stated that Boone Creek Outdoors does not detract from his property.

Sarah Steele, 2012 Woodwind Court, Berea, read the following into the record:

"My name is Sarah Steele. I am a canopy tour guide at Boone Creek Outdoors (BCO). I help to maintain the course through frequent inspections, and make sure that no one is on the property who isn't meant to be there. A large part of my job is to ensure the safety of our participants through the proper upkeep of lines and platforms, as well as enforcement of necessary safety procedures. Sometimes, I am called upon to help the many people who just end up there. For the past year, I have lived at the BCO business location at the top of the hill, which is not an abandoned structure, and I have seen a multitude of people use this spot as a place to pull off the interstate to get directions, deal with car trouble, and even because of health problems. Once, when we were still in operation, a man having a heart attack pulled into our parking lot while his wife dialed 911. She was initially connected to the emergency services in Richmond, which could not locate the couple outside of Madison County. Luckily, we were there to help her get in touch with a response team in Fayette County, saving her husband priceless time in getting help. It is necessary for there to be people at this location, willing to direct and assist the people who naturally pull there.

Before I was hired as a canopy tour guide, I was afraid of heights. But, after the 80 hours of guide training we received to teach us about proper safety procedures and emergency response scenarios, I found that I had overcome my fear and replaced it with knowledge. As a tour guide, I have seen numerous others conquer their own fears while learning about Kentucky's natural environment from a bird's-eye view. I honestly couldn't imagine a better

line of work. Our canopy tour is a fun, safe, exciting experience for tourists and native Kentuckians alike. It also serves to raise awareness about the history and natural landscape of the area. Given knowledge of the land and access to it, many people have already volunteered to help maintain and preserve the natural beauty of Boone Creek. Without their help, wintercreeper and other invasive species would slowly but surely strangle the native vegetation. And without the canopy tour, few people would even be aware of the beauty that is hidden in Lexington's own backyard, let alone of the need to preserve it. It seems strange that, under the current zoning restrictions, the land in question could be legally clear-cut for profit. It would be a far better alternative to share this area with others who would help to care for it. I understand that there is fear about how the land will be used if it is rezoned, but that shouldn't keep us from exploring new ways of using the land in a way that actually benefits it. This is a good thing we are doing, and we want to do it in a good way. So, let's open a dialogue about how to best regulate ecotourism, instead of shutting down the conversation. Let's figure out how to allow business that changes the way people think about the land and their connection to it. Let's move beyond our fears, step off the edge, and fly."

Jimmy Fennell, Fayette County resident, stated that Boone Creek is not easily accessible to the public, but the canopy tour provides a way to enjoy the beauty of the area. He said that the petitioner has participated in activities to beautify the entire area, including trash pick-ups along Old Richmond Road. Mr. Fennell said that the canopy tour provides a great opportunity for people to enjoy everything the area has to offer.

Citizen Opposition: Carolyn King, 2470 Grimes Mill Road, stated that her 79-acre property has been placed in a conservation easement with the Bluegrass Conservancy. She is also registered with the American Tree Farm Association.

Ms. King stated that the intentions of the landowners in the Boone Creek area are "land conservation and farming, not development and commercialism." Many of the property owners have conservation easements, and approximately 95% of the owners want to protect Boone Creek from development. Ms. King said that the unique geology of the area and healthy, undisturbed ecosystem of the area took millions of years to develop, and it requires the courage of property owners to protect it. In her opinion, the land has its own development plan, and that cannot be improved upon by altering the land, developing it, or making it commercial.

Ms. King asked that the Commission members consider the impact of the proposed zone change on the Boone Creek area, since it could set a precedent, and that the Commission disapprove this request.

Keith Moorman, 999 Boone Ridge Lane, stated that his property is located in Clark County, across Boone Creek from the subject property. He said that he is not opposed to development in rural areas, but he does not believe that the proposed development has been well thought out, possibly because no standards are in place to regulate it.

Mr. Moorman stated that he is concerned about emergency access to the subject property, since any approach to it from the Clark County side would require travel across his property, for which no one has asked permission. He added that he is also concerned about additional traffic on Old Richmond Road, since there are no traffic controls, and drivers would not be prepared for traffic stopping at the Boone Creek Outdoors access. Mr. Moorman said that these are just some of the many issues that need to be addressed prior to the development of the subject property, and he asked that the Commission disapprove this request, in order for those concerns to be resolved.

Julie Goodman, 3998 Athens-Booneboro Road, stated that she is not opposed to the proposed A-N zoning, but she is opposed to the requested conditional use.

Ms. Goodman said that she believes very strongly that the requirements of the law and the Zoning Ordinance should be followed, and that the subject property is non-conforming. The property is only 20 acres in size, and both the A-R and A-N zones require a minimum of 40 acres. In addition, she believes that portions of the requested conditional use are non-conforming, particularly the former Jolly Roger restaurant building, which the petitioner agreed to remove at the time of the approval of the 2000 conditional use permit for the property. Ms. Goodman opined that the petitioner is in violation of that conditional use permit, and that the Zoning Ordinance makes it very clear that a conditional use cannot be amended while there are existing violations.

Ms. Goodman stated that she also believes that this conditional use request is the same as the one requested of the Board of Adjustment in 2011, which was disapproved. The BOA found that the request was inappropriate at that time, and the Fayette County Court upheld that ruling, finding that the BOA had followed the law and issuing a cease and desist order to the petitioner. She read the following from Judge Ishmael's order: "The Boone Creek Properties shall cease operating ziplines and canopy tours on the property, and shall comply with the 2000 conditional use permit on the property."

Ms. Goodman said that she believes very strongly that, until the petitioner is in full compliance with the 2000 conditional use permit requirements; the cease and desist order; and Judge Ishmael's orders, that there is nothing to justify any changes to the decisions made by those entities. She asked that the Commission deny the requested conditional use permit.

Melissa King, 195 Ashley Woods Road, stated that she does not believe that there is enough parking, as depicted on the development plan for the property, to accommodate the proposed uses. She stated that the petitioner's website and other materials have listed many uses on the subject property, and read the following from the Zoning Ordinance: "Combined uses shall provide parking equal to the sum of the individual requirements." Ms. King believes that there are so many different activities listed and requested for the property that it would be impossible to accurately calculate the parking needs. She asked that the Planning Commission disapprove this request, based on these and other facts that had been presented.

Graham Wilson, 2300 Abbeywood Road, stated that he believes that the petitioner's request is in violation of the Zoning Ordinance for not filing a tree inventory map or tree protection plan prior to construction of the canopy tour, or designating a required Tree Protection Area. He read the following from the Zoning Ordinance, as it pertains to conditional use permits in the A-N zone: "The Board must find that adequate safeguards will be in place to ensure the least negative impact on the land." Mr. Wilson said that there had already been a negative impact on the land, since the petitioner constructed the canopy tour and cut trees without filing the proper documents. He read the following from the Zoning Ordinance: "Each act, or each healthy tree removed or damaged, except as described in the approved Tree Protection Plan, shall constitute a separate violation."

Mr. Wilson displayed several photographs of trees with canopy tour equipment installed, and a photograph of zipline activity taking place 40 days after the LFUCG Zoning Enforcement staff sent the Notice of Violation to the petitioner. He indicated that he did not agree with the staff's assertion that the canopy tour equipment was installed with minimal impact to the trees, since the photographs depict bolts and other damaging equipment in use.

Jon Larson, 783 Robin Road, stated part of his duties as Fayette County's elected Judge Executive involve the control of funding of county rural and secondary roads. He said that he was part of the Bluegrass Area Development District Tourism Committee. He said that, during his time on the Greenspace Commission and the Environmental Commission, he was part of a movement to stop the use of a landfill in McConnell Springs.

Mr. Larson said that he had participated in the canopy tour on the subject property, and was impressed. He noted, however, that he is also a member of the Metropolitan Planning Organization; and, as such, he is concerned about regional planning. Mr. Larson believes that Lexington-Fayette County has outgrown its city limits, particularly along the southern border. He noted that he believes in ecotourism, and that it is important for officials not to send a message that the area does not want tourism. Mr. Larson stated, however, that he believes it is necessary to conduct those activities regionally, by reaching out to other counties. He said that he does not want the proposed canopy tour facility to move ahead without first reaching out to surrounding counties.

Mary Diane Hanna, 6398 Old Richmond Road, stated that she is not opposed to ziplines, but rather "dealing with someone who flagrantly goes against the law, time and time again." She said that, if this request were for a gas station or strip club, none of the supporters of the canopy tour would be in favor of it; but she believes that those uses are the same as the proposed canopy tour, because "all commercial ventures on a rural piece of land are not allowed in the agricultural zones."

Ms. Hanna said that she would like for the Commission to ask the petitioner and Mr. Park, under oath, if supporting structures for the zipline are located on Mr. Park's property, which is protected by the PDR program. She said that, if that is the case, it would be in violation of the PDR regulations.

Ms. Hanna said that the petitioner continues to add uses to the subject property, and "what they ask for today is not necessarily what will ensue in the end result." She asked that the Commission be careful in their choices at this hearing, because it could set a precedent in the community and "affect planning and zoning forever."

Chairman Comments: Mr. Owens stated that, at this time, the meeting would need to relocate, in order to vacate the Council Chambers for the upcoming Council meeting.

Note: Chairman Owens declared a recess at 5:30 p.m., in order to relocate to the Phoenix Building 3rd floor conference room. The meeting reconvened at 6:00 p.m.

Chairman Comments: Mr. Owens asked, with regard to Ms. Hanna's comments, whether any zipline equipment had been installed on Mr. Park's property. Mr. Murphy responded that Mr. Park had been called away from the meeting briefly, but he had asked Mr. Park that question earlier. Mr. Park indicated to Mr. Murphy that the only piece of equipment installed on his property is a guy wire, which extends from one of the platforms to a tree on the Park

property. Mr. Murphy noted that the platforms are braced with guy wires in the same manner as utility poles, in order to take the pressure off the trees. He stated that, if the presence of that guy wire was a violation of Mr. Park's PDR agreement, it could be easily removed.

Petitioner Rebuttal: Mr. Murphy stated, with regard to the comments about additional uses and structures that exist on the subject property, such as canyoneering, that none of those uses are part of the petitioner's current application. He said that many of the uses mentioned seemed to be the result of rumors that had been spread around, or were listed on the 2011 BOA application, which included kayaking, ATV trails, and a canoe livery. That application was not approved by the BOA. The petitioner contends that it was completely different from the current application, and it was recognized as such by Judge Ishmael in his ruling of July 2014. Mr. Murphy noted that Judge Ishmael also ruled that that application had no impact on the current application.

With regard to Mr. Todd's comments about the removal of the Jolly Roger restaurant building, Mr. Murphy stated that the confusion about the removal of the building comes from a site plan that was filed along with the 2000 conditional use permit application, which included two single-family homes. A note on the development plan for the property indicated that those two buildings would be constructed, and the Jolly Roger building would be demolished. Mr. Murphy read the following from the staff exhibit dated February 27, 2014, which included the minutes of the 2000 conditional use permit hearing before the BOA: "Action: A motion was made by Ms. Ruff, seconded by Ms. DeBoor and carried, to approve Boone Creek Properties, LLC, excluding the construction of two cabins." From the same meeting minutes: "And to disapprove the administrative appeal to change and relocate one non-conforming use (a restaurant and gasoline sales) to another non-conforming use." Mr. Murphy explained that the BOA disapproved the request to build two cabins and move the use of the Jolly Roger building, but there was no requirement at that point that the development plan be amended accordingly to agree with the use that was acted upon. The restaurant building was not torn down; it has been used since that time, and is currently in use as a caretaker's residence. Mr. Murphy said that the application before the Commission today is a canopy tour, which is depicted on the corollary development plan; and it does not include kayaking, ATV courses, or any of the other uses mentioned by the opposition. In addition, a gate will be installed on the property to prevent participants in the canopy tour from traversing the Boone Creek area on foot.

Mr. Murphy stated that, when the petitioner filed his conditional use permit request in 2011, the Kentucky Department of Agriculture was taken by surprise, because there were no regulations in place for zipline tours. After that action, and not at the request of the petitioner, the Department of Agriculture amended the administrative regulation 302KAR16:091 to state that: "Amusement ride or attraction shall not include rope courses; tree swings; platform swings; canopy tours; mobile and permanent ziplines; swinging bridges; and obstacle courses," indicating that those uses were not classified as amusement rides.

Mr. Murphy said that there had been a number of comments about the petitioner's violation of the injunction that was filed for the canopy tour. He entered into the record Judge Ishmael's July 30, 2014, order, in which the Judge noted that this request is different from the 2011 application, noting that the facility planned in 2011 "was to have a canopy tour; ropes course; climbing walls; hiking; biking trails; overnight camping; canoeing; kayaking; a fish hatchery; and other activities...Boone Creek's current application is substantially different from the 2011 conditional use application." Mr. Murphy noted that the same order notes that the temporary injunction still holds on expanding the 2000 conditional use permit to include the canopy tour, but the Planning Commission was required to hold a hearing on the new application.

Mr. Murphy stated that the legal rule of "just and generous" indicates that, when a list of examples of outdoor recreational uses is provided, which is the case in the Zoning Ordinance, those are examples, and not limitations. He said that the petitioner is concerned about the commenter whose child who was injured on a temporary zipline at the Red Mile, noting that the petitioner had been asked to erect temporary ziplines at a couple of different events in Lexington-Fayette County, but he declined. The petitioner contends that those types of ziplines are erected with no standards at all, and he does not participate in those types of events. The petitioner's facility is regulated by the codes of the Association for Challenge Course Technology, whose codes inform the adoption of many local governments' regulations for ziplines and canopy tours. Mr. Murphy noted that the petitioner's facility was inspected by an independent agency, licensed by the ACCT, and was found to be in compliance. He said that there is an element of danger in the canopy tour; but it is very safe when done properly, and there are many daily activities which are more dangerous.

With regard to Mr. Todd's comments about allowing more than one principal use on a lot, Mr. Murphy said that it is permitted under the Zoning Ordinance if a development plan is filed, which the petitioner has done. The petitioner is asking for what is depicted on the development plan that was filed.

Mr. Murphy said, with regard to the comments about notification for Clark County, that the petitioner and the staff had notified the Planning Director in Clark County, who reported no concerns about the proposed facility. He stated that the zipline does cross the corner of an adjoining property in Clark County, but noted that there are no platforms or stops in Clark County as part of the tour.

Mr. Murphy stated, in response to concerns about increased traffic in the area, that conditions on the development plan require the approval of both the Kentucky Transportation Cabinet and the LFUCG Division of Traffic Engineering. He said that both of those entities have reviewed the development plan, and the KTC approved the two access points to Old Richmond Road as depicted. Ms. Kaucher from the Division of Traffic Engineering indicated that it might be best to shift one of the access points slightly, to which the petitioner would be agreeable.

Mr. Murphy said that Sarah Smith, who spoke earlier, had to leave the meeting; but she asked him to note that Mayor Gray had recently discussed "establishing place" for Lexington-Fayette County, and the petitioner contends that the proposed facility can help to do so. He asked that the Commission give the petitioner the opportunity to be a good steward of his land, support his family with his business, and share the property with others. Mr. Murphy reiterated that, if the Commission is in doubt about the appropriateness of the canopy tour, they could choose to require a review after a year of operation. The petitioner is convinced that the business would have a successful record.

Opposition Rebuttal: Mr. Todd stated that he had prepared findings of fact for disapproval, which he circulated to the Commission members.

Mr. Todd said that the Planning Commission "has to focus on the breadth of this issue, not just whether a zipline can be located on a 23-acre tract." He stated that the primary question is whether the Planning Commission deems it appropriate and wise to approve a use and a zone, for which no other application has ever been filed, without there first being an appropriate ordinance in place. Mr. Todd said that the only examination of the canopy tour structures was conducted by someone who was paid by the petitioner for the service.

Mr. Todd stated that, since the subject property has one deed source and one existing conditional use permit, it cannot be approved for a second conditional use permit. In addition, he contended that the non-conforming Jolly Roger restaurant structure must be removed from the property, since the petitioner agreed to remove it at the time of the 2000 conditional use permit, and it has been abandoned for more than 10 years. Mr. Todd reiterated that the only use on the subject property should be the previously permitted anglers' club.

With regard to Mr. Murphy's comments about the Department of Agriculture's decision not to regulate ziplines as amusement rides, Mr. Todd stated that he was informed that the department did not have enough staff or money to monitor the issue, and that they would prefer for local governments to regulate and enforce them. He said that puts a greater burden on the Planning Commission, since they have been placed in the position of the regulatory body.

Mr. Todd stated that his clients and the staff had asked the petitioner to postpone this request because they had a number of concerns, including the lack of access to the subject property through Clark County in the event of an accident.

With regard to the question of whether zipline equipment is in place on Mr. Park's property, Mr. Todd said that he wanted Mr. Park to answer himself, rather than having Mr. Murphy answer for him. He urged the Commission members to require that Mr. Park answer the question.

Mr. Todd stated that Judge Ishmael's opinion indicated that it was not intended to rule on the merits of the application, but rather to provide the petitioner the opportunity to have his request heard by the Planning Commission. He added that the Supreme Court ruling was more important, in that it supported LFUCG's right to protect and enforce the Zoning Ordinance.

Mr. Todd reiterated that he would like for the Chair to ask Mr. Park about zipline equipment on his property.

Commission Question: Mr. Owens asked Ms. Jones if it would be appropriate to ask Mr. Park about the equipment on his property. Ms. Jones responded that the question had been answered, but the Commission could ask again if they so chose. Mr. Owens asked Mr. Park if there are any structures related to the tree canopy tour on his property. Mr. Park noted that it appeared that someone had been on his property without his permission. He answered that there is a guy wire attached to one of his trees, but there are no structures on the property whatsoever related to the canopy tour.

Staff Rebuttal: Mr. Sallee stated, with regard to Ms. Kerr's comments about the 10,000 square-foot limit and the proposed conditional use, that her handout indicated the total square footage shown as 17,000 square feet. He said that the entry just ahead of that was for 47 parking spaces and approximately 7,500 square feet of either paving or asphalt. The staff is not aware that laying of gravel or asphalt has ever been considered a structure locally; by subtracting that area from the square footage calculation, the use is under the 10,000 square-foot limit.

Mr. Sallee stated, with regard to Mr. Murphy's reference to the staff exhibit dated February 2014, that the Commission refer to Tab 3 of that document. He said that the action of the BOA in 2000 to deny two cabins on the property applied to two structures that were depicted on the site plan as being well behind the 300' building line. The BOA did approve the variance, from 300' to 50', which involved the options for the proposed housing site, which is to the left of that portion of the site plan. Mr. Sallee noted that the approval of the variance is in the record of the BOA's actions.

Ms. Wade stated that there are many references in the Comprehensive Plan about preservation and protection, but that Plan and the Greenspace Plan also refer to providing access to resources. She said that the full picture includes not only protection of the resources, but also being able to see and experience the historic resources.

Commission Questions: Mr. Penn asked if this conditional use request was materially different from the one heard by the BOA in 2011. Ms. Jones responded that she had already opined, in a memorandum to the Commission, that it was different, which was the basis for her advisement to the Commission that they had to hear the request. She said, for clarification, that the injunction that was mentioned during the hearing, which was recently affirmed by the Kentucky Supreme Court, was related to the Notice of Violation (NOV) filed against the petitioner. LFUCG indicated in that NOV that there was no conditional use permit in place on the property for the zipline or canopy tour activity; and that, until a granting or denial of a conditional use permit for that activity took place, the petitioner should not be allowed to continue the activity. The Court agreed with that assessment, and issued the injunction.

Ms. Jones stated that the most recent order, from Judge Ishmael, referred to the Commission's decision in February of 2014 not to hear the conditional use request. She noted that, at that time, she informed the Commission that her opinion was that they had to hear the case, and that opinion has not changed, because this is a different application, filed with a zone change. The petitioner appealed the Commission's decision, and Judge Ishmael issued an order that said:

"Boone Creek's application to the Planning Commission for a conditional use permit is substantially different than the 2011 conditional use permit."

Ms. Jones added that the petitioner's pending appeal of the 2011 permit application does not preclude the Commission from hearing this request. She said that her opinion had not changed, and that she still believes that the Commission must hear this request.

Mr. Penn stated that he was not referring to the size of the property, but the nature of the conditional use itself, and what types of activities it would allow on the property. Ms. Jones answered that this request is different, in that it includes fewer activities. She added that, because it is different from the previous requests, the Commission has the ability to condition it in any way they choose, should they wish to approve it.

Mr. Owens asked, with regard to Mr. Sallee's rebuttal comments, if the two houses he mentioned could still be built on the subject property. Mr. Sallee answered that, at the time of the approval of the conditional use permit, the drawing indicated that it would be a choice of one of the two houses, since a principal use allows one single-family dwelling on an A-R property. Mr. Owens asked if one house could be constructed. Mr. Sallee responded that it was a question for the Commission, since a caretaker's quarters is proposed for the former Jolly Roger's building. He said that the question of whether to allow an additional dwelling unit on the property could be part of the Commission's consideration of the conditional use permit.

Ms. Mundy stated that one of the citizens distributed a handout indicating that there are not enough parking spaces on the subject property; but, in their presentation, the staff asserted that there were sufficient spaces. Mr. Sallee answered that the minimum requirement of the Zoning Ordinance is 29 parking spaces; the petitioner is proposing 40 spaces for the canopy tour use, and they have a requirement of 15 for the anglers' club use. Part of the staff recommendation is that 13 of those spaces be located in proximity to the anglers' club building, on the east end of the property, which mirrors the 2000 site plan presented by the staff. The other question was whether there was a "practical" amount of parking proposed. Mr. Sallee stated that the staff believes that, as long as the ratio of people coming to the site is two persons per car, given the restrictions about the timing and number of tour participants, the 40 spaces for the new use should be sufficient. Ms. Mundy asked for clarification about a previous mention of 55 parking spaces. Mr. Sallee answered that the development plan depicts 55 spaces.

Mr. Owens stated that the hearing was now closed, and he opened the floor for Commission discussion.

Discussion: Ms. Plumlee stated that there is an unpredictable element to this request with regard to the ongoing court proceedings, as well as a recent Supreme Court ruling that the petitioner "must comply with zoning law, and cannot undermine government authority," although there has been a history of that on the property. She said that questions had been raised about the actual uses requested on the property, some of which were listed in the record of the Court's decision.

Ms. Plumlee said that the subject property, which is 20 acres in size, does not comply with the 40-acre minimum lot size in agricultural areas, so it is non-conforming. She opined that the proposed use is in conflict with the intent of the A-N zone, as well as the Comprehensive Plan; Greenway Master Plan; Rural Land Management Plan; and Parks & Recreation Master Plan. The Planning Commission had no input or oversight in the construction of the canopy tour, since the petitioner did not obtain the appropriate permits, and Ms. Plumlee does not believe that is the best way for planning and zoning to function. She said that the petitioner was also in violation of the Zoning Ordinance by removing trees and understory canopy in order to construct the facility, and no tree protection plan had been filed for the property. Ms. Plumlee also opined that a surety bond should be filed for the property, so that it could be returned to its original condition if the canopy tour business failed.

Ms. Plumlee stated that the staff recommended postponement of this request in order to have regulations in place for the canopy tour. She said that projects are more likely to be successful if rules and regulations are in place. She is concerned about the stewardship of the land, particularly that "good stewards do not impose on a neighbor's waterfall" or charge money for people to view a waterfall on someone else's property.

Mr. Drake stated that this is obviously a very contentious issue, as debate has surrounded it for a number of years. He said that, since he is a more recent member of the Commission, he was forced to base his conclusions on the current application, and the information that was submitted to accompany it.

Mr. Drake opined that it would likely be more comfortable for the Planning Commission, as regulators, to have a set of regulations or guidelines under which to make this decision; but he does not believe that it would be appropriate to delay or deny consideration of the petitioner's request because of something that may or may not occur in the future. Work on the recreation ZOTA has been ongoing for at least two years, and there is no way to determine at this point when, or if, it will be adopted, Mr. Drake opined; so it would be a "travesty of justice" to refuse to make a decision on this request today, even though that might be the easiest and most comfortable course of action for the Commission members.

Mr. Drake stated that it was difficult, in the development process, to find ventures that have synergies with environmental preservation. In this case, however, the Commission received letters of support from the Environmental Commission and others who testified to the environmental and educational benefits of this project. Mr. Drake said that part of the Commission's mission is to encourage income generation in Lexington-Fayette County, and he believes that the proposed canopy tour presents a unique opportunity to create harmony between commercial interests and those involved in environmental preservation.

Mr. Drake stated that there has been compelling testimony on both sides of this issue, which leaves the Planning Commission to rely upon their judgment to make the best decision for the citizens. He said that he believes that the rationale provided for approval of this request is stronger than the rationale for disapproval; that the proposed project would be beneficial for Lexington-Fayette County; and that this request should be approved.

Mr. Penn said that he was on the ZOTA Work Group that was attended frequently by Mr. Park and the petitioner, and he told the petitioner that his concern about this request was not about the petitioner himself, but about the creation of recreational uses in the agricultural areas. He noted that his primary concern throughout the process has been "to get it right." Mr. Penn stated that he fears that granting this conditional use request without regulation in place could set a precedent for uses that could have a negative impact on rural Fayette County. With 8,600 acres of land in the A-N zone and pressure to make the right decision, Mr. Penn said that, if he had to make a decision today, he would err on the side of caution and vote for disapproval of the requested conditional use.

Mr. Cravens stated that he had reviewed the drafts of the recreation ZOTA, and he noted that canopy tours are listed as a conditional use in the A-N zone. He said that the draft text would require an operational statement, safety statement, and other documentation, all of which had been provided by the petitioner with the application. He said that he could support the petitioner's offer of adding a condition requiring a one-year review of the conditional use.

Mr. Cravens said that the development plan is preliminary, and that issues like the sale of t-shirts and incidental items could be resolved at the Final Development Plan stage if that was a concern for any of the Commission members.

Ms. Mundy thanked the citizens for their attendance and opinions. She said that this request required a great deal of thought by all of the Commission members, and she appreciated the citizens' input.

Ms. Mundy expressed concern about the child who was injured on a temporary zipline, and opined that it might be necessary to add more regulations with regard to safety and inspections for those attractions. She said, however, that she is adventuresome, and she believes that the proposed canopy tour could be a good opportunity for Lexington-Fayette County, if it is done properly. She added that she, too, would support a one-year review of the conditional use, possibly with a surety bond.

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

Mr. Wilson also thanked the citizens for participating in the democratic process. He said that, although he would not participate in the zipline, his son would; and, as a parent, he would not encourage his son to participate in any such type of unregulated activity. Mr. Wilson opined that he "could not sleep well at night" if he felt like his vote of approval had encouraged the operation of a facility that is currently unregulated, knowing that there is an ongoing process to develop standards that would govern the facility.

Mr. Wilson said that he is not opposed to the canopy tour itself, and believes that it could provide a good opportunity for the community; but it is not appropriate for this community until regulations are in place.

Mr. Berkley stated that he sees no reason to oppose the requested zone change, and that the canopy tour is listed as a conditional use in the A-N zone under the recreation ZOTA draft text.

Mr. Berkley said, with regard to the requested conditional use, that he did not hear sufficient testimony to convince him that the canopy tour is not low-impact ecotourism. He stated that the canopy tour has been inspected; safety regulations are in place for it; and the petitioner has obtained insurance.

Mr. Berkley stated that there were many comments about conservation easements, and noted that any property owner who has such easements was either paid for the land or received a tax deduction for the donation of it.

Mr. Berkley opined that he did not believe that this request should be denied because the recreation ZOTA had not yet been enacted.

Ms. Richardson commended the petitioner for bringing a new idea to Lexington-Fayette County, and for making an extra effort to do it safely even though there were no regulations in place to govern it. She said she also appreciates the petitioner's concern for the protection of the land, noting that he must continue to treat it properly, since, without it, his business would not thrive.

Ms. Richardson stated that, when faced with something that has never been done, one must consider whether the desire is for progress in any fashion. She said that she appreciates the citizens' concerns; but it appears that the proposed canopy tour has been well-planned, although the petitioner made some mistakes along the way. Ms. Richardson opined that she was not in favor of waiting on the recreation ZOTA to move forward with this request.

Mr. Owens stated that there is a great deal of passion on both sides of this debate, and thanked the citizens for sharing their opinions. He stated that he personally had worked very hard on the recreation ZOTA, and he would continue to lobby until it is passed. Mr. Owens said that he does not believe that the zone change should have to wait on the ZOTA, and that he realized that the Commission had to make a decision today.

Mr. Owens said that he asked "how many conditional uses on a piece of property was too many," since there are no regulations that address the issue. He stated that there appears, from the materials submitted by the petitioner, to be a possibility of at least five separate conditional uses on the property, some of which were unfamiliar and undefined in the Zoning Ordinance. Mr. Owens opined that it was up to the Commission to determine if they wanted to allow the Jolly Roger building to remain on the property, since it was determined by the BOA to have been abandoned more than 10 years ago.

Mr. Owens stated that the number of visitors to the property projected by the petitioner "do not compute." He believes that the petitioner will provide the tree canopy tour to as many visitors as possible in order to reach the full moneymaking potential of the property, which could result in well over 25,000 participants per year. In addition, no information has been provided as to how intense the other proposed activities will be, and he believes that the Commission needs more information. Mr. Owens stated that the Subdivision Committee members have repeatedly asked the petitioner to show the exact location of the tree canopy tour, and he has refused to do so. He opined that the petitioner might have chosen not to display the information because the provided safety information depicts the canopy tour crossing the creek at least four times.

Mr. Owens stated that the rescue procedures provided by the petitioner appeared to be standardized for any tree canopy tour or zipline, not specific to the Boone Creek Outdoors facility. He said, with regard to the comments of the property's caretaker, who indicated that she had helped a distressed motorist contact emergency services, that the safety manual indicates that some situations require tour guides to call emergency services themselves. Mr. Owens does not believe tour guides would have cell phone service in the gorge; and, if they did, there would be a great deal of confusion about which county should service the call.

Mr. Owens said that he is also concerned about buffering of the subject property, since commercial facilities typically provide buffering against non-commercial activities. He opined that there is not enough information at this time to move forward with this request, and that he could not support it.

Zoning Action: A motion was made by Mr. Penn, seconded by Mr. Wilson, and carried 10-0 to approve MARC 2014-1, for the reasons provided by staff.

Conditional Use Action: A motion was made by Mr. Penn and seconded by Mr. Smith to disapprove the requested conditional use, for the following reasons:

1. There are multiple potential outcomes that may result from the numerous pending litigations regarding this property.
2. It is not in compliance with the Comprehensive Plan, because it does not preserve and protect an environmentally sensitive area as is intended in the A-N zone.
3. There is not enough evidence to find that public facilities and services, particularly in all areas of public safety and regulations, will be adequate to serve the proposed use.
4. The conditional use application does not comply with the emphasis in the Rural Land Management Plan for preservation and enhancement of the land in its natural state, with a minimum of intrusions.

Mr. Penn's motion failed, 5-5 (Berkley, Cravens, Drake, Mundy, and Richardson opposed; Brewer absent.)

Commission Discussion: Mr. Wilson stated that, once a motion has failed, any following motion would have to be substantially different, not just the opposite of the failed motion.

Mr. Berkley stated that he was not familiar with the parliamentary procedure in this instance, and asked Ms. Jones to clarify why another motion could not be made. Ms. Jones responded that, if the zone change had resulted in a tie vote, the statute would require the Commission to reconsider it in 30 days. On a conditional use permit request, however, a tie vote fails. Ms. Jones stated that Mr. Wilson, the Commission's Parliamentarian, indicated to the Commission that they could make another motion, but it would have to be substantially different from the failed motion. Mr. Berkley asked if Ms. Jones had reviewed the staff's alternative action #1, and whether it could be considered substantially different. Ms. Jones answered that it has different findings, but it is the opposite of disapproval, which was the failed motion. She asked Mr. Wilson to clarify the circumstances under which the Commission could make another motion. Mr. Wilson answered that, if someone wanted to rescind or annul the failed motion, they would have to wait until the Commission's next regular session to do so. At that session, the motion could be appealed or nullified either "with notification" or "without notification." Mr. Wilson stated that a "with notification" motion would require that someone notify the Chair that they wanted to have a different vote on a similar motion. That notification would require that the Commission wait another two weeks, after which a simple majority vote would take place. A "without notification" vote could be done at the same session, but it would require a 2/3 vote.

Petitioner Representation: Mr. Murphy noted the petitioner's objection for the record, stating that there were a variety of different motions that could be made, based on the conditions the Commission chose to apply to the requested conditional use. He said that a motion to approve and a discussion of conditions would be fully legal and fully appropriate.

Mr. Todd stated that he strongly objected to Mr. Murphy's argument.

Mr. Cravens stated that often, when a motion fails, the Commission immediately makes an opposite motion. He asked if another motion could be considered if the Chair agreed to accept it. Mr. Wilson responded that it would have to be a substantially different motion. He added that a suspension of the rules could also be argued, which would require a 2/3 vote rather than a simple majority. Mr. Wilson explained that the Commission often acted "by custom and tradition" in ways that were contrary to parliamentary procedure. He said that, if someone wanted to make a new motion at the Commission's meeting in two weeks, it could be done. Mr. Wilson added that the "ultimate parliamentarian" is the Chair, and his role as parliamentarian is simply to advise the Commission.

Ms. Jones noted that the Commission could not bring the matter back up in two weeks unless they intended to make a motion to rescind today's previous motion and action on the zone change. Mr. Wilson confirmed that Ms. Jones' comments were correct, according to parliamentary procedure.

Mr. Owens stated that the last time a similar issue was raised with the Commission was on a tie vote during the Colony neighborhood ND-1 hearing. He said that, one month later, the member who made the motion rescinded it, and there was a change. Ms. Jones answered that that was a different situation, because it was a zone change, rather than a conditional use request. She explained that, when there is a tie vote on a zone change, it automatically goes back to the Commission in 30 days.

Mr. Owens asked if the issue was left up to him, as Chair. Ms. Jones answered affirmatively. Mr. Owens stated that the motion failed, and it would be left as such.

Ms. Jones noted that, if the Commission intended to act on the zoning development plan, they would need to remove all the references to the conditional use, since it was denied.

Development Plan Action: A motion was made by Mr. Penn, seconded by Ms. Plumlee, and carried 8-2 (Cravens and Drake opposed; Brewer absent) to indefinitely postpone ZDP 2014-3, pending the Council action on the zone change.